START

Title: FEDERAL REGISTER.

Reel No: 1 OF 8

Volume: 57

Issues: 1 - 20
PAGES: 1 - 3706

Date: JANUARY 2 - JANUARY 30, 1992

UMI No: 2575.00

Notes: Includes:
INDEX VOLUME 57 (JANUARY - JUNE 1992)
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THIS INDEX is based on a consolidation of contents entries appearing in the January—June issues of the FEDERAL REGISTER. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the FEDERAL REGISTER where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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The LSA (List of CFR Sections Affected), a cumulative numerical finding aid, is published monthly and is cumulated for 12 months, keyed to the revision dates of the various CFR volumes.

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Mildred L. Isler is Chief Editor of the Federal Register Index, assisted by Melanie Y. Williams. The Index is prepared under the direction of Richard L. Claypoole, assisted by Laurice A. Clark.

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GUIDE TO FREEDOM OF INFORMATION INDEXES

Editorial Note: The Freedom of Information Act (5 U.S.C. 552) requires Government agencies to maintain and make available for inspection and copying current indexes that provide identifying information on certain matters issued, adopted, or promulgated after July 4, 1967. Public Law 93–502 (88 Stat. 1561) requires the publication (with exceptions) and distribution of these indexes quarterly. This guide has been compiled by the Office of the Federal Register from information submitted by agencies in order to notify the public of the availability of these indexes for sale or inspection.

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Department of Defense, Department of the Air Force	Numerical index of standard publications (AFR 0–2). January 2, 1992. Lists regulations, manuals, and pamphlets together under each subject series; list visual aids and recurring periodicals separately	National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.	Chief, Base Information Management at nearest Air Force installation
	Numerical index of departmental forms (AFR 0–9). January 2, 1992. Lists forms numerically within each category, including accountable forms, forms requiring storage safeguards, and obsolete forms		Chief, Base Information Management at nearest Air Force installation
Department of Defense, Department of the Army, Information Systems Command, Army Publications Command and Printing Command	DA pamphlet 25–30 (Consolidated Index of Army Publications and Blank Forms) September 30, 1990. Printed in microfiche only	National Technical Information Service, Order Preprocessing Section, 5285 Port Royal Road, Springfield, VA 22161	Director, Army Publications and Printing Command, Hoffman Bldg., Alexandria, VA 22331-0302
Department of Education (ED), Office of the Assistant Secretary for Legislation and Public Affairs	ED Index contains those records required by Public Law 90–23 (Freedom of Information Act). The index is a guide to ED policies, instruction memoranda, organization function statements, guidelines, decisions and procedures not published in the Federal Register. Contains records originated since May 4, 1960; updated quarterly	Freedom of Information Officer, Department of Education, Office of Legislation and Public Affairs, 400 Maryland Ave., SW., Washington, DC 20202	Office of Legislation and Public Affairs, Document Review Center, 400 Maryland Ave., SW., Washington, DC 20202 Telephone 245–8907 or 472–3850
Department of Energy, Bonneville Power Administration	BPA Manual Index dated 1-25-89 (12 pages). Policy, procedural, and directives material indexed by subject and BPA Manual chapter number	The public may review the index, obtain a copy of the index, without charge, or secure further information concerning the contents of the records listed by contacting Bonneville Power Administration's Office of Media Relations, 905 NE. 11th Avenue, Portland, OR 97232, or the Washington, DC, Office, Forrestal Building, Room 8G-033, 1000 Independence Ave., SW., Washington, DC 20585	Bonneville Power Administration offices listed in previous column or BPA Areas and Districts at the following: 1500 NE. Irving, Portland, OR 97208; 201 Queen Anne Ave., N., Seattle, WA 98109; U.S. Cthse, West 920 Riverside Ave., Spokane, WA 99201; West 101 Poplar St., Walla Walla, WA 99362; U.S. Federal Bldg., 211 E. 7th Ave., Eugene, OR 97401; 800 Kensington, Missoula, MT 59801; U.S. Federal Bldg., 301 Yakima St., Wenatchee, WA 98807; 1650 Hollipark Dr., Idaho Falls, ID 83401; and 550 West Fort Street, Boise, ID 83724
Department of Health and Human Services, Public Health Service, Centers for Disease Control (HHS/PHS/CDC)	CDC Freedom of Information Act (FOIA) Index contains those records required by the Freedom of Information Act (P.L. 90-23). This index provides identifying information, by program and subject, for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and not published in the Federal Register. Index is updated quarterly	Public Inquiries, Communications and Management Analysis Office, Centers for Disease Control, Atlanta, GA 30333.	Public Inquiries, Communications and Management Analysis Office, Centers for Disease Control, Atlanta, GA 30333
Department of Health and Human Services, Public Health Service, Food and Drug Administration (HHS/PHS/FDA)	Analyst Operations Manual: Training information, instructions and procedures for new laboratory personnel	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Accession #PB85-211639: $46.50 for paper copy, $6.50 for microfiche	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857 (FDA/FOIS/HFI-35)

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	Compliance Policy Guides: Statements of FDA compliance policy, including those statements which contain regulatory action guidance information	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Manual accession #PB88–915499, $109.95; subscription accession #PB88–915400, $135.00	
	Compliance Program Guidance Manual: Programs, plans and instructions directed to FDA field operations for Program Management System (PMS) project implementation	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Entire manual accession #PB89-920499, $157.95; subscription accession #PB89-920-400, $425.00	
	Drug Autoanalysis Manual: A manual of automated methods which provides content uniformity test specifications in USP XVII and NF XII. Provides assurance of homogeneity within a single lot for a safe and effective drug supply. Specifications are for all table monographs where the active ingredient is present in low quantities (usually 50 mg. or less)	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $56.00. Payable to the Food and Drug Administration	
	EDRO Data Codes Manual: Computer code information for program management system projects used for reporting project information into the Program Oriented Data System (PODS)	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $100.00. Payable to the Food and Drug Administration	
	Field Management Directives: FDA field policy in the areas of operations management, planning and budget, program management	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $35.00. Payable to the Food and Drug Administration	
	Inspection Operations Manual: Standard operating inspectional and investigational procedures and instructions used by FDA investigational personnel	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Manual accession #PB88-913399, $55.95; subscription accession #PB88-913300, $65.00	
	Inspector Training Manual: Basic training manual for food and drug inspectors and inspection techniques	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $24.00. Payable to the Food and Drug Administration	
	Inspector's Manual for State Food and Drug Officials: Two-part manual—Part (1): operations section contains inspectional and investigational procedures, Part (2): program section outlines the specific recommended inspectional procedures applicable to a particular problem area, commodity or regulated industry. Similar in content to the Inspection Operations Manual, except for FDA administrative procedures which are not relevant to State Food and Drug Officials	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $71.00. Payable to the Food and Drug Administration	
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	Supervisory Investigators Guide: Guidelines to assist supervisory inspectors in managing investigational groups	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $9.00. Payable to the Food and Drug Administration	
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Department of Health and Human Services, Public Health Service, Health Services Administration (HHS/PHS/HSA)	HSA Freedom of Information Act (FOIA) Index: March 1975 to June 30, 1982. The HSA, FOIA index is a compilation of supplements to the departmental manual system, program level operations manuals, circulars, memoranda, notices and guides used by the components of HSA. All information included in this index is current as of June 30, 1982. The respective bureau level indexes are listed as follows: OA—OFFICE OF THE ADMINISTRATOR: OCPA—Public Affairs Management System Manual; OPEL—HSA forward plan, fiscal year 1979–83; OM/OCG—HSA procurement operating instructions; OM/OMP—HSA transmittal notices for supplements to HHS manuals; HSA Circulars; OM/OFS—policy decisions, procedures, and opinion. BMS—BUREAU OF MEDICAL SERVICES: Division of Hospitals and Clinics Operations Manual; BMS supplements to HHS manuals; Manual of Operations for PHS Health Unit, DFEH, BMS; BMS circulars; Contract Physician's Guide. IHS—INDIAN HEALTH SERVICES: IHS circulars; IHS supplements to HHS manuals; IHS Operations Manual; General Counsel opinions; policy and procedural manual and circulars. BCHS—BUREAU OF COMMUNITY HEALTH SERVICES: BCHS administrative guide system; BCHS Operations Manual; Emergency Medical Service Systems Program Guidelines; BCHS Regional Memorandum Series. BHPDS—BUREAU OF HEALTH PERSONNEL DEVELOPMENT AND SERVICE: BHPDS supplements to the HHS manuals; BHPDS operations manuals which include memoranda, guidelines, handbooks and procedures	Office of Communications and Public Affairs, HHS/PHS/HSA, Room 14A-39, 5600 Fishers Lane, Rockville, MD 20857. Checks payable to HHS/Public Health Service. Mail to HSA Collection Officer, HHS/PHS/HSA, Room 16-36, 5600 Fishers Lane, Rockville, MD 20857. Fees charged for research and reproduction of information are based upon the current departmental fee schedule for information under the FOI regulations (45 CFR part 5 subpart E)	Office of Communications and Public Affairs, HHS/PHS/HSA, Room 14A-39, 5600 Fishers Lane, Rockville, MD 20857

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Department of the Interior, Office of the Secretary	Departmental Manual, Table of Contents, Checklist, and Subject Index dated May 31, 1989. Index of directives containing descriptions of central and field organizations of the Department, delegations of authority, internal policies, guidelines, procedures, and other administrative matters	Chief, Division of Directives and Regulatory Management, Office of Management Improvement, U.S. Department of the Interior, Washington, DC 20240 One copy only, no charge	
	Checklist and Subject Index of Departmental Manual Additions to the FPM dated June 8, 1988. Index of Departmental personnel management directives which supplement the Federal Personnel Manual	Chief, Division of Program Management and Evaluation, Office of Personnel, U.S. Department of the Interior, Washington, DC 20240 One copy only, no charge	
	Listing of Secretary's Orders which are considered in effect with respect to current operations of the Department dated January 28, 1986	Chief, Division of Directives and Regulatory Management, Office of Management Improvement, U.S. Department of the Interior, Washington, DC 20240 One copy only, no charge	
Department of the Interior, Office of the Secretary, Office of Acquisition and Property Management	Departmental Manual Additions to the Federal Acquisition Regulation (FAR)	Division of Acquisition and Assistance, Office of Acquisition and Property Management, Department of the Interior, 18th & C Sts., NW., Room 5512, Washington, DC 20240 No charge	Division of Acquisition and Assistance, Office of Acquisition and Property Management, Department of the Interior, 18th & C Sts., NW., Room 5512, Washington, DC 20240 Telephone: (202) 343-6431
	400 DM - Departmental Manual Addition to the Interior Property Management Regulations (IPMR) Part 114-52	Division of Property Management, Office of Acquisition and Property Management, Department of the Interior, 18th & C Sts., NW., Room 5512, Washington, DC 20240 No charge	Division of Property Management, Office of Acquisition and Property Management, Department of the Interior, 18th & C Sts., NW., Room 5512, Washington, DC 20240 Telephone: (202) 343-3336
Department of the Interior, Office of the Secretary, Office of Aircraft Services	OAS Index of Operational Procedures Memoranda (OPM's) dated December 17, 1991: 91-1, Index — DMs and OPMs; 91-2, Temporary Flight Restrictions; 91-3, Undercover Law Enforcement Operations in Non-OAS Approved Aircraft; 91-4, Aviation User Training Plan; 91-5, Helicopter Landings; 91-6, Services, Rates, Payment and Collection; 91-7, OMB Circular A-126; 91-8, Aviation Safety Awards; 91-9, Fuel Procurement; 91-10, Helicopter Rappelling and Short-Haul Operations; 91-11, Minimum Equipment List (MEL) Requirements for DOI Owned/Operated Aircraft	Director's Office, Office of Aircraft Services, P.O. Box 15428, Boise, ID 83715-5428.	Director's Office, Office of Aircraft Services, P.O. Box 15428, Boise, ID 83715-5428
Department of the Interior, Bureau of Indian Affairs	Bureau of Indian Affairs Manual Index and Table of Contents dated June 23, 1983	Division of Management Support, Bureau of Indian Affairs, 18th and C Streets, NW., Washington, DC 20245 No charge	Division of Management Support, Bureau of Indian Affairs, Room 334-Interior South, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone: A.C.(202) 343-3577
Department of the Interior, Bureau of Land Management	Directives Digest Bulletin's dated - 1/31/90, 2/28/90, 3/31/90, 4/30/90, 5/31/90, 6/30/90, 7/31/90, 8/31/90, 9/31/90, 10/31/90, 11/30/90, 12/31/90	Department of the Interior, Bureau of Land Management, 1849 C Street, N.W., MIB 2454, Washington, DC 20240	Department of the Interior, Bureau of Land Management, 1849 C Street, N. W., MIB 2454, Washington, DC 20249 Telephone: (202) 208-6152
Department of the Interior, Bureau of Mines	Basic Bureau of Mines Manual General Table of Contents and Checklist-July 6, 1976	In accordance with fee schedule in 43 CFR 2, Appendix A	Elizabeth Knorr, Chief, Branch of Management Analysis, 810 7th Street, NW., Washington, DC 20241 Telephone 202-501-9248
	Numeric and subject listing of internal policies and procedures by series, part, chapter, paragraph, and subordinate paragraph	Bureau of Mines	
Department of the Interior, Bureau of Reclamation	Reclamation Instructions Index dated July 12, 1983. Table of Contents dated June 6, 1991	Bureau of Reclamation, Attention: D-7923, Denver Federal Center, P.O. Box 25007, Denver, CO 80225-0007. No charge	Bureau of Reclamation; Attention: D-7923, Denver Federal Center, P.O. Box 25007, Denver, CO 80225-0007 Telephone: (303) 236-6761
Department of the Interior, U.S. Geological Survey	Geological Survey Manual, Table of Contents, Checklist, and Subject Index	Paperwork Management Officer, U.S. Geological Survey, 208 National Center, Reston, VA 22092 No charge	Paperwork Management Officer; U.S. Geological Survey; 208 National Center, Reston, VA 22092 Telephone 703-648-7309 or FTS 959-7309
Department of the Interior, Minerals Management Service	Basic Minerals Management Service Manual Table of Contents and Checklist	In accordance with fee schedule in 43 CFR 2, Appendix A	Dorothy Christopher, Directives Management Officer, 381 Elden Street, MS 2300, Herndon, VA 22070-4817
	Listed numerically by part, series, chapter, release number, date, and pages		
	Director's appeals decisions and index	In accordance with fee schedule in 43 CFR 2, Appendix A	Chief, Appeals Division, Minerals Management Service, 381 Elden Street, MS 1300, Herndon, VA 22070, Telephone 703-787-1275

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Department of the Interior, Office of Hearings and Appeals	Index-Digest -- Index of synopses for all decisions decided by OHA Boards of Appeal and published Solicitor's decisions under specific topical headings. Useful in researching legal holdings of Department of the Interior. Published quarterly, annually and on 5-year basis.	Editorial Branch, Office of Hearings & Appeals, Room 1103, 4015 Wilson Blvd. Arlington, VA 22203.Telephone 703-235-3791 Price: $475.00 annually for quarterly issues and bound cumulative issue at end of calendar year. Checks made payable to "Department of the Interior." Price for photocopies as prescribed in Department fee schedule for FOIA information (43 CFR Part 2, Appendix A). Checks made payable to "Department of the Interior." Price on Quinquennial issue is set by Government Printing Office and available from that agency.	
	Indian Citator — Index of authorities cited in decisions of the Interior Board of Indian Appeals (IBCA). Initial publication covers volumes 1-15 of IBIA decisions. Annually.	Editorial Branch, Office of Hearings & Appeals, Room 1103, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703-235-3791 Price: $30.00 - initial cost Checks made payable to: "Department of the Interior". $15.00 - annual update	Editorial Branch, Office of Hearings & Appeals, Room 1103, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703-235-3791 Telephone (703) 235-3791
	Administrative Manual— Index related to administrative policies, procedures and standards as contained in the Administrative Manual	Editorial Branch, Office of Hearings & Appeals, Room 1103, 4015 Wilson Blvd., Arlington, VA 22203. Price for photocopies as prescribed in Department fee schedule for FOIA information (43 CFR Part 2, Appendix A). Checks payable to Department of the Interior.	Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Telephone: (703) 235-3791
Department of the Interior, Office of Inspector General	Inspector General Manual Index, December 11, 1990. Numeric and subject listing of internal policies and procedures by volume, chapter, section, and subsection	In accordance with fee schedule in 43 CFR Part 2, Appendix A - Fees Office of Inspector General	Betty Foyes, Information Officer, Department of the Interior, Office of Inspector General, 18th and C Streets, NW., Washington, DC 20240 Telephone: 202-208-4356
Department of the Interior, Office of Surface Mining	Functional Index (OSMRE Directives Listed by Functions) dated October 22, 1986	Office of Surface Mining, Division of Management Services, 1951 Constitution Ave., NW., Washington, DC 20240 No charge	Office of Surface Mining, Division of Management Services, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone: A.C. (202) 343-2210
Department of Labor	Department of Labor Freedom of Information Act Index Overview and Guide to DOL agencies and subagencies with information on how to obtain more detailed indexes to records maintained by each subagency; includes cross-reference to agencies by statute or executive order; 28 pages	Mail $4.20 check payable to DEPARTMENT OF LABOR to: FOIA Index Request, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210.	Administrator, FOIA/PA, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210 Phone (202) 523-9277
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	Cease and Desist and Driver Disqualification Final Orders by the Federal Highway Administratpn: 1969-1984; listing of cease and desist and driver disqualification final orders of the Federal Highway Administrator; items listed are identified by case docket number, name of carrier and date notice of investigation was mailed	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590

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Department of the Treasury, Departmental Offices	Index of Selected Records, July 1967 to June 1989. Index either contains the following information or indicates where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; a description of the central and field offices; rules of procedure, descriptions of forms; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and administrative staff manuals and instructions to staff that affect a member of the public for the Departmental Offices, Internal Revenue Service, United States Customs Service, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, Bureau of Engraving and Printing, Financial Management Service, United States Mint, Bureau of the Public Debt, Office of the Comptroller of the Currency, United States Savings Bond Division, Federal Law Enforcement Training Center, Office of the Assistant Secretary for Tax Policy.	Library, Room 5010-MT, Department of the Treasury, Washington, DC 20220, Reproduced upon request; fees charged per page copied in accordance with fee schedule at 31 CFR 1.6. Make checks payable to Treasury of the United States	Treasury Department Library, Room 5010, Main Treasury Bldg., 15th and Pennsylvania Ave., NW., Washington, DC 20220
Architectural and Transportation Barriers Compliance Board	ATBCB Freedom of Information Index; June 1978 through November 1982: Final decisions made in adjudication of cases concerning alleged noncompliance to the Architectural Barriers Act of 1968; and a record of the final votes of each member of the Board in every Board proceeding. ATBCB annual reports; pamphlets describing the ATBCB, how to file complaints, and resource guides to literature in the area of creating an accessible environment	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. Reproduced upon request. Twenty cents per page, per copy. Make checks payable to the Department of Education Public Information Office, ATBCB, Rm. 1010, 330 C St., SW. Washington, DC 20202. No charge	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC Phone: 202-245-1591 Public Information Office, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202 Telephone: 202-245-1591
Committee for Purchase From the Blind and Other Severely Handicapped	Index of Additions and Deletions to the Procurement List: (a) Procurement List 1990 incorporates all additions and deletions through November 3, 1989; (b) Current index November 1989-December 1991.	Order from: Executive Director, Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square Building No. 5, 1755 Jefferson Davis Highway, Suite 1107, Arlington, VA 22202-3509. Price: Ten cents per page, per copy. Make checks payable to: Treasurer of the United States	Committee for Purchase From the Blind and Other Severely Handicapped, Attention: Freedom of Information Officer
Commodity Futures Trading Commission	Index of final Commission opinions, including concurring and dissenting opinions, and orders in the adjudication of cases. April 21, 1975 to date. (This index consists of separate chronological listings of final Commission opinions and orders in enforcement cases and reparations proceedings before the Commission) Index of statements of policy and interpretations adopted by the Commission and not published in the Federal Register. April 21, 1975 to date Index of Commission administrative manuals and instructions to staff that affect a member of the public. April 21, 1975 to date. (Commission instructions no longer in use are not included in this index)	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Price: 10 cents per page	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Telephone 202 254-6314

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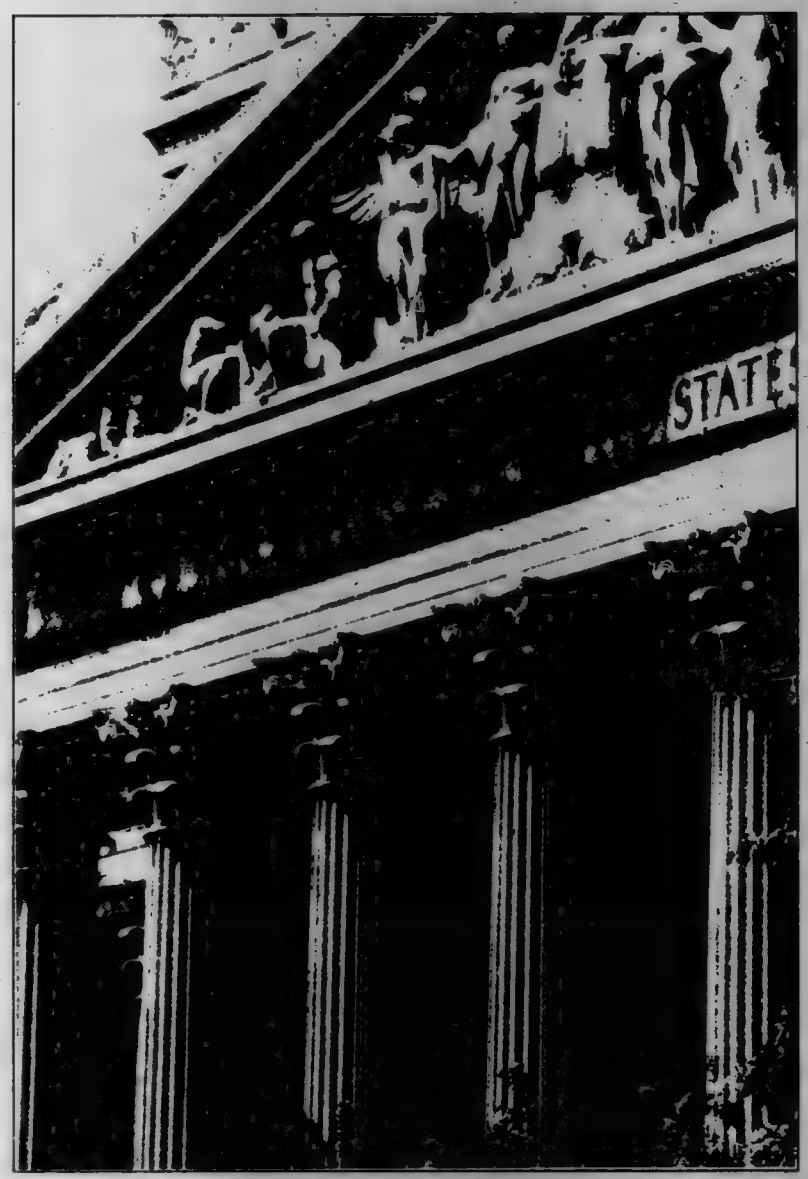

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Federal Register
Vol. 57, No. 1
Thursday, January 2, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules; Miscellaneous Changes

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today is amending subparts A and B of the Financial Assistance Rules, 10 CFR part 600, some of which reflect desired policy changes, some of which are updates to the rules, and some of which correct errors in the rules.

EFFECTIVE DATE: Effective February 3, 1992.

FOR FURTHER INFORMATION CONTACT:
Edward F. Sharp, Business and Financial Policy Division (PR–122), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8192
Linda Johnson, Office of the Assistant General Council, Procurement and Finance (GC–34), U.S. Department of Energy, Washington, DC 20585, (202) 586–1900

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I. Introduction

With this final rule, The Department of Energy (DOE) is amending its Financial Assistance Rules (Rules) to implement desired policy changes, update the Rules and correct errors contained therein. The changes will (1) state the need to comply with DOE regulations regarding the use of human subjects in research; (2) expand the criteria justifying a non-competitive financial assistance award to include a statutory mandate to make an award to a specific recipient; (3) include provisions to comply with Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction; (4) revise the criteria for selection of unsolicited applications to state that the determination that a competitive solicitation would be inappropriate must be made in light of other solicitations the DOE may already have issued or is planning to issue; (5) elaborate on the nature of the information needed in the **Federal Register** notice to explain why an award is being made in response to an unsolicited proposal; (6) change the title of § 600.16; (7) modify the merit review requirements to allow a decision not to merit review a renewal award to be made closer in time to the beginning date of the renewal with appropriate approval; (8) change the words "evaluator" and "evaluation" in § 600.16(i) to "reviewer" and "review" to conform to the terminology used in that Section; (9) codify previously published class deviations for the Small Business Innovation Research (SBIR) program and make conforming changes elsewhere in the rules; (10) eliminate the payment provisions regarding the letter of credit system; (11) clarify the requirement regarding single bid or sole source procurements under research awards; (12) correct the reference in § 600.119(d) from 600.118 to 600.33; (13) change the reference in § 600.120(c) from Attachment F of OMB Circular A–110 to OMB Circular A–133; (14) delete references to the Intergovernmental Cooperation Act of 1968 in §§ 600.113 and 600.421 and the Indian Self-Determination Act in § 600.421; (15) update an address included in § 600.14; and (16) correct typographical errors in §§ 600.103, 600.113, 600.420, 600.424, and 600.436.

Language is being added to § 600.2 to highlight the requirement that research recipients using human subjects must comply with 10 CFR part 745.

The inclusion of an additional ground for justifying the award of financial assistance on a noncompetitive basis recognizes that at times there is a statutory requirement to award funds to a specific recipient.

The provision concerning the use of seismic design and construction standards whenever Federal grants, loans or contracts are used for all or part of the construction costs is included to comply with Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction.

The criteria for selection of an unsolicited application is changed to provide that a determination that a project would be inappropriate for a competitive solicitation is not by itself a sufficient ground to award it. Recent, current, or planned solicitations must also be considered in deciding whether to award an unsolicited proposal.

The requirement to publish in the **Federal Register** an explanation for making an award in response to an unsolicited proposal is being elaborated to stipulate that the explanation must also address the selection criteria for unsolicited proposals.

The title of § 600.16 is being changed to "Objective Merit Review" because the entire merit review process is the subject of the section, not just the affiliation of reviewers as the present title states.

The provisions regarding the merit review of applications currently provides that a determination not to conduct a merit review of a project at renewal must be made no later than one year prior to the renewal date. This is being changed to permit a waiver of the one year requirement so long as the project officer's supervisor and the responsible official concur in that determination and a review for technical merit is included as part of the determination. It also clarifies the point that awards which do not go through the merit review process are subject to the requirements established for award of noncompetitive financial assistance.

The words "evaluator" and "evaluation" in § 600.16(i) are being changed to "reviewer" and "review." The former terms have been in the Rules for a number of years and were inadvertently retained when this section was revised in October, 1988 to add the provisions (which use the terms "reviewer" and "review") concerning objective merit review.

Six class deviations affecting the Rules dealing with the Small Business Innovation Research (SBIR) program were published in the **Federal Register** on May 22, 1990 (55 FR 21008) and are herein codified. These deviations (1) simplify record-keeping requirements for Phase I SBIR recipients; (2) permit, at the discretion of the Contracting Officer, lump sum payments to be made to Phase I recipients; (3) permit Phase II SBIR recipients to have budget periods of up to 24 months; (4) require awarding agency approval for time extensions of project periods; (5) require awarding agency approval of any procurement expected to exceed $25,000 which is being awarded on a sole source basis or for which only one bid was received; (6) permit a fee or profit to be paid to SBIR recipients. Conforming changes are being made in other sections as well. (See paragraph 6.c. of Small Business Innovation Research Policy Directive, 53 FR 23829, June 24, 1988).

Questions have arisen about whether the DOE rulemaking dated October 13, 1989 (54 FR 41943), regarding the elimination of many prior approval requirements, was intended to apply to the prior approval provisions in § 600.119 which deal with procurements under research awards. That rulemaking was intended to apply to procurements under research awards, except for SBIR awards, and changes have been made to § 600.119 to clarify that point.

A typographical error is being corrected in § 600.103(f)(l).

A typographical error is being corrected in § 600.113(e).

References to the Intergovernmental Cooperation Act of 1968 (ICA) in §§ 600.113 and 600.421 and the Indian Self-Determination Act in § 600.421 have been deleted. The ICA has been amended by the Cash Management Improvement Act of 1990 (CMIA), which in particular has affected the requirements regarding state interest payments. The specific impact of the CMIA will not be clear, however, until the Treasury Department completes its implementing regulations. In light of the changing nature of the legal requirements in this area, the Department is concerned that any attempt to list and explicate the relevant statutes might increase confusion and necessitate frequent revision of this regulation. Therefore, all references to specific statutes have been eliminated.

As a result of the phase-out of the Treasury Financial Communication System Letter-of-Credit, and the resultant need for the DOE to convert to another payment system, references to letter-of-credit as a payment mechanism in § 600.112 are being removed. The section on payments is also being restructured to more closely resemble the payment section in subpart E.

As a result of the promulgation of OMB Circular A–133 ("Audits of Institutions of Higher Learning and Other Non-Profit Institutions") on March 16, 1990, the reference in the Financial Assistance Rules to OMB Circular A–110, Attachment F, which deals with the same topic, is being replaced with a reference to Circular A–133.

An address is being changed in § 600.14(c).

A correction of a citation is being made in § 600.119(d)(2).

A typographical error is being corrected in § 600.420(a).

A typographical error is being corrected in § 600.424(b)(7)(ii).

A typographical error is being corrected in § 600.436(g)(2)(i).

II. Changes to 10 CFR Part 600

A new paragraph (c) is being added to § 600.2 to note the requirement that research involving human subjects must comply with 10 CFR part 745.

A new paragraph (G) is being added to § 600.7(b)(2)(i) to recognize as a grounds for issuing a financial assistance award on a noncompetitive basis a statutory requirement to issue an award to a particular recipient. To use this justification, the recipient must be specifically designated in the statute. The current paragraph (G) has been redesignated (H).

A new paragraph (c) is being added to § 600.12 to require that appropriate seismic design and construction standards be met if DOE funds are used in any building construction.

Section 600.14(c) is changed to update the address for receipt of a guide for preparing unsolicited applications/ proposals.

Section 600.14(e)(1)(ii) is changed to provide that the determination of whether it would be appropriate to initiate a competitive solicitation prior to making an award of an unsolicited proposal is one factor to be considered along with whether an application would be eligible for award under a recent, current, or planned solicitation.

Section 600.14(f) is being revised to require that the explanation for making an award in response to an unsolicited application address the selection criteria in § 600.14(e)(1).

The title to § 600.16 is being change from "Reviewer affiliations" to "Objective merit review".

Section 600.16(a)(3)(ii) is being revised to permit a waiver to the requirement that a determination not to merit review a renewal be made at least one year prior to the renewal date. In such a case there must be a written justification, approved by the project officer's supervisor and the responsible official, explaining the reasons that a merit review is not being done. Further, the justification must contain a review of the technical merit of the project. The section is also being revised to clarify the point that if a renewal is not merit reviewed, it is to be treated as a noncompetitive award.

Section 600.16(i) is changed to substitute "reviewer" and "review" for "evaluator" and "evaluation" to conform to the terminology in the rest of § 600.16.

Section 600.31(d)(1) is changed to exclude SBIR awards from the provisions for automatic carryover applicable to all other research awards.

Section 600.31(f) is revised to exclude SBIR awards from the requirement that a single budget period not exceed 12 months.

Section 600.103(b)(6) is amended to exclude SBIR awards from the blanket waiver of prior approvals applicable to all other research awards.

In § 600.103(f)(1), "application" is being changed to "applicant".

Section 600,103(h) is amended to provide for the payment of a fee or profit to SBIR recipients.

Section 600.109(a) is amended to include a reference to an SBIR exception to some of the financial management requirements contained in § 600.125.

Sections 600.112 (a), (b), (c), (d), and (e) are revised to eliminate the provisions concerning letter of credit. The amended language continues to give primary status to advance payments to financial assistance recipients in conformance with the OMB Circulars. As a result of the new language, current sections are redesignated as follows: § 600.112(e) is redesignated 600.112(f); § 600.112(f) is redesignated 600.112(g); § 600.112(g) is redesignated 600.112(h); and § 600.112(h) is redesignated 600.112(i).

In § 600.113(b), the reference to the Intergovernmental Cooperation Act of 1968 is deleted.

In § 600.113(e)(1), "ther" is being changed to "other".

Section 600.119(c)(1) is revised to specifically state that single bid or sole source procurements under *research* financial assistance do not have to be approved by the awarding agency, with the exception of SBIR recipients, which are covered by § 600.125(d)(2).

Section 600.119(d)(2) is changed to correct the reference concerning patents, inventions and copyrights. The proper citation is § 600.33, not § 600.118.

Section 600.120 is amended by replacing the reference to Attachment F of OMB Circular A–110 with a reference to OMB Circular A–133.

Section 600.125 is added to codify the six previously published class deviations to the Rules applicable to the Small Business Innovation Research Program. Cross references to this section have been included in §§ 600.31(d)(1), 600.31(f), 600.103(b)(6), 600.103(h) and 600.109(a).

In § 600.420(a), "expand" is being changed to "expend".

In § 600.421(i), the references to the Intergovernmental Cooperation Act and the Indian Self-Determination Act are deleted.

In § 600.424(b)(7)(ii), "costs" in the second sentence is being changed to "cost".

In § 600.436(g)(2)(i), "seciton" is being changed to "section".

III. Discussion of Comments on Proposed Rule

No comments were received on the proposed rule.

IV. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's rule will revise certain policy and procedural requirements. However, the DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

V. Review Under Executive Order 12291

Today's rule was reviewed under Executive Order 12291. The DOE has concluded that the rule is not a "major rule" because its promulgation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. In accordance with requirements of the Executive Order, this rulemaking has been reviewed by the Office of Management and Budget (OMB).

VI. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. The DOE has concluded that the rule would only affect small entities as they apply for and receive financial assistance and does not create additional economic impact on small entities. The DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VII. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulations at 5 CFR part 1320.

VIII. Review Under the National Environmental Policy Act

The DOE has concluded that promulgation of these rules clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and the DOE guidelines (10 CFR part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Cooperative agreements/energy, Copyrights; Educational institutions; Energy; Grants/energy; Hospitals; Indian Tribal governments; Individuals; Inventions and patents; Non-profit organizations; Reporting requirements; and Small businesses.

In consideration of the foregoing, the Department of Energy hereby amends chapter II of title 10 of the Code of Federal Regulations by amending part 600 as set forth below.

Issued in Washington, DC December 26, 1991.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance, and Program Management.

For the reasons set out in the preamble, part 600 of chapter II, Title 10 of the Code of Federal Regulations is amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 continues to read as follows:

Authority: Secs. 644 and 646, Public Law 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Public Law 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308), unless otherwise noted.

2. In § 600.2, paragraphs (c), (d), (e) and (f) are redesignated as (d), (e), (f) and (g) respectively, and a new paragraph (c) is added to read as follows:

§ 600.2 Applicability.

* * * * *

(c) A financial assistance recipient performing research, development, or related activities involving the use of human subjects shall comply with DOE regulations in 10 CFR Part 745 "Protection of Human Subjects" and any additional provisions which may be included in the Special Terms and Conditions of the award.

* * * * *

3. In § 600.7, paragraph (b)(2)(i)(G) is redesignated as paragraph (b)(2)(i)(H) and a new paragraph (b)(2)(i)(G) is added to read as follows:

§ 600.7 Eligibility.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(G) A specific recipient has been statutorily designated.

* * * * *

§ 600.12 [Amended]

4. Section 600.12(c) is added as follows:

* * * * *

(c) Provision shall be made to design and construct all buildings, in which DOE funds are used, to meet appropriate seismic design and construction standards. Seismic codes and standards meeting or exceeding the provisions of the Uniform Building Code (1988 or as revised), shall be deemed appropriate.

5. Section 600.14 is amended by revising paragraphs (c) and (e)(1)(ii) and by adding a sentence to the end of paragraph (f) as follows:

§ 600.14 Unsolicited applications.

* * * * *

(c) *Preparation and submission of application.* A guide for preparing unsolicited applications/proposals is available from the Field/Headquarters Support Division (PR–132), Office of Procurement, Assistance and Program Management, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

* * * * *

(e) * * *

(1) * * *

(ii) The proposed project represents a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, and if, as determined by DOE, a competitive solicitation would be inappropriate.

* * * * *

(f) * * * Such an explanation must address the selection criteria contained in § 600.14(e)(1) (i) and (ii).

* * * * *

6. Section 600.16 is amended by revising the heading and paragraph (a)(3)(ii) as set forth below. In addition, paragraph (i) is amended by changing "evaluators" to "reviewers", "evaluator" to "reviewer" and "evaluation" to "review".

§ 600.16 Objective merit review.

(a) * * *

(3) * * *

* * * * *

(ii) For projects in which multiple renewals are probable, an objective merit review need not necessarily be done at each renewal, but instead at appropriate points during the course of the project. A determination that a project need not be reviewed at each renewal shall be made at the time the initial award is issued, or, in the event that unforeseen circumstances arise which preclude a merit review at a previously scheduled point during the course of a project, the merit review of a renewal application may be waived prior to the renewal of the project. The criteria on which the determination that a project need not be reviewed at each renewal is based, shall be included in the system of objective merit review to be established by the responsible official in accordance with paragraphs (a) (1) and (2) of this section. For a waiver to be issued, the project officer shall prepare, with the concurrence of his or her immediate supervisor, a written determination for the approval of the responsible official that a merit review is not appropriate at the particular point in time, setting forth the circumstances that preclude the merit review. The determination shall contain an evaluation of the technical merit of the project being proposed for additional support. This determination shall also set forth the facts which would support the justification required by 10 CFR 600.7(b)(2)(i). Finally, the determination shall indicate the reports required under the award and shall be placed in the official file by the Contracting Officer.

* * * * *

7. Section 600.31(d)(1) is revised, paragraph (f)(3) is amended by replacing the period at the end with "; or", and a new paragraph (f)(4) is added, to read as follows:

§ 600.31 Funding.

* * * * *

(d) *Extensions.* (1) Recipients of research awards, except recipients of SBIR awards (See § 600.125(d)), may extend the expiration date of the final budget period of the project (thereby extending the project period) if additional time beyond the established expiration date is needed to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the originally established expiration date. The recipient must notify the cognizant DOE Contracting Officer in the awarding office in writing within ten (10) days of making the extension.

* * * * *

(f) * * *

(3) * * *; or

(4) The award is a Phase II SBIR award (see § 600.125(c)).

8. In § 600.103, paragraphs (b)(6) and (h) are revised to read as follows, and in paragraph (f)(1), "application" is changed to "applicant."

§ 600.103 Cost determinations.

* * * * *

(b) * * *

(6) Before a recipient may make changes in the following areas on research financial assistance awards, the written approval of the cognizant Contracting Officer at the DOE is required:

(i) Changes in objectives or scope,

(ii) Temporary replacement or change of principal investigator or change of key personnel, and

(iii) Change of the institution to which the award is to be made.

All other Federal prior approval requirements, including those in OMB Circulars A–21 and A–110, are waived for research, except as provided in § 600.125 for SBIR awards. The recipient may maintain such internal prior approval systems as it considers necessary.

* * * * *

(h) *Fee or profit.* No increment above cost may be paid to a grantee or subgrantee under a DOE grant or subgrant, except for SBIR recipients as provided in § 600.125(d)(3). A fee or profit may be paid to a contractor providing goods or services under a contract with a grantee or subgrantee.

* * * * *

9. Section 600.109(a) is revised to read as follows:

§ 600.109 Financial management systems.

(a) *General.* Except as provided in paragraph (c) of this section and § 600.125 of this subpart, grantees and subgrantees shall have financial management systems which meet the minimum standards set forth in paragraph (b) of this section.

* * * * *

10. Section 600.112 (a), (b), (c), and (d), are revised, paragraphs (e) through (h) are redesignated as paragraphs (f) through (i) and a new paragraph (e) is added. The revised and added paragraphs are set forth below.

§ 600.112 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which the DOE will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided that their financial management systems meet the standards for fund control and accountability specified in § 600.109(b), including procedures or planned procedures that will minimize the time elapsing between the transfer of the funds from the U.S. Treasury and their disbursement by the grantee or subgrantee, except as provided in § 600.125(b)(5).

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. The DOE may also use the reimbursement method if the major portion of the project or activity will be financed by private financing or Federal loans, with the DOE grant

representing 25 percent or less of the total cost.

(e) *Conversion from advance payment method.* The DOE may convert a grantee from advance payment to reimbursement whenever the grantee no longer meets the criteria for advance payment specified in paragraph (c) of this section. Any such conversion may be accomplished only after the DOE has advised the grantee in writing of the reasons for the proposed action and has provided a period of at least 30 days within which the grantee may take corrective action or provide satisfactory assurances of its intention to take such action.

* * * * *

§ 600.113 Program income.

11. Section 600.113(b) is revised to read as follows, and in paragraph (e)(1), first sentence, "ther" is corrected to read "other".

* * * * *

(b) *Income resulting from advances of DOE funds.* Unless there are statutory provisions to the contrary, a grantee shall remit to DOE any interest or other investment income earned on advances of DOE funds.

* * * * *

12. In § 600.119, paragraphs (c)(1) and (d)(2) are revised to read as follows:

§ 600.119 Procurement under grants and subgrants.

* * * * *

(c) *Prior approval requirements.* (1) A grantee or subgrantee must receive prior written approval from the awarding party before entering into any sole source contract or a contract where only one bid or proposal is received when the value of the contract is expected to exceed $5,000 in the aggregate, and the grantee or subgrantee is not a State government, local government, Indian tribal government, SBIR award recipient (see § 600.125(d)(2)), or research award recipient.

* * * * *

(d) * * *

(2) A clause requiring the contractor to comply with applicable DOE requirements concerning patents, inventions and copyrights (see § 600.33).

* * * * *

13. In § 600.120, the introductory text to paragraph (c)(1) is revised as follows:

§ 600.120 Audit requirements.

* * * * *

(c) *Nonprofit organizations.* (1) Except for public hospitals and public colleges and universities that are included in an audit conducted pursuant to Subpart D of this Part, all grantees and subgrantees that are institutions of higher education, hospitals or other nonprofit organizations shall comply with the requirements of OMB Circular A–133, and shall:

* * * * *

14. Section 600.125 is added as follows:

§ 600.125 Special provisions for Small Business Innovation Research Grants.

(a) *General.* This section contains provisions applicable to the Small Business Innovation Research (SBIR) Program. This codifies six class deviations pertaining to the SBIR program.

(b) *Provisions Applicable to Phase I SBIR Awards.* Phase I SBIR awards may be made on a fixed obligation basis, subject to the following requirements:

(1) While proposed costs must be analyzed in detail to ensure consistency with applicable cost principles, incurred costs are not subject to regulation by the standards of cost allowability;

(2) Although detailed budgets are submitted by a recipient and reviewed by the DOE for purposes of establishing the amount to be awarded, budget categories are not stipulated in making an award;

(3) Prior approval from the DOE for rebudgeting among categories by the recipient is not required. Prior approval from the DOE is required for situation involving sole source or single bid procurements as provided in § 600.125(d)(2). Prior approval from the DOE is also required for any variation from the requirement that no more than one-third of Phase I work can be done by sub-contractors or consortium partners;

(4) Pre-award expenditure approval is not required;

(5) Payments are to be made in the same manner as other financial assistance (see § 600.112), except that, when determined appropriate by the cognizant program official and contracting officer, a lump sum payment may be made. If a lump sum payment is made, the award must be conditioned to require the recipient to return to the DOE amounts remaining unexpended at the end of the project if those amounts exceed $500;

(6) Recipients will certify in writing to the Contracting Officer at the end of the project that the activity was completed or the level of effort was expended. Should the activity or effort not be carried out, the recipient would be expected to make appropriate reimbursements;

(7) Requirements for periodic reports may be established for each award so long as they are consistent with § 600.115;

(8) Changes in principal investigator or project leader, scope of effort, or institution, require the prior approval of the DOE.

(c) *Provision Applicable to Phase II SBIR Awards.* Phase II SBIR awards may be made for a single budget period of 24 months.

(d) *Provisions Applicable to Phase I and Phase II SBIR Awards.* (1) The prior approval of the cognizant DOE Contracting Officer is required before the final budget period of the project period may be extended without additional funds.

(2) A grantee or subgrantee must receive the prior written approval of the awarding party before entering into any sole source contract or a contract where only one bid or proposal is received when the value of the contract is expected to exceed $25,000 in the aggregate.

(3) A fee or profit may be paid to SBIR recipients.

§ 600.420 [Amended]

15. In the first sentence of paragraph 600.420(a), "expand" is corrected to read "expend".

16. Section 600.421(i) is revised to read as follows:

§ 600.421 Payment.

* * * * *

(i) *Interest earned on advances.* Unless there are statutory provisions to the contrary, grantees and subgrantees shall promptly, but at least quarterly, remit to the Federal agency interest earned on advances. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 660.424 [Amended]

17. In the second sentence of paragraph 600.424(b)(7)(ii) "costs" is corrected to read "cost".

§ 660.436 [Amended]

18. In paragraph 600.436(g)(2)(i), "seciton" is corrected to read "section".

[FR Doc. 91–31281 Filed 12–31–91; 8:45 am]
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FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Docket No. R-0685]

Regulation H, Regulation Y—Appraisal Standards for Federally Related Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Rule; Revision of Compliance Date.

SUMMARY: The Board published a final rule at page 27762 of the issue for Thursday, July 5, 1990 (FR Doc. 90–15401), that contains a compliance date of July 1, 1991, regarding the use of state certified or licensed appraisers in federally related transactions. That compliance date is being revised by the Board to December 31, 1992, in response to section 472 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

DATES: *Effective Date*: January 2, 1992. *Compliance Date*: State certified or licensed appraisers, as appropriate, must be used for federally related transactions by December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Roger T. Cole, Assistant Director (202/452-2618), Stanley B. Rediger, Supervisory Financial Analyst (202/452-2629), or Virginia M. Gibbs, Senior Financial Analyst (202/452-2521), Division of Banking Supervision and Regulation; or Michael J. O'Rourke, Senior Attorney (202/452-3288), Legal Division. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), contact Dorthea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: Pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. sections 3310, 3331-3351, the Board adopted a final rule regarding Appraisal Standards For Federally Related transactions (12 CFR parts 208 and 225) on June 27, 1990. The Board's rule contains two compliance dates: the compliance date of August 9, 1990, for adherence to minimal appraisal standards, and the compliance date of July 1, 1991 (subsequently extended to December 31, 1991), for the use of state certified or licensed appraisers. Title XI's provisions regarding the mandatory use of state certified or licensed appraisers was amended by section 472 of the Federal Deposit Insurance Corporation Improvement Act of 1991, (Pub. L. No. 102-242, Section 472, 105 Stat. 2236, 2386) (December 19, 1991). That amendment changed the compliance date in Section 1119(a) of Title XI regarding the mandatory use of certified or licensed appraisers in federally related transactions from "not later than July 1, 1991," to "not later than December 31, 1992." To reflect the change contemplated by the amendment to Title XI of FIRREA, the Board is revising the compliance date in its appraisal regulation regarding the mandatory use of state certified or licensed appraisers in federally related transactions to December 31, 1992. The impact of this amendment on financial institutions regulated by the Board is that the Board's regulatory requirements regarding the mandatory use of state certified or licensed appraisers in federally related transactions will not be effective until December 31, 1992. Under section 472's amendment to Title XI, however, states remain free to adopt their own implementation date for state appraiser licensing and certification requirements prior to December 31, 1992.

(12 U.S.C. 321; 12 U.S.C. 1844(b); 12 U.S.C. 3339, 3340.)

Board of Governors of the Federal Reserve System, December 26, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-31287 Filed 12-31-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-65; Special Conditions No. 25-ANM-52]

Special Conditions: Modified Cessna 551 Airplane: High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cessna Model 551 airplane modified by ElectroSonics Division of AiRadio Corporation of Columbus, Ohio. This airplane is equipped with high-technology digital avionics systems that perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by this system are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is December 23, 1991.

Comments must be received on or before February 17, 1992.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-65, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked Docket No. NM-65. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Lium, FAA, Standardization Branch, ANM-113, Transport Standards Staff, Transport Airplane Directorate Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-1112.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-65." The postcard will be date/time stamped, and returned to the commenter.

Background

On October 16, 1991, ElectroSonics Division of AiRadio Corporation applied for a Supplemental Type Certificate to

modify the Cessna Model 551 airplane. The proposed modification incorporates a number of novel or unusual design features, such as digital avionics consisting of a pilot's-side electronic flight instrument system (EFIS) that is vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.115, subchapter C, of the FAR, ElectroSonics Division of AiRadio Corporation must show that the altered Cessna Model 551 airplane meets the applicable requirements as specified in §§ 21.101 (a) and (b), unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under §§ 21.101 (a) and (b); or (3) special conditions are prescribed by the Administrator.

The requirements specified in § 21.101(a) are the regulations incorporated by reference in Type Certificate No. A27CE for the Cessna Model 551 airplane. Those are part 23 of the FAR, effective February 1, 1965, as amended by Amendments 23–1 through 23–16; part 25 of the FAR, effective February 1, 1965, as amended by Amendments 25–1 through 25–17; and various sections and findings of equivalent safety that are not pertinent to these special conditions. Those sections of part 23 and part 25 that are pertinent to this installation include: § 23.1311, as amended through Amendment 23–41; §§ 25.1301, 25.1303(b), and 25.1322, as amended through Amendment 25–38; and §§ 25.1309, 25.1321 (a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335, as amended through Amendment 25–41. These special conditions will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (that is, part 23 and part 25 requirements) do not contain adequate or appropriate safety standards for the modified Cessna Model 551 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established by the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.115(a).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, these special conditions require that the new technology electrical and electronic systems, such as the EFIS, be designed and installed to preclude component damage and interruption of function due to HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communication, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with HIRF protection special conditions is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10–500 KHz	60	60
500–2000 KHz	80	80
2–30 MHz	200	200
30–100 MHz	33	33
100–200 MHz	150	33
200–400 MHz	56	33
400–1000 MHz	4,020	935
1–2 GHz	7,850	1,750
2–4 GHz	6,000	1,150
4–6 GHz	6,800	310
6–8 GHz	3,600	666
8–12 GHz	5,100	1,270
12–18 GHz	3,500	551
18–40 GHz	2,400	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Final Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type

certification basis for the modified Cessna Model 551 airplane:

1. Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

The following definition applies with respect to this special condition:

2. Critical Function. Function whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on December 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-31272 Filed 12-31-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 778, and 785

[Docket No. 911223-1323]

Exports to Territories Included Within the Geographic Area of the Former Soviet Union

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The rapidly changing situation in the geographic area formerly known as the Union of Soviet Socialist Republics (U.S.S.R., Soviet Union) has caused exporters to question the export control status of that geographic area.

All of the geographic area that has been known as the U.S.S.R. remains a controlled destination and continues to fall within Country Group Y. At this time, the provisions of the Export Administration Regulations (EAR) that have been in effect for the U.S.S.R. continue to apply to that area. The Baltic Republics of Estonia, Latvia, and Lithuania also remain in Country Group Y.

Until new political entities are identified in the EAR, exporters may continue to use the designations "Union of Soviet Socialist Republics", "Soviet Union", or "U.S.S.R." on export control documents involving that geographic area.

References to the U.S.S.R. in parts 770, 778, and 785 of the EAR are revised to reflect this policy.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: David Schlechty, Country Policy Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4252.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, 14th Street and Pennsylvania Ave., NW., room 1622, Washington, DC 20230.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

15 CFR Part 785

Communist countries, Exports.

Accordingly, parts 770, 778, and 785 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

PART 770 [AMENDED]

1. The authority for part 770 is revised to read as follows:

Authority: Pub. L. 96-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93-153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94-163, 89 Stat. 877 (43 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94-258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95-372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976), E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 46587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PARTS 778 & 785 [AMENDED]

2. The authority citation for parts 778 and 785 is revised to read as follows:

Authority: Pub. L. 96-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978), E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 46587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PART 770—[AMENDED]

3. In Supplement No. 1 to part 770, under the heading "Country Group Y", the "Union of Soviet Socialist Republics" is removed and replaced by "The geographic area formerly known as the Union of Soviet Socialist Republics"

PART 778—[AMENDED]

4. Supplement No. 5 to part 778 is amended by removing the "Soviet

Union" and by adding "The geographic area formerly known as the Union of Soviet Socialist Republics", in alphabetical order.

PART 785—[AMENDED]

5. Section 785.2 is amended by revising the section heading and by adding a new sentence at the end of paragraph (a)(1), as follows:

§ 785.2 Country Group Q, W, and Y [1]: Geographic area of the former U.S.S.R., Eastern Europe, Mongolian People's Republic, and Laos.

(a)(1) * * * The term "U.S.S.R.", as used herein, refers to the geographic region formerly known as the Union of Soviet Socialist Republics.

* * * * *

Dated: December 27, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-31328 Filed 12-27-91, 4:43 pm]

BILLING CODE 3510-DT-M

[1] See Supplement No. 1 to part 770 of this subchapter for listing of Country Groups.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 250

[Docket No. RM87-5-008; Order No. 497-C]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines; Order Extending Sunset Date and Amending Final Rule

Issued December 20, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order extending sunset date and amending final rule.

SUMMARY: The Commission issued a final rule in Order No. 497 adopting standards of conduct and reporting requirements to govern the relationship between interstate pipelines and their gas marketing affiliates.

The reporting requirements in Order No. 497 were extended several times by various documents published in the **Federal Register.**

This order extends the final rule's reporting requirements for an additional year, from December 31, 1991, to December 31, 1992. In addition, this order amends the final rule to reduce the number of paper printouts of the FERC Form No. 592 information that pipelines are required to file.

EFFECTIVE DATE: In order to prevent a gap in the rule's reporting requirements, the extension of the sunset provision for the rule's reporting requirements is effective January 1, 1992. The amendment to the final rule is also effective January 1, 1992. However, since the record in this case has been filed with the United States Court of Appeals for the District of Columbia Circuit, the court has exclusive jurisdiction over the matter pursuant to section 19(b) of the Natural Gas Act. Therefore, the extension of the sunset provision for the reporting requirements and the amendment to the final rule are subject to leave of court. If the dates are affected by court action, a document will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1275.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is extending the sunset date of Order No. 497's [1] reporting requirements for an additional year, from December 31, 1991, until December 31, 1992. The Commission is also amending the final rule to reduce the number of paper printouts of the FERC Form No. 592 information that pipelines are required to file.

II. Public Reporting Burden

This order does not change the reporting burden in the final rule, as revised in Order No. 497-A, that already is in effect. The order clarifies the reporting requirements of FERC Form No. 592 and extends the sunset provision for an additional year, from December 31, 1991, to December 31, 1992. Clarification of the reporting requirements will reduce or eliminate the filing of unnecessary duplicative information. The Office of Management and Budget approved the reporting requirements in the final rule on August 18, 1988. This approval is effective until December 31, 1991.

The current annual reporting burden for collection of information is estimated to be 6,996 hours for FERC Form No. 592 (1902-0157). The industry burden is based on an estimated average of 10.60 hours per filing for the 55 respondents to complete 660 filings of FERC Form No. 592. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and obtaining the data needed, and completing and reviewing the collection of information.

III. Background

The Commission issued a final rule in this proceeding on June 1, 1988,[2] which was the result of a lengthy rulemaking proceeding begun in response to petitions for rulemaking [3] and several cases that had raised the issue of potential abuse in the relationship between interstate natural gas pipelines and their marketing or brokering affiliates.[4] The final rule in Order No.

[1] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. ¶ 30,820 (June 1, 1988); Order No. 497-A, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. ¶ 30,868 (December 15, 1989); Order No. 497-B, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. ¶ 30,908 (December 13, 1990).

[2] *Id.*

[3] Petitions of Hadson Gas Systems, Inc. in Docket No. RM86-19-000, Minnesota Department of Public Service in Docket No. RM87-1-000, and Shell Gas Trading Co. in Docket No. RM87-2-000.

[4] Northern Natural Gas Co., 20 FERC ¶ 61,040 (1982); Mountain Fuel Resources, Inc., 36 FERC ¶ 61,150 (1986); ANR Pipeline Co., 35 FERC ¶ 61,400 (1986); Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipe Line Co., 36 FERC ¶ 61,282 (1986); Southern Natural Gas Co., 36 FERC ¶ 61,275 (1986); Texas Gas Transmission Corp., 36 FERC ¶ 61,274 (1986); Arkla Exploration Co., 37 FERC ¶ 61,011 (1986); Southern Natural Gas Co., 38 FERC ¶ 61,401 (1986); Tenneco Oil Co., *et al* 36 FERC ¶ 61,399 (1986).

497 adopted standards of conduct and reporting requirements intended to prevent preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation services.[5] The final rule also adopted a sunset provision of December 31, 1989, for the reporting requirements and specifically reserved the Commission's option of extending the date should the Commission decide there was a need to do so.

On December 15, 1989, the Commission issued Order No. 497–A which granted partial rehearing of Order No. 497 and clarified certain provisions of the final rule.[6] Order No. 497–A also extended the final rule's reporting requirements for an additional year, from December 31, 1989, to December 31, 1990, and stated that the Commission would examine the need to further extend the rule's reporting requirements prior to their sunset date of December 31, 1990.

On December 13, 1990, the Commission issued Order No. 497–B[7] which extended the sunset date of Order No. 497's reporting requirements for an additional year, from December 31, 1990 until December 31, 1991, because several issues regarding Order Nos. 497 and 497–A were pending. These issues included those raised in the protests of filings made by pipelines in response to issuance of Order No. 497, the applicability of the standards of conduct to discount sales programs, as well as the appeal to the U.S. Court of Appeals for the District of Columbia Circuit.

Several pipelines and local distribution companies filed with the United States Court of Appeals for the D.C. Circuit for judicial review of the Order No. 497 marketing affiliate rule, and the case is pending before that court in *Tenneco Gas* v. *FERC*, No. 89–1768. Consequently, the Commission's action in this proceeding is subject to leave of the court.

IV. Discussion

Order No. 497 has two basic elements: (1) The establishment of standards of conduct intended to assure that pipelines do not use the essential facility in a discriminatory manner to the competitive advantage of their affiliates, and (2) the requirement that pipelines record and report the essential terms of transactions with or to the benefit of affiliates in order to allow verification of compliance with the standards of conduct.

The Commission is extending the reporting requirements of Order Nos. 497 and 497–A for an additional year from December 31, 1991, to December 31, 1992, because certain issues regarding Order Nos. 497 and 497–A are still pending and a new issue has arisen. The issues still pending are the applicability of the standards of conduct to discount sales programs and the appeal to the U.S. Court of Appeals for the District of Columbia Circuit. The new issue that has arisen is the proposal in the recent Notice of Proposed Rulemaking (NOPR) in Docket No. RM91–11–000[8] to require pipelines to comply with Order No. 497's standards of conduct and reporting requirements by considering their unbundled sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate. With these issues before the Commission, it would be premature to let the reporting requirements lapse at the end of this year.[9]

The Commission also continues to believe, as it did at the time it issued Order No. 497–B, that the potential for discriminatory behavior by pipelines in favor of their marketing affiliates continues to exist. The Commission still believes that reporting has a deterrent effect because participants in a transaction are aware that at some time in the future the Commission may call upon them to explain how the transaction complies with the standards of conduct. In addition, reporting is an important enforcement tool when deterrence is not successful because data regarding transactions is one of various sources of information that is needed to verify whether a particular prohibited practice has occurred. Therefore, allowing the reporting requirements to lapse at this time would hamper the Commission's ability to enforce these standards. Continuation of these requirements will assist the public and Commission staff in monitoring potential abuses.

For all of the foregoing reasons, the Commission is extending the reporting requirements of Order Nos. 497 and 497–A for an additional year from December 31, 1991 to December 31, 1992. This additional time should enable the Commission to resolve some of the issues discussed above. Because the Commission cannot now determine the need to continue the reporting requirements subsequent to December 31, 1992, the Commission will again examine the need to extend the rule's reporting requirements prior to the new sunset date. By that time we should also have the benefit of the court's review of Order Nos. 497 and 497–A.

The Commission is also amending the final rule to reduce the number of paper printouts of the FERC Form No. 592 information that pipelines are required to file. Currently, pipelines are required to file FERC Form No. 592 on magnetic tape or computer disk and three paper printouts of the information contained on the magnetic tape or computer disk. The paper printouts are sometimes voluminous. The Commission has determined that the number of paper printouts of the FERC Form No. 592 information can be reduced. Accordingly, the Commission is amending the final rule to require pipelines to file only one paper printout of all the information required by FERC Form No. 592.

The Commission is also clarifying certain elements of the reporting requirements to eliminate the filing of certain unnecessary information. Experience has shown that the data filed by some pipelines can be substantially reduced while still complying with the filing requirements. The following clarifications should help reduce the amount of unnecessary duplicative information filed each month.

Filing requirements are set forth in § 250.16 of the Commission's regulations.[10] Pipelines are required to file transportation log information "relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending more than six months," at the end of the month following the month any changes occurred. Additionally, discount information is required to be filed within 15 days of the close of the pipeline's billing period.[11] The contents of the transportation log are listed in § 250.16(b)(2), which describes FERC Form No. 592 as:

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[5] 53 FR 21139 (June 14, 1988), FERC Stats. & Regs. ¶ 30,820 (June 1, 1988).

[6] 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. ¶ 30,868 (December 15, 1989).

[7] 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. ¶ 30,908 (Dec. 13, 1990).

[8] In Re Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Docket No. RM91–11–000, 56 FR 38378 (August 13, 1991), FERC Stats. & Regs. ¶ 32,480 (July 31, 1991).

[9] On November 27, 1991, the Independent Gas Marketers Coalition (IGMC) filed a petition for extension of Order No. 497's reporting requirements. IGMC stated that the reporting requirements serve an important role in assuring that the gains made in reducing discriminatory practices of pipelines in favor of their marketing affiliates are not lost. On December 11, 1991, Indicated Producers filed an answer in support of IGMC's petition and Enron Interstate Pipelines filed an answer in opposition to IGMC's petition.

[10] 18 CFR 250.16.

[11] 18 CFR 250.16(d)(4).

[C]onsisting of a log that contains the following information on *all requests for transportation service* made by affiliated marketers or in which an affiliated marketer is involved for transportation that would be conducted pursuant to Subparts B, C, H, or K of Part 284[ ] (Emphasis added.)

Some pipelines have interpreted these requirements to mean that they must file all of the log data for all of their affiliated transactions, pending and operational, even when there has been a change only in some elements of one transaction. This has resulted in the filing of duplicative information, which is already on file with the Commission.

This was clearly not the Commission's intent. Monthly filings need only include information: (1) On those individual affiliate-related transactions which have not previously been reported; (2) those elements of the transaction which have changed; and (3) specifically required discount information. For instance, unnecessary information is being filed when a pipeline files its entire affiliate transportation log each month, rather than filing only those contracts/requests which are new or amended. Another example is where the pipeline has discounted service under an affiliate-related contract with multiple receipt and delivery points. In these instances, the pipeline should file discount information, as required by § 250.16(d)(4)(ii),[12] for only those point-to-point combinations served at a discount. There is no need to report all of the other points as well. Only the information which relates to the discount "requested, offered, or provided" need be reported.

These clarifications should significantly reduce the amount of information being filed by pipelines subject to the rule. In addition, several minor technical changes are necessary to facilitate the electronic reporting of information about "evergreen" contracts. The instructions to FERC Form No. 582 will be modified to reflect these clarifications and minor technical changes.

V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[13] require that OMB approve certain information collection requirements imposed by agency rule. The information collection requirements in this final rule are contained in FERC Form No. 582 "Marketing Affiliates of Interstate Pipelines." The Commission is notifying OMB that it is extending the sunset provision for Order No. 497 and submitting the information collection provisions in this notice for its approval.

Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208-1415). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Administrative Findings and Effective Date

Section 553(b) of the Administrative Procedure Act (APA)[14] specifies that notice and comment for rulemaking are not required when the "agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The Commission finds that notice and comment are unnecessary since the Commission is merely amending the rule to reduce the number of paper printouts of the FERC Form No. 592 information that pipelines are required to file.

Section 553(d) of the APA[15] generally requires a rule to be effective not less than 30 days after publication in the **Federal Register** unless good cause is found to shorten the time period. The sunset date for the reporting requirements will expire before the APA's 30 day publication requirement has been fulfilled thus causing a gap in the reporting requirements. Therefore, in order to prevent a gap in the rule's reporting requirements, this order's extension of the sunset provision for the rule's reporting requirements, from December 31, 1991, to December 31, 1992, is effective January 1, 1992. However, since the record in this case has been filed with the U.S. Court of Appeals for the District of Columbia Circuit, the court has exclusive jurisdiction over the matter pursuant to section 19(b) of the Natural Gas act.[16] Therefore, the extension of the sunset provision for the reporting requirements is subject to leave of court.

List of Subjects in 18 CFR Part 250

Natural gas. Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission, amends part 250, chapter I, title 18 Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 250—FORMS

1. The authority citation for part 250 is revised to read as follows:

Authority: 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR, 1978 Comp., p. 142; 15 U.S.C. 717–717w; 15 U.S.C. 3301–3482.

2. In § 250.16, paragraphs (a)(3), (c)(1), (c)(2) introductory text, (d)(1) and (e)(2) are revised to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

(a) *Who must comply.* * * *

(3) Maintain all information required under this section from the time the information is received until December 31, 1992.

* * * * *

(c) *What to maintain.* (1) An interstate pipeline must maintain the information in paragraph (b)(2) of this section for all requests for transportation services made by nonaffiliated shippers or in which a nonaffiliated shipper is involved from the time the information is received until December 31, 1992.

(2) The information required to be maintained by this section will be available from September 12, 1988 until December 31, 1992 to:

* * * * *

(d) *When to file.* (1) The information in paragraph (b)(1) of this section and entries in the log specified in paragraph (b)(2) of this section relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending for more than six months, must be filed initially with the Commission by September 19, 1988, and thereafter as required by paragraphs (d)(2) and (d)(4) until December 31, 1992. This requirement applies to transportation service that commenced or transportation requests that were denied after July 14, 1988, or that were pending for six months or more on July 14, 1988.

* * * * *

(e) *How to file.* * * *

(2) The magnetic tape or computer disk must be accompanied by one paper printout of all the FERC Form No. 582 information submitted on the magnetic tape or computer disk. The format for the paper printout can be obtained at the Federal Energy Regulatory Commission, Division of Public

[12] 18 CFR 250.16(d)(4)(ii).

[13] 5 CFR 1320.14.

[14] 5 U.S.C. 553(b).

[15] 5 U.S.C. 553(d).

[16] 15 U.S.C. 717r.

Information, 825 North Capitol Street NE., Washington, DC 20426.

* * * * *

[FR Doc. 91-31213 Filed 12-31-91, 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[T.D. 8383]

RIN 1545-AP34

Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations relating to the disclosure of tax return information for purposes of quality or peer reviews published in the **Federal Register** for December 27, 1991.

EFFECTIVE DATE: December 28, 1990.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, 202-566-5985.

SUPPLEMENTARY INFORMATION:

Background

The final regulations which are the subject of this correction reflect the changes made by the Omnibus Budget Reconciliation Act of 1989.

Need for Correction

As published, the final regulations contain errors which are misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations published December 27, 1991 (56 FR 66995) FR Doc. 91-30712, are corrected as follows:

Paragraph 1. On page 66995, column 3, in the preamble, the "Explanation of provisions" portion, is corrected to read as follows:

Explanation of Provisions

"The temporary regulations define a quality or peer review as a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation services. Some commentators suggested that the definition is too broad and might defeat the statutory purpose of maintaining the confidentiality of tax return information. Suggestions to further limit the scope of the definition were not adopted because of the requirements of section 7216(b)(3) of the Code. Other commentators suggested that this definition is too restrictive. They noted that some preparers must undergo a review of their auditing and accounting services which may require disclosures of tax return information to be properly completed. The final regulations do not change the definition of a quality or peer review to include reviews of auditing and accounting services. However, the Service is issuing a notice of proposed rulemaking addressing the definition of quality or peer reviews and auditing and accounting services.

Persons permitted to conduct quality or peer reviews under the temporary regulations (i.e. persons subject to Circular 230) are attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are not under suspension or disbarment from practice before the Service. Some commentators suggested that the classes of persons permitted to conduct a quality or peer review be expanded to include non-certified, licensed public accountants ("LPAs") who are neither enrolled agents, nor otherwise eligible to practice before the Service. Unenrolled LPAs are not subject to the provisions of Circular 230. The Service believes that permitting only persons subject to Circular 230 to conduct a quality or peer review helps to prevent unauthorized disclosures of tax return information. Accordingly, the final regulations do not adopt this suggestion.

Finally, some commentators suggested that the temporary regulations should be revised to permit franchisees to disclose tax return information to their franchisor for purposes that are unrelated to a quality or peer review. Along similar lines, one commentator suggested that a franchisor's employees who are not eligible to practice before the Service should nonetheless be permitted to conduct quality or peer reviews. Neither suggestion was adopted. The first suggestion raised concerns that were not within the scope of these regulations. The second suggestion would not further the statutory purpose of maintaining the confidentiality of tax return information."

PART 301 [CORRECTED]

§ 301.7216-2 [Corrected]

Par. 2. On page 66996, column 2, in § 301.7216-2, the third sentence of paragraph (o) is corrected to read, "A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation services."

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-4065-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule and response to comments.

SUMMARY: On May 19, 1980, as part of its regulations implementing section 3001 of the Resource Conservation and Recovery Act (RCRA), EPA promulgated a series of criteria for listing wastes as hazardous. On July 19, 1991, the Agency proposed to conform the language of the regulation to reflect the Agency's intent and consistent interpretation of that regulation. Today's rule finalizes the proposed rule.

EFFECTIVE DATE: January 13, 1992.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F-91-CLTP-FFFF and is located in the EPA RCRA Docket room M2427, 401 M Street, SW., Washington, DC 20460. The public must make an appointment in order to review docket materials by calling (202) 260-9327. The docket is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. The public may copy up to 100 pages from the docket at no charge. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 260-3000. For technical information, contact Mr. William A. Collins, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-4791

SUPPLEMENTARY INFORMATION: On May 19, 1980, EPA promulgated regulations implementing section 3001 of RCRA. Section 3001(a), among other provisions, requires the Agency to promulgate criteria for listing wastes as hazardous. The Agency's regulations to implement this section of the Act are codified at 40 CFR 261.11.

Section 261.11(a)(3) of the regulations sets forth the criteria for listing toxic

wastes. The original version of this provision stated that the Agency would list a waste as toxic if the waste contains any toxic constituent listed in appendix VIII of part 261 unless, after considering a series of enumerated factors, the Administrator determines that the waste is not capable of posing a substantial hazard to human health and the environment even if managed improperly. Appendix VIII contains a list of substances shown in scientific studies to be toxic, carcinogenic, mutagenic or teratogenic at certain concentrations. The factors set out in the rule—drawn for the most part from sections 1004(5) and 3001(a) of RCRA—included the nature of the toxic constituents, the concentration of toxic constituents in the waste, the migratory potential of the constituents and their mobility and persistence after migrating from a waste. Other factors were the plausible ways the waste could be mismanaged, the quantity of waste generated, damage incidents caused by past management of the waste, and action by other regulatory agencies regarding the waste or waste constituents.

In promulgating the regulations, EPA intended to evaluate, and in actual practice always has evaluated, relevant waste factors in its specific listing actions, and then made determinations as to whether wastes containing an appendix VIII constituent are capable of causing substantial harm if mismanaged. (See Listing Background Documents of: May 19, 1980, 45 FR 33084–33137; November 12, 1980, 45 FR 74884–74894; November 25, 1980, 45 FR 78524–78550; January 16, 1981, 46 FR 4614–4620; May 29, 1981, 46 FR 27473–27480; May 10, 1984, 49 FR 19922–19923; January 14, 1985, 50 FR 1978–2006; October 23, 1985, 50 FR 42936–42943; December 31, 1985, 50 FR 53315–53320; February 13, 1986, 51 FR 5327–5331, February 25, 1986, 51 FR 6537–6542; May 28, 1986, 51 FR 19320–19322; September 13, 1988, 53 FR 35412–35421; October 6, 1989, 54 FR 41402–41408; and December 11, 1989, 54 FR 50968–50979 (evaluating waste streams for presence of appendix VIII constituents together with factors enumerated at 40 CFR 261.11(a)(3)).) As originally written, however, the rule has been read by some to imply that wastes are presumed to be hazardous if they contain an appendix VIII constituent (conceivably in any concentration), and that the enumerated factors are to be used only to rebut the presumption. As stated above, the Agency has never applied the rule in this way, and has always considered appropriate factors in determining whether to list wastes.

Accordingly, on May 4, 1990 (55 FR 18726), the Agency amended the wording of the rule to more clearly reflect the intent of § 261.11(a)(3), and the Agency's proper and longstanding practice in applying it.

Since the amendment represented no change in EPA listing policy, it was viewed as a technical amendment, and was promulgated without allowing an opportunity for public notice and comment. However, the Agency learned that some organizations opposed EPA's interpretation, and favored a retention of the May 19, 1980 language which they perceived as including a "presumption." As stated above, EPA has never listed a waste on the basis of such a presumption. The Agency does not believe that the mere presence of an appendix VIII constituent by itself justifies the listing of a waste as hazardous. However, in the interest of a full public airing of the issue, the Agency obtained a judicial remand[1] of the May 4, 1990 amendment and proposed to amend § 261.11(a)(3) to clarify that wastes will be listed as hazardous if they contain one or more appendix VIII constituents and, after considering the enumerated factors, the Administrator determines that the waste is capable of posing substantial harm if managed improperly. The proposal was published on July 19, 1991 (56 FR 33238).

The Agency received 28 written comments on the proposal. Twenty-seven of these comments strongly supported the change in regulatory language as proposed. Their reasoning was that the mere presence of an appendix VIII constituent in a waste in any concentration or under any conditions should not result in the regulation of a waste as hazardous. The last commenter strongly disagreed with the proposed change in regulatory language. The commenter maintained that the "two minor but significant wording changes * * * reverse( ) the presumption under which EPA lists particular wastes as hazardous * * *." In response, as noted above, EPA intended to evaluate, and in actual practice always has evaluated, relevant waste factors in its specific listing actions, and then made determinations as to whether wastes containing an appendix VIII constituent are capable of causing substantial harm if mismanaged. The Agency does not believe that a "presumption" should exist that the mere presence of an appendix VIII constituent, no matter how small, justifies the listing of a waste as hazardous. The lone dissenting commenter also claims that the revision would increase EPA's burden in making waste listings. In response, the Agency notes that this wording change will not increase the Agency's burden in listing determinations because the Agency always has made its listing determinations based upon the interpretation clearly reflected in the language being finalized today. Based upon the comments received, the Agency is promulgating the change in regulatory language as proposed.

As stated in the preamble to the May 4, 1990, amendment and July 19, 1991, proposal, the change in language is merely intended to more clearly reflect the Agency's consistent interpretation of the 1980 regulatory language; it is not intended to and will not affect existing Agency listing practices. Thus, EPA has considered and will continue to consider the factors identified in 40 CFR 261.11(a)(3) in making listing determinations.

[1] The remand was issued in the case of *EDF v EPA*, No. 90-1387 (D.C. Cir.) on May 20, 1991.

Economic Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement that a Regulatory Impact Analysis (RIA) be prepared. Since today's rule does not impose any new substantive regulatory requirements on the regulated community, this rule is not a major rule subject to the RIA requirements of Executive Order 12291.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis for all final rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a significant impact on a substantial number of small entities because it merely revises the language of § 261.11(a)(3) to reflect the Agency's consistent interpretation and does not impose any new substantive regulatory requirements on the regulated community.

Paperwork Reduction Act

Today's rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Dated: December 12, 1991

F. Henry Habicht II,

Acting Administrator.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In § 261.11, paragraph (a)(3) introductory text, is revised to read as follows:

§ 261.11 Criteria for listing hazardous waste.

(a) * * *

(3) It contains any of the toxic constituents listed in appendix VIII and, after considering the following factors, the Administrator concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed.

* * * * *

[FR Doc. 91-30989 Filed 12-31-91; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 57, No. 1
Thursday, January 2, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1004, and 1124

[Docket No. AO-14-A65, etc; DA-91-013]

Milk in the New England and Certain Other Marketing Areas; Revised Tentative Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR Part	Marketing area	AO Nos.
1001	New England	AO-14-A65
1002	New York-New Jersey	AO-71-A80
1004	Middle Atlantic	AO-160-A66
1005	Carolina	AO-388-A5
1007	Georgia	AO-366-A34
1011	Tennessee Valley	AO-251-A36
1030	Chicago Regional	AO-361-A29
1033	Ohio Valley	AO-166-A62
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A57
1040	Southern Michigan	AO-225-A43
1044	Michigan Upper Peninsula	AO-299-A27
1046	Louisville-Lexington-Evansville.	AO-123-A63
1049	Indiana	AO-319-A40
1065	Nebraska-Western Iowa	AO-86-A48
1068	Upper Midwest	AO-178-A46
1079	Iowa	AO-295-A42
1093	Alabama-West Florida	AO-386-A12
1094	New Orleans-Mississippi	AO-103-A54
1096	Greater Louisiana	AO-257-A41
1097	Memphis, Tennessee	AO-219-A47
1098	Nashville, Tennessee	AO-184-A56
1099	Paducah, Kentucky	AO-183-A46
1106	Southwest Plains	AO-210-A53
1108	Central Arkansas	AO-243-A44
1124	Pacific Northwest	AO-368-A20
1126	Texas	AO-231-A61
1131	Central Arizona	AO-271-A30
1135	Southwestern Idaho-Eastern Oregon.	AO-380-A10
1138	New Mexico-West Texas	AO-335-A37

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; amendment.

SUMMARY: A tentative decision was issued on December 10, 1991, which proposed a separate class and price for skim milk used to produce nonfat dry milk under the New England, Middle Atlantic, and Pacific Northwest marketing orders. That tentative decision contained a product price formula using a nonfat dry milk yield factor of 9. This revised tentative decision changes from 9 to 8.5 the yield factor used to compute Class III-A prices for skim milk used to manufacture nonfat dry milk (NFDM) under these orders, since the latter number is more appropriate. All of the other findings and conclusions of the tentative decision remain unchanged.

DATES: Comments are due on or before February 3, 1992.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, room 1081, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will facilitate the orderly disposition of the market's reserve milk supplies.

Prior documents in this proceeding:

Notice of Hearing: Issued July 16, 1991, published July 22, 1991 (56 FR 33395).

Tentative Decision. Issued December 10, 1991; published December 19, 1991 (56 FR 65801) and corrected December 23, 1991 (56 FR 66482)

Notice is hereby given of the filing with the Hearing Clerk of this revised tentative decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the New England and Certain Other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this revised tentative decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments and findings and conclusions set forth below are based on the record of a public hearing held at Alexandria, Virginia, on July 30-August 1, 1991, pursuant to a notice of hearing issued July 16, 1991 (56 FR 33395).

The material issues on the record of the hearing relate to:

1. Pricing producer milk used to manufacture butter and nonfat dry milk; and

2. The need for emergency action with respect to issue 1.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Pricing producer milk used to manufacture butter and nonfat dry milk.* These findings are added to supplement

the findings and conclusions of the tentative decision issued on December 10, 1991. The tentative decision proposed a separate price and class for skim milk used to produce nonfat dry milk under the New England, Middle Atlantic, and Pacific Northwest marketing orders. That decision provided a special pricing formula for skim milk that is used to make nonfat dry milk (NFDM). The formula used a yield factor of 9. After further consideration, it is concluded that a factor of 8.5 would more appropriately coordinate Class III–A prices with basic formula prices when the market prices for milk and dairy products are at support buying levels.

There a number of comparative calculations which are based on the yield factor of 9 in the tentative decision. However, the skim milk values that would result from the application of the formula when milk and product prices are at support levels were not computed. For example, if the market price for nonfat dry milk was at the support purchase price of 85 cents per pound, the Class III–A price for skim milk would be $6.525 per hundredweight, based on a yield factor of nine pounds. Also, if the basic formula price and butter prices were at supports, the resulting values of a hundredweight of skim milk would be $6.175. Thus, the formula price for Class III–A would overstate the value of skim milk by about 35 cents per hundredweight. The use of an 8.5-pound yield factor, which is more representative of manufacturing yields, would result in a Class III–A price of $6.16, which approximates the skim milk value of the basic formula price at the price support level.

As a result of this modification, the proposed order amendments in the tentative decision are revised as indicated below. In addition, paragraphs 34 through 39 under issue number 1 of the tentative decision issued December 10, 1991 are revised to read as follows:

The Class III–A skim value would be computed, by subtracting a processing allowance of 12.5 cents from the powder price and multiplying the result by 8.5. For Orders 1 and 4, the Extra Grade Powder Price for the Central States production area should be used. For Order 124, the Grade A powder price for the Western production area should be used. In August 1991, the skim value of Class III–A milk would have been $6.87 per hundredweight under Order 1 and $6.89 under Order 4. For Order 124, the skim value would have been $6.51 per hundredweight. This compares with a $7.89 skim value under orders providing the M–W price as the Class III price, $7.99 and $8.01 under Orders 1 and 4, respectively, which provided seasonal adjustments to Class III prices and $7.63 under Order 124, which provided a lower butter/powder "snubber" price for Class III milk in that month.

In Orders 1 and 4, the skim values for Class III–A milk would have averaged 63 cents per hundredweight less in 1990 and 48 cents per hundredweight less for the first 10 months of 1991 under the Class III pricing formula adopted herein. For Order 124, the Class III–A skim value would have been 76 cents per hundredweight less in 1990 and 56 cents per hundredweight less during January–October 1991.

The skim values for Class III–A milk under the product formulas provided for Orders 1, 4 and 124 would have averaged somewhat lower than such values for Class III milk in both 1990 and 1991. However, it is noteworthy that for Orders 1 and 4 the values would have been lower in 8 months and higher in 4 months of 1990 and lower in each month of January–October 1991. For Order 124, skim values under the new formula for NFDM would have been lower in 10 months and higher in 2 months of 1990 and lower in each month of January–October 1991.

The price formula provides a yield factor of 8.5 so that the order price for milk used to make NFDM compares favorably with the recognized value of such milk when market prices for milk and dairy products are at supports. A 12.5-cent-per-pound drying cost is compatible with industry experience and also with the processing allowance formerly recognized under the support program in connection with drying whey. Such factor is now used in the computation of the Class II formula price under Federal orders.

The plant operating cost information in this record is not exhaustive. However, there is sufficient data to indicate that the $1.06 make allowance provided in the formula for drying a hundredweight of skim milk into powder is not so high that it would create an incentive for handlers to divert milk to drying plants rather than making the milk available to other plant operators processing dairy products demanded by consumers. On the other hand, it is not so low that such plants would be unable to continue functioning as outlets of last resort for distress milk which exceeds the needs of the market's handlers.

The record also indicates that the California Milk Stabilization Branch regularly collects data on operating costs for the purpose of establishing make-allowance costs under the State's milk program. The latest survey covered plants that processed 98 percent of the nonfat dry milk processed in that area. The results of that survey indicate that for a wide range of plant volumes the weighted average per pound cost of producing NFDM was 12.87 cents. Using a yield factor of 8.5, a manufacturing cost of $1.09 per hundredweight of skim milk is reflected.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid interim marketing agreements and orders:

(a) The interim marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the interim marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and

commercial activity specified in a marketing agreement upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Orders

Annexed hereto and made a part hereof are two documents, an Interim Marketing Agreement regulating the handling of milk, and an Interim Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire revised tentative decision plus the interim order and the interim marketing agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

September 1991 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the New England, Middle Atlantic and Pacific Northwest marketing areas is approved or favored by producers, as defined under the terms of each of the orders, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1001, 1004, and 1124

Milk marketing orders.

Signed at Washington, DC, on: December 24, 1991.

John E. Frydenlund,

Deputy Assistant Secretary for Marketing and Inspection Service.

Interim Order Amending the Orders Regulating the Handling of Milk in Certain Specified Marketing Areas

This interim order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the revised tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the New England, Middle Atlantic and Pacific Northwest marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The authority citation for 7 CFR parts 1001, 1002 and 1124 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

In the amendments to part 1001 contained in the tentative decision issued December 10, 1991 (56 FR 65819, December 19, 1991), amendment number 3 to § 1001.50 is revised to read as follows:

3. Section 1001.50 is amended by adding a new paragraph (d) to read as follows:

§ 1001.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States Extra Grade nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 8.5, plus the butterfat differential times 35 and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

In the amendments to Part 1004 contained in the tentative decision issued December 10, 1991 (56 FR 65819, December 19, 1991), amendment number 3 to § 1004.50 is revised to read as follows:

3. Section 1004.50 is amended by revising the section heading and by adding a new paragraph (g) to read as follows:

§ 1004.50 Class and component prices.

* * * * *

(g) *Class III–A price.* The Class III–A price for the month shall be the average Central States Extra Grade nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 8.5, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

In the amendments to part 1124 contained in the tentative decision issued December 10, 1991 (56 FR 65819, December 19, 1991), amendment number 3 to § 1124.50 is revised to read as follows:

3. Section 1124.50 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 1124.50 Class prices.

* * * * *

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western Grade A nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 8.5, plus the butterfat differential times 35 and rounded to the nearest cent.

Interim Marketing Agreement Regulating the Handling of Milk in the Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ [1] to _____, all inclusive, of the order regulating the handling of milk in the New England and certain other marketing areas (7 CFR Part [2]) which is annexed hereto; and

II. The following provisions:

§ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of September 1991, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature) (Seal)

By _____

(Name) (Title)

(Address)

Attest _____

[FR Doc. 91–31232 Filed 12–31–91; 8:45 am]

BILLING CODE 3410–02–M

[1] First and last sections of orders.

[2] Appropriate Part Number.

[3] Next consecutive Section Number.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–ASW–42]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, 205A–1, 205B, and 212 Helicopters; and BHTI manufactured military Model UH–1B, UH–1F and UH–1H Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This supplemental notice proposes to adopt an airworthiness directive (AD) that would establish a mandatory replacement schedule for the main rotor pillow bolts, washers, and nuts on certain BHTI manufactured helicopters. This supplemental notice contains changes to an earlier notice of proposed rulemaking. The proposed AD is needed to prevent separation and failure of the main rotor hub assembly which could result in loss of control of the helicopter.

DATES: Comments must be received by February 18, 1992.

ADDRESSES: The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas. Comments may be inspected between 9 a.m. and 3:30 p.m., weekdays, except Federal holidays.

Submit comments in triplicate to: Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193–0007, Docket Number 90–ASW–42.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Rotorcraft Directorate, Rotorcraft Certification Office, ASW–170, FAA, Southwest Region, Fort Worth, Texas 76193–0170, telephone (817) 624–5168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90–ASW–42." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this SNPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket Number 90–ASW–42, 4400 Blue Mound Road, Fort Worth, Texas 76193–0007.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to Bell Model 204B, 205A, A–1, B, and 212 helicopters; and Military Model UH–1B, 1F and 1H helicopters, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on February 5, 1991 (56 FR 4581). That NPRM would have required a retirement life of 1,200 hours' time in service for the main rotor pillow block bolts, washers and nuts. That NPRM was prompted by reports of at least five cases of pillow block bolt fatigue cracks on BHTI Model 205A–1 and 212 helicopters. Failure of all four bolts will allow separation of the main rotor from the helicopter.

The FAA determined that these special pillow block bolts, part number (P/N) 204–011–171–003, can no longer be operated with an unlimited service life and that these bolts, along with the mating nuts, P/N EB080 or 42FLW–820, and washers, P/N 140–007–33S28–3, should be removed from further service as specified in the proposal. These same bolts, nuts, and washers are used also on the military Model UH–1B, UH–1F, and UH–1H helicopters and are subject to the same operating environment. It was proposed that they be removed at the same time in service as the

corresponding transport category civilian models.

The FAA received one comment in response to the NPRM. The commenter, the airframe manufacturer, proposed replacing these parts within 300 hours' time in service after the effective date of the AD, but no later than the next scheduled 1,200 hours' time in service replacement of the main rotor retention straps and, thereafter, at each replacement of retention straps or overhaul of the main rotor hub assembly. After reconsideration, the FAA agrees. Since this new replacement schedule is beyond the scope of the original NPRM, a supplemental NPRM is being issued. In addition, the commenter recommended that the bolt torque requirements included in Paragraph (a)(1) of the NPRM be more fully described. The FAA also agrees with this recommendation, and additional torque requirements are detailed in this supplemental notice.

Since this condition is likely to exist or develop on helicopters of the same type designs, the proposed AD would establish a specified replacement schedule for the main rotor pillow block bolts, nuts, and washers installed on these helicopters.

It is estimated that approximately 1,250 helicopters of U.S. registry would be affected by the Notice, and that it would cost $130 per aircraft to replace the four bolts, four nuts, and four washers approximately every 1,200 hours' time in service, for a total fleet cost of $162,500 each year.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR part 39

Air transportation, Aircraft, Aviation safety, and Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Bell Helicopter Textron, Inc. (BHTI); California Department of Forestry; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Pilot Personnel International, Inc.; Southern Aero Corporation; and Southwest Florida Aviation: Docket No. 89–ASW–42.

Applicability: All Model 204B, 205A, 205A–1, 205B, and 212 helicopters, certificated in any category, and military Model UH–1B, UH–1F, and UH–1H Helicopters, certificated in the restricted category.

Compliance: Required as indicated, unless already accomplished.

To prevent separation of the main rotor pillow blocks from the hub assembly as a result of bolt cracking which could result in loss of the main rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 300 hours' time in service after the effective date of this AD; or at the next main rotor hub retention strap change; or at the next hub assembly overhaul; whichever occurs first, remove the four bolts, part number (P/N) 204–011–171–003, joining the two pillow blocks to the main rotor yoke assembly. Reinstall the pillow blocks using new bolts, P/N 204–011–171–003; nuts, P/N EB080 or 42FLW–820; and washers, P/N 140–007–33S28–3 as follows:

(1) Coat the shank of the bolts with corrosion prevention compound, such as MIL–C–16173 Grade 1, and dry torque the bolts and nuts 65 to 79 foot-pounds. Retorque nuts within 15 to 30 hours' time in service after the initial installation. If the torque has reduced below the minimum value of 65 foot-pounds, repeat the torque check at intervals of 15 to 30 hours' time in service until the torque remains at 65-foot poulds or until the torque check has been accomplished four times. If a loss of torque occurs after four checks, remove and replace the bolts, nuts and washers and begin again with the torque check procedure.

(2) After initial installation or retorque, apply sealant, such as Bell P/N 299–947–107 TYIII CL7, to the four bolt heads, washers, nuts and yoke mating surfaces to prevent moisture from entering the pillow block retention area.

(b) Thereafter, remove the bolts and associated hardware from the pillow block and replace with new bolts, nuts, and washers as described in paragraph (a) of this AD at each hub assembly overhaul, at each change of the main rotor hub retention strap, or whenever the bolts are removed for any reason.

(c) Rework or repair of the bolts, P/N 204–011–171–003; nuts, P/N EB080 or 42FLW–820; and washers, P/N 140–007–33S28–3, is not authorized.

(d) In accordance with 14 CFR 21.197 and 21.199, flight is permitted to a base where the action required by this AD may be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times, which provides an equivalent level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW–170, Federal Aviation Administration, Fort Worth, Texas 76193–0170.

(f) The request should be forwarded through an FAA Principal Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office, ASW–170.

Note: Bell Helicopter Textron, Inc., Alert Service Bulletins, ASB 204–00–27, Revision A; ASB 205–00–36, Revision A; and ASB 212–00–62, Revision A, all dated October 11, 1990, pertain to this AD. A copy of the service bulletins may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101.

Issued in Fort Worth, Texas, on December 12, 1991.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91–31275 Filed 12–31–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–231–AD]

Airworthiness Directives; Boeing Model 727–200 and 727–200F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to Boeing Model 727–200 and 727–200F series airplanes, which currently requires repetitive inspection to detect cracks of the fuselage skin under the center engine inlet pedestal housing, and repair, if necessary. Such cracking, if not corrected, could result in rapid depressurization of the cabin. This action would revise the AD to include an additional optional repair that, if accomplished, would terminate the repetitive inspection requirement of the

existing AD. This proposal is prompted by the development of a repair that significantly reduces the possibility of fatigue cracks developing.

DATES: Comments must be received no later than February 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–231–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2772. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–231–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–231–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On January 24, 1991, the FAA issued AD–91–03–19, Amendment 39–6885 (56 FR 4536, February 5, 1991), applicable to Boeing Model 727–200 series airplanes, to require inspections to detect cracks of the fuselage skin under the center engine inlet pedestal housing, and repair, if necessary. That action was prompted by reports of fuselage skin cracks in this area. The requirements of the AD were intended to detect and correct such cracking in a timely manner, so as to prevent consequent rapid depressurization of the cabin.

Since issuance of that AD, a repair procedure has been developed that significantly reduces the probability of further fatigue cracking. The FAA has determined that the accomplishment of this repair would constitute terminating action for the repetitive inspections required by the existing AD.

The FAA has reviewed and approved Boeing Alert Service Bulletin 727–53A0204, Revision 3, dated August 15, 1991, which provides instructions for accomplishing a fatigue-resistant repair. This repair involves the installation of a thicker doubler.

Since this condition is likely to exist or develop on other airplanes of this same type design, and AD is proposed which would revise AD 91–03–19 to add the fatigue-resistant repair procedures, in accordance with the service bulletin previously described, as an optional repair method. Once accomplished, this repair would constitute terminating action for the repetitive inspections required by the AD. The service bulletin, described above, has been added as an addition source for appropriate service information.

The format of the proposed rule has been restructured to be consistent with the standard **Federal Register** style.

Paragraph (e) of the proposed rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

There are approximately 1,250 Model 727–200 and 727–200F series airplanes of the affected design in the worldwide fleet. It is estimated that 1,000 airplanes of U.S. registry would be affected by this AD. Should an operator elect to accomplish the optional terminating modification proposed by this AD action, it would take approximately 30 work hours per airplane to accomplish the modification, at an average labor cost of $55 per work hour. Required parts would cost $108 per airplane. Based on these figures, the total cost impact of the proposed optional modification would be $1,758 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising Amendment 39–6885 as follows: **Boeing:** Docket 91–NM–231–AD. Revises AD 91–03–19, Amendment 39–6885.

Applicability: Model 727–200 and 727–200F series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent rapid depressurization of the cabin due to fuselage cracks under the center engine inlet pedestal housing, accomplish the following:

(a) Perform a detailed external visual inspection for fuselage skin cracks from body station (BS) 1090 to BS 1110, in accordance with Boeing Alert Service Bulletin 727-53A0204, Revision 3, dated August 15, 1991, or previous FAA-approved revisions, within the time specified in subparagraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For airplanes identified as Group 1 in the service bulletin, inspect within 500 flight cycles or 2 months after March 11, 1991 (the effective date of AD 91-03-18, Amendment 39-6885), whichever occurs first.

(2) For airplanes identified as Group 2 in the service bulletin, inspect within 1,250 flight cycles or 6 months after March 11, 1991, whichever occurs first.

(3) For airplanes identified as Group 3 in the service bulletin, inspect within 2,500 flight cycles or 18 months after March 11, 1991, whichever occurs first.

(b) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 2,500 flight cycles or 18 months, whichever occurs first.

(c) If fuselage skin cracks are found, prior to further flight, accomplish either of the following:

(1) Repair in accordance with the Boeing Alert Service Bulletin 727-53A0204, Revision 2, dated August 9, 1990, or previous FAA-approved revisions. After repair, continue the repetitive inspections in accordance with paragraph (b) of this AD. Or

(2) Repair in accordance with Part III, paragraph B. or D., of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0204, Revision 3, dated August 15, 1991. This constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD.

(d) *In cases where cracking is not found,* modification in accordance with one of the following service documents constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD:

(1) Boeing Drawing 65C35757; or

(2) Paragraph C. of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0204, Revision 3, dated August 15, 1991, or Revision 2, dated August 9, 1990.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-31273 Filed 12-31-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-248-AD]

Airworthiness Directives; Canadair, Ltd., Model CL-600-2A12 (CL-601) and CL-600-2B16 (CL-601-3A) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Canadair Model CL-600-2A12 and CL-600-2B16 series airplanes, which currently requires repetitive visual inspections of the sensing line in the aft equipment bay to detect damage or deformations, and replacement of the sensing line or drainage of the tail cone fuel tank, if necessary. This action would require modification of the sensing line. This proposal is prompted by the development of a modification which, if installed, eliminates the need for the repetitive visual inspections prior to and after each refuelling of the tail cone fuel tank. The actions specified by the proposed AD are intended to prevent the presence of fuel vapors in the aft equipment bay, resulting in a potential risk of an in-flight fire in the event of a lightning strike or other ignition source in the area.

DATES: Comments must be received by February 20, 1992.

ADDRESSES: Send comments in triplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-248-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec, Canada H3C 3G9. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Fiesel, Aerospace Engineer, Propulsion Branch, ANE-174, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-248-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-248-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On July 31, 1991, the FAA issued AD 91-17-02, Amendment 39-8000 (56 FR 38337, August 13, 1991), to require repetitive visual inspections of the sensing line in the aft equipment bay to detect damage or deformations, and replacement of the sensing line or drainage of the tail cone fuel tank, if necessary. That action was prompted by two reports of sensing lines to the tail cone fuel tank level control valves breaking as a result of damage caused by maintenance in the aft equipment bays. The requirements of that AD were intended to prevent the presence of fuel vapors in the aft equipment bay, resulting in a potential risk of an in-flight fire in the event of a lightning

strike or other ignition source in the area.

Since issuance of that AD, Canadair, Ltd., has issued Revision 1 of Alert Service Bulletin A601–0381, dated August 26, 1991, which describes procedures to relocate the sensing line forward of the aft shut-off valve. Relocation of the sensing line will reduce the potential for maintenance damage, and will eliminate the possibility of the tail tank emptying into the aft equipment bay if the sensing line breaks. When relocated, the sensing line will also relieve any pressure buildup in the refuel/defuel line due to thermal expansion between the shutoff valves. The remaining three tube assemblies between forward and aft shutoff valves are replaced as a precaution against any prior thermal expansion damage. Once this modification is installed, the need for repetitive inspections of the sensing line is eliminated. Transport Canada Aviation, which is the airworthiness authority of Canada, has classified the Alert Service Bulletin as mandatory and has issued Canadian Emergency Airworthiness Directive CF–91–22 in order to assure the airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA totally informed of the above situation. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 91–17–02 to require modification of the sensing line forward of the aft shut-off valve. The actions would be required to be accomplished in accordance with the service bulletin previously described. Accomplishment of this modification would constitute terminating action for the currently-required repetitive visual inspections of the sensing line prior to and after each refuelling of the tail cone fuel tank.

It is estimated that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 33 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $50,820.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8000, and by adding the following new airworthiness directive:

Canadair, Ltd.: Docket No. 91–NM–248–AD. Supersedes AD 91–17–02, Amendment 39–8000.

Applicability: Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A) series airplanes equipped with a tail cone fuel tank, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the presence of fuel vapors in the aft equipment bay, resulting in a potential risk of an in-flight fire in the event of a lightning strike or other ignition source in the area, accomplish the following:

(a) Within 5 days after August 28, 1991 (the effective date of AD 91–17–02, Amendment 39–8000), or prior to refuelling of the tail cone fuel tank, whichever occurs later, perform a visual inspection of the unshrouded portion of the sensing line in the aft equipment bay to detect any damage or deformation, in accordance with Canadair Alert Wire TA601–0381–003, dated June 11, 1991. Thereafter, repeat the inspection prior to each refuelling. If damage or deformation of the sensing line is found as a result of the visual inspection, accomplish either subparagraph (a)(1) or (a)(2) of this AD, in accordance with the alert wire:

(1) Prior to further flight, drain the tail cone fuel tank, and continue flight operations with no fuel in the tail cone fuel tank; or

(2) Prior to further flight, drain the tail cone fuel tank, replace the level control valve sensing line, and continue flight operations with fuel in the tail cone fuel tank.

(b) After each refuelling of the tail cone fuel tank, inspect for any signs of leakage from the fuel sensing line in the aft equipment bay and at the fuel shroud drain, in accordance with Canadair Alert Wire TA601–0381–003, dated June 11, 1991. If leakage is found prior to further flight, either drain the tail cone fuel tank, or replace the tail cone fuel tank level control valve sensing line, in accordance with the alert wire.

(c) Within 6 months after the effective date of this AD, modify the sensing line, and perform functional tests of the refuel/defuel line, tail tank fuel shroud, and tail tank sensing line, in accordance with Canadair Alert Service Bulletin A601–0381, Revision 1, dated August 26, 1991.

(d) Modification of the sensing line, as required by paragraph (c) of this AD, constitutes terminating action for the repetitive inspections required by paragraphs (a) and (b) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–31274 Filed 12–31–91; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

42 CFR Part 52

[MT3-1-5349; FRL-4089-9]

Disapproval of State Implementation Plans; Montana; Open Burning Regulation Revision

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rulemaking.

SUMMARY: In this action, EPA is proposing to disapprove revisions to the Montana State Implementation Plan (SIP) that were submitted by the Governor of Montana on April 9, 1991. The revisions were made to the Administrative Rules of Montana (ARM) 16.8.1302 and 16.8.1307 to allow the open burning of creosote-treated railroad ties, which was previously prohibited in ARM 16.8.1302.

EPA's review of the submittal determined that the proposed regulations do not adequately demonstrate how public health and welfare will be protected during the open burning of creosote-treated railroad ties. This is in direct conflict with section 75-2-102 of the Montana Clean Air Act, which is part of the approved SIP. Section 75-2-102 states that it is the policy of the State to "achieve and maintain such levels of air quality as will protect human health and welfare."

In addition, section 110(a)(2) of the Federal Clean Air Act, as amended, requires that a SIP contain enforceable emissions limitations and a plan for determining compliance with the emissions limitations. Also, the State must demonstrate that adequate personnel and resources are available for implementing and enforcing the SIP. This submittal did not demonstrate any of these requirements.

For additional information, EPA reviewed an open burn permit that was issued to Burlington Northern Railroad on June 26, 1991 to burn creosote-treated railroad ties. EPA's review found that the requirements listed in the permit for approval of open burning of creosote-treated railroad ties were not explicit enough to ensure protection of human health and welfare.

Therefore, EPA is proposing to disapprove the revision to the Montana open burning regulations that would allow the burning of creosote-treated railroad ties. Any source for which a permit was issued under the State's revised open burning rules may be subject to EPA enforcement of the previous version of the open burning rule approved in the SIP, which strictly prohibits the opening burning of creosote-treated railroad ties.

DATES: Comments must be received on or before February 3, 1992.

ADDRESSES: Copies of the revision are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405

Montana Department of Health and Environmental Services, Air Quality Bureau, Cogswell Building, Helena, Montana 59620

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1765, (FTS) 330-1765.

SUPPLEMENTARY INFORMATION:

A. History

Montana has previously revised its open burning regulations numerous times. The original version, which was effective November, 1968, did not specifically prohibit the burning of treated wood. However, the regulation did prohibit the burning of "chicken litter, animal droppings, garbage, dead animals, tires, waste oil, tar paper and similar materials creating dense smoke when burned." This regulation was submitted in the 1972 SIP submittal, which was approved by EPA.

A 1978 versions of the open burning regulation strictly prohibited the burning of railroad ties, as follows: "Chicken litter, animal droppings, garbage, dead animals or parts of dead animals, tires, pathogenic wastes, explosives, oil, railroad ties, tar papers, or toxic wastes shall not be disposed of by open burning." This version was also approved in the SIP.

On April 22, 1982, the State submitted a revision to the SIP, which included a revision to the open burning regulation. In this version of the open burning regulation, under ARM 16.8.1302, "Prohibited Open Burning," the State prohibited the burning of "treated lumber and timbers." This regulation was approved by EPA as a revision to the SIP on July 15, 1982 (47 FR 30762).

B. 1991 Submittal

On April 9, 1991, the Governor of Montana submitted revisions to the SIP. A revision was made to ARM 16.8.1302 to prohibit the burning of treated lumber and timbers, "except creosote-treated railroad ties * * *." Revisions were also made to ARM 16.8.1307 to provide for the permitting of the disposal of railroad ties through open burning. Other revisions were made to ARM 16.8.1307 to include additional provisions for all conditional air quality open burning permits.

The State was notified, on June 12, 1991, that the submittal was administratively and technically complete. In that letter, however, EPA raised several concerns about the toxicity and hazards associated with the burning of creosote-treated wood products and requested further information from the State on how Montana would ensure protection of human health and welfare with the regulation revision. The State indicated that it would not be able to respond to EPA's concerns until a much later date. In order to meet statutory deadlines for processing SIP submittals, EPA decided to continue processing the submittal. EPA determined that the State submittal was in direct conflict with Section 75-2-102 of the Montana Clean Air Act, which states that it is the public policy of the State to "achieve and maintain such levels of air quality as will protect human health and welfare," because the submittal did not adequately show how the public health and welfare would be protected during the open burns of creosote-treated railroad ties. Since the Montana Clean Air Act is in the approved SIP, the regulation revision was found to be in direct conflict with the existing SIP.

For additional information, EPA reviewed an open burn permit which the State had issued to Burlington Northern Railroad on June 24, 1991 to burn creosote-treated railroad ties in accordance with its revised open burning regulations. EPA's review found that the conditions of the permit did not clearly define any specific procedures for open burning to reduce emissions. In addition, under subtitle C of the Resource Conservation and Recovery Act (RCRA), material that is disposed or intended for disposal is defined as solid waste pursuant to 40 CFR 261.2, and a generator of solid waste must determine if the solid waste meets a determination of hazardous waste, as defined in 40 CFR 261, subparts C and D. The State, however, did not require that the source make a determination of whether the material to be burned constituted hazardous waste. Also, the State required that railroad ties must not be burned within two miles of any community. However, due to the toxicity and hazards associated with the burning of creosote-treated railroad ties, EPA was concerned that this requirement

may not fully ensure adequate protection of human health and welfare.

On September 12, 1991, EPA notified the State that EPA would be proposing to disapprove the SIP revision on the basis that the open burning regulation lacked the specific requirements to adequately ensure the protection of human health and welfare, which was in direct conflict with the approved SIP. Additional review of the open burn permit issued to Burlington Northern Railroad substantiated EPA's concerns on the protection of the public health.

However, EPA also provided the state with a final opportunity to submit any additional information which might address EPA's concerns by October 1, 1991. In a letter dated September 30, 1991, the State notified EPA that it was unable to respond to EPA's concerns within the timeframe given. The State will continue to examine its options, to either withdraw the submittal or pursue a detailed permitting program and will keep EPA informed of any decisions.

Proposed Action

In this action, EPA is proposing to disapprove revisions to the open burning regulations in the Montana SIP. The disapproval pertains to those revisions made to ARM 16.8.1302 and 16.8.1307, which allow the open burning of creosote-treated railroad ties.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action does not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Particulate matter.

Dated: December 20, 1991.

Authority: 42 U.S.C. 7401–7642.

James J. Scherer,

Regional Administrator.

[FR Doc. 91-31302 Filed 12-31-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[WI14-1-5067; FRL-4090-1]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is proposing to approve Wisconsin's Statewide Sulfur Dioxide (SO_2) Rules for most sources as a revision to its State Implementation Plan (SIP). The revisions being proposed for approval today consist of: (1) Natural Resources (NR) 417.07—Statewide Sulfur Dioxide Emission Limitations, which contains categorical limits, more restrictive limits, and alternative limits; (2) NR 417.04—Southeast Wisconsin Intrastate Air Quality Control Region (AQCR), which contains restrictions for small sources in Southeastern Wisconsin; (3) new source permits; (4) Administrative Orders; and (5) elective operating permits. USEPA's proposed rulemaking, today, is based upon several submittals from the State.

USEPA is proposing to disapprove Wisconsin's SO_2 plan for some SO_2 sources, because the Wisconsin Department of Natural Resources (WDNR) did not submit site-specific emission limitations and/or compliance methodologies for these sources which provide for attainment and maintenance of the SO_2 national ambient air quality standards (NAAQS).

DATES: Comments on this revision and on the proposed USEPA action must be received by: February 3, 1992.

ADDRESSES: Copies of the SIP revision are available at the following address for review: (It is recommended that you telephone Patrick D. Dolwick, at (312) 886–6053, before visiting the Region V office.) U.S. Environmental Protection Agency, Region V, Air Toxics and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on this proposed rule should be addressed to: (Please submit an original and five copies, if possible.) Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (5AT–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Patrick D. Dolwick (312) 886–6053.

SUPPLEMENTARY INFORMATION: This notice presents a discussion of USEPA's review of Wisconsin's Statewide SO_2 Rules contained in Wisconsin NR Rules 417.07 and 417.04. The outline for the notice is as follows:

I. Background Information
II. Emission Limits
  A. Statewide SO_2 Emission Limitations
  B. Negative Declarations
  C. SO_2 Limitations for Nonattainment Areas
  D. South East Wisconsin Coal Limit
  E. Permit Limitations
III. Compliance Test Methods
IV. Attainment Demonstration
  A. Categorical/More Stringent Limits to Modeling
  1. Prevention of Significant Deterioration (PSD) Increment Analysis
  2. Interstate Impact Analysis
  3. Consistency with Good Engineering Practice (GEP) Regulations
  B. Alternate Limits
V. Summary of USEPA's Proposed Action

I. Background Information

On April 26, 1984, USEPA notified the Governor of Wisconsin under section 110(a)(2)(H) of the Clean Air Act, that the Wisconsin SO_2 SIP was inadequate to ensure the protection of the primary and secondary NAAQS. USEPA concluded that the SIP did not contain SO_2 emission limitations for many sources; nor did it contain schedules and timetables for compliance with such limitations, as required by section 110(a)(2)(B). The finding of SIP inadequacy applied statewide, except for (1) those sources regulated by source-specific New Source Performance Standards (NSPS) (i.e., Wisconsin Public Service (WPS) Weston-UInit 3, Wisconsin Electric Power Company (WEPCo) Pleasant Prairie-Units 1 and 2, Wisconsin Power and Light (WPL) Edgewater-Unit 5, WPL Columbia-Unit 2, Appleton Paper Locks Mill-New Boiler, and Flambeau Paper Boiler 24) and (2) those sources regulated by a USEPA-approved Part D SIP (i.e., Village of Brokaw: Wausau Paper and City of Madison: Madison Gas and Electric Blount Street, Oscar Mayer, University of Wisconsin (UW)-Madison, Wisconsin State Capitol Heating Plant, Wisconsin Department of

Administration-Hillfarms Heating Plant, and Mendota Mental Health Institute).

Wisconsin responded to the notice of SIP deficiency with multiple submittals to USEPA. The Statewide SO_2 Limitation Rule (NR 417.07) was submitted on June 5, 1985, and January 21, 1986. Operating permits were submitted on September 16, 1986, October 3, 1986, and July 20, 1987. Numerous Administrative Orders or elective operating permits containing limits more stringent than those identified in the Statewide Rule were submitted between September 1985 and March 1988. Technical support (consisting of air quality modeling data) was submitted along with the emission limitations.

II. Emission Limitations

The revised SIP is comprised of: (A) Statewide SO_2 Limitations, NR 417.07 (either the categorical limits identified in NR 417.07 (2), more restrictive limits adopted under 417.07 (4), or alternate limits adopted under 417.07 (5)); (B) Sulfur Limitations for specific geographic areas within the State (NR 418.025–08): [1] Brokaw, Madison, Milwaukee, Green Bay, DePere, Peshtigo, Rhinelander, and Rothschild; and (C) Southeast (SE) Wisconsin AQCR coal-fired limit for small sources (NR 417.04); and (D) numerous new source permits. The limits imposed by (A), (C) and (D) above are summarized in Table 1. Each portion of the SIP is reviewed below.

A. Statewide Sulfur Dioxide Emission Limitations (NR 417.07)

(1) Applicability (NR 417.07(1))

Content: This regulation applies to all sources of SO_2 except: (1) Those subject to NR 417.04 or 418 (see footnote 1); or (2) Those subject to a limitation more stringent than the limits identified below.

Action: USEPA proposes to approve the Applicability Section.

(2) Emission Limits for Existing (before February 1, 1985) Sources (NR 417.07(2))

Content: (a) Coal-fired units at facilities with combined coal-firing capacity greater than or equal to 250 million British Thermal Units per hour (MMBTU/HR)—3.2 pounds of SO_2 per million British Thermal Units (lbs/MMBTU);

(b) Coal-fired units at facilities with combined coal-firing capacity less than 250 MMBTU/HR—5.5 lbs/MMBTU;

(c) Residual oil-fired units at facilities with combined residual oil-firing capacity greater than or equal to 250 MMBTU/HR—1.5 lbs/MMBTU;

(d) Residual oil-fired units at facilities with combined residual oil-firing capacity less than 250 MMBTU/HR—3.0 lbs/MMBTU;

(e) Kraft Mill (all process sources combined)—10.0 pounds of SO_2 per ton (lbs/ton) air dried pulp (ADP);

(f) Sulfite mill (all process sources combined)—20.0 lbs/ton ADP;

(g) Petroleum refinery;

(1) Process heater firing residual oil—0.8 lbs/MMBTU;

(2) Fuel burning equipment firing residual oil—0.8 lbs/MMBTU;

(3) Claus sulfur recovery plant—6743 lbs of SO_2/24-hour, and 843 lbs of SO_2/3-hour;

(4) All other process units—1035 lbs of SO_2/1-hour.

Action: USEPA proposes to approve (a), (b), (c), and (d) above subject to source-specific demonstrations of attainment (see Section IV of this notice). USEPA is proposing to disapprove (g), which applies to only one source (Murphy Oil), because the State has not submitted an attainment demonstration for this source. USEPA is proposing to disapprove (e) and (f), which applies to the following sources:

1. Consolidated Papers (Kraft)
2. Mosinee Paper (Kraft)
3. Nekoosa Papers—Port Edwards (Sulfite)
4. Thilmany Pulp and Paper (Kraft)

USEPA is proposing to disapprove (e) and (f) because the federally enforceable compliance technique, stack test, would not be sufficient to determine compliance with the combined process emission limit. Several of these sources have developed alternative (stack specific) emission limits through either operating permits (Thilmany, Nekoosa Papers-Port Edwards) or the PSD permit process (Consolidated Papers). Mosinee is affected by (e) as well, USEPA is also proposing to disapprove it due to the lack of an acceptable modeled attainment demonstration, as discussed in Section IV.

If in the future the State discovers that any of the limits in NR 417.07 will not protect the NAAQS or PSD increments for a given source, then the State has the authority to develop more stringent limits (pursuant to NR 417.07(4), as discussed below). Any such limit developed must be submitted to USEPA as a site-specific SIP revision.

(3) Emission Limits for New (after February 1, 1985) Sources (NR 417.07(3))

Content: (a) Coal-fired units—3.2 lbs/MMBTU;

(b) Residual oil-fired units—1.5 lbs/MMBTU;

(c) Kraft Mill (all process sources combined)—10.0 lbs/ton ADP;

(d) Sulfite mill (all process sources combined)—20.0 lbs/ton ADP;

(e) Petroleum refinery:

(1) Process heater firing residual oil—1.5 lbs/MMBTU;

(2) Fuel burning equipment firing residual oil—1.5 lbs/MMBTU;

(3) Claus sulfur recovery plant—0.025% by volume SO_2 at 0.0% oxygen on a dry basis if emissions are controlled by a reduction control system followed by incineration; 0.030% by volume of reduced sulfur compounds and 0.0010% hydrogen sulfide if emissions are controlled by a reduction control system which is not followed by incineration.

Action: USEPA proposes to approve.[2]

(4) More Restrictive Emission Limits (NR 417.07(4))

Content: Gives the State the authority to revise State rules to require more stringent emission limits if necessary to ensure no violations of the SO_2 NAAQS or PSD increment.

Action: USEPA proposes. The State must have authority to revise its own rules if necessary to protect the public health or welfare. Of course, all more stringent State limits necessary to protect the NAAQS and PSD increments must still be submitted to USEPA as site-specific SIP revisions. (Note, Administrative Orders containing more stringent emission limitations have been submitted by Wisconsin for several sources as site-specific SIP revisions. USEPA is proposing to approve most of the revisions.)

(5) Alternate Emission Limits (NR 417.07(5))

Content: Established State procedures for sources to obtain relaxed State emission limitations.

Action: USEPA proposes to approve these procedures. Of course, all relaxed State limits must still be submitted to USEPA as site-specific SIP revisions, also, the previous limit is enforceable

[1] This rulemaking notice is taking no action on the overall plan for Wisconsin's nonattainment areas.

[2] Any new source, based on size capacity, will be also subject to applicable new source review requirements, including PSD and New Source Performance Standards (NSPS). The controlling limit, thus, will be whichever is the more stringent. Emission controls for new sources may also have to meet more stringent best available control technology (BACT) or lowest achievable emission rate (LAER) requirements.

until the relaxed rule is federally approved by USEPA.

(6) Compliance Schedules (NR 417.07(6))

Content: Established schedules for achieving final compliance and the date for final compliance. All sources must be in final compliance by December 31, 1987.

Action: USEPA proposes to approve. Schedules and final dates are already past and, thus, are now no longer an issue (i.e., sources must be in compliance upon the effective date of Federal approval).

(7) Compliance Demonstrations (NR 417.07(7))

(a) *Content:* Requires each source to submit a plan for demonstrating compliance based on one or more of the following methods—stack tests, fuel sampling and analysis, continuous emission monitoring, or other methods approved by the State.

Action: USEPA proposes to approve Wisconsin's procedures for developing site-specific compliance methodologies. The individual compliance plans themselves must still be submitted to USEPA in order to revise the federally approved SIP. USEPA will then have the opportunity to approve or disapprove any methods approved by the State. Regardless of the specific compliance methodology chosen by a source, Wisconsin's SIP contains an independently enforceable stack test and that remains the primary Federal methodology for determining compliance unless and until Wisconsin submits and USEPA approves any alternatives.

(b) *Content:* Requires each source to maintain records of emissions data and calculations used to verify emissions data and to make records available upon request.

Action: USEPA proposes to approve. However, this provision is being relied on to require recordkeeping and reporting for several sources subject to a restriction on boiler operation or operating load. USEPA finds it necessary that the following sources be subject, at a minimum, to the recordkeeping requirements listed as follows:

1. Hourly records of fuel type—National Presto, Pope & Talbot—Eau Claire, Ansul Fire Protection, Kearney & Trecker, Koch Fuels, Allied Processors, and Beatrice Grocery;

2. Hourly records of actual heat input—Falls Dairy, Rexworks, and Greenwood Milk;

3. Records of hourly operating load and emissions in terms of lbs/MMBTU (obtained through either daily fuel sampling analysis or continuous emission monitoring)—Badger Army Ammunition Plant and Milwaukee County Department H&HS;

4. Hourly records of both fuel type and emissions in terms of lbs/MMBTU (obtained through either daily Fuel Sampling Analysis or continuous emission monitoring)—Colt Industries.

This information is needed to determine compliance (or non-compliance) with the proposed emission limitations for these sources. Therefore, USEPA is proposing to disapprove Wisconsin's plan for these sources because the plan does not contain adequate recordkeeping requirements for these sources.

Note, Ansul Fire Protection, Badger Army Ammunition, Colt Industries, and Milwaukee County Department H&HS have variable emission limitations. USEPA is considering whether advance notification (prior to switching limits) and other additional requirements are necessary for enforcement purposes. USEPA solicits comment on the need for such notification or other requirements.

(8) Variance from Emission Limits (NR 417.07(8))

Content: Establishes State procedures for sources to obtain alternate State emission limitations and/or revised compliance schedules.

Action: USEPA proposes to approve these procedures. Any relaxed State limit or schedule must still be submitted to USEPA in order to revise the federally approved SIP.

(9) Subsequent Requests for Alternate Limits or Variances (NR 417.07(9))

Content: This subsection defines specific time periods for sources to obtain variances and alternate limits. Revisions are not available in 1986 and 1987.

Action: By letter dated December 15, 1989, Wisconsin withdrew this subsection from further SIP review. Thus, USEPA is not proposing action on this section. The State and USEPA understand the withdrawal to mean that all state issued SO_2 variances must be submitted to USEPA in order to revise the federally approved SIP.

B. Negative Declarations

The States submitted "negative declarations" for certain sources with respect to NR 147.07. Negative declarations are declarations which either impose fuel type restrictions (i.e., cannot burn residual oil or coal) on certain sources or identify other sources as being shut down or permanently closed. USEPA is proposing to include these negative declarations into the SIP. These sources are listed in Table 2.

C. Sulfur Limitations for Nonattainment Areas

These are covered in separate rulemaking packages for each area and are not discussed here.

D. South East Wisconsin Coal Limit (NR 417.04)

Content: Coal-fired units (at facilities with combined coal-firing capacity less than 250 MMBTU/hr) are limited to 1.11 pounds of sulfur per MMBTU (2.22 lbs of SO_2 per MMBTU). Significant sources affected by county are: Racine County—Frank Pure; Kenosha County—American Motors Lakeside; Milwaukee County—Milwaukee House of Correction, Cudahy Tanning, Continental Can, and Falk (B20).

Action: USEPA proposes to approve this, based on the source-specific or county-specific demonstrations of attainment submitted (see Section IV of this notice).

E. Permit Limitations

The following sources are covered by operating permits or PSD permits which impose emission limitations that are more stringent than the general limits in NR 147.07:

District	County	Source (* = PSD)
West Central	Clark	Greenwood Milk (B20, 21).
		Lynn Proteins (B21).
	Dunn	Allied Processors (B21).
North Central	Portage	Neenah Paper-Whiting (B01).
	Wood	CPI-Biron,* CPI-Kraft.*
Northwest	Douglas	Koppers (B22).
	Price	Flambeau Papers (Pulp Mill).*
Southeast	Milwaukee	Peter Cooper.
	Racine	J.I. Case.
	Sheboygan	Borden.

Action: PSD permits have already been granted. Each source is subject to source-specific demonstration of attainment.

(Note, the following sources are subject to Federal NSPS requirements: WPL–Columbia (Unit 2), Appleton Papers-Locks Mill (New Boiler), WEPCo–Pleasant Prairie (Units 1 and 2), Flambeau Papers (B24), WPL–Edgewater (Unit 5), and WPS–Weston (Unit 3)).

III. Compliance Test Methods

The Wisconsin SIP currently contains Section NR 154.06 (renumber NR 439) of the Wisconsin Administrative Code.[3]
Section NR. 154.06 requires:

(1) Reporting to "information to locate and classify air contaminant sources according to the type, level, duration, frequency and other characteristics of emissions and such other information as may be necessary. The information shall be sufficient to evaluate the effect on air quality and compliance with these rules."

(2) Stack or performance tests following the methods required or approved by USEPA.

(3) Recordkeeping and reporting of all testing and monitoring, and any other information relating to the emission of air contaminants.

On May 28, 1987, WDNR notified USEPA that the stack test methodology existing in the Wisconsin SIP remains an independent means of demonstrating compliance. Although WDNR has also required development of site-specific compliance plans for all sources subject to NR 417.07 (see NR 417.07(7)), the State has made it clear to USEPA and to each company that regardless of a source's compliance status as determined by the source's site-specific compliance methodology, a stack test can still be used as an independent method to determine whether a violation of the applicable emission limitation has occurred.[4] USEPA accepts the use of a stack test as the sole compliance test method for most sources. (Note, the State's site-specific compliance plans were not submitted as revisions to the SIP and, thus, are not being proposed as a part of the SIP.)

For several sources, however, the State's control strategy is based on certain conditions in addition to the "lbs/MMBTU" emission limitation. These conditions consist of stack height increases/stack mergings, restrictions on operating load, boiler operation, limits as a function of operating load, etc. For the operating/load conditions, recordkeeping and reporting requirements will be required pursuant to NR 417.07(7)(b) and the general requirements of NR 154.06 (now NR 439), as noted previously. For the stack modifications, WDNR on August 21, 1987, stated that all stack height increases, new stacks, or stack mergings have already occurred.

IV. Attainment Demonstration

The State performed dispersion modeling to verify the adequacy of the categorical emission limits (NR 417.01(2)) or to establish more stringent limits in accordance with a modeling protocol approved by USEPA. To support alternate emission limits (i.e., higher than categorical), each company was required to perform a modeled attainment demonstration. These demonstrations generally followed the generic State-USEPA protocol and USEPA modeling guidelines, including block averaging for the 3-hour and 24-hour SO_2 NAAQS.[5]

A. Categorical/More Stringent Limits to Modeling

For screening analyses, the Point Source Gaussian Diffusion Model (PTPLU)[6] or VALLEY was used and, for refined analyses, the Industrial Source Complex Short Term Model (ISCST) was used. (Note, in Milwaukee, ISCST urban was used.) Several comments on the modeling analyses should be noted. First, the State's attainment demonstration for the Wisconsin's Public Service Weston plant in Marathon County relied on both modeling and monitoring data. The USEPA reference model (ISC) was used to show attainment at receptor locations below the physical stack heights. Monitoring data was used to assess the validity of the available models and to show attainment at the critical terrain feature above the physical stack height. USEPA proposes to accept this combined use of modeling and monitoring data to demonstrate attainment here.

Second, the State's modeling for the following sources predicted violations of the SO_2 NAAQS.

University of Wisconsin—Milwaukee
Southern Wisconsin Center
Outboard Marine Corporation—Evinrude
S.C. Johnson
Menasha Electric
Plastics Engineering
American Milk Products—Blair Cheese
Richland Center Municipal
Appleton Papers—Appleton
Ore Ida
Consolidated Papers—Wisconsin River Division
Mosinee Papers[7]
Allis Chalmers

To correct these violations, operating restrictions or additional emission limitations were developed. The conditions were only included in the State's compliance plans, which as noted above will *not* be included in the SIP, in accordance with a mutual agreement between USEPA and the State. Without these conditions, the proposed regulation does *not* ensure attainment of the SO_2 NAAQS. USEPA proposes to disapprove the State's regulation for these sources based on the modeled violations.

Third, the State's plan for American Motors-Kenosha (Main) and Northern States Power-Ashland is not approvable because: (1) The modeling analysis is deficient (e.g., not all allowable emission limits were modeled), and (2) a compliance methodology capable of accounting for the wide variability in emission limitations was not provided. USEPA proposes to disapprove the State's regulation for these sources based on a deficient attainment demonstration and a deficient compliance methodology.

1. PSD Increment Analysis

Pursuant to USEPA's PSD regulations, SIP relaxations submitted after June 19, 1978, must be evaluated for increment consumption. Because this SIP revision establishes emission limitations where, is general, none now exist, no increment analysis is required. (Note, the State did consider whether their allowable emission limits would exceed actual baseline emissions in those counties where the baseline data had been triggered. This preliminary analysis identified no serious threat to the available increment in the baseline counties.)

2. Interstate Impact Analysis

The Clean Air Act requires that the Wisconsin SIP not allow emissions which will prevent attainment or maintenance of the NAAQS in any other State. Generally, Gaussian models are accurate for setting emissions for a

[3] References to the Wisconsin SIP are found at 40 CFR 52.2570.

[4] In a May 28, 1987, letter, WDNR's states that a compliance demonstration method other than a stack test does not insulate the source from a compliance stack test required or conducted by WDNR and USEPA. In fact, in approving compliances plans, the WDNR has included a notice to the source that a source can be required to perform a compliance stack test "regardless of a source's compliance status as determined by the source's site specific compliance methodology in the approved plan."

[5] The modeling techniques used in the demonstrations supporting these regulations are based on the modeling guidelines in place at the time that the analyses were performed (i.e., "Guideline on Air Quality Models", April 1978 and "Regional Workshops on Air Quality Modeling: A Summary Report", April 1981). Since that time, revisions to the modeling guidelines have been promulgated ("Guideline on Air Quality Models (Revised)", July 1986 and "Supplement A to the Guideline on Air Quality Models (Revised)", July 1987). Because the modeling was initiated and generally completed prior to these revisions of the guidelines, USEPA accepts the analyses as they stand.

[6] Gaussian is a statistical term for a normally distributed curve.

maximum useful distance of 50 km.[7] Sources within 50 km of another State are located in 27 counties—the 26 counties on the northern, western, and southern edge of the State, plus Racine County. For the 26 border counties, the State's analyses either: (1) Demonstrated attainment at receptors located in the other State, or (2) implied attainment in the other State (e.g., modeled attainment in Wisconsin, decreasing concentration gradient in the direction of the other State, and no other sources between those modeled in Wisconsin and the other State). Racine County sources are indirectly included in the Kenosha County analysis via the monitored background concentrations, thus, the Kenosha County interstate impact analysis also serves as the Racine County analysis.

3. Consistency with GEP Regulations

USEPA's July 8, 1985, stack height regulations apply to stacks (and sources) which came into existence and dispersion techniques implemented on or after December 31, 1970.[8]

Stack height credit for the purpose of establishing an emission limitation is restricted to the lesser of actual or good engineering practice (GEP) formula height. Credit for merged stacks is generally prohibited, with the following four exceptions:

(1) Where total plantwide allowable SO_2 emissions do not exceed 5000 tons per year.

(2) Where the facility was originally designed and constructed with merged gas streams.

(3) Where such merging was before July 8, 1985, and was part of a change in operation that: (i) included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and (ii) did not result in an increase in the emission limitation or (if no limit was in existence prior to merging) in the actual emission, or

(4) Where such merging was after July 8, 1985, and was part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions for the pollutant affected by the change in operation.

Wisconsin's stack height review for all areas (except Buffalo County, Green Bay/DePere, Peshtigo, Rhinelander, and Rothschild) is summarized below.

There are 52 stacks that exceed 213 feet. Wisconsin certified that 41 stacks were in existence before December 31, 1970 (based on information in State case files, knowledge by State personnel, or discussions with individual companies) and nine stacks are at or below the GEP formula height (based on plot plans available in State case files). The remaining two stacks are:

(1) University of Wisconsin-Madison (Walnut Street): The State remodeled this stack at the GEP formula height. Although no violations were predicted due to this source, violations were predicted due to the UW-Madison (Charter Street) plant. A revised limit of 3.18 lbs/MMBTU appeared to be required for UW-Madison (Charter Street). On October 17, 1986, the State submitted an Administrative Order as a site-specific SIP revision for UW-Madison (Charter Street). USEPA proposes to approve this limit, 3.18 lbs/MMBTU, as part of Wisconsin SIP.

(2) Wisconsin Power & Light-Columbia: The State remodeled the stack for Unit 2 at the GEP formula height. This analysis showed attainment of the NAAQS with Unit 2 at the categorical limit (3.2 lbs/MMBTU) and GEP formula height.

There are 27 sources with plantwide allowable SO_2 emissions greater than 5000 tons per year. Wisconsin certified that there is one stack per unit at two facilities, that a stack was originally designed and constructed with merged gas steams at one facility, and that stacks serving multiple units were in existence before December 31, 1970 at 18 facilities (based on information in State case files, knowledge by State personnel, or discussions with individual companies). The remaining 6 facilities are:

(1–3) Wisconsin Power & Light-Edgewater; Consolidated Papers-Kraft; and Mosinee Papers: No justification provided for merged stacks. Edgewater and CPI-Kraft were modeled without merged stack credit. USEPA proposes to disapprove the State's plan for Mosinee Papers because the State's attainment demonstration inappropriately relied on merged stack credit.

(4) Consolidated Papers—Biron: Installation of nozzles on the two stacks was found to not result in an increase in final plume rise.

(5) Oscar Mayer: On October 17, 1986, the State submitted an Administrative Order as a site-specific SIP revision for Oscar Mayer of 4500 tons per year (in addition to Oscar Mayer's federally enforceable emission limitations approved by USEPA on April 9, 1981, (46 FR 21165) and April 13, 1982, (47 FR 15783). Thus, merged stack credit can be granted. USEPA proposes to approve this limit as part of the Wisconsin SIP.

(6) Owens-Illinois: On March 1, 1988, the State submitted information provided by Owens-Illinois which attempts to affirmatively demonstrate that merged stacks were not significantly motivated by an intent to obtain emissions credit for increased dispersion. This information consisted of affidavits by plant personnel, State construction and operating permits, internal company memos, and correspondence between the State and company. Based on this affirmative demonstration, USEPA proposes to approve credit for merged stacks for this source.

In addition, the control strategy for several sources involves stack height increases or stack mergings. A summary of these cases is provided below.

National Presto, Chippewa County (raise 2 stacks to 55 feet or restrict boiler operation)
Bush Bros, Eau Claire County (raise 2 stacks to 75 feet)
Beatrice Cheese, Wood County (raise 1 stack to 83 feet)
Niagara of Wisconsin, Marinette County (raise 1 stack to 191.3 feet)
Midtec Papers, Outagamie County (raise 1 stack to 120 feet)
Gilbert Papers Winnebago County (raise 1 stack to 200 feet)
Kimberly Clark-Neenah, Winnebago County (raise 2 stacks to 60 feet)
Thilmany Paper, Outagamie County (raise 1 stack to 290 feet)
Waste Research & Reclamation, Eau Claire County (combine 2 stacks to 1–60 foot stack)
Kimberly Clark-Lakeview, Winnebago County (combine 2 stacks to 1–46 foot stack)
Consolidated Papers-Kraft, Wood County (vent Rec Boiler No. 1 exhaust from 90.8m stack to new 91.2m stack)
Pope & Talbot-Eau Claire, Eau Claire County (raise 2 stacks to 213 feet)

All of the stack height increases (new taller stack for existing units(s)), except Thilmany Papers, are fully creditable because either the new stack is less than or equal to the *de minimis* height (213 feet), or the modeled stack height is limited to the grandfathered height. The stack height increase at Thilmany

[7] References to the 50 km limit are in "Guideline on Air Quality Models (Revised)", EPA-450/2–78–027R7–80.

[8] Certain provisions of these rules were remanded to *USEPA in NRDC* v *Thomas* 838 F. 2d 1224 (D.C. Cir 1988). These are grandfathering stack height credits for sources who raise their stacks prior to October 1, 1983, up to the height permitted by GEP formula height (40 CFR 51.100 (kk) (21)), dispersion credit for sources originally designed and constructed with merged or originally designed and constructed with merged or multi-flue stacks. (40 CFR 51.100 (hh) (2) (ii) (A)), and grandfathering credit for the refined (H + 1.5L) formula height for sources unable to show reliance on the original (2.5H) formula (40 CFR 51 100(ii)(2)).

Papers occurred after October 11, 1983. According to the Stack Height Regulations, credit for a stack height increase up to formula height after this date must be supported by evidence that additional stack height is necessary to avoid down wash-related concentrations raising health and welfare concerns. Based on a fluid modeling study performed by the company which demonstrated excessive concentrations at the existing stack height, USEPA is proposing to approve the additional stack height credit at Thilmany Papers. The two stack mergings (Waste Research & Reclamation and Kimberly Clark—Lakeview) are fully creditable because the plantwide allowable SO_2 emissions for these two sources are less than 5000 tons per year.

USEPA is proposing to approve all of the above as meeting the requirements of USEPA's July 8, 1985, stack height regulations. However, CPI-Biron, Wisconsin Electric Power Company-Pleasant Prairie, WPL-Columbia), provisions under which USEPA is proposing to approve granting credit have been remanded to the USEPA.[9] The grandfathering of GEP formula height credit for pre-1983 stack height increases (40 CFR 51.100(kk)(2)) is applicable to Edgewater and Biron, grandfathering credit for the refined GEP formula height (40 CFR 51.100(ii)(2)) is applicable to Columbia, and the original design and construction exemption (40 CFR 51.100(hh)(2)(ii)(A)) for merged stacks is applicable to Pleasant Prairie.

Although USEPA today proposes to approve the emission limits for these sources on the grounds that they satisfy the applicable Section 110 requirements of the Clean Air Act, USEPA also today provides notice that the emission limits are subject to review and possible revision as a result of *NRDC* v. *Thomas*, 838 F.2d 1224 (1988), where the U.S. Court of Appeals for the D.C. Circuit held that USEPA had not adequately explained certain provisions of its July 8, 1985, regulations and remanded these provisions to USEPA for further proceedings consistent with its opinion. If USEPA's response to the *NRDC* remand modifies the applicable July 8, 1985, provision(s), USEPA will notify the State of Wisconsin whether the emission limit for Edgewater, Biron, Pleasant Prairie, and Columbia must be reexamined for consistency with the modified provision. USEPA's proposed approval for these facilities' emission limits today is intended to avoid delay in the establishment of federally enforceable emission limits, while awaiting resolution of the *NRDC* remand.

Finally, as part of WDNR's stack height review, numerous other sources have already been determined to be exempt from the Stack Height Regulations (i.e., mergings at plants with total allowable emission less than 5000 tons per year and stack height increases or new stacks less than 213 feet). (Note, there are stack height issues associated with some sources covered by NR 418, which will be addressed in the technical support documents for each area.)

The only alternate limits (higher than categorical) submitted by WDNR are for the following sources:

Consolidated Papers—Biron
Thilmany Papers
Pope & Talbot—Eau Claire
Owens—Illinois
Dairyland Power—Genoa
Wisconsin Power & Light—Edgewater

Modeling to support the alternate limits was provided by WDNR. USEPA's review and acceptance of this modeling is discussed in USEPA's Technical Support Document. In general, the modeling, performed in accordance with the applicable guidelines, demonstrates that the higher limits will provide for attainment and maintenance of the SO_2 NAAQS. USEPA is, therefore, proposing to approve the limits for each source.

TABLE 1.—SOURCE SPECIFIC EMISSION LIMITATIONS

County	Source	Emission limitation [10]
West Central District:		
Chippewa	Genstar	B21 (3.0), B22 (3.0).
	Falls Dairy	Proposed Disapproval.
	Leinenkugel's	B20/S10 (3.61).
	National Presto	Proposed Disapproval.
	North Wisconsin Center for Develop Disabled	B20,21,22/S10 (4.2), B23/S10 (3.0).
Clark	Greenwood Milk	Proposed Disapproval.
	Lynn Proteins	B20 (3.0), B21 (1.5% S).
Crawford	Iverson Number 6	Burns (3.0).
Dunn	Allied Processors	Proposed Disapproval.
	Beatrice Grocery	Proposed Disapproval.
	Knapp Creamery	B20 (3.0).
	UW-Stout	B21,22 (5.5).
Eau Claire	Bush Brothers	B20 (3.0) stack raised to 75 feet and B21 (3.0) stack raised to 75 feet.
	Eau Claire Asphalt	Boiler number 1 (3.0).
	Luther Hospital	B23,24 (3.0).
	Pope & Talbot-Eau Claire	Proposed Disapproval.
	Uniroyal	B20,21/S 10 (2.25).
	UW-Eau Claire	B20,21/S (4.5), B22/S 18 (3.0).
	Waste Research & Reclamation	B20/S 18 (2.3)}, B21/S 19 (2.3)}, stacks merged to new 60 foot stack.
Jackson	South Alma Cheese	B22 (3.0), B23 (3.0).
LaCrosse	Holy Cross Seminary	B20,21 (5.5).
	Trane 2-5, 7	B21/S 52 (cannot burn coal), B22/S 53 (4.36), B23/S 54 (4.36), B23/S 55 (4.36), B20/S 10 (1.5) or (1.78) if load restricted to 29 MMBTU/hr, record-keeping required.

[9] As stated earlier, certain provisions of these rules were remanded to USEPA in *NRDC* v *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). These are: grandfathering stack height credits for sources who raise their stacks prior to October 1, 1983, up to the height permitted by GEP formula height (40 CFR 51.100(kk)(2)); dispersion credit for sources originally designed and constructed with merged or multi-flue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and grandfathering credit for the refined (H+1.5L) formula height for sources unable to show reliance on the original (2.5H) formula (40 CFR 51.100(ii)(2)).

TABLE 1.—SOURCE SPECIFIC EMISSION LIMITATIONS—Continued

County	Source	Emission limitation [1]
	Trane 6	B20/S 10 (5.5), B21/S 11 (0.6) or (1 75) if restricted to combined 12 MMBTU/hr B22/S 12 (0.6) or (1.75) if restricted to combined 12 MMBTU/hr recordkeeping required.
	Webster Industries	B24 (3.0).
	Saint Rose Convent	S10 (3.0).
	UW-LaCrosse	B20,21 [(3.65) coal, (1.99) oil].
	G. Heileman	B20,21 (2.15), B25 (2.15).
Monroe	Fort McCoy	Boilers 1–3 (3.2).
	Golden Guernsey	B22/S13 (1.73).
Pepin	None.	
St. Croix	Domain	B20 (3.0), B21 (3.0).
	Friday Canning	B20 (3.0).
Trempealeau	AMP-Blair Cheese	Proposed Disapproval.
Pierce	UW-River Falls	B20,21 (5.5).
Vernon	Dairyland Power-Genoa	B20/S10 [(5.6) 24-hour average, (5.5) 30-day average].
North Central District:		
Adams	None.	
Forest	None.	
Juneau	None.	
Langlade	None.	
Lincoln	Owens-Illinois	B24,27,28 (5.5), B25 (1% S) and 84.59 pounds/hr (oil firing restricted to 80 MMBTU/hr), B29 (1% S).
	Ward Paper	B20,21/S10 (5.5).
Marathon	Mosinee Papers	Proposed Disapproval.
	Weyerhaeuser/Reed Lignin	Subject to NR 154.12 (10).
	WPS-Weston	B20/S10 (3.2), B21/S11 (3.2), B22/S12 (1.2).
	Wausau Paper	Subject to NR 154.12 (4).
Oneida	McNaughton Correctional Center	Boiler 1 (3.0).
	Rhinelander Papers	Subject to NR 154.12 (9).
Portage	American Potato	Boiler 1 (3.0).
	CPI-Wisconsin River Division	Proposed Disapproval.
	Del-Monte	B01 (0.19), B02 (0.19).
	Neenah Paper	B21/S10 (3.0).
	Whiting	B01/S01 (55 lbs/hr).
	Ore-Ida	Proposed Disapproval.
	SNE-Stevens Plant	B20/S10 (5.5).
	UW-Stevens Plant	B01,02/S10 (5.5).
Vilas	None.	
Wood	Beatrice Cheese	Boiler 1 (3.0) new 83 feet stack.
	CPI-Biron	B005 (1.2) operates with either B001, 2, 3 or B004; B001, 2, 3 (6.0), B004 (6.0).
	CPI-Kraft	P30/S13 (40 parts per-million dry volume (ppmdv), 6.9 lbs/hrs)—new 65 m stack, Number 3 Recovery boiler (158 ppmdv, 114.6 lbs/hr)—new 91.2 m stack P38/S 21 (24 ppmdv, 2.3 lbs/hr), Numbers 1,2 Power Boilers (1.71), Number 1 Recovery boiler (5 lbs/Ton ADP)—to be vented to new 91.2 m stack, Number 2 Recovery boiler (5 lbs/Ton ADP), Numbers 1,2 smelt Dis. Tanks (0.1 lbs/Ton ADP) new 63.4 m stack.
	Nekoosa Papers	B20,21,24/S 10 (3.0).
	Port Edwards	B25/S 13 (3.0), P30/S 11 (1633 lbs/hour, 24-hour average), Misc. Process Sources (12.1 lbs/hour, 24-hour average).
	St. Joseph Hospital	B01,02 (5.5), B03,04 (3.0).
Northwest District:		
Ashland	Northern States Power	Proposal Disapproval.
Barron	AMPI-Turtle Lake	B20,(3.0), B21 (3.0).
	Morning Glory Farms	Boilers 1,2 /S 11 (5.5).
	Seneca Foods	B10/S 10 (1.5), B11/S 11 (0.5% S), B20, 21, 22 to be shutdown recordkeeping/reporting required, B10 can only burn oil from June–October (limited to 4575 gal/day).
Bayfield	None.	
Burnett	Burnett General Hospital	B20,21 (3.0), B22 (3.0).
Douglas	Middle River Health Facility	B20,21 (5.5).
	Parkland Health Facility	B21,22 (5.5).
	Koppers	B22/S 11 (2% S), B21 (3.0).
	UW Superior	B20,21 (5.5).
	Superior WL&P	B20,21 (1.5).
Iron	None	
Polk	Wisconsin Dairies	B20/S 10 (1.21), B21/S 11 (1.21), B22/S 12 (1.21)
Price	Flambeau Papers	B20 (1.5), B22 (1.5), B23 (1.5), B24 (1.2), Pulp Mill (65.4 lbs/hr).
	Lionite Hardboard	B20/S 10 (1.13).
Rusk	Norco Windows	B20,21 (5.5).
Sawyer	None.	
Taylor	None.	

TABLE 1.—SOURCE SPECIFIC EMISSION LIMITATIONS—Continued

County	Source	Emission limitation [1a]
Washburn	None.	
Southern District:		
Columbia	Davis Construction	Burner (3.0).
	NE Asphalt 52	Burner (3.0)
	Wisconsin Power & Light Columbia	Unit 1 (3.2), Unit 2 (1.2), [Also, combined emissions restricted to 15,200 lbs/hr (3-hr average) and 12,500 lbs/hr (24-hr average)].
Dane	Capital Heating Plant	Subject to NR 154.12(5).
	Consolidating Paving	Burner (3.0)
	Delltown Chemurgic	B21, 22, 23/S 11 (3.0)
	DRS Services	Burner (3.0)
	Hillfarm Heating Plant	Subject to NR 154.12(5).
	Mendota Mental Health	Subject to NR 154.12(5).
	MGE-Bount Street	Subject to NR 154.12(5).
	Oscar Mayer	Subject to NR 154.12(5), July 22, 1986, Administrator Order, and 47 FR 15783.
	Payne & Dolan 6-Deforest	Burner (3.0).
	Payne & Dolan 32-Verona Road	Burner (3.0).
	UW-Madison Walnut Street	Subject to NR 154.12(5).
	Webcrafters	B20/S12 (3.0).
	UW-Charter St.	(3.18).
Dodge	Amber Labs (Universal Foods)	B22/S 10 (1.5), B21/S 11 (0.5).
	John Deere	Boiler 1 (1.33), Boiler 2 (1.33), Boiler 3 (1.33).
	NE Asphalt Horicon	Burner (3.0).
	Waupun Corr Institute	B21,22,23/S 10 (5.5).
Grant	DP-Stoneman	B21, 22/S 11 (2.81).
	Iverson 4, 5	Burner (3.0), Burner (3.0).
	UW-Platteville	B22, 23 (5.5).
	WPL-Dewey	B21, 22/S 11 (3.2).
Green	Iroquis Fndy	P31/S 11 (0.75).
Iowa	Stokeley-Cobb	B21, 22, 23/S 10 (5.5).
Jefferson	Carnation	B21/S 11 (0.58), B22/S 12 (0.58).
	Stoppenbach	B21/S 11 (5.5).
	Lake Mills Blacktop	Burner (3.0).
	UW-Whitewater	B20, 21/S 10 (5.5).
Richland	Richland Center Municipal	Proposed Disapproval.
Rock	Beloit Corporation	B20, 21, 22/S 10 (3.0).
	Colt Industries	Proposed Disapproval.
	Frank Brothers	Burner (1.42).
	General Motors	B21,22,23,24,25/S 12 (3.0).
	Hormel	B20/S 10 (0.65), B21/S 11 (0.65), B22/S 12 (0.65).
	WPL-Blackhawk	B23,24/S 10 (3.2).
	WPL-Rock River	B21/S10 (0.32), B22/S11 (3.2).
	Rock Road Con	P01/S01 (0.348).
Sauk	Grede Foundries	Furnace (5.5).
	U.S. Badger Ammunition Standby Mode	Mobilized Mode B01/S01.
	Off	(0.5) B05/S05, off (0.5), B06/S06.
	(1.5)	(0.5) B09/S09.
	(1.5)	(0.5) B10/S10.
	Off	(2.58) B13/S13.
	Off	(2.58) B14/S14.
	(1.5)	(0.5) B16/S16.
	(1.5)	(0.5) P02/S19.
	Off	Uncontrolled P06/S23.
	Off	95 percent control.
Fond du Lac	N.E. Asphalt Eden Burner	Burner (3.0).
	N.E. Asphalt Ripon Burner	Burner (3.0).
	Wisconsin State	B20/S10 (1.6).
	Taycheedah.	
Green Lake	Berlin Foundry	P31/S10 (1.19).
	Berlin Tanning	B10/S10 (2.28).
Marquette	None.	
Lafayette	None.	
Lake Michigan District:		
Brown	Green Bay Institute	S10 (5.5).
	Green Bay Packaging	NR 154.12(7).
	Fort Howard	NR 154.12(7).
	James River	NR 154.12(7).
	Nicolet Paper	NR 154.12(7).
	P&G-East River	NR 154.12(7).
	P&G-East River	NR 154.12(7).
	St. Vincent Hosp	B24/S10 (3.0).
	WPS-Pulliam	NR 154.12(7).
	Koch Fuels	Proposed Disapproval.
Calumet	None.	
Door	None.	
Florence	None.	
Manitowoc	Manitowoc Co-S Work	B20,21/S10 (3.38) (Coal).

TABLE 1.—SOURCE SPECIFIC EMISSION LIMITATIONS—Continued

County	Source	Emission limitation [1]
	Manitowoc Co	B23/S15 (1.5% S), B20,21,22—249 T/Y (combined), B20/S10, B20/S11, B22/S12 (1.18) (each), 70 gal number 6 oil/hr (each).
	Manitowoc Public Utility	B25 (3.2), B26 (3.2), B27 (3.2).
Marinette	Ansul Fire Protection	Proposed Disapproval.
	Badger Papers	NSR 154.12(8).
	Niagara of Wisconsin	Boiler 1-3/S 11 (3.2), Boiler 4/S 12 (3.2)-raise stack to 58.m.
	Scott Paper	Boiler #5 (5.5).
Menominee	None.	
Oconto	Scott Papers	B26/S10 (5.5).
Outagamie	Appleton Papers Appleton	Proposed Disapproval.
	Appelton Papers-Locks Mill	Boilers 7, 8, 9, (1.5), Boiler-new (1.2).
	Fox River Papers	B21 (1.19), B22 (3.0).
	Kerwin Papers	B20 (5.5).
	Midtec Paper	B21, 22 (3.2), B23 (1.5), B24 (1.5)-raise stacks to 120 feet.
	Sanger Powers Correctional Center	B01, 02/S1 (2.90) (Coal).
	Thilmany Papers	B07/S7, 92.7 lbs/24 hr, B08/S8, B10/S10 (466.3 lbs/24 hours), B09/S9, B11/S9 (7.0), B09/S09 and B11/S09 (865.4 pounds/ 24hrs if stack height ≥290 feet (1.7)-if 175 feet <stack height <290 feet, Also: Numerous fuel type restrictions.
Shawano	Shawano Papers	S10 (3.0), S12 (3.0).
Waupaca	FWD	B21/S11 (0.95) (residual fuel oil), B22/S12 (0.95) (residual fuel oil), B23/S13 (0.95) residual fuel oil).
Waushara	None.	
Winnebago	Galloway	Stack 1 (3.0), Stack 2 (3.0).
	Gilbert Paper	B22, 23/S10 (3.2) (Coal), B24 (3.0)-stack height>200 feet), B24 (2.0)-60 feet<stack height<200 feet), B25 (0.5).
	Kimberly Clark-Lakeview	Stack #1 (3.0), Stack #5 (3.0)—merge into existing 46 foot stack.
	Kimberly Clark-Neenah	B21/S11 (0.35—raise stacks to 60 feet, B22/S12 (0.35)-raise stacks to 60 feet.
	Menasha Electric	Proposed Disapproval.
	PH Glatfelter	Boiler 1 (1.5) (number 6 oil), Boilers 2-4 (1.5) (number 6 oil).
	US Paper Mills	B21/S10 (4.22) (Coal).
	UW-Oshkosh	S10 (5.5) categoncal limit (Coal).
	Winnebago Mental Health	S10 (5.5) categoncal limit (Coal).
	Neenah Foundry	P30, 31 (5.5)—Cannot operate simultaneously, P32, 78 (5.5)—Cannot operate simultaneously.
Southeast District		
Kenosha	American Brass	B20,21,22 (3.0) B23 (3.0).
	AM Motors Lakeside	B20,21,22 (2.22)
	AM Motors Main	Proposed Disapproval
	UW-Parkside	B20,21,22,23/S10 (0.57).
	WEPCo-Pleasant Prairie	B20,21 (1.2).
Milwaukee	A.O. Smith	S13 (1.72).
	Acme Galvanizing	P30/S12 (3.0), P31/S13 (3.0).
	Aldrich	B20,23/S10 (3.0).
	Allen Bradley	B20/S10 (3.0).
	Allis Chalmers	Proposed Disapproval
	American Can	B20/S19 (1.32) B21/S20 (1.32), B22/S18 (1.32).
	AM Motors-	B20/S10 (0.79) 24 hour/(3.0) 3-hour.
	Milwaukee	B22/S10 (0.79) 24 hour/(3.0) 3-hour, B23/S22 (1.33) 24 hour/(3.0) 3-hour.
	Continental Can	B22 (2.22).
	Cudahy Tanning	B20 (2.22), B21 (2.22).
	Eaton/Cutler	B20,21,22/S10 (1.5).
	Falk	B20 (2.22), B21 (3.0), B22 (3.0).
	General Electric	B20,21,22/S11 (3.0)
	JC Penney	B20,21 (3.0).
	Kearney & Trecker	Proposed Disapproval.
	Ladish	B20,21/S10 (3.0), B23,22/S14 (3.0).
	Miller Brewing	S10/(1.5).
	Milwaukee County Institution	B21/S11, B22/S12 B23/S13 (1.85), B21/S11, B22/S12 (2.7290), B22/S12, B23/S13 (2.7290, B21/S21, B23/S23 (2.7290)
	Milwaukee House of Correction	B20 (2.22), B21 (2.22).
	OMC-Evinrude Foundry number 2, 5	Proposed Disapproval.
	Pabst	S10 (1.5).
	Patrick Cudahy	B20/S10 (2.78), B22/S11 (2.78), B24/S14 (2.78).
	Peter Cooper	B22 (1.9), B23 (1.9), restricted to 86 pounds/ MMBTU, recordkeeping required.
	Pfister & Vogel	B20/S10 (3.0).
	Rexworks	Proposed Disapproval.
	Safeway Steel	B20/S10 (3.0).
	Unit Drop Forge	B20/S10 (3.0), B21/S11 (3.0).

TABLE 1.—SOURCE SPECIFIC EMISSION LIMITATIONS—Continued

County	Source	Emission limitation [1]
	Universal Food (Red Star Yeast)	B20,21,22/S10 (3.0).
	UW-Milwaukee	Proposed Disapproval.
	Vilter-Manufacturing	B20/S10 (1.28), B21/S11 (1.28).
	WEEPCo Oak Creek	S11 (3.2), S12 (3.2), S13 (3.2), S14 (3.2).
	WEPCo-Valley	Subject to 154.12(6).
	Wisconsin Paperboard	B20/S10 (3.0).
Ozaukee	WEPCo	B24,25/S16 (3.2).
	Port Washington	B21,22,23/S17 (3.2).
Waukesha	None.	
Washington	Carbon Engineering	B20 (5.5).
Sheboygan	Borden	B21/S10 (1.75%)→, B21/S11 (1.75%)→ can not operate boilers simultaneouly on number 6 oil; recordkeeping required.
	Kohler	B20,22,23 (3.0).
	Plastics Engineering	Proposed Disapproval.
	WPL-Edgewater	B23,24 (6.6) 24-hour average/(4.07) 30-day average, B25 (1.2).
Racine	Frank Pure	B20 (2.22).
	JI Case	B21/S11 (0.9%S), B22/S19 (0.9%S).
	SC Johnson	Proposed Disapproval.
	Western Publishing	B20 A,B/S10 (2.18), B21/S11 (2.18).
	Southern Wisconsin Center	Proposed Disapproval.

TABLE 2.—NEGATIVE DECLARATIONS

County	Source	Fuel type restriction
Lake Michigan District:		
Brown	C. Reiss	Permanent shutdown.
	UW—Green Bay	Not allowed to burn coal or residual oil.
Kewaunee	Algoma Hardwoods	Not allowed to burn coal or residual oil.
Marinette	Rodman Industries	Wood, waste/natural gas.
	Ansul Fire Protect	B23 (natural gas/number 2 oil).
Manitowoc	Man Public Util.	Two diesel engines.
Oconto	Scott Papers	Natural gas/number 2 oil.
Outagamie	Roloff	Permanent shutdown.
	Consolidated Papers—Appleton	Not allowed to burn coal or residual oil.
	Stokely—Appleton	Not allowed to burn coal or residual oil.
	Midtec Paper Dryers	Number 2 oil.
Waupaca	Wisconsin Veteran Home	Not allowed to burn coal or residual oil.
Winnebago	American Can—Neenah	Not allowed to burn coal or residual oil.
	Eggers Industrial	Wood waste/natural gas.
	James River—Canal	Not allowed to burn coal or residual oil.
	Wisconsin Tissue Mills	Not allowed to burn coal or residual oil.
	American Can—Menashana	No oil firing capabilities.
West Central District:		
Chippewa	Mid-American	Permanent shutdown.
	Dairyman (coal boiler)	
	National Presto (B20, 21, 24, 25)	Natural gas.
Dunn	UW—Stout	B20, 23 (gas, number 2 oil).
Eau Claire	Armour	Number 2 oil.
	Eau Claire Foundry	Permanent shutdown.
	Hibernia Brewing	Not allowed to burn coal or residual oil.
La Crosse	G. Heilman Malting	Permanent shutdown.
	G. Heilman	B26 Natural gas, number 2 oil.
	Paper Calmenson	Number 2 oil.
	Trane Number 2-5 (B21)	Number 2 oil.
	Webster Wood Preserving	Number 2 oil.
	UW—LaCrosse	B22 Natural gas, number 2 oil.
Pierce	UW—River Falls	B22 Natural gas, number 2 oil.
St. Croix	Friday Canning	B20, Number 2 oil/natural gas.
	St. Croix Health Center	Not allowed to burn coal or residual oil.
Trepeauleau	A.G. Coop Creamery	Number 2 oil.
	Whitehall Foods	Permanent Shutdown.
	AMPI—Blair Whey	Natural gas.
North Central District:		
Marathon	Conner Forest Industries	Permanent shutdown.
	Edelweiss Cheese	Wood Waste/natural gas.
Portage	UW—Stevens Plans	B03/S10, natural gas/number 2 oil, B04/S11, natural gas/number 2 oil.
Wood	Weyerhaeuser	Natural gas.
	Rollohome	Permanent shutdown.
	Marshfield Electric	Permanent shutdown.
Northwest District:		
Ashland	Ashland Timbers (Boilers)	Permanent shutdown.
	Louisiana Pacific Mellen	Number 2 oil.
	James River	Number 2 oil.
Barron	Knetter Cheese	Permanent shutdown.

TABLE 2.—NEGATIVE DECLARATIONS—Continued

County	Source	Fuel type restriction
Douglas	Superior WLP	Number 2 oil.
Polk	Land-O-Lakes	Number 2 oil/natural gas.
Rusk	Pope & Talbot	Number 2 oil.
Southern District:		
Beloit	Beloit Corporation (Foundry)	Permanent shutdown.
Columbia	Stokely—USA	Number 2 oil.
Dane	Wisconsin Porcelain	Permanent shutdown (coal-fired boiler).
	Wolf Paving	Number 2 oil.
	DL Gasser Number 101 (Mathy Construction)	Number 2 oil.
Dodge	Baker Canning	Permanent shutdown.
	Kraft—Beaver Dam	Number 2 oil.
	M&M Grey Iron Foundry	Permanent shutdown.
	Royer Brands	Permanent shutdown.
	Waupun Corr	B24/S10, number 2 oil/natural gas.
	Western Lime & Cement—Knowles	Permanent shutdown.
Fond du Lac	Fond du Lac County Highway	Number 2 oil.
	Wis. State Taycheedah	B21/S11, B22/S12 natural gas/number 2 oil.
	Ram Construction	Permanent Shutdown.
	Western Lime & Cement—Eden	Permanent Shutdown.
	Galloway West	Number 2 oil/natural gas.
Grant	UW—Platteville	B21, natural gas.
Jefferson	UW—Whitewater	B24/S11 number 2 oil/natural gas, B22/S10 number 2 oil/natural gas, B23/S10 natural gas only.
Rock	Baker Manufacturing	Permanent shutdown (coal-fired boiler).
Southeastern District:		
Milwaukee	AC/Spark Plug	Number 2 oil.
	Alton Packaging	Natural gas.
	Am Linen & Supply	Natural gas.
	Harley Davidson	Permanent shutdown.
	Inryco	Number 2 oil.
	Ladish	(B24, B25) Not allowed to burn coal, residual oil.
	Milwaukee Forge (Boilers)	Permanent shutdown.
	Master Lock	Not allowed to burn coal, residual oil.
	Peter Cooper	B20, 21, 24 (gas).
	P&V Atlas	Permanent shutdown.
	Steiner	Number 2 oil.
	Teledyne	Natural gas.
	WEPCo—Lakeside	Permanent shutdown.
	Wisconsin Paper Board	B21/S11 (number 2 oil, gas), B22/S10 (number 2 oil, gas).
Racine	Webster Electric	Number 2 oil.
	Western Publishing	B22, shutdown.
Sheboygan	Vollrath	Number 2 oil.
	General Box	Not allowed to burn coal or residual oil.
	Kohler	B29 shutdown.
Walworth	Colt Industries Trent Tube	Proposed Disapproval.
Waukesha	Navistar	Natural gas.
	Muskego Rendering (Boiler)	Permanent shutdown.
	Waukesha Foundry	Permanent shutdown.

[10] Emission limits are in parentheses; unit for emission limitations, unless otherwise noted, are pounds of SO_2 per million British Thermal Units, e.g., (3.0) is equal to an emission limit of 3.0 pounds of SO_2 per million British Thermal Units. Specific boilers are referred to by their State identification number, e.g., boiler number 20 at a given facility is referred to as B20 here.

V. Summary of USEPA's Proposed Rulemaking Action

USEPA is proposing to approve Wisconsin's Statewide SO_2 Rules for those SO_2 sources that were submitted by the State to USEPA with regard to Natural Resources (NR) 417.07 Rule Limitations, (1) for the categorical limits, more restrictive limits, and alternate limits; (2) NR 417.04 Rule for Southeast Wisconsin Limit for small sources; and (3) numerous new source permits.

The Agency has reviewed these portions of the revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that these parts of this action conform with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Titles I, IV, and V of the 1990 Clean Air Act Amendments will effect changes in the implementation of the SO_2 NAAQS program. In order for all three titles to be carried out as efficiently as possible, USEPA is requiring States nationwide to correct existing enforceability deficiencies in the SIPs. USEPA released the "Yellow Book," in June 1991, which discussed various types of enforcement deficiencies. There are "Yellow Book" deficiencies in the approvable portions of the Wisconsin Statewide SO_2 Rules, however, these deficiencies will be corrected as part of the upcoming national process to rectify these types of enforceability deficiencies. WDNR was notified by USEPA on July 9, 1991, of the enforceability deficiencies in Wisconsin's SIP and was asked to submit a schedule for correcting them and submitting the corrections as a revision of the SIP.

USEPA is proposing to disapprove emission limitations for the following SO_2 sources because the WDNR did not submit a complete plan which provides for attainment and maintenance of the SO_2 NAAQS consistent with all applicable requirements of the Clean Air Act.

American Motors—Kenosha (Main Plant)
Northern States Power—Asland
University of Wisconsin—Milwaukee
Southern Wisconsin Center
Outboard Marine Corporation—Evinrude
S.C. Johnson

Menasha Electric
Plastics Engineering
American Milk Products—Blair Cheese
Richland Center Municipal
Appleton Papers—Appleton
Ore Ida
Consolidated Papers—Wisconsin River Div.
Mosinee Papers
Allis Chalmers
National Presto
Pope & Talbot—Eau Claire
Ansul Fire Protection
Kearney & Trecker
Koch Fuels
Allied Processors
Beatrice Grocery
Falls Dairy
Rexworks
Greenwood Milk
Badger Army Ammunition Plant
Milwaukee County Department H&HS
Colt Industries

The agency has reviewed these portions of the revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that these parts of this action do not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before (30 days from publication) will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office address provided at the front of this notice.

USEPA is aware that WDNR is in the process of reviewing the submitted SIP revisions. Currently, 10 of the 28 proposed disapprovals contained within this notice are proposed to be disapproved because some of the necessary emission limits and/or operating restrictions are included only in compliance plans instead of the SIP itself. The ten sources in this category of proposed disapprovals are: UW-Milwaukee, Southern Wisconsin Center, Outboard Marine Corporation-Evinrude, S.C. Johnson, Menasha Electric, Richland Center Municipal, Appleton Papers-Appleton, Orelda, Allis Chalmers Power Plant, and Mosinee Papers. It is USEPA's understanding that WDNR plans to officially submit the compliance plans, which contain the appropriate emission limits and/or operating restrictions, as formal SIP revisions for these sources whose plans have been determined to be deficient in this respect before the end of the 30-day comment period. These new submittals should result in technically approvable limits, restrictions, and/or methodologies being inserted into the SIP, thus USEPA is prepared to approve the SIP revisions in the final rulemaking.

There are thirteen other site-specific plans that are proposed disapprovals because of problems with recordkeeping and recording requirements. The sources in this category are: National Presto, Pope and Talbot-Eau Claire, Ansul Fire Protection, Kearney and Trecker, Koch Fuels, Allied Processors, Beatrice Grocery, Falls Dairy, Rexworks, Greenwood Milk, Badger Army Ammunition Plant, Milwaukee County Department of H&HS, and Colt Industries. USEPA has discussed the reasons for these proposed disapprovals with the WDNR and understands that the State plans on attempting to address these deficiencies during the public comment period. If the WDNR rectifies these compliance deficiencies by submitting the individual compliance plans with the appropriate recordkeeping requirements as SIP revisions, USEPA is prepared to approve these site-specific SIP revisions in the final rulemaking.

For three of the proposed disapproved site-specific plans: Plastics Engineering, AMPI-Blair, and Consolidated Papers-Wisconsin River Division, it is USEPA's understanding that the State plans on submitting the appropriate material for USEPA to approve the plans during the public comment period. The appropriate materials in this case are Administrative Orders that have undergone a public hearing. If USEPA receives Administrative Orders for these sources with emission limits that have been technically justified by an acceptable modeling demonstration and documentation that a public hearing was held, the Agency is prepared to approve these site-specific SIP revisions in the final rulemaking.

For two other of the proposed proposed disapproved site-specific plans: American Motors-Main and Northern States Power-Ashland, it is USEPA's understanding that the State plans on submitting acceptable modeling analyses and compliance methodologies capable of accounting for the wide variability in emission limitations as part of the SIP revisions for these sources. If USEPA receives the aforementioned material before the end of the public comment period, the Agency is prepared to approve these site-specific SIP revisions in the final rulemaking.

Any revisions made by the State during the public comment period will be added into the written record and will be available for inspection during normal business hours at the Region V office address provided at the front of this notice.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before February 3, 1992 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office address provided at the front of this notice.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709). As to the disapprovals, they too will not have a significant economic impact on a substantial number of small entities, because they affect only a small number of sources in Wisconsin.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Dated: March 21, 1990.

Valdas V. Adamkus,

Regional Administrator.

Editorial note: This document was received at the Office of the Federal Register on December 27, 1991.

[FR Doc. 91–31303 Filed 12–31–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Proposed Threatened Status for the Mexican Spotted Owl (Strix occidentalis lucida)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public hearings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that public hearings will be held on the proposed rule to list the Mexican spotted owl (*Strix occidentalis lucida*) as a threatened species. The hearing will

allow all interested parties to submit oral or written comments on the proposal.

DATES: The public hearings will be held from 6 p.m. to 9 p.m. on the following dates: January 21, 1992, in Santa Fe, New Mexico; January 22, 1992, Alamogordo, New Mexico; January 23, 1992, Silver City, New Mexico; February 4, 1992, Tucson, Arizona; February 5, 1992, Flagstaff, Arizona; and February 6, 1992, Cedar City, Utah.

The comment period was opened on November 4, 1991, and will close on March 3, 1992. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearings will be held at the following places: January 21, 1992, Public Employee's Retirement Association (PERA) Building, Apodaca Hall, 1120 Paseo de Peralta, Santa Fe, New Mexico; January 22, 1992, Alamogordo Civic Center Auditorium, 800 First St., Alamogordo, New Mexico; January 23, 1992, Light Hall Auditorium, Western New Mexico University, Silver City, New Mexico; February 4, 1992, Pima Community College, Center For The Arts, Proscenium Theater, Pima College, West Campus, 2202 W. Anklam Rd., Tucson, Arizona; February 5, 1992, Flagstaff High School Auditorium, 400 West Elm Ave., Flagstaff, Arizona; and February 6, 1992, Conference Room, Bureau of Land Management District Office, 176 East D.L. Sargent Dr., Cedar City, Utah.

Written comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 3530 Pan American Highway NE., suite D, Albuquerque, New Mexico 87107. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Buck Cully, at the above address (505/883–7977 or FTS 474–7877).

SUPPLEMENTARY INFORMATION:

Background

The Mexican spotted owl is most abundant in forests in New Mexico and Arizona, but is also found in Colorado, Texas, Utah, and Mexico. This owl most often inhabits forested mountains and canyons containing dense, uneven-aged, multistoried forests with a closed canopy. The estimated total population of Mexican spotted owls in 1990 was 2,160. Threats to this species include loss of habitat from logging and fires, increased predation associated with habitat fragmentation and lack of protective regulation. A proposed rule to list this species as threatened was published in the **Federal Register** (56 FR 56344) on November 4, 1991.

Section 4(b)(5)(E) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. Because of anticipated widespread public interest, the Service has decided to hold six public hearings.

The Service has scheduled these public hearings as follows: January 21, 1992, Public Employee's Retirement Association (PERA) Building, Apodaca Hall, 1120 Paseo de Peralta, Santa Fe, New Mexico; January 22, 1992, Alamogordo Civic Center Auditorium, 800 First St., Alamogordo, New Mexico; January 23, 1992, Light Hall Auditorium, Western New Mexico University, Silver City, New Mexico; February 4, 1992, Pima Community College, Center For The Arts, Proscenium Theater, Pima College, West Campus, 2202 W. Anklam Rd., Tucson, Arizona; February 5, 1992, Flagstaff High School Auditorium, 400 West Elm Ave., Flagstaff, Arizona; and February 6, 1992, Conference Room, Bureau of Land Management District Office, 176 East D.L. Sargent Dr., Cedar City, Utah. Oral statements may be limited to several minutes if there are many requests to speak. Oral comments presented at the public hearings are given the same weight and consideration as written comments. If the public hearings are of insufficient time to provide for all who wish to speak, all who are not accommodated will be asked to submit their comments in writing. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The Service must receive all comments by March 3, 1992. Comments should be submitted to the Service at the office listed in the **ADDRESSES** section above.

Author

The primary author of this notice is Lorena L.L. Wada, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, (505/766–2914 or FTS 474–2914).

Authority

The authority citation for this action is 16 U.S.C. 1531–1544.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Reporting and record keeping requirements, and Transportation.

Dated: December 26, 1991.

Joseph P. Mazzoni,

Acting Director.

[FR Doc. 91–31279 Filed 12–31–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 1
Thursday, January 2, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation of Grand Forks (ND), Lima (OH), and the State of Virginia (VA)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS announces the designation of Grand Forks Grain Inspection Department, Inc. (Grand Forks), Lima Grain Inspection Service, Inc. (Lima), and the Virginia Department of Agriculture and Consumer Services (Virginia), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: February 1, 1992.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the August 1, 1991, Federal Register (56 FR 36760 and 36761), FGIS announced that the designations of Grand Forks, Lima, and Virginia terminate on January 31, 1992, and asked persons interested in providing official services within the geographic areas currently assigned to these agencies to submit an application for designation. Applications were to be postmarked by September 3, 1991.

Grand Forks, Lima, and Virginia, the only applicants, each applied for the entire geographic area currently assigned to them. FGIS named and requested comments on the applicants for the Lima and Virginia area designations in the October 1, 1991, Federal Register (56 FR 49740-49741). Comments were to be postmarked by November 15, 1991. FGIS received no comments by the deadline.

FGIS named and requested comments on the applicant for the Grand Forks area designation in the October 25, 1991, Federal Register (56 FR 55269). Comments were to be postmarked by December 9, 1991. FGIS received no comments by the deadline.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Grand Forks, Lima, and Virginia are able to provide official services in the geographic areas for which they applied.

Effective February 1, 1992, and terminating January 31, 1995, Grand Forks and Lima are designated to provide official grain inspection services in the geographic areas specified in the August 1, 1991, Federal Register, and Virginia is designated to provide official grain inspection and Class X or Class Y weighing in the geographic areas specified in the August 1, 1991, Federal Register.

Interested persons may obtain official grain inspection by contacting Grand Forks at 701-772-0151, Lima at 419-223-7866, and Virginia at 804-786-3939.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq*).

Dated: December 24, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-31261 Filed 12-31-91; 8:45 am]

BILLING CODE 3410-EN-F

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Areas Presently Assigned to the Enid (OK), and Erie (OH) Agencies

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall terminate not later than triennially and may be renewed. The designations of Enid Grain Inspection Company, Inc. (Enid), and Dennis L. Boltenhouse dba Erie Grain Inspection Service (Erie) will terminate, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: . Applications must be postmarked on or before February 3, 1992.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes the Administrator of the FGIS to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Enid located at 2205 N. 10th Street, Enid, OK, and Erie located at 301 North Street, Bellevue, OH, to officially inspect grain under the Act on July 1, 1989.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designations of Enid and Erie end on June 30, 1992.

The geographic area presently assigned to Enid, in the State of Oklahoma, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows: Adair, Atoka, Blaine, Bryan, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Delaware, Garfield, Garvin, Grady, Grant, Harmon, Haskell, Hughes, Jackson, Jefferson, Johnston,

Kay, Kingfisher, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, and Washington Counties.

The geographic area presently assigned to Erie, in the States of Michigan and Ohio, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

In Ohio: Bounded on the North by the northern Lucas County line east to Lake Erie; the Lake Erie shoreline east to the Ohio-Pennsylvania State line;

Bounded on the East by the Ohio-Pennsylvania State south to State Route 154;

Bounded on the South by State Route 154 west to Lisbon, Ohio; U.S. Route 30 west to Bucyrus, Ohio; and

Bounded on the West by State Route 19 north to Seneca County; the southern Seneca County line west to State Route 53; State Route 53 north to Sandusky County; the southern Sandusky County line west to State Route 590; State Route 590 north to Ottawa County; the southern and western Ottawa and Lucas County lines.

In Michigan: those sections of Jackson, Lenawee, and Monroe Counties which are east of State Route 127 and south of State Route 50.

Exceptions to Erie s assigned geographic area are the following export port locations inside Erie's area which have been and will continue to be serviced by FGIS: The Andersons, Toledo and Maumee, Ohio; Cargill, Inc., Toledo and Maumee, Ohio; and Mid-States Terminals, Inc., Toledo, Ohio.

Interested persons, including Enid and Erie, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning July 1, 1992, and ending June 30, 1995. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq*).

Dated: December 24, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-31262 Filed 12-31-91, 8:45 am]

BILLING CODE 3410-EN-F

Request for Comments on the Applicant for Designation in the Geographic Area Formerly Assigned to the Chattanooga (TN) Agency

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicant for designation to provide official services in the geographic area formerly assigned to Chattanooga Grain Inspection Company, Inc. (Chattanooga).

DATES: Comments must be postmarked on or before February 18, 1992.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier users may send responses to the automatic telecopier machine at 202-720-1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 25, 1991, **Federal Register** (56 FR 55269), FGIS cancelled Chattanooga's designation and requested comments on the need for official inspection and weighing in the geographic area formerly assigned to Chattanooga. FGIS also requested persons interested in providing official services in this geographic area to submit an application for designation. The deadline for applications and comments was November 25, 1991. J. W. Barton Grain Inspection Service, Inc. (Barton), the only applicant, applied for the entire available area. FGIS received comments from two grain firms requesting that official services be provided in the Chattanooga area. FGIS has authorized Barton to provide official services in the Chattanooga area on a temporary basis until an inspection agency can be designated. Persons wishing to obtain official inspection or weighing in this geographic area should contact Barton at 502-683-0616.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicant for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of this applicant. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicant written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq*).

Dated: December 24, 1991

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-31260 Filed 12-31-91, 8:45 am]

BILLING CODE 3410-EN-F

Forest Service

Waterman and Cummings Creek Timber Sales, Umatilla National Forest, Garfield and Columbia Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Notice intent to prepare environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service will prepare an environmental impact statement (EIS) on a proposal to harvest and regenerate timber, and implement associated projects, on the Waterman and Cummings Creek timber sales which are situated in the Willow Springs Roadless Area No. 14015 (Umatilla Forest Plan FEIS C-24). The proposed projects will be in compliance with the Umatilla Forest Land and Resource Management Plan's Standards and Guidelines, which provide the overall guidance for management of this area and the proposed projects. The proposed projects are located in Columbia and Garfield counties, Washington, and lie against the northern boundary of the Umatilla National Forest. This area may be accessed on the northwest and southwest sides from Forest Road 47, on the southeast side from Trail No. 3139

and Forest Road 4022, and on the east side from Forest Roads 40 and 4018. There are no maintained trails within the roadless area. The proposed project would be implemented in Fiscal Year 1993 on the Pomeroy Ranger District. The Umatilla National Forest invites written comments and suggestions to help define the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process that will occur on the proposal to provide interested and affected people information on how they may participate and contribute to the final decision.

DATES: Comments concerning the issues and the scope of the analysis should be received in writing by February 28, 1992.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Dave Price, District Ranger, Pomeroy Ranger District, Route 1, Box 53–F, Pomeroy, Washington 99347.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed projects and EIS should be directed to Bob Housley, District Planner/ Environmental Coordinator, phone (509) 843–1891.

SUPPLEMENTARY INFORMATION: This proposal includes harvesting timber and construction of roads. This analysis will evaluate a range of alternatives addressing the Forest Service proposal to harvest 8.9 MMBF of timber from approximately 1275 acres while constructing approximately 0.4 miles of roads within the Willow Springs Roadless Area and construction of approximately 0.6 miles outside the Willow Springs Roadless Area. The area being analyzed is approximately 11,100 acres.

This EIS will tier to the final EIS and the Umatilla Forest Plan (June 11, 1990). The Forest Plan's direction for this area includes Management Areas: A3 Viewshed 1)—Manage the areas seen from portions of Forest Service Roads 4712 and 4713 as a natural appearing landscape; C1 Dedicated Old Growth—Provide and protect sufficient suitable habitat for Wildlife species dependent upon mature and/or overmature forest stands; C3 Big Game Winter Range—Manage big game winter range to provide high levels of potential habitat effectiveness and high quality forage; C5 Riparian (fish and wildlife)—Maintain or enhance water quality, and produce a high level of potential habitat capability for all species of fish and wildlife within the designated riparian habitat areas while providing for a high level of habitat effectiveness for big game; C8 Grass-Tree Mosaic (GTM)—On areas known as grass-tree mosaic (GTM), provide high levels of potential habitat effectiveness, high quality forage for big game wildlife species, visual diversity, and protect erosive soils; E2 Timber and Big Game—Manage forest lands to emphasize production of wood timber (timber), encourage forage production, and maintain a moderate level of big game and other wildlife habitat.

Preliminary issues identified include roadless area, economics, biological diversity, elk habitat, access, big game winter range, timber production, old growth habitat protection, effects upon potential endangered and threatened species (such as anadromous fish), and effects on future options for including the Tucannon River as a wild, scenic or recreation river. There are no permits or licenses needed to implement this action.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the proposal. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.
7. Notifying interested publics of opportunities to participate through meetings, personal contacts, or written comments. Keeping the public informed through the media/or written material (i.e. newsletters, correspondence, etc).

Initial public scoping will begin in March 1992 with a public meeting. Additional meetings will be held at the Pomeroy Ranger District upon written notice. The public's comments will be solicited and are appreciated throughout the analysis process. The draft EIS is scheduled to be completed by February 1993.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by August 1993. In the final environmental impact statement, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft environmental impact statement and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Jeff D. Blackwood, Forest Supervisor, Umatilla National Forest, 2517 S.W. Hailey Avenue, Pendleton, Oregon 97801, is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed activities will be implemented. The Responsible Official will document the decision and reasons for the

decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Dated: December 16, 1991.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 91-31270 Filed 12-31-91; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Florida Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, January 23, 1992, at the Metro-Dade Government Center, 111 NW 1st Street, Miami, Florida 33128. The purpose of the meeting is to discuss the status of the Commission and follow-up plans to the Tampa policy project. In addition, the committee will receive information from community leaders on racial tensions in Florida (Miami).

Persons desiring additional information, or planning a presentation to the Committee should contact Florida Chairperson Bradford Brown 305/361-4991 or Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil, Rights at (404/730-2476, TDD 404/730-2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 27, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-31277 Filed 12-31-91; 8:45 am]

BILLING CODE 6335-01-M

Missouri Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 7 p.m. and adjourn at 8:30 p.m. on January 23, 1992 and reconvene at 9 a.m. and adjourn at 12 noon on January 24, 1992, at the Holiday Inn, 1612 North Providence Road & I-70, Columbia, Missouri. The purpose of the meeting is to conduct an orientation session for the Advisory Committee and plan for future projects in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, (TTY 816-426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 27, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-31276 Filed 12-31-91; 8:45 am]

BILLING CODE 6335-01-M

South Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will be held from 1 p.m. until 3:30 p.m. on Tuesday, January 28, 1992, at the Howard Johnson Hotel, 3300 West Russell, Sioux Falls, South Dakota 57102. The purpose of the meeting is to review a draft of a women's rights handbook and plan future projects.

Persons desiring additional information should contact Committee Chairperson, Marcella Prue, or William F. Muldrow, Director of the Rocky Mountain Regional Division, (301) 844-6716 (TDD 303-844-6720). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 27, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-31278 Filed 12-31-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 82-91]

Foreign-Trade Zone 125—South Bend, IN; Application for Subzone; Fairmont/Gulfstream Modular Housing and Recreational Vehicle Plants, Elkhart County, Indiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the St. Joseph County Airport Authority, grantee of FTZ 125, requesting special-purpose subzone status for the modular housing and recreational vehicle (RV) plants of Fairmont Homes, Inc. (Fairmont) and its subsidiary, Gulf Stream, Inc. (Gulfstream) located in Elkhart County, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 6, 1991.

The proposed subzone involves a main manufacturing complex and two related facilities located in Nappanee, Elkhart County, some 20 miles southeast of South Bend, Indiana: Site 1 (234 acres)—Fairmont/Gulfsteam modular housing and recreational vehicle main manufacturing and warehouse complex, Oakland Avenue, Nappanee; Site 2 (8 acres)—components manufacturing facility, U.S. Highway 6 West, Nappanee; Site 3 (6 acres)—Gulfstream recreational vehicle manufacturing facility, 1701 Century Drive, Goshen, some 15 miles northeast of Nappanee.

The facilities employ 1,800 persons and are used to manufacture modular housing, mobile homes, travel trailers, van conversions (domestic chassis), and RV's, including Class A and Class B motor homes and Class C micro-mini RV's. Some of the components (currently about 25%) used in the modular housing products are sourced abroad including tires, wood products, ceramic fixtures, iron and steel shapes, screws, bolts, nuts, household laundry machines, dishwashing machines, household kitchen appliances, consumer electronic equipment, electrical switching apparatus, wire, cable, seats, mattresses, lamps and other household furnishings. Some of the components (currently about 20%) incorporated into RV's are sourced abroad including those mentioned above and additionally, rubber and plastic hoses, engines parts, pumps, pulley tackles and hoists, transmissions shafts and cranks, cab chassis, chassis, speedometers, and instrument panel clocks. The Class C

micro-mini RVs are built on a foreign-sourced light pick-up truck cab/chassis (<6,000-lb. GVW). The other vehicles are built on domestic chassis.

Zone procedures would exempt Fairmont from Customs duty payments on materials used in production for export. On domestic sales the company would be able to choose the duty rates that apply to finished products (2.5—3.2 percent). The duty rates on the foreign materials range from zero to 17 percent. On its domestic sales of micro-mini RVs, the company would be able to choose the lower finished vehicle duty rate (2.5 percent) rather than the pick-up truck cab/chassis rate (25 percent). The applicant indicates that zone savings would help Fairmont/Gulfstream improve its international competitiveness and increase export sales. The Board has approved (with restriction) two other micro-mini RV production operations: The Forest City, Iowa facility of Winnebago Industries, Inc. (FTZ Subzone 107A, 49 FR 35971, 9/13/84) and the Perris, California facility of National RV (FTZ Subzone 50C, 55 FR 35159, 8/28/90).

In accordance with the Board's regulations, an examiners committee has been approved to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Richard Roster, District Director, U.S. Customs Service, North Central Region, suite 217, 610 South Canal Street, Chicago, Illinois 60607; and Colonel Richard Kanda, District Engineer, U.S. Army Engineer District Detroit, Mc Namara Federal Building, 477 Michigan Ave., Detroit, Michigan 48226.

Comments concerning the application are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 14, 1992.

A copy of the application is available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, Mid-Continental Plaza Bldg., rm. 1406, 55 E. Monroe St., Chicago, Illinois 60603.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 3716, Washington, DC 20230.

Dated: December 23, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-31310 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 81-91]

Foreign-Trade Zone 17—Kansas City, KN; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 17, Kansas City, Kansas, requesting authority to expand its zone to include a site in Leavenworth, Kansas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 6, 1991.

FTZ 17 was approved on December 20, 1973 (Board Order 97, 39 FR 26, 1/2/74), and expanded on January 31, 1989 (Board Order 428, 54 FR 5992, 2/7/89). It currently consists of three sites in the Kansas City area: Site 1 (405,000 sq. ft.) located at 6500 Inland Drive, operated by Americold Corporation; Site 2 (220,000 sq. ft.) located at 5203 Speaker Road, operated by Customized Transportation, Inc., and Site 3 (6 acres, 76,000 sq. ft.) located at 30 Funston Road, operated by International Transit and Storage Corporation.

The grantee is now requesting authority to expand the zone to include a site (23 acres) on the Missouri River at the former Missouri Valley Shipyard, 1800 South Second Street, Leavenworth, Kansas. The site is owned and operated by Chem-Tronics, Inc.

No manufacturing requests are being made at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Theodore Galantowicz, District Director, U.S. Customs Service, North Central Region, 7911 Forsythe Boulevard, Suite 625, St. Louis, Missouri 63105; and, Colonel Wilbur H. Boutin, Jr., District Engineer, U.S. Army Engineer District Kansas City, 700 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106-2896.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 18, 1992.

A copy of the application is available for inspection at each of the following locations:

U.S. Department of Commerce, District Office, 601 East 12th Street, room 635, Kansas City, Missouri 64106.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: December 23, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-31311 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 546]

Resolution and Order Approving the Application of the Akron-Canton Regional Airport Authority for a Foreign-Trade Zone in the Akron-Canton, OH, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Arkron-Canton Regional Airport Authority, filed with the Foreign-Trade Zones Board (the Board) on June 1, 1990, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in the Akron-Canton, Ohio, area within the Cleveland/Akron Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and

Executive Officer of the Board, is hereby authorized to issue an appropriate Board Order.

Whereas, By an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under jurisdiction of the United States;

Whereas, The Akron-Canton Regional Airport Authority (the Grantee) has made application (filed June 1, 1990, FTZ Docket 22–90, 55 FR 23956, 6/13/90) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at a site in the Akron-Canton, Ohio, area, within the Cleveland/Akron Customs port of entry;

Whereas, Notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, The Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 181, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations: Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, The Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 23 day of December, 1991, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–31314 Filed 12–31–91; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 551]

Approval for Expansion of Foreign-Trade Zone 84; Harris County, Texas

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, The Port of Houston Authority, Grantee of Foreign-Trade Zone No. 84, has applied to the Board for authority to expand its general-purpose zone in Harris County, Texas, within the Houston Customs port of entry;

Whereas, The application was accepted for filing on October 4, 1991, and notice inviting public comment was given in the **Federal Register** on October 11, 1991 (Docket 58–91, 56 FR 51373);

Whereas, An examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, The expansion is necessary to improve and expand zone services in the Harris County area; and,

Whereas, The Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, The Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed on October 4, 1991, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including Section 400.28.

Signed at Washington, DC, this 24th day of December, 1991.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–31313 Filed 12–31–91; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 550]

Resolution and Order Approving the Application of Foreign Trade Zone of Central Texas, Inc. for a Foreign-Trade Zone in the Austin, TX, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Foreign Trade Zone of Central Texas, Inc., filed with the Foreign-Trade Zones Board (the Board) on April 26, 1991, requesting a grant of authority to establish a general-purpose foreign-trade zone consisting of seven sites in the Austin, Texas, Customs port of entry area, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including Section 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue an appropriate Board Order.

Whereas, By an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for

other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, The Foreign Trade Zone of Central Texas, Inc. (the Grantee), a Texas not-for-profit corporation, has made application (filed 4–29–91, FTZ Docket 23–91, 56 FR 21127, 5–7–91) to the Board, requesting the establishment of a foreign-trade zone at certain sites in the Austin, Texas, Customs port of entry area;

Whereas, Notice of said application has been published in the Federal Register and public comment has been invited; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, The Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated as Foreign-Trade Zone 183, at the sites described in the application, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 23rd day of December 1991.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–31312 Filed 12–31–91; 8:45 am]

BILLING CODE 3510–08–M

International Trade Administration

[A–588–820]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Antidumping Duty Determination: New Minivans From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: James Maeder, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–4929.

PRELIMINARY DETERMINATION:

Background

Since the notice of initiation on June 26, 1991 (56 FR 29221), the following events have occurred.

On July 10, 1991, the petitioners (Ford Motor Company, General Motors Corporation, and Chrysler Corporation) requested that the criteria by which to determine whether a vehicle is a minivan (and, thus, within the scope of this investigation) be amended from that proposed in their petition and set forth in our notice of initiation. The petitioners stated that this request was made in order to ensure that the investigation cover the range of merchandise that they consider to be minivans, including the Mitsubishi Expo and Expo LRV. See, "Scope of Investigation" section of this notice.

On July 15, 1991, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of new minivans from Japan.

On July 19, 1991, we decided that the period of investigation (POI) for both respondents in this investigation, Mazda Motor Corporation and Mazda Motor of America, Inc. (collectively Mazda) and Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc. (collectively Toyota), should begin and end two months earlier than the normal POI, (*i.e.*, October 1, 1990, through March 31, 1991). Subsequently, pursuant to requests by both respondents, we accepted additional comments on the issue. On August 12, 1991, we amended our earlier decision and decided to use an extended POI for Mazda (October 1, 1990, through May 31, 1991) and the standard six-month POI for Toyota (December 1, 1990, through May 31, 1991). See, the "Period of Investigation" section of this notice.

On July 22, 1991, we presented questionnaires to Mazda and Toyota, which together accounted for more than 60 percent of exports by volume to the United States during the period relevant to the investigation, in accordance with 19 CFR 353.42(b). On August 5, 1991, we received responses to section A of the questionnaire from Mazda and Toyota which contained general background information. On August 7, 1991, we presented section D of the questionnaire relating to constructed value (CV) to Mazda and Toyota.

On August 8, 1991, Mitsubishi Motors Corporation and Mitsubishi Motor Sales of America, Inc. (collectively "Mitsubishi") requested that the Department clarify that the Mitsubishi Expo vehicles, which began entering the United States in Fall 1991, are not minivans. See, the "Scope of Investigation" section of this notice for further discussion.

On August 21, 1991, we presented section E of the questionnaire relating to further manufacturing in the United States to Mazda.

On August 26, 1991, we issued section A deficiency letters to Mazda and Toyota. On September 4, 1991, we received Mazda's response to sections B, C, D, and E and Toyota's response to sections B, C and D of the questionnaire. In addition to the requested data, Mazda submitted Canadian sales data and sales data based on the standard six-month POI. We did not analyze the Canadian sales data or six-month POI sales data submitted by Mazda because we have determined that the home market was viable and that an eight-month POI is more appropriate for Mazda. Mazda has submitted further arguments for using these data. On September 10, 1991, Mazda and Toyota submitted their responses to the Department's section A deficiency letters. On September 20, 1991, we issued a second deficiency letter to each respondent. We received Toyota's response to this letter on October 4, 1991, and Mazda's response on October 7, 1991.

On October 22, 1991, pursuant to petitioners' request, we published a notice of postponement of the preliminary determination until not later than December 27, 1991 (56 FR 54561), in accordance with 19 CFR 353.15(c).

Mazda, on October 24, 1991, requested that the final determination be postponed a minimum of three weeks if the preliminary determination was affirmative so that verification could be moved to a later date to avoid scheduling conflicts. Toyota, on October 25, 1991, made a similar request. See, the "Postponement of Final Determination" section of this notice for further discussion.

On October 30, 1991, we issued an additional deficiency letter to each respondent. On November 13, 1991, we received Mazda's and Toyota's responses to these deficiency letters.

On November 4, 1991, and November 12, 1991, petitioners submitted timely allegations that Toyota and Mazda, respectively, had made sales in the home market below the cost of production (COP). On November 15, 1991, we initiated a COP investigation of Toyota's home market sales and issued a COP questionnaire to Toyota. On November 25, 1991, we received Toyota's response to this COP questionnaire. On November 27, we

initiated a COP investigation of Mazda and issued a COP questionnaire to Mazda. On December 10, 1991, we received Mazda's response to this COP questionnaire. Toyota's COP data, received earlier than Mazda's, were received in time for analysis and use in this preliminary determination. Although we were unable to do so in time for the preliminary determination, we will analyze Mazda's COP information for the final determination.

On October 24, November 5, November 7, and December 4, 1991, petitioners alleged that Toyota's reported adjustments for differences in merchandise (difmers) were distorted because the transfer prices between Toyota and its related suppliers were distorted. On October 29, November 6, November 8, and November 12, 1991, Toyota countered petitioners' assertions, arguing that there was no distortion in the transfer prices and that the difmers reflected the costs of actual physical differences. On December 31, 1991, after considering the arguments of petitioners and Toyota, and based on our own analysis of Toyota's data, we determined that it was appropriate to collect additional information regarding Toyota's related suppliers. Accordingly, on December 13, 1991, we issued a supplemental questionnaire to Toyota. See, Memorandum from Deputy Assistant Secretary Sailer, to Assistant Secretary, Alan M. Dunn, dated December 13, 1991, for a detailed discussion of this issue. Finally, petitioners requested that we disallow Toyota's reported difmers for purposes of the preliminary determination. At this time we determine that there is insufficient justification on the record to reject Toyota's difmers for the preliminary determination. We will continue to examine Toyota's difmer claims, and, if appropriate, make adjustments for the final determination.

We received numerous comments from all parties immediately prior to the preliminary determination submitted too late to be considered for the preliminary determination. We will, however, consider these comments for purposes of the final determination.

Scope of Investigation

The products covered by this investigation are new minivans from Japan. In the notice of initiation we stated that we would continue to consider the definition of a minivan and would refine it, if necessary. We received comments from all the parties, as noted in the "Background" section of this notice. Based in part on these comments, we refined the definition of a minivan. *See*, Memorandum from Deputy Assistant Secretary Sailer, to Assistant Secretary Dunn, dated December 13, 1991, for a detailed discussion of this issue.

For purposes of this investigation, a new minivan is defined as an on-highway motor vehicle which generally has the following characteristics:

(1) A cargo capacity behind the front row of seats that is 100 cubic feet or greater and less than 200 cubic feet;

(2) A body structure, width and seat configuration capable of providing full walk-through mobility from the front seat row to the third seat row, or at least partial walk-through mobility from either (a) the front seat row to the second seat row or (b) the second seat row to the third seat row;

(3) A hood that is sloping and a short distance from the cowl to the front bumper relative to the overall length of the vehicle;

(4) A gross vehicle weight that is less than 6,000 pounds;

(5) A height that is between 62 and 75 inches;

(6) A single, box-like structure that envelopes both the space for the driver and front-seat passenger and the rear space (which has flat or nearly flat floors and is usable for carrying passengers and cargo); and,

(7) A rear side passenger access door (or doors) and a rear door (or doors) that provide wide and level access to the rear area.

A vehicle does not necessarily have to meet all seven criteria to be considered a minivan. We will compare the physical characteristics of vehicles with the above criteria and determine on a case-by-case basis whether a vehicle shares enough physical characteristics with minivans, as described by the above seven criteria, to be considered a minivan. While we consider all seven of the above criteria important in determining whether a vehicle is a minivan, we consider the criteria which reflect a measurement of interior space (cargo capacity, walk-through capability, and cowl length) to be of primary importance.

We have examined petitioners' contentions that the Mitsubishi Expo and Expo LRV are within the scope of this investigation and Mitsubishi's request that these vehicles be excluded from the scope. Our preliminary determination is that the Expo and Expo LRV, when analyzed by reference to the seven scope criteria, cannot be considered minivans. Accordingly, although specifically named in the petition, the Expo and Expo LRV are not within the class or kind of merchandise subject to this investigation. Since there is no allegation of less than fair value sales for any vehicle other than minivans, no investigation of any other vehicle is warranted. See, Memorandum from Director, Office of Antidumping Investigations, Richard W. Moreland, to Deputy Assistant Secretary Sailer, dated December 19, 1991, for a detailed discussion of this issue.

Minivans are currently classifiable under either subheading 8703 or subheading 8704 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The petition in this investigation was filed on May 31, 1991. Pursuant to 19 CFR 353.42(b)(1), the standard POI for this investigation is December 1, 1990, through May 31, 1991. However, in the petition and in subsequent submissions dated July 15 and July 16, 1991, petitioners requested that we begin and end the POI two months earlier (*i.e.*, October 1, 1990, through March 31, 1991). Petitioners gave three reasons for this request: (1) To capture all post-sale price adjustments which occur on sales of minivans; (2) to account for the possibility of seasonal price variations; and (3) to account for potential price manipulation by respondents which may have been triggered by media speculation in Japan of a possible antidumping petition prior to its filing.

Mazda and Toyota objected to petitioners' request, stating that all post-sale price adjustments corresponding to sales during the standard POI would be reported during the course of the investigation. Toyota further argued that petitioners had not provided factual support for the reasons for their request.

As noted in the "Background" section of this notice, on July 19, 1991, we decided that the POI for both Mazda and Toyota should be October 1, 1990, through March 31, 1991. Pursuant to requests by the parties, however, we reopened the issue and solicited additional comments from all parties. We also collected information regarding pricing data which respondents had submitted to the ITC.

Based on our analysis of these additional comments and the pricing data, we reconsidered our July 19, 1991, decision. On August 12, 1991, we determined that there was a clear indication that Mazda's pricing was seasonal and that expanding the POI by two months to encompass October 1, 1990, through May 31, 1991, would most appropriately capture Mazda's pricing

practices. We also determined that there was no factual basis on the record for modifying the standard POI (December 1, 1990, through May 31, 1991) with respect to Toyota.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that minivans comprise a single category of "such or similar" merchandise. We considered comments from all parties as to the appropriate basis for establishing product similarity. We determined that petitioners' suggestion that we base similarity on the five characteristics of: (1) Platform type; (2) body style; (3) engine size; (4) type of drive; and (5) transmission type, was the most appropriate method. See, appendix V of the July 22, 1991, questionnaire.

Fair Value Comparisons

To determine whether sales of new minivans from Japan to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

We compared U.S. sales of new minivans to sales of similar minivans sold in Japan. For Mazda, we determined that fleet sales and non-fleet sales were made at different levels of trade. Therefore, where possible, we made comparisons at the same level of trade.

Where we found no similar merchandise in the home market with an adjustment for physical difference of less than 20 percent of the total cost of manufacturing (COM) of the U.S. vehicle, we used CV as the basis for FMV. Petitioners (on August 30, 1991) and Toyota (on September 4 and 26, 1991) suggested that the Department should consider comparisons where the difference was greater than 20 percent. However, we determined that neither party had provided adequate justification for this approach.

United States Price

Mazda

Mazda made sales in the United States to unrelated dealers and to an unrelated distributor. For sales to dealers, we based USP on exporter's sales price (ESP) in accordance with section 772(c) of the Tariff Act of 1930, as amended (the Act), because (1) these sales were made after importation into the United States, (2) the subject merchandise was introduced into the inventory of Mazda's related U.S. selling agent, and (3) Mazda's related U.S. sales agent acted as more than a processor of sales-related documentation and communication link with unrelated U.S. customers.

For sales to Mazda's distributor, we also based USP on ESP, although the sales were made prior to importation, because the minivans sold to the distributor were handled by Mazda's related U.S. sales agent who acted as more than a processor of sales-related documentation and a communication link with the unrelated U.S. customer. We excluded from our analysis sales made to unrelated dealers in Puerto Rico as well as sales made to related dealers in the United States because these sales accounted for a negligible quantity of Mazda's sales.

We calculated ESP based on delivered prices to unrelated customers in the United States. We made additions to USP, where appropriate, for interest revenue received by Mazda on the sale of minivans, revenue received for port-processing and transportation, and credit for a reduction in U.S. duties paid on U.S. components incorporated into the imported vehicle. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. brokerage and handling, and harbor maintenance fees, in accordance with section 772(d)(2) of the Act. We made deductions, where appropriate, for post-sale incentives. We recalculated the amount reported for one of Mazda's incentive programs, the "Holiday Magic Salesman" program, to reflect the average per-unit amount paid on all eligible vehicle lines because Mazda made no distinction between vehicle lines under the program.

In accordance with section 772(e)(2) of the Act, we made additional adjustments, where appropriate, for credit expenses, flooring expenses, the gain or loss associated with the resale of vehicles sold to major rental car companies (repurchase expenses), advertising expenses, warranty expenses, dealer holdback charges, Mazda Dealer Association payments, payments for pre-delivery inspections, port changes, other expenses which include the purchase and placement of portfolios and floor mats into the imported vehicle and the payment of a wholesale tax on vehicles sold to Hawaiian dealers, product liability premium expenses, indirect selling expenses, and inventory carrying costs.

Mazda reported credit expenses for sales to the majority of its dealers based on an average U.S. price. We recalculated credit expenses for these sales based on the prices reported in Mazda's U.S. sales listing.

Mazda reported its repurchase expenses as direct advertising expenses and allocated them over all sales. We reclassified these expenses as sales-specific expenses. We then calculated repurchase expenses as the price received when the vehicle was resold less than the repurchase price paid to the rental company and all expenses associated with the resale and reduced advertising expenses accordingly. See, Memorandum to Assistant Secretary Dunn, from Deputy Assistant Secretary Sailer, dated December 13, 1991.

Mazda reported per unit warranty costs as POI warranty expenses divided by the number of sales since the introduction of the MPV (its minivan model) in the home market. However, we recalculated Mazda's warranty expenses, to reflect only POI experience, by dividing the value of POI claims by the volume of POI retail sales.

We used best information available (BIA) to calculate pre-delivery inspection expenses because a significant number of the expenses reported in Mazda's sales listing did not correspond to the information provided in Mazda's narrative response. As BIA, we used the highest pre-delivery inspection amount reported in Mazda's narrative response for any dealer.

In accordance with section 772(e)(1) of the Act, we deducted from USP arm's-length commissions paid to related parties.

We also deducted all value added to the minivan after importation, pursuant to section 772(e)(3) of the Act. The U.S. value added consists of the costs associated with the production and sale of the minivan and a proportional amount of profit or loss related to the value added. Profit or loss was calculated by deducting from the sales price of the minivan all production and selling costs incurred by the company for the minivan. The total profit or loss was then allocated proportionately to all components of cost. Only the profit or loss attributable to the value added was deducted. In determining the costs incurred to produce the minivan, we included (1) the costs of manufacture for each component, (2) movement expenses for each component, and (3) general expenses, including selling, general, and administrative expenses, research and development (R&D) expenses, and interest expenses.

For comparisons in which FMV was based on home market prices we added to net unit price the amount of value-added tax (VAT) that is not collected by reason of exportation of the

merchandise to the United States, in accordance with section 772(d)(1)(C) of the Act.

Toyota

Toyota had sales in the United States to unrelated dealers and unrelated distributors, associates, and vendors. For all sales, we based USP on ESP in accordance with section 772(c) of the Act because Toyota's related U.S. sales agent acted as more than a processor of sales-related documentation and communication link with unrelated U.S. customers. We excluded from our analysis sales made to unrelated distributors in Hawaii and Puerto Rico, as well as sales made to a related dealer, because these sales accounted for a negligible portion of Toyota's sales quantities.

We calculated ESP based on delivered prices to unrelated customers in the United States. We made additions to USP for freight charges paid to Toyota by distributors and dealers and retail sale processing charges. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, foreign brokerage and handling, foreign loading, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. brokerage, U.S. wharfage and handling, harbor maintenance and merchandise processing fees, port of entry services, pre-delivery services, survey costs, and additional miscellaneous movement charges, in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts, rebates, and post-sale billing adjustments.

In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for credit expenses, advertising expenses, warranty expenses, royalties, courtesy delivery reimbursements, bank charges, other direct selling expenses, indirect selling expenses, and inventory carrying costs.

We recalculated inventory carrying costs and imputed credit expenses by using as the time in inventory the period between the date of production and the date of sale, and as the time during which Toyota extended credit to its customer the period between the date of sale and the date of payment. Where Toyota deducted profits for expenses incurred on services performed by related parties, we added the profits back into the expenses.

We also deducted all value added to the minivan, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production and sale of the minivan and a proportional amount of profit or loss related to the value added. Profit or loss was calculated by deducting from the sales price of the minivan all production and selling costs incurred by the company for the minivan. The total profit or loss was then allocated proportionately to all components of cost. Only the profit or loss attributable to the value added was deducted. In determining the costs incurred to produce the minivan, we included (1) the costs of manufacture for each component, (2) movement expenses for each component, and (3) general expenses, including selling, general, and administrative expenses, R&D expenses, and interest expenses.

For comparisons in which FMV was based on home market prices we added to net unit price the amount of VAT that is not collected by reason of exportation of the merchandise to the United States, in accordance with section 772(d)(1)(C) of the Act.

Foreign Market Value

In order to determine whether there were sufficient sales of new minivans in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of new minivans to the volume of third country sales of new minivans, in accordance with section 773(a)(1) of the Act. Both Mazda and Toyota had viable home markets with respect to sales of new minivans during the POI.

Mazda

As noted in the "Background" section, in response to our COP investigation, we received Mazda's COP data on December 10, 1991. We were unable, however, to analyze the information for purposes of the preliminary determination. We will examine cost information at verification and incorporate the results into the final determination.

We excluded from our analysis sales made to employees in the home market because these sales were outside the ordinary course of trade and accounted for a negligible quantity of Mazda's sales. For purposes of this preliminary determination, we included sales to related customers, pursuant to 19 CFR 353.45, since we preliminarily determine that the prices paid by those customers were comparable to the prices paid by unrelated customers.

Where FMV was based on home market prices, we calculated FMV based on delivered prices to related and unrelated dealers in the home market. We made deductions, where appropriate, for dealer incentives and inland freight. Mazda reported an average POI inland freight expense based upon monthly average expenses. Rather than use the average POI figure, we used the monthly average freight expenses in our calculations because we determined they more accurately represented Mazda's freight expenses. We also made deductions, where appropriate, for credit expenses, warranty expenses, advertising expenses, and pre-delivery inspection expenses.

Mazda reported credit expenses based on gross home market prices including VAT. We recalculated credit expenses to exclude the VAT amounts.

Regarding warranty expenses, Mazda claimed a "start-up" adjustment to account for the fact that its home market minivan had been introduced more recently in Japan than in the United States. We disallowed Mazda's start-up claim because it was based on U.S. warranty experience, without adjusting for differences in warranty terms or driving conditions between the markets. In addition, Mazda reported POI warranty expenses divided by the number of sales since the introduction of the MPV in the home market. We recalculated Mazda's warranty expenses to reflect POI experience only by dividing the value of POI claims by the volume of POI retail sales.

We also deducted indirect selling expenses, including inventory carrying costs and other indirect selling expenses. The deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses incurred and commissions paid on U.S. sales, in accordance with 19 CFR 353.56(b). We made a circumstance of sale adjustment for VAT incurred on home market sales and not on export sales.

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

Finally, Mazda claimed a level of trade adjustment for price comparisons between home market sales to dealers and U.S. sales to Mazda's U.S. distributor, in accordance with 19 CFR 353.58. We disallowed this claim because Mazda based its claim solely on U.S. experience, failing to provide any home market data necessary to quantify the adjustment. This is consistent with *Fundicao Typy S.A.* v. *United States*, 678 F. Supp. 898 (CIT 1988), aff'd, 859 F.2d 915 (Fed Cir. 1988) (upholding ITA's denial of level of trade adjustment where plaintiffs failed to provide home market data to quantify the adjustment).

Where FMV was based on CV, we calculated CV as the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses and profit. We used Mazda's CV data except in the following instances where the costs were not appropriately quantified or valued:

1. We recalculated Mazda's reported financing costs to reflect the net interest expense incurred by the consolidated group of Mazda companies.

2. Mazda's reported profit for CV was calculated as the difference between home market minivan sales prices and the total costs incurred for those sales. Included as a cost element were imputed credit and inventory carrying cost figures. We revised the company's home market profit calculation by excluding these imputed figures and replacing them with Mazda's actual financing costs.

In accordance with section 773(e)(1)(B)(i) of the Act, we used Mazda's reported general expenses, adjusted as detailed above, because they exceeded statutory minimum of 10 percent of COM. For profit, since the recalculated home market amount was greater than the statutory minimum of eight percent of COP, we used the revised figure.

We made circumstance of sale (COS) adjustments to CV, where appropriate, for credit expenses, warranty expenses, advertising, and pre-delivery inspection expenses. We also deducted indirect selling expenses, including inventory carrying costs, and other indirect selling expenses. The deduction for home market indirect expenses incurred and commissions paid on U.S. sales, in accordance with 19 CFR 353.56(b).

Toyota

We investigated whether sales by Toyota were made in the home market at less than the cost of production. We compared home market ex-factory sales prices to the COP in all cases. We found that less than 90 percent but more than 10 percent of sales were made at prices above the COP and considered only the above-cost sales as a basis for determining FMV.

We used Toyota's data and calculated the COP as a sum of materials and fabrication of the merchandise sold in the home market, plus general expenses.

Where FMV was based on home market prices, we calculated FMV based on ex-factory prices to related and unrelated dealers in the home market. We made additions to FMV, where appropriate, for cooperative advertising charges, invoice interest revenue, and security deposit revenue. We made deductions, where appropriate, for dealer incentives. We also made deductions, where appropriate, for credit expenses, warranty expenses, advertising expenses, royalties, and handling. For sales for which Toyota has not yet received payment, we recalculated input credit expenses using, as the payment period, the standard payment terms offered other customers in the prefecture of the customer. We also deducted indirect selling expenses (including financial assistance), inventory carrying costs, and other indirect selling expenses. The deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses incurred on U.S. Sales, in accordance with 19 CFR 353.56(b). We made a circumstance of sale adjustment for VAT incurred on home market sales and not on export sales.

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

Where FMV was based on CV, we used Toyota's data and calculated CV as the cost of materials and fabrication of the merchandise exported to the United States plus general expenses and profit.

In accordance with section 733(e)(1)(B)(i) of the Act, since Toyota's general expenses were less than the statutory minimum of 10 percent of COM, we used the minimum figure. For profit, we used the statutory minimum figure of eight percent of COP since Toyota's home market profit was less than that amount.

We made COS adjustments to CV, where appropriate, for credit expenses, advertising expenses, warranty expenses, and royalties. We also deducted indirect selling expenses (including inventory carrying costs), financial assistance, and other indirect selling expenses. The deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our financial determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of new minivans from Japan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage (percent)
Mazda Motor Corporation and Mazda Motor of America, Inc.	7.19
Toyota Motor Corporation and Toyota Motor Sales, U.S.A., Inc.	0.95
All others	4.23

Postponement of Final Determination

As noted in the "Background" section of this notice, we received requests from Mazda and Toyota to postpone the final determination in the event this preliminary determination was affirmative. Based upon these requests, we are postponing the final determination of this investigation until not later than 135 days after the date of publication of this preliminary determination in the **Federal Register** in accordance with section 735(a)(2) of the Act.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least 10 copies must be submitted to the Assistant Secretary no later than April 13, 1992, and rebuttal briefs no later than April 17, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing is scheduled for April 20, 1992, at 10 a.m. in room 3708 at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by

telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within 10 days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: December 20, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–31309 Filed 12–31–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–580–602]

Certain Stainless Steel Cooking Ware From the Republic of Korea; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent of revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain stainless cooking ware from the Republic of Korea. Interested parties who object to this revocation must submit their comments in writing not later than January 31, 1992.

EFFECTIVE DATE: January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1987, the Department of Commerce ("the Department") published a countervailing duty order on certain stainless steel cooking ware from the Republic of Korea (52 FR 2140). The Department has not received a request to conduct an administrative review of the countervailing duty order on certain stainless steel cooking ware from the Republic of Korea for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity of Object

Not later than January 31, 1992, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by January 31, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: December 24, 1991.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 91–31316 Filed 12–31–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–357–052]

Non-Rubber Footwear From Argentina Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on non-rubber footwear from Argentina. Interested parties who object to this revocation must submit their comments in writing not later than January 31, 1992.

EFFECTIVE DATE: January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Mike Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 1979, the Department of Commerce ("the Department") published a countervailing duty order on non-rubber footwear from Argentina (44 FR 3474). The Department has not received a request to conduct an administrative review of the countervailing duty order on non-rubber footwear from Argentina for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4)(i) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than January 31, 1992, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by January 31, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: December 27, 1991.

Edward C. Yang,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 91–31315 Filed 12–31–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–583–604]

Certain Stainless Steel Cooking Ware From Taiwan; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain stainless steel cooking ware from Taiwan. Interested parties who object to this revocation must submit their comments in writing not later than January 31, 1992.

EFFECTIVE DATE: January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Mike Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1987, the Department of Commerce ("the Department") published a countervailing duty order on certain stainless steel cooking ware from Taiwan (52 FR 2141). The Department has not received a request to conduct an administrative review of the countervailing duty order on certain stainless steel cooking ware from Taiwan for four consecutive annual anniversary months. This is the fifth anniversary.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4)(i) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than January 31, 1992, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by January 31, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: December 27, 1991.

Edward C. Yang,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 91–31317 Filed 12–31–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Application for scientific research permit (P444A).

Notice is hereby given that Messrs. Phillip J. Clapham and David K. Mattila, Center for Coastal Studies, Provincetown, Massachusetts, 02657, have applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

Species and Type of Take

The applicant requests a Permit to harass annually, over a three-year period, up to 300 humpback whales (*Megaptera novaeangliae*) in the course of biopsy sampling/photo-identifying up to 200 of those animals. The applicants are also requesting authorization to import and export humpback whale biopsy samples. The proposed research is part of a three-year international collaborative effort to estimate the abundance and structure (both demographic and genetic) of the North Atlantic humpback whale population.

Location of Activity

Activities will be conducted in the waters off western Puerto Rico and the northern U.S. East Coast.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application of the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/713–2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Dr., Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702.

Dated: December 23, 1991.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 91–31306 Filed 12–31–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification of scientific research permit no. 684 (P77#35).

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 684 (P77#35) issued to NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, CA 92038, on July 14, 1989 is modified in the following manner:

The authority to conduct the research shall extend through December 31, 1993.

This modification becomes effective upon publication in the **Federal Register**.

Documents pertaining to this Modification and Permit are available for review in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, Maryland 20910 (301/713–2289); and

Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196).

Dated: December 24, 1991.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-31307 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Survivable High Frequency Radio Antennas

AGENCY: Institute for Telecommunications Sciences (ITS), National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Request for technical descriptions of survivable high frequency radio transmitting/receiving antennas. This information will be used in computer modeling to establish performance characteristics for a fixed station survivable HF radio network. The numerical electromagnetics computer analysis code (NEC-3) will be used in the development of antenna computer models which will in turn be used in IONCAP propagation predictions. The antenna basic requirements are: Frequency range of 2-30 Mhz without any active components; power handling capability of 10 kw at 100% duty cycle; for operation on both short and long-haul paths; VSWR of 1.5:1 or better across the frequency band; protection against EMP effects of 50 KV/m, nuclear blast of 50 psi, and shock of 150 g; minimum temperature range of −40 to +50 deg C; wind survivability of 140 MPH, no ice, of 100 MPH with 12 mm (½ inch) radial ice.

DATES: All offers must be received by ITS no later than 14 February 1992.

ADDRESSES: Technical information on candidate antennas should be submitted to: Nathaniel B. McMillian, U.S. Dept. of Commerce, NTIA/ITS.N1, 325 Broadway, Boulder, CO 80303-3328.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Adair, Institute for Telecommunication Sciences, telephone (303) 497-5116, or Mr. Nick De Minco, telephone (303) 497-3660.

SUPPLEMENTARY INFORMATION: Complete antenna requirements can be obtained from the contact personnel listed.

Dated: December 20, 1991.

Neal B. Seitz,

Deputy Director.

[FR Doc. 91-31179 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Transshipment Charges for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

December 27, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging transshipments to 1992 limits.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a notice published in the **Federal Register** on August 13, 1991 (56 FR 38426), CITA announced that Customs would be conducting other investigations of transshipments of textiles produced in China and exported to the United States. Based on these investigations, the U.S. Customs Service has determined that cotton textile products in various categories, produced or manufactured in China and entered into the United States with the incorrect country of origin in 1989 and 1990 were transshipped in circumvention of the U.S.-China Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended. During consultations held between the Governments of the United States and the People's Republic of China on this matter in August of this year, the Government of the People's Republic of China was advised of ongoing investigations which, in the absence of further consultations, could result in charges to the 1992 limits. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the 1992 quota levels for the categories listed below:

Category	Amount to be charged to 1992
331	12,500 dozen pairs.
339	72,930 dozen.
339-S [1]	76,348 dozen.
347	7,759 dozen.

[1] Charges to Category 339-S are in addition to those charges being made to Category 339.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in China and exported to the United States. The charges resulting from these investigations will be published in the **Federal Register.**

The U.S. Government is taking this action pursuant to the U.S. note dated October 22, 1991, the U.S.-China bilateral textile agreement of February 2, 1988, as amended, and in conformity with Paragraph 16 of the Protocol of Extension and Article 8 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended on December 14, 1977, December 22, 1981, July 31, 1986 and July 31, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101 published on November 27, 1991) for information regarding the 1992 CORRELATION.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 27, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetble Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on January 1, 1992, you charge the following amounts to the following categories for 1992:

Category	Amount to be charged to 1992 limit
331	12,500 dozen pairs.
339	72,930 dozen.
339-S [1]	76,348 dozen.
347	7,759 dozen.

[1] Category 339-S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 91-31319; Filed 12-31-91; 8:45 am]

BILLING CODE 3510-DR-F

Amendment of Export Visa Requirements for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 27, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and India agreed to extend their Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended, for the period which begins on January 1, 1992 and extends through December 31, 1992.

As a result, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend visa requirements for certain textile products, produced or manufactured in India and exported from India on and after January 1, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 27, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 26, 1979, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns export visa requirements for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India.

Effective on January 1, 1992, you are directed to amend the November 26, 1979 directive to include newly merged Categories 335/635, 340/640, 342/642, 336/636 and 647/648 for goods produced or manufactured in India and exported from India on and after January 1, 1992.

For goods produced or manufactured in India and exported from India on and after January 1, 1992, shipments of merchandise previously visaed as Category 369 must be visaed as Category 369-O [1].

Accordingly, you are directed to permit entry of shipments of textile products in the foregoing categories entered for consumption into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) on and after January 1, 1992, from India which have an appropriate export visa with the correct category, part-category or merged category designation.

Also effective for goods exported on and after January 1, 1992, merged Categories 300/301 and 336/339/340 will no longer be valid.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-31316 Filed 12-31-91; 8:45 am]

BILLING CODE 3510-DR-F

[1] Category 369-O: all HTS numbers except 5702.10.9020, 5702.49.10, 5702.99.1010 (rugs exempt from the bilateral agreement); 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369-D); and 6307.10.2005 (Category 369-S).

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Clearance No. 9000-0066; FAR Case 90-68]

OMB Clearance Request for Professional Employee Compensation Plan

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of a request for a revision to an existing OMB clearance (9000-0066).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for a revision of a currently approved information collection requirement concerning Professional Employee Compensation Plan.

DATES: Comments may be submitted on or before March 3, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

OFPP Policy Letter No. 76-2, March 29, 1976, requires that all professional employees shall be compensated fairly and properly. Implementation of this requires that a total compensation plan setting forth proposed salaries and fringe benefits for professional employees with supporting data be submitted to the contracting officer for evaluation. The information collection requirement is being decreased by 28 percent as a result of raising the threshold for requiring total compensation plans from $250,000 to $500,000. The threshold is being raised to adjust for inflation.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 5,340; responses per respondent, 1; total annual responses, 5,340; preparation hours per response, 5; and total response burden hours, 2,670.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Clearance Request No. 9000–0066, Professional Employee Compensation Plan, in all correspondence.

Dated: December 18, 1991.

Laurie A. Frazier,

FAR Secretariat.

[FR Doc. 91–31257 Filed 12–31–91; 8:45 am]

BILLING CODE 6820–JC–M

Defense Logistics Agency

Administration Fee for Electronic Products

AGENCY: Defense Logistics Agency (DLA), Defense.

ACTION: Notification of intent to affix an administration fee for electronic products. Announcement to establish in the annual administration fee for manufacturers and laboratories participating qualified manufacturers list (QML) and qualified products list (QPL) DoD 4120.3M and 10 U.S.C. 2319.

SUMMARY: The proposed notification of intent to establish an annual administration fee for all manufacturers and laboratories participating in the DoD Product Certification and Qualification Program. The administration fee will recover costs associated with the DoD Product Certification and Qualification Program. These costs include operating expenses of the program, including TDY, labor and other attributable expenses.

DATES: Consideration will be given only to comments received on or before 31 Jan. 92.

ADDRESSES: Interested persons may submit written comments concerning this proposal to the Defense Electronics Supply Center (DESC), DESC–EQ, 1507 Wilmington Pike, Dayton, Ohio 25444–5254.

FOR FURTHER INFORMATION CONTACT: Darrell Hill, Chief Qualifications Division, Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, Ohio 45444–5254; telephone (513) 296–6271.

SUPPLEMENTARY INFORMATION: The DoD Product Certification and Qualification Program for electronic parts is managed by the Defense Electronics Supply Center (DESC), as agent for the Military Services, in accordance with the Department of Defense Standardization Manual 4120.3M. In the past, the program has been funded through DESC's Operations and Maintenance account, 10 U.S.C. 2319 specifies that potential offerors reimburse the Government for testing and audit evaluation services required to demonstrate whether the product needs the stated qualification standards.

The administration fee has been derived by determining the actual resources required to administer each product certification and qualification program. The administration fee will be applied to each manufacturer and laboratory site. Each site will have a single fee charged regardless of the number of OMLs/QPLs maintained.

We anticipate the administration fee will be implemented either during FY92 or at the beginning of FY93 (Oct. 92).

Expenses and Assessment Rate

Semiconductor and microcircuits.	
Class S (Space)	$6500.00
All others	5000.00
MIL–STD–790	
Class S (Space)	5500.00
All others	4500.00
Conventional specifications	3700.00
Laboratory	800.00

Robert J. McKittrick,

Colonel, USAF, Director, Engineering Standardization.

[FR Doc. 91–31258 Filed 12–31–91, 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 3, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. the Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: December 27, 1991.

Wallace R. McPherson, Jr.,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension.

Title: Application for Centers for International Business Education Program.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden: Responses—60; *Burden Hours*—2100.

Recordkeeping Burden: Recordkeeping—0; *Burden Hours*—0.

Abstract: This form will be used by State Educational agencies to apply for funding under the Business Education Program. The Department uses the information to make grant awards.

Office of Policy and Planning

Type of Review: New collection.

Title: A Study of Chapter 1 Resources in the Context of State and Local Resources for Education.

Frequency: One-Time Only.

Affected Public: Individuals or households, Non-profit institutions.

Reporting Burden: Responses—1788; *Burden Hours*—1599.

Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.

Abstract: This study of chapter 1 resource allocation examines a purposive sample of 120 schools in six states selected by degree of equalization across school districts in each state, to determine differences in chapter 1 services between low and high proverty schools and various levels of local funding.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Annual Report of Children in Institutions for Neglected or Delinquent Children.

Frequency: Annually.

Affected Public: State or Local Governments.

Reporting Burden: Responses—52; *Burden Hours*—2,000.

Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.

Abstract: An annual survey is conducted to collect data on (1) the average daily attendance of children in State-operated or supported schools for neglected or delinquent children and (2) the October caseload of children in local institutions. This data is used in the statutory formula for computing entitlements.

Office of Special Education and Rehabilitative Services

Type of Review: New collection.

Title: Examination of Interpreter Referral and Service Provisions for State and Local Residents who are Deaf or Hard of Hearing.

Frequency: One time Only.

Affected Public: Individuals or households, State or local governments, Non-profit Institutions.

Reporting Burden: Responses—200; *Burden Hours*—50.

Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.

Abstract: The purpose of this study is to determine the availability and quality of sign language and interpreter referral services and the adequency of interpreter service delivery for persons who are deaf or hard of hearing. The Department will use the information to assess a need for provisions in section 315.

[FR Doc. 91-31293 Filed 12-31-91; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Paul Douglas Teacher Scholarship Program

AGENCY: Department of Education.

ACTION: Notice of the closing date for receipt of state applications for fiscal year 1992.

SUMMARY: The Secretary gives notice of the closing date for receipt of State applications for fiscal year 1992 State allotments under the Paul Douglas Teacher Scholarship Program for scholarships for academic year 1992–93. This program is a federally funded program to provide college scholarships to outstanding high school graduates to enable and encourage them to pursue teaching careers at the preschool, elementary school, or secondary school level.

Authority for this program is contained in title V, part D, subpart 1 of the Higher Education Act of 1965, as amended (HEA).

A State that desires to receive fiscal year 1992 Paul Douglas Teacher Scholarship Program funds must submit an application as provided for under the authorizing law. The State must provide the information requested in section 553 of the HEA and should be guided by the program regulations (34 CFR 653.20). The Secretary is authorized to accept applications from the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Republic of Palau, provided it remains a trust territory. (The future eligibility of the Republic of Palau will be determined by the provisions of the Compact of Free Association.) However, a State that submitted an application for Douglas funds in a previous fiscal year and had its application approved by the Secretary, need not submit an application to receive its fiscal year 1992 program allotment. Unless a State notifies the Secretary in writing that it does not wish to continue participation, the Secretary will issue a Paul Douglas fiscal year 1992 allotment to each State for which he has an approved Paul Douglas Program application.

CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS: An application for fiscal year 1992 Paul Douglas Teacher Scholarship Program funds must be mailed or hand-delivered by March 4, 1992.

APPLICATIONS DELIVERED BY MAIL: An application sent by mail must be addressed to Mr. Fred Sellers, Chief, State Grant Section, room 4018, ROB #3, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW., Washington, DC 20202–5447.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a Commercial Carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. An applicant is encouraged to use registered or at least first-class mail.

Each late applicant will be notified that it cannot be assured that its application will be considered for fiscal year 1992 funding.

APPLICATIONS DELIVERED BY HAND: An application that is hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th and D Streets, SW., room 4018, GSA Regional Office Building #3, Washington, DC. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

PROGRAM INFORMATION: The Secretary requires the submission of an application followed by the approval of that application by the Secretary for a State to receive Paul Douglas Teacher Scholarship Program funds. State allotments are determined by the statutorily mandated population formula and are not subject to negotiation.

APPLICATION INFORMATION: There is no required application form for receiving Paul Douglas Teacher Scholarship Program funds. Applications must be prepared and submitted in accordance with the authorizing law and the program regulations cited in this notice. The Secretary strongly urges that applicants not submit information that is not requested.

APPLICABLE REGULATIONS: The following regulations are applicable to the Paul Douglas Teacher Scholarship Program:

(1) The Paul Douglas Teacher Scholarship Program final regulations (34 CFR part 653).

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

INTERGOVERNMENTAL REVIEW: This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants that are governmental entities must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A listing containing the single point of contact for each State is included in the appendix to the "Notice Inviting Applications for New Awards for Fiscal Year 1992," published in the **Federal Register** on September 18, 1991 (56 FR 47293–47294).

In States that have not established a process for or chosen this program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, area-wide, regional, and local entities must be mailed or hand delivered by May 1, 1992 to the following address: The Secretary, U.S. Department of Education, room 4181, (CFDA No. 84.176), 400 Maryland Avenue, SW., Washington, DC 20202–0101.

Note: Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Sellers, Chief, State Grant Section, Office of Student Financial Assistance, U.S. Department of Education, Washington, DC 20202–5447; telephone (202) 708–4607.

(Catalog of Federal Domestic Assistance Number 84.176, Paul Douglas Teacher Scholarship Program)

Dated: December 20, 1991.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 91–31077 Filed 12–31–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ES92–20–000, et al.]

Electric rate, Small Power Production, and Interlocking Directorate Filings; UtiliCorp United Inc., et al.

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES92–20–000]

December 19, 1991.

Take notice that on December 12, 1991, UtiliCorp United Inc. filed an application with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act requesting authorization to issue not more than 1 million shares of Common Stock, par value $1 per share, pursuant to the UtiliCorp United Inc. 1986 Stock Incentive Plan and exemption from the Commission's competitive bidding regulations.

Comment date: January 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Long Island Lighting Company

[Docket No. ER92–68–000]

December 23, 1991.

Take notice that on November 26, 1991, Long Island Lighting Company (LILCO) tendered for an amendment to its October 7, 1991 filing the above-referenced docket.

Comment date: January 6, 1992, in accordance with Standard Paragraph E end of this notice.

3. Northeast Utilities Service Co.

[Docket No. ER92–024–000]

December 23, 1991.

Take notice that on December 6, 1991, the Northeast Utilities Service Company as agent for Connecticut Light and Power Company ("NU") tendered for filing supplemental information regarding a proposed rate schedule which provided for an exchange of entitlements between NU and the Public Service Company of New Hampshire (PSNH).

NU states that the amendment was filed in response to a request by the Commission for additional information.

NU states that a copy of this filing has been mailed to PSNH.

NU requests that the Commission waive its standard notice period and filing notice regulations to the extent necessary to permit the rate schedule originally filed to become effective May 1, 1990.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Tampa Electric Co.

[Docket No. ER92–213–000]

December 23, 1991.

Take notice that on December 18, 1991, Tampa Electric Company (Tampa Electric) submitted additional information to supplement and clarify its filing of December 2, 1991, in the above-referenced docket. The information relates to Tampa Electric's commitment to make negotiated sales of available power to the Utility Board of the City of Key West, Florida (Key West) pursuant to Service Schedule J (Negotiated Interchange Service).

Tampa Electric continues to request an effective date of December 4, 1991, for the commitment.

Copies of the supplemental filing have been served on Key West and the Florida Public Service Commission.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. West Texas Utilities Company

[Docket No. ER92–87–000]

December 23, 1991.

Take notice that West Texas Utilities Company ("WTU"), on December 17, 1991, tendered for filing a Notice of Cancellation in the above-referenced docket. The filing cancels Rate Schedule FERC No. 62 effective January 1, 1990. Pursuant to that Rate Schedule, WTU provided certain transmission service for Texas Utilities Electric Company.

Copies of the filing were posted in accordance with the Commission's regulations.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. PSI Energy, Inc.

[Docket No. ER92-30-000]

December 23, 1991.

Take notice that on December 11, 1991, PSI Energy, Inc. tendered for filing supplemental information in the above-referenced docket.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corp.

[Docket No. ER92-196-000]

December 23, 1991.

Take notice that on December 16, 1991, Niagara Mohawk Power Corporation ("Niagara Mohawk"), tendered for filing an amendment to its filing dated November 15, 1991 regarding a proposed change to Niagara Mohawk Rate Schedule No. 140, an agreement between Niagara Mohawk and Orange and Rockland Utilities, Inc. ("O&R").

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corp.

[Docket No. ER92-195-000]

December 23, 1991.

Take notice that on December 6, 1991, Niagara Mohawk Power Corporation ("Niagara Mohawk"), tendered for filing an amendment to its filing dated November 15, 1991 regarding Niagara Mohawk Rate Schedule No. 176, an agreement between Niagara Mohawk and Rochester Gas and Electric Corporation ("RGE").

Comment date: January 6, 1992, in accordance with Standard Paragraph E end of this notice.

9. Florida Power & Light Co.

[Docket No. ER91-693-000]

December 23, 1991.

Take notice that on December 12, 1991, Florida Power & Light Company tendered for filing additional information in the above-referenced docket.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Tampa Electric Co.

[Docket No. ER92-209-000]

December 23, 1991.

Take notice that on November 26, 1991, Tampa Electric Company (Tampa Electric) tendered for filing a Letter Agreement that extends for one year, through December 31, 1992, an existing Letter of Commitment providing for the sale by Tampa Electric to Seminole Electric Cooperative, Inc. (Seminole) of up to 200 MW of capacity and associated energy.

Tampa Electric proposes an effective date of January 1, 1992, for the extension, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. PSI Energy, Inc.

[Docket No. ER91-510-000]

December 23, 1991.

Take notice that PSI Energy, Inc. (PSI) on December 18, 1991, tendered for filing amended Rate Schedules to the FERC Filing in Docket No. ER91-510-000.

Rate Schedules A—Emergency Service, E—Short Term Power and F—Limited Term Power have been revised as a result of a FERC Staff request. In addition, Cincinnati Gas & Electric Company has revised its simulation model and cost support data for the rates in this filing.

Copies of the filing were served on The Cincinnati Gas & Electric Company, the Public Utilities Commission of Ohio, and the Indiana Utility Regulatory Commission.

PSI has requested that the original effective date of June 1, 1991 remain unchanged.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Puget Sound Power & Light Co.

[Docket No. ER92-186-000]

December 23, 1991.

Take notice that on November 15, 1991, Puget Sound Power & Light Company (Puget) tendered for filing a Transfer Agreement between the United States of America, Department of the Interior, acting by and through the Bonneville Power Administration and Puget, Contract No. 14-03-64458, dated September 25, 1968.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. El Paso Electric Co.

[Docket No. ER92-1-000]

December 23, 1991.

Take notice that on December 10, 1991, El Paso Electric Company tendered for filing an amendment to its November 21, 1991 filing in this docket.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. PSI Energy, Inc.

[Docket No. ER92-144-000]

December 23, 1991.

Take notice that on December 16, 1991, PSI Energy, Inc. (PSI) tendered for filing an Amendment to its October 31, 1991 filing of the Interchange Agreement between PSI and Baltimore Gas and Electric Company (BG&E) in the above captioned docket. The Amendment consists of further narrative explanations and support for provisions of Service Schedule A Short-Term Power. PSI also withdraws the Power Release Agreement between PSI and BG&E from the filing.

PSI has requested waiver of the Commission's notice requirements to allow an effective date of December 30, 1991 as originally requested.

Copies of the filing were served on the Maryland Public Service Commission.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Co.

[Docket No. ER92-113-000]

December 23, 1991.

Take notice that New England Power Company (NEP) on December 17, 1991, tendered for filing Period I and Period II statements and workpapers in support of its proposed transmission rates in response to the Commission's November 15, 1991 deficiency letter.

Comment date: January 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Iowa Public Service Co., Iowa Power Inc. MWR Power Inc.

[Docket No. EC92-5-000]

December 23, 1991.

Take notice that on December 17, 1991, Iowa Public Service Company (IPS), Iowa Power Inc. (IPR) and MWR Power Inc. (MWR Power) (collectively referred to as Applicants), pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b and part 33 of the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), tendered for filing an application for authorization and approval of a merger. Under an existing merger agreement, MWR Power, a wholly-owned subsidiary of Midwest Resources Inc. (Midwest Resources), will acquire all of the outstanding shares of common stock and each class of preferred stock of IPS

and IPR which are also wholly-owned subsidiaries of Midwest Resources. At that time IPS and IPR will cease to exist and MWR Power will be the surviving public utility corporation.

IPS is a combination electric and natural gas utility operating in the states of Iowa, Nebraska, Minnesota and South Dakota. Additionally, IPS transports and sells natural gas through its gas division, Midwest Gas, to retail customers in Iowa, Nebraska, Minnesota and South Dakota. IPS has 12 full or partial wholesale requirements customers. IPR is an electric utility that generates, transmits, distributes and sells electricity in the state of Iowa. IPR has two full or partial wholesale requirements customers.

The Applicants submit that the merger of IPS and IPR into MWR Power will be consistent with the public interest. Accordingly, the Applicants requests authorization to consummate the merger without a hearing.

Comment date: January 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Scranton Energy Partners

[Docket No. QF92-12-000]

December 24, 1991.

On December 18, 1991, Scranton Energy Partners, tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to ownership structure, and design and operational configuration of the facility.

Comment date: January 16, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-31263 Filed 12-31-91; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB for review of the information collection system described below.

Type of Review: Revision of a current approved collection.

Title: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks).

Form Number: FFIEC 031, 032, 033, 034.

OMB Number: 3064-0052.

Expiration Date of OMB Clearance: May 31, 1994.

Respondents: Insured state nonmember commercial and savings banks.

Frequency of Response: Quarterly.

Number of Respondents: 7,740.

Number of Responses per Respondent: 4.

Total Annual Responses: 30,960.

Average Number of Hours per Response: 23.45.

Total Annual Burden Hours: 725,935.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project 3064-0017, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3097, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before January 24, 1992.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The Consolidated Reports of Condition and Income (Call Reports) are used by the FDIC in monitoring the financial condition and performance of reporting banks and the banking industry as a whole. The revisions that are the subject of this request are in the following categories: Other Real Estate Owned by Type of Property; Residential Mortgages Serviced for Others by Type of Servicing Contract; Purchased Credit Cardholder Relationships; Floating Rate Debt Securities Maturing Within One Year; Other Data for Deposit Insurance Assessments.

Dated: December 26, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-31264 Filed 12-31-91; 8:45 am]

BILLING CODE 6714-01-M

Coastal Barrier Improvement Act: Property Availability; Caravelle Ranch

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Caravelle Ranch, located in the State of Florida, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written Notices of Serious Interest to purchase or effect other transfer of the property may be mailed or faxed to the Federal Deposit Insurance Corporation until April 2, 1992.

ADDRESSES: All written Notices of Serious Interest must be submitted to Denise Langlois Brown, Legal Department, Federal Deposit Insurance Corporation, P.O. Box 725003, Orlando, Florida 32872-5003, (407) 249-5387, Fax (407) 282-0180.

SUPPLEMENTARY INFORMATION: The property is more fully described as a 5,700.67 acre tract of land located along the east and west sides of State Road 19, approximately 12 miles south of the City of Palatka in Putnam County, Florida. The property is unimproved, heavily vegetated, and has approximately 5,250 feet of frontage along the St. John's River. The property is adjoined by the Ocala National Forest and a parcel owned by the St. John's Water Management District for conservation purposes.

Written Notices of Serious Interest to purchase or effect other transfer of the property must be submitted by April 2, 1992 to Denise Langlois Brown at the above address and in substantially the following form:

Notice of Serious Interest

Re: Caravelle Ranch

This Notice of Serious Interest is tendered in accordance with Section 10 of the Coastal Barrier Improvement Act and publication in the **Federal Register** of Notice of Availability on January 2, 1992 with respect to that property in Putnam County, Florida known as Caravelle Ranch.

The (Name and Address of the Agency or Other Qualified Organization) is eligible to submit this notice under criteria se forth in Public Law 101–591, section 10(b)(2).

The (Name of Agency or Other Qualified Organization) intends to use this property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

The proposed terms of purchase or transfer are as follows: [INSERT TERMS OF PURCHASE]

Dated: December 27, 1991.
Federal Deposit Insurance Corporation.

Patti C. Fox,

Assistant Executive Secretary.

[FR Doc. 91–31299 Filed 12–31–91; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Puget Sound Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 24, 1992.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company and International Regulation) 101 Market Street, San Francisco, California 94105:

1. Puget Sound Bancorp, Tacoma, Washington; to acquire 100 percent of the voting shares of Northwestern National Bank, Port Angeles, Washington.

Board of Governors of the Federal Reserve System, December 26, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–31288 Filed 12–31–91; 8:45 am]

BILLING CODE 6210–01–F

Jerry G. and Margaret A. Scott, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 24, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jerry G. and Margaret A. Scott, Seminole, Oklahoma; to acquire an additional 0.53 percent (totalling 25.27 percent) of the voting shares of Prague Bancorp, Inc., Prague, Oklahoma, and thereby indirectly acquire Prague National Bank, Prague, Oklahoma.

2. James N. and Mary Ellen Wall, Shawnee, Oklahoma; to acquire an additional 0.53 percent (totallying 25.27 percent) of the voting shares of Prague Bancorp, Inc., Prague, Oklahoma, and thereby indirectly acquire Prague National Bank, Prague, Oklahoma.

Board of Governors of the Federal Reserve System, December 26, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–31289 Filed 12–31–91; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO–103–PN]

Medicare Program; Data, Standards and Methodology Used To Establish Fiscal Year 1992 Budgets for Fiscal Intermediaries and Carriers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice describes the data, standards and methodology that would be used to establish fiscal intermediary and carrier budgets for the fiscal year beginning October 1, 1991. Intermediaries and carriers are public or private entities that participate in the administration of the Medicare program by performing claims processing and benefit payment functions. This notice is published in accordance with sections 1816(c)(1) and 1842(c)(1) of the Social Security Act which require us to publish for public comment the data, standards and methodology we intend to use to establish budgets for Medicare intermediaries and carriers.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 3, 1992.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–103–PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept audio, video or facsimile (FAX) copies of comments. In commenting, please refer to file code BPO–103–PN. Written

comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Tom Hessenauer, (301) 966–7542.

SUPPLEMENTARY INFORMATION:

I. Background

Under sections 1816(a) and 1842(a) of the Social Security Act (the Act), public or private organizations and agencies may participate in the administration of the Medicare program under agreements or contracts entered into with the Secretary. These Medicare contractors are known as fiscal intermediaries (section 1816(a) of the Act) and carriers (section 1842(a) of the Act. Intermediaries perform claims processing and benefit payment functions for part A of the program (Hospital Insurance) and carriers perform bill processing and benefit payment functions for Part B of the program (Supplementary Medical Insurance). When claims are submitted by providers, and bills by beneficiaries, physicians, and suppliers of services, intermediaries and carriers are responsible for: (1) Determining the eligibility status of a beneficiary; (2) determining whether the services on the submitted claims or bills are covered under Medicare and, if so, the correct payment amounts; and (3) making appropriate payments to the provider, beneficiary, physician, or supplier of services.

Intermediary and carrier performance is monitored by HCFA on both the central office and regional office (RO) levels. In general, issues that affect policies on a national level are addressed by the central office, and issues dealing with regional and local policies, as well as those of an operational nature, are addressed by the ROs. Communication between HCFA and the intermediaries and carriers is continuous, with established consultation workgroups comprised of representatives from the central office, ROs and Medicare contractors meeting on a regular basis.

II. Fiscal Intermediary and Carrier Budget Process

HCFA's central office is responsible for developing a national contractor budget for both Part A and Part B of the Medicare program. The budget is formulated over a 15-month period, beginning in March of the year preceding the fiscal year (FY) to which it applies. It is formulated after receiving input from the contractor community, HCFA's ROs, various central office and departmental components, and the Office of Management and Budget (OMB), prior to submittal to the President for approval and forwarding to Congress. Once the national contractor budget has been approved, HCFA issues Budget Performance Requirements (BPRs), which serve as guidelines for contractors in preparing their individual budgets for submission to HCFA.

In the past, we have used ROs to obtain budget estimates from the contractors to use as a basis for developing the national budget. The ROs' assessments of the contractors' needs are reviewed during a budget level determination process based on current claims processing trends, legislative mandates, administrative initiatives, current year performance standards and criteria, and the availability of funds appropriated by Congress. We subsequently allocate funding within these constraints.

Section 4035(a) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, amended sections 1816(c)(1) and 1842(c)(1) of the Act by requiring the Secretary to publish in the **Federal Register** by no later than September 1 before each FY, the final data, standards and methodology to be used to establish a national contractor budget for fiscal intermediaries and carriers under these sections for that FY. We also are required to publish our proposed data, standards and methodology at least 90 days before September 1 to provide an opportunity for public comment.

We have been unable to meet the statutory mandate to publish a proposed notice at least 90 days before September 1. Although we have not published the proposed notice within the timeframe contemplated by the statute, we nevertheless want to assure interested parties that they will be provided an adequate opportunity to comment on the data, standards, and methodology to be used to establish budgets before they are issued in a final notice.

Additionally, as in prior years, we have had and will continue to seek extensive input from the involved parties, particularly contractors. Their input is used as part of the basis for the national contractor budget that was presented to Congress. That budget is the basis for the contents of this notice. Therefore, we do not believe that the delay in publishing this proposed notice will disadvantage the contractors as they have already been apprised of the contents of this document via meetings, written correspondence, and telephone calls. The delay will neither diminish the depth of the consultation nor the negotiation with the parties most affected by this notice. After allowing a 30-day comment period and evaluating the comments on the proposed notice, we will publish the final notice as near as possible to September 1.

To the extent that the comments we receive during this comment period warrant revisions to the proposed data, standards and methodology, we will make the necessary changes before publishing the final notice. Moreover, if appropriate, we will issue revised BPRs to intermediaries and carriers. We will also renegotiate any affected areas of intermediary and carrier budgets within the levels of funding made available by Congress.

This notice contains our proposed data, standards and methodology that we intend to use to establish a national contractor budget for fiscal intermediaries and carriers for FY 1992.

III. Overview of FY 1992 National Medicare Contractor Budget: Data, Standards and Methodology

The FY 1992 Medicare contractor budget request was submitted to Congress in February 1991. The workload for the FY 1992 request is expressed in terms of work processed. For Part A, the FY 1992 estimated workload (99.4 million bills) is 8.0% more than the FY 1991 workload. For part B, the estimated workload (569.6 million claims) results in a 13.9% increase over the FY 1991 workload.

Our estimates involved the use of a regression model that uses the last 36 months of actual contractor workload data. The software runs the historical data through five different statistical models, selects the one best suited to the characteristics of the data, and provides a forecast using that model. For the FY 1992 projections, we used January 1991 data, which were the latest available to us at the time. The resulting projections will be updated monthly to assure that the most timely data are available for budgeting purposes.

Based on the projected FY 1991 unit costs for processing bills and claims, we applied a 3.9 percent inflation factor (the economic assumption used by OMB based on changes to the Consumer Price and Wage Indexes as developed by the Department of Labor). This amount was then further adjusted for savings achieved by prior and anticipated productivity investments, and costs

associated with new legislation. This calculation resulted in a new unit cost, which, when multiplied by the Part A and/or Part B workloads, shows the total amount to be earmarked for bills and claims payment in FY 1992.

Feedback received from contractors and ROs during the past several years have led us to believe that contractors can make major improvements in performance if given the authority to manage their budgets. The FY 1992 BPRs give the ROs the authority to set such a budget and the contractors the authority to manage their budgets on a bottom-line basis. Once funding is issued, each contractor will have the flexibility to optimally manage the budget consistent with the scope of work contained in the BPRs. In past years, contractors were not allowed to "shift" more than 5 percent of funds from one line item to another in their budget, as determined by the lesser of the two line items. This restriction was intended to give contractors some latitude with regard to reporting their costs, yet still allow HCFA to maintain control over the national budget. With the exception of the Payment Safeguards, Productivity Investments and Other line items, contractors now will have total flexibility in the use of funds. However, the current 5 percent shift (into or out of) limitations on individual payment safeguards will be maintained. Productivity Investments and Other line funding not governed by contract modifications may be shifted to other functions not to exceed 5 percent, but funding governed by contract modifications may not be shifted to other functions or lines.

A. Medicare Contractor Functional Areas

The Medicare contractor budget consists of seven functional area responsibilities performed by intermediaries for Part A, and eight functional area responsibilities performed by carriers for Part B. The functional area responsibilities for Part A are:

1. Bills Payment;
2. Reconsideration and Hearings;
3. Medicare Secondary Payer;
4. Medical Review and Utilization Review;
5. Provider Audit (Desk Reviews, Field Audits and Provider Settlements);
6. Provider Reimbursements; and
7. Productivity Investments.

The functional area responsibilities for Part B are:

1. Claims Payment;
2. Reviews and Hearings;
3. Beneficiary/Physician Inquiries;
4. Medical Review and Utilization Review;
5. Medicare Secondary Payer;
6. Participating Physicians;
7. Professional Relations; and
8. Productivity Investments.

These functions are funded from the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) trust funds. The data, standards and methodology used in these functional areas are discussed in section IV of this preamble. In the following national budget summary, we have combined the discussion of functional areas common to both intermediaries and carriers. However, data specific to Part A and Part B are provided under each heading.

1. Bills and Claims Payment

We currently estimate the Part A processed workload to be 99.4 million bills in FY 1992. This estimate results from a workload regression model that uses the last 36 months of intermediary data through January 1991 and the current funding available for processing claims. This workload level includes 2.3 million claims related to pap smears, as provided for in section 6115 of the Omnibus Budget Reconciliation Act of 1989, (OBRA '89), Public Law 101–239, and 2.3 million claims related to injectable drugs for osteoporosis and mammograms, as provided for in sections 4156 and 4163 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508.

The part B processed workload is currently projected at 569.6 million claims based on the current funding available. This workload level includes 4.5 million claims as provided for in OBRA '89, and 4.6 million claims as provided for in OBRA '90.

Intermediaries are required by section 1816(c) of the Act (as amended by section 9311 of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Public Law (99–509) to pay 95 percent of part A bills within 24 days of receipt. All part B claims must be processed within the same time frames as part A bills, except that participating physician claims must be paid within 17 days of receipt.

Section 4031 of OBRA '87 amended sections 1816(c) and 1842(c) of the Act to impose a 14-day payment floor standard effective October 1, 1988 for part A bills and part B claims. This standard provides that no payment may be made within 14 calendar days after the date that the bill/claim is received. The statutory requirement for this provision expired on September 30, 1988. However, HCFA has administratively retained the 14-day floor through publication of a notice in the Federal Register on December 11, 1989 at 54 FR 51006.

Additionally, section 4031 also prohibited the Secretary from issuing before October 1, 1990, other regulations, instructions or policies intended to delay Medicare payments. Subsequently, section 4207(b)(2) of OBRA '90 permanently prohibits changes intended primarily to slow down or speed up claims processing or delay payment of claims.

2. Reconsiderations (Reviews Under Part B) and Hearings and Beneficiary Inquiries

This function includes all activities related to guaranteeing due process of law as a result of contractor action (i.e., disallowances) on bills and claims.

Section 4032 of OBRA '87 amended section 1816(f) of the Act to require that intermediaries process 75 percent of reconsiderations within 60 days, beginning in FY 1990. As a result of the FY 1990 funding levels, we reevaluated the reconsideration, review, and hearing processes with the aim to further increase efficiency. For FY 1992 we expect to achieve reduced costs through expanded use of on-the-record and telephone hearings, and through the use of audio response units (ARUs) to replace labor-intensive methods of answering inquiries.

3. Medicare Secondary Payer

The Medicare Secondary Payer (MSP) function is the first of three initiatives (Medicare Secondary Payer, Medical Review and Utilization Review, and Provider Audit) we developed as "Payment Safeguards" in an attempt to safeguard the Medicare program against improper payments. The focus of the MSP initiative is to ensure that the Medicare program pays for covered care only after reimbursement from primary insurers has been made. MSP activities center on claims involving—

- The working aged;
- The spousal working aged;
- Beneficiaries with end-stage renal disease;
- Beneficiaries eligible for payment under automobile, medical liability and no-fault insurance;
- Individuals eligible for or receiving workers compensation; and
- The disabled.

By concentrating efforts in these key areas, the Medicare program has had tremendous success in recovering and reducing improper program payments.

Medicare contractors are responsible for identifying MSP situations and aggressively pursing the recovery of improper payments from the appropriate

party. The standard for determining the amount of MSP funding a contractor will receive in FY 1992 is based on savings goals, workload volumes, required systems changes, and any special projects that may be assigned to contractors.

In conjunction with the actuary, we develop specific savings goals for each contractor based on past performance. In addition, we gather data on actual MSP claims volumes, overall claims volumes for the prior FY, and special project data (e.g., cost of claims, amount of savings achieved). We then compare a contractor's previous year's data to the contractor's projections for the next FY and allocate funding in proportion to the savings goals to be achieved. Additional funding is allocated for specific projects as required. The amounts vary based on the scope of the project, extent of systems changes, if any, and workload.

For FY 1992 we have included funding to implement the IRS/SSA/HCFA data match project created by section 6202 of OBRA '89.

4. Medical Review and Utilization Review

In addition to processing and paying claims from providers of services and Medicare beneficiaries, contractors perform medical reviews of claims to determine whether services were medically necessary and constituted an appropriate level of care. The distribution of Medicare contractor funding is in proportion to workload, individual contractor medical review/utilization review (MR/UR) projects, and the budget constraints brought about by reduced funding availability.

Intermediaries are responsible for medical review of home health agencies (HHAs), skilled nursing facilities (SNFs), outpatient hospital services (excluding surgery), and other outpatient services such as those provided by rehabilitation facilities, rural health clinics, etc. This review assures that medical care received is necessary and appropriate, and that quality medical services are delivered to Medicare beneficiaries. We estimate that the review of HHAs and outpatient services will account for most of the use of Medicare intermediary medical review resources during FY 1992. Medical review of all HHA provider claims will be the responsibility of regional home health intermediaries.

Carriers are responsible for medical review of Part B providers and suppliers. Carrier medical review costs can be offset by avoiding payment for medically unnecessary services through proper medical review/utilization review. To this end, we will continue to focus on prepayment review, including additional mandatory prepayment screens, and continue our efforts in the standard cost analysis system developed in FY 1987 to evaluate the efficiency of carrier prepayment medical review screens. This systematic approach is expected to yield benefits to the medical review process, such as—

- A current inventory of the number, types, and cost effectiveness of medical review screens;
- The ability to analyze the current inventory of screens and set a framework that yields a high return on investment;
- The ability to target strategies for specific medical review activities; and
- Measurement of the relative cost effectiveness of screens among different contractors.

In addition to our continued focus on prepayment review, we also will direct attention in the area of carrier postpayment medical review during FY 1992. The carrier postpayment process consists of preparing profiles of providers and beneficiaries, identifying patterns of fraud and abuse, correcting program abuse in service utilization by educating providers in acceptable norms and proper billing practices, recommending administrative action, where appropriate, and identifying areas for the development and installation of future prepayment review screens.

The actual and cost avoidance benefits in safeguarding program dollars are significant. Educational encounters lead to fewer incorrect billings and administrative cost avoidance in the form of reductions in the number of requests for reviews and hearings. In FY 1992 we will continue to focus on—

- Review of providers with demonstrably aberrant billing and practice patterns;
- Review of educational efforts; and
- Development of a methodology for quantifying the level of program and administrative cost avoidance resulting from postpayment medical review activities.

Also during FY 1992, an analytical diagnosis-based approach to identification of services targeted for more intensified medical review (i.e., patterns of care) will be implemented nationally. Funding for this project is provided for carrier staff review of the system rather than development, which will be accomplished in FY 1991. We estimate that 20 percent of FY 1992 prepayment medical reviews will be diagnosis related.

Carriers must continue to provide support to HHS/Office of Inspector General (OIG) staff in investigating cases of suspected fraud and abuse This is in addition to the fraud and abuse activities that currently exist in other intermediary and carrier functions.

5. Provider Audit

For FY 1992 we have planned for the full complement of audits to help in the identification and prevention of improper payments. These will include desk reviews, field audits, special audit activities and final settlements. Considering provider growth and the increase in cost-based reimbursement to prospective payment system (PPS) hospitals, we will continue to give priority to the audits of PPS multi-facility hospitals as well as chain-affiliated providers. In addition, by concentrating effort on HHAs and SNFs which meet minimum audit criteria, we will maximize the potential savings available from these providers. We will also focus audit efforts on costs reported and allocated by home offices, since there are numerous incentives for chain home offices to maximize reimbursement through creative cost allocation practices.

6. Provider Reimbursement (Part A only)

In FY 1992 Medicare contractors are required to provide reimbursement services to 29,659 health care providers. This represents an increase of approximately 14 percent over the number of providers requiring reimbursement services in FY 1991. Reimbursement services are required for provider-based SNFs and HHAs in addition to end stage renal disease (ESRD) facilities, comprehensive outpatient rehabilitation facilities (CORFs), and hospices, regardless of whether the provider is audited on an annual or other basis. The budget provides for the following activities:

- Collection of Provider Overpayments—A system must be maintained to collect and record overpayments made to providers. In addition to collections and recordkeeping activities, contractors will investigate and provide profile data on uncollectible overpayment cases and provide monthly reports to HCFA on the uncollectible accounts.
- Interim Payments—Interim Payment rates must be established and periodically reviewed throughout the FY for all Medicare providers. The interim rates process requires the review of provider cost and utilization statistics and the calculation of adjusted rates.
- Consultative Services—On-site assistance must be furnished to any provider experiencing difficulties in

preparing the cost report, preparing claims or any other payment area.

• Records and Reports—According to specific instructions from HCFA, files and records must be established and maintained by the contractors to ensure proper payments to providers. In addition, several different provider cost and payment reports must be prepared and submitted quarterly to HCFA.

• System Tracking for Audit and Reimbursement (STAR)—The STAR system collects data on individual provider identification such as name, provider number, number of beds/visits, etc. The system also collects all data on the cost of Medicare contractors performing audit and reimbursement functions, including interim rate setting, desk reviews, settlements and field audits. The STAR system will be integrated with other data retrieval systems to eliminate duplicate reporting and to establish one data base for information reported by intermediaries.

In determining the amount of reimbursement funding each contractor receives, we analyze provider profiles submitted by contractors. The provider profiles show types and numbers of periodic interim payment (PIP) providers and non-PIP providers. We review prior periods of reimbursement funding and assess the contractor's future needs based on projected provider workload and the availability of funds. We make every attempt to distribute funds in proportion to workload.

7. Productivity Investments

The costs of implementing new initiatives designed to improve the effectiveness of Medicare program administration are referred to as productivity investments (PIs). Productivity investments generally provide start-up funds for contractor activities. Once these projects are operational, funding for these projects becomes part of the contractor's ongoing costs. The criteria for selection of PIs to be implemented are varied. For example, some PIs are required by legislative or regulatory requirements. We also fund projects that will improve administrative cost efficiency, e.g., the Common Working File and Shared Maintenance/Shared Processing.

There is no single distribution methodology for the allocation of PI funds. After we determine the national cost of a PI, funds are distributed among the contractors based on either the contractors' cost estimates or through formulas derived by HCFA based on project specifications. Other PI initiatives require equal effort by all contractors regardless of size, and are, therefore, distributed equally among contractors. Finally, other PIs, such as the Common Working File and Shared Maintenance/Shared Processing, are given only to contractors that are involved in the specific projects.

In FY 1992, we will fund the following PIs:

For Part A—

• Common Working File;
• Shared software maintenance;
• Shared claims processing;
• Quality assurance program initiatives;
• Facilities management; and;
• OBRA '90 systems initiatives.

For Part B—

• Common Working File;
• Shared software maintenance;
• Shared claims processing;
• Quality assurance program initiatives;
• Revised HCFA–1500;
• Beneficiary initiatives;
• Facilities management;
• Electronic media claims;
• Physician Ownership and Referral;
• Medicare Fee Schedule Implementation;
• Standardized Edit Package; and
• OBRA '90 systems initiatives.

8. Beneficiary/Physician Inquiries

The Medicare program is a complex one, based on many provisions required by law, regulations and policy dealing with entitlement, coverage of services, comprehensive payment rules, and the rights and responsibilities of beneficiaries. Since contractors are the direct link between beneficiaries, physicians, and the program, this activity includes all costs related beneficiary, physician and supplier inquiries generated by means of telephone calls, correspondence, and personal visits. This workload is estimated to be 30.4 million inquiries in FY 1992. Current contractor performance and evaluation criteria and standards require that inquiries be processed within 30 calendar days. For telephone inquiries, the level of service for a busy signal must equate to an "all trunks busy" of no higher than 20 percent. All calls must be acknowledged in no more than 20 seconds and must be handled by a telephone representative within 120 seconds of acknowledgement. The standards require that 80 percent of the calls be handled to completion during the initial call and that call backs be made within 2 working days. These standards apply to both toll free and local calls. For FY 1992, we expect to achieve reduced costs through the use of ARUs to replace labor-intensive methods of answering inquiries.

9. Participating Physicians (Part B only)

Participating physicians are those who agree to accept assignment on all Medicare claims in return for certain incentives/benefits. All physicians must be given an opportunity to enroll/disenroll in the participation program annually.

The participating physician program for carriers includes the following activities:

• Monitoring Maximum Allowable Actual Charges (MAAC);
• Producing and distributing Medicare Participating Physician Directories (MEDPARDS);
• Monitoring nonparticipating physicians for compliance with section 1842(m) of the Act, as added by section 9332(d) of OBRA '80;
• Monitoring participating physicians;
• Furnishing toll-free electronic media claims lines for participating physicians;
• Responding to participation-related inquiries from beneficiaries in a timely and responsive manner;
• Enrolling participating physicians and suppliers;
• Monitoring systems changes for pricing screens and files related to the participating physician program; and
• Monitoring data requests (participation counts).

When the Congress initially provided funding for the participation program, we identified each of the activities involved and priced each activity nationally. An algorithm was developed for distributing the funds to each contractor for each activity. Some algorithms distributed funds based on workload and others based on the number of sites with systems changes. One activity was funded based on the participation rates. We then totaled the cost of the various activities for each carrier and provided funding accordingly. For FY 1992, the FY 1991 funding was used as the base and was increased proportional to the workload within the limits of the funding available to HCFA.

Section 9332 of OBRA '86 requires HCFA to pay carrier bonuses for increasing the rate of physician participation in the Medicare program. The methodology used to determine carrier bonuses for FY 1992 will be published in a separate notice.

10. Professional Relations

The success of the Medicare program depends upon the continuing cooperation of individuals and institutions providing health care services. To help promote this cooperation, carriers are required to—

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• Notify physicians and suppliers, in writing, of policy and procedural changes prior to the effective dates of changes;

• Develop claims prior to denial or reduction;

• Initiate regular contact with physicians/suppliers through representative organizations;

• Provide regular and periodic training for new personnel, as well as a continuing education program for previously trained staff, on current Medicare coverage, reimbursement, and billing policy;

• Conduct regular meetings with beneficiaries or their representative organizations to inform them about the participation program; and

• Provide adequate telephone service in order to answer queries concerning claims status and processing questions.

The funding provided in FY 1992 will allow carriers to perform the above activities, as well as those outlined in section 4600 of the Medicare Carriers Manual. Funding is also included for the enforcement of proper diagnostic coding of claims, identification of referring, ordering and furnishing physician services, and other provisions as required by OBRA '89.

11. Printing Claims Forms

Although this activity is not among the seven contractor functional areas, it is a part of the national Medicare contractor budget. In the interest of maintaining standard formats and quality of Medicare entitlement and report forms, intermediaries and carriers supply beneficiary enrollment and provider cost reporting forms. The use of these forms is essential to beneficiary notification, effective and efficient contractor operations, and other program objectives. With a steady increase in the number of beneficiaries and providers, we project a corresponding increase in a substantial number of HCFA forms.

B. Contractor Unit Cost Calculations

A key step in the contractor budget process is the development of contractor unit costs for processing Part A bills and Part B claims. FY 1992 is the first year in which we have developed a bottom lone unit cost for each individual contractor. These bottom line unit costs encompass all contractor functions except Audit (Part A only), Productivity Investments, and Other.

Also new in FY 1992 is the application of the Complexity Index (CI). The CI is designed to improve efficiency and reduce contractor-by-contractor cost inequities, and is based on the application of the Industrial Engineering (IE) Study commissioned by HCFA. The IE study provided HCFA with an actual, weighted unit cost for each type and medium of bill and claim. For example, a Part A contractor typically processes (among others) inpatient hospital bills. These bills either are received as hardcopy or are electronically submitted.

The IE study produced an actual unit cost that is associated with processing a hardcopy inpatient bill versus an electronically submitted inpatient bill. The study did the same with every type and medium of bill and claim processed by contractors. These unit costs were applied to each contractor's individual workload mix to develop a weighted unit cost that reflects the complexity of its workload mix. We determined the workload mix for each contractor by calculating the proportion of its work by bill/claim type and medium for the October–January 1991 time period. Since each contractor has a percentage goal in FY 1992 for electronically transmitted claims, we adjusted the workload mixes to reflect achievement of the goals.

We developed the CI by identifying the contractor with the least complicated FY 1991 workload mix and therefore the lowest weighted unit cost. Each individual contractor's unit cost was divided by this contractor's unit cost to calculate its CI. The CI was multiplied by the contractor's actual FY 1990 workload volume in order to weight the workload for the appropriate level of complexity and to develop its Equivalency Work Units (EWUs).

In order to develop each contractor's final bottom-line unit cost for FY 1992, we divided its EWUs into its actual FY 1990 costs, adjusting for various savings and the postage increase. We then arrayed the contractors' unit costs per EWU and identified the contractor at the 70th Percentile. Each contractor with a unit cost per EWU higher than the 70th Percentile was held to this unit cost multiplied by the contractor's own CI. Each contractor at or below the 70th Percentile retained its own unit cost per EWU multiplied by its own CI. As a final step, we adjusted each Part B contractors' bottom-line unit cost to reflect the savings that we expect to realize as a result of several new HCFA policies to be implemented in FY 1992.

In their budget negotiations with the contractors, the ROs cannot exceed this bottom-line unit cost. The total FY 1992 budget (excluding Audit, PI and other) for each contractor will be established by multiplying the bottom-line unit cost by the contractor's projected workload volume. However, each RO is also responsible for allocating between its contractors the General Savings (as described in the BPRs) that we must realize to accommodate our budget limitations in FY 1992. Therefore, while the RO cannot exceed the bottom-line unit cost discussed above, it can adjust the unit costs downward at its discretion to realize the General Savings.

IV. FY 1992 National Medicare Contractor Budget: Standards, Data, and Methodology

After the President's FY 1992 Medicare contractor budget request was submitted to Congress in February 1991, we proceeded to develop budget and performance requirements to be issued to the contractors. These requirements outline the scope of work that intermediaries and carriers are expected to perform during the upcoming FY in each of the functional areas for which they are responsible.

In May 1991, the draft budget and performance requirements were issued to the ROs. Final individualized requirements were sent to each intermediary and carrier in early June to provide assistance in preparing their FY 1992 budget requests. The ROs added information pertinent to intermediaries and carriers within their own region. Intermediaries and carriers must submit their budget requests to HCFA no later than six weeks after the issuance of the budget performance requirements.

While intermediaries and carriers are preparing their budget requests, the Division of Contractor Financial Management within HCFA will develop preliminary budget allocations for the functional areas based upon historical patterns, workload growth/inflation assumptions, and any other available relevant information. Both central office and RO staff will review intermediary and carrier budget requests as they are submitted. RO staff will discuss the differences between the intermediary and carrier requests and the allocations derived by HCFA, and negotiate with each intermediary and carrier a final, mutually acceptable budget within the limits of the funding available to HCFA. The central office prepares a Financial Operating Plan (FOP) for each RO that provides total regional funding authority for each functional area. The ROs in turn prepare a Notice of Budget Approval (NOBA) for each intermediary and carrier that provides a full year budget plan subject to quarterly cash draw limitations.

A. Standards

The basic scope of work, along with new and special activities that intermediaries and carriers will be

expected to perform, are described in the budget and performance requirements package, which was distributed in draft form to the ROs in May 1991. Intermediaries and carriers are expected to perform the work as described in the budget and performance requirements package and in accordance with the standards included in the Contractor Performance Evaluation Program (CPEP) for FY 1992. For consideration in developing their initial budget requests, a draft copy of the CPEP standards was sent to contractors in May 1991. Final FY 1992 CPEP standards will be published in the Federal Register.

B. Data

In developing the individual intermediary and carrier budgets for FY 1992, we will utilize the following sources of data that contain various workload volumes, functional costs, and manpower information:

- Forms HCFA–1523/1524 (a multipurpose form which serves as the Budget Request, Notice of Budget Approval and Interim Expenditure Report);
- Forms HCFA–1523/1524A (Schedule of Productivity Investments and Other);
- Forms HCFA–1523/1524B (Schedule of Credits, EDP and Overhead);
- Forms HCFA–1523/1524C (Schedule of Appeals);
- Forms HCFA–1523/1524D (Schedule of MSP Costs);
- Forms HCFA–1523/1524E (Schedule of MR Costs);
- Forms HCFA–1525/1525B (Contractor Audit Settlement Report (CASR));
- Schedules A, B & C;
- Audit Priority Matrix;
- Crossover from CASR to Audit Priority Matrix;
- Provider Reimbursement Profile;
- Schedule of Providers Serviced;
- MSP Savings Report;
- MR/UR Savings Report;
- Form HCFA–2580 (Cost Classification Report);
- Form–3529 (Facilities and Occupancy Schedule);
- Forms HCFA–1565/1566 Carrier Performance Report/Intermediary Monthly Workload Report;
- HCFA Actuary's Workload Estimates;
- OMB's Economic Assumptions of 3.9 Percent;
- Industrial Engineering Study;
- Savings from Prior Productivity Investments;
- New Legislation Costs;
- Regional Office Recommendations; and
- Contract Provisions.

C. Methodology

The Medicare contractor budget is built around the previously listed seven major functions performed by intermediaries for Part A and eight major functions performed by carriers for Part B. The FY 1992 budget is the first year in which we have developed a bottom-line unit cost for each individual contractor. However, each contractor's bottom-line unit cost associated with the Complexity Index described in section III.B of this preamble takes precedence over these various line item unit costs. The ROs cannot exceed these bottom-line unit costs in their budget negotiations with the contractors. The following narrative describes the methodology used to calculate individual line item costs. This methodology will be considered as general reference for contractors as they develop their FY 1992 budgets, and also to provide additional explanation in determining how certain costs and savings were determined. These individual line item costs should be viewed as tools to guide the ROs in their contractor negotiations.

1. Bills and Claims Payment

The individual intermediary and carrier workload levels for FY 1992 (subject to the national workload levels and approved funding) are determined by the ROs based upon regional forecasted totals that are derived from a statistical forecasting model. We are also projecting the number of bills/claims an intermediary and carrier expect to have pending at the end of the FY 1991 using the same data. We then combine the FY 1992 receipt estimate with the anticipated end of FY 1991 pending level, and subtract the estimated FY 1992 pending for each intermediary and carrier to establish a processed workload (i.e., Estimated FY 1992 receipts + Estimated end of FY 1991 pending—Estimated end of FY 1992 pending = Estimated FY 1992 Processed Workload).

In order to price individual contractor bills/claims workloads, we develop a unit cost that is the cost of processing a single bill/claim. The individual intermediary and carrier unit costs for FY 1992 are calculated based upon unit costs (line 1 of the FY 1990 Final Administrative Cost Proposal). The calculations include increases to recognize the cost of new legislation, and 3.9 percent for price inflation. Reductions associated with the application of the IE study and savings achieved from the Common Working File and other prior PIs will also be part of the formula employed in computing FY 1992 target unit costs. The ROs will negotiate with intermediaries and carriers to resolve any differences within the limits of the funding available to HCFA.

2. Reconsiderations (Reviews Under Part B) and Hearings

We will allocate funding based on the amount of dollars spent (line 2 of HCFA–1523/1524) in the prior years, adjusted for inflation and volume. Specifically, we will adjust the previous year's costs for reconsiderations and hearings by the percentage change in inflation, which for FY 1992 is a 3.9 percent increase (a rate that reflects productivity gains generally for the economy, but which may cause over/understatement of costs depending on the productivity efficiencies experienced by the individual contractors), and for the percentage change in workload. We have revised Forms HCFA–1523/1524C to allow us to capture more discrete workload and cost data.

We will use these data to develop budgeted costs for reconsiderations and hearings as we do for bills payment and claims payment costs, that is, forecasted processed volume times unit cost. The individual intermediary and carrier budget allocations for reconsiderations, reviews, and hearings are determined by using the old methodology. If sufficient reliable data are collected, then we may redetermine the allocations by multiplying anticipated workload levels in FY 1992 times the newly developed unit cost. We will consider the current pending workload and projected receipts for each intermediary and carrier.

The ROs will negotiate with intermediaries and carriers to resolve any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

3. Beneficiary/Provider Inquiries (Part B only)

In order to establish a budgeted amount for beneficiary and provider inquiries, the prior year's cost is adjusted for the percentage change in inflation, which for FY 1992 will be a 3.9 percent increase, as well as any projected workload increase or decrease. We also consider special conditions unique to specific carriers in negotiating the budget. We are now developing new reporting requirements that will allow us to capture more discrete workload and cost data. Until we have sufficient reliable data under the new reporting system, we will use the old budgeting methodology. We may

use the data to develop a budgeted cost for beneficiary/provider inquiries by multiplying forecasted processed volume times unit cost.

The ROs will negotiate with the carriers to resolve any differences between the HCFA allocations and carrier's requests, within the limits of the funding available to HCFA.

4. Provider Reimbursement (Part A only)

In determining individual intermediary budgets for reimbursement activities, we first calculated an FY 1991 unit cost using the funding included on the latest FY 1991 NOBA (HCFA 1523) and divided that amount by the workload reported on the Schedule of Providers Serviced (SPS) for the same period. The SPS is a listing of all the facilities serviced by the intermediary. This report offers a more detailed description of the providers because it identifies them by type, bed size, freestanding or provider-based, and whether they are paid on a periodic interim payment basis. The SPS is submitted with each initial budget request so that a part of the analysis is the comparison of the composition of the provider community serviced by the intermediary and any change reported between FYs.

The unit cost found by dividing the amount of the FY 1991 NOBA by the workload from the SPS for the same period forms the first of the "raw" data used to project the FY 1992 budget. This unit cost is increased by 3.9 percent, which is the rate of inflation provided to HCFA by OMB. This adjusted unit cost is then multiplied by the FY 1992 workload as reported on the SPS. The result is then adjusted based on a review of cost documentation of special initiatives.

In order to resolve major differences between the intermediary's budget request and the amount developed by the preceding approach, we analyze the reimbursement profile that is an addendum to the budget request. This profile shows the cost claimed by type of reimbursement activity (Interim Rate Determinations, Overpayment Recoupment, Consulting Services, etc.).

The ROs will negotiate with the intermediaries to resolve any differences between the HCFA allocations and the intermediaries' requests, within the limits of the funding available to HCFA.

5. Provider Audit (Part A only)

For FY 1992, the provider audit function is divided into three major activities: field audits, desk reviews, and settlements. The basic report on all audit analyses is based on the Contractor Auditing and Settlement Report (CASR) (HCFA–1525/1525A). This form provides a breakout of audit activities and costs by type of provider, and documents the savings incurred as a result of audit activity. Using this as a base, the desk review costs are developed by projecting the workload using the total count of providers serviced. (All cost reports must be desk reviewed.). The count of providers serviced is compared to the total shown on the Schedule of Providers Serviced for verification. We then multiply this count by the unit cost per desk review (developed for the fastest CASR for FY 1991) to determine the cost of handling the FY 1992 workload at the FY 1991 unit cost.

Settlement costs are based on the workload projected in the intermediary's budget request multiplied by the unit cost for settlements found in the most recent CASR for FY 1991. This will cost out the FY 1992 activity at the FY 1991 level of expenditure.

The overriding priority of all audit efforts is the special activities required by legislation. The second priority is that all cost reports be desk reviewed and, to the extent possible, settled. All of the above costs are adjusted for inflation, which for FY 1992 will be a 3.9 percent increase.

The ROs will negotiate with intermediaries to resolve any differences between the HCFA allocations and the intermediaries' requests, within the limits of the funding available to HCFA.

6. Medicare Secondary Payer (MSP)

We will extract data, including processed volumes, costs and program savings, from the HCFA–1523/1524D and the MSP Savings Report (HCFA–1563/1564) to determine MSP funding allocations. These reports will include IRS/SSA/HCFA data match costs, volumes, and savings. In allocating the FY 1992 MSP budget to individual intermediaries and carriers, we consider (1) estimated potential savings goals by category and by State (e.g., working aged and spousal working aged insurance, automobile, medical liability and no-fault insurance, end-stage renal disease, disability, and workers compensation); (2) the relationship of available funds to expected savings among contractors; and (3) staffing mix differences, levels of systems sophistication, and special tasks. The ROs will consider items (1), (2), and (3), of this paragraph when negotiating with intermediaries and carriers within the limits of the funding available to HCFA.

7. Medical Review/Utilization Review (MR/UR)

The individual intermediary and carrier MR/UR budgets for FY 1992 will be calculated in three segments: prepayment medical review, postpayment activities, and medical review policy development (carriers only). As part of the BPRs, we asked intermediaries and carriers to estimate (1) the number of bills/claims to be processed by bill types, and (2) the required funding. We will allocate to each contractor prepayment and postpayment medical review funding based upon the workload that an intermediary or carrier projects will be processed under the FY 1992 budget guidelines for medical review and the funds requested by the intermediary or carrier to perform the reviews. Carrier budgets for medical review policy development are based on levels of sophistication of carrier policy development and dissemination and the need for medical direction. The funding calculations for all MR/UR activities will include a 3.9 percent factor for price inflation where applicable.

The ROs will negotiate with intermediaries and carriers to resolve any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

8. Participating Physicians (Part B only)

In determining the individual carrier funding levels for the participating physician program for FY 1992, we considered the following factors: The number of physicians in the carrier's service area; the carrier's current participation rate; the carrier's recent performance in increasing its participation rate; the scope of work to be performed as outlined in the budget guidelines; and last year's cost experience. Since participating physicians are eligible for free electronic media claims (EMC) lines for billing, allowance has been made for these expenses. Carriers with lower participation rates will receive greater funding for MAAC violation monitoring and monitoring of nonparticipating physicians for compliance with elective surgery disclosure requirements.

Carrier monitoring funds are allocated based on the national percentage of nonparticipating physicians. All carriers will receive the same funding amount for reporting participation statistics. Our computations of the carriers' budgets for these activities will include an allowance for price inflation. The ROs will negotiate with the carriers to resove

any differences between the HCFA allocations and the carriers' requests, within the limits of the funding available to HCFA.

9. Productivity Investments

The costs of implementing legislation and new initiatives designed to improve the effectiveness and efficiency of Medicare program administration are referred to as Productivity Investments. Several allocation methodologies will be employed in calculating the Productivity Investment budgets for individual intermediaries and carriers. For those projects involving only single contractors or small groups of contractors, we will allocate funds based upon the specifications of the particular project. For those projects involving all intermediaries and/or carriers where the costs are driven by bill/claims volume, we will distribute the funding based upon our workload projections for each contractor. Finally, for those projects involving all intermediaries and/or carriers that require equal effort regardless of the contractor's size, we derived a standard allocation to be given to all contractors.

The ROs will negotiate with the intermediaries and carriers to resove any differences between the HCFA allocations and the contractors' requests, within the limits of the funding available to HCFA.

10. Professional Relations

In determining the individual carrier funding levels for the professional relations function for FY 1992, we considered the number of physicians and suppliers in the carrier's service area. Distribution of funds made available to HCFA for the performance of the professional relations function by carriers is made to each carrier based upon the ratio of physicians and suppliers in the carrier's service area to the national total of physicians and suppliers.

V. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any proposed notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of Unites States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Also, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Administrator certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, fiscal intermediaries and carriers are not considered to be small entities. Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice such as this that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice does not contain rules. Rather, the purpose of this notice is to fulfill our obligation under sections 1816(c) and 1842(c) of the Act, as amended by section 4035(a) of OBRA '87, to publish annually in the Federal Register the proposed data, standards and methodology to be used in establishing fiscal intermediary and carrier budgets. This information is to be published for public comment at least 90 days prior to the publication of the final data, standards and methodology to be used.

This proposed notice would not promulgate any rule or implement any policy, nor would it be a part of, or substitute for, any negotiations we intend to conduct with the intermediaries and carriers. Thus, this document would not produce a change either in contractor operations or on program activities. In addition, this proposed notice would not affect provider or supplier reimbursement rates or fees.

For these reasons, this notice does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this proposed notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

For these same reasons, we also have determined, and the Secretary certifies, that this proposed notice would not result in a significant impact on a substantial number of small entities and would not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

VI. Response to Comments

Because of the large volume of public comments that we usually receive on a proposed notice, we cannot acknowledge or respond to them individually. However, we will address all public comments received by the date specified in the "DATES" section of this preamble and will respond to the comments in our final notice.

(Sec. 1816 and 1842 of the Social Security Act (42 U.S.C. 1395h and 1395u))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program; No. 13.774, Medicare-Supplementary Medical Insurance.)

Dated: August 31, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-31292 Filed 12-31-91; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-020-92-5101-12-XJAA; U-64200]

Amended Record of Decision; Salt Lake District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of amended record of decision.

SUMMARY: The Bureau of Land Management, Salt Lake District Office has amended the Record of Decision of the Final Environmental Impact Statement for the USPCI Clive Incineration Facility, dated September 5, 1990, to include language as directed by the Interior Board of Land Appeals decision of September 13, 1991 (120 IBLA 347).

Further information can be obtained by contacting the District Manager, 2370 South 2300 West, Salt Lake City, Utah 84119.

Deane H. Zeller,

District Manager.

[FR Doc. 91-31269 Filed 12-31-91; 8:45 am]

BILLING CODE 4310-DQ-M

[UTU-65717]

Proposed Reinstatement of Terminated Oil and Gas Lease; UT

In accordance with title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a

petition for reinstatement of oil and gas lease UTU–65717 for lands in San Juan County, Utah, was timely filed and required rentals and royalties accruing from August 1, 1991, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease UTU–65717 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective August 1, 1991, subject to the original terms and conditions and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Minerals, Adjudication Section.

[FR Doc. 91–31268 Filed 12–31–91; 8:45 am]

BILLING CODE 4310–DQ–M

[CO–070–4333–13–241A]

Camping, Parking and Firearm Use Restriction Order for the North Hardscrabble Access Road

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Recreation use restriction.

SUMMARY: This order, issued under the authority of 43 CFR 8364.1, closes public lands along the North Hardscrabble Access Road to camping, parking and discharge of firearms. This order applies to public land administered by the Bureau within 300 ft. from the centerline of the North Hardscrabble Access Road, which includes portion of Eagle County Spring Creek Road, 102A, portion of the O.R.E.O. Subdivision road south of Road 102A, and portion of a BLM road. The affected land is located in Township 5 South, Range 85 West, Tract 80, also known as Lot 2 of the O.R.E.O. Subdivision, 6th Principal Meridian.

EFFECTIVE DATE: This closure shall be effective from the date of publication until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: The areas affected by this order will be posted with appropriate regulatory signs. The closures and restrictions are aimed at preventing sanitation and littering problems, protecting the safety of persons and property on private land adjacent to the public lands, and preventing resource damage from vehicle use on unimproved surfaces.

PENALTIES: Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Michael S. Mottice, Area Manager, Glenwood Springs Resource Area, 50629 Highway 6/24, P.O. Box 1009, Glenwood Springs, CO 81602; (303) 945–2341.

Rich Arcand,

Acting District Manager.

[FR Doc. 91–31176 Filed 12–31–91; 8:45 am]

BILLING CODE 4310–JB–M

[NV–940–02–4212–22]

Filing of Plats of Survey; NV

December 19, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management, (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6543.

SUPPLEMENTARY INFORMATION: 1. The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on December 5, 1991:

Mount Diablo Meridian, Nevada

T. 34 N., R. 31 E.—Dependent Resurvey
T. 34 N., R. 32 E.—Dependent Resurvey
T. 35 N., R. 32 E.—Dependent Resurvey
T. 34 N., R. 33 E.—Dependent Resurvey
T. 35 N., R. 33 E.—Dependent Resurvey
T. 35 N., R. 34 E.—Dependent Resurvey

2. The Plats of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada on February 14, 1992:

T. 34½ N., R. 32 E.—Original Survey
T. 35 N., R. 32½ E.—Original Survey
T. 35½ N., R. 33 E.—Original Survey
T. 34 N., R. 33½ E.—Original Survey

3. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described in paragraph 2 are hereby open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or prior to February 14, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

4. All the lands have been and continue to be open under the mining law.

5. These surveys were accepted September 30, 1991, and were executed to meet certain administrative needs of the Bureau of Land Management.

6. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Robert Steele,

Deputy State Director, Nevada.

[FR Doc. 91–31256 Filed 12–31–91; 8:45 am]

BILLING CODE 4310–HC–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–328]

Certain Bathtubs and Other Bathing Vessels and Materials Used Therein; Commission Determination Not to Review an Initial Determination Terminating the Investigation as to One Respondent on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 6) terminating the above-captioned investigation as to respondent Kaldewei GmbH & Co. on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Katherine M. Jones, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone 202–205–3097.

SUPPLEMENTARY INFORMATION: On November 8, 1991, complainant American Standard, Inc. and respondent Franz Kaldewei GmbH & Co. ("Kaldewei") filed a joint motion to terminate the investigation as to

Kaldewei on the basis of a proposed consent order, consent order agreement, and settlement agreement. On December 4, 1991, the presiding ALJ issued an ID (Order No. 6) terminating the investigation as to Kaldewei on the basis of the consent order. No petitions for review or agency or public comments were filed.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rules 210.53 and 211.21 (19 CFR 210.53 and 211.21, as amended).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: December 23, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–31297 Filed 12–31–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–276 Formal Enforcement Proceeding]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has instituted a formal enforcement proceeding relating to the cease and desist order issued on March 16, 1989, at the conclusion of the above-capitioned investigation.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C 1337) and in § 211.56(c) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 211.56(c).

On March 16, 1989, the Commission issued its final determination in the investigation. The Commission determined that there was a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the unlicensed importation and sale of certain erasable programmable read only memories (EPROMs) by, *inter alia*, respondent Atmel Corp. (Atmel). The Commission determined that a limited exclusion order and six cease and desist orders were the appropriate remedy. One of the cease and desist orders was issued to Atmel. The Commission's determination and orders became final on May 22, 1989, the President having determined to take no action with respect to the Commission's determination and orders.

On July 11, 1989, complainant Intel Corp. (Intel) filed a request for a formal enforcement proceeding against Atmel and Jack Peckham, Atmel's Vice President of Sales. On the basis of that request, the Commission instituted and conducted a formal enforcement proceeding.

On December 24, 1990, Intel filed a second request for a formal enforcement proceeding against Atmel. Intel's second request alleges violations occurring subsequent to the period at issue in the first enforcement proceeding.

The Commission having examined the request for a formal enforcement proceeding filed by Intel, and having found that the request complies with the requirements for institution of a formal enforcement proceeding, determined to institute a formal enforcement proceeding.

Copies of the Commission's Order and all other nonconfidential documents filed in connection with this formal enforcement proceeding are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Issued: December 23, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–31295 Filed 12–31–91; 8:45 am]

BILLING CODE 7020–02–M

[Inv. Nos. TA–131–18, 503(a)–23, and 332–319]

Probable Economic Effect of Adding Certain Products to the List of Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: On December 16, 1991, the Commission received a request from the U.S. Trade Representative (USTR) requesting certain Commission advice under sections 131, 503, and 504 of the Trade Act of 1974 and section 332(g) of the Tariff Act of 1930. The request was made following publication; by the Trade Policy Staff Committee (TSPC), in the **Federal Register** on August 8, 1991 (56 FR 37758), of notice of the acceptance of product petitions from the Governments of Czechoslovakia, Hungary, Poland, and Yugoslavia to add products to the list of articles eligible for duty-free treatment under the Generalized System of Preferences (GSP). According to USTR, modifications to the GSP which may result from this review will be announced on or about April 1, 1992, and become effective on or about May 1, 1992.

Following receipt of that request, the Commission instituted investigation Nos. TA–131–18, 503(a)–23, and 322–319 in order to provide advice, as requested by USTR—

(1) Pursuant to sections 131(b) and 503(a) of the Trade Act of 1974 (19 U.S.C. 2151(b) and 2463(a)), with respect to each article listed in the attached Annex, as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties under the Generalized System of Preferences (GSP); and

(2) Pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), in accordance with section 504(d) of the Trade Act of 1974, which exempts from one of the competitive need limits in section 504(c) of the Trade Act of 1974 articles for which no like or directly competitive article was being produced in the United States on January 3, 1985, with respect to whether products like or directly competitive with the articles in the attached Annex were being produced in the United States on January 3, 1985.

In providing its advice under (1), the Commission will assume, as requested by USTR, that the benefits of the GSP would not apply to imports that would

be excluded from receiving such benefits by virtue of the competitive need limits specified in section 504(c)(1) of the Trade Act of 1974.

As requested by USTR, the Commission will seek to provide its advice not later than March 9, 1992.

EFFECTIVE DATE: December 23, 1991

FOR FURTHER INFORMATION CONTACT:

(1) Agricultural products, Mr. J. Fred Warren (202–205–3311)
(2) Textiles and apparel, Ms. Linda Shelton (202–205–3457)
(3) Chemical products, Mr. Edward Matusik (202–205–3356)
(4) Minerals and metals, Ms. Deborah McNay (202–205–3425)
(5) Machinery and equipment, Mr. John Cutchin (202–205–3396)
(6) General manufactures, Mr. Dennis Luther (202–205–3497)

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–205–3091.

PUBLIC HEARING: A public hearing in connection with this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on January 14, 1992. All persons will have the right to appear by counsel or in person, to present testimony, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, no later than noon, January 6, 1992. Persons testifying at the hearing are encouraged to file prehearing briefs or statements; the deadline for filing such briefs or statements (a signed original and 14 copies) is January 8, 1992; and the deadline for filing posthearing briefs or statements is January 24, 1992. In the event that no requests to appear at the hearing are received by noon on January 6, 1992, the hearing will be cancelled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1808) after January 8, 1992 to determine whether the hearing will be held. Any confidential business information included in such briefs or statements or to be submitted at the hearing must be submitted in accordance with the procedures set forth in § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

WRITTEN SUBMISSIONS: In lieu of or in addition to participating in the hearing, interested persons are invited to submit written statements concerning the matters to be addressed in the investigation. Commercial or financial information that a party desires the Commission to treat as confidential must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6)—that is, it must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. (Generally, submission of separate confidential and public versions of the submission would be appropriate.) All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements and posthearing briefs should be submitted to the Commission at the earliest practical date and should be received no later than January 24, 1992. All submissions should be addressed to the Secretary to the Commission at the Commission's Office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Attachment.

Issued: December 26, 1991.

Annex I (HTS Subheadings) [1]

Petitions to add products to the list of eligible articles for the Generalized System of Preferences.

0210.12.00	2921.59.20	2939.40.50(pt)
0406.90.3040	2922.30.20(pt)	2941.40.00
0712.90.75	2922.30.30(pt)	3204.12.50(pt)
1210.10.00	2922.49.20(pt)	3204.15.50(pt)
1602.49.40	2922.50.15(pt)	3204.20.10
1602.50.20	2924.21.30(pt)	3204.20.50
2003.10.00	2925.20.30(pt)	3812.10.10
2009.60.0060	2926.90.10(pt)	3812.30.40
2204.10.00	2926.90.35(pt)	3822.00.50
2204.21.40	2926.90.40(pt)	3912.20.00
2204.21.40(pt)	2930.90.20(pt)	5404 10.20
2204.21.80	2932.29.40(pt)	6911.10 10
2204.21.80(pt)	2933.39.35(pt)	6012.00.35
2208.20.50	2933.40.25(pt)	6912.00.39
2902.90.50(pt)	2933.40.50(pt)	6912.00.45
2904.10.20(pt)	2933.51.50(pt)	6912.00.48
2904.10.30(pt)	2933.59.26(pt)	7013.21.20
2904.90.35	2933.90.27(pt)	7013.21 30
2907.15.50(pt)	2933.90.32(pt)	7013.31 30
2907.23.00	2934.30.10(pt)	7318.15.80
2908.20.10(pt)	2934.30.20(pt)	8112.91 10
2908.20.50(pt)	2934.90.45(pt)	8482 10.50
2908.90.20(pt)	2935.00.35(pt)	8482.30.00
2914.49.10(pt)	2935.00.46(pt)	8482.40.00
2914.61.00	2936.26.00	8482.50.00
2915.90.15(pt)	2937.92.30(pt)	8482.80.00
2916.39.60(pt)	2937.99.10(pt)	9105 19 10
2917 19.10	2937.99.50(pt)	9105 19.40
2918.21.50	2939.10.20(pt)	9404.30.80
2918.29.50(pt)	2939.40.10	9609 10.00
2921 42 70(pt)	2939.40.50	

[1] See USTR **Federal Register** notice of December 18, 1991 (56 FR 65750) for article descriptions

[FR Doc. 91–31294 Filed 12–31–91 8:45 am]

BILLING CODE 7020–02–M

Investigation No. 731–TA–539 (Preliminary); Uranium From the U.S.S.R.

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the U.S.S.R.[3] of uranium,[4] provided for in subheadings 2612.10.00, 2844 10.10, 2844.10.20, 2844.10.50, and 2844.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 8, 1991, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of the Ad Hoc Committee of Domestic Uranium Producers and the Oil, Chemical and Atomic Workers International Union, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of uranium from the U.S.S.R. Accordingly, effective November 8, 1991 the Commission instituted antidumping investigation No. 731–TA–539 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 19, 1991

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Crawford, Nuzum, and Watson not participating.

[3] Purposes of this investigation, the U.S.S.R. includes each and every Republic that was a member of the U.S.S.R. on November 8, 1991

[4] The product covered by this investigation is uranium from the U.S.S.R. This includes natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U^{235} and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U^{235} or compounds of uranium enriched in U^{235}.

(56 FR 58397). The conference was held in Washington, DC, on December 3, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 23, 1991. The views of the Commission are contained in USITC Publication 2471 (December 1991), entitled "Uranium from the U.S.S.R.: Determination of the Commission in Investigation No. 731–TA–539 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: December 23, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–31296 Filed 12–31–91, 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), and Department of Justice regulations, 28 CFR 50.7, notice is hereby given that on November 18, 1991, a proposed Consent Decree ("Decree") in *United States* v. *Acolor Company, et al.*, No. 1:91–CV–972. was lodged with the United States District Court for the Western District of Michigan.

The United States filed this action pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), at the request of the United States Environmental Protection Agency ("U.S. EPA"). The complaint seeks to recover past response costs incurred by the United States responding to the release or threatened release of hazardous substances, at the Auto-Ion Chemicals Co., Inc. Site, located in Kalamazoo, Michigan.

Under the proposed Decree, twenty (20) Settling Defendants have agreed to pay the Hazardous Substance Superfund ("Superfund") $225,000, plus interest from October 15, 1991 until the date of payment. In addition, the United States, on behalf of the United States Department of the Navy, will transfer $35,000 to the Superfund.

The Department of Justice will receive comments relating to the proposed Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. All comments should refer to *United States* v. *Acolor Company, et al.*, DJ Ref. #90–11–2–479A.

The proposed Decree may be examined at the following offices: (1) The United States Attorney, 399 Federal Building, Grand Rapids, Michigan 49503; (2) the United States Environmental Protection Agency, 111 West Jackson Street, Chicago, Illinois 60604; (3) the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004 (202–347–2072). A copy of the proposed Decree may be obtained in person or by mail from the Document Center.

Any request for a copy of the Decree, not including Exhibits, should be accompanied by a check in the amount of $3.00 ($.25 per page) for copying costs. The check should be made payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 91–31255 Filed 12–31–91 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. The Carter Mining Company

[Docket No. M–91–117–C]

The Carter Mining Company, P.O. Box 3007, Gillette, Wyoming 82716–0607 has filed a petition to modify the application of 30 CFR 77.516 (electric wiring and equipment; installation and maintenance) to its Rawhide Mine (I.D. No. 48–00993) and its Caballo Mine (I.D. No. 48–01034) both located in Campbell County, Wyoming. The petitioner requests relief from the requirements of the National Electric Code for wiring of electric and diesel-powered surface excavation equipment.

2. D L & B Coal Company

[Docket No. M–91–118–C]

D L & B Coal Company, 306 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Little Diamond Slope (I.D. No. 36–08203) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) without safety catches to transport persons.

3. A.K.A. Coal Company

[Docket No. M–91–119–C]

A.K.A. Coal Company, Box 148, R.D. 1, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity and velocity) to its Diamond Slope (I.D. No. 36–07760) located in Schuylkill County, Pennsylvania. The petitioner requests a modification to require the minimum quantity of air reaching the working face be 1,500 cubic feet a minute (cfm), reaching the last open crosscut in any pair or set of developing entries be 5,000 cfm, and reaching the intake end of a pillar line be 5,000 cfm.

4. Brookside Coal Company

[Docket No. M–91–120–C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Four Foot Slope (I.D. No. 36–08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) without safety catches to transport persons.

5. Twentymile Coal Company

[Docket No. M–91–121–C]

Twentymile Coal Company, 9100 East Minerals Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner proposes to use a low-level carbon monoxide detection system to monitor electrical equipment instead of ventilating the equipment into the return.

6. Twentymile Coal Company

[Docket No. M–91–122–C]

Twentymile Coal Company, 9100 East Minerals Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.326 (aircourse and belt haulage entries) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner proposes to use the air in the belt entry to ventilate active working places and planned longwall retreat panels, and install a low-level carbon monoxide detection system in all belt entries used as intake aircourses.

7. Twentymile Coal Company

[Docket No. M–91–123–C]

Twentymile Coal Company, 9100 Minerals Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (automatic fire sensor and warning device system; installation; minimum requirements) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner proposes to use the air in the belt entry to ventilate active working places and planned panels, and install a low-level carbon monoxide detection system in all belt entries used as intake aircourses.

8. Island Creek Coal Company

[Docket No. M–91–124–C]

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575–1430 has filed a petition to modify the application of 30 CFR 77.216–5 (water, sediment, or slurry impoundment structures; general) to its Fies No. 14 Mine (I.D. No. 15–16546) located in Hopkins County, Kentucky. The petitioner requests a modification to allow an experimental practice of converting an abandoned slurry impoundment into a wetlands area.

9. Peak Mountain Coal Company

[Docket No. M–91–125–C]

Peak Mountain Coal Company, 244 Daniel Boone Drive, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 1 Mine (I.D. No. 15–17072) located in Whitley County, Kentucky. The petitioner proposes to use a hand-held continuous-duty methane and oxygen indicator instead of a machine mounted methane monitor on permissible three wheel tractors with drag bottom buckets.

10. Consolidated Coal Company

[Docket No. M–91–126–C]

Consolidated Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Robinson Run 95 Mine (I.D. No. 46–01318) located in Harrison County, West Virginia. The petitioner proposes to enclose electric equipment in a monitored fireproof structure instead of ventilating the equipment to the return.

11. Pyro Mining Company

[Docket No. M–91–127–C]

Pyro Mining Company, P.O. Box 289, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (automatic fire sensor and warning device system; installation; minimum requirements) to its Baker Mine (I.D. No. 15–14492); and its Pyro No. 9 Wheatcroft Mine (I.D. No. 15–13920) both located in Webster County, Kentucky. The petitioner requests to amend its petition to consolidate and include the provisions of the Pyro No. 11 Mine, (I.D. No. 15–10339), docket number M–86–38–C; and Pyro No. 9 Slope, William Station Mine, (I.D. No. 15–13881), docket number M–89–134–C into the Pyro No. 9 Wheatcroft Mine.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 3, 1992.

Copies of these petition are available for inspection at that address.

Dated: December 23, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91–31291 Filed 12–31–91; 8:45 am]

BILLING CODE 4510–43–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–374]

Commonwealth Edison Co.; LaSalle County Nuclear Power Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of appendix J to 10 CFR part 50 issued to Commonwealth Edison Company (the licensee), for the LaSalle County Nuclear Power Station, Unit 2, located in Brookefield Township, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would grant a one-time relief from the schedular requirements of section III.A.6(b) of appendix J to 10 CFR part 50, which requires the licensee to perform a Type A test every outage until two consecutive tests meet the acceptance criteria. The increased test frequency is required as a result of test failures in 1987 and 1990. The requested exemption would allow the licensee to resume its normal retest schedule in accordance with section III.D. of appendix J to 10 CFR part 50.

The proposed action is in accordance with the licensee's request for exemption dated October 11, 1991.

The Need for the Proposed Action

The proposed exemption would allow a one-time relief from performing a Type A test during the upcoming refueling outage and would enable the LaSalle County Station, Unit 2, to resume the normal retest schedule specified in section III.D. of 10 CFR part 50, appendix J. The proposed exemption is needed to avoid unnecessary pressurization of the containment to perform a Type A test, as other measures proposed or implemented by the licensee will more effectively focus corrective actions on the previously identified sources of significant containment leakage. For the last two Type A tests conducted by the licensee, leakage from the Traversing Incore Probe Air Purge Supply, the Residual Heat Removal Shutdown Cooling Return, the Hydrogen Recombiner Suppression Pool Discharge, and the Reactor Water Cleanup Section Valves has been the major contributor to the total measured containment leakage rate. The licensee has developed extensive corrective action plans to improve the performance of these valves and other valves which have been identified as being of concern to the licensee and the staff. Therefore, the license has requested a one-time exemption from the schedular requirements of section III.A.6.(b) of appendix J to 10 CFR part 50.

Environmental Impacts of the Proposed Action

The proposed exemption would allow a one-time relief from the schedular requirements to perform a Type A test every outage until two consecutive tests meet the acceptance criteria. Although the last two Type A tests were failures due to excessive leakage from specific valves, the tests have demonstrated that there has been no significant degradation of containment integrity over the last three operating cycles. The licensee has implemented extensive corrective action plans to reduce the leakage from the identified valves.

Therefore, the Commission's staff has determined that granting the proposed exemption would not significantly increase the probability or amount of expected containment leakage and that containment integrity would be maintained. Consequently, the probability of accidents would not be

increased, the post-accident radiological releases would not be greater than previously determined, nor would the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission's staff concludes that there are not significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves a change to surveillance and testing requirements. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed action, any alternatives would have either no or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to the facility but would result in the expenditure of resources and increased radiation exposures without any compensating benefits.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the LaSalle County Nuclear Station," dated November 1978.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated October 11, 1991, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 20th day of December 1991.

For the Nuclear Regulatory Commission.

Richard J. Barrett,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–31284 Filed 12–31–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–602]

University of Texas Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the latest construction completion date specified in Construction Permit No. CPRR–123 issued to the University of Texas (UT or the applicant) for the TRIGA Mark II Research Reactor. The facility is located on the applicant's site at the University of Texas Balcones Research Center in Austin, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action would extend the latest construction completion date of Construction Permit No. CPRR–123 to March 31, 1992. The proposed action is in response to the applicant's request dated September 24, 1991. The applicant requested an extension until December 31, 1991. The NRC staff is extending the latest construction completion date to March 31, 1992, to allow for completion of the license issuance review.

The Need for the Proposed Action

The proposed action is needed to allow time for the NRC staff to complete review of the documentation required to support issuance of the Facility Operating License.

Environmental Impact of the Proposed Action

Since the proposed action involves extending the construction permit, there are no radiological impacts associated with this action. The impacts that are involved are all non-radiological and are associated with continued construction. The impact of construction was evaluated in the Environmental Assessment prepared as part of the NRC staff's review dated May 13, 1985, of the UT construction permit application.

Based on the foregoing, the NRC staff concludes that the proposed extension of the construction permit would have no significant environmental impact.

Alternatives Considered

Since we have concluded that there is no significant environmental impact associated with this construction permit extension, any alternatives will either have no significant impact or greater impact than the proposed action.

A possible alternative to the proposed action would be to deny the request. Under this alternative, the applicant would not be able to complete construction of the facility. This would result in denial of the benefit of research, education, and training. This option would not eliminate the environmental impacts of construction already incurred.

If construction were halted and not completed, site redress activities would restore small areas to their original state. This would be a slight environmental benefit, but much outweighed by the educational and economic losses from denial use of a facility that is nearly completed. Therefore, this alternative is rejected.

Another alternative is to take no action on the request for extension. The construction permit would not be deemed to have expired until the application has been finally processed (10 CFR 2.109). In effect the construction permit could be in effect as long as no action was taken on a timely application for extension. To take no action on the applicant's request would not be responsive; therefore, this alternative is rejected.

Alternative Use of Resources

This action does not involve the use of resources other than those evaluated in the Environmental Assessment prepared as part of the NRC staff's review dated May 13, 1985, of the UT construction permit application.

Agencies and Persons Consulted

The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension dated September 24, 1991, which is available for public inspection at the Commission's Public Document Room,

the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 24th day of December 1991.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91-31283 Filed 12-31-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on January 9-11, 1992, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on November 25, 1991.

Thursday, January 9, 1992

8:30 a.m.-8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

8:45 a.m.-10:45 a.m.: Integral Systems Testing for the Westinghouse AP-600 Nuclear Plant (Open/Closed)—The Committee will review and report on integral systems testing requirements to support design certification of the Westinghouse AP-600 nuclear plant in accordance with 10 CFR part 52. Representatives of the NRC staff and the Westinghouse Electric Corporation will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this project.

11 a.m.-12 Noon: Meeting with Director, NRC Office of Nuclear Reactor Regulation (Open)—The Committee will meet with Dr. Thomas E. Murley, Director, NRR, to discuss items of mutual interest, including the ACRS-NRR staff working interface.

1 p.m.-3 p.m.: Design Acceptance Criteria for Certification of Nuclear Power Plants (Open/Closed)—The Committee will review and comment on proposed use of design acceptance criteria for certification of standardized nuclear power plant designs. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

3:15 p.m.-4:15 p.m.: NRC Metrication Policy (Open)—The Committee will review and comment on proposed NRC metrication policy (SECY-91-390 dated December 3, 1991) with respect to nuclear facility licensing and regulation. Representatives of the NRC staff will participate as appropriate.

4:15 p.m.-5:15 p.m.: Reconciliation of ACRS Comments/Recommendations (Open)—The Committee will discuss the replies received from the NRC Executive Director for Operations regarding reconciliation of ACRS comments and recommendations.

5:15 p.m.-6 p.m.: NRC Safety Research Program (Open)—The Committee will discuss the proposed ACRS annual report to the U.S. Congress on the NRC safety research program.

6 p.m.-6:45 p.m.: Anticipated ACRS Activities (Open)—The Committee will hear and discuss the report of the ACRS Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee, and anticipated activities of ACRS subcommittees, including control of nuclear power plant switchyard activities.

Friday, January 10, 1992

8:30 a.m.-11 a.m.: Proposed Commission Actions Related to Siting of Nuclear Power Plants (Open)—The Committee will review and report on draft SECY papers regarding (1) Proposed revision of 10 CFR part 100, Decoupling Siting from Design; (2) Proposed revision of TID-14844, Calculation of Distance Factors for Power and Test Reactor Sites (Updating the source term); (3) Proposed Site Characteristics to be used in 10 CFR part 100 Revision and the Definition of a Large Release; and (4) Proposed Definition of a Large Release in Accordance with the NRC Safety Goal Policy.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

11 a.m.-12:30 p.m.: Advanced Reactor Safety Features (Open)—The Committee will hear a briefing by and hold a discussion with an invited expert (Mr. Charles Forsberg, ORNL) regarding advanced reactor safety features and their impact on public acceptance of nuclear power as an energy option.

1:30 p.m.-3 p.m.: Design Acceptance Criteria for Certification of Nuclear Power Plants (Open/Closed)—Continue discussion regarding proposed use of design acceptance criteria for standardized nuclear power plant designs.

3:15 p.m.-4:45 p.m.: NRC Policy on Integrated Schedules (Open)—The Committee will hold a discussion with representatives of the NRC staff regarding the proposed NRC final policy statement on integrated schedules. Representatives of the nuclear industry will participate, as appropriate.

4:45 p.m.-6 p.m.: Preparation of ACRS Reports (Open)—The Committee will hold a round-table discussion of comments and recommendations to be included in ACRS reports to the NRC regarding items considered during this meeting.

6 p.m.-6:30 p.m.: Key Technical Issues Applicable to Future Nuclear Power Plants (Open)—The Committee will discuss proposed Action Plans for ACRS review and evaluation of key technical issues applicable to future nuclear power plants.

Saturday, January 11, 1992

8:30 a.m.-12 Noon: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting and items which were not completed at previous meetings, as time and availability of information permit.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed.

1 p.m.-1:45 p.m.: Conduct of ACRS Activities (Open)—The Committee will discuss items related to the conduct of ACRS activities, including a proposed press release calling for nomination of candidates for membership and a proposed amendment to the Federal Advisory Committee Act.

1:45 p.m.-2 p.m.: Appointment of New Members (Open/Closed)—The Committee will discuss qualifications of candidates proposed for Committee membership.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

2 p.m.-2:30 p.m.: Miscellaneous (Open)—The Committee will complete the discussion of items considered during this meeting and proposed Committee activities.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 1, 1991 (56 FR 49800). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the

Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matters being considered in accordance with 5 U.S.C. 552b(c)(4) and information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6). Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8 a.m. and 4:30 p.m.

Dated: December 26, 1991.

Samuel J. Chilk,

Acting Advisory Committee Management Officer.

[FR Doc. 91–31286 Filed 12–31–91; 8:45 am]

BILLING CODE 7590–01–M

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued NUREG–1435, Supplement 1, Status of Safety Issues at Licensed Power Plants. This document has been prepared to provide a comprehensive description of the implementation and verification status of all TMI Action Plan Requirements, Unresolved Safety Issues and Generic Safety Issues at licensed operating plants and to make this information available to other interested parties, including the public. Data contained in the document are presented as of September 30, 1991.

Copies of the Report have been placed in the NRC's Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555. Copies of the Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. GPO deposit account holders may charge their order by calling 202/275–7082. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 11th day of December 1991.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 91–31285 Filed 12–31–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Meeting of Federal Salary Council

AGENCY: United States Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: The Federal Salary Council will meet to discuss the organization and administration of the Council and to review issues relating to the new locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meetings will be open.

DATES: January 16, 1992, and January 30, 1992, beginning at 2 p.m.

ADDRESSES: Room 1350, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth O'Donnell, Chief of Salary Systems Division, room 6H31, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–001. Telephone number: (202) 606–2838.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of 5 U.S.C. 5304, the President established the Federal Salary Council by Executive Order 12764 to advise the President's Pay Agent on: (1) The establishment or modification of pay localities; (2) the coverage of the surveys conducted by the Bureau of Labor Statistics (including, but not limited to, the occupations, establishment sizes, and industries to be surveyed, and how pay localities are to be surveyed); (3) the process of comparing the rates of pay under the General Schedule with rates of pay for the same levels of work performed by non-Federal workers; and (4) the level of comparability payments that should be paid in order to eliminate or reduce pay disparities. This Council shall consist of nine members. The statute provides that three of the members be persons generally recognized for their impartiality, knowledge, and experience in the field of labor relations and pay policy; and that six of the members be representatives of employee organizations which represent substantial numbers of General Schedule employees. To date, the President has appointed eight of the nine members of the Federal Salary Council. The President's Pay Agent is providing for meetings of the Council. This notification announces the first two meetings. The agenda includes introduction, organization and administration of the Council, overview of FEPCA requirements, timetables for fulfilling statutory requirements, and opening discussions on recommendations for criteria to establish the geographic boundaries of pay localities.

For the President's Pay Agent.

Constance Berry Newman,

Director.

[FR Doc. 91–31320 Filed 12–31–91; 8:45 am]

BILLING CODE 6325–01–M

UNITED STATES INFORMATION AGENCY

Albanian Educational and Cultural Exchange Program

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a request for proposals from public and private nonprofit organizations in support of seven projects that have been initiated by E/P. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquires to the Office or submitting their proposals.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. EST on Friday, February 28, 1992. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked February 28, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline.

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ADDRESSES: The original and 15 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Office of the Executive Director (E/X), Attn: Citizen Exchanges—Albanian Exchange Program, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547. To facilitate the processing of your request, please include the name of the appropriate USIA Program Officer, as identified on each announcement, on all inquiries and correspondence.

SUPPLEMENTARY INFORMATION: The Office of Citizen Exchanges of the United States Information Agency (USIA) announces a program to encourage, through limited awards to nonprofit institutions, increased private sector commitment to and involvement in international exchanges. (All international participants will be nominated by USIS personnel overseas and selected by USIA). Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Awarding of any and all grants is contingent upon the availability of funds.

Summary of Albania Exchange Program Ideas

Background

Albania is one of Europe's smallest countries, with 10,629 square miles and a population of 3.2 million (two-thirds of whom live in rural areas). Since early 1990, Albania has witnessed significant democratic reforms and has taken steps to rejoin the international community after decades of self-imposed isolation. A coalition government dominated by noncommunists is in power, and efforts have been made to institute a market-oriented economy.

However, political instability, the severity of Albania's economic crisis, and turmoil in Yugoslavia which is the home for another 2.5 million ethnic Albanians, threaten Albania's transition from Communism. The quality of life in Albania, the lowest in Europe, has deteriorated further with large numbers of unprofitable enterprises on the verge of bankruptcy. Given Albania's struggle to become a more democratic and market-oriented nation and its need for information, training and infrastructure development, the United States Information Agency is developing a series of multi-faceted exchange programs to take place in Albania and the United States during the summer and fall of 1992.

I. Economic Reform

The Office of Citizen Exchanges proposes the development of a three-phase program of assessments, intensive workshops on macro-economic and mirco-economic theories and practice for Albanian professionals, and a study tour in the United States. Preliminary to the first set of workshops in Albania, the grantee institution will conduct a one week assessment tour in Albania for one or two of the program's key logistical administrators and scholars. This initial assessment will provide valuable information concerning the program's administrative and logistical requirements, and will provide the grantee institution with invaluable information so that it can tailor the subsequent workshops to meet the realities of Albania's economic transition.

Within a period of approximately two months, the grantee institution will develop and conduct an intensive two-week workshop in Tirana, or other suitable location, primarily on basic marco-economic terms, theories and practices for twenty to thirty Albanian professionals including senior Ministry officials, business and/or academic leaders. This workshop will also explore the role of public administration in establishing a supportive and fair environment for market-based economic development and trade. The program's key administrator should plan to remain in Tirana, sited at the University, for an additional month where he would lecture and continue to serve as an advisor to both the government and the University. This specialist could help organize marketing at the local level, help advise on privatizing trade, and help in providing substance to key economic laws concerning trade. The development of new curricula and instructional materials should be encouraged.

The third phase or follow-on program, a three week study tour in the U.S., will include six to eight carefully selected senior-level Ministry officials and education leaders from Albania, selected by Agency representatives in Albania. The program will focus on marco-economics and overall problems related to foreign trade, finance and the pursuit of comparative economic advantage. This program will also provide information concerning international economic organizations, private and public international assistance programs and their priorities. The development of these workshops will be the sole responsibility of the award winner. The approximate budget for this two-way exchange program is $75,000–$115,000.

II. Business Administration/ Management Training

The Office of Citizen Exchanges proposes the development of intensive courses and workshops in Albania and a follow-on program of internships in the U.S. The courses would introduce such topics as Western accounting practices, financial management and banking, research and marketing management, entrepreneurship and small business development, industrial relations, privatization, advertising, computers and telecommunications.

Program participants will include professors and instructors of business, senior business leaders, government officials or promising practitioners.

The first phase of this exchange program will include a one week assessment tour in Albania for the program's key administrators and scholars. This initial assessment will provide valuable information concerning the program's administrative and logistical requirements, and will provide the grantee institution with invaluable information so that it can tailor the subsequent workshops to meet the realities of Albania's economic transition.

Within a period of approximately two months, the grantee institution will develop and conduct a series of intensive workshops of varying duration (up to two-weeks) in Tirana, or other suitable location, on Macro-economics to include detailed discussions of basic business practices and concepts.

The final phase or follow-on consists of internships in the United States of two or three months duration for six to eight senior Albanian business leaders, who may have demonstrated particular competence as participants during the workshops in Albania. These internships with American small-business enterprises (and possibly applicable Federal or State Agencies) will provide first-hand observation of theories and concepts at work in the U.S. This multi-faceted program is budgeted with a USIA support of approximately $75,000 to $115,000.

III. Educational Reform

The Office of Citizen Exchanges proposes the development of a two-part exchange program which includes a three-week U.S. seminar/study tour for approximately six to eight secondary

school educators, University educators, and senior level education officials from Albania selected by USIS; and a series of intensive workshops and consultations in Albania. The project would expose these participants to the essential components of social science education in the U.S.; examine citizen participation in the democratic process at the federal, state and local levels; and examine the role of educators, school districts, professional associations, volunteer groups, textbook publishers and local communities in shaping social science curricula. This program would also have the collateral benefit of exposing Albanian educators and officials to the administration of American primary and secondary education systems.

The overall goal of this program is to open a dialogue which could produce a framework for developing social science education curricula in Albania.

The second phase of this program will include two-week workshops for other educators held in Albania with U.S. educators and community leaders working with recent alumni of the social science education study tour program in the United States. American consultants/instructors could also assist Albanian education officials and curriculum designers in an evaluation of their social science education program. These workshops will reach a wider audience of Albanian leaders who can learn of insights garnered from the U.S. study tour program. The program should also encourage long-term institutional linkages to promote professional development of educators, establishment of standards, exchange of instructional materials and syllabi, as well as other resources vital to the creation of an effective social science program. This multi-faceted program is budgeted with USIA support of approximately $75,000 to $115,000.

IV. Library Development

The Office of Citizen Exchanges proposes the development of a three-part Library Development and Management Program for Albanian librarians and library educators, selected by USIS. An initial exploratory trip of one week to Albania for two key U.S. academic scholars to refine this entire program is encouraged. An American university or professional association in library science and/or information services will then conduct a three-week workshop and study tour in the United States for six to eight Albanian library professionals. In Albania, there is no tradition of public lending-library development, nor of broad access to educational materials for students and the general public. It is critical in the development of its program in the United States, that the grantee institution demonstrates a keen awareness of Albanian needs and the status of information access and library/educational systems there.

The purpose of this U.S. study tour and intensive workshop program is to give Albanian educators a first-hand opportunity to examine the American library management system and its processes, including: collection, classification, management and delivery, information retrieval, indexing, material preservation and information technology. The program should include: Lectures and demonstrations by library science faculty and information system specialists; hands-on experience, site visits to local universities, public and corporate libraries, the Library of Congress and meetings with the USIA Books Program Division. Among the topics which might be addressed are: assessing needs; interpersonal skills for the library professional; networking; and the training of other librarians and interns. The grantee institution should be aware of the importance of not exposing the Albanian participants to information technologies that while useful are clearly beyond their fiscal reach.

The final phase of this program will include a team of U.S. experts visiting Albania for two or three weeks to assist in the implementation of a basic library management system and to provide other information for regional libraries and educational institutions. This workshop/training might become a prototype for further educational programs and the exchange of information, donation of books and other materials in support of library development throughout the country. This entire multi-faceted program is budgeted with USIA support of approximately $75,000 to $115,000.

Additional Program Development Recommendations

Competing grantee applicants should not provide proposals which are overly ambitious or superficial. Rather, institutions should provide strong evidence of their ability to accomplish a few tasks exceptionally well.

Applicants must include a detailed description of why their project is important, what their objectives or goals are, and how they will achieve those objectives through a carefully developed plan.

Applicants are encouraged to provide confirmation that Albanian cosponsors endorse their exchange program.

Proposals should explain how the U.S. and Albanian cosponsors will generate other leader and public support (fiscal, social and political) for their program. If possible, applicants should delineate resources that may be available to them in Albania and describe those resources the U.S. grantee institution will provide for this purpose. A central objective of this solicitation is the creation of enduring institutional linkages.

Institutions applying for assistance should not simply present a plan to replicate American institutions, but clearly demonstrate an understanding of Albanian needs, and how the U.S. experience is potentially relevant—if reconfigured—to meet those needs.

Applicants may also wish to use any of the following approaches to achieve their program objectives:

—The development of consortia, associations and information networks in the United States and in Albania which are likely to endure;
—Attention not only on reaching leaders and potential leaders, but also in providing appropriate training materials.
—The development and dissemination (overseas only) of books, newsletters, on-line data systems, and other appropriate communication technology (including desk-top publishing).

Other Logistical Considerations

Applicants should demonstrate their capability of handling the program independently, as USIS Post may be unable to provide logistcal support. Program monitoring and oversight will be provided by appropriate Agency elements. Per Diem support from host institutions during an internship component is strongly encouraged. However, for all programs which include internships, a non-profit grantee institution which receives funds from corporate or other cosponsors will then use those monies to provide food, lodging and pocket money for the participant. Internships should also have an American studies/values orientation component at the beginning of the exchange program in the U.S. Grantee institutions should try to maximize cost-sharing in all facets of their program design, and to stimulate U.S. private sector (foundation and corporate) support.

In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to accept or deny participants recommended by the program institution. The grantee institution should provide the names of American

participants to the Office of Citizen exchanges for information purposes.

The Government reserves the right to reject any or all applications received. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense.

Funding and Budget Requirements for all Submissions

Since USIA assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of support. Applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects. Those budgets including funds from other sources should provide firm evidence of the funds. The required format follows:

Line item	USIA support	Cost sharing	Total
Travel, per diem, etc.			
Total	$	$	$

Funding assistance is limited to project costs as defined in the Project Proposal Information Requirements (OMB #3116–0175, provided in application packet) with modest contributions to defray total administrative costs (salaries, benefits, other direct and indirect costs). USIA-funded administrative costs are limited to 22 (twenty-two) per cent of the total funds requested. The recipient institution may wish to cost-share any of these expenses.

Organizations with less than four years experience in conducting international exchange programs are limited to $60,000 of USIA support, and their budget submissions should not exceed this amount. (Awarding of any and all grants is contingent upon the availability of funds.)

Application Requirements

Application materials may be obtained by writing to: The Office of Citizen Exchanges (E/P), United States Information Agency, Attn: Albania Exchange Program, room 216, 301 4th Street, SW., Washington, DC 20547.

Attention: Program Officer—Sylvia Bosak (202–619–5319).

Inquiries concerning technical requirements are welcome.

Proposals must contain a narrative which includes a complete and detailed description of the proposed program activity as follows:

1. A brief statement of what the project is designed to accomplish; how it is consistent with the purposes of the USIA award program; and how it relates to USIA's mission.

2. A concise description of the project, including complete program schedules and proposed itineraries. Applicants may wish to submit a list of suggested participants for review by appropriate Agency officials.

3. A statement of what follow-up activities are proposed; how the project will be evaluated; what groups, beyond the direct participants, will benefit from the project and how they will benefit.

4. A detailed three-column budget.

5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Primary Covered and Lower Tier Covered Transactions, Forms IA–1279 and IA–1280.

6. Compliance with Office of Citizen Exchanges Additional Guidelines for Conferences (if applicable).

7. Compliance with Travel Guidelines for Organizations Inside and Outside Washington, DC (if and as applicable).

8. For proposals requesting $100,000 or more, Certification for Contracts, Grants and Cooperative Agreements, Form M/KG–13.

9. For proposals requesting $100,000 or more, Disclosure of Lobbying Activities (OMB #0348–0046).

Note: All required forms will be provided with the application packet.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

USIA will consider proposals based on the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.

2. *Institution Reputation/Ability/Evaluations:* Institutional recipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). Relevant evaluation results of previous projects are part of this assessment.

3. *Project Personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program.

4. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate expertise in the subject area which guarantees an effective sharing of information.

6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the institution will met the program's objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Cost-Effectiveness:* The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which insures that USIA supported programs are not isolated events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and

committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 1, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 27, 1991.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-31300 Filed 12-31-91; 8:45 am]
BILLING CODE 8230-01-M

Summer Institute for English Language Educators From South Africa and Namibia

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency requests proposals for a Summer Institute for English Language Educators from South Africa and Namibia. The general objective of the Summer Institute is to support and encourage the upgrading of secondary education for blacks in the field of English. There will be a particular emphasis on preparing disadvantaged students for university level work in English both in the secondary school and in bridging and academic support programs administered by tertiary level institutions.

Participants will be individuals involved with English teaching in black education and will be drawn from universities, teacher training institutions, secondary schools and the non-formal sector. USIA asks for detailed proposals from U.S. institutions of higher education which have an acknowledged reputation in the field of training teachers of English-as-a-Second Language (ESL), experience in providing academic support programs to disadvantaged students, special expertise in handling cross-cultural programs, and experience with South African and Namibian educators. Subject to availability of funds, one grant will be awarded to conduct a Summer Institute in 1992.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. e.s.t. by February 14, 1992. Faxed documents will not be accepted, nor will documents postmarked on February 14, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. The Summer Institute should be programmed to encompass about 45 days beginning on or about Friday, July 10, 1992, and ending on or about Saturday, August 22, 1992. Institutions may propose minor variations in beginning and ending dates to coincide with local academic calendars. The institution should explain why the date variation is proposed and demonstrate improvements in program quality and cost effectiveness that may be achieved thereby. No funds may be expended until a grant agreement is signed with USIA's Office of Contracts.

ADDRESSES: The original and 15 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: Summer Institute for English Language Educators from South Africa and Namibia, Office of the Executive Director, E/X, Room 357, 301 4th St., SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested institutions should contact Dr. Ellen S. Berelson at the U.S. Information Agency, Academic Exchange Programs Division, E/AEA, room 232, 301 4th St. SW., Washington, DC 20547, telephone (202) 619-5355, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION:

Overview

The Bureau of Educational and Cultural Affairs of the United States Information Agency requests proposals for a Summer Institute for English Language educators from South Africa and Namibia. The general objective of the Summer Institute is to support and encourage the upgrading of secondary education for blacks in the field of English.

There will be a particular emphasis on training educators to prepare disadvantaged students for university level work in English while still in secondary school and in bridging and academic support programs (ASP) administered by tertiary level institutions. In South Africa a bridging program is a first year university program that helps students make up for the deficiencies in their secondary school education so that they can perform at a satisfactory level at the university.

Academic support programs often continue throughout a student's university career providing help to those who continue to have academic problems. A majority if not all of the students in the bridging and academic support programs in South Africa are ESL students because their first language is not English.

Depending upon availability of funds, approximately 25 teachers from South Africa and Namibia will participate in the Institute. Participants will be individuals involved with English teaching in black education and will be drawn from universities, teacher training institutions, secondary schools and the non-formal sector.

USIA asks for detailed proposals from U.S. institutions of higher education which have an acknowledged reputation in the field of training teachers of English-as-a-Second Language (ESL) and in providing academic support programs (ASP) for disadvantaged students, special expertise in handling cross-cultural programs, and experience with South African and Namibian educators. Note: Applicant organizations should demonstrate a proven record (at least four years) of experience in international educational exchange.

Authority for this exchange is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The Fulbright Program seeks to increase mutual understanding between the people of the United States and people of other countries. Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Guidelines

Time Frame: The Summer Institute should be programmed to encompass about 45 days beginning on or about Friday, July 10, 1992, and ending on or about Saturday, August 22, 1992. Institutions may propose minor variations of no more than 10 days in beginning and ending dates to coincide with local academic calendars. Please explain why a variation in dates is proposed and show improvements in program quality and cost effectiveness that may be achieved thereby.

Proposed Budget: A comprehensive line item budget must be submitted with the proposal by the application deadline. Specific guidelines for budget preparation are avaialble in the application packet.

Eligibility of African Participants: Participants will be selected by the U.S. Information Agency. Minimum

qualification for all participants will be a two-year teacher training diploma beyond secondary school or its equivalent. Many participants will hold the equivalent of BA/BS degrees from their national education systems.

Few participants will have visited the United States previously. In view of this, an initial orientation to the university community and a brief introduction to U.S. Society and education should be considered an integral part of the Institute and should be held on the first two to three days of the program.

Program Description: The applicant is asked to design a two part program:

(a) A five-week academic program at the university with emphasis on methodology and teaching techniques in ESL which will meet the special needs of secondary and tertiary level ESL teachers, and teacher trainers from South Africa and Namibia. Two concurrent academic components within the same Institute should be designed: One for teachers involved in preparing students for university level work in English; and one for teacher trainers with responsibilities in supervision and staff training. The program should include a variety of formats such as discussion sessions, lectures, workshops, and practicums. Lengthy lectures should be kept at a minimum.

(b) A one-week escorted cultural and educational tour of Washington, DC at the end of the academic program, planned, arranged, and conducted by the Program Director and principal university staff. The tour should be seen as an integral part of the program, complementing and reinforcing the academic material. Programming in Washington, should include a half-day briefing session at the U.S. Information Agency. Proposals may include cultural and educational visits en route to Washington, if such stops contribute to program quality and are cost effective. The participants will return to their home countries at the conclusion of the Washington tour.

The academic program should provide time for interaction with American students, faculty, and the local community to improve the participants understanding of the United States. In this regard, the Institute should incorporate cultural features such as community and cultural activities, field trips to places of local interest, home stays with families in the area (with other educators if possible), and events which will bring the participants into contact with Americans from a variety of backgrounds.

Program Objectives: Specific areas to address in the Institute follow. The U.S. institution should plan to conduct either a pre-program needs assessment if time allows, or a needs assessment upon the arrival of the participants. The Institute Director should be prepared to adjust program emphasis as necessary to respond to participants' concerns. The program design should exhibit evidence of adaptability to the different needs of the two groups; that is, to teachers and to teacher trainers.

1. ESL teaching methodology in theory and practice. How to improve listening, speaking, writing and reading skills in advanced secondary and tertiary level students of English.

2. Improvement of pedagogical skills and of skills required for the development of appropriate curriculum and teacher-made materials.

3. Development of curriculum materials during the Institute which can be used in the participants' home country.

4. For teacher trainers: Enhancement of teacher training skills; evaluation and observation of classroom teachers; development of in-service training programs for teachers; designing and conducting workshops to train ESL teachers.

5. Development of supervisory skills in observation and evaluation of classroom teachers, training teachers to handle individual and small group needs in classes with fifty or more students.

6. Introduction to computer based word processing with emphasis on hands-on experience, if needed.

7. Visits to on-going ESL classes and academic support programs at the host institution, other universities, and in local educational or community centers, providing participants with opportunities to observe and practice ESL teaching skills.

8. Involvement of participants in American culture through community/cultural activities. This should include interaction with Americans from a variety of backgrounds.

9. On-going evaluation and adjustment of program components accordingly, as well as evaluation of the entire Institute.

Program Administration:

All Institute programming and administrative logistics, management of the academic program and the cultural tour, local travel, and on-site university arrangements, including enrolling participants as members of Teachers of English to Speakers of other Languages (TESOL) will be the responsibility of the Institute grantee. USIA will be responsible for all communications to and from the U.S. Information Service posts in South Africa and Namibia, which submit nominations to the Academic Exchange Programs Division and are responsible for all international travel. USIA will provide the university with participants' curriculum vitae and itineraries and be available to offer any advice or guidance the university may find useful.

The African participants will arrive directly at the campus site from their home countries. It is expected that the university program staff will make arrangements to have participants met upon arrival at the airport nearest the university campus. Departures will be from Washington, DC. The program staff will have to plan for transportation to Washington area airports.

The host institution is responsible for arrangements for lodging, food and maintenance for participants while at the host institution and in Washington. The host institution should strive to balance cost effectiveness in accommodations and meal plans with flexibility for differing diets and personal habits among the participants. Single rooms or housing in residential suites which offer privacy while at the university based Institute are preferable.

Application Requirements (Refer to Application Packet):

Proposals must be submitted within deadline and provide a detailed plan in response to the objectives and needs outlined above. Applicants should draw imaginatively on the full range of resources offered by their universities but may involve outstanding professionals from other universities or organizations. The overall quality and effectiveness of the Institute hinges upon good administrative and organizational competence to manage interactions between African educators and Americans.

The proposal package must include one original and fifteen copies. Each proposal must be presented as follows:

1. A completed and signed cover sheet for grant applications which will be provided in the application packet.

2. An abstract of the proposed Summer Institute not to exceed two double-spaced pages.

3. A narrative not to exceed twenty double-spaced pages. The detailed narrative should outline the structure and organization of Institute courses and must include a day-by-day agenda for classes and supplementary activities. Plans for lodging and meals should be discussed in this section. Also note plans to identify appropriate books and readings to be distributed to participants on arrival or to be sent to them upon their return home as follow-up to Institute themes. A plan for institutional

evaluation of the project should also be included.

4. A budget in the prescribed format outlining specific expenditures. Refer to the application packet for format.

5. Appendices must contain the following information:

a. Academic/professional resumes of program director(s), instructors, consultants, and program staff (not to exceed two double-spaced pages for each).

b. Evidence of the institution's activities in substantive academic ESL programs and academic support programs.

c. Demonstration of the institution's experience with similar international educational exchange projects.

6. Completed forms in support of the proposal. See application packet for the following forms: Bureau of Educational and Cultural Affairs Grant Application Cover Sheet; Assurance of Compliance; Certification Regarding Drug-Free Workplace Requirements; Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion; Disclosure of Lobbying Activities; and Designation of Congressional District.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, the budget and contracts offices and, as necessary, by the Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality, rigor, and appropriateness of proposed syllabus to the program objectives of the Institute.

2. Institutional capacity. Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic program.

3. Proposals should demonstrate potential for program excellence and/or track record of applicant institution. The Agency will consider the past performance of prior guarantees and the demonstrated potential of new applicants.

4. Evidence of the ability to be somewhat flexible in final program design in response to initial needs assessment of the specific program participants.

5. Evaluation plan. Proposals should provide a plan for evaluation by the grantee institution at the conclusion of the Summer Institute.

6. Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken.

7. Quality and depth of the cross-cultural program experience of the staff assigned to the Institute as well as their academic credentials.

8. Effective use of community and regional resources.

9. A well-thought-out and comprehensive cultural tour to complement the academic program.

10. Cost-effectiveness. Administrative components of the grant should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are biding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified on the results of the review process on or about May 1, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: December 20, 1991.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-31271 Filed 12-31-91; 8:45 am]

BILLING CODE 8230-01-M

Cultural Property Advisory Committee; Meetings

AGENCY: United States Information Agency.

ACTION: Notice of meeting of the Cultural Property Advisory Committee.

SUMMARY: The Cultural Property Advisory Committee will meet on Tuesday, January 14, 1992 from 9 a.m. to approximately 3 p.m., at USIA headquarters, 301 4th Street, SW., Conference Room 840, Washington, DC. The meeting's agenda will consist of the Committee's deliberation as to whether the United States should extend the import ban on pre-Hispanic archaeological material originating in El Salvador's Cara Sucia region. The emergency import ban imposed under the Convention on Cultural Property Implementation Act (Pub. L. 97-446) on September 11, 1987 expires on March 13, 1992.

The meeting of the Cultural Property Advisory Committee will be open to the public. Due to security requirements and limited space, persons wishing to attend should telephone (202) 619-6612 by 5 p.m. on Friday, January 10, 1992. A list of public attendees will be posted at the security desk of USIA headquarters in order to facilitate access to the meeting room.

Dated: December 26, 1991.

Eugene P. Kopp,

Deputy Director, U.S. Information Agency.

[FR Doc. 91-31301 Filed 12-31-91; 8:45 am]

BILLING CODE 8230-01-M

VOL
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ISS
1
JA
2
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UMI

Sunshine Act Meetings

Federal Register
Vol. 57, No. 1
Thursday, January 2, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 4-92; Notice of Meetings

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time, Subject Matter

Wed., January 22, 1992, at 10:30 a.m.
Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, DC on December 30, 1991.

Judith H. Lock,

Administrative Officer.

[FR Doc. 91-31328 Filed 12-31-91; 12:53 pm]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 30, 1991 and January 6, 13, and 20, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 30

There are no Commission meetings scheduled for the Week of December 30.

Week of January 6—Tentative

Friday, January 10

1:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 13—Tentative

Thursday, January 16

9:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)
2:30 p.m.
Periodic Briefing on EEO Program (Public Meeting)

Friday, January 17

10:00 a.m.
Briefing on Status of Implementation of Safety Goal Policy Statement (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Progress of Research in the Area of Organization and Management (Public Meeting)

Week of January 20—Tentative

Tuesday, January 21

1:30 p.m.
Briefing on Site Decommissioning Management Plan (Public Meeting)

Thursday, January 23

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETING CALL (RECORDING): (301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: Dated: December 27, 1991.

William H. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-31327 Filed 12-30-91; 11:02 am]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 57, No. 1
Thursday, January 2, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

[FE Docket No. 91-30-NG]

Wes Cana Marketing (U.S.) Inc.; Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

Correction

In notice document 91-23720 appearing on page 49890 in the issue of Wednesday, October 2, 1991, in the first column, in the file line at the end of the document, "FR Doc. 91-23750" should read "FR Doc. 91-23720".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Update to Official Staff Commentary

Correction

In rule document 91-7888, beginning on page 13751, in the issue of Thursday, April 4, 1991, make the following correction:

§ 226.9 [Corrected]

On page 13756, in the first column, in the sixth line, "§ 2265b(f)(3)(iii)," should read "§ 226.5b(f)(3)(iii),".

BILLING CODE 1505-01-D

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 932

[No. 91-559]

Eligibility and Financial Disclousure Requirements for Directors of the Federal Home Loan Banks

Correction

In the issue of Friday, November 22, 1991, on page 58964, in the second column, in the correction of rule document 91-26825, in the second line, "page 56920" should read "page 56929".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91D-0123]

Draft Guideline for Submitting Supporting Chemistry Documentation in Radiopharmaceutical Drug Applications; Availability

Correction

In notice document 91-30150, beginning on page 65737, in the issue of Wednesday, December 18, 1991, make the following corrections:

1. On page 65738, in the first column, in the second full paragraph, in the seventh line, "through" should read "though".

2. On the same page, in the same column, in the third full paragraph, in the fourth line, "Docket" should read "Dockets".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicare Program; Meetings of the Advisory Committee on Medicare-Physician Relationships

Correction

In notice document 91-25169 beginning on page 52272 in the issue of Friday, October 18, 1991, on page 52273, in the second column, in the file line at the end of the document, "FR Doc. 91-25166" should read "FR Doc. 91-25169".

BILLING CODE 1505-01-D

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities National Council; Meeting

Correction

In notice document 91-25167 appearing on page 52302 in the issue of Friday, October 18, 1991, in the second column, in the file line at the end of the document, "FR Doc. 91-25617" should read "FR Doc. 91-25167".

BILLING CODE 1505-01-D

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federal register

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Part II

Reader Aids

Cumulative List of Public Laws—First Session of the 102d Congress

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CUMULATIVE LIST OF PUBLIC LAWS

This is the cumulative list of public laws for the first session of the 102d Congress. The List of Public Laws will resume when bills are enacted into law during the second session of the 102d Congress, which convenes on January 3, 1992. Any comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408.

Public Law	Bill	Approval Date	105 Stat.	Title	Price
102-1	H.J. Res. 77	Jan. 14	3	Authorization for Use of Military Force Against Iraq Resolution	$1.00
102-2	H.R. 4	Jan. 30	5	To extend the time for performing certain acts under the internal revenue laws for individuals performing services as part of the Desert Shield Operation.	$1.00
102-3	H.R. 3	Feb. 6	7	Veterans' Compensation Amendments of 1991	$1.00
102-4	H.R. 556	Feb. 6	11	Agent Orange Act of 1991	$1.00
102-5	H.J. Res. 30	Feb. 15	21	To designate February 7, 1991, as "National Girls and Women in Sports Day"	$1.00
102-6	S.J. Res. 76	Mar. 1	23	Commending the Peace Corps and the current and former Peace Corps volunteers on the thirtieth anniversary of the establishment of the Peace Corps.	$1.00
102-7	S.J. Res. 51	Mar. 5	25	To designate the week beginning March 4, 1991, as "Federal Employees Recognition Week".	$1.00
102-8	S.J. Res. 55	Mar. 8	26	Commemorating the two hundredth anniversary of United States-Portuguese diplomatic relations.	$1.00
102-9	S.J. Res. 58	Mar. 11	28	To designate March 4, 1991, as "Vermont Bicentennial Day"	$1.00
102-10	S. 379	Mar. 12	29	National and Community Service Technical Amendments Act of 1991	$1.00
102-11	S.J. Res. 84	Mar. 12	33	Disapproving the action of the District of Columbia Council in approving the Schedule of Heights Amendment Act of 1990.	$1.00
102-12	H.R. 555	Mar. 18	34	Soldiers' and Sailors' Civil Relief Act Amendments of 1991	$1.00
102-13	H.J. Res. 98	Mar. 18	43	Designating March 4 through 10, 1991, as "National School Breakfast Week"	$1.00
102-14	H.J. Res. 104	Mar. 20	44	To designate March 26, 1991, as "Education Day, U.S.A."	$1.00
102-15	H.J. Res. 133	Mar. 21	46	Authorizing and requesting the President to designate the second full week in March 1991 as "National Employ the Older Worker Week".	$1.00
102-16	H.R. 180	Mar. 22	48	To amend title 38, United States Code, with respect to veterans education and employment programs, and for other purposes.	$1.00
102-17	H.J. Res. 167	Mar. 22	57	Designating June 14, 1991, and June 14, 1992, each as "Baltic Freedom Day"	$1.00
102-18	S. 419	Mar. 23	58	Resolution Trust Corporation Funding Act of 1991	$1.00
102-19	S.J. Res. 59	Mar. 25	67	Designating March 25, 1991, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy".	$1.00
102-20	H.R. 1176	Mar. 27	68	Foreign Relations Persian Gulf Conflict Emergency Supplemental Authorization Act, Fiscal Year 1991.	$1.00
102-21	H.R. 1284	Mar. 28	70	Emergency Supplemental Assistance for Israel Act of 1991	$1.00
102-22	H.R. 1316	Mar. 28	71	Performance Management and Recognition System Amendments of 1991	$1.00
102-23	S.J. Res. 53	Mar. 28	73	To designate April 9, 1991 and April 9, 1992, as "National Former Prisoner of War Recognition Day".	$1.00
102-24	S.J. Res. 83	Mar. 28	74	Entitled "National Day of Prayer and Thanksgiving"	$1.00
102-25	S. 725	Apr. 6	75	Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991	$1.50
102-26	H.R. 1285	Apr. 9	123	Higher Education Technical Amendments of 1991	$1.00
102-27	H.R. 1281	Apr. 10	130	Dire Emergency Supplemental Appropriations for Consequences of Operation Desert Shield/Desert Storm, Food Stamps, Unemployment Compensation Administration, Veterans Compensation and Pensions, and Other Urgent Needs Act of 1991.	$1.00
102-28	H.R. 1282	Apr. 10	161	Operation Desert Shield/Desert Storm Supplemental Appropriations Act, 1991	$1.00
102-29	H.J. Res. 222	Apr. 18	169	To provide for a settlement of the railroad labor-management disputes between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and certain of their employees.	$1.00
102-30	H.J. Res. 134	Apr. 18	172	To designate the weeks of April 14 through 21, 1991, and May 3 through 10, 1992, as "Jewish Heritage Week".	$1.00
102-31	H.J. Res. 197	Apr. 18	173	To designate the week of April 15 through 21, 1991, as "National Education First Week"	$1.00
102-32	S. 534	Apr. 23	175	To authorize the President to award a gold medal on behalf of the Congress to General H. Norman Schwarzkopf, and to provide for the production of bronze duplicates of such medal for sale to the public.	$1.00
102-33	S. 565	Apr. 23	177	To authorize the President to award a gold medal on behalf of the Congress to General Colin L. Powell, and to provide for the production of bronze duplicates of such medal for sale to the public.	$1.00
102-34	S.J. Res. 119	Apr. 23	179	To designate April 22, 1991, as "Earth Day" to promote the preservation of the global environment.	$1.00
102-35	S.J. Res. 16	Apr. 24	181	Designating the Week of April 21-27, 1991, as "National Crime Victims' Rights Week"	$1.00
102-36	H.J. Res. 218	Apr. 26	182	To designate the week beginning April 21, 1991, and the week beginning April 19, 1992, each as "National Organ and Tissue Donor Awareness Week".	$1.00
102-37	S.J. Res. 64	Apr. 26	183	To authorize the President to proclaim the last Friday of April 1991, as "National Arbor Day".	$1.00
102-38	S.J. Res. 98	May 3	184	To express appreciation for the benefit brought to the Nation by Amtrak during its twenty years of existence.	$1.00
102-39	S.J. Res. 102	May 3	186	Designating the second week in May 1991 as "National Tourism Week"	$1.00
102-40	H.R. 598	May 7	187	Department of Veterans Affairs Health-Care Personnel Act of 1991	$1.75
102-41	H.J. Res. 214	May 8	242	Recognizing the Astronauts Memorial at the John F. Kennedy Space Center as the national memorial to astronauts who die in the line of duty.	$1.00
102-42	H.J. Res. 173	May 14	243	To designate May 1991 and May 1992 as "Asian/Pacific American Heritage Month"	$1.00
102-43	H.J. Res. 194	May 14	244	Designating May 12, 1991, as "Infant Mortality Awareness Day"	$1.00
102-44	H.J. Res. 109	May 15	245	Designating each of the weeks beginning May 12, 1991, and May 10, 1992, as "Emergency Medical Services Week".	$1.00
102-45	H.R. 2122	May 17	247	Emergency Supplemental Persian Gulf Refugee Assistance Act of 1991	$1.00
102-46	S. 258	May 17	249	To correct an error in the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990.	$1.00
102-47	H.J. Res. 154	May 20	250	Designating the month of May 1991, as "National Foster Care Month"	$1.00

Public Law	Bill	Approval Date	105 Stat.	Title	Price
102-48	S.J. Res. 134	May 21	251	Designating May 22, 1991, as "National Desert Storm Reservists Day"	$1.00
102-49	S.J. Res. 127	May 22	253	To designate the month of May 1991, as "National Huntington's Disease Awareness Month".	$1.00
102-50	S. 248	May 24	254	Niobrara Scenic River Designation Act of 1991	$1.00
102-51	H.J. Res. 141	May 29	259	Designating the week beginning May 13, 1991, as "National Senior Nutrition Week"	$1.00
102-52	H.R. 2127	June 6	260	Rehabilitation Act Amendments of 1991	$1.00
102-53	H.R. 831	June 10	266	To designate the Owens Finance Station of the United States Postal Service in Cleveland, Ohio, as the "Jesse Owens Building of the United States Postal Service".	$1.00
102-54	H.R. 232	June 13	267	To amend title 38, United States Code, with respect to veterans programs for housing and memorial affairs, and for other purposes.	$1.00
102-55	H.R. 2251	June 13	290	Dire Emergency Supplemental Appropriations From Contributions of Foreign Governments And/Or Interest for Humanitarian Assistance to Refugees and Displaced Persons in and Around Iraq as a Result of the Recent Invasion of Kuwait and for Peacekeeping Activities and Other Urgent Needs Act of 1991.	$1.00
102-56	H.J. Res. 219	June 13	296	To designate the week beginning June 9, 1991, as "National Scleroderma Awareness Week".	$1.00
102-57	H.J. Res. 91	June 18	297	Designating June 10 through 16, 1991, as "Pediatric AIDS Awareness Week"	$1.00
102-58	H.R. 971	June 18	299	To designate the facility of the United States Postal Service located at 630 East 105th Street, Cleveland, Ohio, as the "Luke Easter Post Office".	$1.00
102-59	S. 483	June 18	300	Entitled the "Taconic Mountains Protection Act of 1991"	$1.00
102-60	S.J. Res. 111	June 18	302	Marking the seventy-fifth anniversary of chartering by Act of Congress of the Boy Scouts of America.	$1.00
102-61	S. 292	June 19	303	Saguaro National Monument Expansion Act of 1991	$1.00
102-62	S. 64	June 27	305	Education Council Act of 1991	$1.00
102-63	S.J. Res. 159	June 28	319	To designate the month of June 1991, as "National Forest System Month"	$1.00
102-64	S. 909	June 28	320	Semiconductor International Protection Extension Act of 1991	$1.00
102-65	H.R. 2332	July 2	322	To amend the Immigration Act of 1990 to extend for 4 months the application deadline for special temporary protected status for Salvadorans.	$1.00
102-66	H.J. Res. 259	July 2	323	Designating July 2, 1991, as "National Literacy Day"	$1.00
102-67	H.R. 749	July 9	325	To authorize the Secretary of the Interior to accept a donation of land for addition to the Ocmulgee National Monument in the State of Georgia.	$1.00
102-68	H.J. Res. 72	July 9	326	To designate December 7, 1991, as "National Pearl Harbor Remembrance Day"	$1.00
102-69	H.J. Res. 136	July 10	327	Designating the week beginning July 21, 1991, as "Lyme Disease Awareness Week"	$1.00
102-70	H.J. Res. 149	July 10	329	Designating March 1991 and March 1992 both as "Women's History Month"	$1.00
102-71	S. 674	July 10	330	To designate the building in Monterey, Tennessee, which houses the primary operations of the United States Postal Service as the "J.E. (Eddie) Russell Post Office Building", and for other purposes.	$1.00
102-72	H.J. Res. 255	July 23	331	Designating the week beginning July 21, 1991, as the "Korean War Veterans Remembrance Week".	$1.00
102-73	H.R. 751	July 25	333	National Literacy Act of 1991	$1.00
102-74	H.J. Res. 279	July 26	363	To declare it to be the policy of the United States that there should be a renewed and sustained commitment by the Federal Government and the American people to the importance of adult education.	$1.00
102-75	H.R. 427	July 26	365	To disclaim any interests of the United States in certain lands on San Juan Island, Washington, and for other purposes.	$1.00
102-76	H.R. 998	July 26	368	To designate the building in Vacherie, Louisiana, which houses the primary operations of the United States Postal Service as the "John Richard Haydel Post Office Building".	$1.00
102-77	H.R. 2347	July 26	369	To redesignate the Midland General Mail Facility in Midland, Texas, as the "Carl O. Hyde General Mail Facility", and for other purposes.	$1.00
102-78	S.J. Res. 121	Aug. 2	370	Designating September 12, 1991, as "National D.A.R.E. Day"	$1.00
102-79	H.J. Res. 181	Aug. 6	372	Designating the third Sunday of August of 1991 as "National Senior Citizens Day"	$1.00
102-80	S.J. Res. 40	Aug. 6	373	Designating the week beginning September 8, 1991, and the week beginning September 6, 1992, each as "National Historically Black Colleges Week".	$1.00
102-81	S.J. Res. 142	Aug. 6	374	To designate the week beginning July 28, 1991, as "National Juvenile Arthritis Awareness Week".	$1.00
102-82	H.R. 153	Aug. 6	375	To amend title 38, United States Code, to make miscellaneous administrative and technical improvements in the operation of the United States Court of Veterans Appeals, and for other purposes.	$1.00
102-83	H.R. 2525	Aug. 6	378	Department of Veterans Affairs Codification Act	$1.25
102-84	H.R. 1779	Aug. 10	411	To designate the Federal building being constructed at 77 West Jackson Boulevard in Chicago, Illinois, as the "Ralph H. Metcalfe Federal Building".	$1.00
102-85	S.J. Res. 179	Aug. 10	412	To designate the week beginning August 25, 1991, as "National Parks Week"	$1.00
102-86	H.R. 1047	Aug. 14	414	Veterans' Benefits Programs Improvement Act of 1991	$1.00
102-87	H.R. 1448	Aug. 14	427	To amend the Act of May 12, 1920 (41 Stat. 596), to allow the city of Pocatello, Idaho, to use certain lands for a correctional facility for women, and for other purposes.	$1.00
102-88	H.R. 1455	Aug. 14	429	Intelligence Authorization Act, Fiscal Year 1991	$1.00
102-89	H.R. 2031	Aug. 14	446	Rural Telephone Cooperative Associations ERISA Amendments Act of 1991	$1.00
102-90	H.R. 2506	Aug. 14	447	Legislative Branch Appropriations Act, 1992	$1.00
102-91	H.R. 2901	Aug. 14	472	To authorize the transfer by lease of 4 naval vessels to the Government of Greece	$1.00
102-92	H.J. Res. 166	Aug. 14	473	To designate September 13, 1991, as "Commodore John Barry Day"	$1.00
102-93	H.J. Res. 264	Aug. 14	475	Designating August 1, 1991, as "Helsinki Human Rights Day"	$1.00
102-94	H.J. Res. 309	Aug. 14	476	Designating August 29, 1991, as "National Sarcoidosis Awareness Day"	$1.00
102-95	S. 1593	Aug. 14	479	National Commission on Libraries and Information Science Act Amendments of 1991	$1.00
102-96	S. 1594	Aug. 14	481	Terry Beirn Community Based AIDS Research Initiative Act of 1991	$1.00
102-97	S.J. Res. 72	Aug. 14	483	To designate the week of September 15, 1991, through September 21, 1991, as "National Rehabilitation Week".	$1.00
102-98	H.R. 904	Aug. 17	485	African American History Landmark Theme Study Act	$1.00
102-99	H.R. 991	Aug. 17	487	Defense Production Act Extension and Amendments of 1991	$1.00
102-100	H.R. 1006	Aug. 17	491	Federal Maritime Commission Authorization Act of 1991	$1.00
102-101	H.R. 1143	Aug. 17	493	To authorize a study of nationally significant places in American labor history	$1.00
102-102	H.R. 2123	Aug. 17	495	District of Columbia Budgetary Efficiency Act of 1991	$1.00

Public Law	Bill	Approval Date	105 Stat.	Title	Price
102-103	H.R. 2313	Aug. 17	497	To amend the School Dropout Demonstration Assistance Act of 1988 to extend authorization of appropriations through fiscal year 1993, and for other purposes.	$1.00
102-104	H.R. 2427	Aug. 17	510	Energy and Water Development Appropriations Act, 1992	$1.00
102-105	H.R. 2968	Aug. 17	537	To waive the period of Congressional review for certain District of Columbia acts	$1.00
102-106	H.R. 2969	Aug. 17	539	District of Columbia Emergency Deficit Reduction Act of 1991	$1.00
102-107	H.R. 3201	Aug. 17	541	Emergency Unemployment Compensation Act of 1991	$1.00
102-108	S. 1608	Aug. 17	549	To make Technical Amendments to the Nutrition Information and Labeling Act, and for other purposes.	$1.00
102-109	H.J. Res. 332	Sept. 30	551	Making continuing appropriations for the fiscal year 1992, and for other purposes	$1.00
102-110	S. 296	Oct. 1	555	Armed Forces Immigration Adjustment Act of 1991	$1.00
102-111	H.R. 3291	Oct. 1	559	Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1992, and for other purposes.	$1.00
102-112	H.J. Res. 23	Oct. 3	576	To authorize the President to issue a proclamation designating each of the weeks beginning on November 24, 1991, and November 22, 1992, as "National Family Week".	$1.00
102-113	H.J. Res. 233	Oct. 3	577	Designating September 20, 1991, as "National POW/MIA Recognition Day", and authorizing display of the National League of Families POW/MIA flag.	$1.00
102-114	S.J. Res. 73	Oct. 3	579	Designating October 1991 as "National Domestic Violence Awareness Month"	$1.00
102-115	S.J. Res. 125	Oct. 3	581	To designate October 1991 as "Polish-American Heritage Month"	$1.00
102-116	S.J. Res. 126	Oct. 3	583	To designate the Second Sunday in October of 1991 as "National Children's Day"	$1.00
102-117	S.J. Res. 151	Oct. 3	585	To designate October 6, 1991, and October 6, 1992, as "German-American Day"	$1.00
102-118	S. 363	Oct. 4	586	To authorize the addition of 15 acres to Morristown National Historical Park	$1.00
102-119	S. 1106	Oct. 7	587	Individuals with Disabilities Education Act Amendments of 1991	$1.00
102-120	S.J. Res. 95	Oct. 7	609	Designating October 1991 as "National Breast Cancer Awareness Month"	$1.00
102-121	S.J. Res. 78	Oct. 8	611	To designate the month of November 1991 and 1992 as "National Hospice Month"	$1.00
102-122	S.J. Res. 156	Oct. 8	612	To designate the week of October 6, 1991, through October 12, 1991, as "Mental Illness Awareness Week".	$1.00
102-123	S.J. Res. 172	Oct. 9	614	To authorize and request the President to proclaim each of the months of November 1991 and 1992 as "National American Indian Heritage Month".	$1.00
102-124	S. 1773	Oct. 9	616	To extend until October 18, 1991, the legislative reinstatement of the power of Indian tribes to exercise criminal jurisdiction over Indians.	$1.00
102-125	H.J. Res. 189	Oct. 10	617	Designating October 8, 1991, as "National Firefighters Day"	$1.00
102-126	H.J. Res. 305	Oct. 10	618	To designate the month of October 1991, as "Country Music Month"	$1.00
102-127	S. 868	Oct. 10	619	Veterans' Educational Assistance Amendments of 1991	$1.00
102-128	S.J. Res. 132	Oct. 10	624	To designate the week of October 13, 1991, through October 19, 1991, as "National Radon Action Week".	$1.00
102-129	H.R. 2935	Oct. 15	625	To designate the building located at 6600 Lorain Avenue in Cleveland, Ohio, as the "Patrick J. Patton United States Post Office Building".	$1.00
102-130	H.R. 2387	Oct. 17	626	Striped Bass Act of 1991	$1.00
102-131	H.J. Res. 303	Oct. 17	628	To designate October 1991 as "Crime Prevention Month"	$1.00
102-132	H.R. 3259	Oct. 18	630	To authorize appropriations for drug abuse education and prevention programs relating to youth gangs and to runaway and homeless youth; and for other purposes.	$1.00
102-133	S.J. Res. 107	Oct. 18	632	To designate October 15, 1991, as "National Law Enforcement Memorial Dedication Day".	$1.00
102-134	H.J. Res. 230	Oct. 21	633	Designating October 16, 1991, and October 16, 1992, each as "World Food Day"	$1.00
102-135	H.R. 3280	Oct. 24	635	Decennial Census Improvement Act of 1991	$1.00
102-136	H.R. 2426	Oct. 25	637	Military Construction Appropriations Act, 1992	$1.00
102-137	H.R. 972	Oct. 28	646	To make permanent the legislative reinstatement, following the decision of Duro against Reina (58 U.S.L.W. 4643, May 29, 1990), of the power of Indian tribes to exercise criminal jurisdiction over Indians.	$1.00
102-138	H.R. 1415	Oct. 28	647	Foreign Relations Authorization Act, Fiscal Years 1992 and 1993	$2.75
102-139	H.R. 2519	Oct. 28	736	Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992.	$1.50
102-140	H.R. 2608	Oct. 28	782	Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1992.	$1.50
102-141	H.R. 2622	Oct. 28	834	Treasury, Postal Service and General Government Appropriations Act, 1992	$1.50
102-142	H.R. 2698	Oct. 28	878	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1992.	$1.25
102-143	H.R. 2942	Oct. 28	917	Department of Transportation and Related Agencies Appropriations Act, 1992	$1.50
102-144	H.J. Res. 340	Oct. 28	966	To designate October 19 through 27, 1991 as "National Red Ribbon Week for a Drug-Free America".	$1.00
102-145	H.J. Res. 360	Oct. 28	968	Making further continuing appropriations for the fiscal year 1992, and for other purposes	$1.00
102-146	S.J. Res. 131	Oct. 28	972	Designating October 1991 as "National Down Syndrome Awareness Month"	$1.00
102-147	S.J. Res. 192	Oct. 28	974	Designating October 30, 1991 as "Refugee Day"	$1.00
102-148	H.R. 470	Oct. 30	976	To authorize the Secretary of Transportation to release the restrictions, requirements, and conditions imposed in connection with the conveyance of certain lands to the city of Gary, Indiana.	$1.00
102-149	S.J. Res. 160	Oct. 30	978	Designating the week beginning October 20, 1991, as "World Population Awareness Week".	$1.00
102-150	H.R. 1720	Oct. 31	980	District of Columbia Mental Health Program Assistance Act of 1991	$1.00
102-151	S. 1823	Nov. 5	983	To amend the Veterans' Benefit and Services Act of 1988 to authorize the Department of Veterans Affairs to use for the operation and maintenance of the National Memorial Cemetery of Arizona funds appropriated during fiscal year 1992 for the National Cemetery System.	$1.00
102-152	H.R. 1046	Nov. 12	985	Veterans' Compensation Rate Amendments of 1991	$1.00
102-153	H.J. Res. 260	Nov. 12	989	To designate the week beginning November 10, 1991, as "Hire a Veteran Week"	$1.00
102-154	H.R. 2686	Nov. 13	990	Department of the Interior and Related Agencies Appropriations Act, 1992	$1.50
102-155	H.J. Res. 175	Nov. 13	1038	To designate the weeks beginning December 1, 1991, and November 29, 1992, as "National Home Care Week".	$1.00
102-156	H.J. Res. 177	Nov. 13	1039	To designate November 16, 1991, as "Dutch-American Heritage Day"	$1.00
102-157	H.J. Res. 281	Nov. 13	1040	Approving the extension of nondiscriminatory treatment with respect to the products of the Mongolian People's Republic.	$1.00

Public Law	Bill	Approval Date	105 Stat.	Title	Price
102-158	H.J. Res. 282	Nov. 13	1041	Approving the extension of nondiscriminatory treatment with respect to the products of the People's Republic of Bulgaria.	$1.00
102-159	S. 1848	Nov. 13	1042	Dropout Prevention Technical Correction Amendment of 1991	$1.00
102-160	S.J. Res. 36	Nov. 13	1043	To designate the months of November 1991, and November 1992, as "National Alzheimer's Disease Month".	$1.00
102-161	S.J. Res. 145	Nov. 13	1045	Designating the week beginning November 10, 1991, as "National Women Veterans Recognition Week".	$1.00
102-162	S.J. Res. 188	Nov. 13	1047	Designating November 1991 as "National Red Ribbon Month"	$1.00
102-163	H.J. Res. 374	Nov. 15	1048	Making further continuing appropriations for the fiscal year 1992, and for other purposes	$1.00
102-164	H.R. 3575	Nov. 15	1049	Emergency Unemployment Compensation Act of 1991	$1.00
102-165	H.J. Res. 140	Nov. 18	1070	Designating November 19, 1991, as "National Philanthropy Day"	$1.00
102-166	S. 1745	Nov. 21	1071	Civil Rights Act of 1991	$1.00
102-167	H.R. 3350	Nov. 26	1101	United States Commission on Civil Rights Reauthorization Act of 1991	$1.00
102-168	H.R. 3402	Nov. 26	1102	Health Information, Health Promotion, and Vaccine Injury Compensation Amendments of 1991.	$1.00
102-169	H.J. Res. 215	Nov. 26	1105	Acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 25, 1991, as "National Military Families Recognition Day".	$1.00
102-170	H.R. 3839	Nov. 26	1107	Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1992.	$1.25
102-171	S. 374	Nov. 26	1143	Aroostook Band of Micmacs Settlement Act	$1.00
102-172	H.R. 2521	Nov. 26	1150	Department of Defense Appropriations Act, 1992	$2.00
102-173	S. 1475	Nov. 27	1217	Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991	$1.00
102-174	S.J. Res. 207	Nov. 27	1220	To designate the period commencing on November 24, 1991, and ending on November 30, 1991, and the period commencing on November 22, 1992, and ending on November 28, 1992, each as "National Adoption Week".	$1.00
102-175	H.R. 2270	Dec. 2	1222	Senior Executive Service Improvements Act	$1.00
102-176	H.J. Res. 125	Dec. 2	1224	To designate the week beginning November 24, 1991, and the week beginning November 22, 1992, each as "National Family Caregivers Week".	$1.00
102-177	H.J. Res. 130	Dec. 2	1226	Designating January 1, 1992, as "National Ellis Island Day"	$1.00
102-178	H.J. Res. 327	Dec. 2	1227	Designating 1992 as the "Year of the Gulf of Mexico"	$1.00
102-179	S. 1568	Dec. 2	1229	To amend the Act incorporating The American Legion so as to redefine eligibility for membership therein.	$1.00
102-180	S. 1720	Dec. 2	1230	Navajo-Hopi Relocation Housing Program Reauthorization Act of 1991	$1.00
102-181	H.R. 3728	Dec. 3	1232	To provide for a 6-month extension of the Commission on the Bicentennial of the Constitution.	$1.00
102-182	H.R. 1724	Dec. 4	1233	To provide for the termination of the application of title IV of the Trade Act of 1974 to Czechoslovakia and Hungary.	$1.00
102-183	H.R. 2038	Dec. 4	1260	Intelligence Authorization Act, Fiscal Year 1992	$1.00
102-184	H.R. 3394	Dec. 4	1278	Tribal Self-Governance Demonstration Project Act	$1.00
102-185	H.R. 3624	Dec. 4	1280	To amend the Tariff Act of 1930 to provide appropriate procedures for the appointment of the Chairman of the United States International Trade Commission.	$1.00
102-186	S. 1563	Dec. 4	1282	National Sea Grant College Program Authorization Act of 1991	$1.00
102-187	S.J. Res. 187	Dec. 4	1285	To make a technical correction in Public Law 101-549	$1.00
102-188	S.J. Res. 217	Dec. 4	1286	To authorize and request the President to proclaim 1992 as the "Year of the American Indian".	$1.00
102-189	H.J. Res. 201	Dec. 4	1288	Designating the week beginning December 1, 1991, and the week beginning November 15, 1992, each as "Geography Awareness Week".	$1.00
102-190	H.R. 2100	Dec. 5	1290	National Defense Authorization Act for Fiscal Years 1992 and 1993	$9.50
102-191	H.R. 2629	Dec. 5	1589	Women's Business Development Act of 1991	$1.00
102-192	S.J. Res. 184	Dec. 5	1592	Designating the month of November 1991, as "National Accessible Housing Month"	$1.00
102-193	H.R. 3919	Dec. 6	1593	To temporarily extend the Defense Production Act of 1950	$1.00
102-194	S. 272	Dec. 9	1594	High-Performance Computing Act of 1991	$1.00
102-195	H.R. 1988	Dec. 9	1605	National Aeronautics and Space Administration Authorization Act, Fiscal Year 1992	$1.00
102-196	H.R. 3370	Dec. 9	1620	To direct the Secretary of the Interior to carry out a study and make recommendations to the Congress regarding the feasibility of establishing a Native American cultural center in Oklahoma City, Oklahoma.	$1.00
102-197	H.J. Res. 346	Dec. 9	1622	Approving the extension of nondiscriminatory treatment with respect to the products of the Union of Soviet Socialist Republics.	$1.00
102-198	S. 1284	Dec. 9	1623	To make certain technical corrections in the Judicial Improvements Act of 1990 and other provisions of law relating to the courts.	$1.00
102-199	H.R. 525	Dec. 10	1628	To amend the Federal charter for the Boys' Clubs of America to reflect the change of the name of the organization to the Boys & Girls Clubs of America.	$1.00
102-200	H.R. 829	Dec. 10	1630	To amend title 28, United States Code, to make changes in the composition of the Eastern and Western Districts of Virginia.	$1.00
102-201	H.R. 848	Dec. 10	1631	Little Bighorn Battlefield National Monument	$1.00
102-202	H.R. 990	Dec. 10	1634	To authorize additional appropriations for land acquisition at Monocacy National Battlefield, Maryland.	$1.00
102-203	H.R. 3322	Dec. 10	1635	To designate the building in St. Louis, Missouri, which is currently known as the Wellston Station, as the "Gwen B. Giles Post Office Building".	$1.00
102-204	H.R. 3531	Dec. 10	1636	Patent and Trademark Office Authorization Act of 1991	$1.00
102-205	H.R. 3709	Dec. 10	1643	To waive the period of Congressional review for certain District of Columbia acts	$1.00
102-206	H.J. Res. 191	Dec. 10	1644	Designating January 5, 1992 through January 11, 1992 as "National Law Enforcement Training Week".	$1.00
102-207	H.J. Res. 212	Dec. 10	1646	To designate the week beginning February 16, 1992, as "National Visiting Nurse Associations Week".	$1.00
102-208	H.J. Res. 300	Dec. 10	1648	Designating the month of May 1992 as "National Trauma Awareness Month"	$1.00
102-209	H.J. Res. 356	Dec. 10	1649	Designating December 1991 as "Bicentennial of the District of Columbia Month"	$1.00
102-210	H.J. Res. 372	Dec. 10	1651	Designating December 21, 1991, as "Basketball Centennial Day"	$1.00
102-211	H.R. 690	Dec. 11	1652	To authorize the National Park Service to acquire and manage the Mary McLeod Bethune Council House National Historic Site, and for other purposes.	$1.00
102-212	H.R. 794	Dec. 11	1655	To establish the Silvio O. Conte National Fish and Wildlife Refuge along the Connecticut River, and for other purposes.	$1.00

Public Law	Bill	Approval Date	105 Stat.	Title	Price
102-213	H.R. 948	Dec. 11	1662	To designate the United States courthouse located at 120 North Henry Street in Madison, Wisconsin, as the "Robert W. Kastenmeier United States Courthouse".	$1.00
102-214	H.R. 1099	Dec. 11	1663	Lamprey River Study Act of 1991	$1.00
102-215	H.R. 3012	Dec. 11	1664	White Clay Creek Study Act	$1.00
102-216	H.R. 3169	Dec. 11	1666	To lengthen from five to seven years the expiration period applicable to legislative authority relating to construction of commemorative works on Federal land in the District of Columbia and its environs.	$1.00
102-217	H.R. 3245	Dec. 11	1667	Chattahoochee National Forest Protection Act of 1991	$1.00
102-218	H.R. 3327	Dec. 11	1671	To amend title 38, United States Code, to provide for the designation of an Assistant Secretary of the Department of Veterans Affairs as the Chief Minority Affairs Officer of the Department.	$1.00
102-219	H.R. 3387	Dec. 11	1673	To amend the Pennsylvania Avenue Development Corporation Act of 1972 to authorize appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House, and for other purposes.	$1.00
102-220	H.R. 3604	Dec. 11	1674	Greer Spring Acquisition and Protection Act of 1991	$1.00
102-221	H.R. 3932	Dec. 11	1676	To improve the operational efficiency of the James Madison Memorial Fellowship Foundation, and for other purposes.	$1.00
102-222	S. 2050	Dec. 11	1677	To ensure that the ceiling established with respect to health education assistance loans does not prohibit the provision of Federal loan insurance to new and previous borrowers under such loan program, and for other purposes.	$1.00
102-223	S. 2096	Dec. 11	1678	To authorize the President to appoint Major General Jerry Ralph Curry to the Office of Administrator of the Federal Aviation Administration.	$1.00
102-224	S.J. Res. 198	Dec. 11	1680	To recognize contributions Federal civilian employees provided during the attack on Pearl Harbor and during World War II.	$1.00
102-225	H.R 3881	Dec. 11	1682	To expand the boundaries of Stones River National Battlefield, Tennessee, and for other purposes.	$1.00
102-226	H.R. 2105	Dec. 11	1685	To designate an area as the "Myrtle Foester Whitmire Division of the Aransas National Wildlife Refuge".	$1.00
102-227	H.R. 3909	Dec. 11	1686	Tax Extension Act of 1991	$1.00
102-228	H.R. 3807	Dec. 12	1691	Conventional Forces in Europe Treaty Implementation Act of 1991	$1.00
102-229	H.J. Res. 157	Dec. 12	1701	Dire Emergency Supplemental Appropriations and Transfers for Relief From the Effects of Natural Disasters, for Other Urgent Needs, and for Incremental Cost of "Operation Desert Shield/Desert Storm" Act of 1992.	$1.00
102-230	H.R. 3576	Dec. 12	1720	To amend the Cranston-Gonzalez National Affordable Housing Act to reserve assistance under the HOME Investment Partnerships Act for certain insular areas.	$1.00
102-231	H.R. 1476	Dec. 12	1722	San Carlos Indian Irrigation Project Divestiture Act of 1991	$1.00
102-232	H.R. 3049	Dec. 12	1733	Miscellaneous and Technical Immigration and Naturalization Amendments of 1991	$1.00
102-233	H.R. 3435	Dec. 12	1761	Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991	$1.00
102-234	H.R. 3595	Dec. 12	1793	Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991	$1.00
102-235	S. 367	Dec. 12	1806	Nontraditional Employment for Women Act	$1.00
102-236	S. 1532	Dec. 12	1812	Abandoned Infants Assistance Act Amendments of 1991	$1.00
102-237	H.R. 3029	Dec. 13	1818	Food, Agriculture, Conservation, and Trade Act Amendments of 1991	$2.75
102-238	S. 1193	Dec. 17	1908	Technical Amendments to Various Indian Laws Act of 1991	$1.00
102-239	S. 1891	Dec. 17	1912	To permit the Secretary of Health and Human Services to waive certain recovery requirements with respect to the construction or remodeling of facilities, and for other purposes.	$1.00
102-240	H.R. 2950	Dec. 18	1914	Intermodal Surface Transportation Efficiency Act of 1991	$9.50
102-241	H.R. 1776	Dec. 19	2206	Coast Guard Authorization Act of 1991	$1.00
102-242	S. 543	Dec. 19	2236	Federal Deposit Insurance Corporation Improvement Act of 1991	$4.50
102-243	S. 1462	Dec. 20	2394	Telephone Consumer Protection Act of 1991	$1.00

NOTE: The text of laws may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). Some laws may not yet be available for purchase.

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Part III

United States Sentencing Commission

Sentencing Guidelines and Policy Statements for Federal Courts; Notice

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment. Notice of hearing.

SUMMARY: The Commission is considering promulgating amendments to the sentencing guidelines, policy statements, and commentary. The proposed amendments and a synopsis of issues to be addressed are set forth below. The Commission may report amendments to the Congress on or before May 1, 1992. Comment is sought on all proposals, alternative proposals, and any other aspect of the sentencing guidelines, policy statements, and commentary.

DATES: Public comment should be received by the Commission no later than March 2, 1992, in order to be considered by the Commission in the promulgation of amendments due to the Congress by May 1, 1992.

The Commission has scheduled a public hearing on these amendments for February 25, 1992, at 9:30 a.m.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., suite 1400, Washington, DC 20004, Attention: Guideline Comment. The hearing will be held at the Ceremonial Courtroom, United States Courthouse, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, telephone: (202) 626–8500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered under 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994 (o) and (p).

Ordinarily, the Administrative Procedure Act rule-making requirements are inapplicable to judicial agencies; however, 28 U.S.C. 994(x) makes the Administrative Procedure Act rule-making provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Commission.

The proposed amendments are presented in one of three formats, each of which is followed by a statement explaining the reason for the amendment. First, the majority of the amendments are proposed as specific revisions of a guideline, policy statement, or commentary. Second, for some amendments, the Commission has published alternative methods of addressing an issue. Commentators are encouraged to state their preference among listed alternatives or to suggest a new alternative. Third, the Commission has highlighted certain issues for comment and invites suggestions for specific amendment language.

Section 1B1.10 of the United States Sentencing Commission Guidelines Manual sets forth the Commission's policy statement regarding retroactivity of amended guideline ranges. Comment is requested regarding whether any of the proposed amendments should be made retroactive under this policy statement.

In amendments presenting alternative methods addressing an issue, double brackets denote the alternative methods. In displaying certain proposed amendments, single brackets are used to denote material to be deleted; *italics* are used to denote material to be added.

Although the amendments below are specifically proposed for public comment and possible submission to the Congress by May 1, 1992, the Commission emphasizes that it welcomes comment on any aspect of the sentencing guidelines, policy statements, and commentary, whether or not the subject of a proposed amendment.

The amendments below are derived from a variety of sources, including: Monitoring and hotline data and case law review; and the recommendations of the Judicial Conference of the United States, the Department of Justice, the Federal Defenders, the Commission's Practitioners Advisory Group, individual judges, probation officers, attorneys, and others.

Note: Publication of an amendment for comment does not necessarily indicate the view of the Commission or any individual Commissioner on the merits of the proposed amendment.

Authority: 28 U.S.C., sections 994 (a), (o), (p), (x).

William W. Wilkins, Jr.,

Chairman.

Section 1B1.3. Relevant Conduct

1(A). Proposed Amendment: Section 1B1.3(a)(1) is amended by deleting:

"All acts and omissions committed or aided and abetted by the defendant, or for which the defendant would be otherwise accountable, that occurred during the",

and inserting in lieu thereof:

"(A) All acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and

(B) In the case of a jointly-undertaken criminal activity, whether or not charged as a conspiracy, all reasonably foreseeable acts and omissions of others in furtherance of the jointly-undertaken criminal activity,

that occurred during the";

Section 1B1.3(a)(2) is amended by deleting "such acts and omissions" and inserting in lieu thereof "acts and omissions described in subdivisions (1)(A) and (1)(B) above".

The Commentary to section 1B1.3 captioned "Application Notes" is amended in Note 1 by deleting the first paragraph and inserting in lieu thereof:

"A 'jointly-undertaken criminal activity' is a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy. In the case of a jointly-undertaken criminal activity, subsection (a)(1)(B) provides that a defendant is accountable for the conduct (acts and omissions) of others that both was in furtherance of the jointly-undertaken criminal activity, and was reasonably foreseeable to the defendant. Because a count may be broadly worded and include the conduct of many participants over a period of time, the scope of the jointly-undertaken criminal activity is not necessarily the same as the scope of the entire conspiracy, and hence relevant conduct is not necessarily the same for every participant.

Thus, a determination of the scope of the criminal activity the particular defendant agreed to jointly undertake (i.e., the scope of the specific conduct and objectives embraced by the defendant's agreement) is required. The conduct of others that was in furtherance of, and reasonably foreseeable in connection with, the criminal activity that the defendant agreed to jointly undertake is relevant conduct under this provision. The conduct of others that was not in furtherance of the jointly-undertaken criminal activity, or was not reasonably foreseeable in connection with that criminal activity, is not relevant conduct under this provision.

In determining the scope of the criminal activity that the particular defendant agreed to jointly undertake (i.e., the scope of the specific conduct and objectives embraced by the defendant's agreement), the court may consider any explicit or implicit (tacit) agreement, including any agreement fairly imputed to the defendant by his conduct and that of other participants in the criminal activity. For example, where a defendant benefited directly, or expected to benefit directly, from the conduct of others that occurred prior, contemporaneous, or subsequent to the defendant's joining the

criminal activity, such conduct ordinarily may be imputed to be within the scope of the criminal activity the defendant agreed to jointly undertake.

The concept of reasonable foreseeability has no bearing on conduct that the defendant personally undertakes, aids, abets, counsels, commands, induces, procures, or willfully causes. The concept of reasonable foreseeability is considered only in relation to the conduct of other participants that is in furtherance of the jointly-undertaken criminal activity.".

The Commentary to section 1B1.3 captioned "Application Notes" is amended in Note 1 in the fifth (formerly second) paragraph by deleting " 'would be otherwise accountable' " and inserting in lieu thereof "is accountable";

The Commentary to section 1B1.3 captioned "Application Notes" is amended in Note 1 in example (a) by deleting "boat" wherever it appears and inserting in lieu thereof in each instance "ship"; by deleting "any claim on his part" and inserting in lieu thereof "his claim"; and by inserting the following additional paragraph:

"Because the defendant aided and abetted the unloading of the marihuana shipment, no determination of the reasonable foreseeability of the acts of others in unloading the shipment is required. If it were found that the defendant's actions, in this example, did not constitute aiding or abetting the importation of the entire shipment, the defendant appropriately would still be accountable for the entire one-ton quantity because the facts of the case (nine other off-loaders, marihuana in bales) clearly establish that a one-ton quantity of marihuana was reasonably foreseeable.".

The Commentary to section 1B1.3 captioned "Application Notes" is amended in Note 1 in example (e) in the last sentence by deleting "if" and inserting in lieu thereof "because"; by inserting ("i.e., the importation of the single shipment of marihuana) that" immediately following "criminal activity"; and by deleting "(i.e., the importation of the single shipment of marihuana)".

The Commentary to section 1B1.3 captioned "Application Notes" is amended in Note 1 by inserting, immediately after example (e), the following additional paragraphs:

"Where the defendant enters an ongoing conspiracy, as in this example, the scope of the specific criminal activity that the defendant agreed to undertake, and thus the defendant's accountability for prior acts of other conspirators, must be determined. One factor that appropriately may be considered in determining the scope of the criminal activity undertaken by the defendant, particularly in a conspiracy that involves repeated conduct (e.g., a series of drug sales over time), is the benefit or expected benefit to the defendant. Where the defendant benefits directly, or expects to benefit directly, from the prior conduct, such conduct ordinarily will be within the scope of the defendant's criminal activity. Where there is no direct benefit, such conduct ordinarily will not be within the scope of the defendant's criminal activity.

f. Defendant J knows about her boyfriend's ongoing drug trafficking activity, but agrees to participate in this activity on only one occasion. Defendant J is held accountable only for the drug quantity involved on that one occasion.

g. Defendant K is a street-level drug dealer who knows of other street-level drug dealers in the same geographic area who sell the same type of drug as the defendant sells. The defendant is not accountable for the quantities of drugs sold by the other street-level drug dealers, even if all share a common source of supply, because he is not engaged in a jointly-undertaken criminal activity with them. In contrast, Defendant L, another street-level drug dealer, pools his resources and profits with four other street-level drug dealers. Defendant L's behavior meets the criteria for a jointly-undertaken criminal activity. Therefore, Defendant L is accountable for the quantities of drugs sold by the four other dealers during the course of his agreement with them.".

The Commentary to section 1B1.3 captioned "Application Notes" is amended in Note 2 by deleting the first sentence.

Reason for Amendment: This amendment clarifies the operation of this guideline. Material is moved from the commentary to the guideline itself and rephrased for greater clarity, the discussion of the scope of this provision in the commentary is expanded, and additional examples are inserted.

Illustration of Section 1B1.3 as Amended by Proposed Amendment 1

Section 1B1.3. Relevant Conduct (Factors that Determine the Guideline Range)

(a) Chapters Two (Offense Conduct) and Three (Adjustments). Unless otherwise specified, (i) the base offense level where the guideline specifies more than one base offense level, (ii) specific offense characteristics and (iii) cross references in chapter Two, and (iv) adjustments in chapter Three, shall be determined on the basis of the following:

(1) [All acts and omissions committed or aided and abetted by the defendant, or for which the defendant would be otherwise accountable, that occurred during the]

(A) All acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and

(B) In the case of a jointly-undertaken criminal activity, whether or not charged as a conspiracy, all reasonably foreseeable acts and omissions of others in furtherance of the jointly-undertaken criminal activity,

That occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense, or that otherwise were in furtherance of that offense;

(2) Solely with respect to offenses of a character for which section 3D1.2(d) would require grouping of multiple counts, all [such acts and omissions] *acts and omissions described in subdivisions (1)(A) and (1)(B) above* that were part of the same course of conduct or common scheme or plan as the offense of conviction;

(3) All harm that resulted from the acts or omissions specified in subsections (a)(1) and (a)(2) above, and all harm that was the object of such acts or omissions; and

(4) Any other information specified in the applicable guideline.

(b) Chapters Four (Criminal History and Criminal Livelihood) and Five (Determining the Sentence). Factors in Chapters Four and Five that establish the guideline range shall be determined on the basis of the conduct and information specified in the respective guidelines.

Commentary

Application Notes:

1. [Conduct "for which the defendant would be otherwise accountable," as used in subsection (a)(1), includes conduct that the defendant counseled, commanded, induced, procured, or willfully caused. (Cf. 18 U.S.C. 2.) In the case of criminal activity undertaken in concert with others, whether or not charged as a conspiracy, the conduct for which the defendant "would be otherwise accountable" also includes conduct of others in furtherance of the execution of the jointly-undertaken criminal activity that was reasonably foreseeable by the defendant. Because a count may be broadly worded and include the conduct of many participants over a substantial period of time, the scope of the jointly-undertaken criminal activity, and hence relevant conduct, is not necessarily the same for every participant. Where it is established that the conduct was neither within the scope of the defendant's agreement, nor was reasonably foreseeable in connection with the criminal activity the defendant agreed to jointly undertake, such conduct is not included in establishing the defendant's offense level under this guideline.]

A "jointly-undertaken criminal activity" is a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy. In the case of a jointly-undertaken criminal activity, subsection (a)(1)(B) provides that a defendant is accountable for the conduct (acts and omissions) of others that both was in furtherance of the jointly-undertaken criminal activity, and was reasonably foreseeable to the defendant. Because a count may be broadly worded and include the conduct of many participants over a period of time, the scope of the jointly-undertaken criminal activity is not necessarily the same as the scope of the entire conspiracy, and hence relevant conduct is not necessarily the same for every participant.

Thus, a determination of the scope of the criminal activity the particular defendant agreed to jointly undertake (i.e., the scope of the specific conduct and objectives embraced by the defendant's agreement) is required. The conduct of others that was in furtherance of, and reasonably foreseeable in connection with, the criminal activity that the defendant agreed to jointly undertake is relevant conduct under this provision. The conduct of others that was not in furtherance of the jointly-undertaken criminal activity, or was not reasonably foreseeable in connection with that criminal activity, is not relevant conduct under this provision.

In determining the scope of the criminal activity that the particular defendant agreed to jointly undertake (i.e., the scope of the specific conduct and objectives embraced by the defendant's agreement), the court may consider any explicit or implicit (tacit) agreement, including any agreement fairly imputed to the defendant by his conduct and that of other participants in the criminal activity. For example, where a defendant benefited directly, or expected to benefit directly, from the conduct of others that occurred prior, contemporaneous, or subsequent to the defendant's joining the criminal activity, such conduct ordinarily may be imputed to be within the scope of the criminal activity the defendant agreed to jointly undertake.

The concept of reasonable foreseeability has no bearing on conduct that the defendant personally undertakes, aids, abets, counsels, commands, induces, procures, or willfully causes. The concept of reasonable foreseeability is considered only in relation to the conduct of other participants that is in furtherance of the jointly-undertaken criminal activity.

In the case of solicitation, misprision, or accessory after the fact, the conduct for which the defendant ["would be otherwise accountable"] *is accountable* includes all conduct relevant to determining the offense level for the underlying offense that was known, or reasonably should have been known, by the defendant.

Illustrations of Conduct for Which the Defendant is Accountable

* * * * *

a. Defendant A, one of ten off-loaders hired by Defendant B, was convicted of importation of marihuana, as a result of his assistance in off-loading a [boat] *ship* containing a one-ton shipment of marihuana. Regardless of the number of bales of marihuana that he actually unloaded, and notwithstanding [any claim on his part] *his claim* that he was neither aware of, nor could reasonably foresee, that the [boat] *ship* contained this quantity of marihuana, Defendant A is held accountable for the entire one-ton quantity of marihuana on the [boat] *ship* because he aided and abetted the unloading, and hence the importation, of the entire shipment.

Because the defendant aided and abetted the unloading of the marihuana shipment, no determination of the reasonable foreseeability of the acts of others in unloading the shipment is required. If it were found that the defendant's actions, in this example, did not constitute aiding or abetting the importation of the entire shipment, the defendant appropriately would still be accountable for the entire one-ton quantity because the facts of the case (nine other off-loaders, marihuana in bales) clearly establish that a one-ton quantity of marihuana was reasonably foreseeable.

* * * * *

e. Defendants H and I engaged in an ongoing marihuana importation conspiracy in which Defendant J was hired only to help off-load a single shipment. Defendants H, I, and J are included in a single count charging conspiracy to import marihuana. For the purposes of determining the offense level under this guideline, Defendant J is accountable for the entire single shipment of marihuana he conspired to help import and any acts or omissions in furtherance of the importation that were reasonably foreseeable. He is not accountable for prior or subsequent shipments of marihuana imported by Defendants H or I (if) *because* those acts were beyond the scope of, and not reasonably foreseeable in connection with, the criminal activity *(i.e., the importation of the single shipment of marihuana) that* he agreed to jointly undertake with Defendants H and I [(i.e., the importation of the single shipment of marihuana)].

Where the defendant enters an ongoing conspiracy, as in this example, the scope of the specific criminal activity that the defendant agreed to undertake, and thus the defendant's accountability for prior acts of other conspirators, must be determined. One factor that appropriately may be considered in determining the scope of the criminal activity undertaken by the defendant, particularly in a conspiracy that involves repeated conduct (e.g., a series of drug sales over time), is the benefit or expected benefit to the defendant. Where the defendant benefits directly, or expects to benefit directly, from the prior conduct, such conduct ordinarily will be within the scope of the defendant's criminal activity. Where there is no direct benefit, such conduct ordinarily will not be within the scope of the defendant's criminal activity.

f. Defendant J knows about her boyfriend's ongoing drug trafficking activity, but agrees to participate in this activity on only one occasion. Defendant J is held accountable only for the drug quantity involved on that one occasion.

g. Defendant K is a street-level drug dealer who knows of other street-level drug dealers in the same geographic area who sell the same type of drug as the defendant sells. The defendant is not accountable for the quantities of drugs sold by the other street-level drug dealers, even if all share a common source of supply, because he is not engaged in a jointly-undertaken criminal activity with them. In contrast, Defendant L, another street-level drug dealer, pools his resources and profits with four other street-level drug dealers. Defendant L's behavior meets the criteria for a jointly-undertaken criminal activity. Therefore, Defendant L is accountable for the quantities of drugs sold by the four other dealers during the course of his agreement with them.

2. ["Such acts and omissions that were part of the same course of conduct or common scheme or plan as the offense of conviction," as used in subsection (a)(2), refers to acts and omissions committed or aided and abetted by the defendant, or for which the defendant would be otherwise accountable, that were part of the same course of conduct or common scheme or plan as the offense of conviction.]

* * * * *

(B). Proposed Amendment: The Commentary to section 1B1.3 captioned "Application Notes" is amended by inserting the following additional notes:

"8. 'Common scheme or plan' and 'same course of conduct' are two closely-related concepts.

(A) Common scheme or plan. For two or more offenses to constitute part of a common scheme or plan, they must be substantially connected to each other, and linked by common evidence. Factors that appropriately are considered in this determination include common victims, common accomplices, common purpose, and similar modus operandi. For example, the conduct of five defendants who together defrauded a group of investors by computer manipulations that unlawfully transferred funds over an eighteen-month period would qualify as a common scheme or plan on the basis of any of the above listed factors; i.e., the commonality of victims (the same investors were defrauded on an ongoing basis), commonality of offenders (the conduct constituted an ongoing conspiracy), commonality of purpose (to defraud the group of investors), and similarity of modus operandi (the same or similar computer manipulations were used to execute the scheme). Offenses may meet the criteria of a common scheme or plan whether or not they fall within the time frame that would also qualify them as part of the same course of conduct.

(B) Same course of conduct. Offenses that do not qualify as part of a common scheme or plan may nonetheless qualify as part of the same course of conduct if they are sufficiently connected or related to each other as to warrant the conclusion that they are part of a single episode, spree, or ongoing series of offenses. Factors appropriate to consider in this determination are the time interval between the offenses and the similarity of the offenses. As section 1B1.3(a)(2) applies only to offenses of a character that would be grouped under § 3D1.2(d), such offenses will be similar in character (e.g., a series of thefts, a series of thefts and forgeries, or a series of drug sales). As a general—but not absolute—standard, offenses that are similar in character and are committed at intervals of 120 days or less appropriately are considered as part of the same course of conduct. Note that in the case of a series of such offenses committed at intervals of 120 days or less (e.g., a series of four thefts each 90 days apart) all the offenses ordinarily would be considered part of the same course of conduct even though the total time from the first to last offense may have exceeded 120 days.

Due to the nature of tax offenses, a different time interval between offenses is

ordinarily appropriate for this determination. For example, a failure to file income tax returns for consecutive years, or the filing of fraudulent income tax returns in consecutive years, ordinarily would constitute the same course of conduct because such returns are required only at yearly intervals. The determination of the same course of conduct or common scheme or plan in tax cases is addressed in Application Note 3 of the Commentary to section 2T1.1 (Tax Evasion).

Although the term 'same course of conduct' may also be used in connection with dissimilar offenses committed within a short span of time (e.g., a 'spree' in which a defendant assaults a neighbor, steals a car, and unlawfully possesses a controlled substance within a period of several hours appropriately might be considered the same course of conduct), this facet of the term has no applicability to cases under section 1B1.3(a)(2) because § 1B1.3(a)(2) only applies to offenses of a similar character.".

Reason for Amendment: This amendment provides guidance as to the scope of the terms "same course of conduct" and "common scheme or plan."

Section 1B1.8. Use of Certain Information

2(A). Proposed Amendment: The Commentary to section 1B1.8 captioned "Application Notes" is amended in Note 1 by deleting "this guideline" and inserting in lieu thereof "the guideline itself", by inserting "(an upward departure, or a sentence at a higher pofnt within the applicable guideline range)" immediately following "increased sentence", and by inserting the following additional sentence at the end:

"In contrast, in determining whether a downward departure from the applicable guideline range is warranted pursuant to a government motion under § 5K1.1 (Substantial Assistance to Authorities) and the extent of any such downward departure, consideration of such information is appropriate.".

Reason for Amendment: This amendment clarifies the operation of the guideline and policy statements contained in the accompanying commentary. Under this section, (1) information covered by the guideline may not be used to determine the applicable guideline range; (2) an upward departure on the basis of such information would be contrary to the Commission's policy statement contained in Application Note 1 (and, consequently, would be appealable as unreasonable); and (3) the use of such information to set a higher sentence within the applicable guideline range also would be contrary to the Commission's policy statement contained in Application Note 1. In contrast, use of such information would be appropriate in considering whether, and to what extent, a downward departure under section 5K1.1 (Substantial Assistance to Authorities) is warranted.

(B). Proposed Amendment: Section 1B1.8(a) is amended in the first sentence by inserting "or the defendant" immediately following "others".

The Commentary to section 1B1.8 captioned "Application Notes" is amended in Note 1 in the second sentence by inserting "or himself" immediately following "co-conspirators", and in the third sentence by inserting "or to disclose additional unlawful conduct of himself" immediately following "offenders".

Reason for Amendment: Section 1B1.8 currently does not permit the government to agree not to use self-incriminating information against a defendant who wishes to plead and cooperate unless the cooperation consists of "providing information concerning unlawful activities of others." As a result, some have argued that defendants who have no such information have no incentive to plead guilty and cooperate other than the two-level reduction for acceptance of responsibility. This amendment broadens § 1B1.8 to provide that incriminating information provided by the defendant as part of a cooperation argument with the government shall not be used to determine the applicable guideline range in cases in which the only information provided pertains to the defendant's own unlawful activities.

Proposed New Section: Section 1B1.12 Persons Sentenced Under the Federal Juvenile Delinquency Act (Policy Statement)

3. Proposed Amendment: Chapter One, part B, is amended by inserting at the end:

Section 1B1.12. Persons Sentenced Under the Federal Juvenile Delinquency Act (Policy Statement)

(a) The sentencing guidelines do not apply to a defendant sentenced under the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5031–5042). Nevertheless, the guidelines can provide an appropriate starting point for considering a sentence in such cases.

(b) A sentence for a juvenile delinquent that is above the guideline range applicable to an otherwise similarly situated adult defendant should be accompanied by specific reasons justifying such sentence.

(c) To the extent that a juvenile delinquent's age and youthfulness, and lesser culpability associated with such age and youthfulness, distinguish the juvenile delinquent from an otherwise similarly situated adult defendant, a sentence that is below the guideline range applicable to an otherwise similarly situated adult defendant may be appropriate.".

Reason for Amendment: This amendment adds a policy statement addressing the sentencing of juvenile delinquents. Currently, the guidelines provide no direction for the sentencing of juvenile delinquents. This amendment is consistent with the thrust of 18 U.S.C. 3553(b), which provides: "In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to applicable policy statements of the Sentencing Commission."

Chapter Two, Part A, Subpart 3—Criminal Sexual Abuse

4(A). Proposed Amendment: Section 2A3.2 is amended by inserting the following additional subsection:

"(c) Cross Reference

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse or assault with the intent to commit criminal sexual abuse (as defined in 18 U.S.C. 2241 or 2242), apply section 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse).".

Section 2A3.4 is amended by inserting the following additional subsection:

"(c) Cross References

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse or assault with the intent to commit criminal sexual abuse (as defined in 18 U.S.C. 2241 or 2242), apply section 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse).".

(2) If the offense involved criminal sexual abuse of a minor (as defined in 18 U.S.C. 2243(a)), or attempt to commit criminal sexual abuse of a minor, apply section 2A3.2 (Criminal Sexual Abuse of a Minor or Attempt to Commit Such Acts), if the resulting offense level is greater than that determined above.".

Reason for Amendment: This amendment cross references section 2A3.2 to section 2A3.1, and section 2A3.4 to sections 2A3.1 and 2A3.2. A review of cases sentenced under these guidelines indicates that a significant proportion of cases sentenced under section 2A3.2 and section 2A3.4 clearly involved conduct that would more appropriately be covered under an offense guideline applicable to more serious sexual abuse cases. The proposed cross references are designed to address this issue.

A report concerning the sexual abuse guidelines and related guidelines involving minor victims is available for inspection at the Commission's offices.

(B). Proposed Amendment: Section 2A3.1(b)(3) is amended by inserting:

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"(A)" immediately following "victim was"; and by deleting "was a corrections employee, or" and inserting in lieu thereof ", or (B)".

Section 2A3.1 is amended by inserting the following additional subsection:

"(d) Special Instruction

(1) If the offense occurred in a correctional facility and the victim was a corrections employee, the offense shall be deemed to have an official victim for purposes of subsection (a) of section 3A1.2 (Official Victim).".

The Commentary to section 2A3.1 captioned "Application Notes" is amended by renumbering Note 3 as Note 4 and inserting the following additional note:

"3. Subsection (b)(3), as it pertains to a victim in the custody, care, or supervisory control of the defendant, is intended to have broad application and is to be applied whenever the victim is entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.".

The Commentary to section 2A3.2 captioned "Application Notes" is amended by renumbering Note 2 as Note 3 and inserting the following additional note:

"2. Subsection (b)(1) is intended to have broad application and includes offenses involving a minor entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.".

The Commentary to section 2A3.4 captioned "Application Notes" is amended by renumbering Note 3 as Note 4 and inserting the following additional note:

"3. Subsection (b)(3) is intended to have broad application and is to be applied whenever the victim is entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim reallionship.".

Reason for Amendment: This amendment removes an anomaly between section 2A3.1(b)(3) and section 3A1.2(a). In addition, this amendment adds application notes to clarify the scope of sections 2A3.1(b)(3), 2A3.2(b)(1), and 2A3.4(b)(3), using language derived from application notes pertaining to similar specific offense characteristics in chapter Two, part G.

Section 2B1.1 Larceny, Embezzlement, and Other Forms of Theft;

Section 2F1.1 Fraud and Deceit

5. Proposed Amendment: Section 2B1.1(b) is amended by deleting subdivision (5); by renumbering subdivisions (6) and (7) as (5) and (6); and by deleting subdivision (1) in its entirety and inserting in lieu thereof the following:

"(1) If the loss exceeded $100, increase the offense level as follows:

Loss (Apply the greatest)	Increase in level
(A) $100 or less	no increase
(B) More than $100	add 1
(C) More than $1,000	add 2
(D) More than $2,000	add 3
(E) More than $3,500	add 4
(F) More than $6,000	add 5
(G) More than $11,000	add 6
(H) More than $20,000	add 7
(I) More than $35,000	add 8
(J) More than $60,000	add 9
(K) More than $100,000	add 10
(L) More than $175,000	add 11
(M) More than $300,000	add 12
(N) More than $500,000	add 13
(O) More than $900,000	add 14
(P) More than $1,500,000	add 15
(Q) More than $2,750,000	add 16
(R) More than $5,000,000	add 17
(S) More than $8,500,000	add 18
(T) More than $15,000,000	add 19
(U) More than $25,000,000	add 20
(V) More than $45,000,000	add 21
(W) More than $80,000,000	add 22."

The Commentary to section 2B1.1 captioned "Application Notes" is amended by deleting " 'More than minimal planning,' 'firearm,' " and inserting in lieu thereof " 'Firearm' "; and by deleting Application Note 13 in its entirety.

The Commentary to section 2B1.1 captioned "Background" is amended by deleting the second paragraph in its entirety.

Section 2F1.1(b) is amended by deleting subdivision (2); by renumbering subdivisions (3) through (6) as (2) through (5); and by deleting subdivision (1) in its entirety and inserting in lieu thereof the following:

"(1) If the loss exceeded $2,000, increase the offense level as follows:

Loss (Apply the greatest)	Increase in level
(A) $2,000 or less	no increase
(B) More than $2,000	add 1
(C) More than $3,500	add 2
(D) More than $6,000	add 3
(E) More than $11,000	add 4
(F) More than $20,000	add 5
(G) More than $35,000	add 6
(H) More than $60,000	add 7
(I) More than $100,000	add 8
(J) More than $175,000	add 9
(K) More than $300,000	add 10
(L) More than $500,000	add 11
(M) More than $900,000	add 12
(N) More than $1,500,000	add 13
(O) More than $2,750,000	add 14
(P) More than $5,000,000	add 15
(Q) More than $8,500,000	add 16
(R) More than $15,000,000	add 17
(S) More than $25,000,000	add 18
(T) More than $45,000,000	add 19
(U) More than $80,000,000	add 20.".

The Commentary to section 2F1.1 captioned "Application Notes" is amended by deleting Application Notes 2 and 3 in their entirety and by renumbering Application Notes 4 through 18 as Application Notes 2 through 16.

The Commentary to section 2F1.1 captioned "Background" is amended by deleting the second and third paragraphs in their entirety.

Reason for Amendment: This amendment seeks to increase the clarity of sections 2B1.1 and 2F1.1 and to cause their application to be more uniform. The specific offense characteristic of "more than minimal planning" has proven difficult to apply consistently in practice. This amendment would eliminate the specific offense characteristic of "more than minimal planning" and build the two-level increase for "more than minimal planning" into the loss tables. This would be accomplished by extending the loss tables by two additional levels, thereby spreading out the loss amounts. The effect would be to provide no increase for "more than minimal planning" at the lowest loss amounts, to provide for a full two-level increase at the highest loss amounts, and to taper the two-level increase into the loss tables as loss amounts increase.

Additional Issues for Comment: 1. As the Commission considers revisions to the loss table in sections 2B1.1 and 2F1.1, it will consider comparable changes to other guideline sections that contain loss tables, including section 2T4.1. The Commission requests comment with regard to the conforming changes appropriate if the loss tables are revised in sections 2B1.1 and 2F1.1.

2. In connection with this amendment the Commission is considering a number

of possible loss tables. Comment is requested on the tables set forth below. The tables differ with regard to the rate at which the loss amounts increase. The tables in the proposed amendment above contain loss amounts that increase at approximately a constant rate. Tables 1 and 2 below are constructed such that the rate of increase gradually declines, with the more rapid rate of decline in Table 2. If Table 1 or Table 2 is used for section 2F1.1, a comparable table will be used for section 2B1.1.

Table 3 below is constructed with two-level rather than one-level increases. A table with two-level increases is being considered because it should reduce the frequency with which sentencing hearings would be necessary in order to determine the applicable offense level. By reducing the length of the table and increasing the spread between loss amounts, factual disputes should arise less frequently relative to the appropriate offense level. If a table such as Table 3 is used for section 2F1.1, a comparable table will be used for section 2B1.1.

Table 1: Alternative Fraud Table

(1) If the loss exceeded $2,000, increase the offense level as follows:

Loss (Apply the greatest)	Increase in level
(A) $2,000 or less	no increase
(B) More than $2,000	add 1
(C) More than $4,000	add 2
(D) More than $8,000	add 3
(E) More than $16,000	add 4
(F) More than $31,000	add 5
(G) More than $60,000	add 6
(H) More than $110,000	add 7
(I) More than $200,000	add 8
(J) More than $365,000	add 9
(K) More than $650,000	add 10
(L) More than $1,200,000	add 11
(M) More than $2,000,000	add 12
(N) More than $3,350,000	add 13
(O) More than $5,500,000	add 14
(P) More than $9,000,000	add 15
(Q) More than $15,000,000	add 16
(R) More than $23,000,000	add 17
(S) More than $36,000,000	add 18
(T) More than $54,000,000	add 19
(U) More than $80,000,000	add 20.

Table 2: Alternative Fraud Table

(1) If the loss exceeded $2,000, increase the offense level as follows:

Loss (Apply the greatest)	Increase in level
(A) $2,000 or less	no increase
(B) More than $2,000	add 1
(C) More than $4,000	add 2
(D) More than $7,500	add 3
(E) More than $15,000	add 4
(F) More than $25,000	add 5
(G) More than $50,000	add 6
(H) More than $90,000	add 7
(I) More than $160,000	add 8
(J) More than $285,000	add 9
(K) More than $500,000	add 10
(L) More than $885,000	add 11
(M) More than $1,500,000	add 12
(N) More than $2,500,000	add 13
(O) More than $4,500,000	add 14
(P) More than $7,500,000	add 15
(Q) More than $12,000,000	add 16
(R) More than $20,000,000	add 17
(S) More than $32,000,000	add 18
(T) More than $50,000,000	add 19
(U) More than $80,000,000	add 20.

Table 3: Alternative Fraud Table

(1) If the loss exceeded $3,500, increase the offense level as follows:

Loss (Apply the greatest)	Increase in level
(A) $3,500 or less	no increase
(B) More than $3,500	add 2
(C) More than $11,000	add 4
(D) More than $35,000	add 6
(E) More than $110,000	add 8
(F) More than $350,000	add 10
(G) More than $1,100,000	add 12
(H) More than $3,300,000	add 14
(I) More than $10,000,000	add 16
(J) More than $30,000,000	add 18
(K) More than $80,000,000	add 20.

Section 2B1.1. Larceny, Embezzlement, and Other Forms of Theft

Section 2B4.1. Bribery in Procurement of Bank Loan and Other Commercial Bribery

Section 2F1.1. Fraud and Deceit

6. Proposed Amendment: Section 2B1.1(b) is amended by renumbering subdivision (7) as (8), and by inserting the following as subdivision (7):

"(7) If the offense affected a financial institution, increase by 4 levels.".

Section 2B4.1(b) is amended by renumbering subdivision (2) as (3), and by inserting the following as subdivision (2):

"(2) If the offense affected a financial institution, increase by 4 levels.".

Section 2F1.1 is amended by renumbering subdivision (5) as (6), and by inserting the following as subdivision (5):

"(5) If the offense affected a financial institution, increase by 4 levels.".

Reason for Amendment: This amendment would increase the sentences for financial institution fraud, theft, and bribery over the entire range of offense levels, including those at the lower and middle levels, in addition other enhancements already in these guidelines. Under this amendment, embezzlement of $5,000 from a financial institution, for example, would have an offense level four levels higher than embezzlement of the same amount from an individual or from another type of institution. The purpose of this amendment would be to reflect the increases by Congress during the past several years in the maximum terms of imprisonment from 20 to 30 years for violations of title 18 bank fraud and embezzlement offenses.

Section 2D.1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)

7. Issue for Comment: The Commission requests comment regarding the removal or modification of the current limitations on offense levels for the distribution of Schedule III, IV, and V controlled substances, anabolic steroids, and Schedule I and II depressants, so that violations involving large quantities of these substances would result in higher offense levels. Currently, for example, a defendant who violates the law by selling hundreds of kilograms of a Schedule I or II depressant or a Schedule III substance receives the same offense level (level 20) as a defendant who sells 20 kilograms. Schedule I and II depressants include, for example, methqualone (Schedule I) and glutethimide (recently moved to Schedule II from Schedule III), which are used with codeine preparations as a heroin substitute. Schedule III substances, which have a five-year statutory maximum, include codeine preparations such as Tylenol or aspirin with codeine. Section 2D1.1 also limits the offense levels for Schedule IV substances (level 12 for 20 kilograms or more), which have a three-year statutory maximum sentence of imprisonment, and Schedule V substances (level 8 for 20 kilograms or more), which have a one-year statutory maximum sentence of imprisonment.

Chapter Two, Part L—Offenses Involving Immigration, Naturalization, and Passports

8. Proposed Amendment: Section 2L1.1(b)(2) is amended by deleting:

"If the defendant previously has been convicted of smuggling, transporting, or harboring an unlawful alien, or a related offense, increase by 2 levels.",

and inserting in lieu thereof:

"If the offense involved the smuggling, transporting, or harboring of six or more unlawful aliens, and a decrease from subsection (b)(1) does not apply, increase as follows:

Number of unlawful aliens smuggled, transported, or harbored	Increase in level
6–11	add 1
12–24	add 2
25–49	add 3
50–99	add 4
100 or more	add 5."

The Commentary to section 2L1.1 captioned "Application Notes" is amended in Note 1 by inserting the following additional sentence at the end:

"The 'number of unlawful aliens smuggled, transported, or harbored' does not include the defendant.".

The Commentary to section 2L1.1 captioned "Application Notes" is amended in Note 8 in the first sentence by deleting "large numbers of aliens or".

The Commentary to section 2L1.1 captioned "Application Notes" is amended by deleting Notes 2, 3 and 4, and renumbering Notes 5, 6, 7, 8 and 9, as 2, 3, 4, 5, and 6 respectively.

The Commentary to section 2L1.1 captioned "Background" is amended by deleting the last sentence and inserting in lieu thereof:

"Where the offense was committed for profit, the offense level increases with the number of unlawful aliens smuggled, imported, or harbored. In large scale cases, an additional adjustment from § 3B1.1 (Aggravating Role) typically will apply to the most culpable defendants.".

Conforming Amendments: Section 2L2.1(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics", and by inserting the following additional specific offense characteristic:

"(2) If the offense involved six or more sets of documents, and a decrease from subsection (b)(1) does not apply, increase as follows:

Number of sets of documents	Increase in level
6–11	add 1
12–24	add 2
25–49	add 3
50–99	add 4
100 or more	add 5.".

The Commentary to section 2L2.1 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes" and by inserting the following additional Note:

"2. Where it is established that multiple documents are part of a set intended for use by a single person, treat the set as one document.".

Section 2L2.3(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics", and by inserting the following additional specific offense characteristic:

"(2) If the offense involved six or more passports, and a decrease from subsection (b)(1) does not apply, increase as follows:

Number of passports	Increase in level
6–11	add 1
12–24	add 2
25–49	add 3
50–99	add 4
100 or more	add 5.".

Section 3D1.2(d) is amended in the second paragraph by inserting "sections 2L1.1, 2L2.1, 2L2.3" in the appropriate place by section; and in the third paragraph by deleting "2L1.1, 2L2.1," and "2L2.3,".

The Commentary to section 3D1.2 captioned "Application Notes" is amended in Note 3 by deleting example 7.

Reason for Amendment: Currently, section 2L1.1 provides the same offense level for a defendant who smuggles, transports, or harbors 1, 5, 25, 50, or any number of unlawful aliens. The addition of specific offense characteristic (b)(2) to section 2L1.1 in the April 1987 guidelines was intended to conform the guidelines to the offense level indicated by past practices data for "ongoing criminal conduct". However, the specific offense characteristic "prior conviction for the same or similar offense" is not a good proxy for such conduct. Moreover, the inclusion of a prior criminal record variable in the offense guideline seems inconsistent with the general treatment of prior record as a separate dimension in the guidelines.

This amendment addresses this issue by substituting the number of aliens smuggled, transported, or harbored as a more direct measure of the scope of the offense. Consistent with the Commission's general approach, the offense level increases gradually with the number of aliens. It should also be noted that § 3B1.1 (Aggravating Role) generally provides an additional increase of 2, 3, or 4 levels for organizers, managers, and supervisors in large-scale cases because such operations typically involve lower-level participants. Thus, the proposed table in section 2L1.1(b)(2) (pertaining to the number of aliens) is designed to work in conjunction with the operation of enhancements from section 3B1.1.

Additional Issues for Comment: The Commission requests comment on whether enhancements for death or bodily injury should be incorporated into this guideline and, if so, the appropriate levels for such enhancements, and whether the level of enhancement should vary with the defendant's state of mind (e.g., knowing, reckless, criminally negligent). Or, are such issues best addressed as guideline departures? The Commission also requests comment on whether an enhancement for a firearm or other dangerous weapon should be included and, if so, whether the definition and enhancement in section 2D1.1 should be used; or whether this factor also is better addressed as a guideline departure. The Commission also requests comment on whether these guidelines should include any additional specific offense characteristics.

Section 2N2.1. Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product

9. Proposed Amendment: [[Option 1: Section 2N2.1 is amended by inserting the following additional subsection:

"(b) Cross Reference

(1) If the offense was committed in furtherance of, or to conceal, an offense covered by another offense guideline, apply that other offense guideline if the resulting offense level is greater than that determined above.".

The Commentary to section 2N2.1 captioned "Application Notes" is amended by deleting Note 2 as follows:

"2. If the offense involved theft, fraud, bribery, revealing trade secrets, or destruction of property, apply the guideline applicable to the underlying conduct, rather than this guideline.",

and inserting in lieu thereof:

"2. The cross reference at subsection (b) addresses cases in which the offense was committed in furtherance of, or to conceal, an offense covered by another offense guideline (e.g., theft, fraud, bribery, revealing trade secrets, or destruction of property).".]]

[[Option 2: Section 2N2.1 is deleted in its entirety, and the following is inserted in lieu thereof:

"Section 2N2.1. Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product

(a) Base Offense Level: 6

(b) Special Offense Characteristics

(1) If the defendant committed the offense after a prior conviction under the Federal Food, Drug and Cosmetic Act or similar state law, increase by 2 levels.

(2) If the offense involved violation of any judicial or administrative order, injunction, decree or process, increase by 2 levels. If the resulting offense level is less than level 10, increase to level 10.

(3) If the offense created or involved a public health risk or was committed with reckless disregard for such risk, increase by 4 levels. If the resulting offense level is less than level 13, increase to level 13.

"(c) Cross Reference

(1) If the offense was committed in furtherance of, or to conceal, an offense covered by another offense guideline, apply that other offense guideline if the resulting offense level is greater than that determined above.

Commentary

Application Notes:

1. The base offense level assumes a regulatory violation. If only negligence was involved, a downward departure may be warranted. If willful conduct was involved, an upward departure may be warranted. See chapter Five, part K (Departures).

2. Subsection (b)(1) applies to offenders convicted of a second offense under 21 U.S.C. 333(a)(2), which is a felony, and to offenders who have been convicted of similar state offenses.

3. The term 'public health risk' in subsection (b)(3) includes, for example, the risk of illness, adverse side effects, or allergic reaction. It also includes the risk that affected persons will forego needed treatment. Subsection (b)(3) applies to such risk even if the adverse consequences are of short-term duration or not particularly grave. If the offense involved a risk of particularly serious bodily injury or death, an upward departure may be warranted.

4. If death, bodily injury, extreme psychological injury (other than as a result of a public health risk), property damage, or monetary loss resulted, an upward departure may be warranted. See chapter Five, part K (Departures).

5. The Commission has not yet promulgated a guideline for violations of 21 U.S.C. 331(t) (the Prescription Drug Marketing Act).".]]

Reason for Amendment: Option 1 converts the "instruction" in Application Note 2 of the Commentary to a cross reference in the guideline itself to conform with the structure of the remainder of the guidelines. Option 2 incorporates Option 1, but in addition provides specific offense characteristics and revised commentary to distinguish the different circumstances under which this offense can be committed.

Section 2Q1.2 Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification

10. Proposed Amendment: Section 2Q1.2(b)(4) is amended by inserting the following at the end: "Do not apply this adjustment if an adjustment from (b)(1) applies."

Reason for Amendment: The purpose of this amendment is to clarify the intent of the guideline and eliminate "double-counting." A review of cases sentenced under this guideline indicates that some courts have increased the offense level under subdivision (b)(1), based upon a "discharge, release, or emission" without a permit or in violation of a permit, and also increased the offense level under subdivision (b)(4), because the discharge, release, or emission occurred "without a permit or in violation of a permit." Yet, in some cases, the "discharge, release, or emission" is not a violation of law unless it occurs "without a permit or in violation of a permit." Accordingly, it has been contended that applying both of these subsections in the same case is inappropriate double-counting.

Additional Issues for Comment: 1. In conjunction with this amendment, the Commission is reconsidering the appropriate adjustment for offenses involving a discharge, release, or emission of a pollutant. Currently, the guideline provides a 4-level, or 6-level increase under subsections (b)(1)(A) and (b)(1)(B), respectively. Comment is requested on whether these adjustments should be increased by 2–4 levels each to provide an 6 or 8 level increase, and 8 or 10 level increase, respectively; or whether other adjustments should be made to the specific characteristics in subdivisions (b)(1) and (b)(4) to address the perception of double counting.

2. If the proposed amendment is adopted, a comparable amendment to section 2Q1.3 (Mishandling of Other Environmental Pollutants; Recordkeeping, Tampering, and Falsification) may be warranted. Comment is requested whether the Commission should make changes in the structure and specific offense characteristics of section 2Q1.3 consistent with any changes made in section 2Q1.2.

Section 2Q2.1 Specially Protected Fish, Wildlife, and Plants; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants

11. Proposed Amendment: Section 2Q2.1(b)(1) is amended by deleting "involved a commercial purpose" and inserting in lieu thereof "was (A) committed for pecuniary gain or (B) involved a pattern of similar violations".

Section 2Q2.1(b)(2) is amended by inserting "(A)" immediately before "involved" and by inserting "or (B) otherwise created a significant risk of infestation or disease transmission potentially harmful to humans, fish, wildlife, or plants" immediately following "law".

Section 2Q2.1(b)(3)(B) is amended by deleting "a quantity of fish, wildlife, or plants that was substantial in relation either to the overall population of the species or to a discrete subpopulation" and inserting in lieu thereof "(i) marine mammals that are listed as depleted under the Marine Mammal Protection Act (as set forth in 50 CFR 216.15), (ii) fish, wildlife, or plants that are listed as endangered or threatened by the Endangered Species Act (as set forth in 50 CFR part 17), or (iii) fish, wildlife, or plants that are listed as endangered in appendix I to the Convention on International Trade in Endangered Species of Wild Fauna or Flora (as set forth in 50 CFR part 23)".

The Commentary to section 2Q2.1 is amended by inserting in the appropriate place the following:

"Application Notes:

1. An offense 'committed for pecuniary gain' includes market transactions, barter transactions, and activities designed to increase gross revenue or reduce losses (e.g., when a farmer destroys migratory birds to prevent their consumption of cereal grains).

2. For purposes of subsection (b)(2), the quarantine requirements include those set forth in 9 CFR part 92, and 7 CFR chapter III.

3. For purposes of subsection (b)(3)(A), 'market value' may be determined from any reliable information available.".

The Commentary to section 2Q2.1 captioned "Background" is amended by deleting "involved a commercial purpose" and inserting in lieu thereof "was committed for pecuniary gain", and by deleting "species exceeded $2,000 or the offense involved a quantity of fish, wildlife, or plants that was substantial in relation either to the population of the species or to a discrete subpopulation of the species" and inserting in lieu thereof "fish, wildlife, or plants exceeded $2,000, or involved certain endangered, threatened, or depleted species".

Reason for Amendment: This amendment is designed to strengthen the deterrent effect of the sanctions for violations covered by this guideline. The amendment expands the specific offense characteristic in subsection (b)(1) to cover other categories of offenses that appear to be equally serious to those committed for a commercial purpose. In addition, the amendment expands the specific offense characteristic in subsection (b)(2) to cover other comparable types of risk of harm. Furthermore, the amendment modifies the specific offense characteristic in subsection (b)(3) to better encompass the types of cases that the Commission intended to cover; experience has shown that courts have had difficulty applying this subsection.

Additional Issues for Comment: 1. Should an additional specific offense characteristic be added, providing for a two-level increase if the offense involved more than minimal planning? If so, should the increase be an alternative to, or in addition to, the increase for the

specific offense characteristic in section 2Q2.1(b)(1)?

2. When the specific offense characteristic in section 2Q2.1(b)(1) is applicable, should the magnitude of the increase in levels be greater? If so, should there be a three-level or a four-level increase?

Chapter Two, Part S—Money Laundering and Monetary Transaction Reporting

12. Proposed Amendment: Section 2S1.4 is amended in the title by inserting at the end "; Willful Failure to File Form 8300; Filing False Form 8300".

The Commentary to section 2S1.4 captioned "Statutory Provision" is amended by inserting "26 U.S.C. 7203, 7206;" immediately before "31 U.S.C. 5316"; and in the caption by deleting "Provision" and inserting in lieu thereof "Provisions".

The Commentary to section 2S1.4 captioned "Application Notes" is amended by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following additional note:

"2. Violations of 26 U.S.C. 7203 and 7206 are covered by this offense guideline if they involve (A) willfully failing to file a Form 8300 (a willful violation of 26 U.S.C. 6050I), or (B) willfully filing a false Form 8300.".

Conforming Amendments: The Commentary to section 2S1.3 captioned "Statutory Provisions" is amended by deleting "26 U.S.C. 7203 (if a willful violation of 26 U.S.C. 6050I);".

The Commentary to sections 2T1.1–2T1.4 and Statutory Index are amended to reference the inclusion of certain violations of 26 U.S.C. 7203 and 7206 in section 2S1.4.

Section 3D1.2(d) is amended in the second paragraph by inserting ", section 2S1.4" immediately following "2S1.3".

Reason for Amendment: Certain violations of 26 U.S.C. 7203 and 7206 are more closely comparable to violations covered by section 2S1.4, added in November 1991, than to the guidelines presently referenced to these violations. This amendment expands the title and statutory provisions of section 2S1.4 to cover these violations and makes conforming revisions.

Chapter Two, Part T—Offenses Involving Taxation

13. Proposed Amendment: Section 2T1.1 is amended in the title by inserting "; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents" immediately after "Evasion".

Section 2T1.1(a) is deleted and the following is inserted in lieu thereof:

"(a) Base Offense Level (Apply the Greater):

(1) Level from section 2T4.1 (Tax table) corresponding to the tax loss; or

(2) 6.

For purposes of this guideline, the 'tax loss' is the total amount of tax that was the object of the evasion or fraud, or that the defendant owned and willfully did not pay.".

The Commentary to section 2T1.1 captioned "Statutory Provision" is amended by deleting "Provision" and inserting in lieu thereof "Provisions", by deleting "7201" and inserting in lieu thereof "7201, 7203 (other than a willful violation of 26 U.S.C. 6050I), 7206 (except 7206(2)), 7207".

The Commentary to section 2T1.1 captioned "Application Notes" is amended by deleting Application Note 1, and by renumbering Notes 2, 3, 4, 5, and 6 as Notes 1, 2, 3, 4, and 5, respectively.

The Commentary to section 2T1.1 captioned "Application Notes" is amended in Note 1 (formerly Note 2) by deleting "the taxpayer evaded or attempted to evade" and inserting in lieu thereof "was the object of the evasion or fraud, or that the defendant owned and willfully did not pay", and by inserting the following at the end:

"In typical circumstances, tax loss can be calculated as indicated in the following examples:

If the offense involved improperly claiming a deduction (i.e., an item that reduces the amount of taxable income) or an exemption, or causing another to improperly claim a deduction or exemption, the tax loss is the amount of the improper deduction or exemption multiplied by the applicable tax rate(s).

If the offense involved improperly claiming a tax credit (i.e., an item that reduces the amount of tax directly), the tax loss is the amount of the improper tax credit.

If the offense involved filing a return in which gross income was underreported, there shall be a rebuttable presumption that the tax loss is equal to the underreported income multipled by the applicable tax rate(s).

If the offense involved failing to file a tax return, there shall be a rebuttable presumption that the tax loss is the gross income, minus the applicable amount for personal exemption and the amount of the applicable standard deduction, multiplied by the applicable tax rate(s).

If the offense involved improperly claiming a deduction designed to provide a basis for tax evasion or tax fraud in the future, there shall be a rebuttable presumption that the tax loss is the amount of the deduction multipled by the applicable tax rate for the tax year for which the return was filed.".

The Commentary to section 2T1.1 captioned "Background" is amended in the first paragraph by deleting "evaded" and inserting in lieu thereof "loss", by deleting "evasion" the first time it appears and inserting in lieu thereof "tax loss", and by inserting "or tax fraud" immediately before "increases,".

The Commentary to section 2T1.1 captioned "Background" is amended in the fourth paragraph by deleting the first two sentences, and in the fifth paragraph by deleting the last sentence.

The Commentary to section 2T1.1 captioned "Background" is amended in the sixth paragraph by inserting "and tax fraud" immediately following "tax evasion", by inserting "or fraud" immediately following "the evasion", and by deleting the last sentence.

Sections 2T1.2 and 2T1.3 are deleted in their entirety.

Section 2T1.4(a) is amended by deleting "section 2T1.3" and by inserting in lieu thereof "Section 2T1.1".

Section 2T1.4(b)(1) is amended by inserting "(A)" immediately following "If", and by inserting "or (B) the defendant was in the business of preparing or assisting in the preparation of tax returns," immediately before "increase by 2 levels.".

Section 2T1.4(b)(3) is deleted.

The Commentary to section 2T1.4 captioned "Application Notes" is amended by deleting Notes 3 and 4, by renumbering Application Notes 1 and 2 as 2 and 3, respectively; and by inserting the following as Note 1:

"1. For the general principles underlying the determination of tax loss, see Application Note 1 of the Commentary to section 2T1.1 (Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents). In certain instances, such as promotion of a tax shelter scheme, the defendant may advise other persons to violate their tax obligations through filing returns that find no support in the tax laws. If this type of conduct can be shown to have resulted in the filing of false returns (regardless of whether the principals were aware of their falsity), the misstatements in all such returns will contribute to one aggregate 'tax loss.' ".

The Commentary to section 2T1.4 captioned "Application Notes" is amended in Application Note 2 (formerly note 1) by inserting "has two prongs. The first prong" immediately after "(b)(1)", and by inserting the following as the last sentence:

"The second prong applies to persons who regularly act as tax preparers or advisers for profit; if an enhancement from this prong is applied, do not apply Section 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

The Commentary to Section 2T1.4 captioned "Background" is amended by inserting "and those who make a business of promoting tax fraud" immediately following "advisers"

and by deleting "section 2T1.3" and inserting in lieu thereof "section 2T1.1".

Section 2T1.5 is deleted in its entirety.

Section 2T1.9(a)(1) is amended by deleting "section 2T1.3" and inserting in lieu thereof "section 2T1.4".

Section 2T1.9(b)(1) is amended by inserting "to impair, impede, or defeat the ascertainment, computation, assessment, or collection of revenue" immediately following "violence".

Section 2T1.9(b)(2) is amended by deleting "impede or impair the Internal Revenue Service in the assessment and" and inserting in lieu thereof "impair, impede, or defeat the ascertainment, computations, assessment, or" and by inserting the following as the last sentence:

"Do not, however, apply this adjustment if an adjustment from section 2T1.4(b)(1) is applied.".

The Commentary to section 2T1.9 captioned "Application Notes" is amended by deleting "section 2T1.3" and inserting in lieu thereof "section 2T1.4", and by inserting the following additional note:

"4. Subsection (b)(2) provides an enhancement where the conduct was intended to encourage persons, other than the participants directly involved in the offense, to violate the tax laws (e.g., an offense involving a 'tax protest' group that encourages persons to violate the tax laws, or an offense involving the marketing of fraudulent tax shelters.".

Reason for Amendment: This amendment consolidates and clarifies the guidelines in chapter Two, part T, subpart 1, thereby eliminating the confusion that has arisen in some cases regarding which guideline section was applicable. In addition, this amendment eliminates the anomaly of using actual tax loss only in some cases, and using an amount that differed from actual tax loss in other cases. Furthermore, this amendment clarifies the conditions under which the specific offense characteristics of section 2T1.9 are applicable and clarifies the relationship between the loss calculation under section 2T1.4 and section 2T1.9.

14. Proposed Amendment: Section 2T1.1(b)(1) is amended by deleting "income exceeding $10,000 in any year from criminal activity, increase by 2 levels. If" and inserting in lieu thereof:

"income:

(A) From criminal activity involving or related to the manufacture, importation, or distribution of controlled substances (including money laundering), increase by 5 levels; if the resulting offense level is less than level 17, increase to level 17; or

B) Exceeding $10,000 in any year from any other criminal activity, increase by 2 levels; if"

Section 2T1.2(b)(1) is amended by deleting "income exceeding $10,000 in any year from criminal activity, increase by 2 levels. If" and inserting in lieu thereof:

"income:

(A) From criminal activity involving or related to the manufacture, importation, or distribution of controlled substances (including money laundering), increase by 5 levels; if the resulting offense level is less than level 17, increase to level 17; or

(B) Exceeding $10,000 in any year from any other criminal activity, increase by 2 levels; if".

Section 2T1.3(b)(1) is amended by deleting "income exceeding $10,000 in any year from criminal activity, increase by 2 levels. If" and inserting in lieu thereof:

"income:

(A) From criminal activity involving or related to the manufacture, importation, or distribution of controlled substances (including money laundering), increase by 5 levels; if the resulting offense level is less than level 17, increase to level 17; or

(B) Exceeding $10,000 in any year from any other criminal activity, increase by 2 levels; if".

Section 2T1.4(b)(1) is amended by inserting the following additional subdivision:

"(4) If the defendant aided, assisted, procured, counseled, or advised the filing of a return which failed to report or to correctly identify the source of income:

(A) From criminal activity involving or related to the manufacture, importation, or distribution of controlled substances (including money laundering), increase by 5 levels; if the resulting offense level is less than level 17, increase to level 17; or

(B) Exceeding $10,000 in any year from any other criminal activity, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.".

Reason for Amendment: This amendment provides an enhancement, including a minimum base offense level of 17, for tax violations that involve or are related to violations of the controlled substance laws. This amendment would treat such offenses in a manner similar to money laundering offenses. Under the proposed amendment to section 2T1.4, persons who procure or counsel tax fraud that involves unlawful controlled substance offenses or other criminal activity would be treated the same as those who commit such offenses directly.

Chapter Three—Adjustments, Part A—Victim-Related Adjustments

15. Proposed Amendment: Chapter 3, part A is amended by inserting the following additional guideline and accompanying commentary:

"Section 3A1.4. Commission of Terrorist Crimes

If the defendant committed a felony that involved, or was intended to promote international terrorism, whether committed within or outside the United States, increase by 3 levels.

Commentary

Application Note:

1. If the offense constituted a severe threat to national security, or caused death or bodily injury not taken into account in the offense guideline, an upward departure may be warranted.".

Reason for Amendment: This section would provide an enhancement for terrorist actions involving offenses such as explosives, kidnapping, weapons offenses, passport violations, murder, robbery, and other felony offenses that are committed to promote international terrorism.

Chapter Three, Part B—Role in the Offense

Chapter Two, Part D—Offenses Involving Drugs

16(A). Proposed Amendment: The Introductory Commentary to chapter Three, part B is amended by deleting the third sentence of the first paragraph.

The commentary to section 3B1.2 is amended by inserting the following additional note:

"(4) If a defendant has received a lower offense level by virtue of being convicted of an offense significantly less serious than warranted by his actual criminal conduct, a reduction for a mitigating role under this section ordinarily is not warranted because such defendant ordinarily is not substantially less culpable than a defendant whose only conduct involved the less serious offense. For example, if a defendant whose actual conduct involved a minimal role in the distribution of 25 grams of cocaine (an offense having a Chapter Two offense level of 14 under section 2D2.1) is convicted of simple possession of cocaine (an offense having a Chapter Two offense level of 6 under section 2D2.1), no reduction for a mitigating role is warranted because the defendant is not substantially less culpable than a defendant whose only conduct involved the simple possession of cocaine.".

Reason for Amendment: This amendment clarifies a situation in which a defendant is not ordinarily eligible for a reduction under section 3B1.2 (Mitigating Role), and moves existing language from the Introductory Commentary of chapter Three, part B, to the Commentary in section 3B1.2.

(B). Proposed Amendment. The Commentary to section 3B1.1 is amended by inserting the following additional note:

"4. When a defendant, who otherwise would merit a mitigating role reduction under

section 3B1.2 (Mitigating Role), exercised limited supervision over a limited number of participants with equal or lesser roles, do not apply an adjustment from this section. For example, an increase in offense level under this section would not be appropriate for a defendant whose only function was to offload a single large shipment of marijuana, and who supervised other offloaders of that shipment. Instead, consider such circumstances in determining the appropriate reduction under section 3B1.2 (Mitigating Role). See also Application Note 4 of the Commentary to section 3B1.2 (Mitigating Role).".

The Commentary to section 3B1.2 is amended by inserting the following additional note:

"4. When a defendant who otherwise would merit a mitigating role reduction under section 3B1.2 (Mitigating Role), supervises a number of participants with equal or lesser roles, a lesser reduction than otherwise appropriate ordinarily is warranted. For example, in the case of a defendant who would have qualified for a minimal role adjustment but for his supervision of other participants, an adjustment for minor role, rather the minimal role, would be appropriate.".

Reason for Amendment: This amendment clarifies that a defendant who otherwise merits a mitigating role, and who supervises a limited number of participants of equal or lesser roles, is not subject to an aggravating role enhancement. Instead, such circumstances may be considered in determining whether a mitigating role reduction is appropriate under section 3B1.2.

17(A). Proposed Amendment: The Introductory Commentary to chapter three, part B is amended by deleting the first sentence of the second paragraph and inserting in lieu thereof:

"In the case of a criminal activity involving more than one participant, section 3B1.1 or section 3B1.2 may apply. When a criminal activity involves only one participant, or only participants of roughly equivalent culpability, neither section 3B1.1 nor section 3B1.2 will apply.".

Section 3B1.1 is amended by deleting "follows:" and inserting in lieu thereof "follows (Apply the greatest):".

Section 3B1.1(a) is amended by deleting "five or more participants, or was otherwise extensive" and by inserting in lieu thereof "at least four other participants".

Section 3B1.1(b) is amended by deleting "(but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive" and inserting in lieu thereof "of at least four other participants in a criminal activity".

Section 3B1.1(c) is amended by deleting "other than described in (a) or (b)" and inserting in lieu thereof "that involved at least one other participant".

The Commentary to section 3B1.1 captioned "Application Notes" is amended in Note 1 by deleting the second sentence and inserting in lieu thereof the following additional paragraphs:

"In addition, for the purposes of this guideline, a participant ordinarily includes any person who plays the role of a participant, even if such person is not actually criminally responsible for the offense (e.g., if two persons were recruited to assist in transporting marihuana, they would be deemed participants even if they were undercover law enforcement agents and, thus, not criminally responsible for the offense). However, if an undercover agent were recruited to assist in transporting marihuana and that agent recruited three other undercover agents, only the first undercover agent would be counted as a participant.

Furthermore, for purposes of this guideline, a participant includes any person recruited to play a [[significant]] role in the offense, even though their lack of awareness that an offense was being committed is a bar to their criminal liability (e.g., a person recruited to drive the getaway car from a robbery who is unaware that a robbery is to be committed; or a person expressly hired to collect money for charitable purposes, who is unaware that a fraud is being perpetrated). Persons such as postal employees, messengers, or taxi drivers who are performing their normal duties, and are not otherwise criminally responsible for their conduct, are not included under this paragraph.".

The Commentary to section 3B1.1 captioned "Application Notes" is amended by deleting Note 2.

Section 3B1.4 is deleted in its entirety.

Reason for Amendment: This amendment clarifies the definition of participant to inlcude the defendant and other persons who are criminally responsible. "Participant" also includes, in most cases, law enforcement officers, and those who are not criminally responsible for their conduct in the offense but who play a role in furthering the offense, even if unwitting. The amendment also deletes section 3B1.4, which is untitled, and is inconsistent with the remainder of the guideline format. The substance of the Commentary to section 3B1.4 is more appropriately placed in the Introductory Commentary to this part.

Illustration of Chapter Three, Part B, as amended by Proposed Amendment 17(A)

Part B—Role in the Offense

Introductory Commentary

* * * * *

[When an offense is committed by more than one participant, section 3B1.1 or section 3B1.2 (or neither) may apply.] *In the case of a criminal activity involving more than one participant, section 3B1.1 or section 3B1.2 may apply. When a criminal activity involves only one participant, or only participants of roughly equivalent culpability, neither section 3B1.1 or section 3B1.2 will apply.* Section 3B1.3 may apply to offenses committed by any number of participants.

Section 3B1.1. Aggravating Role

Based on the defendant's role in the offense, increase the offense level as [follows:] *follows (Apply the greatest):*

(a) If the defendant was an organizer or leader of a criminal activity that involved [five or more participants or was otherwise extensive] *at least four other participants,* increase by 4 levels.

(b) If the defendant was a manager or supervisor [(but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive] *of at least four other participants in a criminal activity,* increase by 3 levels.

(c) If the defendant was an organizer, leader, manager, or supervisor in any criminal [other than described in (a) or (b)] *that involved at least one other participant,* increase by 2 levels.

Commentary

Application Notes:

1. A "participant" is a person who is criminally responsible for the commission of the offense, but need not have been convicted. [A person who is not criminally responsible for the commission of the offense (e.g., an undercover law enforcement officer) is not a participant.]

In addition, for the purposes of this guideline, a participant ordinarily includes any person who plays the role of a participant, even if such person is not actually criminally responsible for the offense (e.g., if two persons were recruited to assist in transporting marihuana, they would be deemed participants even if they were undercover law enforcement agents and, thus, not criminally responsible for the offense). However, if an undercover agent were recruited to assist in transporting marihuana and that agent recruited three other undercover agents, only the first undercover agent would be counted as a participant.

Furthermore, for purposes of this guideline, a participant includes any person recruited to play a [[significant]] role in the offense, even though their lack of awareness that an offense was being committed is a bar to their criminal liability (e.g., a person recruited to drive the getaway car from a robbery who is unaware that a robbery is to be committed; or a person expressly hired to collect money for charitable purposes, who is unaware that a fraud is being perpetrated). Persons such as postal employees, messengers, or taxi drivers who are performing their normal duties, and are not otherwise criminally responsible for their conduct, are not included under this paragraph.

[2. In assessing whether an organization is "otherwise extensive," all persons involved during the course of the entire offense are to be considered. Thus, a fraud that involved

only three participants but used the unknowing services of many outsiders could be considered extensive.]

* * * * *

[Section 3B1.4. In any other case, no adjustment is made for role in the offense.

Commentary

Many offenses are committed by a single individual or by individuals of roughly equal culpability so that none of them will receive an adjustment under this part. In addition, some participants in a criminal organization may receive increases under section 3B1.1 (Aggravating Role) while others receive decreases under section 3B1.2 (Mitigating Role) and still other participants receive no adjustment.]

(B). Proposed Amendment to section 3B1.1 (Aggravating Role): The Commentary to section 3B1.1, captioned "Application Notes," is amended in Note 1 by inserting the following additional sentence as the first sentence:

"This adjustment applies only when the offense is committed by more than one participant.".

Reason for Amendment: This amendment clarifies that this adjustment is restricted to cases in which the defendant participates in the commission of the offense with at least one other person who is also criminally responsible for the commission of the offense.

18(A). Proposed Amendment: Section 3B1.2 is amended by deleting "In cases falling between (a) and (b), decrease by 3 levels.".

The Commentary to section 3B1.2 is deleted in its entirety and the following notes are inserted in lieu thereof:

"1. This section applies only in the case of criminal activity involving more than one participant. "Participant" is defined in Note 1 of the Commentary to section 3B1.1.

[[2. No mitigating role adjustment under this section shall be applied to a defendant who, in connection with the offense, threatened the use of force, possessed a dangerous weapon, or caused another person to threaten the use of force or possess a dangerous weapon.]]

3. Subsection (a) (Minimal Role) applies to a defendant who is [[plainly among the least culpable of the participants in the criminal activity]] [[plainly among the least culpable when compared to all other participants who typically participate in the particular type of criminal activity]]. [[It is intended that the downward adjustment for a minimal participant be restricted to a narrow group of defendants whose function in the criminal activity and whose culpability for the offense, relative to that of other participants, indicates that such defendants are plainly among the least culpable.]]

To receive a reduction under subsection (a) (Minimal Role), the defendant [[ordinarily]] shall have:

(a) Only performed unskilled or unsophisticated tasks;

(b) No proprietary interest in the criminal activity, and received no benefit from the criminal activity, other than a [[fixed-fee]] payment that is a small amount both absolutely and in comparison to the expected profit of those who have employed the defendant.

(c) No [[significant]] decision-making authority in the criminal activity;

[[(d) Participated in the criminal activity [[on no more than one occasion]] [[for no more than a short period of time]]; and

[[(e) No more than limited knowledge of the scope and structure of the criminal activity and of the criminal conduct of the more culpable participants.]]

[[Frequently, such defendants will have little or no knowledge of the scope and structure of the criminal activity or of the activities of the more culpable participants.]]

4. In a controlled substance trafficking offense (any offense for which the offense level is determined under section 2D1.1)—

(a) "No proprietary interest" excludes (1) any defendant who owned any portion of the controlled substance; and (2) any defendant who financed any aspect of the importation, manufacture, cultivation, transportation, or distribution of the controlled substance;

(b) "No [[significant]] decision-making authority" excludes (1) any defendant who sold, negotiated the sale of, or determined the terms of a sale of the controlled substance, (2) any defendant who exercised [[significant]] decision-making authority with respect to the importation, manufacture, cultivation, transportation, or distribution of the controlled substance, and (3) and defendant who exercised control of the controlled substance for a significant period of time, such that the defendant [[had the ability to control]] [[was essential to]] the success of the criminal activity. In contrast, "no [[significant]] decision-making authority in the criminal activity" includes any defendant who did not exercise control over the controlled substance for any significant period of time, such that the defendant [[had the ability to control]] [[was essential to]] the success of the criminal activity. For example, a defendant who merely offloaded one ship, or permitted use of a residence in furtherance of the crinimal activity did not exercise control over the controlled substance for any significant period of time.

5. Subsection (b) (Minor Role) applies to a defendant who is [[significantly less culpable than a defendant who carried out the same criminal activity without assistance]] [[substantially less culpable when compared to all other participants who typically participate in the particular type of criminal activity]], but who is more culpable than a minimal role participant. This subsection may apply to a defendant who meets some but not all of the criteria for a minimal role reduction. [[For example, an adjustment for minor role, rathter than minimal role, may be appropriate for a defendant who otherwise qualifies for a minimal role adjustment, but exercised sufficient control over controlled substances being transported so as not to merit a minimal role adjustment.]] Furthermore, subsection (b) may apply to a defendant who otherwise meets the criteria for a minimal role adjustment but for the exercise of limited supervision over a limited number of participants who also had minimal roles in the offense.

6. Consistent with the structure of the guidelines, the defendant bears the burden of persuasion in establishing a mitigating role reduction. In determining whether a defendant merits a mitigating role adjustment, the court should base its determination of role on the totality of the circumstances. Among the factors to be considered are the apparent sophistication or lack of sophistication of the defendant or the conduct, evidence conperning the existence of similar criminal conduct by the defendant, evidence of wealth derived from unknown or illegal sources, and the quantity of controlled substances with which the defendant was personally involved.

[[7. In a controlled substance trafficking offense (any offense covered under section 2D1.1), the criminal activity to be considered is the trafficking in the controlled substance, not merely the transportation of the controlled substance from one place to another. For example, in the case of a person hired to drive a truck containing marihuana from one city to another, the defendant's role is to be considered in relation to the criminal activity of drug trafficking. Therefore, a transporter may, if otherwise qualified, receive a reduction for a mitigating role.]]".

Reason for Amendment: This amendment more clearly specifies the factors that the court should consider when determining whether a defendant receives a mitigating role adjustment. This amendment also clarifies that couriers and mules by virtue of the function they play in a criminal activity are either presumed to be eligible nor ineligible for a mitigating role reduction. Such defendants must otherwise meet the criteria for a mitigating role reduction before they are eligible for such adjustment.

Additional Issues for Comment: The Commission requests comment on the following questions:

(1) Whether mitigating role adjustments should apply in cases in which the defendant is substantially less culpable than other defendants in the same case, or whether the adjustments should apply only when the defendant is substantially less culpable than individuals, whether or not defendants, who typically participate in similar criminal conduct?

(2) Whether defendants who perform certain functions in a drug activity may be eligible for a mitigating role adjustment under section 3B1.2 solely by virtue of the function performed? For example, it might be suggested in commentary to section 3B1.2 that defendants who perform the functions of offloader, driver, transporter, or lookout, are automatically eligible for a minor or minimal role adjustment, or are eligible for such an adjustment if certain other

factors are present. The Commission requests comment on how it should identify such participants and how to treat a defendant who performs more than one function in the offense.

(3) Conversely, whether defendants who perform certain functions in a drug activity are, by virtue of the importance of the function, disqualified from receiving a mitigating role adjustment, notwithstanding the fact that the defendant may have received a substantially smaller amount of money for his participation than other participants and may have exercised little decison-making authority in the criminal activity? For example, some argue that because one who transports controlled substances performs a crucial function for the drug trafficking ring, that person should not receive a mitigating role adjustment, no matter how little compensation the individual received, for an offense level based only on the quantity of controlled substances transported.

(4) What factors should be considered in determining whether to give a mitigating role reduction; and whether the list of factors provided in proposed application note 1 is adequate or overinclusive?

(5) Whether a defendant who otherwise merits a mitigating role adjustment under section 3B1.2 should be prevented from receiving that adjustment where the defendant has not been held responsible for a greater quantity of controlled substances than the defendant actually trafficked or aided in the trafficking? The Commission also requests comment on whether such a restriction should apply only to defendants whose sole function is that of a courier or mule.

(6) Conversely, whether a defendant who otherwise does not merit a mitigating role reduction under section 3B1.2 solely because he sold small quantities of certain controlled substances should be permitted to receive that mitigating role adjustment where the defendant has been held responsible for a greater quantity of controlled substances than the defendant actually trafficked or aided in trafficking?

(B). Proposed Amendment to section 3B1.2 (Mitigating Role): The Commentary to Section 3B1.2 captioned "Application Notes" is amended by inserting the following additional note:

"4. In addition to a downward adjustment for a minimal participant, a downward departure may be warranted on the ground that minimal participation exists to a degree not contemplated by the guidelines. For example, a downward departure, in addition to a downward adjustment for a minimal participant, may be warranted in a case where the offense level as applied to a defendant has been extraordinarily magnified by a circumstance that bears little relation to the defendant's role in the offense.".

Reason for Amendment: This amendment provides expressly that a court may depart below the applicable guideline range when it determines that a defendant's minimal participation exists to a degree not taken into consideration by the Sentencing Commission.

19. Proposed Amendment: Section 2D1.1(b) is amended by inserting the following additional subdivisions:

[[Option 1:

"(3) If the defendant was a minimal participant, decrease by 4 levels, but if the offense involved—

(A) Only marijuana, hashish, hashish oil, a Schedule I or II Depressant, or a Schedule III, IV, or V substance, in no event shall the offense level be greater than level [[16–26]]; or

(B) Any other controlled substance, in no event shall the offense level be greater than level [[20–32]].

(4) If the defendant was a minor participant, decrease by 2 levels, but if the offense involved—

(A) Only marijuana, hashish, hashish oil, a Schedule I or II Depressant, or a Schedule III, IV, or V substance, in no event shall the offense level be greater than level [[22–28]]; or

(B) Any other controlled substance, in no event shall the offense level be greater than level [[26–34]].".]]

[[Option 2:

"(3) If the defendant was a minimal participant, decrease by 4 levels, but in no event shall the offense level be greater than level [[16–32]].

(4) If the defendant was a minor participant, decrease by 2 levels, but in no event shall the offense level be greater than level [[22–34]].".]]

[[Option 3:

"(3) If the defendant was a minimal participant, decrease by 4 levels, but in no event shall the offense level be greater than level [[16–32]].".]]

[[Options 1 and 2:

The Commentary to section 2D1.1 captioned "Application Notes" is amended by adding the following additional note:

"15. Do not apply an adjustment from section 3B1.2 (Mitigating Role) if the offense level is adjusted under subsection (b)(3) or (b)(4).".]]

[[Option 3:

The Commentary to section 2D1.1 captioned "Application Notes" is amended by adding the following additional note:

"15. Do not apply an adjustment from section 3B1.2 (Mitigating Role) is the offense level is adjusted under subsection (b)(3).".]]

Reason for Amendment: This amendment limits the offense level to which a minor or minimal participant in drug cases is exposed. Some argue that, with regard to extremely large quantities of drugs, using the weight of the substance to determine the offense level of a minor or minimal participant overstates the culpability of that participant. Some also argue that the current 4-level reduction may be inadequate to counter the impact of a quantity-driven offense level.

Additional Issues for Comment: The Commission requests comment on this amendment and on possible variations of the amendment, as suggested by the following questions:

(1)(a) Should the same offense level cap apply to minor and minimal role offenders?

(b) Should the same offense level cap apply to marijuana (and similar substances) as applies to other controlled substances (such as heroin, cocaine, and crack cocaine)? On what criteria should the Commission make a distinction between types of substances for purposes of determining an appropriate offense level cap?

(2) Should the offense level cap limit the sentence imposed (e.g., no greater than [[120]] months) or limit the guideline offense level to be applied (e.g., no greater than level [[32]])?

(3) With regard to mitigating role participants, should one offense level cap be selected for a particular substance (e.g., a level 32 for cocaine offenses) or should two offense level caps be available, with the cap to be determined based on the mandatory minimum penalty to which the defendant is subject as a result of the quantity of drugs with which the defendant is involved? For example, with two offense level caps, a defendant involved with a quantity of less than 5 kilograms of cocaine could be subject to an offense level cap of 26 (or a sentencing cap of 60 months) and a defendant involved with a quantity of 5 or more kilograms of cocaine could be subject to an offense level cap of 32 (or a sentencing cap of 120 months)? Would the use of two such caps create an undesirable "cliff" effect? For example, a defendant involved with 4.9 kilograms of cocaine might be subject to a 5-year sentencing cap, whereas a defendant involved with 5 kilograms of cocaine would be subject to a 10-year cap: a 5-year difference in sentence may be based on a difference in quantity of 100 grams of cocaine.

(4) To what extent do mandatory minimum sentencing statutes, on which the Commission has set its base offense levels for drug offenses, further influence the Commission's consideration of these possible amendments? Some argue that congressional intent is clearer

concerning the determination of the amount of drugs that triggers a mandatory sentence for substantive offenses than it is with regard to this same determination in the context of conspiratorial offenses. Accordingly, should there be different offense level caps, depending on whether the defendant's accountability for a quantity of drugs is based on conspiratorial or substantive conduct? How could such a distinction be articulated?

(5) Should an amendment capping the offense level of mitigating role offenders be available only to defendants with a Criminal History Category of I? Category I or II? Or, should it be available only to Category I or II defendants who have no prior drug trafficking conviction?

(6) Should an alternative to an offense level cap be considered such that at high base offense levels the reduction for minimal role is greater than 4 levels, and for minor role, greater than 2 levels?

(7) Should this amendment modify section 2D1.1 (Manufacturing, Importing, Exporting, or Trafficking) or section 3B1.2 (Mitigating Role)?

20. Proposed Amendment: [[Option 1: Section 2D1.8 is deleted in its entirety. The Commentary to section 2D1.1 captioned "Statutory Provisions" is amended by inserting "856," before "960(a),".]]

[[Option 2: Section 2D1.8(a) is deleted and the following section inserted in lieu thereof:

"(a) Base Offense Level

(1) The offense level from the table in section 2D1.1 applicable to the underlying controlled substance offense, except as provided below.

(2) If the defendant had no role in the underlying controlled substance offense other than renting or allowing use of a premises, the offense level shall be 4 levels less than the offense from section 2D1.1 applicable to the underlying controlled substance offense, but not greater than level [[16]].".

The Commentary to section 2D1.8 captioned "Application Note" is amended by deleting Note 1 and inserting the following note in lieu thereof:

"1. Do not apply an additional adjustment under section 3B1.2 (Mitigating Role) if the offense level is determined under subsection (a)(2).".]]

[[Option 3: Section 2D1.8(a) is deleted and the following section inserted in lieu thereof:

"(a) Base Offense Level (Apply the greatest):

(1) The offense level from the table in section 2D1.1 applicable to the underlying controlled substance offense;

(2) [[16]] .".]]

Reason for Amendment: Currently, this guideline, which provides for a base offense level of 16 without regard to the quantity of drugs involved in the offense, can produce what appear to be anomalous results. A defendant who allows less than 250 grams of marijuana to be sold from his apartment is assigned a base offense level of 16 if convicted under 21 U.S.C. 856; if he had been convicted of actual distribution, he would have been assigned a base offense level of 6. In contrast, a defendant who allowed the use of a premises to sell 300 kilograms of heroin would also be assigned an offense level of 16 under the current guideline. Each option determines the offense level by reference to section 2D1.1. Option 1 provides no maximum or minimum offense level. Option 2 provides a maximum offense level 16 where the defendant has no role other than to rent or allow the use of a premises. Option 3 provides a minimum offense level 16 for every case.

Section 3C1.2. Reckless Endangerment During Flight

21. Issue for Comment: The sentencing Commission requests comment on whether section 3C1.2 adequately accounts for and punishes the full range of behavior to which it is applicable. More specifically, should the guideline incorporate a floor offense level for creating a substantial risk of death or serious bodily injury (e.g., a level from 12 to 15), with additional enhancements (e.g., 2 levels each) for physical injury, serious physical injury, or if death results? Or, should a cross reference to another guideline be used in lieu of, or in conjunction with, the above?

Chapter Three, Part D—Multiple Counts

22. Issue for Comment: The Commission seeks comment regarding amendment of the multiple count rules. In certain situations, multiple counts of conviction do not result in an increase in guideline range; for example, when one count embodies conduct treated as a specific offense characteristic, or adjustment to, the guideline applicable to the other count, or when there is a difference of nine or more levels between the counts. The Commission seeks comment as to the current structure and the court's ability to choose a point in the guideline range is adequate in these cases, or where section 3D1.2 should be modified and, if so, in what manner.

For example, section 3D1.4 instructs the user to disregard any group of closely related counts that is nine or more levels less serious than the group with the highest offense level. Thus, when counts of conviction include serious offenses and significantly less serious ones, the lesser ones do not contribute toward the determination of the guideline range. For example, a drug count with a high offense level and a theft count relating to a relatively small theft would result in a guideline range no different from the range that would result from the drug count alone if the two offenses were nine or more levels apart.

Another example concerns the tax evasion guideline, section 2T1.1(b)(1). This guideline includes a specific offense characteristic that provides that, if the defendant failed to report or to correctly identify the source of income exceeding $10,000 from criminal activity, a two-level increase results. Assuming there were also a count of conviction for a drug offense, the grouping rule cited above operate to group the tax evasion and drug count. The offense level for the count of conviction relating to the drug offenses is likely to exceed the offense for the tax evasion count. Therefore, the offense level for the group of closely related counts would be that for the drug offense.

Chapter Three, Part E—Acceptance of Responsibility

23. Proposed Amendment: [[Option 1: Section 3E1.1(a) is amended by deleting "his criminal conduct" and inserting in lieu thereof "the offense of conviction and relevant conduct".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in Note 1(c) by deleting "related" and inserting in lieu thereof "relevant".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in Note 3 by deleting "and related conduct" and inserting in lieu thereof "of conviction and relevant conduct".

The Background to section 3E1.1 is amended by deleting "and related conduct" and inserting in lieu thereof "of conviction and relevant conduct".]]

[[Option 2: Section 3E1.1(a) is amended by inserting the following immediately before the period at the end of the sentence "if the offense level determined above is level 29 or less; and 3 levels if the offense level determined above is level 30 or greater".]]

[[Option 3: Subsections (a), (b), and (c) of section 3E1.1 are deleted and the following is inserted in lieu thereof:

"(a) If the defendant—

(1) is convicted upon a plea of guilty or nolo contendere entered prior to the opening of the government's case at trial, or

(2) Truthfully admits his involvement in the offense of conviction prior to adjudication of guilt, while exercising his constitutional right to a trial to assert and preserve issues not related to factual guilt,

reduce the offense level by 2 levels.

(b) If the defendant—

[[(1) Truthfully admits involvement in the offense of conviction and relevant conduct and,]]

(2) Demonstrates full acceptance of responsibility by taking timely affirmative steps such as:

[[(a) Truthful admission of involvement in the offense of conviction and relevant conduct]]

(a) Voluntary payment of restitution prior to adjudication of guilt;

(b) Voluntary assistance to authorities in the recovery of the fruits and instrumentalities of the offense;

(c) Voluntary and full cooperation with authorities in the prosecution and sentencing of the offense;

(d) Voluntary resignation from the office or position held during the commission of the offense; or

(e) Voluntary surrender to authorities promptly after the commission of offense;

reduce the offense level by one level.

(c) If section 3E1.1(a) and (b) apply, reduce the offense level by 3 levels.".

The Commentary to section 3E1.1 captioned "Application Notes" is amended by deleting Notes 1, 2, and 3 and inserting in lieu thereof:

"1. Section 3E1.1 provides for a 1, 2, or 3 level reduction. The 3-level reduction is intended for the defendant who enters a plea in a timely fashion, admits his involvement in the offense, and demonstrates additional affirmative acts of acceptance of responsibility.

2. Section 3E1.1(a)(2) is intended to apply in the rare situation where the defendant admits his involvement in the offense of conviction prior to adjudication of guilty, but exercises his constitutional right to trial for reasons unrelated of contesting factual guilt (e.g., [[to challenge admissibility of evidence necessary to prove guilt,]] to challenge the constitutionality of a statute or challenge the applicability of a statute to his conduct, to assert conduct which would demonstrate that the defendant should not be held responsible for the offense (self-defense motive) to demonstrate the absence of the intent to commit the offense or the absence of knowledge that the conduct would constitute the offense at the time that the offense was committed).

3. The 2- or 3-level reduction is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt. However, such a defendant could qualify for the 1-level reduction as set forth in section 3E1.1(b).".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in the second sentence of Note 4 by inserting "(b) (1) and (2)" immediately following "3E1.1".

The Commentary to section 3E1.1 captioned "Application Notes" is amended by renumbering Note 5 as 6, and by inserting the following as Note 5:

"5. In determining whether a defendant demonstrates 'voluntary and full cooperation,' as used in section (b)(2)(c), appropriate considerations include: (a) the defendant's cooperation with the government that is insufficient to merit a motion by the government for a substantial assistance departure, and (b) the defendant's cooperation with the court and with the pre-trial and probation officers in the execution of their duties.".]]

[[Option 4: Subsections (a), (b), and (c) of section 3E1.1 are deleted and the following is inserted in lieu thereof:

"(a) If more than one of the following applies, use the greatest:

(1) If the defendant clearly demonstrates a recognition and affirmative acceptance of responsibility for his offense in a timely manner, decrease the offense level by 3 levels; or

(2) If the defendant is convicted upon a plea of guilty or nolo contendere entered prior to the opening of the government's case at trial, decrease the offense level by 2 levels[[; or

(3) If the defendant is convicted upon the plea of guilty or nolo contendere after the opening of the government's case at trial, decrease the offense levely by 1 level]].

(b) A defendant may be given consideration under subsection (a)(1) without regard to whether his conviction is based upon a guilty plea or a finding of guilt by the court or jury, or the practical certainty of conviction at trial. Entry of a plea of guilty prior to the opening of the government's case at trial is not in itself sufficient to warrant a reduction under subsection (a)(1).".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in Note 1 by deleting "this provision" and inserting in lieu thereof "an adjustment under section 3E1.1(a)(1)", and by deleting "related" and inserting in lieu thereof "relevant".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in Note 2 by deleting "This adjustment" and inserting in lieu thereof "section 3E1.1(a) (1)".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in Note 3 by deleting "related" and inserting in lieu thereof "relevant", and by deleting "this section" and inserting in lieu thereof "section 3E1.1(a)(1)".

The Commentary to section 3E1.1 captioned "Application Notes" is amended in Note 4 by inserting immediately before the period at the end of the first sentence "under subsection (a)(1)", and in the second sentence by deleting "3E1.1" and inserting in lieu thereof "3E1.1(a)(1)".

The Commentary to section 3E1.1 captioned "Application Notes" is amended by renumbering Note 5 as Note 6 and by inserting the following additional note as Note 5:

"5. Subsection (a)(2) applies to a defendant who is convicted upon a plea of guilty or nolo contendere entered prior to the opening of the government's case at trial (including a conditional plea under Rule 11(a)(2) of the Rules of Criminal Procedure), but does not qualify for a reduction under subsection (a)(1). Such defendants have ensured the certainty of their just punishment in a timely manner and, therefore, are appropriately provided a 2-level reduction.

[[Subsection (a)(3) applies to a defendant who is convicted upon a plea of guilty or nolo contendere, but does not qualify for a reduction under either subsection (a) (1) or (2). Such defendants have ensured the certainty of their just punishment and, therefore, appropriately are provided a 1-level reduction.".]]

The Commentary to section 3E1.1 captioned "Background" is amended by deleting "related" and inserting in lieu thereof "relevant", by inserting "under subsection (a)(1)" immediately following "lower offense level" and by inserting the following additional sentence at the end:

"Lesser reductions are provided under subsection (a)(2) [[or (3)]] to a defendant who, although not qualifying for a reduction under subsection (a)(1), nevertheless has ensured the certainty of his just punishment by entering a plea of guilty or nolo contendere.".

Conforming Amendment: Section 6B1.2(a) is amended by deleting "statutory purposes of sentencing" and inserting in lieu thereof "sentencing guidelines".

The Commentary to section 6B1.2 is amended in the first paragraph by deleting: "This section makes clear that a court may accept a plea agreement provided that the judge complies with the obligations imposed by Rule 11(e), Fed. R. Crim. P. A judge" and inserting in lieu thereof "The court", and by inserting, immediately before "This requirement", the following:

"A defendant who enters a plea of guilty or nolo contendere prior to the opening of the government's case at trial ensures a reduction in offense level by 2 levels under section 3E1.1 (Acceptance of Responsibility). Further reductions in sentences due to plea agreements will tend to undermine the system of sentencing guidelines and should be avoided.".]]

Reason for Amendment: Option 1 provides expressly that a defendant be required to accept responsibility for the offense of conviction and all relevant conduct. With respect to Option 1, the Commission solicits comment on

whether "the offense of conviction and all relevant conduct" is the appropriate scope of consideration for acceptance of responsibility; whether the scope should be broader, i.e., the offense of conviction and all related conduct (all conduct connected with the conduct constituting the offense of conviction whether or not it is within the parameters of relevant conduct); or whether the scope should be narrower, i.e., restricted to the offense of conviction.

Option 2 provides a greater reduction for acceptance of responsibility for cases with offense levels of 30 or greater. The Commission solicits comments on the appropriateness of providing a greater reduction at higher offense levels, and if so, whether the three level reduction should begin at offense level 30 or at a lower or higher offense level.

Option 3 provides a broader range of adjustments for acceptance of responsibility. Under this option, a defendant receives a two-level reduction under subsection (a) if he is convicted upon a plea of guilty or nolo contendere entered prior to the opening of the government's case at trial, or truthfully admits his involvement in the offense of conviction prior to adjudication of guilt, while exercising his constitutional right to a trial to assert and preserve issues not related to factual guilt. A separate, additional, one-level reduction is provided under subsection (b) to a defendant who takes additional steps demonstrative of full acceptance of responsibility. Because the decrease under subsection (b) is separate, a defendant who denies his guilt and is convicted by trial could nevertheless achieve a one-level reduction under subsection (b) of this option by subsequently demonstrating affirmative acceptance of responsibility.

Option 4 is similar to Option 3, but has certain differences. As in Option 3, a defendant who is convicted upon a plea of guilty or nolo contendere entered prior to the government's case at trial receives at least a two-level reduction. Similarly, if such defendant takes additional steps to accept responsibility, a three-level reduction is provided. Under Option 4, a defendant who goes to trial may be eligible for the full reduction under very exceptional circumstances (e.g., a defendant who admits and accepts responsibility for his conduct, but goes to trial to challenge the applicability of the statute to his conduct). Unlike Option 3, however, a defendant who goes to trial is convicted, and later admits his guilt at sentencing would not be eligible for a partial reduction under Option 4. Bracketed language within Option 4 is included to solicit comment on whether if this option is adopted it should include a partial (one-level) reduction for a defendant who changes his plea after the opening of the government's case at trial.

Section 4A1.1. Criminal History Category

24. Proposed Amendment: Section 4A1.1(f) is deleted as follows:

"(f) Add 1 point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was considered related to another sentence resulting from a conviction of a crime of violence, up to a total of 3 points for this item. Provided, that this item does not apply where the sentences are considered related because the offenses occurred on the same occasion.",

and the following is inserted in lieu thereof:

"(f) Add 1 point for each of the following:

"(i) Each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was considered related to another sentence resulting from a conviction of a crime of violence. Provided, that (1) this subparagraph does not apply where the sentences are considered related because the offenses occurred on the same occasion; and (2) not more than 3 points may be added under this subparagraph; and

(ii) Each prior sentence, or each set of consolidated prior sentences, counted under (a) for which the defendant actually served at least [[five]] years of imprisonment prior to initial release.".

Reason for Amendment: This amendment further distinguishes the weight given to serious prior offenses by adding an additional point for sentences on which the defendant actually served five or more years of imprisonment.

Section 4A1.2. Definitions and Instructions for Computing Criminal History

25(A). Proposed Amendment: [[Option 1: Section 4A1.2(f) is amended by deleting ", except" and inserting in lieu thereof ". Provided,"; and by deleting "from juvenile court" and inserting in lieu thereof "for an offense committed prior to the defendant's eighteenth birthday".

Section 4A1.2(j) is deleted as follows:

"(j) Expunged Convictions

Sentences for expunged convictions are not counted, but may be considered under section 4A1.3 (Adequacy of Criminal History Category).",

and the following inserted in lieu thereof:

"(j) Reversed, Vacated, Annulled, Set Aside, Pardoned, or Expunged Convictions

(1) A sentence resulting from a conviction that has been reversed is not counted. A sentence resulting from a conviction that has been vacated, set aside, annulled, or expunged or for which the defendant has been pardoned, is not counted if such action was based on a determination that the conviction was legally defective or on evidence pertaining to the defendant's innocence.

(2) A number of jurisdictions have various procedures pursuant to which a defendant's conviction may be vacated, 'set aside,' annulled, or ordered expunged, or a defendant may be pardoned, for reasons unrelated to innocence or legal defect (e.g., in order to restore civil rights or to remove the stigma associated with a criminal conviction). A sentence for such a conviction is counted.

(3) Provided, that any sentence resulting from a conviction or adjudication for an offense committed prior to a defendant's eighteenth birthday that has been vacated, set aside, annulled, or ordered expunged, or for which the defendant has been pardoned is not counted [[unless the defendant commenced the instant offense prior to such action]] .".

The Commentary to section 4A1.2 captioned "Application Notes" is amended by deleting Note 10 and renumbering the remaining notes accordingly.]]

[[Option 2: Section 4A1.2(f) is amended by deleting "is counted as a sentence under section 4A1.1(c) even if a conviction is not formally entered, except that diversion from juvenile court is not counted" and inserting in lieu thereof:

"(e.g., a probationary disposition without entry of a conviction) [[is counted as a sentence under section 4A1.1(c) only if the defendant commenced the instant offense prior to satisfaction of the express conditions, if any, of such diversionary disposition]] [[is not counted]].

Section 4A1.2(j) is deleted as follows:

"(j) Expunged Convictions

Sentences for expunged convictions are not counted, but may be considered under section 4A1.3 (Adequacy of Criminal History Category).",

and the following is inserted in lieu thereof:

"(j) Reversed, Vacated, Annulled, Set Aside, Pardoned, or Expunged Convictions

(1) A sentence resulting from a conviction that has been reversed, vacated, set aside, annulled, or expunged, or for which the defendant has been pardoned, is not counted if such action was based upon a determination that the conviction was legally defective or on evidence pertaining to the defendant's innocence.

(2) A number of jurisdictions have various procedures pursuant to which a defendant's conviction may be vacated, set aside,

annulled, or expunged, or a defendant may be pardoned, for reasons unrelated to legal defect or innocence (e.g., in order to restore civil rights or to remove the stigma associated with a criminal conviction). A sentence resulting from such a conviction for an offense committed at age eighteen or older—

(A) Is counted if the sentence contained a term of imprisonment of [[sixty days or more]] [[more than one year and one month]] [[, or if the defendant commenced the instant offense before such action was taken]] ; and

(B) Is not counted in any other case.

(3) A sentence resulting from a conviction or adjudication for an offense committed prior to age eighteen that has been vacated, set aside, annulled, expunged, or for which the defendant has been pardoned is not counted [[unless the defendant commenced the instant offense before such action was taken]] "]]

Reason for Amendment. This amendment provides more consistency in respect to the counting of convictions that have been reversed, vacated, annulled, set aside, expunged, or pardoned. Currently, whether such sentences are counted depends upon the terminology used by the various jurisdictions. E.g., sentences resulting from convictions that have been annulled or set aside are counted; sentences resulting from convictions that have been expunged are not. Option 1 would count all sentences resulting from offenses committed at age eighteen or older unless reversed, vacated, annulled, set aside, expunged, or pardoned on the basis of a finding of legal defect or information pertaining to the defendant's innocence. Option 2 would count executed (non suspended) sentences of imprisonment of more than a certain amount, unless the action vacating, annulling, setting aside, expunging, or pardoning such sentence was based upon a finding of legal defect or information pertaining to the defendant's innocence. Lesser sentences for which the convictions had been vacated, annulled, set aside, expunged, or pardoned would not be counted.

(B). Proposed Amendment: [[Option 1: Section 4A1.2(e)(1) is amended by inserting the following additional sentences as the first two sentences:

"To establish the applicable time period for counting sentences under § 4A1 1(a), count back fifteen years from the date of the defendant's commencement of the instant offense, without credit for any period of [[one]] [[two]] [[three]] [[four]] [[five]] years or more that the defendant continuously was in imprisonment. For example, if the defendant was continuously imprisoned for eight years, and any part of this imprisonment fell within the fifteen-year period, the applicable time period would be 23 (15 + 8) years."

By deleting "within fifteen years of the defendant's commencement of the instant offense" and inserting in lieu thereof "on or after the beginning of the applicable time period";

And by deleting "such fifteen-year" and inserting in lieu thereof "the applicable time".]]

[[Option 2: Section 4A1.2(e)(1) is amended by inserting the following additional sentences as the first two sentences:

"To establish the applicable time period, count back twelve years from the date of the defendant's commencement of the instant offense, without credit for any period of [[one]] [[two]] [[three]] [[four]] [[five]] years or more that the defendant continuously was in imprisonment. For example, if the defendant was continuously imprisoned for eight years, and any part of this imprisonment fell within the twelve-year period, the applicable time period would be 20 (12 + 8) years.",

By deleting "of imprisonment exceeding one year and one month that was imposed within fifteen years of the defendant's commencement of the instant offense" and inserting in lieu thereof "that was imposed on or after the beginning of the applicable time period",

And by deleting "such fifteen-year" and inserting in lieu thereof "the applicable time".

Section 4A1.2(e) is amended by deleting subdivision (2) and by renumbering the remaining subdivisions accordingly.]]

Reason for Amendment: Both options of this amendment extend the applicable time period for counting prior convictions (for purposes of determining number of criminal history points and determining career offender status) to take into account substantial periods of incarceration. Option 1 retains the current guideline structure of 10- and 15-year "applicable time periods." Option 2 modifies the current guideline structure to provide for a uniform 12-year applicable time period.

Illustration of Section 4A1.2 as Amended by Option 1

[[Option 1: (1) *To establish the applicable time period for counting sentences under § 4A1 1(a), count back fifteen years from the date of the defendant's commencement of the instant offense, without credit for any period of [[one]] [[two]] [[three]] [[four]] [[five]] years or more that the defendant continuously was in imprisonment. For example, if the defendant was continuously imprisoned for eight years, and any part of this imprisonment fell within the fifteen-year period, the applicable time period would be 23 (15 + 8) years.* Any prior sentence of imprisonment exceeding one year and one month that was imposed [within fifteen years of the defendant's commencement of the instant offense] *on or after the beginning of the applicable time period* is counted. Also count any prior sentence of imprisonment exceeding one year and one month, whenever imposed, that resulted in the defendant being incarcerated during any part of [such fifteen-year] *the applicable time* period.]]

Illustration of Section 4A1.2 as Amended by Option 2

[[Option 2: (1) *To establish the applicable time period, count back twelve years from the date of the defendant's commencement of the instant offense, without credit for any period of [[one]] [[two]] [[three]] [[four]] [[five]] years or more that the defendant continuously was in imprisonment. For example, if the defendant was continuously imprisoned for eight years, and any part of this imprisonment fell within the twelve year period, the applicable time period would be 20 (12 + 8) years.* Any prior sentence [of imprisonment exceeding one year and one month that was imposed within fifteen years of the defendant's commencement of the instant offense] *that was imposed on or after the beginning of the applicable time period* is counted. Also count any prior sentence of imprisonment exceeding one year and one month, whenever imposed, that resulted in the defendant being incarcerated during any part of [such fifteen-year] *the applicable time* period.

[(2) Any other prior sentence that was imposed within ten years of the defendant s commencement of the instant offense is counted.]

([3] *2)* Any prior sentence not within the time periods specified above is not counted.

([4] *3)* The applicable time period for certain sentences resulting from offenses committed prior to age eighteen is governed by section 4A1.2(d)(2).]]

Section 4A1.3. Adequacy of Criminal History Category (Policy Statement)

26(A). Proposed Amendment: [[Option 1: Section 4A1.3 is amended by deleting the fourth sentence in the last paragraph and inserting in lieu thereof:

"In such a case, a sentence above the guideline range for a defendant with a Category VI criminal history may be warranted, but the court shall determine the extent of the departure by extrapolating a new guideline range from the existing guideline ranges in the Sentencing Table. For example, a defendant with a total offense level 10 who has 16 criminal history points and a guideline range of 24–30 months, would have a hypothetical Category VII criminal history, and a hypothetical guideline range of 27–33 months. In the case of unusually serious criminal history, or unusually high numbers of criminal history points, the extent of the departure may be greater than that suggested by extrapolation."]]

[[Option 2: Section 4A1.3 is amended in the fourth (last) paragraph by beginning a new (fifth) paragraph with the fifth sentence, and by inserting the following at the end of the fourth paragraph.

"In determining whether such a departure is warranted, the court should consider that, in the case of a defendant who has established a prior criminal record sufficient to warrant consideration of an upward departure from criminal history category VI, the nature of the prior offenses rather than simply their number is often more indicative of the seriousness of that criminal record. For example, a defendant with nine prior 60-day jail sentences for offenses such as petty larceny, prostitution, or possession of gambling slips (a total of 18 points) has a higher number of criminal history points than the typical criminal history category VI defendant, but not necessarily a more serious criminal history overall. Where the court finds that the quantity and quality of the defendant's criminal history points are sufficient to warrant an upward departure, the court should use an incremental approach, moving down the sentencing table in one-level increments until it finds a guideline range appropriate to the case. Because qualitative judgment is important to this determination, it is not possible to specify the appropriate increments with precision; however, a one, two, or three-level increment should be sufficient to address all but the most egregious cases.".]]

Reason for Amendment: Options 1 and 2 both provide for a structured departure in the case of an offender with high criminal history point totals. The current guideline invites departures on the basis of high criminal history point totals, but suggests no structure for the extent of the departure. Option 1 requires an extrapolation of the Sentencing Table based on three-point increments, with greater departures permitted where criminal history is particularly serious or where criminal history point totals are unusually large. Option 2 accounts for the possibility that a defendant with a high criminal history point total may have accrued a large number of such points after committing numerous less serious offenses for which short prison sentences were imposed—in contrast with the more serious offender who has been incarcerated for long periods of time and has had less opportunity to accumulate large point totals.

(B). Proposed Amendment: Section 4A1.3 is amended in the first paragraph by inserting "(a) Degree of Risk." immediately before "If reliable"; by deleting "the seriousness of the defendant's past criminal conduct or"; by renumbering "(a)", "(b)", "(c)", and "(d)" as "(1)", "(2)", "(3)", and "(4)" respectively; and by deleting "; (e) prior similar adult criminal conduct not resulting in a criminal conviction".

Section 4A1.3 is amended in the second paragraph by deleting "the seriousness of the defendant's criminal history or"; by deleting "serious assaults" and inserting in lieu thereof "criminal acts"; by deleting "had a similar instance of large scale fraudulent misconduct established by an adjudication in a Securities and Exchange Commission enforcement proceeding, (4)"; by deleting "serious" immediately following "another"; by renumbering "(5)" as "(4)"; and by deleting "serious" immediately following "significantly more" and inserting in lieu thereof "extensive".

Section 4A1.3 is amended in the third paragraph by deleting "the seriousness of the defendant's criminal history or"; by deleting "minor misdemeanor"; and by deleting "serious" and inserting in lieu thereof "extensive".

Section 4A1.3 is amended by inserting the following additional subsection after the third paragraph:

"(b) Type of Risk. If reliable information indicates that the criminal history category does not adequately reflect the seriousness of the defendant's past criminal conduct, the court may consider imposing a sentence departing from the otherwise applicable guideline range. Such information may include, but is not limited to, information concerning the nature of the criminal conduct underlying a defendant's prior convictions, and prior similar adult criminal conduct not resulting in a criminal conviction, that establishes a pattern of particularly harmful or very minor criminal behavior.

An upward departure under this provision may be warranted when the criminal history category significantly underrepresents the seriousness of the defendant's criminal history. Examples might include offenders with a history of repetitive assaultive behavior, of repetitive sophisticated criminal behavior (e.g., a series of sophisticated frauds or a similar instance of large scale fraudulent misconduct established by an adjudication in a Securities and Exchange Commission enforcement proceeding), and those with unusually extensive and serious prior records.

A downward departure under this provision may be warranted when the criminal history category significantly overrepresents the seriousness of the defendant's criminal history. Examples might include offenders whose points result from unusually harsh sentencing for misdemeanors or from a string of convictions for relatively minor, victimless crimes such as prostitution.".

Section 4A1.3 is amended in the last paragraph by inserting "(c)" immediately before "In considering"; and by deleting "of the defendant's criminal history, and that the seriousness of" and inserting in lieu thereof "or extensiveness of the defendant's criminal history, and that".

Reason for Amendment: This amendment clarifies that departures under this section may be warranted when the criminal history category does not adequately address either the likelihood of new offenses being committed by the defendant, or the type of risk posed by the defendant.

(C). Proposed Amendment: Section 4A1.3 is amended by inserting the following at the end of the third paragraph:

"A downward departure on the basis of the adequacy of a defendant's criminal history category is not warranted when the guidelines in this chapter specify a particular criminal history category in lieu of the category that would result from calculation of the criminal history points under section 4A1.1. Such guidelines include sections 4B1.1 and 4B1.4.".

Reason for Amendment: This amendment expressly prohibits downward departures for defendants sentenced under the career criminal and armed career criminal sections of those guidelines when such departures are based on the court's conclusion that the criminal history category significantly over-represents the seriousness of a defendant's criminal history or the likelihood the defendant will commit further crimes. Some have argued that such departures are in direct conflict with the statutory directive in 28 U.S.C. 994(h) that career offenders be sentenced at or near the statutory maximum for the offense of conviction and the Commission's interpretation of this directive by placing all such defendants in Criminal History Category VI.

Section 4B1.1. Career Offender

Section 4B1.2. Definitions of Terms Used in Section 4B1.1

27(A). Proposed Amendment: The Commentary to section 4B1.1 captioned "Application Notes" is amended in Note 2 by deleting the first sentence and inserting in lieu thereof:

[[Option 1: "'Offense Statutory Maximum' refers to the maximum term of imprisonment authorized for the offense of conviction that is a crime of violence or controlled substance offense, before the maximum term has been increased by a sentencing enhancement statute applied because the defendant has one or more prior convictions. See e.g., sentencing enhancement statutes in [[18 U.S.C. 924(e);]] 21 U.S.C. 841(a)(1)(B); 21 U.S.C. 841(a)(1)(C); 21 U.S.C. 844(a). For example, where the defendant's statutory maximum of twenty years has been enhanced under 21 U.S.C. 841(a)(1)(C) to a thirty-year maximum because the defendant has one or more qualifying prior drug convictions, the 'Offense Statutory Maximum' is twenty years and not thirty years.".]]

[[Option 2: "'Offense Statutory Maximum' refers to the maximum term of imprisonment authorized for the offense of conviction that is a crime of violence or controlled substance offense, after the maximum term has been increased by a sentencing enhancement statute applied because the defendant has

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one or more prior convictions. See e.g., sentencing enhancement statutes in [[18 U S.C. 924(e);]] 21 U.S.C. 841(a)(1)(B); 21 U S.C. 841(a)(1)(C); 21 U S.C. 844(a). For example, where the defendant's statutory maximum of twenty years has been enhanced under 21 U.S.C. 841(a)(1)(C) to a thirty-year maximum because the defendant has one or more qualifying prior drug convictions, the 'Offense Statutory Maximum' is thirty years and not twenty years."]]

Reason for Amendment: This amendment clarifies the meaning of the term "offense statutory maximum," as used in this section. Under Option 1, an enhancement of the statutory maximum sentence that itself was based upon the defendant's prior criminal record would not be used in determining the offense level under this guideline. Under Option 2, such enhancement would be used.

(B). Proposed Amendment: The Commentary to section 4B1.2 captioned "Application Notes" is amended in Note 3 by deleting "one year" and inserting in lieu thereof "two years".

Reason for Amendment: This amendment prevents the counting of relatively less serious crimes of violence by requiring that the statutory maximum for the offense be greater than two years. Comment is requested as to whether the proposed amendment appropriately excludes only such "less serious" offenses.

(C). Proposed Amendment: Section 4B1.2(3) is amended by deleting the last sentence therein, and inserting in lieu thereof "The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere.".

Reason for Amendment: This amendment conforms the section 4B1.1 definition of "sustaining a conviction" for an offense with the section 4A1.2 definition of "convicted of an offense."

(D). Issue for Comment: Comment is requested as to whether the Commission should identify (generically or specifically) certain categories of crimes of violence (now counted under section 4B1.2(1)) that would be considered "lesser" crimes of violence and not counted under this section. Such categories of offenses, or offenses might include non-aggravated assault, threatening communications, and similar offenses, or offenses with low statutory maxima. The use of any of these categories as qualifying crimes of violence under section 4B1.2(1) might be excluded, or such use might be limited to providing no more than one of the qualifying crimes of violence, or such use might result in a lesser career offender sentence—perhaps one that was "near the statutory maximum" but not "at the statutory maximum."

(E). Issue for Comment: Comment is requested as to whether the Commission should modify the requirement concerning the prior offenses counted for career offender purposes to provide that where the two prior offenses are not related (e.g., not consolidated for trial or sentence), they will be still counted as only one prior conviction if they could have been properly consolidated for trial as joinable offenses under Fed. R. Crim. P. 8(a).

(F). Issue for Comment: Comment is requested as to whether the Commission should modify the requisite sequence requirement in section 4B1.2(3) to require that the prior and instant offenses occur in a strictly consecutive sequence. The current rule requires only that the instant offense be committed subsequent to the date the judgment of conviction is entered for the two qualifying prior convictions. A strictly consecutive rule would require that the defendant commit the first "prior" offense, and be arrested, convicted, and sentenced for the offense, before the defendant commits the second "prior" offense, and is arrested, convicted, and sentenced for the offense. Finally, the instant offense would have to be committed subsequent to the second prior conviction. Departures might be encouraged in the case of numerous armed robberies, rapes, and other serious violent crimes not otherwise counted under the proposed rule. This rule would ensure that the career offender guideline is a more truly recidivist provision by requiring three separate encounters with the criminal justice system. Similarly, this rule would also reduce the possibility that a defendant who engages in a single short-lived crime spree will be classified as a career offender.

A report of the Commission's study of the Career Offender provisions is available for inspection at the Commission's offices.

Chapter Five, Part A—Sentencing Table

28(A). Issue for Comment: The Commission seeks comment on whether to establish a new Category 0 criminal history for offenders for whom Category I criminal history may be an inaccurate measure of likelihood of recidivism. A review of sentencing data suggests that offenders in Category I may exhibit certain different characteristics that could justify distinguishing their crimial history category. The Commission also seeks comment on how such a division would be drawn. One such proposed division would separate offenders with zero criminal history points and with no known criminal history of any kind into a Category 0, and other offenders with 0 or 1 point who had some known criminal history (including prior arrests or convictions) into a Category I. Finally, the Commission seeks comment on the various methods by which Category 0 offenders might be eligible for reduced sentences. Proposals might include establishment of a new Sentencing Table with a new Category 0, a Chapter Four reduction of a Category 0 offender's offense level, or the exposure of a Category 0 offender to a broader selection of alternatives to imprisonment.

A report of the Commission's study of Criminal History Category 0 is available for inspection at the Commission's offices.

(B). Issue for Comment: Defendants with more than 13 criminal history points are presently assigned to Category VI. This open-ended characteristic of the category has led some to question whether the criminal history categories of the Sentencing Table adequately take into account the criminal background of offenders with high numbers of criminal history points. Accordingly, the Commission solicits comment on the following issues:

(1) Whether a new Category VII should be added to the Sentencing Table, or whether offenders with large numbers of criminal history points should be sentenced solely pursuant to a departure;

(2) If a new Category VII is established, what should be the point spread of Category VI and the new Category VII; and should the new Category VII be capped, or should it be open-ended as the current Category VI is open-ended;

(3) When the defendant with large numbers of criminal history points is subject to a departure, under what circumstances would a departure be justified (e.g., a general sense of inadequacy of criminal history, or the existence of a particular number of points; and how would the extent of the departure be structured (e.g., by some principle of reasonableness, or by 10–15% extrapolation of the guideline range).

The following options provide alternative definitions of the offender population to which Category VII might apply:

[[Option 1—Category VI with a 3-point spread. Category VI would include defendants with 13–15 points, and a new Category VII would include cases with 16 or more points.]]

[[Option 2—Category VI with a 7-point spread. Category VI would include

defendants with 13–19 points, and a new Category VII would include cases with 20 or more points.]]

[[Option 3—Category VI and Category VII each with 3-point spreads. Category VI would include defendants with 13–15 points, and a new Category VII would include defendants with 16–18 points.]]

If a new Category VII is promulgated, defendants sentenced pursuant to section 4B1.1 (Career Offender) and section 4B1.4 (Armed Career Criminal) would continue to be sentenced at Category VI, except for those defendants who, on the basis of their criminal history point total, would otherwise be sentenced at a higher criminal history category.

A report of the Commission's study of Criminal History Category VII is available for inspection at the Commission's offices.

Chapter Five, Part A—Sentencing Table

Chapter Five, Part B—Probation

Chapter Five, Part C—Imprisonment

29. Proposed Amendment: [[Option 1: Section 5C1.1(c) is amended by deleting "one half of the minimum term, but in no event less than one month," and inserting in lieu thereof "one month.".

Section 5C1.1(d) is amended by deleting "one half of the minimum term" and inserting in lieu thereof "one month".

The Commentary to section 5C1.1, captioned "Application Notes," is amended in Note 3 by deleting "one half of the minimum term specified in the guideline range from the Sentencing Table, but in no event less than one month," and inserting in lieu thereof "one month", by deleting "of two months" and inserting in lieu thereof "of one month", and by deleting "requiring two months" and inserting in lieu thereof "requiring three months".

The Commentary to section 5C1.1, captioned "Application Notes," is amended in Note 4 in the third paragraph by deleting "one half of the minimum term specified in the guideline range" and inserting in lieu thereof "one month", by deleting "of four months" and inserting in lieu thereof "of one month of", and by deleting "requiring four months" and inserting in lieu thereof "requiring seven months".]]

[[Option 2: Section 5B1.1(a)(2) is amended by deleting "six" and inserting in lieu thereof "ten".

The Commentary to section 5B1.1, captioned "Application Notes," is amended in Note 1(b) by deleting "six" and inserting in lieu thereof "ten".

The Commentary to section 5B1.1, captioned "Application Notes," is amended in Note 2 by deleting "six" and inserting in lieu thereof "ten".

Section 5C1.1(c) is amended by deleting "six" and inserting in lieu thereof "ten".

Section 5C1.1(c) is amended by deleting "one half of the minimum term, but in no event less than one month," and inserting in lieu thereof "one month".

Section 5C1.1(d) is deleted in its entirety.

The Commentary to section 5C1.1, captioned "Application Notes," is amended in Note 3 in the first sentence by deleting "six" and inserting in lieu thereof "ten".

The Commentary to section 5C1.1, captioned "Application Notes," is amended in Note 3 in the fourth paragraph by deleting "one half of the minimum term specified in the guideline range from the Sentencing Table, but in no event less than one month," and inserting in lieu thereof "one month", by deleting "of two months" and inserting in lieu thereof "of one month", and by deleting "requiring two months" and inserting in lieu thereof "requiring three months."

The Commentary to section 5C1.1, captioned "Application Notes," is amended by deleting Note 4 in its entirety and by renumbering Notes 5, 6, 7, and 8 accordingly.]]

[[Option 3: Chapter 5, Part A—Sentencing Table, is amended at Criminal History Category I and Offense Level 7 by deleting "1–7" and inserting in lieu thereof "0–6", and at Criminal History Category I and Offense Level 8 by deleting "2–8" and inserting in lieu thereof "0–6".]]

[[Option 4: Chapter 5, Part A—Sentencing Table, is amended at Criminal History Category I and Offense Level 7 by deleting "1–7" and inserting in lieu thereof "0–6", at Criminal History Category II and Offense Level 6 by deleting "1–7" and inserting in lieu thereof "0–6", and at Criminal History Category III and Offense Level 5 by deleting "1–7" and inserting in lieu thereof "0–6".]]

[[Option 5: Section 5C1.1(d) is amended by deleting "ten" and inserting in lieu thereof "twelve".

The Commentary to section 5C1.1, captioned Application Notes, is amended in Note 4 by deleting "ten" and inserting in lieu thereof "twelve".]]

[[Option 6: Chapter 5, Part A—Sentencing Table, is amended at Criminal History Category I and Offense Level 7 by deleting "1–7" and inserting in lieu thereof "0–6", at Criminal History Category II and Offense Level 6 by deleting "1–7" and inserting in lieu thereof "0–6", and at Criminal History Category III and Offense Level 5 by deleting "1–7" and inserting in lieu thereof "0–6".

Section 5C1.1(c) is amended by deleting "one half of the minimum term, but in no event less than one month," and inserting in lieu thereof "one month.".

Section 5C1.1(d) is amended by deleting "one half of the minimum term" and inserting in lieu thereof "one month".

The Commentary to section 5C1.1, captioned "Application Notes," is amended in Note 3 by deleting "one half of the minimum term specified in the guideline range from the Sentencing Table, but in no event less than one month," and inserting in lieu thereof "one month", by deleting "of two months" and inserting in lieu thereof "of one month", and by deleting "requiring two months" and inserting in lieu thereof "requiring three months".

The Commentary to section 5C1.1, captioned "Application Notes," is amended in Note 4 in the third paragraph by deleting "one half of the minimum term specified in the guideline range" and inserting in lieu thereof "one month", by deleting "of four months" and inserting in lieu thereof "of one month of", and by deleting "requiring four months" and inserting in lieu thereof "requiring seven months".

Section 5C1.1(d) is amended by deleting "ten" and inserting in lieu thereof "twelve".

The Commentary to section 5C1.1, captioned "Application Notes," is amended in Note 4 by deleting "ten" and inserting in lieu thereof "twelve".]]

Reason for Amendment: These amendments, individually and in combination, redefine the "split sentence" and enlarge the number of defendants eligible for alternatives to imprisonment. The Commission seeks comment on whether these options are appropriate or whether they compromise the structure of the guidelines as originally drafted. The Commission further seeks comment on whether these alternatives should apply to all defendants at the offense levels specified or whether an offense-by-offense approach (e.g., excluding white-collar offenders) should be adopted. To assist in comment in respect to this amendment, a working group report on alternatives to imprisonment is available for inspection at the Commission's offices.

Option 1 redefines the "split sentence" to require service of at least one month of incarceration rather than the current requirement of at least one-

half of the minimum term, but not less than one month.

Option 2 expands the alternative of probation with confinement conditions to include those defendants who were previously eligible only for a "split sentence". It also incorporates Option 1's redefinition of the "split sentence".

Option 3 amends the guideline ranges in the Sentencing Table for Criminal History Category I at Offense Levels 7 and 8 by substituting a guideline range of 0–6 months for guideline ranges of 2–8 and 4–10 months respectively.

Option 4 amends the guideline ranges in the Sentencing Table for Criminal History Category I at Offense Level 7, Criminal History Category II at Offense Level 6, and Criminal History Category III at Offense Level 5. In each case a range of 0 to 6 months is substituted for the current range of 1 to 7 months.

Option 5 expands the availability of split sentences to guideline ranges with a minimum of twelve months or less. Currently "split sentences" are authorized only if minimum of the guideline range is ten months or less.

Option 6 incorporates Options 1, 4, and 5.

Additional Issue for Comment: The Commission requests comment on whether the menu of options available to the judge at sentencing should be expanded to include additional alternative programs such as intensive supervision, public service, shock incarceration (boot camps), day reporting centers, or other programs. Specifically, the Commission solicits comments on the adaptability of these or other programs to the current structure of the sentencing guidelines. To aid in focusing comment on this issue, a report titled "The Federal Offenders: A Program of Intermediate Punishments" is available for inspection at the Commission's offices.

Illustration of 5C1.1 as Amended by Option 1:

Section 5C1.1. Imposition of a Term of Imprisonment

* * * * *

(c) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is at least one but not more than six months, the minimum term may be satisfied by (1) a sentence of imprisonment; (2) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention for imprisonment according to the schedule in section 5C1.1(e); or (3) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e), provided that at least [one-half of the minimum term, but in no event less than one month,] *one month* is satisfied by imprisonment.

(d) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is more than six months but not more than ten months, the minimum term may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e), provided that at least [one-half of the minimum term] *one month* is satisfied by imprisonment.

* * * * *

Commentary

Application Notes:

* * * * *

3. Subsection 5C1.1(c) provides that where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is at least one but not more than six months, the court has three options:

* * * * *

Or, it may impose a sentence of imprisonment that includes a term of supervised release with a condition that requires community confinement or home detention. In such case, at least [one-half of the minimum term specified in the guideline range from the Sentencing Table, but in no event less than one month,] *one month* must be satisfied by actual imprisonment and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention. For example, where the guideline range is 4–10 months, a sentence of imprisonment [of two months] *of one month* followed by a term of supervised release with a condition [requiring two months] *requiring three months* of community confinement or home detention would satisfy the minimum term of imprisonment specified in the guideline range.

4. Subsection 5C1.1(d) provides that where the minimum term specified in the guideline range from the Sentencing Table is more than six but not more than ten months, the court has two options:

It may impose a sentence of imprisonment.

Or, it may impose a sentence of imprisonment that includes a term of supervised release with a condition requiring community confinement or home detention. In such case, at least [one-half of the minimum term specified in the guideline range] *one month* must be satisfied by imprisonment, and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention. For example, where the guideline range is 8–14 months, a sentence [of four months] *of one month of* imprisonment followed by a term of supervised release with a condition [requiring four months] *requiring seven months* community confinement or home detention would satisfy the minimum term of imprisonment required by the guideline range.

* * * * *

Illustration of Section 5B1.1 and Section 5C1.1 as amended by Option 2

Section 5B1.1. Imposition of a Term of Probation

(a) Subject to the statutory restrictions in subsection (b) below, sentence of probation is authorized:

* * * * *

(2) if the minimum term of imprisonment specified by the Sentencing Table is at least one but not more than [six] *ten* months, provided that the court imposes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention as provided in § 5C1.1(c)(2) (Imposition of a Term of Imprisonment).

* * * * *

Commentary

Application Notes:

* * * * *

(b) Where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is at least one but not more than [six] *ten* months.

* * * * *

2. Where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is more than [six] *ten* months, the guidelines do not authorize a sentence of probation. See section 5C1.1 (Imposition of a Term of Imprisonment).

* * * * *

Section 5C1.1. Imposition of a Term of Imprisonment

* * * * *

(c) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is at least one but not more than [six] *ten* months, the minimum term may be satisfied by (1) a sentence of imprisonment; (2) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention for imprisonment according to the schedule in section 5C1.1(e); or (3) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e), provided that at least [one-half of the minimum term, but in no event less than one month,] *one month* is satisfied by imprisonment.

[(d) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is more than six months but nor more than ten months, the minimum term may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e), provided that at least one-half of the minimum term is satisfied by imprisonment.]

* * * * *

Commentary

Application Notes:

* * * * *

3. Subsection 5C1.1(c) provides that where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is at least one but not more than [six] *ten* months, the court has three options:

It may impose a sentence of imprisonment.

* * * * *

Or, it may impose a sentence of imprisonment that includes a term of supervised release with a condition that requires community confinement or home detention. In such case, at least [one-half of the minimum term specified in the guideline range from the Sentencing Table, but in no event less than one month,] *one month* must be satisfied by actual imprisonment and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention. For example, where the guideline range is 4–10 months, a sentence of imprisonment [of two months] *of one month* followed by a term of supervised release with a condition [requiring two months] *requiring three months* of community confinement or home detention would satisfy the minimum term of imprisonment specified in the guideline range.

* * * * *

[4. Subsection 5C1.1(d) provides that where the minimum term specified in the guideline range from the Sentencing Table is more than six but not more than ten months, the court has two options:

It may impose a sentence of imprisonment.

Or, it may impose a sentence of imprisonment that includes a term of supervised release with a condition requiring community confinement or home detention. In such case, at least one-half of the minimum term specified in the guideline range must be satisfied by imprisonment, and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention. For example, where the guideline range is 8–14 months, a sentence of four months imprisonment followed by a term of supervised release with a condition requiring four months community confinement or home detention would satisfy the minimum term of imprisonment required by the guideline range.

The preceding example illustrates a sentence that satisfies the minimum term of imprisonment required by the guideline range. The court, of course, may impose a sentence at a higher point within the guideline range. For example, where the guideline range is 8–14 months, both a sentence of four months imprisonment followed by a term of supervised release with a condition requiring six months of community confinement or home detention (under § 5C1.1(d)), and a sentence of five months imprisonment followed by a term of supervised release with a condition requiring four months of community confinement or home detention (also under section 5C1.1(d)) would be within the guideline range.]

Illustration of Section 5C1.1 as Amended by Option 5

Section 5C1.1. Imposition of a Term of Imprisonment

* * * * *

(d) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is more than six months but not more than [ten] *twelve* months, the minimum term may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in section 5C1.1(e), provided that at least one-half of the minimum term is satisfied by imprisonment.

* * * * *

Commentary

Application Notes:

* * * * *

4. Subsection 5C1.1(d) provides that where the minimum term specified in the guideline range from the Sentencing Table is more than six but not more than [ten] *twelve* months, the court has two options:

* * * * *

Section 5E1.2. Fines for Individual Defendants

30. Proposed Amendment: Section 5E1.2(b) is amended by deleting "the fine imposed shall be within the range" and inserting in lieu thereof "the applicable guideline fine range is that".

Section 5E1.2(c)(2) is amended by deleting:

"Except as specified in (4) below, the maximum of the fine range is the amount shown in column B of the table below.",

and inserting in lieu thereof:

"The maximum of the fine range is the amount from column B or C of the table below. Column C shall be used when the statute setting forth the offense of conviction authorizes (i) a fine of more than $250,000 on a single count of conviction, or (ii) a fine for each day of violation. Column B shall be used in all other cases.".

Section 5E1.2(c)(3) is amended by inserting the following additional column:

"C

Maximum-Specified Offenses

$5,000
$7,500
$10,000
$20,000
$40,000
$90,000
$160,000
$250,000
$360,000
$550,000
$1,000,000
$1,500,000
$2,250,000
$3,000,000
$5,000,000
$8,000,000".

Section 5E1.2(c)(4) is deleted as follows:

"(4) Subsection (c)(2), limiting the maximum fine, does not apply if the defendant is convicted under a statute authorizing (A) a maximum fine greater than $250,000, or (B) a fine for each day of violation. In such cases, the court may impose a fine up to the maximum authorized by the statute.".

The Commentary to section 5E1.2 captioned "Application Notes" is amended in Note 5 by deleting the first sentence as follows:

"Subsection (c)(4) applies to statutes that contain special provisions permitting larger fines; the guidelines do not limit maximum fines in such cases.",

and inserting in lieu thereof:

"Column C of the fine table in subsection (c)(3) applies to statutes that contain special provisions authorizing higher fines.".

Reason for Amendment: This amendment provides a new column (C) to the fine table at section 5E1.2(c)(3). The purpose is to provide an upper limit to the guideline fine range that varies with the seriousness of the offense for defendants convicted under a statute authorizing a maximum fine greater than $250,000, or a fine for each day of violation. The current guidelines provide very limited guidance for such cases. For example, the current guideline fine range for sale of 1 gram of cocaine (a level 12 offense) is $3,000 to $2,000,000.

31. Proposed Amendment: Section 5E1.2(b) is amended by deleting "subsections (f) and (i)" and inserting in lieu thereof "subsection (f)".

Section 5E1.2(d) is amended in subdivision 6 by deleting "and"; by renumbering subdivision (7) as (8); and by inserting a new subdivision (7) as follows:

"(7) the costs to the government of any imprisonment, probation, or supervised release ordered; and".

Section 5E1.2 is amended by deleting subsection (i) as follows:

"(i) Notwithstanding of the provisions of subsection (c) of this section, but subject to the provisions of subsection (f) herein, the court shall impose an additional fine amount that is at least sufficient to pay the costs to the government of any imprisonment, probation, or supervised release ordered.".

The Commentary to section 5E1.2 captioned "Application Notes" is amended in Note 7 by deleting the first sentence as follows:

"Subsection (i) provides for an additional fine sufficient to pay the costs of any imprisonment, probation, or supervised release ordered, subject to the defendant's

ability to pay as prescribed in subsection (f).",

and inserting in lieu thereof:

"Subsection (d)(7) provides for consideration of the costs to the government of any imprisonment, probation, or supervised release order.".

Reason for Amendment: This amendment converts this factor into one of several factors to be considered in setting the fine within the otherwise applicable guideline range. This amendment is designed to simplify operation of the guidelines while, at the same time, allowing the court to consider the costs to the government of any sentence of imprisonment, probation, or supervised release imposed in determining the total amount of the fine.

Section 5F1.4 Order of Notice to Victims

32. Proposed Amendment: Section 5F1.4 is amended by deleting:

"The court may order the defendant to pay the cost of giving notice to victims pursuant to 18 U.S.C. 3555. This cost may be set off against any fine imposed if the court determines that the imposition of both sanctions would be excessive.",

and inserting in lieu thereof:

"(a) In the case of a defendant convicted of an offense involving fraud or other intentionally deceptive practices, the court shall order the defendant to give reasonable notice to victims, as provided in 18 U.S.C. 3555, if the offense appears to have affected unidentified and uncompensated victims who could reasonably be identified in this manner, unless the court finds that the cost of giving notice would be disproportionate to the loss caused by the offense.

(b) If the court determines that the cost of giving such notice, taken together with the fine imposed upon the defendant, would be excessive, it shall set off the cost of giving such notice against any fine imposed to the extent necessary to provide an appropriate total sanction.".

The Commentary to section 5F1.4 captioned "Background" is amended in the first paragraph by deleting "the defendant to 'give" and inserting in lieu thereof "that the defendant give", by deleting "approve' to the victims of the offense.", and inserting in lieu thereof "approve, to the victims of the offense.", and by deleting "generally applicable sentencing factors listed in 18 U.S.C. 3553(a) and the cost involved in giving the notice as it relates to the loss caused by the crime" and inserting in lieu thereof "factors listed in 18 U.S.C. 3553(a), to the extent that they are applicable, and the cost involved in giving the notice as it relates to the loss caused by the offense".

The Commentary to section 5F1.4 captioned "Background" is amended by inserting the following additional sentence at the end of the first paragraph:

"This guideline provides that the court order the defendant to give reasonable notice to victims in the circumstances described.".

Reason for Amendment: This amendment provides more specific guidance as to circumstances under which an order of notice to victims is to be imposed.

Chapter Five, Part H—Specific Offender Characteristics

Chapter Five, Part A—Departures

33(A). Proposed Amendment: The Introductory Commentary to chapter Five, part H is amended by inserting the following additional paragraph as the third paragraph:

"Offender characteristics that are not ordinarily relevant to determining whether a sentence should be outside the guidelines, or where within the guidelines a sentence should fall, may be relevant to a departure from the guidelines if such factors, alone or in combination, are present to an unusual degree and are important to the sentencing purposes in the particular case.".

Reason for Amendment: This amendment provides expressly that departures may be appropriate when offender characteristics that are ordinarily not relevant to a guideline departure are present to an unusual degree, either alone or in combination, and are important to the sentencing purposes in the particular case.

(B). Proposed amendment: Section 5H1.1 is amended in the first paragraph by deleting "when the defendant is elderly and infirm" and inserting in lieu thereof "if combined with another factor (e.g., young and naive or elderly and infirm)".

Reason for Amendment: This amendment provides expressly that a departure may be appropriate where age is combined with other factors.

(C). Issue for Comment: The Commission requests comment on whether it should amend its policy statements to provide expressly whether or not a court may consider a defendant's lack of youthful guidance, history of family violence, or a similar factor as a ground for a departure from the applicable guideline range?

(D). Issue for Comment: The Commission requests comment on whether chapter Five, parts H and K, should be amended to authorize a downward departure where a court finds that the defendant's advanced age (e.g., age 60 or older) has reduced the defendant's risk of recidivism, provided that the defendant (1) serves a substantial portion of his sentence, (2) is not a major drug trafficker, and (3) has no current or past history of violent offenses. Comment is also requested on how such a departure, if authorized, might be structured to provide for consistency in application.

Section 5K1.1. Substantial Assistance to Authorities (Policy Statement)

34. Proposed Amendment: Section 5K1.1 is amended by deleting "Upon motion of the government stating" and inserting in lieu thereof "Upon a finding".

Section 5K1.1 is amended by inserting the following additional subsections:

"(b) Substantial weight should be given to the government's evaluation of the extent and value of the defendant's assistance, particularly when the extent and value of the assistance are difficult to ascertain.

(c) A departure below a statutorily required minimum sentence may be made only upon the motion of the government. 18 U.S.C. 3553(e).".

Commentary to section 5K1.1 captioned "Application Notes" is amended by deleting Notes 1 and 3 in their entirely, and by inserting the following as Note 1:

"1. Because of the nature of this factor, it is expected that the consideration of a downward departure will generally be based upon the motion of the government. As provided in subsection (b), substantial weight should be given to the government's evaluation of the extent and value of the defendant's assistance, particularly when the extent and value of such assistance are difficult to ascertain.".

Reason for Amendment: This amendment eliminates the requirement of a government motion and moves into the policy statement the admonition presently in the Commentary concerning the substantial weight that should be given the government's evaluation of a defendant's assistance.

Chapter Six—Sentencing Procedures and Plea Agreements

35(A). Proposed Amendment: The Commentary to section 6B1.2 is amended by inserting the following additional paragraph at the end:

"The Commission encourages the government [[in plea discussions]] [[prior to the Rule 11 colloquy]] to disclose to the defendant facts and circumstances of the offense and offender characteristics, known to the government, that are relevant to application of the sentencing guildelines."

Reason for Amendment: This amendment adds commentary recommending that the government disclose to the defendant information known to the government relevent to

application of the guidelines to encourage plea negotiations that realistically reflect probable outcomes under the sentencing guidelines.

(B). Issue for Comment: The Commission requests comment on whether it should amend its guidelines to provide that conduct that is described in a count dismissed pursuant to a plea agreement and that does not fall within the scope of section 1B1.3 (Relevánt Conduct) may nevertheless be considered by the court in determining whether or not to depart from the applicable guideline range? For example, if a defendant pleads guilty to one robbery and another robbery count is dismissed, the conduct underlying the second count is not relevant conduct to the offense of conviction. The Commission solicits comment on whether the conduct underlying such a count should or should not be considered as a grounds for an upward departure.

(C). Issue for Comment: The Commission seeks comment on whether it should provide expressly that conduct of which a defendant is acquitted, but which the court at sentencing nevertheless determines to have been established by a preponderance of the evidence, may be used for the following purposes: (1) Determining the offense level, (2) selecting a sentence within the guideline range, and (3) as a basis for imposing a sentence above the guideline range (upward departure).

Miscellaneous Substantive, Clarifying, Conforming, and Technical Amendments

36(A). Proposed Amendment to section 1B1.1 (Application Instructions): The Commentary to section 1B1.1 captioned "Application Notes" is amended in Note 1 by inserting the following at the end:

"(m) 'Reckless' refers to a situation in which the defendant was aware of the risk created by his conduct and the risk was of such a nature and degree that to disregard that risk constituted a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

(n) 'Criminally negligent' refers to conduct that involves a gross deviation from the standard of care that a reasonable person would exercise under the circumstances, but which is not reckless.".

The Commentary to section 2A1.4 captioned "Application Notes" is amended in Note 1 by deleting:

" 'Reckless' refers to a situation in which the defendant was aware of the risk created by his conduct and the risk was of such a nature and degree that to disregard that risk constituted a gross deviation from the standard of care that a reasonable person would exercise in such a situation. The term thus",

and inserting in lieu thereof:

" 'Reckless' and 'criminally negligent' are defined in the Commentary to § 1B1.1 (Application Instructions). This definition of reckless conduct";

and by inserting the following additional sentence at the end:

"Offenses under this guideline involving criminally negligent conduct generally will be encountered as assimilative crimes.".

The Commentary to section 2A1.4 captioned "Application Notes" is amended by deleting Note 2; and in the caption by deleting "Notes" and inserting in lieu thereof "Note".

The Commentary to section 2A5.2 is amended by inserting the following immediately before "Background":

"Application Note:

1. 'Reckless' is defined in the Commentary to § 1B1.1 (Application Instructions).".

The Commentary to section 2F1.1 captioned "Application Notes" is amended in Note 2 by deleting "is" and inserting in lieu thereof "and 'reckless' (subsection (b)(4)) are".

The Commentary to section 2N2.1 captioned "Application Notes" is amended in Note 1 by inserting the following additional sentence at the end:

" 'Reckless' and 'criminally negligent' are defined in the Commentary to § 1B1.1 (Application Instructions).".

The Commentary to section 3C1.2 captioned "Application Notes" is amended in Note 2 by deleting "section 2A1.4 (Involuntary Manslaughter)" and inserting in lieu thereof "section 1B1.1 (Application Instructions)".

Reason for Amendment: The terms "reckless" and "criminally negligent" are used in a number of guidelines. For consistency and clarity, this amendment transfers the definitions of these terms to section 1B1.1 (Application Instructions), the guideline section containing definitions of general applicability. References to these definitions are added and conformed accordingly.

(B). Proposed Amendment to § 1B1.1 (Application Instructions) and various chapter Two offense guidelines: The Commentary to section 1B1.1 captioned "Application Notes" is amended in Note 1 by inserting the following additional subdivision at the end:

"(m) 'Defendant' refers to the defendant individually, and not to other participants. Therefore, when used in connection with roles, status, knowledge, or motive, it restricts consideration to the role, status, knowledge or motive of the defendant. Examples include section 2G1.2(b)(2) ('If the defendant was a parent, relative, or legal guardian'), section 2H1.1(b)(1) ('If the defendant was a public official'), section 2L1.1 ('If the defendant committed the offense other than for profit'), section 2S1.1(b)(1) ('If the defendant knew or believed'), section 2T1.4 ('If the defendant committed the offense as part of a pattern or scheme from which he derived a substantial portion of his income'), section 3A1.1 ('If the defendant knew or should have known') section 3B1.1 and section 3B1.2 ('Based on the defendant's role'), and section 3B1.3 ('If the defendant violated a position of public or private trust or used a special skill').

When used in connection with conduct (acts and omissions), the use of the term 'defendant' restricts consideration to the acts and omissions that the defendant committed, aided, abetted, counseled, commanded, induced, procured, or wilifully caused. Examples include section 3C1.1 ('If the defendant willfully obstructed or impeded') and section 3C1.2 ('If the defendant recklessly created a substantial risk').".

Section 2A5.2(a)(1) is amended by deleting "defendant intentionally endangered" and inserting in lieu thereof "offense involved intentionally endangering".

Section 2A5.2(a)(2) is amended by deleting "defendant recklessly endangered" and inserting in lieu thereof "offense involved recklessly endangering".

Section 2A6.1(b)(1) is amended by deleting "defendant engaged in" and inserting in lieu thereof "offense involved".

Section 2A6.1(b)(2) is amended by deleting "defendant's conduct" and inserting in lieu thereof "offense".

Section 2S1.3(a)(1) is amended by deleting "defendant" and inserting in lieu thereof "offense involved"; by deleting "structured" and inserting in lieu thereof "structuring"; and by deleting "filed, or caused" and inserting in lieu thereof "filing, or causing".

Reason for Amendment: This amendment clarifies that the term 'defendant' has different meanings in different contexts. When used in respect to status, position, knowledge, or motive, it refers to the defendant only (e.g., 'If the defendant knew or should have known,' 'If the defendant was a parent, guardian'). When used in respect to conduct, it refers to the personal conduct of the defendant (i.e., acts or omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant). In certain guidelines (sections 2A5.2(a) (1) and (2), 2A6.1(b) (1) and (2), and 2S1.3(a)(1)), the Commission has used the term 'defendant' although the broader term 'offense involved' seems more consistent with the remainder of the

guidelines. This amendment, in these instances, substitutes the term 'offense involved."

(C). Proposed Amendment to section 1B1.2 (Applicable Guidelines): Section 1B1.2(a) is amended by deleting "conviction by a plea of guilty or nolo contendere" and inserting in lieu thereof "a plea agreement (written or made orally on the record)".

Section 1B1.2(c) is amended by deleting "conviction by a plea of guilty or nolo contendere" and inserting in lieu thereof "plea agreement (written or made orally on the record)".

Reason for Amendment: This amendment revises the guideline at section 1B1.2 to clarify the meaning of "stipulation" as used in this guideline, consistent with the amendment of the Commentary to this guideline effective November 1, 1991 (Appendix C, amendment 434).

(D). Proposed Amendment to section 1B1.10 (Retroactivity of Amended Guideline Range (Policy Statement)): Section 1B1.10(d) is amended by inserting "347," immediately after "341,".

Reason for Amendment: This amendment provides for retroactive application of amendment 347, which was effective November 1, 1990. Among the factors the Commission considers in deciding whether an amendment should apply retroactively are: (1) the amendment's purpose; (2) the magnitude of the change in guideline range the amendment makes; and (3) the difficulty in applying the amendment retroactively. In the case of amendment 347, these factors suggest the appropriateness of retroactive application. First, the amendment's purpose was to clarify section 3C1.1's application. It has been suggested that the misapplication of section 3C1.1 before the amendment might have been more widespread than the Commission first believed. Second, the interaction between sections 3C1.1 and 3E1.1 means that pre-amendment decisions to apply section 3C1.1 might have had a four-level rather than a two-level effect. Third, the presentence investigation report in the vast majority of cases will contain all information necessary to determine whether section 3C1.1 was appropriately applied in the first instance. Thus, retroactive application of section 3C1.1's amended commentary should be possible with little additional fact finding or hearings.

(E). Proposed Amendment to chapter One, part B (General Application Principles): Chapter One, part B, is amended by inserting an additional guideline at the end, titled "Section 1B1.11. Definitions", containing: (1) The text of Application Note 1 of section 1B1.1 as subsection (a); (2) the text of the first paragraph of Application Note 2 of section 1B1.1 as subsection (b); and (3) the following commentary:

"Commentary

Application Note:

1. The term 'e.g.' (for example) is used to set forth examples. It is not a term of limitation.

The term 'i.e.' (that is) is used to define an item or concept further and, therefore, is a term of limitation.

The term 'includes' is used to set forth items contained in a particular category. It does not, however, necessarily provide an exhaustive listing of the items in that category.".

The Commentary to section 1B1.1 captioned "Application Notes" is amended by deleting Notes 1 and 2; and by renumbering Notes 3, 4, and 5 as 1, 2, and 3, respectively.

The Commentary to section 1B1.1 captioned "Application Notes" is amended in Notes 1 (formerly Note 3) by deleting:

"does not necessarily include every statute covered by that guideline. In addition, some statutes may be",

and inserting in lieu thereof:

"provides examples of the statutes covered by that guideline. Some guidelines apply to more than one statute, and some statutes are";

and by inserting the following additional paragraph at the end:

"In the case of an offense that is not listed in the Guideline Manual (either in the Statutory Provisions or Statutory Index), the list of offenses set forth in the Statutory Provisions to the various offense guidelines may be helpful in making the determination required under section 2x5.1 (Other Offenses) as to whether there is a sufficiently analogous guideline.".

Reason for Amendment: This amendment moves definitions of general applicability, currently contained in the Commentary to section 1B1.1, to a separate guideline section for ease of reference, and elevates these definitions from commentary to guidelines to reflect their importance.

(F). Proposed Amendment to Chapter Two, Offense Conduct: Section 2A2.1(b)(1) is amended by inserting "or" immediately before "(B)", and by deleting:

";or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels";

Section 2A2.2(b)(3) is amended by deleting:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels".

Section 2A3.1(b)(4) is amended by inserting "or" immediately before "(B)", and by deleting"; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels".

Section 2A4.1(b)(2) is amended by inserting "or" immediately before "(B)", and by deleting "; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels".

Section 2B3.1(b)(3) is amended by deleting:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels".

Section 2B3.2(b)(4) is amended by deleting:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels; or

Section 2E2.1(b)(2) is amended by deleting:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels".

Reason for Amendment: This amendment deletes intermediate offense level adjustments that are not subject to adequate definition and that are unnecessary to the operation of the guidelines since a court may accomplish the result achieved through selecting an intermediate offense level by instead selecting the higher or lower enhancement and adjusting the sentence within the applicable range.

(G). Proposed Amendment to Chapter Two, Offense Conduct: Section 2A2.4(c)(1) is amended by deleting "defendant is convicted under 18 U.S.C. 111 and the" Immediately before "conduct".

Section 2D1.1(b)(2) is amended by deleting "is convicted of violating 21 U.S.C. 960(a)" and inserting in lieu thereof "unlawfully imported or exported a controlled substance"; and by inserting "or export" immediately following "to import".

Section 2K1.5(b)(1) is amended by deleting "defendant is convicted under 49 U.S.C. 1472(1)(2) (i.e., the defendant acted" and inserting in lieu thereof

"offense was committed", and by deleting "life)" and inserting in lieu thereof "life".

Reason for Amendment: This amendment, consistent with the overall structure of the guidelines, provides for the application of these adjustments on the basis of the underlying conduct rather than upon a requirement of a conviction under a specific statute.

(H). Proposed Amendment to Section 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft): The Commentary to § 2B1.1 captioned "Application Notes" is amended in the first paragraph of Note 2 by inserting the following additional sentences immediately after the second sentence:

"Market value is to be determined in relation to the victim of the offense. For example, in the case of merchandise taken from a retailer, the market value is the retail market value; in the case of merchandise taken from a wholesaler, the market value is the wholesale market value.".

Reason for Amendment: This amendment adds language to the Commentary of Section 2B1.1 to provide expressly that market value is to be determined in relation to the particular victim, an approach that is consistent with the other portions of this definition. Although the determination of loss is not subject to precise definition in all circumstances, a victim-oriented approach should generally make the determination more straightforward. For example, in the case of 20 television sets stolen from a wholesaler, it should generally be easier to determine the wholesale market value than the eventual retail value (which may differ widely among the various stores serviced by the wholesaler).

(I). Proposed Amendment to Section 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States): The Commentary to Section 2B5.1 captioned "Application Notes" is amended in Note 3 by deleting "merely photocopy notes or otherwise", and by inserting "(e.g., a mere photocopy of a note)" immediately following "so obviously counterfeit".

The Commentary to Section 2B5.1 captioned "Application Notes" is amended by inserting the following additional Note:

"4. For the purpose of subsection (b)(1), do not count items that clearly were not intended for circulation (e.g., discarded, defective items).".

Reason for Amendment: This amendment clarifies the operation of this guideline.

(J). Proposed Amendment to Section 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking):

The Commentary to Section 2D1.1 captioned "Application Notes" is amended in Note 10 in the subdivision of the "Drug Equivalency Tables" in the table captioned "Cocaine and Other Schedule I and II Stimulants" by inserting at the end:

"N-N-Dimethylamphetamine = 40 gm of marihuana",

and in the table captioned "LSD, PCP, and Other Schedule I and II Hallucinogens" by inserting at the end:

"Phenylcyclohexamine (PCE) = 5.79 kg of marihuana".

Reason for Amendment: This amendment inserts equivalencies for two additional controlled substances to make the Drug Equivalency Table more comprehensive.

(K). Proposed Amendment to section 2D1.4 (Attempts and Conspiracies) and various Chapter Two offense guidelines: Sections 2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2 2D3.1, 2D3.2, 2D3.3, 2D3.4, and 2D3.5 are amended in their titles by inserting at the end thereof in each instance "; Attempt or Conspiracy".

Section 2D1.4 is deleted in its entirety.

The Commentary to section 2D1.1 captioned "Application Notes" is amended in Note 12 by deleting the second, third, and fourth sentences and inserting in lieu thereof:

"Where there is no drug seizure or the amount seized does not reflect the scale of the offense, the court shall approximate the quantity of the controlled substance. In making this determination, the court may consider, for example, the price generally obtained for the controlled substance, financial or other records, similar transactions in controlled substances by the defendant, and the size or capability of any laboratory involved.".

The Commentary to section 2D1.1 captioned "Application Notes" is amended in Note 12 by inserting the following additional paragraphs at the end:

"If the offense involved both a substantive drug offense and an attempt or conspiracy (e.g., sale of five grams of heroin and an attempt to sell an additional ten grams of heroin), the total quantity involved shall be aggregated to determine the scale of the offense.

In an offense involving negotiation to traffic in a controlled substance, the weight under negotiation in an uncompleted distribution shall be used to calculate the applicable amount. However, where the court finds that the defendant did not intend to produce and was not reasonably capable of producing the negotiated amount, the court shall exclude from the guideline calculation the amount that it finds the defendant did not intend to produce and was not reasonably capable of producing.".

The Commentary to section 2D1.6 captioned "Application Notes" is amended in Note 1 by deleting "Commentary to section 2D1.1, and Application Notes 1 and 2 of the Commentary to section 2D1.4," and inserting in lieu thereof "Commentary to section 2D1.1".

The Commentary to section 2X1.1 captioned "Application Notes" is amended in Note 1 by deleting "section 2D1.4 (Attempts and Conspiracies)" wherever it appears and inserting in lieu thereof in each instance:

"Section 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy); section 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy); section 2D1.5 (Continuing Criminal Enterprise; Attempt or Conspiracy); section 2D1.6 (Use of Communication Facility in Committing Drug Offense; Attempt or Conspiracy); section 2D1.7 (Unlawful Sale or Transportation of Drug Paraphernalia; Attempt or Conspiracy); section 2D1.8 (Renting or Managing a Drug Establishment; Attempt or Conspiracy); section 2D1.9 (Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances; Attempt or Conspiracy); section 2D1.10 (Endangering Human Life While Illegally Manufacturing a Controlled Substance; Attempt or Conspiracy); section 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy); section 2D1.12 (Unlawful Possession, Manufacture, Distribution, or Importation of Prohibited Flask or Equipment; Attempt or Conspiracy); section 2D1.13 (Structuring Chemical Transactions or Creating a Chemical Mixture to Evade Reporting or Recordkeeping Requirements; Presenting False or Fraudulent Identification to Obtain a Listed Chemical; Attempt or Conspiracy); section 2D2.1 (Unlawful Possession; Attempt or Conspiracy); section 2D2.2 (Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge; Attempt or Conspiracy); section 2D3.1 (Illegal Use of Registration Number to Manufacture, Distribute, Acquire, or Dispense a Controlled Substance; Attempt or Conspiracy); section 2D3.2 (Manufacture of Controlled Substance in Excess of or Unauthorized by Registration Quota; Attempt or Conspiracy); section 2D3.3 (Illegal Use of Registration Number to Distribute or Dispense a Controlled Substance to Another Registrant or Authorized Person; Attempt or Conspiracy); section 2D3.4 (Illegal Transfer or Transshipment of a Controlled Substance; Attempt or Conspiracy); and section 2D3.5 (Violation of Recordkeeping or Reporting Requirements for Listed Chemicals and Certain Machines; Attempt or Conspiracy)".

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Appendix A (Statutory Index) is amended in the line beginning 21 U.S.C. 846 by deleting "2D1.4" and inserting in lieu thereof: "2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2, 2D3.3, 2D3.4, and 2D3.5"; and in the line beginning 21 U.S.C. § 963 by deleting "2D1.4" and inserting in lieu thereof: "2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2, 2D3.3, 2D3.4, and 2D3.5".

Reason for Amendment: This amendment clarifies and simplifies the guideline provisions dealing with attempts and conspiracies in drug cases and conforms the structure of these provisions to that of other offense guidelines that specifically address attempts and conspiracies (i.e., attempts and conspiracies described in section 2X1.1(c)).

(L). Proposed Amendment to section 2E1.4 (Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire): Section 2E1.4(a)(2) is amended by inserting at the end "from sections 2A1.2 (First Degree Murder), 2A1.5 (Conspiracy or Solicitation to Commit Murder), or 2A2.1 (Assault With Intent to Commit Murder), as applicable".

The Commentary to section 2E1.4 captioned "Background" is amended by deleting:

"The statute does not require that a murder covered by this section has been committed. The maximum term of imprisonment authorized by statute ranges from five years to life imprisonment.",

and inserting in lieu thereof:

"This guideline, and the statute to which it applies, does not require that a murder actually have been committed.".

Reason for Amendment: This amendment makes the wording of subsection (a)(2) and the Background Commentary more precise. The reference in the current Background Commentary to a maximum term of five years is obsolete; this sentence is deleted as unnecessary.

(M). Proposed Amendment to section 2J1.6 (Failure to Appear by Defendant): Section 2J1.6(b)(1) is amended by deleting "away from the facility" and inserting in lieu thereof "in failure to appear status".

The Commentary to section 2J1.6 captioned "Application Notes" is amended by inserting the following additional notes:

"5. 'Voluntarily surrendering' includes voluntarily reporting to the court or to the correctional facility (in the case of a failure to report for service of sentence), or turning one's self in to a law enforcement authority as a person in failure to appear status. It does not, however, include notifying authorities of one's failure to appear status after being arrested on another charge.

6. 'While in failure to appear status' means at any time between the time the defendant was scheduled to report and the time the defendant was returned to federal custody."

Reason for Amendment: The amendment clarifies the operation of this guideline.

(N). Proposed Amendment to chapter Two, part L, subpart 2: The title of section 2L2.1 is amended by inserting at the end "; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law".

The Commentary to section 2L2.1 captioned "Statutory Provisions" is amended by inserting "8 U.S.C. 1325(b);" immediately before "18 U.S.C.", and by inserting "1015," immediately after "Sections".

The title of section 2L2.2 is amended by inserting at the end: "; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law".

The Commentary to section 2L2.2 captioned "Statutory Provisions" is amended by deleting "18 U.S.C." and inserting in lieu thereof "8 U.S.C. 1325(b); 18 U.S.C. 911, 1015,".

Appendix A (Statutory Index) is amended by inserting in the appropriate place by title and section:

"8 U.S.C. 1325(b) * * * 2L2.1, 2L2.2".

Reason for Amendment: This amendment expands the titles of sections 2L2.1 and 2L2.2 to include additional statutes appropriately covered by these provisions. Conforming revisions are made in the Statutory Provisions and Appendix A (Statutory Index).

(O). Proposed Amendment to section 2P1.1 (Escape, Instigating or Assisting Escape): Section 2P1.1(b)(3) is amended by deleting "the non-secure custody of a community corrections center, community treatment center, 'halfway house,' or similar facility" and inserting in lieu thereof "non-secure custody" and by inserting "(A) the offense involved a failure to return from a furlough from secure custody; or (B)" immediately following "apply if".

The Commentary to section 2P1.1 captioned "Application Notes" is amended in Note 2 by deleting "(not in connection with an arrest or other charges)" and inserting in lieu thereof "; it does not include notifying authorities of one's status as an escapee after being arrested on another charge".

Reason for Amendment: This amendment clarifies (1) that a failure to return from a furlough from secure custody is excluded from subsection (b)(3); and (2) that an institution with no security perimeter (a minimum security camp) is included under subsection (b)(3) (U.S. v. Agudelo, 768 F.Supp. 339 (N.D. Fla. 1991)). In addition, it makes an editorial improvement to the commentary.

(P). Proposed Amendment to chapter two, part T, subpart 3, Customs Taxes: The Introductory Commentary to Chapter two, part T, subpart 3, is amended by deleting ". These guidelines are primarily aimed at" and inserting in lieu thereof "and is designed to address violations involving"; by deleting "They are" and inserting in lieu thereof "It is"; by deleting "legislation generally applies" and inserting in lieu thereof "criminal statutes apply"; by inserting "if applicable," immediately following "guideline."; and by deleting "these guidelines" and inserting in lieu thereof "the guideline in this part".

Section 2T3.1 is amended in the title by inserting at the end "; Receiving or Trafficking in Smuggled Property".

Section 2T3.1 is amended by inserting the following additional subsection:

"(c) Cross Reference

(1) If the offense involves a contraband item covered by another offense guideline, apply that offense guideline if the resulting offense level is greater than that determined above.".

The Commentary to section 2T3.1 captioned "Application Notes" is amended in Note 2 by deleting "the court should impose a sentence above the guideline" and inserting in lieu thereof "an upward departure may be warranted".

Section 2T3.2, including accompanying commentary, is deleted in its entirety.

Appendix A (Statutory Index) is amended in the lines beginning "18 U.S.C. 545", "18 U.S.C. 547", "18 U.S.C. 549", and "19 U.S.C. 1464" by deleting in each instance ", 2T3.2".

Reason for Amendment: This amendment inserts a cross reference in section 2T3.1 to provide the legal authority to implement the policy set forth in the introductory commentary; consolidates sections 2T3.1 and 2T3.2 which contain identical characteristics; and makes conforming changes in commentary.

(Q). Proposed Amendment to section 2X1.1 (Attempt, Solicitation, or Conspiracy): Section 2X1.1(b)(3) is amended by deleting "(A)"; and by deleting:

"(B) If the statute treats solicitation of the offense identically with the object offense, do not apply subdivision (A) above; i.e., the

offense level is the same as that for the object offense.".

The Commentary to Section 2X1.1 captioned "Application Notes" is amended in the last paragraph of Note 1 by inserting "Section 2B4.1 Bribery in Procurement of Bank Loan and Other Commercial Bribery; Solicitation of Bribe);" immediately before "Section 2C1.1"; by inserting "Section 2C1.5 (Payments to Obtain Public Office; Solicitation of Payment); Section 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper; Solicitation of Loan or Gratuity);" immediately before "Section 2E5.1"; and by inserting "; Section 2E5.6 (Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations; Solicitation of Prohibited Payment or Loan); Section 2J1.8 (Bribery of Witness; Solicitation of Bribe); Section 2J1.9 (Payment to Witness; Solicitation of Payment)" immediately before the period at the end of the sentence.

The Commentary to Section 2X1.1 captioned "Application Notes" is amended in Note 4 in the second sentence by deleting "(b)(3)(A)" and inserting in lieu thereof "(b)(3)".

Conforming Amendments: Section 2B4.1 is amended in the title by inserting at the end "; Solicitation of Bribe".

Section 2C1.5 is amended in the title by inserting at the end "; Solicitation of Payment".

Section 2C1.6 is amended in the title by inserting at the end "; Solicitation of Loan or Gratuity".

Section 2E5.6 is amended in the title by inserting at the end "; Solicitation of Prohibited Payment or Loan".

Section 2J1.8 is amended in the title by inserting at the end "; Solicitation of Bribe".

Section 2J1.9 is amended in the title by inserting at the end "; Solicitation of Payment".

Reason for Amendment: This amendment simplifies the structure of this guideline by deleting subsection (b)(3)(B) and addressing the offenses currently covered by this subsection by including a specific reference to solicitation in the titles of the appropriate offense guideline, as is done in the case of conspiracy and attempt.

(R). Proposed Amendment to Sections 2X3.1 (Accessory After the Fact) and 2X4.1 (Misprision of Felony): Section 2X3.1 is amended by deleting "4" and inserting in lieu therof "level 1", and by inserting "level" immediately before "30".

Section 2X4.1 is amended by deleting "4" and inserting in lieu thereof "level 1", and by inserting "level" immediately before "19".

Reason for Amendment: This amendment corrects an anomaly. For example, under the current guidelines, in the case of a level 6 or 7 theft or fraud (or any other offense with an offense level of 6 or 7), a conviction for the substantive offense with a 4-level reduction for minimal role will result in an offense level of 2 or 3, respectively. A conviction for accessory after the fact or misprision (lesser offenses) will result in a higher final offense (level 4) because of the alternative minimum offense level. This anomaly is removed by the revision of the minimum offense level under Sections 2X3.1 and 2X4.1.

(S). Proposed Amendment to Section 3A1.2 (Official Victim): Section 3A1.2(a) is amended by deleting "a law enforcement or corrections officer; a former law enforcement or corrections officer; an officer or employee included in 18 U.S.C. 1114; a former officer or employee included in 18 U.S.C. 1114;" and inserting in lieu thereof "a government officer or employee; a former government officer or employee;".

The Commentary to section 3A1.2 captioned "Application Notes" is amended in Note 2 by deleting "are not expressly covered by this section. The court should make an upward departure of at least three levels in those unusual cases in which such persons are victims." and inserting in lieu thereof "although covered by this section, do not represent the heartland of the conduct covered. An upward departure to reflect the potential disruption of the governmental function in such cases typically would be warranted.".

The Commentary to section 3A1.2 captioned "Application Notes" is amended in Note 4 by deleting "law enforcement or corrections officer or other person covered under 18 U.S.C. 1114" and inserting in lieu thereof "government officer or employee"; and by inserting at the end "This adjustment also would not apply in the case of a robbery of a postal employee because the offense guideline for robbery contains an enhancement (section 2B3.1(a)) that takes such conduct into account.".

Reason for Amendment: Section 3A1.2 (entitled "Official Victim") currently covers some but not all government officers or employees victimized on account of their official position. Primarily, it covers law enforcement and correctional officers and employees, prosecutors and judges; but because of the reference to 18 U.S.C. 1114, it also covers postal workers and members of the Coast Guard. To add to the complexity, an application note instructs that in the case of certain high level officials, an upward departure of at least 3 levels should be made. Unstated is whether a 3-level upward departure should be made in the case of a governmental officer or employee who is not covered by this section but who nonetheless is targeted as a victim because of his official status. This amendment adopts a more generic approach. Under this amendment, this section would apply to all government officers or employees targeted on account of their official position or in retaliation for their official conduct.

(T). Proposed Amendment to section 3B1.3 (Abuse of Position of Trust or Use of Special Skill): Section 3B1.3 is amended in the title by inserting "Special" immediately before "Trust".

Section 3B1.3 is amended by inserting "special" immediately before "trust" wherever the latter term appears.

The Commentary to section 3B1.3 captioned "Application Notes" is amended by deleting Note 1 as follows:

"1. The position of trust must have contributed in some substantial way to facilitating the crime and not merely have provided an opportunity that could as easily have been afforded to other persons. This adjustment, for example, would not apply to an embezzlement by an ordinary bank teller.",

and inserting in lieu thereof:

"1. 'Special trust' refers to a position of public or private trust characterized by professional or managerial discretion (i.e., substantial discretionary judgment that is ordinarily given considerable deference). Such positions ordinarily are subject to significantly less monitoring than the typical employee. For this enhancement to apply, the position of trust must have contributed in some significant way to facilitating the commission or concealment of the offense (e.g., by making the detection of the offense or the defendant's responsibility for the offense more difficult). This adjustment, for example, would apply in the case of an embezzlement of a client's funds by an attorney serving as a guardian, a fraudulent loan scheme by a bank president, the theft of merchandise by a police officer who finds the door unlocked during a routine patrol, or the criminal sexual abuse of a patient by a physician under the guise of an examination. This adjustment would not apply in the case of an embezzlement or theft by an ordinary bank teller or postal employee because such positions are not characterized by the factors described above."

Reason for Amendment: Numerous questions have arisen in the application of this section in respect to the intended scope of this adjustment. This amendment reformulates the definition

of an abuse of position of trust to provide an operationally more workable definition that appropriately distinguishes cases warranting this enhancement.

(U). Proposed Amendment to chapter Five, part E (Restitution, Fines, Assessments, Forfeitures): Chapter Five, part E, is amended by inserting the following additional policy statement:

"Section 5E1.5. Costs of Prosecution (Policy Statement)

Costs of prosecution shall be imposed on a defendant as required by statute.

Commentary

Background: Various statutes require the court to impose the costs of prosecution: 7 U.S.C. 13 (larceny or embezzlement in connection with commodity exchanges); 21 U.S.C. 844 (simple possession of controlled substances) (unless the court finds that the defendant lacks the ability to pay); 26 U.S.C. 7201 (attempt to defeat or evade income tax); 26 U.S.C. 7202 (willful failure to collect or pay tax); 26 U.S.C. 7203 (willful failure to file income tax return, supply information or pay tax); 26 U.S.C. 7206 (fraud and false statements); 26 U.S.C. 7210 (failure to obey summons); 26 U.S.C. 7213 (unauthorized disclosure of information); 26 U.S.C. 7215 (offenses with respect to collected taxes); 26 U.S.C. 7216 (disclosure or use of information by preparers of returns); 26 U.S.C. 7232 (failure to register or false statement by gasoline manufacturer or producer); 42 U.S.C. 1302c–9 (improper FOIA disclosure); 43 U.S.C. 942–6 (rights of way for Alaskan wagon roads).".

Reason for Amendment: A number of statutes mandate imposition of the costs of prosecution. The proposed policy statement would make the Guidelines Manual more comprehensive by including notice to users of these statutory sentencing requirements.

(V). Proposed amendment to chapter Five, part K (Departures): Chapter Five, part K, is amended by inserting the following additional policy statement:

"Section 5K2.17. Extraordinary Physical Impairment (Policy Statement)

If a defendant suffers from an extraordinary physical impairment, a sentence below the applicable guidline range may be warranted: e.g., in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.".

Reason for Amendment: For purposes of clarity and comprehensiveness, this amendment takes an existing ground for departure discussed in section 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse) and creates a new section in chapter Five, part K (Departures) that specifically deals with this ground for departure.

(W). Proposed Amendment to section 6B1.2 (Standards for Acceptance of Plea Agreements): Section 6B1.2(a) is amended by deleting "statutory purposes of sentencing" and inserting in lieu thereof "sentencing guidelines".

The Commentary to section 6B1.2 is amended by deleting "This section makes clear that a court may accept a plea agreement provided that the judge complies with the obligations imposed by Rule 11(e), Fed. R. Crim. P. A judge" and inserting in lieu thereof "The court", and by inserting the following additional sentences immediately before "This requirement":

"A defendant who enters a plea of guilty in a timely manner will enhance the likelihood of his receiving a reduction in offense level by 2 levels under § 3E1.1 (Acceptance of Responsibility). Further reduction in offense level (or sentence) due to a plea agreement will tend to undermine the sentencing guidelines.".

The Commentary to section 6B1.2 is amended in the first sentence of the second paragraph by deleting "will" and inserting in lieu thereof "may".

Reason for Amendment: This amendment expresses the Commission's position on the appropriate interaction between section 3E1.1 and section 6B1.2, and makes several editorial improvements.

(X). Proposed Amendment to section 6B1.2 (Standards for Acceptance of Plea Agreements): Section 6B1.2(a) is amended by deleting "statutory purposes of sentencing" and inserting in lieu thereof "sentencing guidelines".

Section 6B1.2(a) is amended by inserting the following additional paragraph at the end:

"Provided, that the acceptance of a plea agreement that includes the dismissal of a charge or a plea agreement not to pursue a potential charge shall not exclude the conduct underlying such charge from consideration under section 1B1.3 (Relevant Conduct) in respect to the offense of which the defendant is convicted.".

The Commentary to section 6B1.2 is amended by inserting the following additional paragraph as the second paragraph:

"Compliance with subsection (a) of this policy statement will reduce the likelihood that a plea agreement will undermine the sentencing guidelines, intentionally or unintentionally. It is to be noted, however, that the acceptance of a plea agreement that includes the dismissal of a charge, or a plea agreement not to pursue a potential charge will, in no event, exclude the conduct underlying such charge from consideration under the provisions of section 1B1.3 (Relevant Conduct) that are applicable to the offense of which the defendant is convicted.".

The Commentary to section 6B1.2 is amended in the third (formerly second) paragraph by deleting "will" and inserting in lieu thereof "should"; by deleting "the contemplated sentence is" and inserting in lieu thereof "such sentence is an appropriate sentence"; and by deleting "recommended sentence or agreement" and inserting in lieu thereof "sentence".

Reason for Amendment: This amendment clarifies that a plea agreement to dismiss a charge or not to pursue a potential charge does not insulate the conduct underlying such charge from the operation of section 1B1.3 (Relevant Conduct).

(Y). Proposed Amendment to section 5D1.1 (Imposition of a Term of Supervised Release): Section 5D1.1(a) is amended by inserting "(other than a sentence of life imprisonment)" immediately before "is imposed".

The Commentary to section 5D1.1 captioned "Application Notes" is amended in the first sentence of Note 1 by inserting "(other than a sentence of life imprisonment)" immediately following "year".

Reason for Amendment: Currently, this guideline requires imposition of a term of supervised release whenever a term of imprisonment exceeding one year is imposed. This amendment provides an exception to this requirement in the case of a sentence of life imprisonment.

[FR Doc. 91–31238 Filed 12–31–91; 8:45 am]
BILLING CODE 2210–40–M

federal register

Thursday
January 2, 1992

Part IV

Office of Personnel Management

5 CFR Parts 831, et al.

Court Orders Affecting Retirement Benefits; Proposed Rule

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 838, 841, 842, and 843

RIN 3206-AE14

Court Orders Affecting Retirement Benefits

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to improve processing of court orders affecting retirement benefits under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). The proposed regulations would establish rules of interpretation and procedures for processing court orders that divide retirement benefits or award survivor annuities, provide model paragraphs for use in preparing court orders, and create a single uniform set of procedures for processing court orders under FERS and CSRS. The regulations are needed to streamline OPM's procedures to allow disputes over the interpretation of State court orders to be brought to closure more easily and quickly, minimizing hardship to the former spouse.

DATES: Comments must be received on or before March 3, 1992.

ADDRESSES: Send comments to Andrea Minnicar Farran, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street NW., Washington, DC.

Comments on the information collection requirements contained in this regulation also should be filed with the Office of Management and Budget. (See below under Paperwork Reduction Act.)

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606-0299.

SUPPLEMENTARY INFORMATION: These regulations would replace the existing separate sets of interim regulations under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS).

On May 13, 1985, we published (at 50 FR 20064) interim regulations which, in part, revised our procedures for processing court orders affecting benefits under CSRS. Those interim rules were necessary to implement the Civil Service Retirement Spouse Equity Act of 1984 (CSRSEA) (Pub. L. 98-615).

On September 8, 1986, we published (at 51 FR 31927) interim regulations amending the interim regulations published May 13, 1985. The September 8th interim regulations implemented several changes to CSRSEA made by the Federal Employees Benefits Improvement Act of 1986 (Pub. L. 99-251). The September 8th interim regulations also included changes based on comments received in response to the interim regulations published May 13, 1985.

On February 3, 1987, we published (at 52 FR 3209) interim regulations amending the interim regulations for processing court orders under CSRS to implement the Federal Employees' Retirement System Technical Corrections Act of 1986 (Pub. L. 99-556).

On March 12, 1990, we published (at 55 FR 9093) amendments to the interim regulations implementing CSRSEA. The amendments included revised guidelines explaining how we interpret certain language used in court orders affecting CSRS benefits.

The interim regulations published May 13, 1985, as amended, remain in effect for court orders affecting CSRS benefits.

On December 30, 1986, we published (at 51 FR 47021) proposed regulations for revising our procedures for processing court orders under CSRS to expedite payments to the former spouses.

On December 31, 1986, we published (at 51 FR 47190) interim regulations for processing court orders affecting FERS basic benefits. Those interim regulations implemented for FERS the procedures that we had proposed the day before for CSRS. The interim regulations published December 31, 1986, remain in effect for court orders affecting FERS benefits.

1. Reasons to Change Processing Procedures

The proposed regulations will make it easier for the parties in a divorce to ensure that OPM will divide CSRS or FERS benefits, or provide a survivor benefit, in accordance with their wishes. In enacting the provisions allowing OPM to honor the decisions of State courts respecting a former spouse's interest in an employee's retirement benefits, the intent of Congress was that the Federal Government not insert itself into marital property disputes. The proposed regulations assure that the dispute-resolution role rests in the hands of the State courts as was originally intended by the Congress.

Under the current regulations for court orders, a process has evolved that, rather than truly protecting the rights of all parties, often simply resulted in delays in payments to former spouses and hardships to them. Under existing regulations, when we receive a court order that awards a benefit to a former spouse of a CSRS or FERS retiree, the retiree can protest OPM's decision through frequently lengthy administrative procedures. This may create financial hardship because, under CSRS procedures, no money is paid while the administrative proceedings are pending. Since the aftermath of many divorces is often an emotionally charged situation, some retirees deliberately use the process to delay payments for as long as possible.

The proposed regulations synthesize our experience in processing court orders since 1978, and contain two important changes that we believe will improve our service to people affected by these orders. First, the regulations will make it easier for people to submit orders that will be acceptable to OPM. The regulations are very detailed as to what constitutes a court order that is acceptable for processing, and as to the exact meaning of court order terminology. The definitions in these regulations are designed to give the most commonly-used meaning to words most often encountered in court orders. This will allow OPM to accept as many court orders as possible rather than rejecting orders, which would require the parties to return to State court. To further facilitate preparation of acceptable orders, appendices to the regulations contain model paragraphs that attorneys can use to ensure that, in drafting orders, the language they select will both produce the intended result and meet OPM's processing requirements.

Second, because the regulations prescribe in detail what is and is not acceptable for processing, OPM can now assume the appropriate role for itself, which is a ministerial role, rather than a mediator in marital property disputes. This role belongs to the State courts. If a court order is so flawed that it is not sufficiently clear to satisfy our requirements, the appropriate action is for the parties to return to the State court to correct the problem. Likewise, if the retiree contends that the court intended its order to have a different meaning than the clear meaning it has under these regulations, the proper forum for the retiree's complaint is the State court. OPM will require the employees and former spouses to settle the disputes in the State courts where they belong, not in Federal proceedings. The courts issuing the orders are in the best position to determine the meaning of their own orders. This will result in faster resolution of disputes and eliminate the delay in payments to former spouses with court orders that

comply with the requirements of the regulations.

2. Changes Having Broad Application

The proposed regulations would consolidate the CSRS and FERS regulations concerning court orders affecting retirement benefits into a single set of regulations applicable to both retirement systems.

We have made several changes to make the regulations easier to use by both the legal community in drafting and submitting court orders and by OPM staff in applying the regulations to court orders. The proposed regulations distinguish clearly among regulations that affect employee annuities, refunds of employee contributions, and former spouse survivor annuities. Under the current regulation, some sections contain regulations pertaining to more than one of these different benefits. This resulted in a lack of clarity about which regulatory provisions apply to which types of benefit. The proposed regulations also divide rules into separate subparts covering procedures, requirements, and terminology. These changes make it easier for the legal community to focus on the provisions that effect benefits involved in the case with which they are concerned. A side effect of clearly dividing the regulations by the type of benefits the order seeks to affect is repetition of provisions that apply to more than one type of benefit. The repetition has added greatly to the length of these regulations; however, separate provisions about the effect of court orders on different types of benefits will simplify this very difficult subject and enhance the usability of the regulations.

These proposed regulations change several terms that have caused confusion or misunderstandings under the current regulations. We hope that the new terms will make the regulations easier to understand.

The term, "employee retirement benefits," that is used in the current regulations has been replaced by its two component parts, "Employee annuities" and "Refunds of employee contributions." The failure to distinguish between these two distinct types of benefits in the current regulations makes the regulations more complex and difficult to understand. Although most of the rules relating to "employee retirement benefits" apply to both annuities and refunds, some of the rules affecting "employee retirement benefits" make sense only for annuities, and others, only for refunds. Treating annuities and refunds separately makes the regulations longer; however, we believe that it also makes them simpler for attorneys and others to use.

The term, "former spouse annuity," which is used in the current regulations, has been replaced by "former spouse survivor annuity." Comments on prior regulations demonstrated that most commenters did not understand that, "former spouse annuity" in the current regulations is only used when we are referring to the survivor benefit payable to a former spouse. The term has never included payments to a former spouse during a retiree's lifetime.

The term, "qualifying court order," which is used in the current regulations, has been replaced by "court order acceptable for processing." The principal reason for this change is to eliminate any similarity in terminology between court orders affecting CSRS and FERS benefits and "qualified domestic relations orders," QDRO's, under the Employees Retirement Income Security Act (ERISA), 29 U.S.C. 1001 *et seq.* In addition, the new term is more consistent with our role under the proposed regulations as the ministerial processor of court orders.

3. Preparing a Court Order

A court order may affect any of three types of retirement benefits paid by OPM. The regulations treat each of the three—employee annuities, refunds of employee contributions, and survivor annuities—independently. In preparing a court order, attorneys should keep in mind that we consider each of the three types of awards separate and independent of the other two, and should exercise great care in each type of benefit they intend to affect. Our requirement that the award of each type of benefits be independent does not mean that the court award of one type of benefit cannot affect another. For example, awarding a former spouse survivor annuity requires a reduction in the employee annuity. If the former spouse has been awarded a portion of the gross or net employee annuity, the former spouse's portion of the employee annuity will be affected.

A complete court order requires three separate provisions—one addressing each type of benefit that the court can affect. However, frequently, courts intend to award only a portion of the employee annuity or a survivor annuity, rather than a complete retirement package. The regulatory structure is designed to maintain a clear separation between court orders affecting different types of benefits. This permits a court that intends only to divide an employee annuity to consider only subparts A, B, C, and F of these regulations. Similarly, if the court intends to award only a survivor annuity, only subparts A, G, H, and I of these regulations apply. More detail on the regulatory structure is available in the analysis of § 838.102.

4. Section Analysis

Section 838.101(a) states the purpose of the regulations. The regulations cover both CSRS and FERS. Our role under the proposed regulations changes from one of an active adjudicator of disputes concerning the interpretation of court orders to one of performing only the ministerial function of executing clear, specific, and unambiguous instructions. As we explained in the section of this supplementary information entitled "Reasons to Change Processing Procedures," the proper place to resolve disputes concerning division of retirement benefits upon termination of marriage is the State courts.

OPM's comments on the legislation that in 1978 enacted section 8345(j) of title 5, United States Code, favored placing the responsibility for deciding the issue of divisions of CSRS employee annuities and refunds of employee contributions as marital property in the State courts. On May 7, 1979, the supplementary information for the original proposed regulations (published at 44 FR 26885) recognized the traditional role of State courts in domestic relations matters. Despite the legislative intent to have all property issues resolved in the State court, we, in interpreting ambiguous orders, have been drawn into marital disputes. Section 838.101(a) states our intent to separate ourselves from these marital disputes. The approach of these regulations is to require the State courts to resolve all disputes, requiring us to perform only the ministerial function of following the State courts' instructions.

Section 838.101(b) states what is covered by these court order regulations. Four principal areas are covered. The first area is the requirements that a court order must meet to enable us to process the court order without any adjudicatory role for OPM, that is, making OPM's function merely a ministerial act. The second area is the procedures that the former spouse must follow to apply for benefits based on a court order. The third area is the procedures that OPM will follow in executing court orders and in making payments based on court orders. The procedures cover how we handle applications based on court orders and the limitations that we must apply in executing court orders. The final area is the meanings assigned to words and phrases commonly used in court orders to provide notice of the effect that these

terms will have if used in a court order. With this notice, we must assume that courts use these terms with a full understanding of their regulatory definition, making terms that could otherwise be ambiguous, completely clear and precise, thereby allowing us to process the court order as a ministerial act.

Section 838.101(c) provides the rule for determining whether we will process a court order under the new regulations. We must retain the old CSRS regulations for court orders filed before the new regulations begin to apply to preserve the legitimate expectations of people who filed court orders that were drafted in reliance on the current regulations. We have thousands of court orders on file that, under the current regulation, we are holding without decision until benefits become payable. The acceptability of these court orders must be judged under the regulatory standards in effect at the time that they were filed. Applying the new, more stringent standards of these regulations to them would be unfair to the employees and former spouses who obtained the court orders in good faith.

The delay before the new regulations become effective is necessary to give the public, especially the legal community, notice of the new requirements and standards that apply to court orders affecting CSRS or FERS benefits and to provide an adjustment period before those requirements and standards apply. We must assume that State courts and attorneys involved with divorces of Federal employees and retirees will become thoroughly familiar with the requirements and terminology in the regulations. We do not wish to require the parties to return to court unnecessarily. The delayed effective date provides time for the effective dissemination of this information.

Section 838.102 provides a guide to finding regulations that relate to court orders. Paragraph (a) outlines the structure of part 838. Subpart A contains definitions and other material of significance to all types of court orders affecting CSRS and FERS. The rest of the part is divided into three major units depending on whether the court order applies to employee annuities, refunds of employee contributions, or former spouse survivor annuities. For each unit, separate subparts cover procedures for processing, requirements that court orders must satisfy, and definitions of terms frequently used in court orders. (The terminology section for employee annuities and refunds of employee contributions are combined to avoid excessive duplication.)

The subparts (B, D and G) regulating procedures contain rules relating to former spouse filing requirements and to our actions upon receipt of court orders. In addition, they contain rules and limitations that the State court cannot change such as when benefits are paid. The subparts (C, E, and H) regulating requirements that court orders must satisfy contain rules pertaining to the requirements that a court order must meet to be acceptable for processing. The subparts (F and I) defining terms explains our understanding of the meaning of terms commonly used in court orders. By choosing the correct term, the State court can tell us exactly what to do. We assume that State courts are familiar with our assigned meanings of these terms and have used them in the way that they are defined in these subparts.

Paragraphs (b) through (i) of § 838.102 contain cross references to other regulations concerning court orders or former spouse benefits. This information may assist people doing research.

Section 838.103 contains definitions of terms. These definitions apply to subparts A through I. Subpart J (for orders filed before the new requirements and procedures become applicable) contains its own definitions. Most of the definitions are the same as used in the current CSRS regulations. As explained in the section of the Supplementary Information entitled "Changes Having Broad Application," the term "court order acceptable for processing" replaces "qualifying court order," and "employee annuity" and "refund of employee contributions" replace "employee retirement benefits."

The definition of "net annuity" is changed to exclude from "net annuity" amounts withheld for State income taxes under section 8345(k) or section 8469 of title 5, United States Code to the same extent that current regulations exclude amounts withheld for Federal income tax. "Net annuity" has two applications. First, "net annuity" is the maximum amount of employee annuity that a State court can award to a former spouse. "Net annuity" is also one of the three types of annuity that may be used to satisfy the requirements of § 838.306 for identifying the type of annuity to which a formula, percentage, or fraction applies. The other two types, "gross annuity" and "self-only annuity" are also defined in section 838.103. Those definitions are essentially the same as under the current regulations.

Section 838.111 states the general statutory exemption from legal process under section 8346(a) or section 8470 of title 5, United States Code. Neither CSRS or FERS benefits are subject to State court orders except when expressly authorized by Federal statute. These regulations (part 838) contain the regulations for the exceptions that permit State court orders under section 8345(j), section 8341(h), section 8467, or section 8445 of title 5, United States Code. Part 581 of title 5, Code of Federal Regulations, regulates the exception for garnishments for alimony and child support under sections 659, 661, and 662 of title 42, United States Code.

Sections 838.121 through 838.124 state the responsibilities of everyone affected by the process. OPM's role is limited to the ministerial function of complying with court orders that meet the statutory and regulatory requirements. The State court is the proper forum for resolving all disputes over the validity or the effect of court orders. The court is also responsible for issuing orders that conform to the statutory and regulatory requirements. The former spouse must comply with the application requirements of these regulations. The person who worked under CSRS or FERS and the former spouse must submit all their disputes concerning entitlement to benefits to the appropriate State court for resolution.

Section 838.131 contains rules for computing the timeliness throughout part 838. Paragraph (a) provides that the normal CSRS and FERS rules for computing timeframes apply under part 838. Paragraph (b) provides rules for determining the date when OPM receives a court order. The date of receipt may be important for determining whether the order is controlled by subparts A through I or subpart J, the timeliness of filing, or the commencing date of benefits. The methodology for determining the date of receipt is similar to the methodology applicable to determining the date of service of process for garnishments under subpart B of part 581 of title 5, Code of Federal Regulations.

Section 838.132 states the statutory payment schedule for CSRS and FERS annuity benefits under sections 8345(a) and 8463 of title 5, United States Code, respectively. We are required by statute to pay CSRS and FERS annuity benefits on the first business day of the month after the month in which the benefits accrue. State courts have no authority to alter this payment schedule.

Section 838.133 continues the rule under section 831.1713(b) of title 5, Code of Federal Regulations, and Guidelines I.G of appendix A and III.F of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that provides that the minimum monthly amount

payable under a court order is one dollar. This section discontinues the provision in the current regulation that requires that the former spouse's share of employee annuity be rounded to the nearest whole dollar. Although the gross amount of an employee annuity is always in whole dollars, the amount paid to the employee after deductions usually is not. Rounding the former spouse benefit to the nearest dollar appears to serve no useful purpose.

Section 838.134 states the order of precedence for honoring court orders when we receive more than one court order affecting one employee or retiree. This section does not change the current rules. Except for court orders that make prohibited modifications of survivor annuity provisions (i.e., modifications that are ineffective under sections 8341(h)(4) and 8445(d) of title 5, United States Code), the last court order concerning any former spouse supersedes all earlier court orders affecting that former spouse. For cases involving more than one former spouse, the court order issued first has priority. Section 838.134(c) provides the rules that we will follow if the employee or retiree and the former spouse obtain conflicting court orders. The rules for determining which court order we must follow provide that we will honor the determination by courts of the employee's domicile (as shown by our records) in preference to the courts of any other jurisdiction and we will honor a later determination in preference to an earlier one. The former is appropriate because the courts of the employee's or retiree's domicile have the best claim to jurisdiction over his or her property, including the employee annuity. The latter is appropriate because the latest court order is presumably issued with knowledge of all earlier court orders and is intended to supersede them.

Section 838.135 eliminates the former spouse's option under § 831.1718 of title 5, Code of Federal Regulations, to have us honor an agreement between an employee or retiree and the former spouse that gives the former spouse a smaller portion of the employee's or retiree's benefits than the former spouse would receive under the court order. The current regulation should be changed because it is inconsistent with OPM's role of merely following the court instructions. If the employee or retiree and the former spouse agree on an amount other than the one that we determine must be paid in accordance with these regulations based on the terms of the court order, they must obtain an amended court order acceptable for processing to change the amount.

Subpart B regulates the procedures that apply to former spouse's applications and our processing of court orders directed at employee annuities. The distinctions among procedures, requirements and terminology are discussed in connection with § 838.102. Section 838.201 lists the topics covered by subpart B and contains cross references to related regulations.

Section 838.211 regulates when a former spouse's share of employee annuity becomes available for payment and the maximum amount payable to a former spouse. These rules are unchanged from the current regulations, §§ 831.1706 and 841.905 of title 5, Code of Federal Regulations.

Section 838.211(c) regulates when a court order prevents a retiree from waiving his or her annuity under section 8345(d) or 8465(a) of title 5, United States Code. Our rule has always been that waiver is permitted until the court order has affected the annuity. Under CSRS, the court order affects an annuity only after expiration of the 30-day notice period during which the retiree can file an objection to give reasons that OPM should not honor the court order. Accordingly, § 831.1706(b) of title 5, Code of Federal Regulations, ends the right to waive at the end of the 30-day notice period. Under FERS and the proposed regulations, the court order affects the annuity when we receive the court order. Accordingly, § 841.905(b) of title 5, Code of Federal Regulations, and § 838.221(c) terminate the right to waive the employee annuity at that time.

Section 838.221 states the application requirements that a former spouse must meet. The requirements are the same as the current FERS requirements under § 841.905 of title 5, Code of Federal Regulations. The only difference from the CSRS requirements under § 831.1705 of title 5, Code of Federal Regulations, is that the former spouse must provide the employee's mailing address if the court order affects the benefits of someone who is still an employee. Under the CSRS regulations, we do not process court orders until benefits become payable. Under the current FERS regulations and the proposed regulations, we need the employee's mailing address because we process the court order upon receipt. In processing a court order, we send information to the employee.

Sections 838.222 and 838.223 provide procedures for our processing of court orders. The procedures eliminate the delays in payments to the former spouse and streamline our handling of court orders. The regulations state the information that OPM will provide to the employee or retiree and the former spouse affected by a court order. Section 838.222(d) provides that payments to the former spouse and withholding from the employee annuity will begin on time, even if the information is not provided to the retiree before the annuity withholding begins.

Section 838.224 provides procedures that the employee or retiree must follow to dispute the validity of the court order. The burden is on the employee or retiree to obtain a court order invalidating the court order submitted by the former spouse. The proper forum for deciding issues relating to the validity of court orders is the courts, not Federal administrative proceedings. Paragraphs 838.224 (a) and (b) require the retiree to submit all challenges to the validity of a court order to the court for adjudication.

Section 838.225 regulates processing amended court orders. Amended court orders are processed as new court orders. Paragraph (b) clarifies the rule for collection of amounts past due or correcting excessive payments under § 831.1711(a)(2) or § 841.910(b)(1) of title 5, Code of Federal Regulations. To have OPM collect an arrearage or correct for excessive payments the court order must expressly tell us to take that action, tell us the total amount of the adjustment, and tell us how much of the adjustment should be made each month.

Section 838.231 regulates the commencing date of payments to the former spouse. Section 838.231(a) provides that the former spouse's share of an employee annuity begins to accrue on the first day of the second month after we receive a court order acceptable for processing. The statute does not provide a commencing date. This commencing date corresponds to the earliest commencing date permitted by statute for a survivor annuity based on a court order under sections 8341(h)(3)(A) and 8445(c)(1) of title 5, United States Code. This commencing date is the same as is used in the current FERS regulations under § 841.910(b)(2) of title 5, Code of Federal Regulations.

Section 838.231(b) regulates the commencing dates of accrual and payment of the former spouse's share of an employee annuity when the former spouse submits an incomplete application. Former spouses frequently submit copies of court orders that do not bear original court certifications, and therefore, do not satisfy the requirements of § 838.221. We also receive applications lacking other documents required by that section for proving validity of the court order.

Section 838.231(b) provides that the only document necessary to begin accrual of the former spouse's share of the employee annuity is a copy of the court order, even if that copy is not an original court certified copy. However, we cannot pay accrued benefits to the former spouse until we have received all the required documentation. If necessary, we will make a retroactive payment to the former spouse covering annuity that accrued after we receive a copy of the court order but prior to our receipt of all necessary documentation.

Section 838.232(a) restates the requirement under § 831,1713(d) or § 841.912(b) of title 5, Code of Federal Regulations, that we must suspend a former spouse's share of an employee annuity if the employee annuity is stopped. Section 838.232(b) provides an exception to the suspension requirement to curb abuses by retirees.

Section 838.233 regulates the termination of the former spouse's share of an employee annuity. It does not change current practice. Paragraph (a) provides for termination in accordance with the terms of the court order. Paragraph (b) provides for termination as soon as possible after we receive a court order invalidating the court order submitted by the former spouse. If we receive the court order at least 20 days before the end of the month we generally can stop the next check (which is for annuity accruing during the month in which we received the court order). If we receive the court order when there are fewer than 20 days left in the month, we will not stop the check for the month in which we receive the court order, but the former spouse's share of the employee annuity will cease accruing at the end of that month. Paragraph (c) provides that a court order becomes ineffective when an amended court order that supersedes it becomes effective. Paragraph (d) provides that if the retiree dies, the former spouse's share stops when annuity to the retiree stops, effective at the end of the month before death. No Federal statute gives State courts any authority over accrued, unpaid annuity that would have been due the retiree for the part of the month in which the retiree dies. We must pay it in accordance with the order of precedence in section 8342 or section 8424 of title 5, United States Code. For cases in which the former spouse predeceases the retiree, paragraph (e) provides that unless the court order expressly provides otherwise, accrual of the former spouse's share ceases at the end of the month before the former spouse dies.

Section 838.234 provides the special requirements applicable to a court order that directs us to collect an arrearage. The special requirement is discussed in connection with § 838.225.

Section 838.235 states how we will pay lump-sum awards from employee annuity. If the court specifies the monthly rate of payment, we will use that rate. Otherwise, we will withhold at the rate of 50 percent of the gross annuity at the time that payments start. Payments will continue at the same rate until the lump sum has been paid.

No Federal statute authorizes State courts to delay or stop annuity payments. We are required by sections 8345(a) and 8463 of title 5, United States Code, to pay employee annuity monthly. Sections 8345(j) and 8467 of title 5, United States Code, authorize State courts in certain situations to direct payment to someone other than the retiree but not to stop payments. Section 838.236 states this statutory prohibition against court orders seeking to stop payments that we are required to make.

Section 838.237 changes the procedures that we will follow upon the death of the former spouse. Currently, § 831.1712 of title 5, Code of Federal Regulations, requires us to contact the State court when the former spouse dies. At that time, we request the State court to provide additional instructions for the disposition of the former spouse portion of the employee annuity. Only a court order issued after the death of the former spouse meets the requirements of the current regulation. Section 838.237 changes our approach to eliminate our involvement in the process. We will no longer solicit additional instructions from the court or require an after-death court order to resolve entitlement. Unless that court order includes express instructions telling us what to do with the former spouse's share of the employee annuity when the former spouse dies, the former spouse's share reverts to the employee upon the death of the former spouse. The limitations on whom we will pay after the death of the former spouse that currently exist under § 831.1712 of title 5, Code of Federal Regulations, would continue under § 838.237.

Section 838.241 states that we add cost-of-living adjustments to annuities in accordance with section 8340 or section 8462 of title 5, United States Code. If the court wants us to apply a different rate or add them at a different time, the court order must include specific instructions.

Section 838.242 states the current rules that we use to calculate lengths of service in evaluating formulas used in a court order. The current rule is in guidelines I.A and I.C of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations. Our policy not to compute lengths of time smaller than months is based on section 8332 of title 5, United States Code, that allows credit for service for years or twelfth parts thereof. We will not honor requests that we calculate smaller units of time.

Section 838.243 duplicates the minimum amount of a former spouse's share of employee annuity requirement established in § 838.133 of these regulations.

Subpart C states the requirements that a court order directed at employee annuity must satisfy to qualify as a court order acceptable for processing. Each section is structured to exclude court orders that do not satisfy the requirements of that section. This structure is designed to allow us to point to specific regulatory language that expressly states that a court order that does not contain a necessary provision is not acceptable for processing. Unless a specific regulation declares a court order not acceptable, the court order is acceptable for processing.

Section 838.302 clarifies that court orders that contain language that make it impossible for us to process the court order while maintaining our ministerial role are not acceptable for processing. Section 838.302(a) defines as unprocessable all court orders labeled "qualified domestic relations order" or issued on ERISA forms. Such a court order demonstrates on its face that the court does not understand that CSRS and FERS are not covered by ERISA. More importantly, the court order itself proves that our necessary presumption that the court is familiar with these regulations and that the court used the terms defined by these regulations intending those terms to have the meaning assigned by these regulations is incorrect. Accordingly, we cannot process such a court order.

Section 838.302(b) also defines as unprocessable court orders that attempt to award a former spouse a portion of an employee annuity that continues after the death of the employee. Our system provides only two types of benefits, employee annuities that are payable to the employee and terminate at the employee's death and survivor annuities that are payable to the employee's survivors after the employee's death. Sections 8345(j) and 8467 of title 5, United States Code, permit a State court to redirect payments that would otherwise be made to a former employee to a former spouse, but our system does not allow the State court to partition the employee

annuity to create a separate annuity that can continue independent of the employee's continued entitlement to the employee annuity. Only a survivor annuity can continue after the death of the employee.

Our current guidelines provide that unless the court order clearly and specifically provides that it is awarding an annuity that begins after the death of the employee or retiree, rather than a continuation of the former spouse's share of the employee annuity—a continuation not authorized by statute—the court order is not acceptable. How that distinction affects the use of these regulations is discussed in the section of this supplementary information concerning preparing a court order. This approach is justified for a number of reasons. Continuing the spouse's portion of an employee annuity after the death of the employee is a product of ERISA which permits a permanent partition of an employee annuity. As previously discussed, CSRS and FERS are exempt from ERISA and do not permit partition of an employee annuity. Our statutes only permit payment that would otherwise be made to a former employee to be redirected to the former spouse. We must also be assured that the court understood that the award of a survivor benefit results in a reduction of the employee's annuity. A court order that implies that partition of an employee annuity is permitted demonstrates that the court is not familiar with the requirements of these regulations. Thus, we must be able to rely on familiarity to make our function of executing court orders in accordance with these regulations ministerial.

We have, in the past, interpreted language that attempted to award the former spouse a portion of the employee annuity that would continue after the death of the employee as providing a portion of the employee annuity that terminates at the employee's death. However, such an interpretation would not be consistent with our limited ministerial role under these regulations. The number of court orders affected by this provision should be negligible.

Section 838.303 requires that the court order identify the retirement system and state that the former spouse is entitled to a portion of the employee annuity. This requirement is derived from current regulations, §§ 831 1704(a) and 841.903(b) of title 5, Code of Federal Regulations.

Section 838.304 changes the current rule on the degree of specificity required for a court order to direct us to pay the former spouse s share of an employee annuity directly to the former spouse. Under current CSRS regulations (§ 831.1704(b) of title 5, Code of Federal Regulations), we will pay the former spouse if the court order directs us to pay, or if the court order is neutral concerning the source of payment, or if the court order directs the retiree to pay and the retiree does not object to our paying directly. Under the current FERS regulation (§ 841.903(b) of title 5, Code of Federal Regulations), we will pay the former spouse unless the court order expressly directs us not to pay the former spouse directly. Under both of these approaches, we acted in an adjudicatory role. Considering that most of the court orders that we currently accept are neutral concerning the source of payments and we do not wish to needlessly require former spouses to return to court to correct technical deficiencies in court orders, we will continue to accept court orders that are neutral concerning who is to make the payments. Nevertheless, we strongly recommend that court orders expressly direct OPM to pay the former spouse directly. Court orders that direct the retiree to pay the former spouse are not acceptable for processing.

Section 838.305 states the requirements for specifying how much of the employee annuity is payable to the former spouse. The section continues the current requirements of §§ 831.1704(b) and 841.903(b) of title 5, and guidelines I.C and VI of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations, with one exception. The current guidelines (guideline VI.A.2 of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations) provide one exception to the general rule that we "will not research, interpret, or apply State laws regarding community or marital property rights or divisions." The exception in current guidelines requires us to apply State law to determine whether disability retirement benefits are subject to division as marital property upon divorce. Section 838.305 abolishes that exception and applies the general rule to all court orders. Unless the court order expressly directs us not to apply it to an employee annuity based on disability, we will apply the court order to any employee annuity payable. If State law does not permit division of disability retirement benefits until the retiree reaches age 62, and the court wants OPM to follow the State rule, the court order must state that it does not apply to disability retirement benefits until the retiree reaches age 62 and provide sufficient instruction for dividing the employee annuity after age 62.

Section 838.305 (b)(2) and (e) contain new material concerning the information that courts can expect us to locate in evaluating a formula. Both of these provisions arise from our concern about the types of salary rate information that will be available under the Federal Employees Pay Comparability Act of 1990, section 529 of Public Law 101–509, enacted November 5, 1990, especially, information about locality pay differentials under section 5305 of title 5, United States Code. Section 838.622(b)(2) contains a list of items that courts should feel comfortable in expecting us to evaluate. Courts should be wary about expecting us to evaluate variables that require us to find information not on the list. Section 838.622(e) provides that a court order is not acceptable for processing if it directs us to adjust the salary component of an annuity computation by an amount other than one of the four factors listed in the paragraph.

Section 838.306 provides that a court order that awards the former spouse a percentage or fraction of the employee annuity or gives us a formula for computing the amount of the former spouse's share of the employee annuity must use as a base for our computation the self-only, gross, or net annuity and must provide us with a way to tell which of these three types of annuity to use.

Subpart D regulates the procedures applicable to court orders directed at refunds of employee contributions. Its structure is similar to subpart B, which contains the corresponding rules for employee annuity. Sections 838.401, 836.411, 838.421, 838.423 through 838.425, and 838.441 correspond to §§ 838.201, 838.211, 838.221, 838.222 through 838.224 and 838.242, respectively.

Unlike annuities that are paid each month, refunds of employee contributions are paid only once and they extinguish any entitlement to a deferred annuity benefit. After the refund is paid, no funds are left to satisfy a court order.

Section 838.422 regulates the time limits for a former spouse to file an application for a court order to affect a refund of employee contributions. The time limits are the same as currently apply under § 831.2009 of title 5, Code of Federal Regulations. We must generally receive the court order no later than the last day of the second month before we pay the refund; however, if the former spouse indicates on the form for spousal notification of a refund application that he or she is submitting a court order, the court order is timely filed if we receive it no later than 20 days after we receive the form for spousal notification of a refund application.

Section 838.431 provides a remedy for former spouses who are harmed by not

receiving notice of an application for a refund of employee contributions. This section continues the current rule under § 831.2009(f) of title 5, Code of Federal Regulations.

Section 838.432 states the statutory requirement under sections 8342(j) and 8424(b) of title 5, United States Code, that a State court may prevent the payment of a refund of employee contributions only if a court order entitles the former spouse to a portion of the employee annuity or to a former spouse survivor annuity. The current regulation implementing that statute is § 831.2009(g) of title 5, Code of Federal Regulations.

As subpart C states the requirements that a court order directed at employee annuity must satisfy to qualify as a court order acceptable for processing, subpart E contains similar rules for court orders directed at refunds of employee contributions. Its structure is similar to subpart C. Sections 838.501, and 838.502 through 838.504 correspond to §§ 838.301, and 838.303 through 838.305, respectively.

Section 838.505 implements the statutory requirements for barring payment of a refund of employee contributions that are stated in section 8342(j) or section 8424(b) of title 5, United States Code. A court order can prohibit payment of a refund of employee contributions only if it awards a former spouse a portion of employee annuity, or a former spouse survivor annuity, that would be extinguished by payment of the refund of employee contributions.

Subpart F explains our understanding of terms frequently used in court orders directed at employee annuities or refunds of employee contributions and states whether use of the term will satisfy specific requirements of subpart C or subpart E. When we process court orders, we must assume that courts are familiar with the meanings assigned to the terms defined in this subpart and have used the terms in the way assigned by subpart F.

Section 838.611 contains information about provisions that attempt to identify the retirement system to satisfy the requirements of § 838.303 or § 838.502 of these regulations. Section 838.611 continues the current rules under guideline V of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations. The court order must clearly provide that it affects CSRS or FERS benefits. Court orders that award benefits paid by agencies other than OPM, most commonly military retired pay paid by the Department of Defense, are not acceptable even if the other benefit terminates to allow credit toward the benefit paid by OPM. This is necessary for two reasons. A practical reason is that we would not be able to compute benefits based on a retirement system administered by another agency. The legal reason is that no court order authorizes OPM to pay a portion of the retiree annuity to the former spouse.

Section 838.612 contains information about provisions used to identify employee annuities or refunds of employee contributions to satisfy the requirements of § 838.303 or § 838.502 of these regulations. Section 838.612 continues the current rules under guideline IV of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations. Paragraph (a) lists terms that are usually used to identify any type of retirement benefit actually paid. Although the literal meaning of some of the terms listed in paragraph (a), such as "pensions" or "annuities," would not include lump-sum distributions, such as refund of employee contributions, our experience has shown that these terms are broadly used to identify all retirement benefits payable. Accordingly, we will continue to accept these terms as affecting both employee annuities and refunds of employee contributions. Paragraph (b) lists terms used to describe lump-sum awards, that is, awards either of a specified amount that are usually based on the amount of the employee contributions (rather than on the amount of an employee annuity) or payable only from refunds of employee contributions.

Section 838.621 establishes a new term, "prorata share," for the most common type of formula used to divide retirement benefits. Court orders that use this term are instructing us to divide the benefits in accordance with the formula provided in paragraph (a). The section also identifies other terms that award a "prorata share."

Section 838.622 contains information about cost-of-living and salary adjustments that can be altered by provisions in court orders. It continues the current rules under guidelines I.A and I.B of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations.

Section 838.623 contains information about terms used in court orders that attempt to describe periods of service or tell us how to compute lengths of service for use in formulas. It continues the current rules under guidelines I.D, I.F, and III of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations, except that the definition of "military service" has been changed to include periods of civilian employment with military agencies.

Under the current guidelines, "military service" excludes such periods of civilian employment "except where the exclusion of such civilian service would be manifestly contrary to the intent of the court order." This change is necessary because exercising judgment to determine whether "the exclusion of such civilian service would be manifestly contrary to the intent of the court order," would be inconsistent with limiting our role in executing court orders to perform the ministerial function of carrying out the court's instructions. Our experience has shown that the court usually intends to include this civilian service in each element of the computation; therefore, we drafted the regulation to implement what has been the court's most likely intent. Again, we must assume that, unless the court provides its own definition, the court will use the term as we have defined it here.

Section 838.624 contains information about how we will treat court orders that contain inconsistent instructions for determining the amount of former spouse's share. It continues the current rules under guidelines I.E. and I.C.2 of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations.

Section 838.625 contains lists of terms that are synonymous with the types of annuity defined in § 838.103. The terms may be used to satisfy the requirements of § 838.306 of these regulations. Section 838.625 continues the current rules under guideline II of appendix A to subpart Q of part 831 of title 5, Code of Federal Regulations.

Subpart G regulates the procedures applicable to court orders awarding former spouse survivor annuities. Its structure is similar to subpart B that contains the corresponding rules for court orders awarding a portion of an employee annuity. Sections 838.701, 838.721 through 838.724, and 838.735 correspond to §§ 838.201, 838.221 through 838.224, and 838.241, respectively.

Section 838.711 states the statutory maximum amount that we may pay as a former spouse survivor annuity. The total of all monthly survivor annuities payable to the widow or widower and all former spouses (except for the former spouse survivor annuities authorized by section 4(b) of CSRSEA) may never exceed 55 percent of the employee annuity under CSRS or 50 percent of the employee annuity under FERS. The definition of former spouse survivor annuity in § 838.103 includes the basic employee death benefit as defined in § 843.102 of title 5, Code of Federal Regulations.

Section 838.725 states the statutory provision in section 8341(h)(4) or section 8445(d) of title 5, United States Code, declaring ineffective court orders that, after the employee retires or dies, modify any provision in a court order concerning a former spouse survivor annuity. This subject is covered in more detail by § 838.806.

Section 838.726 establishes as a regulation for the first time our existing policy for handling employee and retiree election rights in cases in which a former spouse is entitled to a former spouse survivor annuity. It provides that court orders affect our authority to pay benefits based on employee elections but do not affect the employee or retiree's rights to make survivor annuity elections. For example, a married employee who at the time of retirement has a former spouse who is entitled to the maximum former spouse survivor annuity by court order must elect (under § 831.604 or § 842.604 of title 5, Code of Federal Regulations) a reduced annuity to provide a current spouse survivor annuity to the spouse at the time of retirement unless that spouse consents to a different election. The employee annuity is reduced based on the court order that awards the former spouse survivor annuity. No additional reduction is necessary based on the election for the spouse at retirement because that spouse will not receive a benefit as long as the former spouse's entitlement under the court order continues. The benefit for the current spouse is discussed under § 838.733.

Sections 838.731 and 838.732 implement statutory requirements under section 8341(h)(3) or section 8445(c) of title 5, United States Code, for commencing and terminating former spouse survivor annuities.

Section 838.733 establishes as a regulation for the first time our existing policy for determining the rights of a current spouse as defined in §§ 831.603 or 842.602 of title 5, Code of Federal Regulations, for whom the retiree elected a reduced annuity to provide a survivor annuity, or a former spouse with a court order that cannot be honored because of a higher priority court order when a former spouse with entitlement to a former spouse survivor annuity by court order loses that entitlement. If the former spouse loses entitlement while the retiree is living, the annuity reduction would automatically continue to provide a survivor annuity to the current spouse or other former spouse. If the former spouse loses entitlement after the death of the retiree, the spouse at retirement (if he or she qualifies as a widow or widower) or other former spouse would begin to receive a survivor annuity after the former spouse loses entitlement.

Section 838.734 states the rule that OPM will not honor court orders that award lump-sum payments (other than the FERS basic employee death benefit) to a former spouse upon the death of an employee or retiree.

Subpart H regulates the requirements applicable to court orders awarding former spouse survivor annuities. Its structure is similar to subpart C, which contains the corresponding rules for court orders awarding a portion of an employee annuity. Sections 838.801, 838.803, and 838.805 correspond to §§ 838.301, 838.302, and 838.305, respectively.

Section 838.802 states the statutory requirements under CSRS that a court order may award a former spouse survivor annuity only if the marriage terminated on or after May 7, 1985, and, if the retiree retired before May 7, 1985, the former spouse was the beneficiary of a reduced annuity to provide a current spouse survivor annuity on May 7, 1985. These requirements result from section 4(a)(1) of CSRSEA, which controls the effective date of section 8341(h) of title 5, United States Code, the statutory authority for State court orders that award former spouse survivor annuities.

Section 838.804 states the requirement that a court order must expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity. This continues the current requirement of § 831.1704(d) of title 5 and guideline II of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations. Sections 838.303 and 838.304 are the corresponding sections applicable to employee annuity.

Section 838.806 contains the special requirements applicable to an amended court order. Sections 8341(h)(4) and 8445(d) of title 5, United States Code, do not allow us to accept court orders that contain modified provisions affecting survivor annuities if the modification is issued after the retirement or death of the employee. We explained these statutory provisions in detail (at 53 FR 29057, August 2, 1988, and 53 FR 46895, December 5, 1988) when we issued §§ 831.1704(e) and 841.903(d) of title 5, Code of Federal Regulations. Section 838.806 continues to treat as prohibited modifications the same amended court orders that were prohibited under §§ 831.1704(e) and 841.903(d). In addition, § 838.806 establishes standards for determining whether orders that vacate or set aside divorces are pretexts for evading the statutory prohibition against modification.

Section 838.807 states the current requirement under guideline III.C of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that the cost of providing the survivor annuity must be taken from the employee annuity or the former spouse's share of the employee annuity. If the court order directs us to take the cost from the former spouse's share of the employee annuity and the former spouse's share of the employee annuity is sufficient to pay the entire cost, we will take the cost from the former spouse's share of the employee annuity. Otherwise, the entire cost to provide the former spouse survivor annuity must be taken from the employee annuity in accordance with section 8339(j) or section 8417(a) of title 5, United States Code.

Subpart I explains our understanding of terms frequently used in court orders awarding former spouse survivor annuities and states whether use of the terms will satisfy specific requirements of subpart H. When we process a court order, we must assume that the court is familiar with the meanings assigned the terms defined in this subpart and have used the terms in the way assigned by this subpart.

Section 838.911 is similar to § 838.611 in most respects. It sets a similar standard for provisions in court orders that attempt to identify the retirement system to satisfy the requirements of § 838.804 of these regulations. The only noteworthy difference is the effect that we accord the term "maintain." We treat a provision in a court order that requires a retiree to "maintain" the survivor annuity coverage that the former spouse had prior to the divorce as sufficient to identify our benefits if the former spouse would have been entitled to a survivor annuity as the widow or widower except for the divorce. For example, in the case of a post-retirement divorce, the retiree must have elected to provide a survivor annuity for the spouse. Section 838.911 continues the current rules under guidelines II and III.A of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations. The court order must clearly provide that it awards survivor annuity benefits paid by OPM. Court orders that award survivor annuity benefits paid by other agencies, most commonly military retired pay paid by the Department of Defense, are not acceptable even if the other benefit terminates to allow credit from the other benefit to be counted toward the benefit paid by OPM.

Section 838.912 corresponds to § 838.612 in the sense that it contains information about provisions used to identify former spouse survivor annuities to satisfy the requirements of § 838.804 of these regulations, just as § 838.612 contains information about provisions concerning employee annuities or refunds of employee contributions to satisfy the requirements of § 838.303 or § 838.502 of these regulations. However, as under current rules, the standards for identifying survivor annuities are stricter than the standards for identifying employee annuities or refunds of employee contributions. Section 838.912 continues the current rules under guidelines I and III.B of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations. Also, if the court order awards the former spouse a survivor annuity under the statute authorizing survivor annuities to a person with an insurable interest in certain retirees, applicable statutes do not authorize us to comply with the court order. As in § 838.611, the term, "maintain" is accorded special significance if the former spouse is covered prior to the divorce.

Section 838.921 contains information about terminology used to describe the amount of a former spouse survivor annuity. Paragraph (a) continues the current rule under guideline III.E of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that court orders that award a former spouse survivor annuity, but do not contain express instructions for determining the amount of the former spouse survivor annuity, award the maximum amount available. Paragraph (b) continues the current rule under guideline III.D of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations. The rule is that a court order that provides that the former spouse will keep or that the retiree will maintain the survivor annuity to which the former spouse was entitled before divorce awards a former spouse survivor annuity in the same amount as the former spouse had at the time of divorce. Paragraph (c) restates the rule under guideline III.F of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that the minimum former spouse survivor annuity is $1 per month and that cost of living increases must be added to survivor annuities. Paragraph (d) continues the current rule under guideline III.G of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that a court order may authorize a reduction in the amount of a former spouse survivor annuity based on a retiree's election to provide a survivor annuity for a new spouse because the election is an event that will be documented in normal OPM files, but a court order may not authorize a reduction in the amount of a former spouse survivor annuity based on an employee's or retiree's remarriage because the remarriage is not an event that will be documented in normal OPM files. As under the current guideline, only the reduction opportunity is nullified; we treat the court order as awarding a former spouse survivor annuity because that is the probable intent of the court.

Section 838.922 establishes the new term, "prorata share," for the most common type of formula used to divide survivor annuity benefits, as § 838.621 did for court orders dividing employee annuities. Court orders that use this term instruct us to divide the benefits in accordance with the formula provided in paragraph (a). The section also identifies other terms that award a "prorata share."

Section 838.931 continues our current practice, which has not previously been included in the regulations, concerning a divorce decree that provisionally awards a former spouse survivor annuity until further order of the court can be acceptable. Such a court order provides a survivor annuity until the court issues a court order acceptable for processing that changes it. However, if the new court order is issued after the employee retires or dies, it cannot effectively change or terminate the provisional award. If the divorce occurs after the employee retires, section 8341(h) or section 8445 of title 5, United States Code, does not permit us to accept a court order changing or terminating the provisional award. Effectively, that makes the provisional award permanent.

Section 838.932 changes the rule under guideline III.G of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that court orders cannot authorize former spouses to exercise a right to elect a former spouse survivor annuity. The current guideline, under which the election right is nullified and the court order is treated as unequivocally awarding a former spouse survivor annuity, deviates farther than necessary from the instructions of the court. Under § 838.932, a court order providing for such an election awards a former spouse survivor annuity until the former spouse notifies OPM otherwise in a form prescribed by OPM. If the former spouse elects no survivor annuity, the election is irrevocable. A former spouse's election of no survivor annuity under this provision is effective and the employee annuity will be restored to the unreduced rate (unless a reduction is still required as a result of another court order or the retiree's election) effective on the first day of the month after OPM receives the election.

Section 838.933 contains information about terminology used to describe the source of payment of the cost of a former spouse survivor annuity. It continues the current rule under guideline III.C of appendix B to subpart Q of part 831 of title 5, Code of Federal Regulations, that court orders that unequivocally award former spouse survivor annuities and direct the former spouse to pay the costs are acceptable to award a former spouse survivor annuity but the cost must be paid in accordance with § 838.807 of these regulations. On the other hand, court orders that award a former spouse survivor annuity conditioned upon the former spouse paying the cost are not acceptable unless the former spouse is also entitled to a sufficient portion of the employee annuity to cover the cost.

Subpart J contains the current CSRS regulations that will continue to apply to court orders that are currently on file and that we receive prior to January 1, 1993.

Paperwork Reduction Act

The information collection requirements contained in §§ 838.221, 838.421, and 838.721 have been submitted to the Office of Management and Budget for approval in accordance with the requirements of the Paperwork Reduction Act. It is estimated that there will be approximately 7000 responses annually, with an estimated average burden of 6 minutes per response, for a total annual burden of 700 hours. Comments regarding these proposed collections of information through the letters of application should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Joseph Lackey, Desk Officer for the Office of Personnel Management. Comments should be received on or before March 3, 1992. All other comments should be sent to OPM as instructed above under "ADDRESSES."

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities

because the regulation will only affect Federal agencies and retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects

5 CFR Parts 831, 841, 842, and 843

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

5 CFR Part 838

Administrative practice and procedure, Claims, Disability benefits, Government employees, Income taxes, Pensions, Retirement, Courts.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend title 5, Code of Federal Regulations, as follows:

PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS

1. Part 838 is added to read as follows:

PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS

Subpart A—Court Orders Generally

Organization and Structure of Regulations on Court Orders

Sec.
838.101 Purpose and scope.
838.102 Regulatory structure.
838.103 Definitions.

Statutory Limit on Court's Authority

838.111 Exemption from legal process except as authorized by Federal law

Division of Responsibilities

838.121 OPM's responsibilities.
838.122 State courts' responsibilities.
838.123 Claimants' responsibilities.
838.124 Employees' and retirees' responsibilities.

Procedures Applicable to All Court Orders

838.131 Computation of time.
838.132 Payment schedules.
838.133 Minimum awards.
838.134 Receipt of multiple court orders.
838.135 Settlements.

Address for Filing Court Orders With OPM

Appendix A to Subpart A of Part 838—Addresses for Serving Court Orders Affecting CSRS or FERS Benefits

Subpart B—Procedures for Processing Court Orders Affecting Employee Annuities

Regulatory Structure

838.201 Purpose and scope.

Availability of Funds

838.211 Amounts subject to court orders.

Application and Processing Procedures

838.221 Application requirements.
838.222 OPM action on receipt of a court order acceptable for processing.
838.223 OPM action on receipt of a court order not acceptable for processing.
838.224 Contesting the validity of court orders.
838.225 Processing amended court orders.

Payment Procedures

838.231 Commencing date of payments.
838.232 Suspension of payments.
838.233 Termination of payments.
838.234 Collection of arrearages.
838.235 Payment of lump-sum awards.
838.236 Court orders barring payment of annuities.
838.237 Death of the former spouse.

Procedures for Computing the Amount Payable

838.241 Cost-of-living adjustments.
838.242 Computing lengths of service.
838.243 Minimum amount of awards.

Subpart C—Requirements for Court Orders Affecting Employee Annuities

838.301 Purpose and scope.
838.302 Language not acceptable for processing.
838.303 Expressly dividing employee annuity.
838.304 Providing for payment to the former spouse.
838.305 OPM computation of formulas.
838.306 Specifying type of annuity for application of formula, percentage or fraction.

Subpart D—Procedures for Processing Court Orders Affecting Refunds of Employee Contributions

Regulatory Structure

838.401 Purpose and scope.

Availability of Funds

838.411 Amounts subject to court orders.

Application and Processing Procedures

838.421 Application requirements.
838.422 Timeliness of application.
838.423 OPM action on receipt of a court order acceptable for processing.
838.424 OPM action on receipt of a court order not acceptable for processing.
838.425 Contesting the validity of court orders.

Payment Procedures

838.431 Correcting failures to provide required spousal notification.
838.432 Court orders barring payment of refunds.

Procedures for Computing the Amount Payable

838.441 Computing lengths of service.

Subpart E—Requirements for Court Orders Affecting Refunds of Employee Contributions

838.501 Purpose and scope.
838.502 Expressly dividing a refund of employee contributions.
838.503 Providing for payment to the former spouse.
838.504 OPM computation of formulas.
838.505 Barring payment of refunds.

Subpart F—Terminology Used in Court Orders Affecting Employee Annuities or Refunds of Employee Contributions

Regulatory Structure

838.601 Purpose and scope.

Identification of Benefits

838.611 Identifying the retirement system.
838.612 Distinguishing between annuities and contributions.

Computation of Benefits

838.621 Prorata share.
838.622 Cost-of-living and salary adjustments.
838.623 Computing lengths of service.
838.624 Distinguishing between formulas and fixed amounts.
838.625 Types of annuity.

Model Paragraphs

Appendix A to Subpart F of Part 838—Recommended Language for Court Orders Dividing Employee Annuities

Subpart G—Procedures for Processing Court Orders Awarding Former Spouse Survivor Annuities

Regulatory Structure

838.701 Purpose and scope.

Limitations on Survivor Annuities

838.711 Maximum former spouse survivor annuity.

Application and Processing Procedures

838.721 Application requirements.
838.722 OPM action on receipt of a court order acceptable for processing.
838.723 OPM action on receipt of a court order not acceptable for processing.
838.724 Contesting the validity of court orders.
838.725 Amended court orders.
838.726 Effect on employee and retiree election rights.

Payment Procedures

838.731 Commencing date of payments.
838.732 Termination of entitlement.
838.733 Rights of current and other former spouses after termination of a former spouse's entitlement.
838.734 Payment of lump-sum awards by survivor annuity.
838.735 Cost-of-living adjustments.

Subpart H—Requirements for Court Orders Awarding Former Spouse Survivor Annuities

838.801 Purpose and scope.
838.802 CSRS limitations.
838.803 Language not acceptable for processing.

838.804 Court orders must expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity.
838.805 OPM computation of formulas in computing the designated base.
838.806 Amended court orders.
838.807 Cost must be paid by annuity reduction.

Subpart I—Terminology Used in Court Orders Awarding Former Spouse Survivor Annuities

Regulatory Structure

838.901 Purpose and scope.

Identification of Benefits

838.911 Identifying the retirement system.
838.912 Specifying an award of a former spouse survivor annuity.

Computation of Benefit

838.921 Determining the amount of a former spouse survivor annuity.
838.922 Prorata share defined.

Miscellaneous Provisions

838.931 Court orders that provide temporary awards of former spouse survivor annuities.
838.932 Court orders that permit the former spouse to elect to receive a former spouse survivor annuity.
838.933 Payment of the cost of a former spouse survivor annuity.

Model Paragraphs

Appendix A to Subpart I of Part 838—Recommended Language for Court Orders Awarding Former Spouse Survivor Annuities

Authority: 5 U.S.C. 8347(a) and 8461(g). Subparts B, C, D, E, and J also issued under 5 U.S.C. 8345(j)(2) and 8467(b). Sections 838.221, 838.422, and 838.721 also issued under 5 U.S.C. 8347(b).

Subpart A—Court Orders Generally

Organization and Structure of Regulations on Court Orders

§ 838.101 Purpose and scope.

(a)(1) This part regulates the Office of Personnel Management's handling of court orders affecting the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS), both of which are administered by the Office of Personnel Management (OPM). Generally, OPM must comply with court orders, decrees, or court-approved property settlement agreements in connection with divorces, annulments of marriage, or legal separations of employees, Members, or retirees that award a portion of the former employee's or Member's retirement benefits or a survivor annuity to a former spouse.

(2) In executing court orders under this part, OPM must honor the clear instructions of the court. Instructions must be specific and unambiguous. OPM will not supply missing provisions, interpret ambiguous language, or clarify the court's intent by researching individual State laws. In carrying out the court's instructions, OPM performs purely ministerial actions in accordance with these regulations. Disagreement between the parties concerning the validity or the provisions of any court order must be resolved by the court.

(b) This part prescribes—

(1) The requirements that a court order must meet to be acceptable for processing under this part;

(2) The procedures that a former spouse must follow when applying for benefits based on a court order under sections 8341(h), 8345(j), 8445 or 8467 of title 5, United States Code;

(3) The procedures that OPM will follow in honoring court orders and in making payments to the former spouse; and

(4) The effect of certain words and phrases commonly used in court orders affecting retirement benefits.

(c) (1) Subparts A through I of this part apply only to court orders received by OPM on or after July 1, 1992.

(2) Subpart J of this part applies only to court orders received by OPM before July 1, 1992.

§ 838.102 Regulatory structure.

(a) This part is organized as follows:

(1) Subpart A contains information and rules of general application to all court orders directed at CSRS or FERS retirement benefits.

(2) Subparts B and C of this part contain information about court orders directed at ongoing employee annuity payments.

(3) Subparts D and E of this part contain information about court orders directed at refunds of employee contributions.

(4) Subpart F of this part contains information about the effect of words and phrases commonly used in court orders affecting ongoing employee annuity payments and refunds of employee contributions.

(5) Subparts G, H, and I of this part contain information about court orders awarding former spouse survivor annuities.

(6) Subpart J of this part contains the rules applicable to court orders filed under procedures in effect prior to the implementation of this part. These rules continue to apply to court orders received by OPM before July 1, 1992.

(b) Part 890 of this chapter contains information about coverage under the Federal Employees Health Benefits Program.

(c) Part 581 of this chapter contains information about garnishment of Government payments including salary and CSRS and FERS retirement benefits.

(d) Parts 294 and 297 of this chapter and §§ 831.106 and 841.108 contain information about disclosure of information from OPM records.

(e) Subpart V of part 831 of this chapter and subpart G of part 842 of this chapter contain information about how court orders affect eligibility to make an alternative form of annuity election.

(f) Part 1600 of this title contains information about court orders affecting the Federal Employees Thrift Savings Plan.

(g) Subpart F of part 831 of this chapter, subpart F of part 841 of this chapter, and part 843 of this chapter contain information about entitlement to survivor annuities.

(h) Subpart T of part 831 of this chapter and subpart B of part 843 of this chapter contain information about refunds of employee contributions and lump-sum death benefits.

(i) Parts 870, 871, 872, and 873 of this chapter contain information about the Federal Employees Group Life Insurance Program.

§ 838.103 Definitions.

In this part (except subpart J)—

Civil Service Retirement System or *CSRS* means the retirement system for Federal employees described in subchapter III of chapter 83 of title 5, United States Code.

Court order means any judgment or property settlement issued by or approved by any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, The Northern Mariana Islands, or the Virgin Islands, or any Indian court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a Federal employee or retiree.

Court order acceptable for processing means a court order as defined in this section that meets the requirements of subpart C of this part to affect an employee annuity, subpart E of this part to affect a refund of employee contributions, or subpart H of this part to award a former spouse survivor annuity.

Employee means an employee or Member covered by CSRS or FERS.

Employee annuity means the recurring payments under CSRS or FERS made to a retiree. "Employee annuity" does not include payments of accrued and unpaid annuity after the death of a retiree under section 8342(g) or 8424(h) of title 5, United States Code.

Federal Employees Retirement System or "FERS" means the retirement system for Federal employees described in chapter 84 of title 5, United States Code.

Former spouse means (1) in connection with a court order affecting an employee annuity or a refund of employee contributions, a living person whose marriage to an employee has been subject to a divorce, annulment of marriage, or legal separation resulting in a court order, or (2) in connection with a court order awarding a former spouse survivor annuity, a living person who was married for at least 9 months to an employee or retiree who performed at least 18 months of civilian service covered by CSRS or who performed at least 18 months of civilian service creditable under FERS, and whose marriage to the employee or retiree was terminated prior to the death of the employee or retiree.

Former spouse survivor annuity means a recurring benefit under CSRS or FERS, or the basic employee death benefit under FERS as described in part 843 of this chapter, that is payable to a former spouse after the employee's or retiree's death.

Gross annuity means the amount of monthly annuity payable after reducing the self-only annuity to provide survivor annuity benefits, if any, but before any other deduction. Unless the court order expressly provides otherwise, *gross annuity* also includes any lump-sum payments made to the retiree under section 8343a or 8420a of title 5, United States Code.

Member means a Member of Congress covered by CSRS or FERS.

Net annuity means the amount of monthly annuity payable after deducting from the gross annuity any amounts that are (1) owed by the retiree to the United States, (2) deducted for health benefits premiums under section 8906 of title 5, United States Code, and §§ 891.401 and 891.402 of this chapter, (3) deducted for life insurance premiums under section 8714a(d) of title 5, United States Code, (4) deducted for Medicare premiums, (5) properly withheld for Federal income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents to which he or she was entitled, or (6) properly withheld for State income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents to which he or she was entitled. Unless the court order expressly provides otherwise, "net annuity" also includes any lump-sum payments made to the retiree under section 8343a or 8420a of title 5, United States Code.

Reduction to provide survivor benefits means the reduction required by section 8339(j)(4) or section 8419(a) of title 5, United States Code.

Refund of employee contributions means a payment of the lump-sum credit to a separated employee under section 8342(a) or section 8424(a) of title 5, United States Code. *Refund of employee contributions* does not include lump-sum payments made under section 8342 (c) through (f) or section 8424 (d) through (g) of title 5, United States Code.

Retiree means a former employee or Member who is receiving recurring payments under CSRS or FERS based on his or her service as an employee. *Retiree* does not include a person receiving an annuity only as a current spouse, former spouse, child, or person with an insurable interest.

Self-only annuity means the recurring payments to a retiree who has elected not to provide a survivor annuity to anyone. Unless the court order expressly provides otherwise, *self-only annuity* also includes any lump-sum payments made to the retiree under section 8343a or 8420a of title 5, United States Code.

Separated employee means a former employee or Member who has separated from a position in the Federal Government covered by CSRS and FERS under subpart B of part 831 of this chapter or subpart A of part 842 of this chapter, respectively, and is not currently employed in such a position, and who is not a retiree.

Statutory Limit on Court's Authority

§ 838.111 Exemption from legal process except as authorized by Federal law.

(a) Employees, retirees, and State courts may not assign CSRS and FERS benefits except as provided in this part.

(b) CSRS and FERS benefits are not subject to execution, levy, attachment, garnishment or other legal process except as expressly provided by Federal law.

Division of Responsibilities

§ 838.121 OPM's responsibilities.

OPM is responsible for authorizing payments in accordance with clear, specific and express provisions of court orders acceptable for processing.

§ 838.122 State courts' responsibilities.

State courts are responsible for—

(a) Providing due process to the employee or retiree;

(b) Issuing clear, specific, and express instructions consistent with the statutory provisions authorizing OPM to provide benefits to former spouses and the requirements of this part for awarding such benefits;

(c) Using the terminology defined in this part only when it intends to use the meaning given to that terminology by this part;

(d) Determining when court orders are invalid; and

(e) Settling all disputes between the employee or retiree and the former spouse.

§ 838.123 Claimants' responsibilities.

Claimants are responsible for—

(a) Filing a certified copy of court orders and all other required supporting information with OPM;

(b) Keeping OPM advised of their current mailing addresses;

(c) Notifying OPM of any changes in circumstances that could affect their entitlement to benefits; and

(d) Submitting all disputes with employees or retirees to the appropriate State court for resolution.

§ 838.124 Employees' and retirees' responsibilities.

Employees and retirees are responsible for—

(a) Raising any objections to the validity of a court order in the appropriate State court; and

(b) Submitting all disputes with former spouses to the appropriate State court for resolution.

Procedures Applicable to All Court Orders

§ 838.131 Computation of time.

(a) The rules applicable for computation of time under §§ 831.107 and 841.109 of this chapter apply to this part.

(b)(1) Appendix A of this subpart lists the proper addresses for submitting court orders affecting CSRS and FERS benefits.

(2) A former spouse should submit the documentation required by this part to the address provided in appendix A of this subpart. The component of OPM responsible for processing court orders will note the date of receipt on court orders that it receives.

(3) If a court order is delivered to OPM at an address other than the address in appendix A of this subpart, the recipient will forward the court order to the component of OPM responsible for processing court orders. However, OPM is not considered to have received the court order until the court order is received in the component of OPM responsible for processing court orders.

§ 838.132 Payment schedules.

(a) Under CSRS and FERS, employee annuities and survivor annuities are payable on the first business day of the month following the month in which the benefit accrues.

(b) In honoring and complying with a court order, OPM will not disrupt the payment schedule described in paragraph (a) of this section, despite any provision in the court order directing a different schedule of accrual or payment of amounts due the former spouse.

§ 838.133 Minimum awards.

Payments under this part will not be less than one dollar per month. Any court order that awards a former spouse a portion of an employee annuity or a former spouse survivor annuity in an amount of less than one dollar per month will be treated as an award of an annuity equal to one dollar per month.

§ 838.134 Receipt of multiple court orders.

(a) Except as provided in paragraph (c) of this section, for court orders affecting employee annuities or awarding former spouse survivor annuities, in the event that OPM receives two or more court orders acceptable for processing—

(1) When the court orders affect two or more former spouses, the court orders will be honored in the order in which they were issued to the maximum extent possible under § 838.211 or § 838.711.

(2) When two or more court orders relate to the same former spouse or separated spouse, the one issued last will be honored.

(b)(1) Except as provided in paragraph (c) of this section, for court orders affecting refunds of employee contributions, in the event that OPM receives two or more court orders acceptable for processing—

(i) When the court orders affect two or more former spouses—

(A) The refund will not be paid if either court order prohibits payment of the refund of contributions; otherwise,

(B) The court orders will be honored in the order in which they were issued until the contributions have been exhausted.

(ii) When two or more court orders relate to the same former spouse, the one issued last will be honored first.

(2) In no event will the amount paid out exceed the amount of the refund of employee contributions.

(c) With respect to issues relating to the validity of a court order or to the amount of payment—

(1) If the employee, separated employee, retiree, or other person adversely affected by the court order and former spouse submit conflicting court orders from the same jurisdiction, OPM will consider only the latest court order; or

(2) If the employee, separated employee, retiree, or other person adversely affected by the court order and former spouse submit conflicting court orders from different jurisdictions—

(i) If one of the court orders is from the jurisdiction shown as the employee's, separated employee's, or retiree's address in OPM's records, OPM will consider only the court order issued by that jurisdiction; or

(ii) If none of the court orders is from the jurisdiction shown as the employee's, separated employee's, or retiree's address in OPM's records, OPM will consider only the latest court order.

§ 838.135 Settlements.

(a) OPM must comply with the terms of a properly filed court order acceptable for processing even if the retiree and the former spouse agree that they want OPM to pay an amount different from the amount specified in the court order. Information about OPM's processing of amended court orders is contained in §§ 838.225 and 838.725.

(b)(1) OPM will not honor a request from the former spouse that an amount less than the amount provided in the court order be withheld from an employee annuity or a refund of employee contributions.

(2) OPM will not honor a request from the retiree that an amount greater than the amount provided in the court order be withheld from an employee annuity or a refund of employee contributions.

Address for Filing Court Orders with OPM

Appendix A to Subpart A of Part 838—Addresses for Serving Court Orders Affecting CSRS or FERS Benefits

(a) The mailing address for delivery of court orders affecting CSRS or FERS benefits by the United States Postal Service is—Office of Personnel Management, Retirement and Insurance Group, P.O. Box 17, Washington, DC 20044.

(b) The address for delivery of court orders affecting CSRS or FERS benefits by process servers, express carriers, or other forms of handcarried delivery is—Court-ordered Benefits Section, Allotments Branch, Retirement and Insurance Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC.

Subpart B—Procedures for Processing Court Orders Affecting Employee Annuities

Regulatory Structure

§ 838.201 Purpose and scope.

(a) This subpart regulates the procedures that the Office of Personnel Management will follow upon the receipt of claims arising out of State court orders directed at employee annuities under CSRS or FERS. OPM must comply with qualifying court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees or retirees that award a portion of an employee annuity to a former spouse.

(b) This subpart prescribes—

(1) The circumstances that must occur before employee annuities are available to satisfy a court order acceptable for processing; and

(2) The procedures that a former spouse must follow when applying for a portion of an employee annuity based on a court order under section 8345(j) or section 8467 of title 5, United States Code.

(c)(1) Subpart C of this part contains the rules that a court order must satisfy to be a court order acceptable for processing to affect an employee annuity.

(2) Subpart F of this part contains definitions that OPM uses to determine the effect of a court order acceptable for processing on employee annuities.

Availability of Funds

§ 838.211 Amounts subject to court orders.

(a)(1) Employee annuities are subject to court orders acceptable for processing only if all of the conditions necessary for payment of the employee annuity to the former employee have been met, including, but not limited to—

(i) Separation from a position in the Federal service covered by CSRS or FERS under subpart B of part 831 of this chapter or subpart A of part 842 of this chapter, respectively;

(ii) Application for payment of the employee annuity by the former employee; and

(iii) The former employee's immediate entitlement to an employee annuity.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders directed at employee annuities.

(3) OPM cannot pay a former spouse a portion of an employee annuity before the employee annuity begins to accrue.

(b) Payment to a former spouse under a court order may not exceed the net annuity.

(c) Waivers of employee annuity payments under the terms of section 8345(d) or section 8465(a) of title 5, United States Code, exclude the waived portion of the annuity from availability for payment under a court order if such waivers are postmarked or received before the date that OPM receives a court order acceptable for processing.

Application and Processing Procedures

§ 838.221 Application requirements.

(a) A former spouse (personally or through a representative) must apply in writing to be eligible for a court-awarded portion of an employee annuity. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order acceptable for processing that is directed at employee annuity;

(2) A certification from the former spouse or the former spouse's representative that the court order is currently in force and has not been amended, superseded, or set aside;

(3) Information sufficient for OPM to identify the employee or retiree, such as his or her full name, CSRS or FERS claim number, date of birth, and social security number;

(4) The current mailing address of the former spouse; and

(5) If the employee has not retired under CSRS or FERS or died, the mailing address of the employee.

(c)(1) When court-ordered payments are subject to termination (under the terms of the court order) if the former spouse remarries, no payment will be made until the former spouse submits to OPM a statement in the form prescribed by OPM certifying—

(i) That a remarriage has not occurred;

(ii) That the former spouse will notify OPM within 15 calendar days of the occurrence of any remarriage; and

(iii) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage.

(2) OPM may subsequently require periodic recertification of the statements required under paragraph (c)(1) of this section.

§ 838.222 OPM action on receipt of a court order acceptable for processing.

(a) If OPM receives a court order acceptable for processing that is directed at an employee annuity that is in pay status, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order, the date on which the former spouse's benefit begins to accrue, and if known, the date on which OPM commences payment under the order;

(iii) Of the amount of the former spouse's monthly benefit and the formula OPM use to compute the monthly benefit; and

(iv) That, if he or she disagrees with the amount of the monthly benefits, he or she must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The retiree—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order, the date on which the former spouse's benefit begins to accrue, and if known, the date on which OPM commences payment under the court order;

(iv) Of the amount of the former spouse's monthly benefit and the formula OPM used to compute the monthly benefit;

(v) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; and

(vi) That, if he or she disagrees with the amount of the former spouse's monthly benefits, he or she must obtain, and submit to OPM, an amended court order clarifying the amount.

(b) If OPM receives a court order acceptable for processing that is directed at an employee annuity but the employee has died, or if a retiree dies after payments from an employee to a former spouse have begun, OPM will inform the former spouse that the employee or retiree has died and that OPM can only honor court orders dividing employee annuities during the lifetime of the retiree.

(c) If OPM receives a court order acceptable for processing that is directed at an employee annuity that is not in pay status, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) That benefits cannot begin to accrue until the employee retires;

(iii) To the extent possible, the formula that OPM will use to compute the former spouse's monthly benefit; and

(iv) That, if he or she disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The employee, separated employee, or retiree—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) To the extent possible, the formula that OPM will use to compute the former spouse's monthly benefit;

(iv) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; and

(v) That, if he or she disagrees with the amount of the former spouse's monthly benefits, he or she must obtain, and submit to OPM, an amended court order clarifying the amount.

(d) The failure of OPM to provide, or of the employee, separated employee, or retiree or the former spouse to receive, the information specified in this section prior to the commencing date of a reduction or accrual does not affect—

(1) The validity of payment under the court order; or

(2) The commencing date of the reduction in the employee annuity or the commencing date of the accrual of former spouse benefits as determined under § 838.231.

§ 838.223 OPM action on receipt of a court order not acceptable for processing.

If OPM receives an application from a former spouse not based on a court order acceptable for processing, OPM will inform the former spouse that OPM cannot approve the application and provide the specific reason(s) for disapproving the application. Examples of reasons for disapproving an application include that the court order does not meet the definition of court order in § 838.103 or does not meet one or more of the requirements of subpart C of this part.

§ 838.224 Contesting the validity of court orders.

(a) An employee, separated employee, or retiree who alleges that a court order is invalid must prove the invalidity of the court order by submitting a court order that—

(1) Declares the court order submitted by the former spouse is invalid; or

(2) Sets aside the court order submitted by the former spouse.

(b) OPM must honor a court order acceptable for processing that appears to be valid and that the former spouse has certified is currently in force and has not been amended, superseded, or set aside, until OPM receives a court order described in paragraph (a) of this

section or a court order amending or superseding the court order submitted by the former spouse.

§ 838.225 Processing amended court orders.

(a) If the employee, separated employee, retiree, or former spouse submits an amended court order pertaining to payment of a portion of the employee annuity, OPM will process the amended court order prospectively only, effective against employee annuity accruing beginning the first day of the second month after OPM receives the amended court order.

(b) A court order is not effective to adjust payments prior to the first day of the second month after OPM receives the court order unless—

(1) The court order—

(i) Expressly directs OPM to adjust for payment made under the prior court order; and

(ii) Determines the total amount of the adjustment or the length of time over which OPM will make the adjustment; and

(iii) Provides a specific monthly amount of the adjustment or a formula to compute the amount of the monthly adjustment; and

(2) Annuity continues to be available from which to make the adjustment.

Payment Procedures

§ 838.231 Commencing date of payments.

(a) A court order acceptable for processing is effective against employee annuity accruing beginning the first day of the second month after OPM receives the court order.

(b)(1) OPM will not begin payments to the former spouse until OPM receives all the documentation required by § 838.221 (b) and (c).

(2) If payments are delayed under paragraph (b)(1) of this section, after OPM receives all required documentation, it will authorize payment of the annuity that has accrued since the date determined under paragraph (a) of this section but the payment of which was delayed under paragraph (b)(1) of this section.

§ 838.232 Suspension of payments.

(a) Payments from employee annuities under this part will be discontinued whenever the employee annuity payments are suspended or terminated. If employee annuity payments to the retiree are restored, payments to the former spouse will also resume subject to the terms of any court order acceptable for processing in effect at that time.

(b) Paragraph (a) of this section will not be applied to permit a retiree to deprive a former spouse of payment by causing suspension of payment of employee annuity.

§ 838.233 Termination of payments.

A former spouse portion of an employee annuity stops accruing at the earliest of—

(a) The date on which the terms of the court order require termination;

(b)(1) The last day of the first month before OPM receives a court order invalidating, vacating, or setting aside the court order submitted by the former spouse if OPM receives the latest court order no later than 20 days before the end of the month; or

(2) The last day of the month in which OPM receives a court order invalidating, vacating, or setting aside the court order submitted by the former spouse if OPM receives the latest court order later than 20 days before the end of the month; or

(c) The last day of the first month after OPM receives an amended court order;

(d) The last day of the first month before the death of the retiree; or

(e) Except as provided in § 838.237, the date on which the former spouse dies.

§ 838.234 Collection of arrearages.

Specific instructions are required before OPM may pay any arrearage. Except as provided in § 838.225(b), OPM will not increase a former spouse's share of employee annuity to satisfy an arrearage due the former spouse. However, under § 838.225, OPM will prospectively honor the terms of an amended court order that either increases or decreases the former spouse's entitlement.

§ 838.235 Payment of lump-sum awards.

If a court order acceptable for processing awards a former spouse a lump-sum amount from the employee annuity and does not state the monthly rate at which OPM should pay the lump-sum, OPM will pay the former spouse equal monthly installments at 50 percent of the gross annuity (subject to the limitations under § 838.211) at the time of retirement or the date of the order, whichever comes later, until the lump-sum amount is paid.

§ 838.236 Court orders barring payment of annuities.

(a) State courts lack authority to prevent OPM from paying employee annuities as required by section 8345(a) or section 8463 of title 5, United States Code. OPM will not honor court orders directing that OPM delay or otherwise not pay employee annuities at the time or in the amount required by statute.

(b) Except as otherwise provided in this subpart, OPM will honor court orders acceptable for processing that direct OPM to pay the employee annuity to the court, an officer of the court acting as a fiduciary, or a State or local government agency during the pendency of a divorce or legal separation proceeding.

§ 838.237 Death of the former spouse.

(a) Unless the court order acceptable for processing expressly provides otherwise, the former spouse's share of an employee annuity terminates on the last day of the month before the death of the former spouse, and the former spouse's share of employee annuity reverts to the retiree.

(b) Except as otherwise provided in this subpart, OPM will honor a court order acceptable for processing or an amended court order acceptable for processing that directs OPM to pay, after the death of the former spouse, the former spouse's share of the employee annuity to—

(1) The court;

(2) An officer of the court acting as a fiduciary;

(3) The estate of the former spouse; or

(4) One or more of the retiree's children as defined in section 8341(a)(4) or section 8441(4) of title 5, United States Code.

Procedures for Computing the Amount Payable

§ 838.241

Cost-of living adjustments.

Unless otherwise provided in the court order, when the terms of the court order or § 838.621 provide for cost-of-living adjustments on the former spouse's payment from employee annuity, the cost-of-living adjustment will be effected at the same time and at the same percentage rate as the cost-of-living adjustment in the employee annuity.

§ 838.242 Computing lengths of service.

(a) (1) The smallest unit of time that OPM will calculate in computing a formula in a court order is a month, even where the court order directs OPM to make a more precise calculation.

(2) If the court order states a formula using a specified simple or decimal fraction other than twelfth parts of a year, OPM will use the specified number to perform simple mathematical computations.

(b) Unused sick leave is counted as "creditable service" on the date of separation for an immediate CSRS annuity; it is not apportioned over the

time when earned. Unused sick leave is not countable as "creditable service" in a FERS annuity (except in a CSRS component for an employee who transferred to FERS) or in a deferred CSRS annuity.

§ 838.243 Minimum amount of awards.

OPM will treat any court order that awards a former spouse a portion of an employee annuity equal to less than $12 per year as awarding the former spouse $1 per month.

Subpart C—Requirements for Court Order Affecting Employee Annuities

§ 838.301 Purpose and scope.

This subpart regulates the requirements that a court order directed at employee annuity must meet to be a court order acceptable for processing.

§ 838.302 Language not acceptable for processing.

(a) Any court order labeled as a "qualified domestic relations order" or issued on a form for ERISA qualified domestic relations orders is not a court order acceptable for processing.

(b) Any court order directed at employee annuity that expressly provides that the former spouse's portion of the employee annuity may continue after the death of the employee or retiree, such as a court order providing that the former spouse's portion of the employee annuity will continue for the lifetime of the former spouse, is not a court order acceptable for processing.

§ 838.303 Expressly dividing employee annuity.

(a) A court order directed at employee annuity is not a court order acceptable for processing unless it expressly divides the employee annuity as provided in paragraph (b) of this section.

(b) To expressly divide employee annuity as required by paragraph (a) of this section the court order must—

(1) Identify the retirement system using terms that are sufficient to identify the retirement system as explained in § 838.611; and

(2) Expressly state that the former spouse is entitled to a portion of the employee annuity using terms that are sufficient to identify the employee annuity as explained in § 838.612.

§ 838.304 Providing for payment to the former spouse.

(a) A court order directed at employee annuity is not a court order acceptable for processing unless it provides for OPM to pay the former spouse a portion of an employee annuity as provided in paragraph (b) of this section.

(b) To provide for OPM to pay the former spouse a portion of an employee annuity as required by paragraph (a) of this section the court order must—

(1) Expressly direct OPM to pay the former spouse directly;

(2) Direct the retiree to arrange or to execute forms for OPM to pay the former spouse directly; or

(3) Be silent concerning who is to pay the portion of the employee annuity awarded to the former spouse.

(c) Except when the court order directed at employee annuity contains a provision described in paragraph (b)(2) of this section, a court order directed at employee annuity that instructs the retiree to pay a portion of the employee annuity to the former spouse is not a court order acceptable for processing.

(d) Although paragraphs (b)(2) and (b)(3) of this section provide acceptable methods for satisfying the requirement that a court directed at employee annuity provide for OPM to pay the former spouse, OPM strongly recommends that any court order directed at employee annuity expressly direct OPM to pay the former spouse directly.

§ 838.305 OPM computation of formulas.

(a) A court order directed at employee annuity is not a court order acceptable for processing unless the court order provides sufficient instructions and information that OPM can compute the amount of the former spouses's monthly benefit using only the express language of the court order, subparts A, B, and F of this part, and information from normal OPM files.

(b) (1) To provide sufficient instructions and information for OPM to compute the amount of the former spouse's share of the employee annuity as required by paragraph (a) of this section the court order must state the former spouse's share as—

(i) A fixed amount;

(ii) A percentage or a fraction of the employee annuity; or

(iii) A formula that does not contain any variables whose values are not readily ascertainable from the face of the court order directed at employee annuity or normal OPM files.

(2) Normal OPM files include information about—

(i) The dates of employment for all periods of creditable civilian and military service;

(ii) The rate of basic pay for all periods of creditable civilian service;

(iii) The annual rates of basic pay for each grade and step under the General Schedule since 1920;

(iv) The amount of premiums for basic and optional life insurance under the Federal Employees Group Life Insurance Program;

(v) The amount of the Government and the employee shares of premiums for any health insurance plan under the Federal Employees Health Benefits Program;

(vi) The standard Federal income tax withholding tables;

(vii) The amount of cost-of-living adjustments under section 8340 or section 8462 of title 5, United States Code, and the amount of the percentage change in the national index on which the adjustment is based;

(viii) The amount of pay adjustments to the General Schedule under section 5303 (or section 5305 prior to November 5, 1990) of title 5, United States Code, and the amount of the percentage change in the national index on which the adjustment is based;

(ix) The provision of law under which a retiree has retired; and

(x) Whether a retiree has elected to provide survivor benefits for a current spouse, former spouse, or a person with an insurable interest.

(c)(1) A court order directed at employee annuity is not a court order acceptable for processing if OPM would have to examine a State statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing the former spouse's share of the employee annuity.

(2) A court order directed at employee annuity is not a court order acceptable for processing if it awards the former spouse a "community property" fraction, share, or percentage of the employee annuity and does not provide a formula by which OPM can compute the amount of the former spouse's share of the employee annuity from the face of the court order or from normal OPM files.

(d) A court order directed at employee annuity is not a court order acceptable for processing if the court order awards a portion of the "present value" of an annuity unless the amount of the "present value" is stated in the court order.

(e) A court order directed at employee annuity is not a court order acceptable for processing if the court order directs OPM to determine a rate of employee annuity that would require OPM to determine a salary or average salary, other than a salary or average salary actually used in computing the employee annuity, as of a date prior to the date of the employee's separation and to adjust that salary for use in computing the former spouse share unless the adjustment is by—

(1) A fixed amount or fixed annual amounts that are stated in the order;

(2) The rate of cost-of-living or salary adjustments as those terms are described in § 838.622;

(3) The percentage change in pay that the employee actually received excluding changes in grade and/or step; or

(4) The percentage change in either of the national indices used to compute cost-of-living or salary adjustments as those terms are described in § 838.622.

§ 838.306 Specifying type of annuity for application of formula, percentage or fraction.

(a) A court order directed at employee annuity that states the former spouse's share of employee annuity as a formula, percentage, or fraction is not a court order acceptable for processing unless OPM can determine the type of annuity on which to apply the formula, percentage, or fraction.

(b) The standard types of annuity to which OPM can apply the formula, percentage, or fraction are net annuity, gross annuity, or self-only annuity, which are defined in § 838.103. Unless the court order otherwise directs, OPM will apply the formula, percentage, or fraction to gross annuity. Section 838.625 contains information on other methods of describing these types of annuity.

Subpart D—Procedures for Processing Court Orders Affecting Refunds of Employee Contributions

Regulatory Structure

§ 838.401 Purpose and scope.

(a) This subpart regulates the procedures that the Office of Personnel Management will follow upon the receipt of claims arising out of State court orders that affect refunds of employee contributions under CSRS or FERS. OPM must comply with court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees or retirees that—

(1) Award a portion of a refund of employee contributions to a former spouse; or

(2) If the requirements of §§ 838.431 and 838.505 are met, bar payment of a refund of employee contributions.

(b) This subpart prescribes—

(1) The circumstances that must occur before refunds of employee contributions are available to satisfy a court order acceptable for processing; and

(2) The procedures that a former spouse must follow when applying for a portion of a refund of employee contributions based on a court order under section 8345(j) or section 8467 of title 5, United States Code.

(c)(1) Subpart E of this part contains the rules that a court order directed at a refund of employee contributions must satisfy to be a court order acceptable for processing.

(2) Subpart F of this part contains definitions that OPM uses to determine the effect on a refund of employee contributions of a court order acceptable for processing.

Availability of Funds

§ 838.411 Amounts subject to court orders.

(a)(1) Refunds of employee contributions are subject to court orders acceptable for processing only if all of the conditions necessary for payment of the refund of employee contributions to the separated employee have been met, including, but not limited to—

(i) Separation from a covered position in the Federal service;

(ii) Application for payment of the refund of employee contributions by the separated employee; and

(iii) Immediate entitlement to a refund of employee contributions.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders directed at refunds of employee contributions.

(b) Payment under a court order may not exceed the amount of the refund of employee contributions.

Application and Processing Procedures

§ 838.421 Application requirements.

(a) A former spouse (personally or through a representative) must apply in writing to be eligible for a court-awarded portion of a refund of employee contributions. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order acceptable for processing that is directed at a refund of employee contributions.

(2) A certification from the former spouse or the former spouse's representative that the court order is currently in force and has not been amended, superseded, or set aside;

(3) Information sufficient for OPM to identify the employee or separated employee, such as his or her full name, CSRS or FERS claim number, date of birth, and social security number;

(4) The current mailing address of the former spouse; and

(5) If the employee or separated employee has not applied for a refund of employee contributions, the current mailing address of the employee or separated employee.

§ 838.422 Timeliness of application.

(a) Except as provided in § 838.431 and paragraph (b) of this section, a court order acceptable for processing that is directed at a refund of employee contributions is not effective unless OPM receives the documentation required by § 838.421 not later than—

(1) The last day of the second month before payment of the refund; or

(2) Twenty days after OPM receives the Statement required by § 831.2007(c) or § 843.208(b) of this chapter if the former spouse has indicated on that Statement that such a court order exists.

(b) If OPM receives a copy of a court order acceptable for processing that is directed at a refund of employee contributions but not all of the documentation required by § 838.421, OPM will notify the former spouse that OPM must receive the missing items within 15 days after the date of the notice or OPM cannot comply with the court order.

§ 838.423 OPM action on receipt of a court order acceptable for processing.

(a) If OPM receives a court order acceptable for processing that is directed at a refund of employee contributions, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order;

(iii) Whether OPM has a record of unrefunded employee contributions on the employee;

(iv) That the former spouse's share of the refund of employee contributions cannot be paid unless the employee separates from the Federal service and applies for a refund of employee contributions;

(v) To the extent possible, the formula that OPM will use to compute the former spouse's share of a refund of employee contributions; and

(vi) That, if the former spouse disagrees with the formula, the former spouse must obtain, and submit to OPM, an amended court order clarifying the amount; and

(2) The employee or separated employee—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order;

(iv) That the former spouse's share of the refund of employee contributions cannot be paid unless the employee separates from the Federal service and applies for a refund of employee contributions;

(v) To the extent possible, the formula that OPM will use to compute the former spouse's share of the refund of employee contributions; and

(vi) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; and

(vii) That, if he or she disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount.

(b) The failure of OPM to provide, or of the employee or separated employee or the former spouse to receive, the information specified in this section does not affect the validity of payment under the court order.

§ 838.424 OPM action on receipt of a court order not acceptable for processing.

If OPM receives an application from a former spouse not based on a court order acceptable for processing, OPM will inform the former spouse that OPM cannot approve the application and provide the specific reason(s) for disapproving the application. Examples of reasons for disapproving an application include that the order does not meet the definition of court order in § 838.103 or does not meet one or more of the requirements of subpart E of this part.

§ 838.425 Contesting the validity of court orders.

(a) An employee or separated employee who alleges that a court order is invalid must prove the invalidity of the court order by submitting a court order that—

(1) Declares invalid the court order submitted by the former spouse; or

(2) Sets aside the court order submitted by the former spouse.

(b) OPM must honor a court order acceptable for processing that appears to be valid and that the former spouse has certified is currently in force and has not been amended, superseded, or set aside, until the employee or separated employee submits a court order described in paragraph (a) of this section or a court order amending or superseding the court order submitted by the former spouse.

Payment Procedures

§ 838.431 Correcting failures to provide required spousal notification.

The interests of a former spouse with a court order acceptable for processing that is directed at a refund of employee contributions who does not receive notice of an application for refund of employee contributions because the employee or separated employee submits fraudulent proof of notification or fraudulent proof that the former spouse's whereabouts are unknown are protected if, and only if—

(a) The former spouse files a court order acceptable for processing that affects or bars the refund of employee contributions with OPM no later than the last day of the second month before the payment of the refund; or

(b) The former spouse submits proof that—

(1) The evidence submitted by the employee was fraudulent; and

(2) Absent the fraud, the former spouse would have been able to submit the necessary documentation required by § 838.421 within the time limit prescribed in § 838.422.

§ 838.432 Court orders barring payment of refunds.

A court order, notice, summons, or other document that attempts to restrain OPM from paying a refund of employee contributions is not effective unless it meets all the requirements of § 838.505 or part 581 of this chapter.

Procedures for Computing the Amount Payable

§ 838.441 Computing lengths of service.

(a) The smallest unit of time that OPM will calculate in computing a formula in a court order is a month, even where the court order directs OPM to make a more precise calculation.

(b) If the court order states a formula using a specified simple or decimal fraction other than twelfth parts of a year, OPM will use the specified number to perform simple mathematical computations.

Subpart E—Requirements for Court Orders Affecting Refunds of Employee Contributions

§ 838.501 Purpose and scope.

This subpart regulates the requirements that a court order directed at or barring a refund of employee contributions must meet to be a court order acceptable for processing.

(a) A court order is directed at a refund of employee contributions if it awards a former spouse a portion of a refund of employee contributions.

(b) A court order bars a refund of employee contributions if it prohibits payment of a refund of employee contributions to preserve a former spouse's court-awarded entitlement to a portion of an employee annuity or to a former spouse survivor annuity.

§ 838.502 Expressly dividing a refund of employee contributions.

(a) A court order directed at a refund of employee contributions is not a court order acceptable for processing unless it expressly awards a former spouse a portion of a refund of employee contributions as provided in paragraph (b) of this section.

(b) To expressly award a former spouse a portion of a refund of employee contributions as required by paragraph (a) of this section, the court order must—

(1) Identify the retirement system using terms that are sufficient to identify the retirement system as explained in § 838.611; and

(2) Expressly state that the former spouse is entitled to a portion of a refund of employee contributions using terms that are sufficient to identify the refund of employee contributions as explained in § 838.612.

§ 838.503 Providing for payment to the former spouse.

(a) A court order directed at a refund of employee contributions is not a court order acceptable for processing unless it provides for OPM to pay a portion of a refund of employee contributions to the former spouse as provided in paragraph (b) of this section.

(b) To provide for OPM to pay a portion of a refund of employee contributions to the former spouse as required by paragraph (a) of this section, the court order must—

(1) Expressly direct OPM to pay the former spouse directly;

(2) Direct the employee or separated employee to arrange or to execute forms for OPM to pay the former spouse directly; or

(3) Be silent concerning who is to pay the portion of the refund of employee contributions awarded to the former spouse.

(c) Although paragraphs (b)(2) and (b)(3) of this section provide acceptable methods for satisfying the requirement that the court order provide for OPM to pay the former spouse, OPM strongly recommends that the court order expressly direct OPM to pay the former spouse directly.

§ 838.504 OPM computation of formulas.

(a) A court order directed at a refund of employee contributions is not a court

order acceptable for processing unless the court order provides sufficient instructions and information so that OPM can compute the amount of the former spouse's share of the refund of employee contributions using only the express language of the court order, subparts A, D, and F of this part, and information from normal OPM files.

(b) To provide sufficient instructions and information that OPM can compute the amount of the former spouse's share of the refund of employee contributions as required by paragraph (a) of this section requires that the court order state the former spouse's share as—

(1) A fixed amount;

(2) A percentage or a fraction of the refund of employee contributions; or

(3) A formula that does not contain any variables whose values are not readily ascertainable from the face of the court order or normal OPM files.

(c) A court order directed at a refund of employee contributions is not a court order acceptable for processing if OPM would have to examine a State statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing the former spouse's share of the refund of employee contributions.

§ 838.505 Barring payment of refunds.

A court order barring payment of a refund of employee contributions is not a court order acceptable for processing unless—

(a) It expressly directs OPM not to pay a refund of employee contributions;

(b) It awards, or a prior court order acceptable for processing has awarded, the former spouse a former spouse survivor annuity or a portion of the employee annuity; and

(c) Payment of the refund of employee contributions would prevent payment to the former spouse under the court order described in paragraph (b) of this section.

Subpart F—Terminology Used in Court Orders Affecting Employee Annuities or Refunds of Employee Contributions

Regulatory Structure

§ 838.601 Purpose and scope.

(a) This subpart regulates the meaning of terms necessary to award benefits in a court order directed at an employee annuity or a refund of employee contributions. OPM applies the meanings to determine whether a court order directed at an employee annuity or a refund of employee contributions is a court order acceptable for processing and to establish the amount of the former spouse's share of an employee annuity or a refund of employee contributions.

(b)(1) This subpart establishes a uniform meaning to be used for terms and phrases frequently used in awarding a former spouse a portion of an employee annuity or a refund of employee contributions.

(2) This subpart informs the legal community about the definitions to apply terms used in drafting court orders so that the resulting court orders contain the proper language to accomplish the aims of the court.

(c) (1) To assist attorneys and courts in preparing court orders that OPM can honor in the manner that the court intends, Appendix A of this subpart contains model language to accomplish many of the more common objectives associated with the award of a former spouse's share of an employee annuity or a refund of employee contributions.

(2) By using the language in Appendix A of this subpart, the court, attorneys, and parties will know that the court order will be acceptable for processing and that OPM will treat the terminology used in the court order in the manner stated in the Appendix.

Identification of Benefits

§ 838.611 Identifying the retirement system.

(a) To satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1), a court order must contain language identifying the retirement system to be affected. For example, "CSRS," "FERS," "OPM," or "Federal Government" benefits, or benefits payable "based on service with the U.S. Department of Agriculture," etc., are sufficient identification of the retirement system.

(b) Except as provided in paragraphs (b)(1) and (b)(2) of this section, language referring to benefits under another retirement system, such as military retired pay, Foreign Service retirement benefits or Central Intelligence Agency retirement benefits, does not satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1).

(1) A court order that mistakenly labels CSRS benefits as FERS benefits and vice versa satisfies the requirements of § 838.303(b)(1) and § 838.502(b)(1).

(2) Unless the court order expressly provides otherwise, for employees transferring to FERS, court orders directed at CSRS benefits apply to the entire FERS basic benefit, including the CSRS component, if any. Such a court order satisfies the requirements of § 838.303(b)(1) and § 838.502(b)(1).

(c) A court order affecting military retired pay, even when military retired pay has been waived for inclusion in CSRS annuities, does not award a former spouse a portion of an employee annuity or a refund of employee contributions under CSRS or FERS. Such a court order does not satisfy the requirements of § 838.303(b)(1) or § 838.502(b)(1).

§ 838.612 Distinguishing between annuities and contributions.

(a) A court order using "annuities," "pensions," "retirement benefits," or similar terms satisfies the requirements of § 838.303(b)(2) and § 838.502(b)(2) and may be used to divide an employee annuity and a refund of employee contributions.

(b) (1) A court order using "contributions," "deductions," "deposits," "retirement accounts," "retirement fund," or similar terms satisfies the requirements of § 838.502(b)(2) and may be used only to divide the amount of contributions that the employee has paid into the Civil Service Retirement and Disability Fund.

(2) Unless the court order specifically states otherwise, when an employee annuity is payable, a court order using the terms specified in paragraph (b)(1) of this section satisfies the requirements of § 838.303(b)(2) and awards the former spouse a benefit to be paid in equal monthly installments at 50 percent of the gross annuity at the time of retirement or the date of the court order, whichever comes later, until the specific dollar amount is reached.

Computation of Benefits

§ 838.621 Prorata share.

(2) *Prorata share* means one-half of the fraction whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee.

(b) A court order that awards a former spouse a prorata share of an employee annuity or a refund of employee contributions by using the term *prorata share* and identifying the date when the marriage began satisfies the requirements of § 838.305 and § 838.504 awards the former spouse a prorata share as defined in paragraph (a) of this section.

(c) A court order that awards a portion of an employee annuity as of a specified date before the employee's retirement awards the former spouse a prorata share as defined in paragraph (a) of this section.

(d) A court order that awards a portion of the "value" of an annuity as of a specific date before retirement, without specifying what "value" is, awards the former spouse a prorata share as defined in paragraph (a) of this section.

§ 838.622 Cost-of-living and salary adjustments.

(a)(1) A court order that awards adjustments to a former spouse's portion of an employee annuity stated in terms such as "cost-of-living adjustments" or "COLA's" occurring after the date of the decree but before the date of retirement provides increases equal to the adjustments described in or effected under section 8340 or section 8462 of title 5, United States Code.

(2) A court order that awards adjustments to a former spouse's portion of an employee annuity stated in terms such as "salary adjustments" or "pay adjustments" occurring after the date of the decree provides increases equal to the adjustments described in or effected under section 5303 of title 5, United States Code until the date of retirement.

(b)(1) Unless the court order directly and unequivocally orders otherwise, a court order that awards a former spouse a portion of an employee annuity either on a percentage basis or by use of a fraction or formula provides that the former spouse's share of the employee annuity will be adjusted to maintain the same percentage or fraction whenever the employee annuity changes as a result of—

(i) Salary adjustments occurring after the date of the decree and before the employee retires; and

(ii) Cost-of-living adjustments occurring after the date of the decree and after the date of the employee's retirement.

(2) A court order that awards a former spouse a specific dollar amount from the employee annuity prevents the former spouse from benefiting from salary and cost-of-living adjustments after the date of the decree, unless the court expressly orders their inclusion.

(c)(1)(i) Except as provided in paragraph (b) of this section, a court order that contains a general instruction to calculate the former spouse's share effective at the time of divorce or separation entitles the former spouse to the benefit of salary adjustments occurring after the specified date to the same extent as the employee.

(ii) To prevent the application of salary adjustments after the date of the divorce or separation, the court order must either state the exact dollar amount of the award to the former spouse or specifically instruct OPM not to apply salary adjustments after the specified date in computing the former spouse's share of the employee annuity.

(2)(i) Except as provided in paragraph (b) of this section, a court order that requires OPM to compute a benefit as of a specified date before the employee's retirement, and specifically instructs OPM not to apply salary adjustments after the specified date in computing the former spouse's share of an employee annuity provides that the former spouse is entitled to the application of COLA's after the date of the employee's retirement in the manner described in § 838.241.

(ii) To award COLA's between a specified date and the employee's retirement, the court order must specifically instruct OPM to adjust the former spouse's share of the employee annuity by any COLA's occurring between the specified date and the date of the employee's retirement.

(iii) To prevent the application of COLA's that occur after the employee annuity begins to accrue to the former spouse's share of the employee annuity, the decree must either state the exact dollar amount of the award to the former spouse or specifically instruct OPM not to apply COLA's occurring after the date of the employee's retirement.

§ 838.623 Computing lengths of service.

(a) Sections 838.242 and 838.441 contain information on how OPM calculates lengths of service.

(b) Unless the court order otherwise expressly directs—

(1) For the purpose of describing a period of time to be excluded from any element of a computation, the term *military service* means military service as defined in section 8331(13) of title 5, United States Code, and does not include civilian service with the Department of Defense or the Coast Guard; and

(2) For the purpose of describing a period of time to be included in any element of a computation, the term *military service* means all periods of military and civilian service performed with the Department of Defense or the Coast Guard.

(c)(1) When a court order contains a formula for dividing employee annuity that requires a computation of service worked as of a date prior to separation and using terms such as "years of service," "total service," "service performed," or similar terms, the time attributable to unused sick leave will not be included.

(2) When a court order contains a formula for dividing employee annuity that requires a computation of "creditable service" (or some other phrase using "credit" or its equivalent) as of a date prior to retirement, unused sick leave will be included in the computation as follows:

(i) If the amount of unused sick leave is specified, the court order awards a portion of the employee annuity equal to the monthly employee annuity at retirement times a fraction, the numerator of which is the number of months of "creditable service" as of the date specified plus the number of months of unused sick leave specified (which sum is rounded to eliminate partial months) and whose denominator is the months of "creditable service" used in the retirement computation.

(ii) If the amount of unused sick leave is not specified, the court order awards a portion of the employee annuity equal to the monthly rate at the time of retirement times a fraction, the numerator of which is the number of months of "creditable service" as of the date specified (no sick leave included) and whose denominator is the number of months of "creditable service" used in the retirement computation (sick leave included).

(d)(1) General language such as "benefits earned as an employee with the U.S. Postal Service * * *." provides only that CSRS retirement benefits are subject to division and does not limit the period of service included in the computation (i.e., service performed with other Government agencies will be included).

(2) To limit the computation of benefits to a particular period of employment, the court order must—

(i) Use language expressly limiting the period of service to be included in the computation (e.g., "only U.S. Postal Service" or "exclusive of any service other than U.S. Postal Service employment"); or

(ii) Specify the number of months to be included in the computation; or

(iii) Describe specifically the period of service to be included in the computation (e.g., "only service performed during the period Petitioner and Defendant were married" or "benefits based on service performed through the date of divorce").

§ 838.624 Distinguishing between formulas and fixed amounts.

(a) A court order that contains both a formula or percentage instruction and a dollar amount is deemed to include the dollar amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction controls.

(b) A court order that awards a portion of the "present value" of an employee annuity and specifically states the amount of either the "present value" of the employee annuity or of the award is deemed to give the former spouse "a specific dollar amount" that is payable from a monthly employee annuity and will be paid as a lump-sum award in accordance with § 838.235.

§ 838.625 Types of annuity.

(a) Terms that are synonymous with net annuity are—

(1) Disposable annuity; and

(2) Retirement check.

(b) Terms that are synonymous with self-only annuity are—

(1) Life rate annuity;

(2) Unreduced annuity; and

(3) Annuity without survivor benefit.

(c) All court orders that do not specify net annuity or self-only annuity apply to gross annuity.

Model Paragraphs

Appendix A to Subpart F of Part 838—Recommended Language for Court Orders Dividing Employee Annuities

This appendix provides recommended language for use in court orders attempting to divide employee annuity. A court order directed at employee annuity should include five elements:

- Identification of the benefits;
- Instructions that OPM pay for the former spouse;
- A method for computing the amount of the former spouse's benefit;
- Identification of the type of annuity to which to apply a fraction, percentage or formula; and
- Instructions on what OPM should do if the employee leaves Federal service before retirement and applies for a refund of employee contributions. The court order may also include instructions for disposition of the former spouse's share if the former spouse dies before the employee. By using the model language, courts will know that the court order will have the effect described in this appendix.

The model language in this appendix does not award a benefit that is payable after the death of the employee. A separate, distinct award of a former spouse survivor annuity is necessary to award a former spouse a benefit that is payable after the death of the employee. Appendix A to subpart I of this part contains model language for awarding survivor annuities and contains some examples that award both a portion of an employee annuity and a survivor annuity.

The model language uses the terms "(former spouse)" to identify the spouse who is receiving a former spouse's portion of an employee annuity and "(employee)" to identify the Federal employee whose employment was covered by the Civil Service Retirement System or the Federal Employees Retirement System. Obviously, in drafting an actual court order the appropriate terms, such as "Petitioner" and "Respondent," or the names of the parties should replace "(former spouse)" and "(employee)."

Similarly, the models are drafted for employees covered by the Civil Service Retirement System. The name of the retirement system should be changed for employees covered by the Federal Employees Retirement System.

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100 Series—Identification of the Benefits and Instructions That OPM Pay the Former Spouse

¶ 101 Identifying retirement benefits and directing OPM to pay the former spouse.

Using the following paragraph will expressly divide employee annuity to satisfy the requirements of § 838.303 and direct OPM to pay the former spouse a share of an employee annuity to satisfy the requirements of § 838.304.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Insert language for computing the former spouse's share from 200 series of this appendix.] The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 102–110 [Reserved].

¶ 111 Protecting a former spouse entitled to military retired pay.

Using the following paragraph will protect the former spouse interest in military retired pay in the event that the employee waives the military retired pay to allow crediting the military service under CSRS or FERS. The paragraph should be used only if the former spouse is awarded a portion of the military retired pay.

"If [Employee] waives military retired pay to credit military service under the Civil Service Retirement System, [insert language for computing the former spouse's share from 200 series of this appendix.]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

200 Series—Computing the Amount of the Former Spouse's Benefit.

Paragraphs 201 through 204 contain model language for the most common types of awards that court orders make to former spouses. Subsequent paragraphs in the 200 series contain model language for less common, more complex awards.

Awards other than fixed amounts require that the court order specify the type of annuity ("gross," "net," or self-only) on which the award is computed. The types of annuity are defined in § 838.103. Variations on type of annuity are covered by the 300 series of this appendix.

¶ 201 Award of a fixed monthly amount.

Using the following paragraph will award the former spouse a fixed monthly amount. OPM will not apply COLA's to a fixed monthly amount unless the court order expressly directs that OPM add COLA's using the language in ¶ 231 of this appendix or similar language.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to $[insert a number] per month from [employee]'s civil service retirement benefits. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 202 Award of a percentage.

Using the following paragraph will award the former spouse a stated percentage of the employee annuity. Unless the court order expressly directs that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's share at the stated percentage. Paragraph 232 of this appendix provides language for excluding COLA's.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to [insert a number] percent of [employee]'s [insert "gross," "net," or "self-only"] monthly annuity under the Civil Service Retirement System. The United States Office of Personnel Management is

directed to pay [former spouse]'s share directly to [former spouse]."

¶ 203 Award of a fraction.

Using the following paragraph will award the former spouse a stated fraction of the employee annuity. Unless the court order expressly directs that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's share at the stated percentage. Paragraph 232 of this appendix provides language for excluding COLA's.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to [insert fraction]ths of [employee]'s [insert "gross," "net," or "self-only"] monthly annuity under the Civil Service Retirement System. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 204 Award of a prorata share.

Using the following paragraph will award the former spouse a prorata share of the employee annuity. Prorata share is defined in § 838.621. To award a prorata share the court order must state the date of the marriage. Unless the court order specifies a different ending date, the marriage ends for computation purposes on the date that the court order is filed with the court clerk. Unless the court order expressly directs that OPM not add COLA's to the former spouse's share of the employee annuity, OPM will add COLA's to keep the former spouse's share at the stated percentage. Paragraph 232 of this appendix provides language for excluding COLA's.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a prorata share of [employee]'s [insert "gross," "net," or self-only] monthly annuity under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 205–210 [Reserved].

¶ 211 Award based on a stated formula.

Using the following paragraphs will award the former spouse a share of the employee annuity based on a formula stated in the court order. The formula must be stated in the court order (including a court-approved property settlement agreement). The formula may not be incorporated by reference to a statutory provision or a court decision in another case. If the court order uses a formula, the court order must include any data that is necessary for OPM to apply the formula unless the necessary data is contained in normal OPM files.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a share of [employee]'s [insert "gross," "net," or self-only] monthly annuity under the Civil Service Retirement System to be computed as follows:

"[Insert formula for computing the former spouse's share.]

"The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 212–230 [Reserved].

¶ 231 Awarding COLA's on fixed monthly amounts.

Using the following paragraph will award COLA's in addition to a fixed monthly amount to the former spouse. The model awards COLA's at the same rate applied to the employee annuity.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to $[insert a number] per month from [employee]'s civil service retirement benefits. When COLA's are applied to [employee]'s retirement benefits, the same COLA applies to [former spouse]'s share. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶ 232 Excluding COLA's on awards other than fixed monthly amounts.

Using the following paragraph will prevent application of COLA's to a former spouse's share of an employee annuity in cases where the former spouse has been awarded a percentage, fraction or prorata share of the employee annuity, rather than a fixed dollar amount.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Insert language for computing the former spouse's share from ¶202, ¶203, ¶204, or ¶211 of this appendix.] The United States Office of Personnel Management is directed to determine the amount of [former spouse]'s share on the date [insert "when [employee] retires" if the employee has not retired, or "of this order" if the employee is already retired] and not to apply COLA's to that amount. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

300 Series—Types of Annuity

Awards of employee annuity to a former spouse (other than awards of fixed dollar amounts) must specify whether OPM will use the "gross," "net," or self-only annuity as defined in § 838.103 in determining the amount of the former spouse's entitlement. The court order may contain a formula that has the effect of creating other types of annuity, but the court order may only do this by providing a formula that starts from "gross," "net," or self-only annuity as defined in § 838.103.

¶ 301 Awards based on benefits actually paid.

The court order may include a formula that effectively uses the court's definition of net annuity rather than the one provided by § 838.103. For example, using the following paragraph will award the former spouse a prorata share of the employee annuity reduced only by the amount deducted as premiums for basic life insurance under the Federal Employee Group Life Insurance Program.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a prorata share of [employee]'s monthly annuity under the Civil Service Retirement System, where monthly annuity means the self-only annuity less the amount deducted as premiums for basic life insurance under the Federal Employee Group Life Insurance Program. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

¶302–310 [Reserved].

¶311 Awards of earned annuity in cases where the actual annuity is based on disability.

Using the following paragraph will award a former spouse a prorata share of what the employee annuity would have been based on only the employee's actual service in cases where the actual employee annuity is based on disability. The paragraph also allows the court order to provide for the former spouse's share to begin when the employee reaches a stated age, using age 62 as an example. As with all other formulas the court order must specify whether the computation applies to "gross," "net," or self-only annuity. OPM will apply COLA's that occurred after the date of the disability retirement to the former spouse's share. The following paragraph should be used only for disability retirees under CSRS. Under FERS, section 8452 of title 5, United States Code, provides a formula for recomputation of disability annuities at age 62 to approximate an earned annuity. Therefore to award a portion of the "earned" benefit under FERS add the introductory phrase, "Starting when [employee] reaches age 62," to the paragraph describing how to compute the amount.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United State's Government. Starting when [employee] reaches age 62, [former spouse] is entitled to a prorata share of [employee]'s [insert "gross," "net," or self-only] monthly annuity under the Civil Service Retirement System, where monthly annuity means the amount of [employee]'s monthly annuity computed as though [employee] had retired on an immediate, nondisability annuity on the commencing date of [employee]'s annuity based on disability. In computing the amount of the immediate annuity, the United States Office of Personnel Management will deem [employee] to have been age 62 at the time that [employee] retired on disability. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

400 Series—Refunds of Employee Contributions

Court orders that award a former spouse a portion of a future employee annuity of an employee who is not then eligible to retire should include an additional paragraph containing instructions that tell OPM what to do if the employee separates before becoming eligible to retire and requests a refund of employee contributions. The court order may award the former spouse a portion of the refund of employee contributions or bar payment of the refund of employee contributions.

¶401 Barring payment of a refund of employee contributions.

Using the following paragraph will bar payment of the refund of employee contributions if payment of the refund of employee contributions would extinguish the former spouse's entitlement to a portion of the employee annuity.

"The United States Office of Personnel Management is directed not to pay [employee] a refund of employee contributions."

¶402 Dividing a refund of employee contributions.

Using the following paragraph will allow the refund of employee contributions to be paid but will award a prorata share of the refund of employee contributions to the former spouse. The sentence on the beginning date of the marriage is unnecessary if the beginning is stated elsewhere in the order. The award of a prorata share is used only as an example; the court order could provide another fraction, percentage, or formula, or a fixed amount. Note that a refund of employee contributions voids the employee's rights to an employee annuity and the former spouse's right to any portion of that annuity.

"If [employee] becomes eligible and applies for a refund of employee contributions, [former spouse] is entitled to a prorata share of the refund of employee contributions. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

500 Series—Death of the former spouse.

¶501 Full annuity restored to the retiree.

No special provision is necessary to restore the entire annuity to the retiree upon the death of the former spouse. Unless the court order expressly provides otherwise, OPM will pay the former spouse's share to the retiree after the death of the former spouse.

¶502 Former spouse share paid to children.

Using the following paragraph will award the former spouse's share of an employee annuity to the children, including any adopted children, of the employee and former spouse.

"If [former spouse] dies before [employee], the United States Office of Personnel Management is directed to pay [former spouse]'s share of [employee]'s civil service retirement benefits to surviving children of the marriage including any adopted children, in equal shares. Upon the death of any child, that child's share will be distributed among the other surviving children."

The language may be modified to terminate the payments to the children when they reach a stated age. A court order that includes such a provision for termination must include sufficient information (such as the children's dates of birth) to permit OPM to determine when the children's interest terminate. OPM will not consider evidence outside the court order (and normal OPM files) to establish the children's dates of birth.

¶503 Former spouse share paid to the court.

Using the following paragraph will provide for payment of the former spouse's share of an employee annuity to the court after the death of the former spouse. This would allow a court officer to administer the funds.

"If [former spouse] dies before [employee], the United States Office of Personnel Management is directed to pay [former spouse]'s share of [employee]'s civil service retirement benefits to this court at the following address:

"[Insert address and where checks should be sent. The address may be up to six lines and should include sufficient information for court officials to credit the correct account.]"

Subpart G—Procedures for Processing Court Orders Awarding Former Spouse Survivor Annuities

Regulatory Structure

§ 838.701 Purpose and scope.

(a) This subpart regulates the procedures that the Office of Personnel Management will follow upon the receipt of claims arising out of State court orders awarding former spouse survivor annuities and under CSRS or FERS (including the FERS basic employee death benefit as defined in § 843.602 of this chapter). OPM must comply with qualifying court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees or retirees that award former spouse survivor annuities.

(b) This subpart prescribes—

(1) The commencing and terminating dates of former spouse survivor annuities based on court orders acceptable for processing; and

(2) The procedures that a former spouse must follow when applying for a former spouse survivor annuity based on a court order under section 8341(h) or section 8445 of title 5, United States Code.

(c) (1) Subpart H of this part contains the rules that a court order must satisfy to be court order acceptable for processing to award a former spouse survivor annuity.

(2) Subpart I of this part contains definitions that OPM uses to determine the effect of a court order in connection with a former spouse survivor annuity.

Limitations of Survivor Annuities

§ 838.711 Maximum former spouse survivor annuity.

(a) Under CSRS, payment under a court order may not exceed the amount provided in § 831.614 of this chapter.

(b) Under FERS, payments under a court order may not exceed amount provided in § 842.613 of this chapter plus the basic employee death benefit as defined in § 843.102 of this chapter.

Application and Processing Procedures

§ 838.721 Application requirements.

(a) (1) A former spouse (personally or through a representative) must apply in writing to be eligible for a former spouse survivor annuity based on a court order acceptable for processing. No special form is required to give OPM notice of the court order.

(2) OPM may require an additional application after the death of the employee, separated employee, or retiree. This additional application will be on a form prescribed by OPM.

(b)(1) The application letter under paragraph (a)(1) of this section must be accompanied by—

(i) A certified copy of the court order;

(ii) A certification from the former spouse or the former spouse's representative that the court order is currently in force and has not been amended, superseded, or set aside;

(iii) Information sufficient for OPM to identify the employee or retiree, such as his or her full name, CSRS or FERS claim number, date of birth, and social security number;

(iv) The current mailing address of the former spouse;

(v) If the employee has not retired or died, the mailing address of the employee; and

(vi) A statement in the form prescribed by OPM certifying—

(A) That the former spouse has not remarried before age 55;

(B) That the former spouse will notify OPM within 15 calendar days of the occurrence of any remarriage before age 55; and

(C) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage before age 55.

(2) OPM may subsequently require recertification of the statements required by this paragraph.

§ 838.722 OPM action on receipt of a court order acceptable for processing.

(a) If OPM receives a court order acceptable for processing that awards a former spouses survivor annuity based

on the service of a living retiree, OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order; and

(iii) Of the present amount of the monthly former spouse survivor annuity if the retiree were to die immediately and the formula OPM used to compute the monthly benefit; and

(2) The retiree—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order;

(iv) Of the amount and commencing date of the reduction in the retiree's annuity;

(v) Of the present amount of the monthly former spouse survivor annuity if the retiree were to die immediately and the formula OPM used to compute the amount of the former spouse survivor annuity; and

(vi) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse.

(b) If OPM receives a court order acceptable for processing that awards a former spouse survivor annuity, but the employee, separated employee, or retiree has died OPM will inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) Of the date on which OPM received the court order, the date on which the former spouse's benefit will begin to accrue, and if known the date on which OPM will commence payment under the court order; and

(iii) Of the amount on the monthly former spouse survivor annuity and the formula OPM used to compute the former spouse survivor annuity.

(2) Anyone whom OPM knows will be adversely affected by the court order—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order;

(iv) How the court order may adversely affect him or her; and

(v) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse.

(c) If OPM receives a court order acceptable for processing that awards a former spouse survivor annuity and the employee or separated employee has not retired or died, OPM will attempt to inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) To the extent possible, the formula that OPM will use to compute the former spouse survivor annuity (including the FERS basic employee death benefit as defined in § 843.602 of this chapter, if applicable); and

(iii) That, if he or she disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount before the employee or separated employee retires or dies; and

(2) The employee or separated employee—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) To the extent possible, the formula that OPM will use to compute the former spouse survivor annuity (including the FERS basic employee death benefit as defined in § 843.602 of this chapter, if applicable); and

(iv) That, if he or she—

(A) Contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; or

(B) Disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount before he or she retires or dies.

(d) The failure of OPM to provide, or of the employee, separated employee, or retiree, the former spouse, or anyone else to receive, the information specified in this section does not affect—

(1) The validity of payment under the court order; or

(2) The commencing date of the reduction in employees annuity or the commencing date of the former spouse entitlement as determined under § 838.731.

§ 838.723 OPM action on receipt of a court order not acceptable for processing.

If OPM receives an application from a former spouse not based on a court order acceptable for processing, OPM will inform the former spouse that OPM cannot approve the application and provide the specific reason(s) for disapproving the application. Examples of reasons for disapproving an application include that the order does not meet the definition of court order in § 838.103 or does not meet one or more of the requirements of subpart H of this part.

§ 838.724 Contesting the validity of court orders.

(a) An employee, retiree or person adversely affected by a court order who alleges that a court order is invalid must prove the invalidity of the court order by submitting to OPM a court order that—

(1) Declares invalid the court order submitted by the former spouse; or

(2) Sets aside the court order submitted by the former spouse.

(b) OPM must honor a court order acceptable for processing that appears to be valid and that the former spouse has certified is currently in force and has not been amended, superseded, or set aside, until the employee, separated employee, retiree, or person adversely affected by the court order submits to OPM a court order described in paragraph (a) of this section or, if issued before the retirement or death of the employee or separated employee, a court order acceptable for processing amending or superseding the court order submitted by the former spouse.

§ 838.725 Amended court orders.

OPM will not honor an amended court order that awards, increases, reduces, or eliminates a former spouse survivor annuity unless the amended court order is issued by the court on a day before the date of retirement or the date of death of the employee or separated employee.

§ 838.726 Effect on employee and retiree election rights.

(a) A court order acceptable for processing that awards a former spouse survivor annuity does not affect a retiring employee's or retiree's rights and obligations to make survivor elections under subpart F of part 831 of this chapter or subpart F of part 842 of this chapter.

(b) A court order acceptable for processing that awards a former spouse survivor annuity requires OPM to pay a former spouse survivor annuity and prevents OPM from paying an elected survivor benefit to a widow or widower or another former spouse if the election is inconsistent with the court order.

Payment Procedures

§ 838.731 Commencing date of payments.

(a) A former spouse survivor annuity based on a court order acceptable for processing begins to accrue in accordance with the terms of the court order but no earlier than the later of—

(1) The first day after the date of death of the employee, separated employee, or retiree; or

(2) The first day of the second month after OPM receives a copy of the court order acceptable for processing.

(b) OPM will not authorize payment of the former spouse survivor annuity until it receives an application and support documentation required under § 838.721.

§ 838.732 Termination of entitlement.

(a) A former spouse survivor annuity (other than the FERS basic employee death benefit as defined in § 843.602 of this chapter) or the right to a future former spouse survivor annuity based on a court order acceptable for processing terminates in accordance with the terms of the court order but no later than the last day of the month before the former spouse remarries before age 55 or dies.

(b) If the employee dies before the former spouse remarries before age 55 or dies, the former spouse's entitlement to the FERS basic employee death benefit as defined in § 843.602 of this chapter based on a court order acceptable for processing terminates in accordance with the terms of the court order.

§ 838.733 Rights of current and other former spouses after termination of a former spouse's entitlement.

(a) If a former spouse of a retiree loses entitlement to a former spouse survivor annuity based on a court order acceptable for processing while the retiree is living and—

(1) If court orders acceptable for processing award former spouse survivor annuities to other former spouses, OPM will continue the reduction to comply with court orders in the order specified in § 838.135;

(2) If paragraph (a)(1) of this section does not obligate the entire entitlement lost by the former spouse, OPM will continue the reduction to provide a current spouse survivor annuity or a former spouse survivor annuity based on a timely-filed election under § 831.604, § 831.605, § 831.612, § 831.613, § 842.603, § 842.604, § 842.611, or § 842.612, of this chapter; or

(3) If paragraphs (a)(1) and (a)(2) of this section do not obligate the entire entitlement lost by the former spouse, the retiree (except a retiree under CSRS who retired before May 7, 1985 and who remarried before February 27, 1986) may elect within 2 years after the former spouse loses entitlement to continue the reduction to provide a survivor annuity for a spouse acquired after retirement.

(b)(1) If a former spouse of an employee or retiree loses entitlement to a former spouse survivor annuity based on a court order acceptable for processing after the death of the employee or retiree and—

(i) If court orders acceptable for processing award former spouse survivor annuities to other former spouses, OPM will pay the next entitled former spouse in the order specified in § 838.135; or

(ii) If paragraph (b)(1) of this section does not obligate the entire entitlement lost by the former spouse, OPM will pay the balance to a current spouse of the deceased—

(A) Retiree who had elected a reduced annuity to provide a current spouse annuity (as defined in § 831.603 or § 842.602); or

(B) Employee.

(2) Except as provided in § 838.734—

(i) The former spouse survivor annuity based on paragraph (b)(1)(i) of this section begins to accrue in accordance with the terms of the court order but no earlier than the later of—

(A) The first day of the month in which the former spouse with the earlier-issued court order loses entitlement; or

(B) The first day of the second month after OPM receives a copy of the court order acceptable for processing; or

(ii) The current spouse annuity under paragraph (b)(1)(ii) of this section begins to accrue on the first day of the month in which the former spouse loses entitlement.

(c) OPM will not authorize payment of the former spouse survivor annuity until it receives an application and supporting documentation required under § 838.721.

§ 838.734 Payment of lump-sum awards by survivor annuity.

OPM will not honor court orders awarding lump-sum payments (other than the FERS basic employee death benefit as defined in § 843.602 of this chapter) to a former spouse upon the death of an employee or retiree.

§ 838.735 Cost-of-living adjustments.

(a) OPM applies cost-of-living adjustments to all former spouse survivor annuities in pay status at the time of the adjustment and in the amount provided by Federal statute.

(b) OPM will not honor provisions of a court order that alters the time or amount of cost-of-living adjustment or that attempts to prevent OPM from applying cost-of-living adjustments to a former spouse survivor annuity in pay status.

Subpart H—Requirements for Court Orders Awarding Former Spouse Survivor Annuities

§ 838.801 Purpose and scope.

This subpart regulates the requirements that a court order awarding a former spouse survivor annuity must meet to be a court order acceptable for processing.

§ 838.802 CSRS limitations.

(a) A court order awarding a former spouse survivor annuity under CSRS is not a court order acceptable for processing unless the marriage terminated on or after May 7, 1985.

(b) In the case of a retiree who retired under CSRS before May 7, 1985, a court order awarding a former spouse survivor annuity under CSRS is not a court order acceptable for processing unless the retiree was receiving a reduced annuity to provide a survivor annuity to benefit that spouse on May 7 1985.

§ 838.803 Language not acceptable for processing.

(a) Any court order labeled as a "qualified domestic relations order" or issued on a form for ERISA qualified domestic relations orders is not a court order acceptable for processing.

(b) Any court order that provides that the former spouse's portion of the employee annuity shall continue after the death of the employee or retiree, by using language such as "will continue to receive benefits after the death of" the employee, that the former spouse "will continue to receive benefits for his (or her) lifetime," or "that benefits will continue after the death of" the employee, but does not use terms such as "survivor annuity," "death benefits," "former spouse annuity," or similar terms is not a court order acceptable for processing.

§ 838.804 Court orders must expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor annuity.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it expressly awards a former spouse survivor annuity or expressly directs an employee or retiree to elect to provide a former spouse survivor annuity as described in paragraph (b) of this section.

(b) To expressly award a former spouse survivor annuity or expressly direct an employee or retiree to elect to provide a former spouse survivor

annuity as required by paragraph (a) of this section the court order must—

(1) Identify the retirement system using terms that are sufficient to identify the retirement system as explained in § 838.802; and

(2)(i) Expressly state that the former spouse is entitled to a former spouse survivor annuity using terms that are sufficient to identify the survivor annuity as explained in § 838.912; or

(ii) Expressly direct the retiree to elect to provide a former spouse survivor annuity using terms that are sufficient to identify the survivor annuity as explained in § 838.912.

§ 838.805 OPM computation of formulas in computing the designated base.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless the court order provides sufficient instructions and information so that OPM can determine the amount of the former spouse's monthly benefit using only the express language of the court order, subparts A, G and I of this part, and information from normal OPM files.

(b) To provide sufficient instructions and information for OPM to compute the amount of a former spouse survivor annuity as required by paragraph (a) of this section, if the court order uses a formula to determine the former spouse survivor annuity, it must not use any variables whose values are not readily ascertainable from the face of the court order or normal OPM files.

(c) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing if OPM would have to examine a State statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing the former spouse survivor annuity.

§ 838.806 Amended court orders.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing if it is issued after the date of retirement or death of the employee and modifies or replaces the first order terminating the marital relationship between the employee or retiree and the former spouse.

(b) For purposes of awarding, increasing, reducing, or eliminating a former spouse survivor annuity, or explaining, interpreting, or clarifying a court order that awards, increases, reduces or eliminates a former spouse survivor annuity, the court order must be—

(1) Issued on a day prior to the date of retirement or date of death of the employee; or

(2) The first order terminating the marital relationship between the retiree and the former spouse.

(c) A court order that awards a former spouse survivor annuity and that is issued after the first order terminating the marital relationship between the retiree and the former spouse has been vacated, set aside, or otherwise declared invalid is not a court order acceptable for processing if—

(1) It is issued after the date of retirement or death of the retiree;

(2) It changes any provision concerning a former spouse survivor annuity in the court order that was vacated, set aside or otherwise declared invalid; and

(3)(i) The court order is effective prior to the date when it is issued; or

(ii) The retiree and former spouse do not compensate the Civil Service Retirement and Disability Fund for any uncollected annuity reduction due as a result of the court order vacating, setting aside, or otherwise invalidating the first order terminating the marital relationship between the retiree and the former spouse.

(d) In this section, *date of retirement* means the later of—

(1) The date that the employee files an application for retirement; or

(2) The effective commencing date for the employee's annuity.

(e) In this section, *issued* means actually filed with the clerk of the court, and does not mean the effective date of a retroactive court order that is effective prior to the date when actually filed with the clerk of the court (e.g., a court order issued *nunc pro tunc*).

(f) In this section, the *first order terminating the marital relationship between the retiree and the former spouse* means the original written order that first ends (or first documents an oral order ending) the marriage, and does not include—

(1) Any court order that amends, explains, clarifies, or interprets the original written order regardless of the effective date of the court order making the amendment, explanation, clarification, or interpretation; or

(2) Any court order issued under reserved jurisdiction or any other court orders issued subsequent to the original written order terminating the marriage that divide marital property (even if no division of marital property was made in the court order terminating the marriage) regardless of the effective date of the court order.

§ 838.807 Cost must be paid by annuity reduction.

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it permits OPM to collect the annuity reduction required by section 8339(j)(4) or section 8419 of title 5, United States Code, from annuity paid by OPM. OPM will not honor a court order that provides for the retiree or former spouse to pay OPM the amount of the annuity reduction by any other means.

(b) The amount of the annuity reduction required by section 8339(j)(4) or section 8419 of title 5, United States Code, may be paid—

(1) By reduction of the former spouse's entitlement under a court order acceptable for processing that is directed at employee annuity; or

(2) By reduction of the employee annuity.

(c) Unless the court order otherwise directs, OPM will collect the annuity reduction required by section 8339(j)(4) or section 8419 of title 5, United States Code, from the employee annuity.

Subpart I—Terminology Used in Court Orders Awarding Former Spouse Survivor Annuities

Regulatory Structure

§ 838.901 Purpose and scope.

(a) This subpart regulates the meaning of terms necessary to award a former spouse survivor annuity in a court order, and for OPM to determine whether a court order awarding a former spouse survivor annuity is a court order acceptable for processing and the amount of the former spouse survivor annuity.

(b)(1) This subpart establishes a uniform meaning to be used for terms and phrases frequently used in awarding a former spouse survivor annuity.

(2) This subpart informs the legal community about the definition to be applied to terms used in court orders, to permit the resulting orders to be more carefully drafted, using the proper language to accomplish the aims of the court.

(c)(1) To assist attorneys and courts in preparing court orders that OPM can honor in the manner that the court intends, Appendix A of this subpart contains model language to accomplish many of the more common objectives associated with the award of a former spouse survivor annuity.

(2) By using the language in appendix A of this subpart, the court, attorneys, and parties will know that the court order will be acceptable for processing and that OPM will treat the terminology used in the court order in the manner stated in the Appendix.

Identification of Benefits

§ 838.911 Identifying the retirement system.

(a) To satisfy the requirements of § 838.804(b)(1), a court order must contain language identifying the retirement system affected. For example, "CSRS," "FERS," "OPM," or "Federal Government" survivor benefits, or "survivor benefits payable based on service with the U.S. Department of Agriculture," etc., are sufficient identification of the retirement system.

(b) Except as provided in paragraphs (b)(1) and (b)(2) of this section, language referring to benefits under another retirement system, such as military retired pay, Foreign Service retirement benefits and Central Intelligence Agency retirement benefits, does not satisfy the requirements of § 838.804(b)(1).

(1) A court order that mistakenly labels CSRS benefits as FERS benefits and vice versa satisfies the requirements of § 838.804(b)(1).

(2) Unless the court order expressly provides otherwise, for employees transferring to FERS, court orders directed at CSRS benefits apply to the entire FERS basic benefit, including the CSRS component, if any. Such a court order satisfies the requirements of § 838.804(b)(1).

(c) A court order affecting military retired pay, even when military retired pay has been waived for inclusion in CSRS annuities, does not award a former spouse survivor annuity under CSRS or FERS. Such a court order does not satisfy the requirements of § 838.804(b)(1).

(d) A court order that requires an employee or retiree to maintain survivor benefits covering the former spouse satisfies the requirements of § 838.804(b)(1), if the former spouse was covered by a CSRS or FERS survivor annuity or the FERS basic employee death benefit as defined in § 843.602 of this chapter at the time of the divorce.

§ 838.912 Specifying an award of a former spouse survivor annuity.

(a) To satisfy the requirements of § 838.804(b)(2), a court order must specify that it is awarding a former spouse survivor annuity. The court order must contain language such as "survivor annuity," "death benefits," "former spouse survivor annuity under 5 U.S.C. 8341(h)(1)," etc.

(b)(1) A court order that provides that the former spouse is to "continue as" or "be named as" the beneficiary of CSRS survivor benefits or similar language satisfies the requirements of § 838.804(b)(2).

(2) A court order that requires an employee or retiree to maintain survivor benefits covering the former spouse satisfies the requirements of § 838.804(b)(2), if the former spouse was covered by a CSRS or FERS survivor annuity or the FERS basic employee death benefit as defined in § 843.602 of this chapter at the time of the divorce.

(c) Two types of potential survivor annuities may be provided by retiring employees to cover former spouses. Under CSRS, section 8341(h) of title 5, United States Code, provides for "former spouse survivor annuities" and section 8339(k) of title 5, United States Code, provides for "insurable interest annuities." These are distinct benefits, each with its own advantages. The corresponding FERS provisions are sections 8445 and 8444, respectively.

(1) OPM will enforce court orders to provide section 8341(h) or section 8445 annuities. These annuities are less expensive and have fewer restrictions than insurable interest annuities but the former spouse's interest will automatically terminate upon remarriage before age 55. To provide a section 8341(h) or section 8445 annuity, the court order must use terms such as "former spouse survivor annuity," "section 8341(h) annuity," or "survivor annuity."

(2) OPM cannot enforce court orders to provide "insurable interest annuities" under section 8339(k) or section 8444. These annuities may only be elected at the time of retirement by a retiring employee who is not retiring under the disability provision of the law and who is in good health. The retiree may also elect to cancel the insurable interest annuity to provide a survivor annuity for a spouse acquired after retirement. The parties might seek to provide this type of annuity interest if the nonemployee spouse expects to remarry before age 55, if the employee expect to remarry a younger second spouse before retirement, or if another former spouse has already been awarded a section 8341(h) annuity. However, the court will have to provide its own remedy if the employee is not eligible for or does not make the election. OPM cannot enforce the court order. Language including the words "insurable interest" or referring to section 8339(k) or section 8444 does not satisfy the requirements of § 838.804(b)(2).

(3) In court orders which contain internal contradictions about the type of annuity, such as "insurable interest annuity under section 8341(h)," the section reference will control.

Computation of Benefit

§ 838.921 Determining the amount of a former spouse survivor annuity.

(a) A court order that contains no provision stating the amount of the former spouse survivor annuity provides the maximum former spouse survivor annuity permitted under § 831.614 or § 842.613 of this chapter and satisfies the requirements of § 838.805.

(b)(1) A court order that provides that "a former spouse will keep" or "an employee or retiree will maintain" the survivor annuity to which he or she was entitled at the time of the divorce satisfies the requirements of § 838.805 and provides a former spouse survivor annuity in the same proportion to the maximum survivor annuity under § 831.614 or § 842.613 of this chapter as the former spouse had at the time of divorce. For example, a former spouse of an employee would be entitled to the maximum survivor benefit; a former spouse of a retiree (who was married to the retiree at retirement and continuously until the divorce resulting in the court order) would be entitled to the survivor benefit elected at retirement.

(2) If, at the time of divorce, the employee covered by FERS had at least 18 months of civilian service creditable under CSRS but less than 10 years of service creditable under FERS, a former spouse with a court order described in paragraph (b)(1) or paragraph (b)(2) of this section may be entitled to the basic employee death benefit as defined in § 843.602 of this chapter, but is not entitled to any other former spouse survivor annuity based on the court order.

(c)(1) A court order that awards a former spouse survivor annuity of less than $12 per year satisfies the requirements of § 838.805 and provides an initial rate of $1 per month plus all cost-of-living increases occurring after the later of—

(i) The date of the court order; or

(ii) The date when the employee retires.

(2) The reduction in the employee annuity will be computed as though the court order provided a former spouse survivor annuity of $1 per month.

(d)(1) A court order that awards a former spouse survivor annuity while authorizing the employee or retiree to elect a lesser former spouse survivor annuity upon the employee's or retiree's remarriage satisfies the requirements of § 838.805, and provides the former spouse survivor annuity at the rate initially provided in the court order but does not allow the employee or retiree

to elect a lesser benefit for the former spouse.

(2) To provide full survivor annuity benefits to a former spouse while authorizing the employee or retiree to elect a lesser former spouse survivor annuity benefit in order to provide survivor annuity benefits for a subsequent spouse, the court order must provide for a reduction in the former spouse survivor annuity upon the employee's or retiree's election of survivor annuity benefits for a subsequent spouse.

(3) A reduction in the amount of survivor benefits provided to the former spouse does not satisfy the requirements of § 838.805 if it is contingent upon the employee's or annuitant's remarriage rather than his or her election of survivor annuity benefits for a subsequent spouse.

§ 838.922 Prorata share defined.

(a) *Prorata share* means the fraction of the maximum survivor annuity allowable under § 831.614 or § 842.613 of this chapter whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee.

(b) A court order that awards a former spouse a "prorata share" of a survivor annuity by using that term and identifying the date when the marriage began satisfies the requirements of § 838.805 and awards the former spouse a former spouse survivor annuity equal to the prorata share as defined in paragraph (a) of this section.

(c) A court order that awards a portion of a survivor annuity, as of a specified date before the employee's retirement, awards the former spouse a former spouse survivor annuity equal to the prorata share as defined in paragraph (a) of this section.

(d) A court order that awards a portion of the "value" of a survivor annuity as of a specific date before retirement, without specifying what "value" is, awards the former spouse a former spouse survivor annuity equal to a prorata share as defined in paragraph (a) of this section.

Miscellaneous Provisions

§ 838.931 Court orders that provide temporary awards of former spouse survivor annuities.

A provision in a court order that temporarily awards a former spouse survivor annuity satisfies the requirements of § 581.804(b)(2), but the temporary award becomes permanent on the date on which OPM is barred from honoring a modification of the court order (the date of retirement or death, or, in the case of a post-retirement divorce, the date of the initial court order), as provided in sections 8341(h)(4) and 8445(d) of title 5, United States Code.

§ 838.932 Court orders that permit the former spouse to elect to receive a former spouse survivor annuity.

(a) Except as provided in paragraph (b) of this section, a court order that gives the former spouse the right to elect a former spouse survivor annuity satisfies the requirements of § 838.804(b)(2) and provides a former spouse survivor annuity in the amount otherwise provided by the court order.

(b) A former spouse who has been awarded a former spouse survivor annuity by a court order that gives the former spouse the right to elect a former spouse survivor annuity may irrevocably elect not to be eligible for a former spouse survivor annuity based on the court order.

(c) The former spouse may make the election under paragraph (b) of this section at any time after the issuance of the court order. An election under paragraph (b) of this section—

(1) Must be in writing and in the form prescribed by OPM;

(2) Is effective on the first day of the month following the month in which OPM receives the election; and

(3) Is irrevocable once it has become effective.

(d) The reduction in an employee annuity based on a court order that gives the former spouse the right to elect a former spouse survivor annuity terminates on the last day of the month in which OPM receives the former spouse's election under paragraph (b) of this section.

§ 838.933 Payment of the cost of a former spouse survivor annuity.

(a) A court order that unequivocally awards a former spouse survivor annuity and directs the former spouse to pay for that benefit satisfies the requirements of § 838.805, and—

(1) If the former spouse has also been awarded a portion of the employee annuity then the cost of the survivor benefit will be deducted from the former spouse's share of the employee annuity (if sufficient to cover the total cost—there will be no partial withholding); otherwise,

(2) The reduction will be taken from the employee annuity and collection from the former spouse will be a private matter between the parties.

(b) A court order that conditions the award of a former spouse survivor annuity on the former spouse's payment of the cost of the benefit satisfies the requirements of § 838.805 only if a court order acceptable for processing also awards the former spouse a portion of the employee annuity sufficient to cover the cost.

Model Paragraphs

Appendix A to Subpart I of Part 838—Recommended Language for Court Orders Awarding Former Spouse Survivor Annuities

This appendix provides recommended language for use in court orders awarding former spouse survivor annuities. A former spouse survivor annuity is not a continuation of a former spouse's share of an employee annuity after the death of the employee. A former spouse's entitlement to a portion of an employee annuity cannot continue after the death of the employee. A court order that attempts to extend the former spouse's entitlement to a portion of an employee annuity past the death of the employee is not effective. The model language in this appendix does not award benefits payable to the former spouse during the lifetime of the employee. A separate, distinct award of a portion of the employee annuity is necessary to award a former spouse a benefit during the lifetime of the employee. Appendix A to subpart F of this part contains model language for a portion of an employee annuity.

Attorneys should exercise great care in preparing provisions concerning former spouse survivor annuities because sections 8341(h)(4) and 8445(d) of title 5, United States Code, prohibit OPM from accepting modifications after the retirement or death of the employee. (See § 838.806 concerning unacceptable modifications.) A court order awarding a former spouse survivor annuity should include four elements:

- Identification of the retirement system;
- Explicit award of the former spouse survivor annuity;
- Method for computing the amount of the former spouse's benefit; and
- Instructions on what OPM should do if the employee leaves Federal service before retirement and applies for a refund of employee contributions.

By using the model language, courts will know that the court order will have the effect described in this appendix.

The model language uses the terms "[former spouse]" to identify the spouse who is receiving a former spouse survivor annuity and "[employee]" to identify the Federal employee whose employment was covered by the Civil Service Retirement System or the Federal Employees Retirement System. Obviously, in drafting an actual court order the appropriate terms, such as "Petitioner" and "Respondent," or the names of the parties should replace "[former spouse]" and "[employee]."

Similarly, except when the provision applies only to the basic employee death benefit (defined in § 843.103 of this chapter) that is available only under the Federal

Employees Retirement System, the models are drafted for employees covered by the Civil Service Retirement System (5 U.S.C. 8331 *et seq.*). The name of the retirement system should be changed for employees covered by the Federal Employees Retirement System (5 U.S.C. chapter 84.).

Statutory references used in the models are to CSRS provisions (such as section 8341(h) of title 5, United States Code). When appropriate, the corresponding FERS provision (such as section 8445 of title 5, United States Code) should be used.

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700 Series—Computing the Amount of the Former Spouse's Benefit

Paragraphs 701 through 704 contain model language for awards of former spouse survivor annuities in amounts that do not require specification of the base on which the former spouse's share will be computed. Situations in which the computational base need not be specified include amounts defined by law or regulation. For example, the maximum former spouse survivor annuity is fixed by statute generally at 55 percent of the employee annuity under CSRS and 50 percent of the employee annuity under FERS.

Paragraphs 711 and 712 contain model language for awards of former spouse survivor annuities that use the employee annuity as the base on which the portion awarded will be computed (that is, on which percentage, fraction or formula will be applied). Paragraphs 721 and 722 contain model language for awards of former spouse survivor annuities that use the maximum possible survivor annuity as the base on which the portion awarded will be computed (that is, on which percentage, fraction or formula will be applied). Using the maximum possible survivor annuity as the base will generally award 55 percent under CSRS and 50 percent under FERS of the amount that using the employee annuity as the base would produce.

Paragraphs 750 and higher contain model language to implement the most common other types of awards.

Each model paragraph includes a reference to the statutory provision under CSRS that authorizes OPM to honor court orders awarding former spouse survivor annuities. The FERS statutory provision that corresponds to section 8341(h) (mentioned in the first sentence of each example) is section 8445.

¶701 Award of the maximum survivor annuity.

Using the following paragraph will award the maximum possible former spouse survivor annuity. Under CSRS, the maximum possible survivor annuity is 55 percent of the employee annuity unless the surviving spouse or former spouse was married to the retiree at retirement and agreed to a lesser amount at that time. Under FERS, the maximum possible survivor annuity is 50 percent of the employee annuity unless the surviving spouse or former spouse was married to the retiree at retirement and agreed to agreed to a lesser amount at that time.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System."

¶ 702 Award that continues the pre-divorce survivor annuity benefits.

Using the following paragraph will award a former spouse survivor annuity equal to the amount that the former spouse would have received if the marriage were never terminated by divorce.

"Under section 8341(h)(1) of title 5, United States Code, [Former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System in the same amount to which [former spouse] would have been entitled if the divorce had not occurred."

¶ 703 Award of a prorata share.

Using the following paragraph will award the former spouse a prorata share of the maximum possible survivor annuity. Prorata share is defined in § 838.922. To award a prorata share the court order must state the data of the marriage. Unless the court order specifies a different ending date, the marriage ends for computation purposes on the date that the court order is filed with the court clerk.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share. The marriage began on [insert date]."

¶704 Award of a fixed monthly amount.

Using the following paragraph will award a former spouse survivor annuity that will start at the amount stated in the order when the employee or retiree dies, unless the stated amount exceeds the maximum possible former spouse survivor annuity. If the amount stated in the order exceed the maximum possible former spouse survivor annuity, the court order will be treated as awarding the maximum. After payment of the former spouse survivor annuity has begun, COLA's will be applied in accordance with section 838.735.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to $[insert a number] per month."

¶705–710 [Reserved].

¶711 Award of a percentage or fraction of the employee annuity.

Using the following paragraph will award a former spouse survivor annuity equal to the stated percentage or fraction of the employee annuity. The stated percentage or fraction may not exceed 55 percent under CSRS or 50 percent under FERS.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to [insert a percentage or fraction] percent of the [employee]'s annuity."

¶712 Award based on a stated formula as a share of employee annuity.

Using the following paragraphs will award a former spouse survivor annuity in an amount to be determined by applying a stated formula to employee annuity. The amount of the former spouse survivor annuity may not exceed 55 percent of the employee annuity under CSRS or 50 percent under FERS. The formula must be stated in the court order (including a court-approved property settlement agreement). The formula may not be incorporated by reference to a statutory provision or a court decision in another case. If the court order uses a formula, the court order must include any data that is necessary for OPM to evaluate the formula unless the necessary data is contained in normal OPM files.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be the portion of the [employee]'s employee annuity computed as follows:

"[Insert formula.]"

¶713–720 [Reserved.]

¶721 Award of a percentage or fraction of the maximum survivor annuity.

Using the following paragraph will award a former spouse survivor annuity equal to the stated percentage or fraction of the maximum possible survivor annuity. The stated

percentage or fraction may not exceed 100 percent.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to [insert a percentage of fraction] of the maximum possible survivor annuity.

§722 Award based on a stated formula as a share of maximum survivor annuity.

Using the following paragraphs will award a former spouse survivor annuity based on a stated formula to be applied to the maximum possible survivor annuity. The formula must be stated in the court order (including a court-approved property settlement agreement). The formula may not be incorporated by reference to a statutory provision or a court decision in another case. If the court order uses a formula, the court order must include any data that is necessary for OPM to evaluate the formula unless the necessary data is contained in normal OPM files.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be the portion of the maximum possible survivor annuity computed as follows:

"[Insert formula.]"

§723–750 [Reserved.]

§751 Changing amount of former spouse survivor based on remarriage before retirement.

Using the following paragraph will award the maximum possible former spouse survivor annuity unless the employee remarries before retirement. Upon the employee's remarriage before retirement the amount of the former spouse survivor annuity changes to a prorata share. The maximum possible and prorata share are used as examples only; other amounts may be substituted. Similar language is not acceptable for remarriages after retirement.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System unless [employee] remarries before retirement. If [employee] remarries before retirement, under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share. The marriage to [former spouse] began on [insert date]."

§752 Changing amount of former spouse survivor annuity based on remarriage after retirement.

Using the following paragraph will award the maximum possible former spouse survivor annuity unless the employee remarries after retirement and elects to provide a survivor annuity for the spouse acquired after retirement. Upon the employee's remarriage after retirement and election to provide a survivor annuity for the spouse acquired after retirement, the amount of the former spouse survivor annuity changes to a prorata share. The maximum possible and prorata share are used as examples only; other amounts may be substituted. The change in the amount of the former spouse survivor annuity must be triggered by the election, which is a part of normal OPM files, rather than the remarriage, which is not documented in normal OPM files.

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded the maximum possible former spouse survivor annuity under the Civil Service Retirement System unless [employee] elects to provide a survivor annuity for a new spouse acquired after retirement. If [employee] elects to provide a survivor annuity to a new spouse acquired after retirement, under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share. The marriage to [former spouse] began on [insert date]."

800 Series—Paying the Cost of a Former Spouse Survivor Annuity

A court order awarding a former spouse survivor annuity requires that the employee annuity be reduced. The reduction lowers the gross employee annuity. The costs associated with providing the former spouse survivor annuity must be paid by annuity reduction. Under section 838.807, if the former spouse is awarded a portion of the employee annuity sufficient to pay the cost associated with providing the survivor annuity, the former spouse's share may be reduced to pay the cost.

§ 801Costs to be paid from the employee annuity.

No special provision on payment of the costs associated with providing the former spouse survivor annuity is necessary if the court intends the cost to be taken from the employee annuity.

802 Costs to be paid from former spouse's share of the employee annuity.

Using the following paragraph will award the former spouse a prorata share of the employee annuity and a prorata share of the maximum possible survivor annuity and provide that the cost associated with the survivor annuity be deducted from the former spouse's share of the employee annuity. Prorata share and self-only annuity are used as examples only; another amount or type of annuity may be substituted.

"[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Former spouse] is entitled to a prorata share of [employee]'s self-only monthly annuity under the Civil Service Retirement System. [Former spouse]'s share of [employee]'s employee annuity will be reduced by the amount of the costs associated with providing the former spouse survivor annuity awarded in the next paragraph. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

"Under section 8341(h)(1) of title 5, United States Code, [former spouse] is awarded a former spouse survivor annuity under the Civil Service Retirement System. The amount of the former spouse survivor annuity will be equal to a prorata share.

900 Series—Refunds of Employee Contributions

Court orders that award a former spouse survivor annuity based on the service of an employee who is not then eligible to retire should include an additional paragraph containing instructions that tell OPM what to do if the employee requests a refund of employee contributions before becoming eligible to retire. The court order may award the former spouse a portion of the refund of employee contributions or bar payment of the refund of employee contributions.

§901 Barring Payment of a refund of employee contributions

Using the following paragraph will bar payment of the refund of employee contributions if payment of the refund of employee contributions would extinguish the former spouse's entitlement to a former spouse survivor annuity.

"The United States Office of Personnel Management is directed not to pay [employee] a refund of employee contributions."

§902 Dividing a refund of employee contributions.

Using the following paragraph will allow the refund of employee contributions to be paid but will award a prorata share of the refund of employee contributions to the former spouse. The award of a prorata share is used only as an example; the court order could provide another fraction, percentage, or formula, or a fixed amount. A refund of employee contributions voids the employee's rights to an employee annuity unless the employee is reemployed under the retirement system. Payment of the refund of employee contributions will also extinguish the former spouse' right to a court-ordered portion of an employee annuity or a former spouse survivor annuity unless the employee is reemployed and reestablishes title to annuity benefits.

"If [employee] becomes eligible and applies for a refund of employee contributions, [former spouse] is entitled to a prorata share of the refund of employee contributions. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse]."

2. Subpart Q of part 831 consisting of §§ 831.1701 through 831.1718 and appendices A and B are redesignated as subpart J of part 838, §§ 838.1001 through 838.1018 and appendices A and B of subpart J, respectively.

3. Newly redesignated § 838.1001 is removed and reserved; newly redesignated § 838.1010 is removed; and § 831.2009 is redesignated as § 838.1010.

4. In newly redesignated § 838.1002, paragraphs (c) and (d) are revised to read as follows:

§ 838.1002 Relation to other regulations.

* * * * *

(c) Subpart F of part 831 of this chapter, subpart F of part 842 of this chapter, and subpart C of part 843 of this chapter contain information about entitlement to survivor annuities.

(d) Subpart T of part 831 of this chapter and subpart B of part 843 of this chapter contain information about entitlement to lump-sum death benefits.

* * * * *

5. Newly redesignated § 838.1012 is revised to read as follows:

§ 838.1012 Death of the former spouse.

(a) Unless the qualifying court order expressly provides otherwise, the former spouse's share of employee retirement benefits terminates on the last day of the month before the death of the former spouse, and the former spouse's share of employee retirement benefits reverts to the retiree.

(b) Except as otherwise provided in this subpart, OPM will honor a qualifying court order or an amended qualifying court order that directs OPM to pay, after the death of the former spouse, the former spouse's share of the employee annuity to—

(1) The court;

(2) An officer of the court acting as a fiduciary;

(3) The estate of the former spouse; or

(4) One or more of the retiree's children as defined in section 8341(a)(4) or section 8441(4) of title 5, United States Code.

§§ 838.1003, 838.1004, 838.1006, 838.1007, 838.1009, 838.1010, 838.1011, 838.1016 Appendix A to Subpart J, Appendix B to Subpart J [Amended]

6. In the list below, for each section and paragraph indicated in the left two columns, remove the section reference indicated in the third column where it appears in the paragraph, and add the reference indicated in the fourth column:

Section	Paragraph	Remove	Add
838.1003	"Qualifying court order"	831.1704	838.1004.
838.1004	(c)(1)(i)	831.1709	838.1009.
838.1004	(c)(1)(ii)	831.1708	8381008.
838.1006	(b)	831.1708	8381008.
838.1006	(d)(2)	831.1705	838.1005.
838.1007	(a)(1)	831.1705	838.1005.
838.1007	(a)(1)	831.1706	838.1006.
838.1007	(a)(2)	831.1705	838.1005.
838.1007	(a)(2)	831.1704	838.1004.
838.1007	(a)(3)	831.1705	838.1005.
838.1007	(a)(3)	831.1706	838.1006.
838.1007	(a)(3)	831.1704	838.1004.
838.1007	(b)	831.1706	838.1006.
838.1009	(a)(1)	831.1706	838.1006.
838.1009	(b)	831.1706	838.1006.
838.1010	(e)	831.1705	838.1005.
838.1010	(f)(2)(ii)	831.1705	838.1005.
838.1011	(a)(3)	831.1705	838.1005.
838.1011	(b)(2)(ii)	831.1705	838.1005.
838.1016	(a)	831.1706	838.1006.
Appendix A to subpart J	I.A.2	5305	5303.
Appendix A to subpart J	I.C.1	831.1704(b)	838.1004(b).
Appendix A to subpart J	I.F.	Subpart Q of part 831	Subpart J of part 838.
Appendix A to subpart J	II.C.	831.1703	838.1003.
Appendix A to subpart J	II.E.	831.1703	838.1003.
Appendix A to subpart J	V.D.	831.1704(b)	838.1004(b).
Appendix A to subpart J	VI.B.	831.1704(b)	838.1004(b).
Appendix A to subpart J	III.G.	831.1704(b)	838.1004(b).

§§ 838.1002, 838.1003, 838.1006, 838.1007, 838.1009, 838.1010, 838.1016 [Amended]

7. In the list below, for each section and paragraph indicated in the left two columns, add the words "of this chapter" after the section reference indicated in the third column where it appears in the paragraph:

Section	Paragraph	Section reference
838.1002	(b)	831.106.
838.1002	(g)	831.109.
838.1003	"Former spouse annuity".	831.603.
838.1006	(c)(3)	831.614.
838.1006	(d)(3)	831.607.
838.1007	(c)	831.109.
838.1009	(a)(2)	831.109.
838.1010	(e)(2)	831.2007(c).
838.1010	(g)(1)	831.603.
838.1016	(a)	831.614.

PART 831—RETIREMENT

Subpart F—Survivor Benefits

8. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.204 also issued under sec. 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508; § 831.303 also issued under sec. 7001(b) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508; § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under sec. 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.621 also issued under sec. 201(d) of the Federal Employees Benefits Improvement Act of 1986, Public Law 99–251; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and sec. 6001, Public Law 100–203; § 831.2203 also issued under sec. 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508.

9. In section 831.603, the definition of "qualifying court order" is revised to read as follows:

§ 831.603 Definitions.

* * * * *

Qualifying court order means a court order that awards a former spouse annuity and that satisfies the requirements of section 8341(h) of title 5,

United States Code, for awarding a former spouse annuity.

* * * * *

Subpart Q—[Removed and reserved]

10. The heading for subpart Q "Court Orders Affecting Retirement Benefits" of part 831 is removed and the subpart is reserved.

Subpart V—Alternative Forms of Annuity

11. In § 831.2203, paragraph (b) is revised to read as follows:

§ 831.2203 Eligibility.

* * * * *

(b) An employee or Member who, at the time of retirement has a former spouse who is entitled to a portion of the employee's or Member's retirement benefits or a former spouse annuity under a court order acceptable for processing as defined by § 838.103 of this chapter may not elect an alternative form of annuity.

* * * * *

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

12. The authority citation for part 841 continues to read as follows:

Authority: 5 U.S.C. 8461; Section 841.108 also issued under 5 U.S.C. 552a; Subpart D also issued under 5 U.S.C. 8423; Section 841.504 also issued under 5 U.S.C. 8422; Section 841.507 also issued under section 505 of Pub. L. 99–335; Subpart J also issued under 5 U.S.C. 8469.

Subpart H—Waiver of Benefits

13. In § 841.802, the definition of "qualifying court order" is revised to read as follows:

§ 841.802 Definitions.

* * * * *

Qualifying court order means a court order acceptable for processing as defined in section 838.103 of this chapter.

* * * * *

Subpart I—Court Orders Affecting Retirement Benefits

14. Subpart I of part 841 is removed and reserved.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

15. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); Sections 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Section 842.105 also issued under 5 U.S.C. 8402(c)(1); Section 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; Sections 842.604 and 842.611 also issued under 5 U.S.C. 8417; Section 842.607 also issued under 5 U.S.C. 8416 and 8417; section 842.614 also issued under 5 U.S.C. 8419; section 842.615 also issued under 5 U.S.C. 8418; section 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; section 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; Subpart H also issued under 5 U.S.C. 1104.

Subpart F—Survivor Elections

16. In § 842.602, the definition of "qualifying court order" is revised to read as follows:

§ 842.602 Definitions.

* * * * *

Qualifying court order means a court order that awards a former spouse annuity and that satisfies the requirements of section 8445 of title 5, United States Code, for awarding a former spouse annuity.

* * * * *

Subpart G—Alternative Forms of Annuity

17. In § 842.703, paragraph (b) is revised to read as follows:

§ 842.703 Eligibility.

* * * * *

(b) An employee or Member who, at the time of retirement has a former spouse who is entitled to a portion of the employee's or Member's retirement benefits or a former spouse annuity under a court order acceptable for processing as defined by § 838.103 of this chapter may not elect an alternative form of annuity.

* * * * *

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

18. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; Sections 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; Section 843.309 also issued under 5 U.S.C. 8442; Section 843.406 also issued under 5 U.S.C. 8441.

19. In § 843.102, the definition of "qualifying court order" is revised to read as follows:

§ 843.102 Definitions.

* * * * *

Qualifying court order means a court order that awards a former spouse annuity and that satisfies the requirements of section 8445 of title 5, United States Code, for awarding a former spouse annuity.

* * * * *

[FR Doc. 91–31161 Filed 12–31–91; 8:45 am]
BILLING CODE 6325–01–M

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federal register

Thursday
January 2, 1992

Part V

Department of Education

Integration of Vocational and Academic Learning Program (Model Tech-Prep Education Projects); Demonstration Projects; Notice

VOL 57 ISS 1 JA 2 1992 UMI

DEPARTMENT OF EDUCATION

Demonstration Projects for the Integration of Vocational and Academic Learning Program (Model Tech-Prep Education Projects)

AGENCY: Department of Education.

ACTION: Notice of proposed priority, selection criteria, and other requirements for grants to be made in fiscal year 1992.

SUMMARY: The Secretary proposes to establish a priority for a grant competition for awards to be made in Fiscal Year (FY) 1992 using funds appropriated in FY 1991 under the Demonstration Projects for the Integration of Vocational and Academic Learning Program, authorized by section 420 of the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act), as added by Public Law 101–392, 104 Stat. 753 (1990). Under the proposed absolute priority, funds for the competition would be reserved absolutely for applications proposing to demonstrate model tech-prep education programs. The proposed projects would have to be based on successfully designed, established, and operating tech-prep education programs that integrate vocational and academic learning and that would serve as models for programs to be developed under the State-Administered Tech-Prep Education Program. The Secretary also proposes to prohibit the use of Federal funds received under this program for equipment. Lastly, the Secretary proposes other requirements and new selection criteria for evaluating applications submitted for this competition only.

DATES: Comments must be received on or before February 3, 1992.

ADDRESSES: All comments concerning this proposed priority should be addressed to Richard F. DiCola, U.S. Departmernt of Education, 400 Maryland Avenue, SW., room 4512–MES, Washington, DC 20202–7242.

FOR FURTHER INFORMATION CONTACT: Richard F. DiCola. Telephone: 202–732–2370. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC, 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time).

SUPPLEMENTARY INFORMATION: Section 420 of the Perkins Act provides for the development, implementation, and operation of programs using different models of curricula that integrate vocational and academic learning. One area in which the integration of vocational and academic learning is vital to the success of projects is tech-prep education. The Perkins Act requires projects funded under the State-Administered Tech-Prep Education Program (title III, part E of the Perkins Act) to provide technical preparation in a particular field and to "build student competence in mathematics, science, and communications (including through applied academics) through a sequential course of study * * *." Moreover, the widespread interest in, and need for, integrating vocational and academic learning and in tech-prep education support establishing a priority for tech-prep education programs under the Demonstration Projects for the Integration of Vocational and Academic Learning Program in order to provide meaningful direction, resources, and expertise to others wanting to replicate these models.

The Secretary wishes to highlight for potential applicants that this priority would also help further the purposes of AMERICA 2000, the President's education strategy to help America move itself toward the National Education Goals. The integration of vocational and academic learning in tech-prep education projects will directly support National Education Goal 5—ensuring that every adult American will be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The integration of vocational and academic learning also can contribute to the President's objective—as stated in Track III of the AMERICA 2000 strategy ("Transforming America into 'A Nation of Students' ")—of reviewing current Federal job training efforts and identifying successful ways of motivating and enabling individuals to receive the comprehensive services, education, and skills necessary to achieve economic independence.

Background on Tech-Prep Program

Under the State-Administered Tech-Prep Education Program authorized by title III, part E, of the Perkins Act, the States will award grants to consortia of local educational agencies and postsecondary educational institutions to develop and operate tech-prep education programs. Congress appropriated $63,434,000 for use in FY 1992 for this purpose.

Section 347(1) of the Perkins Act defines a "tech-prep education program," for purposes of the State-administered program, as a combined secondary and postsecondary program that—

(a) Leads to an associate degree or two-year certificate;

(b) Provides technical preparation in at least one field of engineering technology, applied science, mechanical, industrial, or practical art or trade, or agriculture, health, or business;

(c) Builds student competence in mathematics, science, and communications (including through applied academics) through a sequential course of study; and

(d) Leads to placement in employment.

The local projects funded under the State-Administered Tech-Prep Education Program are intended to be developmental in nature, with each local project being authorized to acquire, as part of its planning activities, technical assistance from State or local entities that have successfully designed, established, and operated tech-prep education programs.

Projects Demonstrating the Integration of Vocational and Academic Learning in Tech-Prep

The purpose of this proposed priority notice, which would fund federally administered tech-prep demonstration projects, is to provide for evaluations of the funded projects, and for models and other forms of assistance for the local projects funded under the State-administered program as well as for other localities that may not receive these funds. Unlike State and locally funded projects, which will be primarily developmental in nature, the projects funded under this proposed priority would:

- Be based on existing programs that demonstrate success through evidence of student achievement, completion and placement rates;
- Conduct rigorous evaluation activities which may include refining existing data or collecting additional data to yield results that can be submitted to the Secretary for review by the Department's Program Effectiveness Panel;
- Demonstrate curricula and courses that integrate vocational and academic learning; and
- Provide resources, materials, technical assistance, inservice training, and other forms of professional development to help others replicate successful tech-prep education programs.

Pursuant to section 420 of the Perkins Act, the model tech-prep education projects that are funded under this competition must demonstrate programs using different models of curricula that

integrate vocational and academic learning by—

(1) Designing integrated curricula and courses;

(2) Providing inservice training for teachers and administrators in integrated curricula; and

(3) Disseminating information regarding effective integrative strategies to other school districts through the National Diffusion Network (NDN) established under section 1562 of the Elementary and Secondary Education Act of 1965, as amended.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, subject to meeting applicable rulemaking requirements, nor does it limit the Secretary to funding only this priority.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Absolute Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. In order to provide models for programs to be developed and funded under the State-Administered Tech-Prep Education Program (title III, part E of the Perkins Act), the Secretary proposes to fund under this competition only applications that demonstrate tech-prep education programs, as defined in section 347 of the Perkins Act, that—

(a) Are based on successfully designed, established, and operating tech-prep education programs; and

(b) Meet the requirements for funding under Title III–E of the Perkins Act.

In order to be funded under title III–E of the Perkins Act, a tech-prep program must—

(1) Be carried out under an articulation agreement between the secondary and postsecondary participants in the project. *Articulation agreement* means a commitment to a program designed to provide students with a nonduplicative sequence of progressive achievement leading to competencies in a tech-prep education program;

(2) Consist of the two years of secondary school preceding graduation and two years of higher education, or an apprenticeship program of at least two years following secondary instruction, with a common core of required proficiency in mathematics, science, communications, and technologies designed to lead to an associate arts degree or certificate in a specific career field;

(3) Include the development of tech-prep education program curricula appropriate to the needs of the secondary and postsecondary participants;

(4) Include inservice training for teachers that—

(A) Is designed to train teachers to effectively implement tech-prep education curricula;

(B) Provides for joint training for teachers from all secondary and postsecondary participants; and

(C) May provide this training in weekend, evening, and summer sessions, institutes, or workshops;

(5) Include training programs for counselors designed to enable counselors to more effectively—

(A) Recruit students for tech-prep education programs;

(B) Ensure that these students successfully complete the programs; and

(C) Ensure that these students are placed in appropriate employment;

(6) Provide equal access to the full range of technical preparation programs to individuals who are members of special populations, including the development of tech-prep education program services appropriate to the needs of such individuals; and

(7) Provide for preparatory services which assist all participants in the programs.

Required Activities

The Secretary further proposes to require that any project funded under this competition must—

(a) Disseminate its results in a manner designed to provide information on integration of vocational and academic learning to improve the training of teachers, other instructional personnel, counselors, and administrators who are needed to carry out tech-prep programs;

(b) Provide resources, materials, technical assistance, inservice training, and other forms of professional development to help others replicate successful tech-prep education programs;

(c) Provide, and budget for, an independent evaluation of grant activities. The evaluation must—

(1) Include activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(2) Be based on student achievement, completion, and placement rates, and the effectiveness of disseminating information and materials produced by the project to appropriate audiences; and

(3) Provide a summary of evaluation activities and results that the grantee shall submit to the Secretary for review by the Department's Program Effectiveness Panel; and

(e) Expend no Federal funds received under this program for equipment, as defined in 34 CFR 74.132 and 80.32.

Criteria for Evaluating Applications

For the FY 1992 grant competition under the Demonstration Projects for the Integration of Vocational and Academic Learning Program (Model Tech-Prep Education Projects), the Secretary proposes to use the following selection criteria and to assign points to the selection criteria as indicated:

(a) *Program factors.* (15 points) The Secretary reviews each application to assess the quality of the proposed project, including—

(1) The extent to which the project provides a model for programs to be funded under the State-Administered Tech-Prep Education Program;

(2) The extent to which the project involves creative or innovative methods for integrating vocational and academic learning;

(3) The extent to which the project will serve—

(i) Individuals who are members of special populations;

(ii) Vocational students in secondary schools and at post secondary institutions;

(iii) Individuals enrolled in adult programs; or

(iv) Single parents, displaced homemakers, and single pregnant women.

(b) *Educational significance.* (15 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed project on successfully designed, established, and currently operating model tech-prep education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) High school graduation;

(iii) Successful transfer of students to a variety of postsecondary education programs at the completion of the tech-prep education program; and

(iv) Placement of students in jobs, including military service, at the completion of the tech-prep education program;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques that address the need to integrate vocational and academic learning, and produce benefits that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Carries out the requirements for an independent evaluation;

(2) Is clearly explained and is appropriate to the project;

(3) To the extent possible, is objective and will produce data that are quantifiable;

(4) Includes quality measures to assess the effectiveness of the curriculum developed by the project;

(5) Identifies expected outcomes of the participants and how those outcomes will be measured;

(6) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(7) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (15 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of the audience to which the project activities will be disseminated and provisions for publicizing the project at the local, State, and national levels by conducting, or delivering presentations at, conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the methods, approaches, and techniques developed by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities, to ensure that funds awarded under this part are used to provide instructional services.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

Paperwork Reduction Act of 1980

This proposed priority contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of the proposed priority to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

This proposed priority would affect the following types of entities eligible to apply for a grant under this program: Institutions of higher education, area vocational education schools, State boards of vocational education, public

or private nonprofit organizations, and any combination of these types of entities. The Secretary needs this information to determine whether proposed projects are likely to meet identified national needs. Annual public reporting burden for this collection of information is estimated to average 90 hours per response for one hundred fifty respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Atten'ion: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding (a) the proposed absolute priority, (b) the proposed selection criteria, and the other requirements.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period in room 4512, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 2420.

(Catalog of Federal Domestic Assistance Number 84.248 Demonstration Projects for the Integration of Vocational and Academic Learning Program)

Dated: September 19, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-31254 Filed 12-31-91; 8:45 am]

BILLING CODE 4000-01-M

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Part VI

Department of the Interior

Bureau of Indian Affairs

Training and Technical Assistance Grant and Planning Grant Programs; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Training and Technical Assistance Grant and Planning Grant Programs

December 26, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of discretionary grant funds for federally recognized Indian tribes.

SUMMARY: The Bureau of Indian Affairs invites applications from Indian tribes within the contiguous 48 United States and Alaska, for two (2) separate grant programs. The purposes of these grant programs are: (1) To allow tribes to address governmental and/or program operational problems through technical assistance grants; and, (2) to monitor, contract, plan, design or redesign programs serving the tribe under a planning grant. Grant awards will be made on a competitive basis under criteria, terms, and conditions set forth in this announcement. Such grants are authorized by section 103 of the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended by Public Law 100–472, Public Law 101–301 and Public Law 101–644. This notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

DATES: The closing date for submission of applications under this announcement is March 3, 1992.

FOR FURTHER INFORMATION CONTACT: George Clark, (202) 208–1706 or Denise Homer, (202) 208–5727, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, room 4627, 1849 C Street NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

A. Purpose of the Grant Programs

The purpose of the grant programs under this announcement is twofold: (1) To allow tribes to address needs and/or problem areas associated with governmental affairs, program administration and operations, and/or service delivery; and, (2) to permit tribes to monitor, evaluate, plan and design or redesign the Federal programs serving them.

Each of these grant initiatives has its own criteria and guidelines which are designed to accomplish specific objectives for a targeted subgroup of tribes. For instance, the criteria for training and technical assistance grants requires that the tribal applicants document specific needs and/or problems and devise step-by-step strategies to satisfy the needs or resolve the problems which are impediments to their growth. Using the same principle, criteria for planning grants were formulated to specify that these grants would be awarded to the most capable tribes. These are tribes not normally in need of strategical technical assistance since they generally have clean audits, operate mature contracts and have the reputation of administering "good" programs and service delivery systems. Tribes most capable of planning and operating programs may receive planning grants for comprehensive program planning, program redesign, as well as planning for reservation resources development.

To accomplish these ends, the Bureau of Indian Affairs announces the availability of $1.75 Million for the two (2) grant programs.

B. Training and Technical Assistance Grant Program

(1) Purpose of the Grant Program

The purpose of this grant program is to allow tribes to address needs and/or problems associated with governmental affairs, program administration and operations, and/or service delivery. Such grants will enable tribes to resolve present and past problems thereby permitting grantee tribes to improve conditions, advance their movement toward self-sufficiency, and to exercise a greater degree of self-determination in the operation of programs designed to benefit their membership and/or other resident Indian peoples.

(2) Eligibility Criteria

To receive a training and technical assistance grant, a tribe, including an authorized tribal organization, must be able to document and/or demonstrate its needs utilizing five (5) or more of the following identifying conditions or criteria:

(a) The current organization-wide, single audit report findings contain significant and/or material audit exceptions;

(b) Correspondence or other documentation that the tribe is not presently capable of withstanding an organization-wide single audit. This means that:

(i) The tribe's books or records are missing, incomplete or are not in reviewable condition and/or in a condition to sustain a full audit;

(ii) The tribe has not met specific audit requirements for a Federal program it operates although the program is complete and an audit is due; and/or

(iii) The tribe has been notified it cannot receive an initial or continuation grant or contract from one (1) or more agencies due to outstanding audits and/or audit exceptions;

(c) The tribe has had debt collection notices and/or notification it cannot receive a grant or contract until an approved corrective action plan which has the potential to resolve current and/or past audit exceptions is formulated and is in place;

(d) The tribe is unable to accomplish current or past grant/contract objectives and/or is not capable of preparing successful grant/contract applications;

(e) The tribe is not able to operate properly under its management systems although the systems have been approved as satisfying regulatory requirements;

(f) The tribal government has little or no control over its various program operations, thus no control over service delivery, and cost overruns, etc.;

(g) The tribal government needs help but is in such a state it is unable to indicate the type or amount of assistance needed;

(h) The tribal government is experiencing serious internal strife and the tribe is paralyzed with political factionalism which results in the deterioration of its government as well as its program or service delivery systems.

(3) Continuation Grants

In cases where a continuous grant is requested, documentation of the prior years performance is an additional requirements. A continuation grant application must document that the applicant tribe has accomplished, or can demonstrate that it has made substantial progress toward accomplishing its prior year's grant objectives in order to receive a continuation grant. Prior year quarterly and annual progress and/or accomplishment reports must be submitted with the application for a continuation grant.

To document continuing needs or problems, the applicant may furnish new Office of Management and Budget (OMB) Circular A–128 organization-wide single audit reports, OMB Circular A–123 internal control reviews, Area and/or Agency Office monitoring reports reflecting the existence of problems or poor program performance, and/or Office of the Inspector General (OIG) or General Accounting Office (GAO) reports. Further, evidence that one (1) or more Federal agencies have

initiated debt collection action against the applicant tribe and will not renew or award any new grants or contracts to the applicant tribe until the debt is cleared.

(4) Content of Application

Applications for a training and technical assistance grant must:

(a) Contain a current tribal council resolution which specifically authorizes the preparation of an application for a training and technical assistance grant.

(b) Contain a written commitment to use the training and technical assistance grant to address the needs and/or problems cited in the section B(2) of this announcement.

(c) Follow the application requirements set forth in Office of Management and Budget Circular A–102, Uniform Requirements for Assistance to State and Local Governments (The Common Rule), and as implemented within the Department of the Interior in 43 CFR part 12. Under part IV of Standard Form 424, Program Narrative Statement, applicants shall provide the following:

(i) A statement of specific needs and/or problems to be addressed under the proposed grant along with the documentation used to support the needs or problems statement; e.g., OMB Circular A–128 audit reports;

(ii) A description of how the grant funds will be used to overcome the problems or meet the needs which have been identified;

(iii) A schedule for the start and projected completion dates for actions or efforts to be taken to resolve problems or meet needs identified under the proposed grants;

(iv) A description of the personnel required, if any, to carry out grant activities and/or objectives; and provide position descriptions which include qualifications for education and experience;

(v) A line item budget, with narrative justification, to demonstrate how grant funds will be used to carry out the actions or efforts and achieve the goals and objectives of the proposed grant, and that costs associated with the grant application are reasonable, allowable and allocable to the program in terms of the cost principles found in OMB Circular A–87, Cost Principles for State and Local Governments.

(d) The applicant must indicate how other available resources such as tribal income, other Bureau grants or capacity building grants from other agencies will be committed to complement or support this effort.

(e) The applicant must make a written commitment to maintain the positive results expected from the grant.

(f) The applicant must certify that no elected tribal official will receive a salary or any other form of compensation from a grant under this announcement.

(g) If a tribe's application is prepared by an outside consultant, the application must indicate the role of the grant preparer to the tribe during the grant period; e.g., will the preparer be funded through the proceeds of the grant as a consultant, full-time employee, part-time employee, etc.

(h) The grantee must agree in its application to submit quarterly financial status and progress reports.

(i) The applicant must complete a Certification Regarding Drug-Free Workplace Requirements.

(j) No indirect cost funds shall be provided for grants under this announcement.

(5) Other Conditions

(a) Contain the vitae or résumés of project staff and/or third party technical assistance providers or, if the project staff and/or third party technical assistance providers have not been selected, a description of the qualifications and experience necessary for project staff and/or third party technical assistance providers to accomplish the tribe's grant objectives;

(b) A tribe making application for the purchase of third party technical assistance must agree to develop a plan for delivery of technical assistance which contains a schedule of activities and clearly indicates the person(s) responsible for carrying out each of the grant activities;

(c) Deviation or non-adherence to the technical assistance plan by the technical assistance provider can result in nonpayment to the technical assistance provider.

(d) The funds awarded under this announcement may be used as matching shares for any other Federal or non-Federal grant programs which contribute to the purposes for which these grants are made.

(6) Review, Rating and Approval of Applications for Training and Technical Assistance Grants

An original and two (2) copies of the training and technical assistance grant application are to be submitted to the local Agency Office. Applications submitted in response to this announcement will be received, reviewed, and rated as follows:

(a) *Application Review Process.*—(i) *Agency Office Responsibility:*

Applications shall be submitted to the appropriate Agency Superintendent for review and comment. The Superintendent upon receipt of the application shall:

(A) Acknowledge, in writing, receipt of the application within five (5) calendar days of its arrival at the Agency office.

(B) Review the application for completeness of information and to insure that the application is consistent with the conditions set forth in sections B(1) through B(5) of this announcement. Within ten (10) calendar days of its arrival in the Agency office, request any additional information which may be required to conduct a review of the application.

(C) If the application is sufficiently complete, forward it to the Area Director with comments and recommendations for approval or disapproval within fifteen (15) calendar days of its receipt.

(D) In instances where disapproval of an application is recommended, the Superintendent shall provide detailed reasons for the recommendation.

(ii) *Area Office Responsibility.* Upon receipt of the application the Area Director shall:

(A) Within fifteen (15) calendar days, conduct a review of each application for consistency with sections B(1) through B(5) of this announcement. In this review the Area Director shall utilize the comments and recommendations from the Agency Superintendent.

(B) Exception in this application review process. An application for a technical assistance grant received from a tribe experiencing internal strife may be recommended for approval based on the Area Director's judgment that the applicant tribe is making a serious effort to resolve its internal problems. Further, it must be clearly documented in the application that the tribal factions will accept third party intervention in an attempt to resolve the problems causing the internal strife.

(b) *Application Rating Process.* (i) Upon completion of the application review process the Area Director shall rate each application based on the criteria set forth in section B(1) through B(5) of this announcement.

(ii) Applications shall be rated in accordance with the following guidelines:

Criteria	Points
(A) *Need/Problem:* The applicant can furnish documentation or demonstrate it has five (5) or more of the identifying conditions or criteria listed in section B(2) of the Training and Technical Assistance Grant program.	(0–30)
(B) *Work Statement:* The application work plan describes in detail how it will meet the needs or overcome problems cited in criteria (A). The work plan also contains a schedule of activities, which if executed properly, will accomplish the goals and/or objectives of the grant	(0–30)
(C) *Applicant Capability:* The application contains the vitae or résumés of project staff and/or third party technical assistance providers or if the project staff and/or third party technical assistance providers have not been selected, a description of the qualifications and experience necessary for project staff and/or third party technical assistance providers to accomplish the grant objectives	(0–15)
(D) *Budget Justification:* The application contains a line item budget with a separate narrative explaining each cost item and how such costs are reasonable	(0–10)
(E) *Management or Self-Monitoring System:* The application indicates how the grantee will monitor progress in achieving grant objectives and how corrective action will be taken, if necessary	(0–15)

(c) *Application Approval Process.* Upon completion of the application review and rating process the Area Director shall, within fifteen (15) calendar days, initiate one of the following actions:

(i) Approve the application for funding based on the Superintendent's recommendation and the Area Office review and rating process.

(ii) Disapprove the application based on the Area Office review and rating process. Notify the applicant by explanatory letter of the decision to disapprove the application, advising the applicant of its appeal rights.

(7) Schedule for the Receipt of Training/Technical Assistance Grant Applications

Area Offices are to formally notify Agency Offices and tribes that this program exists in FY 1992, immediately upon the receipt of this announcement. Area Offices shall provide copies of the grant criteria and all other pertinent information to all Agency Offices and tribes in an Area Office's jurisdiction.

(8) Submission of Applications for Training and Technical Assistance Grants

Applications submitted in response to this announcement must be:

(a) Postmarked no later than midnight March 3, 1992, if mailed;

(b) Received in the Agency office no later than the close of business March 3, 1992, if hand delivered.

(9) Appeals

Appeals of administrative actions by the Bureau of Indian Affairs on training/technical grant applications are governed by part 2 of 25 CFR.

C. Planning Grant Program

(1) Purpose of the Grant Program

To allow tribes to assume more control over programs designed to serve tribal populations, generally diminishing Federal domination over programs serving Indians.

A planning grant may be used by a tribe to centralize or consolidate all of its administrative functions, to consolidate or integrate Federal programs serving the tribe, as well as formulate short and long-range plans for reservation resources development.

(2) Eligibility Criteria

Tribes receiving planning grants must not only be capable of developing plans, they must also be capable of successfully implementing the plans.

(a) To receive a planning grant a tribe must:

(i) Survey or inform its reservation or community population that the tribe wishes to plan, and carry out such plans as many be developed, to make significant changes in its programs and its service delivery to Indian beneficiaries;

(ii) Have no significant or material audit exceptions noted in any and all current cost audits and/or the current OMB Circular A–128 organization-wide single audit report;

(iii) Administer mostly "mature" contracts; i.e., those meeting the definition of "mature" as found in Public Law 93–638, as amended;

(iv) Have a history of operating or administering Federal programs and services in a sound manner;

(v) Have a stable tribal government as evidenced by a tribe's not having made radical, unplanned changes in program direction which have resulted in the diminishment of services to Indian beneficiaries and resulted in significant audit exceptions under criteria (ii), above;

(b) When a tribe is requesting a planning grant which encompasses activities identified as reservation resources development, the tribe must also satisfy one (1) or more of the following additional conditions:

(i) The tribe has successfully administered other developmental projects and has done so without governmental or political interference;

(ii) The tribe's plan reflects its willingness to accept guidance and assistance for the modification, if necessary, of its comprehensive development plan from subject matter experts; and/or

(iii) The tribe's plan reflects its willingness to accept monitoring and technical assistance as may be arranged by subject matter experts to ensure the best opportunity for success of the grant activity.

(3) Continuation Grants

In cases where a continuation grant is requested, documentation of the prior year's performance is an additional requirement. A continuation grant application must document that the applicant tribe has accomplished, or is able to demonstrate that it has made substantial progress toward accomplishing, its prior year's grant objectives in order to receive consideration for approval of a continuation grant. Prior year quarterly and annual progress and/or accomplishment reports must be submitted with the application for a continuation grant.

(4) Application Content

Applications for a planning grant must:

(a) Follow the application requirements set forth in Office of Management and Budget Circular A–102, Uniform Requirements for Assistance to State and Local Governments (The Common Rule), as implemented within the Department of the Interior in 43 CFR part 12. Under part IV of Standard Form 424, Program Narrative Statement, the grant application must:

(i) Contain a current tribal council resolution which specifically authorizes the preparation of an application for a planning grant;

(ii) Contain a clear statement of the goals and objectives to be achieved through the proposed grant along with the rationale to support the goals and objectives proposed;

(iii) Contain a program narrative which describes, step-by-step how and by whom the goals and objectives of the grant project will be satisfied;

(iv) Contain the vitae or résumés of project staff and/or third party technical assistance providers or, if project staff and/or third party technical assistance providers have not been selected, a description of the qualification and experience necessary for project staff

and/or third party technical assistance providers to accomplish the grant objectives; and,

(v) A line item budget, with narrative justification, to demonstrate that costs associated with the grant application are reasonable, allowable and allocable to the program in terms of the cost principles found in OMB Circular A–87, Cost Principles for State and Local Governments.

(b) Contain a schedule for the start and projected completion dates for actions or efforts to be taken to meet the goals and objectives identified under the proposed grant.

(c) A description of the personnel required, if any, to carry out grant activities and/or objectives and provide position descriptions which include qualifications for education and experience.

(d) A detailed description of how grant funds will be used, if applicable, in coordination with, or to supplement, other Bureau grants and/or contracts or other capacity building grants from other agencies.

(e) The applicant must certify that no elected tribal official will receive a salary or any other form of compensation from a grant under this announcement.

(f) If a tribe's application is prepared by an outside consultant, the application must indicate the role of the grant preparer to the tribe during the grant period; e.g., will the preparer be funded through the proceeds of the grant as a consultant, full-time employee, part-time employee, etc.

(g) The grantee must agree in its application to submit quarterly financial status and progress reports.

(h) Progress and accomplishment reports for a prior year grant must be submitted with an application for a continuation grant which will be used for rating of the continuation grant applications, appropriations permitting, since subsequent grants will include performance as a criteria for grant renewal.

(i) The applicant must complete a Certification Regarding Drug-Free Workplace Requirements.

(j) No indirect cost funds shall be provided for grants under this announcement.

(5) Other Conditions

(a) A tribe's application for the purpose of planning must clearly outline a monitoring schedule for planning activities and clearly indicate the person(s) responsible for carrying out each of the grant activities;

(b) Deviation or non-adherence to the planning schedule by a technical assistance provider can result in nonpayment to the provider;

(c) The funds awarded under this announcement may be used as matching shares for any other Federal or non-Federal grant programs which contribute to the purposes for which these grants are made.

(6) Review, Rating and Approval of Application for Planning Grants

An original and two (2) copies of the planning grant application are to be submitted to the local Agency Office. Applications submitted in response to this announcement will be received, reviewed, and rated as follows:

(a) *Application Review Process.*—(i) *Agency Office Responsibility:* Applications shall be submitted to the appropriate Agency Superintendent for review to determine if the application is consistent with the conditions set forth in sections C(1) through C(5) of this announcement. The Superintendent upon receipt of the application shall:

(A) Acknowledge, in writing, receipt of the application within five (5) calendar days of its arrival at the Agency office.

(B) Review the application for completeness of information and, within ten (10) calendar days of its arrival at the Agency office, request any additional information which may be required to conduct a review of the application.

(C) If the application is sufficiently complete, forward it to the Area Director with comments and recommendations for approval or disapproval within fifteen (15) calendar days of its receipt.

(D) In instances where disapproval of an application is recommended, the Superintendent shall provide detailed reasons for the recommendation.

(ii) *Area Office Responsibility.* Upon receipt of the application the Area Director shall within fifteen (15) calendar days, conduct a review of each application for consistency with sections C(1) through C(5) of this announcement. In this review the Area Director shall utilize the comments and recommendations from the Agency Superintendent.

(b) *Application Rating Process.* (i) Upon completion of the application review process the Area Director shall rate each application based on the criteria set forth in sections C(1) through C(5) of this announcement.

(ii) Applicants shall be rated in accordance with the following guidelines:

Criteria	Points
(A) *Eligibility:* The applicant can document or demonstrate it meets the eligibility criteria in section C.2(a) and, if the application encompasses activities identified as reservation resources development, at least one of the additional criteria in section C.2(b) of the Planning Grant program	(0–30)
(B) *Work Statement:* The application work plan describes in detail how it will achieve the goals and objectives specified in the proposed Planning Grant. The work plan also contains a schedule of activities, which if executed properly, will accomplish the objectives and/or goals of the proposed Planning Grant	(0–30)
(C) *Applicant Capability:* The application contains the vitae or résumés of project staff and/or third party technical assistance providers or, if project staff and/or third party technical assistance providers have not been selected, a description of the qualifications and experience of project staff and/or third party technical assistance providers necessary to accomplish the grant objectives	(0–15)
(D) *Budget Justification:* The application contains a line item budget with a separate narrative explaining each cost item and how such costs are reasonable	(0–10)
(E) *Management or Self-Monitoring System:* The application indicates how the grantee will monitor progress in achieving grant objectives and how corrective action will be taken, if necessary	(0–15)

(c) *Application Approval Process.* Upon completion of the application review and rating process the Area Director shall, within fifteen (15) calendar days, initiate one of the following actions:

(i) Approve the application for funding based on the Superintendent's recommendation and the Area Office review and rating process.

(ii) Disapprove the application based on the Area Office review and rating process. Notify the applicant by explanatory letter of the decision to disapprove the application, advising the applicant of its appeal rights.

(7) Schedule for the Receipt of Planning Grant Applications.

Area Officers are to formally notify Agency Offices and tribes that this program exists in FY 1992, immediately upon the receipt of this announcement. Area Offices shall provide copies of the grant criteria and all other pertinent information to all Agency Offices and tribes in an Area Office's jurisdiction.

(8) Submission of Allocations for Planning Grants

Applications submitted in response to this announcement must be:

(a) Postmarked no later than midnight March 3, 1992, if mailed;

(b) Received in the Agency office no later than the close of business March 3, 1992, if hand delivered.

(9) Appeals

Appeals of administrative actions by the Bureau of Indian Affairs on planning grant applicants are governed by part 2 of 25 CFR.

Ronal Eden,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 91-31290 Filed 12-31-91; 8:45 am]

BILLING CODE 4310-02-M

VOL 57 ISS 1 JA 2 1992 UMI

federal register

Thursday
January 2, 1992

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Alteration of the Dallas-Fort Worth Terminal Control Area and Revocation of the Dallas Love Field Airport Airport Radar Service Area, TX; Final Rule

VOL 57 ISS 1 JA 2 1992 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWA-14]

Alteration of the Dallas-Fort Worth Terminal Control Area and Revocation of the Dallas Love Field Airport Airport Radar Service Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Dallas-Fort Worth, TX, Terminal Control Area (TCA) and revokes the Airport Radar Service Area (ARSA) at Dallas Love Field, TX. This amendment will raise the upper limits of the TCA to 10,000 feet mean sea level (MSL) to enable air traffic control (ATC) to provide terminal ATC service to arriving and departing turbojet aircraft in a TCA environment throughout transition to and from the en route structure. Additionally, this amendment will extend the lateral limits of the TCA from 20 to 30 nautical miles (NM) from the airport, to provide an area wherein ATC can provide TCA control services throughout critical maneuvering phases of flight operations in the terminal area. This action will expand the radius of the inner area to 10 miles and include an extension encompassing Dallas Love Field, enhance air traffic procedures, and simplify visual flight rules (VFR) transient operations outside TCA airspace.

EFFECTIVE DATE: 0901 u.t.c., January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the types of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, a military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under VFR and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 29 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

User Group Participation

The modification to the TCA in this final rule are the product of discussions with a broad representation of the aviation community and substantial public participation. In conjunction with this action, the FAA will continue to cooperate with local user groups to ensure that the TCA is effective for all users by identifying any adjustments or modifications that appear necessary. Through joint FAA and user cooperation, any problems that arise can then be identified and corrective action taken when necessary.

Initially, informal airspace meetings were held in the Dallas-Fort Worth area on August 4, 9, and 11, 1988, to permit local aviation interests and airspace users an opportunity to present input on the alteration of the Dallas-Fort Worth TCA. An additional opportunity for public participation was provided by a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on April 3, 1991 (56 FR 13712).

Discussion of Comments

The FAA received 55 comments in response to the NPRM. The FAA considered these comments as well as the comments received at the various meetings and has amended the final TCA design as contained in this rule. The final TCA design contained herein promotes the safe and efficient use of airspace while satisfying ATC and user requirements.

Ten comments addressed areas that were not relevant to this rulemaking action and, therefore, will not be discussed. Those areas included controller staffing, pilot education, waivers, and rule enforcement.

Thirteen commenters opposed establishing the ceiling of the TCA at 10,000 feet MSL and extending the radius of the lateral boundary from 20 to 30 miles from the DFW VORTAC. Conversely, the Air Transport Association suggested raising the ceiling to 12,500 feet MSL and extending the lateral boundaries to 30 miles in all areas of the proposed TCA.

In designing the Dallas-Fort Worth TCA alteration, the FAA determined the airspace needed to contain the traffic using updated procedures which will, in turn, enhance the flow of traffic in the terminal area. Also, the TCA alteration was designed to handle existing and projected increases in traffic and complexity in the Dallas-Fort Worth area. A ceiling of 10,000 feet MSL combined with the Mode C requirement of § 91.215 of the Federal Aviation Regulations (FAR) (14 CFR 91.215) will provide sufficient airspace to contain traffic operating into and departing the Dallas-Fort Worth area while providing an environment where nonparticipating overflights can operate congruently with a high degree of safety. The lateral boundaries of the TCA are established at 30 miles to allow sufficient airspace for all IFR operations requiring TCA protection while providing as much airspace as possible for VFR operation. The configuration of this area is designed to allow sufficient airspace for departure while allowing arriving aircraft to be vectored and sequenced to the final approach courses. Additionally, during the 1989 informal airspace meetings, users requested that the TCA include airspace to contain turboprop commuter operations. This airspace is designed to accommodate that request.

One commenter suggested that the floor of the TCA east of Dallas-Fort Worth between the 20- and 30-mile boundary (proposed Area K) be 5,000 feet MSL and that Area K be combined with Area L west of Dallas-Fort Worth.

The airspace configuration in the proposed Area K was designed to allow sufficient airspace for all IFR operations requiring TCA protection and to provide as much airspace as possible for VFR operations. This design allows sufficient airspace for departing aircraft while allowing arriving aircraft to be vectored and sequenced to the final approach courses. Additionally, this airspace will contain turbo prop commuter operations.

Eleven commenters recommended that the FAA raise the floor of Area B from 1,800 feet MSL as proposed to 2,000

feet MSL, combine Areas B and C, raise the floor of Areas F and J from 2,500 feet MSL as proposed to 3,000 feet MSL, and combine Areas F, J, and G. The FAA concurs with most of these recommendations and, in the final rule, has established the floor of Area B at 2,000 feet MSL and has combined Areas B and C; the final rule also establishes the floor of Area F at 3,000 feet MSL and combines Areas F and G. The floor of Area J remains 2,500 feet MSL. These actions were taken to allow adequate airspace for VFR operations conducted at uncontrolled airports south and southwest of Dallas-Fort Worth and to allow additional airspace for VFR practice operations at Redbird Airport.

The Air Line Pilots Association (ALPA) concurred with the proposed alteration to the TCA but recommended that the FAA lower the floor of Area L from 5,000 feet MSL to 4,500 feet MSL to establish a 500-foot buffer between the TCA and nonparticipating aircraft.

The TCA is designed to include only that airspace necessary to contain the operations of participating aircraft. While the idea of establishing buffers below the TCA appears advantageous, it would eliminate airspace necessary to allow nonparticipating VFR aircraft to circumnavigate the TCA at prescribed VFR altitudes. Therefore, ALPA's recommendation was not adopted.

The Dallas Department of Aviation was concerned that the extension of the TCA surface area to include Dallas Love Field would have an adverse impact on operations at a proposed heliport in the Dallas business district; the heliport is scheduled to be completed in January 1994. The Department of Aviation recommended that the 15-mile DME arc from the Dallas-Fort Worth 079° radial to the Dallas-Fort Worth 121° radial be reduced to a 12-mile DME arc. As an additional alternative, the agency recommended changing the southern boundary of Area A from the Dallas-Forth Worth 121° radial to the Dallas-Forth Worth 105° radial.

In considering the final design of the TCA, the FAA did not incorporate either suggestion because those changes may adversely affect the arrival/departure activities at Dallas Love Field. To help remedy the concerns of the Dallas Department of Aviation, the FAA will explore alternate procedures leading toward a mutual agreement by the completion date of the proposed heliport.

While most comments favored incorporating Dallas Love Field into the surface area of the TCA, six commenters and a helicopter pilot for the Dallas Police Department objected. These seven commenters expressed considerable concern about immediate access into the TCA by police helicopter, care flight helicopters, and aircraft transitioning in the vicinity of Dallas Love Field.

Currently, Dallas Love Field controllers provide airport radar service area (ARSA) service to the above-mentioned aircraft. This type of service will continue to be provided by Dallas Love Field Terminal Radar Approach Control, Tower Cab, obviating the problems these commenters envisioned as a result of incorporating Love Field in the TCA's surface area.

Nine commenters objected to lowering the TCA floor around Fort Worth Meacham (FTW) and Arlington (F54) Airports. These commenters stated that the lowered floors would leave insufficient airspace to conduct student pilot training in the vicinity of these airports and would eliminate airspace needed for VFR overflight.

The FAA agrees with these commenters and, in the airspace surrounding FTW, will raise the floor of the TCA from 3,500 feet MSL as proposed to 4,000 feet MSL; in the airspace surrounding F–54, the floor of the TCA will be raised from the proposed 2,500 feet MSL to 3,000 feet MSL. This change will allow more airspace for nonparticipating aircraft to operate in the vicinity of these airports without unduly restricting operations at Dallas-Fort Worth.

Three commenters suggested raising the floor of the TCA in the vicinity of Addison Airport (ADS) to accommodate inbound traffic especially when ADS is landing and departing aircraft on Runway 33. These commenters pointed out "an apparent lack of adequate maneuvering airspace" for the Runway 33 traffic pattern at ADS. The FAA did not raise the floor of the TCA in the vicinity of ADS because this airspace is necessary to contain inbound aircraft maneuvering to the Dallas Love Field and Dallas-Fort Worth Airports. Dallas-Fort Worth Terminal Radar Approach Control Facility (TRACON) recognizes the present dilemma which occurs during periods of busy traffic at ADS when a Runway 33 operation is in effect. Dallas-Fort Worth TRACON will, through appropriate coordination with ADS Tower, develop procedures to be incorporated in a subsequent letter of agreement to accommodate this operation when traffic deems it appropriate.

Several commenters, including the owner of the Northwest Regional Airport, stated that the proposed changes in Area D appeared to overlap that airport. They believe that, if promulgated as proposed, these changes could conflict with the airport traffic pattern and VFR overflights.

The actual western TCA boundary in the vicinity of Northwest Regional Airport, as described in the NPRM, is approximately 1 mile east of the airport and would not overlap it as depicted in the NPRM. However, the FAA will reduce the northern boundary of the proposed Area D from a 15–NM to a 13–NM radius of the Dallas-Forth Worth very high frequency omnidirectional radio range and tactical air navigational aid (VORTAC) to accommodate VFR activity in this area.

The Fort Worth Division of General Dynamics and Bell Helicopter Textron, Inc., objected to the proposed alteration because it would have an adverse effect on each organization's flight test operations. General Dynamics requested a cutout in the vicinity of Carswell Air Force Base to continue its current operation of conducting spiraling climbs to 15,000 feet MSL over the base. Bell Helicopter requested that it be allowed to maintain its current operation of rapid ascents and descents and other maneuvers requiring unrestricted use of the airspace. Both organizations were concerned about abnormalities and ensuing emergency procedures which might occur during testing.

General Dynamics' and Bell Helicopter's requests were not compatible with the present design and purpose of the TCA. The FAA will, however, work with each organization and attempt to develop procedures that will expedite directing these flights to a suitable area without derogation of safety or disruption to other users within the TCA.

Four commenters opposed the alteration to the TCA because it would adversely affect glider operations at Aero County Airport and its associated "aerobatics box." They suggested a cutout for Aero Country Airport with a floor of 6,000 feet MSL.

As previously stated, the airspace in this region of the TCA is necessary to segregate the various flows of turbojet arrivals and departures in the Dallas-Fort Worth area from conventional and turboprop aircraft which are generally kept at lower altitudes. Containing turboprop operations within the TCA was suggested during the informal airspace meetings; this suggestion has been incorporated into the final rule. The cutout for Aero Country Airport could not be accommodated in the final design of the TCA.

One commenter noted that gliders or those aircraft certified without an electrical system can operate within the

30-mile Mode C veil without Mode C avionics.

The FAA notes that pilots of these types of aircraft can fly beneath the TCA floor and thereby avoid the Mode C transponder requirement.

A considerable number of standardized form letters objected to the Mode C veil associated with the TCA. These letters suggested the creation of "effective hours restrictions" which, the commenters contended, would afford maximum protection to air carriers during peak periods, while still allowing GA aircraft low-altitude access to satellite facilities.

The FAA recognizes that the establishment of a TCA and the effect of the Mode C rule are related; however, the TCA design and the Mode C requirement are separate matters. The Mode C requirement extends to a radius of 30 miles from the TCA primary airport regardless of the design of TCA airspace.

The primary concern in any proposed TCA action is to provide the highest degree of safety while preserving the most efficient use of the available terminal airspace. The creation of "effective hours restrictions" would not satisfy this intent. This concept would not provide the safest environment for both IFR and VFR aircraft and could cause considerable confusion to nonparticipating aircraft.

The Rule

This amendment to part 71 of the FAR modifies the TCA at Dallas-Fort Worth International Airport, TX, and revokes the ARSA at Dallas Love Field Airport, TX. This amendment raises the upper limits of the TCA to 10,000 feet MSL to enable ATC to provide terminal ATC service to arriving and departing turbojet aircraft in a TCA environment throughout transition to and from the en route structure. Additionally, this amendment will extend the lateral limits of the TCA from 20 to 30 nautical miles from the airport to provide an area wherein ATC can provide TCA control and services throughout critical maneuvering phases of flight operations in the terminal area. The action will expand the radius of the inner area to 10 miles and include an extension encompassing Dallas Love Field, enhance air traffic procedures, and simplify VFR transient operations outside TCA airspace. The FAA has determined that modifying the TCA at Dallas-Fort Worth International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in the terminal area.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA. This summary and the full evaluation quantify estimates of the costs and benefits to the private sector, consumers, and Federal, State, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or to modify existing regulations only if potential benefits to society outweigh potential costs for each regulatory change. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to have an annual impact on the economy of $100 million or more, result in a major increase in consumer costs, have a significant adverse effect on competition, or be highly controversial.

The FAA has determined that this proposal is not major as defined in the Executive Order. Therefore, a full regulatory analysis that includes the identification and evaluation of cost-reducing alternatives to the proposal has not been prepared. Instead, the agency has prepared a more concise regulatory evaluation that analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. The complete regulatory evaluation, which contains more detailed economic information than this summary provides, is available in the docket.

Costs

The Dallas-Fort Worth TCA changes will not require any additional personnel or equipment. Current staffing levels at the Dallas-Fort Worth TRACON will absorb any additional workload. Revised Dallas-Fort Worth sectional and terminal area charts will take effect simultaneously with the TCA revision. The Dallas-Fort Worth TCA change will not impose any additional cost burden on pilots. In the NPRM, the FAA estimated costs of $2,250 to conduct user briefings to explain proposed changes in the TCA. Since the publication of the NPRM, those briefings have been held. Because those costs have already been incurred, they are no longer relevant for consideration in the final rule.

Benefits

The primary objective of the rule is to enhance aviation safety in the congested airspace overlying the Dallas-Fort Worth metropolitan area. In addition, the rule will improve ATC service in the TCA. This rule also will facilitate the transition between the terminal and en route environments and aircraft separation.

The risk of a midair collision at Dallas-Fort Worth and Dallas Love Field will increase as traffic density there increases. However, stricter separation and control measures as applied within a TCA will reduce this risk. The FAA also expects that annexing the Dallas Love Field ARSA into the Dallas-Fort Worth TCA will further reduce the chance of a midair collision in the Dallas-Fort Worth airspace.

Preventing a possible midair collision between two aircraft in the next decade would generate benefits to the public. As a benchmark for comparing expected safety benefits of rulemaking, the FAA uses a value of $1,500,000 for each fatality and $640,000 for a serious accident. The average total loss of an aircraft equals $82,900 and the average cost to repair a severely damaged aircraft is estimated at $14,600. Most midair collisions occur between GA aircraft and average 25 fatalities and 2 serious injuries every 10 collisions. The benefit from the avoidance of one midair collision is estimated at $4 million.

Comparison

Changes mandated by this rule will impose only negligible, if any, costs on the public or the FAA. These negligible costs consist of additional fuel consumption by GA operations who choose to circumnavigate the expanded TCA. These negligible costs are greatly outweighed by the potential safety benefits of this rule that stem from the reduced risk of a midair collision in airspace annexed into the Dallas-Fort Worth TCA. However, the maximum benefits to be derived from this rule are dependent on the usage of Mode C transponder and TCAS by aircraft within the TCA.

Ordinarily, the benefit of a reduction in the risk of midair collisions from redesigning a TCA would be attributed entirely to the redesign. However, an indeterminate amount of the benefits has to be attributed to the interaction of the Dallas-Fort Worth TCA with the Mode C Rule, which, in turn, interacts with the TCAS Rule. The benefits of the redesigned TCA, as well as other designated airspace actions that require Mode C transponder, cannot be

separated from the benefits of the Mode C and TCAS Rules. The TCA program combined with the Mode C and TCAS Rules offers potential national benefits totaling $2.1 billion. Hence, the FAA considers this TCA modification to have benefits that exceed its cost.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entitles are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities that the rule might affect are unscheduled operators of aircraft for hire that own nine or fewer aircraft. These unscheduled air taxi operators would be affected only if they were not able to operate under IFR conditions. This analysis assumes that all unscheduled air taxi operators are already equipped to fly under IFR conditions. Since these operators fly regularly into airports with established radar approach control services, the FAA believes that all unscheduled air taxi operators are already equipped to fly under IFR conditions. Thus, this rule will not have a significant economic impact on any of them.

International Trade Impact Assesment

The rule will have no effect on the sale of foreign aviation products or services in the United States. Nor will the rule have an effect on the sale of U.S. products or services in foreign countries. This rule will not impose costs on aircraft operators or U.S. or foreign aircraft manufacturers.

Federalism Implications

The regulation herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation is not major under Executive Order 12291 and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this regulation will not have a significant economic impact, either positive or negative, on a substantial number of small entities.

The FAA has determined that the users of the Dallas-Fort Forth International Airport, the Dallas Love Field Airport and the surrounding area will benefit from the implementation of the TCA. In order to maximize the benefit at the earliest time, the FAA will have the TCA charted on the next available charting date, which is January 9, 1992, and is making the implementation of the TCA effective on that charting date. Therefore, due to the need to implement the TCA at the earliest possible time, the FAA finds good cause for making this amendment effective in less than 30 days from the date of the publication of this amendment.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas, Airport radar service areas.

The Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71-DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.401(b) [Amended]

2. Section 71.401(b) is amended by revising the Dallas-Fort Worth, TX, description to read as follows:

Dallas-Fort Worth, TX [Revised]
Primary Airport
Dallas-Fort Worth Airport (lat. 32°53'47"N., long. 97°02'28"W.).
Dallas-Fort Worth VORTAC (lat. 32°51'57"N., long. 97°01'40"W.).
Boundaries.

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at the intersection of the Dallas-Fort Worth VORTAC (DFW) 10-mile arc and the LBJ Freeway (Highway 635), thence eastbound on the LBJ Freeway until the DFW VORTAC 15-mile arc, extending clockwise on the DFW VORTAC 15-mile arc until the DFW 129° radial 15-mile DME fix, thence northwest on the DFW 129° radial until the DFW 129° radial 10-mile DME fix, extending clockwise on the DFW 10-mile arc until the DFW 169° radial 10-mile DME fix, thence north on the DFW 169° radial until the DFW 169° radial 7-mile DME fix, extending clockwise on the DFW 7-mile arc until the DFW 310° radial 7-mile DME fix, thence northwest on the DFW 310° radial until the DFW 310° radial 10-mile DME fix, and extending clockwise on the DFW 10-mile arc to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at the DFW 310° radial 10-mile DME fix, thence southeast on the DFW 310° radial until the DFW 310° radial 7-mile DME fix, extending counterclockwise on the DFW 7-mile arc until the DFW 169° radial 7-mile DME fix, thence southwest on the DFW 169° radial until the DFW 169° radial 10-mile DME fix, and extending clockwise on the 10-mile arc to the point of beginning.

Area C. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at the DFW 300° radial 13-mile DME fix, thence southeast on the DFW 300° radial until the DFW 300° radial 10-mile DME fix, extending clockwise on the 10-mile arc until the DFW 023° radial 10-mile DME fix, thence northeast on the DFW 023° radial until the DFW 023° radial 13-mile DME fix, and extending counterclockwise on the DFW 13-mile arc to the point of beginning.

Area D. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the DFW 300° radial 10-mile DME fix, extending counterclockwise on the DFW 10-mile arc to the DFW 169° radial 10-mile DME fix, thence southwest on the DFW 169° radial until Interstate Highway 20 (I–20), extending east along I–20 until the DFW 158° radial 13-mile DME fix, thence counterclockwise along the 13-mile arc until the DFW 129° radial, thence southeast along the DFW 129° radial until the 20-mile arc, extending clockwise on the DFW 20-mile arc until the DFW 217° radial, thence northeast on the DFW 217° radial until the DFW 217° radial 13-mile DME fix, extending clockwise along the 13-mile arc to the DFW 300° radial, and thence southeast on the DFW 300° radial to the point of beginning.

Area E. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL beginning at the DFW 169° radial 10-mile DME fix, extending southeast on the DFW 169° radial until I–20, thence east along I–20 until the DFW 158° radial 13-mile DME fix, extending counterclockwise on the DFW 13-mile arc until the DFW 129° radial 13-mile DME fix, thence northwest on the DFW 129° radial until

the DFW 129° radial 10-mile DME fix, and extending clockwise on the DFW 10-mile arc to the point of beginning.

Area F. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL beginning at the DFW 217° radial 20-mile DME fix, extending clockwise on the DFW 20-mile arc until the DFW 300° radial, thence southeast on the DFW 300° radial until intercepting the DFW 13-mile arc, thence counterclockwise on the 13-mile arc to the DFW 217° radial, and extending southwest on the 217° radial to the point of beginning.

Area G. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the DFW 300° radial 13-mile DME fix, thence northwest on the DFW 300° radial until the DFW 300° radial 20-mile DME fix, extending clockwise on the DFW 20-mile arc until the LBJ Freeway, extending northwest along the LBJ Freeway until intersecting the DFW 10-mile arc, extending counterclockwise on the DFW 10-mile arc until the DFW 023° radial 10-mile DME fix, thence north on the DFW 023° radial until the DFW 023° radial 13-mile DME fix, and extending counterclockwise on the DFW 13-mile arc to the point of beginning.

Area H. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL beginning at the intersection of the 15-mile arc and the LBJ Freeway, extending clockwise on the DFW 15-mile arc until the DFW 129° radial 15-mile DME fix, thence southeast on the DFW 129° radial until the DFW 129° radial 20-mile DME fix, extending counterclockwise on the DFW 20-mile arc until the LBJ Freeway, and extending northwest along the LBJ Freeway to the point of beginning.

Area I. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL beginning at the DFW 329° radial 30-mile DME fix, extending clockwise on the DFW 30-mile arc until the DFW 336° radial 30-mile DME fix, thence east to the DFW 020° radial 30-mile DME fix, extending clockwise on the DFW 30-mile arc until the DFW 162° radial 30-mile DME fix, thence west to the DFW 196° radial 30-mile DME fix, extending clockwise on the DFW 30-mile arc until the DFW 217° radial 30-mile DME fix, thence northeast on the DFW 217° radial until the DFW 217° radial 20-mile DME fix, extending counterclockwise on the DFW 20-mile arc until the DFW 329° radial 20-mile DME fix, and thence northwest on the DFW 329° radial to the point of beginning.

Area J That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL beginning at the DFW 217° radial 30-mile DME fix, extending clockwise on the DFW 30-mile arc until the DFW 329° radial 30-mile DME fix, thence southeast to the DFW 329° radial until the DFW 329° radial 20-mile DME fix, extending counterclockwise on the DFW 20-mile arc until the DFW 217° radial 20-mile DME fix, and thence southwest on the DFW 217° radial to the point of beginning.

§ 71.501 [Amended]

3. Section 71.501 is amended by removing the Dallas Love Field, TX, description as follows:

Dallas Love Field, TX [Removed]

Issued in Washington, DC, on December 27 1991

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-31324 Filed 12-31-91, 8:45 am]

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DALLAS -FORT WORTH , TX

TERMINAL CONTROL AREA

FIELD ELEVATION - 603 FEET

(NOT TO BE USED FOR NAVIGATION)

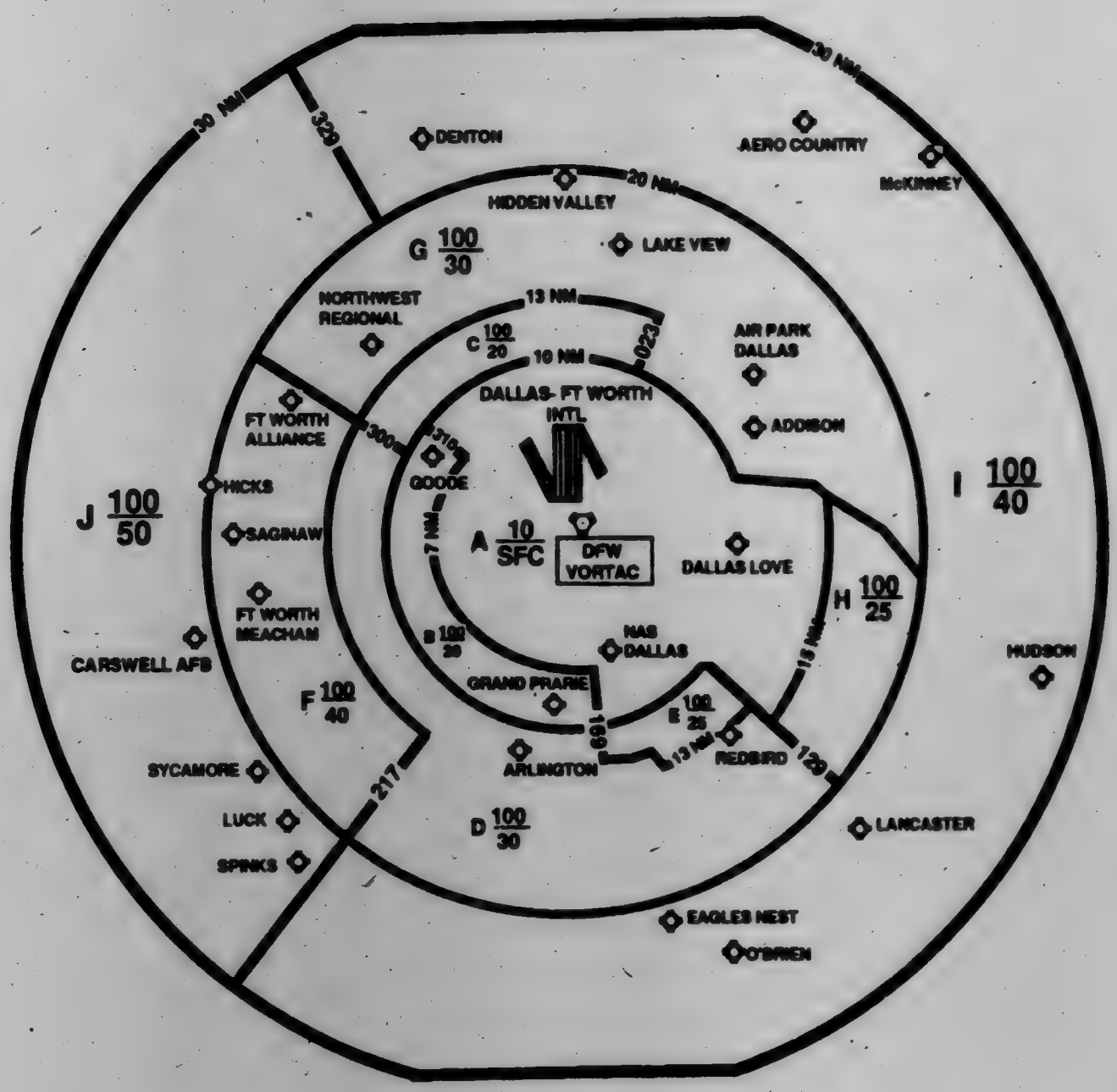

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ATP-220

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CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992.

A cumulative list of Public Laws for the first session will be published in Part II of the Federal Register on January 2, 1992.

The List of Public Laws may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641.

The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws" from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

Last List December 26, 1991

CFR ISSUANCES 1992
Complete Listing of 1991 Editions and Projected January, 1992 Editions

This list sets out the CFR issuances for the 1991 editions and projects the publication plans for the **January, 1992** quarter. A projected schedule that will include the **April, 1992** quarter will appear in the first **Federal Register** issue of April.

For pricing information on available 1991–1992 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1992

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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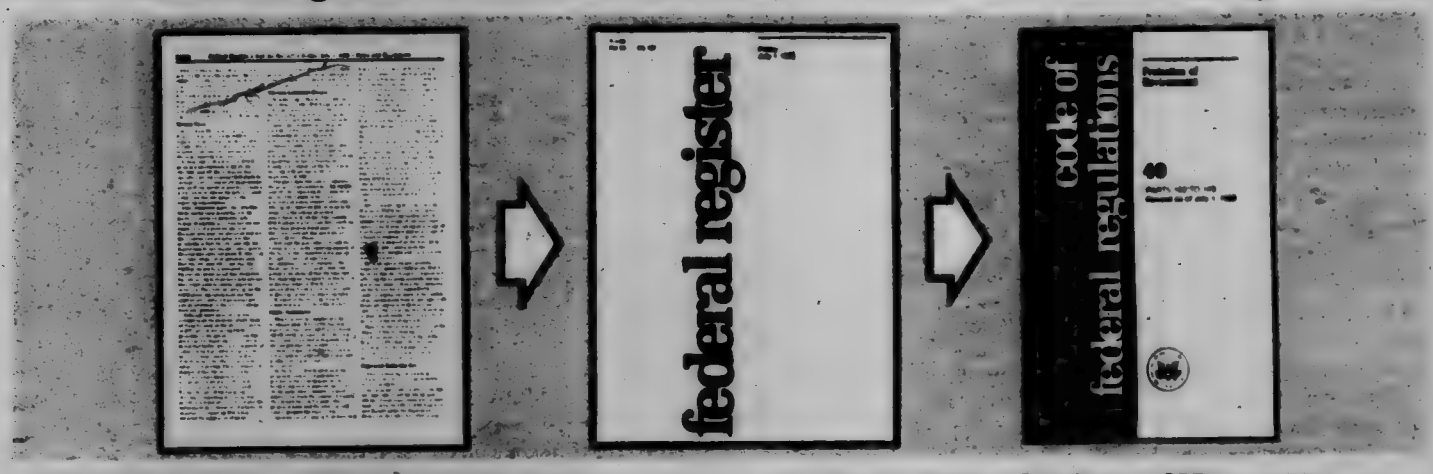

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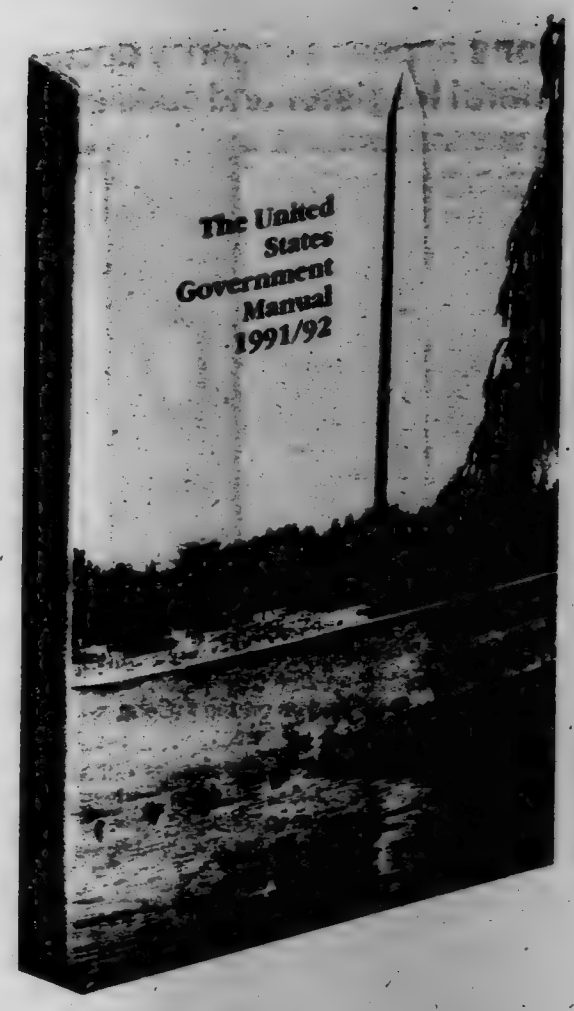

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Rules and Regulations

Federal Register
Vol. 57, No. 2
Friday, January 3, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 458

[Docket No. 0119s]

Special California Citrus Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on Wednesday, July 3, 1991, at 56 FR 30489. The interim rule provided a special three-year program of crop insurance protection against loss of California citrus production.

DATES: This final rule is effective on January 3, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (703) 235–1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1996.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, July 3, 1991, FCIC published an interim rule in the **Federal Register** at 56 FR 30489. The interim rule issued a new part 458 in chapter IV of title 7 of the Code of Federal Regulations, known as the Special California Crop Insurance Regulations (7 CFR part 458), effective for the 1992 through 1994 crop years.

Written comments were solicited for 60 days after publication in the **Federal Register**, and the rule was scheduled so that any amendment made necessary by public comment could be published in the **Federal Register** as quickly as possible. No comments were received, therefore, the interim rule published at 56 FR 30489 is hereby adopted as a final rule without change.

List of Subjects in 7 CFR Part 458

Crop insurance; Special California citrus crop insurance.

Final Rule

Accordingly, the interim rule adding part 458 which was published in the **Federal Register** on Wednesday, July 3, 1991, at 56 FR 30489, is hereby adopted as a final rule.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC on November 25, 1991.

James E. Cason,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 92–15 Filed 1–2–92; 8:45 am]
BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Parts 1001, 1004, and 1124

[Docket No. AO–14–A65, etc; DA–91–013]

Milk in the New England, Middle Atlantic and Pacific Northwest Marketing Areas; Interim Amendment of Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim amendment of rules.

SUMMARY: This action changes on an interim basis the classification and pricing of skim milk used to produce nonfat dry milk (NFDM) under the New England, Middle Atlantic and Pacific Northwest Federal milk orders. As amended, the price for milk used to make NFDM would be established from market prices for such product rather than the Minnesota-Wisconsin price, which primarily reflects the value of milk used to make cheese. More than the required number of producers in each of the marketing areas affected have approved the issuance of the interim amendments.

EFFECTIVE DATE: Upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a

substantial number of small entities. The interim amendments will facilitate the orderly disposition of the reserve milk supplies associated with these three markets.

Prior documents in this proceeding:

Notice of Hearing: Issued July 16, 1991; published July 22, 1991 (56 FR 33395).

Tentative Decision: Issued December 10, 1991; published December 19, 1991 (56 FR 65801) and corrected December 23, 1991 (56 FR 66482).

Revised Tentative Decision: Issued December 24, 1991; to be published January 2, 1992.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings on the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended on an interim basis, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make these interim amendments to the New England, Middle Atlantic and Pacific Northwest orders effective upon publication of this document in the **Federal Register**. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing areas.

The interim amendments to these orders are known to handlers. The tentative decisions containing the proposed amendments to these orders were issued in December 1991.

The changes effected by these interim amendments will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective upon publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**.

(Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of these interim amendments to each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders, and

(3) The issuance of these interim amendments to each of the specified orders is approved by more than the required number of producers who during the determined representative period were engaged in the production of milk for sale in each of the respective marketing areas.

List of Subjects in 7 CFR Parts 1001, 1004 and 1124

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the New England, Middle Atlantic and Pacific Northwest marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended on an interim basis, as follows:

The authority citation for 7 CFR parts 1001, 1004 and 1124 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

1. Section 1001.40 is amended by revising paragraph (c)(1)(iii) and adding a new paragraph (d) to read as follows:

§ 1001.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk.

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1001.43 is amended by adding a new paragraph (f) to read as follows:

§ 1001.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1001.50 is amended by adding a new paragraph (d) to read as follows:

§ 1001.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States Extra Grade nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 8.5, plus the butterfat differential times 35 and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

4. Section 1001.54, Announcement of class prices, is revised to read as follows:

§ 1001.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the

following month computed pursuant to § 1001.50(b).

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. Section 1004.40 is amended by revising paragraph (c)(1)(iii) and adding a new paragraph (d) to read as follows:

§ 1004.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk.

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1004.43 is amended by adding a new paragraph (d) to read as follows:

§ 1004.43 General classification rules.

* * * * *

(d) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.

3. Section 1004.50 is amended by revising the section heading and adding a new paragraph (g) to read as follows:

§ 1004.50 Class and component prices.

* * * * *

(g) Class *III–A price.* The Class III–A price for the month shall be the average Central States Extra Grade nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 8.5, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

4. Section 1004.53 is amended by revising paragraph (a)(2) to read as follows:

§ 1004.53 Announcement of class prices and component prices.

* * * * *

(a) * * *

(2) The Class III and Class III–A prices for the preceding month; and

* * * * *

5. Section 1004.60 is amended by adding a new paragraph (k) to read as follows:

§ 1004.60 Handler's value of milk for computing uniform prices.

* * * * *

(k) For producer milk in Class III–A, add or subtract as appropriate an amount per hundredweight that the Class III–A price is more or less, respectively, than the Class III price.

6. Amend § 1004.71(b)(2) by changing the reference "§ 1004.62" to "§ 1004.61".

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.40 is amended by revising paragraph (c)(1)(iii) and adding a new paragraph (d) to read as follows:

§ 1124.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk.

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1124.43 is amended by adding a new paragraph (e) to read as follows:

§ 1124.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.

3. Section 1124.50 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 1124.50 Class prices.

* * * * *

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western Grade A nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times 8.5, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1124.50(b).

Signed at Washington, DC, on: December 27, 1991.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92–106 Filed 1–2–92; 8:45 am]

BILLING CODE 3410–02–M

Foreign Agricultural Service

7 CFR Part 1530

Sugar To Be Re-exported in Sugar Containing Products: Correction

AGENCY: Foreign Agricultural Service (FAS), USDA.

ACTION: Correction to final regulation.

SUMMARY: FAS is correcting two minor errors which appeared in the final rule published in the **Federal Register** on July 8, 1991 (56 FR 30857), which amended 7 CFR part 1530, subpart B, for Sugar to be Re-exported in Sugar Containing Products.

EFFECTIVE DATE: August 7, 1991.

FOR FURTHER INFORMATION CONTACT: Cleveland H. Marsh, Team Leader, Import Policies & Trade Analysis Division, Foreign Agricultural Service, room 5531–South Building, U.S. Department of Agriculture, Washington, DC 20250–1000; Telephone (202) 720–2916.

SUPPLEMENTARY INFORMATION:

Correction of Publication

The publication on July 8, 1991 of the final regulation which was the subject of FR Doc. 91–16133, is corrected as follows:

§ 1530.205 [Corrected]

1. On page 30865, first column, in § 1530.205, the section heading "§ 1530.205 Proof of export." is corrected to read "§ 1530.205 Proof of export and notice of drawback claims.".

§ 1530.206 [Corrected]

2. On page 30865, second column, in amendatory instruction 12, in line two, "paragraph (a)" is corrected to read "paragraph (b)".

Signed at Washington, D.C. on December 27, 1991.

Philip Mackie,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 92–9 Filed 1–2–92; 8:45 am]

BILLING CODE 3410–01–M

VOL 57 ISS 2 JA 3 1992 UMI

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A (Extensions of Credit by Federal Reserve Banks) to reflect its recent approval of a reduction in discount rates at each Federal Reserve Bank. The discount rate is the interest rate that is charged depository institutions when they borrow from their district Federal Reserve Banks. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

EFFECTIVE DATE: The amendments to Regulation A were effective December 27, 1991. The discount rate changes were effective on the dates specified in §§ 201.51 and 201.52.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452-3257); for the hearing impaired *only*, Telecommunications Device for the Deaf (TTD) (202/452-3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Reserve Bank extensions of credit. The discount rate is the interest rate that is charged depository institutions when they borrow from their district Federal Reserve Banks.

The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks effective on the dates specified below. The reduction was made on the basis of cumulating evidence, notably monetary and credit conditions, as well as current economic conditions, that point to a receding of inflationary pressures. This action, together with the cumulative effects already in train from previous actions, should provide the basis for a resumption of sustained economic expansion. This reduction in part will realign the discount rate with short-term market interest rates.

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of these amendments because the Board for the "good cause" stated above finds that delaying the changes in the discount rates listed in Regulation A to allow notice and public comment on the changes is impracticable, unnecessary, and contrary to the public interest.[1]

The provisions of 5 U.S.C. 553(d) generally prescribing 30 days' prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the discount rates listed in Regulation A is contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the changes will not have a significant adverse economic impact on a substantial number of small entities. The changes reduce rates of interest charged to borrowers from Reserve Banks, and the amendments will have no general effect on regulatory burdens for all depository institutions, no specific effect on such burdens for small depository institutions, and have no particular adverse effect on other small entities.

List of Subjects in 12 CFR Part 201

Banks, banking; Credit; Federal Reserve System.

For the reasons outlined above, the Board of Governors amends 12 CFR part 201 as set forth below:

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: Secs. 10(a), 10(b), 13, 13a, 14(d) and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 357, 374, 374a and 461); and sec. 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d).

2. Section 201.51 is revised to read as follows:

§ 201.51 Short-term adjustment credit for depository institutions.

The rates for short-term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	3.5	Dec. 20, 1991
New York	3.5	Dec. 20, 1991
Philadelphia	3.5	Dec. 20, 1991
Cleveland	3.5	Dec. 20, 1991
Richmond	3.5	Dec. 20, 1991
Atlanta	3.5	Dec. 20, 1991
Chicago	3.5	Dec. 20, 1991
St. Louis	3.5	Dec. 24, 1991
Minneapolis	3.5	Dec. 23, 1991
Kansas City	3.5	Dec. 20, 1991
Dallas	3.5	Dec. 20, 1991
San Francisco	3.5	Dec. 20, 1991

3. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit for depository institutions.

(a) *Seasonal credit.* The rates for seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	3.5	Dec. 20, 1991
New York	3.5	Dec. 20, 1991
Philadelphia	3.5	Dec. 20, 1991
Cleveland	3.5	Dec. 20, 1991
Richmond	3.5	Dec. 20, 1991
Atlanta	3.5	Dec. 20, 1991
Chicago	3.5	Dec. 20, 1991
St. Louis	3.5	Dec. 24, 1991
Minneapolis	3.5	Dec. 23, 1991
Kansas City	3.5	Dec. 20, 1991
Dallas	3.5	Dec. 20, 1991
San Francisco	3.5	Dec. 20, 1991

(b) *Other extended credit.* The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	3.5	Dec. 20, 1991
New York	3.5	Dec. 20, 1991
Philadelphia	3.5	Dec. 20, 1991
Cleveland	3.5	Dec. 20, 1991
Richmond	3.5	Dec. 20, 1991
Atlanta	3.5	Dec. 20, 1991
Chicago	3.5	Dec. 20, 1991
St. Louis	3.5	Dec. 24, 1991
Minneapolis	3.5	Dec. 23, 1991
Kansas City	3.5	Dec. 20, 1991
Dallas	3.5	Dec. 20, 1991
San Francisco	3.5	Dec. 20, 1991

[1] The Board's Rules of Procedure provide that advance notice and deferred effective date will ordinarily be omitted in the public interest for changes in discount rates. 12 CFR 262.2(e).

These rates apply for the first 30 days of borrowing. For credit outstanding for more than 30 days, a flexible rate will be charged which takes into account rates on market sources of funds, but in no case will the rate charged be less than the basic discount rate plus one-half percentage point. Where extended credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period and in relatively large amounts, the 30-day time period may be shortened.

By order of the Board of Governors of the Federal Reserve System, December 27, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-43 Filed 1-2-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-44; Amendment 39-8101, AD 91-24-14]

Airworthiness Directives: Pratt & Whitney (PW) JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to PW JT8D series turbofan engines, that requires a record search, a review of maintenance records, and a one-time inspection and replacement, if necessary, of a specific No. 4-½ bearing seal spacer. This AD also requires oil system breather checks on certain engines. This amendment is prompted by reports of unapproved No. 4-½ bearing seal spacers that have been distributed to JT8D overhaul shops and operators. This condition, if not corrected, could result in failure of the No. 4-½ bearing which could result in low pressure turbine shaft fracture, uncontained engine failure, inflight shutdown, or possible aircraft damage.

DATES: Effective January 21, 1992.

Comments must be received no later than February 3, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 21, 1992.

ADDRESSES: Send comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Engine Certification Office, ANE-140, Engine & Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, (617) 273-7121.

SUPPLEMENTARY INFORMATION: The FAA has determined that approximately 200 unapproved No. 4-½ bearing seal spacers, Part Number (P/N) 525961, have been distributed to JT8D overhaul shops and operators. The unapproved spacers were neither manufactured nor shipped to customers by PW, the only approved manufacturer of this part. Engineering analysis and evaluation has been conducted on 6 unapproved spacers. This technical assessment indicated that the observed characteristics of the unapproved spacers would result in rapid deterioration of the seal elements and that failure is anticipated to occur within 600 hours time in service. The variability in the critical features of these 6 spacers is reasonably constant, and it is anticipated that other unapproved spacers will not significantly deviate from this sample. The 600 hour time interval has been established considering the potential variability in quality aspects of the unapproved spacers.

The extent and source of distribution of these unapproved spacers are not completely known at this time. The information provided through the reporting requirements of this AD will be used by the FAA in an effort to determine these factors. In addition, this information will be used to validate the engineering analysis conducted on the sample of unapproved spacers. Therefore, this AD may be revised based on further assessment of the information received. Further information pertaining to unapproved parts can be obtained from Advisory Circular 21-29, "Reporting Suspected Unapproved Parts."

The No. 4-½ bearing seal spacer, P/N 525961, is used on all JT8D engine models. It is a critical component of the No. 4-½ bearing ring seal assembly which isolates the No. 4-½ bearing from high pressure compressor air. Operation of a JT8D engine with an unapproved bearing seal spacer could result in the failure of the No. 4-½ bearing which could cause a fracture of the low pressure turbine shaft. Therefore, immediate corrective action is required to correct an unsafe condition that could result in fracture of the low pressure turbine shaft, uncontained engine failure, inflight shutdown, or possible damage to the aircraft.

Since these spacers may have been installed on engines of this type design, this AD requires a search of the purchasing records for the No. 4-½ bearing seal spacer, P/N 525961, and a review of the engine maintenance records to determine if an approved spacer is installed in the engine. This AD also requires a one-time inspection of No. 4-½ bearing seal spacers that are not confirmed to be approved spacers. Further, this AD requires on-wing oil system breather checks on certain engines to check for higher breather pressure due to rapid seal wear caused by the unapproved spacer.

Since operation with this unapproved spacer could result in an uncontained engine failure, inflight shutdown, or damage to the aircraft, there is a need to minimize the exposure of aircraft to this condition. Accordingly, safety in air transportation requires adoption of this regulation without prior notice and public comment and requires immediate adoption of this regulation. Therefore, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and opportunity for prior public comment, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-44, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g), and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

91–24–14 Pratt & Whitney: Amendment No. 39–8101. Docket No. 91–ANE–44.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –5, –7, –7A, –7B, –9, –9A, –11, –15, 15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines installed on but not limited to Boeing 727 and 737 series aircraft, McDonnell Douglas DC–9 series and MD–80 series aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent No. 4–½ bearing failure, uncontained engine failure, inflight shutdown, or possible aircraft damage accomplish the following:

(a) Within 15 days after the effective date of this AD, conduct a search and review of the following:

(1) Purchasing records for the No. 4–½ bearing seal spacer, P/N 525961, to identify the purchase source.

(2) Engine maintenance records to determine if the No. 4–½ bearing seal spacer, P/N 525961, was installed by PW in a new or overhauled JT8D engine.

(b) If the records indicate that the No. 4–½ bearing seal spacer, P/N 525961, was purchased directly from PW customer parts support or the spacer was installed by PW in a new or overhauled JT8D engine, no further action is required.

(c) If the records indicate that the No. 4–½ bearing seal spacer, P/N 525961, was not obtained directly from PW customer parts support, or was not installed by PW, or if the purchase source is unknown, accomplish the following:

(1) For No. 4–½ bearing seal spacers, P/N 525961, not installed in JT8D engines, perform the following one-time inspection prior to installation in an engine or within 45 days after the effective date of this AD, whichever occurs first.

(i) Visually inspect to confirm the presence of hardface on the spacer. An approved No. 4–½ bearing seal spacer will have hardface which exhibits a shiny machined appearance. An unapproved spacer does not have hardface.

(ii) Visually inspect to confirm that the spacer is a silver color. The unapproved spacer is manufactured from a different material and has a bronze color.

(iii) Determine the material hardness of the No. 4–½ bearing seal spacer in accordance with industry standard practices on a non-hardfaced and non-plated surface of the spacer, such as the bore inner diameter. Acceptable material hardness is Rockwell C32 to C38, or its equivalent.

(iv) A No. 4–½ bearing seal spacer, P/N 525961, that does not satisfy all three of the above inspections is considered unairworthy and shall not be placed in service.

Note: Data pertaining to the location of the hardface and plated surfaces are contained in Section 72–53–37, of PW Engine Manual, P/N 481672 for JT8D–1 thru –17AR series engines, and PW Engine Manual, P/N 773128 for JT8D–200 series engines.

(2) For engines that are not installed on aircraft, and that have a No. 4–½ bearing seal spacer, P/N 525961, with less than 600 hours total time in service on the effective date of this AD, disassemble the engine sufficiently to perform a one time inspection in accordance with the inspection requirements of paragraphs (c)(1) (i), (ii) and (iii) of this AD, prior to returning the engine to service.

(i) A spacer that does not satisfy all the inspection criteria is considered unairworthy and shall not be returned to service.

(ii) A spacer that has been inspected in accordance with the criteria listed in paragraph (c)(1) (i), (ii), and (iii) of this AD, and has satisfied that criteria, does not require a reinspection.

(3) For engines that are installed on aircraft and that contain a No. 4–½ bearing seal spacer, P/N 525961, with less than 600 hours time in service on the effective date of this AD, accomplish the following:

(i) Perform an oil system breather check on the engine within 100 hours time in service after the effective date of this AD in accordance with PW JT8D Maintenance Manual, Section 72–00–00, Troubleshooting–02, pages 120, 121, and 122, dated August 1, 1991, and pages 123, 124, 135, and 136, dated May 15, 1990, or PW JT8D Maintenance Manual, Section 72–00, Engine Troubleshooting, page 117 dated May 1, 1990, and pages 118, 119, 120, 121, 122, 123, and 124, dated September 1, 1986, as applicable.

(ii) Thereafter, repeat the oil system breather check required by paragraph (c)(3)(i) of this AD at intervals not exceeding 100 hours time in service since the last check until the No. 4–½ bearing seal spacer has accumulated 600 hours total time in service. Engine breather checks are not required when time in service on the seal spacer is greater than or equal to 600 hours.

(iii) Remove engines from service if the check indicates high breather pressure as defined in the applicable Sections of PW JT8D Maintenance Manual referenced in Paragraph (c)(3)(i) of this AD.

(iv) At the next shop visit after the effective date of this AD, when the engine is disassembled sufficiently to gain access to the affected spacer, perform a one time inspection in accordance with the inspection requirements of paragraphs (c)(1) (i), (ii), and (iii) of this AD, but no later than January 31, 1999. Performance of the one time inspection constitutes terminating action for the breather check requirements of paragraph (c)(3) (i) and (ii) of this AD.

(A) A spacer that does not satisfy all the inspection criteria is considered unairworthy and must not be returned to service.

(B) A spacer that has been inspected in accordance with the criteria listed in paragraph (c)(1)(i), (ii), and (iii) of this AD, and has satisfied that criteria, does not require a reinspection.

Note: Applicable maintenance manuals are JT8D Maintenance Manual, P/N 481671 for JT8D–1 thru –17AR series engines, and JT8D Maintenance Manual, P/N 773127 for JT8D–200 series engines.

(4) For engines (uninstalled or installed) containing a No. 4–½ bearing seal spacer, P/N 525961, having greater or equal to 600 hours total time in service on the effective date of this AD, perform a one-time inspection in accordance with the inspection requirements of paragraphs (c)(1)(i), (ii), and (iii) of this AD, at the next shop visit when the engine is disassembled sufficiently to gain access to the affected spacer, but no later than January 31, 1999.

(i) A spacer that does not satisfy all the inspection criteria is considered unairworthy and must not be returned to service.

(ii) A spacer that has been inspected in accordance with the criteria of paragraph (c)(1)(i), (ii), and (iii) of this AD, and has

satisfied that criteria, does not require a reinspection.

(d) Within 30 days after the inspection requirements of paragraph (c)(1) of this AD have been accomplished, report the following information, if an unapproved spacer has been found: (1) Inspection results, (2) Time in Service of the spacer, and (3) Source of purchase of the spacer. This information is to be forwarded to the Manager, Engine Certification Office, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

Information collection requirements contained in this regulation have been approved by the Office of Management Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control No. 2120–0056.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where this AD can be accomplished.

(f) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), an alternative method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

(g) The oil system breather checks shall be done in accordance with the following Sections of Pratt & Whitney JT8D Maintenance Manuals:

Document No.	Page No.	Date
72-00-00	120, 121, 122 123, 124, 135, 136	8/1/91 5/15/90
Total Pages: 7		
72-00	117	5/1/90
	118, 119, 120, 121, 122, 123, 124	9/1/86
Total Pages: 8		

The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment (39–8101, AD 91–24–14) becomes effective January 21, 1992.

Issued in Burlington, Massachusetts, on December 16, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92–8 Filed 1–2–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–259–AD; Amendment 39–8139; AD–02–03]

Airworthiness Directives; Boeing Model 727 and 727–100 Series Airplanes Equipment With a Main Deck Cargo Door Installed in Accordance With Supplemental Type Certificate (STC) SA1368SO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to certain Boeing Model 727 and 727–100 series airplanes, equipped with a main deck cargo door installed in accordance with STC SA1368SO. This action requires that all seven cargo door latch lockpins be operative and properly engaged prior to flight, and repair of inoperative latch lockpins. This amendment is prompted by the results of an audit of the cargo door installation which revealed that a revision to the STC allowed for as many as three cargo door latch lockpins to be inoperative during flight. The actions specified in this AD are intended to prevent an inadvertent in-flight opening of the main deck cargo door, with resultant major structural damage and possible reduced controllability of the airplane.

DATES: Effective January 21, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 4, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–259–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Avera, Aerospace Engineer, Systems and Equipment Branch, ACE–130A, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3020; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: During an audit of a cargo door installation on a Boeing Model 727 series airplane, an unsafe condition was discovered with respect the the latch locking mechanism installed in accordance with Supplemental Type Certificate (STC) SA1368SO. A revision to the STC limitations information permitted as many as three of the seven cargo door latch lockpins to be inoperative. However, in accordance with the intent of Federal Aviation Regulation (FAR) 25.783(f), all cargo door latch lockpins must be operative and properly engaged prior to flight. Service history has shown that airplanes that do not have a means to lock each latch of an outward opening cargo door are subject to in-flight failures of the doors. This condition, if not corrected, could result in an inadvertent in-flight opening of the main deck cargo door, with resultant major structural damage and possible reduced controllability of the airplane.

Since the unsafe condition described is likely to exist or develop on other Boeing Model 727 and 727–100 series airplanes of the same type design, equipped with a main deck cargo door installed in accordance with STC SA1368SO, this AD is being issued to prevent an inadvertent in-flight opening of the main deck cargo door, with resultant major structural damage and possible reduced controllability of the airplane. This AD requires that all seven cargo door latch lockpins be operative and properly engaged prior to flight, and repair of inoperative latch lockpins.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment thereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this section is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES**." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the

Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-259-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-02-03. Boeing: Amendment 39-8139. Docket No. 91-NM-259-AD.

Applicability: Model 727 and 727-100 series airplanes; equipped with a main cargo deck door installed in accordance with Supplemental Type Certification (STC) SA1368SO; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an inadvertent in-flight opening of the main deck cargo door, accomplish the following:

(a) Within 30 days after the effective date of this AD and thereafter prior to takeoff, each time the cargo door is cycled, verify that all seven cargo door latch lockpins are operative. Inoperative latch lockpins must be repaired, prior to further flight, in accordance with an FAA-approved method.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office (ACO), ACE-115A, FAA, Small Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Atlanta ACO, ACE-115A.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment (39-8139), AD 92-02-03 becomes effective January 21, 1992.

Issued in Renton, Washington, on December 23, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-49 Filed 1-2-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-268-AD; Amendment 39-8141; AD 92-02-05]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes Equipped With a Cargo Conversion Modification Installed in Accordance With Supplemental Type Certificate (STC) SA1802SO or SA421NW

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-8 series airplanes equipped with a certain cargo conversion modification. This action requires a revision to the FAA-approved Airplane Flight Manual Supplement to include detailed procedures for use of the cargo door warning light system; and repetitive inspections of the cargo door warning system wiring to detect damage to the wiring or the door latching roller mechanism, and repair or replacement of damaged components. This amendment is prompted by two recent occurrences of inadvertent in-flight openings of the cargo door on certain modified Model DC-8-63 series airplanes. The actions specified in this AD are intended to prevent loss of the cargo door, damage to flight control surfaces, and reduced controllability of the airplane.

DATES: Effective January 21, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 4, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-268-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. David Cundy, Aerospace Engineer, Airframe Branch, ACE-120A, FAA, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, GA 30349; telephone (404) 991-2910; fax (404) 991-3606.

SUPPLEMENTARY INFORMATION: Since August 1991, there have been two occurrences of inadvertent in-flight openings of the cargo door on Model DC-8-63 series airplanes which had been modified in accordance with Supplemental Type Certificate (STC) SA1802SO. The second occurrence resulted in significant structural damage to the airplane. Investigation of this occurrence revealed that procedures for use of the cargo door warning light system were not included in the Airplane Flight Manual Supplement. In addition, the cargo door wire bundle, which powers the cargo door operating and indicating system, was frayed and crimped. Failure of this system could result in a false indication that the cargo door is properly closed and locked. These conditions, if not corrected, could result in loss of the cargo door, damage to flight control surfaces, and reduced controllability of the airplane.

Since the unsafe condition described is likely to exist or develop on other McDonnell Douglas Model DC-8 series airplanes of the same type design, including those modified in accordance with STC SA421NW, this AD is being issued to prevent loss of the cargo door, damage to flight control surfaces, and

reduced controllability of the airplane. This AD requires a revision to the FAA-approved Airplane Flight Manual Supplement to include detailed procedures for use of the cargo door warning light system. In addition, this AD requires repetitive inspections of the cargo door wire bundle to detect crimped, frayed, or chafed wires; inspection for damaged and loose or missing mounting hardware, and repair of any damaged wiring or hardware mounting components, if necessary; and repetitive inspections of the cargo door latch rollers to ensure that all twelve rollers can be rotated freely by hand and, if necessary, replacement of discrepant roller components or repair of rollers which do not rotate freely.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulations, it is found that notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of there comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-268-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(G); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-02-05. McDonnell Douglas: Amendment 39-8141. Docket 91-NM-268-AD.

Applicability: Model DC-9-81, -82, -83, and -73 series airplanes equipped with a cargo conversion modification installed in accordance with Supplemental Type Certificate (STC) SA1802SO; and Model DC-9-21, -32, -33, and -51 series airplanes equipped with a cargo conversion modification installed in accordance with STC SA421NW; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the cargo door, damage to flight control surfaces, and reduced controllability of the airplane, accomplish the following:

(a) Within 7 days after the effective date of this AD, revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) by replacing item 5 in the AFMS for SA1802SO, and item 6 in the AFMS for SA421NW, with the following. (This may be accomplished by inserting a copy of this AD into the AFMS.)

"Prior to initiating the cargo door closing sequence, a flight crew member must verify that the cargo door warning light is illuminated. After the door closing sequence is complete, and visual verification has been made that the latches are closed and the lockpins are properly engaged, a flight crew member must verify that the cargo door warning light is extinguished, and then conduct a PRESS-TO-TEST of the warning light to ensure that the light is operational. Pull all cargo door circuit breakers prior to takeoff. Methods for documentation of compliance with the preceding procedures must be approved by the FAA Principal Maintenance Inspector (PMI)."

(b) Within 7 days after the effective date of this AD, and thereafter at intervals not to exceed 100 hours time-in-service, perform the following inspections:

(1) Inspect the cargo door wire bundle between the exit point of the cargo liner and the attachment point on the cargo door to detect crimped, frayed, or chafed wires; and inspect for damaged, loose, or missing hardware mounting components. Prior to further flight, repair any damaged wiring or hardware mounting components in accordance with FAA-approved maintenance procedures.

(2) Inspect the cargo door latch rollers in the lower sill of the cargo door opening of the airplane to ensure that all twelve rollers can be freely rotated by hand. Prior to further flight, replace any discrepant roller components found, and repair any rollers that cannot be rotated freely by hand, in accordance with FAA-approved maintenance procedures.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office (ACO), ACE-115A, FAA, Small Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Atlanta ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the

requirements of this AD can be accomplished.

(e) This amendment (39-8141), AD 92-02-05, becomes effective January 21, 1992.

Issued in Renton, Washington, on December 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-50 Filed 1-2-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-78-AD; Amendment 39-8136; AD 91-25-03 R1]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes and C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This amendment corrects information in an existing airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-9 series airplanes. The AD currently requires that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this rule are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program. This action corrects a typographical error in the listing of the part numbers of the affected landing gear brakes.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Gfrerer, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: On November 14, 1991, the FAA issued AD 91-25-03, Amendment 39-8104, which was published in the **Federal Register** on November 26, 1991 (56 FR 59868). That AD is applicable to certain McDonnell Douglas DC-9 series airplanes, and requires that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this rule are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program. That action was prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. The requirements of the AD are intended to prevent loss of the main landing gear braking effectiveness during a high energy RTO.

Since issuance of that AD, the FAA has discovered a typographical error in the listing of affected brake part numbers that appears in paragraph (a) of the final rule. One of the ABS brake part numbers for Model DC-9-30 series airplanes was inadvertently listed as "9569788-7." The correct part number is "9560788-7." (This correct part number was listed in the notice of proposed rulemaking that preceded the final rule.)

Action is taken herein to correct this error and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (FAR). No other change has been made to the substance of the rule. The effective date of the rule remains December 31, 1991.

The final rule is being reprinted in its entirety (as follows) for the convenience of affected operators.

Since this action only corrects a typographical error in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by correctly adding the following airworthiness directive:

91-25-03 R1. McDonnell Douglas: Amendment 39-8136. Docket Number 91-NM-78-AD.

Applicablity: Model DC-9 series, including C-9 (military), airplanes equipped with Aircraft Braking System (ABS) brake part numbers identified in paragraph (a), of this AD, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 270 days after the effective date of this AD, inspect the landing gear brakes, having brake numbers listed below, for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within these limits.

Series airplane	ABS brake part No.	Maximum wear limit (inches)
DC-9-10	9560746A	0.3
	B9560746A	0.3
	9560743	0.3
	A9560743	0.3
	B9560743	0.3
DC-9-20/30	9560786	0.3
	A9560786	0.3
	B9560786	0.3
DC-9-30	9560955	0.3
	9560788	0.3
	A9560788	0.3
	B9560788	0.3
	9560788-2/-3/-5/-6	0.3
	9560788-7	0.7
DC-9-30/40/50	B9560861	0.3
	9560861-1	0.2
	9560861-2	0.3
	9560861-3	0.8

(b) Within 270 days after the effective date of this AD, incorporate the maximum brake wear limits specified in paragraph (a) of this AD into the FAA-approved maintenance inspection program.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) This amendment (39-8136), AD 91-25-03 R1, is effective December 31, 1991.

Issued in Renton, Washington, on December 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-51 Filed 1-2-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AA90

Wage and Hour Division

29 CFR Part 506

RIN 1215-AA

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

AGENCIES: Employment and Training Administration, Labor; and Wage and

Hour Division, Employment Standards Administration, Labor.

ACTION: Interim final rule; extension of effective date.

SUMMARY: The Department of Labor has promulgated regulations for filing and enforcement of attestations by employers seeking to use certain alien crewmembers to perform longshore work at U.S. ports. This document extends the expiration date of the interim final rule.

DATES: *Effective Dates:* May 28, 1991, through March 31, 1992.

In FR Doc. 91-12718, 56 FR 24648 (May 30, 1991), the Department of Labor published an interim final rule effective through December 31, 1991. This document extends the expiration date through March 31, 1992.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart F, and 29 CFR part 506, subpart F, contact David O. Williams, Chair, Immigration Task Force, Employment and Training Administration, Department of Labor, room N-4470, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535-0174 (this is not a toll-free number).

On 20 CFR part 655, subpart G, and 29 CFR part 506, subpart G, contact Solomon Sugarman, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On May 30, 1991, the Department of Labor (DOL) published in interim final rule adding, at 20 CFR part 655, subparts F and G, and at 29 CFR part 506, subparts F and G, regulations for filing and enforcement of attestations by employers seeking to use certain alien crewmembers to perform longshore work at U.S. ports, pursuant to section 258 of the Immigration and Nationality Act. 56 FR 24648 (May 30, 1991); see 8 U.S.C. 1288. Public comments were invited through July 29, 1991, and the interim final rule was effective from May 28, 1991, through December 31, 1991.

DOL has determined that it requires additional time to review and consider the information presented in the public and agency comments. This review will extend past December 31, 1991. So as not to have an interruption in the regulations governing the program, DOL is extending the expiration date for the interim final by three months, before which time a final rule is expected to be published.

Accordingly, FR Doc. 91-12718, 56 FR 24648 (May 30, 1991), is amended, by revising the first sentence in the "**DATES**" section to read "*Effective dates:* May 28, 1991, through March 31, 1992."

Signed at Washington, D.C., this 30th day of December, 1991.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91-31333 Filed 12-31-91; 11:34 am]

BILLING CODE 4510-30-M, 4510-27-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 87F-0332]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene-chlorotrifluoroethylene copolymer in repeated use articles intended for use in contact with food. This action is in response to a petition filed by Ausimont USA, Inc.

DATES: Effective January 3, 1992; written objections and requests for a hearing by February 3, 1992. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 177.1380(a)(4), effective January 3, 1992.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parkawn Dr. Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 6, 1987 (52 FR 42728), FDA announced that a food additive petition (FAP 7B4040) had been filed by Ausimont USA, Inc., Fluoropolymer Division, P.O. Box 2332 R, Morristown, NJ 07960, proposing that § 177.1380 *Fluorocarbon resins* (21 CFR 177.1380) be amended to provide for the safe use of ethylene-chlorotrifluoroethylene copolymer in articles intended for repeated use contact with food.

In its evaluation of the safety of this additive, FDA has reviewed the safety of both the additive itself and the starting materials used to manufacture the additive. Although the additive itself has not been found to cause cancer, it has been found to contain minute amounts of chloroform, a carcinogen, used in the manufacturing process. Residual amounts of reactants and manufacturing aids, such as chloroform, are commonly found a contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer, or Delaney clause, of the Food Additives Amendment (section 409(c)(3)(A) of the act) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it

contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimates that the petitioned use of the additive, ethylene-chlorotrifluoroethylene copolymer, will result in extremely low levels of exposure to the additive. The agency calculated the estimated daily intake of the additive based on several factors, including the migration of the additive under the most severe intended conditions of use and the probable concentration of the additive oligomers in the daily diet from its use in contact with repeat use food contact articles. The agency estimated the daily intake of the additive oligomers to be 28 nanograms per person per day.

FDA does not ordinarily consider chronic testing necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here.

Because ethylene-chlorotrifluoroethylene copolymer, which may contain chloroform, has not been shown to cause cancer, the Delaney anticancer clause (section 409(c)(3)(A) of the act) does not apply to it. However, FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by chloroform, the carcinogenic chemical that may be present as an impurity in the additive.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see e.g., 49 FR 13018 at 13019, April 2, 1984). This risk evaluation of the carcinogenic impurity, chloroform, has two aspects: (1) Assessment of the worst case exposure to the impurity from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Chloroform

Based on the fraction of the daily diet that may be in contact with surfaces containing ethylene-chlorotrifluoroethylene copolymer, and on the level of chloroform that may be present in the additive, FDA estimated the hypothetical worst case exposure to chloroform from the use of ethylene-chlorotrifluorethylene copolymer food contact articles to be less than 2 nanograms per person per day (Ref. 3). The agency used data in a 1985 study by Jorgenson et al., in male Osborne Mendel rats and female B6C3F1 mice to estimate the upper bound limit of lifetime human risk from exposure to this chemical stemming from the proposed use of ethylene-chlorotrifluoroethylene copolymer (Ref. 4). The results of the bioassay demonstrated that chloroform was carcinogenic in male rats when administered in drinking water.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (the committee) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on chloroform. The committee further concluded that an estimate of the upper bound human risk from exposure to chloroform stemming from the proposed use of ethylene-chlorotrifluoroethylene copolymer could be calculated from these data.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the study with male rats (the most sensitive animals) to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst case exposure of less than 2 nanograms per person per day, FDA estimates that the upper bound limit of individual lifetime risk from potential exposure to chloroform from the use of ethylene-chlorotrifluoroethylene copolymer is $1x10^{-11}$, or less than 1 in 100 billion (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to chloroform is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to chloroform that might result from the proposed use of ethylene-chlorotrifluoroethylene copolymer repeat use food-contact articles.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of chloroform impurity in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low level at which chloroform may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure to this impurity, even under worst case assumptions, is very low (less than 1 in 100 billion).

C. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use for the additive in repeat use food-contact articles is safe. Based on this information the agency has also concluded that the additive will have its intended technical effect and therefore, § 177.1380 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approved the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

D. Potential Environmental Effects

The agency has carefully considered the potential environmental effects of this action, including potential effects on stratospheric ozone and potential impacts associated with incineration of halogenated polymers.

1. Potential Effects On Stratospheric Ozone

This action will permit a new use for one of the chlorofluorocarbons (CFC's), a class of chemicals that has been implicated in the destruction of the stratospheric ozone layer. During its review of this petition, FDA consulted with the Environmental Protection Agency (EPA) to determine whether FDA approval of the petition would be consistent with EPA's efforts to control CFC's. On March 3, 1988, EPA advised FDA that the proposed new use of this CFC would not be inconsistent with EPA's current regulatory program to protect stratospheric ozone, which restricts allowable production in lieu of controls on particular uses (40 CFR Part 82). EPA advised FDA that approval would not add to total CFC emissions to the atmosphere but would instead mean that less CFC's were available for current uses. EPA stated that the rate of CFC emissions from the proposed use will be far less than from most current uses of these chemicals. EPA also noted that the projected use of CFC's is very small, that the recycling system proposed by the petitioner would capture virtually all of the CFC emissions, and that it should be feasible to switch to a chemical alternative to CFC's when one becomes available.

2. Potential Impacts Associated With Incineration of Halogenated Polymers

In the Federal Register of November 22, 1988 (53 FR 47284), FDA published a notice of intent to prepare an environmental impact statement (EIS) on the effects of the proposed amendments to its food additive regulations to provide for the safe use of vinyl chloride polymers. In the notice of intent, FDA considered whether several food additive petitions that involved halogenated polymers, including the subject petition, should be included as part of the environmental review of the proposed rule on vinyl chloride. FDA decided not to consider the environmental impact of the subject petition in the EIS. This petition concerns a copolymer that will be used in food-processing plants as piping to carry various foods, including hot water. In contrast to disposable food-packaging materials, this type of product is likely to be disposed of by methods other than incineration, such as special landfills. Consequently, any environmental impact associated with incineration of this halogenated polymer would be averted.

Based on full consideration of the potential environmental effects of this action, FDA has concluded that the action will not have a significant impact on the human environment and that an EIS is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Objections

Any person who will be adversely affected by this regulation may at any time on or before February 3, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G.M., "Carcinogen Testing Programs," in "Food Safety: Where are We?", Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 58, July 1979.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, ed. by F. Homburger and J.K. Marquis, *S. Karger*, New York, NY, pp. 24–33, 1985.

3. Memorandum dated November 17, 1988, from the Food and Color Additives Review Section to Indirect Additives Branch, "FAP 7B4040—Ausimont USA, Inc.—Exposure to Components of the Copolymer."

4. "Carcinogenicity of Chloroform in Drinking Water to Male Osborne Mendel Rats and Female B6C3F1 Mice," Jorgenson, T.A., E.F. Meierhenry, C.J. Rushbrook, R.J. Bull, and M. Robinson, *Fundamental and Applied Toxicology*, 5:760–769, (1985).

5. Memorandum dated January 30, 1990, from Quantitative Risk Assessment Committee, "Estimation of Upper Bound Risks for Chloroform in Ethylene/chlorotrifluoroethylene (E/CTFE) Copolymers," (Ausimont USA, Inc.), FAP 7B4040.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 177.1380 is amended by adding new paragraph (a)(4) and by revising paragraph (b) to read as follows:

§ 177.1380 Fluorocarbon resins.

* * * * *

(a) * * *

(4) Ethylene-chlorotrifluoroethylene copolymer resins produced by copolymerization of nominally 50 mole percent of ethylene and 50 mole percent of chlorotrifluoroethylene. The copolymer shall have a melting point of 230 to 243°C and a melt index of less than or equal to 20 as determined by ASTM Method D 3275–89 "Standard Specification for E–CTFE–Fluoroplastic Molding, Extrusion, and Coating Materials," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19013, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(b) Fluorocarbon resins that are identified in paragraph (a) of this section and that comply with extractive

limitations prescribed in paragraph (c) of this section may be used as articles or components of articles intended for use in contact with food as follows:

(1) Fluorocarbon resins that are identified in paragraphs (a)(1), (a)(2), and (a)(3) of this section and that comply only with the extractive limitations prescribed in paragraphs (c)(1) and (c)(2) of this section may be used when such use is limited to articles or components of articles that are intended for repeated use in contact with food or that are intended for one-time use in contact with foods only of the types identified in § 176.170(c) of this chapter, Table 1, under Types I, II, VI, VII–B, and VIII.

(2) Fluorocarbon resins that are identified in paragraph (a)(4) of this section and that comply with the extractive limitations prescribed in paragraphs (c)(1) and (c)(2) of this section may be used only when such use is limited to articles or components of articles that are intended for repeated use in contact with food.

(3) In accordance with current good manufacturing practice, those food-contact articles intended for repeated use shall be thoroughly cleansed prior to their first use in contact with food.

* * * * *

Dated: December 27, 1991.

Robert L. Spencer,

Acting Deputy Commissioner for Policy

[FR Doc. 92–55 Filed 1–2–92; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FR 4090–8]

40 CFR Part 281

Vermont; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Vermont's application for final approval.

SUMMARY: The State of Vermont has applied for final approval of its underground storage tank program under subtitle I of the Resource Conservation and Recovery Act. The Environmental Protection Agency [EPA] has reviewed Vermont's application and has reached a final determination that Vermont's underground storage tank program satisfies all the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Vermont to operate its program.

EFFECTIVE DATE: Final approval for Vermont shall be effective at 1 p.m. on February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Joan Coyle, Office of Underground Storage Tanks, HPU–1, U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203, (617) 573–9667.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state underground storage tank programs to operate in a state in lieu of the Federal underground storage tank program. To qualify for final authorization, a state's program must: (1) Be "no less stringent" than the Federal program, and (2) provide for adequate enforcement. Section 9004 (a) and (b) of RCRA, 42 U.S.C. 6991c (a) and (b).

On July 3, 1991, as required by 40 CFR 281.50(c), EPA acknowledged receiving from the State of Vermont a complete official application requesting final approval to administer its underground storage tank program. On September 16, 1991, EPA published a tentative decision announcing its intent to grant Vermont final approval of its program. See 56 FR 46756 (1991). Further background on EPA's tentative decision to grant approval is included in that decision.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. EPA requested advance notice for testimony and reserved the right to cancel for lack of public interest. Since there was no public interest, the public hearing was cancelled. No public comments were received regarding EPA's approval of Vermont's underground storage tank program.

B. Decision

I conclude that the State of Vermont's application for final approval meets all of the statutory and regulatory requirements established by subtitle I of RCRA. Accordingly, Vermont is granted final approval to operate its underground storage tank program. The State of Vermont now has the responsibility for managing all regulated underground storage tank facilities within its borders and carrying out all aspects of the Federal underground storage tank program except with regard to Indian lands, where EPA will continue to have regulatory authority. Vermont also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under section 9006 of RCRA, 42 U.S.C. 6991e.

Authority: Section 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6991c.

Dated: December 30, 1991.

Julie Belaga,

Regional Administrator.

[FR Doc. 92–61 Filed 1–2–92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket No. 90–312, FCC 91–397]

Denials of Federal Benefits

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting final rules to implement the provisions of section 5301 of the Anti-Drug Abuse Act of 1988 concerning denial of federal benefits to persons convicted of drug related crimes. The rules require applicants for professional or commercial licenses to certify that they are not subject to a section 5301 denial of benefits. This will help ensure that applicants subject to a section 5301 denial are not granted licenses by the Commission. [Initiating document: NPRM 55 FR 37438 (Sept. 11, 1990)].

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon Diskin, Office of General Counsel, Federal Communications Commission (202) 632–6990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted December 11, 1991 and released December 27, 1991. The full text of the Report and Order including a Final Regulatory Flexibility Analysis, is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street NW., Washington, DC. The full text of this Report and Order may also be purchased from the Commission's contractor, Downtown Copy Center, 1114 21st Street, NW. Washington, DC 20036, (202) 452–1422.

Summary of Report and Order

1. These rules implement section 5301 of the Anti-Drug Abuse Act of 1988 with respect to professional and commercial licenses issued by the Commission. Section 5301 provides Federal and state court judges the discretion to deny Federal benefits to individuals

convicted of offenses consisting of the distribution or possession of controlled substances. 21 U.S.C. 853a. Federal benefits, as used in the statute, include licenses issued by the FCC. 21 U.S.C. 853a(d)(1).

2. The Office of National Drug Control Policy (ONDCP) plan for the implementation of section 5301 calls for agencies to use the General Services Administration (GSA) publication "Parties Excluded from Federal Procurement of Nonprocurement Programs" (commonly referred to as the "Debarment List") in determining which persons have been barred from Federal benefits under section 5301. In addition, the ONDCP plan calls for agencies to use an applicant certification. No rule changes are necessary to implement the use of the GSA Debarment List in connection with applications. The application forms used by the Commission do not, however, include the certification referred to in the ONDCP plan. We are therefore amending part 1 of the Commission's rules by adding a new subpart P, 47 CFR 1.2001 *et seq.*, that will require applicants to certify that neither they nor any parties to the application are subject to a section 5301 bar.

3. With one exception, the rules apply to applicants for all forms of Commission instruments of authority, including, for example, authorizations for the use of radio spectrum, radio operator authorizations, equipment certifications, type acceptances or type approvals, and certificates of authority to construct communications lines. Because section 5301 applies only to "professional" and "commercial" licenses, the rules exempt amateur authorizations which may not be used for professional and commercial purposes. Further, because they do not involve applications or the issuance of individual licenses by the Commission, the rules do not apply to individual users of a blanket license (*e.g.*, cellular radio users). The certification requirement adopted in the final rule differs from that proposed in the NPRM in two respects: (1) In order to provide for an orderly transition to the certification requirement, the rules provide that, for authorizations that involve a specific form, until such time as the application form is amended to contain a certification provision, the applicant will be deemed to have certified as to its eligibility by signing the application; (2) The proposed rule stated that failure to certify would lead to automatic dismissal of the application. In order to give corporations and partnerships an opportunity to seek the removal of parties to the application who are subject to a denial of benefits under section 5301, the adopted rules provide that an application will not be dismissed automatically for failure to certify. Rather, failure to certify will result in an application being ineligible for grant unless the applicant comes into compliance with section 5301 within 90 days of the filing of the application. In order to assure that applicants make a good faith attempt to determine whether any parties to the application are subject to a denial of Federal benefits, the rules provide that, in cases where a certification has been incorporated into the application, the application will be dismissed for failure to respond to the question.

4. The legislative history of section 5301 suggests that an applicant will not be eligible when an "individual" who is subject to the bar remains a party to the application. Thus, the rules apply the certification provision to all parties to applications including: officers, directors, non-limited partners, holders of 5% or more of the voting stock, and non-voting stockholders or limited partners with a similar (5% or more) interest in the applicant or licensee.

5. The NPRM proposed a rule requiring licensees to notify the Commission of any section 5301 bar imposed on the licensee or any principals during the license term. Consistent with the Commission's determination that section 5301 does not provide for revocation of existing benefits, the final rule eliminates this reporting requirement.

6. Pursuant to authority contained in sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 303(r), and the Anti-Drug Abuse Act of 1988, 21 U.S.C. 823a, *it is ordered* that part 1 of the Commission's rules are amended as set forth below, effective February 3, 1992.

List of Subjects in 47 CFR Part 1

Denials of federal benefits (new), Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 1, title 47 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 is revised to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303: Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

2. A new subpart P is added to read as follows:

Subpart P—Implementation of the Anti-Drug Abuse Act of 1988

1.2001 Purpose.
1.2002 Applicants required to submit information.
1.2003 Applications affected.

Subpart P—Implement of the Anti-Drug Abuse Act of 1988.

§ 1.2001 Purpose.

To determine eligibility for professional and/or commercial licenses issued by the Commission with respect to any denials of Federal benefits imposed by Federal and/or state courts under authority granted in 21 U.S.C. 853a.

§ 1.2002 Applicants required to submit information.

(a) In order to be eligible for any new, modified, and/or renewed instrument of authorization from the Commission, including but not limited to, authorizations issued pursuant to sections 214, 301, 302, 303(1), 308, 310(d), 318, 319, 325(b), 351, 361(b), 362(b), 381, and 385 of the Communications Act of 1934, as amended, by whatever name that instrument may be designated, all applicants shall certify that neither the applicant nor any party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988. 21 U.S.C. 853a. If a section 5301 certification has been incorporated into the FCC application form being filed, the applicant need not submit a separate certification. If a section 5301 certification has not been incorporated into the FCC application form being filed, the applicant shall be deemed to have certified by signing the application, unless an exhibit is included stating that the signature does not constitute such a certification and explaining why the applicant is unable to certify. If no FCC application form is involved, the applicant must attach a certification to its written application. If the applicant is unable to so certify, the applicant shall be ineligible for the authorization for which it applied, and will have 90 days from the filing of the application to comply with this rule. If a section 5301 certification has been incorporated into the FCC application form, failure to respond to the question concerning certification shall result in dismissal of the application pursuant to the relevant processing rules.

(b) A party to the application, as used in paragraph (a) of this section shall include:

(1) If the applicant is an individual, that individual;

(2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non-voting) of the applicant; and

(3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership.

(c) The provisions of paragraphs (a) and (b) of this section are not applicable to the Amateur Radio Service, the Citizens Band Radio Service, the Radio Control Radio Service, or to users in the Public Mobile Services and the Private Radio Services that are not individually licensed by the Commission.

§ 1.2003 Applications affected.

The certification required by § 1.2002 must be filed with the following applications as well as any other requests for authorization filed with the Commission, regardless of whether a specific form exists.

FCC 301 Application for Construction Permit for Commercial Broadcast Station;
FCC 301–A Application for Authority to Operate a Broadcast Station by Remote Control or to Make Changes in a Remote Control Authorization;
FCC 302 Application for New Broadcast Station License;
FCC 303–S Application for Renewal of License for Commercial and Noncommercial AM, FM or TV Broadcast Station;
FCC 307 Application for Extension of Broadcast Construction Permit or to Replace Expired Construction Permit;
FCC 308 Application for Permit to Deliver Programs to Foreign Broadcast Stations;
FCC 309 Application for Authority to Construct or Make Changes in an International or Experimental Broadcast Station;
FCC 310 Application for an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station License;
FCC 311 Application for Renewal of an International or Experimental Broadcast License;
FCC 313 Application for Authorization in the Auxiliary Radio Broadcast Services;
FCC 313–R Application for Renewal of Auxiliary Broadcast License;
FCC 314 Application for Consent to Assignment of Broadcast Station Construction Permit or License;
FCC 315 Application for Consent to Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License;
FCC 316 Application for Consent to Assignment of Radio Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Radio Broadcast Station Construction Permit or License;
FCC 327 Application for Cable Television Relay Service Station Authorzation;
FCC 330 Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign or Transfer Such Stations;
FCC 330–L Application for Instructional Television Fixed Station License;
FCC 330–R Application for Renewal of Instructional Television Fixed Station and/or Response Station(s) and Low Power Relay Station(s) License;
FCC 340 Application for Construction Permit for Noncommercial Educational Broadcast Station;
FCC 345 Application for Transfer of Control of a Corporate Licensee or Permittee, or Assignment of License or Permit, for an FM or TV Translator Station, or a Low Power Television Station;
FCC 346 Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station;
FCC 347 Application for a Low Power TV, TV Translator or TV Booster Station License;
FCC 348 Application for Renewal of License for Translator or low Power Television Broadcast Station;
FCC 349 Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station;
FCC 350 Application for an FM Translator or FM Booster Station License;
FCC 401 Application for New or Modified Common Carrier Radio Station Authorization Under Part 22 of this chapter.
FCC 402 Application for Station Authorization in the Private Operational Fixed Microwave Radio Service;
FCC 402–R Renewal Notice and Certification in the Private Operational Fixed Microwave Radio Service;
FCC 403 Application for Radio Station License or Modification Thereof Under Parts 23 or 25 of this chapter;
FCC 404 Application for Aircraft Radio Station License;
FCC 405 Application for Renewal of Radio Station License;
FCC 405–A Application for Renewal of Radio Station License and/or Notification of Change to License Information;
FCC 405–B Ship/Aircraft License Expiration Notice and/or Renewal Application;
FCC 406 Application for Ground Station Authorization in the Aviation Services;
FCC 407 Application for New or Modified Radio Station Construction Permit;
FCC 409 Airborne Mobile Radio Telephone License Application;
FCC 410 Registration of Canadian Radio Station Licensee and Application for Permit to Operate (Land Mobile);
FCC 442 Application for New or Modified Radio Station Authorization Under Part 5 of this chapter—Experimental Radio Service (Other than Broadcast);
FCC 490 Application for Assignment or Transfer of Control Under Part 22 of this chapter;
FCC 493 Application for Earth Station Authorization or Modification of Station License (Proposed);
FCC 494 Application for a New or Modified Microwave Radio Station License Under Part 21 of this chapter;
FCC 494–A Certification of Completion of Construction Under Part 21 of this chapter;
FCC 503 Application for Land Radio Station License in the Maritime Services;
FCC 506 Application for Ship Radio Station License;
FCC 574 Application for Private Land Mobile and General Mobile Radio Services;
FCC 574–R Application for Renewal of Radio Station License;
FCC 701 Application for Additional Time to Construct a Radio Station;
FCC 702 Application for Consent to Assignment of Radio Station Construction Permit or License;
FCC 703 Application for Consent to Transfer Control of Corporation Holding Station License;
FCC 704 Application for Consent to Transfer of Control of Corporation Holding Common Carrier Radio Station Construction Permit or License;
FCC 730 Application for Registration of Equipment to be Connected to the Telephone Network;
FCC 731 Application for Equipment Authorization;
FCC 753 Restricted Radiotelephone Operator Permit Application;
FCC 755 Application for Restricted Radiotelephone Operator Permit—Limited Use;
FCC 756 Application for Commercial Radio Operator License.

[FR Doc. 92–62 Filed 1–2–92; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–261; RM–7789]

Radio Broadcasting Services; Callahan, FL and St. Marys, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 227C2 from St. Marys, Georgia, to Callahan, Florida, and modifies the license for Station WAIA(FM) to specify Callahan, Florida, as its community of license, in accordance with § 1.420(i) of the Commission's Rules. The allotment of Channel 227C2 to Callahan will provide that community with its first local FM transmission service, and will

not deprive St. Marys of its only local transmission service. See 56 FR 46762, September 16, 1991. The coordinates for Channel 227C2 at Callahan, Florida are North Latitude 30–33–22 and West Longitude 81–33–13. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 10, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–261, adopted December 13, 1991, and released December 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel 227C2, Callahan, Florida.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Channel 227C2, St. Marys.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–10 Filed 1–2–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–567; RM–7028]

Radio Broadcasting Services; Electra, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Albert L. Crain, permittee of Station KWTA(FM), Channel 236A, Electra, Texas, substitutes Channel 235C2 for Channel 236A at Electra, Texas, and modifies its construction permit for Station KWTA(FM) to specify operation on the higher powered channel. See 54 FR 52424, December 21, 1989. Channel 235C2 can be allocated to Electra in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.3 kilometers (5.2 miles) northwest to accommodate Crain's desired transmitter site. The coordinates for Channel 235C2 are 34–06–03 and 98–57–15. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 10, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–567, adopted December 12, 1991, and released December 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 236A and adding Channel 235C2 at Electra.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–3 Filed 1–2–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73 and 76

[MM Docket No. 91–168; FCC 91–403]

Radio Broadcast and Television Broadcast Services, Cable Television Service; Codification of the Commission's Political Programming Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule; Policy Statement.

SUMMARY: By this Report and Order, the Commission revises its existing rules regarding political broadcasting. This action represents a comprehensive guide to political broadcasting and supersedes previous Commission interpretations of the political broadcasting provisions of the Communications Act. The Commission has sought in this proceeding to reflect more accurately and closely the language, intent and requirements of the political broadcasting portions of the Communications Act; to issue detailed and practical advise spelled out in clear and specific Commission rules so that broadcasters, candidates, advertising buyers, and the public may be fairly and consistently apprised of the duties required by rights accorded under political broadcasting statutes; and to revise the rules to be responsive to the evolving sales practices.

EFFECTIVE DATE: January 4, 1992.

FOR FURTHER INFORMATION CONTACT: Diane L. Hofbauer, Office of General Counsel (202) 632–7020; Milton O. Gross, Robert L. Baker, or Marsha J. MacBride, Mass Media Bureau (202) 632–7586.

SUPPLEMENTARY INFORMATION: This is a full text of the Commission's Report and Order in MM Docket No. 91–168, adopted December 12, 1991, and released December 23, 1991.

Report And Order

Adopted: December 12, 1991; Released: December 23, 1991

By the Commission: Chairman Sikes concurring in part and dissenting in part and issuing a separate statement: Commissioners Quello, Marshall, Barrett, and Duggan issuing separate statements.

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1. By this Report and Order, the Commission revises its existing rules [1] regarding political broadcasting. This action represents a comprehensive guide to political broadcasting and, as indicated herein, supersedes previous Commission interpretations of the political broadcasting provisions of the Communications Act.[2]

I. Introduction and Summary

2. We initiated the Notice of Proposed Rulemaking (NPRM) in this proceeding, 56 FR 30526, July 3, 1991, 6 FCC Rcd 5707 (1991), in response to continuing questions concerning our political programming policies. As we described in the NPRM, a July 1990 audit of thirty television and radio stations revealed that political candidates often pay higher prices for airtime than commercial advertisers, primarily because "candidates purchase [ ] time at non-preemptible 'fixed' rates while commercial advertisers purchase [ ] time at 'preemptible' rates." [3] The audit raised questions whether candidates' advertising choices may be related to a lack of the types of negotiations that often occur between a station and a commercial advertiser.[4] In addition, the numerous inquiries received by Commission staff in the wake of the audit made it clear that there is a need for a single, up-to-date source describing our political programming policies.

3. We have therefore sought in this proceeding to accomplish several objectives. First, we intend to more accurately and closely reflect the language, intent, and requirements of the political broadcasting portions of the Act. In addition, we seek to issue detailed and practical advice, spelled out in clear and specific Commission rules,[5] so that broadcasters, candidates, advertising buyers and the public may be fairly and consistently apprised of the duties required by and rights accorded under the statute. Finally, we seek to revise our rules in order to promote achievement of the Act's objectives while being responsive to the evolving sales practices of broadcast stations.[6] Toward that end, we have determined that licensees must provide more timely, accurate, and complete information on rates and sales practices to candidates. Such information will help candidates take advantage of the full benefits to which they are entitled under the law.

4. The following discussion addresses the concerns raised by the commenting parties and resolves the issues raised in the NPRM.[7] Specifically, by this action the Commission does the following:

(A) *Reasonable Access.* Section 312(a)(7) requires stations to afford reasonable access for federal candidates to their facilities, or to permit federal candidates to purchase "reasonable amounts of time." [8] In this regard the Commission will:

(i) Continue to rely upon the reasonable good faith judgments of licensees to determine what constitutes reasonable access.

(ii) Adhere to its current interpretation that Section 312(a)(7) does not apply to cable television systems.

(iii) Retain our policy of permitting stations to ban federal candidates from news programming.

(iv) Permit sales of a "news-adjacency" class of time to candidates only if such a class of time is sold at rates no higher than sales of such time to most-favored commercial advertisers.

(v) Require stations to provide access for federal candidates to the station over the weekend preceding an election if that station has provided similar services to any commercial advertiser during the year preceding the relevant election period.

(B) *Equal Opportunities.* Section 315(a) requires stations that permit legally qualified candidates to use their station to afford equal opportunities to the candidates' opponents. Bona fide newscasts, as well as news interviews, documentaries, and news events, are exempt from these requirements.[9] In this regard the Commission will:

(i) Continue to interpret the "bona fide newscast" exemption as requiring only that licensees exercise control over the newscast by exercising editorial discretion whether or not to air the program.

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[1] The Commission's rules are codified in §§ 73.1940 and 76.205, pertaining to broadcasting stations and cable television systems, respectively.

[2] 47 U.S.C. 312(a)(7), 315. See infra at para. 3. Previously, the Commission has had occasion to issue numerous interpretations, both comprehensive and *ad hoc*, of these statutory requirements. For example, in 1978 the Commission issued a comprehensive guide to complying with the Commission's political programming rules, which it then revised in 1984. The Law of Political Broadcasting and Cablecasting: A Political Primer, 100 FCC 2d 1476 (1984) ("1984 Political Primer"). The primer was followed by a 1988 Public Notice, which concentrated on the application of section 315(b)'s lowest unit charge provision. See 4 FCC Rcd 3823 (1988).

[3] Mass Media Bureau Report on Political Programming Audit, 66 RR 2d 113 (1990) ("1990 Audit Report").

[4] *Id.*

[5] We have decided to issue detailed rules rather than a Primer. In addition, we will ensure that oral advice of the Commission staff on new and significant issues is reflected in written form, which is publicly available.

[6] As we stated in the NPRM, over the years the industry has moved away from a system based primarily upon the sale of volume discounts to a system that uses a "grid card" to give stations greater flexibility in selling their fixed inventory of advertising time. The latest development appears to be the introduction of a "yield maximization" system, under which spots are in essence auctioned off to the highest bidder, and the price of a given class of time changes constantly to respond to the broadcasters' needs and advertisers' fluctuating demand.

[7] We received 39 comments and 13 reply comments in this proceeding. See appendix A.

[8] Section 312(a)(7) of the Communications Act creates a specific right of access only as to federal candidates. It provides:

(a) The Commission may revoke any station license or construction permit * * * (7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

[9] Section 315(a) of the Communications Act states:

(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: Provided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any:

(1) bona fide newscast,

(2) bona fide news interview,

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto), shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance. 47 U.S.C. Section 315(a).

For purposes of section 315, the terms "broadcasting station" or "licensee" includes "community antenna television."

(ii) Narrow the definition of a "use" by a "candidate" to include only uses of a licensee's facilities that are controlled, approved or sponsored by a candidate after becoming legally qualified.

(iii) Continue to defer to licensees' reasonable, good faith judgment in determining whether sufficient sponsorship identifications have been provided in political programming and advertising.

(iv) Require both audio and visual sponsorship identification for television advertisements.

(v) Continue our present policy that permits stations to request candidates to submit their advertisements in advance to allow the station to determine whether the ad constitutes a use by a candidate and whether it complies with the sponsorship identification requirements. If a candidate refuses to allow the station to pre-screen the ad, the station should advise the candidate that it will take whatever steps are necessary to add the appropriate sponsorship identification to the submitted material.

(c) *Lowest Unit Charge.* Section 315(b) prohibits stations from charging candidates more than the lowest unit charge of the station for each class and period of time, and requires stations to offer candidates all discounts and privileges afforded its most-favored advertiser.[10] In this regard, the Commission will:

(i) Require stations to disclose to candidates all classes of time, discount rates, and privileges afforded to commercial advertisers. Furthermore, stations are required to sell such time to candidates upon request.

(ii) Continue to apply the "most-favored advertiser" standard to factors which affect the value of an advertisement, including (but not limited to) priorities against preemption.

(iii) Permit stations to establish their own reasonable classes of immediately preemptible time so long as some demonstrable benefit besides price or identity of the advertiser (such as preemption protection, scheduling flexibility, or guaranteed time-sensitive make goods) distinguishes each class. The licensee must adequately define each class, disclose it, and make it available to candidates.

(iv) Permit stations to establish their own reasonable classes of preemptible with notice time so long as they adequately define such classes, disclose them, and make them available to candidates.

(v) Permit stations to treat non-preemptible and fixed position as distinct classes of time, provided that they articulate clearly the differences between such classes, fully disclose them, and make them available to candidates.

(vi) Continue the policy of prohibiting stations from creating premium-priced, candidates-only class of time.

(vii) Adopt a policy requiring stations to calculate rebates and provide them to candidates promptly.

(viii) Adopt a policy requiring that all rates found in all package plans sold to commercial advertisers be included in the station's calculation of the lowest unit rate.

(ix) No longer require stations to include in lowest unit charge calculations noncash merchandise incentives (*e.g.*, vacation trips). Bonus spots, however, must still be calculated into lowest unit charge.

(x) Require that fire sale rates be calculated as the lowest unit charge for all classes of time sold that air during the fire sale period, but restrict that calculation to the time period or program actually covered by the fire sale.

(xi) Continue the policy of prohibiting stations from increasing their rates during an election period unless the rate increase is an ordinary business practice.

(xii) Require stations to provide make goods prior to the election if the station has provided a time-sensitive make good to any commercial advertiser during the year preceding the 45- or 60-day election period. *All* make-good spots must be included in the calculation of the lowest unit charge.

(xiii) Continue the existing policy that, while there is no obligation to sell spots in a particular program to candidates, once a station has decided that it will sell spots in a program, daypart, or time period, it cannot inflate the price of the spot sold to a candidate beyond the minimum necessary to clear by claiming that all "preemptible time" is sold out.

(D) *Political File.* The Commission's current policies and Section 73.1940(d) will continue to provide adequate guidance to licensees concerning maintenance of a public political file.

5. Finally, the Commission has determined that the policies reflected in this Report and Order should serve as legally binding rules. We thus have codified new rules to effectuate the policies enumerated in this proceeding. Henceforth, any staff and Commission interpretative rulings will also be made public in order to provide clear and consistent guidance to the public. To the extent that anything contained herein conflicts with prior rules or Commission policies (such as the 1984 *Primer*), the policies adopted herein are controlling.

II. Reasonable Access

6. As indicated above, section 312(a)(7) of the Act requires stations to provide federal candidates "reasonable access" to their facilities.[11] As noted in the NPRM, in 1978, after notice and inquiry, the Commission concluded that additional formal rules regarding what constituted "reasonable access" would not help licensees because of the varying circumstances under which broadcasters and candidates operate. Instead, the Commission determined that it would continue to rely upon the reasonable, good faith judgments of its licensees to provide reasonable access. It did, however, articulate guidelines that would be applied to determine whether a particular licensee's judgment was reasonable. Subsequently, additional questions have been raised regarding standards for reasonableness, as outlined in the NPRM.

A. Formal Guidelines for Reasonable Access for Federal Candidates

7. *Issue and Comments.* The NPRM proposed to incorporate existing Commission guidelines on what constitutes "reasonable access" into a

[10] Section 315(b) of the Communications Act states:

The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed—(1) during the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and (2) at any other time, the charges made for comparable use of such station by other users thereof.

[11] In the NPRM, we asked for comment on our earlier interpretation that section 312(a)(7) does not apply to cable television systems. NPRM at paragraph 19. Few commenters addressed this issue. Those that believe section 312(a)(7) should apply argue that growing cable penetration makes cable access increasingly important to candidates. In our view, however, the statutory language of FECA and its legislative history indicate that Congress never intended to apply reasonable access to cable television. We note, for example, that section 312(a)(7) is in a license revocation provision of the Act, making it unlikely that Congress intended its application to non-licensee cable systems. Moreover, even if Congress initially intended to apply reasonable access to cable, the amendment of FECA in 1974 established that reasonable access does not apply. In that 1974 legislation, Congress repealed Title I of FECA, containing the only statutory language arguably supporting section 312(a)(7)'s applicability to cable. Thus, upon careful review of the statute, the relevant legislative history, and the comments received in this proceeding, we find no reason to alter the conclusion in *Subscription Video Services*, 51 FR 1821 n.27 (1986), that section 312(a)(7) does not apply to cable television.

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more formal scheme. The majority of commenters did not address this issue. Of the four that did, three asked for quantifiable access, i.e., a specific number of hours per week, or formulas that consider the market's various stations and populations.[12]

8. *Decision.* On further reflection, the Commission continues to believe that formal rules would not be practical and that we should continue to rely upon the reasonable, good faith judgments of licensees to provide reasonable access to federal candidates. Reasonable access does not lend itself to a specific number of hours based on complex formulas. Rather, what constitutes "reasonable access" depends on the circumstances surrounding a particular candidate's request for time and the station's response to that request. We will thus continue to determine compliance with section 312(a)(7) on a case-by-case basis.

9. In evaluating whether a particular licensee's judgment in affording access is reasonable, we will continue to rely on the following guidelines, which reflect a combination of policies articulated by the Commission in its 1978 Report and Order on reasonable access,[13] and approved by the Supreme Court in *Carter/Mondale:*[14]

(a) Reasonable access must be provided to legally qualified federal candidates through the gift or sale of time for their "uses" of the station. See Report and Order, 68 FCC 2d at 1088.

(b) Reasonable access must be provided at least during the 45 days before a primary and the 60 days before a general or special election. The question of whether access should be afforded before these periods or before a convention or non-primary caucus will be determined by the Commission on a case-by-case basis. *Id.* at 1091.[15]

(c) Both commercial and noncommercial educational stations must make program time available to legally qualified federal candidates during prime time and other time periods unless unusual circumstances exist that render it reasonable to deny access. *Id.* at 1090.

(d) Commercial stations must make spot announcements available to federal candidates in prime time. The same rule applies to non-commercial stations that utilize spot time for underwriting announcements. Where a noncommercial educational station normally broadcasts spot promotional or public service announcements only, it generally need not make those spot times available to political candidates. *Id.* at 1092 and n.22.

(e) If a commercial station chooses to donate rather than sell time to candidates, it must make available to federal candidates free time of the various lengths, classes, and periods that it makes available to commercial advertisers. *Id.* at 1090 n.18.[16]

(f) Noncommercial stations may not reject material submitted by candidates merely on the basis that it was originally prepared for broadcast on a commercial station. *Id.* at 1094.

(g) A station may not use a denial of reasonable access as a means to censor or otherwise exercise control over the content of political material, *e.g.,* by rejecting it for nonconformance with any of the station's suggested guidelines. *Id.*

(h) Licensees may not adopt a policy that flatly bans federal candidates from access to the types, lengths, and classes of time which they sell to commercial advertisers. Noncommercial educational stations must provide program time which conforms to normal parts of the station's broadcast schedule. *Id.* at 1094.

(i) In providing reasonable access, stations may take into consideration their broader programming and business commitments, including the multiplicity of candidates in a particular race, the program disruption that will be caused by political advertising, and the amount of time already sold to a candidate in a particular race. *Id.* at 1090.

B. Access for State and Local Candidates

10. *Issues and Comments.* The Commission requested comment on whether stations are required by law to make facilities available to state and local candidates for their "uses." The few commenters that address this issue all state that section 213(a)(7) is distinct and more demanding than stations' general public interest obligation,[17] and that stations may satisfy any public interest obligations with respect to state and local elections through news and general public affairs programming. Unlike federal candidates' reasonable access, they state, the public interest standard does not accord state and local candidates any specific access rights.

11. *Decision.* The Commission will not require a specific right of access for non-federal candidates. Section 312(a)(7), the only access provision in the political broadcasting laws, is quite explicit in creating a right of "reasonable access" exclusively for federal candidates.[18] Thus, no statutory basis exists to create a right which Congress implicitly rejected.

12. Moreover, the Supreme Court has declined to extend the general public interest obligations of broadcasters to encompass specific access requirements. As the Court explained in *CBS, Inc.* v. *FCC,* under the "public interest" standard, "an individual [non-federal] candidate can claim no personal right of access."[19] Indeed, except for the "reasonable access" required for federal candidates under section 312(a)(7) and the "equal opportunities" that must be provided to all candidates once a "use" by an opponent has been broadcast under section 315, section 3(h) of the Act states that broadcast stations cannot be treated as common carriers with an obligation to accord access to any particular person, group, or entity.[20]

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[12] See comments of Greater Media at 3; Outlet Broadcasting at 1.

[13] Report and Order, 68 FCC 2d 1079 (1978).

[14] Carter/Mondale Presidential Committee, Inc., 44 FCC 2d 631, recon. denied, 74 FCC 2d 657 (1979), *aff'd sub. nom. CBS, Inc.* v. *FCC,* 629 F.2d 1 (D.C. Cir. 1980), *aff'd.,* 453 U.S. 367 (1981).

[15] The Supreme Court has recognized the Commission's need to evaluate when access should be afforded on a case-by-case basis, and has also affirmed the Commission's use of objective criteria in a national campaign. Those criteria included the facts that: (a) A number of candidates had formally announced their intention to seek a nomination; (b) various states had begun their delegate selection process; (c) candidates were fund raising and making speeches across the country; and (d) national print media had already given campaign activities prominent coverage. After weighing these criteria, the Commission determined that access should be given 11 months before a presidential election and 8 months before the Democratic National Convention. *CBS, Inc.* v. *FCC,* 453 U.S. at 392.

[16] In its comments, the Federal Election Commission (FEC) notes that, in 1980, it initially approved an advisory opinion which would have prohibited corporate licensees' offering free advertising to candidates. That opinion, however, was later vacated when the FEC revisited the issue. The FEC vote on reconsideration was deadlocked at 3–3. The FEC points out that it is currently unable to offer guidance on this issue apart from its "advisory opinion" process. Under that procedure, an interested party would need to present its question in the form of a new advisory opinion request, and the FEC would then have the opportunity to further consider the issue. However, at this time there appears to be no FEC ruling which squarely prohibits advertising donations by corporations.

[17] The comments of AFB at 18–19; NBC at 10–11, Shamrock at 19, 23; RTNDA at 5.

[18] As originally reported in the Senate, section 213(a)(7) would have applied to any legally qualified candidate, but the Conference Committee expressly limited the provision to candidates seeking federal office. S. Conf. Rep. No. 92–580, p. 22, (1971); See, *CBS Inc.* v. *FCC,* 453 U.S. 367, 380 (1981).

[19] 453 U.S. 367, 378–79, n.8. (1981). Of course, once a broadcaster decides to sell or give time to a state or local candidate for political advertising, it is required to meet all of its statutory obligations including equal opportunities, lowest unit charge, and sponsorship identification.

[20] *CBS* v. *Democratic National Committee,* 412 U.S. 94 (1973).

C. News Programming

13. *Issue and Comments.* The NPRM requested comment on whether the Commission should keep its current policy that permits broadcasters the editorial discretion to determine whether political advertisements should be aired during news programming. The majority of commenters argue that licensees should retain their discretion to exclude political advertising from news programming.[21] Such parties contend that mandatory access may compromise the journalistic integrity of news programming and confuse the public. They also point out that section 213(a)(7) affords federal candidates reasonable—not extraordinary or mandatory—access, and does not entitle them to specific placement or programs.[22]

14. By contrast, three media buyers argue that television news programming reaches the highest concentration of those likely to vote. Accordingly, limiting candidates' access to news curtails their access to voters.[23] These commenters also contend that voters are able to distinguish partisan messages from news programming.

15. *Decision.* The Commission will continue its policy of allowing broadcasters to ban the sale of political advertising to federal candidates during the news.[24] The preponderance of comments received on this issue support retention of this longstanding policy, based upon our conclusion that section 312(a)(7) was never intended to provide candidate access to specific programming.[25]

16. Indeed, so long as a station makes available to candidates a wide array of dayparts and programs, access to news programming is simply not essential to afford "reasonable access." We continue to believe that allowing the station discretion to refuse to run political advertising within its news programming does not unreasonably hamper the access of federal candidates to broadcast time, but does serve the public interest by preserving the journalistic integrity of the licensee in this vital area of programming.[26]

17. As we concluded in 1978: "[A]lthough a candidate for Federal office is entitled under section 312(a)(7) to varied broadcast times, such candidate is not entitled to a particular placement of his or her political announcement on a station's broadcast schedule. We recognize that it would be very difficult for a licensee to afford 'equal opportunities' to opposing candidates if one candidate has his or her spot placed adjacent to a highly rated program, which was broadcast only once or very rarely. Additionally, there may be circumstances when a licensee might reasonably refuse broadcast time to political candidates during certain parts of the broadcast day. It is best left to the discretion of a licensee when and on what date a candidates spot announcement or program should be aired." Report and Order, 68 FCC 2d at 1091. We reaffirm our longstanding policy in this Report and Order.

D. News Adjacencies

18. *Issue and Comments.* The NPRM also asked for comment on the Commission's policy that prohibits stations from creating "news adjacencies" that are sold only to candidates at premium rates.[27] While the comments were mixed, more commenters state that news adjacencies should be considered as part of the news period and priced consistently with the lowest unit rate for the entire news period.[28] Apparently, this approach would be consistent with customary business practice.[29] Other comments contend that the scheduling of news adjacencies is certain and precise, and therefore justifies a higher, premium rate.[30]

19. *Decision.* Based on the record compiled in this proceeding, we are persuaded that the scheduling attributes of news adjacenies may be sufficient to justify treating them as a separate class of time. We will permit sales of "news-adjacency" class of time to candidates, however, only if such a class is sold at rates no higher than sales of such time to most-favored commercial advertisers. Thus, a station may charge no more for the news-adjacency class of time than the lowest unit rate charged to commercial advertisers during the news itself. We believe that this additional requirement, coupled with our disclosure requirements, will provide adequate safeguards against abuse.

E. Weekend Hours

20. *Issue and Comments.* The Mass Media Bureau has previously noted that it does not require stations to make "extraordinary efforts" to remain open outside of normal business hours for the purpose of selling political advertising time.[31] However, if the station is formally closed but is otherwise open for purposes of "arranging and providing programming," the Bureau has stated that it may be unreasonable and inconsistent with the requirements of section 312(a)(7) and 315(a) to deny access to political candidates on the weekend before the election.[32] The NPRM requested comment on the Bureau's policy that requires a station to afford "weekend" or "after hours" access to political candidates for placement and/or scheduling of advertisements on the weekend before the election if they would so treat their most-favored advertiser.

21. The majority of commenters oppose mandated weekend and after-hour access to stations for candidates in order to provide for the placement and/or scheduling of advertisements.[33] To require stations to accommodate candidates' requests outside normal business hours, several argue, presents staffing and financial hardships.[34] Moreover, several commenters argue that the Commission has erroneously extended section 315(b) lowest unit charge provision's "most-favored commercial advertiser" considerations to non-rate related candidate benefits, such as weekend access.[35]

22. In contrast, Wilson claims that a station's political sales should mirror its commercial practices. Thus, if a station's most-favored commercial advertiser is afforded weekend/after hour access, so should candidates.[36] According to Dow

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[21] See, *e.g.*, the comments of ABC at 2–3, CBS at 21–23; INTV at 9–10.

[22] Comments of Dow, Lohnes and Albertson at 33.

[23] The comments of MPC at 2; National Media at 2; and Wilson at 3.

[24] Because state and local candidates have no right of access to broadcast facilities, stations may ban the sale of advertisements during news programming to such candidates regardless of the Commission's policy with respect to federal candidates.

[25] See Report and Order, 68 FERC 2d 1079, 1091 (1978); *Carter-Mondale Presidential Committee*, 74 FCC 2d 631, *recon. denied*, 74 FCC 2d 657 (1979), *aff'd sub nom. CBS, Inc.* v *FCC*, 629 F.2d 1 (1980), *aff'd*, 453 U.S. 367 (1981). 47 U.S.C. 315(a)(1)–(4).

[26] In this regard, we note that Congress generally has recognized the special status of news programming in the context of licensees' political broadcasting obligations.

[27] News adjacencies are the commercial breaks immediately preceding or following a news program.

[28] See generally comments of Busse at 3–4, CBS at 21–23.

[29] One media buyer states that news adjacencies should be treated as "swing breaks," which are sold as part of the higher rated program, consistent with normal business practices. National Media's comments at 2.

[30] The comments of Covington and Burling at n.14 and n.24; Osborn at 13.

[31] Letter Ruling released July 3, 1980 (DA 80-871).

[32] *Id.*

[33] See, *e.g.*, the comments of CBS at 23–25; Cox at 11–12; NAB at 18–19.

[34] *Id.*

[35] The comments of CBS at 23–25; Dow Lohnes and Albertson at 18; NBC at 12–14.

[36] Wilson at 3.

Lohnes and Albertson, stations should only be required to accommodate federal candidates if they did so for a commercial advertiser within the 60 days preceding the statutory period.[37]

23. *Decision.* The Commission will require that stations provide access to federal candidates for purposes of "arranging and providing programming" the weekend before an election if they have so accommodated any commercial advertiser during the previous year. Regardless of how a station treats its "most-favored advertiser," if it has provided weekend access for any commercial advertiser during the year preceding the election, then it is "reasonable" for federal candidates to expect similar treatment.[38]

III. Equal Opportunities

24. Section 315(a) of the Communications Act provides that if a broadcast station permits any legally qualified candidate (federal, state or local) to "use" its station, the licensee is required to provide equal opportunities to all other candidates for the same office to "use" the station. The Commission has held that the candidate "use" that triggers equal opportunities is an appearance by the candidate by voice or picture in which the candidate is identifiable to the audience.[39] Section 315(a) further stipulates that the licensee shall have no power of censorship over material broadcasting pursuant to these requirements.

25. In 1959, Congress, in an effort to encourage increased news coverage of political campaign activity, amended section 315 to exempt from the equal opportunity requirements appearances by legally qualified candidates in the following news programs:

(1) Bona fide newscast,
(2) Bona fide news interview,
(3) Bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
(4) On-the-spot coverage of a bona fide news event (including but not limited to political conventions and activities incidental thereto).

47 U.S.C. 315(a).

A. Bona Fide Newscast Exemption

26. *Issue and Comments.* The NPRM asked for comment on the extent to which a licensee must have control over the production of a bona fide newscast in order for it to be exempt from equal opportunities under section 315(a), and the criteria for establishing such control. The majority of commenters support the Commission's decision in *Oliver Productions, Inc.*, 4 FCC Rcd 5953 (1989), *appeal dismissed sub non., TRAC* v. *FCC*, 917 F.2d 585 (D.C. Cir. 1990), in which the Commission concluded that the absence of complete licensee control over a newscast's production does not exclude application of the statutory exemption from equal opportunities.[40] These commenters state that the news exemptions depend on the nature of the programming, not the source of production. The quality as a bona fide news-exempt program, they argue, the selection of material should be based on legitimate news judgments and not be designed to advance any particular candidacy. They also point out that licensees exercise reasonable news judgment in acquiring and airing the material, and are ultimately responsible for all their programming. Further, they argue that a narrow interpretation would inhibit the free flow of information and curtail diversity.[41]

27. In opposition, TRAC argues that *Oliver Productions* should be expressly overruled. TRAC contends that to qualify for a news exemption, programming must be subject to full licensee editorial control.[42] According to TRAC, full editorial licensee control means that a licensee should supervise production or retain the right to refuse to air programming if it so decides, without contractual limitations. Such control is necessary, TRAC argues, to protect the electoral process from abuse, because while licensees must answer to the FCC, independent producers are not accountable to anyone. Additionally, TRAC defines a newscast as a multi-faceted news program with timely segments.[43] TRAC argues that inclusion of a newscast segment in a non-exempt program does not warrant exemption.[44]

28. INTV, PBS and RTNDA object to TRAC's standard of unhindered licensee editorial control. They state that such a requirement would undermine the purpose of the news exemptions by discouraging, rather than facilitating, election coverage.[45] Moreover, PBS and RTNDA regard TRAC's analysis as unrealistic, particularly with respect to late-breaking and "live" news coverage of interviews.

29. *Decision.* We continue to believe that a determination of whether a program qualifies as a *bona fide* newscast should be judged solely on the basis of whether the program reports news of some area of current events in a manner similar to more traditional newscasts.[46] Regarding TRAC's concern that this view will lead to abuse because we have no jurisdiction over third parties who may have produced the news segments, we of course note that we have jurisdiction over the licensee itself, the party ultimately responsible for exercising editorial control in determining whether or not to air the program. Thus, we believe that, for purposes of the newscast exemption, the exercise of such control will alleviate this concern. Third-party produced newscasts featuring candidates not for their newsworthiness, but to promote a particular candidacy, will not be viewed as qualifying for the exemption Congress set forth for a *bona fide* newscast. Regardless of any contractual obligations the station may have to the third party, if a station chooses to air such programming for the purpose of promoting a particular candidacy, it must comply with the equal opportunity requirements of our rules and the Act.

B. "Uses" under Section 315(a)

30. *Issue and Comments.* As noted above, the Commission currently defines a "use" by a "legally qualified candidate" under section 315(a) as any "positive" appearance of a candidate by voice or picture. The Commission staff has advised licensees that, in the event a candidate's name or picture is used by opponents in an advertisement in a disparaging manner, such appearance of

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[37] Dow, Lohnes and Albertson at 15.

[38] Furthermore, a licensee that affords weekend access to state and local candidates must do so on a non-discriminatory basis.

[39] 1984 Political Primer, 100 FCC 2d at 1480.

[40] See generally, the comments of CBS at 25–27; Dow, Lohnes and Albertson at 36; Koteen and Naftalin at 38–41.

[41] Koteen and Naftalin, PBS, and RTNDA argue that this rationale should be extended to news interview programming. Koteen and Naftalin at 38–41; PBS at 3; reply comments of RTNDA at 2–5. We believe that the arguments raised in these comments may warrant further consideration. We specifically stated in the NPRM, however, that such matters were beyond the scope of the proceeding. NPRM at fn. 39. Thus, we invite interested parties to file a petition for declaratory ruling on this issue, which will give the public adequate opportunity to comment so that we can evaluate this issue based upon a complete record.

[42] TRAC's comments at 3–9; TRAC's reply comments at 4–7.

[43] Comments of TRAC at 10–13.

[44] TRAC argues that this factor distinguishes the program in Oliver Productions from other programs such as "Nightline." In "Nightline," the newscast segment is not a bona fide newscast; rather, its exempt status is due to its integration with an exempt news interview program. Comments of TRAC at 19–22.

[45] The reply comments of INTV at 5; PBS at 4; RTNDA at 5.

[46] § Oliver Productions, Inc., 4 FCC Rcd 5953, 5954 (1989).

the candidate is not a "use" and does not therefore trigger the equal opportunities clause.[47] In contrast, if any unauthorized third-party advertiser or programmer uses a picture or other depiction of a candidate to endorse that candidate, even if the candidate considers such an endorsement to be harmful because of the identity of the advertiser, such appearance is still considered a "use" that would trigger the equal opportunity provision. Current policy permits licensees to adopt a policy of selling time only to authorized spokesparties for any candidate. However, once a station permits a "use" by an unauthorized third party, the equal opportunities clause is triggered. We sought comment on these policies in the NPRM.

31. Spurred by the rash of recent negative campaign advertisements, several commenters request that the Commission clarify or modify the definition of "use." Many suggest that "uses" be restricted to programs and announcements that are either paid for or authorized by the candidate (or his campaign committee).[48] Such a simplified definition, they argue, will ease Section 315 administration, preserve candidates' campaign strategies, and avoid stations' subjective assessment of announcements' content and impact.[49] In this connection, Group W and NCAB request that the Commission reiterate that licensees are not obligated to sell airtime to entities not authorized by, or related to, candidates.

32. In contrast, only one commenter argues that any appearance by a candidate should constitute a use, given the potential for candidate abuse. INTV contends that if the Commission restricts "uses" only to appearances authorized by candidates, candidates could collude with, and channel money to, independent entities whose uses would not trigger the equal opportunities requirement, thereby denying the candidate's opponents' requests for time.[50]

33. *Decision.* We have decided to narrow our interpretation of "use under section 315(a) to include only non-exempt candidate appearances that are controlled, approved, or sponsored by the candidate (or the candidate's authorized committee) after the candidate becomes legally qualified.[51] In doing so, we note that section 315 is limited specifically to "uses" by a "legally qualified candidate." At the very least, then, the plain language of the statute suggests the candidates' tacit approved participation in the broadcast. Moreover, the legislative history of Section 18 of the Radio Act, which preceded Section 15, indicates that Congress primarily was addressing candidate-initiated appearances and speeches when enacting the equal opportunities requirement.[52] Similarly, in considering the 1959 news exemptions amendment, various legislators also expressed the view that "use" was directed only to candidate-initiated appearances.[53] Thus, the relevant legislative history of section 315(a) supports a narrower interpretation of the term "use" as well.

34. Under our narrower interpretation, if a legally qualified candidate voluntarily appears as a performer, celebrity, or station employee in a non-exempt program, his opponents will continue to be entitled to equal opportunities. In these circumstances, the candidate controls his appearance on the air and therefore is properly viewed as having "used" the station's facilities. By contrast, if a legally qualified candidate does not voluntarily appear in a non-exempt broadcast, such as in unauthorized, independently sponsored advertisements or rebroadcasts of appearances that were made prior to his attaining the status of a legally qualified candidate, his appearance would not constitute a use.[54]

35. As a practical consequence, this interpretation will have the effect of overruling decisions such as Adrain Weiss, 58 FCC 2d 342, review denied, 58 FCC 2d 1389 (1976), where the Commission upheld a Bureau determination that the broadcast of Ronald Reagan motion pictures during applicable campaign periods would constitute a "use" for purposes of Section 315. While President Reagan voluntarily appeared in the films when they were made, any control over when or whether the films were broadcast ended prior to his becoming a legally qualified candidate. Thus, under our new interpretation, such broadcasts would not be section 315 "uses" by a "legally qualified candidate." [55]

36. However, if a legally qualified candidate voluntarily appears or otherwise consents to an appearance during the applicable campaign periods, such appearances would constitute a section 315 "use." Thus, for example, a voluntary appearance on a live entertainment program during a campaign period would constitute a "use." [56] Likewise, the voluntary appearance of announcers, newscasters, interviewers, commentators and other talent would be deemed a section 315 "use." [57] In each case, however,

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[47] The FCC staff has advised licensees accordingly, relying upon a report it gave to Congress in 1981. See Report of the Staff of the Federal Communications Commission on the Operation and Application of the Political Broadcasting Laws During the 1980 Political Campaign, submitted to Senator Barry Goldwater in 1981.

[48] See, *e.g.*, the comments of Cox at 29; Dow, Lohnes & Albertson at 7; reply comments of NCAB at 22–24.

[49] The comments of Group W at 8; the reply comments of NCAB at 23.

[50] Comments of INTV at 11.

[51] Our ruling herein does not in any way affect news programming that is statutorily exempt pursuant to the provisions of subsections 315(a)(1)–(4). Congress has directly addressed the circumstances in which such news programming falls outside the equal opportunities requirement. As to these programs, we shall continue to be guided by the explicit standards set out in the statute, the legislative history, and court and Commission precedents. For example, to qualify for the exemption, the news programming at issue must still be "bona fide" (*i.e.*, must be of genuine news value and not designed by the broadcaster to advance any particular candidate). See, Conference Rep. No. 1069, 86th Cong., 1st Sess. 4 (1959); 105 Cong. Rec. 14442 (Pastore); *id.* at 16224 (Brown); *id.* at 17828 (Pastore); *id.* at 17777 (Scott). Additionally news interview programs must still be regularly scheduled and licensee-controlled, and news documentaries must still focus on matters other than the candidate.

[52] See 67 Cong. Rec. 12502–12504.

[53] See S. Rep. No. 562, 86th Cong., 1st Sess. 6 (1959) (remarks of former Senator Dill, who sponsored the original legislation in the 1927 Radio Act); See also Cong. Rec. 16244 (Brown) and 14442 (Pastore).

[54] Independent entities that oppose or support candidates do not have any access rights; only federal candidates are accorded access rights. Thus, licensees are not required to accept any political material that is not authorized by candidates. In this connection, we note that several commenters expressed the belief that the lowest unit charge provision currently applies to "uses" sponsored by independent entities. Even under our prior broader interpretation of "use," however, we have never held that independent entities were entitled to the lowest unit charge. The legislative history of section 315(b) clearly demonstrates Congressional effort to reduce *candidates'* escalating campaign costs. See S. Rep. No. 92–96, 92d Cong., 1st Sess. 20 (1971). Therefore, we reiterate that the lowest unit charge inures to the benefit of candidates only

[55] The Commission, of course, retains the discretion to revisit these rules if abuses become apparent. As stated, we believe the approach outlined above more closely comports with both the plain language and intent of the Act. If, however, the accomplishment of Congress' objectives under the political broadcasting provisions is not enhanced under this approach, we will respond accordingly.

[56] See Paulsen, 33 FCC 2d 835 (1972); *aff'd sub nom. Paulsen v FCC*, 491 F.2d 887 (9th Cir. 1974).

[57] For examples of candidate appearances that will continue to be considered uses, (*see RKO General, Inc.*, 25 FCC 2d 117 (1970) (daily interview host); *Station WBAX*, 17 FCC 2d 316 (1969) (station announcer); *KUGN* 40 FCC 293 (1958) (broadcaster's occasional appearances).

whether a "use" has occurred depends upon whether the appearance is voluntary (*i.e.*, under the candidate's control after he or she has become a legally qualified candidate.[58]

37. We believe that defining "use" in terms of an appearance that is controlled, sponsored, or approved by a candidate should simplify administration of section 315. In determining the applicability of section 315's no censorship provisions, for example, the candidate's control, approval, or sponsorship, or lack thereof, would be dispositive. Such a determination may readily be ascertained and does not necessitate any review of the broadcast material. Additionally, a narrower definition of use ensures candidates greater control of their campaigns by attributing to them only those messages or associations they authorize or approve.

38. Finally, we are not persuaded by the argument that a narrower definition of use will result in "collusion" between candidates and independent groups. This concern is purely speculative. Moreover, FECA expressly requires that political advertising clearly state who pays for a political advertisement and whether or not it was authorized by a candidate. 2 U.S.C. 441(d). Thus, federal candidates or committees that attempted to collude by channeling money to independent groups without an appropriate announcement would violate federal law.[59] Further, given the fact that only candidates are entitled to lowest unit charge benefits, *see* n.55, *supra*, we think it is highly unlikely that candidates will be motivated to channel scarce resources to independent groups.

C. Sponsorship ID Guidelines

39. Section 317 provides generally that the identity of the party providing consideration (*i.e.*, paying) for broadcast material must be disclosed on the air at the time of broadcast. The Commission has determined previously that it is not practical to adopt quantifiable standards to govern the sponsorship identification requirements contained in this provision and codified in § 73.1212 of our rules. Sponsorship Identification Requirements, 41 RR2d 761 764 (1967). Rather, we have generally advised that the sponsorship announcement must be displayed in letters of sufficient size to be legible to the average viewer; set against a background that does not reduce the announcement's legibility; and exhibited on the screen for a sufficient amount of time to be read in full by the average viewer.[60] The Commission has applied these criteria to spohsorship identifications involving both political broadcasts and commercial matter.[61]

40. There are, however, additional requirements for political announcements that are designed to make information about their sponsors more available to the public. Sections 73.1212 (d) and (e) of the rules require that: (1) Licensees retain lists of information regarding the political sponsors' identity for public inspection; and (2) announcements be made both at the beginning and the end of political material five minutes or more in length. See Amendment of Sponsorship Identification Requirements, 52 FCC 2d 701 (1975).

41. The Commission has also made clear that "liability for incorrect sponsorship identification rests with licensees." [62] As a consequence, licensees may "require that proposed [political] broadcasts" contain appropriate sponsorship announcements. The Commission has characterized this as an exception to the no censorship provision set forth in section 315(a), which otherwise precludes stations from influencing the content of political broadcasts.[63] In identifying the appropriate sponsor of the political material, however, licensees are only required to exercise reasonable diligence.[64]

42. *Issue and Comments.* The NPRM proposed adoption of objective guidelines that could be used by stations to assess whether a paid political broadcast complies with the sponsorship identification requirement. In particular, it proposed that letters equal to or greater than 4% of picture height, to air for not less than six seconds, should be required for video identification. It further proposed that a clearly audible statement at the beginning and end of the message, setting forth the name of the sponsor, should be required for audio identification.

43. The majority of commenters support, or do not oppose,[65] adoption of objective sponsorship identification standards.[66] According to Koteen and Naftalin, objective standards will better inform the public of the sponsor of political broadcasts—a public interest benefit that is made all the more necessary, they claim, given the negative campaign climate.[67] In contrast, CBS, Group W, NAB and NCAB oppose the adoption of quantitative criteria.[68] NAB contends that such standards will require licensees to make precise measurements, which are difficult to calculate.[69] CBS agrees with NAB, and further states that the proposed criteria would be unnecessarily restrictive and may substantially curtail candidates' political presentations.[70] Moreover, several commenters argue that the burden of compliance should be imposed on the candidates and enforced by the Federal Election Commission ("FEC")—not licensees or the Commission.[71]

44. *Decision.* After carefully reviewing the record, we are not persuaded that we should adopt specific, objective criteria for meeting sponsorship identification obligations. We are concerned that specific requirements, such as those proposed in the NPRM, would place undue burdens upon licensees and would interfere with candidates' ad design and preparation. Thus, we favor maintaining flexibility for both broadcasters and candidates,

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[58] Public Broadcast Licensees also argue that the Commission should clarify that where candidate A appears by invitation in another candidate's program or advertisement, candidate A's appearance is not a use and does not create equal opportunities for his opponents, since candidate A did not "control" the use. Joint Comments of Public Broadcast Licensees at 11–12. We believe, however, that if a candidate chooses to appear on another candidate's advertisement, the appearance is voluntary and thus constitutes a "use" under Section 315(a).

[59] Indeed, in order to qualify as an "independent expenditure" that supports or opposes a candidate under FECA, the expenditure cannot be made in "cooperation or consultation" with any candidate, any authorized committee, or agent of such candidate. 2 U.S.C. 431(17).

[60] *Id.* at 763. With respect to television, the Commission stated that announcements could be aural or visual. *Id.*

[61] *See Lotus Broadcasting Co.*, 10 RR 2d 921, 923 (1967); *Amendment of Sponsorship Identification Rules*, 34 FCC 829, 848–49 (1963). *See also, National Broadcasting Co.*, 20 RR2d 901, 903 (1970), in which the Commission applied the same size and length criteria for political sponsorship announcements to sponsors of cash and prizes awarded on game and audience participation shows.

[62] See Joint Agency Guidelines for Broadcast Licensees, 69 FCC 2d 1129, n.2 (1978).

[63] *Id.* See also, KOOL–TV, 28 FCC 2d 42 (1970) ("A Lot of People Who Would Like To See Sam Grossman Elected To The U.S. Senate" failed to represent that this was a committee, and thus lacked the specificity necessary to comply with Section 317).

[64] See Voter, 46 RR 2d 350, 352 (1979).

[65] See, *e.g.*, the comments Busse at 4; FEC at 3–5; Group W at 9–10; PAW/MAP at 21–24.

[66] MPC states that sponsorship identifications should appear both at the beginning and end of radio announcements. MPC Comments at 4.

[67] Koteen and Naftalin's comments at 41–42.

[68] Group W's comments at 9–10.

[69] NAB's comments at 20–22. NCAB also states that the new standards will be difficult for licensees to implement and enforce.

[70] CBS' comments at 29–30.

[71] See, *e.g.* the comments of CBS at 29–30; Dow Lohnes and Albertson at 38; NAB at 20–22.

and will continue to rely upon the licensees' reasonable, good-faith judgment as to whether a particular sponsorship identification meets the statutory requirements.

45. We note, however, that broadcasters must be mindful of the importance of assuring that the audience is able to discern the sponsor of a paid political broadcast. Thus, while no specific, quantifiable standards will be established, we will continue to require that the sponsorship identification for television must be sufficiently large, and of sufficient length on radio and television, to allow members of the audience to reasonably comprehend the identity of the sponsor. Moreover, although we decline to make them mandatory, we believe that the specific requirements outlined in the NPRM (and described above in paragraph 40) would be sufficient to satisfy the statutory mandate.

D. Audio and Visual Identification

46. *Issues and Comments.* The NPRM also sought comment on its proposal to require both audio and visual identification for television advertisements. Several commenters addressing this issue supported this proposal.[72] NAB, on the other hand, described the visual and aural requirement as overreaching, particularly given the non-emergency nature of political messages.[73]

47. *Decision.* The Commission will adopt the proposed policy of requiring both audio and visual identification for political advertisements carried by television stations. We believe that this requirement will better inform those persons suffering from aural or visual impairments. In addition, the requirement will convey the sponsor's identity to viewers listening, but not actually watching a program, or those receiving programming from the class of radios that has been specifically designed to receive the audio portion of television programs.

E. Pre-Airing Submissions

48. *Issue and Comments.* Current Commission policy does not require candidates to submit their political broadcasts to stations before airing so that the station can determine whether the broadcast complies with the sponsorship ID rules. Most commenters argue that, if we were to adopt objective sponsorship identification standards, those standards must be coupled with a right by the station to preview candidate material to ensure compliance. ABC explains that fairness and effective enforcement necessitate such preview rights, particularly since the proposed standards require screen size and time duration calculation.[74] In this connection, several commenters specify time periods in which licensees should be permitted to require candidates to furnish material in advance of the scheduled airtime.[75] Additionally, Public Broadcast Licensees state that licensees should be able to refuse material that does not conform to the sponsorship identification standards.[76]

49. *Decision.* In view of our decision not to require sponsorship identification announcements to meet specific regulator criteria, we do not believe it is necessary to adopt a policy which requires pre-airing submissions. Such a policy would be difficult to implement and could result in improper station involvement in the timing and content of political broadcasts. We will, however, continue to enforce our current policy, which permits broadcasters to ask for pre-airing submissions to determine compliance with technical standards, including compliance with sponsorship ID requirements. If a candidate nonetheless refuses to allow a broadcaster to pre-screen an ad, the licensee should presume that it must provide its own sponsorship identification or risk violating the Act and our rules.[77] We emphasize, however, that, consistent with the Commission's traditional approach, we are not requiring licensees to provide additional time, free of charge, to add the required sponsorship ID. Rather, the broadcaster may choose whatever means are appropriate to ensure sponsorship ID compliance.

IV. Lowest Unit Charge

50. Section 315(b) of the Communications Act directs broadcast stations and cable television systems to charge political candidates the "lowest unit charge of the station" for the same class and amount of time for the same period, during the 45 days preceding a primary or runoff election and the 60 days preceding a general or special election. Congress added section 315(b) in 1972 as part of a plan "to give candidates for public office greater access to the media and * * * to halt the spiraling cost of campaigning for public office."[78] By adopting the lowest unit charge requirement, Congress intended to place candidates on a par with a broadcast station's most-favored advertiser.[79]

A. Obligation to Make Rates Available

51. *Issue and Comments.* Broadcasters currently have a duty, under § 73.1940(b), to make all discount rates and privileges offered to commercial advertisers available to candidates. As we stated in the Notice, we believe that this duty contains two obligations: an affirmative duty to disclose to candidates information about rates, make goods, and discount privileges offered commercial advertisers; and an obligation to sell to candidates all types of discount privileges made available to commercial advertisers.

52. In the NPRM we sought comment upon the scope of the affirmative disclosure obligation. Almost all commenters agree that some form of mandatory disclosure requirement is reasonable, and most request specific guidance on what must be done to satisfy such an obligation. Pulitzer argues that the Commission should leave the method of disclosure to the discretion of the licensee to assure maximum flexibility and that the FCC should adopt a policy of relying generally on the reasonable good faith judgment of licensees.[80] Numerous commenters request that the Commission adopt a standard disclosure report form or specify exactly what information must be conveyed to meet the obligation.[81]

53. Many commenters suggest that the amount of disclosure required should be tailored to the needs of the buyer. They maintain that more sophisticated buyers—who would often include political time buyers—would not need as much repetitious disclosure.[82] MPC

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[72] See, *e.g.*, comments of FEC at 4; Gillett at 8–9.

[73] See also, NCAB Reply at 25.

[74] ABC's comments at 3–6.

[75] Public Broadcast Licensees also state that candidates should be required to furnish in advance written scripts for "live" announcements, to enable licensees to ensure compliance. *Id* at 5.

[76] Joint comments of Public Broadcast Licensees at 6.

[77] We note that the NAB form contract for political advertising specifies that broadcasters are authorized to include appropriate sponsorship ID.

[78] S. Rep. No. 96, 92d Cong., 1st Sess. (1971), reprinted in 1972 U.S. Cong. 7 Ad. News 1773, 1774.

[79] *Id.* at 1780.

[80] Pulitzer comments at 15. Kahn and Jablonski respond that "there is nothing in the history of political broadcasting to suggest that there is any intention [on the part of broadcasters] to act in good faith."

[81] See, e.g., comments of AFB at 42; Covington and Burling at 27; Shamrock at 9.

[82] Comments of Fox at 4–5; Cox at 10; Covington and Burling at 9; Dow Lohnes and Albertson at 15; NBC at 41. AFB contends that the fact that fixed or non-preemptible time is purchased through the use of sophisticated advertising agencies "confirms that candidates are not 'steered' to fixed time, but purchase such time as a matter of their own informed choice." AFB Reply at 7.

disagrees, and states that most political time buyers are young and inexperienced.[83] INTV suggests that disclosure statements should not be required to include every conceivable package or option, but that the Commission could adopt a general rule that prohibits stations' use of selling techniques that obsecure the availability of less expensive types of spots for candidates.[84]

54. Numerous commenters emphasize that there was no disclosure obligation prior to the 1990 Audit Report. They contend that the only requirement "implicit" in the LUC obligation was that broadcasters act in good faith.[85] Thus, many commenters request that the Commission make an explicit finding that, prior to 1990, there was no required affirmative course of conduct with respect to disclosure.[86] Conversely, Kahn and Jablonski argue that ever since Congress enacted the lowest unit charge provision, broadcasters have had an affirmative obligation to disclose to candidates all discounts and options given to the most-favored commercial advertiser. They contend that the fact that the industry has developed an official position now demonstrates that broadcasters as a group have been collaborating to avoid the spirit and intent of the law.[87] They emphasize that without disclosure, "the statute is meaningless."[88]

55. *Decision.* The Commission believes that broadcasters must disclose and make available to candidates all discount privileges available to commercial advertisers, including the lowest unit charges for the different classes of time sold by the station. This requirement serves to ensure that candidates are able to avail themselves of their statutory rights and are not steered to purchase more expensive categories of time. Candidates must have full information about the discount privileges made available with various classes of time in order to ensure parity of treatment with commercial advertisers.[89]

56. Political broadcasting obligations are imposed upon station licensees, not on candidates and their representatives. The representatives' or candidates' knowledge, or lack thereof, does not replace the broadcaster's obligation to offer candidates the benefits of the lowest rates and any associated discount privileges for the various classes and lengths of time and time periods. It is thus incumbent upon the broadcaster to disclose to candidates all information concerning the lowest unit charges made available to commercial advertisers, together with the discount privileges associated by the broadcaster with those rates. The absence of such full disclosure hampers candidates' ability to evaluate what is being made available to them and is inconsistent with Congress' intent to place candidates on par with favored commercial advertisers. Indeed, the benefits of disclosure not only were undescored in the comments but were also made clear in the Commission's 1990 political audit. In a number of instances, the Commission noted that lowest unit charge issues arising from the audit stemmed in large measure from incomplete disclosure to candidates of individual stations' commercial sales practices.[90]

57. As noted *infra*, discount privileges afforded favored commercial advertisers include all sales practices which affect rates.[91] These include priorities against preemption,[92] time-sensitive make goods,[93] and any other privilege which essentially adds value to the spot purchased. Thus, in addition to disclosing to candidates the rates offered commercial advertisers for the various classes of time, broadcasters must also disclose all pertinent information about the privileges associated by the broadcaster with the rates.

58. We understand that implementation of the disclosure requirement is complicated by the divergent sales practices in the industry, the rapid changes in such practices, and the proliferation of individually negotiated packages and rates. We believe that, in light of the vast array of approaches to the sale of time, a Commission-sanctioned "disclosure form" would be impractical. The more reasoned approach would be to afford each broadcaster the reasonable discretion to decide how best to disclose its particular practices. However, we believe that, at a minimum, this disclosure should include:

(a) A description and definition of each class available to commercial advertisers which is complete enough to allow candidates to identify and understand what specific attributes differentiate each class;

(b) A complete description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers;

(c) A description of the station's method of selling preemptible time based upon advertiser demand, commonly known as the "current selling level," with the stipulation that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers;

(d) An approximation of the likelihood of preemption for each kind of preemptible time; and

(e) An explanation of the station's sales practices, if any, that are based on audience delivery.

Finally, once disclosure is made, stations must negotiate in good faith to actually sell time to candidates in accordance with this disclosure.

59. While the method of disclosure is left to the discretion of individual stations, we believe that broadcasters can meet the disclosure obligation by reducing their sales practices, as noted above, to some kind of outline format that briefly describes the various rates and discount privileges available at the station. For example, a station need not list every rotation offered by the station, but must make clear that other rotations are available upon request if that is the case.[94] In addition, since our policies now require stations to include all negotiated package rates in their lowest unit charge calculations, see para. 93, *infra*, every individual negotiated deal does not need to be disclosed. We also understand that time is of the essence in the context of an election campaign. Accordingly, after a licensee has once made full disclosure to a particular candidate or the candidate's representative during a given campaign, full disclosure need not occur each time a buy is made, although any changes in

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[83] MPC comments at 2.

[84] INTV comments at 14–15.

[85] *See, e.g.*, ABC comments at 9. ABC acknowledges, however, that a fact pattern demonstrating a pattern of deliberate concealment of rate options or steering would not be consistent with "good faith." *Id.*

[86] *Id.*

[87] Kahn and Jablonski comments at 5–6.

[88] Kahn and Jablonski Reply at 6. See also Pulitzer comments at 14 (agreeing with Commission's position that disclosure is inherent in the LUC obligation).

[89] However, we recognize that neither the Commission nor the Mass Media Bureau had articulated the disclosure requirement before September 1990.

[90] See, *e.g.*, Letters of December 12, 1991, to KGO Television, Inc.; KDFW–TV, Inc.; TVX Broadcast Group, Inc.; and Chronicle Publishing Company, all of which were adopted contemporaneously with this Report and Order.

[91] See discussion para. 61, *infra*.

[92] Preemption priorities are any hedges against the likelihood of preemption.

[93] Make goods are the spot announcements rescheduled as a result of technical difficulty or preemption.

[94] By the same token, stations need not disclose which commercial advertisers are getting which rates; rather, it is sufficient merely to disclose the rates themselves.

rates or other information that may arise subsequent to be initial disclosure (or subsequent candidate transactions) must be disclosed during each succeeding negotiation.

60. Finally, we understand that candidates or their representatives may wish to pursue specific purchase objectives with regard to a station and may not wish an oral or written catalogue of available rates. Clearly, a station cannot compel candidates or their representatives to read or listen to a presentation of rate packages. Rather, it is sufficient that the station attempt to inform candidates of its sales practices in accordance with the requirements set forth above.

B. Most-favored Advertiser

61. *Issue and Comments.* In response to our NPRM, several commenters argue that the most-favored advertiser standard applies only to rates and that Commission policies should not force stations to apply the concept to other station sales practices, such as make goods and preemption priorities. NBC and Cox state that the purpose of the 1972 amendments enacting the LUC provision was to place the candidate on par with a broadcast station's "most-favored commercial advertiser" with respect to advertising rates.[95] CBS argues that the notion of a most-favored commercial advertiser originally contemplated volume discounts in an era when time was sold at stable prices. Now, however, the concept of a most-favored commercial advertiser is a fiction because advertiser advantages are dispersed in a wide variety of ways beyond price discounts.[96] Cox contends that the Commission's interpretations of benefits that must accrue to candidates are now based on a composite picture of the most-favored commercial advertiser, and that no single advertiser would ever receive all the advantages that candidates must receive through the Commission's "cherry-picking" of benefits given to all commercial advertisers.[97] Thus, these commenters argue, the effect of the Commission's current policy is to afford candidates greater benefits than those actually conferred upon the "most-favored commercial advertiser."[98]

62. Conversely, Kahn and Jablonski argue that Section 315 was intended to put candidates on a par with the most-favored commercial advertiser, and thus, candidates should receive all of the same benefits. They observe that, for the most-favored commercial advertiser, class-of-time distinctions are "rare," preemption is extremely unlikely, timely make goods are provided, preemptions are not based exclusively upon price, and rates are guaranteed over the long term.[99] They argue that candidates should receive similar treatment. Moreover, they argue, for a major advertiser, stations do not sell time on a true auction basis—the major advertisers who pay lower volume prices will not get preempted if they object or are in the late stages of a buy, and, thus, higher priced spots for other advertisers are more likely to be preempted. Thus, Kahn and Jablonski assert, candidates should receive the preemption treatment given to the most-favored advertiser, not the station's "usual" preemption policy.[100]

63. *Decision.* We believe that we should continue to apply the most-favored advertiser standard not only to the advertising rates themselves but also to station sales practices and other discount privileges that improve the value of the spot to the advertiser. These would include make goods, preemption priorities, and any other factors that enhance the value of a spot. These characteristics effectively determine the particular class of time at issue. Hence, they must be disclosed and made available to candidates at the LUC. Even if it were true that no single advertiser would ever receive all such benefits (a conclusion some commenters dispute), nonetheless we believe that, because all such factors enhance the value of a particular class of time and improve the value of individual spots (even though the price itself does not necessarily reflect such value), each such benefit must be made available to candidates. Any other approach would be inconsistent with the statute's express directive that candidates be charged no more than the station's most-favored advertiser for the "same class" of time.

C. Classes of Time

64. *Issue and Comments.* Section 315(b) of the Communications Act requires that stations charge candidates, during the 45-day period preceding a primary and the 60 days preceding a general election, no more than the lowest unit charge for the same class and amount of time for the same period. Regarding classes of time, the Commission historically has stated that "fixed" [101] or "non-preemptible," [102] "preemptible with notice," [103] and "run-of-schedule" [104] constitute separate classes of time. [105] In addition, current Commission policy provides that there is only one class of "immediately preemptible" time for lowest unit charge purposes.[106] The NPRM sought comment on whether it is lawful to have more than one class of immediately preemptible, preemptible-with-notice, and non-preemptible time.

65. *Preemptible Time.* Several commenters argue that the Commission's decision, announced in the 1988 Public Notice,[107] to treat all immediately preemptible time as a single class of time confers extra benefits upon candidates not intended by the statute.[108] Moreover, some commenters point out that this decision was made without the benefit of public comment.[109] Greater Media, for example, argues that it is not fair to require stations to give refunds to candidates if any other preemptible rate clears at a lower rate during the same time period. Greater Media notes that the advertiser placing the lower-priced spot took a greater risk of not clearing than the political candidate, and the spot was priced accordingly. By requiring a rebate, the candidate is achieving a higher preference against preemption without having to pay for it.[110]

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[95] NBC comments at 25.

[96] CBS comments at 4.

[97] Cox comments at 15.

[98] See, *e.g.*, the comments of Cox at 15; CBS at 4–5; NBC at 25.

[99] Kahn and Jablonski comments at 17.

[100] *Id.* at 11, 15.

[101] Fixed or fixed position connotes the guarantee of placement during a particular time *(e.g.*, the spot will run at the 6:45 p.m. break, Wednesday, January 1, 1992).

[102] Non-preemptible connotes any spot which is not subject to preemption during a particular daypart, program or time period. By comparison to a fixed position, non-preemptible may run anywhere during the designated program, daypart or time period.

[103] Preemptible with notice is preemptible time which cannot be preempted without prior notice given by a specific time, for example, one week before airing. Often, at the time notice is provided, the advertiser is accorded the option of paying more for the spot in order to avoid preemption.

[104] Run-of-schedule refers to preemptible time that can be scheduled at any time during the broadcast day at the discretion of the station.

[105] See 1988 Public Notice, for FCC Rcd 3823, 3824 (1988).

[106] *Id.*

[107] *Id.*

[108] See, *e.g.*, comments of Shamrock at 14; Koteen and Naftalin at 15–19; AFB at 21; reply comments of Gray at 4. Several commenters, such as Covington and Burling, extensively cite the legislative history of FECA and Section 315(b) to show that early provisions requiring that candidates be sold fixed time at run of schedule or preemptible rates were specifically rejected by Congress. Covington and Burling comments at 2–3.

[109] See comments of AFB at 5, NAB at 3, Gray Reply at 3, NCAB Reply at 2.

[110] Greater Media comments at 7.

66. The vast majority of commenters contend that evolving sales practices have significantly complicated the calculation of the LUC. They seek flexibility in creating classes of time, made available to both commercial and political advertisers, so that they can adapt to individual market demands.[111] Most argue that the disclosure requirements will protect candidates against any manipulation of rates resulting from allowing broadcasters to create separate classes of time.[112] Thus, the commenters generally suggest that the Commission should allow flexibility in creating classes of time, require full disclosure, and articulate a general rule that stations cannot use class distinctions to defeat the purpose of the LUC requirement.[113] With respect to this latter point, the parties assert that candidates should continue to be allowed to challenge classes viewed as manipulative or discriminatory.[114]

67. NBC argues that each succeeding price increase in immediately preemptible time should be treated as a separate class for LUC purposes.[115] Other commenters contend that "class of time" is a function of two interrelated attributes: preemptibility and spot location.[116] A change in either attribute affects the desirability to the advertiser of the particular spot (demand) as well as the availability of time slots for it (supply), and thus is reflected in the price. The broader the time periods (spot location parameters) selected by the advertiser, the lower the value of the spot to the station because the licensee has increased flexibility in scheduling it. The commenters outlining these principles argue that the effect of such attributes should not be ignored when identifying appropriate "classes" of time.[117]

68. In contrast, Kahn and Jablonski argue that changing sales practices makes the calculation of LUC easier, not more complex. The contend that advertising rates are "so competitive that heavy advertisers are able to negotiate cheap rates without any distinction based on class." They thus conclude that there is only one class of time—negotiated—and further claim that Section 315(b) requires that the lowest rate of the station for each daypart should be provided to candidates.[118] These commenters also cite the court's statement in *Hernstadt* v. *FCC*[119] that "if broadcasters have total discretion to define 'class of time' . . . they will be free to return to pre-1952 rate discrimination simply by defining a 'political' class of time, with higher rates than other classes, and offering candidates only 'political' time."[120] They thus argue against broad discretion, claiming that it will only lead to abuse.

69. ABC asks the Commission to clarify that run of schedule is a separate class of preemptible time that gives broadcasters maximum scheduling discretion because the station merely has to place the ads so that the advertiser's overall rating point objective is met.[121] Koteen and Naftalin contend that "class of time" should be defined to refer primarily to distinctions affecting the likelihood that a particular spot will run at a particular time.[122] Kahn and Jablonski respond that a spot's chances of preemption are not governed by price alone, and argue that whether a spot is preempted or not depends upon how "favored" the advertiser is.[123]

70. *Decision.* We are persuaded by the arguments of the overwhelming majority of commenters that our current policy of treating all immediately preemptible time as an all-inclusive single class does not appear to effectuate what Congress envisioned when it enacted Section 315(b). We accordingly conclude that our policy should be changed to reflect more accurately the realities of the advertising marketplace. As we stated in the NPRM, it is our understanding that, over the years, the industry has moved away from a system based primarily on the sale of volume discounts to a system that uses a "grid card" to give stations greater flexibility when selling inventory. The latest development appears to be the introduction of a "yield maximization" system, under which spots are in essence auctioned to the highest bidder and the price of a given class of time changes constantly to respond to fluctuating supply and demand.[124]

71. Under certain current sales practices, a commercial advertiser may choose to take a significant prospective risk of nonclearance—and pay less accordingly—that a political advertiser would not accept. Under our current method of interpreting all immediately preemptible time as a single class, however, a candidate could select a "higher" priced level of immediately preemptible time to ensure that his ad runs, ostensibly paying that higher price for associated increased preemption protection, knowing that he will nevertheless be rebated to the lowest priced preemptible level that ultimately clears—without having assumed the additional risk of nonclearance that other advertisers have accepted when they purchased time at the lower price. Thus, the "higher" payment is a fiction, and the candidate is essentially afforded "fixed" status at a preemptible rate, a result specifically rejected by Congress.[125]

72. Nonetheless, as the court noted in *Hernstadt* v. *FCC*, 677 F.2d 893 (D.C. Cir. 1980), broadcasters do not have total discretion under Section 315(b) to define classes of time in any manner.[126] We thus believe the better interpretation of the law is that, while stations may not use class distinctions to defeat the statutory purpose of the LUC requirement, they may establish and define their own reasonable classes of immediately preemptible time. The differences between classes, however, may not be based solely upon price or the identity of the advertiser; rather, some other demonstrable benefit, such as varying levels or assurances of preemption protection, scheduling flexibility, or special make-good benefits, must be used to distinguish between different classes of immediately preemptible time. Furthermore, as discussed above, we hereby hold that all classes of time must be disclosed to candidates and made available in compliance with the lowest unit charge requirements.[127] To further

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[111] See, *e.g.*, Comments of Paducah at 4; INTV at 7; Cox at 19; Dow, Lohnes and Albertson at 15; ABC at 7. NCAB notes that section 315(b) was intended to be interpreted so as to "make use of each broadcaster's own commercial practices rather than impose on him an arbitrary discount rate applicable to all stations without regard to their differences," citing the Senate Report on the 1972 amendments establishing the LUC requirements. NCAB Reply at 13.

[112] See, *e.g.*, comments of Paducah at 2.

[113] See, *e.g.*, comments of INTV at 7, 13 and 15.

[114] See, *e.g.*, Paducah at 7; Shamrock at 12–13; Busse Broadcasting at 6; AFB at 27. AFB also argues that the high cost of auditing sales rates after the ads run, which is necessary to enable the station to provide any requisite rebates throughout such an "extensive" class of time, imposes significant extra costs upon all advertisers. *Id.* at 30.

[115] NBC comments at 29.

[116] Comments of Fox at 6.

[117] Fox Reply at 7.

[118] Kahn and Jablonski at 15.

[119] 677 F.2d 893 (D.C. Cir. 1980).

[120] *Id.* at 900, cited in Kahn and Jablonski Reply at 9.

[121] Comments of ABC at 8.

[122] Koteen and Naftalin comments at 32.

[123] Kahn and Jablonski Reply at 10.

[124] NPRM at para. 19.

[125] See 117 Cong. Rec. 29,028–29 (1971).

[126] See *Hernstadt* v. *FCC*, 677 F.2d 893 (D.C. Cir. 1980).

[127] Of course, stations will be required to provide timely rebates to candidates in the event that a commercial advertiser's spot clears at a lower rate within the same class of time, as established and disclosed by the station.

safeguard against possible abuse in the creation of various classes, candidates will be able to file complaints with the Commission to challenge classes viewed as manipulative or discriminatory.

73. These same principles apply to establishing permissible classes of "preemptible with notice" time. Under our new policy, licensees will be allowed to establish reasonable classes of time (such as preemptible with one day's, two days', one week's or two weeks' notice) so long as they clearly define all such classes, disclose them to candidates, and offer all such classes of preemptible with notice time to candidates in compliance with the lowest unit charge requirements.[128]

74. *Non-preemptible.* The NPRM also sought comment on whether non-preemptible and fixed (or "fixed position") should be considered distinct classes for LUC purposes and, if so, how each type should be defined.[129] Few candidates address whether "fixed position" and "non-preemptible" should be treated as separate classes of time. Gillett supports this approach, proposing that "fixed position" should refer to spots designated to air at specific times on specific days, and "non-preemptible" should refer to spots designated to air in a particular time period or on particular days that cannot be preempted for any reason by any other spot except for a fixed position spot.[130] Fox contends that "non-preemptible" means that the spot may not be deleted by the broadcaster once scheduled, but that the station has flexibility in placing the spot within the same time period or daypart specified by the advertiser.[131]

75. *Decision.* Consistent with our decision to give licensees greater discretion in establishing different classes of immediately preemptible and preemptible with notice time, we conclude that stations may treat non-preemptible and fixed position as distinct classes of time, provided that they articulate clearly the differences between such classes, fully disclose them to candidates, and make them available to political candidates in compliance with the lowest unit charge requirements.

76. *Candidate-Only Class of Time.* In our 1988 Public Notice, we recognized that "non-preemptible 'fixed rate' spots are frequently offered to political candidates only."[132] We noted that rates for non-preemptible time are typically higher than preemptible rates because they carry a guarantee of airing at a particular time, and further recognized that because of this guarantee, candidates "often choose to pay the higher non-preemptible rate."[133] In its "Questions and Answers" released following the 1990 political programming audit, the Mass Media Bureau informed licensees that broadcasters "can charge candidates a premium for a non-preemptible class of time, only if such a higher priced class of time is also made available to commercial advertisers."[134] It stated further that a station cannot create a special class of non-preemptible time that it knows only candidates will purchase while at the same time offering a less expensive "preemptible" class to commercial advertisers that in reality offers virtually the same benefits as the higher priced class of time.[135]

77. *Issues and Comments.* The NPRM sought comment on our existing policies concerning the creation of candidate-only classes of time. In response, many parties argued that stations should be able to sell a special class of fixed or non-preemptible time to candidates, regardless of whether any commercial advertisers choose to purchase such time.[136] Most complained that such a practice was clearly condoned by the 1988 Public Notice, and that the 1990 Questions and Answers' prohibition of such a practice was a radical departure from precedent that should be reversed.[137] These commenters also contend that broadcasters should be able to create a special class of time to deal with the candidates' special needs and that any concern about higher rates can be dealt with through adequate disclosure requirements.[138] Such a rate is justified, they say, because "candidates' demand for certainty in the scheduling and broadcast of their political advertising messages is relatively inelastic."[139]

78. Kahn and Jablonski argue, however, that if a broadcaster has not actually sold fixed time to commercial advertisers, there is no objective method for determining a fixed LUC.[140] They contend that "approving a fixed political rate would be tantamount to granting the industry a license to overcharge."[141]

79. CBS suggests that, if the Commission prohibits sales of non-preemptible time to candidates unless the licensee has also made *bona fide* efforts to sell such time to commercial advertisers, an offer of non-preemptible time to commercial advertisers should be presumed to be *bona fide* so long as it is included on the commerical rate card, even if no commercial advertiser buys it.[142] Kahn and Jablonski acknowledge that "if a record of good faith efforts to comply existed, this concept [creation of a special class of fixed time at a discount rate for candidates] might merit consideration."[143]

80. *Decision.* The Commission will continue to prohibit the creation of a special, premium-priced class of time that is sold only to candidates. While we recognize that candidates often seek to purchase fixed or non-preemptible spots because they are more suited to candidates' needs, we are concerned that allowing stations to create a special class of time sold *only* to candidates would lead to abuse. We will, however, permit stations to sell to candidates premium-priced fixed or non-preemptible time if (1) such a higher priced class of time is made available on a *bona fide* basis to *both* candidates and commercial advertisers, and (2) no lower-priced class of time (*i.e.*, a preemptible class) sold to commercial advertisers is functionally equivalent to the non-preemptible class.

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[128] We note that nothing herein changes our current policy that run-of-schedule time is a separate class of time that gives broadcasters maximum scheduling discretion in that the broadcaster is merely required to place the ads purchased so that the advertisers' overall rating point objective is met. We note, however, that as in the case of any other class of time offered by a licensee to commercial advertisers, information regarding run-of-schedule time must be disclosed and the class must be made available to candidates.

[129] *NPRM*, 6 FCC Rcd at n.63.

[130] Gillett comments at 13.

[131] Fox Reply at 5.

[132] 1988 Public Notice, 4 FCC Rcd 3823, 3824 (1988).

[133] *Id.*

[134] Questions and Answers Relating to Political Programming Law, 68 RR 2d 113 (1990).

[135] *Id.*

[136] *See generally*, comments of CBS at 7; Shamrock at 5; NBC at 32; Cox at 21. MPC agrees that the law permits broadcasters to structure both preemptible and non-preemptible classes of time for candidates. MPC comments at 4.

[137] Comments of CBS at 7–8; Shamrock at 5; Cox at 21; Paducah Newspapers at 5.

[138] See, *e.g.*, comments of NBC at 32. NBC further notes that the 1990 Questions and Answers released by the Bureau appeared to create a *per se* prohibition against selling fixed time to candidates if a licensee has not sold fixed time to any commercial advertiser. By contrast, NBC claims, the NPRM appears to indicate that the Commission would replace such a *per se* prohibition with a case-by-case analysis to determine whether a station has sold what is actually "fixed" time to a commercial advertiser under a "preemptible" label, finding a violation if the same opportunity was not made available to candidates. NBC comments at 36. NBC states that such a refinement of the prior policy that permitted the sale of fixed time to candidates only is appropriate and would be consistent with the requirements of Section 315(b). *Id.* at 38.

[139] NCAB Reply at 15.

[140] Kahn and Jablonski comments at 10.

[141] *Id.* at 11.

[142] CBS comments at 10.

[143] Kahn and Jablonski comments at 5.

81. The Commission will view a preemptible class as functionally the same as a non-preemptible class if, due to the station's own priorities against preemption or other discount privileges, a commercial advertiser is, in practice, assured of not being preempted while paying a lower preemptible rate. The Commission will not require that commercial advertisers actually *purchase* a non-preemptible or fixed class; rather, to be considered *bona fide*, the class must be offered to commercial advertisers and must legitimately be available to them.[144]

D. Weekly Rotations

82. *Issue and Comments.* In the NPRM, we noted that stations increasingly sell preemptible time to advertisers in weekly rotations.[145] Under this system, an advertiser purchases one or more preemptible spots to run over the course of the week during pre-determined dayparts. The specific time and day that each spot airs is determined by the station; the only constraint is that each of the advertiser's spots must run during the chosen dayparts. As stated in the NPRM, the lowest unit charge for preemptible time sold by stations using weekly rotations is the lowest price that any advertiser paid in a particular rotation during a particular week.

83. Most commenters agree that LUC rates should be permitted to fluctuate week to week if time is sold in weekly rotations, with some commenters stating that the LUC may vary even more often.[146] For example, Fox observes that, for prime time, rates may vary on a daily or even per-program basis.[147] Thus, the LUC for each class of service could be determined on a daily, program-by-program basis.[148] Similarly, CBS observes that the LUC may vary program to program in the same time spot in a given week, week to week within a given program, and week to week for weekly rotations.[149]

84. ABC asks the Commission to clarify that different time blocks offered in weekly rotation plans are different "periods" for LUC purposes, whether or not they overlap. For example, a 9 a.m. to 4 p.m. rotation is not the same as 3 p.m. to 4 p.m. ABC at 14. Similarly, CBS contends that "Geraldo," Monday-Friday is one class, while Monday, 8 p.m. to 10:30 p.m. (during which Geraldo may be aired) is a separate class.[150] Fox agrees, stating that Tuesday, 12 p.m. to 5 p.m., Tuesday, 4 p.m. to 5 p.m. and Monday-Friday, 4 p.m. to 5 p.m. are all separate rotations and should be treated as separate classes because they offer the station different degrees of scheduling flexibility.[151]

85. *Decision.* The Commission will continue its policy of permitting stations to calculate the lowest unit charge on a weekly basis in connection with the sale of weekly rotations. This policy recognizes the fact that many stations sell preemptible time on a weekly basis and that the lowest price paid by any advertiser may vary from week to week. Stations, however, must verify that the lowest unit charge is the lowest price paid by any advertiser during a given period in the relevant week, including those commercial advertisers or other political candidates whose spots appeared in the relevant week but who may have contracts that are in effect over the course of several weekly rotations.

86. In addition, the Commission will continue to recognize that distinctly different rotations constitute separate periods of time for purposes of calculating lowest unit charge, regardless of whether or not they overlap. Distinctly different rotations are rotations that have meaningful differences in value to an advertiser. For example, a radio drive-time rotation of 6 a.m. to 9 a.m. is a distinctly different rotation from a 6 a.m. to 3 p.m. rotation because of the high possibility that the advertiser's spot will run in the less valuable 10 a.m. to 3 p.m. time period. If, however, the second and less expensive rotation is 6 a.m. to 10 a.m., the rotations would not be considered distinctly different because of the small likelihood that the spot will air outside of the prime time drive period of 6 a.m. to 9 a.m.

87. In a similar vein, we will also continue our policy of recognizing that prime-time programs can differ in value on a program-by-program basis. Where such differences are reflected in a station's sales practices, we will allow the station to treat each prime-time program as a separate rotation or time period for purposes of calculating the lowest unit charge.

E. Increase in Rates During Election Period

88. *Issue and Comments.* Current Commission policy provides that stations may not increase rates for candidate advertising during the election period except for ordinary business practices, such as rate changes when new audience ratings are published, or seasonal changes, such as the start of a new schedule. As discussed in the preceding section, Commission policy also recognizes that, in some circumstances, rates for spots may vary from week to week, or even program to program.

89. The majority of commenters support retention of these Commission policies. MPC, however, asserts that major advertisers such as McDonald's, Procter & Gamble, Pepsi, and Bristol-Myers do not pay different rates for the same daypart or programs in different weeks; they get the same low rate because they are buying in volume.[152] Thus, MPC claims, candidate rates should not vary weekly. Kahn and Jablonski state that if licensees lock in rates for their most-favored commercial advertiser that do not vary weekly, then they should not be permitted to raise rates over the course of the election period for candidates.[153] These commenters add that licensees also should be required to allow candidates to place advance orders where the station's most-favored advertiser is entitled to do the same.[154]

90. *Decision.* The Commission will continue its policy of not permitting rate increases during election periods except in circumstances governed by "ordinary business practices," which we have defined in the past to include changes in audience ratings, seasonal program changes, and, for stations that sell time on weekly rotations, rate changes on a weekly basis. We also will continue to follow our current policy that candidates who contract to purchase time after the effective date of such a rate increase are entitled to the lower rates charged to other advertisers (commercial or political) who contracted for time before the rate increase so long as the spots are of the same class and amount of time. If, for example, a station has a long-term contract with a commercial advertiser that is less than the lowest rate sold on a weekly basis for a particular week, the

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[144] Nothing in this decision precludes a station from offering a non-preemptible, candidate-only class of time at a discount to political advertisers. Nothing in the statute or its legislative history prohibits such a sales practice which would, in effect, confer a greater benefit upon candidates than that afforded to the station's most-favored advertiser.

[145] Weekly rotations connote time which can run anytime Monday through Friday during a particular program, daypart or time period at the station's discretion (*e.g.*, spot will run during Jeopardy, 7 to 7:30, at some point Monday to Friday).

[146] *See e.g.*, Shamrock comments at 18; AFB at 37; NAB at 17.

[147] Fox comments at 7–8.

[148] Fox Reply at 13.

[149] CBS comments at 12.

[150] *Id.* at 11.

[151] Fox comments at 7.

[152] MPC comments at 4.

[153] Kahn and Jablonski comments at 13.

[154] *Id.* at 14.

long-term contract rate is the lowest unit charge for those weeks in which spots are aired for the same class and amount of time. In addition, as the commenters note, stations may have different rates for various days and programs during prime time [155], or, indeed, for any program based on audience ratings. As discussed above, if different programs have different rates, the lowest unit charge can change program-by-program.

F. Calculation of Rebates

91. *Issue and Comments.* The NPRM recognized that candidates may be entitled to rebates where they pay more than the lowest unit charge for a given class of time.[156] When addressing the issue of refunds, some commenters state that licensees should be required to review their program logs weekly to determine whether rebates are required, giving such rebates or credits promptly.[157] National Media emphasizes that the timeliness of rebates is critical to candidates, and suggests that the FCC should set guidelines on when rebates must be calculated. In particular, it recommends that notifications should be sent to candidates every Tuesday or Wednesday following air dates.[158]

92. *Decision.* The Commission recognizes that timely rebates are crucial to candidates, who need to use all available funds to continue their campaigns. We accordingly will henceforth require that stations review their program logs periodically during the election period to determine whether rebates are required, and issue any such rebates or credits promptly. Although we will not mandate a weekly review or designate specific days for the licensee to review its logs, we expect that licensees will conduct periodic audits on a timely basis, making every effort to afford necessary rebates or credits before the election when possible. Thus, recognizing candidates' need to maximize their immediate campaign funds, stations will be expected to provide rebates on a more expeditious basis as the election day approaches.

G. Package Plans

93. *Issue and Comments.* Many of the commenters express confusion about treatment of package plans [159] and ask the Commission to clarify its policy that individually negotiated packages must be included in a station's calculation of lowest unit charge. Commenters interpret the 1990 Audit Report as now concluding that all individually negotiated package plans are simply volume discounts that must be factored into the LUC for each segment of the package, whereas "special discount rates" or "special package plans" offered to all commercial advertisers constitute a separate class of time.[160] Many commenters argue that candidates should not be permitted to cherry-pick the most favorable rates from package plans without buying the entire package. For example, Fox contends that, while all package plans should be offered to candidates, each should be treated as a separate class of time, even if tailored for particular advertisers. It also asks the Commission to clarify that candidates must buy comparable combinations of dayparts to obtain package plan rates.[161] AFB argues that treating package plans as mere volume discounts is particularly unfair when applied to the value of spots in sports packages, because some games are more valuable than others.[162] It claims that sports packages should be special package plans constituting a separate class of time, not mere volume discounts; at a minimum, the licensee should have discretion to assign a separate value to each game for LUC purposes so long as the total value for all games does not exceed the price of the package.

94. Cox raises some package plan issues peculiar to cable systems. Cable package plans often involve spots on different cable channels that have different values. Cox asks the Commission to define cable "package plans" as established combinations of spots, announcements, channels and program sponsorships that constitute a separate class of time, and to state that a candidate must purchase a proportionate number of spots on all channels to qualify for the LUC package rate—candidates should not be permitted to dissect a package and establish a LUC for each channel separately.[163]

95. *Decision.* Based on a reevaluation of the statutory lowest unit charge requirements, we will discontinue our policy of permitting stations to treat "packages" as a separate class of time.[164] We will now require stations to include in their LUC calculations all rates offered to commercial advertisers in packages. This policy will apply to all packages, whether individually negotiated or generally available to every advertiser. Thus, stations must include rates found in any packages when computing or disclosing to candidates the lowest unit charge for any request for a class and length of time in the same time period.

96. The statutory language of Section 315(b) expressly entitles candidates to the lowest unit charge for the same class and amount of time for the same period. It is well established that, through this language, Congress intended for candidates to receive the benefits of rates without having to purchase in bulk or over extended periods of time.[165] Since packages are, in effect, volume discounts, we conclude that candidates will no longer have to buy an entire package or a proportionate package in order to derive the benefits of rates found in packages. In addition, today's sales practices regularly involve the sale of commercial time in individually negotiated packages. Because most-favored advertisers are usually those advertisers who individually negotiate packages on a monthly, quarterly, and sometimes yearly basis, it would frustrate the intent of the statute to exclude rates offered in those packages from LUC calculations.

97. The Commission, however, will continue to rely on the reasonable good faith judgment of the station as to the value of a particular spot in a package. For example, if a station has a sports package which includes several games at a single package price, then the per-game rate for lowest unit charge purposes is the total package price divided by the number of games. If, however, each game in a package is priced separately in the contracts with commercial advertisers, then the specified contract price will be the value of a spot in that game. A package rate may or may not be the lowest unit charge for a specific time period, depending on the price of other spots sold in the time period. A candidate is

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[155] See 1988 Public Notice, 4 FCC Rcd at 3824.

[156] While this Report and Order provides stations with more discretion with respect to defining different classes of immediately preemptible and preemptible-with-notice time (see paras. 68–71, *supra*.), we note that stations are still required to provide rebates to candidates where they pay more than the lowest unit charge for a given class of time.

[157] See *e.g.*, Shamrock comments at 18, AFB at 37, NAB at 17.

[158] National Media comments at 8.

[159] As used herein, package plans are established combinations of spots offered at a given price, which are generally available to all advertisers.

[160] Koteen and Naftalin comments at 21.

[161] Fox comments at 9.

[162] AFB comments at 31.

[163] Cox comments at 23.

[164] Political Primer, 68 FCC 2d 2209, 2276–77 (1978); Political Primer, 100 FCC 2d 1470, 1515 (1984).

[165] *See* Sen. Rep. No. 96, 92d Cong., 1st Sess. (1971).

entitled to the lowest rate sold during the time period.[166]

98. We believe that this policy will simplify the calculation of lowest unit charge and will also simplify the disclosure process. Individual package terms will not have to be disclosed to candidates as long as the *rates* contained in those packages have been included in the station's calculation of the lowest unit charge for each program or daypart.

H. Merchandising Incentives and Bonus Spots

99. *Issues and Comments.* Numerous commenters contend that, while noncash promotional incentives [167] such as bumper stickers, mailings, displays, tickets, or trips won for achieving certain volume levels should be offered to candidates and commercial advertisers on the same terms and conditions, they should not be factored into LUC calculations because they are either too difficult to value or only add a *de minimis* value.[168] National media agrees that the use of billboards [169] and merchandising incentives such as trips and tickets should be excluded from LUC calculations, but contends that bonus spots of 30 seconds or longer should be factored into the LUC calculation.[170]

100. Kahn and Jablonski contend that there is no authority to exclude contingent bonuses [171] from LUC calculations, and argue that if the Commission allows stations to disregard contingent bonuses that vest after the election, then "stations would simply time such contingencies to occur after the election" so they could avoid lower LUCs.[172] Kahn and Jablonski also argue that all free spots or bonus spots of any kind should be factored into LUC calculations because stations use bonus spots to avoid the required candidate discounts.[173]

101. *Decision.* The Commission agrees with the commenters' assertion that noncash promotional incentives should not be included in calculations of lowest unit charge. Inclusion of such items is confusing, burdensome to broadcasters and appears not to offer candidates significant benefits on a per-spot basis. Moreover, inclusion of these items is not required in order to place candidates on a par with the most-favored advertisers. Rather, stations need merely to offer all noncash merchandise to political advertiser on the same basis as commercial advertisers. Therefore, the Commission will not require such promotional materials as mugs, bumper stickers, and trips to be included in the calculation of lowest unit charge.

102. Bonus spots will, however, be factored into LUC calculations, as the value of such spots is readily ascertainable. We believe, for example, that a reasonable way of calculating the value of bonus spots for purposes of determining the LUC would be to compute an "average cost," reached by dividing the total cost of the spots by the number of spots, including bonus spots, sold.

I. Fire Sale

103. *Issue and Comments.* The NPRM asked for comment on the Commission's "fire sale" policy, which provides that a discount on time afforded to a last-minute buyer establishes the lowest unit charge for its particular class of time throughout the election period. NAB contends that the fire sale policy should be abolished because it is unreasonable to force stations to apply a price given to liquidate perishable inventory to an entire campaign period.[174] CBS argues that a last minute discount should not establish the LUC for an entire election period, but that a last minute discount should not establish the LUC for an entire election period, but that a fire sale should establish the LUC only for the week, program or daypart (whatever the LUC fluctuation period is) in which the fire sale advertisements airs.[175] Pulitzer contends that candidates should be offered fire sale inventory on the same terms as commercial advertisers, but that they should only apply to a specific time period, such as weekend or special sporting event, for LUC purposes.[176]

104. Group W states that the fire sale policy should be retained because it is a "bright line test that is simple to use." [177] Kahn and Jablonski argue that "abolition of this doctrine would mean that stations would consider all spots sold below their artificially inflated political rate as 'fire sale' spots." [178]

105. *Decision.* The Commission will modify its interpretation of its "fire sale" policy. There has been considerable confusion with respect to how the sale of available inventory at the last minute affected the LUC. When the fire sale policy was first adopted in 1972, many, if not most, spots were sold on a non preemptible basis. As sales practices have evolved, however, the last-minute sale of available inventory has included preemptible time, which may be offered at different rates in relationship to supply and demand. Thus, applying the original fire sale policy results in a last-minute sale of preemptible time, changing the LUC for the entire statutory period even though higher rates in the weeks preceding the fire sale may have been fully justified by demand.

106. To correct this inequity, the Commission will now treat the sale of all available inventory at the last minute as affecting all classes of time, but only during the particular time period (daypart or program) in which the "fire sale" spots are broadcast. When a station faces the extraordinary situation of conducting a fire sale to dispose of excess inventory, it is not accurate to treat such sales as affecting only one class of time. The effect of a fire sale is to eliminate class distinctions. All sales on a "fire sale" basis are, in essence, sales of non-preemptible time. In such instances, in order to comply with the intent of Section 315(b), we believe that the fire sale rate should be considered the LUC for all classes of time sold, but only during the time period in which the fire sale actually occurs, *i.e.*, a daypart, program, day, etc.[179]

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[166] We also reiterate that make goods, preemption priorities, and other factors that add value to spots, may be associated with packages and will affect the lowest unit charge calculation. See para. 61, *supra.*

[167] Also known as advertiser incentive arrangements, these are products or other rewards given to advertisers who spend a certain minimum amount on advertising. They are often utilized to encourage advertisers to purchase time from a station.

[168] *See generally,* comments of Koteen and Naftalin at 47–48; INTV at 14–15. Kahn and Jablonski respond that excluding noncash incentives from LUC calculations would ensure their widespread use in the future so as to "subvert" the Communications Act. Kahn and Jablonski Reply at 11.

[169] Billboards are groups of short promotional announcements (10 seconds or less) listing the sponsors of advertising for a particular daypart or program.

[170] National media comments at 7.

[171] Contingent bonuses are bonus spots provided when a promised audience is underdelivered, for example, where only 4000 households of a promised 7500 are reached by the purchased schedule, requiring additional "contingent bonuses" to meet the promised goal.

[172] Kahn and Jablonski Reply at 14.

[173] *Id.* at 15.

[174] NAB comments at 17.

[175] CBS comments at 12.

[176] Pulitzer comments at 10–11.

[177] Group W comments at 14.

[178] Kahn and Jablonski Reply at 11.

[179] For example, if a station finds that it has excess inventory during a particular program or daypart and offers to sell those spots to any commercial advertiser for a significant discount—a "fire sale"—it is clear that any commercial advertiser purchasing those spots will receive essentially non—preemptible time regardless of what would normally run in that program of daypart. Thus, any candidate who purchased time during that same program or daypart must receive the fire sale rate regardless of the class of time the candidate originally purchased.

107. This approach is fully consistent with our policy that rates may change on a weekly basis in response to demand and our similar policy that rates for preemptible time, which may also fluctuate in response to demand, may be treated as separate classes of time. The fire sale rate must, of course, be made available to candidates. The availability of 'fire sale' spots also must be fully disclosed to candidates. Moreover, in response to the concerns of some of the commenters, we see little danger that abuses will occur if we adopt this policy. To the extent candidates have purchased time during the same time period in which the fire sale occurs, they will—to their benefit—be equally entitled to the fire sale rate. Further, if examination of a licensee's records revealed a pattern indicating that fire sale rates were afforded repeatedly only to particular advertisers, we would be alerted to the possibility of abuse.

J. Timely Make Goods

108. *Issue and Comments.* The NPRM asked for comment on the Commission's policy that a station must offer candidates make goods on a timely basis if it would so treat its most-favored advertiser. The Mass Media Bureau has also stated that timely make goods must be offered to candidates if they were ever offered to even one commercial advertiser. Numerous commenters contend, however, that it is unreasonable to require broadcasters to guarantee that preempted candidate spots will be made good prior to the election if the station has ever guaranteed a make good on a time-sensitive basis to a commercial advertiser.[180] These commenters argue that such a requirement effectively confers non-preemptible status upon all spots purchased by candidates without regard to the normal preemptibility of the spot, thus giving them better treatment than even the station's most-favored commercial advertiser.[181] Rather than mandating an absolute guarantee, they claim, the Commission should require broadcasters to employ a "best efforts" policy, based upon available inventory, to air the make good prior to the election.[182]

109. Cox and NAB contend that stations should be able to place limitations on pre-election make goods and should only be required to air any such make goods if they have provided similar time-sensitive make goods to commercial advertisers within a specified period of time preceding the relevant campaign period.[183] Outlet suggests that stations be permitted to provide make goods on a run of schedule basis, with the candidate given the opportunity to accept or reject the proffered make good.[184]

110. National Media argues that stations should be required to make good political spots within the planned air dates or the following week.[185] In response to the commenter's "best efforts" suggestion, Kahn and Jablonski argue that such a make good policy would have the same effect as no make good policy, and is "contrary to the Act."[186]

111. *Decision.* We continue to believe that licensees who offer timely make goods to commercial advertisers must also offer timely make goods to political candidates before election day. This policy comports with Congress' intent to place candidates on par with a station's most-favored commercial advertiser. Time-sensitive make goods are a discount privilege and assure timely rescheduling of preempted spots during comparable, or even superior, time periods. As we have previously noted, make goods form an integral part of the industry practice of selling preemptible time. In essence, they permit the broadcaster to maintain revenue from a preempted spot and at the same time enable the advertiser to retain the "reach" of the missed spot.

112. Accordingly, we will continue to require stations to offer make goods to candidates if make goods are also offered to the stations' commercial advertisers who purchased time in the same class. We agree, however, that the Act does not mandate that this obligation remain completely open-ended. In this regard, we believe that candidates should be entitled to timely make goods only if the broadcaster has provided a make good to any commercial advertiser during the year preceding the 60- or 45-day statutory LUC period. We believe that such a one-year period will be sufficient to establish the licensee's current make good practices with regard to its most-favored advertisers. We also affirm our prior ruling that make goods for political spots must air before the election "where the licensee would so treat its most-favored commercial advertiser where time is of the essence."[187]

K. Calculation of Make Good in LUC

113. *Issue and Comments.* The NPRM also reiterates the Commission's policy that prices paid for make goods must be included in the station's calculation of lowest unit charge.[188] Many commenters assert that make-good options should be provided to candidates on the same terms as to commercial advertisers, but that make-good spots should not be included in calculating the LUC.[189] According to the commenters, make goods can be used (1) to "make up" to a commercial advertiser for any inconvenience in preemption,[190] (2) to make up for any failure to meet audience reach or ratings requirements,[191] or (3) to correct for preemptions outside the station's control, such as network changes, technical problems, show cancellations or sports overruns.[192] The commenters argue that make goods given for such reasons do not confer additional benefits or discounts, and thus should not be included in LUC calculations.[193] Moreover, the commenters assert that an advertiser generally values a make good spot less than the original spot purchased, while another advertiser might place a higher value on the same time, so it is not fair or accurate to factor any charge for the make good into the LUC.[194]

114. *Decision.* As discussed above, we recognize that make goods are an integral aspect of the sale of preemptible time and that they may, in some circumstances, bestow and additional benefit or discount on the advertiser whose preemptible spot is made good. In order to ensure that political buyers also are able to enjoy those advantages, we will continue our policy of requiring stations to include make goods in LUC calculations. This means that, when

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[180] Comments of Koteen and Naftalin at 29; Covington and Burling at 6; AFB at 33; NCAB Reply at 18.

[181] Comments of NBC at 44; Covington and Burling at 6; NCAB Reply at 18.

[182] Comments of NBC at 4; Koteen and Naftalin at 29; NCAB Reply at 18.

[183] Cox suggests sixty days before the statutory period (Cox comments at 16); NAB suggests six months before the LUC period (NAB comments at 17).

[184] Outlet comments at 4.

[185] National Media comments at 6.

[186] Kahn and Jablonski Reply at 11.

[187] 1988 Public Notice, 4 FCC Rcd at 3823.

[188] *Id.*

[189] See, *e.g.*, comments of AFB at 34; NBC at 44; Gillett at 18; INTV at 16; Cox at 25.

[190] Group W comments at 15.

[191] ABC comments at 15.

[192] Gillett comments at 17

[193] Cox further asks the Commission to confirm that, with respect to cable, make goods given for audience underdelivery on one cable channel should not impact the LUC on any substitute channel. We agree with this interpretation. For example, if an advertiser buys time on the Discovery Channel, fails to achieve the bargained-for audience reach and is then given a make good on TNT, that make good will not be presumed to have a separate value that must be included in the LUC calculations for TNT sales. Cox comments at 25.

[194] NBC comments at 44.

computing the LUC for a given class of time, a broadcaster must include the rate paid by an advertiser whose spot was "made good" during the relevant period.

115. Where the value of the make-good spot is equal to that of the original spot, our policy obviously will have no practical effect on the LUC, since the rate for either spot will be the same. We recognize, however, that stations sometimes choose to "appease" an advertiser whose spot has been preempted by running a make-good spot in a more valuable time period. In this situation, the advertiser receives an additional benefit or discount that should also accrue to candidates who have purchased the same class of time in the same period. Accordingly, we will require that, where a station places a make good in a more valuable program or daypart, the value of that make good must be factored into the calculation of the LUC for that more valuable program or daypart. Candidates purchasing the same class of time who have paid a higher rate for the program or daypart will be entitled to a rebate of the difference between the rate they paid and the rate of the made good spot.

116. In addition, the Commission will continue to permit exclusion from make-good calculations any make goods or bonus spots furnished to meet contracted-for promises of certain audience numbers, demographics, or ratings, when that is the station's practice for selling time to both commercial and political advertisers. Further, just as for commercial advertisers, if a candidate's promised audience delivery fails to be realized, the candidate is entitled to additional make-good or bonus spots in the same manner as commercial advertisers.

L. Sold-Out Time

117. *Issue and Comments.* The NPRM sought comment on whether preemptible time could ever be sold out since a buyer can offer to pay a higher rate and preempt an incumbent. ABC states that the Bureau's statement in the 1990 Questions and Answers that "unless the entire inventory is sold out on a non-preemptible basis, a licensee must sell to candidates at the commercial selling level for preemptible time" effectively creates mandatory access at odds with Section 315.[195] Other commenters note that price alone is not the driving force behind the availability of time because the disruption to program logs or potential advertiser dissatisfaction from preemption could outweigh the benefits from a slightly or even significantly increased rate.[196] Conversely, National Media asserts that preemptible time can never be sold out; MPC states that it is "highly unlikely" that preemptible time would ever be sold out, with the Olympics and the Super Bowl creating possible exceptions.[197]

118. *Decision.* We take this occasion to clarify our sold-out policy. This policy would not, as some commenters seem to believe, force stations to afford candidates access to a particular program. Such a concern confuses our sold-out policy as it refers to LUC with the concept of "reasonable access" for federal candidates. Our LUC sold-out policy states that stations may not tell candidates that the preemptible time is sold out in order to force them to purchase non-preemptible spots in the same program or time period. There is no requirement, however, that stations sell candidates spots in a particular program in the first place. We merely state that once a station decides to sell time within a given period, it cannot inflate the price of a spot sold to a candidate beyond the minimum necessary to clear by claiming that all "preemptible" time is sold out.

119. We believe that this policy should be maintained in order to assure that candidates are not improperly steered toward buying fixed time in a program on the basis that all the preemptible time in a particular show is sold out. Preemptible time is not only a class of time but also a discount privilege, and, as such, it cannot be both offered to commercial advertisers and denied to candidates. In addition, preemptible time, by its very nature, cannot be "sold out" because an offer of a higher price will almost always preempt a lower priced spot. In the event a station uses varying levels of preemption protection as a means of establishing different classes of immediately preemptible time, it may disclose to candidates that lower priced spots are unlikely to clear in light of previous sales.[198] However, we emphasize that stations may not use this disclosure process to persuade candidates to buy premium-priced fixed or nonpreemptible spots by claiming that a given level of preemptible time has been fully sold and, therefore, is unavailable.

V. Political File Requirements

120. *Issue and Comments.* In addition to those requirements spelled out in the Commission's rules, the Commission has developed policies aimed at assuring complete, accurate and readable political files.[199] Some commenters maintain that the Commission should leave the political file rules alone—they are adequate and should not be made more burdensome.[200] Others request that the Commission establish a uniform political file format for licensees to follow.[201] Some commenters specify what documents should be included in the file. MPC suggests that all rates as disclosed to candidates should be placed in the political file.[202] CBS suggests that the file include a record of all requests for time, records of time purchased, the time/date/rate/class of each spot, a notation if the spot was not aired as originally purchased (preempted, rescheduled, made good), but that it should not be required to include a notice of the exact time each ad runs because that "would be too burdensome."[203]

121. Kahn and Jablonski state that the file should be self-explanatory and should provide descriptions of the various classes of time; spots ordered; rate applied; whether and when spot ran; if preempted, whether a make good was provided; the amount of refunds, if any; reconciliation of any rebates; rate cards and a written statement of the licensee's political policies.[204] Wilson requests that the Commission confirm that the requirement to place advertising orders in the public file "as soon as possible" means as long as it takes to make a copy and put it in the file without delay.[205]

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[195] Comments of ABC at 12.

[196] Dow Lohnes and Albertson comments at 31.

[197] Comments of National Media at 7; MPC at 5.

[198] We note that stations selling preemptible time on a strict auction basis (*i.e.*, price is the only variable and thus only a single class of time is involved) could not steer candidates to purchase a premium-priced class of time (for example, "non-preemptible" time) by informing them that all preemptible time was "sold out," because, by definition, such preemptible time cannot be sold out.

[199] Section 73.1940(d) of the Commission's rules requires broadcasting stations to: . . . [K]eep and permit public inspection of a complete record (political file) of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. When free time is provided for use by or on behalf of such candidates, a record of the free time provided shall be placed in the political file. All records required by this section shall be placed in the political file as soon as possible and shall be retained for a period of two years.

47 C.F.R. 73.1940(d) (emphasis added). See also, 47 C.F.R. Section 76.205(d) for cable provision.

[200] Gillett comments at 19.

[201] Koteen and Naftalin comments at 48. AFB also suggests that the Commission specify what information related to rebates should be maintained in the political file. AFB comments at 44.

[202] MPC comments at 5.

[203] CBS comments at 31.

[204] Kahn and Jablonski comments at 18.

[205] Wilson comments at 2.

122. PBS suggests that the Commission should accept the good faith exercise of licensee judgment in organizing and maintaining the public file, enforcing a "rule of reason."[206] PBS maintains that there should be no penalties for good faith attempts at compliance because there can be reasonable disputable violations of the file rules.

123. *Decision.* We believe that our current rule 73.1940(d) adequately addresses the political file requirements and that continuation of our existing policies will best serve the interests of both candidates and broadcasters. We will continue to require that stations maintain neat and accurate political files so that anyone viewing the contents of the file will be able to readily discern what the station has sold or otherwise provided to each and every candidate.

124. In addition, the rule requires stations to document the "disposition of requests." Therefore, we will continue the policy requiring a station to file information showing the schedule of the time provided or purchased, when spots actually aired, the rates charged and the classes of time purchased. This vital information is necessary to determine whether a station is affording equal opportunities and whether the candidate is getting favorable or unfavorable treatment in the placement of spots, especially in light of the wide rotations offered by most stations. We will also continue to interpret "as soon as possible" as meaning immediately, under normal circumstances.

Initial Regulatory Flexibility Analysis

125. Reason for Action. This Report and Order is intended to serve as a comprehensive guide to political broadcasting laws and supercedes previous Commission interpretations of the political broadcasting and cablecasting provisions of the Communications Act.

126. *Objectives.* The Commission codifies and updates its political programming policies, through revised rules addended to the Report and Order, and as an official policy statement.

127. Legal Basis. The action is authorized under sections 4(i), 4(j), 301, 303(i), 303(r), 312, 315 and 317 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 154(j), 301, 303(i), 303(r), 312, 315 and 317.

128. Reporting, Recordkeeping and Other Compliance Requirements. None.

[206] PBS comments at 14.

129. Federal Rules Which Overlap, Duplicate or Conflict With These Rules. None.

130. Description, Potential Impact, and Number of Small Entities Involved. Rule changes as a result of this proceeding affect broadcast licensees and cable television system operators. After evaluating the comments in this proceeding, the Commission examined the impact of any rule changes on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

131. Any Significant Alternatives Minimizing the impact on Small Entities Consistent with the Stated Objectives. None.

Ordering Clauses

132. Accordingly, *it is ordered* that pursuant to the authority contained in sections 312(a)(7), 315, and 317 of the Communications Act of 1934, as amended, 47 U.S.C. sections 312(a)(7), 315, and 317, parts 73 and 76 of the Commission's rules, 47 CFR parts 73 and 76, are amended, as set forth below. Moreover, because the primary season for the 1992 presidential elections begins January 4, 1992, and because candidates and broadcasters need certainty in the administration of our political broadcasting rules, pursuant to 5 U.S.C. Section 553(d)(3), we find good cause to make these rules effective January 4, 1992.

133. *It is further ordered* that MM Docket No. 91–168 is terminated.

134. Further information on this proceeding may be obtained by contacting Milton O. Gross, Robert L. Baker, or Marsha J. MacBride, Mass Media Bureau at (202) 632–7586, or Diane Hofbauer, Office of General Counsel, at (202) 632–7020.

List of Subjects

47 CFR Part 73

Radio broadcasting, Television broadcasting.

47 CFR Part 76

Cable television services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix A

Formal Comments

Alabama Broadcaster's Association (ABA)
American Broadcasting Company (ABC)
American Family Broadcast Group, Inc. (AFBG)
Association of Independent Television Stations, Inc. (INTV)
Busse Broadcasting Corp. (Busse)
California State University (San Diego State University) (CSU)
CBS Inc. (CBS)
Covington & Burling: Benedek Broadcasting Group; Lin Broadcasting Corporation; Midwest Television, Inc.; Post-Newsweek Stations, Inc.; Providence Journal Company; The Spartan Radiocasting Company (Covington and Burling)
Cox Cable Communications, Inc. (Cox)
Dow, Lohnes & Albertson: A.H. Belo Corporation; Booth American Company; Brill Media Company, Inc.; Cosmos Broadcasting Corp.; Cox Enterprises, Inc.; Diversified Communications; Great Empire Broadcasting Corp.; Multimedia, Inc.; Stauffer Communications, Inc. (Dow, Lohnes and Albertson)
Federal Election Commission (FEC)
Fisher, Wayland, Cooper & Leader, State Broadcasters Association of: Arizona, Connecticut, Iowa, Maryland/District of Columbia/Delaware, Minnesota, Missouri, New Hampshire, New Jersey, Oklahoma, Tennessee, West Virginia, Wisconsin. (SBA)
Gillett Communications, *et al.* (Gillett)
Greater Media, Inc. (Greater Media)
Hogan & Hartson: Fox Television; Albritton Communications Company; Federal Broadcasting Company (Hogan and Hartson)
Joint Comments of Public Broadcasting Licensees (JCPBL)
KIVI Channel 6 Television (KIVI)
Koteen & Naftalin on Behalf of 8 Broadcasters: Great American Television and Radio Company, Inc.; Kelly Broadcasting Company; Kelly Television Company; McGraw-Hill Broadcasting Company, Inc.; The New York Times Company; Renaissance Communications Corporation; Castle Broadcasting; WFRV-TV, Inc. (Koteen and Naftalin)
Law firms: Barnes, Browning, Tankaley & Casurella; Long, Aldridge, & Norman; Savell & Williams; Venema, Towery, Thompson & Chambliss (Kahn & Jablonski)
Media Placement Consultants, Inc. (MPC)
National Association of Broadcasters (NAB)
National Media Inc. (National Media)
NBC, Inc. (NBC)
North Carolina Association of Broadcasters (NCAB)
Osborn Communications Corp. (Osborn)
Outlet Broadcasting, Inc. (Outlet)
Paducah Newspapers, Inc. (Paducah)
Public Broadcasting Service (PBS)
People for the American Way (Citizen's Petition)
People for the American Way/Media Access Project (PAW/MAP)
Pulitzer Broadcasting Company and WDSU Television, Inc. (Pulitzer)
Reed Smith Shaw & McClay on Behalf of: California Oregon Broadcasting, Gannett Co., Inc.; Gaylord Broadcasting Company; Lee Enterprises, (RSSM)
RTNDA/Society of Professional Journalists (RTNDA)
Shamrock Broadcasting, Inc. (Shamrock)
State of Connecticut
Telecommunications Research and Action Center & Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights (TRAC)
Washington State University (WSU)

Westinghouse Broadcasting Company, Inc. (Westinghouse)
Wilson Communication Services, Inc. (Wilson)

Reply Comments

Allbritton Communications Company (Allbritton)
American Family Broadcast Group, Inc. (AFB)
Association of Independent Television Stations, Inc. (INTV)
Channel 40 Licensee, Inc. (KTXL)
Gray Communications Systems (Gray)
Law Firms: Barnes, Browning, Tanksley & Casurella; Long, Aldridge, & Norman; Savell & Williams, Venema, Towery, Thompson & Chambliss (Kahn & Jablonski)
Media Placement Consultants, Inc. (MPC)
Media Plus
National Association of Broadcasters (NAB)
North Carolina Association of Broadcasters (NCAB)
People for the American Way/Media Access Project (PAW/MAP)
Public Broadcasting Licensees (PBL)
Radio—Television News Directors Associations, Reporters Committee for Freedom of the Press and Society of Professional Journalists (RTNDA)
Telecommunications Research and Action Center and Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights (TRAC)

Title 47 CFR parts 73 and 76 are amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 73.1940 is revised to read as follows:

§ 73.1940 Legally Qualified Candidates for Public Office.

(a) A legally qualified candidate for public office is any person who:

(1) Has publicly announced his or her intention to run for nomination or office;

(2) Is qualified under the applicable local, State or Federal law to hold the office for which he or she is a candidate; and

(3) Has met the qualifications set forth in either paragraphs (b), (c) or (d) of this section.

(b) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in paragraph (a) of this section, that person:

(1) Has qualified for a place on the ballot, or

(2) Has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a bona fide candidate for nomination or office.

(c) A person seeking nomination to any public office, except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (a) of this section, that person makes a substantial showing that he or she is a bona fide candidate for such nomination: Except, that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(d) A person seeking nomination for the office of President of Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those States or territories (or the District of Columbia) in which, in addition to meeting the requirements set forth in paragraph (a) of this section:

(1) He or she, or proposed delegates on his or her behalf, have qualified for the primary or Presidential preference ballot in that State, territory or the District of Columbia, or

(2) He or she has made a substantial showing of a bona fide candidacy for such nomination in that State, territory or the District of Columbia; Except, that any such person meeting the requirements set forth in paragraphs (a)(1) and (2) of this section in at least 10 States (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all States, territories and the District of Columbia for purposes of this act.

(e) The term "substantial showing" of a bona fide candidacy as used in paragraphs (b), (c) and (d) of this section means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

3. Section 73.1941 is added to read as follows:

§ 73.1941 Equal Opportunities.

(a) *General requirements.* Except as otherwise indicated in § 73.1944, no station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other candidates for that office to use such facilities. Such licensee shall have no power of censorship over the material broadcast by any such candidate. Appearance by a legally qualified candidate on any:

(1) Bona fide newscast;

(2) Bona fide news interview;

(3) Bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); or.

(4) On-the-spot coverage of bona fide news events (including, but not limited to political conventions and activities incidental thereto) shall not be deemed to be use of broadcasting station. (section 315(a) of the Communications Act.)

(b) *Uses.* As used in this section and § 73.1942, the term "use" means candidate appearance (including by voice or picture) or political advertisement that is not exempt under § 73.1941(a)(1)-(4) and that is controlled, approved or sponsored by the candidate or the candidate's authorized Committee after the candidate becomes legally qualified.

(c) *Timing of request.* A request for equal opportunities must be submitted to the licensee within 1 week of the day on which the first prior use giving rise to the right of equal opportunities occurred: Provided, however, That where the person was not a candidate at the time of such first prior use, he or she shall submit his or her request within 1 week of the first subsequent use after he or she has become a legally qualified candidate for the office in question.

(d) *Burden of proof.* A candidate requesting equal opportunities of the licensee or complaining of noncompliance to the Commission shall have the burden of proving that he or she and his or her opponent are legally

qualified candidates for the same public office.

(e) *Discrimination between candidates.* In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

4. Section 73.1942 is added to read as follows:

§ 73.1942 Lowest Unit Charge.

(a) Charges for use of stations. The charges, if any, made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his or her campaign for nomination for election, or election, to such office shall not exceed:

(1) During the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period.

(i) A candidate shall be charged no more per unit than the station charges its most favored commercial advertisers for the same classes and amounts of time for the same periods. Any station practices offered to commercial advertisers that enhance the value of advertising spots must be disclosed and made available to candidates. Such practices include but are not limited to any discount privileges that affect the value of advertising, such as bonus spots, time-sensitive make goods, preemption priorities, or any other factors that enhance the value of the announcement.

(ii) The Commission recognizes non-premptible, preemptible with notice, immediately preemptible and run-of-schedule as distinct classes of time.

(iii) Stations may establish and define their own reasonable classes of immediately preemptible time so long as the differences between such classes are based on one or more demonstrable benefits associated with each class and are not based solely upon price or identity of the advertiser. Such demonstrable benefits include, but are not limited to, varying levels of preemption protection, scheduling flexibility, or associated privileges, such as guaranteed time-sensitive make goods. Stations may not use class distinctions to defeat the purpose of the lowest unit charge requirement. All classes must be fully disclosed and made available to candidates.

(iv) Stations may establish reasonable classes of preemptible with notice time so long as they clearly define all such classes, fully disclose them and make available to candidates.

(v) Stations may treat non-preemptible and fixed position as distinct classes of time provided that stations articulate clearly the differences between such classes, fully disclose them, and make them available to candidates.

(vi) Stations shall not establish a separate, premium-period class of time sold only to candidates. Stations may sell higher-priced non-preemptible or fixed time to candidates if such a class of time is made available on a *bona fide* basis to both candidates and commercial advertisers, and provided such class is not functionally equivalent to any lower-priced class of time sold to commercial advertisers.

(vii) Unit rates charged for the last-minute sale ("fire sale") of available inventory must be included in the calculation of the lowest unit charge for all time sold to candidates during the period or daypart or program (regardless of when candidates originally purchased/ordered their spots), but such calculation establishes the lowest unit charge only for the period, daypart, or program in which such fire sale spots actually aired. Moreover, if a licensee permits candidates to use its broadcast facilities, such last minute sales must also be made available to candidates.

(viii) Lowest unit charge may be calculated on a weekly basis with respect to time that is sold on a weekly basis, such as rotations through particular programs or dayparts. Stations electing to calculate the lowest unit charge by such a method must include in that calculation all rates for all announcements scheduled in the rotation, including announcements aired under long-term advertising contracts. Stations may implement rate increases during election periods only to the extent that such increases constitute "ordinary business practices," such as seasonal program changes or changes in audience ratings.

(ix) Stations shall review their advertising records periodically throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits. Where necessary, stations shall issue such rebates or credits promptly.

(x) Unit rates charged as part of any package, whether individually negotiated or generally available to all advertisers, must be included in the lowest unit charge calculation for the same class and length of time in the same time period. A candidate cannot be required to purchase advertising in every program or daypart in a package as a condition for obtaining package unit rates.

(xi) Stations are not required to include non-cash promotional merchandising incentives in lowest unit charge calculations; provided, however, that all such incentives must be offered to candidates as part of any purchases permitted by the licensee. Bonus spots, however, must be included in the calculation of the lowest unit charge calculation.

(xii) Make goods, defined as the rescheduling of preempted advertising, shall be provided to candidates prior to election day if a station has provided a time-sensitive make good to any commercial advertiser who purchased time in the same class during the pre-election periods, respectively set forth in paragraph (a)(1) of this section.

(xiii) Stations must disclose and make available to candidates any make good policies provided to commercial advertisers. If a station places a make good for any commercial advertiser or other candidate in a more valuable program or daypart, the value of such make good must be included in the calculation of the lowest unit charge for that program or daypart.

(2) At any time other than the respective periods set forth in paragraph (a)(1) of this section, stations may charge legally qualified candidates for public office no more than the charges made for comparable use of the station by commercial advertisers. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means, direct or indirect. A candidate shall be charged no more than the rate the station would charge for comparable commercial advertising.

(b) If a station permits a candidate to use its facilities, the station shall make all discount privileges offered to commercial advertisers, including the lowest unit charges for each class and length of time in the same time period and all corresponding discount privileges, available to candidates. This duty includes an affirmative duty to disclose to candidates information about rates and all value-enhancing

discount privileges offered commercial advertisers. Stations may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

(1) A description and definition of each class of time available to commercial advertisers sufficiently complete to allow candidates to identify and understand what specific attributes differentiate each class;

(2) A description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers;

(3) A description of the station's method of selling preemptible time based upon advertiser demand, commonly known as the "current selling level," with the stipulation that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers;

(4) An approximation of the likelihood of preemption for each kind of preemptible time; and

(5) An explanation of the station's sales practices, if any, that are based on audience delivery, with the stipulation that candidates will be able to purchase this kind of time, if available to commercial advertisers.

(c) Once disclosure is made, stations shall negotiate in good faith to actually sell time to candidates in accordance with the disclosure.

(d) This rule (§ 73.1942) shall not apply to any station licensed for non-commercial operation.

5. Section 73.1943 is added to read as follows:

§ 73.1943 Political File.

(a) Every licensee shall keep and permit public inspection of a complete and orderly record (political file) of all requests for broadcast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.

(b) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

6. Section 73.1944 is added to read as follows:

§ 73.1944 Reasonable Access.

(a) Section 312(a)(7) of the Communications Act provides that the Commission may revoke any station license or construction permit for willful or repeated failure to allow reasonable access to, or to permit purchase of, reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

(b) *Weekend Access.* For purposes of providing reasonable access, a licensee shall make its facilities available for use by federal candidates on the weekend before the election if the licensee has provided similar access to commercial advertisers during the year preceding the relevant election period. Licensees shall not discriminate between candidates with regard to weekend access.

7. Section 73.1212 is amended by adding a last sentence to paragraph (a)(2)(i) to read as follows:

§ 73.1212 Sponsorship identification; list retention; related requirements.

(a) * * *

(2) * * *

(i) * * * In the case of political television broadcasts under this paragraph and paragraph (d) of this section, the broadcast must contain both a visual and aural announcement.

* * * * * *

PART 76—[AMENDED]

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 76.205 is revised to read as follows:

§ 76.205 Origination Cablecasts by Legally Qualified Candidates for Public Office; Equal Opportunities.

(a) *General requirements.* No cable television system is required to permit the use of its facilities by any legally qualified candidate for public office, but if any system shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other candidates for that office to use such facilities. Such system shall have no power of censorship over the material broadcast by any such candidate. Appearance by a legally qualified candidate on any:

(1) Bona fide newscast;

(2) Bona fide news interview;

(3) Bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); or

(4) On-the-spot coverage of bona fide news events (including, but not limited to political conventions and activities incidental thereto) shall not be deemed to be use of a system. (section 315(a) of the Communications Act.)

(b) *Uses.* As used in this section and § 76.206, the term "use" means candidate appearance (including by voice or picture) or political advertisement that is not exempt under § 76.205(a)(1)–(4) and that is controlled, approved or sponsored by the candidate or the candidate's authorized Committee after the candidate becomes legally qualified.

(c) *Timing of Request.* A request for equal opportunities must be submitted to the system within 1 week of the day on which the first prior use giving rise to the right of equal opportunities occurred: Provided, however, That where the person was not a candidate at the time of such first prior use, he or she shall submit his or her request within 1 week of the first subsequent use after he or she has become a legally qualified candidate for the office in question.

(d) *Burden of proof.* A candidate requesting equal opportunities of the system or complaining of noncompliance to the Commission shall have the burden of proving that he or she and his or her opponent are legally qualified candidates for the same public office.

(e) *Discrimination between candidates.* In making time available to candidates for public office, no system shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any system make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to cablecast to the exclusion of other legally qualified candidates for the same public office.

3. Section 76.206 is added to read as follows:

§ 76.206 Lowest Unit Charge.

(a) *Charges for use of cable television systems.* The charges, if any, made for the use of any system by any person who is a legally qualified candidate for

any public office in connection with his or her campaign for nomination for election, or election, to such office shall not exceed:

(1) During the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the system for the same class and amount of time for the same period.

(i) A candidate shall be charged no more per unit than the system charges its most favored commercial advertisers for the same classes and amounts of time for the same periods. Any system practices offered to commercial advertisers that enhance the value of advertising spots must be disclosed and made available to candidates. Such practices include but are not limited to any discount privileges that affect the value of advertising, such as bonus spots, time-sensitive make goods, preemption priorities, or any other factors that enhance the value of the announcement.

(ii) The Commission recognizes non-preemptible, preemptible with notice, immediately preemptible and run-of-schedule as distinct classes of time.

(iii) Systems may establish and define their own reasonable classes of immediately preemptible time so long as the differences between such classes are based on one or more demonstrable benefits associated with each class and are not based solely upon price or identity of the advertiser. Such demonstrable benefits include, but are not limited to, varying levels of preemption protection, scheduling flexibility, or associated privileges, such as guaranteed time-sensitive make goods. Systems may not use class distinctions to defeat the purpose of the lowest unit charge requirement. All classes must be fully disclosed and made available to candidates.

(iv) Systems may establish reasonable classes of preemptible with notice time so long as they clearly define all such classes, fully disclose them and make them available to candidates.

(v) Systems may treat non-preemptible and fixed position as distinct classes of time provided that systems articulate clearly the differences between such classes, fully disclose them, and make them available to candidates.

(vi) Systems shall not establish a separate, premium-priced class of time sold only to candidates. Systems may sell higher-priced non-preemptible or fixed time to candidates if such a class of time is made available on a *bona fide* basis to both candidates and commercial advertisers, and provided such class is not functionally equivalent to any lower-priced class of time sold to commercial advertisers.

(vii) Unit rates charged for the last-minute sale ("fire sale") of available inventory must be included in the calculation of the lowest unit charge for all time sold to candidates during the period or daypart or program (regardless of when candidates originally purchased/ordered their spots), but such calculation establishes the lowest unit charge only for the period, daypart, or program in which such fire sale spots actually aired. Moreover, if a system permits candidates to use its cablecast facilities, such last minute sales must also be made available to candidates.

(viii) Lowest unit charge may be calculated on a weekly basis with respect to time that is sold on a weekly basis, such as rotations through particular programs or dayparts. Systems electing to calculate the lowest unit charge by such a method must include in that calculation all rates for all announcements scheduled in the rotation, including announcements aired under long-term advertising contracts. Systems may implement rate increases during election periods only to the extent that such increases constitute "ordinary business practices," such as seasonal program changes or changes in audience ratings.

(ix) Systems shall review their advertising records periodically throughout the election period to determine whether compliance with this section requires that candidates receive rebates or credits. Where necessary, systems shall issue such rebates or credits promptly.

(x) Unit rates charged as part of any package, whether individually negotiated or generally available to all advertisers, must be included in the lowest unit charge calculation for the same class and length of time in the same time period. A candidate cannot be required to purchase advertising in every program or daypart in a package as a condition for obtaining package unit rates.

(xi) Systems are not required to include non-cash promotional merchandising incentives in lowest unit charge calculations; provided, however, that all such incentives must be offered to candidates as part of any purchases permitted by the system. Bonus spots, however, must be included in the calculation of the lowest unit charge calculation.

(xii) Make goods, defined as the rescheduling of preempted advertising, shall be provided to candidates prior to election day if a system has provided a time-sensitive make good to any commercial advertiser who purchased time in the same class during the year preceding the pre-election periods, respectively set forth in paragraph (a)(1) of this section.

(xiii) Systems must disclose and make available to candidates any make good policies provided to commercial advertisers. If a system places a make good for any commercial advertiser or other candidate in a more valuable program or daypart, the value of such make good must be included in the calculation of the lowest unit charge for that program or daypart.

(2) At any time other than the respective periods set forth in paragraph (a)(1) of this section, systems may charge legally qualified candidates for public office no more than the charges made for comparable use of the sytem by commercial advertisers. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means, direct or indirect. A candidate shall be charged no more than the rate the system would charge for comparable commercial advertising.

(b) If a system permits a candidate to use its cablecast facilities, the system shall make all discount privileges offered to commercial advertisers, including the lowest unit charges for each class and length of time in the same time period and all corresponding discount privileges, available to candidates. This duty includes an affirmative duty to fully disclose to candidates information about rates and all value-enhancing discount privileges offered commerical advertisers. Systems may use reasonable discretion in making the disclosure; provided, however, that the disclosure includes, at a minimum, the following information:

(1) A description and definition of each class of time available to commercial advertisers sufficiently complete enough to allow candidates to identify and understand what specific attributes differentiate each class;

(2) A description of the lowest unit charge and related privileges (such as priorities against preemption and make goods prior to specific deadlines) for each class of time offered to commercial advertisers;

(3) A description of the system's method of selling preemptible time based upon advertiser demand, commonly known as the "current selling level," with the stipulation that candidates will be able to purchase at these demand-generated rates in the same manner as commercial advertisers;

(4) An approximation of the likelihood of preemption for each kind of preemptible time; and

(5) An explanation of the system's sales practices, if any, that are based on audience delivery, with the stipulation that candidates will be able to purchase this kind of time, if available to commercial advertisers.

(c) Once disclosure is made, systems shall negotiate in good faith to actually sell time to candidates in accordance with the disclosure.

4. Section 76.207 is added to read as follows:

§ 76.207 Political file.

(a) Every cable television system shall keep and permit public inspection of a complete and orderly record (political file) of all requests for cablecast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the system of such requests, and the charges made, if any, if the request is granted. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.

(b) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

5. Section 76.221 is amended by adding a last sentence to paragraph (a) to read as follows:

§ 76.221 Sponsorship identification; list retention; related requirements.

* * * * *

(a) * * * In the case of political cablecasts under this paragraph and paragraph (c) of this section, the cablecast must contain both a visual and aural announcement.

* * * * *

[FR Doc. 92-41 Filed 1-2-92; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB

Endangered and Threatened Wildlife and Plants; Listing of the Snake River Sockeye Salmon as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service is adding the Snake River sockeye salmon (*Oncorhynchus nerka*) to the list of Endangered and Threatened Wildlife. This measure, required by the Endangered Species Act of 1973, corresponds with a determination of endangered status by the National Marine Fisheries Service, which has jurisdiction for the Snake River sockeye salmon.

EFFECTIVE DATE: December 20, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Larry Shannon, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (452 ARLSQ), Washington, DC 20240 (703/358-2171, FTS 921-2171).

SUPPLEMENTARY INFORMATION: Under the Endangered Species Act (16 U.S.C. 1531 et seq.), and in accordance with Reorganization Plan No. 4 of 1970, the National Marine Fisheries Services (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the sockeye salmon. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Fish and Wildlife Service (FWS) is responsible for the actual addition of a species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

NMFS published its determination of endangered status for the Snake River sockeye salmon on November 20, 1991 (56 FR 58619-58624). Accordingly, the FWS is adding the Snake River sockeye salmon as an endangered species to the List of Endangered and Threatened Wildlife. This addition is effective as of December 20, 1991 as indicated in the NMFS's determination. Because this action of the FWS is nondiscretionary and the species was proposed for listing (April 5, 1991; 56 FR 14055), the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. § 17.11(h) is amended by adding the following entry in alphabetical order under FISHES in the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Fishes							
*	*	*	*	*	*	*	

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Salmon, sockeye (=red, =blueback).	*Oncorhynchus nerka*	North Pacific Basin from U.S.A. (CA) to U.S.S.R.	Snake R., (U.S.A.) stock wherever found.	E	455	NA	NA

* * * * *

Dated: December 24, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-46 Filed 1-2-92; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 911194-1294]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of revision to two-time requirements.

SUMMARY: NMFS issues this notice to revise the tow-time restrictions imposed on the summer flounder fishery off of North Carolina under the emergency interim rule which is in effect December 2, 1991, through March 5, 1992 (56 FR 63685; December 5, 1991). The tow-time restriction was imposed to protect threatened and endangered sea turtles within a defined area. Observation of the fishery indicates that the sea turtles have left the northern portion of this area; therefore, the area to which the tow-time restriction applies is revised. Observation of the fishery will be increased to determine if sea turtles reenter this area.

EFFECTIVE DATES: The revision is effective from December 27, 1991 through March 5, 1992.

ADDRESSES: Copies of documents supporting this action may be obtained from: Richard B. Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-3799.

FOR FURTHER INFORMATION CONTACT: Richard G. Seamans, Jr., Senior Resource Policy Analyst, 508-281-9244, or Phil Williams, NMFS National Sea Turtle Coordinator, 301-713-2322.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder fishery is managed under an emergency interim rule for the period December 2, 1991, through March 5, 1992 corrected at 56 FR 66603 on December 24, 1991. The emergency interim rule implements regulations designed to enhance conservation of the summer flounder resource and to protect threatened and endangered sea turtles. Summer flounder are managed under the Fishery Management Plan for the Summer Flounder Fishery, which was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the England and South Atlantic Fishery Management Councils. Implementing regulations are found at 50 CFR part 625, and are authorized under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The regulations also ensure the conservation of threatened and endangered species under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA).

Section 625.26(c) of the emergency regulations imposes a 75-minute tow time limit on trawlers in the EEZ off North Carolina to protect threatened and endangered sea turtles. This regulation applies to vessels operating in a relatively concentrated area off of North Carolina bounded on the north by a line along 37°05'N. latitude, bounded on the south by a line along 33°'35'N. latitude, and bounded on the east by a line 7 nautical miles from the shoreward boundary of the EEZ. Vessels operating in this area also must comply with the sea turtle conservation measures described in the emergency rule.

Section 625.26(b) of the regulations establishes a monitoring and assessment program, in cooperation with the State of North Carolina, to measure the incidental take of sea turtles in the summer flounder fishery, monitor compliance with required conservation measures by trawlers, and predict interactions between the fishery and sea turtles to prevent turtle mortalities. The monitoring and assessment program utilizes and evaluates a variety of information from aerial and vessel surveys, on-board observers, individually tagged turtles environmental monitoring of sea surface temperatures, reports from the sea turtle stranding network, and other relevant and reliable information, to determine or predict turtle distribvution, abundance, movement patterns and timing to provide information to NMFS to prevent turtle mortality by the summer flounder fishery. This monitoring and assessment program indicates that sea turtles are no longer present in significant numbers north of 35°45'N. latitude.

Section 625.26(c)(2) authorizes the Regional Director to revise the tow-time requirement in § 625.26(c)(1), including changes in the geographical area where the requirement applies, after consultation with the Council and the Director of the State of North Carolina Marine Fisheries. Such consultations have been completed and indicate that the current tow-time restriction can be modified to apply to a smaller geographical area and still protect sea turtles adequately, and that a less restrictive measure would benefit the fishery. Thus, the tow-time restriction may no longer apply to vessels fishing in the area north of 35°45'N. latitude for the remainder of the effective period of the emergency regulations. The 75-minute tow-time limit continues in effect for vessels operating within the EEZ in the area bounded on the north by a line along 35°45'N. latitude, bounded on the south by a line along 33°35'N. latitude, and bounded on the east by a line 7 nautical miles from the shoreward boundary of the EEZ.

Section 625.5 of the emergency regulations establishes an observer program to evaluate more fully the interactions between the summer flounder fishery and sea turtles. The regulations authorize NMFS to require observers on all or a certain portion of the vessels engaged in fishing for summer flounder off North Carolina to gather data on incidental capture of sea turtles and to monitor compliance with required conservation measures. To ensure timely response should sea turtles return to this area, observer coverage in the summer flounder fishery

will be increased to 24 percent of all trips.

List of Subjects in 50 CFR Part 625

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: December 27, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-31323 Filed 12-27-91; 3:34 pm]

BILLING CODE 3510-22-M

50 CFR Part 649

[Docket No. 911047-1296]

RIN: 0648-AD20

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule implementing Amendment 4 to the Fishery Management Plan for American Lobster (FMP). This rule: (1) Reduces the minimum carapace size for American lobster to 3¼ inches (8.26 cm); (2) delays further increases in the minimum size until 2 years after the implementation of this amendment; and (3) modifies the minimum dimensions of the escape vent to be consistent with the minimum carapace size. Amendment 4 is intended to restore uniformity among the Federal and state size limits.

The intention of the New England Fishery Management Council (Council) is to develop and submit a comprehensive amendment to the FMP during the 2-year delay. If the comprehensive amendment is approved and implemented, it may replace the scheduled minimum size increases, and will provide management of the American lobster resource throughout its range and reduce the risk of overfishing. Nonsubmission of a comprehensive amendment within this period, or disapproval of the amendment, would trigger resumption of the remaining minimum carapace length increases approved under Amendment 3. In accordance with Amendment 3, the minimum dimensions of the escape vent would also increase to be consistent with a 3⅞₂ inch (8.41 cm) minimum carapace length.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Paul Jones, Resource Policy Analyst, 508-281-9273.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the FMP was prepared by the New England Fishery Council, under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, 16 U.S.C. 1801 *et seq.* A notice of availability for Amendment 4 was published in the **Federal Register** on September 17, 1991 (56 FR 47061). The proposed rule was published on October 10, 1991 (56 FR 51191) and public comments were invited until November 18, 1991.

This final rule: (1) Reduces the minimum carapace size for American lobster to 3¼ inches (8.26 cm); (2) delays further increases in the minimum size until 2 years after the implementation of this amendment; and (3) modifies the minimum dimensions of the escape vent to be consistent with the minimum carapace size.

The following definition of overfishing for the American lobster resource has also been approved: "The American lobster resource is considered to be overfished when, based on information concerning the status of the resource throughout its range, it is harvested at a fishing mortality rate (F) and minimum size combination that results in a calculated egg production per recruit of less than 10 percent of a non-fished population." Egg production per recruit for the offshore portion of the resource is estimated at 5–6 percent of maximum. The information necessary to accurately estimate egg production per recruit for the resource throughout its range is currently unavailable. During the 2-year delay proposed in this amendment, studies will be conducted to provide this information. The results of these studies and a proposed rebuilding program for the resource, if appropriate, will be included in the comprehensive amendment being prepared by the Council.

The preamble to the proposed rule to implement Amendment 4 described these measures and their rationale and is not repeated here.

Comments and Responses

Written comments were submitted by the U.S. Coast Guard and NMFS Law Enforcement; they expressed support for Amendment 4.

Changes From The Proposed Rule

The dates in § 649.20 and § 649.21 of the proposed rule were calculated based on the assumption that the final rule would be filed on December 29, 1991, and would be effective immediately because it relieves a restriction. Because the final rule was filed on December 27, 1991, the dates in the final rule have been revised accordingly.

Classification

The Secretary of Commerce determined that Amendment 4 is necessary for the conservation and management of the American lobster fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator has determined that this final rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291.

The Council prepared a regulatory impact review (RIR) that analyzes the economic impacts of this rule and describes its effects on small business entities. The RIR concludes that Amendment 4 is not expected to have an annual effect on the economy of more than $100 million, will not lead to cost or price increases, and will not have significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the environment as a result of this rule.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Delaware, Maryland, New Jersey, and North Carolina. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Connecticut, Massachusetts, New Hampshire, New York, Delaware, New Jersey, and North Carolina agreed with the determination. None of the other states commented within the statutory time period, and, therefore, consistency is automatically inferred.

This final rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator, pursuant to the Administrative Procedure Act (5 U.S.C. 553(d)(1)), finds that it is unnecessary to delay for 30 days the effective date of this rule because it relieves a restriction. This rule will restore uniformity between Federal and state size limits by decreasing the Federal size limit to match those of the major lobster-producing states. Accordingly, this final rule is effective December 27, 1991.

List of Subjects in 50 CFR Part 649

Fisheries, Reporting and recordkeeping requirements.

Dated: December 26, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 649.20, paragraph (b) is revised to read as follows:

§ 649.20 Harvesting and landing requirements.

* * * * *

(b) *Carapace length.* (1) All American lobsters landed on the dates set forth must have a minimum carapace length as follows:

Effective dates	Minimum carapace length
December 27, 1991, through December 26, 1993.	3¼ inches (8.26 cm).
December 27, 1993, through December 26, 1994.	3$^{9}/_{32}$ inches (8.33 cm).
December 27, 1994, and beyond.	3$^{5}/_{16}$ inches (8.41 cm).

(2) If, prior to December 26, 1993, the Council transmits a comprehensive amendment to the American Lobster Fishery Management Plan that further addresses management strategies for the American lobster throughout its range with an emphasis on alleviating any overfishing, the Regional Director shall change the date, by regulatory amendment, upon which the 3$^{9}/_{32}$ inch (8.33 cm) minimum carapace length becomes effective to the 146th day after the date on which the comprehensive amendment was transmitted.

3. In § 649.21, paragraphs (c)(1) and (c)(2) are revised and paragraph (c)(3) is added to read as follows:

§ 649.21 Gear identification and marking, escape vent, and ghost panel requirements.

* * * * *

(c) * * *

(1) Through January 25, 1992, all lobster traps must contain one of the following:

(i) A rectangular escape vent with an unobstructed opening not less than 1¾ inches (4.45 cm) by 6 inches wide (15.25 cm); if the escape vent is made by cutting meshes on a wire mesh trap, the width will be measured from center to center on the wires;

(ii) Two circular escape vents with unobstructed openings not less than 2¼ inches (5.72 cm) in diameter; or

(iii) Any other type of escape vent that the Regional Director finds to be consistent with paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(2) Effective January 26, 1992, all lobster traps must contain one of the following:

(i) A rectangular escape vent with an unobstructed opening not less than 1⅞ inches (4.76 cm) by 6 inches wide (15.25 cm); if the escape vent is made by cutting meshes on a wire mesh trap the width will be measured from center to center on the wires;

(ii) Two circular escape vents with unobstructed openings not less than 2⅜ inches (6.03 cm) in diameter; or

(iii) Any other type of escape vent that the Regional Director finds to be consistent with paragraphs (c)(2)(i) and (c)(2)(ii) of this section. The Regional Director, consistent with 5 U.S.C. 553, shall publish a notice of any other type of acceptable escape vent in the **Federal Register.**

(3) Effective December 27, 1994, all lobster traps must contain one of the following:

(i) A rectangular escape vent with an unobstructed opening not less than 1$^{15}/_{16}$ inches (4.92 cm) by 6 inches wide (15.25 cm); if the escape vent is made by cutting meshes on a wire mesh trap, the width will be measured from center to center on the wires;

(ii) Two circular escape vents with unobstructed openings not less than 2$^{7}/_{16}$ inches (6.19 cm) in diameter; or

(iii) Any other type of escape vent that the Regional Director finds to be consistent with paragraphs (c)(3)(i) and (c)(3)(ii) of this section. The Regional Director, consistent with 5 U.S.C. 553, shall publish a notice of any other type of acceptable escape vent in the **Federal Register.**

* * * * *

[FR Doc. 91-31280 Filed 12-27-91; 4:15 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 901199-1021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Apportionment of reserve; request for comments.

SUMMARY: NMFS announces that amounts of the operational reserve are apportioned to the following domestic annual processing (DAP) fisheries: Sablefish in the Aleutian Islands (AI) subarea, Pacific Ocean perch in the Bering Sea (BS) subarea, "other rockfish" in the BS subarea, squid in the Bering Sea and Aleutian Islands area (BSAI), and "other species" in the BSAI. This action is necessary to promote optimum use of groundfish in the BSAI area. The intent of this action is to carry out objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective 12 noon, Alaska local time (A.l.t.), December 27, 1991, through 12 midnight, A.l.t., December 31, 1991. *Comments* are invited through January 13, 1992.

ADDRESSES: Comments should be mailed to Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668, or delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone within the BSAI management area under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and 50 CFR part 675.

Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (mt) for all groundfish species in the BSAI management area. Total allowable catch

(TAC) specifications for target species and the "other species" category are specified annually within the OY range and apportioned by subarea (§ 675.20(a)(2)). In accordance with § 675.20(a)(3), 15 percent of the TAC for each target species category is placed in a reserve, and the remaining 85 percent of the TAC for each target species is apportioned between domestic annual harvesting (DAH) and the total allowable level of foreign fishing. The reserve is not designated by species or species group and any amount of the reserve may be apportioned to a target species category provided that such apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species category. As established in § 675.20(b)(1)(i), NMFS will apportion reserve amounts to a target species category as needed.

The initial DAH specified for sablefish in the AI subarea, Pacific ocean perch in the BS subarea, "other rockfish" in the BS subarea, and "other species" in the BSAI are 2,720 mt, 3,885 mt, 340 mt, and 12,750 mt, respectively (56 FR 6290; February 15, 1991). The initial TAC for squid in the BSAI, 850 mt, was increased to 1,100 mt by a later action (56 FR 40809; August 16, 1991). Under 675.20(a)(4)(i), all of these amounts were assigned to DAP. The current total DAP for all groundfish in the BSAI area is 1,911, 600 mt, which includes prior apportionments from reserve (56 FR 12853; March 28, 1991, 56 FR 40809; August 16, 1991).

Divsion of the sablefish apportionment for the AI subarea between users of trawl and longline fishing gears is provided for at 50 CFR 675.24. These gears are defined at § 675.2; longline gear includes taking fish with hooks or pots. Gear allocations of sablefish apportionments in the Aleutian Islands are specified at § 675.24(c) as 25 percent to trawl gear and 75 percent to longline gear (see Table 2).

Under the authority provided at § 675.20(b)(1)(i), NMFS finds that these fisheries require additional amounts of groundfish and apportions reserve amounts as follows: To the AI sablefish fishery—480 mt; to the Pacific ocean perch fishery in the BS subarea—685 mt; to the "other rockfish" fishery in the BS subarea—60 mt, to the "other species" fishing in the BSAI—5,250 mt; to the squid fishery in the BSAI—100 mt (Table 1; Table 2). For AI sablefish, the trawl gear share is 800 mt and the longline gear share is 2,400 mt. These reserve apportionments do not change the status of the fisheries or allowable types of gear which are already restricted under prior inseason actions. These apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing as the revised DAPs are equal to or less than the acceptable biological catch for those stocks.

Classification

This action is taken under 50 CFR 675.20 (a)(8) and (b)(1)(i), and is in compliance with Executive Order No. 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and comment or delaying the effective date of this notice is impractical and contrary to the public interest. However, interested persons are invited to submit comments in writing to the above address until January 13, 1992.

Lists of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 27, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

TABLE 1.—APPORTIONMENT OF RESERVE IN THE BERING SEA-ALEUTIAN ISLANDS MANAGEMENT AREA

[Values are in metric tons]

	Current DAP	This action	Revised
sablefish (AI subarea): ABC=3,200	2,720	+480	3,200
Pacific Qcean perch (BS subarea): ABC=4,570	3,885	+685	4,570
"other rockfish" (BS subarea): ABC=400	340	+60	400
"other species" ABC=28,700	12,750	+5,250	18,000
squid (BSAI): ABC=3,800	1,100	+100	1,200
Total BSAI: ABC=2,932,485			
DAP	1,911,600	+6,575	1,918,175
Reserve	88,400	−6,575	81,825

TABLE 2.—GEAR SHARES OF ALEUTIAN ISLANDS SABLEFISH DAP

	Gear	Percent of DAP	Share of DAP
New DAP=3,200.	trawl	25	800
	longline	75	2,400

[FR Doc. 91-31325 Filed 12-27-91; 3:45 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 2
Friday, January 3, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-068]

Importation of Papayas from Costa Rica

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow papayas to be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands from three provinces in Costa Rica, provided that certain conditions are met to ensure the papayas' freedom from Mediterranean fruit flies. This action would provide importers and U.S. consumers with an additional source of papayas without presenting any significant pest risk.

DATE: Consideration will be given only to comments received on or before February 3, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-068. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Darcy Axe, Staff Officer for Preclearance, International Services, APHIS, USDA, room 857, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-8892.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 *et seq.* prohibit or restrict the importation of certain fruits and vegetables into the United States to prevent the introduction of injurious insects, including fruit flies, that are new to or not widely distributed within the United States. The importation of papayas from Costa Rica has been prohibited because of the existence in Costa Rica of the Mediterranean fruit fly (*Ceratitis capitata*) and *Anastrepha* species of fruit fly.

Research conducted in Costa Rica under the direction of the Agricultural Research Service (ARS), U.S. Department of Agriculture, now shows that the Solo type of papaya grown in western Costa Rica (the provinces of Guanacaste, San Jose, and Puntarenas) is not a host of the Mediterranean fruit fly when it is less than one-half ripe. In addition, the research shows that, even when ripe, the Solo type of papaya grown in these provinces is not attacked by any *Anastrepha* species of fruit fly known to exist in Costa Rica.[1]

The papaya fruit fly (*Toxotrypana curvicauda*), which exists in Costa Rica and whose host fruit is the papaya, may attack the fruit. If carried into the United States, however, this pest would present a threat to agriculture only in Hawaii. Hawaii is currently the only State where the papaya fruit fly is not established that produces sufficient quantities of papaya to sustain an infestation of the papaya fruit fly. The papaya fruit fly is established in Puerto Rico and the U.S. Virgin Islands, and very little papaya is grown in other areas of the United States because the climate is not suitable for papaya production.

Based on this information, we are proposing to allow the Solo type of papaya to be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands from the Costa Rican provinces of Guanacaste, San Jose, and Puntarenas, without treatment, if an APHIS inspector in Costa Rica determines that certain conditions have been met. These conditions are listed and explained below:

(1) The papayas were grown and packed for shipment to the United States in the provinces of Guanacaste, San Jose, and Puntarenas.

Limiting this proposal to Solo type papayas grown and packed in these provinces appears to be necessary because research ha not yet been done to show that other types of papayas, or Solo type papayas from other areas, would be free of the Mediterranean fruit fly under the conditions we are proposing.

(2) Beginning at least 30 days before harvest begins and continuing through the completion of harvest, all trees in the field where the papayas were grown were kept free of papayas that were ⅛ or more ripe (more than 25 percent of the shell surface yellow), and all culled and fallen fruits were removed from the field at least twice a week.

Papayas that are ⅛ or more ripe could serve as host material for the Mediterranean fruit fly. Removing potential host material would reduce the likelihood that Mediterranean fruit fly would be attracted to any papayas in the field.

(3) When packed, the papayas were less than ½ ripe (the shell surface was no more than 25 percent yellow, surrounded by light green), and appeared to be free of all injurious insect pests.

The research cited earlier indicates that papayas less than ½ ripe are not a host to the Mediterranean fruit fly. Requiring that the fruit appear to be free of other insect pests would help ensure that "hitchhikers" are not carried into the United States by the papayas.

(4) The papayas were packed in an enclosed container or under cover so as to prevent access by fruit flies and other injurious insect pests, and were not packed with any other fruit, including papayas not qualified for importation to the United States.

This requirement appears necessary to provide assurance that the papayas would not be attacked by injurious insect pests after they were packed.

(5) All activities described in (1) through (4) above were carried out under the general supervision and direction of plant health officials of the Costa Rican Ministry of Agriculture.

Supervision of activities by plant health officials of the Costa Rican Ministry of Agriculture would help ensure that activities required by our regulations were properly carried out.

[1] Information concerning this research may be obtained from the individual listed under "FOR FURTHER INFORMATION CONTACT."

(6) Beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were placed at a rate of 1 trap per hectare and were checked for fruit flies at least twice a week by plant health officials of the Costa Rican Ministry of Agriculture and Livestock (MAG). Fifty percent of the traps were of the McPhail type and fifty percent of the traps were of the Jackson type. The MAG kept records of fruit fly finds for each trap, updated the records each time the traps were checked, and made the records available to APHIS inspectors. The records were maintained for at least 1 year.

The trapping and associated recordkeeping described above would tell Costa Rican plant health officials and APHIS what kinds of fruit flies are present in the papaya fields. This information is important because the procedures in this proposed rule are based on research that shows that, at less than ½ ripe, Solo papayas grown in this area of Costa Rica are not hosts of the Mediterranean fruit fly or any *Anestrepha* species of fruit fly known to exist in Costa Rica. These procedures would have to be reevaluated if other species of fruit flies were detected. We propose to require that the trapping and recordkeeping be done by plant health officials of the Costa Rican Ministry of Agriculture and Livestock (MAG) to ensure that information is collected and maintained by an objective party, rather than by the grower. The Costa Rican Ministry of Agriculture and Livestock is responsible for providing information concerning plant pests in Costa Rica.

We are proposing that the Costa Rican Ministry of Agriculture and Livestock (MAG) enter into a trust fund agreement with APHIS before APHIS will provide inspection services in Costa Rica under these proposed regulations.

The trust fund agreement would require MAG to pay at least a month in advance all estimated costs to be incurred by APHIS in providing inspection services. These costs would include administrative expenses incurred in conducting preclearance, as well as all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS inspectors in providing these services. MAG would be required to deposit a certified or cashier's check to APHIS for the amount of these costs for an entire month, as estimated by APHIS, based on projected shipment volumes and cost figures from previous inspections. The agreement would further require that, if the deposit does not meet the actual costs incurred by APHIS, MAG would deposit with APHIS a certified or cashier's check for the amount of the known remaining costs, as determined by APHIS, before completion of the inspections for that month. The agreement would also specify that unanticipated costs must be paid upon demand, and that further service will be withheld until payment is made. If the amount MAG pays during any monthly period exceeds the total costs incurred by APHIS in providing inspection services for the papayas in Costa Rica, the difference would be either refunded to MAG by APHIS at the end of the month or, at the option of MAG, credited to the MAG account for future services.

Requiring payment of costs in advance is necessary to help defray the costs to APHIS of providing inspection services in Costa Rica.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule has been reviewed in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would allow the Solo type of papaya to be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands from the provinces of Guanacaste, San Jose, and Puntarenas, Costa Rica, without treatment, under certain conditions.

Costa Rica produces about 8 million pounds of papaya per year. Currently, Costa Rica does not export any fresh papaya to the United States. The Department estimates that approximately 49,000 pounds of fresh papaya could be imported into the United States annually from Costa Rica if this proposed rule is adopted.

Current U.S. production of papaya totals 68.5 million pounds. Papayas are produced commercially on about 300 farms in Hawaii. Nearly 65 percent of these farms are owned by individuals whose major occupation is not farming, and about 90 percent of these farms are small entities with average revenues of less than $300,000 per year. Hawaii ships about 19.8 million pounds of fresh papaya per year to the mainland, mostly to the West Coast. About 75 percent of these papaya are sold directly to retailers and the rest to wholesalers.

About 11.5 million pounds of fresh papaya (both Solo type and other), valued at about $2.4 million, are imported into the continental United States each year. Most of the papaya comes from Mexico (56.8 percent), the Bahamas (31.6 percent), and Belize (7.6 percent). The Bahamas and Belize provide the Solo type papaya.

Imports of the Solo type of papaya (about 4.9 million pounds) represent approximately 20 percent of the total supply of Solo type available for consumption. An addition of 49,000 pounds of the Solo type papaya annually from Costa Rica would increase the total available supply by about 0.2 percent. This estimated increase in the domestic supply is unlikely to have any significant impact on U.S. papaya prices and, in turn, on U.S. papaya producers, consumers, or any small entities.

Under these circumstances, the Acting Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would be amended to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 21 U.S.C. 136a; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. In Subpart—Fruits and Vegetables, a new § 319.56–2u would be added to read as follows:

§ 319.56–2u Administrative instructions; conditions governing the entry of papayas from Costa Rica.

The Solo type of papaya may be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands from the provinces of Guanacaste, San Jose, and Puntarenas, Costa Rica, only under the following conditions:

(a) The Costa Rican Ministry of Agriculture and Livestock (MAG) has entered into a trust fund agreement with the Animal and Plant Health Inspection Service (APHIS) to pay for services to be provided by APHIS. This agreement requires the MAG to pay at least a month in advance all estimated costs incurred by APHIS in provided the services prescribed in paragraph (b) of this section. These costs will include administrative expenses incurred in providing the services; and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS inspectors in providing these services. The agreement requires MAG to deposit a certified or cashier's check with APHIS for the amount of these costs for an entire month, as estimated by APHIS, based on projected shipping volumes and cost figures from previous inspections. The agreement further requires that, if the deposit is not sufficient to meet the actual costs incurred by APHIS, MAG must deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the inspections will be completed. The agreement also requires that, in the event of unexpected costs, MAG must deposit with APHIS a certified or cashier's check sufficient to meet such costs as estimated by APHIS, before any further inspection services will be provided. If the amount MAG deposits during a month exceeds the total costs incurred by APHIS in providing the services, the differences will be returned to MAG by APHIS at the end of the month, or, at the option of MAG, credited to the MAG account for future services.

(b) An APHIS inspector in Costa Rica certifies that the following requirements have been met:

(1) The papayas were grown and packed for shipment to the United States in the provinces of Guanacaste, San Jose, and Puntarenas.

(2) Beginning at least 30 days before harvest begins and continuing through the completion of harvest, all trees in the field where the papayas were grown were kept free of papayas that were ½ or more ripe (more than 25 percent of the shell surface yellow), and all culled and fallen fruits were removed from the field at least twice a week.

(3) When packed, the papayas were less than ½ ripe (the shell surface was no more than 25 percent yellow, surrounded by light green), and appeared to be free of all injurious insect pests.

(4) The papayas were packed in an enclosed container or under cover so as to prevent access by fruit flies and other injurious insect pests, and were not packed with any other fruit, including papayas not qualified for importation into the United States.

(5) All activities described in paragraphs (a) through (d) of this section were carried out under the general supervision and direction of plant health officials of the MAG.

(6) Beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were placed at a rate of 1 trap per hectare and were checked for fruit flies at least twice a week by plant health officials of the MAG. Fifty percent of the traps were of the McPhail type and fifty percent of the traps were of the Jackson type. The MAG kept records of fruit fly finds for each trap, updated the records each time the traps were checked, and made the records available to APHIS inspectors. The records were maintained for at least 1 year.

Done in Washington, DC, this 27th day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–86 Filed 1–2–92; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV–91–451]

California Desert Grapes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 925 for the 1992 fiscal period. Authorization of this budget would permit the California Desert Grape Administrative Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by January 16, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–690–4244.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 925, regulating the handling of grapes grown in a designated area of southeastern California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has

considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California Desert grapes under this marketing order, and approximately 90 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of grape producers and handlers may be classified as small entities.

The budget of expenses for the 1992 fiscal period was prepared by the California Desert Grape Administrative Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of California Desert grapes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of California desert grapes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

The committee met on November 21, 1991, and unanimously recommended a 1992 budget of $31,240, $2,595 more than the previous year. Increases are in the telephone and communications, office equipment and repairs, rent, vehicle—field supervisor, and insurance—workman's compensation categories.

The committee also unanimously recommended an assessment rate of $0.0025 per lug, the same as last season. This rate, when applied to anticipated shipments of 8,000,000 lugs, would yield $20,000 in assessment income. This, along with $1,100 interest income and $10,140 from the committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1992 fiscal period, estimated at $23,860, would be within the maximum permitted by the order of one fiscal period's expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992 fiscal period for the program begins on January 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable grapes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program need to be expedited.

List of Subjects in 7 CFR Part 925

Marketing agreements, Grapes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 925 be amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR Part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 925.211 is added to read as follows:

§ 925.211 Expenses and assessment rate.

Expenses of $31,240 by the California Desert Grape Administrative Committee are authorized, and an assessment rate of $0.0025 per lug of grapes is established for the fiscal period ending December 31, 1992. Unexpended funds may be carried over as a reserve.

William J. Doyle,

Deputy Associate Director, Fruit and Vegetable Division.

[FR Doc. 92–27 Filed 1–2–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1007

[DA–91–023]

Milk in the Georgia Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal that would suspend portions of the producer milk definition of the Georgia milk order for the months of December 1991 through August 1992. The suspension would increase the amount of milk that may be shipped directly from the farm to nonpool plants and still be priced under the order. The suspension was requested by Carolina Virginia Milk Producers Association (CVMPA), a cooperative association that represents producers who supply the market. CVMPA contends that the suspension is necessary because of changed marketing conditions and to provide equity among its producer members because of base plans in the Georgia milk order and neighboring Federal orders.

DATES: Comments are due on or before January 10, 1992.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the

criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Georgia marketing area is being considered for the months of December 1991 through August 1992.

In § 1007.13 paragraphs (b)(4) and (b)(5).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include December 1991 in the suspension period.

Statement of Consideration

The proposed suspension would suspend portions of the producer milk definition of the Georgia milk order for the months of December 1991 through August 1992. The proposal would allow more milk to be shipped from farms to nonpool plants and still be priced and pooled under the order.

The order provides that a cooperative association may divert up to 25 percent of the milk received at pool plants and that a proprietary handler may divert up to 25 percent of its non member milk received at its pool plant. A suspension would increase the diversion limits to all but 10 days' production of each producer during the month.

The suspension was requested by Carolina Virginia Milk Producers Association (CVMPA), a cooperative association having a substantial amount of milk pooled on the Georgia market. In support of its proposal, the cooperative said the suspension is needed because a decreased volume of milk is needed by pool plants in the Georgia marketing area. CVMPA said that on December 1, 1991, there was a significant shift of processed milk accounts from plants regulated by the Georgia milk order to other order plants. The cooperative also states that it is not practical to shift producer milk supplies among orders, because of the base plans in the Georgia order and neighboring orders. CVMPA said that because of the diversion limitations contained in the Georgia order, producer is being reloaded at pool plants to keep it priced under the order. Relaxation of the diversion limits would facilitate moving the milk directly to nonpool plants.

Accordingly, it may be appropriate to suspend the aforesaid provisions for the months of December 1991 through August 1992.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

The authority citation for 7 CFR part 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on December 27, 1991.

L.P. Massaro,

Acting Administrator.

[FR Doc. 92–30 Filed 1–2–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1106

[DA–91–024]

Milk in the Southwest Plains Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend certain provisons of the Southwest Plains milk order. The suspension actions were requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative assocation that represents producers who supply a significant portion of milk for the market.

The proposed suspension actions would suspend for the months January through August 1992 the shipping standards for supply plants. The monthly requirement that a dairy farmer's milk be received at a pool plant in order to be eligible for diversion to nonpool plants would be suspended for the months of February through August 1992. Mid-Am claims these suspension actions are necessary for the efficient disposition of an increasing supply of milk. The proponent contends that the proposed actions would eliminate the costly and inefficient movement of milk from supply plants that would have to be made to guarantee continued pricing and pooling of milk of producers who have historically supplied the market's fluid needs.

DATES: Comments are due no later than January 10, 1992.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule. Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provision of the order regulating the handling of milk in the Soutwest Plains marketing area is being considered as follows:

For January through August 1992.

1. In § 1106.6, suspension of the words "during the month".

2. In § 1106.7(b)(1), suspension of the words "of February through August until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) or (e) of this section. A plant not meeting such 20 percent requirement in any month of such February–August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section are not less than 50 percent of receipts or diversions, as previously specified".

For February through August 1992.

1. In § 1106.13, suspension of paragraph (d)(1) in its entirety.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include January 1992 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed actions for January through August 1992 would suspend the shipping standards for supply plants that were previously associated with the market. The order defines a supply plant as a plant from which fluid milk products are transferred or diverted to distributing plants during the month. It also provides that in order to be pooled under the order during the months of September through January, 50 percent of a supply plant's receipts must be shipped to distributing plants each month. A supply plant that was pooled during each of the immediately preceding months of September through January shall continue to be pooled during the following months of February through August if 20 percent of its receipts are shipped to distributing plants. Part of the requested suspension action would remove during the months of February 1992 through August 1992 the shipping standard for supply plants that were pooled under the order during the immediately preceding September through January period. These order provisions were last suspended from February through August 1991.

The proposed suspension action would also suspend, for February 1992 through August 1992, the monthly requirement that a dairy farmer's milk be received at a pool plant in order to be eligible for diversion to nonpool plants. The order currently provides that a dairy farmer's milk may be diverted to nonpool plants and still be priced under the order if at least one day's production of such person is physically received at a pool plant during the month. This order provision also was last suspended from February through August 1991.

The suspension actions were requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents a substantial number of producers who supply the market. Mid-Am asserts that there will be ample supplies of direct-shipped producer milk to satisfy the fluid needs of plants during the February through August 1992 period. Mid-Am claims that producer receipts in the Southwest Plants order are increasing at a rate faster than Class I milk sales. Because of this, Mid-Am contends that it is unnecessary to compel producers located some distance from pool plants to have their milk be received at a pool plant one time during the month when their milk can more economically be diverted to manufacturing plants in the production area. Mid-Am argues that requiring each producer to have his/her milk be received at least one time each month at a pool plant will result in uneconomical and inefficient milk movements.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: December 27, 1991.

Daniel Haley,

Administrator.

[FR Doc. 92–29 Filed 1–2–92; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11, 19, 20, 21, 25, 26, 30, 31, 32, 33, 34, 35, 39, 40, 50, 52, 53, 54, 55, 60, 61, 70, 71, 72, 73, 74, 75, 95, 110, 140, 150

RIN 3150–AD62

Clarification of Statutory Authority for Purposes of Criminal Enforcement

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to clarify the applicability of the criminal penalty provisions of the Atomic Energy Act of 1954, as amended (the Act), to certain regulations. The proposed rule is intended to identify more clearly those regulations which may subject the violator to criminal penalties for willfull violation, attempted violation, or conspiracy to violate.

DATES: The comment period expires March 18, 1992. Comments received after the date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch.

Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2741.

SUPPLEMENTARY INFORMATION: The Commission's regulations are issued under authority of section 161, among others, of the Atomic Energy Act of 1954, as amended, (the Act). Within section 161, there are five provisions, sections 161b, 161i, 161o, 161p, and 161x, that provide the Commission with authority to issue regulations. The rulemaking authority delegated to the Commission in sections 161b, 161i, and 161o provides the basis for most of the substantive rules issued by the Commission that are codified in 10 CFR chapter I. The NRC has considered how to provide effective notice as to which of its regulations are issued under sections 161b, 161i, or 161o. At the same time, the NRC has also considered how to minimize imprecision that could jeopardize appropriate enforcement action against those who violate these regulatory requirements.

Section 222 of the Act provides criminal penalties for willful violation (including an attempted violation or a conspiracy to violate) of sections 57, 92, and 101 of the Act, and unlawful interference with any recapture or entry under section 108 of the Act. Section 223 of the Act provides criminal penalties for willful violation (including an attempted violation or a conspiracy violation) of any provision of the Act for which no criminal penalty is specifically provided, and for willful violation of any regulation or order prescribed or issued under sections 65, 161b, 161i, or 161o of the Act.

Currently, the NRC provides notice of the criminal penalty provisions of section 223 by including a paragraph in the authority citation for each affected part of 10 CFR chapter I that identifies provisions of the appropriate regulations, by section or paragraph, that the NRC considers promulgated under section 161b, 161i, or 161o. Specifically, section 161b of the Act authorizes the Commission to "establish by rule, regulation, or order, such standards and instructions to govern the

possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property * * *." Section 161i states that the Commission may "prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 or produced by any person in connection with any activity authorized pursuant to this Act, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, * * * and (3) to govern any activity authorized pursuant to this Act, * * * in order to protect health and to minimize danger to life or property." Section 161o authorizes the Commission to "require by rule, regulation, or order, such reports, and the keeping of such records with respect to, and to provide for such inspections of, activities and studies of types specified in section 31 and of activities under licenses issued pursuant to sections 53, 63, 81, 103, and 104, as may be necessary to effectuate the purposes of this Act, including section 105." Thus the Commission's rulemaking authority in these sections is the basis for the substantive rules of the Commission. Section 161x authorizes the Commission to establish, by regulation, standards to ensure financial security for decontamination and decommissioning of sites containing certain byproduct material, specifically mill tailings. The remaining section (161p) authorizes the Commission to make, promulgate, issue, rescind, and amend rules and regulations which may be necessary to carry out the purposes of the Act. This last section pertains to the more general or merely administrative (nonsubstantive) regulations, as opposed to the substantive, specified matters of the three primary sections. Section 161p is used for the promulgation of those rules that are necessary to administratively complement the rules issued pursuant to 161b, 161i, and 161o. In light of the more specific authority of sections 161 b, i, o, or x, section 161p is considered a catchall provision that has no application where a provision of Section 161 provides specific authority.

This rule will remedy several problems with the current method of providing notice of the criminal penalty provisions of the Act. It may not always be readily apparent from a statement in the authority citations for each part that the purpose of that statement is to provide notice of potential criminal penalties for certain willful violations. To fully appreciate this notice, a reader needs to understand the rulemaking provisions of sections 161b, 161i, and 161o, as well as the criminal penalty provisions of section 223. From time to time, errors have been made which hampered the effectiveness of including the criminal penalty notice provisions in the authorities sections. In some instances, authority citations have been merely to section 161 without any indication of which subsection of 161 was used to promulgate the regulation. Substantive regulations, such as 10 CFR 50.7(a), which addresses discrimination against an employee for raising safety concerns, were overlooked. When § 50.7(a) was originally issued, there was no specific notice in the authority section that this section was issued under 161b, 161i, or 161o. This oversight resulted in a failure to provide notice to the public that this substantive regulation was promulgated under the specific subsections for which the Act provides criminal penalties for willful violations. These types of problems have affected the NRC's ability to refer cases to the Department of Justice and seek an appropriate criminal remedy.

The NRC has considered how to best provide notice as to which regulations are issued under sections 161b, 161i, or 161o, and to minimize errors that could jeopardize appropriate enforcement action. To eliminate any uncertainty and to provide clear and consistent notice of criminal penalties for willful violations of specific regulations, the Commission is adopting a standard format for identifying those regulations that, if willfully violated, are subject to criminal enforcement penalties. While the statement of general authority for each part will remain the same, the authority citations will no longer provide notice by the inclusion of a specific reference to those regulations issued under sections 161b, 161i, or 161o for the purpose of section 223 of the Act. These paragraphs within the authority citations will be removed. Instead, each appropriate part in 10 CFR chapter I will contain a section that will address criminal penalties. The new "Criminal penalties" section (added to each part) will contain a statement that for the purposes of section 223 all the regulations in the part are "issued under one or more of subsections 161b, 161i, or 161o," except as otherwise noted in a separate paragraph. Any section of the regulation which is not substantive in nature will be specifically identified and excluded from criminal enforcement penalties. This will result in the exclusion of those sections that are mainly administrative and do not address substantive matters. In addition, it is the NRC's intention, when each new regulation is promulgated in the future, to include, when applicable, a statement in the Supplementary Information published in the **Federal Register** that the regulation is issued under section 161b, 161i, or 161o. If a regulation is not issued under one of those sections, the criminal penalty section for the part in which the regulation is contained will be amended to specifically enumerate the new regulation as an exception. The inclusion of a "Criminal penalties" provision in the body of regulations in each substantive part will provide explicit notice of potential criminal penalties and should enable all persons subject to the rules to readily determine whether willful violation of the regulation could result in criminal liability, such as a fine or imprisonment.

In determining which NRC regulations are substantive and, accordingly, are promulgated under sections 161b, 161i, or 161o of the Act, the NRC has included those rules that create duties, obligations, conditions restrictions, limitations, and prohibitions. Regulations that are considered substantive include those that describe which activities require an NRC license, what a licensee must do under license conditions, and what information is required to be collected, reported, recorded, and protected by licensees and the NRC. In this proposed rulemaking, the regulations stating what is to be submitted in an application for an NRC license have not been included among those subject to criminal enforcement. This is because those requirements are stated in a general manner or without language that specifically imposes a requirement. Nonetheless, any willful submission of material false information to the NRC in a license application remains subject to criminal enforcement under the provisions of 18 U.S.C. 1001. In a few instances, a section that appears similar to the application requirement sections discussed above is made subject to criminal prosecution because the section also contains a provision that imposes a specific requirement, such as 50.34(e), which requires an applicant to protect Safeguards Information.

In addition, it was noted in the preparation of this rulemaking that inconsistent language is used in the

various parts to describe civil remedies, and that a few parts do not contain any such provision. Changes have been made to use the same language in each part and to add those provisions in parts that may be the basis for civil enforcement action. This does not add any new sanction, but clarifies that civil and criminal enforcement authority is available. Previous provisions as to criminal sanctions that appeared in "Violations" sections in some Parts have been deleted because they are replaced by the new "Criminal Penalties" sections.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the proposed regulation.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 USC 3501, et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers: 3150–0001, 0002, 0007, 0008, 0009, 0010, 0011, 0014, 0015, 0016. 0017, 0018, 0020, 0032, 0035, 0036, 0039, 0044, 0046, 0047, 0055, 0062, 0123, 0126, 0127, 0130, 0132, 0135, 0146, and 0151.

Regulatory Analysis

The NRC has prepared this proposed regulation in order to identify the provisions of its regulations that are issued under section 223 of the Act for purposes of imposing criminal penalties on those who willfully violate those regulatory requirements. The NRC recognizes a need to clearly, simply, and accurately identify these provisions to provide public notice that violations of certain provisions may subject the violator to criminal penalty. The amendments presented in this proposed rule are intended to accomplish this objective. This proposed rule would not result in the creation of new potential liabilities and, of itself, imposes no new requirements on NRC licensees. This discussion constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 USC 605(b)), the Commission certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule would not result in the creation of any new potential liabilities and would not impose new or additional requirements on NRC licensees.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and, therefore, a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 11

Criminal Penalties, Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty Management actions, Nuclear power reactors, Protection, of information, Reporting and recordkeeping requirements.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 33

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 39

Byproduct material, Criminal penalties, Nuclear material, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection.

Limited work authorization, Nuclear power plants and rectors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 53

Administrative practice and procedure, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting recordkeeping requirements, Spent fuel, Waste treatment and disposal.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalty, Environmental protection, Incorporation by reference, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Criminal penalties, Hazardous materials—transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 73

Criminal penalties, Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 150

Criminal penalties, Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing the following amendments to 10 CFR parts 11, 19, 20, 21, 25, 26, 30, 31, 32, 33, 34, 35, 39, 40, 50, 52, 53, 54, 55, 56, 60, 61, 70, 71, 72, 73, 74, 75, 95, 110, 140, and 150.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); SEC. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. A new center heading "Violations" and § 11.30 are added directly after § 11.21 to read as follows:

Violations

§ 11.30 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended,

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

3. Section 11.31 is added directly after § 11.30 to read as follows:

§ 11.31 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all regulations in part 11 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 11 that are not issued under subsections 161b, 161i,

or 161o for the purposes of section 223 are as follows: § § 11.1, 11.3, 11.5, 11.7, 11.8, 11.9, 11.16, 11.21, 11.30, and 11.31.

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTIONS

4. The authority citation for part 19 is revised to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

5. Section 19.30 is revised to read as follows:

§ 19.30 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended,

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

6. Section 19.40 is added to read as follows:

§ 19.40 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 11 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 19 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: § § 19.1, 19.2, 19.3, 19.4, 19.5, 19.8, 19.16, 19.17, 19.18, 19.30, 19.31, and 19.40.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

7. The authority citation for part 20 (including §§ 20.1 through 20.2402) is revised to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

8. Section 20.601 is revised to read as follows:

§ 20.601 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section.

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

9. Section 20.602 is added to read as follows:

§ 20.602 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in §§ 20.1 through 20.602 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in §§ 20.1 through 20.602 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 20.1, 20.2, 20.3, 20.4, 20.5, 20.6, 20.7, 20.8, 20.107, 20.108, 20.204, 20.206, 20.302, 20.306, 20.501, 20.502, 20.601, and 20.602.

§ 20.2401 [Amended]

10. In § 20.2401, paragraph (c) is removed.

11. Section 20.2402 is added directly after § 20.2401 to read as follows:

§ 20.2402 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in §§ 20.1001 through 20.402 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in §§ 20.1001 through 20.2402 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 20.1001, 20.1002, 20.1003, 20.1004, 20.1005, 20.1006, 20.1007, 20.1008, 20.1009, 20.1704, 20.1903, 20.1905, 20.2002, 20.2007, 20.2301, 20.2302, 20.2401, and 20.2402.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

12. The authority citation for part 21 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2201, 2282); secs. 201, as amended, 206, 88 Stat. 1242, as amended 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

13. Section 21.62 is added directly after § 21.61 to read as follows:

§ 21.62 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provided for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 21 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 21 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 21.1, 21.2, 21.3, 21.4, 21.5, 21.7, 21.8, 21.61, and 21.62.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

14. The authority citation for part 25 is revised to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); secs. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issue under 96 Stat. 1051 (31 U.S.C. 9701).

§ 25.37 [Amended]

15. In § 25.37, paragraph (c) is removed.

16. Section 25.39 is added directly after § 25.37 to read as follows:

§ 25.39 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 25 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 25 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 25.1, 25.3, 25.5, 25.7, 25.8, 25.9, 25.11, 25.19, 25.25, 25.27, 25.29, 25.31, 25.37, and 25.39.

PART 26—FITNESS FOR DUTY PROGRAMS

17. The authority citation for part 26 is revised to read as follows:

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

§ 26.90 [Amended]

18. In § 26.90, paragraph (c) is removed.

19. Section 26.91 is added directly after § 26.90 to read as follows:

§ 26.91 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 26 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 26 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 26.1, 26.2, 26.3, 26.4, 26.6, 26.8, 26.90, and 26.91.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

20. The authority citation for part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); SECS. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

21. Section 30.63 is revised to read as follows:

§ 30.63 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

22. Section 30.64 is added directly after § 30.63 to read as follows:

§ 30.64 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violations, attempted violation, or conspiracy to violate, and regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 30 are issued under one or more of subsections 161b, 161i, or 161o, expect for the sections listed in paragraph (b) of this section.

(b) The regulations in part 30 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 30.1, 30.2, 30.4, 30.5, 30.6, 30.8 , 30.11, 30.12, 30.13, 30.15, 30.16, 30.31, 30.32, 30.33, 30.37, 30.38, 30.39, 30.61, 30.62, 30.63, 30.64, 30.70, 30.71, and 30.72.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

23. The authority citation for part 31 is revised to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

24. Section 31.13 is added directly after § 31.12 to read as follows:

§ 31.13 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

25. Section 31.14 is added directly after § 31.13 to read as follows:

§ 31.14 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsection 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 31 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 31 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 31.1, 31.2, 31.3, 31.4, 31.7, 31.9, 31.13, and 31.14.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

26. The authority citation for part 32 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

27. Subpart E (§§ 32.301 and 32.303) is added to part 32 to read as follows:

Subpart E—Violations

Sec.
32.301 Violations.
32.303 Criminal penalties.

Subpart E—Violations

§ 32.301 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§ 32.303 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsection 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 32 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 32 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 32.1, 32.2, 32.8, 32.11, 32.14, 32.17, 32.18, 32.22, 32.23, 32.24, 32.26, 32.27, 32.28, 32.51, 32.53, 32.57, 32.61, 32.71, 32.72, 32.73, 32.74, 32.301, and 32.303.

PART 33—SPECIFIC DOMESTIC LICENSES OF BROAD SCOPE FOR BYPRODUCT MATERIAL

28. The authority citation for part 33 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

29. A new center heading "Violations" and §§ 33.21 and 33.23 are added directly after § 33.17 to read as follows:

Violations

§ 33.21 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§ 33.23 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 33 are issued under one or more subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 33 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 33.1, 33.8, 33.11, 33.12, 33.13, 33.14, 33.15, 33.16, 33.21, 33.23 and 33:100.

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

30. The authority citation for part 34 is revised to read as follows:

Authority: Secs. 81, 161, 182, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.32 also issued under sec. 206, 88 Stat. 1246, (42 U.S.C. 5846).

31. A new center heading "Violations" and §§ 34.61 and 34.63 are added directly after § 34.51 to read as follows:

Violations

§ 34.61 Violations.

(a) The Commission may obtain in injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

§ 34.63 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 34 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 34 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 34.1, 34.2, 34.3, 34.8, 34.11, 34.51, 34.61, and 34.63.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

32. The authority citation for part 35 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

33. Section 35.990 is revised to read as follows:

§ 35.990 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

34. Section 35.991 is added directly after § 35.990 to read as follows:

§ 35.991 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 35 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 35 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 35.1, 35.2, 35.8, 35.12, 35.18, 35.19, 35.57, 35.100, 35.600, 35.901, 35.970, 35.971, 35.990, 35.991, and 35.999.

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

35. The authority citation for part 39 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

36. Section 39.101, is revised to read as follows:

§ 39.101 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

37. Section 39.103 is added directly after § 39.101 to read as follows:

§ 39.103 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 39 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 39 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 39.1, 39.2, 39.5, 39.8, 39.13, 39.91, 39.101, and 39.103.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

38. The authority citation for part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

39. Section 40.81 is revised to read as follows:

§ 40.81 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil

penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

40. Section 40.82 is added directly after § 40.81 to read as follows:

§ 40.82 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violations, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 40 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 40 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 40.1, 40.2, 40.2a, 40.4, 40.5, 40.6, 40.8, 40.11, 40.12, 40.13, 40.14, 40.20, 40.21, 40.22, 40.31, 40.32, 40.34, 40.43, 40.44, 40.45, 40.71, 40.81, and 40.82.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

41. The authority citation for part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C.5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

42. Section 50.110 is revised to read as follows:

§ 50.110 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

43. Section 50.111 is added directly after § 50.110 to read as follows:

§ 50.111 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 50 are issued under one or more subsections 162b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 50 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 50.1, 50.2, 50.3, 50.4, 50.8, 50.11, 50.12, 50.13, 50.20, 50.21, 50.22, 50.23, 50.30, 50.31, 50.32, 50.33, 50.34a, 50.35, 50.36b, 50.37, 50.38, 50.39, 50.40, 50.41, 50.42, 50.43, 50.45, 50.50, 50.51, 50.52, 50.53, 50.56, 50.57, 50.58, 50.81, 50.82, 50.90, 50.91, 50.92, 50.100, 50.101, 50.102, 50.103, 50.109, 50.110, and 50.111.

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

44. The authority citation for Part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

45. Subpart D (§§ 52.111 and 52.113) is added to part 52 to read as follows:

Subpart D—Violations

Sec.
52.111 Violations.
52.113 Criminal penalties.

Subpart D—Violations

§ 52.111 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) for any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

§ 52.113 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 52 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 52 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 52.1, 52.3, 52.5, 52.8, 52.11, 52.13, 52.15, 52.17, 52.18, 52.19, 52.21, 52.23, 52.24, 52.27, 52.29, 52.31, 52.33, 52.37, 52.41, 52.43, 52.47, 52.48, 52.49, 52.51, 52.53, 52.54, 52.55, 52.57, 52.59, 52.61, 52.71, 52.73, 52.75, 52.77, 52.78, 52.81, 52.83, 52.85, 52.87, 52.89, 52.93, 52.97, 52.101, 52.111, and 52.113.

PART 53—CRITERIA AND PROCEDURES FOR DETERMINING ADEQUACY OF AVAILABLE SPENT NUCLEAR FUEL STORAGE CAPACITY

46. The authority citation for part 53 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 68, 81, 103, 104, 161, 68 Stat. 930, 932, 933, 934, 935, 936, 937, 948, as amended (42 U.S.C. 2073, 2077, 2092, 2095, 2099, 2111, 2133, 2134, 2201); secs. 201, 209, as amended, 88 Stat. 1242, 1248, as amended (42 U.S.C. 5841, 5849); secs. 132, 135, 96 Stat. 2230, 2232 (42 U.S.C. 10152, 10155).

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

47. The authority citation for part 54 is revised to read as follows:

Authority: Secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2238, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, as amended (42 U.S.C. 5841, 5842.)

48. Section 54.41 is added directly after § 54.37 to read as follows:

§ 54.41 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended.

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

49. Section 54.43 is added directly after § 54.41 to read as follows:

§ 54.43 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violations, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 54 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 54 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 54.1 54.3, 54.5, 54.7, 54.9, 54.11, 54.15, 54.17, 54.19, 54.21, 54.22, 54.23, 54.25, 54.27, 54.29, 54.31, 54.41, and 54.43.

PART 55—OPERATOR'S LICENSES

50. The authority citation for part 55 is revised to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1442, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

51. Section 55.71 is revised to read as follows:

§ 55.71 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

52. Section 55.73 is added directly after § 55.71 to read as follows:

§ 55.73 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsection 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 55 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 55 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: 55.1, 55.2, 55.4, 55.5, 55.6, 55.7, 55.8, 55.11, 55.13, 55.31, 55.33, 55.35, 55.41, 55.43, 55.47, 55.51, 55.55, 55.57, 55.61, 55.71, and 55.73.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

53. The authority citation for part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub L. 97–425, 96 Stat. 2213a, 2228, as amended (42 U.S.C. 10134, 10141).

54. Subpart J (§§ 60.181 and 60.183) is added to part 60 to read as follows:

Subpart J—Violations

Sec.
60.181 Violations.
60.183 Criminal penalties.

Subpart J—Violations

§ 60.181 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

§ 60.183 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsection 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 60 are issued under one or more subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 60 that are not issued under subsections 161b, 161i, or 161o, for the purposes of section 223 are as follows: §§ 60.1, 60.2, 60.3, 60.5, 60.6, 60.7, 60.8, 60.15, 60.16, 60.17, 60.18, 60.21, 60.22, 60.23, 60.24, 60.31, 60.32, 60.33, 60.41, 60.42, 60.43, 60.44, 60.45, 60.46, 60.51, 60.52, 60.61, 60.62, 60.63, 60.64, 60.65, 60.101, 60.102, 60.111, 60.112, 60.113, 60.121, 60.122, 60.130, 60.131, 60.132, 60.133, 60.134, 60.135, 60.137, 60.140, 60.141, 60.142, 60.143, 60.150, 60.151, 60.152, 60.162, 60.181, and 60.183.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

55. The authority citation for part 61 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); sec. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851).

56. Section 61.83 is revised to read as follows:

§ 61.83 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

56. Section 61.84 is added directly after § 61.83 to read as follows:

§ 61.84 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 61 are issued under one or more of subsections 161b, 161i, or 161o, excpet for the sections listed in paragraph (b) of this section.

(b) The regulations in part 61 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 16.1, 61.2, 61.4, 61.5, 61.6, 61.7, 61.8, 61.10, 61.11, 61.12, 61.13, 61.14, 61.15, 61.16, 61.20, 61.21, 61.22, 61.23, 61.26, 61.30, 61.31, 61.50, 61.51, 61.54, 61.55, 61.58, 61.59, 61.61, 61.63, 61.70, 61.71, 61.72, 61.73, 61.83, and 61.84.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

58. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10. 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

59. Section 70.71 is revised to read as follows:

§ 70.71 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any item, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

60. Section 70.72 is added directly after § 70.71 to read as follows:

§ 70.72 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in Part 70 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 70 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 70.1, 70.2, 70.4, 70.5, 70.6, 70.8, 70.11, 70.12, 70.13, 70.13a, 70.14, 70.18, 70.23, 70.31, 70.33, 70.34,

70.35, 70.37, 70.61, 70.62, 70.63, 70.71, and 70.72.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

61. The authority citation for part 71 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789-790.

62. Section 71.99 is revised to read as follows:

§ 71.99 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 161, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any item, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

63. Section 71.100 is added directly after § 71.99 to read as follows:

§ 71.100 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i or 161o of the Act. For purposes of section 223, all the regulations in part 71 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 71 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 71.0, 71.1, 71.2, 71.4, 71.6, 71.7, 71.9, 71.10, 71.31, 71.33, 71.35, 71.37, 71.39, 71.41, 71.43, 71.45, 71.47, 71.51, 71.52, 71.53, 71.65, 71.71, 71.73, 71.75, 71.77, 71.99, 71.100.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

64. The authority citation for part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 68, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235(42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 96 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

65. Section 72.84 is revised to read as follows:

§ 72.84 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections, 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) or this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

66. Section 72.86 is added directly after § 72.84 to read as follows:

§ 72.86 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 72 are issued under one or more of subsections 161b, 161i or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 72 that are not issued under subsections 161b, 161i or 161o for the purposes of section 223 are as follows: §§ 72.1, 72.2, 72.3, 72.4, 72.5, 72.7, 72.8, 72.9, 72.16, 72.18, 72.20, 72.22, 72.24, 72.26, 72.28, 72.32, 72.34, 72.40, 72.42, 72.46, 72.54, 72.56, 72.58, 72.60, 72.62, 72.84, 72.86, 72.90, 72.92, 72.94, 72.96, 72.98, 72.100, 72.102, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.192, 72.194, 72.200, 72.202, 72.204, 72.206, 72.210, 72.214, 72.220, 72.230, 72.236, 72.238, and 72.240.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

67. The authority citation for part 73 is revised to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); Sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

68. Section 73.80 is revised to read as follows:

§ 73.80 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

69. Section 73.81 is added directly after § 73.80 to read as follows:

§ 73.81 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 73 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 73 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 73.1, 73.2, 73.3, 73.4, 73.5, 73.6, 73.8, 73.25, 73.45, 73.80, and 73.81.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

70. The authority citation for part 74 is revised to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 201, as amended 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

71. Section 74.83 is revised to read as follows:

§ 74.83 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 63, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

72. Section 74.84 is added directly after § 74.83 to read as follows:

§ 74.84 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, 161o of the Act. For purposes of section 223, all the regulations in part 74 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 74 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 74.1, 74.2, 74.4, 74.5, 74.6, 74.7, 74.8, 74.83 and 74.84.

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

73. The authority citation for part 75 is revised to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

74. Section 75.51 is revised to read as follows:

§ 75.51 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

(c) The Commission may issue orders to secure compliance with the provisions of this part or to prohibit any violation of such provisions as may be proper to protect the common defense and security. Enforcement actions, including proceedings instituted with respect to Agreement State licensees, will be conducted in accordance with the procedures set forth in part 2, subpart B of this chapter. Only NRC licensees, however, are subject to license modification, suspension, or revocation as such as a result of such enforcement action.

75. Section 75.53 is added directly after § 75.51 to read as follows:

§ 75.53 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 171o of the Act. For purposes of section 223, all the regulations in part 75 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 75 that are not issued under subsections 161b, 161i, or 161o for the purposes of Section 223 are as follows: §§ 75.1, 75.2, 75.3, 75.4, 75.5, 75.8, 75.9, 75.12, 75.37, 75.41, 75.46, 75.51, and 7.53.

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

76. The authority citation for part 95 is revised to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

77. Section 95.61 is revised to read as follows.

§ 95.61 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section;

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

78. Section 95.63 is added directly after § 95.61 to read as follow:

§ 95.63 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 95 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) the regulations in part 95 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 95.1, 95.3, 95.5, 95.7, 95.8, 95.9, 95.11, 95.17, 95.19, 95.21, 95.23, 95.55, 95.59, 95.61, and 95.63.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

79. The authority citation for part 110 is revised to read as follows:

Authority: Sec.s 51, 53, 54, 57, 63, 64, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 188, 68 Stat. 928, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2136, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 110.1(b)(2) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 68 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.60–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30–110.35 also issued under 5 U.S.C. 553.

80. Section 110.60 is revised to read as follows:

§ 110.60 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section.

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under seciton 186 of the Atomic Energy Act of 1954, as amended.

81. Section 110.67 is added directly after § 110.66 to read as follows:

§ 110.67 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 100 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 110 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 110.1, 110.2, 110.3, 110.4, 110.7, 110.8, 110.9, 110.10, 110.11, 110.28, 110.29, 110.30, 110.31, 110.40, 110.41, 110.42, 110.43, 110.44, 110.45, 110.51, 110.52, 110.60, 110.61, 110.62, 110.63, 110.64, 110.65, 110.66, 110.67, 110.70, 110.71, 110.72, 110.73, 110.80, 110.81, 110.82, 110.83, 110.84, 110.85, 110.86, 110.87, 110.88, 110.89, 110.90, 110.91, 110.100, 110.101, 110.102, 110.103, 110.104, 110.105, 110.106, 110.107, 110.108, 110.109, 110.110, 110.111, 110.112, 110.113, 110.120, 110.122, 110.123, 110.144, 110.125, 110.130, 110.131, 110.132, 110.133, 110.134, and 110.135.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

82. The authority citation for part 130 is revised to read as follows:

Authority: Sec. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

83. Subpart F (§§ 140.87 and 140.89) is added to part 140 to read as follows:

Subpart F—Violations

Sec.
140.87 Violations.
140.89 Criminal penalties.

Subpart F—Violations

§ 140.87 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§140.89 Criminal Penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 140 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 140 that are not issued under subsections 161b, 161i, or 161o for purposes of Section 223 are as follows: §§ 140.1, 140.2, 140.3, 140.4, 140.5, 140.7, 140.8, 140.9, 140.9a, 140.10, 140.14, 140.16, 140.18, 140.19, 140.20, 140.51, 140.52, 140.71, 140.72, 140.81, 140.82, 140.83, 140.84, 140.85, 140.87, 140.89, 140.91, 140.92, 140.93, 140.94, 140.95, 140.96, 140.107, 140.108, and 140.109.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

84. The authority citation for part 150 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

85. Section 150.30 is revised to read as follows:

§ 150.30 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

86. Section 150.33 is added directly after § 150.32 to read as follows:

§150.33 Criminal Penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation, attempted violation, or conspiracy to violate, any regulation issued under subsections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 150 are issued under one or more of subsections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 150 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 150.1, 150.2, 150.3, 150.4, 150.5, 150.7, 150.8, 150.10, 150.11, 150.15, 150.15a, 150.30, 150.31, 150.32, and 150.33.

Dated at Rockville, MD, this 24th day of December, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-105 Filed 1-2-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-91-19]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 3, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Angela M. Washington, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-5571.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 19, 1991.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Rulemaking

[Docket No.: 26628]

Petitioner: Mr. Lawrence Schaefer.

Regulations affected: 14 CFR 121.383.

Description of petition: Petitioner would amend the Federal Aviation Regulations (FAR) to permit airmen who have had their medical certificates and/or licenses lost or stolen to fly as long as the airman carries a letter from his supervisor stating that he has the current documentation on file.

Petitioner's reason for the request: The petitioner asserts that the proposed amendment would benefit the public by eliminating the inconvenience of delayed or cancelled flights resulting from having to replace those pilots who do not have their medical certificates and or licenses on hand. The petitioner also asserts that the proposed amendment would enhance the safety of flight by relieving the worry of a pilot whose certificates have been lost, misplaced, or stolen, thus allowing the pilot to devote full attention to flying the aircraft.

[Docket No.: 26633]

Petitioner: Mr. Jack W. Tunstill.

Regulations affected: 14 CFR 61.95.

Description of petition: Petitioner would add a new section to the regulations which would allow student pilots to operate within either the Tampa Terminal Control Area or the Orlando Terminal Control Area with a logbook endorsement from a certified flight instructor who has flown with the student in either Terminal Control Area. Ground instruction in both Terminal Control Areas would still be required.

Petitioner's reason for the request: The petitioner feels that the Tampa and Orlando TCA's form a barrier for most cross country flights in Florida because of their close proximity to each other. The petitioner states that this reduces aviation safety because student pilots avoid the TCA's rather than operating within them.

[Docket No.: 25918]

Petitioner: Executive Jet Westfield.

Regulations affected: 14 CFR 91.511(a)(2) and 135.165(b).

Description of petition: The petitioner requests that the FAA extend the termination date of Exemption No. 5112 which was issued on November 9, 1989 and terminates on November 30, 1991. The exemption permits the petitioner to operate specific aircraft in extended overwater operations using one long-range navigation system and one high frequency communication system.

Petitioner's reason for the request: The petitioner states that reliability and accuracy of both navigation and communication systems has improved considerably in recent years, and this exemption reduces operating costs by allowing more direct routes.

Disposition: Granted. October 31, 1991.

[Docket No.: 26441]

Petitioner: Mr. Peter G. Tchamitch.

Regulations affected: 14 CFR 91.113 (d) and (e).

Description of petition: The petitioner proposes to amend § 91.113(d) to require that when aircraft of the same category are converging at approximately the same altitude, except head on or nearly so, the aircraft to the other's right has the right of way, and the pilot giving way may turn left or right to avoid collision provided that the pilot also initiates a steep descent or climb respectively. The petitioner proposes to amend § 91.113(e) to require that when aircraft are approaching head-on, or nearly so, at approximately the same altitude, each pilot shall alter its course to the right and also initiate a steep climb. In the event the pilot finds it necessary to deviate from the requirement to turn right, and decides to turn left, the pilot shall initiate a steep descent.

Petitioner's reason for the request: The petitioner states that there are many close-in situations in which pilots may feel forced to deviate from the requirements of § 91.113. Pilots may only have a few seconds to decide whether or not to deviate. Consequently, pilots may be at a complete loss as to which way to turn, resulting in turning one way or another out of pure instinct. Thus, the petitioner feels that the proposed amendment would aid in collision avoidance.

Disposition: Denied. November 6, 1991.

[FR Doc. 92-48 Filed 1-2-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-66-AD]

Airworthiness Directives; Beech 33, 35, and 36 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would supersede AD 91-14-13, which currently requires initial and repetitive inspections of the wing front spar carry-through frame structure for cracks on certain Beech 33, 35, and 36 series airplanes, and repair or reinforcement if found cracked. The Federal Aviation Administration (FAA) has determined that the available service history justifies the requirement for the initial inspection, but that the repetitive inspection requirement should be based on the results of the fleet-wide initial inspection. Therefore, the proposed action would retain the initial inspection required by AD 91-14-13, and would require a report to the FAA on the results of the one-time inspection in order to determine whether additional rulemaking is necessary. The actions specified by the proposed AD are intended to prevent structural damage to the wing that could progress to the point of failure.

DATES: Comments must be received on or before February 3, 1992.

ADDRESSES: Beech Service Bulletin No. 2360, dated November 1990, may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-66-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4122; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and engergy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–86–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness Directive (AD) 91–14–13, Amendment 39–7054 (56 FR 31324, July 10, 1991), currently requires initial and repetitive inspections of the wing front spar carry-through frame structure for cracks on certain Beech 33, 35, and 36 (Bonanza) series airplanes, and repair or reinforcement if found cracked. The actions are to be accomplished in accordance with the instructions in Beech Service Bulletin (SB) No. 2360, dated November 1990.

The FAA recently received a petition from the Aircraft Owners and Pilots Association (AOPA to reconsider the need for AD 91–14–13. The FAA has received six confirmed reports of cracks to the spar carry-through frame structure on the affected airplanes. In addition, the manufacturer reports to the FAA that 128 reinforcement kits have been sold, which could indicate the likelihood that cracks are being detected. AD action was further reinforced by the similarity of the Bonanza series airplanes to the Beech 55, 56TC, 58, and 95 (Baron) series airplanes. AD 90–08–14, Amendment 39–6563 (55 FR 12475, April 4, 1990), currently requires initial and repetitive inspections to detect and correct identical cracking problems. Because cracks are still likely to occur in both series airplanes, the FAA has determined that the initial inspection required by AD 91–14–13 is justified. However, because there are differences in aircraft weight and external loads between the Baron and Bonanza series airplanes, the FAA has determined that further study needs to be undertaken in order to determine if there is a need for the repetitive inspection requirement. Instead of the repetitive inspection requirement, the FAA has determined that a reporting requirement should be required for the initial inspection to more fully investigate the cracking of the wing front spar carry-through structure on the affected airplanes.

Since the condition described is likely to exist or develop in other Beech 33, 35, and 36 series airplanes of the same type design, the proposed AD would retain the initial inspection requirement of the wing front spar carry-through web structure for cracks and the repair or reinforcement requirement on structures found cracked that are currently required by AD 91–14–13. However, the proposed action would not require the repetitive inspections required by AD 91–14–13, but would add a reporting requirement of the initial inspection that, based on the results, would help the FAA determine whether additional rulemaking should be initiated. The inspection and repair/reinforcement actions would be done in accordance with Beech SB No. 2360, dated November 1990.

It is estimated that 11,000 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 hours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,840,000. The above cost analysis is the same as AD 91–14–13, which would be superseded by this proposed action. There would be no additional cost impact on U.S. operators by this proposed action than that which is currently required by AD 91–14–13.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91–14–13, Amendment 39–7054 (56 FR 31324, July 10, 1991), and adding the following new AD:

Beech: Docket No. 91–CE–86–AD.
Applicability: Applies to the following Models and serial numbered airplanes, certificated in any category.

Models	Serial numbers
35–33, 35–A33, 35–B33, 35–C33, E33, F33, and G33.	CD–1 through CD–1304.
35–C33A, E33A, and F33A	CE–1 through CE–1192.
E33C and F33C	CJ–1 through CJ–179.
H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B.	D–4866 through D–10403.
36 and A36	E–1 through E–2397.
A36TC and B36TC	EA–1 through EA–471.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent structural damage to the wing that could progress to the point of failure, accomplish the following:

(a) Upon the accumulation of 1,500 hours time-in-service (TIS), or within the next 100 hours TIS, whichever occurs later, unless already accomplished (AD 91–14–13, Amendment 7054), inspect the wing front spar carry-through frame (web) structure for cracks in accordance with the instructions in Beech Service Bulletin (SB) No. 2360, dated November 1990.

(b) If cracks are found in the bend radius and not in the web face in the areas of the huckbolt fasteners as a result of the inspection required in paragraph (a) of this AD, accomplish the following in accordance with the instructions in Beech SB No. 2360:

(1) For cracks up to 2.25 inches, prior to further flight, stop drill each crack at the crack ends. Only one stop-drilled crack on each side of the wing forward spar carry-

through frame structure bend radius is allowable as long as neither exceeds 2.25 inches. If more than one crack is found on either side, prior to further flight, install the applicable Beech part number (P/N) 36–4004 Kit.

(2) For cracks between 2.25 and 4.0 inches, prior to further flight, stop drill each crack at the crack ends, and within the next 100 hours TIS, install the applicable Beech P/N 36–4004 Kit. Only one stop-drilled crack on each side of the wing forward spar carry-through frame structure bend radius is allowable as long as the crack does not exceed 4.00 inches and the applicable Beech P/N 36–4004 Kit is installed within the next 100 hours TIS. If more than one crack is found on either side, prior to further flight, install the applicable Beech P/N 36–4004 Kit.

(3) For cracks exceeding 4.0 inches, prior to further flight, install the applicable Beech P/N 36–4004 Kit.

(c) If cracks are found in the web face in the area of the huckbolt fasteners but not in the bend radius as a result of the inspections required in paragraph (a) of this AD, accomplish the following in accordance with the instructions in Beech SB No. 2360, but do not stop drill the cracks because it is possible to damage the structure behind the web face:

(1) For cracks less than 1.0 inch in length, return the airplane to service as long as their is not more than one crack on each side, and reinspect each crack for progression 200 hours TIS after the initial inspection. If more than one crack is found on either side, prior to further flight, install the applicable Beech P/N 36–4004 Kit.

(2) For cracks more than 1.0 inch in length, within the next 25 hours TIS, install the applicable Beech P/N 36–4004 Kit. Only one crack on each side is allowable. If more than one crack is found on either side, prior to further flight, install the applicable Beech P/N 36–4004 Kit.

(3) If a crack passes through two fasteners but is less than 0.5 inches beyond either fastener, within the next 25 hours TIS, install the applicable Beech P/N 36–4004 Kit. Only one crack on each side is allowable. If more than one crack is found on either side, prior to further flight, install the applicable Beech P/N 36–4004 Kit.

(4) If a crack passes through two fasteners but is more than 0.5 inches beyond either fastener, prior to further flight, install the applicable Beech P/N 36–4004 Kit.

(d) If cracks are found in both the web face in the area of the huckbolt fasteners and the bend radius as a result of the inspections required in paragraph (a) of this AD, accomplish the following in accordance with the instructions in Beech SB No. 2360:

(1) If only one crack is found on either side of the airplane, repair each crack in accordance with the criteria and instructions in paragraphs (b)(1) through (b)(3) or (c)(1) through (c)(4) of this AD, whichever is applicable.

(2) If more than one crack is found on either side of the airplane, prior to further flight, repair any crack on that side of the airplane that is 1.0 inch or more in length by installing the applicable Beech P/N 36–4004 Kit. For cracks under 1.0 inch in length, return the airplane to service and reinspect each crack for progression 200 hours TIS after the initial inspection.

(e) Send the results of each inspection in writing to the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209, within 10 days after the inspection or 15 days after the effective date of this AD, whichever occurs later. State whether cracks, were found, the location and length of any cracks, and the total hours TIS of the component at the time the crack was discovered. The form presented as Figure 1 of this AD may be used. (Reporting approved by the Office of Management and Budget under OMB No. 2120–0056).

Figure 1

Reporting Form

Date of inspection:
Airplane serial number:
Total airplanes hours time-in-service:
Were cracks found as a result of the inspection?
If so, provide the following information:

1. Crack locations (refer to Beech Service Bulletin No. 2360).

2. Length of cracks (refer to applicable paragraph in Beech Service Bulletin No. 2360).

3. Was a Beech kit installed?

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

(h) Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri.

(i) This amendment supersedes AD 91–14–13, Amendment 39–7054, issued in Kansas City, Missouri, on December 19, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–64 Filed 1–2–92; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5, 20, 100, 101,102, 105, and 130

[Docket No. 91N–0511]

Food Labeling; Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing on the notices of proposed rulemaking on food labeling that it published in the **Federal Register** of November 27, 1991. This hearing will provide an opportunity for interested persons to present their views on the issues raised by the proposals on such matters as mandatory nutrition labeling, nutrient content claims, and health claims. The public hearing is being held in accordance with 21 CFR part 15.

DATES: Written notices of participation should be filed by January 23, 1992. The public hearing will be held on Thursday and Friday, January 30, and 31, 1992, 8 a.m. to 6 p.m. The records of the underlying rulemakings will remain open for comments until February 25, 1992.

ADDRESSES: The public hearing will be held in the Jack Masur Auditorium, Warren Grant Magnuson Clinical Center, Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. Written notices of participation and any comments are to be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Transcripts of the hearing and copies of data and information submitted during the hearing will be available for review at the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document. The comments on the underlying proposals will be available for review as part of the docket of the relevant rulemaking. A copy of the proposals that were published November 27, 1991 (56 FR 60366), can be obtained by contacting John Tisler, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFF–326), 200 C St. SW., Washington,

DC 20204, 202–245–0251 between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Persons needing information about the various food labeling issues to be addressed at the public hearings should contact:

Virginia Wilkening, Center for Food Safety and Applied Nutrition (HFF–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1561.

Charles Edwards, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, 202–205–0080.

Questions about the hearing in general should be directed to:

Annette Funn, Office of Consumer Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006, 301–443–9767 (FAX).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal government has launched a major initiative to improve the food label, led by Louis W. Sullivan, Secretary of Health and Human Services, David A. Kessler, Commissioner of Food and Drugs, and Edward Madigan, Secretary of Agriculture. In the **Federal Register** of November 27, 1992, as part of that initiative and in response to the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535), FDA published proposals on mandatory nutrition labeling (docket numbers 90N–0134, 90N–0135; 56 FR 60366), serving sizes (docket number 90N–0165; 56 FR 60394), nutrient content claims (docket numbers 91N–0384, 84N–0153, 91N–0317 et al., 91N–0344; 56 FR 60421, 60478, 60512, and 60523, respectively), health claims, including claims on 10 specific substance–disease relationships (docket numbers 85N–0061, 91N–0098, 91N–0099, 91N–0100, 91N–0101, 91N–0102, 91N–0103, 91N–0094, 91N–0095, 91N–0096, 91N–0097, 56 FR 60537, 60566, 60582, 60610, 60624, 60652, 60663, 60689, 60727, 60764, 60825, respectively), State petitions for an exemption from preemption (docket number 91N–0038, 56 FR 60528), State enforcement of certain provisions of the Federal Food, Drug, and Cosmetic Act (docket number 91N–0343; 56 FR 60534), and the regulatory impact of the proposed food labeling regulations (docket number 91N–0219; 56 FR 60856). In the same issue of the **Federal Register**, USDA published a proposal on the nutrition labeling of meat and poultry products (docket number 91–006P; 56 FR 60302). In these proposals, FDA and USDA requested public comment on the matters set forth. In addition, FDA announced its intention to hold a public hearing. Interested persons are encouraged to review these proposals to become familiar with the many issues that they address.

II. Scope of Hearing

Comments are specifically requested on three broad topic areas: (1) Nutrient content claims (i.e., descriptors) (2) health claims, and (3) nutrition labeling issues. Regarding nutrient content claims, comments may address the approach that FDA has taken in selecting terms to be defined, synonyms to be allowed, and methods for arriving at definitions. Particular attention should be directed to the alternative approach for defining comparative nutrient content claims discussed at 56 FR 60458 and in a proposal that FDA intends to publish before the hearing. Comments regarding health claims should discuss the proposed general requirements or issues related to specific diet-disease relationships. In addition, comments are requested on the nutrition label, proposed Reference Daily Intakes and Daily Reference Values, and serving sizes.

Although participants may comment on any issue raised by the food labeling proposals, time for presentations will be extremely limited. Therefore, participants will be well advised to limit their comments to an indepth discussion of one or two topics. Participants can present the full range of their views in the written comments that they submit on each of the proposals.

III. Notice of Hearing Under 21 CFR 15

The Commissioner of Food and Drugs is announcing that the public hearing will be conducted in accordance with 21 CFR part 15.

The presiding officer will be the Commissioner of Food and Drugs or his designee. Ronald Prucha, Food Safety and Inspection Service, USDA, or his designee, will also participate. The presiding officer will be accompanied by a panel of FDA employees with the relevant expertise.

Persons who wish to participate are requested to file a notice of participation with the Dockets Management Branch (address above) on or before January 23, 1992. To ensure timely handling, any outer envelope should be clearly marked with the docket number found in brackets in the heading of this document and the statement "Food Labeling Hearing." The notice of participation should contain the name, address, telephone number, facsimile number, affiliation (if applicable) of the participant, and a brief summary of the presentation. FDA asks groups that have similar interests to consolidate their comments. FDA will allocate the time available for the hearing among the persons who have properly filed a notice of participation. If time permits, FDA may allow other interested persons attending the hearing who did not submit a notice of participation, in advance, to make an oral presentation at the conclusion of the hearing.

FDA will schedule each appearance after reviewing the notices of participation and accompanying information, and notify each participant by mail, telephone, or FAX of when the time allotted to the person's oral presentation is scheduled to begin. Presentations will be limited to 5 to 10 minutes depending on the number of participants. The hearing schedule will be available at the hearing, and after the hearing it will be placed on file in the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document.

Interested persons may, on or before February 25, 1992, submit to the Dockets Management Branch (address above) written comments on the proposed rulemakings that underlie this hearing. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of each proposal on which comments are made. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Under 21 CFR 15.30(e) and (f), the hearing is informal, and the rules of evidence do not apply. No participant will be allowed to interrupt the presentation of another participant. Only the presiding officer and panel members will be able to question any person during or at the conclusion of their presentation.

Public hearings, including hearings under part 15, are subject to FDA's guidelines (21 CFR part 10, subpart C) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Any handicapped persons requiring special accommodations in order to attend the hearings should direct those needs to Annette Funn (address above).

Individuals and organizations who testify at this hearing should submit three copies of their written testimony for the official record on the day they are to appear at the hearing.

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in 21 CFR 15.30(h).

Dated: December 30, 1991.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 91-31329 Filed 12-30-91 3:53 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3282

[Docket No. R-91-1540; FR-2985-A-01]

RIN 2502-AF42

Manufactured Home Procedural and Enforcement Regulations

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: HUD is soliciting public comments on certain changes to the structure of the monitoring program used to enforce the manufactured housing construction and safety standards required by section 604 of the Act. HUD has proposed some alternative regulatory structures which would change the current third party design and inspection program and system of monitoring and enforcement.

These alternative monitoring procedures are intended to provide a more efficient and effective regulatory enforcement program which will assure protection of the consumers, while lessening the burden on the manufactured housing industry.

DATES: Comments due date: March 4, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: David C. Nimmer, Director, Office of Manufactured Housing and Regulatory Functions, Department of Housing and Urban Development, 451 Seventh Street, SW., room 9156, Washington, DC 20410-8000. Telephones: (voice) (202) 708-1590; (TDD) (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

On October 21, 1991, the Secretary published in the semiannual regulation agenda the intention to issue an advance notice of proposed rulemaking concerning the structure of the monitoring program (56 FR 53380, 53398). This advance notice of proposed rulemaking is intended to provide an opportunity for public input to improve the methods used to verify that designs, inspection procedures, and construction of manufactured housing result in homes which meet the Manufactured Home Construction and Safety Standards contained in 24 CFR 3280.

The Secretary has currently approved eight companies and one state agency to approve manufactured home designs of the manufacturers. These agencies are called Design Approval Primary Inspection Agencies or DAPIAs.

In addition, HUD has approved seven companies and thirteen State agencies to provide inspection services of manufacturing facilities. These agencies are known as Production Inspection Primary Inspection Agencies or IPIAs. The State IPIAs may serve as exclusive inspection agents inside of their state. In all other States, manufacturers may contract with any other approved private IPIA for the required inspection services in the manufacturing plant.

Since 1976, HUD, with the assistance of a monitoring contractor, has evaluated the performance of all IPIAs and DAPIAs. In addition, the monitoring contractor inspects dealer lots for violations of the manufactured home standards. The contractor also conducts investigations for the Department, and provides training seminars and workshops for the education of personnel involved in design approval and inspection of manufactured homes.

Based on information provided by the monitoring contractor, and staff analysis, the Department annually determines if the performance levels of the DAPIAs and IPIAs are adequate for continued acceptance as primary inspection agencies. The Department reviews and authorizes the use of monitoring procedures used by the Monitoring Contractor, which are implemented after extensive discussions with the manufactured housing industry and the primary inspection agencies.

A. Options for Changes in the Monitoring Procedures for the Manufactured Housing Industry

To consider alternative monitoring procedures for administering the manufactured home construction standard program, the Department hereby proposes several options for public comment. Parties who believe that the current Manufactured Home Procedural and Enforcement Regulations (24 CFR part 3282) should be maintained are encouraged to write the Department and express their reasons for this view. Also, the Department is seeking other possible options which could accomplish the same program objectives in a more efficient and effective manner.

Option No. 1: Maintain Existing Monitoring and Enforcement System; Establish Uniform Inspection and Design Review Fees

This option would maintain the present basic monitoring and enforcement system. However, to eliminate any potential conflict of interests, HUD would set a uniform inspection fee and design review fee through regulation, and all PIAs would be compensated directly and equally by the manufacturers.

Other matters, such as specific criteria for initial plant certifications and recertification of the manufacturing process will be accomplished by changes in the Manufactured Home Procedural and Enforcement Regulations (24 CFR part 3282).

Option No. 2: HUD Would Audit Performance of Primary Inspection Agencies. Monitoring Contractor's Role Would Be Redefined To Include Technical Assistance in the Development of Performance Standards and Administrative Support to the Department

Under this option, manufacturers would continue to pay primary inspection agencies directly for inspection services. The manufacturer's label fee would be paid directly to HUD or its administrative agent.

HUD would hire Field Office auditors to monitor the performance of primary inspection agencies and perform random audits of the manufacturers. HUD staff engineers, with the technical services contractor, would monitor the effectiveness and accuracy of the design

reviews to meet the Standards. HUD and the primary inspection agencies would notify manufacturers of nonconformances with the standards.

The responsibilities of the Monitoring Contractor would be changed to provide technical services in the development of procedures rather than the auditing of primary inspection agencies. The Monitoring Contractor would also perform administrative functions such as the collection and tracking of label fees, maintenance of the technical library of approved designs along with other matters which can be done at lesser cost by contractor personnel.

HUD would establish a uniform fee schedule for primary inspection services and design review services. HUD would also use the current per floor fee for the payment of a technical services contractor along with the additional costs of staffing and overhead to administer the program.

This type of system would more closely resemble other Federal agency inspection procedures where the inspectors are generally Federal government employees, and are held directly accountable to the Department and not to the industry they inspect.

Option No. 3: IPIAs and DAPIAs Would Be Eliminated and Design Approval and Inspection Services Would Be Performed by the Monitoring Contractor or by HUD

Fees to be paid for inspection services would be set by regulation. The monitoring contractor woud provide technical assistance in the development of performance standards and administrative support.

This option would consolidate all of the design review and inspection functions into one organization, either the monitoring contractor or the Department. The Department would establish uniform rates for providing the design and inspection services. In conjunction with private and non-profit organizations, the Department would continue to develop performance-based standards to improve the quality and durability of manufactured homes.

B. Other Changes in the Manufactured Housing Enforcement Regulations

HUD has under consideration a number of changes to 24 CFR 3282 which would update and clarify policies concerning the enforcement of the regulations. The definition of the recreational vehicle would be clarified to indicate which types of products would be subject to the Manufactured Home Construction and Safety Standards. Also, the procedures for the approval of alternate construction requests would be changed to include an inspection of such work once the home is sited.

HUD is considering eliminating the DAPIA function to be replaced by a self certification by manufacturers that designs comply with the Manufactured Home Construction and Safety Standards (24 CFR part 3280). Also, we are considering further definition of the circumstances under which a manufacturing plant would have to be recertified by the IPIA and certain other changes in IPIA monitoring of the manufacturing facility.

Finally, complaint handling procedures would be streamlined, and procedures for conducting notification of manufactured home owners under 24 CFR 3282.404 would be clarified for those situations where the State in which the manufactured home is located is different from the State in which the manufactured home is produced. HUD would welcome any comments concerning these sections of the enforcement regulations or any other areas where changes are needed.

C. Comments Requested

Comments are requested on these proposals and other related matters which could be the basis for changes in the monitoring structure. All comments will become part of the public record and can be viewed by calling the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, at (202) 708–2084, between 7:30 a.m. and 5:30 p.m. weekdays.

Dated: December 6, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92–23 Filed 1–2–92; 8:45 am]

BILLING CODE 4210-27-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-347; FCC 91-384]

Processing Procedures for Commercial FM Broadcast Applications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: On December 18, 1991, at 56 FR 65721, the Commission published a Proposed Rule, in this proceeding concerning Commercial FM Broadcast Applications. This document corrects the reply comment date.

DATES: The reply comment date is March 4, 1992.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Irene Blieweiss, Audio Services Division, Mass Media Bureau (202) 632–6485.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–58 Filed 1–2–92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–68; Notice 01]

RIN 2127–AC64

Rollover Prevention

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This advance notice announces that NHTSA is considering whether to propose a Federal motor vehicle safety standard (FMVSS) to reduce the casualties associated with rollovers of passenger cars, pickup trucks, vans, and utility vehicles. NHTSA is considering regulatory actions in the areas of improved vehicle stability (so as to reduce rollovers), improved crashworthiness (to provide increased occupant protection in the event of a rollover), and consumer information on a vehicle's rollover propensity. The above actions may be pursued singly or in combination. This notice requests comments and information to assist the agency in determining whether to issue a proposal and if so, what form that proposal should take.

DATES: Comments on this notice must be received by the agency no later than April 3, 1992.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5267. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Hinch, Office of Vehicle Safety Standards, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590 (telephone 202–366–5398).

SUPPLEMENTARY INFORMATION:

I. Overview of Notice

The goal of this advance notice is to obtain data and other information that would assist the agency in determining the feasibility of developing a viable and appropriate standard or standards related to reducing the frequency of vehicle rollovers and/or the number and severity of injuries resulting from vehicle rollovers. This notice summarizes past research efforts by the agency to accurately predict the rollover accident involvement rate of vehicles, and discusses various alternatives for rulemaking action. This notice also contains a number of questions and requests for information that would further improve the agency's understanding of rollover accident and injury causation.

This notice is supplemented by two documents. The first is NHTSA's technical analysis of the effect of various vehicle factors, including tilt table results, on vehicles' rollover involvement. The paper provides a detailed statistical discussion of the relationships between rollover accident involvement and various measures of vehicle rollover stability that could serve as the basis for a vehicle performance requirement. The second document is NHTSA's preliminary regulatory evaluation of the potential costs, benefits and other impacts of the contemplated rule. Both documents are available from NHTSA's docket section at the address and telephone number provided at the beginning of this notice.

The vast majority of rollover crashes are caused by the interaction of three factors: The driver, the vehicle and the environment. NHTSA has completed several years of physical testing, data analyses, and computer modeling regarding this problem, particularly with respect to the vehicle's role in rollovers and rollover casualties. As a result of the agency's efforts, NHTSA has identified several means of potentially reducing these casualties. These include: (1) Methods to reduce the incidence of rollovers; (2) means to mitigate injuries given that a rollover occurs; and (3) the provision of consumer information to educate consumers on the relative rollover propensities of vehicles.

The agency is seeking comment on these three potential courses of action, which may be undertaken separately or in combination. Ideally, the agency would prefer to significantly reduce the number of rollovers; thus, a crash avoidance-type standard would be most desirable. Of the vehicle rollover stability measures evaluated, the "tilt table" ratio (described below in this notice), appears, at this stage of the rulemaking, to be the most promising at explaining a significant portion of a vehicle's rollover propensity. At the same time, there are indications that factors related to vehicle control and stability characteristics are also influential. One such factor which has shown correlation with rollover involvement rates is whether the vehicle is equipped with antilock brakes. In view of the fact that rollovers will always occur in some numbers, the agency is also seeking comment on means to better protect occupants in such crashes. Since a large number of fatalities associated with rollovers result from ejection from the vehicle, means to increase safety belt use—the primary means to prevent ejection—or provide different restraint systems in vehicles most prone to rollovers, could be beneficial. Other means of occupant protection, such as increased roof strength or interior padding, are also being considered. Finally, the agency is considering providing information to consumers, based on a vehicle rollover stability test such as the tilt table test, on the relative rollover propensity of vehicles.

In analyzing the rollover involvement of a particular vehicle model in its search for means to avoid rollovers, the agency focused on the ratio of rollovers to single vehicle accidents involving that model (RO/SVA) as the accident rate measure. This measure uses the number of single vehicle accidents involving a particular vehicle model as the "exposure" measure (i.e., a measure of the opportunity for a rollover accident to occur). After a review of rollover exposure measures, NHISA decided to use this accident rate measure based on a rationale similar to that presented by I.S. Jones ("Vehicle Stability Related to Frequency of Overturning for Different Models of Car," Proceedings of 7th Australian Road Research Board Conference, 1974, Vol. 7, Part 5).

Jones concluded that the RO/SVA exposure metric more accurately depicts a vehicle's rollover propensity than the ratio of rollovers involving that model to the total vehicle miles travelled (VMT) by that model (RO/VMT) or to the total number of registered vehicles of that model (RO/RV) because the latter two metrics are heavily dependent on the extent of the vehicle's involvement in single vehicle accidents. This dependence is undesirable because a vehicle that has a relatively high ratio of SVA's to VMT or to number of registered vehicles may nevertheless have a relatively low ratio of rollovers to SVA's. The vehicle factors that lead to the high number of SVA's may not lead to a high number of rollovers. The rollovers per VMT or registered vehicle rates could be high for the vehicle because the vehicle has significantly different handling characteristics than other vehicles, which contribute to the vehicle's involvement in more SVA's. While those handling characteristics may contribute to SVA's, their contribution to rollovers may not be proportionate. Jones believed that by using the "rollover to single vehicle accident" ratio, the confounding influence of such vehicle factors, unrelated to vehicle rollover stability, would be significantly reduced. NHTSA believes this is reasonable since the vast majority of rollovers occur in SVA's. Therefore, the occurrence of the SVA can be viewed as the opportunity for, and, thus an exposure measure of, a rollover accident. While the RO/SVA rate alone does not provide a complete characterization of the overall rollover accident involvement of vehicles, the agency believes that it is an adequate measure for consideration in a rulemaking action. Nevertheless, should the agency decide to pursue regulation in this area, it solicits comment on the appropriate measure of rollover risk. For example, should the agency relate risk to vehicles (RV) or single vehicle accidents (SVA)? What are the advantages and disadvantages of RO/RV and RO/SVA as a measure of rollover risk?

The agency believes that, while it is important to assess a vehicle's rollover stability vis-a-vis other vehicles generally, it is equally important to compare the performance vis-a-vis other vehicles in the same class. A vehicle's basic design characteristics, i.e., those that are shared by other vehicles in its class, reflect the function for which the vehicle was designed. For example, the relatively narrow track width (compared to passenger cars of the same weight) and high center of gravity height of utility vehicles are characteristics that enhance the off-road operation of the utility vehicle class. Yet, a vehicle's basic design characteristics significantly influence the vehicle's involvement in various accident modes. For example, with all other parameters equal, a tall and narrow vehicle is more likely to roll than a low, wide vehicle. An assessment of the extent that a vehicle's rollover

stability can be improved must include consideration of the degree to which vehicle characteristics essential to the use of the vehicle can be preserved.

The types of vehicles addressed by this notice are the "light duty vehicles," which include passenger cars and "LTV's" (i.e., light and full-size pickup trucks, and multipurpose passenger vehicles (MPV's) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less). MPVs are defined in 49 CFR 571.3 as vehicles designed to carry 10 or fewer persons, and are constructed either on a truck chassis or with special features (usually, four-wheel-drive) that allow for off-road operation. MPVs include full-size passenger and cargo vans, and passenger vehicles with four-wheel-drive or other features for off-road use. These off-road passenger vehicles are often referred to as "sport utility vehicles" (SUVs) in the automotive industry. This terminology is consistent with NHTSA's Consumer Information Regulation, Utility Vehicles (49 CFR 575.105), which refers to "utility vehicles" as MPVs that have a wheelbase of 110 or fewer inches and special features for occasional off-road operation. Section 575.105 requires manufacturers of such utility vehicles to alert drivers that the particular handling and maneuvering characteristics of these vehicles require special driving practice when the vehicles are used on paved roads. Of the SUVs on the market today only three, the Toyota Land-Cruiser with a wheelbase of 112.2 inches, the Lamborghini LM002 with a wheelbase of 122.4 inches and the Chevrolet/GMC Suburban with a wheelbase of 129.5 inches, do not fall in the category of "utility vehicle" as defined by § 575.105.

II. Background

A. The Rollover Accident Problem

Based on data reported in a 1980 report documenting analyses conducted by NHTSA's National Center for Statistics and Analysis, rollover accidents are the most dangerous collision type for light duty vehicles, measured by the ratio of fatal/incapacitating injuries to the number of occupants involved in a tow-away crash. In terms of fatalities per registered vehicle, rollovers are second only to frontal crashes in their level of severity. These high injury and fatality rates are even more alarming given the fact that rollovers are by far the least frequent crash mode, as measured by accident involvements per registered vehicle. The General Estimates System (GES) of the National Accident Sampling System for 1989 estimates 137,600 rollover accidents involving passenger cars. Of these, 124,800 are single vehicle rollovers, and the vast majority of these, 114,800, occur off the roadway. For LTVs, there are 75,600 rollovers, and 65,800 single vehicle rollovers. Of the latter, 57,200 occur off road. (These estimates are based on the GES, which is a probability sample of policy accident reports. Since the estimate are based on a sample, they are subject to sampling and nonsampling errors. The 1989 General estimates Systems Report's Appendix C, Technical Note, explains the GES sample design and the accuracy of the estimates. A 68 percent confidence interval—the estimate + or − one standard error—for the GES numbers in this report using the generalized variance formulas in Appendix C are: 137,600±13,000; 124,800±12,000; 114,800±11,000; 75,600±8,000; 65,800±7,000; and 57,200±7,000.)

Based on 1989 Fatal Accident Reporting System data, 5,682 fatalities occurred in passenger cars rollovers and 3,862 fatalities occurred in LTV rollovers. (The FARS is a census of all motor vehicle crashes resulting in at least one fatality. Since it is a census, it is not subject to sampling error, but nonsampling errors can occur. A discussion of the FARS quality control procedures used to control these errors can be found in the 1989 Fatal Accident Reporting System Report.)

The number of LTV fatalities, including rollover fatalities, from 1985 through 1989 was 6763, 7274, 7875, 8214 and 8350, an increase over the period of about 23 percent. Over that period, the number of rollover fatalities in LTVs was 2995, 3387, 3658, 3815 and 3862, an increase of about 29 percent. During this period, the number of LTVs on the road increased about 30 percent. Thus, although the rate of total fatalities in LTVs (fatalities per registered vehicle) actually decreased by 5.5 percent from 1985 to 1989, the rate of rollover fatalities in LTVs decreased by only 1.5 percent. The rollover fatality rate is discussed in detail in the preliminary regulatory evaluation for this notice (see, *e.g.*, p. 55 of the evaluation), which the agency has placed in the docket. From 1985 to 1989, the rate of fatalities per registered vehicle in rollover accidents involving passenger cars increased over 3 percent, while the fatality rate for all crashes involving passenger cars remined constant. ("Safety Programs for Light Trucks and Sport Utility Vehicles," 1990, U.S. Department of Transportation, as supplemented with data for 1989.)

The rollover problem is generally more serious for the LTV, and in particular, the SUV portion of the light vehicle group. State accident data (North Carolina for 1984 and 1985) indicate that although the involvement rate (involvements per registered vehicle) for LTVs in all types of collisions is only 68 percent that of cars, their involvement rate in accidents involving rollover is 127 percent that of cars. SUV's are also more dangerous for their occupants after a rollover accident has occurred. The incapacitating injury rate per involved occupant is 27.6 percent higher for SUV's than it is for the average light duty vehicle.

B. Previous Agency Rulemaking Actions

In 1973, the agency issued an ANPRM on Rollover Resistance (Docket 73–10; Notice 1.) The ANPRM was primarily directed toward obtaining comments on the development of a test procedure, test conditions and performance requirements to evalate "vehicle rollover tendencies on smooth, dry pavement." After reviewing the comments to that notice and conducting several research studies related to vehicle control and stability, the agency decided to discontinue activity in this area. One study titled "Development of Vehicle Rollover Maneuver", concluded that although a vehicle's rollover resistance is dependent on its "stability factor" (defined as a vehicle's half-track width divided by the vehicle's center of gravity height) "to the first order," that resistance to rollover "can, however, be degraded by other design and operational features under real-life performance conditions." At that time, the agency decided that until the influence of those other factors on real world accidents was better understood, agency action could not be justified.

In December 1987, NHTSA denied a rulemaking petition from then Congressman Timothy E. Wirth (now Senator Wirth) that requested NHTSA to require that the "stability factor" of light duty vehicles exceed a specified minimum value. (52 FR 49033; December 29, 1987.) The stability factor, also referred to as the "static stability factor," represents an approximation, assuming that the vehicle is a rigid body, of the steady state lateral acceleration at which a vehicle would roll over. In other words, if the vehicle were a rigid body, the vehicle's stability factor would be a rather direct representation of the vehicle's ability to resist lateral overturning forces.

Senator Wirth based his request on the findings of a report by L.S. Robertson and A.B. Kelley titled "The

Role of Statility In Rollover-Initiated Fatal Motor Vehicle Crashes Under On-Road Driving Conditions." That report found one group of high stability factor vehicles (all of which were passenger cars) with low rollover per single vehicle accident rates, and another group of low stability factor vehicles (all of which were sport utility vehicles) with high rollover per single vehicle accident rates. The petitioner believed that the report indicated that there is some specific value of stability factor above which vehicles are "safe" and below which they are "unsafe." The petitioner suggested 1.20 as that value.

NHTSA denied the petition because the agency determined that establishing a minimum stability factor value would neither adequately encompass the causes of vehicle rollover nor satisfactorily ameliorate the problem. The agency determined that the stability factor is a good predictor of rollover involvement if it is applied to a subsample of particular, individual vehicles, each of which has already been involved in a single vehicle accident, and used to predict which of them rolled over in the crash. However, NHTSA determined that the stability factor is not nearly as effective in predicting rollover involvement when it is applied to a sample of vehicles, none of which has been involved in an accident, and used to predict which of them will become involved in a rollover accident. The reason for the lower predictive capability in the second instance is that the factor does not take into account the influence of vehicle control and stability factors related to the causation of the single vehicle loss of control situation that precedes the vast majority of rollovers. Such factors not only affect the likelihood of an SVA occurring due to a loss of control, but can alter the pre-crash dynamics of the vehicle (e.g., the vehicle's spinning or sliding sideways as it leaves the roadway) that influence the likelihood of subsequent rollover. The lower predictive capability gave the agency concern whether the application of the factor would adequately separate the vehicles which needed change from those which did not. Therefore, the agency decided to defer consideration of rulemaking on vehicle rollover characteristics until the agency completed its comprehensive research program on vehicle stability and rollover.

In September 1988, NHTSA granted a petition for rulemaking from the Consumers Union requesting the establishment of "a minimum stability standard to protect against unreasonable risk of rollover." NHTSA granted the petition because the agency was already undertaking research into rollover safety of light duty vehicles and the petition was consistent with the agency's steps to address the rollover problem.

C. Previous Analyses of Rollover Crashes

Through the years, the agency and other researchers analyzed accident data to qualify the relationship between rollover involvement and factors relating to the vehicle, driver and environment. Understanding the relaltionship is important for purposes of ameliorating the rollover problem, since safety countermeasures can be developed for the vehicle, driver and environment to reduce the likelihood of rollover.

Various accident condition variable have been shown to exhibit a relationship with rollover rates. These include pre-crash stability (skidding or spinning), vehicle pre-crash condition (skid sideways or spin) and skid type (rear whell lateral or four wheel lateral). In addition, various driver and environment-related accident variable also have been shown to influence the likelihood of rollover. These include driver age, alcohol involvement, driver error, rural versus urban roadway, day versus night, the roadway speed limit, the rollover's occurring on or off the roadway, and accident occurring where the roadway was straight or curved.

Researchers have reported correlations between certain vehicle characteristics, or metrics, and various measures of rollover accident involvement. One that has received considerable attention is the static stability factor, discussed previously, which has been shown to have a significant correlation with the rate of rollovers in single vehicle accidents. Another is wheelbase.

1. Static Stability Factor

In 1986, Harwin and Brewer found, in their analysis of state accident data, that the static stability factor statistically explained much of the difference in the rollover rate (computed as the number of rollovers per SVA (RO/SVA)) between different vehicle make/models. (Harwin, E. Anna and Brewer, Howell K., "Analysis of the Relationship Between Vehicle Rollover Stability and Rollover Risk Using the NHTSA CARDfile Accident Database," 1989.) The data was from NHTSA's CARDfile (Crash Avoidance Research Data file), which is a database constructed from police accident reports from several states.

The database included accident data for a series of forty vehicle make/models (some of which were different "nameplate" versions of the same vehicle mode, e.g., Chevrolet Citation and Oldsmobile Omega) which represented nineteen unique passenger car models, including both foreign and domestic models, and eight utility vehicle models. The vehicles in their sample were selected to cover the range of stability factors from small utility vehicles to large domestic passenger cars. However, similar to the previously metioned Robertson and Kelley study, the vehicle sample did not include any vans or pickup trucks. Harwin and Brewer examined various vehicle data, including wheelbase (L), center of gravity height (H), half track width (T/2) and the static stability factor (T/2H).

The data regression of the CARDfile data between the static stability factor and the percent of rollovers in SVA's showed a strong correlation, with R^2 values ranging between 0.57 and 0.86. Unlike Robertson and Kelley, who found two clusters of vehicles (one of which appeared "safe" while the other appeared "unsafe"), Harwin and Brewer found a generally linear distribution of rollovers per SVA's over a wide range of stability factors, with no obvious delineation of "safe" or "unsafe" vehicles.

Harwin and Brewer improved on earlier research by conduting a stepwise multivariate regression analysis of the Maryalnd and Texas state accident data to control for differences in driver and vehicle use. They showed improved R^2 values for the combination file of Maryland and Texas, as well as the Maryland file only. In their final stop, the R^2 value was 0.92 for the Texas and Maryland date combined, with static stability factor, percent drivers under 25, and percent male drivers included in the regression model.

Mengert, Salvatore, DiSario, and Walter re-analyzed the Harwin and Brewer data using logistic regression techniques. ("Statistical Estimation of Rollover Risk," August 1989, DOT–HS–807–446.) This process considers the likelihood of rollover at the accident level rather than at the make/model level as was done in the Harwin/Brewer report. This allows each accident to be treated as a data point (rather than using the summary information from each vehicle make/model as a data point).

The database included over 39,000 single vehicle accidents of which 4,910 were rollover accidents. Several models were developed to relate vehicle metrics and accident conditions. Analysis was

conducted at both the accident level and make/model level. At the accident level, the ability of the models to predict rollover versus nonrollover was found to be dependent on the static stability factor and where the accident occurred, urban or rural. The models were used to predict rollover rates at the make/model level. The index of agreement (R^2) exceeded 0.9 when static stability factor was included in the regression, but dropped to approximately 0.5 when static stability factor was removed from the analysis. Mengert's plots of the actual versus predicted rollover rate using his 11-factor model showed strong statistical relationships between rollover rate and static stability factor.

2. Wheelbase

NHTSA found significant correlations between rollover accident involvement rates and vehicle wheelbase when the agency analyzed accident data for purposes of evaluating the rulemaking petition from Senator Wirth. ("Technical Evaluation of Rulemaking Petition," Docket No. PRM–MP–004–013.") In addition, Malliaris found that reducing wheelbase at a fixed vehicle weight leads to a very significant increase in fatal rollover accident involvement, while reducing the vehicle weight at a fixed wheelbase leads to a very signficant reduction in fatal rollover accident involvement. ("Discerning the State of Crash Avoidance in the Accident Experience," Proceeding of the 10th International Technical Conference on Experimental Safety Vehicles, July 1985.)

Unlike the static stability factor, whose correlation with rollover accident involvement rate "makes sense" (vehicles with low stability factors generally can be described as tall and narrow), the correlation with wheelbase does not have the same intuitive relationship with a vehicle's rollover propensity. Several possible explanations have been put forth to explain this wheelbase-to-rollover accident involvement correlation. For example, the relationship might be due to a correlation of wheelbase with vehicle pre-crash stability, pre-crash condition and/or skid type mentioned above. In other words, wheelbase might be acting as a surrogate for vehicle stability characteristics, and actually the correlation that results is between wheelbase and vehicle loss of stability preceding the rollover.

3. *Other Vehicle Factors*

The stability condition under which a vehicle leaves the road in a single vehicle crash can significantly influence the likelihood that the single vehicle accident will result in a rollover. Malliaris found that vehicles that left the roadway either sliding sideways or spinning were far more likely to roll over in a single vehicle crash. This influence was found for all sizes of passenger cars, as well as light trucks. (Malliaris, Nicholson, Hedlund and Scheiner, "Problems in Crash Avoidance and Crash Avoidance Research " SAE Paper No. 830560, February 1983.) Although that study did not attempt to determine specific vehicle characteristics that result in such pre-crash vehicle conditions, it is obvious that a vehicle's directional control and stability properties would influence the likelihood of a vehicle's sliding sideways or spinning while leaving the roadway, and thus, would influence a vehicle's overall rollover propensity.

III. Current Program

In view of the apparent effect that vehicle factors have on a vehicle's propensity to roll, NHTSA sought to improve its understanding of the vehicle factors. NHTSA examined correlations between various vehicle metrics and rollover accident rates, and increased the number and diversity of the vehicles examined. NHTSA's technical paper for this ANPRM provides a full discussion of the methodology and results of the agency's research program. The methods and results of the study are briefly described in the following sections.

Rollover crashes are the result of both vehicle characteristics related to a vehicle's rollover stability and vehicle metrics related to a vehicle's directional control and stability. In some cases, some of the vehicle metrics related to one type of stability may be covariant with metrics related to the other, leading to a synergistic effect on a vehicle's overall rollover accident involvement. In other cases, the metrics related to these two types of stability may not have any correlation with one another or may even be inversely related. As such, the agency believes that identifying a single metric related to a vehicle's rollover stability would not lead to the elimination of all or even a majority of rollover crashes. However, a requirement based on a single rollover stability metric could lead to the elimination of a portion of them. As discussed later in this notice and in the technical paper, this belief has been borne out by the accident data. A rollover standard based on a single metric might be a minimum performance standard with broad applicability for vehicles (e.g., a tilt table angle minimum, such as that proposed by the UK for an ECE standard), or it could be a standard that encompasses vehicle crashworthiness requirements (e.g., vehicle with less than a minimum tilt table value must be equipped with extra crash protective devices). At the same time, the agency is also aware of the possibility that requirements based on multiple vehicle metrics may prove to be a better basis for a rollover prevention standard. NHTSA is considering a range of possible rulemaking approaches. The range of possible regulatory requirements resulting from the agency's program is discussed in the section titled, "Rulemaking Alternatives."

A. Summary of Methodology

Briefly stated, NHTSA's goal for the program was to identify the level of correlation between each vehicle metric chosen for study and rollover crashes. To do this, NHTSA selected a vehicle sample (from which the various metrics could be obtained), identified and measured the metrics, generated the accident data base, and performed the analyses (logistic regression and linear regression) that examined the degree of correlation between the vehicle metrics and accident rate measures of vehicle rollover propensity, as evidenced by the normalized accident data. These analyses also included vehicle use factors related to the driver and the accident environment (i.e., driver's age, driver's alcohol use, male or female driver, rural or urban accident location, road surface condition and the single vehicle accident involvement rate), to account for their influence on rollover accident involvement.

Initially, NHTSA performed linear regression analyses using a data file that consisted of the combined accident data from these five states: Georgia (1987–1988), Maryland (1986–1988), Michigan (1986–1988), New Mexico (1986–1988) and Utah (1986–1988). These preliminary analyses were used to complement the later, more detailed analyses that used logistic regression techniques. Due to differences in the data coding formats and reporting thresholds of the various states, these logistic regression analyses were applied to only one state file at a time.

The initial logistic regression analyses were performed using data from each of the five states and later, more detailed logistic regression models were examined using only the Michigan data. These state-to-state difference were not as significant in the preliminary linear regression analyses. The Michigan data were chosen for these more complex analyses because that State had the largest sample size.

1. Selected Vehicles

The population of vehicles that were initially identified for inclusion in the sample was chosen with the goal of encompassing all classes of light vehicles, i.e. all ranges of passenger cars; small and large pickup trucks; mini and full size vans; and open, small, and large utility vehicles. NHTSA identified 60 vehicles, which encompassed the entire range of market class designations, usage classifications, and size classes. For each of the classifications, NHTSA sought to obtain: (1) A set representative of the full spectrum of rollover rates (the selected vehicles encompassed the lowest to the highest rollover to SVA rates); and (2) a set representative of the full spectrum of vehicle characteristics (the selections included the complete range of vehicles from low slung sports cars and full size sedans to tall and narrow utility vehicles with short, medium and long wheelbases).

After the initial selection of the vehicle population, NHTSA evaluated Maryland SVA and single vehicle rollover accident data from the CARDfile accident data base for 1986 through 1988 to determine whether including the selected vehicle in the actual sample would yield useful data. Each vehicle that met at least one of the following criteria were retained for the actual sample from the initial population: Model years 1981 or later (model years previous to 1981 did not have a standardized vehicle identification number (VIN) scheme); adequate data available (minimum number of observations was 20); vehicles with high rollover propensity (the rollover rate of the vehicle relative to the rest of the sample population); high current sales volumes (vehicles which represent a large or growing segment of the new vehicle fleet); high registration populations (vehicles well represented in the on-road vehicle fleet); and vehicles previously tested (vehicles for which dependable sidepull or other measurement data exist, or is planned to be measured in ongoing programs, and which could be used for comparison purposes with data collected).

Forty-five of the original 60 vehicles met the criteria and were selected for inclusion in the evaluation sample. Eleven other vehicles were also included in the sample to expand the range of vehicle types, such as several short wheelbase front and rear wheel drive subcompact passenger cars, a European sport sedan, large utility vehicle, and a shorter wheelbase version of a vehicle included from the original list. To confirm that the vehicles selected for the evaluation sample were representative of vehicles in their respective size/market/usage class, the agency compared accident data for "like" vehicles in each of the respective classes.

2. Identifying and Measuring the Metrics

NHTSA chose a number of vehicle metrics to include in the study. These metrics have been identified by various researchers as playing a significant role in vehicle rollover propensity. The metrics included: Static stability factor; tilt table ratio; side pull ratio; wheelbase; critical sliding velocity; a "rollover prevention metric"; a "braking stability metric"; and percent of total vehicle weight on the rear axle. A description of the metrics is provided below.

a. *Center of gravity measurement.* This measurement is needed to calculate the static stability factor and to determine the test condition for the side pull ratio test. The longitudinal and lateral location of the vehicle's center of gravity (cg) were determined using the individual wheel weights along with their associated geometry. The vertical cg height (for the total vehicle with one occupant) was determined either by tilting the vehicle to a known angle and measuring the resultant weight distribution or by applying a known torque to the vehicle and measuring the resultant tilt angle and motion of the vehicle's sprung mass. In either case, the vehicle was tilted about its lateral axis.

b. *Static stability factor.* The static stability factor is the average half track width divided by vertical cg height. The front and rear track widths were determined, averaged together and divided by two to determine the average half track width.

c. *Tilt table ratio.* Tilt table data are obtained from placing the vehicle on a table which is then tilted about an axis parallel to the vehicle's longitudinal axis. The vehicle is placed on the table with the tires on one side against a low curb. The side of the table on the far side from the curb is then slowly lifted while the role angle of the table is measured. The tilt table angle is the platform roll angle at which both tires first lift off of the table on the high side. The point of wheel lift is determined using a contact switch to detect when the wheels lose contact with the platform. The tilt table ratio is determined as the tangent of the tilt table angle.

d. *Side pull ratio.* Side pull ratio is determined as the ratio of the lateral force acting through the vehicle cg required to lift the opposite side tires off the ground divided by the vehicle weight. The test is performed using wide straps and, in some cases, chains, to apply the pull force to the vehicle body. Extreme care needs to be taken to ensure that the pull force vector passes through the vehicle vertical cg at all times, the force is maintained horizontally to the ground, and adjustments to the pulling mechanism are made as the vehicle rolls on its suspension and deflects laterally and vertically, causing the vertical and horizontal location of the cg to change.

e. *Wheelbase.* This vehicle parameter was used since it is a basic factor in determining a vehicle's dynamic transient directional stability. It should be noted that if one were comparing the directional stability characteristics of two vehicles, the vehicle with the shorter wheelbase (which based on wheelbase alone would be likely to have a lower level of directional stability) could, by virtue of other vehicle characteristics (e.g., suspension and tire characteristics) have a higher level of directional stability. Although there are a multitude of other factors which influence, and could easily compensate for the contribution of wheelbase to vehicle directional stability, if all other vehicle features and characteristics are equal, a vehicle with a longer wheelbase will exhibit greater directional stability.

f. *Critical sliding velocity.* This metric is a measure of the minimum lateral velocity required to initiate rollover when the vehicle is tripped by a low curb. It is determined by equating the vehicle energy prior to the tripped impact with the energy needed to raise the vehicle cg to the point where it is just above the pivot point about which the vehicle is rotating.

g. *Rollover prevention metric.* This metric is determined by computing the difference between the vehicle's lateral translational kinetic energy before being tripped and its rotational kinetic energy after being tripped. This quantity is then normalized by multiplying it by 100 and dividing it by the initial lateral translational kinetic energy.

h. *Braking stability metric.* This metric is defined as the longitudinal distance from the vehicle's front wheel to the total vehicle center of gravity (A) divided by the height of the total vehicle center of gravity (h_{cg}) or A/H_{cg}. It represents the level of longitudinal (braking) deceleration at which the vehicle's rear wheels would lift off the roadway.

i. *Percent of total vehicle weight on rear axle.* Percent of total vehicle weight is determined by dividing the longitudinal distance from the vehicle's total center of gravity to the front

wheels by the wheelbase. At the limits of a vehicle's control capabilities, the vehicle's steady state directional stability is heavily influenced by its weight distribution and by the relative friction characteristics of its front and rear tires. As with the effect of wheelbase on transient directional stability, there are vehicle factors other than weight distribution that can also influence steady state directional stability, and in the case of comparisons of one vehicle to another, can compensate for differences in weight distribution. However, in the case of steady state directional stability, weight distribution and tire characteristics are the predominant determining factors. Vehicles with a higher percentage of their total weight on the rear wheels will tend to have a lower level of steady state directional stability.

NHTSA tested vehicles at two facilities, the Vehicle Research and Test Center (VRTC) and Systems Technology Incorporated (STI). In all, vehicle measurements were obtained for 56 different make/models.

B. Accident Databases

NHTSA maintains a collection of state accident data files for 26 States, each of which provide their tapes annually. Data from five of the State files were used for the study. Those States were: Georgia (1987–1988), Maryland (1986–1988), Michigan (1986–1988), New Mexico (1986–1988) and Utah (1986–1988). These States were selected based on the ability to identify specific vehicles according to their Vehicle Identification Number (VIN): i.e., these five States consistently and accurately report a high proportion of VINs for those vehicles involved in accidents.

The agency obtained data for single vehicle accidents (SVA's) from the State files. An SVA was defined as all overturns, collisions with a parked vehicle or other fixed object, and noncollision accidents. SVA's do not include collisions with pedestrians, other vehicles on the roadway, bicycles, trains or animals.

NHTSA examined the data from each of the SVA's to determine if the accident involved a primary-event rollover. A primary-event rollover was defined as any accident in which the most harmful event was a rollover, and did not include any accident in which a rollover followed a significant collision with an object. For Utah, this category also included reports for accidents in which the first event was described as "run off the road" and the second event was a rollover. For Maryland, this category also included those reports in which the first event was a collision with a ditch, berm or culvert followed by a vehicle rollover.

C. Summary of Results

Readers are referred to the technical analysis for this notice for a detailed discussion of the statistical analyses of the relationship between the vehicle metrics and the accident data. As discussed in that paper, the statistical analyses showed very significant correlations with the rollovers per single vehicle accident rate (RO/SVA) of light duty vehicles for tilt table, static stability factor and sidepull. Tilt table and static stability factor consistently showed the higher levels of correlation.

NHTSA performed analyses of the Michigan data using a logistic regression model that included a number of variables related to influential driver and roadway/environmental factors, as well as each of the vehicle rollover stability metrics taken one at a time. The results of those analyses were used to calculate a predicted RO/SVA rate for various vehicle make/models. The index of agreement (analogous to R^2 at the make/model level) for the actual RO/SVA rate versus predicted RO/SVA rate produced values of 0.65 for the model using the tilt table ratio, 0.66 for the static stability factor model, and 0.58 for the side pull ratio model.

The logistic regression model that resulted in the highest level of statistical correlation included the tilt table ratio and variables representing the vehicle's make/model's single vehicle accident per registered vehicle rate and the vehicle make/model's vehicle class (e.g., sport utility vehicle, pickup truck, van or passenger car) and drive configuration (e.g., front wheel drive, rear wheel drive or four-wheel drive), as well as driver and accident location demographics. The index of agreement of the results of that logistic regression model produced a make/model R^2 value of 0.80. The reasons for the large improvement in the model's correlation with the inclusion of the single vehicle accident per registered vehicle rate and the vehicle class variables are currently under further study. This effect may be related to driver and vehicle influences that are not accounted for by the driver and vehicle variables that have been included in the analyses to date, or may be related to vehicle control and stability characteristics. This hypothesis is supported by the "stability condition" found by Malliaris that was discussed earlier. Also, results from both logistic regression analyses and Chi-square population comparisons found that the presence of antilock brakes on vehicles was significantly correlated with a lower RO/SVA rate.

The agency believes the tilt table ratio has advantages over the static stability factor and side pull ratio that may warrant its selection. Those advantages relate to the ability to precisely measure the metric and to the ability to vary vehicle design to affect the metric.

The procedure for determining the tilt table ratio (i.e., the tangent of the angle of the tilt) is simple to conduct, and yields repeatable and reproducible results. Unlike the static stability factor and side pull ratio, the determination of the tilt table ratio does not rely on center of gravity height measurements, which are difficult to obtain, and which can introduce variability in measurements. (Winkler, C.B., "Center of Gravity Height: A Round-Robin Measurement Program," University of Michigan Transportation Research Institute, January 1991.) In addition, unlike the side pull test, the tilt table test has the advantage of not damaging vehicle body work, which keeps costs to a minimum.

The use of the tilt ratio as the basis for a rollover stability requirement also allows manufacturers to vary a vehicle's performance in relation to such a requirement in ways that are readily achievable. A manufacturer could increase a vehicle's tilt table ratio value (i.e., improve the vehicle's rollover stability) by varying the vehicle's suspension characteristics. With the static stability factor, changes in the respective values would most likely entail substantial changes in vehicles' size, ground clearance and roof structure, which are features that may be important to the purpose for which the vehicle was designed.

Aside from the advantages of the tilt table ratio described above, the agency was concerned that the other two metrics might be fundamentally deficient for NHTSA's purposes for other reasons. The static stability factor assumes that a vehicle is a rigid body with no tire or suspension deflections or motions. Since vehicles are not rigid, the vehicle's tire and suspension deflections and suspension kinematics affect the vehicle's cg relative to the vehicle's tires (where the forces that initiate a vehicle rollover are generated). These motions change both the cg height (above the ground) and the lateral distance between the cg and the tires on the outside of the turn. The static stability factor does not account for the change in the cg's position.

Although the side pull ratio takes into account the motions of the vehicle's sprung mass (the body and chassis less the suspension and tires) relative to tire contact area, the side pull ratio appears

less desirable than the tilt table ratio because the side pull test is very complex and requires an extraordinary amount of equipment. The test is performed using wide straps or chains to apply the pull force to the vehicle body. Extreme care needs to be taken to assure that the pull force vector passes through the vehicle's vertical cg, and is maintained horizontally to the ground. Adjustments to the pulling mechanism must be made as the vehicle rolls on its suspension and deflects laterally and vertically. The complexity in setting up and conducting the test can lead to errors and inconsistencies in the data. To date, all of the vehicle rollover metrics that are measures of a vehicle's rollover stability and that show correlations with a vehicle's rollover propensity, the tilt table ratio appears to be the most promising for regulatory purposes.

IV. Rulemaking Alternatives

NHTSA is considering a range of possible rulemaking approaches to developing a proposal to reduce rollover injuries and fatalities. The possible approaches include a crash avoidance rulemaking proposal that vehicles which did not meet a specific performance measurement (e.g., a minimum tilt table ratio) either could not be manufactured, or would have to have safety devices or features to improve the vehicle's directional stability characteristics (e.g., antilock brakes), and/or crashworthiness (e.g., improved roof strength).

A crash avoidance standard that would require a minimum level of vehicle rollover stability would produce a safety benefit by reducing the numbers of rollovers in single vehicle accidents involving light duty vehicles. This type of standard may also have substantial costs for manufacturers and consumers, and may have the greatest effect on the availability of vehicles from which consumers may choose. A standard of this type has been proposed by the United Kingdom (U.K.) to the "Meeting of Experts on Brakes and Running Gear" (GRRF) of the Economic Commission for Europe (ECE). The proposal suggests using the tilt table test, with a minimum required tilt angle of 40 degrees (equivalent to a tilt table ratio of 0.839) for vehicles in both an "unladen" (drive only load) and "laden" (GVWR load) condition, as a requirement for the rollover stability of all light duty vehicles.

NHTSA is currently conducting tests at several load conditions, including the one passenger and full passenger complement, and two versions of the GVWR load condition (including the "laden condition" specified in the ECE proposal) to examine the effect of load conditions on the relative ranking of different vehicles.

As already noted, a safety standard having a crash avoidance thrust might require specific equipment, such as antilock brakes (should they be shown to reduce the incidence of rollovers), on vehicles having a low tilt table value. The results of a logistic regression analysis of the Michigan accident data file, and those of the linear regression analysis of the combined 5-State accident data file, indicate that the presence of antilock brakes was statistically significant and would predict a lower rollover accident rate for vehicles equipped with antilock brakes. Also, data were available for accidents involving four vehicle make/models that had subgroup populations in which some vehicles were equipped with antilock brakes and some were not. When the subgroups of each of these make/model populations were compared using Chi-square analyses, two of the four comparisons indicated that the lower rollover rate for the antilock equipped vehicles was statistically significant, alpha=0.05. NHTSA specifically requests comments on the effectiveness of antilock brakes in reducing the propensity of a vehicle to become involved in those situations (e.g., sliding sideways) in which the likelihood of a vehicle's rolling over is increased.

The agency is also considering requirements to improve occupant protection in rollovers. These requirements might be applied to all vehicles or only those with a "low" (i.e., below a specified value for one of the metrics previously discussed) level of rollover stability. The added protection may take the form of means to increase belt usage, different types of restraints (e.g., four point harnesses), improved roof strength, or interior padding. These actions may be taken either in conjunction with, or in lieu of, a crash avoidance rulemaking and comments are sought on this issue.

NHTSA is also considering a market-based option of a consumer information regulation under which the manufacturers would be required to measure certain metrics for their vehicles and report them to prospective purchasers. The number of rollovers might be reduced if consumers better understand the risk of rollover associated with different vehicle types and models. A regulation that is geared toward informing consumers of a vehicle's rollover propensity might require manufacturers to measure the rollover stability of their vehicles, using a metric such as the tilt table ratio, and to provide that information to the consumer. Information would also be provided to the consumer on the relative risk of rollover for a vehicle having a rollover stability value in a particular range. NHTSA requests comments on the desirability of such a requirement.

V. Issues

This section discusses a range of issues that NHTSA is considering in deciding whether to issue a proposal relating to vehicle stability and rollover induced injuries. The issues are grouped according to the following subject areas: (1) The appropriateness of a vehicle metric (particularly the tilt table ratio) as the basis for regulatory action; (2) the extent to which factors relating to vehicle use and directional control and stability confound an analysis of vehicle rollover involvement; (3) potential countermeasures that might reduce injuries and fatalities in rollover crashes; and (4) potential costs and benefits. For easy reference, the agency has consecutively numbered its questions. In responding to a particular question, NHTSA requests that commenters refer to the question by number, and provide any relevant factual information to support their conclusions or opinions, including but not limited to statistical data and estimated costs and benefits, and the source of such information.

NHTSA emphasizes that this is an advance notice of proposed rulemaking. If the agency were ultimately to isuse a final rule, it would do so only after first issuing a notice of proposed rulemaking providing further opportunity to comment.

A. Vehicle Metrics

1. What is your general opinion for the various rollover metrics NHTSA evaluated for this ANPRM? What are the strong points and weak points for each of the metrics? Which of these metrics do you think NHTSA should use to develop a proposed rollover stability standard?

2. Are there any accident data analyses that have investigated whether vehicle rollover stability metrics or other vehicle metrics influence the overall accident involvement of vehicles, as measured by rollovers per registered vehicle (RO/RV), single vehicle accidents per registered vehicle (SVA/RV), rollovers per vehicle miles traveled (RO/VMT) or single vehicle accidents per vehicle miles traveled (SVA/VMT)?

3. Will further research and testing be needed to accurately quantify the

rollover metrics for various vehicles? If so, what types of research and testing are needed, and why?

B. Vehicle Use

4. Several previous studies, including "Rollovers in Motor Vehicle Accidents," (Malliaris), indicate that the correlations between rollover involvement rates and a driver's age, gender and the involvement of alcohol vary significantly when these factors are examined independently, versus when the variables are combined. For example, Milliaris found that although females in general have lower rollover accident rates than males, "sober" (i.e., no alcohol involvement in the accident) females over the age of 35 had significantly higher rollover rates than "sober" males in the same age range, particularly when they were driving LTV's. However, there was no significant difference between the rollover accident rates for females versus males over the age of 35 if alcohol was involved in the accident. These findings pose several questions. What is the most appropriate "model" to represent these factors in trying to account for driver influences? What is the best method of considering the effect of alcohol use on single vehicle accidents and rollovers? What vehicle factors may be related to the significantly higher rollover accident rates for the over 35 females, particulary when they are driving LTV's?

5. Logistic regression results have indicated a significant correlation between the probability of rollover in a single vehicle crash and the SVA/RV rate for vehicle make/models. This could obviously be related to vehicle factors, but it is also possible that it is related to the risk-taking behavior or other characteristics of the driver of particular make/models.

What driver characteristic(s) that can influence the SVA/RV rate of vehicle make/models might explain a portion of the correlation found between the RO/SVA rate and SVA/RV rate for vehicle make/models? How could their influence be evaluated?

6. Logistic regression results have indicated a significant correlation between the probability of rollover in a single vehicle accident and vehicle class and drive configuration (e.g., front wheel drive, rear wheel drive, or four wheel drive). As with the SVA/RV rate correlation discussed in the previous item, this could be related to vehicle factors that are influenced by design features that are peculiar to the vehicle make/model's class and/or drive configuration, but also may be related to driver and/or vehicle use factors that result from the kinds of drivers that purchase and use vehicles in certain vehicle classes and the kinds of trips on which the vehicles in certain vehicle classes are driven.

What driver characteristics, related to the class of vehicle that the drivers purchase and use, might explain a portion of the correlation found between the RO/RVA rate and the vehicle class and drive configuration of particular vehicle make/models? How could their influence be evaluated?

7. Are there any new findings regarding the relationships between roadside features encountered in a rollover crash and rollover accident involvement?

8. Are there any relationships between environmental factors, such as urban versus rural accident location in a rollover crash and overall accident involvement, measured by rollovers per registered vehicle (RO/RV), SVA/RV, RO/VMT or SVA/VMT accident rates?

9. Later in 1991, when the final data from the Federal Highway Administration's 1990 Nation Wide Personal Transportation Study (NPTS) are available, NHTSA intends to conduct statistical analyses of rollover accidents and single vehicle accidents per vehicle mile travelled (VMT). It may be possible to obtain from the NPTS data estimates of VMT by vehicle make/model or by vehicle class/subclass.

What information is available with regard to the risk of involvement in SVA's and/or rollover accidents, measured by accidents per vehicle mile travelled, for different kinds of drivers, on different kinds of trips, in different classes/subclasses of vehicles? If no such information is available, how could the influence of driver and vehicle usage factors best be evaluated using VMT data?

10. The above discussion in question number nine refers to the possible availability of VMT data by vehicle make/model. If the NPTS data are not sufficient to provide this level of detail for a sufficient number of vehicle make/models to allow a more thorough analysis of the influences of driver characteristics and vehicle usage patterns, the agency seeks other means to conduct such analyses. One possible avenue would be the acquisition of information from insurance companies on the characteristics of the drivers of the vehicles insured by their companies, e.g., driver age, male or female driver, estimated miles driven per year and other usage information (e.g., whether vehicle is used to commute to work and miles driven while commuting). If it would be possible to acquire such information on a large enough portion of the vehicle population for a state whose accident data were being examined by the agency, it would be possible to use the logistic regression techniques discussed earlier to gain a better understanding of the influences of driver and vehicle use characteristics on accident causation. Would insurance companies be willing to provide basic summaries of such information by vehicle make/model?

C. Countermeasures

11. What crashworthiness criteria would be the most effective in preventing occupant injury given a rollover accident occurs? NHTSA is considering criteria which would reduce the number of ejections in an effort to reduce the number of injuries. What is your opinion on the relative effectiveness of the following types of ejection reduction actions: improved occupant restraints, improved belt warning devices, roll bars or cages, better latches and hinges for doors and hatches, stronger roof strength, and improved glazing? Are there any data to support any of these measures over the others, and, if so, what does you data indicate?

12. How would installing roll protection equipment affect vehicle roll stability? What is the effect on cg height when a roll cage is added to a light weight open utility vehicle? How can vehicle crashworthiness and rollover stability both be improved?

13. What type of standard is preferred? Please supply comment on the pros and cons of each type as well as any safety data which exist to support your conclusion.

14. Logistic regression and Chi-square population comparison results have indicated a significant correlation between a reduction in the probability of rollover in a single vehicle accident and the presence of antilock brakes on particular vehicle make/models. What information is available on the likely reason for that correlation and what information is available on the correlation between the likelihood of involvement in a single vehicle accident and the presence of antilock brakes?

With regard to the correlations between the possibility of rollover in a single vehicle accident and the single vehicle accident per registered vehicle rate for vehicle make/models (see question five), it has been hypothesized that these correlations may involve the influence of vehicle directional control and stability characteristics on a vehicle's single vehicle accident and rollover accident involvement. What

information is available with regard to the influence of vehicle directional control and stability characteristics on a vehicle's rollover and/or single vehicle accident involvement?

15. Would changes to the chassis and suspension of a vehicle to improve its rollover stability have an impact on the vehicle's directional control and stability characteristics? Would such changes be more likely to improve or degrade those directional control and stability characteristics? Could changes be made that would improve a vehicle's rollover stability but have no impact on the vehicle's directional control and stability characteristics?

D. Costs and Benefits

16. As discussed in question six, logistic regression results indicate a significant correlation between a vehicle make/model's probability of rollover in a single vehicle accident and the vehicle class and drive configuration of that vehicle make/model. Given this correlation, what classes or subclasses of vehicles should be covered by a rollover standard? Why do some classes or subclasses of vehicles, such as vans, have a relatively low RO/SVA rate? Should any class or subclass of vehicle, such as vans, be excluded from a rollover standard? Should a class or subclass of vehicle, such as open utility vehicles which have a high ejection potential, be subjected to a different rollover stability performance threshold than that which would apply to a class of vehicle with a relatively low rollover rate, such as vans? If certain classes of vehicles are to be excluded or subjected to a different rollover threshold, how should the vehicle classes be defined?

17. What specific costs might be associated with each of the potential rulemaking options? For the rollover crash avoidance rulemaking action, could vehicle designs be changed to meet the standard or would particular make/models need to be eliminated from the current manufacturer's fleet, and if so, please provide specific make models and an engineering reason for the decision?

18. What effect would each of the rulemaking alternatives have on vehicle alterers and final stage manufacturers? How would an FMVSS on vehicle stability affect motor vehicle manufacturers, dealers, distributors and repair businesses who modify the suspension and cg of new and used vehicles? The agency is particularly interested in information on general rulemaking alternatives that could have the most and least impacts on those businesses.

VI. Potential Regulatory Impacts

NHTSA has considered the potential benefits and burdens associated with the possible rulemaking alternatives discussed above. This advance notice is a "significant" rulemaking action under the Department of Transportation's regulatory policies and procedures. The advance notice concerns a matter in which there is substantial public interest, and there is potential that a rule resulting from this ANPRM might have a substantial impact on a major transportation safety problem. The preliminary regulatory evaluation (PRE) for this notice discusses the potential impacts of this regulatory action and identifies some areas where substantial benefits might be realized. However, because the affected vehicle population is not defined at this stage in the rulemaking, the agency is unable at this time to quantify the benefits and estimate the cost impact of the various rulemaking alternatives. Further, the impacts of the action can only be estimated when it is determined which of the various alternatives will be chosen as the basis for a rule. That information is yet unknown.

The PRE provides some preliminary cost estimates for equipping vehicles with antilock brakes, which is one of the rulemaking alternatives under consideration. NHTSA's data (which is several years old) on the cost range for a four wheel antilock system for light duty vehicles is from $375 to $570. The agency does not have data on the cost of a two wheel, rear wheel only, antilock system. NHTSA believes the agency will obtain up-to-date cost estimates for both types of antilock systems in a planned cost and leadtime estimates study on potential crashworthiness and crash avoidance countermeasures (including antilock).

Also, the agency has estimated the cost of the test equipment and procedures that are currently under consideration. NHTSA estimates that potential compliance test equipment costs for measuring vehicle metrics consist of $19,000 to $45,000 for the tilt table ratio, $45,000 to $90,000 for the static stability factor (consisting of a center of gravity measurement facility) and $130,000 to $290,000 for the side pull ratio (consisting of both a center of gravity measurement facility and a side pull test facility). Personnel costs are about $120 per test for each of these metrics.

With respect to the Regulatory Flexibility Act, NHTSA is unable to determine whether the regulatory action that the agency may eventually take would have a significant impact on a substantial number of small entities. The extent and magnitude of the impact cannot be determined before the specific requirements have been proposed. NHTSA expects that the comments received on today's ANPRM will assist the agency in determining whether the various regulatory alternatives may have an impact on small entities, the potential magnitude of that impact, and the number of small entities affected. Any NPRM or rule that results from this notice will be analyzed for its impact on small entities, in accordance with the Regulatory Flexibility Act.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

VII. Comments

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket.

The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. It is therefore recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed,

stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations.The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50)

Issued. December 27, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-25 Filed 1-2-92; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 1-11; Notice 09]

RIN 2127-AA43

Federal Motor Vehicle Safety Standards, Rear Impact Guards; Rear Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: On January 8, 1981, NHTSA published a notice of proposed rulemaking (NPRM) on rear underride crashes, i.e., crashes in which a relatively small vehicle such as a passenger car collides with the rear of a heavy vehicle (i.e., a vehicle with a gross vehicle weight rating (GVWR) greater than 10,000 pounds), such as a large trailer. Rear underride occurs when the front of the smaller vehicle slides under ("underrides") the rear end of the larger vehicle. In the worst cases, trailer design allows the smaller vehicle to underride so far that the trailer's rear end strikes the passenger car's windshield and enters the passenger compartment. The agency received over 100 comments on the proposal, some of which raised issues about possible alternatives to the proposal and about the burdens of the proposal on small businesses. This notice seeks to retain the safety benefits of the earlier proposal while meeting the concerns about potential small business impacts.

DATES: Comments on this notice must be received by the agency no later than March 4, 1992.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-5267. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sam Daniel, Office of Vehicle Safety Standards, NRM-12, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. Telephone: (202) 366-4921.

SUPPLEMENTARY INFORMATION:

The Safety Problem

This notice addresses the problem of rear underride crashes, i.e., crashes in which a relatively small vehicle such as a passenger car collides with the rear of a much larger and heavier vehicle, such as a trailer with a GVWR greater than 10,000 pounds. Rear underride occurs when the front of the smaller vehicle slides under ("underrides") the rear end of the larger vehicle. Underride occurs to some extent in most collisions in which a passenger car crashes into the rear end of a large trailer. In the worst cases, trailer design allows the smaller vehicle to underride so far that the trailer's rear end strikes the passenger car's windshield and enters the passenger compartment. These worst case crashes, which are referred to as "passenger compartment intrusion (PCI)" or "excessive underride" crashes, occur in essentially all of fatal underride crashes.

In 1989, there were 500 passenger car and light truck fatalities due to rear impacts with heavy trucks. This represents 23 percent (500/2143) of the vehicle occupants killed in rear end collisions that year.

The Existing Standard

The initial regulation addressing the issue of rear underride protection was issued in 1953 by the Bureau of Motor Carriers of the Interstate Commerce Commission (presently the Office of Motor Carrier Safety of the Federal Highway Administration, DOT). This regulation, which is still in effect, requires vehicles used in interstate commerce and manufactured on or after January 1, 1953 to have a rear end device intended to help prevent underride. The rule provides that the ground clearance of the underride guard shall not exceed 30 inches when the vehicle is empty. The device must be located not more than 24 inches forward of the extreme rear of the vehicle, and must be sufficiently wide so that the guard's ends are not more than 18 inches inboard from either side. The regulation requires that the device "be substantially constructed and firmly attached." (49 CFR 393.86.)

Past Proposals

Over the years, DOT reassessed the requirements of § 393.86 and considered the need for NHTSA to issue a Federal Motor Vehicle Safety Standard (FMVSS) on underride protection. Whether present guards are fixed low enough to the ground to engage the striking vehicle or are strong enough to resist impact forces have been issues of particular concern. The most recent of several NHTSA notices was issued in 1981 (46 FR 2136; January 8, 1981). (The notices of proposed rulemaking issued by NHTSA and by FHWA prior to the 1981 NPRM are cited and discussed in that notice.) The 1981 notice proposed to adopt an FMVSS for new trucks and trailers with a GVWR greater than 10,000 pounds. The rulemaking was initiated after research and computer modeling studies led the agency to tentatively conclude that it was feasible to manufacture a lightweight guard that could effectively prevent excessive underride and absorb energy in a crash. Absorbing energy is important because too rigid a guard could increase the severity of crash forces on passenger car occupants and thus increase the risk of injury due to hazards other than underride.

The proposed standard would have required large trucks and trailers to be equipped with an underride guard that met specified strength and configuration requirements when force was applied to the guard by a loading device. The proposed standard differed from the FHWA regulation in three ways. First, NHTSA's proposal specified more objective strength requirements for the guard (FHWA specifies that the guard must be "substantially constructed and firmly attached"). Second, the proposed configuration requirements would have required the guard to be located lower to the ground and further rearward on the vehicle than the guard required by FHWA. Third, NHTSA's proposed guard would have been wider (i.e., closer to the sides of the vehicle) than the FHWA guard. Details of the 1981 proposal are described more fully below.

The 1981 NPRM proposed that the guard (as installed on the vehicle) must be capable of withstanding any one of two combinations of load applications without displacing more than a specified distance. The first load combination

would have been a force of 50,000 Newtons (the proposed requirements were based primarily in metric units), or 11,240 lbs., applied to the guard at a position of 30 cm (11.8 inches) inboard from either the right or left side of the vehicle, and then a force of 50,000 Newtons (11,240 pounds) applied to the middle of same guard, i.e., where the guard intersects the longitudinal vertical plane passing through the vehicle longitudinal axis. The second combination was a force of 100,000 Newtons (22,480 pounds) applied to the guard at any point not less than 35 cm (13.8 inches) and not more than 50 cm (19.7 inches) to the left of the longitudinal vertical plane passing through the vehicle longitudinal axis, and then the same force to the same guard in the area located at the same distance to the right of that plane. The NPRM proposed than when the loads are applied by the load block, the guard must not deflect forward more than 40 cm (15.7 inches) as measured longitudinally from the rear of the vehicle.

In addition, configuration requirements were proposed. The guard would have been required to have a ground clearance of not more than 55 cm (21.65 inches). This distance was intended to ensure that the guard would be high enough for normal trucking operations, yet low enough to engage at least some part of the engine in a small car in a crash, and thus prevent excessive underride. The guard's width would have been required to be wide enough so that the outermost edges were within 10 cm (3.94 inches) of the sides of the vehicle. The guard would have been required to be located not more than 30 cm (11.8 inches) from the rear extremity of the vehicle. The cross sectional height of the horizontal member of the guard was proposed to be at least 10 cm (3.94 inches), to ensure that a substantial part of the guard engages a significant amount of the striking vehicle's structure.

The NPRM proposed to exclude certain heavy vehicles (i.e., vehicles with gross vehicle weight ratings of 10,000 pounds or more) from the standard. Truck tractors and pole trailers, as those vehicles are defined in 49 CFR 571.3, would have been excluded because the agency believed the rear end structure of these vehicles is an adequate underride deterrent. The NPRM also would have excluded "low chassis vehicles" (vehicles having a chassis that extended behind the rear tires and whose chassis met the proposed configurational requirements for underride guards), and "wheels back vehicles" vehicles having a permanently fixed rear axle and whose tires on that axle are not more than a specified distance from the rear of the vehicle and thus tend to prevent underride). The NPRM also would have excluded "special purpose vehicles" (vehicles having work performing equipment at the lower rear of the vehicle whose function would be significantly impaired by an underride guard).

Comments on the NPRM

The agency received over 100 comments on the NPRM. Many of the commenters were manufacturers and operators of heavy vehicles who believed that their vehicles were special purpose vehicles and thus excluded from the proposed rule. Some commenters objected to the proposed requirements and suggested alternative means to reduce the deaths and injuries associated with underride crashes, such as by reducing the incidence of such crashes by improving the conspicuity of heavy vehicles. As a result of those comments, NHTSA undertook research on whether the potential reduction in fatalities that might be achieved by underride guards could be achieved by improved conspicuity as well. The agency believed the conspicuity issue was important because data from the Fatal Accident Reporting System (FARS) had indicated that almost twice as many (65 percent) of fatalities resulting from rear end crashes of passenger cars and light trucks into heavy trucks occurred under "non-daylight" (i.e., "dark," "dawn," and "dusk") conditions as occurred in "daylight" conditions (35 percent).

The preliminary results of the conspicuity study indicated that improved conspicuity with reflectorization and/or lighting has the potential for reducing both the occurrence and the intensity of the rear end crashes under both daylight and night conditions. The degree of potential effectiveness of improved conspicuity in eliminating non-daylight collisions (NHTSA estimates improved conspicuity will be 15 percent effective) and the continuing high rate of rear end collisions of passenger cars into heavy trucks under non-daylight conditions (nearly 65 percent for 1984 to 1989) are such that NHTSA has proposed rulemaking on enhanced conspicuity for large trucks and trailers. 56 FR 63474; December 4, 1991.

In terms of reducing truck underride fatalities and serious injuries, improved conspicuity is expected to be about 9.8 percent effective (0.15×0.65 (non-daylight collisions)). However, the agency believes an underride guard could mitigate the bulk of the fatalities and serious injuries not addressed by improved conspicuity.

Also, accident data on alcohol involvement in rear end collisions with heavy trailers indicate that the driver of the striking vehicle had been drinking in 47.9 percent of the fatal rear end underride collisions. An underride guard may help to reduce the severity of a rear end crash where the benefits of enhanced conspicuity of a vehicle may be negated to an extent by the alcohol-impaired, or drowsiness-impaired, reaction time and sensory perception of the driver. Thus, while enhancing conspicuity could complement the agency's proposal to improve underride guards, it would not obviate the apparent need for such a proposal. The agency believes that both a vehicle's enhanced conspicuity and its guard could reduce the likelihood of a crash occurring, and the severity of the crash in the event that one occurs.

Comments on the NPRM also expressed concerns that the proposed requirements would impose substantial burdens of trailer manufacturers. The trailer manufacturing industry consists of many firms that vary widely in size and engineering capabilities. Some of the firms may lack the financial or technical resources to meet the requirements of the vehicle-based underride guard strength test that was proposed in the NPRM. As a result of the comments, the agency sought to determine whether it could revise its proposal to reduce the burdens on small manufacturers.

Summary of the Proposed Requirements

Today's notice contains proposals that are similar to those in the 1981 NPRM in terms of the contemplated strength and configuration of the guard, but that nevertheless differ significantly from those in the NPRM in terms of the potential impacts on small manufacturers. Instead of a vehicle-based safety standard such as that proposed in 1981, this notice proposes two standards: One standard for the guard itself as an item of motor vehicle equipment, and another for the vehicle. The equipment standard would specify the strength requirements which the guard would have to meet when tested on a rigid test fixture, not on the vehicle itself. Testing guards under these conditions would relieve trailer manufacturers, many of whom are small businesses, of the responsibility of conducting a static or dynamic test of a vehicle equipped with the guard. No vehicle need be certified as to its actual performance with the guard installed.

Instead, the vehicle manufacturer need only certify under the vehicle standard that the trailer has an underride guard (separately certified to the equipment standard) at a specified location.

Proposed equipment standard requirements. This notice proposes to establish minimum performance standards for guards manufactured for particular types of motor vehicles, primarily, van and flatbed trailers. There are additional trailer types to which the proposed rule would be applicable. These vehicles would be required to have a guard by the vehicle FMVSS also proposed in this notice. The underride safety hazard results from the chassis height of many trailers (40–50 inches) and the distance between the rear tires and the rear extremity of the vehicle. The combination of these factors allows passenger cars and light trucks to underride these vehicles in rear end collisions, often resulting in significant injuries. The term "rear impact guard" would be used for the standard instead of the term "underride guard" that had been proposed in the NPRM, to reflect the fact that the guard would protect the occupants of a colliding vehicle by absorbing crash forces, in addition to preventing excessive underride.

This notice proposes many of the same strength and configuration requirements for the guard that were proposed in the 1981 NPRM. (Today's proposed requirements are in English units, instead of primarily metric units used in the 1981 notice.) The 1981 proposal would have required each particular guard to be subjected to one of two tests (see S6.6 of proposed text). "Test 1" would have required a force application to the center and another to the outside edge on either the right or left side of the horizontal member of the guard. "Test 2" would have required a force application to the horizontal member at points of specified distances left and right of the longitudinal center of the guard. Today's notice proposes that force would be applied to one of three specified areas on the guard. Each guard must withstand the applied force at all three areas, any one of which may be tested by the agency in a compliance test. The agency believes modifying the procedure simplifies that test while assuring that appropriate strength requirements are met. The loading device (test block) would have approximately the same dimensions as that proposed in the 1981 proposal.

This notice proposes that the maximum allowable distance that the test block is allowed to travel forward would be five inches from its initial location, i.e., resting against the guard. The 1981 NPRM proposed a figure of 15.7 inches (40 cm.), but this distance was measured relative to the rear end of the vehicle. Since the 1981 proposed rule would have allowed the rearmost surface of the guard to be placed up to 11.8 inches (30 cm.) forward of the rear of the vehicle, the rule would have allowed a guard to deflect from 3.9 inches (10 cm.) to 15.7 inches (40 cm.), depending on guard placement. Under the procedures proposed today, the deflection would be measured while the guard is on a test fixture and taken relative to movement of the test block. The agency has tentatively chosen the five inch requirement because test data have indicated that guards requiring above a five inch displacement to reach specified force levels on a rigid test fixture performed well in full scale tests (Contract No. DTNH22–81–C–07177 by Dynamic Sciences, Inc., "Testing to Support Truck Underride Rulemaking," November 1982). The agency's proposed vehicle standard specifies that the guard is to be placed not more than 12 inches forward of the rear of the vehicle. If a trailer manufacturer placed the guard at the maximum allowable distance from the vehicle's rear, NHTSA believes the specification of five inches of guard displacement in guard strength requirements would result in guards that generate underride resistance forces over a short distance which would significantly reduce the number of PCI collisions.

The FMVSS for the guard would require persons manufacturing a guard to certify that each guard meets the proposed requirements by permanently labeling the guard with the symbol "DOT" and with the name of the guard manufacturer. NHTSA believes labeling the guard would facilitate enforcement efforts by providing a ready means of identifying the manufacturer. Except for a guard which is produced and installed by a vehicle manufacturer on a vehicle it produced, each guard would be required to be accompanied by installation instructions. The agency would follow those instructions in setting up a compliance test of the guard. To test a guard manufactured and installed by a vehicle manufacturer on one of its vehicles, NHTSA would contact that manufacturer as needed for compliance testing purposes to obtain a description of the installation procedures used by the manufacturer.

The agency is proposing that each guard must be designed to attach to the "chassis" (defined in the standard as the load-supporting structure) of the vehicle for which the guard is manufactured. This would complement a requirement in the vehicle standard that the guard be attached to the chassis. The rationale for proposing the chassis attachment is because chassis-mounted guards are more capable of preventing PCI than guards mounted to some less rigid part of the vehicle structure. The tests conducted by Dynamic Sciences showed that passenger car underride was kept within acceptable limits and PCI was prevented by the combined strength of the guard and the vehicle chassis members to which the guard was attached for crash severities covered by the proposed standard.

NHTSA proposes that each guard would have to be accompanied by all attachment hardware necessary to ensure that the loads specified in the standard would be met when the guard is attached to a "rigid test fixture." NHTSA would install the guard on the fixture with the attachment hardware provided by the guard manufacturer in the agency's compliance test procedure.

By "rigid test fixture," the agency means a supporting structure that is sufficiently large and appropriately configured so the guard can be attached to it, and that absorbs no significant amount of the energy from the force applied to the guard during a test. The performance requirements would have to be met no matter how small an amount of energy is absorbed by the fixture.

The agency wishes to note that it does not intend to require a change in current guard designs and methods of attachment so that all future guards conform to one particular shape and size of text fixture. If a guard and its method of attachment are unusual in design, the agency will adapt the fixture as appropriate to provide a proper fit with the guard.

The agency's expectation in proposing that the guards be tested on a test fixture instead of on the vehicle on which they are ultimately installed, is that if the guard achieves the specified performance level on the test fixture, and if the guard is installed on the vehicle in the same manner it is installed on the fixture, there will be a significant reduction in underride and PCI cases in the real world. The ability to estimate the performance of the guard on the vehicle based on static tests of the guard mounted on a fixture was demonstrated by the data obtained by Dynamic Sciences. ("Task 4 Report—Truck Underride Guard Static Loading Tests Using a Van" (Other 1982) and "Task 5 Report of Tests 5.1 and 5.2 for Testing to Support Truck Underride Rulemaking" (November 1982), Rodack

et al., Dynamic Science, Inc., Contract No. DTN H22–81–C–07177.)

Proposed vehicle standard requirements. At the outset of this discussion, NHTSA wishes to emphasize that these standards proposed by the agency apply only to new vehicles, not any vehicles already in use. FHWA's regulations address the latter group of vehicles. If NHTSA proceeds to adopt today's proposal as a final rule, FHWA will consider initiating rulemaking to amend 49 CFR 393.86 to require vehicles which were subject to NHTSA's rear impact guard requirements at the time of manufacture to retain and maintain such devices.

The agency has tentatively determined that the vehicle standard should apply to trailers and semi-trailers only, and not to heavy single unit trucks as proposed in the 1981 NPRM. NHTSA has tentatively decided to exclude trucks because approximately 75 percent of the fatalities and serious injuries resulting from heavy vehicle rear end crashes involve collisions with semi-trailers and trailers. Also, the annual cost of equipping new trucks with guards exceeds the annual cost for equipping new trailers. NHTSA tentatively believes that, since trucks cause only 25 percent of the fatalities yet are more costly to equip with a guard than trailers, it may not be reasonable to require trucks to have a rear impact guard. However, NHTSA requests comments on whether the vehicle standard ought to apply to trucks.

Further, NHTSA is proposing to apply the vehicle standard primarily to two types of trailers and semi-trailers, van and flatbed trailers and semi-trailers. These types of trailers uniformly pose a significant rear end collision safety threat because of their height and the distance between the rear wheels and the rear extremity of the vehicle. The rear end structures also do not vary significantly in design from vehicle to vehicle, so a particular guard design would not need to be substantially modified to satisfy the configuration requirements proposed by today's notice.

The agency proposes to exclude special purpose vehicles, wheels back vehicles, truck tractors, low chassis vehicles, and pole trailers from the proposed vehicle standard. Examples of trailers that are special purpose vehicles are dump trailers, oil well servicing rigs, and motorized cranes.

The vehicle standard would require each trailer or semi-trailer to be equipped with a guard that is certified as meeting the equipment standard for guards and installed in the manner specified by the guard manufacturer under the equipment standard. (As noted above, the manner in which the guard is attached to the vehicle should be the same as the manner in which the agency would attach the guard to the test fixture for compliance testing under the equipment standard since the attachments in both circumstances would be governed by the guard manufacturer's instructions.) The vehicle's guard would have to be configured such that the outermost edges of the guard would be located within 4 inches of the side extremities of the vehicle, when measured transversely at a height of 22 inches or less, and the rearmost surface of the guard would have to be located 12 or fewer inches forward of the rear extremity of the vehicle. The guard's edges would not be permitted to extend beyond the sides and rear ends of the vehicle.

NHTSA has tentatively determined that the vertical distance between the lower surface of the horizontal member of the guard and the ground would have to be 22 inches of less, similar to the 55 cm (21.65 inches) proposed in the 1981 NPRM. Some commenters to the NPRM indicated that the 55 cm. ground clearance would be too low to permit trucks or trailers to maneuver up loading ramps without damaging the guard, and would otherwise impair the function of the vehicles. However, because of events that have occurred in recent years, NHTSA believes the concerns expressed in the comments to the 1981 NPRM have been alleviated. The most important events are the apparent steps taken by the trucking industry toward embracing a 22 inch ground clearance design. The Maintenance Council of the American Trucking Industry has a recommended practice (RP 707) to standardize ICC bumper dimensions that includes a provision for 22 inches of maximum ground clearance.

NHTSA also believes the trucking industry would not be opposed to the proposed 22 inch requirement because several (Michigan, Florida, Georgia and North Carolina, New Hampshire, New York, and Vermont) already specify or are considering specifying a 22 inch ground clearance requirement for certain especially long trailers, i.e., 53 feet or longer. Also, the test procedure for underride guards that is specified in Recommended Practice J260 (June 1990) of the Society for Automotive Engineers (SAE) describes a "test zone" on the vehicle, the lower boundary of which is 18 inches above the ground. The 18 inch lower boundary for the test zone shows that the SAE has recognized that 18 inches of ground clearance would not be an undue restriction on the operation of vehicles equipped with underride guards. Moreover, the agency also believes a 22 inch requirement would be acceptable to the industry because methods for loading trailers and semi-trailers onto trains and ships have changed over the past 10 years. A large portion of the loading and unloading of trailers and semi-trailers on and off ships or trains is now done by using a crane rather than driving the trailers or semi-trailers into position as was done prior to 1981, which eliminates many of the ramp angle concerns expressed in comments to the 1981 NPRM.

NHTSA tentatively concludes that, for safety purposes, the vehicle standard should require that the distance between the ground and the lower edge of the guard must be at most 22 inches. The average height of passenger car front ends has been lowered considerably over the past 10 years. A maximum 22 inch ground clearance requirement would ensure that the rear impact guard will engage substantial vehicle structure (e.g., frame, engine and fenders) during a crash. Also, NHTSA requests comments on the adequacy of the proposed 22 inch requirement. Should the requirement specify that the guard must be lower to the ground?

Feasibility of countermeasure. NHTSA believes production and installation of the guard on present trailers and semi-trailers would be feasible within the leadtime proposed below. Today's proposal is based on a NHTSA research program of underride guards that began in the early 1980's. The agency developed a trailer body simulator that effectively modeled the rear of a trailer body during static and dynamic testing, and evaluated the performance of different guard designs when the guards were attached to the simulated rear of the trailer. (Dynamic Sciences, Inc. Contract No. DTNH22–81–C–07177, November 1982.) Guards that met the strength requirements proposed in today's notice performed well when impacted by a 1980 2-door Volkswagen Rabbit in a 29.4 mph crash, and by a 1978 Chevrolet Impala in a 23.9 mph crash. In both tests, vehicle underride was limited to the extent that there wasn't any PCI. Further, crash dummies restrained in the vehicles showed occupant responses well below the allowable injury criteria limits in FMVSS 208, *Occupant Crash Protection* (49 CFR 571.208).

Estimate of needed improvement. The agency estimates that few, if any, present guards would meet the proposed strength and configuration requirements. Information indicates that there may be some guards that could be strong enough

at their center to meet some of the strength requirements, but these guards may not be wide enough to be tested at the specified outboard test points. Also, the vast majority of current guards do not have a lateral structural member located within 22 inches of the ground. The agency requests information that would help NHTSA estimate the extent to which existing guards would have to be improved to meet the proposed equipment standard, and the extent to which trailers would have to be modified to meet the proposed vehicle standard.

Leadtime. The proposed effective date for the rules is two years after publication of the final rule. The agency believes that this leadtime is sufficient for small trailer and semi-trailer manufacturers to develop or purchase guards for the variety of vehicle models they produce. Also, NHTSA believes that the leadtime would be sufficient to design and produce the guards, because designing and producing the guards would require only marginally more effort than that required to produce and install conventional guards now available.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291. However, this notice is a "significant" rulemaking action under the Department of Transportation regulatory policies and procedures. The notice concerns a matter in which there is substantial public interest. The preliminary regulatory evaluation (PRE) for this notice describes the economic and other effects of this rulemaking action in detail. A copy of this document has been placed in the docket for public inspection.

To briefly summarize the PRE, NHTSA estimates that the proposed guards would have an incremental cost increase of $112.00 per trailer or semi-trailer. This cost represents an incremental increase of $67.00 per guard, $13.33 for replacing the guard's horizontal member when damaged during the life of the trailer or semi-trailer, and an added lifetime fuel cost of $29.53 from the added weight of the guard (approximately 55 pounds) and the attachment hardware. An additional $1.70 cost increment is required for compliance certification. The incremental cost increase of the guard would be less than two percent of the trailer retail cost. NHTSA estimates that the total consumer cost of the proposed rule would be $9,382,800 million annually.

The agency estimates that 9 to 19 fatalities would be eliminated annually by the proposed rule based on the number of vehicle occupants killed in underride collisions with PCI, about 60, and an estimated overall rear end protection guard effectiveness of 18 to 27 percent at preventing PCI. NHTSA further estimates that 76 to 114 non-minor injuries (AIS–2 through 5) would be prevented annually by the proposed rule, including vehicle occupants involved in rear end collisions with and without PCI. The "non-PCI" benefits estimated for this rulemaking may be reduced substantially as airbags become more common and safety belt use increases. If a regulation for enhanced conspicuity were in effect for the rear perimeter of trailers and semi-trailers, the estimate of fatality reduction benefits attributed to rear impact protection guards would be reduced slightly to 8 to 18 fatalities prevented annually. NHTSA also estimates that 69 to 103 non-minor injuries (AIS–2 to 5) would be prevented annually if a regulation for enhanced conspicuity were in effect simultaneously with the proposed rear impact protection guard rule. NHTSA believes that there would be significant additional fatality and injury severity reduction benefits resulting from the rear impact protection guards required by this proposal, but the agency is unable to quantify them.

Regulatory Flexibility Act

NHTSA has analyzed the potential impacts of this rule on small entities under the Regulatory Flexibility Act and has described those possible impacts in the PRE. To summarize the PRE on that subject, the agency seeks to reduce the severity of underride crashes by proposing to improve the design of the impacted vehicle, the trailer, or semi-trailer. Accordingly, trailer and semi-trailer manufacturers would be affected by the proposed rule. There are approximately 322 trailer and semi-trailer manufacturers, most of which are small businesses (less than 500 employees). These manufacturers would have to produce their trailers and semi-trailers with the guard and ensure that the guard is placed within specified distances from the ground and the vehicle's sides and rear. If the trailer and semi-trailer manufacturers were to obtain the guard from a supplier, they would only have to install the guard in accordance with the installation instructions provided with the guard. If the manufacturers produce their own guards, they would have to ensure that the guard met the proposed equipment requirements when tested on a rigid test fixture. Today's proposed rules impose no additional reporting or recordkeeping requirements on small entities.

Today's proposal is itself a less burdensome alternative to the proposed underride guard standard issued in 1981, which specified that NHTSA would test the vehicle to the strength requirements. Today's notice only tests the guard (attached to a test fixture) to those requirements, which avoids the vehicle manufacturer having to test the strength of the guard. Also, unlike the 1981 NPRM, today's notice excludes trucks, because of the apparent lack of a safety need for a guard on those vehicles. Thus, proposing strength requirements for the guard in an equipment standard and excluding truck manufacturers (including small entities) from the rule minimizes the impacts of today's proposal on small entities in a manner that is consistent with the Safety Act. Nevertheless, the agency requests comments on the potential costs and other impacts of the proposed rule on the small entities that would be affected.

Executive Order 12612 (Federalism)

Based on the information available to NHTSA, the agency believes the federalism implications of the proposal would be borderline at most. The information available to the agency indicates that nearly all of the States require underride guards on heavy trailers and semi-trailers, and that most of these require the guard to be mounted within a certain distance from the ground and rear and sides of the vehicle. If the proposed vehicle standard is adopted, it would preempt inconsistent State requirements for the guard. However, the agency believes that Federalism implications would only be borderline becuase the proposed standard would not require that underride guards be fundamentally different from those required by existing State law. Guards complying with the proposed requirements would also meet the preexisting State standard.

In addition, several States (Michigan, Florida, Georgia, North Carolina, New Hampshire, New York, New Jersey, Maine and Vermont) require excessively long trailers (53 or more feet) to have a guard that has the same configuration vis-a-vis the ground and sides of the vehicle as the guard proposed in this notice. Those requirements would not be affected by the rule.

Although the agency has determined that this action does not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment, it should be noted that, regardless of that determination, NHTSA also believes that measures to reduce the fatalities caused by underride crashes can only be implemented effectively at the national level. Only trailer and semi-trailer manufacturers can produce a trailer or semi-trailer with improved rear impact crash protection. Because the proposed improvements would cause trailer and semi-trailer manufacturers and operators to incur costs, rear end collision countermeasures such as an upgraded underride guard could directly affect a manufacturer's competitive position if voluntarily implemented by some, but not all, trailer or semi-trailer manufacturers. A federal safety standard would implement the proposed changes uniformly across the industry and thus reduce competitive effects. A uniform standard would also lower the cost of the safety countermeasure for consumers by taking advantage of economies of scale.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Comments On the Proposal

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal, regardless of their filing date, will be placed in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes that 49 CFR part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. A new safety standard, Standard No. ____, Rear Impact Guards, would be added to part 571, to read as set forth below.

§ 571.____, Standard No. ____; Rear Impact Guards.

S1. *Scope.* This standard specifies requirements for rear impact guards for trailers and semi-trailers with a gross vehicle weight rating (GVWR) of 10,000 pounds or more.

S2. *Purpose.* The purpose of this standard is to reduce the number of deaths and serious injuries that occur in rear underride collisions that involve trailers and semi-trailers with a GVWR of 10,000 pounds or more.

S3. *Application.* This standard applies to rear impact guards for trailers and semi-trailers with a GVWR of 10,000 pounds or more subject to Federal Motor Vehilce Safety Standard No. ____, Rear Impact Protection.

S4. *Definitions. Chassis* means the load-supporting structure of a motor vehicle.

Rear impact guard means a device installed on or near the rear of a vehicle so that when the vehicle is struck from the rear by a smaller vehicle, the device limits the distance that striking vehicle's front end slides under the impacted vehicle's rear end.

Rigid test fixture means a supporting structure that is sufficiently large and appropriately configured so the guard can be attached to it, and that dissipates no significant amount of the energy from the force applied to the guard.

S5. *Requirements.* Each rear impact guard shall:

(a) Meet the requirements of S5.1 through S5.4; and

(b) Except in the case of a guard manufactured by a company for installation on a vehicle it manufactures, meet the requirements of S5.5.

S5.1. *Configuration.* Each guard shall have a cross sectional vertical height of at least four inches at any point across the full width of the horizontal member of the device.

S5.2. *Strength.* When tested under the procedures of S6 with the appropriate force level specified in S5.2.3, each guard shall comply with the requirements of S5.2.1 at each of the test sites determined in accordance with S5.2.2 of this paragraph. However, a particular guard (i.e., test specimen) need not be tested at more than one site.

S5.2.1. In accordance with the test procedures described in S6, when each test site is subjected to the force levels specified in S5.2.3 (a) through (c) for that site, any forward longitudinal movement of the center point on the contact surface of the loading device shall not exceed five inches.

S5.2.2. *Test sites.* With the guard oriented as it would be installed on a vehicle, determine test sites P_1, P_2, and P_3 on the guard in accordance with the procedure set forth in paragraphs (a) through (c) of this section, and as shown in Figure 1.

(a) Test site P_1 is the point on the rearmost surface of the horizontal member of the guard that lies in the horizontal plane passing through the vertical center of that member and that is ⅜ of the transverse horizontal distance between the longitudinal

centerline of the guard and a longitudinal vertical plane tangent to the guard's outermost edge on either the right or left side of the guard.

(b) Test site P_2 is the point on the rearmost surface of the horizontal member of the guard that lies in the longitudinal vertical plane passing through the longitudinal centerline of the guard and in the horizontal plane that passes through the vertical center of the horizontal member of the guard.

(c) Test site P_3 is any point on the rearmost surface of the horizontal member of the guard that is between 14 inches and 20 inches outboard of the longitudinal centerline of the guard on either the right or left side of the horizontal member of the guard, and that lies in the horizontal plane that passes through the vertical center point of the horizontal member of the guard.

S5.2.3. The force levels described below in paragraphs (a) through (c) are applied to the test sites identified in accordance with S5.2.2, according to the procedures specified in S6.

(a) Apply a force of 11,240 pounds to the guard at either test site P_1 on the right or left side.

(b) Apply a force of 11,240 pounds to the guard at test site P_2.

(c) Apply a force of 22,480 pounds to the guard at either test site P_3 on the right or left side.

S5.3. *Labeling.* Each guard shall be permanently labeled with the information specified in paragraphs (a) through (c). The labeling shall be placed on the rearmost surface of the guard at the vertical centerline of the horizontal member of the guard. The information specified in paragraphs (a) through (c) of this section shall be in English and in letters and numbers that are at least one half inch high.

(a) The guard manufacturer's name and address.

(b) The statement: "Manufactured in ____," inserting the month and year of manufacture of the guard.

(c) The symbol DOT constituting a certification by the guard manufacturer that the guard conforms to all requirements of this standard.

S5.4. *Attachment hardware.* Each guard shall be accompanied by all attachment hardware necessary for installation of the guard to the chassis of the motor vehicle on which the guard will be installed.

S5.5. *Installation instructions.*

S5.5.1. Each rear impact guard shall be accompanied by printed installation instructions in English for installing the guard on a motor vehicle.

S5.5.2. The instructions shall specify—

(a) The types of vehicles with which the guard can be used.

(b) The necessity for attaching the guard to the vehicle's chassis.

(c) How the attachment hardware is to be used to install the guard properly.

S6. *Test procedures for evaluating rear impact guards.* The following procedures apply to determining compliance with paragraph S5.2.1:

(a) Attach the rear impact guard to a rigid test fixture according to instructions for guard attachment provided by the guard manufacturer in accordance with S5.5 for that guard or, in the case of a guard produced by a company for installation on a vehicle produced by that same company, according to the procedures followed by the company in installing that guard.

(b) Use a loading device consisting of a rectangular solid made of rigid steel. The solid is eight inches in hieght and eight inches in width. The 8 inch by 8 inch face of the block is used as the contact surface. Each edge of the contact surface has a radius of curvature of 5±1 mm.

(c) Before applying any force, locate the loading device so that:

(1) The center point of the contact surface of the loading device is touching the guard at the test site selected for testing in accordance with S5.2.2.

(2) The longitudinal axis of the loading device passes through the test site and is perpendicular to the transverse vertical plane tangent to the rearmost surface of the guard.

(d) Using the loading device, subject the underride guard to the force specified in S5.2.3 for the selected test site, applying the force to the rearmost surface of the underride guard in a forward direction.

(e) Each of the forces specified in S5.2.3 is reached in not less than one minute and not more than two minutes by increasing the application of force at a constant rate.

(f) During each force application, the loading device is guided so that it does not rotate. At all times during the application of force, the longitudinal axis of the device remains at the intersection of the vertical and horizontal planes that passed through the axis immediately before the application of force.

(g) When the force specified in S5.2.3 for the selected test site is reached, measure the distance that the center point of the loading device contact surface has traveled longitudinally forward from its initial point of contact with the guard.

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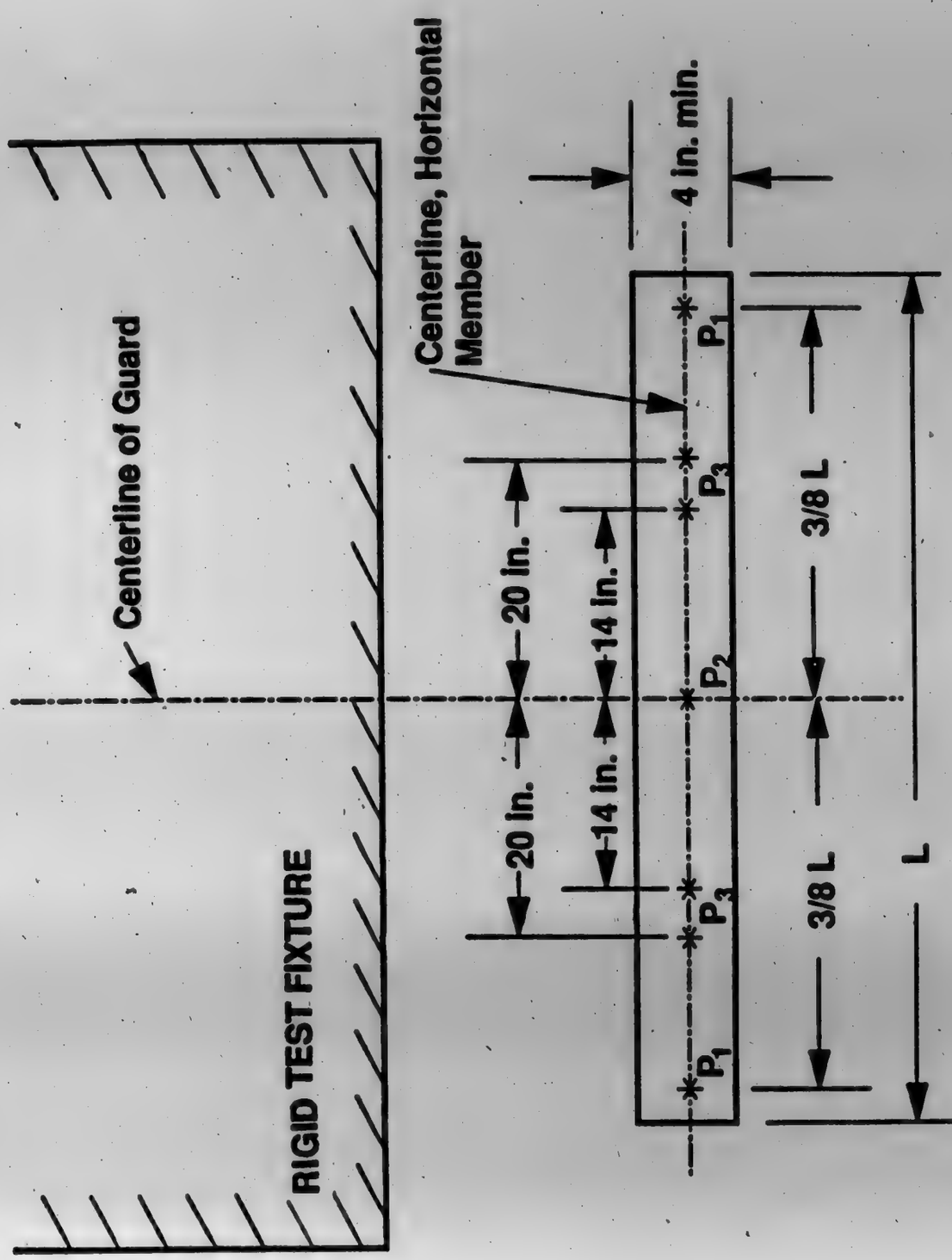

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Figure 1. Performance Requirements.

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3. A new safety standard, Standard No. ____, Rear Impact Protection, would be added to part 571, to read as set forth below.

§ 571.____, Standard No. ____; Rear Impact Protection.

S1. *Scope.* This standard establishes requirements for the installation of rear impact guards on trailers and semi-trailers with a gross vehicle weight rating (GVWR) of 10,000 pounds or more.

S2. *Purpose.* The purpose of this standard is to reduce the number of deaths and injuries occurring when vehicles impact the rear of trailers and semi-trailers with a GVWR of 10,000 pounds or more.

S3. *Application.* This standard applies to trailers and semi-trailers with a gross vehicle weight ratings (GVWR) of 10,000 pounds or more. The standard does not apply to single unit trucks, truck tractors, pole trailers, low chassis trailers, special purpose vehicles, or wheels back vehicles.

S4. *Definitions. Chassis* means the load-supporting structure of a motor vehicle.

Low chassis vehicle means a trailer or semi-trailer having a chassis which extends behind the rearmost point on the rear tires and whose rear lower surface meets the configuration requirements of S5.2.

Rear extremity means the rearmost point on a vehicle that falls above a horizontal plane located 22 inches above the ground when the vehicle is unloaded but has its full capacity of fuel and the tires are inflated in accordance with the manufacturer's recommendations. Also, the vehicle's cargo doors, tailgate, or other permanent structures are positioned as they normally are when the vehicle is being driven. Nonstructural protrusions such as taillights, hinges and latches are excluded from the determination of the rearmost point.

Side extremity means the outermost point on a side of the vehicle that is above a horizontal plane located 22 inches above the ground and between a transverse vertical plane tangent to the vehicle rear extremity and a transverse vertical plane located 12 inches forward of that plane when the vehicle is unloaded but has its full capacity of fuel and the tires are inflated in accordance with the manufacturer's recommendations. Nonstructural protrusions such as taillights, hinges, and latches are excluded from the determination of the outermost point.

Special purpose vehicle means a trailer or semi-trailer having work-performing equipment that is located at the lower rear of the vehicle and whose function would be significantly impaired if a rear impact protection guard meeting the requirements of this standard were attached to the vehicle.

Wheels back vehicle means a trailer or semi-trailer having a permanently fixed rear axle so that the rearmost part of the tires on that axle is not more than 12 inches from the transverse vertical plane tangent to the rear extremity of the vehicle.

S5. *Requirements.* Each vehicle shall be equipped with a rear impact guard that complies with the requirements of S5.1 through S5.3.

S5.1 *Certification.* The guard shall be certified as meeting Federal Motor Vehicle Safety Standard No. ____, Rear Impact Guards.

S5.2 *Configuration requirements.* When the vehicle to which the guard is attached is resting on level ground, the guard shall comply with the requirements of S5.2.1 through S5.2.3 below. (See Figure 1.)

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33a

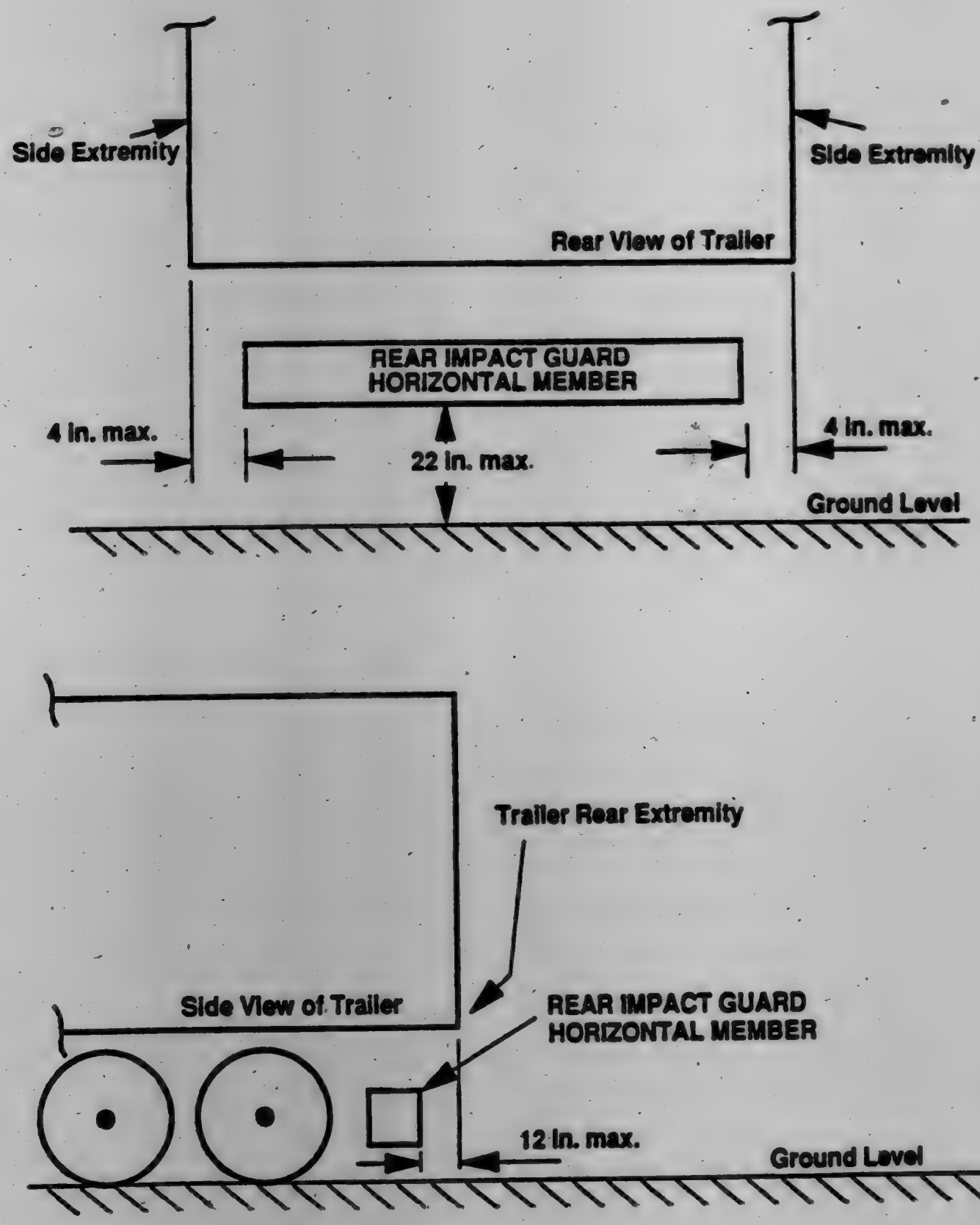

Figure 1. Configuration Requirements, Rear and Side View.

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S5.2.1 *Guard width.* At any height not more than 22 inches above the ground, the outermost edges of the guard shall not be located outboard of the longitudinal vertical planes tangent to the side extremities of the vehicle, nor inboard of the longitudinal vertical planes 4 inches inboard of those planes.

S5.2.2 *Guard lower edge.* The vertical distance between the lower surface of the horizontal member of the guard and the ground shall not exceed 22 inches at any point across the full width of the member when the vehicle is unloaded but has its full capacity of fuel and its tires are inflated in accordance with the vehicle manufacturer's recommendations.

S5.2.3 *Guard rear surface.* At any height not more than 22 inches above the ground, the rearmost surface of the horizontal member of the rear impact guard shall not be located rearward of a transverse vertical plane tangent to the rear extremity of the vehicle, nor forward of a transverse vertical plane located 12 inches in front of the first plane.

S5.3 *Installation requirements.*

S5.3.1 Except for guards that are produced and installed by a vehicle manufacturer for vehicles produced by him, each guard shall be mounted to the vehicle's chassis in accordance with directions provided by the guard manufacturer pursuant to S5.5 of § 571.____.

S5.3.2 Guards that are produced and installed by a vehicle manufacturer for vehicles produced by him shall be mounted to the vehicle's chassis.

Issued on: December 27, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-24 Filed 1-2-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Foreign Proposals To Amend Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed amendments to CITES appendices and public meeting.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) regulates international trade in certain animals and plants. Species for which trade is controlled are listed in appendices I, II, and III to CITES. Any nation that is a party to CITES may propose amendments to appendix I or II for consideration by the other Parties.

This notice announces proposals submitted by Parties other than the United States and the Service's tentative negotiating positions, and invites information and comments on these proposals in order to develop negotiating positions for the U.S. delegation. The proposals will be considered at the eighth regular Meeting of the Conference of the Parties, to be held in Kyoto, Japan from March 2–13, 1992.

DATES: The U.S. Fish and Wildlife Service (Service) will consider all comments received by January 31, 1992, in developing final negotiating positions. The Service plans to publish a notice of its final negotiating positions prior to the meeting of the Parties.

A public meeting will also be held to receive comments from the public on January 8, 1992, at 2 p.m.

ADDRESSES: Please send correspondence concerning this notice to Chief, Office of Scientific Authority; Arlington Square Building, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240. The fax number is 703–358–2276. Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; 4401 North Fairfax Drive, room 750; Arlington, Virginia 22203. Comments and other information received are available for public inspection by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

The public meeting will be held in room 7000 at the Department of the Interior, 18th and C Sts. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address; telephone 703–358–1708 (or FTS 921–1708).

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless trade in them is strictly controlled. It also listed species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to appendices I and II for consideration at the meetings of the Conference of the Parties. The text of any proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses and the Secretariat's own findings and recommendations to all Parties no later than 30 days before the meeting. Amendments to the Appendices are adopted by a two-thirds majority of the Parties present and voting.

Information Sought

This notice announces proposals submitted by Parties other than the United States for consideration at the forthcoming meeting of the Parties, and sets forth tentative negotiating positions of the U.S. delegation on foreign proposals. The Service solicits comments on its tentative negotiating positions, on the biological status of the affected species, on the amount and type of trade in specimens of the species, and on the impact of trade on their populations, especially as it relates to any potential effects on survival of the species. Comments that provide this information based on the criteria for adding or removing species from the appendices would be especially helpful.

The Service has based its present tentative negotiating positions mainly on the review of information presented in the proposals by proponents and in terms of criteria adopted at previous meetings of the Conference of the Parties of CITES. Some of the proposals had to be translated into English from Spanish or French (also official languages under terms of the Convention). Because information provided in many of the proposals or otherwise available to the Service is too incomplete to allow clear judgments about their merits, several of the tentative negotiating positions presented may be revised as additional biological and trade data are obtained. Final

guidance for the delegation is to be based on the best available biological and trade information, including comments received in response to this notice.

Proposals

In accordance with the provisions of Article XV, paragraph 1(a) of the Convention: Argentina, Austria, Botswana, Brazil, China, Costa Rica, Denmark, Ethiopia, Germany, Indonesia, Kenya, Madagascar, Malawi, Malaysia, Namibia, the Netherlands, Paraguay, the Philippines, South Africa, and Sudan, Sweden, Switzerland, Tanzania, Thailand, Uganda, the United Kingdom of Great Britain and Northern Ireland, Zambia, and Zimbabwe, all Parties to the Convention, have communicated to the Secretariate the following proposals for amendment of Appendices I or II of the Convention. Proposals submitted by the United States will be discussed in a subsequent **Federal Register** notice.

A total of 144 proposals on both plant an animal species were submitted by countries other than the United States, including 17 proposals that were submitted based on the "Ten Year Review" concept first adopted at the 1981 Conference of the Parties in New Dalhi, India. Some of the proposals by Switzerland recommend the deletion from the appendices of those species that have not been reported in trade, unless the species should be included in appendix II because of similarity in appearance to related taxa that do appear in trade.

However, the lack of reported trade for some species proposed for deletion from the appendices may be due to (1) their rarity, (2) the possibility that their listing in the appendices has inhibited trade, or (3) the lack of proper documentation on the reporting of trade. Consequently, the Service does not believe that lack of appearance in trade is, by itself, a sufficient reason to warrant the removal of a taxon from the appendices. In establishing a tentative negotiating position on these "Ten Year Review" delisting proposals, the Service will consider the degree of vulnerability of the species and the likelihood of it entering trade.

In addition to the listing, delisting, and transfer proposals there are two other categories of proposals. Switzerland, in carrying out its responsibilty as CITES depository government, submitted proposal to transfer several populations of crocodiles from appendix II to appendix I. These proposals provide the basis for Parties to act on their previously stated intentions if countries do not submit, or Parties do not adopt, appropriate amendments under resolutions adopted by the third and seventh meeting of the Parties (Conf. 3.15 on ranching or Conf. 7.14 on export quotas). Such is the case for some populations of crocodiles presently on appendix II under special provision. However, for those populations for which ranching proposals or export proposals have been submitted, and if adopted by the Parties, Switzerland intends to withdraw its proposed amendment to transfer these populations to appendix I.

The second category of proposals involves those that would register the first commercial captive-breeding operations for an appendix I animal species. Sixteen such proposals, involving 15 species, have been submitted for consideration at the March meeting of the Conference of the Parties. The Service will consider these proposals based on the criteria described in resolution Conf. 7.10 (available from the Service upon request).

Proposals submitted by Parties other than the United States are listed in the following table. Tentative negotiating positions and the basis for making them also are indicated. These positions were taken largely on the basis of the information contained in the proposals. If insufficient population and/or trade information was provided, the Service's position is usually to oppose the proposal, pending the receipt of further information and a review of the relevant scientific literature. If no supporting documentation has been received the Service has taken no position on the proposed change. The complete text of each proposal received is available for public inspection at the Service's Office of Scientific Authority (see address above). The text of any referenced resolution from previous meetings of the Conference of the Parties is available from the Service's Office of Scientific Authority or the Office of Management Authority (see above addresses).

Proposed amendments and the Service's tentative position are as follows:

Species	Proposed amendment	Proponent	Tentative U.S. position
MAMMALS			
Order primates:			
Tarsius syrichta (Philippine tarsier)	Transfer from II to I	Philippines	Support (3).
Order edentata:			
Tamandua tetradactyla chapadensis (Tamandua, collared anteater).	Remove from II (ten year review)	Germany	Support (3,10).
Order pholidota:			
Manis temminckii (common African ground pangolin).	Remove from I	Botswana, Malawi, Namibia, and Zimbabwe.	Oppose (11).
Order carnivora:			
Acinonyx jubatus (cheetah)	Transfer from I to II (Botswana, Malwai, Namibia, Zambia, and Zambabwe populations with quotas).	Namibia, Zimbabwe	No position (1).
Dusicyon (=cerdocyon) thous (crab-eating fox).	Add to II	Argentina	Support (2,3).
Conepatus spp. (hog-nosed skunks)	...do	...do	Do.
Felis geoffroyi (Geoffroy's cat)	Transfer from II to I	Brazil	Support (3).
Hyaena brunnea (brown hyaena)	Remove from I	Botswana, Malawi, Namibia, and Zimbabwe.	Support (11).
Panthera pardus (leopard)	Transfer from I to II (Sub-Sahara population with quotas).	Botswana, Malawi, Namibia, Zambia, and Zimbabwe.	Oppose (17).
Panthera tigris altaica (Siberian tiger)	Transfer from I to II (captive breeding)	China	Oppose (16).
Ursidae spp. (bear spp.)	Add to II (USSR and Baltic States populations) [for look-alike reasons—Article II, 2(b)].	Denmark	Support (7).
Ursus arctos	Add to I (populations of China and Mongolia).	...do	Support (3).

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Species	Proposed amendment	Proponent	Tentative U.S. position
Ursus americanus (American black bear)	Add to II [for look-alike reasons—Article II, 2(b)].	do	Oppose (8).
Order tubulidentata:			
Orycteropus afer (aardvark)	Remove from II	Botswana, Malawi, Namibia, and Zimbabwe.	Support (11).
Order proboscidea:			
Loxodonta africana (African elephant)	Transfer from I to II (Botswana, Malawi, Namibia, Zambia, and Zimbabwe populations).	Botswana, Malawi, Namibia, and Zimbabwe.	See discussion in footnote (18).
Do	Transfer from I to II (Botswana population).	Botswana	Do.
Do	Transfer from I to II (South Africa population).	South Africa	Do.
Order perissodactyla:			
Ceratotherium simum simum (southern white rhino).	Transfer from I to II	South Africa	Oppose (22).
Do	Transfer from I to II (Zimbabwe population).	Zimbabwe	Oppose (4,6,22).
Diceros bicornis (Black rhino)	Transfer from I to II (Zimbabwe population).	do	Do.
Do	Transfer from I to II	do	Oppose (16,22).
Order artiodactyla:			
Capra falconeri falconeri (astor markhor)	Transfer from II to I	United Kingdom	Support (6).
Capra falconeri heptneri (bukhara markhor)	do	do	Do.
Hippotragus equinus (roan antelope)	Remove from II:	Botswana, Malawi, Namibia, Zambia, and Zimbabwe.	Support (11).
BIRDS			
Order rheiformes:			
Rhea americana (greater rhea)	Add to II	Argentina	Support (20).
Order anseriformes:			
Anas formosa (baikal teal)	Add to II	United Kingdom	Support (3).
Cygnus columbianus jankowskii (Jankowski's swan).	Remove from II (ten year review)	Germany	Support (10).
Order columbiformes:			
Goura spp. (crowned pigeons)	Transfer from II to I	Netherlands	Support (3).
Order psittaciformes:			
Amazona leucocephala (Cuban amazon)	Transfer from I to II (captive breeding)	Germany	Support (15).
Do	do	Philippines	Oppose (16).
Anodorhynchus hyacinthinus (Hyacinth macaw).	do	do	Do.
Ara ambigua (buffon's macaw)	do	do	Do.
Ara macao (scarlet macaw)	do	do	Do.
Ara maracana (illiger's macaw)	do	do	Do.
Ara militaris (military macaw)	do	do	Do.
Ara rubrogenys (red-fronted macaw)	do	do	Do.
Cacatua haematuropygia (red-vented cockatoo).	Transfer from II to I	do	Support (3).
Cacatua moluccensis (moluccan cockatoo)	Transfer from I to II (captive breeding)	do	Support (15).
Probosiger aterrimus (palm-cockatoo)	do	do	Oppose (16).
Order coraciiformes:			
Aceros spp. (hornbills)	Add to II (8 spp.)	Netherlands	Support (7).
Aceros (=Berenicornis) *comatus* (hornbill)	Add to I	Thailand	Oppose (4,9).
Aceros corrugatus (hornbill)	do	do	Do.
Aceros nipalensis (rufous-necked hornbill)	do	do	Do.
Aceros subruficollis (hornbill)	do	do	Do.
Aceros undulatus (hornbill)	Add to II	do	Support (3).
Anorrhinus spp. (hornbill)	do	Netherlands	Support (7).
Anorrhinus austeni (hornbill)	do	Thailand	Support (3).
Anorrhinus galeritus (hornbill)	do	do	Do.
Anthracoceros spp. (hornbills)	do	Netherlands	Oppose (4,5).
Anthracoceros coronatus coronatus	do	Thailand	Support (3).
Anthracoceros albirostris (=*malabaricus*) (oriental pied-hornbill).	do	do	Do.
Anthracoceros malayanus (black hornbill)	Add to I	do	Oppose (4, 5, 9).
Buceros spp. (giant hornbills)	Add to II	Netherlands	Support (7).
Buceros bicornis (great Indian hornbill)	Transfer from II to I	do	Oppose (4, 5).
Buceros bicornis homari (great pied hornbill)	do	do	Do.
Buceros rhinoceros (rhinoceros hornbill)	do	Thailand	Do.
Penelopides spp. (hornbills)	Add to II	Netherlands	Do.
Ptilolaemus spp. (hornbills)	do	do	Do.
Order piciformes:			
Ramphastos spp. (toucans)	Add to II	Paraguay	Support (3)
Pteroglossus spp. (toucans)	do	do	Do.
Order passeriformes:			
Pittidae spp. (pittas)	Add to II (24–26 spp.)	Malaysia	Oppose (21).
Order crocodylia:			
Alligator sinensis (Chinese alligator)	Transfer from I to II (captive breeding)	China	Oppose (16).
Crocodylus cataphractus (African slender-snouted crocodile).	Transfer from II to I (Congo population)	Switzerland	Support (14).

Species	Proposed amendment	Proponent	Tentative U.S. position
Crocodylus niloticus (Nile crocodile)	Transfer Ethiopia population from I to II, pursuant to Resolution Conf. 3.15 on ranching.	Ethiopa	Support (12).
Do.	Transfer Kenya population from I to II, pursuant to Resolution Conf. 3.15 on ranching.	Kenya	Do.
Do.	Transfer Madagascar population from I to II, pursuant to Resolution Conf. 3.15 on ranching.	Madagascar	Do.
Do.	Transfer Tanzania population from I to II, pursuant to Resolution Conf. 3.15 on ranching.	Tanzania	Do.
Do.	Maintain Sudanese population in II, subject to an export quota.	Sudan	Oppose (4, 13, 14, 25)
Do.	Transfer from I to II, (South Africa population).	South Africa	Support (3).
Do	Transfer from I to II (Uganda population subject to an export quota pursuant to resolution Conf. 7.14).	Uganda and Zimbabwe	Support (12).
Do	Transfer from II to I (Cameroon, Congo, Kenya, Madagascar, Sudan, and Tanzania populations).	Switzerland	Support (14).
Crocodylus porosus (saltwater crocodile)	Transfer Indonesia population from I to II, pursuant to resolution Conf. 3.15 on ranching.	Indonesia	Support (12).
Do	Transfer from II to I (Indonesia population).	Switzerland	Oppose (14).
Osteolaemus tetrapis (dwarf crocodile)	Transfer from II to I (Congo population)	....do	Support (14).
Order squamata:			
Corucia zebrata (prehensile-tailed skink)	Add to II	Germany	Support (3).
Vipera wagneri (Wagner's viper)	....do	Sweden	Support (6).
AMPHIBIANS			
Rana arfaki (frog)	Add to II	Germany	Support (7).
Rana blythii (frog)	....do	....do	Do.
Rana cancrivora (frog)	....do	....do	Do.
Rana crassa (frog)	....do	....do	Do.
Rana cyanophlyctis (frog)	....do	....do	Do.
Rana grunniens (frog)	....do	....do	Do.
Rana ibanorum (frog)	....do	....do	Do.
Rana ingeri (frog)	....do	....do	Do.
Rana kuhlii (frog)	....do	....do	Do.
Rana limnocharis (frog)	....do	....do	Do.
Rana macrodon (including *R. microtympanum*.	....do	....do	Do.
Rana magna (frog)	....do	....do	Do.
Rana malesiana (frog)	....do	....do	Do.
Rana modesta (frog)	....do	....do	Do.
Rana paramacrodon (frog)	....do	....do	Do.
Rana rugulosa (frog)	....do	....do	Do.
BONY FISHES			
Order clupeiformes:			
Clupea harengus	Add to I	Botswana, Malawi, Namibia, and Zimbabwe.	Oppose (4).
Order cypriniformes			
Gymnocharacinus bergi (characin)	....do	Argentina	Support (2, 3).
Order atheriniformes:			
Cynolebias constanciae (killifish)	Remove from II (Ten year review)	Switzerland	Support (10).
Cynolebias marmoratus (killifish)	....do	....do	Do.
Cynolebias minimus (killifish)	....do	....do	Support (10).
Cynolebias opalescens (killifish)	....do	....do	Do.
Cynolebias splendens (killifish)	....do	....do	Do.
Order perciformes:			
Thunnus thynnus (bluefin tuna)	Add to I (Western Atlantic population)	Sweden	Oppose (24).
Do	Add to II (Eastern Atlantic population)	....do	Do.
PLANTS			
Family anacardiaceae:			
Schinopsis spp. (quebrachos)	Add to II (3–7) spp.)	Argentina	Support (3,7).
Family araceae:			
Alocasia sanderiana (Sander's alocasia)	Remove from I (ten year review)	Philippines; Switzerland	Support (3,9,10).
Family bromeliaceae:			
Tillandsia spp. (tillandsias)	Add to II [400–500+ spp.]	Austria; Germany	Oppose (4,21).
Family cactaceae:			
Ariocarpus spp. (living-rock cacti)	Transfer from II to I (3+ spp.)	Netherlands	Support (3).
Discocactus spp. (discocacti)	Transfer from II to I (8+ spp.)	Brazil	Do
Melocactus conoideus (conelike Turk's-cap cactus).	Transfer from II to I	....do	Support (3).
Melocactus deinacanthus (wonderfully bristled Turk's-cap cactus).	....do	....do	Do.
Melocactus glaucescens (grayish blue-green, wooly Turk's-cap cactus).	....do	....do	Do.

Species	Proposed amendment	Proponent	Tentative U.S. position
Melocactus pescispinus (few-spined Turk's-cap cactus).	....do	....do	Do.
Uebelmannia spp. (Uebelmann cacti)	Transfer from II to I (4+ spp.)	....do	Do.
Family caryocaraceae:			
Caryocar costaricense (ajo; garlic tree)	Remove from II (ten year review)	Switzerland	Oppose 4,10).
Family fagaceae:			
Quercus copeyensis	Remove from II (ten year review)	Switzerland	Oppose (4,5,10).
Family humiriaceae:			
Vantanea barbourii (ira chircana)	Remove from II (ten year review)	Switzerland	Oppose (4,10).
Family juglandaceae:			
Oreomunnea pterocarpa (gavilan)	Remove from I (ten year review)	Switzerland	Oppose (4,10).
Family leguminosae (= fabaceae):			
Cynometra hemitomophylla (guapinol negro)	Remove from II (ten year review)	Switzerland	Oppose (4,10).
Dalbergia nigra (Brazilian rosewood)	Add to I	Brazil	Support (3).
Intsia spp. (merbau, Borneo-teak)	Add to II (3 spp.)	Denmark and Netherlands	Support (3,7).
Pericopsis elata (afrormosia)	Add to II	Denmark and United Kingdom	Support (3).
Platymiscium pleiostachyum (cristobal, granadillo).	Remove from II (ten year review)	Switzerland	Oppose (4,10).
Tachigali versicolor (cana fistuta)	....do	....do	Oppose (4,5,10).
Family meliaceae:			
Swietenia spp. (American mahoganies)	Add to II (2-3 spp.)	Costa Rica; [also U.S.A.]	Support (3,7).
Family moraceae:			
Batocarpus costaricensis (ojoche macho)	Remove from II (ten year review)	Switzerland	Oppose (4,5,10).
Family orchidaceae:			
Didiciea cunninghamii (didiciea)	Remove from I (ten year review)	Switzerland	Oppose (5,9,10).
Family palmae (= arecaceae):			
Areca ipot	Remove from II (ten year review)	Switzerland	Oppose (4,5,10).
Family thymeleaceae:			
Gonystylus bancanus (amin)	Add to II	Denmark and Netherlands	Support (3,7).
Family zingiberaceae:			
Hedychium philippinense (Philippine garland flower).	Remove from I	Switzerland	Support (3,5,9,10).

The bases for the tentative U.S. positions on the proposals are:

(1) While this amendment to the appendices has been proposed, the Service has not received any supporting statement from the CITES Secretariat.

(2) The original proposal is in French or Spanish. The Service will provide an English translation upon request.

(3) The listing or delisting of the taxon or taxa, as proposed, appears to be justified by the information in the proposal or currently available to the Service. In terms of some of the timber proposals, however, the Service will support some of the timber proposals only if they are amended to exclude certain parts and/or derivatives of the taxon.

(4) The population status (i.e., the degree of threat of extinction) of the entire species or taxon does not appear to warrant the listing, downlisting, or delisting as proposed.

(5) Available information suggests that there is little likelihood that there has been or will be any significant international trade in this species.

(6) The Service would support listing, or retention, of this taxon in Appendix I on the basis of resolution Conf. 2.19 (i.e., due to the taxon's rarity, and because any trade in it would be detrimental), and because trade has been documented and may increase.

(7) Listing of this species (including population) or higher taxon appears justified because of its similarity of appearance to a species or taxa that are at risk of detrimental trade.

(8) This listing has been proposed because of the preceived need to regulate this species in order that trade in Asian bear species listed in appendix I or II may be brought under effective control due to similarity of appearance, particularly for the gall bladder trade (article II, paragraph 2b). The Service believes that the necessary regulation has been achieved with the recent listing of this species in appendix III by Canada. That listing is not acknowledged in the proposal.

(9) Biological and trade information presented in this proposal do not appear to support listing in appendix I. However, other information is available or may become available to support listing the species or taxon in Appendix II.

(10) This proposal was submitted under the ten year review resolution for downlisting or removal of the species and other taxa from the appendices. The Service either: Supports the proposal believing the information presented to be an accurate interpretation of the likely effect of trade and the lack of risk to the species; or opposes the proposal for removal believing that the lack of reported international trade for the species may be due to rarity, or the lack of proper documentation of actual trade.

(11) This downlisting has been proposed under the provisions of resolution Conf. 2.23, which provided for downlisting or removal of species or other taxa that were included in appendix I or II prior to application of the Berne criteria for addition of species to the appendices. The proposal does not present information sufficient to meet the downlisting criteria under Conf 1.2, but in most instances it appears that international trade is non-existent or extremely restricted, and therefore, would have been considered for downlisting or delisting under the "10-year review" process (Conf. 3.20) or periodic review process (Conf. 6.1) established subsequent to Conf. 2.23. Therefore, the Service intends to support most of these proposals either for downlisting or removal from the appendices, but will consult with Switzerland (previous chair of the 10-year review committee) or Germany (chair of the periodic review group of the Animals Committee). However, the Service's tentative position is to oppose the removal of the cape pangolin from Appendix I because of the possibility of trade in this species.

(12) The transfer of certain Nile and saltwater crocodile populations from appendix I to appendix II was proposed pursuant to resolution Conf. 3.15 on ranching, at least one population subject to annual export quotas for wild harvested specimens. The Service's initial support of these proposals is contingent upon assurance that annual reports are being regularly filed with the

CITES Secretariat by the proponent and that either (1) adequate management programs exist to monitor the wild population, or (2) animals will be returned to the wild in numbers greater than would have survived naturally (the original concept of Conf. 3.15).

(13) The transfer of certain populations from appendix I to II was proposed pursuant to resolution Conf. 5.21, subject to an annual export quota.

(14) Switzerland, as depository government, proposed the transfer from appendix II to I those species that were downlisted from appendix I to II under the provisions of Conf. 5.21. This transfer was called for under the provisions of Conf. 7.14 unless regular downlisting or ranching proposals were submitted for consideration and adopted at the upcoming meeting of the Parties. If the ranching proposals for crocodile populations in Indonesia, Kenya, Madagascar, and Tanzania are adopted by the Parties, Switzerland will presumably withdraw its proposal for those populations. However, the effect of the revised proposal, if all other crocodilian proposals were adopted, would be to return the populations of the dwarf and slender-snouted crocodile in the Congo, and the Nile crocodile in the Cameroon and the Congo, and possibly the Sudan, to appendix I.

(15) Present information supports the proposal to register this appendix I animal species as bred in captivity for commercial purposes under the provisions of resolution Conf. 7.10 (i.e., criteria for a proposal to register the first commercial captive-breeding operation for an appendix I animal species).

(16) Information presented does not indicate that the breeding program meets the criteria stipulated in resolution Conf. 7.10 for registration of the first commercial captive-breeding operation for an appendix I animal. In most instances, either second generation stock has not been produced, or has not been reliably produced. For the Chinese alligator the management program has not been presented in a manner to ensure that the collection will be managed in a way to minimize inbreeding.

(17) The Service recognizes the difficult, if not impossible, requirements imposed by the provision of Conf. 1.2 that expects a showing of improvement in population trends when no adequate surveys were available at the time of the listing. However, until this issue is further clarified, the Service cannot support this proposal under the provisions of Conf. 1.2. The proponent recognized this situation, and the proposal to transfer the leopard from appendix I to appendix II with export quotes adopted by the Parties was submitted under the provisions of resolution Conf. 7.14. This appears to represent an appropriate application of this resolution although such a downlisting can remain in effect for only two intervals between meetings of the Conference of the Parties. However, Conf. 7.14 requires, among other things, "sufficient evidence from a well-documented scientific report on population size and geographical range of the species based on at least a single survey to establish that the species should be included in the appendix II rather than appendix I, according to the criteria of Conf. 1.1." Population "estimates" are provided in the proposal, but this information does not appear to meet the standard stipulated in the resolution. The Service will seek additional information, but presently, the Service supports continuation of the export quotas system for trophies and skins for tourists as previously provided for in resolution Conf. 7.7.

(18) The Service believes that in order for the African countries to maintain substantial populations of African elephants the people in those countries must realize both consumptive and nonconsumptive benefits from this natural resource. The African elephant was listed in appendix I, at COP7 for a number of reasons including to control illegal trade in ivory. A resolution (Conf. 7.9) adopted with this listing acknowledged that some elephant populations may not have met the Berne criteria and set up special criteria for consideration of future downlisting proposals. The Service will consider support for downlisting to appendix II of some of the proposed populations, in accordance with the Conf. 7.9 criteria, if convinced that these populations are not threatened with extinction and that trade in illegal ivory will not be stimulated to the detriment of wild populations. Such assurance might be achieved by allowing only trade in non-ivory parts at this time. The challenges to CITES is to assist in the establishment of a regulated marketplace for elephant products from those countries that have abundant and well managed populations without impacting populations in those countries that do not. This necessitates a marketing system which demonstrably excludes illegally taken ivory. Several Southern African countries are now working towards this end by developing a Southern Africa Center for Ivory Marketing (SACIM). CITES should supplement this effort by developing an international system for monitoring the trade of ivory once it has left the SACIM Trade Center for consumer countries, such as allowing only one-time trade from country of harvest to consumer country with no further trade permitted including no trade in worked ivory. For South Africa, the Service has received the Panel of Experts report, and the Service expects to receive the Panel of Experts report for the other countries in January 1992.

(19) If the previous proposal is adopted this proposal becomes redundant, and presumably will be withdrawn.

(20) The addition of this species was recommended by the CITES Significant Trade Working Group, in large part because of the concern that large numbers of specimens of the subspecies listed in Appendix II were being illegally traded as specimens of the unlisted subspecies.

(21) Biological and/or trade information presented on this taxon seems insufficient to meet the Berne criteria. However, the Service recognizes that sufficient information may exist and/or become available to support the addition of certain of these species to appendix II. The issue then would be whether those not meeting appendix II, article II, paragraph 2(a) criteria could be practically and effectively distinguished from those included in Appendix II because of the potential for detrimental trade.

(22) All proposed amendments for rhinoceros were submitted to enable commercial trade in horns with the belief that properly controlled harvest (often involving removal of horns without harm to the animal) would support conservation of the species. The black rhinoceros population in Zimbabwe continues to be under significant poaching pressure, the white rhinoceros population in Zimbabwe is extremely small (about 400 animals), but he white rhinoceros population in South Africa appears to be relatively secure. Nevertheless, the Service believes that allowing legal trade in rhinoceros horn will, because of the extreme demand for this part, impose sufficient enforcement problems so as to contribute to additional illegal take of wild rhinoceros.

(23) The Service has supported interim downlistings of crocodile species provided conservative export quotas were established based on population status information. Furthermore, the Service has supported downlisting of crocodilians pursuant to ranching provisions when the wild adult breeding population is adequately protected. Harvest of adult stock has and can again quickly result in overharvesting. However, the Service believes that

South Africa has the strong management programs and enforcement capabilities necessary to preserve the wild populations.

(24) The Service opposes this proposal for the following reasons: (1) The 1991 population assessment indicates that current management by the International Commission for the Conservation of Atlantic Tunas (ICCAT) may have arrested the past decline in numbers of immature western Atlantic bluefin tuna; (2) ICCAT has agreed to accelerate recovery of the western Atlantic population by reducing quotas over the next four years and evaluating further reductions early in 1992; (3) ICCAT has convened a working group to control trade in western Atlantic bluefin tuna by non-members and to better document trade among members of ICCAT. The Service intends to re-evaluate its position if ICCAT does not implement these measures or if future assessments show a need for additional measures.

(25) At COP7, Sudan requested a one-time quota to dispose of 5,040 Nile crocodile skins. furthermore, Sudan reported that they had instituted a ban on hunting for 3 years, from January 1, 1989, to the end of December 1991. Sudan also agreed to inventory and tag all skins. The present proposal notes that an additional 11,960 skins have been stockpiled, of which 8,000 have been aequately preserved. All were reportedly legally taken in 1990. Sudan announces that hunting of wild crocodiles ended completely in 1991, and requests an export quota for 8,000 skins.

Future Actions

The Service has announced in the December 31, 1991 **Federal Register** the provisional agenda for COP8 and resolutions submitted by the Parties. That **Federal Register** notice also presented the Service's tentative negotiating positions on these agenda items and resolutions.

The Nomenclature Committee, in conjunction with the Wildlife Trade Monitoring Unit, has been working to review and resolve numberous ambiguities in the Appendices that arose from the listing of taxa at the plenipotentiary and first meetings of the Conference of the Parties. Supporting documents were not a matter of record at these meetings and either similar names may have had more than one interpretation or the scientific name used may not have been the preferred or commonly accepted name. The Service anticipates that the Nomenclature Committee will be submitting a list of over 50 such clarifications to the CITES Secretariat, and that this list should be available to the Service by the end of January 1992. Presumably only about a dozen of these clarifications will involve more than technical name changes.

The next regular meeting of the Parties is scheduled to be held in Kyoto, Japan from March 2–13, 1992. The Service will develop final negotiating positions and announce these decisions prior to the meeting of the Conference of Parties. These negotiating positions will be based upon the best available biological and trade information, taking into account comments received in response to this notice. If further information is presented at the meeting in Japan, the U.S. delegation to COP8 will also take it into account in determining whether the Service's previous positions remain appropriate.

Public Meeting

The Service announces a public meeting on January 8, 1992, at 2 p.m. in room 7000 at the Department of the Interior, 18th and C Streets, NW., Washington, DC. This meeting is being held to provide information about the eighth meeting of the Conference of the Parties, and to receive comments from the public on the proposed amendments to the Appendices, the proposed resolutions, and other agenda items.

This notice was prepared by Drs. Charles W. Dane, Bruce MacBryde, and Richard M. Mitchell, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Transportation, and Treaties.

Dated: December 26, 1991.

Richard N. Smith,

Deputy Director.

[FR Doc. 92–42 Filed 1–2–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 2
Friday, January 3, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Revision of a System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture (USDA) proposes to revise the Privacy Act system of records maintained by the Food and Nutrition Service (FNS), entitled "Investigations of Fraud, Theft, or Other Unlawful Activities of Individuals Involving Food Stamps" designated as USDA/FNS–5, and to rename the system "Information on Persons Disqualified from the Food Stamp Program."

EFFECTIVE DATE: This notice will be effective, without further notice, March 4, 1992, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before February 18, 1992 to be assured of consideration.

ADDRESS: Comments should be addressed to: Abigail Nichols, Director, Program Accountability Division, room 907, 3101 Park Center Drive, Alexandria, Virginia 22302. Telephone: (703) 305–2414.

FOR FURTHER INFORMATION CONTACT: Joseph M. Scordato, FNS Privacy Act Officer, room 308, 3101 Park Center Drive, Alexandria, Virginia 22302. Telephone: (703) 305–2234.

SUPPLEMENTARY INFORMATION: FNS plans to implement a USDA-maintained, limited-access Nationwide data bank of information on individuals who have been disqualified from participation in the Food Stamp Program. The data base will be composed only of data supplied by State agencies; no Federally generated data will be included. The authority for compiling and maintaining such a data base is found in the Omnibus Budget Reconciliation Act of 1981 in which Congress specified that States will report information on disqualified individuals to the Secretary of Agriculture for purposes of Food Stamp Program enforcement.

In the mid-1980's, FNS maintained a data base of information on disqualified recipients under the system of records USDA/FNS–5, indicated above. Because of technical problems which resulted in unreliable data and because of the advent of the Computer Security Act of 1988, which mandated safeguards not inherent in the system, FNS suspended the collection of information under that system in July 1989. A new data base, and the software associated with it, called the Disqualified Recipient Subsystem (DRS), has been developed and is the successor to the earlier data base. This new data base will constitute the revised system of records.

The Food Stamp Program is a Federal food assistance entitlement program administered by and operating in all fifty States, the District of Columbia, the Virgin Islands, and Guam. Uniform nationwide eligibility standards are established by FNS and applied by State agencies. Federal law also requires that States apply uniform disqualification procedures when it is discovered that Food Stamp Program recipients have fraudulently obtained benefits, and further specifies that disqualifications for second and third violations be more stringent than for first-time offenses.

In order to assist States in assigning appropriate periods of disqualification, State agencies will provide to FNS on a monthly basis information on Food Stamp disqualification cases within the State. FNS will maintain this information in the Disqualified Recipient Subsystem and make it available to the various State agencies administering the Food Stamp Program for program enforcement purposes.

The DRS data will consist of information identifying individuals disqualified from the Food Stamp Program and information on present and any prior disqualifications.

Signed at Washington, DC on December 30, 1991.

Edward Madigan,
Secretary of Agriculture.

SYSTEM NAME:

Information on Persons Disqualified from the Food Stamp Program, USDA/FNS–5.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is under the control of the Deputy Administrator, Food Stamp Program, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302. The data will be maintained at the Department's National Computer Center, Kansas City, Missouri (NCC–KC).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of information on individuals who have been disqualified from food stamp participation for intentionally violating Food Stamp Program regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of standardized records containing identifying information (first name, middle initial, last name; Social Security number; date of birth; and sex) on individuals disqualified from the Food Stamp Program and information identifying the location, date(s) and length(s) of any disqualification determined and imposed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 2011–2031.

PURPOSE:

To facilitate the Congressional mandate to increase the severity of disqualifications from the Food Stamp Program for repeated instances of fraudulently obtaining Food Stamp Program benefits and to verify eligibility of applicants for Food Stamp Program benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed, as part of a computer

matching program or otherwise, to State agency personnel responsible for investigating or prosecuting violations of the Food Stamp Program regulations, and to Federal, State, and local officials responsible for administration of the Food Stamp Program. Records contained in this system also may be disclosed to the General Accounting Office for program audit purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on the Department's computers at the NCC–KC or on magnetic tapes at that facility.

RETRIEVABILITY:

Records may be indexed and retrieved by name of the individual, by Social Security Number, by Federal Information Processing Standard (FIPS) code, or by a State case-file identification number.

SAFEGUARDS:

Records will be available only to identified State agency personnel charged with Food Stamp Program enforcement. Voice recognition technology may be used; such a system will release information only to authorized individuals calling from authorized telephone numbers. On-line access to the NCC–KC data base will be restricted to FNS personnel charged with system management. The NCC–KC is the repository of numerous Department systems of records and other sensitive data bases. It was constructed and is maintained as a highly secure facility.

State agencies will be provided information from this system of records only upon entering into a written agreement with FNS. This agreement includes the understanding that State agencies will provide full security for data released to them and will limit access to this data to authorized personnel only. Any reports generated by FNS will be for system evaluation purposes only and will be maintained in secured offices and facilities.

RETENTION AND DISPOSAL:

Because the law mandates a longer disqualification period if there have been any prior disqualifications, FNS intends to maintain these records permanently in an electronic or magnetic tape mode.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, room 907, Alexandria, Virginia 22302. Telephone: (703) 305–2414.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him, from the System Manager listed above.

RECORD ACCESS PROCEDURE:

An individual may obtain information about a record in the system which pertains to him by submitting a written request to the Systems Manger listed above. The envelope and the letter should be marked "Privacy Act Request."

A request for information pertaining to an individual should contain the name, address, date of birth and social security number of the individual, and any other information that will assist in locating the record.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, the reasons for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate.

RECORD SOURCE CATEGORIES:

Information in this system is provided by State agency personnel responsible for investigating cases involving intentional violations of Food Stamp Program Regulations.

[FR Doc. 92–87 Filed 1–2–92; 8:45 am]

BILLING CODE 3410–30–M

Privacy Act of 1974, Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act Systems of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is (1) adding two new systems of records to support Contracting Officer and Real Property Leasing Officer Warrant Systems; (2) redesignating and revising two systems of records on Debarred and Suspended Bidders and Headquarters Parking; and (3) deleting Secretary's Controlled Correspondence as a Privacy Act system of records.

EFFECTIVE DATE: This notice will be adopted without further Federal Register publication on March 4, 1992 unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received at the address listed below on or before February 18, 1992 to be assured of consideration.

ADDRESS: Interested persons may submit written comments to Marilyn G. Wagner, Acting Director, Office of Operations, USDA, room 113–W Administration Building, Washington, DC 20250, or deliver them to room 113–W, USDA Administration Building, Jefferson Drive between 12th and 14th Streets, SW., Washington, DC between 8:30 am and 5 p.m., work days. Comments received may also be inspected during these hours in room 113–W, Administration Building.

FOR FURTHER INFORMATION CONTACT: For the Debarred and Suspended Bidders and Contracting Officer Warrant Systems: Linda Persons, Procurement Analyst ((202) 447–7529). For the Real Property Leasing Officer System: Marsha Pruitt, Realty Specialist ((202) 447–3338). For the other Systems: Sharon Roth, Program Analyst ((202) 447–3820). Address mail for all of the above to Office of Operations, USDA, room 134–W, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: USDA is establishing Contracting Officer Warrant (USDA/OO–2) and Real Property Leasing Officer Warrant (USDA/OO–3) systems of records. These systems will contain information necessary to evaluate training, experience, education, and proficiency of employees recommended for authority as procurement contracting officers or real property leasing officers. USDA is also redesignating and amending record systems on Debarred, Ineligible and Suspended Bidders (USDA/O&F 5, redesignated as USDA/OO–1) and on Employee Parking Applications for DC Headquarters parking privileges (USDA/O&F 6, redesignated as USDA/OO–4). The changes reflect organizational name changes, clarification of routine users, and editorial matters. USDA is also rescinding Secretary's Controlled Correspondence (USDA/O&F–7) as a Privacy Act system of records. These files are not retrievable by personal identifier and, therefore, do not constitute a Privacy Act system of records.

A Privacy Act Systems Report relating to each of the two new and two altered system, required by 5 U.S.C. 552a(r), was sent to the Committee on Government Operations of the House, the Committee on Governmental Affairs of the Senate,

and of the Office of Management and Budget, on December 30, 1991.

Signed at Washington, DC, on December 27, 1991.

Edward Madigan,

Secretary.

1. The existing System of Records USDA/O&F–5, Debarred, Ineligible, and Suspended Bidders, is redesignated USDA/OO–1 and is revised as follows:

SYSTEM NUMBER:

USDA/OO–1.

SYSTEM NAME:

Debarred, Ineligible and Suspended Bidders.

SYSTEM LOCATION:

Procurement Division, Office of Operations, USDA, Washington, DC 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, as principals or responsible employees of companies contracting with USDA or other Federal agencies, have committed or are suspected of having committed, illegal or irresponsible acts in connection with the performance of those contacts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contract files on companies and their principal owners, officers or responsible employees, containing material relating to performance of individuals and their companies under government contracts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Used in USDA to determine if a debarment or suspension action is appropriate to preclude individuals from contracting with the Federal government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

1. To Federal Contracting Officers in connection with the Federal procurement process;

2. To Members of Congress to respond to inquiries made on behalf of individual constituents that are record subjects;

3. In response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding;

4. In a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding;

5. In the event that material in this system indicates a violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

POLICIES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders at the address above.

RETRIEVABILITY:

Information can be retrieved by name of an individual or the name of the firm with which that person was associated.

SAFEGUARDS:

Records are kept in locked rooms in metal filing cabinets with access limited to those requiring the information for official purposes.

RETENTION AND DISPOSAL:

Records are sent to Federal Records Centers about 3 years after the close of a case and are destroyed about 2 years thereafter.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Operations, USDA, Washington, DC 20250.

NOTIFICATION PROCEDURE:

Persons may request information on this system of records, or information as to whether the system contains records pertaining to them from the Chief, Procurement Division, Office of Operations, USDA, Washington, DC 20250. Telephone (202) 447–3037. A request for information pertaining to an individual should contain: Name, address, company name, date of debarment, ineligibility or suspension, or date of last correspondence with the agency.

RECORD ACCESS PROCEDURE:

Persons may obtain information on procedures to gain access to system records pertaining to them by submitting a written request to the Director, Office of Operations.

CONTESTING RECORD PROCEDURES:

Persons may obtain information on procedures to contest system records pertaining to them by submitting a written request to the Director, Office of Operations.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from agency employees, other Federal agencies, law enforcement officials or judicial officers.

2. A new system of records USDA/OO–2 is added as follows:

SYSTEM NUMBER:

USDA/OO–2.

SYSTEM NAME:

Contracting Officer Warrant System.

SYSTEM LOCATION:

See appendix.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Agriculture employees who have been delegated procurement authority under the Warrant System.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee name, identification number, present employment, previous employment, education, experience, specialized training, series and grade, and level of warrant issued.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Used by Heads of Contracting Activities or designees for evaluation purposes when delegating procurement authority. Data from the system provides program management information needed for planning, training, budgeting, and recruiting.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSE OF SUCH USES:

Data from the system may be disclosed:

1. To Federal agencies in cases where concurrence of those agencies is necessary prior to designating a person as contracting officer for a specific procurement or class of procurement;

2. To Federal Contracting Officers in connection with the Federal procurement process;

3. To Members of Congress to respond to inquiries made on behalf of individual constituents that are record subjects;

4. In response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding;

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5. In a proceeding before a court of adjudicative body to the extent that they are relevant and necessary to the proceeding;

6. In the event that material in this system indicates a violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper forms, originals or copies, preprinted or handwritten forms, and/or computer storage.

RETRIEVABILITY:

Information can be retrieved by name, identification number, office location.

SAFEGUARDS:

Records are maintained in standard filing equipment and computers. Access to the file is restricted to persons having a need to know the information in the course of their duties.

RETENTION AND DISPOSAL:

Records are maintained for 3 years after cancellation of the delegation and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Operations, USDA, Washington, DC 20250.

NOTIFICATION PROCEDURE:

Covered employees may request information on this system and information on records relating to them from the Chief, Procurement Division, Office of Operations, USDA, Washington, DC 20250. Telephone (202) 447–3037.

CONTESTING RECORD PROCEDURES:

Persons may obtain information on procedures to contest system records pertaining to them by submitting a written request to the Director, Office of Operations.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from agency employees.

APPENDIX: ADDRESSES AT WHICH RECORDS IN SYSTEM USDA/OO–2 MAY BE MAINTAINED (SPECIFIC STREET ADDRESSES AND ZIP CODES MAY BE FOUND IN THE TELEPHONE DIRECTORS FOR EACH COMMUNITY UNDER THE CLASSIFICATION U.S. GOVERNMENT, DEPARTMENT OF AGRICULTURE).

Agricultural Marketing Service: Poultry Division; Livestock, Meat, Grain and Seed Division; Fruit and Vegetable Division, Washington, DC 20250.

Agricultural Research Service: Facilities Construction Management Division, Hyattsville, MD 20782; Contracting and Assistance Division, Beltsville, MD 20705; Beltsville Area Office, Beltsville, MD 20705; Central Plains Area Office, Ames, IA; Mid-South Area Office, Stoneville, MS; Midwest Area Office, Peoria, IL; Mountain States Area Office, Ft. Collins, CO; North Atlantic Area Office, Philadelphia, PA; Northern States Area Office, Minneapolis, MN; Northwest Area Office, Portland, OR; Pacific Basin Area Office, Albany, CA; South Atlantic Area Office, Athens, GA; Southern Plains Area Office, College Station, TX.

Agricultural Stabilization and Conservation Service: Management Services Division, Washington, DC; Kansas City Management Office, Kansas City, MO; Aerial Photography Field Office, Salt Lake City, UT; Kansas City Commodity Office, Kansas City, MO.

Animal and Plant Health Inspection Service: Administrative Services Division; Washington, D.C.; Procurement and Engineering Branch, Hyattsville, MD; Field Servicing Office, Minneapolis, MN.

Economics Management Staff: Administrative Services Division, Washington, DC.

Extension Service: Cooperative Management Staff, Washington, DC.

Farmers Home Administration: Administrative Services Division, Washington, D.C. 20250; Administrative Support Division, St. Louis, MO.

Federal Crop Insurance Corporation: Management Support Division, Washington, DC 20250.

Food and Nutrition Service: Administrative Services Division, Alexandria, VA; Mid-Atlantic Division, Robbinsville, NW; Southeast Region, Atlanta, GA; Minneapolis Computer Support Center, Minneapolis, MN; Mid-West Region, Chicago, IL; Southwest Region, Dallas, TX; Western Region, San Francisco, CA; New England Region, Burlington, MA; Mountain Plains Region, Denver, CO.

Food Safety and Inspection Service: Administrative Services Division, Washington, D.C.; Administrative Services Division, Minneapolis, MN.

Foreign Agricultural Service: Management Services Division, Washington, DC.

Forest Service: Administrative Services Division, Washington, DC; Geometronics Service Center, Salt Lake City, UT; Boise Interagency Fire Center, Boise ID; Alaska Region, Juneau, AK; Tongass NF Chatham Area, Sitka, AK; Tongass NF Stikine Area, Petersburg, AK; Tongass NF Ketchikan Area, Ketchikan, AK; Chugach NF, Anchorage, AK; Pacific Northwest Region, Portland, OR; Deschutes NF, Bend, OR; Fremont NF, Lakeview, OR; Malheur NF, John Day, OR; Mt. Hood NF, Gresham, OR; Ochoco NF, Prineville, OR; Rogue River NF, Medford, OR; Siskiyou NF, Grants Pass, OR; Siuslaw NF, Corvallis, OR; Umatilla NF, Pendleton, OR; Umpqua NF, Roseburg, OR; Wallowa-Whitman NF, Baker, OR; Willamette NF, Eugene, OR; Winema NF, Klamath Falls, OR; Okanogan NF, Okanogan, WA; Wenatchee NF, Wenatachee, WA; Olympic NF, Olympia, WA; Gifford Pinchot NF, Vancouver, WA; Mt. Baker-Snoqualmie NF, Seattle, WA; Colville NF, Colville, WA; Pacific Southwest Region, San Francisco, CA; Angeles NF, Arcadia, CA; Cleveland NF, San Diego, CA; Eldorado NF, Placerville, CA; Inyo NF, Bishop, CA; Klamath NF, Yreka, CA; Lassen NF, Susanville, CA; Lost Padres NF, Goleta, CA; Mendocino NF, Willo, CA; Modoc NF, Alturas, CA; Plumas NF, Quincy, CA; San Bernardino NF, San Bernardino, CA; Sequoia NF, Porterville, CA; Shasta-Trinity NF, Redding, CA; Sierra NF, Fresno, CA; Six Rivers NF, Eureka, CA; Stanislaus NF, Sonora, CA; Tahoe NF, Nevada City, CA; Northern Region, Missoula, MT; Clearwater NF, Orofino, ID; Idaho Panhandle NF, Coeur d'Alene, ID; Nezperce NF, Grangeville, ID; Bitteroot NF, Hamilton, MT; Beaverhead NF, Dillion, MT; Custer NF, Billings, MT; Deerlodge NF, Butte, MT; Flathead NF, Kalispell, MT; Gallatin NF, Bozeman, MT; Helena NF, Helena, MT; Kootenai NF, Libby, MT; Lewis and Clark NF, Great Falls, MT; Lolo NF, Fort Missoula, MT; Intermountain Region, Ogden, UT; Boise NF, Boise, ID; Caribou NF, Pocatello, ID; Challis NF, Challis, ID; Payette NF, McCall, ID; Salmon NF, Salmon, ID; Sawtooth NF, Twin Falls, ID; Targhee NF, St. Anthony, ID; Humbolt NF, Elko, NF; Toiyabe NF, Sparks, NV; Ashley NF, Vernal, UT; Dixie NF, Cedar City, UT; Fishlake NF, Richfield, UT; Manti-LaSal NF, Price, UT; Uinta NF, Provo, UT; Wasatch NF, Salt Lake City, UT; Bridger-Teton NF, Jackson, WY; Southwestern Region, Albuquerque, NM; Apache-Sitgreaves NF, Springeville, AZ; Coconino NF, Flagstaff, AZ; Coronado NF, Tucson,

AZ; Kaibab NF, Williams, AZ; Prescott NF, Prescott, AZ; Tonto NF, Phoenix, AZ; Carson NF, Taos, NM; Cibola NF, Albuquerque, NM; Gila NF, Silver City, NM; Lincoln NF, Alamagordo, NM; Santa Fe NF, Sante Fe, NM; Rocky Mountain Region, Lakewood, CO; Grand Mesa, Uncompahgre and Gunnison National Forests, Delta, CO; Rio Grande NF, Monte Vista, CO; Arapaho-Roosevelt NF, Fort Collins, CO; Routt NF, Steamboat Springs, CO; Pike-San Isabel NF, Pueblo, CO; San Juan NF, Durango, CO; White River NF, Glenwood Springs, CO; Nebraska NF, Chadron, NE; Black Hills NF, Custer, SD; Bighorn NF, Sheridan, WY; Medicine Bow NF, Laramie, WY; Shoshone NF, Cody, WY; Eastern Regions, Milwaukee, WI; Shawnee NF, Harrisburg, IL; Wayne-Hoosier NF, Bedford, IN; Hiawatha NF, Escanaba, MI; Huron-Manistee NF, Cadillac, MI; Ottawa NF, Ironwood, MI; Superior NF, Duluth, MN; Chippewa NF, Cass Lake, MN; Mark Twain NF, Rolla, MO; White Mountain NF, Laconia, NH; Allegheny NF, Warren, PA; Green Mountain NF, Ruthland, VT; Monongahela NF, Elkins, WV; Chequamegon NF, Park Falls, WI; Nicolet NF, Rhinelander, WI; Southern Region, Atlanta, GA; Ouachita NF, Hot Springs, AK; National Forests in Alabama, Montgomery, AL; Ozark and St. Francis National Forests, Russellville, AK; National Forests in Florida, Tallahassee, FL; Chattahoochee and Ocone National Forests; Gainesville, GA; Daniel Boone NF, Winchester, KY; Kisatchie NF, Pineville, LA; National Forests in Mississippi, Jackson, MS; National Forests in North Carolina, Asheville, NC; Francis Marion and Sumter National Forests, Columbia, SC; Cherokee NF, Cleveland, TN; National Forests in Texas, Lufkin, TX; George Washington NF, Harrisonburg, VA; Jefferson NF, Roanoke, VA; Caribbean NF, Rio Piedras, PR; North Central Forest and Range Experiment Station, St. Paul, MN; Northeastern Forest Experiment Station, Broomail, PA; Rocky Mountain Forest Experiment Station, Fort Collins, CO; Southeastern Forest Experiment Station, Asheville, NC; Southern Forest Experiment Station, New Orleans, LA; Forest Products Laboratory, Madison, WI.

Office of Finance and Management, National Finance Center: New Orleans, LA 70160.

Office of Information Resources Management: Ft. Collins Computer Center, Ft. Collins, CO 80524.

Office of Inspector General: Contracting and Procurement Branch, Resources Management Division, Washington, DC 20250.

Office of International Cooperation and Development: Management Services Branch, Washington, DC 20250.

Office of Operations: Procurement Division, Washington, DC 20250.

Rural Electrification Administration: Administrative Services Division, Washington, DC 20250.

Soil Conservation Service: National Office Administrative Staff, Washington, DC 20250; and State Administrative Offices in Auburn, AL; Anchorage, AK; Phoenix, AZ; Little Rock, AK; Davis, CA; San Juan, PR; Denver, CO; Storrs, CT; Dover, DE; Gainesville, FL; Athens, GA; Honolulu, HI; Boise, ID; Champaign, IL; Indianapolis, IN; Des Moines, IA; Salina, KS; Lexington, KY; Alexandria, LA; Orono, ME; College Park, MD; Amherst, MA; East Lansing, MI; St. Paul, MN; Jackson, MS; Columbia, MO; Bozeman, MT; Lincoln, NE; Reno, NV; Durham, NH; Somerset, NJ; Albuquerque, NM; Syracuse, NY; Raleigh, NC; Bismarck, ND; Columbus, OH; Stillwater, OK; Portland, OR; Harrisburg, PA; West Warwick, RI; Columbia, SC; Huron, SD; Nashville, TN; Temple, TX; Salt Lake City, UT; Winooski, VT; Richmond, VA; Spokane, WA; Morgantown, WV; Madison, WI; Casper, WY; and Administrative Officers at Technical Service Centers in Lincoln, NB; Portland, OR; Chester, PA; and Fort Worth, TX.

3. A new system USDA/OO–3 is added, as follows:

System Number:

USDA/OO–3.

System Name:

Real Property Leasing Officer Warrant System

System Location:

See appendix.

Categories of individuals covered by the system:

USDA employees who have been delegated real property leasing authority under the Warrant System.

Categories of records in the system:

Employee name, identification number, present employment, previous employment, education, experience, specialized training, series and grade, and level of warrant issued.

Authority for maintenance of the system:

U.S.C. 301.

PURPOSE(S):

Used by Heads of the Real Property Leasing Activity or designees for evaluation purposes prior to delegating real property leasing authority. Data from the system provides program management information needed for planning, training, budgeting, and recruiting.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Records contained in this system may be disclosed:

1. To Members of Congress to respond to inquiries made on behalf of individual constitutents who are record subjects;

2. In response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding;

3. In a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding;

4. In the event that material in this system indicates a violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

Policies and practices for storing, retrieving, accessing, retraining, and disposing of records in the system:

Storage:

Paper form, originals or copies, preprinted or handwritten forms, and/or computer storage.

RETRIEVABILITY:

Information can be retrieved by name, identification number, office location.

SAFEGUARDS:

Records are maintained in standard filing equipment and computers. Access to the file is restricted to persons having a need to know the information in the course of their duties.

RETENTION AND DISPOSAL:

Records are maintained for 7 years after cancellation of the delegation and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Operations, USDA, Washington, DC 20250.

NOTIFICATION PROCEDURE:

Covered employees may request information on this system and information on records relating to them

from the Chief, Real Property Management Division, Office of Operations, USDA, Washington, DC 20250 Telephone (202) 447–5225.

CONTESTING RECORD PROCEDURES:

Persons may obtain information on procedures to contest system records pertaining to them by submitting a written request to the Director, Office of Operations.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from agency employees.

APPENDIX: ADDRESSES AT WHICH RECORDS IN SYSTEM USDA/OO–3 MAY BE MAINTAINED (SPECIFIC STREET ADDRESSES AND ZIP CODES MAY BE FOUND IN THE TELEPHONE DIRECTORY FOR EACH COMMUNITY, UNDER THE CLASSIFICATION U.S. GOVERNMENT, DEPARTMENT OF AGRICULTURE).

Agricultural Marketing Service: Administrative Services, Washington, DC 20250.

Agricultural Research Service: Facilities Construction Management Division, Hyattsville, MD 20782; Contracting and Assistance Division, Beltsville, MD 20705; Beltsville Area Office, Beltsville, MD 20705; Central Plains Area Office, Ames, IA; Mid-South Area Office, Stoneville, MS; Midwest Area Office, Peoria, IL; Mountain States Area Office, Ft. Collins, CO; North Atlantic Area Office, Philadelphia, PA; Northern States Area Office, Minneapolis, MN; Northwest Area Office, Portland, OR; Pacific Basin Area Office, Albany, CA; South Atlantic Area Office, Athens, GA; Southern Plains Area Office, College Station, TX.

Agricultural Stabilization and Conservation Service: Management Services Division, Washington, DC; Kansas City Management Office, Kansas City, MO; Aerial Photography Field Office, Salt Lake City, UT; Kansas City Commodity Office, Kansas City, MO.

Animal and Plant Health Inspection Service: Administrative Services Division, Washington, DC; Procurement and Engineering Branch, Hyattsville, MD; Field Servicing Office, Minneapolis, MN.

Economics Management Staff: Administrative Services Division, Washington, DC.

Extension Service: Cooperative Management Staff, Washington, DC.

Farmers Home Administration: Administrative Services Division, Washington, DC 20250; Administrative Support Division, St. Louis, MO.

Federal Crop Insurance Corporation: Management Support Division, Washington, DC 20250.

Food and Nutrition Service: Administrative Services Division, Alexandria, VA; Mid-Atlantic Division, Robbinsville, NW; Southeast Region, Atlanta, GA; Minneapolis Computer Support Center, Minneapolis, MN; Mid-West Region, Chicago, IL; Southwest Region, Dallas, TX; Western Region, San Francisco, CA; New England Region, Burlington, MA; Mountain Plains Region, Denver, CO.

Food Safety and Inspection Service: Administrative Services Division, Washington, DC; Administrative Services Division, Minneapolis, MN.

Foreign Agricultural Service: Management Services Division, Washington, DC.

Forest Service: Administrative Services Division, Washington, DC; Geometronics Service Center, Salt Lake City, UT; Boise Interagency Fire Center, Boise, ID; Alaska Region, Juneau, AK; Tongass NF Chatham Area, Sitka, AK; Tongass NF Stikine Area, Petersburg, AK; Tongass NF Ketchikan Area, Ketchikan, AK; Chugach NF, Anchorage, AK; Pacific Northwest Region, Portland, OR; Deschutes NF, Bend, OR; Fremont NF, Lakeview, OR; Malheur NF, John Day, OR; Mt. Hood NF, Gresham, OR; Ochoco NF, Prineville, OR; Rogue River NF, Medford, OR; Siskiyou NF, Grants Pass, OR; Siuslaw NF, Corvallis, OR; Umatilla NF, Pendleton, OR; Umpqua NF, Roseburg, OR; Wallowa-Whitman NF, Baker, OR; Willamette NF, Eugene, OR; Winema NF, Klamath Falls, OR; Okanogan NF, Okanogan, WA; Wenatchee NF, Wenatchee, WA; Olympic NF, Olympia, WA; Gifford Pinchot NF, Vancouver, WA; Mt. Baker-Snoqualmie NF, Seattle, WA; Colville NF, Colville, WA; Pacific Southwest Region, San Francisco, CA; Angeles NF, Arcadia, CA; Cleveland NF, San Diego, CA; Eldorado NF, Placerville, CA; Inyo NF, Bishop, CA; Klamath NF, Yreka, CA; Lassen NF, Susanville, CA; Lost Padres NF, Goleta, CA; Mendocino NF, Willow, CA; Modoc NF, Alturas, CA; Plumas NF, Quincy, CA; San Bernardino NF, San Bernardino, CA; Sequoia NF, Porterville, CA; Shasta-Trinity NF, Redding, CA; Sierra NF, Fresno, CA; Six Rivers NF, Eureka, CA; Stanislaus NF, Sonora, CA; Tahoe NF, Neveda City, CA; Northern Region, Missoula, MT; Clearwater NF, Orofino, ID; Idaho Panhandle NF, Coeur d' Alene, ID; Nezperce NF, Grangeville, ID; Bitteroot NF, Hamilton, MT; Beaverhead NF, Dillon, MT; Custer NF, Billings, MT; Deerlodge NF, Butte, MT; Flathead NF, Kalispell, MT; Gallatin NF, Bozeman, MT; Helena NF, Helena, MT Kootenai NF, Libby, MT; Lewis and Clark NF, Great Falls, MT; Lolo NF, Fort Missoula, MT; Intermountain Region, Ogden, UT; Boise NF, Boise, ID; Caribou NF, Pocatello, ID; Challis NF, Challis, ID; Payette NF, McCall, ID; Salmon NF, Salmon, ID; Sawtooth NF, Twin Falls, ID; Targhee NF, St. Anthony, ID; Humbolt NF, Elko, NF; Toiyabe NF, Sparks, NV; Ashley NF, Vernal, UT; Dixie NF, Cedar City, UT; Fishlake NF, Richfield, UT; Manti-LaSal NF, Price, UT; Uinta NF, Provo, UT; Wasatch NF, Salt Lake City, UT; Bridger-Teton NF, Jackson, WY; Southwestern Region, Albuquerque, NM; Apache-Sitgreaves NF, Springerville, AZ; Coconino NF, Flagstaff, AZ; Coronado NF, Tucson, AZ; Kaibab NF, Williams, AZ; Prescott NF, Prescott, AZ; Tonto NF, Phoenix, AZ; Carson NF, Taos, NM; Cibola NF, Albuquerque, NM; Gila NF, Silver City, MN; Lincoln NF, Alamagordo, NM; Santa Fe NF, Santa Fe, NM; Rocky Mountain Region, Lakewood, CO; Grand Mesa, Uncompahgre and Gunnison National Forests, Delta, CO; Rio Grande NF, Monte Vista, CO; Arapaho-Roosevelt NF, Fort Collins, CO; Routt NF, Steamboat Springs, CO; Pike-San Isabel NF, Pueblo, CO; San Juan NF, Durango, CO; White River NF, Glenwood Springs, CO; Nebraska NF, Chadron, NE; Black Hills NF, Custer, SD; Bighorn NF, Sheridan, WY; Medicine Bow NF, Laramie, WY; Shoshone NF, Cody, WY; Eastern Region, Milwaukee, WI; Shawnee NF, Harrisburg, IL; Wayne-Hoosier NF, Bedford, IN; Hiawatha NF, Escanaba, MI; Huron-Manistee NF, Cadillac, MI; Ottawa NF, Ironwood, MI; Superior NF, Duluth, MN; Chippewa NF, Cass Lake, MN; Mark Twain NF, Rolla, MO; White Mountain NF, Laconia, NH; Allegheny NF, Warren, PA; Green Mountain NF, Rutland, VT; Monogahela NF, Elkins, WV; Chequamegon NF, Park Falls, WI; Nicolet NF, Rhinelander, WI; Southern Region, Atlanta, GA; Ouachita NF, Hot Springs, AK; National Forests in Alabama, Montgomery, AL; Ozark and St. Francis National Forests, Russellville, AK; National Forests in Florida, Tallahassee, FL; Chattahoochee and Oconee National Forests, Gainesville, GA; Daniel Boone NF, Winchester, KY; Kisatchie NF, Pineville, LA; National Forests in Mississippi, Jackson, MS; National Forests in North Carolina, Asheville, NC; Francis Marion and Sumter National Forests, Columbia, SC; Cherokee NF, Cleveland, TN; National Forests in Texas, Lufkin, TX; George Washington NF, Harrisonburg, VA; Jefferson NF, Roanoke, VA; Caribbean NF, Rio Piedras, PR; North Central Forest and Range Experiment Station, St. Paul, MN; Northeastern Forest Experiment Station, Broomall, PA; Rocky Mountain Forest Experiment Station, Fort Collins, CO; Southeastern

Forest Experiment Station, Asheville, NC; Southern Forest Experiment Station, New Orleans, LA; Forest Products Laboratory, Madison, WI.

Office of International Cooperation and Development: Management Services Branch, Washington, DC 20250.

Office of Operations: Real Property Management Division, Washington, DC 20250.

Rural Electrification Administration: Administrative Services Division, Washington, DC 20250.

Soil Conservation Service: National Office Administrative Staff, Washington, DC 20250; and State Administrative Officers in Auburn, AL; Anchorage, AK; Phoenix, AZ; Little Rock, AK; Davis, CA; San Juan, PR; Denver, CO; Storrs, CT; Dover, DE; Gainesville, FL; Athens, GA; Honolulu, HI; Boise, ID; Champaign, IL; Indianapolis, IN: Des Moines, IA; Salina, KS; Lexington, KY; Alexandria, LA; Orono, ME; College Park, MD; Amherst, MA; East Lansing, MI; St. Paul, MN; Jackson, MS; Columbia, MO; Bozeman, MT; Lincoln, NE; Reno, NV; Durham, NH; Somerset, NJ; Albuquerque, NM; Syracuse, NY; Raleigh, NC; Bismarck, ND; Columbus, OH; Stillwater, OK; Portland, OR; Harrisburg, PA; West Warwick, RI; Columbia, SC; Huron, SD; Nashville, TN; Temple, TX; Salt Lake City, UT; Winooski, VT; Richmond, VA; Spokane, WA; Morgantown, WV; Madison, WI; Casper, WY; and Administrative Officers at Technical Service Centers in Lincoln, NB; Portland, OR; Chester, PA; and Fort Worth, TX.

4. Existing System of Records USDA/O&F–6, Parking Applications, is redesignated USDA/OO–4, and revised to read as follows:

SYSTEM NUMBER:

USDA/OO–4.

SYSTEM NAME:

Parking Applications.

SYSTEM LOCATION:

Facilities Management Division, Office of Operations, USDA, Washington, DC 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for parking permits at the USDA Washington, DC, headquarters complex.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, agency, social security number, and home address of parking applicants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Used to determine assignment of parking spaces at the USDA Washington, DC headquarters complex.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

No disclosure outside USDA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper forms, originals or copies, preprinted or handwritten forms, and/or computer storage.

RETRIEVABILITY:

Information can be retrieved by name, agency, identification number, office location, assigned parking space.

SAFEGUARDS:

Records are maintained in standard filing equipment and computers. Access to the file is restricted to persons having a need to know the information in the course of their duties.

RETENTION AND DISPOSAL:

Records are maintained for 12 months after submission of the application and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Operations, USDA, Washington, DC 20250.

NOTIFICATION PROCEDURE:

Notification procedure: Covered employees may request information on this system and information on records relating to them from the Parking Coordinator, Facilities Management Division, Office of Operations, USDA, Washington, DC 20250. Telephone (202) 447–2902.

CONTESTING RECORD PROCEDURES:

Persons may obtain information on procedures to contest system records pertaining to them by submitting a written request to the Director, Office of Operations.

RECORD SOURCE CATEGORIES:

Information in this system comes from applications submitted by employees.

5. USDA/O&F–7, Secretary's Controlled Correspondence, USDA/O&F, is deleted.

[FR Doc. 92–84 Filed 1–2–92; 8:45 am]

BILLING CODE 3410–00–M

Grants; Brown University

AGENCY: Office of International Cooperation and Development (OICD) USDA.

ACTION: Notice of intent.

SUMMARY: OICD intends to award a Grant to Brown University to provide partial funding support for the project entitled "Humanitarianism and War: Learning the Lessons from Recent Armed Conflicts.".

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1992 (FY92) for partial funding to the Thomas J. Watson Jr. Institute for International Studies, Brown University, as part of the joint program of Agency for International Development's Office of Foreign Disaster Assistance and OICD's Famine Mitigation Activity. The purpose of the project is to develop principles and policy guidelines to assist policy-makers and practitioners in improving the provision of humanitarian assistance and protection; and to break new conceptual ground regarding the intellectual and policy frameworks for such activities.

Based on the above, this is not a formal request for application. An estimated $35,000 will be available in FY92 as partial project support.

Information on proposed Grant #59–319R–2–001 may be obtained from: USDA/OICD/Administrative Services, Washington, DC 20250–4300.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 92–28 Filed 1–2–92; 8:45 am]

BILLING CODE 3410–DP–M

Soil Conservation Service

Trinidad Lake North Watershed, Colorado; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Trinidad Lake North Watershed, Las Animas County, Colorado.

FOR FURTHER INFORMATION CONTACT: Duane L. Johnson, State Conservationist,

Soil Conservation Service, 655 Parfet Street, rm. E200C, Lakewood, Colorado 80215–5517, telephone (303) 236–2886.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Duane L. Johnson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns are the reduction of sediment reaching Trinidad Lake, improvement of the water quality in the Lake, and resource base protection. The planned works of improvement include sediment basins, proper grazing, and critical area plantings as well as many other enduring and management measures which will address these concerns.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Duane L. Johnson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under no. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 24, 1991.

Duane L. Johnson,

State Conservationist.

[FR Doc. 92–67 Filed 1–2–92; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip From the Federal Republic of Germany; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On November 27, 1991, the Department of Commerce published the final results of its administrative review of the antidumping duty order on brass sheet and strip from the Federal Republic of Germany. Based on the corrections of clerical errors, we have changed the weighted-average margin for the Wieland Group (Wieland-Werke AG, Langenberg Kupfer-und Messingwerke GmbH KG, and Metallwerke Schwarzwald GmbH) from 19.59 percent to 23.49 percent.

EFFECTIVE DATE: January 3, 1992.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine, Michael Diminich, or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–4733.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 1991, the Department of Commerce published in the **Federal Register** (56 FR 60087) the final results of its administrative review of the antidumping duty order (52 FR 6997; March 6, 1987) on brass sheet and strip from the Federal Republic of Germany. The review covered five manufacturers/exporters of this merchandise, Wieland-Werke AG, Langenberg Kupfer-und Messingwerke GmbH KG, and Metallwerke Schwarzwald GmbH, hereinafter collectively referred to as "the Wieland Group," William Prym, and Schwermetall Halbzeugwerke for the period August 22, 1986, through February 29, 1988. After publication of our final results, counsel for respondent, the Wieland Group, and counsel for the petitioners alleged, in a timely fashion, that clerical errors had been made in calculating the weighted-average margin. Further, both parties alleged that there was a typographical error in the final notice. We agree, in part, and have made corrections where appropriate.

Amended Final Results of Review

We made two corrections to computer programs. First, we deducted early payment discounts from the home market prices in all the Wieland Group computer programs. Second, we corrected a program error in the sales matching section of the ESP programs for the Wieland Group.

Further, the last line in the Department's Position of Comment 8 in the final notice should be changed from "* * * the highest interest rate in the range for home market sales and the lowest interest rate in the range for U.S. sales." to read "* * * the lowest interest rate in the range for home market sales and the highest interest rate in the range for U.S. sales."

As a result of our correction of these clerical errors, we have determined that a weighted-average margin of 23.49 percent exists for brass sheet and strip sold by the Wieland Group during the period August 22, 1986, through February 29, 1988.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these amended final results of this administrative review for all shipments of the subject merchandise from the Federal Republic of Germany entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided for by section 751(a)(1) of the Tariff Act of 1930, as amended:

(1) The cash deposit rate for any shipments of this merchandise manufactured or exported by manufacturers/exporters not covered by this review but specifically covered in the final determination of sales at less than fair value will continue to be the rate published in that final determination; (2) the cash deposit rate for William Prym, Schwermetall Halbzeugwerke, and the Wieland Group (Wieland-Werke AG, Langenberg Kupfer-und Messingwerke GmbH KG and Metallwerke Schwarzwald GmbH) will be 23.49 percent; and (3) the cash deposit rate for all other exporters/producers shall be 23.49 percent for shipment of the subject merchandise. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

We have determined that the cash deposit rate applies to all entries from the former German Democratic Republic entered or withdrawn from warehouse for consumption on or after October 3, 1990.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 24, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-99 Filed 1-2-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit: Oceans of Fun, Inc. (P482)

On August 20, 1991, notice was published in the **Federal Register** (56 FR 41334) that an application had been filed by Shelly L. Brandau, Oceans of Fun, Inc., for a permit to obtain four (4) captive-born California sea lions (*Zalophus californianus*) from licensed marine mammal facilities for public display at the Milwaukee County Zoo.

Notice is hereby given that on December 27, 1991, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a permit for the above taking subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that Oceans of Fun, Inc. offers an acceptable program for education or conservation purposes. The facilities are open to the public on a regularly scheduled basis and access to facilities is not limited or restricted other than by the charging of an admission fee.

The Permit is available for review by interested persons by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/713-2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508-281-9200);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893-3141);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731 (213/514-6196); and

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115 (206/526-6150).

Dated: December 27, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92-100 Filed 1-2-92; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 23-24 January 1992.

Time: 0800-1700 hours daily.

Place: Fort Leavenworth, Kansas.

Agenda: Members of the Army Science Board C3I Issue Group will meet to continue work on issues relating to the upcoming study entitled "Command and Control on the Move." The Group will receive numerous classified briefings on AirLand Battle doctrine. This meeting will be cloised to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Office, Sally Warner, may be contracted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-13 Filed 1-2-92; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 11-22 January 1992.

Time: 0800-1700 hours daily.

Place: 11 January 1992, depart CONUS, 12 January 1992, Rome/UK, 13 January 1992, Rome/UK, 14 January 1992, Madrid/The Hague, 15 January 1992, Zurich, 15 January 1992, Paris, 16 January 1992, Marignane, 17 January 1992, Bonn, 18 January 1992, Tokyo.

Agenda: The Army Science Board Ad Hoc Study Group on Comanche International will visit the above listed countries on the dates specified to explore collaborative opportunities in the development of the RAH-66 Comanche Helicopter Program. The Study team will provide briefings to the MOD's on status of the Comanche Program and discuss opportunities for collaboration. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified, proprietary and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-75 Filed 1-2-92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Cooperative Agreement

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of Intent.

SUMMARY: The U.S. Department of Energy, Idaho Field Office (DOE-ID), announces that pursuant to the DOE Financial Assistance Rules 10 CFR part 600.7(b)(2)(i)(A) it intends to issue a renewal award to the Cooperative Agreement with American Iron and Steel Institute (AISI). The objective of the work is to provide for renewal of the research and development project for Direct Steelmaking.

FOR FURTHER INFORMATION CONTACT: Ginger Sandwina, U.S. Department of Energy, Idaho Field Office, 785 DOE Place, MS 1221, Idaho Falls, Idaho 83401-1562, 208/526-8698.

SUPPLEMENTARY INFORMATION: The statutory authority for the proposed award is Public Law 93-577, Federal Non-Nuclear Energy Research and Development Act of 1974 (ERDA) and Public Law 100-680, the "Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988." The unsolicited proposal meets the criteria for renewal of a project as set forth in 10 CFR 600.7(b)(2)(i)(A). The objective of the AISI "Direct Steelmaking" project is to develop a coal-based (coke-free) continuous in-bath smelting process for the direct production of liquid steel. The process development goals are: (a) Re luced energy consumption compared to the conventional coke oven—blast furnace—basic oxygen furnace route; (b) at least a 10% reduction in product cost;

and, (c) flexibility in raw materials input. The project will consist of laboratory studies and pilot-scale research and development. In addition, the project will include supporting studies on circulating fluid beds, continuous desulfurization and decarbonization, and mixed-phase heat transfer and fluid flow. A techno-economic analysis will be conducted at the conclusion of the experimental work in order to determine the feasibility of commercializing this coal-based, continuous direct steelmaking process in the U.S.A. The successful results of this research may lead to further industrial-scale tests before the technology can be adapted to industrial practice.

The anticipated project period for this renewal is 22 months. The total cost of this renewal is estimated at $18,500,000. Total project costs are estimated to be $52,000,000. Authorizing legislation requires AISI to provide at least 30% cost share of DOE's contribution. DOE funding for the first 12 months of this renewal is estimated to be $9,600,000.

Issued December 20, 1991.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 92-88 Filed 1-2-92; 8:45 am]

BILLING CODE 6450-01-M

Cooperative Agreement

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy, Idaho Field Office, announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i)(C) it intends to award a Cooperative Agreement to City of Boise, Idaho. The objective of the work to be performed under this Cooperative Agreement is to resolve problems that preclude the City of Boise from fully developing geothermal resources.

FOR FURTHER INFORMATION CONTACT: Ginger Sandwina, U.S. Department of Energy, Idaho Field Office, 785 DOE Place, MS 1221, Idaho Falls, Idaho 83401-1562, (208) 526-8698.

SUPPLEMENTARY INFORMATION: The statutory authorities for the proposed award are 42 U.S.C. 2011 et seq., Atomic Energy Act of 1954 as amended, the Federal Non-nuclear Energy Research and Development Act of 1974 (Pub. L. 93-577), the Energy Reorganization Act of 1974 (Pub. L. 93-438), and the Energy and Water Development Appropriation Bill of 1991 (Pub. L. 102-104). The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity. This agreement will provide the City of Boise with the means to evaluate, access and improve geothermal resources. These activities are expected to help assist the citizens of the City of Boise to develop to a fuller extent the geothermal resources in the area. The anticipated total project period to be awarded is thirty-six (36) months. The total project cost is estimated to be $870,000.

Issued: December 13, 1991.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 92-89 Filed 1-2-92; 8:45 am]

BILLING CODE 6450-01-M

Title: The Physics of Coal Liquid Atomization; Acceptance of an Unsolicited Proposal Assistance (Grant) With Carnegie Mellon University

AGENCY: U.S. Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Notice of Acceptance of an Unsolicited Proposal Assistance (Grant) Award with Carnegie Mellon University.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center, announces that pursuant to 10 CFR 600.14, it intends to award a grant to Carnegie Mellon University based on acceptance of an unsolicited proposal. The Carnegie Mellon University has proposed a unique approach to expand the fundamental understanding on atomization of coal-liquid slurries. It is anticipated that the results of this research will provide a better prediction of atomizer performance and will lead to improved atomizer designs.

SUPPLEMENTARY INFORMATION:

Awardee: Carnegie Mellon University.

Grant Number: DE-FG22-92PC92152.

Grant Value: $434,791.

Scope: The objective of the grant is to investigate spray characteristics of coal-liquid slurries related to the physical properties of slurries.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921-118, Pittsburgh, PA 15236, Attn: Martin J. Byrnes, Telephone: AC (412) 892-4486.

Issued in Washington, DC on December 18, 1991.

Dale A. Siciliano,

Chief, Contracts Group 1, Pittsburgh Energy Technology Center.

[FR Doc. 92-90 Filed 1-2-92; 8:45 am]

BILLING CODE 6450-01-M

City of Chicago—Department of Planning Urban Consortium Energy Task Force; Award Based on Justification of Noncompetitive Financial Assistance

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) Chicago Field Office, announces it intends to negotiate a sole source cooperative agreement renewal with the City of Chicago—Department of Planning-Urban Consortium Energy Task Force under document number DE-FC02-90CE27504. The renewal is made pursuant to 10 CFR 600.6(b)(2) and was justified in accordance with 10 CFR 600.7(b)(2). The object of the work is follow-on research, development, and application studies in the areas of energy, environment, economic and social development; energy efficient facilities; and transportation as they apply to energy problems in urban jurisdictions.

SUPPLEMENTARY INFORMATION: The program has formal components for technology transfer and experience exchange to interested urban jurisdictions. In addition to individual projects, a core program supports management coordination and technical assistance to each of the projects both collectively and individually.

The City of Chicago acts as the designated fiscal agent to receive the award on behalf of the Urban Consortium Energy Task Force. The project period for the grant is for 1½ year period, expected to begin in January 1992. DOE plans to provide funding in the amount of $2,111,389.00 for this project period.

FOR FURTHER INFORMATION CONTACT: Robert L. Kladiva, U.S. Department of Energy, DOE Chicago Field Office, 9800 South Cass Avenue, Argonne, IL 60439. 708/252-2365.

Issued in Chicago, Illinois on December 13, 1991.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92-91 Filed 1-2-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP92-233-000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

December 20, 1991.

[Docket No. CP92-233-000]

Take notice that on December 12, 1991, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 77978, filed in Docket No. CP92-233-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the firm transportation and delivery of 300,000 Mcf of natural gas per day to Southern California Gas Company (SoCal) at the Ehrenberg delivery point near Blythe, California, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that on August 31, 1990, as amended on October 5, 1990, El Paso filed its offer of settlement, request for approval of Stipulation and Agreement in Docket No. RP88-44-000 *et al.* (Global Settlement). El Paso states further that the Global Settlement provided, among other things, a schedule for the conversion of all existing firm sales entitlements to firm transportation. It is stated that under the provisions of Article III of the Global Settlement, each of El Paso's firm sales customers shall convert 100 percent of its firm sales entitlements to firm transportation, subject to the terms, conditions and requirements set forth in Article III.

It is said that based upon the Global Settlement, SoCal advised El Paso that it would convert to firm transportation service effective September 1, 1991.

Comment date: January 10, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

December 20, 1991.

[Docket No. CP92-229-000]

Take notice that on December 11, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-229-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities located in Colorado and Kansas (Baca County System), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that it seeks to abandon and transfer ownership to Panda Resources, Inc. (Panda) certain Panhandle facilities in Baca County, Colorado and Morton County, Kansas, including: (1) One compressor station site with total compression of approximately 1,195 horsepower; (2) approximately 56 miles of pipeline, appurtenant facilities, operating and maintenance equipment and spare parts in inventory.

Panhandle states further that all facilities abandoned by Panhandle would remain in place for the continued use by Panda.

Comment date: January 10, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. North Country Gas Pipeline Corporation

December 23, 1991.

[Docket Nos. CP89-362-002 and CP89-363-002]

Take notice that on December 6, 1991, North Country Gas Pipeline Corporation (Applicant), Five Post Oak Park, suite 1400, Houston, Texas 77027, filed Docket Nos. CP89-362-002 and CP89-363-002 to amend to the "Order Approving Point of Importation and Exportation and Issuing Presidential Permit", issued to Applicant on April 3, 1991, in order to increase the diameter of its pipeline from 12-inches to 16-inches and to request changes in the environmental conditions, all set forth in the request which is on file with the Commission and open to public inspection.

Applicant states that the Commission's order approving point of importation and Presidential Permit issued on April 3, 1991 in Docket Nos. CP89-362-000, CP89-362-001, CP89-363-000 and CP89-363-001, authorized Applicant to site, construct, operate and maintain natural gas pipeline facilities at the United States/Canada border near Champlain, New York as part of a 26-mile pipeline to be constructed by Applicant to transport gas from an interconnect with TransCanada PipeLines Limited to certain cogeneration, industrial and local distribution customers in Clinton County, New York.

Applicant requests authorization to amend the April 3, 1991 Order in order to increase the diameter of its pipeline facilities between the United States/Canada border and Saranac Energy Company Inc's (Saranac's) proposed nominal 240 MW cogeneration facility, from twelve to sixteen inches and requests that Article 2 of its Presidential Permit be amended to reflect this increase in pipeline diameter. Applicant seeks the Commissions' approval to reflect the fact that the pipeline will serve the Saranac facility instead of three separate 79.9 MW cogeneration facilities.

Applicant states that applicant's pipeline was intended to serve three 79.9 MW cogeneration facilities proposed to be constructed by affiliates of Applicant in Clinton County, New York. Applicant indicates that on July 12, 1991, the State of New York Public Service Commission ("NYPSC") approved the consolidation of the three cogeneration facilities into a single 240 MW facility to be located at the Saranac Energy Company, Inc. site. Applicant further states that the gas turbines to be utilized in the consolidated cogeneration facility will require a lower gas delivery pressure than those to be used in the three unconsolidated plants. It is indicated that at a lower delivery pressure of approximately 565 psi at a diameter of 12 inches, the capacity of the pipeline will decrease from 81 MMcf per day to about 58 MMcf per day. Applicant states that this reduced capacity will be insufficient to satisfy the anticipated requirements of the consolidated cogeneration facility as well as the other customers previously expected to receive gas through the Applicant's pipeline—Georgia-Pacific Corporation, which is expected to receive gas at its tissue paper mill in Plattsburgh, New York, and New York State Electric and Gas Corporation, which intends to utilize the Applicant pipeline to distribute gas to several communities in Clinton, County. To satisfy the anticipated demand, Applicant proposes to utilize 16 inch diameter pipeline from the United States/Canada border to the Saranac plant, which will raise the capacity of the pipeline to 105 MMcf per day.

Applicant requests that the Commission revise Conditions 2, 4, and 5 of the April 3, 1990 Order. Applicant states that these conditions required Applicant to file with the Commission copies of all comments and cultural resource survey reports prepared by the New York State Historic Preservation Officer (SHPO) concerning the three proposed cogeneration projects and that Applicant not commence construction of the pipeline facilities until the environmental review of the cogeneration projects was completed by the State of New York Department of Environmental Conservation. Applicant request that the condition be revised in order for Applicant to file with the Commission all comments of the SHPO

and copies of the cultural resource survey reports for the Saranac cogeneration facility, and for the associated power lines based on the New York SHPO's recommendation. Applicant submits that no revision is required to environmental conditions (4) and (5) on the understanding that the conditions apply to the consolidated cogeneration facility rather than the three unconsolidated plants.

Applicant states that the proposed increase in diameter is necessary to serve the anticipated demand for gas in the area. The Applicant also states that the proposed line increase in pipeline diameter is an insignificant change from the proposal originally approved by the Commission. The proposed location, route, and right-of-way for the border facilities have not changed. Applicant submits that, on November 27, 1991, it filed with the NYPSC a petition to revise the certificate of environmental compatibility and public need issued to Applicant on March 13, 1991 in accordance with the changes set forth in this amendment.

Comment date: January 13, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corporation

December 23, 1991.

[Docket No. CP92-237-000]

Take notice that on December 12, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158-0900 filed in Docket CP92-237-000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon the gathering and exchange service with Williams Natural Gas Company (WNG) and upon approval of the abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that Northwest and WNG have mutually agree to abandon the gathering and exchange agreement which was authorized on March 8, 1983 in Docket No. CP82-434-000 (Northwest) and Docket No. CP82-316-000 (WNG). This agreement covered wells in Carbon County, Wyoming.

Further, it has stated that Northwest and WNG executed a termination Agreement dated July 1, 1991, which terminated the Agreement effective July 1, 1991, since Northwest's and WNG's records indicate that no imbalance exist. Northwest also states that no abandonment of facilities is proposed in conjunction with the abandonment of this service.

Comment date: January 10, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Williams Natural Gas Company

December 23, 1991.

[Docket No. CP92-244-000]

Take notice that on December 16, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, successor in interest to Cities Services Gas Company, filed in Docket CP92-244-000 an abbreviated application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon the gathering and exchange service with Northwest Pipeline Corporation (Northwest) and upon approval of the abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG states that WNG and Northwest have mutually agreed to abandon the gathering and exchange agreement which was authorized on March 8, 1983 in Docket No. CP82-316-000 (WNG) and Docket No. CP82-434-000 (Northwest). This agreement covered wells in Carbon County, Wyoming.

Further, it has stated that WNG and Northwest executed a termination Agreement dated July 1, 1991, which terminated the Agreement effective July 1, 1991, since WNG's and Northwest's records indicate that no imbalance exist. WNG also states that no abandonment of facilities is proposed in conjunction with the abandonment of this service.

Comment date: January 13, 1992, in accordance with Standard Paragraph F at the end of this notice.

6. Transwestern Pipeline Company

December 23, 1991.

[Docket No. CP92-243-000]

Take notice that on December 16, 1991, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP92-243-000, pursuant to Section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing operation of certain pipeline and metering facilities in the states of Arizona and California, all as more fully set forth in the application which is on file with the Commission and is open to public inspection.

Transwestern states that it is currently constructing the Topock Interconnect facilities pursuant to section 311 of the NGPA. Transwestern plans to have these facilities available for service concurrently with the proposed completion date of its San Juan/Mainline Expansion Project. Transwestern requests the Commission to issue a certificate of public convenience and necessity to operate the Topock Interconnect pursuant to Section 7(c) of the Natural Gas Act. Transwestern requests the Commission to grant expeditious authorization so these facilities will be available concurrently with the proposed completion date of its San Juan/Mainline Expansion Project. The Topock Interconnect Facilities will connect Transwestern's system to the Mojave pipeline system. Without expeditious certificate authorization, Transwestern will be limited to transporting on the Topock Interconnect facilities to only qualified NGPA 311 shippers. This could result in Subpart G shippers not being able to access Mojave's markets with any gas supplies on Transwestern's system, including the San Juan Basin.

Comment date: January 13, 1992, in accordance with the Standard Paragraph F at the end of this notice.

7. Arkla Energy Resources, a Division of Arkla, Inc.

December 24, 1991.

[Docket No. CP92-248-000]

Take notice that on December 17, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc., 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP92-248-000 a request pursuant to §§ 157.205, 157.211, 157.212 and 157.216 of the Commission's Regulations (18 CFR 175.205, 157.211, 157.212 and 157.216) under its blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 to construct and operate certain facilities in Arkansas, Louisiana and Texas, and to abandon certain facilities in Arkansas and Texas, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, AER proposes (1) to operate three existing taps for delivery of natural gas to Arkansas Louisiana Gas Company (ALG) for resale to consumers other than the right-of-way grantors for whom the taps were originally installed, (2) to upgrade one existing meter station for increased deliveries to ALG for resale consumers, and (3) to relocate two existing meter stations for deliveries to ALG and to abandon certain related AER pipeline facilities. AER further states that the gas will be delivered from its general system supply, which it states is adequate to provide the service.

Comment date: February 10, 1992, in accordance with Standard Paragraph G at the end of this notice.

8. Northern Natural Gas Company

December 24, 1991.

[Docket No. CP92-257-000]

Take notice that on December 19, 1991, Northern Natural Gas Company (Northern), P.O. Box 3330, Omaha, Nebraska 68103-0330, filed a request with the Commission in Docket No. CP92-257-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon in place approximately 2.27 miles of its four-inch Elkhart, Kansas, branchline and 1,310 feet of this four-inch Hugoton, Kansas, branchline under Northern's blanket certificate issued in Docket No. CP82-401-000, all as more fully described in the application which is open to public inspection.

Northern proposes to abandon in place approximately 2.27 miles of its four-inch Elkhart, Kansas, branchline and 1,310 feet of its four-inch Hugoton, Kansas, branchline because these facilities have been replaced by new facilities. Northern states that the Commission authorized the Elkhart meter station and branchline and the Hugoton town border station and branchline in the "grandfather" order issued April 6, 1943, in Docket No. G-280. Northern further states that it installed these facilities in 1929 and 1931 to serve Peoples Natural Gas Company, Division of Utilicorp United Inc. (Peoples), for natural gas service to residential and commercial consumers in Elkhart and Hugoton, respectively. Northern states that the proposed abandonment would not result in the abandonment of service to any of Northern's existing customers and that Peoples has agreed to the proposed abandonment of facilities.

Comment date: February 10, 1992, in accordance with Standard Paragraph G at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation

[Docket No. CP92-260-000]

December 24, 1991.

Take notice that on December 20, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92-260-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon firm transportation service to Tennessee Gas Pipeline Company (Tennessee), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Transco has provided Tennessee with written notice of its desire to terminate the service agreement and service under Transco's Rate Schedule X-15, effective January 15, 1992. It is also stated that Transco requests authorization to provide replacement firm transportation service under Transco's Rate Schedule FT, effective as of January 15, 1992, at the same level of service as under Rate Schedule X-15 and that the pregranted abandonment provision of the Commission's Regulations not apply to such replacement FT service.

Comment date: January 3, 1992, in accordance with Standard Paragraph F at the end of this notice.

10. Northwest Pipeline Corporation

[Docket No. CP92-252-000]

December 24, 1991.

Take notice that on December 17, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed in Docket No. CP92-252-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a gas exchange service with Questar Pipeline Corporation (Questar), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that on October 4, 1966, Northwest's predecessor, El Paso Natural Gas Company (El Paso) and Cascade Natural Gas Corporation (Cascade) entered into a gas exchange agreement covering the delivery of not more than 6,000 Mcf per day of natural gas by Cascade from the Elk Springs and Winter Valley fields in Moffatt County, Colorado, into Northwest's Piceance Creek lateral in Rio Blanco County, Colorado, in exchange for the delivery of equivalent quantities of gas by Northwest into Cascade's pipeline at the discharge side of Northwest's Compressor Station No. 24 at the upstream terminus of Northwest's Piceance Creek lateral in Rio Blanco County, Colorado.

Northwest states that the exchange agreement was originally certificated in El Paso's Docket No. CP67-141 and Cascade's Docket No. CP67-154 by order issued February 13, 1967. It is also stated that effective January 21, 1968, El Paso's tariff was modified to reflect a volume increase to 9,000 Mcf per day under the exchange agreement.

It is stated that as a result of Northwest's acquisition of El Paso's Pacific Northwest Division in 1974, the exchange agreement is set forth as Rate Schedule X-17 in Northwest's F.E.R.C. Gas Tariff, Original Volume No. 2. It is also stated that in 1976, in Docket No. CP76-111, Mountain Fuel Resources, Inc., received approval to acquire Cascade's Colorado-Utah Division facilities and to continue operating under Cascade's previously certificate contracts, including the exchange with Northwest. In addition, it is stated that effective March 7, 1988, the name of Mountain Fuel Resources, Inc. was changed to Questar Pipeline Company.

Northest requests permission and approval to abandon the exchange of up to 6,000 Mcf per day of natural gas with Questar pursuant to Northwest's Rate Schedule X-17 of its F.E.R.C. Gas Tariff, Original Volume No 2. Northwest states that the primary term of the October 4, 1966 exchange agreement expired in 1976. Northwest further states that Questar's predecessor, Cascade Natural Gas Corporation was authorized to abandon its participation in the exchange service in 1984.

Northest states that no abandonment of facilities is proposed in conjunction with the abandonment of this service.

Comment date: January 14, 1992, in accordance with Standard Paragraph F at the end of the notice.

11. Northwest Pipeline Corporation

[Docket No. CP92-253-000]

December 24, 1991.

Take notice that on December 17, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed in Docket No. CP92-253-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon gathering and exchange services provided for Colorado Interstate Gas Company (CIG), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that in Docket No. CP78-122, order issued November 16, 1989, Northwest and CIG were authorized to transport and exchange up to 25,000 Mcf per day of natural gas. Northwest states that it has been gathering only 23 MMBtu per day of natural gas for CIG under Rate Schedule X-66 from a few wells connected by Northwest to CIG's system in the Blue Gap and Madden areas of Wyoming. In addition, Northwest states that it has terminated nearly all of its system gas supply purchase arrangements, so it no longer needs the expansive, system-wide gathering and transportation services provided by CIG.

It is stated that Northwest and CIG have agreed to terminate the

transportation and exchange services under Rate Schedule X–66. Northwest states that replacement gathering and open-access transportation agreements were executed which provide for CIG's continued gathering and transportation of Northwest's small remaining gas supplies which were formerly subject to the Rate Schedule X-66 transportation and exchange agreement. In addition, it is stated that to replace Northwest's gathering service for CIG under Rate Schedule X–66, Northwest and CIG entered into a non-certificated replacement gathering and processing agreement whereby Northwest agreed to gather on an interruptible basis and process up to 1,000 MMBtu per day of natural gas owned or controlled by CIG from various wells, including the wells which were formerly covered by the Rate Schedule X–66 agreement.

Comment date: January 14, 1992, in accordance with the Standard paragraph F at the end of this notice.

12. Northwest Pipeline Corporation

[Docket No. CP92–254–000]

December 24, 1991.

Take notice that on December 18, 1991, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84158–0900, filed in Docket No. CP92–254–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a transportation and exchange service for Questar Pipeline Company (Questar), all as more fully set forth in the request which is open to public inspection.

Northwest states that the transportation service was authorized by the Commission in Docket Nos. G–15458 and G–17651. It is asserted that Pacific Northwest Pipeline Corporation (Pacific Northwest), a predecessor of Northwest, was authorized to exchange up to 100,000 Mcf per day of gas with Mountain Fuel Supply Company (Mountain Fuel), a predecessor of Questar, pursuant to the terms of an agreement dated July 1, 1958, on file with the Commission as Northwest's Rate Schedule X–15. It is stated that Pacific Northwest was authorized to transport gas for Mountain Fuel pursuant to the terms of an agreement dated December 6, 1958, on file with the Commission as Northwest's Rate Schedule X–16. It is explained that Northwest and Questar have mutually agreed to terminate the transportation and exchange service by signing a Termination Agreement dated October 1, 1990. It is explained that Northwest would replace the services proposed for abandonment with an open-access interruptible transportation service. It is further explained that no facilities would be abandoned in conjunction with the proposed abandonment of service.

Comment date: January 14, 1992, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instance notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92–31 Filed 1–2–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–143–008]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes In FERC Gas Tariff

December 26, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes"), on December 17, 1991, tendered to the Federal Energy Regulatory Commission (Commission) the following *pro forma* tariff sheets, to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volumes Nos. 2 and 3:

First Revised Volume No. 1

33rd Revised Sheet No. 1

Original Volume No. 2

39th Revised Sheet No. 1
Third Revised Sheet No. 4
First Revised Sheet Nos. 5 through 25

Original Volume No. 3

Second Revised Sheet No. 1
Second Revised Sheet No. 8
Second Revised Sheet No. 23

Great Lakes states that the purpose of the instant filing is to comply with Ordering Paragraph (B) of the "Opinion and Order Affirming in Part and Reversing in Part Initial Decision" issued by the Federal Energy Regulatory Commission ("Commission") on October 31, 1991, in Docket Nos. RP89–186–000, *et al.* (Opinion). In this regard, the Opinion directed Great Lakes to file, in Docket No. RP91–143–000, *pro forma* tariff sheets containing a capacity release and assignment program applicable to its firm transportation services (*see*, Opinion, *mimeo* at 20–21, 24).

Great Lakes further states that the *pro forma* tariff sheets would create new Rate Schedule CRT, applicable to the transportation of gas for the account of an assignee of firm capacity under the release and assignment program. In addition, the *pro forma* tariff are submitted, Great Lakes states, to include a Form of Service Agreement applicable to Rate Schedule CRT, an Amendatory Agreement to provide a contractual basis for the assignment of capacity, *pro forma* tariff sheets to designate the format for capacity release and

assignment requests, and various other technical changes to Great Lakes' FERC Gas Tariff to reflect the capacity release and assignment program.

Great Lakes states that copies of this filing were served on all of its customers, upon the Public Service Commissions of the States of Minnesota, Michigan, and Wisconsin, and upon all parties listed on the service list maintained by the Commission's Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-36 Filed 1-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-259-052]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 26, 1991.

Take notice that on December 18, 1991, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Thirty-Fifth Revised Sheet No. 86
Forty-Fourth Revised Sheet No. 87
Forty-Seventh Revised Sheet No. 88
Twenty-Ninth Revised Sheet No. 89
Thirty-Eighth Revised Sheet No. 90
Twenty-Fifth Revised Sheet No. 94
Twenty-First Revised Sheet No. 95
Twenty-Fifth Revised Sheet No. 96
Twentieth Revised Sheet No. 97
Twenty-Fourth Revised Sheet No. 98
Twenty-Seventh Revised Sheet No. 99
Twenty-Third Revised Sheet No. 100
Twenty-First Revised Sheet No. 101
Twenty-Third Revised Sheet No. 102
Twenty-First Revised Sheet No. 103
Twentieth Revised Sheet No. 104
Twentieth Revised Sheet No. 105
Fourteenth Revised Sheet No. 105A
Twentieth Revised Sheet No. 106
Seventeenth Revised Sheet No. 107
Nineteenth Revised Sheet No. 108
Twentieth Revised Sheet No. 109
Twentieth Revised Sheet No. 110
Eighteenth Revised Sheet No. 111
Nineteenth Revised Sheet No. 112
Eighth Revised Sheet No. 112A
Twentieth Revised Sheet No. 113
Twentieth Revised Sheet No. 114
Nineteenth Revised Sheet No. 115
Seventeenth Revised Sheet No. 116
Twenty-First Revised Sheet No. 117
Twenty-Third Revised Sheet No. 118
Twenty-Fourth Revised Sheet No. 119
Seventeenth Revised Sheet No. 120
Nineteenth Revised Sheet No. 121
Fifteenth Revised Sheet No. 122
Fifteenth Revised Sheet No. 123
Fifteenth Revised Sheet No. 125
Fifth Revised Sheet No. 126
Fourth Revised Sheet No. 127
Fourth Revised Sheet No. 128
Third Revised Sheet No. 129
Sixth Revised Sheet No. 130
Sixth Revised Sheet No. 131

These tariff sheets are being filed to update the Index of Purchasers and Directory of Communities Served contained in Northern's FERC Gas Tariff, Third Revised Volume No. 1, reflecting the extension of Northern's IGIC approved by Commission order dated September 3, 1991, and Service Agreements associated with the Wisconsin Gas Company "Grantsburg" sale approved by Commission order dated September 6, 1991 in Docket No. CP91-1677-000. All Service Agreements contained in this filing became effective an November 1, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-37 Filed 1-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-19-001]

Transwestern Pipeline Co. Compliance Filing

December 26, 1991.

Take notice that Transwestern Pipeline Company (Transwestern) on December 16, 1991 tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective December 1, 1991:

Substitute 4th Revised Sheet No. 28
Substitute 1st Revised Sheet No. 51A
Substitute 4th Revised Sheet No. 68A
Substitute Original Sheet No. 80A
Substitute Original Sheet No. 80B
Substitute 7th Revised Sheet No. 81
Substitute 1st Revised Sheet No. 92A
Substitute 1st Revised Sheet No. 92B
Substitute 1st Revised Sheet No. 92C
Substitute 1st Revised Sheet No. 92D

Transwestern states that the above-referenced tariff sheets are being filed to comply with the Commission's Order ("Order") issued November 29, 1991 in Docket No. RP92-19-000. The Order required Transwestern to refile revised tariff sheets within fifteen (15) days to reflect language for Unauthorized Gas that states Transwestern will only assess one penalty for each unauthorized gas infraction that occurs, and that penalties assessed against Transwestern or an affiliate will be refunded to other customers on Transwestern's system.

The Commission also approved the indexing of imbalances, but only prospectively. Therefore, Transwestern states, it is refiling revised tariff sheets to implement price indexing and Monthly-Cash-Out for those imbalances occurring after January 1, 1992. In addition, the Commission's Order directed the FERC Staff to convene a technical conference to discuss the proposed tariff revisions dealing with Flexible Receipt Points, Flexible Delivery Points, and Monthly Cash-Out of past imbalances. Therefore, Transwestern states, it is refiling revised tariff sheets to be effective December 1, 1991 to remove these provisions until after the technical conference.

Transwestern requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary so as to permit the tariff sheets submitted by it to become effective December 1, 1991.

Transwestern states that copies of the filing were served upon all parties of record in this proceeding, all Transwestern's utility customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-38 Filed 1-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-1-55-002 and TM92-2-55-001]

Questar Pipeline Co.; Tariff Filing

December 26, 1991.

Take notice that Questar Pipeline Company, on December 16, 1991 tendered for filing and acceptance to be effective December 1, 1991, and January 1, 1992, the following tariff sheets:

	Effective date
Original Volume No. 1:	
Second Substitute Fifteenth Revised Sheet No. 12.	December 1, 1991.
Substitute Sixteenth Revised Sheet No. 12.	January 1, 1992.
Original Volume No. 1-A:	
Substitute Seventh Revised Sheet No. 5.	January 1, 1992.
Original Volume No. 3:	
Substitute Eighth Revised Sheet No. 8.	January 1, 1992.

Questar states that the purpose of this filing is to (1) refile its purchase gas cost adjustment in compliance with the November 29, 1991, order in Docket No. TQ92-1-55-000 and (2) update tariff sheets filed November 27, 1991, in Docket No. TM92-2-55-000 implementing the Gas Research Institute Charge by incorporating revised base sales and transportation rates in accordance with Questar's November 15, 1991, compliance filing in Docket No. RP91-140-008 as supplemented on December 10, 1991, and December 12, 1991.

Questar states that it has provided a copy of this filing to parties listed on the Commission's official service list of Docket Nos. TQ92-1-55-000 and TM92-2-55-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-34 Filed 1-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-16-005]

Superior Offshore Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 26, 1991.

Take notice that on December 19, 1991, Superior Offshore Pipeline Co. ("SOPCO") tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1:

1. Sixth Revised Sheet No. 40;
2. Sixth Revised Sheet No. 41;
3. Fifth Revised Sheet No. 42;
4. Fifth Revised Sheet No. 43; and
5. First Revised Sheet No. 43a.

The above-referenced tariff sheets are being filed to ensure continued compliance with the findings and conditions set forth in the Commission's May 23, 1991 "Order on Order Nos. 497 and 497-A Compliance Filings," issued in Docket Nos. MT-88-1-000, *et al.*,[1] and the Commission's May 23, 1991 "Order" specifically applicable to SOPCO in Docket No. MG 88-23-000,[2] part 161 of the Commission's Regulations concerning Standard of Conduct for Interstate Pipelines With Market Affiliates and Order Nos. 497 and 497-A. The principal purpose of the above-referenced tariff sheets is to reflect an updated list of operating personnel for the SOPCO system resulting from a September 1, 1991 reorganization of management and operational personnel of all Mobil Corporation affiliate pipeline systems.

SOPCO requests that the above-referenced tariff sheets be made effective February 1, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding.

[1] Algonquin Gas Transmission Company, *et al.*, 55 FERC ¶ 61,261 (1991).

[2] Superior Offshore Pipeline Company, 55 FERC ¶ 61,289 (1991).

Any person wishing to become a party must file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-35 Filed 1-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-17-003]

Texas Sea Rim Pipeline, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 26, 1991.

Take notice that on December 19, 1991, Texas Sea Rim Pipeline, Inc. ("Sea Rim") tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2:

1. Second Revised Sheet No. 113;
2. Second Revised Sheet No. 114;
3. Second Revised Sheet No. 115;
4. First Revised Sheet No. 115a; and
5. Second Revised Sheet No. 116.

The above-referenced tariff sheets are being filed to ensure continued compliance with the findings and conditions set forth in the Commission's May 23, 1991 "Order or Order Nos. 497 and 497-A Compliance Filings," issued in Docket Nos. MT-88-1-000, *et al.*,[1] and the Commission's May 23, 1991 "Order" specifically applicable to Sea Rim in Docket No. MG 88-24-000,[2] Part 161 of the Commission's Regulation concerning Standards of Conduct for Interstate Pipeline With Market Affiliates and Order Nos. 497 and 497-A. The principal purpose of the above-referenced tariff sheets is to reflect an update list of operating personnel for the Sea Rim system resulting from a September 1, 1991 reorganization of management and operational personnel of all Mobil Corporation affiliate pipeline systems.

Sea Rim requests that the above-referenced tariff sheets be made effective February 1, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the

[1] Algonquin Gas Transmission Company, *et al.*, 55 FERC ¶ 61,261 (1991).

[2] Texas Sea Rim Pipeline, Inc., 55 FERC ¶ 61,290 (1991).

protestants parties to the proceeding. Any person wishing to become a party must file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-33 Filed 1-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-19-000]

Transwestern Pipeline Co.; Rescheduling of Technical Conference

December 26, 1991.

Take notice that the technical conference, previously scheduled for Wednesday, January 8, 1992, has been rescheduled. The conference has been scheduled for Wednesday, January 15, 1992 at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 92-39 Filed 1-2-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-21-001]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 26, 1991.

Take notice that Williams Natural Gas Company (WNG) on December 16, 1991 tendered for filing Substitute First Revised Sheet No. 219 to be included in its FERC Gas Tariff, First Revised Volume No. 1.

WNG states that this filing was made in compliance with Commission order (order) issued November 29, 1991 in Docket No. RP92-21-000. The order directed WNG to file revised tariff sheets within 15 days of the date of the order to clarify that if WNG's currently effective PGA rates are based on an interim PGA filing, any sales of excess deliveries to the Company during a supply curtailment will be made at the WACOG included in such interim PGA filing. Substitute First Revised Sheet No. 219 is being filed to clarify the WACOG basis for the purchase of excess deliveries.

WNG states that copies of its filing were served on all jurisdictional purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-32 Filed 1-2-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-104-NG]

Global Petroleum Corp.; Application To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on December 4, 1991, of an application filed by Global Petroleum Corp. (Global) for blanket authorization to import and export up to 100 Bcf of natural gas, including liquefied natural gas (LNG), over a two-year period commencing with the date of first import or export delivery. Global intends to use the existing facilities to transport the proposed imports and exports, no new construction would be required. Global would submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, February 3, 1992.

ADDRESSES:

Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:

C. Frank Duchaine Jr., Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3G-087, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8233.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: Global is a Massachusetts corporation with its principal place of business in Waltham, Massachusetts. Global is a marketer of natural gas and is an affiliate with Trinity Pipeline Inc., an aggregator and marketer of natural gas.

Global proposes to secure quantities of U.S. natural gas from a variety of suppliers in various producing states and resell to customers outside the U.S. Also, Global contemplates purchasing natural gas supplies from a variety of foreign suppliers and reselling such supplies to any suitable domestic purchaser, including local distribution companies, pipelines, and commercial and industrial end-users. Global requests authorization to import and export natural gas and LNG for its own account as well as for the accounts of others. Although the identity of the parties are not known at this time, Global states that the individual import and export transactions would be conducted through arm's length bargaining and the price would be competitive in the marketplace. In addition, Global asserts that the gas to be exported would be incremental to the needs of current domestic purchasers in the area from which the supplies would come.

The decision on Global's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested

import and export authority. The applicant asserts that this import/export arrangement would be in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Global's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 27, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–92 Filed 1–2–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4090–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 16, 1991 Through December 20, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D–AFS–L82012–ID Rating EC2, Lucky Peak Nursery Pest Management Program, Implementation, Intermountain Region, Boise National Forest, Ada County, ID.

Summary: EPA has reviewed the Draft Environmental Impact Statement (DEIS). EPA rated the DEIS EC–2 (Environmental Concerns-Insufficient Information). EPA has concerns regarding the potential for surface and ground water chemical contamination and surface water eutrophication.

ERP No. D–BIA–K85083–00 Rating EO2, Fort Mojave Indian Reservation Planned Community Development, Mojave Valley Resort, Lease Approval, Sites Selected, Section 404 Permit and Coast Guard Permit, San Bernardino Co., CA, Clark Co., NV and Mohave Co., AZ.

Summary: EPA expressed environmental objections regarding potential impacts to air and water quality, wetlands, sensitive species and biodiversity. EPA requested additional information in the FEIS on the jurisdiction and enforcement of environmental laws; monitoring and mitigation; and impacts to air and water quality, vegetation, wildlife, including cumulative impacts.

ERP No. D–DOE–K36103–CA Rating EC2, Sacramento Metropolitan Area Flood Control Plan, Implementation, Yolo and Sacramento Counties, CA.

Summary: EPA expressed environmental concerns because the DEIS did not rigorously explore and objectively evaluate all alternatives, nor did it sufficiently discuss compliance with environmental laws (Clean Water Act, Clean Air Act), nor did it sufficiently discuss means to mitigate adverse direct, indirect and cumulative impacts to wetlands, water quality, air quality and other natural resources. EPA noted that, based on the information in the DEIS, it was unable to determine the least environmentally damaging practicable alternative which fulfills the basic project purpose, as required by the Clean Water Act.

ERP No. D–SFW–L70011–AK Rating EC2, Federal Subsistence Management Program for Federal Public Lands in Alaska, Implementation, AK.

Summary: EPA had environmental concerns based on the potential for adverse effects if adequate funding is not received to implement the entire program. Additional information is needed to describe the feedback loop for the use of population status information in the subsistence use decision process.

Final EISs

ERP No. F–BLM–G02000–NM Albuquerque District Resource Management Plan (RMP) Amendment, Oil and Gas Leasing and Development, Farmington, Rio Puerco and Taos Resource Areas, Implementation, Several Counties, NM.

Summary: EPA feels while the FEIS attempts to be responsive to issues such as cumulative impacts, methane migration, air quality, etc., there is little documentation offered by BLM to validate the responding statements. Additional studies or analyses are warranted on these issues to fill remaining data gaps. As such, we

continue to have concerns with the proposal. Region 6 believes that the recently signed MOU between BLM and EPA, to deal with oil and gas activities in the San Juan Basin, may be the best mechanism to resolve these issues.

ERP No. FA-COE-A30031-FL Manatee County Shore Protection Project, Beach Protection Extension and Groins Construction, Updated Modifications, Manatee County, FL.

Summary: EPA continues to have a degree of environmental concern about removal of sand from the offshore borrow area because this could affect the long-term sand budget for this section of Anna Maria Island. Additionally, the value of using artificial reefs as mitigation for hard bottom loss remains a matter of discussion.

Dated: December 30, 1991.

William D. Dickerson,

Deputy Officer, Office of Federal Activities.

[FR Doc. 92-98 Filed 1-2-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4090-4]

Environmental Impact Statements; Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260-5073 OR (202) 260-5075. Availability of Environmental Impact Statements Filed December 23, 1991 Through December 27, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910449, FINAL EIS, FAA, TX, Stinson Municipal Airport Improvement, Airport Layout Plan, Approval and Funding, City of San Antonio, Bexar County, TX, Due: February 03, 1992, Contact: Ms. Mo Keane (817) 624-5606.

EIS No. 910450, DRAFT EIS, SFW, CA, Tijuana Estuary Tidal Restoration Project, Implementation, Tijuana River National Estuarine Research Reserve, Section 10 and 404 Permits and Special Use Permit, San Diego County, CA, Due: March 04, 1992, Contact: Robert Fields (503) 429-6164.

EIS No. 910451, DRAFT EIS, FRC, WA, ID, NV, OR, WY, CA, Northwest Natural Pipeline Gas Expansion Project, Construction and Operation, Licensing, from points in Canada and the United States to Washington, Oregon, Idaho, Wyoming, Nevada and California, WA, OR, ID, WY, NV and CA, Due: February 18, 1992, Contact: Lauren O'Donnell (202) 208-0874.

EIS No. 910452, DRAFT EIS, UAF, NM, Cannon Air Force Base Realignment, F/EF-111 Basing, Implementation, Curry County, NM, Due: February 18, 1992, Contact: Brenda Cook (804) 764-4430.

EIS No. 910453, DRAFT EIS, BLM, UT, Diamond Mountain Resource Area, Resource Management Plan, Implementation, Daggett, Duchesne and Uintah Counties, UT, Due: April 01, 1992, Contact: Penelope Smalley (801) 789-1362.

EIS No. 910454, DRAFT EIS, COE, PA, Curwensville Lake Water Storage Reallocation, Implementation, Susquehanna River Basin, Susquehanna River, Clearfield County, PA, Due: February 18, 1992, Contact: Claire D. O'Neill (410) 962-4958.

Dated: December 30, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-97 Filed 1-2-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL 4090-3]

Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; Bennington Landfill Site, Bennington, VT

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of Banner Publishing Corporation, Town of Bennington, Bennington Iron Works, Inc., Bijur Lubricating Corporation, Chemical Fabrics Corporation, Courtaulds Structural Composites, Inc., East Mountain Transport, Environmental Action, Inc., Eveready Battery Corporation, G.C.D.C., Inc., Johnson Controls Inc., and Textron, Inc. for costs incurred by EPA in conducting response actions at the Bennington Landfill Superfund Site in Bennington, Vermont as of February 9, 1991.

DATES: Comments must be provided on or before February 3, 1992.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts 02203, and should refer to: In the Matter of Bennington Landfill Superfund Site, Bennington, VT, U.S. EPA Docket No. I-91-1094.

FOR FURTHER INFORMATION CONTACT: Andrew Raubvogel, U.S. Environmental Protection Agency, Office of Regional Counsel, RCV, J.F.K. Federal Building, Boston, Massachusetts 02203, (617) 565-3169.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Bennington Landfill Superfund Site in Bennington, VT. The settlement was approved by EPA Region I on December 16, 1991, subject to review by the public pursuant to this Notice. Banner Publishing Corporation, Town of Bennington, Bennington Iron Works, Inc., Bijur Lubricating Corporation, Chemical Fabrics Corporation, Courtaulds Structural Composites, Inc., East Mountain Transport, Environmental Action, Inc., Eveready Battery Corporation, G.C.D.C., Inc., Johnson Controls, Inc., and Textron, Inc., the Settling Parties, have executed signature pages committing them to participate in the settlement. Under the proposed settlement, the Settling Parties are required to pay $197,920.64 to the Hazardous Substances Superfund. EPA believes the settlement is fair and in the public interest.

EPA is a entering into this agreement under the authority of section 122(h) of CERCLA. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle a claim under section 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice approved this settlement in writing on December 3, 1991.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Andrew Raubvogel, U.S. Environmental Protection Agency, Office of Regional Counsel, JFK Federal Building—RCV, Boston, Massachusetts 02203, (617) 565-3169.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG,

Boston, Massachusetts (U.S. EPA Docket No. I–91–1094).

Dated: December 16, 1992.

Julie Belaga,

Regional Administrator.

[FR Doc. 92–83 Filed 1–2–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL 4090–2]

Proposed Administrative Settlement under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; In re: Great Northern Nekoosa Corp.; East Millinocket, ME

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of Great Northern Nekoosa Corporation for costs incurred by EPA in conducting response actions at their facility in East Millinocket, Maine.

DATES: Comments must be provided on or before February 3, 1992.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts 02203, and should refer to: Great Northern Nekoosa Corporation, East Millinocket, Maine, U.S. EPA Docket No. TSCA–I–87–1041.

FOR FURTHER INFORMATION CONTACT: Kathleen Woodward, U.S. Environmental Protection Agency, Office of Regional Counsel, RCV, J.F.K. Federal Building, Boston, Massachusetts 02203, (617) 565–4891.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Great Northern Nekoosa Corporation in East Millinocket, ME. The settlement was approved by EPA Region I on September 27, 1991, subject to review by the public pursuant to this Notice. Great Northern Nekoosa Corporation, the Settling Party, has executed signature pages committing them to participate in the settlement. Under the proposed settlement, the Settling Party is required to pay $210,000 to the Hazardous Substances Superfund. EPA believes the settlement is fair and in the public interest.

EPA is a entering into this agreement under the authority of section 122(h) of CERCLA. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle a claim under Section 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action.

EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from Kathleen Woodward, U.S. Environmental Protection Agency, Office of Regional Counsel, JFK Federal Building—RCV, Boston, Massachusetts 02203, (617) 565–4891.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts (U.S. EPA Docket No. TSCA–I–87–1041).

Dated: December 16, 1991.

Julie Belaga,

Regional Administrator.

[FR Doc. 92–82 Filed 1–2–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted To Office of Management and Budget for Review

December 20, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.

Title: Section 73.30, Petition for authorization of an allotment in the 1605–1705 kHz band.

Action: New collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 250 responses; 2 hours average burden per response; 500 hours total annual burden.

Needs and Uses: Section 73.30(a) requires any party interested in applying for an AM broadcast station to be operated on one of the ten channels in the 1605–1705 kHz band must first file a petition for the establishment of an allotment to its proposed community of service. Each petition must include certain information. Section 73.30(b) requires a petitioner if awarded an allotment, sixty (60) days from the date of public notice of selection to file an application for construction permit (FCC Form 301). Upon grant of the application and the construction of the authorized facility, the applicant must file a covering license application (FCC Form 302). The data will be used by FCC staff to determine whether applicant meets basic technical requirements to migrate to the expanded band.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92–63 Filed 1–2–92; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 91–300; DA 91–1535]

Private Land Mobile Radio Services; Virginia Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Virginia (Region 42). As a result of accepting the Plan for Region 42, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: December 20, 1991.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Before the Federal Communications Commission, Washington, DC 20554.

In the Matter of Virginia Public Safety Plan

[PR Docket No. 91-300]

Order

Adopted: December 11, 1991.
Released: December 20, 1991.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On March 11, 1991, Region 42 (Virginia) submitted its public safety plan to the Commission for review. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Virginia. On September 20, 1991, Virginia filed revisions to the plan, based on conversations with the Commission's staff.

2. The Virginia plan was placed on Public Notice for comments on October 9, 1991, 56 FR 52549 (October 21, 1991). The Commission received no comments in this proceeding.

3. We have reviewed the plan submitted for Virginia and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87-112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Virginia.

4. Therefore, we accept the Virginia Public Safety Radio Plan. Furthermore, licensing of the 821-824/866-869 MHz band in Virginia may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 92-11 Filed 1-2-92; 8:45 am]

BILLING CODE 6712-01-M

[DA 91-1574]

Public Safety Region 5 Meeting Announced

December 18, 1991.

The Southern California Chapter of the Associated Public-Safety Communications Offices (APCO) will be conducting a meeting pursuant to General Docket 87-112, for the purpose of revising the Southern California 800 MHz Regional Communication Plan, Region 5, for the counties of San Diego and Imperial. Interested parties should contact: Garrett Mayer, Convenor and Committee Chairman, Los Angeles County Communications, 1110 North Eastern Avenue, Los Angeles, CA 90063, Phone (213) 267-2320.

The affected areas are defined by the physical boundaries of the counties of San Diego and Imperial.

The meeting will be held at the San Diego County Administrative Center, 1600 Pacific Highway, room 358, San Diego, CA 92101 on January 24, 1992, at 10 a.m.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497.

Federal Communications Commission.

William F. Caton,

Acting Secretary

[FR Doc. 92-61 Filed 1-2-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010736-005.

Title: Long Beach/Long Beach Container Terminal, Preferential Assignment Agreement.

Parties: City of Long Beach, Long Beach Container Terminal, Inc.

Synopsis: This Agreement, filed December 17, 1991, provides for certain revisions in the preferential assignment lease between the City of Long Beach and Long Beach Container Terminal, Inc. Those revisions include the description of the assigned premises and adjustments in the compensation provisions.

Agreement No.: 217-011362.

Title: Tecomar, S.A. de C.V./ Transportation Maritima Mexicana, S.A. de C.V./Euro-Gulf International, Inc., Slot Charter Agreement, a/k/a Tecomar/TMM/EGI Slot Charter Agreement.

Parties: Tecomar, S.A. de C.V., Transportacion Maritima Mexicana, S.A. de C.V. Euro-Gulf International, Inc.

Synopsis: The proposed Agreement establishes a slot chartering arrangement between the parties in the trade between ports and points in North Europe including Felixstowe, and ports and points in the U.S. Atlantic and Gulf Coast, and the Gulf Coast of Mexico. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: December 27, 1991.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 92-7 Filed 1-2-92; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice if hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 3389.

Name: Miguel D. Marave dba Marave & Associates.

Address: 138 Arena St., Unit C, El Segundo, CA 90245.

Date Revoked: October 24, 1991.

Reason: Failed to furnish a valid surety bond.

License Number: 1708-R.

Name: International Forwarding & Project Management, Inc.

Address: Five Beekman St., suite 520, New York, NY 10038.

Date Revoked: October 30, 1991.

Reason: Failed to furnish a valid surety bond.

License Number: 3107.

Name: Tradelink International, Inc.

Address: 416 E. Hennepin Ave., suite 105, Minneapolis, MN 55414.

Date Revoked: October 31, 1991.

Reason: Failed to furnish a valid surety bond.

License Number: 1683R.

Name: Pacific Steamship Agency, Inc. dba R. B. Abbott & Co. Inc.

Address: 1050 Green St., San Francisco, CA 94133.

Date Revoked: November 2, 1991.

Reason: Failed to furnish a valid surety bond.

License Number: 2229.

Name: T-A-T Airfreight, Inc. dba Tatmar Co.

Address: 4401 N.W. 74th Ave., Miami, FL 33152.

Date Revoked: November 8, 1991.

Reason: Failed to furnish a valid surety bond.

License Number: 3247.
Name: Drew Freight, Inc.
Address: 29 Broadway, New York, NY 10006–3030.
Date Revoked: November 20, 1991.
Reason: Failed to furnish a valid surety bond.

License Number: 1958.
Name: Wilson Maritime, Inc.
Address: 125 Elizabeth St., #3B, New York, NY 10013.
Date Revoked: November 22, 1991.
Reason: Failed to furnish a valid surety bond.

License Number: 2008R.
Name: Moses E. Shamash & Company.
Address: 5758 W. Century Blvd., suite 212, Los Angeles, CA 90045.
Date Revoked: November 26, 1991.
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,
Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 92–73 Filed 1–2–92; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

MASSBANK Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 27, 1992.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. MASSBANK Corp., Reading, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of MASSBANK for Savings, Reading, Massachusetts.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Majoning National Bancorp, Inc., Youngstown, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Mahoning National Bank of Youngstown, Youngstown, Ohio.

C. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Triangle Bancorp, Inc., Raleigh, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Triangle Bank and Trust Company, Raleigh, North Carolina.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company and International Regulation) 101 Market Street, San Francisco, California 94105:

1. Continental Bancorporation, Las Vegas, Nevada; to become a bank holding company by acquiring 100 percent of the voting shares of Continental National Bank, Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, December 27, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92–44 Filed 1–2–92; 8:45 am]
BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Wednesday, January 22, 1992, from 9 a.m. to 5 p.m.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code, and section 10(d) of the Federal Advisory Committee Act, a meeting closed to the public will be held on January 23, 1992, from 8:30 a.m. to 12:30 p.m. to review, discuss, and evaluate grant applications. The discussion and review of grant applications could reveal confidential personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

ADDRESS: The meeting will be at the Hyatt Regency Hotel, 7400 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Judith D. Moore, Executive Secretary at (301) 227–8142.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to the actions of AHCPR to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are:

Linda H. Aiken, Ph.D.; Mr. Edward C. Bessey; Joseph F. Boyle, M.D.; Linda Burnes-Bolton, Dr. P.H.; Joseph T. Curti, M.D.; Gary L. Filerman, Ph.D.; Juanita W. Fleming, Ph.D.; David Hayes-Bautista, Ph.D.; William S. Kiser, M.D.; Kermit B. Knudsen, M.D.; Norma M. Lang, Ph.D.; Barbara J. McNeil, M.D.; Mr. Walter J. McNerney; Lawrence H. Meskin, D.D.S., Ph.D.; Theodore J. Phillips, M.D.; Barbara Starfield, M.D.; and Donald E. Wilson, M.D.

There also are Federal ex officio members. These members are:

Administrator, Alcohol, Drug Abuse and Mental Health Administration; Director, National Institutes of Health; Director, Centers for Disease Control; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs);

and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Wednesday, January 22, 1992, the open portion of the meeting will begin at 9 a.m. with the call to order by the Council Acting Chairman. The Administrator will report on AHCPR activities and discuss the Council's advice on AHCPR planning activities. In the afternoon the AHCPR Administrator and other AHCPR staff will present an update on AHCPR's clinical guidelines development followed by a presentation by AHCPR staff on grant review procedures. The Council will recess at 5 p.m.

On Thursday, January 23, 1992, the Council will resume at 8:30 a.m. with a closed meeting to review grant applications. The meeting will then adjourn at 12:30 p.m.

Agenda items are subject to change as priorities dictate.

Dated: December 19, 1991.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92-6 Filed 1-2-92; 8:45 am]

BILLING CODE 4160-90-M

Food and Drug Administration

[Docket No. 91F-0480]

E.I. Dupont de Nemours and Co., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that E.I. duPont de Nemours and Co., Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,1-difluoroethane as a blowing agent in the production of polystyrene articles intended to contact food.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4303) has been filed by E.I. duPont de Nemours and Co., Inc., Wilmington, DE 19898. The petition proposes to amend the food additive regulations to provide for the safe use of 1,1-difluoroethane as a blowing agent in the production of polystyrene articles intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 23, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-53 Filed 1-2-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F-0465]

Gycor International, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Gycor International, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of citric acid, disodium ethylenediamine tetraacetate, sodium lauryl sulfate, and monosodium phosphate as components of a sanitizing solution for general use on food-contact surfaces.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4301) has been filed by Gycor International, Ltd., c/o Hogan & Hartson, 555 Thirteenth St. NW., Washington, DC 20004. The petition proposes to amend the food additive regulations in § 178.1010 *Sanitizing solutions* (21 CFR 178.1010 to provide for the safe use of citric acid, disodium ethylenediamine tetraacetate, sodium lauryl sulfate, and monosodium phosphate as components of a sanitizing solution intended for general use on food-contact surfaces.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 23, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-52 Filed 1-2-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F-0399]

3-V Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that 3-V Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,3-propanediamine, N,N''-1,2-ethanediylbis-, polymer with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine and 2,4,6-trichloro-1,3,5-triazine as a light stabilizer for polypropylene and polyethylene complying with 21 CFR 177.1520.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4277) has been filed by 3-V Chemical Corp., P.O. Drawer Y, Georgetown, SC 29442. The petition proposes to amend the food additive regulations in § 178.2010 Antioxidants and/or stabilizers for polymers (21 CFR 178.2010) to provide for the safe use of 1,3-propanediamine, N,N''-1,2-ethanediylbis-, polymer with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine and 2,4,6-trichloro-1,3,5-triazine as a light stabilizer for polypropylene and polyethylene complying with 21 CFR 177.1520.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the

Federal Register in accordance with 21 CFR 25.40(c).

Dated: December 23, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-54 Filed 1-2-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91M-0493]

Staar Surgical Co.; Premarket Approval of Elastimide ™ Models AQ-1000, AQ-1001, AQ-1002, AQ-1005, and AQ-1016 Silicone Posterior Chamber Intraocular Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Staar Surgical Co., Monrovia, CA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Elastimide ™ Models AQ-1000, AQ-1001, AQ-1002, AQ-1005, and AQ-1016 Silicone Posterior Chamber Intraocular Lenses. The devices are to be manufactured under an agreement with Softlensco, Inc., Los Angeles, CA, which has authorized Staar Surgical Co. to incorporate information contained in its approved premarket approval application (PMA) (P900048) for the Elastimide ™ Models AQ-1000, AQ-1001, AQ-1002, AQ-1005, and AQ-1016 Silicone Posterior Chamber Intraocular Lenses. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 29, 1991, of the approval of the application.

DATES: Petitions for administrative review by February 3, 1992.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donna L. Rogers, Center for Devices and Radiological Health (HFZ-463), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1212.

SUPPLEMENTARY INFORMATION: On September 30, 1991, Staar Surgical Co., Monrovia, CA 91016, submitted to CDRH an application for premarket approval of Elastimide ™ Models AQ-1000, AQ-1001, AQ-1002, AQ-1005, and AQ-1016 Silicone Posterior Chamber Intraocular Lenses. These devices are indicated for primary implantation for the visual correction of aphakia in persons 60 years of age or older in whom a cataractous lens has been removed by extracapsular cataract extraction. The devices are intended to be placed in the ciliary sulcus or capsular bag. The application includes authorization from Softlensco, Inc., Los Angeles, CA 90071, to incorporate information contained in its approved PMA for Elastimide ™ Models AQ-1000, AQ-1001, AQ-1002, AQ-1005, and AQ-1016 Silicone Posterior Chamber Intraocular Lenses.

In accordance with the provisions of section 515(f)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Ophthalmic Devices Panel, the FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On November 29, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations for a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 3, 1992, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 24, 1991.

Elizabeth D. Jacobson,

Deputy Director, Center for Diseases and Radiological Health.

[FR Doc. 92-102 Filed 1-2-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91M-0496]

Staar Surgical Co.; Premarket Approval of Elastic™ Model AA-4203 Silicone Posterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Staar Surgical Co., Monrovia, CA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Elastic™ Model AA-4203 Silicone Posterior Chamber Intraocular Lens. The device is to be manufactured under an agreement with Softlensco, Inc., Los Angeles, CA, which has authorized Staar Surgical Co. to incorporate information contained in its approved premarket approval application (P880091) for the Elastic™ Model AA-4203 Silicone Posterior Chamber Lens. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 29, 1991, of the approval of the application.

DATES: Petitions for administrative review by February 3, 1992.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for

administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donna L. Rogers, Center for Devices and Radiological Health (HFZ–463), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1212.

SUPPLEMENTARY INFORMATION: On September 30, 1991, Staar Surgical Co., 1911 Walker Ave., Monrovia, CA 91016, submitted to CDRH an application for premarket approval of the Elastic ™ Model AA–4203 Silicone Posterior Chamber Intraocular Lens. The device is indicated for primary implantation for the visual correction of aphakia in persons 60 years of age or older in whom a cataractous lens has been removed by phacoemulsification extracapsular cataract extraction. The lens is intended to be placed only in the capsular bag following successful circular tear anterior capsulotomy with a verified absence of radial tears. The application includes authorization from Softlensco, Inc., Los Angeles, CA 90071, to incorporate information contained in its approved premarket approval application for the Elastic™ Model AA–4203 Silicone Posterior Chamber Intraocular Lens.

In accordance with the provisions of section 515(f)(2) of the act as amended by the Safe Medical Devices Act of 1990, this premarket approval application was not referred to the Ophthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the premarket approval application substantially duplicates information previously reviewed by the panel. On November 29, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 3, 1992, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 24, 1991.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 92–103 Filed 1–2–92; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Nashville District Office, chaired by Raymond K. Hedblad, District Director. The topic to be discussed is food labeling.

DATES: Wednesday, January 15, 1992, 9:30 a.m.

ADDRESSES: Guy M. Tate Bldg., Jefferson County Department of Health, 1400 Sixth Ave. South, Birmingham, AL 35233.

FOR FURTHER INFORMATION CONTACT: Sandra S. Baxter, Public Affairs Specialist, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615–781–5372.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: December 27, 1991.

Robert L. Spencer,

Acting Deputy Commissioner for Policy.

[FR Doc. 92–4 Filed 1–2–92; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Orlando District Office, chaired by Douglas D. Tolen, District Director. The topic to be discussed is food labeling reform.

DATES: Monday, January 27, 1992, 10 a.m. to 12 a.m.

ADDRESSES: Palm Beach County Cooperative Extension Service, 559 North Military Trail, West Palm Beach, FL 33415.

FOR FURTHER INFORMATION CONTACT: Estela Niella-Brown, Public Affairs Specialist, Food and Drug Administration, P.O. Box 59–2256, Miami, FL 33159–2256, 305–526–2919.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: December 27, 1991.

Robert L. Spencer,

Acting Deputy Commissioner for Policy.

[FR Doc. 92–5 Filed 1–2–92; 8:45 am]

BILLING CODE 4160–01–M

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National Institutes of Health

Availability of Information on Technology Transfer and Government-Owned Inventories Available for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health desires to announce the availability of information concerning the technology transfer programs of the Public Health Service, including government-owned inventions available for licensing. The information, contained in the "1991 PHS Technology Transfer Directory" (November 1991), includes the following: (1) Acronyms of participating PHS agencies; (2) List of technology keywords and names of all PHS scientists who indicated this keyword as an area of collaborative interest; (3) Addresses of PHS investigators interested in forming collaborations with industry; (4) List of PHS technology transfer resource personnel; (5) List of existing Cooperative Research and Development Agreements (CRADAs); (6) Model license agreements, model CRADA agreement and technology transfer policy statements; and (7) List of existing DHHS-owned inventions available for licensing to interested companies. This information is available in a printed version or can be supplied in a machine-readable form for publishers, on-line services and similar organizations.

The NIH Office of Technology Transfer is also considering the formation of non-exclusive CRADAs with publishers, on-line services and similar organizations to further research and development efforts regarding information dissemination for PHS inventions and technology transfer.

ADDRESS: Inquiries should be directed to: Mr. Steven Ferguson, Technology Management Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892 (telephone: (301) 496–0750; fax: (301) 402–0220).

Dated: December 17, 1990.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 92–19 Filed 1–2–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–91–3370]

Submission of Proposed Information Collection to OMB

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department consulted with a number of potential users prior to this publication; however, additional public comments are solicited on the proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay Weaver, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, phone (202) 708–0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing an information collection package with respect to the Section 202 Supportive Housing Program for the Elderly and the Section 811 Supportive Housing Program for Persons with Disabilities.

The information collected will be forms currently used for processing requests for conditional commitment and firm commitment, as well as loan closings, which have been modified, as necessary, to convert Section 202 loan applications to either the Section 202 Supportive Housing Program for the Elderly or the Section 811 Supportive Housing Program for Persons with Disabilities. As provided for in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1992, eligible projects in the pipeline which have not been initially closed as of December 31, 1991, will be converted during the period January 1, 1992 to April 1, 1992 to the appropriate supportive housing program. The Department has requested OMB to complete its paperwork review of the forms within 1 working day. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office or agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, or reinstatement, and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 24, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Collecting information from approved applicants under Section 202 Housing for the Elderly or Disabled.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This information will enable HUD to convert Section 202 direct loan projects for the elderly or disabled to either the Section 202 Supportive Housing Program for the Elderly or the Section 811 Supportive

Housing Program for Persons with Disabilities.

Form Number: Various processing and closing forms.

Respondents: Nonprofit organizations and nonprofit consumer cooperatives which have been previously approved under the Notices of Fund Availability for Section 202 Housing for the Elderly or Handicapped.

Frequency of Submission: One time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hrs. per response	=	Burden hours
202/811	350		1		10.5		3,675
	100		1		1.5		150
	50		1		.5		25
					[1] 12.5		3,850

[1] See attached table for burden hours for each application requirement.

Status: Revision of forms used in direct loan program.

Contact: Sharon Mizell, HUD (202) 708–2866, Jennifer Main, OMB (202) 395–6880.

Dated: December 24, 1991.

[FR Doc. 92–20 Filed 1–2–92; 8:45 am]

BILLING CODE 4210–27–M

Office of Administration

[Docket No. N–91–975]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 16, 1991.

John T. Murphy,

Director, Information Resources, Management Policy and Management Division.

Proposal: Recertification of Family Income and Composition, Section 235 (b).

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: The forms are submitted by homeowners to mortgagees to determine their continued eligibility for assistance and to determine the amount of assistance a homeowner is to receive. The forms are also used by mortgagees to report statistical and general program data to HUD.

Form Number: HUD–93101 and 93101–A.

Respondents: Individuals or households and businesses or other for-profit.

Frequency of Submission: On occasion, monthly and annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–93101	150,000		1.25		1		187,500
HUD–93101–A	962		12		.17		1,962

Total Estimated Burden Hours: 189,462.

Status: Reinstatement.

Contact: Florence Brooks, HUD, (202) 708–1719, Jennifer Main, OMB, (202) 395–6880.

Dated: December 16, 1991.

[FR Doc. 92–21 Filed 1–2–92; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–1917; FR–2934–N–59]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: January 3, 1992.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: December 24, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 92–2 Filed 1–2–92; 8:45 am]

BILLING CODE 4210–29–M

Office of Fair Housing and Equal Opportunity

[Docket No. D–91–975; FR–3197–D–01]

Redelegation of Authority Under the Fair Housing Act and 24 CFR Part 103

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: Under this notice, the Assistant Secretary for Fair Housing and Equal Opportunity for the Department of Housing and Urban Development (HUD) redelegates certain authority under 24 CFR 103.400 to make determinations of no reasonable cause respecting fair housing complaints. This redelegation is made to the Directors of the Regional Offices for Fair Housing and Equal Opportunity (Regional Directors). The Assistant Secretary retains authority to make determinations of no reasonable cause respecting fair housing complaints.

EFFECTIVE DATE: December 13, 1991.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Investigations, Office of Fair Housing and Equal Opportunity, room 5208, 451 Seventh Street, SW., Washington, DC 20410–2000, telephone: (202) 708–0836. A telecommunications device for hearing impaired persons (TDD) is available at (202) 401–4913. (These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Part 103 of title 24 of the Code of Federal Regulations contains HUD's regulations governing the complaint processing procedures under the Fair Housing Act. Under 24 CFR 103.400, in processing complaints under the Act, the General Counsel of HUD is delegated exclusive authority to make all determinations of whether or not reasonable cause exists to believe that discrimination occurred. The General Counsel redelegated the authority in 24 CFR 103.400 to make determinations of no reasonable cause to the Assistant Secretary for Fair Housing and Equal Opportunity under a redelegation of authority published in the **Federal Register** on December 28, 1990, at 55 FR 53293.

Under this redelegation, the Assistant Secretary for Fair Housing and Equal Opportunity redelegates to the ten HUD Regional Directors for Fair Housing and Equal Opportunity the authority, redelegated by the General Counsel, in 24 CFR 103.400, to issue determinations of no reasonable cause in processing fair housing complaints and to carry out functions attendant to such determinations. This redelegation includes determinations in all cases including, but not limited to, zoning and land use matters. The Assistant Secretary retains authority to issue no reasonable cause determinations in these matters. This redelegation also does not affect the authority of the General Counsel, or the authority redelegated to the ten Regional Counsel, to make determinations of reasonable cause and no reasonable cause under 24 CFR 103.400.

Section A—Authority Redelegated

The Assistant Secretary for Fair Housing and Equal Opportunity redelegates to the Directors of the Regional Offices of Fair Housing and Equal Opportunity the authority under 24 CFR 103.400:

1. To determine that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur in processing fair housing complaints;

2. To carry out the following functions attendant to such a determination;

(a) Issuing a short and plain written statement of the facts upon which the Regional Director has based the no reasonable cause determination;

(b) Dismissing the complaint based on the no reasonable cause determination;

(c) Notifying the aggrieved person and the respondent of the dismissal (including the written statement of facts) as required by 24 CFR 103.400(a)(1); and

(d) Making public disclosure of the dismissal as described in 24 CFR 103.400(a)(1).

Section B—No Further Redelegation

The authority granted to the Regional Office Directors under this notice may not be further redelegated pursuant to this redelegation.

Dated: December 13, 1991.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 92–22 Filed 1–2–92; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Wapato Irrigation Project, Washington

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final notice of operation and maintenance rates.

SUMMARY: The purpose of this notice is to change the assessment rates for

operating and maintaining the Wapato Irrigation Project for 1992 and subsequent years. The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

EFFECTIVE DATE: Date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232–4169, telephone FTS 429–6750; commercial (503) 231–6750.

SUPPLEMENTARY INFORMATION: On November 8, 1991 in the **Federal Register**, Volume 56, No. 217, Page 57348, there was published a notice of proposed assessment rates and related provisions on the Wapato Irrigation Project for Calendar Year 1992 and subsequent years until further notice.

Interested persons were given 30 days in which to submit written comments, views or arguments regarding the proposed rates and related provisions. During this period no comments, suggestions, or objections were submitted. However, the chairman of the Yakima Tribal Council submitted a letter dated December 9, 1991. The letter stated the Tribe was objecting to assessment of O&M charges and was also opposed to the 22% increase in the O&M rates.

The Tribes objections was considered in this final publication. The need for this increase still exists and must be upheld in order to maintain the level of service needed.

A portion of the payments section was deleted since it was not consistent with the interest and penalty fees section. This following sentence was deleted "To all assessment on lands in non-Indian ownership and lands in Indian ownership remaining unpaid on or after July following due date shall be considered delinquent." Therefore, the assessment rates and related provisions as set forth below are adopted effective 30 days after date of publication in the **Federal Register**. Operation and maintenance rates and related information are published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and delegated by the Assistant Secretary—Indian Affairs to the Area Director in BIAM 3. This notice is given in accordance with § 171.1(e) of part 171, subchapter H, chapter I, of title 25 of the Code of Federal Regulations, which provide for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information of the Wapato Irrigation Project for Calendar Year 1992 and subsequent years. This notice is pursuant to the authority contained in the Acts of August 1, 1914 (38 Stat. 587), and March 7, 1928 (45 Stat. 210).

The purpose of this notice is to announce an increase in the Wapato Project assessment rates proportionate with actual operation and maintenance costs. The assessment rates for 1992 will amount to an increase of 22% for the Wapato Satus unit, and Additional Works lands and no increase for the Toppenish-Simcoe & Ahtanum units.

Wapato Irrigation Project-General

Administration

The Wapato Irrigation Project, which consists of the Ahtanum Unit, Toppenish-Simcoe Unit, and Wapato-Satus Unit within the Yakima Indian Reservation, Washington, is administered by the Bureau of Indian Affairs. The Project Engineer of the Wapato Irrigation Project is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employees designated by him. The general regulations are contained in part 171, Operation and Maintenance, title 25-Indians, Code of Federal Regulations. (42 FR 30362, June 14, 1977)

Irrigation Season

Water will be available for irrigation purposes from April 1 to September 30 of each year. These dates may be varied by 20 days depending on weather conditions and the necessity for doing maintenance work warrants doing so.

Request for Water Delivery and Changes

Request for water delivery and changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditchrider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Repeated violations of this rule will result in strict enforcement of rotation schedules.

Water users will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

Charges for Speical Services

Charges will be collected for various special services requested by the general public, water users and other organizations during the Calendar Year 1992 and subsequent years until further notice, as detailed below:

(1) Requests for Irrigation Accounts and Status Reports, Per Report	$15.00
(2) Requests for Verification of Account Delinquency Status, Per Report	10.00
(3) Requests for Splitting of Operation and Maintenance Bills (in addition to minimum billing fee) Per Bill	10.00
(4) Requests for Billing of Operation and Maintenance to Other than Owner or Lessee of Record (in addition to minimum billing fee), Per Bill	10.00
(5) Requests for Other Special Services similar to the above, when appropriate, Per Report	10.00
(6) Requests for elimination of lands from the Project. In the event that the elimination is approved, a portion of the fee will be used to pay the Yakima County, Recording Fee	10.00
(7) Review of subdivision plats	10.00

Ahtanum Unit

Charges

(a) The operation and maintenance rate on lands of the Ahtanum Irrigation Unit for the Calendar Year 1992 and subsequent years until further notice, is fixed at $9.00 per acre per annum for land to which water can be delivered from the project works.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

Toppenish-Simcoe Unit

Charges

(a) The operation and maintenance rate for the lands under the Toppenish-Simcoe Irrigation Unit for the Calendar year 1992 and subsequent years until further notice, is fixed at $9.00 per acre per annum for land for which an application for water is approved by the Project Engineer.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bills issued for any

tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

Wapato-Satus Unit

Charges

(a) The basic operation and maintenance rates on assessable lands under the Wapato-Satus Unit are fixed for the Calendar Year 1992 and subsequent years until further notice as follows:

(1) Minimum charge for all tracts.....	$36.00
(2) Basic rate upon all farm units or tracts for each assessable acre except Additional Works lands.....	36.00
(3) Rate per assessable acre for all lands with a storage water rights, known as "B" lands, in addition to other charges per acre.....	6.80
(4) Basic rate upon all farm units or tracts for each assessable acre of Additional Works lands	39.60

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied against all tracts of less than one acre.

Payments

The water charges become due on April 1 of each year and are payable on or before that date. No water shall be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest and penalty fees will be assessed, where required by-law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, title 4, part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Assessable Lands

The assessable lands of the Wapato-Satus Unit are classified under these regulations as follows:

(a) All Indian trust (A and B) land designated as assessable by the Secretary of the Interior for which application for water is pending or on which assessments had been charged the preceding year.

(b) All Indian trust (A or B) land not designated as assessable by the Secretary of the Interior for which application for water is pending or on which assessments had been charged the preceding year.

(c) All patent in fee land covered by a water right contract, except on land that because of inadequate drainage is no longer productive. The adequacy of the drainage is determined by the Project Engineer.

(d) At the discretion of Project Engineer and upon the payment of charges, patent in fee land for which an application for a water right or modification of a water right contract is pending.

Wilford Bowker,

Acting Portland Area Director.

[FR Doc. 92-68 Filed 1-2-92; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[WO760-00-4410-01-2410]

Public Land and Resources; Planning, Programming, and Budgeting

AGENCY: Bureau of Land Management; Interior.

ACTION: Notification of resource management planning schedule.

SUMMARY: A provision of the regulation governing resource management planning on the public lands administered by the Bureau of Land Management (BLM) requires the agency to annually publish a planning schedule (43 CFR 1610.2(b)). The schedule provides the public information on the status of resource management plans (RMP's) in preparation. Projected new RMP starts for the 3 succeeding fiscal years are also identified to provide the public an opportunity to comment on the projected planning schedule and to aid coordination with other Federal agencies and levels of government.

There are currently 41 RMP efforts in progress (not including plan amendments). The BLM expects that 13 of these plans will be completed in Fiscal Year (FY) 1992 and that an additional 13 will be completed in FY 1993. This large number of ongoing RMP's is having a significant effect on the agency's capacity both to start new plans and to maintain the existing base of completed RMP's.

In FY 1992 five new RMP starts are projected. New starts beyond FY 1992 are not identified at this time. It is anticipated that, upon completion of a substantial number of the RMP's in progress, there will be sufficient capacity to start a limited number of new RMP's and revise some older RMP's. Prospects for new starts (and revisions) beyond those identified in this schedule appear at this time to include the following RMP's: Lower Gila (Arizona); Deep Creek (Idaho); Malheur/Jordan (Oregon); and Grand (Utah, a revision).

There are extensive opportunities for the public to participate in the resource management planning process (43 CFR 1610.2). The preparation of each RMP (or plan amendment) begins with the publication of a Notice of Intent to initiate a plan. Subsequent public notice and participation opportunities are provided as required by the regulations. Publication of a draft RMP and associated draft environmental impact statement, as indicated on the schedule, is a key opportunity for public comment.

A number of plan amendments are in progress to address oil and gas resources in high priority areas. These amendments are identified in a separate table since there is considerable public interest associated with them and, unlike most plan amendments, they have been scheduled over more than 1 year. These plan amendments will determine the availability of public lands for oil and gas leasing and the associated terms and conditions.

A key to the abbreviations used follows the schedule.

DATES: Comments on the schedule will be accepted until January 31, 1992.

ADDRESSES: Comments should be sent to: Director (WO-760), Bureau of Land Management, rm. 406 LS, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gordon Knight or Bruce E. Flinn, (202) 653-8824.

Dated: December 12, 1991.

Cy Jamison,

Director.

TABLE 1.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE

State, district and resource area	Plan name type (major resource/issue)	Fiscal year 1992	Fiscal year 1993	Fiscal year 1994	Fiscal year 1995
Alaska:					
Anchorage					
Glennallen	Southcentral RMP (recreation wildlife)	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Arizona:					
Phoenix					
Kingman	Kingman RMP (realty, ACEC, grazing, wildlife)	ARMP/ROD			
Arizona Strip					
Districtwide	Arizona Strip RMP (realty, off-road vehicles, recreation, cultural).	ARMP/ROD			
Safford					
Districtwide	Safford RMP (recreation, off-road vehicles, ACEC)	ARMP/ROD			
California:					
Bakersfield					
Bishop	Bishop RMP (grazing, realty, geothermal	PRMP/FEIS ARMP/ROD			
Caliente	Caliente RMP ((O&G, realty)	DRMP/DEIS PRMP/FEIS	ARMP/ROD		
California Desert					
Indio	South Coast RMP (O&G, realty, forestry, recreation)	PRMP/FEIS ARMP/ROD			
Susanville					
Alturas	Alturas RMP revision (grazing, wildlife)			DRMP/DEIS	PRMP/FEIS
Ukiah					
Arcata	Arcata RMP (timber, T&E, recreation)	ARMP/ROD			
Redding	Redding RMP (timber, T&E, wildlife)	PRMP/FEIS ARMP/ROD			
Colorado:					
Canon City					
Royal Gorge	Royal Gorge RMP (grazing, realty, O&G, recreation)	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	
San Luis	San Luis RMP (grazing, wildlife, water)	ARMP/ROD			
Montrose					
Gunnison	Gunnison Basin RMP (grazing, wildlife, riparian, recreation)	PRMP/FEIS ARMP/ROD			
Craig					
White River	White River RMP (O&G, riparian, T&E, oil shale)	DRMP/DEIS PRMP/FEIS	ARMP/ROD		
Idaho:					
Boise					
Owyhee	Owyhee RMP (grazing, wildlife)	ARMP/ROD			
Salmon					
Challis	Challis RMP (realty, grazing)		DRMP/DEIS	PRMP/FEIS ARMP/ROD	
Shoshone					
Bennett Hills	Bennett Hills RMP (grazing, recreation)	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	
Montana:					
Lewistown					
Judith Valley, Phillips	Judith/Valley/Phillips RMP (O&G, realty, off-road vehicle)	ARMP/ROD			
Big Dry	Big Dry RMP (realty, off-road vehicles)	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Nevada:					
Battle Mountain					
Tonopah	Tonopah RMP (O&G, realty)	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	
Las Vegas					
Stateline	Stateline RMP (realty, T&E species)	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	
New Mexico:					
Las Cruces					
Mimbres	Mimbres RMP (off-road vehicles, mining, realty)	PRMP/FEIS ARMP/ROD			
Roswell					
Roswell	Roswell RMP (O&G, mining, off-road vehicles)	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	
Tulsa					
Oklahoma	Oklahoma RMP (O&G, coal leasing)		DRMP/DEIS PRMP/FEIS	ARMP/ROD	
	Texas RMP (O&G, coal leasing)		NOI	DRMP/DEIS	PRMP/FEIS ARMP/ROD
Oregon:					
Burns					
Three Rivers	Three Rivers RMP (grazing, wildlife, realty, watershed)	ARMP/ROD			
Coos Bay					
Districtwide	Coos Bay RMP (forestry, watershed, wildlife, realty, ACEC)	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Eugene					
Districtwide	Eugene RMP (forestry, watershed, ACEC, realty)	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Lakeview					
Klamath Falls	Klamath Falls RMP (forestry, watershed, wildlife, range, ACEC).	DRMP/DEIS	PRMP/FEIS ARMP/ROD		

TABLE 1.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

State, district and resource area	Plan name type (major resource/issue)	Fiscal year 1992	Fiscal year 1993	Fiscal year 1994	Fiscal year 1995
Medford					
Districtwide	Medford RMP (forestry, wildlife, watershed, realty, ACEC)	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Roseburg					
Districtwide	Roseburg RMP (forestry, wildlife, watershed, realty, ACEC)	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Salem					
Districtwide	Salem RMP (forestry, wildlife, watershed, realty)	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Eastern States:					
Jackson	Florida RMP (lands, minerals, wildlife, recreation)	NOI	DRMP/DEIS	PRMP/FEIS	ARMP/ROD
Milwaukee	Michigan RMP (oil and gas)	NOI	DRMP/DEIS	PRMP/FEIS	ARMP/ROD
Utah:					
Cedar City					
Kanab-Escalante	Kanab-Escalante RMP (recreation, wildlife)		DRMP/DEIS	PRMP/FEIS	ARMP/ROD
Dixie	Dixie RMP (recreation, range, wildlife)	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	
Richfield					
Henry Mountain	Henry Mountain RMP (ACEC, wildlife)	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	
Vernal					
Diamond Mountain	Diamond Mountain RMP (wildlife, O&G)	PRMP/FEIS	ARMP/ROD		
Wyoming:					
Casper					
Newcastle	Newcastle RMP (O&G)	PRMP/FEIS	ARMP/ROD		
Rock Springs					
Green River	Green River RMP (O&G, grazing, wild horses, cultural resources).	DRMP/DEIS PRMP/FEIS	ARMP/ROD		
Worland					
Grass Creek	Grass Creek RMP (wildlife, watershed)		DRMP/DEIS PRMP/FEIS	ARMP/ROD	

Key to planning schedule abbreviations:
ACEC—Area of Critical Environmental Concern.
ARMP/ROD—Approved Resource Management Plan and Record of Decision.
DRMP/DEIS—Draft Resource Management Plan and Draft Environmental Impact Statement.
PRMP/FEIS—Proposed Resource Management Plan and Final Environmental Impact Statement.
NOI—Notice of Intent.
O&G—Oil and Gas.

TABLE 2—BUREAU OF LAND MANAGEMENT HIGH PRIORITY OIL AND GAS PLAN AMENDMENT SCHEDULE

State, district & resource area	Plan name, type (major resource/issues)	Fiscal year 1992	Fiscal year 1993	Fiscal year 1994	Fiscal year 1995
California:					
Bakersfield					
Hollister	Hollister RMPA (O&G)	DRMPA/DEIS PRMPA/FEIS	ARMPA/ROD		
Colorado:					
Canon City					
Northeast	Statewide RMPA (O&G)	ARMPA/ROD			
Craig					
Kremmling	Statewide RMPA	ARMPA/ROD			
Little Snake	do				
Grand Juction					
Glenwood Springs	Statewide RMPA	ARMPA/ROD			
Montrose					
San Juan/San Miguel	Statewide RMPA	ARMPA/ROD			
Montana:					
Miles City					
Districtwide	Miles City RMPA (O&G)	DRMPA/DEIS	PRMPA/FEIS ARMP/ROD		
Nevada:					
Battle Mountain					
Shoshone-Eureka	Shoshone-Eureka RMPA (O&G)			NOI	DRMPA/DEIS
Elko					
Elko	Elko RMPA (O&G)	DRMPA/DEIS	PRMPA/FEIS ARMPA/ROD		

TABLE 2—BUREAU OF LAND MANAGEMENT HIGH PRIORITY OIL AND GAS PLAN AMENDMENT SCHEDULE—Continued

State, district & resource area	Plan name, type (major resource/issues)	Fiscal year 1992	Fiscal year 1993	Fiscal year 1994	Fiscal year 1995
Ely					
Egan	Egan RMPA (O&G)	DRMPA/ DEIS	PRMPA/ FEIS ARMPA/ ROD		
New Mexico:					
Albuquerque					
Districtwide	Albuquerque RMPA (O&G)	PRMPA/ FEIS ARMPA/ ROD			
Roswell					
Carlsbad	Carlsbad RMPA (O&G)	DRMPA/ DEIS	PRMPA/ FEIS	ARMPA/ ROD	
Oregon:					
Spokane					
Districtwide	Spokane RMPA (O&G)	ARMPA/ ROD			
Utah:					
Vernal					
Book Cliffs	Book Cliffs RMPS (O&G)		NOI	DRMPA/ DEIS	PRMPA/ FEIS ARMPA/ ROD

Key to Oil and Gas Amendment Schedule:
DRMPA/DEIS—Draft Resource Management Plan Amendment/Draft Environmental Impact Statement.
PRMPA/FEIS—Proposed Resource Management Plan Amendment/Final Environmental Impact Statement.
PMFPA/EA—Proposed Management Framework Plan Amendment/Environmental Analysis.
AMFPA/DR—Approved Management Framework Plan Amendment/Decision Record.

[FR Doc. 92-138 Filed 1-2-92; 8:45 am]
BILLING CODE 4310-84-M

[UT-050-02-4410-08]

Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council Meeting.

SUMMARY: The Richfield District Advisory Council will hold a meeting on January 28, 1992. The meeting will start at 10 a.m. in the District Office, 150 East 900 North, Richfield, Utah.

The agenda will include:

1. Election of officers
2. Update on wild horses
3. Update on the Henry Mountain Planning
4. Overview of Animal Damage Control Program
5. Update on R.S. 2477
6. Progress on the Otter Creek Plan
7. Owens wilderness proposal (HR 1500)
8. The Henry Mountain Bison

Interested persons may make oral statements to the Council between 1:15 p.m. and 2:15 p.m. or file written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 (801-896-8221). For further information contact: Bert Hart, District Public Affairs Specialist at the above address.

Dated: December 23, 1991.

Neil Thomas,

Assistant District Manager, Administration.

[FR Doc. 92-69 Filed 1-2-92; 8:45 am]
BILLING CODE 4310-DQ-M

[ID-943-02-4212-13; IDI-27025, IDI-27542]

Notice of Exchanges and Order Providing for Opening of Public Lands; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Exchange and Opening Order.

SUMMARY: The United States has issued two exchange conveyance documents as shown below under Section 206 of the Federal Land Policy and Management Act. In addition to providing official public notice of the exchanges, this document contains an order which opens lands received by the United States to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384-3163.

1. In two exchanges made under the provisions of Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States:

Boise Meridian

IDI-27025 (Conveyed to Dennis M. and Jean S. Baker)

T. 2 N., R. 3 E.,
sec. 34, S½SE¼.

IDI-27542 (Conveyed to Faulkner Land & Livestock Company)

T. 5 S., R. 13 E.,
sec. 19, E½SW¼ and W½SE¼;
sec. 30, NW¼NE¼ and NE¼NW¼.
T. 6 S., R. 15 E.,
sec. 31, lot 4, W½NE¼, E½W½, and SE¼.
Comprising 761.41 acres of public land.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

(Acquired from Dennis M. and Jean S. Baker)

T. 2 N., R. 4 E.,
sec. 8, NE¼NW¼, W½W½, SE¼SW¼, and SW¼SE¼.

(Acquired from Faulkner Land & Livestock Company)

T. 2 S., R. 16 E.,
sec. 10, E½SW¼ and SE¼;
sec. 11, W½NE¼, E½NW¼, SW¼NW¼, N½SW¼, and NW¼SE¼;
sec. 15, N½NE¼ and NE¼NW¼.
Comprising 960.00 acres of private land.

The purpose of the exchanges was to acquire non-Federal lands which have high public values for wildlife, recreation, and riparian habitat. The

public interest was well served through completion of both exchanges. The values of the Federal and private lands involved in the Baker exchange were appraised at $22,000 and $21,000, respectively. The values of the Federal and private lands involved in the Faulkner exchange were appraised at $96,000 and $75,000, respectively. In each exchange, the Bureau of Land Management received an equalization payment to compensate for the difference in land values.

3. At 9 a.m. on February 3, 1992, the reconveyed private lands described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 3, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on February 3, 1992, the reconveyed private land described below will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Boise Meridian

T. 2 N., R. 4 E.,
sec. 8, SE¼SW¼ and SW¼SE¼.
Containing 80.00 acres.

Appropriation of any of the lands described above under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The balance of the private lands reconveyed from the Bakers have been and remain open to the general mining laws and operation of the mineral leasing laws. The mineral estate in the private lands reconveyed from Faulkner Land & Livestock Company is outstanding in third parties, and therefore, remains closed to the mining and mineral leasing laws.

Dated: December 23, 1991.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 92-14 Filed 1-2-92; 8:45 am]

BILLING CODE 4310-GG-M

[MT-930-4214-11; MTM 80092]

Proposed Withdrawal and Public Meeting; Montana

December 26, 1991

Correction

In notice document 91-25108 appearing on pages 52281-52283 in the issue of Friday, October 18, 1991, make the following correction:

In the third column, under T. 20 N., R. 29 E., sec. 27, E½" should read "N½."

James Binando,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 92-70 Filed 1-2-92; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

Revised Availability of Draft Environmental Impact Report/ Environmental Impact Statement on the Restoration of the Tidal Prism and Enhancement of Wetlands in the Tijuana Estuary

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised notice of availability.

SUMMARY: This notice advises the public that the Fish and Wildlife Service has completed a Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/DEIS) for the enhancement of the tidal prism to Tijuana Estuary, San Diego County, California. Notice of this action was originally published in the **Federal Register** November 8, 1991. This revised notice announces a new public meeting and extends the comment period for public review. This is a joint action between the State of California Coastal Conservancy and the Fish and Wildlife Service. A public meeting regarding the DEIR/DEIS will be held. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain comments and information from other agencies and the public on the issues in the DEIR/DEIS. Comments and participation in this process are solicited.

DATES: Written comments should be received on or before March 4, 1992. A public meeting will be conducted on January 22, 1992 by the U.S. Fish and Wildlife Service and the California Coastal Conservancy. See **ADDRESSES** below for location and time.

ADDRESSES: Comments should be addressed to:

Tom Alexander, Manager, Tijuana Slough National Wildlife Refuge, P.O. Box 355, Imperial Beach, California 92032.

The public meeting on January 22, 1992, will be held from 7 p.m. to 9 p.m. at the Tijuana Estuary Visitor Center, 301 Caspian Way, Imperial Beach, California 91932.

FURTHER INFORMATION CONTACT: Jim King, California Coastal Conservancy, 1330 Broadway, suite 1100, Oakland, California 94612, (510) 464-1015.

Copies of the DEIR/DEIS are available for review at:

Tijuana Estuary Visitor Center, 301 Caspian Way, Imperial Beach, California 91932

and

San Diego County Library, Imperial Beach Branch, 810 Imperial Beach Blvd., Imperial Beach, California 91932

and

Governmental Reference Library, 602 County Administration Center, 1600 Pacific Highway, San Diego, California 92101.

SUPPLEMENTAL INFORMATION: The Tijuana River National Estuarine Research Reserve (Reserve) is located in San Diego County, California. Within the Reserve is the Tijuana Slough National Wildlife Refuge. The Fish and Wildlife Service is a member of the Management Authority for Reserve. A management plan approved by this Management Authority proposes to restore the wetlands of the Tijuana Estuary. The Fish and Wildlife Service, the State of California Department of Parks and Recreation, and the California Coastal Conservancy are to assume the responsibility to provide technical advice and funding assistance as available for restoration activities within the Reserve.

The Fish and Wildlife Service with the other interested Federal, State, and local agencies proposes to restore the tidal prism and circulation for the southern arm of the Tijuana Estuary. Without extensive restoration of the tidal prism and tidal circulation in the near future, the very saline habitats which led to the establishment of the Tijuana Slough National Wildlife Refuge and the Tijuana River National Estuarine Research Reserve could be lost.

The DEIR/DEIS under review now is a programmatic environmental document

and covers the two main phases of the restoration proposal. The Model Project (first phase of restoration) consists of three parts; a 20 acre experimental marsh, widening of a critical portion of Oneonta Slough and a Connector Channel from the upper reach of Oneonta Slough to the northern end of the tidal lagoons.

The later phase of the project includes 495 acres of wetland restoration and construction of a river training structure and will be reviewed in more detail in supplemental environmental documents.

The major short-term impacts associated with this project are the loss of high saltmarsh and transition zone habitats. The major long-term impact will be the permanent loss of uplands in the estuary. The document addresses the impacts to water and wetland dependent species during construction, and during the short-term loss of habitat values. Long-term impacts to terrestrial species are also discussed. Of particular concern is any possible adverse impacts to listed, proposed, or candidate endangered species that may be found in the project area. Therefore, the document contains discussions of these possible impacts as well as means to mitigate the loss of habitat values.

The environmental review of this project is being conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal regulations and Service procedures for compliance with those regulations.

Dated: December 20, 1991.

Don Weathers,

Acting Regional Director.

[FR Doc. 92–1 Filed 1–2–92; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

New River Gorge National River Environmental Impact Statement for General Management Plan; Bluestone Scenic River

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the general management plan for the Bluestone Scenic River.

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, the National Park Service (NPS) is preparing an enviornmental impact statement to assess the impacts of alternative management strategies for the recreation area, which will be described in a general management plan (GMP). A range of alternatives will be formulated for resource protection, visitor use and interpretation, facilities development and operations.

Persons wishing to provide input to the scoping process for the GMP and EIS should address comments to the Superintendent, New River Gorge National River, P.O. Box 246, Glen Jean, West Virginia, 25846. Comments should be received no later than 60 days from the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Superintendent, New River Gorge National River, at the above address, telephone 304–465–0508, or Lorraine Mintzmyer 215–597–7013.

Issued on: December 19, 1991.

Charles P. Clapper, Jr.,

Regional Director, Philadelphia, Pennsylvania.

[FR Doc. 92–93 Filed 1–2–92; 8:45 am]

BILLING CODE 4310–70–M

New River Gorge National River Environmental Impact Statement for General Management Plan; Gauley River National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the general management plan for the Gauley River National Recreation Area.

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, the National Park Service (NPS) is preparing an environmental impact statement to assess the impacts of alternative management strategies for the recreation area, which will be described in a general management plan (GMP). A range of alternatives will be formulated for resource protection, visitor use and interpretation, facilities development and operations.

Persons wishing to provide input to the scoping process for the GMP and EIS should address comments to the Superintendent, New River Gorge National River, P.O. Box 246, Glen Jean, West Virginia, 25846. Comments should be received no later than 60 days from the publication of this notice. The draft GMP and EIS are expected to be completed and available for public review by late 1992. The final GMP, EIS and Record of Decision are expected to be completed in 1993.

FOR FURTHER INFORMATION CONTACT: Superintendent, New River Gorge National River, at the above address, telephone 304–465–0508, or Lorraine Mintzmyer 215–597–7013.

Issued on: December 19, 1991.

Charles P. Clapper, Jr.,

Regional Director, Philadelphia, Pennsylvania.

[FR Doc. 92–94 Filed 1–2–92; 8:45 am]

BILLING CODE 4310–70–M

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1 sec. 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, January 31, 1992.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The commission members will meet for a regular business meeting which will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1 p.m. for the following reasons:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting
3. Reports of Officers
4. Old Business
   a. Beach Monitoring—Boston Harbor project
   b. Visitor Survey Questionnaire
5. Superintendent's Report
6. 30th Anniversary meeting agenda
7. Update on Advisory Commission legislation
8. Dune cottages
9. New Business
10. Agenda for Next Meeting
11. Date for Next Meeting
12. Communications/public comment
13. Adjournment.

The business meeting is open to the public. It is expected that 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Dated: December 23, 1991.

Carol F. Aten,

Acting Regional Director.

[FR Doc. 92-95 Filed 1-2-92; 8:45 am]

BILLING CODE 4310-70-M

Hydropower Projects; Meeting

ACTION: Notice.

SUMMARY: Notice is hereby given that the National Park Service (NPS) will hold a workshop to discuss updating NPS technical assistance and consultation policy and guidelines relating to recreation on existing and potential hydropower projects.

DATE AND TIME: January 22 and 23, 1992—9 a.m.

PLACE: Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Haas, National Park Service, Philadelphia, PA, Telephone: (215) 597-1582 or FTS 597-1582.

Dated: December 27, 1991.

Jerry L. Rogers,

Acting Director, National Park Service.

[FR Doc. 92-96 Filed 1-2-92; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0035), Washington, DC 20503, telephone 202-395-7340.

Title: Surface Mining Permit Applications—Minimum Requirements for Environmental Resources, 30 CFR Part 779.

OMB approval number: 1029-0035.

Abstract: Applicants for surface coal mining permits are required to provide an adequate description of the environmental resources that may be affected by proposed surface mining activities. The information will be used by the regulatory authority to determine if the applicant can comply with environmental protection performance standards.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Coal Mine Operators.

Annual Responses: 2,108.

Annual Bureau Hours: 171,845.

Estimated Completion Time: 82 hours.

Bureau clearance officer: Andrew F. DeVito, 202-343-5150.

Dated: November 19, 1991.

Andrew F. DeVito,

Acting Chief, Division of Technical Services.

[FR Doc. 92-76 Filed 1-2-92; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-321]

Certain Soft Drinks and Their Containers; Decision To Issue a Limited Exclusion Order and a Cease and Desist Order as to Respondent Cobros Food Corp.; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order and has terminated the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3095.

SUPPLEMENTARY INFORMATION: The authority for the Commission's actions is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as amended, and in §§ 210.25(c) and 210.58 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.25(c) and 210.58.)

On November 23, 1990, Kola Colombiana (Kola) filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 as amended (19 U.S.C. 1337) in the importation and sale of certain soft drinks and their containers. In its complaint, Kola asserted violations of section 337 based upon false representation or designation of origin, common law trademark infringement, and misappropriation of trade dress.

The Commission instituted an investigation into the allegations of Kola's complaint on December 17, 1990, and published a notice of investigation in the **Federal Register**. 55 FR 53205 (Dec. 27, 1990). The notice named International Grain Trade, Inc. of New York, New York; Universe Trading Corp. of Miami, Florida; Colgran Ltda. of Bogota, Colombia; and Cobros Food Corp. (Cobros) of Corona, New York, as respondents. On May 28, 1991, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding respondent Cobros in default. The Commission determined not to review that ID. Subsequently, complainant Kola and the three remaining respondents jointly moved to terminate the investigation as to those respondents on the basis of a consent order. On September 3, 1991, the ALJ issued an ID granting that motion, after amendment. The Commission determined not to review that ID. 56 FR 50927 (Oct.9, 1991).

Subsequently, on September 23, 1991, complainant filed a declaration stating that it sought a limited exclusion order and cease and desist order against defaulting respondent Cobros, pursuant to section 337(g)(1) and interim rule 210.25(c).

Section 337(g)(1) of the Tariff Act of 1930 as amended, 19 U.S.C. 1337(g)(1), provides that the Commission shall presume the facts alleged in a complaint to be true, and, upon request, issue a limited exclusion order and/or cease and desist order if: (1) A complaint is filed against a person under section 337, (2) the complaint and a notice of investigation are served on the person, (3) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice, (4) the person fails to show good cause why it should not be found in default, and (5) the complainant seeks relief limited solely to that person. Such an order shall be issued unless, after considering the effect of such relief upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion should not be issued.

The Commission determined that each of the statutory requirements for the issuance of a limited relief was satisfied with respect to defaulting respondent Cobros. The Commission also determined that the public interest factors enumerated in section 337(g)(1) do not preclude the issuance of such relief. Finally, the Commission

determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of one hundred (100) percent of the entered value of the imported articles.

Copies of the limited exclusion order, the cease and desist order, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: December 27, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-74 Filed 1-2-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31990]

Missouri Pacific Railroad Co.—Trackage Rights Exemption—Southern Pacific Transportation Co.; Exemption

Southern Pacific Transportation Company (SP) has agreed to grant overhead trackage rights to Missouri Pacific Railroad Company (MP) over 6.94 miles of SP trackage, known as the Belt Line Trackage, between mileposts 0.0 and 6.94, in Dallas, TX. The parties' trackage rights agreement modifies and extends various agreements between the parties (or their predecessors) for use of the Belt Line Trackage.[1] The trackage rights were to have become effective on December 20, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer and Jeanna L. Regier, 1416 Dodge Street, Omaha, NE 68179.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: December 24, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

(SEAL)

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-56 Filed 1-2-92; 8:45 am]

BILLING CODE 7035-01-M

[1] The various agreements were entered into on February 4, 1919, October 20, 1922, September 4, 1990, November 5, 1990, and November 19, 1991.

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers.

Volume I

New York:
NY91-23(Jan. 3, 1992)..... p. 952a, p. 952i.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage

Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida:
FL91-17(Feb. 22, 1991)..... p. 141, p. 142.
Mississippi:
MS91-8(Feb. 22, 1991)..... p. ALL.
MS91-9(Feb. 22, 1991)..... p. ALL.
MS91-10(Feb. 22, 1991)..... p. ALL.
Pennsylvania:
PA91-4(Feb. 22, 1991)..... p. 985, pp. 986-987.

Volume II

Michigan:
MI91-3(Feb. 22, 1991)..... p. 477, pp. 479-481, 487.
MI91-4(Feb. 22, 1991)..... p. 491, pp. 495-498.
MI91-5(Feb. 22, 1991)..... p. 499, pp. 500-512.
MI91-7(Feb. 22, 1991)..... p. 515, pp. 516-534b.
Ohio:
OH91-29(Feb. 22, 1991)..... p. 903, pp. 904-942.
Texas:
TX91-19(Feb. 22, 1991)..... p. ALL.

Volume III

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the State covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 27th day of December 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-16 Filed 1-2-92; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-8964]

Rio Algom Mining Corp.; Final Finding of No Significant Impact Regarding the Issuance of a Source Material License to Rio Algom Mining Corp., Smith Ranch Commercial Mine Project, Converse County, Wyoming

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The administrative action is issuance of a commercial source and byproduct material license. This license will authorize in situ leach uranium recovery of the Smith Ranch Project in Converse County, Wyoming.

2. Reasons for Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts onsite and offsite due to radiological releases that may occur during the course of the operation. Documents used in preparing the assessment included operational data from the O-Sand and Q-Sand Research and Development in situ leach operation and the licensee's application dated March 31, 1988, as amended. Based on the review of operational data and the application materials, the Commission has determined that no significant impact will result from the proposed action, and therefore, an Environmental Impact Statement is not warranted.

The following statements support the final finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. The ground-water monitoring program proposed by Rio Algom Mining Corp. is sufficient to monitor the operations and will provide a warning system that will minimize any impact on ground water. Furthermore, aquifer testing indicates that the production zone is adequately confined, thereby assuring hydrologic control of mining solutions.

B. Radiological effluents from the proposed operation of the well field and processing plant will be within regulatory limits and will be continuously monitored.

C. The environmental monitoring program is comprehensive and will detect any radiological releases resulting from the operation.

D. Radioactive wastes will be minimal and will be disposed of at an approved site in accordance with applicable Federal and State regulations.

E. Ground water, based on previous applicant demonstration projects, can be restored to baseline conditions or applicable class of use standards.

F. Cultural resources eligible for and listed on the National Register of Historic Places will not be adversely affected by the mining project.

In accordance with 10 CFR 51.33(a), the Director of the Uranium Recovery Field Office made the determination to issue a draft finding of no significant impact and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register**. The draft finding was published in the **Federal Register** on October 28, 1991. No public comments were received.

This finding, together with the Environmental Assessment setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Denver, Colorado this 23rd day of December 1991.

Ramon E. Hall,

Director.

[FR Doc. 92-65 Filed 1-2-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-277, 50-278, 50-352, 50-353]

Philadelphia Electric Co., Public Service Electric and Gas Co., Delmarva Power and Light Co., Atlantic City Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3) (Limerick Generating Station, Units 1 and 2); Exemption

I

The Philadelphia Electric Company, et. al. (PECo, the licensee), is the holder of Operating License Nos. DPR-44, DPR-56, NPF-39 and NPF-85 which authorizes operation of the Peach Bottom Atomic Power Station, Units 2

and 3 (PBAPS), and the Limerick Generating Station, Units 1 and 2 (LGS), at steady state reactor core power levels not in excess of 3293 megawatts thermal. These licenses provide, among other things, that the licensee is subject to the rules, regulations, and orders of the Commission now or hereafter in effect.

The Limerick facility consists of two boiling water reactors located at the licensee's site in Montgomery and Chester Counties, Pennsylvania. The Peach Bottom facility also consists of two boiling water reactors located at the licensee's site in York County, Pennsylvania.

II

This exemption grants a one-time schedular exemption to eight (8) Senior Reactor Operators limited to fuel handling (LSROs) to permit them to take their first annual requalification operating test during January 1992 instead of the end of 1991. The docket numbers for the eight LSROs are: 55–61452, 55–61453, 55–61454, 55–61455, 55–61456, 55–61457, 55–61459 and 55–61461.

III

By letter dated October 18, 1991, the licensee requested an exemption, in accordance with 10 CFR 55.11 from the requirements of 10 CFR 55.59(a)(2) and 10 CFR 55.59(c)(4)(i) related to annual requalification operating tests for LSROs. Pursuant to 10 CFR 55.53(h) a licensee, as a condition of the license, shall complete a requalification program as described by 10 CFR 55.59. In 10 CFR 55.59(c)(4)(i), the requalification program must include annual operating tests, and 10 CFR 55.59(a)(2) stipulates that each licensee shall pass an annual operating test.

NRC Generic Letter (GL) No. 89–03, "Operating Licensing National Examination Schedule," issued March 24, 1989, specified two examination months for each facility during which operator licensing examinations would be conducted each year. The purpose of the national examination schedule is to provide a consistent time period for conducting the examinations at each facility so that the facility can establish a standard schedule for conducting the required licensed operator training, and so that the NRC can schedule the resources required for conducting the examinations. The national examination schedule months for LGS, Units 1 and 2, are January and July. The scheduled months for PBAPS are February and August. PECo is requesting, on behalf of the licensed LSROs, a one-time schedular exemption from the requirements of 10 CFR 55.59(a)(2) with regard to each individual licensed LSRO to conduct the first annual requalification operating test for the multi-site licensed LSROs in January 1992 in conformance with the national examination schedule for LGS instead of the end of 1991. By letter dated October 18, 1991, from R. J. Conte, Region I, to D. M. Smith, PECo, the NRC confirmed that arrangements have been made for administration of fuel handling licensing examinations at LGS, for both Limerick and Peach Bottom, during the week of January 13, 1992.

The two units at PBAPS and the two units at LGS are all BWR–4 reactors. PECo has a nuclear maintenance group responsible for core alterations, reactor refueling and in-vessel maintenance activities (e.g., control rod drive replacement) during refueling outages at both LGS and PBAPS. The Technical Specifications (TS) require that all core alterations shall be observed and directly supervised by either a licensed Senior Operator (SRO) or licensed LSRO. To meet this requirement, PECo has implemented a new LSRO program that established LSROs with a dual license applicable at both PBAPS, Units 2 and 3 and LGS, Units 1 and 2. The objective of the LSRO program is to maintain a small group of licensed personnel to supervise core alterations (reactor refueling and in-vessel maintenance activities) during refueling outages at each of the four nuclear units, LGS and PBAPS. There are currently eight (8) LSROs who hold a dual SRO license limited to fuel handling involved in the current Peach Bottom Unit 3 refueling outage.

The LSROs were initially licensed at LGS, Units 1 and 2, on September 10, 1990. The licenses were amended on January 9, 1991, to include PBAPS, Units 2 and 3, based on successful completion of training on the differences between LGS and PBAPS, and written and operating examinations on these differences. According to 10 CFR 55.59(a)(2) and 10 CFR 55.59(c)(4)(i), the LSROs licensed in September 1990 have to pass an annual operating test (i.e., by the end of 1991) to maintain their licenses. The licensees are requesting a one-time schedular exemption in order to bring the requalification exams in accordance with the NRC's National Examination Schedule.

Prior to shutdown of Peach Bottom Unit 3 on September 14, 1991, for the current refueling outage, there was an indication of several fuel pin failures as evidenced by slightly elevated offgas activity. A sample inspection of some fuel bundles revealed the possibility of widespread debris (metal shavings, etc) in the core. PECo decided to remove, inspect, clean, as necessary and reinsert the 508 fuel assemblies that would otherwise have remained in the reactor. The additional, unanticipated fuel handling and other core alterations are going to tie-up the LSROs until the end of December 1991.

IV

The Commission has determined that pursuant to 10 CFR 55.11, the exemption requested by PECo's letter of October 18, 1991, is authorized by law and will not endanger life or property, and is otherwise in the public interest. Accordingly, the Commission hereby grants the following exemption:

Philadelphia Electric Company and the eight Senior Reactor Operators limited to fuel handling (LSROs) identified in the letter of October 18, 1991, are granted a one-time schedular exemption from the requirements of 10 CFR 55.59(a)(2) and 10 CFR 55.59(c)(4)(i) to permit the LSROs to take the annual requalification operating test in January 1992 instead of in 1991.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (56 FR 65514).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of December 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–06 Filed 1–2–92; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION
Coast Guard

[CGD–91–067]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Request for members to fill vacancies.

SUMMARY: The U.S. Coast Guard is seeking members for three year terms on the Navigation Safety Advisory Council (NAVSAC). On June 30, 1992, there will be seven vacancies on the 21-member Council. The Coast Guard will review all applications and make recommendations to the Secretary. The appointments will be made by the Secretary of Transportation.

DATES: Completed applications must be received by February 28, 1992.

ADDRESSES: To request an application, either call (202) 267–0415 and give your

name and mailing address or write to Commandant (G–NSR–3), U.S. Coast Guard, 2100 Second St., SW., room 1420, Washington, DC 20593–0001. Completed applications and resumes should be mailed or delivered to the above address.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director, Navigation Safety Advisory Council at (202) 267–0415.

SUPPLEMENTARY INFORMATION: The Navigation Safety Advisory Council was originally established as the Rules of the Road Advisory Council (RORAC) under the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073). The RORAC provided advice to the Secretary of Transportation on matters relating to the International and Inland Navigation Rules.

Section 105 of the Coast Guard Authorization Act of 1989 (Pub. L. 101–225; 33 U.S.C. 1231a(e)), enacted December 12, 1989, changed the name of the RORAC to the Navigation Safety Advisory Council (NAVSAC), broadened the scope of the Council, and extended the life of the Council to September 30, 1995.

NAVSAC is a deliberative body which advises the Secretary of Transportation, via the Commandant, U.S. Coast Guard, on matters relating to the prevention of vessel collisions, rammings, and groundings, including, but not limited to: Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

The Council consists of 21 members who have expertise, knowledge and experience in the Navigational Rules of the Road (International and Inland), aids to navigation, navigational safety equipment, vessel traffic service, and traffic separation schemes and vessel routing. To assure balanced representation, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and state officials with responsibility for vessel and port safety.

The Council meets twice a year at various sites in the continental United States. Members are entitled to per diem in lieu of subsistence, as well as reimbursement for travel expenses to attend the meetings. The three year membership term will begin July 1, 1992, and expire June 30, 1995.

Dated: December 24, 1991.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92–77 Filed 1–2–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 39–91]

Treasury Notes, Series AJ–1993; Interest Rate

Washington, December 19, 1991.

The Secretary announced on December 18, 1991, that the interest rate on the notes designated Series AJ–1993, described in Department Circular—Public Debt Series—No. 39–91 dated December 16, 1991, will be 5 percent. Interest on the notes will be payable at the rate of 5 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92–17 Filed 1–2–92; 8:45 am]

BILLING CODE 4810–40–M

[Supplement to Department Circular—Public Debt Series—No. 40–91]

Treasury Notes, Series W–1996

Washington, December 20, 1991.

The Secretary announced on December 19, 1991, that the interest rate on the notes designated Series W–1996, described in Department Circular—Public Debt Series—No. 40–91 dated December 18, 1991, will be 6⅛ percent. Interest on the notes will be payable at the rate of 6⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92–18 Filed 1–2–82; 8:45 am]

BILLING CODE 4810–40–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–80]

Canadian Provincial Practices Affecting Canadian Imports of Beer

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations under section 304 of the Trade Act of 1974, as amended ("Trade Act").

SUMMARY: The USTR determines, consistent with a report of a dispute settlement panel established under the General Agreement on Tariffs and Trade ("GATT"), that acts, policies or practices of Canada violate the provisions of a trade agreement (specifically, the GATT), and that action shall be taken in the form of substantially increased duties on beer and malt beverages from Canada sufficient to offset fully the nullification or impairment of GATT rights resulting from these Canadian acts, policies or practices. The USTR further determines that, pursuant to section 305(a)(2) of the Trade Act, it is desirable to implement such action no later than April 10, 1992.

DATES: Action shall be implemented no later than April 10, 1992.

ADDRESSES: Section 301 Committee, Office of the United States Trade Representative, room 223, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Rick Ruzicka, Director, Canadian Affairs, (202) 395–3412, or Andrew Shoyer, Assistant General Counsel, (202) 395–7203.

SUPPLEMENTARY INFORMATION: On June 29, 1990, an investigation was initiated pursuant to section 302 of the Trade Act upon the petition of G. Heileman Brewing Company with respect to Canadian provincial liquor board practices concerning imported beer. On the same day, the United States requested consultations with Canada under Article XXIII:1 of the GATT, as required under section 303 of the Trade Act. Consultations were held with Canada in July 1990, but no mutually satisfactory resolution was reached at that time. On September 14, 1990, the Stroh Brewery Company submitted a section 301 petition concerning pricing and distribution practices in the province of Ontario. On October 19, 1990, the USTR determined to address these allegations in the existing investigation rather than to initiate a separate investigation.

A dispute settlement panel was established under GATT Article XXIII:2 on February 6, 1991, at the request of the United States, and issued its report to the Contracting Parties on October 16, 1991. The Panel concluded, *inter alia*, that Canada had failed to make "serious, persistent and convincing efforts" to ensure observance by the provincial liquor boards of the provisions of the GATT as they relate to the restrictions on points of sale and discriminatory markups that had been found in 1988 to be inconsistent with the GATT, and that this failure constituted

prima facie nullification or impairment of U.S. rights under the GATT. Moreover, the Panel found that the restrictions on the private delivery of imported beer maintained by 8 of the 10 Canadian provinces were inconsistent with Canada's national treatment obligation under the GATT, and that minimum price requirements set in relation to domestic prices were also inconsistent with the GATT. The Panel recommended that the Contracting Parties request Canada to take reasonable steps to ensure observance of the provisions of the GATT by the provincial liquor boards, and to report to the Contracting Parties on the measures taken with regard to access to points of sale and differential markups before the end of March 1992 and with regard to private delivery and other matters before the end of July 1992. A copy of the panel report has been placed in the public file in this matter (Docket No. 301–80).

Consultations were commenced with the Government of Canada following receipt of the panel report, but no mutually satisfactory resolution has been reached.

On the basis of the investigation initiated under section 302 of the Trade Act, the consultations conducted pursuant to section 303 of the Trade Act, and the final report of the GATT dispute settlement panel, the USTR proposed on November 22, 1991 (published on November 27, 1991, at 56 FR 60,128) to determine that the rights to which the United States is entitled under a trade agreement are being denied. The USTR further proposed to continue consultations with the Government of Canada to reach a mutually satisfactory resolution in this matter. If such a resolution was not reached by December 29, 1991, or if one of the other conditions stated in section 301(a)(2) of the Trade Act had not been satisfied, then the USTR proposed to take action within the scope of section 301(c) of the Trade Act. As stated in the notice of proposed determinations, among the actions that the USTR has considered taking is the suspension of duty bindings and increase in duties on Canadian beer and other alcoholic beverages. The USTR requested that public comments be submitted no later than December 23, 1991.

Determinations

No mutually satisfactory resolution has been reached with the Government of Canada, nor has any other provision of section 301(a)(2) of the Trade Act been satisfied. Accordingly, the USTR determines, consistent with the report of the GATT dispute settlement panel, that acts, policies or practices of Canada violate the provisions of a trade agreement (specifically, the GATT), and that action shall be taken in the form of substantially increased duties on beer and malt beverages from Canada (entered under Harmonized Tariff Schedule of the United States subheading 2203.00.00) sufficient to offset fully the nullification or impairment of GATT rights resulting from these Canadian practices. The USTR further determines that, pursuant to section 305(a)(2) of the Trade Act, it is desirable to implement such action no later than April 10, 1992. The USTR will continue to consult with the Government of Canada in an effort to obtain an agreement from the Government of Canada to eliminate these practices, consistent with the report of the Panel, in an expeditious manner, such that the implementation of action under section 301 of the Trade Act will no longer be necessary. Until that time, the U.S. Customs Service has been requested to monitor the volume of entries, and withdrawals from warehouse for consumption, of Canadian beer and malt beverages, effective immediately, to ensure the effective implementation of action under section 301 of the Trade Act.

Joshua B. Bolten,

General Counsel.

[FR Doc. 92–71 Filed 1–2–92; 8:45 am]

BILLING CODE 3190-01-M

VOL 57 ISS 2 JA 3 1992 UMI

Sunshine Act Meetings

Federal Register
Vol. 57, No. 2
Friday, January 3, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration:
Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on December 10, 1991 (56 FR 64543) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for December 12, 1991. This notice is to amend the agenda for that meeting to add an item to the open session.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for December 12, 1991, is amended to add the following item to the open session:

Open Session

• System Banks' Requests Concerning Preferred Stock and Capital Preservation Agreement Debt.

Date: December 30, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–31337 Filed 12–31–91; 2:27 p.m.]

BILLING CODE 6705-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:30 a.m., Wednesday, January 8, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Issues concerning the treatment of intangible assets for purposes of calculating regulatory capital.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 31, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–31335 Filed 12–31–91; 1:08 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, January 8, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding acquisition of computers within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

December 31, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–31336 Filed 12–31–91; 1:08 pm]

BILLING CODE 6201-01-M

federal register

Friday
January 3, 1992

Part II

Department of Housing and Urban Development

Grants and Cooperative Agreements; Availability, etc.: Family Self-Sufficiency Program; Public and Indian Housing; Section 8 Incentive Award Rental Vouchers and Certificates

VOL 57 ISS 2 3 1992 JA UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-91-3353; FR 3166-N-01]

NOFA—Notice of Total Funding (FY 1991 and 1992 Funding) for Section 8 Incentive Award Rental Vouchers and Rental Certificates in Connection With the Family Self-Sufficiency Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA); notice of total available funding for Fiscal Years 1991 and 1992 for Section 8 incentive award rental certificates and rental vouchers under the family self-sufficiency (FSS) program.

DATE: Applications must be received in the HUD Field Office/Indian Programs Office by close of business on February 10, 1992.

SUMMARY: On September 30, 1991 (56 FR 49612), HUD published a notice of funding availability that (1) identified the amount of budget authority available for FY 1991 for competitive FSS Incentive Awards of Rental Voucher and Rental Certificate funding for public housing agencies (PHAs) and Indian housing authorities (IHAs) (Section 8—FSS Incentive Awards); and (2) invited PHAs and IHAs to apply for these awards.

HUD has determined to make available up to $934 million of budget authority for Section 8—FSS Incentive Awards. The $934 million represents the combined amount of budget authority available for Section 8—FSS Incentive Awards for FY 1991 and FY 1992. This combined amount is being made available under the application process described in the September 30, 1991 NOFA.

HUD has decided to combine the FY 1991 and FY 1992 Section 8—FSS Incentive Award funding, and make the total amount available under a single application and funding round to minimize the administrative burdens involved in having two Section 8—FSS Incentive funding rounds in FY 1992.

The NOFA published on September 30, 1991:

(1) Provides the instructions to PHAs and IHAs governing the submission of applications for Section 8—FSS Incentive Awards; and

(2) Describes the procedures for rating, ranking and approving PHA/IHA applications for these awards.

PHAs and IHAs applying for Section 8—FSS Awards are requested to refer to the September 30, 1991 NOFA for the above information.

PHAs that have already submitted applications in response to the September 30, 1991 NOFA may supplement their applications:

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Rental Assistance Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone number (202) 708-0477, or (202) 708-4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) for under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2502-0466.

II. Purpose and Substantive Description

A. Authority

Sec. 23, United States Housing Act of 1937, as added by sec. 554, Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

B. Background

The purpose of the Rental Voucher and the Rental Certificate Programs is to assist eligible families to pay rent for decent, safe, and sanitary housing. The purpose of the FSS Program is to promote the development of local strategies to coordinate the use of public housing and rental assistance under the Section 8 Rental Certificate and Rental Voucher Programs with public and private resources, to enable eligible families to achieve economic independence and self-sufficiency. The Notice of Program Guidelines governing the FSS Program was published on September 30, 1991 (56 FR 49592). The regulations for allocating housing assistance budget authority are codified at 24 CFR part 791.

C. Allocation Amounts

1. Housing Needs Formula. Approximately $934 million of budget authority is available for Section 8—FSS Incentive Awards for FY 1991 and FY 1992, and is being allocated to HUD Field Offices using the housing needs factors established in accordance with 24 CFR 791.402.

2. Program Type. Attachment 1 to this NOFA revises and supersedes Attachment 5 to the September 30, 1991 NOFA. Attachment 1 announces the allocation of the total number of units and the allocation of combined budget authority for FY 1991 and FY 1992 for the Rental Voucher Program and for the Rental Certificate Program to each Field Office, based on the housing needs factors.

The allocation of budget authority to each Field Office is the total amount for both rental certificates and rental vouchers. The allocations have been structured to give Field Offices flexibility in approving PHA applications for a specific program type (Rental Voucher or Rental Certificate) by allocation of available rental certificate or rental voucher budget authority among allocation areas in the Field Office jurisdiction.

The number of units for each Field Office as set forth in Attachment 1 is an estimate. These estimates are based on the average fair market rents for two-bedroom units in the Field Office's jurisdiction and on a 50 percent Rental Certificate Program and a 50 percent Rental Voucher Program mix. The actual number of units assisted will vary from these estimates because of differences in actual bedroom-size mix and the actual mix of Rental Vouchers and Rental Certificates that are funded in each Field Office.

D. Eligibility

All PHAs/IHAs are invited by this NOFA to submit applications for an incentive award of Rental Vouchers (24 CFR part 887) and Rental Certificates (24 CFR part 882) for use in connection with the FSS Program.

III. Selection Criteria, Application Requirements and Application Process

Information regarding the selection criteria, ranking factors, application requirements and the application process for Section 8—FSS Incentive Awards is set forth in the NOFA published in the **Federal Register** on September 30, 1991 (56 FR 49614). The application due date is extended one month to close of business on February 10, 1992. Also, with respect to the discussion in the September 30, 1991 NOFA of the rating points for "Selection Criterion 1: PHA/IHA Administrative Capability" as set forth in the section I(E)(1)(a)(ii) of the September 30, 1991 NOFA (56 FR 49613), the applicable date for determining the leasing rate for one

year for rental vouchers and rental certificates (or occupancy rate for public/Indian housing units) under the Annual Contributions Contract (ACC) is one year as of September 30, 1991 (not "September 30, 1990," as set forth in the September 30, 1991 NOFA at 56 FR 49613).

Dated: December 19, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

TABLE 1.—FY 92 FAMILY SELF-SUFFICIENCY ALLOCATION FACTORS BY HUD OFFICE

HUD office	Metro		Non-Metro		Composite	
	Units	Dollars	Units	Dollars	Units	Dollars
Boston, MA Office	750	34,634,135	94	3,595,135	844	38,229,270
Hartford, CT Office	329	13,566,890	46	1,692,225	375	15,259,115
Manchester, NH Office	126	4,826,340	234	7,517,900	360	12,344,240
Providence, RI Office	119	4,265,555	25	1,033,950	144	5,299,505
Buffalo, NY Office	519	15,035,215	223	6,123,040	742	21,158,255
New York, NY Office	2,980	116,667,645	35	1,160,660	3,015	117,828,305
Newark, NJ Office	928	39,385,075	0	0	928	39,385,075
Baltimore, MD Office	327	10,800,630	47	1,341,665	374	12,142,295
Charleston, WV Office	63	1,702,815	175	3,954,655	238	5,657,470
Philadelphia, PA Office	735	24,009,755	121	3,333,160	856	27,342,915
Pittsburgh, PA Office	310	7,980,495	122	3,242,000	432	11,222,495
Richmond, VA Office	273	7,705,075	227	5,323,980	500	13,029,055
Washington, DC Office	360	17,158,445	0	0	360	17,158,445
Atlanta, GA Office	372	11,019,270	371	7,425,550	743	18,444,820
Birmingham, AL Office	247	5,769,460	199	3,709,370	446	9,478,830
Columbia, SC Office	163	3,958,760	184	3,692,150	347	7,650,910
Greensboro, NC Office	297	7,403,850	399	8,702,760	696	16,106,610
Jackson, MS Office	61	1,576,530	325	6,412,485	386	7,989,015
Jacksonville, FL Office	905	28,027,005	107	2,726,230	1,012	30,753,235
Louisville, KY Office	169	4,151,530	293	6,060,120	462	10,211,650
Knoxville, TN Office	112	2,660,225	71	1,400,600	183	4,060,825
Nashville, TN Office	201	5,330,205	133	2,639,085	334	7,969,290
Caribbean Office	239	5,970,385	103	2,044,165	342	8,014,550
Chicago, IL Office	1,143	41,604,810	283	6,828,485	1,426	48,433,295
Cincinnati, OH Office	230	5,999,965	35	779,060	265	6,779,025
Cleveland, OH Office	427	11,327,760	110	2,626,465	537	13,954,225
Columbus, OH Office	178	4,586,480	134	2,995,700	312	7,582,180
Detroit, MI Office	494	14,583,565	41	978,515	535	15,562,080
Grand Rapids, MI Office	160	4,323,705	148	3,577,185	308	7,900,890
Indianapolis, IN Office	307	8,226,475	171	3,793,900	478	12,022,375
Milwaukee, WI Office	343	9,466,080	204	4,708,400	547	14,174,480
Minneapolis-St. Paul MN Office	256	8,733,650	164	3,882,695	420	12,616,345
Fort Worth, TX Office	553	15,782,805	316	6,891,510	869	22,674,315
Houston, TX Office	337	8,909,965	75	1,738,585	412	10,648,550
Little Rock, AR Office	87	2,126,910	218	4,212,840	305	6,339,750
New Orleans, LA Office	339	9,563,135	191	3,556,720	530	13,119,855
Oklahoma City, OK Office	146	3,804,125	179	3,485,455	325	7,289,580
San Antonio, TX Office	295	8,401,055	108	2,281,255	403	10,682,310
Des Moines, IA Office	108	3,033,825	222	5,181,165	330	8,214,990
Kansas City, MO Office	232	5,958,605	222	4,581,420	454	10,540,025
Omaha, NE Office	68	1,763,475	112	2,412,320	180	4,175,795
St. Louis, MO Office	184	5,192,330	132	2,633,355	316	7,825,685
Denver CO Regional Office	387	10,868,030	393	10,234,610	780	21,102,640
Honolulu, HI Office	99	4,837,960	71	3,120,805	170	7,958,765
Los Angeles, CA Office	2,271	102,105,490	71	2,609,905	2,342	104,715,395
Phoenix, AZ Office	181	5,781,555	79	2,159,010	260	7,940,565
Sacramento, CA Office	197	6,237,575	47	1,484,180	244	7,721,755
San Francisco, CA Office	1,060	49,887,135	126	4,069,350	1,206	53,976,485
Anchorage, AK Office	25	976,215	39	1,584,570	64	2,560,785
Portland, OR Office	234	7,131,810	257	7,428,090	491	14,559,900
Seattle, WA Office	338	11,166,060	142	4,029,270	480	15,197,330

[FR Doc. 92-40 Filed 1-2-92; 8:45 am]
BILLING CODE 4210-33-M

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federal register

Friday
January 3, 1992

Part III

Department of Health and Human Services

National Institutes of Health

Recombinant DNA: Notice of Meeting and Proposed Actions; Notices

VOL 57 ISS 2 JA 3 1992 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on February 10–11, 1992. The meeting will be held at the National Institutes of Health (NIH), Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. on February 10, 1992, to adjournment at approximately 5 p.m. on February 11, 1992. The meeting will be open to the public to discuss the following proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958):

Proposed Major Actions to the NIH Guidelines:

Five additions to appendix D of the NIH Guidelines Regarding Human Gene Therapy/Gene Transfer Protocols;

An amendment to appendix D–XV of the NIH Guidelines Regarding a Human Gene Therapy Protocol;

Amend section IV–B and add sections IV–C and IV–D to the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Into the Genome of Human Subjects Regarding Reporting Requirements for Human Gene Transfer/Gene Therapy Protocols;

Amend sections III–A and IV–C of the NIH Guidelines regarding publishing notice of meetings and proposed actions in the **Federal Register**;

Amend introduction, section IV–B and V of the Points to Consider regarding review by the Human Gene Therapy Subcommittee;

Amend appendices B–I–B–1 and B–I–B–2 of the NIH Guidelines to include only pathogenic genera and species of the bacterial order, *Actinomycetales*, in the current list of microorganisms;

Amend Appendices B–I–C–1 and B–I–B–1 in the NIH Guidelines regarding *Mycobacterium* avium;

Other Matters To Be Considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair. Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: December 24, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–107 Filed 1–2–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on February 10–11, 1992. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by January 28, 1992, will be reproduced and distributed to the RAC for consideration at its February 10–11, 1992, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Building 231, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, or sent by FAX to 301–496–9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Dr. Nabel

In a letter dated October 18, 1991, Dr. Gary J. Nabel of the University of Michigan Medical School, Ann Arbor, Michigan, indicated his intention to submit a human gene therapy protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"Immunotherapy of Malignancy by In Vivo Gene Transfer into Tumors."

This request was published for comment in the **Federal Register** on November 4, 1991 (56 FR 56415).

The protocol was reviewed during the Human Gene Therapy Subcommittee meeting on November 21–22, 1991. Provisional approval was given with the following conditions: (i) Amend consent form regarding possibility of sensitization to the human antigen; (ii) expand the clinical protocol regarding the number of biopsies; (iii) make available the nucleotide sequence analysis of the total construct of the vector; and (iv) provide clarification concerning the status of DNA integration in tumor cells.

The Human Gene Therapy Subcommittee forwarded the protocol to the Recombinant DNA Advisory

Committee for consideration during the February 10–11, 1992, meeting.

II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Cornetta

In a letter dated October 10, 1991, Dr. Kenneth Cornetta of Indiana University, Indianapolis, Indiana, indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"Retroviral-Mediated Gene Transfer of Bone Marrow Cells During Autologous Bone Marrow Transplantation for Acute Leukemia."

This request was published for comment in the **Federal Register** on November 4, 1991 (56 FR 56415).

The protocol was reviewed during the Human Gene Therapy Subcommittee meeting on November 21–22, 1991. Provisional approval was given with the following conditions: (i) Amend the consent form regarding the possible benefit of the introduction of gene; (ii) amend the consent form regarding compensation to the patient related to the research aspects of the protocol; (iii) demonstrate that the transduced leukemic cells will survive the freezing process; and (iv) add a statistical section that addresses the interpretation of recurrent labeled bone marrow specimens.

The Human Gene Therapy Subcommittee forwarded the protocol to the Recombinant DNA Advisory Committee for consideration during the February 10–11, 1992, meeting.

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Economou

In a letter dated October 15, 1991, Dr. James S. Economou of the University of California, Los Angeles, indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"The Treatment of Patients with Metastatic Melanoma and Renal Cell Cancer Using In Vitro Expanded and Genetically-Engineered (Neomycin Phosphotransferase) Bulk, CD8(+) and/or CD4(+) Tumor Infiltrating Lymphocytes and Bulk, CD8(+) and/or CD4(+) Peripheral Blood Leukocytes in Combination with Recombinant Interleukin-2 Alone, or with Recombinant Interleukin-2 and Recombinant Alpha Interferon."

This request was published for comment in the **Federal Register** on November 4, 1991 (56 FR 56415).

The protocol was reviewed during the Human Gene Therapy Subcommittee meeting on November 21–22, 1991. Provisional approval was given with the following conditions: (i) All data concerning vector safety and testing must be submitted; (ii) patient eligibility will be limited to those with at least one lesion that can be biopsied post therapy; (iii) add the schedule for the post therapy assessment of cell trafficking; (iv) develop a statistical section for analysis of cell trafficking; (v) submit proportionality experiments demonstrating the limits of the ability to quantitate differences in ratio of the two vectors; (vi) submit data showing stable integration of the genetic markers in chronic cell cultures; (vii) modify the consent form so that the language concerning biopsies is moved from the biomodulator section to the viral marker section; and (viii) include a stopping rule in the protocol if the in vivo trafficking data is uninterpretable.

The Human Gene Therapy Subcommittee forwarded the protocol to the Recombinant DNA Advisory Committee for consideration during the February 10–11, 1992, meeting.

IV. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Dr. Greenberg

In a letter dated October 8, 1991, Dr. Philip D. Greenberg of the University of Washington, Seattle, Washington, indicated his intention to submit a human gene therapy protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"A Phase I/II Study of Cellular Adoptive Immunotherapy Using Genetically Modified CD8+ HIV-Specific T Cells for HIV-Seropositive Patients Undergoing Allogeneic Bone Marrow Transplant."

This request was published for comment in the **Federal Register** on November 4, 1991 (56 FR 56415).

The protocol was reviewed during the Human Gene Therapy Subcommittee meeting on November 21–22, 1991. Approval was given with the following requested changes in the patient consent form: (i) Reword language regarding unforeseen problems; (ii) reword the language concerning the costs associated with the research aspects of the protocol and billing to the patients; (iii) clearly distinguish between the therapy and the gene modification portions of the protocol; (iv) use less technical terminology throughout the document; and (v) provide hard copies of the helper-virus assay and vector testing slides presented during the subcommittee meeting.

The Human Gene Therapy Subcommittee forwarded the protocol to the Recombinant DNA Advisory Committee for consideration during the February 10–11, 1992, meeting.

V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Dr. Freeman

In a letter dated May 10, 1990, Dr. Scott M. Freeman of the University of Rochester School of Medicine, Rochester, New York, indicated his intention to submit a human gene therapy protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"Gene Transfer for the Treatment of Cancer."

This request was published for comment in the **Federal Register** on July 2, 1991 (56 FR 30398).

The protocol was reviewed during the Human Gene Therapy Subcommittee meeting on July 29–30, 1991. Provisional approval was given with the stipulation that the PA–1 ovarian cancer cell line be tested for potential pathogens as per FDA guidelines. Further, it was requested that there should be more preclinical studies on the MFG vector to assure that it does not contain replication competent retroviruses.

The Human Gene Therapy Subcommittee forwarded the protocol to the Recombinant DNA Advisory Committee for consideration during the October 7–8, 1991, meeting.

This request was published for comment in the **Federal Register** on September 3, 1991 (56 FR 43686).

The protocol was reviewed during the Recombinant DNA Advisory Committee meeting on October 7–8, 1991. The Recombinant DNA Advisory Committee passed a motion to defer approval of the protocol by a vote of 19 in favor, 0 opposed, and no abstentions. The protocol can be considered again when the following requests have been met: (i) Improvement of the animal model so that it has some relevance to the malignancy seen in patients; (ii) examination of the animal model for the tumor specificity of cytotoxic T lymphocytes; (iii) demonstration of the efficacy of this proposed treatment by measuring the tumor burden in patients and state whether this will be done by laparoscopy or imaging techniques or both; (iv) refinement of safety tests; and (v) elimination of every reference to

cancer vaccine in the patient consent form.

VI. Amendment to Appendix D–XV of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Drs. Blaese and Anderson

In a letter dated December 20, 1991, Drs. R. Michael Blaese and W. French Anderson of the National Institutes of Health, Bethesda, Maryland, requested an action item concerning a major amendment to the protocol entitled, "Treatment of Severe Combined Immunodeficiency Disease (SCID) due to Adenosine Deaminase (ADA) Deficiency with Autologous Lymphocytes Transduced with a Human ADA Gene."

This protocol was originally approved by the Recombinant DNA Advisory Committee at its meeting on July 31, 1990, and approved by the Director, NIH (September 12, 1990, 55 FR 37565).

The requested amendment would use as a supplemental therapy CD–34+ cells (the peripheral blood stem cell fraction) transduced with the gene coding for adenosine deaminase.

VII. Amending Section IV–B and Adding Sections IV–C and IV–D to the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects Regarding Reporting Requirements for Human Gene Transfer/Gene Therapy Protocols

At the Human Gene Therapy Subcommittee meeting on July 30–31, 1991, the subcommittee formed a Working Group on Data Management. The working group was charged with developing a system for analyzing approved protocol results for the purpose of ensuring quality control in the approval process and to devise a follow-up procedure for analyzing already approved protocols. During the Human Gene Therapy Subcommittee meeting on November 21–22, 1991, a proposed reporting document was developed by the working group and submitted for review that would become Sections IV–C and IV–D of the Points to Consider.

Sections IV–C and IV–D of the *Points to Consider* will be an expansion of the *Reporting Requirement* section. It includes the requirements for the investigators to provide a detailed follow-up of approved human gene therapy/gene transfer protocols.

The Human Gene Therapy Subcommittee suggested minor changes to this section. The Recombinant DNA Advisory Committee will receive the following modified version of this proposed section from the Human Gene Therapy Subcommittee at the meeting of February 10–11, 1992. Section IV, Reporting Requirements, of the *Points to Consider* will be amended in Section IV–B, and two new sections, IV–C and IV–D, will be added.

Section IV–B of the *Points to Consider* currently reads:

"Section IV–B. Reports regarding the general progress of patients should be filed with both your local IRB and ORDA within 6 months of the commencement of the experiment and at six-month intervals thereafter. These twice yearly reports should continue for a sufficient period of time to allow observation of all major effects. In the event of a patient's death, a summary of the special post mortem studies and statement of the cause of death should be submitted to the IRB and ORDA, if available."

Reporting requirements will be more clearly defined in the new Sections IV–C and IV–D of the *Points to Consider* below. Therefore, Section IV–B will now read:

"Section IV–B. Reports regarding the general progress of patients should be filed with both your local IRB and ORDA. ORDA requests the first report after one year of the commencement of the experiment (See Section IV–C), and at yearly intervals thereafter (See Sections IV–D). These reports should continue for a sufficient period of time to allow observation of all major effects. In the event of a patient's death, a summary of the special post mortem studies and statement of the cause of death should be submitted to the IRB and ORDA, if available."

Two new sections, IV–C and IV–D will be added to the *Points to Consider*. The proposed sections read as follows:

"Section IV–C. Reporting Form "A". This information is being collected from each gene transfer protocol approved by the RAC that involves human subjects. The information on this form will be requested only with the first report.

"Section IV–C–1. General Information.

"Section IV–C–1–a. Indicate the: (1) Name of principal investigator, (ii) name of study, and (iii) date of report.

"Section IV–C–1–b. What is the current status of the study (i.e., is it open or closed)? If closed, include: (i) Date protocol closed; (ii) describe reason for closure; and (iii) submit summary.

"Section IV–C–2. Approval Process of Protocol.

"Section IV–C–2–a. Supply a copy of the latest version of the protocol including copies of sample case report forms or any other data collection forms that are being employed as part of this study.

"Section IV–C–2–b. Indicate the dates of the following approvals: Institutional Review Board, Institutional Biosafety Committee, Human Gene Therapy Subcommittee, Recombinant DNA Advisory Committee, and Food and Drug Administration.

"Section IV–C–2–b–(1). Note major changes suggested by each committee and the responses to those suggestions.

"Section IV–C–2–c. Have there been any amendments to the protocol?

"Section IV–C–2–d. Describe your proposed standard quality control measures.

"Section IV–D. Reporting Form "B". An annual update of the following information will be required. Each question may not be applicable to each protocol.

"Section IV–D–1. General Information.

"Section IV–D–1–a. Indicate the: (i) Name of principal investigator, (ii) name of study, and (iii) date of report.

"Section IV–D–1–b. What is the current status of the study (i.e., is it open or closed)? If closed, include: (i) Date protocol closed; (ii) describe reason for closure; and (iii) submit summary.

"Section IV–D–1–c. Have there been any amendments to the protocol? If so, indicate the dates of the following approvals: Institutional Review Board (IRB) and Office of Recombinant DNA Activities (ORDA).

"Section IV–D–1–d. Have there been any adverse reactions reported? If so, describe. What dates were they reported to the IRB and ORDA?

"Section IV-D–2. Measurements of Gene Transfer Success *In Vitro*.

"Section IV–D–2–a. Describe what you are doing currently and how this compares with what you proposed.

"Section IV–D–2–b. What material are you administering to the patients via what route? is this different from what you proposed?

"Section IV–D–2–c. What *in vitro* evidence is there for the efficacy of the genetic manipulation prior to administration of the material, i.e., the efficiency of gene transfer and the manufacture of the desired product? How do your results compare with anticipated results?

"Section IV–D–2–d. Have there been any unexpected results of the ongoing quality control measures? In particular, has there been any incidence of replication competent virus or vector rearrangement? Are these tests performed for each lot of materials administered?

"Section IV–D–2–e. Are there problems that have occurred that you did not anticipate prior to starting the

protocol? What are these? Have they resulted in a change in your procedures?

"Section IV–D–3. Measure of Gene Transfer Success *In Vivo.*

"Section IV–D–3–a. Positive effects.

"Section IV–D–3–a–(1). In the patients treated, has there been any evidence of activity of the transferred gene? what is the documentation for this? How does this compare with what you anticipated?

"Section IV–D–3–a–(2). Has the patients' condition improved?

"Section IV–D–3–a–(3). Is there significant variation between patients. If so, how is this explained?

"Section IV–D–3–b. Negative effects.

"Section IV–D–3–b–(1). Is there any evidence of adventitial spread of transduced material? Was any tumor/normal tissue obtained after transduced material was administered? Was a post mortem obtained? Was there any sign of gonadal transfer of genetic material? By what criteria?

"Section IV–D–3–b–(2). Is there any evidence of generation of replication competent virus related to gene transfer procedure in patients?

"Section IV–D–3–b–(3). What toxicity was seen? Local, at injection site, systemic, any evidence of allergy/hypersensitivity/autoimmunity to the administered products?

"Section IV–D–3–b–(4). Is there evidence of deterioration of the disease state in relation to therapy?

"Section IV–D–3–b–(5). Is there any evidence of effects on other genes?

"Section IV–D–3–b–(6). Are there problems that have occurred that you did not anticipate prior to starting the protocol? What are these? Have they resulted in a change in your procedures?

"Section IV–D–4. Patient Accrual Data.

"Section IV–D–4–a. How many patients were considered for entry on study?

"Section IV–D–4–b. For those who were rejected, what were the reasons?

"Section IV–D–4–b–(1). Unavailability of tissue for transduction?

"Section IV–D–4–b–(2). Lack of ability to transduce tissue?

"Section IV–D–4–b–(3). Was that transduced tissue unable to be used? If not, give reason.

"Section IV–D–4–b–(4). Patient/physician refusal to participate?

"Section IV–D–4–b–(5). Other reasons not accepted in protocol?

"Section IV–D–4–c. How many patients were actually entered?

"Section IV–D–4–c–(1). Upon review, were all these patients eligible? If not, give reasons why not.

"Section IV–D–4–d. Provide a coded list of patients on study along with their on-study dates, off-study dates, and reason for being taken off study.

"Section IV–D–4–e. Are your patient accrual goals being met in a timely fashion? If not, why not.

"Section IV–D–5. Have any publications (abstracts or articles) resulted from this work? If so, provide reprints.

VIII. Amend Introduction, Section IV–B and V of the Points to Consider Regarding Review by the Human Gene Therapy Subcommittee; Amend Sections III–A and IV–C of the NIH Guidelines Regarding Publishing Notice of Meetings and Proposed Actions in the Federal Register

At the Human Gene Therapy Subcommittee meeting on July 30–31, 1991, the subcommittee requested that the Working Group on the Future Role of the Recombinant DNA Advisory Committee prepare a report about the feasibility of merging the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee.

This request was published for comment in the **Federal Register** on November 4, 1991 (56 FR 56415).

The Human Gene Therapy Subcommittee received a report from this working group during its meeting on November 21–22, 1991 which recommended that: (i) All eligible Human Gene Therapy Subcommittee members be added to the Recombinant DNA Advisory Committee as full voting members; or (ii) all of the Human Gene Therapy Subcommittee members be added to the Recombinant DNA Advisory Committee as non-voting members; or (iii) joint meetings would be held in which the subcommittee would vote on the proposed action first, followed by the full Recombinant DNA Advisory Committee.

During the meeting, the following motion passed by a vote of 11 in favor, 2 opposed, and no abstentions:

"We move to recommend to the Recombinant DNA Advisory Committee, that its subcommittee, the Human Gene Therapy Subcommittee, be merged into the parent committee. The number of meetings per year of the Recombinant DNA Advisory Committee would increase to four per year. There would be a transition period of one year in which the Recombinant DNA Advisory Committee would begin to review proposed actions as the sole review group with the following provisions: (i) The Human Gene Therapy Subcommittee would codify a set of guidelines for shortening the review process, and (ii) the eligible members of the Human Gene Therapy Subcommittee would be brought onto the Recombinant DNA Advisory Committee as full voting members in keeping with the nomination process for Federal Advisory Committees."

The Human Gene Therapy Subcommittee forwarded the proposal to the Recombinant DNA Advisory Committee for consideration during the February 10–11, 1992, meeting.

In a letter dated December 23, 1991, Dr. Nelson Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland, is making a request to enable the above transition to proceed more efficiently. His letter states:

"* * * the Office of Recombinant DNA Activities (ORDA) is requesting that the following amendments be made to: (i) Sections III–A, IV–C–1–b–(1), IV–C–2, IV–C–3–b–(1), and IV–C–3–b–(2) to have the 30 day notice for Notice of Meeting and Proposed Actions be changed to a 15 day notice; and (ii) the *Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects* in the sections of Introduction, IV–B, V, and the *NIH Guidelines*, Appendix D–XV, to have the Human Gene Therapy Subcommittee reviewing the human gene protocols changed to the Recombinant DNA Advisory Committee.

"ORDA is proposing that if the RAC votes to approve the recommendation to merge the HGTS with the parent committee and to increase the number of meetings per year, that the following changes must be made to amend the *National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules:*

"I. Notice of Meeting and Proposed Actions.

"The *NIH Guidelines* states that a 30 day Notice of Meeting and Notice of Proposed Action be published in the **Federal Register** for public comment. Under the Federal Advisory Committee Act, only a 15 day notice is required. The recommendation being forwarded by the HGTS to the RAC for approval would require an increase in the number of meetings per year. To more efficiently process the required paperwork prior to each meeting, the 30 day notice needs to be changed to a 15 day notice. It is proposed that the following changes be made:

'Section III–A. Experiments that Require RAC Review and NIH and IBC Approval Before Initiations.

'Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH, the publication of the Proposal in the **Federal Register** for

fifteen days of comment, review by the RAC, and specific approval by NIH.

'Section IV–C–1–b–(1). Major Actions. To execute major actions the Director, NIH, must seek the advice of the RAC and provide an opportunity for public and Federal agency comment. Specifically, the agenda of the RAC meeting citing the major actions will be published in the **Federal Register** at least 15 days before the meeting, and the Director, NIH, will also publish the proposed action the **Federal Register** for comment at least 15 days before the meeting. In addition, the Director's proposed decision, at his/her discretion, may be published in the **Federal Register** for 15 days of comment before final action is taken.

'Section IV–C–2. Recombinant DNA Advisory Committee. * * * All meetings of the RAC will be announced in the **Federal Register**, including tentative agenda items, 15 days in advance of the meeting with final agendas (if modified) available at least 72 hours before the meeting.

'Section IV–C–3–b–(1). Announcements of RAC meetings and agendas at least 15 days in advance;

'Section IV–C–3–b–(2). Proposed major actions of the type falling under Section IV–C–1–b–(1) at least 15 days prior to the RAC meeting at which they will be considered; and * * *"

"II. Review of Human Gene Therapy/ Transfer Protocols.

"The Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects document (**Federal Register** of March 1, 1990) and the *NIH Guidelines* need to be amended to reflect exclusive review of protocols by the Recombinant DNA Advisory Committee. The *Points to Consider* will be amended as follows:

'Introduction. RAC consideration of each proposal will be on a case-by-case basis and will follow publication of a precis of the proposal in the **Federal Register**, and an opportunity for public comment.

'Section IV–B. If the change has been approved by the relevant IRB, and IBC, then the Chair of the Recombinant DNA Advisory Committee may give approval. It is expected that the Chairs will consult with one or more members of the committee, as necessary.

'Section V. Minor Modifications. A minor change in protocol approved by the Recombinant DNA Advisory Committee is a change that does not significantly alter the basic design of a protocol and that does not increase risk to the subjects.' "

IX. Amend Appendices B–I–B–1 and B–I–B–2 of the NIH Guidelines regarding the Bacterial Order, Actinomycetales

In a written request dated April 15, 1991, Dr. Diane O Fleming of Merck & Co., Inc., Somerset, New Jersey, requested that only pathogenic genera and species of the bacterial order, *Actinomycetales*, be included in Appendix B–I–B–1 of the *NIH Guidelines*.

It was proposed that the following pathogens be included in the list of Bacterial Agents in appendix B–I–B–1 of the *NIH Guidelines* as follows:

Actinomadura madurae
Actinomadura pelletieri
Actinomyces bovis
Actinomyces israelii
Nocardia asteroides
Nocardia brasiliensis

In appendix B–I–B–2, the entry under *Actinomycetes* would be deleted.

This request was reviewed at the Recombinant DNA Advisory Committee meeting on May 30–31, 1991. Following a discussion there was agreement that the *Actinomyces* should be reclassified as bacteria and removed from the list of fungi. However, there was disagreement about the number of species to be listed as pathogens. The number was thought to be considerably larger than the six species proposed for inclusion. Dr. Fleming was asked to consult with leading experts in the field and return with a revised list of pathogens, to be reviewed at the Recombinant DNA Advisory Committee meeting on October 7–8, 1991.

This request was published for comment in the **Federal Register** on September 3, 1991 (56 FR 43686).

During the October 7–8, 1991, Recombinant DNA Advisory Committee meeting, a motion was passed by a vote of 19 in favor, 0 opposed, and no abstentions to create an *ad hoc* working group within the Recombinant DNA Advisory Committee with outside consultants to provide an amended list of pathogens.

X. Amend Appendices B–I–C–1 and B–I–B–1 in the NIH Guidelines regarding Mycobacterium avium

In a letter dated December 18, 1991, Dr. William R. Jacobs, Jr., of the Albert Einstein College of Medicine, Bronx, New York, requested lowering the classification of *Mycobacterium avium* from a Class III bacterial agent to a Class II bacterial agent. *M. avium* would move from appendix B–I–C–1 to appendix B–I–B–1 in the *NIH Guidelines*.

XI. Other Matters To Be Considered by the Committee

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, a roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: December 24, 1991.

Jay Moskowitz,

Associate Director for Science Policy and Legislation, NIH.

[FR Doc. 92–108 Filed 1–2–92; 8:45 am]
BILLING CODE 4140–01–M

Friday
January 3, 1992

Part IV

Department of Housing and Urban Development

24 CFR Part 570
Community Development Block Grants: Community Development Plans

VOL 57 ISS 2 JA 3 1992 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-91-1597; FR-3007-P-01]

RIN 2506—AB19

Community Development Block Grants; Community Development Plans

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to require each recipient under subsection (b) of section 106 of the Housing and Community Development Act of 1974 (the so-called Entitlement grantees) to submit a Community Development Plan to HUD in a standardized format. The plan must describe the community's non-housing community development needs and present a strategy for meeting those needs.

DATES: Comment due date: March 4, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division (202) 708–1577, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. A telecommunications device for hearing impaired persons (TDD) is available at (202) 708–0564. FAX inquiries may be sent to Mr. Broughman at (202) 708–3363. (These telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Public reporting burdens for the collection of information requirements contained in this proposed rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, consulting with adjacent units of government, holding public hearings, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW, room 10276, Washington, DC 20410; and to the Office of Management and Budget, Washington, DC 20503.

Background

This proposed rule would revise the Community Development Block Grant program regulations for entitlement cities and counties (24 CFR 570 subpart D) to implement certain of the changes made to the Housing and Community Development Act of 1974 by the National Affordable Housing Act of 1990 (NAHA), Public Law 101–625, approved November 28, 1990. The proposed changes would implement NAHA section 922—Community Development Plans. The changes contained in this proposed rule only affect the Entitlement program. Separate rules will address the effects on States, Indians and other non-entitlement units of government.

Community Development Plan

Section 922 of NAHA added a new section 104(l) to the Housing and Community Development Act of 1974. This section requires each recipient under subsection (b) of section 106 (the so-called Entitlement grantees), among other recipients, to submit a Community Development Plan to HUD in a standardized format prescribed by HUD in regulations, as a pre-condition to receipt of CDBG funds. The proposed rule would implement the new requirement that the plan describe the community's non-housing community development needs and present a strategy for meeting those needs. The Department invites comment on whether the categories selected fully encompass all non-housing community development needs that should be addressed, as well as on the helpfulness of the specific categories themselves as identified in the proposed rule.

Section 922 is silent concerning the period of time localities should consider when identifying community development needs, and whether, and how frequently, the plan would need to be updated and resubmitted. HUD is aware that section 104(b)(4) already requires units of general local government to have developed a community development plan which identifies both community development and housing needs for a period of one to three years. To allow a community to use, either wholly or partially, a plan that it previously developed, including a plan developed in compliance with section 104(b)(4), this proposed rule would permit units of general local government to choose the relevant time period used in its newly required plan containing its non-housing community development needs. This will enable communities to use a one-, two-, or three-year period to coincide with their current plan developed under section 104(b)(4), and therefore use some (or all) of the non-housing needs contained in that plan as part of the newly required plan. In addition, any grantee that wishes to develop its new plan in conjunction with its Comprehensive Housing Affordability Strategy (CHAS) in accordance with section 105 of the National Affordable Housing Act may select the five-year period covered by the CHAS. The Department invites comment on the appropriate period of time for consideration of non-housing community development needs.

Section 922 requires units of general local government to hold at least one public hearing to obtain citizen views on non-housing community development needs. HUD recognizes that the Housing and Community Development Act of 1974 already requires each community to hold public hearings on its community development and housing needs, that public hearings will be required as part of the preparation of the new CHAS, and that many communities conduct public hearings as part of their planning process for local or State plans. This proposed rule would enable a community to use the results of any such public hearings, held up to one year before the submission of its community development plan to HUD, if that public hearing substantively meets the requirements of obtaining citizen views on non-housing community development needs for the period of time chosen by the grantee for the plan required under this proposed rule.

Section 922 also requires units of general local government to consult with

all adjacent localities. "Adjacent" for this purpose will mean those localities that are contiguous to the borders of the grantee community. The apparent purpose of the consultation is to determine the extent to which the grantee's local needs may have an impact on neighboring units of government and any needs that are mutually shared and that might be advantageous to address together; to discuss strategies for meeting the needs; and to consider the possibility of coordinated action for addressing multi-jurisdictional needs. Comments are invited on the nature and extent of consultation that the rule should require.

Section 922 of NAHA specifies that the community development plan be submitted to HUD before HUD may make the grant. While it would not be a requirement, grantees are encouraged to submit their community development plan at least 30 days in advance of the submission of their Statement. As mentioned previously, the statute is silent regarding the frequency with which the plan should be submitted to the Department. This rule proposes that communities need not resubmit their plan until the period of time covered by the plan is expiring. Accordingly, if a community elects to use a five-year plan, its plan need not be resubmitted more often than once every five years. The Department invites comment on how frequently a community should be required to resubmit its plan.

The specific proposed content of the new non-housing community development plan requirements is discussed below.

Plan Requirements

a. Nonhousing Community Development Needs

Section 922 of NAHA requires that the plan describe the community's non-housing community development needs and a strategy for meeting those needs. A community would be required to describe briefly its non-housing community development needs that currently are unmet, and those expected to arise within the period of time covered by the plan. Communities would not be required to list those needs for which remedial actions are already underway and are expected to have been fully met by the time the plan period expires. The description would need specifically to state whether identified facilities needs would constitute construction, reconstruction, or expansion. This rule proposes to require that the description of needs be arranged so that grantees separately identify the following four basic categories: (1) Public infrastructure facilities needs, such as transportation, water, sanitation, energy, and drainage/flood control; (2) other public facilities needs, such as neighborhood facilities or facilities for provision of health, education, recreation, public safety, or other services; (3) economic development needs, such as commercial/industrial revitalization, job-creation and retention considering the unemployment and underemployment of its citizens, accessibility to financial resources by citizens and businesses, investment within particular areas of the jurisdiction, or other related components of community economic development; and (4) social services needs. Within each category, a community would be required either to identify the relative priority it attaches to each of the needs, or to describe the process the community expects to follow in determining which need to address as funds become available during the period of time covered by the plan. (See proposed §§ 570.309(b)(2) through 570.309(b)(4).)

b. Strategies for Meeting Needs

The Act requires that units of general local government include in their community development plan a description of their strategies for meeting their needs. As part of their strategy statements, communities would be required to identify the needs for which specific plans are currently in place and the source of funds expected to be used. For the balance of needs, the grantee would need to identify the sources of funds the grantee believes might become available during the period covered by the plan; actions the grantee would take to acquire those funds; and which needs would be addressed in concert with adjacent communities. (See § 570.309(b)(5).)

c. Period of Time for Plan

The grantee would need to identify the period of time covered by its plan. (See § 570.309(c).)

d. Public Hearings

Section 104(l)(2)(A) of the Housing and Community Development Act of 1974, as amended by section 922 of NAHA, requires units of general local government to hold one or more public hearings to obtain citizen views of the locality's non-housing community development needs. These public hearings may be held in conjunction with those required for other purposes. (For example, section 104(a)(2)(C) requires grantees to hold one or more public hearings to obtain the views of citizens on community development and housing needs.) Moreover, CDBG entitlement grantees are required under 24 CFR part 91 to hold hearings for the consideration of housing needs as part of the preparation of the community's CHAS. If the community has held a public hearing within 12 months of the date of submission to HUD of the community development plan and the hearing met the statutory requirement that the public hearing was for the purpose of obtaining citizen viewpoints on the locality's non-housing community development needs covering the period of time that will be covered by the newly required community development plan, the grantee may use the results of that public hearing to comply with this requirement.

In the plan, the community would be required to describe when and where the public hearing or hearings were held. To fulfill this requirement, a grantee could simply include in its plan a copy of any public notices announcing the hearings. (See §§ 570.309(a)(2), and 570.309(b)(6).)

e. Consultation

Section 104(l)(2)(A) requires units of general local government, while preparing the non-housing community development plan, to consult with adjacent units of general local government. "Adjacent units of general local government" is defined to mean those localities that share a common boundary or where one community is entirely surrounded by another.

The community would need to identify in its plan all adjacent units of government and include the date and circumstances of the consultation with each of them and a brief description of the substance of each consultation. (See §§ 570.309(a)(3) and 570.309(b)(7).)

f. Submission of Plan

Section 104(l)(1) prohibits HUD from making a grant until the community submits a non-housing community development plan to HUD. Section 104(l)(2)(B) requires that a grantee submit its plan to the State within which it resides and to any other unit of general local government within which the recipient is located. Because entitlement communities have wide latitude in selecting their program year start dates, HUD does not propose to specify a particular date by which the plan must be submitted. However, since HUD may not make a grant until the plan is submitted, the Department does not plan to accept a final statement submitted by a grantee until the required plan has been received from the

community. HUD also will not make the grant until it has reviewed the plan to determine that it meets the content and format requirements that will be identified in the rules. Accordingly, HUD recommends that a locality submit its non-housing community development plan at least 30 days before the submission of its final statement. This will allow HUD sufficient time to review the community development plan for compliance with the above-described requirements without delaying the grant award. (See § 570.309(a).)

g. Effect of Submission on CDBG

The contents of a nonhousing community development plan shall not be binding upon a grantee with respect to the use of any funds received under section 106. (See § 570.309(d).)

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW, Washington, DC 20410.

Executive Order 12291

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in the CDBG program, but rather modifies and updates program administration and procedural requirements to comport with recently enacted legislation.

Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, The Family, has determined that this proposed rule does not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. The proposed rule would provide for increased citizen participation in the Community Development Block Grants (CDBG) program. Any effect on the family or on family formation, maintenance, and general well-being will be indirect and incidental.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this proposed rule would not have "federalism implications" within the meaning of the Order. The increased citizen participation requirements under the CDBG program will not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

This proposed rule was listed as item no. 1448 in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53380, 53416), under Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. The amendment at § 570.309 of this proposed rule has been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Annual Reporting Burden for the Community Development Plan—Proposed Rule

Description of information collection	Number of respondents	Number of responses	Total annual responses	Hours per response	Total hours
Community Development Plan	860	.25	215	100	21,500

List of Subjects in 24 CFR Part 570

Community development block grants.

Accordingly, the Department amends 24 CFR part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 would continue to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5300–20); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 570.304, a new paragraph (a)(4) would be added, to read as follows:

§ 570.304 Making of grants.

(a) *Acceptance of final statement and certifications.*

* * * * *

(4) *Plan submission.* The grantee must have submitted a plan meeting the requirements of § 570.309 covering a period that includes the fiscal year in which the grant is to be made.

* * * * *

3. A new § 570.309 would be added, to read as follows:

§ 570.309 Community development plan.

(a) *General Requirements.* Before the receipt of a grant in any fiscal year, the grantee must have submitted to HUD a community development plan meeting the requirements set forth in this section.

(1) Before developing the plan, the grantee must:

(i) Hold one or more public hearings to obtain the views of residents within its jurisdiction concerning the community's non-housing community development needs. (The hearings must occur no earlier than one year from the date the plan is submitted to HUD); and

(ii) Consult with all adjacent units of general local government regarding the grantee's non-housing community development needs and strategies for addressing those needs. (For the purpose of this paragraph, "adjacent" means

being physically contiguous with the border of the other unit of government);

(2) The plan must contain all of the elements described in paragraph (b) of this section, and

(3) The grantee must submit the plan to HUD, to the State, and to any units of general local government within which the grantee is located.

(b) *Plan contents.* The plan shall, at a minimum, contain the following:

(1) The period of time covered by the needs identified in the plan. The period covered shall not be less than one year following the date of the plan's submission to HUD.

(2) A brief description of each of the grantee's non-housing community development needs that currently are unmet and those expected to arise within the period of time covered by the plan. Communities should not list those needs for which all of the required funds have been committed, remedial actions are already underway, and the needs are expected to have been fully met by the time the plan period expires. The description of non-housing community development needs should be arranged by category in the following order:

(i) *Public infrastructure facilities needs*, consisting of the following major subcategories of public works: transportation, water, sanitation, energy, and drainage/flood control;

(ii) *Other public facilities needs* such as neighborhood facilities or facilities for provision of health, education, recreation, public safety, or other services;

(iii) *Economic development needs* such as those for commercial/industrial revitalization, job-creation and retention considering the unemployment and underemployment of the citizens, increased accessibility to financial resources by citizens and businesses, increased levels of investment within particular areas of the jurisdiction experiencing disinvestment, or other related components of community economic development; and

(iv) *Social services needs*. (3) For needs under paragraphs (b)(2) (i) and (ii) of this section, the grantee must identify whether the need is for construction of a new facility, reconstruction or expansion of an existing facility;

(4) An identification of the relative priority the grantee considers each need to have. Alternatively, the grantee may describe how it expects to decide which need to address as funds become available during the period covered by the plan.

(5) A description of the grantee's strategy to meet the needs identified under paragraph (b)(2) of this section. The description must include:

(i) The sources of funds expected to be available during the period covered by the plan and the needs for which the funds are expected to be applied;

(ii) Other sources of funds the grantee believes may become available during the period covered by the plan, and the strategy the grantee expects to use to acquire and use the funds to meet the identified needs;

(iii) A description of steps the grantee has taken and expects to take to coordinate its actions in addressing identified needs with adjacent units of general local government; and

(iv) A description of any timing considerations that may be crucial to the implementation of any of the grantee's strategies;

(6) A description of when and where the grantee conducted a public hearing or hearings for the purpose of identifying the needs contained in its plan. (A copy of the public notice of the hearing or hearings will meet the requirement of this paragraph); and

(7) A description of the dates and circumstances of consultations with adjacent units of general local government, the governments with which the grantee consulted on each occasion, and the substance of each consultation.

(c) *Resubmission.* (1) A Grantee may update its plan whenever the grantee believes that a significant change has occurred to its needs.

(2) A Grantee need not resubmit a community development plan to HUD until a plan is required to enable HUD to make a grant under § 570.304(a)(4).

(d) *Effect on use of CDBG funds.* The contents of a nonhousing community development plan shall not be binding upon the recipient with respect to use of its CDBG funds.

Dated: November 26, 1991.

S. Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92-47 Filed 1-2-92; 8:45 am]

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Friday
January 3, 1992

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Airspace Reclassification; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 24456; Amendment No. 91-227]

RIN 2120-AB95

Airspace Reclassification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the preamble and the effective date of the Airspace Reclassification Final Rule published in the **Federal Register** on December 17, 1991 (56 FR 65638), docket number 24456, regarding authority of air traffic control (ATC) to approve deviations from the transponder requirements in § 91.215(b).

FOR FURTHER INFORMATION CONTACT: Mr. William Mosley, Air Traffic Rules Branch, (ATP-230), Airspace Rules and Aeronautical Information Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267-9251.

SUPPLEMENTARY INFORMATION:

History

The Airspace Reclassification Final Rule provided that the effective date for § 91.215(d) of the Federal Aviation Regulations was December 12, 1991. The amendment and the preamble to the rule clarified that the ATC facility having jurisdiction over the concerned airspace is permitted to authorize deviations from the transponder requirements in § 91.215(b). However, the effective date of the amendment to § 91.215(b), which complements and supports the language in § 91.215(d), was issued erroneously as September 16, 1993. The corrections are listed in detail below and this oversight is corrected by this notice.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the preamble and effective date of the amendment to § 91.215(b), as published in the **Federal Register** on December 17, 1991 (56 FR 65638), (Federal Register Document 91-29869; page 65638, Column 1, and page 65639, Column 2) are corrected as follows:

1. On page 65638, first column, in the third line of the paragraph entitled **EFFECTIVE DATE**, insert "91.215(b) introductory text" between "§ 11.61(c)" and "91.215(d)".

2. On page 65639, second column, line 22, delete the "(d)" from "Section 91.215" and change the effective date on line 39 to December 12, 1991 instead of December 17.

Issued in Washington, DC on December 30, 1991.

Donald P. Byrne,

Assistant Chief Counsel for Regulations and Enforcement, Office of the Chief Counsel

[FR Doc. 92-120 Filed 1-2-92; 8:45 am]

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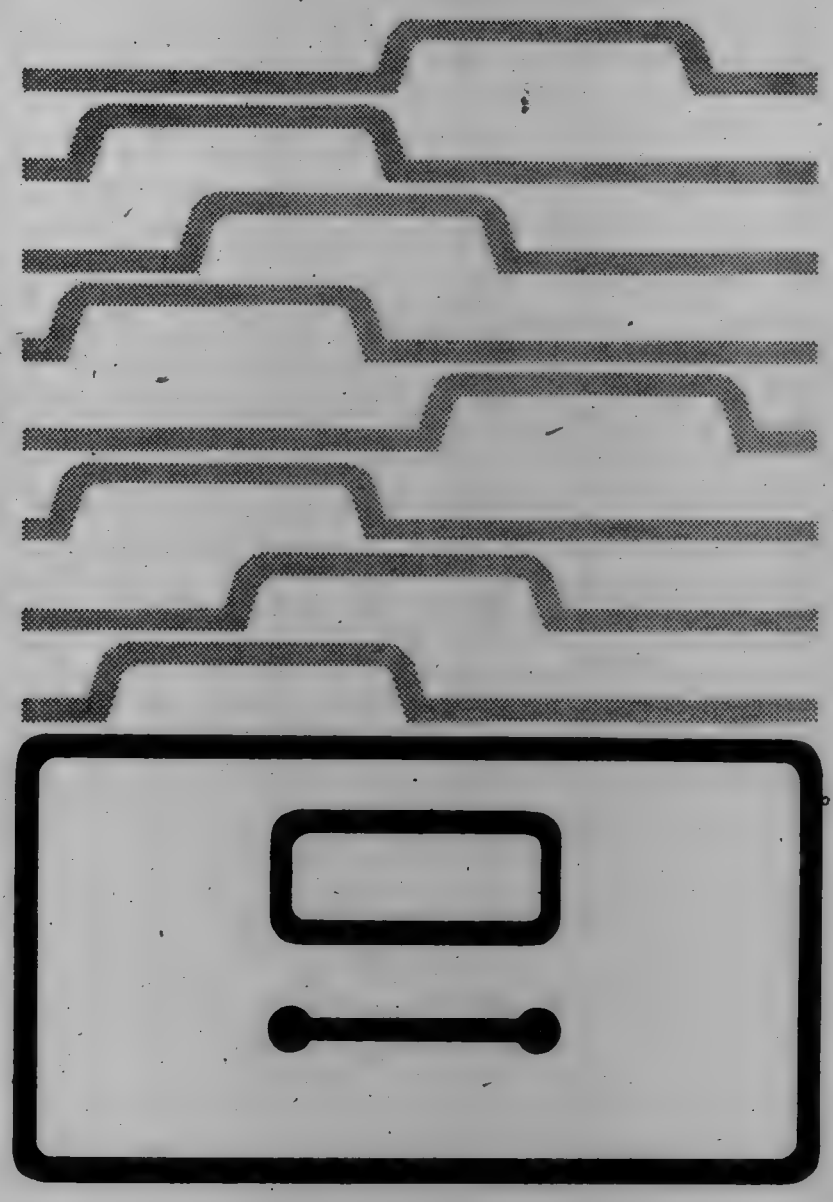

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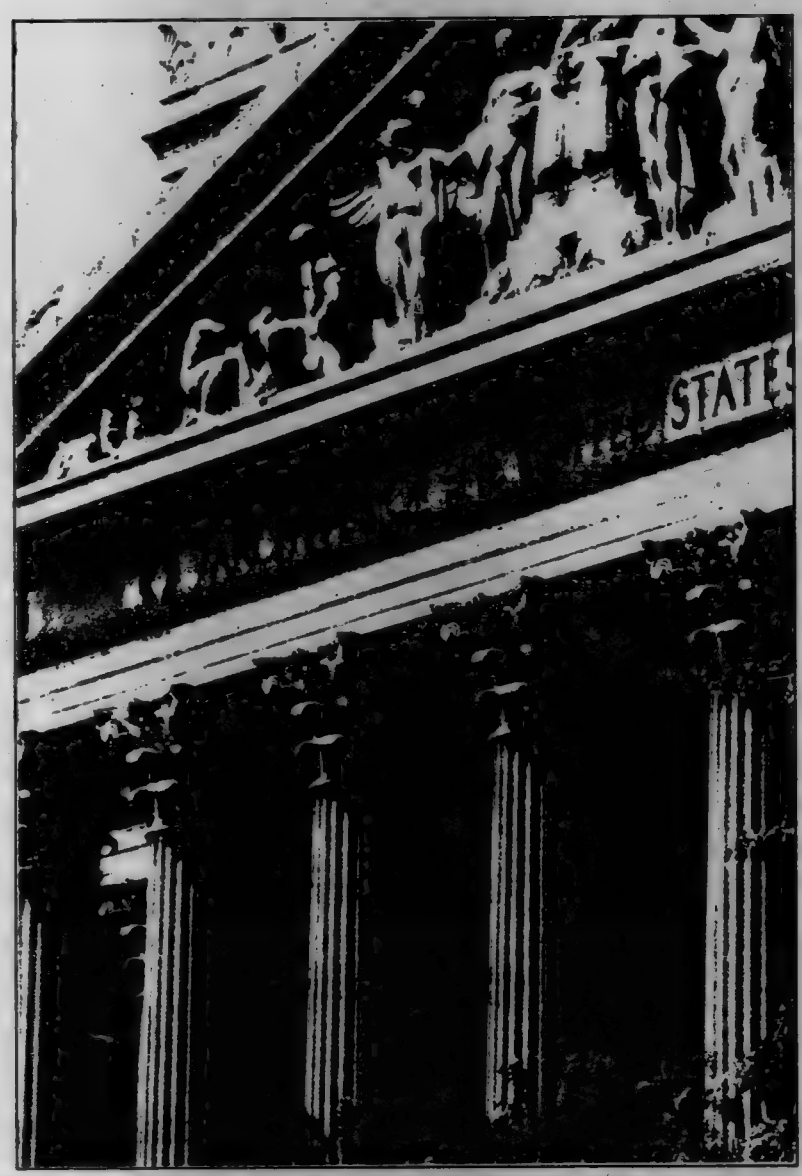

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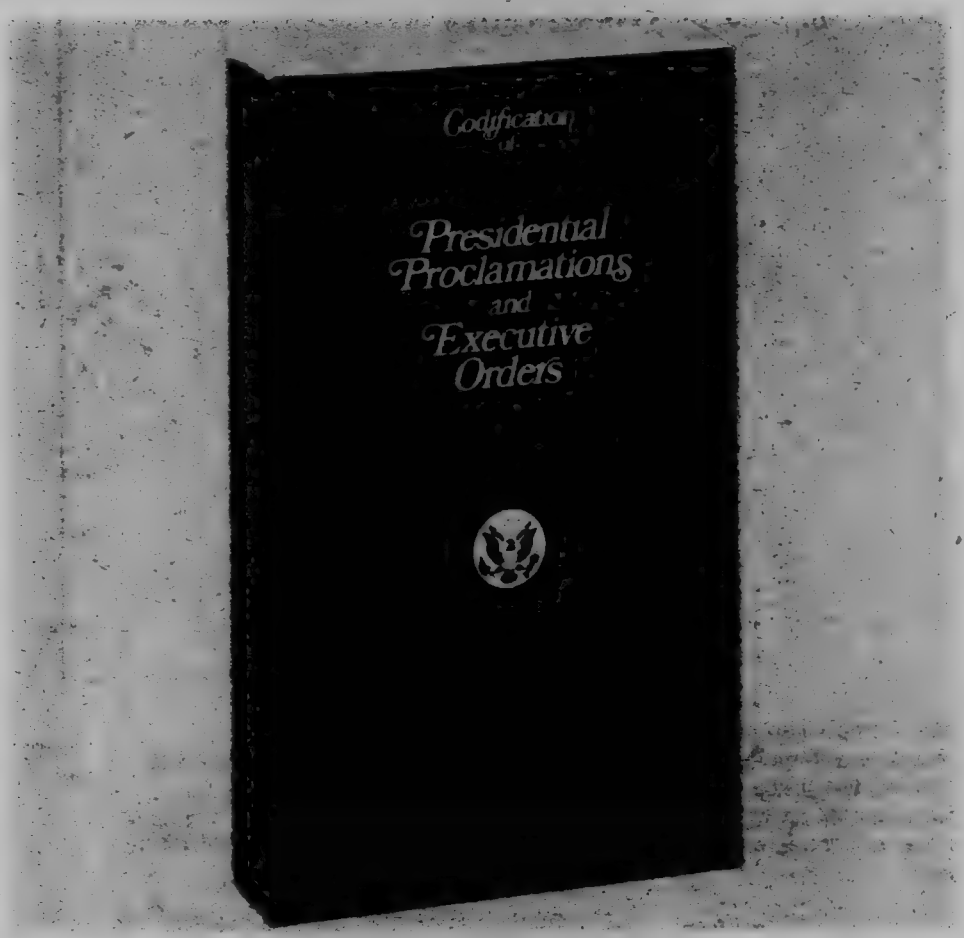

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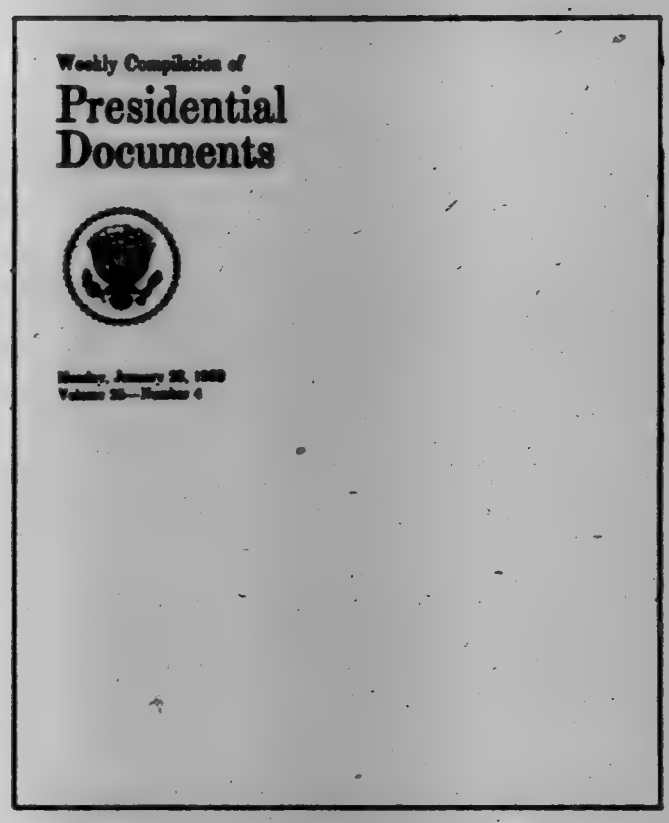

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Monday, January 6, 1992

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Title 3—

The President

Presidential Determination No. 92–9 of December 16, 1991

Migration and Refugee Assistance for Yugoslav Refugees

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I determine that it is important to the national interest that up to $7,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund (the Fund) to meet unexpected urgent needs of refugees and other displaced persons resulting from the civil conflict in Yugoslavia. These funds may be used to provide U.S. contributions to the United Nations High Commissioner for Refugees, the International Committee of the Red Cross, other international organizations, governments and governmental organizations, and private voluntary organizations, as required.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this memorandum in the **Federal Register.**

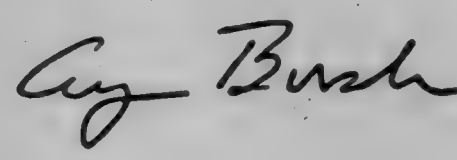

THE WHITE HOUSE,
Washington, December 16, 1991.

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Rules and Regulations

Federal Register
Vol. 57, No. 3
Monday, January 6, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 321

[Docket No. 91-105]

Importation of Potatoes From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning importation of potatoes by adding restrictions on the importation of potatoes and potato plants from Canada. This emergency action was prompted by new information about the necrotic strain of potato virus Y in Canada, and is necessary to prevent the introduction of this disease into the United States.

DATES: This interim rule is effective December 27, 1991. Consideration will be given only to comments received on or before March 6, 1992.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies of written comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-105. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays .

FOR FURTHER INFORMATION CONTACT: James Petit de Mange, Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 321 (referred to below as the potato regulations) restrict the importation of potatoes from foreign countries to prevent the introduction into the United States of potato wart and other injurious potato diseases and insect pests. For purposes of the potato regulations, the term "potatoes" refers only to tubers. As defined in this part, a seed potato is a potato tuber intended for planting and growing potato plants. A table stock potato is a potato tuber intended for sale as a fresh vegetable. A processing potato is a potato tuber intended to produce potato products, incapable of propagation, not to include table stock. The regulations in 7 CFR part 319.37 (referred to below as the nursery stock regulations) govern the importation of living plants, plant parts, and seed for, or capable of, propagation, including all parts of potato plants other than tubers.

Prior to the effective date (April 25, 1991) of an interim rule and request for comments published in the April 30, 1991 **Federal Register** (56 FR 19789-19791, Docket No. 91-038), § 321.8 of the potato regulations allowed potato tubers to be imported without restrictions from Canada (except from Newfoundland and the Land District of South Saanich on Vancouver Island of British Columbia). Also prior to the effective date of that interim rule, the nursery stock regulations allowed the importation of potato plants (other than tubers) from Canada without restriction.

The previous interim rule prohibited the importation of potato plants and prohibited or restricted the importation of certain tubers from New Brunswick and Prince Edward Island in order to prevent the introduction of the necrotic strain of potato virus Y (PVY-N), which is not known to exist in the United States. This virus, which presents a plant pest risk, had been identified in potatoes in New Brunswick and Prince Edward Island. PVY-N, also known as tobacco veinal necrosis, can infect potatoes, tobacco, tomatoes, and peppers. PVY-N can be introduced into new locations by the movement of infected potato tubers and plants. The PVY-N virus in spread slowly in nature by aphids feeding on infected plants and transmitting the virus to healthy plants. Long-distance spread of the disease has resulted from the movement of infected potato tubers.

Preliminary investigations by Agriculture Canada indicated that PVY-N detected on farms in Prince Edward Island and New Brunswick had been traced back to a single farm in Prince Edward Island, and that the spread of PVY-N had been the result of movement of Atlantic variety seed potatoes from that farm.

Based on this information, the interim rule effective on April 25, 1991, did the following:

(1) Prohibited the importation of the Atlantic variety of seed potatoes from Prince Edward Island,

(2) Restricted the importation of other varieties of seed potatoes from Prince Edward Island to seed potatoes grown in Prince Edward Island Seed Potato Inspection Districts 5 or 6,

(3) Prohibited the importation of seed potatoes from New Brunswick if they were the progeny of or were grown on the same farm with any Atlantic variety seed potato produced on Prince Edward Island in 1988 or later,

(4) Prohibited the importation of seed potatoes from other provinces which were otherwise eligible to ship potatoes to the United States if the potatoes were the progeny of any Atlantic variety seed potato produced on Prince Edward Island in 1988 or later,

(5) Prohibited the importation of table stock from Prince Edward Island or New Brunswick unless the potatoes were not grown in Prince Edward Island or New Brunswick or unless the potatoes were treated with sprout inhibitor,

(6) Prohibited the importation of processing potatoes from Prince Edward Island or New Brunswick unless the potatoes were not grown in Prince Edward Island or New Brunswick, or were treated with sprout inhibitor, or were moved under certain restrictions from the first port of entry in the United States to a processing plant, and

(7) Required a permit and phytosanitary certificate for the importations.

The interim rule also prohibited the importation of potato plants (other than tubers) from Prince Edward Island and New Brunswick.

Follow-up Canadian surveys since the publication of that interim rule have detected PVY-N in Ontario, Nova Scotia, and Quebec, and in potato varieties other than Atlantic. Most of

these new detections can be traced back to potatoes originating in Prince Edward Island.

Survey results also note that the extent of the infestation in Prince Edward Island is more widespread than previously believed. PVY–N has been found in many more seed potatoes in Prince Edward Island, in areas within Prince Edward Island that were previously thought to be free from PVY–N, and in varieties other than Atlantic.

Some of the detections in Ontario relate to infections that occurred in Ontario in previous years. However, at least one PVY–N detection in tobacco in Ontario made last year, and one this year, have not been directly linked to the presence of infected potatoes. It appears that another unknown host of PVY–N may be present in Ontario and acting as a source of inoculum capable of causing recurring infections in tobacco and potatoes. To date, the surveys for PVY–N in Ontario have concentrated on a few farms that received Prince Edward Island potatoes that were considered high risk for PVY–N. The majority of seed potatoes in Ontario have yet to be tested for PVY–N. The presence of an unknown source of inoculum for PVY–N in Ontario leaves many questions about the possible risks associated with the movement of potatoes from Ontario.

The recent Canadian surveys have detected PVY–N only once in each of the provinces of New Brunswick, Nova Scotia, and Quebec. The infected potatoes have been authorized for local processing only. We perceive the risk of introducing PVY–N in potatoes from those provinces to be small relative to potatoes from Ontario and Prince Edward Island.

Therefore, we are broadening the prohibition on seed potatoes from Prince Edward Island to all varieties from all parts of Prince Edward Island. We are adding Ontario as a province from which seed potatoes are prohibited, regardless of variety, due to the circumstances noted above concerning the presence of PVY–N in tobacco, potatoes, and possibly other hosts in Ontario that have yet to be identified.

We are permitting the importation of seed potatoes from other provinces if a USDA import permit has been obtained and the potatoes are accompanied by a phytosanitary certificate stating the province of origin and containing the following statements as explained below:

• The potatoes are neither the progeny of nor were grown on the same Canadian seed potato farm with potatoes produced in Ontario or Prince Edward Island in 1988 or later, nor are the sibling potatoes of a lot of potatoes known to be infected with PVY–N. (Sibling potatoes are potatoes that were produced from the same common seed source in the previous growing season. They are potatoes that were harvested from the same field.) These restrictions are necessary to prevent the importation of seed potatoes which are at high risk of being infected with the PVY–N virus.

• The potatoes are not harvested from a farm or field that is within 200 meters of a farm or field where PVY–N has been detected. The natural spread of the aphids in the field that act as vectors for PVY–N is generally 100 meters or less per year. As a precautionary measure, we are requiring that these potatoes be no closer than 200 meters from PVY–N infected potatoes.

We consider the risks of introducing PVY–N into the United States with Canadian table stock and processing potatoes to be very low. There are no restrictions due to PVY–N on such potatoes from Canada, except Ontario, Prince Edward Island, New Brunswick, Nova Scotia, and Quebec. However, due to the circumstances in Ontario and Prince Edward Island described above, we believe additional safeguards and/or certifications are necessary for table stock and processing potatoes from these provinces to lessen any risks. We consider the disease risks to be less from New Brunswick, Nova Scotia, and Quebec, since PVY–N was detected only once in each of these provinces in recent surveys conducted by Agriculture Canada and since the infected potatoes have been destroyed.

Therefore, we are allowing the importation of table stock and processing potatoes from Ontario and Prince Edward Island if a USDA import permit has been obtained and the potatoes are accompanied by a phytosanitary certificate stating that the potatoes were not grown from seed potatoes that were siblings of a lot of potatoes known to be infected with PVY–N, were not harvested from a farm or field that is within 200 meters of any farm or field where PVY–N was detected, and were treated while dormant with chlorpropham in accordance with labeled rates approved and authorized by the U.S. Environmental Protection Agency.

The sprout inhibitor chlorpropham acts to extend the dormancy of potatoes when it is applied to dormant potatoes. Treating while dormant is recommended on the label of the sprout inhibitor. When potatoes are imported and are found to be sprouting, we assume that they were either not treated with sprout inhibitor or that the inhibitor was improperly applied.

We are requiring sprout inhibitor treatment for table stock from Ontario and Prince Edward Island to reduce the chances of these potatoes being planted and then producing PVY–N infected plants. Home gardeners frequently plant table stock potatoes instead of purchasing seed potatoes because the diversity of potato varieties available for sale as table stock in grocery stores generally outnumbers the varieties available as seed potatoes in local garden supply stores, nurseries, etc.

We also believe sprout inhibitor treatment is necessary for processing potatoes from Ontario and Prince Edward Island, and many other areas where PVY–N has been detected. In the United States, processing plants that receive these potatoes are often near potato farms. Potato wastes and culls that are capable of growing are often generated at these processing plants. The sprout inhibitor treatment will help lessen the possibilities of these wastes and culls growing into PVY–N infected plants which could spread to potatoes or other potential hosts growing nearby.

We believe that table stock and processing potatoes from Ontario and Prince Edward Island that meet the requirements described above present an insignificant level of risk of spreading PVY–N if imported because of the multiple safeguards imposed by the certification requirements and treatment.

We are allowing the importation of table stock and processing potatoes from Ontario and Prince Edward Island that have been treated with the sprout inhibitor chlorpropham, but which do not meet the other certification requirements described above, only from August 15 through March 15, inclusive.

Without the previously described certification, we feel that table stock and processing potatoes from Ontario and Prince Edward Island pose an increased degree of risk of spreading PVY–N. Our past experience with table stock and processing potatoes from Canada reveals that they begin breaking dormancy and sprouting near the end of March, depending on how the potatoes were stored. After dormancy breaks, sprout inhibitors are less effective. The possibility exists, albeit remote, that these potatoes could be planted and grown, especially by home gardeners, and produce PVY–N infected plants. Also, potato processing plants that receive these potatoes could generate culls and wastes that could potentially produce PVY–N infected plants. If infected plants were to develop from the culls or wastes, they could serve as a

source of infection for other potatoes growing within the vicinity of the processing plants. To reduce the possibilities of these events occurring, we are prohibiting the importation of these potatoes from March 16 through August 14, inclusive, unless they meet the certification requirements, as a precaution against the possible planting of these potatoes by home gardeners, or the growth of these plants from potato culls and wastes at processing plants, during a time of the year when most potato and tobacco crops are being grown in the United States.

From August 15 through March 15, inclusive, table stock and processing potatoes from Canada will likely be comprised of either recently harvested potatoes which are incapable of growing, or potatoes which are dormant. When treated with chloropropham, dormant potatoes are unlikely to produce potato plants even if planted. Also, by August 15, most potatoes in the United States have been harvested and tobacco is at or near harvest. Additionally, most home gardeners in the United States are not likely to be planting potatoes after this date.

We are allowing table stock and processing potatoes that were harvested in New Brunswick, Nova Scotia, and Quebec to be imported without sprout inhibitor treatment. Those potatoes will be allowed entry if a USDA import permit has been obtained and the potatoes are accompanied by a phytosanitary certificate stating that they were not the progeny of nor were grown on the same farm with potatoes produced in Ontario or Prince Edward Island in 1988 or later, were not grown from seed potatoes that were the siblings of a lot of potatoes known to be infected with PVY–N, and were not harvested from a farm or field that is within 200 meters of any farm or field where PVY–N was detected. These potatoes meet the basic certification requirements which we are establishing for seed potatoes from New Brunswick, Nova Scotia, and Quebec, which could be imported and planted. Therefore, sprout inhibitor treatment is unnecessary for table stock and processing potatoes if certified as described in this paragraph. Alternately, table stock and processing potatoes harvested in New Brunswick, Nova Scotia, and Quebec that do not meet the above requirements may be imported if a USDA import permit has been obtained and the potatoes are accompanied by a phytosanitary certificate stating that they were treated while dormant with the sprout inhibitor chlorpropham in accordance with labeled rates approved and authorized by the Environmental Protection Agency.

We are also changing the nursery stock regulations to prohibit the importation of potato plants (other than tubers and true seeds) from Nova Scotia, Ontario, and Quebec. It is necessary to prohibit the importation of potato plants from provinces where PVY–N has been detected because we have no way to trace potato plants and determine whether or not they are from infected sources or were grown in proximity to infected sources. In the previous interim rule we prohibited the importation of potato plants from New Brunswick and Prince Edward Island.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of the necrotic strain of potato virus Y (PVY–N) into the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

The emergency nature of this action makes it impracticable for the Agency to follow the procedures of Executive Order 12291 and Secretary's Memorandum 1512–1 with respect to this interim rule. Immediate action is warranted to prevent the introduction of PVY–N into the United States.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Regulatory Impact Analysis, if required, will address the issues required in section 604 of Public Law 96–354, the Regulatory Flexibility Act.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this interim rule will be submitted for approval to the Office of Management and Budget. Written comments should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. A duplicate copy of comments should be submitted to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects

7 CFR Part 319

Agricultural commodities, Imports, Nursery stock, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

7 CFR Part 321

Agricultural commodities, Imports, Plant diseases, Plant pests, Plants (Agriculture), Potatoes, Quarantine, Transportation.

Accordingly, 7 CFR parts 319 and 321 are amended to read as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In the table in § 319.37–2, paragraph (a), the entry listed for "*Solanum* spp. (excluding potato tubers which are subject to 7 CFR part 321).", the information listed in the second column for this entry is revised to read as follows:

§ 319.37–2 Prohibited articles.

(a) * * *

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
Solanum spp. * * *.....	All except Canada (excluding New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec).	* * *

PART 321—RESTRICTED ENTRY ORDERS

3. The authority citation for part 321 continues to read as follows:

Authority: 7 U.S.C. 154, 159, and 162; 44 U.S.C. 35; 7 CFR 2.17, 2.51, and 371.2(c).

4. Section 321.2 is amended by adding the following definition in alphabetical order to read as follows:

§ 321.2 Definitions.

* * * * *

Sibling potatoes. Potatoes that were produced from the same common seed source or harvested from the same field in the previous growing season.

* * * * *

5. Section 321.9 is amended by removing paragraphs (g) and (h) and by revising paragraphs (b) through (f) to read as follows:

§ 321.9 Importation of potatoes from Canada.

* * * * *

(a) * * *

(b) Seed potatoes grown in Ontario and Prince Edward Island may not be imported.

(c) Seed potatoes imported from Canada that are not provided for in paragraphs (a) or (b) of this section must be accompanied by a phytosanitary certificate issued by Agriculture Canada stating the province of origin and bearing an additional declaration stating that the seed potatoes are neither the progeny of nor were grown on the same Canadian seed potato farm with potatoes produced in Ontario or Prince Edward Island in 1988 or later, are not the sibling potatoes of a lot of potatoes known to be infected with PVY–N, and were not harvested from a farm or field that is within 200 meters of a farm or field where PVY–N has been detected.

(d) Table stock and processing potatoes that were harvested in Ontario or Prince Edward Island may be imported:

(1) Between August 15 and March 15 of each year if accompanied by a phytosanitary certificate stating that they have been treated while dormant with the sprout inhibitor chlorpropham in accordance with labeled rates approved and authorized by the U.S. Environmental Protection Agency; or

(2) Year round if accompanied by a phytosanitary certificate stating that the potatoes were not grown from seed potatoes that are sibling potatoes of a lot of potatoes known to be infected with PVY–N, were not harvested from a farm or field that is within 200 meters of any farm or field where PVY–N was detected, and were treated while dormant with chlorpropham in accordance with labeled rates approved and authorized by the U.S. Environmental Protection Agency.

(e) Table stock and processing potatoes that were harvested in New Brunswick, Nova Scotia, and Quebec may be imported with a phytosanitary certificate stating that:

(1) They were not the progeny of nor were grown on the same farm with potatoes produced in Ontario or Prince Edward Island in 1988 or later, were not grown from seed potatoes that were the siblings of a lot of potatoes known to be infected with PVY–N, and were not harvested from a farm or field that is within 200 meters of any farm or field where PVY–N was detected, or

(2) They were treated while dormant with the sprout inhibitor chlorpropham in accordance with labeled rates approved and authorized by the U.S. Environmental Protection Agency.

(f) Importers must obtain an import permit issued by the United States Department of Agriculture, in accordance with § 321.4, for potatoes for which phytosanitary certificates are required by paragraphs (c) through (e) of this section.

Done in Washington, DC, this 27th day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–85 Filed 1–3–92; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV–91–431FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Minimum Size Requirements for Red and White Seedless Grapefruit and Dancy Tangerines

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting, with a correction, as a final rule an interim final rule which relaxed the minimum size requirement for red and white seedless grapefruit to 3$^{5}/_{16}$ inches in diameter from 3$^{6}/_{16}$ inches for the remainder of the 1991–92 shipping season. The interim final rule also indefinitely relaxed the minimum size requirement for domestic shipments of Dancy tangerines to 2$^{6}/_{16}$ inches in diameter from the current 2$^{6}/_{16}$ inch requirement. The relaxations were based on this season's crop and market demand conditions, and the maturity and flavor levels of these citrus fruits.

EFFECTIVE DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–9918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 10,200 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (committee), which administers the marketing order locally, met September 10, 1991, and unanimously recommended the relaxations specified in the interim final rule. The committee meets prior to and during each season to review the handling regulations effective on a continous basis for each citrus fruit regulated under the marketing order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

The interim final rule was issued on October 11, 1991, and published in the **Federal Register** (56 FR 51971, October 17, 1991), with an effective date of October 11, 1991, and a 30-day comment period ending November 18, 1991. No comments were received.

Section 905.306 of the regulations (7 CFR 905.306) in Table I of paragraph (a) specifies minimum grade and size requirements for grapefruit and tangerines grown in Florida and shipped to the 48 contiguous States and the District of Columbia of the United States (the domestic market).

The interim final rule relaxed the minimum size requirement to size 56 (3$^{5}/_{16}$ inches in diameter) from size 48 (3$^{7}/_{16}$ inches in diameter) for red seedless grapefruit through October 25, 1992, and for white seedless grapefruit through August 16, 1992. However, the interim rule as published in the October 17, 1991, **Federal Register** incorrectly stated that on or after 08/17/92, the minimum size requirement for white seedless grapefruit would be 3$^{5}/_{16}$. The correct minimum size requirement is 3$^{5}/_{16}$ and is reflected in this final rule. The Florida seedless grapefruit shipping season normally begins in September and continues until the following July.

In addition, the interim final rule relaxed the minimum size requirement for domestic shipments of Florida Dancy tangerines to size 210 (2$^{9}/_{16}$ inches in diameter) from size 176 (2$^{9}/_{16}$ inches) indefinitely. Dancy tangerine shipments each season normally begin about the first of November, peak in December, and end the following March.

The committee reported that the 1991–92 Florida citrus season was much earlier than normal this year and recommended these relaxations based on its assessment of maturity, flavor level, and size composition of this season's Florida seedless grapefruit and Dancy tangerine crops. This committee's action followed its practice of prior years of recommending reduced minimum size requirements for these fruits once they reach acceptable levels of flavor and maturity for the fresh market. The committee anticipates that the demand will be good for size 56 seedless grapefruit and size 210 Dancy tangerines this season, and that the fruit will meet consumer acceptance.

The relaxations were designed to enable Florida citrus shippers to ship sizes of fruit to the domestic market which are consistent with the demand in those markets during the 1991–92 season, and to maximize shipments to fresh market channels. The minimum size requirements are designed to provide fresh markets with fruit of acceptable size and maturity, thereby maintaining consumer confidence in fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is expected to increase returns to Florida citrus growers.

The minimum grade and size requirements in section 944.106 for grapefruit imported into the United States have been suspended since March 11, 1991. The U.S. Trade Representative (USTR) was notified that we contemplated reinstating those requirements upon USTR concurrence. Since the interim final and this final rule changes the size requirements for Florida grapefruit, the USTR will be notified that we are contemplating making similar changes in the grapefruit import requirements when they are reinstated.

Under the marketing order for Florida citrus, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This action reflects the committee's and the Department's appraisal of the need to maintain the relaxed size requirements currently in effect. The Department's view is that this action will have a beneficial impact on producers and handlers since it would allow Florida citrus handlers to continue to ship those sizes of fruit available to meet consumer needs consistent with this season's crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (56 FR 51971, October 17, 1991), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains relaxed minimum size requirements currently in effect for Florida red and white seedless grapefruit and Dancy tangerines; (2) Florida grapefruit and tangerine handlers are aware of this action which was unanimously recommended by the committee at a public meeting and they will need no additional time to continue complying with the relaxed requirements; (3) shipment of the 1991–92 season Florida grapefruit and Dancy tangerine crops is currently in progress; (3) the interim

final rule provided a 30-day comment period and no comments were received; and (4) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the Federal Register (56 FR 51971, October 17, 1991), is adopted as a final rule with the following change:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 905.306 [Amended]

2. Section 905.306 is amended in Table I of paragraph (a) by revising the number "3⅞₆" to read "3⅞₆" in column 4 for Grapefruit: seedless, except red, on and after 8/17/92.

Note: This section will appear in the annual Code of Federal Regulations.

Dated: December 27, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–28 Filed 1–3–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 907

[Navel Orange Regulation 727]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from January 3, 1992, through January 9, 1992. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 727 (7 CFR part 907) is effective for the period from January 3, 1992, through January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 79 percent of the total production in 1990–91. District 2 is located in the southern coastal area of California and represented almost 18 percent of 1990–91 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 3 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's revised estimate of 1991–92 production is 64,600 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 32,895 cars during the 1990–91 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee has estimated that about 68 percent of the 1991–92 crop of 64,600 cars will be utilized in fresh domestic channels (43,650 cars), with the remainder being exported fresh (14 percent), processed (16 percent), or designated for other uses (2 percent). This compares with the 1990–91 total of 16,675 cars shipped to fresh domestic markets, about 51 percent of that year's crop. In comparison to other seasons, 1990–91 production was low because of a devastating freeze that occurred during December 1990.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize

certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers to connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1991–92 season on June 25, 1991. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 24, 1991, in Visalia, California; and District 2 and 3 on October 1, 1991, in Ontario, California. The Committee subsequently revised its marketing policy at a meeting on October 15, 1991. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Mr. Nissen. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on December 30, 1991, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with 7 members voting in favor, 2 opposing, and 1 abstaining, that 750,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1991–92 marketing policy. The recommended amount of 750,000 cartons compares to the 1,300,000 cartons specified in the Committee's shipping schedule. Of the 750,000 cartons, 94.82 percent or 711,150 cartons are allotted for District 1, and 5.18 percent or 38,850 cartons are allotted for District 3. Handlers in Districts 2 and 4 will not be regulated as they are not shipping a sufficient quantity of navel oranges to warrant volume regulation at this point in the season.

During the week ending on December 26, 1991, shipments of navel oranges to fresh domestic markets, including Canada, totaled 742,000 cartons compared with 1,064,000 cartons shipped during the week ending on December 27, 1990. Export shipments totaled 209,000 cartons compared with 119,000 cartons shipped during the week ending on December 27, 1990. Processing and other uses accounted for 244,000 cartons compared with 183,000 cartons shipped during the week ending on December 27, 1990.

Fresh domestic shipments to date this season total 8,901,000 cartons compared with 12,610,000 cartons shipped by this time last season. Export shipments total 1,158,000 cartons compared with 1,419,000 cartons shipped by this time last season. Processing and other use shipments total 1,813,000 cartons compared with 2,700,000 cartons shipped by this time last season.

For the week ending December 26, 1991, regulated shipments of navel oranges to the fresh domestic market were 719,000 cartons on an adjusted allotment of 978,000 cartons which resulted in net undershipments of 259,000 cartons. Regulated shipments for the current week (December 27, 1991 through January 2, 1992) are estimated at 860,000 cartons on an adjusted allotment of 1,019,000 cartons. Thus, undershipments of 159,000 cartons could be carried forward into the week ending on January 9, 1992.

The average f.o.b. shipping point price for the week ending on December 26, 1991, was $10.06 per carton based on a reported sales volume of 767,000 cartons. The season average f.o.b. shipping point price to date is $10.38 per carton. The average f.o.b. shipping point prices for the week ending on December 27, 1990, was $10.40 per carton; the season average f.o.b. shipping point price at this time last year was $9.23.

The Department's Market News Service reported that, as of December 31, demand is light, and the market is about steady.

Committee members discussed implementing volume regulation at this time, as well as different levels of allotment. It was reported that poor weather conditions have hampered harvesting in northern California. Several Committee members commented that they expect a large carryover from the past week. Most Committee members believe net undershipments will exceed 100 cars. Two Committee members favored open movement at this time, while the majority of Committee members favored the issuance of general maturity allotment.

According to the National Agricultural Statistics Service, the 1990–91 season average fresh equivalent on-tree price for California-Arizona navel oranges was $7.75 per carton, 119 percent of the season average parity equivalent price of $6.52 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1991–92 season average fresh on-tree price is estimated at $8.33 per carton, about 85 percent of the estimated fresh on-tree parity equivalent price of $7.44 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from January 3, 1992, through January 9, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1991–92 season was published in the September 30, 1991, issue of the Federal Register (56 FR 49432). The Department is currently in the process of analyzing comments received in response to this proposal and, if warranted, may finalize that action this season. However, issuance of this final rule implementing volume regulation for the regulatory week ending on January 9, 1992, does not constitute a final decision on that proposal.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this

action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 31, 1991, and this action needs to be effective for the regulatory week which begins on January 3, 1992. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1027 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1027 Navel Orange Regulation 727.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from January 3, 1992, through January 9, 1992, is established as follows:

(a) District 1: 711,150 cartons;

(b) District 2: unlimited cartons;

(c) District 3: 38,850 cartons;

(d) District 4: unlimited cartons.

Dated: December 31, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–261 Filed 1–3–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–64, Special Conditions No. 25–ANM–53]

Special Conditions: Modified McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82) and DC–9–83 (MD–83) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These final special conditions are issued for the McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82) and DC–9–83 (MD–83) series airplanes modified by E–Systems, Inc. for design of Civil Reserve Air Fleet Aeromedical Evacuation Ship Set kits. Removal of existing passenger seats and installation of the kits will result in these airplanes being equipped with an aeromedical evacuation interior that can accommodate up to 45 litter patients and their attendants. The aeromedical evacuation ship set kit includes an additional oxygen system, utilizing liquid oxygen for storage, that provides medical oxygen for the litter patients. The applicable regulations do not contain adequate or appropriate safety standards for the design and installation of medical oxygen systems utilizing liquid oxygen for storage. These special conditions contain the additional safety standards which the Administrator considers necessary to ensure that the design and installation of the medical oxygen system utilizing liquid oxygen for storage is such that a level of safety equivalent to that established by the airworthiness standards of Part 25 of the Federal Aviation Regulations (FAR) is provided.

EFFECTIVE DATE: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: William Schroeder, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1989, E–Systems, Inc. applied for a supplemental type certificate (STC) to modify McDonnell Douglas DC–9–81 (MD–81), DC–9–82 (MD–82) and DC–9–83 (MD–83) series airplanes by removing the existing seats and installing a conversion kit that provides an interior for transportation of sick or wounded persons. The conversion kits are being developed to meet the needs of the United States Military Airlift Command Civil Reserve Air Fleet program involving quick conversion of U.S. civil air carrier passenger airplanes for transportation of sick and wounded personnel. The conversion kit includes a patient transport interior system (provisions for up to 45 litters), aeromedical operations system (60 cycle AC electric power supply and distribution system and one nurse station including seat and desk), and a medical oxygen system (liquid oxygen dewars/converters, valves, evaporating coils, lines, regulators, indicators, fittings, etc.) utilizing liquid oxygen for storage. Approval of the performance of the medical oxygen system (flow rate, percent oxygen delivered, delivery temperature, etc.) is not included as part of the STC approval except that the system peformance shall not result in any unsafe condition as related to the airplane. The proposed modification incorporates a novel or unusual design feature, in the form of a medical oxygen system, utilizing liquid oxygen for storage, that provides oxygen for up to 45 litter patients. Existing applicable regulation in the McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82) and DC–9–83 (MD–83) series certification basis do not provide adequate or appropriate safety standards for the design and installation of medical oxygen systems that utilize liquid oxygen for storage.

Supplemental Type Certification Basis

Under the provisions of § 21.115, Subchapter C, of the FAR, E-Systems, Inc. must show that the modified DC–9–81 (MD–81), DC–9–82 (MD–82) and DC–9–83 (MD–83) airplanes meet the regulations incorporated by reference in Type Certificate No. A6WE, as specified in § 21.101(a), unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under §§ 21.101 (a) or (b); or (3) special conditions are prescribed by the Administrator.

Under the provisions of §§ 21.101 (a) and (b), E-Systems, Inc. must show that the Models DC–9–81 (MD–81), DC–9–82 (MD–82) and DC–9–83 (MD–83) as changed, continue to meet the applicable provisions of the regulations incorporated by reference in the Type Certificate No. A6WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." In addition, the

certification basis includes certain special conditions, exemptions and optional requirements that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (Part 25 requirements) do not contain adequate or appropriate safety standards for the Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by § 11.28 and § 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

There are no specific regulations that address the design and installation of medical oxygen systems that utilize liquid oxygen for storage. Existing requirements such as §§ 25.1309, 25.1441 (b) and (c), 25.1451, and 25.1453 in the McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series certification basis applicable to this STC project provide some design standards appropriate for medical oxygen system installations. However, additional design standards for medical oxygen systems utilizing liquid oxygen are needed to supplement the existing applicable requirements. The quantity of medical liquid oxygen involved in this installation and the potential for unsafe conditions that may result when the oxygen content of an enclosed area becomes too high because of system leaks, malfunction, or damage from external sources, make it necessary to assure adequate safety standards are applied to the design and installation of the system in McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series airplanes.

To ensure that a level of safety is achieved for McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series airplanes, utilizing liquid oxygen as a storage medium for a medical oxygen system, equivalent to that intended by the regulations incorporated by reference, special conditions are needed which require those oxygen systems to be designed and installed to preclude or minimize the existence of unsafe conditions that can result from system leaks, malfunction, installation, or damage from external sources.

Application by E-Systems for approval of medical oxygen systems utilizing liquid oxygen as a storage medium installed in transport airplanes and the unsafe conditions that can exist when the oxygen content of an enclosed area becomes too high because of system leaks, malfunction, installation or damage from external sources make development and application of appropriate additional design and installation standards necessary.

Under standard practice, the effective date of these final special conditions would be 30 days after the date of publication in the Federal Register. As the intended STC date for the first DC-9-81, DC-9-82 and DC-9-83 series is imminent, the FAA finds good cause exists to make these special conditions effective upon issuance.

Discussion of Comments

Notice of Proposed Special Conditions No. SC-91-11-NM was published in the Federal Register on November 6, 1991 (56 FR 56605). The comment period closed November 25, 1991. One comment was received, from an organization representing airline pilots, expressing concern about having liquid oxygen on aircraft piloted by their members. In their understanding, commercial air carriers do not use liquid oxygen, and hence, have not established procedures and trained personnel to handle it. They stated that if the FAA approves these special conditions it is incumbent that it also ensure that adequate maintenance and operations procedures are developed and followed.

The FAA agrees with the commenter. The procedures for using therapeutic oxygen from a system that utilizes liquid oxygen for storage are the same as those for users of therapeutic oxygen from a system that utilizes high pressure oxygen for storage. The personnel administering or receiving the oxygen will be unable to detect a difference. Oxygen systems that utilize liquid oxygen for storage require special operations and maintenance procedures to assure safety. The special operations and maintenance instructions for this system will be contained in documents which are included as part of the Supplemental Type certificate (STC) approved modification kit. These documents will be included with each kit installation along with the Flight Manual Supplement to assure appropriate operations and maintenance procedures are provided to operators.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

These special conditions provide necessary additional safety standards for design and installation of medical oxygen systems utilizing liquid oxygen as a storage medium in McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series airplanes called into service under the U.S. Military Airlift Command Civil Reserve Air Fleet program for the purpose of transporting sick and wounded military personnel within the continental United States. The recent certification of an identical but larger capacity medical oxygen system utilizing liquid oxygen provides the military an intercontinental capability to transport sick and wounded military personnel. The utilization of McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series airplanes will enhance and expedite the military capability to transport the sick and wounded military personnel to medical facilities best equipped to handle the particular illness or injury.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

The Final Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Civil Reserve Air Fleet Aeromedical Evacuation Ship Set kits for modification of McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82) and DC-9-83 (MD-83) series airplanes.

The medical oxygen system utilizing liquid oxygen for storage must be designed and installed to ensure that no failure of the system, including a leak in any part of the medical oxygen system, would prevent continued safe flight and landing of the aircraft. In addition, the following design criteria apply with respect to these special conditions.

a. The liquid oxygen converter and other oxygen equipment shall not be installed in compartments where baggage, cargo or loose equipment is stored.

b. The liquid oxygen converter shall be located in the aircraft so as to

minimize damage to the liquid oxygen converter due to an uncontained rotor or fan blade failure.

c. The pressure relief valves on the liquid oxygen converters shall be vented overboard through a drain at the bottom of the aircraft. There shall be no hydrocarbon filling or drain provisions forward, above or in proximity to the vent outlet.

d. The system installation shall include provisions to assure complete conversion of the liquid oxygen to gaseous oxygen.

e. Check valves shall be installed in systems where multiple converters are manifolded together so a leak in one converter will not allow leakage of oxygen from any other converter.

f. Oxygen lines shall consist of rigid tubing or flexible hoses. The rigid tubing shall be of aluminum alloy conforming to AMS 4071 or corrosion resistant annealed steel type 304. Flexible hoses shall be qualified for oxygen service and, where applicable, cryogenic service.

g. Flexible hoses shall be used for the aircraft system connections to shock mounted converters where movement relative to the aircraft will occur.

h. Condensation from system components or lines shall be collected by drip pans, shields or other suitable collection means and drained overboard through a drain fitting separate from the liquid oxygen vent fitting.

i. Oxygen components and systems shall meet the requirements of § 25.1438(b) and be installed in accordance with the recommended practices of FAA Advisory Circular 43.13–1A, chapter 8, section 3, paragraph 363; chapter 10, section 1, paragraph 393, and Advisory Circular 43.13–2A, chapter 6, paragraph 86 through paragraph 89. The oxygen system components shall be electrically bonded to aircraft structure.

j. A means shall be provided to indicate system pressure and the quantity of liquid oxygen in the converters.

Issued in Renton, Washington on December 26, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 92–174 Filed 1–3–92; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 91–AWP–21]

Name Change to Compulsory Reporting Points; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the names of the Salt River, AZ, compulsory reporting points to Phoenix, AZ. A final rule was published in the **Federal Register** on November 15, 1991, (56 FR 57973), Airspace Docket No 91–AWP–3, that altered the descriptions of VOR Federal airways and jet routes extending from the Salt River VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) located in Phoenix, AZ. These alterations were due to the relocation of the Salt River VORTAC and subsequent name change to the Phoenix VORTAC. The name changes to the compulsory reporting points were inadvertently omitted from the final rule.

EFFECTIVE DATE: 0901 u.t.c., January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SE., Washington, DC 20591; telephone: (202) 267–9252.

SUPPLEMENTARY INFORMATION:

History

On June 4, 1991, the FAA proposed to amend parts 71 and 75 of the Federal Aviation Regulations (14 CFR parts 71 and 75) to alter the descriptions of VOR Federal airways and jet routes located in Phoenix, AZ (56 FR 25382). A final rule was published in the **Federal Register** on November 15, 1991, (56 FR 57973), Airspace Docket No. 91–AWP–3, with an effective date of January 9, 1992, that altered the descriptions of VOR Federal airways and jet routes extending from the Salt River VORTAC located in Phoenix, AZ. These alterations were due to the relocation of the Salt River VORTAC, 4 miles west of its previous position, and subsequent name change to the Phoenix VORTAC. The name changes to the compulsory reporting points were inadvertently omitted from the final rule. Section 71.203 and 71.207 of part 71 of the Federal Aviation Regulations were republished in FAA Handbook 7400.7 dated November 1, 1991.

The Rule

This emendment to part 71 of the Federal Aviation Regulations changes the names of the Salt River, AZ, compulsory reporting points to Phoenix, AZ. These changes are necessary to coincide with the relocation and subsequent name change of the Salt River, AZ, VORTAC to the Phoenix, AZ, VORTAC. Accordingly, since this action merely involves a change in the names of the Salt River, AZ, compulsory reporting points, and does not involve a change in the actual dimensions, configuration, or operating requirements of airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Furthermore, because there is an immediate need to change the names of the compulsory reporting points to incorporate the name change onto the next chart and avoid pilot confusion, I find that good cause exists, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Compulsory reporting points.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.203 [Amended]

2. Section 71.203 is amended as follows:

Salt River, AZ [Remove]
Phoenix, AZ [New]

§ 71.207 [Amended]

3. Section 71.207 is amended as follows:

Salt River, AZ [Remove]
Phoenix, AZ [New]

Issued in Washington, DC, on December 30, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-175 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 91-AWP-3]

Alteration of VOR Federal Airways and Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the descriptions of Jet Routes J-244 and J-19 located in Phoenix, AZ. The final rule was published in the Federal Register on November 15, 1991, (56 FR 57973), Airspace Docket No. 91-AWP-3. During the flight check of J-244 and J-19, the Phoenix 052° radial was changed to the Phoenix 053° radial. The change was not reflected in the final rule. This action changes the radial description.

EFFECTIVE DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 91-27475, Airspace Docket No. 91-AWP-3, published on November 15, 1991, (56 FR 57973), altered the descriptions of VOR Federal airways and jet routes extending from the Salt River VORTAC (SRP) located in Phoenix, AZ. These alterations were due to the reolocation of the Salt River VORTAC and subsequent name change to the Phoenix VORTAC. During the flight check of J-244 and J-19, the Phoenix 052° radial was changed to the Phoenix 053° radial. This change was not reflected in the final rule. This action changes the Phoenix 052° radial to the Phoenix 053° radial.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the descriptions of J-244 and J-19 located in Phoenix, AZ, as published in the **Federal Register** on November 15, 1991, (56 FR 57973), (Federal Register Document 91-27475, page 57973, column 3 and page 57974, column 1), are corrected as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 75.100 [Corrected]

2. § 75.100 is corrected to read as follows:

J-244 [Corrected]

By removing the words, "INT Zuni 242° and Phoenix, AZ, 052° radials; Phoenix;" and substituting the words, "INT Zuni 242° and Phoenix, AZ, 053° radials; Phoenix;"

J-19 [Corrected]

By removing the words, "From Phoenix, AZ, via INT Phoenix 052° and Zuni, NM, 242° radials;" and substituting the words, "From Phoenix, AZ, via INT Phoenix 053° and Zuni, NM, 242° radials;"

Issued in Washington, DC, on December 30, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-173 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 1543]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended; Business and Media Visas

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends part 41, Code of Federal Regulations, to implement the provisions of section 209 of the Immigration Act of 1990, Public Law 101-649. This section creates a new nonimmigrant classification under section 101(a)(15)(R) of the Immigration and Nationality Act, as amended, resulting in the addition of § 41.58 to 22 CFR part 41. The new nonimmigrant visa classification provides for the temporary admission into the United States of "aliens in religious occupations."

DATES: Effective January 6, 1992. Written comments must be received in duplicate by February 5, 1992.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Chief, Division of Legislation and Regulations, Visa Services, Department of State, Washington, DC 20522-0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, 202-663-1204.

SUPPLEMENTARY INFORMATION:

Public Law 101-649 Background

Until the enactment of Public Law 101-649, Congress had not provided a specific nonimmigrant classification for religious workers. Currently, aliens seeking to engage in religious activities in the United States temporarily must qualify under the B-1, H-1B, H-3, L-1, or J-1 nonimmigrant visa classifications. Aliens seeking to immigrate to the United States have been able to seek qualification under INA 101(a)(27)(C), or under INA 203(a) (3) or (6) in Schedule A Group III.

Discussion of INA 101(a)(15)(R), as Added by Section 209 of Public Law 101-649, and its Relation to INA 101(a)(27)(C), as Amended by Section 151 of Public Law 101-649

Provisions of INA 101(a)(15)(R) Relative to INA 101(a)(27)(C)

The Immigration Act of 1990 has amended INA 101(a)(27)(C), ministers of religion, and created a direct link between the new "INA 101(a)(15)(R)" classification and the special immigrant category. In order to qualify for an "R" visa, the alien must have been a member of a religious denomination having a bona fide nonprofit religious organization with branches in the United States for the two years immediately preceding application for admission and must be coming to the United States to engage in one of the three activities listed in INA 101(a)(27)(C)(ii), as amended by section 151 of Public Law 101-649. The alien must be coming either: (i) To carry on the vocation of minister of that religion (subparagraph (C)(ii)(I)); or (ii) to work for that organization at their request in a

religious vocation or occupation in a professional capacity (subparagraph (C)(ii)(II)); or (iii) to work for such qualifying organization in a religious vocation or occupation (subparagraph (C)(ii)(III)). A significant substantive difference between the nonimmigrant classification and the immigrant category lies in the fact that the immigrant alien must have not only been a member of the qualifying religious organization for the immediately preceding two years but must have also been carrying on one of the vocations and activities for those two years. A significant procedural difference between the nonimmigrant visa classification and the special immigrant category lies in the fact that a petition must be filed with and approved by the Immigration and Naturalization Service to accord special immigrant status. Although no petition is required to establish entitlement under "R" visa classification, the applicable standards common to the two visas, described below, must be applied by the Immigration and Naturalization Service and the Department of State.

Conference Report 101–955

The provisions of INA 101(a)(27)(C)(ii)(II) and (ii)(III) as they relate to the special immigrant visa category will sunset by October 1, 1994. The conference report 101–955 indicates that Congress may have intended these provisions to terminate for the nonimmigrant provisions as well. The language of the "R" visa classification, however, is unambiguous in stating that the alien must "perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii)." The Department and the INS read this literally and intend to apply these provisions until amended by law.

Criteria To Be Met

The special immigrant visa category under INA 101(a)(27)(C) and the nonimmigrant visa classification under INA 101(a)(15)(R), are the same with the exceptions noted above, and the same standards must be applied in adjudicating an alien's qualifications for such. The Department has sought to coordinate with the Immigration and Naturalization Service to use the same standards for the "R" visa classifications as INS applies through the petition process for extension of stay for "R" visa bearers and through the petition process for the special immigrant category where pertinent.

The first of the activities described in subparagraph (C)(ii)(I) concerns carrying on the vocation of a minister of religion. The Department has experience adjudicating special immigrant minister of religion cases and its standards have been adopted by the Immigration and Naturalization Service and are applicable to the "R" visa classification. (See Foreign Affairs Manual, Volume 9, Visas, § 42.24, Regulations and corresponding Notes.)

The alien will have to establish that the organization is a bona fide religious denomination by submitting evidence which reveals that the denomination possesses: (1) Some form of ecclesiastical government; (2) a recognized creed and form of worship; (3) a formal code of doctrine and discipline; (4) religious services; (5) established places of religious worship; and (6) religious congregations. The presentation of an IRS certificate of tax exempt status as a religion will constitute prima facie evidence that the religion is indeed a recognized religion.

The alien will also have to establish to the satisfaction of the consular officer that he or she possesses the authority of the denomination to conduct religious worship and to perform other duties usually performed by other clergy in that religion. Whereas the submission to the consular officer of a certificate of ordination might be sufficient evidence in traditional religions to verify that the applicant is indeed a minister, the applicant would in a nontraditional religion have to provide comprehensive information on that religion identifying the ministerial functions and provide evidence that this denomination has sanctioned the alien to perform such functions.

Defining Religious Vocation or Occupation

Both subparagraphs (II) and (III) of section 101(a)(27)(C)(ii) involve engaging in a religious vocation or occupation. Under (ii)(II) the alien must be working in a professional capacity and in (ii)(III) the applicant is not so restricted but must merely be working in a religious vocation or occupation. Although there is no perceived need for the distinction, as anyone who qualifies under (ii)(II) will clearly qualify under (ii)(III), both INS and the Department define professional capacity in their respective proposed regulations. In view of the statutory definition of profession at INA 101(a)(32) and the many administrative decisions seeking to define that term, it was decided that the appropriate standard would be an activity which requires a United States baccalaureate degree or its foreign equivalent for entry into that particular field of endeavor.

It was much more problematic defining a religious vocation or occupation, as House Report 101–723 provided guidance in the form of examples rather than by providing general standards. The examples cited aliens engaging in a religious vocation or occupation as those "who take vows, such as nuns and monks, and others who are liturgical workers, religious instructors, counselors, cantors and catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators or broadcasters." The report continued by saying that "these provisions relate to traditional religious functions and are not intended to cover janitors, maintenance workers and clerks." The House report appears to make a distinction between two classes of aliens, those who have taken vows or the equivalent, and those who have not taken such vows. In the Department's view this distinction can only bear any meaningful significance by restricting only lay-persons from engaging in janitorial, maintenance, clerical, or equivalent services. An alien who has taken vows or the equivalent and has made a lifetime commitment to a religion is presumed to be engaging in activities relating to a traditional religious function regardless of the nature of the activity, including janitorial services.

Affiliated Organization

Each applicant must establish that he or she is a member of a religious denomination that has a bona fide nonprofit religious organization in the United States. Again, the same standards used by the Department in adjudicating special immigrant cases will be applied to this nonimmigrant visa classification. (See Foreign Affairs Manual Volume 9, Visas, § 42.24 generally.) The Immigration Act of 1990 has introduced a new concept of an organization which is affiliated with the religious denomination. Such organization must be associated with the religious denomination in a subordinate or dependent position, as well as enjoying tax exemption under section 501(c)(3) of the Internal Revenue Code of 1986.

Limitation of Section 209 of Public Law 101–649

This section limits the total period of admission in "R" status to five years. If an alien has remained in the United States for the full five years in that status, the alien must reside and be physically present outside the United States for one year, except for brief visits to the United States for business or pleasure, before the alien can be readmitted in "R" status.

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Interim Rule With Comments

This interim rule provides the general requirements of this nonimmigrant classification in paragraph § 41.58(a); defines terms for this classification in paragraphs (b) through (g); and prohibits, in paragraph (h), the issuance of an "R" vise to an alien who has spent five years in the United States in the "R" classification unless the alien has been resident and physically present outside the United States for the immediate preceding year.

This rule is not considered to be a major rule for purposes of Executive Order 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This interim rule imposes no reporting or recordkeeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements.

List of Subjects in 22 CFR Part 41

Aliens in religious occupations, Nonimmigrants, Passports and visas, Religious organizations.

In view of the legislative mandate of Public Law 101–649, part 41 to title 22 is amended by adding new § 41.58.

PART 41—[AMENDED]

1. The authority citation for part 41 is revised to read:

Authority: 8 U.S.C. 1104; sec. 209, 104 Stat. 5027; 8 U.S.C. 1101(a)(15).

2. Part 41, subpart F—Business and News Media, is amended by adding § 41.58 to read as follows:

§ 41.58 Aliens in religious occupations.

(a) *Requirements for "R" classification.* An alien shall be classifiable under the provisions of INA 101(a)(15)(R) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2) The alien, for the 2 years immediately preceding the time of application for admission, has been a member of religious denomination having a bona fide nonprofit, religious organization in the United States; and

(3) The alien seeks to enter the United States solely for the purpose of

(i) Carrying on the vocation of a minister of that religious denomination, or

(ii) At the request of the organization, working in a professional capacity in a religious vocation or occupation for that organization, or

(iii) At the request of the organization, working in a religious vocation or occupation for the organization, or for a bona fide organization which is affiliated with the religious denomination described in section 501(c)(3) of the Internal Revenue Code of 1986; and

(4) The alien is seeking to enter the United States for a period not to exceed 5 years to perform the activities described in paragraph (3) of this section; or

(5) The alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.

(b) *Religious denomination.* A religious denomination is a religious group or community of believers. Among the factors that may be considered in determining whether a group constitutes a bona fide religious denomination are the presence of some form of ecclesiastical government, a recognized creed and form of worship, a formal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, and religious congregations. For purposes of this definition, an interdenominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

(c) *Bona fide nonprofit religious organization in the United States.* For purposes of this section, a bona fide nonprofit religious organization is an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the consular officer that it would be eligible therefore if it had applied for tax exempt status.

(d) *Bona fide organization which is affiliated with the religious denomination.* A bona fide organization affiliated with the religious denomination is an organization which is both closely associated with the religious denomination and exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, as it relates to religious organizations.

(e) *Minister of religion.* A minister is an individual who is duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. A minister does not include a lay preacher who is not authorized to perform such duties. In all cases, there must be a reasonable connection between the activities performed and the religious calling of a minister.

(f) *Professional Capacity.* Working in a professional capacity means engaging in an activity in a religious vocation or occupation which is defined by INA 101(a)(32) or for which the minimum of a United States baccalaureate degree (or a foreign equivalent degree) is required for entry into that field of endeavor.

(g) *Religious Occupation.* A religious occupation is the habitual employment or engagement in an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

(h) *Religious Vocation.* A religious vocation is a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to nuns, monks, and religious brothers and sisters.

(i) *Alien not entitled to classification under INA 101(a)(15)(R).* An alien who has spent 5 years in the United States under INA 101(a)(15)(R) is not entitled to classification and visa insurance under that section unless the alien has resided and been physically present outside the United States, except for brief visits to the United States for business or pleasure, for the immediate prior year.

Dated: October 3, 1991.

Elizabeth M. Tamposi,

Assistant Secretary for Consular Affairs.

[FR Doc. 92–101 Filed 1–3–92; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8368]

RIN 1545–AO29

Acquisitions Made to Evade or Avoid Income Tax; Use of Corporate Tax Attributes Following an Ownership Change

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final income tax regulations providing guidance relating to acquisitions made to evade or avoid income tax under section 269 of the Internal Revenue Code of 1986 (the "Code"). This document also contains final income tax regulations which provide guidance relating to the use of certain corporate tax attributes following an ownership change within the meaning of section 382(g)(1) to which section 382(l)(5) applies. Section 382 was amended in relevant part by the Tax Reform Act of 1986 (the "1986 Act") and the Revenue Act of 1987 (the "1987 Act").

DATES: *Effective date:* These regulations are effective January 6, 1992.

Applicability dates: These regulations apply generally to any ownership change, as defined under section 382 of the Code, occurring after December 31, 1986. The presumption under § 1.269–3(d) applies only to acquisitions of control or property effected pursuant to a plan of reorganization confirmed by a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) after August 14, 1990.

FOR FURTHER INFORMATION CONTACT: Victor L. Penico of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention CC:CORP:T:R) or telephone 202–566–3618 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A Notice of Proposed Rulemaking under sections 269, 382, and 383 of the Internal Revenue Code of 1986, relating to acquisitions made to evade or avoid income tax and to the use of pre-change corporate tax attributes following an ownership change with respect to which section 382(l)(5) applies, was published in the **Federal Register** on August 14, 1990 (55 FR 33137). Those regulations proposed to amend §§ 1.269–3(a) and 1.269–6 of the Income Tax Regulations and to add new §§ 1.269–3(d), 1.269–3(e), 1.269–7, and 1.382–3.

After issuance of the proposed regulations, the Internal Revenue Service received public comments on the proposed regulations and held a public hearing on December 3, 1990. After considering the comments and the statements made at the hearing, the Service adopts the proposed regulations as revised by this Treasury decision.

Ownership Changes to Which Section 382(l)(5) Applies

Section 1.269–7 of the proposed regulations clarifies that section 269 of the Code may be applied to disallow a deduction, credit or other allowance even though the acquisition of control or property of a corporation occurs in connection with an ownership change to which section 382 applies. Section 1.269–3(d) of the proposed regulations provides that, absent strong evidence to the contrary, a requisite acquisition of control or property in connection with an ownership change to which section 382(l)(5) applies is considered to be made for the principal purpose of tax evasion or avoidance unless the corporation carries on more than an insignificant amount of an active trade or business during and subsequent to the title 11 or similar case.

Several commentators objected to the presumption provided in § 1.269–3(d) of the proposed regulations. These commentators asserted that the presumption should either be eliminated or replaced with a non-exclusive list of factors indicating that an acquisition should or should not be considered to be made principally for tax evasion or avoidance. Commentators also asserted that, although § 1.382–3(c) of the proposed regulations provides that the continuity of business enterprise test required by section 382(c) of the Code is inapplicable to section 382(l)(5) ownership changes, the presumption in § 1.269–3(d) indirectly applies the test to such ownership changes.

As a result of these comments, the Service has made certain changes to clarify that the determination of whether a corporation carries on more than an insignificant amount of an active trade or business is made without regard to continuity of business enterprise under § 1.368–1(d) and that a corporation may satisfy this requirement even if all of the corporation's business activities temporarily cease for a period of time in order to address business exigencies.

Several commentators argued that section 269 of the Code should play only a residual role, applying only to transactions to which the rules of sections 382 and 383 technically do not apply, but which violate the purposes of those sections. These commentators believe that the acquisition of control of a bankrupt corporation by its qualified creditors in a section 382(l)(5) ownership change does not violate the purposes of section 382 regardless of the corporation's level of business activity because the creditors have borne the economic losses reflected in the tax attributes.

Relegating section 269 of the Code to a residual role is inconsistent with the intent of Congress, expressed in the Conference Report to the Tax Reform Act of 1986, that the amendment of sections 382 and 383 not alter the continuing application of section 269. See H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–194 (1986), 1986–3 (Vol. 4) C.B. 194. The rules of section 269 and other provisions of the Code that prohibit or limit deductions, credits, or other allowances are not mutually exclusive. See § 1.269–2(b). The application of section 269 to loss corporations that do not carry on more than an insignificant amount of a trade or business is consistent with interpretations of existing law that prevent taxpayers from trafficking in tax attributes of corporations carrying on minimal business activities. See *American Pipe and Steel Corporation* v. *Commissioner*, 243 F.2d 125 (9th Cir. 1957) and *U.S. Shelter Corporation* v. *United States*, 13 Cl. Ct. 606 (1987). Creditors are allowed deductions under other provisions of the Code for losses they incur as a result of bad debts.

Some commentators suggested that the presumption in § 1.269–3(d) ignores the requirement in section 269 of the Code that the acquiring persons or the corporation secure the benefit of a deduction, credit or other allowance which they would not otherwise enjoy. These commentators argue that section 269 does not apply to the acquisition of stock of a corporation unless there is a transfer of assets or other income-producing activity in order to use an otherwise unusable deduction, credit or other allowance. Section 269 has not been construed so narrowly. See *Inductotherm Industries, Inc.* v. *Commissioner*, T.C. Memo 1984–281 (taxpayer must demonstrate that the choice of a stock acquisition in preference to an asset acquisition was primarily motivated by genuine, nontax related, business reasons), aff'd without published opinion, 770 F.2d 1071 (3rd Cir. 1985); *Urban Redevelopment Corporation* v. *Commissioner*, 294 F.2d 328 (4th Cir. 1961) (purchaser's testimony inherently unbelievable because purchaser could have acquired assets rather than stock).

One commentator requested that, when a corporation is a member of a consolidated group, the determination of whether the corporation carries on more than an insignificant amount of a trade or business be made by taking into account the business activities of other members of the consolidated group. The Service recognizes that taking into account business activities of other

members of the consolidated group may be appropriate, but is deferring consideration of the issue until development of specific rules concerning reorganizations of consolidated groups under section 382(l)(5).

Some commentators asserted that the presumption in § 1.269–3(d) unfairly penalized taxpayers who effected transactions in reliance upon prior law. These commentators believe that the presumption should not be applied retroactively. Because the presumption imposes an additional evidentiary burden by giving further weight to the presumption of correctness already arising from a determination by the Commissioner under section 269, the final regulations make the presumption effective only for acquisitions of control or property effected pursuant to a plan of reorganization confirmed by a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) after August 14, 1990, the date the proposed regulations were published in the Federal Register. The general rules of section 269 continue to apply, however, to acquisitions of control or property occurring prior to such date.

Time of Acquisition of Control

Section 1.269–5 of the proposed regulations provides that creditors acquire control of an insolvent or bankrupt corporation only when they acquire beneficial ownership of the requisite amount of stock. Under the proposed regulations, the creditors are treated as acquiring beneficial ownership of the stock no earlier than the time a bankruptcy court confirms a plan of reorganization.

Some commentators argued that § 1.269–5, in conjunction with the presumption in § 1.269–3(d), inappropriately disregards the creditor's intent at the time the debt was incurred and that such intent should be a mitigating factor in the determination of whether the acquisition of control is made for the principal purpose of tax evasion or avoidance. Concern was also expressed that, in some cases, § 1.269–5 may create an inference that creditors acquire ownership of stock of the corporation before the effective date of the plan of reorganization for purposes of other Code sections.

The final regulations clarify that § 1.269–5 is applicable solely for purposes of section 269 of the Code. The Service believes that the intention of creditors when they lend money to a corporation (or otherwise become creditors) is not relevant to the principal purpose for a bankruptcy reorganization. The claims of creditors initially were taken in a form distinct from equity interests in important ways for legal and tax purposes (*e.g.*, interest paid on the claims was deductible by the debtor). Subsequently, the financial condition of the debtor deteriorated, and the creditors' claims became, as a practical matter, subject to greater risks of not being fully repaid. In a title 11 or similar case, the creditors may vote to receive the value of their claims in cash or property (other than stock of the debtor) or in stock of the debtor. This decision is independent of the earlier transaction in which the creditors chose to be (or otherwise became) creditors of the corporation.

Relationship of Section 269 to 11 U.S.C. 1129(d)

Section 1.269–3(e) of the proposed regulations provides that the fact that a governmental unit did not seek a determination under 11 U.S.C. 1129(d) is not taken into account in determining under section 269 of the Code whether an acquisition was made for the principal purpose of evasion or avoidance of Federal income tax and any determination by a court under 11 U.S.C. 1129(d) that the principal purpose of the plan is not avoidance of taxes is not controlling.

Although commentators criticized § 1.269–3(e) as incorrect and inappropriate for an income tax regulation, the final regulations adopt the rule of § 1.269–3(d) without substantive change. As stated in the Restatement of Judgments 2d section 28(4) (1982), issue preclusion does not apply where the burden of proof is changed in the subsequent proceeding. Moreover, it is appropriate as a matter of policy that determinations under 11 U.S.C. 1129(d) not preclude subsequent litigation of the issue in a tax proceeding because preclusion would deter the government from seeking determinations under 11 U.S.C. 1129(d). Finally, the interaction of a provision of the Code and another Federal statute is an appropriate issue for income tax regulations to address.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Victor L. Penico, Office of the Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, in matters of both substance and style.

List of Subjects

26 CFR 1.261–1 Through 1.280H–1T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.381(a)–1 Through 1.383–3

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR, chapter I, part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Section 1.269–3(d) also issued under 26 U.S.C. 382(m). * * * Section 1.382–3 also issued under 26 U.S.C. 382(m). * * *

Par. 2. Section 1.269–1 is amended by removing "1.269–6" from the introductory text and adding "1.269–7" in lieu thereof.

Par. 3. Section 1.269–3 is amended as follows:

1. The last sentence of paragraph (a) concluding text is removed.

2. New paragraphs (d) and (e) are added to read as follows:

§ 1.269–3 Instances in which section 269(a) disallows a deduction, credit, or other allowance.

* * * * *

(d) *Ownership changes to which section 382(l)(5) applies; transactions indicative of purpose to evade or avoid tax*—(1) *In general.* Absent strong evidence to the contrary, a requisite acquisition of control or property in connection with an ownership change to which section 382(l)(5) applies is considered to be made for the principal purpose of evasion or avoidance of

Federal income tax unless the corporation carries on more than an insignificant amount of an active trade or business during and subsequent to the title 11 or similar case (as defined in section 382(l)(5)(G)). The determination of whether the corporation carries on more than an insignificant amount of an active trade or business is made without regard to the continuity of business enterprise set forth in § 1.368–1(d). The determination is based on all the facts and circumstances, including, for example, the amount of business assets that continue to be used, or the number of employees in the work force who continue employment, in an active trade or business (although not necessarily the historic trade or business). Where the corporation continues to utilize a significant amount of its business assets or work force, the requirement of carrying on more than an insignificant amount of an active trade or business may be met even though all trade or business activities temporarily cease for a period of time in order to address business exigencies.

(2) *Effective date.* The presumption under paragraph (d) of this section applies to acquisitions of control or property effected pursuant to a plan of reorganization confirmed by a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) after August 14, 1990.

(e) *Relationship of section 269 to 11 U.S.C. 1129(d).*

In determining for purposes of section 269 of the Internal Revenue Code whether an acquisition pursuant to a plan of reorganization in a case under title 11 of the United States Code was made for the principal purpose of evasion or avoidance of Federal income tax, the fact that a governmental unit did not seek a determination under 11 U.S.C. 1129(d) is not taken into account and any determination by a court under 11 U.S.C. 1129(d) that the principal purpose of the plan is not avoidance of taxes is not controlling.

Par. 4. Section 1.269–5 is revised to read as follows:

§ 1.269–5 Time of acquisition of control.

(a) *In general.* For purposes of section 269, an acquisition of control occurs when one or more persons acquire beneficial ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of share of all classes of stock of the corporation.

(b) *Application of general rule to certain creditor acquisitions.* (1) For purposes of section 269, creditors of an insolvent or bankrupt corporation (by themselves or in conjunction with other persons) acquire control of the corporation when they acquire beneficial ownership of the requisite amount of stock. Although insolvency or bankruptcy may cause the interests of creditors to predominate as a practical matter, creditor interests do not constitute beneficial ownership of the corporation's stock. Solely for purposes of section 269, creditors of a bankrupt corporation are treated as acquiring beneficial ownership of stock of the corporation no earlier than the time a bankruptcy court confirms a plan of reorganization.

(2) The provisions of this section are illustrated by the following example.

Example. Corporation *L* files a petition under chapter 11 of the Bankruptcy Code on January 5, 1987. A creditors' committee is formed. On February 22, 1987, and upon the request of the creditors, the bankruptcy court removes the debtor-in-possession from business management and operations and appoints a trustee. The trustee consults regularly with the creditors' committee in formulating both short-term and long-term management decisions. After three years, the creditors approve a plan of reorganization in which the outstanding stock of Corporation *L* is canceled and its creditors receive shares of stock constituting all of the outstanding shares. The bankruptcy court confirms the plan of reorganization on March 23, 1990, and the plan is put into effect on May 25, 1990. For purposes of section 269, the creditors acquired control of Corporation *L* no earlier than March 23, 1990. Similarly, the determination of whether the creditors acquired control of Corporation *L* with the principal purpose of evasion or avoidance of Federal income tax is made by reference to the creditors' purposes as of no earlier than March 23, 1990.

Par. 5. The section heading for § 1.269–6 is revised to read as follows:

§ 1.269–6 Relationship of section 269 to section 382 before the Tax Reform Act of 1986.

Par. 6. New § 1.269–7 is added to read as follows:

§ 1.269–7 Relationship of section 269 to sections 382 and 383 after the Tax Reform Act of 1986.

Section 269 and §§ 1.269–1 through 1.269–5 may be applied to disallow a deduction, credit, or other allowance notwithstanding that the utilization or amount of a deduction, credit, or other allowance is limited or reduced under section 382 or 383 and the regulations thereunder. However, the fact that the amount of taxable income or tax that may be offset by a deduction, credit, or other allowance is limited under section 382(a) or 383 and the regulations thereunder is relevant to the determination of whether the principal purpose of an acquisition is the evasion or avoidance of Federal income tax.

Par. 7. New § 1.382–3 is added to read as follows:

§ 1.382–3 Special rules under section 382 for corporations under the jurisdiction of a court in a title 11 or similar case.

(a) *Introduction.* Either section 382(l)(5) or section 382(l)(6) may apply to an ownership change which occurs in a title 11 or similar case (as defined in section 368(a)(3)(A)) if the transaction resulting in the ownership change is ordered by the court or is pursuant to a plan approved by the court. Terms and nomenclature used in this section, and not otherwise defined herein, have the same respective meanings as in section 382 and the regulations thereunder.

(b) *Application of section 382(l)(5).* Section 382(a) does not apply to any ownership change if—

(1) The old loss corporation is (immediately before the ownership change) under the jurisdiction of the court in a title 11 or similar case; and

(2) The pre-change shareholders and qualified creditors of the old loss corporation (determined immediately before the ownership change) own (after the ownership change and as a result of being pre-change shareholders or qualified creditors immediately before the ownership change) stock of the new loss corporation (or stock of a controlling corporation if also in bankruptcy) that meets the requirements of section 1504(a)(2) (determined by substituting "50 percent" for "80 percent" each place it appears).

(c) [Reserved]
(d) [Reserved]
(e) [Reserved]
(f) [Reserved]
(g) [Reserved]
(h) [Reserved]
(i) [Reserved]
(j) [Reserved]
(k) [Reserved]
(l) [Reserved]
(m) *Continuity of business requirement*—(1) *Under section 382(l)(5).* If section 382(l)(5) applies to an ownership change of a loss corporation, section 382(c) and the regulations thereunder do not apply with respect to the ownership change.

(2) [Reserved]
(n) [Reserved]

Dated: December 17, 1991.
Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.
Approved:
Kenneth W. Gideon,
Assistant Secretary of the Treasury.
[FR Doc. 91–31304 Filed 12–31–91; 1:39 pm]
BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 91–171]

Safety Zone; Boston Main Ship Channel, Boston Inner Harbor, Boston, MA

AGENCY: Coast Guard, DOT.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing an emergency safety zone in the waters of Boston Harbor between the Subaru Terminal in South Boston and Bird Island Flats (the southwest corner of Logan Airport) in East Boston. Vessel movements within this safety zone are permitted under the criteria set forth in this regulation. This action is necessary to protect the maritime community from the possible dangers and hazards to navigation associated with the extensive blasting and dredging operations to be conducted in conjunction with the construction of the Third Harbor Tunnel. The period of blasting will be from December 20, 1991 to April 1, 1992.

EFFECTIVE DATE: This regulation becomes effective at 6 a.m. local time, December 20, 1991 and terminates at 12:01 a.m., April 1, 1992.

ADDRESSES: The docket for this rulemaking is available for inspection or copying at room 232, U.S. Coast Guard Marine Safety Office, 455 Commercial Street, Boston, MA 02109–1045, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Christian C. Fahy, USCG Marine Safety Office Boston, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant (Junior Grade) Christian C. Fahy, project officer for the Captain of the Port Boston, and Lieutenant Commander John Astley, project attorney, First Coast Guard Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. The Coast Guard was informed less than a month ago of the exact methods which the contractors would be using to execute the contract specifications. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury to the persons and vessels involved.

Background and Purpose

The U.S. Coast Guard is establishing this emergency safety zone to enhance vessel safety during the extensive construction project for the Third Harbor Tunnel being undertaken by the contractors Morrison/Knudsen-Interbeton-White. The tunnel is part of a larger multi-year effort aimed at reducing automobile congestion within the city of Boston. The initial stage of construction involves blasting and dredging. The blasting and dredging portion of the tunnel construction is the first of a multi-phase process. The contractors anticipate finishing construction of the tunnel in mid-1994. The Coast Guard views the blasting portion of the construction as a concern for mariners, while contractors blast bedrock located beneath the subsurface of the channel on a line between the southwest corner of Logan Airport in East Boston and the Subaru Pier in South Boston. The purpose of the blasting is to form a trench across the subsurface of the main ship channel into which prefabricated sections of the tunnel can be placed. A blast will cause a 2–3 foot wave on the surface of the water in the immediate vicinity. No rock will be sprayed into the air due to the blast. Because the vibration shock of underwater blasting can potentially damage the hulls of vessels located too close to the operation, this zone will ensure that vessels transiting in the vicinity of the blasting area will maintain a safe distance to eliminate this risk. The safety zone also ensures that communication is established between the contractors and vessels transiting the waters within the safety zone. With proper communication between all parties, the contractor is assured of having ample time to comply with a request to move his operation temporarily to allow a vessel to navigate through the zone safely.

Description of the Blasting

On the average, contractors plan to conduct three blasts per day between sunrise and sunset, with each blast taking approximately four hours to set up. No blasting will take place when there is restricted visibility (the contractor must be able to see the shoreline of both South Boston and East Boston). Before each blast, personnel onboard the barge CGA–100 (100 feet x 52 feet x 12 feet) will drill ten holes (the width of the tunnel) and load the holes with the explosives. After retreating to a safe distance, the contractors will remotely detonate the explosives in the holes and then more ten feet down (across channel) to the next set of holes to be drilled. Operations will begin first on the East Boston side of the zone and move toward the South Boston side.

Description of the Dredging

The dredging operation will be taking place 24 hours per day, 7 days per week. In preparation for blasting operations, contractors will dredge the soft bottom of the subsurface of areas to be blasted until they reach bedrock. Performing the dredging will be the SUPERSCOOP (a clamshell dredge—225 feet x 75 feet), working with five separate scows into which dredged spoils will be placed. In general, the SUPERSCOOP will be positioned ahead of the CGA–100, also working from East to South Boston. During blasting operations, these vessels too will retreat to a safe distance from the blast. If there is a "high spot" of dredged material on the sea bed resulting from the blast, the SUPERSCOOP will swing around and remove that material immediately after the blast. After most blasting is complete, the SUPERSCOOP will conduct a second pass across the channel to dredge the blasted material.

Obstruction of the Channel

The CGA–100 will be postioned in line with the shipping channel. When in the channel, it will cause an obstruction of 60–65 feet (the width of the barge (52 feet) + 10–15 feet overhang from drills on the edge of the barge). The CGA–100 will be held in place by six anchors, which will extend outward 500 feet in all directions. Each anchor will be marked with a white buoy, which will be lighted at night with blinking white lights (60 flashes per minute). The navigational hazard associated with the anchoring system can be minimized, however, as the anchor wires can be "dropped" and made to lie on the bottom within 10 minutes after contractor's receipt of a notification of an impending vessel movement. Accordingly it is essential

that mariners passing between the barge and the anchor buoys communicate with the contractors to ensure that the anchor wires are "dropped" in order to eliminate this navigational hazard. The dredge SUPERSCOOP will also be positioned parallel to the channel. When in the channel, it will cause an obstruction of about 130 feet (the width of the SUPERSCOOP (75 feet) + (48 feet)—the width of the largest scows receiving dredged material (connected to the dredge by wire cables)). The SUPERSCOOP will be held in place by four anchors extending outward 500 feet in all directions, with the same "drop" capability as the blasting barge. Each anchor will be marked similarly with white buoys and blinking white lights (60 flashes per minute). Again, communications are essential for mariners passing between the dredge and its anchor buoys to ensure that the anchor wire can be "dropped" by the contractor if necessary. Through the dredge and the barge are being operated by the same contractor, all communications should be initiated with the SUPERSCOOP since that vessel has control over the entire project.

Notification of Blasting

Two hours, one hour, forty-five minutes, thirty minutes, and fifteen minutes prior to blasting, the contractors will broadcast on Channels 9, 13, and 16 VHF–FM their intention to conduct blasting operations. Approximately fifteen minutes before a blast round is to be fired, the signal will be given by the blaster for four clearly audible prolonged (4–6 seconds) horn/whistle signals to indicate that the blast area is being secured. Two work boats will be available for security of the immediate blast area. One boat will be placed approximately 1500 feet west of the blast area. The second boat will be placed 1500 feet east of the blast area. These boats will patrol and warn any vessel traffic of the impending blast. When the area is determined to be secure by the contractor, the blaster will signal with four clearly audible short (approximately one second duration) horn/whistle signals to indicate that the blast is going to be fired in one minute. The blast round will then be fired unless there is a last minute breakdown in the security of the blast area. If a vessel not involved with the blasting operating is within the safety zone at this point, the contractor *will not* blast. Immediately following the blast, the blaster will inspect the area and determine that it is clear to resume operations. At this point an all clear signal (4–6 second horn/whistle signal) will be given.

This safety zone is necessary to protect vessel traffic operating in Boston Harbor from the hazards associated with the proposed blasting operations and hazards to navigation due to the presence of contractor vessels in proximity to the Main Ship Channel, Boston Inner Harbor. Notice of this safety zone will be published in the Local Notice of Mariners and Safety Marine Information Broadcasts. Entry into this safety zone during blasting operations will be prohibited, unless authorized by the Captain of the Port Boston.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 on Federal Regulation and not significant under Department of Transportation Regulatory Policies and Procedures (44 CFR 11034; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. Costs to the shipping industry from these regulations, if any, will be minor and have no significant adverse financial effect on vessel operators. Deep draft vessel traffic, fishing vessels, and commuter or tour boats may experience slight delays (a few minutes) in departures or arrivals while waiting for the blast to occur, however, mariners can time their transit through the safety zone with contractors to minimize delays by communicating with the contractors using bridge to bridge marine radios.

Small Entities

Since this action will cause only slight, intermittent delays in transits by deep draft vessel traffic, fishing vessels, and commuter or tour boats and scheduling of transits and blasting operations can be adjusted as necessary in most cases to accommodate all parties, no significant adverse economic impact should result from this rulemaking. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded under section 2.B.2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. An Environmental Impact Statement on construction of the Third Harbor Tunnel has already been issued by the Federal Highway Administration. In fact, implementation of this rulemaking should help to reduce the risk of collision or other marine accidents. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new temporary § 165.T01–171 is added to read as follows:

§ 165.T01–171 Safety Zone: Boston Main Ship Channel, Boston Inner Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone: All waters of the Boston Inner Harbor within an area described between two lines: one boundary line on the east extending across the Boston Main Ship Channel from the easternmost portion of the Massport North Jetty dock, So. Boston, to the landslide point in East Boston abeam Boston Main Ship Channel Lighted Buoy 12; and another boundary line on the west extending across the Boston Main Ship Channel from the northwest corner of the Boston Fish Pier, So. Boston to Cashman's drydock, East Boston (see attached chart).

(b) *Effective date.* This regulation becomes effective at 6 a.m., local time, December 20, 1991. It terminates at 12:01 a.m., local time, April 1, 1992.

(c) *Regulations.* (1) Except with permission of the Captain of the Port, all vessels must:

(i) Remain outside the safety zone (i.e., not operate or anchor within the area between the two boundary lines for

the safety zone) once the dredge SUPERSCOOP has given the final warning that a blast will occur (four clearly audible short, one second duration, horn/whistle signals one minute prior to the blast) and remain outside of the zone until the dredge SUPERSCOOP has given the all-clear signal (a horn/whistle signal sounded for a prolonged, 4-6 second interval). Vessels moored at the Massport North Jetty dock in So. Boston, Cashman's drydock in E. Boston, or the north face of the Boston Fish Pier in So. Boston may remain inside the safety zone provided they are securely moored.

(ii) Maintain at all times at least 100 yards distance from the blasting barge CGA–100, the dredge SUPERSCOOP, and all attending scows or tugs made fast to the SUPERSCOOP or CGA–100.

(iii) Maintain at all times a safe distance from anchors and anchor buoys deployed by the blasting barge CGA–100 and the dredge SUPERSCOOP.

(iv) Communicate with the SUPERSCOOP (the vessel in charge of the contractor's operation) on Channels 9, 13, or 16 VHF–FM to arrange for safe passage when the CGA–100 or SUPERSCOOP (or their anchors) are in the Boston Main Ship Channel; and if requesting barge CGA–100 and dredge SUPERSCOOP to slack anchor lines, provide at least 10 minutes notification of vessel transit to allow the barge and dredge to slack their anchor lines.

(v) Provide the contractor at least 4 hours advance notice (i.e., Channels 9, 13, or 16 VHF–FM or cellular phone (617–966–1670)) to move/suspend his operations in any case where the transitting vessel operator believes the safe passage of his vessel is jeopardized by the presence/operation of the CGA–100 and/or SUPERSCOOP.

(2) Except with the permission of the Captain of the Port, vessels involved with the Third Harbor Tunnel blasting and dredging operations must:

(i) CGA–100 and SUPERSCOOP: Mark anchors with white buoys, lighted at night with a white light (60 flashes per minute); and slack anchor lines to the bottom of the channel within 10 minutes after receipt of a request to do so from any vessel operator intending to transit the safety zone.

(ii) All vessels: Move/suspend operations and relocate to a safe position within four hours after receipt of a request to do so from any vessel operator expressing concern about the safety of any impending transit through the safety zone.

(iii) SUPERSCOOP: Communicate with and arrange safe passage through the safety zone for all vessels not involved in Third Harbor Tunnel blasting/dredging operations.

(iv) SUPERSCOOP: Initiate appropriate broadcast notices and warning signals to local mariners prior to and after conducting blasting operations. Two hours, one hour, forty-five minutes, thirty minutes, and fifteen minutes prior to blasting, broadcast on Channels 9, 13, and 16 VHF–FM the intention to conduct blasting operations. Approximately fifteen minutes before a blast round is to be detonated, give a signal of four clearly audible prolonged (4–6 seconds) horn/whistle signals to indicate that the blast area is being secured. Determine the blast area to be secured. Signal with four clearly audible short (approximately one second) horn/whistle signals to indicate that the blast is going to be detonated in one minute. Do not blast if a vessel not involved with the blasting operation is within the safety zone with the exception of vessels moored as described in paragraph (c)(1). Immediately following the blast, inspect/survey the blast area to determine whether it is clear to resume operations. Remove and debris that lessens the channel depth. Give an all clear signal (4–6 second horn/whistle signal) after area is determined to be clear to resume normal operations.

(v) All vessels: Relocate to a safe distance prior to conducting blasting operations.

(3) The Captain of the Port may, upon request, authorize a deviation from any rule in this section if he determines that the proposed operations can be done safely.

(4) The Captain of the Port may direct the movement of any vessel within the safety zone as appropriate to ensure the safe navigation of vessels through the safety zone.

Dated: December 17, 1991.

W.H. Boland, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 92–158 Filed 1–3–92; 8:45 am]
BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

[4310–55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AB43

Extension of Temporary Subsistence Management Regulations for Federal Public Lands in Alaska

AGENCY: Forest Service, USDA. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final action extends the expiration date of December 31, 1991 for the "Temporary Subsistence Management Regulations for Public Lands in Alaska" (55 FR 27114), as amended by the "1991–1992 Seasons and Bag Limits for Subsistence Management Regulations for Public Lands in Alaska" (56 FR 29310) through June 30, 1992.

DATES: *Effective Date:* This rule will be effective December 31, 1991. The expiration date of the rule published June 29, 1990 (55 FR 27114) is extended through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest lands, contact Norman Howse, Assistant Director, Subsistence, USDA—Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802; telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires the Secretary of the Interior and the Secretary of Agriculture to implement a joint program to grant a preference in favor of subsistence uses of fish and wildlife resources on Federal public lands unless the State of Alaska enacts and implements laws of general applicability consistent with ANILCA's requirements for the definition, preference and participation as specified in sections 803, 804, and 805. The State implemented such a program which the Department of the Interior previously found to be consistent with ANILCA. In December 1989, however,

the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute, which is required by ANILCA, violated the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result of that decision, the Department of the Interior and the Department of Agriculture were required to assume responsibility for the implementation of title VIII of ANILCA on Federal public lands on July 1, 1990. On June 29, 1990 the "Temporary Subsistence Management Regulations for Public Lands in Alaska" were promulgated (55 FR 27114). Those regulations are codified at 36 CFR part 242 and 50 CFR part 100.

Subpart D of the temporary regulations, which addresses subsistence seasons and bag limits, methods and means restrictions, and related issues, routinely requires annual review and modification. Consequently, proposals for changes to this portion of the regulations were invited from the public. The Federal Subsistence Board, established by the temporary regulations, held meetings on the proposals, and took action in regard to the proposals which were reflected in a proposed rulemaking to amend subpart D published on April 16, 1991 (56 FR 15402). Following an additional public hearing and analysis of comments received, final subpart D regulations were published for the 1991–1992 subsistence seasons on June 26, 1991 (56 FR 29310). The amended subpart D became effective on July 1, 1991.

The preamble to the comprehensive temporary regulations of 1990 stated that the regulations would become effective on July 1, 1990 and remain in effect until December 31, 1991 (55 FR 27114). The preamble explained that: "The development of permanent regulations, which is expected to start in 1990, will involve extensive public interaction and comment throughout the regulations development process, and will be completed by December 31, 1991." *Id.* The preamble to the amendment to subpart D of the regulations, published in June of 1991, stated: "the seasons and bag limits herein reflect a complete regulatory year although they will presently expire on December 1, 1991" (56 FR 29310).

In order to ensure that the public's attention and comments in regard to the Federal Subsistence Management program are focused on all issues related to the program, considerable time has been spent in developing a comprehensive analysis of alternative approaches to Federal management of subsistence on Federal public lands. A draft environmental impact statement (DEIS) on "Subsistence Management for Federal Public Lands in Alaska" was developed and released for public review and comment in early October 1991. This DEIS includes a draft of the proposed rewrite of Federal subsistence management regulations for public lands. Public meetings to receive comments on the DEIS took place in October and November 1991. Comments regarding the DEIS, and consequently, the form and content of the Federal Subsistence Management Program will then be analyzed. The result will be a final environmental impact statement and development of final regulations to replace the current temporary regulations.

To allow for adequate public review and comment on the form that the Federal program should take, the development of the final subsistence management regulations has been delayed. Consequently, it is proposed to extend the applicability of subparts A, B, and C of the temporary regulations as promulgated in 1990, and subpart D as amended in 1991, through June 30, 1992.

Summary of Comments

A Proposed Rule was published in the Federal Register on December 5, 1991, (56 FR 63702), with a comment period that ended December 20, 1991. A public hearing was held on December 18, 1991, in Anchorage, Alaska. No comments were received at the public hearing. Two comments were received prior to the close of the public comment period. One comment was in favor and one objected to the proposed action.

Analysis of Comments

One person commented expressing objection to the extension of the temporary subsistence regulations because the Federal Government adopted regulations based on those regulations adopted by the State of Alaska. The commenter believes those regulations to be flawed. The commenter urges adoption of regulations that acknowledge the long standing practices of members of the Sitka community relative to subsistence resource use.

The purpose of extending the effective date of the temporary subsistence regulations (subparts A, B, C, and D) from December 31, 1991 to June 30, 1992, is to do exactly that which the commenter urges. That is to allow for adequate public review and comment on adoption of regulations for a Federal Subsistence Management Program. It is the intent to have the temporary subsistence regulations effective concurrently with the public review and comment period on proposed rules, so that there would be no interruption of subsistence uses pending completion of the regulatory process for subparts A, B, C, and D. By not extending the effective date of the temporary subsistence regulations would likely halt the Federal Subsistence Management Program in Alaska and disallow rural residents of Alaska the subsistence taking of fish and wildlife resources. The end result would be a potential hardship on subsistence users; thus, possibly requiring alternative means by subsistence users for obtaining fish and wildlife resources.

The regulatory process for the Federal Subsistence Management Program has been continuing with the proposed rule for Subpart D published in the Federal Register on December 9, 1991, with a 45-day public comment period that will end January 23, 1992. It is anticipated that the proposed rule for subparts A, B, and C will be published in the Federal Register in early January 1992 and will provide for a 30 or 45-day public comment period. As such, the commenter will be provided with an opportunity to comment on the proposed rules for subparts A, B, C, and D. The issues raised by the commenter relate specifically to information contained in the proposed rule for subparts A, B, and C anticipated for publication in early January 1992.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A DEIS, "Subsistence Management for Federal Public Lands in Alaska," was released on October 7, 1991. A final EIS and Record of Decision will be issued prior to implementation of the final "Subsistence Management Regulations for Federal Public Lands in Alaska, subparts A, B and C."

ANILCA Section 810 Compliance

The intent of all Federal Subsistence Regulations is to best accommodate customary and traditional subsistence uses subject to the limitation of protecting healthy, or natural and healthy fish and wildlife populations. The 810 analysis will be completed as part of the final EIS process.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501 et seq. They apply to subsistence users of Federal public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–00075.

Public reporting burden for this form is estimated to average .1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0075), Washington, DC 20503. Additionally, information collection requirements may be imposed if the councils and committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The Departments of the Interior and Agriculture have determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, and certify that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue pre-existing uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on Federal public lands. The scope of this program is limited by definition to certain Federal lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Effective Date of Rule

In accordance with 5 U.S.C. 553(d)(1), the Departments of the Interior and Agriculture have determined that this rule should be made effective on December 31, 1991. The Final Rule is considered to be a substantive rule, the provisions of which will relieve restrictions to subsistence users by allowing the taking of fish and wildlife resources. Any delay in the effective date beyond December 31, 1991, would likely halt the Federal Subsistence Management Program in Alaska and disallow rural residents of Alaska the subsistence taking of fish and wildlife resources.

Drafting Information

This regulation was drafted by Sharon E. Fleek, under the guidance of Richard S. Pospahala, both of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public lands, Reporting and recordkeeping, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, chapter I, subchapter H of title 50 and chapter II of title 36 of Code of Federal Regulations are amended in an identical fashion in 36 CFR part 242 and 50 CFR part 100 as follows:

1. The authority citation for 50 CFR part 100 and 36 CFR part 242 continues to read as follows:

Authority: 16 U.S.C. 472, 551, 668dd et seq., 3101 et seq.; 18 U.S.C. Chapter 227; 43 U.S.C. 1733.

2. The expiration date for 50 CFR part 100 and 36 CFR part 242 is delayed until June 30, 1992.

§ ___.15(c) [Amended]

3. Section ___.15(c) is amended by removing the first sentence.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

Michael A. Barton,

Regional Forester, USDA—Forest Service.

[FR Doc. 91-31338 Filed 12-31-91; 12:20 pm]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE 5-2-5329; FRL-4068-4]

Approval and Promulgation of Air Quality Implementation Plans; Revision to the Delaware Motor Vehicle I/M Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision amends Regulation XXVI (26), Motor Vehicle Emissions Inspection Program, of the Delaware Regulations Governing the Control of Air Pollution. The regulation revisions became effective in the State on April 1, 1990. These amendments expand the motor vehicle inspection and maintenance (I/M) program area from New Castle County to the entire State of Delaware, add carbon monoxide (CO) emissions standards to the statewide program, modify the inspection test procedure and increase the cost repair limit for waivers. These amendments will result in additional reductions in both volatile organic compounds (VOCs) and CO emissions. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective March 6, 1992 unless EPA receives notice on or before February 5, 1992 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at U.S.

Environmental Protection Agency, Region III, Air Program Branch, Air, Radiation and Toxics Management Division, 841 Chestnut Building, Philadelphia, PA 19107, Attn: David Arnold; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903, Attn: Robert Taggart.

FOR FURTHER INFORMATION CONTACT: Mrs. Kelly Bunker, (215) 597–4554; FTS 597–4554.

SUPPLEMENTARY INFORMATION: On March 6, 1990, the State of Delaware submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a revision to the Reid Vapor Pressure (RVP) limitation on gasoline sold in Delaware and a revision to amend Regulation XXVI (26), Motor Vehicle Emissions Inspection Program, and Technical Memoranda numbers 1 and 2, which are appendices to Regulation XXVI (26), of the Delaware Regulations Governing the Control of Air Pollution. This notice will address the amendments to Regulation XXVI (26), of the Delaware Regulations Governing the Control of Air Pollution. The gasoline RVP amendment is being addressed under a separate rulemaking action.

As part of the 1982 revision to the Delaware SIP for ozone, the State committed to implement a motor vehicle inspection and maintenance (I/M) program. This program was approved on March 6, 1980 (45 FR 14551), March 11, 1982 (45 FR 10535) and October 17, 1983 (45 FR 46866). The Delaware I/M program was implemented in January of 1983. The SIP required that light duty vehicles and trucks registered in New Castle County be tested for hydrocarbon emissions only. On March 6, 1990, the State of Delaware submitted a revision to its SIP's I/M Program. This revision expands coverage of the I/M program to include the entire state, establishes statewide carbon monoxide (CO) standards, modifies the inspection test procedures and revises waiver cost repair limits.

As a result of the 1988 EPA audit of the Delaware I/M program, EPA recommended that the State adopt CO standards and test for CO emissions. Although Delaware is not a nonattainment area for CO, the introduction of CO standards would be beneficial to the State. Testing for CO could help yield additional hydrocarbon emission reduction benefits, aid in the diagnosis of engine problems, and might reduce the cost of repairs.

The statewide expansion of the I/M program will increase the number of vehicles tested for exhaust emissions from approximately 250,000 vehicles to approximately 450,000 vehicles. By expanding the program to include Kent and Sussex counties, significant additional reductions in both VOC and CO emissions will be realized within the State.

The statewide CO standards and addition of hydrocarbon standards for the Kent and Sussex counties became effective on April 1, 1990. Table 1 shows the new standards that are being implemented by the State. These emission standards replace the standards in Table 2 of Technical Memorandum #2, Regulation XXVI (26), Exhibit H of the current Delaware SIP.

TABLE 1* A. New Castle County Emission Standards.

Group	Light duty vehicle	Light duty truck	Hydrocarbon limit	*Carbon monoxide limit (%)*
1	'68–'70	'70–'72	900 ppm	*8.00*
2	'71–'74	'73–'78	600 ppm	*6.00*
3	'75–'79	'79–'83	400 ppm	*4.00*
4	'80	(None)	220 ppm	*2.00*
5	'81 Plus	'84 Plus	220 ppm	*1.20*

B. Kent and Sussex County Emission Standards Through March 31, 1991. Effective April 1, 1991, the Kent and Sussex County emission standards will be adjusted to reflect the New Castle County emission standards in existence at that time.

Group	*Light duty vehicle*	*Light duty truck*	*Hydrocarbon limit*	*Carbon monoxide limit (%)*
1	*'68–'70*	*'70–'72*	*1000 ppm*	*10.00*
2	*'71–'74*	*'73–'78*	*700 ppm*	*7.00*
3	*'75–'79*	*'79–'83*	*500 ppm*	*5.00*
4	*'80*	*(None)*	*275 ppm*	*3.00*
5	*'81 Plus*	*'84 Plus*	*220 ppm*	*1.20*

C. Whenever the Department of Natural Resources and Environmental Control determines that the standards in Part A do not provide the minimal required hydrocarbon reduction, the following standards will become effective statewide on the first day of the subsequent calendar quarter (i.e., January, April, July, or October).

Group	Light duty vehicle	Light duty truck	Hydrocarbon limit	*Carbon monoxide limit (%)*
1	'68–'70	'70–'72	800 ppm	*8.00*
2	'71–'74	'73–'78	500 ppm	*5.00*
3	'75–'79	'79–'83	350 ppm	*3.50*
4	'80	(None)	220 ppm	*2.00*
5	'81 Plus	'84 Plus	220 ppm	*1.20*

*The new standards and requirements are italicized.

This amendment also revises Technical Memorandum #1 entitled Motor Vehicle Inspection and Maintenance Program, Vehicle Test Procedure and Machine Calibration. Technical Memorandum #1 is revised to eliminate the use of the manual Sun Model CEA–3023 emission analyzer and require instead the use of the Computerized Allen Test Products 53–500 emission analyzer, which the State has been using since late 1983. The amendment also revises the inspection procedures to conform with the test procedure specifications of the computerized Allen emission analyzer by requiring the analyzers to be calibrated on a daily basis as recommended by the EPA in the 1988 audit report. The concentration of the gas used to calibrate the analyzer will be 1.8% carbon monoxide, 11% carbon dioxide, 600 parts per million propane with the balance in nitrogen.

This amendment also revises the waiver cost repair limit. The waiver cost repair limit for model years 1968 through 1980 will remain at a minimum of $75.00 and the waiver cost repair limit for model years 1981 to the present will increase from $75.00 to a minimum of $200.00. However, vehicles less than 5 years old and with odometer readings under 50,000 miles, are still under warranty and are therefore not eligible for a waiver. The minimum reasonable cost should not be construed as an amount which must be spent as a condition of compliance after an initial failure. The cost relates only to granting of waivers.

This revision to the Delaware SIP regulations was adopted by the Department of Natural Resources & Environmental Control (DNREC) on January 31, 1990. As required by 40 CFR 51.102, the State of Delaware has certified that, after adequate public notice, on June 6, 1989, DNREC held a public hearing with respect to this SIP revision.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register notice unless, on or before 30 days after date of publication, EPA receives notice that adverse or critical comments will be submitted. If EPA receives such notice, EPA will withdraw this action before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on March 5, 1992.

Final Action

EPA is approving this revision to the Delaware SIP which amends Regulation XXVI (26), Motor Vehicle Emissions Inspection Program, and Technical Memoranda numbers 1 and 2, which are appendices to Regulation XXVI (26), of the Delaware Regulations Governing the Control of Air Pollution by expanding the I/M Program Statewide, adopting CO emission standards, modifying the inspection test procedures and increasing the waiver cost repair limits.

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the requirements of the 1990 Clean Air Act amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal of the request preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. EPA considers each request for revision to the SIP separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision amending the Delaware SIP's I/M regulations will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 5, 1992. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution, control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: December 17, 1991.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

Subpart I, part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart I—Delaware

2. Section 52.420 is amended by adding paragraph (c)(43) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(43) Revision to the State Implementation Plan submitted by the Delaware Department of Natural Resources and Environmental Control on March 6, 1990, amending portions of Regulation XXVI (26) of the Delaware *Regulations Governing the Control of Air Pollution* by expanding the I/M program statewide, adopting CO cutpoints statewide, modifying the test procedures, and increasing the waiver cost repair limit.

(i) Incorporation by reference.

(A) Letter from the Delaware Department of Natural Resources and Environmental Control dated March 6, 1990 submitting a revision to the Delaware State Implementation Plan.

(B) Sections 1, 2, 4 and 6 of Regulation XXVI (26), Motor Vehicle Emissions Inspection Program, of the Delaware *Regulations Governing the Control of Air Pollution* and the two (2) Technical Memoranda, Numbers 1 and 2, which are appendices to Regulation XXVI (26), of the Delaware *Regulations Governing the Control of Air Pollution.*

(ii) Additional materials—remainder of State submittal.

[FR Doc. 92–72 Filed 1–3–92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[OAQPS # AZ4-1-5261; FRL-4083-8]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision; Maricopa County Bureau of Air Pollution Control

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of direct final rulemaking.

SUMMARY: EPA is granting full approval to rule 220, Permits to Operate, and rule 335, Architectural Coatings, adopted by the Maricopa County Bureau of Air Pollution Control (the District) for inclusion in the Arizona State Implementation Plan (SIP). EPA is approving these rules because they strengthen the SIP. The revisions were officially submitted to EPA by the Arizona Department of Environmental Quality (DEQ) on January 4, 1990. The submittal was reviewed for completeness and Arizona was notified that it was complete on May 25, 1990. Rule 220 regulates criteria pollutants through permitting of operations in existing facilities. Rule 335 regulates emissions of volatile organic compounds (VOCs), which are precursors of ozone (smog), from architectural coatings. EPA has evaluated these rules and is granting full approval of rule 220 (permitting) under section 110(k) of the Clean Air Act Amendments of 1990 (CAAA) as meeting the requirements of section 110(a), and full approval of rule 335 (coatings) under sections 110(k) as meeting the requirements of section 110(a) and part D of the CAAA.

DATES: This action will be effective on March 6, 1992 unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to: Daniel Meer, Southern Rulemaking Section A–5–3), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revision and EPA's detailed Technical Support Document for the rules are available for public inspection at EPA's Region 9 office (address above) during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Arizona Department of Environmental Quality, Air Quality Planning Office, 2005 N. Central Avenue, Phoenix, AZ 85004.

Maricopa County Air Pollution Control, 1845 E. Roosevelt Street, Phoenix, AZ 85006.

FOR FURTHER INFORMATION CONTACT: William E. Davis, Jr., Southern Rulemaking Section (A–5–3), Air and Toxics Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1183, (FTS) 484–1183; Fax: (415) 744–1076, (FTS) 484–1076.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1988, EPA notified the Governor of Arizona that the District's portion of the Arizona SIP was inadequate to attain and maintain the National Ambient Air Quality Standard (NAAQS) for ozone and requested that certain deficiencies relating to VOC controls and the application of reasonably available control technology (RACT) in the existing SIP be corrected (EPA's SIP-Call, 53 FR 34500). On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990 (CAAA), Public Law 101–549, 104 Stat. 1399, codified at §§ 7401–7671q. In section 182(a)(2)(A) of the CAAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient RACT rules and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. Maricopa County was subject to the May 15, 1991, deadline. The District adopted the architectural coating rule being approved in this notice in July of 1988, and the Arizona DEQ, acting as the Governor's designee, submitted it to EPA on January 4, 1990 in response the SIP-Call. This submission also serves as a submission under section 182(a)(2)(A). At the same time, but not related to the SIP-Call or section 182(a)(2)(A), the Arizona DEQ submitted an operating permits rule, which is also being approved in this notice.

EPA Evaluation

The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to EPA (January 4, 1990) and has determined that the Agency must apply later amendments to the law to the revision. Therefore, the Agency has reviewed this request for revision of the SIP for conformance with the CAAA enacted on November 15, 1990.

EPA evaluated rule 335, Architectural Coatings, against the requirements found in section 110 and part D of the CAAA, 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans), and EPA policy. Among those provisions is the requirement that a VOC rule provide, at a minimum, for the implementation of RACT for major stationary sources of VOC emissions. This requirement was carried forward from the preamended Clean Air Act. EPA has published a series of Control Technique Guidelines (CTGs) for a variety of stationary sources which provides guidance on what constitutes RACT for the subject sources. However, while these CTGs represent RACT for a variety of categories, EPA did not publish a CTG for the category of architectural coatings. EPA therefore evaluated this rule against the EPA approved rule in the existing SIP and other EPA approved architectural coating rules in Region 9, which can be considered to be RACT. Additionally, EPA VOC policy requirements are found in the document entitled, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register**" (appendix D or the "Blue Book"). The rule meets all of the requirements specified in these regulations and documents except for a minor provision identified below and it is, therefore, approved. Details of the evaluation can be found in EPA's Technical Support Document for the rule.

EPA evaluated rule 220, Permits to Operate, against requirements of section 110 of the CAAA, 40 CFR part 51, and EPA policy. The rule meets all of the requirements specified in these regulations and documents and it is, therefore, approved. Details of the evaluation can be found in EPA's Technical Support Document for the rule. Rule 220 will ultimately be required to comply with the regulations forthcoming under title V of the CAAA. However, these regulations have not been promulgated in final form at this date and several years will pass before the District is required to comply. EPA is approving this rule at this time because it strengthens the SIP.

Rule 335, Architectural Coatings

This rule regulates VOCs emitted from coatings applied to stationary structures, mobile homes, pavements and curbs. It limits VOC emissions by limiting the amount of VOC in the coatings.

This rule strengthens the current SIP. Unlike the SIP rule, the revised rule lists VOC limits that are being achieved by industry for a variety of specialty coatings. It also specifies labeling requirements limiting the use of thinners

containing VOCs to prevent exceeding the VOC limits specified for a coating. In addition, test methods for determining compliance are specified in the revised rule. None of these provisions are present in the current SIP and these added provisions are, therefore, a strengthening of the SIP. There is one minor deficiency in the rule. The rule is not consistent with EPA policy because the non-precursor (to ozone) organic compound definition, which is part of the VOC definition, lacks four HCFCs designated by EPA as photochemically unreactive and not precursors of ozone. However, this rule was submitted prior to the EPA's policy change adding these HCFCs to the definition of VOC. In addition, these HCFCs are not usually found in paints. Therefore, the deficiency is considered negligible and the rule can be grandfathered under EPA's "Guidance on Grandfathering of Requirements for Pending SIP Revisions", dated June 27, 1988. The strengthening provisions of rule 335 far outweigh this minor problem. Therefore, this rule is given full approval under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAAA.

Rule 220, Permits to Operate

This rule provides for control of air contaminants through the issuance of operating permits for existing stationary sources. The rule strengthens the existing SIP. It defines major stationary sources, adds procedures and a compliance schedule for demonstrating that the major sources are complying with RACT, and provides for an annual inspection of the source by the Control Officer to determine the adequacy of the control equipment. No deficiencies were found in this rule and EPA is approving it under section 110(k)(3) as meeting the requirements of section 110(a) of the CAAA.

EPA Proposed Action

EPA has evaluated these rules for consistency with the CAAA, 40 CFR part 51 and EPA policies. The rules were found to be consistent with the requirements in those regulations and documents with only a minor exception. EPA is granting full approval of rule 335 under section 110 and part D of the CAAA, and rule 220 under section 110 of the CAAA.

The changes related to the operating permit rule (rule 220) in the Maricopa County Bureau of Air Pollution Control District strengthens the rule in the existing SIP. Today's action does not constitute approval of, or action on, an operating permit program pursuant to 40 CFR 51.166(b)(17) (54 FR 27281) with respect to the federal enforceability of operating permits under the Federal New Source Review rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective March 5, 1992 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective March 5, 1992.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1991, the Office of Management and Budget extended the waiver of Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act as amended in 1990, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 5, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of the rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 6, 1991.

Daniel W. McGovern,

Regional Administrator.

Title 40 of the Code of Federal Regulations, part 52, subpart D is amended to read as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart D—Arizona

2. Part 52.120 is amended by adding paragraph (c)(67) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(67) Regulations for the Maricopa County Bureau of Air Pollution Control were submitted on January 4, 1990 by the Governor's designee.

(i) Incorporation by reference.

(A) Amended regulations: Regulation II, rule 220 and Regulation III, rule 335, both adopted July 13, 1988.

[FR Doc. 92-182 Filed 1-3-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 300

[FRL-4080-6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of sites from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of two sites from the Superfund National Priorities List (NPL). The NPL is appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The sites are Beachwood/Berkeley Wells in Ocean County, New Jersey, and Johns' Sludge Pond in Wichita, Kansas. EPA, in consultation with New Jersey and

Kansas, has determined that all appropriate Fund-financed response under CERCLA has been implemented and that no further response action by responsible parties is appropriate. EPA has concluded that conditions at the sites are protective of human health, and the environment. Both States have concurred on the deletion of the sites from the NPL.

EFFECTIVE DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Carter H. Strickland, Environmental Protection Agency, 401 M Street SW. (Mail Code—OS–220W), Washington, DC 20460, (703) 308–8338.

SUPPLEMENTARY INFORMATION: Under section 105(a)(8)(B) of CERCLA, EPA has established the NPL as a list of priorities among known or threatened releases of hazardous substances, pollutants and contaminants throughout the United States, for potential response action. Sites on the NPL may be the subject of Hazardous Substance Superfund (Fund) financed remedial actions. Sites are deleted from the NPL when all appropriate response actions have been implemented or investigation of the site has shown that the site poses no significant threat. Any sites deleted from the NPL remain eligible for Fund-financed remedial action in the event that conditions at the site are later found to warrant such action. Section 300.425(e)(3) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) provides that whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. Specific information about each site follows.

Beachwood/Berkeley Wells

The Beachwood/Berkeley Wells site is located in Ocean County, New Jersey. EPA published a Notice of Intent to Delete the Beachwood/Berkeley Wells site from the NPL on July 12, 1991 (56 FR 31900). EPA also published a notification in a local newspaper on July 12, 1991. The comment period ended on August 12, 1991. EPA received no comments. Entries in the Deletion Docket may be reviewed at the EPA Region II office in New York, New York and at the Berkeley Township Library, in Bayville, New Jersey; the Beachwood Borough Library in Beachwood, New Jersey; and the New Jersey Department of Environmental Protection in Trenton, New Jersey.

Johns' Sludge Pond

The Johns' Sludge Pond site is located in Wichita, Kansas. EPA published a Notice of Intent to Delete the Johns' Sludge Pond site from the NPL on September 10, 1991 (56 FR 46142). EPA also published a notification in the principal local newspaper on September 8, 1991. The comment period ended on October 21, 1991. EPA received no comments. Entries in the Deletion Docket may be reviewed at the EPA Region VII office in Kansas City, Kansas, and at the Department of Public Works at the City Hall in Wichita, Kansas. It is EPA's policy to conduct a Five-Year Review at sites in which hazardous substances remain above levels which allow for unlimited use and unrestricted exposure. A Five-Year Review was conducted at this site in December 1990 at which time it was determined that the remedy remains protective of human health and the environment.

List of Subjects in 40 CFR Part 300

Hazardous waste.

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: Section 105, Pub. L. 96–510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92–500 as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

Appendix B—[Amended]

2. The first table in appendix B is amended as follows:

a. Remove NPL Rank 408 from Group 9 (Beachwood/Berkeley Wells) and redesignate 409 through 1069 as 408 through 1068;

b. Remove newly redesignated NPL Rank 648 from Group 12 (Johns' Sludge Pond) and redesignate 649 through 1068 as 648 through 1067;

c. The heading "Group 9 (HRS Scores 42.33–41.60)" is revised to read "Group 9 (HRS Scores 42.33–41.59);"

d. The heading "Group 10 (HRS Scores 41.59–31.69)" is revised to read "Group 10 (HRS Scores 41.44–39.88);"

e. The heading "Group 11 (HRS Scores 39.88–38.20)" is revised to read "Group 11 (HRS Scores 39.87–38.20);"

f. The heading "Group 12 (HRS Scores 38.20–37.63)" is revised to read "Group 12 (HRS Scores 38.17–37.62);"

g. The heading "Group 13 (HRS Scores 37.62–35.79)" is revised to read "Group 13 (HRS Scores 37.52–35.76);"

h. The heading "Group 14 (HRS Scores 35.79–35.35)" is revised to read "Group 14 (HRS Scores 35.72–35.34);"

i. The heading "Group 15 (HRS Scores 35.35–34.21)" is revised to read "Group 15 (HRS Scores 35.34–34.21);"

j. The heading "Group 16 (HRS Scores 34.21–33.73)" is revised to read "Group 16 (HRS Scores 34.21–33.71);"

k. The heading "Group 17 (HRS Scores 33.73–32.87)" is revised to read "Group 17 (HRS Scores 33.71–32.69);"

l. The heading "Group 18 (HRS Scores 32.77–31.94)" is revised to read "Group 18 (HRS Scores 32.65–31.90);"

m. The heading "Group 19 (HRS Scores 31.94–30.93)" is revised to read "Group 19 (HRS Scores 31.86–30.83);"

n. The heading "Group 20 (HRS Scores 30.83–29.85)" is revised to read "Group 20 (HRS Scores 30.78–29.81);" and

o. The heading "Group 21 (HRS Scores 29.85–28.90)" is revised to read "Group 21 (HRS Scores 29.78–28.90);"

Dated: December 27, 1991.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 92–79 Filed 1–3–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7530]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202)

646–2717, Federal Center Plaza, 500 C Street, SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or a Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and Floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date
New Eligibles—Regular Program			
Indiana:			
Markle, town of, Wells & Huntington Counties [1]	180457	November 7, 1991	
Sweetser, town of, Grant County [2]	180503	....do	
Upland, town of, Grant County [2]	180504	....do	
Van Buren, town of, Grant County [2]	180489	....do	
Michiana Shores, city of, Laporte County	180505	November 12, 1991	NSFHA.
Maine:			
Wiscasset, town of, Lincoln County	230223	November 20, 1991	April 16, 1991.
Criehaven, township of, Knox County [3]	231034	April 4, 1979, Emerg; April 30, 1984, Reg	NSFHA.
New Eligible—Emergency Program			
Indiana:			
Montpelier, city of, Blackford County [4]	180501	November 8, 1991	
Blackford County, Unincorporated Areas	180476	....do	
Shamrock Lakes, town of, Blackford County [4]	180502	....do	
Iowa: Clemons, city of, Marshall County	190201	November 18, 1991	November 5, 1976.
Georgia: Cook County, Unincorporated Areas	130501	November 20, 1991	
Michigan: Bruce, township of, Macomb County	260864	November 27, 1991	
Texas: Bailey, town of, Fannin County	480606	November 29, 1991	November 5, 1976.
Reinstatements—Regular Program			
Ohio: Perry County, Unincorporated Areas	390778	May 19, 1977, Emerg; September 27, 1991, Reg; September 27, 1991, Susp; November 6, 1991, Rein.	September 27, 1991.
New York: West Union, town of, Steuben County	361437	June 27, 1975, Emerg; July 1, 1986, Reg; July 4, 1989, Susp; November 6, 1991, Rein.	July 1, 1986.
Utah: Castle Dale, city of, Emery County	490059	July 25, 1975, Emerg; May 1, 1980, Reg; May 17, 1989, Susp; November 8, 1991, Rein.	May 1, 1980.
Wyoming: Lovell, town of, Big Horn County	560073	August 30, 1976, Emerg; October 1, 1986, Reg; August 15, 1989, Susp; November 12, 1991, Rein.	October 1, 1986.
New York: Cold Brook, village of, Herkimer County	360298	February 10, 1976, Emerg; July 3, 1985, Reg; July 3, 1985, Susp; November 18, 1991, Rein.	July 3, 1985.
Pennsylvania: Jackson, township of, Perry County	421952	January 28, 1976, Emerg; October 15, 1985, Reg; October 15, 1985, Susp; November 25, 1991, Rein.	October 15, 1985.
Vermont: Proctor, town of, Perry County	500265	April 17, 1974, Emerg; December 1, 1978, Reg; June 18, 1990, Susp; November 27, 1991, Rein.	December 1, 1978.
Wisconsin: Richland County, Unincorporated Areas	550356	June 16, 1975, Emerg; September 27, 1991, Reg; September 27, 1991, Susp; November 29, 1991, Rein.	September 27, 1991.
Regular Program Conversions			
Region I			
New York: Grove, town of, Allegany County	361005	November 6, 1991. Suspension withdrawn	November 6, 1991.
Region III			
West Virginia: Nicholas County, Unincorporated Areas.	540146	....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Region VI			
Oklahoma: Dewar, town of, Okmulgee County	400143	....do	Do.
Region II			
New York: Hounsfield, town of, Jefferson County	360340	November 20, 1991. Suspension withdrawn	November 20, 1991
Region III			
Pennsylvania: Whitpain, township of, Montgomery County.	420713	....do	Do.
Region IV			
Georgia:			
Clayton County, Unincorporated Areas	130041	....do	November 6, 1991.
Riverdale, city of, Clayton County	130047	....do	Do.
South Carolina: Chesterfield County, Unincorporated Areas.	450228	....do	Do.
Region V			
Wisconsin:			
Burnett County, Unincorporated Areas	550032	....do	November 20, 1991.
Pittsville, city of, Wood County	550517	....do	November 6, 1991.
Waushara County, Unincorporated Areas	550540	....do	Do.
Region VI			
Oklahoma: Washington County, Unincorporated Areas.	400459	November 20, 1991. Suspension withdrawn	November 20, 1991.
Minimal Conversions			
Region V			
Michigan: Chester, township of, Ottawa County	260629	....do	November 20, 1991.
Cascade, township of, Kent County	260814	November 28, 1991. Suspension withdrawn	November 6, 1991.

[1] The Town of Markle has adopted the Wells County (180288) FIRM.
[2] The Towns of Sweetser, Van Buren and Upland have adopted the Grant County (180435) FIRM.
[3] The following communities (Ragged Island #230940, Wooden Ball Island #230959, Seal Island #230948, and Matinicus Rock #230949), are no longer participating in the National Flood Insurance Program as separate governmental entities and should be deleted from the National Flood Insurance Program. They have formed the *Township of Criehaven*. The new community is under the Land Use Regulatory Commission (LURC). In order to avoid confusion, the Township of Criehaven has been issued a
[4] The Town of Shamrock Lakes and City of Montpelier have adopted Blackford County (180478) FHBM.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

C.M. "Bud" Schauerte,
Administrator, Federal Insurance Administration.
[FR Doc. 92-171 Filed 1-3-92; 8:45 am]
BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 7531]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.
ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial

flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final day rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule is promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance-Floodplains

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Regular Program Conversions				
Region II				
New York:				
Pamelia, town of, Jefferson County	360346	July 7, 1978, Emerg; July 30, 1982, Reg; January 2, 1992, Susp.	January 2, 1992	January 2, 1992.
Evans Mills, Village of, Jefferson County	360337	September 18, 1975 Emerg; February 5, 1986, Reg; January 2, 1992, Susp.	January 2, 1992	Do.
Region III				
Pennsylvania: Lower Heidelberg, Township of, Berks County.	421077	July 18, 1975, Emerg; August 16, 1982, Reg; January 2, 1992, Susp.	January 2, 1992	Do.
Region VII				
Iowa: LeGrand, City of, Marshall County	190606	December 5, 1977, Emerg; September 1, 1987, Reg; January 2, 1992, Susp.	September 1, 1987	Do.
Region X				
Alaska: Fairbanks-Northstar, Borough of, Fairbanks Division.	025009	May 15, 1970, Emerg; June 25, 1980, Reg; January 2, 1992, Susp.	January 2, 1992	Do.
Region II				
New York:				
Leroy, town of, Jefferson County	360341	June 12, 1975, Emerg; January 16, 1992, Reg; January 16, 1992, Susp.	January 16, 1992	January 16, 1992
Wilna, town of, Jefferson County	360357	June 24, 1975, Emerg; January 16, 1992, Reg; January 16, 1992, Susp.	January 16, 1992	Do.
Region IV				
Mississippi: Tylertown, City of, Walthall County	280175	February 27, 1975, Emerg; September 30, 1988, Reg; January 16, 1992, Susp.	January 16, 1992	Do.
South Carolina: Greenville County, Unincorporated Areas.	450089	February 12, 1974, Emerg; December 2, 1980, Reg; January 16, 1992, Susp.	January 16, 1992	Do.
Tennessee: Franklin County, Unincorporated Areas.	470344	June 12, 1991, Emerg; January 2, 1992, Reg; January 16, 1992, Susp.	January 2, 1992	Do.
Georgia: Fulton County, Unincorporated Areas	135160	November 20, 1970, Emerg; October 29, 1971, Reg; January 16, 1992, Susp.	January 2, 1992	Do.
Region V				
Illinois: Marengo, City of McHenry County	170482	June 27, 1973, Emerg; August 1, 1979, Reg; January 16, 1992, Susp..	January 2, 1992	Do.
Michigan:				
Ann Arbor, City of, Washtenaw County	260213	April 19, 1973, Emerg; June 15, 1982, Reg; January 16, 1992, Susp.	January 2, 1992	Do.
Lapeer, City of, Lapeer County	260112	November 25, 1974, Emerg; June 15, 1979, Reg; January 16, 1992, Susp.	January 2, 1992	Do.
Missouri: Clarkson Valley, Village of, St. Louis County.	290340	May 27, 1975, Emerg; April 8, 1977, Reg; January 16, 1992, Susp.	January 2, 1992	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-172 Filed 1-3-92; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subject in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State	County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California	Sacramento	Unincorporated Areas (Docket No. 7036).	August 7, 1991, August 14, 1991, *Sacramento Bee.*	Mr. Douglas M. Fraleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, room 304, Sacramento, California 95814.	July 25, 1991	060262
California	San Joaquin	City of Stockton (Docket No. 7035).	August 15, 1991, August 22, 1991, *The Stockton Record.*	The Honorable Joan Darrah, Mayor, City of Stockton, 425 North El Dorado Street, Stockton, California 95202.	August 14, 1991	060302
California	San Joaquin	Unincorporated Areas (Docket No. 7035).	August 15, 1991, August 22, 1991, *The Stockton Record.*	The Honorable George L. Barber, Chairman, San Joaquin County Board of Supervisors, 222 East Weber Avenue, room 701, Stockton, California 95201.	August 14, 1991	060299

State	County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Colorado	Arapahoe	City of Greenwood Village (Docket No. 7033).	July 25, 1991, August 1, 1991, *Villager.*	The Honorable Rollin Barnard, Mayor, City of Greenwood Village, 8660 South Quebec Street, Greenwood Village, Colorado 80111-4591.	July 15, 1991	080195
Connecticut	Fairfield (FEMA Docket No. 7021).	City of Norwalk	May 10, 1991, May 17, 1991, *The Norwalk News.*	The Honorable Frank Esposito, Mayor of the City of Norwalk, Fairfield County, 125 East Avenue, Norwalk, Connecticut 06851.	May 2, 1991	090012 C
Connecticut	Fairfield (FEMA Docket No. 7028).	City of Stamford	June 21, 1991, June 28, 1991, *The Advocate.*	The Honorable Thom Serrani, Mayor of the City of Stamford, Stamford Governmental Center, 888 Washington Boulevard, Stamford, Connecticut 06904-2152.	June 14, 1991	090015
Georgia	Cobb (Docket No. FEMA-7028).	City of Marietta	June 21, 1991, June 28, 1991, *Marietta Daily Journal.*	The Honorable Joe Mack Wilson, Mayor, City of Marietta, P.O. Box 609, Marietta, Georgia 30061.	June 7, 1991	130226
New York	Dutchess (FEMA Docket No. 7021).	Town of LaGrange	April 25, 1991, May 2, 1991, *The LaGrange Ledger.*	Mr. Arthur McCluskey, Town Supervisor, 120 Stringham Road, LaGrangeville, New York 12540-6412.	April 11, 1991	361611 B&C
Ohio	Greene (Docket No. FEMA-7026).	City of Fairborn	June 14, 1991, June 21, 1991, *The Fairborn Daily Herald.*	The Honorable Michael Hammond, City Manager, City of Fairborn, 44 W. Hebble Avenue, Fairborn, Ohio 45324-4999.	June 4, 1991	390161
Tennessee	Sumner (Docket No. FEMA-7033).	City of Gallatin and City of Hendersonville.	August 8, 1991, August 15, 1991, *News Examiner.*	The Honorable Bethel Brown, County Executive, Sumner County, 355 North Belvedere Drive, Gallatin, Tennessee 37066.	July 26, 1991	470249
Virginia	Independent City (FEMA Docket No. 7021).	City of Falls Church	May 1, 1991, May 8, 1991, *The Fairfax Journal.*	The Honorable Dale Warren Dover, Mayor of the City of Falls Church, Harry E. Wells Building, 300 Park Avenue, Falls Church, Virginia 22046.	April 23, 1991	510054 B
Wisconsin	Calumet	City of Chilton (Docket No. FEMA-7021).	April 18, 1991, April 25, 1991, *Chilton Times Journal.*	The Honorable John Ronk, Mayor, City of Chilton, 42 School Street, P.O. Box 183, Chilton, Wisconsin 53014.	April 5, 1991	550037
Wisconsin	Calumet	Unincorporated Areas (Docket No. FEMA-7021).	April 18, 1991, April 25, 1991, *Chilton Times Journal.*	The Honorable John Keuler, Administrative Coordinator, Calumet County, 206 Court Street, Chilton, Wisconsin 53014.	April 5, 1991	550035

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-165 Filed 1-3-92; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket Number FEMA-7038]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists communities where modification of the base (100-year) flood elevations is apppropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: These modified base flood elevations are currently in effect and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish, in this notice, all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are made available for inspection.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 65.4.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for te floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical revisions made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 65.4 is amended by adding, in alphabetic sequence, new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas	Benton	City of Centerton	October 28, 1991, November 4, 1991, *The Daily Record.*	The Honorable Sherman Kinyon, Mayor of the City of Centerton, Benton County, P.O. Box 208, Centerton, Arkansas 72719.	October 18, 1991	050399
California	Santa Barbara	Unincorporated Areas	October 24, 1991, October 31, 1991, *Santa Barbara News-Press.*	The Honorable Diane Owens, Chairperson, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, California 93101.	October 18, 1991	060331
Connecticut	Hartford	City of Bristol	October 29, 1991, November 5, 1991, *Bristol Press.*	The Honorable William T. Stortz, Mayor of the City of Bristol, Hartford County, 111 North Main, Bristol, Connecticut 06010.	October 15, 1991	090023
Illinois	Cook	Village of Hoffman Estates.	November 8, 1991, November 15, 1991, *The Daily Herald.*	The Honorable Michael J. O'Malley, Village President, Village of Hoffman Estates, 1200 North Gannon Drive, Hoffman Estates, Illinois 60196.	October 24, 1991	170107
Illinois	Lake	Village of Vernon Hills	April 18, 1991, April 25, 1991, *The Vernon Review.*	The Honorable Larry Laschen, Village Manager, Village of Vernon Hills, 290 Evergreen Drive, Vernon Hills, Illinois 60061.	April 5, 1991	170394

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois	Madison	City of Granite City	November 14, 1991, November 21, 1991, *Granite City Press Record.*	The Honorable Von Dee Crews, Mayor, City of Granite City, 2060 Edison Avenue, Granite City, Illinois 62040.	October 31, 1991	170443
Indiana	Hamilton	City of Carmel	November 22, 1991, November 29, 1991, *Carmel Daily Ledger.*	The Honorable Dottie Hancock, Mayor, City of Carmel, 1 Civic Square, Carmel, Indiana 46032.	November 8, 1991	180081
Mississippi	Madison	City of Ridgeland	November 28, 1991, December 5, 1991, *Madison County Journal.*	The Honorable Gene F. McGee, Mayor, City of Ridgeland, 500 Highway 51 South, P.O. Box 217, Ridgeland, Mississippi 39158.	November 13, 1991	280116
Ohio	Medina	City of Brunswick	October 31, 1991, November 7, 1991, *The Medina County Gazette.*	The Honorable Judith Beadell-Rapp, Mayor, City of Brunswick, City Hall, 4095 Center Road, Brunswick, Ohio 44212.	October 8, 1991	390369
Ohio	Medina	City of Brunswick	October 24, 1991, October 31, 1991, *The Medina County Gazette.*	The Honorable Judith Beadell-Rapp, Mayor, City of Brunswick, City Hall, 4095 Center Road, Brunswick, Ohio 44212.	October 8, 1991	390369
Tennessee	Shelby	City of Millington	November 13, 1991, November 20, 1991, *Millington Star.*	The Honorable George R. Harvell, Jr., Mayor, City of Millington, P.O. Box 247, Millington, Tennessee 38053.	October 31, 1991	470178
Texas	Travis	City of Austin	October 25, 1991, November 1, 1991, *Austin American-Statesman.*	The Honorable Ruth Todd, Mayor of the City of Austin, Travis County, P.O. Box 1088, Austin, Texas 78767.	October 18, 1991	480624 C

C.M. "Bud" Schauerte,
Administrator, Federal Insurance Administration.
[FR Doc. 92-166 Filed 1-3-92; 8:45 am]
BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 28

[CGD 88-079]

RIN 2115-AD12

Commercial Fishing Industry Vessel Regulations; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations published on August 14, 1991 (56 FR 40364). That final rule related to the Coast Guard's issuance of regulations for documented or state numbered uninspected fishing, fish processing, and fish tender vessels to implement provisions of the Commercial Fishing Industry Vessel Safety Act of 1988. These regulations are intended to improve the overall safety of commercial fishing industry vessels.

EFFECTIVE DATE: September 15, 1991.

FOR FURTHER INFORMATION CONTACT: LCDR Ed McCauley, Merchant Vessel Inspection and Documentation Division, Fishing Vessel/Offshore Activities Branch (G-MVI-4), room 1405, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202)-267-2307.

SUPPLEMENTARY INFORMATION:

Background

These regulations apply to all U.S. commercial fishing industry vessels, whether existing before, or built or altered after September 15, 1991, and provides requirements for their equipment, design, and operations. Additional equipment is required for documented vessels that operate beyond the Boundary Lines or that operate with more than 16 individuals on board. Design and construction requirements that apply to vessels built after or which undergo a major conversion completed after September 15, 1991, are also included, if those vessels operate with more than 16 individuals on board. Additionally, casualty and injury reporting requirements are included that apply to all underwriters of primary insurance for commercial fishing industry vessels, owners of commercial fishing industry vessels, and all employees injured on such vessels.

Paragraph (b) of § 28.500 is revised in order to clarify the requirements for vessels that undergo alterations to fishing or fish processing equipment in a manner different than had been accomplished previously. These vessels are considered to be "substantially altered". Therefore, they need only meet the subpart E requirements in § 28.501.

Paragraph (a) of § 28.580 is revised in order to clarify the Coast Guard's intent that U.S. commercial fishing industry vessels constructed before the effective date of the regulations be exempt from § 28.580(a). The Notice of Proposed Rulemaking (NPRM) published on April 19, 1990 (55 FR 14824) stated that § 28.580(a) would apply only to vessels constructed on or after the effective date of the regulations. In drafting the final rule, the Coast Guard inadvertently

deleted that provision thus making § 28.580(a) apply to vessels that had undergone major conversions or alterations as well. This was not the Coast Guard's intent, considering the difficulties existing vessels would have retrofitting bulkheads in order to meet the survival conditions specified.

Need for Correction

As published, the final regulations contain errors which may prove misleading or are unclear in their intent and need further clarification.

List of Subjects in 46 CFR Part 28

Fire prevention, Fishing vessels, Incorporation by reference, Lifesaving equipment, Main and auxiliary machinery, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Seamen, and Stability.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

1. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4506, 6104, 10603; 49 U.S.C. App. 1804; 49 CFR 1.46.

2. Paragraph (b) of § 28.500 is revised to read as follows:

§ 28.500 Applicability.

* * * * *

(b) Undergoes alterations to the fishing or processing equipment for the purpose of catching, landing, or processing fish in a manner different than has previously been accomplished on the vessel—these vessels need only comply with § 28.501 of this subpart; or

* * * * *

3. Paragraph (a) of § 28.580 is revised to read as follows:

§ 28.580 Unintentional flooding.

(a) *Applicability.* Except for an open boat that operates on protected waters and as provided by paragraph (i) of this section, each vessel built on or after September 15, 1991 must comply with the requirements of this section.

* * * * *

Dated: December 27, 1991.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-157 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-14-M

Research and Special Programs Administration

49 CFR Parts 107 and 180

[Docket Nos. HM-183, 183A; Amdt. Nos. 107-20, 180-2]

RIN 2137-AA42

Requirements for Cargo Tanks; Compliance Date

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; revision of compliance date.

SUMMARY: RSPA is delaying the compliance date for a provision contained in 49 CFR 107.503(b)(1) and (c) that persons who are engaged in the manufacture and repair of MC 306, MC 307 and MC 312 cargo tank motor vehicles must submit a copy of their American Society of Mechanical Engineers (ASME) "U" or National Board of Boiler and Pressure Vessel Inspectors (National Board) "R" Certificate of Authorization to RSPA before December 31, 1991. RSPA is delaying the compliance date to June 30, 1992. This action is being taken to allow the National Board, which performs the inspection reviews, additional time to process its backlog of authorization requests.

EFFECTIVE DATE: Effective December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Charles Hochman, (202) 366-4545, Office of Hazardous Materials Technology, or Hattie Mitchell, (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: The Hazardous Materials Regulations (49 CFR parts 171-180) require that any person engaged in the manufacture, assembly or repair of DOT specification cargo tanks or cargo tank motor vehicles, and cargo tanks manufactured under exemption must hold a current ASME "U" or National Board "R" Certificate of Authorization. Sections 107.504(b)(1) and (c) require manufacturers (including certain assemblers) and repairers of MC 306, MC 307 and MC 312 cargo tank motor vehicles to submit a copy of their Certificate of Authorization to RSPA before December 31, 1991. Similarly, § 180.413(a) provides that any repair, modification, stretching or rebarrelling on any low pressure MC series cargo tank must be performed by a holder of an ASME "U" stamp or a National Board "R" stamp after January 1, 1992.

RSPA has received several written and telephonic requests to delay the December 31, 1991 compliance date for RSPA to receive these ASME or National Board Certificates of Authorization. The ASME and the National Board both have established procedures for inspection and certification of facilities engaged in the construction and repair of cargo tanks. Prior to issuance of both types of certificates, the National Board conducts a review of the manufacturer's or repairer's facility and witnesses a demonstration of the operator's quality control system and fabrication or repair procedures. Because of a substantial increase in the number of these authorization requests, the National Board is experiencing scheduling delays of 3-4 months in some states. Therefore, RSPA is delaying the date for submission of these ASME and National Board Certificates of Authorization from December 31, 1991, to June 30, 1992.

Because the amendments adopted herein impose no new regulatory burden on any person, notice and public procedure are unnecessary. For these same reasons, these amendments are being made effective without the usual 30-day delay following publication.

Administrative Notices

A. Executive Order 12291

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. However, it is a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034). This rule does not require a Regulatory Impact Analysis, or an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) This final rule does not impose additional requirements and has the net result of reducing costs imposed under the final rule published in the **Federal Register** on June 12, 1989 (54 FR 38233) without reducing safety. The original regulatory evaluation of the final rule was not modified because this final rule does not impose additional requirements and does not make substantive changes to the final rule. That document is available for review in the docket.

B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effect on the States, on the current

Federal-State relationship, or the current distribution of power and responsibilities among levels of government. Thus this final rule contains no policies that have Federalism implications, as defined in Executive Order 12612, and no Federalism Assessment is required.

C. Impact on Small Entities

Based on available information, I certify that the changes in this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A regulatory flexibility analysis prepared for the October 2, 1991 final rule is available for review in the docket.

D. Paperwork Reduction Act

This amendment imposes no changes to the information collection and recordkeeping requirements contained in the June 12, 1989 final rule, which was approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35.

E. Regulatory Information Number (RIN)

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous material transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, chapter I, subchapters B and C of the Code of Federal Regulations, are amended as set forth below.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1802, 1806, 1808–1811; 49 CFR 1.45 and 1.53 and app. A of part 1, Public Law 89–670 (49 U.S.C. 1653(d), 1655).

§ 107.503 [Amended]

2. In § 107.503, in paragraphs (b)(1) and (c), the date "December 31, 1991" is revised to read "June 30, 1992" both places it appears.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

3. The authority citation for part 180 continues to read as follows:

Authority: 49 App. U.S.C. 1803; 49 CFR part 1.

§ 180.413 [Amended]

4. In § 180.413, in the last sentence of the introductory text to paragraph (a), the date "January 1, 1992" is revised to read "June 30, 1992".

Issued in Washington, DC on December 30, 1991, under authority delegated in 49 CFR part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91–31332 Filed 12–31–91; 11:35 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 910102–1312]

RIN 0648–AD01

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule under authority of the Atlantic Tunas Convention Act (ATCA) to: (1) Require specified amounts of other species to be landed as a condition for landing an incidental bycatch of Atlantic bluefin tuna (bluefin) in the southern longline fishery; (2) prohibit retention of Atlantic bluefin tuna harvested from the Gulf of Mexico, except for vessels permitted in the Incidental Catch category; and (3) make other technical revisions to the regulations.

This action is necessary to prevent a directed fishery for Atlantic bluefin tuna in the Gulf of Mexico and to enhance enforcement of the regulations. The intent of this action is to ensure that the United States fulfills its obligations to conserve and manage the Atlantic bluefin tuna resource in accordance with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

EFFECTIVE DATE: December 31, 1991.

ADDRESSES: Copies of the environmental assessment and final regulatory flexibility analysis referred to in this rule, as well as other previously published reports, are available from Richard Roe, Regional Director, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, (508) 281–9324 or Hannah Goodale, (508) 281–9101.

SUPPLEMENTARY INFORMATION: On March 11, 1991, NMFS published a proposed rule at 56 FR 10227 to amend the regulations governing the Atlantic bluefin tuna fishery (50 CFR part 285). The rule was intended to prevent a directed fishery for Atlantic bluefin tuna in the Gulf of Mexico (Gulf) and improve management of the angling sector. The rule also proposed technical revisions to improve the effectiveness of existing regulations. This final rule implements the measures concerning the Gulf fishery, which are necessary before the January commencement of the Gulf fishery, and the technical revisions. A technical modification to allow the Regional Director to specify a date when a bluefin permit expires was implemented in a separate final rule (56 FR 50061). The remaining proposed measures concerning the angling sector are still under consideration by NMFS and are not implemented by this rule.

Public comment on the proposed rule was initially invited through April 25, 1991. NMFS also held a series of public hearings in New England, Mid-Atlantic and Gulf states. In response to concerns expressed at the public hearings, the comment period was reopened until May 10, 1991 (56 FR 20183, May 2, 1991). In addition, NMFS also invited comment on a request from fishermen in North Carolina for future rulemaking to change the commencement date of the General category season.

Background

This final rule is not intended to present a new management strategy for Atlantic bluefin tuna. The Fishery Conservation Amendments of 1990 (Pub. L. 101–627) will bring all tunas under Magnuson Act authority on January 1, 1992, and NMFS intends to undertake a more comprehensive rulemaking after that date. This final rule is intended to address specific concerns and ensure that the United States fulfills its current obligations to ICCAT.

ICCAT prohibits directed fishing on the spawning stock of Atlantic bluefin tuna in the Gulf. The United States currently implements this prohibition by restricting domestic longliners operating south of 36° N. latitude to a bycatch of two bluefin per trip. The lack of a requirement that bluefin be landed in conjunction with other species and the short distance from port to the fishing grounds make it possible for vessels to direct their fishing on bluefin despite the trip limit. This final rule requires longline vessels operating south of 36° N. latitude to land, offload, and sell at least 2,500 lbs (1,134 kg) of other species as a condition for landing a maximum of one bluefin tuna. This rule also modifies the existing regulation concerning bycatch in the longline fishery north of 36° N. latitude to require that the catch be offloaded after each trip and recorded on a dealer weighout. The purpose of this requirement is to facilitate enforcement and to ensure that the intent of this rule is not circumvented by a vessel's storing 2,500 lbs (1,134 kg) of unmarketable fish on board or by landing and discarding them to meet the requirement.

This final rule also revises the regulation to prohibit the retention of bluefin tuna from the Gulf by any vessels other than those permitted in the Incidental Catch categories. These measures are expected to discourage directed fishing in the Gulf and to have a beneficial impact on the stock. These measures do not change the allocation for total longline bycatch or any other allocations.

Technical Modifications

This rule makes several modifications to the existing regulations to improve enforceability and administration of the management program. These modifications are described below.

A definition of the term "fishing record" is added to mean all records of navigation and operations, as well as all records of catching, harvesting, transporting, landing, purchase or sale. This clarifies the regulations to allow the inspection of more than the normal fishing logbook. This change will facilitate enforcement of the existing regulations.

The definition of "Regional Director" is revised to reflect the current address.

Section 285.3(b) is amended by adding the words "possessed or landed" after the words "taken or retained" to give this prohibition a broader application. Section 285.3(f) is amended to require young school, school or medium tuna to be landed in whole or eviscerated form only, and paragraph (g) is added to enhance enforcement against imports that were harvested contrary to another country's regulations.

A definition of "eviscerated" is added to mean removal of alimentary organs only. Presently, fishermen are allowed to remove the head and gills of fish of any size. The lack of a uniform heading practice results in measurements that may not accurately reflect the overall length of the fish, and makes proper species identification difficult in smaller fish. This information is important for fishery management and enforcement purposes. To facilitate proper identification, the removal of the head or gills will be prohibited for young school, school or medium size categories (smaller than 77 inches or 196 cm fork length) since gill-raker count is one of the only accurate means of species differentiation in smaller fish. In response to concerns about meat storage of young school, school and medium fish, the entrails may be removed and the spinal cord destroyed by insertion of a metal spike.

The head and gills may be removed from giant tuna (77 inches, 196 cm fork length or greater) provided that the total length is recorded prior to heading and reported to the dealer. Heading of fish is permitted for giant bluefin tuna because neither yellowfin tuna nor bigeye tuna reaches the 77-inch (196 cm) length. For enforcement purposes, a headed fish with a pectoral fin to fork of tail length of 57 inches (145 cm) or greater will be considered a giant Atlantic bluefin tuna.

This final rule also authorizes the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) in § 285.31(c), to rescind the prohibition on heading by a publication of a notice in the **Federal Register** in the event that documented evidence is produced that would provide an alternate definitive method of accurate field identification and provided that fishermen record total lengths prior to heading and report them to the dealer.

Section 285.21(c) is revised to allow the Regional Director to change a vessel's permit category after May 15 if a vessel has been inactive in the fishery or in instances where an error was made during the application procedure. A vessel that has never landed an Atlantic bluefin tuna is considered to be inactive in the fishery. The intent of the existing regulation, which does not allow permit category changes after May 15, was to prevent vessels from fishing in two permitted quota categories in the same year. The change implemented by this final rule provides some administrative latitude without altering the intent or effectiveness of this section.

Section 285.23(g) is revised by removing the phrase "in the Gulf of Mexico". The intent of this section is to allow the incidental harvest of bluefin caught in traditional rod and reel fisheries. Historical fisheries engaged in by U.S. fishermen, such as those in the Bahamas, Cayman Islands, etc., were inadvertently excluded. This is corrected by this final rule by removing the geographical specification.

Section 285.25(c) is revised to reflect the current telephone number for purse seine gear inspection.

Section 285.28(a) is revised to clarify the requirement that all dealers who purchase or receive bluefin tuna must obtain a permit. This clarification is to enhance enforcement of the quota monitoring system. Sections 285.29(a) and (b) are revised to clarify the requirement that the dealer reports must be postmarked within the times specified in these paragraphs. Section 285.29(b) is further revised to clarify the existing requirement in the regulation that dealers must include imported Atlantic bluefin tuna on their weekly report forms. Section 285.29(e) is revised to include the current phone number to be called for the inspection of a purse seine vessel.

Section 285.30 is revised by removing the requirement that the metal tag be affixed to the outside of a container holding a medium or giant Atlantic bluefin tuna. Some of these fish are cut into pieces before they are exported. Therefore, it is impossible for the tag to accompany each boxed piece. A new requirement is added that tag numbers must be written on any documents accompanying bluefin tuna shipments. The requirement that the tag number be marked on the outside of these containers remains unchanged. This section is also revised to reflect current phone numbers and to allow the Regional Director to designate a person other than a NMFS agent to tag a medium or giant bluefin.

Sections 285.31(a)(1)(2) and (5) are revised by adding the words "possess or land" after the words "[F]ish for". This broadens the application of these sections to facilitate enforcement.

Among the technical improvements discussed in the proposed rule was a modification to § 285.21(e) that would allow the Regional Director to specify a date when a permit expires. That modification was implemented separately in a final rule published on October 3, 1991 (56 FR 50061), due to the need for sufficient lead time to allow for permit renewal before commencement of the 1992 fishing season.

Discussion of Public Comments

NMFS received a total of 167 written comments during the public comment period. Comments were submitted by congressional representatives, a state assembly, state legislators, a township council, state wildlife agencies, fishing associations, marine research and conservation organizations, charter boat owners and operators, recreational fishermen, and other individuals. Many of the comments exceeded the scope of this final rulemaking. Only the portions that pertain to the measures implemented by this final rule are addressed below.

General Comments

Comment: Several commenters expressed concern that the proposed actions are not consistent with ICCAT intentions, particularly as they apply to spawning tuna; some felt that the proposed actions fall short of those required for conservation and management, while others felt that the actions will result in underharvest of the ICCAT quota.

Response: The primary conservation measure for Atlantic bluefin tuna is a quota established by ICCAT. NMFS' management measures allow U.S. fisheries to operate within the ICCAT constraint. Since the measures implemented by this final rule are intended to improve quota compliance and enforceability, NMFS believes that they will further ICCAT's conservation goals. The measure pertaining to the southern longline fishery is specifically designed to comply with the ICCAT recommendation prohibiting directed fishing in the Gulf of Mexico.

Comment: Several commenters expressed concern that the allocation established by ICCAT for scientific monitoring purposes is too high. They cited past recommendations made by the ICCAT Scientific Committee on Research and Statistics and by NMFS that the number of bluefin killed must be held as near as possible to the minimum needed to index population abundance. One commenter expressed concern that the ICCAT quotas are not biologically sound, but are economically determined, and that catch levels are too high.

Response: NMFS' current bluefin tuna management is consistent with ICCAT quotas, which are established to further scientific monitoring. Under ATCA, NMFS management measures must be consistent with final ICCAT recommendations and the U.S. quotas cannot legally be more restrictive than the ICCAT quotas.

Comment: Several commenters expressed concern that discard mortality estimates are not charged against the quotas. Several proposed that bluefin currently discarded dead should be landed and donated to food banks.

Response: NMFS believes that discard mortality is an important concern that should be addressed. Research is needed on gear modification, seasonal and/or area closures, and other techniques to minimize discarding any bycatch. NMFS will pursue this research as resources allow. Estimates of the amount of discard from U.S. fisheries are reported to ICCAT each year. These data are considered by scientists and managers in formulating recommended measures.

NMFS agrees that discard is wasteful, but believes that allowing fish to be landed and donated to a food bank would complicate enforcement and would be likely to increase mortality. Instead, NMFS believes that methods of preventing incidental catch should be sought.

Comment: Several commenters expressed hope that there will be significant changes in management methods when the Secretary of Commerce (Secretary) begins to manage bluefin under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) in January 1992. They felt that the measures contained in this rule will not be effective in halting a decline in the bluefin population. They proposed re-examination of the overall management strategy for bluefin and made specific management proposals. Several suggested that NMFS should organize a Plan Development Team and/or begin work on the fishery management plan (FMP) immediately.

Response: The specific management proposals suggested by the commenters exceed the scope of this rulemaking and will not be responded to here. However, many of the points raised are constructive and are under consideration for the measures previously proposed but not yet implemented. The purpose of this rulemaking is to comply with ICCAT commitments, which ensures that the United States is in the best position to negotiate future agreements.

Comment: One fishing association stated that it hopes these are the last tuna regulations developed in a "secretive fashion."

Response: NMFS does not believe these regulations were developed in a secretive fashion. The statutory procedures for Federal rulemaking have been followed, including publication of a proposed rule in the **Federal Register** and a period for public comment. In addition, NMFS extended the initial comment period, sent notices regarding the rulemaking to approximately 30,000 permit holders, and held a series of pubic hearings along the eastern seaboard and in the Gulf states. NMFS believes that there were extensive opportunities for input to this rulemaking and, in fact, received 167 written comments.

Comment: Several commenters questioned the adequacy of the data available to NMFS concerning bluefin tuna. They expressed specific concern with the data used to evaluate the economic impacts of regulations and the catch levels, particularly in the recreational fishery. Several commenters proposed that NMFS allocate increased resources to addressing data needs, and several state agencies and fishing organizations offered to cooperate in future data collection efforts.

Response: NMFS must use the best available information to monitor catch levels and ensure compliance with ICCAT quotas. Additional resources would be required to make significant improvements in the current data collection system; however, improvements are being made when possible. To improve economic information, for instance, NMFS recently initiated the collection of ex-vessel price information on mandatory dealer reports.

Comment: Several commenters expressed concern about the lack of enforcement of existing regulations. One expressed the belief that the most effective enforcement tool at the current time is peer pressure and a growing conservation ethic.

Response: Improving enforcement effectiveness is one of NOAA's current operational goals and NMFS does not debate that coverage could be improved. Recent efforts have been made to inform fishermen of the regulations and of the location of enforcement offices, should they require assistance. A pamphlet containing this information was widely distributed; a second edition will be produced to incorporate these changes made in this final rule and will be distributed to fishermen. Certain aspects of the existing regulations are revised by this rule to facilitate enforcement. For instance, a requirement to land bluefin (other than giants) with the head on, a definitive pectoral fin to fork of tail measurement, and other measures implemented by this final rule, are added to improve enforceability of the regulations.

Comment: Many commenters requested the reduction or elimination of the quota allocated to purse seiners.

Response: These comments are not relevant to this final rulemaking and will not be responded to here. This issue was addressed in the preamble to the rules published on June 11, 1982 (47 FR 25350), and June 17, 1983 (48 FR 27755).

Comment: Several commenters proposed that part or all of the fishery for Atlantic bluefin tuna be closed for a period of years in order to further stock rebuilding; some proposed a complete closure, some proposed closure of the Gulf of Mexico only, some proposed closure of the Gulf of Mexico during the spawning period, and some proposed a closure only of the giant bluefin fishery.

Response: The ATCA does not provide the authority to adopt management measures for Atlantic bluefin tuna that are more restrictive than those adopted by ICCAT; therefore, complete closure of the fishery is not currently an option. While it would be possible to close specific areas to fishing in order to further the conservation and management goals of ICCAT, NMFS employs fishing seasons and quotas to accomplish the same goal.

Comment: Several commenters expressed concern that efforts to control bluefin harvesting in the Gulf of Mexico will be ineffective unless Mexico is persuaded to join ICCAT. They expressed serious concern that Mexico is not an ICCAT signatory. One conservation organization expressed concern that the possibility exists for an over-the-side trade with Mexican vessels to develop or intensify in the Gulf under these regulations.

Response: Over-the-side between U.S.-owned or operated vessels is prohibited (§ 285.31 (a)). NMFS urges anyone with information or evidence of this practice to report it immediately to one of these offices: Northeast Region Enforcement (508–281–9239), or Southeast Region Enforcement (813–893–3145).

Comment: One commenter proposed that NMFS investigate fishery-independent methods of monitoring the population of bluefin.

Response: NMFS currently conducts a larval survey in the Gulf that provides information concerning bluefin tuna, but agrees that more fishery-independent information is needed. Fiscal constraints have prevented the agency from pursuing other methods, such as aerial surveys.

Southern Area Incidental Longline Fishery

Of the 43 comments received on this issue, 19 commenters favored the measure presented in the proposed rule and several stated that they believe it will reestablish the incidental nature of the bluefin catch in the Gulf of Mexico and stop the directed fishery that has developed. The remaining commenters opposed the proposed rule, some because they believe it is too restrictive and others because it is not restrictive enough.

Comment: One commenter believed that the regulation has disparate impacts in the northern and southern fishing areas; he suggested extending the 2-percent requirement (northern area) to the southern longline fishery as a remedy. Other commenters expressed similar concerns and several proposed that the portion of the rule that applies to the northern area should be rewritten to read "2 percent or one fish."

Response: NMFS does not believe that the northern and southern incidental fishing restrictions, although different, create a disparity. Both the 2-percent requirement in the north and the 2,500 lbs (1,134 kg) catch requirement for species other than bluefin tuna (directed catch) in the south require longline vessels to land a reasonable amount of directed catch as a requisite for an incidental take of one bluefin tuna. Since NMFS is unaware of any directed longline fishing for bluefin occurring in the northern area, a change has been sought only in the southern area where the problem is occurring. NMFS rejects the proposal to reword the requirement for the northern fishery because it may weaken a measure that seems to have been effective.

Comment: A conservation organization questioned the effectiveness of the regulation because it estimated that the 2,500 (1,134 kg) of directed catch can be easily obtained and felt that the regulation will not discourage a fishery directed on bluefin. It suggested that the minimum catch of allowed species be set at 15,000 lbs (6,804 kg).

Response: Comments received during public hearings and from the NMFS port statistics program indicate that 2,500 lbs (1,134 kg) is an appropriate threshold amount of directed catch for the southern area. Many smaller vessels are not capable of carrying 15,000 lbs (6,804 kg). Although 2,500 lbs (1,134 kg) may be easily obtained by the largest vessels, NMFS is seeking a threshold that can be applied to vessels of all sizes and not exclusively to large vessels.

Comment: Several commenters questioned the effectiveness of the rule in limiting directed fishing on bluefin because the bycatch of bluefin is much more valuable than the species making up the directed catch. They expressed concern that 2,500 lbs of shark or yellowfin tuna could be brought onto a vessel and sold at any price or dumped, since the bluefin is the valuable portion of the catch. Another proposed that language be inserted to require that the directed catch be "landed and offloaded" because of concern that boats might carry 2,500 lbs (1,134 kg) of shark or yellowfin tuna that is never offloaded.

Response: NMFS believes this is a legitimate concern and the language of the final rule has been revised to require that, in order to land one incidentally caught bluefin, at least 2,500 lbs (1,134 kg) of other directed species must be offloaded from the same trip, and documented as sold on the dealer weighout.

Comment: A state agency commented that the measures move in the right direction, but proposed that protective language be inserted to state that if NMFS monitoring shows there is no reduction in the mortality of giants then the spawning area shall be closed. They felt this would put fishermen on notice that such catches must be truly incidental.

Response: NMFS scientists believe that closure of certain spawning areas within the Gulf of Mexico is problematic because the location of the areas varies from year to year. Closing the entire Gulf of Mexico exceeds the scope of this rule.

Comment: Several fishermen and fishing organizations proposed that additional species be added to the list of those making up the 2500-lb (1,134/kg) directed catch since these species are often caught in the longline fishery. The species proposed were common dolphin or mahi-mahi, wahoo, albacore tuna, escalar or oil fish, and bigeye tuna.

Response: It is NMFS' intent that longline fishermen direct their fishing on species other than bluefin; therefore, it is both reasonable and consistent to include all other species in the 2,500-lb (1,143-kg) directed catch amount. NMFS will require that the directed catch amount is offloaded from the same trip and documented on the dealer weighout.

Comment: Several fishermen and a fishing organization proposed division of the incidental catch allocation into three equal portions for Gulf of Mexico, southern and northern Atlantic areas in order to prevent the entire incidental catch allocation from being used up early in the season by the gulf of Mexico fishery. They believed that this will reduce discards in the fisheries in the other areas. Another commenter proposed that the incidental tonnage allocation for the northern area should be between 33 and 50 percent. Those proposing new geographical allocations also proposed a change in the way

quotas are adjusted when catches exceed quota limits. They proposed that if a particular quota is exceeded, rather than reducing the quota in another category to ensure that the catch for the year remains within the overall U.S. quota limit, the adjustment should be made the following year to the allocation for the area that went over.

Response: NMFS believes that the requirement to land 2,500 lbs (1,134 kg) of other species will prevent the incidental allocation from being used up early in the season by directed fishing. Because a measure to subtract overages from a subsequent year's quota was not specifically addressed in the proposed rule and, therefore, the public has not had an opportunity to comment fully on it, NMFS intends to include this measure in a proposed rule in 1992.

Comment: One commenter opposed the proposed rule because it applies to an area greater than that required to protect spawning fish and felt it is unacceptable to put these restrictions on boats in areas other than the spawning area.

Response: There is no directed fishing permitted for bluefin tuna for U.S. longline vessels in any area. NMFS implemented longline restrictions to preclude expansion of the bluefin fishery by non-traditional fisheries. Although the longline restrictions serve to implement the ICCAT objective concerning the Gulf of Mexico spawning area, this is not the sole purpose; the purpose is to preclude directed fishing by U.S. longliners in any area at any time, and therefore, it is appropriate to apply the restriction to the entire southern area.

Comment: With the proposed reduction in the bycatch limit from two fish to one, a fishing organization requested more flexibility on the 24-hour reporting requirement. It also proposed making it acceptable to submit facsimile (fax) landings reports within 24 hours with associated paperwork to be postmarked within 48 hours.

Response: The Assistant Administrator is required to close this fishery when the quota is taken and relaxing this requirement would make it more difficult to carry out this responsibility. NMFS cannot consider relaxing the 24-hour reporting requirement, and has modified the final rule to clarify that the reports required of dealers must be postmarked within the times specified in the regulations.

Comment: One commenter proposed that the regulations be altered to require that dealer reports be faxed to NMFS to allow timely monitoring of quotas and reduce the likelihood of quota overages.

Response: NMFS does not believe that it is feasible to impose this requirement on the small dealers at this time.

Comment: One fishing organization expressed concern that the proposed rule is not adequate to prevent stock decline and proposed that the proposed measures be implemented for 2 years. If monitoring shows continued population decrease, the fishery should then be closed completely.

Response: The purpose of this rule is to bring the U.S. fishery into compliance with the ICCAT agreements to conserve and manage the resource by prohibiting a directed fishery in the Gulf of Mexico. It is important to manage fishery resources on a stock-wide basis and this can be effectively accomplished through ICCAT. For the United States to lead the way toward improving the health of the resource, it must first reconcile inconsistencies between the domestic and international programs. NMFS will continue to pursue improvements to the ICCAT conservation program.

Comment: Several fishermen and a fishing organization proposed that gear restrictions should be considered for the Gulf of Mexico longline fishery to reduce the incidental catch of giant bluefin. They proposed that requiring the use of 250–300 lb (113–136 kg) test leaders in the Gulf of Mexico between January 1 and June 1 would protect spawning fish because giant tuna would break off.

Response: NMFS believes that gear restrictions could be a future management option but that further study is required to define exact specifications and enforcement methods.

Comment: One commenter proposed an alternate management scheme to protect bluefin and other currently overfished large pelagic fishes that would require boats to return to port and land their catch once the daily quota for any single regulated species is reached (e.g., bluefin, swordfish, etc.). They believe that this is one of the only effective methods to reduce directed and incidental mortality short of a prohibition of longlining.

Response: There are no daily quotas for other tunas (e.g., yellowfin, bigeye, etc.) and swordfish caught by longline, or any other large pelagic species in the Atlantic or Gulf at this time. Implementing such a program would require amendments to fishery management plans for several species, which exceeds the scope of this rulemaking.

Comment: One commenter opposed the proposed rule and suggested instead closing the fishery during spawning and then allowing fishing without trip or daily limits. He proposed that mandatory daily reporting of all tuna caught, including reports from vessels still at sea, would prevent discard mortality and ensure that the fishery is closed when the quota is taken.

Response: NMFS's previous rejection of this alternative remains unchanged, because the location of the spawning areas within the Gulf of Mexico varies from year to year. As stated in response to the previous comment, ICCAT has identified the elimination of the directed bluefin fishery as a priority and NMFS rejects any proposal that would permit a directed bluefin fishery in the Gulf of Mexico or any expansion of directed bluefin fishing by non-traditional fisheries.

Comment: One commenter stated that, if longlining continues to be allowed during spawning season, it should only be permitted with observers aboard. Another commenter stated that observer coverage in the fishery should be enhanced to provide a more accurate estimate of discards.

Response: NMFS has implemented observer programs in some fisheries, but does not currently have such a program in the Southeast Region.

Comment: Many commenters proposed that the Gulf of Mexico be closed entirely to fishing in order to protect spawning bluefin. Several challenged the NMFS assertion that this option is not feasible because spawning areas vary from year to year. They felt that the area is not so large or variable that it could not be reasonably specified and closed. One stated that, given ICCAT's intent to protect spawning fish, NMFS should go further than the proposed regulations. Several proposed closing the entire Gulf to fishing during spawning; suggested dates for closure vary, but all fall within the period January-May. One commenter also proposed that to discourage illegal activity, the sale of bluefin tuna should be prohibited throughout the year in Gulf states. Several commenters questioned the effectiveness of the measures because they believe they will result in increased discard mortality.

Response: NMFS believes it is possible to conduct directed fishing on species other than bluefin, with only a limited amount of bluefin bycatch, provided that sufficient incentives are in place. NMFS believes the 2,500-lb (1,134-kg) threshold and one-fish bycatch allowance will force vessels to move away from bluefin. However, if this measure is demonstrated to be ineffective, NMFS will consider more stringent measures in a future rulemaking.

Comment: Four comments were received that specifically concerned the portion of the proposed rule that would prohibit retention of Atlantic bluefin tuna in the Gulf of Mexico except by vessels permitted in the Incidental Catch category. One commenter opposed the rule and wished the entire Gulf closed to all possession or retention of bluefin. Three commenters (an individual, a state fisheries agency, and a fishing club) favored the proposed rule. In addition, many of those who commented on the incidental catch regulation proposed a complete or partial halt to all catching of bluefin in the Gulf; they are construed to oppose this portion of the rulemaking since it allows incidental catches to occur.

Response: A complete closing of the Gulf of Mexico to those directed fisheries that legitimately have bycatch of bluefin tuna is responded to in the previous response.

Comments Concerning the Technical Modifications

Comment: Two individuals favored the measure prohibiting landing regulated tunas in other than whole or gutted (not gilled) form. Three individuals and five fishing organizations opposed it. Most of the commenters opposing this measure did so because heading improves quality and preservation and because it provides more storage area on vessels. One commenter was also concerned that the regulation would create fish waste disposal problems on shore. Commenters proposed that NMFS should continue to allow heading of regulated tunas and that the measurement from the pectoral fin to the fork, or from the nape to the caudal keel, should be used to estimate the total length of a headed fish. One commenter proposed that NMFS retain the existing guideline in the regulation for estimating the size of a headed fish. One commenter expressed concern that measurements of gilled and gutted fish actually overstate the length of the fish and will result in inaccurate data, and suggested that the measurement from the collar membrane to the tail is more accurate. One fishing club proposed adding a specific definition of "head-off length"—the measurement taken in a straight line along the middle of the lateral surface from pectoral girdle (collar) to the fork in the tail; they also proposed that language be added to make it a violation to mutilate the pectoral girdle. Two of the commenters proposed that instead of prohibiting the removal of the head, it should be required that all fish be measured before heading and the length reported at the point of sale.

Response: The reasons for prohibiting the heading and gilling of school and medium tunas, i.e., accurate measurements and field identification, are outlined under "Technical Modifications" above. NMFS agrees, however, that if fishermen will measure tunas before they are headed and provide the lengths to the dealers for reporting to NMFS, this removes one reason for the prohibition. However, this does not address the problem of field identification of small tuna. Therefore, until another scientifically documented identification method is found, this requirement remains in effect for regulated tunas less than 77 inches (196 cm).

Comment: One fishing club opposed the heading prohibition; however, the club requested that, if NMFS proceeds, the final rule be changed to allow the use of a rod to destroy the spinal cord (leaving a hole in the head) because this improves the quality of the meat.

Response: NMFS has no problem with this and has modified the final rule to allow the spinal cord to be destroyed.

Comment: One fishing club opposed the application of the heading prohibition to other species of tuna. They felt that only three ways exist to identify tuna species accurately (gill-raker count, examination of liver, examination of body cavity) and the proposed rule would make it difficult to use any of the three.

Response: The only known field method to distinguish between small tunas is by gill-raker count (examination of the livers is impractical). The requirement to leave the head on the fish will also require gill rakers to remain intact.

Comment: Three individuals opposed a modification to the regulations to allow changes to be made in permit categories after May 15.

Response: NMFS believes it should have the administrative latitude to correct mistakes that occur in the permitting process, which is the reason for this measure.

Comment: Four individuals were in favor of the proposal to allow incidental rod and reel catch to be extended to the traditional fishing grounds in the Bahamas and Cayman Islands. Two fishing organizations opposed it until these nations become members of ICCAT. One fishing organization expressed concern that this rule may impact the U.S. quota and believed that any reduction in the U.S. quota as a result of this rule is unacceptable.

Response: This revision will allow the incidental harvest of giant bluefin caught by U.S. fishermen in traditional rod and reel fisheries in areas such as the Bahamas, Cayman Islands, etc. U.S. regulations provide an established allocation of 5.4 mt of quota for this fishery that was formerly limited to the Gulf of Mexico. This quota has never been fully harvested and, therefore, is expected to be sufficient for the extended area without any impact on other quotas.

Comment: Four commenters supported the extension of dealer permitting requirements. One commenter requested that the requirement be expanded to cover all purchasers of tuna, including direct buyers such as restaurants.

Response: NMFS will implement the measure as proposed. The regulations already require that all direct buyers, including restaurants, obtain permits.

Comment: A fishing club supported the proposal allowing the Regional Director to designate a person other than a NMFS enforcement agent to tag medium and giant bluefin tuna. The club believed this measure will improve information about unsold mediums and giants that may be lost to the database due to the difficulties in getting a NMFS agent to tag the fish.

Response: NMFS is implementing this suggested provision through this final rule; the Regional Director will have the authority to designate individuals in appropriate locations for the delegation of tagging authority, as needed.

Comment: One related comment was received from a state fisheries agency that would like all fish to be tagged if they are sold. That agency believed that this measure would assist in the collection of data concerning the smaller fish that are sold.

Response: Currently, NMFS does not require school-size bluefin that are sold to be tagged; however, dealers must report them to NMFS nonetheless. NMFS does not believe tagging is necessary because small fish are used in local markets and not transported overseas and, therefore, do not require the additional tracking ability that tagging provides for larger fish. However, tagging school-size fish may be proposed in future rulemakings if this tracking ability becomes necessary.

Comment: Two commenters expressed support for all of the proposed "technical" revisions. A fishing organization proposed the addition of language in § 285.31, requiring enforcement officers to identity themselves to the captains and crew of a vessel before boarding.

Response: NMFS enforcement agents followed specified procedures in carrying out investigative and enforcement activities, and it is not necessary to specify these procedures in the regulations that apply to the Atlantic bluefin tuna fishery.

Comments Concerning a Request for Rulemaking

In addition to the proposed rule published March 11, 1991 (56 FR 10227), NMFS sought comment on May 2, 1991 (56 FR 20183), on a request from fishermen in North Carolina to have a future rulemaking to change the commencement date of the General category season for giant bluefin tuna from June 1 to January 1, thus opening the fishery to a new area off North Carolina.

Comment: Four commenters supported this proposal and six opposed it. One of the supporters pointed out that the General category quota has not been taken for several years. Several of the opponents believed that it is inappropriate to expand the bluefin fishery, particularly when more control is needed in the fisheries that already exist.

Response: NMFS agrees that opening the bluefin tuna fishery to non-traditional areas is contrary to sound conservation and management at this time, unless the expansion is counter-weighted by an equivalent reduction in another sector. For example, the rebuilding program emphasizes protection of juvenile bluefin; therefore, a proposal to allow giant bluefin to be harvested instead of small bluefin off North Carolina is an action NMFS would want to consider. Therefore, this proposal may be included in the forthcoming comprehensive rulemaking.

Changes From the Proposed Rule

The proposed rule would have allowed domestic longliners operating south of 36° N. latitude to land a bycatch of one bluefin tuna per trip only if they landed at least 2,500 lbs (1,134 kg) or more of yellowfin tuna, swordfish and shark on the same trip. The final rule has been modified to allow all species other than bluefin to be counted toward the 2,500 lbs (1,134 kg) provided that all species are offloaded after each trip and are recorded as sold on a dealer weigh-out. This was done in response to requests to expand the list of species to be included in the 2,500-lb (1,143-kg) threshold catch, and in consideration of concerns expressed about reductions in swordfish landings due to recent regulation changes affecting that fishery.

In response to comments on the proposed rule for the southern incidental longline fishery, a disparity in the wording of the regulations for the southern and northern fisheries was pointed out. To remedy this disparity, the final rule modifies the regulations for allowable incidental bluefin in the northern longline fishery to require that the vessel catch be landed and documented on a dealer weighout as sold.

In response to comments received concerning the proposed measure to prohibit removal of the head, the final rule was modified. In order to facilitate proper identification the removal of the head, fins or gills will be prohibited for young school, school, or medium size categories (smaller than 77 inches (196-cm) total fork length, measured from the snout to the fork of the tail) since gill-raker count is currently the only practical means of species differentiation in smaller fish. In response to concerns about meat storage of fish in the absence of heading, the alimentary organs may be removed and the spinal cord destroyed by insertion of a metal spike.

The final rule has been modified to allow the removal of heads and gills from giant bluefin tuna (77 inches (196 cm) total fork length or greater), provided that the total length is recorded prior to heading and reported to the dealer. Heading of fish is permitted for giant bluefin tuna because neither yellowfin tuna nor bigeye tuna reach the 77-inch (196-cm) length. For enforcement purposes, a headed fish with a pectoral fin to fork length, (measured from the dorsal insertion of the pectoral fin to the fork of the tail) of 57 inches (145 cm) or greater will be considered a giant Atlantic bluefin tuna.

Section 285.31(c) has also been added to enable the Assistant Administrator to rescind the prohibition on heading by a notice action in the event that another scientifically documented and enforceable method for identifying tunas is found.

Among the technical improvements in the proposed rule was a modification to § 285.21(e) that would allow the Regional Director to specify a date when a permit expires. That modification was implemented separately in a final rule published on October 3, 1991 (56 FR 50061), due to the need for sufficient lead time to allow for permit renewal before commencement of the 1992 fishing season. Therefore, that provision is not included in this final rule.

This final rule also modified § 285.29 (a) and (b) of the rule to clarify that the reports required by these paragraphs must be postmarked within the times specified therein.

Classification

An environmental assessment (EA) was prepared in 1983 to implement the ICCAT recommendations of 1982. The EA concluded that there would be no additional significant environmental impacts resulting from the action that were not addressed in the Environmental Impact Statements published in 1980 and 1982. This rule does not alter the scope or intent of those regulations. Copies of the EA may be obtained from the Regional Director (see **ADDRESSES**).

The Assistant Administrator has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. A summary of the reasons for this certification was published at 47 FR 10227 (March 11, 1991). As a result, a regulatory flexibility analysis was not prepared. All of the vessels operating in the Atlantic bluefin tuna fishery are considered small entities. These measures do not reduce the total amount of bluefin tuna allocated for harvest by U.S. fishermen and are not expected to result in under-harvesting of any of the quotas established for bluefin tuna. The impact of the measure specifying the amount of other species to be landed in conjunction with incidental bycatch of bluefin in the southern longline fishery will be that income previously derived from the illicit directed fishery for Atlantic bluefin tuna in the Gulf of Mexico will be redirected to vessels that legitimately land bluefin incidental to other species. This is consistent with the original intent of the rule.

The Assistant Administrator finds, pursuant to the Administrative Procedure Act (APA) (5 U.S.C. 553(d)(3)), for good cause that it is impracticable to delay for 30 days the effective date of this final rule. Because the Gulf longline fishery begins on January 1, this final rule must take effect on December 31, 1991, to ensure United

States compliance with its treaty obligation.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act and approved by the Office of Management and Budget. Section 285.21(c) makes a minor revision to the requirement for vessel permits (OMB Control Number 0648–0202). The reporting burden for permit applications is estimated to average 30 minutes for initial permits and 15 minutes for renewals. Section 285.23 is slightly revised to allow incidental rod and reel harvest in areas outside the Gulf of Mexico. Such harvests must be reported and made available for inspection and attachment of a metal tag within 24 hours of landing. The reporting burden is estimated to average 2 minutes per response (OMB Control Number 0648–0202). Section 285.25 is revised to reflect new telephone numbers to call to request a purse seine vessel inspection 24 hours prior to offloading. The reporting burden is estimated to be 5 minutes per request (OMB Control Number 0648–0202). Section 285.28(a) is revised to include importers of bluefin and thus requires their compliance with dealer reporting requirements. The reporting burden for dealer reports (Section 285. 29 (a) and (b)) is estimated to average 2 minutes per report (OMB Control Number 0640–0239). Section 285.29(e), as well as § 285.30, are revised to reflect new telephone numbers to call to request offloading inspections for buyboats and to request inspection and tagging of unsold medium and giant bluefin. The reporting burden is estimated to be 2 minutes for each request (OMB Control Number 0648–0202). These burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates or any other aspect of these collections-of-information to the Office of Fisheries Conservation and Management, 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20235, Attention: NOAA Desk Officer.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: December 30, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 285 is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. Section 285.2 is amended by adding, in alphabetical order, definitions of "eviscerated" and "fishing record" and by revising paragraph (a) of the definition of "Regional Director" to read as follows:

§ 285.2 Definitions.

* * * * *

Eviscerated means removal of the alimentary organs only.

* * * * *

Fishing record means all records of navigation and operations, as well as all records of catching, harvesting, transporting, landing, purchase or sale.

* * * * *

Regional Director means

(a) For purposes of Atlantic bluefin tuna, the Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–3799; and

* * * * *

3. Section 285.3 is amended by revising paragraphs (b) and (f) and by adding a new paragraph (g) to read as follows:

§ 285.3 Prohibitions.

* * * * *

(b) For any person to land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish that the person knows, or should have known, was taken, retained, possessed, or landed contrary to this part, without regard to the citizenship of the person or registry of the fishing vessel that harvested the fish.

* * * * *

(f) For any person or vessel subject to the jurisdiction of the United States to land any tuna other than giant Atlantic bluefin tuna in forms other than whole or eviscerated, or to possess such bluefin tuna for commercial purposes in forms other than whole or eviscerated unless such tuna has been prepared for immediate packing in a sealed container for shipment or transport. A metal spike may be inserted into the spinal column, leaving a hole in the head of the fish, in order to destroy the spinal cord and enhance meat preservation and quality. In the case of giant Atlantic bluefin tuna, it is unlawful for any person or vessel subject to the jurisdiction of the United States to land any tuna in forms other than round, eviscerated or with the head removed.

(g) For any person subject to the jurisdiction of the United States to land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any regulated species that was harvested, retained, or possessed in a manner contrary to the regulations of another country.

4. Section 285.21 is amended by revising paragraph (c) to read as follows:

§ 285.21 Vessel permits.

* * * * *

(c) *Application procedure.* A vessel owner applying for an Atlantic bluefin tuna permit under this section must submit a completed permit application signed by the owner on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The application must include the name and address of the vessel owner; the name of the vessel, the port where the vessel is docked, the official State registration or U.S. Coast Guard documentation number, the tonnage if known, the length of the vessel, the area to be fished, and the category of the permit. Except for purse seine vessels, an owner may change the category of the vessel's permit by notifying the Regional Director in writing before May 15. After May 15, the vessel's permit category may not be changed for the remainder of the calendar year regardless of any change in the vessel's ownership, unless the vessel never had recorded landings of Atlantic bluefin tuna, or unless there is sufficient evidence for the Regional Director to determine that an error involving contradictory information was made on the application.

* * * * *

5. Section 285.23 is amended by revising paragraphs (f)(1), (f)(2) and (g) to read as follows:

§ 285.23 Incidental catch.

* * * * *

(f) * * *

(1) South of 36°00' N. latitude, one bluefin per vessel per trip may be landed provided that at least 2,500 lbs (1,134 kg) of species other than Atlantic

bluefin tuna are landed and offloaded from the same trip and are recorded on the dealer weighout as sold.

(2) North of 36°00' N. latitude, one bluefin per vessel per trip may be landed provided that it does not exceed two percent by weight of all other fish landed, offloaded and documented on the dealer weighout as sold at the end of each fishing trip.

(g) *Rod and reel.* Subject to the quotas in § 285.22, any person operating a vessel using rod and reel gear and possessing an Incidental Catch permit issued under § 285.21 may catch and retain, annually, one giant Atlantic bluefin tuna as an incidental catch. The permit holder must report to the nearest NMFS enforcement office found at § 285.30(c)(2), within 24 hours of landing, any giant Atlantic bluefin tuna taken and must make the tuna available for inspection and attachment of a metal tag. No such Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose.

6. Section 285.25 is amended by revising paragraph (c) to read as follows:

§ 285.25 Purse seine vessel requirements.

* * * * *

(c) *Inspection.* Any owner or operator of a purse seine vessel with a permit issued under § 285.21(b) must request an inspection of the vessel and fishing gear by an enforcement agent of NMFS before commencing any fishing trip that may result in the harvest of any regulated species and before offloading any Atlantic bluefin tuna. The vessel owner or operator must request such inspection at least 24 hours before commencement of a fishing trip and offloading by calling 508–563–5721 or 508–281–9261. Purse seine vessel owners or operators must have each medium and giant Atlantic bluefin tuna in their catch weighed (round weight), measured, and the information recorded on the appropriate forms at the time of offloading and prior to transporting said tuna from the area of offloading.

* * * * *

7. Section 285.26 is revised to read as follows:

§ 285.26 Size classes.

For any Atlantic bluefin tuna found with the head removed it is deemed, for purposes of this subpart, that the tuna, when caught, fell into a size class in accordance with the following formula: Total fork length equals pectoral fin fork length multiplied by a factor of 1.35. For this purpose, all measurements must be taken along the middle of the lateral surface from dorsal insertion of the pectoral fin of the beheaded fish to the fork of the tail (PF, see Figure 1). The pectoral fin fork length will be the sole criterion for determining the size class of a beheaded Atlantic bluefin tuna. Total fork length will be the sole criterion for determining the size class of whole (head on) Atlantic bluefin tuna. Atlantic bluefin tuna are deemed to fall into size class according to the following table; approximate round weights are given for illustrative purposes only.

Size class	Total fork length	Pectoral fin fork length	Approx. round wt.
Young school	<26 in (<66 cm)	<19 in (<48 cm)	<14 lbs (<6.4 kg)
School	26 to <57 in (66 to <145 cm)	19 to <42 in (48 to <107 cm)	14 to <135 lbs (6.4 to <61 kg)
Medium	57 to <77 in (145 to <196 cm)	42 to <57 in (107 to <145 cm)	<135 to <310 lbs (61 to <140 kg)
Giant	77 in (196 cm) or greater	57 in (145 cm) or greater	310 lbs (140 kg) or greater

8. Section 285.28 is amended by revising paragraph (a) to read as follows:

§ 285.28 Dealer permits.

(a) *General.* A dealer purchasing, receiving, possessing, importing or exporting Atlantic bluefin tuna must have a valid permit required under this section. If such purchase or receipt is made from a buy-boat, the buy-boat must have a valid permit under paragraph (1) of this section.

* * * * *

9. Section 285.29 is amended by revising paragraphs (a), (b) and (e), and by adding an OMB control number to read as follows:

§ 285.29 Dealer recordkeeping and reporting.

* * * * *

(a) Must submit to the Regional Director a daily report on a reporting card provided by NMFS. Said card must be postmarked within 24 hours of the purchase or receipt of each medium or giant Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator and must show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round or dressed weight, the whole fork length, gear used, and area where caught.

(b) Must submit to the Regional Director a weekly report on forms supplied by NMFS. Said report must be postmarked within 2 days after the end of each reporting week in which Atlantic bluefin tuna were purchased or received. Each report must specify accurately and completely: The number of tuna purchased or received, including imported tuna; location where each tuna was landed; the disposition of the tuna (names, addresses and, where applicable, country of destination); the source of the tuna (names and addresses); dates purchased or received; metal tag numbers (where applicable); round or dressed weight and whole fork length (by individual tuna); and any other information requested by the Regional Director. Also, dealers using buy-boats, in addition to the information required above, must include the precise time and date when each tuna was received aboard the buy-boat.

* * * * *

(e) Each operator of a buy-boat, in addition to the above, must notify the Regional Director of any intended offloading, and must request a vessel inspection at least 6 hours before such offloading, by calling 508–281–9261 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, local time, or at all other times during the day and weekends, by calling 508–992–7711. In making the request for inspection, the owner or operator of the buy-boat or a designated representative must provide his/her name, the buy-boat's name and permit number, the number of tuna received, and the location and anticipated time of landing in port.

(Approved by the Office of Management and Budget under OMB control number 0648–0239)

10. Section 285.30 is amended by revising paragraphs (c)(2) and (d) to read as follows:

§ 285.30 Metal tags.

* * * * * *

(c) * * *

(2) Any person who catches a medium or giant Atlantic bluefin tuna and does not transfer it to a permitted dealer must contact the nearest NMFS enforcement office at the time of landing such Atlantic bluefin tuna and make the tuna available for inspection and attachment of a metal tag. The offices to contact are: Portland, Maine (207–780–3241); Otis Air Force Base, Massachusetts (508–563–5721); Brielle, New Jersey (201–528–3315); Atlantic Beach, North Carolina (919–247–4549); Brunswick, Georgia (912–265–0108); Miami, Florida (305–361–4224); St. Thomas, U.S. Virgin Islands (809–774–5226); San Juan, Puerto Rico (809–782–8686); St. Petersburg, Florida (813–893–3145); St. Joe, Florida (904–227–1879); or Corpus Christi, Texas (512–888–3362). The Regional Director may designate a person other than a NMFS agent to inspect and tag the fish. Such designation will be made in writing.

(d) *Removal of tags.* A metal tag affixed to any medium or giant Atlantic bluefin tuna must remain on the tuna until the tuna is either cut into portions or sold for export from the United States. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container. Tag numbers must be recorded on any document accompanying shipments of bluefin tuna for domestic commercial use or for export.

11. Section 285.31 is amended by revising paragraphs (a)(1), (a)(2), (a)(5), (a)(10), (a)(15), and by adding paragraphs (a)(30) through (a)(33), and (c), to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(1) Fish for, catch, possess, or land Atlantic bluefish tuna without a valid permit required under § 285.21 and carried onboard the vessel;

(2) Fish for, catch, possess, or land Atlantic bluefish tuna after fishing has been closed or before fishing has commenced under § 285.20, except under the provisions of § 285.27;

* * * * *

(5) Fish for, catch, possess, or land Atlantic bluefish tuna in excess of any allocation made under § 285.25(d);

* * * * *

(10) Land any tuna other than giant Atlantic bluefin tuna in forms other than whole or eviscerated, or to possess such bluefin tuna for commercial purposes in forms other than whole or eviscerated unless such tuna has been prepared for immediate packing in a sealed container for shipment or transport. A metal spike may be inserted into the spinal column, leaving a hole in the head of the fish, in order to destroy the spinal cord and enhance meat preservation and quality. In the case of giant Atlantic bluefin tuna, it is unlawful for any person or vessel subject to the jurisdiction of the United States to land any tuna in forms other than round, or with the head removed;

* * * * *

(15) Sell, offer for sale, or transfer to any person for a commercial purpose any giant Atlantic bluefin tuna caught incidentally with rod and reel gear under § 285.23(g);

* * * * *

(30) Fish for, catch, possess or land Atlantic bluefin tuna from the Gulf of Mexico except under § 285.23 (f) (1) and (g);

(31) Assault, resist, oppose, impede, intimidate, or interefere with any authorized officer in the conduct of any search, inspection, or seizure made in connection with enforcement of this part;

(32) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search by an authorized officer in the process of enforcing this part;

(33) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part.

* * * * *

(c) The Assistant Administrator may rescind the prohibition on removing the heads of young school, school and medium size Atlantic bluefin tuna if he determines that an alternative definitive method of identifying young school, school and medium size Atlantic bluefin tuna exists. The Assistant Administrator will publish a notice in the Federal Register of such rescission together with an explanation of the alternative method of identification.

12. A new figure 1 to part 285 is added as follows:

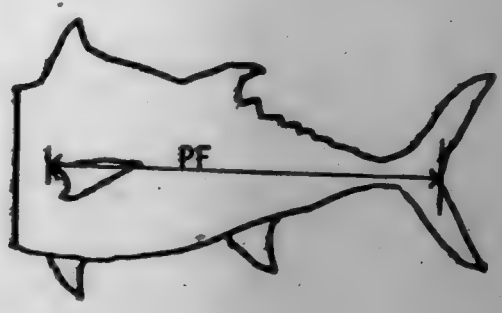

Figure 1. Pectoral fin to fork of tail measurement (PF).

[FR Doc. 91–31330 Filed 12–31–91, 2:11 pm]
BILLING CODE 3510-22-M

[Docket No. 911179-1279]

50 CFR Chapter VI

Policy Guidelines for the Use of Emergency Rules

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of policy guidelines for the use of emergency rules.

SUMMARY: NMFS provides guidelines for the Regional Fishery Management Councils (Councils) in determining whether the use of an emergency rule is justified under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The guidelines were also developed to provide the NMPS regional directors guidance in the development and approval of regulations to address events or problems which require immediate action.

EFFECTIVE DATE: February 5, 1992.

FOR FURTHER INFORMATION CONTACT: CDR Thomas L. Meyer, NOAA, Office of Fisheries Conservation and Management, NMFS, telephone: 301-427-2337.

SUPPLEMENTARY INFORMATION: Section 305(c) of the Magnuson Act provides for taking emergency action with regard to any fishery but does not define the circumstances that would justify such emergency action. Section 305(c) provides that:

1. The Secretary may promulgate emergency regulations to address an emergency if the Secretary finds that an emergency exists, without regard to whether a fishery management plan exists for that fishery;

2. The Secretary shall promulgate emergency regulations to address the emergency if the Council, by a unanimous vote of the voting members, requests the Secretary to take such action; and

3. The Secretary may promulgate emergency regulations to address the emergency if the Council, by less than a unanimous vote of its voting members, requests the Secretary to take such action.

The NOAA Office of General Counsel has defined the phrase "unanimous vote," in items 2 and 3 above, to mean the unanimous vote of a quorum of the voting members of the Council only. An abstention has no effect on the unanimity of the quorum vote. The only legal prerequisite for use of the Secretary's emergency authority is that an emergency must exist. Congress intended that emergency authority be available to address conservation, biological, economic, and social emergencies. In addition, emergency regulations may make direct allocations among user groups, if strong justification and the administrative record demonstrate that, absent emergency regulations, substantial harm will occur to one or more segments of the fishing industry. Controversial actions with serious economic effects, except under extraordinary circumstances, should be done through normal notice-and-comment rulemaking.

The preparation or approval of management actions under the emergency provisions of section 305(c) of the Magnuson Act should be limited to extremely urgent, special circumstances where substantial harm to or disruption of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures. An emergency action may not be based on administrative inaction to solve a long-recognized problem. In order to approve an emergency rule, the Secretary must have an administrative record justifying emergency regulatory action and demonstrating its compliance with the national standards. In addition, the preamble to the emergency rule should indicate what measures could be taken or what alternative measures will be considered to effect a permanent solution to the problem addressed by the emergency rule.

The process of implementing emergency regulations limits substantially the public participation in rulemaking that Congress intended under the Magnuson Act and the Administrative Procedure Act. The Councils and the Secretary must, whenever possible, afford the full scope of public participation in rulemaking. In addition, an emergency rule may delay the review of non-emergency rules, because the emergency rule takes precedence. Clearly, an emergency action should not be a routine event.

NMFS provides the following guidelines for the Councils to use in determining whether an emergency exists:

Emergency Criteria

For the purpose of section 305(c) of the Magnuson Act, the phrase "an emergency exists involving any fishery" is defined as a situation that:

(1) Results from recent, unforeseen events or recently discovered circumstances; and

(2) Presents serious conservation or management problems in the fishery, including impacts on protected species or habitats; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

Emergency Justification

If the time it would take to complete notice-and-comment rulemaking would result in substantial damage or loss to a living marine resource, habitat, fishery, industry participants, or communities, emergency action might be justified under one or more of the following situations:

(1) Ecological—(A) to prevent overfishing as defined in a fishery management plan (FMP), or as defined by the Secretary in the absence of an FMP; or (B) to prevent other serious damage to the fishery resource or habitat; or

(2) Economic—to prevent significant direct economic loss or to preserve a significant economic opportunity that otherwise might be foregone; or

(3) Social—to prevent significant community impacts or conflict between user groups.

Dated: December 27, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-204 Filed 1-3-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Parts 601 and 605

[Docket No. 910496-1307]

Regional Fishery Management Councils; Guidelines for Council Operations and Administration

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS revises the regulations and guidelines governing appointments to, and the operation and administration of, the Regional Fishery Management Councils (Councils) established by the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the preparation of fishery management plans (FMPs) and FMP amendments under the Magnuson Act. These revisions make existing regulations and guidelines consistent with the requirements of sections 302 and 303 of the Magnuson Act as amended by sections 108 and 109 of Public Law 101-627. The revisions: (1) Define Council members' qualifications and strengthen

the appointment process; (2) place a limit on the number of consecutive terms Council voting members may serve; (3) adjust Council voting members' pay and provide for reimbursement of actual expenses for Council staff members; (4) require the NMFS Regional Director or designee, serving on a Council, on the final vote on any matter to be transmitted to the Secretary of Commerce (Secretary) by the Council, to submit a written statement of the reason(s) for casting a negative vote; (5) require each Council to have a Fishing Industry Advisory Committee (FIAC); (6) require notification to local newspapers of closed or partially closed Council meetings; (7) provide for consideration of new information from the public when a Council considers new information from a state or Federal agency or from a Council advisory body, and provide for public comment on the new information presented; and (8) require that each FMP or FMP amendment include a Fishery Impact Statement (FIS).

EFFECTIVE DATE: February 5, 1992.

FOR FURTHER INFORMATION CONTACT: CDR Thomas L. Meyer, NOAA, telephone: 301–427–2337.

SUPPLEMENTARY INFORMATION: Public Law 101–627, the "Fishery Conservation Amendments of 1990," amended and reauthorized the Magnuson Act through September 30, 1993. Section 108 of the Fishery Conservation Amendments amended certain provisions of the Magnuson Act governing the appointment of members to, and the operation and administration of, the eight Regional Fishery Management Councils established by the Magnuson Act. A proposed rule was published at 56 FR 23858 on May 24, 1991, inviting public comments until July 23, 1991. A description of the regulatory amendments and the rationale for them appear in the preamble to the proposed rule, and will not be repeated here.

A technical change was made to § 605.15(b)(2) to clarify that, when the Secretary prepares an FMP or amendment, the Secretary must also include an FIS.

Comments and Responses

Five individuals submitted 23 comments on the proposed rule; their comments are summarized below, with responses to them.

1. *Comment:* One commenter stated that the proposed rule would make the Governors solely responsible for determining whether a nominee is qualified.

Response: No change was made. Clearly § 601.33(e) indicates that the Secretary is responsible for determining whether a nominee is qualified. The Governor is responsible for proposing qualified candidates and supporting their nominations by providing the Secretary with documentation demonstrating that each nominee is knowledgeable and experienced.

2. *Comment:* One commenter suggested adding language to § 601.33(g) to detail the Secretary's responsibilities after receiving the Governor's list of qualified individuals.

Response: The suggested change is more appropriately placed in § 601.33(e), which already contains much of the language proposed. Although the Secretary's review responsibilities are implicit in the current language of this section, NMFS, for clarity, has added at the beginning of § 601.33(e), "The Secretary will review each list of nominees submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of the qualifications required by the Magnuson Act, and the qualification criteria as prescribed in § 601.33(c)." In addition, the word "shall" is substituted for "may" in the second sentence of § 601.33(e), to correspond to revised language in the Magnuson Act.

3. *Comment:* One commenter suggested that § 601.33(c)(6) is a catch-all category and should be excluded. To the extent that there are highly knowledgeable or experienced lawyers, consultants, academics, and journalists, the commenter felt they should qualify under § 601.33(c)(4).

Response: No change was made. Individuals in the fields listed in § 601.33(c)(6) may have extensive knowledge of the fisheries and could add another viewpoint to the Councils. These individuals may have obtained substantial knowledge of the fisheries in activities other than those directly related to management of the fisheries as provided in § 601.33(c)(4). The qualifications of these individuals, therefore, should be listed in a separate category. The language of § 601.33(c)(6) has been strengthened by changing the language to read, "Teaching, journalism, writing, consulting, legal practice, or researching matters directly related to fisheries, fishery management, and marine resource conservation."

4. *Comment:* One commenter suggested that § 601.33(b) should include language not simply to maintain a balance between commercial and recreational fisheries as required under the Magnuson Act, but also a balance among the major fishing gear types harvesting fish or shellfish subject to an FMP.

Response: No change was made. Considering the limited number of appointments to any one Council, representation could not be provided for all major fishing gear types. The FIAC is one appropriate mechanism to allow Councils to provide representation for all gear types in the Council process.

5. *Comment:* One commenter suggested that, to avoid possible conflict of interest problems, the Secretary should promulgate regulations that prohibit the appointment to a Council of any individual who has any direct or indirect financial interests in the fisheries under the jurisdiction of the Council.

Response: No change was made. The Magnuson Act specifically authorizes and encourages individuals with a financial interest in fisheries to participate in Council activities by providing in section 302(b)(2)(A) for the appointment of members of the fishing industry based on their occupational experience. Section 302(k) of the Magnuson Act addresses the possibility of a conflict of interest by requiring nominees to a Council, voting members of a Council, and the executive director of a Council to disclose any financial interest held. Nominees are required to complete a "statement of financial interest" form that is retained on file in the Council offices and made available for public inspection at a reasonable hour upon request.

6. *Comment:* One commenter suggested that regulations be promulgated to require not only that individual Councils have fair and equitable representation among all participants in the fisheries under the jurisdiction of the Council, but that each state delegation of at-large members be representative, to the maximum extent practicable, of all the participants in the fishery. The commenter also felt that the regulations should ensure that one group of participants in the fishery does not have greater representation than another, either on the Council or within an individual state's delegation of at-large members.

Response: No change was made. The principle of balanced representation is the main focus of section 302(b)(2) of the Magnuson Act. It is not possible, however, to provide representation for all participants in the fisheries, given the limited number of appointed members on each Council and the limitation that the Secretary make appointments only from among those individuals nominated by Governors of the Councils' constituent states.

7. *Comment:* One commenter suggested that regulations should

provide criteria for the Secretary to reject all three nominees by a Governor and request the Governor to submit three new nominees if the addition of any of the nominated members would not maintain fair and balanced representation either on the Council or within an individual state's delegation of at-large members.

Response: No change was made. Section 302(b)(2) of the Magnuson Act requires the Secretary, in making appointments to the Councils, "to the extent practicable, to ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council." The Magnuson Act does not provide for the rejection of a nominee because of balancing problems, but only in cases where the Secretary determines that the nominee is not qualified.

8. *Comment:* One commenter suggested that the Secretary promulgate regulations requiring the Councils to establish more than one FIAC, depending on the needs of the individual Council, to ensure the Council receives broad public input.

Response: No change was made. Section 302(f)(6) of the Magnuson Act allows each Council to determine its organization and prescribe its practices and procedures for carrying out its functions. Section 302(g) of the Magnuson Act requires the Councils to establish and maintain a scientific and statistical committee and a fishing industry advisory committee, and allows each Council to establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under the Magnuson Act. The Magnuson Act does not specify how many advisory panels a Council may have.

9. *Comment:* One commenter suggested that the Secretary prohibit Councils from directly using recommendations from the advisory committees in Council proceedings. The commenter stated that Councils frequently use advisory committee recommendations as the beginning mark from which to began deliberations, which, in effect, increases the importance of advisory panel decisions that have been made with restricted public input.

Response: No change was made. NMFS believes that the advice given to the Councils by their advisory committees is extremely valuable and should be used in developing Council management programs, although we expect the Councils to use information from other sources as well.

10. *Comment:* One commenter suggested that the Secretary require that members on advisory committees be representatives of all sectors of the industry and that no one sector should be overrepresented. The commenter also suggested that members should be appointed by the NMFS Regional Director from a recommendation by the Council.

Response: No change was made. The Magnuson Act specifies that the Councils appoint their advisory bodies. Moreover, section 302(g)(3) of the Magnuson Act requires that appointments to the FIAC shall be made by each Council so as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council.

11. *Comment:* One commenter suggested that Council appointments to the FIAC provide fair representation to recreational as well as commercial fishing interests.

Response: No change was made for the reasons given in response 10. NMFS believes, however, that the FIAC should include both commercial and recreational fishing interests, although Congress only specifically referenced commercial fishing interests when requiring fair representation on the committee.

12. *Comment:* One commenter would like to see the Regional Director's statement for rendering a negative vote, as provided for in section 302(e)(4) of the Magnuson Act, be made available to the public when the statement is transmitted to the Secretary.

Response: No change was made. As proposed in this rulemaking, § 605.24(a)(3)(v) will allow the Regional Director 10 working days after adjournment of the Council meeting to submit a statement to the Council giving reason(s) for a negative vote. This statement will be available to the public through the Councils at that time.

13. *Comment:* One commenter suggested that, in addition to providing for public comment when the Council receives new information from a state or Federal agency or from a Council advisory body, the public should be provided an opportunity for comment if new information is provided to the Council by any member of the Council.

Response: No change was made. In amending the Magnuson Act, Congress referenced new information only from state or Federal agencies and a Council advisory body.

14. *Comment:* One commenter stated that the present financial disclosure form does not provide enough meaningful information to reveal all potential conflict-of-interest areas. In addition, financial interests should be disclosed periodically or whenever a new business interest raises the potential of new conflicts.

Response: No change was made to the regulations. NMFS agrees with the comment and will develop a proposed rule requiring each Council member to update his/her financial disclosure form annually, and requiring that the following additional information be provided on the financial disclosure form: the fisheries participated in, the product type produced, and the gear type utilized. Section 302(k)(4) of the Magnuson Act requires that the form be updated at any time any such financial interest is acquired or substantially changed.

15. *Comment:* One commenter stated that Secretarial appointment of a fair and balanced Council should not be disrupted through a Council member's change of allegiance to new clients during that member's term. The commenter felt that achieving certain and balanced representation on the Council could best be achieved through freezing the candidate's industry interests and conflicts at the time of his/her appointment and that such a change in allegiance should require termination of that Council member's term.

Response: No change was made. Individuals are appointed on the basis of knowledge and experience with an effort to achieve fair and balanced representation to the extent possible. As long as an individual properly discloses new interests or changes to existing interests, as section 302(k)(4) of the Magnuson Act requires, a change in a member's financial interest is not a basis for terminating the term of that individual. The Secretary has no authority to restrict a Council member's employment or affiliation. Fair and balanced representation on the Council is reviewed annually, and will be taken into consideration when appointing or reappointing members.

16. *Comment:* One commenter opposed Council appointment of executive directors, staff, or hired lobbyists of either fisheries trade associations or environmental organizations.

Response: No change was made. The Magnuson Act does not provide for exclusion of these individuals. Section 302(b)(2)(B) of the Magnuson Act requires that the Secretary, in making appointments, "to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and

recreational fisheries under the jurisdiction of the Council."

17. *Comment:* One commenter strongly supported a change in the Council nomination process as provided in § 601.33(h) to ensure "that those persons dependent for their livelihood upon the fisheries within Council jurisdiction are fairly represented as voting members," especially as technologies and participants change in the fishery.

Response: No change was made for the reasons given in response 16. To the extent practicable, the Secretary will ensure fair representation on the Council of active participants in the fisheries.

18. *Comment:* One commenter suggested the preparation of an annual report from the NMFS Regional Director describing the active participants in the commercial and recreational fisheries within a Council's area of authority, which would be made public.

Response: No change was made. Section 302(b)(2)(B) of the Magnuson Act requires the Secretary to submit annually a report to Congress describing the actions being taken to ensure that a fair and balanced apportionment of active participants (or their representatives) in the commercial and recreational fisheries is achieved. Once an annual report is sent to Congress, it is available to the public.

19. *Comment:* One commenter requested that appointments to the Councils and to the FIAC be made in accordance with the annual report concerning membership on the Councils.

Response: No change was made. The report will be taken into consideration when making appointments.

20. *Comment:* One commenter requested that the Councils limit the maximum annual salary to be earned by individual Council members through Council business. The commenter felt that regulations should permit additional payment to individuals charged with extra Council responsibilities, but not without prior public testimony, Council debate, and approval of the additional business and expenses.

Response: No change was made. Section 302(d) of the Magnuson Act establishes allowable compensation and expenses for Council members. The Secretary does not have the authority to control the salary or payment of funds to individual Council members. Limits on members' activities are within the Councils' purview.

21. *Comment:* One commenter supported the language on the review of new information and suggested that the phrase "a reasonable opportunity" include the opportunity to examine and consider the data fully. The commenter suggested that public response should not be required until a later meeting following adequate notice.

Response: No change was made. The position of NMFS is that the Council is in the best position to determine what is a reasonable opportunity. The amount of time to respond to new information should correspond to the urgency and complexity of the issue.

22. *Comment:* One commenter stated that the Regional Director's negative vote statement should specifically apply to emergency actions.

Response: No change was made. The requirement for the Regional Director to explain a negative vote pertains to all final votes on any matter to be transmitted to the Secretary by a Council; this includes emergency actions.

23. *Comment:* One commenter stated that public confidence in the management process would be enhanced by requiring all Councils to hold at least one meeting each year in every constituent state.

Response: No change was made. Council meetings are held in various locations to make it easier for all participants in fisheries to attend, but the location is left to the Council's discretion. Councils are no longer restricted to meeting only in the concerned geographical area by section 302(e)(3) of the Magnuson Act and may now meet in any of the constituent states of a Council.

In addition to the comments and responses presented above, two individuals submitted three comments on language in the preamble to the proposed rule; their comments are summarized below, with responses to them.

1. *Comment:* One commenter had no objection to requesting that each nominee provide "a statement of his or her general philosophy on the conservation and management of living marine resources," but stated that a mere statement of philosophy means little and can be easily manipulated by less knowledgeable but more sophisticated "wordsmiths" to the detriment of experienced and knowledgeable commercial and recreational fishermen who have been active in fishery conservation.

Response: NMFS agrees in principle, and has changed the word "general" to "guiding" in reference to the philosophy on conservation and management. NMFS also believes that, because such statements can be made public, it is unlikely that nominees will provide exaggerated statements.

2. *Comment:* One commenter stated that under the qualification, nomination, and appointment of Council members section, the preamble states that "It is agency policy to request that each nominee provide a statement of his or her general philosophy on the conservation and management of living marine resources." The commenter felt that this policy is unnecessary and indicates an intention to promote an agency bias in the selection of nominees. The commenter stated that section 302(b) of the Magnuson Act stipulates that the members of the Councils are to be appointed on the basis of their knowledge and experience. It does not require them to hold particular views in regard to fisheries management.

Response: No change was made. NMFS agrees that nominees should be appointed to Councils primarily on the basis of their knowledge and experience. Extremely important, however, is their ability to act as stewards of the living marine resources for which they are responsible. Because of the national and international developments that significantly affect the growth, maturation, and equitable use of fisheries resources, it has become increasingly critical that the individuals chosen for membership on the Councils possess a reasonably accurate perception of the complex marine resource conservation and fishery management issues they will face as future Council members. Annual appointments to the Council are continually reassessed in terms of members' qualifications, equitable representation, and balance of the many fishery resource user interests. Information relative to an individual's perception of the fishery conservation and resource management issues is an important supplement to the information provided in the resume and other background documents required from the nominees, documents that are vital in determining nominees' qualifications. NMFS, therefore, requested that each nominee provide a written statement of philosophy relative to his/her knowledge and experience of marine resource management issues. This is a request for additional information to assist in making the best selection of individuals for the good of the Nation and the marine resources. Because the total membership is limited in number, this information is an important factor for the Secretary to consider when assessing whether his appointments will provide for a membership that will be able to address effectively the resource problems of the fishery.

3. *Comment:* One commenter stated that under the consecutive terms of Council members section, the preamble states that "It is agency policy to give preference in the selection process to individuals nominated by the Governors who have not already served two consecutive terms." Congress statutorily imposed a limitation of three consecutive terms for Council members in order to address the question of providing balance to Council appointments. The policy statement in the **Federal Register** notice is contrary to the intent of Congress and, in the opinion of the commenter, should be withdrawn.

Response: No change was made. NMFS needs to expand the field of nominees who possess the varied knowledge and experience necessary to confront serious future fishery management problems. A diverse Council membership is desirable for the Councils to consider properly the problems, solutions, and potential effects on the various sectors of the industry impacted by fisheries management. NMFS believes this can be accomplished by giving priority consideration to new nominees and those who have not completed two Council terms. This will greatly aid in NMFS' ability to meet the requirements of the Fishery Conservation Amendments of 1990 to "* * * ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council." This in no way suggests that the reappointment of individuals to a third consecutive term is prohibited by this preference. Certainly, there are Council members whose knowledge, experience, and demonstrated ability to act as stewards of the Nation's resources would qualify them for a third term on the Council. Given the seriousness of this task, it is vital for the Secretary to consider the greatest number of qualified individuals for appointment, particularly since the selection of individuals is constrained by a limited number of at-large seats on each Council.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is not a "major" rule requiring a regulatory impact analysis under E.O. 12291. It revises the regulations and guidelines governing appointments to, and the operation and administration of, the eight Regional Fishery Management Councils established by the Magnuson Act and the preparation of FMPs and FMP amendments under the Magnuson Act. These revisions concern such matters as appointments, eligibility for consecutive terms, members' pay, and notice of closed meetings, which have no effect on industry participants or operations. Other provisions such as requiring the establishment of the FIAC and requiring preparation of an FIS would also have no direct effect on industry participants or operations. These provisions are designed to improve the decisions reached by the Councils.

For the same reasons, the General Counsel of the Department of Commerce has certified to the Chief Counsel of Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Parts 601 and 605

Fisheries, Fishing.

Dated: December 30, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 601 and 605 are amended as follows:

PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

1. The authority citation for part 601 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 601.32 is amended by adding new text at the end of the existing text, to read as follows:

§ 601.32 Terms of Council members.

* * * No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term completed prior to January 1, 1986, shall not be counted in determining the number of consecutive terms served by any Council member.

3. In § 601.33, paragraphs (c), (e), and (h) are revised to read as follows:

§ 601.33 Appointments.

* * * * *

(c) Governors are responsible for nominating only those persons who meet the qualification requirements of the Magnuson Act; they shall provide a statement explaining how each nominee meets the qualification requirements; and they must provide appropriate documentation to the Secretary that each nomination was made in consultation with commercial and recreational fishing interests, and that each nominee who, by reason of his or her occupational or other experience, scientific expertise, or training, is knowledgeable and experienced in one or more of the following ways related to the fishery resources of the geographical area of concern to the Council:

(1) Commercial fishing or the processing or marketing of fish, fish products, or fishing equipment;

(2) Fishing for pleasure, relaxation, or consumption,or experience in any business supporting fishing;

(3) Leadership in a state, regional, or national organization whose members participate in a fishery in the Council's area of authority;

(4) The management and conservation of natural resources, including interactions with industry, government bodies, academic institutions, and public agencies. This includes experience serving as a member of a Council, Advisory Panel, Scientific and Statistical Committee, or Fishing Industry Advisory Committee;

(5) Representing consumers of fish or fish products through participation in local, state, or national organizations, or performing other activities specifically related to the education or protection of the consumer of marine resources; and

(6) Teaching, journalism, writing, consulting, legal practice, or researching matters related to fisheries, fishery management, and marine resource conservation.

* * * * *

(e) The Secretary will review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of the criteria prescribed in § 601.33(c). If the Secretary determines that any nominee is not qualified, the Secretary will notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the nominee in question. The Secretary reserves the right to determine whether nominees are qualified.

* * * * *

(h) The Secretary must, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries in the Council's area of authority. Further, the Secretary must take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries in the Council's area of authority are fairly represented as voting members.

4. In § 601.39, paragraph (a) is revised to read as follows:

§ 601.39 Council member compensation.

(a) The voting members of each Council who are not employed by the Federal Government or any state or local government (that is, anyone who does not receive compensation from any such government for the period when performing duties as a Council member) shall, until January 1, 1992, receive compensation at the daily rate for a GS–18 in the General Schedule, and after December 31, 1991, at the daily rate for a GS–16 (Step 1) in the General Schedule when engaged in the actual performance of duties as assigned by the Chairman of the Council. Actual performance of duties, for the purposes of compensation, may include travel time.

* * * * *

PART 605—GUIDELINES FOR COUNCIL OPERATIONS/ ADMINISTRATION

5. The authority citation for part 605 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 605.15, existing paragraphs (b)(2) through (b)(4) are redesignated as paragraphs (b)(3) through (b)(5), respectively, and a new paragraph (b)(2) is added, to read as follows:

§ 605.15 Establishment of management measures.

* * * * *

(b) * * *

(2) Each FMP or amendment, prepared by or submitted by a Council to the Secretary after October 1, 1990, must include a Fishery Impact Statement (FIS). The FIS shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on participants in the fisheries affected by the FMP or amendment, and on participants in the fisheries conducted in adjacent geographical areas under the authority of another Council, after consultation with such Council and representatives of those participants.

* * * * *

7. In § 605.23, the introductory text of paragraph (d) is revised, existing paragraph (d)(2) is redesignated as paragraph (d)(3), and a new paragraph (d)(2) is added, to read as follows:

§ 605.23 Council organization.

* * * * *

(d) *Advisory groups.* Each Council must establish a Scientific and Statistical Committee (SSC) and a Fishing Industry Advisory Committee (FIAC), and may establish such other Advisory Panels (APs) as necessary or appropriate to assist in carrying out its functions. Councils that already have equivalent fishing industry panels do not need to establish an FIAC. Advisory group size is discretionary within the resources budgeted to each Council. Each Council must specify procedures in its Statement of Organization, Practices and Procedures (SOPP) for continuing involvement of its advisory groups in the development of amendments to Fishery Management Plans (FMPs). Procedures for appointing members to these groups should also be specified in the SOPPs.

* * * * *

(2) *Fishing Industry Advisory Committee (FIAC).* The FIAC provides information and recommendations on, and assists in the development of, FMPs and their amendments. Appointments to the FIAC shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographic area of authority of the Council.

* * * * *

8. In § 605.24, paragraph (a)(2) is amended by adding new text at the end of existing text, paragraph (a)(3)(i) is revised, new paragraph (a)(3)(v) is added, and paragraphs (a)(5)(i) introductory text, (a)(5)(ii), and (a)(7)(i) are revised, to read as follows:

§ 605.24 Council meetings and hearings.

* * * * *

(a) * * *

(2) * * * If a meeting or portion of a meeting is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports) of the time and place of the meeting. Notification is not required regarding any brief closure of a portion of a meeting to discuss employment matters or other internal administrative matters.

(3) * * *

(i) All meetings of the Council advisory panels and working groups must be open, unless closed in accordance with paragraph (a)(5) of this section. Interested persons will be permitted to present oral or written statements regarding the matters on the agenda at regular meetings of the Council, within reasonable limits established by the Chairman. At any time when a Council determines it appropriate to consider new information from a state or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures. A vote is required for Council approval or amendment of a fishery management plan (including any proposed regulations), a Council finding that an emergency exists involving any fishery, or Council comments to the Secretary on fishery management plans developed by the Secretary.

* * * * *

(v) On the final vote on any matter to be transmitted to the Secretary by a Council, the Regional Director of the National Marine Fisheries Service serving on the Council, or his or her designee, when rendering a negative vote, shall submit to the Council within 10 working days after adjournment of the Council meeting a statement explaining the reason(s) for the vote. This statement shall remain on file with the Council and copies made available to the public upon request.

* * * * *

(5) * * *

(i) Each Council, SSC, FIAC, and AP:

* * * * *

(ii) Closed meetings, or portions thereof, must be announced in the news media.

* * * * *

(7) * * *

(i) Each Council must conduct its meetings at appropriate times and places in any of the constituent states of the Council. Two or more Councils may hold joint meetings within a constituent state of one of the Councils for the purpose of discussing issues of mutual concern or for the purpose of developing or amending a joint FMP.

* * * * *

[FR Doc. 92–203 Filed 1–3–92; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Parts 672 and 675

[Docket No. 911183-1322]

RIN 0648-AE46

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS publishes a final rule that delays the opening of the 1992 trawl fisheries in the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands area (BSAI) until Steller sea lion protection measures are implemented or until the Secretary of Commerce (Secretary) publishes a notice in the **Federal Register** disapproving Amendment 25 to the Fishery Management Plan for Groundfish of the GOA and Amendment 20 to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMPs). This action is necessary to prevent the groundfish trawl fisheries from beginning before the Secretary can determine whether the Steller sea lion protection measures in Amendments 20 and 25 are necessary. This action is intended to further the goals and objectives contained in the GOA and BSAI FMPs and the Endangered Species Act (ESA).

EFFECTIVE DATE: January 1, 1992

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained by writing to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Biologist, NMFS, (907) 586-7229.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the GOA and the BSAI are managed by the Secretary under the respective FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations governing the foreign fishery at 50 CFR part 611 and by regulations governing the U.S. fishery at 50 CFR parts 672 and 675. Additional regulations applicable to U.S. fisheries are codified at 50 CFR part 620.

At its September 23-29, 1991, meeting, the Council adopted Amendment 20 to the BSAI FMP and Amendment 25 to the GOA FMP that would authorize the implementation of groundfish management measures for purposes of protecting Steller sea lions, a species of marine mammal listed as threatened under the ESA. The proposed rule that would implement these amendments was published in the **Federal Register** for public review and comment on November 18, 1991 (56 FR 58214). The Secretarial review schedule for Amendments 20 and 25 allows for a January 20, 1992, effective date of the sea lion protection measures.

The 1992 groundfish fishery is scheduled to commence on January 1, 1992. However, NMFS has determined that a delay of the 1992 groundfish trawl fisheries is necessary until Steller sea lion protection measures are implemented or until the Secretary publishes a notice in the **Federal Register** disapproving Amendments 20 and 25. This action is appropriate for the conservation and management of the groundfish fishery. To carry out their objectives, NMFS prepared a proposed rule that would delay the 1992 trawl fisheries and published it in the **Federal Register** on November 26, 1991 (56 FR 59922). The purpose of the season delay is to prevent the groundfish trawl fisheries from beginning before the Secretary can determine whether the Steller sea lion protection measures of Amendment 20 and 25 are necessary. A detailed explanation of this action is provided in the proposed rule.

The proposed rule also described NMFS' determination that the proposed delay of the 1992 groundfish trawl fisheries would require an extension of the January 15, 1992, control date for trawl vessel entry into the Alaska groundfish fisheries for purposes of access limitation management measures that may be considered by the Council (55 FR 36302; September 2, 1990, as corrected at 55 FR 37729; September 13, 1990). By this action, the control date for trawl vessel participation in the groundfish fisheries is extended from January 15, 1992, to a date that is 15 calendar days after the effective date of Amendments 20 and 25.

Comments were invited on the proposed rule until December 4, 1991. No comments were received.

The final rule is being issued without any change from the proposed rule.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an EA for this rule and the Assistant Administrator concluded that no significant impact on the environment will occur as a result of this rule. Copies of the EA may be obtained from the Director, Alaska Region, NMFS (Regional Director) (see **ADDRESSES**).

On April 19, 1991, NMFS concluded formal ESA Section 7 consultation on the BSAI and GOA FMPs and fisheries. The biological opinions issued for the consultations concluded that the FMPs and fisheries are not likely to jeopardize the continued existence and recovery of any endangered or threatened species under the jurisdiction of NMFS. Adoption of the management measures described in this rule will not affect listed species in a way that was not already considered in the aforementioned biological opinions. NMFS determined that no further Section 7 consultation is required for adoption of this rule.

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The regulatory impact review prepared for this action concluded that none of the measures in this rule would cause impacts considered significant for purposes of Executive Order 12291. A copy of this review is available from the Regional Director (see **ADDRESSES**).

The FRFA prepared as part of the EA/RIR/FRFA for this action concluded that this rule could have significant effects on small entities. A detailed explanation is provided in the proposed rule.

The reasons justifying implementation of this final rule make it impracticable and contrary to the public interest to provide a 30-day "cooling off" period under section 553(d) of the Administrative Procedure Act. The scheduled public review and comment period for Amendments 20 and 25 will not allow for Secretarial approval of the sea lion protection measures prior to the start of the 1992 fishing year, January 1. Implementation of this final rule to delay the start of the fishing year until Steller sea lion protection measures are implemented, or until the Secretary publishes a notice in the **Federal Register** disapproving Amendments 20/25, is imperative for it to meet its intended purpose.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

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NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Since the appropriate State agency did not reply within the statutory time period, consistency is automatically inferred.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping.

Dated: December 30, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.23, paragraph (d) is added to read as follows:

§ 672.23 Seasons.

* * * * *

(d) Notwithstanding any other provision of this part, directed fishing for groundfish with trawl gear in the Gulf of Alaska is prohibited for 00:01 a.m. Alaska local time, January 1, 1992, until the date upon which final rules implementing Amendment 25 to the Fishery Management Plan for Groundfish of the Gulf of Alaska are made effective or until the Secretary publishes a notice in the **Federal Register** disapproving Amendment 25.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIANS ISLANDS AREA

3. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

In § 675.23, paragraph (d) is added to read as follows:

§ 675.23 Seasons.

* * * * *

(d) Notwithstanding any other provision of this part, directed fishing for Groundfish with trawl gear in the Bering Sea and Aleutian Islands area is prohibited from 00:01 a.m. Alaska local time, January 1, 1992, until the date upon which final rules implementing Amendment 20 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands are made effective or until the Secretary publishes a notice in the **Federal Register** disapproving Amendment 20.

[FR Doc. 91-31331 Filed 12-31-91; 12:45 pm]

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Proposed Rules

Federal Register
Vol. 57, No. 3
Monday, January 6, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139

[Docket No. A0-14-A64, etc; DA-90-017]

RIN 0581-AA37]

Milk in the New England and Other Marketing Areas; Extension of Time for Filing Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR Part	Marketing area	AO Nos.
1001	New England	AO-14-A64
1002	New York-New Jersey	AO-71-A79
1004	Middle Atlantic	AO-160-A67
1005	Carolina	AO-388-A3
1006	Upper Florida	AO-356-A29
1007	Georgia	AO-366-A33
1011	Tennessee Valley	AO-251-A35
1012	Tampa Bay	AO-347-A32
1013	Southeastern Florida	AO-286-A39
1030	Chicago Regional	AO-361-A26
1032	Southern Illinois-Eastern Missouri.	AO-313-A39
1033	Ohio Valley	AO-166-A60
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A55
1040	Southern Michigan	AO-225-A42
1044	Michigan Upper Peninsula.	AO-299-A26
1046	Louisville-Lexington-Evansville.	AO-123-A62
1049	Indiana	AO-319-A38
1050	Central Illinois	AO-355-A27
1064	Greater Kansas City	AO-23-A60
1065	Nebraska-Western Iowa.	AO-86-A47
1068	Upper Midwest	AO-178-A45
1075	Black Hills, South Dakota.	AO-248-A21
1076	Eastern South Dakota	AO-260-A30
1079	Iowa	AO-295-A41
1093	Alabama-West Florida	AO-366-A11
1094	New Orleans-Mississippi.	AO-103-A53
1096	Greater Louisiana	AO-257-A40
1097	Memphis, Tennessee	AO-219-A46
1098	Nashville, Tennessee	AO-184-A55
1099	Paducah, Kentucky	AO-183-A45
1106	Southwest Plains	AO-210-A52
1108	Central Arkansas	AO-243-A43
1124	Pacific Northwest	AO-368-A19
1126	Texas	AO-231-A60
1131	Central Arizona	AO-271-A29
1134	Western Colorado	AO-301-A22
1135	Southwestern Idaho-Eastern Oregon.	AO-380-A9
1137	Eastern Colorado	AO-326-A26
1138	New Mexico—West Texas.	AO-335-A36
1139	Great Basin	AO-309-A30

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rule.

SUMMARY: This notice extends the time for filing exceptions to a recommended decision issued November 6, 1991, concerning proposed amendments to all federal milk marketing orders. The Milk industry Foundation and International Ice Cream Association requested the additional time to complete exceptions to the recommended decision.

DATES: Exceptions now are due on or before January 31, 1992.

ADDRESSES: Exceptions (four copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 720-4829.

SUPPLEMENTARY INFORMATION: Prior documents in the proceeding:

Advance Notice of Proposed Rulemaking: Issued March 29, 1990; published April 3, 1990 (55 FR 12369).

Notice of Hearing: Issued July 11, 1990; published July 17, 1990 (55 FR 29034).

Extension of Time for Filing Briefs and Reply Briefs: Issued March 28, 1991; published April 3, 1991 (56 Fr 13603).

Recommended Decision: Issued November 6, 1991; published November 22, 1991 (56 FR 58972).

Notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in all Federal order marketing areas which was issued November 6, 1991, is hereby extended to January 31, 1992.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139

Milk marketing orders.

The authority citation for 7 CFR parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Dated: December 24, 1991.

Daniel Haley,
Administrator.

[FR Doc. 92-186 Filed 1-3-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-91-17]

Petition for Rulemaking; Summary of Petitions Received; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for rulemaking received; correction.

SUMMARY: This action makes a correction to the Notice of summaries of petitions for rulemaking published on October 25, 1991, (56 FR 55241). The petition was prepared by Mr. Lawrence B. Smith, Attorney at Law, 3938 E. Grant Rd., t191, Tucson, AZ 85712; Tel.: (602) 326-0283, not (602) 326-0236, as published.

FOR FURTHER INFORMATION CONTACT: Angela M. Washington, Office of

Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-5571.

DATES: Comments on the petition must be received on or before January 27, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Administration Regulations (14 CFR part 11).

Issued in Washington, DC, on December 19, 1991.

Denise D. Castaldo,

Manager, Program Management Staff.

On page 55242, in the **Federal Register** of October 25, 1991, first column, line 35 to the end of the document is correctly revised to read as follows:

Docket No.: 26642

Petitioners: Marvin Borodkin, S. Jon Trachta, and Stephen Parkman.

Regulations affected: 14 CFR 13.19; This notice publishes for public comment a verbatim summary of the petition as provided by the petitioners.

Subject: Amendment of FAR § 13.19 (14 CFR 13.19).

To: Rules Docket (AGC-10), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

From petitioners: Marvin Borodkin, S. Jon Trachta and Stephen Parkman, all of Tucson, Arizona.

Prepared by: Lawrence B. Smith, Attorney at Law, 3938 E. Grant Rd., #191, Tucson, AZ 85712; Tel.: 602/326-0283, Fax: 602/326-8230.

Authority: Administrative Procedure Act, 5 U.S.C. 553(e), 14 CFR 11.25.

Purpose: To amend FAR § 13.19 to include all explicit statement that the Administrator claims and exercises authority to suspend or revoke airmen and operator certificates as an alternative and/or concurrent penalty to that of a civil-money fine for the violation of safety rules.

Comment: FAA officials interpret section 609 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1429(a), to authorize the Administrator to suspend or revoke certificates strictly as punishment for safety violations when no issue of qualification is involved. FAR § 13.19 purports to interpret the authority granted by section 609, yet says nothing of violations or penalties; common sense dictates that it should, so that airmen are warned that their licenses are at risk for such behavior. Nothing in the amendment adds to or changes any FAA enforcement policy.

[FR Doc. 92-149 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[Docket No. 911184-1284]

Proposed Limit on Duty-Free Insular Watches in Calendar Year 1992

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Territorial and International Affairs, Department of the Interior.

ACTION: Proposed rule and request for comments.

SUMMARY: This action invites public comment on a proposal to amend 15 CFR part 303, which governs duty-exemption allocations and duty-refund entitlements for watch producers in the United States' insular possessions (the Virgin Islands, Guam, and American Samoa) and the Northern Mariana Islands.

DATES: Comments must be received on or before February 5, 1992.

ADDRESSES: Address written comments to Frank Creel, Director, Statutory Import Programs Staff, room 4204, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377-1660, same address as above.

SUPPLEMENTARY INFORMATION: The insular possessions watch industry provision in sec. 110 of Public Law 97-446 (96 Stat. 2331) (1983) (19 U.S.C. 1202 note) requires the Secretary of Commerce and the Interior Secretary of the Interior, acting jointly, to establish a limit on the quality of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands. Regulations on the establishment of these quantities and shares are contained in sec. 303.3 and 303.4 of title 15, Code of Federal Regulations (15 CFR 303.3 and 303.4). Section 303.6(h) gives the Secretaries authority to propose changes in § 303.14.

The Departments propose to establish for calendar year 1992 a total quantity and respective territorial shares as shown in the following table:

Virgin Islands	3,700,000
Guam	1,000,000
American Samoa	500,000
Northern Mariana Islands	500,000
Total	5,700,000

Compared with the total quantity established for 1991 (56 FR 9621; March 7, 1991), this amount would be a decrease of 500,000 units. The proposed Virgin Islands territorial share would be lowered by 500,000. The proposed shares for Guam, American Samoa, and the Northern Mariana Islands would not change.

Our reasons for proposing these amounts are as follows:

1. There are no producers in American Samoa and the Northern Mariana Islands. This proposal would leave these territories' shares at the minimum required by the statute.

2. There is only one producer in Guam, and the amount we propose is consistent with the needs of the existing producer along with a set-aside of 200,000 units for possible allocation to new firms in Guam.

3. We do not expect total Virgin Islands shipments in 1992 to exceed 3.5 million units. The amount we propose is consistent with the anticipated needs of the existing producers along with a set-aside of 200,000 units for possible allocation to new firms in the Virgin Islands.

Classification: Executive Order 12291. In accordance with Executive Order 12291 (46 FR 13193, February 19, 1981), the Departments of Commerce and the Interior have determined that this rule does not constitute a "major rule" as defined by section 1(b) of the Order. It is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individuals industries,

Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required.

This regulation was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities. Fewer than ten entities are directly affected by this action. The commerical benefits of the program governed by these regulations, for entities both directly and indirectly affected, are less than $10 million per year.

Paperwork Reduction Act. This rulemaking involves information collection activities subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq, which are currently approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134. The proposed amendments will not increase the information burden on the public.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, we propose to amend 15 CFR part of 303 as follows:

PART 303—[AMENDED]

1. The authority citation for part 303 continues to read as follows:

Authority: Pub. L. 97–446, 96 Stat. 2329, 2331 (19 U.S.C. 1202 note); Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note).

§ 303.14 [Amended]

2. Section 303.14(e) is amended by removing "4,200,000" and adding "3,700,000" in its place.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Stella G. Guerra,

Assistant Secretary for Territorial and International Affairs.

[FR Doc. 92–206 Filed 1–3–92; 8:45 am]

BILLING CODE 3510-DS-M
BILLING CODE 4310-03-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[RM91–11–000]

18 CFR Part 284

Pipeline Service Obligations and Revisions To Regulations Governing Self-Implementing Transportation; Technical Conference

Issued December 27, 1991.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of technical conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is convening a technical conference to afford the natural gas industry and the public an opportunity to discuss with the Commission staff issues with respect to operational aspects of the Commission's July 31, 1991 Notice of Proposed Rulemaking in Docket No. RM91–11–000. In specific, interested persons are invited to respond to staff questions regarding the pipeline industry's ability to provide a delivery service on demand if the Commission adopts its proposal to mandate the unbundling (*i.e.*, separation) of pipeline sales and transportation services except for small customers.

DATES: The public conference will be held January 22, 1992, at 9:30 a.m. Requests to speak should be received by the Commission on or before January 10, 1992. Written responses must be filed with the Commission on or before January 17, 1992.

ADDRESSES: The conference will be held in the Commission's Hearing Room Number 1, 810 First Street, NW., Washington, DC. All requests to speak should identify the name of the speaker and the group represented, refer to Docket No. RM91–11–000, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Braunstein, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capital Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's Copy Contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capital Street, NE., Washington, DC 20426.

I. Introduction

The Commission is convening a technical conference to afford an opportunity for the natural gas industry and the public to discuss with the Commission staff issues with respect to operational aspects of the Commission's July 31, 1991 Notice of Proposed Rulemaking (NOPR).[1] The conference will be held in the Commission's Hearing Room No. 1, 810 First Street, NE., Washington, DC, on January 22, 1992, at 9:30 a.m.[2]

II. Purpose of the Conference

Among other things, the NOPR proposes to require interstate pipelines to unbundle (*i.e.*, separate) their sales and transportation services with one exception for continued bundled sales to

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[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under part 284 of the Commission's Regulations, 56 FR 38,372 (Aug. 13, 1991), FERC Stats. & Regs. (Proposed regulations) ¶ 32,480 (1991).

[2] The Commission notes that on December 18, 1991, the Interstate Natural Gas Association of America, the American Gas Association, the Associated Gas Distributors, the United Distribution Companies, and the American Public Gas Association proposed that a technical conference be convened on the NOPR's operational aspects.

small customers.[8] A number of commenters have raised the issue of the impact of mandatory unbundling on the pipeline industry's ability to continue to provide a reliable service, especially during peak periods. For instance, some commentors are concerned that a "no-notice" type of service may no longer be available. That service permits the pipelines to deliver gas without advance notice in response to increased customer demand caused, for example, by a sudden unexpected change in temperature.

The main purpose of the conference is to obtain additional information on pipeline operations in order to analyze operational issues associated with the Commission's unbundling proposal. The Appendix to this notice sets forth the questions that should be addressed by interested persons. Other related operational matters may be discussed. This conference is not intended to hear a person's arguments for or against the proposal. There should be no discussion of policy or legal matters.

III. Procedures

Persons desiring to make an oral presentation must file a request to speak. Persons with common points of view are urged to appoint a single spokesperson for oral presentations. The request to speak should be filed with the Secretary on or before January 10, 1992. Requests to speak should identify the name of the speaker and the group represented and the questions upon which the speaker wants to make a presentation. The speaker must have sufficient knowledge about the operations of pipeline systems to be able to answer technical questions. The Commission may not be able to accommodate all requests to participate in the conference. However, the Commission will seek to ensure that all segments of the industry are adequately represented. The requests should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, and should refer to Docket No. RM91–11–000. The Commission invites (but does not require) written responses from any interested person on the questions set forth in the appendix. An original and 14 copies of the written responses must be filed with the Commission on or before January 17, 1992, and should be no longer than 30 pages, double-spaced typing, excluding documentation necessary to support answers.

[8] In general, the NOPR proposes that unbundling will occur by moving the point of pipeline sales upstream in or near the production area.

Finally, the Commission expects to consider the final rule in this proceeding shortly after this technical conference is held. Written responses filed after January 17, 1992 will be rejected. In addition, the Commission will not establish any procedures for further written filings after the technical conference. Along these same lines, in order to keep on the current schedule, no request to postpone or delay the conference will be entertained. Simply put, the Commission does not intend to delay issuance of the final rule because of the conference.

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix—Questions To Be Addressed in Technical Conference

(All answers must be documented to the extent possible. Any examples must be in sufficient detail to be replicated by staff.)

Some of the comments on the NOPR claim various operational concerns related to the unbundling proposal. The Commission would like the parties to address whether such operational concerns are probable under the proposal and, if so, what mechanisms can be developed to avoid or reduce such concerns. At the technical conference the parties should specifically address the following:

1. What resources (*e.g.*, communications systems, facilities) are required by a pipeline to provide a bundled "no-notice" sales service?

2. What resources are required to provide a "no-notice" delivery service by an unbundled pipeline? Do these resources differ from those required to provide a bundled "no-notice" sales service and, if so, what would be the costs? Provide estimates of the costs of what additional resources would be needed to provide a "no-notice" delivery service by an unbundled pipeline.

3. What formal or informal operating arrangements or cooperative agreements among a pipeline, its customers and its suppliers are necessary to provide a bundled "no-notice" sales service? How would these differ for a "no-notice" delivery service on unbundled pipelines?

4. How valid are the problems cited in connection with the scheduling of gas under unbundled services and, to the extent valid, how can they be managed?

(a) Is it necessary that shippers be required to schedule gas receipts at specific locations to provide for orderly system operations, and, if so, how should that be done?

(b) Is it necessary that shippers adjust their gas receipt scheduling to pack the line for "no-notice" delivery service, and, if so, how should that be done?

(c) Is it necessary that pipelines have the right to control shipper receipt points through "operational flow orders" as necessary for system integrity, and, if so, when and how should that be done?

(d) How can "agency" arrangements reduce problems associated with uncoordinated shipper scheduling of gas?

(e) Is it necessary to have different arrangements between shippers and their suppliers to ensure adequate gas supplies to meet "no-notice" delivery service. If so, what types of different arrangements would be needed and what would it cost to provide for such arrangements?

5. How valid are the problems cited in connection with open-access storage and, to the extent valid, how should they be managed? Address the impact of different pipeline systems' configurations.

(a) Does any system storage need to be retained for "no-notice" delivery services, and imbalance and line pack management and, if so, how much and under what circumstances?

(b) Under what circumstances, if any, should access to system storage be provided on an aggregate, system-wide basis rather than by individual field? To what extent, if any, would supply area diversification be affected by such access on an aggregate, system-wide basis? If there are such circumstances, would some combination of aggregate, system-wide storage and individual field storage address valid concerns?

(c) To what extent, and under what circumstances, are injection and withdrawal cycle requirements necessary for proper reservoir management and how should these be reflected in tariff provisions?

6. What mechanisms have been employed by pipelines who have already unbundled (*i.e.*, El Paso, Northwest, Transwestern, and Transco) to avoid the problems cited by some parties in their comments?

(a) How is "no-notice" or limited notice delivery service being provided?

(b) How much storage, if any, has been reserved for imbalance and system management purposes?

(c) How are transportation imbalances managed?

(d) Is contract storage available, and on what basis?

(e) What additional facilities have been necessary and what costs have been incurred to achieve this unbundling?

7. Do transportation-only pipelines (*e.g.*, Northern Border, HIOS, and

Trailblazer) provide "no notice" or limited notice delivery service? Have those pipelines experienced the problems cited in the comments and, if so, how valid are the alleged concerns about supply failure. What mechanisms are employed to avoid or reduce the problems?

8. What measures are appropriate to deal with supply failure situations?

(a) Are pre-allocation arrangements at supply-short receipt points effective at managing imbalances? If not, why and how can they be made more effective?

(b) Are current penalties effective in managing imbalances in supply failure situations? If not, why not and how can they be made more effective?

(c) If a supply shortage is traced to an individual shipper can the pipeline control the shipper's deliveries through either physical control or penalties in a timely manner? If not, why not and what effective means of control can be used?

(d) How can the timely reallocation of gas between shippers in a shortage situation be accomplished? What should be the appropriate role of the pipeline and shippers in such reallocation?

(e) How often have shippers refused to reduce takes in shortage situations? How has this affected the system operations? How often have pipelines misappropriated third party gas supplies for system supply sales in shortage situations?

9. Some commenters claim that pipelines providing bundled service can deliver gas because of their control of multiple receipt points. During peak periods, how much additional gas can be delivered because of this control? How valid are concerns about potential loss on unbundled pipelines of throughput now transported by displacement transactions? If the concerns are valid, what steps could be taken on unbundled pipelines to minimize such potential loss?

10. How valid are concerns that bundled pipelines need significantly less mainline and storage capacity then unbundled pipelines because of demand diversity among customers? If valid, what procedures can be instituted on unbundled systems to maximize economies of diversity?

11. Are there significant economies of scope in pipelines' current operations? Provide examples and estimates of cost savings. Would these be affected by unbundling? If so, how and why?

12. Currently, the coordination of multiple pipeline interactions is a factor in system operations.

(a) What problems exist today, and how are they handled?

(b) Would these interactions be affected by unbundling? If so, how and why?

(c) Please discuss specific operational problems that could restrict multiple pipeline transactions. For example, would any operational problems limit third parties from arranging point-to-point transactions between hubs or pooling points across several pipelines thus reducing pipeline coordination?

(d) What can be done to implement these transactions?

13. Can the pipeline provide an unbundled "no-notice" delivery service by simply retaining responsibility for packing the line in the production area or from storage treating the line pack as a physical asset similar to plant?

14. To what extent should the Commission try to differentiate between differing pipeline configurations (*i.e.*, web, bridge, and long-line) in a generic rulemaking?

(a) Are there operational barriers that arise between differently configured pipelines which may limit third party transactions across two or more pipelines and, if so, how should the Commission address such barriers?

(b) What provisions should the Commission adopt that would allow parties in the restructuring proceedings to overcome such barriers?

15. Are there operational factors that interfere with other non-pipeline merchants performing "no-notice" delivery service?

(a) If there is an adequate communication system to coordinate transactions among all market participants, can non-pipeline merchants provide "no-notice" delivery service? What communication systems exist today? Are they effective, and if not, why not?

(b) What distinguishes the natural gas industry from the electric industry, which has implemented communications systems to coordinate transactions?

16. Can "no-notice" delivery service and similar issues be addressed in the context of curtailment provisions in individual pipeline tariff provisions resulting from restructuring negotiations?

17. With respect to unbundled gas storage issues, what operational problems cannot be overcome by changing accounting procedures to accommodate for engineering limits on injection and withdrawal facilities together with reservoirs?

18. Are any operational problems presented by downstream pipelines unbundling services prior to unstream pipelines unbundling of services?

[FR Doc. 92-135 Filed 1-3-92; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915 and 1926

[Docket No. H-71]

RIN 1218-AA98

Occupational Exposure to Methylene Chloride

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; corrections.

SUMMARY: This notice corrects errors that appeared in the Notice of Proposed Rulemaking (NPRM) for Occupational Exposure to Methylene Chloride that the Occupational Safety and Health Administration (OSHA) published on November 7, 1991 (56 FR 57036).

DATES: Comments and requests for a hearing concerning the proposed standard must be postmarked on or before April 6, 1992.

ADDRESSES: Comments are to be submitted in quadruplicate to: The Docket Office, Docket No. H-71, United States Department of Labor, room N-2634, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-7894.

Comments limited to 10 pages or less in length also may be transmitted by facsimile to (202) 523-5046 or 8-523-5046 (for FTS), provided that the original and 3 copies are sent to the Docket Office thereafter.

Requests for a hearing are to be submitted in quadruplicate to Mr. Tom Hall, OSHA, U.S. Department of Labor, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8615.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, United States Department of Labor, room N-3641, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: On November 7, 1991, the Occupational Safety and Health Administration issued a notice of proposed rulemaking (NPRM) for occupational exposure to methylene chloride (56 FR 57036). Two errors were introduced into the

preamble of the NPRM during the process of editing the document for publication. In the first instance, OSHA inadvertently failed to revise Table 18 and Table 19 in the Summary of Preliminary Regulatory Impact and Regulatory Flexibility Analysis so that they reflected the corresponding text (56 FR 57108) regarding the benefits of a revised standard. Those tables, which appeared at 56 FR 57109 and 57110, are corrected to read as follows:

TABLE 18.—REDUCTIONS IN EXCESS CANCER DEATHS OVER 45 YEARS BY ADOPTING 50 PPM STANDARD

Application group	PELs (PPM)	Exposures: Current and expected arithmetic mean (PPM)	Directly exposed workers	Expected excess deaths	Reduction in deaths
Manufacture of MC	500	9.14	124	0.10	
	50	9.14	124	0.10	0.00
Distribution/Formulation of solvents	500	40.18	2,245	8.04	
	50	21.09	2,021	3.80	4.24
Metal Cleaning:					
Cold Degreasing and Other Cold Cleaning	500	26.88	90,293	216.52	
	50	12.38	45,147	49.89	166.63
Open Top Vapor Degreasing	500	115.70	271	2.79	
	50	49.77	244	1.08	1.71
Conveyorized Vapor Degreasing	500	115.70	177	1.82	
	50	36.79	159	0.52	1.30
Aerosol Packing	500	143.34	2,182	27.76	
	50	32.79	1,964	5.74	22.02
Paint and Paint Remover Formulation:					
Paint Remover Formulation	500	23.34	760	1.58	
	50	18.08	684	1.10	0.48
Paint Manufacture	500	11.67	1,808	1.86	
	50	11.34	904	0.92	0.96
Paint Stripping (PS):					
PS—Large Aircraft Firms	500	58.13	1,671	8.65	
	50	29.82	836	2.22	6.43
PS—Small Aircraft Firms	500	58.13	799	4.14	
	50	16.73	400	0.60	3.54
PS—Furniture	500	126.17	5,720	64.11	
	50	29.53	5,148	13.56	50.55
PS—Industrial	500	70.35	6,942	43.49	
	50	26.96	3,471	8.35	35.14
Electronics:					
Semiconductors	500	46.89	3,868	16.25	
	50	19.21	3,868	6.67	9.58
Printed Circuit Boards	500	46.89	832	3.48	
	50	20.51	832	1.52	1.96
Foam Blowing/Pastics:					
Foam Blowing	500	30.10	1,169	3.14	
	50	18.56	1,169	1.94	1.20
Other Plastics/Adhesives	500	29.51	2,546	6.70	
	50	17.03	2,292	3.48	3.22
Ink Use (Printing):					
Ink Solvent Manufacturing	500	40.18	143	0.51	
	50	20.72	14	0.03	0.48
Ink Solvent Use (Blanket Wash)	500	24.17	34,868	75.19	
	50	13.44	3,487	4.18	71.01
Pesticide Formulation	500	40.18	120	0.43	
	50	19.86	120	0.21	0.22
Pharmaceuticals	500	154.87	1,007	13.64	
	50	40.78	1,007	3.66	10.18
Solvent Recovery	500	3.83	161	0.06	
	50	3.83	161	0.06	0.00
Film Base	500	35.80	700	2.23	
	50	29.60	700	1.85	0.38
Polycarbonates	500	3.86	67	0.02	
	50	3.86	67	0.02	0.00
Construction	500	57.68	24,896	127.94	
	50	17.24	19,917	30.64	97.30
Shipyards	500	139.65	3,040	37.69	
	50	7.26	2,432	1.58	36.11
Total, all 25 application groups	500	35.75	186,429	668.36	
	50	16.74	97,187	143.73	524.64
Average annual reduction					11.66

Sources: CONSAD, Crump Report, Office of Regulatory Analysis

TABLE 19.—REDUCTIONS IN EXCESS CANCER DEATHS OVER 45 YEARS BY ADOPTING 25 ppm STANDARD

Application Group	PELs (PPM)	Exposures: Current and expected arithmetic mean (ppm)	Directly exposed workers	Expected excess deaths	Reduction in deaths
Manufacture of MC	500	9.14	124	0.10	
	25	1.75	124	0.02	0.08
Distribution/Formulation of Solvents	500	40.18	2,245	8.04	
	25	10.36	2,021	1.87	6.17
Metal Cleaning:					
Cold Degreasing and Other Cold Cleaning	500	26.88	90,293	216.52	
	25	6.47	45,147	26.08	190.44
Open Top Vapor Degreasing	500	115.70	271	2.79	
	25	4.77	244	0.10	2.69
Conveyorized Vapor Degreasing	500	115.70	177	1.82	
	25	12.15	159	0.17	1.65
Aerosol Packing	500	143.34	2,182	27.76	
	25	6.32	1,964	1.11	26.65
Paint and Paint Remover Formulation:					
Paint Remover Formulation	500	23.34	760	1.58	
	25	4.04	684	0.25	1.33
Paint Manufacture	500	11.67	1,808	1.86	
	25	4.01	904	0.32	1.56
Paint Stripping (PS):					
PS—Large Aircraft Frims	500	58.13	1,671	8.65	
	25	9.57	836	0.71	7.94
PS—Small Aircraft Firms	500	58.13	799	4.14	
	25	14.03	400	0.50	3.64
PS—Furniture	500	126.17	5,720	64.11	
	25	8.40	5,148	3.86	60.25
PS—Industrial	500	70.35	6,942	43.49	
	25	7.72	3,471	2.39	41.10
Electronics:					
Semiconductors	500	46.89	3,868	16.25	
	25	2.60	3,868	0.90	15.35
Printed Circuit Boards	500	46.89	832	3.48	
	25	6.64	832	0.49	2.99
Foam Blowing/Plastics:					
Foam Blowing	500	30.10	1,169	3.14	
	25	5.47	1,169	0.57	2.57
Other Plastics/Adhesives	500	29.51	2,546	6.70	
	25	4.37	2,292	0.89	5.81
Ink Use (Printing):					
Ink Solvent Manufacturing	500	40.18	143	0.51	
	25	10.43	14	0.01	0.50
Ink Solvent Use (Blanket Wash)	500	24.17	34,868	75.19	
	25	4.29	3,487	1.34	73.85
Pesticide Formulation	500	40.18	120	0.43	
	25	2.78	120	0.03	0.40
Pharmaceuticals	500	154.87	1,007	13.84	
	25	4.54	1,007	0.41	13.43
Solvent Recovery	500	3.83	161	0.06	
	25	3.83	161	0.06	0.00
Film Base	500	35.80	700	2.23	
	25	21.54	700	1.35	0.88
Polycarbonates	500	3.68	67	0.02	
	25	3.68	67	0.02	0.00
Construction	500	57.68	24,896	127.94	
	25	5.91	19,917	10.51	117.43
Shipyards	500	139.65	3,040	37.69	
	25	2.22	2,432	0.48	37.21
Total, All 25 Application Groups	500	35.75	166,429	668.36	
	25	6.51	97,187	54.46	613.90
Average Annual Reduction					13.64

Sources: CONSAD, Crump Report, Office of Regulatory Analysis.

In the second instance, the Public Participation section of the NPRM (56 FR 57128) did not provide the requisite notice that interested persons have the right to file objections to the proposal and request an informal hearing. The Public Participation section is corrected to read as follows:

XIII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposed standard. These comments must be postmarked on or before April 6, 1992, and submitted to quadruplicate to the Docket Officer, Docket No. H–71, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Comments limited to 10 pages or less also maybe transmitted by facsimile to 202–523–5046 or FTS 8–523–5046, provided the original and three copies are sent to the Docket Office thereafter. Written submissions must clearly identify the provisions of the proposal which are addressed and the

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position taken with respect to each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions will be made a part of the record of the proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 655), section 107 of the Construction Safety Act (41 U.S.C. 333), and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Officer at the address above and must comply with the following conditions:

1. The objections must include the name and address of the objector;

2. The objections must be postmarked by April 6, 1992.

3. The objections must specify with particularity the provisions of the proposed rule to which each objection is taken and must state the grounds therefor;

4. Each objection must be separately stated and numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655); Secretary of Labor's Order 1–90 (55 FR 9033); and 29 CFR part 1911.

Signed at Washington, DC, this 18th day of December, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 92–104 Filed 1–3–92; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 911211–1311]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed catch sharing plan in Area 2A and request for comments.

SUMMARY: NOAA announces and requests comments on the proposed 1992 Catch Sharing Plan developed by the Pacific Fishery Management Council (Council) to allocate the catch of Pacific halibut between treaty Indian and non-Indian commercial and recreational fishermen off the coasts of Washington, Oregon, and California. The proposed 1992 Catch Sharing Plan allocates the total allowable catch of Pacific halibut in Area 2A between domestic users in accordance with the Northern Pacific Halibut Act of 1982. The purpose of this notice is to solicit public comments on the proposed plan before approval by the Secretary of Commerce and implementation by the IPHC.

DATES: Comments must be received by January 21, 1992.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (Halibut Act), Public Law 97–176, 16 U.S.C. 773c(c) authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the allocation of Pacific halibut catch in U.S. Convention waters, which are in addition to, but not in conflict with, the regulations of the International Pacific Halibut Commission (IPHC). The geographic area herein involved is all U.S. marine waters lying south of the U.S.-Canada border, including the Straits of Juan de Fuca and Puget Sound, known as IPHC statistical Area 2A.

The potential Pacific halibut harvest in Area 2A by the non-Indian commercial fishery, recreational fisheries and treaty Indian tribes now exceeds the total allowable catch (TAC) for Area 2A. Because the effort and catch by the three user groups needs to be controlled and reduced to meet conservation goals established by the IPHC, Catch Sharing Plans that allocate the TAC in Area 2A have been developed each year since 1988. The Council developed a Catch Sharing Plan in 1990 that was approved by the Secretary for continuation into 1991 (56 FR 18533; April 23, 1991) and implemented by IPHC regulations (56 FR 18533; April 23, 1991). The Plan allocated 25 percent of the Area 2A TAC to 12 Washington treaty Indian tribes, with the tribe's share to be taken in subarea 2A–1 (the tribes' usual and accustomed fishing grounds), and 75 percent to non-Indian fishermen. The allocation among non-Indian fishermen was divided 50 percent to commercial users and 50 percent to recreational users. The recreational allocation was further divided 61 percent to areas off Washington and 39 percent to areas off Oregon and California.

For 1992, the Council developed five alternatives for allocating halibut at its September 1991 public meeting. Development of the treaty Indian/non-Indian allocation alternatives was based on input from a Halibut Managers Group consisting of state, Federal, and tribal fishery managers. The proposed allocations between and within commercial and recreational user groups were based on rcommendations from halibut advisory groups and the public developed during public meetings convened by the States of Washington, and Oregon prior to the September Council meeting. The alternatives were distributed by the Council for public comments to be considered at its November 1991 public meeting. The States also convened subsequent meetings with halibut advisors on the alternatives adopted by the Council and presented the results of their meetings at the Council's November 1991 public meeting.

The alternatives considered by the Council at its November 1991 public meeting, including the preferred alternative, are described below. Under each alternative, the Washington recreational allocation applies to the coastal and inland waters off Washington and includes the north coast of Oregon, north of Cape Falcon; the Oregon recreational allocation applies to waters off Oregon south of Cape Falcon and includes the California coast. The tribal ceremonial and subsistence fishery is included in the treaty Indian share as a sub-quota under each of the alternatives. The Council also requested public input on recreational geographic areas, bag limits, seasons, and distribution of catch under each alternative.

Alternative 1. (Preferred Alternative) This alternative (status quo) provides for an allocation of 25 percent of the Area 2A TAC to treaty Indian tribes for harvests in subarea 2A–1, and 75 percent to non-Indian fishermen. The allocation among non-Indian fishermen would be divided 50 percent to commercial users and 50 percent to recreational users. The recreational allocation would be further divided 61 percent to areas off Washington and 39 percent to areas off Oregon and California.

Alternative 2. This alternative provides for an allocation of 25 percent of the Area 2A TAC to treaty Indian

tribes in subarea 2A–1 and 75 percent to non-Indian fishermen. The allocation among non-Indian fishermen would be divided ⅓ to commercial users and ⅔ to recreational users. The recreational allocation would be divided equally between Washington and Oregon. This alternative would result in an equal sharing of the overall TAC between treaty Indian, non-Indian commercial, Oregon recreational and Washington recreational users with each group receiving 25 percent of the Area 2A TAC. The commercial fishery would be restricted to waters off Oregon and California.

Alternative 3. This alternative provides for an allocation of 25 percent of the Area 2A TAC to treaty Indian tribes in subarea 2A–1, and 75 percent to non-Indian fishermen. The non-Indian allocation would be divided ⅓ to commercial users and ⅔ to recreational users. The recreational allocation would be 50 percent of the overall TAC and would be divided 60 percent to Washington and 40 percent to Oregon. The resulting sharing of the overall TAC would be 25 percent to treaty Indian, 25 percent to non-Indian commercial, 30 percent to Washington recreational, and 20 percent to Oregon recreational users.

Alternative 4. This alternative provides for an allocation of 35 percent of the Area 2A TAC to treaty Indian tribes in subarea 2A–1, and 65 percent to non-Indian fishermen. The allocation between non-Indian commercial and Washington/Oregon recreational users is the same as Alternative 2. The overall sharing of the TAC would be 35 percent treaty Indian and equal sharing of the non-Indian TAC between commercial, Oregon recreational and Washington recreational users with each receiving 21.7 percent. The commercial fishery would be restricted to waters off Oregon and California.

Alternative 5. This alternative provides for an allocation of 35 percent to treaty Indian tribes in subarea 2A–1, and 65 percent to non-Indian fishermen. This alternative is similar to Alternative 3 except that the increased 10 percent to treaty Indian fishermen would be taken from the non-Indian commercial allocation. The overall sharing of the TAC would be 35 percent treaty Indian, 15 percent non-Indian commercial, 30 percent Washington recreational, and 20 percent Oregon recreational.

At its November 1991 public meeting, the Council reviewed the potential social and economic aspects of the alternatives and their impacts on treaty Indian and non-Indian commercial and recreational users. An analysis of the alternatives (Regulatory Impact Review) indicated that none of the alternatives would result in substantial net economic increases overall, but rather just shifted the benefits between user groups. The Council also received a report from its Scientific and Statistical Committee on the distribution of halibut biomass in Area 2A and the comparable distribution of harvest effort. The Council considered whether the harvests should be directed to areas of greater biomass, but did not pursue this for 1992. The Council requested its advisory bodies to review this issue further and provide input to the Council in 1993 and beyond. With regard to the commercial fishery, the Council also discussed restructuring the fishery from a directed longline fishery to an incidental catch regime in the salmon troll or sablefish longline fisheries. This issue also was deferred to the future to allow advisory bodies the opportunity for further review. After review of the results of the analysis and consideration of comments from the States and the public, the Council voted to recommend the status quo as the preferred allocation alternative (Alternative 1) for 1992 only. The Council also announced that it is considering an Individual Quota (IQ) system for the Pacific halibut fishery and that fishing activity occurring after November 13, 1991, may not be considered in determining priorities for future participation in the fishery or amount of IQ's issued. A notice of this limited access control date will be published in the **Federal Register** separately from this action.

Proposed 1992 Catch Sharing Plan

The proposed 1992 Catch Sharing Plan (Plan) allocates 25 percent of the Area 2A TAC to Washington treaty Indian tribes in subarea 2A–1, and 75 percent to non-Indian fishermen. The allocation among non-Indian fishermen is divided 50 percent to commercial users and 50 percent to recreational users. The recreational allocation is further divided 61 percent to areas off Washington and 39 percent to areas off Oregon and California. This Plan would distribute the IPHC staff recommended 1992 TAC of 650,000 pounds (294.8 metric tons) in Area 2A as sub-quotas between users as follows.

	Pounds
Treaty Indian sub-quota	162,500 (73.7 mt)
Non-Indian:	
Commercial sub-quota	243,750 (110.6 mt)
Washington Recreational sub-quota	148,687 (67.4 mt)
Oregon Recreational sub-quota	95,063 (43.1 mt)
Total	650,000 (294.8 mt)

Recreational Fisheries

The non-Indian recreational users would be allocated 37.5 percent of the Area 2A TAC. The recreational allocation would be further divided with 22.9 percent of the Area 2A TAC to areas off Washington and 14.6 percent to areas off Oregon. The recreational fisheries are proposed to be divided into five geographic areas, each having separate seasons, quotas, bag limits, and other restrictions as necessary. The Washington recreational allocation would apply to the coastal and inland waters off Washington and includes the north coast of Oregon, north of Cape Falcon. The Oregon recreational allocation would apply to waters off Oregon south of Cape Falcon and includes the California coast. The details of the proposed recreational fisheries structures for the five areas, one of which is divided into two regions, are as follows. The specific dates for each season will be determined in consultation with the IPHC after the Area 2A TAC is announced to ensure that the harvests do not exceed the recreational sub-quotas.

1. *Washington inside waters;* Puget Sound and United States waters in the Strait of Juan de Fuca, east of a line from Bonilla Point (latitude 48°35'44" N., longitude 124°43'00" W.) to Tatoosh Island (latitude 48°23'30" N., longitude 124°44'00" W.) to Cape Flattery (latitude 48°22'55" N., longitude 124°32'42" W.).

Thirty to thirty-five percent of the Washington recreational sub-quota would be allocated to this area. The daily bag limit would be two halibut per person per day with no size limit. Two seasons would be scheduled; an early May to mid-June season that is open 6 days per week, and a mid-June to late June season that is open 2 days per week (Saturdays and Sundays only).

2. *Washington north coast;* west of the line described above and north of the Queets River (latitude 47°31'42" N.).

Sixty to sixty-five percent of the Washington recreational sub-quota would be allocated to this area. The daily bag limit would be one halibut per person per day with no size limit. Three seasons would be scheduled, each with a sub-quota: the first season would commence in early May and would continue until about 85 percent of the area sub-quota is taken; the second season would commence in early July and would be open every Friday and Saturday until about 12 percent of the area sub-quota is taken; and the third season would commence in late August and would be open every day until the

remaining 2 percent of the area sub-quota is taken.

3. *Southern Washington/northern Oregon:* between the Queets River and Cape Falcon (latitude 45°46'00" N.).

Three to eight percent of the Washington recreational sub-quota would be allocated to this area for a continuous season. The season would commence in early May and would continue until late September. The daily bag limit would be one halibut per person per day with no size limit.

4. *Oregon—South of Cape Falcon and north of the California border* (latitude 42°00'00" N.).

Sixty-five to seventy percent of the Oregon recreational sub-quota would be allocated to an early May opening in this area that is divided into two regions each with a sub-quota. The region south of Cape Falcon and north of the Nestucca River (latitude 45°09'45" N.) would have an early May opening for a season that continues in this region until about 2 to 4 percent of the Oregon recreational sub-quota is taken. The region south of Nestucca River and north of California border would have an early May opening for a season that continues in this region until about 60 to 65 percent of the Oregon recreational sub-quota is taken. The daily bag limit in both regions would be two halibut per person per day, one with a minimum 32-inch size limit and the second with a minimum 50-inch size limit.

Thirty to thirty-five percent of the Oregon recreational sub-quota would be allocated to the entire area for two later seasons, each with a sub-quota. The first season would commence in early July in the area inside the 30 fathom curve and would continue until 9 to 12 percent of the area sub-quota is taken. The second season would commence in early August, with no depth restrictions, and would continue until 20 to 29 percent of the area sub-quota is taken. The daily bag limit would be two halibut per person per day, one with a minimum 32-inch size limit and the second with a minimum 50-inch size limit.

5. *California—South of the California border.*

This area would be allocated 2.6 percent of the Oregon recreational sub-quota for a continuous season. The season would commence in mid-May and continue until mid-September. The daily bag limit would be one halibut per person per day with a minimum 32-inch size limit.

The determination of the specific area sub-quotas and dates for these recreational fisheries will be based on public comments, on consultations with the IPHC to ensure that the seasonal structuring does not result in quota overages, and on the following Council objectives for recreational fishery structuring in each State.

The Washington recreational structuring will be based on the following objectives:

1. Provide a stable recreational opportunity for anglers in inside waters, and provide incentive to anglers to fish in Puget Sound with the two-fish limit.

2. Maximize the season length for viable fishing opportunity on the remote halibut grounds off northwest Washington and stagger the seasons to spread out this opportunity to maximize the benefit to anglers who utilize these grounds.

3. On the south coast, an area of relatively low abundance of halibut, provide for the opportunity for anglers to retain halibut caught incidental to other target species.

The Oregon recreational fisheries structuring will be based on the following objectives:

1. Provide special opportunity for anglers out of Pacific City and Garibaldi, where a long-standing relatively small fishery has existed.

2. Provide early opportunity to anglers along the central and south coast especially Newport anglers. The delayed opening (previously April 1) will give private boat anglers more chance at this sub-quota.

3. Provide opportunity for all Oregon ports south of Cape Falcon especially small boat anglers.

4. Provide a short period of opportunity for all ports south of Cape Falcon and allow charterboats and larger private boats to fish productive areas in deeper water off Newport.

5. Provide anglers in California the opportunity to fish in a fixed season.

Treaty Indian Fisheries

Twenty-five percent of the Area 2A TAC would be allocated to 12 treaty Indian tribes for tribal commercial and ceremonial and subsistence (C&S) fisheries in subarea 2A–1 as defined in 50 CFR 301.19(c). The tribal C&S fishery, which is expected to take about 10,000 pounds (4.5 metric tons), would commence on January 1 and continue year-round. No size or bag limits would apply to the C&S fishery except during those periods that the commercial fishery is closed when treaty Indians may take and retain not more than two halibut per day per person. The commercial fishery would be allocated a sub-quota that is equal to the tribal allocation less the tribal estimate of C&S catch. The tribal commercial fishery would commence in early March and continue until the tribal commercial fishery sub-quota is taken. Harvest of halibut for sale by treaty Indians during the commercial fishing season would be subject to the gear and size restrictions that apply to non-Indian commercial fishermen. Halibut taken for ceremonial and subsistence purposes could not be offered for sale or sold.

Commercial Fisheries

The non-Indian commercial fisheries would be allocated 37.5 percent of the Area 2A TAC. The Plan does not address the structuring of the commercial season(s). The commercial fishery opening date, duration, and vessel trip limits for Area 2A will be determined by the IPHC as necessary to ensure that the sub-quota for this fishery is not exceeded.

A final 1992 Catch Sharing Plan will be approved by the Secretary after consideration of public comments. Specific regulations to implement the final plan will be developed by the IPHC at its annual meeting on January 27–30, 1992 in Seattle, Washington, consistent with its responsibilities under the international convention. The actual amounts of halibut allocated to each group may change if the IPHC establishes a TAC that is different than the anticipated 450,000 pounds TAC; however, the percentage for each group will remain the same.

Classification

While this 1992 Catch Sharing Plan is being published in proposed form with a request for public comments, it is a general statement of agency policy that does not require publication of a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553) or any other law. Consequently, the Regulatory Flexibility Act does not apply. A regulatory impact review prepared by the Council for the 1992 Plan to fulfill the requirements of E.O. 12291 indicates that actions taken under the plan are not "major" and the preparation of a Regulatory Impact Analysis is not required. An Environmental Assessment (EA) was prepared for the 1990 IPHC regulations incorporating the 1990 Catch Sharing Plan in accordance with the National Environmental Policy Act (NEPA), and the Assistant Administrator for Fisheries, NOAA, determined that there would be no significant adverse environmental impact resulting from the regulations and that preparation of an environmental impact statement was not required by section 102(2)(C) of NEPA or its implementing regulations. The environmental impacts of the proposed 1992 Catch Sharing Plan and alternatives are no different than those

evaluated in the 1990 EA and; therefore, this action is categorically excluded from the NEPA requirements to prepare another EA in accordance with NOAA Administrative Order 216–6, section 6.02a.3., because the alternatives and their impacts have not changed and the determination of no significant environmental impact would also apply to a 1992 Catch Sharing Plan. This action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612. Copies of the 1990 environmental assessment and the 1992 regulatory impact review are available from the Director (see ADDRESSES). This action has been determined to be consistent to the maximum extent practicable with applicable State coastal zone management programs and has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773k.

Dated: December 31, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–31339 Filed 12–31–91; 2:57 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 3
Monday, January 6, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Stride Environmental Impact Statement, Leary Compartment, Humboldt Co., CA

ACTION: Notice of intent.

SUMMARY: The USDA, Forest Service will prepare the Stride Environmental Impact Statement (EIS) which will analyze and disclose the environmental impacts of a site specific proposal to harvest and regenerate timber, and to construct associated roads within the Leary Compartment of the Orleans Ranger District, Six Rivers National Forest, Humboldt County, California. The Forest Service hereby gives notice of the environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision. The Forest Service invites written input concerning issues specific to the proposed action.

DATES: Any comments that are to be considered in the Draft Environmental Impact Statement (DEIS) must be received on or before February 29, 1992.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to John Larson, District Ranger, Orleans Ranger District, Drawer B, Orleans, CA, 95556.

FOR FURTHER INFORMATION CONTACT: Becky Bryan, Planning Forester. Orleans Ranger District, Drawer B, Orleans, CA, 95556, phone (916) 627–3291.

SUPPLEMENTARY INFORMATION: The project objectives are to harvest between 2 and 8 million board feet of sawtimber in such a way that maintains or enhances the longterm productivity of the existing ecosystems. The Leary Compartment encompasses approximately 5,000 acres in Townships 9 and 10 North. Range 5 East. Humboldt Base Meridian. This compartment is adjacent to the Red Cap Creek, a main tributary to the Klamath River, and encompasses all of Leary Creek. Prior timber management has resulted in the harvesting of 1,800 acres since 1955 and the construction of several miles of road. Opportunities for the enhancement of fisheries, water quality, and wildlife habitats will be considered. A reasonable array of alternatives will be analyzed. One of these will be "No Action", in which no timber harvest or road construction would occur. Other alternatives will consider various levels and locations of harvest and related road construction in response to the issues generated through scoping.

Public participation is a vital part of the process (40 CFR 1501.7). Federal, State, and local agencies, local residents, and other individuals or organizations who may be interested in or affected by the decision are hereby invited to participate in the scoping process. This process will be used to:

1. Identify the issues to be addressed.
2. Identify those issues to be analyzed in depth.
3. Eliminate insignificant issues or those which have been covered by previous environmental review.
4. Explore additional alternatives.
5. Identify potential environmental effects of the proposed action and the alternatives.

The proposed scoping process includes:

1. Written contact with local residents of Orleans, potential timber purchasers, and organizations and agencies that have expressed prior interest in timber management decisions on the Orleans Ranger District.
2. Posting of this Notice of Intent on the bulletin boards in Orleans, CA, and publishing this Notice in the Kourier newspaper, Willow Creek, CA.
3. Two public meetings will take place in the conference room of the Orleans Ranger Station located on Ishi Pishi Road near Highway 96 in Orleans, Ca. This first meeting will be held on January 8, 1992 at 7 p.m. The second meeting will be held on January 9, 1992 at 1 p.m.

James L. Davis, Jr., Forest Supervisor, Six Rivers National Forest, is the responsible official.

The analysis is expected to take about 6 months. The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and made available for public review by August 1992. At that time, EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the DEIS will be 45 days from the date that EPA's Notice of Availability appears in the **Federal Register.** It is very important that those interested in the management of the Leary Compartment participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of a DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, (1978), and that environmental objections that could have been raised at the draft stage may be waived or dismissed if not raised until after completion of the Final Environmental Impact Statement (FEIS), *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022, (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends for the DEIS, the comments received will be analyzed and incorporated in the preparation of the FEIS. The FEIS is scheduled to be completed by December 1992. In the FEIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Dated: December 23, 1991.

Jack R. Kahl,

Fish and Wildlife Staff Officer.

[FR Doc. 92–115 Filed 1–3–92; 8:45 am]

BILLING CODE 3410–11–M

RIN 0596–AB06

Recreation Residence Authorizations

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; extension of public comment period.

SUMMARY: On October 10, 1991, at 56 FR 51260, the Forest Service gave notice of its intent to seek public comments on a draft revised policy for administering special use permits that authorize privately-owned recreation residences on National Forest System lands. The policy is being revised in response to an administrative appeal decision by the Assistant Secretary of Agriculture for Natural Resources and Environment. The comment period on this draft policy was to close on January 8, 1992. However, a number of individuals and organizations have indicated that the 90-day period was insufficient time to review and analyze the draft policy, particularly since the comment period encompassed the holiday period, and, therefore, have requested additional time to prepare comments. In addition, the Forest Service has found that some holders of recreation residence authorizations, in a mailing made to all holders by the agency's Washington Office, may not have received a copy of the October 10, 1991, notice. A follow up mailing has been made to those holders believed affected. Accordingly, the Forest Service has decided to extend the comment period an additional 60 days to March 8, 1992.

DATES: Comments must be received in writing and postmarked no later than March 8, 1992.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2720), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Questions about this proposed policy should be addressed to J. Kenneth Myers, Lands Staff, at the address above, or by calling (202) 205–1248.

Dated: December 30, 1991.

George M. Leonard,

Associate Chief.

[FR Doc. 92–136 Filed 1–3–92; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will be held from 9 a.m. until 5 p.m. on Friday, February 7, 1992, at the University Place Hotel, 850 West Michigan Street, Indianapolis, Indiana. The purpose of this meeting is for the Committee to discuss its report on hate crime and to plan a future project.

Persons desiring additional information should contact Hollis E. Hughes, Committee Chairperson at (219) 233–9305 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 27, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–150 Filed 1–3–92; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will be held from 9 a.m. until 5 p.m. on Thursday, January 23, 1992, at the Omni International Hotel, 333 E. Jefferson Avenue, Detroit, Michigan. The purpose of this meeting is for the Committee to discuss its report on hate crimes and to plan a future project.

Persons desiring additional information should contact Dennis L. Gibson, Committee Chairperson at (313) 863–9394 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 352–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 27, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–151 Filed 1–3–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–806]

Electrolytic Manganese Dioxide From Japan; Final Scope Ruling

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Preliminary scope ruling.

SUMMARY: In response to a July 7, 1989, request to exclude high-grade chemical manganese dioxide (CMD–U) produced by Chuo Denki Kogyo Co., Ltd. (Chuo Denki) from the scope of the antidumping duty order on electrolytic manganese dioxide (EMD) from Japan, the Department of Commerce (the Department) issued a preliminary ruling that CMD–U is a later-developed product within the scope of the antidumping duty order on EMD from Japan. 56 FR 56977 (November 7, 1991). The Department hereby reaffirms its preliminary ruling.

EFFECTIVE DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Carlo Cavagna or Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4474 and 377–4851, respectively.

SUPPLEMENTARY INFORMATION: On July 7, 1989, the Department received a request from Sumitomo Corporation of America (SCOA) to clarify the scope of the outstanding duty order on EMD from Japan by ruling that CMD–U is outside the scope of the order. By letter of July 17, 1989, we invited interested parties to comment on SCOA's request. We received comments from Petitioners, Kerr-McGee Chemical Corporation (KMCC) and Chemetals, Inc. (Chemetals), arguing that CMD–U is a later-developed product that, based on an analysis of the criteria specified in 19 U.S.C. 1677j(d), is within the scope of the order. We received rebuttal comments from SCOA and Chuo Denki arguing that CMD–U is not a later-developed product and that all grades of CMD

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should be determined to be outside the scope of the antidumping order on EMD because CMD was excluded from the original investigation. By letter of June 5, 1990, Petitioners suggested that the later-developed product issue must be decided before ruling on SCOA's exclusion request.

On November 7, 1991, the Department published a preliminary determination in the **Federal Register**. Electrolytic Manganese Dioxide From Japan; Preliminary Scope Ruling, 56 FR 56977 (November 7, 1991). In this determination, the Department found that CMD–U was a later-developed product within the scope of the order and invited interested parties to comment within thirty days. The Department did not receive any comments from interested parties. In accordance with section 781(e) of the Tariff Act of 1930, as amended, the Department also notified the International Trade Commission (ITC) of its preliminary determination. By letter of December 3, 1991, the ITC notified the Department that consultations concerning the proposed inclusion of CMD–U in the scope of the order on EMD from Japan would not be necessary.

Because interested parties and the ITC declined to comment on the Department's proposed inclusion, there is no reason for the Department to change its findings from those presented in its preliminary scope ruling. Therefore, the Department reaffirms its preliminary decision that CMD–U is included in the scope of the order on EMD from Japan. CMD–U was not specifically included or excluded from the original scope of the order because development of CMD–U was not yet complete at the time of the petition and investigation. Therefore, CMD–U is a "later-developed product." Because of the similarities between the physical characteristics, the expectations of the ultimate purchasers, the ultimate uses, the channels of trade, and the methods of advertisement and display, CMD–U is the same class or kind of merchandise as EMD, and, therefore, subject to the antidumping duty order on EMD. A detailed summary of the arguments presented by interested parties and of the Department's findings is contained in the preliminary scope ruling. 56 FR 56977 (November 7, 1991).

The final scope ruling is in accordance with section 781(d) of the Tariff Act. 19 U.S.C. 1677j(d).

Dated: December 20, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–207 Filed 1–3–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests by the petitioner and a respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada. The review covers the only known manufacturer/exporter of this merchandise to the United States for the period September 1, 1989 through August 31, 1990. We preliminarily determine the dumping margin for this period to be 7.24 percent. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Allan Christian or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 36300) of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada for the period September 1, 1989 through August 31, 1990. On September 24 and September 25, 1990, the respondent, Allatt Paving Division of Ingersoll-Rand Canada, Inc., and the petitioner, Blaw Knox Construction Equipment Co., requested an administrative review of the antidumping finding. We initiated the review on October 26, 1990 (55 FR 43154). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of replacement parts for self-propelled bituminous paving equipment, excluding attachments and parts for attachments. This merchandise is currently classifiable under HTS items 4016.93.10, 7315.11.00, 7315.89.50, 7315,90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, and 9015.30.40. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise, Allatt-Paving Division of Ingersoll-Rand Canada, Inc. (Allatt), and the period September 1, 1989 through August 31, 1990.

United States Price

In calculating United States price, the Department used purchase price and exporter's sales price, as defined in section 772 of the Tariff Act. For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. For those transactions in which sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For the latter sales, the Department determined that purchase price was the appropriate determinant of United States price because the merchandise was shipped immediately after importation from the related sales agent to the unrelated buyers, without being introduced into the inventory of the related selling agent. Moreover, this arrangement was the customary commercial channel for sales of this merchandise between the parties involved. Finally, the related selling agent located in the United States acted mainly as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where sales to the first unrelated purchaser occurred after importation into the United States, we based United States price on exporter's sales price, in accordance with section 772(c) of the Tariff Act. Purchase price (PP) and exporter's sales price (ESP) were based on the packed, f.o.b. prices to unrelated purchasers in the United States. We made adjustments, where applicable, for brokerage charges, U.S. and foreign inland freight, U.S. duties and discounts. For ESP sales, we also deducted commissions to unrelated parties, credit, and indirect selling expenses.

For end user sales, we accounted for the Canadian Federal Sales Tax (FST) imposed in Canada, but rebated or not collected of reason by exportation of the merchandise to the United States. We did so by adding a constructed U.S. FST to the U.S. price pursuant to 19 U.S.C. 1677a(d)(1)(C). No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, where sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Where sufficient quantities of such and similar merchandise were not sold in the home market, we used constructed value in accordance with 19 U.S.C. 1677b(a)(2).

Home market price was based on the packed, ex-factory or delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for discounts, inland freight, credit expenses, commissions, and differences in merchandise. When making comparisons with PP sales, we deducted home market commissions and home market credit expenses from FMV and added U.S. commissions and U.S. credit expenses to FMV. In those instances in which commissions were paid in the home market but not in the U.S. market (*i.e.*, Allatt part sales), we deducted home market commissions from FMV and added to FMV the lesser of U.S. indirect selling expenses or home market commissions. See 19 CFR 353.56(b)(1). When making comparisons with ESP sales, we also deducted indirect selling expenses from foreign market value in an amount not exceeding the indirect selling expenses incurred in the U.S. market. We also made circumstance-of-sale adjustments, where appropriate, pursuant to 19 U.S.C. 1677b(a)(4), in an amount of the difference in taxes between the Canadian and U.S. markets to ensure a tax-neutral margin.

We calculated constructed value by adding material and fabrication costs, selling, general and administrative expenses (SG&A), profit, and U.S. packing. Since actual SG&A expenses were greater than the statutory minimum of ten percent of the sum of materials and fabrication costs, we used actual SG&A expenses. We used the statutory minimum of eight percent for profit.

No other adjustments were claimed or allowed.

Preliminary Results of the Reviews

As a result of our review, we preliminarily determine that the margin for Allatt is 7.24 percent for the period September 1, 1989 through August 31, 1990.

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than ten days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due.

The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Srevice.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the initial less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to Allatt, or any other previously-reviewed firm, will be the "All Others" rate established in the final results of this administrative review. This rate represents the highest rate for any firm in this administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on the best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act, as amended (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 23, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-208 Filed 1-3-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-816]

Postponement of Preliminary Countervailing Duty Determination: Certain Softwood Lumber Products From Canada

AGENCY: Import Trade Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is postponing its preliminary determination in the countervailing duty investigation of certain softwood lumber products from Canada. The Department will now issue its preliminary

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determination no later than February 24, 1992.

EFFECTIVE DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau of Barbara Tillman, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Telephone (202) 377–2786.

SUPPLEMENTARY INFORMATION: On October 31, 1991, the Department of Commerce published the self-initiation of a countervailing duty investigation on certain softwood lumber products from Canada (56 FR 56056). This notice stated that the preliminary determination would be issued on or before 85 days following publication of our notice of initiation.

Prior to self-initiation, the Department determined that it did not have sufficient evidence to warrant an investigation of the log export restrictions programs in Canada. On December 3 and December 13, 1991, the Department received timely allegations with respect to British Columbia and Alberta, Ontario and Quebec that log export restrictions constitute subsidies within the meaning of the countervailing duty law. Since these allegations contain sufficient evidence demonstrating that the restrictions have a measurable downward effect on log prices, the Department has decided to investigate the export restriction programs of British Columbia, Alberta, Ontario, and Quebec.

The investigation of the log export restriction programs is highly complex and involves a number of novel issues. We have determined that additional time is necessary to make the preliminary determination, and that the federal and provincial governments of Canada are cooperating in this investigation.

For these reasons, we determine that this investigation is extraordinarily complicated in accordance with 19 CFR 355.15(b), and are postponing the preliminary determination until February 24, 1992.

This notice is published pursuant to 19 CFR § 355.15(e).

Dated: December 31, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–209 Filed 1–3–92; 8:45 am]

BILLING CODE 3510–DS–M

Short-Supply Determination: Certain Steel Casing and Tubing

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain steel casing and tubing.

SHORT-SUPPLY REVIEW NUMBER: 61.

SUMMARY: The Secretary of Commerce hereby denies a short-supply request for 59.4 net tons of certain steel casing and tubing for the first quarter of 1992 under paragraph 8 of the U.S.–Japan steel arrangement.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Brechtl or Kathy McNamara, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377–1386 or 377–1390.

SUPPLEMENTARY INFORMATION: On November 29, 1991, the Secretary of Commerce ("Secretary") received an adequate petition from Kawasaki Thermal Systems, Inc. ("KTS") requesting a short-supply allowance for 59.4 net tons of modified American Petroleum Institute 5CT seamless L80 steel casing and tubing for the first quarter of 1992, under paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of American Concerning Trade in Certain Steel Products. KTS requests the following quantities of three different sizes of this steel casing and tubing: 17.2 net tons of seamless casing that is 5½ inches in diameter and weighs 15.5 pounds per foot, 18.9 net tons of seamless casing that is 5½ inches in diameter and weighs 17 pounds per foot, and 23.3 net tons of seamless tubing that is 4 inches in diameter and weights 10.5 pounds per foot. KTS will weld the casing and tubing together to form coaxial double walled joints which will be exported to Europe for use in a heat exchanger for the disposal of solid wastes. KTS states that the only U.S. manufacturer of this material to its knowledge, USX Corporation ("USX"), was unable to meet its quantity or delivery requirements. Thus, KTS claims that this material is not available domestically. KTS states that because of the recent drop in the DRI forecast for apparent consumption of OCTG and the resultant reduction in export licenses available to Japanese exporters, it cannot obtain the subject casing and tubing from its potential Japanese supplier, Nippon Steel, without additional export licenses. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law 101–221, 103 Stat. 1886 (1989) (the "Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures. (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

On November 29, 1991, the Secretary established an official record for this short-supply request (Case Number 61) in the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce at the above address. On December 9, 1991, the Secretary published a notice in the **Federal Register** (56 FR 64243) announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than December 16, 1991, and interested parties were invited to file replies to any comments no later than five days after that date. In order to determine whether this product could be supplied by U.S. producers for the first quarter of 1992, the Secretary sent questionnaires to six domestic casing and tubing producers that potentially have the capability to produce the requested material: UXS, CF&I Steel Corporation ("CF&I"), North Star Steel ("North Star"), Lone Star Steel ("Lone Star"), Koppel Steel Corporation ("Koppel"), and Al Tech Specialty Steel Corporation ("Al Tech"). All comments by interested parties concerning the review were due by December 16, 1991, and replies to those comments were to be filed no later than five days after that date. The Secretary received timely questionnaire responses from UXS, CF&I, North Star, Koppel, and Al Tech, rebuttal comments from KTS addressing the responses from USX, CF&I, and North Star, and additional comments from UXS and CF&I. Lone Star's submission was not timely and cannot be considered in this review.

Questionnaire Responses

Koppel and Al Tech did not offer to supply the requested product. USX offered to supply KTS with all of the requested material. USX offered to supply KTS with all of the requested material. USX stated that it could deliver the 5½ inch material in 4 to 6 weeks and the 4 inch material in 4 to 12 weeks. USX indicated that it was willing to accept minimum orders of 20 net tons per size, revised downward from its usual minimum order of 50 net tons per size.

North Star also offered to supply all of the 5½ inch material with an order-to-delivery period of 8 to 10 weeks. CF&I stated that it is able to supply all of the 5½ inch material with an order-to-delivery period of 4 to 10 weeks for the first quarter of 1992. On December 23, the Department contacted CF&I for clarification of its reported order-to-delivery time for the first quarter of 1992. CF&I stated that its correct order-to-delivery time is now 4 weeks for the requested material.

KTS's rebuttal comments contend that no domestic producer can deliver the requested product in time to satisfy its needs. KTS states that failure to receive the entire order by February 14, 1992, will cause it to be unable to meet its required delivery date to its European customer and will result in cancellation of the order. Further, KTS contends that USX's minimum order of 20 net tons per size still exceeds the quantities KTS requested for the two sizes of casing.

On December 20, USX responded to the minimum order issue by stating that it is willing to supply KTS with the quantities of 5½ inch material requested, 17.2 and 18.9 net tons, even though these amounts are less than USX's revised minimum order. On December 26, the Department contacted USX for clarification of the reported 4 to 12 week order-to-delivery period. USX stated that its correct order-to-delivery time for the 4 inch material is 4 to 6 weeks.

Analysis

The major issues in this short-supply review are whether the three domestic companies that have offered to supply the requested casing and tubing can deliver it to KTS within the normal order-to-delivery period for this product and whether USX is an acceptable supplier for quantities below 20 net tons per size.

According to the House Report to the Steel Trade Liberalization Program Implementation Act ("House Report"), the Secretary is to consider "the ability of the domestic supplier to deliver the requested product within the time frame designated by the petitioner, provided that such time frame is reasonable in light of normal order-to-delivery periods." The normal order-to-delivery period for this material, as stated in the questionnaire responses from USX, CF&I, and North Star, is 4 to 10 weeks. The first quarter of 1992 order-to-delivery times offered by USX, CF&I, and North Star for the requested product are within this range. KTS has not shown that the order-to-delivery periods offered by these three domestic producers are unreasonable or outside the normal order-to-delivery period for the industry for this material. Therefore, USX, CF&I, and North Star should be considered as able to supply KTS with the requested product within the normal order-to-delivery period.

KTS also states that USX is not an acceptable supplier of the requested material because the amounts requested for the two sizes of casing (17.2 and 18.9 net tons) are less than USX's stated minimum order of 20 net tons per size. USX, however, has stated that it is willing to accept orders for this material at tonnage levels below 20 net tons. Therefore, USX is an acceptable supplier for these quantities.

Conclusion

Because three domestic producers have offered to supply KTS in whole or in part with the requested steel casing and tubing within a normal order-to-delivery period, the Secretary has concluded that a condition of short supply does not exist for the requested product. Pursuant to section 4(b)(4)(A) of the Act, and § 357.102 of Commerce's Short-Supply Procedures, the Secretary denies KTS's short-supply request for 59.4 net tons of the certain steel casing and tubing included in this request for the first quarter of 1992, under the U.S.-Japan steel arrangement.

Dated: December 27, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-210 Filed 1-3-92; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-169. *Applicant:* Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. *Instrument:* Scanning Electron Microscope Accessories. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used in geochemical studies for analysis of hydrogen isotope ratios in waters. *Application Received by Commissioner of Customs:* November 15, 1991.

Docket Number: 91-173. *Applicant:* Laboratory of Cellular Biology, NIDCD, 9000 Rockville Pike, Building 10, room 5D50, Bethesda, MD 20892. *Instrument:* Electron Microscope, Model CEM 902. *Manufacturer:* Carl Zeiss, Germany. *Intended Use:* The instrument will be used for several analytical studies including the following:

(1) Resolution studies of replicas of auditory sensory tissues where a molecular resolution can be achieved,

(2) Visualization of frozen hydrated specimens including molecular aggregates, isolated organelles such as stereocilia and intact sensory cells,

(3) Increased contrast in unstained freeze-substituted specimens, where low contrast is a limiting factor in a conventional electron microscope,

(4) Increased contrast and definition in imaging thick specimens and

(5) Increased contrast in EM immunocytochemical specimens.

Application Received by Commissioner of Customs: November 25, 1991.

Docket Number: 91-174. *Applicant:* U.S. Geological Survey, Box 25046, Denver Federal Center, Denver, CO 80225. *Instrument:* Mass Spectrometer System, Model 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used for studies of the stable isotope variations that resulted during the formation and history of waters, rocks and minerals from a variety of geologic sites and contexts. *Application Received by Commissioner of Customs:* November 26, 1991.

Docket Number: 91-175. *Applicant:* Oregon State University, College of Oceanography, Ocean Administration Building 104, Corvallis, OR 97331-5503. *Instrument:* Deep Ocean Particle Sampler. *Manufacturer:* Challenger Oceanic Systems and Services, United Kingdom. *Intended Use:* The instrument will be used for existing and proposed research programs which are designed to define the link between upper water column properties, biological productivity, and the climate signal recorded in marine sediments. Measurements of particle flux and biological productivity are an essential component of these studies. *Application Received by Commissioner of Customs:* November 25, 1991.

Docket Number: 91–176. *Applicant:* University of California at Los Angeles, Department of Neurology, UCLA School of Medicine, 10833 LeConte Avenue, Los Angeles, CA 90024–1769. *Instrument:* Video Oculography System. *Manufacturer:* Senso Motoric Instruments GmbH, Germany. *Intended Use:* The instrument will be used to examine humans who are either suspected of having disorders of the gravity-sensing organs in their inner ears or related brainstem connections; and to evaluate normal human subjects, particularly astronauts, to determine their susceptibility to motion sickness. *Application Received by Commissioner of Customs:* November 29, 1991.

Docket Number: 91–177. *Applicant:* The Regents of the University of California, Material Management Department, Riverside, CA 92521. *Instrument:* Flow Sample Handling Unit, Model DX.17MV/SHU. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument will be used to study rapid reactions catalyzed by enzymes. The results of the work are expected to contribute important new basic information about how biological systems function. In addition, the instrument will be used in a biochemistry course to train M.S. and Ph.D. students in state-of-the-art instrumentation applications to the study of biological systems. *Application Received by Commissioner of Customs:* November 29, 1991.

Docket Number: 91–178. *Applicant:* Research Foundation State University of New York, Stony Brook, NY 11794. *Instrument:* Tandem Fabry-Perot Interferometer. *Manufacturer:* J.R. Sandercock, Switzerland. *Intended Use:* The instrument will be used for the study of acoustic velocities in oxide and silicate minerals and their chemical analogues. Experiments will include investigating these properties for several different samples and for some samples in extreme pressure and temperature environments. The objective of the experiments is to better understand the current state of the Earth's interior by comparing these results with those of seismology. In addition, the instrument will be used for educational purposes in the courses GEO 556—Solid State Geophysics and GEO 607—Topics in Geophysics. *Application Received by Commissioner of Customs:* November 29, 1991.

Docket Number: 91–179. *Applicant:* U.S. Geological Survey, Water Resources Division, 345 Middlefield Road, Mail Stop 434, Menlo Park, CA 94025. *Instrument:* Electronics for Hydrogen-Water Equilibrium Device and Auto Freezing Microvolume Inlet System. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used for studies of hydrogen isotope ratios in waters. *Application Received by Commissioner of Customs:* November 29, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–211 Filed 1–3–92; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List, Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons with severe disabilities.

EFFECTIVE DATE: February 5, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On November 8, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 57323) of a proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List: Janitorial/Custodial, Food and Drug Administration, 240 Hennepin Avenue, South, Minneapolis, Minnesota.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–176 Filed 1–3–92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List, Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 5, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have severe disabilities.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Box, Wood, Fiberboard
8115–00–L01–0679
8115–00–L01–0680
8115–00–L01–0681
8115–00–L01–0682
8115–00–L01–0684
8115–00–L85–0005
(Requirements of the Navy Ships Parts Control Center, Mechanicsburg, PA only).

Services

Food Service Attendant, Naval Station, Staten Island Galley, New York, New York.

Repair and Cleaning of Respirators, Robins Air Force Base, Georgia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-177 Filed 1-3-92; 8:45 am]

BILLING CODE 6820-33-M

CONSUMER PRODUCT SAFETY COMMISSION

Technical Advisory Group for Cigarette Fire Safety; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Technical Advisory Group for Cigarette Fire Safety will meet on January 24, 1992, in Gaithersburg, Maryland. The purpose of the meeting is to discuss recent research on cigarette ignition propensity and plans for a cigarette fire incident study.

DATES: The meeting will be from 9 a.m. to 3 p.m. on January 24, 1992 .

ADDRESSES: The meeting will be in room B19, Palmers Building 224, at the National Institute for Standards and Technology, Gaithersburg, Maryland. For a recorded message containing the latest information about the time and location of the meeting call (301) 504-0709.

FOR FURTHER INFORMATION CONTACT: Beatrice M. Harwood, Directorate for Epidemiology, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0470.

SUPPLEMENTARY INFORMATION: The Fire Safe Cigarette Act of 1990 (FSCA) (Pub. L. 101-352, 104 Stat. 405) directs the Commission, with assistance from the National Institute for Standards and Technology (NIST) and the Department of Health and Human Services to conduct research concerning the feasibility of a performance standard to address the propensity of cigarettes to act as an ignition source. The FSCA also establishes an advisory committee, the Technical Advisory Group for Cigarette Fire Safety, to advise and work with the Commission and NIST in the implementation of that act.

The Technical Advisory Group for Cigarette Fire Safety will meet on January 24, 1992, to discuss recent research on cigarette ignition propensity and plans for a cigarette fire incident study.

The meeting will be open to observation by members of the public, but only members of the Technical Advisory Group for Cigarette Fire Safety may participate in the discussion. Persons who desire to submit written statements or questions for consideration by the Technical Advisory Group, before or after the meeting, should address them to the Technical Advisory Group for Cigarette Fire Safety, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Dated: December 30, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92-212 Filed 1-3-92; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Nuclear Failsafe and Risk Reduction Advisory Committee; Meeting

AGENCY: Nuclear Failsafe and Risk Reduction Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Nuclear Failsafe and Risk Reduction Review Advisory Committee. The purpose of the meeting is to discuss and approve an Interim Report to the Secretary of Defense regarding status of the comprehensive and independent review of U.S. positive measures for the prevention of unauthorized or inadvertent use of nuclear weapons to date and preliminary finding regarding the need for additional failsafe procedures and mechanisms. This meeting will be closed to the public.

DATES: 22 January 1992, 1500-1600.

ADDRESSES: Pentagon, Crisis Coordination Center, room 3C912.

FOR FURTHER INFORMATION CONTACT: Colonel Bill Jones, U.S. Army, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline #3, 5201 Leesburg Pike, suite 500, Falls Church Virginia 22041, (703) 756-8660.

Dated: December 30, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 92-111 Filed 1-3-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board Meeting

December 30, 1991.

The USAF Scientific Advisory Board Arnold Engineering Development Center (AEDC) Advisory Group will meet on January 22-23, 1992 from 8 a.m. to 4 p.m. Central Time at Arnold Air Force Base, Tennessee.

The purposes of this meeting will be to acquaint the new AEDC Advisory Group members with the mission and test facilities of AEDC and to receive feedback from the AEDC Advisory Group on the planning process that is used to identify/select/fund/build AEDC's technical facilities. This meeting will be closed to the public, in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-152 Filed 1-3-92; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 3, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Request for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that the public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: December 30, 1991.

Wallace R. McPherson, Jr.,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: New.

Title 1993 National Study of Postsecondary Faculty—List Collection Procedures.

Frequency: Quadrennial.

Affected Public: Individuals or households; State or local governments; businesses or other for-profit; non-profit institutions.

Reporting Burden: Responses—111; Burden Hours—168.

Recordkeeping Burden: Recordkeepers—0; Burden Hours—0.

Abstract: This information collected by this form will be used to develop a faculty list. The Department will use this list to conduct the field test and the full-scale study for the 1993 National Study of Postsecondary Faculty (NSOPF).

[FR Doc. 92–112 Filed 1–3–92; 8:45 am]

BILLING CODE 4000–01–M

Office of Educational Research and Improvement

[CFDA No.: 84.999E]

The National Assessment of Educational Progress (NAEP) Program

AGENCY: Department of Education.

ACTION: Extension of deadline date for transmittal of applications.

SUMMARY: On November 25, 1991, the Secretary published in the **Federal Register** (56 FR 59250) a notice inviting applications for an award to conduct the design, item development, field testing, and printing of final assessment booklets for the 1994 National Assessment of Educational Progress. Detailed information was included in that notice.

The purpose of this notice is to extend the deadline date for transmittal of applications.

DATES: The Secretary extends the deadline date for transmittal of applications from January 10, 1992 to January 17, 1992.

FOR APPLICATIONS OR INFORMATION CONTACT: Steven Gorman, U.S. Department of Education, 555 New Jersey Avenue, NW., room 308, Washington, DC. 20208–5653. Telephone (202) 219–1937.

Program Authority: 20 U.S.C. 1221e.

Dated: December 31, 1991.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92–190 Filed 1–3–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), and in accordance with 41 CFR Part 101–6.10, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Secretary of Energy Advisory Board has been renewed for an additional two years.

The Board will continue to provide advice to the Secretary of Energy on the research, development, energy, and national defense responsibilities, activities, and operations of the Department of Energy and provide expert guidance in these areas to the Department.

Board members have been selected for their backgrounds and experience in the basic sciences, in energy production and distribution technologies, in related fields of conservation, economics, the environment, management, and public policy, and in the national defense field, such as nuclear weapons research, testing, and verification and nuclear materials production and safety. Particular attention will also be paid to obtaining a balance of interests, points of view, and geography.

The establishment of the Secretary of Energy Advisory Board has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Board operates in accordance with the provisions of FACA, the Department of Energy Organization Act, the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Frederica Cravens (202/586–3282).

Issued in Washington, DC on January 2, 1992.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 92–194 Filed 1–3–92; 8:45 am]

BILLING CODE 6450–01–M

University of Alabama; Grant

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of award intent.

SUMMARY: The U.S. Department of Energy's Idaho Field Office announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7, it intends to award a new start Grant Number DE–FG07–92ID13163 to the University of Alabama. The objective of the work to be performed under this Grant is to establish the metal casting competitiveness research.

FOR FURTHER INFORMATION CONTACT: Dallas L. Hoffer, U.S. Department of Energy, Idaho Field Office, 785 DOE Place MS 1221, Idaho Falls, Idaho 83401–1562, 208/526–0014.

SUPPLEMENTARY INFORMATION: The statutory authority for the research is Public Law 101–425, Department of Energy Metal Casting Competitiveness Research Act of 1990. The unsolicited proposal meets the criteria for "non-competitive financial assistance," as set forth in 10 CFR 600.7(b)(2). The objective of the project is to perform research in four separate thrust areas: (1) Clean casting; (2) environmental; (3) mold/

metal interactions; and (4) computer modeling and control. The anticipated total project period to be awarded is twenty-four (24) months. The estimated total award value is $2,200,000.00. The estimated University of Alabama cost share will equal or exceed $1,281,000.00 or approximately 58% of the total.

Contact: U.S. Department of Energy, Idaho Field Office, 785 DOE Place, Idaho Falls, Idaho 83402, Dallas L. Hoffer, Contract Specialist (208) 526-0014.

Dated: December 20, 1991.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 92-196 Filed 1-3-92; 8:45 am]

BILLING CODE 6450-01-M

Dairy Research Foundation; Financial Assistance

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of award intent.

SUMMARY: The U.S. Department of Energy's Idaho Field Office announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7, it intends to award a new start Financial Assistance Number DE-FG07-92ID13165 to the Dairy Research Foundation. The objective of the work to be performed under this project is to develop freeze concentration technology for use in the dairy industry.

FOR FURTHER INFORMATION CONTACT: Dallas L. Hoffer, U.S. Department of Energy, Idaho Field Office, 785 DOE Place MS 1221, Idaho Falls, Idaho 83401-1562, 208/526-0014.

SUPPLEMENTARY INFORMATION: The statutory authority for the research is Public Law 93-577, Federal Non-Nuclear Research and Development Act of 1974; Public Law 96-294, Energy Security Act; Public Law 93-438, Energy Reorganization Act of 1974; and Public Law 94-385, The Energy Conservation and Production Act. The unsolicited proposal meets the criteria for "non-competitive financial assistance," as set forth in 10 CFR 600.7(b)(2). The objective of the project is to: (1) Conduct tests of the freeze concentration Prototype Development Unit (PDU) concentrating a variety of diary feeds; and (2) to conduct crystalization studies. The anticipated total project period to be awarded is twelve (12) months. The estimated total award value is $898,192.00. The estimated Dairy Research Foundation cost share will equal or exceed $698,192.00 or approximately 78% of the total.

Contact: U.S. Department of Energy, Idaho Field Office, 785 DOE Place, Idaho Falls, Idaho 83402, Dallas L. Hoffer, Contract Specialist (208) 526-0014.

Dated: December 20, 1991.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 92-198 Filed 1-3-92; 8:45 am]

BILLING CODE 6450-01-M

University of Northern Iowa; Grant

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of award intent.

SUMMARY: The U.S. Department of Energy's Idaho Field Office announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7, it intends to award a new start Grant Number DE-FG07-92ID13164 to the University of Northern Iowa. The objective of the work to be performed under this Grant is to establish the metal casting competitiveness research.

FOR FURTHER INFORMATION CONTACT: Dallas L. Hoffer, U.S. Department of Energy, Idaho Field Office, 785 DOE Place MS 1221, Idaho Falls, Idaho 83401-1562, 208/526-0014.

SUPPLEMENTARY INFORMATION: The statutory authority for the research is Public Law 101-425, Department of Energy Metal Casting Competitiveness Research Act of 1990. The unsolicited proposal meets the criteria for "non-competitive financial assistance," as set forth in 10 CFR 600.7(b)(2). The objective of the project is to perform research in four separate thrust areas: (1) Sand reclamation; (2) a die cast research consortium; (3) robotic ultrasonic inspection/testing; and (4) technical assessment of midwest research needs. The anticipated total project period to be awarded is thirty-six (36) months. The estimated total award value is $2,200,000.00. The estimated University of Northern Iowa cost share will equal or exceed $1,281,000.00 or approximately 58% of the total.

Contact: U.S. Department of Energy, Idaho Field Office, 785 DOE Place, Idaho Falls, Idaho 83402, Dallas L. Hoffer, Contract Specialist (208) 526-0014.

Dated: December 20, 1991.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 92-197 Filed 1-3-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF92-42-000]

Oyster Creek Limited; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 27, 1991.

On December 11, 1991, Oyster Creek Limited, in c/o Destec Energy, Inc., 2500 City West Blvd., suite 150, Houston, Texas 77042, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Dow Chemical Company industrial complex near Oyster Creek, Texas. The facility will consist of three combustion turbine generators, one extraction/condensing steam turbine generator, three heat recovery boilers (HRBs), approximately 3.3 miles of 138KV transmission line and associated equipment. Thermal energy, in the form of extraction steam and steam from the HRBs, will be used by Dow Chemical for the production of chemical products. The net electric power production capacity of the facility will be 381 MW. The primary energy source for the facility is natural gas. Installation of the facility is expected to begin in October 1992.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the Federal Register and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc 92-132 Filed 1-3-92; 8:45 am]

BILLING CODE 6717-01-M

ANR Pipeline Co.; Relocating Informal Settlement Conference

[Docket Nos. RP89-161-000, RP89-172-000, CP91-678-000, and CP90-2275-000]

December 27, 1991

Take notice that the informal settlement conference scheduled in this proceeding to commence on Tuesday, January 7, 1992, at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, will be held instead at 825 North Capitol Street, NE., Washington, DC. The purpose of the conference is to explore the possible settlement of the above-referenced docket. The conference will continue through Wednesday, January 8, 1992.

Any party, as defined in 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Michael D. Cotleur at (202) 208-1076 or James A. Pederson at (202) 208-2158.

Lois D. Cashell,

Secretary.

[FR Doc. 92-128 Filed 1-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-264-000]

Kern River Gas Transmission Co.; Request Under Blanket Authorization

December 27, 1991.

Take notice that on December 23, 1991, Kern River Gas Transmission Company (Kern River), Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP92-264-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations for authorization to construct and operate certain tap and meter facilities under Kern River's blanket certificate issued in Docket No. CP89-2048-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Kern River requests authorization to construct and operate a sales tap and meter facilities required to deliver gas to Amoco Energy Trading Corporation (Amoco) at seven delivery points along Kern River's mainline facilities in Juab, Millard, Beaver, Iron and Washington Counties, Utah. The details as proposed by Kern River are shown in the table below.

Site name and milepost	Delivery volume (Mcf/day)	County
Dog Valley, MP 208	2,175	Juab.
Scipio, MP219.7	435	Millard.
Holden, MP232.2	388	Millard.
Fillmore, MP243.5	2,070	Millard.
Milford, MP300.9	3,211	Beaver.
New Castle, MP357.1.	628	Iron.
Central, MP375.5	529	Washington.

Kern River states that each point would consist of a 3-inch diameter pipeline tap and two related buildings. It is stated that in the case of Dog Valley, Fillmore and Milford, the first building would house two 3-inch meter runs, headers, control valves and related yard piping. Kern River states that in the case of Scipio, Holden, New Castle and Central, the first building would house a rotary meter and related yard piping. It is indicated that the second building at each point would house the System Control and Data Acquisition equipment to control the operation of the meter station and to communicate with Kern River's Gas Control Facility in Salt Lake City, Utah.

Kern River explains that it would provide transportation service to Amoco under Kern River's blanket transportation certificate and pursuant to the terms of Kern River's Rate Schedule KRF-1 (firm transportation). Kern River indicates that the proposed service to Amoco at these points would not impact Kern River's ability to render service to other firm shippers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-130 Filed 1-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-3-16-003 and TQ92-3-16-000]

National Fuel Gas Supply Corp.; Request for Special Relief or, in the Alternative, Reconsideration

December 27, 1991.

Take notice that National Fuel Gas Supply Corporation (National Fuel) on December 20, 1991, filed a request for special relief or, in the alternative, reconsideration of the Commission's letter order dated November 21, 1991.

National Fuel states that the Commission by letter order issued November 21, 1991, rejected its filing made on June 19, 1991, in Docket Nos. TQ91-3-16-001 and TF91-11-16-001 to comply with a letter order issued June 28, 1991 in Docket No. TQ91-3-16-000, because it contained rate increases to track increases in its pipeline supplier demand costs. National Fuel admits that it should have originally filed its compliance filing dated June 19, 1991, as an out-of-cycle PGA filing to track the increase of its pipeline suppliers' demand costs effective July 1, 1991. National Fuel requests the Commission reconsider and approve the compliance filing as out-of-cycle PGA filing with a proposed effective date of August 1, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-134 Filed 1-3-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-239-000]

Northern Natural Gas Co.; Application

December 27, 1991.

Take notice that on December 13, 1991, Northern Natural Gas Company (Northern), 1400 Smith Street, Houston, Texas 77251, filed in Docket No. CP92-239-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the increase of 825

Mcf of natural gas per day of sales entitlements for Northern States Power Company and Northern States Power Company of Wisconsin (NSP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that in order for NSP to serve increased requirements in and around the communities of Withrow and Faribault, Minnesota, Northern requests authorization to increase its current sales entitlements to NSP by 825 Mcf per day under Northern's Season Service Demand Schedule, Rate Schedule SS–1. It is also stated that pursuant to an executed service agreement dated October 30, 1991, the increased sales service will become effective on November 1, 1991, or such other date as approved by the Commission, whichever is later. It is further stated that the additional sales service to NSP will be accomplished without constructing new facilities or rearranging presently authorized facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 17, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92–133 Filed 1–3–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP90–1978–000, CP91–1589–000]

Panhandle Eastern Pipe Line Co. and Phillips 66 Natural Gas Co.; Technical Conference

December 27, 1991.

Take notice that on January 14, 1992, a technical conference will be convened at the offices of the Federal Energy Regulatory Commission to discuss an issue regarding Panhandle Eastern Pipe Line Company's application in Docket No. CP90–1978–000 to abandon by sale its Powder River System. Phillips 66 Natural Gas Company filed a petition, in Docket No. CP91–1589–000, requesting that the Commission disclaim jurisdiction over the facilities upon Phillips' acquisition of these facilities.

The specific issue to be discussed in this conference, as raised by Western Gas Processors, Ltd., is the continuing gas imbalance on the Powder River System. The Commission invites all parties who have filed motions to intervene to attend the conference. The conference will be held at 10 a.m. at 810 First Street, NE., Washington, DC. The room will be posted on the 1st floor of that building on the day of the conference.

Lois D. Cashell,

Secretary.

[FR Doc. 92–129 Filed 1–3–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC92–6–000]

UGI Corp.; Filing

December 27, 1991

Take notice that on December 23, 1991, UGI Corporation ("UGI") tendered for filing an application for an order authorizing a corporate reorganization.

UGI is a corporation organized and existing under the laws of Commonwealth of Pennsylvania, and through its Luzerne Electric Division is engaged in producing and selling electric energy to approximately 58,600 customers in two counties in northeastern Pennsylvania. UGI proposes to reorganize into a holding company structure with New UGI Corporation ("New UGI") becoming the parent of UGI. UGI will continue to operate its Luzerne Electric Division facilities without change. UGI seeks an order pursuant to section 203 of the Federal Power Act granting any authorization required for the implementation of this reorganization.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–131 Filed 1–3–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Superconducting Super Collider Environmental, Safety, and Health Advisory Committee; Determination To Establish

Pursuant to section 9(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), and 41 CFR 101.6.1005 of the Final Rule on Advisory Committee Management, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Superconducting Super Collider Environmental, Safety, and Health Advisory Committee (SSC ES&HAC) has been established.

The purpose of the Committee is to provide advice and guidance to the Department on the non-technical aspects of the SSC project including: Periodic review and assessment of ES&H aspects of management of the project and recommendations thereon; advice on proposed strategies for addressing ES&H issues relating to industrial involvement, international partners, interface with other government agencies, and public outreach; and advice on ES&H issues relating to the project management and design.

The Committee members will be chosen to ensure an appropriately balanced membership, taking into account (1) the disciplines to be

represented, such as high energy physics, geology, environment, and public safety; (2) institutions involved in the SSC program such as universities, national laboratories, and industry; and (3) appropriate geographic distribution. The establishment of the SSC ES&HAC has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the FACA, the Department of Energy Organization Act (Pub. L. 95–91), the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee may be obtained from Rachel Murphy at (202) 586–3279.

Issued at Washington, DC on: December 31, 1991.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 92–193 Filed 1–3–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

Joint Meeting National Coal Council and Coal Policy Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Tuesday, January 28, 1992, 9 a.m.

Place: Stouffers Concourse Hotel, Washington National Airport, 2399 Jefferson Davis Highway, Arlington, Virginia.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–3867.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: To consider and act upon the two studies the Council is currently completing, to consider requests for new studies, and to provide a briefing and orientation for new members.

Tentative Agenda

—Call to order by C. Carter Grinstead, Jr., Chairman of the National Coal Council.
—Remarks by Chairman Grinstead.
—Remarks by William Wahl, Chairman of the Coal Policy Committee.
—Discussion of completed studies.
—Discussion of new studies.
—Briefing and orientation of new members.
—Discussion of any other business properly brought before the Council.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on December 27, 1991.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92–199 Filed 1–3–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–73–NG]

Oryx Gas Marketing Limited Partnership; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Oryx Gas Marketing Limited Partnership blanket authorization to import up to 200 Bcf of natural gas, including liquefied natural gas (LNG) from Canada, Mexico and other countries and to export up to 200 Bcf of natural gas, including LNG, to Canada, Mexico and other countries, over a two-year term beginning on the date of first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., December 27, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–202 Filed 1–3–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–88–NG]

Michigan Consolidated Gas Co.; Application To Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 17, 1991, of an application filed by Michigan Consolidated Gas Company (MichCon) requesting authorization to import up to 50,000 Mcf of natural gas per day from Canada over a three-year term beginning on the date of first delivery after January 22, 1992, the date its existing import authority under DOE/ERA Opinion and Order No. 96 (as amended) expires. The proposed imports would take place at the United States-Canadian border near Emerson, Manitoba, where existing pipeline facilities are located. No new pipeline construction would be involved.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, February 3, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6116.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:
MichCon, a Michigan corporation with its principal place of business in Detroit, Michigan, is engaged in the storage, transmission, and local distribution of natural gas to approximately one million customers in the State of Michigan. On December 20, 1985, the DOE , in Opinion and Order No. 96, authorized MichCon to import up to 13,000 Mcf of natural gas per day from Canada for a three-year term beginning on the date of first delivery (1 ERA Para. 70,614). The first import under that authorization took place on January 22, 1986. The authorization was increased to 50,000 Mcf per day in DOE/ERA Opinion and Order No. 135 issued on July 14, 1988 (1 ERA Para. 70,658) and was extended for an additional three years (through January 22, 1992) in DOE/ERA Opinion and Order No. 296 issued on January 19, 1989 (1 ERA Para. 70,837).

In its October 17, 1991, application, MichCon requests that this authorization be further extended for three years. The import facilitates an energy exchange between MichCon and Esso Chemical Canada, a division of Imperial Oil Limited (Imperial). Under that exchange, Shell Western E&P (Shell) extracts ethane from natural gas sold to MichCon. The ethane is transported by Shell and Dome Petroleum Corporation to Canada where it is used as a feedstock in Imperials' Sarnia, Ontario, petrochemical plant. In exchange for the ethane, Imperial purchases a Btu equivalent amount of natural gas from TransCanada Pipelines Limited (TCPL). It is this gas that MichCon herein seeks authority to import, via the Great Lakes Gas Transmission Company, to its facilities in the United States. MichCon notes in its application that the operational problems on its natural gas distribution system that require it to conduct this natural gas/ethane exchange have not changed since MichCon filed its previous application. In that application, MichCon explained that a high level of ethane in its gas would prevent it from maintaining the stable Btu quality demanded by its industrial customers. Further, at times, a higher concentration of mercaptan sulphur remains with the ethane in the gas and causes an increase in the number of leak complaints, especially during the fringe heating season months.

The gas to be imported under its current application will become part of MichCon's general system supply. As such, it will be used by any and all of MichCon's nearly one million customers including those communities in the northern peninsula of Michigan which can only be served off the Great Lakes' system. MichCon intends to use existing facilities of U.S. pipelines to transport its imported gas supplies and does not contemplate the construction of any new facilities. Accordingly, MichCon asserts that imports for which authorization is requested will have no significant impact on the environment. If its application is approved, MichCon stated that it would comply with DOE's quarterly reporting provisions contained in previous authorizations.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In its application MichCon asserts the import is not inconsistent with the public interest because the energy exchange enables MichCon to avoid the operational problems associated with the high level of ethane in natural gas. Parties opposing MichCon's request for import authorization bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MichCon's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 24, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–195 Filed 1–3–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–72–NG]

Sun Operating Limited Partnership; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and

export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Sun Operating Limited Partnership blanket authorization to import up to 200 Bcf of natural gas, including liquefied natural gas (LNG), from Canada, Mexico and other countries, and to export up to 200 Bcf of natural gas, including LNG, to Canada, Mexico and other countries over a two-year term beginning on the date of first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 27, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-201 Filed 1-3-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-4089-5]

Clean Air Act; 1990 Amendments

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) has completed the final report on the "Nonroad Engine and Vehicle Emission Study." This study was mandated in the 1990 Amendments to the Clean Air Act and is to be used in determining potential regulation of nonroad engines and vehicles.

DATES: The final report has been released and is currently available to the public.

ADDRESSES: Materials relevant to this study are contained in Docket No. A-91-24. The docket is located at the Air Docket Room, room M-1500 (LE-131), Waterside Mall, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: John German, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668-4214, FTS 374-8214.

SUPPLEMENTARY INFORMATION: Title II of the Clean Air Act (CAA) as amended by the 1990 Clean Air Act Amendments, requires EPA to study emissions from nonroad engines and vehicles in areas of the country which fail to attain the National Ambient Air Quality Standards (NAAQS) for either ozone or carbon monoxide. In doing this study, EPA examined ten pollutants emitted by nonroad engines and vehicles using emission data collected both nationally and in twenty-four nonattainment areas. The nonroad engine and vehicle categories included in the study are lawn and garden, airport service equipment, recreational equipment, recreational marine equipment, light commercial equipment, construction equipment, agricultural equipment, commercial marine vessels, logging equipment, and industrial equipment.

The final report of this study is completed and available to the public. It may be inspected in the public docket, No. A-91-24, at the address provided in ADDRESSES. Copies are available for viewing, purchase and/or duplication at the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, (703) 487-4650. A reasonable fee may be charged for services. In addition, the report may be viewed at Regional EPA Air Offices. Duplication services at these facilities may be limited.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-184 Filed 1-3-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4087-2]

Final Ruling on Petition Pursuant to Section 324(a)(1) of the Clean Air Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final ruling on petition.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is granting a petition submitted by the Governor of the Virgin Islands pursuant to section 324(a)(1) of the Clean Air Act Amendments of 1990. In response to the petition, EPA hereby exempts the Virgin Islands Water and Power Authority (VIWAPA) from having to obtain a Prevention of Significant Deterioration (PSD) of Air Quality permit prior to commencement of construction of its Unit #18 in accordance with the specified conditions detailed in this final ruling.

EFFECTIVE DATE: January 5, 1992.

ADDRESSES: Kenneth Eng, Chief, U.S. EPA—Region II, Air Compliance Branch, 26 Federal Plaza, room 500, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Kenneth Eng, at (212) 264-9726.

SUPPLEMENTARY INFORMATION: Alexander A. Farrelly, Governor of the Virgin Islands, submitted a petition to the Administrator of EPA pursuant to section 324(a)(1) of the Clean Air Act, 42 U.S.C. 7625-1(a)(1), as amended by the Clean Air Act Amendments of 1990, Public Law 101-549 806 (the "Act") on April 22, 1991. The petition requested that the Virgin Islands Water and Power Authority (VIWAPA) be authorized to commence construction of an electric generation unit (Unit #18) prior to receipt of an effective Prevention of Significant Deterioration (PSD) of Air Quality permit. The request did not include allowing the operation of any part of Unit #18 unless and until the PSD permit is issued in final form and is made effective.

The primary provisions of the PSD regulations require that major new stationary sources and major modifications at stationary sources be carefully reviewed prior to commencement of construction to ensure compliance with the National Ambient Air Quality Standard (NAAQS), the applicable PSD air quality increments, and the requirement to apply Best Available Control Technology (BACT) to minimize the project's emissions of air pollutants. This is a requirement of section 110(a)(2)(C).

As amended, Section 324(a)(1) states that:

> * * * the Administrator is authorized to exempt any person or source or class of persons or sources in such territory from any requirement under this Act other than Section 112 or any requirement under Section 110 or Part D necessary to attain or maintain a national primary ambient air quality standard. Such exemptions may be granted if the Administrator finds that compliance with requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory or such other local factors as the Administrator deems significant * * *

The 1990 amendments to the Act permit such exemptions to apply to the Virgin Islands.

On the basis of the language cited above, the first prerequisite to granting an exemption under section 324(a)(1), is that the request not involve any requirement necessary to attain or

maintain a national primary air quality standard. Although the PSD program is a requirement under section 110, the PSD permitting requirements of the program are generally applicable to areas which attain the NAAQS. The air quality analyses which have been performed for the Unit #18 PSD review indicate that this unit will not cause a violation of the NAAQS in the Virgin Islands. Therefore, the VIWAPA Unit #18 project is within the scope of section 324(a)(1), and can qualify for an exemption from the permitting requirements of the PSD regulations based on this prerequisite.

The other prerequisite to granting such a petition is that the requirement is not feasible or is unreasonable due to unique geographical or meteorological factors or such local factors as the Administrator may deem significant. No arguments have been presented which demonstrate that the requirement for a permit is not feasible. Information contained in the petition indicates that there is a critical need for additional power and potable water for the residents of St. Thomas and the neighboring islands. In analyzing the situation currently existing at VIWAPA, the Administrator concludes that although the power shortage may not be attributable to the geography and meteorology of the islands, the current capability of the system, merits special consideration as a significant "local factor".

VIWAPA's lack of additional power generating and water desalination capacity to meet current power demands and to ensure adequate water supply will have significant impact on the residents of St. Thomas and St. John. There is evidence that the existing capacity is being extended beyond its limits and the loss of any existing capacity would cause very serious limits on power and potable water. A decision to allow construction, but not operation, of Unit #18 without a PSD permit does not solve the problem of inadequate power. On February 5, 1991, VIWAPA submitted a PSD permit application for Unit #18. EPA issued a draft PSD permit for unit #18 on August 20, 1991. There is no indication at this time that a proper permit will not be issued in the near future. During the 30-day public comment period for the proposed ruling (September 11, 1991—October 11, 1991) no comments were received from the public, with the exception of the Department of the Interior. The Department of the Interior requested a 3-week extension so that comments could be provided by November 4, 1991. However, no comments were received from the Department of the Interior.

Based upon these considerations, the Administrator therefore approves the Governor's request for a limited exemption from certain of the PSD regulations with respect to VIWAPA, subject to the following conditions:

1. The exemption shall be for installation of the proposed gas turbine, (Unit #18) prior to obtaining a PSD permit. VIWAPA would be authorized to perform only the following activities as they relate to Unit #18 prior to permit issuance: Clear/level the ground, excavate the ground for foundation and piling, construct turbine pad, install unit, install wiring/connection with control room, power grid and fuel supply.

2. VIWAPA will proceed as rapidly as possible to obtain a PSD permit for Unit #18. VIWAPA shall also submit a bimonthly (by the tenth day of the following month) progress reports to EPA Region II. These reports shall provide the status on the consideration of Unit #18. This requirement to submit reports to EPA shall continue until completion of construction/installation of the unit.

3. VIWAPA shall modify/retrofit the gas turbine to accommodate whatever is ultimately determined to be the BACT for oxides of nitrogen and carbon monoxide, and all other pollutants for which emission limitations are established in the permit.

4. VIWAPA shall not operate the unit until a final PSD permit is issued by EPA Region II. VIWAPA shall not operate the unit for shakedown, performance testing and other "start up" activities considered "operation" of the unit.

VIWAPA shall hereby be exempt from the prohibition on beginning actual construction of a PSD affected facility without an effective PSD permit for the facility described above, provided that the conditions listed above are met. VIWAPA shall submit a complete PSD permit application as soon as possible and is not exempt from the requirement to operate the facilities in accord with the application for and the terms of such PSD permit that may be finally issued and made effective for the facility. This exemption shall terminate:

1. Six (6) months from the effective date of this **Federal Register** notice; or

2. On the effective date of a PSD permit issued for this facility; or

3. Upon any failure by VIWAPA to adhere to the conditions set out herein.

This limited exemption does not guarantee that EPA will issue a PSD permit reflecting the terms set forth in VIWAPA's application. EPA reserves the right to issue a final PSD permit that contains terms other than those requested in VIWAPA's application, or deny the application altogether. Thus, any expenditures by VIWAPA as a result of beginning actual construction prior to the issuance of a final and effective PSD permit are made at VIWAPA's risk. In addition, the terms of any PSD permit issued by EPA will be established without regard to any construction related expenditures that may be made by VIWAPA prior to the issuance of such permit.

Dated: December 19, 1991.

William K. Reilly,

Administrator.

[FR Doc. 92-185 Filed 1-3-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-44579; FRL-4042-1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on vinylidene fluoride (VDF) (CAS No. 75-38-7), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for VDF were submitted by the Chemical Manufacturers Association on behalf of the Vinylidene Fluoride Producers Task Group and pursuant to a test rule at 40 CFR 799.1700. They were received by EPA on December 10, 1991. The submission describes an inhalation oncogenicity study of vinylidene fluoride in the mouse. Health effects testing is required by this test rule. Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

EPA has initiated its review and evaluation process for these data

submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44579). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: December 26, 1991.

Lois Dicker,

Acting Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–181 Filed 1–3–92; 8:45 am]

BILLING CODE 6560–60–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Territory of American Samoa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of American Samoa (FEMA–927-DR), dated December 13, 1991, and related determinations.

DATES: December 13, 1991.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3606.

NOTICE: Notice is hereby given that, in a letter dated December 13, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub.L. 100–707), as follows:

I have determined that the damage in certain areas of the Territory of American Samoa, resulting from Hurricane Val on December 6, 1991 through and including December 10, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Territory of American Samoa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses; however, no Public Assistance funds will be committed until adequate certification of non-Federal cost sharing is received.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard A. Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine that following areas of the Territory of American Samoa to have been affected adversely by this declared major disaster:

The Territory of American Samoa for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92–163 Filed 1–3–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–928–DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–928–DR), dated December 26, 1991, and related determinations.

DATES: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3606.

NOTICE: Notice is hereby given that, in a letter dated December 26, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from a severe ice storm on October 31–November 2, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Warren M. Pugh, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

The counties of Adair, Adams, Audubon, Boone, Buena Vista, Calhoun, Carroll, Cass, Cerro Gordo, Cherokee, Clay, Dallas, Dickinson, Emmet, Franklin, Fremont, Greene, Guthrie, Hamilton, Hancock, Hardin, Humboldt, Kossuth, Madison, Mills, Mitchell, Montgomery, Osceola, Page, Palo Alto, Pocahontas, Ringgold, Sac, Shelby, Taylor, Webster, Winnebago, Worth, and Wright for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92–170 Filed 1–3–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA-926-DR]

Federated States of Micronesia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Federated States of Micronesia (FEMA-926-DR), dated December 10, 1991, and related determinations.

DATES: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Tim Maywalt of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster. This action terminates my appointment of Richard A. Buck as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92-162 Filed 1-3-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-929-DR]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA-929-DR), dated December 26, 1991, and related determinations.

DATES: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3606.

NOTICE: Notice is hereby given that, in a letter dated December 26, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from a severe ice storm on October 31, 1991, through November 29, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Gary K. Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster:

The counties of Blue Earth, Dodge, Freeborn, Goodhue, Mower, Olmstead, Rice, Steele, and Waseca for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92-169 Filed 1-3-92; 8:45 am]

BILLING CODE 6718-02-M

Texas; Major Disaster and Related Determinations

[FEMA-930-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA-930-DR), dated December 26, 1991, and related determinations.

DATES: December 26, 1991.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3606.

NOTICE: Notice is hereby given that, in a letter dated December 26, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe thunderstorms and flooding on December 20, 1991, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts, as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be provided at a later time, if needed. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Brad Harris of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

The counties of Bastrop, Bosque, Brown, Dallas, and Travis for Individual Assistance.

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

FR Doc. 92-168 Filed 1-3-92; 8:45 am]

BILLING CODE 6718-02-M

VOL 57 ISS 3 JA 6 1992 UMI

FEDERAL MARITIME COMMISSION

International Longshoremen's Association, et al.; Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200083–006.

Title: International Longshoremen's Association/Carrier Container Council Implementation Agreement.

Parties: International Longshoremen's Association, AFL–CIO Carriers Container Council.

Synopsis: The Agreement, filed December 23, 1991, provides for payment of container royalties in accordance with the terms of the master contract between the ILA and CCC.

Agreement No.: 224–200601.

Title: Georgia Ports Authority/Saga Forest Carriers Agreement.

Parties: Georgia Ports Authority, Saga Forest Carriers.

Synopsis: The Agreement, filed December 23, 1991, provides for an incentive refund of dockage for Saga vessels calling at the ports of Savannah or Brunswick. The term is one year and renewable.

Agreement No.: 217–011363.

Title: Space Charter Agreement Between Frontier Liner Services Inc. and Venezuela Transport Line, Inc.

Parties: Frontier Liner Services, Inc., Venezuela Transport Line, Inc.

Synopsis: The proposed Agreement would permit the parties to charter space on each other's vessels in the trade between ports in Venezuela and Colombia and ports in the U.S. Atlantic.

Dated: December 30, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–137 Filed 1–3–92; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and Health Statistics (NCVHS) Work Group on Confidentiality; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following meeting.

Name: NCVHS Work Group on Confidentiality.

Time and Date: 9 a.m.–5 p.m., January 15, 1992, 9 a.m.–12 noon, January 16, 1992.

Place: Room 303A–305A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is to receive information and comments from representatives of public and private agencies invited to discuss issues related to data access and privacy, data security, data release, and the use of unique identifiers.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050 or FTS 436–7050.

Dated: December 30, 1991.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 92–230 Filed 1–3–92; 8:45 am]

BILLING CODE 4160–18–M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 56 FR 65271, December 16, 1991) is amended to reflect the revision of the functional statements for the Personnel Management Office and the Office of the Director, Personnel Management Office, Office of Program Support.

Section HC–A, Organization and Functions, is hereby amended as follows:

Delete in their entirety the headings and functional statements for the *Personnel Management Office (HCA57)* and the *Office of the Director (HCA571)* and substitute the following:

Personnel Management Office (HCA57). (1) Provides service, support, advice, and assistance to CDC organizations, management, and employees on personnel related activities; (2) conducts and coordinates personnel management for CDC's civil service and Commissioned Corps personnel; (3) conducts CDC's visiting programs; (4) develops and issues policies and procedures; conducts staffing, position classification, pay administration, performance management systems, employee training and development, and employee and labor relations programs; (5) conducts and coordinates a position management program; (6) maintains personnel records and reports, and processes personnel actions and documents; (7) administers the Federal life and health insurance programs; (8) administers the employee recognition, suggestion, and incentives awards programs; (9) furnishes advice and assistance in the processing of Office of Workers' Compensation Program claims; (10) advises and assists CDC officials and employees in all areas of personnel management; (11) coordinates committee management activities; (12) conducts CDC's personnel security and substance abuse programs; (13) develops, maintains, and supports information systems to conduct personnel activities and provide timely information and analyses on CDC personnel and staffing to CDC management and employees.

Office of the Director (HCA571). (1) Provides leadership and technical guidance to CDC in planning, coordinating, and conducting an effective personnel and labor-management relations program for civil service, Commissioned Corps, and visiting program personnel; (2) plans, directs, and evaluates the activities of the Personnel Management Office; (3) advises the Director, CDC, and other CDC management staff on all matters relating to personnel management; (4) plans, directs and coordinates labor negotiations, collective bargaining, and management representation before third parties.

Effective Date: December 23, 1991.

William L. Roper,

Director Centers for Disease Control.

[FR Doc. 92–144 Filed 1–3–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 91G-0452]

Amaranth Institute; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The food and Drug Administration (FDA) is announcing that the Amaranth Institute has filed a petition (GRASP 1G0372), proposing that amaranth grain be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Written comments by March 5, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerald J. Bounopane, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409(b)(5) (21 U.S.C. 321(s), (348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that James W. Lehmann, Amaranth Institute, P.O. Box 216, Bricelyn, MN 56014, has filed a petition (GRASP 1G0372), proposing that amaranth grain be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability of amaranth grain for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability for the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before March 5, 1992, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 23, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-146 Filed 1-3-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0513]

Drug Export; Ortho-Novum 7/7/7 Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that R.W. Johnson Pharmaceutical Research Institute has filed an application requesting approval for the export of the human drug Ortho-Novum 7/7/7 Tablets to Japan.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Land, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that R.W. Johnson Pharmaceutical Research Institute, Route 202, P.O. Box 300, Raritan, NJ 08869-0602, has filed an application requesting approval for the export of the drug Ortho-Novum 7/7/7 Tablets to Japan. This product is used for birth control. The application was received and filed in the Center for Drug Evaluation and Research on November 5, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 16, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: December 24, 1991.

Sammie R. Young,

Acting Director, Office of Compliance Center for Drug Evaluation and Research.

[FR Doc. 92-147 Filed 1-3-92; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OPHC-024-N]

Medicare Program; HMO Qualification Determinations and Compliance Actions

AGENCY: Health Care Financing Administration (HFCA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the names, addresses, service areas or expanded service areas, and dates of qualification or expansion of entities determined to be Federally qualified health maintenance organizations (HMOs) that received Federal qualification or service area expansions during the period November 1990 through August 1991. The notice also lists an expanded service area that was inadvertently omitted from the notice that covered the period December 1989 through October 1990. Additionally, this notice sets forth compliance actions taken by the Office of Compliance, Office of Prepaid Health Care Operations and Oversight for the period November 1990 through August 1991.

FOR FURTHER INFORMATION CONTACT:
For information on qualification determinations:
Maxine Palmore, Office of Qualification, Office of Prepaid Health Care Operations and Oversight, Health Care Financing Administration, room 4336 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, (202) 619–2174
For information on compliance actions:
Tony Mazzarella, Office of Compliance, Office of Prepaid Health Care Operations and Oversight, Health Care Financing Administration, room 4336 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, (202) 619–3555

SUPPLEMENTARY INFORMATION:

A. Office of Qualification Determinations

Regulations at 42 CFR 417.144(e) and 42 CFR 417.163 (c) and (d), promulgated under title XIII of the Public Health Service Act (the Act) (42 U.S.C. 300e), require publication of certain determinations relating to the Federal qualification of health maintenance organizations (HMOs). There are three categories of qualified HMOs: Operational, transitionally qualified, and pre-operational (see 42 CFR 417.141 for definitions of these terms).

The Office of Prepaid Health Care Operations and Oversight, HCFA, has determined that the following entities are operationally qualified HMOs under section 1310(d) of the Act (42 U.S.C. 300e–9(d)) for the following service areas:

1. *Humana Health Plan of Texas, Inc. (HHPT)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 8431 Fredericksburg Road, Suite 540, San Antonio, Texas 78229. HHPT's previously Federally qualified service area for San Antonio has been expanded. The expansion area includes Comal, Guadalupe, and Wilson Counties in their entirety, and the following zip codes in Atascosa, Bandera, Blanco, Frio, Kendall, and Medina Counties:

Atascosa County	Bandera County	Blanco County
78011	78003	78606
78012	78063	
78026		
78050		
78052		
78064		
78065		

Frio County	Kendall County	Medina County
78005	78004	78009
78057	78006	78016
78061	78027	78039
	78074	78056
		78059
		78066
		78861
		78866

Date of qualification for the service area expansion: October 12, 1990.

2. *Humana Health Plan, Inc. (HHP)* (Staff Model, see section 1310(b)(1) of the Act), 500 West Main Street, P.O. Box 1438, Louisville, Kentucky 40201. HHP's Federally qualified service area includes counties in the states of Illinois and Indiana. In the state of Illinois, Cook and Dupage Counties are included in their entirety, and the following zip codes in Kane, Lake, and Will Counties are included:

Kane County	Lake County	Will County
60505	60044	60417
60506	60045	60423
60507	60047	60442
60508	60048	60446
60010	60049	60451
60011	60060	60468
60015	60061	60481
60035	60064	60483
60037	60069	60544
60040	60073	
	60085	
	60088	
	60089	

In the state of Indiana, the following zip codes in Lake County are included:

Lake County
46303
46307
46311
46312
46319 through 46325
46327
46342
45355
46356
46373
46375 through 46377
46394
46399 through 46411

Date of qualification: February 26, 1991.

3. *Inter Valley Health Plan (IVHP)* (Group Model, see section 1310(b)(1) of the Act), 300 South Park Avenue, Suite 300, Pomona, California 91766. IVHP's previously Federally qualified service area has been expanded into the following zip codes in San Bernardino County:

San Bernardino County
92301
92307
92308
92345
92356
92358
92371
92372
92392
92394
92397

Date of qualification for the service area expansion: May 30, 1991.

4. *Total Health Care (THC)* (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 2301 Main Street, Kansas City, Missouri 64108. THC's previously Federally qualified service area has been expanded into Cass County in its entirety.

Date of qualification for the service area expansion: May 30, 1991.

5. *PacifiCare of California (PC)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 5995 Plaza Drive, Cypress, California 90630. PC's previously Federally qualified service area has been expanded into Kern County in its entirety.

Date of qualification for the service area expansion: June 21, 1991.

B. Compliance Actions

Section 1312(b)(1) of title XIII of the Act and implementing regulations at 42 CFR 417.183(c)(1) and 417.163(d)(1), which set forth procedures for enforcing the assurances given to the Secretary by Federally qualified HMOs, require us to publish a notice in the Federal Register when we determine that an HMO is not in compliance with Federal qualification requirements for HMOs, or when we

revoke an HMO's qualification. In a noncompliance notice, we direct the HMO to initiate corrective action within 30 days of the date of the notice or within any longer period that the Secretary determines to be reasonable. If the Secretary determines to be reasonable. If the Secretary determines that a qualified HMO has filed to initiate corrective action in accordance with the notice of noncompliance or has not carried out or refuses to carry out corrective action, the Secretary will revoke the HMO's qualification and will notify the HMO of this action. In this notification, we provide the HMO with an opportunity to request a reconsideration of the revocation, including a fair hearing. If an HMO requests a reconsideration of the revocation decision, the HMO will retain its Federally qualified status throughout the reconsideration process. If the reconsideration decision upholds the previous revocation decision, the Secretary will reissue a revocation notice, and no further administrative remedy is available to the HMO. The final decision (either to revoke Federal qualification or restore the HMO to compliance status) resulting from the reconsideration process will be published in the **Federal Register.**

The Office of Prepaid Health Care Operations and Oversight gives notice of the following compliance actions affecting Federally qualified HMOs for the period November 1990 through August 1991:

1. Letters of noncompliance followed by notices of revocation:

We have issued letters of noncompliance followed by notices of revocation of Federal qualification to the two HMOs listed below. Both HMOs have requested reconsideration. Therefore, as noted above, these HMOs retain their Federally qualified status until we make a final decision as a result of the reconsideration process.

a. *Capital Area Community Health Plan (CHP), Albany, New York*

On December 13, 1990, we issued a letter of noncompliance to CHP. We initiated the compliance action due to CHP's failure to remove language imposing impermissible limits on home health benefits from its subscriber contracts. Neither title XIII of the Act nor the regulations permit a Federally qualified HMO to place across-the-board time or cost limitations on medically necessary, prescribed home health services for commercial (non-Medicare/Medicaid) enrollees. We directed CHP to make the required revisions and to provide notice to its members and providers of the change. CHP failed to respond to the notice of noncompliance and has failed to make the required revisions to the subscriber contract and to notify members and providers of the change. Therefore, on May 21, 1991, we notified CHP that its Federal qualification was being revoked. By letter dated May 30, 1991, CHP formally requested reconsideration, including a fair hearing, of the revocation decision. As of the date of this notice, the fair hearing has yet to be scheduled.

b. *Independent Health Plan of Pennsylvania (IHP), Erie, Pennsylvania*

On February 28, 1991, we issued a letter of noncompliance to IHP. We initiated the compliance action because of IHP's termination of its HMO product and membership. We directed IHP to submit information and to implement corrective action to reinstate its HMO program as a responsible means of addressing its lack of prepaid operations. IHP failed to submit a corrective action plan that addressed resumption of its prepaid health care plan. Therefore, on May 15, 1991, we notified IHP that we were revoking its Federal qualification. By letter dated May 23, 1991, IHP formally requested reconsideration, including a fair hearing, of the revocation decision. As of the date of this notice, the fair hearing has yet to be scheduled.

2. Letters of noncompliance:

We have issued letters of noncompliance to the three following HMOs:

a. *Kaiser Foundation Health Plan, Inc., Hawaii Region*

On May 21, 1991, we issued a letter of noncompliance to Kaiser Foundation Health Plan, Inc., Hawaii Region. We initiated the compliance action because of Kaiser's policy imposing impermissible limits on home health benefits. Neither title XIII of the Act nor the regulations permit a Federally qualified HMO to place across-the-board time or cost limitations on medically necessary, prescribed home health services for commercial (non-Medicare/Medicaid) enrollees. Kaiser was also determined to be placing impermissible limitations on the provision of services for infertility. We directed Kaiser to amend its subscriber agreement to eliminate the impermissible limits, to notify its members and providers of the change, and to submit a draft of the revised subscriber agreement and a copy of the notice to members and providers to the Office of Prepaid Health Care Operations and Oversight.

b. *Kaiser Foundation Health Plan of Massachusetts, Inc.*

On May 21, 1991, we issued a letter of noncompliance to Kaiser Foundation Health Plan of Massachusetts, Inc. We initiated the compliance action because of Kaiser's policy imposing impermissible limits on home health benefits. Neither title XIII of the Public Health Service Act nor the regulations permit a Federally qualified HMO to place across-the-board time or cost limitations on medically necessary, prescribed home health services for commercial (non-Medicare/Medicaid) enrollees. We directed Kaiser to amend its subscriber agreement to eliminate the impermissible limits, to notify its members and providers of the change, and to submit a draft of the revised subscriber agreement and a copy of the notice to members and providers to the Office of Prepaid Health Care Operations and Oversight.

c. *Kaiser Foundation Health Plan, Inc., Northern California Region*

On June 17, 1991, we issued a letter of noncompliance to Kaiser Foundation Health Plan, Inc., Northern California Region. We initiated the compliance action because of Kaiser's policy imposing impermissible limits on home health benefits. Neither title XIII of the Act nor the regulations permit a Federally qualified HMO to place across-the-board time or cost limitations on medically necessary, prescribed home health services for commercial (non-Medicare/Medicaid) enrollees. We directed Kaiser to amend its subscriber agreement to eliminate the impermissible limits, to notify its members and providers of the change, and to submit a draft of the revised subscriber agreement and a copy of the notice to members and providers to the Office of Prepaid Health Care Operations and Oversight.

3. Notices of revocation:

Organization	Date Issued	Reason
Share Health Plan of Illinois, Inc., Itasca, Illinois.	05/24/91	Voluntary relinquishment.
Share Health Plan of Iowa, Inc., West Des Moines, Iowa.	07/10/91	Voluntary relinquishment.
Southern Health Services, Inc., Richmond, Virginia.	08/07/91	Voluntary relinquishment.

C. Availability of Additional Information

A cumulative list and additional information about Federally qualified HMOs may be obtained by writing to the following address:

Office of Prepaid Health Care Operations and Oversight, Health

Care Financing Administration, Room 4360 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201

The list also may be obtained by visiting that office between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday, except for Federal holidays. Interested persons should contact Margie Ridley for an appointment, telephone (202) 619–2756.

((42 U.S.C. 300e) title XIII of the Public Health Service Act)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; 93.774, Medicare-Supplementary Medical Insurance)

Dated: December 18, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 92–109 Filed 1–3–92; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–967–4230–15]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Koniag, Inc., Regional Native Corporation. The lands involved are in the vicinity of Kodiak, Alaska.

Serial No.	Land description	Approximate acreage
AA–11725	Sec. 26, T. 33 S., R. 30 W., Seward Meridian, Alaska.	1.0
AA–10602	Sec. 17, T. 35 S., R. 28 W., Seward Meridian, Alaska.	7.75

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until February 3, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 92–192 Filed 1–3–92; 8:45 am]

BILLING CODE 4310–JA–M

Fish and Wildlife Service

Extension of Comment Period for Permit Applications

This notice serves to extend the comment period for the following permit applications until January 15, 1992: Florida Game and Fresh Water Fish Commission (PRT–763741), Lowry Park Zoo (PRT–763742), Jacksonville Zoo (PRT–763744), Miami MetroZoo (PRT–763740), and White Oak Plantation (PRT–763743). The Florida Game and Fresh Water Fish Commission requested a 2-year permit to take (capture and remove from the wild) a maximum of 6 Florida panther (*Felis concolor coryi*) kittens per year and up to 4 adults the first year and up to 2 adults the second year, to be placed in the above mentioned Florida zoological facilities for the purpose of enhancement of propagation and survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director by January 9, 1992.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, by January 9, 1992: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone (703/358–2104); FAX (703/358–2281). Please refer to the PRT number when requesting a copy of the application(s) and when submitting comments.

Dated: December 27, 1991.

R.K. Robinson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92–12 Filed 1–3–92; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–333]

Certain Woodworking Accessories; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on November 25, 1991, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cantlin Incorporated, 7 Deer and Road, Lincoln, Massachusetts 01773. Supplements were filed on December 16 and 19, 1991.

The complaint, as supplemented, alleges violations of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain woodworking accessories by reason of alleged infringement of claims 1–18 of U.S. Letters Patent 4,805,505, and that there exists an industry in the United States as required by subsection (a)(2) of section 337. The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent general exclusion order and permanent cease and desist orders.

The motion for temporary relief requests that the Commission issue a temporary exclusion order and temporary cease and desist orders prohibiting the importation into and the sale within the United States after importation of infringing woodworking accessories, during the course of the Commission's investigation.

ADDRESSES: The complaint and the motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC. 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: James M. Gould, Esq., or Gabrielle Siman, Esq., Office of Unfair Import

Investigations, U.S. International Trade Commission, telephone 202–205–2576 or 202–205–2573, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12. The authority for provisional acceptance of the motion for temporary relief is contained in § 210.24(e) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.24(e).

SCOPE OF INVESTIGATION: Having considered the complaint and the motion for temporary relief, the U.S. International Trade Commission, on December 30, 1991, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain woodworking accessories by reason of alleged infringement of claims 1–17 or 18 U.S. Letters Patent 4,805,505, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) Pursuant to § 210.24(e)(8) of the Commission's Interim Rules of Practice and Procedure, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, be provisionally accepted and referred to an administrative law judge.

(3) For the purposes of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Cantlin Incorporated, 7 Deer Run Road, Lincoln Massachusetts 01773.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and motion for temporary relief are to be served:

Trend-lines, Inc., 170 Commercial Street, Malden, Massachusetts 02148.
Taiwan Zest Industrial Co., Ltd., 2nd Floor, No. 1–156 Mei Ts'un Road, Taichung City, Taiwan.
Woodever Products Co., Ltd., Room H, 10th Floor, No. 24 Chi-Lin Road, Taipei, Taiwan.
An Yun Industrial Co., Ltd., 64–2 Chiu-Sir Lane, Peitun District, Taichung, Taiwan.

(c) James M. Gould, Esq., and Gabrielle Siman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401, Washington, DC 20436, who shall be the Commission investigative attorneys, parties to this investigation; and

(4) For the investigation and temporary relief proceedings so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint, the motion for temporary relief and the notice of investigation must be submitted by the named respondents in accordance with §§ 210.21 and 210.24 of the Commission's Interim Rules of Practice and Procedure. Pursuant to §§ 201.16(d), 210.21(a), and 210.24(e)(9) of the Commission's Rules, such responses will be considered by the Commission if received not later than ten (10) days after the date of service by the Commission of the complaint, the motion for temporary relief and the notice of investigation. Extensions of time for submitting responses to the complaint, the motion for temporary relief and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, motion for temporary relief and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: December 30, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–187 Filed 1–3–92; 8:45 am]

BILLING CODE 7020–02–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential materials. Notice is hereby given that, in accordance with section 104 of title I of the Presidential Recordings and Materials Preservation Act (88 Stat. 1695; 44 U.S.C. 2111 note) and section 1275.42(b) of the Public Access Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access integral file segments of materials among the Nixon Presidential materials.

DATES: The National Archives intends to make the integral file segments described in this notice available to the public beginning February 19, 1992. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before February 12, 1992.

ADDRESSES: The materials will be made available to the public at the National Archives' facility located at 845 South Pickett Street, Alexandria, Virginia.

Petitions concerning access must be sent to the Archivist of the United States, National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Clarence F. Lyons, Jr., Acting Director, Nixon Presidential Materials Staff, 703–756–6498.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened consist of 38.3 cubic feet.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. This is the seventh of a series of openings of Central Files; the previous openings were on December 1, 1986; March 22, 1988; December 9, 1988; July 17, 1989; December 15, 1989; and August 22, 1991.

Some of the materials designated for opening on February 19, 1992, were selected from the Subject Files of the Central Files. The Subject Files are based on an alphanumeric file scheme of 61 primary subject categories. Listed below are the primary subject categories of the Subject Files that will be made available to the public on February 19, 1992.

Subject category Federal Government (FG)	Volume (cubic feet)
FG 6–10 Office of Special Trade Representative	.3
FG 14 Department of the Army	1.0

Subject category Federal Government (FG)	Volume (cubic feet)
FG 15 Department of the Navy	1.0
FG 16 Department of the Air Force	1.0
	3.3

Two file groups from the Staff Member and Office Files will also be made available to the public. These consist of materials that were transferred to Central Files but were not incorporated into the Subject Files. Listed below are the Staff Member and Office Files that will be made available to the public on February 19, 1992.

File Group	Volume (cubic feet)
Andre Buckles	10.0
Edwin Harper	25.0
	35.0

A number of documents which were previously withheld from public access have been reviewed and declassified under the Mandatory Review provisions of Executive Order 12356 and will be made available to the public on February 19, 1992:

	Volume (cubic feet)
Previously restricted material	less than .1

Public access to some of the items in the file segments will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: December 30, 1991.

Claudine J. Wieber,

Acting Archivist of the United States.

[FR Doc. 92–155 Filed 1–3–92; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

SES Performance Review Board

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Board for the National Endowment of the Arts. This notice supersedes all previous notices of the PRB membership of the Agency.

DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Leon F. Williams, Assistant Director of Personnel, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., room 208, Washington, DC 20506, (202) 682–5405.

SUPPLEMENTARY INFORMATION: Sec. 4314(c) (1) through (5) of title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts: Laurence M. Baden, Deputy Chairman for Management, Ana M. Steele, Director of Program Coordination, Anne-Imelda Radice, Senior Deputy Chairman, Thomas S. Kingston, Assistant Chairman for Operations (NEH).

Steven M. Klink,

Director of Personnel, National Endowment for the Arts.

[FR Doc. 92–143 Filed 1–3–92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biotic Systems and Resources; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for award. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of U.S.C. 552b (c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Biotic Systems and Resources.

Dates & Times: January 22 & 23, 1992; 8:30 a.m.–5 p.m.

Location: National Science Foundation Conference & Training Center, 1110 Vermont Avenue NW., Washington, DC 20005, room 500E.

Type of Meeting: Closed.

Agenda: Review and evaluate Doctoral Dissertation Research Proposals.

Contact Person: Penelope Firth, Program Director, Special Programs, room 215, National Science Foundation, Washington, DC 20550, (202) 357–3978.

Dated: December 30, 1991.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92–123 Filed 1–3–92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Computer and Computation Research, Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Computation Research.

Date and Time: January 23 and 24, 1992; 9 a.m.-5 p.m.

Place: Room 500D—Albert Schweitzer Room, 1110 Vermont Avenue, NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Bruce H. Barnes, Acting Director, Division of Computer and Computation Research, room 304, National Science Foundation, 1800 G St., NW., Washington, DC 20550, telephone: (202) 357–9747, email: bbarnes@note.nsf.gov Anyone planning to attend this meeting should notify Dr. Barnes no later than January 15, 1992.

Summary Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee will provide advice and recommendations concerning support of Computer Research.

Agenda:

Thursday, January 23, 1992

9 a.m. Welcome and Discussion of Goals for the Meeting and Agenda (B. Barnes and G. Andrews)
9:15 a.m. Approval of October 1990 Minutes and Discussion of Informational Items
9:45 a.m. Workshop Reports
10:15 a.m. Break
10:30 a.m. Divisional Overview and Status (B. Barnes)
11 a.m. Special Initiatives
12 noon Lunch
1 p.m. Planning and Organizing Session
1:30 p.m. Open Discussion on Funding Priorities for the Division
3 p.m. CISE Overview (N. Habermann—tentative)
4 p.m. Continued Discussion

5 p.m. Adjournment

Friday, January 24, 1992

9 a.m. Discussion of Trends in Computer Research and Their Impact on the Divisions Programs (G. Andrews and B. Barnes
12 noon Lunch
1 p.m. Remarks from Walter Massey, Director, NSF (tentative)
2 p.m. Closing Remarks and Discussion
3 p.m. Adjournment

Dated: December 30, 1991.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-126 Filed 1-3-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Cross-Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended) the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross-Disciplinary Activities.

Date and Time: January 22, 1992; 8:30 a.m. to 5 p.m.

Place: Duke University, Department of Computer Science, Durham, NC 27706.

Type of Meeting: Closed.

Contact Person: John C. Cherniavsky, Acting Head, Office of Cross-Disciplinary Activities, room 436, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7349.

Purpose of Meeting: To Provide advice and recommendations concerning a research proposal submitted to NSF for financial support.

Agenda: Site visit to review and evaluate the University of Washington's Research Proposal.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: December 30, 1991.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-121 Filed 1-3-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Cross-Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended) the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross-Disciplinary Activities.

Date and Time: January 24, 1992; 8:30 a.m. to 5 p.m.

Place: University of California, Department of Computer Science, Los Angeles, CA 90024.

Type of Meeting: Closed.

Contact Person: John C. Cherniavsky, Acting Head, Office of Cross-Disciplinary Activities, room 436, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7349.

Purpose of Meeting: To provide advice and recommendations concerning a research proposal submitted to NSF for financial support.

Agenda: Site visit to review and evaluate the University of Washington's Research Proposal.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: December 30, 1991.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-122 Filed 1-3-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Cross-Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended) the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross-Disciplinary Activities.

Date and Time: January 16, 1992; 8:30 a.m. to 5 p.m.

Place: University of Washington, Department of Computer Science, Seattle, WA 98195.

Type of Meeting: Closed.

Contact Person: John C. Cherniavsky, Acting Head, Office of Cross-Disciplinary Activities, Room 436, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7349.

Purpose of Meeting: To provide advice and recommendations concerning a research proposal submitted to NSF for financial support.

Agenda: Site visit to review and evaluate the University of Washington's Research Proposal.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: December 30, 1991.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-124 Filed 1-3-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Materials Research; Meetings

Name: Special Emphasis Panel in Materials Research.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Purpose of Meetings: To provide advice and recommendations concerning support for Materials Research Laboratories.

Contact: Dr. W. Lance Haworth, Program Director, Materials Research Laboratories, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550 Telephone (202) 357-9791.

Meeting Locations and Schedules

A. Materials Research Center, The Technological Institute, Northwestern University, Evanston, IL 60201..... 01/20/92..... 7 p.m.-9 p.m.,
01/21/92..... 8 a.m.-9 p.m.,
01/22/92..... 8 a.m.-5 p.m.

B. Laboratory for Research on the Structure of Matter, University of Pennsylvania, 3231 Walnut Street, Philadelphia, PA 19104.	01/26/92	7 p.m.–9 p.m.
	01/27/92	8 a.m.–9 p.m.
	01/28/92	8 a.m.–5 p.m.
C. Materials Science Center, Clark Hall, Cornell University	02/05/92	7 p.m.–9 p.m.
	02/06/92	8 a.m.–9 p.m.
	02/07/92	8 a.m.–5 p.m.
D. Materials Research Laboratories, University of California at San Diego, 9500 Gilman Drive, La Jolla, CA 92093–0934.	02/18/92	7 p.m.–9 p.m.
	02/19/92	8 a.m.–9 p.m.
	02/20/92	8 a.m.–5 p.m.
E. Materials Research Laboratory, North Carolina State University, Raleigh, NC 27695–7919	02/26/92	7 p.m.–9 p.m.
	02/27/92	8 a.m.–9 p.m.
	02/28/92	8 a.m.–5 p.m.
F. Materials Research Laboratory, University of California at Santa Barbara, Santa Barbara, CA 93106	03/24/92	7 p.m.–9 p.m.
	03/25/92	8 a.m.–9 p.m.
	03/26/92	8 a.m.–5 p.m.
G. Materials Research Laboratory on X-Rays and Materials Processing, University of Wisconsin-Madison, 750 University Avenue, Madison, WI 53706.	03/30/92	7 p.m.–9 p.m.
	03/31/92	8 a.m.–9 p.m.
	04/01/92	8 a.m.–5 p.m.

Dated: December 30, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–127 Filed 1–3–92; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Research in Teaching and Learning; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Advisory Panel for Research in Teaching and Learning.

Date and Time: January 16, 1992; 8 a.m. to 5:30 p.m., January 17, 1992; 8 a.m. to 3 p.m.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Raymond J. Hannapel and Barbara Lovitts, Program Directors, National Science Foundation, 1800 G Street, NW., room 635–A, Washington, DC 20550. Telephone: (202) 357–7071.

Purpose of Meeting: To provide advice and recommendations concerning Research in Teaching and Learning proposals.

Agenda: Review and evaluate Research in Teaching and Learning proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b (c)(4) and (6) the Government in the Sunshine Act.

Dated: December 30, 1991.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92–125 Filed 1–3–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

Public Service Company of New Hampshire Seabrook Station; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRC), has issued a Decision concerning a request filed pursuant to 10 CFR 2.206 by Mr. Michael C. Sinclair. The Petition requested that the NRC withhold a determination on whether the directive in ALAB–941 regarding the December 1990 exercise for the Seabrook Nuclear Station was satisfied. ALAB–941 describes the scope of the June 1988 full-participation exercise at Seabrook and directs that a deficiency in the exercise be cured in a subsequent exercise.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petition should be denied. The reasons for this Decision are explained in the "Director's Decision Under 10 CFR 2.206," (DD 91–7), which is available for public inspection in the Commission's Public Document Room, in the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Seabrook facility located at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

A copy of the Decision will be filed with the office of the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 27th day of December 1991.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92–160 Filed 1–3–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corporation; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 156 to Facility Operating License No. DPR–16 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications section 4.2.A and 4.2.C.1 to delete restriction that the refueling outage interval is not to exceed 20 months. This modification accommodates implementation of a 21-month operating cycle with a 3-month refueling outage.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 25, 1991 (56 FR 48588). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated August 19, 1991, as revised August 29, 1991, (2) Amendment No. 156 to License No. DPR–16. (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects-I/II.

Dated at Rockville, Maryland this 27th day of December 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–161 Filed 1–3–92; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF STATE

Office of the Legal Adviser; Submission of Claims Against Iraq to the United Nations Compensation Commission

[Public Notice 1545]

This notice concerns the procedures for filing a claim against Iraq with the United Nations Compensation Commission for losses, damage or injury suffered as a result of Iraq's illegal invasion and occupation of Kuwait. It supplements Public Notice 148 (56 **Federal Register** 47979, September 23, 1991). For further information, and to obtain claim forms, contact Ronald J. Bettauer, Assistant Legal Adviser for International Claims and Investment Disputes, 2100 K Street, NW., suite 402, Washington, DC 20037–7180. Telephone (202) 632–5040.

The United Nations Compensation Commission has approved and circulated forms to be used by individual claimants in filing claims for losses up to $100,000 sustained as a result of Iraq's illegal invasion and occupation of Kuwait. Fixed amounts may be claimed for departure ($2500 or $4000, depending on whether the claimant is filing additional claims), serious personal injury ($2500), and the death of a spouse, child or parent ($2500) without documentation of the amount of loss. Where adequate documentation is available, claimants may claim compensation in any amount up to $100,000. Individuals whose losses exceed $100,000 can file for the first $100,000 now and claim the rest at a later stage.

Instructions on how to complete the forms will be sent with the claim forms. Claimants should note that, since an expedited, simplified process is envisaged, the Commission has decided that no compensation will be given to pay attorneys' fees or other expenses incurred in the preparation of a claim. In addition, any compensation, whether in cash or in kind, received from any source will be deducted from the total amount of losses suffered.

A claim form must be filled out and returned to the Office of the Assistant Legal Adviser for International Claims and Investment Disputes regardless of whether claimants have already registered their claims with the Office of Foreign Assets Control in the Department of the Treasury. The Assistant Legal Adviser's office will then consolidate the claims and submit them to the Compensation Commission. The Department will submit the claims of United States citizens and, as authorized by the claims criteria adopted by the Governing Council of the Compensation Commission, will be prepared to consider submitting claims of residents of the United States.

As of July 1, 1992, the Commission will begin processing claims submitted by governments up to that date. The final deadline for the submission of claims by Governments is July 1, 1993, but it is in claimants' interest to have their claims submitted as early as possible. The Department needs time to review the forms and documentation received, follow up with claimants where necessary, and prepare a consolidated statement summarizing the claims. Therefore, claimants wishing to ensure that their claim is considered as soon as possible should return completed form(s) and documentation by March 1, 1992. The Department urges claimants to file by this date, but in any event no later than March 1, 1993.

Dated: December 23, 1991.

Ronald J. Bettauer,

Assistant Legal Adviser for International Claims and Investment Disputes.

[FR Doc. 92–116 Filed 1–3–92; 8:45 am]

BILLING CODE 4710–08–M

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 1544]

Conservation Measures for Antarctic Fishing Under the Auspices of the Commission for the Conservation of Antarctic Marine Living Resources

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, State.

ACTION: Notice.

SUMMARY: At its Tenth Annual Meeting in Hobart, Tasmania, October 21 to November 1, 1991, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted the conservation measures listed below, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These were agreed upon in accordance with article IX, paragraph 6(A) of the Convention for the Conservation of Antarctic Marine Living Resources. The measures restrict overall catches of certain species of fish, prohibit the taking of certain species of fish, list the fishing seasons, and define reporting requirements. In addition, a resolution was adopted to protect the Seal Islands as a site for the CCAMLR Ecosystem Monitoring Program (CEMP).

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments on or before February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ray Arnaudo, Chief, Division of Polar Affairs, Office of Oceans Affairs (OES/OA), room 5801, Department of State, Washington, DC 20520, (202) 647–3262.

SUPPLEMENTARY INFORMATION:

Conservation Measures Adopted at the Tenth Meeting of CCAMLR

At its Tenth Annual Meeting in Hobart, Tasmania, October 21 to November 1, 1991, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) adopted the following fifteen conservation

measures and one resolution. The conservation measures addressing catch limitations were adopted in accordance with Conservation measure 7/V and therefore enter into force immediately.

Conservation Measures Adopted This Year

CONSERVATION MEASURE 29/X, Minimisation of the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research in the Convention Area

The Commission,

Noting the need to reduce the incidental mortality of seabirds during longline fishing by minimizing their attraction to the fishing vessels and by preventing them from attempting to seize baited hooks, particularly during the period when the lines are set,

Recognizing that successful techniques for reducing the mortality of albatrosses have been employed in the longline fishery for tuna immediately to the north of the Convention Area,

Agrees to the following measures to reduce the possibility of incidental mortality of seabirds during longline fishing.

1. Fishing operations shall be conducted in such a way that the baited hooks sink as soon as possible after they are put in the water.

2. During the setting of longlines at night only, the minimum ship's lights necessary for safety shall be used.

3. Trash and offal are not to be dumped while longline operations are in progress.

4. A streamer line designed to discourage birds from settling on baits during deployment of longlines shall be towed during daylight operations. The specification of the streamer line and its method of deployment is given in the Appendix to this Measure.

5. This Measure shall not apply to designated research vessels investigating better methods for reducing incidental mortality of seabirds.

CONSERVATION MEASURE 30/X, Net Monitor Cables

The use of net monitor cables on harvesting vessels in the CCAMLR Convention Area is prohibited from the 1994/95 fishing season.

CONSERVATION MEASURE 31/X, Notification that Members are Considering Initiating a New Fishery

The Commission,

Recognising that in the past, Antarctic fisheries have been initiated in the Convention Area before sufficient information was available upon which to base management advice,

Noting that in recent years new fisheries have started without adequate information being available to evaluate either the fishery potential or the possible impacts on the target stocks or species dependent on them,

Believing that without prior notification of a new fishery, the Commission is unable to fulfill its function under article IX, hereby adopts the following Conservation Measure in accordance with article IX of the Convention:

1. A new fishery, for the purposes of this Conservation Measure, is a fishery on a species using a particular fishing method in a statistical subarea for which:

(i) Information on distribution, abundance, demography, potential yield and stock identity from comprehensive research/surveys or exploratory fishing have not been submitted to CCAMLR; or

(ii) Catch and effort data have never been submitted to CCAMLR; or

(iii) Catch and effort data from the two most recent seasons in which fishing occurred have not been submitted to CCAMLR.

2. A Member intending to develop a new fishery shall notify the Commission not less than three months in advance of the next regular meeting of the Commission, where the matter shall be considered. The Member shall not initiate a new fishery pending the process specified in paragraphs 4 and 5 below;

3. The notification shall be accompanied by as much of the following information as the Member is able to provide:

(i) The nature of the proposed fishery including target species, methods of fishing, proposed region and any minimum level of catches that would be required to develop a viable fishery;

(ii) Biological information from comprehensive research/survey cruises, such as distribution, abundance, demographic data and information on stock identity;

(iii) Details of dependent and associated species and the likelihood of them being affected by the proposed fishery; and

(iv) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the valuation of potential yield;

4. The information provided in accordance with paragraph 3, together with any other relevant information, shall be considered by the Scientific Committee, which shall then advise the Commission;

5. After its review of the information on the proposed mew fishery, taking full account of the recommendations and the advice of the Scientific Committee, the Commission may then take such action as it deems necessary.

CONSERVATION MEASURE 32/X, Precautionary Catch Limitations on Euphausia superba in Statistical Area 48

The total catch of *Euphausia superba* in Statistical Area 48 shall be limited to 1.5 million tonnes in any fishing season. A fishing season begins on 1 July and finishes on 30 June of the following year.

This limit shall be kept under review by the Commission, taking into account the advice of the Scientific Committee. Precautionary limits to be agreed by the Commission on the basis of advice of the Scientific Committee shall be applied to subareas, or on such other basis as the Scientific Committee may advise, if the total catch in Statistical Subareas 48.1, 48.2 and 48.3 in any fishing season exceeds 620,000 tonnes.

For the purpose of implementing this Conservation Measure the catches shall be reported to the Commission on a monthly basis.

CONSERVATION MEASURE 33/X, Prohibition of Directed Fishery on Champsocephalus gunnari in Statistical Subarea 48.3 for the 1991/92 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

Directed fishing on *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited in the 1991/92 season, defined as the period from 2 November 1991 to the end of the Commission meeting in 1992.

CONSERVATION MEASURE 34/X, Prohibition of Directed Fishery on Notothenia gibberifrons, Chaenocephalus aceratus, Pseudochaenicthys georgianus, Notothenia squamifrons, and Patagonothen guntheri, in Statistical Subarea 48.3 for the 1991/92 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

Directed fishing on *Notothenia gibberifrons, Chaenocephalus aceratus, Pseudochaenicthys georgianus, Notothenia squamifrons, and Patagonothen guntheri* in Statistical Subarea 48.3 is prohibited in the 1991/92 season, defined as the period from 2 November 1991 to the end of the Commission meeting in 1992.

CONSERVATION MEASURE 35/X, Catch Limit on Dissostichus eleginoides in Statistical Subarea 48.3 for the 1991/92 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/X:

1. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 caught in the 1991/92 season shall be limited to 3500 tonnes.

2. For the purposes of the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 1991/92 fishing season is defined as the period from 2 November 1991 to the end of the Commission meeting in 1992.

3. For the purpose of implementing this Conservation Measure:

(i) the Catch Reporting System set out in Conservation Measure 36/X shall apply in the 1991/92 season, commencing on 2 November 1991.

(ii) the Data Reporting System set out in Conservation Measure 37/X shall apply in the 1991/92 season, commencing on 2 November 1991.

CONSERVATION MEASURE 36/X, Five-day Catch and Effort Reporting System in Statistical Subarea 48.3 for the 1991/92 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V where appropriate:

1. For the purposes of this Catch and Effort Reporting System the calendar month shall be divided into six reporting periods, viz: day 1 to day 5, day 6 to day 10, day 11 to day 15, day 16 to day 20, day 21 to day 25 and day 26 to the last day of the month. These reporting periods are hereinafter referred to as periods A, B, C, D, E and F.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, by cable or telex, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period.

3. Such reports shall specify the month and reporting period (A, B, C, D, E or F) to which each report refers.

4. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the area, of the total catch taken during the reporting period, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season. The estimate shall be based on a projection forward of the trend in daily catch rates, obtained using linear regression techniques from a number of the most recent catch reports.

5. At the end of every five reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the five most recent reporting periods, the total aggregate catch for the season to date together with an estimate of the date upon which the total allowable catch is likely to be reached for that season.

6. If the estimated date of completion of the TAC is within five days of the date on which the Secretariat received the report of the catches, the Executive Secretary shall inform all Contracting Parties that the fishery will close on that estimated day or on the day on which the report was received, whichever is the later.

CONSERVATION MEASURE 37/X, Effort and Biological Data Reporting System for Dissostichus eleginoides Statistical Subarea 48.3 for the 1991/92 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. At the end of each reporting period, as defined in Conservation Measure 36/X, each Contracting party shall obtain from each of its vessels the haul-by-haul data required to complete the CCAMLR fine-scale catch and effort data form for longline fisheries (Form C2, Ver. 2). It shall transmit those data to the Executive Secretary not later than the end of the following reporting period.

2. At the end of each month, each contracting party shall obtain from each of its vessels a representative sample of length composition measurements from the fishery (Form B2, Ver. 4). It shall transmit those data to the Executive Secretary not later than the end of the following month.

3. Failure by a Contracting Party to provide the haul-by-haul data for three consecutive reporting periods shall result in the closure of the fishery to vessels of that Contracting Party. If the Executive Secretary has not received haul-by-haul data for two consecutive reporting periods he shall notify the Contracting Party that the fishery will be closed to that Contracting party unless those data (including arrears of data) are provided by the end of the next reporting period. If at the end of the next reporting period those data have still not been provided, the Executive Secretary shall notify all Contracting Parties of the closure of the fishery to vessels of the Contracting Party which has failed to supply the data as required.

4. Failure by a Contracting Party to provide the length composition data for three consecutive months shall result in the closure of the fishery to vessels of that Contracting Party. If the Executive Secretary has not received length composition data for two consecutive months he shall notify the Contracting Party unless those data (including arrears of data) are provided by the end of the next month. If at the end of the next month those data have still not been provided, the Executive Secretary shall notify all Contracting Parties of the closure of the fishery to vessels of the Contracting Party which has failed to supply the data as required.

CONSERVATION MEASURE 38/X, Limitation of the Total Catch of Eletrona carlsbergi in Statistical Subarea 48.3 for the 1991/92 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. For the purpose of this Conservation Measure the fishing season is defined as the period from 2 November 1991 to the end of the Commission meeting in 1992.

2. The total catch of *Electrona carlsbergi* in the 1991/92 season shall not exceed 345,000 tonnes in Statistical Subarea 48.3.

3. In addition, the total catch of *Electrona carlsbergi* in the 1991/92 season shall not exceed 53,000 tonnes in the Shag Rocks region, defined as the area bounded by 52°30'S, 40°W; 52°30'S, 44°W; 54°30'S, 40°W and 54°30'S, 44°W.

4. In Statistical Subarea 48.3, the by-catch of *Notothenia gibberifrons* shall not exceed 500 tonnes and the by-catch of any of the following species: *Notothenia rosii, Notothenia squamifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, and Champsocephalus gunnari* shall not exceed 300 tonnes.

5. The fishery in Statistical Subarea 48.3 shall close if the by-catch of any of the species named in paragraph 4 above reaches their by-catch limit of if the total catch of *Electrona carlsbergi* reaches 245,000 tonnes, whichever comes first.

6. The fishery in the Shag Rocks region shall close if the by-catch of any of the species named in paragraph 4 above reaches their by-catch limit or if the total catch of *Electrona carlsbergi* reaches 53,000 tonnes, whichever comes first.

7. If, in the course of the directed fishery for *Electrona carlsbergi*, the by-catch of any one haul of any of the species named in paragraph 4 above exceeds 5%, the fishing vessel shall

move to another fishing ground within the subarea.

8. For the purpose of implementing this Conservation Measure:

(i) The Catch Reporting System set out in Conservation Measure 40/X shall apply in the 1991/92 season; and

(ii) The Data Reporting System set out in Conservation Measure 39/X shall apply in the 1991/92 season.

CONSERVATION MEASURE 39/X, Biological Data Reporting System for Electrona carlsbergi, in Statistical Subarea 48.3 for the 1991/92 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V.

Each month the length composition of a minimum of 500 fish, randomly collected from the commercial fishery, will be measured and the information passed to the Executive Secretary not later than the end of the month following.

CONSERVATION MEASURE 40/X, Monthly Catch and Effort Reporting System

This Conservation Measure is adopted in accordance with Conservation Measure 7/V where appropriate:

1. For the purposes of this Catch and Effort Reporting System the reporting period shall be defined as one calendar month.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, by cable or telex, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period.

3. Such reports shall specify the month to which each report refers.

4. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties of the total catch taken during the reporting period, the total aggregate catch for the season to date, together with an estimate of the date upon which the total allowable catch is likely to be reached for that season. The estimate shall be based on a projection forward of the trend in daily catch rates, obtained using linear regression techniques from a number of the most recent catch reports.

5. In the case of finfish, if the estimated date of completion of the TAC is within one reporting period of the date on which the Secretariat received the report of the catches, the Executive Secretary shall inform all Contracting Parties that the fishery will close on that estimated day or on the day on which the report was received, whichever is the later.

CONSERVATION MEASURE 41/X, Prohibition of Directed Fishing for Finfish in Statistical Subarea 48.1 for the 1991/92 Season

Taking of finfish, other than for scientific research purposes, in Statistical Subarea 48.1 is prohibited in the 1991/92 season, defined as the period from 2 November 1991 to the end of the Commission meeting in 1992.

CONSERVATION MEASURE 42/X, Prohibition of Directed Fishing for Finfish in Statistical Subarea 48.2 for the 1991/92 Season

Taking of finfish, other than for scientific research purposes, in Statistical Subarea 48.2 is prohibited in the 1991/92 season, defined as the period from November 1991 to the end of the Commission meeting in 1992.

CONSERVATION MEASURE 43/X, Prohibition of Directed Fishing for Notothenia squamifrons Statistical Division 58.4.4 (Ob and Lena Banks) for the 1991/92 Season

Taking of *Notothenia squamifrons*, other than for scientific research purposes, in Statistical Division 58.4.4 (Ob and Lena Banks) is prohibited in the 1991/92 season, defined as the period from 2 November 1991 to the end of the Commission meeting in 1992.

RESOLUTION 8/X, Protection of the Seal Island CEMP Site

1. The Commission noted that a program of long-term studies is being undertaken at the Seal Islands, South Shetland Islands, as part of the CCAMLR Ecosystem Monitoring Program (CEMP). Recognizing that these studies may be vulnerable to accidental or willful interference, the Commission expressed its concern that this CEMP site, the scientific investigations, and the Antarctic marine living resources therein be protected.

2. Therefore, the Commission considers it appropriate to accord protection to the Seal Islands CEMP Site.

3. Members are requested to comply, on a voluntary basis, with the provisions of the draft management plan for the Seal Islands CEMP Site pending the conclusion of consultations with SCAR, the Antarctic Treaty Consultative Parties and, if appropriate, the Contracting Parties to other components of the Antarctic Treaty System.

4. It was agreed that, in accordance with article X, the Commission would draw this Resolution to the attention of any State that is not a Party to the Convention and whose nationals or vessels are present in the Convention Area.

Other Conservation Measures In Force

The Commission agreed that Conservation Measures 2/III (as amended by Conservation Measure 19/IX to delete the reference to *Champsocephalus gunnari*), 3/IV, 4/V, and 7/V and 18/IX should remain in force as they stand. Conservation Measures 20/IX to 28/IX inclusive expired at the end of the 1990/91 season.

Catch Reporting

Catches of *D. eleginoides*, including haul by haul data, should be reported to the Secretariat every five days, according to the system as described in Conservation Measure 36/X. Biological data, however, should be reported monthly according to the protocols set out in Conservation Measure 37/IX.

Catches of *E. carlsbergi*, should be reported to the Secretariat at the end of each calendar month, according to the system described in Conservation Measure 40/X. In addition, biological data should be reported every month in accordance with Conservation Measure 39/X.

Dated: December 20, 1991.

Raymond Arnaudo,

Chief, Division of Polar Affairs, Office of Oceans Affairs.

[FR Doc. 92-117 Filed 1-3-92; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aircraft Accessibility Federal Advisory Committee

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of establishment of federal advisory committee.

SUMMARY: This notice announces the establishment of an advisory committee to provide guidance to the Department of Transportation (DOT) concerning access to lavatories on narrow-body aircraft for persons with disabilities, including persons in wheelchairs.

Aircraft Accessibility Federal Advisory Committee Charter

I. Purpose

This charter establishes a federal advisory committee to provide guidance to the Department of Transportation

(DOT) concerning access to lavatories on narrow body aircraft for persons with disabilities including persons who use wheelchairs. It sets forth guidelines for operation of the committee in accordance with the Federal Advisory Committee Act 5 U.S.C. app. I (FACA), and the Department's regulations on Federal Advisory Committee, 49 CFR part 95.

II. Sponsor and Office Providing Support Services

The Office of the Assistant Secretary for Policy and International Affairs will sponsor the committee. The Office of Transportation Regulatory Affairs will provide support services.

III. Scope of Objectives

(a) The committee will advise the Secretary of DOT on issues necessary for further rulemaking to implement the Air Carrier Access Act of 1986. The committee will advise the Department on matters such as:

1. Whether it is feasible to design a toilet that can be fitted into narrow body aircraft that will accommodate persons with disabilities, including those who use wheelchairs;

2. For the various cabin configurations of different aircraft types under 200 seats, what physical layouts are possible to offer passengers at least visual privacy, and the ability to maneuver in the lavatories?

3. What physical layouts are possible which would provide disabled passengers full maneuvering room using an on-board chair inside the lavatory? What layouts would provide partial accessibility, (e.g. a privacy area curtain outside the lavatory)?

4. Which designs can be accomplished without the loss of revenue seats? Which design can be accomplished with only a minimal loss of revenue seats?

5. How would such arrangements impact on the passengers traffic within the cabin, flight attendant duties in galleys, and the opportunity for passengers to use other lavatories?

6. How might such arrangements impair safety?

7. In small planes, where can the aisle chairs be stored?

8. Down to what size airplanes and what types can such requirements reasonably be imposed?

9. Should the requirements for accessible lavatories be made a function of stage length (i.e. the length of the flight which the aircraft performs) instead of airplane size, and if so for what stage lengths should such requirements be improved?

The Department will use advice provided by the committee to develop a notice of proposed rulemaking and a final rule.

(b) The committee shall act solely in an advisory capacity to the Department and shall neither exercise any program management responsibility nor make decisions directly affecting the matters on which it provides advice.

IV. Duties

Consistent with the scope and objectives described in Section of this charter, the committee is authorized to:

(a) Review comments submitted to Docket No 46812 in response to the Supplemental Notice of proposed rulemaking published in the Federal Register on March 6, 1990.

(b) Provide a forum for discussion of issues that will be covered in the proposed and final rules.

(c) Respond to specific assignments made by the sponsor.

V. Membership

(a) The committee will consist of approximately 20 members appointed by the Assistant Secretary for Policy and International Affairs with the approval of the Secretary. Members will be representative of organizations that have an interest in gaining access to lavatories in narrow body aircraft and airline industry representatives.

(b) The membership will be balanced in terms of points of view represented.

VI. Chairperson(s)

The Chairperson(s) will be appointed by the Assistant Secretary for Policy and International Affairs.

VII. Meetings

(a) The Committee and any subcommittee will meet and terminate at the call of the designated federal official. Agenda will be reviewed and approved by the designated federal official.

(b) Each committee and subcommittee meeting will be open to the public. A notice of each meeting will be published in the Federal Register at least fifteen days in advance of the meeting. Shorter notice is permissible in cases of emergency, but the reason for the emergency must be reported in the notice.

(c) Detailed minutes of each meeting will be kept and their accuracy certified to by the committee chairperson. The minutes will include the time and place of the meetings, a record of the persons present, a complete summary of matters discussed and conclusions reached, if any, by the committee or any subcommittee.

VIII. Compensation for Non-Federal Members

Non-federal government members serve without compensation, but may be reimbursed for expenses.

IX. Estimated Annual Cost to the Government

Some cost to the government is anticipated. However, should cost be incurred, in no event will those costs exceed $50,000 and one quarter person years, which is the ceiling for this committee. No government staff positions are being allocated to the committee on a full-time basis.

X. Public Interest

The information and use of the committee is determined to be in the public interest in connection with the performance of duties imposed on the Department of Transportation by law.

XI. Effective Date

This charter is effective fifteen days after publication in the Federal Register, and terminates upon completion of the subject rulemaking or two years after this date, whichever occurs first, unless, before such time, it is extended in accordance with the FACA and other applicable requirements.

FOR FURTHER INFORMATION CONTACT: Donald R. Trilling, Director, Office of Transportation Regulatory Affairs, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Telephone (202) 336–4220; or Ira Laster, Jr., Senior Program Coordinator, Office of Transportation Regulatory Affairs, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Telephone (202) 366–4859.

Issued on December 27, 1991.

Jeffrey N. Shane,
Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–145 Filed 1–3–92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Acceptance of Noise Exposure Maps and Request for Review of Noise Compatibility Program for McClellan-Palomar Airport, Carlsbad, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the County of San Diego, California for the McClellan-

Palomar Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the McClellan-Palomar Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before June 17, 1992.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 20, 1991. The public comment period ends February 18, 1992.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Airport Planner, Federal Aviation Administration, Planning Section, AWP–611.3, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone (310) 297–1621. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the McClellan-Palomar Airport are in compliance with applicable requirements of Part 150, effective December 20, 1991. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 17, 1992. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional non-compatible uses.

The County of San Diego, California, submitted to the FAA on October 12, 1990, noise exposure maps, descriptions and other documentation which were produced during the preparation of the McClellan-Palomar Airport Noise Compatibility Study dated August 1990. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the County of San Diego. The specific maps under consideration are Exhibits Q and R in the submission. The FAA has determined that these maps for McClellan-Palomar Airport are in compliance with applicable requirements. This determination is effective on December 20, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the McClellan-Palomar Airport, on December 29, 1991. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 18, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Blvd., room 3E24, Hawthorne, CA 90261.

County of San Diego, Department of Public Works, 5555 Overland Avenue, San Diego, CA 92123.

McClellan-Palomar Airport, 2198 Palomar Airport Road, Carlsbad, CA 92008.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on December 20, 1991.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 92-148 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 91-51; Notice 2; Docket No. 91-60; Notice 2]

The Clarity Group, Inc.; Solectria Corp.; Extension of Time To Comment on Petition for Temporary Exemption From Several Federal Motor Vehicle Safety Standards

On December 4, 1991, the National Highway Traffic Safety Administration (NHTSA), published notice of receipt of a petition from The Clarity Group, Inc., dba Electric Transportation Applications, for temporary exemption from several Federal motor vehicle safety standards (56 FR 63546). The comment closing date on the notice is January 3, 1992. Ford Motor Company has petitioned for an extension of time in which to comment. December 20, 1991, is the last working day for Ford, prior to its Christmas and New Year's recess, and it does not return to work until January 2, 1992. Because it has an active electric vehicle program, it believes it can provide information helpful to NHTSA in its deliberations on the merits of the petition. Ford requested a 30-day extension.

On December 17, 1991, the agency published a similar notice with respect to a petition by Solectria Corporation for a temporary exemption from several Federal motor vehicle safety standards (56 FR 65531). The comment due date on this notice is January 16, 1992. Because part of the comment period for this notice also falls during holiday recesses, the agency believes that it is in the public interest to extend the comment date on this notice as well.

Accordingly, in consideration of the foregoing, the due dates for comments on Docket 91-51 and Docket 91-60 are hereby extended to January 31, 1992.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8.

Issued: December 30, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-118 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 91-61; Notice 1]

Solar Electric Engineering, Receipt of Petition for Temporary Exemption From Five Federal Motor Vehicle Safety Standards

Solar Electric Engineering of Santa Rosa, California, has applied for a temporary exemption from five Federal motor vehicle safety standards for passenger cars and trucks that it converts to electric power. The basis of the petition is that an exemption will facilitate the development and field evaluation of low-emission motor vehicles.

Notice of receipt of the petition is published in accordance with agency regulations on the subject (49 CFR part 555), and does not represent any judgment of the agency on the merits of the petition.

Petitioner intends to convert 1992 model Ford Escort passenger cars, and Chevrolet S10 pickup trucks to electric power, as well as certain other unspecified passenger cars certified as conforming to the Federal motor vehicle safety standards. The Fords will be marketed under the name "Electron-One", and the Chevrolets under the name "Electron-Two." The basis of the petition is that a temporary exemption would facilitate the development and field evaluation of a low-emission motor vehicle, as provided by 49 CFR 555.6(c).

The vehicles to be converted have been certified by their original manufacturers to conform to all applicable Federal motor vehicle safety standards. However, petitioner has determined that the vehicles may not conform with all or part of five Federal motor vehicle safety standards after their modification. The standards and sections for which exemptions are requested are discussed more fully below.

1. Standard No. 103, Windshield Defrosting and Defogging Systems.

2. Standard No. 105, Hydraulic Brake Systems.

Petitioner states that the vehicles originally conform to these standards, but it is unsure whether performance requirements are met after conversion.

3. Standard No. 201, Occupant Crash Protection.

4. Standard No. 204, Steering Control Rearward Displacement.

5. Standard No. 208, Occupant Crash Protection.

None of the impact protection materials of vehicles certified to comply with Standard No. 201 are removed as part of the conversion, and the vehicle's original restraint system conforming to Standard No. 208 remains in place. However, the petitioner is unsure whether performance differs "since the weight and mass has (sic) been altered."

According to the petitioner, an exemption would facilitate the development and field evaluation of a low-emission motor vehicle by enabling the petitioner to produce and market its vehicles. Such exemption would not unduly degrade the safety of the vehicle because of its intended use in low speed urban areas.

Further, argues the petitioner, granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act because the vehicles would "reduce air pollution at street level and lessen the dependence of the United States on importation of petroleum."

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 3, 1992.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50, and 501.8.

Issued on December 30, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-119 Filed 1-3-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 30, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance

Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0205.
Form Number: IRS Form 5452.
Type of Review: Revision.
Title: Corporate Report of Nondividend Distributions.
Description: Form 5452 is used by corporations to report their nontaxable distributions as requested by Internal Revenue Code (IRC) section 6042(d)(2). The information is used by IRS to verify that the distributions are nontaxable as claimed.
Respondents: Farms, Businesses or other for-profit, small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 1,700.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—24 hours, 9 minutes.
Learning about the form or the law—1 hour, 20 minutes.
Preparing the form—3 hours, 39 minutes.
Copying, assembling, and sending the form to IRS—32 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 50,439 hours.
OMB Number: 1545–1099.
Form Number: IRS Form 8811.
Type of Review: Extensive.
Title: Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.
Description: Form 8811 will be used to collect the name, address, and phone number of representative of a Real Estate Mortgage Investment Conduit (REMIC) who can provide brokers with the correct income amounts that the broker's clients must report on their income tax returns. It is estimated that there are some 1,000 REMICs currently in existence.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hours, 38 minutes.
Learning about the form or the law—24 minutes.
Preparing, copying, assembling, and sending the form to the IRS—27 minutes.
Frequency of Response: Other (Taxpayer must only file once for each obligation issued.)
Estimate Total Reporting/ Recordkeeping Burden: 3,490 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–113 Filed 1–3–92; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

December 30, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments Regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0059.
Form Number: ATF F 5120.29.
Type of Review: Extension.
Title: Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.
Description: ATF F 5120.29 is completed by proprietors of bonded wineries who intend to produce wine, to ensure that the formulas and processes used in the production of wine are in accordance with the regulations of the Federal Alcohol Administration Act and the Internal Revenue Code.
Respondents: Businesses or other for-profit, small businesses or organizations.
Estimated Number of Respondents: 600.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,200 hours.
OMB Number: 1512–0092.
Form Number: ATF F 5100.31 (1648/ 1649/1650).
Type of Review: Extension.
Title: Application for Certification/ Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.
Description: The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label their products. Treasury oversees label application to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages.
Respondents: Businesses or other profit, Small businesses or organizations.
Estimated Number of Respondents: 6,060.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 27,300 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–153 Filed 1–3–92; 8:45 am]
BILLING CODE 4810–31–M

Fiscal Service

Renegotiation Board Interest Rate Prompt Payment Interest Rate Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 92–41). For example, the Contracts Disputes Act of 1978 (Pub. L. 95–563) and the Prompt Payment Act (Pub. L. 97–177) are required to calculate interest due on claims " * * * at a rate established by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board."

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest

applicable for the purpose of said sections, for the period beginning January 1, 1992 and ending on June 30, 1992, is 6⅞% per centum per annum.

Dated: December 18, 1991.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92–154 Filed 1–3–1992; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 57. No. 3
Monday, January 6, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 7, 1992, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g. § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 9, 1992, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1991-36: Mr. John E. Impert, Assistant General Counsel of The Boeing Company

* * * * *

Technical and Conforming Amendments to Honoraria Regulations
Administrative Matters

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Delores Harris,

Administrative Assistant.

[FR Doc. 92-283 Filed 1-2-92; 2:44 pm]

BILLING CODE 6715-01-M

VOL 57 ISS 3 JA 6 1992 UMI

federal register

Monday
January 6, 1992

Part II

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 455

Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions; Notice of Proposed Rulemaking and Public Hearings

VOL 57 ISS 3 JA 6 1992 UMI

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 455

[Docket No. CE-RM-91-130]

Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions

AGENCY: Office of Conservation and Renewable Energy, Department of Energy..

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: Today the Department of Energy (DOE) is proposing revisions to the regulations for its Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions, also known as the Institutional Conservation Program (program, Institutional Conservation Program, or ICP) and is requesting public comment. The program provides grants to institutions to fund detailed energy audits, called technical assistance programs (TAs), and energy conservation measures (ECMs). The purpose of the proposed revisions is to provide States and institutional grantees more specific guidance in some areas of program operation and more flexibility in other areas. The revisions are also intended to improve DOE's ability to assist States, institutions, and other interested parties in improving energy efficiency, reducing energy costs, and leveraging available resources. In a number of cases, the revisions reflect changes to the program made by the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101-440).

DATES: Written comments (ten copies) in response to this Notice must be received by DOE on or before February 14, 1992; to ensure their consideration. Three public hearings are scheduled to be held: in Washington, DC on February 4, in Dallas, TX on January 28, and in San Francisco, on January 30. Requests to speak at the hearings must be received no later than February 3, for Washington, January 27, for Dallas, and January 27, for San Francisco.

ADDRESSES: All written comments (ten copies), as well as requests to speak at the public hearings, are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, CE-90, Hearings and Dockets, Notice of Proposed Rulemaking for Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586-3012. FAX comments will not be accepted.

The public hearings will be held at the following locations:

January 28, 1992—1:30 p.m.

Earle Cabel Federal Building, 1100 Commerce Street, room 1B16A (1st Floor), Dallas, Texas.

January 30, 1992—8:30 a.m.

U.S. Appraisers Building, 630 Sansome Street (btwn Washington & Jackson), room 1415 (14th Floor), San Francisco, CA.

February 4, 1992—1 p.m.

Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., room TBD, Washington, DC.

Each person to be heard is requested to bring ten copies of his/her Statement to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements may be made with the Office of Hearings and Dockets in advance by so indicating in the letter or phone request to make an oral presentation.

Transcripts of the hearings, as well as the entire rulemaking record, will be available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the following address: U.S. Department of Energy, Freedom of Information Office Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-6020. Any person may purchase a copy of the transcript from the reporter.

For more information concerning public participation in this rulemaking proceeding, see section X, "Opportunity for Public Comment," of this notice.

FOR FURTHER INFORMATION CONTACT: Thomas P. Stapp, U.S. Department of Energy, Institutional Conservation Program, Conservation and Renewable Energy, CE-531, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-2096.

Neal J. Strauss or Vivian Lewis, U.S. Department of Energy, Office of General Counsel, Conservation and Regulations, GC-41, 6B-256, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction and Description of the Program.
II. Proposed Rule Changes.
III.-VIII. Environmental, Regulatory Impact, Small Entity Impact, Paperwork Reduction Act, and Other Reviews.
IX. Catalog of Federal Domestic Assistance.
X. Opportunity for Public Comment.

I. Introduction and Description of the Program

The Department of Energy (DOE or Department) is proposing to amend the program regulations for the Institutional Conservation Program, 10 CFR part 455, authorized by title III of the Energy Policy and Conservation Act, as amended, (the Act) 42 U.S.C. 6371 *et seq.* The program is subject to the general DOE Assistance Regulations at 10 CFR part 600 which is cross referenced in 10 CFR part 455 and sometimes discussed in this preamble.

The Act established a primary goal for the program of reducing energy use and costs in institutional buildings. To accomplish this goal, it authorized DOE to establish cost-shared energy conservation grant programs to fund TAs in public and private non-profit schools, hospitals, and buildings owned by units of local government and public care institutions and to fund the purchase and installation of ECMs in schools and hospitals.

The TAs are used to identify changes in maintenance and operating procedures and new equipment or materials that could conserve energy in eligible buildings. Implementation of the maintenance and operating procedures and installations of the new ECMs contribute to energy conservation in the building where they are used.

The purpose of today's action is to improve the operation of the Institutional Conservation Program. The Department is taking these actions based on its experience in administering the program since fiscal year 1979, questions raised and suggestions made by participants in the program, and amendments to the Act by the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101-440) (1990 legislation). Other areas of program administration require revision because the program has evolved. DOE is proposing to rearrange a number of the subparts to the rule and to add some new subparts and new sections, to provide a more logical sequence and to make the rule easier to use. DOE is also making a number of minor technical or grammatical corrections.

DOE is also seeking to facilitate the leveraging of ICP funds by encouraging States and institutions to identify additional sources of funding for energy efficiency improvements and to obtain

funding from those sources where feasible. Since ICP funding is limited, it is important that States and institutions utilize non-grant funding sources whenever possible. Finally, DOE believes that improved and more flexible regulations will have a positive influence on energy efficiency efforts.

Over the history of the program, DOE has issued numerous policy guidance memoranda relating to various areas of program administration and implementation. These guidance memoranda will be reviewed and, as appropriate, edited or canceled to properly reflect the final rule.

II. Proposed Rule Changes

The following discussion indicates the changes DOE is proposing and the reasons for the changes. It is important to note that a number of the changes will require revisions to State Plans. DOE invites comments regarding these changes and other aspects of the program.

The principal revisions being proposed in this action are: Reorganizing the rule in more logical order and adding new sections and headings for clarity; redefining "building" to cover groups of structures centrally metered and served by a central utility plant; changing the building eligibility date to May 1, 1989; simplifying the definition of "energy audit" and offering States the option of doing simpler energy audits in the future; allowing demand-shifting ECMs if they don't use more energy than was used before their installation; adding definitions and other regulatory provisions for optional new grants to States for technical assistance, program assistance, and marketing; deleting the exclusion of educational agency administration buildings from eligibility; providing for various new or changed requirements that States must address in their State Plans or have the option to address; incorporating the DOE deobligation/reobligation policy for various types of situations into the rule; deleting the requirement that TAs be long-term planning documents and allowing States to limit the range and types of ECMs to be considered in TAs for particular types of buildings; allowing States to select either simple payback or life-cycle costing as their cost-effectiveness test for ECMs in the TAs done in the States, and adding regulatory provisions for States that want to use life-cycle costing citing Federal Energy Management Program (FEMP)-developed documents.

Further revisions proposed in this action are: Extending the allowable payback range for ECMs to 15 years from 10 years in States where life-cycle costing has been selected as the cost-effectiveness test (the lower end of the allowable range remains 2 years); dropping the former calculations for coal and renewable energy conversions and requiring that all ECMs (except those to shift demand) be evaluated based on the value of the energy saved; revising hardship criteria to concentrate only on financial need; raising the State administrative grant maximum base amount to $50,000 and eliminating the matching requirement for these grants; providing for administrative grants from appropriated funds where States fund ECMs from non-Federal sources; requiring a State to offer regular ICP grants to religious institutions where such institutions would be ineligible for non-Federal ECM funding due to State constitutional prohibitions on providing State aid to religious institutions; providing for allowance of liens where the matching contribution is borrowed, and requiring that DOE be notified if a lender sues to repossess the equipment; providing States the option of allowing applications for credit toward the grantee's share of the cost of ECMs and limiting credit to TAs and ECMs done within 3 years of grant application; allowing States the option of permitting applications for ECMs that were funded in previous cycles but never done; providing for a sample energy use report, using a statistically valid sampling technique, to replace the current requirement that all grantees file such reports; and allowing rebates to be used for the grantees' matching contribution.

List of Subparts and Sections

In order to improve the organization and comprehensibility of the program regulations, DOE proposes to rearrange the subparts. A list of the new proposed subparts and the corresponding old existing subparts is as follows:

Proposed new subpart	Existing subpart
Subpart A—General Provisions.	Subpart A—General Provisions.
Subpart B—State Plan Development and Approval.	Subpart H—State Plan Development and Approval.
Subpart C—Allocation of Appropriations Among the States.	Subpart I—Allocation of Appropriations Among the States.
Subpart D—Preliminary Energy Audit and Energy Audit Grant Procedures.	Subpart B—Preliminary Energy Audit and Energy Audit Grant Procedures.
Subpart E—Technical Assistance Programs for Schools, Hospitals, Units of Local Government, and Public Care Institutions.	Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government and Public Care Institutions.
Subpart F—Energy Conservation Measures for Schools and Hospitals.	Subpart D—Energy Conservation Measures for Schools and Hospitals
Subpart G—State Administrative Expenses.	Not a separate subpart.
Subpart H—State Grants for Technical Assistance, Program Assistance, and Marketing.	Not in existing rule.
Subpart I—Cost Sharing	Not a separate subpart.
Subpart J—Applicant Responsibilities—Grants to Institutions.	Subpart E—Applicant Responsibilities.
Subpart K—Applicant Responsibilities—Grants to States.	Not a separate subpart.
Subpart L—State Responsibilities.	Subpart F—State Responsibilities.
Subpart M—Grant Awards.	Subpart G—Grant Awards.
Subpart N—Administrative Review.	Part of Appeals Process Rulemaking.

As appropriate, new sections and revised section headings have been added to many of the subparts.

Section 455.2 Definitions

DOE proposes to revise the definition of "building" to change the eligibility date to May 1, 1989, and to permit a group of structural units served by a central utility plant and centrally metered to be considered a "building." The 1990 legislation changed the building date, and DOE believes a broader definition of "building" will add flexibility where a group of structural units has a single energy-using plant providng heating and/or cooling and is on a central meter. However, it is important to note that only the eligible portions of buildings may be the subjects of ICP-funded conservation improvements. In cases where part of a building is an eligible institution and part is ineligible (a building housing both a school and a church, for instance), the ineligible part may not be the subject of ICP-funded conservation improvements.

DOE proposes to revise the definition of "complex" to delete a group of buildings served by a central utlity plant which would now be covered under the revised definition of building.

DOE proposes to revise the definition of "coordinating agency" to clarify that a State may serve in this role consistent with State laws and regulations.

DOE proposes to revise the definition of "energy audit" (EA) to delete the reference to former § 455.19 (which DOE is proposing to drop from the rule, as discussed later) and to add wording which reflects the definition in the Act. Energy audits are no longer funded by DOE, and, as discussed under new § 455.20, DOE is now proposing to allow each State to decide what type of energy audit to require as the basis for TA grant applications with the new definition in this section serving as the minimum requirement for State-designed EAs.

DOE proposes to revise the definition of "energy conservation measure" (ECM) to reflect statutory amendments. A new subsection (d) would be added to cover measures designed to shift energy usage to off-peak hours if they save energy costs and do not increase energy use. These cost-saving (but not necessarily energy-saving) systems are now allowable because of the 1990 legislation. (A separate definition is also being added under "load management system.") Consistent with applicable U.S. House of Representatives report language, DOE does not interpret the revised definition to cover fuel switching. House Report No. 101-646, 101st Congress, 2d Session 15 (1990), reprinted in 1990 U.S. Code Congressional & Administrative News 1656.

DOE proposes to revise new subsection (j) (old subsection (i)) under the definition of "energy conservation measure" to add, as an eligible measure, replacement or modification of exterior light fixtures that are physically attached or connected to an eligible building. This change would provide for institutions to make exterior, as well as interior, improvements to light fixtures as long as those fixtures meet the specified criteria.

DOE is proposing to delete the definition of "energy use evaluation" (EUE) because DOE is also proposing to delete old § 455.20 (which described EUE requirements). As already discussed, States will be able to design their own requirements for an EA, consistent with the statutory definition of "energy audit," under the changes proposed in this rulemaking.

DOE proposes to add a new definition for "load management system" to provide for this type of equipment, newly allowable due to the 1990 legislation. This is the only type of ECM eligible for funding under ICP that is not required to save energy. However, this type of ECM is not allowable in cases where it causes more energy to be used than was used before its installation.

DOE proposes to add a definition for "marketing" to provide for this new type of State grant activity made allowable, under certain circumstances, by the 1990 legislation. The proposed definition is consistent with the applicable language in the U.S. House of Representatives report previously cited.

DOE proposes to delete the definition of "Operations Office Manager" to reflect the realignment of the DOE field offices. A definition of "support office director" is being added as part of this change.

DOE proposes to revise the definition of "preliminary energy audit" (PEA) to reflect the definition in the Act. As with energy audits, DOE no longer funds PEAs and thus is simplifying the definition to describe a minimum standard for PEAs.

DOE proposes to add a definition for "program assistance" to provide for this new type of State grant activity made allowable, under certain circumstances, by the 1990 legislation. (See section 6 of Pub. L. 101-440).

DOE proposes to revise the definition of "school facilities" by adding administrative facilities (newly allowable due to the 1990 legislation).

New Subpart B—State Plan Development and Approval

DOE proposes to make old subpart H new subpart B (old subpart B becomes new subpart D), with new section numbers starting with § 455.20. From old subpart H, old § 455.92, which provided for development by DOE of State Plans for States that did not have their own approved by February 7, 1981, is being deleted because it is no longer needed. All States had approved plans by that date.

New Section 455.20 Contents of State Plan

DOE proposes a series of revisions to new § 455.20, clarifying some paragraphs and specifying areas where the States may need to provide new or revised entries in their State Plans. First, DOE proposes revising the introductory sentence of the section to add wording referring to the new option for States to apply for grants to provide technical assistance, program assistance, and marketing.

DOE proposes to add a new paragraph (c) requiring States to set forth their procedures for notifying their eligible institutions (for each cycle that allocations are provided by DOE) of the availability of funding under this part. Since States must already have such procedures established, this change simply requires that the procedures be included in the State Plan.

DOE then proposes to redesignate former paragraph (c) as new paragraph (d) and then to delete the former paragraph (d) entirely. That paragraph required States to include results from preliminary energy audits. Since that part of the program is now completed and has been reported on in previous State Plans, DOE believes it is now appropriate to delete the requirement that the information continue to be included in future State Plans.

DOE then proposes adding new paragraph (j) requiring a State to describe its programs to provide technical assistance, program assistance, or marketing if the State elects and is eligible to establish one or more such programs. This change results from the 1990 legislation and is more fully discussed under subparts H and K.

DOE then proposes redesignating existing paragraph (l) as new paragraph (k) and revising this paragraph to require States to describe their requirements for the energy audit that is to be used as the basis for a TA grant application. DOE is proposing to delete former §§ 455.18, 455.19, and 455.20 which covered the requirements for PEAs, EAs, and EUEs. However, States can include, in their EA requirements, any of the elements from those sections that are considered necessary for an effective EA.

Former paragraph (j) would then become new paragraph (l) and would be revised to simplify the requirements for assuring the implementation of maintenance and operating procedures or for an adequate explanation for not implementing them. Former paragraph (k) would then become new paragraph (m) and would be revised to require States to more specifically evaluate grant applications to assure that grant funds are not supplanting other available sources of funding. With limited Federal funds available for ICP, it is important for States and institutions to investigate and consider other sources of funding before seeking ICP grants. Former paragraph (m) would be deleted because new paragraph (k) provides for States to set requirements for EAs. Paragraph (n) would then be revised to clarify that the TAs referred to are the TAs that are used as the basis for ECM grant applications.

A new paragraph (o) is added to require a State to specify its policies regarding selection of the ECMs to be studied in a TA and its requirements for TAs for different types of buildings if it elects to impose requirements beyond those in the rule. States may limit the number and types of ECMs to be studied in the TAs, as appropriate for the particular types of buildings involved, but they need to be specific about these

limitations in their State Plans. At a minimum, State-designed TAs must include the information required under §§ 455.62 and 455.63. Old paragraph (o) would then be redesignated paragraph (p), and a provision would be added for a State to specify hospital or school certification requirements unique to the State. A new paragraph (q) would then be added to provide for a State to specify the circumstances under which it requires an updated TA. Old paragraph (p) would then be redesignated as new paragraph (r). A new paragraph (s) would be added to provide for a State to specify whether, and under what circumstances, it will consider allowing reapplication for ECMs funded in earlier cycles but not implemented.

Old paragraphs (q) and (r) are redesignated as new paragraphs (t) and (u), respectively. DOE proposes to require, in new paragraph (u), that States use 3,413 as the factor in the conversion of kilowatt hours to Btu's to ensure consistency among all States. This factor represents consumption at the consumer's end. (Formerly, DOE policy allowed States the choice of using 3,413 or 11,600, which represents consumption at the producer's end). This change need not affect the rankings of projects that might benefit from the use of the higher factor (for instance, those involving a change in the use of electricity), because States can compensate for using the lower factor by adding to the weight of this type of change pursuant to paragraph (e) of this section and § 455.131(c). DOE also proposes to add to new paragraph (u) a provision for States to select either simple payback or life cycle costing as their cost effectiveness testing approach for technical assistance programs. A new paragraph (v) would then be added to provide for a State to describe its role as coordinating agency if it plans to serve in that role. A State serving in this role may receive a grant from DOE for TAs and/or ECMs and may, in turn, provide the assistance to its schools and hospitals. This is not a newly allowable role for States, but only two States have chosen to apply to run their programs this way. Other States may wish to consider this approach.

New paragraph (w) would then be added to provide for a State to specify the circumstances under which it will consider applications for credit for costs incurred on projects.

New Section 455.21 Submission and Approval of State Plans and State Plan Amendments

DOE proposes adding new paragraph (d) to this section to provide for amendments submitted by the State because of changes the State wishes to make. DOE also proposes to revise paragraph (e) (formerly paragraph (d)) to provide for a 60-day review period for State plan amendments by DOE. The existing rule does not specify a limit for DOE's review of amendments.

New Subpart C—Allocation of Appropriations Among the States

DOE proposes to redesignate old subpart I as new subpart C (old subpart C becomes new subpart E) with new section numbers starting with § 455.30.

New Section 455.30 Allocation of Funds

DOE proposes to revise this section as follows: Adding to paragraph (a) a reference to the new grants to States for technical assistance, program assistance, and marketing; adding new subparagraphs (b)(2) and (b)(3), providing for States that elect and are eligible to use their appropriated funds for TAs, program assistance, or marketing, and for State administrative expense grants, respectively; and then redesignating old subparagraph (b)(2) as (b)(4). Allowing States to use their allocations for TAs, program assistance, and marketing is a change resulting from the 1990 legislation; DOE is particularly interested in any suggestions relating to the implementation of this new provision.

New Section 455.32 Reallocation of Funds

DOE proposes to delete paragraph (b), which relates to the allocation of funding for States that did not have State Plans approved by February 7, 1981. Since all States had approved plans as of that date, this paragraph is now moot. Former paragraph (c) is then redesignated paragraph (b).

DOE then proposes to add new paragraphs (c), (d), (e), and (f) to specify when various ICP grant funds will be deobligated by DOE and reallocated among all the States (as required by the Act) and to provide (in paragraph (d)) for the reobligation within a State of declined grant funds under certain circumstances. With the exception of paragraph (f) which covers the new State grants for TAs, program assistance, and marketing, these paragraphs reiterate existing DOE policy.

New Subpart D—Preliminary Energy Audit and Energy Audit Grant Procedures

DOE proposes to redesignate old subpart B as new subpart D in the new arrangement of the rule (old subpart D becomes new subpart F). New section numbers in this subpart would be §§ 455.40–455.49. Old §§ 455.18, 455.19, and 455.20 from old subpart D are proposed for deletion as discussed earlier. Those sections cover detailed requirements for PEAs, EAs, and EUEs.

The effect of these deletions would leave the general statutory definitions of PEA and EA in § 455.2 for use in connection with regulatory provisions other than subpart D. For years, Congress has not appropriated funds for subpart D grants. If Congress were to provide appropriations for subpart D grants, DOE would reissue rules prescribing detailed content requirements after seeking public comment. (New §§ 455.48 and 455.49 are indicated in the regulatory table of contents as reserved for such rules.) DOE is considering removal and reservation of all of subpart D because there is very little likelihood that funds will be made available in the foreseeable future, and the content of subpart D clutters part 455 with useless and potentially confusing details. DOE invites public comment on the desirability of removal and reservation of subpart D in the final rule. In the absence of persuasive adverse comment, DOE intends to take such action.

New Section 455.43 Allocation of Funds for Preliminary Energy Audits and Energy Audits

DOE proposes revising this section so that the information to be used in the formula corresponds to that in the formulas specified in § 455.31. While PEA and EA grants are not currently being funded, DOE feels it is appropriate at this time to make this correction. The existing formula in old § 455.13 uses population data from the 1976 census estimates and heating and cooling degree days from the period 1941–1970. The revision provides for using the most recent data available which are consistent with the formula input for the allocations in § 455.31.

New Section 455.46 Use of Funds

DOE proposes to delete from the program regulations the specifics regarding the dollar threshold triggering a requirement for DOE prior approval of equipment purchases. The existing $500.00 threshold is out of date, and the current policies are set forth in the DOE Financial Assistance Regulations at 10 CFR 600.119 or 600.436.

New Subpart E—Technical Assistance Programs for Schools, Hospitals, Units of Local Government and Public Care Institutions

DOE proposes to redesignate old subpart C as new subpart E (with old subpart E being divided between new subparts I and J) with new section numbers starting with § 455.60.

New Section 455.61 Eligibility

DOE proposes to revise paragraph (a) to delete the exclusion of administrative buildings used by local education agencies. This change results from the 1990 legislation.

DOE also proposes to revise paragraph (c) of this section to conform to new § 455.20(k) which allows States to establish requirements for EAs, consistent with the definition of "energy audit" in the Act, to be used as the substantiation for a TA or ECM grant application. Paragraph (d) would be similarly revised.

New Section 455.62 Contents of a Technical Assistance Program

DOE proposes to revise this section to provide for the new State option of designing TAs to suit various building types. For purposes of a TA to be used as the basis for a later ECM grant application, a State must specify the extent to which various types of eligible buildings in the State are to be analyzed and the range of ECMs which must be considered. The basic TA content requirements are being retained in the rule, but each State will have the flexibility of specifying the extent to which potential ECMs must be evaluated and will be able to design one or more TA formats for its eligible buildings. This would mean that a State could set the same TA requirements for all its eligible buildings, or it could specify different requirements for different types of buildings. For example, a State might want to specify simpler TA requirements (meaning that fewer ECMs would have to be evaluated) for institutions with buildings that are relatively small in size, or for types of institutions that have relatively few ECM opportunities, or where the potential ECMs are relatively low-cost items. The goal here is to allow States to design TAs so that the cost and effort in doing the TA is in reasonable porportion to the cost of the ECMs that are likely to be recommended in the TA.

This revision to new § 455.62 is being proposed in response to many comments DOE has received over the years that the present TA requirements of the rule are too inflexible and often lead to costly and cumbersome TAs that may not serve a useful purpose to the institution. Apparently, some TAs are used only to substantiate a subsequent ECM grant application; a State may wish to recognize this reality by reducing its TA requirements for some or all of its institutions. Whatever approach the State chooses must be described in the State Plan and must be reasonable. (E.g., it would not be reasonable to include only one ECM in a TA.) States should ensure that, in cases where simpler TAs are permitted, allowable costs for such TAs are reduced accordingly. The individual revisions designed to permit State flexibility in TA design and oversight, together with basic requirements DOE is retaining in the rule, are discussed below.

DOE proposes to revise paragraph (a) of this section to explicitly require an on-site analysis of each building where a TA is performed. While it has always been understood that TAs involve an on-site analysis, it is DOE's intention that a TA could not, for example, be based entirely on a computer model of a building. In fact, DOE encourages TA analysts to concentrate on providing clear information in their TAs, with complex computer-generated data kept to a minimum and used primarily to support the recommendations in the TA. Former subparagraph (a)(1) becomes new paragraph (b). Former subparagraph (a)(2), which requires that TAs also be designed as long-term planning documents, is being proposed for deletion as a mandatory requirement. However, States and institutions may take advantage of the opportunity to have a TA provide as much planning information as possible, since it may be the one chance to have such documentation provided on a cost-shared basis.

Former paragraph (b) is being revised and shortened to reflect the changes already discussed, and redesignated as paragraph (c). Paragraph (d) is being revised to delete the requirements relating to evaluating the accuracy of EA's in § 455.62(d)(1)(i) and to delete the former subparagraphs (d)(3) and (d)(4). A change is also being proposed for § 455.62(d)(3)(vii), which has been redrafted to cross reference new proposed § 455.63, discussed in detail below, which deals with testing the cost effectiveness of an energy conservation measure. DOE proposes deleting former subparagraphs (d)(5)(vii) (A) and (B), which cover calculations for payback where coal and renewable energy conversions are being evaluated, as further discussed under § 455.63. DOE also proposes replacing former subparagraph (d)(5)(vii) with new subparagraph (d)(3)(ix) which requires all TAs to include the simple payback calculations for each recommended ECM so that DOE has a consistent data element to compare ECMs across the country, regardless of which cost-effectiveness test a State adopts pursuant to § 455.63.

In addition, a new § 455.62(d)(5) is being added to require that TAs include documentation as to demand charges paid by the institution over the prior 12-month period in cases where demand charges are being included in current energy prices and/or when the TA is recommending an ECM that shifts energy usage to a period of lower demand and cost.

New Section 455.63 Cost-Effectiveness Testing

DOE proposes to authorize States to decide whether to continue testing for cost effectiveness and assigning rank order on the basis of simple payback period or to shift to life cycle cost analysis. DOE is also proposing to eliminate special calculations for fuel switching to coal or renewable energy because all energy conservation measures, except for those that shift demand to off-peak hours, should be evaluated and ranked on the basis of the same economic criteria. DOE considered proposing a requirement for applicants to select energy conservation measures on the basis of the rank order indicated by the applicable cost effectiveness test, but elected not to change this aspect of the program because applicants should be free to consider factors in addition to purely energy-related factors in deciding what measures, from among those qualified on the basis of the TA, should be covered by a grant application.

The simple payback test is a rough estimate of cost effectiveness. It is rough in part because future cost savings are not discounted to present value, and significant effects on non-energy cash flows (e.g., non-energy operating and maintenance costs) are not included. The omission of discounting with the simple payback approach becomes especially problematic as paybacks become longer. A related change (discussed more fully later under § 455.71) will permit ECM's with up to a 15-year payback to be eligible where States elect to utilize the life-cycle costing approach. (The existing rule limits the payback period to 10 years which will continue to be the limit where States use the simple payback approach.)

The shortcomings of the simple payback approach suggest that the funds available to carry out the program

could be used more productively with a better cost-effectiveness test. On the basis of the foregoing, DOE considered eliminating simple payback altogether or with a delayed effective date to give time for adjustment. DOE is not proposing to do so, because it prefers to defer to State judgment which may take unique factors into account. DOE invites comment on this choice.

The proposed rule incorporates by reference the life-cycle cost analysis procedures which were developed over the last 10 years for the Federal Energy Management Program. They have proved to be effective and well-accepted by the users.

The procedures involve consideration of the estimated significant effects of an energy conservation measure on relevant cash flows, including non-energy cash flows such as non-energy operation and maintenance expenses, replacement costs, and salvage values. They also provide for discounting future cash flows to present value and for escalating future energy costs according to the estimated rate of energy price increases above inflation over the long term. Both the discount rate and the energy cost escalation rate are revised annually by DOE. The operational details of applying the methodology, including tables of present worth factors, are described in the Life Cycle Cost Manual for the Federal Energy Management Program (NIST 85–3272), which is published and updated annually by the National Institute of Standards and Technology (NIST). NIST has prepared menu-driven software for computerized life-cycle cost analysis on a personal computer. The software is updated by NIST annually in light of changes in the discount and energy cost escalation rates. NIST also conducts seminars which provide valuable training on the use of the software.

Generally, the discount rate for the life cycle analysis procedures is based on an annual average of U.S. Treasury bonds over the preceding 12 months less inflation as estimated by the President's Council of Economic Advisers. The development of the method for annually revising the discount rate, as well as the general background of the procedures, is described at 55 FR 2590 (January 25, 1990) and 55 FR 48217 (November 20, 1990). The present rate is between 4 and 5 percent real, but some States may want to use a higher discount rate. The proposed rule would allow them to do so. The effect of a higher discount rate will be to make estimated future cost savings appear smaller in comparison to investment costs; fewer projects will qualify, and those that do will appear less cost-effective.

As indicated above, the life-cycle cost analysis procedures include energy cost escalation rates. The proposed rule would also allow States to dispense with those rates. The effect of dispensing with those rates will make the estimated energy cost savings appear relatively smaller with an impact similar to that of a higher discount rate.

DOE considered limiting the savings to be used, for ranking with the life-cycle cost approach, to energy cost savings or requiring that energy cost savings constitute a specified percent of the overall savings used in the analysis (possibly 50 percent). Some States may object to such a limitation because they think it is better economics to consider all estimated significant cost effects (and not just energy cost savings) resulting from a proposed ECM. DOE has decided not to include such limits in today's proposal but would be interested in hearing comments on this subject.

DOE also considered limiting the study period for a life-cycle cost analysis to the useful life of the ECM or the remaining building life, whichever is less. This limitation would preclude consideration of replacement costs, which ICP does not fund, and some States might object to such a limitation because they might wish to facilitate selection of ECM's from among cost effective ECM's on the basis of replacement cost savings. DOE has decided not to include such a limitation in this proposed rule but would be interested in comments as to the desirability of such a limitation.

In formulating today's proposal, DOE considered the greater computational complexity of life-cycle cost analysis. However, since the technical assistance programs are conducted by architectural and engineering firms, DOE does not believe such complexity to be a persuasive reason for retaining simple payback as the only test of cost-effectiveness. DOE also considered whether the requirement might boost the cost of a technical assistance program prohibitively. Given that the software is available at relatively small cost, it is hard to see how the requirement would involve a significant cost factor.

DOE is especially interested in comments on the new proposed § 455.63 and conforming changes elsewhere in the proposed rule.

New Subpart F—Energy Conservation Measures for Schools and Hospitals

DOE proposes to redesignate old subpart D as new subpart F with new section numbers starting with § 455.70.

New Section 455.70 Purpose

DOE proposes to revise this section to clarify the purpose of subpart F.

New Section 455.71 Eligibility

DOE proposes to revise paragraph (a) of this section (formerly § 455.51) to delete the exclusion of administrative buildings used by local education agencies. This change is mandated by the 1990 legislation.

DOE also proposes to add a new subparagraph (a)(4) to require the completion of an updated TA if the State requires such an update for the particular type of ECM application. This change is also reflected in new § 455.20, which covers State Plans. DOE believes each State should decide when TA updates are needed and should specify this in its State Plan. DOE proposes to redesignate old subparagraphs (a) (4), (5), and (6) as new subparagraphs (a) (5), (6), and (7) to allow for the addition of new subparagraph (a)(4).

DOE then proposes to add a new paragraph (b)(2) to provide for the use of savings-to-investment ratios instead of simple payback where States elect to require a life-cycle cost effectiveness test and then to make the allowable payback range 2–15 years for ECMs proposed in those States. This change in payback range is being made to permit the funding of longer payback ECMs in States where such ECMs would rank for funding, and where the State has elected to require the use of the more rigorous life-cycle costing approach. The payback range is not being proposed for extension in States where simple payback is still used as the cost effectiveness test because that approach causes unacceptable distortions in over 10-year payback calculations due to its failure to discount future cash flows to prevent value. While the lower payback ECMs still seem the most urgent ones for the majority of eligible institutions to undertake with ICP grants, DOE is now making it possible for institutions to consider longer payback ECMs if the State provides for this by adopting the life-cycle costing test for cost effectiveness.

DOE is also proposing to add a new paragraph (c) stating that leased equipment is not eligible for funding under ICP. This was formerly included as part of the definition of ECM in § 455.2. It refers to traditional leased equipment where title does not pass to the lessee at the conclusion of the lease. Long-term purchase agreements, where title automatically passes to the purchaser at the end of the agreement at no additional cost, would not be

considered leases for this purpose even if their names (for instance, "municipal lease") sound like traditional leases.

New Section 455.72 Scope of the Grant

DOE proposes revising the title of this section (formerly § 455.52) to better reflect its purpose and then proposes adding wording to the section to differentiate between the design costs included as part of a TA and those later included as part of the ECM. Provision is also made for ECMs designed to shift energy usage to periods of lower demand and cost.

New Subpart G—State Administrative Expenses

DOE proposes adding this subpart (§§ 455.80, 455.81, and 455.82) to describe grants for State administrative expenses, which formerly were funded activities not separately covered in the rule. With new State grant-funded activities permitted by the 1990 legislation (described in new subpart H), it appears best to describe each major category of grant in a separate subpart rather than add more types of grants to, for instance, the former section on grant application submittals. (DOE is also proposing to add a new subpart K to cover applicant responsibilities for the various types of grant-funded activities which may now be undertaken by eligible States.)

New Section 455.82 Scope of the Grant

DOE proposes to move to this new section former paragraph (c) of former § 455.83 (new § 455.143) regarding allowable costs for State administrative expense grants, and to delete $500 and replace it with a cross reference to 10 CFR 600.436 to reflect a change in the Government-wide Common Rule (codified for DOE at 10 CFR part 600) relating to limits for equipment and tangible personal property for State grantees and a requirement for DOE prior approval.

New Subpart H—State Grants for Technical Assistance, Program Assistance, and Marketing

DOE proposes adding this subpart (§§ 455.90, 455.91, and 455.92) to describe the unique eligibility requirements for three types of grant-funded activities the States will have the option of applying for, under specified conditions, due to the 1990 legislation. States may use these grants, made from appropriated funds and issued by DOE, for State-run technical assistance programs, and for program assistance and marketing activities as defined in § 455.2. To be eligible to apply for these grants, a State must provide to DOE a certification pursuant to § 455.122.

States that are eligible to apply for these grants may apply to use up to 100 percent of their allocations for technical assistance and program assistance, and up to 50 percent for marketing, or they may continue to apply for administrative expense grants up to the relevant limits and then apply to use their remaining allocations for these new activities. States are not required to use the maximum allowable percentage of their allocations for these purposes, however.

States that have State constitutional prohibitions against direct State assistance to religiously affiliated institutions must make reasonable provisions for such institutions to continue to be eligible to receive assistance under ICP, including assistance for TAs and energy conservation measures. Because such institutions are eligible for ECM assistance under the Act, States must make ECM funding available to them either from the Federal funds provided by DOE, or from the non-Federal funds assembled by the State. A State with State law prohibitions against direct assistance to religiously affiliated schools and hospitals should decide the percent of allocated appropriated funds for which it wishes to apply under subpart H in light of those State law prohibitions and its estimate of the needs of religiously affiliated institutions based at least on data about their recent participation in ICP.

This may mean that such States must reserve a portion of their allocation each fiscal year for grant applications that are processed by DOE under the regular ICP grant process, if there is no other way for States to provide assistance to these institutions. In cases where a State has such a constitutional prohibition, and where the non-Federal funds for ECMs would not be available to such institutions, the State must certify to DOE, pursuant to § 455.122, that it has provided access to regular DOE-funded grants to the affected religiously affiliated institutions.

Whatever percent of the State's allocation is to be used for State technical assistance, program assistance, and marketing, the total dollar amount cannot exceed 15 percent of the aggregate Federal and non-Federal funds legally obligated to eligible recipients in the State during the fiscal year for eligible activities under this part. Eligible activities include ECMs and administrative expenses in addition to the newly allowable State TA, program assistance, and marketing activities.

These new types of grants are also covered in other sections of the rule, including §§ 455.20, 455.121, 455.122, 455.123, 455.134, and 455.144. However, DOE wants to emphasize that, to be eligible for such grants, a State must have a program or programs to fund, from non-Federal sources, the implementation of energy conservation measures eligible under this part. If a State intends to use its allocation of DOE appropriated funds partially or entirely for program and technical assistance, and for marketing costs associated with leveraging of non-Federal funds, the State would have to provide sufficient information in its State Plan and financial assistance application to warrant the conclusion that at least 85 percent of the aggregate Federal and non-Federal funds used for eligible program activities will be legally obligated or committed to recipients for ECMs eligible under this part by the end of the fiscal year for which the allocated funds were provided.

Not more than 5 percent of the aggregate Federal and non-Federal funds legally obligated to eligible recipients for technical assistance, program assistance, marketing, and energy conservation measures during the fiscal year may be used for State administrative expenses. States may elect to use part of their allocated funds for administrative expenses, in addition to technical assistance, program assistance, and marketing. Alternatively, States may use all of their allocated funds for technical assistance, program assistance, and marketing and ask participating institutions to contribute to the administrative expenses. However, for purposes of qualifying to use the allocated funds for these State grant activities, not more than 5 percent of the aggregate funds used for eligible activities cited above may be used for State administrative expenses.

DOE believes that, with the State's new ability to obtain grants for program assistance and marketing in addition to administrative expenses, there should be no need for States to exceed 5 percent for the administrative expense portion of those program activities. DOE is also concerned that States not "charge" school and hospital recipients of the non-Federal funds disproportionate fees to participate in ICP. Therefore, DOE believes a 5 percent limit on administrative expenses, whether wholly from the State's allocation or wholly or partially from institutions, is reasonable.

The 1990 legislation provides that eligible States may administer a

"continuous and consecutive award procedure for providing program and technical assistance under this part * * *." DOE interprets this to mean that once an eligible State receives its grant for technical and/or program assistance, it may provide those funds to institutions throughout the fiscal year for which the allocation was provided. The State would be responsible for the disbursement of those funds on whatever schedule the State establishes. However, it is important to remember that such funds must be legally obligated for their intended purposes to eligible institutions by the close of the fiscal year In addition, if a State wants to apply for administrative expenses in excess of the $50,000 maximum base provided for under § 455.120(b), the 5 percent maximum may only be based on the total Federal and non-Federal funds used for eligible activities during the fiscal year before the administrative expense grant for an amount in excess of $50,000 is applied for by the State. That would mean that, to apply for an amount in excess of $50,000 by the application deadline in September of a fiscal year, a State would have to base its application on funds legally obligated or committed on or before August 31.

DOE wants to assure that States not use their allocations to fund TAs, program assistance, marketing, and administrative expenses unless they have well-established, functioning programs to fund ECMs from non-Federal sources of funding. The primary goal of ICP always has been, and continues to be, one of assisting eligible institutions to achieve energy savings and related cost savings. A State which provides the required certification is implying that it will use (legally obligate or commit) 85 percent of the funds available for its ICP activities for a fiscal year for ECMs and related program costs. If, at the end of the fiscal year, the State is unable to demonstrate that it has substantially done so, it must comply with any relevant requirements of 10 CFR part 600, relating to non compliance with terms and conditions of the award. In addition, depending upon the circumstances, DOE may reject a similar certification for the next year, or accept it only if the percent of allocated funds is reduced in light of past performance, or take other appropriate action.

A State must account for these funds on a fiscal year basis, must meet its obligation to obtain the non-Federal sources of funding, and must assure that such funding is legally obligated or committed to eligible recipients for its intended purposes, entirely within the same fiscal year for which it is using allocated funds for technical assistance, program assistance, marketing, and administrative expenses. The non-Federal funds must be used specifically for energy conservation measures for eligible institutions and may not, for example, include general obligation bonds or loan funds which are not specifically dedicated to financing ECMs.

A hypothetical example of several State options is shown below:

State allocation from DOE.....	$500,000
Anticipated non-Federal funds.....	3,000,000
Total available for eligible ICP activities.....	3,500,000

When appropriated funds are available for a cycle, a State could:

(1) Apply to DOE to use all of the funds for TAs, program assistance, and marketing (assuming the State had no intention of applying for an administrative expenses grant at any time in the cycle); or

(2) Apply to DOE for a $50,000 administrative expenses grant and a $450,000 grant for TAs, program assistance, and marketing (assuming the State had no intention of subsequently applying for the maximum administrative expenses grant, which would be 5 percent of the actual funds legally obligated for technical assistance, program assistance, marketing, and energy conservation measures during the cycle); or

(3) Apply to DOE for a $50,000 initial administrative expenses grant and for a grant for technical assistance, program assistance, and marketing that would be reduced by the potential remaining administrative expenses grant (5 percent of the actual funds legally obligated or committed for technical assistance, program assistance, marketing, and energy conservation measures during the cycle, less the $50,000 administrative expenses grant already provided).

To determine the potential maximum administrative expenses grant possible in this case, the $3,500,000 would be multiplied by .04762. (It is important to remember that the maximum administrative expenses grant is currently based on 5 percent of the schools and hospitals grants awarded in the State. It is not based on 5 percent of the allocation, and, in fact, works out to .04762 of the allocation. Consistent with this policy, with these new types of grants, it would be based on 5 percent of the actual assistance provided in the form of legal obligations or commitments for eligible activities to eligible recipients during the cycle.)

In this example, the maximum potential total administrative expenses grant would be $166,670, so the State could ask for a second-phase administrative expenses grant of $116,670 ($166,670 less $50,000), provided the State documents at the time of its second application that the full $3,000,000 in non-Federal funds had been legally obligated or committed to eligible schools and hospitals for eligible activities during the cycle. Therefore, if the State wanted to reserve a sufficient amount of its allocation to apply for the maximum administrative expenses grant at the end of the cycle, the State would have to limit its application for a grant for TAs, program assistance, and marketing to $333,330, which is $500,000 less the $166,670 maximum potential administrative expenses grant.

A State would have the option of varying the amounts from these examples, for instance, by not applying for the maximum administrative expenses grant, or for any administrative expenses grant, by leaving some of the allocation available for traditional DOE-funded TAs and/or ECMs, or by not funding one or more of the activities such as TAs, program assistance, or marketing. In addition to the limitation that the total amount of grants to a State cannot exceed that State's allocation, there are two other limitations: The administrative expenses grant cannot exceed 5 percent; and the technical assistance, program assistance, and marketing grant cannot exceed 15 percent of the aggregate Federal and non-Federal funding legally obligated or committed to eligible institutions for eligible ICP activities in the State during the fiscal year for which the allocation is provided by DOE.

New Subpart I—Cost-Sharing

DOE proposes to create this new subpart, which covers various aspects of ICP cost-sharing. This topic was not formerly addressed in a separate subpart in the rule.

New Section 455.101 Borrowing the Non-Federal Share/Title to Equipment

DOE proposes to add this new section, which is provided for by the 1990 legislation. Grantees that borrow their non-Federal matching shares may use the equipment purchased with those funds as collateral for the loan, and may obtain clear title to the equipment after the loan is repaid. Current DOE policy requires grantees to obtain clear title before grant close out. This change will mean that, where the matching share is

borrowed and there is a lien on the equipment, grants may be closed out when all other program requirements have been met, with clear title passing to the grantee later, when the grantee's financial obligations under the lien have been met. Grantees must obtain clear title at that time, without having to pay an additional amount to "buy" the equipment. Financing agreements, such as traditional leases, in which the borrower never obtains clear title or must "buy" the equipment at the end of the agreement, are not allowable under ICP.

To the extent feasible, DOE encourages grantees to limit liens on equipment to the equipment purchased with the borrowed funds, so that equipment purchased with the DOE-provided grant funds is not put at risk. In addition, grantees must submit to DOE a certification as specified under § 455.111(e) if they borrow their matching share and allow a lien to be placed on the equipment funded under the grant. It is important to note in addition that, with the single exception of the lien, all program regulations and requirements apply to grants in which the matching share is borrowed. Grantees are cautioned to make sure that any financing agreement or related equipment acquisition agreement is in compliance with all applicable rules and regulations.

New Section 455.102 Energy Conservation Measure Cost Share Credit

DOE proposes to add this new section, which is a revised version of old § 455.82(e). The changes being proposed here would: Allow States the option of deciding whether to permit applications for credit; limit credit for ECMs to those commenced within 3 years of the grant application; limit credit for TAs to those dated no more than 3 years before the ECM grant application; and allow credit for TA updates (if the State elects to permit credit applications) where the State has determined that an update is required, pursuant to § 455.20(q). DOE believes credit should be limited to TAs recently completed and to ECMs recently installed, and is therefore proposing the 3-year limit (the rule now permits TAs and ECMs begun as far back as 1978 to be used for credit). The State option of allowing credit for TA updates is new, and DOE would be interested in receiving comments on this idea.

New Section 455.103 Requirements for Applications for Credit

DOE proposes to add this new section, which was formerly contained in old § 455.82(e). This section has been revised to allow for the State option to permit credit applications.

New Section 455.104 Rebates From Utilities and Other Entities

DOE proposes to add this new section to clarify DOE requirements that apply when ICP grantees receive rebates for ECMs funded by ICP grants. DOE wants to encourage grantees to apply for rebates when they are available. Grantees may use rebates or similar monetary considerations to meet grant cost sharing requirements. Grantees are not required to deduct the amount of the rebate or monetary consideration from costs, nor will DOE consider such rebates as program income to be remitted to DOE when received by the grantee.

New Subpart J—Applicant Responsibilities—Grants to Institutions

DOE proposes to create this new subpart to cover aspects of the rule applying to institutional (as opposed to State) grant applications. The subpart includes new §§ 455.110, 455.111, 455.112, and 455.113, which were formerly covered in old §§ 455.60, 455.61, and 455.63.

New Section 455.110 Grant Application Submittals for Technical Assistance and Energy Conservation Measures

DOE proposes to revise subparagraph (b)(2) of new § 455.110 to allow for the submission of information to substantiate a TA grant application as required by the State in its State Plan. Under the revisions proposed in this rulemaking, it will be the responsibility of each State to specify the information it will require about the buildings for which TA grants are being applied.

DOE proposes three revisions to paragraph (c) of new § 455.110: Changing the requirement for building identification in subparagraph (c)(2) to delete the reference to PEA data in old § 455.18 (which DOE is proposing to drop from the rule) and replace it with a requirement that applications include descriptions adequate to establish building use, eligibility, and ownership; adding to subparagraph (c)(5) references to life cycle cost savings-to-investment ratios, to provide for this new State option (while retaining the requirement that all applications include the simple paybacks of each ECM, so DOE has consistent data on all of the ECMs funded over the life of the program); and adding a new subparagraph (c)(7) to allow for the inclusion of an update of the TA in a grant application if such an update is required by the State. DOE then proposes to redesignate old subparagraphs (c)(7) and (c)(8) as new subparagraphs (c)(8) and (c)(9), respectively, to allow for the addition of new subparagraph (c)(7).

New Section 455.111 Applicant Certifications for Technical Assistance and Energy Conservation Measure Grants to Institutions

DOE proposes to revise paragraph (c) of new § 455.111 by referring to the State-required EA information for TA grant applications, as discussed above. In addition, a new paragraph (e) is being added to cover certifications by grantees that have borrowed their non-Federal shares and have allowed liens to be placed on the ECMs funded under the grant. As discussed under § 455.101, this certification is designed to assure that DOE is notified should the grantee ever later be sued due to problems with the repayment of the borrowed funds. Since DOE retains an interest in equipment acquired with ICP grant funds, it is essential that DOE be notified if that equipment is at risk of repossession by a lender.

New Section 455.112 Davis-Bacon Wage Rate Requirement

DOE proposes to create this new section to cover the Davis-Bacon requirement formerly included in old § 455.61. The wording has been simplified and reformatted, but the requirement remains the same.

New Section 455.113 Grantee Records and Reports for Technical Assistance and Energy Conservation Measure Grants to Institutions

DOE proposes revising this section throughout to require that grantees send one copy of each required report to DOE and one copy to the State, instead of having two copies sent to the State, with the State then sending one of those copies to DOE. This change eliminates the need for States to serve as intermediaries on reports to DOE and should result in DOE receiving the reports more directly and quickly.

DOE proposes revising new § 455.113 by removing State grant requirements formerly in old § 455.63 and by adding, in subparagraph (b)(2)(ii), a requirement that final reports from grantees include the actual costs, as well as the final estimated simple payback periods, or the final estimated life cycle cost (depending upon the State requirement) based on actual costs for each ECM and for the entire project. The previous language only required the final estimated payback. Since the original grant application included only TA

estimated costs, the final report must include the actual costs. Otherwise there will be no record of how estimated costs compared to actual costs.

DOE proposes revising subparagraph (b)(2)(iii) of new § 455.113 by providing that statistically valid samples of each State's grantees submit energy use reports for three years after project completion and by requiring, to the extent feasible, that energy consumption data in those annual energy use reports be monthly usage data by fuel or energy type. Grantees are also encouraged to provide relevant information about changes in building usage, equipment, or structure. These energy use reports may serve as useful tools in assessing the effectiveness of ECMs, and a carefully designed sample should result in better reports. DOE plans to develop the sample design and provide it to the States before the FY 1993 cycle begins.

New Subpart K—Applicant Responsibilities—Grants to States

DOE proposes creating this new subpart to cover all types of grants to States under ICP. Some of these requirements were formerly covered in §§ 455.60, 455.62, and 455.63, and some are new due to the 1990 legislation. This subpart includes new §§ 455.120, 455.121, 455.122, and 455.123.

New Section 455.120 Grant Applications for State Administrative Expenses

DOE proposes to revise this section (formerly § 455.62) by changing $30,000 to $50,000 in paragraph (a). This would become the new maximum base amount for a grant for State administrative expenses. The maximum remains 5 percent of the schools and hospitals grants awarded, when that exceeds $50,000. The $30,000 maximum base grant was established in 1983 (48 FR 28071–73, June 20, 1983), and DOE believes that it is now appropriate to raise it. States have considerable administrative responsibilities under ICP and, over the years, have found that effective program administration is a labor-intensive activity. DOE believes that $50,000 now is a reasonable, maximum base amount for these grants. A State could apply for that amount any time after DOE announces the availability of the State allocations.

DOE is proposing to delete the rest of the sentence following $50,000. The next sentence is revised so that States which are entitled to receive more than $50,000 may apply for their remaining administrative expenses grants after they submit to DOE their TA and ECM grant applications from schools and hospitals. DOE is not proposing to raise the maximum administrative expenses grant, which remains 5 percent of the schools and hospitals grants awarded in the State during the program cycle.

DOE is proposing to add a new paragraph (b) to permit States that are eligible to use up to 100 percent of their allocations for technical assistance, program assistance, and marketing to apply for administrative expenses grants, again in two stages: First, for the $50,000 maximum base amount after the cycle is announced; later, for up to 5 percent (less the $50,000) of their total funds obligated to eligible recipients for energy conservation measures, technical assistance, program assistance, and marketing during the fiscal year It is important to note here that the total amount for which a State applies to cover administrative expenses, technical assistance, program assistance, and marketing, may not exceed its allocation for the fiscal year

DOE is then proposing to establish a new paragraph (c) in new § 455.120, using the last sentence of old paragraph (a) for this new paragraph (c). This allows States to use funds allocated for administrative expenses for ECM and TA grants. DOE then proposes to delete from subparagraph (d)(2) (formerly (b)(2)) the references to sources of non-Federal share for administrative expenses grants. DOE is proposing to delete the requirement for matching contributions for these grants.

New Section 455.121 Grant Applications for State Technical Assistance, Program Assistance, and Marketing Programs

DOE proposes to create this new section to cover the requirements for the new grants to States provided for in the 1990 legislation. These grants have already been discussed under new subpart H, but this section covers in detail the requirements States must meet in order to apply for them. The 1990 legislation permits States meeting specified conditions to apply for up to 100 percent of their allocations for State-run technical assistance or program assistance programs, and/or up to 50 percent of their allocations for marketing programs. These programs must be described in the State Plan, and must be administered in conjunction with a non-Federally funded State program that provides the remaining financing—primarily ECM funding, or funding for ECMs and TAs if a State elects to use appropriated funds only for program assistance and marketing. The application requirements are intended to demonstrate that the State has a viable, non-Federally funded ECM program, and that not more than 15 percent of the funds legally obligated or committed to eligible recipients for the overall program will be spent on technical assistance, program assistance, and marketing.

Among the important requirements under this section are that non-Federally funded ECMs must be eligible for funding under § 455.71, and that institutions undertaking such ECMs comply with all applicable Federal, State, and local laws and regulations. Special attention should be paid to applicable State and Federal non-discrimination laws and regulations. DOE believes that these are reasonble requirements designed to assure that, when States use their ICP allocations for the newly allowable activities, eligible institutions benefit by obtaining ECMs that meet the basic eligibility standards of ICP. This does not mean, however, that requirements applicable only to Federally funded projects, such as Davis-Bacon wage rates, are applicable to the non-Federally funded ECMs.

Applications for these new grants must be made together with the application for the State administrative expense grant, if the State elects to apply for both types of grants. DOE is not proposing to require a matching contribution for these grants.

New Section 455.122 Applicant Certifications for State Grants for Technical Assistance, Program Assistance, and Marketing

DOE proposes to create this new section to cover the certifications States must submit to DOE if they elect to apply for the new types of grants provided for by the 1990 legislation. The State must certify that not more than 15 percent of the funds used for its ICP program in a fiscal year will be expended on technical assistance, program assistance, and marketing. As discussed earlier, States must have viable programs to fund their energy conservation measure programs from non-Federal sources in order to qualify to use their Federal allocations for technical assistance, program assistance, and marketing, and they must provide certifications to that effect. Energy conservation measures funded from such non-Federal sources would have to be eligible for funding under the ICP regulations. Institutions installing such measures would have to follow applicable Federal, State, and local laws and regulations. States that have constitutional prohibitions on providing State assistance to religiously affiliated institutions eligible under ICP, must certify that provision has been made for such institutions to receive assistance

for ECMs from DOE funded grants if such institutions would be ineligible to apply for the non-Federal sources of funding under the States's ECM program

New Section 455.123 Grantee Records and Reports for State Grants for Administrative Expenses, Technical Assistance, Program Assistance, and Marketing

DOE proposes creating new § 455.123 to cover the reporting requirements for grants made to States for administrative expenses, technical assistance, program assistance, and marketing. Some of the requirements were formerly found in old § 455.63; some are new, to cover the new types of grant activities provided for in the 1990 legislation. States funding technical assistance programs must submit reports to DOE listing the institutions receiving TAs and the amounts of assistance provided to each institution under the State program. States funding ECMs from non-Federal sources must submit to DOE reports which include lists of recipients of the non-Federal funding, together with the amounts of funding received and the types of ECMs installed by each recipient. In addition to providing necessary documentation to support a certification pursuant to § 455.122, and an application for an administrative expenses grant, these records are needed so that DOE is able to track the impact of its program funds, including the completion of projects using non-Federal funds related to the ICP appropriations. States need to report to DOE on all their grant activities, if they have been awarded funding for several activities such as administrative expenses, program assistance, marketing, and technical assistance.

New Subpart L—State Responsibilities

DOE proposes to redesignate old subpart F as new subpart L, which will include new §§ 455.130, 455.131, 455.132, 455.133, 455.134, 455.135, and 455.136. Some of these sections are new, and some are revised from old §§ 455.70, 455.71, 455.72, and 455.73.

New Section 455.130 State Evaluation of Grant Applications

DOE proposes revising paragraph (b) of new § 455.130 by deleting the requirement for review and certification of hospital applications under §§ 1524(c)(2) and 1603 of the Public Health Service Act (42 U.S.C. 300m–3 and 300o–2, respectively). This change is necessitated by the repeal of those sections of the Public Health Service Act. DOE is proposing a provision for State review and certification of hospital applications where there is a State requirement. New § 455.20 is also being revised to include a provision for States to specify special requirements for application review and certification for either schools or hospitals in State Plans. This proposed change is necessary because there are no longer uniform requirements for application review and certification.

New Section 455.131 State Ranking of Grant Applications

DOE proposes designating the opening paragraph of new § 455.131 (formerly § 455.71) as paragraph (a) and then revising it to provide for the exception to the ranking requirement mentioned in § 455.92, covering State technical assistance awards.

Former paragraph (a) then becomes new paragraph (b) and is revised to provide for the State EA requirements pursuant to § 455.20(k). This paragraph is also revised to add the wording "on a percentage basis" after energy conservation potential to provide an equal opportunity to small institutions whose conservation potential might be relatively low in absolute terms but still constitutes a sizeable portion of that institution's energy usage. Proposed for deletion in this paragraph is the former preference given to applicants which funded their own EAs. Since DOE no longer funds any EAs, that preference is now moot.

DOE proposes to redesignate former paragraph (b) as new paragraph (c), and then revise it by changing the second sentence to clarify that it applies when a State ranks on a building-by-building basis and by replacing the phrase "directly involves" with "is physically connected to." DOE then proposes adding a new sentence to explain that, when States rank on a measure-by-measure basis, an ECM that is physically connected to a number of buildings may be ranked as a single ECM. The important qualification here is that the ECM must be physically connected to all of the buildings. ECMs that are the same for a number of buildings, but not physically connected to all of them, such as storm windows or interior lights, must be ranked individually for each building in which they appear.

DOE then proposes to change the weighting requirements for ranking criteria so that the first criterion, cost effectiveness as determined by simple payback or life cycle cost analysis, must always receive at least 50 percent of the weight. This better reflects the importance of cost effectiveness over all other criteria. States are then allowed to set their own weights for the remaining criteria, as set forth in § 455.20(e).

DOE proposes redesignating old subparagraph (b)(3) as new subparagraph (c)(2), covering the types and quantities of energy to be saved. DOE then proposes several revisions for old subparagraph (b)(2): Redesignating it as (c)(3); deleting the phrase "in descending priority," and replacing it with "renewable energy"; and deleting old subparagraphs (b)(2) (i) and (ii) which refer to coal and renewable energy sources. These changes eliminate the priority given to renewable energy and coal and make the type of energy source to which conversion is proposed a criterion.

DOE proposes replacing old § 455.71(f) with a new § 455.131(g) which addresses only the State option of using school or hospital allocations for other applicants if the 30 percent minimum for each sector is not covered by applications. Old § 455.71(e), which covered applications for severe hardship, is being moved to a new § 455.132.

New Section 455.132 State Evaluation of Requests for Severe Hardship Assistance

DOE proposes to add this section which contains revised wording from old § 455.71(e). The primary change is to relegate to a secondary status, and make optional, the criteria unrelated to financial need. A sentence is added at the end of paragraph (c) which states that the primary consideration for hardship grants must be the institution's inability to provide its 50 percent share of the cost. Other factors such as fuel cost may be considered if the State determines they are valid. The optional secondary criteria have little or nothing to do with the fundamental question of whether the applicant is able to provide the 50 percent matching contribution. DOE believes that hardship grants, which may total up to 90 percent of the cost of a project under ICP, should be given only to institutions that are able to document they have a financial need for the additional funds. The secondary criteria such as fuel cost and availability and climate, which are mentioned in the Act, may be used by States to reinforce any hardship determination, but financial need must be the primary criterion.

DOE proposes revising subparagraph (d)(2) of new § 455.132 by adding a new last sentence stating that each State must decide on a case-by-case basis whether, and to what extent, it will recommend hardship funding for individual applicants. This change is proposed to emphasize that applications for hardship assistance must be

evaluated individually and should be recommended for funding on individual merit. Also, the State must decide how much additional funding to provide each applicant.

DOE also proposes adding to new § 455.132 a new paragraph (e) to clarify that, where there are insufficient applications from hardship applicants to cover the 10 percent allocation provided for in new paragraph 455.30(d), the State may use the remaining funds in that allocation for other qualified applicants. However, in no case may more than 10 percent of a State's allocation for schools and hospitals be awarded to hardship applicants. This new paragraph (e) clarifies what was intended to be stated in old paragraph 455.71(f). Unfortunately, because that paragraph included the phrase "without regard to the limitations of paragraphs (d) and (e) of this section," it was possible to interpret the paragraph to mean that the 10 percent hardship limitation could be exceeded if insufficient non-hardship applications were received by the State. It was never DOE's intention to allow hardship grants to exceed 10 percent.

New Section 455.133 Forwarding of Institutional Applications for Technical Assistance and Energy Conservation Measure Grants

DOE proposes to revise the title of this section to differentiate it from the next section covering grants to States. DOE then proposes revising paragraph (c) to require State certification of applications forwarded to DOE as having been reviewed and evaluated and found to have met all program requirements. This change is intended to emphasize the importance of the State role in reviewing grant applications.

New Section 455.134 Forwarding of Applications for State Grants for Technical Assistance, Program Assistance, and Marketing

DOE proposes to add this new section to cover the new grants provided for by the 1990 legislation. States that are eligible for such grants may apply for them any time after allocations are announced by DOE.

New Section 455.135 State Liaison, Monitoring, and Reporting

DOE proposes to renumber this section, formerly § 455.73.

New Section 455.140 Approval of Institutional Applications for Technical Assistance and Energy Conservation Measures

DOE is proposing to revise the title to differentiate this from the section on grants to States, and then to revise paragraph (d) as follows: By adding "to cover cost overruns or other additional costs" after "supplemental funds;" and replacing the word "awarded" with "provided for in the original grant award" to clarify the intent of the paragraph.

DOE is proposing, similarly, to revise paragraph (e) of this section by adding "to cover cost overruns or other additional costs" after the words "supplemental funds," and replacing the word "awarded" with "provided for in the original grant award." This again is intended to clarify the paragraph's intent.

DOE proposes to add a new paragraph (f) which allows each State to decide, in accordance with State plan criteria, whether, and under what circumstances, it will permit applicants to reapply for ECMs when those ECMs were funded in earlier grant cycles but were never implemented. DOE then proposes to add a new paragraph (g) which is a revised version of the second sentence of old § 455.80(e).

DOE further proposes adding a new paragraph (h) stating that funds that become available to a grantee after the installation of all approved ECMs, due to cost underruns in the installed ECMs, may be used for additional ECMs if approved by the State and DOE. Grantees must seek writtten approval from the State and DOE before committing funds from a cost underrun to other ECMs.

New Section 455.141 Grant Awards for Units of Local Government and Public Care Institutions

DOE proposes to delete the language prohibiting the procurement of "* * * any single item of equipment or tangible personal property having an acquisition cost in excess of $500 * * *," which would then make it possible to purchase meters and submeters under a TA grant. DOE is not imposing a dollar limit on such purchases, because different buildings may have varying needs for meters. However, DOE would expect prudence to be exercised in this regard. Meters and submeters should be considered an adjunct to the TA itself and should not be the major investment under the TA grant.

New Section 455.142 Grant Awards for Schools, Hospitals and Coordinating Agencies

DOE proposes the same kind of deletion as discussed under new § 455.141.

New Section 455.143 Grant Awards for State Administrative Expenses

DOE proposes revising subparagraph (a)(1) of new § 455.143 by deleting $30,000 and replacing it with $50,000 to reflect the new maximum base amount for State administrative expense grants which may be applied for and awarded after the State's allocation is announced by DOE. Then DOE is proposing to add a new subparagraph (a)(3) to provide for subsequent administrative grants to States that are providing non-Federal funding pursuant to § 455.121(a), up to 5 percent of the aggregate funding provided, less $50,000 if that was earlier awarded.

DOE proposes to delete the requirement for a 50 percent non-Federal share matching contribution for State administrative expense grants. This change is in response to comments DOE has received that a number of States are encountering difficulties in obtaining their non-Federal shares from State funds.

New Section 455.144 Grant Awards for State Programs To Provide Technical Assistance, Program Assistance, and Marketing

DOE proposes to add this section to cover the new grants provided for in the 1990 legislation. Requirements for these grants have already been discussed in this preamble. DOE is proposing that no match be required from the States for these grants; therefore, the rule provides that these grants may be for up to 100 percent of a State's projected costs in the cases of program assistance and marketing. It is important to note, however, that pursuant to new paragraph 455.144(b), a State may apply only for up to 50 percent of its allocation for marketing activities as defined in § 455.2. However, that grant may cover up to 100 percent of the State's costs for marketing. Conversely, while up to 100 percent of the State's allocation may be used for technical assistance, DOE is requiring that no more than 50 percent of individual TA costs be provided with these grant funds. DOE believes that institutions that receive TA funding through a State grant still should be required to provide a 50 percent matching contribution.

DOE is providing, in paragraph 455.144(d), for States which receive grants for technical assistance, program assistance, and marketing to apply to DOE to use some or all of those funds for regular grants to schools and hospitals if they cannot use the funds for the originally intended purpose in the required timeframe. Particularly in cases

in which a State finds it cannot obtain non-Federal sources of funding for ECMs, the State is obligated to revert, for that cycle, at least, to a regular ICP grant program.

As mentioned earlier in this preamble, DOE is particularly interested in receiving comments and suggestions on the implementation of these new grants, particularly how States integrate them with the non-Federally funded energy conservation improvements for schools and hospitals which must be undertaken concurrently with these other activities.

New Subpart N—Administrative Review

DOE proposes to include this entire subpart (§§ 455.150–155), which was finalized as part of the Grants Appeals Procedures rulemaking in the **Federal Register** published on October 10, 1990 (pages 41322–41327).

New Section 455.150 Right to Administrative Review

DOE proposes to add a new paragraph (b) to provide appeal rights for State applications for the new types of grants for technical assistance, program assistance, and marketing provided for by the 1990 legislation.

Response to Additional Suggestions

Over the years, DOE has received suggestions for changes to the program which cannot be considered because of statutory requirements or limitations. These suggestions, which cannot be implemented by revisions to the rule, include: (1) Eliminating hardship grants (or increasing the allocation for them); (2) changing the matching provisions from 50/50 to some other split; (3) funding ECMs for local government and public care buildings; (4) issuing a single grant to each State and having the States award the individual schools and hospitals ECM grants (except when a State applies to serve as a coordinating agency for all institutions including religiously affiliated institutions); (5) funding second TAs for buildings after a specified time period; and (6) funding ECMs which replace ECMs previously funded under the program.

DOE is interested in receiving comments on the suggested revisions proposed herein and in receiving other ideas for improving the program. In order for DOE to make informed decisions about any suggestions, it helps to have as much background as possible on why a change is needed and how it might be implemented, or on why a proposed revision should not be made or how it might be more effectively drafted.

Some States have expressed an interest in implementing some or all of the changes resulting from this rulemaking as soon as possible. DOE would be interested in receiving comments as to the desirability of allowing the final rulemaking to be effective during the program cycle in which it is published in the **Federal Register**, rather than wait until the start of the next cycle.

III. Review Under Executive Order 12291

Today's issuance was reviewed under Executive Order 12291. DOE has concluded that the rule is not a "major rule" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete in domestic or export markets. In accordance with the requirements of the Executive Order, this notice has been reviewed by the Office of Management and Budget (OMB).

IV. Review Under the Regulatory Flexibility Act

These regulations were reviewed under the Regulatory Flexibility Act, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses and small government jurisdictions. The changes proposed in this action primarily clarify the regulations or add flexibility to the existing program. Thus, these changes have a minimal effect on small entities. DOE therefore certifies that there will not be a significant economic impact on a substantial number of small entities, and that preparation of a regulatory flexibility analysis is not warranted.

V. Review Under the Paperwork Reduction Act

The information collection requirements proposed in this Notice have been submitted to OMB in accordance with section 3504(b) of the Paperwork Reduction Act, Public Law 96–511, 94 Stat. 2812 (44 U.S.C. 3510 *et seq.*), and procedures implementing that Act (5 CFR 1320.1 *et seq.*).

VI. Review Under National Environmental Policy Act

Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, 83 Stat. 852 (42 U.S.C. 4321 *et seq.*), DOE published a Notice of Availability of an Environmental Assessment (EA) of the entire Title III program on March 12, 1979, in the **Federal Register**, 44 FR 13554. Based on this assessment, DOE determined that the EPCA Title III program did not constitute a major Federal action significantly affecting the quality of the human environment, and that therefore, no Environmental Impact Statement (EIS) was required.

DOE has reviewed the environmental impacts for the program amendment proposed today. It is DOE's judgment that the proposed amendments will result in no environmental impacts in addition to those previously analyzed for this program. It is, accordingly, DOE's determination that the environmental impacts of the program as modified by today's proposed amendment have been adequately analyzed in the March 1979 EA, and that these impacts are not significant. Hence, the previous negative determination is still applicable, and no additional EA or EIS is required.

VII. Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, or in the distribution of power among various levels of Government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a Federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation.

Today's proposed regulatory amendments are intended to simplify the management of the program by providing the States with clearer, more specific guidance in a number of areas and greater flexibility in other areas. They will not, therefore, have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government.

VIII. Review Under the Federal Energy Administration Act

This notice was submitted for comment to the Administrator of the Environmental Protection Agency under section 7(c)(2) of the Federal Energy Administration Act, as amended, 15 U.S.C. 766(c)(2). The Administrator did not submit any comments.

IX. Catalog of Federal Domestic Assistance

The *Catalog of Federal Domestic Assistance* number for the Grant Program for Schools and Hospitals is 81.052.

X. Opportunity for Public Comment

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposal set forth in this notice. Comments should be submitted to the address for the Office of Hearings and Dockets, which is given in the beginning of this notice. The envelope and written comments submitted should be identified with the designation, "Notice of Proposed Rulemaking for Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions, Docket Number CE–RM–91–130." Ten (10) copies should be submitted.

All comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking action on a final rule.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, as well as ten (10) copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. This procedure is set forth in 10 CFR 1004.11.

B. Public Hearings

DOE will hold three public hearings on the proposed rule as specified at the beginning of this notice.

Any person who has an interest in the proposed rule or who is a representative of a group or class of persons which has an interest in it may make a request for an opportunity to make an oral presentation. Such a request to speak at the hearing should be directed to the Hearings and Dockets address given in the Addresses section of this notice and must be received by 4:30 p.m. local time on the date specified in the Dates section.

The person making the request should describe briefly his or her interest in the proceeding. The person should also provide a daytime phone number where the person may be reached. Those persons requesting an opportunity to provide oral testimony should bring ten (10) copies of their Statement to the hearing.

DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 10 minutes.

A DOE official will preside at each hearing. These will not be judicial or evidentiary-type hearings. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting Statements. Any decision made by DOE with respect to the subject matter of the hearings will be based on all of the information available to DOE.

Any participant who wishes to ask a question at the hearing may submit the question in writing to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether time limitations permit it to be presented for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

If DOE must cancel a hearing, DOE will make every effort to give advance notice of such cancellation to interested parties. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates may be cancelled in the event no public testimony has been scheduled in advance.

List of Subjects in 10 CFR Part 455

Buildings, community facilities, energy audits, energy conservation, grant programs, energy, health facilities, hospitals, reporting and recordkeeping requirements, schools, solar and renewable energy, technical assistance.

Issued in Washington, DC on November 5, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy

Part 455 of chapter II, title 10, Code of Federal Regulations is revised to read as set forth below:

PART 455—GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

Subpart A—General Provisions

Sec.

455.1 Purpose and scope.
455.2 Definitions.
455.3 Administration of grants.
455.4 Recordkeeping.
455.5 Suspension and termination of grants.

Subpart B—State Plan Development and Approval

455.20 Contents of State plan.
455.21 Submission and approval of State plans and State plan amendments.

Subpart C—Allocation of Appropriations Among the States

455.30 Allocation of funds.
455.31 Allocation formulas.
455.32 Reallocation of funds.

Subpart D—Preliminary Energy Audit and Energy Audit Grant Procedures

455.40 Purpose and scope.
455.41 Financial assistance.
455.42 Cost sharing.
455.43 Allocation of funds for preliminary energy audits and energy audits.
455.44 Submission and review of applications.
455.45 Content of applications.
455.46 Use of funds.
455.47 Reporting requirements.
455.48 Contents of a preliminary energy audit. [Reserved]
455.49 Contents of energy audit. [Reserved]

Subpart E—Technical Assistance Programs for Schools, Hospitals, Units of Local Government, and Public Care Institutions

455.60 Purpose.
455.61 Eligibility.
455.62 Contents of a technical assistance program.
455.63 Cost effectiveness testing.

Subpart F—Energy Conservation Measures for Schools and Hospitals

455.70 Purpose.
455.71 Eligibility.
455.72 Scope of the grant.

Subpart G—State Administrative Expenses

455.80 Purpose.
455.81 Eligibility.
455.82 Scope of the grant.

Subpart H—State Grants for Technical Assistance, Program Assistance, and Marketing

455.90 Purpose.
455.91 Eligibility.
455.92 State technical assistance awards.

Subpart I—Cost-Sharing

455.100 Limits to Federal share.
455.101 Borrowing the non-Federal share/title to equipment.
455.102 Energy conservation measure cost-share credit.
455.103 Requirements for applications for credit.
455.104 Rebates from utilities and other entities.

Subpart J—Applicant Responsibilities—Grants to Institutions

455.110 Grant application submittals for technical assistance and energy conservation measures.

455.111 Applicant certifications for technical assistance and energy conservation measure grants to institutions.
455.112 Davis-Bacon wage rate requirement.
455.113 Grantee records and reports for technical assistance and energy conservation measure grants to institutions.

Subpart K—Applicant Responsibilities—Grants to States

455.120 Grant applications for State administrative expenses.
455.121 Grant applications for State technical assistance, program assistance, and marketing programs.
455.122 Applicant certifications for State grants for technical assistance, program assistance, and marketing.
455.123 Grantee records and reports for State grants for administrative expenses, technical assistance, program assistance, and marketing.

Subpart L—State Responsibilities

455.130 State evaluation of grant applications.
455.131 State ranking of grant applications.
455.132 State evaluation of requests for severe hardship assistance.
455.133 Forwarding of institutional applications for technical assistance and energy conservation measure grants.
455.134 Forwarding of applications for State grants for technical assistance, program assistance, and marketing.
455.135 State liaison, monitoring, and reporting.

Subpart M—Grant Awards

455.140 Approval of institutional applications for technical assistance and energy conservation measures.
455.141 Grant awards for units of local government and public care institutions.
455.142 Grant awards for schools, hospitals, and coordinating agencies.
455.143 Grant awards for State administrative expenses.
455.144 Grant awards for State programs to provide technical assistance, program assistance, and marketing.

Subpart N—Administrative Review

455.150 Right to administrative review
455.151 Notice requesting administrative review.
455.152 Transmittal of record on review.
455.153 Review by the Deputy Assistant Secretary.
455.154 Discretionary review by the Assistant Secretary.
455.155 Finality of decision.

Authority: 42 U.S.C. 6371 *et seq.*; 42 U.S.C. 7101 *et seq.*

Subpart A—General Provisions

§ 455.1 Purpose and scope.

(a) This part establishes programs of financial assistance pursuant to Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6371 *et seq.*

(b) This part authorizes grants to States or to public or non-profit schools and hospitals to assist them in conducting preliminary energy audits and energy audits, in identifying and implementing energy conservation maintenance and operating procedures, and in evaluating, acquiring, and installing energy conservation measures, including renewable resource measures, to reduce the energy use and anticipated energy costs of buildings owned by schools and hospitals.

(c) This part also authorizes grants to States or units of local government and public care institutions to assist them in conducting preliminary energy audits and energy audits, in identifying and implementing energy conservation maintenance and operating procedures, and in evaluating energy conservation measures, including renewable resource measures, to reduce the energy use and anticipated energy costs of buildings owned by units of local government and public care institutions.

§ 455.2 Definitions.

Act, as used in this part, means the Energy Policy and Conservation Act, Pub. L. 94–163, 89 Stat. 871 (42 U.S.C. 6201, *et seq.*), as amended by Title III of the National Energy Conservation Policy Act, Public Law 95–619, 92 Stat. 3238 (42 U.S.C. 6371), and the State Energy Efficiency Programs Improvement Act of 1990, Public Law 101–440, 104 Stat. 1011.

Assistant Secretary means the Assistant Secretary for Conservation and Renewable Energy or any official to whom the Assistant Secretary's functions may be redelegated by the Secretary.

Auditor means any person who is qualified in accordance with 10 CFR 450.44 to conduct an energy audit.

Building means any structure, including a group of closely situated structural units that are centrally metered and are served by a central utility plant, or eligible portion thereof, the construction of which was completed on or before May 1, 1989, which includes a hearing or cooling system, or both.

Civil rights requirements means civil rights responsibilities of applicants and grantees pursuant to the Nondiscrimination in Federally Assisted Programs regulation of the Department of energy (10 CFR part 1040).

Complex means a closely situated group of buildings on a contiguous site such as a school or college campus or multibuilding hospital.

Construction completion means the date of issuance of an occupancy permit for a building or the date the building is ready for occupancy as determined by DOE.

Cooling degree days means the annual sum of the number of Fahrenheit degrees of each day's mean temperature above 65° for a given locality.

Coordinating agency means a State or any public or nonprofit organization legally constituted within a State which provides either administrative control or services for a group of institutions within a State and which acts on behalf of such institutions with respect to their participation in the program.

Deputy Assistant Secretary means the Deputy Assistant Secretary for Technical and Financial Assistance or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.

DOE means the Department of Energy.

Energy audit means a determination of the energy consumption characteristics of a building which:

(1) Identifies the type, size, and rate of energy consumption of such building and the major energy using systems of such building;

(2) Determines appropriate energy conservation maintenance and operating procedures; and

(3) Indicates the need, if any, for the acquisition and installation of energy conservation measures.

Energy conservation maintenance and operating procedures means modifications in the maintenance and operations of a building and any installation therein which are designed to reduce the energy consumption in such building and which require no significant expenditure of funds.

Energy conservation measure means an installation or modification of an installation in a building which is primarily intended to maintain or reduce energy consumption and reduce energy costs, or allow the use of an alternative energy source, including, but not limited to:

(1) Insulation of the building structure and systems within the building;

(2) Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated windows and door systems, additional glazing, reductions in glass area, and other window and door systems modifications;

(3) Automatic energy control systems which would reduce energy consumption;

(4) Load management systems which would shift demand for energy from peak hours to hours of low demand and lower cost;

(5) Equipment required to operate variable steam, hydraulic, and

ventilating systems adjusted by automatic energy control systems;

(6) Active or passive solar space heating or cooling systems, solar electric generating systems, or any combination thereof;

(7) Active or passive solar water heating systems;

(8) Furnace or utility plant and distribution system modifications including:

(i) Replacement burners, furnaces, boilers, or any combination thereof which substantially increase the energy efficiency of the heating system;

(ii) Devices for modifying flue openings which will increase the energy efficiency of the heating system;

(iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights; and

(iv) Utility plant system conversion measures including conversion of existing oil- and gas-fired boiler installations to alternative energy sources, including coal;

(9) Addition of caulking and weatherstripping;

(10) Replacement or modification of lighting fixtures (including exterior light fixtures which are physically attached to, or connected to, the building) to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless such increase in illumination is necessary to conform to any applicable State or local building code or, if no such code applies, the increase is considered appropriate by DOE;

(11) Energy recovery systems;

(12) Congeneration systems which produce steam or forms of energy such as heat, as well as electricity for use primarily within a building or a complex of buildings owned by an eligible institution and which meet such fuel efficiency requirements as DOE may by rule prescribe;

(13) Such other measures as DOE identifies by rule for purposes of this part, as set forth in subpart D of 10 CFR part 450; and

(14) Such other measures as a grant applicant shows will save a substantial amount of energy and as are identified in an energy audit in accordance with § 455.2 or § 455.20(k), or a technical assistance report in accordance with § 455.62.

Fuel means any commercial source of energy used within the building or complex being surveyed, such as natural gas, fuel oil, electricity, or coal.

Governor means the chief executive officer of a State, including the Mayor of the District of Columbia, or a person duly designated in writing by the Governor to act on her or his behalf.

Grant program cycle means the period of time specified by DOE which relates to the fiscal year or years for which monies are appropriated for grants under this part, during which one complete cycle of DOE grant activity occurs, including fund allocations to the States; applications receipt, review, approval, or disapproval; and award of grants by DOE, but which does not include the grantee's performance period.

Grantee means the entity or organization named in the Notice of Financial Assistance Award as the recipient of the grant.

Gross square feet means the sum of all heated or cooled floor areas enclosed in a building, calculated from the outside dimensions, or from the centerline of common walls.

Heating degree days means the annual sum of the number of Fahrenheit degrees for each day's mean temperature below 65° for a given locality.

Heating or cooling system means any mechanical system for heating, cooling, or ventilating areas of a building, including a system of through-the-wall air conditioning units.

Hospital means a public or nonprofit institution which is a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and which is duly authorized to provide hospital services under the laws of the State in which it is situated.

Hospital facilities means buildings housing a hospital and related facilities, including laboratories, laundries, outpatient departments, nurses' residence and training facilities, and central service facilities operated in connection with a hospital; it also includes buildings housing education or training facilities for health professions personnel operated as an integral part of a hospital.

Indian tribe means any tribe, band, nation, or other organized group or community of Indians, including any Alaska native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act, Public Law 92–203; 85 Stat. 688, which is:

(1) Recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(2) Located on, or in proximity to, a Federal or State reservation or rancheria.

Load management system means a device or devices which are designed to shift energy use to hours of low demand in order to reduce energy costs and which do not cause more energy to be used than was used before their installation.

Local educational agency means a public board of education or other public authority or a nonprofit institution legally constituted within, or otherwise recognized by, a State either for administrative control or direction of, or to perform administrative services for, a group of schools within a State.

Maintenance means activities undertaken in a building to assure that equipment and energy-using systems operate effectively and efficiently.

Marketing means a program or activity managed by the State and designed to obtain non-Federal funds to finance energy conservation measures consistent with this part.

Native American means a person who is a member of an Indian tribe.

Operating means the operation of equipment and energy-using systems in a building to achieve or maintain specified levels of environmental conditions of service.

Owned or *owns* means property interest, including without limitation a leasehold interest, which is, or shall become, a fee simple title in a building or complex.

Preliminary energy audit means a determination of the energy consumption characteristics of a building, including the size, type, rate of energy consumption, and major energy-using systems of such building.

Primarily occupied means that in excess of 50 percent of a building's square footage or time of occupancy is occupied by a public care institution or an office or agency of a unit of local government.

Program assistance means a program or activity managed by the State and designed to provide support to eligible institutions to help ensure the effectiveness of energy conservation programs carried out consistent with this part, including such relevant activities as:

(1) Evaluating the services of consulting engineers;

(2) Training school or hospital personnel to perform energy accounting;

(3) Monitoring the implementation and operation of energy conservation measures; and

(4) Aiding in the procurement of energy efficient equipment.

Public care institution means a public or nonprofit institution which owns:

(1) A facility for long-term care, rehabilitation facility, or public health center, as described in section 1624 of the Public Health Service Act (42 U.S.C. 300s–3; 88 Stat. 2270); or

(2) A residential child care center, which is an institution, other than a foster home, operated by a public or nonprofit institution. It is primarily intended to provide full-time residential care, with an average length of stay of at least 30 days, for at least 10 minor persons who are in the care of such institution as a result of a finding of abandonment or neglect or of being persons in need of treatment or supervision.

Public or nonprofit institution means an institution owned and operated by:

(1) A State, a political subdivision of a State, or an agency or instrumentality of either; or

(2) A school or hospital which is, or would be in the case of such entities situated in American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954; or

(3) A unit of local government or public care institution which is, or would be in the case of such entities situated in American Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, exempt from income tax under section 510(c)(3) or 501(c)(4) of the Internal Revenue Code of 1954.

School means a public or nonprofit institution which:

(1) Provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis;

(2) Provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis and:

(i) Admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(ii) Is accredited by a nationally recognized accrediting agency or association; and

(iii) Provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program;

(3) Provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions cited in paragraph (b), and subparagraphs (b)(1), and (b)(2) of this definition; or

(4) Is a local educational agency.

School facilities means buildings housing classrooms, laboratories, dormitories, administrative facilities, athletic facilities, or related facilities operated in connection with a school.

Secretary means the Secretary of the Department of Energy, or his/her designee.

State means, in addition to the several States of the Union, the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

State energy agency means the State agency responsible for developing State energy conservation plans pursuant to section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322) or, if no such agency exists, a State agency designated by the Governor of such State to prepare and submit the State Plan required under section 394 of the Energy Policy and Conservation Act.

State hospital facilities agency means an existing agency which is broadly representative of the public hospitals and the nonprofit hospitals or, if no such agency exists, an agency designated by the Governor of such State which conforms to the requirements of this definition.

State school facilities agency means an existing agency which is broadly representative of public institutions of higher education, nonprofit institutions of higher education, public elementary and secondary schools, nonprofit elementary and secondary schools, public vocational education institutions, nonprofit vocational education institutions, and the interests of handicapped persons in a State or, if no such agency exists, an agency which is designated by the Governor of such State which conforms to the requirements of this definition.

Support office director means the Director of the DOE field support office with the responsibility for grant administration or any official to whom that function may be redelegated.

Technical assistance means: (1) The conduct of specialized studies to identify and specify energy savings or energy cost savings that are likely to be realized as a result of the modification of maintenance and operating procedures in a building, the acquisition and installation of one or more specified energy conservation measures in a building, or both; and (2) the planning or administration of such specialized studies.

For schools and hospitals which are eligible to receive grants to carry out energy conservation measures, the term also means the planning or administration of specific remodeling, renovation, repair, replacement, or insulation projects related to the installation of energy conservation or renewable resource measures in a building.

Unit of local government means the government of a county, municipality, parish, borough, or township, which is a unit of general purpose goverment below the State (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes) and the District of Columbia. Such term also means the recognized governing body of an Indian tribe which governing body performs substantial governmental functions, and includes libraries which serve all residents of a political subdivision below the State level (such as a community, district or region) free of charge and which derive at least 40 percent of their operating funds from tax revenues of a taxing authority below the State level.

§ 455.3 Administration of grants.

Grants provided under this part shall comply with applicable law, regulation or procedure including, without limitation, the requirements of:

(a) The DOE Financial Assistance Rules (10 CFR part 600 as amended), except as otherwise provided in this rule;

(b) Executive Order 12372 entitled "Intergovernmental Review of Federal Programs" (48 FR 3130, January 24, 1983; 3 CFR, 1982 Comp., p. 197), and the DOE regulation implementing this Executive Order entitled "Intergovernmental Review of Department of Energy Programs and Activities" (10 CFR part 1005);

(c) Office of Management and Budget Circular A–97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specified or Technical Services to State and Local Units of Government under Title III of the Inter-Governmental Coordination Act of 1968," available from the Office of Management and Budget, Office of Publication Services, 725 17th Street, NW., Washington, DC 20503;

(d) DOE regulation entitled "Nondiscrimination in Federally Assisted Programs" (10 CFR part 1040), which implements the following public laws: Title VI of the Civil Rights Act of 1964; section 16 of the Federal Energy Administration Act of 1974; section 401 of the Energy Reorganization Act of 1974; Title IX of the Education Amendments of 1972; The Age Discrimination Act of 1975; and section

504 of the Rehabilitation Act of 1973; and

(e) Such other procedures applicable to this part as DOE may from time to time prescribe for the administration of financial assistance.

§ 455.4 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required and specified by the DOE Financial Assistance Rules, 10 CFR part 600, and this part.

§ 455.5 Suspension and termination of grants.

Suspension and termination procedures shall be as set forth in the DOE Financial Assistance Rules, 10 CFR part 600.

Subpart B—State Plan Development and Approval

§ 455.20 Contents of State Plan.

Each State shall develop and submit to DOE a State Plan for technical assistance programs and energy conservation measures, including renewable resource measures and, to the extent appropriate, program assistance and/or marketing. The State Plan shall include:

(a) A statement setting forth the procedures by which the views of eligible institutions or coordinating agencies representing such institutions, or both, were solicited and considered during development of the State Plan and any amendment to a State Plan;

(b) The procedures the State will follow to notify eligible institutions and coordinating agencies of the content of the approved State Plan, or any approved amendment to a State Plan;

(c) The procedures the State will follow to notify eligible institutions and coordinating agencies of the availability (each funding cycle) of funding under this program and related funding available from non-Federal sources to fund technical assistance programs and energy conservation measures consistent with this Part;

(d) The procedures for submittal of grant applications to the State;

(e) The procedures to be used by the State for evaluating and ranking technical assistance and energy conservation measure grant applications pursuant to § 455.130 and § 455.131, including the weights assigned to each criterion set forth in §§ 455.131(c)(2), (c)(3), (c)(4) and (c)(5). In addition, the State shall determine the order of priority given to fuel types that include oil, natural gas, and electricity, under § 455.131(c)(2);

(f) The procedures that the State will follow to insure that funds will be allocated equitably among eligible applicants within the State, including procedures to insure that funds will not be allocated on the basis of size or type of institution, but rather on the basis of relative need, taking into account such factors as cost, energy consumption, and energy savings, in accordance with § 455.131;

(g) The procedures that the States will follow for identifying schools and hospitals experiencing severe hardship and for apportioning the funds that are available for schools and hospitals in a case of severe hardship. Such policies and procedures shall be in accordance with § 455.132;

(h) A statement setting forth the extent to which, and by which methods, the State will encourage utilization of solar space heating, cooling and electric systems, and solar water heating systems;

(i) The procedures to assure that all financial assistance under this part will be expended in compliance with the requirements of the State Plan, in compliance with the requirements of this part, and in coordination with other State and Federal energy conservation programs;

(j) If a State is eligible and elects to use up to 100 percent of the funds provided by DOE under this part for any fiscal year for program and technical assistance and/or up to 50 percent of such funds for marketing:

(1) A description of each activity the State proposes, including the procedures for program operation, monitoring, and evaluation;

(2) The level of funding to be used for each program and the source of those funds;

(3) The amount of the State's allocated funds that the State proposes to use for each;

(4) A description of the non-Federal financing mechanisms to be used to fund energy conservation measures in the State during the fiscal year;

(5) A description of the evaluation/selection criteria to be used by the State in determining which institutions receive funding for energy conservation measures;

(6) The procedures for assuring that all segments of the State's eligible institutions, including religiously affiliated institutions receive an equitable share of the assistance provided both for program and technical assistance, marketing, and energy conservation measures;

(7) A description of how the State will track: the amount of total available funds by source; the amount of funds obligated against those funds; and any limits on types of institutions eligible for particular funding sources; and

(8) The procedures for assuring that institutions which initially receive program, technical, or marketing assistance as part of the State's special program(s) later participate in the State's program(s) to provide energy conservation measure funding;

(k) The requirements for an energy audit to be used as the basis for a technical assistance program grant application;

(l) With regard to energy conservation maintenance and operating procedures:

(1) The procedures to insure implementation of energy conservation maintenance and operating procedures in those buildings for which financial assistance is requested under this part;

(2) A provision that all maintenance and operating procedure changes recommended in an energy audit pursuant to § 455.20(k), or in a technical assistance report under § 455.62, or a combination of these, are implemented as provided under this part; or

(3) An assurance that the maintenance and operating procedures will be implemented in the future, or a reasonable justification for not implementing such procedures, as appropriate.

(m) The procedures to assure that financial assistance under this part will be used to supplement, and not to supplant, State, local or other funds, including at least:

(1) The screening of applicants for eligibility for available State funds; and

(2) The identification of applicants which are seeking or have obtained private sector funds;

(n) The procedures for determining that technical assistance programs performed without the use of Federal funds and used as the basis for energy conservation measure grant applications have been performed in compliance with the requirements of § 455.62, for the purposes of satisfying the eligibility requirements contained in § 455.71(a)(3);

(o) The State's policy regarding reasonable selection of energy conservation measures for study in a technical assistance program, including any restriction based on category of building, and any additional State requirements for the conduct of such a program;

(p) The procedures for State management, monitoring, and evaluation of technical assistance programs and energy conservation measures receiving financial assistance under this part. This includes any State requirements for hospital certifications

from a State agency, with descriptions of the review procedures and coordination process applicable in such cases. If there is no school facilities agency in the State, or if the existing agency does not certify all types of schools, it also includes any State requirements for an alternative review and certification process for schools;

(q) The circumstances under which the State requires an updated technical assistance program report to accompany an application for an energy conservation measure grant;

(r) A description of the State's policies for establishing and insuring compliance with qualifications for technical assistance analysts. Such policies shall require that technical assistance analysts be free from financial interests which may conflict with the proper performance of their duties and have experience in energy conservation and:

(1) Be a registered professional engineer licensed under the regulatory authority of the State;

(2) Be an architect-engineer team, the principal members of which are licensed under the regulatory authority of the State; or

(3) Be otherwise qualified in accordance with such criteria as the State may prescribe in its State Plan to insure that individuals conducting technical assistance programs possess the appropriate training and experience in building energy systems;

(s) The circumstances under which the State will or will not consider accepting applications for energy conservation measures which were included in earlier approved grant awards but which were not implemented and for which no funds were expended after the original grant award;

(t) A statement setting forth:

(1) An estimate of energy savings which may result from the modification of maintenance and operating procedures and installation of energy conservation measures;

(2) A recommendation as to the types of energy conservation measures considered appropriate within the State; and

(3) An estimate of the costs of carrying out technical assistance and energy conservation measure programs;

(u) For purposes of the technical assistance program pursuant to § 455.62:

(1) A statement setting forth uniform conversion factors to be used by all grant applicants in the technical assistance analysis for conversion of fuels to Btu equivalents. For the conversion of kilowatt hours to Btu's, the State shall use 3,413, representing consumption at the consumer's end; and

(2) A statement setting forth the cost effectiveness testing approach to be used to evaluate energy conservation measures pursuant to § 455.63. States may select either the simple payback approach or the life cycle costing approach. Only one approach may be used for all technical assistance programs in the State;

(v) If a State plans to act as a coordinating agency, a description of its functions and a copy of its plan for serving in this role; and

(w) If a State elects to allow credit toward the cost share for an energy conservation measure for the costs of technical assistance programs, technical assistance program updates, or energy conservation measures previously incurred and wholly paid for with non-Federal funds, the policies regarding such credit consistent with the limitations in § 455.102.

§ 455.21 Submission and approval of State plans and State plan amendments.

(a) Proposed State Plans or plan amendments necessitated by a change in regulations shall be submitted to DOE within 90 days of the effective date of this subpart or any amended regulations. DOE upon request, and for good cause shown, may grant an extension of time.

(b) DOE shall, within 60 days of receipt of a proposed State Plan, review each plan and, if it is reasonable and found to conform to the requirements of this part, approve the State Plan. If DOE does not disapprove a State Plan within the 60-day period, DOE will be deemed to have approved the State Plan.

(c) If DOE determines that a proposed State Plan fails to comply with the requirements of this part or is not reasonable, DOE shall return the plan to the State with a statement setting forth the reasons for disapproval.

(d) Except for State Plan amendments covered by paragraph (a) of this section, if a State wishes to deviate from its approved State Plan, the State must submit and obtain DOE approval of the State Plan amendment.

(e) DOE shall, within 60 days of receipt of a proposed State Plan amendment, review each amendment and, if it is found to conform to the requirements of this part, approve the amendment. If DOE determines that a proposed State Plan amendment fails to comply with the requirements of this part, or is not reasonable, DOE shall return the amendment to the State with a statement setting forth the reasons for disapproval. With the consent of DOE, the State may submit a new or amended plan at any time.

Subpart C—Allocation of Appropriations Among the States

§ 455.30 Allocation of funds.

(a) DOE will allocate available funds among the States for two purposes: To award grants to schools, hospitals, units of local government, and public care institutions and coordinating agencies representing them to implement technical assistance and energy conservation measures grant programs; and to award grants to eligible States for administrative expenses, technical assistance programs, program assistance, and marketing expenses in accordance with this part.

(b) DOE shall notify each Governor of the total amount allocated for grants within the State for any grant program cycle:

(1) For schools and hospitals, the allocation amount shall be for technical assistance programs, together with any limitation placed on technical assistance, and energy conservation measures;

(2) For States that are eligible pursuant to § 455.91, up to 100 percent of the funds allocated to the State by DOE may be used for technical assistance programs and/or for program assistance, and up to 50 percent of the funds allocated to the State by DOE may be used for marketing as defined in § 455.2;

(3) For States eligible under § 455.81, a portion of the allocation may be used for a grant to the State for administrative expenses, as described in § 455.120; and

(4) For units of local government and public care institutions, the allocation amount shall be solely for technical assistance programs.

(c) DOE shall notify each Governor of the period for which funds allocated for a grant program cycle will be made available for grants within the State.

(d) Each State shall make available up to 10 percent of its allocation for schools and hospitals in each grant program cycle to provide financial assistance, not to exceed a 90 percent Federal share, for technical assistance programs and energy conservation measures for schools and hospitals determined to be in a class of severe hardship. Such determinations shall be made in accordance with § 455.132.

§ 455.31 Allocation formulas.

(a) Financial assistance for conducting technical assistance programs for units of local government and public care institutions shall be allocated among the States by multiplying the sum available by the allocation factor set forth in paragraph (c) of this section.

(b) Financial assistance for conducting technical assistance programs and acquiring and installing energy conservation measures, including renewable resource measures, for schools and hospitals, shall be allocated among the States by multiplying the sum available by the allocation factor set forth in paragraph (c) of this section.

(c) The allocation factor (K) shall be determined by the formula:

$$K=0.07/N+0.1\ (Sfc)/(Nfc)+0.83\ (SP)(SC)/(NPC)$$

where, as determined by DOE:

(1) Sfc is the projected average retail cost per million Btu's of energy consumed within the region in which the State is located, as contained in current regional energy cost projections obtained from DOE.

(2) Nfc is the summation of the Sfc numerators for all States;

(3) N is the total number of eligible States;

(4) SP is the population of the State, as contained in the most recent Bureau of the Census, Department of Commerce, Official Census documents;

(5) SC is the sum of the State's heating and cooling degree days, as contained in the National Oceanic and Atmospheric Administration's most recent editions of "State, Regional and National Monthly and Seasonal Heating Degree Days, Weighted by Population"; and "State, Regional and National Monthly and Seasonal Cooling Degree Days, Weighted by Population"; and

(6) NPC is the summation of the (SP)(SC) numerators for all States.

(d) Except for the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, no allocation available to any State may be less than 0.5 percent of all amounts allocated in any grant program cycle. No State will be allocated more than 10 percent of the funds allocated in any grant program cycle.

§ 455.32 Reallocation of funds.

(a) If a State Plan has not been approved and implemented by a State by the close of the period for which allocated funds are available as set forth in the notice issued by DOE pursuant to § 455.30(c), funds allocated to that State for technical assistance and energy conservation measures will be reallocated among all States for the next grant cycle, if available.

(b) Funds which have been allocated to States in a grant program cycle but which have not been obligated to eligible State, school, or hospital grant applicants by the end of that cycle shall be reallocated by DOE among all States in the next grant program cycle.

(c) Funds which become available due to deobligations resulting from funds returned by grantees due to cost underruns or scope-of-work reductions on completed projects shall be reallocated by DOE among all States in the next grant program cycle.

(d) Funds which become available because of declined grants to schools and hospitals within a State may be reobligated to other eligible applicants in the State until the December 31 following the close of the cycle for which the funds were allocated to the State.

(e) Funds which become available because of grants declined by schools and hospitals after the December 31 following the close of the cycle for which the funds were allocated to the State will be reallocated by DOE among all States in the next grant program cycle.

(f) Funds granted to States for technical assistance, program assistance, and marketing pursuant to § 455.144 are subject to reallocation by DOE among all the States in the next grant program cycle if such funds are not committed by the State to their intended purposes by means of grants, contracts, or other legally binding obligations, or redirected to schools and hospitals grant applications pursuant to § 455.144(d), by the December 31 following the close of the cycle for which the funds were allocated to the State.

Subpart D—Preliminary Energy Audit and Energy Audit Grant Procedures

§ 455.40 Purpose and scope.

(a) This subpart contains the regulations whereby DOE shall provide financial assistance for preliminary energy audits and energy audits.

(b) Preliminary energy audits are to be performed by States for the purpose of:

(1) Determining the energy use characteristics of eligible school and hospital facilities, and buildings owned by units of local government and public care institutions, including the size, type, rate of energy use and major energy using systems of such buildings within the State;

(2) Establishing a data base from which reasonably accurate estimates may be made of the number of eligible institutions, the number of qualifying buildings, and patterns of energy conservation needs including an indication of the opportunities for use of renewable energy sources; and

(3) Assisting States in development of a sound and complete State Plan which is a prerequisite to receipt of financial assistance for technical assistance or energy conservation measures, including renewable resource measures.

(c) Energy audits are to be performed by States or eligible schools, hospitals, units of local government and public care institutions for the purpose of:

(1) Determining the energy use characteristics of eligible school and hospital facilities, and buildings owned by units of local government and public care institutions, including the size, type, rate of energy use and major energy using systems of such buildings within the State;

(2) Identifying and encouraging adoption of energy conservation maintenance and operating procedures;

(3) Indicating potential, if any, for acquiring and installing energy conservation measures, including possible use of renewable resources; and

(4) Providing, to the greatest extent practicable, consistent information necessary to identify those buildings eligible to receive priority for additional financial assistance.

§ 455.41 Financial assistance.

(a) DOE shall provide financial assistance from sums appropriated only upon application in accordance with the provisions of this subpart.

(b) DOE may make grants for purposes of conducting preliminary energy audits and energy audits of school facilities and hospital facilities.

(c) DOE may make grants for purposes of conducting preliminary energy audits and energy audits of buildings owned by units of local government and public care institutions.

§ 455.42 Cost sharing.

(a) Amounts made available under this subpart, together with any other amounts made available from other Federal sources, may not be used to pay more than 50 percent of the costs of a preliminary energy audit or an energy audit, except as provided in paragraph (b) of this section.

(b) The Governor of a State may request a grant of up to 100 percent of the costs of any preliminary energy audit or energy audit for schools or hospitals. When financial assistance in excess of the 50 percent cost share limitation is provided to a State, the sum allocated to that State for technical assistance and energy conservation measures, including renewable resource measures shall be reduced by an equal amount. Such funds shall be reallocated among all other States on the same basis as the initial allocation. DOE may

make such a grant if the State has demonstrated that:

(1) The State would otherwise be unable to participate in the program; and

(2) The amount of the additional financial assistance requested is the minimum necessary to allow the State to participate.

(c) Where a State has expended funds without financial assistance under this subpart for the conduct of preliminary energy audits or energy audits commenced on or after November 9, 1978, DOE may, upon application and approval under this subpart, accept all or any portion of such expenditures as constituting State matching funds.

(d) To the extent that funds allocated to a State for preliminary energy audits and energy audits are not needed because all potentially eligible buildings have had or will have an energy audit or its equivalent conducted, such funds may be made available for technical assistance or energy conservation measures. DOE shall, upon request by the State, redistribute funds not needed for preliminary energy audits and energy audits to the State allocation for technical assistance or energy conservation measures, as appropriate, and such funds shall be in addition to those which would otherwise be available for such purposes.

(e) Amounts to be used to meet the cost-sharing requirements of this part must meet the requirements for cost-sharing set forth in the DOE Financial Assistance Rules, 10 CFR part 600.

§ 455.43 Allocation of funds for preliminary energy audits and energy audits.

(a) Financial assistance for conducting preliminary energy audits and energy audits of school facilities and hospital facilities shall be allocated among the States by multiplying the sum available by the allocation factor (F).

(b) Financial assistance for conducting preliminary energy audits and energy audits of buildings owned by units of local government and public care institutions shall be allocated among the States by multiplying the sum available by the allocation factor (F).

(c) The allocation factor (F) shall be determined by the formula:

$$F = \frac{(.1)}{(n)} + \frac{(.7SP)}{(NP)} + \frac{(.2SC)}{(NC)}$$

where, as determined by DOE:

(1) n is the total number of eligible States;

(2) SP is the population of the State, as contained in the most recent Bureau of the Census, Department of Commerce, Official Census documents;

(3) NP is the total population of all States;

(4) SC is the sum of the State's heating and cooling degree days, contained in the National Oceanic and Atmospheric Administration's most recent editions of "State, Regional and National Monthly and Seasonal Heating Degree Days Weighted By Population," and "State, Regional and National Monthly and Seasonal Cooling Degree Days Weighted By Population"; and

(5) NC is the sum of all States' heating and cooling degree days.

(d) Financial assistance allocated to a State pursuant to this subpart for a grant program cycle which remains unobligated at the end of the grant program cycle shall, if available, be reallocated under paragraph (b) or (b) of this section, as appropriate, in the subsequent grant program cycle.

§ 455.44 Submission and review of applications.

(a) To be eligible to receive financial assistance, a State shall complete and submit an original copy of the application to DOE. Such application shall be signed by the Governor or his designee.

(b) The first State application shall be submitted not later than 30 days after the effective date of this subpart. Subsequent State applications shall be submitted for each grant program cycle on or before the date established by DOE for:

(1) Schools and hospitals;

(2) Buildings owned by units of local government and public care institutions; or

(3) Both.

(c) The State shall consult with representatives of schools, hospitals, units of local government, and public care institutions during the preparation of applications for financial assistance for preliminary energy audits and energy audits.

(d) The Governor may request an extension of the submission date for a State's application by sending a written request to DOE prior to the date upon which it is due. An extension will only be provided for good cause shown. Such a request shall include a brief discussion of work remaining to be done on the application and time required for its completion. An extension shall not exceed 60 days except where additional time may be required by a State to enact enabling legislation, or where DOE finds an additional extension to be consistent with the overall objectives of the Act and the requirements of this subpart.

(e) DOE shall review each timely State application and provide financial assistance if DOE determines that the application meets the objectives of the Act and the requirements of this part.

(f) All or any portion of an application under this section may be disapproved to the extent that funds are not available under this subpart to carry out such application or portion thereof.

(g) DOE shall state in writing the reasons any application is disapproved. Applications not approved by DOE may be resubmitted by the applicant at any time within the grant program cycle in the same manner as the original application, and DOE shall approve such resubmitted application if it is found to be in compliance with the requirements of this subpart. Amendments of an application shall, except as DOE may otherwise provide, be subject to approval in the same manner as the original application.

§ 455.45 Content of applications.

(a) An application shall contain:

(1) The name and mailing address of the proposed State grantee;

(2) A budget which shall include identification of the sources, amounts, and intended use of non-Federal funds required to meet the cost-sharing provisions of § 455.42; and

(3) Assurance that preliminary energy audit and energy audit procedures to be employed will meet the requirements of this part.

(b) For each program for which financial assistance is sought, a State application shall also contain:

(1) A timetable, including a listing of milestones for the activities to be carried out by calendar quarters for each program for which financial assistance will be provided;

(2) A description of materials to be developed and adopted, or an identification of existing materials to be used, to meet the requirements for conducting preliminary energy audits and energy audits, including provision of data concerning heating degree days, cooling degree days, insolation, and wind speed for regions within the State;

(3) A description of the training to be provided to those persons who will conduct energy audits. Such training shall, at a minimum, use as instructors, architects, or engineers who have had practical experience in performing energy audits. The minimum qualifications of those attending the training course, and the minimum qualifications of those who will be permitted to perform energy audits

without having attended the training course, shall also be described;

(4) An explanation of how the size of the sample and the selection of sample buildings will be determined in those instances where a sampling methodology is used in the conduct of preliminary energy audits; and

(5) A description of the methods which will be used to advise eligible institutions of the availability of assistance under this subpart, and the amounts available by categories of institutions as determined under paragraphs (c)(3) and (d)(2) of this section.

(c) A State application for financial assistance to conduct preliminary energy audits and energy audits of schools and hospital facilities shall contain:

(1) A description of the procedures the State will use to provide funding or services to those schools and hospitals which are willing and able to conduct their own energy audits;

(2) A justification for any funding applied for in excess of the 50 percent limit provided in paragraph (a) of § 455.42;

(3) A description of the method by which funds will be apportioned between school facilities and hospital facilities, including a justification for the apportionment if fewer than all such facilities will be audited;

(4) An explanation of the manner in which activities to be conducted shall be consistent with:

(i) Related State programs for educational facilities in such State; and

(ii) State health plans under sections 1524(c)(2) (42 U.S.C. 300m-3; 88 Stat. 2247) and 1603 (42 U.S.C. 300o-2, 88 Stat. 2259) of the Public Health Service Act; and

(5) A description of the actions taken by the State to solicit and consider the views of representatives of schools and hospitals during the preparation of the State's application.

(d) A State application for financial assistance to conduct preliminary energy audits and energy audits of buildings owned by the units of local government and public care institutions shall contain a description of:

(1) The procedures the State will use to provide funding or services to those units of local government and public care institutions which are willing and able to conduct their own energy audits;

(2) The method by which funds will be apportioned between buildings owned by units of local government and public care institutions including a justification for the apportionment if fewer than all these buildings will be audited; and

(3) The action taken by the State to solicit and consider the views of representatives of units of local government and public care institutions during the preparation of the State's application.

(e) A State application shall set forth procedures:

(1) By which buildings or complexes eligible for preliminary energy audits and energy audits will be identified, and a listing thereof prepared and maintained;

(2) For the State to participate, on a selective sampling basis, in the performance of on-site energy audits to assure that the findings present a reasonably thorough and accurate assessment of the buildings surveyed; and

(3) For the State to conduct followup visits, on a selective sampling basis, to ascertain the degree of implementation of energy audit results.

§ 455.46 Use of funds.

(a) A State shall either carry out preliminary energy audits and energy audits of schools and hospitals, or provide for the conduct of such audits by schools and hospitals, through use of funds which the State has received pursuant to paragraph (b) of § 455.41.

(b) A State shall either carry out preliminary energy audits and energy audits of buildings owned by units of local government and public care institutions, or provide for the conduct of such audits by units of local government and public care institutions, through the use of funds which the State has received pursuant to paragraph (c) of § 455.41.

(c) No financial assistance provided under this subpart shall be expended for the audit of:

(1) A vacant, unused or condemned building;

(2) A stadium which is part of a school facility used primarily for exhibitions for which admission is charged and which is not also generally used for intramural sports and physical fitness programs generally available to all students; or

(3) A building or complex owned by a unit of local government or a public care institution:

(i) Not primarily occupied by such institution; or

(ii) Which is intended for seasonal use.

(d) Of the financial assistance provided to a State under this subpart, not more than 25 percent shall be expended for:

(1) Administrative expenses;

(2) Development of materials for the conduct of preliminary energy audits and energy audits;

(3) Training of personnel to conduct energy audits;

(4) Conducting preliminary energy audits and sample energy audits; and

(5) Monitoring and evaluation.

(e) At least 75 percent of the financial assistance provided under this subpart shall be used in conducting energy audits of buildings, including costs of personnel attending training sessions conducted by the State preparatory to performing energy audits.

(f) A State may request, and DOE may approve, a waiver of the limitations required under paragraphs (d) and (e) of this section, provided the State demonstrates that such a waiver would permit the conduct of more energy audits than would otherwise be conducted under the provisions of this section.

§ 455.47 Reporting requirements.

(a) Each State receiving financial assistance under this part shall submit to DOE a quarterly program performance report and a quarterly financial status report. The reports shall be submitted to DOE within 30 days following the end of each calendar quarter.

(b) The quarterly program performance report shall include:

(1) For those buildings which have received a preliminary energy audit or an energy audit, a summary of the categories, types of ownership, functional uses, gross square feet and energy use levels; and

(2) For those buildings which have received an energy audit:

(i) An estimate of the savings anticipated from energy conservation operation and maintenance procedure changes identified; and

(ii) An approximation of the energy savings indicated from applicable energy conservation measures if the procedure used by the State results in such information or a summary of the number of buildings for which the energy audit indicates potential for energy conservation measures, including renewable resource measures.

(c) The second quarterly report shall also include:

(1) The total sum required for energy audits of buildings whose owners have been advised of selection to receive an energy audit;

(2) A copy of the materials adopted by the State for conducting energy audits;

(3) The apportionment of funds pursuant to paragraphs (c)(3) and (d)(2) of § 455.45 and the data on which such apportionment was based;

(4) The listing of institutions and their building compiled pursuant to the

provisions of paragraph (e)(1) of § 455.45 summarized by category, types of ownership, and functional use;

(5) Any necessary revisions to the estimate of the characteristics and energy conservation potential of buildings owned by eligible institutions resulting from the sample preliminary energy audits, if a sampling approach was used.

(d) Copies of preliminary energy audit and energy audit reports made by or furnished to the State under § 450.45 of this chapter shall be submitted to DOE together with the quarterly report.

(e) Reports shall contain such other information as may be required by DOE.

§ 455.48 Contents of a preliminary energy audit. [Reserved]

§ 455.49 Contents of an energy audit. [Reserved]

Subpart E—Technical Assistance Programs for Schools, Hospitals, Units of Local Government, and Public Care Institutions

§ 455.60 Purpose.

This subpart specifies what constitutes a technical assistance program eligible for financial assistance under this part, and sets forth the eligibility criteria for schools, hospitals, units of local government, and public care institutions to receive grants for technical assistance to be performed in buildings owned by such institutions.

§ 455.61 Eligibility.

To be eligible to receive financial assistance for a technical assistance program, an applicant must:

(a) Be a school, hospital, unit of local government, public care institution, or coordinating agency representing them, all as defined in § 455.2, except that financial assistance for units of local government and public care institutions will be provided only for buildings which are owned and primarily occupied by offices or agencies of a unit of local government or public care institution and which are not intended for seasonal use and not utilized primarily as a school or hospital eligible for assistance under this program; and

(b) Be located in a State which has an approved State Plan as described in Subpart B of this part;

(c) Have available the information required by the State as the substantiation for the technical assistance program grant application pursuant to § 455.20(k) for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration, or utilization change which significantly modified energy use within the building;

(d) Give assurance that it has implemented all energy conservation maintenance and operating procedures identified in the description of the building required by the State pursuant to § 455.20(k) or provide a written justification for not implementing them pursuant to § 455.20(l)(3); and

(e) Submit an application in accordance with the provisions of this part and the approved State Plan.

§ 455.62 Contents of a technical assistance program.

(a) The purpose of a technical assistance program is to provide a report based on an on-site analysis of the building which meets the requirements of this section and the State's procedures for implementing this section.

(b) A technical assistance program shall be designed to identify and document energy conservation maintenance and operating procedure changes and energy conservation measures in sufficient detail to support possible application for an energy conservation measure grant, and to provide reviewers and decisionmakers handling such applications sufficient information upon which to base a decision.

(c) A technical assistance program shall be conducted by a technical assistance analyst, who has the qualifications established in the State Plan in accordance with § 455.20(r).

(d) At the conclusion of a technical assistance program, the technical assistance analyst shall prepare a report which shall include:

(1) A description of building characteristics and energy data including:

(i) The results of the energy audit of the building;

(ii) The operation characteristics of energy-using systems; and

(iii) The estimated remaining useful life of the building;

(2) An analysis of the estimated energy consumption of the building, by fuel type in total Btu's and Btu/sq.ft./yr., using conversion factors prescribed by the State in the State Plan, at optimum efficiency (assuming implementation of all energy conservation maintenance and operating procedures);

(3) A description and analysis of all identified operating and maintenance procedures changes, if any, and energy conservation measures selected in accordance with the State Plan, including renewable resource measures, setting forth:

(i) A description of each operating and maintenance procedure change and an estimate of the costs of adopting such operating and maintenance procedure changes;

(ii) An estimate of the cost of design, acquisition and installation of each energy conservation measure, discussing pertinent assumptions as necessary;

(iii) Estimated useful life of each energy conservation measure;

(iv) An estimate of any significant increases or decreases in maintenance and operating costs that would result from each conservation measure, if relevant to the cost effectiveness test applicable under this part;

(v) An estimate of any significant salvage value or disposal cost of each energy conservation measure at the end of its useful life, if relevant to the cost effectiveness test applicable under this part;

(vi) An estimate supported by all data and assumptions used in arriving at the estimate, of the annual energy and energy cost savings (using current energy prices including demand charges) expected from each operating and maintenance procedure change and the acquisition and installation of each energy conservation measure. In calculating the potential energy cost savings or energy savings of each energy conservation measure, including renewable resource measures, the technical assistance analyst shall:

(A) Assume that all energy savings obtained from energy conservation maintenance and operating procedures have been realized;

(B) Calculate the total energy and energy cost savings, by fuel type, expected to result from the acquisition and installation of the energy conservation measures, taking into account the interaction among the various measures;

(C) Calculate that portion of the total energy and energy cost savings, as determined in paragraph (d)(3)(vi)(B) of this section, attributable to each individual energy conservation measure; and

(D) Consider climate and other variables;

(vii) An analysis of the cost effectiveness of each energy conservation measure consistent with § 455.63 of this part;

(viii) The estimated cost of the measure, which shall be the total cost for design and other professional service (excluding the cost of a technical assistance program), if any, and acquisition and installation costs. At the request of the applicant, or if required by the State in its State Plan, the

technical assistance report shall provide a life cycle cost analysis, which considers all costs and cost savings, such as maintenance costs and/or savings, resulting from an energy conservation measure for use by the institution;

(ix) The simple payback period of each energy conservation measure, calculated pursuant to § 455.63(a);

(4) Energy use and cost data, actual or estimated, for each fuel type used for the prior 12-month period, by month, if possible;

(5) Documentation of demand charges paid by the institution for the prior 12-month period, by month if possible, when demand charges are included in current energy prices or when the technical assistance report recommends an energy conservation measure that shifts energy usage to periods of lower demand and cost; and

(6) A signed and dated certification that the technical assistance program has been conducted in accordance with the requirements of this section and that the data presented is accurate to the best of the technical assistance analyst's knowledge.

§ 455.63 Cost effectiveness testing.

(a) This paragraph applies to calculation of the simple payback period of any energy conservation measure. The simple payback period of each energy conservation measure shall be calculated, taking into account the interactions among the various measures, by dividing the estimated total cost of the measure, as determined pursuant to § 455.62(d)(3)(ii), by the estimated annual energy cost savings accruing from the measure (adjusted for demand charges), as determined pursuant to § 455.62(d)(3)(vi).

(b) This paragraph applies, in addition to paragraph (a) of this section, if the State plan requires the cost effectiveness of an energy conservation measure to be determined by life cycle cost analysis of if the applicant requests such an analysis.

(1) A life cycle cost analysis, showing a savings-to-investment ratio greater than or equal to one over the useful life of the energy conservation measure (at least two years), shall be conducted in accordance with subpart A of 10 CFR Part 436 except that a State in its State Plan:

(i) may select a reasonable discount rate higher than the discount rate annually provided by DOE; and

(ii) may provide that the DOE energy cost escalation rates do not apply.

(2) The resulting savings-to-investment ratio shall be used for the purpose of ranking applications.

Subpart F—Energy Conservation Measures for Schools and Hospitals

§ 455.70 Purpose.

This subpart sets forth the eligibility criteria for schools and hospitals to receive grants for energy conservation measures, including renewable resource measures, and the elements of an energy conservation measure program.

§ 455.71 Eligibility.

(a) To be eligible to receive financial assistance for an energy conservation measure, including renewable resource measures, an applicant must:

(1) Be a school, hospital, or coordinating agency representing them as defined in § 455.2;

(2) Be located in a State which has an approved State Plan as described in subpart B of this part;

(3) Have completed a technical assistance program or its equivalent, as determined by the State in accordance with the State Plan, for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration, or utilization change to the building which significantly modified energy use within the building;

(4) Have completed an updated technical assistance program if required in the State Plan as specified in § 455.20(q);

(5) Have implemented all energy conservation maintenance and operating procedures which are identified as the result of a technical assistance program, or have provided a satisfactory written justification for not implementing any specific maintenance and operating procedures so identified;

(6) Have no plan or intention at the time of application to close or otherwise dispose of the building for which financial assistance is to be requested within the simple payback period or useful life (depending on the State's requirement for determining cost effectiveness) of any energy conservation measure recommended for that building; and

(7) Submit an application in accordance with the provisions of this part and the approved State Plan;

(b) To be eligible for financial assistance:

(1) In States where simple payback has been selected as the cost-effectiveness test pursuant to § 455.20(u)(2), the simple payback period of each energy conservation measure for which financial assistance is requested shall not be less than two years nor greater than 10 years, and the estimated useful life of the measure shall be greater than its simple payback period; or

(2) In States where life cycle costing has been selected as the cost-effectiveness test pursuant to § 455.20(u)(2), the savings-to-investment ratio of each energy conservation measure must be greater than or equal to one under § 455.62(b), the life cycle cost payback cannot exceed 15 years, and the useful life of the energy conservation measure must be at least two years.

(c) Leased equipment is not eligible for financial assistance under this part.

§ 455.72 Scope of the grant.

Except for design costs funded under Subpart E of this part, financial assistance awarded under this subpart may be expended for the design, acquisition and installation of energy conversion measures to reduce energy consumption or measures to allow the use of renewable resources for schools and hospitals or to shift energy usage to periods of low demand and cost. Such measures include, but are not necessarily limited to, those included in the definition of energy conservation measure in § 455.2.

Subpart G—State Administrative Expenses

§ 455.80 Purpose.

This subpart describes what constitutes a State administrative expense that may receive financial assistance under this part and sets forth the eligibility criteria for States to receive grants for administrative expenses.

§ 455.81 Eligibility.

To be eligible to receive financial assistance for administrative expenses, a State must:

(a) Have in place a State Plan approved by DOE pursuant to § 455.21; and

(b) Be operating a program to provide technical assistance and energy conservation measure grants, or technical assistance, program assistance, and marketing (where energy conservation measures are funded non-Federally) to eligible institutions pursuant to this part.

§ 455.82 Scope of the grant.

A State's administrative expenses shall be limited to those directly related to administration of technical assistance programs, program assistance and marketing programs, and energy conservation measures, including costs associated with:

(a) Personnel whose time is expended directly in support of such administration;

(b) Supplies and services expended directly in support of such administration;

(c) Equipment purchased or acquired solely for and utilized directly in support of such administration, subject to 10 CFR 600.436;

(d) Printing, directly in support of such administration; and

(e) Travel, directly related to such administration.

Subpart H—State Grants for Technical Assistance, Program Assistance, and Marketing.

§ 455.90 Purpose.

This subpart describes what constitutes a State program for technical assistance, program assistance, and marketing that may receive financial assistance under this part and sets forth the eligibility criteria for States to receive grants for technical assistance, program assistance, and marketing.

§ 455.91 Eligibility.

To be eligible to receive financial assistance for technical assistance, program assistance, and marketing, a State must:

(a) Have in place a State Plan approved by DOE which includes a description of the State's program or programs to provide technical assistance, program assistance, and marketing, pursuant to § 455.20(j)(1);

(b) Have established a program consistent with this part to fund, from non-Federal sources, energy conservation measures for eligible institutions; and

(c) Provide to DOE a certification pursuant to § 455.122.

§ 455.92 State technical assistance awards.

Technical assistance awards by States under this subpart are subject to all requirements of this part which apply to DOE-awarded technical assistance program grants except that States:

(a) Are not required to award the funds in grant instruments;

(b) May award the funds throughout the fiscal year subject to § 455.143(a)(3); and

(c) Are not required to rank applications under § 455.131(b) of this part.

Subpart I—Cost Sharing

§ 455.100 Limits to Federal share.

Amounts made available under this part, together with any other amounts made available from other Federal sources, may not be used to pay more than 50 percent of the costs of technical assistance programs and energy conservation measures unless the grantee qualifies for the exceptions specified in §§ 455.141(a), 455.142(a), 455.142(b), or for severe hardship assistance specified in § 455.142(d). In cases of severe hardship, the Federal share of the cost cannot exceed 90 percent.

§ 455.101 Borrowing the non-Federal share/title to equipment.

The non-Federal share of the costs of acquiring and installing energy conservation measures may be provided by using financing or other forms of borrowed funds, such as those provided by loans and performance contracts, even if such financing does not provide for the grantee to receive clear title to the equipment being financed until after the grant is closed out. However, grantees in such cases must otherwise meet all the requirements of this part, and financing and loan agreements and performance contracts under this section are subject to the requirements of 10 CFR part 600 and the certification requirements under § 455.111(e). Grantees must receive clear title to the equipment when the loan is paid off.

§ 455.102 Energy conservation measure cost-share credit.

To the extent a State provides in its State Plan, DOE may wholly or partially credit the costs of the following, with respect to a building, toward the required cost-share for an energy conservation measure grant in that building:

(a) A non-Federally funded technical assistance program dated no earlier than three years prior to the date of the grant application;

(b) A non-Federally funded technical assistance program update to comply with § 455.20(q); and

(c) The non-Federally funded implementation of one or more energy conservation measures, which complies with § 455.71, commenced within the three years prior to the grant application.

§ 455.103 Requirements for applications for credit.

(a) If a State has provided for credit in its State Plan, applications for credit will be considered only when the projects for which credit is sought meet the applicable program requirements, including the eligibility requirements specified in § 455.71 and the relevant sections of 10 CFR part 600.

(b) Credit for energy conservation measures will be considered only when supported by a technical assistance analysis performed prior to the installation of the energy conservation measures.

§ 455.104 Rebates from utilities and other entities.

(a) Grantees which receive rebates or other monetary considerations from utilities or other entities for installing the energy conservation measures funded by a grant under this part may use such funds to meet their cost sharing obligations pursuant to § 455.100.

(b) Grantees are not required to deduct the amount of the rebate or monetary consideration from the cost of the measures applied for in a grant application, and DOE does not consider such rebates or monetary considerations to be program income which would have to be remitted to DOE upon receipt by the grantee.

Subpart J—Application Responsibilities—Grants to Institutions

§ 455.110 Grant application submittals for technical assistance and energy conservation measures.

(a) Each eligible applicant desiring to receive financial assistance shall file an application in accordance with the provisions of this subpart and the approved State Plan of the State in which such building is located. The application, which may be amended in accordance with applicable State procedures at any time prior to the State's final determination thereon, shall be filed with the State energy agency designated in the State Plan.

(b) Applications from schools, hospitals, units of local government, public care institutions, and coordinating agencies for financial assistance for technical assistance programs shall include the certifications contained in § 455.111 and:

(1) The applicant's name and mailing address;

(2) The energy audit required by the State pursuant to § 455.20(k) as the basis for technical assistance program grants, for each building for which financial assistance is requested;

(3) A project budget, by building, which stipulates the intended use of all Federal and non-Federal funds, including in-kind contributions (valued in accordance with the guidelines in 10 CFR part 600), to be used to meet the cost-sharing requirements described in subpart I of this part;

(4) A brief description, by building, of the proposed technical assistance program, including a schedule, with appropriate milestone dates, for

completing the technical assistance program;

(5) Additional information required by the applicable State Plan, and any other information which the applicant desires to have considered, such as information to support an application from a school or hospital for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship or an application which proposes the use of Federal funds, paid under and authorized by another Federal agreement, to meet cost sharing requirements.

(c) Applications from schools and hospitals and coordinating agencies for financial assistance for energy conservation measures, including renewable resource measures, shall include the certifications contained in § 455.111 and:

(1) The applicant's name and mailing address;

(2) A description of each building for which financial assistance is requested, sufficient to determine the building's eligibility, ownership, use, and size in gross square feet;

(3) A project budget, by measure or building, as provided in the State Plan, which stipulates the intended use of all Federal and non-Federal funds, and identifies the sources and amounts of non-Federal funds, including in-kind contributions (valued in accordance with the guidelines in 10 CFR part 600) to be used to meet the cost sharing requirements described in subpart I of this part;

(4) A schedule, including appropriate milestone dates, for the completion of the design, acquisition, and installation of the proposed energy conservation measures for each building;

(5) For each energy conservation measure proposed for funding, the projected cost, the projected simple payback period, and (if required by the State) the life cycle cost savings-to-investment ratio, as contained in § 455.63. Applications with more than one energy conservation measure per building shall include projected costs and paybacks, and (if required) the savings-to-investment ratios for each measure, and the average simple payback period or overall savings-to-investment ratio for all measures proposed for the building;

(6) Unless waived by DOE, the report of the technical assistance analyst. This report must have been completed since the most recent construction, reconfiguration, or utilization change to the building which significantly modified energy use, for each building;

(7) An update of the technical assistance program report if required by the State in its State Plan and as specified in § 455.20(q);

(8) If the applicant is aware of any adverse environmental impact which may arise from adoption of any energy conservation measure, an analysis of that impact and the applicant's plan to minimize or avoid such impact; and

(9) Additional information required by the applicable State Plan, and any additional information which the applicant desires to have considered, such as information to support an application for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship, or an application which proposes the use of Federal funds, paid under and authorized by another Federal agreement, to meet cost sharing requirements.

§ 455.111 Applicant certifications for technical assistance and energy conservation measure grants to institutions.

Applications for financial assistance for technical assistance programs and energy conservation measures, including renewable resource measures, shall include certification that the applicant:

(a) Is eligible under § 455.61 for technical assistance or § 455.71 for energy conservation measures;

(b) Has satisfied the requirements set forth in § 455.110;

(c) For applications for technical assistance, has implemented all energy conservation maintenance and operating procedures recommended in the energy audit required by the State as the basis for the technical assistance grant, pursuant to § 455.20(k), and for applications for energy conservation measures, those recommended in the report obtained under a technical assistance program. If any such procedure has not been implemented, the application shall contain a satisfactory written justification for not implementing that procedure;

(d) Will obtain from the technical assistance analyst, before the analyst performs any work in connection with a technical assistance program or energy conservation measure, a signed statement certifying that the technical assistance analyst has no conflicting financial interests and is otherwise qualified to perform the duties of technical assistance analyst in accordance with the standards and criteria established in the approved State Plan;

(e) When using borrowed funds for the non-Federal share of an energy conservation project where a lien is placed by the lender on equipment funded under the grant, will obtain a clause in the financing contract requiring lender notification with certified return receipt requested, to the applicable Support Office Director, of the filing of a lawsuit seeking a remedy for a default; and

(f) Will comply with all reporting requirements contained in § 455.113.

§ 455.112 Davis-Bacon wage rate requirement.

When an energy conservation measure or group of measures in a building, funded under this part, has a total estimated cost for acquisition and installation of more than $5,000, any construction contract or subcontract in excess of $2,000 using any grant funds awarded under this part must include:

(a) Those contract labor standards provisions set forth in 29 CFR 5.5; and

(b) A provision for payment of laborers and mechanics at the minimum wage rates determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a) as set forth in 29 CFR part 1.

§ 455.113 Grantee records and reports for technical assistance and energy conservation measure grants to institutions.

(a) Each unit of local government or public care institution which receives a grant for a technical assistance program, and each school, hospital, and coordinating agency which receives a grant for a technical assistance program or an energy conservation measure, including renewable resource measures, shall keep all the records required by § 455.4 in accordance with this part and the DOE Financial Assistance Rules.

(b) Each grantee shall submit reports as follows:

(1) For technical assistance programs, copies of a final report of the analysis completed on each building for which financial assistance was provided shall be submitted to DOE and to the State energy agency no later than 90 days following completion of the analysis. These reports shall contain:

(i) The report submitted to the institution by the technical assistance analyst, and

(ii) The institution's plan to implement energy conservation maintenance and operating procedures.

(2) For energy conservation measure projects:

(i) Semi-annual progress reports. Copies shall be submitted to DOE and to the State energy agency no later than the end of July (for the period January 1 through June 30), and January (for the period July 1 through December 31), and shall detail and discuss milestones accomplished, those not accomplished,

status of in-progress activities, and remedial actions if needed to achieve project objectives. A final report may be submitted in lieu of the last semi-annual report if it satisfies the semi-annual progress report and final report designated time frames;

(ii) A final report. Copies shall be submitted to DOE and to the State energy agency within 90 days of the completion of the project and shall list and describe the energy conservation measures acquired and installed, contain a final actual cost and a final estimated simple payback period for each measure and the project as a whole, or a final savings to investment ratio for each measure and the project as a whole (depending on the State requirement), and include a statement that the completed energy conservation measures conform to the approved grant application.

(iii) If the grantee has been selected by the State as part of its statistically valid sample of grantees, annual energy use reports which will reflect the grantee's actual post-retrofit energy use experiences for 3 years after project completion. Copies of these reports shall be submitted to DOE and to the State energy agency within 60 days after the end of each 12-month period covered in the reports, and shall identify each building and provide data on energy use for that building for the relevant 12-month period. To the extent feasible, energy consumption data in each annual report should be the monthly usage data by fuel or energy type, and the reports should include brief descriptions of any changes in building usage, equipment, or structure occurring during the reporting period.

(3) Such other information as DOE may from time to time request.

(4) Each copy of any technical assistance or energy conservation measure report shall be accompanied by a financial status report completed in accordance with the documents listed in § 455.3.

Subpart K—Applicant Responsibilities—Grants to States

§ 455.120 Grant applications for State administrative expenses.

(a) Each State desiring to receive grants to help defray State administrative expenses shall file an application in accordance with the provisions of this section. The maximum amount a State may apply for is $50,000 or 5 percent of its schools and hospitals grant awards, whichever is greater. At any time after notice by DOE of the amounts allocated to each State for a grant program cycle, each State may apply to DOE for an amount for administrative expenses not exceeding $50,000. In addition, each State, after it makes its submittal to DOE required under § 455.133, may apply for a further grant not exceeding 5 percent of the total of all grant awards for technical assistance and energy conservation measures within the State, less than $50,000 if that was previously awarded the State for administrative expenses in the same grant program cycle.

(b) States that are eligible and elect to apply for grants for technical assistance, program assistance, or marketing pursuant to § 455.121 may initially apply to DOE for $50,000 for administrative expenses. Once a State has determined the amount of non-Federal funds that have been legally obligated to schools and hospitals for eligible energy conservation measures during the fiscal year, it may subsequently apply for a further grant, not exceeding 5 percent of the total amount (less $50,000, if that was previously awarded to the State for administrative expenses in the same fiscal year) legally obligated to eligible recipients in the State during the fiscal year for technical assistance, program assistance, and marketing, and for energy conservation measures which are funded with non-Federal funds but which meet the certification and other requirements of this part for such energy conservation measures. The aggregate amount applied for to cover State administrative expenses, technical assistance, program assistance, and marketing cannot exceed the State's allocation for the fiscal year.

(c) In the event that a State cannot, or decides not to use the amount available to it for an administrative grant under this section for administrative purposes, these funds may, at the discretion of the State, be used for technical assistance and energy conservation measure grants to eligible institutions within the State, in accordance with this part.

(d) Applications for financial assistance to defray State administrative expenses shall include:

(1) The name and address of the person designated by the State to be responsible for the State's functions under this part;

(2) An identification of intended use of all Federal and non-Federal funds to be used for the State administrative expenses listed in § 455.82; and

(3) Any other information required by DOE.

§ 455.121 Grant applications for State technical assistance, program assistance, and marketing programs.

(a) A State may apply for up to 100 percent of the amount allocated to it for a grant program cycle to fund administrative expenses under § 455.120 and technical assistance and program assistance programs, or for up to 50 percent of the amount allocated to it for a grant program cycle to fund marketing programs provided that:

(1) The State has established a program to fund technical assistance, program assistance, or marketing programs, and has described its program or programs in its State Plan, as specified in § 455.20(j);

(2) The State has a program or programs established consistent with this part that fund, from non-Federal sources, energy conservation measures eligible under this part;

(3) Not more than 15 percent of the aggregate amount of Federal and non-Federal funds legally obligated to eligible recipients in the State to provide program assistance, marketing and technical assistance programs, implement energy conservation measures consistent with this part, and otherwise carry out a program pursuant to this part for the fiscal year concerned are expended for program assistance, technical assistance and marketing costs for such program;

(4) The energy conservation measures funded from non-Federal sources under this section would be eligible for funding under § 445.71; and

(5) The institutions undertaking the non-Federally funded energy conservation measures do so in accordance with all applicable Federal, State and local laws and regulations, with particular attention paid to applicable State and Federal non-discrimination laws and regulations.

(b) Applications for financial assistance to defray State technical assistance, program assistance, or marketing expenses shall include:

(1) The name and address of the person designated by the State to be responsible for the State's functions under this part;

(2) An identification of intended use of all Federal and non-Federal funds, for the State administrative expenses listed in § 455.82, or the technical assistance, program assistance, or marketing programs pursuant to this section;

(3) Descriptions of the activities to be implemented, together with a description of the State's program to provide non-Federal sources of funding to carry out the State's program(s) for energy conservation measures consistent with this part;

(4) A certification that the 15 percent limit specified in subparagraph (a)(3) of this section will not be exceeded; and

(5) Any other information required by DOE.

§ 455.122 Applicant certifications for State grants for technical assistance, program assistance, and marketing.

Applications from States for financial assistance for technical assistance programs, program assistance, and marketing shall include certifications that the State:

(a) Has established a program or programs to fund, from non-Federal sources, energy conservation measures for eligible buildings consistent with this part;

(b) Will not expend, for technical assistance, program assistance, and marketing, more than 15 percent of the aggregate amount of Federal and non-Federal funds legally obligated to eligible recipients in the State to provide technical assistance, program assistance, marketing programs, implement energy conservation measures consistent with this part, and otherwise carry out a program pursuant to this part for the fiscal year concerned; and

(c) Has provided for regular DOE-funded grants to religiously affiliated eligible institutions if the State has a State constitutional prohibition on providing State assistance to such institutions and if such institutions would be ineligible to apply for the non-Federally funded conservation measures or State-funded technical assistance.

§ 455.123 Grantee records and reports for State grants for administrative expenses, technical assistance, program assistance, and marketing.

(a) Each State which receives a grant for administrative expenses, technical assistance programs, program assistance, or marketing shall keep all the records required by § 455.4 in accordance with this part and the DOE Financial Assistance Rules.

(b) Each State shall submit a semi-annual program performance report to DOE by the close of each February and August, including, but not limited to:

(1) A discussion of administrative activities pursuant to § 455.82, and a discussion of milestones accomplished, those not accomplished, status of in-progress activities, problems encountered, and remedial actions, if any, planned pursuant to § 455.135(f);

(2) A discussion of technical assistance, program assistance, and/or marketing programs pursuant to § 455.144(a) and § 455.144(b), if the State has received a grant to fund such activities, including a discussion of the results of the State's program to non-Federally fund energy conservation measures consistent with this part pursuant to § 455.144(c), with a list of institutions receiving assistance for technical assistance programs and a list of institutions which obtained energy conservation measures using non-Federal funds, including the name and address of each institution, the amount and type of funding provided to each, and, for energy conservation measures, the types of measures funded in each institution;

(3) A summary of grantee reports received by the State during the report period pursuant to §§ 455.113 (b)(1) and (b)(2);

(4) For the report due to be submitted to DOE by the close of each August, an estimate of annual energy use reductions in the State, by energy source, attributable to implementation of energy conservation maintenance and operating procedures and installation of energy conservation measures under this part. Such estimates shall be based upon a sampling of institutions participating in the technical assistance phase of this program and upon the energy use reports submitted to the State pursuant to § 455.113(b)(2)(iii); and

(5) Such other information as DOE may from time to time request.

(c) Each copy of any report covering State administrative, technical assistance, program assistance, or marketing expenses shall be accompanied by a financial status report completed in accordance with the documents listed in § 455.3. In addition, States shall file quarterly financial status reports for the quarters which occur between the semi-annual report periods covered in their program performance reports. These quarterly reports are due within 30 days following the end of the applicable quarters.

Subpart L—State Responsibilities

§ 455.130 State evaluation of grant applications.

(a) If an application received by a State is reviewed and evaluated by that State and determined to be in compliance with subparts E, F, and J of this part, § 455.130(b), any additional requirements of the approved State Plan, State environmental laws, and other applicable laws and regulations, then such application will be eligible for financial assistance.

(b) Concurrent with its evaluation and ranking of grant applications pursuant to § 455.131, the State will forward applications for technical assistance or for energy conservation measures for a school to the State school facilities agency for review and certification that each school application is consistent with related State programs for educational facilities. For hospitals the certification requirement applies only if there is a State requirement for it, in which case the procedure should be described in the State Plan.

§ 455.131 State ranking of grant applications.

(a) Except as provided by § 455.92, all eligible applications received by the State will be ranked by the State in accordance with its approved State Plan.

(b) For technical assistance programs, buildings shall be ranked in descending priority based upon the energy conservation potential, on a percentage basis, of the building as determined in the energy audit in accordance with the procedures established in the State Plan pursuant to § 455.20(e). Each State shall develop separate rankings for all buildings covered by eligible applications for:

(1) Technical assistance programs for units of local government and public care institutions; and

(2) Technical assistance programs for schools and hospitals.

(c) All eligible applications for energy conservation measures received will be ranked by the State on an individual building-by-building or a measure-by-measure basis. If a State ranks on a building-by-building basis, several buildings may be ranked as a single building if the application proposes a single energy conservation measure which is physically connected to all of the buildings. If a State ranks on a measure-by-measure basis, a measure that is physically connected to a number of buildings may be ranked as a single measure. Buildings or measures shall be ranked in accordance with the procedures established by the State Plan, on the basis of the information developed during a technical assistance program (or its equivalent) for the building and the criteria for ranking applications. The criterion set forth in paragraph (1) of this section shall receive at least 50 percent of the weight given to the criteria used to rank applications. Each State may assign weights to the other criteria as set forth in the State Plan pursuant to § 455.20(e). The criteria for ranking applications are:

(1) Simple payback or a life cycle cost analysis, calculated in accordance with § 455.63;

(2) The types and quantities of energy to be saved, including oil, natural gas, or electricity, in a priority as established in the approved State Plan;

(3) The types of energy sources to which conversion is proposed, including renewable energy;

(4) The quality of the technical assistance program report; and

(5) Other factors as determined by the State.

(d) A State is exempt from the ranking requirements of this section when:

(1) The total amount requested by all applications for schools and hospitals for technical assistance and energy conservation measures in a given grant program cycle for grants up to 50 percent is less than or equal to the funds available to the State for such grants and the total amount recommended for hardship funding is less than or equal to the amounts available to the State for such grants.

(2) The total amount requested by all applications for buildings owned by units of local government and public care institutions in a given grant program cycle is less than or equal to the total amount allocated to the State for technical assistance program grants in the State.

(e) If a State elects to permit applications for credit pursuant to § 455.102, such applications for completed or partially completed energy conservation measures shall reflect both the work done and the work to be done, and will be reviewed and ranked on the basis of the cost of all of the measures in the project. The credit shall not exceed the non-Federal share of the proposed additional energy conservation measures.

(f) Within the rankings of school and hospital buildings for technical assistance and energy conservation measures, including renewable resource measures, to the extent that approvable applications are submitted, a State shall initially assure that:

(1) Schools receive at least 30 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle; and

(2) Hospitals receive at least 30 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle.

(g) If there are insufficient applications from schools or hospitals to cover the respective 30 percent requirements specified in paragraph (f) of this section, then the State may recommend use of the remaining funds in those allocations for other qualified applicants.

§ 455.132 State evaluation of requests for severe hardship assistance.

(a) To the extent provided in § 455.30(d), financial assistance will be initially available for schools and hospitals experiencing severe hardship based upon an applicant's inability to provide the 50 percent non-Federal share. This financial assistance will be available only to the extent necessary to enable such institutions to participate in the program.

(b) The State shall recommend funds for severe hardship applications wholly or partially from the funds reserved in accordance with § 455.30(d) and as stated in an approved State Plan.

(c) Applications for Federal funding in excess of 50 percent based on claims of severe hardship shall be given an additional evaluation by the State to assess on a quantifiable basis, to the maximum extent practicable, the relative need among eligible institutions. The minimum amount of additional Federal funding necessary for the applicant to participate in the program will be determined by the State in accordance with the procedures established in the State Plan. The primary consideration shall be the institution's inability to provide the 50 percent share of the project cost. Secondary criteria such as climate, fuel cost and fuel availability, borrowing capacity, median family income in the area, and other relevant factors as determined by the State may be addressed in the State Plan, as specified in § 455.20(g).

(d) A State shall indicate, for those schools and hospitals with the highest rankings, determined pursuant to § 455.131 (a) and (b):

(1) The amount of additional hardship funding requested by each eligible applicant for each building determined to be in a class of severe hardship; and

(2) The amount of hardship funding recommended by the State based upon relative need, as determined in accordance with the State Plan, to the limit of the hardship funds available. The State must decide on a case-by-case basis whether, and to what extent, it will recommend hardship funding.

(e) If there are insufficient applications from hardship applicants to cover the 10 percent allocation provided for in § 455.30(d), then the State may recommend use of the remaining funds for other qualified applicants. The total amount recommended for hardship grants cannot exceed the 10 percent limit.

§ 455.133 Forwarding of institutional applications for technical assistance and energy conservation measure grants.

(a) Except as provided by § 455.92, each State shall forward all applications recommended for funding within its allocation to DOE once each grant program cycle, along with a listing of buildings or measures covered by eligible applications for schools, hospitals, units of local government, and public care institutions, ranked by the State if necessary pursuant to the provisions of § 455.131. If ranking has been employed, the list shall include the standings of buildings or measures.

(1) Measure-by-measure rankings will be recombined for the respective buildings with more than one recommended measure.

(2) Buildings will be consolidated under one grantee application.

(b) The State shall indicate the amount of financial assistance requested by the applicant for each eligible building and, for those buildings recommended for funding within the limits of the State's allocation, the amount recommended for funding. If the amount recommended is less than the amount requested by the applicant, the list shall also indicate the reason for that recommendation.

(c) The State shall indicate that it has reviewed and evaluated all of the submitted applications and that those applications meet the relevant requirements of the program, and shall certify that applications submitted are eligible pursuant to § 455.130(a).

§ 455.134 Forwarding of applications for State grants for technical assistance, program assistance, and marketing.

A State eligible to apply for a grant for technical assistance, program assistance, or marketing, as described in § 455.121, may submit such an application to DOE any time after the allocations have been announced, in conjunction with or in lieu of an application for State administrative expenses.

§ 455.135 State liaison, monitoring, and reporting.

Each State shall be responsible for:

(a) consulting with eligible institutions and coordinating agencies representing such institutions in the development of its State Plan;

(b) Notifying eligible institutions and coordinating agencies of the content of the approved State Plan and any amendment to a State Plan;

(c) Notifying each applicant how the applicant's building or measure ranked among other applications, and whether and to what extent its application will be recommended for funding or, if not to be recommended for funding, the specific reasons(s) therefor;

(d) Certifying that each institution has given its assurance that it is willing and able to participate on the basis of any changes in amounts recommended for that institution in the State ranking pursuant to § 455.131;

(e) Reporting requirements pursuant to § 455.113; and

(f) Direct program oversight and monitoring of the activities for which grants are awarded as defined in the State Plan. States shall immediately notify DOE of any noncompliance or indication thereof.

Subpart M—Grant Awards

§ 455.140 Approval of institutional applications for technical assistance and energy conservation measures.

(a) DOE shall review and approve applications submitted by a State in accordance with §455.133 if DOE determines that the applications meet the objectives of the Act, and comply with the applicable State Plan and the requirements of this part. DOE may disapprove all or any portion of an application to the extent funds are not available to carry out a program or measure (or portion thereof) contained in the application, or for such other reason as DOE may deem appropriate.

(b) DOE shall notify a State and the applicant of the final approval or disapproval of an application at the earliest practicable date after DOE's receipt of the application, and, in the event of disapproval, shall include a statement of the reasons therefor.

(c) An application which has been disapproved for reasons other than lack of funds may be amended to correct the cause of its disapproval and resubmitted in the same manner as the original application at any time within the same grant program cycle. Such an application will be considered to the extent funds have not already been designated for institutions by the ranking process at the time of resubmittal. However, nothing in this provision shall obligate either the State or DOE to take final action regarding a resubmitted application within the grant program cycle. An application not acted upon may be resubmitted in a subsequent grant program cycle.

(d) DOE shall not provide supplemental funds to cover cost overruns or other additional costs beyond those provided for in the original grant award for technical assistance projects and shall fund only one technical assistance project per building.

(e) DOE shall not provide supplemental funds to cover cost overruns or other additional costs beyond those provided for in the original grant award for all energy conservation measures funded under a grant in a given grant program cycle.

(f) States shall specify in their State Plans the circumstances under which a measure which was included in a grant but which was not implemented and for which no funds were expended may be reapplied for in a subsequent application.

(g) An institution may apply for, and DOE may make, grant awards in another grant program cycle for additional energy conservation measures which relate to a building which previously received grants for other energy conservation measures.

(h) Funds which become available to a grantee after the installation of all approved measures, due to cost underruns in the installed measures, may be used by the grantee for additional measures if such measures are approved in writing by the State and DOE.

(i) DOE may fund costs incurred by an institution for technical assistance and energy conservation measure projects after the date of the grant application, so long as that date is no earlier than the close of the preceding grant program cycle. Such costs may be funded when, in the judgment of DOE, the institution has complied with program requirements and the costs incurred are allowable under applicable cost principles and the approved project budget. The applicant bears the responsibility for the entire project cost unless the application is approved by DOE in accordance with this part.

(j) In addition to the prior approval requirements for project changes as specified in the DOE Financial Assistance Rules (10 CFR part 600), a grantee shall request prior written approval from DOE before:

(1) Transferring DOE or matching amounts between buildings included in an approved application when the State ranks applications on a building-by-building basis; or

(2) Transferring DOE or matching amounts between energy conservation measures included in an approved application when the State ranks on a measure-by-measure basis.

§ 455.141 Grant awards for units of local government and public care institutions.

(a) DOE may make grants to units of local government, public care insitutions, and coordinating agencies representing them for up to 50 percent of the costs of performing technical assistance programs for buildings covered by an application approved in accordance with § 455.140, except that in the case of units of local government and public care institutions a majority of whose operating and capital funds are provided by the government of the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, a grant may be made for up to 100 percent of such costs.

(b) Total grant awards within any State to units of local government and public care institutions are limited to funds allocated to each State in accordance with § 455.30.

(c) Units of local government and public care institutions are not eligible for financial assistance for severe hardship.

§ 455.142 Grant awards for schools, hospitals, and coordinating agencies.

(a) DOE may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the costs of performing technical assistance programs for buildings covered by an application approved in accordance with § 455.140; except that in the case of schools and hospitals a majority of whose operating and capital funds are provided by the government of the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands a grant may be made for up to 100 percent of such costs. Grant awards for technical assistance programs in any State within any grant program cycle shall be limited to a portion of the total allocation as specified in § 455.30(b)(1).

(b) DOE may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the costs of acquiring and installing energy conservation measures, including renewable resource measures, for buildings covered by an application approved in accordance with § 455.140, except that in the case of schools and hospitals a majority of whose operating and capital funds are provided by the government of the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, a grant may be made for up to 100 percent of such costs.

(c) DOE may award up to 10 percent of the total amount allocated to a State for schools and hospitals in a case of severe hardship, ascertained by the State in accordance with the State Plan, for buildings recommended and in amounts determined by the State pursuant to § 455.132(e).

§ 455.143 Grant awards for State administrative expenses.

(a) For the purpose of defraying State expenses in the administration of technical assistance programs in accordance with subpart E and energy conservation measures in accordance with subpart F, or energy conservation measures non-Federally funded pursuant to § 455.121, DOE may make grant awards to a State:

(1) Immediately following public notice of the amounts allocated to a State for the grant program cycle, and upon approval of the application for administrative costs, in an amount not exceeding $50,000;

(2) Concurrent with grant awards for approved applications for technical assistance or energy conservation measures for institutions in that State, and upon approval of an application for administrative costs, in an amount not exceeding the difference between the amount granted pursuant to paragraph (a)(1) of this section and 5 percent of the total amount of grants awarded within the State for technical assistance programs and energy conservation measures in the applicable grant program cycle; or

(3) Upon receipt by DOE of documentation from the State demonstrating that sufficient non-Federal funding has been legally obligated to schools and hospitals for energy conservation measures pursuant to § 455.121(a) and § 455.123(b)(ii), and upon approval of an application for administrative costs, in an amount not exceeding the difference between the amount granted pursuant to paragraph (a)(1) of this section and 5 percent of the aggregate Federal and non-Federal funds legally obligated to eligible recipients in the State to provide technical assistance, program assistance, and marketing programs and implement energy conservation measures consistent with this part, for the fiscal year concerned.

(b) Grants for such purposes may be made for up to 100 percent of the projected administrative expenses, not to exceed the State's allocation or the $50,000 or 5 percent limit, as approved by DOE.

(c) The total of all grants for State administrative costs, technical assistance programs, and energy conservation measures (or for State administrative costs, technical assistance, program assistance, and marketing, if the State elects and is eligible to apply for such grants) in that State shall not exceed the total amount allocated for that State for any grant program cycle.

(d) In the event that a State cannot, or decides not to use the amount available to it for an administrative grant under this section for administrative purposes, these funds may, at the discretion of the State, be used for technical assistance and energy conservation grants to eligible institutions within that State in accordance with this part.

§ 455.144 Grant awards for State programs to provide technical assistance, program assistance, and marketing.

(a) For the purpose of defraying State expenses in the administration of special programs to provide technical assistance and program assistance pursuant to § 455.121, DOE may make a grant award to a State for up to 100 percent of the funds allocated to the State for the grant program cycle, provided that the State meets the requirements described in § 455.121(b). In addition:

(1) Funds for individual technical assistance programs provided by the State pursuant to this section shall not exceed 50 percent of the cost of the technical assistance program;

(2) Grants for program assistance may be made for up to 100 percent of a State's projected program assistance expenses; and

(3) Grants for State technical assistance, and program assistance programs may be awarded by DOE upon approval of an application from the State.

(b) For the purpose of defraying State expenses in the administration of a marketing program pursuant to § 455.121, DOE may make a grant award to a State for up to 50 percent of the funds allocated to the State for the grant program cycle, provided that the State meets the requirements described in § 455.121(b). In addition:

(1) Grants for marketing may be made for up to 100 percent of a State's projected marketing expenses; and

(2) Such grants may be awarded by DOE upon approval of an application from the State.

(c) If a State provides a certification under § 455.121(b) and is unable to document that the required non-Federal funding levels for energy conservation measures were achieved substantially for the previous fiscal year for which a similar certification was submitted, DOE may deny the application, accept it after the percent of allocated funds is reduced in light of past performance, or take other appropriate action.

(d) In the event that a State, after receiving a grant under this section, cannot, or decides not to use all or part of the amount available to it for technical assistance, program assistance, and marketing, these funds may, at the discretion of the State, and after appropriate application to, and approval of DOE, be used for technical assistance and energy conservation grants to eligible institutions within that State in accordance with this part.

Subpart N—Administrative Review

§ 455.150 Right to administrative review.

(a) A State shall have a right to file a notice requesting administrative review of a decision under § 455.143 by a Support Office Director to disapprove an application for a grant award for State administrative expenses subject to special conditions or a decision under § 455.21 of this part by a Support Office Director to disapprove a State Plan or an amendment to a State Plan.

(b) A State shall have a right to file a notice requesting administrative review of a decision under § 455.144 by a Support Office Director to disapprove an application for a grant award for State technical assistance, program assistance, or marketing programs.

(c) A school, hospital, coordinating agency, or State acting as an institution's duly authorized agent shall have a right to file a notice requesting administrative review of a decision under § 455.142 by a Support Office Director to disapprove an application for a grant award to perform technical assistance programs or to acquire and install an energy conservation measure if the disapproval is based on a determination that:

(1) The applicant is ineligible, under § 455.61 or § 455.71 or for any other reason; or

(2) A technical assistance program equivalent performed without the use of Federal funds does not comply with the requirements of § 455.62 for purposes of satisfying the eligibility requirements of § 455.71(a)(3).

§ 455.151 Notice requesting administrative review.

(a) Any applicant shall have 20 days from the date of receipt of a decision subject to administrative review under § 455.150 to disapprove its application for a grant award to file a notice requesting administrative review. If an applicant does not timely file such a notice, the decision to disapprove shall become final for DOE.

(b) A notice requesting administrative review shall be filed with the Support Office Director and shall be accompanied by a written statement containing supporting arguments.

(c) If the applicant is a State appealing pursuant to paragraph (a) § 455.150, the State shall have the right to a public hearing. To exercise that right, the State must request such a hearing in the notice filed under paragraph (b) of this section. A public hearing under this section shall be informal and legislative in nature.

(d) A Notice or any other document shall be deemed filed under this subpart upon receipt.

§ 455.152 Transmittal of record on review.

On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the Support Office Director shall forward to the Deputy Assistant Secretary the notice requesting administrative review, the decision to disapprove as to which administrative review is sought, a draft recommended final decision for concurrence, and any other relevant material.

§ 455.153 Review by the Deputy Assistant Secretary.

(a) If a State requests a public hearing pursuant to paragraph (a) of § 455.150, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and **Federal Register** notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.

(b) The Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the Support Office Director:

(1) With respect to a notice filed pursuant to paragraph (a) of § 455.150, on or before 60 days from receipt of documents under § 455.152 or the conclusion of a public hearing, whichever is later; or

(2) With respect to a notice filed pursuant to paragraph (b) of § 455.150, on or before 30 days from receipt of documents under § 455.152.

§ 455.154 Discretionary review by the Assistant Secretary.

On or before 15 days from the date of the determination under § 455.153(b), the applicant for a grant award may file an application, with a supporting statement of reasons, for discretionary review by the Assistant Secretary. If administrative review is sought pursuant to paragraph (a) of § 455.150, the Assistant Secretary shall send a notice granting or denying discretionary review within 15 days and upon granting such review, shall issue a decision no later than 60 days from the date discretionary review is granted. If administrative review is sought pursuant to paragraph (b) of § 455.150, the Assistant Secretary shall send a notice granting or denying discretionary review within 15 days and, upon granting such review shall issue a decision no later than 30 days from the date discretionary review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

§ 455.155 Finality of decision.

A decision § 455.153 shall be final for DOE if there is no review sought under § 455.154. If there is review under § 455.154, the decision thereunder shall be final for DOE, and no appeal shall lie elsewhere in DOE.

[FR Doc. 92-114 Filed 1-3-92; 8:45 am]
BILLING CODE 6450-01-M

VOL
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1992

UMI

federal register

Monday
January 6, 1992

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 577 and 578

Supportive Housing Demonstration—Transitional Housing; Permanent Housing for Handicapped Housing; Proposed Rule

VOL 57 ISS 3 JA 6 1992 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 577 and 578

[Docket No. R-91-1575; FR-2878-P-01]

RIN 2506-AB10

Supportive Housing Demonstration—Transitional Housing; Permanent Housing for Handicapped Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement changes to the Supportive Housing Demonstration program made by the National Affordable Housing Act (Pub. L. 101-625, approved Nov. 28, 1990). The rule also proposes other changes to the program that HUD has determined, based on experience with the program, would be beneficial to the purpose of the program.

DATES: Comment due date: March 6, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Special Needs Assistance Programs, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; (202) 708-4300 (TDD: (202) 708-2565). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Some of the information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980, and have been approved and assigned OMB control numbers 2502-0361 and 2506-0112. New information collection requirements contained in the rule have been submitted and are pending approval. Until approved by OMB and assigned an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this document under the heading, Other Matters. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent by March 5, 1992 to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

The Supportive Housing Demonstration Program is authorized by title IV of the Stewart B. McKinney Homeless Assistance Act to provide assistance to private nonprofit organizations and governmental entities for use in providing housing and supportive services to the homeless. The Supportive Housing Demonstration consists of two programs—Transitional Housing and Permanent Housing for Handicapped Homeless. The existing regulations for these programs are contained in 24 CFR part 577 (Transitional Housing) and part 578 (Permanent Housing for Handicapped Homeless).

Section 833 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) amended title IV of the McKinney Act, making several changes to the Supportive Housing Demonstration programs. This rule would implement those changes. In addition, the Department is proposing other changes to parts 577 and 578. Some of these changes would clarify or reorganize the regulations. Others, which are based on the experience gained through operating the programs, would be more substantive in nature. The regulations are published in their entirety to assist the reader.

II. Proposed Rule

1. National Affordable Housing Act

Assistance Available

Section 833(c) of the NAHA amended section 423(a) of the McKinney Act to change the form of assistance for acquisition and substantial rehabilitation of existing structures for use in the provision of supportive housing from advances, which were subject to repayment under certain circumstances, to grants. All references in the rule to advances would be changed accordingly.

In addition to the prospective nature of this change in the form of assistance, section 833(c) also amended section 423(b) of the McKinney Act to authorize the conversion of advances made to past recipients under section 423(a) to grants, under terms and conditions prescribed by the Secretary. Under the proposed rule, §§ 577.310 and 578.310 would be amended to convert all past advances to grants, which may be subject to repayment if the facility is not operated as Supportive Housing for ten years after initial occupancy, or if the facility is sold for a different use during the 20-year period after initial occupancy.

Section 833(e) further amended section 423(a) of the McKinney Act to authorize grants in an amount not to exceed $400,000 for new construction of a structure for use in the provision of supportive housing. Under the existing rule (§§ 577.112 and 578.112), advances for new construction have been available only under very limited circumstances, which were prescribed by an amendment to the McKinney Act in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988. The Department only made one such advance, because of the strict requirements imposed by the amendment. Sections 577.112 and 578.112 would be amended to provide for new construction grants of up to $200,000 (or up to $400,000 in high cost areas) or the total cost of the construction less the applicant's matching share, whichever is lower. The strict requirements for new construction assistance in the existing rule would be modified. Under the proposed rule, applicants would be required to show that costs associated with new construction are substantially less than the costs associated with rehabilitation or that there is a lack of available units that could be rehabilitated at a cost less than new construction. In addition to these amendments of §§ 577.112 and 578.112, the rule would also amend §§ 577.5 and 578.5 to define "new construction" as the building of a structure when none existed or an addition to an existing structure that increases the floor area by more than 100 percent.

Grants to establish and operate a child care services program were authorized by section 833(g) as a type of

assistance for the Transitional Housing Program. Under the existing rules for both the Transitional and the Permanent Housing Programs, the cost of child care has been included as an eligible supportive services cost (see paragraph (f) of the definition of *supportive services* in § 577.5 and paragraph (e) in the definition in § 578.5). The Department would continue to fund child care services as an eligible supportive services cost, if they comply with the statutory criteria. The proposed rule would define child care services, in accordance with section 833(g), in §§ 577.5 and 578.5.

Under the existing rules, assistance for supportative services and operating costs has been available for up to five years to Transitional Housing recipients and up to two years to Permanent Housing recipients. Section 833(d) of the NAHA has amended the McKinney Act to authorize assistance for these costs, for both Transitional and Permanent Housing, for a five-year period, with possible renewal for another five-year period.

The proposed rule would make up to 75 percent of a recipient's supportive services and operating costs available for the first two years and up to 50 percent of the cost for the next three years. A recipient could then reapply and be renewed for assistance for an additional five years, provided the recipient demonstrates progress in assisting homeless persons with housing and effectiveness in assisting homeless persons to achieve independence. In reviewing applications for renewal, HUD would consider whether the recipient is carrying out the activities as proposed in the initial application, in a timely manner, and meeting the program's goals. HUD would take into consideration the fact that some populations have a larger number and more intractable problems than others.

Under the renewals, HUD would provide up to the lower of 50 percent of the total supportive services and operating costs in years 6 through 10, or the amount of assistance for supportive services and operating costs provided for the final year of the initial funding period, multiplied by the number of years in the renewal period. (See §§ 577.117, 577.217, 578.117, and 578.217.)

Section 424(a)(2)(D) of the McKinney Act required that all recipients of assistance provide assurances satisfactory to the Secretary that the project assisted would be operated for not less than 10 years. This requirement was implemented in the program rules at §§ 577.210(b)(6) and 578.210(b)(8). Section 833(j) of the NAHA has amended this provision to require the 10-year commitment only from recipients of acquisition, rehabilitation, or new construction grants, and the rule would be amended accordingly. Section 833(j) amended section 424 further to require recipients of grants for supportive services and operating costs to provide an annual assurance, for each year the assistance is received, that the project will be operated for the purpose specified in the application. The proposed rule includes this requirement at §§ 577.305(f) and 578.305(f).

Waiver of Site Control

Section 424(a)(3) of the McKinney Act provides that an applicant must furnish reasonable assurances that it will own or have control of a site for its proposed project not later than six months after notification of an award, and may obtain ownership or control of a different site than the one specified in the application. However, section 424(a)(3) further provides that, if the applicant fails to obtain ownership or control within one year after notification of an award, the grant will be recaptured. Section 833(f) amended section 424(a)(3) to provide for a waiver of these site control requirements where the Secretary determines that these requirements are inapplicable because, under the application, the persons to be served own or control, or will eventually own or control, the site.

HUD interprets this provision as applying to situations where an applicant does not propose to have control of a site but rather proposes to assist a homeless family or individual in obtaining a lease, which may include assistance with rent payments, and receiving supportive services for up to two years, after which time the family remains in the same housing but on an independent basis. Rather than obtaining housing for homeless persons who, when self-sufficient, vacate the housing for use by other homeless persons, the provider instead helps the homeless persons become established in the housing. The provider then repeats the assistance at another site.

Therefore, §§ 577.210(c) and 578.210(c) would provide that waivers will be approved, on a case-by-case basis, if, in addition to proposing this concept, an application (1) includes comprehensive supportive services appropriate to the needs of the population to be served; (2) does not request funds for acquisition, rehabilitation, or new construction; and (3) commits the applicant to begin providing assistance to at least one homeless family or individual within 60 days of grant execution. HUD believes that acquisition, rehabilitation, and new construction are infeasible with this concept because those activities carry with them a commitment to use the assisted structures for transitional housing for a ten-year period.

Eligible Applicants

The McKinney Act, as originally enacted, limited eligibility for Permanent Housing assistance to the State in which the permanent housing is located, or the State housing agency (or other State agency) that customarily implements housing programs for the State and that is identified by statute to participate in housing programs in the State. The State then provides the assistance to a project sponsor (a private nonprofit organization or public housing agency (PHA)) for the operation of the permanent housing. Section 833(k) amended the McKinney Act to include Indian tribes as eligible applicants for Permanent Housing assistance. (Tribes have been eligible for Transitional Housing assistance since the beginning of the program.) Section 578.5 has been amended to include tribes in the definition of *applicant* as well as the definition of *tribe*. All requirements applying to States as applicants (and recipients) would apply to tribes, with the exception of CHAS requirements, discussed in the next section.

Miscellaneous Provisions

Section 833(b) increased the maximum number of handicapped homeless persons in a Permanent Housing structure from 8 to 16, but only if not more than 20 percent of the units in the structure are designated for such persons. Sections 578.5 and 578.325(a) would be amended to accommodate this change. The maximum number of residents in a group home would not be increased. (The rule would continue to allow HUD to waive these limitations, as described in § 578.325(d).)

Section 833(i) amended section 424(c) of the McKinney Act to require an applicant to agree or certify that it will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services with Supportive Housing assistance. Further, the address or location of any housing used as a family violence shelter assisted with Supportive Housing funds may not be made public without the written authorization of the recipient. The proposed rule includes this provision in §§ 577.210(b) and 578.210(b).

The statutory selection criteria of "site control" and "employment assistance program" were eliminated by section

833(h). These criteria would be eliminated from §§ 577.215 and 578.215.

In the past §§ 577.150 and 578.150 provided that assistance could not be provided to, or within the jurisdiction of, a State, city, or county, unless the jurisdiction had a HUD-approved Comprehensive Homeless Assistance Plan (CHAP) and the applicant had obtained a certification of consistency with the plan. These sections implemented section 401 of the McKinney Act. Section 836 of the NAHA amended section 401 to require each grantee receiving assistance to certify that it is following a Comprehensive Housing Affordability Strategy (CHAS) or a CHAP approved within 180 days of enactment of the NAHA or such longer period of time as the Secretary prescribes, and to delete all CHAP requirements as of October 1, 1991. That change was implemented for all jurisdictions except Indian tribes in an interim rule published at 56 FR 4480 on February 4, 1991.

This proposed rule would implement section 836 as it applies to tribes. Unlike other applicants, Indian tribes have not previously been required to submit a CHAP. Further, they were not included in the NAHA definition of a "jurisdiction," the entity charged with submitting a CHAS. Therefore, the Department concluded that they need not submit a housing strategy, or CHAS. However, the Senate Report accompanying NAHA states in the discussion of the HOME program:

> Although a tribe would not be required to submit a housing strategy, as provided for in Section 105, a grant application shall demonstrate how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing within the tribe's jurisdiction. S. Rep. No. 316, 101st Cong., 2d Sess. 65 (1990).

During Fiscal Year 1991, Indian tribes participating in the McKinney Act programs were required to submit a biennial CHAP before or with their application for funding. After October 1, 1991, Indian tribes participating in these programs are required under §§ 577.150 and 578.150 to complete application forms that comply with the language of the Senate Report, certifying that they are following the strategy outlined in the application; except that with respect to Indian tribes having a biennial CHAP covering Fiscal Year 1992, this requirement will not become applicable until after October 1, 1992.

Applicants other than Indian tribes had submitted annual CHAPs in October 1990. HUD did not require the filing of new biennial CHAPS by those applicants in 1991. As a result, in Fiscal Year 1992, non-Indian tribe applicants must submit a certification of consistency with an approved CHAS and do not have the option of certifying compliance with a biennial CHAP filed in 1991.

2. Other Amendments

Definitions (§§ 577.5 and 578.5)

The following changes would be made to definitions contained in §§ 577.5 and 578.5 of the existing regulations:

The definition of *handicapped* would be changed to specifically include persons with emotional impairments, reflecting the definition of "person with disabilities" in section 811(k)(2) of the NAHA. Section 811 of the NAHA provides for a new supportive housing program for persons with disabilities to replace the loan program for nonelderly handicapped persons under section 202 of the Housing Act of 1959. Section 422(2) of the McKinney Act defines "handicapped" as an individual who is handicapped within the meaning of section 202. The proposed rule amends the definition in §§ 577.5 and 578.5 to pick up the clarification in the successor program that emotional impairments are intended to be included in the definition.

In addition, the proposed rule would delete the exclusion in the definition of handicapped persons in §§ 577.5 and 578.5 of persons whose sole impairment is alcoholism or drug addiction. For purposes of the Section 202 and Section 811 programs, the definition of *handicapped* or persons with disabilities (in 24 CFR 885.5 and 890.105) excludes a person whose sole impairment is alcoholism or drug addiction. The Section 202 program and now the Section 811 program are intended to serve a large array of disabled persons. Since 1979, for purposes of the Section 202 program, it has been the opinion of the Department that the definition in section 202(d)(4) (and now in section 811(k)(2)) cannot be construed to exclude otherwise qualified alcoholics and drug addicts and that a statutory amendment would be needed to accomplish such an exclusion. Whether an alcoholic or drug addict is disabled or handicapped within the section 202 statutory definition depends on the nature and severity of the individual's impairment. In the Section 202 program (and now the Section 811 program), the limitation on eligibility to qualified handicapped individuals means that a handicapped individual must meet general program eligibility requirements. A handicapped person may be denied services or benefits of a program if the person fails to meet eligibility criteria that are applied to all potential beneficiaries, even if the reason the person does not meet those criteria is related to the handicap. Eligibility may also be restricted as a result of statutory or policy limitations on the type of housing that will be provided under the program.

The Department has revisited this issue and has determined that, within the context of the Supportive Housing Demonstration programs only, persons whose impairment is alcoholism or drug addiction would be considered handicapped, as long as they meet the additionally required statutory three-prong test that the impairment (1) is expected to be of long-continued and indefinite duration; (2) substantially impedes his or her ability to live independently; and (3) is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

The Department previously made the same determination in the Shelter Plus Care Guidelines, published February 4, 1991 at 56 FR 4494. HUD implemented the Section 202 component of Shelter Plus Care by eliminating the exclusion of persons whose sole impairment is alcoholism or drug addiction from the definition of handicap on the basis that the statutorily stated purpose of that program was to assist "homeless persons with disabilities (primarily persons who are seriously mentally ill, *have chronic problems with alcohol, drugs, or both,* or have acquired immunodeficiency syndrome and related diseases)" (emphasis added).

While the Supportive Housing Demonstration does not have a statutory mandate to serve alcoholics and drug addicts, the program purpose is to serve the homeless, a subgroup of the general populace with a high incidence of alcoholism and drug addiction. The Inter-Agency Council on the Homeless states at page 33 of its 1990 Annual Report:

> Based on a variety of studies completed in the last decade, the National Institute on Alcohol Abuse and Alcoholism (NIAAA) of the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) estimates that 35–40% of the homeless population suffers from chronic alcohol problems * * *. [S]tudies indicate that alcoholism among homeless people is more severe than it is among the general population, as measured by physiological and behavioral symptoms of the disease (e.g., blackouts, DT's, early morning drinking, and experiences of adverse social consequences such as drinking-related arrests, family dissolutions, loss of jobs, etc.).
>
> Although the prevalence of other drug use in the homeless population is less studied, NIAAA in consultation with the National Institute on Drug Abuse, Rossie, and others estimate that approximately 10% to 20% of

homeless persons have chronic problems with drugs other than alcohol.

Further, the Supportive Housing Demonstration requires a clinical fit between the audience and the supportive services to be provided. Recipients must provide "supportive" housing (section 421(a) of the McKinney Act), meaning that the project assisted must include both housing and supportive services (section 422(12)). The supportive services are to address the special needs of the homeless persons intended to be served by the project (section 422(13)).

This approach does not conflict with the statute or the regulatory approach to eligibility in the Section 202 and Section 811 programs. The Supportive Housing Demonstration applies the section 811 definition and continues to apply the three-prong test first applied in the Section 202 nonelderly handicapped program. The difference in emphasis of the persons served is based on programmatic policy consideration of the groups to be served, the facilities designed to serve this population, and the nature of the program.

Because of confusion on the part of some applicants and recipients, the Department wants to restate in this preamble its understanding of the statutory definition of the term *homeless* as repeated in this rule. The Department places the section 103 definition in the context of the findings of Congress in section 102(a) of the McKinney Act. The first finding states that "the Nation faces an immediate and unprecedented crisis due to the *lack* of shelter for a growing number of individuals and families, including elderly persons, handicapped persons, families with children, Native Americans, and veterans[.]" (Emphasis added.) All the other findings, as well as the purpose in section 102(b), use the terms "homeless" or "homelessness." The Department, therefore, concludes that "lack of shelter" and "homelessness" are used synonymously in section 102.

Misunderstandings regarding the definition of homeless have arisen in two areas. First, there has been confusion over the distinction between persons living in overcrowded or substandard housing and persons who are homeless. The Department does not believe that the limited resources of the Supportive Housing Demonstration programs were intended to be used to serve persons who are poorly housed. The Department administers other programs to serve these persons, such as the Section 8 Housing Assistance Payments programs, public and Indian housing, and the HOME program. The intent of the Supportive Housing Demonstration programs is to help persons who lack shelter.

The other misunderstanding involves the distinction between persons needing supportive housing (*i.e.*, housing combined with supportive services) and persons who are homeless. The Department recognizes that supportive housing is important for several populations. The Section 202 program has long been a source of supportive housing for elderly and handicapped persons. A new program that will provide supportive housing for persons with disabilities was authorized by section 811 of the NAHA. However, many persons needing supportive housing are not homeless. The limited resources available under the McKinney Act's Supportive Housing Demonstration programs must be used for homeless persons.

In general, homeless persons are persons living in places designed to provide temporary living accommodations, such as emergency shelters, or persons living in public or private places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The latter group of homeless persons are sometimes referred to as persons living "on the street."

The Department also considers as homeless those persons who would become homeless imminently because they are being evicted from private dwelling units or are handicapped persons being discharged from institutions, and because no subsequent residences have been identified and they lack the resources and support networks needed to obtain access to housing. The standard to be followed in determining whether these persons are homeless is to ask whether without the Supportive Housing Demonstration program they would spend the night in a shelter or on the street.

The proposed rule would amend the definition of *operating costs* in §§ 577.5 and 578.5 to allow repair and maintenance reserves as an eligible operating cost. This change would recognize the need for funds to be set aside for future repairs and maintenance. The definition of *supportive services* would also be amended to add case management as a service eligible for assistance. Case management is an essential tool for assuring that residents are receiving the appropriate services and for assisting their progress toward independence.

Under the existing Transitional Housing rule, a *recipient* is required to operate the housing. The proposed rule would amend this definition in § 577.5 to clarify that a recipient may, as an alternative, contract with other organizations to carry on the day-to-day operations of the housing.

The definition of *rehabilitation* in §§ 577.5 and 578.5 would be changed to show the difference between rehabilitation and new construction. The existing definition is unnecessarily complicated. Under the proposed rule, rehabilitation would be defined as the improvement or repair of an existing structure or an addition to an existing structure that does not increase the floor area by more than 100 percent. The rule would continue to recognize that minor or routine repairs are not considered rehabilitation.

Types of Assistance (§§ 577.100 and 578.100)

Sections 577.100 and 578.100 would be amended to allow acquisition assistance for land when it will be used for the new construction of transitional or permanent housing. This change would be consistent with the new authority to use Supportive Housing assistance for new construction.

These sections would also describe the ways in which assistance may be used. Assistance would be available to: (1) Establish new transitional or permanent housing facilities; (2) expand existing housing to increase the number of persons served or the level of services provided; (3) bring housing to applicable State and local health and safety standards; (4) replace the loss of private funding; and (5) continue funding for supportive services or operating costs, as authorized by the NAHA and described above. Item (4) would be added to help maintain the viability of existing homeless facilities in instances where all funds originally committed by a private organization have been spent and, although further funding is needed, the private organization does not plan to provide more.

Acquisition and Rehabilitation Grants (§§ 577.105, 577.110, 578.105, 578.110)

Under the McKinney Act as originally enacted, advances were available for up to $200,000 for acquisition, substantial rehabilitation, or acquisition and rehabilitation of an existing structure. Assistance for moderate rehabilitation was available in the form of grants. HUD's rule, promulgated shortly after enactment of the original legislation, limited grants for moderate rehabilitation to $100,000, although the statute had placed no limit on the amount of a moderate rehabilitation grant. The McKinney Act was later amended by the Stewart B. McKinney

Homeless Assistance Amendments Act of 1988 to allow moderate rehabilitation grants for up to $200,000, and the rule was amended accordingly. The rule change proposed in this document would eliminate the distinction between substantial rehabilitation and moderate rehabilitation. The Department believes that there is no useful purpose for distinguishing between these types of assistance, especially after the NAHA amendments in 1990 changed acquisition and substantial rehabilitation assistance from advances to grants and since the maximum amounts available for each are the same.

The rule would provide for acquisition grants for up to $200,000 in §§ 577.105 and 578.105, and for rehabilitation grants for up to $200,000 in §§ 577.110 and 578.110 without regard to whether the rehabilitation is substantial or moderate. Assistance under both categories—acquisition and rehabilitation—would continue to be available.

While the rule would generally continue to prohibit assistance for acquisition of existing facilities or programs currently serving the homeless, it would allow an exception in §§ 577.105(b) and 578.105(b) for applicants that have operated programs using properties leased through the Single Family Property Disposition Homeless Initiative. Under this exception, HUD would consider applications from those applicants for grants for acquiring the properties. This would allow such properties to continue being available for homeless persons rather than being returned to HUD after the lease period ends.

Supportive Services Costs (§§ 577.115 and 578.115)

In addition to the changes discussed in the section above on the amendments by the NAHA to assistance for supportive services, the rule would permit recipients of grants for supportive services costs to continue providing services to former residents for up to six months after they have left transitional housing, provided in all they do not receive services for more than 24 months. This would enable recipients that serve persons who, although living independently, need supportive services during the period of time immediately after leaving transitional housing to help them adjust to their new situations. Studies have shown that such services significantly increase the likelihood that homelessness will not reoccur.

Technical Assistance (§§ 577.120 and 578.120)

Sections 577.120 and 578.120 would be added to the rule to provide for a set-aside of up to two percent of the amounts available annually for the Supportive Housing Demonstration to provide technical assistance to applicants (or prospective applicants) and recipients of funds. Technical assistance in the areas of establishing and operating programs, as well as providing and obtaining supportive services, would include written materials and training workshops. The Department believes that providing such technical assistance would improve the quality and cost effectiveness of the programs serving the homeless.

Matching Requirements (§§ 577.130 and 578.130)

With regard to the value of "in-kind" contributions that HUD will include as a source of matching funds for acquisition, rehabilitation, and new construction grants, the rule would be amended to increase the value of volunteer time and services from $5 an hour to $10, and permit donated professional services, such as services donated by health care professionals, to be counted at the customary charge for the service provided (§§ 577.130(c)(1) and 578.130(c)(1)). The Department recognizes the important role that volunteers perform in the success of programs serving the homeless, and believes that the use of volunteers is indispensable in building a community-based program.

Assistance Under Other HUD Programs (§§ 577.135 and 578.135)

Sections 577.135 and 578.135 prohibit the use of assistance in facilities that involve a structure that is assisted by a HUD-administered housing program or where residents will receive HUD-administered assistance. The Department is considering changing its policy to allow recipients to accept persons with Section 8 Certificates, provided the requirements of the Section 8 Certificate program are met. (Those requirements are described in 24 CFR part 882.) The Housing Assistance Payment received by the owner would be deducted from the amount of operating costs obligated by HUD under the grant agreement. If adopted, this policy change would be included in the final rule, although it does not appear in the text of today's proposed rule. The Department invites the public to submit specific comments on this proposal.

Homeless persons obtaining Section 8 Certificates often need supporting services to address underlying causes of homelessness. Permitting Section 8 Certificate holders to use the assistance initially in a transitional housing facility would help ensure that the needed services are received. After preparation for independent living, they may then use the Certificate to obtain permanent private market housing. (Persons with Section 8 Vouchers would not be accepted because the amount of rent that may be payable by a tenant is incompatible with the resident rent requirements of these programs.)

Application and Selection Process (Subpart D)

Sections 577.210 and 578.210, which describe the requirements for applications, would be amended to eliminate the requirement for a written statement from the local government in which the housing is located that the proposed use of the structure and site is not inconsistent with any local government plan. Experience with the program has shown that this requirement is confusing and unnecessarily burdensome to applicants, and is of minimal use to HUD in determining whether to approve an application. However, the requirement for evidence that the proposed use of the site is permissible under applicable zoning ordinances or regulations, or will be made permissible within four months of application submission, would be retained.

An application may also be considered for funding if it contains proof that a lawsuit or HUD complaint was filed challenging the legality of current zoning ordinances or regulations. This change would allow consideration of the application; however, any execution of grants would depend on the successful resolution of the challenge.

These sections would also be amended to require that applicants include in their applications evidence that the resources to carry out proposed activities will be available. This information is critical to HUD's decision on whether the applicant's proposal is financially feasible.

The sections on selection criteria (§§ 577.215 and 578.215) would be amended to delete detailed descriptions of each criterion. The factors relevant to each criterion will be described in detail in the notices announcing the availability of funds. This change would allow maximum program flexibility in responding to any changing programmatic needs. These sections would also be amended to include as a selection factor the extent to which an

applicant for grants for operating and supportive services costs proposes funds in excess of the minimum amounts required for its share of those costs.

In addition, the selection criterion for permanent housing applications with regard to neighborhood integration would be eliminated. This criterion has not proved useful in rating applications. However, the requirement for neighborhood integration is retained as an eligibility criterion since it is required by section 422(13)(B) of the McKinney Act. The rule would clarify, in § 578.325(c), that each permanent housing facility must be integrated into the neighborhood in which it is located, and that this is evidenced by plans for resident participation in neighborhood activities and institutions. This does not mean that neighborhood acceptance is required.

A selection criterion regarding project quality would be added for transitional housing applications. Similar to the project quality criterion in the permanent housing program, it refers to the overall quality of the transitional housing program, e.g., the extent to which the program meets the total needs of residents including assurance of security within and around the facility, access to services and transportation, and privacy space for social and recreational needs.

Sections 577.225 and 578.225, which describe the procedure for final selection, currenlty provide that, in the event of a tie between applicants, HUD will use the quality of the proposal as one of the selection criteria in determining which application should be selected. The proposed rule would replace that criterion with the delivery of supportive services, which is one of the selection criteria of §§ 577.215 and 578.215 and, therefore, is defined and more easily measured. (The other selection criterion used in the case of ties is the need for the project, which is also a selection criterion under §§ 577.215 and 578.215.)

Paragraph (c) of §§ 577.225 and 578.225 describes the policy for awarding grants when HUD makes a procedural error in a funding competition that, when corrected, would result in sufficient points to warrant funding to an otherwise eligible applicant. The current rule provides that the applicant may be awarded assistance in the next funding competition. The proposed change would provide that HUD would award a grant as sufficient funds become available. This change in timing would allow funding with funds that may become available as a result of deobligation, and would speed up the funding for the applicant.

Habitability Standards (§§ 577.305 and 578.305)

The proposed rule would include, for the first time in the Supportive Housing Demonstration, minimal habitability standards for the housing of homeless persons under this program. Section 102 of the NAHA provides that the objective of national housing policy is to reaffirm the long-established national commitment to decent, safe, and sanitary housing for every American. HUD believes that the standards provided in the rule would ensure that the housing assisted under the programs for the homeless meets this national commitment.

Except where variations are approved by HUD, recipients would be required to provide housing that meets the standards described in §§ 577.305(b) and 578.305(b) with regard to: (1) Structure and materials; (2) access; (3) space and security; (4) interior air quality; (5) water supply; (6) sanitary facilities; (7) thermal environment; (8) illumination and electricity; (9) food preparation and refuse disposal; and (10) sanitary conditions.

Lead-based Paint (§§ 577.335(d) and 578.335(d)

The proposed rule would subject property under the program to the lead-based paint detection and abatement requirements in 24 CFR part 35 (HUD's basic lead-based paint prevention requirements). The Department is currently revising part 35 to reflect requirements based on current knowledge of the nature of the problem and the means to detect and abate it. Because of the revised language in this proposed rule concerning lead-based paint requirements, when the new part 35 regulations are issued, its requirements will automatically apply to this program.

Amendments to Approved Applications; Deobligation of Funds (§§ 577.400 and 578.400)

Sections 577.400 and 578.400 would be amended to provide that changes a recipient makes to its program after approval of an application must be approved by HUD. In addition, these sections would be amended to eliminate the provision that HUD may adjust an operating cost grant downward if a recipient receives more in rents from its residents than anticipated. HUD believes that it is unlikely that rents would produce large excesses, and in any case, may contribute to the long-term feasibility of the recipient's program.

Paragraph (f) would be added to §§ 577.400 and 578.400 to clarify HUD's authority to recapture funds that have been disbursed to a recipient if necessary.

III. Other Matters

Some of the information collection requirements in this rule have been reviewed by the Office of Management and Budget under the Paperwork Reduction Act and assigned OMB approval numbers, which appear in the text of the proposed regulations. The Department anticipates that the amendments to the programs proposed in this rule with regard to renewed assistance will increase the information requested and burden hours previously approved. Therefore, the amended information collection requirements have been submitted to OMB for review. The new information collection requirements and estimated burden hours are as follows:

Description	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
Application for renewed funding:					
Perm Hsg (578.217)	90	1	90	30	2700
Trans Hsg (577.217)	125	1	125	30	3750
Total annual burden					6450

This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices

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for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington DC 20410.

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that some of the policies in this proposed rule may have a potential significant impact on the formation, maintenance, and general well-being of participating homeless families. Participation of families in the program can be expected to support family values, by helping families remain together; by enabling them to live in decent, safe, and sanitary housing; and by offering the supportive services that are necessary to acquire the skills and means to live independently in mainstream American society. Since the impact on the family is considered to be a beneficial one, no further review is necessary.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the provisions in the rule requiring applicants to assume the responsibilities for environmental review, decisionmaking, and action under NEPA and other environmental authorities have Federalism implications. While the assignment of these responsibilities under section 104(g) of the Housing and Community Development Act of 1974 is discretionary with HUD, it is authorized by and clearly the intent of section 443 of the McKinney Act. Therefore, the policy is not subject to review under Executive Order 12612.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities because the program has been designed to allow applicants to design programs that provide housing and supportive services to homeless families and individuals with as little regulation as possible under the existing law.

This rule was listed as item number 1452 in the Department's Semiannual Agenda of Regulations published at 56 FR 53380, 53417 on October 21, 1991, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 577

Community facilities, Employment, Grant programs—housing and community development, Grant programs—social programs, Handicapped, Homeless, Indians, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements; Technical assistance.

24 CFR Part 578

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Handicapped, Homeless, Indians, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

For the reasons stated in the preamble, parts 577 and 578 of title 24 of the Code of Federal Regulations are proposed to be amended as follows:

PART 577—TRANSITIONAL HOUSING

1. Part 577, consisting of subparts A through F, would be revised to read as follows:

Subpart A—General

Sec.
577.1 Applicability and scope.
577.5 Definitions.
577.10 Waivers.

Subpart B—Assistance Provided

577.100 Types of assistance.
577.105 Acquisition grants.
577.110 Rehabilitation grants.
577.112 New construction grants.
577.115 Funding for supportive services costs.
577.116 Funding for operating costs.
577.117 Recipient share of supportive services and operating costs.
577.119 Administrative costs for grants.
577.120 Technical assistance.
577.125 Limitations on use of assistance.
577.130 Matching requirements.
577.135 Assistance under other HUD programs.

Subpart C—Comprehensive Housing Affordability Strategy

577.150 Comprehensive Housing Affordability Strategy.

Subpart D—Application and Selection Process

577.200 Notice of fund availability.
577.205 Selection process.
577.210 Application requirements.
577.215 Ranking criteria for applicants.
577.217 Application and selection process for renewal grants.
577.220 Environmental review.
577.225 Final selection.

Subpart E—Program Requirements

577.300 Grant agreement.
577.305 General operation.
577.310 Term of commitment; repayment of grant; conversion of advances to grants.
577.315 Displacement, relocation, and acquisition.
577.320 Resident rent.
577.325 Discharge of residents.
577.330 Flood insurance.
577.335 Applicability of other Federal requirements.

Subpart F—Administration

577.400 Obligation of funds, amendments, and deobligation.
577.405 Site change.

Authority: Sec. 426, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 577.1 Applicability and scope.

(a) *General.* The Supportive Housing Demonstration program contained in subtitle C of title IV of the Stewart B. McKinney Homeless Assistance Act is designed to develop innovative approaches for providing supportive housing, especially to deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handicapped homeless persons. A central purpose of the program is to provide supportive housing for deinstitutionalized homeless individuals and other homeless individuals with mental disabilities. It is designed to determine:

(1) The cost of acquisition, rehabilitation, new construction, or leasing of existing structures for the provision of supportive housing;

(2) The cost of operating such housing and providing supportive services to the residents of such housing;

(3) The social, financial, and other advantages of such housing as a means of assisting homeless individuals; and

(4) The lessons that the provision of supportive housing might have for the design and implementation of housing programs that serve homeless individuals and families with special needs, particularly deinstitutionalized homeless individuals, homeless families with children, homeless individuals with

mental disabilities, and other handicapped homeless persons.

(b) *Components.* The Supportive Housing Demonstration program consists of two components: Permanent housing for handicapped homeless persons and transitional housing. Part 577 of this title implements the transitional housing component of the program. Part 578 of this title provides for a program to assist in providing permanent housing for handicapped homeless persons.

§ 577.5 Definitions.

As used in this part:

Applicant means a State, metropolitan city, urban county, governmental entity, tribe, or private nonprofit organization that submits an application for assistance under this part. Governmental entities include those that have general governmental powers (such as a city or county), as well as those that have limited or special powers (such as public housing agencies).

Child care services means

(1) Establishing, licensing, and operating a child care facility for residents; or

(2) (i) Contributions for the child care costs of residents to existing community child care programs and facilities; and

(ii) Counseling designed to inform the residents of public and private child care services for which they are eligible.

(3) Child care services, whether an on-site facility operated by the recipient or an off-site facility contributed to by the recipient, must meet any applicable State and local laws.

Comprehensive Housing Affordability Strategy (CHAS or housing strategy) means the housing strategy prepared by a jurisdiction and submitted to HUD in accordance with 24 CFR part 91.

Date of initial occupancy means the date that the transitional housing is initially occupied by a homeless person for whom assistance is provided under this part. If the assistance is for an existing homeless facility, the date of initial occupancy is the date that services are first provided to the residents of transitional housing with funding under this part.

Deinstitutionalized homeless individual means a homeless individual with mental disabilities who has been discharged or released from a mental institution or hospital, a halfway house, or similar facility providing housing and supportive services to its residents. This term includes a homeless family, if the head of the family (or the spouse of the head of the family) is a deinstitutionalized homeless individual.

Employment assistance means

(1) Placement of residents in jobs outside the housing or, if this is not feasible, employment of residents in the operation and maintenance of the housing;

(2) Where necessary and appropriate, payment of reasonable transportation costs of residents to places of employment outside the housing;

(3) Employment counseling; and

(4) Technical courses leading to employment.

Handicapped or *Handicapped person* means a household composed of one or more persons at least one of whom is an adult who has a disability. A person is considered to have a disability if such person is determined to have a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions. This term includes:

(1) An individual who is developmentally disabled, *i.e.*, an individual who has a severe chronic disability that:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living; and

(G) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual who is chronically mentally ill, *i.e.*, an individual who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (*e.g.*, by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, or recreation), and whose impairment could be improved by more suitable housing conditions.

Homeless means:

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(2) An individual or family that has a primary nighttime residency that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(3) This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

Homeless family with children means a homeless family that includes at least one parent or guardian and one child under the age of 18, a homeless pregnant woman, and a homeless individual in the process of securing legal custody of any person who has not attained the age of 18 years.

HUD means the Department of Housing and Urban Development.

Metropolitan city means a city that is classified as a metropolitan city under section 102(a)(4) of the Housing and Community Development Act of 1974. In general, metropolitan cities are those cities are those cities that are eligible for an entitlement grant under 25 CFR part 570, subpart D.

New construction means the building of a structure where none existed or an addition to an existing structure that increases the floor area by more than 100 percent.

Operating costs means expenses that a recipient incurs for:

(1) Administration (including staff salaries), maintenance, minor or routine repair, repair and maintenance reserve, security and rental of the housing;

(2) Utilities, insurance, fuel, furnishings, and equipment for the housing;

(3) Relocation assistance under § 577.315 of this part, including payments and services; and

(4) Other costs associated with operating the transitional housing.

Private nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(1) Have a voluntary board;

(2) Have a functioning accounting system that is operated in accordance

with generally accepted accounting principles, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(3) Practice nondiscrimination in the provision of assistance under the transitional housing program in accordance with the authorities described in § 577.335(a) of this part.

Recipient means the applicant, approved by HUD as financially responsible, that executes a grant agreement with HUD to provide transitional housing. The recipient is responsible for operating or contracting for the operation of transitional housing and for providing or coordinating the provision of supportive services to the residents of the housing.

Rehabilitation means the improvement or repair of an existing structure or an addition to an existing structure that does not increase the floor area by more than 100 percent. Rehabilitation does not include minor or routine repairs.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Supportive services means services provided for the purpose of facilitating the movement of the residents of transitional housing to independent living. Supportive services must address the special needs of the homeless to be served by the transitional housing (such as deinstitutionalized homeless individuals, homeless families with children, homeless individuals with mental disabilities, and other handicapped homeless persons). Supportive services, may include, but are not limited to:

(1) Case management;

(2) Assistance in obtaining permanent housing;

(3) Medical and psychological counseling and supervision;

(4) Live skills training;

(5) Nutritional counseling;

(6) Assistance in obtaining other Federal, State, and local assistance available for residents of transitional housing facilities, including mental health benefits; employment counseling; medical assistance; Veterans' benefits; and income support assistance, such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, and Food Stamps, and

(7) Other services, such as child care and employment assistance.

All or part of the supportive services may be provided directly by the recipient or by arrangement with public or private service providers.

Transitional housing means assistance under this part:

(1) That is designed to provide housing and appropriate supportive services to homeless persons, including (but not limited to) deinstitutionalized homeless individuals with mental disabilities and other homeless individuals with mental disabilities, and homeless families with children; and

(2) That has as its purpose facilitating the movement of homeless individuals to independent living within 24 months, or within a longer period determined by HUD as necessary to facilitate the transition.

Tribe means any Indian tribe, band, group, or nation, including Alaska Indians, Aleuts, and Eskimos and any Alaskan Native Village, of the United States, which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (321 U.S.C. 6701) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

Urban county means a county that is classified as an urban county under section 102(a)(6) of the Housing and Community Development Act of 1974. In general, urban counties are those counties that are eligible for an entitlement grant under 24 CFR part 570, subpart D.

§ 577.10 Waivers.

Upon completion of a determination and finding of good cause by the Assistant Secretary for Community Planning and Development, HUD may waive any provision of this part in any particular case subject only to statutory limitations. Each waiver must be in writing, and must be supported by documentation of the facts and reasons that formed the basis for the waiver. HUD will publish a notice in the **Federal Register** informing the public of all waivers granted under this section and containing all relevant information concerning the waiver.

Subpart B—Assistance Provided

§ 577.100 Types of assistance.

(a) *Assistance available.* Grant assistance for transitional housing is available for:

(1) Acquisition of land or structures;

(2) Rehabilitation of structures;

(3) New construction;

(4) Operating cost; and

(5) Supportive services costs, including costs for employment assistance and child care services;

(b) *Eligibility for more than one type of assistance.* Applicants may apply for more than one type of assistance.

(c) *Use of transitional housing assistance.* Assistance available for transitional housing may be used:

(1) To establish new transitional housing facilities;

(2) To expand transitional housing in order to increase the number of homeless persons served or to increase the level of supportive services provided to homeless persons;

(3) To bring transitional housing to a level that meets State and local government health and safety standards;

(4) To replace the loss of private funding for transitional housing that has ceased after completion of the funding period specified in the award of private funding, up to the amount lost or the limit in § 577.117 of this part, whichever is lower; and

(5) To continue funding transitional housing where the recipient has received funding under this part for supportive services or operating costs.

(d) *Structures used for multiple purposes.* Structures used to provide transitional housing may also be used for other purposes. For example, a structure may contain facilities for an emergency shelter as well as transitional housing, may be used to provide supportive services to the public at large, or may include commercial space. Under these circumstances, however, acquisition, rehabilitation, and new construction grants will be available only in proportion to the use of the structure for transitional housing, and the funding for operating costs and supportive services costs will be available only to support the costs related to transitional housing.

(e) *Technical assistance.* HUD may offer technical assistance, as described in § 577.120 of this part.

§ 577.105 Acquisition grants.

(a) *Use.* HUD will grant funds to recipients to:

(1) Defray the cost of the acquisition of real property selected by the recipients for use in the provision of

transitional housing (including property acquired through the Single Family Property Disposition Homeless Initiative); or

(2) Repay the outstanding debt on a loan made to purchase property that will be used in the provision of transitional housing, if the property has not been used previously as supportive housing.

(b) *Existing facilities.* HUD will not provide assistance under this part for acquisition of existing facilities that currently serve homeless persons, except properties leased through the Single Family Property Disposition Homeless Initiative, described in subpart E of 24 CFR part 291.

(c) *Amount.* If the applicant meets the matching share requirements at § 577.130 of this part, the maximum grant available for acquisition is the lower of:

(1) $200,000; or

(2) The total cost of the acquisition minus the applicant's contribution toward the cost of the acquisition.

(d) *Increased amounts.* In areas determined by HUD to have high acquisition and rehabilitation costs, grants of more than $200,000, but not more than $400,000, may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 577.130 of this part are applicable to increased grants.

§ 577.110 Rehabilitation grants.

(a) *Use.* HUD will grant funds to recipients to defray the cost of rehabilitation of structures selected by the recipients for use in the provision of transitional housing.

(b) *Amount.* If an applicant meets the matching share requirements at § 577.130 of this part, the maximum grant available for rehabilitation is the lower of:

(1) $200,000; or

(2) The total cost of the rehabilitation minus the applicant's contribution toward the cost of the rehabilitation.

(c) *Increased grants.* In areas determined by HUD to have high acquisition and rehabilitation costs, grants of more than $200,000 but not more than $400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 577.130 of this part are applicable to increased grants.

§ 577.112 New construction grants.

(a) *Use.* HUD will grant funds to recipients to defray the cost of new construction of facilities for use in the provision of transitional housing where the applicant demonstrates that the costs associated with new construction are substantially less than the costs associated with rehabilitation or the applicant provides evidence of lack of available units that could be acquired and rehabilitated at a cost less than new construction.

(b) *Amount.* If the applicant meets the matching share requirements at § 577.130 of this part, the maximum grant available for new construction is the lower of:

(1) $200,000; or

(2) The total cost of the construction minus the applicant's contribution toward the cost of the new construction.

(c) *Increased grants.* In areas determined by HUD to have high acquisition and rehabilitation costs, grants of more than $200,000 but not more than $400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 577.130 of this part are applicable to increased grants.

§ 577.115 Funding for supportive services costs.

(a) *General.* HUD will provide grants to pay a portion (as described in § 577.117 of this part) of the actual supportive services costs of transitional housing.

(b) *Supportive services costs.* Costs associated with providing supportive services, approved by HUD, to residents of transitional housing for the purpose of facilitating their movement to independent living include salaries paid to providers of supportive services, the costs of conducting resident supportive services needs assessments, and any other costs directly associated with providing such services. These services may also be provided to former residents of transitional housing for up to 6 months after they leave the facility, provided in all they do not receive services for more than 24 months.

§ 577.116 Funding for operating costs.

(a) *General.* HUD will provide grants to pay a portion (as described in § 577.117 of this part) of the actual operating costs of transitional housing.

(b) *Operating costs.* Operating costs are those associated with the day-to-day operation of the transitional housing. They include the actual expenses that a recipient incurs for administration, including staff salaries (but not salaries of employment assistance, child care services, or other supportive services providers which will be charged to those categories); maintenance; minor or routine repair; repair and maintenance reserve; security; rental, utilities, insurance, fuel, furnishings, and equipment costs for the housing; and relocation assistance under § 577.315 of this part, including payments and services.

§ 577.117 Recipient share of supportive services and operating costs.

(a) *General.* Assistance for supportive services and operating costs will be initially available for up to 75 percent of the total cost for two years and up to 50 percent of the total cost for the next three years. Assistance may be renewed under § 577.217 of this part for a period of time not to exceed the difference between the initial funding period and ten years from the date of initial occupancy. Assistance during the renewal period may be for up to the lower of:

(1) the amount of assistance for supportive services and operating costs provided under this part for the final year of the initial funding period multiplied by the number of years in renewal period; or

(2) 50 percent of the total cost of supportive services and operating costs during the renewal period.

(b) *Recipient share.* The recipient must show that it has cash resources to pay the percentage of the total cost of supportive services and operating costs not funded by HUD. Prior to the start of each operating year, the recipient will be required to submit documentation firmly establishing the availability of cash resources to pay the recipient's share of costs for the upcoming year. If this requirement is not met, HUD may withhold supportive services or operating cost payments.

(c) *Commitment of grant amounts.* Upon approval of an application for assistance for supportive services or operating costs, HUD will obligate amounts for a period not to exceed five operating years commencing on the date of initial occupancy. The total amount obligated will be equal to an amount necessary for five years of operation, less the recipient's share of such costs. Each year, following submission of the recipient's documentation of cash resources to pay its share of costs, HUD will make cost payments to the recipient for HUD's share of costs incurred that year. The recipient may reapply for a grant to pay a portion of the supportive services or operating costs of the transitional housing for a period not to exceed the difference between the initial funding period and ten years from the date of initial occupancy. If approved for renewal, the same commitment and

payment procedures will be followed as with the initial grant.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0361)

§ 577.119 Administrative costs for grants.

(a) *General.* Up to five percent of any grant awarded under this part may be used for the purpose of paying costs of administering the assistance.

(b) *Administrative costs.* Administrative costs include the costs associated with accounting for the use of grant funds, preparing reports for submission to HUD, obtaining program audits, tracking clients to measure program effectiveness, and similar costs related to administering the grant after the award. This does not include the costs of carrying out activities eligible under §§ 577.105 through 577.116 of this part, since those costs are eligible as part of such activities.

§ 577.120 Technical assistance.

(a) *General.* HUD will set aside up to two percent of the amount available annually for the Supportive Housing Demonstration program to provide technical assistance under this part and part 578 in the following areas:

(1) Establishing facilities;

(2) Operating facilities; and

(3) Providing or obtaining supportive services for the residents.

(b) *Technical assistance.* Technical assistance is the provision of skills or knowledge by organizations or individuals to applicants (or prospective applicants) and recipients to help them plan, develop, administer, and/or evaluate their transitional housing program or specific activities more effectively. Technical assistance also includes the development, collection, processing, and dissemination of program information for local and national program management. The assistance may include, but is not limited to, written information such as papers, monographs, manuals, guides, and brouchures; person-to-person exchanges; and training such as seminars, classes, workshops, and meetings.

(c) *Selection of providers.* From time to time, as HUD determines the need, HUD will advertise and competitively select providers to deliver assistance to Supportive Housing Demonstration recipients or applicants (or prospective applicants). HUD may enter into contracts, grants, or cooperative agreements, as appropriate, to implement the technical assistance.

§ 577.125 Limitations on use of assistance.

(a) *Maintenance of effort.* No assistance received under this part (or any State or local government funds used to supplement this assistance) may be used to replace funds provided under any State or local government assistance programs previously used, or designated for use, to assist handicapped persons, homeless persons, or handicapped homeless persons.

(b) *Primarily religious organizations.*—(1) *Provision of assistance.* (i) HUD will provide assistance to a recipient that is a primarily religious organization if the organization agrees to provide housing and supportive services in a manner that is free from religious influences and in accordance with the following principles:

(A) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(B) It will not discriminate against any person applying for housing or supportive services on the basis of religion and will not limit such housing or services or give preference to persons on the basis of religion;

(C) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of housing and supportive services.

(ii) HUD will provide assistance to a recipient that is a primarily religious organization if the assistance will not be used by the organization to acquire a structure or to rehabilitate a structure owned by the organization, except as described in paragraph (b)(2) of this section.

(2) *Acquisition and rehabilitation of structures owned by a primarily religious organization.* Acquisition and rehabilitation grants may be used to rehabilitate a structure owned by a primarily religious organization, if the following conditions are met:

(i) The structure (or portion of the structure) that is to be rehabilitated with HUD assistance has been leased to a recipient that is an existing or newly established wholly secular organization (which may be established by the primarily religious organization under the provisions of paragraph (b)(3) of this section);

(ii) The HUD assistance is provided to the wholly secular organization (and not the primarily religious organization) to make the improvements;

(iii) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion;

(iv) The lease payments paid to the primarly religious organization do not exceed the fair market rent of the structure before the rehabilitation was done;

(v) The portion of the cost of any improvements that benefit any unleased portion of the structure will be allocated to, and paid for by, the primarily religious organization;

(vi) The primarily religious organization agrees that, if the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of the improvements to the secular organization, and the secular organization will remit the amount to HUD.

(3) *Assistance to a wholly secular private nonprofit organization established by a primarily religious organization.* (i) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a recipient. The wholly secular organization may be eligible to receive all forms of assistance available under this part.

(A) The wholly secular organization must agree to provide housing and supportive services in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (b)(1)(i) of this section.

(B) The wholly secular organization may enter into a contract with the primarily religious organization to provide supportive services for the project. In such a case, the primarily religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (b)(1)(i) of this section.

(C) The acquisition/substantial rehabilitation advance and the moderate rehabilitation grant are subject to the requirements of paragraph (b)(2) of this section.

(ii) HUD will not require the primarily religious organization to establish the wholly secular organization before the selection of its application. In such a case, the primarily religious organization may apply on behalf of the wholly secular organization. The application will be reviewed on the basis of the primarily religious organization's financial responsibility and capacity, and its commitment to provide

appropriate resources to the wholly secular organization after formation. The requirement with regard to site control, described in § 577.210(b)(9) of this part, may be satisfied if the primarily religious organization demonstrates site control and a commitment to transfer control of the site to the wholly secular organization after its formation. Since the wholly secular organization will not be in existence at the time of the application, it will be required to demonstrate that it meets the definition of private nonprofit organization contained in § 577.5 of this part. If such an application is selected for funding, the obligation of funds will be conditioned upon the compliance with these requirements.

§ 577.130 Matching requirements.

(a) *General.* The recipient must match the funding provided by HUD for grants for acquisition, rehabilitation, and new construction with an equal amount of resources from non-Federal sources. (Funds from Community Development Block Grants and Community Services Block Grants are considered non-Federal sources.)

(b) *Cash resources.* The matching calculation may include cash resources provided to the transitional housing by the recipient, State and local governments, private resources, and resident rent.

(c) *"In-kind" contributions.* The matching calculation may include the following "in-kind" contributions:

(1) Time and services contributed by volunteers to carry out the transitional housing program at the value of $10 an hour, except that donated professional services (*i.e.*, services ordinarily performed by donors for payment, such as services of health care professionals, that are equivalent to services they provide in their occupations) may be counted at the customary charge for the service provided;

(2) The value of contributions of materials or contributions of existing structures, or parts of structures, in the following manner:

(i) Contributions of materials and supplies;

(ii) A contribution of a fee ownership in a structure, to the extent of the fair market value of the structure or portion of the structure to be used for transitional housing, except to the extent funds under this part are not being used to finance acquisition of the structure; and

(iii) A contribution of a leasehold interest in a structure, to the extent of the fair rental value of the structure or portion of the structure to be used for transitional housing, except to the extent funds under this part are not being used to finance lease payments for the structure.

(d) *Maintenance of effort.* State or local government funds used in the matching contribution are subject to the maintenance of effort requirements described at § 577.125(a) of this part.

§ 577.135 Assistance under other HUD programs.

(a) *Supplemental assistance.* HUD will permit recipients to use any assistance that may be awarded under the Emergency Shelter Grants program (24 CFR part 576) or the Supplemental Assistance for Facilities to Assist the Homeless program (24 CFR part 579) in conjunction with assistance awarded under this part.

(b) *Ineligible projects.* HUD will not assist a facility under this part, if the transitional housing involves a structure that is assisted, or residents of the structure will receive assistance, under the United States Housing Act of 1937; section 202 of the Housing Act of 1959; section 221(d)(3) (BMIR) or section 236 of the National Housing Act; section 101 of the Housing and Urban Development Act; section 811 of the National Affordable Housing Act; or subtitle F, title IV of the Stewart B. McKinney Homeless Assistance Act.

(c) *HUD-owned properties.* (1) HUD will make HUD-owned single-family properties in its inventory available to applicants or potential applicants for acquisition grants to purchase for use as transitional housing for the homeless. To obtain these properties, applicants may request a listing of available properties from the HUD field office, Property Disposition Branch. If an applicant wishes to purchase a property or properties, it must enter into a lease-option agreement with HUD. Under the terms of the agreement, HUD will lease the property to the applicant for up to six months for one dollar. The lease-option agreement will state that the applicant may purchase the property at a stated price during the lease period. Except as provided in paragraph (c)(2) of this section, an applicant leasing property under this section may not sublease or otherwise occupy the property until after closing of the sale. During the lease period, applicants will be responsible for all taxes, utilities, and maintenance, excluding hazard insurance. Applicants demonstrating a lease-option agreement at the time their application for assistance is filed will be regarded as having site control of the property under § 577.210(b)(9) of this part. If the option is not exercised, the lease-option agreement will expire at the end of six months, and the property will be returned to HUD's inventory, unless an extension of time is authorized by HUD.

(2) An applicant may be allowed to sublease the property to the homeless while its application for assistance under this part is pending if the applicant demonstrates to HUD's satisfaction that it has the ability, in the event its application is not approved, to continue in a lease arrangement with HUD beyond the six-month lease term under the requirements of subpart E of 24 CFR part 291.

Subpart C—Comprehensive Housing Affordability Strategy

§ 577.150 Comprehensive housing affordability strategy.

(a) *Certifications.* Except as provided in paragraph (d) of this section, assistance may not be made available under this part unless the applicant has submitted a certification that the proposed activities are consistent with a Comprehensive Housing Affordability Strategy (CHAS) and, in the case of a jurisdiction, it has submitted a certification that it is following a HUD-approved CHAS.

(b) *Applicable CHAS for a jurisdiction.* The certification of consistency for a State, metropolitan city, urban county, or other government entity must be submitted by the public official responsible for submitting the CHAS.

(c) *Applicable CHAS for a private nonprofit organization.* The certification of consistency for a private nonprofit organization must indicate consistency with the CHAS of the lowest level of government in which the project is located that has a CHAS and the certification must be made by the public official responsible for submitting that CHAS.

(d) *Indian tribes.* (1) Before October 1, 1992, assistance may not be made available under this part to an Indian tribe unless the tribe has either:

(i) Submitted a certification of consistency with a biennial Comprehensive Homeless Assistance Plan (CHAP), as described in 24 CFR part 90, which was approved by HUD during fiscal year 1991, and a certification that it is following the CHAP; or

(ii) Completed an application form that demonstrates how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing within the tribe's jurisdiction, and submitted a certification that the tribe is following the strategy outlined in the application.

(2) After October 1, 1992, assistance may not be made available under this part unless the tribe has completed an application form that demonstrates how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing within the tribe's jurisdiction, and submitted a certification that the tribe is following the strategy outlined in the application.

Subpart D—Application and Selection Process

§ 577.200 Notice of fund availability.

When funds are made available for assistance for transitional housing, HUD will publish a notice of fund availability in the **Federal Register** in accordance with the requirements of 24 CFR part 12. The notice will:

(a) Give the location for obtaining application packages, which will provide specific application requirements and guidance;

(b) Specify the time and the place for submitting completed applications;

(c) State the amount and status of funding available under the notice;

(d) Describe the factors relative to each ranking criterion contained in § 577.215 of this part, and indicate the weight or relative importance of the criteria as they will be applied to the funding round announced in the notice;

(e) Specify the timing and conditions for curing technical deficiencies in a reviewed application;

(f) Provide a checklist of application submission requirements, including certifications;

(g) Announce any separate funding competitions under § 577.205(b) of this part, including the categories of transitional housing that will be subject to the separate funding competitions and the amount of funding available in each funding category; and

(h) Provide other appropriate program information and guidance, including purpose, authority, and eligibility.

§ 577.205 Selection process.

(a) *Selection process.* The selection process for assistance under this part consists of the following stages:

(1) Reviewing applications for eligibility for assistance (see § 577.210 of this part);

(2) Ranking applications (see § 577.215 of this part);

(3) Final selection (see § 577.225 of this part).

(b) *Separate funding competitions.* (1) HUD may establish separate funding competitions for specified categories of transitional housing (*e.g.*, transitional housing that is primarily designed to serve homeless families with children or deinstitutionalized homeless persons and other homeless persons with mental disabilities). If separate funding competitions are established, applicants within each category will compete against other applicants in the same category for a specified amount of funding. Selections within each category will be subject to the selection process described in paragraph (a) of this section.

(2) HUD will announce separate funding competitions, if any, in the notice of funds availability under § 577.200 of this part. The notice will designate the categories of transitional housing projects subject to the separate funding competition and the amount of funding available in each funding category.

(c) *Prohibition of disclosure of selection information.* The selection process for assistance under this part is subject to the prohibition of covered selection information regarding the selection process, as described in 24 CFR part 4. Applicants for or recipients of assistance who have received covered selection information may be subject to sanctions, as determined to be appropriate.

§577.210 Application requirements.

(a) *Application.* To be considered for assistance under this part, applications for assistance must be filed in the form prescribed by HUD under this section, must meet the requirements of this part, and must be submitted within the time period established by HUD in the notice of funds availability under § 577.200 of this part. HUD reserves the right to reject applications from any organization with an outstanding obligation to HUD that is in arrears or for which a payment schedule has not been agreed to, or whose response to an audit finding is overdue or unsatisfactory.

(b) *Application contents.* At a minimum, HUD will require applications to contain:

(1) Applicant data, including identity, description of past experience, and, for private nonprofit organizations, information on eligibility to receive assistance and financial responsibility.

(2) The type or types of assistance requested and the amount of funds requested for each type.

(3) A description of the proposed project, including information regarding:

(i) The property to be used, any proposed acquisition, rehabilitation, or new construction, and the estimated costs of those activities and how transitional housing funds are proposed to be used; the estimated value, as determined by an appraisal, of the structure if the fair market value of the structure is to be used as a source of matching funds, or the estimated value, as determined by an appraisal, of the fair rental value if that value is to be used as a source of matching funds;

(ii) The supportive services to be offered to the residents and the method by which such services will be provided, and plans for monitoring and evaluating such services; and

(iii) An estimated annual cash budget of operating costs and supportive services costs for a five-year period.

(4) A description of the size and characteristics (to include racial and ethnic data) of the particular homeless population that will occupy the transitional housing.

(5) Evidence of the public and private resources expected to be made available to meet the recipient share and matching requirements of §§ 577.117 and 577.130 of this part.

(6) For applications requesting grants for acquisition, rehabilitation, or new construction, an assurance satisfactory to HUD that the transitional housing will be operated for not less than 10 years for the purpose specified in the application.

(7) For applications requesting grants for operating costs or supportive services costs but not for acquisition, rehabilitation, or new construction, an assurance satisfactory to HUD that the transitional housing will be operated for the purpose specified in the application for the year for which such assistance is provided.

(8) A certification from the public official responsible for submitting the Housing Affordability Strategy for the appropriate jurisdiction, described in § 577.150 of this part, stating that the proposed project is consistent with the applicable housing strategy.

(9) Evidence that the applicant has control of the site or sites involved (*i.e.*, deed or other proof of ownership, lease, option to purchase or lease), or reasonable assurance that the applicant will have control of the site or sites not later than six months after notification of a grant. "Reasonable assurances" must be satisfied by identification of a suitable site and evidence that the applicant is engaged in negotiations for the purpose of gaining control of the identified site.

(10) Evidence that the resources to carry out transitional housing-assisted activities will be available, and evidence that resources are available to carry out activities that are not transitional housing-assisted but are essential to the acquisition, rehabilitation, or new construction of

any facility that will contain transitional housing-assisted programs.

(11) A written statement from the unit of general local government in which the transitional housing is proposed to be located that the proposed use of the site is permissible under applicable zoning ordinances and regulations or other evidence that the use of the project site is permissible under applicable zoning ordinances and regulations; or a statement from the applicant describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, with evidence that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully and within four months following submission of the application; or proof that a lawsuit or a HUD complaint related to the proposed site has been filed challenging the legality of current zoning ordinances or regulations under the Fair Housing Act.

(12) If the applicant plans to provide family violence prevention or treatment services with assistance under this part, a certification that the applicant will develop and implement procedures to ensure confidentiality of records pertaining to any individual receiving such services, and that it will not make public the address or location of any transitional housing used as a family violence shelter without the written authorization of the person or persons responsible for the operation of the facility.

(13) For applications requesting grants for acquisition, rehabilitation, or new construction, evidence that the proposed sites are accessible to supportive services and transportation.

(14) Other certifications, information, or data as prescribed by HUD in the application package, including disclosures required by 24 CFR part 12.

(c) *Waiver of site control.* HUD may waive, on a case-by-case basis, the requirement that the applicant have site control where:

(1) The applicant does not propose to have control of a sife or sites but rather proposes to assist a homeless family or individual in obtaining a lease, which may include assistance with rent payments, and receiving supportive services for up to two years, after which time the family or individual remains in the same housing without further assistance under this part;

(2) The applicant does not request assistance for acquisition, rehabilitation, or new construction;

(3) The applicant commits to provide comprehensive supportive services appropriate to the needs of the population to be served;

(4) The applicant commits to begin providing assistance to at least one homeless family or individual within sixty days of the date of execution of the grant agreement by HUD.

(d) *Environmental review.* The environmental effects of each application must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and the related authorities listed in HUD's implementing regulations at 24 CFR part 50 or part 58. See § 577.220 of this part for a full discussion of the environmental review requirements for applications for assistance.

(Approved by the Office of Management and Budget under OMB Control Number 2506–0112)

§ 577.215 Ranking criteria for applicants.

(a) *In general.* Applicants will be assigned a rating score and placed in ranked order, based upon the criteria listed in paragraph (b) of this section, and described in more detail in the Notice of Funds Availability published in the **Federal Register** at the beginning of each program funding round.

(b) *Criteria.* HUD will award points for the following criteria:

(1) Applicant capacity;

(2) Innovative quality of proposal;

(3) Need for transitional housing in the area to be served;

(4) Delivery of supportive services;

(5) Matching resources for acquisition, rehabilitation, or new construction in excess of the required minimum;

(6) Recipient share of supportive services and operating costs in excess of the required minimum;

(7) Cost effectiveness;

(8) Project quality;

(9) Other criteria as determined by the Secretary.

§ 577.217 Application and selection process for renewal grants.

(a) *General.* To be considered for renewal funding for operating costs and supportive services, recipients must submit a request for such funding, in the form specified by HUD, to the local HUD field office serving the area in which the transitional housing is located. In order to assure the uninterrupted flow of supportive services and operating funds to recipients, the request must be submitted within three months after the start of the recipient's final operating year of funding under the initial grant.

(b) *HUD review.* Staff in the local HUD field office in which the project is located will evaluate the recipient's performance in the previous year(s) against the plans projected, and committed to, in the initial application for assistance, as amended. In particular, HUD will consider whether the recipient is serving a homeless population, whether the recipient has shown adequate progress as evidenced by the timely expenditure of funds, and whether the recipient has a successful record of assisting residents in achieving independent living initially and in maintaining it for at least one year. In determining the recipient's success in assisting residents to achieve and maintain independent living, consideration will be given to the level and type of problems of residents. HUD will also review the proposed budget for the renewal period and documentation for the recipient's share of costs for the initial renewal year.

§ 577.220 Environmental review.

(a) *Generally.* (1) The environmental effects of each application must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4320) (NEPA) and the related environmental laws and authorities listed in HUD's implementing regulations at 24 CFR parts 50 or 58, depending on who is responsible for environmental review.

(2) Environmental regulations provide for certain categorical exclusions under NEPA and set conditions under which excluded activities may be determined exempt from all environmental review requirements. In cases where proposed assistance and matching contributions solely involve operating costs for facilities or the provision of supportive services and the structures and sites involved in the projects meet the program requirements of this part, these activities are categorically excluded by regulation under part 58 of this title and may be determined fully exempt from environmental review.

(b) *Responsibility for review.* (1) HUD will perform the environmental review, in accordance with part 50 of this title, for applications received directly from private nonprofit organizations, governmental entities with special or limited purpose powers, and any governmental entities with general purpose powers found not to have the legal capacity to carry out this responsibility. HUD is not permitted to approve such applications prior to its completion of this review.

(2) Applicants that are States, metropolitan cities, urban counties, tribes, or other governmental entities with general purpose powers, and that are deemed to have the legal capacity to do so, must assume responsibility for

environmental review, decisionmaking, and action for each application for assistance in accordance with part 58 of this title. HUD is permitted to approve such applications subject to the completion of reviews by the applicant in accordance with part 58 of this title.

(3) The assumption of legal responsibility by an applicant under paragraph (b)(2) of this section does not preclude the applicant's arranging for the conduct of technical reviews by cooperating local governments having an established technical capability, *e.g.*, metropolitan cities in which the project is proposed to be located. The applicant under such arrangements must independently evaluate information submitted and assume responsibility for its accuracy, scope, and content; meet legal requirements attached to the Release of Funds by HUD; determine the completeness of the review; meet any requirements for consultation, as applicable, under 24 CFR 58.5 authorities; and assure the completion of any mitigation measures resulting from technical review or from State consultations. The arrangements described in this paragraph are in addition to the ability of an applicant to adopt relevant and adequate prior reviews conducted by HUD or other governmental entity if the reviews meet the particular requirements of the Federal environmental law or authority under which they would be adopted, and only under certain conditions (*e.g.*, a determination that no environmentally significant changes have occurred since the review was done).

(c) *Environmental review by HUD.* With regard to the environmental effects of applications for which HUD performs the review, HUD will undertake its review in accordance with the provisions of NEPA and the related authorities listed in 24 CFR 50.4. Any application subject to environmental review by HUD that requires an Environmental Impact Statement (EIS) (generally, an application that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR part 50, subpart E) will not be eligible for assistance under this part.

(d) *Environmental review by applicants.* (1) An applicant that is required under paragraph (b)(2) of this section to assume environmental review responsibility must include in its application an assurance that the applicant will assume all the environmental review responsibility that would otherwise be performed by HUD as the responsible Federal official under NEPA and related authorities listed in 24 CFR 58.5, including acceptance of jurisdiction of the Federal courts.

(2) Applicants required to assume environmental review responsibility need not complete the review until a reasonable time after selection for funding. In such cases, the award is subject to completion of the environmental responsibilities set out in 24 CFR part 58 within a reasonable time period after notification of the award. (This provision does not preclude the applicant from enclosing its environmental certification and Request for Release of Funds with its application.)

(i) Upon completion of the requirements in 24 CFR part 58, applicants must certify the completion and submit a Request for Release of Funds. This submission is not required in cases in which the applicant determines, in accordance with 24 CFR 58.34(a)(1)–(10) that its program components are totally exempt.

(ii) HUD will not release funds for transitional housing if the recipient or any other party commits transitional housing funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the grantee submits and HUD approves its Request for Release of Funds (when such submission is required).

(3) A general government applicant that believes that it does not have the legal capacity to carry out the responsibilities required by 24 CFR part 58 should contact the appropriate HUD field office for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(e) *Location of transitional housing in floodplains.* Applications for transitional housing that is to be acquired, rehabilitated, or assisted with funds under this part and that is located in any 100-year floodplain, as designated by the Federal Emergency Management Agency (FEMA), are subject to the floodplain review requirements of Executive Order 11988, Floodplain Management (May 24, 1977). Executive Order 11988 review, as referenced under parts 50 and 58 of this title, is to be performed during the environmental review.

(Approved by the Office of Management and Budget under OMB Control Number 2506–0112)

§ 577.225 Final selection.

(a) *Selection for funding.* In the final stage of the selection process, the highest-ranked applications will be selected for funding in accordance with their ranked order to the extent funds are available, as determined under § 577.215 of this part.

(b) *Ties between applicants.* In the event of a tie between applicants, HUD will use delivery of supportive services and the need for the project to determine which application should be selected for funding.

(c) *Procedural error.* If HUD makes a procedural error in a funding competition that, when corrected, would result in awarding sufficient points to warrant funding of an otherwise eligible applicant, HUD will award a grant as sufficient funds become available.

SUBPART E—PROGRAM REQUIREMENTS

§ 577.300 Grant agreement.

(a) *General.* The duty to provide transitional housing in accordance with the requirements of this part will be incorporated in a grant agreement executed by HUD and the recipient.

(b) *Enforcement.* HUD will enforce the obligations in the grant agreement through such action as may be appropriate.

§ 577.305 General operation.

(a) *State and local requirements.* Each recipient of assistance under this part must provide safe and sanitary housing that is in compliance with all applicable State and local housing codes, licensing requirements, and any other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the housing (except as provided in § 577.325 of this part).

(b) *Habitability standards.* Except for such variations as are proposed by the locality and approved by HUD, transitional housing must meet the following requirements:

(1) *Structure and materials.* The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the environment.

(2) *Access.* The housing must be accessible and capable of being utilized without unauthorized use of other private properties. Structures must provide alternate means of egress in case of fire.

(3) *Space and security.* Each resident must be afforded adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

(4) *Interior air quality.* Every room or space must be provided with natural or mechanical ventilation. Structures must

be free of pollutants in the air at levels that threaten the health of residents.

(5) *Water supply.* The water supply must be free from contamination.

(6) *Sanitary facilities.* Residents must have access to sufficient sanitary facilities that are in proper operating condition, may be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(7) *Thermal environment.* The housing must have adequate heating and/or cooling facilities in proper operating condition.

(8) *Illumination and electricity.* The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire.

(9) *Food preparation and refuse disposal.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(10) *Sanitary condition.* The housing and any equipment must be maintained in sanitary condition.

(c) *Ongoing assessment of supportive services.* Each recipient of assistance under this part must conduct an ongoing assessment of the supportive services required by the residents of the project and make adjustments as appropriate.

(d) *Residential supervision.* Each recipient of assistance under this part must provide any residential supervison determined by HUD as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate transitional housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(e) *Records and reports.* Each recipient of assistance under this part must keep any records and make any reports (including those pertaining to race, ethnicity, gender, and handicap status data) that HUD may require within the timeframe required. HUD may require recipients to monitor former residents for a reasonable time set by HUD to determine whether former residents made successful transitions to, and continue to reside in, permanent housing.

(f) *Annual assurances.* Recipients who receive assistance only for operating costs or supportive services costs must provide an annual assurance for each year such assistance is received that the project will be operated for the purpose specified in the application.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0361)

§ 577.310 Term of commitment; repayment of grant; conversion of advances to grants.

(a) *General.* All recipients receiving assistance for acquisition, rehabilitation, or new construction must agree to operate the transitional housing in accordance with this part for a term of at least 10 years from the date of initial occupancy.

(b) *Repayment of grant.* If the facility is not operated as transitional housing for 10 years following the date of initial occupancy, HUD may require repayment of all or part of the grant used for acquisition, rehabilitation, or new construction. In order to make this determination, HUD will review documentation submitted by the recipient describing why the facility will not continue to be used for transitional housing, what the new use of the facility will be, whether an alternative site has been identified, and any other information HUD should consider.

(c) *Prevention of undue benefits.* If any facility acquired, rehabilitated, or newly constructed with funds under this part is sold or otherwise disposed of during the 20-year period following the date of initial occupancy, all proceeds from the sale or disposition should be used to provide supportive housing or for the direct benefit of low income persons. Any other proposed use of sale proceeds must be submitted to HUD with appropriate documentation for a determination whether repayment of all or a portion of the grant will be required to prevent undue benefits to the recipient.

(d) *Conversion of advances to grants.* All acquisition and rehabilitation advances awarded under this part before [insert effective date of rule] are converted to grants, which are subject to the provisions of paragraphs (b) and (c) of this section.

§ 577.315 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and project sponsors must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of transitional housing assisted under this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(c) *Real property acquisition requirements.* The acquisition of real property for a transitional housing project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Responsibility of recipient.* (1) The recipient must certify (*i.e.*, provide assurance of compliance) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the recipient to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with local public funds or funds available from other sources.

(3) The recipient must maintain records in sufficient detail to demonstrate compliance with provisions of this section.

(e) *Appeals.* A person who disagrees with the recipient's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient. A low-income person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the HUD field office.

(f) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property permanently as a direct result of acquisition, rehabilitation, or demolition for a transitional housing project assisted under this part. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(i) After notice by the recipient, project sponsor, or property owner to move permanently from the property, if the move occurs on or after the date that the recipient submits to HUD an

application for assistance that is later approved and funded;

(ii) Before the submission of the application to HUD, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the transitional housing project; or

(iii) By a tenant-occupant of dwelling unit, if any one of he following three situations occurs:

(A) The tenant moves after the execution of the agreement between the recipient and HUD and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions must include a monthly rent, including estimated average monthly utility costs, that do not exceed the greater of:

(*1*) The tenant's monthly rent before execution of the agreement between the recipient and HUD and estimated average monthly utility costs; or

(*2*) 30 percent of gross household income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either

(*1*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or

(*2*) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (*e.g.*, the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project.

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the transitional housing project.

(3) The recipient or sponsor may, at any time, request HUD to determine whether a displacement is or would be covered by this section.

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the recipient and HUD.

§ 577.320 Resident rent.

Each resident of transitional housing assisted under this part must pay as rent an amount determined in accordance with section 3(a) of the United States Housing Act of 1937. Under section 3(a), each resident must pay as rent the highest of:

(a) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses);

(b) 10 percent of the family's monthly income; or

(c) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

§ 577.325 Discharge of residents.

(a) *Preemption.* No State or local law, ordinance, or regulation shall have any force or effect to the extent that it prohibits, or has the effect of prohibiting, recipients from discharging residents from transitional housing at the end of the 24-month or other HUD-approved limit on the stay of residents in the housing.

(b) *Notice to residents.* A recipient must personally serve written notice to a resident, not less than 30 calendar days before the end of the residency period for the resident, that he or she will be discharged from the transitional housing at the end of the stated period.

(c) *Resident contract.* A recipient of assistance under this part may execute a contract with each resident individual or family before admission to transitional housing providing for the length of the residency period (not to exceed 24 months or a longer time period approved by HUD) and such other terms and conditions governing the relationship between the recipient and the resident.

§ 577.330 Flood insurance.

(a) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) prohibits the approval of applications for assistance for acquisition or construction (including rehabilitation) for transitional housing located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) Recipients with transitional housing located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

§ 577.335 Applicability of Other Federal Requirements.

Each recipient of assistance under this part must comply with the following additional requirements:

(a) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to transitional housing are discussed below. Notwithstanding the permissibility of proposals that serve designated populations of homeless persons, recipients serving a designated population of homeless persons are required, within the designated population, to comply with these requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familial status, and handicap.

(1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally

Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(6) If the procedures that the recipient intends to use to make known the availability of the transitional housing are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for admission to the housing, the recipient must establish additional procedures that will ensure that such persons can obtain information concerning the availability of the housing.

(7) The recipient must adopt procedures to make available information on the existence and locations of facilities and services that are accessible to persons with a handicap and maintain evidence of implementation of the procedures.

(8) The recipient must comply with the new construction accessibility requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, and the reasonable accommodation and rehabilitation accessibility requirements of section 504 as follows:

(i) All new construction must meet the accessibility requirements of 24 CFR 8.22 and, as applicable, 24 CFR 100.205.

(ii) Projects in which costs of rehabilitation are 75 percent or more of the replacement cost of the building must meet the requirements of 24 CFR 8.23(a). Other rehabilitation must meet the requirements of 24 CFR 8.23(b).

(b) *Environmental.* The National Environmental Policy Act of 1969 and the related authorities in 24 CFR parts 50 and 58 are applicable to proposals under this program.

(c) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87 and A–102 (as set forth in 24 CFR part 85) apply to the acceptance and use of assistance under the program by governmental entities, and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations, except the requirements of 24 CFR 85.24 are modified by § 557.130 of this part, and the requirements of 24 CFR 85.31 are modified by § 557.310 of this part.

(d) *Lead-based paint.* Any residential property assisted under this part constitutes HUD-associated housing for the purposes of the Lead Based Paint Poisoning Prevention Act and is, therefore, subject to 24 CFR part 35.

(e) *Conflicts of interest.* In addition to the conflict of interest requirements in OMB Circular A–102 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient that receives assistance under the program, or who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(f) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(g) *Audit.* The financial management systems used by States, metropolitan cities, urban counties, governmental entities and tribes that are recipients under this program must provide for audits in accordance with 24 CFR part 44. Private nonprofit organization recipients are subject to the audit requirements of OMB Circular A–133. HUD may perform or require additional audits as it finds necessary or appropriate.

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act do not apply to this program.

(i) *Drug-and alcohol-free facilities.* Section 402 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 requires recipients assisted under this part to administer, in good faith, a policy designed to ensure that the facility is free from the illegal use, possession, or distribution of drugs or alcohol by its residents. Recipients are also subject to the requirements of sections 5151–5160 of the Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24.

Subpart F—Administration

§ 577.400 Obligation of funds, amendments, and deobligation.

(a) *Obligation of funds.* When HUD selects an application for funding and notifies the applicant, it will obligate funds to cover the amount of the approved assistance under subpart B of this part. The recipient will be expected to carry out the transitional housing activities as proposed in the application.

(b) *Increases.* After the initial obligation of funds, HUD will not make revisions to increase the amount obligated.

(c) *Amendment.* HUD must preapprove changes to an application selected for funding.

(d) *Deobligation.* (1) HUD may deobligate all or parts of grants for acquisition, rehabilitation, or new construction:

(i) If the actual total costs of acquisition, rehabilitation, or new construction are less than the total cost anticipated in the application; or

(ii) If proposed activities for which funding was approved are not begun within nine months or residents do not begin to occupy within 18 months after grant execution.

(2)(i) HUD may deobligate the amounts for annual operating costs or supportive services in any year based on any revisions to the recipient's budget as originally approved.

(ii) HUD may deobligate the amounts for annual operating costs or supportive services costs if the proposed transitional housing operations are not begun within three months after the units are available for occupancy.

(3) The grant agreement may set forth in detail other circumstances under which funds may be deobligated, and other sanctions may be imposed.

(4) HUD may:

(i) Readvertise the availability of funds that have been deobligated under this section in a notice of fund availability under § 577.200 of this part, or

(ii) Award deobligated funds to selected applications previously

submitted in response to the most recently published notice of fund availability. Such selections will be made in accordance with subpart D of this part.

(e) *Site control.* HUD will recapture or deobligate any award for assistance under this part if the recipient is not in control of a suitable site before the expiration of one year after notification of an award, unless previously waived at the time of application under § 577.210(c) of this part. Evidence of site control is satisfied by a deed, lease, or executed contract of sale.

(f) *Repayment.* If necessary, HUD may require recipients to repay funds that have already been disbursed.

§ 577.405 Site change.

(a) *General.* A recipient may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements under this part for suitable sites.

(b) *Increased costs.* If the acquisition, rehabilitation, or new construction costs for the substitute site are greater than the amount of the grant awarded for the site specified in the application, the recipient must provide for all additional costs. If the recipient is unable to demonstrate to HUD that it is able to provide for the difference in costs, HUD may deobligate the award of assistance.

PART 578—PERMANENT HOUSING FOR HANDICAPPED HOMELESS PERSONS

2. Part 578, consisting of subparts A through F, would be revised to read as follows:

Subpart A—General

Sec.
578.1 Applicability and scope.
578.5 Definitions.
578.10 Waivers.

Subpart B—Assistance Provided

578.100 Types of assistance.
578.105 Acquisition grants.
578.110 Rehabilitation grants.
578.112 New construction grants.
578.115 Funding for supportive services costs.
578.116 Funding for operating costs.
578.117 Recipient share of supportive services and operating costs.
578.119 Administrative costs for grants.
578.120 Technical assistance.
578.125 Limitations on use of assistance.
578.130 Matching requirements.
578.135 Assistance under other HUD programs.

Subpart C—Comprehensive Housing Affordability Strategy

578.150 Comprehensive Housing Affordability Strategy.

Subpart D—Application and Selection Process

578.200 Notice of fund availability.
578.205 Selection process.
578.210 Application requirements.
578.215 Ranking criteria for applicants.
578.217 Application and selection process for renewal grants.
578.220 Environmental review.
578.225 Final selection.

Subpart E—Program Requirements

578.300 Grant agreement.
578.305 General operation.
578.310 Term of commitment; repayment of grants; conversion of advances to grants.
578.315 Displacement, relocation, and acquisition.
578.320 Resident rent.
578.325 Sites and number of residents.
578.330 Flood insurance.
578.335 Applicability of other Federal requirements.

Subpart F—Administration

578.400 Obligation of funds, amendments, and deobligation.
578.405 Site change.

Authority: Sec. 426, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 578.1 Applicability and scope.

(a) *General.* The Supportive Housing Demonstration program contained in subtitle C of title IV of the Stewart B. McKinney Homeless Assistance Act is designed to develop innovative approaches for providing supportive housing, especially to deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handicapped homeless persons. A central purpose of the program is to provide supportive housing for deinstitutionalized homeless individuals and other homeless individuals with mental disabilities. It is designed to determine:

(1) The cost of acquisition, rehabilitation, new construction, or leasing of existing structures for the provision of supportive housing;

(2) The cost of operating such housing and providing supportive services to the residents of such housing;

(3) The social, financial, and other advantages of such housing as a means of assisting homeless individuals; and

(4) The lessons that the provision of supportive housing might have for the design and implementation of housing programs that serve homeless individuals and families with special needs, particularly deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handicapped homeless persons.

(b) *Components.* The Supportive Housing Demonstration program consists of two components: Permanent housing for handicapped homeless persons and transitional housing. Part 578 of this title implements the program for permanent housing for handicapped homeless persons. Part 577 of this title implements the transitional housing program.

§ 578.5 Definitions.

As used in this part:

Applicant means the State in which permanent housing for handicapped homeless persons is to be located, or a tribe. An applicant may be the state housing finance agency (or other State agency) that customarily implements housing programs for the State and that is identified by statute to participate in housing programs in the State.

Child care services means

(1) Establishing, licensing, and operating a child care facility for residents; or

(2) (i) Contributions for the child care costs of residents to existing community child care programs and facilities; and

(ii) Counseling designed to inform the residents of public and private child care services for which they are eligible.

(3) Child care services assisted under this part, whether an on-site facility operated by the recipient or an off-site facility contributed to by the recipient, must meet any applicable State and local laws.

Comprehensive Housing Affordability Strategy (CHAS or housing strategy) means the housing strategy prepared by a jurisdiction and submitted to HUD in accordance with 24 CFR part 91.

Date of initial occupancy means the date that the permanent housing is initially occupied by a homeless person for whom assistance is provided under this part. If the assistance is for an existing homeless facility, the date of initial occupancy is the date that services are first provided to the residents of permanent housing with funding under this part.

Deinstitutionalized homeless individual means a homeless individual with mental disabilities who has been discharged or released from a mental insitution or hospital, a halfway house, or similar facility providing housing and supportive services to its residents. This term includes a homeless family, if the head of the family (or the spouse of the

head of the family) is a deinstitutionalized homeless individual.

Employment assistance means

(1) Placement of residents in jobs outside the housing or, if this is not feasible, employment of residents in the operation and maintenance of the housing;

(2) Where necessary and appropriate, payment of reasonable transportation costs of residents to places of employment outside the housing;

(3) Employment counseling; and

(4) Technical courses leading to employment.

Handicapped homeless person means a handicapped person who

(1) Is a homeless individual;

(2) Is currently not a homeless individual but who is at risk of becoming a homeless individual through eviction from permanent housing, including private dwelling units or institutions, and lacks the resources and support network needed to obtain access to housing; or

(3) Has been a resident of transitional housing assisted under the Transitional Housing program, described in 24 CFR part 577. This term may include a homeless family, if the head of the family (or the spouse of the head of the family) is a handicapped homeless person.

Handicapped or *handicapped person* means a household composed of one or more persons at least one of whom is an adult who has a disability. A person is considered to have a disability if such person is determined to have a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that the ability to live independently could be improved by more suitable housing conditions. This term includes:

(1) An indiviudal who is developmentally disabled, i.e., an individual who has a severe chronic disability that:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living; and

(G) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual who is chronically mentally ill, *i.e.*, an individual who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (*e.g.*, by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, or recreation), and whose impairment could be improved by more suitable housing conditions.

Homeless means:

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(2) An individual or family that has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(3) This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

Homeless family with children means a homeless family that includes at least one parent or guardian and one child under the age of 18, a homeless pregnant woman, and a homeless individual in the process of securing legal custody of any person who has not attained the age of 18 years.

HUD means the U.S. Department of Housing and Urban Development.

New construction means the building of a structure where none existed or an addition to an existing structure that increases the floor area by more than 100 percent.

Operating costs means expenses that a recipient incurs for:

(1) Administration (including staff salaries), maintenance, minor or routine repair, repair and maintenance reserve, security and rental of the housing;

(2) Utilities, insurance, fuel, furnishings, and equipment for the housing;

(3) Relocation assistance under § 578.315 of this part, including payments and services; and

(4) Other costs associated with operating the permanent housing.

Permanent housing for handicapped homeless persons or *permanent housing* means housing assisted under this part:

(1) That provides community-based, long-term housing and appropriate supportive services for not more than eight handicapped homeless persons and their families (or 16 such persons and their families but only if not more than 20 percent of the units in the structure are designed for handicapped persons) and that is carried out by a project sponsor in homes designed solely for housing handicapped homeless persons, or dwelling units in a rental apartment building, a condominium project, or a cooperative project; and

(2) That has as its purpose, through providing housing and supportive services, maximizing each resident's ability to live independently within a permanent housing environment.

Private nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(1) Have a voluntary board;

(2)(i) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or

(ii) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(3) Practice nondiscrimination in the provision of assistance under the permanent housing program in accordance with the authorities described in § 578.335(a) of this part.

Project sponsor means a private nonprofit organization that an authorized official of the applicant approves as financially responsible, or a public housing agency (PHA). The project sponsor must operate the permanent housing for handicapped homeless persons, and must provide (or coordinate the provision of) supportive services to the residents of such housing.

Recipient means the applicant that executes a grant agreement with HUD. The recipient provides assistance to the project sponsor for the operation of permanent housing for handicapped homeless persons and facilitates the provision of necessary supportive services to the residents of the permanent housing.

Rehabilitation means the improvement of an existing structure or

an addition to an existing structure that does not increase the floor area by more than 100 percent. Rehabilitation does not include minor or routine repairs.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Supportive services means services provided to residents of permanent housing for the purpose of maximizing each resident's ability to live independently within a permanent housing environment. Supportive services must address the special needs of the handicapped homeless persons to be served and must assist in accomplishing the purpose of permanent housing. Supportive services may include, but are not limited to:

(1) Case management;

(2) Medical and psychological counseling and supervision;

(3) Life skills training;

(4) Nutritional counseling;

(5) Assistance in obtaining other Federal, State, and local assistance available for residents of permanent housing facilities, including mental health benefits; employment counseling; medical assistance; Veterans' benefits; and income support assistance, such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, and Food Stamps; and

(6) Other services, such as child care and employment assistance.

All or part of the supportive services may be provided directly by the recipient or the project sponsor, or by arrangement with public or private service providers.

Tribe means any Indian tribe, band, group, or nation, including Alaska Indians, Aleuts, and Eskimos and any Alaskan Native Village, of the United States, which is considered an eligible recipient under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 6701) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

§ 578.10 Waivers.

Upon completion of a determination and finding of good cause by the Assistant Secretary for Community Planning and Development, HUD may waive any provision of this part in any particular case subject only to statutory limitations. Each waiver must be in writing, and must be supported by documentation of the facts and reasons that formed the basis for the waiver. HUD will publish a notice in the **Federal Register** informing the public of all waivers granted under this section and containing all relevant information concerning the waiver.

Subpart B—Assistance Provided

§ 578.100 Types of assistance.

(a) *Assistance available.* Grant assistance for permanent housing is available for:

(1) Acquisition of land or structures;

(2) Rehabilitation of structures;

(3) New construction;

(4) Operating costs; and

(5) Supportive services costs, including costs for employment assistance and child care services.

(b) *Eligibility for more than one type of assistance.* Applicants may apply for more than one type of assistance.

(c) *Use of permanent housing assistance.* Assistance available for permanent housing may be used:

(1) To establish new permanent housing facilities;

(2) To expand permanent housing in order to increase the number of homeless persons served or to increase the level of supportive services provided to homeless persons;

(3) To bring permanent housing to a level that meets State and local government health and safety standards;

(4) To replace the loss of private funding for permanent housing that has ceased after completion of the funding period specified in the award of private funding up to the amount lost or the limit in § 578.117 of this part, whichever is lower; and

(5) To continue funding permanent housing where the recipient has received funding under this part for supportive services or operating costs.

(d) *Structures used for multiple purposes.* Structures use to provide permanent housing may also be used for other purposes. For example, a structure may contain facilities for an emergency shelter as well as permanent housing, may be used to provide supportive services to the public at large, or may include commercial space. Under these circumstances, however, acquisition, rehabilitation, and new construction grants will be available only in proportion to the use of the structure for permanent housing, and the funding for operating costs and supportive services costs will be available only to support the costs related to the permanent housing to be provided.

(e) *Technical assistance.* HUD may offer technical assistance, as described in § 578.120 of this part.

§ 578.105 Acquisition grants.

(a) *Use.* HUD will grant funds to recipients to:

(1) Defray the cost of the acquisition of real property selected by the recipients for use in the provision of permanent housing (including property acquired through the Single Family Property Disposition Homeless Initiative); or

(2) Repay the outstanding debt on a loan made to purchase property that will be used in the provision of permanent housing, if the property has not been used previously as supportive housing.

(b) *Existing facilities.* HUD will not provide assistance under this part for acquisition of existing facilities that currently serve the homeless, except properties leased through the Single Family Property Disposition Homeless Initiative, described in subpart E of 24 CFR part 291.

(c) *Amount.* If the applicant meets the matching share requirements at § 578.130 of this part, the maximum grant available for acquisition is the lower of:

(1) $200,000; or

(2) The total cost of the acquisition minus the applicant's contribution toward the cost of the acquisition.

(d) *Increased amounts.* In areas determined by HUD to have high acquisition and rehabilitation costs, grants of more than $200,000, but not more than $400,000, may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 578.130 of this part are applicable to increased grants.

§ 578.110 Rehabilitation grants.

(a) *Use.* HUD will grant funds to recipients to defray the cost of rehabilitation of structures selected by the recipients for use in the provision of permanent housing.

(b) *Amount.* If an applicant meets the matching share requirements at § 578.130 of this part, the maximum grant available for rehabilitation is the lower of:

(1) $200,000; or

(2) The total cost of the rehabilitation minus the applicant's contribution toward the cost of the rehabilitation.

(c) *Increased grants.* In areas determined by HUD to have high acquisition and rehabilitation costs,

grants of more than $200,000, but not more than $400,000, may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 578.130 of this part are applicable to increased grants.

§ 578.112 New construction grants.

(a) *Use.* HUD will grant funds to recipients to defray the cost of new construction of facilities for use in the provision of permanent housing where the applicant demonstrates that the costs associated with new construction are substantially less than the costs associated with rehabilitation or the applicant provides evidence of lack of available units that could be acquired and rehabilitated at a cost less than new construction.

(b) *Amount.* If the applicant meets the matching share requirements at § 578.130 of this part, the maximum grant available for new construction is the lower of:

(1) $200,000; or

(2) The total cost of the new construction minus the applicant's contribution toward the cost of the new construction.

(c) *Increased grants.* In areas determined by HUD to have high acquisition and rehabilitation costs, grants of more than $200,000, but not more than $400,000, may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements for matching funds described in § 578.130 of this part are applicable to increased grants.

§ 578.115 Funding for supportive services costs.

(a) *General.* HUD will provide grants to pay a portion (as described in § 578.117 of this part) of the actual supportive services costs of permanent housing.

(b) *Supportive services costs.* Costs associated with providing supportive services, approved by HUD, to residents of permanent housing for the purpose of maximizing each resident's ability to live independently within a permanent housing environment include salaries paid to providers of supportive services, the costs of conducting resident supportive services needs assessments, and any other costs directly associated with providing such services.

§ 578.116 Funding for operating costs.

(a) *General.* HUD will provide grants to pay a portion (as described in § 578.117 of this part) of the actual operating costs of permanent housing.

(b) *Operating costs.* Operating costs are those associated with the day-to-day operation of the permanent housing. They include the actual expenses that a recipient incurs for administration, including staff salaries (but not salaries of supportive services providers which will be charged to those categories); maintenance; minor or routine repair; repair and maintenance reserve; security; rental, utilities, insurance, fuel, furnishings, and equipment costs for the housing; and relocation assistance under § 578.315 of this part, including payments and services.

§ 578.117 Recipient share of supportive services and operating costs.

(a) *General.* Assistance for supportive services and operating costs will be initially available for up to 75 percent of the total cost for two years and up to 50 percent of the total cost for the next three years. Assistance may be renewed under § 578.217 of this part for a period of time not to exceed the difference between the initial funding period and ten years from the date of initial occupancy. Assistance during the renewal period may be for up to the lower of:

(1) the amount of assistance for supportive services and operating costs provided under this part for the final year of the initial funding period multiplied by the number of years in the renewal period; or

(2) 50 percent of the total cost of supportive services and operating costs during the renewal period.

(b) *Recipient share.* The recipient must show that it has cash resources to pay the percentage of the total cost of supportive services and operating costs not funded by HUD. Prior to the start of each operating year, the recipient will be required to submit documentation firmly establishing the availability of cash resources to pay the recipient's share of costs for the upcoming year. If this requirement is not met, HUD may withhold supportive services or operating cost payments.

(c) *Commitment of grant amounts.* Upon approval of an application for assistance for supportive services or operating costs, HUD will obligate amounts for a period not to exceed five operating years commencing on the date of initial occupancy. The total amount obligated will be equal to an amount necessary for five years of operation, less the recipient's share of such costs. Each year, following submission of the recipient's documentation of cash resources to pay its share of costs, HUD will make cost payments to the recipient for HUD's share of costs incurred that year. The recipient may reapply for a grant to pay a portion of the supportive services or operating costs of the permanent housing for a period not to exceed the difference between the initial funding period and ten years from the date of initial occupancy. If approved for renewal, the same commitment and payment procedures will be followed as with the initial grant.

(Approved by the Office of Management and Budget under OMB Control Number 2506-0112)

§ 578.119 Administrative costs for grants.

(a) *General.* Up to five percent of any grant awarded under this part may be used for the purpose of paying costs of administering the assistance.

(b) *Administrative costs.* Grant administration costs include the costs associated with accounting for the use of grant funds, preparing reports for submission to HUD, obtaining program audits, tracking clients to measure program effectiveness, and similar costs related to administering the grant after the award. This does not include the costs of carrying out activities eligible under §§ 578.105 through 578.116 of this part, since those costs are eligible as part of such activities.

§ 578.120 Technical assistance.

(a) *General.* HUD will set aside up to two percent of the amount available annually for the Supportive Housing Demonstration program to provide technical assistance under this part and part 577 in the following areas:

(1) Establishing housing facilities;

(2) Operating facilities; and

(3) Providing or obtaining supportive services for the residents.

(b) *Technical assistance.* Technical assistance is the provision of skills or knowledge by organizations or individuals to applicants (or prospective applicants) and recipients to help them plan, develop, administer, and/or evaluate their permanent housing program or specific activities more effectively. Technical assistance also includes the development, collection, processing, and dissemination of program information for local and national program management. The assistance may include, but is not limited to, written information such as papers, monographs, manuals, guides, and brochures; person-to-person exchanges; and training such as seminars, classes, workshops, and meetings.

(c) *Selection of providers.* From time to time, as HUD determines the need, HUD will advertise and competitively select providers to deliver assistance to Supportive Housing Demonstration

recipients or applicants (or prospective applicants). HUD may enter into contracts, grants, or cooperative agreements, as appropriate, to implement the technical assistance.

§ 578.125 Limitations on use of assistance.

(a) *Maintenance of effort.* No assistance received under this part (or any State or local government funds used to supplement this assistance) may be used to replace funds provided under any State or local government assistance programs previously used, or designated for use, to assist handicapped persons, homeless persons, or handicapped homeless persons.

(b) *Primarily religious organizations*—(1) *Provision of assistance.* (i) HUD will provide assistance to a recipient that will use a primarily religious organization as a project sponsor, if the primarily religious organization agrees to provide housing and supportive services in a manner that is free from religious influence and in accordance with the following principles:

(A) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(B) It will not discriminate against any person applying for housing or supportive services on the basis of religion and will not limit such housing or services or give preference to persons on the basis of religion;

(C) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of housing and supportive services.

(ii) HUD will provide assistance to a recipient that will use a primarily religious organization as a project sponsor, only if the assistance will not be used to acquire a structure to be owned by the project sponsor or to rehabilitate a structure owned by the project sponsor, except as described in paragraph (b)(2) of this section.

(2) *Acquisition and rehabilitation of structures owned by primarily religious organizations.* Acquisition and rehabilitation grants may be used to rehabilitate a structure that is owned by a primarily religious organization, only if:

(i) The structure (or portion of the structure) that is to be rehabilitated with HUD assistance has been leased to a wholly secular private nonprofit organization that will serve as the project sponsor, or to the recipient;

(ii) The HUD assistance will be provided to the project sponsor or to the recipient to make the improvements, rather than to the primarily religious organization;

(iii) The leased structure will be used exclusively for secular purposes available to all persons regardless of religions;

(iv) The lease payments provided to the primarily religious organization do not exceed the fair market rent of the structure without the rehabilitation;

(v) The cost of improvements that benefit any portion of the structure that is not used for the provision of permanent housing assisted under this Part will be allocated to and paid for by the primarily religious organization; and

(vi) The primarily religious organization agrees that if the project sponsor or the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of improvements to the project sponsor or recipient that will remit the amount to HUD.

(3) *Assistance to a wholly secular private nonprofit organization established by a primarily religious organization.* (i) If a primarily religious organization is foreclosed from direct participation as a project sponsor under the requirements set forth in paragraph (b)(2) of this section, the primarily religious organization may establish a wholly secular private nonprofit organization to serve as the project sponsor under this part.

(A) The wholly secular organization must agree to provide housing and supportive services in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (b)(1)(i) of this section.

(B) The wholly secular organization may enter into a contract with the primarily religious organization to provide supportive services for the project. In such a case, the primarily religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (b)(1)(i) of this section.

(C) The acquisition and rehabilitation grants are subject to the requirements of paragraph (b)(2) of this section.

(ii) HUD will not require the primarily religious organization to establish the wholly secular organization before the selection of the application. In such a case, the applicant must name the wholly secular organization as the project sponsor in the application. In determining whether the wholly secular organization is financially responsible, the applicant may consider the primarily religious organization's financial responsibility and its commitment to provide appropriate resources to the project sponsor upon its formation. The project sponsor's capacity to provide housing and supportive services to handicapped homeless persons may be used on the primarily religious organization's capacity and its commitment to provide appropriate resources to the project sponsor after its formation. The requirement with regard to site control, described in § 578.210(b)(12) of this part, may be satisfied if the applicant demonstrates that the primarily religious organization has site control and has a commitment to transfer control of the site to the recipient or the project sponsor following selection. Since the wholly secular organization will not be in existence at the time of the application, it will be required to demonstrate that it meets the definition of a private nonprofit organization, described in § 578.5 of this part. If such an application is selected for funding, the obligation of funds will be conditioned upon the compliance with these requirements.

§ 578.130 Matching requirements.

(a) *General.* The recipient must match the funding provided by HUD for grants for acquisition, rehabilitation, and new construction with an equal amount of resources from non-Federal sources. (Funds from Community Development Block Grants and Community Services Block Grants are considered non-Federal sources.)

(b) *Cash resources.* The matching calculation may include cash resources provided to the permanent housing by the recipient, local governments, private resources, and resident rent.

(c) *"In-kind" contributions.* The matching calculation may include the following "in-kind" contributions:

(1) Time and services contributed by volunteers to carry out the permanent housing program at the value of $10 an hour, except that donated professional services (*i.e.*, services ordinarily performed by donors for payment, such as services of health care professionals, that are equivalent to services they provide in their occupations) may be counted at the customary charge for the services provided;

(2) The value of contributions of materials or contributions of existing structures, or parts of structures, in the following manner:

(i) Contributions of materials and supplies;

(ii) A contribution of a fee ownership in a structure, to the extent of the fair market value of the structure or portion of the structure to be used for permanent housing, except to the extent funds under this part are not being used to finance acquisition of the structure; and

(iii) A contribution of a leasehold interest in a structure, to the extent of the fair rental value of the structure or portion of the structure to be used for permanent housing, except to the extent funds under this part are not being used to finance lease payments for the structure.

(d) *Maintenance of effort.* State or local government funds used in the matching contribution are subject to the maintenance of effort requirements described at § 578.125(a) of this part.

§ 578.135 Assistance under other HUD programs.

(a) *Supplemental assistance.* HUD will permit recipients to use any assistance that may be awarded under the Emergency Shelter Grants program (24 CFR part 576) or Supplemental Assistance for Facilities to Assist the Homeless program (24 CFR part 579) in conjunction with assistance awarded under this part.

(b) *Ineligible projects.* HUD will not assist a project under this part if the project involves a structure that is assisted, or residents of the structure will receive assistance, under the U.S. Housing Act of 1937; section 202 of the Housing Act of 1959; section 221(d)(3) (BMIR) or section 236 of the National Housing Act; section 101 of the Housing and Urban Development Act; section 811 of the National Affordable Housing Act; or subtitle F, title IV of the Stewart B. McKinney Homeless Assistance Act.

(c) *HUD-owned properties.* (1) HUD will make HUD-owned single family properties in its inventory available to applicants or potential applicants for acquisition grants to purchase for use as permanent housing for handicapped homeless persons. To obtain these properties, applicants may request a listing of available properties from the HUD field office, Property Disposition Branch. If an applicant wishes to purchase a property or properties, it must enter into a lease-option agreement with HUD. Under the terms of the agreement, HUD will lease the property to the applicant for up to six months for one dollar. The lease-option agreement will state that the applicant may purchase the property at a stated price during the lease period. Except as provided in paragraph (c)(2) of this section, an applicant leasing property under this section may not sublease or otherwise occupy the property until after closing of the sale. During the lease period, applicants will be responsible for all taxes, utilities, and maintenance, excluding hazard insurance. Applicants demonstrating a lease-option agreement at the time their application for assistance is filed will be regarded as having site control of the property under § 578.210(b)(12) of this part. If the option is not exercised, the lease-option agreement will expire at the end of six months, and the property will be returned to HUD's inventory, unless an extension of time is authorized by HUD.

(2) An applicant may be allowed to sublease the property to the homeless while its application for assistance under this part is pending if the applicant demonstrates to HUD's satisfaction that it has the ability, in the event its application is not approved, to continue in a lease arrangement with HUD beyond the six-month lease term under the requirements of subpart E of 24 CFR part 291.

Subpart C—Comprehensive Housing Affordability Strategy

§ 578.150 Comprehensive housing affordability strategy.

(a) *State applicants.* Assistance may not be made available under this part to a State, State housing finance agency, or other State agency unless the applicant has submitted certifications, by the official responsible for submitting the Comprehensive Housing Affordability Strategy, that the proposed activities are consistent with the housing strategy and that the jurisdiction is following its HUD-approved CHAS.

(b) *Indian tribes.* (1) Before October 1, 1992, assistance may not be made available under this part to an Indian tribe unless the tribe has either:

(i) Submitted a certification of consistency with a biennial Comprehensive Homeless Assistance Plan (CHAP), as described in 24 CFR part 90, which was approved by HUD during Fiscal Year 1991, and a certification that it is following the CHAP; or

(ii) Completed an application form that demonstrates how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing within the tribe's jurisdiction, and submitted a certification that the tribe is following the strategy outlined in the application.

(2) After October 1, 1992, assistance may not be made available under this part unless the tribe has completed an application form that demonstrates how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing within the tribe's jurisdiction, and submitted a certification that the tribe is following the strategy outlined in the application.

Subpart D—Application and Selection Process

§ 578.200 Notice of fund availability.

When funds are made available for assistance for permanent housing, HUD will publish a notice of fund availability in the **Federal Register** in accordance with the requirements of 24 CFR part 12. The notice will:

(a) Give the location for obtaining application packages, which will provide specific application requirements and guidance;

(b) Specify the time and the place for submitting completed applications;

(c) State the amount and status of funding available under the notice;

(d) Describe the factors relative to each ranking criterion contained in § 578.215 of this part, and indicate the weight or relative importance of the ranking criteria as they will be applied to the funding round announced in the notice;

(e) Specify the timing and conditions for curing technical deficiencies in a reviewed application;

(f) Provide a checklist of application submission requirements, including certifications;

(g) Announce any separate funding competitions under § 578.205(b) of this part, including the categories of permanent housing projects that will be subject to the separate funding competitions and the amount of funding available in each funding category; and

(h) Provide other appropriate program information and guidance, including purpose, authority, and eligibility.

§ 578.205 Selection process.

(a) *Selection process.* The selection process for assistance under this Part consists of the following stages:

(1) Reviewing applications for eligibility (see § 578.210 of this part);

(2) Ranking applications (see § 578.215 of this part);

(3) Final selection (see § 578.225 of this part).

(b) *Prohibition of disclosure of selection information.* The selection process for assistance under this part is subject to the prohibition of covered selection information regarding the selection process, as described in 24 CFR part 4. Applicants for or recipients of assistance who have received covered selection information may be

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subject to sanctions, as determined to be appropriate.

§ 578.210 Application requirements.

(a) *Application.* To be considered for assistance under this part, applications for assistance must be filed in the form prescribed by HUD under this section, must meet the requirements of this part, and must be submitted within the time period established by HUD in the notice of funds availability under § 578.200 of this part. HUD reserves the right to reject applications where the applicant or project sponsor has an outstanding obligation to HUD that is in arrears or for which a payment schedule has not been agreed to, or whose response to an audit finding is overdue or unsatisfactory.

(b) *Application contents.* At a minimum, HUD will require applications to contain:

(1) Project sponsor data, including identity, description of past experience, and information on eligibility to receive assistance and financial responsibility. Where the project sponsor is a private nonprofit organization, the applicant must demonstrate that the project sponsor has been approved by an authorized official of the State as to financial responsibility.

(2) The type or types of assistance requested and the amount of funds requested for each type.

(3) A description of the proposed project, including information regarding:

(i) The property to be used, any proposed acquisition, rehabilitation, or new construction, and the estimated costs of those activities and how permanent housing funds are proposed to be used; the estimated value, as determined by an appraisal, of the structure if the fair market value of the structure is to be used as a source of matching funds, or the estimated value, as determined by an appraisal, of the fair rental value of the structure if that value is to be used as a source of matching funds;

(ii) The supportive services to be offered to the residents and the method by which such services will be provided, and plans for monitoring and evaluating such services; and

(iii) An estimated annual cash budget of operating costs and supportive services costs for a 5-year period.

(4) A description of the characteristics (to include racial and ethnic data) of the handicapped homeless population that will occupy the permanent housing and the number of individuals proposed to be served.

(5) An assessment of how the proposed permanent housing would meet the needs of handicapped homeless persons in the State.

(6) Evidence of the public and private resources expected to be made available to meet the recipient share and matching requirements of §§ 578.117 and 578.130 of this part.

(7) A certification from the public official responsible for submitting the Housing Affordability Strategy, described in § 578.150 of this part, stating that the proposed project is consistent with the applicable housing strategy.

(8) For applications requesting grants for acquisition, rehabilitation, or new construction, an assurance satisfactory to HUD that the project will be operated for not less than 10 years for the purpose specified in the application.

(9) For applications requesting grants for operating costs or supportive services costs but not for acquisition, rehabilitation, or new construction, an assurance satisfactory to HUD that the permanent housing will be operated for the purpose specified in the application for the year for which such assistance is provided.

(10) A letter of participation from an authorized official of the applicant containing assurances that the applicant will promptly transmit assistance to the project sponsor and will facilitate the provision of necessary supportive services to the residents of the project.

(11) A designation of the State (or tribal) agency responsible for the provision of services to handicapped persons that will assist the applicant in fulfilling the applicant's responsibilities under this part.

(12) Evidence that the applicant or project sponsor has control of the site or sites involved (*i.e.*, deed or other proof of ownership, lease, option to purchase or lease), or reasonable assurance that the applicant or project sponsor will have control of the site or sites not later than 6 months after notification of a grant. "Reasonable assurances" must be satisfied by identification of a suitable site and evidence that the applicant or project sponsor is engaged in negotiations for the purpose of gaining control of the identified site.

(13) Evidence that the resources to carry out permanent housing assisted activities will be available, and evidence that resources are available to carry out activities that are not permanent housing assisted but are essential to the acquisition, rehabilitation, or new construction of any facility that will contain permanent housing assisted programs.

(14) (i) A written statement from the unit of general local government in which the permanent housing is proposed to be located that the proposed use of the site is permissible under applicable zoning ordinances and regulations or other evidence that the use of the project site is permissible under applicable zoning ordinances and regulations; (ii) or a statement from the applicant describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, with evidence that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully and within 4 months following submission of the application; (iii) or proof that a lawsuit or a HUD complaint related to the proposed site has been filed challenging the legality of current zoning ordinances or regulations under the Fair Housing Act.

(15) An assurance that the applicant as the State will assume all the environmental review responsibility that would otherwise be performed by HUD under 24 CFR part 50 as the responsible Federal official under the National Environmental Policy Act of 1969 (NEPA) and related authorities (see § 578.220 of this part for a full discussion of the environmental review requirements for applicants under this part).

(16) If the applicant plans to provide family violence prevention or treatment services with assistance under this part, a certification that the applicant will develop and implement procedures to ensure confidentiality of records pertaining to any individual receiving such services, and that it will not make public the address or location of any permanent housing used as a family violence shelter without the written authorization of the person or persons responsible for the operation of the facility.

(17) For applications requesting grants for acquisition, rehabilitation, or new construction, evidence that the proposed sites are accessible to supportive services and transportation.

(18) Other certifications, information, or data as prescribed by HUD in the application package, including disclosures required by 24 CFR part 12.

(c) *Waiver of site control.* HUD may waive, on a case-by-case basis, the requirement that the applicant have site control where:

(1) The homeless families or individuals served own or control, or will eventually own or control, the site;

(2) The applicant does not request funds for acquisition, rehabilitation, or new construction;

(3) The applicant commits to provide comprehensive supportive services

appropriate to the needs of the population to be served; and

(4) The applicant commits to begin providing assistance to at least one homeless family or individual within 60 days of the date of execution of the grant agreement by HUD.

(Approved by the Office of Management and Budget under OMB Control Number 2506-0112.)

§ 578.215 Ranking criteria for applicants.

(a) *In general.* Applications will be assigned a rating score and placed in ranked order, based upon the criteria described in paragraph (b) of this section and described in more detail in the Notice of Funds Availability published in the **Federal Register** at the beginning of each program funding round.

(b) *Criteria.* HUD will award points and rank applications for assistance based on the following criteria:

(1) Project sponsor capacity;

(2) Innovative quality of proposal;

(3) Need for permanent housing in the area to be served;

(4) Delivery of supportive services;

(5) Matching resources for acquisition, rehabilitation, or new construction in excess of the required minimum;

(6) Recipient share of supportive services and operating costs in excess of the required minimum;

(7) Cost effectiveness;

(8) Project quality;

(9) Other criteria as determined by the Secretary.

§ 578.217 Application and selection process for renewal grants.

(a) *General.* To be considered for renewal funding for operating costs and supportive services, recipients must submit a request for such funding, in the form specified by HUD, to the local HUD field office serving the area in which the permanent housing is located. In order to assure the uninterrupted flow of supportive services and operating funds to recipients, the request must be submitted within three months after the start of the recipient's final operating year of funding under the initial grant.

(b) *HUD review.* Staff in the local HUD field office in which the permanent housing is located will evaluate the recipient's performance in the previous year(s) against the plans projected, and committed to, in the initial application for assistance, as amended. In particular, HUD will consider whether the recipient is serving a homeless population, whether the recipient has shown adequate progress as evidenced by the timely expenditure of funds, and whether the recipient has a successful record of maximizing each resident's ability to live independently within the permanent housing. In determining the recipient's success in maximizing each resident's ability to live independently, consideration will be given to the level and type of problems of residents and the services that have been provided in response to these problems. HUD will also review the proposed budget for the renewal period and documentation for the recipient's share of costs for the initial renewal year.

§ 578.220 Environmental review.

(a) *Generally.* (1) The environmental effects of each application must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and related environmental laws and authorities listed in HUD's implementing regulations in 24 CFR part 58.

(2) Environmental regulations provide for certain categorical exclusions under NEPA and set conditions under which excluded activities may be determined exempt from all environmental review requirements. In cases where proposed assistance and matching contributions solely involve operating costs for facilities or the provisions of supportive services, and the structures and sites involved in the permanent housing meet the program requirements of this part, these activities are categorically excluded by regulation and may be determined fully exempt from environmental review.

(b) *Responsibility for review.* (1) Applicants must assume responsibility for environmental review, decisionmaking, and action for each application for assistance, in accordance with the procedural provisions of the NEPA and related environmental laws and authorities defined in HUD's implementing regulations in 24 CFR part 58.

(2) An applicant must include in its application an assurance that the applicant will assume all the environmental review responsibility that would otherwise be performed by HUD as the responsible Federal official under NEPA and related authorities listed in 24 CFR 58.5, including acceptance of jurisdiction of the Federal courts.

(3) The assumption of legal responsibility by applicants does not preclude the applicant's arranging for the conduct of technical reviews by cooperating local governments having an established technical capability, *e.g.*, metropolitan cities in which the project is proposed to be located. The applicant under such arrangements must independently evaluate information submitted and assume responsibility for its accuracy, scope, and content; meet legal requirements attached to the Release of Funds by HUD; determine the completeness of the review; meet any requirements for consultation, as applicable, under 24 CFR 58.5 authorities; and assure the completion of any mitigation measures resulting from technical review or from State consultations. The arrangements described in this paragraph are in addition to the ability of the applicant to adopt relevant and adequate prior reviews conducted by HUD or another governmental entity if the reviews meet the particular requirements of the Federal environmental law or authority under which they would be adopted, and only under certain conditions (*e.g.*, a determination that no environmentally significant changes have occurred since the review was done).

(c) *Timing of review process and restriction on release of funds.* (1) An applicant need not complete the review until a reasonable time after HUD has approved the application. In such cases, the award is subject to completion of the environmental responsibilities set out in 24 CFR part 58 within a reasonable time period after notification of the award. (This provision does not preclude the applicant from enclosing its environmental certification and Request for the Release of Funds with its application.)

(2) Upon completion of the requirements in part 58 of this title, applicants must certify the completion and submit a Request for Release of Funds. This submission is not required in cases in which the applicant determines in accordance with 24 CFR 58.34(a) (1)–(10) that its program components are totally exempt.

(3) HUD will not release funds for a permanent housing project if the recipient, project sponsor, or any other party commits permanent housing funds (*i.e.*, incurs any costs or expenditures to be paid or reimbursed with such funds) before the grantee submits and HUD approves its Request for Release of Funds (when such submission is required).

(d) *Location of permanent housing in floodplains.* Applications for permanent housing that is to be acquired, rehabilitated, or assisted with permanent housing funds and that is located in any 100-year floodplain, as designated by the Federal Emergency Management Agency (FEMA), are subject to the floodplain review requirements of Executive Order 11988, Floodplain Management (May 24, 1977). Executive Order 11988 review, as referenced under part 58 of this title, is

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to be performed during the environmental review.

(Approved by the Office of Management and Budget under OMB Control Number 2506–0112)

§ 578.225 Final selection.

(a) *Selection for funding.* In the final stage of the selection process, the highest-ranked applications will be selected for funding in accordance with their ranked order to the extent funds are available, as determined under § 578.215 of this title.

(b) *Ties between applicants.* In the event of a tie between applicants, HUD will use delivery of supportive services and the need for the project to determine which application should be selected for funding.

(c) *Procedural errors.* If HUD makes a procedural error in a funding competition that, when corrected, would result in awarding sufficient points to warrant funding of an otherwise eligible applicant, HUD will award a grant as sufficient funds become available.

Subpart E—Program Requirements

§ 578.300 Grant agreement.

(a) *General.* The duty to provide permanent housing in accordance with the requirements of this part will be incorporated in a grant agreement executed by HUD and the recipient.

(b) *Enforcement.* HUD will enforce the obligations in the grant agreement through such action as may be appropriate.

§ 578.305 General operation.

(a) *State and local requirements.* Each recipient of assistance under this part must provide safe and sanitary housing that is in compliance with all applicable State and local housing codes, licensing requirements, and any other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the housing.

(b) *Habitability standards.* Except for such variations as are proposed by the locality and approved by HUD, permanent housing must meet the following requirements:

(1) *Structure and materials.* The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the environment.

(2) *Access.* The housing must be accessible and capable of being utilized without unauthorized use of other private properties. Structures must provide alternate means of egress in case of fire.

(3) *Space and security.* Each resident must be afforded adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

(4) *Interior air quality.* Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.

(5) *Water supply.* The water supply must be free from contamination.

(6) *Sanitary facilities.* Residents must have access to sufficient sanitary facilities that are in proper operating condition, may be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(7) *Thermal environment.* The housing must have adequate heating and/or cooling facilities in proper operating condition.

(8) *Illumination and electricity.* The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire.

(9) *Food preparation and refuse disposal.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(10) *Sanitary condition.* The housing and any equipment must be maintained in sanitary condition.

(c) *Meals.* Each recipient of assistance under this part must provide meals or meal preparation facilities for residents.

(d) *Ongoing assessment of supportive services.* Each recipient of assistance under this part must conduct an ongoing assessment of the supportive services required by the residents of the project and make adjustments as appropriate.

(e) *Residential supervision.* Each recipient of assistance under this part must provide any residential supervision determined by HUD as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate permanent housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(f) *Records and reports.* Each recipient of assistance under this part must keep any records and make any reports (including those pertaining to race, ethnicity, gender, and handicap status data) that HUD may require within the timeframe required.

(g) *Annual assurances.* Recipients who receive assistance only for operating costs or supportive services costs must provide an annual assurance for each year such assistance is received that the project will be operated for the purpose specified in the application.

(Approved by the Office of Management and Budget under OMB Control number 2506–0112)

§ 578.310 Term of commitment; repayment of grants; conversion of advances to grants.

(a) *General.* All recipients receiving assistance for acquisition, rehabilitation, or new construction must agree to operate the permanent housing in accordance with this part for a term of at least 10 years from the date of initial occupancy.

(b) *Repayment of grant.* If the facility is not operated as permanent housing for 10 years following the date of initial occupancy, HUD may require repayment of all or part of the grant used for acquisition, rehabilitation, or new construction. In order to make this determination, HUD will review documentation submitted by the recipient describing why the facility will not continue to be used for permanent housing, what the new use of the facility will be, whether an alternative site has been identified, and any other information HUD should consider.

(c) *Prevention of undue benefits.* If a facility acquired, rehabilitated, or newly constructed with funds under this part is sold or otherwise disposed of during the 20-year period following the date of initial occupancy, all proceeds from the sale or disposition should be used to provide supportive housing or for the direct benefit of low income persons. Any other proposed use of sale proceeds must be submitted to HUD with appropriate documentation for a determination whether repayment of all or a portion of the grant will be required to prevent undue benefits to the recipient.

(d) *Conversion of advances to grants.* All acquisition and rehabilitation advances awarded under this part before [*insert effective date of rule*] are converted to grants, which are subject to the provisions of paragraphs (b) and (c) of this section.

§ 578.315 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and project sponsors must assure that they have taken all reasonable steps to minimize the displacement of persons

(families, individuals, businesses, nonprofit organizations, and farms) as a result of permanent housing assisted under this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U..S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(c) *Real property acquisition requirements.* The acquisition of real property for a permanent housing project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Responsibility of recipient.* (1) The recipient must certify (*i.e.*, provide assurance of compliance) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the recipient to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with local public funds or funds available from other sources.

(3) The recipient must maintain records in sufficient detail to demonstrate compliance with provisions of this section.

(e) *Appeals.* A person who disagrees with the recipient's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient. A low-income person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the HUD field office.

(f) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property permanently as a direct result of acquisition, rehabilitation, or demolition for a permanent housing project assisted under this part. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(i) After notice by the recipient, project sponsor, or property owner to move permanently from the property, if the move occurs on or after the date that the recipient submits to HUD an application for assistance that is later approved and funded;

(ii) Before the submission of the application to HUD, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the permanent housing project; or

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after the execution of the agreement between the recipient and HUD and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions must include a monthly rent, including estimated average monthly utility costs, that do not exceed the greater of:

(*1*) The tenant's monthly rent before execution of the agreement between the recipient and HUD and estimated average monthly utility costs; or

(*2*) 30 percent of gross household income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either

(*1*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or

(*2*) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (*e.g.*, the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project.

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the permanent housing project.

(3) The recipient or sponsor may, at any time, request HUD to determine whether a displacement is or would be covered by this section.

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the recipient and HUD.

§ 578.320 Resident rent.

Each resident of permanent housing assisted under this Part must pay as rent an amount determined in accordance with section 3(a) of the United States Housing Act of 1937. Under section 3(a), each resident must pay as rent the highest of:

(a) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family members, medical expenses, and child care expenses);

(b) 10 percent of the family's monthly income; or

(c) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

§ 578.325 Sites and number of residents.

(a) *Site.* Each facility must be either a home designed solely for housing handicapped persons or dwelling units in a multi-family rental building, a condominium project, or cooperative project. Not more than one home may be located on any one site, and no such home may be located on a site contiguous to another site containing such a home.

(b) *Number of residents.* (1) If the permanent housing consists of dwelling units in a multifamily rental building, condominium, or cooperative, no more than eight handicapped homeless persons and their families may reside in such structure (or 16 such persons and their families if no more than 20 percent of the units in the structure are designated for such persons).

(2) If the permanent housing is a group home, no more than eight handicapped homeless persons may reside in the group home, and the families of the handicapped homeless persons may not reside there.

(c) *Neighborhood integration.* Each permanent housing facility must be integrated into the neighborhood in which it is located. Indicators of neighborhood integration include:

(1) Plans for resident participation in neighborhood activities and institutions; and

(2) Use of a structure for permanent housing that is in keeping with the general scale of residential structures in the neighborhood.

(d) *Waiver.* HUD may waive, on a case-by-case basis, the limitation on residents contained in paragraph (b) of this section if the applicant demonstrates that local market conditions dictate the development of a larger project, and that a larger project will achieve the neighborhood integration objectives of the program within the context of the affected community.

§ 578.330 Flood insurance.

(a) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) prohibits the approval of applications for assistance for acquisition or construction (including rehabilitation) for permanent housing located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) Applicants with permanent housing located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

§ 578.335 Applicability of other Federal requirements.

Use of assistance provided under this part must comply with the following additional requirements:

(a) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to the permanent housing program are discussed below. Notwithstanding the permissibility of proposals that serve designated populations of handicapped homeless persons, recipients and project sponsors serving a designated population of handicapped homeless persons are required, within the designated population, to comply with these requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familiar status, and handicap.

(1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients and project sponsors must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(6) If the procedures that the recipient or project sponsor intends to use to make known the availability of the permanent housing are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for admission to the housing, the recipient or project sponsor must establish additional procedures that will ensure that such persons can obtain information concerning availability of the housing.

(7) The recipient must adopt procedures to make available information on the existence and locations of facilities and services that are accessible to persons with a handicap and maintain evidence of implementation of the procedures.

(8) The recipient must comply with the new construction accessibility requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, and the reasonable accommodation and rehabilitation accessibility requirements of section 504 as follows.

(i) All new construction must meet the accessibility requirements of 24 CFR 8.22 and, as applicable, 24 CFR 100.205.

(ii) Projects in which costs of rehabilitation are 75 percent or more of the replacement cost of the building must meet the requirements of 24 CFR 8.23(a). Other rehabilitation must meet the requirements of 24 CFR 8.23(b).

(b) *Environmental.* The National Environmental Policy Act of 1969 and the related authorities in 24 CFR part 58 are applicable to proposals under this program.

(c) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87 and A–102 (as set forth in 24 CFR part 85) apply to the acceptance and use of assistance under the program by governmental entities, and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations, except the requirements of 24 CFR 85.24 are modified by § 578.130 of this part, and the requirements of 24 CFR 85.31 are modified by § 578.310 of this part.

(d) *Lead-based paint.* Any residential property assisted under this part constitutes HUD-associated housing for the purposes of the Lead Based Paint Poisoning Prevention Act and is, therefore, subject to 24 CFR part 35.

(e) *Conflicts of interest.* In addition to conflict of interest requirements in OMB Circular A–102 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, or the project sponsor, that receives assistance under the program, or who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the

activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(f) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(g) *Audit.* The financial management systems used by recipients under this program must provide for audits in accordance with 24 CFR part 44. Project sponsors are subject to the audit requirements of OMB Circular A–133. HUD may perform or require additional audits as it finds necessary or appropriate.

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act do not apply to this program.

(i) *Drug and alcohol-free facilities.* Section 402 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 requires recipients and project sponsors of permanent housing assisted under this part to administer, in good faith, a policy designed to ensure that the facility is free from the illegal use, possession, or distribution of drugs or alcohol by its residents. Recipients are also subject to the requirements of sections 5151–5160 of the Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24.

Subpart F—Administration

§ 578.400 Obligation of funds, amendments, and deobligation.

(a) *Obligation of funds.* When HUD selects an application for funding and notifies the applicant, it will obligate funds to cover the amount of the approved assistance under subpart B of this part. The recipient will be expected to carry out the permanent housing activities as proposed in the application.

(b) *Increases.* After the initial obligation of funds, HUD will not make revisions to increase the amount obligated.

(c) *Amendment.* HUD must preapprove changes to an application selected for funding.

(d) *Deobligation.* (1) HUD may deobligate all or parts of grants for acquisition, rehabilitation, or new construction:

(i) If the actual total costs of acquistion, rehabilitation, or new construction are less than the total cost anticipated in the application; or

(ii) If proposed activities for which funding was approved are not begun within nine months or residents do not begin to occupy within 18 months after grant execution.

(2)(i) HUD may deobligate the amounts for annual operating costs or supportive services costs in any year based on any revisions to the recipient's budget as originally approved.

(ii) HUD may deobligate the amounts for annual operating costs or supportive services costs if the proposed permanent housing operations are not begun within three months after the units are available for occupancy.

(3) The grant agreement may set forth in detail other circumstances under which funds may be deobligated, and other sanctions may be imposed.

(4) HUD may:

(i) Readvertise the availability of funds that have been deobligated under this section in a notice of fund availability under § 578.200 of this part, or

(ii) Award deobligated funds to the selected applications previously submitted in response to the most recently published notice of fund availability. Such selections will be made in accordance with subpart D of this part.

(e) *Site control.* HUD will recapture or deobligate any award for assistance under this part if the recipient is not in control of a suitable site before the expiration of one year after notification of an award, unless previously waived at the time of application under § 578.210(c) of this part. Evidence of site control is satisfied by a deed, lease, or executed contract of sale.

(f) *Repayment of disbursed funds.* If necessary, HUD may require recipients to repay funds that have already been disbursed.

§ 578.405 Site change.

(a) *General.* A recipient may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements under this part for suitable sites.

(b) *Increased costs.* If the acquisition, rehabilitation, or new construction costs for the substitute site are greater than the amount of the grant awarded for the site specified in the application, the recipient must provide for all additional costs. If the recipient is unable to demonstrate to HUD that it is able to provide for the difference in costs, HUD may deobligate the award of assistance.

Dated: November 11, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92–45 Filed 1–3–92; 8:45 am]

BILLING CODE 4210-29-M

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Part IV

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60-250

Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era; Final Rule

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DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–250

RIN 1215–AA73

Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era; Amendment of the Definition of Vietnam Era Veteran

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: This regulation incorporates a statutory change in the definition of "veteran of the Vietnam era" as that definition relates to Federal contractors' and subcontractors' affirmative action obligations with respect to such veterans. The regulation amends the current definition by extending the coverage cut-off date to December 31, 1994.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Annie A. Blackwell, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523–9430.

SUPPLEMENTARY INFORMATION: The Veterans' Education and Employment Programs Amendments of 1991 (Pub. L. 102–16) amended numerous laws relating to veterans' benefits. Section 1 of Public Law 102–16 amends 38 U.S.C. 2011, the definitional section applicable, *inter alia*, to veterans' affirmative action coverage under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 2012).

Prior to the enactment of Public Law 102–16, eligibility under 38 U.S.C. 2012 as a "veteran of the Vietnam era" terminated on December 31, 1991. In Public Law 201–16, Congress extended the coverage cut-off date to December 31, 1994. Regulations issued by the Office of Federal Contract Compliance Programs (OFCCP) at 41 CFR part 60–250 implement 38 U.S.C. 2012. The regulation published today amends OFCCP's definition of "veteran of the Vietnam era," at 41 CFR 60–250.2, to make it consistent with Public Law 102–16.

Waiver of Proposed Rulemaking

This rule is nondiscretionary, ministerial action which merely incorporates, without change, a statutory amendment into pre-existing regulations. Publication in proposed form serves no useful purpose, and therefore is unnecessary within the meaning of the Administrative Procedure Act (5 U.S.C. 553(b)(B)). We, therefore, find good cause to waive notice of proposed rulemaking.

Effective Date

Pursuant to 5 U.S.C. 553(d) the undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that this rule is a nondiscretionary, ministerial action which merely incorporates, without change, a statutory amendment into pre-existing regulations.

Executive Order 12291

The Secretary of Labor has determined that this is not a major rule as defined in Executive Order 12291, and thus a regulatory impact analysis is not required.

Paperwork Reduction Act

Because this rule does not contain information collection requirements, it is not subject to approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 41 CFR Part 60–250

Administrative practice and procedure, Civil Rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Veterans.

Signed at Washington, DC, on this 27th day of December, 1991.

Lynn Martin,

Secretary of Labor.

Carl M. Dominguez,

Assistant Secretary for Employment Standards.

Leonard J. Biermann,

Acting Director, Office of Federal Contract Compliance Programs.

For the reasons set forth above, 41 CFR part 60–250 is amended as set forth below.

PART 60–250—[AMENDED]

1. The authority citation for part 60–250 is revised to read as follows:

Authority: 38 U.S.C. 4211 and 4212; 29 U.S.C. 793; Executive Order 11758 (39 FR 2075, January 15, 1974; 3 CFR 1971–1975 Comp. p. 841).

2. Section 60–250.2 is amended by revising the definition "Veteran of the Vietnam era" to read as follows:

§ 60–250.2 Definitions.

* * * * *

Veteran of the Vietnam era means a person who:

(1) served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge, or

(2) was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975. No veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1994.

[FR Doc. 91–31334 Filed 12–31–91; 12:40 pm]

BILLING CODE 4510–27–M

federal register

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Part V

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 58 and 72
Permissible Exposure Limit for Diesel Particulate; Proposed Rule

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 58 and 72

RIN 1219–AA74

Permissible Exposure Limit for Diesel Particulate

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Mine Safety and Health Administration (MSHA) is in the early stages of developing a permissible exposure limit (PEL) for diesel particulate to control miners' exposure to diesel exhaust in the mining industry. This notice raises major issues which the Agency needs to consider with respect to possible regulatory action that would affect surface and underground mines in the coal, metal, and nonmetal mining sectors. The Agency seeks comment on the need for a standard, the specific regulatory language appropriate for a standard, the impact that various exposure limits would have on small businesses, and the need for recordkeeping and reporting requirements. In addition, comments are solicited on the need for a medical surveillance or screening program and on the use of respiratory equipment.

DATE: All written comments should be submitted by April 5, 1992.

ADDRESSES: Comments should be sent to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

On October 6, 1987, MSHA published in the **Federal Register** (52 FR 37381) a notice of establishment of an advisory committee on standards and regulations for diesel-powered equipment in underground coal mines. On January 5, 1988, (53 FR 169) the Secretary of Labor appointed the advisory committee to make recommendations for standards and regulations related to the approval and safe use of diesel-powered equipment in underground coal mines. The committee provided a collective expertise not otherwise available to the Secretary to address complex issues associated with mining and diesel powered equipment. The Committee submitted its recommendations in July 1988, based on its 6-month review of safety, health, and technical issues. These recommendations incorporated a three-tiered approach to reduce potential safety and health hazards.

The first approach recommended that all diesel equipment except for limited class be approved for use in underground coal mines. This approval would involve both safety (e.g., fire suppression systems) and health factors (e.g., maximum exhaust emissions).

The second approach recommended standards to address the safety aspects of the use of diesel equipment. These safety aspects included such concerns as equipment maintenance, training of mechanics, and the storage and transport of diesel fuel.

The third approach recommended standards to address the health aspects surrounding the use of such equipment. The committee emphasized the importance of the health implications of diesel exhaust relating to both the gaseous and particulate components and recommended that regulations be promulgated for monitoring and controlling the particulate. (The problem of noxious gases will be addressed in the air quality rulemaking, RIN 1219–AA48.) The committee did not recommend a specific level of exposure to diesel particulate based on the existing data and current available technology for monitoring the amount of diesel particulate in mining.

After considering the information available in 1988, the advisory committee was concerned that diesel exhaust represents a probable risk for causing human lung cancer. The committee's report recommended that MSHA regulate the use of diesels in underground coal mines to protect the health of miners by two means. First, MSHA should implement a system to control the amount of diesel particulate where diesel equipment is used underground. Second, the Secretary should set in motion a mechanism whereby a diesel particulate standard can be set.

The committee made several research proposals to the Secretary because they recognized the difficulty in implementing their recommendations based on the body of scientific knowledge that existed at the time of the report. The committee recommended that the Secretary request that the National Institute for Occupational Safety and Health (NIOSH) and the Bureau of Mines (BOM) give the highest priority to research in the development of sampling methods and devices for diesel particulate. In addition, the committee concluded that in the absence of adequate information regarding diesel particulate exposure levels at which health effects accrue, more research is needed.

After the transmission of the committee's report to the Secretary, MSHA formally requested NIOSH to perform a risk assessment for exposure to diesel particulate and requested BOM and NIOSH to develop sampling and analytical methodologies for assessing exposure to diesel particulate in mining operations. Initiatives were also undertaken to have BOM place a high priority on conducting research toward the control of diesel particulate and to have MSHA test and evaluate the technology available to measure and control diesel particulate in the mining environment, as well as characterize occupational exposures to diesel particulate.

As a result of these initiatives by the Secretary, MSHA has received additional documentation from NIOSH and BOM. This documentation includes:

1. "An Exploratory Risk Assessment of the Risk of Lung Cancer Associated with Exposure to Diesel Exhaust Based on a Study in Rats." R. Smith and L. Stayner, Division of Standards Development and Technology Transfer, NIOSH, July 2, 1990. This study employed the Armitage-Doll multi-stage model to represent the relationship between exposure to diesel exhaust and the risk of lung tumors in rodents. The results of the modeling were used to produce quantitative estimates of the risk of lung cancer in humans.

2. "Pollutant Levels in Underground Coal Mines Using Diesel Equipment." B. Cantrell, K. Rubow, W. Watts, and D. Carlson, BOM, presented at the Society of Mining Engineers, February 25, 1991. This report includes field testing data on the personal diesel exhaust aerosol sampler and an impact assessment on the effects of diesel face haulage equipment on air quality in mines.

3. "Control of Diesel Exhaust Emissions." R. Waytulonis, BOM, Proceedings of the Twenty-first Annual Institute on Coal Mining Health, Safety, and Research, 1990. This paper includes a review of conventional work practices and devices used to control diesel exhaust emission, as well as a discussion of new control techniques being tested by the Bureau of Mines.

4. "Measurement of Coal Dust and Diesel Exhaust Aerosols." K. Rubow, *et al.*, Proceedings of the VIIth International Pneumoconiosis Conference, NIOSH, 1988. This study was conducted to determine the effectiveness of size selective sampling

as a measuring technique for diesel aerosols used in underground coal mines.

5. "Development of a Personal Diesel Aerosol Sampler—Design and Performance Criteria." B. Cantrell and K. Rubow, Preprint No. 90–74, SME Annual Meeting, Salt Lake City, Utah, 1990. This paper covers the design and performance criteria used in developing a personal diesel aerosol sampler.

In addition, MSHA has participated in the development and publication of the following documents pertaining to the measurement of diesel particulate in underground mines and the determination of underground occupational exposures to diesel particulate:

1. "Development and Evaluation of a Diesel Particulate Sampler." T. Tomb, R. Haney, A. Gero, and P. Parobeck, Symposium on Respirable Dust in the Mineral Industries, October 17, 1990. Included in this paper are the results of an MSHA evaluation concerning diesel particulate samplers developed by the University of Minnesota and MSHA. The evaluation was conducted under laboratory conditions as well as in four underground coal mines where diesel-powered equipment is used.

2. "Evaluation of Personal Diesel Particulate Samplers." R. Haney, Proceedings of the 4th U.S. Mine Ventilation Symposium Berkeley, California, 1989. The report describes the evaluation of a prototype impact on sampling devices used to measure submicron particulate levels in underground coal mines.

3. "Diesel Particulate Exposures in Underground Mines." R. Haney, Preprint No. 90–40, Society for Mining, Metallurgy, and Exploration, Inc., SME Annual Meeting, Salt Lake City, Utah, 1990. This paper summarizes exposure to diesel particulate from comparative samples taken from various occupations in both coal and metal/nonmetal mining. In addition, the paper describes and evaluates the accuracy and precision of the instrumentation and analytical methods used.

Other information pertaining to the health risks associated with exposure to diesel particulate is contained in the following publications:

1. "Diesel Particulate Study." (Draft). Emission Control Technology Division, Office of Mobile Sources, Office of Air and Radiation, U.S. Environmental Protection Agency, October 1983. The purpose of this study was to provide a comprehensive assessment of the costs and benefits associated with the control of diesel particulate emissions and to recommend a regulatory strategy for such control.

2. "Air toxic Emissions and Health Risks from Mobile Sources." J. Adler and P. Carey, Air and Waste Management Association Annual Meeting, June 25, 1989. This paper focuses on all air carcinogens emitted from motor vehicles for which EPA has unit risk estimates.

To ensure that all relevant information is considered in the development of a proposed rule, the Agency is seeking further information on the risk associated with exposure to diesel particulate, the methodology available for assessing occupational exposures to diesel particulate, and the technology available or under development to reduce the concentration of diesel particulate in the mining environment. Upon completion of a comprehensive analysis of the comments and any other information received in response to this advance notice of proposed rulemaking (ANPRM), MSHA plans to publish a proposed rule to address the need to adequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards of diesel particulate for the period of his working life. In addition to the attainment of the highest degree of health protection to the miner, other considerations in this proposed rule will be the latest available scientific data, technological and economic feasibility issues, and the Agency's experience under its health regulations.

II. Public Participation

Interested parties are encouraged to submit comments on any of the specific issues identified for public comment and on any other issues dealing with the protection of miners from the hazards of diesel particulate.

As part of this review and in addition to the statutory requirements of the Federal Mine Safety and Health Act of 1977, MSHA will also be evaluating its proposed standards in accordance with Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

III. Specific Issues Identified for Comment

As a diesel particulate standard would affect the entire mining industry, commenters should provide specific justification, based upon particular mining methods, practices, and conditions, for their positions. Comment is requested on the health effects, technological and economic feasibility, and provisions which should be considered for inclusion in a diesel particulate rule. Mine operators and other interested parties should identify and discuss both the quantifiable and nonquantifiable potential benefits and costs of compliance with various levels of diesel particulate, the methods of monitoring to measure exposure, the duration and frequency of exposure, etc. Economic information should include capital, maintenance, and ongoing costs. While MSHA requests comments on all relevant diesel particulate issues, the Agency is particularly interested in comments on the following specific issues.

1. Exposure Limit

What information is available concerning the relationship between working lifetime diesel particulate exposure and a risk of lung cancer or other biological response?

What level of risk should be used to determine a permissible exposure limit for diesel particulate?

What methology (absolute or relative risk) should be used to arrive at the risk relationship? How do factors such as smoking and exposure to other carcinogens affect this relationship?

How should the results of a quantitative risk assessment be used in arriving at an exposure limit?

Should all mines under MSHA jurisdiction be subject to the same exposure limit?

Should a short term exposure limit (STEL) as well as a time weighted average (TWA) permissible exposure limit (PEL) be established?

Should MSHA set an action level for occupational exposure to diesel exhaust? What types of provisions should be established in such a standard? To what extent would these provisions be met by current practices in the mining and other industries, and what would be their costs?

What effect does the environmental background level of diesel particulate have on diesel particulate exposure to miners?

Are there individual components of whole diesel exhaust that would better indicate the carcinogenic hazard than diesel particulate? If so, identify these components.

2. Risk Assessment

In its quantitative risk assessment, NIOSH relied on the Mauderly et al. rodent study to estimate the lung cancer risk to humans exposed to diesel exhaust. NIOSH determined that this study provided the best available data for diesel exhaust risk assessment because it had a long period of follow up, several well-chararacterized

exposure concentrations, and a large number of animals per exposure group.

Using the Armitage-Doll multistage model, NIOSH found statistically significant dose-response relationships which were determined suitable for estimating human risks at expected human doses. However, several comments and studies submitted to the Department of Labor in other rulemakings (e.g., methylene chloride and 1,3-butadiene) have raised the issue that the dose-response risk assessment approach used by the Department and other Federal agencies to estimate the carcinogenic risk to humans may be inappropriate. It is argued that this method does not take into account the metabolic differences between rodents and humans when exposed to certain toxic chemicals. These comments and studies suggest that risk extrapolated from test animals based on applied dose methods may overestimate the cancer risk.

The information acquired through this ANPRM will aid MSHA in resolving the uncertainties and in determining if species differences should be incorporated into NIOSH's model for estimating cancer risks to humans exposed to diesel exhaust.

Epidemiological Studies

To what extent do existing epidemiological studies provide a reliable estimate of the risk of lung cancer from exposure to diesel particulate? How reliable and valid are the outcome data in each study?

What limitations should be applied to interpreting the available epidemiological studies? Should any of the studies be excluded from consideration, either partially or entirely, due to inadequacies in design or in the way they were conducted?

Have the studies used an appropriate comparison population?

Does the possible presence of other carcinogens such as asbestos, arsenic, nickel, or chromium affect the reliability of the study?

Are there inconsistencies among results of epidemiological studies, and if there are, can they be explained?

Animal Studies

Are there animal studies, other than those used in the NIOSH Exploratory Risk Assessment, that should be considered to establish risk?

What parameters should be used to convert animal data to human data (i.e., body weight or surface area, age scaling methods, etc.)?

Appropriateness of Models to Assess Risk

MSHA recognizes the large areas of uncertainty which exist in applied dose risk assessment procedures. Can other forms of modeling (e.g., pharmacokinetics) reduce these uncertainties, and if so, can the reduction in uncertainty be quantified? Are additional uncertainties introduced into the risk assessment process by the use of other models? What weight should MSHA give to other modeling data in its risk assessments and why?

What consideration should be given to selecting a model when using animal data to evaluate the risk associated with exposure to diesel particulate in humans?

Would a linear nonthreshold model extrapolated from elevated exposure levels from animal studies be the most appropriate model to predict average lifetime lung cancer risks from exposure to diesel particulate in humans?

What is the best estimate of a latency period? How should latency be incorporated into the risk assessment model?

Should the risk relationship be modified in some fashion to account for cell repair or other factors?

Does the latency period vary with smoking? Does the latency period vary with total exposure or exposure rate?

Should a maximum likelihood estimate (MLE) or 95 percent upper confidence limit (UCL) estimate of risk be used?

3. Consideration of Other Information

Are there other health effects (noncarcinogenic) that result from exposure to diesel particulate?

What effect does smoking have on the risk of lung cancer in miners exposed to diesel particulate? If there is an effect, is it additive, multiplicative, or is there some other relationship? Is there information to indicate that diesel particulate works in conjunction with other contaminants?

What dermal absorption studies for diesel exhaust are available? What are the potential adverse health effects from dermal exposure alone or from a combined exposure by inhalation and dermal routes?

4. Sampling and Monitoring Methods

What methods are available to measure diesel particulate exposures in underground mines?

Are existing sampling and exposure monitoring methods sufficiently sensitive, accurate and reliable? If not, what methods would be more suitable?

What criteria should be the basis for a sampling strategy?

Would personal or area sampling be more appropriate?

MSHA solicits information on the conditions under which personal or area sampling devices should or should not be used for measuring diesel exhaust exposures.

Are there any surrogate methods available that can be used to monitor diesel particulate levels? What are the advantages, disadvantages, and relative costs for these methods?

5. Feasibility

A critical issue in the development of a diesel particulate standard is the technological feasibility of various techniques for controlling diesel particulate emissions. MSHA recognizes the wide variation in types of mines, equipment, operations, and conditions. As a result, MSHA requests both general and specific information, as well as any other relevant factors regarding the following questions. Commenters should compare alternative approaches in terms of cost and relative effectiveness.

To what extent can the design of a mine, the mining system, and the mine ventilation system be used to control exposure to diesel particulate?

If mine ventilation is used to reduce diesel particulate concentration, what would be the additional costs to reduce the concentration in increments of 100 micrograms per cubic meter of air? Would the potential costs of controlling diesel particulate affect the extent to which diesel equipment is used?

What reduction in the concentration of diesel particulate can be achieved through the use of low sulfur fuels? Does the reduction of a fuel's sulfur content reduce the hazard associated with diesel particulate? Is there a difference in the amount of particulate produced from the use of No. 1 or No. 2 diesel fuel? What is the sulfur content of fuels currently being used at diesel mines? What would be the reduction in diesel particulate if the sulfur content were reduced to 0.05 percent? When will 0.05 percent sulfur fuel be generally available to the mining industry?

What are the differences in the per-gallon costs among No. 1, No. 2, and 0.05 percent sulfur diesel fuel? How much fuel is used annually in the mining industry? What would be the economic impact on mining of using 0.05 percent sulfur fuel?

Are fuel additives available or being developed that can reduce diesel particulate emissions? What diesel particulate emission reductions can be

expected through the use of these fuel additives? Will the use of these fuel additives introduce other health hazards? If so, what specific health hazards would be introduced with the use of these fuel additives? What would be the cost of these additives? Are there any additional advantages to the use of additives, such as increased fuel efficiency?

Are there any anticipated changes in engine design that will affect diesel particulate emissions? What are these expected changes and to what extent will they reduce diesel particulate emissions? When will engines incorporating these designs be available to the mining industry?

What would be the expected increase in price of new diesel equipment or the components incorporating these anticipated changes? Would there be additional operational costs resulting from these changes?

What type of after-treatment devices are available or being developed to reduce particulate emissions from equipment with water bath scrubbers, light duty equipment such as personnel carriers and service vehicles, heavy duty equipment such as load-haul-dump vehicles and haul trucks, and stationary equipment? Will the use of these after-treatment devices introduce other health hazards? What specific health hazards would be introduced with the use of these after-treatment devices?

What diesel particulate reduction can be expected through the use of after-treatment devices? What additional maintenance requirements will be necessary as a result of adding these devices? What problems would be encountered in retrofitting existing equipment with after-treatment devices? What would be the initial cost of the devices, including installation? How long would these devices last before they needed to be replaced? What would be the costs of maintaining these devices? Would there be any loss of production specifically due to the use of these devices?

Manufacturers of engines used in over-the-road vehicles have developed and are developing after-treatment devices for the removal of diesel particulate. What after-treatment devices currently being developed for over-the-road vehicles would be applicable to the mining industry? What diesel particulate reduction can be achieved through the use of these after-treatment devices?

Is specialized training required for diesel mechanics working on equipment that uses particulate reduction technology? If specialized training is required, what type of specialized training should be required, and how extensive and costly would such training be?

What maintenance procedures are effective in reducing diesel particulate emissions from existing diesel-powered equipment? What additional maintenance procedures would be required in conjunction with anticipated developments of new diesel particulate reduction technology? How much time would be required to perform maintenance procedures? What, if any, production loss would occur during the performance of these procedures?

What is the lowest feasible exposure level of diesel exhaust that can be achieved by engineering controls and work practices alone? Are there unique conditions in certain mining settings where feasible engineering controls are not available?

Dated: December 30, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 92-178 Filed 1-3-92; 8:45 am]

BILLING CODE 4510-43-M

VOL
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federal register

Monday
January 6, 1992

Part VI

Department of Education

34 CFR Part 81

General Education Provisions Act; Enforcement: Administrative Law Judges Office Procedural Regulations and Operating Efficiency; Proposed Rule

VOL 57 ISS 3 JA 6 1992 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 81

RIN 1880-AA35

General Education Provisions Act; Enforcement

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend part 81, subparts A and B. Part 81, entitled General Education Provisions Act; Enforcement, contains general procedural rules for proceedings before the Office of Administrative Law Judges (OALJ). The regulations in part 81 implemented amendments to part E of the General Education Provisions Act (GEPA) made by Public Law 100-297, enacted April 28, 1988. These proposed regulations are needed to clarify and refine the existing general procedural regulations and enhance the operating efficiency of the OALJ.

DATES: Comments must be received on or before February 20, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Frank J. Furey, Senior Attorney, Office of Hearings and Appeals, U.S. Department of Education, 490 L'Enfant Plaza, SW., suite 2100, Washington, DC 20219-3644.

FOR FURTHER INFORMATION CONTACT: Frank J. Furey. Telephone (202) 732-1928. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On May 5, 1989, the Secretary published final regulations in the **Federal Register** (54 FR 19512) establishing general procedural rules for proceedings before the Office of Administrative Law Judges (OALJ) authorized by the GEPA amendments and specific rules for OALJ hearings for the recovery of funds. These provisions were published to facilitate implementation of section 3501 of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law 100-297. The Secretary is proposing a number of technical, procedural, and clarifying changes to the existing regulations, which are intended to enhance the operating efficiency of the OALJ.

Summary of Proposed Changes

Subpart A—General Provisions

Subpart A contains general provisions relating to the OALJ, including proceedings designated by the Secretary to be conducted by that office.

Section 81.14 is revised to provide that administrative law judges (ALJs) are not required to grant joint requests for stays for settlement negotiations, but that the ALJs may do so, upon a finding of good cause. The Secretary believes that the ALJs should have the discretion to deny joint requests for stays for settlement negotiations, if they believe that action is appropriate.

Section 81.18 is revised to delete the provision that provides transcripts to non-Departmental parties at no cost. The change permits the Department to recover the actual costs of duplication, as it is permitted to do by law. See Federal Advisory Committee Act section 11, 5 U.S.C. app. (1988).

New § 81.20 governs the process for interlocutory appeal to the Secretary of ALJ interim rulings. Under the current regulations, interim rulings are not appealable to the Secretary. The proposed rule would permit appeals to the Secretary of an interim ruling, if the ruling involves a "controlling question of substantive or procedural law and the immediate resolution of the question will materially advance the final disposition of the proceeding." The standard of "controlling question of law" is taken from Federal Judiciary and Judicial Procedure at 28 U.S.C. 1292, "Interlocutory Decisions." Courts have interpreted the standard "controlling question of law" to include questions of substance and procedure. However, given the novelty of the procedure for this Department, the phrase "substantive or procedural" has been added to clarify that both substantive rulings and interim procedural rulings (including, but not limited to, matters of discovery, venue, and requests for stays) that meet the requirements in the proposed regulation can be appealed to the Secretary. The proposed regulatory language thus makes the intent of the rule clear to the public and the participants in the proceedings.

The discretion to accept a petition for interlocutory review of an interim ruling would reside exclusively with the Secretary. Lack of acceptance by the Secretary, within 15 days of receipt, would be deemed to be a denial of the petition.

New § 81.20 also makes clear that a petition for interlocutory review does not automatically stay the ALJ proceedings. A stay of the ALJ proceedings is discretionary with the ALJ or with the Secretary if the ruling is certified for review. However, this provision does not affect the parties' right to a review of an initial decision under redesignated § 81.32.

Subpart B—Hearings for Recovery of Funds

Subpart B contains the specific rules that apply to OALJ hearings for the recovery of funds under applicable programs.

Section 81.37 imposes a time frame of 10 days during which the authorized Departmental official must provide the ALJ with a copy of any document identified in the written notice of a disallowance decision under redesignated § 81.24(b)(2). The revision also ensures that a copy of the written application for review will be served upon the issuing Departmental official.

Section 81.41 clarifies the procedure for transmitting initial decisions of the ALJ to the Secretary and to the parties.

Section 81.42 reflects technical amendments that clarify the location for filing a petition for review by the Secretary of an initial ALJ decision. The revision clarifies the processes for the Secretary's review and modifies the provisions for service.

Section 81.43 reflects a technical amendment, deleting language prohibiting the interlocutory review of an ALJ ruling by the Secretary. This revision conforms to the addition of the proposed rule for interlocutory review at § 81.20. Section 81.43 also is revised to eliminate the provision permitting the standard of the Secretary to receive new evidence on review under "extraordinary circumstances;" the revision provides for the Secretary, for good cause shown, to remand the case to the ALJ to take further evidence, thereby directly conforming to section 452 of GEPA.

Section 81.44 explains the procedure for issuing decisions of the Secretary.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

While some small local educational agencies and small nonprofit organizations would be affected by these regulations, the Secretary does not

expect the total number of these entities to be significant in relation to the total number of entities that would be subject to these regulations. Also, the impact on small entities would be minimal.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Suite 2100, 490 L'Enfant Plaza, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Education Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 81

Enforcement, General education provisions act.

Dated: December 30, 1991.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by amending part 81 as follows:

PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

1. The authority citation for part 81 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 1234–1234i, 3474(a), unless otherwise noted.

2. Section 81.2 is amended by revising the definition of *Secretary* to read as follows:

§ 81.2 Definitions.

* * * * *

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

* * * * *

3. Section 81.14 is amended by revising paragraph (a) to read as follow:

§ 81.14 Settlement negotiations.

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations, or for approval of a settlement agreement, the ALJ may grant a stay of the proceedings upon a finding of good cause.

* * * * *

4. Section 81.18 is amended by revising paragraph (a) to read as follows:

§ 81.18 The record.

(a) The ALJ arranges for any evidentiary hearing or oral argument to be recorded and transcribed and makes the transcript available to the parties. Transcripts are made available to non-Departmental parties at a cost not to exceed the actual cost of duplication.

* * * * *

§§ 81.20–81.35 [Redesignated as §§ 81.30–81.45]

5. Sections 81.20 through 81.35 are redesignated as §§ 81.30 through 81.45, respectively.

6. In the list below, for each redesignated section in the left column, remove the cross-reference in the middle column and add, in its place, the cross-reference listed in the right column:

Section	Remove	Add
81.30(a)	81.21	81.31
81.31(a)	81.22	81.32
81.31(c)	81.24	81.34
81.34(a)	81.20	81.30
81.35(a)	81.21	81.31
81.35(c)	81.26	81.36
81.37(b)	81.24(b)(2)	81.34(b)(2)
81.38(b)	81.24	81.34
81.38(b)(1)(ii)	81.24	81.34
81.38(c)	81.24	81.34
81.38(c)	81.27	81.37
81.38(c)(1)	81.27(d)	81.37(d)
81.38(c)(3)	81.27	81.37
81.39(a)	81.27	81.37
81.40	81.26	81.36
81.40(c)	81.22	81.32
81.40(d)	81.23	81.33
81.45(b)(1)	81.27	81.37
81.45(b)(2)	81.34	81.44
81.45(d)	81.26	81.36
81.45(d)	81.34	81.44

7. A new § 81.20 is added to subpart A to read as follows:

§ 81.20 Interlocutory appeals to the Secretary from rulings of an ALJ.

(a) A ruling by an ALJ may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of an initial decision, grant review of a ruling upon either an ALJ's certification of the ruling to the Secretary for review, or the filing of a petition seeking review of an interim ruling by one or both of the parties, if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case.

(2) A petition may not exceed ten pages, double-spaced, and must be accompanied by a copy of the ruling and any findings and opinions relating to the ruling. The petition must be filed with the Office of Hearings and Appeals, which immediately forwards the petition to the Office of the Secretary.

(c) A copy of the petition must be provided to the ALJ at the time the petition is filed under paragraph (b)(2) of this section, and a copy of a petition or any certification must be served upon the parties by certified mail, return receipt requested. The petition or certification must reflect that service.

(d) If a party files a petition under this section, the ALJ may certify to the Secretary that review is either appropriate or inappropriate by submitting a brief statement addressing a party's petition within 10 days of the ALJ's receipt of the petition for interlocutory review. A copy of the certification must be served on all parties by certified mail, return receipt requested.

(e) A party's response, if any, to a petition or certification for interlocutory review must be filed within seven days after service of the petition or certification, and may not exceed ten pages, double-spaced, in length. A copy of the response must be served on all parties and the ALJ by hand delivery or regular mail.

(f) The filing of a request for interlocutory review does not automatically stay the proceedings. Rather, a stay during consideration of a petition for review may be granted by the ALJ if the ALJ has certified to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a request for interlocutory review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the ALJ's ruling.

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1234(f)(1)).

8. Redesignated § 81.37 is amended by revising paragraphs (a) and (b), redesignating paragraphs (c) and (d) as (d) and (e), respectively, and adding a new paragraph (c) to read as follows:

§ 81.37 Application for review of a disallowance decision.

(a) If a recipient wishes to obtain review of a disallowance decision, the recipient shall file a written application for review with the Office of Hearings and Appeals, and, as required by § 81.12(b), shall serve a copy on the applicable Departmental official who made the disallowance decision.

(b) A recipient shall file an application for review not later than 30 days after the date it receives the notice of a disallowance decision.

(c) Within 10 days after receipt of a copy of the application for review, the authorized Departmental official who made the disallowance decision shall provide the ALJ with a copy of any document identified in the notice pursuant to § 81.34(b)(2).

* * * * *

9. Redesignated § 81.41 is amended by revising paragraph (c) to read as follows:

§ 81.41 Initial decision.

* * * * *

(c) The initial decision is transmitted to the Secretary by hand-delivery or Department mail, and to the parties by certified mail, return receipt requested, by the Office of Administrative Law Judges.

(Authority: 5 U.S.C. 557(c); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a)).

* * * * *

10. Redesignated § 81.42 is revised to read as follows:

§ 81.42 Petition for review of initial decision.

(a) If a party seeks to obtain the Secretary's review of the initial decision of an ALJ, the party shall file a petition for review by hand delivery or mail with the Office of Hearings and Appeals, which immediately forwards the petition to the Office of the Secretary.

(b) A party shall file a petition for review not later than 30 days after the date it receives the initial decision.

(c) If a party files a petition for review, the party shall serve a copy of the petition on the other party by hand delivery or by mail.

(d) Any written submission to the Secretary under this section must be accompanied by a statement certifying the date that the filed material was served on the other party.

(e) A petition for review of an intitial decision must contain—

(1) The identity of the initial decision for which review is sought; and

(2) A statement of the reasons asserted by the party for affirming, modifying, setting aside, or remanding the initial decision in whole or in part.

(f)(1) A party may respond to a petition for review of an initial decision by filing a statement of its views on the issues raised in the petition with the Secretary, at the address set forth in paragraph (a) of this section, not later than 15 days after the date it receives the petition.

(2) A party shall serve a copy of its statement of views on the other party by hand delivery or mail, and shall certify that it has done so pursuant to the provisions of paragraph (d) of this section.

(g)(1) The filing date for written submissions under this section is either—

(i) The date of hand delivery; or

(ii) The date of mailing.

(2) If a scheduled filing date falls on a Saturday, Sunday or a Federal holiday, the filing deadline is the next business day.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(e), 3474(a)).

11. Redesignated § 81.43 is revised to read as follows:

§ 81.43 Review by the Secretary.

(a) The Secretary's review of an initial decision is based on the record of the case, the initial decision, and any proper submissions of the parties or other participants in the case.

(b) The ALJ's findings of fact, if supported by substantial evidence, are conclusive.

(c) The Secretary may affirm, modify, set aside, or remand the ALJ's initial decision.

(1) If the Secretary modifies, sets aside, or remands an initial decision, in whole or in part, the Secretary's decision includes a statement of reasons that supports the Secretary's decision.

(2)(i) The Secretary may remand the case to the ALJ with instructions to make additional findings of fact or conclusions of law or both based on the evidence of record. The Secretary may also remand the case to the ALJ for further briefing or for clarification or revision of the initial decision.

(ii) If a case is remanded, the ALJ shall make new or modified findings of fact or conclusions of law or otherwise modify the initial decision in accordance with the Secretary's remand order.

(iii) A party may appeal a modified decision of the ALJ under the provisions of §§ 81.42, *et seq.* However, upon that review, the ALJ's new or modified findings, if supported by substantial evidence, are conclusive.

(3) The Secretary, for good cause shown, may remand the case to the ALJ to take further evidence, and the ALJ may make new or modified findings of fact and may modify the initial decision based on that new evidence. These new or modified findings of fact are likewise conclusive if supported by substantial evidence.

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(d), 3474(a)).

12. Redesignated § 81.44 is amended by revising paragraph (b) to read as follows:

§ 81.44 Final decision of the Department.

* * * * *

(b) If the Secretary modifies or sets aside the ALJ's initial decision, a copy of the Secretary's decision is sent by the Office of Hearings and Appeals to the parties by certified mail, return receipt requested. The Secretary's decision becomes the final decision of the Department on the date the recipient receives the Secretary's decision.

* * * * *

[FR Doc. 92-169 Filed 1-3-92; 8:45 am]
BILLING CODE 4000-01-M

federal register

Monday
January 6, 1992

Part VII

Department of Education

Office of Postsecondary Education

Perkins Loan, College Work-Study and Supplemental Educational Opportunity Grant Programs; Notice

VOL 57 ISS 3 JA 6 1992 UMI

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Perkins Loan, College Work-Study and Supplemental Educational Opportunity Grant Programs; Closing Date for Institutions to File an Application for Institutional Eligibility and Certification for Participation in the Campus-Based Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to file an "Application for Institutional Eligibility and Certification" (ED Form E–40–34P, OMB #1840–0098) to participate in the Perkins Loan, College Work-Study and Supplemental Educational Opportunity Grant Programs for the 1992–93 Award Year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that filed a Fiscal Operations Report and Application to Participate (FISAP) (ED Form 646–1) in one or more of the "campus-based programs" for the 1992–93 award year to submit to the Secretary an "Application for Institutional Eligibility and Certification" and all documents required for an eligibility determination.

The campus-based programs are the Perkins Loan Program, the College Work-Study Program and the Supplemental Educational Opportunity Grant Program and are authorized by title IV of the Higher Education Act of 1965, as amended. The 1992–93 award year is July 1, 1992 through June 30, 1993.

DATES: Closing date for filing application and required documents. To participate in a campus-based program in the 1992-93 award year, a currently ineligible institution must mail or hand-deliver its "Application for Institutional Eligibility and Certification" on or before February 3, 1992. The application along with all documents required for an eligibility determination must be submitted to the Division of Eligibility and Certification at one of the addresses indicated below.

ADDRESSES: Applications and required documents delivered by mail. An institutional eligibility application and required documents delivered by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: DEC/DCMAS/OPE, room 3633, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202–4725.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Institutions that submit eligibility applications and required documents after the closing date will not be considered for funding under the campus-based programs for award year 1992–93.

Applications and Required Documents Delivered by Hand. An institutional eligibility application and required documents delivered by hand must be taken to the U.S. Department of Education, Application Control Center, room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC. The Application Control Center will accept hand-delivered applications between 8 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays and Federal holidays. An application for eligibility for the 1992–93 award year that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs for award year 1992–93 to any currently ineligible institution unless the institution files its "Application for Institutional Eligibility and Certification" and other required documents by the closing date. If the institution submits its institutional eligibility and certification application or other required documents after the closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 1993–94 award year.

For purposes of this notice, ineligible institutions only include:

(1) An institution that has not been designated as an eligible institution by the Secretary, but has previously filed a FISAP.

(2) An off-campus site of an eligible institution that is currently not included in the Department's eligibility certification for the eligible institution, but has been included in the institution's 1992–93 FISAP.

(3) A branch campus that is currently part of an eligible institution, but has filed its own FISAP and is seeking eligibility as a separate institution of higher education.

The Secretary wishes to advise institutions that the institutional eligibility form, "Application for Institutional Eligibility and Certification," should not be confused with the FISAP form that institutions were required to mail by October 1, 1991 for diskette or magnetic tape filers, or to transmit electronically via modem by October 1, 1991 for electronic FISAP filers, in order to be considered for funds under the campus-based programs for the 1992–93 award year.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) Perkins Loan Program, 34 CFR part 674.

(3) College Work-Study Program, 34 CFR part 675.

(4) Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(6) New Restrictions on Lobbying, 34 CFR part 82.

(7) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(8) Drug-Free Schools and Campuses, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: For information concerning designation of eligibility, contact Carol F. Sperry, Director, Division of Eligibility and Certification, Office of Postsecondary Education, U.S. Department of Education, room 3030, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202–5242. Telephone: (202) 708–4906.

For technical assistance concerning the FISAP and/or other operational procedures of the campus-based programs, contact: Robert R. Coates, Chief, Campus-Based Programs Branch, Division of Program Operations and Systems, room 4621, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202–5347. Telephone:

(202) 708–9711. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., eastern time.

Program Authority: 20 U.S.C. 1807 *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Catalog of Federal Domestic Assistance, Supplemental Educational Opportunity Grant Program, 84.007; College Work-Study Program, 84.033; Perkins Loan Program, 84.037.

Dated: December 27, 1991.

John B. Childers,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 92–191 Filed 1–3–92; 8:45 am]

BILLING CODE 4000-01-M

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federal register

Friday
January 3, 1992

Part VIII

Department of Transportation

Coast Guard

46 CFR Part 35

Tank Vessels: Automatic Pilot Use; Area Restrictions and Performance Requirements; Proposed Rule

VOL 57 ISS 3 JA 6 1992 UMI

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 35

[CGD 91-204]

RIN 2115-AE00

Use of Automatic Pilot: Area Restrictions and Performance Requirements

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to implement a provision of section 4114(a) of the Oil Pollution Act of 1990 (OPA 90), by defining the conditions under which, and designating the waters where, tank vessels may operate with the automatic pilot engaged. This proposed rulemaking will promote the safe operations of tank vessels in U.S. waters. Section 4114(a) also requires restrictions on operations of tank vessels with unattended machinery spaces. Regulations restricting operations with unattended machinery spaces are the subject of a separate rulemaking.

DATES: Comments must be received on or before March 6, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 91-204), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters. A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at room B110, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LCDR Paul Jewell, Project Manager, Oil Pollution Act Office, United States Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-6746.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91-204) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or enveolope. The Coast Guard will consider all comments received during the comment period.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** If the Coast Guard determines that oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal drafters of this document are Joan Tilghman, Project Counsel, and LCDR Paul Jewell, Project Manager.

Background and Purpose

Section 4114(a) of OPA 90 requires the Coast Guard to define the conditions under, and designate the waters upon, which tank vessels may operate in U.S. navigable waters with the automatic pilot engaged. "Tank vessels" to which 46 U.S.C. 3703 applies are defined in 46 U.S.C. 2101(39) as: any "* * * vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(A) Is a vessel of the United States;

(B) Operates on the navigable waters of the United States; or

(C) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States."

Although unmanned barges are considered tank vessels, this rule does not affect barges because they are not equipped with automatic pilots. Towing vessels, including any tug which is part of an integrated tug/barge combination, are not subject to this rule because these towing vessels are not constructed or adapted to carry oil in bulk as cargo. Section 4114 specifies that this rule apply only on the navigable waters of the U.S. Navigable waters as defined in 33 U.S.C. 2701 "means the waters of the United States, including the territorial sea." This definition does not encompass the waters of the Exclusive Economic Zone (EEZ). Additionally, under 46 U.S.C. 3702, "Foreign vessels on innocent passage on the navigable waters of the United States" are exempt from rules issued under the authority of 4114(a).

Among other things, the purpose of OPA 90 is to reduce the risk of the discharge of oil into the navigable waters of the United States. Section 4114(a) focuses on reducing vessel casualties and marine pollution incidents by requiring the Secretary of Transportation to issue regulations defining the conditions under which, and designating the waters where, an automatic pilot may be used on tank vessels operating in U.S. waters.

In 1977, the Coast Guard proposed a rule to prohibit the use of automatic pilots, to require that machinery spaces be manned, and to require the anchor detail set in specific U.S. waters. The Coast Guard initiated this rulemaking in an attempt to resolve the problems associated with navigation in congested and confined waters. The resulting list of specified waters was confusing to mariners because they would have been required to learn and chart new areas where the rule applied. Many commenters objected to the 1977 proposal, and the Coast Guard withdrew it after further consideration because it was determined that the rule would present an undue burden both to the mariner and the Coast Guard.

Section 4114(a) now directs the Coast Guard to establish parameters for using automatic pilots and for operating with machinery spaces unattended. The Coast Guard is proposing an approach restricting the use of automatic pilots in waters that mariners already know require additional navigational care. Tank vessel watch officers and pilots can rely on their existing knowledge of these waters and will not need to learn or chart new areas where the automatic pilot rule applies. Regulations restricting operations with unattended machinery spaces are the subject of a separate rulemaking (USCG docket #91-203).

Discussion of Proposed Amendment

The Coast Guard proposes to establish minimum performance and operating standards for using automatic pilots in U.S. navigable waters. These rules will be in addition to requirements already imposed under 33 part 164. Navigating with the automatic pilot engaged will be permitted, except in the following waters designated in title 33, Code of Federal Regulations: Traffic separation schemes (33 CFR part 167), regulated navigation areas (33 CFR part 165), shipping safety fairways (33 CFR part 166), anchorage areas (33 CFR part 110), VTS areas (33 CFR part 161), and areas within one-half mile of shore. Tank vessels transiting those waters will be required to operate under manual control without the automatic pilot engaged.

This proposed rule permits masters of tank vessels to take advantage of

modern technology, consistent with the practice of good seamanship, but also will recognize that specific U.S. waters should be navigated with an extra measure of caution. Tank vessel watch officers and pilots are familiar with these waters because these waters are generally shown on nautical charts and are already subject to regulation. The Coast Guard proposes to designate those waters as waters where an automatic pilot cannot be engaged. This approach eliminates the need for mariners to learn and chart new areas where the automatic pilot rule applies.

In a separate action to implement other OPA 90 provisions, the Coast Guard is developing regulations to require towing vessel escorts for tankers in certain waters. If those regulations become final, the Coast Guard will consider including towing vessel escort waters as areas where the automatic pilot cannot be engaged.

Requiring a helmsman to steer a tank vessel manually in designated areas will ensure quick action on the orders of the licensed bridge officer to respond to situations which require immediate corrective action. This practice should result in the avoidance of certain types of navigational hazards, and should reduce the risk of maritime casualties in U.S. waters.

Under the proposed rule, where using the automatic pilot is permitted in U.S. navigable waters, its use must conform to certain technical standards specified and recommended by the International Maritime Organization (IMO). These IMO standards specify that automatic pilot equipment be able to provide reliable operation under prevailing conditions, be outfitted with course deviation and power failure alarms, and be capable of 3 second changover from one steering mode to another. The IMO standards govern the location, type, and adjustment features of the automatic pilot equipment. This proposed rule also specifies that a qualified helmsman must be present at the helm when a tank vessel is operating with the automatic pilot engaged.

Incorporation by Reference

The following material would be incorproated by reference in § 35.01–3: International Maritime Organization (IMO) Resolution A.342(IX) adopted November 12, 1975. Copies of the material are available for inspection where indicated under "ADDRESSES." Copies of the material are available at the addresses in § 35.01–3.

Regulatory Evaluation

The Coast Guard has determined that this proposal is not major under Executive Order 12291. There will be no cost to vessel owners in complying with this proposal because the rule will not require vessels to increase crew size or add equipment. This proposal will have no significant adverse effects on competition, employment, or other aspects of the economy; and it will not result in a major increase in costs and prices. This proposal is not significant under the Department of Transportation Regulatory Policies and Procedures for Simplification Analysis and Review of Regulations (Order 2100.5), because its cost is expected to be minimal and it does not meet any of the criteria listed in paragraph 6(a)(2) of the Order.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). "Small entities" also include small not-for-profit organizations and small governmental jurisdictions. Since there is no cost associated with this rule, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has prepared a preliminary Environmental Assessment (EA) for this action, in accordance with the Council on Environmental Quality regulations (40 CFR parts 1500–1508) and Coast Guard policy (COMDTINST M16475.1B) implementing the procedural provisions of the National Environmental Policy Act (NEPA). The EA discusses the environmental consequences of the proposed action and alternatives, including the no-action alternative. The preliminary EA is available in the docket. After receipt of all comments to this proposed rulemaking action and comments to the EA, a final decision on the need to draft an Environmental Impact Statement (EIS) will be made.

List of Subjects in 46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR part 35 as follows:

1. The authority citation for part 35 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; Pub. L. 101–380 § 4114(a), Aug. 18, 1990, 104 Stat. 484; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Section 35.01–3 is revised to read as follows:

§ 35.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and make the material available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), or at the Oil Pollution Act Staff (G–MS), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials	
1916 Race St., Philadelphia, PA 19103	
ASTM D–93–80, Test Method for Flash Point by Pensky-Martens Closed Tester, 1980	35.25–10
ASTM F1014–1986, Standard Specification for Flashlights on Vessels	35.25–20

International Maritime Organization (IMO)	
4 Albert Embankment, London SE1 7SR, U.K.	
IMO Resolution A.342(IX), Recommendation on Performance Standards for Automatic Pilots	35.20–45
National Fire Protection Standards (NFPA)	
Batterymarch Park, Quincy, MA 02269	
NFPA 306, Standard for the Control of Gas Hazards on Vessels to be Repaired, 1987	35.01–1

3. Section 35.20–45 is revised to read as follows:

§ 35.20–45 Use of automatic pilot—T/ALL.

(a) Tank vessels may engage the automatic pilot if all of the following conditions exist:

(1) The operation and performance of the automobile pilot conforms with the standards recommended by the IMO in Resolution A.342(IX) adopted November 12, 1975;

(2) An Able Seaman or Licensed Deck Officer is present at the helm, prepared at all times to assume manual control when instructed to do so by the deck officer of the watch; and

(3) The vessel is not operating in:

(i) The areas of the traffic separation schemes specified in 33 CFR part 167 which lie within U.S. navigable waters;

(ii) A regulated navigation area specified in 33 CFR part 165;

(iii) Those portions of a shipping safety fairway specified in 33 CFR part 166 which lie within U.S. navigable waters;

(iv) An anchorage area specified in 33 CFR part 110;

(v) A Vessel Traffic Service Area specified in 33 CFR part 161; or

(vi) An area within one-half nautical mile of any U.S. shore.

Dated: December 30, 1991.

A. E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–159 Filed 1–3–92; 8:45 am]

BILLING CODE 4910–14–M

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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A new table will be published in the first issue of each month.

Editorial Note: This table replaces and corrects the table published on Thursday, January 2, 1992.

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January 9	January 24	February 10	February 24	March 9	April 8
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January 13	January 28	February 12	February 27	March 13	April 13
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January 22	February 6	February 21	March 9	March 23	April 21
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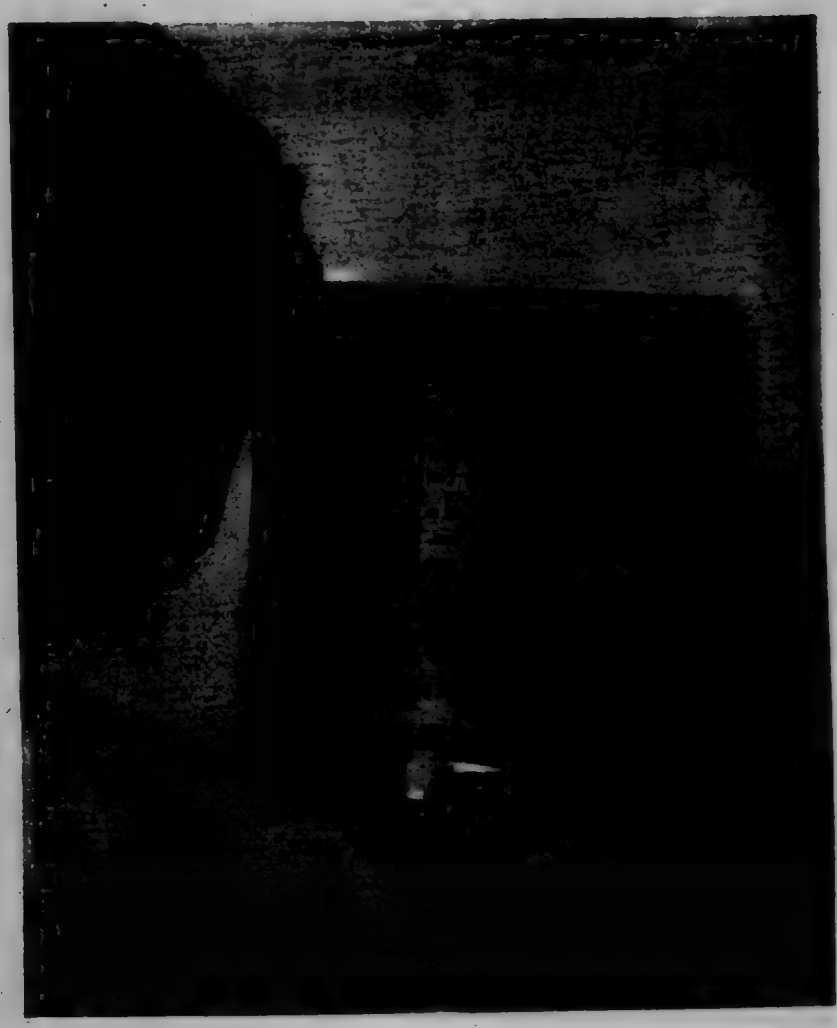

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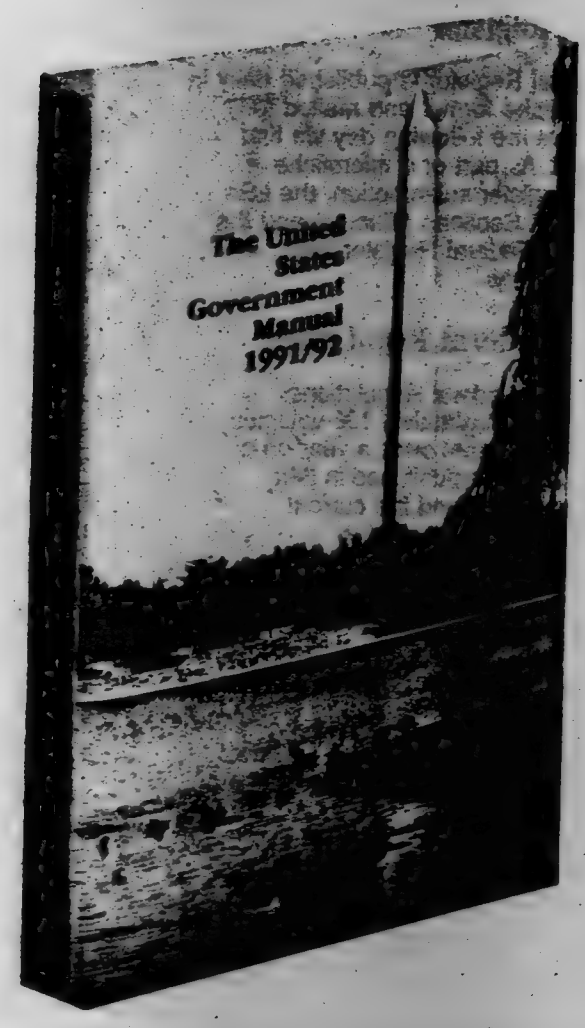

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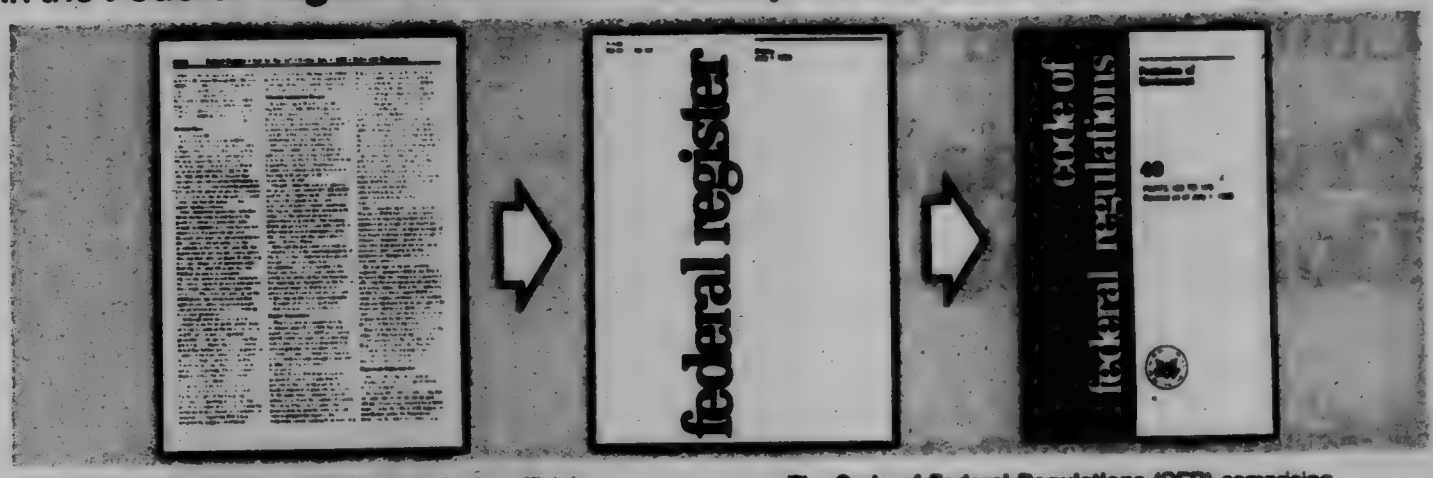

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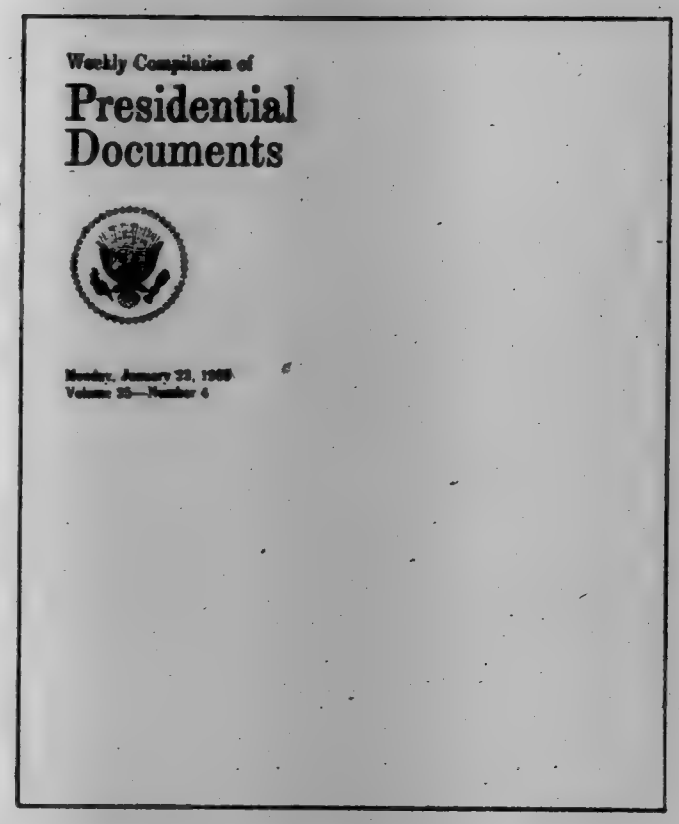

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1-7-92
Vol. 57 No. 4
Pages 517-600

federal register

Tuesday
January 7, 1992

VOL
57
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

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Presidential Documents

Title 3—

The President

Executive Order 12787 of December 31, 1991

The Order of Succession of Officers To Act as Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 3347 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Succession to the Authority of the Secretary of Defense.*

(a) In the event of the death, permanent disability, or resignation of the Secretary of Defense, the incumbents holding the Department of Defense positions designated below shall, in the order indicated, act for and exercise the powers of the Secretary of Defense:

(1) Deputy Secretary of Defense.

(2) Secretary of the Army.

(3) Secretary of the Navy.

(4) Secretary of the Air Force.

(5) Under Secretary of Defense for Acquisition.

(6) Under Secretary of Defense for Policy.

(7) Deputy Under Secretary of Defense for Acquisition.

(8) Director of Defense Research and Engineering, Assistant Secretaries of Defense, the Comptroller of the Department of Defense, the Director of Operational Test and Evaluation, the Deputy Under Secretary of Defense for Policy, and the General Counsel of the Department of Defense, in the order fixed by their length of service as permanent appointees in such positions.

(9) Under Secretaries of the Army, the Navy, and the Air Force, in the order fixed by their length of service as permanent appointees in such positions.

(10) Assistant Secretaries and General Counsels of the Army, the Navy, and the Air Force, in the order fixed by their length of service as permanent appointees in such positions.

(b) In the event of the temporary absence or temporary disability of the Secretary of Defense, the incumbents holding the Department of Defense positions designated in paragraph (a) of this section shall, in the order indicated, act for and exercise the powers of the Secretary of Defense.

(1) In these instances, the designation of an Acting Secretary of Defense applies only for the duration of the Secretary's absence or disability, and does not affect the authority of the Secretary to resume the powers of his office upon his return.

(2) In the event that the Secretary of Defense is merely absent from his position, the Secretary may continue to exercise the powers and fulfill the duties of his office during his absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraph (a) of this section who have the same date of appointment shall be determined by the Secretary of Defense at the time that such appointments are made.

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(d) Notwithstanding paragraphs (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of Defense under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

Sec. 2. *Temporary Nature of Succession.*

Succession to act for and exercise the powers of the Secretary of Defense pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

Sec. 3. *Revocation of Prior Executive Order.*

Executive Order No. 12514 of May 14, 1985, is hereby revoked.

George Bush

THE WHITE HOUSE,
December 31, 1991.

[FR Doc. 92-401
Filed 1-3-92; 2:03 pm]
Billing code 3195-01-M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-174]

Mexican Fruit Fly; Addition of Regulated Area in Los Angeles, CA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations to quarantine the State of California and designate a portion of Los Angeles County as a regulated area, and by listing American Samoa, the Northern Mariana Islands, and the parts of Louisiana not previously listed, as areas into or through which the movement of regulated articles is restricted. This action is necessary on an emergency basis to prevent the spread of the Mexican fruit fly to noninfested areas of the United States and to impose certain restrictions on the movement of regulated articles from regulated areas in California and Texas, into or through American Samoa, the Northern Mariana Islands, and the parts of Louisiana not previously listed.

We are also amending the Mexican fruit fly regulations by adding two alternative treatments to the list of approved treatments that may be used to qualify regulated articles for interstate movement with a certificate.

DATES: Interim rule effective December 31, 1991. Consideration will be given only to comments received on or before March 9, 1992.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-174. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Mike B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 640, Federal Building 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and many other types of fruits. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas. The Mexican fruit fly regulations, contained in 7 CFR 301.64 *et seq.* (referred to as the regulations), restrict the interstate movement of regulated articles from regulated areas in order to prevent the spread of the Mexican fruit fly to noninfested areas.

Until the effective date of this interim rule, Texas was the only State quarantined because of the Mexican fruit fly. Regulated areas within Texas are listed in paragraph (c) of § 301.64-3 of the regulations.

Regulated articles are listed in paragraph (a) of § 301.64-2 of the regulations and include, but are not limited to, avocados, apples, peaches, pears, plums, prunes, pomegranates, and certain varieties of citrus fruit.

Quarantined Areas

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), an agency of the U.S. Department of Agriculture, reveal that infestations of Mexican fruit fly have been discovered in Los Angeles County near Maywood, California.

The regulations in § 301.64-3 provide that the Deputy Administrator of APHIS for Plant Protection and Quarantine shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine and regulations that impose restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed with respect to the interstate movement of these articles; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

Accordingly, we are designating California as a quarantined State and designating as a regulated area the following portion of Los Angeles County:

California

Los Angeles County

That portion of the county near the Maywood area bounded by a line drawn as follows: Beginning at the intersection of San Pedro Street and Interstate 10; then east on Interstate 10 to where it becomes Interstate 60; east on Interstate 60 to its intersection with Garfield Avenue; then south on Garfield to its intersection with Whittier Boulevard; then east on Whitter Boulevard to its intersection with Rosemead Boulevard; then south on Rosemead Boulevard to where it becomes Lakewood Boulevard; then south on Lakewood Boulevard to its intersection with Imperial Highway; then west on Imperial Highway to its intersection with Central Avenue; then north on Central Avenue to its intersection with Adams Boulevard; then northwest on Adams Boulevard to its intersection with San Pedro Street; then north on San Pedro to the point of beginning.

There does not appear to be any reason to designate any other regulated areas in California. California has

adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles under this subpart.

In a document published in the **Federal Register** on August 20, 1991 (56 FR 41311–41313, Docket No. 88–148), we proposed to list American Samoa, the Northern Mariana Islands, and the portion of the State of Louisiana not previously listed, as areas into or through which the movement of regulated articles is restricted. We also proposed to add two alternative treatments, one for premises and one for grapefruit and oranges, to the list of approved treatments that may be used to qualify regulated articles for interstate movement with a certificate.

Comments on the proposed rule were required to be received on or before September 19, 1991. We received one comment in favor of the rule as proposed by the close of the comment period. With the exception of the treatment for premises, we are incorporating those proposed changes into this document, as explained below.

Interstate Movement

In accordance with the regulations, regulated articles moved interstate from a regulated area are subject to certain restrictions if moved into or through areas listed in paragraph (b) of § 301.64. These areas are susceptible to infestations by the Mexican fruit fly due to a combination of climatic conditions and available host material, primarily citrus. Until the effective date of this interim rule, the listed areas were Arizona, California, Florida, Guam, Hawaii, Puerto Rico, Texas, the Virgin Islands of the United States, and the parishes of Iberia, Jefferson, Lafayette, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. Mary, and Terrebonne in Louisiana.

As explained in the proposed rule of August 20, we have determined that climate and citrus plantings in American Samoa, Louisiana, and the Northern Mariana Islands create a favorable environment for the Mexican fruit fly. We are therefore adding the remainder of the State of Louisiana, as well as American Samoa and the Northern Mariana Islands, to the list of areas into or through which the movement of regulated articles is restricted. This action is necessary to prevent these areas from becoming infested with the Mexican fruit fly.

Treatments

We are amending § 301.64–10 of the regulations, which sets forth treatments for regulated articles. Under the regulations, a regulated article from a regulated area is eligible for interstate movement pursuant to a certificate if, among other things, it has been treated in accordance with § 301.64–10 of the regulations. In addition, a regulated article from a regulated area is eligible for interstate movement pursuant to a limited permit if it is moving under certain conditions to a specified destination for treatment. As explained in the proposed rule of August 20, it has been determined that there are two additional treatments for regulated articles that are adequate to destroy the Mexican fruit fly in fruit or maintain the premises of origin free from the Mexican fruit fly.[1]

The first treatment is a fumigation treatment for grapefuit and oranges, as follows:

Grapefruit and oranges: Methyl bromide at normal atmospheric pressure—chamber only: 40g/m³ (2-1/2 lb/1000 ft³) for 2 hours at 21-29 °C (70-85 °F).

The other treatment, when applied to premises on which any of the regulated articles listed in paragraph (a) of § 301.64-2 are growing, would qualify these articles for interstate movement. The August 20 proposed rule stated that any and all articles listed in § 301.64-2(a), and that are growing within the regulated areas, must receive three or more applications of malathion bait spray at 6- to 10-day intervals, starting at least 30 days before harvest and continuing through the harvest period. The malathion bait spray treatment must be applied at a rate of 2.4 ounces of active ingredient of malathion and 9.6 ounces of protein hydrolysate per acre. However, in this document we are changing the procedure from what was proposed to the following:

A field, grove, or area that is located within the quarantined area but outside the core area, and that produces regulated articles, must receive regular treatments with malathion bait spray. These treatments must take place at 6- to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Mexican fruit fly. Determination of the time period must be based on the day degrees model for Mexican fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 ounces of technical grade malathion and 9.6 ounces of protein hydrolysate per acre.

Definitions of two terms used above, core area and day degrees, are added to § 301.64-1 to read as follows:

Core area. The 1 square mile area surrounding each property where Mexican fruit fly has been detected.

Day degrees. A mathematical construct combining average temperature over time that is used to calculate the length of a Mexican fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F:

(Minimum Daily Temp + Maximum Daily Temp)/2) − 54° = Day Degrees.

The 30-day malathion bait spray treatment is an effective treatment for fruit (e.g. stone fruit) that matures within an approximate 30-day period and is then harvested. However, a 30-day treatment is not as valid for use on fruit, such as citrus, that can remain on a tree in a mature state for a long period of time. Mexican fruit fly larvae can be present within citrus for up to 50–60 days, depending upon the average daily temperatures. To ensure the treatment is effective for citrus, the time period for treatments must be based on the day degrees model for Mexican fruit fly.

We have also decided that fruit within the core area of an infestation should not qualify for interstate movement with this treatment because of the increased risk that fruit from this area may be infested.

Emergency Action

Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mexican fruit fly from spreading to noninfested areas of the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any

[1] A copy of the research upon which the determination is based may be obtained by writing to the Administrator, c/o Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of the Management and Budget has waived the review process required by Executive Order 12291.

This interim rule restricts the interstate movement of regulated articles from a portion of Los Angeles County in California. Within the regulated area there are approximately 376 small entities that may be affected by this rule. These include 150 fruit/produce markets, 38 nurseries, 180 mobile vendors, 6 flea markets, and 2 processors. There are no growers in the regulated area who would be affected. These 376 entities comprise less than one percent of the total number of similar entities operating in the State of California. Most of the sales for these entities involve local intrastate movements. Also many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this rule on these entities appears to be minimal. The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

This interim rule also adds American Samoa, the Northern Mariana Islands, and additional parts of Louisiana not previously listed to the list of areas into or through which the movement of regulated articles is restricted.

Based on a review of available records, there appears to be very little movement of regulated articles from regulated areas in California and Texas directly to American Samoa and the Northern Mariana Islands. We have determined that American Samoa and the Northern Mariana Islands do not provide a substantial market for regulated articles from regulated areas in California and Texas.

Available records also indicate that most shipments of citrus fruit or other regulated articles from regulated areas in Texas, into the portion of Louisiana previously not listed, are channeled there by brokers in New Orleans, Louisiana. New Orleans is within the area of Louisiana that has been listed as an area into or through which the movement of regulated articles is restricted. Therefore, all regulated articles shipped from regulated areas in Texas into this city have been accompanied by a certificate. The certificate indicates that the regulated articles have been inspected by an Animal and Plant Health Inspection Service (APHIS) inspector and determined to be free of Mexican fruit fly, or have been treated under the direction of an APHIS inspector in accordance with § 301.64–10 of the regulations.

Further, this rule allows entities to continue shipping regulated articles from regulated areas in California and Texas to American Samoa, all parts of Louisiana, and the Northern Mariana Islands provided certain conditions—ranging from inspection to treatment—are met.

Adding two alternative treatments to the list of approved treatments is unlikely to affect the amount of regulated articles that are moved to restricted areas from regulated areas in Texas, since most citrus and other regulated articles moved interstate by these entities are certified for such movement without the need for treatment. (The regulations in § 301.64–5 state, in part, that a regulated article may be moved interstate, with a certificate, if an inspector determines that the regulated article is free from the Mexican fruit fly, or if the inspector determines that the premises of origin is free from the Mexican fruit fly and the regulated article has not been exposed to the Mexican fruit fly. Treatment, therefore, becomes necessary only if the above conditions cannot be met.)

A cold treatment is currently available for regulated articles. Two additional treatments will simply provide more treatment options during those instances in which treatment is required.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Mexican fruit fly, Plant diseases, Plant pests, Plant (agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.64 [Amended]

2. In § 301.64, paragraph (a), the phrase "the State of Texas" is removed and the phrase "the States of California and Texas" is added in its place.

§ 301.64 [Amended]

3. In § 301.64, paragraph (b), the phrase "Arizona; California; Florida; Guam; Hawaii; Puerto Rico; Texas; the Virgin Islands of the United States; and Iberia, Jefferson, Lafayette, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. Mary and Terrebonne Parishes in Louisiana," is removed, and "American Samoa, Arizona, California, Florida, Guam, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States," is added in its place.

4. In § 301.64–1, all the paragraph designations are removed and the definitions for "Core area" and "Day degrees" are added, all definitions are placed in alphabetical order to read as follows:

§ 301.64–1 Definitions.

* * * * *

Core area. The 1 square mile area surrounding each property where Mexican fruit fly has been detected.

Day degrees. A mathematical construct combining average temperature over time that is used to

calculate the length of a Mexican fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F:

(Minimum Daily Temp + Maximum Daily Temp)/2)−54°=Day Degrees.

* * * * *

5. In § 301.64–3, paragraph (c) is amended by adding the following entry for California immediately before the entry for Texas:

§ 301.64–3 Regulated areas.

* * * * *

California

Los Angeles County

The portion of the county near the Maywood area bounded by a line drawn as follows: Beginning at the intersection of San Pedro Street and Interstate 10; then east on Interstate 10 to where it becomes Interstate 60; east on Interstate 60 to its intersection with Garfield Avenue; then south on Garfield to its intersection with Whittier Boulevard; then east on Whittier Boulevard to its intersection with Rosemead Boulevard; then south on Rosemead Boulevard to where it becomes Lakewood Boulevard; then south on Lakewood Boulevard to its intersection with Imperial Highway; then west on Imperial Highway to its intersection with Central Avenue; then north on Central Avenue to its intersection with Adams Boulevard; then northwest on Adams Boulevard to its intersection with San Pedro Street; then north on San Pedro to the point of beginning.

* * * * *

6. In § 301.64–4, the heading and the introductory paragraph are revised to read as follows:

§ 301.64–4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.

Any regulated article may be moved interstate from any regulated area in a quarantined State into or through those areas listed in § 301.64(b) of this subpart only if moved under the following conditions: [3]

* * * * *

7. In § 301.64–10, the introductory text is revised and new paragraphs (c) and (d) are added to read as follows:

§ 301.64–10 Treatments.

Treatments for regulated articles shall be one of the following:

* * * * *

[3] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(c) *Premises.* A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with malathion bait spray. These treatments must take place at 6- to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Mexican fruit fly. Determination of the time period must be based on the day degrees model for Mexican fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 ounces of technical grade malathion and 9.6 ounces of protein hydrolysate per acre.

(d) *Grapefruit and oranges. MB at NAP—Chamber only:* 40 g/m³ (2½ lb/1000 ft³) for 2 hours at 21–29 °C (70–85 °F).

Load not to exceed 80% of the chamber volume.

Done in Washington, DC, this 31st day of December 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–260 Filed 1–6–92; 8:45 am]

BILLING CODE 3410–34–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

[Docket No. 91–06–C]

Administrative Actions, Adjudicative Hearings, Rules of Practice and Procedure, and Investigations

AGENCY: National Credit Union Administration.

ACTION: Correction to final rule.

SUMMARY: This document contains typographical and technical corrections to the final rule which was published on Thursday, August 8, 1991 (56 FR 37762). The rule sets forth uniform rules of practice and procedure to govern formal administrative proceedings conducted pursuant to the Federal Credit Union Act, 12 U.S.C. 1751 *et seq.*, and complementary local rules which address formal enforcement actions not within the scope of the uniform rules of practice and procedure; informal actions which are not subject to the Administrative Procedure Act; and procedures which supplement or facilitate investigations and the processing of administrative enforcement actions by the National Credit Union Administration ("NCUA").

EFFECTIVE DATE: August 9, 1991.

FOR FURTHER INFORMATION CONTACT: Steven W. Widerman, Trial Attorney, Office of General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456. Telephone: 202/682–9630.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 18 U.S.C. 1818 note, the NCUA, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively "the Agencies") jointly developed a set of uniform rules of practice and procedure ("Uniform Rules") to govern formal administrative proceedings brought by each of the Agencies, including a Uniform Rule providing for summary judgment in cases where there is no dispute as to the material facts.

In addition to the Uniform Rules, the NCUA adopted complementary "Local Rules" to supplement the Uniform Rules. These Local Rules address formal enforcement actions not within the scope of the Uniform Rules; informal actions which are not subject to the Administrative Procedure Act; and procedures which supplement or facilitate investigations and the processing of administrative enforcement by the NCUA.

The final rule which establishes both the Uniform Rules and the NCUA's Local Rules is the subject of the typographical and technical corrections set forth below.

Need for Correction

As published, the final rule contains typographical and technical errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on Thursday, August 8, 1991, of the final rule, which was the subject of FR Doc. 91–18579, is corrected as follows:

PART 747—[CORRECTED]

1. On page 37767, in the table of contents to part 747, in the second column, in the heading for subpart E, in line 4 of the heading, the words "Under Title I" are added following the words "to Involuntary Liquidations".

§ 747.0 [Corrected]

1. On page 37767, in the third column, in § 747.0, paragraph (a), line 12 of that paragraph, which reads "Recovery, and Enforcement Act of 1989", is corrected to read "Recovery, and Enforcement Act of 1989 ('FIRREA')".

2. On page 37767, in the third column, in § 747.0, paragraph (a), in lines 29 and 30 of that paragraph, the words "202(a)(3), 206 and 304(c)(3) of the FCUA." are corrected to read "202(a)(3) and 206 of the Federal Credit Union Act ('the Act'), 12 U.S.C. 1766(b), 1782(a)(3), 1786.".

3. On page 37767, in the third column, in § 747.0, paragraph (a), in line 33 of that paragraph, "FCUA" is corrected in both places to read "Act".

4. On page 37767, in the third column, in § 747.0, paragraph (a), in line 37 of that paragraph, "FCUA" is corrected to read "Act".

5. On page 37768, in the first column, in § 747.0, in paragraph (b), in line 5 of that paragraph, "FCUA" is corrected to read "Act".

§ 747.1 [Corrected]

1. On page 37768, in the first column, in § 747.1, in paragraph (a), in lines 2 and 3 of that paragraph, the words "Federal Credit Union Act ('FCUA')" are corrected to read "Act".

2. On page 37768, in the first column, in § 747.1, in paragraph (b), in line 3 of that paragraph, "FCUA" is corrected to read "Act".

3. On page 37768, in the first column, in § 747.1, in paragraph (c) introductory text, lines 2 and 3, which read "penalties by the National Credit Union Administration Board ('NCUA Board')", are corrected to read "penalties by the NCUA Board".

4. On page 37768, in the first column, in § 747.1, in paragraph (c)(1), in lines 1 and 2 of that paragraph, the words "FCUA, pursuant to 12 U.S.C. 1782(a);" are corrected to read "Act (12 U.S.C. 1782);".

5. On page 37768, in the first column, in § 747.1, in paragraph (c)(3), in line 3 of that paragraph, "FCUA" is corrected to read "Act (12 U.S.C. 1782)".

§ 747.3 [Corrected]

1. On page 37768, in the second column, in § 747.3, in paragraph (f)(1), in line 3 of that paragraph, "FCUA" is corrected to read "Act".

2. On page 37768, in the second column, in § 747.3, in paragraph (g), in line 4 of that paragraph, "FCUA" is corrected to read "Act".

§ 747.9 [Corrected]

1. On page 37770, in the first column, in § 747.9, in paragraph (d), in lines 7 and 8 of that paragraph, the word "or" is inserted between "Board" at the end of line 7 and "the" at the beginning of line 8.

§ 747.16 [Corrected]

1. On page 37771, in the first column, in § 747.16, in line 6 of that section, "Agency" is corrected to read "NCUA".

§ 747.33 [Corrected]

1. On page 37775, in the second column, in § 747.33, in paragraph (a), in lines 6 through 10 of that paragraph, the words "or, in the case of change-of-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order" are removed.

§ 747.201 [Corrected]

1. On page 37777, in the third column, in § 747.201, in line 2 of that section, "FCUA" is corrected to read "Act".

§ 747.207 [Corrected]

1. On page 37778, in the second column, in § 747.207, in line 4 of that section, "FCUA" is corrected to read "Act".

§ 747.208 [Corrected]

1. On page 37778, in the second column, in § 747.208, in paragraph (a), in line 3 of that paragraph, "FCUA" is corrected to read "Act".

§ 747.301 [Corrected]

1. On page 37778, in the third column, in § 747.301, in the introductory text, in line 6, "FCUA" is corrected to read "Act".

§ 747.304 [Corrected]

1. On page 37779, in the third column, in § 747.304, in line 25 of that section, "FCUA" is corrected to read "Act".

§ 747.305 [Corrected]

1. On page 37779, in the third column, in § 747.305, in line 9 of that section, "FCUA" is corrected to read "Act".

§ 747.306 [Corrected]

1. On page 37780, in the first column, in § 747.306, in paragraph (a), in line 2, the citation "§ 747.404" is corrected to read "§ 747.304".

Heading for Subpart E [Corrected]

1. On page 37781, in the first column, in the heading for subpart E, in line 5, the words "Under Title I" are added following the words "Involuntary Liquidations".

§ 747.401 [Corrected]

1. On page 37781, in the first column, in § 747.401, in line 5 of that section, "FCUA" is corrected to read "Act".

§ 747.405 [Corrected]

1. On page 37782, in the first column, in § 747.405, in paragraph (c), in the last line of that paragraph, "FCUA" is corrected to read "Act".

§ 747.606 [Corrected]

1. On page 37783, in the second column, in § 747.606, in paragraph (c), in line 5 of that paragraph, "Equal Access to Justice Act" is corrected to read "EAJA".

§ 747.703 [Corrected]

1. On page 37785, in the first column, in § 747.703, in paragraph (a), in line 10 of that paragraph, "FCUA" is corrected to read "Act".

§ 747.803 [Corrected]

1. On page 37785, in the third column, in § 747.803, in paragraph (b)(1)(iv), in line 2 of that paragraph, the words "or her" are inserted between the words "him" and "at".

2. On page 37785, in the third column, in § 747.803, in paragraph (b)(1)(iv), in line 6 of that paragraph, the words "where by" are corrected to read "whereby".

Heading for Subpart J [Corrected]

1. On page 37786, in the third column, in the heading for subpart J, in line 5 of the heading, "FCUA" is corrected to read "Act".

§ 747.901 [Corrected]

1. On page 37786, in the third column, in § 747.901, in line 4 of that section, "FCUA" is corrected to read "Act".

2. On page 37786, in the third column, in § 747.901, in line 10 of that section, the word "office" is corrected to read "officer".

§ 747.902 [Corrected]

1. On page 37786, in the third column, in § 747.902, in line 5 of that section, "FCUA" is corrected to read "Act".

§ 747.903 [Corrected]

1. On page 37787, in the first column, in § 747.903, in paragraph (a)(3), in line 2 of that paragraph, the word "constant" is corrected to read "considered".

§ 747.904 [Corrected]

1. On page 37787, in the second column, in § 747.904, in paragraph (b)(1), lines 1 and 2 of that paragraph, which read "The reasons why NCUA should review its disapproval; and", is corrected to read "The reasons why the NCUA Board should review the disapproval; and".

2. On page 37787, in the second column, in § 747.904, in paragraph (b)(2),

in line 5 of that paragraph, "FCUA" is corrected to read "Act".

3. On page 37787, in the third column, in § 747.904, in paragraph (d)(2), in line 3, the word "designed" is corrected to read "designee".

§ 747.905 [Corrected]

1. On page 37787, in the third column, in § 747.905, in paragraph (a), in line 3 of that paragraph, the word "on" is inserted between the words "decision" and "a".

Dated: January 2, 1992.

Robert M. Fenner,

General Counsel, National Credit Union Administration.

[FR Doc. 92-272 Filed 1-6-92; 8:45 am]

BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Administration

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is hereby amending its delegation of authority to grant general approval authority to various field offices for guaranteeing sureties against a portion of losses resulting from the breach of bid, payment, or performance bonds on contracts. The amendment further provides that the SBA, through notice to the public published in the **Federal Register** will increase, decrease, or establish the authority of individual SBA field employees to guarantee sureties on a case by case basis.

EFFECTIVE DATE: This rule is effective January 7, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy D. Kleeschulte, Assistant Administrator for Surety Guarantees, (202) 205-6540.

SUPPLEMENTARY INFORMATION: SBA sets forth the delegation of authority, in 13 CFR 101.3-2, for approval of guaranties of sureties against a portion of losses resulting from the breach of bid, payment, or performance bonds on contracts by officials in SBA regional offices. SBA is amending this delegation of authority for the purpose of simplification and clarification.

This action delineates the standard delegation of authority by SBA officials to guarantee sureties against a portion of losses resulting from the breach of bid, payment, or performance bonds on contracts. The standard delegation of such authority for a Regional Administrator, Deputy Regional Administrator, and Supervisory Surety Bond Guarantee Specialist is $1,250,000. The standard delegation to guarantee sureties against a portion of losses resulting from the breach of bid, payment, or performance bonds on contracts for a Surety Bond Coordinator and Senior Surety Bond Guarantee Specialist is $750,000. The standard delegation of authority to guarantee sureties against a portion of losses resulting from the breach of bid, payment, or performance bonds on contracts for a Surety Bond Guarantee Specialist is $500,000. SBA reserves the right to publish, by notice in the **Federal Register**, the level of guaranty approval authority in this area for SBA employees in a regional, district, or branch office, based upon their education, training, and experience.

Because this final rule governs matters of agency organization, management, and personnel and makes no substantive change to the current regulation, SBA is not required to determine if these changes constitute a major rule for purposes of Executive Order 12291, to determine if they have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to do a Federalism Assessment pursuant to Executive Order 12612. Finally, SBA certifies that these changes will not impose an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35).

SBA is publishing this regulation governing agency organization, procedure, and practice as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(A).

List of Subjects in 13 CFR Part 101

Administrative practice and procedure, Authority delegations (Government Agencies), Investigations, Organization and functions (Government Agencies), Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Part 101 of Title 13, Code of Federal Regulations is amended as follows:

PART 101—ADMINISTRATION

1. The authority citation for part 101 continues to read as follows:

Authority: Secs. 4 and 5, Pub. L. 85-536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85-699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93-386 (Aug. 23, 1974); and 5 U.S.C. 552.

2. Section 101.3-2, Delegations of Authority to conduct program activities in field offices, is amended by revising Part III, Section C thereof to read as follows:

§ 101.3-2 Delegations of authority to conduct program activities in field offices.

* * * * *

Part III—Other Financial and Guaranty Programs

* * * * *

Section C—Surety Guarantee

1. To guarantee sureties against a portion of losses resulting from the breach of bid, payment, or performance bonds on contracts, not to exceed the following amounts:

a. Regional Administrator	$1,250,000
b. Deputy Regional Administrator	1,250,000
c. Supervisory Surety Bond Guarantee Specialist	1,250,000
d. Surety Bond Coordinator	750,000
e. Senior Surety Bond Guarantee Specialist	750,000
f. Surety Bond Guarantee Specialist	500,000

SBA may, as it deems appropriate, grant to or remove from any individual SBA employee in a regional, district, or branch office, based on education, training, or experience, the authority to guarantee sureties against a portion of losses resulting from the breach of bid, payment, or performance bonds on contracts, by notice published in the **Federal Register**.

* * * * *

Dated: January 2, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-256 Filed 1-6-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Butynorate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of a new

animal drug application (NADA) held by Solvay Animal Health, Inc. The NADA provides for use of Tinostat Type A medicated article containing butynorate to make Type B and Type C medicated feeds. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8749.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 8–741 held by Solvay Animal Health, Inc., 2000 Rockford Rd., Charles City, IA 50616–9989. The NADA provides for the use of Tinostat Type A medicated article containing 25 percent butynorate to make Type B and Type C medicated feeds for use as turkey coccidiostats. This document removes that part of 21 CFR 558.4(d) which provides for medicated feed applications for feed containing butynorate as the sole ingredient and § 558.108 (see 56 FR 19263 at 19269, April 26, 1991), which reflects this approval.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.4 [Amended]

2. Section 558.4 *Medicated feed applications* is amended in paragraph (d) in the table "Category II" by removing the first entry for "Butynorate."

§ 558.108 [Removed]

3. Section 558.108 *Butynorate (dibutyltin dilaurate)* is removed.

Dated: December 24, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92–235 Filed 1–6–92; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 550

Libya Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Correction to final regulation.

SUMMARY: This document contains a correction to the Summary of the final regulation published Friday, December 20, 1991, (56 FR 66334). The regulation related to the revocation of a general license that permitted transfers to the Government of Libya between offshore third-country banks to be cleared through domestic banks in the United States.

EFFECTIVE DATE: 10 p.m., EST, December 19, 1991.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, tel.: (202) 535–6020, or Steven I. Pinter, Chief of Licensing, tel.: (202) 535–9449, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: As published, the final regulation omitted a portion of the third sentence of the Summary. Accordingly, this omitted text is restored so that the third sentence reads, in its entirety: "All funds in which a direct or indirect Libyan government interest is indicated and which come into the possession or control of any U.S. person, including a domestic bank, are blocked by operation of law regardless of their origin or destination unless licensed by the Office of Foreign Assets Control."

Dated: December 31, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

[FR Doc. 92–324 Filed 1–3–92; 10:23 am]

BILLING CODE 4810–25–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 583

Appearances by Former Personnel Before Department of the Army

AGENCY: Office of the Army Judge Advocate General, DoD.

ACTION: Withdrawal of rule.

SUMMARY: The purpose of this document is to withdraw § 583.1, which concerns appearances by former personnel before the Department of the Army. The reason for this removal is that Army Regulation 632–35, Appearances Before Command or Agency of the Department of the Army, which § 583.1 implements, was rescinded in March 1985. Therefore, § 583.1 is no longer valid.

EFFECTIVE DATE: January 7, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Fran Anderson, Paralegal Specialist, Standards of Conduct Office, Office of the Army Judge Advocate General, Washington, DC 20310–2200, (703) 695–0921.

List of Subjects in 32 CFR Part 583

Legal services, Law, Administrative practices and procedures.

PART 583—FORMER PERSONNEL

1. The authority for part 583 continues to read:

Authority: 10 U.S.C. 3013.

§ 583.1 [Removed]

2. Section 583.1 is removed.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–220 Filed 1–6–92; 8:45 am]

BILLING CODE 3710–08–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Federal Insurance Administration; Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency

Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67 [AMENDED]

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Paragould (city), Greene County (FEMA Docket No. 7030)	
Eight Mile Creek:	
Approximately 1.2 river miles downstream of U.S. Route 412	*261
Approximately 500 feet upstream of South Spring Grove Street	*324
Loggy Creek:	
Approximately 100 feet upstream of confluence with Eight Mile Creek	*285
Approximately .7 mile upstream of confluence with Eight Mile Creek	*287
Tributary No. 1:	
At confluence with Eight Mile Creek	*293
At downstream side of Honeysuckle Road	*322
Tributary No. 2:	
At confluence with Eight Mile Creek	*314
Upstream side of Maxwell Street	*335
Tributary No. 3:	
At confluence with Eight Mile Creek	*29
Approximately 1.2 river miles upstream of Bo Gill Road	*33
Maps available for inspection at the City Hall, 221 West Court Street, Paragould, Arkansas.	
IOWA	
Griswold (city), Cass County (FEMA Docket No. 7032)	
Baughmans Creek:	
Shallow flooding upstream of Scott Street	*1,092
Approximately 650 feet upstream of State Route 92	*1,108
Maps available for inspection at the City Hall, 201 Cass, Griswold, Iowa.	
MAINE	
Lubec (town), Washington County (FEMA Docket No. 7006)	
Atlantic Ocean:	
Grand Manan Channel:	
Along southwest shoreline of Baileys Mistake	*15
Along east shoreline of Jims Head	*44
Cobscook Bay:	
Entire shoreline of Dudley Island	*15
Along shoreline at Youngs Point	*20
Maps available for inspection at the Town Office, 40 School Street, Lubec, Maine.	
MARYLAND	
Secretary (town), Dorchester County (FEMA Docket No. 7024)	
Warwick River North Branch: Along northern corporate limits	*8
Warwick River South Branch: Along southern corporate limits	*8
Maps available for inspection at the Town Hall, Main Street, Secretary, Maryland.	
MICHIGAN	
Clinton (township), Macomb County (FEMA Docket No. 7024)	
Clinton River:	
Just downstream of confluence of Clinton River North Branch	*593
About 2,100 feet upstream of confluence of Red Run Drain	*601
Red Run Drain:	
At mouth	*601
About 2,650 feet upstream of Metropolitan Parkway	*604
Maps available for inspection at the Planning Department, 40700 Romeo Plank Road, Mt. Clemens, Michigan.	
MISSOURI	
Cass County (unincorporated areas) (FEMA Docket No. 7032)	
East Creek:	
About 2.2 miles downstream of County Highway YY	*875
About 3.54 miles upstream of 195th Street	*1,021
West Fork East Creek:	
At mouth	*902
About 1.1 miles upstream of 187th Street	*981
Tributary B:	
At mouth	*878
Just downstream of County Highway YY	*885
Just upstream of County Highway YY	*891
About 3,400 feet upstream of 215th Street	*984
Big Creek:	
About 1.0 mile upstream of County Road	*850
About 1.2 miles upstream of abandoned railroad	*869
North Overflow Big Creek:	
About 1,300 feet downstream of State Highway 7	*850
About 1,400 feet upstream of State Highway 7	*852
Maps available for inspection at the Zoning Office, County Courthouse, Harrisonville, Missouri.	
MISSISSIPPI	
Pearl River County (unincorporated areas) (FEMA Docket No. 7022)	
Mill Creek:	
Approximately 3,550 feet upstream of the confluence with the Pearl River	*29
At the City of Picayune corporate limits	*49
Maps available for inspection at the County Courthouse, 200 Main Street, Courthouse Square, Poplarville, Mississippi.	
Picayune (city), Pearl River County (FEMA Docket No. 7022)	
Mill Creek:	
At the downstream corporate limits	*49
Approximately 100 feet upstream of Rose Street	*59
Maps available for inspection at the City Hall, 203 Goodyear Boulevard, Picayune, Mississippi.	
NEBRASKA	
Yutan (village), Saunders County (FEMA Docket No. 7017)	
Upper Clear Creek:	
About 200 feet downstream of State Highway 92	*1,144
Just downstream of County Road	*1,172
Maps available for inspection at the Village Clerk's Office, 112 Vine Street, Yutan, Nebraska.	
NEVADA	
Elko County (unincorporated areas) (FEMA Docket Nos. 7009 and 7024)	
Woodhills Drain:	
At the City of Wells corporate limits, approximately 5,500 feet upstream of Tenth Street Extension	*5,646
Approximately 7,000 feet upstream of Tenth Street Extension, just upstream of the intersection of U.S. Highway 93 and an unnamed road	*5,655
Approximately 8,500 feet upstream of Tenth Street Extension, at the intersection of U.S. Highway 93 and an unnamed road	*5,664
Susie Creek:	
Just below Western Pacific Railroad	*4,907
At U.S. Highway 40	*4,913
Approximately 300 feet upstream of westbound lane of Interstate 80	*4,917
Unnamed Wash:	
Approximately 1,500 feet downstream of Lamoille Highway	*5,070
Approximately 1,200 feet downstream of Lamoille Highway	*5,075
Approximately 800 feet downstream of Lamoille Highway	*5,081
Approximately 40 feet downstream of Lamoille Highway	*5,087
Approximately 40 feet upstream of Lamoille Highway	*5,094

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 300 feet upstream of Lamolle Highway	*5,094
Maps are available for review at the Elko County Engineering Department, 569 Court Street, Elko, Nevada.	
NEW HAMPSHIRE	
Bath (town), Grafton County (FEMA Docket No. 7008)	
Ammonoosuc River:	
At confluence with Connecticut River	*428
Approximately 2.1 miles upstream of confluence of Pettyboro Brook	565
Maps available for inspection at the Town Office, Bath, New Hampshire.	
Bradford (town), Merrimack County (FEMA Docket No. 7008)	
Warner River:	
At downstream corporate limits	*842
Approximately 175 feet upstream of State Route 114	*844
Lake Massasecum: Entire shoreline within community	*844
Todd Lake: Entire shoreline within community	*876
Maps available for inspection at the Town Office, Bradford, New Hampshire.	
Charlestown (town), Sullivan County (FEMA Docket No. 7020)	
Ox Brook:	
Approximately 1,150 feet upstream of confluence with the Connecticut River	*306
Just upstream of State Routes 11 and 12	*431
Beaver Brook:	
At confluence with the Connecticut River	*304
At David Street	*475
Maps available for inspection at the Town Offices, Charlestown, New Hampshire.	
Gilford (town), Belknap County (FEMA Docket No. 7008)	
Gunstock Brook:	
Approximately 250 feet upstream of State Route 11B	*507
Approximately .4 mile upstream of Alvah Wilson Road	*750
Gunstock Brook Tributary:	
At confluence with Gunstock Brook	*517
At upstream side of State Route 11B	*537
Maps available for inspection at the Selectmen's Office, 47 Cherry Valley Road, Gilford, New Hampshire, and Department of Public Works, 55 Cherry Valley Road, Gilford, New Hampshire.	
Kingston (town), Rockingham County (FEMA Docket No. 7003)	
Great Pond: Entire shoreline within community	*122
Powwow Pond: Entire shoreline within community	*119
Powwow River:	
At upstream side of New Boston Road	*121
At downstream side of Bell Road	*122
Country Pond: Entire shoreline within community	*121
Maps available for inspection at the Town Clerk's Office, 163 Main Street, Kingston, New Hampshire.	
Lyme (town), Grafton County (FEMA Docket No. 7008)	
Connecticut River:	
At the downstream corporate limits	*397
At the upstream corporate limits	*408
Hewes Brook:	
At the downstream side of State Route 10	*663
Approximately 275 feet upstream of Bliss Road	*847
Grant Brook:	
At State Route 10	*484
Approximately 50 feet upstream of Dorchester Road	*794
Clay Brook:	
At North Thetford Road	*426
Approximately .8 miles upstream of North Thetford Road	*436
Trout Brook:	
Approximately .3 mile downstream of State Route 10	*436
Approximately 125 feet upstream of Pinnacle Road	*660
Maps available for inspection at the Town Clerk's Vault, Town Office, Lyme, New Hampshire.	
Orford (town), Grafton County (FEMA Docket No. 7019)	
Connecticut River:	
At the downstream corporate limits	*407
At the upstream corporate limits	*411
Maps available for inspection at the Town Office, Orford, New Hampshire.	
Raymond (town), Rockingham County (FEMA Docket No. 7016)	
Lamprey River:	
Approximately 0.5 mile downstream of Prescott Road	*161
At the downstream side of Epping Road	*166
Exeter River:	
At the downstream corporate limits	*158
At the upstream corporate limits	*165
Maps available for inspection at the Building Inspector's Office, Epping Street, Raymond, New Hampshire.	
NEW JERSEY	
Carteret (borough), Middlesex County (FEMA Docket No. 7022)	
Arthur Kill:	
At Noe Street extended near CONRAIL	*9
At Salem Avenue extended	*10
At intersection of Beverly Street and Lefferts Street	*9
At the downstream corporate limits	*10
Rahway River: Entire length within community	*9
Maps available for inspection at the Borough Hall, 61 Cooke Avenue, Carteret, New Jersey.	
Edgewater Park (township), Burlington County (FEMA Docket No. 7008)	
Delaware River:	
At downstream corporate limits	*11
At upstream corporate limits	*11
Maps available for inspection at the City Hall, 400 Delanco Road, Edgewater Park, New Jersey.	
Ridgefield (borough), Bergen County (FEMA Docket No. 7032)	
Overpeck Creek:	
Upstream side of Hendricks Causeway	*7
Upstream corporate limits	*7
Wolf Creek:	
Upstream side of CONRAIL	*9
Approximately 50 feet downstream of dam downstream of Broad Avenue	*9
Maps available for inspection at the Borough Hall, 604 Broad Avenue, Ridgefield, New Jersey.	
Tabernacle (township), Burlington County (FEMA Docket No. 7026)	
Friendship Creek:	
Approximately 150 feet downstream of downstream corporate limits	*59
At confluence of Bread and Cheese Run	*67
Bread and Cheese Run:	
At confluence with Friendship Creek	*67
Just downstream of Red Lion Road	*68
Maps available for inspection at the Township Building, Tabernacle, New Jersey.	
Teaneck (township), Bergen County (FEMA Docket No. 7004)	
Overpeck Creek:	
At the downstream corporate limits	*7
Approximately 1,000 feet upstream of State Route 4	*8
Teaneck Creek:	
At confluence with Overpeck	*7
Approximately 1,800 feet upstream of Degraw Avenue	*8
Tributary to Overpeck Creek:	
At confluence with Overpeck Creek	*8
At Overpeck Avenue	*8
Maps available for inspection at the Municipal Building, 818 Teaneck Road, Teaneck, New Jersey.	
NEW YORK	
Allegany (village), Cattaraugus County (FEMA Docket No. 7024)	
Five Mile Creek:	
At downstream corporate limits	*1,415
Approximately 100 feet upstream of upstream corporate limits	*1,418
Maps available for inspection at the Village Hall, 180 West Main Street, Allegany, New York.	
Newstead (town), Erie County (FEMA Docket No. 7032)	
Murder Creek:	
Approximately 1,325 feet downstream of Bruckner Kirby Road	*805
Approximately .66 mile downstream of State Route 93	*822
Ledge Creek:	
Approximately .7 mile downstream of Cedar Street	*805
Approximately 125 feet upstream of Martin Road	*834
Maps available for inspection at the Town Hall, Church & Johns Streets, Akron, New York.	
Perinton (town), Monroe County (FEMA Docket No. 7010)	
Thomas Creek:	
Approximately 750 feet downstream of County Route 44 (Lyndon Road)	*463
Approximately 25 feet upstream of Whitney Road	*489
White Brook:	
Approximately 1.0 mile downstream of Lyndon Road	*463
At County boundary	*508
Maps available for inspection at the Town Hall, 1350 Turk Hill Road, Fairport, New York.	
Willsboro (town), Essex County (FEMA Docket No. 7023)	
Bouquet River:	
Approximately 1.4 miles upstream of the confluence with Lake Champlain	*103
At the corporate limit (approximately 7,300 feet of State Route 14A)	*196
Maps available for inspection at the Willsboro Town Hall, Point Road, Willsboro, New York.	
NORTH CAROLINA	
Apex (town), Wake County (FEMA Docket No. 7023)	
Middle Creek (Basin 22—Stream 1):	
About 1.84 miles upstream of SR 1301	*372
About 2.95 miles upstream of SR 1301	*380
Beaver Creek (Basin 27—Stream 2):	
At confluence of Basin 27—Stream 4	*283
Just downstream of U.S. Route 64	*314
Just upstream of U.S. Route 64	*319
Just downstream of State Route 55	*320
Just upstream of State Route 55	*325
Just downstream of SR 1611	*364
Basin 27—Stream 4:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At mouth	*283
About 2,130 feet upstream of mouth	*295
Maps available for inspection at the Town Hall, Apex, North Carolina.	
Cary (town), Wake County (FEMA Docket No. 7023)	
Crabtree Creek (Basin 18—Stream 9):	
Just upstream of Interstate 40	*268
Just downstream of SCS Dam No. 23	*269
Just upstream of SCS Dam No. 23	*284
Just downstream of dam near SR 1615	*322
Just upstream of dam near SR 1615	*353
Halleys Branch (Basin 18—Stream 10):	
At mouth	*284
Black Creek Tributary A (Basin 18—Stream 11):	
At mouth	*284
Just downstream of SR 1652	*353
Stirrup Iron Creek (Basin 18—Stream 12):	
At mouth	*284
At county boundary	*321
Basin 18—Stream 13:	
At mouth	*287
Brier Creek (Basin 18—Stream 14):	
At mouth	*284
About 2,280 feet upstream of dam	*319
Crabtree Creek Tributary No. 6 (Basin 18—Stream 20):	
At mouth	*284
About 0.98 mile upstream of mouth	*311
Turkey Creek (Basin 18—Stream 23):	
At mouth	*304
Just downstream of SR 1615	*319
Coles Branch (Basin 18—Stream 24):	
At mouth	*303
Just downstream of dam	*307
Just upstream of dam	*329
Hatchet Grove Tributary (Basin 18—Stream 25):	
About 350 feet downstream of SR 1613	*309
About 250 feet downstream of dam	*314
Swift Creek (Basin 20—Stream 1):	
Just upstream of SR 1152	*306
Just downstream of U.S. Route 64	*352
Lens Branch (Basin 20—Stream 22):	
At mouth	*309
Just downstream of dam	*316
Just upstream of dam	*342
Just downstream of U.S. routes 1 and 64	*367
Straight Branch (Basin 20—Stream 23):	
At mouth	*351
Just downstream of U.S. Routes 1 and 64	*372
Swift Creek Tributary No. 7 (Basin 20—Stream 24):	
At mouth	*326
Just downstream of dam at Glasgow Road	*342
Just upstream of dam at Glasgow Road	*356
Just downstream of dam near Pebble Creek Drive	*373
Just upstream of dam near Pebble Creek Drive	*383
Just downstream of Maynard Road	*401
Swift Creek Tributary No. 7A (Basin 20—Stream 25):	
At mouth	*356
About 2,600 feet upstream of mouth	*358
Panther Creek (Basin 29—Stream 1):	
At county boundary	*245
About 0.96 mile upstream of SR 1625	*282
Morris Branch (Basin 29—Stream 5):	
At county boundary	*250
Just downstream of SR 1625	*271
Kit Creek (Basin 29—Stream 7):	
At county boundary	*244
Just downstream of State Road 55	*254
Kit Creek Tributary B (Basin 29—Stream 8):	
About 0.87 mile upstream of mouth	*266
About 0.97 mile upstream of mouth	*266
Walnut Creek (Basin 30—Stream 1):	
Just upstream of Interstate 40	*266
Just downstream of Western Boulevard Extension	*406
Just upstream of Western Boulevard Extension	*411
Just downstream of Maynard Road	*437
Maps available for inspection at the Town Hall, Cary, North Carolina.	
Cary (town), Wake County (FEMA Docket No. 7023)	
Crabtree Creek (Basin 18—Stream 9):	
Just upstream of Interstate 40	*268
Just downstream of SCS Dam No. 23	*269
Just upstream of SCS Dam No. 23	*284
Just downstream of dam near SR 1615	*322
Just upstream of dam near SR 1615	*353
Halleys Branch (Basin 18—Stream 10):	
At mouth	*284
Black Creek Tributary A (Basin 18—Stream 11):	
At mouth	*284
Just downstream of SR 1652	*353
Stirrup Iron Creek (Basin 18—Stream 12):	
At mouth	*284
At county boundary	*321
Basin 18—Stream 13:	
At mouth	*287
Brier Creek (Basin 18—Stream 14):	
At mouth	*284
About 2,280 feet upstream of dam	*319
Crabtree Creek Tributary No. 6 (Basin 18—Stream 20):	
At mouth	*284
About 0.98 mile upstream of month	*311
Turkey Creek (Basin 18—Stream 23):	
At mouth	*304
Just downstream of SR 1615	*319
Coles Branch (Basin 18—Stream 24):	
At mouth	*303
Just downstream of dam	*307
Just upstream of dam	*329
Hatchet Grove Tributary (Basin 18—Stream 25):	
About 350 feet downstream of SR 1613	*309
About 250 feet downstream of dam	*314
Swift Creek (Basin 20—Stream 1):	
Just upstream of SR 1152	*306
Just downstream of U.S. Route 64	*352
Lens Branch (Basin 20—Stream 22):	
At mouth	*309
Just downstream of dam	*316
Just upstream of dam	*342
Just downstream of U.S. Routes 1 and 64	*367
Straight Branch (Basin 20—Stream 23):	
At mouth	*351
Just downstream of U.S. Routes 1 and 64	*372
Swift Creek Tributary No. 7 (Basin 20—Stream 24):	
At mouth	*326
Just downstream of dam at Glasgow Road	*342
Just upstream of dam at Glasgow Road	*356
Just downstream of dam near Pebble Creek Drive	*373
Just upstream of dam near Pebble Creek Drive	*383
Just downstream of Maynard Road	*401
Swift Creek Tributary No. 7A (Basin 20—Stream 25):	
At mouth	*356
About 2,600 feet upstream of mouth	*358
Panther Creek (Basin 29—Stream 1):	
At county boundary	*245
About 0.96 mile upstream of SR 1625	*282
Morris Branch (Basin 29—Stream 5):	
At county boundary	*250
Just downstream of SR 1625	*271
Kit Creek (Basin 29—Stream 7):	
At county boundary	*244
Just downstream of State Road 55	*254
Kit Creek Tributary B (Basin 29—Stream 8):	
About 0.87 mile upstream of mouth	*266
About 0.97 mile upstream of month	*268
Walnut Creek (Basin 30—Stream 1):	
Just upstream of Interstate 40	*266
Just downstream of Western Boulevard Extension	*406
Just upstream of Western Boulevard Extension	*411
Just downstream of Maynard Road	*437
Maps available for inspection at the Town Hall, Cary, North Carolina.	
Fuquay-Varina (town), Wake County (FEMA Docket No. 7023)	
Basal Creek (Basin 22—Stream 16):	
About 0.82 mile upstream of dam	*330
About 900 feet upstream of State Road 55	*360
Terrible Creek (Basin 22—Stream 19):	
About 2,600 feet downstream of Sunset Lake Road (SR 1301)	*330
Just downstream of SR 1401	*365
Kenneth Creek (Basin 24—Stream 2):	
About 2,700 feet downstream of confluence of Bradley Creek	*263
Just downstream of U.S. Route 401	*286
Just upstream of U.S. Route 401	*291
Just downstream of State Road 42	*375
Bradley Creek (Basin 24—Stream 3):	
At mouth	*272
Just downstream of U.S. Route 401	*281
Anger Creek (Basin 24—Stream 4):	
About 200 feet upstream of mouth	*259
Just downstream of dam	*319
Just upstream of dam	*333
Just downstream of abandoned railroad	*356
Rocky Ford Branch (Basin 24—Stream 5):	
At mouth	*311
About 1,1500 feet upstream of Norfolk Southern Railway	*357
Kenneth Branch (Basin 24—Stream 6):	
At mouth	*366
Just downstream of Norfolk Southern Railway	*377
Neil Creek (Basin 24—Stream 7):	
At mouth	*306
About 500 feet upstream of Anger Road	*317
Just downstream of Holland Road	*323
Neil Branch (Basin 24—Stream 8):	
At mouth	*320
Just downstream of East Spring Avenue	*342
Maps available for inspection at the Town Hall, 1300 East Academy Street, Fuquay-Varina, North Carolina.	
Garner (town), Wake County (FEMA Docket No. 7023)	
White Oak Creek (Basin 19—Stream 1):	
Just downstream of confluence of Basin 19—Stream 3	*243
About 2.0 miles upstream of SR 2555	*286
Unnamed Stream (Basin 19—Stream 3):	
At mouth	*243
Just downstream of U.S. Route 70	*280
Just upstream of U.S. Route 70	*295
Just downstream of Norfolk Southern Railway	*303
Unnamed Stream (Basin 19—Stream 4):	
At mouth	*262
Just downstream of Norfolk Southern Railway	*287
Swift Creek (Basin 20-Stream 1):	
About 1.55 miles downstream of State Road 50	*220
Just downstream of dam	*227
Just upstream of dam	*241
Just downstream of SR 1006	*245
Mahlers Creek (Basin 20—Stream 6):	
At mouth	*225
About 2.47 miles upstream of SR 2703	*286
Mahlers Creek Tributary (Basin 20—Stream 7):	
At mouth	*232
Just downstream of SR 2707	*246
Unnamed Stream (Basin 20—Stream 8):	
At mouth	*246
Just downstream of SR 2707	*257
Reedy Branch Tributary (Basin 20—Stream 9):	
At mouth	*246
About 3,000 feet upstream of mouth	*260
Just downstream of Claymore Drive	*264
Bagwell Branch (Basin 20—Stream 10):	
At mouth	*240
Just downstream of State Road 50	*293
Reedy Branch (Basin 20—Stream 11):	
At mouth	240
Just downstream of Seventh Avenue	*319
Buck Branch (Basin 20—Stream 12):	
At mouth	*240
About 3,950 feet upstream of Vandora Springs Road	*286
Yates Branch (Basin 20—Stream 13):	
At mouth	*247
Just downstream of Lake Wheeler Road	*288
Echo Branch (Basin 20—Stream 14):	
Just upstream of Old Stage Road	*265
About 1,500 feet upstream of Old Stage Road	*272
Just downstream of Winterlochen Road	*302
Just upstream of Winterlochen Road	*309
Just downstream of Vesta Drive	*311

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Big Branch (Basin 30—Stream 2):	
Just upstream of SR 2548	^232
Just downstream of dam	^242
Just upstream of dam	^260
Unnamed Stream (Basin 30—Stream 3):	
At mouth	^199
About 1.08 miles upstream of SR 2548	^262
Big Branch Tributary No. 1 (Basin 30—Stream 6):	
About 2,100 feet downstream of Creech Road	^218
At confluence of Adams Branch (Basin 30—Stream 9)	^253
Hillard Creek (Basin 30—Stream 7):	
At mouth	^220
About 3,600 feet upstream of mouth	^244
Unnamed Stream (Basin 30—Stream 8):	
At mouth	^230
About 2,900 feet upstream of mouth	^260
Adams Branch (Basin 30—Stream 9):	
At mouth	^253
Just downstream of SR 2569	^276
Maps available for inspection at the Town Hall, Garner, North Carolina.	
Holly Springs (town), Wake County (FEMA Docket No. 7023)	
Middle Creek (Basin 22—Stream 1):	
Just upstream of SR 1301 (near dam)	^308
Just upstream of dam	^312
About 300 feet downstream of SR 1301	^348
Basal Creek (Basin 22—Stream 16):	
Along shoreline of Sunset Lake	^312
Maps available for inspection at the Town Hall, Holly Springs, North Carolina.	
Knightdale (town), Wake County (FEMA Docket No. 7023)	
Mingo Creek (Basin 12—Stream 2):	
Just upstream of dam (about 1.0 mile upstream of mouth)	^257
Just downstream of SR 2233	^270
Poplar Creek (Basin 13—Stream 1):	
About 700 feet downstream of confluence of Poplar Branch (Basin 13—Stream 2)	^211
About 500 feet upstream of SR 2233	^224
Just downstream of SR 2513	^245
Just upstream of SR 2513	^251
About 900 feet upstream of SR 2513	^251
Poplar Branch (Basin 13—Stream 2):	
At mouth	^215
Just downstream of Farm Road	^240
Mango Creek (Basin 15—Stream 11):	
About 1.55 miles upstream of Norfolk Southern Railway	^224
About 2.23 miles upstream of Norfolk Southern Railway	^251
Maps available for inspection at the Town Hall, Knightdale, North Carolina.	
Morrisville (town), Wake County (FEMA Docket No. 7023)	
Crabtree Creek (Basin 18—Stream 9):	
At the confluence of Stirrup Iron Creek (Basin 18—Stream 12)	^284
About 2,500 feet downstream of confluence of Coles Branch (Basin 18—Stream 24)	^298
Stirrup Iron Creek (Basin 18—Stream 12):	
At mouth	^284
Just downstream of Interstate 40	^293
Basin 18—Stream 13:	
At mouth	^287
Just downstream of SR 1640	^291
Coles Branch (Basin 18—Stream 24):	
About 250 feet downstream of dam	^306
Just downstream of dam	^307
Just upstream of dam	^329
About 3,150 feet upstream of dam	^329
Hatchet Grove Tributary (Basin 18—Stream 25):	
At mouth	^293
About 1,100 feet upstream of SR 1613	^313
Morrisville Tributary (Basin 18—Stream 26:	
At mouth	^286
Just downstream of State Road 54	^293
Just upstream of State Road 54	^300
About 1,450 feet upstream of Norfolk Southern Railway	^304
Kit Creek (Basin 29—Stream 7):	
About 1.5 miles upstream of confluence of Kit Creek Tributary No. 1 (Basin 29—Stream 11)	^283
Maps available for inspection at the Town Hall, Morrisville, North Carolina.	
Raleigh (city), Wake County (FEMA Docket No. 7023)	
Neuse River (Basin 15—Stream 1):	
About 1,300 feet upstream of confluence of Basin 15—Stream 9	^171
Just downstream of SR 2000	^206
Beaverdam Creek (Basin 15—Stream 21):	
At mouth	^188
Just downstream of Buffalo Road	^195
Just upstream of Buffalo Road	^200
Just downstream of Aithcock Loop Road	^236
Perry Creek (Basin 15—Stream 26):	
At mouth	^197
Just downstream of U.S. Route 1	^242
Just upstream of SR 2179	^250
Just downstream of abandoned road (about 2,200 feet upstream of CSX Railroad	^259
Just upstream of abandoned road	^264
Just downstream of dam at Hunting Ridge Road	^263
Just upstream of dam at Hunting Ridge Road	^298
About 4.73 miles above mouth	^305
Just downstream of footbridge (about 2,000 feet upstream of Rainwater Road)	^329
Just upstream of footbridge (about 2,000 feet upstream of Rainwater Road)	^334
Just downstream of dam (about 5.26 miles upstream of mouth)	^339
Perry Creek East Branch (Basin 15—Stream 27):	
At mouth	^197
Just downstream of Fox Road	^208
Just upstream of Fox Road	^211
About 0.93 mile upstream of Fox Road	^260
Basin 15—Stream 28:	
At mouth	^197
About 0.86 mile upstream of mouth	^205
Hare Snipe Creek (Basin 16—Stream 1):	
At mouth	^240
Just downstream of Rembert Drive	^262
Just upstream of Rembert Drive	^267
About 2.37 miles upstream of mouth	^308
About 1,950 feet upstream of Leesville Road	^312
Richland Creek (Basin 16—Stream 3):	
At mouth	^254
Just downstream of dam	^283
Just upstream of dam	^320
Just downstream of Wade Avenue	^344
Just upstream of Wade Avenue	^349
About 4.36 miles upstream of mouth	^356
Just downstream of Trinity Road	^366
Basin 16—Stream 4:	
At mouth	^281
About 0.47 mile upstream of mouth	^295
Just downstream of U.S. Route 70	^300
Just upstream of U.S. Route 70	^305
About 2,500 feet upstream of U.S. Route 70	^319
Turkey Creek (Basin 16—Stream 5):	
About 0.90 mile downstream of dam	^280
Just downstream of dam	^310
Just upstream of dam	^339
Just downstream of U.S. Route 70	^342
Sycamore Creek (Basin 16—Stream 6):	
About 2,050 feet downstream of confluence of Basin 16—Stream 8	^357
About 2,700 feet upstream of ACC Boulevard	^396
Basin 16—Stream 8:	
At mouth	^359
Just downstream of U.S. Route 70	^368
Just upstream of U.S. Route 70	^375
About 1.14 miles above mouth	^392
Just downstream of Westgate Road	^400
Just upstream of Westgate Road	^411
About 0.63 mile upstream of Westgate Road	^433
Crabtree Creek (Basin 16—Stream 9):	
At mouth	^176
About 1.60 miles downstream of SCS Dam No. 23	^281
Little Brier Creek (Basin 16—Stream 15):	
Just upstream of SR 1644	^319
At county boundary	^346
Basin 16—Stream 16:	
At mouth	^321
Just downstream of U.S. Route 70	^348
Marsh Creek (Basin 16—Stream 17):	
At mouth	^213
Just downstream of Ingram Drive	^223
Just upstream of Ingram Drive	^229
Just downstream of CSX Railroad	^270
Just upstream of CSX Railroad	^284
Just downstream of Quail Ridge Road	^290
Just upstream of Quail Ridge Road	^298
About 1,600 feet upstream of Quail Ridge Road	^310
Millbrook Tributary (Basin 16—Stream 18):	
At mouth	^237
Just downstream of Brockton Drive	^242
Just upstream of Brockton Drive	^250
Just downstream of Millbrook Road	^263
New Hope Tributary (Basin 16—Stream 18):	
At mouth	^216
Just downstream of dam (upstream of Huntleigh Road)	^240
Just upstream of dam (upstream of Huntleigh Road)	^250
Just downstream of dam near New Hope Church Road	^254
Just upstream of dam near New Hope Church Road	^271
Just downstream of dam near Waterbury Drive	^281
Big Branch (Basin 18—Stream 21):	
At mouth	^215
Just downstream of U.S. Routes 64 and 70 Bypass	^222
Just downstream of U.S. Routes 64 and 70 Bypass	^227
Just downstream of Compton Drive	^248
Just upstream of Compton Drive	^254
About 1,300 feet upstream of Compton Drive	^260
Just downstream of Purdue Street	^275
Just upstream of Purdue Street	^281
Just downstream of Mill Brook Road	^281
Just upstream of Mill Brook Road	^287
About 900 feet upstream of Mill Brook Road	^298
Lakemont Tributary (Basin 18—Stream 22):	
At mouth	^254
About 1,000 feet upstream of mouth	^269
Just downstream of Latimer Road	^283
Just upstream of Latimer Road	^290
About 1,300 feet upstream of Latimer Road	^314
Pigeon House Branch (Basin 18—Stream 27):	
At mouth	^205
Just downstream of CSX Railroad	^219
Just upstream of CSX Railroad	^224
Just downstream of Downtown Boulevard	^243
Just upstream of Downtown Boulevard	^249
Just downstream of Dortch Street	^255
Just upstream of Dortch Street	^262
Just downstream of Peace Street	^275
Beaverdam Creek (Basin 18—Stream 28):	
At mouth	^220
About 4,500 feet upstream of mouth	^232
Just downstream of Glenwood Avenue	^242
Just upstream of Glenwood Avenue	^247
Southwest Prong Beaverdam Creek (Basin 18—Stream 29):	
At mouth	^247
Just downstream of Cambridge Road	^260
Just upstream of Cambridge Road	^266
Just upstream of Brooks Avenue	^283
Just downstream of Dixie Trail	^328
Just upstream of Dixie Trail	^334
Just downstream of Wade Avenue	^338
Southeast Prong Beaverdam Creek (Basin 18—Stream 30):	
At mouth	^247
Just downstream of Fairview Road	^305
Just upstream of Fairview Road	^271
About 500 feet downstream of Churchill Road	^284
Just downstream of Churchill Road	^290
Just upstream of Churchill Road	^298
Just downstream of Grant Avenue	^306
Just upstream of Grant Avenue	^315
Just downstream of Wade Avenue	^316
Mine Creek (Basin 18—Stream 31):	
At mouth	^232
Just downstream of Shelly Lake Dam	^237
Just upstream of Shelly Lake Dam	^275
Lynn Road Tributary (Basin 18—Stream 32):	
At mouth	^275
About 2,400 feet upstream of mouth	^289

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just downstream of Lead Mine Road	*305
Just upstream of Lead Mine Road	*310
West Fork Mine Creek (Basin 18—Stream 33):	
At mouth	*275
About 1,500 feet upstream of mouth	*280
About 2,800 feet upstream of mouth	*287
East Fork Mine Creek (Basin 18—Stream 34):	
At mouth	*275
About 1,400 feet upstream of mouth	*283
Just downstream of Long Street	*291
Just upstream of Long Street	*307
Just upstream of Six Forks Road	*313
Just downstream of Newton Road	*318
Just upstream of Newton Road	*329
About 2,450 feet upstream of Newton Road	*338
East Fork Mine Creek Tributary (Basin 18—Stream 35):	
At mouth	*317
Just downstream of Woodbend Drive	*336
Just upstream of Woodbend Drive	*342
About 1,900 feet upstream of Woodbend Drive	*354
House Creek (Basin 18—Stream 36):	
At mouth	*236
About 3,700 feet upstream of mouth	*249
Just downstream of Beltline	*243
Just upstream of Beltline	*248
Just downstream of Glen Eden Road	*254
Just upstream of Glen Eden Road	*260
Just downstream of Horton Street	*299
Just upstream of Horton Street	*307
About 2.46 miles above mouth	*325
Just downstream of U.S. Route 64	*334
Armory Tributary (Basin 18—Stream 38):	
At mouth	*343
About 2,700 feet upstream of mouth	*367
Medfield Tributary (Basin 18—Stream 39):	
At mouth	*328
Just upstream of Wade Avenue	*335
Just downstream of Trinity Road	*364
Just upstream of Trinity Road	*369
About 1,800 feet upstream of Trinity Road	*378
Yates Branch (Basin 20—Stream 13):	
Just upstream of Lake Wheeler Road	*288
Just upstream of dam	*298
About 3.56 miles upstream of dam	*409
Walnut Creek (Basin 30—Stream 1):	
At mouth	*174
Just downstream of Interstate 40	*196
Just upstream of Interstate 40	*201
Just downstream of Lake Raleigh Dam	*270
Just upstream of Lake Raleigh Dam	*285
Just downstream of Lake Johnson Dam	*315
Just upstream of Lake Johnson Dam	*351
Just downstream of Maynard Road	*437
Big Branch (Basin 30—Stream 2):	
At mouth	*184
Just downstream of SR 2548	*226
Just upstream of SR 2548	*232
About 300 feet upstream of SR 2548	*235
Basin 30—Stream 3:	
At mouth	*199
About 1.42 miles upstream of mouth	*262
Wildcat Branch (Basin 30—Stream 4):	
At mouth	*232
Just upstream of Interstate 40 offramp	*236
Just upstream of Norfolk Southern Railway	*243
Just upstream of dam	*250
About 1.27 miles upstream of mouth	*252
Rocky Branch (Basin 30—Stream 5):	
At mouth	*234
Just downstream of West Cabarrus Street	*272
Just upstream of West Cabarrus Street	*279
Just downstream of Western Boulevard (downstream crossing)	*282
Just upstream of Western Boulevard (downstream crossing)	*291
Just downstream of Western Boulevard (upstream crossing)	*298
Just upstream of Western Boulevard (upstream crossing)	*305
Just downstream of Pullen Road	*319

Maps available for inspection at the Inspection Department, City Hall, Raleigh, North Carolina.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wake Forest (town), Wake County (FEMA Docket No. 7023)	
Horse Creek (Basin 4—Stream 1):	
Just upstream of SR 2916	*322
About 1,800 feet upstream of confluence of Basin 4—Stream 3	*323
Unnamed Stream (Basin 4—Stream 3):	
About 2,450 feet upstream of mouth	*335
About 1,800 feet downstream of dam	*352
Richland Creek (Basin 5—Stream 1):	
About 3,450 feet downstream of U.S. Route 1	*221
About 1,650 feet upstream of U.S. Route 1	*237
About 3,200 feet upstream of West Oak Avenue	*295
Smith Creek (Basin 6—Stream 1):	
At mouth	*200
Just downstream of State Road 98	*270
Just upstream of State Road 98	*275
Just upstream of dam	*302
Dunn Creek (Basin 6—Stream 5):	
At mouth	*234
About 0.99 mile upstream of SR 1942	*368
Spring Branch (Basin 6—Stream 6):	
At mouth	*240
Just downstream of Franklin Street	*333
Just upstream of Franklin Street	*342
Austin Creek (Basin 6—Stream 10):	
At mouth	*251
About 2,550 feet upstream of SR 2053	*267
Neuse River (Basin 15—Stream 1):	
Just downstream of confluence of Smith Creek (Basin 6—Stream 1)	*200

Maps available for inspection at the Town Hall, 401 East Elm Street, Wake Forest, North Carolina.

Wake County (unincorporated areas) (FEMA Docket No. 7023)

Little Beaverdam Creek (Basin 2—Stream 2):	
About 2.07 miles upstream of mouth	*299
At county boundary	*323
Newlight Creek (Basin 3—Stream 1):	
At mouth	*263
At confluence of Basin 3—Stream 8	*279
Basin 3—Stream 6:	
At mouth	*263
About 1.30 miles upstream of mouth	*306
Basin 3—Stream 8:	
At mouth	*279
About 1.52 miles upstream of mouth	*372
Buckhorn Branch (Basin 3—Stream 9):	
At mouth	*263
About 1.35 miles upstream of mouth	*299
Horse Creek (Basin 4—Stream 1):	
Just upstream of State Road 98	*264
About 2,400 feet upstream of SR 1909	*336
Basin 4—Stream 3:	
At mouth	*322
Just downstream of dam	*361
Just upstream of dam	*373
Just downstream of SR 1909	*378
Lowery Creek (Basin 4—Stream 10):	
About 3,000 feet upstream of mouth	*263
Just downstream of dam	*350
Just upstream of dam	*366
Just downstream of SR 1909	*371
Basin 4—Stream 13:	
At mouth	*279
About 1.06 miles upstream of mouth	*342
Mud Branch (Basin 4—Stream 15):	
At mouth	*284
Just downstream of first dam upstream of mouth	*321
Just upstream of first dam upstream of mouth	*341
Just upstream of second dam upstream of mouth	*353
Just downstream of third dam upstream of mouth	*412
Just upstream of third dam upstream of mouth	*423
Just downstream of dam just upstream of SR 1909	*439
Just upstream of dam just upstream of SR 1909	*446
Richland Creek (Basin 5—Stream 1):	
At mouth	*205

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 0.60 mile upstream of West Oak Avenue	*295
Smith Creek (Basin 6—Stream 1):	
At mouth	*200
At county boundary	*328
Dunn Creek (Basin 6—Stream 5):	
At mouth	*234
About 0.99 mile upstream of SR 1942	*368
Spring Branch (Basin 6—Stream 6):	
At mouth	*240
About 630 feet upstream of mouth	*246
Sanford Creek (Basin 6—Stream 7):	
At mouth	*216
About 1.23 miles upstream of SR 2049	*240
Reedy Creek (Basin 6—Stream 8):	
At mouth	*237
About 1,000 feet upstream of mouth	*240
Just downstream of SR 2052	*254
Basin 6—Stream 9:	
At mouth	*239
Just downstream of SR 2052	*301
Austin Creek (Basin 6—Stream 10):	
At 2,600 feet upstream of mouth	*263
Just downstream of SR 1945	*324
Just upstream of SR 1945	*332
Toms Creek (Basin 7—Stream 1):	
At mouth	*200
Just downstream of first dam upstream of mouth	*224
Just upstream of first dam upstream of mouth	*235
Just downstream of second dam upstream of mouth	*235
Just upstream of second dam upstream of mouth	*249
About 0.87 mile upstream of SR 2049	*277
Hodges Creek (Basin 8—Stream 1):	
At mouth	*191
About 1.14 miles upstream of mouth	*196
About 1,000 feet downstream of SR 2228	*214
Just downstream of SR 2228	*216
Just upstream of SR 2228	*222
About 1,100 feet upstream of SR 2228	*223
Powell Creek (Basin 8—Stream 7):	
At mouth	*194
Just downstream of first dam upstream of mouth	*205
Just upstream of first dam upstream of mouth	*210
Just downstream of second dam upstream of mouth	*221
Just upstream of second dam upstream of mouth	*228
About 2.69 miles upstream of SR 2226	*261
Buffalo Creek (Basin 9—Stream 1):	
At county boundary	*247
Just downstream of SR 2324	*286
Little River (Basin 10—Stream 1):	
At county boundary	*219
Just downstream of dam at SR 2224	*275
Just upstream of dam at SR 2224	*283
Just downstream of State Road 96	*301
Just upstream of State Road 96	*306
About 0.93 mile upstream of State Road 96	*319
Basin 10—Stream 2:	
At mouth	*221
At county boundary	*245
Basin 10—Stream 3:	
At mouth	*221
Just upstream of dam 1,300 feet upstream of mouth	*227
Just upstream of dam 2,600 feet upstream of mouth	*231
Hominy Branch (Basin 10—Stream 4):	
At mouth	*229
About 1.56 miles upstream of mouth	*261
Basin 10—Stream 5:	
At mouth	*246
Just downstream of SR 2329	*274
Basin 10—Stream 6:	
At mouth	*253
Just downstream of SR 2329	*253
Hominy Creek (Basin 10—Stream 7):	
At mouth	*254
Just downstream of SR 2329	*254
Big Branch (Basin 10—Stream 8):	
At mouth	*257
About 3,000 feet upstream of mouth	*264
Just downstream of State Road 96	*282
Basin 10—Stream 9:	
At mouth	*258

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just upstream of State Road 98	*289
Basin 10—Stream 10:	
At mouth	*260
Just downstream of dam	*268
Just upstream of dam	*271
Buffalo Branch (Basin 10—Stream 22):	
At mouth	*222
About 2,000 feet upstream of mouth	*228
Moccasin Creek (Basin 11—Stream 1):	
At county boundary	*212
Just upstream of U.S. Route 264	*219
Just downstream of State Road 39	*231
Just upstream of dam at State Road 39	*241
Just upstream of SR 2308	*284
About 400 feet upstream of SR 2308	*296
About 2,850 feet upstream of SR 2308	*302
Little Creek (Basin 11—Stream 2):	
At county boundary	*218
Just downstream of State Road 39	*223
Just upstream of State Road 39	*229
About 1.33 miles upstream of mouth	*229
About 1.23 miles upstream of State Road 39	*240
Beaverdam Creek (Basin 11—Stream 3):	
At mouth	*227
Just downstream of dam	*320
Beaverdam Creek (Basin 12—Stream 1):	
At mouth	*184
Just downstream of dam at SR 2217	*189
Just upstream of dam at SR 2217	*196
About 1.89 miles above mouth	*201
Just downstream of SR 2049	*207
Just upstream of SR 2049	*213
Just downstream of SR 2228	*232
Basin 12—Stream 3:	
At mouth	*214
About 2,500 feet upstream of mouth	*228
Just downstream of SR 228	*245
Poplar Creek (Basin 13—Stream 1):	
At mouth	*168
About 1.55 miles upstream of SR 1007	*211
Marks Creek (Basin 14—Stream 1):	
About 0.75 mile downstream of SR 2501	*209
About 7.39 miles upstream of mouth	*213
About 8.52 miles upstream of mouth	*230
Just downstream of SR 2500	*256
Neuse River (Basin 15—Stream 1):	
At county boundary	*161
Just downstream of SR 2000	*206
Basin 15—Stream 7:	
At mouth	*170
About 1.52 miles upstream of mouth	*186
Just downstream of SR 1007	*194
Just upstream of SR 1007	*199
About 2.84 miles upstream of mouth	*208
Just downstream of SR 2601	*228
Basin 15—Stream 8:	
At mouth	*175
Just downstream of SR 2511	*209
Basin 15—Stream 9:	
At mouth	*171
Just downstream of SR 2552	*197
Mango Creek (Basin 15—Stream 11):	
At mouth	*176
About 1.55 miles upstream of Norfolk Southern Railway	*224
Beaverdam Creek (Basin 15—Stream 21):	
At mouth	*188
Just downstream of Buffalo Road	*195
Just upstream of Buffalo Road	*200
Just downstream of Althcock Loop Road	*236
Basin 15—Stream 22:	
At mouth	*189
About 3,500 feet upstream of mouth	*201
Just downstream of SR 2049	*219
Basin 15—Stream 25:	
At mouth	*194
About 4,500 feet upstream of mouth	*212
Just downstream of SR 2049	*249
Honeycutt Creek (Basin 15—Stream 31):	
About 2.49 miles upstream of mouth	*263
Just downstream of SR 2005	*300
Basin 15—Stream 32:	
At mouth	*263
Just downstream of SR 2010	*279
Basin 15—Stream 33:	
At mouth	*265
Just downstream of dam	*276
Just upstream of dam	*282
Just downstream of SR 2005	*293
Just upstream of SR 2005	*308
Cedar Creek (Basin 15—Stream 34):	
About 1.33 miles upstream of mouth	283
Just downstream of dam	*311
Just upstream of dam	*332
About 1,900 feet upstream of dam	*336
Upper Barton Creek (Basin 16—Stream 1):	
At mouth	*283
Just downstream of SR 1841	*357
Basin 16—Stream 2:	
At mouth	*283
Just downstream of State Road 50	*324
Basin 16—Stream 5:	
At mouth	*268
Just upstream of dam	*284
About 3,000 feet upstream of mouth	*284
Just downstream of State Road 50	*288
Just upstream of State Road 50	*292
About 1,250 feet upstream of State Road 50	*297
Lower Barton Creek (Basin 17—Stream 1):	
At mouth	*283
Just downstream of State Road 50	*316
Just upstream of State Road 50	*321
Just downstream of SR 1826	*361
Basin 17—Stream 4:	
At mouth	*284
About 3,000 feet upstream of mouth	*304
Just downstream of State Road 50	*352
Just upstream of State Road 50	*361
Just downstream of SR 1831	*364
Sycamore Creek (Basin 18—Stream 6):	
About 5.66 miles upstream of mouth	*347
Just downstream of unnamed road about 6.01 miles upstream of mouth	*351
Just upstream of unnamed road about 6.01 miles upstream of mouth	*357
Basin 18—Stream 8:	
At mouth	*359
Just downstream of U.S. Route 70	*369
Just upstream of U.S. Route 70	*375
Just downstream of Westgate Road	*400
Just upstream of Westgate Road	*411
About 3,400 feet upstream of Westgate Road	*428
Crabtree Creek (Basin 19—Stream 9):	
About 1.80 miles downstream of Interstate 40	*259
About 1.10 miles upstream of SCS Dam 23	*284
Halsys Branch (Basin 19—Stream 10):	
At mouth	*284
About 0.6 mile upstream of Interstate 40	*292
Stirrup Iron Creek (Basin 19—Stream 12):	
Just upstream of Interstate 40	*321
Brier Creek (Basin 19—Stream 14):	
Just downstream of dam	*299
Just upstream of dam	*319
White Oak Creek (Basin 19—Stream 1):	
At county boundary	*229
About 5.30 miles upstream of mouth	*235
About 1,750 feet upstream of SR 2555	*251
Basin 19—Stream 4:	
At mouth	*262
Just downstream of Norfolk Southern Railway	*267
Swift Creek (Basin 20—Stream 1):	
At county boundary	*203
Just downstream of dam near State Road 50	*227
Just upstream of dam near State Road 50	*241
Just downstream of Old Stage Road	*245
Just downstream of Norfolk Southern Railway	*251
Just downstream of Lake Wheeler Dam	*269
Just upstream of Lake Wheeler Dam	*292
About 2,000 feet downstream of SR 1300	*315
Bagwell Branch (Basin 20—Stream 10):	
At mouth	*241
Reedy Branch (Basin 20—Stream 11):	
At mouth	*241
Yates branch (Basin 20—Stream 13):	
At mouth	*247
Just downstream of Norfolk Southern Railway	*257
Just downstream of dam	*266
Just upstream of dam	*298
About 3.58 miles upstream of dam	*409
Echo Branch (Basin 20—Stream 14):	
At mouth	*257
Just downstream of Old State Road	*265
Dutchmans Branch (Basin 20—Stream 17):	
At mouth	*292
Just upstream of dam	*298
About 3,100 feet upstream of Dutchmen Downs Road	*299
Basin 20—Stream 20:	
At mouth	*284
About 0.83 mile upstream of mouth	*318
Middle Creek (Basin 22—Stream 1):	
At county boundary	*214
Just downstream of Norfolk Southern Railway	*258
Just upstream of Norfolk Southern Railway	*261
About 1.7 miles upstream of SR 1301	*373
Panther Branch (Basin 22—Stream 2):	
At mouth	*237
About 2,850 feet upstream of SR 2724	*306
Mills Branch (Basin 22—Stream 5):	
At confluence with Middle Creek (Basin 22—Stream 1)	*251
Just downstream of SR 2724	*262
Just upstream of SR 2724	*271
Just downstream of Norfolk Southern Railway	*274
Basin 22—Stream 6:	
At mouth	*271
About 2,550 feet upstream of Old Smithfield Road	*348
Camp Branch (Basin 22—Stream 7):	
At mouth	*291
About 1.1 miles upstream of unnamed road	*360
Rocky Branch (Basin 22—Stream 8):	
At confluence with Middle Creek (Basin 22—Stream 1)	*301
Just downstream of SR 1152	*370
Basin 22—Stream 9:	
At mouth	*301
About 3,900 feet upstream of SR 1360	*356
Basal Creek (Basin 22—Stream 16):	
At mouth	*312
Just downstream of dam	*316
Just upstream of dam	*328
About 0.75 mile upstream of State Road 55	*361
Terrible Creek (Basin 22—Stream 19):	
At mouth	*243
Just downstream of dam	*308
Just upstream of dam	*324
Just downstream of SR 1301	*349
Basin 22—Stream 20:	
At confluence with Terrible Creek (Basin 22—Stream 19)	*289
About 1.0 mile upstream of confluence with Terrible Creek (Basin 22—Stream 19)	*312
Rocky Ford Branch (Branch 24—Stream 5):	
About 900 feet upstream of Norfolk Southern Railway	*351
About 1,700 feet upstream of Norfolk Southern Railway	*362
Little Beaver Creek (Basin 27—Stream 1):	
At county boundary	*230
About 1.0 mile upstream of SR 1141	*278
Beaver Creek (Basin 27—Stream 2):	
At county boundary	*239
Just downstream of SR 1611	*364
Beaver Creek Tributary (Basin 27—Stream 3):	
At mouth	*264
About 0.78 mile upstream of mouth	*277
Basin 27—Stream 4:	
At mouth	*263
About 1,250 feet upstream of mouth	*290
Reedy Branch (Basin 27—Stream 5):	
At mouth	*239
Just upstream of confluence of Reedy Branch Tributary	*266
Reedy Branch Tributary (Basin 27—Stream 6):	
At mouth	*266
Just downstream of SR 1163	*305
Kit Creek (Basin 29—Stream 7):	
Just upstream of State Road 55	*236
About 2.21 miles upstream of CSX Railroad	*266
Kit Creek Tributary No. 2 (Basin 29—Stream 8):	
At mouth	*236
About 0.97 mile upstream of mouth	*266
Kit Creek Tributary No. 1 (Basin 29—Stream 11):	
At mouth	*260
About 1.21 miles upstream of SR 1639	*280

Maps available for inspection at the Community Development Department, County Courthouse, Raleigh, North Carolina.

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Wendell (town), Wake County (FEMA Docket No. 7023)	
Buffalo Creek (Basin 9—Stream 1):	
About 400 feet upstream of county boundary	*247
About 2,200 feet upstream of Norfolk Southern Railway	*274
Little River (Basin 10—Stream 1):	
At confluence of Buffalo Branch (Basin 10—Stream 22)	*222
About 2,200 feet upstream of U.S. Business Route 64	*228
Hominy Branch (Basin 10—Stream 4):	
About 2,700 feet downstream of SR 2329	*256
Just downstream of SR 2329	*270
Buffalo Branch (Basin 10—Stream 22):	
At mouth	*222
About 1,500 feet above mouth	*222
Just downstream of dam	*229
Just upstream of dam	*241
Just upstream of private road (about 4,000 feet upstream of mouth)	*257
About 6,000 feet above mouth	*257
Just downstream of SR 2353	*270
Lizard Lick Creek (Basin 10—Stream 23):	
At mouth	*226
About 5,000 feet upstream of mouth	*242
Just downstream of SR 2359	*250
Just upstream of SR 2359	*256
Just downstream of dam	*262
Maps available for inspection at the Town Hall, Wendell, North Carolina.	
Zebulon (town), Wake County (FEMA Docket No. 7023)	
Little River (Basin 10—Stream 1):	
About 3,150 feet upstream of U.S. Business Route 64	*228
Just downstream of State Road 97	*236
Wheeles Creek (Basin 10—Stream 25):	
At mouth	*233
Just downstream of Worth Hinton Road	*281
Little Creek (Basin 11—Stream 2):	
About 1.16 miles downstream of Norfolk Southern Railway	*240
About 3,000 feet downstream of Norfolk Southern Railway	*249
Just downstream of State Road 97	*265
Just upstream of State Road 97	*272
Just downstream of Cemetery Street	*278
Beaverdam Creek (Basin 11—Stream 3):	
About 1,450 feet downstream of SR 2406	*275
Just downstream of SR 1001	*297
Maps available for inspection at the Town Hall, 111 East Vance Street, Zebulon, North Carolina.	
OKLAHOMA	
Glenpool (city), Tulsa County (FEMA Docket No. 7024)	
Nichols Creek:	
At the downstream side of U.S. Routes 75 & 169	*685
33rd West Avenue (upstream corporate limits)	*757
Rolling Meadows Creek:	
At U.S. Routes 75 & 169	*695
At the upstream corporate limits	*727
Maps available for inspection at the City Manager's Office, 14522 Broadway, Glenpool, Oklahoma.	
Owasso (city), Tulsa County (FEMA Docket No. 7024)	
Bird Creek Tributary 5A:	
Approximately 350 feet upstream of U.S. Highway 169	*804
Approximately 3,150 feet upstream of North 123rd Street	*854
Maps available for inspection at the Community Development Office, 207 South Cedar, Owasso, Oklahoma	
Pink (town) Pottawatomie County (FEMA Docket No. 7026)	
Little River:	
Approximately 1 mile downstream of confluence with Pecan Creek	*960
Approximately .42 mile upstream of confluence with Spring Creek	*970
Pecan Creek:	
At confluence with Little River	*966
Approximately 1.6 miles upstream of confluence of Bullfrog Creek	*968
Bullfrog Creek:	
At confluence with Pecan Creek	*969
Approximately 3.7 miles upstream of confluence with Pecan Creek	*1,039
Maps available for inspection at the Town Hall, Ok Road, 1 mile south of Highway 9, Pink, Oklahoma, by contacting the Town Clerk for appointment at (405) 598-3615.	
Sallisaw (city), Sequoyah County (FEMA Docket No. 7026)	
West Shiloh Branch:	
At West Shiloh Avenue	*490
At County Road	*539
Little Sallisaw Creek:	
Just downstream of Kansas City Southern Railway	*488
Just downstream of U.S. Route 64 (Cherokee Avenue)	*492
Hog Creek:	
Just upstream of Interstate Route 40	*492
Approximately 0.9 mile downstream of U.S. Route 59	*522
Maps available for inspection at the City Engineer's Office, 111 N. Elm Street, Sallisaw, Oklahoma	
Sequoyah County (unincorporated areas) (FEMA Docket No. 7024)	
West Shiloh Branch:	
Approximately 0.6 mile downstream of West Shiloh Avenue	*482
Approximately 130 feet upstream of County Road	*540
Little Sallisaw Creek:	
Just upstream of Dogwood Street	*481
Approximately 0.5 mile upstream of Interstate Route 40	*501
Hog Creek:	
At confluence with Little Sallisaw Creek	*491
Approximately 0.9 mile downstream of U.S. Route 59	*522
Maps available for inspection at the Sequoyah County Conservation District, 101 McGee Drive, Sallisaw, Oklahoma.	
Tulsa County (unincorporated areas) (FEMA Docket No. 7030)	
Nichols Creek:	
At downstream corporate limits	*717
At upstream corporate limits	*726
Rolling Meadows Creek:	
At corporate limits	*727
Approximately 1,625 feet upstream of corporate limits	*739
Maps available for inspection at the County Engineer's Office, 500 South Denver, Tulsa, Oklahoma	
PENNSYLVANIA	
Dreher (township), Wayne County (FEMA Docket No. 7026)	
Wallenpaupack Creek:	
Approximately 100 feet downstream of the confluence of East Branch Wallenpaupack Creek	*1,301
Approximately 425 feet downstream of Pine Grove Road	*1,459
Maps available for inspection at the Township Building, Route 191, Newfoundland, Pennsylvania.	
Girardville (borough), Schuylkill County (FEMA Docket No. 7026)	
Mahanoy Creek:	
At Julia Street	*939
At confluence of Shenandoah Creek	*961
Shenandoah Creek:	
At confluence with Mahanoy Creek	*961
Approximately 980 feet upstream from confluence with Mahanoy Creek	*966
Maps available for inspection at the Borough Hall, 4th and B Streets, Girardville, Pennsylvania.	
PUERTO RICO	
Rio Mameyes Basin, Rio Grande de, Pedillas and Rio Guamani Basin (FEMA Docket No. 7032)	
Atlantic Ocean:	
At Atlantic Ocean shoreline just west of the mouth of Rio Mameyes	**4.3
Rio Guamani:	
Just downstream of Camino Pozo Hondo	**49.0
Approximately 410 meters upstream of Camino Pozo Hondo	**54.5
Rio Nigua:	
Approximately 40 meters above confluence with Caribbean Sea	**2.8
Approximately 1,185 meters upstream of Puerto Rico Highway 753	**60.2
** Elevation in meters (Mean Sea Level)	
Maps available for inspection at the Minillas Governmental Center, De Diego Avenue, 13th Floor, North Building, Stop 22, San Juan, Puerto Rico.	
SOUTH CAROLINA	
Barnwell County (unincorporated areas) (FEMA Docket No. 7026)	
Salkehatchie River:	
About 700 feet downstream of CSX railroad	*165
Just upstream of State Route 64	*171
Turkey Creek:	
About 1600 feet upstream of mouth	*155
About 0.89 mile upstream of Wellington Drive	*176
Jordan Branch:	
Just upstream of Galilee Road	*199
Just downstream of dam	*200
Just upstream of dam	*210
About 3100 feet upstream of Main Street	*217
Maps available for inspection at the County Courthouse, Barnwell, South Carolina.	
TEXAS	
Denison (city), Grayson County (FEMA Docket No. 6969)	
Iron Ore Creek:	
Approximately 2.8 miles upstream of U.S. Route 69	*563
Just upstream of Fanin Avenue	*804
Approximately 400 feet upstream of the confluence with Ellsworth Branch	*626
Approximately .8 mile downstream of Loy Lake Road	*640
Loy Creek:	
Approximately 100 feet upstream of the confluence with Iron Ore Creek	*625
Approximately 675 feet upstream of Low Lake Road	*659
Waterloo Creek:	
Approximately 600 feet upstream of the confluence with Iron Ore Creek	*620
At Flowers Drive	*620
Red River:	
Approximately 2.7 miles downstream of Burlington Northern Railroad	*530
Approximately .8 mile upstream of U.S. Routes 69 and 75	*534
Maps available for inspection at the City Hall, 108 Main, Denison, Texas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Grayson County (unincorporated areas) (FEMA Docket No. 6997)	
Iron Ore Creek:	
Approximately 200 feet upstream of confluence with Choctaw Creek	*538
Approximately 1.9 miles upstream of Preston Road	*712
Choctaw Creek:	
Approximately 500 feet upstream of confluence with Iron Ore Creek	*538
Approximately 2.5 miles upstream of Moore Road	*731
Red River:	
Approximately 2.2 miles downstream of State Route 120	*511
Approximately 2 miles upstream of U.S. Routes 69 and 75	*536
West Prong Whites Creek:	
At County boundary	*660
Approximately 1.7 miles upstream of State Route 121	*712
Ellsworth Branch:	
At the confluence with Iron Ore Creek	*626
Approximately 1.9 miles upstream of State 691	*709
Loy Creek:	
At the confluence with Iron Ore Creek	*625
Approximately 625 feet upstream of Loy Lake Road	*660
Post Oak Creek:	
At the confluence with Choctaw Creek	*625
Approximately 800 feet downstream of U.S. Route 82	*741
Sand Creek:	
Approximately 500 feet upstream of State Route 1417	*708
Approximately 1.6 miles upstream of Washington Avenue	*746
Stream B:	
Approximately 2,200 feet downstream of U.S. Route 82	*668
At the City of Sherman corporate limits	*726
Waterloo Creek: Entire length of stream within county	*620
Stream G:	
At the confluence with Choctaw Creek	*603
Approximately 2.6 miles upstream of confluence with Choctaw Creek	*761
Calf Creek:	
Approximately 6.5 miles upstream of confluence with Choctaw Creek	*653
Approximately 7.8 miles upstream of confluence with Choctaw Creek	*678
Bois d'Arc Creek:	
Approximately 600 feet downstream of Missouri-Kansas-Texas Railroad	*705
Approximately 0.8 miles upstream of Missouri-Kansas-Texas Railroad	*723
Maps available for inspection at the County Courthouse, Sherman, Texas.	
Jasper (city), Jasper County (FEMA Docket No. 7030)	
Trotti Brook:	
At downstream corporate limits	*207
Approximately 900 feet upstream of Munson Street on west side river	*241
Maps available for inspection at the City Hall, 272 East Lamar, Jasper, Texas.	
Nueces County (unincorporated areas) (FEMA Docket No. 7032)	
Gulf of Mexico:	
Vierto Del Mar (extended)	*14
East-west access road to Nueces County Park No. 1	*10
Laguna Madre:	
Packery channel east of Packery Channel Park	*12
Approximately 1,000 feet southwest of bayside mouth of Corpus Christi Pass	*12
Palo Seco Drive	*10
Maps available for inspection at the Nueces County Courthouse, Corpus Christi, Texas.	
Sherman (city), Grayson County (FEMA Docket No. 6998)	
Stream B:	
Approximately 50 feet upstream of Union Pacific Railroad	*728
Approximately 1,800 feet upstream of Tuck Street	*745
East Fork Post Oak Creek:	
Approximately 100 feet upstream of U.S. Route 82	*769
Approximately 75 feet upstream of Pecan Grove Road	*771
Choctaw Creek:	
Approximately 1 mile downstream of Burlington Northern Railroad	*679
At Moore Road	*969
Maps available for inspection at the City Hall, 400 North Rusk, Sherman, Texas.	
Whitewright (town), Grayson County (FEMA Docket No. 6998)	
Bois d'Arc Creek:	
Approximately 600 feet downstream of Missouri-Kansas-Texas Railroad	*705
Approximately 0.8 mile upstream of Missouri-Kansas-Texas Railroad	*723
Maps available for inspection at the City Hall, Whitewright, Texas.	
VIRGINIA	
Bedford (city), Independent City (FEMA Docket No. 7024)	
Unnamed Tributary to Little Otter River:	
At confluence with Little Otter River	*841
Approximately 850 feet upstream of Crenshaw Street	*920
West Branch:	
Approximately 400 feet upstream of confluence with Unnamed Tributary to Little Otter River	*882
At U.S. Route 460	*902
Little Otter River:	
Approximately 500 feet downstream of State Route 43	*836
At confluence of Unnamed Tributary to Little Otter River	*841
Maps available for inspection at the City Hall, 215 E. Main Street, Bedford, Virginia.	
WEST VIRGINIA	
White Sulphur Springs (city), Greenbrier County (FEMA Docket No. 7017)	
Howard Creek:	
Approximately 1,000 feet downstream of Greenbrier Street	*1,836
At upstream corporate limits	*1,879
Dry Creek:	
At confluence with Howard Creek	*1,850
At upstream corporate limits	*1,868
Wades Creek:	
At confluence with Howard Creek	*1,855
Approximately 240 feet upstream of State Route 92	*1,902
Maps available for inspection at the City Hall, 34 W. Main Street, White Sulphur Springs, West Virginia.	

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-167 Filed 1-6-92; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF DEFENSE

48 CFR Part 249

Default for Failure To Submit Revised Delivery Schedule

AGENCY: Department of the Army, DoD.

ACTION: Interim rule with request for comments.

SUMMARY: A class deviation from FAR 52.249-8 Default (Fixed Price Supply and Service), has been requested by the U.S. Army Communications-Electronics Command (CECOM). Under this deviation, CECOM Contracting Officers (COs) will insert, in addition to the FAR 52.249.8 clause, a clause entitled Default for Failure to Submit Revised Delivery Schedule, which broadens the scope of the 52.249-8 clause by placing additional obligations on contractors. COs will insert the Default for Failure to Submit Revised Delivery Schedule clause in production contracts for a three-year period.

EFFECTIVE DATE: Interim rule effective January 7, 1992; comments must be submitted on or before February 6, 1992.

ADDRESSES: Mail comments to: Headquarters, U.S. Army Communications-Electronics Command, Attn: AMSEL-LG-AB (Mr. James Scuro), Fort Monmouth, NJ 07703-5010 or they may be delivered to: Headquarters, U.S. Army Communications-Electronics Command, Attn: Legal Office, Mr. James Scuro, 2nd floor, CECOM Office Building, Tinton Falls, NJ.

FOR FURTHER INFORMATION CONTACT: Mr. James Scuro (908) 532-1143.

SUPPLEMENTARY INFORMATION: This proposed clause will give COs the contractual rights to require contractors to submit a proposal for a revised delivery schedule, along with documentation to support the reasonableness of the proposed schedule, within 30 days of the COs notification. If the CO approves the revised delivery schedule, it will be incorporated into the contract as a bilateral modification. A failure by a contractor to submit such a proposal and supporting documentation within 30 days as required, or within any extension of time granted in writing by the CO, will be considered a failure to make delivery within the meaning of the Default clause and will be grounds for terminating the contract for default.

The need for this clause arises when a contractor fails to meet the contract delivery schedule, the schedule is subsequently waived by the Government and the contractor then refuses to cooperate in the

establishment of a revised contract schedule. In the absence of the proposed clause the CO is forced to unilaterally impose a delivery schedule on an uncooperative contractor and then has the burden of proof to show the reasonableness of that schedule if the contract is subsequently terminated for default. The proposed clause will place the burden of developing a revised schedule on the contractor who is in a better position to evaluate its capability and thereby proposed a reasonable schedule.

This deviation will allow the use of the new clause for three years. At the end of the three year period, CECOM will submit a report showing (1) the number of contracts in which the clause was included; (2) the number of times the clause was used; and (3) CECOM's assessment of the clause's benefit.

List of Subjects in 48 CFR Part 249

Termination of contracts.

For the reasons set forth in the preamble, CECOM amends 48 CFR part 249 as follows:

1. The authority citation for part 249 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

2. Section 249.402–4 is added to read as follows:

249.402–4 Default for failure to submit revised delivery schedule.

(a) If at any time it appears that the contractor has not or will not meet the contract delivery schedule, or any extension thereof, the Contracting Officer shall have the right to require the contractor to submit a revised delivery schedule together with adequate documentation to support the reasonableness of the revised schedule. The revised schedule shall provide a specific date for the delivery of each deliverable item under the contract and shall not be submitted subject to any contingencies.

(b) Unless the Contracting Officer has extended the time in writing, the contractor shall submit the revised delivery schedule within thirty (30) days after receipt of the Contracting Officer's written request for it. Such request shall not be deemed a waiver of any existing delivery schedule. The Contracting Officer shall have thirty (30) days after receipt of the contractor's response within which to approve or disapprove the contractor's revised schedule. If it is approved, the parties shall incorporate it into the contract using a bilateral modification.

(c) If the contractor fails to submit a revised delivery schedule as specified in subparagraph (a) above, or any extension thereof granted by the Contracting Officer, the contractor shall be deemed to have failed to make delivery within the meaning of the "Default" clause of this contract and this contract shall be subject to termination.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–218 Filed 1–6–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 655

[Docket No. 910926–1304]

RIN 0648–AE19

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 4 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). The final rule will: (1) Allow annual catch specifications to be established for up to 3 years; (2) eliminate the existing foreign fishing "windows" and allow the Director, Northeast Region, NMFS (Regional Director), to limit times and areas in which foreign directed fishing may occur; and (3) allow the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) to impose special conditions on joint ventures and directed foreign fishing, including the requirement that owners and operators of foreign vessels purchase domestic harvested and processed fish in relation to the allocation of the total allowable level of foreign fishing (TALFF) to the Nation of the flag vessel. Amendment 4 revises the definition of overfishing for Atlantic mackerel; while not codified, the definition is referenced in this rule.

EFFECTIVE DATE: February 6, 1992.

ADDRESSES: Copies of the amendment, environmental assessment (EA), and regulatory impact review (RIR), and other supporting documents are available upon request from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Resource Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION: Amendment 4 makes refinements to the Atlantic mackerel, squid, and butterfish fisheries management regime. The current regime sets a biologically based allowable biological catch (ABC) for each year, from which specifications of optimum yield (OY) are derived. The OY takes economic, social, and ecological factors into consideration under the constraint of the ABC. Domestic annual processing (DAP), domestic annual harvest (DAH), joint venture processing (JVP), and TALFF are based on the OY specifications. These specifications are recommended annually by the Mid-Atlantic Fishery Management Council (Council). The Regional Director makes preliminary and final specification determinations for the fishery based on consultations with the Council and comments from the public. For the purpose of annual specifications, the FMP uses a fishing year of January 1 through December 31. The actual fishing season is prosecuted from November through March. The OY may be adjusted upward to the ABC during the fishing year to accommodate DAH needs. Any adjustments to the OY are published in the **Federal Register** following a public comment period.

In recent years, the Council has recommended that special conditions be imposed on foreign fishing through the foreign fishing permits. These conditions have included the imposition of ratios of directed catch to joint venture and purchased domestic production. Ratios are a method to distribute allocations in exchange for over-the-side purchases and purchases of domestically processed product.

Although boundaries, or windows, in which directed foreign fishing may occur are specified in 50 CFR part 611, the foreign vessels have been granted exceptions by the Regional Director under § 611.50(b)(7) to fish outside of them for several years.

Amendment 4 contains a revised definition of overfishing for Atlantic mackerel that is implemented by approval of the amendment. This rule implements three management measures of Amendment 4: (1) Changes the period in which specifications apply from 1 year (annual) to 3 years; (2) removes the foreign fishing windows but allows the Regional Director to limit the areas in which foreign fishing can occur; and (3) allows the Assistant Administrator to impose special conditions on foreign fishing permits, including ratios.

A description of the management measures of Amendment 4 and their background and rationale were discussed in the proposed rule (56 FR 47439; September 19, 1991) and are not repeated here. The proposed rule invited public comments through October 28, 1991. The comments received are summarized and responded to below.

Comments and Responses

Two sets of public comments were received and are summarized as follows:

Comment: One commenter believes that the measure removing foreign fishing windows is unjustified, since it gives the Regional Director discretionary power to determine where foreign fishing may occur.

Response: The removal of foreign fishing windows signals a response to the dynamic nature of these fisheries and enhances the ability of NMFS to manage these stocks of fish on a timely basis.

Comment: Both commenters felt that the measure allowing the Assistant Administrator to impose ratios and special conditions may cause distress to foreign nations applying for TALFF or JVP by eliminating flexibility of their operations.

Response: This measure will allow the Assistant Administrator to promote the growth of the U.S. domestic fishery while applying strict conservation measures to the management regime in terms of allocations and bycatch limitations.

Classification

The Assistant Administrator determined that Amendment 4 is necessary for the conservation and management of the Atlantic mackerel, squid, and butterfish fisheries.

The Council prepared an EA that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule. You may obtain a copy of the EA from the Council (see **ADDRESSES**).

The Assistant Administrator has determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The rule is not expected to have an annual impact of $100 million or more, or to lead to an increase in costs or prices to consumers, individual industries, Federal, state, or local government agencies, or geographic regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets are anticipated. You may obtain a copy of the RIR from the Council (see **ADDRESSES**).

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the implementing rule will not have a significant economic impact on a substantial number of small entities. While this rule lays the groundwork for the prosecution of joint venture fisheries in Atlantic mackerel, the rule itself does not impact United States vessels. The special conditions of restricted bycatch and the use of ratios have been used in the management of this fishery for several years. However, NOAA believes that these conditions, by which the fishery is managed, should be explicitly stated as options in this FMP.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the Federally-approved coastal management programs of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Massachusetts, Connecticut, New York, New Hampshire, Pennsylvania and Virginia concur with the determinations. Delaware, Rhode Island, Maryland, did not respond within the statutory time period; therefore, their agreement is presumed. The State of Maine has responded previously that fishery management is not a listed activity under Maine's coastal management program and that no consistency review was required.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects

50 CFR Part 611

Fishing, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 655

Fishing, Fisheries, Vessel permits and fees.

Dated: December 31, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR chapter VI is amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for 50 CFR part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Section 611.50 is amended by deleting Figure 1, and Table 1, and revising paragraph 611.50(b)(2) to read as follows:

§ 611.50 Northwest Atlantic Ocean fishery.

* * * * *

(b) * * *

(2) *Time and area restrictions.* (i) Fishing, including processing, scouting, and support of foreign or U.S. vessels, is prohibited south of 35° 00′ N. latitude, and north and east of a line beginning at the shore at 44°22′ N. latitude, 67°52′ W. longitude and intersecting the boundary of the EEZ at 44°11′12″ N. latitude, 67°16′46″ W. longitude.

(ii) Foreign directed fishing under provisions of this section, other than joint venture support by foreign vessels, may not be conducted in the EEZ shoreward of 20 nautical miles from the baseline from which the territorial sea is measured.

(iii) The Assistant Administrator may modify the 20 nautical mile buffer zone or northern or southern boundaries or establish other area restrictions on foreign fishing if necessary.

(iv) The Regional Director may modify the 20 nautical mile buffer zone or northern or southern boundaries or establish other time and area restrictions if he determines that:

(A) The restriction will enhance the availability of fish to domestic fishermen;

(B) The restriction will reduce the amount of the bycatch of certain nontarget species;

(C) The restriction will reduce gear conflicts between domestic and foreign fishermen; or

(D) The restriction will enhance the conservation and management of the fishery.

(v) The Regional Director shall consult with the Council prior to giving notice of any area or time restriction. The Secretary shall also consult with the Coast Guard if the restriction is proposed to reduce gear conflicts. If the Secretary determines after such

consultation that the restriction appears to be appropriate, he shall publish a notice of the proposed restriction in the **Federal Register** together with a summary of the information on which the restriction is based. Following a 30-day comment period, he shall publish a final notice.

(vi) The Regional Director may rescind any restriction if he determines that the basis for the restriction no longer exists.

(vii) Any notice of restriction shall operate as a condition imposed on the permit issued to the foreign vessels involved in the fishery.

* * * * *

PART 655—ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES

3. The authority citation for 50 CFR part 655 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. Section 655.22 is amended by revising paragraphs (a), (b), (c), and (d), redesignating paragraph (f) as paragraph (g), and adding a new paragraph (f) to read as follows:

§ 655.22 Procedures for determining initial annual amounts and adjustments.

(a) On or about October 15 of each year, the Council will prepare and submit recommendations to the Regional Director of the initial annual amounts for the fishing year beginning January 1, or the continuing validity of annual specifications for the upcoming fishing year established under paragraph (f) of this section, based on information gathered from sources specified in paragraph (e) of this section. The Council may also recommend, in order to facilitate development of the U.S. fishery, special conditions on joint ventures and foreign directed fishing activities. Such conditions may include certain ratios of TALFF to purchases of domestic-harvested fish and/or domestic-processed fish in relation to the initial annual amounts.

(b) On or about November 1 of each year, unless annual specifications have been established under paragraph (f)(1) of this section, the Secretary will publish a notice in the **Federal Register** that specifies preliminary initial amounts of OY, DAH, DAP, JVP, TALFF, and reserve (if any) for each species. The amounts will be based on information submitted by the Council and from the sources specified in paragraph (e) of this section. In the absence of a Council report, the amounts will be based on information gathered from sources specified in paragraph (e) of this section and other information considered appropriate by the Regional Director. If the preliminary initial amounts differ from those recommended by the Council, the notice must clearly state the reason(s) for the difference(s) and specify how the revised specifications satisfy the 9 criteria set forth above for the species affected. The **Federal Register** notice will provide for a 30-day comment period.

(c) The Council's recommendation and the information listed in paragraph (e) of this section will be available in aggregate form for inspection at the office of the Regional Director during the public comment period. The Council's report on specifications established under paragraph (f)(1) of this section will also be available for inspection at the office of the Regional Director upon receipt from the Council.

(d) On or about December 15 of each year, unless annual specifications have been established under paragraph (f)(1) of this section, the Secretary will make a final determination of the initial amounts for each species, considering all relevant data and any public comments, and will publish a notice of the final determination and response to public comments in the **Federal Register**. If the final amounts differ from those recommended by the Council, the notice must clearly state the reason(s) for the difference(s) and specify how the revised specifications satisfy the 9 criteria set forth above for the species affected.

* * * * *

(f)(1) In accordance with the procedures set forth in this section, the Council may prepare recommendations for initial annual amounts for 3 consecutive fishing years.

(2) The Secretary may adjust these annual amounts upward or downward to produce the greatest overall benefit to the United States at any time prior to or during the fishing years for which the annual specifications were set, by publishing a notice and providing for a 30-day comment period, followed by publication of a final notice.

[FR Doc. 92-265 Filed 1-6-92; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 4
Tuesday, January 7, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

RIN 3150-AD80

Training and Qualification of Nuclear Power Plant Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to require each applicant for and each holder of a license to operate a nuclear power plant to establish, implement, and maintain a training program for nuclear power plant personnel based on a systems approach to training. The proposed rule would require that the training program provide qualified personnel to operate and maintain the facility in a safe manner in all modes of operation. The rule is being proposed to meet the directives of section 306 of the Nuclear Waste Policy Act of 1982. The proposed rule generally reflects current industry practice.

DATES: The comment period expires March 9, 1992. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Mail written comments to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN; Docketing and Service Branch. Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Copies of the draft regulatory analysis, as well as copies of the comments received on the proposed rule, may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Morton Fleishman, Office of Nuclear Regulatory Research, telephone: (301) 492-3794 or Mary Ann Biamonte, Office of Nuclear Reactor Regulation, telephone: (301) 504-1073, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

Background

Nuclear Waste Policy Act of 1982

In section 306 of the Nuclear Waste Policy Act of 1982 (NWPA), Public Law 97-425, the NRC was "directed to promulgate regulations, or other appropriate Commission regulatory guidance for the training and qualifications of civilian nuclear power plant operators, supervisors, technicians and other operating personnel. Such regulations or guidance shall establish * * * instructional requirements for civilian nuclear power plant licensee personnel training programs." In order to meet this directive, on March 20, 1985 (50 FR 11147), the Commission published a Policy Statement on Training and Qualification of Nuclear Power Plant Personnel. The policy statement endorsed a training accreditation program managed by the Institute of Nuclear Power Operations (INPO) in that it encompassed the elements of effective performance-based training and provided the basis to ensure that personnel have qualifications commensurate with the performance requirements of their jobs.

In addition to endorsing the INPO-managed training accreditation program, the 1985 Policy Statement also recognized the INPO-managed accreditation of utility training for the following training programs:

(1) Non-licensed operator.
(2) Control room operator.
(3) Senior control room operator/shift supervisor.
(4) Shift technical advisor.
(5) instrument and control technician.
(6) Electrical maintenance personnel.
(7) Mechanical maintenance personnel.
(8) Radiological protection technician.
(9) Chemistry technician.
(10) On-site technical staff and managers.

While issuing the policy statement, the Commission decided to defer rulemaking in this area for a minimum of two years in order to allow the industry to continue its initatives to upgrade training programs through the INPO-managed training accreditation program. Following issuance of the policy statement, the NRC evaluated the INPO-managed training accreditation program over a two-year period and concluded that it was an effective program. On November 18, 1988, the NRC published an amended policy statement in order to (1) provide additional information regarding the NRC's experience with industry accreditation, (2) change the policy regarding enforcement to eliminate discretion in inspection and enforcement in the areas covered by the 1985 Policy Statement, and (3) reflect current Commission and industry guidance. The NRC staff continues to perform training inspections at different utilities with accredited training programs to ensure that these programs remain effective.

U.S. Court of Appeals Decision

On April 17, 1990, the U.S. Court of Appeals for the District of Columbia Circuit concluded that the Commission's Policy Statement did not meet the intent of the Congressional directive to create mandatory requirements for personnel training programs at civilian nuclear power plants. The Court remanded the issue back to the NRC for action consistent with the Court's findings. *Public Citizen* v. *NRC*, 901 F.2d 147 (D.C Cir.). The Commission requested a rehearing by the full court of the decision. The request was denied on June 19, 1990. On November 26, 1990, the Supreme Court denied a petition for certiorari by the Nuclear Utility Management and Resource Council. 59 U.S.L.W. 3392 (November 26, 1990).

Actions Proposed in Response to the Court Decision

The NRC is proposing to amend 10 CFR part 50 to require each applicant for and each holder of a license to operate a nuclear power plant to establish, implement, and maintain a training program for nuclear power plant personnel that provides qualified personnel to operate and maintain the facility in a safe manner in all modes of operation. The rule is being proposed to meet the directives contained in section 306 of the Nuclear Waste Policy Act of 1982 (NWPA), Pub. L. 97-425, as interpreted by the U.S. Court of Appeals for the District of Columbia Circuit.

The proposed rule would amend 10 CFR part 50 to require training programs to be derived from a systematic analysis of job performance requirements. Current industry programs have been developed consistent with this approach. From the NRC's monitoring of industry training programs since the 1985 policy statement went into effect, the NRC has concluded that these programs have been generally effective in ensuring that personnel have qualifications commensurate with the performance requirements of their jobs.

Discussion

The safety of nuclear power plant operations and the assurance of general public health and safety depend on personnel performing at adequate performance levels. The systematic determination of qualifications and the provision of effective initial training and periodic retraining will enhance confidence that workers can perform at adequate performance levels. Qualifications in the context of this rule means that nuclear power plant personnel have completed the training program, or parts thereof, as evidenced by meeting the job performance requirements, and are permitted to independently perform specific activities. The Commission has taken an approach in this proposed rule that would specify the process to be implemented by applicants and licensees by which job performance criteria and associated personnel training would be derived. This approach provides for flexibility and site-specific adaptations in the training programs. No additional cost is anticipated with this approach for licensees with accredited programs because the proposed rule is believed to be consistent with existing industry practice for personnel training.

Approaches to the rulemaking other than that proposed, which establishes requirements consistent with the programs already largely developed and implemented by the industry, were not evaluated in detail. There is no evidence that any other approach would provide greater protection of the public's health and safety than the site-specific training programs called for in the proposed rule. At the same time, other approaches would involve greater costs to the industry and the NRC.

Summary of Proposed Rule

Each applicant for and each holder of an operating license for a nuclear power plant would be required to—

(1) Establish a training program for certain nuclear power plant personnel who perform operating, maintenance, and technical support activities;

(2) Use a systems approach to training;

(3) Incorporate instructional requirements to provide qualified personnel who can safely operate the facility in all modes of operation;

(4) Periodically review, evaluate and revise the training program; and

(5) Maintain and keep available for NRC inspection sufficient records to verify the adequacy of the training program.

Although no written response would be required, licensees would be expected to review their license and other commitments for consistency with the new rule.

The Commission has also developed conforming amendments to 10 CFR parts 50 and 52 to accompany the proposed rule. Two changes, to parts 50 and 52, would update information collection requirements for OMB approval and are considered minor. The other change to part 52 is more substantive and has been developed to ensure that applicants for a combined license (construction and operation) will establish, implement, and maintain a training program in accordance with the requirements in 10 CFR 50.120. The proposed rule is not intended to preclude vendor training programs developed in conjunction with standardization of design.

Discussion of Proposed Rule

A new section, § 50.120, would be added to 10 CFR part 50, entitled "Training and qualification of nuclear power plant personnel."

The proposed rule would establish the requirements for and the essential elements of the process to be used by applicants and licensees to—

(1) Determine training and qualification requirements for all appropriate personnel; (2) develop corresponding personnel training programs to ensure that qualified personnel are available to operate and maintain the facility in a safe manner; and (3) implement and maintain these programs effectively on a continuing basis.

Paragraph (a), "Applicability," indicates that the proposed rule would apply to each applicant for and each holder of an operating license for a nuclear power plant.

Paragraph (b), "Requirements," would require that each applicant and licensee establish, implement, and maintain a program for training nuclear power plant personnel which addresses all modes of operation and is derived from a systems approach to training (SAT). The SAT was selected because it has the following characteristics:

(1) Training content and design are derived from job performance requirements;

(2) Training is evaluated and revised in terms of the job performance requirements and observed results on the job;

(3) Trainee success in training can predict satisfactory on-the-job performance; and

(4) Training and associated programs can be readily audited because they involve clearly delineated process steps and documentation.

The SAT process contains five major elements and is intended to require a training system that will ensure successful performance on the job by trained individuals. The elements are—

(1) Analysis of job performance requirements and training needs;

(2) Derivation of learning objectives;

(3) Design and implementation of the training programs;

(4) Trainee evaluation;

(5) Program evaluation and revision.

The SAT process also provides a sequential method of generating the type of documentation needed for training review. Use of SAT will obviate the need for additional-documentation for NRC review.

The SAT process is a generic process, and its application is not limited to a certain subject matter or to specific licensee personnel. Training programs based on job performance requirements have been successfully used by the military for over 20 years, and by the nuclear industry for much of the past decade. Furthermore, the Commission has recognized the appropriateness of using this approach to training in its requirements for operator licensing prescribed in § 55.31(a)(4), and for operator requalification prescribed in § 55.59(c).

The rule would provide for the training and qualification of the following nuclear power plant personnel:

(1) Non-licensed operator.

(2) Shift supervisor or equivalent.

(3) Shift technical advisor.

(4) Instrument and control technician.

(5) Electrical maintenance personnel.

(6) Mechanical maintenance personnel.

(7) Radiological protection technician.

(8) Chemistry technician.

(9) On-site technical staff and managers. Licensed operators, such as control room operators and senior control room operators, are not covered by this rule. They will continue to be covered by 10 CFR part 55 for both

initial and requalification training. Because some senior control room operators may also be shift supervisors, only those aspects of training related to their shift supervisor function would be covered by the proposed rule.

The rule would require that training programs be periodically evaluated and revised as appropriate, and also be periodically reviewed by management for effectiveness. Current industry criteria in this regard involve the evaluation by management of individual training programs on a continuing or periodic basis to identify program strengths, weaknesses, and effectiveness. These evaluations are normally completed within a three to six month period following completion of the training programs. The sum of these evaluations results in a comprehensive review. Periodic evaluations of the overall training programs are being done within the four-year industry accreditation cycle. The Commission expects the above practices to continue in conformance with this rule.

Determination of job performance requirements and training needs is part of analysis in the SAT process and is reflected in qualification requirements. It will be the responsibility of the facility applicant or licensee to ensure that all personnel, licensee and contractor, within the scope of the proposed rule have qualifications commensurate with job performance requirements for those tasks for which they are assigned. Initial and continuing training, as appropriate, is expected to be provided to job incumbents in positions covered by the proposed rule.

Each applicant and licensee would be required to maintain and keep available for NRC review and inspection the materials used to establish and implement required training programs for the affected personnel. Current industry criteria in this regard involve retention of those records necessary to support management information needs and to provide required historical data. In general, these include records of program development, evaluation, and revision related to the existing training program. The NRC inspection of training programs has found that sufficient records are being retained for periods that are adequate for regulatory purposes. The Commission believes that no additional guidance for recordkeeping is necessary.

No written response is required by the proposed rule. However, applicants and licensees would be expected to compare their current training commitments and licensing bases with the requirements of the proposed rule. Licensees should use the results of this comparison to evaluate and revise, as appropriate, existing technical specifications (e.g. perhaps deleting Standard Technical Specification Section 6.4—Training) and/or previous commitments. This approach will ensure a common understanding of training commitments (between applicants and licensees and the NRC staff) when future inspections are conducted.

Impact of the Rule on Existing Industry Training Programs

The rule, if adopted, would supersede the Policy Statement on Training and Qualification of Nuclear Power Plant Personnel. The Commission believes that the rule would not result in any change to accredited training programs. Inspections by the NRC have found the programs to be generally acceptable. The Commission concludes that those training programs accredited and implemented consistent with the industry program objectives and criteria would be in compliance with the requirement of this regulation. This conclusion is based both on inspections by the staff which have found the programs to be generally acceptable, and the staff's review of documents which provide the industry program objectives and criteria. An applicant or licensee could also comply with the requirements of the proposed rule without being accredited.

An existing Memorandum of Agreement between INPO and the NRC assures that the NRC will be aware of any modifications or updates to the industry's program objectives and criteria documents which would warrant any modification in the NRC's position expressed above. The NRC will continue to monitor the industry accreditation process by—

(a) Nominating individuals who are not on the NRC staff to serve as members of the National Nuclear Accrediting Board with full voting privileges;

(b) Having an NRC staff member attend and observe selected National Nuclear Accrediting Board meetings with the INPO staff and/or the utility representatives;

(c) Having NRC employees observe INPO accreditation team site visits;

(d) Reviewing any modifications in the program objectives and criteria as currently described in the National Academy for Nuclear Training document "The Objectives and Criteria for Accreditation of Training in the Nuclear Power Industry" (ACAD 91–015); and.

(e) Verifying licensee programs through the NRC inspection process.

As noted above, the NRC has the ability to verify compliance with this regulation through the inspection program and will do so as appropriate. In their inspections the NRC staff will use Inspection Procedure 41500, "Training and Qualification Effectiveness," which references the guidance in NUREG–1220,[1] "Training Review Criteria and Procedures." Based on NRC inspections conducted to date, the Commission believes that the criteria and procedures in NUREG–1220 provide sufficiently clear guidance to allow applicants and licensees to implement effective training programs in compliance with the rule. Therefore, the Commission does not believe it is necessary to issue a regulatory guide to provide additional guidance for complying with the rule.

Vendor-Developed Programs

In 10 CFR part 52, the Commission articulated the goal of safety through standardization of design. The Commission believes that the benefits of standardization could involve the standardization of some types of training associated with the 10 CFR part 52 design certification. Therefore, nothing in the proposed rule is intended to preclude standard training programs being developed or implemented by a vendor. For example, the initial training for instrument and control technicians related to a particular standard design may be conducted by a vendor. As a result, there could be a pool of technicians trained by the vendor on the certified design available for hire at a nuclear power plant site. The personnel, however, would need to complete site-specific training related to the administrative and operating philosophy of the site as well as any other specific requirements of the licensee.

Thus, the requirements for personnel training programs prescribed by § 50.120 do not prevent a vendor from training personnel or from developing a training process. However, it is important to note that vendor training programs are not governed by the proposed rule and that the licensee is ultimately responsible for ensuring that personnel are qualified.

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[1] Copies of NUREG–1220 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW., Lower Level of the Gelmen Building, Washington, DC.

Applicants for a Combined License

Part 52 is being amended to require that applicants for combined licenses establish, implement, and maintain training programs in accordance with the requirements in 10 CFR 50.120.

Invitation To Comment

Comments concerning the scope and content and the implementation of the proposed amendments are encouraged. Comments are especially solicited on (1) the personnel to be covered, (2) the impact of the proposed amendments on industry training programs, (3) the relationship of the industry's accreditation process to the proposed rule, and (4) the time periods chosen for implementation of the requirements. Suggestions for alternatives to those rulemaking methods described in this notice and estimates of cost for implementation are encouraged.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be major Federal action significantly affecting the quality of the human environmental and therefore an environmental impact statement is not required. Numerous studies have shown that in complex, man-machine systems, human error has often been the overriding contributor to actual or potential system failures that may be precursors to accidents. With this rulemaking, the NRC is emphasizing the need to ensure that industry personnel training programs are based upon job performance requirements. Personnel who are subjected to training based on job performance requirements should be able to perform their job more effectively, and with few errors. Therefore, the environmental effect of implementing this rule would, if anything, be positive because of the reduction in human error. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street. NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Morton Fleishman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–3794.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Public reporting burden for this collection of information is estimated to average 780 hours per response, including the time of reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the values (benefits) and impacts (costs) of implementing the proposed regulation for personnel training and qualification. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Morton Fleishman (see **ADDRESSES** heading).

The Commission requests public comment on the draft regulatory analysis. Comments on the analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. This proposed rule primarily affects the companies that own and operate light-water nuclear power reactors and the vendors of those reactors. The companies that own and operate these reactors do not fall within the scope of the definition of "small entity" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR part 121. Because these companies are dominant in their service areas, this proposed rule does not fall within the purview of the Act.

However, because there may be now or in the future small entities that will provide personnel to nuclear power plants on a contractual basis, the NRC is specifically seeking comment as to how the regulation will affect them and how the regulation may be tiered or otherwise modified to impose less stringent requirements on them while still adequately protecting the public health and safety. Those small entities who offer comments on how the regulation could be modified to take into account the differing needs of small entities should specifically discuss the following items:

(a) The size of their business and how the proposed regulation would result in a significant economic burden upon them as compared to larger organizations in the same business community.

(b) How the proposed regulation could be modified to take into account their differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation was modified as suggested by the commenter.

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individuals or groups.

(e) How the proposed regulation, as modified, would still adequately protect the public health and safety.

The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 59.109, does not apply to this proposed rule because these amendments are mandated by section 306 of the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10226. Therefore, a backfit analysis is not required for this proposed rule.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria,

Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 50 and 52 as follows:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for 10 CFR part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.120 is also issued under section 306 of the NWPA of 1982, 42 U.S.C. 10226. Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.46 (a) and (b), 50.54(c) and 50.120 are issued under sec. 161b, 161i and 161o, 68 Stat. 948, as amended (42 U.S.C. 2201(b); §§ 50.7(a), 50.10(a)–(c), 50.34 (a) and (e), 50.44(a)–(c), 50.46 (a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54 1 (a), (i), (i)(1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a (a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, is amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)–(c) and (e), 50.72 (a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.8, paragraph (b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.63, 50.64, 50.71, 50.72, 50.80, 50.82, 50.90, 50.91, 50.120, and appendixes A, B, E, G, H, I, J, K, M, N, O, Q, and R.

* * * * *

3. Section 50.120 is added to read as follows:

§ 50.120 Training and qualification of nuclear power plant personnel.

(a) Applicability. The requirements of this section apply to each applicant for (applicant) and each holder of an operating license (licensee) for a nuclear power plant of the type specified in § 50.21(b) or § 50.22.

(b) Requirements. Each nuclear power plant applicant, by (180 days after the effective date of the rule) or 18 months prior to fuel load, whichever is later, and each nuclear power plant licensee, by (180 days after the effective date of the rule), shall establish, implement, and maintain a training program derived from a systems approach to training as defined in 10 CFR 55.4. The training program must provide for the training and qualification of the following nuclear power plant personnel:

(1) Non-licensed operator.
(2) Shift supervisor.
(3) Shift technical advisor.
(4) Instrument and control technician.
(5) Electrical maintenance personnel.
(6) Mechanical maintenance personnel.
(7) Radiological protection technician.
(8) Chemistry technician.
(9) On-site technical staff and managers.

The training program must incorporate the instructional requirements necessary to provide qualified personnel to operate and maintain the facility in a safe manner in all modes of operation. The training program must be developed so as to be in compliance with the facility license, including all technical specifications and applicable regulations. The training program must be periodically evaluated and revised as appropriate to reflect industry experience as well as changes to the facility, procedures, regulations, and quality assurance requirements. The training program must be periodically reviewed by licensee management for effectiveness. Sufficient records must be maintained and kept available for NRC inspection to verify the adequacy of the program.

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

4. The authority citation for 10 CFR part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

5. In § 52.8, paragraph (b) is revised to read as follows:

§ 52.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.45, 52.47, 52.57, 52.75, 52.77, 52.78, and 52.79.

6. Section 52.78 is added to read as follows:

§ 52.78 Contents of applications; training and qualification of nuclear power plant personnel.

(a) Applicability. The requirements of this section apply only to the personnel associated with the operating phase of the combined licenses.

(b) The application must demonstrate compliance with the requirements for training programs established in § 50.120 of this chapter.

Dated at Rockville, MD, this 31st day of December, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–247 Filed 1–6–92; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Petroleum Refining Industry

AGENCY: Small Business Administration.

ACTION: Notice of intent to revise the size standard for the Petroleum Refining Industry.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is considering a revision to a

proposed rule establishing the size standard for a small business in the Petroleum Refining Industry. The size standard is currently no more than 1,500 employees and no more than a 50,000 barrels per day (BPD) refining capacity. On May 3, 1991 the SBA published a notice of proposed rulemaking in the **Federal Register** (56 FR 20382) to eliminate the current 50,000 BPD component of the size standard and retain the 1,500 employee size limit. The comments received from that proposal indicated the need to retain or increase the capacity component to the petroleum refiners size standard. The SBA is considering an increase of that component to 75,000 BPD and the public is invited to comment on the merits of such a revision.

DATES: Comments must be submitted on or before February 6, 1992.

ADDRESSES: Written comments should be sent to: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business, Administration, 409 3rd Street SW.—suite 8150, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Norman S. Salenger, Economist, Size Standards Staff, Tel: (202) 205–6618.

SUPPLEMENTARY INFORMATION: On May 3, 1991 the SBA published in the **Federal Register** (56 FR 20382) a notice of proposed rulemaking to change the size standard for the Petroleum Refining Industry (Standard Industrial Classification code 2911) from no more than 1,500 employees and no more than 50,000 barrels per day (BPD) refining capacity to no more than 1,500 employees. By eliminating the refining capacity component of the size standard the SBA intended to simplify the size standard and make it compatible with the single size criterion used for all other industries. In addition, this change would allow refining firms now slightly below the capacity limit to expand their refining facilities without losing their small business status.

As explained in the proposed rule, SBA believes small refiners should be allowed to expand beyond 50,000 BPD. Since the current size standard was established in 1975, the number small refiners as well as their share of the industry's refining capacity have steadily diminished. Since 1975, most refineries with less than a 10,000 BPD refining capacity and almost half of the refineries with between 10,000 and 50,000 BPD capacity are no longer operating. During this 16-year period the trend has been an increase in refineries with over 100,000 BPD refining capacity. In 1975, small refiners accounted for 7.8 percent of the U.S. refining capacity while by 1989, this share had decreased to 6.7 percent. New environmental compliance requirements may further diminish the small business share of industry capacity. A heavy investment is expected to be needed to change refining processing equipment and some small firms may not be able to meet the investment requirements.

The public had 30 days to comment on the May 3, 1991 proposal. This comment period was extended an additional 30 days to July 3, 1991 at the request of eight commenters, including three industry associations. The SBA also invited comments on alternatives to the current and proposed size standard. In response, SBA received 24 comments. Two comments supported the proposal as presented. However, one of two commenters also suggested that SBA consider increasing the BPD capacity limit to 175,000. The remaining 22 comments opposed the proposed change with 8 comments recommending alternatives. The major issues raised by the commenters and the SBA's position are discussed below.

Twenty-two commenters recommended that SBA retain the barrel per day capacity component of the size standard. Eight commenters felt that there was no meaningful relationship between barrel capacity and the number of refinery employees. Thus, eliminating the BPD requirement would not accurately reflect a small petroleum refiner. This was due to a widely varying degree of automation among refineries as well as the extent to which firms are engaged in nonrefining activities, such as operating petroleum retail outlets. In conjunction with these comments, the capacity level was cited as a better measure of refinery size than employees. The SBA is persuaded that there is a tenuous relationship between employees and capacity and the previous position to eliminate the barrel per day component of the size standard for petroleum refining should not be adopted.

Ten comments from firms recommended no change to the current size standards without offering or discussing alternatives. The five large firms taking this position argued that employees do not measure true size of a refining firm and that bona fide small refiners would be hurt if large firms were included as small business. The small firms desiring to maintain the current size standard argued that a barrel limitation in necessary to reflect the capital intensive structure of the industry. The small firms commented that they would be placed at a competitive disadvantage with refiners which would be considered small under the proposal because eliminating the BPD requirement would qualify firms with capacity as much as three times the current size limit. Further, integrated refiners, as opposed to businesses which are primarily refiners, would derive substantial benefits. The Defense Fuel Supply Center commented that the proposal would not benefit small firms as intended. The SBA agrees that the change proposed on May 3, 1991 could have had a negative impact on small firms. However, a change to 75,000 BPD is expected not to impact negatively on the small business sector of the Petroleum Refining Industry. The structural changes in the industry warrant an upward adjustment of the capacity component of the size standard. The reasons for this are explained in greater detail after the discussion of the comments.

Five firms recommended that SBA increase the employee component of the size standard for petroleum refiners to 2,000 employees along with an increase in the capacity level. Their position was that this would permit small refiners with widespread retail operations to be small business. The SBA does not believe an increase in the employee component is supportable. Refining firms with 1,500 to 2,000 employees are substantially engaged in nonrefining activities. This observation indicates that refiners with more than 1,500 employees are strong enough to expand beyond their primary business base and do not need assistance from small business programs.

The SBA's concept of what is considered a small petroleum refiner within the industry evolved from the comments. An association representing small refiners said it does not consider a refiner with a capacity in excess of 100,000 BPD a small refiner. A large refiner said that a refiner in the 100,000 BPD to 150,000 BPD range would not be a small refiner. A small refiner said that under the May 3, 1991 proposal a 175,000 BPD refiner could qualify, but no firm with that capacity could be deemed small. A larger refiner that would become small under the proposed change said that at 175,000 BPD the change from small to large occurs. Although these views differ, the general indication is that a firm with over 100,000 BPD refining capacity is not viewed by the industry as a small refiner.

Several alternative capacity levels were recommended by the commenters. They ranged from retaining the 50,000 BPD limit to raising it to 175,000 BPD. The most frequently mentioned alternative (six comments) was 75,000 BPD. Four small firms, below a 50,000

BPD capacity, commented that a 75,000 BPD size standard was acceptable to them.

Several commenters suggested that a capacity level in excess of 100,000 BPD may be appropriate. Two firms and an industry association recommended that SBA consider a capacity size standard of 75,000 BPD per refinery with a limit of 137,500 BPD for multirefinery firms. This alternative introduces complications to the size standard. It also could raise the capacity element to almost three times its present level for a multirefinery firm. (It should be noted that a capacity level of 50,000 BPD per refinery and 137,500 BPD per firm was set by legislation for the purpose of defining a small refinery firm in meeting certain environmental requirements.)

The smallest capacity increase suggested was to 65,000 BPD. SBA believes a limited increase of this amount is not desirable because it would not permit mergers or acquisitions among some small refiners without loss of their small business status.

The SBA has decided that the capacity component to the Petroleum Refinery Industry size standard should be retained and be increased from its current 50,000 BPD level. Such a change should permit small refiners that are now close to the current limit to expand their plants or combine with other small refiners without losing their small business status. The change in the industry structure since the last size standard revision in 1975 supports an adjustment. Such a change should be based on selecting a size standard that reflects the need for assistance by firms designated as small.

SBA is, therefore, considering a revision of the barrel per day component to 75,000 BPD from 50,000 BPD and retaining the 1,500 employee component. Besides being within the industry's concept of a small refiner and facilitating a moderate expansion or combination by currently small refiners, this level is supported by the industry's structure. Firms within this standard are primarily operating as refiners rather than substantially as retail marketers or as petroleum explorers owning a refining operation. Firms with over 75,000 BPD refining capacity are integrated into petroleum activities other than refining. A 75,000 BPD level would allow a number of acquisition or merger opportunities among now small refiners without loss of their small business status. Such a combination may help to alleviate cost pressures of environmental compliance on small refining firms.

SBA is publishing this notice to elicit further information from the public prior to the issuance of a final rule. In order to facilitate such public comments SBA has provided this notice outlining its present thinking based upon comments received from the May 3, 1991 proposed rule, as well as the Agency's own study. However, SBA is not suggesting that the size standard outlined in this notice, or that set forth in the May 3, 1991 proposal, will be adopted as the final size standard for the Petroleum Refining Industry. Rather, SBA is seeking additional input from the public in the formulation of a final size standard which will reflect a more suitable definition of a small business in the Petroleum Refining Industry. As such, any final rule on this issue adopted by SBA will be logical outgrowth of Agency research in conjunction with public comment from both the proposed rule and this notice.

Dated: December 29, 1991.

Patricia Saiki,

Administrator, U.S. Small Business Administration.

[FR Doc. 92-257 Filed 1-6-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Indiana Abandoned Mine Land Reclamation Program (hereinafter referred to as the Indiana Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1231 *et seq.*, as amended.

The proposed amendment pertains to changes to SMCRA made by the AML Reclamation Act of 1990 which became effective October 1, 1991. The proposed amendment is intended to revise the Indiana Program to address the changes to SMCRA effected by the amendments.

This notice sets forth the times and locations that the Indiana Program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m., e.s.t. on February 6, 1992; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m., e.s.t. on February 3, 1992; and requests to present oral testimony at the hearing must be received on or before 4 p.m., e.s.t. on January 22, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226-6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232-1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Telephone (317) 226-6166; (FTS) 331-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 321110). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.20, and 914.25.

II. Discussion of the Proposed Amendment

By letter received by the OSM on December 6, 1991 (Administrative Record No. IND–1010), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana Program on its own initiative. The proposed amendment consists of revised narratives to modify several sections of the approved Indiana Plan as provided for by 30 CFR 884.13. Specifically, the following areas of the plan are being revised.

(1) Goals and Objectives (30 CFR 884.13(c)(1))

Indiana is revising this part of the plan to include those post-1977 abandoned mine lands and water made eligible for reclamation by the AML Reclamation Act of 1990 which amended SMCRA, and to reflect the State's use of the Set Aside Reclamation Fund for restoring eligible lands and water after expiration of the Federal Program, or implementation of an Acid Mine Drainage abatement program.

(2) Project Ranking and Selection Procedures (30 CFR 884.13(c)(2))

Indiana is changing this part of the plan so that the State's project priority system directly corresponds to SMCRA, and revises the Site Evaluation Matrix used to rank potential sites. This narrative also incorporates language to reflect SMCRA amendments.

(3) Reclamation on Private Land (30 CFR 884.13(c)(5))

Indiana modified this narrative to include a policy to utilize the services of an independent appraiser when a lien evaluation indicates a $2,500.00 or greater increase in property value due to reclamation.

(4) Public Participation Policies (30 CFR 884.13(c)(7))

Indiana has modified this part of the plan to reflect organizational changes in the State agency, and provide clarification concerning these changes.

(5) Organization of Designated Agency (30 CFR 884.13(d)(1))

This portion of the plan is being changed to reflect State agency organizational changes in the Departmental and Division levels, and the AML agency's changes relating to project management.

(6) Description of Eligible Lands and Water (30 CFR 884.13(e)(1)(2))

Indiana revised this part of the plan to address post-1977 sites eligible for reclamation under SMCRA as amended, as to description and reclamation objectives.

Minor wording changes may occur in other sections of the plan, but do not substantively change the plan.

The full text of the proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.14, OSM is now seeking comment on whether the amendment proposes by Indiana satisfies the applicable requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on January 22, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under "**ADDRESSES**". A summary of the meeting will be included in the Administrative Record.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface Mining, Underground mining.

Dated: December 20, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 92–240 Filed 1–6–92, 8:45 am]

BILLING CODE 4310-05-M

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Initiation of Status Review and Request for Information on the Northern Goshawk

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of status review on the northern goshawk.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is reviewing the status of the northern goshawk (*Accipiter gentilis*) in the United States. The northern goshawk is currently being elevated to Category 2 status throughout its range in the United States in response to information indicating possible population declines and loss and modification of habitat. The Service requests data on taxonomy, distribution, population trends, habitat use, and loss or modification of habitat.

DATES: Comments and materials may be submitted to the Field Supervisor at the address listed below until further notice.

ADDRESSES: Information, comments, or questions concerning the northern goshawk status review may be submitted to the Field Supervisor, Phoenix Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, suite 6, Phoenix, Arizona 85019. The information, data and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Timothy Tibbitts at the above Phoenix,

Arizona, Field Office address (telephone 602/379–4720 or FTS 261–4720).

SUPPLEMENTARY INFORMATION:

Background

The northern goshawk (*Accipiter gentilis*) occurs in forested regions throughout the higher latitudes of the northern hemisphere. Approximately 11 subspecies are variously recognized, with 7 occurring across northern Eurasia (Palmer 1988). Three subspecies are variously recognized in North America: *A. g. atricapillus* occurs throughout northern North America, and south through the western states to southern Arizona and New Mexico; *A. g. langi* in coastal British Columbia and southeastern Alaska; and *A. g. apache* in the mountains of southern Arizona and New Mexico, and south through the Sierra Madre of Mexico (Johnsgard 1990, Monson and Phillips 1981, Palmer 1988, Wattel 1973, Webster 1988). The Queen Charlotte Islands goshawk (*A. g. langi*) is more widely recognized than the Apache goshawk (*A. g. apache*) (Palmer 1988), and both are likely sympatric to some degree with *A. g. atricapillus*. Neither the Queen Charlotte nor Apache goshawks were included in the 1983 American Ornithologists' Union Checklist of North American Birds (AOU 1983).

Summary of Status

The northern goshawk is known to experience fluctuations in population size, density, and nesting success, presumably in response to natural factors such as prey availability (Kenward 1982, McGowan 1975, Wikman and Linden 1981). A number of studies have found population declines and loss and modification of habitat are also occurring, especially in western North America (Crocker-Bedford 1986, Crocker-Bedford 1990a and 1990b, Kennedy 1989, Patla 1991, Zinn and Tibbitts 1990). Also, reestablishment of the goshawk is suspected in northeastern North America, where forest habitat is recovering from extensive clearing following European settlement.

In recent decades, the northern goshawk has been the subject of numerous studies, particularly on habitat and food requirements, as well as habitat partitioning among the *Accipiter* hawks (e.g. Anderson 1979, Bartelt 1974, Reynolds 1983, Reynolds 1988, Saunders 1982). Many studies have attempted to investigate the implications of forest management on goshawk populations. The concern has been that various human activities (timber extraction, conversion to agriculture, suppression of fire) may significantly alter forest structure and ecology.

The goshawk is a high trophic level predator dependent upon a variety of avian and mammalian species. The goshawk has been considered a valuable "indicator species," reflecting changes in overall forest ecology. More recently, however, concern has been expressed for the goshawk (USFS 1991), including a petition filed with the Service to list goshawks in the southwestern United States under the Endangered Species Act of 1973, as amended (ESA) (Silver et al. 1991).

In evaluating the petition, the Service concluded that goshawks in the southwestern United States did not comprise a distinct population and therefore do not constitute a listable entity. However, the Service also determined substantial information exists which indicates northern goshawk population declines, and loss and/or modification of its habitat may be occurring, not only in the Southwest but elsewhere in the United States.

A number of studies have reported declining trends in goshawk populations (Crocker-Bedford 1990a, Kennedy 1989, Patla 1991, Zinn and Tibbitts 1990). In response to concern for goshawk populations, several programs have been developed to manage habitat to promote goshawk population viability (Crocker-Bedford 1991, Fowler 1988, Merrill 1989, USFS 1991). Thus, concern now exists for both the overall forest ecology and for goshawks themselves.

The Service has determined that substantial scientific and commercial information exists to indicate goshawk numbers may be declining and present and future threats of habitat destruction or modification may exist. The Service is therefore classifying the northern goshawk (*Accipiter gentilis*) as a Candidate species (Category 2) throughout its range in the United States. Category 2 includes those taxa for which there is some evidence of vulnerability, but for which there are not enough data to support a listing proposal at this time. Elevation to Category 2 does not mandate initiation of a status review. However, because of the level of concern for the goshawk, the Service is initiating this status review (50 CFR 424.15) to better understand trends in population size and stability and loss or modification of habitat. The Service's Southwest Region (Albuquerque, New Mexico) will assume lead responsibility in pursuing this status review.

The Service requests information on the northern goshawk (*Accipiter gentilis*) primarily throughout its range in the United States, but also solicits information on the species in Canada, Mexico, and Eurasia. The Service requests information primarily on the following topics:

1. Population trends and dynamics, and documented or suspected influencing factors.
2. Reproduction trends and documented or suspected influencing factors.
3. Trends in loss, modification, and recovery of goshawk habitat.
4. Qualitative and quantitative partitioning of habitat by goshawks for wintering, nesting, and foraging.
5. Taxonomic clarification of North American goshawk subspecies.
6. Migration and dispersal.

Literature Cited

American Ornithologists' Union. 1983. Checklist of North American birds, 6th edition. Allen Press, Lawrence, Kansas. 877 pp.

Anderson, R.G. 1979. Draft: Forest Management and goshawks in northeastern Oregon, Wallowa-Whitman National Forest, unpubl. report.

Bartelt, P.R. 1974. Management of the American goshawk in the Black Hills National Forest. Unpubl. MS Thesis, University of South Dakota, Vermilion, South Dakota. 102 pp.

Crocker-Bedford, D.C. 1986. Density and trend of goshawk nests on the North Kaibab Ranger District. Unpubl. rept. U.S. Forest Service.

Crocker-Bedford D.C. 1990a. Goshawk reproduction and forest management. Wild. Soc. Bull. 18:262–269.

Crocker-Bedford, D.C. 1990b. Status of the Queen Charlotte goshawk. Report to U.S. Forest Service, Alaska Region. 16 pp.

Crocker-Bedford, D.C. 1991. A conservation strategy for the northern goshawk on the Tongass National Forest. Unpubl. draft, U.S. Forest Service, Tongass National Forest, Ketchikan, Alaska. 14 pp.

Fowler, C. 1988. Habitat capability model for the northern goshawk. U.S. Dept. Agric., Forest Service Region 5, Tahoe Natl. Forest, Nevada City, Nevada. 21 pp.

Johnsgard, P. A. 1990. "Hawks, eagle and falcons of North America". Smithsonian Institution Press, Washington Press. 403 pp.

Kennedy, P.L. 1989. The nesting ecology of Cooper's hawks and northern goshawks in the Jemez Mountains, NM: A summary of results, 1984–1988. Report to the USDA Forest Service, Southwest Region, Purchase Order # 43–6379–8–346.

Kenward, R.E. 1982. Goshawk hunting behavior, and range size as a function of food and habitat availability. J. Animal. Ecol. 51:69–80.

McGowan, J.D. 1975. Distribution, density and productivity of goshawks in interior Alaska. Final Report, Federal Aid in Wildlife Restoration, Alaska Department of Fish and Game, Juneau, Alaska. 31 pp.

Merrill, K. 1989. Silvicultural prescription for development of goshawk habitat. Master

Forestry Paper, Utah State University, Logan, Utah. 63 pp.
Monson, G., and A.R. Philips. 1981. Annotated checklist of the birds of Arizona. The University of Arizona Press, Tucson, Arizona. 240 pp.
Palmer, R.S. 1988. Handbook of North American birds. Vol. 4. Yale University Press, New Haven, Connecticut. 448 pp.
Patla, S. 1991. Northern goshawk monitoring project—Report # 2. Purchase Order No. 43–02S2–0–0184. Targhee Natl. Forest, St. Anthony, Idaho. 42 pp.
Reynolds, R.T. 1983. Management of western coniferous forest habitat for nesting Accipiter hawks. U.S. Dept. of Agric., U.S. Forest Service, Rocky Mt. Range and Exp. Sta, General Tech. Report RM–102.
Reynolds, R.T. 1989. Accipiters. Pages 92–101 *in* R.L. Glinski et al., eds. Proceedings of the Southwest Raptor Management Symposium and Workshop. Natl. Wildl. Fed., Washington, DC.
Saunders, L.B. 1982. Essential Nesting habitat of the goshawk (*Accipiter gentilis*) on the Shasta-Trinity National Forest, McCloud District. M.A. thesis, California State University, Chico. 57 pp.
Silver, R.D., et al. 1991. Petition to list the northern goshawk (*Accipiter gentilis*) in Utah, Colorado, New Mexico and Arizona, under the Endangered Species Act. Correspondence to the U.S. Fish and Wildlife Service Director. 61 pp.
U.S. Forest Service. 1991. Management guidelines for the northern goshawk in the Southwestern Region. **Federal Register**, Vol. 56, pages 28853–28859, June 25, 1991.
Wattel, J. 1973. Geographical differentiation in the genus Accipiter. Cambridge, Massachusetts.
Webster, J.D. 1988. Some bird specimens from Sitka, Alaska. Murrulet 69:46–48.
Wikman, M., and H. Linden. 1981. The influences of food supply on goshawk population size. Pages 105–113 *in* Kenward and Lindsay 1981: Understand the goshawk. The International Association for Falconry and Conservation of Birds of Prey.
Zinn, L.J. and T.J. Tibbits. 1990. Final report, goshawk nesting survey—1990, North Kaibab Ranger District, Kaibab National Forest, Arizona. Challenge cost-share Agreement # 07–80–02, Nongame and Endangered Wildlife Program, Arizona Game and Fish Department, Phoenix, Arizona. 36 pp.

Authors

The primary authors of this notice are Timothy Tibbitts of the Phoenix, Arizona, U.S. Fish and Wildlife Ecological Services Field Office, and Lorena Wada of the Albuquerque, New Mexico, U.S. Fish and Wildlife Service Regional Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: 16 U.S.C. 1381–1487; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: December 30, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–254 Filed 1–6–92; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition To List the Northern Goshawk as Endangered or Threatened in the Southwestern United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding; 90-day petition finding for the northern goshawk.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the northern goshawk (*Accipiter gentilis*) in Utah, Colorado, New Mexico, and Arizona to the List of Endangered and Threatened Wildlife. The Service finds that the petition has not presented substantial information indicating that the requested action may be warranted, primarily because the petition has not presented substantial information indicating that the northern goshawk (*Accipiter gentilis*) in Utah, Colorado, New Mexico, and Arizona constitutes a listable entity.

DATES: The finding announced in this notice was made on December 30, 1991. Comments and materials related to this petition finding may be submitted to the Field Supervisor at the address listed below until further notice.

ADDRESSES: Information, comments, or questions concerning the northern goshawk petition may be submitted to the Field Supervisor, Phoenix Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, suite 6, Phoenix, Arizona 85019. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Timothy Tibbitts at the above Phoenix, Arizona, Field Office address (telephone 602/379–4720 or FTS 261–4720).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531–1544), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register.**

On July 19, 1991, the Service received a petition from Robin D. Silver, M.D., Maricopa Audubon Society, to list the northern goshawk (*Accipiter gentilis*) as an endangered species in Utah, Colorado, New Mexico, and Arizona. Co-sponsors of the petition were the Arizona Audubon Council, Southwest New Mexico Audubon Society, Mesilla Valley Audubon Society, Forest Guardians, Friends of the Owls, Greater Gila Biodiversity Project, HawkWatch International, Inc., Lighthawk, Sierra Club Grand Canyon Chapter, and Sierra Club Rio Grande Chapter. The petition was dated July 12, 1991. A second petition to list the goshawk throughout the forested west was received from Mr. Charles Babbitt of the Maricopa Audubon Society, and co-sponsored by the Arizona Audubon Council, Southwest New Mexico Audubon Society, Mesilla Valley Audubon Society, Forest Guardians, Friends of the Owls, Greater Gila Biodiversity Project, HawkWatch, Rio Grande Chapter Sierra Club, and Southern Utah Wilderness Alliance, on September 26, 1991. The 90-day finding for the second petition is due December 25, 1991.

This finding is based on various documents, including published and unpublished studies, agency documents, literature syntheses, field survey records, and consultation with Service, Bureau of Land Management (BLM) and U.S. Forest Service (FS) personnel. All documents on which this finding is based are on file in the Phoenix, Arizona Fish and Wildlife Service Field Office.

A species that is in danger of extinction throughout all or a significant portion of its range may be declared an endangered species under the Act. A species that is in danger of endangerment (as defined above) throughout all or a significant portion of its range may be declared a threatened species under the Act. The term "species" is defined by the Act to include "subspecies * * * and any distinct population segment of any species which interbreeds when mature." (16 U.S.C. 1532 (16)) Thus, the first issue addressed in evaluating this petition was whether northern goshawks in Utah, Colorado, New Mexico, and Arizona constitutes a listable entity, i.e. a distinct population

segment of the species which interbreeds when mature.

The northern goshawk (*Accipiter gentilis)* occurs in forested regions throughout the higher latitudes of the northern hemisphere. Approximately 11 subspecies are variously recognized, with 7 occurring across northern Eurasia (Palmer 1988). Three subspecies are variously recognized in North America: *A. g. atricapillus* occurs throughout northern North America, and south through the western states to southern Arizona and New Mexico; *A. g. langi* in coastal British Columbia and southeastern Alaska; and *A. g. apache* in the mountains of southern Arizona and New Mexico, and south through the Sierra Madre of Mexico (Johnsgard 1990, Palmer 1988, Monson and Phillips 1981, Wattel 1973, Webster 1988). The petition therefore requested listing geographical sections of both the *A. g. atricapillus* and *A. g. apache* subspecies.

The primary evaluation of the petition sought to determine whether or not the petitioned action involved a listable entity, a population as defined by the Act and current draft population policies. The petition was initially examined to determine whether a distinct population segment which interbreeds when mature, which exhibits genetic or morphological distinctness and/or geographical isolation was identified. Population criteria were applied to the petitioned area of Utah, Colorado, New Mexico, and Arizona (hereafter "petitioned region").

The petitioners state that northern goshawks in the petitioned region constitute "* * * an isolated population, geographically separated from other goshawk populations * * *" (Silver et al. 1991). As evidence of this isolation, they cite various studies that document (and hypothesize) only short-range seasonal dispersal of juveniles (Crocker-Bedford 1991, Widen 1985). The petitioners also submit that genetic mixing with other regions is unlikely to result from migration, citing studies documenting adult northern goshawks resident in breeding habitat throughout the year (McGowan 1975, Widen 1985), and sources stating that goshawks are largely nonmigratory (Brown and Amadon 1968, Hoffman, HawkWatch International, Inc., *in litt.*, 1991, Johnsgard 1990, Palmer 1988).

1. Genetic or Morphological Distinctness

The petition presents no data demonstrating genetic or morphological distinctness of goshawks in the petitioned region. The petition suggests the Southwest is genetically isolated, based on small (30 miles) dispersal ranges documented in Swedish goshawks by Widen (1985). The Service was unable to locate additional data, and determined that the burden of proof for genetic isolation rests with the petitioner and was not satisfactorily accomplished. The Service does anticipate, however, the comparison data will become available in the near future, resulting from ongoing studies by the U.S. Forest Service and private researchers.

2. Geographic Isolation

No known studies have demonstrated that the northern goshawk in the petitioned region constitutes a geographically isolated population. The region defined in the petition is believed to constitute a significant portion of the goshawk's range in North America but is not geographically separated from other regions containing breeding goshawks. Breeding habitat is continuous from within the petitioned region into adjoining regions at several points. The Rocky Mountains provide forested goshawk breeding habitat from Colorado north into Wyoming. Habitat is also continuous from northern Utah north into Idaho and Wyoming. Considerable habitat exists in mountains of the Great Basin west of Utah in Nevada, and south from southern Arizona and New Mexico into northern Mexico.

Evidence shows that goshawks are capable of moving (migration or dispersing) freely into and out of the southwest. Hoffman (*in litt.*, 1991) reported recovery of 3 banded goshawks 105, 160, and 1,050 miles from their respective points of banding. All three were subadult birds; they were banded during autumn Captor migrations. However, the best available evidence also suggests that goshawks tend not to make significant movements for the crucial purpose of seeking new breeding sites. Widen (1985) found adult male goshawks tended to remain on breeding territories through the year. Adult females and subadults did disperse in the nonbreeding season but rarely more than 30 miles. This dispersal was believed to be driven by a reduced prey availability in the nesting habitat through the winter months. Several authorities (Johnsgard 1990, Palmer 1988) believe goshawks mate for life, thus dispersing adult females are expected to return to a traditional nesting territory. The fidelity of goshawks to their natal area for nesting in adulthood is not currently known.

Data suggests goshawks are weakly migratory at best and after adulthood may be year-round residents in their breeding habitat. Goshawks are proportionately uncommon at migration concentration points where congeneric Cooper's hawks and sharp-shinned hawks are common (Hoffman, *in litt.*, 1991). Several authors (McGowan 1975, Widen 1985) have noted adult goshawks in breeding territories through the winter. Without marking individuals these cannot be confirmed as "year-round residents" but are often assumed to be. The alternative is unlikely, that breeding birds would abandon their territories to invading migrants. Regardless, the importance of migration in genetic mixing between geographic regions is not likely to be great. By definition, migration involves individuals moving seasonally between distinct breeding and wintering grounds and does not provide for mixing of individuals from diverse geographical regions for reproductive purposes.

Service biologists considered the above information, assisted by a group of Federal biologists from the FS and BLM. The consensus was that the petition had not presented substantial information indicating that goshawks in Colorado, Utah, New Mexico, and Arizona constitute a distinct vertebrate segment (population). Limited information is available, and exists in two limited and somewhat counterbalancing data sets. On one hand, observations at migration stations do reveal a small number of goshawks in seasonal migration. Several band returns have quantified movements in subadults ranging from 100 to 1,000 miles. Thus goshawks are at least capable of movement into and out of the petitioned geographic area. However, telemetry data suggests goshawks do not tend to move large distances, for purposes that result in interbreeding of individuals from widely separated geographic regions. Evidence suggests adults (especially males) may largely be resident year-round, with females and subadults dispersing for the nonbreeding season, presumably in search of prey. The degree of philopatry is unknown at this time. Thus, the best available information suggests that goshawks are capable of considerable geographic movement, sometimes accomplish these movements, but also tend to remain near their breeding sites.

Given the relative continuity of goshawk habitat through the western United States, the petitioned area cannot be defined as a distinct population. While evidence suggests it is unlikely that goshawk from central Arizona (for example) interbreed with those from outside the petitioned region, it is possible that interbreeding takes

place across the boundaries of the petitioned region. Goshawks in northern Colorado may interbreed with those in southern Wyoming, 30 miles away. The petition, and the best available information, does not support defining goshawks in Utah, Colorado, New Mexico, and Arizona as an exclusive, interbreeding population.

The Service finds that the data contained in the petition, referenced in the petition, and otherwise available to the Service does not present substantial information indicating that the petitioned action may be warranted. This negative 90-day finding results from the failure of the petitioner to present substantial scientific or commercial information indicating that northern goshawks in Utah, Colorado, New Mexico, and Arizona satisfy Service criteria for a distinct vertebrate population. In reviewing the petition and all known relevant information, the Service was also unable to demonstrate that goshawks in the Southwest satisfy current population criteria and, therefore, found that the segment of the goshawk's range identified in the petition is not a listable entity.

The Service did conclude however, that the petition did present substantial information indicating that northern goshawk population declines and loss and/or modification of its habitat may be occurring. Therefore the Service has elevated the Northern goshawk (*A. gentilis*) to Category 2 status in the upcoming Endangered and Threatened Wildlife and Plants; Animal Notice of Review, throughout its range in the United States. Initiation of a status review for the goshawk in its range throughout the United States is announced in this volume of the Federal Register.

Literature Cited

Brown, L., and D. Amadon. 1968. Eagles, hawks and falcons of the world. 2 vols. Country Life Books, Feltham, Middlesex.

Crocker-Bedford, D.C. 1991. A conservation strategy for the northern goshawk on the Tongass National Forest. Unpubl. draft, U.S. Forest Service, Tongass National Forest, Ketchikan, Alaska. 14 pp.

Johnsgard, P. A. 1990. "Hawks, eagles and falcons of North America". Smithsonian Institution Press, Washington Press. 403 pp.

McGowan, J.D. 1975. Distribution, density and productivity of goshawks in interior Alaska. Final Report, Federal Aid in Wildlife Restoration, Alaska Department of Fish and Game, Juneau, Alaska. 31 pp.

Monson, G., and A.R. Philips. 1981. Annotated checklist of the birds of Arizona. The University of Arizona Press, Tucson, Arizona. 240 pp.

Palmer, R.S. 1988. Handbook of North American birds. Vol. 4. Yale University Press, New Haven, Connecticut. 448 pp.

Silver, R.D., et al. 1991. Petition to list the northern goshawk (*Accipiter gentilis*) in Utah, Colorado, New Mexico, and Arizona, under the Endangered Species Act. Correspondence to U.S. Fish and Wildlife Service Director. 61 pp.

Wattel, J. 1973. Geographical differentiation in the genus Accipiter. Cambridge, Massachusetts.

Webster, J.D. 1988. Some bird specimens from Sitka, Alaska. Murrulet 69:46–48.

Widen, P. 1985. Breeding and movements of goshawks in boreal forests in Sweden. Holarctic Ecol. 8:273–279.

Authors

The primary authors of this notice are Timothy Tibbitts of the Phoenix, Arizona U.S. Fish and Wildlife Ecological Services Field Office, and Lorena Wada of the Albuquerque, New Mexico U.S. Fish and Wildlife Service Regional Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: December 30, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–255 Filed 1–6–92; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB10

Captive-bred Wildlife Regulation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to propose rule.

SUMMARY: Under the Endangered Species Act of 1973 (Act), the Fish and Wildlife Service (Service) regulates certain activities involving endangered or threatened wildlife of non-native species that are born in captivity in the United States. This is currently accomplished by requiring persons who wish to conduct otherwise prohibited activities with such wildlife to register with the Service, *i.e.*, to obtain a captive-bred wildlife, or CBW, registration [50 CFR 17.21(g)]. The Service registers persons who meet certain established requirements and specifies the extent of the activities that those persons are authorized to conduct. The system is based in part on the definition of "enhance the propagation or survival" found at 50 CFR 17.3. The Service believes that this system of regulation, as presently implemented, may impose a substantial paperwork burden on the public as well as on the Service without contributing appreciably to the conservation of many affected species. Since the Service's primary goal under the Act is the conservation of wild populations, it wishes to conduct a review of the system to determine whether changes are needed, and if so, what those changes should be. The review is based upon the principle that regulatory actions should have a sound biological basis rather than representing an overly legalistic interpretation of the Act. Several alternatives including continuation of the present system and the current definition of "enhance" are presented. The Service seeks information and comments from the public that will contribute to this review and the subsequent decision by the Service whether to propose revised regulations. Suggestions for other alternatives not presented here are welcome. Information on species that have substantial numbers of individuals that are surplus to breeding programs is also solicited.

DATES: The Service will consider all comments received by March 9, 1992.

ADDRESSES: Send comments to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, room 432, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones, or Richard K. Robinson, Office of Management Authority, at the above address (703/358–2093).

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) prohibits any person subject to the jurisdiction of the United States from conducting certain activities with any endangered or threatened species of fish or wildlife. These activities include, among other things, import, export, take, and interstate or foreign commerce. The Secretary of the Interior (or the Secretary of Commerce in the case of certain marine species) may permit such activities, under such terms and conditions as he shall prescribe, for scientific purposes or to enhance the propagation or survival of the affected species, provided these activities are consistent with the purposes of the Act. The Secretary of the Interior's authority has been delegated through the Directorate of the Service to the Office of Management Authority.

The Fish and Wildlife Service (Service) has been striving to achieve an

appropriate degree of control over prohibited activities involving living wildlife of non-native species born in captivity in the United States. This has been difficult to achieve. Twelve years ago, the Service issued proposed and final rules to address this issue (44 FR 30044, May 23, 1979, and 44 FR 54002, September 17, 1979). In announcing the final rule, the Service stated that:

> The proposal followed from a decision by the Service that activities involving captive wildlife should be regulated, as required by the Endangered Species Act of 1973, but only to the extent necessary to conserve the species. As reported in the proposal, strict regulation has interfered with the captive propagation of wildlife. It has caused persons who would otherwise breed endangered species to cease doing so, or to reduce the number of offspring produced because they could not readily be transferred to other persons.

The preamble to the final rule also pointed out that conservation of wild populations must be the Service's primary goal.

The final rule amended regulations in 50 CFR 17.21 by adding § 17.21(g), which granted general permission to take; import or export; deliver, receive, carry, transport or ship in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any non-native endangered or threatened wildlife that is bred in captivity in the United States. In other words, the regulation itself is the permit. In order for persons or institutions to operate under that permit, certain conditions must be met:

(1) The wildlife is not native to the United States or is a native species determined by the Service to be eligible due to low demand for taking from wild populations and the effective protection of wild populations;

(2) The purpose of the activity is to enhance the propagation or survival of the species;

(3) The activity does not involve interstate or foreign commerce with non-living wildlife;

(4) Each specimen being reimported is uniquely identified by means that are reported in writing to the Service prior to export; and

(5) Any person seeking to operate under the permit must register with the Service by showing that their expertise, facilities, or other resources appear adequate to enhance the propagation or survival of the wildlife.

This registration is called a captive-bred wildlife, or CBW, registration.

The final rule also amended the definition of "enhance the propagation or survival" of wildlife in captivity to include a wide range of normal animal husbandry practices needed to maintain self-sustaining and genetically viable populations of wildlife in captivity. Specifically included in those practices were "culling" and "euthanasia." "Culling" was intended to mean the removal (including by destruction) of animals with genetic defects, animals that are over-represented in the gene pool so that further use in a breeding program would result in inbreeding, or animals otherwise unsuitable for breeding. "Euthanasia" was intended to denote the true mercy killing of old or incurably ill or injured animals. Confusion has resulted because many holders of wildlife characterize destruction of healthy animals for any reason as euthanasia if the animal is given a quick and painless death.

Other aspects of the definition of "enhance" that were codified in 1979 and are still in use today include accumulation, holding and transfer of animals not immediately needed or suitable for propagative or scientific purposes, and exhibition in a manner designed to educate the public about the ecological role and conservation needs of the affected species (50 CFR 17.3). Since these definitions appear in part 17, it can be argued that they apply to all types of endangered species permits as well as to CBW registrations. However, the five application requirements for CBW registrations mandate that, among other things, the applicant must describe his/her facilities and experience in maintaining and propagating listed wildlife, and if appropriate, the manner in which the applicant intends to educate the public. The qualifier under the education clause argues that education could be used as additional justification for issuance of registration, but that it must be in combination with propagation activities. This and other questions concerning the inclusion of education in the definition of "enhance" are discussed later in this notice.

"Harass" is another definition that merits discussion and comment. Section 3 of the Act defines "take", a prohibited activity, as including harassment. "Harass" is defined in 50 CFR 17.3 as an act or omission which creates the likelihood of injury by annoying wildlife to such an intent as to significantly disrupt normal behavioral patterns, including breeding, feeding or sheltering. While the applicability of this concept to animals in the wild is obvious, its applicability to captive-born wildlife is not so clear. Some specific circumstances can obviously be defined as harassment. For example, maintenance of unsafe enclosure is an act or omission that creates the likelihood of injury to the animal. The Service, in cooperation with the Animal and Plant Health Inspection Service (Department of Agriculture) constantly strives to ensure that captive facilities for endangered or threatened species meet the requirements of the Animal Welfare Act. The problem in applying this definition generally to captive-born wildlife is in knowing what constitutes "normal behavioral patterns." If the animal has never known anything but a captive environment, then presumably its captive behavior is "normal" for that specimen. Public comment on this point is solicited.

The Service now is evaluating the effectiveness of these regulations in accomplishing the purposes of the Act, which include providing a means whereby the ecosystems upon which endangered and threatened species depend may be conserved and to provide a program for the conservation of those species. In particular, the Service is considering the practical effect of the regulations in furthering conservation programs for listed species. This includes a consideration of whether for many species regulation has had any significant impact upon the species in the wild.

The relaxation of strict permit requirements in 1979 was followed by the development of captive-breeding programs by various organizations for listed species of non-native wildlife. This development was not entirely due to the change in permit requirements; however, the same organizations previously maintained that those requirements were an obstacle to such programs.

The Service welcomes the development of organized, long-term programs for the maintenance of captive-breeding populations of endangered and threatened wildlife, such as the Species Survival Plans of the American Association of Zoological Parks and Aquariums. Such programs, involving great cost and effort, can benefit the species in several ways: (1) By preserving the existence of the species in the event that wild populations are extirpated, (2) by enabling persons who maintain and study the captive wildlife to gain knowledge about the species that can be applied to conservation of wild populations, (3) by supplying a source of animals for research or other uses to relieve demands on wild populations, and (4) by creating a reservoir of animals that can be drawn upon to reestablish or augment wild populations.

In view of these actual or potential benefits, the Service believes that the premise underlying the approach it

adopted in 1979, to regulate activities only to the extent necessary to conserve the species, aided in accomplishing the purposes of the Act. The risks of this approach, which the Service recognized and addressed in its regulations, were as follows: (1) Captive-bred animals of the listed non-native species might be used for purposes that do not contribute to conservation, such as for pets, for research that does not benefit the species, or for entertainment; and (2) persons might conduct prohibited activities with wild-caught animals of these species on the pretext that the animals were captive-bred.

The risk that captive-bred animals might be used for purposes that do not contribute to conservation of the species must be viewed in terms of the scope of the Act. The Act prohibits interstate commerce, *e.g.*, sale or transfer of a leasehold interest in listed wildlife from one person to another across a state line. It does not prohibit intrastate commerce (*e.g.*, commerce within a single State); non-commercial interstate transfers of legally-taken wildlife (*e.g.*, loans, gifts); possession of lawfully acquired endangered species; or, once lawfully possessed without benefit of a permit, use of them in ways that are not encompassed by the prohibition against "take." Given these limits, the Service cannot fully control the use of captive-bred animals, nor mandate compliance with conservation programs by persons holding such animals.

Conservation programs involving captive-bred non-native species are motivated primarily by the initiative of organizations that run them, rather than by the requirements of the Act. The Service's approach to regulating prohibited activities with captive-bred non-native animals has been associated with an increase in responsible captive-breeding programs, but there is no indication that it has led to a significant increase in the use of such animals for purposes that do not contribute to conservation, insofar as those activities are prohibited by the Act. The Service believes that the array of non-prohibited activities cited above, coupled with the breeding of certain species to surplus, has contributed more to the proliferation of uses such as for pets than has any lack of regulatory effort on its part. It is true that some of the less common species have been purchased by entertainers in interstate commerce by virtue of having a CBW registration. However, species in surplus such as Bengal tigers (*Panthera tigris tigris*) and leopards (*Panthera pardus*) that are commonly used in entertainment are available in intrastate commerce in many, if not most, states. Some entertainers also breed animals for their own use.

The risk that persons might conduct prohibited activities with non-native animals taken from the wild on the pretext that they were captive-bred is minimized by controls on importation. This risk is the reason that native species generally are not eligible for treatment under this system. The limits on the Service's authority to control activities with animals discussed above, coupled with the obvious difficulty of distinguishing between captive-bred and wild-caught animals in captivity, make it impractical to deal with this risk by means of internal controls. If the Service were to attempt to address this risk by rigorously controlling activities with animals already in captivity in the United States, captive-breeding programs could be adversely impacted by hindering the exchange of animals, and the costs of such a control program would be prohibitive. Import controls have improved significantly since the Service issued regulations on captive-bred wildlife in 1979. These improvements include an enhanced capability of Service law enforcement personnel at ports of entry, much broader participation by governments around the world in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the addition of a second enforcement officer to the staff of the CITES Secretariat.

During 1990, there were about 850 CBW registrations. At least 50 percent of these are for species that appear to have been bred to surplus—animals that are unsuitable for organized breeding programs aimed at preservation of the species because of unknown genealogy, inbreeding, over-representation in the gene pool, or because of interbreeding of different subspecies as is the case with the "Bengal" tiger. While these tigers are suitable for zoological display purposes, they are of little or no value in terms of preserving the taxon for possible reintroduction to the wild because they no longer have the same genetic makeup as the wild population. They are known in the zoo community as "generic tigers."

The Service believes that the CBW system, as currently implemented, may be more burdensome to both the public and the Service than is warranted by its contribution to conservation of wild populations. If so, it diverts limited Service resources from regulation of activities more important to the survival of the species. These include protection of native endangered and threatened species, control of import and export, regulation of activities involving individuals of non-native species that were taken from the wild, and implementation of other laws and treaties such as CITES, the Migratory Bird Treaty Act, the Marine Mammal Protection Act, the Bald and Golden Eagle Protection Act and the Lacey Act (injurious wildlife).

One possible approach to the problems discussed above would be to downlist certain captive populations of non-native species to threatened or threatened due to similarity of appearance, and promulgate special rules easing regulation of them. This would be limited to animals born in captivity in the United States, belonging to species present in large numbers with many individuals that are surplus to organized breeding programs for various reasons. However, this approach is not considered as an alternative within the scope of this notice, which considers possible revisions of 50 CFR part 17. Implementation of this approach would involve listing actions, the procedures for which are found at 50 CFR part 424. Various other alternatives for revision of the CBW system as set forth in 50 CFR 17.21(g) are discussed below. This will be followed by a discussion of a possible amendment of the definition of "enhance" set forth in 50 CFR 17.3.

Alternatives for the CBW System

1. Eliminate Registration Process

Amend 50 CFR 17.21(g) in a manner which would:

(1) Leave the general permit issued by section 17.21(g)(1) in place;

(2) Eliminate the requirement for persons to register with the Service in order to conduct certain activities under the general permission granted in that section; and

(3) Add a rebuttable presumption that any otherwise prohibited activity involving any listed wildlife does not meet the conditions of the general permission, granted in 50 CFR 17.21(g).

The term "rebuttable presumption" means that a presumption that an activity is not properly authorized can be rebutted by evidence that it is. For example, section 9(b)(1) of the Act establishes a rebuttable presumption that a specimen is not entitled to the pre-Act exemption claimed for it absent documentation of pre-Act status.

These changes would not be expected to significantly increase either of the risks to species that are described above. The rebuttable presumption would apply to any persons, firms or institutions now possessing listed

species whether they have CBW registrations or not. The requirements for detailed record-keeping and reasonable access to inspect those records set forth in 50 CFR 13.46 and 13.47 would remain in place. These regulations require all permittees to maintain complete and accurate records of all activities and transactions authorized by permit, and to allow Service agents to enter their premises at any reasonable hour for inspection purposes. Establishment of a rebuttable presumption could be justified on the grounds that activities for which persons might be challenged are those that the Act prohibits. These changes would have the added benefits of reducing the paperwork burden on the public, and of shifting the resources in the Service that are dedicated to administering the registration process toward types of permit administration that are more important in achieving the purposes of the Act.

One drawback of this alternative is the deletion of the requirement for annual reports by persons holding endangered and threatened species. Many of the species covered by the regulation are rare in captivity and/or are difficult to breed. Under the current system, persons and organizations involved in serious breeding programs can obtain copies of annual reports for purposes such as tracking individual animals. While many institutions participate in the International Species Inventory System, a computerized system that keeps track of wildlife in captivity, many holders of listed wildlife do not.

2. Eliminate Registration for Large Captive Populations

Amend 50 CFR 17.21(g) as discussed in Alternative 1, except that only species present in the United States in large numbers, including many individuals that are surplus to organized breeding programs, would be exempted from the registration requirement. As currently implemented, the CBW system virtually mandates that the registrant breed his animals. It is counterproductive to foster breeding of species already present in surplus numbers. This exemption would not prevent those so inclined from breeding their animals; however, the Service should not be in the position of exacerbating the surplus animal problem. The species to be exempted from the registration requirement would be identified in any subsequent rulemaking process, with due consideration given to factual information received from the public. Possible examples would be pheasants, Bengal tigers, leopards, and parakeets of the genus *Neophema*. Currently, out of approximately 850 registrants, about 380 (located in 47 states and Puerto Rico) are registered for pheasants, and about 80 (in 32 states and Puerto Rico) for *Neophema*. There are approximately 135 registrants for members of the cat family (Felidae) located in 41 states. The majority of these hold only Bengal tigers and/or leopards. It should be noted that for tigers, the registration exemption would only apply to the Bengal tiger; other sub-species of tiger for which organized breeding programs exist, and which are not so abundant in captivity, would continue to fall under the current registration requirement.

This alternative would preserve the benefit of a substantial reduction in burden on both the public and the Service, and would also preserve any potential benefits that may accrue to organized breeding programs from the registration system.

3. No Action

Make no change in the CBW system, retaining current registration and annual reporting requirements. No change in current regulatory practice would occur. There would be no change in existing risk of inappropriate use of listed wildlife. Existing burden on the public and the Service would continue. This alternative does not address the question of whether further propagation of species in surplus should continue to be encouraged, if not mandated. It would also continue to ignore the fact that for a number of species, their abundance in captivity and their lack of potential for release to the wild is such that it can be argued that neither increased nor decreased regulation will have any material impact on the species in the wild. As stated earlier, conservation of wild populations must be the Service's primary goal.

Possible Amendment of the Definition of "Enhance"

"Exhibition of living wildlife in a manner designed to educate the public about the ecological role and conservation needs of the affected species" is now deemed to constitute enhancement of survival of the species (50 CFR 17.3). Such exhibition thus qualifies as justification for issuance of a permit and, at least in part, for a CBW registration for endangered species. Theoretically, properly designed and delivered educational materials could serve to enhance the prospects for survival of endangered and threatened species by increasing public awareness and stimulating interest in the plight of listed species. This would be more likely in the case of endangered species native to the United States, where the American public can have much more influence on the fate of species than they can in the case of species in other countries. Possible exceptions would be: (1) Species that provide popular products such as elephant ivory, to the extent that the public would be dissuaded from purchasing the product, and (2) "glamor" species for which the public could be moved to donate significant amounts of money, provided the Service could ensure that the funds were spent to benefit the species in its native country. In most cases, a cause and effect relationship between education of the American public and any significant impact on the survival of non-native species in the wild cannot be determined. This presents a problem in the case of commercial exhibitors seeking to use education as the sole justification for permits or CBW registrations. Even with good material and a good faith effort at delivery by the exhibitor, there may be a limit to the amount of educational content a public which came (and paid) to be entertained will absorb. This is especially true for commercial exhibitors who have a limited amount of time to present their shows, or whose educational message is delivered in social settings where people may not be receptive.

Section 4(d) of the Act provides authority to issue any regulations the Secretary deems necessary and advisable for the conservation of threatened species. The regulations (50 CFR 17.32) give public education as one of the acceptable purposes for issuance of a threatened species permit. However, for endangered species permits and registrations within the scope of this notice, the Act itself specifies scientific purposes or enhancement of propagation or survival as the only acceptable purposes. Therefore, it can be argued that a regulation defining education as constituting enhancement of survival of an endangered species goes beyond the intent of the Congress. Section 2(a) of the Act (findings of the Congress) refers to the educational value of endangered species or threatened species, but this appears to be in the context of "various species of fish, wildlife, and plants *in the United States* * * *" [section 2(a)(1)—emphasis added]. On the other hand, section 3 defines the terms "conserve" and "conservation" as the use of all methods and procedures necessary to aid the recovery of listed species to the point where the protection of the Act is no longer necessary.

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The Service suggests several possible alternatives to treating education as part of the definition of "enhance" in 50 CFR 17.3. Comments and/or suggested additional alternatives are solicited.

1. Issue No Permits Based on Public Education

Delete education from the definition of "enhance" for endangered species and from the regulations governing issuance of threatened species permits (50 CFR 17.32). While this alternative might possibly be more consistent with the provisions of the Act, it would assign no value whatsoever to education as a tool for conserving either native or non-native listed species.

2. Limit Permits for Educational Purposes to Native Listed Species Only

Modify 50 CFR 17.3 and 17.32 so that education would be allowed as a purpose for native endangered and threatened species only. Expand appropriate sections of the regulations to provide more specific guidance on types of educational material and activity that are qualifying.

3. No change in Definition of "Enhance"

Allow the current definition to remain in § 17.3, but limit its applicability to only permits and CBW registrations where education is the primary purpose for maintaining the animals.

Public Comments Solicited

The Service intends that any proposed rule will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this notice are hereby solicited. Suggestions for alternatives not discussed in this notice are welcome. Information and statistics are solicited on species that have substantial numbers of individuals that are surplus to, or unsuitable for, breeding programs for any reason. Such information would be useful to the Service in administering the CBW system regardless of whether it remains unchanged, and could be disseminated for use by those interested in captive breeding.

Author

The primary authority of the notice is Richard K. Robinson, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Arlington, VA 22203.

List of subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority continues to read: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500.

Dated: December 31, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–276 Filed 1–6–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 4
Tuesday, January 7, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; First Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Public Law 96–177, Public Law 100–418, and Public Law 100–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00. 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202. 10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22,40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1992 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

In accordance with the requirements of the Act, I have made the following estimates:

1. The estimated aggregate quantity of meat articles prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1992 is 1,192 million pounds.

2. The first quarterly estimate of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1992 is 1,274 million pounds.

Done at Washington, DC this 31st day of December, 1991.

Edward Madigan,

Secretary of Agriculture,

[FR Doc. 92–223 Filed 1–6–92; 8:45 am]

BILLING CODE 3410–10–M

Agricultural Stabilization and Conservation Service

National Marketing Quota for Fire-Cured (Type 21), Fire-Cured (Types 22 & 23), Dark Air-Cured (Types 35 & 36), Virginia Sun-Cured (Type 37), and Cigar-Filler and Cigar-Binder (Types 42–44 & 53–55) Tobaccos

AGENCY: Agricultural Stabilization and Conservation Service (ASCS) (USDA).

ACTION: Notice of proposed determinations.

SUMMARY: The Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to proclaim by March 1, 1992, national marketing quotas for Virginia sun-cured (type 37—tobacco for the 1992–93, 1993–94, and 1994–95 marketing years and to determine and announce the amounts of the national marketing quotas for fire-cured (type 21), fire-cured (types 22 & 23), dark air-cured (types 35 & 36), Virginia sun-cured (type 37), and cigar-filler and cigar-binder (types 42–44 & 53–55) kinds of tobacco for the 1992–93 marketing year. The public in invited to submit written comments, views and recommendations concerning the determination of the national marketing quotas for such kinds of tobacco, the conduct of the referendum, and other related matters which are discussed in this notice.

DATES: Comments must be received on or before February 7, 1992, in order to be assured of consideration.

ADDRESSES: Send comment to the Director, Commodity Analysis Division, room 3741, South Building, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to the notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m., except holidays, Monday through Friday, in room 3741, South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, room 3736, South Building, P.O. Box 2415, Washington, DC 20013, (202) 720–8839. The Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established to implement Executive Order 12291 and Department Regulation 1512–1 and has been classified as "not major."

The matters under consideration will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs of consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance to which this notice applies are: Commodity Loans and Purchases; 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The Agricultural Adjustment Act of 1938, as amended (hereafter referred to as the "Act"), requires that, with respect

to Virginia sun-cured (type 37) tobacco, the Secretary of Agriculture (Secretary) must proclaim by March 1, 1992, national marketing quotas for the 1992–93, 1993–94, and 1994–95 marketing years. In addition, the Secretary is required to conduct, within 30 days after proclamation of such national marketing quotas, a referendum of farmers engaged in the 1991 production of this kind of tobacco to determine whether they favor or oppose marketing quotas for such years. For Virginia sun-cured (type 37) tobacco, the 1991–92 marketing year is the last year of the three consecutive marketing years for which marketing quotas previously proclaimed will be in effect for this kind of tobacco.

The Secretary is also required: (1) To determine and announce the amounts of the national marketing quotas with respect to fire-cured (type 21), fire-cured (types 22 & 23), dark air-cured (types 35 & 36), Virginia sun-cured (type 37), and cigar-filler and cigar binder (types 42–44 & 53–55) tobaccos for the 1992–93 marketing year; (2) to convert such marketing quotas into national acreage allotments and announce the allotments; (3) to apportion such allotments, less reserves of not to exceed 1 percent of each kind of tobacco respectively, through county ASCS committees among old farms; and (4) to apportion the reserves for use in: (a) Establishing acreage allotments for new farms, and (b) making corrections and adjusting inequities in old farm allotments. The five kinds of tobacco to which this notice applies account for about 3 percent of the total U.S. tobacco production.

Section 312(b) of the Act provides that the Secretary shall determine and announce, not later than March 1, 1992, with respect to kinds of tobacco specified in this notice of proposed determinations, the amount of the national marketing quota which will be in effect for the 1992–93 marketing year in terms of the total quantity of tobacco which may be marketed that will allow a supply of each kind of tobacco equal to the reserve supply level.

The aggregate reserve supply level for the 1991–92 marketing year for the 5 kinds of tobacco discussed in this notice was determined to be 175 million pounds (56 FR 20577). The proposed reserve supply level for the 1992–93 marketing year will range between 150 million and 200 million pounds. The aggregate total supply for the 1991–92 marketing year is 180.5 million pounds based on carryover of 123.6 million and production of 56.9 million pounds.

Section 312(c) of the Act provides that, within 30 days after a national marketing quota is proclaimed in accordance with section 312(a) of the Act for a kind of tobacco, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of such kind of tobacco harvested immediately before holding the referendum to determine whether such farmers are in favor of or opposed to such quotas for the next three succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not become effective, but the results shall in no way affect or limit the subsequent proclamation and submission to a referendum of national marketing quota as otherwise authorized in section 312.

Section 313(g) of the Act authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the 5 years immediately preceding the year in which the national marketing quota is proclaimed. In addition, the Secretary is authorized to apportion, through county committees, the national acreage allotment to tobacco producing farms, less a reserve not to exceed 1 percent thereof for new farms, to make corrections and adjust inequities in old farm allotments.

Proposed Determinations

Accordingly, comments are requested on the following proposed determinations for the kinds of tobacco listed for the 1992–93 marketing year:

1. With respect to fire-cured (type 21), fire-cured (types 22 & 23) dark air-cured (types 35 & 36), Virginia sun-cured (type 37), and cigar-filler and binder (types 42–44 & 53–55) tobaccos:

a. The amount of the reserve supply level, within the aggregate range of 150 and 200 million pounds;

b. The amount of the national marketing quota for each kind tobacco for the 1992–93 marketing year, within the aggregate range of 60 million and 80 million pounds; and

c. The amounts of the national acreage allotments to be reserved for new farms, and for making corrections and adjusting inequities in old farm allotments, within the aggregate range of 100 to 500 acres.

2. With respect to Virginia sun-cured (type 37) tobacco:

a. The date or period of the referenda for determining whether quotas will be in effect for the 1992–93, 1993–94, and 1994–95 marketing years for such kind of tobacco; and

b. Whether the referenda should be conducted at polling places rather than by mail ballot (see 7 CFR part 717).

Authority: 7 U.S.C. 1301, 1312 and 1313.

Signed at Washington, DC on December 31, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 92–262 Filed 1–6–92; 8:45 am]

BILLING CODE 3410–05–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting of the Board

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB or Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, January 14–15, 1992 at the times and locations noted below.

DATES: The schedule of events is as follows:

Location: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC.

Tuesday, January 14, 1992:

9 a.m.–12 p.m.—Working Group, Title II

1 p.m.–5 p.m.—Working Group, Title II

Wednesday, January 15, 1992:

9 a.m.–10:30 a.m.—Working Group Meeting, If Necessary

10:30 a.m.–11:30 a.m.—Planning and Budget Committee

1 p.m.–3:00 p.m.—Business Meeting

MATTERS TO BE CONSIDERED: At its business meeting, the Board will consider the following Agenda Items:

- Approval of the minutes of the January 8, September 25, and November 13, 1991 Board meetings.
- Election of Officers.
- Board Policy of Charging for Training Expenses.
- FY 92 Research and Technical Assistance Projects.
- Delegation of Authority to the General Counsel to sign Federal Register Correction Notices.
- Procedures to Consult with DOJ on Code Certification.
- Federal Register Notice setting research priorities.
- Goals and Objectives.
- Approval of the Fiscal Year 1992 Operating Plan.
- Committee Reports.

- Title II Work Group Plan of Action.
- Complaint Status Report.
- Voting by Proxies.

FOR FURTHER INFORMATION CONTACT: For further information regarding the business meetings, please contact Barbara A. Gilley, Executive Officer, (202) 653–7834 (voice/TDD).

SUPPLEMENTARY INFORMATION: Some meetings may be closed to the public. All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee, Jr.,

Executive Director.

[FR Doc. 92–242 Filed 1–6–92; 8:45 am]

BILLING CODE 8150–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioners, a domestic interested party, and certain respondents, the Department of Commerce has conducted an administrative review of the antidumpting duty order on color television receivers, except for video monitors, from Taiwan. This notice covers 14 manufacturers/ exporters and the period April 1, 1990 through March 31, 1991. The review indicates the existence of dumping margins for certain firms during this period.

As a result of this review, we have preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 7, 1992.

FOR FURTHER INFORMATION CONTACT: Philip Marchal, Leon McNeill, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 65218) the final results of the 1989–90 (sixth) administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan (49 FR 18336, April 30, 1984). In April 1991, the petitioners, a domestic interested party, and certain respondents requested, in accordance with § 353.22(a) of the Commerce Regulations, that we conduct an administrative review for the period April 1, 1990 through March 31, 1991. We published a notice of initiation of the antidumping duty administrative review on May 21, 1991 (56 FR 23271).

The Department initiated a review for Action Electronics Co., Ltd. (Action), AOC International, Inc. (AOC), Funai Electric Co., Ltd. (Funai), Hitachi Television (Taiwan) Ltd. (Hitachi), Kuang Yuan Co., Ltd. (Kuang Yuan), Nettek Corp., Ltd. (Nettek), Paramount Electronics (Paramount), Proton Electronic Industrial Co., Ltd. (Proton), RCA Taiwan Ltd. (RCA), Sampo Corp. (Sampo), Sanyo Electric (Taiwan) Co., Ltd. (Sanyo), Shinlee Corp. (Shinlee), Tatung Co. (Tatung), and Teco Electric and Machinery Co., Ltd. (Teco) for the 1990–91 period.

The Department has now conducted a review for this period in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Also, in April, 1991, the Department received from respondent Sanyo a request, pursuant to §§ 353.25(d)(1) and 353.22(f), that the Department conduct a changed circumstances review for the purpose of determining whether sufficient circumstances exist to warrant revocation of the order as it relates to Sanyo. The Department is considering that request.

Scope of the Review

Imports covered by the review are shipments of color television receivers, except for video monitors, complete or incomplete, from Taiwan. The order covers all color television receivers regardless of tariff classification. Effective January 1, 1989, this merchandise is classified under the Harmonized Tariff Schedule (HTS) items 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers 14 manufacturers/ exporters of Taiwan color television receivers, except for video monitors, and the period April 1, 1990 through March 31, 1991.

Funai, Hitachi, Sampo, and Sanyo had no shipments of the subject merchandise, and AOC, Nettek, Paramount, Shinlee, and Teco failed to respond to our questionnarie. For those firms which had no shipments, we continued the deposit rate for each firm for the last period for which a review has been completed in which that firm had shipments. For those firms that failed to respond to our questionnaire, we used the best information available (BIA), which was the highest margin among respondent firms in the current review period, or any rate received by any firm in prior reviews, whichever was higher. See, Final Results of Antidumping Duty Administrative Reviews: Portable Electric Typewriters from Japan, 56 FR 56393 (November 4, 1991).

United States Price

In calculating United States price (U.S. price), we used purchase price or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act. Purchase price and ESP were based on the packed f.o.b., c.i.f., or delivered prices to the first unrelated purchasers in the United States.

We made deductions, where appropriate, for export charges, ocean freight, marine insurance, U.S. and foreign inland freight and insurance, U.S. and foreign brokerage fees, bank charges, shipping charges, U.S. customs duties, inspection fees, finder's fees, harbor fees, discounts, rebates, credit expenses, warranty expenses, advertising and sales promotion expenses, after-sale warehousing, technical service expenses, royalties, bonuses, commissions to unrelated parties, selling expenses incurred in Taiwan, and the U.S. subsidiary's indirect selling expenses. Where applicable, we made an addition for import duties not collected on imported raw materials used to produce subsequently exported merchandise.

We accounted for any commodity taxes imposed in Taiwan, but not collected by reason of exportation to the United States, by multiplying the appropriate duty paying value (DPV) of the merchandise sold in the United States by the tax rate in Taiwan, and adding the result to the U.S. price. In Taiwan, the DPV is the ex-factory price for merchandise produced in a bonded factory; for merchandise produced in an unbonded factory, the DPV is the price to the first unrelated purchaser in the United States.

We accounted for the value-added tax (VAT) imposed in Taiwan, but not collected by reason of exportation to the

United States, by multiplying the U.S. invoice value by the VAT rate, and adding the result to U.S. price.

No other adjustments were claimed or allowed.

Foreign Market Value

In calculating FMV, we used home market price, third-country price, or constructed value, as defined in section 773 of the Tariff Act, as appropriate.

Home market prices were used when sufficient quantities of such or similar merchandise were sold in the home market to provide a reliable basis for comparison. We used home market sales as the basis for FMV for Action, Proton, and Tatung.

Since we determined that the home market sales of Kuang Yuan were insufficient to use as a basis for FMV, we used third-country sales as the basis for FMV.

We used constructed value for RCA since RCA had insufficient sales of such or similar merchandise in both the home and third-country markets.

Home market price was based on the packed, delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, insurance, commissions to unrelated parties, rebates, credit expenses, discounts, warranty expenses, advertising the sales promotion expenses, royalties, after-sale warehousing, differences in the physical characteristics of the merchandise, and differences in packing.

We also made adjustments, where applicable, for indirect selling expenses to offset commissions, and to offset U.S. selling expenses deducted in ESP calculations, but not for amounts exceeding the U.S. commissions and expenses. For Action, we made adjustments for U.S. indirect selling expenses on purchase price sales, in amounts not exceeding home market commissions. Finally, we made circumstance-of-sale (COS) adjustments for commodity tax differences and VAT differences, where appropriate.

Third-country price was based on the packed f.o.b. price to unrelated purchasers. We made adjustments, where applicable, for brokerage and handling, Taiwan inland freight, credit expenses, and royalties.

Finally, we made COS adjustments for credit expenses and royalties.

We disallowed RCA's claim for a COS adjustment to constructed value for the U.S. subsidiary's selling expenses. There is no provision within the statute instructing us to use U.S. selling expenses as a surrogate when the producer does not incur selling expenses in its home market. See our response to Comment 32 in Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review (56 FR 31378, July 10, 1991).

No other adjustments were claimed or allowed.

Constructed value consisted of the sum of the costs of materials, fabrication, general expenses, profit, and the cost of export packing. Because the statutory minimum of 10 percent of the cost of materials and fabrication exceeded the actual amount of general expenses, we added the statutory minimum amount, in accordance with section 773(e) of the Tariff Act. Because the statutory minimum of eight percent of the sum of the cost of materials, fabrication, and general expenses exceeded the actual profit, we added the statutory minimum.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Period of review	Margin (percent)
Action Electronics Co., Ltd.	04/01/90–03/31/91	1.64
AOC International, Inc.	04/01/90–03/31/91	[2] 23.89
Funai Electric Co. Ltd.	04/01/90–03/31/91	[2] 23.89
Hitachi Television (Taiwan) Ltd.	04/01/90–03/31/91	[1] 23.89
Kuang Yuan Co., Ltd.	04/01/90–03/31/91	0.00
Nettek Corp., Ltd.	04/01/90–03/31/91	[2] 23.89
Paramount Electronics.	04/01/90–03/31/91	[2] 23.89
Proton Electronic Industrial Co., Ltd.	04/01/90–03/31/91	4.13
RCA Taiwan, Ltd.	04/01/90–03/31/91	0.41
Sampo Corp.	04/01/90–03/31/91	[1] 0.78
Sanyo Electric (Taiwan) Co., Ltd.	04/01/90–03/31/91	[1] 4.66
Shinlee Corp.	04/01/90–03/31/91	[2] 23.89
Tatung Co	04/01/90–03/31/91	0.23
Teco Electric and Machinery Co., Ltd.	04/01/90–03/31/91	[2] 23.89
All Others	not applicable	4.13

[1] No shipments during the period; rate is from the last review in which there were shipments.

[2] No response; we therefore used the best information available, which was either the highest rate among respondent firms in the relevant review, or any rate received by any firm in prior reviews, whichever was higher.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of color television receivers, except for video monitors, from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final results covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to any of the reviewed firms or any previously reviewed firm, will be 4.13 percent, the "All Others" rate established in the final results of this administrative review. This rate represents the highest non-BIA rate for any firm with shipments during the period covered by this administrative review whose shipments to the United States were reviewed. These deposit requirements, when imposed, shall remain in effect until publication of the

final results of the next administrative review.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 20, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-267 Filed 1-6-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-020]

Final Results of Antidumping Duty Administrative Review and Revocation in Part: Titanium Sponge From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: January 7, 1992.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or Stephen Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0186 or (202) 377-1766.

FINAL RESULTS:

Background

On August 16, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 40866) the preliminary results of its fifth administrative review of the antidumping duty order on titanium sponge from Japan (49 FR 47053, November 30, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

The review covers four producers of Japanese titanium sponge for the period November 1, 1988 through October 31, 1989. The producers are: Toho Titanium Co., Ltd. (Toho); Osaka Titanium Co., Ltd. (Osaka); and Showa Denko K.K. (Showa). The fourth producer, Nippon Soda Co., Ltd., had no shipments during the period.

Scope of the Review

Imports covered by the review are shipments of unwrought titanium sponge. Titanium sponge is a porous, brittle metal which has a high strength-to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingots, slabs, billets, plates, and sheets. During the review period, titanium sponge was classifiable under item 629.1420 of the Tariff Schedules of the United States Annotated (TSUSA). Titanium sponge is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 8108.10.50.10. Although the TSUSA and HTS numbers are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Revocation in Part

In the first and second administrative reviews of this order, Osaka had shipments but made no sales at less than fair value and was assessed a zero percent margin. During the second administrative review and pursuant to 19 CFR 353.54, Osaka requested revocation of the order as it pertained to them. Because of a lack of evidence that Osaka was unlikely to resume dumping, in the preliminary results of the second administrative review, the Department refused Osaka's request. However, after considering comments from interested parties, and after Osaka agreed, pursuant to 19 CFR 353.54(e), to the immediate reinstatement of the order if circumstances develop indicating that Osaka is making sales at less than fair value, the Department published a "Tentative Determination to Revoke in Part" as part of the final results of the second administrative review (54 FR 13403, April 3, 1989). The Department stated that if the revocation were made final, it would apply to all entries made on or after October 31, 1987.

On October 18, 1990, the Department published final results of the third and fourth administrative reviews (55 FR 42227). Osaka made no shipments in either of those periods.

The issue of Osaka's revocation was raised again prior to the Department's preliminary results in this administrative review (the fifth). Osaka's request for revocation is governed by the regulations in effect at the time the Department issued its tentative determination to revoke. (See, "Antidumping Duties; Final Rule" (54 FR 12742, 12758, March 28, 1989).)

The Department received comments from Osaka and petitioner regarding this revocation. Osaka provided evidence of efforts it has undertaken to avoid sales at less than fair value, including its refusal to make sales, rather than risk sales at less than fair value. Osaka also resubmitted a written agreement regarding the possible reinstatement of the order as it pertains to Osaka, pursuant to 19 CFR 353.54(e). The petitioner indicated that they had no objection to this revocation.

The Department has determined that Osaka has not sold titanium sponge at less than fair value in this review period and that there is no likelihood of resumption of sales at less than fair value by Osaka. Since Osaka did not make sales at less than fair value in the first, second, and fifth administrative review periods, and had no shipments in the third and fourth periods, in accordance with 19 CFR 353.54, we are revoking the antidumping duty order as it pertains to Osaka. This revocation applies to all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse for consumption on or after October 10, 1987, the date stated in our tentative determination to revoke the order.

Product Comparisons

Respondents Showa and Osaka have argued that there are different such or similar categories of titanium sponge and that product comparisons should only be made within these such or similar categories. However, as in prior proceedings involving this merchandise, we have found that titanium sponge constitutes one such or similar category, and for comparison purposes, we considered all titanium sponge to be identical. (See *Comment 1.*)

At the preliminary results, for each of the three respondents we made price-to-price comparisons at what we described as the same level of trade. Since the preliminary results, we have examined this issue further. For purposes of the final results, we did not make price-to-price comparisons by dividing the markets into levels of trade, since information on the record does not support such a stratification. (See *Comment 2.*) We compared U.S. price and foreign market value as detailed below.

United States Price

In calculating United States price for Osaka, Toho, and Showa, the Department used purchase price, as defined in section 772(b) of the Act, both because the merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances.

A. Osaka

For Osaka, we calculated purchase price based on packed, ex-factory or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, harbor and U.S. Customs user fees, U.S. brokerage and

handling, and U.S. inland freight. Because a consumption tax was paid on home market sales but not on U.S. sales, we added to the U.S. selling price the amount of the consumption tax that would have been collected if Japan had taxed the export sales.

B. Showa

For Showa, we calculated purchase price based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for cash discounts, foreign brokerage and handling, foreign inland freight, ocean freight, foreign insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. duty, including harbor and U.S. Customs user fees. Because a consumption tax was paid on home market sales but not on U.S. sales, we added to the U.S. selling price the amount of the consumption tax that would have been collected if Japan had taxed the export sales.

C. Toho

For Toho, we calculated purchase price based on packed, delivered prices to the first unrelated customer in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine and inland insurance, U.S. duty, harbor and U.S. Customs user fees, U.S. brokerage and handling, and U.S. inland freight. Because a consumption tax was paid on home market sales but not on U.S. sales, we added to the U.S. selling price the amount of the consumption tax that would have been collected if Japan had taxed the export sales.

We made corrections to the reported amounts of U.S. duty, brokerage and handling, and inland freight expenses on certain sales, based on information obtained at verification.

Foreign Market Value

A. Osaka

For Osaka, we based foreign market value (FMV) on packed, delivered prices in the home market. We used sales to both unrelated customers and to those related customers for which we could establish that sales were at arm's length. We determined that sales were at arm's length if individual related parties were, on average, charged prices comparable to the prices charged to unrelated customers.

Osaka contends that it had no direct relationship with one home market customer. At the preliminary results, we determined that sales to this customer were related party transactions and we did not use these sales in calculating FMV. Since the preliminary results, we have examined this issue further. Based on information on the record, we have determined that this customer is not related to Osaka as defined in section 771(13) of the Act, and we are including sales to this customer in calculating FMV. (See *Comment 3.*)

We made deductions for foreign inland freight. We made adjustments, where appropriate, for post-sale price adjustments. We made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and post-sale warehousing expenses, pursuant to 19 CFR 353.56(a). In accordance with 19 CFR 353.56(b), we added U.S. commissions and deducted home market indirect selling expenses up to the amount of the U.S. commissions. We deducted home market packing costs and added U.S. packing costs. We also made a circumstance-of-sale adjustment for the difference between the consumption taxes on home market sales and U.S. sales.

B. Showa

In the previous administrative review, as a result of an allegation from petitioner, the Department initiated an investigation of sales made below the cost of production. As a result of this analysis, below-cost sales were found. Therefore, for this review, we also investigated whether sales were made in the home market at less than the cost of production. Showa reported its COP data based on materials, labor, overhead, and selling, general, and administrative costs incurred during the period of review (POR). We relied on the submitted data except in the following instances where the costs were not appropriately quantified or valued:

(1) We adjusted the submitted overhead costs to correct a misclassification of depreciation expense;

(2) We adjusted interest expense to exclude the submitted deduction for interest income, because evidence of the short-term nature of this interest income is not on the record;

(3) We adjusted general and administrative (G&A) expense to account for a clerical error which understated these expenses; and

(4) We allocated a share of write-downs and write-offs (expenses incurred in reorganizing Showa) to the review period.

In accordance with section 773(b) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales (1) were made in substantial quantities over an extended period of time and (2) were at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. In general, when less than 10 percent of home market sales are at prices below the COP, we do not disregard any below-cost sales. When between 10 and 90 percent of a respondent's sales are at prices below the COP, we disregard the below-cost home market sales in our calculation of FMV provided that these below-cost sales were made over an extended period of time. When more than 90 percent of a respondent's home market sales are at prices below the COP and occur over an extended period of time, we determine that there are an insufficient number of sales to serve as the basis for calculating FMV and we base FMV on constructed value for all U.S. sales.

In this review, we found that between 10 and 90 percent of Showa's sales in the home market were made at prices below the COP. We found that below-cost sales were made in substantial quantities because more than 10 percent of Showa's sales of the subject merchandise in Japan were made at prices below the COP. We further determined that the below-cost sales were made in 5 months of the review period and thus were made over an extended period of time. Finally, Showa has provided no information that would lead us to conclude that its below-cost home market sales would permit recovery of all costs within a reasonable period of time in the normal course of trade. Accordingly, we disregarded all sales that were made at prices below the COP.

We based FMV on packed, delivered prices. We used sales to both unrelated customers and to those related customers for which we could establish that sales were at arm's length. We determined that sales were at arm's length if individual related parties were, on average, charged prices comparable to the prices charged to unrelated customers.

Based on findings at verification, we adjusted the date of sale in the home market for certain sales to one customer. For those sales where the reported date of shipment preceded the reported date of sale, we changed the date of sale to the date of shipment.

We made deductions for inland freight. We made adjustments, where appropriate, for post-sale price adjustments. We made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a). In accordance with 19 CFR 353.56(b), we subtracted home

market commissions and added U.S. commissions. We adjusted home market packing costs, based on findings at verification. We deducted home market packing costs and added U.S. packing costs. We also made a circumstance-of-sale adjustment for the difference between the consumption taxes on home market sales and U.S. sales.

With regard to certain home market commissions paid to related commissionaires, based on information on the record, we compared the commissions paid to related selling agents in the home market to those paid to unrelated selling agents in the home market, and we have determined that these commissions are at arm's length. Therefore, we are making the appropriate adjustment. (See, Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland (56 FR 56363, November 4, 1991), Comment 6).

C. Toho

In all previous administrative reviews, the Department initiated an investigation of sales made below the cost of production. As a result of these analyses, below cost sales were found. Therefore, for this review, we have also investigated whether sales were made in the home market at less than the cost of production. Toho reported its COP data based on materials, labor, overhead, and selling, general, and administrative costs incurred during the POR. We relied on the submitted data except in the following instances where the costs were not appropriately quantified or valued:

(1) We adjusted interest expense to exclude the offset for imputed credit since this is not necessary for COP purposes; and

(2) We reduced research and development costs which had been overstated due to a clerical error.

In this review, applying the analysis described above for Toho, we found that between 10 and 90 percent of Toho's sales in the home market were made at prices below the COP. We found that below-cost sales were made in substantial quantities because more than 10 percent of Toho's sales of the subject merchandise in Japan were made at prices below the COP. We further determined that the below-cost sales were made in 12 months of the review period and thus were made over an extended period of time. Finally, Toho has provided no information that would lead us to conclude that its below-cost home market sales would permit recovery of all costs within a reasonable period of time in the normal course of trade. Accordingly, we disregarded all sales that were made at prices below the COP.

We based FMV on packed, delivered prices to unrelated customers in the home market. We used sales to both unrelated customers and to those related customers for which we could establish that sales were at arm's length. We determined that sales were at arm's length if individual related parties were, on average, charged prices comparable to the prices charged to unrelated customers.

We made deductions for inland freight. We made circumstances-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a). We deducted home market packing costs and added U.S. packing costs. We also made a circumstance-of-sale adjustment for the difference between the consumption taxes on home market sales and U.S. sales.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner, RMI Titanium Company, and Osaka, Showa, and Toho. At the request of petitioner and the three respondents, we held a public hearing on October 10, 1991.

Comment 1

Respondent Showa and Osaka have argued that there are different such or similar categories of titanium sponge, and that product comparisons should only be made within these such or similar categories.

Showa claims that its sales or titanium sponge to the United States and home markets during the POR consisted of three different products: Titanium sponge for mill use (Product 1); titanium sponge for non-mill use (Product 2); and off-grade titanium sponge (Product 3). Showa argues that U.S. Product 1 sales should be compared exclusively with home market Product 1 sales.

Showa contends that the criteria the Department uses to determine whether two or more products belong to separate "such or similar" categories (the component materials, the purposes for which the products are used, and the commercial value or commercial interchangeability of the products (section 771(16) of the Act) support comparisons of U.S. Product 1 to home market Product 1. Showa argues that Product 3 differs physically from Product 1, that the three products have three separate and distinct purposes, and that home market Products 2 and 3 fail to meet the such or similar requirement of having the same "commercial value."

Showa argues that, even if the Department were to find that all home market products fell within the same such or similar category, the Department must still compare the "most similar" home market product with the U.S. product. Showa claims that home market Product 1 is more similar to U.S. Product 1 than is home market Product 2 or 3, since it is used for the same purpose.

Osaka states that, prior to the preliminary results of this review, the Department always compared Osaka's U.S. prices of Product 1 (mill-use) with home market prices of Product 1 (mill-use). Osaka contends that the Department improperly reversed its previous practices in this review.

Osaka states that for purposes of the investigation and the first and second administrative reviews, the Department considered Product 2 (additive-use) so different from Product 1 that it did not require Osaka to report these sales. Osaka argues that product 2 does not qualify as such or similar merchandise. Concerning Product 3, Osaka explains that Product 3 is titanium sponge purchased by Osaka and re-sold. Since Product 3 is not produced by Osaka, Osaka contends that it does not qualify as such or similar merchandise. Osaka argues that, should the Department determine that Product 2 is such or similar merchandise, it should still calculate the dumping margin based solely on sales of Product 1 because Product 1 sold in Japan is more similar to Product 1 sold in the United States than is Product 2 sold in Japan.

Like Showa, Osaka argues that section 771(16)(B) of the Act supports comparisons of U.S. Product 1 to home market Product 1.

Petitioner argues that in the preliminary results, the Department correctly treated physically identical products as "such merchandise." Petitioner claims that Showa's proposal is counter to the language of the antidumping law and to long-standing Department practice. Petitioner argues that the statute does not consider use and looks only to the physical characteristics of the product and the identity of the manufacturer to determine "such" merchandise. Petitioner contends that Showa itself admits that Product 1 and Product 2 are physically identical, and that Showa did not and will not find cases supporting its proposition that physically identical products can be divided into separate such or similar categories. Finally, petitioner argues that it would be

impossible for the U.S. Customs Service to distinguish between titanium sponge based on use, and that even Showa admits that it cannot identify the use for all the titanium sponge it sells.

Showa argues that petitioner is incorrect in its statement that Showa's home market products are physically identical to the product that Showa sells in the United States and that therefore, section 771(16) (B) and (C) of the Act do not apply for identifying "such or similar" product categories. Showa contends that it has never made the claim that its three home market products are identical to the product sold in the United States, and explains that the physical properties within each product category may vary. Showa claims that since its three products are not physically identical "either inter or intra-categorically," the Department should apply the criterion for "such or similar" merchandise under section 771(16)(B) of the Act.

DOC Position

Consistent with the Department's policy in prior administrative reviews of this order, we are treating all subject merchandise within the scope of this review as a single such or similar category. Further, in making product comparisons we considered all titanium sponge to be identical.

Osaka and Showa have not provided sufficient technical information supporting the claims for product segregation or the definitive criteria necessary to define the alleged different categories of titanium sponge. The respondents themselves apply different criteria when defining their supposed categories. Respondents have not differentiated between their product categories based on physical characteristics, but rather base their categorizations on end-use. Furthermore, we have determined that there are no cost differences associated with producing the alleged different categories of titanium sponge.

Given the lack of information supplied by respondents, our standard practice of making product comparisons based on physical characteristics, and our history of product matching in this case, we are treating all subject merchandise within the scope of this review as a single such or similar category.

Concerning Osaka's sales of Product 3, since Product 3 is not produced by Osaka, it does not qualify as such or similar merchandise according to section 771(16) of the Act. Accordingly, Osaka's sales of Product 3 were not included for purposes of calculating Osaka's final dumping margin.

Comment 2

All three respondents argue that the Department improperly attempted to compare sales at the same level of trade in the preliminary results of this review. Respondents claim that the Department should follow its long-standing practice in this proceeding and not match sales based upon customer categories.

Respondents also claim that customer categories do not represent different levels of trade. They argue that the only logical basis for concluding that a difference in customer category or function yields a distinct level of trade is where the difference in category or function results in a pricing difference. Showa claims that, under 19 CFR 353.58, the Department is authorized—but not required—to compare sales at the same level of trade. Respondents claim that when prices do not vary by level of trade, the Department does not make price comparisons by level of trade. Since they claim that there are no pricing differences between their customer categories, respondents argue that there is no basis for a level of trade comparison. Osaka and Showa claim that pricing is based on quantities purchased and not on customer category.

Toho claims that the Department "generally has taken into account respondent's customer categories only when one party is claiming an adjustment for differing levels of trade," and Toho has not made this claim. Moreover, if the Department was attempting to make a level of trade adjustment or to compare similar levels of trade in the U.S. and home markets, the comparison was inappropriately made.

DOC Position

For purposes of the preliminary results, the Department attempted to make comparisons at the same level of trade in the U.S. and home markets by equating level of trade with customer category.

Since the preliminary results we have examined this issue further and determined that there is insufficient information on the record to support such level of trade distinctions. Information on the record identifies customer categories, and we have no reason to disbelieve respondents' contention that these categories do not constitute different levels of trade. We also have no reason to disbelieve respondents' contention that there is no correlation between levels of trade, however defined, and pricing.

Comment 3

Osaka contends that the Department should treat a particular home market customer ("customer") as an unrelated party. At the preliminary results, the Department determined that sales to this customer were not at arm's length and therefore treated the customer in question as a related party and did not include sales to this customer in calculating FMV.

Citing section 771(13) of the Act, Osaka asserts that the customer is not related to Osaka because: (1) The customer is not Osaka's agent or principal; (2) the customer does not directly or indirectly own or control Osaka; (3) Osaka does not directly or indirectly own or control the customer; and (4) common stock ownership between the customer and other parties do not meet the 20 percent statutory test of 771(13)(D).

Furthermore, Osaka states that, based on verification, the Department had no grounds for considering Osaka and the customer related parties at the preliminary results. Respondent contends that the verification report did not state that Osaka and the customer were related.

Petitioner agrees with Osaka and states that Osaka is correct in its contention that sales to this customer should be used in calculating FMV. Petitioner is persuaded (1) that the relationship between Osaka and the customer is "sufficiently indirect that no real influence on prices is effected by the relationship," and (2) that the Department's comparison of the average price of sales to this customer to the average price of sales to unrelated trading companies in the home market is insufficient to test whether prices are at arm's length.

DOC Position

Based on information on the record, we have determined that, pursuant to section 771(13) of the Act, Osaka and the customer in question are not related. Therefore, for purposes of the final results, we have included Osaka's sales to this customer when calculating FMV.

Comment 4

Osaka argues that the Department should use all related party sales in its margin calculations because sales to related and unrelated customers were made at comparable prices. Osaka claims that it sets prices based on quantity of the merchandise sold and not on its relationship to the customer.

Osaka also argues that the Department incorrectly calculated the "Overall Percent Ratio of Related to

Unrelated Prices." Osaka contends that the Department weighted the average by the related quantity when it should have weighted the average by the sum of the related and unrelated quantities.

DOC Position

We disagree with Osaka. We compared prices to unrelated customers to prices to related customers to determine whether sales to related parties were made at arm's length. We determined that sales were at arm's length if individual related parties were, on average, charged prices comparable to the prices charged to unrelated customers. We excluded related party sales to certain customers because these sales were not at arm's length.

Concerning Osaka's statement that we incorrectly conducted the arm's length test, Osaka misunderstood our methodology. We do not weight average all related parties to determine whether sales are at arm's length, but rather perform our analysis on a customer-specific basis. We compared the weighted average price to each related customer to the weighted average price to all unrelated customers to determine whether sales to each related customer were at arm's length.

Comment 5

Citing 19 CFR 353.55(a), Showa claims that the Department is required to compare U.S. sales with home market sales of "comparable quantities." Pursuant to the regulations, Showa argues that it is a well-established Department practice that where a party demonstrates a correlation between price and quantity, the Department will disregard home market sales which are not of comparable quantities to U.S. sales. Further, when there are both large quantity sales and small quantity sales in the home market, only the large quantity sales should be compared with the large quantity U.S. sales.

Showa claims that since quantity is the basis for its prices, the Department should compare these comparable quantity sales. Based on its argument that the Department should compare U.S. Product 1 sales only to home market Product 1 sales, Showa claims that it has adequate home market sales of large quantities of Product 1 for purposes of comparison with large quantity U.S. Product 1 sales.

Showa analyzed the relationship between price and quantity in two different ways. First, Showa divided all sales into various categories by quantity and calculated a weighted average net price for each category. Second, Showa undertook a regression analysis showing the quantity sold to each customer and the weighted average net price for each customer. In both cases, Showa claims there is a direct correlation: the greater the quantity, the lower the price.

Showa admits that the correlation between price and quantity is not apparent based on a visual examination of the data. Showa's prices are based on the quantity a customer buys over a period of time—not the quantity purchased in a given transaction. Showa sets prices based on a "customer's past, present and expected future volume purchases with adjustments based on packing requirements."

DOC Position

We do not believe that Showa has provided either: (1) Sufficient justification for their argument that we should compare sales of comparable quantities (*i.e.*, proof that price is driven by quantity purchased); or (2) sufficient information as to how we would compare U.S. sales with home market sales of comparable quantities.

Showa's comparable quantity argument is faulty in that it is directly related to Showa's argument that the Department should compare U.S. Product 1 sales only to home market Product 1 sales. Showa claims that it has adequate home market sales of large quantities of Product 1 for purposes of comparison with large quantity U.S. Product 1 sales, but as discussed in *Comment 1*, we are treating all subject merchandise within the scope of this review as a single such or similar category. Further, an examination of Showa's data shows that some sales of U.S. Product 1 and home market Product 1 were made in "small" quantities, and some sales of home market Product 3 were made in "large" quantities.

Showa claims that its prices are based on the quantity a customer buys over a period of time and not the quantity purchased in a given transaction, yet Showa's suggested methodology for implementing comparable quantity comparisons is based on the quantity of each specific transaction. Furthermore, the "comparable" quantity categories suggested by Showa appear to be somewhat random, and Showa provides no justification or explanation for how it determined what quantities were "comparable."

We did not attempt to compare U.S. sales with home market sales of "comparable quantities" because the information on the record does not support making such comparisons. Absent proof that price is driven by quantity purchased and proof that certain quantities are "comparable" while other quantities are not, we cannot compare U.S. sales with home market sales of "comparable quantities."

Comment 6

Showa claims that the Department should use a weighted-average FMV for the period of review, rather than a monthly weighted-average FMV. Showa argues that the POR FMV is representative of home market prices. Showa cites Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof From Japan (56 FR 41508, 41517, August 21, 1991) (TRBs from Japan), where the Department conducted a two-prong test for determining whether a period weighted-average FMV is representative. Showa believes it meets the test established in TRBs from Japan, and claims we should use the period weighted-average FMV.

Petitioner argues that the Department should not abandon its long-standing practice of comparing contemporaneous sales. Petitioner claims that Showa offers no rationale for suggesting that the Department deviate from its standard practice, and merely cites one example where the Department compared sales based on a weight-averaged FMV. Furthermore, petitioner claims that the TRBs from Japan case involved extraordinarily complex product matching issues and an exceptionally large number of transactions. Petitioner claims that there is no necessity or justification for abandoning the preference for comparing contemporaneous sales.

DOC Position

We see no reason, in this case, to vary from our standard practice of comparing sales based on a monthly weighted-average FMV.

Comment 7

Petitioner claims that the Department uncritically accepted Showa's allocation of its parent company's (Showa Denko) G&A expenses and that these amounts should be recalculated on the basis of cost of sales. Petitioner states that while Showa Denko's G&A allocation may have been based on internal accounting policies, the respondent has had ample opportunity to adjust its normal accounting since the original order on titanium sponge was issued in November 1984.

Respondent claims that the Department correctly calculated G&A expenses in a manner consistent with previous reviews.

DOC Position

We agree with respondent. We verified the parent company G&A

allocation to subsidiaries, noting it was based on Showa Denko internal accounting policy manual guidelines. We have no reason to believe that these guidelines distort the proper allocation of G&A. (See, Titanium Sponge from Japan; Final Results of Antidumping Administrative Review (55 FR 42227, October 18, 1990), Comment 4.)

Comment 8

Petitioner contends that the Department understated Showa's "loss allocation rate" for this review period because of errors in the method used to divide write-off expenses between this period and the prior review period. The write-off was divided between two review periods which each included portions of the fiscal year in which the write-off had been recorded. Petitioner further asserts that if a similar error was made in the previous review, the Department should correct for both periods by increasing the loss allocation rate in the current review period.

Respondent claims that the write off of fixed assets in connection with the reorganization of Showa Titanium constitutes an extraordinary item, excludable from normal operations which should not be included in costs summarized for the COP or CV.

DOC Position

We agree with Petitioner, in part. We have recalculated the loss allocation rate for this review period. We used the proportionate share of the loss and the cost of sales of the fiscal year in which the loss was incurred. The loss was applied only to the cost of production for 1988. There was no error in the previous review, and the entire loss has now been allocated to products produced in 1988. Losses incurred on sales or write-offs of fixed assets pursuant to Showa's restructuring were not considered to be extraordinary items and were included as part of the loss. (See, Titanium Sponge from Japan; Final Results of Antidumping Administrative Review, 55 FR 42227 (October 18, 1990), Comment 3.)

Comment 9

Petitioner claims that Toho has diluted the amount of research and development (R&D) costs allocated to titanium sponge through "creative accounting." Respondent asserts that the R&D data used in the preliminary results were verified by Department representatives.

DOC Position

We agree with respondent. The Department verified that R&D specific to titanium sponge was included in cost of manufacture (COM), and general R&D was allocated as part of G&A expense.

Comment 10

Petitioner asserts that the Department improperly deducted Toho's interest income from finance expense because there is no evidence on the record that the interest income is short term. Respondent claims that the Department fully verified its records regarding finance expense and income, and that the Department should maintain the calculations of finance expense.

DOC Position

We agree with respondent. The Department verified that the submitted finance income was interest earned on unrestricted bank deposits, *i.e.*, short-term interest income.

Final Results of the Review

Based on our final analysis, we determine that the following weighted-average margins exist for the period November 1, 1988, through October 31, 1989:

Manufacturer/exporter	Margin (percent)
Osaka Titanium Co., Ltd.	0.00
Showa Denko K.K.	13.16
Toho Titanium Co., Ltd.	0.00
Nippon Soda Co., Ltd.	*56.27
All Others	13.16

* No shipments during the period; rate is from the last review in which there were shipments.

In response to our questionnaire, Nippon Soda responded that it made no shipments of Japanese titanium sponge to the United States during the POR. The U.S. Customs Service verified that Nippon Soda made no shipments of titanium sponge to the United States during the POR. We will collect cash deposits on future entries of merchandise by Nippon Soda equal to the most recent rate calculated for Nippon Soda.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final results or final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent period or the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firm or any previously reviewed firm, will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm in this administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: December 31, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-268 Filed 1-6-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-505]

Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 24, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on porcelain-on-steel cookingware from

Mexico (56 FR 48163). We have now completed that review and determine the total bounty or grant to be *de minimis* for CINSA and 3.26 for all other companies for the period January 1, 1990 through December 31, 1990.

EFFECTIVE DATE: January 7, 1992.

FOR FURTHER INFORMATION CONTACT: Dana S. Mermelstein or Maria P. MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTAL INFORMATION:

Background

On September 24, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 48163) the preliminary results of its administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico (51 FR 44287; December 12, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of porcelain-on-steel cookingware from Mexico. The products are porcelain-on-steel cookingware (except teakettles), which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. During the review period such merchandise was classifiable under item number 7323.94.0020 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period from January 1, 1990 through December 31, 1990, two companies, and the following programs: (1) FOMEX; (2) BANCOMEXT Financing for Exporters; (3) FONEI; (4) Program for Temporary Importation of Products Used in the Production of Exports (PITEX); (5) CEPROFI; (6) Guarantee and Development Fund for Medium and Small Industries (FOGAIN); (7) Other BANCOMEXT preferential financing; (8) Import Duty Reductions and Exemptions; (9) State tax incentives; (10) NAFINSA FONEI-type financing; and (11) NAFINSA FOGAIN-type financing.

Calculation Methodology for Assessment and Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52306, 52325–52326; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the benefits received by both companies subject to review to determine the overall subsidy from all countervailable programs benefitting exports of subject merchandise to the United States. Because the country-wide rate was above *de minimis*, as defined by 19 CFR 355.7, we proceeded to the next step in our analysis and examined the *ad valorem* rate we had calculated for each company for all countervailable programs, to determine whether individual company rates differed significantly from the weighted-average country-wide rate. One company (CINSA) received aggregate benefits which were *de minimis* (significantly different within the meaning of 19 CFR 355.22(d)(3)(ii)). This company must be treated separately for assessment and cash deposit purposes.

The remaining company (APSA) received aggregate benefits from all countervailable programs combined which were not significantly different from the weighted-average country-wide rate; its rate was used to establish the "all-other" rate for the review period. See, *e.g.*, Final Results of Countervailing Duty Administrative Review; Ceramic Tile from Mexico (56 FR 27496, 27498; June 14, 1991).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Acero Porcelanizado, S.A. (APSA) and CINSA, the two respondent companies, and the Government of Mexico.

Comment 1: APSA and CINSA claim that the Department has overstated the benefits attributable to the BANCOMEXT Export Financing program. By using the interest payment to interest payment comparison methodology in calculating benefits for the BANCOMEXT export financing program, rather than the interest rate to interest rate comparison methodology which the Department has used in the past, the Department has not accounted for the loss of the use of funds by the borrower when interest is pre-paid, as it is for BANCOMEXT export financing.

Department's Position: We have adjusted our calculations to account for the prepayment of interest required by the BANCOMEXT Export Financing program. We determine the benefit from BANCOMEXT Export Financing to be 0.16 percent *ad valorem* for CINSA and 0.47 percent *ad valorem* for all other companies.

Comment 2: The Government of Mexico contests the Department's determination that the BANCOMEXT export financing program provides countervailable benefits. First, the Government of Mexico contends that the use of a commercial rate as a benchmark in the Department's calculation is inconsistent with Item (k) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Applications of Articles VI, XVI, and XVIII of the General Agreements on Tariff and Trade (GATT). Item (k) of the Illustrative List defines an export subsidy as the granting of export credits by governments at interest rates below the cost of funds to the government. BANCOMEXT financing meets the cost to government standard and therefore does not provide countervailable subsidies. Second, the Government of Mexico maintains that BANCOMEXT loans are indeed given at commercial rates. The stated interest rate for BANCOMEXT financing is the U.S. prime rate plus 0.5 percent, and prime rate is considered a commercial rate.

Department's Position: We disagree. The cost to government standard which defines an export subsidy in Item (k) of the Illustrative List does not limit the United States in applying its own national countervailing duty law to determine the countervailability of benefits bestowed on merchandise exported from Mexico. Because BANCOMEXT export financing is only available to exporters, we determine this program is countervailable. See *e.g.*, Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Order Administrative Review (54 FR 36841; September 5, 1989) and Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review (56 FR 12175, 12177; March 22, 1991). When we compared our benchmark with the interest rates reported under the BANCOMEXT program, we found countervailable benefits. There is no evidence on the record illustrating the Government of Mexico's assertion that the BANCOMEXT interest rate, the U.S. prime rate plus 0.5 percent, is commercially available in Mexico.

Comment 3: The Government of Mexico contests our use of the quarterly weighted average effective interest rates published in the Federal Reserve Bulletin as a benchmark, since this rate represents all types of lending at a certain level. The Government of Mexico argues that a more appropriate benchmark would be a rate which reflects financing for exports, such as a

rate available through the U.S. Export-Import Bank.

Department's Position: We disagree. It is the Department's practice to use the predominant source of short-term financing to construct a benchmark. See, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Butt-Weld Pipe Fittings from Thailand (55 FR 1695; January 18, 1990) and Section 355.44(b)(3)(i) of the Department's proposed regulations (54 FR 23366, 23380; May 31, 1989). The benchmark that we have relied on here is a national-average interest rate based on a Federal Reserve survey of the terms of lending at commercial banks during the review period. Our use of Federal Reserve rates has been sustained in *Cementos Anahuac del Golfo, S.A.* v. *U.S.*, 689 F. Supp. 1191, 1214 (CIT 1988), *aff'd Cementos Guadalajara, S.A.* v. *U.S.* 879 F. 2d 847 (Fed. Cir. 1989), *cert. denied*, 110 S. Ct. 1318 (1990), and *PPG* v. *United States*, 768 F. Supp. 354 (CIT 1991), appeal docketed, No. 91–1486 (CAFC, Sept. 9, 1991). Use of U.S. Export-Import Bank lending rates as the basis for our benchmark, as the Government of Mexico proposes, would be inappropriate here because such rates represent long-term financing, are limited to exporters, and the rates are based on conditions specific to the individual borrower or importing country.

Comment 4: The Government of Mexico contends that the PITEX program is not an export subsidy because machinery temporarily imported under PITEX is used to manufacture merchandise for both the domestic and the export markets.

Department's Position: We disagree. The eligibility criteria for the PITEX program limit the benefits to exporters because they require a company to have a proven export record, and to use the imported merchandise (both raw materials and equipment) in the production of goods for export. See, Certain Textile Mill Products from Mexico; Final Results of Countervailing Administrative Review (56 FR 12175, 12178; March 22, 1991). Moreover, should a company using PITEX wish to sell its production (incorporating the imported raw materials or produced with the imported equipment) in the domestic market, it must obtain special authorization and pay the corresponding duties, thereby forfeiting the portion of benefits granted through PITEX to merchandise ultimately sold in the domestic market. In addition, such sales in the domestic market are limited to thirty percent of the total PITEX-related production. Therefore, because PITEX benefits are limited to exporters, and to the extent that PITEX provides duty drawback on non-physically incorporated merchandise, we determine this program to be a countervailable export subsidy. See, Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review (56 FR 50858, 50860; October 9, 1991).

Comment 5: The Government of Mexico argues that because import duties are part of the acquisition cost of capital equipment and are therefore depreciated over the useful life of the equipment, the Department should allocate the PITEX benefit over the useful life of the equipment.

Department's Position: We disagree. With respect to the timing of the benefit, it is the Department's practice to expense benefits resulting from tax or duty exemption programs in full in the year of receipt. The benefit consists of import duties not paid on the imported machinery, which normally would be payable at the time of import; we followed our standard practice by expensing the benefit from the value of duty exemptions in full, in the year of receipt. See, Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof from Thailand; Final Negative Countervailing Duty Determinations: Antifriction Bearings (Other Than Ball or Tapered Roller Bearings) and Parts Thereof from Thailand (54 FR 19130; May 3, 1989); see also Certain Cotton Yarn Products from Brazil; Preliminary Results of Countervailing Duty Administrative Review (55 FR 19766; May 11, 1990); § 355.48(b)(6) of the Department's proposed regulations (54 FR 23366, 23384: May 31, 1989).

Final Results of Review

After reviewing all of the comments received, and correcting for clerical errors found in the calculations, we determine the total bounty or grant to be *de minimis* for CINSA, and 3.26 percent *ad valorem* for all other companies for the period January 1, 1990 through December 31, 1990.

For this merchandise, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments from CINSA, and to assess countervailing duties of 3.26 percent of the f.o.b. invoice price on shipments from all other companies exported on or after January 1, 1990 and on or before December 31, 1990.

The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on any shipments of merchandise from the CINSA, and to collect a cash deposit of estimated countervailing duties of 3.18 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: December 30, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–269 Filed 1–6–92 8:45 am]

BILLING CODE 3510–DS–M

Short-Supply Determination: Certain 13-Chrome Stainless Steel Tubing

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain sizes of 13-chrome stainless steel tubing.

SHORT-SUPPLY REVIEW NUMBER: 60.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply allowance for 182 metric tons of certain sizes of 13-chrome stainless steel tubing for the first quarter 1992 under the U.S.-Japan Steel Arrangement.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Marissa Rauch or Kathy McNamara, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377–1382 or (202) 377–3792.

SUPPLEMENTARY INFORMATION: On November 27 and 29, 1991, the Secretary received adequate petitions from Sooner Pipe & Supply Corporation ("Sooner"), requesting a short-supply allowances for 286 metric tons of this product for the first quarter 1992 under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America in Certain Steel Products (the U.S.-Japan Steel Arrangement). Sooner requested short supply because it alleges that this material is not produced

domestically and regular export licenses are not available for this material.

The requested material meets the following specifications: 13-Chrome Stainless Steel Tubing Grades SM13CR–85 and SM23CR–95 with Vam Ace Connections.

	Quantity (MT)
1. SM13CR–85 O.D. 2⅞" × 4.60Lb/Ft × R–2 Vam Ace	42
2. SM13CR–85 O.D. 2⅞" × 6.40Lb/Ft × R–2 Vam Ace	174
Total	216
3. SM13CR–85 O.D. 2⅞" × 7.70Lb/Ft × R–2 Vam Ace	52
4. SM13CR–95 O.D. 2⅞" × 7.70Lb/Ft × R–2 Vam Ace	17
5. SM13CR–95 O.D. 2⅞" × 7.70:Lb/Ft Vam Ace 1 set of pup joints	1
6. SM13CR–95 O.D. 2⅞" × 7.70Lb/Ft Vam Ace 1 piece Double Pin Sub 2 feet long	
Total	70

Chemical Composition:

C:	0.15	–0.22
MN:	0.25	–1.00
CR	12.00	–14.00
NI:	MAX	0.50
CU	MAX	0.25
SI	MAX	1.00

Mechanical Properties:

PSI

	SM85 grade	SM95 grade
Min. Yield Strength	85,000	95,000
Max. Yield Strength	100,000	110,000
Min. Tensile Strength	100,000	105,000

The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures").

Action

On November 27 and 29, 1991, the Secretary established an official record on this short-supply request (Case Number 60) in the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce at the above address. On December 9, 1991, the Secretary published a notice in the **Federal Register** announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than December 16, 1991, and interested parties were invited to file replies to any comments no later than five days after that date. In order to determine whether this product, or a viable alternative product, could be supplied in the U.S. market for the period of this review, the Secretary sent questionnaires to: North Star Steel, Texas Inc. ("North Star"), Al Tech Specialty Steel Corporation ("Al Tech"), USX Corporation ("USX"), CF&I Steel Corporation ("CF&I"), Koppel Steel Corporation ("Koppel"), and Lone Star Steel Corporation ("Lone Star"). The Secretary received timely questionnaire responses from 5 of the 6 companies.

Questionnaire Responses

Four questionnaire respondents (CF&I, North Star, Lone Star and Koppel) indicated that they were unable to supply the requested 13-chrome tubing. Al Tech indicated that it would be able to supply 13-chrome tubing meeting the specifications, but not in the requested lengths.

On December 18, 1991, we received a letter from John Gandy Corporation ("JGC"), a specialty distribution company for corrosion resistant alloy OCTG, as an interested party. JGC indicated that it has 13-chrome tubing meeting the requested specifications in inventory. JGC provided an inventory list indicating that, of the tubing requested by Sooner, it has the following inventory:

52 MT (15,000 ft.) SM 13CR–85 O.D. 2⅞" × 7.70 lb/ft. × range 2
52 MT (18,000 ft.) SM 13CR–85 O.D. 2⅞" × 6.40 lb/ft. × range 2

104MT

On December 16, 1991, Sooner responded to Al Tech's comments by indicating that their equipment in the oil field is set to handle only range 2 (28–32 ft.) pipe. Therefore, the 20 foot lengths offered by Al Tech are unacceptable in Sooner's down-hold applications.

On December 19, 1991, Sooner provided comments in response to JGC's letter. Sooner indicated that the material JGC has offered may have been in inventory for a long period and may therefore be subject to "crevice corrosion." Sooner noted that the pipe offered by JGC is produced by Sumitomo, Kawasaki and Tubecex. Sooner asserts that purchasing pipe produced by several different manufacturers would be inconsistent with its practice of purchasing pipe through a single source, and would deprive Sooner of "single source responsibility" in case of problems. Sooner also expressed concern that JGC does not have any coupling stock to thread the material with a Vam Ace connection, which would make it impossible to screw the pipe together.

On December 20, 1991, JGC responded to Sooner's concerns and provided full specification sheets on the 13-chrome material held in inventory. JGC noted that, as part of its standard practice, it would perform electro-magnetic or ultrasonic testing to detect any crevice corrosion on the offered pipe. With regard to sole source responsibility, JGC noted that it ordinarily serves as the first point of responsibility for its OCTG customers. With regard to threading for the Vam Ace connection, JGC indicated that it inventories coupling stock to match its inventory of pipe, and that its stock could be threaded for the Vam Ace connection in one to two weeks through Vam PTS. JGC asserts that in the past year it has sold over 100,000 ft. of pipe threaded with Vam Ace connections.

On December 20, 1991, Sooner responded to JGC's comments, noting that certain of the pipe offered did not meet its requirements for hydrostatic testing, Charpy impact testing, and hardness testing. In addition, Sooner asserted that the non-destructive testing offered by JGC would not necessarily detect crevice corrosion. Sooner asserts that, in its experience, crevice corrosion can only be detected by visual inspection by a knowledgeable inspector.

Analysis

The principle question in this review is whether sufficient supplies of tubing are available domestically to meet Sooner's actual consumption needs.

One domestic producer, Al Tech, has indicated that it can produce 13-chrome tubing, however, it cannot meet the API range 2 length specifications (28–32 ft) that are necessary for Sooner's application. According to Sooner, the equipment in the oil patch is set to handle tubing in Range 2 lengths (28–32 foot lengths) an API standard for OCTG pipe. Use of shorter, non-range 2 pipe would require either welding or additional jointing, which would be unacceptable for use in Sooner's downhole applications. The pipe offered by Al Tech does not and cannot easily be converted to meet the API length specifications noted in Sooner's petitions and therefore does not address Sooner's short-supply needs.

JGC offers 104 metric tons of pipe meeting all of the specifications provided by Sooner in its November 27 and 29, 1991, petitions. Sooner has since stated that the offered pipe does not

meet certain other requirements not noted in its initial petitions for short supply, notably, single source requirements, certain testing requirements, and visual inspection by a practiced inspector.

Standards for hardness testing, Charpy impact testing and hydrostatic testing are standards not included in Sooner's initial petition for short supply, but were noted only after JGC offered pipe available from its inventory. Pursuant to section 375.102(d) of the Department's Short Supply Procedures, petitioner is required to file a new petition for short supply if it modifies its request to the extent that the modification represents a substantial change in its request. Since these testing requirements were not included in Sooner's initial request, JGC has had no opportunity to comment upon the reasonableness of these testing requirements. Therefore, the additional testing standards described in Sooner's December 20, 1991, submission constitute a substantial change in the specifications for the material requested and cannot be considered in this review. Sooner must file a new petition for short supply fully describing all testing requirements if it wants these requirements to be considered by the Secretary in making his determination.

With regard to single source responsibility, we note that source preferences are not one of the five factors described in the House Report to the Steel Trade Liberalization Act (H.R. 101–263) ("House Report") that are to be considered in determining whether short supply exists. Further, JGC asserts that it acts as the first point of responsibility for its customers should problems arise with JGC's products. Therefore, the fact that the material offered by JGC's products. Therefore, the fact that the material offered by JGC was produced by different steel companies does not affect our determination of whether short supply currently exists in the domestic market.

After subtracting the quantity offered by JGC from the quantity requested by Sooner, the following tonnage remains outstanding:

122 MT (60,000 ft.) SM13CR–85 O.D. 2⅞" × 6.40 lb/ft. × range 2
42 MT (20,000 ft.) SM13CR–85 O.D. 2⅜" × 4.60 lb/ft. × 2
17 MT (5,000 ft.) SM13CR–95 O.D. 2⅞" × 7.70 lb/ft. × range 2
1 MT 1 set of pup joints—SM13CR–95 O.D. 2⅞" × 7.70 lb/ft.
1 MT 1 piece double pin sub (2 ft. long)

182 MT

Conclusion

Because the domestic industry is unable to supply Sooner with 182 metric tons of material meeting its specification for the first quarter of 1992, the Secretary determines that short supply does exist with respect to the requested product for this time period. Pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Procedures, the Secretary hereby grants a short-supply allowance for 182 metric tons of the requested 13-chrome stainless steel tubing in the sizes noted above for the first quarter 1992.

Dated: December 27, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–270 Filed 1–6–92; 8:45 am]

BILLING CODE 3510–DS–M

Technology Administration, Bureau of Export Administration

National Critical Technologies Development and Advancement; Public Workshop

AGENCY: Technology Administration; Bureau of Export Administration, Commerce.

ACTION: Notice of public workshop.

SUMMARY: This is to notify interested parties that the Department of Commerce will hold a public workshop on February 6, 1992 at the National Institute of Standards and Technology in Gaithersburg, Maryland to explore interest in the development and advancement of national critical technologies. The workshop will (1) acquaint the private sector with the Strategic Partnerships Initiative, and (2) encourage private sector input on the scope and format of industrial surveys that the Bureau of Export Administration is developing to assess the financial and production status of six Department of Defense critical technologies. A registration fee of $75.00 per participant is due no later than January 24, 1991. Space is limited.

DATES: The workshop will convene at 9 a.m. (registration at 8 a.m.) and conclude at 5 p.m. on Thursday, February 6, 1992. A registration fee of $75.00 per participant is due no later than January 24, 1992. Space is limited.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Gaithersburg, Maryland. Registration fees should be forwarded to:

National Institute of Standards and Technology, Conference Registrar—"Criticla Technologies Workshop", A–902 Administration Building, Gaithersburg, MD 20899

FOR FURTHER INFORMATION CONTACT: Lori Phillips, Conference Registrar, (301) 975–4513.

SUPPLEMENTARY INFORMATION: This is to notify interested parties that the Department of Commerce will hold a public workshop on February 6, 1992 at the National Institute of Standards and Technology in Gaithersburg, Maryland to explore interest in the development and advancement of national critical technologies. The workshop will serve two purposes: (1) Pursuant to the Notice of Final Rules and Regulations, dated August 20, 1991, acquaint the private sector with the Strategic Partnerships Initiative, including how strategic partnerships offer a means for firms to collaborate on the development and commercialization of large-scale critical technologies; and (2) encourage private sector input on the scope and format of industrial surveys that the Bureau of Export Administration is developing to assess the financial and production status of six Department of Defense critical technologies (optoelectronics, composites, advanced ceramics, flexible computer integrated manufacturing, artificial intelligence, and superconductivity). These industrial assessments will be conducted in accordance with Section 825 of the fiscal year 1991 Defense Authorization Act.

Goal of the Strategic Parternships Initiative

Strategic Partnerships are multi—industry teams of noncompeting firms formed to create and commercialize proprietary technologies, especially large-scale critical technologies, using a systems management approach. Large-scale critical technologies are technologies that are too complex and costly for a single firm to create, and have more potential applications than a single firm or even an industry can readily and fully exploit. In some cases, investments in these technologies can be recouped only if the results are used in several applications. Since speed of recoupment can be critical to continued competitiveness, it often is essential that multiple major applications be introduced simultaneously.

This new initiative is designed to provide the private sector the opportunity to discuss possible benefits of forming strategic partnerships among firms representing the entire food chain of specific technologies. By focusing on a specific technology, these partnerships will have the capability to integrate

innovation activities for a broad range of applications made possible by that technology. Strategic partnerships are made up generally of noncompeting companies, and are capable of accomplishing the entire process of innovation working on a proprietary basis.

The immediate goal of this initiative is to hold workshops on key technologies upon request from the private sector, at which the stakeholder industries in the food chain for each technology will have a change to consider: potential applications and current status of the technology, what R&D needs to be performed, the competitive position of U.S. industry in that technology, and ways in which U.S. stakeholders might organize themselves to maximize commercial benefits. The design of and participants in a specific partnership will be solely at the discretion of the private sector.

Goal of the Critical Technology Assessments

The Department of Defense has identified 21 technologies deemed critical to national security. These technologies include Machine Intelligence, Flexible Manufacturing, Photonics, Superconductivity, and Advanced Materials. The Technologies and the industries that support them constitute a section of the defense industrial base vital to present and future national security needs of the United States.

The Bureau of Export Administration, Office of Industrial Resource Administration (OIRA), in coordination with the Technology Administration, and the Department of Defense, is conducting assessments of the Department of Defense's 21 Critical Technologies. Assessments of six technologies and their industrial infrastructures are scheduled to be completed in fiscal year 1992. The final reports will be delivered as public documents to the United States Congress, Armed Services Committees.

The immediate goal of this workshop is to secure the participation of industry associations and individual companies in framing assessment outlines and industrial surveys related to their technologies. OIRA will then use the surveys to collect research and development, financial, production, and employment information, which will form the basis for each final Critical Technology Assessment.

Dated: December 31, 1991.

Deborah Wince-Smith,

Assistant Secretary for Technology Policy.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 92-286 Filed 1-6-92; 8:45 am]

BILLING CODE 3510-13-M

CONGRESSIONAL BUDGET OFFICE

Transmittal of Final Sequestration Report for Fiscal Year 1992 to Congress and the Office of Management and Budget

Pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Final Sequestration Report for Fiscal Year 1992 to the House of Representatives, the Senate, and the Office of Management and Budget.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 92-436 Filed 1-6-92; 8:45 am]

BILLING CODE 2107-11-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement, part 215, Contracting by Negotiation, and the clauses at 252.215; OMB Control Number 0704-0232.

Type of Request: Revision.

Average Burden Hours/Minutes per Response: 4 hours and 40 minutes.

Responses per Respondent: 1.

Number of Respondents: 199,540.

Annual Burden Hours: 932,900.

Annual Responses: 199,615.

Needs and Uses: Defense Far Supplement Part 215 concerns information collection requirements required (1) for negotiation of contracts, (2) for implementing the Industrial Modernization Improvement Program, and (3) to perform estimating systems surveys.

Affected Public: Businesses or other for-profit, non profit institutions and Small Businesses or Organizations

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain a benefit.

Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Davis Highway, suite 1204, Arlington, Virginia, 22202-4302.

Dated: December 31, 1991.

L.M. Bynum,

Alternate OSD Federal Register Officer, Department of Defense.

[FR Doc. 92-249 Filed 1-6-92; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Application Form, and Applicable OMB Control Number: Defense FAR Supplement, part 210, Specifications, Standards and Other Purchase Descriptions, and the clauses at 252.210; Forms DD 346 and 347; OMB Control Number 0704-0230.

Type of Request: Revision.

Average Burden Hours/Minutes per Response: 3 Hours.

Responses per Respondent: 1.

Number of Respondents: 15,000.

Annual Burden Hours: 45,000.

Annual Responses: 15,000.

Needs and Uses: Defense FAR Supplement part 210 concerns information collection requirements required to obtain bills of material for production maintenance purposes by preparing and submitting DD Forms 346 and 347.

Affected Public: Businesses or other for-profit, non profit institutions and Small Businesses or Organizations.

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain a benefit.

Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, room 3255, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Davis Highway, suite 1204, Arlington, Virginia, 22202–4302.

Dated: December 31, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–250 Filed 1–6–92; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement, part 225, Foreign Acquisitions, and the clauses at 252.225; Form DD 2139; OMB Control Number 0704–0229.

Type of Request: Revision.

Average Burden Hours/Minutes per Response: 3 Hours.

Responses per Respondent: 3.

Number of Respondents: 53,153.

Annual Burden Hours: 458,765.

Annual Responses: 159,842.

Needs and Uses: Defense FAR Supplement (DFARS) part 225 concerns information collection requirements required to process (10 duty free certificates, (2) report on expenditures by foreign contractors in the United States and (3) information required by the Trade Agreements Act on sources of petroleum. In addition, information collection requirements previously approved under DFARS parts 204 and 208 have been relocated to part 225 as a result of a complete rewrite of DFARS.

Affected Public: Businesses or other for-profit, non profit institutions and Small Businesses or Organizations.

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain a benefit.

Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Davis Highway, suite 1204, Arlington, Virginia, 22202–4302.

Dated: December 31, 1991

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–251 Filed 1–6–92; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, applicable form, and applicable OMB control number: DoD FAR supplement, part 225, Foreign Acquisition.

Type of Request: New collection.

Average burden hours/minutes per response: 1 hour.

Responses per respondent: 1.

Number of respondents: 50.

Annual burden hours (including recordkeeping): 100.

Annual Responses: 50.

Needs and uses: The Department of Defense (DoD) and the United Kingdom (U.K.) have a reciprocal agreement to waive, on a case-by-case basis, nonrecurring cost charges on U.K. purchases, and commercial exploitation levies on DoD purchases. The terms of the reciprocal agreement are addressed in a series of confidential letters between the two Governments. This rule revises the Defense Federal Acquisition Regulation Supplement to address commercial exploitation levies. It requests information needed to obtain a waiver of the levies.

Affected public: Business or other for-profit.

Frequency: On occasion.

Respondents obligation: Required to obtain or retain a benefit.

OMB Desk officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: December 31, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–252 Filed 1–6–92; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, applicable form, and applicable OMB control number: Navy Advertising Effectiveness Study (NAES), OMB Control Number: 0703–0032.

Type of request: Expedited Submission—Approval Date Requested: March 1, 1992.

Average burden hours/minutes per response: 30 minutes.

Responses per respondent: 2.

Number of respondents: 1,000.

Annual responses: 2,000.

Needs and uses: The Navy Advertising Effectiveness survey measures recruiting advertising effectiveness, and provides data for strategies to be used in advertising.

Affected public: Individuals or households.

Frequency: Semiannually.

Respondent's obligation: Voluntary.

OMB desk officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215

Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: December 31, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–253 Filed 1–6–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 23, 1991.

The USAF Scientific Advisory Board Air Combat Cross-Matrix Panel will meet on 24 January 1992 from 8 a.m. to 5 p.m. at Headquarters, Tactical Air Command (TAC), Langley AFB, Virginia.

The purpose of this meeting is to exchange information among Panel members and TAC personnel on technical developments and tactical operations issues. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–219 Filed 1–6–92; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award a Cooperative Agreement; Southern States Energy Board

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(5) it is making a financial assistance award to Southern States Energy Board (SSEB) to facilitate the exchange of information and discussion of issues relating to the transportation of high-level nuclear waste.

SCOPE: Work under the cooperative agreement will include the collection and analysis of institutional data to be included in nuclear waste reports; analyses of state regional issues; organizing and participating in meetings to inform state and local government officials of the findings of transportation technical and institutional studies; and developing options for issue resolution or mitigation.

BASIS FOR NONCOMPETITIVE AWARD: Pursuant to 10 CFR 600.7(b)(2)(i)(D), DOE has determined that SSEB has exclusive capacity to perform the activities successfully, based upon the unique character of the organization, proprietary data, technical expertise and other such special qualifications.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Nick Graham, PR–322.1, 1000 Independence Ave., SW., Washington, DC 20585.

Arnold A. Gjerstad,

Acting Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 92–263 Filed 1–6–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 91–19–NG]

Inland Gas & Oil Corp.; Application To Amend Authorization To Import And Export Natural Gas, Including Liquefied Natural Gas, From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application to Amend Authorization to Import and Export Natural Gas, Including LNG, from and to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on December 5, 1991, of an application filed by Inland Gas & Oil Corp. (IGOC) requesting authorization to amend its authorization to import and export natural gas, including liquefied natural gas (LNG), from and to Canada. IGOC was granted blanket authorization to import up to 14 Bcf and export up to 36 Bcf of natural gas for a two-year period in DOE/FE Opinion and Order No. 517 (Order 517) on July 5, 1991 (1 FE ¶ 70,463). IGOC requests that the DOE increase its currently authorized blanket import volumes from 14 Bcf to a maximum of 35 Bcf for the remainder of Order 517's authorization term. The blanket export volumes approved in Order 517 would not change. In addition, IGOC requests authority to import or export the proposed natural gas and LNG at new border facilities to be constructed by Sumas International Pipeline Inc. (SIPI).

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC, at the address listed below no later than 4:30 p.m., eastern time, February 6, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9590.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: IGOC is a corporation organized under the laws of the State of Delaware with its principal place of business in Wilmington, Delaware. IGOC is a wholly owned subsidiary of BC Gas Inc. (BC Gas), a Canadian corporation located in Vancouver, British Columbia. IGOC functions as a natural gas marketer and intends to import and export natural gas or LNG on a short-term or spot basis for its own account or as agent for Canadian or U.S. purchasers and suppliers, including BC Gas and its U.S. agent, Grand Valley Gas Company of Salt Lake City, Utah. IGOC states the terms of all transactions will be the product of arms length negotiations between the parties and therefore will be competitive.

The decision on the import portion of this amendment request will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). IGOC's currently authorized export volumes are not affected by this amendment request. Therefore, parties that may oppose this application should limit their comments to the issue of increasing the import ceiling approved by Order 517. The applicant asserts the imports would be competitive under the proposed arrangement. Parties opposing the import arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of IGOC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 31, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–264 Filed 1–6–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–84–NG]

Tennessee Gas Pipeline Co.; Application To Amend Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to amend long-term authorizations to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on October 10, 1991, by Tennessee Gas Pipeline company (Tennessee) to amend two current natural gas import authorizations under which Tennessee imports gas for its own account for system supply. The amendments requested would allow Tennessee the option of importing this gas for sale on the spot market on its own account or for sale as agent for third parties to whom Tennessee might assign its rights under the two long-term gas contracts underlying these two import licenses.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, February 6, 1992.

ADDRESSES: Office of Fuels Programs, Fossil energy, U.S. Department of Energy, room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION:

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9482;

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

Tennessee currently is authorized to import, through October 31, 2002, up to 125,000 Mcf of natural gas per day from KannGaz Producers Ltd. (KannGaz) and up to 25,000 Mcf of gas per day from TransCanada Pipelines Limited (TransCanada). See DOE Opinion and Order Nos. 195–B and 254–A at 1 FE ¶70,261 and 1 FE ¶70,262, respectively. Gas imported from both suppliers is transported by TransCanada to a point on the international border near Niagara Falls, New York, where TransCanada's facilities interconnect with those of Tennessee.

Tennessee requests its existing import authorizations be modified solely to give Tennessee the option of importing the gas for sale on the spot market on its own account or as agent for third parties if not needed for system supply. According to the application, the terms and conditions of Tennessee's contracts with KannGaz and TransCanada, which are known and have been approved, would govern any gas purchase rights assigned to a third party. In support of its application, Tennessee asserts the amendments requested would in no way affect DOE findings that gas imported pursuant to the terms of the KannGaz and TransCanada contracts is competitive, needed, and secure. Further, Tennessee asserts the flexibility of the proposed modification would increase the overall competitiveness of the import arrangements and would provide firm customers some measure of protection from having to absorb demand and minimum take costs if system supply takes decline for any reason.

The decision on Tennessee's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import

arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should focus their responses on the effect of the proposed modification on the public interest determinations already made by DOE with regard to the Tennessee/KannGaz and Tennessee/TransCanada imports. Tennessee asserts the proposed modifications are in the public interest because they would enhance the flexibility of the imports. Parties opposing the import arrangements bear the burden of overcoming these assertions.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met it's NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulation in 10 CFR part 590. Protests, motions to intervene, notices of intervention, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through response to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, shown that it is material and relevant to a decision in this proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference should materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Tennessee's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on December 27, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–200 Filed 1–6–92; 8:45 am]

BILLING CODE 6450–0–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4090–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. Because EPA is requesting expedited review, this notice includes the specific data items being collected. The ICRs describe the nature of the information collections and their expected costs and burden.

DATES: Comments must be submitted on or before February 6, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Environmental Education

Title: Environmental Fellowship Application Form (EPA No. 1609.01).

Abstract: This ICR is a new collection in support of the Environmental Fellowship Program established by the National Environmental Education Act (NEEA) under Public Law 101–169, section 7. Each year, in accordance with the NEEA, the Office of the Governor of each State and the Office of the Mayor of the District of Columbia will nominate an eligible teacher, and an alternate, as potential recipients of this Fellowship. Following approval of this ICR, nominees will be required to complete and submit the Environmental Fellowship Application to EPA representatives from the Office of Environmental Education (OEE). OEE representatives will use the information from the completed application to: (1) Select potential Fellows, and (2) place each Fellow with an appropriate department or agency, geographical location, and type of organization unit (laboratory, office, or field station). The Environmental Fellowship Application will contain the following data elements:

1. *Term* for which applicant is seeking Fellowship (date, semester, school year, calendar year).

2. *Identifier Information:* (a) Name of applicant (last, first, middle), (b) Social Security Number, (c) sex (M/F), (d) birth date, (e) citizenship (U.S., Other), and (f) ethnic origin (optional).

3. *Locator Information:* (a) Current residence (street, city, state and zip code), (b) legal residence (if different from "a"), and (c) telephone number (home, business).

4. *Geographic Availability:* (a) Preference to work near home (y/n) and (b) region or area of the country applicant would prefer to be located for the duration of the Fellowship assignment.

5. *Work Preference:* (a) Preference, in order, for working in a laboratory, office, or field station; (b) preference, in order, for working in communications, research, policy/program, laboratory, or any other; (c) specific environmental subjects applicant is interested in (e.g. air pollution, water pollution, toxics, soil conservation, fish and wildlife, forestry, national parks, pesticides, clean-up of waste sites); and (d) first two preferences for work assignment in a department or agency.

6. *Teaching Experience:* (a) Number of years and grade level taught by applicant (Primary, Secondary, Middle/Junior High, Other); (b) present teaching status; (c) course(s) presently being

taught, and number of years spent teaching present course(s); and (d) past teaching experience (courses, years taught).

7. *Education:* (a) Undergraduate/graduate major and minor; (b) name(s) and address(es) of institutions from which undergraduate/graduate degree(s) was (were) obtained; (c) college courses applicant has completed that are considered relevant to the Fellowship Program (environmental science, environmental studies, environmental education, or other science courses); (d) college courses completed by the applicant in math, computers, writing/English, public policy/political science, statistics, economics; (e) clubs or student activities the applicant has sponsored and any professional activities that applicant has been involved in; and (f) applicant's language skills and the level of fluency obtained in each language.

8. *Essay Questions:* (a) A detailed explanation of an environmental project or activity the applicant has been involved with to include how the project was initiated, who was involved, what the applicant's specific role was, and what was accomplished; and (b) an explanation of the applicant's interest in the Environmental Fellowship Program and how the Fellowship will help the applicant's performance in the classroom, school, and/or school system.

9. *Certification:* (a) Name and telephone number of the school official sponsoring the applicant, (b) name of the Governor of the applicant's State, and (c) signature of the applicant.

Burden Statement: Public reporting burden for this collection of information is estimated to average 3 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the application.

Respondents: Eligible Teachers, as described in the NEEA.

Estimated Number of Respondents: 102.

Estimated Number of Responses per Respondent: 1.

Frequency of Collection: On occasion.

Estimated Total Annual Burden on Respondents: 306 hours.

Expedited Review: An expedited request is made under the Paperwork Reduction Act (5 CFR 1320.18). To meet the schedule set forth under the National Environmental Education Act, and to allow respondents sufficient time to review, complete and submit this information collection request, the EPA has requested OMB clearance by late January of 1992.

Title: Environmental Internship Application Form (EPA No. 1610.01).

Abstract: This ICR is a new collection in support of the Environmental Internship Program established by the National Environmental Education Act (NEEA) under Public Law 101–169, section 7. Each year, the EPA will select, on the basis of criteria described in the NEEA, undergraduate and graduate students to participate in the Environmental Internship Program. Following approval of this ICR, eligible students that wish to participate in the Internship Program must complete the Environmental Internship Application and submit the application to the EPA. The Office of Environmental Education at the EPA will use the information obtained from the application to: (1) Select potential Interns and (2) place each Intern with an appropriate department or agency, geographical location, and type of organization (laboratory, office, or field station). The application form will also explain the eligibility criteria to potential applicants, and thereby reduce wasted effort by applicants that are ineligible. The Environmental Internship Application will contain the following data elements:

1. *Term* for which applicant is seeking Internship (date, semester, school year, calendar year).

2. *Identifier Information:* (a) Name of applicant (last, first, middle), (b) Social Security Number, (c) sex (M/F), (d) birth date, (e) citizenship (U.S., Other), and (f) ethnic origin (optional).

3. *Locator Information:* (a) Current residence (street, city, state and zip code) and date when current address becomes invalid, (b) mailing residence (if different from "a"), and (c) telephone number (home, other).

4. *Georgraphic Availability:* (a) Preference to work near home (Y/n) and (b) region or area of the country applicant would prefer to be located for the duration of Internship.

5. *Work Preference:* (a) Preference, in order, for working in a laboratory, office, or field station; (b) preference, in order, for working in communications, research, policy/program, laboratory, or any other; (c) preference for Environmental Issues; and d) first two preferences for work assignment in a department or agency.

6. *Education:* (a) Undergraduate/graduate major and minor; (b) name (s) and address (es) of universities/departments from which undergraduate/graduate degree (s) was (were) obtained or is (are) anticipated; (c) college courses that are considered relevant to the Internship Program (environmental science, environmental studies, environmental education, or other science courses), and the grades obtained; (d) college courses, and the grades obtained, in math, computers, writing/English, public policy/ political science, statistics, economics; and e) an indication (y/n) from the applicant, if the internship is part of applicant's degree requirements.

8. *Essay Questions:* A detailed explanation of the applicant's interest in the Environmental Internship Program and the applicant's career interests with respect to specific areas of environmental study.

9.*Certification:* Signature of applicant on completed application.

Burden Statement: Public reporting burden for this collection of information is estimated to average 3 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the application.

Respondents: Eligible Students, as described in the NEEA.

Estimated Number of Respondents: 1000.

Estimated Number of Responses per Respondent: 1.

Frequency of Collection: On occasion.

Estimated Total Annual Burden on Respondents: 3000 hours.

Expedited Review: An expedited request is made under the Paperwork Reductions Act (5 CFR 1320.18). To meet the schedule set forth under the National Environmental Education Act, and to allow respondents sufficient time to review, complete and submit this information collection request, the EPA has requested OMB clearance by late January of 1992.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503

Dated December 27, 1991.

David Schwarz, Acting

Director, Regulatory Management Division.

[FR Doc. 92–183 Filed 1–6–92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

The Port Authority of New York et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreements No.: 224–003930–005, 224–003930–006.

Title: Port Authority of New York and New Jersey/Universal Maritime Service Corp. Terminal Agreement.

Parties: The Port Authority of New York and New Jersey, Universal Maritime Service Corp.

Synopsis: The proposed amendments provide for exceptions to the usage rental for the handling of certain excepted cargoes and overall lease rental modifications.

Agreement No.: 224–011034–001.

Title: Port of Seattle/Dovex Corporation Terminal Agreement.

Parties: Port of Seattle, Dovex Corporation.

Synopsis: The proposed amendment clarifies the definition of cargo qualifying for discounts, revises the discount structure, adds two five-year options for the user, establishes specific procedures for adjusting rates upon renewal, and clarifies other provisions regarding management and use of facilities.

Dated: December 31, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–225 Filed 1–6–92; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 1634.

Name: Vincent Bastides dba Basmar Exports Co.

Address: 89–25 186th Street, Hollis, NY 11423.

Date: November 24, 1991.

Reason: Failed to furnish a valid surety bond.

License Number: 2014.

Name: Steve Sami.

Address: P.O. Box 269, Arlington, VA 22210.

Date Revoked: December 1, 1991.

Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 92–226 Filed 1–6–92; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

National Advisory Council for Health Care Policy, Research, and Evaluation: Request for Nominations for Public Members

SUMMARY: 42 U.S.C. 299c, section 921 of the Public Health Service (PHS) Act, as amended by section 6103(c) of the Omnibus Budget Reconciliation Act of 1989, established a National Advisory Council for Health Care Policy, Research, and Evaluation (the Council). The Council is to advise the Secretary and the Administrator, Agency for Health Care Policy and Research, on matters related to the enhancement of the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services. Seventeen members with staggered terms were appointed in 1990. Six current members' terms will expire in May 1992. Nominations to fill these vacancies should be received on or before February 15, 1992. Current members whose terms expire in 1992 will be considered for reappointment should they so desire.

ADDRESSES: All nominations for membership should be submitted to Judith D. Moore, Executive Secretary, National Advisory Council for Health Care Policy, Research, and Evaluation, suite 603, Executive Office Center, 2102 East Jefferson Street, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Judith D. Moore, Executive Secretary at (301) 227–8142 from December 20, 1991, until January 24, 1992, and at (301) 227–8459 after January 24, 1992.

SUPPLEMENTARY INFORMATION: 42 U.S.C. 299c, section 921 of the PHS Act, provides that the National Advisory Council for Health Care Policy, Research, and Evaluation shall consist of 17 appropriately qualified representatives of the public appointed by the Secretary. Of the 17 public members, 8 are to be individuals distinguished in the conduct of research, demonstration projects, and evaluations with respect to health care; 3 are to be individuals distinguished in the practice of medicine; 2 are to be individuals distinguished in the health professions; 2 are to be individuals distinguished in the fields of business, law, ethics, economics, and public policy; and 2 are to be individuals representing the interests of consumers of health care.

The six members whose terms expire May 31, 1992, represent expertise in health services research (2 members), health professions (one member), the practice of medicine (one member), public policy (one member), and the interests of health care consumers (one member). (Each of these individuals with expiring terms will be considered for reappointment should they so desire.)

The Council advises the Secretary, through the Administrator, regarding priorities for a national agenda and strategy for: (1) Conduct of research, demonstration projects, and evaluations with respect to health care, including clinical practice and primary care; (2) development and application of appropriate health care technology assessments; (3) development and periodic review and updating of guidelines for clinical practice, standards of quality, performance measures, and medical review criteria with respect to health care; (4) conduct of research on outcomes of health care services and procedures. In addition, the Council performs second level review of grant applications in excess of $250,000 total direct costs.

The term of office is 3 years, except that appointments are staggered to permit an orderly rotation of membership.

Interested persons may nominate one or more qualified persons for membership on the Council.

Nominations shall state that the nominee is willing to serve as a member of the Council and appears to have no conflict of interest that would preclude Council membership. Potential candidates will be asked to provide detailed information concerning such matters as financial interests, consultancies, and research grants or contracts, to permit evaluation of possible sources of conflict of interest.

The Department is seeking a broad geographic representation and has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory bodies and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and/or physically handicapped candidates.

Dated: December 19, 1991.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92-213 Filed 1-6-92; 8:45 am]

BILLING CODE 4160-60-M

Food and Drug Administration

Advisory Committees; Filing of Annual Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings.

ADDRESSES: Copies are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, 301-443-1751.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR 14.60(c), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period October 1, 1990, through September 30, 1991:

Center for Biologics Evaluation and Research

Biological Response Modifiers Advisory Committee, Blood Products Advisory Committee, Vaccines and Related Biological Products Advisory Committee.

Center for Drug Evaluation and Research

Anesthetic and Life Support Drugs Advisory Committee, Anti-Infective Drugs Advisory Committee, Antiviral Drugs Advisory Committee, Arthritis Advisory Committee, Drug Abuse Advisory Committee, Generic Drugs Advisory Committee.

Center for Devices and Radiological Health

Circulatory System Devices Panel, Medical Devices Advisory Committee, Gastroenterology and Urology Devices Panel, Immunology Devices Panel.

Annual reports are available for public inspection at: (1) The Library of Congress, Newspaper and Current Periodical Reading Room, rm. 133, Madison Bldg., 101 Independence Ave. SE., Washington, DC; (2) the Department of Health and Human Services Library, rm G-619, 330 Independence Ave. SW., Washington, DC, on weekdays between 9 a.m. and 5:30 p.m.; and (3) the Dockets Management Branch (HFA-305), rm. 1-23, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 31, 1991.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-217 Filed 1-6-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0435]

Solvay Animal Health, Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Solvay Animal Health, Inc. The NADA provides for the use of Tinostat Type A medicated article containing butynorate to make Type B and Type C medicated feeds. The sponsor requested the withdrawal of approval. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations by removing the portion of the regulations that reflect approval of the NADA.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8749.

SUPPLEMENTARY INFORMATION: Solvay Animal Health, Inc., 2000 Rockford Rd., Charles City, IA 50616-9989, is the sponsor of NADA 8-741 which provides for the use of Tinostat Type A medicated article containing 25 percent butynorate to make Type B and Type C medicated feeds for use as turkey coccidiostats. Solvay Animal Health, Inc., in a letter dated April 26, 1991, requested that FDA withdraw approval of NADA 8-741.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 8-741 and all supplements and amendments thereto is hereby withdrawn, effective December 31, 1991. Distribution and use after that date are illegal. The sponsor has agreed to retrieve and destroy any unused product remaining in distribution channels after that date.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 558.4 to remove the entry for medicated feed applications for feed containing butynorate as the sole ingredient and is also removing § 558.108 which reflects this approval.

Dated: December 24, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-234 Filed 1-6-92; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants: Rechartering

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the rechartering of the Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants by the Secretary of Health and Human Services. This notice is issued under the

Federal Advisory Committee Act of October 6, 1972 (5 U.S.C. app. 2).

DATES: Authority for this committee will expire on December 2, 1993, unless the Secretary of Health and Human Services formally determines that rechartering is in the public interest.

FOR FURTHER INFORMATION CONTACT: Donna Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: December 31, 1991.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92–215 Filed 1–6–92; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90P–0386]

Cottage cheese Deviating From Identity Standard; Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is amending a temporary permit, issued to Friendship Dairies, Inc., to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128), dry curd cottage cheese (21 CFR 133.129), and lowfat cottage cheese (21 CFR 133.131), to increase the amount of test product to be distributed. In addition, the milkfat content allowed in the nonfat cottage cheese test product is changed from "0.1 percent" to " less than 0.3 percent."

FOR FURTHER INFORMATION CONTACT: Michelle A Smith, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0106.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 6, 1990 (55 FR 50403), FDA issued a temporary permit under the provisions of 21 CFR 130.17, to Friendship Dairies, Inc., 4900 Maspeth Ave., Maspeth, NY 11378, to market test "nonfat cottage cheese" in interstate commerce. The agency issued the permit to facilitate interstate market testing of a nonfat cottage cheese, formulated from dry curd cottage cheese and a dressing, such that the finished product contains 0.1 percent milkfat. The product deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) in that the milkfat content of cottage cheese is not less than 4.0 percent, and the milkfat content of lowfat cottage cheese ranges from 0.5 to 2.0 percent. The test product also deviates from the U.S. standard of identity for dry curd cottage cheese (21 CFR 133.129) because of the added dressing. The test product meets all requirements of the standards with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to cottage cheese but contains less fat.

Friendship Dairies, Inc., has requested that FDA amend its temporary permit to increase the amount of test product from 544,320 kilograms (kg) (1,200,000 pounds (lb)) to 600,454 kg (1,321,000 lb). The applicant requested this amendment to add an additional brand name to its market test. The applicant has also requested that FDA change the level of milkfat allowed in the test product from "0.1 percent" to "less than 0.3 percent." Friendship Dairies, Inc., maintains that this amendment will not alter the substance of the temporary permit (55 FR 50403) but will allow for a product with improved flavor and sensory characteristics. The milkfat content remains less than 0.5 gram per serving.

Therefore, under the provision of 21 CFR 130.17(f), FDA is amending the temporary permit to increase the amount of test product to 600,454 kg per year. In addition, FDA is changing the level of milkfat allowed in the test product from "0.1 percent" to "less than 0.3 percent." All other terms and conditions of this permit remain the same.

Dated: December 26, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–214 Filed 1–6–92; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Cincinnati District Office, chaired by James C. Simmons, District Director. The topic to be discussed is food labeling reform.

DATES: Wednesday, January 22, 1992, 10 a.m. to 12 m.

ADDRESSES: Environmental Protection Agency Bldg., Rm. 130–136, 26 Martin Luther King, Jr. Dr., Cincinnati, OH 45202.

FOR FURTHER INFORMATION CONTACT: Patricia A. Leathem, Public Affairs Specialist, Food and Drug Administration, 114 Central Pkwy., Cincinnati, OH 45202, 513–684–3501.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: December 31, 1991.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92–216 Filed 1–6–92; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Institute of Child Health and Human Development; Regional Meetings of the National Center for Medical Rehabilitation Research, NICHD

Notice is hereby given that the National Center for Medical Rehabilitation Research (NCMRR), NICHD, will convene three (3) regional meetings in 1992. The location of these meetings will be Houston, Texas; Seattle, Washington; and Bethesda, Maryland. All sessions of these meetings will be open to the public.

The National Advisory Board on Medical Rehabilitation Research (NABMRR) has been asked to develop a report on medical rehabilitation research that will be submitted to the President of the United States and to the U.S. Congress. In preparing this report the NABMRR will assess the current status of medical rehabilitation, identify medical rehabilitation issues and opportunities, and recommend approaches to program priorities in research for individuals with disabilities.

The purpose of these meetings is to acquire public testimony related to this research report from members of the scientific community and from individuals representing organizations interested in the needs and opportunities for research related to the medical rehabilitation of persons with disabilities. The testimony derived from the three meetings will be considered by the NABMRR in the development of the research report.

Due to time constraints, only one representative from each disability advocacy organization and one from each department at a university or treatment facility may present oral testimony, with presentations limited to five (5) minutes. One session at each meeting site will be open to testimony on any topic related to medical rehabilitation research. At each site, one functional problem and one crosscutting issue in the field of medical rehabilitation research will be emphasized. For an explanation of the functional problem and crosscutting issue topic at each site, please request a copy of the Draft Report of the NABMRR Research Report. Comments on this draft report are encouraged. Copies of this report may be obtained from the NCMRR at the address listed below.

A letter of intent to present oral testimony should be sent by interested individuals and organizations to the National Center for Medical Rehabilitation Research (NCMRR). With this letter, please include a one-page summary of the testimony to be presented. The date of receipt of the letter will establish the order of presentations at the meeting. A full written statement should be made available at the meeting.

Individuals and organizations unable to make oral presentations to the NABMRR at the field hearings may provide written statements for consideration by the NABMRR. One written copy of their statement should be sent to the address below no later than March 6, 1992.

Comments and questions relating to the proposed meetings and requests for the Draft Report of the NABMRR Research Report Should be addressed to David B. Gray, Ph.D., Acting Deputy Director, NCMRR, NICHD, Executive Plaza South, room 450 West, 6120 Executive Boulevard, Rockville, Maryland 20852, (301/402–2242). Please place the phrase "ATTENTION: Field Hearing" in the lower left portion of the envelope.

Date of Meeting: February 26, 1992.
Place of Meeting: The Institute for Rehabilitation and Research, 1333 Moursund, Houston, Texas 77030.
Receipt Date Deadline: February 12, 1992.

Hearing Schedule

Plenary Session: 9 a.m.–5:30 p.m.
Public Testimony: 1:30 p.m.–5:30 p.m.
Session 1 Topic: Any topic relevant to medical rehabilitation research.
Session 2 Topic: Functional Problem*—Behavioral Systems.
Session 3 topic: Crosscutting Issue*—Treatment Effectiveness.

Date of Meeting: March 2, 1992.
Place of Meeting: University of Washington, Student Union Building, West Ball Room, Seattle, Washington 98195.
Receipt Date Deadline: February 19, 1992.

Hearing Schedule

Plenary Session: 9 a.m.–12 noon.
Public Testimony: 1:30 p.m.–5:30 p.m.
Session 1 Topic: Any topic relevant to medical rehabilitation research.
Session 2 Topic: Functional Problem—Mobility.
Session 3 Topic: Crosscutting Issue—Assistive Devices.

Date of Meeting: March 19, 1992.
Place of Meeting: Warren Magnuson Clinical Center (Bldg. 10), Masur Auditorium, 900 Rockville Pike, Bethesda, Maryland 20892.
Receipt Date Deadline: March 4, 1992.

Hearing Schedule

Plenary Session: 9 a.m.–12 noon.
Public Testimony: 1:30 p.m.–5:30 p.m.
Session 1 Topic: Any topic relevant to medical rehabilitation research.
Session 2 Topic: Functional Problem—Body Systems.
Session 3 Topic: Crosscutting Issue—Assessment & Measurement.

Dated: December 30, 1991.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 92–224 Filed 1–6–92; 8:45 am]
BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public law 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Board on January 13, 1992. The meeting will take place from 8:30 a.m. to 4:30 p.m. in Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public to discuss the Board's activities and to present special reports. Attendance by the public will be limited to the space available.

Summaries of the Board's meeting and a roster of members may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

This notice is being published later than the 15 days prior to the meeting due to the difficulty of coordinating schedules.

(Catalog of Federal Domestic Assistance Program No. 13.173 Biological Research Related to Deafness and Other Communication Disorders.)

Dated: January 2, 1992.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 92–331 Filed 1–6–92; 8:45 am]
BILLING CODE 4140–01–M

* For an explanation of the functional problem and crosscutting issue categories, please refer to the Draft Report of the NABMRR Research Report.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–3371; FR–2941–N–02]

Announcement of Winners of Technical Assistance Awards for the Development of Community Energy Systems Based on District Heating and Cooling

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: This Notice announces funding awards HUD has made pursuant to a competition for feasibility and other studies for district heating and cooling systems. This Notice contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: James F. Selvaggi, Office of Technical Assistance, Department Of Housing and Urban Development, room 7148, 451 Seventh Street, SW., Washington, DC, 20410. Telephone (202) 708–2090. The TDD number is (202) 708–0564. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In a Notice published on May 2, 1991 (56 FR 20314), HUD announced the availability of $578,000 in community development technical assistance funds for initial feasibility studies of new systems; design, marketing, and financial/ownership packaging for systems already proven feasible; and for major expansions of existing systems that require further studies.

The authority for this competition is the Community Development Technical Assistance Program under section 107 of title I of the Housing and Community Development Act of 1974, implemented by HUD regulations at 24 CFR 570.400 and 570.402.

The purpose of this competition was to aid communities in developing community energy systems based on district heating and cooling, thereby reducing energy costs to commence and industry, making housing more affordable, and reducing dependence on imported fuels.

Five applicants responded by the closing date of July 17, 1991; these were scored and ranked pursuant to the Factors for Award in the May 2, 1991 Notice. All five were judged to the fundable up to their requested amounts, which totaled $550,000 of the $578,000 available.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (P.L. 101–235, approved December 15, 1989), the Department announces the five winner of the district heating and cooling competition as follows:

Mr. Ernest Freeman
Director, City of Baltimore
417 East Fayette Street
8th Floor
Baltimore, Md 21202
(301) 396–3100
$50,000

Mr. Aaron A. Thompson
Mayor, City of Camden
Office of the Mayor
Six and Market Street
Camden, NJ 08101
(609) 757–7200
$150,000

Mr. Donald W. Ahlstrom
Mayor, City of Jamestown
P.O. Box 700
Jamestown, NY 14702
0700
(716) 483–7600
$100,000

Mr. Joaquin G. Avino
County Manager
Metro-Dade Center
Suite 2910
111 NW., 1st Street
Miami, Fl 33128–1994
(305) 375–5311
$150,000

Mr. J. Scott Wolf
Director, City of Providence
Governor's Office of Housing, Energy, and Intergovernmental Relations
Six and Market Street
Providence, RI 02903–2850
(401) 421–7740
$100,000

Dated: December 23, 1991.

Paul R. Bardack

Deputy Assistant Secretary for Economic Development.

[FR Doc. 92–227 Filed 1–6–92; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–91–3286; FR–3063–C–02]

Family Self-Sufficiency

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability for FY 91; correction of selection/qualification process for applications from Indian housing authorities, extension of application deadline.

SUMMARY: On September 30, 1991, the Department published a NOFA (56 FR 49604) for the Public and Indian Housing Family Self-Sufficiency Program for Fiscal Year 1991. This notice revises and corrects the published NOFA as it pertains to the Indian Housing portion of the funding competition. This notice will affect only the Indian Housing portion of the NOFA, except that the extension of the application deadline announced today applies to all applicants. Based upon information from HUD Field Offices, national training sessions and comments from participants in these sessions, the Department has decided to set out a minimum score that will be necessary for an Indian Housing application to be considered "approvable."

DATES: The deadline date for receipt of applications in response to the Notice of Fund Availability (NOFA) for the Public and Indian Housing Family Self-Sufficiency Program for Fiscal Year 1991 has been extended to February 10, 1992. Applications must be received in the HUD Field/Indian Office by close of business on that date.

With reference to this deadline extension, applicants should note that, in a separate document as yet unpublished, the Department intends to notify applicants for Section 8 Incentive Award Rental Vouchers and Rental Certificants in connection with the Family Self-Sufficiency Program (a NOFA also published on September 30, 1991 (56 FR 49612)) that (1) FY 1991 and 1992 funding will be combined into a single funding round; and (2) the FY 1991 "Incentive Award" NOFA's application due date has been extended from January 10, 1992 to February 10, 1992. Please note as well that the extended due date in today's document is applicable to the NOFA for the Public and Indian Housing Family Self-Sufficiency Program for FY 1991 (56 FR 49604) which is the subject matter of today's document, and not to the Incentive Award NOFA.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Indian Housing, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–1015.

Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (The TDD number and the above-listed telephone number are not toll-free.)

SUPPLEMENTARY INFORMATION: The Notice of Fund Availability for the Public and Indian Housing Family Self-Sufficiency Program for Fiscal Year 1991 was published in the Federal Register of September 30, 1991, at 56 FR 49604.

Today's document corrects the September 30, 1991 NOFA by adding a minimum score requirement for applications for Family Self-Sufficiency Funds for Indian Housing programs.

On page 49605, in FR Doc. 91–23312, in the second column, immediately after the paragraph designated as 2b., a new paragraph 2c is added, to read as follows:

c. An application for Indian Housing funds which does not receive a minimum score of 60 points of the possible 110 points under the rating and ranking criteria which follow, will not be considered "approvable" for funding.

This change is being made to assure that any funded application represents a program capable of being pursued to a successful conclusion. In the Department's judgment, the stated minimum score is necessary to assure this result.

Dated December 31, 1991.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–228 Filed 1–6–92; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Salmon District Advisory Council: Meeting

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Advisory Council.

DATES: The meeting will be held Wednesday January 8, 1992, at 10 a.m.

ADDRESSES: The meeting will be held at the BLM Salmon District Office, Salmon, Idaho.

SUPPLEMENTARY INFORMATION: The meeting is held in accordance with Public Laws 92–463 and 94–579. The purpose for the meeting is to discuss the Endangered Species Act and its implications for BLM management of the public lands, the Wild and Scenic Rivers study process, water quality issues, and current Salmon District issues.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 a.m. and 11:30 a.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Salmon District Office by January 3, 1992.

Summary minutes to the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy S. Jackson, District Manager, Salmon District BLM, Box 430, Salmon, Idaho 83467.

Dated: December 17, 1991.

Robert W. Heidemann,

Associate District Manager.

[FR Doc. 92–231 Filed 1–6–92; 8:45 am]

BILLING CODE 4310–G–G

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31988]

Missouri Pacific Railroad Co. and CSX Transportation, Inc.—Joint Relocation Project Exemption

On December 9, 1991, Missouri Pacific Railroad Company (MP) and CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1180.2(d)(5) for their joint project to relocate a line of railroad. The joint project involves the abandonment by MP of its trackage rights over line of Consolidated Rail Corporation (Conrail) between Westville and Danville, IL, and its initiation of alternative operations between Woodland Jct., IL, and Danville over lines of CSXT pursuant to trackage rights granted it by that carrier. The purpose of the transaction is to establish a convenient alternate route for MP. The transaction was to have been consummated on or after December 16, 1991.

MP has been serving Danville pursuant to trackage rights over a line of Conrail between Westville and Danville. The joint relocation project involving MP and CSXT is the result of an agreement between the parties dated August 23, 1988, under which MP continued operating to Danville, but, instead of routing its trains through the MP station at Westville and then over the Conrail trackage between Westville and Danville, MP was to use its main line track to Woodland Jct. and then travel over CSXT trackage to Danville. Pursuant to the terms of the agreement, MP initially did not operate its trains over the CSXT track. Instead, CSXT handled MP's freight business in a haulage arrangement until such time as MP elected to handle its own traffic.[1] MP now has elected to recognize its right to operate its own trains over the CSXT track and has filed this exemption notice. The trackage rights granted by CSXT allow MP to serve shops and industries at Danville and to have interchange accessibility with CSXT at CSXT's Danville terminal trackage.

This is a joint project involving the relocation of a line of railroad that does not disrupt service to shippers, and it falls within the class of transactions identified at 49 CFR 1180.2(d)(5). MP's operation over the CSXT rail line is to be conducted pursuant to overhead trackage rights granted by CSXT. The Commission has determined that joint relocation projects embrace trackage rights transactions such as the one proposed here. See D.T. & I.R.—Trackage rights, 363 I.C.C. 878 (1981). Discontinuance of MP's trackage rights operation over Conrail line is involved as part of the line relocation project. The Commission, however, will assume jurisdiction over the abandonment and/or construction components of a relocation project only in cases where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation Over BN, 4 I.C.C.2d 95 (1987). Under these standards, MP's discontinuance of operations over the Conrail line here is not subject to the Commission's jurisdiction.

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in Norfolk and Western Ry. Co.—Trackage rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, General Attorney, Jeanna L. Regier, Registered ICC Practitioner, 1416 Dodge Street, room 830, Omaha, NE 68179.

Decided: December 26, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–205 Filed 1–6–92; 8:45 am]

BILLING CODE 7035–01–M

[1] The Commission has held that car haulage is a private arrangement between the carriers and does not require Commission approval.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Michael D. Laney, d/b/a Lanehaus Kennels; Denial of Application for Registration

On August 9, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael D. Laney, d/b/a Lanehaus Kennels, of Harlingen, Texas, proposing to deny his application, executed on April 13, 1989, for registration as a researcher. The statutory basis for the Order to Show Cause was that Mr. Laney did not have authorization to conduct research with, or otherwise handle, controlled substances under the laws of the state in which he intended to practice as required by 21 U.S.C. 823(f).

The Order to Show Cause was served on Mr. Laney on August 16, 1991. More than thirty days have passed since the Order to Show Cause was received by Mr. Laney and the Drug Enforcement Administration has received no response from Mr. Laney or anyone purporting to represent him.

Pursuant to 21 CFR 1301.54(d), the Administrator finds that Mr. Laney has waived his opportunity for a hearing. Accordingly, under the provisions of 21 CFR 1301.57, the Administrator hereby enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that Mr. Laney applied for registration as a researcher in his capacity as a dog handler. Mr. Laney's stated intention was to train animals to detect controlled substances. Neither Mr. Laney nor

Lanehaus Kennels holds any state registration as a researcher, nor is either registered or licensed by the State of Texas, Board of Private Investigators and Private Security Agencies, or by the Texas Department of Public Safety. Mr. Laney has not offered any evidence contrary to that stated in the Order To Show Cause, nor has he provided any information that he or his company is otherwise qualified as a practitioner or researcher under Title 21 U.S.C. 802(21).

The Administrator has no statutory authority to register practitioners if they are not licensed in the state in which they practice. See George P. Gotsis, M.D., 49 FR 33750 (1984); James W. Mitchell, M.D., 44 FR 71466 (1979). Thus, the Administrator must deny an application for a DEA Certificate of Registration if he determines that the applicant is not authorized to dispense, or conduct research with respect to, controlled substances under the laws of the state in which he practices. Based on all of the foregoing, the application of Mr. Laney and Lanehaus Kennels must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for registration, executed on April 13, 1989, by Michael Laney, d/b/a Lanehaus Kennels, be, and it hereby is, denied. This order is effective January 7, 1992.

Dated: December 27, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-238 Filed 1-6-92; 8:45 am]

BILLING CODE 4410-09-M

Antonio B. Sampang, M.D.; Revocation of Registration

On November 4, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order To Show Cause to Antonio B. Sampang, M.D., of San Diego, California, proposing to revoke his DEA Certificate of Registration, BSO397249, and to deny any pending applications for registration as a practitioner. The statutory basis for the Order To Show Cause was that Dr. Sampang had been convicted of a felony under the laws of the United States related to controlled substances, and that his state license to practice medicine had been revoked and he was no longer authorized by state law to handle controlled substances. 21 U.S.C. 824(a)(2) and 824(a)(3).

The Order To Show Cause was served on Dr. Sampang on November 9, 1991. More than thirty days have passed since the Order To Show Cause was received by Dr. Sampang. The Drug Enforcement Administration has received no response from Dr. Sampang or anyone purporting to represent him. Pursuant to 21 CFR 1301.54(d), the Administrator finds that Dr. Sampang has waived his opportunity for a hearing. Accordingly, under the provision of 21 CFR 1301.57, the Administrator enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that on May 17, 1990, before the United States District Court for the Western District of Virginia, Dr. Sampang was convicted, upon a plea of guilty, of one count of a violation of 21 U.S.C. 841(a)(1), for the unlawful distribution of controlled substances. He was sentenced to 24 months probation during which time he was prohibited from practicing medicine. On November 26, 1990, The Commonwealth of Virginia, Department of Health Professions, Board of Medicine issued an Order of Mandatory Revocation upon Dr. Sampang's license to practice medicine. Therefore, Dr. Sampang is not authorized to administer, dispense, prescribe, or otherwise handle controlled substances under the laws of the state in which he was registered by DEA. Dr. Sampang did not offer any evidence contrary to that recited in the Order To Show Cause.

The DEA has consistently held that termination of a registrant's state authority to handle controlled substances requires that DEA revoke the registrant's DEA Certificate of Registration. See, Sam S. Misasi, D.O., 50 FR 11469 (1985); George P. Gotsis, M.D., 49 FR 33750 (1984); Henry Weitz, M.D., 46 FR 34858 (1981).

Based on the foregoing, the Administrator concludes that Dr. Sampang's registration must be revoked. 21 U.S.C. 823(f) and 824(a)(3). Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BS0397249, previously issued to Antonio B. Sampang, M.D., be, and it hereby is, revoked, and that any pending applications for registration, be, and they hereby are, denied. This order is effective February 6, 1992.

Dated: December 27, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-237 Filed 1-6-92; 8:45 am]

BILLING CODE 4410-09-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-8839]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Dorchester Master Limited Partnership, 8½% Convertible Subordinated Debentures Due December 1, 2005)

December 31, 1991.

Dorchester Master Limited Partnership ("DMLP") has filed an application with the Securities and Exchange Commission, pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to DMLP, it was involved in a transaction that occurred on February 19, 1991, pursuant to which DMLP became a wholly-owned indirect subsidiary of Parket & Parsley Petroleum Company ("PPPC") and, as a result of such transaction, (i) Parker & Parsley Oil & Gas Company ("PPGC"), a wholly-owned subsidiary of PPPC, became the owner of $22,975,000 principal amount of the $27,892,000 principal amount of Bonds outstanding and (ii) PPPC became a joint and several obligor with DMLP under the Indenture dated December 1, 1980, as supplemented, governing the Bonds ("Indenture").

The Board of Directors of Parker & Parsley Gas Processing Co., a Delaware Corporation ("Company") that is a wholly-owned subsidiary of PPPC, and the sole general partner of DMLP considers continued listing and registration of the Debentures on the Amex unduly burdensome because (i) as of July 11, 1991, there were only 111 registered holders of the Debentures; (ii)

$22,975,000 of the $27,892,000 principal amount of Debentures outstanding are held by PPGC, an affiliate of DMLP; (iii) since January 1, 1987, the trading volume has been relatively low; and (iv) continued listing of the Debentures is costly to the Company.

Any interested person may, on or before January 22, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary

[FR Doc. 92-229 Filed 1-6-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Areas #7504 & #7505]

Florida (And Contiguous Counties in Alabama); Declaration of Disaster Loan Area

Bay, Gulf, and Santa Rosa Counties and the contiguous counties of Calhoun, Escambia, Franklin, Jackson, Liberty, Okaloosa, Walton, and Washington in the State of Florida and Escambia County in the State of Alabama constitute an Economic Injury Disaster Loan Area due to severe, adverse impacts on the fishing industry caused by excessive rainfall and flooding beginning January 1991 and continuing through August 1991, resulting in reduced reproduction, altered migration patterns and retarded growth. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on September 28, 1992 at the address listed below: Disaster Area 2 Office, Small Business Administration, One Baltimore Place, suite 300, Atlanta, GA 30308, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperative is 4 percent.

The numbers assigned to this declaration for economic injury are 750400 for Florida and 750500 for Alabama.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: December 26, 1991.

Paul H. Cooksey,

Acting Administrator.

[FR Doc. 92-259 Filed 1-6-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2540]

Commonwealth of the Northern Mariana Islands; Declaration of Disaster Loan Area

The Islands of Saipan and Tinian in the Commonwealth of the Northern Mariana Islands constitute a disaster area as a result of damages caused by Typhoon Seth which occurred on November 3-4, 1991. Applications for loans for physical damage may be filed until the close of business on February 14, 1992 and for loans for economic injury until the close of business on September 16, 1992 at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	8.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 254006 and for economic injury the number is 749200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 16, 1991.

Patricia Saiki,

Administrator

[FR Doc. 92-258 Filed 1-6-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: SR 520, 108th Avenue NE. to SR 901, King Co., WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in King County, Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Federal Highway Administration, Evergreen Plaza Building, suite 501, 711 South Capitol Way, Olympia Washington 98501, Telephone: (206) 753-2120; E.R. Burch, Design Engineer, Washington State Department of Transportation, Highway Administration Building, Olympia, Washington 98504, Telephone: (206) 753-6141; or Ronald Q. Anderson, District Administrator, Washington State Department of Transportation, District One, 15325 SE 30th Place, Bellevue, Washington 98007-6538, Telephone (206) 764-4020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT), will prepare an EIS on a proposal to improve first five mile segment of SR 520.

Alternatives to be considered include widening SR 520 to accommodate High Occupancy Vehicle (HOV) lanes, proposing access at NE 31st Street, modifying the 148th Avenue N.E. interchange, and a no action alternative. In addition, a feasibility study will be performed for adding ramps at 130th Avenue NE. Letters describing the proposed action and soliciting comments will be sent to the appropriate Federal, State, and local agencies as well as to citizens and organizations that have expressed interest in this project. A series of meetings with the public, interested community groups and governmental agencies will be held in early 1992. Notification will be published prior to publishing of the Draft Environmental Impact Statement, Public notice of actions related to the proposal which identify the date, time, place of meetings and note the length of review periods will be published when appropriate.

To ensure that the full range of issues related to this proposed project are identified and addressed, comments and suggestions are invited from all

interested parties. Comments or questions concerning this proposed action and to EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program)

Dated: December 30, 1991.

Richard C. Kay,

Area Engineer, Olympia, Washington.

[FR Doc. 92-233 Filed 1-6-92; 8:45 am]

BILLING CODE 4910-22-M

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 1:30 p.m., January 31, 1992, at the Oberlin Building at Eisenhower Lock, Massena, New York. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business; and Closing Remarks.

Attendance at meeting is open to the interested public but is limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than, January 21, 1992, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202/366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on December 31, 1991.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 92-232 Filed 1-6-92; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 31, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington DC 20220.

Internal Revenue Service

OMB Number: 1545-1144.
Form Number: IRS Form 706GS(D).
Type of Review: Revision.
Title: Generation-Skipping Transfer Tax Returns for Distributions.
Description: Form 706GS(D) is used by the distributes to compute and report the Federal GST tax imposed by IRC section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 50,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 minutes.
Learning about the form or the law—12 minutes.
Preparing the form—22 minutes.
Copying, assembling, and sending the form to IRS—19 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 49,500 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224,
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 92-241 Filed 1-6-92; 8:45 am]

BILLING CODE 4830-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Generalized System of Preferences (GSP); Location of Public Hearings for Special GSP Review for Central and Eastern Europe

AGENCY: Office of the United States Trade Representative.

SUMMARY: The purpose of this notice is to announce the location of the public hearings to be held January 21-23, 1992, concerning the Special GSP Review for Central and Eastern European countries.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20516. The telephone number is (202) 395-6971. Public versions of all documents are also available for review by appointment with the USTR Public Reading Room. Documents will be available in the reading room shortly after the filing deadlines. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395-6186.

SUPPLEMENTARY INFORMATION: As announced in a previous notice of December 18, 1991 (56 FR 65750), public hearings in connection with the Special GSP Review for Central and Eastern Europe are scheduled to be held January 21-23, 1992, beginning at 9 a.m. These hearings will be held in room 217 [Courtroom C] of the United States International Trade Commission, 500 E Street, SW., Washington, DC 20436.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 92-230 Filed 1-6-92; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 4
Tuesday, January 7, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

Commodity Futures Trading Commission

TIME AND DATE: 10:30 a.m., Tuesday, January 14, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92-426 Filed 1-3-92; 3:16 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Commodity Futures Trading Commission

TIME AND DATE: 10:30 a.m., Wednesday, January 22, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 92-427 Filed 1-3-92; 3:16 pm]
BILLING CODE 6351-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 9, 1992, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of FCA Board Meeting Minutes.

B. Regulations.

1. Expansion of Privacy Act Exemptions to Inspector General Investigatory Files—Amendment of 12 CFR 603.355 (Proposed).

Closed Session *

A. Enforcement Actions.

Dated: January 2, 1992.

Curtis M. Anderson,
Secretary, Farm Credit Administration Board.
[FR Doc. 92-321 Filed 1-2-92; 4:27 pm]
BILLING CODE 6705-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, January 13, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 3, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 92-416 Filed 1-3-92; 2:57 pm]
BILLING CODE 6210-01-M

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

INTERNATIONAL TRADE COMMISSION

United States International Trade Commission

TIME AND DATE: January 13, 1992 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings.
2. Minutes.
3. Ratification List.
4. Petitions and complaints: Certain condensers parts thereof and products containing same (Docket Number 1664).
5. Further consideration of the APO matter held over from the Commission meeting of October 10, 1991.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: December 30, 1991.

Kenneth R. Mason,
Secretary.
[FR Doc. 92-377 Filed 1-3-92; 1:36 pm]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME & DATE: 10:00 a.m., Tuesday, January 14, 1992.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Docket No. AB-167 (Sub-No. 1094), Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY.

Docket No. AB-1 (Sub-No. 299X), Chicago and North Western Transportation Company—Abandonment Exemption—In Cook County, IL.

Docket No. AB-39 (Sub-No. 12), St. Louis Southwestern Railway Company—Abandonment Exemption—In Smith and Cherokee Counties, TX.

Finance Docket No. 31870, Texas and Oklahoma R.R. Co.—Acquisition and Operation Exemption—The Atchison, Topeka and Santa Fe Railway Company.

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of External Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–271 Filed 1–2–92; 1:40 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Nuclear Regulatory Commission

DATES: Weeks of January 6, 13, 20, and 27, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 6

Friday, January 10

1:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of January 13—Tentative.

Thursday, January 16

9:30 a.m.—Collegial Discussion of Items of Commissioner Interest (Public Meeting).

2:30 p.m.—Periodic Briefing on EEO Program (Public Meeting).

Friday, January 17

10:00 a.m.—Briefing on Status of Implementation of Safety Goal Policy Statement (Public Meeting).

11:30 a.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed).

2:00 p.m.—Briefing on Progress of Research in the Area of Organization and Management (Public Meeting).

Week of January 20—Tentative

Tuesday, January 21

1:30 p.m.—Briefing on Site Decommissioning Management Plan (Public Meeting).

Thursday, January 23

11:30 a.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of January 27—Tentative

There are no Commission meetings scheduled for the week of January 27.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETING CALL (RECORDING): (301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: January 3, 1992.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 92–402 Filed 1–3–92; 8:45 am]

BILLING CODE 7590–01–M

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federal register

Tuesday
January 7, 1992

Part II

Department of the Interior

Bureau of Indian Affairs

Proclaiming Certain Lands as Part of the Reservation of the Seminole Tribe of Indians of Florida; Notice

VOL 57 ISS 4 JA 7 1992 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Part of the Reservation of the Seminole Tribe of Indians of Florida

December 24, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.3a.

SUMMARY: On December 24, 1991, by proclamation issued pursuant to the Act of June 28, 1934 (48 Stat. 986; 25 U.S.C. 467), the following-described tracts of land, located in Collier County, Florida, was added to and made part of the Seminole Indian Reservation.

Tallahassee Meridian, Collier County, Florida

Section 10, Township 47 South, Range 29 East, less and excepting therefrom the following: the SE¼ of the NE¼ of said Section 10; the West 50 feet of said Section 10, less railroad right of way conveyed to the State of Florida, Road Department, by Quit Claim Deed recorded in Deed Book 31, page 243 of the Public Records of Collier County, Florida; the North 30 feet of said Section 10, conveyed to Collier County, by Deed recorded in O.R. Book 54, page 583 of the Public Records of Collier County, Florida;

Section 15, Township 47 South, Range 29 East, commencing at the Northwest Corner of Section 15, Township 47 South, Range 29 East; thence North 88°37'37" East along the North boundary said Section, 443.00 feet; thence South 36°41'03" East, 73.53 feet to the South right of way line of county road for the point of beginning; thence North 88°37'37" East, 665.05 feet along said right of way line; thence South 33°57'17" west, 347.30 feet; thence South 34°50'43" East, 308.48 feet; thence South 60°36'57" West, 207.50 feet; thence North 36°41'03" West, 781.47 feet to the South right of way line of county road and to the point of beginning.

The above described parcels contain a total of 599.68 acres, more or less which are subject to all valid rights, reservations, rights of way, and easements of records.

Ronal Eden,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92-221 Filed 1-6-92; 8:45 am]

BILLING CODE 4310-02-M

federal register

Tuesday
January 7, 1992

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule and Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Threatened Status for the Louisiana Black Bear and Related Rules

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Louisiana black bear (*Ursus americanus luteolus*) to be a threatened species within its historic range. The historic range of the Louisiana black bear includes southern Mississippi, Louisiana, and east Texas. The Service designates other free-living bears of the species *U. americanus* within the Louisiana black bear's historic range as threatened due to similarity of appearance under the authority of the Endangered Species Act (Act) of 1973, as amended. This rule includes a special rule allowing normal forest management practices in occupied bear habitat, with certain limitations. The bear is vulnerable to habitat loss and illegal killing. This action implements protection of the Act.

EFFECTIVE DATE: February 6, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. Wendell A. Neal, at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The American black bear (*Ursus americanus*) was formerly widespread in North America, from northern Alaska and northern Canada, including Newfoundland, south to central northern Mexico (Lowery 1981). Hall (1981) lists sixteen subspecies of *U. americanus*. The black bear is a huge, bulky mammal with long black hair, with brownish or cinnamon color phases often found in western parts of its range. The tail on the black bear is short and well haired. The facial profile is rather blunt, the eyes small and the nose pad broad with large nostrils. The muzzle is yellowish brown and a white patch is sometimes present on the lower throat and chest. There are five toes on the front and hind feet with short curved claws. Large males may weigh more than 600 pounds, although weight varies considerably throughout their range.

In 1821, Edward Griffith, in his work "Carnivora," called the bear from Louisiana, the "yellow bear," according it a full species rank, i.e., *U. luteolus*. The first formal citation of the Louisiana black bear as a subspecies (*U. a. luteolus*) was by Miller and Kellog (1955) cited by Lowery (1981). In 1893, C.H. Merriam described the Louisiana black bear using five skulls from a Mer Rouge locality in Morehouse Parish in northeastern Louisiana. The distinctiveness of these skulls (Nowak 1986), when contrasted with other black bears, is that they are relatively long, narrow, and flat, and have proportionately large molar teeth (Nowak 1986). According to Hall (1981), *U. a. luteolus* once occurred throughout southern Mississippi, all of Louisiana and eastern Texas. The historic range according to Hall (1981) included all Texas counties east of and including Cass, Marion, Harrison, Upshur, Rusk, Cherokee, Anderson, Leon, Robertson, Burleson, Washington, Lavaca, Victoria, Refugio, and Aransas; all of Louisiana, and the southern Mississippi counties south of and including Washington, Humphreys, Holmes, Attala, Neshoba, and Lauderdale. While Hall (1981) included the southernmost counties in Arkansas as part of the range, there were no Arkansas specimens to support doing so. Accordingly, Arkansas is not considered as part of the historic range.

The Louisiana black bear was included as a category 2 species in the notice of review published on December 30, 1982 (47 FR 58454), September 18, 1985 (50 FR 37958), and January 6, 1989 (54 FR 554). Category 2 includes taxa that are being considered for possible addition to the Federal list of Endangered and Threatened Wildlife, but for which available data are judged insufficient to support a proposed rule.

The Service was petitioned on March 6, 1987, under section 4(b)(3)(A) of the Act to list the Louisiana black bear as an endangered species. The Service made two 12-month findings (August 19, 1988, 53 FR 31723, and August 10, 1989, 54 FR 32833), indicating that the action requested (listing) had been determined to be warranted but precluded by other actions to amend the lists.

In 1988 the Service undertook a study in cooperation with the Louisiana Department of Wildlife and Fisheries to clarify taxonomic concerns relating to possible introgression of non-native genetic material. The results of these investigations, which included blood protein electrophoresis, mitochondrial DNA and skull measurements, were received by the Service on July 21, 1989 (Pelton 1989).

A peer review of this report generated a variety of comments, which allow general conclusions on genetics and morphology. Although circumstantial evidence remains that native bears have interbred with introduced Minnesota bears, a morphological distinctiveness remains. There was disagreement on the taxon *U. a. luteolus* as being validated by the multicharacter morphological approach. However, the Service concludes that, notwithstanding conflicting opinions about accepted mammalian taxonomic criteria, available evidence, while not ovewhelming, does support validity of the taxon. As a subspecies, *U. a. luteolus* qualifies for listing consideration under the Act. This action presupposes bears within the historic range of *U. a. luteolus* possess those cranial features characterizing *U. a. luteolus*. Accordingly, threats to this population of bears threatens the taxon and thereby any unique genetic material possibly possessed by the taxon.

On June 21, 1990, the Service published in the **Federal Register** (55 FR 25341) a proposal to list the Louisiana black bear as a threatened species and to designate as threatened due to similarity of appearance all other bears of the species *Ursus americanus* within the historical range of *U. a. luteolus*. A notice of public hearing and reopening of the comment period was published in the **Federal Register** (55 FR 37723) on September 13, 1990, and a public hearing was held on October 11, 1990.

On September 20, 1991, the Service published in the **Federal Register** (56 FR 47732) a notice extending the deadline for taking final action on the proposal to list the Louisiana black bear, as provided in section 4(b)(6)(B)(i) of the Act, in order to examine questions regarding the taxonomy of the subspecies and reopened the public comment period. To assist the Service in making an informed decision on the listing of the Louisiana black bear, further assessment of morphometric data compiled in the course of the Pelton study (1989) was commissioned to further evaluate the systematic relationship of the Louisiana black bear (*U. a. luteolus*) and the Florida bear (*U. a. floridanus*). In addition to the existing data, additional skulls were located and the measurements included in the assessment. The conclusion from this review supports the current subspecific classifications of the Louisiana and Florida black bears. Assessment of the taxonomic relationship of black bears of

the southeastern region of the United States is ongoing.

Summary of Comments and Recommendations

In the June 21, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period was reopened and extended until October 21, 1990, to accommodate a request for a public hearing. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the "Baton Rouge Advocate" (Baton Rouge, Louisiana) on June 30, 1990, in the "Longview Journal" (Longview, Texas) on July 1, 1990, in the "Clarion Ledger" (Jackson, Mississippi) on July 6, 1990, in the "Lafayette Advertiser" (Lafayette, Louisiana) on July 9, 1990, and in the "Times Picayune" (New Orleans, Louisiana) on July 25, 1990.

A total of 86 comments were received on the proposed rule. One Federal agency commented but neither supported nor opposed the proposal. Two Louisiana State agencies provided three comments, one agency supporting the proposal, the other opposing it. Fifty-six individuals commented on the proposal. Of these, 33 supported it, 20 opposed it, and 3 were neutral. One wildlife research organization opposed the proposal. One economic development organization opposed it. Eight conservation organizations commented, seven supporting it and one being neutral. Sixteen timber companies and organizations representing either timber or landowner interests provided comments opposing the proposed rule.

A public hearing was requested by Joseph M. Haas, Luther F. Holloway, and the Mississippi Forestry Association. The hearing was held in the Louisiana Room of the Louisiana Department of Wildlife and Fisheries Building, 2000 Quail Drive, Baton Rouge, Louisiana on October 11, 1990, with 87 attendees. Seventeen comments were received during the hearing. Ten comments were in opposition, five were supportive and two were neutral. A question and answer session resulted in ten questions regarding the proposal.

Fourteen written comments were received during the comment period following the notice extending the deadline for a final listing decision. Seven comments were received from individuals with four favoring listing and three opposing. Three timber companies commented, all opposing the listing. Four organizations commented with one supporting, one neutral and two opposing.

Written comments and oral statements presented at the public hearing and received during the three comment periods are covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. These issues and the Service's response to each, are discussed below.

Issue 1: The subspecies *U. a. luteolus* is invalid because genetic differences among subspecies sampled were not conclusively different, and the basis for the subspecies designation was relatively minor morphologic differences. *Response:* The validity of the taxon does not depend on genetic differences. The subspecies designation is based on morphologic differences that distinguish Louisiana bears from other subspecies and is generally recognized as such by the scientific community. Morphological distinction, regardless of any known presence or absence of genetic differences, is sufficient to support a taxonomic entity.

Issue 2: Forced isolation through Federal listing could ultimately be the most damaging influence on the genetic composition of the Louisiana black bear. *Response:* The listing would not isolate any one group of bears. Gene flow between populations of the same species would be encouraged, not discouraged.

Issue 3: Because population data on the black bear are inconclusive, the bear should not be listed. *Response:* The Service agrees that population data for much of the Louisiana black bear's occupied range is not very useful. However, the Act requires the Service to make its proposals on the basis of the best available scientific and commercial data, which need not be statistically valid population estimates or counts.

Issue 4: Hybridization from *U. americanus* introduced from Minnesota in the mid-1960's is a serious threat to the Louisiana black bear, which today remains in pure form both in the Tensas and lower Atchafalaya River basins. *Response:* Discussion of this threat is found under factor E of this rule.

Issue 5: Listing the Louisiana black bear will place restrictions on the use of private lands. *Response:* While it is true that under section 7 of the Act private land management actions dependent on a Federal action, i.e., funding, licensing, permitting, etc., may require consultation between the Federal action agency and the Fish and Wildlife Service to insure the Federal action is not likely to jeopardize the continued existence of the Louisiana black bear, such consultation would not necessarily result in land use restrictions. Although there have been instances of effects on management of privately owned lands through section 9 of the Act (enforcement of taking prohibitions) based on adverse alteration of habitat for other species, a similar instance with a wide ranging species such as the Louisiana black bear is conjectural. The Louisiana black bear utilizes a diversity of habitats. Normal forest management activities that support a sustained yield of timber products and wildlife habitats are considered compatible with Louisiana black bear needs. Therefore, insofar as habitat alteration of occupied black bear habitat may be construed as a violation of section 9 of the Act, the Service issues herein a special rule which specifically exempts normal forest management activities as defined in the rule. This is in response to concerns expressed during the comment periods and is consistent with the Service's position that normal forest management activities are not considered a threat to the Louisiana black bear.

Issue 6: The Louisiana black bear should be listed as an endangered species rather than a threatened species. *Response:* The rationale for threatened status is described at the conclusion of the Summary of Factors Affecting the Species section.

Issue 7: Critical habitat for the Louisiana black bear should be designated. *Response:* This issue is addressed under the section entitled "Critical Habitat" in this rule.

Issue 8: Listing the Louisiana black bear will result in a transfer of management responsibility from the States to the Fish and Wildlife Service. *Response:* In the only known occupied habitat of the Louisiana black bear (Louisiana and Mississippi), there are existing cooperative agreements allowing the Service and the States to share Federal aid funds and responsibility in research and management actions directed toward recovery. Enforcement of section 9 of the Act also will be a cooperative endeavor between Federal and State conservation enforcement officers. The conduct of section 7 consultation, however, will be solely a Federal agency responsibility.

Issue 9: Given the opportunity for free movement of black bear from adjoining States into the range of the Louisiana black bear, it should not be concluded that black bear in Louisiana are a unique geographic isolate worthy of listing under the Endangered Species

Act. *Response:* The Service is listing a recognized subspecies and does not consider the Louisiana black bear to be a geographic isolate.

Issue 10: Arkansas is within the historic range but is not included within the designated range in the proposal. *Response:* The range of *U. a. luteolus* as depicted by Hall (1981) included a small area of south Arkansas; however, no specimens from Arkansas were used as a basis for placement of the line. Accordingly, Arkansas is not considered as part of the historic range for purposes of this rule.

Issue 11: The figures on rate of loss of bottomland hardwoods published in the proposed rule have leveled off and are no longer accurate, and in some cases there has been a reversal of losses because of the cropland reserve program. *Response:* The Service agrees there has been a leveling off of the clearing rates cited in the proposed rule. The Service also recognizes the efforts of private groups and governmental programs, and agrees there have been some reversals of the past trend. As noted in comments received during the last comment period, this leveling off of timberland loss is confirmed by the recent U.S. Forest Service survey data for the North Delta and South Delta regions of Louisiana (Rosson, Miller, and Vissage 1991), which indicated a slight increase in forested acreage for the North Delta region and a slight decrease in the South Delta region. However, based on history and present activities relative to interpretation and enforcement of the Food Security Act and the Clean Water Act, the Service remains unable to conclude that protection of these privately owned habitats is assured.

Issue 12: Listing of the Louisiana black bear may be an unnecessary legal encumbrance, and as such actually may cause more harm to the bear than not listing. *Response:* The Service makes listing decisions on the basis of the best available scientific and commercial data, and following a listing, the protective measures of the Act are made available to the species (See Available Conservation Measures elsewhere in this rule). The Service does not agree that listing may cause more harm to the bear than not listing.

Issue 13: The option of opening and closing of bear hunting seasons, as well as the setting of harvest limits as a management tool would be eliminated in Louisiana, and would be greatly complicated in Texas and Mississippi. *Response:* Under certain conditions, the Act allows taking of threatened species, which could include hunting. The Service agrees that administration of hunting seasons would be complicated by the listing.

Issue 14: State agencies will bear a disproportionate share of the economic burden for compliance. *Response:* Compliance with section 7 of the Act is strictly a Federal responsibility. States will share in the responsibility for enforcement and recovery actions, and they may be assisted through available Federal funds.

Issue 15: Delisting a species that was incorrectly or prematurely listed is much more difficult than the original listing. *Response:* The process for delisting, reclassification, or listing a species is the same.

Issue 16: The discriminant function analysis by Kennedy on skull morphology was flawed because the individuals used to define the functions were subsequently classified into groups using the same functions. The use of jackknifing or independent data sets should be used to test validity of the discriminant functions. *Response:* Had the discriminant function analysis not compared well with the principal component analysis, there may have been cause for concern. Since the two were corroborative, it was felt that a different approach would have added little to the conclusions.

Issue 17: The "look alike" provisions of the Act (threatened due to similarity of appearance) would discourage legitimate hunters from possessing black bears legally taken outside the described range. *Response:* The threatened due to similarity of appearance designation provides additional protection to free-living bears within the historic range of the Louisiana black bear, but it should not be construed to discourage hunters from engaging in legal black bear hunting opportunities provided elsewhere.

Issue 18: The proposed rule makes no distinction between bottomland hardwood and cypress-tupelo forest types, when in fact much of the Atchafalaya basin consists of flooded swamps not suitable for black bear. *Response:* The Service agrees that those permanently flooded acreages are not optimum bear habitat. Bears use intermittently flooded cypress-tupelo forest.

Issue 19: Any form of life should not be listed as threatened or endangered unless there is real provable evidence that such action will engender a better chance of survival and its continued existence as a viable component of its ecosystem. To list a form to have it "hang on" is scientifically irresponsible and obfuscates the real purposes of the proposal. *Response:* In accordance with the Act, the Service lists species on the basis of available scientific and commercial data, without regard to recoverability of the species in question.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Louisiana black bear should be classified as as threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Louisiana black bear (*U. a. luteolus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The habitat of *U. a. luteolus* has suffered extensive modification with suitable habitat having been reduced by more than 80 percent as of 1980. The remaining habitat has been reduced in quality by fragmentation due to intrusion of man and his structures (e.g. proximity to man's disturbing activities, multi-lane highways, etc.), thereby stressing the remaining population of bears. According to Rieben (1980) as cited by Nowak (1986), the original 25,000,000 acres of bottomland forests of the lower Mississippi River Valley had been reduced to 5,000,000 acres, and through the early 1980's another 165,000 acres were being cleared annually. Some of the Mississippi River Delta counties in the lower Yazoo River Basin may have as little as 5 percent of the original bottomland hardwoods.

Presently occupied bear habitat in Louisiana consists of two core areas, the Tensas and Atchafalaya River Basins. Within the basins, only wooded areas (bottomland hardwoods) are considered as bear habitat, athough marshes along the lower rim of the Atchafalaya Basin and agricultural lands (sugarcane, soybeans) in other areas are also used. The once extensive bottomland forests of the Tensas Basin no longer exist, with only 15 percent (about 100,000 acres) of the original stands remaining (Gosselink, Louisiana State University, *in litt.* 1988). Of this, about 85 percent is in public ownership or under plans for public acquisition.

The entire Atchafalaya Basin contained 718,500 acres of bottomland hardwoods as of 1975 (O'Neil et al. 1975). In the lower Atchafalaya River

Basin (south of U.S. Highway 190), there are presently approximately 516,129 acres of bottomland hardwoods, with a projected amount of 536,739 by the year 2030 due to accretion (LeBlanc et al. 1981). In the lower Basin, there is a recently established Atchafalaya National Wildlife Refuge of about 15,000 acres and a State owned area (Sherburne Wildlife Management Area) of about 12,000 acres which is to be increased by 23,000 acres. The purchase of 367,000 acres of habitat protection easements also is planned. Dow Chemical has donated 30,000 acres to the State and there are 61,000 acres of accreted State lands with land use controls. Much of the northern portion of the Basin (considered as north of U.S. Highway 190 and which contains the better drained areas) has been cleared for agriculture. As of the 1975 O'Neil report, there were about 200,000 acres of forestland north of U.S. Highway 190. Today, there are 100,000 to 128,000 acres of forested lands remaining (Simmering, U.S. Department of Agriculture, *in litt.* 1989).

The privately owned lands of the Atchafalaya River Basin south of U.S. 190 may remain exposed to threat from clearing and conversion to agricultural uses. Privately owned woodlands for the north Atchafalaya River Basin and the Tensas River Basin were estimated to be in the range of 115,000 to 143,000 acres of occupied bear habitat out of a total woodland base of 200,000 to 228,000 acres. This means about one-half of the occupied bear habitat in this area is privately owned and under no plans for protection through conservation easements or acquisition. Clearing forested wetlands for accommodating crop use may forgo U.S. Department of Agriculture (USDA) farm program benefits for the landowner. This, in the short term, should protect these lands. In the long term, a substantial upturn in commodity prices may make it economically feasible to clear forested wetlands and farm without USDA program benefits. Since the 1985 Food Security Act is reauthorized every 5 years, there is no guarantee of continued protection of privately owned forested wetlands. In addition, catfish farming, now about a 13,000-acre industry in Louisiana, is rapidly expanding. This, along with crayfish farming and pastureland are other possible uses that would not be limited by the Food Security Act.

Past losses of habitat quantity and quality have been severe (ranging from 95 percent in some lower Mississippi Delta counties to 63 percent in the Atchafalaya River Basin). Protection of privately owned woodlands in the north Atchafalaya and the Tensas River Basins is not assured. Long term protection of these bear habitats may depend upon factors the Service neither controls nor can adequately predict. The Louisiana bear has exhibited a past vulnerability to habitat loss. The Service believes that further loss of privately owned occupied habitats to agriculture or other non-timber uses as an increment to past losses would represent a threat to this subspecies in a significant portion of its range.

B. Overutilization for Commercial, Recreational, Scientific, or Education Purposes

Black bear populations range in density up to one to two per square mile. The Great Smokey Mountain National Park carries 500 to 600 bears on 512,000 acres (Pelton, pers. comm. 1989). The White River National Wildlife Refuge carries 130 bears on 113,000 acres (Smith 1983). Through trapping of 25 bears and extrapolation of untrapped bears and known family groups of bears, Weaver (pers. comm. 1989) estimates a population of at least 60 bears in about 70,000 acres of timberland of the Tensas River Basin, which contains about 100,000 acres of woods. What fraction 60 is of the total bears in the Tensas Basin is unknown.

In Atchafalaya River Basin, there are approximately 718,500 acres of timberland, about 516,129 of which are below U.S. Highway 190. For this vast tract, there is essentially no population data. The population estimates that are available for *U. a. luteolus* range in accuracy from crude to little more than intuition. Although estimates as quoted by Nowak (1986) indicate the bear population is low, all that is known for certain is that bears exist in the Atchafalaya River Basin and that due to bear movements, it would be difficult to separate bears from the lower, middle, or upper basin.

There are rumors of individuals killing bears for depredating sugar cane and for robbing trap lines. Bears are also killed incidentally to other forms of hunting. It may well be that bear numbers in the Atchafalaya are far greater than most believe, and that illegal kill is not a threat to that population. The White River National Wildlife Refuge in Arkansas has sustained heavy hunting pressure and has maintained a mid-range bear density. A rule of thumb the Virginia Department of Natural Resources uses is that their bear population can withstand a 20 percent annual loss to hunting without affecting the population's ability to sustain itself. However, as a population of bears approaches the minimum viable threshold, the more significant is any loss to that population. While it is true that illegal killing of bears occurs (Weaver 1988) and that illegal killing can be a threat, the effects of that illegal kill on the Louisiana black bear remain speculative.

The appearance of an abnormally low density of *U. a. luteolus* in the Atchafalaya River may be an artifact of the poor quality of population data or it may indicate considerable illegal kill is occurring on private and public lands. Should the latter be the case, and at this time it cannot be ruled out, illegal kill of that magnitude would unequivocally be a threat to the continued existence of a viable population of Louisiana black bears.

C. Disease or Predation

While a *U. a. luteolus*, like all other forms of vertebrate wildlife suffers from disease or possible predation (young bears being killed by older males), this is not considered limiting or threatening to the population.

D. The Inadequacy of Existing Regulatory Mechanisms

The dramatic losses of bottomland hardwood forests, including the loss of forested wetlands, as discussed in factor A, portray the inadequacy of existing regulatory mechanisms for protection of such habitats. If illegal killing is a threat, the possibility of prosecution under the Act in addition to State laws or regulations, may serve as a deterrent in some instances.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The introduction of 161 to 163 bears of the subspecies *U. a. americanus* from Minnesota into the Atchafalaya and Tensas River Basins in the mid-sixties is considered by some (Nowak 1986) to represent a manmade threat to the native subspecies, *U. a. luteolus*. This threat was considered as one of "hybridization," in this instance cross breeding between the introduced subspecies and the native subepecies. Other researchers contended that little genetic difference would be found. In gathering data on this question, the Fish and Wildlife Service, in close consultation with the Louisiana Department of Wildlife and Fisheries, instituted a plan in July 1988 to obtain genetic samples from bears in Louisiana for comparison with bears from the original Minnesota trapping locale, and other bear populations, including the Florida subspecies, *U. a. floridanus*.

The genetic analyses did not show significant differences between the various subspecies (Pelton 1989). Expecting to preserve *U. a. luteolus*, as is, presupposes a static condition which does not exist. Further, interbreeding between subspecies is a normal and expected occurrence simply based on opportunity. The mobile nature of bears, plus the fact there was a more or less continuous distribution in relatively recent times (in an evolutionary sense), suggested at the outset that little genetic difference would be found. It appears that in a biological sense, hybridization as a threat at this taxonomic level may not be a significant cause for concern, unless there are real genetic differences which were undetected. Hybridization as a threat has neither been discounted nor proven and remains unsettled. Since the genetic profile of a known *U. a. luteolus* is unavailable, the issue is unlikely to be settled. The greatest likelihood is that the bears inhabiting the Atchafalaya and Tensas River Basins are a mixture; that in a definitional sense, the population is probably intraspecifically hybridized. In a biological sense, *U. a. luteolus* is likely pretty much unchanged (genetically) because of the low probability of reproductive isolation which would be necessary for an extended period in order for the evolutionary process of genetic differentiation to operate.

However, to the extent the genetic investigations did not identify real differences, or to the extent a pure genetic heritage is a realistic concept when applied to subspecies not likely to be reproductively isolated, the threat may (have) exist(ed). Since *U. a. luteolus* and *U. a. americanus* are so similar as to be difficult to distinguish even by experts, the only practical means available for protecting any possibly remaining unique genetic material originally belonging to the native *U. a. luteolus* would be through listing and protecting the taxon now distinguished by cranial features as *U. a. luteolus*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the Service believes that the bear meets the criteria for protection under the Act on the basis of past habitat loss alone. The preferred action is to list the Louisiana black bear as threatened, defined as likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

Although the Service recognizes that loss of occupied bear habitat has currently leveled off, the preferred action is chosen because of the continued exposure of privately owned occupied bear habitats to agricultural conversion, the Louisiana black bear's demonstrated past vulnerability to such loss, and the significance of these exposed habitats to the overall well-being and health of the subject bear populations. Endangered status is not chosen because the threats are not believed to place the Louisiana black bear in imminent danger of extinction. Because normal forest management practices in the range of the Louisiana black bear are considered by the Service to be compatible with black bear needs, a special rule is included herein exempting such practices from the take provisions of section 9 of the Act. For law enforcement purposes, all other free-living *U. americanus* within the historic range of *U. a. luteolus* are being classified as threatened due to similarity of appearance. Critical habitat is not being designated at this time as discussed below.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas containing the physical and biological features essential to the conservation of the species and which may require special management considerations or protection. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary. Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is proposed to be endangered or threatened. Service regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analysis of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species.

In the June 21, 1990, proposed rule to list the Louisiana black bear, the Service stated that designation of critical habitat was not presently prudent. The basis for this determination was the interpretation that designation of critical habitat would not provide benefits over and above those available under section 7 by simply listing the species since all Federal and State agencies likely to be involved had been notified of the location and importance of protecting the species' habitat. Therefore, designation was deemed "not prudent" due to no net benefit. Consideration of this finding within the Service since the publication of the proposed rule has resulted in a determination that designation of critical habitat may be prudent in this case given the potential for further habitat loss as a result of Federal actions, but it is not now determinable. Section 4(b)(6)(C) provides that a concurrent critical habitat determination is not required and that the final decision on designation may be postponed for 1 additional year (i.e., 2 years from the date of publication of the proposed rule) if the Service finds that a prompt determination of endangered or threatened status is necessary to the conservation of the species. The Service believes that prompt determination of threatened status for the Louisiana black bear is necessary. This will afford the species the benefits of section 9 (prohibitions) and section 7 (interagency) cooperation.

The Louisiana black bear ranges over large areas of Louisiana and Mississippi. Although individual bears travel over great distances and are considered habitat "generalists" utilizing a diversity of habitats, they do require large areas of relatively undisturbed forest. In cooperation with the Black Bear Conservation Committee (BBCC), a coalition of State, Federal, academic and private interests committed to restoring the Louisiana black bear within its historic range, the Service is attempting to identify occupied and potential habitat and to ascertain the bear's biological needs. Studies are ongoing on the Tensas National Wildlife Refuge, in the lower Atchafalaya River basin and in Mississippi to delineate areas used by black bear and assess management needs, and maps are in preparation that will show occupied habitat, areas of occasional sightings, potential habitat and possible corridors. Development of a restoration plan has already been initiated by the BBCC. Once the maps are completed and a restoration plan or recovery plan is prepared, the Service will make a critical habitat determination and assess whether designation of critical habitat is prudent. In assessing critical habitat, the

Service will consider the bear's requirements for space, food, water, cover or shelter, reproduction and population growth, and other biological features that are essential to the conservation of the bear and that may require special management considerations or protection. In the interim, protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Possible Federal actions may include Corps of Engineers wetland permits, Soil Conservation Service watershed projects or the Service's activities on National Wildlife Refuges within the species' occupied habitat. Formal consultation and the resulting biological opinion issued by the Service may preclude or modify Federal actions depending on the nature and extent of the impact on listed species.

Section 4(d) of the Act provides that whenever a species is listed as a threatened species, such regulations deemed necessary and advisable to provide for the conservation of the species may be issued. The Secretary may by regulation prohibit any act prohibited for endangered species under section 9(a). These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies. The term "harm" as it applies to the take prohibition is defined in 50 CFR 17.3 to include "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." The implementing regulations for threatened wildlife (50 CFR 17.31) incorporate, for the most part, by reference the prohibitions for endangered wildlife (50 CFR 17.21) except when a special rule applies [50 CFR 17.31(c)]. The Service finds that the prohibitions for endangered species are necessary and advisable for conservation of the threatened Louisiana black bear. However, pursuant to the latitude for threatened species afforded by the Act and 50 CFR 17.31(c), the Service issues a special rule, discussed below, exempting certain forest management activities that could be construed by some, although not the Service, to constitute "harm" to the Louisiana black bear.

In order to avoid unnecessary permitting requirements, and in response to extensive comments regarding perceived impacts of the listing on timber interests, the Service is promulgating a special rule exempting normal forest management activities from section 9 take prohibitions. The Service continues to take the position that habitat needs of the Louisiana black bear are compatible with normal forest management activities as practiced in this bear's range. This position is based on recent studies in the Tensas River basin of Louisiana (Weaver et al. 1991) that affirm the value of habitat diversity attributable to a variety of silvicultural procedures.

The Louisiana black bear, like other members of the species *U. americanus*, is not an old growth species; nor can it survive in open cropland conditions. Weaver (1991) found that an abundance of bear foods (e.g., fruits and soft mast) were produced following fairly severely timber harvests, and that bears also utilized these cutover areas for escape cover, and in some cases, actually used treetops remaining from logging operations as winter denning sites for birthing of cubs. This leads the Service to believe that maintaining occupied bear habitat in some form of timberland condition may be the single most critical factor in conserving this species, and that the principal threat to the bear is not normal forest management but conversion of these timbered habitats to croplands and other agricultural uses. For this reason, the Service believes that the exemption provided in the special rule will not contribute to loss of black bear habitat, but will provide for habitat diversity for the bear through continued forest management.

Certain restrictions pertaining to den trees are included in the special rule. Although den trees for Louisiana black bear are not essential, they are important (Weaver 1991). Because of their importance, actual den sites/trees or candidate den trees in occupied Louisiana black bear habitat are to be maintained. For purposes of the special rule, candidate den trees are considered to be bald cypress and tupelo gum with visible cavities, having a diameter at breast height (DBH) of 36 inches, and occurring in or along rivers, lakes, streams, bayous, sloughs, or other water bodies. Further or fewer restrictions in the special rule may become appropriate as results of ongoing research and recovery planning are assessed.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits may also be available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Similarity of Appearance

Section 4(e) of the Act authorizes the treatment of a species (or subspecies or group of wildlife in common spatial arrangement) as an endangered or threatened species even though it is not otherwise listed as endangered or threatened if: (a) The species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial

difficulty in differentiating between listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) that such treatment will substantially facilitate the enforcement and further the policy of the Act.

Introductions of bears from Minnesota in the mid-sixties of the subspecies *U. a. americanus* gives rise to the possibility (however remote) that bears remain somewhere within the historic range of *U. a. luteolus* that are of *U. a. americanus* ancestry. Evidence of *U. a. americanus* in southern Arkansas just north of the Louisiana line has been recently documented. This theoretically could present an enforcement and taxonomic problem because both subspecies may now or later inhabit the same range, and the listed subspecies (*U. a. luteolus*) cannot always be differentiated from the unlisted *U. a. americanus* by enforcement personnel or experts. For these reasons, the Service is treating all free-living bears of the species *U. americanus* other than *U. a. luteolus* as threatened by similarity of appearance within the historic range of *U. a. luteolus* (Louisiana, Mississippi and Texas).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Griffith, E. 1821. General and Particular Descriptions of the Vertebrated Animals order Carnivora. London: Presented for Baldwin, Cradock and Joy.

Hall, E.R. 1981. The Mammals of North America. John Wiley and Sons, New York. I:950–951.

Kennedy, M.L. 1991. Additional Assessment of the Systematics *Ursus americanus luteolus*. Special Report to U.S. Fish and Wildlife Service. 14pp.+figs.

Leblanc, D., D. Soileau and C. Kerlin. 1981. Atchafalaya Basin (Water and Land Resources), Louisiana Study. U.S. Fish and Wildlife Service Report. Table 16.

Lowery, G.H. 1981. The Mammals of Louisiana and its adjacent waters. LA State University Press. Pg. 404.

Merriam, C.H. 1893. The Yellow Bear of Louisiana, *Ursus Luteolus Griffith*. Proc. of the Biological Society of Washington. Vol. III, pp. 147–152.

Nowak, R.M. 1986. Status of the Louisiana Bear. U.S. Fish and Wildlife Service special report. 17 pp.

O'Neil, C.P., J.E. Desteiger and G.W. North. 1975. Trend Analysis of Vegetation in Louisiana's Atchafalaya River Basin. U.S. Department of Interior, Geological Survey, EROS Applications Assistance Facility, National Space Technology Laboratories, Bay St. Louis, MS. 61 pp.

Pelton, M. 1989. The Louisiana Black Bear: Status and Future. Special Report to U.S. Fish and Wildlife Service. 22 pp.

Smith, T.R. 1983. Status and Ecology of Black Bears on the White River National Wildlife Refuge: Final Research Report. M.S. Thesis, Univ. of Tenn. Knoxville, TN. 82 pp.

Weaver, K.M. 1988, Louisiana Status reprt. Ninth Eastern Workshop on Black Bear Research and Management, Ontario, Canada. 14 pp.

Weaver, K.M., D.K. Tabberer, L.U. Moore, Jr., G.A. Chandler, J.C. Posey, M.R. Pelton. 1991. Bottomland Hardwood Forest Management for Black Bears in Louisiana. Proc. Annu. Conf. Southeast Assoc. Fish and Wild. Agencies. vol 44 (In press).

Weaver, K.M. 1991. Unpublished data, Tensas River National Wildlife Refuge Bear Research.

Author

The primary author of this rule is Wendell A. Neal (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
MAMMALS							
*	*	*	*	*	*	*	
Bear, American black	*Ursus americanus*	North America	USA (LA, MS, TX)	T(S/A)	456	NA	17.40(i)
*	*	*	*	*	*	*	
Bear, Louisiana black	*Ursus americanus luteolus*	USA (LA, MS, TX)	Entire	T	456	NA	17.40(i)
*	*	*	*	*	*	*	

3. Amend § 17.40 by adding paragraph (i) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(i) Louisiana black bear (*Ursus americanus luteolus*). (1) Except as noted in paragraph (i)(2) of this section, all prohibitions of §17.31 and exemptions of § 17.32 shall apply to any black bear within the historic range of the Louisiana black bear (Texas, Louisiana and Mississippi).

(2) Subsection 17.40(i)(1) and § 17.31 shall not prohibit effects incidental to normal forest management activities within the historic range of the Louisiana black bear except for activities causing damage to or loss of den trees, den tree sites or candidate den trees. For purposes of this exemption, normal forest management activities are defined as those activities that support a sustained yield of timber products and wildlife habitats, thereby maintaining forestland conditions in occupied habitat. For purposes of this special rule, candidate den trees are considered to be bald cypress and tupelo gum with visible cavities, having

a minimum diameter at breast height (DBH) of 36 inches, and occurring in or along rivers, lakes, streams, bayous, sloughs, or other water bodies.

(3) This express exemption for normal forest management activities provided by this special rule is subject to modification or withdrawal if the Service determines that this provision fails to further the conservation of the Louisiana black bear.

Dated: December 30, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-244 Filed 1-6-92, 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on a Petition To List the Florida Black Bear as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The Service announces a 12-month finding on a petition to amend the List of Endangered and Threatened Wildlife. After review of all available scientific and commercial information, the Service has determined that listing the Florida black bear as threatened is warranted but precluded by other higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants.

DATES: The finding reported in this notice was made in December, 1991. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding the petition finding may be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley at the above address (904/791–2580; FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, the U.S. Fish and Wildlife Service (Service) should make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but precluded from immediate proposal by other pending proposals. Section 4(b)(3)(C) requires that petitions for which the requested action is found to be "warranted but precluded" should be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the **Federal Register**.

In a petition dated May 20, 1990, and received by the Service on June 11, 1990, the Service was requested by Ms. Inge Hutchison of Lake Geneva, Florida to list the Florida black bear as a threatened species. The petition cited the following threats to the Florida black bear: (1) Illegal hunting by beekeepers, gallbladder poachers, and others; (2) loss and fragmentation of critical habitat; (3) hunting pressure; and (4) road mortality. An administrative finding that the petition presented substantial information that the requested action may be warranted was made in September, 1990, and announced in the **Federal Register** on October 18, 1990 (55 FR 42223).

The Florida black bear (*Ursus americanus floridanus*) is a subspecies of the black bear (*Ursus americanus*), which ranges from northern Alaska and Canada south to northern Mexico. The black bear formerly occurred in all the lower 48 States, but its range has decreased and become fragmented, particularly in the eastern States, where it is now generally restricted to large areas of remote woodlands (Maehr 1984a). The Florida black bear was described by Merriam (1896) based on a male specimen from Key Biscayne, Dade County, Florida. Merriam stated that he had examined several other skulls that he assigned to this species, apparently all from the Everglades area of south Florida. According to Hall (1981), the Florida black bear is primarily restricted to Florida but also occurs in the coastal plain areas of Georgia and Alabama. Hall indicates that the range of *floridanus* extends into extreme southeastern Mississippi, but cites no specimens attributable to the subspecies from that State. According to Hall's range map of the subspecies of the black bear, *floridanus* presumably intergrades with two other adjacent and contiguous subspecies of the black bear: on the north, with the American or eastern black bear (*U. a. americanus*) in Georgia and Alabama, and on the west with the Louisiana black bear (*U. a. luteolus*). The latter subspecies, historically occurring in southern Mississippi, Louisiana, and east Texas, was proposed as a threatened species by the Service on June 21, 1990 (55 FR 25341), due to threat from habitat loss and fragmentation of the populations.

Historically, the Florida black bear was found throughout Florida, including some coastal islands. Following extensive human development in the State, the distribution has become reduced and fragmented (Brady and Maehr 1985). It is currently considered a threatened species (in Florida) by the Florida Game and Fresh Water Fish Commission, except in Baker and Columbia Counties and Apalachicola National Forest, and is considered threatened by the Florida Committee on Rare and Endangered Plants and Animals (Williams 1978; Maehr and Wooding undated). The Florida black bear was considered a candidate for listing under the Endangered Species Act of 1973, as amended, in Service review notices of December 30, 1982 (47 FR 58454), September 18, 1985 (50 FR 37958), January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804).

In response to the October 18, 1990, notice the Service received comments from the Florida Congressional delegation, the state game agencies of Alabama, Florida, and Georgia, two conservation groups, two animal rights organizations, the Wildlife Committee of the National Forest Products Association and American Forest Council, and numerous private parties. Comments are summarized below.

In a joint letter dated July 19, 1991, the Florida Congressional delegation supported the listing of the Florida black bear as a threatened species.

The Alabama Division of Game and Fish (Division) stated that the black bear was considered a game species in Alabama, but that there was currently no open season. The Division enclosed a report (Dusi 1987) based on a study of black bears in southwestern Alabama. The report concluded that a dense, healthy and relatively undisturbed population of black bears occurred in Baldwin, Mobile and Washington Counties. Dusi (1987) believed that one habitat feature that made this area valuable black bear habitat was the presence of extensive titi (*Cliftonia monophylla* and *Cyrilla racemiflora*) swamps, providing refuge from human disturbance. He pointed out that such heavy shrub habitat was absent in much of Alabama. Maehr (1984) and Dusi (1986) have previously considered the survival of this population to be of concern. The Service's Daphne, Alabama Field Office reported that the size of this southwestern Alabama population might be as few as 50 bears.

The Georgia Game and Fish Division (Georgia) currently allows bear hunting in the five counties that are contiguous with the Okefenokee Swamp; this is within the range of the subspecies *floridanus*. The hunt totals 6 days, taking place the last weekend of September and the first two weekends in October. In their comments, Georgia included a nine-year summary (1981–1989) of bears that had been checked during the hunts; 221 bears, including 107 males and 114 females, were taken

during this period. Total annual take ranged from five to 56 bears. In the 1990 hunt, 23 bears (8 males, 15 females) were taken; 33 bears (15 males, 18 females) were taken in 1991 (Wes Abler, Georgia Division of Game and Fish, pers. comm.). This brought the eleven-year total to 277 bears (120 males and 147 females). There has been no indication of a downward trend in population. A seven-year age summary (1983–1989) showed the average age of males taken to be 4.44 years, and females 6.57 years. This was interpreted by Georgia to indicate a healthy age structure and a sustainable harvest. Georgia also indicated that they averaged three to six road-killed bears per year and received one or two nuisance bear complaints each year. They estimated that there was likely an annual illegal harvest by beekeepers approximating the legal harvest. Georgia believes that the Okefenokee black bear population is very healthy and would not merit listing as a threatened species. Service response: The Service must consider the status of a species over its range when making listing decisions. The existence of healthy populations in some parts of the range does not preclude the possibility that the species may qualify for listing based on one or more of the listing factors described under section 4 of the Act.

The Florida Game and Fresh Water Fish Commission (Commission) submitted information on the conservation status of the black bear in Florida. Black bears are still widely distributed in Florida, but the current distribution is patchy and fragmented, in contrast to the continuous range in the state before human settlement. The largest remaining black bear populations in Florida are located on Big Cypress National Preserve; Ocala, Osceola, and Apalachicola National Forests; and areas adjacent to these federal lands. A number of other small populations persist, but their long-term survival is doubtful because of small population size, limited habitat, and the likelihood of further development. Urbanization, agricultural development, and increasing recreational pressure are all considered to contribute to habitat loss. The size of the current bear population in Florida is not known, but is estimated at 500–1000 animlas (Maehr and Wooding undated). In a black bear habitat study of Ocala and Osceola National Forests, Wooding and Hardisky (undated) estimated that 125 bears may occur in Ocala National Forest; their sample size was too small to estimate the Osceola population. The black bear in Florida is currently considered threatened by the Florida Committee on Rare and Endangered Plants and Animals (Williams 1978) and by the Commission, except in Apalachicola National Forest and Baker and Columbia Counties, where regulated hunts are allowed.

The Commission goal for black bear management is to maintain the health and status of the species statewide. According to the Commission, bears in the two hunted populations have been hunted on a sustained yield basis for many years. The total number of bears checked from the Florida hunts over the nine years from 1981 to 1989 was 415 (mean = 46.1 per year). There was no apparent indication of a decline in the hunted populations, although regulatory changes have been made, and continue to be made, to reduce hunting pressure on females as necessary. Bear harvest is monitored by hunter reporting and mail surveys. Decisions on each year's hunt are generally based on numbers and sex and age distribution of the bears taken in the previous year. The Commission presented information on numerous changes in regulations affecting bears in Florida that had been made from 1939 to 1991. The trend has been toward more limitd hunting, with fewer areas open to hunting for shorter periods. In recent years, the hunt has been opened later in the year, when females are more apt to be denning and are therefore less vulnerable to being taken. The most recent harvest analysis (Wooding 1990) indicated that, while the hunt on private lands was sustainable, harvests on Osceola National Forest had been exessive and the record number of bears killed in Apalachicola National Forest in 1989–1990 was of concern. These findings resulted in the most recent changes in the bear hunt regulations. The Osceola National Forest hunt was reduced to nine days in mid-January, with no bear hunting allowed in archery, muzzleloader, and general gun seasons. The Apalachicola National Forest bear hunt was restricted to eleven days in late November. The general gun season on private lands in Baker and Columbia Counties was delayed two weeks, commencing in late November.

The Commission also submitted reports on black bear necropsies performed by Commission staff in 1989 and 1990. These data indicated that from April 1989 to June 1990, 48 black bears were known to have died from collisions with vehicles and three were killed illegally. In some years, road mortality equalled or exceeded legal take. Commission biologists have prepared recommendations on bear crossing designs and locations for major highways that, if implemented, would reduce bear mortality from vehicle collisions.

Comments from the conservation groups, animal rights organizations, and private parties supported Federal listing for the Florida black bear, citing habitat loss due to human population growth, roadkills, unsupportable hunting, and small but unknown population size as threats to the Florida black bear. Service response: The Service will continue to evaluate these threats with regard to the priority of listing the Florida black bear under the Act.

The Wildlife Committee (Committee) of the National Forest Products Association and the American Forest Council opposed listing. They believed the petition to list the Florida black bear was a surrogate (sic) to constrain land use policy, particularly timber harvesting; and that this would be a misuse of the Act's stated purpose to conserve endangered and threatened species and their ecosystems. Service response: Since the petitioner's main concern seemed to be hunting, and not land management practices, the Service does not believe the petition was primarily intended to constrain land use. Regardless of the intent of petitioners, the Service lists species only if they meet one or more of the five listing criteria in section 4(a)(1) of the Act. If a species qualifies for listing, the Service must proceed with such regulation, other priorities permitting. Economic impacts are not considered in making a listing decision, although they must be considered in promulgating regulations involving critical habitat. The Service attempts to carry out its listing, consultation, and recovery responsibilities so as to conserve the ecosystems on which endangered and threatened species depend. When possible, the Service lists species found together in particular ecosystems at the same time, and includes them in the same recovery plan, to emphasize the importance of protecting ecosystems, not just individual species.

The Committee also suggested that the subspecific nomenclature of the Florida black bear is archaic and should not be relied upon. They enclosed a letter from Dr. Michael Kennedy of Memphis State University, who recently examined skull morphology of the Louisiana black bear (*Ursus americanus luteolus*) as part of a recent investigation (Pelton 1989) of that subspecies' taxonomic validity. Dr. Kennedy felt that the taxonomic status of the Florida black bear was questionable for the following reasons: (a) The original description of the

subspecies did not assess geographic variation over the range of the two subspecies, because only material from south Florida was used to describe the Florida black bear. A complete assessment of bears using modern systematic tools has not been conducted. (b) Based on the Pelton report (1989), the Florida and Louisiana black bears are very similar. A complete assessment of *Ursus americanus* is needed. Service response: The Service agrees that it would be desirable to have better taxonomic understanding of bear populations in the southeastern United States, and intends to commence a taxonomic study to address this issue in the near future. This study is expected to include both genetic and morphometric analyses of southeastern black bears and could clarify the status of the three subspecies in the region. The Service recently contracted with Dr. Kennedy to do additional morphometric work on this problem, and the results, although preliminary in nature and based on small samples, suggest that the subspecies *americanus*, *floridanus*, and *luteolus* are valid (Kennedy 1991). The Service notes that the Louisiana and Florida black bears remain generally accepted subspecies in the literature, and are eligible for protection under the Act. Although differences between the subspecies, as currently described, are slight, this is the case for many mammalian subspecies. Without further examination, doubts about the validity of black bear subspecies remain speculative.

The Committee further suggested that the Service should participate in the establishment of a black bear conservation committee in Florida to develop management plans to ensure continued viable populations. Service response: The Service agrees that the cooperation of a number of landowners and managers could be beneficial for bear conservation, and is willing to participate in any such effort. However, if the black bear qualifies for listing according to the listing factors under section 4 of the Act, the formation of a conservation committee would not relieve the Service of its responsibility to list the subspecies. If the Florida black bear were listed, management plans and other conservation tools could be an important part of a recovery plan.

Summary of Factors Affecting the Species

The five factors prescribed by section 4(a)(1) of the Act were evaluated to make a determination in response to the petition. These factors and their application to the Florida black bear (*Ursus americanus floridanus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Much of the historical habitat of the Florida black bear has been lost to land clearing and alteration by man. Brady and Meahr (1985) concluded that black bear distribution in Florida is reduced and fragmented, and that local extinctions are an important threat to the existence of the species in the state. The range of the Florida black bear in peninsular Florida is particularly vulnerable to further habitat loss. Florida is one of the fastest growing states in human population, and that trend is expected to continue. The largest remaining populations of the Florida black bear are on Federal lands (approximate acreage follow each site), including Okefenokee National Wildlife Refuge (438,000 acres), the adjacent Dixon Memorial State Forest Wildlife Management Area (38,500 acres), Eglin Air Force Base (310,000 acres), Apalachicola (718,000 acres), Ocala (410,000 acres), and Osceola (194,000 acres) National Forests; and Big Cypress National Preserve, Fakahatchee Strand State Preserve, and Florida Panther National Wildlife Refuge (644,000 acres combined). Bears enjoy a reasonable degree of habitat security on these lands, but there is a continuing need to insure that public land management remains compatible with the continued existence of bears, and that activities on adjacent private lands do not adversely affect bears on public lands. Residential, agricultural, commercial, highway, and other forms of human development have already eliminated viable populations of Florida black bears on many private lands throughout the range; in the future this subspecies is likely to be restricted to "islands" of suitable habitat on public lands, preventing movements between bear populations. Habitat loss has been, and continues to be the most serious threat to the continued existence of the Florida black bear.

Nonetheless, a considerable amount of public land (over 2.5 million acres), occurring in large, widely separated blocks, is likely to remain available for conservation of the Florida black bear. In recent years, there have been significant purchases of private lands for conservation purposes in Florida by Federal and state agencies, and private organizations. Several major land acquisitions will improve conservation prospects for the Florida black bear. Major acquisitions have taken place in Florida's Big Bend (upper Gulf Coast area), Pinhook Swamp (an area between Osceola National Forest and Okefenokee National Wildlife Refuge), adjacent to Ocala National Forest, and in the Big Cypress area (Florida Panther National Wildlife Refuge). Several of these acquisitions will assist in maintaining corridors and habitat between major black bear concentrations. Because bears dispersing from the larger and more secure blocks of protected habitat are more vulnerable to human-caused mortality, such habitat linkages are essential to insure long-term viability of the Florida black bear.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although the Florida black bear is a game species in Alabama, that state does not allow a hunt and has no intention of doing so in the foreseeable future (Keith Guyse, Alabama Division of Fish and Game, pers. comm.). The Georgia Game and Fish Division currently allows a six-day hunt of Florida black bears (three weekends in September and October) in the five counties contiguous with Okefenokee National Wildlife Refuge. The Florida Game and Fresh Water Fish Commission allows a nine-day hunt in both Apalachicola and Osceola National Forests, and a 58-day (general gun season) hunt on private lands in Baker and Columbia Counties. Both Florida and Georgia use hunt harvest results (age and sex ratio data from bears checked in) to adjust the seasons and limits for the subsequent year, and both states have been able to maintain huntable bear populations for many years using this approach. Many other states use a similar approach to manager black bears. The Service believes that both Florida and Georgia have adequate knowledge of their bear populations to alter or halt hunting before any hunted population could be extirpated. However, it is possible that some populations could, at least periodically, be reduced to less than optimal densities for long-term conservation. It would therefore be desirable to have more information on the demographics of the hunted populations, particularly concerning birth and death rates and population density. Florida currently has studies underway on both a hunted (Apalachicola National Forest) and an unhunted (Big Cypress National Preserve) population, and Georgia continues to study the hunted Okefenokee population. Information from these and other studies will be

even more necessary to make harvest decisions as threats from habitat loss and road mortality increase. Without more information, it may be difficult to evaluate the combined effects of hunting and other sources of mortality, and it may be difficult to justify the hunt. The Service encourages Florida and Georgia to continue to gather more data to allow a better assessment of the effects of hunting on the Florida black bear.

C. Disease or Predation

Southeastern black bears are known to host a variety of disease organisms, but none seem to represent a serious problem (Davidson and Nettles 1988); disease is not known to be a factor in the decline of this subspecies. The Florida black bear has few natural enemies; predation is not a threat.

D. The Inadequacy of Existing Regulatory Mechanisms

The wildlife laws of the States of Alabama, Florida, and Georgia give them the authority to protect the Florida black bear through the regulation of hunting. Federal protection against illegal trade in bears or bear parts (e.g. gall bladders or claws) is available through the Lacey Act, if such trade crosses state lines. Federal listing of the Florida black bear would provide additional take prohibitions and penalties through sections 9 and 11 of the Act, and Section 7 of the Act would require Federal agencies to insure that their actions were not likely to jeopardize the continued existence of the Florida black bear or to adversely modify critical habitat designated for the species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Road mortality is a serious threat to the Florida black bear in Florida. The threat is likely to worsen with increases in human population, road-building, and vehicular traffic. From 1976 to 1991, 250 bears were killed on Florida highways, with a steady increase over the years. Road mortality was greatest in the Big Cypress (Collier County) and the Ocala populations (Lake and Marion Counties), but occurred wherever bear populations must cross busy highways (John Wooding, Florida Game and Fresh Water Fish Commission, pears. comm., October 28, 1991). The Florida Game and Fresh Water Fish Commission is working with the Florida Department of Transportation to recommend and plan undercrossings in key areas as highways are built and widened, but it is likely that highways will continue to be a threat to the Florida black bear through habitat fragmentation.

Georgia reported 3–6 road-killed bears per year around Okefenokee Swamp, but roads and traffic are much more limited in that area than in much of Florida. No roadkill information was available from Alabama.

Humans are generally fearful and intolerant of bears when they come in contact. Nuisance complaints, particularly from beekeepers, are periodically received by state game agencies. As previously stated, illegal kills do occur as a result of these interactions. Maehr (1984b) reported that bear depredations have been reported from 41 of Florida's 67 counties, and that beekeepers have historically been responsible for a sizable illegal kill. The Georgia Game and Fish Division reported that beekeepers may kill as many bears annually around Okefenokee Swamp as are taken in the legal harvest.

Since bear parts, especially gall bladders, are considered to be medically valuable in the Orient, poaching of Florida black bears is a potential threat. Poaching of black bears to supply this illicit trade has been documented throughout North America, including within otherwise secure habitat on National Forest and National Park lands. Little information on such take is currently available within the range of the Florida black bear, and neither Alabama, Florida nor Georgia is aware of a serious problem, but continued attention should be paid to this threat. Illegal hunting could be especially detrimental to smaller, isolated populations of the Florida black bear.

Finding

On the basis of the best available scientific and commercial information and the following assessment of Service listing priorities and progress, the Service finds that the petition to list the Florida black bear as a threatened species is warranted, but precluded by work on other species having higher priority for listing.

In accordance with section 4(b) of the Act, the Service may make a warranted-but-precluded finding only if it can demonstrate that (1) other listing decisions have a higher priority, and that (2) expeditious progress is being made on other listing actions. On September 21, 1983, the Service published in the **Federal Register** its priority system for listing species under the Act. The system considers three factors in assigning species numerical priorities on a scale of 1 to 12. The three factors are magnitude of threat, immediacy of threat, and taxonomic distinctiveness.

As discussed above, the Florida black bear faces threats from habitat destruction, roadkills, and legal and illegal hunting. The Service considers the overall magnitude of these threats throughout the range of the subspecies as moderate to low. The Florida black bear occurs primarily on Federal lands (Okefenokee National Wildlife Refuge, Apalachicola, Osceola, and Ocala National Forests, and Big Cypress National Preserve) likely to remain favorable habitat into the foreseeable future. Although development is expected to continue on adjacent private lands, with negative effects on black bear habitat, the Service does not expect development to occur so quickly or extensively as to pose substantial immediate threats to the bear. Other man-caused threats, including road mortality, hunting and poaching, are a concern. They appear to be currently supportable by the major remaining Florida black bear populations, and are therefore considered to represent a moderate degree of threat.

The Service currently considers threats to the Florida black bear to be moderate-to-low throughout its range. As a subspecies, the Florida black bear has a lower listing priority than full species or monotypic genera under comparable threats to their continued existence. Therefore, the subspecies has been assigned a level 9 priority for listing. Other candidate species currently warrant more immediate listing consideration than the Florida black bear. Approximately 150 category 1 species (species for which the Service has adequate information to proceed with listing) are considered to have a high magnitude of imminent threat, and should therefore be addressed prior to the bear. If threats to the Florida black bear increase, the listing priority will become higher.

The Service believes that expeditious progress is being made on other listing actions. In fiscal year 1990 (October 1, 1989 to September 30, 1990), the Service proposed 106 species for listing and added 47 species to the lists of endangered and threatened wildlife and plants. In fiscal year 1991 (October 1, 1990 to September 30, 1991), 87 species were proposed for listing and 52 species were added to the list. Thus far in fiscal year 1992 (October 1, 1991 to September 30, 1992), the Service has proposed 67 species for listing and 37 species have been added to the list. The Service has also attempted to list species through multi-species listing actions whenever possible. In fiscal year 1990, 19 multispecies listings, including 92 species, were proposed or made final. In

fiscal year 1991, 16 multispecies listings, including 81 species, were proposed or made final. Thus far in fiscal year 1992, 10 multispecies listings, including 87 species, were proposed or made final. The Service intends to continue using multispecies listings whenever appropriate to maximize the use of its limited listing resources.

The Service will treat this petition, for which it makes a warranted-but-precluded finding, as though resubmitted on the date of the finding and make a subsequent finding within 12 months. The Service will continue to provide technical assistance to state and Federal agencies to address Florida black bear conservation needs.

References Cited

Brady, J.R. and D.S. Maehr. 1985. Distribution of black bears in Florida. Florida Field Naturalist 13:1–7.

Davidson, W.R. and V.F. Nettles. 1988. Field manual of wildlife diseases in the southeastern United States. Univ. of Georgia, Athens. 309 pp.

Dusi, J.L. 1986. Black bear. Pp. 116–117 *in* R.H. Mount, ed., vertebrate animals of Alabama in need of special attention. Alabama Agric. Expt. Station, Auburn.

_____. 1987. Ecology of the black bear in southwest Alabama. Final report on project no. W–44 to Alabama Department of Wildlife and Conservation. 46 pp., 6 pl.

Hall, E.R. 1981. Mammals of North America. John Wiley and Sons, New York. 1175 pp.

Kennedy, M.L. 1991. Additional assessment of the systematics of *Ursus americanus luteolus*. Unpublished report to U.S. Fish and Wildlife Service, Jackson, MS Field Office. 14 pp. 8 fig.

Maehr, D.S. 1984a. Distribution of black bears in eastern North America. Pp. 74 *in* D.S. Maehr and J.R. Brady, ed., proceedings seventh eastern workshop on black bear research and management. Florida Game and Fresh Water Fish Commission, Tallahassee. 85 pp.

_____. 1984b. Black bear depredation on bee yards in Florida. Pp. 133–135 *in* D.J. Decker, ed., Proc. first eastern wildlife damage control conf. Ithaca, New York.

_____, and J.B. Wooding. Undated. Revised Florida black bear species account for Florida Committee on Rare and Endangered Species of Plants and Animals. 12 pp.

Merriam, C.H. 1896. Preliminary synopsis of the American bears. Proc. Biol. Soc. Wash. 10:65–83.

Pelton, M. 1989. The Louisiana black bear: status and future. Report to U.S. Fish and Wildlife Service. 22 pp.

Williams, L.E. Jr. 1978. Florida black bear. Pp. 23–25 in J.N. Layne, editor, Rare and Endangered Biota of Florida. Vol. 1: Mammals. 52 pp.

Wooding, J.B. 1990. Black bear harvest analysis. Final report on study no. 7554 to Florida Game and Fresh Water Fish Commission, Tallahassee. 8 pp.

_____, and T.S. Hardisky. Undated. Black bear habitat study. Final report on study 7552 to Florida Game and Fresh Water Fish Commission, Tallahassee. 37 pp., 8 tables, 2 append.

Author

The primary author of this notice is Dr. Michael M. Bentzien (see **ADDRESSES** section above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

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Dated: December 31, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–243 Filed 1–6–92; 8:45 am]

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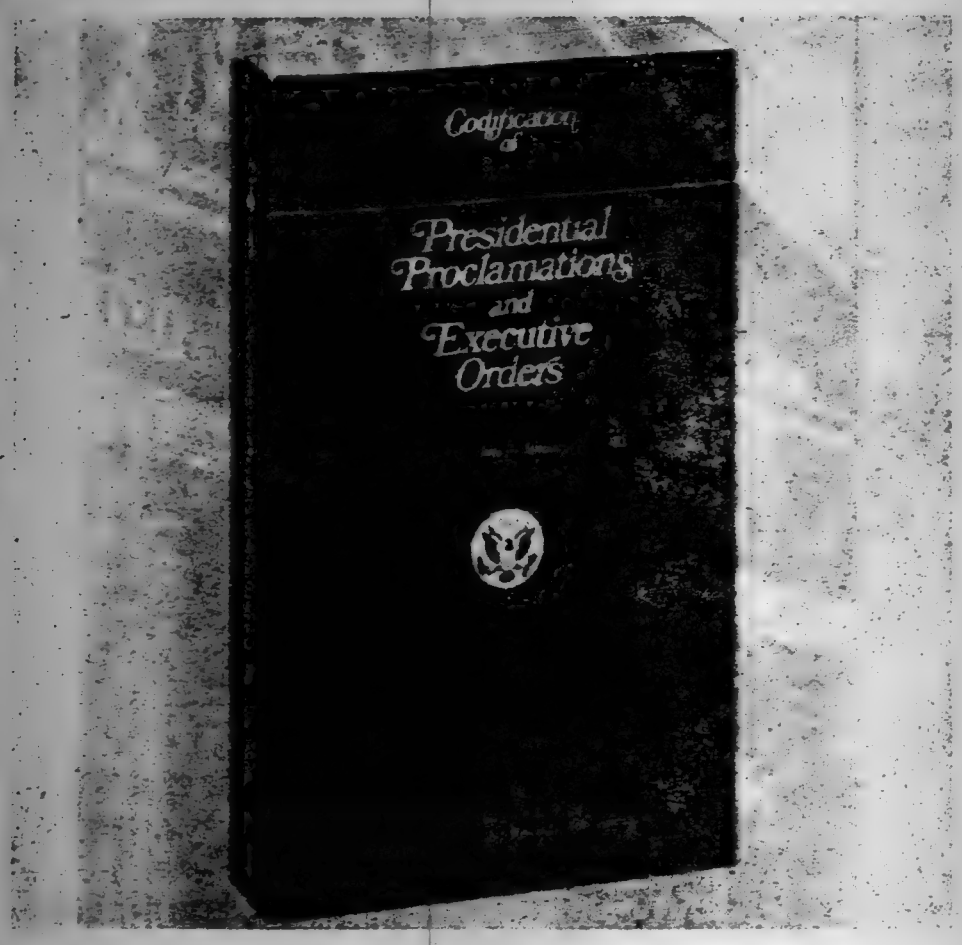

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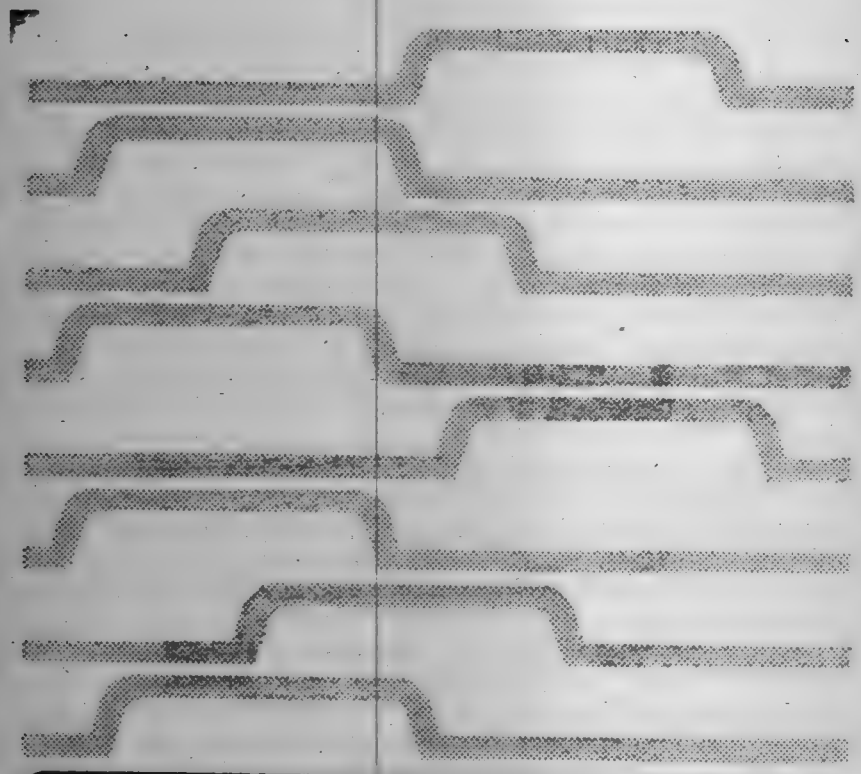

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federal register

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VOL 57 ISS 5 JA 8 1992 UMI

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2636

RIN 3209-AA13

Prohibition of Honoraria

AGENCY: Office of Government Ethics.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Government Ethics is issuing an amendment to 5 CFR part 2636 to implement section 314 of the Legislative Branch Appropriations Act for 1992 for executive branch employees. Section 314 of that act amends section 505(3) of the Ethics in Government Act to provide that the definition of the term "honorarium" includes a payment of money or any thing of value for "a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government."

DATES: Interim regulation effective January 1, 1992. Comments by agencies and the public are invited and must be received by March 9, 1992.

ADDRESSES: Comments on this interim regulation should be sent to the Office of Government Ethics, suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Ms. Glynn.

FOR FURTHER INFORMATION CONTACT: Marilyn Glynn, Office of Government Ethics, telephone (202/FTS) 523-5757, FAX (202/FTS) 523-6325.

SUPPLEMENTARY INFORMATION:

A. Summary of Legal Background

This interim rule is being published by the Office of Government Ethics following consultation with the Department of Justice and the Office of Personnel Management. It amends 5 CFR 2636.203(a) to reflect the change in the definition of the term "honorarium" in section 505(3) of the Ethics in Government Act of 1978 ("Ethics Act"), at 5 U.S.C. App., as amended by section 314(b) of the Legislative Branch Appropriations Act for 1992 (Pub. L. 102-90, 105 Stat. 447, at 469). Interim regulations implementing sections 501-505 of the Ethics Act, 5 U.S.C. App., for the executive branch, including the honorarium prohibition at section 501(b) of the Ethics Act, were issued by the Office of Government Ethics as 5 CFR part 2636 (56 FR 1721-1739, January 17, 1991; 56 FR 21589, May 10, 1991; and 56 FR 51319, October 11, 1991).

Section 501(b) of the Ethics Act, 5 U.S.C. App., provides that:

> An individual may not receive any honorarium while that individual is a Member, officer or employee." As enacted by the Ethics Reform Act of 1989 (Pub. L. 100-194, 103 Stat. 1716, at 1762), section 505(3) of the Ethics Act defined the term "honorarium" to mean a "payment of money or any thing of value for an appearance, speech or article by a Member, officer or employee" and included an exception only for certain travel expenses. Effective January 1, 1992, section 314(b) of Public Law 102-90 amends that definition to mean a "payment of money or any thing of value for an appearance, speech or article (including a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government) by a Member, officer or employee * * *.

The report of the Bipartisan Task Force on Ethics that drafted the original 1989 honorarium prohibition expressed an intention that it apply to appearances, speeches or articles individually or in a series:

> The task force intends that the prohibition on honoraria for speeches, articles, and appearances extends to payment or compensation for such activity in any form. The ban on honoraria could not be circumvented, for example, by arranging for a continuing series of talks, lectures, speeches, or appearances and re-characterizing the income as a "stipend" or "salary." 135 Cong. Rec. H9257 (daily ed. November 21, 1989).

The effect of the present amendment of the law is to create an exception to the honorarium prohibition for compensation for certain appearances, speeches or articles if they are made, delivered or published as a series. This interim rule adds a new paragraph (a)(13) to 5 CFR 2636.203 and modifies a few examples following that provision to reflect the new statutory exception. In the absence of a statutory definition of the word "series," the interim regulation adopts the primary meaning given in Webster's Third New International Dictionary: "a group of usually three or more things or events standing or succeeding in order and having a like relationship to each other."

The phrase "directly related to the individual's official duties" is not further defined in this interim regulation. A proposed definition of the similar phrase "relates to the employee's official duties" is included for codification at § 2635.807(a)(1) of this chapter in the proposed Standards of Ethical Conduct for Employees of the Executive Branch which was issued for comment by the Office of Government Ethics on July 23, 1991 (56 FR at 33812). As there proposed, relatedness would encompass subject matter that focuses specifically on responsibilities, programs, or operations of the employee's agency as well as subject matter that focuses specifically on the employee's individual duties. Pending issuance of a definition that can be cross-referenced in this 5 CFR part 2636, employees should rely on the guidance in Office of Government Ethics informal advisory opinion 85×16 issued October 28, 1985 in determining whether subject matter that does not deal with the employee's particular duties is nevertheless directly related to his or her official duties. That opinion is published at pages 589-600 of the Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics (1979-1988), and provides in pertinent part (at p. 596):

> When the seminar, conference, or briefing in which the employee wishes to participate does not involve non-public information, but the subject matter thereof relates to the programs or operations of the employee's agency, the permissibility of the activity depends upon how closely the subject matter relates to the agency's responsibilities. Generally, an employee * * * may lecture on a subject within the employee's inherent expertise based on his or her educational background or experience, even though the subject matter is related to the activities of the employing agency. The employee will be prohibited from receiving compensation only when the activity focuses specifically on the agency's responsibilities, policies, and programs * * *.

While that opinion deals specifically with speaking engagements and includes a different test for certain

Presidential appointees, it is in part the basis for the proposed definition in § 2635.807(a)(1) of this chapter and can be applied equally to the honorarium prohibition as to appearances, speeches and articles.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as the Director of the Office of Government Ethics I have found that good cause exists for waiving the general requirements of notice of proposed rulemaking and 30-day delayed effective date and for making this interim regulation effective on January 1, 1992. These requirements are being waived because the amended honorarium definition at section 505(3) of the Ethics Act, 5 U.S.C. App., is effective January 1, 1992. Because a violation of the honorarium prohibition of section 501(b) of the Ethics Act, 5 U.S.C. App., can result under section 504(a) of the Ethics Act, 5 U.S.C. App., in a civil penalty of up to $10,000 or the amount of compensation received for the prohibited conduct, whichever is greater, there is a need to amend the interim regulation for the executive branch effective January 1, 1992. Any comments received in response to this interim rule will be considered in formulating a final rule. Comments are due by March 9, 1992.

E.O. 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

Paperwork Reduction Act

As Director of the Office of Government Ethics, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 5 CFR Part 2636

Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: December 17, 1991.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2636 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2636—[AMENDED]

1. The authority citation for 5 CFR part 2636 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978, sections 102(a)(1)(A), 402, 404 and 501–505); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2636.203 is amended as set forth below:

A. Adding a new paragraph (a)(13) before the examples which follow;

B. Revising examples 3 and 6; and

C. Adding a new example 7.

The revisions and additions read as follows:

§ 2636.203 Definitions.

* * * * *

(a) * * *

(13) Payment for a series of three or more different but related appearances, speeches or articles, provided that the subject matter is not directly related to the employee's official duties and that the payment is not made because of the employee's status with the Government.

* * * * *

Example 3. An economist employed by the Department of the Treasury has entered into an agreement with a speakers bureau to give 10 unrelated after-dinner speeches to be arranged by the speakers bureau with various organizations over a six-month period. The employee may not receive the contract fee of $10,000. The 10 speeches do not constitute a series of speeches, but 10 individual speeches.

* * * * *

Example 6. An employee of the National Aeronautics and Space Administration may accept compensation for a series of three articles on white collar crime she has agreed to write for a local newspaper. While she could not accept compensation for just two articles on white collar crime, she could accept a national journalism award for two articles she had written on an uncompensated basis.

Example 7. A physicist employed by the Department of Energy to conduct research on laser technology may not accept a contract fee for a series of three lectures on lasers where one of the lectures is to focus on the research he is conducting for DOE.

* * * * *

[FR Doc. 92–398 Filed 1–7–92; 8:45 am]
BILLING CODE 6345–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–62; Special Conditions No. 25–ANM–54]

Special Conditions: Cessna Aircraft Company, Model 650, Citation VII, Airplane; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cessna Aircraft Co., Model 650, Citation VII, airplane. This airplane is equipped with high technology digital avionics systems which perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

DATES: The effective date of these special conditions is December 31, 1991. Comments must be received on or before February 24, 1992.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–62, 1601 Lind Avenue SW, Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–62. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton,

WA 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–62." The postcard will be date/time stamped, and returned to the commentor.

Background

On December 10, 1990, Cessna Aircraft Company applied for an amendment to their Type Certificate No. A9NM to include their Model 650, Citation VII, series airplanes. The Cessna 650 is a pressurized, two-crew, seven-passenger, low wing transport with two aft mounted turbofan engines. The modified Model 650, the Citation VII will be a derivative of the Model 650, Citation III. The modifications will include increased taxi, gross and zero fuel weights, new dual V_{mo} limits, installation of increased thrust Garrett TFE 731–4R–2S turbofan engines, installation of new electrically heated glass windshield and side windows, installation of a externally serviceable toilet and installation of increased capacity alternators. The airplane incorporates a number of novel or unusual design features, such as Digital Electronic Engine Controls (DEEC), which may be vulnerable to lightning and external high intensity radiated fields (HIRF).

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Cessna Aircraft Company, must show that the modified Model 650, the Citation VII, meets the applicable provisions of the regulations incorporated by reference in TC No. A9NM, or the applicable regulations in effect on the date of application for the Model 650 unless: (1) Otherwise specified by the Administrator; or (2) compliance with later effective amendments is elected or required under § 21.17; and (3) special conditions are prescribed by the Administrator. The proposed certification basis for the Model 650, Citation VII is shown below:

Part 25 of the Federal Aviation Regulations (FAR) effective February 1, 1965, as amended by Amendments 25–1 through 25–39, 25–43, and 25–44; plus §§ 25.901(c) and 25.1199 as amended through Amendment 25–40; §§ 25.1309 and 25.1351(d) as amended through Amendment 25–41; §§ 25.177, 25.255, and 25.703 as amended through Amendment 25–42, and §§ 25.1305 and 25.1529 as amended through Amendment 25–54; § 25.904, as amended through Amendment 25–62; Special Conditions No. 25–102–NM–7; and Exemption No. 3436 from compliance with § 25.1305(d)(3) for type certification without an engine rotor system unbalanced indicator. Part 36 of the FAR effective December 1, 1969, as amended by Amendment 36–1 through the amendment effective on the date of type certification. Part 34 of the FAR effective September 10, 1990, as amended through the amendment effective on the date of type certification.

Section 25.801 on ditching is not complied with.

Section 25.901(d) as amended by Amendment 25–46 for airplanes equipped with an inflight operable APU.

For the Sperry EDZ–605 and SPZ–6000 electronic flight instrument systems only, compliance has been shown with the following regulations: §§ 25.1321 (a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335 as amended through Amendment 25–41.

Equivalent Safety Items:

(1) Ditching Emergency Exits, § 25.807(d)
(2) Cockpit side Window, § 25.773(b)(2)
(3) Digital Turbine Speed (N_2) Indicator, § 25.1549 (a) and (b)
(4) Aisle Width, § 25.815
(5) Emergency Exit Signs, § 25.812(b)(1)
(6) Passenger Compartment Door, § 25.813(e)

Equivalent safety items for airplanes equipped with an inflight operable APU:

(7) Oil Pressure Indicator, § 25.1305(a)(4)
(8) Oil Temperature Indicator, § 25.1305(a)(6)
(9) Gas Temperature Indicator, § 25.1305(c)(1)
(10) Tachometer, § 25.1305(c)(3)

These special conditions are an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e. part 25, as amended) do not contain adequate or appropriate safety standards for the Model 650, Citation VII, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2). In addition to the applicable airworthiness regulations and special conditions, the Model 650, Citation VII, must comply with the noise certification requirements of part 36 and the engine emission requirements of part 34.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane.

Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, these special conditions require that the new electrical and electronic systems, such as Digital Electronic Engine Controls (DEEC), be designed and installed to preclude component damage and interruption of

function due to both the direct and indirect effects of lightning and HIRF.

Novel or Unusual Design Features

Lightning

To provide a means of compliance with these special conditions, a clarification on the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation; and,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulse observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$$i(t) = I_o (e^{-at} - e^{-bt})$$

where:

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp =	218,810	109,405	54,703	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

i_{peak} =	200 KA	100 KA	50 KA	10 KA

and

$(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
(di/dt), (amp/sec)	=	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	$.0625\times10^6$	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS, ADC and AHRS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	80	80
500 KHz–2 MHz	80	80
2 MHz–30 MHZ	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	33	33
200 MHz–400 MHz	150	33
400 MHz–1 GHz	6,300	2,000
1 GHz–2 GHz	9,000	1,500
2 Hz–4 GHz	17,600	1,200
4 GHz–6 GHz	14,500	900
6 GHz–8 GHz	4,000	666
8 GHz–12 GHz	9,000	2,000
12 GHz–20 GHz	4,000	509
20 GHz–40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Conclusion: This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subject to the notice and public comment procedures in several prior instances. For this reason and because a delay would significantly affect applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions without notice. Therefore, special conditions are being issued substantive changes for this airplane and made effective upon issuance.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 142 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Cessna Aircraft Company Model 650, Citation VII, airplane:

1. *Lightning protection.* a. Each new electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of new or modified electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from unwanted effects of high-intensity radiated fields (HIRF).* Each new electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

3. *The following definitions apply with respect to these special conditions:*

Critical Functions. Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

Issued in Renton, Washington, on December 31, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–344 Filed 1–7–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–05–AD; Amendment 39–8135; AD 91–11–04 R1]

Airworthiness Directives; Short Brothers, PLC, Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; rescission.

SUMMARY: This amendment rescinds Airworthiness Directive (AD) 91–11–04, which is applicable to certain Short Brothers, PLC, Model SD3–60 series airplanes. That AD requires modification of the wiring for the emergency lighting system and the installation of two new relays to prevent

failure of the emergency lights to illuminate during an emergency. Since the issuance of that AD, the FAA has determined that the required modification does not meet FAA requirements for the emergency lighting system.

EFFECTIVE DATE: January 8, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Standardization Branch, ANM-113; telephone (206) 227-2141. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: On May 7, 1991, the FAA issued AD 91-11-04, Amendment 39-7000 (56 FR 22308, May 15, 1991), applicable to certain Short Brothers, PLC, Model SD3-60 series airplanes, which requires modification of the wiring for the emergency lighting system and the installation of two new relays. That action was prompted by reports which indicated that the emergency lighting system will not illuminate automatically if normal airplane power is interrupted or lost. This condition, if not corrected, could result in failure of the emergency lights to illuminate during an emergency.

Since issuance of that AD, the FAA has determined that the modification required by the AD does not meet part 25 of the Federal Aviation Regulations (FAR) requirements for the emergency lighting system. Results of recent functional tests performed on emergency lighting systems modified in accordance with AD 91-11-04 revealed that the modified system activates when either the right-hand engine or right-hand generator fails. Part 25 of the FAR requires that the emergency lighting system activate only when both the right-hand and left-hand engine and/or generator fails.

Since the modification required by AD 91-11-04 does not meet FAR requirements for the emergency lighting system and will not prevent the addressed unsafe condition, the FAA has determined that it is necessary to rescind that AD in order to prevent operators from performing an unsatisfactory modification.

Short Brothers, PLC, is in the process of making design changes to the emergency lighting system which will meet FAA requirements. The FAA intends to follow this AD action with additional rulemaking action to address the design change or improved modification, once it is developed, approved, and available to operators.

The FAA has determined that safety will be assured in the interim by the applicable flight operating procedures that are currently required.

Since this action rescinds a requirement to install an unsatisfactory modification, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the rescission may be made effective upon publication in the **Federal Register**.

The Rescission

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-7000.

91-11-04 R1. Short Brothers, PLC: Amendment 39-8135. Docket 91-NM-05-AD. Rescinds AD 91-11-04, Amendment 39-7000.

Applicability: Model SD3-60 series airplanes, Serial Numbers SH3601 through SH3764, certificated in any category

This rescission is effective January 8, 1992.

Issued in Renton, Washington, on December 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-335 Filed 1-7-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ASW-54; Amendment 39-8128; AD 92-01-05]

Airworthiness Directives; Bell Helicopter, Textron, Inc. (BHTI), Model 206A, 206B, 206L, 206L-1 and 206L-3 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 89-22-01 R1, issued November 21, 1989, which was previously made effective as to all known U.S. owners and operators of certain BHTI, Model 206A, 206B, 206L, 206L-1, and 206L-3 helicopters by individual letters. This AD requires a one-time visual inspection of the main rotor (M/R) blades to determine if the M/R blades installed are those that have been previously scrapped. This amendment is prompted by reports of scrapped M/R blades being resold with falsified component history cards and being installed in operational helicopters. This AD is necessary to detect and prevent the installation of the main rotor blades which have reached their service life limits.

DATES: Effective February 5, 1992, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD's 89-22-01, issued October 18, 1989, and 89-22-01R1 issued November 21, 1989, which contained this amendment.

ADDRESSES: Applicable AD-related material may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, room 158, Bldg. 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Gary B. Roach, Rotorcraft Directorate, Rotorcraft Certification Office, ASW-170, FAA, Southwest Region, Fort Worth, Texas 76193-0170, telephone (817) 624-5179; fax (817) 740-3394.

SUPPLEMENTARY INFORMATION: On October 18, 1989, and November 21, 1989, the FAA issued Priority Letter AD's 89-22-01 and 89-22-01R1, respectively, applicable to Bell Model 206A, 206B, 206L, 206L-1 and 206L-3 helicopters, which require a one-time visual inspection of the M/R blades and replacement, as necessary, of certain blades listed in the AD's. This action was prompted by reports that certain M/R blades which had reached their fatigue life limit were scrapped and subsequently resold with falsified component cards. These scrapped components were later installed on operational helicopters. The actions specified in this AD are intended to identify the falsified main rotor blades by serial number, and if found, require removal and replacement with an airworthy part. This amendment is necessary to detect blades that have reached service life limits but may have been installed and, if undetected, could result in failure of the M/R blades and subsequent loss of control of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon where impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued October 18, 1989, and November 21, 1989, to all known U.S. owners and operators of certain BHTI Model 206A, 206B, 206L,

206L–1, and 206L–3 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 92–01–05. Bell Helicopter Textron, Inc. (BHTI): Amendment 39–8128, Docket Number 89–ASW–54.

Applicability: All Bell Helicopter Textron, Inc. Model 206A, 206B, 206L, 206L–1 and 206L–3 helicopters, certificated in any category, with main rotor blade part numbers (P/N) 206–015–001–001, 206–015–001–103, 206–015–001–105, or 206–010–200–033 installed.

Compliance: Required before further flight, unless already accomplished.

To prevent failure and separation of the main rotor blades, and subsequent loss of the helicopter, accomplish the following:

(a) Visually inspect the Model 206A and 206B main rotor blades and determine if one of the following serial number (S/N) blades is installed: TAC–0069, TAC–0542, TAC–0607, TAC–0614, TAC–0624, TAC–1643, TAC–1749, TAC–1776, TAC–1831, TAC–1911, TAC–1922, TAC–2399, TAC–2766, TAC–5742, TKK–6794, TKK–9683, or TKK–9933. If any one of these main rotor blades is installed, remove and replace with a servicable part prior to further flight.

(b) Visually inspect the Model 206L, 206L–1, and 206L–3 main rotor blades and determine if one of the following S/N blades is installed: T–92, T–245, T–417, TLY–0075, TLY–0095, TLY–0764, TLY–0770, TLY–0973, TLY–1438, TLY–1619, TLY–1653, TLY–1697, TLY–1766, TLY–1801, TLY–1858, TLY–1953, TLY–1984, TLY–2031, TLY–2039, TLY–2064, TLY–2081, TLY–2148, TLY–2335, TLY–2337, TLY–2549, TLY–2603, TLY–2604, TLY–2625, TLY–2633, TLY–2648, TLY–2745, TLY–2786, TLY–2951, or TLY–2954. If any one of these main rotor blades is installed, remove and replace with a serviceable part prior to further flight.

Note: The serial number may be found on the Bell Helicopter data plate located on top of the blade at the root end and is also marked on the root end of the lower grip plate in the 1.5 inch radius.

(c) If the serial number of the main rotor blade matches one listed in paragraph (a) or (b) of this AD, report the registration number and serial number of the affected helicopter and provide a copy of the parts tag with which the part was delivered, if available. Send the report to the Manager, Rotorcraft Certification Office, Southwest Region, Federal Aviation Administration, Fort Worth, Texas 76193–0170, telephone (817) 624–5170, with 10 days of the inspection. (Reporting approved by the Office of Management and Budget under OMB No. 2120–0056.)

(d) An alternative method of compliance which provides an equivalent level of safety, may be used if approved by the Manager, Rotorcraft Certification Office, Southwest Region, Federal Aviation Administration, Fort Worth, Texas 76193–0170, telephone (817) 624–5170.

(e) This amendment (39–8128), AD 92–01–05, becomes effective February 5, 1992, persons except those persons to whom it was made immediately effective by Priority Letter AD's 89–22–01, and 89–22–01R1 issued October 18, 1989, and November 21, 1989, respectively, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on December 17, 1991.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92–338 Filed 1–7–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 92–4]

RIN 1515–AA87

Amendment to the Interim Customs Regulations Regarding the Harbor Maintenance Fee

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulation; solicitation of comments.

SUMMARY: This document amends the interim Customs Regulations relating to the harbor maintenance fee. The interim regulations, which, among other things, established procedures for collection of a port use fee for transporting cargo on specified United States waterways, were promulgated under the Water Resources Development Act of 1986. Section 6109 of the Technical and Miscellaneous Revenue Act of 1988 amended 26 U.S.C. 4462, pertaining to the harbor maintenance fee, to include an exemption from the harbor maintenance fee for cargo owned or financed by nonprofit organizations or cooperatives and certified by the Customs Service as intended for use in humanitarian or development assistance overseas. This amendment to the interim regulations sets forth the terms and applicability of the exemption.

DATES: Effective Date: January 8, 1992. Comments must be submitted on or before March 9, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service Headquarters, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Patricia Barbare, User Fee Task Force, (202–566–8648).

SUPPLEMENTARY INFORMATION:

Background

The Water Resources Development Act established a Harbor Maintenance Trust Fund which contributes to the operation and maintenance of ports and harbors in the United States. This fund is supported by a harbor maintenance fee which became effective on April 1, 1987. Interim regulations concerning the harbor maintenance fee (19 CFR 24.24) were issued on March 30, 1987 (52 FR 10198). Prior to January 1, 1991, the fund was supported by a harbor maintenance

fee of 0.04 percent of the value of the commercial cargo loaded or unloaded. Effective January 1, 1991, however, the harbor maintenance fee was increased to 0.125 percent of the value of the commercial cargo loaded or unloaded. Section 11214, Omnibus Budget Reconciliation Act of 1990, Public Law 101–508. A change in the regulations concerning this increase was published in the **Federal Register** on May 9, 1991 (56 FR 21445).

Section 6109(a) of the Technical and Miscellaneous Revenue Act of 1988 (the Revenue Act), Public Law 100–647, amended 26 U.S.C. 4462, pertaining to the harbor maintenance fee, to provide that no tax shall be imposed on any nonprofit organization or cooperative for cargo which is owned or financed by such nonprofit organization or cooperative and which is certified by U.S. Customs as intended for use in humanitarian or development assistance overseas. The exemption was made effective as of the effective date of the fee, April 1, 1987. Accordingly, § 24.24(c) of the Customs Regulations, (19 CFR 24.24(c)), is being amended to reflect the exemption and to provide procedures for claiming cargo as exempt from the application of the harbor maintenance fee because the cargo is owned or financed by nonprofit organizations or cooperatives and is intended for use in humanitarian or development assistance overseas, including contiguous countries.

Pursuant to 26 U.S.C. 4462(h), the donating organization or cooperative is required to be a nonprofit entity. Customs has concluded that nonprofit status will be determined pursuant to the Internal Revenue Service requirements under 26 U.S.C. 501(c)(3), which provide for income taxation exemption.

Humanitarian assistance is considered to be assistance which is required for the survival of the affected population in cases of, or in preparation for, emergencies of all kinds. Such relief assistance includes, but is not limited to: Food items, shelter, clothing, basic home utensil kits and small electric generators. Development assistance is considered to be aid similar to that provided pursuant to chapter 1 of part 1 of the 1961 Foreign Assistance Act, as amended, 22 U.S.C. 2151–1(b). Such development assistance would include, but is not limited to, aid designed to promote: agricultural productivity, reduction of infant mortality, reduction of rates of unemployment and underemployment, and an increase in literacy.

Refund Procedure

The Revenue Act provides that the donated cargo exemption shall be retroactive to April 1, 1987. Prior to the granting of the exemption, the Revenue Act requires Customs to certify that the cargo is intended for use in humanitarian or development assistance overseas. As a consequence, the harbor maintenance fee must be paid on donated cargo and a refund request initiated subsequent to the payment. The donated cargo exemption to the harbor maintenance fee cannot be claimed through the initial filing of a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349.

A refund of the harbor maintenance fee may be obtained by completing an Amended Quarterly Summary Report, Customs Form 350, and forwarding it to the U.S. Customs Service, Office of Inspection and Control, 1301 Constitution, NW., Washington, DC 20229, along with supporting evidence that the entity donating the cargo is a nonprofit organization or cooperative and that the cargo was intended for humanitarian or development assistance overseas. Description of the cargo on the shipping documents and a brief summary of the intended use of the goods, if such use is not reflected in the documents, are acceptable evidence for certification purposes. Copies of the Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, should be attached for each quarter for which refund is requested. Upon completion of certification, the documents will be forwarded to the National Finance Center for refund processing.

Each nonprofit organization or cooperative claiming the exemption must maintain documentation pertaining to the exemption for a period of 5 years. The documentation must be made available for inspection by Customs in accordance with the provisions of § 162.1a–i of the Customs Regulations (19 CFR 162.1a–i).

Comments

Consideration will be given to any timely submitted written comments (preferably in triplicate) regarding this amendment. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, U.S. Customs Service Headquarters, room 2119, 1301 Constitution Avenue, NW., Washington, DC.

Inapplicability of Notice and Delayed Effective Date Provisions

Inasmuch as the statutory provision on which this amendment is based is retroactive, and confers a benefit on the public, this regulation is to be effective retroactively to April 1, 1987, and pursuant to 5 U.S.C. 553(b)(B), notice and public procedure is impracticable and unnecessary. Similarly, pursuant to 5 U.S.C. 553(d) (1), (3) a delayed effective date is not provided. However, prior to the adoption of final regulations, consideration will be given to all timely submitted written comments.

Executive Order 12291 and Regulatory Flexibility Act

Because this amendment does not meet the criteria for a "major rule" within the meaning of Executive Order 12291, Customs has not prepared a regulatory impact analysis. Inasmuch as a notice of proposed rulemaking is not required for these interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

Paperwork Reduction Act

The collection of information contained in the interim regulation has been approved by the Office of Management and Budget (OMB) under 1515–0184. The information required by this amendment will not increase the paperwork burden on the majority of those affected by the overall regulation. This amendment will only affect those entities which are eligible to obtain refunds of harbor maintenance fees paid on donated cargo to be used for humanitarian purposes or organizations. The amendment will require requesting organizations to compile and submit to Customs the documentation necessary to demonstrate that the fees should be refunded. This documentation should already be in the organization's possession.

The estimated burden of the requirement in this amendment that the respondents/recordkeepers gather necessary information, prepare Customs Form 350 and attach the required documentation will be approximately 20 minutes. It is anticipated that approximately 100 respondents/recordkeepers will be required to submit this documentation annually.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the

Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Customs Service at the address previously specified.

Drafting Information

The principal author of this document was Michael Smith, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 24

Accounting, Customs duties and inspection, Imports, Taxes.

Amendments to the Regulations

Accordingly, part 24, Customs Regulations (19 CFR part 24), is amended as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority for part 24, Customs Regulations, continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 31 U.S.C. 9701, unless otherwise noted.

* * * * *

§ 24.24 also issued under 26 U.S.C. 4461, 4462;

* * * * *

2. Section 24.24 is amended by adding paragraphs (b)(5), (b)(6), (b)(7), and (c)(8) to read as follows:

§ 24.24 Harbor Maintenance Fee.

* * * * *

(b) *Definitions.*

* * * * *

(5) *Humanitarian assistance* is considered to be assistance which is required for the survival of the affected population in cases of, or in preparation for, emergencies of all kinds. Such relief assistance would include, but is not limited to: food items, shelter, clothing, basic home utensil kits, and small electric generators.

(6) *Development assistance* is considered to be assistance similar to that provided for pursuant to chapter 1 of part 1 of the 1961 Foreign Assistance Act, as amended, 22 U.S.C. 2151–1(b). Such development assistance would include, but is not limited to, aid to promote: Agricultural productivity, reduction of infant mortality, reduction of rates of unemployment and underemployment, and an increase in literacy.

(7) *Non-profit* means an organization or cooperative exempt from income taxation pursuant to 26 U.S.C. 501(c)(3).

(c) *Exemptions.* The following are not subject to the fee:

* * * * *

(8) Cargo owned or financed by nonprofit organizations or cooperatives which is certified by the U.S. Customs Service as intended for use in humanitarian or development assistance overseas, including contiguous countries.

(i) The donated cargo is required to be certified as intended for use in humanitarian or development assistance overseas by Customs. Subsequent to the payment of the fee, a request for refund should be made on an Amended Quarterly Summary Report, Customs Form 350, and forwarded to the U.S. Customs Service, Office of Inspection and Control, 1301 Constitution Avenue, NW., Washington, DC 20229. To permit certification, supporting evidence that the entity donating the cargo is a nonprofit organization or cooperative should be included along with supporting evidence that the cargo was intended for humanitarian or development assistance overseas. A description of the cargo listed in the shipping documents and a brief summary of the intended use of the goods, if such use is not reflected in the documents, are acceptable evidence for certification purposes. Copies of the Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, should be attached for each quarter that a refund is requested.

(ii) Each nonprofit organization or cooperative claiming the exemption under this subpart shall maintain documentation pertaining to the exemption for a period of 5 years. The documentation shall be made available for inspection by Customs in accordance with the provisions of §§ 162.1a through 162.1i of this chapter.

* * * * *

Carol Hallett,
Commissioner of Customs.

Approved: December 31, 1991.

Peter K. Nunez,
Assistant Secretary of the Treasury.

[FR Doc. 92-355 Filed 1-7-92; 8:45 am]
BILLING CODE 4820-02-M

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19 CFR Part 101

[T.D. 92-6]

Customs Regulation Amendment to Relocate the North Carolina Customs District Headquarters at Charlotte

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document changes the field organization of the Customs Service by relocating the North Carolina Customs District headquarters from Wilmington, North Carolina, to Charlotte, North Carolina. This relocation is prompted by the dramatic shift in the volume of Customs activity which has occurred within this district in recent years. Customs operational services in Wilmington, which would remain a Customs port of entry, would not be impaired. This relocation is part of Customs continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better overall service to carriers, importers, and the general public.

EFFECTIVE DATE: February 7, 1992.

FOR FURTHER INFORMATION CONTACT: Wallis W. McLaren, Office of Inspection and Control, (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers and the public, Customs published a notice in the Federal Register on May 15, 1991 (55 FR 22369), proposing to amend § 101.3, Customs Regulations (19 CFR 101.3), to change the Customs Service field organization by relocating the North Carolina Customs District headquarters from Wilmington, North Carolina, to Charlotte, North Carolina.

Discussion of Comments

Fifteen comments were received in response to the Federal Register notice. Twelve commenters concurred with the proposal as presented. Two commenters supported the proposal, provided that adequate staff would still be assigned to Wilmington, and that the North Carolina District office would be independent of the Charleston, South Carolina, District office. One commenter disagreed with the proposal because of its belief that the relocation would result in continued loss of business at Wilmington.

Over the past six years, Charlotte has experienced very significant commercial growth which, in turn, has stimulated large increases in Customs activities there. Specifically, for example, since 1985, the number of Customs entries in Charlotte has increased from over 23,000 to over 40,000. During the same period in Wilmington, the number of Customs entries decreased from over 13,000 to below 11,000. Duty collections in 1990 in Charlotte amounted to over $70 million, while duty collections in Wilmington

amounted to $51 million. All Customs projections in various activity categories (including duty collections) strongly point to a continuation of increased Customs volume in Charlotte.

Given this workload growth in Charlotte, Customs believes that relocation of the North Carolina Customs District headquarters at Charlotte, North Carolina, will result in more economical and efficient use of its personnel and resources in carrying out the Customs mission.

The relocation, however, will affect only district management and support personnel in the North Carolina Customs District, who will simply be reassigned from Wilmington, North Carolina, to Charlotte, North Carolina. Wilmington will, of course, remain a Customs port of entry, with existing levels and hours of commercial operations, and the assignment of adequate staff, sufficient to continue meeting the needs of the Wilmington trade community. Accordingly, Customs operational services in Wilmington will not be impaired under the relocation.

Therefore, after further review of the matter, Customs has determined that it is in the public interest to relocate the headquarters of the North Carolina Customs District at Charlotte, North Carolina.

Authority

This change is made under the authority vested in the President by Section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. 10289, September 17, 1951 (3 CFR 1949–1953 Comp. Ch. II), and pursuant to the authority provided by Treasury Department Order No. 101–5, dated February 17, 1987 (52 FR 6282).

Executive Order 12291 and Regulation Flexibility Act

Because this document is related to agency organization and management, it is not subject to Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Amendments to the Regulations

Part 101, Customs Regulations (19 CFR part 101) is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The authority citation for part 101, Customs Regulations (19 CFR part 101), continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624, unless otherwise noted.

§ 101.3 [Amended]

2. The list of Customs regions, districts and ports of entry in § 101.3(b) is amended by removing "Wilmington, N.C.", directly below "Norfolk, Va." under the column titled "Name and headquarters", and inserting in its place, "Charlotte, N.C.", and by repositioning "Charlotte (T.D. 56079)", at the head of the column titled "Ports of entry", in the Charlotte, North Carolina, District, and, in appropriate alphabetical order thereunder, "Wilmington, including townships of Northwest, Wilmington, and Cape Fear (E.O. 7761, Dec. 3, 1937, 2 FR 2679, and territory described in E.O. 10042, Mar. 10, 1949, 14 FR 1155)".

Carol Hallett,

Commissioner of Customs.

Approved: November 22, 1991.

John P. Simpson,

Acting Assistant Secretary of the Treasury (Enforcement).

[FR Doc. 92–354 Filed 1–7–92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. N–91–3342; FR–3187–N–01]

Title I Property Improvement and Manufactured Home Loans; Equity Requirement for Certain Property Improvement Loans

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Rule.

SUMMARY: On October 18, 1991, the Department published a final rule in the **Federal Register** (56 FR 52414), implementing major changes to reform the Title I property improvement and manufactured home loan programs. The final rule added a new § 201.20(a)(3) to 24 CFR part 201 to require that, for any property improvement loan (or combination of such loans on the same property) with a total principal balance in excess of $15,000, the borrower must have equity in the property being improved at least equal to the loan amount. However, this requirement is not applicable to any loan originated by or on behalf of a governmental institution to provide assistance to a low- or moderate-income family. This Notice provides lenders with procedures to follow in determining the market value of the property being improved and in evaluating whether the borrower has sufficient equity in the property to qualify for a loan.

EFFECTIVE DATE: November 18, 1991.

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Director, Title I Insurance Division, room 9158, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708–2880. Hearing- or speech-impaired individuals may call HUD's TDD number which is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

On October 18, 1991, the Department published a final rule implementing major changes to reform the title I property improvement and manufactured home loan programs. One of the goals of program reform is to require more secure collateral for property improvement loans. In line with this goal, the Department has, for the first time, established an equity requirement for certain property improvement loans.

The final rule added a new § 201.20(a)(3) to 24 CFR part 201 to require that, for any property improvement loan (or combination of such loans on the same property) with a total principal balance in excess of $15,000, the borrower must have equity in the property being improved at least equal to the loan amount. However, this equity requirement is not applicable to any loan originated by or on behalf of a governmental institution to provide assistance to a low- or moderate-income family.

This Notice provides lenders with procedures to follow in determining the market value of the property to be improved and in evaluating whether the borrower has sufficient equity in the property to qualify for a loan. These procedures are applicable to any qualifying property improvement loan (or combination of such loans) for which a credit application is approved on or after November 18, 1991. On loans originated by a loan correspondent,

compliance with these procedures is the responsibility of the loan correspondent.

Definitions

In determining whether a loan is exempted from the equity requirement by virtue of the fact that it will be originated by or on behalf of a governmental institution to provide assistance to a low- or moderate-income family, the following definitions are applicable:

"Governmental institution" shall be a Federal, State or municipal agency, a Federal Reserve Bank, a Federal Home Loan Bank, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

"Low-income family" is one whose annual income does not exceed 80 percent of the median income for the area, with adjustments for smaller and larger families. This is the same standard used by the Department for virtually all of its housing assistance programs (see 24 CFR 813.102).

"Moderate-income family" is one whose annual income is between 80 and 115 percent of the median income for the area, with adjustments for smaller and larger families. This is the standard used by many State and local public agencies that utilize the title I program in connection with their housing assistance and neighborhood revitalization efforts.

Determining the Borrower's Equity

To determine the amount of the borrower's equity in the property being improved, the lender shall ascertain the market value of the property without taking into account any value that would be added by the proposed improvements, and then subtract the outstanding principal balances of all other loans that are secured by the property.

The lender may use a real property appraisal received from another source to document the market value of the property, if that appraisal was completed within one year prior to the date of loan approval and meets the appraisal requirements specified in this Notice. In those localities where real estate tax assessments are updated on an annual basis, the lender may accept the current tax assessment as documentation that the equity requirement has been met.

Appraisal Requirements

All real property appraisals shall be carried out in accordance with the current edition of the Uniform Standards of Professional Appraisal Practice, as adopted by the Appraisal Standards Board of The Appraisal Foundation. The real property appraisal report shall be in writing, and the lender shall retain a copy of the completed appraisal report, including any worksheets or computations prepared by the appraiser, in the loan file.

Qualifications of the Appraiser

Lenders may use either staff appraisers or independent fee appraisers; however, only fully qualified appraisers shall be selected to perform these appraisals. If the State where the property is located as adopted appraiser licensing or certification requirements, the appraiser must have a valid license or certification in that State. Evidence that the appraiser has been licensed or certified by the State shall be retained by the lender.

For those States that do not yet require a license or certification to perform appraisals, the appraiser must meet the minimum education and experience criteria for a Licensed Real Property Appraiser as adopted by the Appraiser Qualifications Board of The Appraisal Foundation. These minimum criteria include 75 classroom hours of courses in subjects related to real estate appraisal which include coverage of the Uniform Standards of Professional Appraisal Practice, and the equivalent of two years of appraisal experience. A resume or other evidence that the appraiser meets these minimum criteria shall be retained by the lender.

A detailed description of the appraiser qualifications criteria adopted by the Appraiser Qualifications Board may be obtained from: The Appraisal Foundation, 1029 Vermont Avenue, NW., suite 900, Washington, DC 20005, Telephone 202-347-7722.

Appraisal Fees

The title I regulations at 24 CFR 201.25(b)(1) have been revised to permit an appraisal fee to be financed with the proceeds of a property improvement loan, if such fee is incurred by the lender in connection with a loan in excess of $15,000. The lender may collect the appraisal fee from the borrower at the time of loan application; if the loan is made, the appraisal fee may then be included in the loan proceeds disbursed to the borrower, as long as the total amount disbursed does not exceed the maximum loan amount specified in 24 CFR 201.10(a)(1).

In the case of a dealer loan, the dealer may pay the appraisal fee from its own resources in the form of discount points paid to the lender, as long as the dealer does not accept any reimbursement for such payment from the borrower or any other party to the loan transaction. Since the payment of the appraisal fee by a dealer is for the benefit of the borrower, this procedure is permitted under 24 CFR 201.13.

Authority: Sec. 2, National Housing Act (12 U.S.C. 1703); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: December 30, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92-207 Filed 1-7-92; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 510

Implementation of the Minimum Wage Provisions of the 1989 Amendments to the Fair Labor Standards Act in Puerto Rico

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Publication of regulatory impact analysis; request for comment.

SUMMARY: This document provides the Department's regulatory impact analysis for interim final regulations implementing the minimum wage provisions of the 1989 Amendments to the Fair Labor Standards Act (FLSA) in Puerto Rico.

DATES: Comments are due on or before February 7, 1992.

ADDRESSES: Submit written comments to Samuel D. Walker, Acting Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, U.S. Department of Labor, room S-3506, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On March 30, 1990, interim final regulations were published in the **Federal Register** (55 FR 12114) implementing the minimum wage provisions of the 1989 Amendments to the Fair Labor Standards Act (FLSA) in the Commonwealth of Puerto Rico. Amendments to this interim final rule concerning the phase-in of the minimum wage in agricultural, and industries with

fewer than three reporting employers were published in the **Federal Register** on September 27, 1990 (55 FR 39574), October 1, 1990 (55 FR 39958), and December 27, 1990 (55 FR 53246). The interim final rule of March 30, 1990, stated at 55 FR 12117 that it was not feasible to follow the procedures of Executive Order 12291 due to deadlines imposed by statutory minimum wage increases and that the Department's preliminary Regulatory Impact Analysis would be published at a later date. A review of information on the cost impact of the above interim final rules has been completed and this document provides the Department's preliminary regulatory impact analysis under Executive Order 12291.

Background

On November 17, 1989, the Fair Labor Standards Amendments of 1989 (Pub. L. 101–157) were enacted. These Amendments provide, among other provisions, that the increases in the statutory minimum wage required under section 6(a)(1) of FLSA (to $3.80 an hour effective April 1, 1990, and to $4.25 an hour effective April 1, 1991) would be phased in over extended periods of time in the Commonwealth of Puerto Rico. Except in the case of employees of the United States, and of hotels, motels, restaurants, and certain other food service establishments or activities, employers in industries in which the average hourly wage is less than $4.65, including the Commonwealth of Puerto Rico, the municipalities, and other governmental entities, are eligible for an extended phase-in period.

The Amendments establish four different categories or tiers based on the average hourly earnings of employees in the subject industry or, in the case of Tier Four, for certain employees of the Commonwealth and the municipalities. Tier One calls for minimum wage increases identical to those required on the mainland. Tiers Two, Three, and Four provide for extended phase-in periods—five, six, and seven equal increments, respectively, until the minimum wage of $4.25 is reached.

To qualify for one of the extended phase-in periods under Tiers Two, Three, or Four, Conference Report 101–47 [1] states that the Commonwealth would "be required to furnish official survey data substantiating that any industry's average hourly wage is below either the $4.65 or the $4.00 threshold levels." The Conference Report goes on to acknowledge that "the only such data available are provided in Puerto Rico's annual Census of Manufacturing [Industries] * * *." The Conference Report also states that "the government intends to collect additional data where appropriate" and that the "data should be at a level of specificity comparable to the four digit Standard Industrial Classification (SIC) code level, consistent with the average hourly earnings data published by the Department of Labor." SIC Manual code references are to the Standard Industrial Classification (SIC) Manual, Executive Office of the President, Office of Management and Budget.

The above interim rule and amendments designated applicable tiers for employers in Puerto Rico by Standard Industrial Classification (SIC) codes based on statutory specifications, data provided in Puerto Rico's annual Census of Manufacturing, and average hourly earnings data collected by the Commonwealth government.

Summary of Preliminary Regulatory Impact Analysis

I. Introduction

The 1989 Amendments to the Fair Labor Standards Act (FLSA) provided for a two step phase-in increase in the minimum wage for all covered activities on the mainland: To $3.80 an hour effective April 1, 1990, and to $4.25 an hour one year later. With respect to the Commonwealth of Puerto Rico, the Congress in enacting the FLSA Amendments of 1989 established a series of four levels or tiers of minimum wage increases that become effective over an extended period of four, five, and six years. This extended phase-in schedule was provided for in recognition of current economic conditions in Puerto Rico, necessitating some relief from the two step mainland minimum wage increase, especially for many smaller and labor intensive industries and commonwealth and municipal government entities.

The following analysis estimates, in two different ways, what the total wage bill would be under a 6-year phase-in of the minimum wage. The analysis concludes that the added wage bill would be $1.0 to $1.1 billion, and that it is reasonable to assume that the order of magnitude of the wage bill would be similar even if all the minimum wage increases were required to occur in the first two years after enactment of the Act, as on the mainland. The analysis then discusses the likely short-term and longer-term economic effects of such a wage bill, e.g., on employment. The analysis concludes that both shorter and longer term adverse effects would likely be greater if the minimum wage changes had been compressed into two years, compared to the 6-year phase-in that the act mandates.

Absent the special extended phase-in provision applicable only to Puerto Rico, all covered business and government activities would have had to adjust to the new minimum wage rates on the same two year schedule applicable to covered activities on the mainland. The analysis concludes that the economic impact of this adjustment would have been felt much sooner, and caused a greater shock with a greater potential for causing disruptions to the Puerto Rico economy (especially in the smaller and more labor intensive industries and with Commonwealth Corporations and municipal governments) than those associated with the extended six year phase-in of new minimum wage rates.

II. Estimating Cumulative Wage Bill Effects of a 6-year Phase-in

Two alternate assumptions were used to estimate the cumulative wage bill effects of 1989–1996. The first assumed no employment growth. The second assumed employment growth based on historical experience.

No-growth

The effects of the tier phase-in of new minimum wage rates were measured by determining the aggregate increases in the average hourly wage rates in the various sectors of the Puerto Rico economy, without consideration of employment growth. In order to do this the increase in average hourly earnings and in average monthly earnings were determined for each sector. The effects as of 1996, the last year of the phase-in, were measured. By that time, all sectors will be required to pay a minimum hourly wage rate of $4.25.

The same data used to determine the tier structure for the various sectors of the Puerto Rico economy were used to perform this analysis. These data were provided by the Commonwealth government and are included in Appendix Tables A1–A5. The data lists by industry, municipality, government agency, or public organization, the total number of employees, number of non-supervisory/production employees, average hourly wage rate, and number of hours worked per month. Monthly hours paid were assumed to be 162.5 hours per non-supervisory/production employee, based on information supplied by the Puerto Rico Bureau of Labor Statistics. The monthly wage bill for each industry, municipality,

[1] Conference Report 101–47 (101st Cong., 1st Sess., May 8, 1989) on a vetoed bill (H.R. 2) which is identical to the enacted provisions with respect to the Commonwealth, has been declared authoritative for the enrolled bill by a floor statement of Senator Kennedy (Cong. Rec., S. 14708, Nov. 8, 1989).

government agency, or public organization for 1989, prior to any change in the FLSA minimum, is presented in the tables in the columns headed "1989 Wage Bill".

By 1996, all industries are required to be paying a minimum hourly wage rate of $4.25. In fact, most employees will be earning at least $4.25 by 1995 since the last year of the phase-in applies only to a subset of non-supervisory employees of municipal governments and public organizations. If it is assumed that six years (from April 1, 1990 to April 1, 1996) allows time for the effects of a changing wage distribution [2] to work themselves through the Puerto Rico economy, then an estimate of the total wage bill in 1996 at the end of all phase-in periods can be made.

Estimation of the 1996 wage bill relies on the assumptions that by 1996, aggregate wage bill inflation due to the increasing minimum wage rate is such that the relationship between the average hourly wage rate and the statutory minimum for each industry, municipality, state agency, and public organization will be the same as it was in 1989, prior to the beginning of the phase-in periods; that by 1996 there has been no net decrease in the employment level due to disemployment effects of interim minimum wage rate increases; and that there is full compliance with the law.

Appendix Tables A1–A5 each include columns that show the differential that exists between the average hourly wage rate and the 1989 FLSA minimum and the level of the average hourly wage rate in 1996 if this differential were to remain constant. Continuing to use the convention that each non-supervisory/production employee works 162.5 hours per month results in the estimates for monthly wage bills by industry and sector for 1996. The summary table below illustrates the 1989 and 1996 monthly wage bills by industry and sector.

[2] These include disemployment effects, changes in the factor mix, productivity changes, and the effects of higher wages on aggregate demand and total product.

	1989	1996	Difference
Manufacturing	$118,305,964	$150,089,656	$31,783,692
Nonmanufacturing	114,662,928	145,467,894	30,804,966
Commonwealth Gvt	36,890,914	46,801,906	9,910,992
Municipalities	23,842,561	30,248,025	6,405,464
Public Org	23,099,749	27,777,160	4,677,411
Agriculture	2,306,514	2,925,666	619,152

Derivation of the wage bill differential for the 1989–1996 period is completed by totalling the difference for each sector and multiplying by twelve. Thus, the increase in the aggregate wage bill for the Puerto Rico economy between 1989 and 1996 due to the phase-in of the new minimum wage rate as required by the 1989 FLSA Amendments is approximately $1,010,420,124.

Growth

Alternatively, we can assume that the Puerto Rico economy will experience employment growth between 1989 and 1996 similar to its historical growth experience. Aggregate employment level data [3] were used to derive average annual employment growth rates between 1980 and 1987 of −0.31% in the manufacturing sector; 3.13% in the nonmanufacturing sector; 0.54% in municipal governments; 1.4% in the Commonwealth government; and 1.4% in public organizations. Growth in agriculture employment is assumed to be zero. Appendix Tables A6–A10 illustrate the new employment levels and associated wage bill in 1996. The new wage bills are in the columns headed "1996 Wage Bill (Scenario 2)". The summary table below illustrates the 1989 and 1996 monthly wage bills by industry and sector that result after assuming employment level growth rates as listed above.

[3] From Employment, Hours, and Earnings, States and Areas, 1972–87. Volume V. U.S. Department of Labor, Bureau of Labor Statistics, March 1989.

	1989	1996	Difference
Manufacturing	$118,305,964	$149,624,378	$31,318,414
Nonmanufacturing	114,662,928	150,021,039	35,358,111
Commonwealth Gvt	36,890,914	47,457,133	10,566,219
Municipalities	23,842,561	30,411,364	6,568,803
Public Org	23,099,749	28,166,040	5,066,291
Agriculture	2,306,514	2,925,666	619,152

Derivation of the wage bill differential for the 1989–1996 period is completed by totalling the difference for each sector and multiplying by twelve. Thus, the increase in the aggregate wage bill for the Puerto Rico economy between 1989 and 1996 due to the phase-in of the new minimum wage rate as required by the 1989 FLSA Amendments and assuming aggregate employment level growth rates similar to previous experience is approximately $1,073,963,880.

Summary

Thus, the two scenarios produce a range within which the increased wage bill may fall. Based on our estimates, by 1996, the increase in the wage bill across all industries and sectors in Puerto Rico will be between $1,010,420,124 and $1,073,963,880, that is, approximately $1 billion.

III. Estimating Cumulative Wage Bill Effects of a Two Year Phase-in

Consideration was given to calculating the wage bill cost of a 2-year phase-in of the 1989 amendments directly, rather than estimating only the 6-year phase-in cost and then using it as a surrogate for the 2-year cost. A

decision not to do so was made for several reasons:

A. Certain data are not available. Data on Tier 4 employers does not exist, and data on non-manufacturing and agricultural sectors are only samples.

B. The $1.0 to $1.1 billion 6-year costs is also so high that it is clear that, even if the 2-year calculation produced a lower figure, economic dislocation would be substantial.

C. Significant differences between the 2-year and 6-year phase-in costs would, in fact, be unlikely. A sample of employers' wage bills compressed into 2 years was found to be of the same order of magnitude as that for 6 years.

D. Finally, given methodological limitations discussed earlier, this report does not give specific levels of disemployment, or of resultant increases in wages and prices, that would result from the added wage bill cost.

In short, it would be necessary to complete a detailed survey over an extended period of time in order to fully assess the impact on Puerto Rico of the extended phase-in of minimum wage increases vis-a-vis the effects of applying the mainland two year phase-in. Despite the limitations described above, certain analysis can be done and conclusions drawn based on information currently available.

IV. Effects of a 2-year Vs. 6-year Phase-in of Wage Bill

For example, a review of the following tables indicates that as a result of the extended phase-in schedule provided for covered businesses in tier two, three and four, these employers have had a relief or a dollar savings of 25–30 cents an hour for each minimum wage worker in 1991, with further progressively smaller savings through 1995. Individually, for example, a small firm covered in tier two has an opportunity to save 25 cents an hour in 1990, 55 cents an hour in 1991, 35 cents an hour in 1992 and 20 cents an hour in 1993 for each minimum wage worker employed.

MINIMUM WAGE RATES EFFECTIVE APRIL 1ST OF—

Tier	1990	1991	1992	1993	1994	1995	1996
1	$3.80	$4.25					
2	3.55	3.70	$3.90	$4.05	$4.25		
3	3.50	3.65	3.80	3.95	4.10	$4.25	
4	3.50	3.60	3.75	3.85	4.00	4.10	$4.25

Tier	Amount saved by covered employer in Puerto Rico						
1							
2	.25	.55	.35	.20			
3	.30	.60	.45	.30	.15		
4	.30	.65	.50	.40	.25	.15	

It is important to realize that while the impact of these potential savings might be small compared to the Puerto Rico economy as a whole, the impact on certain industries can be quite large since the relief extended is targeted at generally smaller businesses that historically have small numbers of workers and have a larger proportion of workers paid at or near the required minimum wage.

Further, each time the statutory minimum wage rate is increased, there will be interim effects caused by each annual incremental minimum wage rate increase across all sectors. The first of these interim effects can be estimated by using the current wage distribution to determine the approximate number of employees that earn at or below the minimum wage at the beginning of the first phase-in period. Other annual interim effects will include disemployment effects among the lowest paid, least skilled workers. This occurs whenever the minimum wage is increased.

Using industry wage and employment data from the Current Population Survey (CPS) for total employment in the United States economy, and wage and employment data obtained from a special survey conducted by the Commonwealth government for the agriculture sector, wage distribution data presented in the table below were derived.

V. Wage Distribution

	$0.00–3.35	$3.36–3.79	$3.80–4.24	$4.25+
All Industries	3.7%	3.02%	4.72%	88.57%
Nonmanufacturing	4.53	3.62	5.52	87.70
Manufacturing	1.30	1.29	2.43	94.98
Agriculture	14.07	74.33	11.61	

For lack of better total employment and wage data, it is assumed that the all industry wage distribution applies for the municipal government, public organization, and Commonwealth government sectors. This assumption is likely to lead to an understatement of the number of employees in these sectors earning low wage rates. Nevertheless, application of the wage distribution data to the total employment data in Appendix Tables A1–A5 results in an estimate of 25,212 employees in Puerto Rico earning less than $3.80 per hour as of March 31, 1990. This means that 25,212 employees were directly affected by the increase in the minimum wage rate to $3.80 mandated as of April 1, 1990. Further application of wage distribution data to the total employment data yields an estimate of 16,123 employees that earned between $3.80 and $4.25 per hour as of March 31, 1990. This group, combined with those earning less than $3.80, will be directly affected by the second year increase in the minimum wage rate to $4.25. Thus, the first year wage rate increase will directly affect 25,212 employees and the second year increase will directly affect 41,335 or less employees.

In addition to these direct effects, each time the minimum wage is increased, those already being paid just above what the new minimum will be will probably experience an increase in their wage rates as well. This increase is considered an indirect effect. Thus, the initial increase in the minimum wage rate results in a ratcheting upwards of other wage rates. Those rates closest to the new minimum wage rate are affected first and usually to a greater

extent than wage rates that are significantly higher than the minimum.

Unfortunately, there is no way to safely estimate the magnitudes of these direct and indirect effects. First and second year increments in the aggregate wage bill can not be estimated by using what is known about the number of employees directly affected, because there is no way to know with enough certainty what their average hourly wage rate is. Only the range within which their average hourly wage rate falls is known. Nor can the indirect effect be estimated, because it is not known with enough certainty how many employees earning just above the new minimum wage rate will actually experience a wage increase in response to an increase in the statutory minimum.

Notwithstanding these uncertainties, certain conclusions can be drawn about shorter vs. longer-term effects:

A. After 2 years, there will likely be reduced total output, labor force participation, and employment for the Puerto Rican economy, especially among low skilled persons, if the total minimum wage increase were to be compressed into those two years. Such a degree of adverse economic effects will not occur if employers, after two years, had only been required to implement part of the minimum wage increases as part of a total 6-year phase-in plan.

B. After 6 years, output and employment would likely have recovered from the short-term effects of a 2-year phase-in of the minimum wage. However, the output, income and adverse social costs of unemployment lost in the first 5 years would not be recoverable. In addition, there would have been a substitution of capital for labor that would possibly result in some permanent adverse effects on certain industries and in loss of low-skilled jobs, which would particularly impact on the large numbers of less educated workers, including youth. By contrast, by the 6th year of a 6-year phase-in, these groups would likely have more opportunities.

In sum, while the data available allows for only rough estimates, had the Congress not provided an extended phase-in period for Puerto Rico employers to adjust to the higher minimum wage rates, the increase in the aggregate wage bill under a two year phase-in period would have been under one billion dollars, and would have been accompanied by other serious macroeconomic effects such as unemployment, inflation, and reductions in aggregate demand and total product. The greatest impact would have been on smaller businesses, which generally employ small numbers of workers with higher percentages paid at or near the applicable minimum. The impact would also have been felt in certain Commonwealth corporations and municipal government entities. These macro-effects are greatly mitigated with the six year phase-in period provided for Puerto Rico.

This document was prepared under the direction and control of John R. Frasert, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 510

Employment, Investigations, Labor, Law enforcement, Puerto Rico, Incorporation by reference, Minimum wages.

Signed at Washington, DC, on this 31st day of December, 1991.

Cari M. Dominguez,

Assistant Secretary For Employment Standards.

Appendix Tables

BILLING CODE 4510-27-M

TABLE 1. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN MANUFACTURING INDUSTRIES

SIC Number	Total Employment	Production Workers	Average Hourly Earnings 1989	Total Hours Paid	1989 Wage Bill	Percent Difference from 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
20	24173	17312	$5.82	2,813,200.0	$15,370,774	73.7	$7.38	$19,500,236
2011	274	235	$4.45	38,187.5	$169,934	32.8	$5.65	$215,588
2013	275	191	$4.70	31,037.5	$145,876	40.3	$5.96	$185,067
2015	943	770	$4.56	125,125.0	$570,570	36.1	$5.79	$723,857
2022	7	6	$3.35	975.0	$3,266	0.0	$4.25	$4,144
2023	112	71	$6.29	11,537.5	$72,571	87.8	$7.98	$92,068
2024	301	146	$4.89	23,725.0	$116,015	46.0	$6.20	$147,184
2026	1383	436	$5.85	70,850.0	$414,473	74.6	$7.42	$525,823
2032	370	150	$5.11	24,375.0	$124,556	52.5	$6.48	$158,019
2033	939	665	$5.11	108,062.5	$552,199	52.5	$6.48	$700,551
2035	99	70	$3.74	11,375.0	$42,543	11.6	$4.74	$53,972
2037	76	61	$4.12	9,912.5	$40,840	23.0	$5.23	$51,811
2038	457	379	$3.42	61,587.5	$210,629	2.1	$4.34	$267,216
2041	1	1	$3.36	162.5	$546	0.3	$4.26	$693
2043	7	2	$4.10	325.0	$1,333	22.4	$5.20	$1,690
2044	244	177	$7.88	28,762.5	$226,649	135.2	$10.00	$287,539
2045	13	9	$5.25	1,462.5	$7,678	56.7	$6.66	$9,741
2046	183	83	$5.99	13,487.5	$80,790	78.8	$7.60	$102,495
2048	563	353	$7.47	57,362.5	$428,498	123.0	$9.48	$543,617
2051	1085	489	$4.81	79,462.5	$382,215	43.6	$6.10	$484,899
2052	520	396	$5.43	64,350.0	$349,421	62.1	$6.89	$443,295
2053	11	10	$3.29	1,625.0	$5,346	-1.8	$4.17	$6,783
2061	2009	1620	$5.01	263,250.0	$1,318,883	49.6	$6.36	$1,673,209
2062	337	243	$8.84	39,487.5	$349,070	163.9	$11.21	$442,849
2064	568	454	$7.93	73,775.0	$585,036	136.7	$10.06	$742,210
2066	81	25	$3.96	4,062.5	$16,088	18.2	$5.02	$20,410
2067	740	96	$10.29	15,600.0	$160,524	207.2	$13.05	$203,650
2082	364	294	$7.78	47,775.0	$371,690	132.2	$9.87	$471,546
2084	46	30	$3.80	4,875.0	$18,525	13.4	$4.82	$23,502
2085	843	389	$6.52	63,212.5	$412,146	94.6	$8.27	$522,871
2086	1385	371	$8.85	60,287.5	$533,544	164.2	$11.23	$676,885
2087	493	312	$8.17	50,700.0	$414,219	143.9	$10.36	$525,502
2091	8029	7676	$5.41	1,247,350.0	$6,748,164	61.5	$6.86	$8,561,103
2095	436	132	$4.38	21,450.0	$93,951	30.7	$5.56	$119,192
2096	671	210	$6.55	34,125.0	$223,519	95.5	$8.31	$283,569
2097	95	72	$3.32	11,700.0	$38,844	-0.9	$4.21	$49,280
2098	75	60	$4.93	9,750.0	$48,068	47.2	$6.25	$60,981
2099	138	128	$4.45	20,800.0	$92,560	32.8	$5.65	$117,427
21	1177	1026	$6.39	166,725.0	$1,046,747	90.7	$8.11	$1,327,963
2111	257	209	$10.57	33,962.5	$358,984	215.5	$13.41	$455,427
2121	856	760	$5.20	123,500.0	$642,200	55.2	$6.60	$814,731
2131	63	56	$4.94	9,100.0	$44,954	47.5	$6.27	$57,031
2141	1	1	$3.75	162.5	$609	11.9	$4.76	$773
22	3839	3427	$4.69	556,887.5	$2,606,263	40.0	$5.95	$3,306,453
2211	449	376	$6.18	61,100.0	$377,598	84.5	$7.84	$479,042
2241	30	23	$5.92	3,737.5	$22,126	76.7	$7.51	$28,070
2251	835	763	$4.96	123,987.5	$614,978	48.1	$6.29	$780,196
2253	1765	1595	$4.43	259,187.5	$1,148,201	32.2	$5.62	$1,456,672
2254	618	563	$3.91	91,487.5	$357,716	16.7	$4.96	$453,819
2261	3	2	$3.42	325.0	$1,112	2.1	$4.34	$1,410
2262	19	10	$4.99	1,625.0	$8,109	49.0	$6.33	$10,287
2273	102	80	$5.14	13,000.0	$66,820	53.4	$6.52	$84,772
2281	18	15	$3.94	2,437.5	$9,604	17.6	$5.00	$12,184
23	32201	30277	$4.09	4,920,012.5	$20,111,104	22.1	$5.19	$25,514,087
2311	2765	2595	$3.77	421,687.5	$1,589,762	12.5	$4.78	$2,016,862
2321	2825	2686	$4.04	436,475.0	$1,763,359	20.6	$5.13	$2,237,097
2322	1994	1865	$4.91	303,062.5	$1,488,037	46.6	$6.23	$1,887,808
2323	473	457	$4.45	74,262.5	$330,468	32.8	$5.65	$419,251
2325	1788	1712	$4.12	278,200.0	$1,146,184	23.0	$5.23	$1,454,114
2326	3126	3027	$3.97	491,887.5	$1,952,793	18.5	$5.04	$2,477,424
2329	729	674	$3.96	109,525.0	$433,719	18.2	$5.02	$550,241
2331	1003	926	$3.84	150,475.0	$577,824	14.6	$4.87	$733,060
2335	1350	1215	$3.86	197,437.5	$762,109	15.2	$4.90	$966,854
2337	128	109	$3.81	17,712.5	$67,485	13.7	$4.83	$85,615
2339	1415	1314	$4.15	213,525.0	$886,129	23.9	$5.26	$1,124,193
2341	3877	3716	$4.01	603,850.0	$2,421,439	19.7	$5.09	$3,071,974

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SIC Number	Total Employment	Production Workers	Average Hourly Earnings 1989	Total Hours Paid	1989 Wage Bill	Percent Difference from 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
2342	6689	6345	$4.30	1,031,062.5	$4,433,569	28.4	$5.46	$5,624,677
2353	447	380	$3.83	61,750.0	$236,503	14.3	$4.86	$300,040
2361	1582	1482	$3.78	240,825.0	$910,319	12.8	$4.80	$1,154,882
2369	590	517	$3.97	84,012.5	$333,530	18.5	$5.04	$423,135
2385	58	48	$3.58	7,800.0	$27,928	6.9	$4.54	$35,426
2387	24	18	$3.60	2,925.0	$10,520	7.5	$4.57	$13,359
2389	86	73	$3.69	11,862.5	$43,773	10.1	$4.68	$55,532
2391	123	87	$4.10	14,137.5	$57,964	22.4	$5.20	$73,536
2392	393	344	$3.94	55,900.0	$220,246	17.6	$5.00	$279,417
2393	469	436	$3.59	70,850.0	$254,382	7.2	$4.55	$322,685
2395	60	55	$4.16	8,937.5	$37,180	24.2	$5.28	$47,169
2396	199	161	$4.08	26,162.5	$106,743	21.8	$5.18	$135,420
2399	37	35	$3.37	5,687.5	$19,167	0.6	$4.28	$24,316
24	1016	789	$4.16	128,212.5	$532,795	24.2	$5.28	$675,934
2421	19	15	$3.40	2,437.5	$8,288	1.5	$4.31	$10,514
2431	316	209	$4.30	33,962.5	$146,039	28.4	$5.46	$185,273
2434	457	382	$4.18	62,075.0	$259,474	24.8	$5.30	$329,183
2435	7	6	$3.59	975.0	$3,500	7.2	$4.55	$4,441
2448	107	90	$3.85	14,625.0	$56,306	14.9	$4.88	$71,433
2451	13	9	$3.62	1,462.5	$5,294	8.1	$4.59	$6,717
2491	59	47	$4.26	7,637.5	$32,536	27.2	$5.40	$41,277
2499	38	31	$4.24	5,037.5	$21,359	26.6	$5.38	$27,097
25	2190	1725	$4.05	280,312.5	$1,127,087	20.9	$5.14	$1,429,785
2511	451	382	$3.58	62,075.0	$222,229	6.9	$4.54	$281,932
2512	145	117	$3.67	19,012.5	$69,776	9.6	$4.66	$88,522
2514	109	86	$3.48	13,975.0	$48,633	3.9	$4.41	$61,699
2515	286	189	$4.28	30,712.5	$131,450	27.8	$5.43	$166,764
2517	42	37	$3.95	6,012.5	$23,749	17.9	$5.01	$30,130
2519	413	309	$3.77	50,212.5	$189,301	12.5	$4.78	$240,158
2521	45	31	$4.38	5,037.5	$22,064	30.7	$5.56	$27,992
2522	44	37	$4.20	6,012.5	$25,253	25.4	$5.33	$32,037
2531	33	27	$3.62	4,387.5	$15,883	8.1	$4.59	$20,150
2541	61	48	$4.11	7,800.0	$32,058	22.7	$5.21	$40,671
2542	469	401	$4.69	65,162.5	$305,612	40.0	$5.95	$387,717
2591	39	36	$3.96	5,850.0	$23,166	18.2	$5.02	$29,390
2599	33	25	$4.39	4,062.5	$17,834	31.0	$5.57	$22,626
26	2143	1579	$5.74	256,587.5	$2,474,116	71.3	$7.28	$3,138,804
2611	55	37	$4.74	6,012.5	$28,499	41.5	$6.01	$36,156
2621	34	14	$4.26	2,275.0	$9,692	27.2	$5.40	$12,295
2631	75	59	$6.79	9,587.5	$65,099	102.7	$8.61	$82,588
2652	480	353	$5.98	57,362.5	$343,028	78.5	$7.59	$435,184
2653	497	379	$6.65	61,587.5	$409,557	98.5	$8.44	$519,587
2655	36	29	$5.43	4,712.5	$25,589	62.1	$6.89	$32,463
2657	192	165	$5.70	26,812.5	$152,831	70.1	$7.23	$193,890
2671	78	62	$4.17	10,075.0	$42,013	24.5	$5.29	$53,300
2672	54	146	$4.02	23,562.5	$94,721	20.0	$5.10	$120,169
2673	184	49	$4.27	7,962.5	$34,000	27.5	$5.42	$43,134
2674	162	48	$5.66	7,800.0	$44,148	69.0	$7.18	$56,009
2676	164	52	$7.46	8,450.0	$63,037	122.7	$9.46	$79,972
2677	66	11	$5.31	1,787.5	$9,492	58.5	$6.74	$12,042
2678	71	1931	$3.66	313,787.5	$1,148,462	9.3	$4.64	$1,457,004
2679	15	5	$4.86	812.5	$3,949	45.1	$6.17	$5,010
27	3494	2660	$6.05	432,250.0	$2,260,768	80.6	$7.68	$2,868,139
2711	1364	97	$8.94	15,762.5	$140,917	186.9	$11.34	$178,775
2731	7	1049	$4.74	166,587.5	$784,885	41.5	$6.01	$995,749
2732	12	8	$3.82	1,300.0	$4,966	14.0	$4.85	$6,300
2741	130	97	$5.84	15,762.5	$92,053	74.3	$7.41	$116,784
2752	1426	1019	$5.18	165,587.5	$857,743	54.6	$6.57	$1,088,182
2754	30	24	$5.29	3,900.0	$20,631	57.9	$6.71	$26,174
2759	232	180	$5.26	29,250.0	$153,855	57.0	$6.67	$195,189
2761	62	30	$6.05	4,875.0	$29,494	80.6	$7.68	$37,417
2782	199	167	$5.62	27,137.5	$152,513	67.8	$7.13	$193,486
2796	32	19	$7.68	3,087.5	$23,712	129.3	$9.74	$30,082
28	20826	14206	$8.49	2,308,475.0	$19,596,739	153.4	$10.77	$24,784,146
2813	117	74	$9.30	12,025.0	$111,833	177.6	$11.80	$141,877

TABLE I. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN MANUFACTURING INDUSTRIES

SIC Number	Total Employment	Production Workers	Average Hourly Earnings 1989	Total Hours Paid	1989 Wage Bill	Percent Difference from 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
2819	343	253	$7.11	41,112.5	$292,310	112.2	$9.02	$370,841
2821	29	22	$5.16	3,575.0	$18,447	54.0	$6.55	$23,403
2822	15	10	$4.19	1,625.0	$6,809	25.1	$5.32	$8,638
2833	1876	1272	$10.56	206,700.0	$2,182,752	215.2	$13.40	$2,769,163
2834	14029	9540	$8.64	1,550,250.0	$13,394,160	157.9	$10.96	$16,992,591
2835	1212	948	$7.38	154,050.0	$1,136,889	120.3	$9.36	$1,442,322
2836	83	70	$7.45	11,375.0	$84,744	122.4	$9.45	$107,511
2841	145	92	$5.17	14,950.0	$77,292	54.3	$6.56	$98,056
2842	336	160	$5.96	26,000.0	$154,960	77.9	$7.56	$196,591
2844	1189	908	$7.47	147,550.0	$1,102,199	123.0	$9.48	$1,398,312
2851	469	230	$5.36	37,375.0	$200,330	60.0	$6.80	$254,150
2865	39	22	$7.66	3,575.0	$27,385	128.7	$9.72	$34,742
2869	42	29	$6.18	4,712.5	$29,123	84.5	$7.84	$36,947
2873	152	85	$5.80	13,812.5	$80,113	73.1	$7.36	$101,635
2879	333	212	$10.06	34,450.0	$346,567	200.3	$12.76	$439,675
2891	260	181	$6.34	29,412.5	$186,475	89.3	$8.04	$236,573
2899	157	98	$6.49	15,925.0	$103,353	93.7	$8.23	$131,120
29	1755	983	$9.17	159,737.5	$1,461,727	173.7	$11.63	$1,854,429
2911	883	497	$12.53	80,762.5	$1,011,954	274.0	$15.90	$1,283,822
2951	672	375	$5.82	60,937.5	$354,656	73.7	$7.38	$449,937
2952	82	47	$5.55	7,637.5	$42,388	65.7	$7.04	$53,776
2992	118	64	$5.07	10,400.0	$52,728	51.3	$6.43	$66,894
30	5721	4813	$5.22	782,112.5	$4,075,016	55.8	$6.62	$5,169,796
3021	1639	1527	$5.06	248,137.5	$1,255,576	51.0	$6.42	$1,592,895
3052	64	38	$4.43	6,175.0	$27,355	32.2	$5.62	$34,704
3069	772	697	$4.22	113,262.5	$477,968	26.0	$5.35	$606,377
3081	30	25	$4.75	4,062.5	$19,297	41.8	$6.03	$24,481
3082	13	9	$3.70	1,462.5	$5,411	10.4	$4.69	$6,865
3083	29	24	$4.95	3,900.0	$19,305	47.8	$6.28	$24,491
3084	220	148	$4.74	24,050.0	$113,997	41.5	$6.01	$144,623
3085	425	324	$6.27	52,650.0	$330,116	87.2	$7.95	$418,803
3086	233	115	$4.36	18,687.5	$81,478	30.1	$5.53	$103,367
3087	10	8	$3.88	1,300.0	$5,044	15.8	$4.92	$6,399
3088	66	45	$4.81	7,312.5	$35,173	43.6	$6.10	$44,623
3089	2220	1853	$5.66	301,112.5	$1,704,297	69.0	$7.18	$2,162,168
31	5640	5294	$4.36	860,275.0	$3,760,741	30.1	$5.53	$4,771,089
3131	683	665	$4.17	108,062.5	$450,621	24.5	$5.29	$571,683
3142	146	137	$3.69	22,262.5	$82,149	10.1	$4.68	$104,218
3143	781	711	$4.55	115,537.5	$525,696	35.8	$5.77	$666,927
3144	606	571	$4.87	92,787.5	$451,875	45.4	$6.18	$573,274
3149	2468	2339	$4.29	380,087.5	$1,630,575	28.1	$5.44	$2,068,640
3151	208	203	$3.65	32,987.5	$120,404	9.0	$4.63	$152,752
3161	25	18	$3.74	2,925.0	$10,940	11.6	$4.74	$13,878
3171	233	212	$3.55	34,450.0	$122,298	6.0	$4.50	$155,154
3172	490	448	$5.03	72,800.0	$366,184	50.1	$6.38	$464,562
32	5121	3795	$6.06	616,687.5	$3,496,903	80.9	$7.69	$4,436,369
3211	36	29	$4.03	4,712.5	$18,991	20.3	$5.11	$24,094
3221	499	434	$4.47	70,525.0	$315,247	33.4	$5.67	$399,940
3231	1082	877	$5.61	142,512.5	$799,495	67.5	$7.12	$1,014,285
3241	697	465	$7.41	75,562.5	$559,918	121.2	$9.40	$710,344
3261	63	49	$3.90	7,962.5	$31,054	16.4	$4.95	$39,397
3269	32	26	$3.31	4,225.0	$13,985	-1.2	$4.20	$17,742
3271	586	311	$4.08	50,537.5	$206,193	21.8	$5.18	$261,588
3272	688	530	$5.23	86,125.0	$450,434	56.1	$6.64	$571,446
3273	1225	896	$6.55	145,600.0	$953,680	95.5	$8.31	$1,209,893
3274	29	20	$7.18	3,250.0	$23,335	114.3	$9.11	$29,604
3275	16	14	$2.82	2,275.0	$6,416	-15.8	$3.58	$8,139
3281	115	102	$4.68	16,575.0	$77,571	39.7	$5.94	$98,411
3295	20	15	$4.05	2,437.5	$9,872	20.9	$5.14	$12,524
3296	33	27	$7.00	4,387.5	$30,713	109.0	$8.88	$38,964
33	695	514	$6.64	83,525.0	$536,661	98.2	$8.42	$680,839
3312	197	146	$4.98	23,725.0	$118,151	48.7	$6.32	$149,892
3317	9	7	$8.01	1,137.5	$9,111	139.1	$10.16	$11,559
3341	73	55	$4.86	8,937.5	$43,436	45.1	$6.17	$55,106
3351	25	16	$6.67	2,600.0	$17,342	99.1	$8.46	$22,001

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TABLE 1. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN MANUFACTURING INDUSTRIES

SIC Number	Total Employment	Production Workers	Average Hourly Earnings 1989	Total Hours Paid	1989 Wage Bill	Percent Difference from 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
3353	14	9	$5.21	1,462.5	$7,620	53.5	$6.61	$9,667
3354	220	168	$6.92	27,300.0	$188,916	106.6	$8.78	$239,670
3365	19	19	$4.13	3,087.5	$12,751	23.3	$5.24	$16,177
3398	21	18	$5.92	2,925.0	$17,316	76.7	$7.51	$21,968
3399	117	76	$9.88	12,350.0	$122,018	194.9	$12.53	$154,799
34	4515	3468	$5.32	563,550.0	$2,972,198	58.8	$6.75	$3,770,699
3411	522	431	$8.70	70,037.5	$608,326	159.7	$11.04	$773,028
3412	10	8	$5.15	1,300.0	$6,695	53.7	$6.53	$8,494
3421	13	9	$3.88	1,462.5	$5,675	15.8	$4.92	$7,199
3423	95	76	$4.94	12,350.0	$61,009	47.5	$6.27	$77,399
3429	10	8	$5.43	1,300.0	$7,059	62.1	$6.89	$8,955
3433	38	20	$4.52	3,250.0	$14,690	34.9	$5.73	$18,637
3441	142	111	$5.74	18,037.5	$103,535	71.3	$7.28	$131,351
3442	1098	789	$4.31	128,212.5	$552,596	28.7	$5.47	$701,054
3443	208	148	$5.24	24,050.0	$126,022	56.4	$6.65	$159,879
3444	457	303	$4.62	49,237.5	$227,477	37.9	$5.86	$288,591
3446	234	212	$3.98	34,450.0	$137,111	13.8	$5.05	$173,947
3449	14	9	$4.24	1,462.5	$6,201	26.6	$5.38	$7,867
3452	227	181	$7.45	29,412.5	$219,123	122.4	$9.45	$277,992
3469	446	329	$4.93	53,462.5	$263,570	47.2	$6.25	$334,380
3471	266	212	$4.44	34,450.0	$152,958	32.5	$5.63	$194,051
3494	27	20	$6.31	3,250.0	$20,508	88.4	$8.01	$26,017
3495	32	28	$4.10	4,550.0	$18,655	22.4	$5.20	$23,667
3496	310	245	$4.67	39,812.5	$185,924	39.4	$5.92	$235,874
3498	64	58	$5.51	9,425.0	$51,932	64.5	$6.99	$65,884
3499	302	271	$4.59	44,037.5	$202,132	37.0	$5.82	$256,436
35	4829	3827	$6.29	621,887.5	$3,888,354	87.8	$7.98	$4,932,986
3535	132	112	$5.36	18,200.0	$97,552	60.0	$6.80	$123,760
3541	10	7	$6.12	1,137.5	$6,962	82.7	$7.76	$8,832
3544	209	154	$7.17	25,025.0	$179,429	114.0	$9.10	$227,634
3545	226	183	$5.32	29,737.5	$158,204	58.8	$6.75	$200,706
3555	121	99	$7.38	16,087.5	$118,725	120.3	$9.36	$150,622
3562	134	108	$11.39	17,550.0	$199,895	240.0	$14.45	$253,598
3563	30	22	$7.45	3,575.0	$26,634	122.4	$9.45	$33,789
3564	117	99	$5.15	16,087.5	$82,851	53.7	$6.53	$105,109
3568	28	27	$4.89	4,387.5	$21,455	46.0	$6.20	$27,219
3569	424	298	$5.41	48,425.0	$261,979	61.5	$6.86	$332,362
3571	103	76	$3.83	12,350.0	$47,301	14.3	$4.86	$60,008
3572	1003	826	$5.96	134,225.0	$799,981	77.9	$7.56	$1,014,901
3577	976	820	$5.44	133,250.0	$724,880	62.4	$6.90	$919,624
3579	489	295	$9.18	47,937.5	$440,066	174.0	$11.65	$558,293
3585	621	530	$6.88	86,125.0	$592,540	105.4	$8.73	$751,730
3589	52	40	$5.66	6,500.0	$36,790	69.0	$7.18	$46,674
3592	87	85	$4.11	13,812.5	$56,769	22.7	$5.21	$72,021
3596	12	8	$3.35	1,300.0	$4,355	0.0	$4.25	$5,525
3599	55	38	$5.18	6,175.0	$31,987	54.6	$6.57	$40,580
36	20841	17494	$6.22	2,842,775.0	$17,628,531	85.7	$7.89	$22,364,555
3612	210	176	$4.66	28,600.0	$133,276	39.1	$5.91	$169,081
3613	3661	3259	$6.31	529,587.5	$3,341,697	88.4	$8.01	$4,239,467
3621	40	28	$10.69	4,550.0	$48,640	219.1	$13.56	$61,707
3624	503	409	$10.19	66,462.5	$677,253	204.2	$12.93	$859,201
3625	1099	955	$6.21	155,187.5	$963,714	85.4	$7.88	$1,222,623
3629	193	158	$4.85	25,675.0	$124,524	44.8	$6.15	$157,978
3639	29	19	$3.93	3,087.5	$12,134	17.3	$4.99	$15,394
3641	598	478	$5.17	77,675.0	$401,580	54.3	$6.56	$509,467
3643	1948	1669	$6.70	271,212.5	$1,817,124	100.0	$8.50	$2,305,306
3644	377	295	$4.92	47,937.5	$235,853	46.9	$6.24	$299,216
3645	107	99	$6.19	16,087.5	$99,582	84.8	$7.85	$126,335
3646	4	2	$3.35	325.0	$1,089	0.0	$4.25	$1,381
3648	101	90	$4.01	14,625.0	$58,646	19.7	$5.09	$74,402
3651	399	348	$5.55	56,550.0	$313,853	65.7	$7.04	$398,171
3652	5	4	$3.74	650.0	$2,431	11.6	$4.74	$3,084
3661	1607	1442	$5.47	234,325.0	$1,281,758	63.3	$6.94	$1,626,111
3663	1869	1629	$6.29	264,712.5	$1,665,042	87.8	$7.98	$2,112,366
3669	985	820	$4.88	133,250.0	$650,260	45.7	$6.19	$824,957

TABLE 1. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN MANUFACTURING INDUSTRIES

SIC Number	Total Employment	Production Workers	Average Hourly Earnings 1989	Total Hours Paid	1989 Wage Bill	Percent Difference from 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
3672	197	170	$4.35	27,625.0	$120,169	29.9	$5.52	$152,453
3674	4008	2964	$7.27	481,650.0	$3,501,596	117.0	$9.22	$4,442,323
3677	273	244	$4.57	39,650.0	$181,201	36.4	$5.80	$229,881
3678	307	260	$4.88	42,250.0	$206,180	45.7	$6.19	$261,572
3679	859	669	$5.41	108,712.5	$588,135	61.5	$6.86	$746,141
3692	390	360	$6.04	58,500.0	$353,340	80.3	$7.66	$448,267
3694	1072	947	$5.52	153,887.5	$849,459	64.8	$7.00	$1,077,672
37	1058	788	$5.78	128,050.0	$734,958	72.5	$7.33	$932,410
3713	58	35	$5.05	5,687.5	$28,722	50.7	$6.41	$36,438
3714	350	289	$5.44	46,962.5	$255,476	62.4	$6.90	$324,111
3721	337	222	$6.82	36,075.0	$246,032	103.6	$8.65	$312,130
3728	199	154	$5.15	25,025.0	$128,879	53.7	$6.53	$163,503
3731	77	58	$5.91	9,425.0	$55,702	76.4	$7.50	$70,666
3732	33	27	$4.16	4,387.5	$18,252	24.2	$5.28	$23,156
3792	4	3	$3.89	487.5	$1,896	16.1	$4.94	$2,406
38	14861	12485	$6.05	2,028,812.5	$12,268,835	80.6	$7.68	$15,564,939
3812	543	466	$5.02	75,725.0	$380,140	49.9	$6.37	$482,267
3821	316	250	$6.11	40,625.0	$248,219	82.4	$7.75	$314,904
3822	698	618	$5.84	100,425.0	$586,482	74.3	$7.41	$744,044
3823	824	669	$6.72	108,712.5	$730,548	100.6	$8.53	$926,815
3824	144	131	$4.79	21,287.5	$101,967	43.0	$6.08	$129,361
3825	1108	947	$5.40	153,887.5	$830,993	61.2	$6.85	$1,054,244
3829	85	71	$4.18	11,537.5	$48,227	24.8	$5.30	$61,183
3841	6853	5914	$6.22	961,025.0	$5,977,576	85.7	$7.89	$7,583,491
3842	2223	1735	$6.18	281,937.5	$1,742,374	84.5	$7.84	$2,210,474
3843	386	284	$7.83	46,150.0	$361,355	133.7	$9.93	$458,435
3844	79	61	$5.58	9,912.5	$55,312	66.6	$7.08	$70,172
3845	429	340	$7.15	55,250.0	$395,038	113.4	$9.07	$501,167
3851	1060	919	$4.98	149,337.5	$743,701	48.7	$6.32	$943,501
3861	47	37	$5.41	6,012.5	$32,528	61.5	$6.86	$41,266
3873	66	43	$4.92	6,987.5	$34,379	46.9	$6.24	$43,615
39	3273	2739	$5.44	445,087.5	$2,416,728	62.4	$6.90	$3,065,998
3911	440	370	$5.66	60,125.0	$340,308	69.0	$7.18	$431,733
3914	76	68	$5.79	11,050.0	$63,980	72.8	$7.35	$81,168
3915	159	146	$6.78	23,725.0	$160,856	102.4	$8.60	$204,070
3942	14	8	$4.17	1,300.0	$5,421	24.5	$5.29	$6,877
3949	18	13	$4.01	2,112.5	$8,471	19.7	$5.09	$10,747
3951	19	18	$3.86	2,925.0	$11,291	15.2	$4.90	$14,324
3952	5	4	$5.14	650.0	$3,341	53.4	$6.52	$4,239
3953	31	23	$5.15	3,737.5	$19,248	53.7	$6.53	$24,419
3961	1895	1632	$5.33	265,200.0	$1,413,516	59.1	$6.76	$1,793,267
3965	22	16	$3.77	2,600.0	$9,802	12.5	$4.78	$12,435
3991	139	107	$8.01	17,387.5	$139,274	139.1	$10.16	$176,691
3993	179	114	$4.61	18,525.0	$85,400	37.6	$5.85	$108,344
3995	80	65	$4.26	10,562.5	$44,996	27.2	$5.40	$57,085
3999	196	155	$4.40	25,187.5	$110,825	31.3	$5.58	$140,599

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TABLE 2. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN NONMANUFACTURING INDUSTRIES

SIC Number	Total Employment	Production Workers	Average Hourly Earnings	Total Hours Paid	1989 Wage Bill	Percent Difference from 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
TOTAL	148,711	127,814	--	20,769,775	$114,662,928			$145,467,894
723	9	7	$3.75	1,138	$4,266	11.9	$4.76	$5,412
74	17	15	$4.52	2,438	$11,018	34.9	$5.73	$13,977
751	3	1	$3.38	163	$549	0.9	$4.29	$697
78	70	65	$3.75	10,563	$39,609	11.9	$4.76	$50,251
1422	112	84	$4.62	13,650	$63,063	37.9	$5.86	$80,005
1429	61	54	$6.19	8,775	$54,317	84.8	$7.85	$68,910
1442	217	180	$5.53	29,250	$161,753	65.1	$7.02	$205,208
152	4,865	4,421	$4.77	718,413	$3,426,828	42.4	$6.05	$4,347,468
154	3,336	2,877	$5.87	467,513	$2,744,298	75.2	$7.45	$3,481,573
1611	1,027	945	$5.57	153,563	$855,343	66.3	$7.07	$1,085,137
1622	665	606	$5.19	98,475	$511,085	54.9	$6.58	$648,392
1623	297	252	$5.85	40,950	$239,558	74.6	$7.42	$303,916
1629	756	667	$6.66	108,388	$721,861	98.8	$8.45	$915,793
1711	1,282	1,139	$5.65	185,088	$1,045,744	68.7	$7.17	$1,326,691
1721	168	152	$4.61	24,700	$113,867	37.6	$5.85	$144,458
1731	2,028	1,814	$5.08	294,775	$1,497,457	51.6	$6.44	$1,899,759
1741	199	189	$4.75	30,713	$145,884	41.8	$6.03	$185,077
1742	248	236	$5.28	38,350	$202,488	57.6	$6.70	$256,888
1743	68	55	$5.10	8,938	$45,581	52.2	$6.47	$57,827
1751	9	5	$4.42	813	$3,591	31.9	$5.61	$4,556
1761	405	362	$4.34	58,825	$255,301	29.6	$5.51	$323,889
1791	21	16	$4.71	2,600	$12,246	40.6	$5.98	$15,536
1793	10	8	$4.01	1,300	$5,213	19.7	$5.09	$6,614
1794	333	284	$5.45	46,150	$251,518	62.7	$6.91	$319,089
1795	117	115	$6.50	18,688	$121,469	94.0	$8.25	$154,102
1796	183	104	$6.65	16,900	$112,385	98.5	$8.44	$142,578
1799	274	255	$4.92	41,438	$203,873	46.9	$6.24	$258,644
4111	4	4	$4.63	650	$3,010	38.2	$5.87	$3,818
4121	11	11	$3.63	1,788	$6,489	8.4	$4.61	$8,232
4131	31	29	$3.53	4,713	$16,635	5.4	$4.48	$21,104
4151	5	5	$7.00	813	$5,688	109.0	$8.88	$7,215
4210	1,024	926	$10.36	150,475	$1,558,921	209.3	$13.14	$1,977,736
4221	114	95	$12.56	15,438	$193,895	274.9	$15.93	$245,966
4222	34	26	$6.39	4,225	$26,998	90.7	$8.11	$34,251
4224	14	9	$5.98	1,463	$8,746	78.5	$7.59	$11,095
4225	68	64	$5.52	10,400	$57,408	64.8	$7.00	$72,831
4226	122	90	$5.04	14,625	$73,710	50.4	$6.39	$93,513
4422	19	4	$7.50	650	$4,875	123.9	$9.51	$6,185
4454	227	204	$9.71	33,150	$321,887	189.9	$12.32	$408,363
4459	18	15	$13.33	2,438	$32,492	297.9	$16.91	$41,221
4463	1,526	1,356	$16.49	220,350	$3,633,572	392.2	$20.92	$4,609,755
4469	44	39	$4.92	6,338	$31,181	46.9	$6.24	$39,557
4511	64	45	$11.93	7,313	$87,238	256.1	$15.14	$110,675
4521	268	256	$8.06	41,600	$335,296	140.6	$10.23	$425,376
4582	30	25	$4.86	4,063	$19,744	45.1	$6.17	$25,048
4583	605	510	$5.81	82,875	$481,504	73.4	$7.37	$610,863
4613	6	6	$12.92	975	$12,597	285.7	$16.39	$15,981
4712	37	25	$6.19	4,063	$25,147	84.8	$7.85	$31,903
4722	217	170	$6.45	27,625	$178,181	92.5	$8.18	$226,051
4723	96	84	$5.77	13,650	$78,761	72.2	$7.32	$99,920
4782	29	19	$7.51	3,088	$23,187	124.2	$9.53	$29,417
4821	86	68	$12.70	11,050	$140,335	279.1	$16.11	$178,037
4832	494	445	$6.19	72,313	$447,614	84.8	$7.85	$567,869
4833	673	570	$8.56	92,625	$792,870	155.5	$10.86	$1,005,880
4899	26	26	$3.92	4,225	$16,562	17.0	$4.97	$21,011
4923	15	11	$5.44	1,788	$9,724	62.4	$6.90	$12,336
4925	54	43	$6.39	6,988	$44,650	90.7	$8.11	$56,646

TABLE 2. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN NONMANUFACTURING INDUSTRIES

SIC Number	Total Employment	Production Workers	Average Hourly Earnings	Total Hours Paid	1989 Wage Bill	Percent Difference from 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
4953	76	74	$4.96	12,025	$59,644	48.1	$6.29	$75,668
4971	12	12	$6.31	1,950	$12,305	88.4	$8.01	$15,610
5012	129	78	$5.10	12,675	$64,643	52.2	$6.47	$82,009
5013	227	197	$5.20	32,013	$166,465	55.2	$6.60	$211,187
5014	86	69	$4.76	11,213	$53,372	42.1	$6.04	$67,710
5021	61	53	$4.60	8,613	$39,618	37.3	$5.84	$50,261
5023	94	66	$4.96	10,725	$53,196	48.1	$6.29	$67,487
5031	37	32	$4.49	5,200	$23,348	34.0	$5.70	$29,621
5039	286	231	$4.65	37,538	$174,549	38.8	$5.90	$221,443
5041	9	8	$5.76	1,300	$7,488	71.9	$7.31	$9,500
5042	160	132	$4.87	21,450	$104,462	45.4	$6.18	$132,526
5043	145	111	$11.11	18,038	$200,397	231.6	$14.09	$254,235
5051	509	480	$5.15	78,000	$401,700	53.7	$6.53	$509,619
5063	328	232	$6.40	37,700	$241,280	91.0	$8.12	$306,101
5064	472	396	$7.66	64,350	$492,921	128.7	$9.72	$625,348
5065	107	86	$5.51	13,975	$77,002	64.5	$6.99	$97,689
5072	289	234	$5.05	38,025	$192,026	50.7	$6.41	$243,615
5074	207	167	$4.83	27,138	$131,074	44.2	$6.13	$166,288
5075	66	59	$9.08	9,588	$87,055	171.0	$11.52	$110,442
5078	27	18	$4.37	2,925	$12,782	30.4	$5.54	$16,216
5081	906	777	$9.90	126,263	$1,249,999	195.5	$12.56	$1,585,819
5082	61	46	$5.28	7,475	$39,468	57.6	$6.70	$50,071
5083	42	40	$4.10	6,500	$26,650	22.4	$5.20	$33,810
5084	730	598	$6.76	97,175	$656,903	101.8	$8.58	$833,384
5085	77	64	$6.35	10,400	$66,040	89.6	$8.06	$83,782
5086	15	375	$4.08	60,938	$248,625	21.8	$5.18	$315,420
5087	501	12	$5.91	1,950	$11,525	76.4	$7.50	$14,621
5093	82	67	$5.57	10,888	$60,643	66.3	$7.07	$76,936
5094	91	81	$10.11	13,163	$133,073	201.8	$12.83	$168,824
5099	110	97	$6.05	15,763	$95,363	80.6	$7.68	$120,983
5111	66	56	$5.10	9,100	$46,410	52.2	$6.47	$58,878
5112	80	75	$3.93	12,188	$47,897	17.3	$4.99	$60,765
5113	183	165	$6.33	26,813	$169,723	89.0	$8.03	$215,320
5122	2,543	2,024	$9.07	328,900	$2,983,123	170.7	$11.51	$3,784,559
5133	181	155	$4.38	25,188	$110,321	30.7	$5.56	$139,960
5134	22	15	$4.58	2,438	$11,164	36.7	$5.81	$14,163
5136	13	13	$5.02	2,113	$10,605	49.9	$6.37	$13,454
5137	260	219	$3.67	35,588	$130,606	9.6	$4.66	$165,694
5139	114	94	$4.54	15,275	$69,349	35.5	$5.76	$87,979
5141	3,231	2,722	$4.85	442,325	$2,145,276	44.8	$6.15	$2,721,619
5142	293	228	$5.39	37,050	$199,700	60.9	$6.84	$253,350
5143	38	33	$5.59	5,363	$29,976	66.9	$7.09	$38,030
5144	22	20	$3.70	3,250	$12,025	10.4	$4.69	$15,256
5145	87	71	$10.84	11,538	$125,067	223.6	$13.75	$158,666
5146	20	18	$5.17	2,925	$15,122	54.3	$6.56	$19,185
5147	204	175	$4.88	28,438	$138,775	45.7	$6.19	$176,058
5148	219	187	$4.72	30,388	$143,429	40.9	$5.99	$181,962
5149	323	280	$6.67	45,500	$303,485	99.1	$8.46	$385,018
5154	14	14	$4.70	2,275	$10,693	40.9	$5.96	$13,565
5161	502	310	$5.49	50,375	$276,559	63.9	$6.96	$350,858
5171	18	16	$6.78	2,600	$17,628	102.4	$8.60	$22,364
5172	545	443	$11.04	71,988	$794,742	229.6	$14.01	$1,808,255
5181	169	148	$7.46	24,050	$179,413	122.7	$9.46	$227,614
5191	135	112	$3.91	18,200	$71,162	16.7	$4.96	$90,280
5194	16	15	$3.79	2,438	$9,238	13.1	$4.81	$11,720
5198	72	65	$7.21	10,563	$76,156	115.2	$9.15	$96,615
5199	245	198	$6.05	32,175	$194,659	80.6	$7.68	$246,955

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TABLE 2. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN NONMANUFACTURING INDUSTRIES

SIC Number	Total Employment	Production Workers	Average Hourly Earnings	Total Hours Paid	1989 Wage Bill	Percent Difference from 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
5211	843	633	$3.89	102,863	$400,135	16.1	$4.94	$507,634
5231	140	102	$6.91	16,575	$114,533	106.3	$8.77	$145,303
5251	720	622	$4.17	101,075	$421,483	24.5	$5.29	$534,717
5261	46	42	$3.73	6,825	$25,457	11.3	$4.73	$32,297
5311	6,549	6,144	$5.59	998,400	$5,581,056	66.9	$7.09	$7,080,444
5331	228	215	$4.19	34,938	$146,388	25.1	$5.32	$185,716
5399	1,308	1,150	$3.89	186,875	$726,944	16.1	$4.94	$922,242
5411	11,418	10,176	$4.48	1,653,600	$7,408,128	33.7	$5.68	$9,398,371
5423	17	16	$6.92	2,600	$17,992	106.6	$8.78	$22,826
5462	198	179	$3.79	29,088	$110,242	13.1	$4.81	$139,859
5499	68	60	$3.65	9,750	$35,588	9.0	$4.63	$45,148
5511	794	643	$6.12	104,488	$639,464	82.7	$7.76	$811,260
5521	96	58	$4.30	9,425	$40,528	28.4	$5.46	$51,415
5531	952	831	$5.76	135,038	$777,816	71.9	$7.31	$986,781
5541	337	304	$3.93	49,400	$194,142	17.3	$4.99	$246,300
5611	1,191	1,042	$3.88	169,325	$656,981	15.8	$4.92	$833,483
5621	2,264	2,010	$3.84	326,625	$1,254,240	14.6	$4.87	$1,591,200
5631	40	37	$3.69	6,013	$22,186	10.1	$4.68	$28,147
5641	136	115	$3.79	18,688	$70,826	13.1	$4.81	$89,853
5651	1,599	1,406	$3.51	228,475	$801,947	4.8	$4.45	$1,017,396
5661	1,909	1,641	$4.06	266,663	$1,082,650	21.2	$5.15	$1,373,511
5699	171	148	$3.75	24,050	$90,188	11.9	$4.76	$114,417
5712	1,232	1,042	$4.56	169,325	$772,122	36.1	$5.79	$979,558
5713	18	16	$4.82	2,600	$12,532	43.9	$6.11	$15,899
5714	45	42	$3.47	6,825	$23,683	3.6	$4.40	$30,045
5719	153	90	$5.05	14,625	$73,856	50.7	$6.41	$93,698
5722	147	124	$4.71	20,150	$94,907	40.6	$5.98	$120,404
5732	143	120	$2.86	19,500	$55,770	-14.6	$3.63	$70,753
5733	42	29	$5.48	4,713	$25,825	63.6	$6.95	$32,762
5810	7,534	6,572	$4.11	1,067,950	$4,389,275	22.7	$5.21	$5,568,483
5912	2,337	2,176	$5.03	353,600	$1,778,608	50.1	$6.38	$2,256,443
5921	25	20	$3.57	3,250	$11,603	6.6	$4.53	$14,720
5931	4	4	$3.61	650	$2,347	7.8	$4.58	$2,977
5941	384	321	$7.86	52,163	$409,997	134.6	$9.97	$520,146
5942	319	114	$5.58	18,525	$103,370	66.6	$7.08	$131,140
5943	205	183	$4.47	29,738	$132,927	33.4	$5.67	$168,638
5944	201	178	$4.68	28,925	$135,369	39.7	$5.94	$171,737
5945	84	55	$3.40	8,938	$30,388	-1.5	$4.31	$38,551
5946	263	198	$4.01	32,175	$129,022	19.7	$5.09	$163,684
5947	168	122	$3.93	19,825	$77,912	17.3	$4.99	$98,844
5949	310	259	$3.64	42,088	$153,199	8.7	$4.62	$194,356
5962	46	33	$4.37	5,363	$23,434	30.4	$5.54	$29,730
5963	23	20	$3.35	3,250	$10,888	0.0	$4.25	$13,813
5984	213	185	$4.55	30,063	$136,784	35.8	$5.77	$173,532
5992	45	35	$3.90	5,688	$22,181	16.4	$4.95	$28,140
5999	468	370	$5.71	60,125	$343,314	70.4	$7.24	$435,547
6022	6,359	5,118	$5.98	831,675	$4,973,417	78.5	$7.59	$6,309,558
6023	3,252	2,510	$5.95	407,875	$2,426,856	77.6	$7.55	$3,078,847
6025	920	546	$8.19	88,725	$726,658	144.5	$10.39	$921,879
6028	598	439	$7.30	71,338	$520,764	117.9	$9.26	$660,670
6059	4	4	$4.33	650	$2,815	29.3	$5.49	$3,571
6122	2,468	1,814	$5.24	294,775	$1,544,621	56.4	$6.65	$1,959,594
6131	64	38	$7.20	6,175	$44,460	114.9	$9.13	$56,404
6142	41	33	$6.62	5,363	$35,500	97.6	$8.40	$45,037
6143	505	380	$4.79	61,750	$295,783	43.0	$6.08	$375,246
6144	13	9	$12.24	1,463	$17,901	265.4	$15.53	$22,710
6145	43	516	$5.81	83,850	$487,169	73.4	$7.37	$618,050

TABLE 2. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN NONMANUFACTURING INDUSTRIES

SIC Number	Total Employment	Production Workers	Average Hourly Earnings	Total Hours Paid	1989 Wage Bill	Percent Difference from 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
6146	1,027	191	$5.35	31,038	$166,051	59.7	$6.79	$210,661
6153	258	39	$5.53	6,338	$35,046	65.1	$7.02	$44,462
6162	750	629	$5.71	102,213	$583,633	70.4	$7.24	$740,430
6211	219	110	$12.89	17,875	$230,409	284.8	$16.35	$292,310
6221	29	19	$26.35	3,088	$81,356	686.6	$33.43	$103,212
6311	657	482	$6.07	78,325	$475,433	81.2	$7.70	$603,161
6321	161	131	$6.72	21,288	$143,052	100.6	$8.53	$181,484
6324	1,217	989	$7.28	160,713	$1,169,987	117.3	$9.24	$1,484,312
6331	1,148	970	$7.74	157,625	$1,220,018	131.0	$9.82	$1,547,783
6351	5	3	$6.53	488	$3,183	94.9	$8.28	$4,039
6361	67	49	$6.32	7,963	$50,323	88.7	$8.02	$63,843
6371	11	9	$11.23	1,463	$16,424	235.2	$14.25	$20,836
6411	1,052	853	$7.33	138,613	$1,016,030	118.8	$9.30	$1,288,993
6510	583	503	$5.79	81,738	$473,260	72.8	$7.35	$600,405
6531	119	96	$6.12	15,600	$95,472	82.7	$7.76	$121,121
6552	163	148	$5.08	24,050	$122,174	51.6	$6.44	$154,997
6553	34	26	$5.21	4,225	$22,012	55.5	$6.61	$27,926
7011	6,938	6,104	$6.58	991,900	$6,526,702	96.4	$8.35	$8,280,144
7021	23	21	$4.77	3,413	$16,278	42.4	$6.05	$20,651
7210	438	395	$4.63	64,188	$297,188	38.2	$5.87	$377,030
7221	56	46	$3.82	7,475	$28,555	14.0	$4.85	$36,226
7231	404	245	$5.12	39,813	$203,840	52.8	$6.50	$258,603
7241	39	33	$5.77	5,363	$30,942	72.2	$7.32	$39,254
7251	31	23	$4.37	3,738	$16,333	30.4	$5.54	$20,721
7261	63	52	$5.18	8,450	$43,771	54.6	$6.57	$55,530
7267	13	9	$3.51	1,463	$5,133	4.8	$4.45	$6,512
7299	114	99	$6.43	16,088	$103,443	91.9	$8.16	$131,233
7311	676	468	$8.99	76,050	$683,690	168.4	$11.41	$867,367
7312	22	19	$5.33	3,088	$16,456	59.1	$6.76	$20,877
7319	63	48	$5.59	7,800	$43,602	66.9	$7.09	$55,316
7321	64	42	$8.32	6,825	$56,784	148.4	$10.56	$72,039
7339	11	9	$4.63	1,463	$6,771	38.2	$5.87	$8,591
7342	75	68	$3.85	11,050	$42,543	14.9	$4.88	$53,972
7349	1,911	1,771	$3.85	287,788	$1,107,982	14.9	$4.88	$1,405,649
7361	257	242	$4.54	39,325	$178,536	35.5	$5.76	$226,500
7362	4,395	4,335	$4.49	704,438	$3,162,924	34.0	$5.70	$4,012,665
7372	22	15	$7.36	2,438	$17,940	119.7	$9.34	$22,760
7374	155	128	$6.21	20,800	$129,168	85.4	$7.88	$163,870
7379	85	55	$13.20	8,938	$117,975	294.0	$16.75	$149,670
7392	421	354	$9.05	57,525	$520,601	170.1	$11.48	$660,464
7393	4,354	4,125	$3.75	670,313	$2,513,672	11.9	$4.76	$3,188,987
7394	284	230	$5.93	37,375	$221,634	77.0	$7.52	$281,177
7395	133	120	$4.73	19,500	$92,235	41.2	$6.00	$117,015
7397	34	18	$5.19	2,925	$15,181	54.9	$6.58	$19,259
7399	452	383	$5.40	62,238	$336,083	61.2	$6.85	$426,373
7512	491	416	$7.09	67,600	$479,284	111.6	$8.99	$608,047
7513	14	7	$3.98	1,138	$4,527	18.8	$5.05	$5,744
7523	237	217	$3.50	35,263	$123,419	4.5	$4.44	$156,576
7525	90	78	$3.44	12,675	$43,602	2.7	$4.36	$55,316
7531	27	21	$4.22	3,413	$14,401	26.0	$5.35	$18,270
7534	139	121	$6.01	19,663	$118,172	79.4	$7.62	$149,919
7535	4	3	$3.75	488	$1,828	11.9	$4.76	$2,319
7538	54	44	$3.68	7,150	$26,312	9.9	$4.67	$33,381
7539	115	103	$4.16	16,738	$69,628	24.2	$5.28	$88,334
7542	18	15	$3.96	2,438	$9,653	18.2	$5.02	$12,246
7549	7	6	$3.37	975	$3,286	0.6	$4.28	$4,168
7622	25	23	$3.90	3,738	$14,576	16.4	$4.95	$18,492

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TABLE 2. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN NONMANUFACTURING INDUSTRIES

SIC Number	Total Employment	Production Workers	Average Hourly Earnings	Total Hours Paid	1989 Wage Bill	Percent Difference from 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
7623	114	94	$5.17	15,275	$78,972	54.3	$6.56	$100,188
7629	118	90	$5.46	14,625	$79,853	63.0	$6.93	$101,305
7631	9	8	$4.05	1,300	$5,265	20.9	$5.14	$6,679
7641	21	20	$3.97	3,250	$12,903	18.5	$5.04	$16,369
7692	25	21	$4.45	3,413	$15,186	32.8	$5.65	$19,285
7694	102	92	$8.96	14,950	$133,952	167.5	$11.37	$169,939
7699	61	54	$5.53	8,775	$48,526	65.1	$7.02	$61,563
7813	32	20	$6.11	3,250	$19,858	82.4	$7.75	$25,192
7814	42	35	$12.59	5,688	$71,606	275.8	$15.97	$90,843
7823	166	145	$4.50	23,563	$106,031	34.3	$5.71	$134,517
7832	245	201	$3.53	32,663	$115,299	5.4	$4.48	$146,274
7833	14	12	$3.06	1,950	$5,967	-8.7	$3.88	$7,570
7911	13	8	$4.42	1,300	$5,746	31.9	$5.61	$7,290
7929	6	3	$8.70	488	$4,241	159.7	$11.04	$5,381
7933	27	24	$3.65	3,900	$14,235	9.0	$4.63	$18,059
7941	8	8	$6.30	1,300	$8,190	88.1	$7.99	$10,390
7948	350	313	$5.36	50,863	$272,623	60.0	$6.80	$345,865
7993	50	43	$4.26	6,988	$29,767	27.2	$5.40	$37,764
7997	67	58	$4.73	9,425	$44,580	41.2	$6.00	$56,557
7999	269	222	$4.49	36,075	$161,977	34.0	$5.70	$205,493
8011	685	598	$4.74	97,175	$460,610	41.5	$6.01	$584,355
8021	105	98	$4.84	15,925	$77,077	44.5	$6.14	$97,784
8031	5	5	$5.73	813	$4,656	71.0	$7.27	$5,906
8049	54	44	$7.12	7,150	$50,908	112.5	$9.03	$64,585
8059	134	110	$5.21	17,875	$93,129	55.5	$6.61	$118,148
8062	10,496	9,445	$4.81	1,534,813	$7,382,448	43.6	$6.10	$9,365,792
8063	301	271	$6.63	44,038	$291,969	97.9	$8.41	$370,406
8069	529	491	$5.15	79,788	$410,906	53.7	$6.53	$521,298
8071	423	361	$5.33	58,663	$312,671	59.1	$6.76	$396,672
8072	31	27	$4.14	4,388	$18,164	23.6	$5.25	$23,044
8081	140	128	$6.89	20,800	$143,312	105.7	$8.74	$181,814
8091	390	361	$5.79	58,663	$339,656	72.8	$7.35	$430,907
8111	1,098	977	$10.08	158,763	$1,600,326	200.9	$12.79	$2,030,264
8321	377	330	$7.62	58,625	$408,623	127.5	$9.67	$518,402
8331	260	251	$3.35	40,788	$136,638	0.0	$4.25	$173,347
8351	315	271	$4.73	44,038	$208,297	41.2	$6.00	$264,258
8361	577	217	$4.26	35,263	$150,218	27.2	$5.40	$190,575
8399	610	610	$3.74	99,125	$370,728	11.6	$4.74	$470,326
8411	29	16	$3.89	2,600	$10,114	16.1	$4.94	$12,831
8611	91	76	$5.60	12,350	$69,160	67.2	$7.10	$87,740
8621	391	327	$4.94	53,138	$262,499	47.5	$6.27	$333,021
8631	65	54	$6.89	8,775	$60,469	105.7	$8.74	$76,703
8641	340	293	$4.47	47,813	$212,828	33.4	$5.67	$270,006
8661	123	117	$4.24	19,013	$80,613	26.6	$5.38	$102,279
8699	21	17	$4.63	2,763	$12,790	38.2	$5.87	$16,227
8811	17	17	$3.04	2,763	$8,398	-9.3	$3.86	$10,654
8911	447	336	$6.29	54,890	$343,434	87.8	$7.98	$435,700
8931	499	428	$10.32	69,556	$717,756	208.1	$13.09	$910,586
8922	176	158	$6.47	25,675	$166,117	93.1	$8.21	$210,746
5431	11	11	$3.35	1,788	$5,988	0.0	$4.25	$7,597

TABLE 3. EMPLOYMENT AND AVERAGE HOURLY EARNINGS FOR SELECTED MUNICIPALITIES

Municipality	Total Employment	Non Supervisory Employees	Average Hourly Earnings	Total Hours	1989 Wage Bill	Percent Difference from 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
TOTAL	43,398	38,606	$3.70	6,273,475	$23,022,080	10.4	$4.69	$29,207,117
ADJUNTAS	200	83	$3.58	13,488	$48,285	6.9	$4.54	$61,257
AGUADA	261	250	$3.74	40,625	$151,938	11.6	$4.74	$192,757
AGUADILLA	519	374	$3.71	60,775	$225,475	10.7	$4.71	$286,051
AGUAS BUENAS	202	118	$3.67	19,175	$70,372	9.6	$4.66	$89,278
AIBONITO	196	88	$3.74	14,300	$53,482	11.6	$4.74	$67,850
ANASCO	231	175	$3.73	28,438	$106,072	11.3	$4.73	$134,569
ARECIBO	892	498	$3.46	80,925	$280,001	3.3	$4.39	$355,225
ARROYO	165	159	$3.54	25,838	$91,465	5.7	$4.49	$116,037
BARCELONETA	303	239	$3.67	38,838	$142,534	9.6	$4.66	$180,826
BARRANQUITAS	213	149	$3.67	24,213	$88,860	9.6	$4.66	$112,733
BAYAMON	3,016	11,887	$3.48	1,931,638	$6,722,099	3.9	$4.41	$8,528,035
CABO ROJO	379	190	$3.84	30,875	$118,560	14.6	$4.87	$150,412
CAGUAS	1,738	1,320	$3.58	214,500	$767,910	6.9	$4.54	$974,214
CAMUY	246	127	$3.91	20,638	$80,693	16.7	$4.96	$102,371
CANOVANAS	301	199	$4.44	32,338	$143,579	32.5	$5.63	$182,152
CAROLINA	2,035	1,107	$3.77	179,888	$678,176	12.5	$4.78	$860,372
CATANO	515	400	$3.73	65,000	$0	-100.0	$0.00	$0
CAYEY	293	204	$3.96	33,150	$131,274	18.2	$5.02	$166,542
CEIBA	151	108	$4.06	17,550	$71,253	21.2	$5.15	$90,396
CIALES	167	135	$3.63	21,938	$79,633	8.4	$4.61	$101,027
CIDRA	273	178	$3.69	28,925	$106,733	10.1	$4.68	$135,408
COAMO	254	86	$3.49	13,975	$48,773	4.2	$4.43	$61,876
COMERIO	259	96	$4.16	15,600	$64,896	24.2	$5.28	$82,331
COROZAL	189	164	$3.68	26,650	$98,072	9.9	$4.67	$124,420
CULEBRA	99	23	$3.77	3,738	$14,090	12.5	$4.78	$17,876
DORADO	317	173	$4.19	28,113	$117,791	25.1	$5.32	$149,437
FAJARDO	475	409	$3.59	66,463	$0	-100.0	$0.00	$0
FLORIDA	174	104	$3.75	16,900	$63,375	11.9	$4.76	$80,401
GUANICA	178	154	$3.89	25,025	$97,347	16.1	$4.94	$123,500
GUAYANA	360	292	$3.70	47,450	$175,565	10.4	$4.69	$222,732
GUAYANILLA	175	174	$4.28	28,275	$121,017	27.8	$5.43	$153,529
GUAYNABO	1,628	1,268	$3.64	206,050	$750,022	8.7	$4.62	$951,520
GURABO	196	151	$3.81	24,538	$93,488	13.7	$4.83	$118,604
HATILLO	280	241	$3.65	39,163	$142,943	9.0	$4.63	$181,346
HORMINGUEROS	247	115	$3.91	18,688	$73,068	16.7	$4.96	$92,698
HUNACAO	886	355	$3.96	57,688	$228,443	18.2	$5.02	$289,815
ISABELA	477	484	$3.48	78,650	$273,702	3.9	$4.41	$347,234
JAYUYA	151	129	$3.81	20,963	$79,867	13.7	$4.83	$101,324
JUANA DIAZ	235	180	$3.80	29,250	$111,150	13.4	$4.82	$141,011
JUNCOS	175	121	$3.54	19,663	$69,605	5.7	$4.49	$88,305
LAJAS	174	77	$4.56	12,513	$57,057	36.1	$5.79	$72,386
LARES	293	244	$3.74	39,650	$148,291	11.6	$4.74	$188,130
LAS MARIAS	141	127	$3.77	20,638	$77,803	12.5	$4.78	$98,706
LAS PIEDRAS	232	177	$3.91	28,763	$112,461	16.7	$4.96	$142,675
LOIZA	463	168	$3.51	27,300	$95,823	4.8	$4.45	$121,566
LUQUILLO	218	201	$3.75	32,663	$122,484	11.9	$4.76	$155,391
MANATI	510	400	$3.73	65,000	$0	-100.0	$0.00	$0
MARICAO	163	85	$3.61	13,813	$49,863	7.8	$4.58	$63,259
MAUNABO	181	115	$3.72	18,688	$69,518	11.0	$4.72	$88,194
MAYAGUEZ	1,522	980	$3.71	159,250	$590,818	10.7	$4.71	$749,545
MOCA	230	132	$4.06	21,450	$87,087	21.2	$5.15	$110,484
MOROVIS	236	184	$3.83	29,900	$114,517	14.3	$4.86	$145,283
NAGUABO	202	162	$3.90	26,325	$102,668	16.4	$4.95	$130,250
NARANJITO	315	157	$4.10	25,513	$104,601	22.4	$5.20	$132,703
OROCOVIS	296	158	$3.58	25,675	$91,917	6.9	$4.54	$116,610
PATILLAS	207	121	$3.66	19,663	$71,965	9.3	$4.64	$91,299

TABLE 3. EMPLOYMENT AND AVERAGE HOURLY EARNINGS FOR SELECTED MUNICIPALITIES

Municipality	Total Employment	Non Supervisory Employees	Average Hourly Earnings	Total Hours	1989 Wage Bill	Percent Difference from 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
PENUELAS	2,262	122	$3.83	19,825	$75,930	14.3	$4.86	$96,329
PONCE	1,938	924	$3.86	150,150	$579,579	15.2	$4.90	$735,287
QUEBRADILLAS	236	160	$3.73	26,000	$0	-100.0	$0.00	$0
RINCON	208	177	$3.50	28,763	$100,669	4.5	$4.44	$127,714
RIO GRANDE	270	243	$3.84	39,488	$151,632	14.6	$4.87	$192,369
SABANA GRANDE	195	161	$3.69	26,163	$96,540	10.1	$4.68	$122,476
SALINAS	242	205	$3.58	33,313	$119,259	6.9	$4.54	$151,298
SAN GERMAN	323	212	$3.83	34,450	$131,944	14.3	$4.86	$167,391
SAN JUAN	9,607	7,199	$4.50	1,169,838	$5,264,269	34.3	$5.71	$6,678,550
SAN LORENZO	211	182	$3.50	29,575	$103,513	4.5	$4.44	$131,322
SAN SEBASTIAN	341	272	$3.69	44,200	$163,098	10.1	$4.68	$206,915
SANTA ISABEL	194	172	$3.75	27,950	$104,813	11.9	$4.76	$132,971
TOA ALTA	211	205	$3.85	33,313	$128,253	14.9	$4.88	$162,709
TOA BAJA	815	469	$3.71	76,213	$282,748	10.7	$4.71	$358,711
TRUJILLO ALTO	451	160	$4.05	26,000	$105,300	20.9	$5.14	$133,590
UTUADO	253	195	$3.52	31,688	$111,540	5.1	$4.47	$141,506
VEGA ALTA	210	176	$3.87	28,600	$110,682	15.5	$4.91	$140,417
VEGA BAJA	519	431	$3.71	70,038	$259,839	10.7	$4.71	$329,647
VIEQUES	258	144	$3.68	23,400	$86,112	9.9	$4.67	$109,247
VILLIALBA	184	142	$3.84	23,075	$88,608	14.6	$4.87	$112,413
YABUCOA	345	226	$3.67	36,725	$134,781	9.6	$4.66	$170,991
YAUCO	291	234	$3.80	38,025	$144,495	13.4	$4.82	$183,315

TABLE 4. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN STATE GOVERNMENT AGENCIES

Agencies	Total Employment	Non Supervisory Employees	Average Hourly Earnings	Total Hours Paid	1989 Wage Bill	Percent Difference form 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
Total	164,223	55,693	$4.08	9,050,113	$36,890,914	21.8	$5.18	$46,801,906
1	392	262	$4.76	42,575	$202,657	42.1	$6.04	$257,102
2	2,383	912	$3.88	148,200	$575,016	15.8	$4.92	$729,498
3	23	13	$4.96	2,113	$10,520	48.7	$6.32	$13,347
4	257	42	$4.32	6,825	$29,484	29.0	$5.48	$37,405
5	312	117	$4.43	19,013	$84,225	32.2	$5.62	$106,853
6	10	4	$4.36	650	$2,834	30.1	$5.53	$3,595
7	4	1	$3.35	163	$544	0.0	$4.25	$691
8	131	43	$4.56	6,988	$31,863	36.1	$5.79	$40,423
9	258	96	$4.13	15,600	$64,428	23.3	$5.24	$81,737
10	5,194	627	$4.32	101,888	$440,154	29.0	$5.48	$558,404
11	1,365	338	$4.37	54,925	$240,022	30.4	$5.54	$304,506
12	1,418	551	$4.20	89,538	$376,058	25.4	$5.33	$477,088
13	453	232	$4.46	37,700	$168,142	33.1	$5.66	$213,314
14	67,317	22,598	$3.61	3,672,175	$13,256,552	7.8	$4.58	$16,818,013
15	221	56	$3.73	9,100	$33,943	11.3	$4.73	$43,062
16	1,833	193	$4.43	31,363	$138,936	32.2	$5.62	$176,262
17	2,433	1,008	$4.23	163,800	$692,874	26.3	$5.37	$879,019
18	1,540	895	$3.91	145,438	$568,661	16.7	$4.96	$721,435
19	10,732	4,371	$3.92	710,288	$2,784,327	17.0	$4.97	$3,532,355
20	1,720	1,182	$3.81	192,075	$731,806	13.7	$4.83	$928,410
21	181	69	$4.50	11,213	$50,456	34.3	$5.71	$64,012
22	4,169	1,735	$4.05	281,938	$1,141,847	20.9	$5.14	$1,448,612
23	4,858	2,225	$4.47	361,563	$1,616,184	33.4	$5.67	$2,050,383
24	363	115	$5.62	18,688	$105,024	67.8	$7.13	$133,239
25	54	29	$5.41	4,713	$25,495	61.5	$6.86	$32,344
26	467	211	$4.24	34,288	$145,379	26.6	$5.38	$184,436
27	4,586	2,375	$3.86	385,938	$1,489,719	15.2	$4.90	$1,889,942
28	36	10	$6.15	1,625	$9,994	83.6	$7.80	$12,679
29	118	41	$4.23	6,663	$28,182	26.3	$5.37	$35,754
30	269	131	$4.33	21,288	$92,175	29.3	$5.49	$116,938
31	32	8	$5.36	1,300	$6,968	60.0	$6.80	$8,840
32	157	37	$5.15	6,013	$30,964	53.7	$6.53	$39,283
33	11	6	$6.25	975	$6,094	86.6	$7.93	$7,731
34	180	97	$4.55	15,763	$71,719	35.8	$5.77	$90,987
35	579	235	$4.88	38,188	$186,355	45.7	$6.19	$236,421
36	373	2	$4.81	325	$1,563	43.6	$6.10	$1,983
37	318	27	$5.56	4,388	$24,395	66.0	$7.05	$30,948
38	3,585	2,571	$5.20	417,788	$2,172,495	55.2	$6.60	$2,756,150
39	44	12	$4.21	1,950	$8,210	25.7	$5.34	$10,415
40	381	67	$4.71	10,888	$51,280	40.6	$5.98	$65,057
41	92	28	$4.48	4,550	$20,384	33.7	$5.68	$25,860
42	46	17	$4.19	2,763	$11,575	25.1	$5.32	$14,685
43	87	15	$3.80	2,438	$9,263	13.4	$4.82	$11,751
44	76	33	$3.82	5,363	$20,485	14.0	$4.85	$25,988
45	3,248	1,349	$7.06	219,213	$1,547,640	110.7	$8.96	$1,963,424
46	101	26	$4.21	4,225	$17,787	25.7	$5.34	$22,566
47	55	34	$4.68	5,525	$25,857	39.7	$5.94	$32,804
48	19	10	$4.05	1,625	$6,581	20.9	$5.14	$8,349
49	365	117	$4.44	19,013	$84,416	32.5	$5.63	$107,094
50	29	11	$4.71	1,788	$8,419	40.6	$5.98	$10,681
51	50	21	$4.18	3,413	$14,264	24.8	$5.30	$18,096
52	18	6	$5.03	975	$4,904	50.1	$6.38	$6,222
53	1,517	1,300	$4.90	211,250	$1,035,125	46.3	$6.22	$1,313,218
54	20,568	6,894	$4.29	1,120,275	$4,805,980	28.1	$5.44	$6,097,138

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TABLE 4. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN STATE GOVERNMENT AGENCIES

Agencies	Total Employment	Non Supervisory Employees	Average Hourly Earnings	Total Hours Paid	1989 Wage Bill	Percent Difference form 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
55	25	9	$4.51	1,463	$6,596	34.6	$5.72	$8,368
56	367	125	$4.31	20,313	$87,547	28.7	$5.47	$111,067
57	14,900	1,173	$4.17	190,613	$794,854	24.5	$5.29	$1,008,397
58	177	84	$4.19	13,650	$57,194	25.1	$5.32	$72,559
59	498	156	$4.64	25,350	$117,624	38.5	$5.89	$149,224
60	211	111	$4.33	18,038	$78,102	29.3	$5.49	$99,085
61	588	222	$4.31	36,075	$155,483	28.7	$5.47	$197,255
62	857	171	$3.77	27,788	$104,759	12.5	$4.78	$132,903
63	694	86	$4.70	13,975	$65,683	40.3	$5.96	$83,329
64	809	128	$4.51	20,800	$93,808	34.6	$5.72	$119,010
65	30	13	$4.46	2,113	$9,422	33.1	$5.66	$11,953
66	39	10	$5.92	1,625	$9,620	76.7	$7.51	$12,204

TABLE 5. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN PUBLIC ORGANIZATIONS OF PUERTO RICO

Public Organizations	Total Employment	Non Supervisory Employment	Average Hourly Earnings	Total Hours Paid	1989 Wage Bill	Percent Difference from 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
TOTAL	36,223	20,998	$6.42	3,412,175	$23,099,749	91.6	$8.14	$27,777,160
1	593	302	$8.65	49,075	$424,362	158.2	$10.97	$538,543
2	18	6	$5.16	975	$503,500	54.0	$6.55	$6,383
3	17	11	$4.02	1,788	$719,200	20.0	$5.10	$9,116
4	471	8	$3.92	1,300	$5,100	17.0	$4.97	$6,465
5	2,735	1,411	$6.00	229,288	$1,375,741	79.1	$7.61	$1,745,323
6	22	20	$4.18	3,250	$13,579	24.8	$5.30	$17,235
7	421	278	$5.12	45,175	$231,220	52.8	$6.50	$293,435
8	70	44	$4.29	7,150	$30,706	28.1	$5.44	$38,914
9	1,462	1,334	$6.16	216,775	$1,334,455	83.9	$7.81	$1,694,080
10	4	2	$4.53	325	$1,472	35.2	$5.75	$1,868
11	28	10	$5.97	1,625	$9,695	78.2	$7.57	$12,308
12	1,300	924	$7.29	150,150	$1,093,903	117.6	$9.25	$1,388,663
13	11	1	$4.98	163	$810	48.7	$6.32	$1,027
14	7,095	5,881	$6.82	955,663	$6,513,814	103.6	$8.65	$8,268,620
15	1,229	779	$5.57	126,588	$705,653	66.3	$7.07	$894,520
16	250	79	$5.08	12,838	$65,217	51.6	$6.44	$82,735
17	71	6	$6.71	975	$6,540	100.3	$8.51	$8,300
18	1,915	1,313	$6.21	213,363	$1,324,064	85.4	$7.88	$1,680,946
19	1,441	1,048	$7.47	170,300	$1,271,964	123.0	$9.48	$1,613,910
20	112	17	$5.34	2,763	$14,765	59.4	$6.77	$18,715
21	189	67	$4.01	10,888	$43,684	19.7	$5.09	$55,388
22	45	5	$3.70	813	$3,009	10.4	$4.69	$3,814
23	7,793	4,021	$7.91	653,413	$5,169,694	136.1	$10.04	$6,557,043
24	43	13	$4.50	2,113	$9,509	34.3	$5.71	$12,060
25	93	43	$7.93	6,988	$55,393	136.7	$10.06	$70,297
26	385	85	$6.12	13,813	$84,546	82.7	$7.76	$107,243
27	4,539	1,262	$3.79	205,075	$776,612	13.1	$4.81	$986,043
28	1,020	688	$3.86	111,800	$431,036	15.2	$4.90	$547,486
29	1,147	725	$3.90	117,813	$459,575	16.4	$4.95	$582,908
30	1,704	615	$4.21	99,938	$420,931	25.7	$5.34	$533,771

EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN AGRICULTURE

Production Workers	Average Hourly Earnings	Total Hours Paid	1989 Wage Bill	Percent Difference from 1989 Minimum Wage	Average Hourly Earnings 1996	1996 Wage Bill
4,187	$3.39	680387.5	$2,306,514	1.2	$4.30	$2,925,666

TABLE 6. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN MANUFACTURING INDUSTRIES

SIC Number	1996 Total Employment	Production Workers	1996 Total Hours Paid	Average Hourly Earnings 1996	1996 Wage Bill (SCENARIO 2)
20	24,098	17,258	2,804,479	$7.38	$19,439,785
2011	273	234	38,069	$5.65	$214,920
2013	274	190	30,941	$5.96	$184,493
2015	940	768	124,737	$5.79	$721,614
2022	7	6	972	$4.25	$4,131
2023	112	71	11,502	$7.98	$91,782
2024	300	146	23,651	$6.20	$146,727
2026	1,379	435	70,630	$7.42	$524,193
2032	369	150	24,299	$6.48	$157,529
2033	936	663	107,728	$6.48	$698,380
2035	99	70	11,340	$4.74	$53,805
2037	76	61	9,882	$5.23	$51,651
2038	456	378	61,397	$4.34	$266,388
2041	1	1	162	$4.26	$691
2043	7	2	324	$5.20	$1,685
2044	243	176	28,673	$10.00	$286,648
2045	13	9	1,458	$6.66	$9,711
2046	182	83	13,446	$7.60	$102,177
2048	561	352	57,185	$9.48	$541,931
2051	1,082	487	79,216	$6.10	$483,396
2052	518	395	64,151	$6.89	$441,920
2053	11	10	1,620	$4.17	$6,762
2061	2,003	1,615	262,434	$6.36	$1,668,022
2062	336	242	39,365	$11.21	$441,477
2064	566	453	73,546	$10.06	$739,909
2066	81	25	4,050	$5.02	$20,346
2067	738	96	15,552	$13.05	$203,019
2082	363	293	47,627	$9.87	$470,085
2084	46	30	4,860	$4.82	$23,429
2085	840	388	63,017	$8.27	$521,250
2086	1,381	370	60,101	$11.23	$674,786
2087	491	311	50,543	$10.36	$523,873
2091	8,004	7,652	1,243,483	$6.86	$8,534,564
2095	435	132	21,384	$5.56	$118,822
2096	669	209	34,019	$8.31	$282,690
2097	95	72	11,664	$4.21	$49,127
2098	75	60	9,720	$6.25	$60,792
2099	138	128	20,736	$5.65	$117,063
21	1,173	1,023	166,208	$8.11	$1,323,846
2111	256	208	33,857	$13.41	$454,015
2121	853	758	123,117	$6.60	$812,206
2131	63	56	9,072	$6.27	$56,854
2141	1	1	162	$4.76	$771
22	3,827	3,416	555,161	$5.95	$3,296,203
2211	448	375	60,911	$7.84	$477,557
2241	30	23	3,726	$7.51	$27,983
2251	832	761	123,603	$6.29	$777,777
2253	1,760	1,590	258,384	$5.62	$1,452,157
2254	616	561	91,204	$4.96	$452,412
2261	3	2	324	$4.34	$1,406
2262	19	10	1,620	$6.33	$10,255
2273	102	80	12,960	$6.52	$84,509
2281	18	15	2,430	$5.00	$12,146
23	32,101	30,183	4,904,760	$5.19	$25,434,993
2311	2,756	2,587	420,380	$4.78	$2,010,610
2321	2,816	2,678	435,122	$5.13	$2,230,162
2322	1,988	1,859	302,123	$6.23	$1,881,956
2323	472	456	74,032	$5.65	$417,951
2325	1,782	1,707	277,338	$5.23	$1,449,606
2326	3,116	3,018	490,363	$5.04	$2,469,744
2329	727	672	109,185	$5.02	$548,535
2331	1,000	923	150,009	$4.87	$730,788
2335	1,346	1,211	196,825	$4.90	$963,857
2337	128	109	17,658	$4.83	$85,349
2339	1,411	1,310	212,863	$5.26	$1,120,708
2341	3,865	3,704	601,978	$5.09	$3,062,451

TABLE 6. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN MANUFACTURING INDUSTRIES

SIC Number	1996 Total Employment	Production Workers	1996 Total Hours Paid	Average Hourly Earnings 1996	1996 Wage Bill (SCENARIO 2)
2342	6,668	6,325	1,027,866	$5.46	$5,607,240
2353	446	379	61,559	$4.86	$299,110
2361	1,577	1,477	240,078	$4.80	$1,151,302
2369	568	515	83,752	$5.04	$421,823
2385	58	48	7,776	$4.54	$35,316
2387	24	18	2,916	$4.57	$13,318
2389	86	73	11,826	$4.68	$55,360
2391	123	87	14,094	$5.20	$73,308
2392	392	343	55,727	$5.00	$278,550
2393	459	435	70,630	$4.55	$321,684
2395	60	55	8,910	$5.28	$47,022
2396	198	161	26,081	$5.18	$135,000
2399	37	35	5,670	$4.28	$24,241
24	1,013	787	127,815	$5.28	$673,839
2421	19	15	2,430	$4.31	$10,481
2431	315	208	33,857	$5.46	$184,699
2434	456	381	61,883	$5.30	$328,162
2435	7	6	972	$4.55	$4,427
2448	107	90	14,580	$4.88	$71,212
2451	13	9	1,458	$4.59	$6,696
2491	59	47	7,614	$5.40	$41,149
2499	38	31	5,022	$5.38	$27,013
25	2,183	1,720	279,444	$5.14	$1,425,353
2511	450	381	61,883	$4.54	$281,058
2512	145	117	18,954	$4.66	$88,247
2514	109	86	13,932	$4.41	$61,507
2515	285	188	30,617	$5.43	$166,247
2517	42	37	5,994	$5.01	$30,036
2519	412	308	50,057	$4.78	$239,414
2521	45	31	5,022	$5.56	$27,905
2522	44	37	5,994	$5.33	$31,937
2531	33	27	4,374	$4.59	$20,087
2541	61	48	7,776	$5.21	$40,545
2542	468	400	64,960	$5.95	$386,515
2591	59	36	5,832	$5.02	$29,299
2599	33	25	4,050	$5.57	$22,556
26	2,136	1,574	255,792	$7.28	$3,129,074
2611	55	37	5,994	$6.01	$36,044
2621	34	14	2,268	$5.40	$12,257
2631	75	59	9,558	$8.61	$82,332
2652	459	352	57,185	$7.59	$433,835
2653	495	378	61,397	$8.44	$517,976
2655	36	29	4,698	$6.89	$32,363
2657	191	164	26,729	$7.23	$193,289
2671	78	62	10,044	$5.29	$53,135
2672	54	145	23,489	$5.10	$119,796
2673	183	49	7,938	$5.42	$43,000
2674	161	48	7,776	$7.18	$55,835
2676	163	52	8,424	$9.46	$79,724
2677	66	11	1,782	$6.74	$12,004
2678	71	1,925	312,815	$4.64	$1,452,488
2679	15	5	810	$6.17	$4,994
27	3,483	2,652	430,910	$7.68	$2,859,248
2711	1,360	97	15,714	$11.34	$178,221
2731	7	1,016	165,074	$6.01	$992,662
2732	12	8	1,296	$4.85	$6,281
2741	130	97	15,714	$7.41	$116,422
2752	1,422	1,016	165,074	$6.57	$1,084,808
2754	30	24	3,888	$6.71	$26,093
2759	231	179	29,159	$6.67	$194,584
2761	62	30	4,860	$7.68	$37,301
2782	198	166	27,053	$7.13	$192,887
2796	32	19	3,078	$9.74	$29,989
28	20,761	14,162	2,301,319	$10.77	$24,707,315
2813	117	74	11,988	$11.80	$141,437

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TABLE 6. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN MANUFACTURING INDUSTRIES

SIC Number	1996 Total Employment	Production Workers	1996 Total Hours Paid	Average Hourly Earnings 1996	1996 Wage Bill (SCENARIO 2)
2819	342	252	40,985	$9.02	$369,691
2821	29	22	3,564	$6.55	$23,330
2822	15	10	1,620	$5.32	$8,611
2833	1,870	1,268	206,059	$13.40	$2,760,579
2834	13,986	9,510	1,545,444	$10.96	$16,939,914
2835	1,208	945	153,572	$9.36	$1,437,851
2836	83	70	11,340	$9.45	$107,177
2841	145	92	14,904	$6.56	$97,752
2842	335	160	25,919	$7.56	$195,982
2844	1,185	905	147,093	$9.48	$1,393,977
2851	468	229	37,259	$6.80	$253,362
2865	39	22	3,564	$9.72	$34,634
2869	42	29	4,698	$7.84	$36,833
2873	152	85	13,770	$7.36	$101,320
2879	332	211	34,343	$12.76	$438,312
2891	259	180	29,321	$8.04	$235,840
2899	157	98	15,876	$8.23	$130,713
29	1,750	980	159,242	$11.63	$1,848,680
2911	880	495	80,512	$15.90	$1,279,843
2951	670	374	60,749	$7.38	$448,542
2952	82	47	7,614	$7.04	$53,609
2992	118	64	10,368	$6.43	$66,686
30	5,703	4,798	779,688	$6.62	$5,153,770
3021	1,634	1,522	247,368	$6.42	$1,587,957
3052	64	38	6,156	$5.62	$34,597
3069	770	695	112,911	$5.35	$604,497
3081	30	25	4,050	$6.03	$24,405
3082	13	9	1,458	$4.69	$6,844
3083	29	24	3,888	$6.28	$24,415
3084	219	148	23,975	$6.01	$144,175
3085	424	323	52,487	$7.95	$417,505
3086	232	115	18,630	$5.53	$103,047
3087	10	8	1,296	$4.92	$6,379
3088	66	45	7,290	$6.10	$44,484
3089	2,213	1,847	300,179	$7.18	$2,155,465
31	5,623	5,278	857,608	$5.53	$4,756,299
3131	681	663	107,728	$5.29	$569,911
3142	146	137	22,193	$4.68	$103,895
3143	779	709	115,179	$5.77	$664,860
3144	604	569	92,500	$6.18	$571,497
3149	2,460	2,332	378,909	$5.44	$2,062,228
3151	207	202	32,885	$4.63	$152,278
3161	25	18	2,916	$4.74	$13,835
3171	232	211	34,343	$4.50	$154,673
3172	488	447	72,574	$6.38	$463,122
32	5,105	3,783	614,776	$7.69	$4,422,616
3211	36	29	4,698	$5.11	$24,019
3221	497	433	70,306	$5.67	$398,700
3231	1,079	874	142,071	$7.12	$1,011,141
3241	695	464	75,328	$9.40	$708,142
3261	63	49	7,938	$4.95	$39,274
3269	32	26	4,212	$4.20	$17,687
3271	584	310	50,381	$5.18	$260,777
3272	686	528	85,858	$6.64	$569,674
3273	1,221	893	145,149	$8.31	$1,206,142
3274	29	20	3,240	$9.11	$29,512
3275	16	14	2,268	$3.58	$8,114
3281	115	102	16,524	$5.94	$98,106
3295	20	15	2,430	$5.14	$12,485
3296	33	27	4,374	$8.88	$38,843
33	693	512	83,266	$8.42	$678,728
3312	196	146	23,651	$6.32	$149,428
3317	9	7	1,134	$10.16	$11,523
3341	73	55	8,910	$6.17	$54,935
3351	25	16	2,592	$8.46	$21,933

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TABLE 6. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN MANUFACTURING INDUSTRIES

SIC Number	1996 Total Employment	Production Workers	1996 Total Hours Paid	Average Hourly Earnings 1996	1996 Wage Bill (SCENARIO 2)
3353	14	9	1,458	$6.61	$9,637
3354	219	167	27,215	$8.78	$238,927
3365	19	19	3,078	$5.24	$16,127
3398	21	18	2,916	$7.51	$21,900
3399	117	76	12,312	$12.53	$154,319
34	4,501	3,457	561,803	$6.75	$3,759,010
3411	520	430	69,820	$11.04	$770,629
3412	10	8	1,296	$6.53	$8,467
3421	13	9	1,458	$4.92	$7,177
3423	95	76	12,312	$6.27	$77,160
3429	10	8	1,296	$6.89	$8,928
3433	38	20	3,240	$5.73	$18,579
3441	142	111	17,982	$7.28	$130,944
3442	1,095	787	127,815	$5.47	$698,881
3443	207	148	23,975	$6.65	$159,383
3444	456	302	49,085	$5.86	$287,696
3446	233	211	34,343	$5.05	$173,408
3449	14	9	1,458	$5.38	$7,843
3452	226	180	29,321	$9.45	$277,130
3469	445	328	53,297	$6.25	$333,343
3471	265	211	34,343	$5.63	$193,450
3494	27	20	3,240	$8.01	$25,936
3495	32	28	4,536	$5.20	$23,593
3496	309	244	39,689	$5.92	$235,143
3498	64	58	9,396	$6.99	$65,679
3499	301	270	43,901	$5.82	$255,641
35	4,814	3,815	619,960	$7.98	$4,917,694
3535	132	112	18,144	$6.80	$123,376
3541	10	7	1,134	$7.76	$8,804
3544	208	154	24,947	$9.10	$226,928
3545	225	182	29,645	$6.75	$200,084
3555	121	99	16,038	$9.36	$150,155
3562	134	108	17,496	$14.45	$252,811
3563	30	22	3,564	$9.45	$33,684
3564	117	99	16,038	$6.53	$104,783
3568	28	27	4,374	$6.20	$27,134
3569	423	297	48,275	$6.86	$331,331
3571	103	76	12,312	$4.86	$59,822
3572	1,000	823	133,809	$7.56	$1,011,755
3577	973	817	132,837	$6.90	$916,773
3579	487	294	47,789	$11.65	$556,562
3585	619	528	85,858	$8.73	$749,399
3589	52	40	6,480	$7.18	$46,529
3592	87	85	13,770	$5.21	$71,798
3596	12	8	1,296	$4.25	$5,508
3599	55	38	6,156	$6.57	$40,454
36	20,776	17,440	2,833,962	$7.89	$22,295,225
3612	209	175	28,511	$5.91	$168,557
3613	3,650	3,249	527,946	$8.01	$4,226,324
3621	40	28	4,536	$13.56	$61,516
3624	501	408	66,256	$12.93	$856,538
3625	1,096	952	154,706	$7.88	$1,218,833
3629	192	158	25,595	$6.15	$157,488
3639	29	19	3,078	$4.99	$15,346
3641	596	477	77,434	$6.56	$507,887
3643	1,942	1,664	270,372	$8.50	$2,298,160
3644	376	294	47,789	$6.24	$298,288
3645	107	99	16,038	$7.85	$125,943
3646	4	2	324	$4.25	$1,377
3648	101	90	14,580	$5.09	$74,171
3651	398	347	56,375	$7.04	$396,937
3652	5	4	648	$4.74	$3,075
3661	1,602	1,438	233,599	$6.94	$1,621,070
3663	1,863	1,624	263,892	$7.98	$2,105,818
3669	982	817	132,837	$6.19	$822,399

TABLE 6. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN MANUFACTURING INDUSTRIES

SIC Number	1996 Total Employment	Production Workers	1996 Total Hours Paid	Average Hourly Earnings 1996	1996 Wage Bill (SCENARIO 2)
3672	196	169	27,539	$5.52	$151,980
3674	3,996	2,955	480,157	$9.22	$4,428,551
3677	272	243	39,527	$5.80	$229,169
3678	306	259	42,119	$6.19	$260,761
3679	856	667	108,375	$6.86	$743,828
3692	389	359	58,319	$7.66	$446,878
3694	1,069	944	153,410	$7.00	$1,074,331
37	1,055	786	127,653	$7.33	$929,519
3713	58	35	5,670	$6.41	$36,325
3714	349	288	46,817	$6.90	$323,107
3721	336	221	35,963	$8.65	$311,162
3728	198	154	24,947	$6.53	$162,996
3731	77	58	9,396	$7.50	$70,447
3732	33	27	4,374	$5.28	$23,084
3792	4	3	486	$4.94	$2,398
38	14,815	12,446	2,022,523	$7.68	$15,516,688
3812	541	465	75,490	$6.37	$480,772
3821	315	249	40,499	$7.75	$313,928
3822	696	616	100,114	$7.41	$741,738
3823	821	667	108,375	$8.53	$923,942
3824	144	131	21,222	$6.08	$128,960
3825	1,105	944	153,410	$6.85	$1,050,976
3829	85	71	11,502	$5.30	$60,994
3841	6,832	5,896	958,046	$7.89	$7,559,982
3842	2,216	1,730	281,063	$7.84	$2,203,622
3843	385	283	46,007	$9 93	$457,014
3844	79	61	9,882	$7.08	$69,954
3845	428	339	55,079	$9 07	$499,613
3851	1,057	916	148,875	$6.32	$940,576
3861	47	37	5,994	$6.86	$41,138
3873	66	43	6,966	$6.24	$43,479
39	3,263	2,731	443,708	$6.90	$3,056,493
3911	439	369	59,939	$7.18	$430,395
3914	76	68	11,016	$7.35	$80,916
3915	159	146	23,651	$8.60	$203,438
3942	14	8	1,296	$5.29	$6,856
3949	18	13	2,106	$5.09	$10,714
3951	19	18	2,916	$4.90	$14,279
3952	5	4	648	$6.52	$4,225
3953	31	23	3,726	$6.53	$24,344
3961	1,889	1,627	264,378	$6.76	$1,787,707
3965	22	16	2,592	$4.78	$12,397
3991	139	107	17,334	$10.16	$176,143
3993	178	114	18,468	$5.85	$108,008
3995	80	65	10,530	$5.40	$56,908
3999	195	155	25,109	$5.58	$140,163

TABLE 7. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN NONMANUFACTURING INDUSTRIES

SIC Number	Total Employment	Production Workers	Average Hourly Earnings 1996	Total Hours Paid	1996 Wage Bill (SCENARIO 2)
TOTAL	153,366	131,815	---	21,419,869	$150,021,039
723	9	7	$4.76	1,173	$5,581
74	18	15	$5.73	2,514	$14,415
751	3	1	$4.29	168	$719
78	72	67	$4.76	10,893	$51,824
1422	116	87	$5.86	14,077	$82,509
1429	63	56	$7.85	9,050	$71,067
1442	224	186	$7.02	30,166	$211,631
152	5,017	4,559	$6.05	740,899	$4,483,544
154	3,440	2,967	$7.45	482,146	$3,590,546
1611	1,059	975	$7.07	158,369	$1,119,102
1622	686	625	$6.58	101,557	$668,686
1623	306	260	$7.42	42,232	$313,429
1629	780	688	$8.45	111,780	$944,458
1711	1,322	1,175	$7.17	190,881	$1,368,216
1721	173	157	$5.85	25,473	$148,980
1731	2,091	1,871	$6.44	304,001	$1,959,221
1741	205	195	$6.03	31,674	$190,870
1742	256	243	$6.70	39,550	$264,928
1743	70	57	$6.47	9,217	$59,637
1751	9	5	$5.61	838	$4,699
1761	418	373	$5.51	60,666	$334,026
1791	22	17	$5.98	2,681	$16,022
1793	10	8	$5.09	1,341	$6,821
1794	343	293	$6.91	47,594	$329,077
1795	121	119	$8.25	19,272	$158,926
1796	189	107	$8.44	17,429	$147,041
1799	283	263	$6.24	42,734	$266,740
4111	4	4	$5.87	670	$3,938
4121	11	11	$4.61	1,843	$8,489
4131	32	30	$4.48	4,860	$21,765
4151	5	5	$8.88	838	$7,441
4210	1,056	955	$13.14	155,185	$2,039,639
4221	118	98	$15.93	15,921	$253,686
4222	35	27	$8.11	4,357	$35,323
4224	14	9	$7.59	1,508	$11,443
4225	70	66	$7.00	10,726	$75,111
4226	126	93	$6.39	15,083	$96,440
4422	20	4	$9.51	670	$6,378
4454	234	210	$12.32	34,188	$421,145
4459	19	15	$16.91	2,514	$42,511
4463	1,574	1,398	$20.92	227,247	$4,754,040
4469	45	40	$6.24	6,536	$40,795
4511	66	46	$15.14	7,541	$114,139
4521	276	264	$10.23	42,902	$438,690
4582	31	26	$6.17	4,190	$25,832
4583	624	526	$7.37	85,469	$629,983
4613	6	6	$16.39	1,006	$16,481
4712	38	26	$7.85	4,190	$32,901
4722	224	175	$8.18	28,490	$233,126
4723	99	87	$7.32	14,077	$103,048
4782	30	20	$9.53	3,184	$30,337
4821	89	70	$16.11	11,396	$183,609
4832	509	459	$7.85	74,576	$585,643
4833	694	588	$10.86	95,524	$1,037,364
4899	27	27	$4.97	4,357	$21,669
4923	15	11	$6.90	1,843	$12,723
4925	56	44	$8.11	7,206	$58,419

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TABLE 7. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN NONMANUFACTURING INDUSTRIES

SIC Number	Total Employment	Production Workers	Average Hourly Earnings 1996	Total Hours Paid	1996 Wage Bill (SCENARIO 2)
4953	78	76	$6.29	12,401	$78,036
4971	12	12	$8.01	2,011	$16,099
5012	133	80	$6.47	13,072	$84,576
5013	234	203	$6.60	33,014	$217,797
5014	89	71	$6.04	11,563	$69,829
5021	63	55	$5.84	8,882	$51,834
5023	97	68	$6.29	11,061	$69,600
5031	38	33	$5.70	5,363	$30,548
5039	295	238	$5.90	38,712	$228,374
5041	9	8	$7.31	1,341	$9,797
5042	165	136	$6.18	22,121	$136,674
5043	150	114	$14.09	18,602	$262,192
5051	525	495	$6.53	80,441	$525,570
5063	338	239	$8.12	38,880	$315,682
5064	487	408	$9.72	66,364	$644,921
5065	110	89	$6.99	14,412	$100,747
5072	298	241	$6.41	39,215	$251,241
5074	213	172	$6.13	27,987	$171,493
5075	68	61	$11.52	9,888	$113,899
5078	28	19	$5.54	3,017	$16,724
5081	934	801	$12.56	130,215	$1,635,455
5082	63	47	$6.70	7,709	$51,639
5083	43	41	$5.20	6,703	$34,868
5084	753	617	$8.58	100,217	$859,469
5085	79	66	$8.06	10,726	$86,404
5086	15	387	$5.18	62,845	$325,292
5087	517	12	$7.50	2,011	$15,078
5093	85	69	$7.07	11,228	$79,344
5094	94	84	$12.83	13,574	$174,108
5099	113	100	$7.68	16,256	$124,770
5111	68	58	$6.47	9,385	$60,721
5112	83	77	$4.99	12,569	$62,667
5113	189	170	$8.03	27,652	$222,060
5122	2,623	2,087	$11.51	339,195	$3,903,016
5133	187	160	$5.56	25,976	$144,341
5134	23	15	$5.81	2,514	$14,606
5136	13	13	$6.37	2,179	$13,875
5137	268	226	$4.66	36,701	$170,881
5139	118	97	$5.76	15,753	$90,733
5141	3,332	2,807	$6.15	456,170	$2,806,806
5142	302	235	$6.84	38,210	$261,280
5143	39	34	$7.09	5,530	$39,220
5144	23	21	$4.69	3,352	$15,733
5145	90	73	$13.75	11,899	$163,633
5146	21	19	$6.56	3,017	$19,785
5147	210	180	$6.19	29,328	$181,568
5148	226	193	$5.99	31,339	$187,658
5149	333	289	$8.46	46,924	$397,069
5154	14	14	$5.96	2,346	$13,990
5161	518	320	$6.96	51,952	$361,840
5171	19	17	$8.60	2,681	$23,064
5172	562	457	$14.01	74,241	$1,039,813
5181	174	153	$9.46	24,803	$234,738
5191	139	116	$4.96	18,770	$93,106
5194	17	15	$4.81	2,514	$12,087
5198	74	67	$9.15	10,893	$99,639
5199	253	204	$7.68	33,182	$254,685

TABLE 7. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN NONMANUFACTURING INDUSTRIES

SIC Number	Total Employment	Production Workers	Average Hourly Earnings 1996	Total Hours Paid	1996 Wage Bill (SCENARIO 2)
5211	869	653	$4.94	106,082	$523,523
5231	144	105	$8.77	17,094	$149,851
5251	743	641	$5.29	104,239	$551,454
5261	47	43	$4.73	7,039	$33,307
5311	6,754	6,336	$7.09	1,029,650	$7,302,062
5331	235	222	$5.32	36,031	$191,529
5399	1,349	1,186	$4.94	192,724	$951,108
5411	11,775	10,495	$5.68	1,705,358	$9,692,540
5423	18	17	$8.78	2,681	$23,540
5462	204	185	$4.81	29,998	$144,236
5499	70	62	$4.63	10,055	$46,561
5511	819	663	$7.76	107,758	$836,652
5521	99	60	$5.46	9,720	$53,025
5531	982	857	$7.31	139,264	$1,017,668
5541	348	314	$4.99	50,946	$254,009
5611	1,228	1,075	$4.92	174,625	$859,571
5621	2,335	2,073	$4.87	336,848	$1,641,005
5631	41	38	$4.68	6,201	$29,028
5641	140	119	$4.81	19,272	$92,666
5651	1,649	1,450	$4.45	235,626	$1,049,240
5661	1,969	1,692	$5.15	275,009	$1,416,502
5699	176	153	$4.76	24,803	$117,998
5712	1,271	1,075	$5.79	174,625	$1,010,218
5713	19	17	$6.11	2,681	$16,396
5714	46	43	$4.40	7,039	$30,986
5719	158	93	$6.41	15,083	$96,631
5722	152	128	$5.98	20,781	$124,172
5732	147	124	$3.63	20,110	$72,968
5733	43	30	$6.95	4,860	$33,788
5810	7,770	6,778	$5.21	1,101,377	$5,742,776
5912	2,410	2,244	$6.38	364,668	$2,327,070
5921	26	21	$4.53	3,352	$15,180
5931	4	4	$4.58	670	$3,070
5941	396	331	$9.97	53,795	$536,426
5942	329	116	$7.08	19,105	$135,245
5943	211	189	$5.67	30,668	$173,917
5944	207	184	$5.94	29,830	$177,112
5945	87	57	$4.31	9,217	$39,758
5946	271	204	$5.09	33,182	$168,808
5947	173	126	$4.99	20,446	$101,938
5949	320	267	$4.62	43,405	$200,440
5962	47	34	$5.54	5,530	$30,660
5963	24	21	$4.25	3,352	$14,245
5984	220	191	$5.77	31,003	$178,964
5992	46	36	$4.95	5,866	$29,021
5999	483	382	$7.24	62,007	$449,180
6022	6,558	5,278	$7.59	857,706	$6,507,047
6023	3,354	2,589	$7.55	420,641	$3,175,215
6025	949	563	$10.39	91,502	$950,734
6028	617	453	$9.26	73,570	$681,349
6059	4	4	$5.49	670	$3,682
6122	2,545	1,871	$6.65	304,001	$2,020,929
6131	66	39	$9.13	6,368	$58,170
6142	42	34	$8.40	5,530	$46,447
6143	521	392	$6.08	63,683	$386,992
6144	13	9	$15.53	1,508	$23,421
6145	44	532	$7.37	86,475	$637,395

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TABLE 7. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN NONMANUFACTURING INDUSTRIES

SIC Number	Total Employment	Production Workers	Average Hourly Earnings 1996	Total Hours Paid	1996 Wage Bill (SCENARIO 2)
6146	1,059	197	$6.79	32,009	$217,255
6153	266	40	$7.02	6,536	$45,853
6162	773	649	$7.24	105,412	$763,606
6211	226	113	$16.35	18,434	$301,459
6221	30	20	$33.43	3,184	$106,443
6311	678	497	$7.70	80,777	$622,040
6321	166	135	$8.53	21,954	$187,164
6324	1,255	1,020	$9.24	165,743	$1,530,771
6331	1,184	1,000	$9.82	162,559	$1,596,229
6351	5	3	$8.28	503	$4,165
6361	69	51	$8.02	8,212	$65,841
6371	11	9	$14.25	1,506	$21,488
6411	1,085	880	$9.30	142,951	$1,329,338
6510	601	519	$7.35	84,296	$619,197
6531	123	99	$7.76	16,088	$124,912
6552	168	153	$6.44	24,803	$159,848
6553	35	27	$6.61	4,357	$28,800
7011	7,155	6,295	$8.35	1,022,946	$8,539,313
7021	24	22	$6.05	3,519	$21,297
7210	452	407	$5.87	66,197	$388,831
7221	58	47	$4.85	7,709	$37,360
7231	417	253	$6.50	41,059	$266,697
7241	40	34	$7.32	5,530	$40,483
7251	32	24	$5.54	3,854	$21,369
7261	65	54	$6.57	8,714	$57,268
7267	13	9	$4.45	1,506	$6,716
7299	118	102	$8.16	16,591	$135,341
7311	697	483	$11.41	78,430	$894,516
7312	23	20	$6.76	3,184	$21,531
7319	65	50	$7.09	8,044	$57,047
7321	66	43	$10.56	7,039	$74,294
7339	11	9	$5.87	1,506	$8,859
7342	77	70	$4.88	11,396	$55,661
7349	1,971	1,826	$4.88	296,795	$1,449,645
7361	265	250	$5.76	40,556	$233,590
7362	4,533	4,471	$5.70	726,486	$4,138,262
7372	23	15	$9.34	2,514	$23,472
7374	160	132	$7.88	21,451	$168,999
7379	67	57	$16.75	9,217	$154,354
7392	434	365	$11.48	59,326	$681,137
7393	4,490	4,254	$4.76	691,293	$3,288,802
7394	293	237	$7.52	38,545	$289,978
7395	137	124	$6.00	20,110	$120,677
7397	35	19	$6.58	3,017	$19,862
7399	466	395	$6.85	64,186	$439,719
7512	506	429	$8.99	69,716	$627,079
7513	14	7	$5.05	1,173	$5,923
7523	244	224	$4.44	36,366	$161,477
7525	93	80	$4.36	13,072	$57,047
7531	28	22	$5.35	3,519	$18,841
7534	143	125	$7.62	20,278	$154,612
7535	4	3	$4.76	503	$2,392
7538	56	45	$4.67	7,374	$34,426
7539	119	106	$5.28	17,261	$91,099
7542	19	15	$5.02	2,514	$12,629
7549	7	6	$4.28	1,006	$4,299
7622	26	24	$4.95	3,854	$19,071

TABLE 7. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN NONMANUFACTURING INDUSTRIES

SIC Number	Total Employment	Production Workers	Average Hourly Earnings 1996	Total Hours Paid	1996 Wage Bill (SCENARIO 2)
7623	118	97	$6.56	15,753	$103,324
7629	122	93	$6.93	15,083	$104,476
7631	9	8	$5.14	1,341	$6,889
7641	22	21	$5.04	3,352	$16,881
7692	26	22	$5.65	3,519	$19,868
7694	105	95	$11.37	15,418	$175,258
7699	63	56	$7.02	9,050	$63,489
7813	33	21	$7.75	3,352	$25,981
7814	43	36	$15.97	5,866	$93,686
7823	171	150	$5.71	24,300	$138,728
7832	253	207	$4.48	33,685	$150,853
7833	14	12	$3.88	2,011	$7,807
7911	13	8	$5.61	1,341	$7,518
7929	6	3	$11.04	503	$5,549
7933	28	25	$4.63	4,022	$18,625
7941	8	8	$7.99	1,341	$10,716
7948	361	323	$6.80	52,454	$356,691
7993	52	44	$5.40	7,206	$38,946
7997	69	60	$6.00	9,720	$58,327
7999	277	229	$5.70	37,204	$211,925
8011	706	617	$6.01	100,217	$602,646
8021	108	101	$6.14	16,423	$100,845
8031	5	5	$7.27	838	$6,091
8049	56	45	$9.03	7,374	$66,606
8059	138	113	$6.61	18,434	$121,846
8062	10,825	9,741	$6.10	1,582,852	$9,658,942
8063	310	279	$8.41	45,416	$382,002
8069	546	506	$6.53	82,285	$537,615
8071	436	372	$6.76	60,499	$409,088
8072	32	28	$5.25	4,525	$23,765
8081	144	132	$8.74	21,451	$187,505
8091	402	372	$7.35	60,499	$444,394
8111	1,132	1,008	$12.79	163,732	$2,093,812
8321	389	340	$9.67	55,303	$534,628
8331	268	259	$4.25	42,064	$178,773
8351	325	279	$6.00	45,416	$272,529
8361	595	224	$5.40	36,366	$196,540
8399	629	629	$4.74	102,228	$485,047
8411	30	17	$4.94	2,681	$13,233
8611	94	78	$7.10	12,737	$90,487
8621	403	337	$6.27	54,801	$343,445
8631	67	56	$8.74	9,050	$79,103
8641	351	302	$5.67	49,103	$278,457
8661	127	121	$5.38	19,608	$105,471
8699	22	18	$5.87	2,849	$16,734
8811	18	18	$3.86	2,849	$10,988
8911	461	347	$7.98	56,309	$449,337
8931	515	441	$13.09	71,727	$939,087
8922	182	163	$8.21	26,479	$217,342
5431	11	11	$4.25	1,843	$7,835

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TABLE 8. EMPLOYMENT AND AVERAGE HOURLY EARNINGS FOR SELECTED MUNICIPALITIES

Municipality	Total Employment	Non Supervisory Employees	Average Hourly Earnings	Total Hours	1996 Wage Bill (SCENARIO 2)
TOTAL	43,632	38,814	$4.69	6,307,352	$29,364,835
ADJUNTAS	201	83	$4.54	13,560	$61,588
AGUADA	262	251	$4.74	40,844	$193,797
AGUADILLA	522	376	$4.71	61,108	$287,595
AGUAS BUENAS	203	119	$4.66	19,279	$89,760
AIBONITO	197	88	$4.74	14,377	$68,217
ANASCO	232	176	$4.73	28,591	$135,286
ARECIBO	897	501	$4.39	81,362	$357,143
ARROYO	166	160	$4.48	25,977	$116,664
BARCELONETA	305	240	$4.66	39,047	$181,803
BARRANQUITAS	214	150	$4.66	24,343	$113,341
BAYAMON	3,032	11,951	$4.41	1,942,068	$8,574,087
CABO ROJO	381	191	$4.87	31,042	$151,224
CAGUAS	1,747	1,327	$4.54	215,658	$979,475
CAMUY	247	128	$4.96	20,749	$102,924
CANOVANAS	303	200	$5.63	32,512	$183,135
CAROLINA	2,046	1,113	$4.78	180,859	$865,018
CATANO	518	402	$0.00	65,351	$0
CAYEY	295	205	$5.02	33,329	$167,441
CEIBA	152	109	$5.15	17,646	$90,884
CIALES	168	136	$4.61	22,056	$101,573
CIDRA	274	179	$4.68	29,081	$136,139
COAMO	255	86	$4.43	14,050	$62,210
COMERIO	260	97	$5.28	15,684	$82,775
COROZAL	190	165	$4.67	26,794	$125,092
CULEBRA	100	23	$4.78	3,758	$17,972
DORADO	319	174	$5.32	28,264	$150,244
FAJARDO	478	411	$0.00	66,821	$0
FLORIDA	175	105	$4.76	16,991	$80,835
GUANICA	179	155	$4.94	25,160	$124,167
GUAYANA	362	294	$4.69	47,706	$223,934
GUAYANILLA	176	175	$5.43	28,428	$154,358
GUAYNABO	1,637	1,275	$4.62	207,163	$956,659
GURABO	197	152	$4.83	24,670	$119,244
HATILLO	282	242	$4.63	39,374	$182,325
HORMINGUEROS	248	116	$4.96	18,788	$93,199
HUNACAO	891	357	$5.02	57,999	$291,380
ISABELA	480	487	$4.41	79,075	$349,109
JAYUYA	152	130	$4.83	21,076	$101,871
JUANA DIAZ	236	181	$4.82	29,408	$141,773
JUNCOS	176	122	$4.49	19,769	$88,782
LAJAS	175	77	$5.79	12,580	$72,777
LARES	295	245	$4.74	39,864	$189,146
LAS MARIAS	142	128	$4.78	20,749	$99,239
LAS PIEDRAS	233	178	$4.96	28,918	$143,445
LOIZA	466	169	$4.45	27,447	$122,223
LUQUILLO	219	202	$4.76	32,839	$156,230
MANATI	513	402	$0.00	65,351	$0
MARICAO	164	85	$4.58	13,887	$63,601
MAUNABO	182	116	$4.72	18,788	$88,670
MAYAGUEZ	1,530	985	$4.71	160,110	$753,592
MOCA	231	133	$5.15	21,566	$111,080
MOROVIS	237	185	$4.86	30,061	$146,067
NAGUABO	203	163	$4.95	26,467	$130,953
NARANJITO	317	158	$5.20	25,650	$133,420
OROCOVIS	298	159	$4.54	25,814	$117,240
PATILLAS	208	122	$4.64	19,769	$91,792

TABLE 8. EMPLOYMENT AND AVERAGE HOURLY EARNINGS FOR SELECTED MUNICIPALITIES

Municipality	Total Employment	Non Supervisory Employees	Average Hourly Earnings	Total Hours	1996 Wage Bill (SCENARIO 2)
PENUELAS	2,274	123	$4.86	19,932	$96,849
PONCE	1,948	929	$4.90	150,961	$739,257
QUEBRADILLAS	237	161	$0.00	26,140	$0
RINCON	209	178	$4.44	28,918	$128,404
RIO GRANDE	271	244	$4.87	39,701	$193,408
SABANA GRANDE	196	162	$4.68	26,304	$123,137
SALINAS	243	206	$4.54	33,492	$152,115
SAN GERMAN	325	213	$4.86	34,636	$168,295
SAN JUAN	9,056	7,238	$5.71	1,176,155	$6,714,614
SAN LORENZO	212	183	$4.44	29,735	$132,031
SAN SEBASTIAN	343	273	$4.68	44,439	$208,033
SANTA ISABEL	195	173	$4.76	28,101	$133,689
TOA ALTA	212	206	$4.88	33,492	$163,588
TOA BAJA	819	472	$4.71	76,624	$360,648
TRUJILLO ALTO	453	161	$5.14	26,140	$134,311
UTUADO	254	196	$4.47	31,859	$142,270
VEGA ALTA	211	177	$4.91	28,754	$141,176
VEGA BAJA	522	433	$4.71	70,416	$331,427
VIEQUES	259	145	$4.67	23,526	$109,836
VILLIALBA	185	143	$4.87	23,200	$113,020
YABUCOA	347	227	$4.66	36,923	$171,914
YAUCO	293	235	$4.82	38,230	$184,304

TABLE 9. E

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TABLE 9. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN STATE GOVERNMENT AGENCIES

Agencies	Total Employment	Non Supervisory Employees	Average Hourly Earnings 1996	Total Hours Paid	1996 Wage Bill (SCENARIO 2)
Total	166,522	56,473	$5.18	9,176,814	$47,457,133
1	397	266	$6.04	43,171	$260,702
2	2,416	925	$4.92	150,275	$739,711
3	23	13	$6.32	2,142	$13,533
4	261	43	$5.48	6,921	$37,929
5	316	119	$5.62	19,279	$108,349
6	10	4	$5.53	659	$3,646
7	4	1	$4.25	165	$700
8	133	44	$5.79	7,085	$40,989
9	262	97	$5.24	15,818	$82,881
10	5,267	636	$5.48	103,314	$566,222
11	1,384	343	$5.54	55,694	$308,769
12	1,438	559	$5.33	90,791	$483,767
13	459	235	$5.66	38,228	$216,301
14	68,259	22,914	$4.58	3,723,585	$17,053,466
15	224	57	$4.73	9,227	$43,665
16	1,859	196	$5.62	31,802	$178,730
17	2,467	1,022	$5.37	166,093	$891,326
18	1,562	908	$4.96	147,474	$731,535
19	10,882	4,432	$4.97	720,232	$3,581,808
20	1,744	1,199	$4.83	194,764	$941,408
21	184	70	$5.71	11,369	$64,908
22	4,227	1,759	$5.14	285,885	$1,468,892
23	4,926	2,256	$5.67	366,624	$2,079,089
24	368	117	$7.13	18,949	$135,104
25	55	29	$6.86	4,778	$32,797
26	474	214	$5.38	34,768	$187,018
27	4,650	2,408	$4.90	391,341	$1,916,401
28	37	10	$7.80	1,648	$12,856
29	120	42	$5.37	6,756	$36,254
30	273	133	$5.49	21,586	$118,575
31	32	8	$6.80	1,318	$8,964
32	159	38	$6.53	6,097	$39,833
33	11	6	$7.93	989	$7,839
34	183	98	$5.77	15,983	$92,261
35	587	238	$6.19	38,722	$239,730
36	378	2	$6.10	330	$2,011
37	322	27	$7.05	4,449	$31,382
38	3,635	2,607	$6.60	423,637	$2,794,736
39	45	12	$5.34	1,977	$10,561
40	386	68	$5.98	11,040	$65,968
41	93	28	$5.68	4,614	$26,222
42	47	17	$5.32	2,801	$14,890
43	88	15	$4.82	2,472	$11,915
44	77	33	$4.85	5,438	$26,352
45	3,293	1,368	$8.96	222,281	$1,990,912
46	102	26	$5.34	4,284	$22,882
47	56	34	$5.94	5,602	$33,263
48	19	10	$5.14	1,648	$8,466
49	370	119	$5.63	19,279	$108,594
50	29	11	$5.98	1,813	$10,831
51	51	21	$5.30	3,460	$18,350
52	18	6	$6.38	989	$6,309
53	1,538	1,318	$6.22	214,208	$1,331,603
54	20,856	6,991	$5.44	1,135,959	$6,182,498

TABLE 9: EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN STATE GOVERNMENT AGENCIES

Agencies	Total Employment	Non Supervisory Employees	Average Hourly Earnings 1996	Total Hours Paid	1996 Wage Bill (SCENARIO 2)
55	25	9	$5.72	1,483	$8,485
56	372	127	$5.47	20,597	$112,622
57	15,109	1,189	$5.29	193,281	$1,022,515
58	179	85	$5.32	13,841	$73,575
59	505	158	$5.89	25,705	$151,314
60	214	113	$5.49	18,290	$100,472
61	596	225	$5.47	36,580	$200,016
62	869	173	$4.78	28,177	$134,764
63	704	87	$5.96	14,171	$84,495
64	820	130	$5.72	21,091	$120,676
65	30	13	$5.66	2,142	$12,120
66	40	10	$7.51	1,648	$12,375

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TABLE 10. EMPLOYMENT AND AVERAGE HOURLY EARNINGS IN PUBLIC ORGANIZATIONS OF PUERTO RICO

Public Organizations	Total Employment	Non Supervisory Employment	Average Hourly Earnings 1996	Total Hours Paid	1996 Wage Bill (SCENARIO 2)
TOTAL	36,730	21,292	$8.14	3,459,945	$28,166,040
1	601	306	$10.97	49,762	$546,083
2	18	6	$6.55	989	$6,472
3	17	11	$5.10	1,813	$9,244
4	478	8	$4.97	1,318	$6,556
5	2,773	1,431	$7.61	232,498	$1,769,757
6	22	20	$5.30	3,296	$17,476
7	427	282	$6.50	45,807	$297,543
8	71	45	$5.44	7,250	$39,459
9	1,482	1,353	$7.81	219,810	$1,717,798
10	4	2	$5.75	330	$1,894
11	28	10	$7.57	1,648	$12,480
12	1,318	937	$9.25	152,252	$1,408,105
13	11	1	$6.32	165	$1,041
14	7,194	5,963	$8.65	969,042	$8,384,381
15	1,246	790	$7.07	128,360	$907,043
16	254	80	$6.44	13,017	$83,893
17	72	6	$8.51	989	$8,416
18	1,942	1,331	$7.88	216,350	$1,704,479
19	1,461	1,063	$9.48	172,684	$1,636,505
20	114	17	$6.77	2,801	$18,977
21	192	68	$5.09	11,040	$56,164
22	46	5	$4.69	824	$3,867
23	7,902	4,077	$10.04	662,560	$6,648,842
24	44	13	$5.71	2,142	$12,229
25	94	44	$10.06	7,085	$71,282
26	390	86	$7.76	14,006	$108,744
27	4,603	1,280	$4.81	207,946	$999,848
28	1,034	698	$4.90	113,365	$555,151
29	1,163	735	$4.95	119,462	$591,069
30	1,728	624	$5.34	101,337	$541,243

[FR Doc. 92-245 Filed 1-7-92; 8:45 am]
BILLING CODE 4510-27-C

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300235A; FRL-3947-2]

RIN 2070-AB78

Definitions and Interpretations; Lettuce, Head Lettuce, and Leaf Lettuce

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends 40 CFR 180.1(h) to add EPA's interpretations for the application of tolerances and exemptions from the requirement of a tolerance established for pesticide chemicals in or on the raw agricultural commodities lettuce, head lettuce, and leaf lettuce. The amendments to 40 CFR 180.1(h) are based, in part, on recommendations of the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective January 8, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1991 (56 FR 42579), EPA issued a proposed rule, in part pursuant to a request from the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, to amend 40 CFR 180.1(h) to specify that the general commodities lettuce, leaf lettuce, and head lettuce should be interpreted for tolerance purposes to include the corresponding specific commodities listed below.

There were no comments received in response to the proposed rule.

The data submitted by IR-4 and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the general commodities lettuce, head lettuce, and leaf lettuce should be interpreted to include the corresponding specific commodities listed below.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Although this regulation does not establish or raise a tolerance level or establish an exemption from the requirement of a tolerance, the impact of the regulation would be the same as establishing new tolerances or exemptions from the requirement of a tolerance. Therefore, the Administrator concludes that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 24, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1(h) is amended in the table therein by adding and alphabetically inserting the general commodities in column "A" and the corresponding specific commodities in column "B" to read as follows:

§ 180.1 Definitions and interpretations.

* * * * * * *

(h) * * *

A	B
* * * * *	
Lettuce	Lettuce, head; and lettuce, leaf
Lettuce, head	Lettuce, head; crisphead varieties only
Lettuce, leaf	Lettuce, leaf; cos (romaine), butterhead varieties
* * * * *	

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[FR Doc. 92-180 Filed 1-7-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 63

[CC Docket No. 90-337; FCC 91-401]

Common Carrier Services: In the Matter of Regulation of International Accounting Rates

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On December 12, 1991, the Commission adopted a Report and Order that requires that U.S. carriers permit resale of international private lines for the provision of basic telecommunications services between the United States and foreign countries that afford equivalent resale opportunities. This decision will increase competition in the international telecommunications market, increasing customer choice and bringing the collection and accounting rates for international telecommunications services closer to cost.

EFFECTIVE DATE: April 7, 1992.

FOR FURTHER INFORMATION CONTACT: John Copes, Attorney/Advisor or Michael A. Mandigo, Attorney/Advisor, International Policy Division, Common Carrier Bureau, (202) 632-3214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted December 12, 1991, and released December 23, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st St., NW., Washington, DC 20036.

Public reporting burden for collections of information are as follows: 1 hour average burden per response for § 43.51(a); and 3 hours average burden per response for § 63.01(k)(5). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of the collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Information Resources Branch, room 416, Paperwork Reduction Project (3060-0454), Washington, DC

20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0454), Washington, DC 20503.

OMB Number: (3060–0454).

Title: Regulation of International Accounting Rates (CC Docket No. 90–337–Phase II).

Action: New collection.

Respondents: Businesses or other for profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 110 responses; 240 hours total; 2.18 hours average burden per response.

Needs and Uses: The Report and Order reforms existing regulation of Certificates granted under section 214 of the Communications Act to increase opportunities for new entrants in the international telecommunications services market and to promote the implementation of lower, more economically efficient, cost-based international accounting rates and reductions in international calling prices.

Summary of Report and Order. In the Report and Order, the Commission adopted a policy governing resale of international private lines for the provision of a basic telecommunication service. In its decision, the Commission: (1) Requires that U.S. carriers permit resale of their private lines between the United States and those overseas points that afford equivalent opportunities for resale;

(2) Provides that an applicant will receive certification under Section 214 of the Communications Act of 1934 to resell private lines for the provision of a basic telecommunications service between the United States and another country if it can demonstrate that the country affords equivalent resale opportunities;

(3) Requires U.S. carriers to include in their international private-line tariffs language to inform users that, if the user wishes to resell the international private line for the provision of a basic telecommunications service, the user must obtain certification from the Commission and must show that the country to which it wishes to resell the international private line affords equivalent resale opportunities; and

(4) Requires U.S. carriers to notify the Commission of all arrangements to interconnect international private lines to the public switched network in the United States.

Ordering Clauses: Accordingly, *It Is Ordered* That pursuant to authority contained in sections 1, 4, 201–205, 211, 214, 218–220, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 211, 214, 218–220, and 303, parts 43 and 63 of the Commission's Rules, 47 CFR parts 43 and 63 *Are Amended* As set forth below.

It Is Further Ordered That the policies, rules, and requirements set forth herein ARE ADOPTED.

It Is Further Ordered That U.S. carriers shall amend their tariffs within ten (10) days after publication of this decision in the **Federal Register**.

It Is Further Ordered That all other provisions in this First Report and Order will be effective February 6, 1992.

It Is Further Ordered That the Chief, Common Carrier Bureau is delegated to act on matters pertaining to implementation of the policies, rules, and requirements as set forth herein.

For further information on this item contact John Copes, Attorney/Advisor, International Policy Division, Common Carrier Bureau, (202) 632–3214.

List of Subjects

47 CFR Part 43

Communication common carriers, Reporting and recordkeeping requirements, Telegraph, Telephone.

47 CFR Part 63

Contents of Applications, Reporting and Recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, parts 43 and 63, are amended as follows:

PART 43—[AMENDED]

1. The authority citation for part 43 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Section 43.51 is amended by revising paragraph (a) to read as follows:

§ 43.51 Contracts and Concessions.

(a) Any communications common carrier engaged in domestic or foreign communications, or both, which has not been classified as non-dominant pursuant to § 61.3 of the Commission's Rules, 47 CFR 61.3, is not treated under the regulatory forbearance policies established by the Commission, and which enters into a contract with another carrier, including an operating agreement with a communications entity in a foreign point for the provision of a common carrier service between the United States and that point, must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto with respect to the following:

(1) The exchange of services;

(2) Except as provided in paragraph (c) of this section, the interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances;

(3) The interconnection of a private line to the United States' public switched network when such private line is used for foreign communications; and

(4) The rights granted to the carrier by any foreign government for the landing, connection, installation, or operation of cables, land lines, radio stations, offices, or for otherwise engaging in communication operations.

* * * * *

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: Sec. 4, 48 Stat 1066, as amended 47 U.S.C. 154. Interpret or apply sec. 214, 40 Stat. 1075, as amended; 47 U.S.C. 214.

2. Section 63.01 is amended by adding paragraph (k)(5) to read as follows:

§ 63.01 Contents of Applications.

* * * * *

(k) * * *

(5) The procedures set forth in this subsection are subject to Commission policies on resale of international private lines in CC Docket No. 90–337. If proposed facilities are to be acquired through the resale of private lines for the purpose of providing international services, applicant shall demonstrate for each country to which it seeks to provide service that that country affords resale opportunities equivalent to those available under U.S. law. In this regard, applicant shall:

(i) State whether the Commission has previously determined that equivalent resale opportunities exist between the United States and the subject country; or

(ii) Include other evidence demonstrating that equivalent resale opportunities exist between the United States and the subject country, including any relevant bilateral agreements between the administrations involved. Parties may address such issues as:

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(A) licensing;
(B) tariffing; and
(C) other terms and conditions associated with the provision of service.

* * * * *

[FR Doc. 92-57 Filed 1-7-92; 8:45 am]
BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 525

[APD 2800.12A CHGE 33]

General Services Administration Acquisition Regulation; Threshold for Application of Trade Agreements Act

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), chapter 5 (APD 2800.12A), is amended to revise section 525.402 to provide the new dollar threshold required for the applicability of the Trade Agreements Act of 1979 as authorized by the U.S. Trade Representative under Executive Order 12260. The intended effect is to provide guidance to GSA contracting activities and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Edward McAndrew, Office of GSA Acquisition Policy (VP), (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the **Federal Register** for public comment because it merely reflects the U.S. Trade Representative's determination to change the threshold for applicability of the Trade Agreements Act of 1979 in accordance with Executive Order 12260.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because the proposed policy was not required to be published in the **Federal Register**.

D. Paperwork Reduction Act

This rule does not contain information collection requirements that require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 525

Government procurement.

Accordingly, 48 CFR part 525 is amended to read as follows:

1. The authority citation for 48 CFR part 525 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Paragraph (a) of section 525.402 is revised to read as follows:

525.402 Policy.

(a) Under FAR 25.402(a), when the estimated value of all items or products (exclusive of any item or product within any of the exceptions described in FAR 25.403) listed in the solicitation exceeds the Trade Agreements Act threshold, contracting officers shall evaluate offers without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The Trade Agreements Act threshold is $176,000.

* * * * *

Dated: December 26, 1991.

Ida M. Ustad,

Acting Associate Administrator for Acquisition Policy.

[FR Doc. 92-288 Filed 1-7-92; 8:45 am]
BILLING CODE 6820-61-M

Prope

This section contains no proposed is regulations. is to give opportunity making prio rules.

DEPARTM

Federal Av

14 CFR Pa

[Docket No.

Airworthin Industrie 600 Series

AGENCY: Fe Administra

ACTION: Su proposed r of commen

SUMMARY: proposed a applicable Model A31 airplanes, the replace Bennett pa container c seals, and correct ope prompted b emergency deploy due oxygen cor revises the airplane to citing the la revisions a service infe specified b intended to being unab an emerge

DATES: Co February 2

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Proposed Rules

Federal Register
Vol. 57, No. 5
Wednesday, January 8, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-13-AD]

Airworthiness Directives; Airbus Industrie Model A310, A320, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Industrie Model A310, A320, and A300-600 series airplanes, which would have required the replacement of certain Puritan Bennett passenger emergency oxygen container door latch seals with modified seals, and testing of these units for correct operation. That proposal was prompted by reports of the passenger emergency oxygen masks failing to deploy due to a malfunction of the oxygen container doors. This action revises the proposed rule by adding one airplane to the AD applicability, and by citing the latest service bulletin revisions as the appropriate sources of service information. The actions specified by this proposed AD are intended to prevent passengers from being unable to receive oxygen during an emergency situation.

DATES: Comments must be received by February 27, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-13-AD, 1601 Lind Avenue SW., Renton, Washington, 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-13-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention Rules Docket No. 91-NM-13-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain Airbus Industrie Model A310, A320, and A300-600 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on February 20, 1991 (56 FR 6812). That NPRM would have required the replacement of certain Puritan Bennett passenger emergency oxygen container door latch seals with modified seals, and to test these units for correct operation. That NPRM was prompted by reports of the passenger emergency oxygen masks failing to deploy due to a malfunction of the oxygen container doors. That condition, if not corrected, could have resulted in passengers being unable to receive oxygen during an emergency situation.

Since the issuance of that NPRM, Airbus Industrie has issued Revision 2 to Service Bulletins A310-35-2002 and A300-35-6001, both dated April 30, 1991; and Revision 1 to Service Bulletin A320-35-1002, dated December 3, 1990. These service bulletins include additional airplanes in their effectivity, one of which is of U.S. registry. The French Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has classified these service bulletins as mandatory, and has issued French Airworthiness Directives 90-108-012(B)R1 and 90-135-113(B)R1 to include the additional airplanes.

Since the unsafe condition addressed by this rulemaking action is also likely to exist or develop in the additional airplanes identified, the FAA has determined that it is necessary to revise the proposal to include the U.S.-registered airplane in the applicability of the proposed rule. The inclusion of this additional airplane is achieved by specifying the latest revision of the applicable Airbus service bulletin in the applicability statement of the rule. The latest revision of the service bulletin is also cited throughout the rule as an appropriate source of service information.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional time for public comment.

The paragraph designations of the proposal have been restructured to be

consistent with the standard Federal Register style.

Paragraph (b) of the proposal has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

It is estimated that 43 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $9,460.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 91–NM–13–AD.

Applicability: Model A310, A320, and A300–600 series airplanes, as listed in Airbus Industrie Service Bulletins A310–35–2002, Revision 2, dated April 30, 1991; A320–35–1002, Revision 1, dated December 3, 1990; and A300–35–6001, Revision 2, dated April 30, 1991; certified in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent passengers from being unable to receive oxygen during an emergency situation, accomplish the following:

(a) Within 90 days after the effective date of this AD, replace Puritan Bennett passenger emergency oxygen container door latch seals with modified seals, and test all units for correct operation, in accordance with Airbus Industrie Service Bulletins A310–35–2002, Revision 2, dated April 30, 1991 (for the Model A310); A320–35–1002, Revision 1, dated December 3, 1990 (for the Model A320); and A300–35–6001, Revision 2, dated April 30, 1991 (for the Model A300–600).

Note: The Airbus Industrie Service Bulletins reference several Puritan Bennett Service Bulletins for additional instructions.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–340 Filed 1–7–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–216–AD]

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 707 and 720 series airplanes, which would require that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this amendment are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway. An investigation revealed that eight out of ten brakes were near the maximum allowable wear limits before the RTO and were unable to absorb the required RTO energy, thus contributing to the accident. This condition, if not corrected, could result in loss of brake effectiveness during a high energy RTO and cause further incidents/accidents.

DATES: Comments must be received no later than February 25, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–216–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2672. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–216–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–216–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

In 1988, a McDonnell Douglas DC–10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed and the airplane ran off the end of the runway. Investigation revealed that there were O-rings damaged by over-extension due to extensive wear on each of the eight brakes. Fluid leaking from the over-extended pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of the methodology used in the determination of the allowable wear limits for all transport category airplane brakes. Worn brake rejected takeoff (RTO) dynamometer testing and analysis were conducted for the Model DC–10 series brakes and a new set of reduced allowable wear limits were established; the use of these limits for the Model DC–10 is required by AD 90–01–01, Amendment 39–6431 (54 FR 53048, December 27, 1989).

The FAA and the Aerospace Industries Association (AIA) worked together to develop a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. The final test guidelines were sent from the FAA to the AIA on March 2, 1990. It should be noted that this worn-brake accountability determination validates brake wear limits with respect to brake energy capacity only and is not meant to account for any reduction in brake force due solely to the wear state of the brake. Any reduction in brake force (or torque) that may develop over time as a result of brake wear is to be evaluated and accounted for as part of a separate rulemaking project. The guidelines for validating brake wear limits allow credit for use of reverse thrust to determine energy level absorbed by the brake during the dynamometer test.

The FAA has requested that U.S. airframe manufacturers (1) determine required adjustments in allowable wear limits for all of its brakes in use, (2) schedule dynamometer testing to validate wear limits as necessary, and (3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated. Boeing Commercial Airplane Group has submitted, and the FAA has evaluated, a series of dynamometer test data and analyses concerning brakes installed on the Model 707 and 720 series airplanes.

Based on this data, the FAA has determined that the brake wear limits currently recommended in the Component Maintenance Manuals for the Model 707 and 720 series airplanes are not acceptable as they relate to the effectiveness of the brakes during a high energy RTO. Further, these limits are only recommended values. The FAA has determined that the following criteria for the Model 707 and 720 brakes, specifically the new maximum brake wear limits indicated in the last column, are necessary:

Brake mfr.	Brake P/N	Boeing P/N	Max. wear limit
Bendix	150550	10–3072–1, –11	0.80 inch.
Bendix	2601775	None	0.70 inch.
BFGoodrich	2–758–2	10–60229–1	0.51 inch.
BFGoodrich	2–784–1	10–3379–11	0.35 inch.
BFGoodrich	2–991	10–60229–6	0.51 inch.
ABS	9560569	10–60810–1	0.520 inch.

Since this condition is likely to exist or develop on airplanes of this type design, an AD is proposed which would require (1) inspection of Model 707 and 720 landing gear brakes for wear, and replacement if the new wear limits are not met, and (2) incorporation of specific maximum wear limits into the FAA-approved maintenance inspection program.

There are approximately 336 Model 707 and 720 series airplanes of the affected design in the worldwide fleet. It is estimated that 97 airplanes of U.S. registry and 6 operators would be affected by this AD. For 43 airplanes of U.S. registry, it would take approximately 29.5 work hours per airplane to accomplish the required actions; and for 54 airplanes of U.S. registry, it would take approximately 66 work hours per airplane to accomplish the required actions. The average labor cost would be $55 per work hour.

In addition, it is estimated that the cost of parts to accomplish the change in wear limits to 72 of these airplanes (cost resulting from the requirement to change brakes before they are worn to their previously approved limits for a one-time change) is estimated to be an average of $8,180 per airplane. The cost for parts for 25 other airplanes is estimated to be $11,050 per airplane.

Further, it is estimated that it will require 20 work hours per operator, at an average labor cost of $55 per work hour, to incorporate the requirements into an operator's FAA-approved maintenance inspection program.

Based on the figures discussed above, the total cost impact of the AD on U.S. operators is estimated to be $1,138,318.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the

criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91–NM–216–AD.

Applicability: Model 707 and 720 series airplanes, equipped with brake part numbers (P/N) identified in paragraph (a) of this AD, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after the effective date of this AD, accomplish the following:

(1) Inspect the main landing gear brakes, having brake part numbers shown below, for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within that limit.

Brake mfr.	Brake P/N	Boeing P/N	Max. wear limit
Bendix	150550	10–3072–1, –11	0.60 inch.
Bendix	2601775	None	0.70 inch.
BFGoodwich	2–756–2	10–60228–1	0.51 inch.
BFGoodwich	2–784–1	10–3379–11	0.35 inch.
BFGoodwich	2–991	10–60228–8	0.51 inch.
ABS	9560569	10–60618–1	0.528 inch.

(2) Incorporate the maximum brake wear limits specified in paragraph (a)(1) of this AD into the FAA-approved maintenance inspection program.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplanes Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplane to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–336 Filed 1–7–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–70–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of the comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, which would have superseded an existing AD that currently requires inspection, repair if necessary, and modification of certain fuselage frames. That proposal would have reduced the threshold for the required initial inspection. That proposal was prompted by reports of cracking on airplanes that had accumulated less than the current threshold of 40,000 cycles. This condition, if not corrected, could result in loss of structural integrity of the fuselage that could result in airplane depressurization. This action revises the proposed rule by revising the service information to cite a later revision to the referenced service bulletin and expanding the area of the proposed modification.

DATES: Comments must be received no later than February 10, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2772. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket Number 91–NM–70–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this Supplemental NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 9, 1990, the FAA issued AD 90–06–16, Amendment 39–6545 (55 FR 10048, March 19, 1990), applicable to Boeing Model 727 airplanes, to require inspection, repair if necessary, and modification of certain fuselage frames. That action was prompted by reports of fatigue cracking in certain fuselage frames on airplanes that had accumulated less than 40,000 flight cycles. This condition, if not corrected, could result in loss of structural integrity in the fuselage and lead to airplane depressurization.

Subsequent to the issuance of that AD, the FAA received reports of cracks in fuselage frames of airplanes that had accumulated between 28,000 and 40,000 flight cycles. Therefore, the FAA issued a proposal to supersede AD 90–06–16 with a new airworthiness directive that would reduce the threshold for the initial inspection. That proposal was published in the **Federal Register** on April 26, 1991 (56 FR 19328).

Since issuance of that proposal, the manufacturer has advised the FAA that it has developed a modification of the fuselage frame at Stringer (S)–28 which, if accomplished, would eliminate the need for the currently required inspections of that area. The FAA has reviewed and approved Boeing Alert Service Bulletin 727–53A0195, Revision 1, dated September 19, 1991, which includes procedures for performing this modification of the fuselage frame at S–28.

The FAA has determined that the proposed rule must be revised to include a requirement to accomplish this modification in order to ensure the continuing airworthiness of these airplanes. Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional time for public comment.

Additionally, several operators commented on the calendar time limit that is used in conjunction with flight cycles for the proposed compliance time. The commenters requested that the FAA delete the calendar time requirement, or increase it so that the inspections could be accomplished during scheduled maintenance. The justification given was that the cracks in the frames were fatigue-related in nature and not time-related. The FAA does not concur that the requirement can be dropped because some airplanes have low utilization. The FAA does concur that the inspection should be accomplished during scheduled maintenance and has increased the calendar component of the proposed compliance time from 15 to 24 months.

The format of this Supplemental Notice of Proposed Rulemaking has been restructured to be consistent with the standard **Federal Register** style.

There are approximately 1,695 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,172 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor cost would be $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,031,360.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6545 and by adding the following new airworthiness directive:

Boeing: Docket No. 91–NM–70–AD. Supersedes AD 90–06–16, Amendment 39–6545.

Applicability: Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To detect cracking in the fuselage aft lower lobe frames between body stations (BS) 950 and BS 1168, accomplish the following:

(a) Conduct a detailed visual inspection of the fuselage frames in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–53A0195, dated May 4, 1989, prior to the time specified in subparagraph (a)(1) or (a)(2) of this AD, whichever occurs first.

(1) Prior to the time specified in subparagraph (a)(1)(i) or (a)(1)(ii) of this AD, whichever occurs later:

(i) Within the next 3,000 flight cycles or 15 months after April 24, 1990 (the effective date of AD 90–06–16, Amendment 39–6545), whichever occurs first; or

(ii) Prior to the accumulation of 40,000 flight cycles.

(2) Prior to the time specified in subparagraph (a)(2)(i) or (a)(2)(ii) of this AD, whichever occurs later:

(i) Within the next 3,000 flight cycles or 24 months after the effective date of this AD, whichever occurs first; or

(ii) Prior to the accumulation of 28,000 flight cycles.

(b) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 4,000 flight cycles or 30 months, whichever occurs first.

(c) If any cracks are detected, repair prior to further flight, in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–53A0195, dated May 4, 1989. Skin repairs must be accomplished in accordance with Section 53–30–3 of the Boeing 727 Structural Repair Manual.

(d) Accomplishment of repairs in accordance with Boeing Alert Service Bulletin 727–53A0195, dated May 4, 1989, constitutes terminating action for the inspections required by paragraphs (a) and (b) of this AD for the repaired areas only.

(e) Accomplish the preventive modification in accordance with part I, Paragraph B., of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–53A0195, Revision 1, dated September 19, 1991, prior to the time specified in subparagraph (e)(1) or (e)(2) of this AD, whichever occurs later:

(1) Within the next 7,500 flight cycles or 45 months after the effective date of this AD, whichever occurs first; or

(2) Prior to the accumulation of 47,500 flight cycles.

(f) Accomplishment of the preventive modification required by paragraph (e) of this AD constitutes terminating action for the inspections required by this AD for the modified area only.

(g) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Seattle, Washington, on December 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-337 Filed 1-7-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-50-AD]

Airworthiness Directives; Boeing Model 747-100, 747-200, and 747-SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a proposed rule, applicable to certain Boeing Model 747-100, 747-200, and 747-SP series airplanes, which would have required installation of a placard and the addition of an airplane flight manual (AFM) limitation prohibiting operating under Category (CAT) II and CAT III weather minima. The proposed requirements were intended to prevent landing approaches that are offset from the runway centerline due to degraded localizer tracking performance following an adverse localizer capture maneuver during automatic landings. Since the issuance of the proposal, the FAA has determined that pilot monitoring will adequately detect when there is excessive divergence from the localizer beam, and crew action would disengage the autopilot. Accordingly, the proposal is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Frank vanLeynseele, Seattle Aircraft Certification Office, Systems & Equipment Branch, ANM-130S; telephone (206) 227-2671. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by adding a new airworthiness directive (AD) was published as a Notice of Proposed Rulemaking (NPRM) in the Federal Register on February 25, 1991 (56 FR 7611). The proposal would have required installation of a placard and the addition of an AFM limitation prohibiting operation under CAT II and CAT III weather conditions. To restore the airplane to its full CAT II or CAT III capability, operators would have been required to install a modified autoland computer, known as the Advanced Autoland Improvement Program (AAIP) Phase II. That action was prompted by reports of degraded localizer tracking performance during automatic landings, and the development of a modified autoland computer that would prevent such problems.

Due consideration has been given to the comments received in response to the NPRM. These comments are discussed below.

Almost none of the comments received were supportive of the proposed rule. Most commenters requested that the rule be withdrawn and that they be permitted to continue autoland operations using the currently-installed pre-AAIP Phase II autoland computers.

Many commenters stated that the procedures outlined in Boeing Operations Bulletin 88-2, dated August 24, 1988, together with diligent monitoring of the localizer tracking performance by the pilot not flying, have shown to be successful in detecting the occasional cases of mistracking. The Boeing Operations Bulletin provides instructions by which degraded localizer tracking and degraded autoland performance can be avoided. For example, it contains procedures that instruct flight crews to monitor ILS raw data throughout the approach: when approaching the runway threshold, the flight crew verifies if the autoflight system is tracking the localizer and glide slope within acceptable limits for autoland; when in doubt, the crew must consider a go-around. The operations bulletin also provides detailed information concerning the localizer deviation limits that must be observed in order to accomplish a successful autoland.

Due to the number of comments received that were similar in nature with regard to the Boeing Operations Bulletin, the FAA has reviewed in depth the data available and is now convinced that the existing operational procedures and the pilots' monitoring of the localizer raw data are adequate to detect and correct the effects of the mistracking incidents.

Several commenters especially challenged the statement in the preamble to the Notice which indicated that "a survey of airline operators has revealed several incidents of degraded localizer tracking each month." The FAA has examined in depth the information provided and now finds that a high percentage of approaches which resulted in degraded localizer tracking performance may actually have occurred under CAT I or better visibility conditions. This introduces the possibility that the ground traffic around and across an active ILS runway was causing distractions to the localizer beam. Further, ILS capture procedures are apt to experience certain conditions that can result in off-centerline tracking, such as:

(1) Interception of the localizer beam at an angle greater than 45°;

(2) Capture at a distance less than 8 miles from the runway threshold;

(3) Capture at speeds greater than V_{ref} + 40 knots;

(4) Capture at an altitude less than 1,500 feet AGL; or

(5) Passing the outer marker when the airplane is not stabilized on the localizer or glideslope beam.

Although encountering one of these situations under Instrument Meteorological Conditions (IMC) weather conditions is unlikely, should it occur, the pilot's monitoring of the ILS instruments will provide sufficient warning of the conditions and will allow the pilot to correct the approach or go around.

One of the commenters provided detailed information regarding its service history experience, which indicates that none of the subject problems had ever been encountered during as many as 12 years of operation using CAT II or III autoland procedures. It was also noted, and the FAA concurs, that the data collection and reporting of autoland incidents—on a worldwide basis—is imperfect and may not always provide the most accurate information.

In light of the data and information discussed above, and taking into account the safety record of affected airplanes in service, the FAA has reevaluated its position on this subject and has determined that the need for the previously proposed requirements is not warranted. The addressed unsafe condition is corrected by current operational procedures in which the crew monitors the localizer beam raw data during any autoland approach. For

these reasons, the FAA hereby withdraws the NPRM.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another Notice in the future, or commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed nor final rule, and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 89–NM–50–AD published in the **Federal Register** on February 25, 1991 (56 FR 7811), is withdrawn.

Issued in Renton, Washington, on December 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–343 Filed 1–7–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–254–AD]

Airworthiness Directives; Boeing Model 747–300 and 747–400 Series Airplanes Equipped With BFGoodrich Escape Slide/Rafts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–300 series airplanes and all Model 747–400 series airplanes equipped with certain BFGoodrich escape slide/rafts. This proposal would require modification of the main deck doors' evacuation systems. This proposal is prompted by reports indicating that deployed escape slide/rafts inflate slowly due to high internal regulator friction, or experience low pressure at low ambient temperatures. The actions specified by the proposed AD are intended to prevent delayed inflation of the escape slide/rafts, which could delay or impede the evacuation of passengers during an emergency.

DATES: Comments must be received by February 25, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–254–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from BFGoodrich Company, Aerospace, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Mechanical/Environmental and Crashworthiness Section, ANM–131L, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5338; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–254–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–254–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

Tests recently conducted at Boeing Commercial Airplane Group revealed that some BFGoodrich escape slide/rafts did not inflate immediately when they were deployed. Further investigation revealed that delayed deployment of escape slide/rafts installed on Boeing Model 747–400 series airplanes at main deck doors 1, 2, 4 and 5, and on certain Boeing Model 747–300 series airplanes at main deck door 2, was due to high internal regulator friction. Additionally, main deck door 2 escape slide/rafts installed on certain Boeing Model 747–300 series airplanes and Boeing Model 747–400 series airplanes may develop low pressure at low ambient temperatures. This condition, if not corrected, could result in delayed inflation of the escape slide/rafts, which could delay or impede the evacuation of passengers during an emergency.

The FAA has reviewed and approved BFGoodrich Service Bulletin 25–232, dated November 18, 1991, which describes procedures for modification of the escape slide/rafts' regulator and aspirators, to preclude the occurrence of internal regulator friction, and low pressure in aspirators at low temperatures.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action must be taken to prevent delayed inflation of deployed escape slide/rafts.

Since the unsafe condition described is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the regulator and aspirators on the affected escape slide/rafts. The actions would be required to be accomplished in accordance with the service bulletin previously described.

There are approximately 243 Model 747–300 and 747–400 series airplanes of the affected design in the worldwide fleet. It is estimated that 38 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 2 work hours per airplane to accomplish the proposed actions if they are performed during a regular maintenance check; otherwise, it would take 20 work hours per airplane. The average labor rate is $55 per work hour. The manufacturer will provide required parts to operators on an exchange basis at no cost. Based on

these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,180 (if performed during regularly scheduled maintenance), or $41,800 (if performed at a time other than during scheduled maintenance).

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BFGoodrich: Docket 91-NM-254-AD.

Applicability: Boeing Model 747-400 series airplanes equipped with BFGoodrich slide/raft P/N 7A1467-1 through -16 (main deck, doors 1 and 4), P/N 7A1479-1 through -16 (main deck, door 2), P/N 7A1480-1 through -8 (main deck, door 3); and Boeing 747-300 airplanes equipped with slide/raft P/N 7A1479-1 through -16 (main deck, door 2); certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent delayed inflation of deployed escape slide/rafts, accomplish the following:

(a) For main deck doors 1, 2, 4, and 5: Within 12 months after the effective date of this AD, modify regulator P/N 5A2851-1 or -2 (subassembly of reservoir assembly P/N 5A2832-1 or -2) to become reservoir assembly P/N 5A2832-3; and perform a regulator leak check; in accordance with the Accomplishment Instructions, paragraphs 2.A. through 2.F., BFGoodrich Service Bulletin 25-232, dated November 18, 1991.

(b) For main deck door 2: Within 12 months after the effective date of this AD, modify aspirators, P/N 4A3166-1, to form new aspirator assembly P/N 5A2870-1, in accordance with the Accomplishment Instructions, paragraph 2.G., of BFGoodrich Service Bulletin 25-232, dated November 18, 1991.

(c) Subsequent to accomplishing the requirements of paragraph (a) and (b) of this AD, reidentify the modified slide/rafts in accordance with paragraph 3.B., Identification, of BFGoodrich Service Bulletin 25-232, dated November 18, 1991.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-339 Filed 1-7-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-222-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10 and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the supersedure an existing airworthiness directive (AD) that is applicable to McDonnell Douglas DC-10 and KC-10A (Military) series airplanes. That AD currently requires inspections and repair, if necessary, of the horizontal stabilizer rear upper spar cap and/or upper rear skin panel for fatigue cracking. This action would shorten the repetitive inspection intervals for repaired spar caps and upper rear skin panels, and would expand the inspection area. This proposal is prompted by service experience and additional data presented by the manufacturer. The actions specified by the proposed AD are intended to prevent loss of the fail-safe capability of the horizontal stabilizer.

DATES: Comments must be received no later than February 24, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-222-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Moreland, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-121L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5236.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-222-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-222-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On February 17, 1989, the FAA issued AD 87-06-53 R2, Amendment 39-6149 (54 FR 6527, March 1, 1989), which is applicable to McDonnell Douglas DC-10 and KC-10A (Military) series airplanes. That AD requires repetitive inspections of the horizontal stabilizer rear upper spar cap and/or upper rear skin panel at intervals not to exceed 2,000 landings to detect fatigue cracking, and repair, if necessary. That action was prompted by reports of cracking of the horizontal stabilizer upper outer section rear spar caps and outer section rear skin panels. Such cracking, if not detected and repaired in a timely manner, could lead to structural failure of the airplane.

Since issuance of that AD, the FAA has received reports indicating that fatigue cracks that were previously blended out in the barrel nut holes of the spar cap, have cracked beyond the established limits. The cracking occurred prior to the 2,000-landing inspection interval required by the existing AD. The manufacturer has furnished data to substantiate that the stop-drilling of cracks that are within specified limits on the skin panels is an acceptable procedure for addressing this cracking problem, provided that the area is repetitively inspected at reduced inspection intervals.

Additionally, the manufacturer has received reports of four instances of fatigue cracking found in the inboard-most end of the horizontal stabilizer rear spar upper cap vertical tang. This condition, if not corrected, could result in the loss of the fail-safe capability of the horizontal stabilizer.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin A55-18, Revision 4, dated September 10, 1991, which describes procedures for the inspection and repair of the horizontal stabilizer upper outer section rear spar caps and upper outer section rear skin panels.

Since the unsafe condition described is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 87-06-53 R2 to reduce the repetitive inspection interval for cracked spar caps from 2,000 landings to 500 landings, and to require an 80-flight hour inspection interval for stop-drilled cracks in the skin panels. Additionally, this action would require inspection of the inboard-most end of the horizontal rear spar upper cap vertical tang at intervals of 3,500 landings. These actions would be required to be accomplished in accordance with the service bulletin previously described.

There are approximately 423 Model DC-10 series airplanes of the affected design in the worldwide fleet. It is estimated that 153 airplanes of U.S. registry would be affected by this AD, that it would take approximately one work hour per airplane to accomplish the required actions, and that the average labor cost would be $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,415 per inspection.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6149, and by adding the following new airworthiness directive:

McDonnell Douglas: Docket No. 91-NM-222-AD. Supersedes AD 87-06-53 R2, Amendment 39-6419.

Applicability: Model DC-10 and KC-10A (Military) series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent failure of the horizontal stabilizer rear upper spar cap and/or upper rear skin panel due to fatigue cracking, accomplish the following:

(a) Prior to the accumulation of 30,000 flight hours or 7,500 landings, whichever occurs earlier, or within 15 days after August 14, 1987 (the effective date of AD 87-06-53 R1, Amendment 39-5694), whichever occurs later, unless already accomplished within the last 120 days since August 14, 1987, conduct a dye penetrant or eddy current inspection of the horizontal stabilizer upper outer section rear spar cap and a visual inspection of the horizontal stabilizer upper outer rear skin panel, in accordance with the "Accomplishment Instructions" of McDonnell Douglas Alert Service Bulletin A55-18, dated March 23, 1987; or Revision 1, dated May 21, 1987; or Revision 2, dated February 8, 1988; or Revision 3, dated August 17, 1990; or Revision 4, dated September 10, 1991.

(b) Prior to the accumulation of 2,000 landings after accomplishing the inspections required by paragraph (a) of this AD, or within 100 landings after March 27, 1989 (the effective date of AD 87-06-53 R2, Amendment 39-6149), whichever occurs later, and thereafter at intervals not to exceed 2,000 landings, except as provided below, repeat the dye penetrant or eddy current inspection required by paragraph (a) of this AD.

(c) If the spar cap has been repaired by removing/blending out a crack in accordance with the method described in McDonnell Douglas Service Bulletin A55-18, Revision 4, dated September 10, 1991 (hereafter, referred to as the "Service Bulletin"), repeat the dye penetrant or eddy current inspection of the spar required by paragraph (a) of this AD prior to the accumulation of 500 landings after the effective date of this amendment, or within 2,000 landings after the last inspection, whichever occurs first. Thereafter, repeat the dye penetrant or eddy current inspection at intervals not to exceed 500 landings.

(d) If the skin panel has been repaired by stop drilling a crack in accordance with the method described in the Service Bulletin, repeat the visual inspection of the skin panel

required by paragraph (a) of this AD prior to the accumulation of 80 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 80 flight hours.

(e) At the next scheduled inspection required by paragraph (a), (b), (c), or (d) of this AD, conduct an eddy current inspection of the inboard-most end of the horizontal stabilizer rear spar upper cap vertical tang at station XRS=63.810, in accordance with the "bolt hole" method described in the Service Bulletin. If no cracks are found, stress coin the attachment holes and install oversize attachments. Thereafter, at intervals not to exceed 3,500 landings, conduct an eddy current inspection utilizing the "surface probe" method in accordance with the Service Bulletin.

(f) If any crack is found as a result of the inspections required by this AD, that is within the limits specified in the Service Bulletin accomplish the following:

(1) For cracks in the spar cap that are within the limits specified in Table I of the Service Bulletin: Repair prior to further flight, in accordance with paragraph 4.(b) of the Service Bulletin.

(2) For cracks in the skin panel that are within the limits specified in Table II of the Service Bulletin: Repair prior to further flight, in accordance with paragraph 4.(c) of the Service Bulletin.

(3) For cracks in the vertical tang that are within the limits specified in paragraphs 4.3(a)(1), 4.3(a)(2) and 4.3(b) of the Service Bulletin: Repair prior to further flight, in accordance with 4.3(b) of the Service Bulletin.

(g) If any crack is found as a result of the inspections required by this AD that exceed the limits specified in the Service Bulletin, prior to further flight, repair in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 20, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-342 Filed 1-7-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[PS-56-89]

RIN 1545-AN92

Certain Publicly Traded Partnerships Treated as Corporations—Transaction Provisions; Correction to Notice of Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of public hearing.

SUMMARY: This document contains corrections to a notice of public hearing on proposed regulations relating to a description of when a publicly traded partnership adds a "substantial new line of business," thus forfeiting the partnership status preserved for "existing partnerships" by the transition rule applicable to section 7704 of the Internal Revenue Code of 1986.

EFFECTIVE DATE: January 8, 1992.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of public hearing that is the subject of these corrections was published in the **Federal Register** on December 31, 1991 (56 FR 67557).

Need for Correction

As published, the notice of public hearing contains errors concerning dates which are in need of clarification.

Correction of Publication

Accordingly, the publication on December 31, 1991 of the notice of public meeting hearing (PS-56-89), which was the subject of FR Doc. 91-31145, is corrected as follows:

Paragraph 1. The **"DATES"** portion of the preamble of the notice of public hearing is corrected to read:

"DATES: The public hearing will be held on Monday, February 24, 1992, beginning at 10 a.m. Outlines of oral comments must be received by Monday, February 10, 1992."

Par. 2. On page 67558, in the first column, second paragraph, the comment date in the eleventh line which now reads "February 10, 1991" is corrected to read "February 10, 1992".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-294 Filed 1-7-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for Certain Populations of the African Elephant and Revision of Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice of reopening of comment period.

SUMMARY: The Service announces that the comment period on the proposed rule to determine endangered status for some populations of the African elephant will be reopened. This will allow foreign countries in the range of this species, additional time to submit management plans that will be used, in part, by the Service in making its final decision. Such plans would be available for public review and comment before the close of this period.

DATES: All comments received through January 24, 1992, will be considered part of the administrative record.

ADDRESSES: Written comments and materials concerning this proposal should be sent to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (Fax number 703-358-2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address, or by phone (703-358-1708 or FTS 921-1708).

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service), in the **Federal Register** of March 18, 1991 (56

FR 11392–11401), issued a notice proposing to reclassify most populations of the African elephant (*Loxodonta africana*) from threatened to endangered status. The proposal would classify all African elephants (including their parts and products) as endangered wherever found, except in Botswana, Zimbabwe, and South Africa, where they would remain threatened. The Service at that time also proposed: (1) Withdrawing its May 5, 1989, proposal (54 FR 19416) to amend its regulations found in 50 CFR 14.91, 14.92, and 17.21, and the African elephant special rule found in 50 CFR 17.40(e); (2) amending its regulations found in 50 CFR 17.21; and (3) revising the African elephant special rule found in 50 CFR 17.40(e). The Service, in the Federal Register of July 19, 1991 (56 FR 33241), extended the comment period to December 15, 1991.

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies within the United States, African range states, other interested countries, the scientific community, industry, private interests, and other parties.

The African Elephant Conservation Coordinating Group, with financial support from the U.S. Agency for International Development (USAID), the European Economic Community (EEC), the World Wildlife Fund (WWF), and the U.S. Fish and Wildlife Service, has developed a series of reports that represent broad overviews of the status, conservation, and management of elephants in certain African range countries. The Service believes these reports may provide useful information in the continuing effort to assign the proper listing under the Endangered Species Act for the African elephant. The reports were intended for use at the African Elephant Conservation Grants Donor's Conference in Nairobi, Kenya, in November 1991. That Conference has been rescheduled for January 1992. Several of the reports have not yet been received and may not be available to the Service until mid-January. The Service is thus extending the comment period on the proposed rule through January 24, 1992, so these reports if received in a timely manner can be considered in the final listing determination.

Authority: 16 U.S.C. 1361–1401; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 31, 1991.

Richard N. Smith,

Deputy Director.

[FR Doc. 92–274 Filed 1–7–92; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for Argali

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Service gives notice that the comment period on the proposed rule to determine threatened status for the argali will be reopened for 2 months. This will afford the public additional time to review and comment on various percentage points before the Service makes its final decision.

DATES: Comments must be received by February 24, 1992.

ADDRESSES: Please send correspondence regarding this notice to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (Fax number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. Comments and other information received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION: In the Federal Register of October 5, 1990 (55 FR 40690–40696), the Fish and Wildlife Service (Service) issued a proposed rule to determine threatened status for the argali (*Ovis ammon*), a large wild sheep found in Soviet Central Asia, Mongolia, China, and the Himalayan region. The proposal stated that any resulting final rule might take a substantially different form, perhaps designating the entire species *O. ammon*, or any subspecies or populations thereof, as endangered, or perhaps excluding certain subspecies or populations from any classification. In the Federal Register of February 8, 1991 (56 FR 5192), the comment period was extended to April 20, 1991. In the Federal Register of October 25, 1991 (56 FR 55266–55267), the deadline for issuing a final rule was extended to April 5, 1992, and the comment period was extended to December 24, 1991. However, the Service has continued to encounter difficulty in obtaining data on the bioconservation and legal status of the argali from various foreign authorities and certain other interested parties, as well as resolving disagreement on the sufficiency and accuracy of the information that is available. Therefore, the comment period is reopened.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 31, 1991.

Richard N. Smith,

Deputy Director.

[FR Doc. 92–275 Filed 1–7–92; 8:45 am]

BILLING CODE 4310-55-M

VOL 57 ISS 5 JA 8 1992 UMI

Notices

Federal Register
Vol. 57, No. 5
Wednesday, January 8, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee; Renewal

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given that the Secretary of Agriculture is renewing the charter of the Agricultural Biotechnology Research Advisory Committee (ABRAC). The purpose of the Committee is to advise the Secretary, through the Assistant Secretary for Science and Education, with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research.

The Secretary has determined that the work of the Committee is in the public interest and is relevant to the duties of the Department of Agriculture.

The Committee, including the Chair and Vice-Chair, will consist of 15 voting members, of whom no more than five will be federal employees. The members of the Committee will have professional or personal qualifications or experience in one or more of the following areas: Recombinant-DNA research in plants, animals and microbes; ecology/epidemiology/environmental science; agricultural production practices; biological containment and field release; applicable laws and regulations; standards of professional conduct and practice; public attitudes; public health; occupational health and ethics; human medicine; fisheries science; and socioeconomic impacts.

Comments may be submitted to Dr. Alvin L. Young, room 1001, RP–E, 14th and Independence Avenue, SW., Washington, DC 20250–2200.

Done in Washington, DC, this 27th day of December 1991.

Charles R. Hilty,

Assistant Secretary for Administration.

[FR Doc. 92–366 Filed 1–7–92; 8:45 am]

BILLING CODE 3410–22–M

Cooperative State Research Service

Joint Council on Food and Agricultural Sciences; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463, 86 Stat. 770–776), as amended, the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: Joint Council on Food and Agricultural Sciences

Date: January 29–31, 1992

Time: 1 p.m.–5 p.m., January 29, 1992; 8 a.m.–5 p.m., January 30, 1992; 8 a.m.–12 noon, January 31, 1992.

Place: Pennington Bio-Medical Center and Louisiana State University Agricultural Center, Baton Rouge, Louisiana

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: The purposes of the meeting are to discuss human nutrition science and education issues; select and rank Fiscal Year 1994 priorities for agricultural research, extension, and higher education for the food and agricultural science and education system; follow up on previous discussions concerning responsibilities assigned in the 1990 Farm Bill; and review the Joint Council/Users Advisory Board draft "White Paper."

Contact Person for Agenda and More Information: Dr. Mark R. Bailey, Executive Secretary, Joint Council on Food and Agricultural Sciences, suite 302, Aerospace Building, U.S. Department of Agriculture, Washington, DC 20250–2200; Telephone (202) 401–4662.

Done in Washington, DC, this 20th day of December, 1991.

John Patrick Jordan,

Administrator.

[FR Doc. 92–367 Filed 1–7–92; 8:45 am]

BILLING CODE 3410–22–M

Federal Grain Inspection Service

Request for Comments on the Applicants for Designation in the Geographic Areas Currently Assigned to the Detroit (MI), and Keokuk (IA) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to Detroit Grain Inspection Service, Inc. (Detroit), and John H. Oliver, Inc., dba Keokuk Grain Inspection Service (Keokuk).

DATES: Comments must be postmarked on or before February 24, 1992.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier users may send responses to the automatic telecopier machine at 202-720-1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the November 1, 1991, **Federal Register** (56 FR 56184), FGIS asked persons interested in providing official grain inspection in the Detroit and Keokuk geographic areas to submit an application for designation. Applications were to be postmarked by December 2, 1991. Detroit, the only applicant for the Detroit area, applied for the entire area currently assigned to them. There were two applicants for the Keokuk area designation. Keokuk applied for the entire area currently assigned to them, except for Lomax Grain Elevator, in Henderson County, Illinois (located inside Eastern Iowa Grain Inspection and Weighing Service, Inc.'s area (Eastern Iowa). Eastern Iowa applied for designation to serve Lomax Grain Elevator, in Henderson County, Illinois. Eastern Iowa and Keokuk are neighboring official agencies.

FGIS is also correcting an error in the Keokuk and Eastern Iowa geographic area descriptions. Continental Grain Company, in Henderson County, Illinois, is inside Keokuk's area, not Eastern Iowa's; therefore, it is not an exception to Eastern Iowa's geographic area, and the geographic area descriptions are being changed accordingly. Continental Grain Company, in Henderson County, Illinois, will continue to be served by Keokuk.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: December 31, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 92-280 Filed 1-7-92; 8:45 am]

BILLING CODE 3410-EN-F

Food and Nutrition Service

National Advisory Council on Commodity Distribution; Meeting Announcement

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: A meeting of the national Advisory Council on Commodity Distribution is scheduled for February 11–13, 1992. The council, established by the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100–237) meets biannually to advise the Secretary of Agriculture regarding the development of commodity specifications and other program improvements.

DATES: The meeting will take place on February 11 and 12 from 8:30 a.m. to 5 p.m. and on February 13 from 8:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Hotel Pullman Highland at 1914 Connecticut Avenue, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly King, Deputy Director, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 305–2680.

SUPPLEMENTARY INFORMATION: This is the sixth meeting of the National Advisory Council on Commodity Distribution, as established by section 3(a)(3) of Public Law 100–237. The purpose of the council is to provide guidance to the Secretary of Agriculture on regulations and policy development for the Food Distribution Programs with primary emphasis on specifications for commodities. If time permits, the general public will be allowed to participate in the discussions. The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to Ms. Alberta C. Frost, Executive Secretary, National Advisory Council on Commodity Distribution, USDA, Food and Nutrition Service, 3101 Park Center Drive, room 502, Alexandria, Virginia 22302. Comments may be filed with Alberta C. Frost before or after the meeting.

Dated: December 31, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 92-279 Filed 1-7-92; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Management Plan for the Metolius Wild and Scenic River, Jefferson County, Oregon; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) and management plan for the Metolius River, Jefferson County, Oregon, designated a National Wild and Scenic River by the Omnibus Oregon Wild and Scenic Rivers Act of 1988. The agency invites written comments and suggestions on the management of this river and the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision making process that will occur on this plan so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the management of this river should be received by February 1, 1992.

ADDRESSES: Submit written comments and suggestions concerning the management of this river to the Jose Cruz, Forest Supervisor, Deschutes National Forest, 1645 Highway 20 East, Bend, OR 97701.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Don Doyle, River Planner, Deschutes National Forest, 1645 Highway 20 East, Bend, OR 97701, telephone (503) 383–5536.

SUPPLEMENTARY INFORMATION: The Omnibus Oregon Wild and Scenic Rivers Act (Public Law 100–557, October 7, 1988) designated a segment of the Metolius River into the National Wild and Scenic Rivers System. The EIS and management plan will address this river segment, as described in Public Law 100–557:

Metolius, Oregon: The 28.6-mile segment from the south Deschutes National Forest boundary to lake Billy Chinook in the following classes: (A) The 11.5-mile segment from the south Deschutes National Forest boundary (approximately 2,055.5 feet from Metolius Springs) to Bridge 99 as a recreational river, to be administered by the Secretary of Agriculture; and (B) the 17.1-mile segment from Bridge 99 to Lake Billy Chinook as scenic river, by the Secretary of Agriculture, through a cooperative management agreement between the Secretary of the Interior and the Confederated Tribes of the Warm Springs Reservation as provided in section 10(e) of this Act and section 105 of the Omnibus Oregon Wild and Scenic Rivers Act of 1968: Provided, That the river and its adjacent land area will be managed to provide a primitive recreational experience as defined in the ROS User's Guide.

The river between Metolius Springs and Candle Creek also was designated an Oregon State Scenic Waterway by Ballot Measure 7 in 1988. The State and Forest Service have agreed to conduct a joint planning process covering both the state and federal segments. As specified

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by Public Law 100–557, management of the river below Bridge 99 will be accomplished through a cooperative agreement with the Confederated Tribes of the Warm Springs Reservation.

Public participation will be especially important at several points during the management planning process. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, the Confederated Tribes of the Warm Springs Reservation, and individuals and organizations who may be interested in or affected by the proposed action. This input will be used in the preparation of the draft EIS.

A series of informational workshops will be held in Camp Sherman, Bend, and Salem, Oregon, during January, 1992 to inform the public of the planning process and to provide for public participation and involvement. Federal, State, and local agencies as well as the Confederated Tribes of the Warm Springs Reservation, user groups, local residents, and other individuals and organizations interested in the plan will be invited to participate in scoping the issues that should be considered. In addition, a newsletter and response form will be available in January, 1992, for those unable to attend a workshop.

A second series of informational workshops will be held during April–May, 1992, to obtain comment on preliminary management alternatives to be considered in the draft EIS. A newsletter and comment form will be available for those unable to attend a workshop.

The draft EIS and Management Plan are expected to be filed with the Environmental Protection Agency (EPA) and made available for public review by January, 1993. At that time, EPA will publish a notice of availability in the **Federal Register**. The comment period on the draft EIS and Management Plan will be 90 days from the date the notice of availability appears in the **Federal Register**. It is important that those interested in the management of the Metolius River get involved at this time.

To be most helpful, comments should be as specific as possible and may address the adequacy of the statement and plan and the merits of the alternatives discussed. In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that they are meaningful and alert the agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage but that are not raised until after completion of the final EIS may be waived or dismissed by the court *City of Angoon* v. *Hodel*, 803 f.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritage, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wisc. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the draft EIS and Management Plan, comments will be analyzed and considered by the Forest Service in preparing a final EIS and Management Plan, in which the Forest Service is required to respond to comments received (40 CFR 1503.4). The final EIS is scheduled to be completed by December, 1993. The Forest Supervisor is the responsible official. The responsible official will consider the comments, responses, and consequences discussed in the EIS, applicable laws, regulations, and policies in making a decision regarding the management of the river. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal regulations (36 CFR 217).

Dated: December 20, 1991.

Sally D. Collins,

Deputy Forest Supervisor.

[FR Doc. 92–349 Filed 1–7–92; 8:45 am]

BILLING CODE 3410–11–M

Management Plan for the Deschutes Wild and Scenic River—Wickiup Dam to the Bend Urban Growth Boundary, Deschutes County, OR; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) and management plan for the upper Deschutes River, Deschutes County, Oregon, a designated Wild and Scenic River. Designation was established in the Omnibus Oregon Wild and Scenic River Act (Public Law 100–557). The proposal will require an amendment to the Deschutes National Forest Land and Resource Management Plan dated August, 1990 (Forest Plan). The Forest Service invites written comments and suggestions on management of this river and the scope of the analysis. The agency gives notice of the full environmental analysis and decision making process that will occur on this plan so that interested and affected people are aware of how they may participate and contribute to the final decision. A public review of the issues and alternatives will be held in Bend, Oregon, in March, 1992. Actual dates, times and place of the review will be announced in The Bulletin, and other appropriate places.

DATES: Comments concerning the scope and implementation of this proposal must be received by February 1, 1992.

ADDRESSES: Submit written comments concerning the scope of the analysis to Jose Cruz, Forest Supervisor, Deschutes National Forest, 1645 Hwy 20E, Bend, Oregon 97701; phone (503) 383–5715.

FOR FURTHER INFORMATION CONTACT: Questions and written comments about the proposed action should be directed to Carrie Sammons, Supervisors Office, 1645 Hwy 20E, Bend, Oregon 97701; phone (503) 383–5536.

SUPPLEMENTARY INFORMATION: The diverse characteristics of the upper Deschutes River have necessitated dividing the 54.4 mile stream reach into several segments for the analysis.

Segment 1, Little Lava Lake to Crane Prairie Reservoir, is not being considered in this analysis. It has been found eligible for designation however the suitability determination has not been completed.

Segment 2 is from Wickiup Dam to the south boundary of LaPine State Recreation Area. The desired condition for this segment would be ROS classification semi-primative motorized. Road access would be limited in some areas providing a natural setting that could be reached only by river or trail. A river trail system would be in place and boat access would exist at Tenino, Bull Bend, Wyeth, Pringle Falls, Tetherow and LaPine State Recreation Area. Boating, fishing, wildlife watching, and camping are the primary uses. Developed camping facilities would be provided at Bull Bend, Wyeth, Pringle Falls and LaPine State Recreation Area. Haner Park and Pringle Falls, two areas of private development, provide year round residential living. "Watchable wildlife" (eagles, osprey, blue herons, waterfowl, elk, deer, and numerous small mammals) would be a recognized attraction. This reach of the river would provide good year round fish habitat and quality brown trout fishery.

To reach the desired condition the following actions would be necessary:

Providing portages at Pringle Falls and Tetherow, closing selected low standard roads to reduce disturbance to wildlife;

Construction of trails to provide access along the river while protecting riparian vegetation and habitat;

Moving campsites and vehicle parking back from the river at least 100 feet, except in designated locations to protect riparian vegetation and to allow stream bank revegetation, enforcement of state and county regulations in conjunction with colors and construction materials compatible with the natural settings;

Development of fish management plans to perpetuate natural fish production that would provide for self-sustaining populations, emphasis on maintenance/restoration of riparian zone habitat for "watchable wildlife";

Emphasis of snags for wildlife with modified only if posing a safety hazard to recreationists;

Vegetative management for healthy, diverse plant communities, monitoring and enforcement through cooperative agency attention, through a formal Memorandum of Understanding, to assure land uses are consistent with applicable regulations, protection of wetlands as special habitat for fish, wildlife, scenic and water quality values;

Native American cultural and traditional use sites would be managed to protect their unusual characteristics, exceptional values, and religious importance;

River flows would be identified to balance irrigation uses with restoration of fish habitat, reduction of turbidity and sedimentation, stabilization of stream banks and maintenance of wetland and riparian ecosystems.

Segment 3 runs from the south boundary of LaPine State Recreation Area to Benham Falls. The desired condition for this segment would be one of a developed rural area. This segment of the river would be substantially modified by private residences. Evidence of human development would be prevalent and bridges, roads and powerlines are evident. Native vegetation would be growing on the banks giving a natural appearance to the stream. The Brown trout fishery in this section would be very good. The riparian and wetland zones would provide quality habitat for waterfowl, native fur bearing animals and contribute to the aquatic biological diversity. Access routes through the residential areas would be identified and boat access would be provided at several ramps located on public lands. Canoeing, fishing, and wildlife watching would be the primary uses.

To reach the desired condition the following actions would be necessary:

Technical design assistance would be provided to facilitate new and maintain existing bank erosion measures (riprap) that emphasize the use of natural vegetation;

The number of private boat docks would be reduced by encouraging community facilities and enforcement of existing county regulations, public access to the river for boating, fishing and camping purposes would be managed to protect the river values;

Public trails and river access routes through the residential would be marked for motorists and bicyclists, recreational navigation of the river would be encouraged and maintained;

Campsites and vehicle parking would be moved back from the river at least 100 feet, except in designated locations, to protect riparian vegetation and to allow stream bank revegetation;

New residences and facilities would comply with state and county regulations in conjunction with using colors and construction materials compatible with the natural settings, fish management plans would be developed to perpetuate natural fish production that would provide for self-sustaining populations, fish habitat would be supplement/restored with habitat structures, management would emphasize maintenance or restoration of riparian zone habitat for "watchable wildlife";

Snag retention would be emphasized for wildlife and modified only if posing a safety hazard to recreationists, vegetative management would be carried out to maintain healthy, diverse plant communities;

Monitoring and enforcement would receive cooperative agency attention, through a formal Memorandum of Understanding, to assure land uses were consistent with applicable regulations, wetlands would be protected as special habitat for fish, wildlife, scenic and water quality values;

Native American cultural and traditional use sites would be managed to protect their unusual characteristics, exceptional values, and religious importance;

River flows would be identified to balance irrigation uses with restoration of fish habitat, reduction of turbidity and sedimentation, stabilization of stream banks and maintenance of wetland and riparian ecosystems.

Segment 4 includes the portion from Benham Falls to COID Diversion. The desired condition for this portion of the river would be ROS classification roaded natural. Sightseeing, fishing, whitewater boating, canoeing, hiking and wildlife watching would be the primary activities. Day use would be emphasized and there would be a well developed non-motorized trail system originating in the Bend urban area. Vehicle access would be provided at several locations. Alterations to the landscape would be subtle and there would be moderate evidence of the sights and sounds of others. Exceptions might occur at several major sightseer attractions where landscapes have been substantially modified to accommodate and manage heavy use. This segment would provide an opportunity for a quality recreation experience. Diversity would be reflected in native plant and tree species, ages and sizes, with mature ponderosa pine highlighted. Snags would be an important component of the stands and would be found in numbers necessary to support natural wildlife populations. The riparian and wetland zones would provide quality habitat for waterfowl, native fur bearing animals and other wildlife. Seasonal restrictions would limit motor vehicle use during the winter months when the area would be important for winter elk habitat.

The actions necessary to achieve the desired conditions would be as follows:

An interpretive plan would be developed to make information about the unique geologic and cultural features found in this river segment available to the recreation users, access facilities, trail heads and viewpoints, would be redesigned and moved back from the river bank to enhance the natural river setting;

Selected roads and dispersed campsites would be closed to enhance the roaded natural setting and to encourage day use;

Mining claims located in the river corridor would be acquired, if necessary, to protect the viewshed from unnecessary modification, river flows would be managed to provide recreation boating experiences during the April through September season and to maintain the wetlands, aquatic and riparian ecosystems;

Campsites and vehicle parking would be moved back from the river at least 100 feet, except in designated locations, to protect riparian vegetation and to allow stream bank revegetation;

New residences and facilities would comply with state and county regulations in conjunction with colors and construction materials compatible with natural settings;

Fish management plans would be developed to perpetuate natural fish production that would provide self-sustaining populations, fish habitat would be supplemented/restored with habitat structures, management would emphasize maintenance or restoration of riparian zone habitat for "watchable wildlife";

Snag retention would be emphasized for wildlife and modified only if they pose a safety hazard to recreationists;

Vegetative management would be carried out to maintain healthy, diverse plant communities;

Monitoring and enforcement would receive cooperative agency attention through a formal Memorandum of Understanding, to assure land uses would be consistent with applicable regulations; wetlands would be protected as special habitat for fish, wildlife, scenic and water quality values;

Native American cultural and traditional use sites would be managed to protect their unusual characteristics, exceptional values, and religious importance.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by May, 1992. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability

of the draft EIS in the Federal Register. The comments period on the draft EIS will be 90 days from the date the EPA notice appears in the Federal Register. It is important that those interested in the management of this portion of the Deschutes River participate at that time.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed by September 1992. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The Forest Supervisor is the responsible official, and will make a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR 217).

Dated: December 20, 1991.

Sally D. Collins,

Deputy Forest Supervisor.

[FR Doc. 92-350 Filed 1-7-92; 8:45 am]

BILLING CODE 3410-10-M

Quosatana/Bradford Timber Sales and Integrated Resource Projects, Siskiyou National Forest, Curry County, OR; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA will prepare an environmental impact statement (EIS) for a proposal to prepare three timber sales and implement other projects in the Quosatana Creek and Bradford Creek drainages. The EIS will tier to the Final EIS and Land and Resource Management Plan (Forest Plan) for the Siskiyou National Forest.

The Gold Beach Ranger District of the Siskiyou National Forest proposes to implement two timber sales (Skookumhouse T.S. and Homestead/Butte T.S.) and one thinning sale (2T Thin Sale) in the Quosatana and Bradford Creek drainages.

Appendix C of the Siskiyou National Forest Land and Resource Management Plan lists the proposed Skookumhouse (#89302) and Homestead/Butte (#90302) Timber Sales in Fiscal Years (FY) 1989 and 1990, respectively. The current version of the proposal, as shown below, differs from the information presented in Appendix C, and from the proposal presented to the public in January, 1991.

The proposal consists of two timber sales, totaling 550 acres and 12.623 MMBF, and one thinning sale (223 acres, 1.3 MMBF):

Skookumhouse T.S.: 173 acres, 4.253 MMBF;

Homestead/Butte T.S.: 377 acres, 8.370 MMBF; and

2T Thin Sale: 223 acres, 1.300 MMBF in one thinning project.

DATES: Written input concerning issues with this proposal must be received by January 31, 1992.

ADDRESSES: Submit written input to Quosatana Project Team Leader; Gold Beach Ranger District, 1225 S. Ellensburg, #7, Gold Beach, Oregon 97444.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Quosatana Project Team Leader, Gold Beach Ranger District, 1225 S. Ellensburg, #7, Gold Beach, Oregon 97444 (telephone: (503) 247-6651).

SUPPLEMENTARY INFORMATION: The Skookumhouse Timber Sale includes units from the selected alternative of the Decision Notice for the Skookumhouse Environmental Assessment (EA) (Decision Notice signed 12/7/83) and additional harvest units not analyzed under previous EAs.

The Skookumhouse Timber Sale area is centered in section 12, Township 36 South, Range 13 West of the Willamette Meridian. It is located in the Bradford Creek watershed, which is tributary to the Rogue River.

The sale, as proposed, would consist of 11 units on 173 acres. Approximate volume (gross), as proposed, would be 4.253 million board feet. Timber removal would be accomplished by means of skyline, helicopter, and tractor yarding systems. Approximately 1.8 miles of new roads would be constructed. Dust abatement would occur on haul roads. Treatment of vegetative residue (slash) with the following methods may occur: Hand-pile and burn, lop and scatter, broadcast burn (low-intensity burning/burning of concentrations/burning under forest canopy). Fertilizers (natural/petrochemical) may be applied to man-made plantations created after harvesting during this project.

The proposed harvest units contain both old-growth and mature Douglas-fir in the overstory. Unit S17 contains Port-Orford-cedar (POC) in the overstory. Unit S18 has a mixture of tanoak, madrone, and Douglas-fir. The elevation of proposed harvest units ranges from 1000 to 3200 feet, with most of the acreage at approximately 2200 feet.

SKOOKUMHOUSE TIMBER SALE

Unit	Acres	Skyline (mbf)	Helicopter (mbf)	Tractor (mbf)
S8	3		769	
S9	2		101	
S10	6		107	
S11	9	385		
S12	8	34		
S13	10	213		
S14	8	154		
S16	36		647	
N7	46	1320		
N9	34	493		
N17	10			30
Subtotals	173	2599	1624	30

SKOOKUMHOUSE TIMBER SALE—Continued

Unit	Acres	Skyline (mbf)	Helicopter (mbf)	Tractor (mbf)

Total volume: 4,253 mbf.

All volumes are cruised and expressed as gross mbf.

The Homestead/Butte Timber Sale is a combination of units from the selected alternatives of the Decision Notices for the Butte Skyline EA (Decision Notice signed 6/29/77) and Skookumhouse EA (Decision Notice signed 12/7/83) and newly identified units not analyzed in previous EAs.

The Homestead/Butte Timber Sale area is centered in Section 25, Township 36 South, Range 13 West of the Willamette Meridian. It is located in the Quosatana Creek watershed, which is tributary to the Rogue River.

The sale as proposed would consist of 11 units. Preliminary volume is estimated at 8.370 million board feet from about 377 acres and would require approximately 3.92 miles of new road construction and approximately 0.38 mile of reconstruction.

The stands under consideration are predominantly old-growth and mature Douglas-fir, with some evergreen hardwoods. The block of old growth habitat that includes units B3, H19, and N11–15 is the largest remaining block in the Quosatana drainage, except for the units that became part of the former Quosatana SOHA 82. The elevation of proposed harvest units ranges from 800 to 2600 feet, with most of the acreage at approximately 1600 feet.

HOMESTEAD/BUTTE TIMBER SALE

Unit	Acres	Skyline (mbf)	Helicopter (mbf)
B2	25	430	
B3	35	1652	
B4	40	988	
H19	36		1604
N1	20	690	
N10	30	285	
N11–15	189	2741	
Subtotals	377	6786	1604

Total Volume: 8,370 mbf.

All volumes are expressed as gross mbf.

The 2T Thin Timber Sale is the name of a thinning sale that would consist of 12 units of commercial thinning (low-intensity partial cutting) on approximately 223 acres, harvesting approximately 1.3 million board feet of timber. Timber removal would be by skyline yarding systems. 2.0 miles of road construction. The sale would focus on stands that already have road access. Treatment of vegetative residue, or slash, may occur following harvest. Fertilizers (natural/petrochemical) may be applied to remaining forest stands or the thinned stands.

This proposed timber sale timber is located near the headwaters of the Bradford and Quosatana Creek drainages. (Legal description: Township 36 South, Range 13 West, Section 28, Willamette Meridian).

Other Projects

Appendix B (Projected Budget) of the Siskiyou LRMP lists the following capital investment projects for the Quosatana and Bradford Creeks area. These projects are necessary to provide the level of outputs and services identified in the Forest Plan that pertain to the Quosatana/Bradford Area.

Wildlife:

Turkey Survey work in FY '91–'93.
The goal of this project is to identify potential turkey habitat in the Quosatana/Bradford Creek area.
Surveys for threatened, endangered, and sensitive wildlife and plant species in FY '91–93'.
The goal of this project is to identify the presence of threatened, endangered, and sensitive wildlife and plant species and their habitat in the Quosatana/Bradford Creek area.
Meadow Habitat Improvement in FY '93.
The goal of this project is to remove vegetation that is encroaching on meadows in the Quosatana/Bradford Creek area.

Fish:

Anadromous Fish structure Improvements (FY '92 & '93). Resident Fish non-Structural improvement in Quosatana and Bradford Creek.
The goals of these projects is to increase the quality of anadromous fish habitat in the Quosatana/Bradford Creek area.

In addition to the Appendix B projects other projects were identified during development of the proposal. These would be implemented to improve the quality of National Forest resources in the vicinity of the project area; these would include, but would not be limited to, the following:

Meadow enhancement.
Closure of roads (both existing and newly built roads).
Development of long-term quarry management plan.
Replacement of the existing culvert on Bradford Creek under the Agness Road.
Recreational trail development and maintenance.
Fish habitat enhancement.
Forage seeding for big game habitat.
Tree topping for cavity-dependent species.
Water source development for fire fighting.
Dispersed camping and the use of motor vehicles adjacent to Quosatana Creek.

The Siskiyou National Forest also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

Preliminary Issues

1. Fish habitat for resident and anadromous fish in Quosatana and Bradford Creeks (spawning, rearing habitat; water temperature, clarity);
2. The quality of water draining into the Rogue River from Quosatana and Bradford Creeks.
3. The geologic stability of portions of the landscape.
4. The integrity of habitat for old-growth-dependent wildlife.
5. The biological diversity of the area.
6. Uninfected Port-Orford-cedar stands.
7. Forest resistance to wild fires; timber removal may increase the quantity of flammable vegetative material to a hazardous level.
8. The current roadless character of the area.
9. Recreationists camping near the mouth of Quosatana Creek.
10. The potential of the area to provide opportunities for outdoor recreationists.
11. Timber productivity in areas where reforestation may be difficult to achieve.
12. Wildlife habitat in an area currently designated as a rock quarry in Management Area 9 (Special Wildlife Site; see below).

The following aspects of the Proposal are of interest and would be assessed during the determination of effects:

Benefit: Cost Ratio.
Payments to Curry County from timber sale receipts.

The Quosatana/Bradford Creeks analysis area includes the following Management Areas (MAs), as identified in the Forest Plan.

MANAGEMENT AREAS

Management area No. and area	Drainage	Quosatana Cr. (acres) / Bradford Cr. (acres)	Percent of Area
5—Unique Interest	369	0	1
7—Supplemental Resource	400	53	2
9—Designated Wildlife Habitat	1,381	43	7

MANAGEMENT AREAS—Continued

Management area No. and area	Drainage	Quosatana Cr. (acres) / Bradford Cr. (acres)	Percent of Area
9—Special Wildlife Site	544	165	4
10—Scenic/Recreation River	101	19	1
11—Riparian	*	*	*
12—Retention Visual	240	112	2
13—Partial Retention Visual	363	1573	10
14—General Forest	10,923	240	58
Private Land within planning boundaries	2,485	144	
Total	16,828	2,349	

* Undetermined.

Estimated project area: 19,175 acres.
Roadless area in planning boundaries: 5,997 acres.

MA 5: 2 per cent is in the Unique Interest Area, designed to protect significant cultural sites or outstanding geological features on the Forest.

MA 7: 2 per cent is in the Supplemental Resource area flanking Quosatana Creek, designed to provide high-quality fish and wildlife habitat, and protect sensitive watershed areas and recreation values.

MA 8: 7 per cent is in Designated Wildlife Habitat for the pileated woodpecker and pine marten.

MA 9: 4 per cent is in Special Wildlife Sites, including meadows/meadow buffers, a small botanical area, a general wildlife site, a pond/bog, dispersed old-growth sites, rock outcrops, and hardwood areas.

MA 10: 1 per cent is in Scenic/Recreation River, designed to maintain the recreation and scenic values accorded the Rogue Wild and Scenic River.

MA 11: an undetermined percentage is in Riparian ecosystems where multiple uses are allowed while maintaining water, fisheries, and other streamside values.

MA 12: 2 per cent is in Retention Visual, designed to provide for a visually pleasing level of scenery while management activities occur.

MA 13: 10 per cent is in Partial Retention Visual, where management activities would be more evident to the average forest visitor than in Retention Visual, but where their presence would be visually subordinate to the landscape.

MA 14: 58 per cent is in General Forest (MA 14), where multiple-use activities occur and timber management is planned for full, sustained yield.

The Responsible Official for this proposal would be the Forest Supervisor. He would decide whether to implement the proposal or one of the alternatives, including the option of not implementing any action.

The proposed projects to be implemented are all located in the Quosatana Creek and Bradford Creek drainages and develop or use some common road systems. The project area is approximately 19,175 acres in size.

The proposed projects would be in compliance with the direction in the Forest Plan, which provides the overall guidance for management of the area and the proposed projects. The proposed projects would be implemented within the Quosatana Creek and Bradford Creek drainages from Fiscal Years 1992 through 1994 on the Gold Beach Ranger District. The Quosatana Creek and Bradford Creek drainages are located approximately 14 and 17 river miles northeast of Gold Beach, respectively. The Siskiyou National Forest invites written input concerning issues regarding the proposal in addition to comments already received as a result of local public participation activities.

The agency also gives notice of the full environmental analysis and decision-making process that would occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

This EIS would tier to the Final EIS and Forest Plan (3/10/89). The Forest Plan provides goals and objectives, forest-wide standards and guidelines, management area standards and guidelines, and management area prescriptions for the various lands on the Forest. This direction provides for management practices that would be utilized during the implementation of the Forest Plan.

The analysis for the Quosatana/Bradford Creek proposal would consider a range of alternatives. Along with the proposed action, the analysis would consider a no-action alternative in the Quosatana Creek and Bradford Creek drainages.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies, and partners.
7. Notifying interested publics of opportunities to participate through meetings, personal contacts, or written comment.

The Draft Environmental Impact Statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March 6, 1992. At that time, EPA will publish a notice of availability of the draft EIS in the Federal Register.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process.

First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final EIS.

To be the most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The Final EIS is scheduled to be completed by June, 1992. In the Final EIS, the Forest Service is required to respond to comments received during the comment period. Mike Lunn, Forest Supervisor, Siskiyou National Forest, 200 NE. Greenfield Road, P.O. Box 440, Grants Pass, Oregon 97526–0242, is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed projects will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision.

That decision will be subject to Forest Service Appeal Regulations (36 CFR 217).

Dated: December 23, 1991.

J. Michael Lunn,

Forest Supervisor.

[FR Doc. 92–361 Filed 1–7–92; 8:45 am]

BILLING CODE 3410–11–M

Table Top Prospect Exploratory Oil and Gas Well; Intent To Prepare Environmental Impact Statement

AGENCY: USDA, Forest Service is the lead agency. USDI, Bureau of Land Management is a cooperating agency.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service, along with the Bureau of Land Management as a cooperating agency, will prepare an Environmental Impact Statement for an exploratory oil and gas well proposed by Chevron USA, INC. on lands administered by the Evanston Ranger District of the Wasatch-Cache National Forest. The analysis will be tiered to the current Land and Resource Management Plan and associated Final Environmental Impact Statements.

DATES: Comments concerning the scope of the analysis should be received in writing by January 31, 1992.

ADDRESSES: Send written comments to Stephen Ryberg, District Ranger, Evanston Ranger District, P.O. Box 1880, Evanston, WY 82931–1880.

FOR FURTHER INFORMATION CONTACT: Bernard Asay, Evanston Ranger District, P.O. Box 1880, Evanston, WY 82931–1880, telephone number (307) 789–3194; or Barry Burkhardt, Wasatch-Cache National Forest, 125 South State Street, Salt Lake City, UT 84138. Telephone number (801) 524–6333 or (801) 524–5030.

SUPPLEMENTARY INFORMATION: Chevron, USA, Inc. has submitted a proposal to drill an exploratory oil and gas well on Chevron's Federal oil and gas lease U–54044 in Township 1 North, Range 10 East, NW1/4SE1/4 Section 21 (referred to as the Table Top Prospect). The proposed site is located in the Main Fork of the Stillwater drainage. The proposal includes the construction of an access road and a drill site approximately 300 feet by 475 feet. The drilling period is expected to last approximately six months. The Forest Service will prepare an environmental impact statement to evaluate potential environmental consequences associated with this proposal and alternatives to the proposal in accordance with the National Environmental Policy Act. With the passage of the Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA) and the implementing regulations (36 CFR part 228), the Forest Service was given the authority to approve the Surface Use Plan of Operations portion of the Application for Permit to Drill (APD) which includes the identification of mitigation measures deemed necessary to minimize impacts on other resource values or uses. The Forest Service decision related to the approval of the Surface Use Plan of Operations will be appealable under Forest Service Regulation 36 CFR part 217. The final approval of the APD is the authority of the Bureau of Land Management. Before it was determined whether an EIS would be prepared scoping was conducted in September and October of 1991. Comments already received will be included in the environmental impact statement preparation; duplicate copies need not be sent. Issues to be addressed in the analysis will be determined through public scoping. Susan Giannettino, Forest Supervisor, is the responsible official. The Bureau of Land Management has been identified as a cooperating agency. The draft EIS will be available in March, 1992. The Forest Service anticipates the Final EIS to be released in May, 1992.

When an Environmental Impact Statement is prepared, the Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a Draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, (8th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: December 27, 1991.

Susan Giannettino,

Forest Supervisor, Wasatch Cache National Forest.

[FR Doc. 92–290 Filed 1–7–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held January 30, 1992, 9:30 a.m., Herbert C. Hoover Building, room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda: General Session

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Update on Latest Rounds of International Negotiations.
5. Discussion on Important Future Issues for the TRANSTAC.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue, NW., room 1621, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 28, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: January 3, 1992.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 92–397 Filed 1–7–92; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

[Docket No. 911171–1271]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of determination to accept an alternative international observer program.

SUMMARY: The Under Secretary for Oceans and Atmosphere has determined that the acceptable level of observer coverage for the observer program that is administered by the Inter-American Tropical Tuna Commission (IATTC) on behalf of Ecuador, Mexico, Panama, Vanuatu, Venezuela; and any subsequent harvesting nation which applies to NMFS for a yellowfin tuna importation finding, will be 75-percent observer coverage for fishing trips in the 1992 fishing season (October 1, 1991, to September 30, 1992), and 100-percent for fishing trips in the 1993 and subsequent fishing seasons.

EFFECTIVE DATE: This determination is effective March 9, 1992.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, California 90731, or 213/514–6196.

SUPPLEMENTARY INFORMATION: In the 1986 reauthorization of the Marine Mammal Protection Act (MMPA), the U.S. Congress amended the Act to add new importation requirements for nations exporting to the United States yellowfin tuna that were caught with purse seine nets in the eastern tropical Pacific Ocean (ETP). The amendments required, among other things, monitoring of incidental dolphin mortality under the IATTC dolphin program or an equivalent international program in which the United States participates. Any equivalent program must achieve an observer coverage rate no less than that achieved by the U.S. fleet.

On October 18, 1990, NMFS published in the **Federal Register** (55 FR 42235) a notice of proposed determination to accept an alternative international observer program. The determination requires 75-percent observer coverage in 1991, and 90-percent coverage in 1992 and subsequent years. In another action, published October 8, 1991, at 56 FR 50672, NMFS redefined the fishing season to be the period October 1 to September 30, to allow a finding to be made by December 31 of each year. This affects the requirement for observer coverage (as described in the October 18, 1990, notice of proposed determination) by decreasing the time available for the fishing nations to implement the increased coverage level. NMFS is now determining that the international program is acceptable at a level of 75 percent observer coverage for fishing trips in 1992 and 100 percent for fishing trips in 1993 and for subsequent fishing seasons. Accepting a 75 percent level of coverage again for the 1992 fishing season will allow the nations involved to coordinate with the IATTC to train and embark sufficient observers to meet the new requirement.

This determination will require observer coverage as near to 100-percent as practicable in the near term, and 100-percent thereafter. A standard of 75-percent for the 1992 fishing season (October 1, 1991, to September 30, 1992), will provide a reasonable time for the IATTC to recruit and train the personnel necessary to implement an expanded international observer program and to complete the necessary institutional and funding arrangements with participating nations. The 100-percent standard is intended to apply to the 1993 and subsequent fishing seasons.

Since publication of the October 18, 1990, determination, two intergovernmental meetings have addressed the need for observer coverage of incidental dolphin mortality in the ETP. At the first meeting, in San Jose, Costa Rica, September 12–20, 1990, all participating nations agreed that an international program for the reduction of incidental mortality of dolphins caught in association with tuna in the ETP would be established and that 100-percent observer coverage would be part of this program. At the second intergovernmental meeting, in La Jolla, California, January 16–18, 1991, each country agreed to contribute or ensure that each vessel in its fleet contribute the sum of $10 per vessel-ton carrying capacity per annum to the IATTC for the purpose of implementing the international observer program. Although that program is not yet established, the participating nations have agreed by consensus that 100-percent observer coverage is needed, and have developed a funding mechanism for that program.

In issuing this determination NMFS has considered comments on the determination published in the **Federal Register** on October 18, 1990. Two letters of comment were received as a result of the request for comment. Both expressed concern that the proposed levels of coverage (75-percent observer coverage for the international fleet in 1991 and 90-percent observer coverage for this fleet in 1992), were not consistent with the international consensus of the intergovernmental/IATTC resolutions of September 1990, and the findings of Congress in the MMPA. One comment also expressed concern that the United States and international fleets are not able to function in an equitable manner, and the

international fleet is denied the same opportunities as the U.S. fleet to participate in the "dolphin safe" markets throughout the world if there is not 100-percent observer coverage.

NMFS agrees that an observer level of 100-percent is the most desirable, but NMFS also realizes that 100-percent coverage is not possible in the near term, and has decided that 75-percent observer coverage for the 1992 fishing season is acceptable; 100-percent observer coverage is the intended level of coverage for the 1993 and subsequent fishing seasons. International negotiations are proceeding to provide the $1.2 million necessary to implement a 100-percent observer coverage program. As stated in the October 18, 1990, determination, it will take approximately 8 months after the funding is arranged to recruit and train new observers, making it impossible to achieve 100-percent, or even 90-percent, coverage in 1991; but 75-percent coverage will be possible during the 1992 fishing season. The fishing season has recently been re-established to allow findings to be made by December 31 of each year. A final determination of the level of observer coverage was originally intended to be published early in 1991 for the 1991 fishing season. However, under the new regulations, since the 1991 fishing season ended September 30, 1991, the observer requirements are being implemented to begin with the new fishing season. NMFS believes that this level of coverage is consistent with the MMPA and international resolutions.

Further, NMFS believes that by adhering to this observer program and striving for 100-percent coverage, the foreign fleet is afforded the same opportunity as the U.S. fleet to participate in the world market for all tuna, whether "dolphin safe" or not. NMFS regulations allow imports to the U.S. market from nations that have acted to prohibit purse seine sets on marine mammals, i.e., "dolphin safe", that require 100-percent observer coverage, and provide for serious penalties for non-compliance.

Determination

The Under Secretary for Oceans and Atmosphere, NOAA, determines to continue to accept an alternate foreign observer program for the 1992 fishing season and subsequent calendar years. The determination establishes observer coverage of 100-percent as a goal, but accepts 75-percent observer coverage for the 1992 fishing season, with 100-percent coverage in subsequent years. If the 100 percent coverage requirement is not met in 1993 or subsequent fishing seasons, a complete explanation for the deficiency must be provided along with a statement of what sanctions have been imposed on the offending vessel owner or owners.

This determination is based on a finding that the IATTC's observer program will provide sufficiently reliable documentary evidence of the average rate of dolphin mortality by a harvesting nation if the observer coverage for a nation is at least 75-percent of the fishing trips on an annual basis.

Dated: January 2, 1992.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 92-277 Filed 1-7-92; 8:45 am]

BILLING CODE 3510-22-M

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS will hold a scoping meeting that will be open to the public. The purpose of the meeting is to discuss recent measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT) concerning the Atlantic bluefin tuna fishery and to provide NMFS with public views on possible plans for domestic implementation of management measures.

EFFECTIVE DATE: See "**SUPPLEMENTARY INFORMATION**" for date and time of the meeting.

FOR FURTHER INFORMATION CONTACT: Richard Stone, 301-427-2347, Kathi Rodrigues, 301-427-2337, or Rod Dalton, 813-893-3161.

SUPPLEMENTARY INFORMATION: The public meeting is being held to provide an opportunity for informal discussion between the various constituency representatives and the NMFS on Atlantic bluefin tuna management. Because the meeting is not a public hearing, and to provide an opportunity for in-depth discussion, NMFS urges that associations and groups limit their participation to one or two representatives.

The public meeting is scheduled as follows:

January 10, 1992, 6 p.m.—National Marine Fisheries Service, 3500 Delwood Beach Road, Panama City, Florida.

Dated: January 3, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-301 Filed 1-7-92; 8:45 am]

BILLING CODE 3510-22-M

Endangered Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modified Permit No. 578 (P77#21) (Modification No. 1).

Notice is hereby given that pursuant to the provisions of §§ 216.33(d) and (3) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and § 220.24 of the Regulations Governing Endangered Species (50 CFR part 217-222), Scientific Research Permit No. 578 was issued to the National Marine Mammal Laboratory, National Marine Fisheries Service, on January 16, 1987 (52 FR 3037). The Permit has been modified to extend its duration through April 30, 1992. All other conditions currently contained in the Permit remain in effect.

This modification is effective on January 1, 1992.

Documents submitted in connection with Permit No. 578 and Modifications are available for review in the following offices:

By appointment: Office of Protected Resources, NOAA, National Marine Fisheries Service, 1335 East-West Highway, room 7330, Silver Spring, Maryland 20910 (301-713-2289);

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802 (907-586-7221); and

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115 (206-526-6150).

Dated: December 31, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-300 Filed 1-7-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification to Below-Listed Permits: Theater of the Sea, Permit Nos. 69 and 326 (P82 and P82B). Dolphin Research Center, Permit No. 514 (P63B). Dolphins Plus, Inc., Permit Nos. 292 and

577 (P234 and P234A), Hyatt Regency Waikoloa Resort, Permit No. 625 (P407).

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Special Conditions on swim-with-the-dolphin (SWTD) programs that apply to Public Display Permit Nos. 69 and 326 issued to the Theater of the Sea, Islamorada, Florida; Permit No. 514 issued to the Dolphin Research Center, Marathon, Florida; Permit Nos. 292 and 577 issued to Dolphins Plus, Inc., Key Largo, Florida; and Permit No. 625 issued to the Hyatt Regency Waikoloa Resort, Waikoloa, Hawaii, are modified by deleting Special Condition D.1 and substituting the following:

D.1. The Permit Holder is authorized to use dolphins in an experimental human/dolphin swim program until June 30, 1993. The National Marine Fisheries Service (NMFS) may modify, suspend, or revoke this authority before June 30, 1993, if the SWTD programs are found to have an adverse impact on the health or well-being of the animals, if an ongoing review of public display permit authorities, procedures, and criteria results in new regulations that disallow such programs, or if the terms of the conditions that follow are not met.

This modification extension is necessary to allow time to complete a research study on dolphins that are used in SWTD programs. The purpose of the study is to determine how the participation in these programs may affect the dolphins' health and behavior, and the results will provide a basis for deciding the future of the SWTD programs.

Documents concerning the above modification and permits are available for review by appointment in the Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7330, Silver Spring, Maryland 20910, (301) 713–2289.

This modification is effective on January 1, 1992.

Dated: December 31, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–400 Filed 1–7–92; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Regulatory Coordination Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Regulatory Coordination Advisory Committee will conduct a public meeting in the Lower Level Hearing Room (B–1) at the Commission's Washington, DC headquarters located at room 532, 2033 K Street, NW., Washington, DC 20581, on January 22, 1992, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

Agenda

1. Progress Report on International Issues from Office of General Counsel:
   a. Status of purchase and sale of foreign stock index futures contracts by U.S. entities.
   b. Status of other Issues.
2. Report from the Division of Economic Analysis regarding:
   a. Guideline 1.
   b. Large Trader Reporting System.
   c. Exemptions from Speculative Limits.
3. Report from the Division of Trading and Markets regarding:
   a. Rulemaking pertaining to an accredited investor exemption and bifurcated risk disclosure.
   b. Clearing and Settlement issues.
4. Follow-up on issues discussed at earlier Committee meetings:
   a. Allocation of trades.
   b. CTI codes.
   c. Performance reporting/notional funds.
5. New Issues:
   a. Pension Fund Issues/Large Order Execution.
   b. Other Issues.
6. Other items for Committee consideration; additional working groups; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on ways to improve coordination and to facilitate cross market transactions, including cross border transactions. The purposes and objective of the Advisory Committee are more fully set forth in the April 16, 1990 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, CFTC Chairman Wendy L. Gramm, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Regulatory Coordination Advisory Committee, c/o Ms. Kate Hathaway, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Hathaway in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on January 6, 1992.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–501 Filed 1–7–92; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–00XX; FAR Case 91–56]

OMB Clearance Request for Research and Development Contracting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Research and Development Contracting.

DATES: Comments may be submitted on or before March 9, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR part 35 provides policies and procedures for use of research contracts. When contracts are awarded for research, contractors have certain contractual obligations. FAR 52.235–XX,

Frequency Authorization, requires contractors to obtain frequency authorization for radio frequencies required in support of the research effort. FAR 52.235–XX, Acknowledgment of Support and Disclaimer, requires contractors to acknowledge the research was conducted under a Government contract and that the opinions in the article are those of the author. FAR 52.235–XX, Progress Reports, requires contractors to submit annual progress reports. FAR 52.235–XX Final Scientific or Technical Report Requirements, requires contractors to submit a final scientific or technical report on research conducted. FAR 52.235–XX, Dissemination of Project Results, requires contractors to provide two reprints of any articles published.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 27,000; responses per respondent, 1; total annual responses, 27,000; preparation hours per response, .629; and total response burden hours, 17,000.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Clearance Request [OMB Control No. 9000–00XX], for FAR case 91–56, Research and Development Contracting, in all correspondence.

Dated: December 24, 1991.

Laurie A. Frazier,

FAR Secretariat.

[FR Doc. 92–289 Filed 1–7–92; 8:45 am]

BILLING CODE 6820–JC–M

[OMB Control No. 9000–0075; FAR Case 91–58]

OMB Clearance Request Concerning Government Furnished Property Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice; request for an amendment to OMB Control No. 9000–0075.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for an amendment of a currently approved information collection requirement concerning Government Furnished Property Requirements.

DATES: Comments may be submitted on or before March 9, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 45.505–14, Reports of Government Property, is being revised to mandate that contractor property control systems provide annually the total acquisition cost of Government property for which the contractor is accountable under each contract with each agency, including Government property at subcontractor plants and alternate locations, by specified classifications. In addition, the following four classifications have been added to the existing list: Special tooling, special test equipment, material, and agency peculiar property.

B. Annual Reporting Burden

It is Government policy that property to support Government programs be provided by the private sector to the maximum extent possible. Recent reviews reveal that certain types of Government-owned property have been increasing and that Government attempts to phase-down Government ownership has not been fully successful. Reviews have also concluded that millions of dollars are being needlessly expended annually by not disposing of nonessential property. Consequently, the Government has determined that more discipline is needed in the implementation of existing policies and that additional policies are needed for the management of Government property provided to contractors. This information will be used by property administrators for visibility and control purposes.

The information collection requirement contained in this FAR amendment was initially approved by the Office of Management and Budget (OMB) under OMB Control Number 9000–0075. A revised Paperwork Reduction Act Analysis depicting this proposed rule amendment is being submitted to OMB for review.

The annual reporting burden is estimated as follows: Respondents, 18,750; responses per respondent, 10; total annual responses, 187,500; preparation hours per response, 1.25; and total response burden hours, 234,375.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 10,000; hours per recordkeeper, 40; and total recordkeeping burden hours, 400,000. The total annual burden requested is 634,375. This is a program change of 243,875.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0075, FAR case 91–58, in all correspondence.

Dated: December 24, 1991.

Laurie A. Frazier,

FAR Secretariat.

[FR Doc. 92–291 Filed 1–7–92; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the U.S. Army Reserve Command Independent Commission

ACTION: Notice.

SUMMARY: The U.S. Army Reserve Command Independent Commission was established as a Department of Defense federal advisory committee on December 19, 1991, pursuant to section 903, Public Law 101–510, the "National Defense Authorization Act for Fiscal Year 1991."

The Commission will assist the Secretary of the Army in assessing the progress and effectiveness of the Army Reserve Command since its inception, and any changes needed to improve readiness, operations, and mission capabilities as well as resource implications associated with recommended alternative courses of action.

For further information, please contact Ms. Sandy Riley, Office of the Administrative Assistant to the Secretary of the Army, telephone: 703–697–6900.

Dated: January 2, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–368 Filed 1–7–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

George W. Miller; Availability of Patent License

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces the availability of an exclusive or partially exclusive domestic license under United States Letters Patent No. 4,813,979, which matured from application Serial No. 07/151,383 filed 2 February 1988 in the names of George W. Miller and Clarence F. Theis for "Secondary Oxygen Purifier for Molecular Sieve Oxygen Concentrator" and/or United States Letters Patent No. 4,880,443, which matured from application Serial No. 07/288,315, filed 22 December 1988 in the names of George W. Miller and Clarence F. Theis for "Molecular Sieve Oxygen Concentrator with Secondary Oxygen Purifier".

All communications concerning this Notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Air Force Legal Services Agency, HQ AFLSA/JACP, 1900 Half Street, SW. Washington, DC 20324–1000, Telephone No. (202) 475–1386. Copies of these patents may be obtained, on request, from the same addressee.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–287 Filed 1–7–92; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Record of Decision To Construct Support Facilities for the Existing Relocatable Over-the-Horizon Radar System on Amchitka Island, AK

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the Department of the Navy announces its decision to construct improvements to the base camp for the existing relocatable over-the-horizon radar (ROTHR) system on Amchitka Island, Alaska. This action was identified as Phase 1 of the preferred (both operationally and environmentally) alternative discussed in the Draft Environmental Impact Statement (DEIS) that was distributed to the public on September 7, 1990. Since distribution of the Final Environmental Impact Statement (FEIS) to the public on March 1, 1991, the phasing of the proposed action has changed and the immediate scope of the project has been reduced. The original proposal included base camp improvements (Phase 1), site preparation work for a second ROTHR system (Phase 2), and installation of a second ROTHR system (Phase 3). The proposal to be implemented only includes some of the Phase 1 projects. No decision has been reached regarding the implementation of remaining Phase 1 projects, Phase 2, or Phase 3 at this time. Appropriate environmental documentation will be prepared, and decisions regarding these phases, will be made at a later time.

As discussed in the FEIS, Phase 1 projects to be implemented will involve constructing improvements at the Base Camp serving the existing ROTHR system, and at the existing receiver site. Projects to be implemented include removal of the deteriorating existing pier and replacement with a new pile supported pier; renovation of the existing waterfront operations building, and fire protection salt water pump; construction of a new water supply system, hazardous waste storage and transfer building, and vehicle maintenance and storage facility; and construction of a new sewage system, including a new sewage lagoon.

Alternatives considered included the no action alternative and implementing the proposed base camp improvements. The no action alternative was rejected because improvements to the base camp are needed to prevent environmental degradation, and improve living conditions for personnel stationed at the existing ROTHR system. Sites selected for all improvements are on areas previously disturbed by World War II, the Atomic Energy Commission, and Navy occupation of the island, and were selected to minimize further environmental impacts.

Construction activities for projects to be implemented including various buildings and improvements on existing hardstands an access roads, will cause disturbance to about 1.5 acres of wetland tundra. This fill is authorized by a Corps of Engineers Nationwide Discharge Permit. About 0.5 acres of wetlands will be disturbed during the installation of pipelines; this area will be restored in place to its natural state upon installation of the pipelines; the remaining 1 acre of wetlands disturbed would be unavoidably filled during construction activities. To mitigate this wetland fill in accordance with the Navy wetland protection policy, about 1 acre of emergent wetlands will be constructed on Runway Fox by lowering the existing grade and installing water control structures. This will result in no net loss of Navy wetlands. Erosion control measures as set forth in the Erosion Control Plan (appendix A of the FEIS) will be implemented to protect water quality.

The federally protected endangered Aleutian Canada goose and Stellar sea lion are resident on Amchitka Island during portions of the year. The U.S. Fish and Wildlife Service has reviewed the biological assessment on the Aleutian Canada goose and concurs that the Phase 1 projects to be implemented would not adversely affect the populations or habitat of this species. The National Marine Fisheries Service has concluded that the Phase 1 projects to be implemented would not adversely affect populations of the Stellar sea lion.

A wide variety of archaeological and historic resources occur on Amchitka Island from prehistoric time through the early Russian occupation and into modern time. Some of these resources are known to be in close proximity to planned development activities. The Navy has reached an agreement in principal with the Alaska State Historic Preservation Officer addressing the need for consultation on a site by site basis being completed prior to site disturbance as projects related to this decision are implemented. This site by site consultation will be completed for each project prior to its implementation.

The Navy filed a DEIS on September 7, 1990, for this project and held a public hearing in Anchorage, Alaska, on September 26, 1990. In addition to comments delivered from one individual at this hearing, twelve letters were received from public agencies. Comments in general centered on the effects Phases 2 and 3 would have on water quality, air quality, vegetation, wetlands, wildlife, and cultural resources. The Navy filed a FEIS on March 1, 1991.

The Navy believes that there are no outstanding issues to be resolved with respect to Phase 1 projects to be implemented. Questions regarding the environmental impact statement prepared for this action may be directed to Commanding Officer, Engineering Field Activity Northwest, Naval Facilities Engineering Command, 3505 Anderson Hill Road NW., Silverdale, WA 98383 (Attn: Mr. Joe DiVittorio), telephone (206) 476–5773.

Dated: January 1, 1992.

Elsie Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

[FR Doc. 92–396 Filed 1–7–92; 8:45 am]

BILLING CODE 3910-AE-M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Education Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Education.

ACTION: Notice of meeting (partially closed meeting).

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans. This notice also describes the functions of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: January 17, 1992–1 p.m. to 5 p.m. and January 18, 1992–8:30 a.m. to 1 p.m.

ADDRESSES: The Ritz-Carlton Hotel, 2100 Massachuesetts Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Florez, Executive Director, White House Initiative on Educational Excellence for Hispanic Americans, U.S. Department of Education, Washington, DC 20202. Telephone: (202) 401–0747.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order 12729.

The Commission is established to advise the Secretary of Education on the educational status of Hispanic Americans, including the progress of Hispanic Americans towards achievement of the national educational goals, and on Federal efforts to promote quality education for Hispanic Americans.

On January 17, the Commission will meet in a closed session from 1 p.m. to 5 p.m. During the closed portion of the meeting the Commission will review and discuss resumes and qualifications of applicants for two staff positions. This discussion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemption (6) of section 552b(c) of title 5 U.S.C.

On January 18, the Commission will meet in an open session from 8:30 a.m. to 1 p.m. The agenda will be the development and adoption of the Commission Workplan and Calendar of Activity for the next three months.

The public is being given less than fifteen days notice because of changes in the agenda.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Avenue, SW., room 2149, Washington, DC 20202–6135 from the hours of 8:30 a.m. to 5 p.m.

Dated: January 2, 1992.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 92–322 Filed 1–7–92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

FY92 Program Solicitation No. DE–PS22–92MT92003 entitled "Support of Advanced Fossil Resource Utilization Research at Historically Black Colleges and Universities (HBCUs)"; Restricted Eligibility

AGENCY: U.S. Department of Energy, Pittsburgh Energy Technology Center, Metairie Site Office (MSO).

ACTION: Notice of restricted eligibility.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.7(b)(1), and in support of the Metairie Site Office (MSO), it intends to conduct a competitive Program Solicitation No. DE–PS22–92MT92003 and to award, on a restricted eligibility basis, financial assistance (grants) to U.S. Historically Black Colleges and Universities (who can show evidence of a collaborative effort with industry), in support of innovative research and advanced concepts pertinent to fossil resource conversion and utilization. Proposals will be subjected to a comparative merit review by a DOE technical panel, and awards will be made to a limited number of proposers on the basis of the scientific merit of the proposal, application of relevant program policy factors, and the availability of funds.

Supplemental Data

Scope: The Department of Energy seeks proposals from Historically Black Colleges and Universities (HBCUs) and HBCU-affiliated research institutes (in collaboration with the private sector) for innovative research and advanced concepts pertinent to fossil resource conversion and utilization. The resultant grants are intended to maintain and upgrade educational, training and research capabilities of our HBCUs in the fields of science and technology related to fossil energy resources; to foster private sector participation, collaboration and interaction with HBCUs; and to provide for the exchange of technical information and to raise the overall level of HBCU competitiveness with other institutions in the field of fossil energy research and development. Thus, the establishment of linkages between the HBCU and private sector fossil energy community are critical to the success of this program, and equally consistent with the Nation's goal of ensuring a future supply of fossil fuel scientists and engineers from a previously under-utilized resource.

Eligibility for participation in this Program Solicitation is restricted to Historically Black Colleges and Universities (HBCUs) and HBCU-affiliated research institutes, and only those that meet all of the following criteria may submit applications in response to this solicitation: the Principal Investigator or a Co-Principal Investigator must be a teaching professor at the submitting university listed in the application; and at least one student registered at the university is to be compensated for work performed in the conduct of research proposed in the application; and each HBCU applicant must reflect collaboration with industry, i.e. the private sector. Proposals from HBCU-affiliated research institutes must be submitted through the college or university with which they are affiliated. The university (not the university-affiliated research institute) will be the recipient of any resultant DOE grant award.

A small or large business enterprise will qualify as a "private" sector entity; however, the following are specifically excluded from recognition as private sector collaborators: Federal, state and/or local government agencies and non-HBCU colleges and universities. Collaboration by the private sector with the HBCU may be in the guise of cost sharing, consultation, HBCU-access to industrial facilities or equipment, or as a subgrantee/subcontractor to the HBCU.

Areas of Interest: To develop a focused national and regional program of HBCU research on fossil technology and resources, the Department is particularly interested in innovative research and advanced concepts pertinent to fossil resource conversion

and utilization limited to the following eleven (11) technical topics. Some examples of subtopics in each category are also given (note that these examples are generally not all inclusive):

(1) Advanced Fossil Resource Utilization

Grant applications in support of advanced fossil resource utilization are sought for the following subtopics: Improved technology for syncrude from oil shales in the areas of (1) mining and material handling, (2) retorting/extraction, and (3) upgrading/refining; improved recovery effectiveness in tar sands reservoirs, i.e, innovative approaches to enable wider resource applicability and process efficiency; development of low cost, corrosion/contaminant resistant materials for high performance fuel cell systems, such as methods for lowering the costs of fuel cells, improving the system's maturity, and improving the resistance of the fuel cell components to gas stream contaminants; upgrading gasification and mild gasification processes utilizing catalyst systems, separation concepts, and integrated reaction mechanisms that would permit multiple reactions to occur in a single reactor and applications that initiate or advance the development of novel techniques for the production of synthesis gas for use with "indirect liquefaction" processes from various coals and coal-based char that promise to provide significant improvement in the production costs.

(2) Advanced Environmental Control Technology for Coal

Grant applications in support of advanced environmental control technology for coal are sought for the following subtopics: Coal preparation, i.e., the development of improved coal cleaning technologies through physical, physicochemical, chemical, or biological methods; hot gas stream cleanup, i.e, techniques for (1) removing physical and chemical contaminants to levels that are compatible with diesel, gas turbine, and fuel cell systems, (2) reducing emissions to levels below the promulgated standards for pulverized coal boilers, and (3) reducing gas stream contaminants to levels that are compatible with liquids production; advanced high efficiency emissions control systems that are simple to construct, operate, and maintain, and capable of removal efficiencies of a minimum of 90% for NO_x and CO_2 and 95% for SO_2; waste management, i.e, development of novel uses for coal-derived residues from the sulfur capture wastes produced in fluidized-bed combustion, limestone injection multistage burners, advanced flue gas cleaning, or gasification processes.

(3) Coal-Based Alternative Fuels Technology

Grant applications in support of advanced environmental control technology for coal are sought for the following subtopics: Coal-based mixtures, i.e. the utilization of coal-based mixtures that will lead to a better understanding of coal surface chemistry and mixture rheology and that will provide for high solids loading, efficient atomization, or a more predictable mixture behavior from the standpoints of stability and controlled viscosity over extended time periods, without the need for constant monitoring and control; or advanced characterization techniques development, i.e., advanced, novel techniques to characterize alternative fuels, their combustion behavior, and resultant wastes and emissions, including (1) physical and chemical properties of ash and (2) fouling and slagging.

(4) Advanced Coal Utilization

Grant applications in support of advanced coal utilization are only sought for the following subtopics: Advanced coal combustion systems, i.e., the direct combustion of pulverized coal or other dry, liquid, or slurry coal-based fuels in either slagging or non-slagging systems other than fluidized beds and heat engines, with focus on enhanced overall system performance/lower capital, operating, and maintenance costs, reduced emissions via combustion zone modifications, increased efficiency, and expanded markets; fluidized bed combustion (FBC), i.e., innovative research for both atmospheric and pressurized FBCs to (1) reduce capital, operating, and maintenance costs of FBC systems, (2) improve solids handling, (3) improve environmental performance, (4) improve reliability and operability of critical FBC system components, (5) develop instrumentation for characterization of FBC parameters, and (6) integrate FBCs with other components to improve the economics of small FBC systems; heat engines including both coal-fuel diesel engines and gas turbines, i.e., for novel integrated approaches for coal-fuel diesels to (1) develop fuel injection techniques, (2) develop novel low cost emissions control techniques for NO_x, SO_x, and particulates, and (3) improve engine efficiency through in-cylinder techniques.

(5) Coal Liquefaction Technology

Grant applications in support of coal liquefaction technology are only sought for the following subtopics: Advanced concepts for conversion of coal to liquids, i.e., novel catalysts or reaction chemistry to remove oxygen in the initial stages of direct coal liquefaction with minimal or reduced hydrogen consumption, preconversion processing, or instrumentation or analytical methods to (1) measure chemical reactions in situ, (2) determine the effect of chemical and physical pretreatments on the coal structure, or (3) measure accurate process stream flows and compositions; advanced concepts for conversion of syngas to liquids, i.e., improved methods of methanol synthesis and of novel single step processes for producing gasoline and diesel hydrocarbons, simpler routes to higher alcohols and ethers that can be used as octane enhancers, novel catalyst systems to facilitate the desired reaction sequences, process schemes which make more effective use of heat generated in synthesis, novel systems which convert syngas directly into liquids or liquid precursors, and improved instrumentation and analytical techniques that allow on-line determination of process stream composition or improve catalyst characterization; coal-oil coprocessing, i.e., better understanding the chemistry of interaction between the residue and the coal, improved demetallization, or novel techniques for hydrogen production from various coals and coal-based chars for use in direct liquefaction; advanced catalysts, i.e., enhanced depolymerization reactions while repressing the condensation reactions, improved methods for solids removal from coal reaction products, recovery of dispersed catalysts and activation of the recovered catalysts, and for supported catalyst for promoting distillate production after initial dissolution that have higher reactivity and lower rates of deactivation from either coke or metals, or both.

(6) Biotechnology for Fossil Energy

Grant applications in support of biotechnology for fossil energy are only sought for the following subtopics: Beneficiation of coal resources, i.e., studies/application of biotechnology to remove organic and inorganic contaminants from typical U.S. coals at mild operating conditions; biotechnologies with the ability to (1) selectively modify the surface properties of the contaminants, thereby enhancing the effectiveness of physical beneficiation with minimal energy loss, (2) degrade sulfur-containing molecules in the resource, followed by release of the sulfur as sulfate or other disposable

residue, (3) solubilize or release ash-forming materials, or (4) selectively attack nitrogen-and oxygen-containing molecules so that their removal is made simple; conversion of fossil energy resources, i.e. (1) types of biotechnical resource modification that include conversion of fossil energy resources to liquid or gaseous fuels, viscosity reduction of high viscosity materials, or release of organic materials bound in inorganic matrices, (2) microorganisms, enzymes, or other products of microorganisms that have the ability to modify the structure of fossil energy resources and result in a fuel form that is more amenable to utilization, or requires minimum upgrading or processing, and (3) research on biochemical mechanisms by which these conversions occur; bioreactors and bioprocess efficiency, i.e., improved approaches for bioprocessing fossil resources (or their products); enhanced oil and gas recovery, i.e., development of processes using microorganisms or their products in the recovery of light and heavy oils or natural gas from low producing fields.

(7) Enhanced Oil Recovery (EOR)

DOE seeks innovative methods and concepts that will contribute to more efficient, effective, and economical techniques for the recovery of domestic oil in declining fields. Better reservoir understanding and engineering design of all of these operations (primary, secondary, and EOR) is needed to increase domestic oil production. Reservoir characterization is the most important means of understanding the reservoir. Its two main facets—defining the anatomy of the reservoir and determining how that anatomy governs fluid movement—are requisite to any improvements in oil recovery strategy.

Grant applications in support of enhanced oil recovery are only sought for the following subtopics: Recovery of light oil, i.e., sweep improvement for enhanced oil recovery (EOR) processes, novel surfactants for high salinity, high hardness, and high temperature reservoir brines; recovery of heavy oil, i.e., novel techniques to reduce wellbore heat losses using an effective, inexpensive insulating fluid in the tubing-casing annulus, measure the downhole steam quality to determine wellbore heat loss and thus to allow design of better production operations, and to improve the effective sweep of the reservoir by reducing the effects of overriding gravity segregation, insufficient mobility control, and heterogeneities; oil-field geoscience, i.e., novel methods of characterization to quantify reservoir parameters, techniques to interpret dispositional, diagenetic, or structural features of reservoirs for prediction of the spatial distribution of heterogeneities and their influence on fluid flow within known oil reservoirs, novel improvements in instrumentation for use in characterization of known hydrocarbon reservoirs, innovative techniques for computer modeling of reservoir heterogeneities and reservoir/fluid interactions, and the development of oil data bases and oil atlas compilation and reservoir classification.

(8) Advanced Technology for the Recovery of Natural Gas

Grant applications in support of advanced technology for the recovery of natural gas are only sought for the following subtopics: Advanced geotechnology in production applications, i.e., innovative approaches to improve the recovery of original gas in place and/or inexpensive new geotechnical approaches or concepts to restore the flow rate of old gas wells, including (1) novel completion (or re-completion) and stimulation techniques to improve resource recovery, (2) improved directional drilling equipment so that wells can be designed to cross the natural fracture network that is determined to be present in situ, (3) diagnostic tool development (measurement while drilling) for operation in long, horizontal wellbores, (4) stimulation techniques effective in horizontal and high angle wells (including from old wells), (5) advancements in lateral drilling and/or near-wellbore stimulation to enhance deliverability from gas storage reservoirs, (6) conservation techniques in the production and distribution of natural gas, (7) methodologies for strategic infill drilling to increase recovery of original gas in place, (8) techniques for restoration of flow rates in stripper gas wells, (9) methodologies for recovering and transporting natural gas (including subquality gas) from remote locations, and (10) systems studies for optimizing natural gas utilization at the wellhead or for reducing costs of natural gas acquisition to the ultimate user; advanced instrumentation and interpretation techniques for locating and characterizing natural gas resources, i.e., advanced instrumentation and interpretation techniques for locating and characterizing gas reservoirs, including hydrates and deep gas, to improve resource recovery and to increase reserves, and the development of gas data bases and gas atlas compilation and reservoir classification into an easily accessible information repository; advanced concepts for natural gas conversion to liquids, i.e., advanced concepts for conversion of natural gas to liquids including catalytic and noncatalytic processes (with emphasis on the latter) for converting natural gas to liquid fuels.

(9) Advanced Environmental Considerations in the Recovery and Processing of Oil, Natural Gas, and Oil Shale

Grant applications in support of advanced environmental considerations in the recovery and processing of oil, natural gas, and oil shale are sought for the following subtopics: Advanced environmental considerations in the recovery and processing of oil and gas, i.e., (1) technology for the management of wastes generated during drilling, production, and processing, (2) research relates to naturally occurring radioactive materials (NORM) in drilling and production operations, (3) methodologies for drilling, producing, and transporting oil and gas from wetlands, offshore, arctic, and other sensitive areas in an environmentally acceptable manner, (4) improved technologies for more cost-effective protection of drinking water aquifers, (5) development of environmental, regulatory, and operational data management and geographic information systems for drilling and production operations, to assist states and Federal agencies in developing and implementing risk-based regulatory programs and to assist operators in lowering their costs of environmental compliance while providing better environmental protection, (6) research related to air emissions from drilling, production, distribution, and processing operations, (7) methodologies for evaluating and controlling methane emissions from gas production and distribution operations and their contribution to global climate change, (8) techniques for economic conversion of small quantities of naturally occurring gases to usable or environmentally benign products or for separation of naturally occurring gases, (9) evaluation of the environmental impacts and mitigation strategies for advanced recovery technologies, and (10) innovative techniques for the transfer of environmental compliance technologies to the oil and gas industry; advanced environmental considerations in the recovery and processing of oil shale, i.e., novel methods of assessing the potential environmental impact of solid waste disposal, novel methods of mitigation/control of disposed solid waste, and novel methods of dealing with the liquid

effluent from oil shale beneficiation processes.

(10) Heavy Oil Upgrading and Processing

Grant applications in support of heavy oil upgrading and processing are sought for the following subtopics: Improved understanding of the chemistry and the thermodynamics of adding hydrogen to heavy feedstocks; improved understanding of the chemistry and the thermodynamics of the removal of the contaminants, i.e. S, N, O, metals, etc., from heavy feedstocks; development of new and less expensive means for producing hydrogen from feedstocks other than light hydrocarbons; development of newer, less expensive contaminant removal processes for heavy oils along with environmentally acceptable means of disposing of the contaminants when removed; development of new knowledge to be used to improve cat cracking and hydrocracking catalysts and process; and development of the knowledge, catalysts and processes necessary to eliminate the production of petroleum coke or the ability to liquefy it for recycling to the refinery.

(11) Faculty/Student Exploratory Grants

DOE is seeking grant applications for a supportable basic premise on any one of the subtopics covered under the above ten (10) topics. DOE will provide "seed" grants to the selected HBCU for the faculty and/or student investigator to conduct initial exploratory research on their stated premise.

This is the only topic (Topic eleven (11)) under this solicitation that does not require initial private sector collaboration.

Awards: DOE anticipates issuing financial assistance (grant) awards for each project. DOE reserves the right to support or not to support any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year. The limitation on the maximum DOE funding for each selected grant to be awarded under this Program Solicitation is as follows:

	Maximum Award
Topics (1)–(10):	
To 12 months grant duration	$80,000.00
13–24 months grant duration	$140,000.00
25–69 months grant duration	$200,000.00
Topic (11):	
To 12 months grant duration	$10,000.00

Approximately $ one (1) million is planned for this solicitation. The total should provide support for approximately six (6) R&D proposal selections (Topics 1–10) and approximately ten (10) faculty/student exploratory proposal selections (Topic 11). The Program Solicitation is expected to be ready for mailing on or about January 31, 1992.

Applications must be prepared and submitted in accordance with the instructions and forms in the Program Solicitation. To be eligible, applications must be received by the Department of Energy by the closing date stated in the solicitation.

For Further Information Write To: For a copy of this solicitation or for further information, please write to: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940, Attn.: Ms. Donna J. Lebetz, Contract Administrator.

Issued in Washington, DC on December 24, 1991.

Richard D. Regan,

Chief, Contracts Group, Acquisition & Assistance Div.

[FR Doc. 92–304 Filed 1–7–92; 8:45 am]

BILLING CODE 6450-01-M

Membership of UNITAR/UNDP Information Center for Heavy Oil and Tar Sands

AGENCY: Bartlesville Project Office, Department of Energy (DOE).

ACTION: Notice of non-competitive financial assistance (grant) award with United Nations Institute for Training and Research (UNITAR).

SUMMARY: The Department of Energy (DOE), Bartlesville Project announces that pursuant to 10 CFR 600.7 (b)(2)(i)(A) and (B), it intends to make a non-competitive Financial Assistance (Grant) award through the Pittsburgh Energy Technology Center to United Nations Institute for Training and Research, New York 10017 to support the "International Center for Heavy Oil and Tar Sands."

SUPPLEMENTARY INFORMATION:

Awardee: United Nations Institute for Training and Research.

Grant Number: DE–FG22–92BC14993.

Grant Value: $150,000.

SCOPE: The proposed research effort is to promote and facilitate the exchange of technical information on matters relating to the heavy crude and tar sands on a world-wide basis, to publish special studies on particular topics related to heavy crude and tar sands, and to assess research in heavy crude and tar sands and guide countries in developing their energy potential.

This grant is in support of UNITAR for the UNITAR/UNDP Information Center for Heavy Oil and Tar Sands. DOE was a cofounder of the Center with UNITAR, AOSTRA (Canada) and PDVSA (Venezuela) in 1981.

The establishment of the UNITAR/UNDP Information Center for Heavy Oil and Tar Sands has facilitated international cooperation among countries for solutions to common technological problems and technology transfer. Huge resources of heavy oil and tar sands exist worldwide including in the United States. As light oil resources become depleted, the world will shift emphasis to the heavy oil and tar sands resources.

The term of the grant is thirty-six (36) months with a total estimated cost of $150,000.00 to the DOE Office of Fossil Energy. The anticipated share is $50,000 each year from FY 1992 to FY 1994.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attention: Rhonda L. Dupree, Telephone: AC 412/892/4949.

Issued in Washington DC on December 18, 1991.

Richard D. Regan,

Contracting Officer, Pittsburgh Energy Technology Center.

[FR Doc. 92–302 Filed 1–7–92; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award a Grant to Washington State University

AGENCY: Department of Energy, Richland Field Office.

ACTION: Notice of acceptance of an unsolicited proposal and the intent to award a financial assistance instrument.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based upon an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE–FG06–92EH60160 to Washington State University for management and operation of the United States Transuranium and Uranium Registries.

SCOPE: The United States Uranium Registry (USUR) and the United States Transuranium Registry (USTR) are parallel human tissue research programs

studying the deposition of actinide elements within the human body. This grant to Washington State University will support the USUR and the USTR major objective to improve the body of knowledge relating to the biokinetics and dosimetry of the actinides in humans and thus provide scientific data for verification and refinement of existing radiation protection standards. The Government's share of the proposed three year project is $3,782,179. First year funding will be $700,000.

The proposed grantee will consolidate management of the registries, integrate them into the broader research and academic communities, conduct research activities necessary to achieve the full potential of the registries, and increase the interdisciplinary mix of individuals who participate in registry programs.

The purpose of this proposal relates directly to the mission of the DOE Office of Health because it concerns the responsibility for insuring that the Department of Energy activities are conducted in conformance with all applicable environmental laws and regulations and that the health and safety of workers and the public are protected. It has been determined that the conduct and management of the research and activities of the Registries is essential to the mission and will accomplish a public purpose of support or stimulation authorized by Federal Statute.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Richland Field Office, Contract Management Branch, Procurement Division, Attn: Daniel L. White, A7-60, P.O. Box 550, Richland, Washington 99352.

SUPPLEMENTARY INFORMATION: A determination has been made that the project has high scientific merit and offers an innovative approach to the organization, management and conduct of registry studies and activities. It would not be eligible for financial assistance under a recent, current, or planned solicitation. The proposed grantee offers a unique combination of capabilities and facilities. Based on these criteria, it has been determined that it is appropriate to award a grant for this activity to Washington State University.

G. L. Amidon,

Acting Director, Procurement Division, Richland Field Office.

[FR Doc. 92-369 Filed 1-7-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10359-003 Washington]

Snoqualmie River Hydro; Availability of Environmental Assessment

December 31, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), Office of Hydropower Licensing has reviewed the application for license for the proposed Youngs Creek Project, located near the town of Sultan on Youngs Creek, Snohomish County, Washington, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-301 Filed 1-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1858-002 Utah]

Beaver City; Notice Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

December 31, 1991.

The license for the Beaver City Canyon Plant #2 Project No. 1858 located on the Beaver River in Beaver County, Utah expires on July 31, 1993. The statutory deadline for filing an application for new license was July 31, 1991.

The project consists of: (1) A 17-foot-high diversion dam; (2) a 2-mile-long, 30-inch-diameter penstock; (3) a powerhouse with an installed capacity of 626 kW; (4) a 4.1-mile-long, 69-kV transmission line; and (5) other appurtenances.

An application for new license has been filed as follows:

Project No.	Applicant	Contact
P-1858-002	Beaver City, P.O. Box 271, Beaver, UT 84713.	Robert H. Lee, Mayor, P.O. Box 271, Beaver, UT 84713, (801) 438-5451

If any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for a study, together with justification for such request in accordance with § 4.32 of the Commission's regulations, must be filed no later than 60 days after this notice is published in the Federal Register.

The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
90 days from the date that this notice is published in the Federal Register.	Commission's deadline for applicant for filing a final amendment, if any, to its application.
April 10, 1992	Commission notifies applicant that its application has been accepted. The notification of acceptance will specify the need for additional information and the date information is due.
April 17, 1992	Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protests.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Hector M. Perez at 202-219-2843.

Lois D. Cashell,

Secretary.

[FR Doc. 92-309 Filed 1-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-65-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 31, 1991.

Take notice that CNG Transmission Corporation ("CNG"), on December 20, 1991, pursuant to section 4 of the Natural Gas Act and part 154 of the Commission's regulations, filed the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Ninth Revised Sheet No. 32
Fourth Revised Sheet No. 33
Eighth Revised Sheet No. 35

The revised tariff sheets are filed to be effective on February 1, 1992.

The filing would reduce CNG's fuel retention percentage and fuel charge from those currently in effect subject to refund. The lower levels reflect the unopposed settlement agreement that has recently been certified to the Commission in Docket No. RP90-143.

CNG also proposes to amend its tariff rates to provide for minimum gathering and products extraction rates in accordance with § 284.7(d)(5)(i) of the Commission's regulations.

CNG states that it has mailed a copy of its filing to customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before January 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-303 Filed 1-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-2-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 31, 1991.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on December 20, 1991 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective February 1, 1992.

ESNG states that such tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and sections 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.1802 per dt in the Commodity Charge and an increase of $0.0272 per dt in the Demand Charge, all as measured against ESNG's previously scheduled PGA filing in Docket No. TA92-2-23-000, et al. as filed on September 25, 1991 and approved to be effective on November 1, 1991.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 and rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-305 Filed 1-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-44-026 and RP91-139-002]

El Paso Natural Gas Co., Compliance Tariff Filing

December 31, 1991.

Take notice that on December 23, 1991 El Paso Natural Gas Company ("El Paso") filed pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations under the Natural Gas Act and in compliance with ordering paragraph (D) of the Commission's order issued November 20, 1991 at Docket Nos. RP88-44-000, *et al.*, RP91-139-000 and CP92-4-000 accepting the Joint Offer of Settlement and Stipulation and Agreement ("Settlement") filed October 1, 1991 in the referenced proceedings, certain tariff sheets to become effective on October 1, 1991.

El Paso states that the Settlement concludes several outstanding disputes among El Paso, the City of Willcox, Arizona ("Willcox") and Arizona Electric Power Cooperative, Inc. ("AEPCO") arising from El Paso's Global Rate Settlement approved by the Commission in Docket No. RP88-44-000, *et al.* El Paso states that the parties to the Settlement resolved, among other things, issues relating to (1) establishment of demand charges and billing determinants for certain rate periods applicable to AEPCO; and (ii) the method of allocating the Monthly Direct Charge for take-or-pay cost recovery from AEPCO/Wilcox. El Paso also states that by order issued November 20, 1991 at Docket Nos. RP88-44-000, *et al.*, the Commission approved the tariff revisions which were reflected in the *pro forma* tariff sheets attached to the Settlement. El Paso states that the tendered tariff sheets are being submitted in compliance with ordering paragraph (D) of the Commission's November 20, 1991 order approving the Settlement.

El Paso requested that all necessary waivers of the Commission's Regulations be granted so as to permit the tendered tariff sheets to become effective on October 1, 1991 which is the date that the rates, charges and procedures have been implemented pursuant to the Settlement, except for one (1) tariff sheet to become effective December 1, 1991 for pagination purposes.

El Paso states that copies of the filing were served upon all parties of record at Docket Nos. RP88-44-000, *et al.*, RP91-130-000 and CP92-4-000 and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before January 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-306 Filed 1-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT92-11-000]

El Paso Natural Gas Co.; Tariff Filing

December 31, 1991.

Take notice that on December 27, 1991, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, 2nd Revised Original Sheet No. 116 contained in its FERC Gas Tariff, First Revised Volume No. 1-A. El Paso states that the filing reflects deletion of the Billing Determinant for Southern Union Gas Company, A Division of Southern Union Company ("Southern Union Gas"), applicable to the State of Arizona and the addition of a Billing Determinant for Citizens Utilities Company ("Citizens") applicable to the State of Arizona. El Paso requests that the tendered tariff sheet be accepted for filing and permitted to become effective December 1, 1991.

El Paso states that on November 30, 1991, Southern Union Company and Citizens entered into an agreement effective December 1, 1991 in which all rights, title and interest, and contracts with respect to Southern Union Gas' natural gas distribution system located in the State of Arizona were assigned to Citizens. El Paso states that as a result of such agreement, the Transportation Service Agreement (Conversion from Firm Sales Service) between El Paso and Southern Union Gas has been assigned to Citizens. As a result of the effectiveness of the assignment, El Paso states that it is necessary to revise Sheet No. 116 to eliminate the Billing Determinant for Southern Union Gas applicable to the State of Arizona and add a Billing Determinant for Citizens applicable to the State of Arizona to reflect its existing transportation entitlements plus the assumption of those firm transportation entitlements from Southern Union Gas. Accordingly, El Paso is tendering 2nd Revised Original Sheet No. 116 to reflect such revision.

El Paso requests that, pursuant to § 154.51 of the Commission's Regulations, waiver of the notice requirements of § 154.22 of the Commission's Regulations be granted so as to permit the tendered tariff sheet to become effective December 1, 1991, the effective date of the assignment.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-307 Filed 1-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1773-001 Utah]

Moon Lake Electric Association, Inc.; Notice Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

December 31, 1991

The license for the Yellowstone Project No. 1773 located on the Yellowstone River in Duchesne County, Utah expires on March 31, 1993. The statutory deadline for filing an application for new license was March 31, 1991.

The project consists of: (1) A 15-foot-high, 313-foot-long earth and rock dam; (2) a small reservoir with a storage capacity of 8.01 acre-feet; (3) a 44-inch-diameter, 14,128-foot-long penstock; (4) a powerhouse with three generating units with a total installed capacity of 900 kW; (5) a 14.37-mile-long transmission line; and (6) other appurtenances.

An application for new license has been filed as follows:

Project No.	Applicant	Contact
P-1773-001	Moon Lake Electric Association, Inc.	Grant J. Earl, General Manager, Moon Lake Electric Association, Inc., 188 West 2nd North, Roosevelt, UT 84066, (801) 722-3406.

If any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for a study, together with justification for such request in accordance with § 4.32 of the Commission's regulations, must be filed no later than 60 days after this notice is published in the Federal Register.

The following is an approximate schedule and procedures that will be flowed in processing the application:

Date	Action
90 days from the date that this notice is published in the Federal Register.	Commission's deadline for applicant for filing a final amendment, if any, to its application.
April 10, 1992	Commission notifies applicant that its application has been accepted. The notification of acceptance will specify the need for additional information and the date information is due.
April 17, 1992	Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protests.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and

take appropriate action on the application.

Any questions concerning this notice should be directed to Hector M. Perez at 202–219–2843.

Lois D. Cashell,

Secretary.

[FR Doc. 92–308 Filed 1–7–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP92–64–000 and RP92–23–001]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

December 31, 1991.

Take notice that on December 20, 1991, Natural Gas Pipeline Company of America (Natural) tendered for filing tariff sheets listed below to be effective as indicated:

	Effective
Third revised volume No. 1:	
Substitute Third Revised Sheet No. 8A.	12/01/91.
Substitute Seventh Revised Sheet No. 8B.	12/01/91.
First revised volume No. 1A:	
Second Revised Sheet No. 91	01/19/92.

Natural states the purpose of the filing it to: (1) Correct Rate Schedule DMQ–1 billing entitlements previously filed and approved to be effective December 1, 1991, and (2) to revise the Restriction on Other Services, section 6 of the Rate Schedule FTS–G.

Natural requested waiver of § 154.22 of the Commission's Regulations and such other waivers to the extend necessary to permit the tariff sheets to become effective as indicated.

Natural states that copies of the filing were served on Natural's jurisdictional customers and interested state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–304 Filed 1–7–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–140–000]

Questar Pipeline Co.; Informal Settlement Conference

December 30, 1991.

Take notice that an informal settlement conference will be convened in this proceeding beginning on Monday, January 13, 1992, at 10 a.m., and is expected to continue the following day. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket. Discussions will focus on all issues set for hearing in this proceeding, including, but not limited to, cost-of-service, return, rate design, and comparability of service.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact John P. Roddy at (202) 208–1176 or J. Carmen Gastilo at (202) 208–0248.

Lois D. Cashell,

Secretary.

[FR Doc. 92–310 Filed 1–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ92–2–43–000 and TM92–2–5–43–000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 31, 1991.

Take notice that Williams Natural Gas Company (WNG) on December 23, 1991 tendered for filing Sixth Revised Sheet No. 6, Seventh Revised Sheet No. 6A, and Sixth Revised Sheet No. 9 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective February 1, 1992.

WNG states that pursuant to the Purchased Gas Adjustment in Article 18 of its FERC Gas Tariff, it proposes a net reduction of $.0056 per Dth as measured against its rates in Docket No. RP91–152 which became effective November 7, 1991 and increases in transportation fuel rates and in gathering fuel rates resulting from a decrease in purchase gas costs to be effective February 1, 1992.

WNG states that pursuant to Article 26 of its FERC Gas Tariff, the above referenced tariff sheets reflect a revised TOP Volumetric Surcharge for the period February 1, 1992 through April 30, 1992 of $.0436 per Dth.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–302 Filed 1–7–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 91–96–NG]

Alenco Resources Inc.; Order Granting Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Alenco Resources Inc. blanket authorization to import up to 54 Bcf and export up to 54 Bcf of natural gas,

including liquefied natural gas, over a two-year period commencing with the date of first import or export after December 31, 1991.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 31, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-385 Filed 1-7-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-84-NG]

Centra Gas Manitoba; Order Approving Long-Term Authorization To Export Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order approving long-term authorization to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Centra Gas Manitoba authorization to export up to 13.5 Bcf of natural gas to Canada through March 31, 1995, beginning on the date of first export delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 31, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy

[FR Doc. 92-386 Filed 1-7-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-75-NG]

Continental Energy Marketing Ltd.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Continental Energy Marketing Ltd. blanket authorization to import from Canada up to 75 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 31, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy

[FR Doc. 92-387 Filed 1-7-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-51-NG]

Fina Natural Gas Co.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas from and to Canada and Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing Fina Natural Gas Company to import up to 100 Bcf and to export up to 100 Bcf natural gas to Canada and Mexico over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistance Secretary for Fuels Programs, Office of Fossil Energy

[FR Doc. 92-388 Filed 1-7-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-70-NG]

Northern States Power Co.; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on September 5, 1991, and amended on October 21, 1991, by Northern States Power Company (Wisconsin), hereafter referred to as NSPW, for authorization to import up to 15,000 Mcf per day of natural gas from Canada over a 10-year term commencing on the later of November 1, 1992, or the date of first delivery. NSPW would import the gas from Amoco Canada Petroleum Company Ltd. (Amoco Canada) under a gas purchase agreement dated January 1, 1991. The gas would be imported at the international border near Emerson, Manitoba, where Great Lakes Gas Transmission's (Great Lakes) pipeline system interconnects with TransCanada PipeLines Limited (TransCanada). Great Lakes would deliver the import volumes to Viking Gas Transmission (Viking) which in turn would transport the gas to NSPW's distribution facilities at Eau Claire, Wisconsin. NSPW states that no new pipeline construction is required for the proposed imports.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC, at the address listed below no later than 4:30 p.m., Eastern time, February 7, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:
Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9590.
Diane Stubbs, Office of Assistant General Counsel, for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: NSPW is a public utility incorporated in the State of Wisconsin and a wholly owned subsidiary of Northern States Power Company (Minnesota). According to its application, NSPW provides electricity and natural gas service to customers in upper and central Wisconsin as well as Michigan's Upper Peninsula.

Under its gas sales contract with Amoco Canada, NSPW has agreed to purchase a minimum annual quantity. Minimum purchases would be 75 percent of the sum of the daily contract quantities (DCQ), for the peak period months of November through March and 40 percent of the DCQ for the remainder of the year. If NSPW does not meet minimum purchase requirements, the contract requires it to pay Amoco Canada 5 percent of the commodity price per MMBtu times the shortfall. The contract DCQ (15,000 Mcf) is also subject to adjustment if NSPW does not make minimum purchases that average at least 55 percent of DCQ over a three-year period.

The sales agreement requires NSPW to pay Amoco Canada a contract price consisting of a commodity price, as described below, any demand charges incurred by Amoco Canada to deliver gas under the contract, and a supply reservation charge equal to 10 percent of the commodity price times the maximum daily quantity in effect. The commodity price to be paid in any month would equal the product of the base commodity price, $1.45 (U.S.) per MMBtu, as adjusted annually to reflect changes in the average prices reported for spot purchases into the Northern Natural Gas System at Kansas, Texas and Oklahoma, and by changes in the weighted average commodity prices under comparable long-term contracts for deliveries at Emerson to the U.S. Midwest and NSPW's weighted average cost of gas (WACOG). The contract provides for renegotiation, and, absent agreement, arbitration of the commodity price and the commodity price adjustment mechanism if it fails to track changes in the WACOG of NSPW's gas purchases or the weighted average price to long-term Canadian gas exported to the U.S. midwestern market.

In support to its application, NSPW asserts the pricing, renegotiation, and arbitration provisions in its gas sales contract provide sufficient flexibility to assure a competitive price that will reflect market conditions throughout the term of the contract. NSPW also submits that the long-term imports are needed and secure. According to its application, NSPW's natural gas demand between 1987 and 1990 increased from 11.4 to 14.1 Bcf, and NSPW anticipates at least a 5 percent annual growth rate for near-term deliveries. Also, NSPW states that Amoco Canada estimates it has over 100 Bcf of available reserves, more than double the volumes it has obligated to NSPW over its ten-year contract. According to NSPW, security of supply is further ensured by contract provisions that require Amoco Canada to reimburse NSPW for the cost of replacing any gas volumes Amoco Canada fails to provide. Amoco Canada's reimbursement obligation would be the amount by which the cost of replacement gas, including transportation and related costs, exceed the commodity price under the gas sales contract, which also would be adjusted to include transportation costs. Such reimbursement would be limited to 130 percent of the commodity charge for the first five days of non-delivery and 160 percent of the commodity charge in excess of five days. In the event non-delivery of gas volumes exceeds ninety days, NSPW is entitled to terminate the contract.

The decision on NSPW's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the natural gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. NSPW asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in

the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of NSPW's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Clifford P. Tomaszewski,

Acting Assistant Deputy Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–389 Filed 1–7–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–71–NG]

Northern States Power Co.; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on September 5, 1991, and amended on October 21, 1991, by Northern States Power Company (Wisconsin) (NSPW), for authorization to import up to 7,500 Mcf per day of natural gas from Canada over a 10-year term commencing on the later of November 1, 1992, or the date of the first delivery. NSPW would import the gas from ProGas Limited (ProGas) under a gas purchase agreement dated November 1, 1990. The gas would be imported at the international border near Emerson, Manitoba, where Great Lakes Transmission's (Great Lakes) pipeline system interconnects with TransCanada PipeLines Limited (TransCanada). Great Lakes would deliver the import volumes to Viking Gas Transmission (Viking) which in turn would transport the gas to NSPW's distribution facilities at Eau Claire, Wisconsin. NSPW states that no new pipeline construction is required for the proposed import.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC, at the address listed below no later than 4:30 p.m., Eastern time, February 7, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9590.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: NSPW is a public utility incorporated in the State of Wisconsin and a wholly-owned subsidiary of Northern States Power Company (Minnesota) (NSPW). According to its application, NSPW provides electricity and natural gas service to customers in upper and central Wisconsin as well as Michigan's Upper Peninsula.

Under its gas contract with ProGas, NSPW has agreed to purchase a minimum annual quantity. Minimum purchases for the peak period months of December through February would be 75 percent of the sum of the daily contract quantities (DCQ) for those months, and 40 percent for the remainder of the year. If NSPW does not meet minimum purchase requirements, the contract requires it to pay a gas inventory charge equal to $.25 per Mcf times the shortfall. The contract DCQ (7,500 Mcf) is also subject to adjustment if NSPW does not make minimum purchases or during periods of interruption in delivery. In addition, NSPW may cancel its contract with ProGas if it fails to make deliveries for any 90-day period during any contract year.

The contract price for the DCQ service consists of a two-part demand/commodity price. The monthly demand rate would equal the product of the DCQ average for the month times the sum of the monthly demand tolls for transportation service on the TransCanada, NOVA and TransGas Limited pipeline systems. The commodity price to be paid in any month would equal the product of the base commodity price $1.70 (U.S.) per MMBtu, as adjusted annually to reflect changes in the weighted average cost of gas (WACOG) paid by other utilities in the midwestern market, times a predetermined monthly adjustment factor. The contract provides for renegotiation and, absent agreement, arbitration of the commodity price and the commodity price adjustment mechanism if it fails to track changes in the WACOG of NSPW's gas purchases or the weighted average price of long-term Canadian gas exported to the U.S. midwestern market.

In support of its application, NSPW asserts the pricing, renegotiation, and arbitration provisions in its gas sales contract provide sufficient flexibility to assure a competitive price that will reflect market conditions throughout the term of the contract. NSPW also submits that the long-term imports are needed and secure. According to its application, NSPW's natural gas demand between 1987 and 1990 increased from 11.4 to 14.1 Bcf, and NSPW anticipates at least a 5 percent annual growth rate for near-term deliveries. Finally, NSPW states that ProGas has advised it that it has ample reserve sources to meet its 10-year demand requirements and that the total contract volumes represent less than 1 percent of ProGas' total sales obligations.

The decision on NSPW's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the natural gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. NSPW asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the

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import arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NSPW's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 30, 1991.

Clifford P. Tomaszewski,

Acting Assistant Deputy Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-388 Filed 1-7-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-57-LNG]

Pan National Sales, Inc.; Order Granting Authorization To Import Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pan National Gas Sales, Inc. blanket authorization to import a total of 320 Bcf of liquefied natural gas over a two-year period commencing with the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 31, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistance Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-391 Filed 1-7-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-66-NG]

Sierra Pacific Power Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing Sierra Pacific Power Company to import up to 60 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery after January 11, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-392 Filed 1-7-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-76-NG]

Suncor Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Suncor Inc. blanket authorization to import up to 127.76 Bcf of natural gas from Canada over a two-year period beginning on January 1, 1992, the date its current import authority expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585,

(202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistance Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–393 Filed 1–7–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–85–LNG]

Texaco Gas Marketing Inc.; Order Granting Authorization To Import Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Texaco Gas Marketing Inc. blanket authorization to import a total of 150 Bcf of liquefied natural gas over a two-year period commencing with the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 31, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–394 Filed 1–7–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–49–NG]

Utrade Gas Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing Utrade Gas Company to import up to 150 Bcf of natural gas from Canada over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–395 Filed 1–7–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180858; FRL 4009–4]

Receipt of Application for Emergency Exemption To Use Benomyl; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Kentucky Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide benomyl (CAS 17804–35–2) to control Sclerotinia stem rot on up to 15,000 acres of canola in Kentucky. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before January 23, 1992.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180858," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–305–7889).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the fungicide, benomyl, available as Benlate 50WP (EPA Reg. No. 352–354) from E. I. du Pont de Nemours Co., to control Sclerotinia stem rot, caused by *Sclerotinia sclerotiorum*, on up to 15,000 acres of canola in Kentucky. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, Sclerotinia has a broad host range, including weed hosts and vegetable crops which are commonly grown in rotation with canola. The fungus produces hard resting structures, sclerotia, that live from 4 to 6 years in the soil. Short rotations of susceptible crops have resulted in a buildup of Sclerotinia in the soil, which can result in a severe stem rot outbreak if weather during the two weeks prior to flowering (usually mid to late April) is cool and wet. Under these conditions, the sclerotia germinate, producing small mushroom-like fruiting bodies, known as apothecia, that release millions of airborne spores, which infect the canola blossoms. According to the Applicant, there are no pesticides currently registered for the control of Sclerotinia stem rot on canola in the United States, and without an effective control, yield losses of up to 60 percent could result if stem rot outbreaks occur this season. The potential dollar loss without benomyl during the 1992 season could approach $1 million.

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A single ground or aerial application of benomyl will be applied at a maximum rate of 0.75 pounds of active ingredient per acre during the 30 percent bloom stage if the preceding two weeks are cool and wet. Ground applications will be made in ten to twelve gallons of water per acre. Aerial applications will be made using five gallons of water per acre. A maximum of 11,250 pounds of active ingredient may be needed to treat a maximum of 15,000 acres. Applications will be completed by June 1, 1992.

Benomyl was referred to Special Review in December of 1977 because of its mutagenic, teratogenic, spermatogenic, and acute aquatic effects. The Special Review process was completed on October 20, 1982, and the decision was made to require use of either cloth or commercially available disposable dust masks by mixer/loaders of benomyl intended for aerial application and to require that registrants of benomyl products conduct field monitoring studies to identify residues that may enter aquatic sites after use on rice.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review [40 CFR 166.24 (a)(5)].

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Kentucky Department of Agriculture.

Dated: December 18, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-179 Filed 1-7-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-250066; FRL 4002-7]

Notification to the Secretary of Agriculture of a Final Pesticide Export Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given pursuant to section 25(a)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), that the Administrator of EPA has forwarded to the Secretary of Agriculture EPA's final pesticide export policy statement.

FOR FURTHER INFORMATION CONTACT: By mail: Deborah Hartman, office of Pesticide Programs (H7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460, or telephone (703) 305-7102, facsimile (703) 305-6244.

SUPPLEMENTARY INFORMATION: Under FIFRA section 25(a)(2)(B), the Administrator of EPA has forwarded EPA's final pesticide export policy statement to the Secretary of Agriculture for comment. In accordance with section 25, if the Secretary of Agriculture comments in writing within 15 days after receipt of the policy statement, the Administrator must include the comments in the **Federal Register**, with the final policy statement, if requested to do so by the Secretary of Agriculture. If the Secretary does not comment within 15 days after receipt of the final policy statement, the Administrator may sign the policy for publication in the **Federal Register** at any time after the 15 day-period notwithstanding the foregoing 30-day time requirement.

As required by FIFRA section 25(a)(3), this final policy has been forwarded to the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture and Forestry of the Senate.

As required by FIFRA section 25(d), a copy of this final policy statement has also been forwarded to the Scientific Advisory Panel.

Dated: December 31, 1991.

Douglas D.Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-361 Filed 1-7-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-825-DR]

Republic of the Marshall Islands; Amendment to Notice of a Major Disaster Declaration

December 28, 1991.

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Republic of the Marshall Islands (FEMA-825-DR), dated December 7, 1991, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: the notice of a major disaster for the Republic of the Marshall Islands, dated December 7, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 7, 1991:

Namu Atoll and the island of Lib for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 92-371 Filed 1-7-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-830-DR]

Texas; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-830-DR), dated December 26, 1991, and related determinations.

DATED: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3606.

NOTICE: The notice of a major disaster for the State of Texas, dated December 26, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 26, 1991:

The counties of Burnet, Coleman, Fayette, Liberty, Limestone, Llano, Parker, and Wharton for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92-372 Filed 1-7-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-930-DR]

Texas; Amendment to Notice of a Major Disaster Declaration

December 31, 1991.

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-930-DR), dated December 26, 1991, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated December 26, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 26, 1991:

The counties of Burnet, Coleman, Fayette, Liberty, Limestone, Llano, Parker, and Wharton for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 92-373 Filed 1-7-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Port Authority of New York and New Jersey; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 021-000861-005.
Title: Port Authority of New York & New Jersey/Universal Maritime Service Corp. Lease Agreement.
Parties:
Port Authority of New York & New Jersey ("the Port Authority"),
Universal Maritime Service Corp. ("U.M.S.").

Synopsis: This Agreement, filed December 26, 1991, provides for modifications to the lease rental agreement. It amends the crane agreement between the Port Authority and U.M.S.

Agreement No.: 224-010730-004.
Title: City of Los Angeles/Los Angeles Cruise Ship Terminals Lease Agreement.
Parties:
City of Los Angeles,
Los Angeles Cruise Ship Terminals, Inc. ("LACST").

Synopsis: The agreement, filed December 26, 1991, provides for the use of Berths 90-93 by LACST. The term of the agreement is five years. Purposes, uses, right to sublease and terms of compensation are included.

Agreement No.: 224-200445-001.
Title: Port of Portland/Hyundai Merchant Marine Co., Ltd. Terminal Use Agreement.
Parties:
Port of Portland,
Hyundai Merchant Marine Co., Ltd.

Synopsis: The agreement, filed December 26, 1991 provides for an extension of the terms of the agreement through 29 February 1992. All other terms and conditions of the original Agreement remain the same.

Agreement No.: 224-200448-001.
Title: Port of Portland/Nippon Yusen Kaisha Terminal Use Agreement.
Parties:
Port of Portland,
Nippon Yusen Kaisha, Ltd.

Synopsis: This agreement, filed December 26, 1991, provides for an extension of the terms of the agreement through 29 February 1992. All other terms and conditions of the original Agreement remain the same.

Agreement No.: 224-200599-001.
Title: Port of Oakland/Nippon Yusen Kaisha/Neptune Orient Lines Preferential Assignment Agreement.
Parties:
Port of Oakland ("Port"),
Nippon Yusen Kaisha ("NYK"),
Neptune Orient Line, Ltd. ("NOL").

Synopsis: This agreement, filed December 26, 1991, provides for the preferential agreement of certain marine terminal facilities in the Port's Outer Harbor Terminal Area. It assigns NOL, Ltd. as a joint assignee, with NYK.

Agreement No.: 224-200599-002.
Title: Port of Oakland/Nippon Yusen Kaisha/Neptune Orient Lines Preferential Terminal Agreement.
Parties:
Port of Oakland ("Port"),
Nippon Yusen Kaisha ("NYK"),
Neptune Orient Line, Ltd. ("NOL").

Synopsis: This agreement, filed December 26, 1991, provides for modifications to the preferential assignment of certain marine terminal facilities in the Port's Outer Harbor Terminal Area. Those amendments concern (i) conforming modifications to the provisions defining primary use, (ii) compensation terms, and (iii) assignment of the agreement to Yusen Terminals, Inc.

By Order of the Federal Maritime Commission.

Dated: January 2, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-320 Filed 1-7-92; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Import Trade Services, Inc., 12605 I-10, Suite 401, Houston, TX 77015.
Officer: Mary Ann Melancon, President

Chaseman & Sollazzo, Inc., 1 Edgewater Plaza, Staten Island, NY 10305.
Officers: Richard Chaseman, President/Director/Stockholder, Salvator Sollazzo, Executive Vice President, Lucretia Fasciano, Vice President/Director/Stockholder.

Brunswick International, Inc., 14 Kennedy Blvd., E. Brunswick, New Jersey 08816.
Officers: Joseph Zagarielle, President/

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Director/Stockholder, Julian Santana, Secretary/Treasury/Director/Stockholder.
Richard C. Forte, 44 Beaumont Ave., Massapequa, NY 11748, Sole Proprietor.
Paul M. Tiger, III, 636 Valle Vista Ave., Vallejo, CA 94590, Sole Proprietor.
Freight Management Services, Inc., 200 West Thomas St., Suite 305, Seattle, WA 98119.
Officers: Douglas K. Wickre, CEO/Director/Stockholder, Gail E. Wickre, Secretary/Director/Treasurer/Stockholder, David A. Mayo, President/Director.
Robert J. Semany & Co. dba Altransco, 930 E. Lafayette Blvd., Suite 203, Detroit, MI 48207.
Officer: Robert J. Semany, President.
D & S Movers, Inc., 1806 Enterprise Blvd., West Sacramento, CA 95691.
Officers: Sharon K. Hopkin, President/Secretary/Chief Financial Officer, Dean S. Hopkins, Vice President/Stockholder, Joyce L. Carter, Vice President.
Frennea International, Inc., 80 St. Michael St., Suite 315, Mobile, Alabama 36601.
Officer: Barbara O. Frennea, President.
Mitsui-Soko (U.S.A.) Incorporated, One World Trade Center, Suite 1701, New York, NY 10048.
Officers: Kazuo Tamura, President/Director, Shinichiro Sasao, Vice President/Director, Michiko Ito Crampe, Secretary.

By the Federal Maritime Commission.
Dated: January 2, 1992.

Joseph C. Polking,
Secretary.

[FR Doc. 92-293 Filed 1-7-92; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Request for Certification as a Supplier of Portable X-ray Services Under the Medicare/Medicaid Program and Portable X-ray Survey Report; *Form Numbers:* HCFA-1880 and HCFA-1882; *Use:* Form HCFA-1880 is an application completed by suppliers of portable X-ray equipment requesting participation in the Medicare/Medicaid programs. Form HCFA-1882 is the survey report form used to determine if suppliers of portable X-ray equipment meet requirements necessary to participate in the Medicare/Medicaid programs; *Frequency:* Biennially; *Respondents:* State/local governments; *Estimated Number of Responses:* 250; *Average Hours per Response:* 1.75; *Total Estimated Burden Hours:* 438.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare Renal Dialysis Facility Cost Report; *Form Number:* HCFA-265; *Use:* This form provides for the determinations and allocation of costs to the components of the facility in order to establish a proper basis for Medicare reimbursement; *Frequency:* Annually; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 1,281; *Average Hours per Response:* 198; *Total Estimated Burden Hours:* 251,012.

3. *Type of Request:* New; *Title of Information Collection:* Physician Payment Differentials in Group Practices Survey; *Form Number:* HCFA-R-23; *Use:* This survey will identify and describe innovative physician payment mechanisms in physician group practices. Criteria used by physicians can be used by HCFA in making policy decisions on physician payment reform; *Frequency:* One-time; *Respondents:* Individuals/households; *Estimated Number of Responses:* 135; *Average Hours per Response:* 3.11; *Total Estimated Burden Hours:* 420.

4. *Type of Request:* Revision; *Title of Information Collection:* Request to Establish Eligibility in the Medicare/Medicaid Program to Provide Outpatient Physical Therapy and/or Speech Pathology Services (OPT/SPS) and OPT/SPS Survey Report; *Form Numbers:* HCFA-1856 and HCFA-1893; *Use:* The HCFA-1856 is completed to request participation in the Medicare/Medicaid Programs; the HCFA-1893 is a survey report used by State agencies to record data collected from an on-site visit to determine facility compliance with individual conditions of participation and report it to the Federal Government; *Frequency:* Biennially; *Respondents:* State/local governments; *Estimated Number of Responses:* 650; *Average Hours per Response:* 1.75; *Total Estimated Burden Hours:* 1,138.

5. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements in 42 CFR 447.53(d), Imposition of Cost Sharing Charges Under Medicaid; *Form Number:* HCFA-R-53; *Use:* This information collection requirement requires States to include in their Medicaid State Plan, their provisions for imposition of cost sharing on the categorically and medically need; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 54; *Average Hours per Response:* 50; *Total Estimated Burden Hours:* 2,700.

6. *Type of Request:* Revision; *Title of Information Collection:* Home Health Agency (HHA) Medicare Cost Report; *Form Number:* HCFA-1728; *Use:* Providers of home health services under the Medicare program submit annual information to achieve settlement of costs for health care services to Medicare beneficiaries. This cost report is needed to determine the amount of reimbursable cost, based upon the cost limits, that is due these providers; *Frequency:* Annually; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 4,150; *Average Hours per Response:* 160; *Total Estimated Burden Hours:* 664,000.

7. *Type of Request:* New; *Title of Information Collection:* Clinical Laboratory Improvement Act Budget Workload Reporting Forms; *Form Numbers:* HCFA-102, 103, 105; *Use:* The information collected on these forms will be used by HCFA in determining the amount of Federal reimbursement for compliance surveys. Use of the information includes program evaluation, audit, budget formulation and budget approval; *Frequency:* Annually/Quarterly; *Respondents:* State/local governments; *Estimated Number of Responses:* 265; *Average Hours per Response:* 16.4; *Total Estimated Burden Hours:* 4,346.

Additional Information or Comments:

Call the Reports Clearance Officer on 410-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: December 24, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 92-285 Filed 1-7-92; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-92-3373]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 27, 1991.

Kay Weaver,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: General Conditions.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The form is required for construction contracts awarded by Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs). The form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, HUD program regulations on grantee procurement, and HUD Handbooks implementing those regulations. The form is used by PHAs and IHAs in solicitations to provide necessary contract clauses. If the form were not used, PHAs and IHAs would be unable to enforce their contracts.

Form Number: HUD-5370.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	3,895		1		.25		974

Total Estimated Burden Hours: 974

Status: Reinstatement.

Contact: William Thorson, HUD, (202) 708-4703; Jennifer Main, OMB, (202) 395-6880.

Dated: December 27, 1991.

[FR Doc. 92-286 Filed 1-7-92; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-92-3372]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an

estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 10, 1991.

John T. Murphy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Monitoring and Technical Assistance Handbook for the Congregate Housing Services Program (CHSP 4640.1 (10/83), 4640.1 Change 1 (12/84), 4640.1 Change 2 (11/85), 4640.2 to CHSP (FR–3092).

Office: Housing.

Description of the Need for the Information and its Proposed Use: This information is needed for regular reporting for biennial renewals, no-cost extension, updates and narratives needed to meet grant terms. This report must be filled out by tenants in order for grantees to determine their eligibility for benefits. The information is used by HUD to monitor reports and guidelines.

Form Number: None.

Respondents: Individuals or households and state or local governments.

Frequency of Submission: On occasion, semi-annually and annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Existing CHSP Program:							
Participant application to CHSP	58		2		5		580
Budget submission	58		1		3		174
Annual program reports	58		1		3		174
Revised CHSP Program:							
Initial owner applications	150		1		14		2,100
Reports (Budget, Semiannual, Annual)	50		4		2.5		500
Participant applications to revised (CHSP)	1,800		1		4		7,200

Total Estimated Burden Hours: 10,728.

Status: Revision.

Contact: Jerold Nachison, HUD, (202) 708–3291, Jennifer Main, OMB, (202) 395–6880.

Dated: December 10, 1991.

[FR Doc. 92–299 Filed 1–7–92; 8:45 am]

BILLING CODE 4210-01-M

Office of Assistant Secretary for Community Planning and Development

[Docket No. N–91–3351; FR–3181–N–01]

Community Development Special Purpose Grants; FY 1992 Funding

AGENCY: Office of the Assistant Secretary of Community Planning and Development, HUD.

ACTION: Notice of fiscal year 1992 funds.

SUMMARY: Section 570.400(h) of 24 CFR part 570 provides that HUD will publish each year the amount of funds available for the special purpose grants authorized by each section under subpart E of part 570. The purpose of this Notice is to announce those funds appropriated by the Congress for Fiscal Year 1992 for the various categories of special purpose grants under section 107 of the Housing and Community Development Act of 1974.

FOR FURTHER INFORMATION CONTACT: *For Insular Areas:* Maria B. Ratcliff, Office of Block Grant Assistance, Department of Housing and Urban Development, room 7184, Washington, DC 20410, Telephone: (202) 708–1322; TDD: (202) 708–1322.

For Other Categories: Lyn T. Whitcomb, Director, Technical Assistance Division, Office of Technical Assistance, room 7150, Department of Housing and Urban Development, Washington, DC 20410, Telephone: (202) 708–3176. TDD (202) 708–3176.

None of these numbers is toll-free.

SUPPLEMENTARY INFORMATION: Section 105(c) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235) added subsection (f) to section 107, "Special Purpose Grants", of the Housing and Community Development Act of 1974 (42 U.S.C. 5307). Subsection (f) requires the promulgation of selection criteria for the award of special purpose grants, and the publication of the criteria along with any notification of availability of amounts for those grants.

The Department supplemented these requirements when it published a final rule adding a new paragraph (h) to 24 CFR 570.400 (56 FR 18968, April 24, 1991). Paragraph (h) requires HUD also to publish each year the amount of funds available for each of the special purpose grants authorized under subpart E of 24 CFR part 570.

This Notice serves as the annual publication required by 24 CFR 570.400(h), and also provides a brief description of each of the affected categories of special purpose grants.

Amount of Funds

The amount of funds appropriated for Fiscal Year 1992 in each category of Special Purpose Grants is as follows:

Category	Dollars (in millions)
Insular Areas-CDBG	$7.0
Community Development Work Study	3.0
Historically Black Colleges and Universities	4.5
Designated Technical Assistance Grant	0.5
Total	$15.0

Insular Areas

The Insular Areas Community Development Block Grant Program is available, by statute, only to a limited number of eligible applicants. The regulations governing applicant eligibility, distribution of funds, and funding criteria are contained in 24 CFR 570.405.

Community Development Work Study Program

This program is governed by regulations contained in 24 CFR 570.415. The two-year grants to eligible applicants are for the purpose of providing assistance to economically disadvantaged and minority students who participate in a work-study program while enrolled in community and economic development, community planning, or community management

programs. The Fiscal Year 1992 funds will provide assistance for those applicants selected competitively for awards in Fiscal Year 1991, as indicated in the Notice of Fund Availability (NOFA) announcing the 1991 and 1992 competition (56 FR 9574). Those selected for 1991 awards were announced in the **Federal Register** on October 16, 1991 (56 FR 51912). Those selected for 1992 awards will be announced shortly.

Historically Black Colleges and Universities

Awards under this program are to expand the role and effectiveness of Historically Black Colleges and Universities in addressing community development needs, housing, and economic development in their localities, consistent with the purposes of title I of Housing and Community Development Act of 1974. This program is governed by regulations contained in 24 CFR 570.404 (see 56 FR 18968, April 24, 1991).

A Notice of Funding Availability (NOFA) for this program will be published at a later date in the **Federal Register**. This NOFA will provide terms of the funding and evaluation criteria to be used, state the deadline for submission of applications, and contain information and instructions for submission of acceptable applications to HUD.

Designated Technical Assistance Grant

The Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1992, approved October 28, 1991 (Pub. L. 102–139), earmarks $500,000 for a grant to develop an integrated data base system and computer mapping tool. The conference report accompanying that Act states: "The conferees are in agreement that this grant is for the Population and Marketing Analysis Center in Towanda, Pennsylvania for mapping projects in Lackawanna County, Dunmore, Carbondale, Tioga County, Wilkes-Barre and Hazelton." Because this grant has been designated by the Congress for a specific applicant, there will be no competition for these funds.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); Sec. 7(D), Department of Housing and Urban Development Acts (42 U.S.C. 3535(d)).

Dated: December 23, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92–300 Filed 1–7–92; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–7122–14–X218; AZA–054–92–2]

Arizona: Temporary Closure of Selected Public Lands in La Paz Co., AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary Closure of Selected Public Lands in La Paz County, Arizona, During the Operation of the 1992 SCORE Parker 400 Off-Highway Vehicle Race.

SUMMARY: The District Manager of the Yuma District announces the temporary closure of selected public lands under its administration. This action is being taken to provide for public safety and prevent unnecessary environmental degradation during the official permitted running of the 1992 SCORE Parker 400 off-highway vehicle race.

DATES: January 23, 1992, through January 26, 1992.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management Ranger Rob Smith or Outdoor Recreation Planner Myron McCoy, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602–855–8017.

SUPPLEMENTARY INFORMATION: Specific restrictions and closure periods are as follows:

Designated Course

1. The portion of the course comprised of Bureau of Land Management lands, roads, and ways south of the Bill Williams River, east and north of Highway 72, and west of Wenden Road is closed to public vehicle use from midnight Wednesday, January 22, 1992, to noon Sunday, January 26, 1992 (Mountain Standard Time).

2. Vehicles are prohibited from the following four wilderness areas and one wilderness study area:

a. AZ–050–12 (Gibraltar Mountain).
b. AZ–050–15A (Swansea).
c. AZ–050–71 (Buckskin Mountains).
d. AZ–050–17 (East Cactus Plain).
e. AZ–050–14A/B (Cactus Plain Wilderness Study Area).

3. The entire area encompassed by the designated course and all areas within 1 mile outside the designated course are closed to all vehicles except authorized and emergency vehicles. Access routes leading to the course are closed to vehicles. All closed routes will be posted throughout the closure period.

4. Spectator viewing is limited to two designated spectator areas located at:

a. South of Shea Road (approximately 6 miles east of Parker, Arizona).

b. Bouse Road, also known as Swansea Road (about 1⅛ miles north of Bouse, Arizona).

Camping is allowed only in the two designated spectator areas. Vehicle travel or parking outside these designated locations is prohibited. All vehicles operated within these two locations shall be legally registered for street and highway operation. No off-highway vehicle use is permitted in the race area. Spectators should not bring their off-highway vehicles to the race as this activity is prohibited.

5. Vehicle parking or stopping along Bouse Road, Shea Road, and Swansea Road is prohibited except for the two designated spectator areas.

6. All vehicles operated within designated pit areas shall be legally registered for street and highway operation.

7. Spectators are not permitted on the race course or in any wash used by the race course, including all of Osborne Wash.

8. Firewood cutting or collection is prohibited within the closure.

Signs and maps directing the public to the designated spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona, or La Paz County. Vehicles under permit for operation by event participants must follow the race permit stipulations. Operators of permitted vehicles shall maintain a maximum speed limit of 35 miles per hour on all La Paz County and Bureau of Land Management roads and ways. This speed limit shall not apply to vehicles entered in the race during the race day, Saturday, January 25, 1992.

Authority for closure of public lands is found in 43 CFR part 8340, subpart 8341; 43 CFR part 8360, subpart 8364.1; and 43 CFR part 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

Dated: December 31, 1991.

Mervin G. Boyd,

Acting Yuma District Manager.

[FR Doc. 92–295 Filed 1–7–92; 8:45 am]

BILLING CODE 4310–32–M

[CA-020-4352-12]

Designation of Research Natural Area/Area of Critical Environmental Concern (RNA/ACEC); California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of designation of additional acquired land for inclusion in the existing Ash Valley Research Natural Area/Area of critical environmental concern (RNA/ACEC); Lassen County, California.

SUMMARY: Pursuant to the authority in 43 CFR 8223, the following recently acquired land is designated for inclusion in the Ash Valley Research Natural Area/Area of Critical Environmental Concern (RNA/ACEC).

Mount Diablo Meridian; Lassen County, California

T. 37 N., R 11 E., sec. 5, Lots 1 and 2 and SE¼NE¼.

The addition of these 120.93 acres to the Ash Valley RNA/ACEC will total 1241.51 acres of BLM administered lands now within the designated RNA/ACEC.

A total of 1120.58 acres of BLM administered lands were originally designated as the Ash Valley Research Natural Area (RNA) in a **Federal Register** Notice on Thursday, December 6, 1984, Vol. 49, No. 236, page 47660. The designation was changed to the Ash Valley Research Natural Area/Area of Critical Environmental Concern (RNA/ACEC) in a **Federal Register** Notice on Tuesday, January 3, 1989, Vol. 54, No. 1, page 70. The Habitat Management Plan for the Ash Valley RNA/ACEC recommended acquiring specific private lands supporting special status plant habitat and including them in the Ash Valley RNA/ACEC. The subject land was included in those private lands.

This designation is made for the protection of six special status plant species. The area will be preserved for research and education purposes and the continued existence of the special status plants and their habitat.

This area and management criteria were developed through the planning process (43 CFR part 1610) which included three stages of public participation. The resulting document, the Resource Management Plan Record of Decision for the Alturas Resource Area, signed August 28, 1984, published land use decisions and required support needs. These support needs included the development of a Habitat Management Plan (HMP) for the Ash Valley RNA/ACEC (completed August 28, 1985), restriction of off highway vehicle (OHV) use, and acquisition of private land in the Ash Valley RNA/ACEC area. The HMP incorporated management objectives and the specific actions needed to meet these objectives.

DATES: The designation of these additional acres to the Ash Valley RNA/ACEC is effective on January 8, 1992.

FOR FURTHER INFORMATION CONTACT: Rich Burns, Area Manager, Alturas Resource Area, 608 W. 12th Street, Alturas, CA 96101. Telephone: (916) 233-4666.

Dated: December 19, 1991.

Robert J. Sherve,

Associate District Manager.

[FR Doc. 92-292 Filed 1-7-92; 8:45 am]

BILLING CODE 4310-40-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 28, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by January 23, 1992.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Orange County

Santa Fe Railway Passenger and Freight Depot, 140 E. Santa Fe Ave., Fullerton, 91002031

Riverside County

Armory Hall, 252 N. Main St., Lake Elsinore, 91002032

Santa Barbara County

Sexton, Joseph and Lucy Foster, House, 5490 Hollister Ave., Santa Barbara, 91002033

FLORIDA

Sarasota County

Bacheller—Brewer Model Home Estate, 1903 Lincoln Dr., Sarasota, 91002034

GEORGIA

Chattooga County

Summerville Depot, 120 E. Washington, Ave., Summerville, 91002037

ILLINOIS

Tazewell County

Farm Creek Section, S side of Farm Cr., East Peoria vicinity, 91002030

KENTUCKY

Jefferson County

Drumanard (Boundary Increase) (Louisville and Jefferson County MPS), 6401 Wolf Pen Branch Rd., Louisville vicinity, 88002854

MISSISSIPPI

Alcorn County

US Post Office, Old, 515 Fillmore St., Corinth, 91002038

NEW YORK

Herkimer County

Newport Stone Arch Bridge, Bridge St. across W. Canada Cr., Newport, 91002035

Queens County

Flushing High School, 35-01 Union St., Queens, 91002036

VIRGINIA

Botetourt County

Wheatland Manor, N side VA 639 ¼ mi. SE of jct. with VA 638, Fincastle vicinity, 91002040

Essex County

Port Micou, VA 674, at Rappahannock R., Loretto vicinity, 91002041

[FR Doc. 92-282 Filed 1-7-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875-1573, FA/AS/ISS, room 1209B, SA-14, Washington, D.C. 20523-1413.

Date Submitted: December 3, 1991.

Submitting Agency: Agency for International Development.

OMB Number: None.

Form Number: A.I.D. 1558-1.

Type of Submission: New Collection.

Title: Financial Status Report.

Purpose: To better conform with the nature of its program, the Office of the American Schools and Hospitals Abroad (ASHA) proposes to replace SF-

269 with AID form 1558-1. This ASHA specific form is essentially a replica of the standard form currently in use by the Agency and approved for GSA by the Office of Management and Budget No. 80-RO180. This form also omits some entries from the SF-269 which have caused confusion or misunderstandings.

Annual Reporting Burden: Respondents: 90; annual responses: 4.88; average hours per response: 128.69; burden hours: 55,744

Reviewer: Lin Liu (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 3, 1991.

Elizabeth Baltimore,

Information Support Services Division.

[FR Doc. 92-286 Filed 1-7-92; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-308 (Final)]

Bulk Ibuprofen From India

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-308 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of bulk ibuprofen, provided for in subheading 2916.39.15 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202-205-3184), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in India of bulk ibuprofen. The investigation was requested in a petition filed on July 31, 1991, by Ethyl Corporation, Richmond, VA.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on February 25, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 12, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 25, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 27, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by § 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is March 6, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is March 20, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 20, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: January 2, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-379 Filed 1-7-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-320]

Macadamia Nuts: Economic and Competitive Factors Affecting the U.S. Industry

AGENCY: United States International Trade Commission.

ACTION: Notice of institution of investigation and public hearing.

EFFECTIVE DATE: December 30, 1991.

SUMMARY: Following receipt on November 20, 1991, of a request from the Committee on Finance, United States Senate, the Commission instituted investigation No. 332-320, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of reporting on the economic and competitive conditions affecting the macadamia nut industry.

More specifically, as requested by the Committee, the Commission will, to the extent possible, develop information pertinent to the macadamia nut industry in the United States, including, but not limited to, the following factors:

(1) The competitive factors affecting the domestic macadamia nut growing and processing industry, including competition from imports of macadamia nuts;

(2) The extent to which trade practices and barriers to trade by other competing countries are impeding the marketing of domestically produced macadamia nuts; and

(3) Current conditions of trade in macadamia nuts between the United States, Australia, and the rest of the world and any recent changes in such conditions, including information on prices, cost of production, and marketing practices.

The Committee requested that the Commission submit its report not later than November 13, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen Burket (202-205-3318) or David Ingersoll (202-205-3309), Agriculture Division, Office of Industries, or William Gearhart (202-205-3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on this study by contacting the Commission's TDD terminal on (202) 205-1810.

PUBLIC HEARING: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, at a time and date to be announced.

WRITTEN SUBMISSIONS: Interested persons may submit written statements concerning the investigation. To be assured of consideration, written statements (original plus 14 copies) must be received by the close of business (5:15 p.m.) May 29, 1992. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform to the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Issued: December 31, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary

[FR Doc. 92-378 Filed 1-7-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-321]

Potential Effects of a North American Free Trade Agreement on Apparel Investment in CBERA Countries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. William Warlick (202-205-3459), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on legal aspects of this investigation, contact Mr. William Gearhart (202-205-3091), Office of the General Counsel, U.S. International Trade Commission, Washington, DC 20436.

SUMMARY: The Commission instituted the investigation following receipt on November 26, 1991, of a request from the United States Trade Representative (USTR), pursuant to authority delegated by the President, for an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). As requested by the USTR, the Commission will seek in its report on the investigation to provide advice to the President, to the extent possible, of the potential effects of providing duty-free and quota-free treatment for U.S. imports of apparel from Mexico under a North American Free Trade Agreement (NAFTA) on the levels of apparel investment in the Caribbean Basin Economic Recovery Act (CBERA) countries, and on the competitiveness of U.S. apparel operations in these countries. As also requested by USTR, the Commission will seek to examine in particular the effects on those operations that produce primarily for import into the United States under heading 9802.00.80 of the Harmonized Tariff Schedule of the United States. Under this heading, cut fabric pieces are exported from the United States, assembled abroad, and then re-imported as finished apparel, with duties assessed only on the non-U.S. value added.

In her letter requesting the investigation, the USTR stated that U.S. apparel manufacturers co-producing in the Caribbean and Central America are concerned that a NAFTA could have a detrimental effect on the competitiveness of their operations in the region, and that countries eligible for benefits under the CBERA have expressed concern over the potential effects of a NAFTA on the levels of investment in the region's apparel industry.

The USTR has requested that the Commission submit its report by June 1, 1992. USTR indicated that the Commission's report and certain Commission staff working papers may be classified as confidential.

PUBLIC HEARING: A public hearing in connection with this investigation will be held beginning at 9:30 a.m. on March 17, 1992, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on March 3, 1992. In addition, persons testifying at the hearing are encouraged to file prehearing briefs or statements (a signed original and 14 copies) with the Secretary by the close of business on March 6, 1992. The deadline for filing posthearing briefs or statements is the close of business on April 3, 1992. Any confidential business information included in such briefs or statements or to be submitted at the hearing must be submitted in accordance with the procedures set forth in § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

In the event that no requests to appear at the hearing are received by the close of business on March 3, 1992, the hearing will be cancelled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–2000) after March 5, 1992 to determine whether the hearing will be held.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements relating to the investigation in addition to or in lieu of appearing at the hearing. Commercial or financial information that a party wishes the Commission to treat as confidential must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6)—that is, it must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. (Generally, submission of separate confidential and public versions, each so marked, of the document would be appropriate.) All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. In order to be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest possible date and should be received no later than April 3, 1992. All submissions should be addressed to the Secretary of the Commission at the Commission's office in Washington, DC.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1809.

Issued: January 2, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–375 Filed 1–7–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–540 and 541 (Preliminary)]

Certain Welded Stainless Steel Pipes From the Republic of Korea and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines [2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the Republic of Korea and Taiwan of certain welded stainless steel pipes,[3] provided for in subheadings 7306.40.10 and 7306.40.50 and covered by statistical reporting numbers 7306.40.1000, 7306.40.5010, 7306.40.5030, 7306.40.5050, and 7306.5070 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 18, 1991, a petition was filed with the Commission and the Department of Commerce by Avesta Sandvik Tube, Inc., Schaumberg, IL; Bristol Metals, Bristol, TN; Damascus Tubular Products, Greenville, PA; Trent Tube Division, Crucible Materials Corp., East Troy, WI; and the United Steelworkers of America, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain welded stainless steel pipes from the Republic of Korea and Taiwan. Accordingly, effective November 18, 1991, the Commission instituted antidumping investigations Nos. 731–TA–540 and 541 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 28, 1991 (56 FR 59961). The conference was held in Washington, DC, on December 10, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 2, 1992. The views of the Commission are contained in USITC Publication 2474 (January 1992), entitled "Certain Welded Stainless Steel Pipes from the Republic of Korea and Taiwan: Determinations of the Commission in Investigations Nos. 731–TA–540 and 541 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: January 3, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–376 Filed 1–7–92; 8:45 am]

BILLING CODE 7020–02–M

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford and Commissioner Watson not participating.

[3] For purposes of these investigations, the subject product is austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. Welded ASTM A–312 pipe is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. Welded ASTM A–312 pipe is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for welded ASTM A–312 pipe include, but are not limited to digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines.

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 401)]

CSX Transportation, Inc.—Abandonment—Between Delphi and Frankfort, IN; Findings

The Commission has found that the public convenience and necessity permit CSX Transportation, Inc., to abandon service over its 25.28-mile line of railroad between Delphi (milepost QA–112.22) and Frankfort (milepost QA–137.50), in Carroll and Clinton Counties, IN.

A certificate has been issued authorizing abandonment unless, within 15 days after publication, the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from the publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR part 1152.

Decided: December 31, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–332 Filed 1–7–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB-354 (Sub-No. 1X)]

Rochester & Southern Railroad, Inc.—Abandonment Exemption—Wyoming, Allegany, and Cattaraugus Counties, NY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Rochester & Southern Railroad, Inc., of 33.3 miles of rail line between Silver Lake Junction, near Silver Springs, NY (milepost 50.0), and the diamond near Machias, NY (milepost 83.3), in Wyoming, Allegany, and Cattaraugus Counties, NY, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 19, 1992. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 18, 1992, petitions to stay must be filed by January 15, 1992, and petitions to reopen must be filed by January 23, 1992. Requests for a public use condition must be filed by January 15, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB–354 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioner's representative: Charles D. Crampton, Harter, Secrest & Emery, 700 Midtown Tower, Rochester, NY 14604.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 926–5660, (TDD for hearing impaired: (202) 927–5721.).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: December 24, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–333 Filed 1–7–92; 8:45 am]

BILLING CODE 7035–01–M

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 21, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 21, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 23rd day of December 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Avison Lumber Co (Co.)	Molalla, OR	12/23/92	12/13/91	26,681	Lumber—Framing.
Barnhart Drilling Co., Inc (Co.)	Riverton, WY	12/23/92	12/10/91	26,682	Uranium, Oil, Gas drilling.
Barrett & Blandford, Inc (Workers)	Estontown, NJ	12/23/92	12/10/91	26,683	Precision Optics for Night Vision.
Bendix Oldsmobile (Workers)	Pittsburgh, PA	12/23/92	11/04/91	26,684	Automobile Sales.
DuBois Chemicals (Workers)	East Rutherford, NJ	12/23/92	12/16/91	26,685	Industrial Soap.
Martin Blouse Co ACTWU	Shenandoah, PA	12/23/92	12/10/91	26,686	Blouses.
Muskogee Inspection Co (Co)	Muskogee, OK	12/23/92	12/11/91	26,687	Oil Country Tubular Goods.
Scientific Drilling Int'l, Inc (Workers)	Mills, WY	12/23/92	12/09/91	26,688	Natural Gas and Oil.
Tubular Corp of America (Co)	Muskogee, OK	12/23/92	12/11/91	26,689	Oil Tubular Goods.
Wirnan Apparel, Div. of WMI Co ACTWU	Goylord, MN	12/23/92	12/16/91	26,690	Jackets Outerwear.

[FR Doc. 92–327 Filed 1–7–92; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-26,511]

Encore Shoe Corporation; Chase City, VA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 4, 1991, in response to a worker petition which was filed on November 4, 1991 on behalf of workers at Encore Shoe Corporation, Chase City, Virginia.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA-W-26,486). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 23rd day of December 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-328 Filed 1-7-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,304]

Quad Offshore, Inc., Scott, LA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Quad Offshore, Incorporated, Scott, Louisiana. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-26,304; Quad Offshore, Incorporated, Scott, Louisiana (December 30, 1991).

Signed at Washington, DC, this 31st day of December, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-329 Filed 1-7-92; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 92-1; Exemption Application No. D-8633, et al.]

Grant of Individual Exemptions; General Electric Pension Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

General Electric Pension Trust (the Trust) Located in Fairfield, Connecticut

[Prohibited Transaction Exemption 92-1; Exemption Application No. D-8633]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective April 24, 1990, to the past and proposed lease by the Trust of space in a commercial office building located at 353 Sacramento Street in San Francisco, California (the Building) to the General Electric Capital Computer Leasing Corporation (CCLC), previously known as the Decimus Corporation, a party in interest with respect to the employee benefit plans participating in the Trust; provided that (1) such lease is on terms no less favorable to the Trust than those which the Trust could obtain in an arm's-length transaction with an unrelated party, and (2) CCLC does not lease more than 25 percent of the leasable space in the Building.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 6, 1991 at 56 FR 56666.

EFFECTIVE DATE AND TEMPORARY NATURE OF THE EXEMPTION: This exemption is effective April 24, 1990 and will expire December 31, 2001.

WRITTEN COMMENTS: The Department received one written comment and no requests for a hearing. The comment was submitted on behalf of the trustees of the Trust (the Applicant) in supplementation of the Summary of facts and Representations in the Notice of Proposed Exemption:

(1) The Applicant represents that the Plans participating in the Trust include four defined benefit pension plans sponsored by companies affiliated with General Electric, the assets of which constitute less than 2 percent of total Trust assets, identified as follows: Knolls Atomic Power Laboratory Pension Plan, Neutron Devices Department Pension Plan, NBC Retirement Plan for Certain Union Represented Employees, and CPPR Pension Plan.

(2) The Applicant states that each Trustee is an officer of GEIC, A General Electric subsidiary, and that the Trustees are appointed by the Benefit Plans Investment Committee of General Electric, the members of which are appointed by the Board of Directors of General Electric.

(3) The Applicant notes that the third section of the Summary contains a statement that the Building's value constitutes less than three-hundredths of one percent of the Trust's assets. The Applicant represents that the leased space in the Building constitutes approximately thirty-six hundredths of 1 percent of the Trust's assets, while the

Building itself constitutes approximately three-tenths of 1 percent of the Trust's assets.

(4) The Applicant notes that the first paragraph of section 5 of the Summary indicates that the 15th floor of the Building constitutes a total of 9,256 square feet of office and storage space. The Applicant represents that the square footage of the fifteenth floor is described more accurately in the second paragraph of section 5 as a total of 11,556 square feet.

(5) The Applicant represents that Decimus Corporation changed its name, effective October 1, 1991, to General Electric Capital Computer Leasing Corporation.

After consideration of the entire record, including the Applicant's comment, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett at the Department, telephone (202) 523-8881. (This is not a toll-free number.)

NECA–IBEW Welfare Trust Fund (the Plan) Located in Decatur, Illinois

[Prohibited Transaction Exemption 92–2; Exemption Application No. L–8713]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the cash sale (the Sale) of certain real property (the Property) to the Plan by Mr. Larry Lawler and Mrs. Shelby J. Lawler, husband and wife (Mr. and Mrs. Lawler), parties in interest with respect to the Plan, provided that the Plan pays the lesser of (1) $280,000 or (2) the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser. Mr. and Mrs. Lawler will also convey certain personal property to the Plan in conjunction with the transaction for no additional charge to the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 13, 1991, at 56 FR 57682.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Horne CPA Group Profit Sharing Plan and Trust (the Plan) Located in Laurel, Mississippi

[Prohibited Transaction Exemption 92–3; Exemption Application No. D–8756]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a series of loans by the Plan (the Loans) over a five-year period, not to exceed the total principal amount of the lesser of 25 percent of the Plan's assets or $300,000, to the Horne CPA Group, a party in interest with respect to the Plan; provided that all terms and conditions of the Loans are at least as favorable to the Plan as those which the Plan could obtain in arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 13, 1991 at 56 FR 57683.

TEMPORARY NATURE OF THE EXEMPTION: This exemption is effective only for Loans entered into within a period of five years commencing with the date on which this exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Richard Edward Gruskin Keogh Plan (the Plan) Located in New London, Connecticut

[Prohibited Transaction Application 92–4; Exemption Application D–8832]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan of $50,000 (the Loan) by the Plan to Richard E. Gruskin [1] (Mr. Gruskin), a disqualified person with respect to the Plan, provided that the following conditions are satisfied:

(A) On the day the transaction is entered into, the Loan will be secured by a first mortgage on certain real property (the Property), which will be appraised by a qualified independent appraiser to assure that the net fair market value of the Property is at least 150% of the amount of the Loan.[2]

(B) The net fair market value of the collateral will remain at least 150% of the Loan to collateral ratio for the duration of the Loan;

(C) On the date the transaction is entered into, the interest rate on the Loan will be determined by reference to the interest rate that an independent bank or a similar financial institution would charge on a comparable loan of similar duration and risk;

(D) On the date the transaction is entered into, the promissory note which will evidence the Loan, will reflect the current interest rate and repayment schedule and will include a provision that if the Property is sold to an independent third party at any time during the term of the Loan, the outstanding principal balance plus any accrued, but unpaid interest on the Loan will become immediately due and payable;

(E) The Loan will at no time exceed 25% of the Plan's total assets, and the Plan will incur no expenses with respect to the transaction; and

(F) Mr. Tedeschi, the independent trustee of the Plan, will be responsible for monitoring the Loan repayment and enforcing the rights of the Plan with respect to the Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 25, 1991 at 56 FR 59300/59301.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and

[1] Because Mr. Gruskin is the only participant in the Plan and the Employer is wholly owned by Mr. Gruskin there is no jurisdiction under title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under title II of the Act pursuant to section 4975 of the Code.

[2] Net fair market value in this case refers to fair market value after all and any takes, liens, easements and any other encumbrances on the Property have been accounted for.

beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of January, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-363 Filed 1-7-92; 8:45 am]

BILLING CODE 4510-29-M

[Proposed Prohibited Transaction Exemption D-8819]

Pilgrim's Pride Retirement Savings Plan (the Plan) Located in Pittsburg, TX

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Correction.

SUMMARY: In 56 FR published at page 66651 on Tuesday, December 24, 1991, make the following corrections:

On page 66651, in the third column, delete from "(1) The proposed cash sale * * * (to the end of the paragraph)" and insert "(1) The proposed cash sale of two parcels (herein identified as Parcels #10 and #11) of improved and unimproved real property by the Plan to Pilgrim's Pride Corporation (the Employer), a party in interest with respect to the Plan; and (2) the proposed cash sale of nine other parcels (herein identified as Parcels #1 through #9) of improved and unimproved real property by the Plan to the Employer, provided the following terms and conditions are met: (a) The terms of the sales are not less favorable to the Plan than similar terms negotiated at arm's length between unrelated third parties; (b) the aggregate sales price of Parcels #10 and #11 is the greater of $14,306, the total cost to the Plan in acquiring such parcels, or the sum of the fair market values of Parcels #10 and #11, as determined by an independent, qualified appraiser, on the date of the sale; and (c) the aggregate sales price of Parcels #1 through #9 is the greater of $559,900 or the sum of the fair market values of Parcels #1 through #9, as determined by an independent, qualified appraiser, on the date of the sale.

Signed at Washington, DC, this 3rd day of January 1992.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-364 Filed 1-7-92; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-8687, et al.]

Proposed Exemptions; United States Trust Company of New York, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 2975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

United States Trust Company of New York (U.S. Trust) Located in New York, NY

[Application No. D-8687]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(b)(1) and 406(b)(2) of the Act and

the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of an incentive fee (the Incentive Fee) to Crown Trust Advisors, Inc. (Crown), by employee benefit plans (the Participating Plans) investing in the "Crown Trust" (the Pooled Trust), in connection with services rendered by Crown with respect to investments in the Pooled Trust provided:

(1) The decision to invest plan assets in the Pooled Trust shall be made by a plan fiduciary who is independent of U.S. Trust and Crown.

(2) Each plan investing in the Pooled Trust shall have total assets that are in excess of $50 million and no plan shall invest more than 10 percent of its assets in the Pooled Trust.

(3) No plan shall invest an amount which exceeds 25 percent of the total of plan assets in the Pooled Trust immediately after such investment.

(4) Prior to making an investment in the Pooled Trust, each plan fiduciary shall receive offering materials which disclose all material facts concerning the purpose, structure and operation of the Pooled Trust.

(5) The terms of all transactions that are entered into on behalf of the Pooled Trust by U.S. Trust or Crown shall be at least as favorable to the Participating Plans as those obtainable in arm's length transactions between unrelated parties.

(6) The fees paid by the Pooled Trust to U.S. Trust and Crown shall constitute no more than reasonable compensation.

(7) Crown's incentive fee will be based upon the aggregate of all realized and unrealized capital gains and losses and all income less any expenses, other than the incentive fee, during the period for which Crown provides investment services to the Pooled Trust. Investments will be made in securities for which market quotations are either readily available, or persons independent of Crown and U.S. Trust will make an independent valuation of securities for which market quotations are not readily available.

(8) Each Participating Plan shall receive the following from U.S. Trust:

(a) Audited financial statements, prepared by independent qualified public accountants, of the Pooled Trust, on an annual basis; and

(b) Quarterly reports relating to the overall financial position and operating results of the Pooled Trust which include a breakdown of all fees paid by the Pooled Trust and the value of a Participating Plan's interest in the Pooled Trust.

(10) U.S. Trust shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (11) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of U.S. Trust and Crown (and/or their affiliates), the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than U.S. Trust or Crown shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (9) below.

(11) (a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (9) of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any fiduciary of a Participating Plan who has the authority to acquire or dispose of the interests of the plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any Participating Plan that has an interest in the Pooled Trust or any duly authorized employee or representative of such employer; and

(4) Any participant or beneficiary of any Participating Plan that has an interest in the Pooled Trust or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraphs (2)–(4) of this paragraph (10) shall be authorized to examine the trade secrets of U.S. Trust or Crown or commercial or financial information which is privileged or confidential.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material facts which are the subject of this exemption.

Summary of Facts and Representations

1. U.S. Trust, founded in 1853 in New York, New York is subject to regulation as a trust company by the State of New York. U.S. Trust is the principal subsidiary of U.S. Trust Corporation, a member bank of the Federal Reserve System and the Federal Deposit Insurance Corporation and an entity having approximately $2.5 billion in assets as of 1990.

Currently, U.S. Trust actively manages assets of $18 billion and acts as trustee or custodian for $1.5 billion of the assets of pension and profit sharing plans that are subject to the provisions of the Act. U.S. Trust will serve as the trustee of the Pooled Trust that is described herein.

2. The Pooled Trust that will be established by U.S. Trust is a vehicle intended for the collective investment of a portion of the assets of approximately 5–10 unrelated employee benefit plans that are subject to the provisions of title I of the Act and sections 401(a) and 501(a) of the Code. The Pooled Trust will be qualified as a tax-exempt "group trust," as described in Rev. Rul. 81–100, 1981–1 C.B. 326. The duration of the Pooled Trust will be 7 years. At least 80 percent of the Pooled Trust's assets will be invested in publicly-traded securities. In addition, up to 20 percent of the Pooled Trust's assets will be placed in nonmarketable securities of small and newly formed companies (Venture Capital Investments). Idle cash balances will be invested in a short-term investment fund maintained by U.S. Trust. Investments by the Pooled Trust will not be made on a leveraged basis.

3. U.S. Trust will retain Crown to provide services with respect to investments in the Pooled Trust. Crown will not be an entity related to U.S. Trust or the Participating Plans. Further, Crown will not be a subsidiary or affiliate of U.S. Trust, nor will U.S. Trust and Crown have any common ownership by any individual or entity. In addition, Crown will be precluded from investing in the Pooled Trust.

The principals of Crown Advisors Ltd. (Crown Ltd.) and the principals of Glynn Capital Management (Glynn), are forming Crown as a Subchapter S corporation, to utilize their broad experience in institutional money management, investment banking, venture capital investment and operating management, by providing jointly, investment management services to clients, including investment funds such as the Pooled Trust. Crown Ltd. was formed in 1981, and is devoted to long term investment of capital in small public and private growth companies. Currently, Crown Ltd. has approximately $300 million in assets under management of which approximately $130 million constitutes assets or employee benefit plans.

Glynn, founded in 1983, currently has approximately $60 million in assets under management. Glynn specializes in

identifying and managing public and private growth companies.

4. Under the terms of the master trust agreement (the Master Trust Agreement), U.S. Trust will be responsible for the administration and oversight of the assets of the Pooled Trust, as trustee of the Pooled Trust. The Master Trust Agreement expressly authorizes U.S. Trust to employ Crown. Pursuant to the Master Trust Agreement, U.S. Trust will enter into the investment management agreement (the Investment Management Agreement) with Crown whereby Crown will be retained with investment management authority with respect to the assets of the Pooled Trust.

5. Crown will have complete discretion to make all of the investment decisions with respect to the assets of the Pooled Trust including, but not limited to, the execution of purchases and sales of securities transactions through one or more unrelated brokers. U.S. Trust's responsibilities include, but are not limited to, the supervision and monitoring of the performance of Crown as well as removing Crown where appropriate.

6. The Pooled Trust will be capitalized with no less than $100 million, with each Plan contributing at least $5 million for the acquisition of units of beneficial interest (the Interests) in the Pooled Trust.[1] Each Participating Plan will have aggregate assets of at least $50 million. No Participating Plan will be permitted to invest an amount which exceeds 25 percent of the total assets in the Pooled Trust immediately after such investment. Further, no Participating Plan may invest more than 10 percent of its assets in the Pooled Trust, as determined on the date of the investment.

7. The decision by a plan to invest in the Pooled Trust will be made by a plan fiduciary who is independent of U.S. Trust and of Crown. In this regard, U.S. Trust represents that it and Crown, will not cause a plan to invest in the Pooled Trust. In each instance, the plan fiduciary who makes the investment decision will agree not to rely on either the advice of U.S. Trust or Crown as the primary basis for a plan's investment and such plan fiduciary will be specifically required to do so in every instance. U.S. Trust represents that the decision of a plan to invest in the Pooled Trust will be made by an unrelated plan fiduciary acting on the basis of his or her own investigation into the advisability of investing in the Pooled Trust.[2]

8. Prior to investing in the Pooled Trust, each Plan fiduciary will receive copies of: (a) The Master Trust Agreement; (b) the Investment Management Agreement; (c) the final prohibited transaction exemption pertaining to the relief provided herein; and (d) an offering circular, containing descriptions of U.S. Trust and Crown, the investment philosophy, risks and management of the Pooled Trust, and the fees that will be paid by Participating Plans to U.S. Trust and Crown. Once a decision to invest has been made, the Participating Plan fiduciary will be provided with the names and addresses of all other Participating Plans. In addition, U.S. Trust will provide each Participating Plan fiduciary with quarterly statements showing the overall performance of the Pooled Trust as well as such Participating Plan's Interest in the Pooled Trust within 45 days of the end of the quarter.

9. A Participating Plan will have the right to assign its interest in the Pooled Trust to another plan so long as the assignment will not result in the assignee plan exceeding the limits set forth in the Pooled Trust. The decision to invest in the Pooled Trust by an assignee plan will be made by the assignee plan's fiduciary who is independent of U.S. Trust and of Crown. However, due to the illiquid nature of the Venture Capital Investments, no Participating Plan will be able to withdraw from the Pooled Trust unless it receives a well reasoned opinion of legal counsel that the withdrawal is required to enable such Participating Plan to comply with the Act.

10. U.S. Trust will provide written guidelines describing how a Participating Plan may withdraw from the Pooled Trust. Any such withdrawal will be effective as of the end of the fiscal year in which the legal opinion is provided to U.S. Trust and Crown by the Participating Plan. Upon withdrawal, 100 percent of the balance of the Participating Plan's account will be distributed to such Participating Plan including its pro rata distribution of Venture Capital Investments. U.S. Trust represents that the illiquid nature of the Venture Capital Investments held by the Pooled Trust requires that voluntary withdrawals are not permitted other than under these limited circumstances.

11. Crown will inform the Participating Plans that: (a) Crown and its affiliates may perform investment advisory and management services for various clients other than the Pooled Trust, (b) nothing in the Trust Agreement, Investment Management Agreement or any other related document will be deemed to impose upon Crown any obligation to purchase or sell on behalf of, or to recommend for purchase or sale by, the Pooled Trust any security with Crown or its affiliates may purchase or sell for its own account, or for the account of any other client; and (c) concurrently with the establishment of the Pooled Trust, Crown intends to establish a limited partnership none of the assets of which would be assets of ERISA-covered plans. Crown would serve as the general partner or investment manager of this limited partnership. Crown would limit its own investment in the limited partnership to the amount necessary to establish general partner status (1 percent or less of the limited partnership's assets). The Pooled Trust will not invest in the limited partnership. The limited partnership and any other clients of Crown will not directly invest in the Pooled Trust. Furthermore, the Pooled Trust will be prohibited from directly purchasing assets from or selling assets to the limited partnership and such other clients. In addition, U.S. Trust represents that the fee arrangement of the limited partnership will be identical to that of the Pooled Trust. The timing of the payment of such fees may, however, differ.[3]

12. The Pooled Trust may be terminated, earlier than the seven year term, by Participating Plans holding 51 percent of the fair market value of the Interests in the Pooled Trust (the Controlling Plans) upon giving at least 180 days prior written notice to U.S. Trust. In addition, the Pooled Trust will terminate automatically if U.S. Trust (a) resigns (upon giving all Participating Plans and Crown at least 90 days prior written notice) or (b) is removed by the Controlling Plans (upon being given 30 days advance written notice) prior to the appointment of a successor trustee. The Controlling Plans will have the right to appoint a successor Trustee. In addition, during the 60 day period

[1] The Department is not proposing, nor is the applicant requesting herein, exemptive relief for the purchase and sale of the Interests in the Pooled Trust between U.S. Trust and the investing plans beyond that provided under section 408(b)(8) of the Act.

[2] The Department is not expressing an opinion on whether U.S. Trust and Crown would be deemed to be fiduciaries under section 3(21)(A)(ii) of the Act with respect to a plan's investment in the Pooled Trust. The Department, however, notes that it is not proposing relief for the rendering of investment advice in connection with the acquisition of Interests in the Pooled Trust.

[3] The Department is not proposing, nor is the applicant requesting, any relief for any prohibited transaction which may arise from Crown's allocation of investment opportunities among accounts over which it has discretion.

following the appointment of a successor trustee, each Participating Plan will be given an opportunity to withdraw from the Pooled Trust.[4]

13. Assets of the Pooled Trust will not be distributed to Participating Plans until the termination of the Pooled Trust at the end of its seven year term, unless (a) the Pooled Trust is terminated earlier pursuant to a vote of the Controlling Plans, or (b) a Participating Plan withdraws from the Pooled Trust in order to comply with the Act, as described above, or (c) a Participating Plan withdraws from the Pooled Trust in connection with the resignation or removal, of U.S. Trust as trustee or, of Crown.

14. U.S. Trust and Crown will receive certain fees from the Pooled Trust based upon a multi-part fee structure that will be set forth in the Master Trust Agreement and in the Investment Management Agreement and approved by the Participating Plans. The applicant represents that the payment of all other fees by the Participating Plans with the exception of the Incentive Fee will conform with the terms and conditions of section 408(b)(2) of the Act.[5] U.S. Trust represents that an exemption may be required with respect to Crown's receipt of an incentive fee which is described below.

15. Crown will receive the Incentive Fee based upon a percentage of the net appreciation or depreciation of the Pooled Trust (i.e., profits minus losses) which will take into account realized and unrealized gains and losses of the Pooled Trust as measured on periodic adjustment dates on which the value of the Pooled Trust is determined.[6] The Incentive Fee is a cumulative rolling fee which will be paid to Crown in cash at the termination of the Pooled Trust or upon Crown's termination by either U.S. Trust or the Controlling Plans.

If Crown terminates the Investment Management Agreement within two years of the inception of the Pooled Trust, the incentive fee will not apply to that period. In the event Crown terminates the Investment Management Agreement after the initial two years of the Pooled Trust, the Incentive Fee will not be payable until the end of the original seven year term of the Pooled Trust.

16. Initially, the Incentive Fee will be reflected as a liability of the Pooled Trust and represent a zero amount bookkeeping entry in the Incentive Fee account. As amounts are periodically credited to or debited from such account, the liability to Crown will be proportionately increased or decreased. Neither U.S. Trust nor Crown will have any direct interest in the amount accruing to the Incentive Fee account other than the right of Crown to receive payment. Moreover, any unpaid portion of the Incentive Fee will not accrue interest or earnings of any kind.

17. For purposes of calculating the Incentive Fee, the assets of the Pooled Trust will be valued, on any Adjustment Date, in the following manner:

(a) Any security which is listed on a national securities exchange will be valued based on its last sales price on the national securities exchange on which the security is principally traded on the Adjustment Date, or, if trading in such security on such exchange was reported on the consolidated tape, the last sales price, on that day, as reported on the consolidated tape. In the event the Adjustment Date is not a date upon which the exchange was open for trading, the value shall be determined in the same manner as if the Adjustment Date was the last prior date the security was traded on the exchange.

In the event that a sale of a security listed on a national securities exchange did not occur on either of the foregoing dates, such security will be valued based on the last "bid" price on the national securities exchange on which the security was principally traded, or if the "bid" price of the security was reported on the consolidated tape, the "bid" price on the consolidated tape. In the event that the Adjustment Date is not a date on which the exchange was open for trading, the value will be determined in the same manner as if the Adjustment Date was the last prior date on which the exchange was open.

(b) Any security which is not listed on a national securities exchange will be valued upon the last closing "bid" price, unless on that day the security was included on the NASDAQ National Market System (in which case the security will be valued based upon its last readily available sales price).

(c) Any security for which a market quotation is not readily available will be valued by a committee (the Valuation Committee) comprised of persons who are independent of U.S. Trust and Crown. The Valuation Committee will be appointed, by U.S. Trust and Crown, prior to the formation of the Pooled Trust and the identity of its members will be disclosed to the fiduciaries of the plans preceding their decision to invest in the Pooled Trust. Each member of the Valuation Committee will derive (and continue to derive for the duration of his membership on the Valuation Committee) less than 5 percent of his or her lowest income (which will be recalculated each year that the Pooled Trust is in effect) from U.S. Trust or Crown for each of the three years prior to his or her appointment. Members of the Valuation Committee may be removed by Crown for cause only, or by the Controlling Plans upon five days advance written notice. Replacements for members of the Valuation Committee must be approved by the Controlling Plans in writing.

Each of the members of the Valuation Committee will have prior experience, as a fiduciary, a fund manager or an adviser, in the valuation and/or management of investments similar to the investments of the Pooled Trust.

18. At least once each year, an audit will be made of the Pooled Trust by auditors who are independent certified

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[4] Although the Investment Management Agreement will have a term that is co-extensive with the term of the Pooled Trust, such agreement will also be subject to earlier termination by U.S. Trust upon at least 90 days prior written notice to Crown, but only (a) under circumstances in which the failure to terminate would be considered to be a breach by U.S. Trust of its fiduciary duties under the Act or (b) if the Controlling Plans request such termination. However, no such termination will be effective until the appointment by U.S. Trust of an investment manager independent of U.S. Trust and each of the Participating Plans. Any replacement for Crown must be approved by the Controlling Plans in writing.

In addition, Crown may terminate the Investment Management Agreement upon at least 90 days prior written notice to U.S. Trust. In the event of the termination of the Investment Management Agreement, each participating Plan shall have the right to withdraw from the Pooled Trust during the 60 day period following the date of such termination.

[5] The other components of the fee structure include a quarterly fee payable to U.S. Trust, based upon a stated percentage of the value of the Pooled Trust's assets, and a quarterly asset management fee paid to Crown based upon a stated percentage of net aggregate contributions. Net aggregate contributions will not include profits (if any) and may only be reduced by withdrawals. Upon the effective date of a withdrawal from the Pooled Trust, a Participating Plan will receive a distribution of the balance of its account equal to its allocated share of the value, based upon readily available market quotations or valuations by an independent valuation committee, of the assets of the Pooled Trust. Upon such effective date, a Participating Plan will have no further obligation to the Pooled Trust. The Department notes that the relief provided by this proposed exemption, if granted, is limited solely to the Incentive Fee.

[6] An "Adjustment Date" will occur only on each of the following events: (a) the last day of each fiscal quarter; (b) on the date a plan makes a contribution to the Pooled Trust; (c) the effective date of a withdrawal by a Participating Plan from the Pooled Trust (i.e., the last day of the fiscal year in which the withdrawing plan provides the required opinion of counsel); (d) the effective date of the termination of the Pooled Trust (i.e., the final adjustment date); (e) the effective date of the termination of the Investment Management Agreement.

public accountants retained by U.S. Trust. It is anticipated that the auditors' report will be disseminated to fiduciaries of the Participating Plans within 90 days following the fiscal year end of the Pooled Trust.

19. In summary, it is represented that the proposed investment by the Plans in the Pooled Trust will satisfy the statutory criteria for an exemption under section 408(a) of the Act because (a) with respect to plan investment in the Pooled Trust: (i) the decision to invest in the Pooled Trust will be made on behalf of a plan by a fiduciary who is independent of U.S. Trust and Crown following full disclosure of all material facts regarding the purpose, structure and operation of the Pooled Trust; (ii) only plans with at least $50 million in assets will be permitted to invest in the Pooled Trust and no plan may invest more than 10 percent of its assets in the Pooled Trust or contribute an amount that exceeds 25 percent of the total contributions of all plans investing in the Pooled Trust; (iii) Controlling Plans will have the right to remove U.S. Trust, and to request the replacement and approve any successors of members of the Valuation Committee and Crown; and (b) with respect to the receipt of the Incentive Fee by Crown in connection with services rendered to the Pooled Trust: (i) The fee structure will be approved by independent plan fiduciaries acting on behalf of the Participating Plans and will take into account both realized and unrealized gains and losses; (ii) the valuation of the assets in the Pooled Trust will be based on readily available market quotations or will be made by an independent valuation committee; (iii) Crown will not have any authority to unilaterally cause the payment of the fee before the end of the original seven year term of the Pooled Trust; (iv) Participating Plans will possess a level of investor sophistication which enables each Participating Plan to engage in on-going and independent monitoring of Crown.

FOR FURTHER INFORMATION CONTACT: Eric Berger, Department of Labor, Pension and Welfare Benefits Administration, Office of Exemption Determinations, telephone (202) 523–8971. (This is not a toll-free number.)

C & S Ellison, Inc., Defined Benefit Pension Plan and Trust (the Plan) Located in Fort Myers, Florida

[Application No. D–8765]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain parcels of real property (collectively; the Property) to Chalmas S. Ellison and Sandra L. Ellison (Mr. and Mrs. Ellison), husband and wife, and as such disqualified persons[7] with respect to the Plan; provided the Plan receives the greater of: (1) The fair market value of the Property as determined at the time of the sale by an independent qualified appraiser; or (2) the initial acquisition costs for the Property plus the aggregate holding costs incurred by the Plan since the initial acquisition of the individual parcels that make up the Property.

Summary of the Facts and Representations

1. The Plan, amended on June 16, 1991, is a defined benefit pension plan, which as of September 30, 1990, had $298,630 in total assets, and two participatns. Mr. and Mrs. Ellison, the applicants, represent that they have decided to terminate the Plan, but have not yet begun the termination procedures. The current trustees of the Plan are the Plan participatns, Mr. and Mrs. Ellison, who also wholly own C&S Ellison Inc., a Florida corporation established on December 30, 1988, which is the Plan sponsor (the Employer). The applicants represent that while the predecessor of the Employer, Procraft Batteries Inc., was engaged in the sale of automobile batteries at retail and wholesale, the Employer is currently not engaged in the active conduct of a trade or business.

2. The Property is located in Pasco County, Florida, and consists of three parcels. The first parcel of real estate was purchased on November 11, 1988, from Thomas R. Riffle, who it is represented is an independent third party with respect to the Plan and the Employer, for a total purchase price of $54,900 (the First Parcel). The First Parcel contains approximately 1.2 acres, upon which is a 1970 12×55 Parkway mobile home. The applicants represent that Mr. and Mrs. Ellison personally own a parcel which is adjacent to the First Parcel. The second parcel was purchased on June 13, 1987, from George Hayes and Isabelle Hayes, who it is represented are independent third parties with respect to the Plan and the Employer, for a purchase price of $43,000 (the Second Parcel). The Second Parcel contains slightly less than one acre, upon which is a 1979 14×60 Windsor mobile home. The applicants represent that the mobile homes and other attached improvements were already on the First and Second Parcels at the time these Parcels were acquired by the Plan. The third parcel was purchased on February 13, 1990, from Carlton E. Ellison and Elsie V. Ellison for a total purchase price of $28,000 (the Third Parcel). The applicants maintain that Carlton E. Ellison is Mr. Ellison's brother.[8] The Third Parcel contains approximately 1.3 acres and is unimproved. Furthermore, it is represented that the Property was not developed during the time it was held by the Plan, and that the Property was originally acquired by the Plan for investment purposes via cash purchases and as such there is no outstanding debt or mortgage on the Property. The applicants maintain that the Property has not been used by any parties in interest since initial acquisition by the Plan.

3. The applicants represent that the First and Second Parcels are currently leased to independent third parties. Specifically, the First Parcel is leased to Richard and Cheri Wagner for an annual rent of $5,700, and the Second Parcel is leased to Charles and Lois Savage for an annual rent of $5,460. The applicants represent that from the date of acquisition until the end of 1991, the approximate holding costs for the First Parcel were $3,410.42, for the Second

[7] Because Mr. and Mrs. Ellison are the only participants in the Plan and the Employer is wholly owned by Mr. and Mrs. Ellison, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3 (b) and (c). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[8] Carlton E. Ellison does not appear to be a disqualified person under section 4975(e)(2) of the Code. However, section 4975(c)(1) (D) and (E) of the Code provides, in relevant part, that a prohibited transaction means a direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan or an act by a disqualified person who is a fiduciary whereby he deals with the income or assets of the plan in his own interest or for his own account. Mr. and Mrs. Ellison may have had an interest in the transaction which may have affected their best judgement as fiduciaries of the Plan. The Department, in this instance, expresses no opinion whether the purchase by the Plan of the Third Parcel from Carlton E. Ellison, is a prohibited transaction under section 4975(c)(1) (D) and (E) of the Code, and no relief is provided herein.

Furthermore, the Department notes that section 401(a) of the Code provides, in relevant part, that in order for a plan to be a qualified trust it must be impossible, prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than exclusive benefit of his employees or their beneficiaries. The Internal Revenue Service has jurisdiction over section 401(a) of the Code.

Parcel they were $3,126.06 and for the third parcel they were $631.01, for an aggregate total of $7,167.49 (the Aggregate Holding Costs). The applicants represent that the Aggregate Holding Costs were paid by the Plan.[9]

4. The applicants propose to purchase the Property from the Plan in a one-time cash sale. The applicants represent that the Plan will bear no costs with respect to these transactions. An appraisal of the Property was prepared on March 15, 1991, by Audrey M. Leach and Norman M. Leach (the Appraisers), located in Zephyrhills, Florida. The applicants represent that the Appraisers are Florida state certified residential appraisers and that they are independent and qualified. The Appraisers relied on the market value approach and determined that as of February 28, 1991, the aggregate fair market value of the Property was $127,500. In an update to the appraisal, dated September 13, 1991, the Appraisers addressed the fair market value of each Parcel and concluded that the fair market value of the First Parcel is $56,000, the fair market value of the Second Parcel is $43,500, and the fair market value of the Third Parcel is $28,000. In a letter dated November 13, 1991, the Appraisers represent that the fair market values for the First and Second Parcels include the mobile homes and other attached improvements. The Appraisers further conclude that the primary reason the Property failed to substantially appreciate in value since the initial acquisition is because in the last three years the real estate market in Pasco County, Florida has experienced limited sales and little, if any, appreciation. The Appraisers also concluded that the ownership by Mr. and Mrs. Ellison of a parcel adjacent to the First Parcel does not merit a premium above the fair market value of that Parcel.

5. The applicants represent that the aggregate transaction which involves approximately 43% of the Plan's total assets, is desirable as the sale will increase the liquidity of the Plan's portfolio and will enable the Trustees to distribute the cash to Plan participants upon the termination of the Plan, which the participants will then rollover into IRAs. The transaction is protective of the Plan because the individual and aggregate fair market value of the Parcels and the Property has been determined by independent qualified Appraisers. The transaction is in the best interest of the Plan because the Plan will be receiving the greater of: (1) The fair market value of the Property as established at the time of the sale by an independent qualified appraiser; or (2) the initial acquisition costs for the Property plus the Aggregate Holding Costs incurred by the Plan since the initial acquisition of the Property. The applicants further note that the Plan will sustain economic hardship if the transaction is denied because this will preclude an expedition of the termination of the Plan and subsequent distribution of the Plan's assets to participants. Furthermore, if the Property is to be sold to an unrelated entity, the Plan will incur trustees' fees, professional and administrative fees until the Property is sold, as well as a brokerage commission when such a sale is consummated.

6. In summary, the applicants represent that the transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) The sale will be a one-time cash transaction and the Plan will pay no expenses or commissions with respect to the sale;

(b) As a result of the sale, the Plan will be able to receive the greater of: (1) The fair market value of the Property as determined at the time of the sale by an independent qualified appraiser; or (2) the initial acquisition costs for the Property plus the Aggregate Holding Costs incurred by the Plan since the initial acquisition of the Property;

(c) The current fair market value of the Property has been determined by independent qualified Appraisers; and

(d) The sale will enable the Plan to divest of the Property and upon termination to make timely cash distributions to the Plan participants.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Citizens Federal Bank, F.S.B. (Citizens) Located in Dayton, Ohio

[Application No. D–8862]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the sale by Citizens of its holding company's common stock to the Simplified Employee Pension Plans (SEPs) and Keogh Plans (Keoghs) for which Citizens serves as custodian, as part of an initial issue of such stock; and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the sale by Citizens of its holding company's common stock to the individual retirement accounts (IRAs) [10] for which Citizens serves as custodian, as part of an initial issue of such stock, provided the SEPs, Keoghs and IRAs pay no more than the fair market value of the stock on the date of the sale. The proposed exemption is also subject to the following conditions: (1) The decision to purchase the stock of the holding company will be made by IRA, SEP and Keogh customers as part of a range of investment choices, and Citizens has no discretion over such decision; (2) no fees or commissions will be paid by the purchasers with respect to the transaction; (3) no more than 25 percent of the assets of any IRA, Keogh or SEP will be invested in the stock in connection with the initial offering; and (4) the purchase price of the stock will be determined by independent appraisal, and must be approved by the Office of Thrift Supervision (the OTS).

Summary of Facts and Representations

1. Citizens is a federally chartered mutual savings bank headquartered in Dayton, Ohio. Citizens is in the process of converting (the Conversion) from a mutual savings bank to a stock corporation. In connection with the Conversion, all of Citizens' common stock that will be outstanding will be issued to Citfed Bancorp, Inc. (the Holding Company).

2. Pursuant to the plan of conversion, non-transferable rights to subscribe for the common stock of the Holding Company (Subscription Rights) will be given to Citizens' depositors as of June 30, 1990 (Eligible Account Holders), to Citizens' depositors as of September 30, 1991, and to its employees, officers and directors. All depositors Citizens may purchase common stock of the Holding

[9] Because the Aggregate Holding Costs combined with the aggregate initial acquisition cost to the Plan ($7,167.49 + $125,900 = $133,067.49) are greater than the current aggregate fair market value of the Property, which is $127,500, the Plan in this transaction will receive the greater of: (1) The fair market value of the Property as determined at the time of the sale by an independent qualified appraiser; or (2) the initial acquisition costs for the Property plus the Aggregate Holding Costs incurred by the Plan since the initial acquisition of the Property.

[10] Pursuant to 29 CFR 2510.3–2(d), there is no jurisdiction with respect to the IRAs under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Company up to the amount of the cash in their accounts. Concurrently, and subject to the prior rights of these above-described holders of Subscription Rights, the Holding Company will offer its common stock for sale in a community offering to members of the general public (the Community Offering), with a preference to natural persons residing in the counties in which Citizens has an office. All shares not subscribed for in the Subscription and Community Offering are expected to be sold to the general public in an underwritten public offering (Public Offering) on a national basis. All shares sold in the Subscription and Community Offering and the Public Offering will be sold at the same price per share.

3. The total number of shares to be issued in the Conversion and the price per share will be based upon an appraised valuation of the market value of the Holding Company and Citizens as converted. Kaplan Associates, Inc. (Kaplan), an independent appraiser in Washington, DC, has appraised the value of the Holding Company and Citizens as converted to be within the range of $29,750,000 to $40,250,000 (the Estimated Value Range) as of August 19, 1991. Kaplan represents that it has no ownership interest in Citizens or the Holding Company. Kaplan further represents that it is experienced in the valuation and appraisal of business entities, including thrift institutions involved in the process of the conversion from mutual to stock form of ownership. Kaplan has performed over 200 such conversion appraisals. Based on the Estimated Value Range, the Holding Company is offering 3,500,000 shares at a maximum subscription price of $11.50 per share. Depending upon the market and financial conditions at the time of the Public Offering, the total number of shares to be issued in the Conversion may be increased or decreased from the 3,500,000 shares offered thereby, and the price per share decreased, provided: (1) The product of the total number of shares multiplied by the price per share remains within, or does not exceed by more than 15 percent, the current Estimated Value Range; and (2) the price per share is not less than $8.50.

4. The Holding Company is prohibited by regulations of the OTS from selling or offering to sell its common stock unless it gives to each Eligible Account Holder Subscription Rights to acquire the Holding Company stock pursuant to the subscription offering. IRA, Keogh and SEP funds held, as of June 30, 1990, in time deposits by Citizens as custodian, are Eligible Account Holders requiring that the holders of these accounts receive Subscription Rights to purchase Holding Company stock.

5. Citizens currently acts as custodian for approximately 13,802 IRA customers, 771 participants in custodial Keogh plan accounts and 118 participants in the custodial SEP accounts with assets, in the aggregate, of approximately $240 million. These assets represent approximately 14 percent of the total deposits held by Citizens. Citizens, as custodian, has no discretionary authority with respect to the investment of IRA, SEP or Keogh assets. All investments are made at the direction of the account holder within the range of investment choices permitted by the plan documents. The applicants represent that no single SEP, IRA or Keogh account will be permitted to invest more than 25 percent of the assets of such account in stock of the Holding Company in connection with this initial offering.

6. In accordance with the provisions of the conversion regulations of the OTS, Citizens must submit to the OTS a plan outlining the terms of the subscription offering. Citizens will be required to mail to each Eligible Account Holder, including holders of IRAs, SEPs and Keoghs, a notice that the Board of Directors has approved the sale of a certain number of shares of common stock, a description of the rights of such depositors to subscribe for such stock and various other information concerning rights of stockholders. Pursuant to the terms of the proposed transaction, the IRA, SEP and Keogh customers would notify Citizens within that subscription period of their direction to invest the assets of their SEP, IRA and Keogh accounts in Holding Company stock. No commissions will be paid with respect to the purchase.

7. As part of the Conversion plan submitted to the OTS, Citizens will include the appraisal prepared by Kaplan of the fair market value of the Holding Company and the common stock to be issued. The valuation was based on financial information relating to Citizens and the economic environment in which it operates, a comparison of Citizens with selected publicly held thrift institutions and with other thrift institutions located in Ohio, and other factors that Kaplan deemed to be appropriate. The valuation was stated in terms of a per share subscription price range, the maximum of which was no more than 15 percent above the midpoint of such price range, and the minimum of which was no more than 15 percent below such midpoint (See Rep 3, above).

8. If all shares of Holding Company stock are sold through the exercise of Subscription Rights and through the Community Offering, Kaplan will re-examine its estimate of the market value of the Holding Company and of shares of Holding Company stock as of the last day of the Subscription Offering and the Community Offering (the Final Estimate). It at that time Kaplan's Final Estimate of the value of Holding Company common stock is less than the subscription price (but not less than the minimum of the Estimated Value Range), then the Final Estimate value will become the final purchase price for Holding Company stock and the Holding Company will refund to all purchasers the difference between the subscription price and the independent appraiser's Final Estimate of value of Holding Company stock. If, however, Kaplan's Final Estimate of the value of Holding Company stock exceeds the subscription price, then, with the approval of the OTS, Citizens will either terminate the subscription plan, establish a higher subscription price range or increase the total number of shares of the Holding Company so that the market value per share will be within the subscription price range. If Kaplan's Final Estimate of the value of Holding Company stock is less than the minimum of the Estimated Value Range, then, with the approval of the OTS, Citizens will either terminate the subscription plan, establish a lower subscription price range, or decrease the total number of shares of the Holding Company so that the market value per share will be within the subscription price range.

9. If all the shares of Holding Company stock to be sold are not sold through the exercise of Subscription Rights or through the Community Offering, the remaining shares will be sold to the public after approval of a public offering circular by the OTS. The shares not previously subscribed for will then be sold to or through the underwriters of the Public Offering pursuant to the terms of an underwriting agreement. In the event the sale price of Holding Company stock pursuant to the Public Offering is less than the subscription price, the difference will be refunded to those who paid the higher price. Prior to the closing of the Public Offering, Kaplan will reconfirm its appraisal.

10. The applicants represent that the entire process is designed to ensure that the price paid for Holding Company stock is its fair market value. In any event, the determination as to the price

to be paid for Holding Company stock will be subject to approval by the OTS. All investors in Holding Company stock, including the IRAs, Keoghs and SEPs, will pay the same price for the stock.

11. In summary, the applicants represent that the proposed transaction meets the criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (1) The decision to purchase the Holding Company stock will be made by IRA, SEP and Keogh customers as part of a range of investment choices, and Citizens has no discretion over such decision; (2) no fees or commissions will be paid by the purchasers with respect to the transaction; (3) no more than 25 percent of the assets of any IRA, SEP or Keogh account will be invested in Holding Company stock in connection with the initial offering; and (4) the purchase price of the stock will be determined by independent appraisal, and must be approved by the OTS.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Surgical Group, P.S.C. Profit Sharing Plan and Retirement Plan Located in Paducah, KY 42001

[Application No. D–8665]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase of Paducah Bankshares Inc. common stock (the Stock) by the individually directed accounts (the Accounts) of Dr. Wally O. Montgomery in the Surgical Group, P.S.C. Profit Sharing Plan and in the Surgical Group, P.S.C. Retirement Plan (the Plans) from Dr. Wally O. Montgomery and his wife Geraldine, joint owners of the Stock and parties in interest with respect to the Plans, provided that: (a) The purchase of the Stock will be a one-time transaction for cash; (b) the Accounts will purchase the Stock at a price no greater than the fair market value of the Stock; (c) the Accounts will not pay any expense in connection with the proposed transaction; and (d) Dr. Montgomery will be the only participant affected by the transaction.

Summary of Facts and Representations

1. Each Plan has approximately 38 participants, including Dr. Montgomery who is a 20 percent owner of the corporation maintaining the Plan. Each of the Plans permits each participant to control the investment of his Account under the Plan. The applicant represents that as of December 31, 1989, Dr. Montgomery's balances in the Accounts were $565,143.06 and $430,428.45 in the profit sharing plan and the retirement plan, respectively.

2. Paducah Bank and Trust Company, the issuer of the Stock, is a state bank regulated by the Federal Reserve, the FDIC and the Department of Financial Institutions for the State of Kentucky. The applicant states that there were 184,504 shares of the Stock outstanding as of October 30, 1991. The applicant represents that there are no restrictions on the sale or transfer of the Stock. The Stock is not traded on an exchange or over the counter, however, the Stock is generally traded in private transactions among the current stockholders.

3. Dr. Montgomery and his wife Geraldine propose to sell, to the Accounts, an amount of shares whose total fair market value will not exceed 25 per cent of the balance of each of the Accounts on the date of the Stock purchase. The purchase will be a one time transaction for cash. In addition, the Plans will not incur any expenses in connection with the pruchase of the Stock by the Accounts. The applicant states that any expenses relating to the proposed transaction will be paid by Dr. Montgomery. The applicant wishes to sell the Stock to the Accounts because the Stock has historically had steady capital appreciation and is expected to continue to do so.

4. The applicant has submitted a valuation of the Stock by Professional Bank Services, Inc. (PBS), an investment banking and financial consulting firm, that concluded that the fair market value of the Stock was $35.00 per share, as of September 18, 1991. PBS represents that it derived less than 1 percent of its income from Dr. Montgomery during the past year.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The purchase of the Stock will be a one-time transaction for cash; (b) the Accounts will purchase the Stock at a price no greater than the fair market value of the Stock; (c) the Accounts will not pay any expense in connection with the proposed transaction; and (d) Dr. Montgomery will be the only participant affected by the transaction, has determined that the transaction is appropriate and in the best interests of the Plans and desires that the transaction be consummated.

Notice to Interested Persons: Since the only assets of the Plans involved in the proposed transaction are those in Dr. Montgomery's Accounts and since he is the only participant affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests on the proposed exemption are due 30 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Berger of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of January, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-365 Filed 1-7-92; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 73—Physical Fitness Programs and Day Firing Qualifications for Security Personnel at Category 1 Licensee Fuel Cycle Facilities.

3. *The form number if applicable:* Not applicable.

4. *How often is the collection required:* Revisions to the Fixed Site Physical Protection Plan are required once upon rule implementation. Recordkeeping requirements associated with physical fitness performance testing and day firing qualifications are required once each year for each security force member.

5. *Who will be required or asked to report:* Applicants for license or licensees authorized to possess formula quantities of strategic special nuclear material.

6. *An estimate of the number of responses:* 2.

7. *An estimate of the number of hours annually needed to complete the requirement or request:* 96 (Annualized over three years).

8. *An indication of whether Section 3504(h), Public Law 96-511 applies:* Applicable.

9. *Abstract:* The proposed rule contains requirements which would require an applicant for license or a licensee authorized to possess formula quantities of strategic special nuclear material to institute annual physical fitness performance testing and to qualify security force personnel for day firing of assigned weapons according to a specific day firing course.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150-0002), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 24th day of December, 1991.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior, Official for Information Resources Management.

[FR Doc. 92-360 Filed 1-7-92; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 16, 1991 through December 26, 1991. The last biweekly notice was published on December 26, 1991 (56 FR 66912).

Notice Of Consideration Of Issuance Of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 7, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should

consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: December 6, 1991

Description of amendment request: The proposed amendment would revise Section 3/4.9, Auxiliary Electrical System, to incorporate a surveillance for the inverters associated with the High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) Systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or

consequences of an accident previously evaluated. The proposed change adds a surveillance to Technical Specifications concerning the electrical inverters associated with the HPCI and RCIC systems. These inverters provide power to the flow control mechanisms of these systems. Loss of the RCIC inverter results in a minimum flow condition. Loss of the HPCI inverter results in HPCI going to zero flow. The inverters have an automatic reset. After the inverters reset, RCIC flow returns to normal and HPCI restarts. The operation of PNPS in accordance with the proposed surveillance will not alter the function or configuration of the subject inverters or the HPCI and RCIC Systems. The surveillance will be performed during the verification of operability of the auxiliary electrical system and will not be performed during power operation. Hence, this new surveillance will be performed when the HPCI and RCIC systems are not required and it will not involve an increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not change the configuration or function of PNPS and involves surveillance activities to be performed when the associated systems are not required. Therefore, operating PNPS in accordance with the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety. The proposed change adds a surveillance intended to ensure the operability of existing equipment (i.e., the inverters associated with the HPCI and RCIC Systems). The proposed change does not modify the configuration, function, or setpoint of the inverters or the associated systems. Hence, operating PNPS in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199, attorney for the licensee.

NRC Project Director: Walter R. Butler

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: November 7, 1991

Description of amendment request: The amendment would revise Technical Specifications (TSs) 3.5.2.4 (Quadrant Power Tilt), 3.5.2.5 (Control Rod Positions), and 3.5.2.6 (Reactor Power Imbalance), by replacing the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report (COLR), which contains the values of those limits. In addition, the COLR would be included in the Definitions Section of the TSs (Section 1.11) as the unit-specific document that provides these limits for the current operating reload cycle. The definition would note that the values of these cycle-specific parameter limits are to be determined in accordance with TS 6.12.3. This specification would require that the COLR be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions would be provided to the NRC upon issuance. NRC Generic Letter (GL) 88-16, dated October 4, 1988, provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's proposed amendment is in response to this GL.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The removal of cycle dependent variables from Technical Specifications and placing them into a COLR has no impact on plant operation or safety. The Technical Specifications will continue to require operation within the core operational limits for each cycle reload calculated by the approved reload design methodologies. The values or setpoints placed in the COLR are addressed in the Reload Report. The reload report presents the results of an evaluation of accidents addressed in the ANO-1 SAR [Safety Analysis Report]. The evaluation demonstrates that changes in the fuel cycle design and the corresponding COLR do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The removal of cycle specific variables would not create the possibility of a new or different kind of accident from any previously analyzed. The cycle specific variables will continue to be calculated using NRC approved methods. This change consists of relocating the cycle specific variables from the Technical Specifications to the COLR. Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken if the limits are exceeded. The Technical Specification changes result in no significant changes to the operation of the unit.

Criterion 3 - Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed changes do not involve a significant reduction in a margin of safety since these changes only involve transferring data from one document to another. The limits or setpoints themselves will not change until the next fuel cycle. These values are originally provided in the Reload Report for a particular cycle. The development of limits for future reloads will continue to conform to methods described in NRC approved documentation. Each future reload will involve a 10CFR50.59 safety review to assure that operation of the unit within the cycle specific limits will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: February 20, 1991, as supplemented October 11, 1991.

Description of amendment request: The proposed amendment would revise Tables 3.3-6 and 4.3-3 of the Arkansas Nuclear One Unit 2 Technical Specifications (TS) to require the process monitors for gaseous activity for purge and exhaust isolation be operable when the monitors are actually in use rather than during all modes. The proposed amendment also would require that the purge system be secured during fuel movement and containment purge operations and provide actions for continuous ventilation with an inoperable monitor. Additionally, the proposed amendment would replace asterisks in the tables with note numbers and revises the Bases for this TS.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or consequences of an Accident Previously Evaluated.

Changing the requirement for system OPERABILITY to limit the requirement to only those plant conditions when the system actually has the potential for creating a release path does not involve an increase in the probability or consequences of an accident previously evaluated. The radiation levels are continually measured in the areas served by the individual channels and both the alarm and automatic action are initiated when the radiation level trip setpoint is exceeded. This change is effectively administrative in nature as the requirement for the OPERABILITY of the system which this instrumentation serves is required only during purging and core alterations and the purge valves are key locked closed during Modes 1, 2, 3, and 4.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

This instrumentation is not involved in the creation of an accident, only in the mitigation of a previously assumed accident and would be OPERABLE for this function. Therefore this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

As this proposed change still requires the radiation monitoring system to be in use and capable of performing its function when the actual potential for a release exits (during Purging operations or when ventilating during core alterations) the margin of safety will not be reduced.

Based on the above evaluation it is concluded that the proposed Technical Specification change does not constitute a significant hazards concern.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 11, 1991, as supplemented by letter dated December 18, 1991

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to change the test frequency of the Engineered Safety Features Actuation System (ESFAS) initiation relays to once a quarter. The request to change the frequency of the subgroup relays and related footnotes will be handled by a separate amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Combustion Engineering analyses show that a reduction in test frequency of these relays is expected to decrease the frequency of spurious actuations of emergency safety features equipment. While there may be a small increase in unavailability due to relays failing during the longer surveillance interval, it is believed to be negligible due to the high reliability of these relays. Furthermore, this will be offset by a larger decrease in the inadvertent actuation of equipment during testing. As such, the overall result will be a reduction in the probability of plant transients. ... Therefore, the operation of Waterford 3 in accordance with these changes will not increase the probability of any accident previously evaluated.

The proposed changes do not involve an increase in the consequences of an accident previously evaluated as the accident analysis assumes the most limiting single failure. The limiting single failure assumed bounds the failure of these relays. Whatever the failure mode of the particular type of relay used, the consequences are acceptable. Therefore, the operation of Waterford 3 in accordance with this change will not involve a significant increase in the probability or consequence of any accident previously evaluated.

Failure modes for the initiation ... relays remain unchanged by extended test frequencies.... Potential consequences of failure of one of these relays, regardless of type, are already considered in the accident analyses. Other than extension of test intervals ..., there is no change to plant procedures or operation that could lead to a new event. Failure of a single relay may result in certain ESFAS equipment failing to actuate, but due to the plant configuration, this will not affect more than one train. As such, operation of Waterford 3 in accordance with this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not affect the performance of the safety function for the actuated equipment. Integrity of the fission product barriers is maintained by the action of the actuated equipment. Since there is no increase in the consequences of the events against which this equipment protects, there is no change in the margin of safety. There are redundant trains of all engineered safety features equipment, and thus redundant trains of all ... relays. Therefore, the single failure of any ... relay will not prevent the performance of the design safety function. The failure of two trains of redundant relays actuating the same equipment is not considered credible. Therefore, the operation of Waterford 3 in accordance with this change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynods, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: February 12, 1990

Description of amendment requests: The proposed amendments to the St. Lucie Units 1 and 2 Technical Specifications would revise the requirement to determine control element assembly (CEA) operability at least once per 31 days to once per 92 days. Additionally, it is proposed that the surveillance interval for the performance of the functional test of the CEA block circuit, which is performed as part of the CEA operability test, be performed on a quarterly basis, rather than on the current monthly basis.

This request was originally noticed in the **Federal Register** on April 4, 1990 (55 FR 12393). It was subsequently denied by NRC letter dated January 24, 1991, and the denial was noticed in the **Federal Register** on February 6, 1991 (56 FR 3846). By letter dated November 22, 1991, the licensee requested that the NRC reconsider the denial.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91 (a), the licensee has provided analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

Operation of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The intent of the [c]ontrol [e]lement [a]ssembly (CEA) movement testing surveillance is the detection of CEAs which

are stuck fully out of the core, and to demonstrate that the CEA can move freely within a small range of movement. The current Combustion Engineering Standard Technical Specification and the St. Lucie Technical Specification 31 day surveillance interval frequency was based on engineering judgement. Operating experience has demonstrated that this surveillance is not a principal method for detecting stuck CEAs. For example, startup testing, which includes CEA drop testing and CEA worth testing, [has] detected a number of stuck CEAs. Additionally, in a few instances, stuck CEAs have been identified following a trip, and have generally occurred in the last foot of travel. The St. Lucie Units 1 and 2 Updated Final Safety Analysis Report (UFSAR) Chapter 15 Accident Analyses assume the most reactive CEA is stuck in the fully withdrawn position on a reactor trip; therefore, [these] amendment[s] [do] not involve a significant increase in the consequences of accidents previously analyzed. As discussed above, other more effective means of detecting stuck CEAs in normal use make operation with an undetected stuck CEA improbable. Therefore, [these] amendment[s] [do] not involve a significant increase in the probability of accidents previously analyzed.

Increasing the surveillance test interval of the CEA movement test will decrease the probability of dropping a CEA. Dropped CEAs cause unnecessary flux perturbations in the core, and can result in a reactor trip.

The block circuit test frequency was originally established to be the same as the CEA movement test. The individual CEA block circuit surveillance is not directly connected with any analyzed event, but rather serves as backup to other surveillances and operator action. The CEA group block circuit surveillance applies during initial CEA withdrawal during reactor startup, and is bounded by the CEA [m]isoperation event previously analyzed.

Criterion 2

Operation of the facility in accordance with the proposed amendment[s] [would] not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident initiators are created by the extended test intervals. A single CEA stuck in the fully withdrawn position and CEA misoperation events have been previously analyzed in the St. Lucie Units 1 and 2 USFAR Chapter 15 Accident Analyses. Additionally, the change does not result in any physical change to the plant or method of operating the plant from that allowed by the [T]echnical [S]pecifications.

Criterion 3

Operation of the facility in accordance with the proposed amendment[s] [would] not involve a significant reduction in a margin of safety.

The St. Lucie Units 1 and 2 UFSAR Chapter 15 accident analyses assume the most reactive control element assembly is stuck in the fully withdrawn position on a reactor trip; therefore, this proposed change does not alter the margin of safety with respect to limiting positive reactivity additions during a postulated [m]ain [s]team [l]ine [b]reak at [h]ot [z]ero [p]ower, [e]nd of [c]ycle. Additionally, [s]hutdown [m]argin requirements per the St. Lucie Units 1 and 2 Technical Specifications assume the hypothetical worst case stuck CEA.

The Technical Specification Action Statements applicable to misaligned or inoperable CEAs include requirements to align the [o]perable CEAs in a given group with an inoperable CEA. Conformance with these alignment requirements brings the core, within a short period of time, to a configuration consistent with that assumed in establishing Limiting Conditions for Operation (LCO) limits and Limiting Safety System Settings (LSSS) setpoints.

Even should a CEA misalignment or CEA block circuit failure occur during the proposed 92 day surveillance frequency for testing, other independent means of detecting misaligned CEAs exist, enabling control room operators to implement the Technical Specification ACTIONS as required.

Based on the above, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety, and therefore does not involve a significant hazards consideration.

The staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment request involves no significant hazards consideration.

Local Public Document Room Location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Herbert N. Berkow

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: May 13, 1991, as supplemented August 30, 1991, and September 27, 1991.

Description of amendment request: The proposed amendment would revise the reactor vessel pressure/temperature (P/T) limits specified in Technical Specifications 3.2.2/4.2.2 and the withdrawal schedule of reactor vessel material surveillance capsules specified in TS 4.2.2.b. The revised P/T limits would be valid for operation of Nine Mile Point Unit 1 through 18 effective full power years (EFPY). The revised limits would satisfy NRC Generic Letter 88-11 since the revised limits were calculated using the method in NRC Regulatory Guide 1.99, Revision 2. The reactor vessel material surveillance capsule withdrawal schedule would be revised to specify withdrawal of capsules in terms of EFPY rather than in terms of service life.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment incorporates the results of testing of NMP1 reactor vessel material surveillance specimens which have been irradiated during station operation. Testing of the material surveillance specimens was performed in accordance with 10 CFR [Part] 50 Appendix H.

Components of the reactor primary coolant system are operated so that no substantial pressure is imposed unless the reactor vessel materials are above nil-ductility transition temperature. The nil-ductility transition temperature increases as a function of the neutron exposure. The proposed amendment incorporates (1) the results of testing of irradiated NMP1 reactor vessel material, (2) calculation of stress intensity factors according to Appendix G of Section III of the ASME [American Society of Mechanical Engineers] Boiler and Pressure Code 1980 Edition with Winter 1982 Addenda, and (3) the Regulatory Guide 1.99, Revision 2 method for extrapolation of the ART_{NDT}.

Operation of NMP1 in accordance with the proposed pressure/temperature operating limits will preclude brittle failure of the reactor vessel material. Safety margins for brittle failure will be in accordance with those specified in 10 CFR [Part] 50 Appendix G and Appendix G of the ASME Code. The proposed changes to the withdrawal schedule for the reactor vessel material surveillance capsules are administrative changes. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment incorporates pressure/temperature operating limits based on analysis of irradiated samples. No modification to the plant is required in order to implement the proposed amendment. Therefore, the proposed limits will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes to the withdrawal schedule for the reactor vessel material surveillance capsules are administrative in nature and will not create

the possibility of a new or different type of accident.

The operation of Nine Mile Point Unit 1 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Implementation of the proposed pressure/temperature operating limits will ensure station operations are conducted with the reactor vessel materials above the nil-ductility transition temperature. Operation in accordance with the proposed pressure/temperature operating limits and proposed surveillance program will preclude brittle failure of the reactor vessel material, since safety margins specified in 10 CFR [Part] 50 Appendix G and the ASME Code Appendix G will be maintained. The proposed changes to the reactor vessel material surveillance capsule withdrawal schedule are administrative and will not affect any margin of safety

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Scriba, New York

Dates of amendment request: November 6, 1991, as supplemented December 5, 1991

Description of amendment request: The proposed amendment would revise Technical Specification 4.5.1.e.2(b) to increase the minimum reactor steam dome pressure for manual opening of the Automatic Depressurization System (ADS) valves during 18-month surveillance testing from 100 psig to 950 psig.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will not affect the operability or reliability of the ADS valves. In addition, the probability or consequences of a stuck open relief valve analyzed in USAR [Updated Safety Analysis Report] Section 15.1.4 or any other accident previously analyzed will not be increased. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possiblilty of a new or different kind of accident from any previously evaluated.

No new operational modes will result from the proposed change. The valves have been routinely tested at the proposed minimum pressure in the past with no adverse effects. The safety function of the ADS valves will be unaffected such that the proposed change will not create the possibility of a new or different accident from any previously analyzed.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety

Testing at 950 psig enhances safety by assuring that the ADS valves can operate under normal operating conditions and also by preventing damage to the ADS valve seats. Only three ADS valves are required to function for all analyzed events. In the extremely unlikely event that five ADS valves are inoperable before steam dome pressure reaches safe testing pressure (950 psig), redundant safety systems exist to prevent the reduction in safety for this brief period. Moreover, the suppression pool heatup and loading from the valve opening at this pressure has been previously shown to be acceptable in USAR Appendix 6A. Therefore, the proposed change will not involve a significant reduction in the margin of safety

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: October 9, 1991 as supplemented November 26, 1991.

Description of amendment request: The proposed amendment would revise the Index and the Technical Specifications Sections 3.1.3.6, 3.9.18, 3.9.20, and the Bases Sections 3/4.9.17, 3/4.9.18, 3/4.9.19 and 3/4.9.20 to correct various editorial and typographical errors. Also the bases for the Thermal Margin/Low Pressure trip limiting safety system setting (Basis page B 2-7) is proposed to be revised to account for reevaluation of the pressurizer pressure instrument uncertainty.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed technical specification change has been reviewed against the criteria of 10CFR50.92 and it has been determined not to involve a significant hazards consideration. Specifically, the proposed changes do not:

1. Involve a significant increase in the probability or consequences of any accident previously analyzed. These changes are proposed to only correct typographical errors and are not intended to change the intent of the subject matter. This does not affect or have any potential impact upon any of the design basis types of accidents previously analyzed. There are no failure modes affected by the changes. As such, there are no design basis accidents affected by the changes.

2. Create the possibility of a new or different kind of accident from any previously analyzed. There are no failure modes associated with this proposed Technical Specification change. Therefore, there are no failure modes which can represent a new unanalyzed accident.

3. Involve a reduction in the margin of safety There is no impact on the performance of any safety system. There is no increase in the consequences of any accident and, as such, there is no reduction in the margin of safety

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: December 11, 1991

Description of amendment request: The licensee has proposed to revise the Technical Specifications to make certain

administrative changes. These changes are: (1) a revision of the curve for shutdown margin with three loop operation to correct a drafting inaccuracy, (2) correction to be consistent with an earlier change, (3) deletion of an obsolete reference, (4) a wording clarification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes to Figure 3.1-2, Table 3.3-4, and Section 3/4.6.3 are intended to clarify the Technical Specifications and ensure consistency The changes do not increase ... the probability or consequences of an accident previously analyzed.

The proposed changes to Section 3/4.7.7 simply provide clarification and increased understanding of the existing Technical Specifications, and therefore do not increase the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes to Figure 3.1-2, Table 3.3-4, and Section 3/4.6.3 are to parameters included in existing design basis accidents. All affected systems will continue to function as designed.

The proposed changes do not affect any plant operations, and the potential for an unanalyzed accident is not created, and no new failure modes are introduced.

The proposed changes to Section 3/4.7.7 provide clarification and ensure understanding of existing Technical Specification requirements. No physical modifications to equipment or equipment operation have been made. All other surveillance requirements and bases remain unchanged.

3. Involve a significant reduction in the margin of safety

Since all design basis accidents are unaffected by these changes, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 27, 1991.

Description of amendment request: The proposed amendment to the Technical Specification would remove the cycle-specific operating limits and institute the Core Operating Limits Report, in accordance with Generic Letter 88-16.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes to the Technical Specifications for the removal of cycle-specific operating limits does not involve a significant hazards considerations because the operation of the Fort Calhoun Station in accordance with this change would not:

1. Involve a significant increase in the probability or the consequences of an accident previously evaluated.

The institution of a cycle-specific operating limits report, consistent with the NRC recommendations of Generic Letter 88-16, will not modify the methodology used in generating the limits nor the manner in which they are implemented. These limits will continue to be determined by analyzing the same postulated events as previously analyzed. The plant will continue to operate within the limits specified in the Core Operating Limits Report and will take the same corrective actions when or if these limits are exceeded as required by current Technical Specifications. Therefore, this amendment incorporating the Core Operating Limits Report is administrative in nature and has been concluded not to increase the probability or consequences of an accident previously evaluated.

2. Create the possibility for an accident or malfunction of a different type than any previously evaluated.

There are no physical alterations to the plant configuration, changes to setpoint values, or changes to the implementation of setpoints and limits associated with this proposed amendment. No new or different kind of accident is created by this administrative change because the actual operation of the plant remains unchanged. Therefore, the possibility of an accident or malfunction of a different type than any previously evaluated in the safety analysis report would not be created.

3. Involve a significant reduction in the margin of Safety

As indicated above the implementation of the proposed Core Operating Limits Report, consistent with the guidance of Generic Letter 88-16, makes use of the existing safety analysis methodologies and the resulting limits and setpoints for plant operation. Additionally, the safety analysis acceptance criteria for operations with this proposed change has not changed from that used in the current reload analysis. Therefore, the margin of safety as defined in the basis for any Technical Specification is not reduced due to the implementation of the Core Operating Limits Report.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036

NRC Project Director: John T. Larkins

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 27, 1991.

Description of amendment request: The proposed amendment to the Technical Specifications would revise the negative limit for the Moderator Temperature Coefficient (MTC) of reactivity for the Cycle 14 Reload.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed amendment does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The safety analysis most impacted by a change to the negative MTC Technical Specification limit is the main steam line break event. The steam line break cooldown curves (for hot zero power and hot full power) for an MTC of -3.0×10^{-4} p/° F were calculated and found to be bounded by the USAR [Updated Safety Analysis Report] (Cycle 8) cooldown curves. Other transient analyses were reanalyzed and/or reevaluated with the more negative MTC and found to yield acceptable results in accordance with the acceptance criteria contained in OPPD's [Omaha Public Power Districts'] reload analysis methodology topical reports. Thus, this change does not increase the probability or consequences of a previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident

previously evaluated. It has been determined that a new or different type of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety The revised negative MTC limit results in a steam line break cooldown curve which remains bounded by the USAR steam line break cooldown curve (Cycle 8). Therefore, this change does not reduce or alter the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036

NRC Project Director: John T. Larkins

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 19, 1991

Description of amendment request: The amendment proposes changes to the Technical Specifications (TS) Section 1.0, Definition of Surveillance Frequency. Specifically, the changes provide specific definition of each of the periodic surveillance intervals used in the TS. In addition, the changes revise the reference date from which subsequent surveillance tests are scheduled. Finally, the changes delete redundant and potentially confusing words concerning the definition of an "operating cycle".

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

i) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

One of the purposes of the proposed changes is to allow implementation of a new surveillance testing software system. Implementation of this software will be an overall enhancement to the surveillance testing program. One benefit is the ability to schedule surveillance tests on a daily basis and to better control STs performed on an event basis. Another purpose of the proposed changes is to provide surveillance interval definitions which are more conservative that those currently used. Attaining these two purposes could result in increased assurance of plant equipment reliability. This will not increase the probability of accidents previously evaluated. The proposed changes do not affect the consequences of accidents previously evaluated because they do not affect the initial conditions or precursors assumed in any Updated Final Safety Analysis Report Section 14 accident analyses. Further, these proposed changes to not decrease the effectiveness of equipment relied upon to mitigate the previously evaluated accidents.

ii) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not alter the design or function of any equipment or introduce any new failure modes. Implementation of proposed changes does not involve any new plant configurations, testing methods or operating scenarios. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

iii) The proposed changes do not involve a significant reduction in a margin of safety

One of the proposed changes involves surveillance interval definitions which are more conservative than those currently in place. Another proposed change deletes a requirement to schedule subsequent surveillance tests based on the originally scheduled date. This requirement is similar to a requirement which the NRC, in Generic Letter 89-14, recommended that licensees remove from Technical Specifications because of a greater benefit to plant safety The remaining two changes are proposed for clarity and consistency, and do not adversely affect the surveillance testing program. Consequently, the proposed changes do not reduce any margin of safety

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: December 12, 1991

Description of amendment request: The licensees propose to revise the Trojan Techincal Specification 6.0, "Administrative Controls." This change would incorporate planned organizational changes, modify the Plant Review Board composition, and correct several editorial errors within this section of the Trojan Technical Specifications. This amendment application was designated by the licensee as LCA 218.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

a. Organization Changes

The changes related to the reorganization are administrative in nature. The titles of the Shift Supervisor, Assistant Shift Supervisor, Radiation Protection Branch Manager, and Operations Branch Manager are being changed while the qualifications, responsibilities, and authorities of the positions remain the same as presently described in the Final Safety Analysis Report (FSAR).

These changes have no effect on accident probability or consequences as they are a change in nomenclature. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. PRB Composition

The change to PRB Composition is an administrative change to allow greater flexibility in establishing PRB membership while maintaining the necessary qualifications of the board to adequately advise the Plant General Manager on matters related to nuclear safety The composition requirements for the PRB will now be similar to those for the TNOB.

Since the qualification requirements will ensure the board has the necessary expertise to consider matters pertaining to nuclear safety and an appropriate spectrum of functional areas will be represented, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

c. Editorial Changes

The editorial changes are administrative in nature as they correct editorial errors or achieve consistency throughout the Technical Specifications. These changes do not affect how the Plant is operated or any accident analysis. Therefore, the proposed changes do not involve a significant increase in the

probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

a. Organization Changes

The changes related to the reorganization are administrative in nature. The titles of the Shift Supervisor, Assistant Shift Supervisor, Radiation Protection Branch Manager, and Operations Branch Manager are being changed while the qualifications, responsibilities, and authorities of the positions remain the same as presently described in the FSAR.

These changes do not affect Plant equipment or operations as they are a change in nomenclature. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

b. PRB Composition

The change to PRB Composition is an administrative change to allow greater flexibility in establishing PRB membership while maintaining the necessary qualifications of the board to adequately advise the Plant General Manager on matters related to nuclear safety The composition requirements for the PRB will now be similar to those for the TNOB.

Since the qualification requirements will ensure the board has the necessary expertise to consider matters pertaining to nuclear safety and an appropriate spectrum of functional areas will be represented, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Editorial Changes

The editorial changes are administrative in nature as they correct editorial errors or achieve consistency throughout the Technical Specifications. The changes do not affect how the Plant is operated or any Plant equipment. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

a. Organization Changes

The changes related to the reorganization are administrative in nature. The titles of the Shift Supervisor, Assistant Shift Supervisor, Radiation Protection Branch Manager, and Operations Branch Manager are being changed while the qualifications responsibilities, and authorities of the positions remain the same as presently described in the FSAR.

These changes do not affect Plant equipment or operations as they are a change in nomenclature. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

b. PRB Composition

The change to PRB Composition is an administrative change to allow greater flexibility in establishing PRB membership while maintaining the necessary qualifications of the board to adequately advise the Plant General Manager on matters related to nuclear safety. The composition requirements for the PRB will now be similar to those for the TNOB.

Since the qualification requirements will ensure the board has the necessary expertise to consider matters pertaining to nuclear safety and an appropriate spectrum of functional areas will be represented, this change does not involve a significant reduction in a margin of safety.

c. Editorial Changes

The editorial changes are administrative in nature as they correct editorial errors or achieve consistency throughout the Technical Specifications. The changes do not [not] affect how the Plant is operated or any Plant equipment. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: Theodore R. Quay

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: December 19, 1991

Description of amendment request: This proposed amendment to the James A. FitzPatrick Technical Specifications (TS) requests a one-time extension to the fire barrier penetration surveillance interval. Technical Specification 4.12.F.1.a requires that fire barrier penetration seals be visually inspected once every 18 months. The licensee has requested a one-time extension of 3 months until May 15, 1992, to complete these fire barrier inspections.

On August 2, 1991, during a meeting with the NRC's staff, the licensee committed to complete a full baseline barrier seal inspection not later than 30 days after startup from the 1993 refuel outage. The licensee accelerated its baseline inspection schedule to run concurrently with the fire barrier penetration seal inspections required by TS 4.12.F.1.a. Each of these inspections takes longer because the baseline inspection requirements are more detailed than those previously employed at FitzPatrick. Because these inspections are more detailed and take longer to perform, the licensee has determined that a one-time extension is necessary to complete the surveillance requirements of TS 4.12.F.1.a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed one time extension of the fire barrier penetration seal inspection interval involves no hardware modifications, changes to system operating procedures or affects the ability of any system to perform its intended function. The probability of a fire is not increased and the ability of plant personnel and fire protection equipment to detect and extinguish a fire is not affected. The proposed one time extension of the fire barrier penetration seal inspection interval will not introduce any additional combustible materials or ignition sources into the plant.

2. create the possibility of a new or different kind of accident from those previously evaluated.

The proposed one time extension of the fire barrier penetration seal inspection interval does not create the possibility of a new or different kind of accident or fire. Analyses have been performed based on the presence of a fire in each area or zone regardless of the actual fire hazard and combustible loading present. Fire protection features (including fire barriers and fire barrier penetration seals) have been installed throughout the plant to limit the spread of fires between zones and areas. Analyses have demonstrated that the plant can be safely shutdown and maintained in a shutdown condition assuming the loss of all equipment in [in] any single fire area or zone.

3. involve a significant reduction in the margin of safety.

The proposed one time extension of the fire barrier penetration seal inspection interval does not reduce the ability of the barriers to perform their intended function. The small amount of degradation the seals may undergo during this period is insignificant and will not significantly reduce their fire rating or their ability to prevent the spread of fire from one side of the barrier to the other. In addition, other fire protection features remain available to detect and suppress a fire. Fire watches will be posted for non-functional seals in accordance with Technical Specification requirements.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request

involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: November 19, 1991, as supplemented December 16, 1991.

Description of amendment request: The licensee requests an amendment to the Technical Specifications to revise Section 3.3.G (Hydrogen Recombiner and Containment Hydrogen Monitoring Systems), Section 4.5.A.3 (Hydrogen Recombiner and Containment Hydrogen Monitoring Systems), and Table 4.4-1 (Containment Isolation Valves). These sections would be revised to reflect a scheduled plant modification which will replace the existing containment hydrogen recombiners with new equipment. Specifically, the modification will replace the existing mechanical recombiners with electrical recombiners.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the requirements of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

No. The replacement of the flame-type recombiner with an electric hydrogen recombiner system does not result in a functional change (i.e., both the flame-type recombiner and the electric hydrogen recombiner system limit and reduce containment building post LOCA [loss of coolant accident] hydrogen concentration to safe levels). The EHRS [Electric Hydrogen Recombiner System] will satisfy the design criteria by maintaining the hydrogen concentration following a design basis accident to [less than or equal to] 3.0% by volume maximum hydrogen concentration within the containment precluding potential containment failure caused by an uncontrolled hydrogen burn. WCAP-7709-L Supplement 4 documents that the EHRS meets the requirements of Regulatory Guide 1.7 for the control of combustible gas concentrations in containment following a loss of coolant accident.

The EHRS modification will not introduce any new mechanisms which can result in radiological releases. Therefore, there is no mechanism involved with this modification which will result in an increase in the radiological releases currently presented in the (UFSAR) [Updated Final Safety Analysis Report].

This amendment simply specifies the operability and surveillance requirements of the EHRS and operation of IP3 in accordance with this proposed license amendment does not significantly increase the probability or consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

No. The function provided by the EHRS is the same as the existing flame-type recombiner. Both systems limit and reduce containment building post LOCA hydrogen concentration to safe levels. The EHRS satisfies the design criterion by maintaining this concentration to [less than or equal to] 3.0% by volume maximum hydrogen within the containment, thereby precluding containment failure due to an uncontrolled hydrogen burn. The cable routing for the EHRS and the installation location of the recombiners, power supplies, and control panels will not adversely impact the safety related function provided by the EHRS or other systems. Operation of Indian Point 3 in accordance with the proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

No. The replacement of the flame-type hydrogen recombiner with the electric recombiner does require a change to the Technical Specifications. However, the use of the EHRS will not affect the margin of safety as defined in the bases of the Technical Specifications. Both the flame-type recombiner and the electric hydrogen recombiner systems limit and reduce containment building post LOCA hydrogen concentration to safe levels. Specifically, each can prevent post LOCA hydrogen concentration in containment from reaching the lower flammable limit that Regulatory Guide 1.7 defines as acceptable and adequately conservative. Operation of Indian Point 3 in accordance with the proposed license amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: December 19, 1991

Description of amendment request: The proposed Technical Specification (TS) changes would eliminate the operability requirements for the station records vault Halon fire suppression system. In addition, the operability requirements for the Halon fire suppression systems for the emergency switchgear rooms (ESGR) would be included in the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[The proposed changes would not:]

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The station's record vault does not interface with [or] effect the operation of any plant system. The ESGR fire suppression system is required to be operable in accordance with the approved Appendix R Program. Elimination of the operability requirement for the station's record vault fire suppression system and establishing requirements for the existing ESGR fire suppression system does not change or effect the probability or consequences of any previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The station's record vault and its fire suppression system do not interface with or effect the operation of any plant system. Specifying requirements for the ESGR fire suppression system merely adds appropriate requirements to the Technical Specifications for an existing system. Therefore, a new or different accident from those previously evaluated has not been created.

3. Involve a significant reduction in a margin of safety. Removing the operability requirements for the station's records vault and including the operability [requirements] for the ESGR fire suppression system [do] not effect any accident analysis assumption. Therefore, the margin of safety is not significantly reduced by the proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Previously Published Notices Of Consideration Of Issuance Of Amendments To Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: December 16, 1991

Description of amendment request: The proposed amendment would modify Technical Specification 6.9.1.9, Technical Report Supporting Cycle Operation, to add a reference that includes the analytical methods used to determine the core operating limits relative to Zircaloy fuel.

Date of publication of individual notices in **Federal Register:** December 26, 1991 (56 FR 66937)

Expiration date of individual notice: January 27, 1992

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: November 14, 1990, as supplemented June 6, June 14, and September 18, 1991.

Description of amendment request: The proposed amendment would increase the number of spent fuel assemblies which may be stored in the spent fuel pool (SFP) from 749 assemblies to 1494 assemblies through use of high density spent fuel storage racks whose design incorporates Boral as a neutron absorber. The changes would affect Technical Specification Sections 5.4.1.a and 5.4.2. and adds a Figure 5-4.

Date of publication of individual notice in **Federal Register:** December 26, 1991 (56 FR 66939)

Expiration date of individual notice: January 27, 1992

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 12, 1991

Description of amendment request: The proposed amendments would change the Technical Specifications to revise the minimum required reactor coolant loop system thermal design flow (TDF).

Date of publication of individual notice in **Federal Register:** December 2, 1991 (56 FR 61263)

Expiration date of individual notice: January 2, 1992

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Tennessee Valley Authority Docket No. 50-260, Browns Ferry Nuclear Plant Unit 2, Limestone County, Alabama

Date of amendment request: December 6, 1991, (TS 305)

Brief description of amendment request: The proposed amendment would revise the Limiting Conditions for Operation (LCO) of the Technical Specifications (TS) for the Containment Atmosphere Dilution (CAD) System. More specifically, the LCO requirements of TS 3.7.G and Table 3.2.F would be temporarily changed (i.e., until the next refueling outage) to allow for extended plant operation with only one of two CAD systems operable.

Date of publication of individual notice in the **Federal Register:** December 17, 1991 (56 FR 65515).

Expiration date of individual notice: January 16, 1992

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Notice of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 GFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon

request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: January 15, 1991, as supplemented May 17, 1991, and revised November 14, 1991

Brief description of amendment: The amendment revises numerous Technical Specifications (TS) in support of the realignment of some of Carolina Power & Light Company's (CP&L's) organizational structure. CP&L has created a Nuclear Assessment Department to assume the functions and responsibilities for (1) administering CP&L's independent review program for nuclear facilities that was provided by the Corporate Nuclear Safety Section, and (2) auditing of the unit activity formerly provided by the Quality Assurance Department.

Date of issuance: December 20, 1991

Effective date: December 20, 1991

Amendment No. 138

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9376) The May 17, 1991, letter submitted updated TS pages, but did not change the initial proposed no significant hazards consideration determination. The November 14, 1991, submittal withdrew the request to change the title of the Robinson Project Department Head from "Vice President - Robinson Nuclear Project to "Department Head - Robinson Nuclear Project." The existing title is now correct because of a promotion, and the request for this portion of the amendment request has been withdrawn. NRC staff did not review the withdrawn portion of the amendment request. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: October 8, 1991

Brief description of amendment: The amendment would reword Technical Specification (TS) Surveillance Requirement 4.1.1.6(b), "Minimum Temperature for Criticality," reword a footnote in TS Section 3.4.1.1, "Reactor Coolant Loops and Coolant Circulation," and replace the word "intermediate" with "wide" in the Bases Section 2.2, "Reactor Trip System Interlocks."

Date of Issuance: December 17, 1991

Effective date: December 17, 1991

Amendment No.: 146

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 13, 1991 (56 FR 57694) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 17, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 20, 1991, as supplemented December 5, 1991

Brief description of amendments: The amendments revise Technical Specification Table 2.2-1 to compensate for potential nonconservitisms in the F-Delta I (axial flux differences) portion of the Overtemperature-Delta Temperature reactor trip function.

Date of issuance: December 17, 1991

Effective date: December 17, 1991

Amendment Nos.: 93, 87

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 29, 1991 (56 FR 61062) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duquesne Light Company, et. al., Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: April 12, 1991

Brief description of amendment: The amendment will modify Technical Specification 3.3.3.6 by deleting a nonapplicable (first fuel cycle only) Action statement and reannotating the last two Action statements. It will also modify Table 3.3-11 by deleting a nonapplicable (first fuel cycle only) note.

Date of issuance: December 13, 1991

Effective date: December 13, 1991

Amendment No. 41

Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 21, 1991 (56 FR 41580) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: June 18, 1991

Brief description of amendment: The amendment revised the Arkansas Nuclear One, Unit No. 2 Technical Specifications to provide for conserving starting air for emergency diesel generators in case an engine fails to start on a safety injection actuation signal.

Date of issuance: December 17, 1991.

Effective date: The next refueling outage, currently scheduled for August 1992, in which the applicable design change for this license amendment will be implemented.

Amendment No.: 127

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37581) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: May 22, 1990, as revised September 5, 1991.

Brief description of amendments: The amendment revised the Arkansas Nuclear One, Units 1 and 2 (ANO-1&2) Industrial Security Plan due to the security perimeter improvement project

at ANO. The amendment deletes a specific area from the current physical security plan.

Date of issuance: December 18, 1991
Effective date: December 18, 1991
Amendment Nos.: 155 and 128
Facility Operating License Nos. DPR-51 and NPF-6. Amendments revised the licenses.
Date of initial notice in **Federal Register:** October 16, 1991 (56 FR 51924) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 18, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 10, 1991
Brief description of amendment: The amendment changed the Technical Specifications (TS) and Bases for the containment purge system by replacing the cumulative time limitation on the system operation with safety-related criteria. Alternative means are allowed for isolating a penetration when isolation valves in the system are inoperable.
Date of issuance: December 17, 1991
Effective date: December 17, 1991
Amendment No: 84
Facility Operating License No. NPF-29. Amendment revises the Technical Specifications and license.
Date of initial notice in **Federal Register:** November 13, 1991 (56 FR 57695) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 15, 1991
Brief description of amendment: The amendment removed requirements for the Balance of Plant Load Shedding feature of the Load Shed and Sequencing System contained in Technical Specification Tables 3.3.3-1. 3.3.3-2, and 4.3.3-1.
Date of issuance: December 18, 1991
Effective date: December 18, 1991
Amendment No: 85
Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** September 18, 1991 (56 FR 47237) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: September 11, 1991
Brief description of amendment: The amendment changed the surveillance requirement for the CHANNEL FUNCTION TEST of the Reactor Protection System electrical assemblies to require performance of the test each time the plant is in COLD SHUTDOWN mode for more than 24 hours unless the test has been carried out within the previous 6 months.
Date of issuance: December 18, 1991
Effective date: December 18, 1991
Amendment No: 86
Facility Operating License No. NPF-29. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 16, 1991 (56 FR 51924) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 13, 1991
Brief description of amendment: The amendment 1) incorporated programmatic controls into the Administrative Controls section of the TS in accordance with the requirements of 10 CFR 20.106, 40 CFR Part 190, 10 CFR 50.36a, and Appendix I to 10 CFR Part 50; 2) relocated existing procedural details in the current TS for radioactive effluent monitoring instrumentation, the control of liquid and gaseous effluents, equipment requirements for liquid and gaseous effluents, radiological environmental monitoring, and radiological reporting details from the TS to the Offsite Dose Calculation Manual (ODCM); 3) relocated the definition of solidification and existing procedural details in the current TS on solid radioactive wastes to the Process Control Program (PCP); 4) simplified the administrative controls and added retention requirements for changes to the ODCM and the PCP; and 5) updated the definitions of the ODCM and the PCP consistent with these changes. This amendment implemented the guidance contained in NRC Generic Letter 89-01.
Date of issuance: December 18, 1991
Effective date: December 18, 1991
Amendment No: 87
Facility Operating License No. NPF-29. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 18, 1991 (56 FR 47237) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 18, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: October 7, 1991
Brief description of amendment: This amendment changes the surveillance frequency of ECCS pump-related instruments from monthly to quarterly.

Although a previous amendment (No. 121, issued May 9, 1991 at 56 FR 13664) revised the surveillance interval for ECCS pumps from monthly to quarterly, the corresponding instruments were inadvertently left as monthly. The administrative change to Technical Specifications Table 4.1-2, items 13 through 18, will correct this oversight and provide consistency between ECCS pump and ECCS pump-related instrument surveillance testing. The change replaces the "M" (monthly) notation with a "Q" (quarterly) notation for Table 4.1-2 items 13 through 18.

Date of issuance: December 19, 1991

Effective date: December 19, 1991

Amendment No.: 126

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 13, 1991 (56 FR 57698) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 29, 1991, as supplemented October 3, 1991

Brief description of amendment: The amendment changed the Technical Specifications to allow plant operation in the plant domain on the power/flow map above the rated rod line and to incorporate improvements in the average power range monitor and rod block monitor systems.

Date of issuance: November 29, 1991

Effective date: November 29, 1991

Amendment No.: 151

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43810) The additional information contained in the supplemental letter dated October 3, 1991, was clarifying in nature and thus within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1991.

No significant hazards consideration comments received: None.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Scriba, New York

Date of application for amendment: August 21, 1991

Brief description of amendment: The amendment revises Technical Specification 4.9.6c. to allow raising the fuel assemblies up to 6 inches higher than currently allowed during refueling operations.

Date of issuance: December 17, 1991

Effective date: December 17, 1991

Amendment No.: 35

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 2, 1991 (56 FR 49924) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: July 2, 1991

Brief description of amendments: These amendments revised the testing requirements for the Emergency Service Water Pumps.

Date of issuance: December 19, 1991

Effective date: December 19, 1991

Amendments Nos.: 165 and 169

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 21, 1991 (56 FR 41585) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 19, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: October 11, 1991.

Brief description of amendment: The amendment reduces the Residual Heat Removal pump flow rate surveillance acceptance criteria from 9800 gpm to 8910 gpm in TS 4.5.F.1. This change allows more accurate and repeatable inservice testing by eliminating problems inherent in testing the pumps near runout flow conditions.

Date of issuance: December 17, 1991

Effective date: December 17, 1991

Amendment No.: 174

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** November 13, 1991 (56 FR 57700) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of Oswego, Oswego, New York 13126.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: October 11, 1991 as supplemented November 15, 1991.

Brief description of amendment: This amendment allows a reduction of the maximum outlet and minimum average temperatures of the liner cooling water for the Prestressed Concrete Reactor Vessel.

Date of issuance: December 19, 1991

Effective date: December 19, 1991

Amendment No.: 83

Facility License No. DPR-34: Amendment revised the license.

Date of initial notice in **Federal Register:** November 13, 1991 (56 FR 57701) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 19, 1991.

No significant hazards consideration comments received: None

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado 80631

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 10, 1991

Brief description of amendment: This amendment revised Technical Specification (TS) 3/4.4.6, "Pressure/ Temperature Limits", and its associated Bases in accordance with the guidance contained in Generic Letter 91-01, "Removal of the Schedule for Withdrawal of Reactor Vessel Material Specimens from Technical Specifications." Specifically, Table 4.4.6.1.3-1, "Reactor Vessel Material Surveillance Program - Withdrawal Schedule", was removed, and references to the table in TS 3/4.4.6 and the associated Bases were deleted. In addition to the Generic Letter 91-01 endorsed changes, an additional change to the Bases for TS 3/4.4.6 was made to correct an editorial error.

Date of issuance: December 16, 1991

Effective date: As of the date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment No. 46

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 13, 1991 (56 FR 57702) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 17, 1991

Brief description of amendment: This amendment revised TS Section 3/4.2.3, MINIMUM CRITICAL POWER RATIO. Specifically, the constants in the equation for tau_b have been changed.

Date of issuance: As of the date of issuance and shall be implemented within 60 days of the date of issuance.

Effective date: December 17, 1991

Amendment No. 47

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 13, 1991 (56 FR 57703) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: December 14, 1990; supplemented October 15, 1991 (TS 90-22)

Brief description of amendment: This amendment changes the title of the person on the Operations Department staff holding a Senior Operator License from the Operations Manager to the Operations Superintendent.

Date of issuance: December 16, 1991

Effective date: December 16, 1991

Amendment No.: 156 for Unit 1; 145 for Unit 2

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in Federal Register: November 13, 1991 (56 FR 57704) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: October 26, 1989

Brief description of amendments: These amendments add a license condition stating that the current assessment of the control room dose calculations/ habitability is documented in letter Serial No. 89-381 and that the limiting predicted control room doses are revised in accordance with that submittal.

Date of issuance: December 26, 1991

Effective date: December 26, 1991

Amendment Nos. 184 and 183

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Licenses.

Date of initial notice in Federal Register: February 7, 1990 (55 FR 4287) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 26, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Notice of Issuance Of Amendment To Facility Operating License and Final Determination Of No Significant Hazards Consideration and Opportunity For Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without

opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By February 7, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions,

supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: December 5, 1991

Brief description of amendment: This amendment adds a statement in TS 3.2.4 that the provisions of TS 3.0.4 are not applicable. A Temporary Waiver of Compliance was verbally granted on December 4, 1991, followed by a letter dated December 6, 1991.

Date of issuance: December 16, 1991

Effective date: December 16, 1991

Amendment No.: 138

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Public comments requested regarding proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances and final determination of no significant hazards consideration is contained in a Safety Evaluation dated December 16, 1991.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

NRC Project Director: Herbert N. Berkow

Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: December 16, 1991

Brief description of amendment: This amendment modifies TS 3.3.3.6. to allow the pressurizer safety valve position indicator acoustic monitor QR-107C (instrument 14 in Table 3.3-10) to be exempt from the Table 3.3-10 requirements until the end of the current operating cycle expected to end in February 1992.

Date of Issuance: December 23, 1991

Effective date: December 23, 1991

Amendment No.: 145

Facility Operating License No. DPR-58. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated December 23, 1991.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

NRC Project Director: L. B. Marsh.

Dated at Rockville, Maryland, this 27th day of December 1991.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 92-248 Filed 1-7-92; 8:45 am]

BILLING CODE 7590-01-D

All Nuclear Power Reactors; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action regarding a Petition for action under 10 CFR 2.206 received from Mr. Eldon V.C. Greenberg, filed on behalf of the Nuclear Control Institute and the Committee to Bridge the Gap. The Petition requested the U.S. Nuclear Regulatory Commission (NRC) to institute an individual plant examination program requesting licensees to evaluate the margin of nuclear power plants to withstand safeguards events beyond the current design basis. The Notice of Receipt of Petition for Director's Decision under 10 CFR 2.206 was published in the **Federal Register** on October 16, 1991 (56 FR 51937).

The Director of the Office of Nuclear Reactor Regulation has determined that the Petition should be denied for the reasons explained in the "Director's Decision under 10 CFR 2.206" (DD-91-08), which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the issuance of the decision, unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 31st day of December, 1991.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-359 Filed 1-7-92; 8:45 am]

BILLING CODE 7590-01-M

Yankee Atomic Electric Co.; Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Yankee Atomic Electric Company (licensee) to withdraw its March 14, 1991, application for an amendment to Facility Operating License DPR-3, issued to the licensee for operation of the Yankee Nuclear Power Station, located in Franklin County, Massachusetts. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on April 17, 1991 (56 FR 15647).

The purpose of the licensee's amendment request was to change certain staffing titles, make staff additions, and personnel realignments, and provide for a review by the Plant Operations Review Committee of changes made to the Security Plan, Emergency Plan and their associated implementing procedures.

Subsequently, the licensee informed the staff that the amendment is no longer required. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment, dated March 14, 1991, and (2) the staff's letter, dated December 17, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555 and at the local public document room, located at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 31st day of December, 1991.

For the Nuclear Regulatory Commission.

Morton B. Fairtile,

Senior Project Manager, Project Directorate I-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-358 Filed 1-7-92; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meetings

ACTION: Notice of panel meeting.

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the Nuclear Waste Technical Review Board's Panel on the Engineered Barrier System will hold a meeting on February 10, 1992, in Augusta, Georgia, at the Sheraton Augusta Hotel, 2651 Perimeter Parkway, Augusta, Georgia 30909; (404) 855–8100.

The purpose of the meeting is twofold. The Office of Civilian Radioactive Waste Management (OCRWM) has been asked to make a presentation on the effects of thermal loading on the performance of the engineered barrier system (EBS). (The EBS comprises all the engineered components of a high-level waste disposal system including the repository design, waste form, waste containers and surrounding material, and backfill material. The EBS is an important part of the repository that is being designed for the proposed site at Yucca Mountain, Nevada.) Subsequent to this presentation on the EBS, the Department of Energy (DOE) and its contractors will brief the panel on the high-level waste management activities at the Savannah River Plant. The one-day meeting is tentatively scheduled to begin at 8:30 a.m. The public is welcome to attend this meeting.

On February 11 panel members have been invited to tour the waste handling operations at the Savannah River Plant, including the Defense Waste Processing Facility (DWPF). On February 12 panel members will tour the commercial low-level waste disposal site operated by Chem-Nuclear Systems, Inc., at Barnwell, South Carolina. Both tours are closed to the public.

Transcripts of the February 10 meeting will be available on a library-loan basis from Victoria Reich, Board librarian, beginning April 15, 1992. For further information, contact Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: January 3, 1992.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 92–380 Filed 1–7–92; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Administrative Careers With America

AGENCY: Office of Personnel Management.

ACTION: Final notice of implementation of ACWA.

SUMMARY: In accordance with a court order in *National Treasury Employees Union* v. *Newman*, No. 90–1165 (D.D.C., July 22, 1991), the Office of Personnel Management (OPM) is publishing a final notice of the implementation of the Administrative Careers With America (ACWA) examinations covering various entry-level positions at the GS–5/7 levels.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 606–0960.

EFFECTIVE DATE: January 8, 1992.

SUPPLEMENTARY INFORMATION: OPM announced the ACWA examinations on April 19, 1990, covering positions that were formerly filled under the Professional and Administrative Career Examination (PACE). Use of the PACE was terminated in 1982 under the terms of a consent decree in *Luevano* v. *Devine* (Civil Action No. 79–271). In *NTEU* v. *Newman*, the court held that OPM must engage in notice and comment rulemaking on ACWA on a specified schedule. Pursuant to that schedule, a notice of proposed rulemaking was published on September 5, 1991 (56 FR 43394). OPM received comments from the National Treasury Employees Union (NTEU), eight agencies, and one individual.

Those comments are discussed below. In making final decisions on the content of the program, OPM considered those comments in light of basic goals for ACWA—i.e., to expedite the examining process, to provide prompt service and high-quality candidates to agencies, and to create a system that would be easy for applicants to use.

Validity of the Written Tests

The ACWA examinations employ separate written tests for each of six occupational groups: (1) Health, safety and environmental occupations; (2) writing and public information occupations; (3) business, finance, and management occupations; (4) personnel, administration, and computer occupations; (5) benefits review, tax, and legal occupations; and (6) law enforcement and investigations occupations. The written test accounts for one-half of an applicant's score, with the other half based on an Individual Achievement Record (IAR), a biodata instrument that evaluates how well applicants have used the opportunities they have had in school, work, and outside activities.

Three commenters questioned the validity of the written tests. They commented that the questions did not appear sufficiently job-related for all the occupations covered by a single test. One of these commenters also asked why OPM discontinued use of 16 occupation-specific examinations developed between the elimination of PACE and implementation of ACWA and suggested that OPM continue use of those 16 examinations in the occupations they covered and use ACWA only for the remaining occupations. That commenter also suggested that occupation-specific examinations be developed for additional occupations, stating that the large number of potential hires would justify the costs of developing and validating the examinations.

The ACWA tests measure reasoning abilities common to all jobs in a group. The difference among jobs is in the subject matter in which the reasoning abilities are applied. The subject matter in which ACWA tests is tailored to the duties of jobs in the group or to Government employment in general.

Continuation of the 16 previous alternative examinations along with ACWA would make the examining system more confusing for applicants, since there would be 22 examinations instead of 6, without increasing validity or fairness. Evidence available so far supports the validity of the new tests as comparing favorably with that of the 16 earlier occupation-specific examinations. Also, applicants obtaining a passing score under ACWA include a greater representation of minorities than was the case for the occupation-specific examinations.

With regard to development of occupation-specific examinations, hiring activity to date does not support the conclusion that additional examinations would have substantial use. Since implementation of ACWA, 2,528 appointments have been made from ACWA registers. Seven occupations—Social Insurance Representative and Claims Examiner, GS–101 and 993, Tax Technician, GS–526, Internal Revenue Officer, GS–1169, Immigration Inspector, GS–1816, Import Specialist, GS–1889, and Customs Inspector, GS–1890—account for 85 percent of that total. The remaining 15 percent of appointments are distributed among over 90 occupations. OPM plans to develop more occupation-specific examinations to the extent possible, but it is unlikely that hiring activity will support

development of separate examinations in some ACWA occupations. OPM plans to conduct pilot studies to explore the feasibility of alternative selection procedures and to determine how best to examine in the small-fill occupations. OPM will also conduct a pilot study of shared examining responsibility involving major occupations. Shared examining may benefit both OPM, by reducing costs, and the agency, by making the examination more responsive to actual hiring needs.

Validity of the IAR

Four commenters also questioned the validity of the IAR, citing concerns about job-relatedness, subjectivity, bias, and privacy.

For 5 years, a major portion of OPM's personnel research resources was devoted to research and development of alternative tests that would permit measurement of work-related noncognitive attributes such as achievement motivation and that would reduce the impact that purely cognitive tests have on some applicants. OPM has concluded that the procedure which best meets these goals is the empirically scored achievement and experience (biodata) form. We know of no reasonably valid selection procedure that has no impact against one or more groups, but the IAR is among the lowest that OPM has observed. In developing the IAR, OPM took great care to include only items that were under the applicant's control and to include questions on a broad range of experiences. Therefore, no particular group of questions, such as those about early experiences, will carry undue weight. OPM has recently reviewed the questions in the IAR and has removed some that did not meet the objectives stated above.

The IAR has been validated using a concurrent validation study that meets the highest professional standards and is in accord with the Uniform Guidelines on Employee Selection Procedures. Applicant scores to date have followed the distribution obtained from the employee sample used in the validation study. OPM will continue to monitor IAR scores and has embedded special items within the IAR that will permit us to develop indices of possible inflation of experiences by applicants. OPM also plans to conduct a criterion-related validity study on applicants as soon as there are enough appointments in various occupations to provide a representative sample. That study has been delayed because of the low level of hiring activity since ACWA was implemented.

Shortening the Written Test

Four commenters approved use of a shorter test, but three commenters expressed concern that reducing the length of the test might reduce its validity. OPM has determined that the reduction of validity due to the shortening of the test battery is approximately 2 percent, which would reduce the validity coefficient from .91 to .89. OPM regards the level of retained validity as excellent. It should be noted that much of the shortening of the test was accomplished by eliminating experimental questions. The operational test (i.e., questions calculated in an applicant's score) was reduced by 30 percent, but the number of experimental questions was reduced by 85 percent.

Use of a Warm-Up Test

Four commenters also approved use of a 10-minute warm-up test, but one commenter suggested that the warm-up test might distract applicants, particularly recent college graduates, who are accustomed to taking tests. That commenter suggested that providing a study guide might be more appropriate. The warm-up test serves a dual purpose: It allows the applicants to practice with the test questions, and it allows OPM to pre-test items that may someday be used in the operational test. The possibility that the warm-up test may prove a distraction causes OPM some concern. OPM will monitor applicants' reactions to the warm-up test to determine whether it serves a beneficial purpose. OPM also agrees that a study guide is helpful to applicants. At present, OPM provides a sample question booklet containing two questions of each type. Thorough explanations are given for each question, including an explanation of why the incorrect response choices are inferentially incorrect. In the future, OPM would like to expand the booklet and perhaps include a sample test. However, some applicants may not read the booklet before the test. Those applicants should benefit from the warm-up test.

Scheduling of Examinations

Three commenters supported use of open-continuous examinations. Their comments expressed concern about "stagnant" registers (i.e., registers with limited hiring activity on which eligible applicants are likely to be unavailable by the time they are referred) and about high declination rates. In response to these concerns, OPM will be changing the period of eligibility from 1 year to 6 months. OPM expects to implement this change by April 1992 and will notify applicants of the need to renew their eligibility after 6 months.

Other Operational Issues

Several commenters made suggestions for streamlining operation of the ACWA examinations. Greatest interest was expressed in obtaining more specific information about applicants' geographic availability and in providing applicants with more information about the qualifications required for eligibility at each grade and the documentation they will need to demonstrate eligibility. OPM plans to restructure the geographic availability codes and is now testing revised codes for some geographic areas. OPM is also advising applicants in the Qualifications Information Statement about the forms they will need and the importance of obtaining these forms promptly. OPM may include instructions for examiners to provide an additional reminder during the test session when the directions for conducting the OPM examinations are revised.

To give prompt effect to the court's ruling in *NTEU* v. *Newman*, which called for OPM to engage in notice and comment rulemaking and to continue use of ACWA, OPM is making this notice of implementation effective immediately.

Legal Authority: 5 U.S.C. 3301(2)).

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 92-278 Filed 1-7-92; 8:45 am]

BILLING CODE 6325-01-M

Director's Advisory Committee on Law Enforcement and Protective Occupations; Open Meeting

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of open meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that the third meeting of the Director's Advisory Committee on Law Enforcement and Protective Occupations will be held at the time and place shown below.

DATES: January 23, 1992, 2:30 p.m.

PLACE: Stouffer Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC.

AGENDA: The focus of the January 23rd meeting will be to discuss issues related to the pay and classification of Federal firefighters.

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FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley, Director, Law Enforcement and Protective Occupations Task Force, Office of Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, room 7H30, 1900 E Street, NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. If time permits, an opportunity will be provided for members of the public in attendance at the meeting to provide their views. Persons wishing to address the Advisory Committee orally at the meeting should submit a written request no later than the close of business on January 16, 1992. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and the amount of time desired.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 92-374 Filed 1-7-92; 8:45 am]

BILLING CODE 6325-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, January 21-22, 1992, at The Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Full Commission will meet each day in Executive Rooms 1, 2, and 3 and will convene on both days at 9 a.m.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 92-353 Filed 1-7-92; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30132; File No. SR-NASD-91-57]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Improvements in the NASD Code of Arbitration Procedure

December 30, 1991.

Introduction

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted on November 4, 1991, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder.[2] The proposal, in general, amends the NASD Code of Arbitration Procedure [3] (the "Code") to allow for a single arbitrator in simplified cases where a counterclaim exceeds $10,000.

Notice of the proposed rule change together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 29974, November 20, 1991 (and by publication in the **Federal Register** (56 FR 60139, November 27, 1991). No comments were received with respect to the proposed rule change.

Description

The proposed rule change to Section 13(d) would permit the appointment of a single arbitrator in simplified cases [4] where a counterclaim or third-party claim exceeds $10,000, unless the parties demand a panel of three arbitrators. This conforms to the provisions of section 19(a) of the Code, which provides that a single arbitrator may be appointed where the amount in controversy does not exceed $30,000. In the event that the amount in controversy exceeds $30,000, section 19(b) of the Code would require the appointment of a panel of three arbitrators. Additionally, minor grammatical changes have been made to conform section 13 to other sections of the Code.

Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A [5] and the rules and regulations thereunder. Section 15A(b)(6) of the Act requires, in part, that the rules of the Association are designed to promote just and equitable principles of trade, and to protect investors and the public interest. The Commission believes that these goals are furthered by the instant proposal in that the efficiency of the arbitration process will be improved, which will benefit investors who have occasion to use the arbitration process.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change, SR-NASD-91-57, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 92-313 Filed 1-7-92; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] NASD *Securities Dealers Manual,* Code of Arbitration Procedure, Part III, section 13(d), CCH ¶ 3713.

[4] Section 13 provides an arbitration procedure, characterized as Simplified Arbitration, for any dispute, claim or controversy which is subject to arbitration, arising between a public customer and an associated person or a member, involving a dollar amount not exceeding $10,000. Section 13(f) allows for a single arbitrator in Simplified cases, and upon request, Section 13(i) allows for the appointment of two additional arbitrators to decide the matter in controversy.

[5] 15 U.S.C. 78o-3 (1982).

[6] 17 CFR 200.30-3(a)(12).

[Release No. 34-30143; File No. SR-NASD-91-64]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Fees for Nasdaq Issuers

January 2, 1992.

Introduction

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted on November 26, 1991, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder.[2] The proposal amends Part IV of Schedule D to the NASD By-Laws [3] to adopt a new annual fee for Nasdaq National Market System ("Nasdaq/NMS") and Regular Nasdaq issuers.

Notice of the proposed rule change together with the terms and language of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 30003, November 27, 1991) and by publication in the **Federal Register** (56 FR 61452, December 3, 1991). No comments were received with respect to the proposed rule change.

Description

The NASD is proposing a new annual fee increase for domestic and foreign issuers in Nasdaq and Nasdaq/NMS for the 1993 calendar year, with a partial implementation of the new annual fee in

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] NASD *Securities Dealers Manual,* Schedule D to the By-Laws, Part IV, CCH ¶ 1814.

the 1992 calendar year.[4] The new annual fee will apply to both foreign and domestic issuers on Nasdaq or Nasdaq/NMS, with the annual fee calculation for American Depositary Receipts ("ADRs") remaining unchanged. The NASD has determined that an increase in the annual fee is necessary to fund among other things, increased market surveillance costs, significant enhancements to Nasdaq technology, enhanced product/service programs, and advertising programs for such issuers and markets.

The new annual fee for the Nasdaq/NMS issuers will be calculated on total issuer shares outstanding, the "base fee," plus a "variable fee" for issuers with a market capitalization [5] above $100 million. Regular Nasdaq issuers shall pay an annual fee consisting of $4,000 for the Company's first issue, plus $1,000 for each additional issue.[6] Furthermore, the rule proposal clarifies that where a security moves from Nasdaq/NMS to Regular Nasdaq, any such portion of the annual Nasdaq/NMS fee shall be applied to the Regular Nasdaq annual fee for that calendar year; and the inverse would apply to companies moving from Regular Nasdaq to Nasdaq/NMS.

Commission Findings

Section 15A(b)(5) of the Act [7] requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Association operates or controls. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(5) of the Act.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change, SR-NASD-91-64, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 92-316 Filed 1-7-92; 8:45 am]

BILLING CODE 8010-01-M

[4] The rule proposal provides that for 1992, issuers will pay as an annual fee 100 percent of the current annual fee (calculated pursuant to a formula in the rule proposal which mirrors the formula now provided in Schedule D) *plus* 50 percent of the difference between the current annual fee and what the new annual fee would have been had it been in effect in 1992.

[5] Market capitalization is calculated by multiplying total shares outstanding at year end (except that convertible bonds, rights and warrants are not included) times the price at year end.

[6] The exact terms and language of the proposal have been provided in the Federal Register notice referenced in the introduction section of this order.

[7] 15 U.S.C. 78o-3 (1988).

[Release No. 34-30144; File No. SR-NASD-91-49]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the NASD Code of Arbitration Procedure

January 2, 1992.

The National Association of Securities Dealers, Inc. ("NASD") submitted on September 24, 1991, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder to amend part III, sections 12(c), 13(h), 22, 29 and 41(h) of the NASD Code of Arbitration Procedure (the "Code") to improve the efficiency of its arbitration process.

In general, the proposed rule change is intended to permit the referral of cases to the self-regulatory organization that supervises the market where the transaction occurred, provide pre-hearing procedures for simplified cases, provide a time period within which to raise a peremptory challenge to an arbitrator selected to determine pre-hearing matters, clarify the authority of arbitrators to proceed where a party fails to appear at any hearing session, and provide for the accrual of interest on awards.

Notice of the filing and the terms of substance of the proposed rule change, was given by the issuance of a Commission release (Securities Exchange Act Release No. 29976, November 21, 1991) and by publication in the **Federal Register** (56 FR 60140, November 27, 1991). The Commission did not receive any comment letters on the proposed rule change.

The proposed rule change is intended to accomplish the following:

1. Referral of Cases to Other Self-Regulatory Organizations

Under the proposed change to section 12(c), the Arbitration Department would review each claim to determine whether all transactions are readily identifiable as arising out of another market. If so, the claimant would be contacted and asked to consent to having the case referred to the appropriate self-regulatory organization for that market. It is intended that the NASD would retain jurisdiction where the claim invovled a mix of securities from different markets.

2. Pre-Hearing Procedures in Simplified Arbitrations

The proposed change to section 13(h) refers the parties to the general pre-hearing procedures of section 32 when a hearing is to be conducted, and sets shorter time frames for discovery where no hearing is to be conducted, in keeping with the policy of expediting small claims cases.

3. Peremptory Challenge to Selected Arbitrator

The proposed change to section 22 clarifies existing practice, wherein a peremptory challenge must be raised within five days of notification of the arbitrator named under either the general selection procedures of section 21 or the pre-hearing procedures of section 32 (d) or (e), whichever comes first in the course of the arbitration. Thus, a party that has not objected to an arbitrator selected to handle a pre-hearing conference or discovery dispute may not later raise a peremptory challenge to the same arbitrator when notification is made of the names of the entire panel.

4. Failure of a Party to Appear

The proposed change to section 29 clarifies the authority of the arbitrator(s) to proceed with and dispose of a case if a party fails to appear not only at the initial hearing, but at any continuation of the hearing session.

5. Interest Accrual on Awards

The proposed change to section 41 adds a new paragraph (h), providing that interest will accrue from the date of the award if the award is not paid within 30 days of receipt or if the award is the subject of a motion to vacate that is denied, unless otherwise specified by the arbitrators in the award. The rate of interest will be the legal rate (if any) prevailing in the state where the award was rendered, unless a different rate is set by the arbitrators.

[8] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

The Commission recognizes that the proposed rule change is based on changes adopted by the Securities Industry Conference on Arbitration ("SICA") and that these provisions will be uniformly adopted by all members of SICA. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15(b)(6) of the Act requires that the NASD's rules, among other things, be designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade, and provide for protection of investors and the public interest. The rule change approved by this order will facilitate the arbitration process in the public interest and help ensure that the NASD continues to be able to provide an effective arbitration program that promotes the goals of section 15A(b)(6).

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 92-356 Filed 1-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30142; File No. SR-NYSE-91-46]

Self-Regulatory Organizations; Notice of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Enhancements to Audit Trail Account Identification Codes

January 2, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an introduction of new account identification codes to indicate orders for the account of a competing dealer for audit trail reporting purposes pursuant to the requirements of NYSE Rule 132.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Exchange Rule 132 provides that clearing member firms submitting a transaction to comparison must include certain audit trail data elements, including a specification of the account type for which that transaction was effected according to defined account categories. However, current indicators do not identify transactions effected for the account of a competing dealer. A competing dealer is a specialist or market-maker registered as such on a registered stock exchange (other than the NYSE), or a market-maker bidding and offering over-the-counter, in a New York Stock Exchange-traded security.

New indicators of O, T, and R would be adopted to denote that a transaction was effected for the account of a competing dealer. The identifer "O" would denote a proprietary order for the account of a competing dealer, that is, a member or member organization trading for its own competing dealer account. The identifer "T" would denote an order where one member is acting as an agent for another member's competing dealer account. The identifer "R" would denote an order for the account of a non-member competing dealer.

The Exchange believes that the three new account categories for order identification will enhance the efficiency and accuracy of audit trail information. In addition, they will improve the Exchange's ability to assess the extent of activity by dealers and market-makers in Exchange listed securities and its imapct on the NYSE market. The new account identifers also will provide information which will assist the Exchange in developing any rules or policies which may be appropriate to ensure that a reasonable balance is struck as to the needs of competing dealers and the needs of other market participants, including public investors.

Member firms would be given a reasonable period of time (approximately six months) to make their own system enhancements so that they may be in compliance with the new account type identification requirements.

(b) Statutory Basis

The basis under the Act for the proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impedients to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer peirod to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-91-46 and should be submitted by January 29, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-357 Filed 1-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30122; File No. SR-Phlx-91-47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Insider Trading Sanctions and Fraud Enforcement Act of 1988

December 30, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 9, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt rule 761 and equity and option floor procedure advices relating to the Insider Trading Sanctions and Fraud Enforcement Act of 1988 ("ITSFEA") as it relates to Exchange trading floor units (floorbrokers, Registered Options Traders ("ROTs"), and specialists).[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule is to comply with ITSFEA which requires written supervisory procedures for all broker-dealers, regardless of whether they are part of a full service or large trading firm or a floor trader. The proposed rule change establishes minimum standards for all Phlx Floor Units (i.e., floor brokers, ROTs, and specialists) respecting written supervisory procedures prescribed under ITSFEA. The procedures are designed to prevent the misuse of material, non-public information by Floor Unit employees.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, thereby protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

[1] The exact text of the proposal was attached to the rule filing as Exhibit 2 and is available at the Phlx and the Commission at the address noted in Item IV below.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-91-47 and should be submitted by January 29, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Exhibit A

Rule 761 Supervisory Procedures Relating to ITSFEA

Member organizations must maintain written supervisory procedures as required by the Insider Trading and Securities Fraud Enforcement Act of 1988 (ITSFEA). Such procedures must be reasonably designed to prevent the misuse of material, non-public information by their employees.

In addition to the requirements under ITSFEA, the Exchange herein institutes basic minimum standards for incorporation into

ITSFEA related written supervisory procedures for all PHLX Floor Units (Floorbroker, ROT and Specialist). The requirements enumerated belolw must be included and, together with all related additional written supervisory procedures, must receive approval by the respective Designated Examining Authority (DEA). These requirements are not intended to supercede, or be presumed to fulfill, the requirements of ITSFEA. These requirements are instead set forth as separate requirements of the Exchange.

(1) Each new employee of the unit shall be furnished with a copy of the most current version of the Exchange's "Notice of Insider Trading" (Notice), or a document substantially similar to the Notice approved by the DEA for use in this connection. Within ten business days from the first date of employment with the unit, each new employee must sign and return the Notice to the employer. By his signature on the Notice, the employee attests to having carefully read the Notice and agrees to appropriately supply the employer firm with all trading accounts for which such person maintains a beneficial interest, including all personal and household accounts of the employee. Also, by his signature on the Notice, each new employee ensures that delivery of all related account statements will be made directly from the firm(s) maintaining the account to the employer.

(2) Each Unit must complete the Exchange's "ITSFEA Accounts List", comprising all accounts submitted in connection with paragraph (1) above and all proprietary accounts of the unit. Updates to the list must be made within one month of any change and each version of the list must be maintained for no less than three years by the Unit.

(3) Each month a supervisory person of the Unit is required to make a reasonable review of all activities from the account statements of those accounts reflected on the ITSFEA Accounts List with a view toward identifying the possible misuse of material non-public information. A report must be made promptly to the Exchange's Market Surveillance Department in the event that any such unusual profits are so identified.

In the instance where written supervisory procedures relating to ITSFEA have been adopted for a PHLX Unit in connection with requirements under another National Securities Exchange, and have been approved by the respective DEA, the Exchange requirements set forth in this advice will not apply.

EF–13, OF–13: Supervisory Procedures Relating to ITSFEA

Member organizations must maintain written supervisory procedures as required by the Insider Trading and Securities Fraud Enforcement Act of 1988 (ITSFEA). Such procedures must be reasonably designed to prevent the misuse of material, non-public information by their employees.

In addition to the requirements under ITSFEA, the Exchange herein institutes basic minimum standards for incorporation into ITSFEA related written supervisory procedures for all PHLX Floor Units (Floorbroker, ROT and Specialist). The requirements enumerated below must be included and, together with all related additional written supervisory procedures, must receive approval by the respective Designated Examining Authority (DEA). These requirements are not intended to supercede, or be presumed to fulfill, the requirements of ITSFEA. These requirements are instead set forth as separate requirements of the Exchange.

(1) Each new employee of the unit shall be furnished with a copy of the most current version of the Exchange's "Notice of Insider Trading" (Notice), or a document substantially similar to the Notice approved by the DEA for use in this connection. Within ten business days from the first date of employment with the unit, each new employee must sign and return the Notice to the employer. By his signature on the Notice, the employee attests to having carefully read the Notice and agrees to appropriately supply the employer firm with all trading accounts for which such person maintains a beneficial interest, including all personal and household accounts of the employee. Also, by his signatyure on the Notice, each new employee ensures that delivery of all related account statements will be made directly from the firm(s) maintaining the account to the employer.

(2) Each Unit must complete the Exchange's "ITSFEA Accounts List", comprising all accounts submitted in connection with paragraph (1) above and all proprietary accounts of the unit. Updates to the list must be made within one month of any change and each version of the list must be maintained for no less than three years by the Unit.

(3) Each month a supervisory person of the Units is required to make a reasonable review of all activities from the account statements of those accounts reflected on the ITSFEA Accounts List with a view toward identifying the possible misuse of material non-public information. A report must be made promptly to the Exchange's Market Surveillance Department in the event that any such unusual profits are so identified.

Failure to properly maintain the ITSFEA Account List, or to conduct related reviews required by this Advice, may result in the issuance of fines in accordance with the schedule below. In the instance where written supervisory procedures relating to ITSFEA have been adopted for a PHLX Unit in connetion with requirements under another National Securities Exchange, and have been approved by the respective DEA, the Exchange requirements set forth in this advice will not apply.

Fine Schedule: (Implemented on a three year running calendar basis.)

1st Occurrence $250
2nd Occurrence $500
3rd Occurrence Sanction discretionary with the Business Conduct Committee

[FR Doc. 92–317 Filed 1–7–92; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–30134; File No. SR–PHLX–91–46]

Self-Regulatory Organizations; Philadelphia Stock Exchange Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to Options Floor Procedure Advice F–7 Relating to Bids and Offers

December 31, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 9, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to rule 19b–4, submits as a proposed rule change a proposal to amend Exchange's Options Floor Procedure Advice ("OFPA") F–7, entitled Bids and Offers, to provide that floor traders may provide greater bid and/or offer sizes to facilitate customer orders while not being under such obligations with respect to broker-dealer orders.

The amendment to OFPA F–7 also reiterate current provisions contained in the PHLX's rules. First, in the absence of a stated size to any bid or offer, the quote displayed is deemed to be for one contract. Second, floor traders may be required to trade more than one contract for a particular quote in connection with provisions of the Exchange's Ten-Up Rule.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C)

below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OFPA F–7 represents the general exchange auction principle that bid and offer prices shall be general ones and shall not be specified for acceptance by particular members. The proposed amendment reflects the development of different execution guarantees depending on the status of the order to be executed. For example, customer orders, as opposed to broker-dealer orders, are afforded a ten-up market guarantee on the Exchange, which means that customer orders receive an execution of up to ten contracts at the best market price regardless of whether a quote size was provided. Accordingly, the purpose of the proposed rule change is to permit floor traders to provide greater bid and/or offer sizes to facilities customer orders while not being under such obligations with respect to broker-dealer orders. Nevertheless, the proposed OFPA requires that sizes must be maintained equally for all orders of the same account type. For example, for a particular order, if a specialist elects to give a size of twenty-up to one broker-dealer, he must honor the size of twenty-up for all broker-dealer orders.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act, in that, it promotes just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 28, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-318 Filed 1-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–18461; File No. 812–7820]

Bankers Security Life Insurance Society, et al.

December 31, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Bankers Security Life Insurance Society ("Bankers Security") and Bankers Security Variable Annuity Fund G ("Separate Account G").

RELEVANT SECTIONS OF THE 1940 ACT: Order requested pursuant to section 26(b) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit Bankers Security to substitute shares of Oppenheimer Asset Allocation Fund for the shares of Oppenheimer Fund currently held by Separate Account G.

FILING DATE: The application was filed on November 6, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 pm. on January 21, 1992. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues contested. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, 4691 Fairfax Drive, P.O. Box 3700, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Senior Attorney, at (202) 272–2828, or Heidi Stam, Assistant Chief, Office of Insurance Products (Division of Investment Management), at (202) 272–2060.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Bankers Security is a stock life insurance company incorporated under the laws of the State of New York. Separate Account G is one of several separate investment accounts of Bankers Security (the "Separate Accounts") to which assets are allocated to fund certain individual variable annuity contracts (the "Contracts") issued by Bankers Security. The Separate Accounts are registered collectively as a unit investment trust under the 1940 Act.

2. Net purchase payments under the Contracts were allocated among the Separate Accounts in accordance with allocation instructions provided by owners of the Contracts ("Contract Owners"). Under the terms of the Contracts, the amount of a Contract's accumulated value, and the amount of annuity payments to annuitants, vary with the investment performance of the Separate Account or Accounts selected by the Contract Owner. Contract Owners may transfer all or a portion of the Contract's accumulated value between Separate Accounts (subject to certain limits), elect to surrender the Contract for all or any part of its

accumulated value, and elect one of several annuity payment schedules. All of the Contracts were issued prior to 1981 and no purchase payments have been accepted since January 1, 1981.

3. The assets of each Separate Account are invested in shares of a mutual fund, each of which is an open-end diversified management investment company registered under the 1940 Act, as follows:

Separate Account D—Oppenheimer Fund.

Separate Account E—Eaton Vance Income Fund of Boston.

Separate Account F—Oppenheimer Money Market Fund, Inc.

Separate Account G—Oppenheimer Fund.

Separate Account H—Oppenheimer High Yield Fund.

Separate Account I—Oppenheimer Time Fund.

(collectively, the "Funds"). With the exception of Eaton Vance Income Fund of Boston, all of the Funds are managed by Oppenheimer Management Corporation ("Oppenheimer"). Shares of each of the Funds are also available for direct purchase by members of the general public. Under the Contracts, Bankers Security has reserved the right to invest the assets of the Separate Accounts in shares of other investment companies or any other investment permitted by law.

4. Oppenheimer Fund was organized as a Massachusetts business trust in 1987. Its primary investment objective is to seek capital appreciation. Its secondary investment objective is to achieve income consistent with growth in capital. Oppenheimer Fund seeks to achieve its objectives by investing principally in common stocks that offer growth possibilities while retaining a flexible approach to investment.

5. Oppenheimer Asset Allocation Fund ("Asset Allocation Fund") was organized as a Massachusetts business trust in 1983. Its investment objective is high total investment return, which includes current income and capital appreciation in the value of its shares, from investments in common stocks and other equity securities, bonds and other debt securities, and money market securities. Shares of Asset Allocation Fund are available for direct purchase by members of the general public. Asset Allocation Fund is currently not available as an investment option under the Contracts. Asset Allocation Fund has a distribution plan pursuant to rule 12b–1, which provides for payment by Asset Allocation Fund of certain distribution expenses at the maximum rate of .25% of the average net asset value of the Fund shares held by certain broker-dealers or other financial institutions or their customers (the "Distribution Plan").

6. Prior to July 11, 1991, the assets of Separate Account G were invested in Oppenheimer Premium Income Fund ("Premium Income Fund"). Premium Income Fund was organized as a Massachusetts business trust in 1985. On July 12, 1991, substantially all of the assets of Premium Income Fund were exchanged for shares of Asset Allocation Fund pursuant to an Agreement and Plan of Reorganization, which is discussed below. Premium Income Fund's investment objective was to provide high current return through investment in a professionally managed portfolio consisting primarily of dividend-paying common stocks with respect to which call options are traded on national securities exchanges and by writing covered call options on such stocks.

7. On September 25, 1981, the Internal Revenue Service ("IRS") released Rev. Rul. 81–225, 1981–2 C.B. 12, in which it concluded that the contract owner and not the issuing insurance company is considered the owner of mutual fund shares underlying a variable annuity contract where the mutual fund shares are also available for direct purchase by the contract owner, *i.e.*, where the mutual fund is publicly available. This conclusion applies only with respect to payments made into a separate account after December 31, 1980. All premium payments for the Contracts were made on or before December 31, 1980. Thus, the Contracts are "grandfathered" and continued investment of the assets of the Separate Accounts in the Funds has not altered the tax status of the Contracts.

8. On July 12, 1991, substantially all of the assets of Premium Income Fund were exchanged for shares of Asset Allocation Fund pursuant to an Agreement and Plan of Reorganization (the "Plan"). Under the Plan, Asset Allocation Fund shares were automatically issued for shares of Premium Income Fund on the basis of the per share net asset value of the shares of Asset Allocation Fund and the value of the assets of Premium Income Fund transferred to Asset Allocation as of the close of business on July 12, 1991 (the "Reorganization Transaction"). The Plan also provided for the dissolution and liquidation of Premium Income Fund and for the termination of its registration statement under the 1940 Act.

9. The Plan was approved by Premium Income Fund's Trustees on March 7, 1991 and by its shareholders on June 20, 1991. In connection with shareholder approval of the Plan, Bankers Security voted the shares held by Separate Account G in accordance with the instructions received from Contract Owners having a voting interest in Separate Account G, of which 84% of those voting approved the Plan.

10. Since Asset Allocation Fund was not one of the original investment options under the Contracts, Bankers Security was concerned that the acquisition of shares of Asset Allocation Fund in the Reorganization Transaction could have been treated as a modification of the Contracts, and that such modification could have resulted in the disallowance of the "grandfathered" status of the Contracts under Revenue Ruling 81–225. In such a case the Contract Owners might have been taxed currently on their proportionate share of future distributions made by Asset Allocation Fund to Separate Account G and possibly on other gains under the Contracts. In order to clarify this issue, Bankers Security applied to the IRS for a private letter ruling (the "Private Ruling") seeking confirmation that the investment of Separate Account G's assets in Asset Allocation Fund would not affect the tax treatment of the Contract Owners. The IRS had not responded to Bankers Security's request for the Private Ruling as of the date of the Reorganization Transaction.

11. Because of the concerns discussed above, Bankers Security determined that it should not permit the assets of Separate Account G to be subject to the Reorganization Transaction. The proxy statement distributed to Premium Income Fund shareholders in connection with the Reorganization Transaction stated that Bankers Security intended to apply to the Commission for an exemptive order to allow Bankers Security to transfer on behalf of the Contract Owners, its investment in Premium Income Fund to Oppenheimer Fund, since such a transfer would avoid any potential modification of the Contracts. Bankers Security did not file such an application with the Commission. By letters dated July 10 and July 11, 1991, Applicants (and others) requested "no-action" assurance that the Commission staff would raise no objection to this substitution without an order under section 26(b) of the 1940 Act. By a response dated July 11, 1991, the Staff stated that it would not recommend any enforcement action to the Commission under section 26(b) of the 1940 Act if Applicants substituted shares of Oppenheimer Fund for shares of Premium Income Fund then held by Separate Account G without an order from the Commission under section

26(b). Bankers Security Life Insurance Society (pub. avail. July 11, 1991). Accordingly, prior to the Reorganization Transaction, the substitution was effected by Bankers Security redeeming the shares of Premium Income Fund then held by Separate Account G and purchasing with the proceeds shares of Oppenheimer Fund.

12. On October 10, 1991, the IRS issued the requested Private Ruling, confirming that the investment of Separate Account G's assets in Asset Allocation Fund will not affect the tax treatment of the holders of the Contracts. Accordingly, consistent with the spirit of Contract Owners' approval of the Reorganization Transaction, Applicants now seek to substitue shares of Asset Allocation Fund for the shares of Oppenheimer Fund held by Separate Account G.

13. Applicants request that the Commission issue an order pursuant to section 26(b) of the 1940 Act approving the substitution of shares of Asset Allocation Fund for all shares of Oppenheimer Fund held by Separate Account G.

14. Section 26(b) of the 1940 Act requires Commission approval before any depositor or trustee of a registered unit investment trust holding the security of a single issuer may substitute another security for such security. The Commission is authorized to approve any such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

15. Applicants submit that the proposed substitution is necessary to give effect to the substance of Contract Owners' approval of the Plan. Eighty-four percent of the Owners having a voting interest in Separate Account G approved the Plan, and only seven percent of those Contract Owners who voted did so against adoption of the Plan. The intermediate substitution of shares of Oppenheimer Fund made soley to avert possible adverse tax consequences of the Reorganization Transaction to Contract Owners who maintain Accumulated Value in Separate Account G pending receipt of the Private Ruling.

16. Applicants represent that the investment policy of each of these funds involves the purchase of common stocks. In addition, the primary or secondary investment objective of each of these Funds includes current income. Asset Allocation Fund pays a maximum management fee of 1.0% of average net assets, and its effective management fee rate is .90% of average net assets, taking into account breakpoints in the fee schedule. Oppenheimer Fund pays a management fee at an annual rate of .75% of average net assets (disregarding breakpoints). Asset Allocation Fund had a ratio of expenses to average net assets of 1.36% for the fiscal year ended December 31, 1990, compared to 1.07% for Oppenheimer Fund for the fiscal year end June 30, 1991. In analyzing the appropriateness of substituting shares of one fund for those of another, applicants often address the comparability of the respective funds' investment objectives, policies, and expenses ratios. However, while such information may be pertinent, Applicants submit that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because it is necessary to give effect to the substance of the Contract Owners' approval of the Plan.

17. In addition, Applicants submit that the proposed substitution is not the type of substitution that Section 26(b) was designed to govern. Applicants represent that Congress intended section 26(b) to provide for Commission scrutiny of proposed substitutions that could otherwise, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvesment of the proceeds of redemption, or both.

18. The proposed substitution will take place at relative net asset value with no change in the amount of any Contract Owner's accumulation value allocated to separate account G or in the dollar value of any Contract Owner's interest in Separate Account G immediately before and after the substitution. Contract Owners will not incur any fees or charges as a result of the proposed substitution, nor will their rights or Bankers Security's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitution, including legal, accounting, and other fees and expenses, will be paid by Bankers Security. The proposed substitution will not impose any tax liability on Contract Owners. Thus, Applicants assert that none of the detriments of "forced " substitutions underlying congressional intent in adopting section 26(b) are present.

19. Contract Owners will receive notice of the proposed substitution, which will also advise Contract Owners about their right, without penalty, to exercise their own judgement as to the most appropriate alternative investment vehicle and to transfer all or a portion of the accumulated value held in Separate Account G to another of the Separate Accounts without payment of any fee or charge. Conditions under the Contract that limit the timing and minimum dollar amount of transfers will be waived; however, a transfer may only be made prior to the date of receipt by Bankers Security of notification of the death of the Annuitant.

Applicants' Conditions

20. As a condition to the requested order, Bankers Security will waive annual revenues that it derives from Separate Account G under the Contracts in an amount equal to Separate Account G's pro rata portion of the charges assessed on an annual basis by Asset Allocation Fund under its Distribution Plan. The wavier will be effected by Bankers Security offsetting the percentage of Separate Account G's assets that are deducted daily for the mortality and expense risk charge by an amount that is equal to the percentage of Asset Allocation Fund's assets that are accrued on a daily basis under its Distribution Plan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-319 Filed 1-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18463; 812-7793]

Boston Capital Tax Credit Fund III L.P. et al.; Notice of Application

December 31, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Boston Capital Tax Credit Fund III L.P., a Delaware limited partnership (the "Partnership") and its general partner, Boston Capital Associates III L.P. (the "General Partner").

RELEVANT ACT SECTIONS: Exemption under section 6(c) from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants seek an order exempting the Partnership from all provisions of the Act and the rules thereunder to permit the Partnership to invest in other limited partnerships that, in turn, will engage in the development, rehabilitation,

ownership, and operation of housing for low and moderate income persons.

FILING DATE: The application was filed on September 27, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 23, 1992, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 313 Congress Street, Boston, Massachusetts 02210–1232.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504–2406, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership was organized on September 19, 1991, under the Delaware Revised Uniform Limited Partnership Act. Pursuant to registration under the Securities Act of 1933, the Partnership plans to offer 20,000,000 units of beneficial interest at $10.00 each with a minimum purchase amount of $5,000. Purchasers of these units ("Investors" or "BAC Holders") will become holders of beneficial assignee certificates ("BACs") which represent an assignment of the limited partnership interest in the Partnership of BCTC III Assignor Corp., a Delaware corporation (the "Assignor Limited Partner").

2. The Assignor Limited Partner was formed for the sole purpose of acting as assignor of all its limited partnership interest in the Partnership and will not engage in any other business. After the admission of Investors, the Assignor Limited Partner will not retain any ownership interest in the Partnership. The Assignor Limited Partner must vote the assigned limited partnership interests as directed by the BAC Holders. Each BAC Holder will be entitled to all the economic benefits of a limited partner of the Partnership. In addition, the Partnership's counsel will render an opinion stating that it is more likely than not that the BAC Holders will be able to realize the tax benefits disclosed in the Prospectus, and unqualified opinions that BAC Holders will be treated as limited partners of the Partnership for federal income tax purposes, and that all the rights granted to BAC Holders by the Partnership Agreement are valid and enforceable under Delaware law. The BACs are used solely for administrative convenience and to facilitate transferability.

3. The Partnership will operate as a "two-tier" entity, *i.e.* as a limited partner, it will invest in other limited partnerships ("Operating Partnerships") which will acquire, develop, construct or rehabilitate, operate and maintain multifamily residential apartment complexes ("Apartment Complexes"), each of which is expected to qualify for the low-income housing tax credit under section 42 of the Internal Revenue Code of 1986, as amended (the "Code"). The investment in Operating Partnerships is in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (Aug. 9, 1974) ("Release No. 8456"). The Partnership intends to realize: (a) Certain tax benefits, including low-income housing tax credits, (b) potential capital appreciation through increases in value and, to the extent applicable, amortization of the mortgage indebtedness of the Apartment Complexes, (c) cash distributions from liquidation, sale or refinancing of the Apartment Complexes, and (d) to the extent available, limited cash flow from operations.

4. The Partnership will generally attempt to acquire a 90% to 99% interest in the profits, losses, and tax credits, and a 50% to 99% interest in the distributable cash flow of each Operating Partnership, with the balance remaining with the operating general partner (the "Operating General Partner"). However, regardless of the percentage interest in an Operating Partnership, the Partnership will have certain rights under the terms of the Operating Partnership Agreements which will include, subject only to a determination that the existence and/or exercise of any such rights will jeopardize the limited liability of the Partnership as a limited partner: (a) The right to approve or disapprove any sale or refinancing of an Apartment Complex, (b) the right to replace an Operating General Partner on the basis of performance, (c) the right to approve or disapprove the dissolution of an Operating Partnership, (d) the right to approve or disapprove amendments to an Operating Partnership Agreement materially and adversely affecting the Partnership's investment, and (e) the right to direct the Operating General Partners to convene meetings and to submit matters to a vote. In addition, the Partnership will require all Operating Partnerships to provide to the limited partners thereof substantially all the rights required by section VII of the Statement of Policy on Real Estate Programs adopted by the North American Securities Administrators Association, Inc. (the "NASAA Guidelines").

5. When placing an order for BACs, each Investor must represent in writing that he/she or it meets the following applicable suitability standards: (a) Each Investor must have (i) a net worth (exclusive of home, home furnishings, and automobiles) in excess of $75,000 or (ii) annual gross income of $35,000 and a net worth (exclusive of home, home furnishings, and automobiles) of not less than $35,000 and (iii) for those non-corporate Investors who do not have or anticipate having any net passive income, a maximum adjusted gross income of $250,000, and (b) for corporate Investors (i) a corporation that is neither closely held nor a personal service corporation and is not subject to Subchapter S of the Code (a "C Corporation") may use the low-income tax credits to offset income from all sources, but should reasonably expect to have sufficient federal taxable income from all sources to use the low-income tax credits and losses for ten to twelve years after investing in BACs and (ii) a closely held C Corporation that is not a personal service corporation should reasonably expect to have sufficient active or passive income, but not portfolio income, to use the low-income tax credits and losses for approximately ten to twelve years after investing in BACs. In addition, the Partnership Agreement requires evidence of a transferee's suitability in order to record a transfer on its books. Units will be sold in certain states only to persons who meet different standards which will be set forth in the Prospectus. In no event shall the Partnership employ suitability standards that are less restrictive than those set forth above except to the extent that the standard in item (a)(iii) above is modified as a result of changes in federal income tax law or with respect to investments in Apartment Complexes expected to qualify for state housing tax credits, in addition to the federal low-income housing tax credits, where the $250,000

adjusted gross income maximum is inapplicable.

6. The Partnership will be controlled by its General Partner. The Investors, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. However, a majority in interest of the Investors will have the right to amend the Partnership Agreement, dissolve the Partnership, remove any General Partner and consent to a successor General Partner. In addition, under the Partnership Agreement, each Investor is entitled to review all books and records of the Partnership at any and all reasonable times.

7. The Partnership Agreement provides that certain significant actions cannot be taken by the General Parnter without the express consent of a majority in interest of the Limited Partners. Such actions include: (a) The sale of the Partnership's interests in the Operating Partnerships or the sale at any one time of all or substantially all of the assets of the Partnership, (b) dissolution of the Partnership, (c) consent to the sale of a substantial portion of the Apartment Complexes by the Operating Partnerships and (d) the admission of a successor or additional General Partner.

8. Boston Capitol Services, Inc. (the "Selling Agent"), an affiliate of the General Partner, will receive selling commissions, dealer-manager fees, and reimbursement of due diligence expenses in connection with BACs. The Selling Agent may re-allow a portion of its dealer-manager fees and due diligence expense reimbursement to other soliciting dealers. Any selling commissions and fees charged by the Selling Agent or other soliciting dealers will be consistent with the NASAA Guidelines.

9. During the offering and organizational phase, the General Partner and its affiliates will receive from the Partnership reimbursement of organizational and offering expenses.

10. Acquisition phase fees payable by the Parntership to the General Partner or its affiliates in connection with the acquisition of interests in Operating Partnerships will be limited by the NASAA Guidelines. During the operating phase, the Partnership may pay additional fees or compensation to the General Partner or its affiliates, including an annual management fee and reimbursement for administrative services. In addition to the foregoing fees and interests, the General Partner will be allocated generally 1% of profits and losses of the Partnership.

11. None of the fees payable to the General Partners and their affiliates has been or will be negotiated at arm's length. All such fees and compensation, however, will be fair and shall be no greater than the amount the Partnership would be required to pay to independent third parties for comparable services in the same geographic location. The Partnership believes that all potential conflicts of interest, including the receipt of commissions, fees, and other compensation by the General Partner and its affiliates, will be disclosed in the Prospectus. The Parnership Agreement and the Prospectus will contain various provisions designed to eliminate or significantly reduce these conflicts. For example, if a partnership becomes available that would satisfy the investment criteria of the Partnership and any other public partnership in which the General Partner and/or its affiliates have an interest, the following criteria will be followed with respect to determining which entity should acquire such investment. The General Partner and its affiliates will review the investment portfolio of each such entity, including any series being offered by each such partnership, and will in their sole determination decide which entity will acquire the investment on the basis of various factors, such as the amount of funds available, the length of time such funds have been available for investment, the cash requirements of each such entity, and the effect of the acquisition on each such entity's portfolio. If funds should be available to two or more public limited partnerships to purchase a given investment and all factors have been evaluated and deemed equally applicable to each entity, including any series being offered by each such partnership, then the General Partner and its affiliates will acquire such investments for the entities on a basis of rotation, with the order or priority determined by the dates of formation of the entities.

12. All proceeds of the offering of units will initially be deposited and held in trust for the benefit of the Investors in an escrow account or accounts with the Wainwright Bank and Trust Company. The Partnership intends to apply such proceeds to the acquisition of Operating Partnership interests as soon as possible. Such proceeds may be temporarily invested in bank time deposits, certificates of deposit, bank money market accounts, and government securities. The Partnership will not trade or speculate in temporary investments.

13. The Partnership Agreement provides for indemnification of the General Partner and its affiliates for losses, liability, or damage incurred by them in connection with the business of the Partnership. However, the Partnership has been advised that in the opinion of the SEC, indemnification for liabilities under federal securities laws is contrary to public policy and therefore unenforceable.

Applicants' Legal Conclusions

1. The exemption of the Partnership from all provisions of the Act is both necessary and appropriate in the public interest, because: (a) Investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organization advantages of the limited partnership form; (b) the limited partnership form insulates each Investor from personal liability, limits his financial risk to the amount he has invested in the program, and permits the pass-through to the Investor, on his individual tax return, of his proportionate share of the income and losses from the investment; (c) the limited partnership form of organization is incompatible with many provisions of the Act, such as the requirement of annual approval by investors of a management contract and the requirements concerning election of directors and the termination of the management contract; and (d) the concerns underlying the asset coverage limitations of section 18 of the Act are not justified in real estate investments and are inapposite to the mortgage financing and other government assisted programs developed for low income and moderate income housing. Also, an exemption from these basic provisions is necessary and appropriate in the public interest so as not to discourage two-tier limited partnership arrangements or frustrate the public policy established by the housing laws.

2. Release No. 8456 contemplates that the exemptive power of the SEC under section 6(c) may be applied to two-tier partnerships which engage in the kind of activities in which the Partnership will engage; that is, "[t]wo-tier partnerships that invest in limited partnerships engaged in the development and building of housing for low and moderate income persons * * *." The release lists two conditions, designed for the protection of investors, that must be satisfied in order to qualify for such an exemption: (a) "interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be

unsuitable" and (b) "requirements for fair dealing by the General Partners of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company." The Partnership will comply with these conditions and will otherwise operate in a manner designed to insure investor protection.

3. The contemplated arrangement of the Partnership is not susceptible to abuses of the sort the Act was designed to remedy. The requirements for fair dealing provided by the Partnership's governing instruments, and pertinent governmental regulations imposed on the Operating Partnerships by various federal, state and local agencies, provide protection to Investors comparable to, and in some respects greater than, that provided by the Act. An exemption would therefore be consistent with the protection of Investors and the purposes and policies of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-315 Filed 1-7-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18459; File No. 812-7830]

Providentmutual Life and Annuity Company of America, et al.

December 30, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Providentmutual Life and Annuity Company of America ("Providentmutual"), Providentmutual Variable Annuity Separate Account (the "Account") and PML Securities Company ("PML Securities").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the assessment of a daily charge against the assets of the Account for mortality and expense risks under certain variable annuity contracts.

FILING DATE: The application was filed on November 25, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 27, 1992. Request a hearing in writing, giving the nature of your interest, the reason for your request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Providentmutual Life and Annuity Company of America, 1600 Market Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Barbara Whisler, Attorney, at (202) 272-5415, or Heidi Stam, Assistant Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Providentmutual is a stock life insurance company chartered under Pennsylvania law in 1958 as Washington Square Life Insurance Company and authorized to transact life insurance and annuity business in Pennsylvania and all states other than New York and Maine and the District of Columbia. For purposes of the 1940 Act, Providentmutual is the depositor and sponsor of the Account as those terms have been interpreted by the Commission with respect to life insurance company separate accounts. Providentmutual is a wholly-owned subsidiary of Providentmutual Life Insurance Company of Philadelphia, a mutual insurance company chartered under Pennsylvania law in 1865.

2. The Account was established by Providentmutual as a separate investment account under Pennsylvania insurance law on May 9, 1991, as a funding medium for certain flexible premium variable annuity contracts (the "Contracts"). The Account has six subaccounts which invest exclusively in the shares of a designated investment portfolio of the Market Street Fund, Inc. (the "Fund"). The Fund was organized as a Maryland Corporation on March 21, 1985, and is registered under the Act as an open-end diversified management investment company of the series type.

3. The Contracts require a minimum initial premium payment of at least $2,000. Subsequent premium payments must be at least $100 for nonqualified Contracts and $50 for qualified Contracts. The Contract owner can allocate premium payments to one or more subaccounts, each of which will invest in a corresponding portfolio of the Fund. The Contract owner can also allocate premium payments to Providentmutual's general account and such payments will be credited with interest as provided for in the Contracts.

4. Prior to the earlier of the maturity date or death of the annuitant, a Contract owner may surrender all or a portion of the Contract account value, or transfer Contract account values between the subaccounts. The Contract provides for a series of annuity payments beginning on the maturity date. The Contract owner may select from three annuity payment options. In the event that an annuitant who is not the owner dies prior to the maturity date, a death benefit is payable upon receipt of due proof of death as well as proof that the annuitant died prior to the maturity date. The death benefit is equal to the greater of the Contract account value on the date of receipt of due proof of death or the premiums paid, less partial withdrawals including applicable surrender charges. In the event that the owner dies prior to the maturity date, the beneficiary is entitled to receive a death benefit equal to the Contract account value as of the date of receipt of due proof of death (to be distributed to the beneficiary within five years after the owner's death).

5. Providentmutual will deduct an annual contract maintenance charge of $30 per Contract year. This charge will be deducted from the Contract account value on each Contract anniversary prior to and including the maturity date (and upon a full surrender or on the maturity date if other than a Contract anniversary) to compensate Providentmutual for the administrative services provided to Contract owners. This charge is guaranteed not to increase for the duration of the Contract. Applicants represent that this charge will be deducted in reliance on Rule 26a-1 under the 1940 Act and represents reimbursement only for administration costs expected to be incurred over the life of the Contract. Providentmutual does not anticipate any profit from this charge. No administration charge is payable during the annuity period.

6. In order to permit investment of the entire premium payment (less any applicable premium taxes), Providentmutual currently does not

deduct sales charges at the time of investment. However, a contingent deferred sales charges of up to 6% of the amount withdrawn is imposed on certain full surrenders or partial withdrawals of Contract account value during the first six Contract years to cover expenses relating to the sales of the Contracts, including commissions to registered representatives and other promotional expenses. The aggregate contingent deferred sales charges are guaranteed never to exceed 8.5% of the premium payments.

7. Providentmutual will impose a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Contracts. This charge is equal to an effective annual rate of 1.10% of the value of the net assets in the Account. Of that amount approximately .50% is attributable to mortality risk, and approximately .60% is attributable to expense risks. The Contracts, however, reserve for Providentmutual the right to raise this charge up to an annual rate of 1.25% of the value of the net assets of the Account. Providentmutual guarantees that this charge will never exceed 1.25%. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on Providentmutual. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to Providentmutual. Providentmutual currently anticipates a profit from this charge.

8. The mortality risk borne by Providentmutual arises from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Contract) regardless of how long annuitants or any individual annuitant may live. This undertaking assures that neither an annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the monthly annuity payments that the annuitant will receive under the Contract. The expense risk assumed by Providentmutual is the risk that Providentmutual's actual administration costs will exceed the amount recovered through the Contract maintenance charge. Providentmutual also incurs a risk in connection with the death benefit guarantee. On the annuitant's death, Providentmutual will pay the greater of (a) the Contract account value, or (b) premium payments (net of withdrawals, including applicable surrender charges). There is no extra charge for this guarantee. Providentmutual does not anticipate that the contingent deferred sales charges will generate sufficient revenues to pay the cost of distributing the Contracts. If these charges are insufficient to cover the expenses, the deficiency will be met from Providentmutual's general account assets, which may include amounts derived from the charge for mortality and expense risks.

9. Providentmutual will impose a $25 charge under the Contracts for the fifth and each subsequent transfer request made by the Contract owner during a single Contract year. Providentmutual does not anticipate any profit from this charge.

10. Applicants request that the Commission, pursuant to section 6(c) of the 1940 Act, grant the exemptions from sections 26(a)(2) and 27(c)(2) in connection with Applicants' assessment of the daily charge for mortality and expense risks. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

11. Applicants submit that Providentmutual is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of up to 1.25% under the Contracts made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. The mortality and expense risk charge is a reasonable charge to compensate Providentmutual for the risk that annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; for the risk that Contract value will be less than the death benefit; and for the risk that administrative expenses will be greater than amounts derived from the Contract maintenance charge.

12. Providentmutual represents that the charge of 1.25% for mortality and expense risks assumed by Providentmutual is within the range of industry practice with respect to comparable annuity products. This representation is based upon Providentmutual's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Providentmutual will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

13. Applicants acknowledge that the proceeds of surrender charges may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge. Providentmutual has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Providentmutual at its administrative offices and will be available to the Commission.

14. Providentmutual also represents that the Account will only invest in management investment companies which undertake, in the event such company adopts a plan under rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees) a majority of whom are not interested persons of the company, formulate and approve any such plan under rule 12b–1.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–311 Filed 1–7–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18462; 811–1629]

Vance Sanders Special Fund; Notice of Application

December 31, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Vance Sanders Special Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks and order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 5, 1991, and an amendment to the application was filed on December 23, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 27, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 24 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulations).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Application's Representations

1. Applicant is an open-end diversified investment company that was organized as a business trust under the laws of Massachusetts. On November 13, 1968, applicant registered under the Act and filed a notification of registration pursuant to section 8(b) of the Act. A registration statement under the Securities Act of 1933 was filed on March 19, 1968. The registration statement was declared effective on November 12, 1968, and the initial public offering commenced soon thereafter.

2. At a meeting held on Februray 25, 1991, applicant's board of trustees adopted a plan of reorganization (the "Plan") in reliance on rule 17a–8 under the Act. On or about May 1, 1991, applicant mailed proxy materials to its shareholders, who approved the Plan at a special shareholders' meeting held on June 7, 1991.

3. On June 24, 1991, pursuant to the Plan, applicant transferred all of its assets and liabilities to Eaton Vance Growth Fund ("Fund") in exchange for shares of beneficial interest of Growth Fund on a *pro rata* basis. The transfer of applicant's assets in exchange for shares of Growth Fund was based on the relative net asset value of Growth Fund and applicant.

4. Applicant and Growth Fund each assumed its own expenses in connection with the reorganization. Applicant bore expenses totalling approximately $60,000, including legal ($31,200), audit ($12,000), and printing ($12,800) expenses.

5. A reserve in the amount of $44,770 was established to cover all obligations and liabilities of applicant that were not assumed by Growth Fund. Most of the reserve has been used to pay accrued expenses of applicant that had not been paid as of June 24, 1991. As of December 20, 1991 a balance of $14,440 existed, representing approximately the amount still owed for certain legal services.

6. There are nor securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant was terminated as a Massachusetts business trust on June 24, 1991 pursuant to a Termination of Trust filed with the Secretary of State of the Commonwealth of Massachusetts.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–314 Filed 1–7–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18460; 812–7777]

Zweig Series Trust, et al.; Notice of Application

December 31, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Zweig Series Trust (the "Trust"), Zweig/Glaser Advisers (the "Adviser"), Zweig Securities Corp. (the "Distributor"), and any future series of the Trust that will issue multiple classes of shares which are identical in all material respects to the classes described in this notice, and any open-end management company established or acquired in the future by the Adviser, or any affiliated person of the Adviser, as defined in section 2(a)(3) of the Act, that is part of the same group of investment companies (as defined in rule 11a–3 under the Act) as the Trust and that issues multiple classes of shares that are identical in all material respects to the classes described in this notice.

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c) and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit each series of the Trust to sell two classes of securities for the purpose of establishing a dual distribution system, and each series of the Trust to assess a contingent deferred sales charge ("SDSC") on certain redemptions of a class of their securities. The classes would be identical in all respects except for differences relating to distribution expenses, voting rights relating to rule 12b–1 plans, the imposition of front-end loads and contingent deferred sales loads, different exchange privileges, and the description of each class of shares.

FILING DATE: The application was filed on August 21, 1991, and amended on December 10, December 20, and December 27, 1991. Applicant's counsel has stated that an additional amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 27, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 5 Hanover Square, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a diversified open-end management investment company registered under the Act which was organized as a business trust under the laws of the Commonwealth of Massachusetts. The Adviser serves as the Trust's investment adviser and the Distributor acts as principal underwriter of the Trust's shares. The Trust presently offers five series of shares: Money Market Series, Government Securities Series, Priority Selection List Series, Zweig Strategy Fund, and Zweig Appreciation Fund (the "Series"). Shares of the Series are currently offered at net asset value plus a front-end sales charge, except for the Money Market Series, which imposes no sales charge. A sixth series of the Trust, Zweig Global Bond Fund, became effective on September 20, 1991, but has not yet commenced operations. The Trust pays the Distributor a distribution fee under a plan adopted pursuant to rule 12b–1 under the Act (the "Rule 12b–1 Plan").

2. Applicants propose to establish a dual distribution system (the "Dual Distribution System"). If the requested relief is granted, each Series of the Trust will create a new class of shares, designated Class B (the "Class B Shares"). The shares currently offered will be designated Class A (the "Class A Shares") and will continue to be offered in accordance with the terms of purchase described in the Trust's current prospectus. The classes will each represent interests in the same portfolio of securities of the Trust and will be identical except that (a) Class A Shares will pay a front-end sales charge (except for the Money Market Class A Shares) and Class B Shares will be subject to a CDSC of 1.25% of the net asset value of shares redeemed within one year of their purchase (no CDSC will be imposed on redemptions thereafter); (b) Class B Shares will be subject to a higher rule 12b–1 distribution fee (except for shares of the Money Market Series) and a service fee; (c) Class B Shares will be subject to higher transfer agency costs and any other incremental expenses resulting from the different sales charge arrangement subsequently identified which shall be approved by the Commission; (d) each class will vote separately as a class with respect to the Series' 12b–1 Plans; and (e) the two classes will have different exchange privileges.

3. With respect to the Class A Shares (except Money Market Class A Shares), an investor will purchase such shares at net asset value plus a sliding scale front-end sales charge. The front-end sales charge is currently waived for certain purchases, including those by or on behalf of any officer, director, trustee, account executive or full-time employee (or a spouse or child of any such person) of the Trust, the Adviser, the Distributor, or any company affiliated with the Adviser or Distributor, or by or on behalf of any employee (or a spouse or child of any employee) of any National Association of Securities Dealers ("NASD") member. The waivers are contingent upon the shares not being redeemed within 90 days of their purchase. If the shares are redeemed within 90 days of their purchase, the Trust will impose a CDSC.[1] Class A Shares will pay to the Distributor a distribution fee at an annual rate of .30% of the average daily net asset value of the Class A Shares pursuant to the Trust's Rule 12b–1 Plan. Shares of each Series of the Trust that were purchased prior to the implementation of the Dual Distribution System will be designated Class A Shares.

4. The Class B Shares are designed to permit the investor to purchase shares of the Series without the assessment of a front-end sales charge (except for the Money Market Series) and at the same time permit the Distributor to pay financial intermediaries a commission on the sale of the Class B Shares. Class B Shares of the Priority Selection List Series, Zweig Strategy Fund, and Zweig Appreciation Fund will pay the Distributor a distribution fee pursuant to the Trust's Rule 12b–1 Plan at a rate of .75% per annum. Class B Shares of Government Securities will pay a distribution fee of .50% per annum and Class B Shares of Money Market Series will pay a distribution fee of .05% per annum. Class B will bear a service fee of .25% per annum of the average daily net assets of such Class. The service fees are payments made to a NASD member for the provision of personal, continuing service to investors similar to account maintenance fees.

5. An investor's proceeds from redemption of Class B Shares may be subject to a CDSC of 1.25% of the net asset value of shares redeemed within one year of their purchase. The CDSC will only be imposed on redemptions of Class B Shares which were purchased less than one year (the "CDSC Period") prior to their redemption; no CDSC will be imposed thereafter. Further, no CDSC will be imposed on shares derived from reinvestment of dividends or capital gains distributions, or on amounts which represent an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchases during the CDSC Period. In determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares derived from reinvestment of dividends and capital gain distributions or shares representing capital appreciation, second of shares purchased prior to the CDSC Period, and third of shares purchased during the CDSC Period.

6. The Trust had previously received orders from the Commission in connection with its CDSC. *See* Investment Company Act Release Nos. 17493 (May 16, 1990), 16277 (Feb. 18, 1988), 15368 (Oct. 20, 1986), and 14343 (January 30, 1985).

7. Applicants request relief to permit them to waive the CDSC on redemptions following the death of a shareholder, or in the event that a shareholder becomes unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. Applicants also request relief to permit them to waive the CDSC when a total or partial redemption is made in connection with distributions from Individual Retirement Accounts ("IRAs"), or other qualified retirement plans: (a) In connection with a lump-sum or other distribution following retirement or, in the case of an IRA, Keogh Plan, or a custodial account pursuant to section 403(b)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), upon the investor's attaining age 59½ or (b) on any redemption which results from the tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code, or from the death or disability of the employee. Finally, applicants request relief to permit them to waive the CDSC on redemptions from qualified pension or profit-sharing plans arising in connection with the termination of the beneficial owner's employment and the transfer of assets from such plans to a new plan maintained by the beneficial owner's new employer; and in whole or in part, in connection with shares purchased by or on behalf of any officer, director, trustee, account executive or full-time employee (or a spouse or child of any such person) of the Trust, the Adviser, the Distributor or any company affiliated with the Adviser or Distributor, or by or on behalf of any employee (or a spouse or child of any employee) of any NASD member. If the

[1] The staff of the Division of Investment Management notes that the Trust previously received an order to impose the CDSC. *See Zweig Series Trust*, Investment Company Act Release No. 17440 (April 17, 1990).

Trustees determine to discontinue the waiver of the CDSC, the disclosure in the Trust's prospectus will be appropriately revised. Any Class B Shares purchased prior to the determination of such waiver will have the CDSC waived as provided in the Trust's prospectus at the time of the purchase of the shares.

8. Proceeds from the Class B Shares' distribution fees and the CDSC will be used to compensate financial intermediaries (except for sales of Class B Shares for which a waiver of the CDSC is applicable at the time or purchase). Proceeds from the distribution fee and CDSC in the case of Class B Shares also will be used to defray the expenses of the Distributor with respect to providing distribution related services, including commissions.

9. The Distributor will furnish the Trustees of the Trust (the "Trustees") with quarterly and annual statements of distribution revenues and expenditures (the "Statements"), in accordance with the requirements of paragraph (b)(3)(ii) of rule 12b–1, to enable the Trustees to make the findings required by paragraphs (d) and (e) of rule 12b–1. In the Statements, only distribution expenditures properly attributable to the sale of a particular class will be used to justify the distribution fee charged to that class.

10. The decision as to whether a particular distribution expenditure or category of distribution expenditures is properly attributable to the sale of a particular class or to the sale of both classes of shares (and thus allocated to each class of shares in accordance with the method described above) will be subject to the review and approval of the Trustees. The Statements will disclose whether the distribution expenditures listed are attributable to the sale of a particular class or to the sale of both classes of shares.

11. Class A Shares of a Series will be exchangeable only for Class A Shares of the other Series, and Class B Shares will be exchangeable only for Class B Shares of the other Series. The applicable exchange privileges will be in compliance with rule 11a–3 under the Act.

12. Except for the differences described above, the Class A Shares and Class B Shares of the Series will have identical voting, dividend, liquidation and other rights, and the same terms and conditions. All expenses incurred by each Series will be borne on a pro rata basis by each outstanding class of shares except for the expenses of the distribution plan and incremental transfer agency costs. Because of the additional expenses that will be borne solely by Class B Shares, the net income attributable to and the dividends payable on Class B Shares will be lower than the net income attributable to and the dividends payable on Class A Shares. The net asset value of the Class A Shares (except for Money Market Series Class A Shares) will be higher initially than the net asset value of the Class B Shares, and the net asset value per share of the two classes will continue to diverge over time (except in the case of the Money Market Series).

13. Gross income and expenses will be allocated daily to each class of shares based on the net assets pertaining to the class at the beginning of the day. Since differing rule 12b–1 fees will be charged to the two classes of shares, separate net asset values will be calculated for each class of shares. Net asset value will be determined by dividing the net assets applicable to a specific class by the number of shares outstanding in that class. Dividends paid by any Series with respect to Class A and Class B Shares will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except for expenses solely attributable to one class.

Applicants' Legal Analysis

1. Applicants state that the Dual Distribution System will both facilitate the distribution of shares by the Trust and provide investors with a broader choice of methods for financing the purchase of shares. Applicants assert that competitive pressures in the distribution channels make it desirable to offer services adapted to meet the particular needs of specific groups of investors. Further, applicants assert that it would be inefficient and economically and operationally infeasible to continually organize separate portfolios to meet these competitive situations. Moreover, owners of both classes may be relieved of a portion of the fixed costs normally associated with open-end management investment companies since such costs would potentially be spread over a greater number of shares than would otherwise be the case.

2. The proposed Dual Distribution System does not create the potential for the abuses that section 18 was designed to redress. The proposed arrangement will not increase the speculative character of the shares of each Series of the Trust. The proposal does not involve borrowings, and all shares will participate pro rata in each Series' total income and expenses, with the exception of the differing rule 12b–1 distribution fees and transfer agency costs.

3. Both classes of shares will be redeemable at all times and no class of shares will have any preference or priority over any other class in the Series in the usual sense; that is, no class will have distribution or liquidation preferences with respect to particular assets, no class will have any right to require that lapsed dividends be paid before dividends are declared on the other class, and no class will be protected by any reserve or other account.

4. The interests of the two classes of shares as to the advisory fees of the Trust are the same and are not in conflict because these fees are used solely to compensate the Adviser for providing management and advisory services that are common to all investors. Further, the Trustees must analyze the reasonableness of the advisory fee and the distribution fee under the standards defined by section 36(b) of the Act. Thus, the interests of each class of shareholders will be protected.

5. The proposed allocation of expenses and voting rights relating to the Rule 12b–1 Plans is equitable and will not discriminate against either group of shareholders. Investors purchasing Class A Shares will bear a proportionately lower share of the Series' distribution expenses and transfer agency costs than holders of the Class B Shares. However, each class will vote separately as a class with respect to that Series' rule 12b–1 distribution plan.

6. Applicants believe that the imposition of the CDSC on the Class B Shares is fair and in the best interests of the Trust's sharedollars. The proposed Dual Distribution System permits Class B shareholders (except for Money Market Series Class B Shareholders) to have the advantage of greater investment dollars working for them the time of the purchase than if a sales charge were imposed at the time or purchase, as is the case with the Class A Shares. Furthermore, the CSDC is fair to Class B shareholders because it applies only to amounts representing purchase payments and does not apply to increases in the value of an investor's account through capital appreciation, or to amounts representing reinvestment of dividends and capital gains distributions.

7. Applicants also believe that the imposition of the CDSC is appropriate in the light of the relationship between the CDSC and the Trust's Rule 12b–1 Plan. Applicants believes that when amounts attributable to Class B Shares are redeemed prior to the expiration of the

CDSC period, and thus no longer contribute to the annual distribution fee, it is fair to impose on the withdrawing Class B shareholders a lump sum payment reflecting expenses that have not been recovered through payments by such Series. As noted above, the proceeds from the CDSC will reduce the amount of distribution expenses which must be borne by the remaining shares.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

A. Conditions Relating to the Dual Distribution System

1. The Class A and Class B Shares will represent interests in the same portfolio of investments of each Series, and be identical in all respects, except as set forth below. The only differences between Class A and Class B Shares of the same Series will relate solely to: (a) The impact of the respective rule 12b–1 Plan payments and the service fee imposed on Class B Shares made by each of the Class A and Class B Shares of a Series, any incremental transfer agency costs paid by the Class A and Class B Shares of a Series resulting from the Class A and Class B Shares sales arrangements, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order, (b) voting rights on matters which pertain to each Series' rule 12b–1 Plan, (c) the different exchange privileges of the Class A and Class B Shares as described in the prospectus (and as more fully described in the statement of additional information) of the Trust, and (d) the description of each class of shares of each Series.

2. The Trustees, including a majority of the independent Trustees, will approve the Dual Distribution System. The minutes of the meetings of the Trustees regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Dual Distribution System will reflect in detail the reasons for determining that the proposed Dual Distribution System is in the best interests of both the Trust and its shareholders.

3. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Series for the existence of any material conflicts between the interests of the two classes of shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. Any rule 12b–1 Plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b–1 Plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting will be held within sixteen months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

5. The Trustees will receive quarterly and annual statements concerning distribution expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as amended from time to time. In the statements, only expenditures properly attributable to the sale of Class A or Class B Shares, respectively, or to the provision of services to holders of such shares, will be used to justify any fee attributable to such class. Expenditures not related to the sale of Class A or Class B Shares, or to services provided to holders of such shares, will not be presented to the Trustees to justify any fee attributable to such class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

6. Dividends paid by each Series with respect to its Class A and Class B Shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that distribution and/or service fee payments made by a Series under its rule 12b–1 Plan for Class A or Class B Shares, and any incremental transfer agency costs relating to Class A and Class B Shares, will be borne exclusively by the respective class.

7. The methodology and procedures for calculating the net asset value and dividend/distributions of the Class A and Class B Shares, and the proper allocation of expenses between those classes, have been reviewed by the Expert who has rendered a report to applicants, which has been provided to the staff of the Commission, which states that the methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made under the Dual Distribution System and, based upon such review, will render at least annually a report to the Trust that the calculations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Trust (which the Trust agrees to provide), will be available for inspection by the Commission staff upon the written request to the Trust for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests," as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. The Trust has adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses between the classes of shares. This representation has been concurred with by the Expert in the initial report referred in condition (7) above and will be concurred with the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

9. The prospectus of the Trust will include a statement to the effect that a salesperson and any other person entitled to receive compensation for

selling shares of the Trust may receive different compensation for selling Class A or Class B Shares.

10. The Distributor will adopt compliance standards as to when Class A and Class B Shares may appropriately be sold to particular investors. Applicants will require all persons selling Class A or Class B Shares to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees with respect to the Dual Distribution System will be set forth in guidelines that will be furnished to the Trustees.

12. Each Series will disclose its respective expenses, performance data, distribution arrangements, services, fees, sales charges, deferred sales charges, and exchange privileges applicable to each class of shares in the Trust's prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Series will disclose its respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent advertisements or sales literature describe the expenses or performance data applicable to any class of shares of any Series, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of such Series. Similarly, the information provided by the Trust to any newspaper or similar listing of each Series' net asset values and public offering prices will separately present the Class A and Class B Shares.

13. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization or acquiescence in any particular level of payments that each Series may make pursuant to their rule 12b–1 distribution plan in reliance on the exemptive order.

B. Condition Relating to the CDSC

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–312 Filed 1–7–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

San Diego International Airport-Lindbergh Field, San Diego, CA; Environmental Impact Statement

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for a proposal to incorporate an Immediate Action Program (IAP) consisting of the development of improved airport facilities at the San Diego International Airport-Lindbergh Field. To ensure that all significant issues, related to the proposed action, are identified, a public scoping meeting will be held.

DATES: Comments must be received at the address below on or before Friday, January 31, 1992.

ADDRESSES: Comments may be mailed or delivered in duplicate to the FAA at the following address: Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Hawthorne, California 90261, Mail Address: P. O. Box 92007, Worldway Postal Center, Los Angeles, California 9009–2007.

FOR FURTHER INFORMATION CONTACT: Mr. William T. Johnstone (AWP 611.3), Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, (telephone 310/297–1621).

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the San Diego Unified Port District, will prepare an EIS based on an Environmental Assessment for the IAP. The following projects will be evaluated in the EIS:

—Passenger terminal Expansion
—New aircraft gates
—Airport automobile parking and roadway improvements
—Aircraft fuel storage expansion

Comments and suggestions are invited from Federal, State and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified. Comments and suggestions may be mailed to the FAA informational contact listed above.

The objective of the project is the development of facilities consistent with project near term (5 year) growth of airport traffic.

Alternative

The existing configuration of the airport precludes reorientation of the runways or relocation to different portions of the airport. Therefore, the alternative to the proposed projects is the "No Action" alternative.

Public Scoping Meeting

To effect scoping, the FAA hereby solicits comments for consideration and possible incorporation in the Draft EIS. To ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Interested parties are invited to attend a scoping meeting will be held Wednesday, January 8, 1992, at 2 p.m. in the San Diego Unified Port District Administration Building, 3165 Pacific Highway, San Diego, California.

Documents related to the proposed action that may be useful in defining issues and concerns may be reviewed at the following location: District Clerk's Office, San Diego Unified Port District, 3165 Pacific Highway, San Diego, California 92101.

Issued in Hawthrone, California on December 31, 1991.

Ellsworth L. Chan,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 92–334 Filed 1–7–92; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA); Task Force 1, GNSS Implementation Task Force; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the first meeting of Task Force 1 to be held January 13, 1992, at the Software Productivity Consortium, 2214 Rockhill Road, Herndon, Virginia, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks and discussion of task force organization, approach and milestones; (2) FAA perspective on early implementation of GNSS; (3) Working group chairmen's perspectives; (a) Responsibilities; (b) Organization and approach; (c) Milestones; (4) Other business; (5) Date and place of working group meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral

statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 30, 1991.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-345 Filed 1-7-92; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 170, Minimum Operational Performance Standards for Automatic Dependent Surveillance (ADS); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the fourth meeting of Special Committee 170 to be held January 22-24, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of minutes of the third meeting held on October 2-4, 1991, RTCA paper no. 505-91/SC170-22 (previously distributed); (3) Review of Timing Working Group recommendations; (4) Review progress in defining the Context Manager; (5) Review of other tasks assigned during previous meeting; (6) Continue development of draft Minimum Operational Performance Standards for Automatic Dependent Surveillance (ADS) (in preparation); (7) Review of test procedures; (8) Assignment of tasks; (9) Other business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 20, 1991.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-347 Filed 1-7-92; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 168; Lithium Batteries; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the fifth meeting of Special Committee 168 to be held January 27-29, 1992, in the RTCA conference room, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036, commencing at 1 p.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the fourth meeting's minutes, RTCA paper No. 545-91/SC168-34; (3) Technical presentations; (4) Report of working groups; (5) Review of material preparatory to a first draft of the MOPS; (6) Working group sessions; (7) Assignment of tasks; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 19, 1991.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-348 Filed 1-7-92; 8:45 am]

BILLING CODE 4910-13-M

Hattiesburg-Laurel Regional Airport, Hattiesburg, MS; Intent to Rule on Application

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Hattiesburg-Laurel Regional Airport, Hattiesburg, Mississippi.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Hattiesburg-Laurel Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and 14 CFR part 158.

On December 24, 1991, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Hattiesburg-Laurel Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 20, 1992.

DATES: Comments must be received on or before February 7, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 120 North Hangar Drive, suite B, Jackson, Mississippi 39208-2308.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael C. Moon, Executive Director of the Hattiesburg-Laurel Regional Airport Authority, at the following address: Hattiesburg-Laurel Regional Airport Authority, 1002 Terminal Drive, Moselle, Mississippi 39459.

Comments from air carriers and foreign air carriers may be in the same form as provided to the Hattiesburg-Laurel Regional Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Elton E. Jay, Principal Engineer, FAA/Airports District Office, 120 North Hangar Drive, suite B, Jackson, Mississippi 39208-2308; telephone number (601) 965-4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1992.

Proposed charge expiration date: June 30, 1997.

Total estimated PFC revenue: $119,153.00.

Brief description of proposed project(s): Overlay and groove Runway 18-36; overlay parallel and connecting taxiways and general aviation apron.

AVAILABILITY OF APPLICATION: Any person may inspect the application in person at the FAA office listed above. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the office of the Hattiesburg-Laurel Regional Airport Authority.

Issued in Atlanta, Georgia, on December 30, 1991.

Stephen A. Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 92-346 Filed 1-7-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the Soo Line Railroad Company a request for exemptions from or waivers of compliance with a requirement of Federal rail safety standards. The petition is described below, including the regulatory provisions involved, and the nature of the relief being requested.

Soo Line Railroad Company

[Waiver Petition Docket Number PB-91-6]

The Soo Line Railroad Company (SOO) is seeking a waiver of compliance from § 232.12 of the Railroad Power Brakes and Drawbars Regulations, 49 CFR part 232. The SOO is requesting that it be permitted to move a train to clear a public highway/rail crossing prior to making the initial terminal air brake test. In assembling trains at Nahant, Iowa, it is necessary that Concord Road, a public highway, be blocked while performing the initial terminal air brake test. The SOO is requesting that it be permitted to move the train approximately 3,000 feet at a speed of less than 10 mph to clear the road prior to the test.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB-91-6) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before February 10, 1992, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on December 19, 1991.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92-325 Filed 1-7-92; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 2, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0204.
Form Number: ATF F 5110.38.
Type of Review: Extension.
Title: Formula for Distilled Spirits Under the Federal Alcohol Administration Act (Supplemental).
Description: ATF F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made, and restrictions to the labeling and manufacture. The form is used by ATF to ensure that a product is made and labeled properly and to audit distilled spirits operations.
Respondents: Small businesses or organizations.
Estimated Number of Respondents: 200.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 4,000 hours.

OMB Number: 1512-0469.
Form Number: None.
Type of Review: Extension.
Title: Labeling of Sulfites in Alcoholic Beverages.
Description: In a final rule published in the Federal Register on July 9, 1986 (51 FR 34706) the Food and Drug Administration established 10 parts per million as the threshold for declaration of sulfites in Food and wine products. The Bureau of Alcohol, Tobacco and Firearms on September 30, 1986 published a final rule (ATF-236) (51 FR 34706) establishing the same threshold for declaration of sulfites in alcoholic beverages.
Respondents: Business or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 4,787.
Estimated Burden Hours Per Respondent: 40 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,159 hours.

OMB Number: 1512-0482.
Form Number: ATF REC 5100/1.
Type of Review: Extension.
Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act.
Description: Under the Federal Alcohol Administration Act, bottlers and importers of alcohol beverages are required to display certain information for consumers on labels and in advertisements. Other optional statements are also required.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 6,060.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-369 Filed 1-7-92; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review.

January 2, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1143.
Form Number: IRS Form 706GS(D–1).
Type of Review: Revision.
Title: Notification of Distribution From a Generation-Skipping Trust.
Description: Form 706GS(D–1) is used by trustees to notify the IRS and distributees of information needed by distributees to compute the Federal GST tax imposed by Internal Revenue Code (IRC) section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 80,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 1 hour, 33 minutes
Learning about the form or the law: 1 hour, 41 minutes
Preparing the form: 41 minutes
Copying, assembling, and sending the form to IRS: 20 minutes
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 340,800 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Department Reports Management Officer.
[FR Doc. 92–370 Filed 1–7–92; 8:45 am]
BILLING CODE 4830–01–M

Designation of Securities for Exemption Under the Securities Exchange Act of 1934

AGENCY: Departmental Offices; Department of the Treasury.

ACTION: Notice of designation by the Secretary of the Treasury of debt obligations issued by banks of the Farm Credit System as exempt under the Securities Exchange Act of 1934.

SUMMARY: This designation updates existing designations to allow for changes in the structure of the Farm Credit System under amendments to the Farm Credit Act of 1971. It encompasses all obligations issued by the banks of the Farm Credit System that are authorized to be issued under subsections 4.2(c), (d), and (e), as amended, of the Farm Credit Act of 1971.

EFFECTIVE DATE: January 8, 1992.

FOR FURTHER INFORMATION CONTACT: Jill K. Ouseley, Director, Office of Market Finance; room 2209, Main Treasury, Washington, DC 20220, (202) 566–8741.

SUPPLEMENTARY INFORMATION: Subsection 3(a)(12) of the 1934 Act (15 U.S.C. 78c(a)(12)), as amended, provides in part that the term "exempted security" or "exempted securities" includes "government securities, as defined in paragraph (42) of this subsection." The Government Securities Act of 1986, Public Law No. 99–571, 100 Stat. 3208 (1986), in part amends the 1934 Act to add a new subparagraph to section 3(a) defining government securities to include "securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors." Public Law No. 99–571, section 102 (adding subsection 3(a)(42)(B), 15 U.S.C. section 78c(a)(42)(B)).

This is a notice of the designation by the Secretary of the Treasury of debt obligations issued by the banks of the Farm Credit System as exempted securities, and therefore as government securities, for the purposes of the 1934 Act. Whereas existing designations are specific as to the issuing banks and types of securities, this designation covers any debt obligations that the banks of the Farm Credit System are authorized to issue under subsections 4.2(c), (d), and (e), as amended, of the Farm Credit Act of 1971 (12 U.S.C. subsections 2153(c), (d), and (e)).

The generic form of this designation provides flexibility to allow for changes in the structure of the Farm Credit System that are authorized or mandated under amendments to the Farm Credit Act of 1971. It also provides flexibility for Farm Credit System banks to utilize the full range of securities authorized under subsections 4.2(c), (d), and (e), as amended, of the Farm Credit Act of 1971, whereas the existing designations are for particular types of securities. The existing designations remain in effect.

The existing designations are listed in a notice listing instruments previously exempted under the Securities Exchange Act of 1934, published in the **Federal Register** for October 16, 1987 (52 FR 38,559). For additional information regarding securities designated by the Treasury, interested parties should refer to the full text of the designations cited in the October 16, 1987 **Federal Register**.

Dated: December 3, 1991.

Jerome H. Powell,
Assistant Secretary (Domestic Finance).
[FR Doc. 92–296 Filed 1–7–92; 8:45 am]
BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on January 8 in room 600, 301 4th Street SW., Washington, DC from 10 a.m. to 12:30 p.m.

At 10 a.m. the Commission will meet with Mr. David Hitchcock, Director, Office of East Asian and Pacific Affairs, for an overview of public diplomacy in East Asia. At 10:45 Mr. Alberto Mora, General Counsel, will discuss the functions of legal adviser to the U.S. Information Agency. At 11:30 the Commission will hear from Mr. Greg Lagana, Public Affairs Officers, Quito, Ecuador, and Ms. Anne Stenzel, Andean Desk Officer, USIA, on the roles of Agency PAOs and desk officers.

FOR FURTHER INFORMATION: Please call Gloria Kalamets, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

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Dated: January 3, 1992.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 92-500 Filed 1-6-92; 12:13 pm]

BILLING CODE 6320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 5
Wednesday, January 8, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, January 30, 1992.

The Commission was established pursuant to Public Law 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 P.M. at the City Council Chambers, Pawtucket City Hall, 137 Roosevelt Avenue, Pawtucket, Rhode Island for the following reasons:

1. Report on Pawtucket Activities as Relates to the National Heritage Corridor
2. Discussion of the Heritage Corridor Interpretive Plan
3. Update on the Blackstone Valley Bikeway
4. Discussion of Criteria for Special Development Projects
5. Public Comment Period

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569. Telephone: (508) 278-9400.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address below.

Nancy L. Brittain,

Acting Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 92-486 Filed 1-6-92; 1:26 pm]

BILLING CODE 4310-70-M

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

TIME AND DATE: January 12, 1992 from 2:00 p.m. to 6:00 p.m. and January 13, 1992 from 9:00 a.m. to 4:00 p.m.

PLACE: University Place Conference Center and Hotel, 850 West Michigan Street, Indianapolis, Indiana.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Board of Directors of the Commission on National and Community Service will meet on January 12-13, 1992 to discuss strategies, priorities and final regulations to implement the National and Community Service Act of 1990. The public is invited to address the Board from 4:30 to 6:00 p.m. on January 12th, with a focus on Title E of the Act and the proposed Technical Assistance meetings and from 3:00 to 4:00 p.m. on January 13th, with a focus on evaluation and the final regulations and applications. Statements may not exceed 3 minutes, although supplementary written material may be provided. Please provide at least 28 copies of any such materials, either in advance or at the meeting. To request a time slot for the public comment period, please send a request in writing to the Commission on National and Community Service, 529 14th Street NW (Suite 428), Washington, D.C. 20045. Request must be received no later than the close of business, January 10, 1992. Any remaining time during the public comment periods will be made available for others who submit request to the Commission on January 12th between 2:00 and 4:30 p.m. at a place in the University Place Conference Center and Hotel to be designated at the meeting.

CONTACT PERSON FOR MORE INFORMATION: Terry Russell, General Counsel, Commission on National and Community Service, 529 14th Street NW. (Suite 428), Washington, DC 20045, (202) 724-0600.

Catherine Milton,

Executive Director, Commission on National and Community Service.

[FR Doc. 92-569 Filed 1-6-92; 3:48 pm]

BILLING CODE 6820-BA-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Board's meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning the Department of Energy's Operational Readiness Review and other matters related to the resumptions of operations in Building 559 at the Rocky Flats Plant.

TIME AND DATE: 1:30 p.m. January 16, 1992—Department of Energy presentations; 6:30 p.m.—Opportunity for interested persons to present oral comments concerning the matters to be considered.

PLACE: Building 1 Auditorium, Department of Commerce, 325 Broadway, Boulder, Colorado.

STATUS: Open.

MATTERS TO BE CONSIDERED: The open public meeting and hearing will address the Department of Energy's Operational Readiness Review and other matters related to the resumption of operations in Building 559 at the Rocky Flats Plant. The public hearing portion is independently authorized by 42 U.S.C. 2286b.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (202) 208-6400 (FTS 268-6400). This is not a toll free number.

SUPPLEMENTARY INFORMATION: On August 24, 1991, the Defense Nuclear Facilities Safety Board conducted a hearing on the operational readiness review (ORR) for Rocky Flats Building 559. Upon review of the record of that hearing and other information supplied by the Department of Energy (DOE), the Board concluded that the ORR was inadequate and premature. The Board set forth its concerns in Recommendations 91-4, issued September 30, 1991 (56 FR 50711, Oct. 8, 1991).

DOE has undertaken to correct the ORR deficiencies. DOE representatives will meet with the public at Rocky Flats to discuss the ORR for Building 559 on January 6, 1992. The Board has been informed by DOE that copies of the final ORR report for this building will be made available to the public at that time. The Board has decided that it should also conduct an additional public meeting and hearing on the ORR for Building 559.

Requests to speak at the hearing may be submitted in writing or by telephone. We ask that commentators describe the nature and scope of the oral presentation. Those who contact the Board prior to close of business on January 14, 1992, will be scheduled for time slots, beginning at approximately 6:30 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Meeting Room, at the start of the 1:30 p.m. meeting.

Anyone who wishes to comment, provide technical information or data may do so in writing, either in lieu of, or in addition to making an oral presentation. The Board members may question presenters to the extent deemed appropriate. The Board will hold the record open until January 21, 1992, for the receipt of additional materials. A transcript of the meeting will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at the DOE's Reading Room at Front Range Community College, 3645 West 112 Avenue, Westminster, CO 80030.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting, and otherwise exercise its powers as provided by law.

At this meeting, the Board will review with the Department of Energy, its contractors, and outside experts the DOE's Operational Readiness Review and other technical issues pertaining to the resumption of operations in Building 559 at the Rocky Flats Plant. The Department of Energy will take appropriate measures to safeguard any classified or controlled nuclear information it presents at this meeting.

Dated: January 6, 1992.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 92-562 Filed 1-6-92; 3:45 pm]

BILLING CODE 6820-KD-M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m. Thursday, January 9, 1992.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board will consider the following:

1. Approval of December Board Minutes
2. Approval of Resolution for Ronald Morphew
3. Bank Presidents, Vice Chairman and Remaining District Board Appointments
4. Advances Issues
5. 1992 Priorities

The above matters are exempt under one or more of sections 552b(c)(2), (6), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (6), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 92-457 Filed 1-6-92; 9:04 am]

BILLING CODE 6725-01-M

FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Friday, January 3, 1992, 57 FR 310.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, January 8, 1992.

CHANGES IN THE MEETING: The open meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 6, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-474 Filed 1-6-92; 10:43 am]

BILLING CODE 6210-01-M

RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on January 14, 1992, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Backlog Reductions (Task Force Report/ Administrative Finality)
(2) Taxation Memos to the Board
(3) Internal Revenue Service Interagency and Other Issues
(4) RRB Medicare Contract
(5) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act
(6) Regulations—Part 203, Employees Under the Act
(7) Regulations—Part 230, Reduction and Non-Payment of Annuities by Reason of Work

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: January 3, 1992.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92-568 Filed 1-6-92; 3:47 pm]

BILLING CODE 7905-01-M

Corrections

Federal Register
Vol. 57, No. 5
Wednesday, January 8, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Update to Official Staff Commentary

Correction

In the issue of Thursday, January 2, 1992, on page 81, in the correction of rule document 91-7888, in the second column, the first line now reading "**§ 226.9 [Corrected]**" should read "**Supplement I to part 226 [Corrected]**".

BILLING CODE 1505-01-D

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 900

[91-643]

Description of Organization and Functions

Correction

In rule document 91-31004 beginning on page 67155 in the issue of Monday, December 30, 1991, make the following correction:

§ 900.53 [Corrected]

On page 67158, in the third column, the second section, "**§ 900.52 Official Seal.**" should read "**§ 900.53 Official Seal.**"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-679-NC]

RIN 0938-AE78

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1991

Correction

In notice document 91-29362, beginning on page 64256, in the issue of Monday, December 9, 1991, make the following corrections:

1. On page 64256, in the second column, under **DATES:**, in the second paragraph, in the last line, "1991." should read "1992."

2. On the same page, in the same column, under **ADDRESSES:**, in the fifth line, "PBD" should read "BPD".

3. On page 64269, in the second column, the file line at the end of the document should read "FR Doc. 91-29362".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1417-91]

RIN 1115-AC72

Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act

Correction

In rule document 91-28552, beginning on page 61111, in the issue of Monday, December 2, 1991, make the following corrections:

§ 214.2 [Corrected]

1. On page 61127, in the first column, in paragraph 5., in the first line, "(h)(2)(v)(E)" should read "(h)(4)(v)(E)".

2. On the same page, in the same column, in paragraph 8., in the second line, "revising" should read "removing".

BILLING CODE 1505-01-D / Corrections

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Wednesday
January 8, 1992

Part II

Department of Health and Human Services

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies; Notice

VOL 57 ISS 5 JA 8 1992 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9–A–53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratory, 427 Fifth Avenue NW., Attalla, AL 35954–0770, 205–538–0012.

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703–691–9100

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bellin Hospital-Toxicology Laboratory, 2789 Allied Street, Green Bay, WI 54304, 414–496–2487

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Center for Human Toxicology, 417 Wakara Way-Room 290, University Research Park, Salt Lake City, UT 84108, 801–581–5117

Columbia Biomedical Laboratory, Inc., 4700 Forest Drive, Suite 200, Columbia, SC 29206, 800–848–4245/803–782–2700

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919–549–826/800–833–3984

Continental Bio-Clinical Laboratory Service, Inc., A MetPath Laboratory, 2740 28th Street, SW., Grand Rapids, MI 49509, 800–777–0706/616–538–6700

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–365–3840 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006

Drug Labs of Texas, 15201 I 10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

Eagle Forensic Laboratory, Inc., 950 North Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324

Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516–625–9800

ElSohly Laboratories, Inc., 1215½ Jackson Ave., Oxford, MS 38655, 601–236–2609

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (name change: formerly Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800–533–1710/507–284–3631

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 9176 Independence Avenue, Chatsworth, CA 91311, 818–718–0115/800–331–8670 (outside CA)/800–464–7081 (inside CA), (name changed: formerly Laboratory Specialists, Inc., Abused Drug Laboratories)

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 2356 North Lincoln Avenue, Chicago, IL 60614, 312–880–6900 (name changed: formerly Bio-Analytical Technologies)

MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612–636–7466/800–832–3244

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 North Senate Boulevard, Indianapolis, IN 46202, 317–929–3587 317–929–2314

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (name changed: formerly Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (name changed: formerly Med Arts Lab)

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100/800–572–3734 (inside VA)/800–336–0391 (outside VA)

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC

27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (inside NC)
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800–446–4728/619–694–5050 (name changed: formerly Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1610 Frontage Rd., Northbrook, IL 60062, 708–480–4680
Pathlab, Inc., 16 Concord, El Paso, TX 79906, 800–999–7284
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 512–493–3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–6378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–3537
Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811
Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919–361–7770
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
Scott & White Drug Testing Laboratory, 600 South 25th Street, Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southgate Medical Services, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137–3054, 800–338–0166 outside OH/800–362–8913 inside OH (name changed: formerly Southgate Medical Laboratory)
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 92–567 Filed 1–7–92; 8:45 am]

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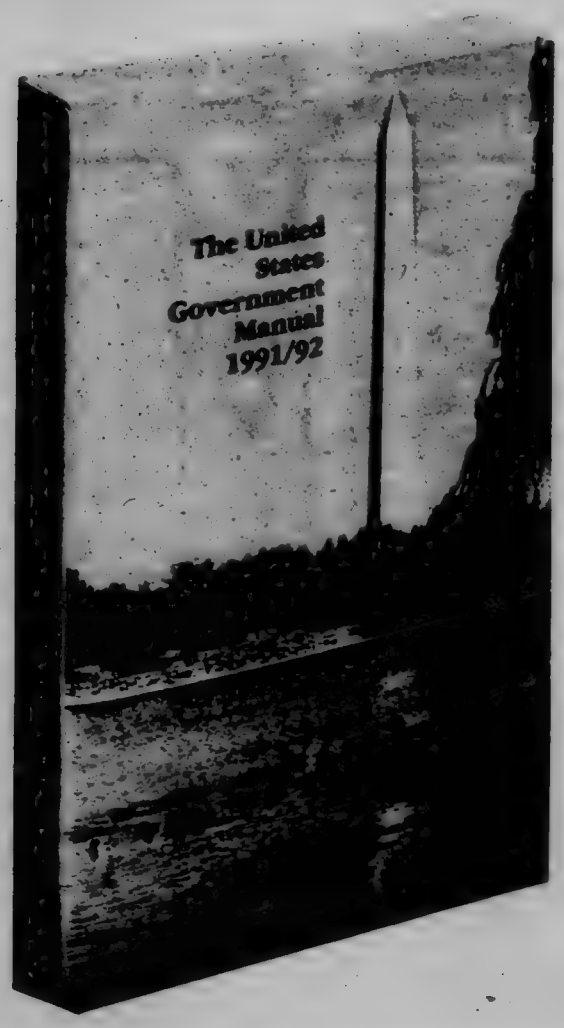

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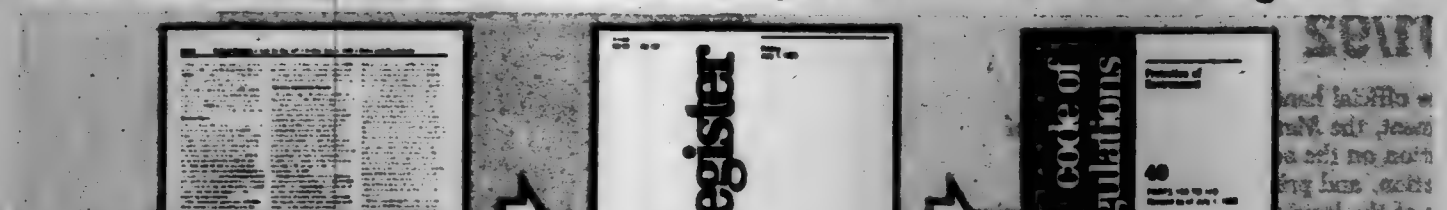

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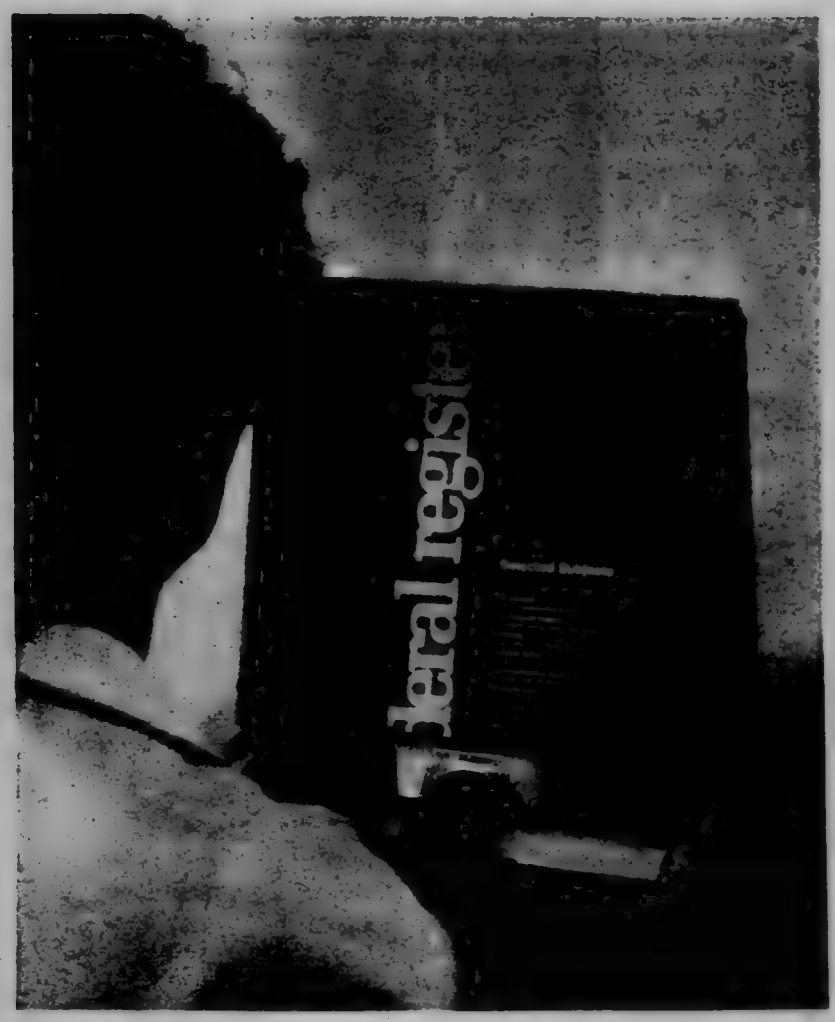

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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Part 130

[Docket No. 91-135]

RIN 0579-AA43

User Fees—Agricultural Quarantine and Inspection Services, Phytosanitary Certificates, Animal Quarantine Services, Veterinary Diagnostics, Export Health Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending 7 CFR part 354 and 9 CFR chapter I to establish user fees for certification, inspection and testing services we provide. These user fees are authorized by sections 2509 (b) and (c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended by the Omnibus Budget Reconciliation Act of 1990 (21 U.S.C. 136a) and by the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102-237).

The effect of these regulations will be to require certain persons to pay fees for services they receive.

EFFECTIVE DATE: February 9, 1992.

FOR FURTHER INFORMATION CONTACT: For information concerning agricultural quarantine and inspection (AQI), plant inspections, and additional inspections, contact Charles A. Havens, Chief Operations Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

For information concerning animal imports and exports, contact Louise R. Lothery, Director, Resource Management Support Staff, VS, APHIS, USDA, room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7517.

For information concerning veterinary diagnostics, contact Dr. Robert M. Nervig, Director, National Veterinary Services Laboratory, S&T, APHIS, USDA, 1800 Dayton Road, P.O. Box 844, Ames, Iowa 50010, 515-239-8266.

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Background

User Fees Authorized Under the Farm Bill

The Food, Agriculture, Conservation and Trade Act of 1990, as amended by the Omnibus Budget Reconciliation Act of 1990 (Budget Reconciliation Act) and the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (technical amendments), referred to below as the Farm Bill, authorizes the Secretary of Agriculture, within certain limits, to prescribe and collect fees to cover the cost of providing certain agricultural quarantine and inspection services. The services are "agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States,[1] or the preclearance or preinspection at a site outside the customs territory of the United States, of an international passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car" (section 2509 of the Farm Bill). We refer to these services as AQI services.

The Farm Bill, as amended by the technical amendments, limits the amount of money which APHIS can collect for services provided in certain categories. One category is user fees collected for "airport inspection services," which are limited to $69 million in fiscal year 1992 and $75 million in fiscal 1993 "from international airline passengers and commercial aircraft operators." (See section 1015 of the technical amendments, amending section 2509(a)(1)(B) of the Farm Bill). In addition, the Farm Bill, as amended, states that "Fees, including fees from international airline passengers and commercial aircraft operators, may only be collected to the extent that the Secretary reasonably estimates that the amount of the fees are commensurate with the costs of agricultural quarantine and inspection services with respect to the class of persons or entities paying the fees. Costs of such services with respect to passengers as a class include the cost of related inspections of the aircraft." (See section 2509(a)(1)(D) of the Farm Bill, as amended.)

The Farm Bill establishes a fund in the Treasury of the United States, known as the "Agricultural Quarantine Inspection User Fee Account" (the Account), for the Secretary of Agriculture to use for quarantine or inspection services. All fees collected for agricultural quarantine and inspection services are to be deposited in the Account. Fees collected within a calendar quarter are to be deposited no later than 31 days after the close of that quarter. The Farm Bill further requires the Secretary of the Treasury to reimburse, from the Account, any appropriation accounts that incur costs associated with agricultural quarantine services for which the Secretary of Agriculture is authorized to collect user fees and "all other activities carried out by the Secretary at ports in the customs territory of the United States and at preclearance or preinspection sites outside the customs territory of the United States in connection with the enforcement of the animal quarantine laws." (See section 2509(a)(3)(B)(ii) of the Farm Bill, as amended).

The Farm Bill also authorizes the Secretary of Agriculture "to prescribe and collect fees to recover the costs of providing for the inspection of plants and plant products offered for export or transiting the United States and certifying to shippers and interested parties as to the freedom of such plants and plant products from plant pests according to the phytosanitary requirements of the foreign countries to which such plants and plant products may be exported, or to the freedom from exposure to plant pests while in transit through the United States * * *." (Section 2509(b) of the Farm Bill). This section further provides that "[t]he Secretary of Agriculture shall, pursuant to regulations as prescribed by the Secretary of Agriculture, suspend performance of services to persons who have failed to pay such fees, late payment penalty and accrued interest."

In addition to the above authority, the Farm Bill authorizes the Secretary of

[1] The Farm Bill defines "customs territory of the United States" as "[t]he 50 States, the District of Columbia, and Puerto Rico." (section 2509(f)(2))

Agriculture to "prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine Laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance" (section 2509(c)(1) of the Farm Bill).

Further, the Farm Bill authorizes the Secretary "to prescribe and collect fees to recover the costs of carrying out the provisions of [21 U.S.C. 114a, as amended], which relate to veterinary diagnostics" (section 2509(c)(2) of the Farm Bill). 21 U.S.C. 114a concerns control and eradication of livestock and poultry diseases. Section 2509(c) also provides procedures for the Secretary to follow in the case of nonpayment, late payment penalties, or accrued interest. The section states that "[t]he Secretary shall suspend performance of services to persons who have failed to pay fees, late payment penalty, or accrued interest * * *".

Section 2509(d) of the Farm Bill provides in addition that "[t]he Secretary may prescribe such regulations as the Secretary determines necessary to carry out the provisions of [section 2509]."

Finally, the Farm Bill authorizes the Secretary "in carrying out regulations prohibiting or restricting the entry of materials that may harbor pests, or diseases, * * * to enter into agreements with operators or owners of vessels or aircraft for the purpose of providing inspection services at points of entry in the United States in addition to the regular or on-call basis currently available in connection with such vessels or aircraft." The section states that such agreements shall "provide for the payment by the operator or owner of an amount determined by the Secretary to be necessary to defray the costs of providing additional service pursuant to such agreement" (section 2508 of the Farm Bill).

Previously Published Regulations

On February 27, we proposed to amend 7 CFR parts 318, 320, 330, 352 and 354 (56 FR 8148–8156. Docket No. 90–247), to establish user fees for services we provide in connection with airline passengers departing Hawaii and Puerto Rico for other parts of the United States, and in connection with the arrival at ports in the customs territory of the United States of commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft.[2]

We made a portion of these regulations final in a document published April 12, 1991 (56 FR 14837–14846, Docket No. 91–028). It covered user fees for commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft arriving in the United States from outside the country. We began charging user fees for these services May 13, 1991.

The second final rule was published April 23, 1991 (56 FR 18496–18502, Docket No. 91–054). It covered user fees for passengers on commercial airlines departing Hawaii and Puerto Rico for other parts of the United States. We originally scheduled these regulations to be effective August 1, 1991. However, in a subsequent document published August 1, 1991 (56 FR 36724, Docket No. 91–113), we postponed the effective date until October 1, 1991. Then, on September 30, 1991, we published a document, Docket No. 91–138 (56 FR 49389), postponing indefinitely the effective date of these rules.

Proposed Rule

On August 7, 1991, we published a document in the **Federal Register** (56 FR 37481–37499, Docket 91–021) in which we proposed to amend 7 CFR part 354 and 9 CFR chapter I to establish user fees for certification, inspection and testing services we provide. On August 21, 1991, and September 24, 1991, documents were published in the **Federal Register** (56 FR 41805 and 56 FR 48270) making various corrections.

The services for which we proposed to charge an APHIS user fee fall into five categories.

The first category of services is the inspection services we provide to commercial aircraft, both aircraft arriving at a port within the customs territory of the United States and aircraft departing Hawaii or Puerto Rico for other locations within the United States, and commercial vessels departing Hawaii or Puerto Rico for other locations within the United States.

The second category of services relates to the issuance of phytosanitary certificates for plants and plant products being exported from the United States. These certificates are issued in accordance with the regulations at 7 CFR 353.1. They certify agricultural products moving from one country to another as being "free from quarantine pests, and practically free from other injurious pests."

The third category includes services which relate to the export or import of animals or birds. In this category are: (1) Services provided in connection with animals or birds in quarantine facilities, including Animal Import Centers operated by APHIS and privately-operated facilities; (2) endorsing health certificates needed to export animals or birds; (3) inspecting export isolation facilities for animals or birds; (4) inspecting animals and birds in isolation facilities; (5) supervising rest periods for animals and birds prior to export; and (6) supervising loading and unloading of animals or birds from a means of conveyance.

The fourth category of services relates to veterinary diagnostics. Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism is present in body tissues or cells. The services in this category are: (1) Performing laboratory tests required to import or export animals or birds; (2) conducting diagnostic testing on tissue samples referred to APHIS by State animal health officials who want assistance in establishing or confirming a diagnosis (referred to in this document as reference assistance testing); (3) providing certain diagnostic reagents. Diagnostic reagents are substances used in diagnostic tests to detect disease antibodies by causing an identifiable reaction.

The fifth category of services includes inspection services provided, at the request of operators or owners of vessels or aircraft, in addition to regular or on-call services currently available at points of entry in the United States.

We solicited comments concerning our proposal for a 30-day period ending September 6, 1991. We received 176 comments by that date. They were from shipping interests, both international and domestic, Members of Congress, airlines, State governments, representatives of agricultural industries, importers, exporters, veterinarians, and producers.

This document, Docket No. 91–135, covers all of the APHIS user fees we proposed in our proposed rulemaking, except (1) the user fees proposed for inspecting commercial aircraft and commercial vessels departing Hawaii and Puerto Rico for other parts of the United States, (2) the user fees for veterinary diagnostic services and diagnostic reagents, and (3) the user fees for export health certificates for animal products and byproducts.

As mentioned above, we indefinitely postponed the effective date of user fees under the User Fee Statute (31 U.S.C. 9701) for agricultural quarantine and inspection (AQI) services provided in

[2] The authority for the proposed regulations concerning passengers on certain domestic airline flights from Hawaii and Puerto Rico was 31 U.S.C. 9701, not the Farm Bill.

connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights. Since then, Congress has passed the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies appropriations act for fiscal year 1992. This Act, among other things, prohibits APHIS from developing, establishing, or operating any user fee program for agricultural quarantine and inspection to prevent the movement of exotic pests and diseases from Hawaii and Puerto Rico as authorized by 31 U.S.C. 9701. Consequently, we plan to publish documents in the Federal Register to withdraw both the previous published regulations that would have established user fees for AQI services provided in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights, and that part of our recent proposed rulemaking concerning user fees for inspecting commercial aircraft and commercial vessels departing Hawaii and Puerto Rico for other parts of the United States. Our reasons for not adopting user fees for veterinary diagnostic services and diagnostic reagents or for export health certificates for animal products and byproducts, are explained elsewhere in this document.

In addition, technical amendments to the Farm Bill limit, among other things, the total amount of money we can collect in user fees from international airline passengers and commercial aircraft operators. The technical amendments provide that the cost of services with respect to passengers include the cost of related inspections of the aircraft. As explained below, based on these amendments, we have changed the fee we proposed for aircraft inspection services. We have also recalculated the costs to be funded by the passengers fee.

We have carefully considered all of the comments we received. All the comments that apply to the user fees made final in this document are discussed below by topic.

General Comments

Increased Costs to APHIS

Some commenters pointed out that collecting user fees will raise APHIS's own administrative costs. One commenter charged that no real savings would be realized.

We agree that APHIS's administrative costs will rise when we start collecting user fees. However, we have attempted to minimize the increase, which is already factored into the proposed fees.

With regard to savings realized by charging user fees, the intent of the Farm Bill was not to save money, but to shift the burden of paying for services from the general public to the recipient of the services. We believe our APHIS user fees accomplish this goal.

Public v. Private Benefit

Numerous commenters stated that we do not have the authority to charge user fees for any service which is not clearly a "private benefit." Other comments stated that we should not charge a user fee for any service which benefits the public. Many of these comments referred to the User Fee Statute (31 U.S.C. 9701), which provides that agencies "may prescribe regulations establishing the charge for a service or thing of value provided by the agency."

We are making no changes in the proposed regulations based on these comments. The user fees we are adopting in this document are authorized by the Farm Bill, not by the User Fee Statute.

Our authority under the Farm Bill, which is explained more extensively above, does not require us to consider the issue of private or public benefits at all. The Farm Bill states simply that we may charge a user fee for certain listed services. Whether those services provide public or private benefits, or a combination of the two, is irrelevant under the Farm Bill.

Length of Comment Period

Numerous comments expressed dissatisfaction with the length of the comment period. Many of these comments requested that the comment period, which was 30 days, be extended. As we explained in the proposal, the Animal and Plant Health Inspection Service (APHIS) must institute user fees as soon as possible. Time considerations do not allow for a longer comment period. We believe the comment period provided was reasonable under the circumstances. Moreover, the fact that we received 176 comments on the proposal, many of which were extensive, leads us to believe that the comment period was adequate.

Use of Fees—Deficit Reduction versus Improved APHIS Service

Many comments stated that APHIS user fees should be used to augment the APHIS budget and improve services. Many comments also stated that APHIS user fees should not be used for general Federal budget deficit reduction.

All user fees collected under the regulations adopted in this final rule will be collected under authority of the Farm Bill. This money will be available to APHIS to apply directly to APHIS programs, as explained above.

The Farm Bill does not require Congress to reduce our appropriation. Whether to increase or decrease our funding is a decision made by Congress as part of the budget process. For fiscal year 1992, the APHIS appropriation has been reduced. We anticipate that the loss of direct funding will be made up by APHIS user fees we collect.

Cost Cutting versus User Fees

Several commenters suggested that APHIS, and other agencies within the Federal government, reduce costs and thereby avoid charging user fees. We have not made any changes based on these comments. Implementing user fees is not a substitute for cost-cutting. We are constantly trying to reduce costs and minimize necessary cost increases. Also, because APHIS user fees reflect the actual cost of providing a service, up to any limit which may have been imposed by Congress, if we can reduce the cost of a service, we can reduce the user fee for that service.

Future Review and Revision of User Fees

Many commenters stated that our proposed fees were either too high or too low, and should be adjusted. Others stated that we will collect money in excess of our costs. We are making no changes based on these comments.

We have determined, using the best data available, the cost of each of the services for which we will charge an APHIS user fee. In addition, the services we provide and the cost of providing those services will change over time. Therefore, as stated in our proposal, we intend to monitor our fees throughout the year and review them at least annually. We will propose to adjust the fees up or down as the review warrants, and we will publish, for public comment, any proposed fee changes in the Federal Register.

In addition, as explained elsewhere in this document, through technical amendments to the Farm Bill, the amount of money we can collect in user fees for certain services has been limited. Regardless of the cost of providing these services, we cannot collect more in user fees than allowed by the Farm Bill.

Increased Cost of Doing Business

Some comments stated that the fees would increase their cost of doing business. We realize that payment of the user fees will increase the up-front cost of doing business. However, as stated in our proposal, having the user, or immediate recipient, of the service pay

for it directly will allow a reduction in general tax receipts.

General Economic Situation and Other Factors To Be Considered

Many comments objected in general terms to the proposed APHIS user fees. Many maintained the proposed APHIS user fees would be detrimental to specific industries, such as international trade in horses, lumber exports, tobacco, wool exports, semen and embryo transfer, and tourism. Some comments proposed that we exempt certain industries or classes of users from the proposed user fees. Among those mentioned were the tobacco industry, germplasm industry, "companion animal (pet)" owners, and food animal producers. Commenters maintained that our user fees will discourage "young" industries, inhibit exports, and harm small businesses. Commenters also argued that we should consider the current economic situation, both in the United States and abroad, and the financial health of affected industries, before adopting APHIS user fees. One commenter suggested that instead of user fees, we should implement export credits to encourage exports.

We are not exempting any industries or businesses from APHIS user fees based on these comments. Because of budget constraints, we do not have the option to charge user fees which recover less than the full cost of providing a service. If we did so, we would not collect enough money to support the service. However, we have attempted to minimize the cost of our services, thereby keeping APHIS user fees at the lowest possible level. In addition, we are adjusting our proposed user fees for phytosanitary certificates, which will minimize the impact on shippers of "low value" commercial shipments.

Rounding of Fees

Several comments objected to our proposal to round up our fees. We are not making any changes in the regulations based on these comments. As explained in our proposal, we "proposed to round these fees up, rather than down, in order to ensure that we collect enough revenue to cover the costs of providing these services. If we were to round down, many fees would be lower than the cost of the service. As we would not have a reserve fund (for non-AQI services), there would be no funds for us to draw on to make up the deficiency (see 56 FR 37491)." We cannot recover any shortfall by charging a higher fee for another service category.

Also, as we stated in the proposal, we intend to review, at least annually, the user fees we are adopting in this document. We will publish any necessary adjustments in the **Federal Register**.

Request for Delay of Effective Date

Many other comments stated that the effective date of the regulations should be delayed. Most of these comments suggested no particular length of time, but one requested we delay implementation a full year. One other letter suggested that the proposed APHIS user fees should be phased in gradually over time.

We are making no changes based on these comments. We believe publication of our proposed regulations has given affected persons adequate time to prepare. Also, as explained in this docket, our appropriation for fiscal year 1992 has been reduced. We must begin collecting APHIS user fees to continue providing services at or near the same level as provided previously.

Proliferating User Fees

Several comments complained that federal user fees are proliferating. Unfortunately, APHIS has not control over other user fees which may be authorized or mandated by Congress.

Calculation of Fees

According to many comments, certain user fees as proposed are too high, too low, or inconsistent with other proposed user fees. Comments asserted that we did not include sufficient data in our proposed rules to justify our proposed user fees. Comments compared our proposed user fees with fees charged by other facilities for similar services. Comments also questioned whether we should include certain cost factors, for example, agency-level overhead charges, in calculating fees. Comments also stated that we would recover more money from our proposed fees than it costs to provide APHIS services.

We did not make any changes in the regulations based on these comments. The proposed APHIS user fees were based, in part, on estimates of the traffic volume in various service categories: Aircraft arrival, air cargo inspection, vessel inspection, maritime cargo clearance, and others. Costs were assigned directly to a category when the cost directly related to providing the service. Where a cost benefits all categories of service, it was pro-rated among the categories based on historic direct labor staff hours.

The total cost in each service category was divided by activity volume to arrive at a final fee. We estimated activity volume for 1992 by obtaining data for prior years from the Department of Transportation, Customs, and our own records. We adjusted these figures for anticipated changes in volume, based on past changes and on current world conditions which could affect volume, such as wars and economic conditions. This calculation provided the "raw fee."

We rounded the "raw fees" up to the nearest quarter. We rounded them off to simplify collection and accounting. We rounded our fees up, rather than down, because if we were to round down, even if only by pennies, the fees would not fully recover our costs. If there is a shortfall for a service category, we cannot recover it by charging a higher fee for another service category.

The technical amendments to the Farm Bill provide that the cost of services with respect to passengers include the cost of related inspections of the aircraft. As explained below, no changes in the amount of the passenger user fee are necessary to effectuate this change.

The technical amendments to the Farm Bill also limit the amount of money APHIS can collect in user fees for certain categories of services. For these services, we have adjusted our user fees, if necessary, to a level that would generate no more money than allowed. We will monitor receipts monthly, and if it appears the fees will exceed the applicable revenue limitations, we will revise our fees.

Each service category was considered separately. Each category must, through user fee receipts, return enough money to APHIS, up to the maximum allowed for certain categories under the Farm Bill, to cover the cost of providing AQI services to that particular category. Therefore, when computing fees for one category, we cannot take into account the amount of the fees calculated for other service categories.

We would like to point out that as a government agency, our cost categories for providing any given service may be similar, but not the same as, the costs for non-government entities to provide the same service. For example, both APHIS and any non-governmental entity have personnel costs. But APHIS, unlike some non-governmental entities, has no advertising cost. However, even where cost factors are the same, the actual dollar amounts may be very different.

We put as much of our supporting data in the proposed rulemaking as possible. However, it was not possible to publish all the material. Therefore, as stated in the proposed rulemaking, we made it available for inspection at our headquarters in Hyattsville, Maryland. Only one individual came to our office to inspect the supporting data.

Relationship of User Fee to Service Provided, Risk Posed, or Value of Item Receiving Service

There were several comments suggesting different approaches to fee setting. Comments suggested that the higher the disease or pest risk, the higher the applicable user fee. Comments suggested user fees be tied to the duration of inspection or the amount of service provided. Comments also suggested that user fees be tied to the value of the item receiving service. For example, one commenter stated that someone exporting a $40 box of plants should not have to pay the same fee for a phytosanitary certificate as the shipper of a $20,000 load of lumber.

We have carefully considered these comments.

We realize that the degree of pest or disease risk posed by individual means of conveyance or cargo varies. However, the number of variables which determine the actual risk, and, therefore, determine the amount of service or length of time required to provide service, is virtually infinite. A system which attempted to account for the variables would be unwieldy and expensive to administer and would require that the additional expenses would have to be included in the fee calculated. We are making no changes in our user fees on this basis.

The service we provide is also not directly related to the value of the items being inspected, or receiving some service. For example, using the commenter's example, the box of plants and the lumber require similar APHIS inspection. The dollar value of the items being inspected is not directly related to the time or effort required of APHIS personnel to issue a phytosanitary certificate. However, there is an indirect relationship. As we stated in our proposed regulations (55 FR 37484), it takes APHIS personnel less time and effort to issue a certificate for a noncommercial shipment because shippers usually bring the items to the APHIS office to be inspected. This is also true of low value commercial shipments. Therefore, in order to reflect this difference in cost to APHIS, we are amending the regulations to charge the same user fee for phytosanitary certificates for low value commercial shipments as for phytosanitary certificates for noncommercial shipments. We are specifying in the regulations that "low value" means less than $1,250.

We have chosen this figure to distinguish low value shipments from others, because it is a standard recognized by the exporting and importing industry. Most shippers, brokers, and others in the export business are also importers, or are familiar with this standard. This includes exporters who obtain phytosanitary certificates from APHIS. All importers must comply with the United States Customs Service (Customs) regulations. Under those regulations, all imported goods must "enter" the United States. This is true regardless of the type, quantity, or value of the goods. However, customs regulations distinguish between minor, low value importations, and others. Low value importations are allowed to make "informal entry" into the United States. This requires less paperwork and documentation, and processing is faster. Customs regulations state that to qualify for "informal entry" importations must, among other things, be valued at less than $1,250. (See 19 CFR 143.21)

In connection with the amendment, we are specifying in the regulation that commercial shippers can take advantage of this lower user fee only if: (1) The shipper requests the lower fee; (2) the items to be inspected are the same ones identified on the phytosanitary certificate; and (3) the shipment is accompanied by an invoice stating that the shipment is worth less than $1,250.

Discounts and Fee Caps

Several comments mentioned discounts. Several requested discounts for small businesses. One asked that we give discounts to large businesses.

Capping APHIS user fees was also suggested by several comments. As pointed out by a commenter, we have fee caps already in place for loaded commercial railroad cars (if prepaid for an entire year), commercial trucks (if prepaid for an entire year), and commercial vessels arriving in the United States.

In addition, as explained above, since our proposed regulations were published on August 7, 1991, Congress enacted technical amendments to the Farm Bill. These amendments, among other things, limit the amount of revenue APHIS may collect in user fees for airport inspection services.

We have carefully considered both the comments we received and the amendments to the Farm Bill. We have determined that only an adjustment to the aircraft inspection user fee is necessary to stay within the revenue limitations imposed by the amended Farm Bill.

Generally speaking, inspections or other services for a small entity cost the same as an inspection or other services for a large entity. The service provided is not related to the size of the business receiving it. Therefore we cannot justify a discount based on size of the business.

The commenters are correct that we already have fee caps in place for certain means of conveyance arriving in this country. In these situations the United States Customs Service or some other entity is collecting APHIS's user fees for us. As explained in the user fee document we published February 27, 1991 (Docket number 90-247, 56 FR 8140-8156), we adopted these fee caps to make our user fee collection regulations the same as United States Customs Service's regulations which applied to the same users and which were already in place. To do differently would have created needless confusion and would have raised the cost of our services.

However, this reasoning does not apply to any of the user fees we proposed adopting in our user fee document of August 7, 1991, as the United States Customs Service or other entity will not be collecting for us the APHIS user fees proposed in that document. Also, our proposed user fees were calculated based on the actual number of times we anticipate a service will be provided during one year. Our calculations did not take into account fee caps. As explained above, we must recover enough money from APHIS user fees to recover the full cost of providing our services. Therefore, we are making no changes based on these comments.

However, we are amending our proposed user fees to shift passenger-related inspection costs from the aircraft user fee to the airline passenger user fee. We have also recalculated the user fees for airport inspection services pursuant to the technical amendments to the Farm Bill. Therefore, we are lowering our proposed user fees for inspection of commercial aircraft arriving at a port in the customs territory of the United States. The user fee proposed for this service was $117.50. The final amended user fee for this service is $76.75.

We still must collect enough in user fees to cover the full cost of providing services. In this situation, though the total amount of money we can collect is limited, we estimate that user fees collected for these inspections will cover our costs. As explained in our proposal of August 7, 1991 (56 FR 37481-37499), our proposed user fee included the cost of inspections related to the presence of passengers on aircraft, such as inspection of the passenger cabin. The cost of these inspections will now be covered in the APHIS user fee for aircraft passengers. That fee was adopted April 12, 1991, and was effective May 13, 1991. The passenger fee was not originally intended to cover

the cost of these services. However, the fee was rounded up, as explained in the proposal, and therefore will generate some extra money. We believe this extra income is sufficient to cover the cost of passenger-related aircraft inspections. Therefore, the airline passenger user fee and the aircraft inspection user fee together should recover enough money to cover the full cost of airport inspection services and stay within the revenue limitations of the Farm Bill.

Originally, the airline passenger user fee covered inspection of the passenger, his or her baggage, and all related administrative and overhead expenses. The cost of these services was $1.73 per passenger. In addition to these costs, the airline passenger user fee will now also cover inspection of the aircraft galley, including garbage, the passenger compartment, the baggage hold, and all related administrative and overhead expenses. The cost of these additional services is $0.25 per passenger, raising the total cost of passenger-related inspection services to $1.98 per passenger. In both instances, the fee is rounded up to $2.00 per passenger.

User Fees for Services During Normal Business Hours

Many comments suggested that we should not charge a user fee for any service we provide during normal business hours. We are sympathetic to the feelings of these commenters. However, charges for services we provide during normal business hours are exactly the services for which the Farm Bill now authorizes us to charge a user fee. However, one advantage to our charging an APHIS user fee for these services is that we will be able to directly apply the fees to fund our programs and services. The Farm Bill requires that APHIS user fees be applied to APHIS programs.

User Fee or Tax?

Other comments stated that the APHIS user fee is a tax, not a fee. We do not agree with this comment. A tax is money paid to support general government operations. A fee is money paid for a specific service. The APHIS user fees herein are designed to recover and fund the cost of providing specific services. As such, the APHIS user fee is a user fee, not a tax.

Advisory Committee

One comment suggested that as part of the regulations APHIS should establish an Advisory Committee to monitor operations and use of the APHIS user fee/review performance of APHIS. We are taking no action based on this comment at this time. The establishment of an Advisory Committee is outside the scope of this rulemaking proceeding.

Economic Analysis

Of the many comments received, one requested that "the USDA do a study of how much the proposed user fees would produce for income to the USDA in relation to how much it would cost the producers in lost sales or reduced-priced sales due to the fees * * *." Another comment asked if we had "engaged in any formal, systematic effort to determine the economic impact of (phytosanitary certificate) fees * * *." A third commenter stated that the preliminary economic analysis did not state what method was used to determine discounted values or discuss the monetary ramifications of detecting a foreign animal disease before it spread.

In our proposed rulemaking we included a summary of our preliminary economic analysis. That analysis, which was made available for public inspection, includes the analyses and information the commenters request. As part of this final rule, we have included a summary of our final economic analysis. That analysis, along with numerous other documents pertaining to this final rule, is available for public inspection. Documents, including economic analyses performed in connection with other APHIS user fees may also contain relevant information and are, and were, available for public inspection.[3]

Administrative Procedure Act

One comment maintained that the proposed regulations violate the Administrative Procedure Act (5 U.S.C. 553, *et seq.*) because, according to the commenter, we have not conducted an adequate cost analysis. We believe, as discussed above, that we have conducted an adequate cost analysis. The analysis, which was summarized in the proposed rulemaking (56 FR 37492–37493) has been available for inspection since the rulemaking was published.

[3] General background documents such as prior proposed regulations, comments received in response to proposed regulations, and preliminary and final economic analyses, can be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC. Economic data supporting individual APHIS user fees may be inspected at APHIS, Budget and Accounting Division, User Fee Branch, room 263, Federal Building, 6505 Belcrest Road, Hyattsville, MD. Both offices are open 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Miscellaneous General Comments

One commenter pointed out that a statement in our proposed rulemaking, that the regulations would have no effect on the family (see 56 FR 37493), did not take into account "the many economic problems that delays in detection of an important disease outbreak will cause." We stand by our earlier statement. We agree with the commenter that delay in detecting an important disease outbreak does have economic consequences. However, those consequences are spread over society and the economy at large. Under our proposed regulations, the impact on the family would be difficult to quantify, would vary depending on the disease, the amount of delay, the location where the disease was introduced, and a number of other factors.

Several comments noted that some foreign governments subsidize exports indirectly by not charging for tests, inspections, or export certificates. Some of these commenters suggested that APHIS also do this; and that our charges will put American businesses at a competitive disadvantage.

We are making no changes in the regulations based on these comments. We have no basis for exempting shipments destined to any specified country from our export-related user fees. Other countries require various export certificates, which in turn require inspections and tests, to accompany plants and plant products and animals, animal products, and germplasm imported into their countries. We issue certificates, including performing tests and inspections, as a service to exporters in this country. We cannot provide these services without incurring various costs. Under authority of the Farm Bill, we can recover these costs by collecting user fees from those who request the services.

Whether other countries should charge their exporters a user fee for issuing various health certificates is a matter for the governments of those countries to decide. Their decisions have no bearing on whether we should charge a user fee for the same services provided by us in the United States.

One comment stated that we should institute a user fee for performing the "pink juice" test on meat transiting the United States. This is a test designed to help ensure that meat is not infected with foot-and-mouth disease or rinderpest. APHIS requires the test under 9 CFR 94.4. However, as the commenter correctly observed, "it is anticipated that transshipment (of meat subject to the test) would occur only

occasionally." At this time we have not calculated a user fee for the "pink juice" test. Any user fee we propose to adopt will be published for public comment in the **Federal Register**.

One comment suggested we guarantee that APHIS always maintain staffing at authorized levels. There is always turnover among staff, and time unavoidably passes before replacements can be hired and start to work. Also, hiring freezes and local shortages of qualified personnel can keep staffing below authorized levels. Therefore, it is not possible to guarantee constant staffing at authorized levels.

Proposed Amendments to Title 7, Code of Federal Regulations

Movement of Plants Without Phytosanitary Certificates

If APHIS adopts user fees for endorsing phytosanitary certificates, according to one comment, some people will be tempted to move plants out of the United States without the certification required by the receiving country. We are aware of this possible problem. However, we believe the potential loss of plant shipments and penalty actions taken by foreign governments against individuals who attempt this will deter such activities. For these reasons we are making no changes in the regulations based on this comment.

Exemption for Exports to Canada

Plant exports to Canada should be exempt from APHIS user fees for phytosanitary certificates, according to one commenter. The commenter cited the Free Trade Agreement with Canada as their reason.

We are making no changes in the regulations based on this comment. Canada requires phytosanitary certificates to accompany imported plants and plant products. We issue certificates as a service to exporters in this country. We cannot provide this service without incurring various costs. Under authority of the Farm Bill, we can recover these costs by collecting user fees from those who request phytosanitary certificates. The Free Trade Agreement with Canada has no bearing on APHIS charges for services we provide to American citizens in the United States.

Issuance of Phytosanitary Certificates/ State-Federal Relationship

Two comments questioned whether we will charge an APHIS user fee if State personnel perform a phytosanitary certificate inspection, but APHIS personnel issue the certificate. One commenter wanted to know further that if APHIS did charge a fee in this situation, how we would split it, if we would, with the State. The answer is that we would charge an APHIS user fee in the situation described, but we would not split the fee with the State. As explained in the proposal of August 7, 1991, (56 FR 37484–37485), we will charge the applicable APHIS user fee when a certificate is signed by APHIS personnel. However, the State has the option of charging its own fee for any services it provides. This is true even if the State does not issue a certificate. For example, if State personnel conduct an inspection for a certificate signed by APHIS personnel, the State may charge a fee for the inspection. State fees are allowed under 7 CFR 354.3(g)(4).

One of the commenters also asked several hypothetical questions about a shipper who pays for a block of Federal phytosanitary certificates at an APHIS office, receives the required inspection from a State inspector, and the State inspector signs a certificate from the block. The commenter's questions all concerned fees associated with the certificate.

However, the situation described by the commenter should never arise. Administrative controls over issuance of Federal phytosanitary certificates do not allow block certificates to be signed in any office other than the one where the certificates are obtained. For example, if a shipper pays for a block of certificates in APHIS's Portland, OR, office, then the shipper must get each certificate in the block signed by an APHIS inspector from our Portland, OR, office. An APHIS inspector from our Seattle, WA, office may not sign the certificate. Neither may any State inspector. Likewise, if a shipper obtains a block of phytosanitary certificates from a State office, the shipper must return to that State office to get the certificates signed.

Calculation of State Fees for Phytosanitary Certificates

Two comments questioned our statutory authority to prescribe guidelines for setting State fees for phytosanitary certificates.

Our authority for prescribing fee-setting guidelines is the Talmadge-Aiken Act (7 U.S.C. 450). That Act provides that:

> In order to avoid duplication of functions, facilities, and personnel, and to attain closer coordination and greater effectiveness and economy in administration of Federal and State laws and regulations relating to the marketing of agricultural products and to the control or eradication of plant and animal diseases and pests, the Secretary of Agriculture is authorized, in the administration and enforcement of such Federal laws within his area of responsibility, whenever he deems it feasible and in the public interest, to enter into cooperative arrangements with State departments of agriculture and other State agencies charged with the administration and enforcement of such State laws and regulations and to provide that any such State agency which has adequate facilities, personnel, and procedures, as determined by the Secretary, may assist the Secretary in the administration and enforcement of such Federal laws and regulations to the extent and in the manner he deems appropriate in the public interest.
>
> Further, the Secretary is authorized to coordinate the administration of such Federal laws and regulations with such State laws and regulations wherever feasible. However, nothing herein shall affect the jurisdiction of the Secretary of Agriculture under any Federal law, or any authority to cooperate with State agencies or other agencies or persons under existing provisions of law, or affect any restriction of law upon such cooperation.

As explained in our August 7, 1991, proposed rulemaking, issuance of phytosanitary certificates is a Federal function under Federal law (7 U.S.C. 147a) and regulations (7 CFR 353.1 *et seq.*). APHIS inspectors issue many certificates directly to exporters. However, in some States which cooperate with APHIS, certain State employees are designated to issue Federal certificates. Designated State employees issue approximately 47 percent of all certificates. These State inspectors are vital to the success of our program. There are more State inspectors than APHIS inspectors, and in many instances they are able to provide services more efficiently, including at remote portions of the country.

To ensure that United States plants and plant products move in international commerce, it is in the public's interest that APHIS cooperate with States to ensure that phytosanitary certificates are issued.

The Secretary of Agriculture, through APHIS, believes that one aspect of cooperation with the States is to allow them to recover the cost of services they perform in issuing phytosanitary certificates. However, we also believe that administration of Federal regulations concerning issuance of phytosanitary certificates should be coordinated with the States. We have the authority to do this under the Talmadge-Aiken Act. One aspect of coordination is to ensure that Federal and State fees for this Federal function have a similar cost basis. Therefore, we are adopting fee-setting guidelines for States to follow. We are not prescribing

each individual item for which they may charge or prescribe the exact amount they may charge.

Missing Phytosanitary Certificate Fees

We received one comment pointing out that we did not include a user fee for re-export certificates for noncommercial shipments. As explained above, we are amending our proposed regulations to change "noncommercial shipments" to "noncommercial and low-value shipments." Where it is clear and appropriate, we will use the new terminology in discussing this comment.

As the commenter pointed out, we were incorrect when we stated we had never issued a phytosanitary certificate for re-export certificate for noncommercial shipments (see proposed rulemaking published on August 7, 1991, 56 FR 37484), and therefore did not need to propose a user fee for the service.

We do in fact issue phytosanitary certificates for re-export of noncommercial shipments, though they are rare. An example is a phytosanitary certificate for a shipment of imported fruit being re-exported by the United States Department of Defense to a United States military installation overseas.

Based on this comment, we have decided to publish a proposed APHIS user fee covering phytosanitary certificates for re-export of noncommercial and low-value shipments in another document. The proposed user fee, which we will publish as soon as practicable, will appear in the **Federal Register** and the public will be invited to comment on it.

While considering this comment, we also realized we had neglected to include an APHIS user fees in our proposed regulations for processed product certificates for commercial shipments. This proposed APHIS user fee was explained in the background portion of our proposed rulemaking (see 56 FR 37484) and a proposed fee of $30.00 was listed. In the proposed regulations, we included a definition of "processed product certificate," but we did not include the $30.00 user fee (see 56 FR 37494.)

Therefore, we are amending 7 CFR 354.3(g)(5) to add a $30.00 user fee for processed product certificates for commercial shipments.

Efficiency of Issuing and Collecting User Fees for Phytosanitary Certificates

One comment stated that "[t]he necessity for issuing phytosanitary certificates expediently has not been considered. The proposal does not offer any viable method for collecting these fees * * *"

We are making no changes based on this comment. However, we agree with the comment that phytosanitary certificates need to be issued efficiently and user fees collected efficiently. Over the years we have developed our current system for issuing phytosanitary certificates. We welcome any suggestions for improving it. With regard to collecting user fees, we believe the collection system we proposed is practical and efficient. However, it is a new system. We will be working to improve it. Again, we welcome any suggestions.

Conflict with California Fee

Under authority of the Torres Bill, the State of California has recently instituted an $85 fee which must be paid by commercial aircraft arriving in California. Several commenters stated that it would constitute "double-billing" if they had to pay both the California user fee and the proposed Federal user fee. We do not agree, and have made no changes in the regulations based on these comments.

The California fee covers the cost of providing enhanced AQI inspections in that State. An APHIS user fee is not being assessed for these additional personnel. In calculating the APHIS user fee, the inspection cost was based on the level of funding requested in the fiscal year 1992 budget. Therefore, carriers are not being double-billed for inspection services provided in California because the cost of the enhanced inspection was excluded from our user fee calculations.

Difference in User Fees for Inspection of International and Domestic Aircraft

Two comments asked us to explain the apparent "discrepancy" between the proposed user fees for inspecting commercial aircraft arriving in the United States from other countries and the proposed user fee for inspecting commercial aircraft departing Hawaii and Puerto Rico for other parts of the United States.

As explained above, we are not adopting any user fee at this time for inspecting aircraft departing Hawaii and Puerto Rico for other parts of the United States. When we do publish a document adopting such rules, we will repeat our explanation.

The proposed user fee for inspecting certain domestic aircraft is lower because: (1) The scope of the inspection is narrower, being concerned only with certain plant materials, as opposed to all plants and plant materials, noxious weeds, endangered species, certain animal products and byproducts, and other items under APHIS regulation; (2) airlines are prohibited from accepting uncertified regulated cargos without bringing them to APHIS for certification; (3) no prohibited materials are allowed on the aircraft; therefore no garbage needs to be monitored; and (4) we can control materials loaded on the aircraft at domestic ports, which we cannot do at foreign ports, because we have inspectors stationed at domestic ports. As a result, we can charge a lower fee for inspecting these domestic aircraft.

Violation of International Agreements

Several commenters stated that our proposed user fees for inspection of aircraft arriving in the United States from foreign countries would be in violation of various international agreements. The agreements mentioned by commenters were: The Convention on International Civil Aviation (Chicago Convention) (Dec. 7, 1944, 61 Stat. 1180, 3 Bevans 944); the International Civil Aviation Convention (ICAO); the General Agreements on Trade and Tariffs (GATT); Bermuda 2 bilateral aviation agreement; Air Transport Services Agreements between the United States and Paraguay, Switzerland (11 Bevans 946), the United Kingdom, and Japan (Agreement of August 11, 1952 (4 U.S.T. 1948); and the United States-Japan Treaty of Friendship, Commerce and Navigation. We have carefully reviewed all of these agreements and have determined that no changes in the regulations are necessary. Each agreement is discussed individually below.

Chicago Convention. Several comments listed the Convention on International Civil Aviation as being violated by the proposed APHIS user fees.

According to the comments, Article 15 of the Convention provides that:

> Any charges that may be imposed or permitted to be imposed by a Contracting State for the use of such airports and air navigation facilities by the aircraft of any other Contracting State shall not be higher * * *
>
> (a) * * *
>
> (b) As to aircraft engaged in scheduled international air services, than those that would be paid by its national aircraft engaged in similar international air services.
>
> All such charges shall be published and communicated to the International Civil Aviation Organization [ICAO]: * * * 61 Stat. at 1184–85)

According to the commenters, user fees "other than those related to airport and airway facilities (are) not contemplated by the scheme of international regulations of civil aviation." This commenter also states that the "network of international

aviation agreements obligates APHIS to consult with the Departments of State and Transportation, and through those agencies with appropriate foreign air transportation officials, regarding the proposed imposition of this fee."

We do not believe the Chicago Convention applies to APHIS. The Convention applies to "airport operator(s) or other competent authorit(ies)." APHIS is not an airport operator. Neither do we believe APHIS is an "other competent authority" within the intended meaning of the Convention.

We also do not believe that the "network of international aviation agreements" obligates APHIS to consult with other Departments of the Federal government, as suggested by the commenter. However, by publishing our proposed rule for public comment in the Federal Register, we have solicited comments from all interested parties, including other Departments of the Federal government. We received no comments on our proposed rules from any other Federal government agency.

ICAO. One commenter states that ICAO Document 9082/3 "specifically required airport operators or *other competent authorities* (emphasis added by commenter) to provide adequate notification (4 to 6 months) when contemplating the imposition of new charges."

As explained above with regard to the Chicago Convention, we do not believe APHIS is either an "airport operator (* * *) or (an) other competent authority" within the intended meaning of the document. Therefore we do not believe this document applies to APHIS.

GATT. The GATT does not apply to persons or means of conveyance; the GATT does apply to cargo. However, the GATT permits user fees imposed on or in connection with importations, for inspection and quarantine services, if such fees are limited in amount to the approximate cost of the services rendered.

Various Bilateral Air Transport Services Agreements. Based on the comments we received, it appears that the many bilateral Air Transport Services Agreements to which the United States is a party are similar, if not identical, in wording and contain virtually the same provisions. In this discussion we quote from several different agreements. They are representative of the wording and contents of the other agreements.

The Air Transport Agreement between the United States and Switzerland requires that user fees be "established at reasonable and non-discriminatory levels, consistent with the costs of providing the relevant services and facilities, and be equitably apportioned among categories of users." According to the comments, the proposed APHIS user fees for aircraft inspection do not meet these criteria.

The APHIS user fees do not violate this agreement. It is not clear that the APHIS user fees proposed are encompassed by this provision of the agreement. However, even if they are, they are in compliance. As explained elsewhere in this document, the user fees have been established to reflect the cost of providing certain APHIS services to individual users of those services. Within each category of service, the user fee is the same. Under these circumstances, we conclude that the APHIS user fees meet the criteria of this agreement.

Accordingly, to another commenter, APHIS is in violation of the Air Transport Agreement between the United States and the United Kingdom because, among other things, APHIS "failed to consult the airlines using (APHIS) services or their representative organizations" before proposing the APHIS user fee. The provision which the commenter asserts has been violated is paragraph (5) of Article 10 (T.I.A.S. No. 8461 at 10–11). It states: "each Contracting Party shall use its best efforts to encourage the competent charging authorities and the airlines to exchange * * * information."

We do not believe APHIS is in violation of any requirement to report proposed fees. The provision in question only requires that "best efforts (be used) to encourage * * * exchange" of information. This does not appear to be a requirement. Therefore we do not believe APHIS can be in violation of it.

United States-Japan Treaty of Friendship, Commerce and Navigation. According to a commenter, the United States-Japan Treaty of Friendship, Commerce and Navigation provides, at paragraph 1, Article V, that:

> Neither party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other Party in the enterprises which they have established.

The commenter believes that the proposed APHIS user fees violate this clause because they exceed APHIS's authority and are therefore unreasonable. As we have explained elsewhere, we do not believe the proposed user fees exceed our authority under the Farm Bill. Therefore, we do not believe that we are in violation of this Treaty.

Nationality of Airlines

It appears that several commenters believe our user fees will apply to non-United States airlines, but not to United States airlines.

This is incorrect. The nationality of the airline is irrelevant—we will impose APHIS user fees on all aircraft arriving in the United States from other countries. We will except some aircraft from paying user fees, as listed in the regulations (see 7 CFR 354.3(e)(2)). However, the exceptions apply to any aircraft which meet the requirements, regardless of what country's flag the aircraft flies.

User Fees Exemption for Commercial Aircraft Arriving in the United States from Canada

One commenter objected to the "arbitrary exemption of Canada" from user fees proposed for commercial aircraft arriving in the United States. According to the commenter, our explanation that aircraft from Canada "pose little animal or plant disease or pest risk to the United States" (see 56 FR 37483) was unconvincing because the statement "likely also applies to aircraft from Great Britain, Norway and numerous other countries" which are not exempted from the proposed user fees.

We do not agree that the exemption is arbitrary. APHIS applies many quarantine restrictions on plants and animals and plant and animal products from countries other than Canada (including those mentioned by the commenter). By contrast, very few restrictions apply to plants and animals and plant and animal products from Canada. In addition, because of close cooperation between APHIS and Agriculture Canada, only materials which can be imported into the United States without restrictions are allowed by Canadian authorities to be placed on aircraft leaving Canada for the United States. Under these circumstances it is not necessary for APHIS to provide inspection services for commercial aircraft from Canada, and APHIS, therefore, incurs no expenses for such services.

Double-Billing: User Fees for Aircraft Passenger Inspection and Aircraft Inspection

Several comments expressed the opinion that for us to charge a user fee for foreign aircraft passenger inspection (see 56 FR 14637–14646, user fees effective May 11, 1991) and a user fee for inspection of the aircraft itself, including cargo, is "double-billing." We do not agree. Passengers pose a different risk of

bringing foreign diseases and pests into the United States than do the aircraft and cargo it carries. For example, passengers may have walked through dirt infested with parasites, or they may be carrying infested fruits or vegetables or infected meat on their person or in their baggage. Aircraft may be infested with a pest which has escaped from infested cargo. Aircraft or cargo may need to be fumigated or disinfected. Also, passengers are responsible for themselves and their baggage; the airline is responsible for the aircraft and the cargo. For all these reasons, passengers and their baggage must be inspected separately and in a different manner than the aircraft and its cargo.

It is also relevant that passengers themselves pay the APHIS user fees for passengers. Airlines are not responsible for paying passenger fees, though they collect the fee along with the price of the ticket, taxes, and any other charges that apply, and then remit the APHIS user fee to APHIS.

In addition, APHIS is authorized under the Farm Bill to charge separate user fees for inspecting foreign arriving commercial aircraft and foreign arriving commercial aircraft passengers.

In view of these facts, we have decided to make no changes in the regulations based on this comment. However, we want to point out that the APHIS user fee for aircraft inspection has been recalculated, and lowered. Passenger-related services, such as inspection of the aircraft's passenger compartment, will be covered by the APHIS passenger user fee. This change is explained more fully elsewhere in this document.

Calculation of User Fee for Aircraft Inspection

Several comments questioned the method and data we used to calculate the proposed APHIS user fee for aircraft inspection. Commenters raised several issues. One observed that our administrative cost figure for air cargo inspection was incorrect in the preliminary economic impact analysis. The commenter is correct that the figure should have been $1,250,000, not $209,000, as we reported in our preliminary economic analysis. However, we have recalculated our administrative cost figure at $179,000, based on the fact that aircraft inspection user fees will not be billed, but instead will be remitted.

Among other things, commenters stated that APHIS will receive "excessive" revenue from aircraft-related user fees. Some provided figures purporting to show this.

First, it is apparent that at least some of the commenters incorrectly included the APHIS user fee for passenger inspection as an aircraft fee, thereby inflating the apparent impact of APHIS user fees on airlines. However, the APHIS user fee for airline passengers is paid by passengers, not by airlines.

Second, a commenter asked what we considered user fee administrative costs. As we noted in our proposed rulemaking (56 FR 37485), user fee administrative costs include the cost to develop, implement, and properly account for AQI user fees. These are costs we would not incur if APHIS did not have user fees. Activities and costs included in this category are rate-development, cost and aircraft tracking systems, fee collection and processing systems, regulatory processes, and audit functions.

Third, one commenter charged that we did not reveal management support costs we included in the cost of program delivery. We believe APHIS clearly explained that the cost of providing service includes program delivery, program support, and agency level (or management support) costs. Management support, or overhead costs, are appropriate costs to include in user fees. No government program or business entity can operate without overhead, and including such costs in pricing goods or services is a standard cost accounting principle.

APHIS conducts a variety of activities, including the AQI program. All our activities are funded through "line item" appropriations. APHIS receives no direct Congressional appropriation for program support costs. Each APHIS "line item" must contribute to administrative support in order to fund costs. In the past, a portion of all administrative support has been funded through the AQI "line item." The funding process is the same under our proposed user fee regulations. All AQI user fees include amounts to support the AQI share of APHIS administrative costs.

Fourth, one commenter stated that APHIS has included various "non-administrative" program delivery costs. This is correct. We have included costs such as risk analysis and methods development which directly benefit users of AQI services. We have documented these costs, and they have been made available for public inspection.

Fifth, according to one comment, "APHIS has overstated the costs of its AQI services." The commenter has calculated a cost per inspector of approximately $183,000 to provide AQI services. We do not agree with the figures provided by the commenter. The commenter has estimated $30 million for APHIS aircraft clearance costs. At the time we published our proposed user fees, we estimated our costs at $23 million. However, based on the recent technical amendments to the Farm Bill, explained above, and the fact that aircraft inspection user fees will not be billed, but instead remitted, we have recalculated APHIS aircraft clearance costs at $18.8 million. This figure includes amounts for recomputed administrative costs and reserves. The reserve fund will remain in our user fee account to cover expenses when user fee collections are low.

Finally, one commenter stated that our data is from 1984 and our economic analysis is therefore invalid. As we have stated elsewhere in this document, our user fee program is new. In the past, we collected only data that was necessary for AQI program operations. Therefore, this data was the only data available when we developed our user fees. The data came from many sources, including detailed work load studies from 1984. However, contrary to the comment, we also have Workload Based Budgeting information from fiscal year 1990 and APHIS Work Accomplishment Data from 1985 to 1990, and the most recent Department of Transportation Air Travel Statistics available, from 1989.

Reimbursable Overtime for Arriving Commercial Aircraft

Several comments suggested that aircraft subject to the commercial aircraft user fee should be exempt from overtime charges.

We intended to exempt aircraft from overtime charges for aircraft inspection if they are subject to the commercial aircraft user fee. This will be true no matter what time of day the aircraft arrives. This exception is similar to the exception we adopted in our document of April 12, 1991 (56 FR 14840), concerning APHIS user fees for various AQI services, including inspection of passengers arriving in the United States aboard commercial aircraft. That exception provides that airlines will not be charged reimbursable overtime for required passenger inspection if the passenger has paid the APHIS passenger user fee for that flight.

With one exception, charging overtime for cargo inspection would also be excessive, as the cost of cargo inspection performed concurrently with inspection of the aircraft is already covered in the APHIS aircraft user fees. Only when cargo is off-loaded and inspected, by request of the shipper or aircraft owner or operator outside of normal business hours, is reimbursable

overtime justified. We are adding a new 7 CFR 354.3(e)(5) to clearly exempt aircraft from reimbursable overtime charges for aircraft or cargo inspection, if the aircraft is subject to the APHIS user fee for international arrivals.

The regulation will be applied as follows: If an aircraft arrives at any hour, even outside of normal business hours, and is inspected at that time, the standard APHIS user fee for aircraft will apply. If the cargo is inspected at that time, or is off-loaded and inspected later, but during normal business hours, we will not charge reimbursable overtime. The cargo inspection is included in the aircraft inspection fee. However, if an aircraft arrives and is inspected, but the cargo is off-loaded and inspected, by request, outside of normal business hours, then reimbursable overtime charges will apply to the cargo inspection. Normal business hours are 8:00 am to 4:30 pm, Monday through Friday.

User Fees for Intransit Aircraft

Some comments questioned how the regulations would apply to intransit aircraft. Implicit in these comments is the issue of multiple user fees, that is, more than one user fee for the same trip. Intransit aircraft are aircraft which arrive at a port of entry, without going through any portion of the Federal clearance process, which includes APHIS, United States Customs Service, and Immigration and Naturalization Service inspections and clearance, and then continues to another destination. In the airline industry, this type of stop is known as a "technical stop." An example would be an aircraft which lands for refueling only—no cargo is placed on the aircraft or removed from it, no passengers get on or off the aircraft, no crew members get on or off the aircraft, no food is placed on the aircraft, no garbage is removed from the aircraft. In these situations, we will not charge an APHIS user fee. We have therefore amended the regulations to add this exception in a new 7 CFR 354.3(e)(2)(vi).

Multiple User Fees

Aircraft arriving in the United States, and the cargo they carry, may be subject to multiple inspections as they are processed through Federal clearance procedures. Federal clearance procedures include inspections and clearances by APHIS, the United States Customs Service, and the Immigration and Naturalization Service. Under our proposed regulations, at each port where they are subject to APHIS inspection, they would pay the appropriate APHIS user fee.

Reserve Fund

A few comments stated that we should not establish a reserve fund.

We have made no changes based on this comment. The Farm Bill allows for a "reasonable balance" in the AQI user fee account. Our reserve fund is consistent with the size of reserve funds established by other agencies within the Department. The reserve fund will ensure that APHIS has sufficient operating funds in cases of bad debt, user insolvency, and fluctuation in activity volumes.

Miscellaneous Comments Concerning Title 7

Several commenters suggested changes in regulations which are not connected with the proposed APHIS user fees. One suggested that we establish a standard clearance time for aircraft. The commenter continued to suggest that if an aircraft was not cleared within the standard time, it would not have to pay the APHIS user fee.

We have considered this comment. We conclude that such a regulation would be inappropriate, as conditions outside our control affect the clearance time of individual aircraft.

Missing Provisions in Proposed Regulations

One comment stated that our proposed rulemaking did not address either APHIS's plans to document and substantiate its fee assessments to carriers (airline) or procedures for administrative appeals.

We are making no changes in the regulations based on this comment. Proposed 7 CFR 354.3(e)(3) contains requirements for carriers to remit user fees to APHIS. We did not propose to bill carriers for the APHIS user fees they owe. They will be responsible for remitting the correct amount to us. We will be responsible for ensuring the remittances are accurate. We currently maintain records of aircraft flights arriving in the United States which are subject to our inspection. Also, the Debt Collection Act of 1982 (31 U.S.C. 3717), referred to in 7 CFR 354.3(e)(3), applies to user fees remitted by carriers to APHIS. United States Department of Agriculture regulations implementing the Debt Collection Act of 1982 contain provisions for administrative appeals. Those regulations appear in 7 CFR 3.21 *et seq.*

Proposed Amendments to Title 9, Code of Federal Regulations Definitions

One commenter pointed out an error in our proposed definition of "export health certificate". The commenter correctly explained that export health certificates are issued, or filled in, by USDA accredited veterinarians, whom we had left out of our definition. However, it is the endorsement of the certificate, not its issuance, for which we are going to charge an APHIS user fee. The endorsement indicates that APHIS officially has reviewed the certificate and believes it to be accurate and reliable. Export health certificates are endorsed only by APHIS veterinarians. Therefore, we are adjusting the definition of "export health certificate" to clarify this. The new definition, in 9 CFR 130.1, will read as follows:

Export health certificate. An official document endorsed by an APHIS veterinarian which, as required by the importing country, states that animals or birds to be exported from the United States are free of certain diseases and pests.

Import versus Export Animal Quarantine Fees

A large number of commenters asked whether the daily animal quarantine charges we proposed applied both to animals being imported into the United States and to animals being exported from the United States, or only to animals being imported.

We proposed to charge a daily user fee for animals in quarantine. The only animals officially in "quarantine" are animals being imported into the country. Therefore, these are the only animals for which an APHIS user fee will be payable.

However, many commenters referred to animals being held in isolation prior to export, and animals resident in artificial insemination and embryo transfer centers, as being in "quarantine." Under our regulations, these animals are not technically in "quarantine."

To eliminate any possible confusion, we have amended the heading and text of 9 CFR 130.4 and 130.5 to refer to "import-quarantine facilities."

Fee for Use of Entire Quarantine Building at Animal Import Centers

In our proposed regulations we included a provision allowing importers, at their option, to utilize an entire Animal Import Center quarantine building and pay a single user fee. This option would be available only for designated buildings. In our August 7, 1991, proposal we designated one building each at our Newburgh, NY, and Honolulu, HI, Animal Import Centers as available for exclusive use.

We received one comment requesting that we not designate the Honolulu, HI, building for such use. The commenter pointed out that our Animal Import Center in Hawaii is small, and due to the high demand for space, allowing one importer to utilize an entire building would deprive numerous other importers of any opportunity to import animals through the facility. In addition, the space in the building we proposed to designate for such use has already been reserved for the next 2 years.

In view of these facts, we are amending proposed 9 CFR 130.3 to delete this building from the list of designated buildings. If, in the future, we determine that this or some other building can be made available for exclusive use, we will propose to amend the regulations.

Daily Fees at Animal Import Centers

Another commenter wrote to say that our daily fees for both partridges and large birds quarantined in our Animal Import Centers are too high. While the commenter presented some cost figures for feed, he did not take into account other costs which we must recover through APHIS user fees. Therefore, we are not adjusting our fee schedule based on this comment. However, as explained elsewhere in this document, we will review our fees at least annually, and, if we determine that our fees for partridges and for large birds, or any of our other fees, are either too high or too low, we will propose to adjust these fees in the **Federal Register**.

Conflict of Interest for APHIS

A few comments questioned whether APHIS could remain impartial or whether there would be a conflict of interest, when the proposed user fees become effective. The commenters did not give specific examples of potential conflicts of interest. However, the endorsement of export certificates presented to APHIS for endorsement are not endorsed, either because they are incomplete, incorrect, or have other problems.

When our user fees become effective, we will collect a fee only for actually endorsing a certificate. If a certificate presented to us cannot be endorsed, we will not collect an APHIS user fee. The commenter appears to be concerned that the potential loss of revenue will encourage APHIS employees to endorse certificates, whether correct or not, merely to collect the user fee.

While this may be a potential problem, we believe it is very unlikely to occur, for the following reasons. First, APHIS employees will not be paid directly from the user fees they collect. Individuals will not keep any fees they collect, as suggested by one comment, nor will salaries be dependent on the fees collected. In addition, employees will have no knowledge of the portion of their salaries attributable to user fee collections. Second, APHIS employees are responsible for maintaining the value of APHIS services and the Agency's reputation. Demand for some APHIS services would decrease if such services were inferior or the Agency's reputation was not maintained. Third, we attempt, through our personnel system, to hire and retain employees of demonstrated integrity. Fourth and finally, endorsing export health certificates which should be refused, or performing any other service in a fraudulent manner, is grounds for dismissal.

Financial Questions re: User Fees for Endorsing Export Health Certificates

One commenter asked questions about export health certificates: (1) How much additional revenue will be generated; (2) how many additional employees will be needed to account for billing and collection; and (3) will any of the funds be used to hire additional staff where needed.

No additional revenue will be generated. As we have explained, our appropriation has been reduced. The APHIS user fees we collect will replace the lost funds.

Until we implement these proposed APHIS user fees, we will not know if additional staff will be needed or not. For example, we do not know how many users will choose to be billed, and we therefore cannot predict the amount of billing work. We also do not know, if additional staff are needed, where they might be needed. We will have to wait until the user fees are implemented and assess their impact. We intend to adjust our staffing as necessary.

Basis of User Fees for Export Health Certificates

One comment asked why the user fees for export health certificates increase as the number of required tests increases. The commenter correctly states that the "function of this duty does not change regardless of the number of tests required." That is true, but the time it takes to perform the duty does change. As explained elsewhere in this document, one of the factors we used to determine the user fee for each service is the amount of staff time it takes to perform the service. Each test on a certificate must be verified. Therefore, certificates that involve more tests will require more staff time, and therefore the fee for endorsing such certificates will be higher.

Determining Correct User Fee for Export Health Certificates

One commenter asked what the user fee will be if a certificate lists several animals not requiring the same number of tests. The answer is that the user fee is the fee which would be due if all the animals on the certificate required the same number of tests as the animal which requires the greatest number of tests. For example, if 5 animals are listed on the certificate and the animal which requires the greatest number of tests requires 4 tests, the user fee for the certificate is $41.50, plus $1.25 for each of the additional 4 animals, for a total $46.50. We have amended proposed 9 CFR 130.6(b) to clarify this.

We would like to note that the situation described by the commenter is very rare. Consequently, we believe this method of determining the fee will be the easiest to administer and the most equitable. The reason for this is as follows. There are certain fixed costs involved with issuing an export certificate regardless of the number of animals on a certificate. Those fixed costs are for researching the test requirements for the country the animals will be exported to. The countries requiring more tests require more time to research since their import requirements are more stringent. This is reflected in the way the fees are structured—with the first animal on the certificate bearing those fixed costs. Therefore, in a case where there are animals on a certificate requiring different numbers of tests, the cost for the animals from the country requiring more tests must be used in order for APHIS to recover the full cost of issuing the certificate.

Multiple and Overtime Charges in Connection with Export Health Certificates

One commenter asked whether exporters who have health certificates endorsed outside of normal business hours will have to pay reimbursable overtime in addition to the export health certificate user fee.

Another commenter requested that we charge only one APHIS user fee if an APHIS veterinarian endorses the export health certificate during the course of supervising or inspecting export animals. The commenter is concerned that his business will have to pay two fees: An hourly fee for the inspection service and a separate fee for endorsement of the health certificate.

As proposed, our regulations required two fees—one user fee for the inspection

and another user fee for the endorsement. Depending on when the inspection was conducted, reimbursable overtime could apply.

We have carefully considered these comments and have decided to amend proposed 9 CFR 130.6 by adding a new paragraph (c). The regulations will now provide that if an APHIS veterinarian endorses an export health certificate in the course of conducting supervision or inspection services concerning the export animals listed on the certificate, only the hourly rate will apply. We will not charge a separate APHIS user fee for the endorsement. However, under our regulations, if the export health certificate is endorsed at another time, not during the course of supervision or inspection services described above, a separate APHIS user fee will apply to the endorsement. Similarly, if inspection or supervision services are conducted outside of normal business hours, regardless of whether or not the veterinarian endorses a health certificate at that time, the reimbursable overtime hourly rate will apply.

User Fees for Endorsing Export Health Certificates for Semen and Embryos

Numerous commenters needed clarification regarding APHIS user fees for endorsing export health certificates for semen and embryos. Commenters were obviously confused by our explanation and some were unclear what fee would be due for these certificates. Commenters also explained why they believe the user fee we proposed for these certificates should be calculated differently than the user fees we proposed for other export certificates. Some commenters suggested other approaches.

We have carefully reviewed all of these comments. We must agree that the explanation we published in our document of August 7, 1991, was confusing. Also in light of the comments we received, we believe we should reconsider our approach to calculating the fee for these export health certificates.

Therefore, we are not including in this final rule a user fee for export health certificates for animal semen or embryos. We will reconsider this issue and will publish a new proposal for public comment in the **Federal Register** as soon as feasible.

In connection with this issue, one commenter wanted to know whether semen and embryos are animal products or animal byproducts. We do not, under these regulations, consider semen and embryos to be either animal products or byproducts.

User Fees for Endorsing Export Health Certificates for Animal Products and Byproducts

We did not receive any comments which specifically addressed our proposed user fee for export health certificates for animal products and byproducts (see proposed 9 CFR 130.6(a).) However, as we explained above, at least one commenter was confused as to whether semen and embryos were animal products or byproducts, and other comments we received indicated that our explanations concerning semen and embryos was not clear.

These comments indicate to us that there may be general confusion concerning this issue. Rather than adopting a user fee which may not be clear to the public, we have decided to reconsider our proposed user fee for export health certificates for animal products and byproducts, and have deleted all references to such animal products and byproducts in this final rule. We will publish a new proposal for public comment in the **Federal Register** as soon as feasible.

Billing for Export Health Certificates

One comment stated that requiring export health certificates to be paid for at the time of endorsement would be extremely inconvenient for many users. We have considered this comment, and have decided to amend the proposed regulations to provide optional billing for users who meet certain criteria (see 9 CFR 130.50(a)(6)).

Under the amended regulations, users who request export health certificates may either pay for the certificates at the time of endorsement, or if they have established an acceptable credit history, as determined by APHIS, may choose to be billed for the service. These requirements are similar to those which apply to overtime services at border ports, sea ports, and airports under 7 CFR 354.1(c). If a user chooses to be billed, we will endorse its certificates and bill the user at the end of the month in which services are rendered. Payment will be due within 30 days after receipt of the bill. If bills are not paid within that time, we will take action under 9 CFR 130.51.

User Fees for Diagnostic Reagents and for Services at the National Veterinary Services Laboratories and the Foreign Animal Disease Diagnostic Laboratory

We received numerous comments objecting to the proposal to charge user fees for tests performed at the National Veterinary Services Laboratories (NVSL) and the Foreign Animal Disease Diagnostic Laboratory (FADDL). Many commenters also objected to the proposal to charge for diagnostic reagents obtained from NVSL.

Some commenters believe NVSL and FADDL services will deteriorate or be curtailed because APHIS is imposing user fees for tests and reagents. Several comments expressed the opinion that the proposed user fees for reference assistance testing are not comparable or consistent with the fees proposed for import and export testing.

Some commenters felt that if NVSL charges for program disease tests, people will stop using NVSL for these tests and NVSL will no longer get the data it needs to compile its statistics. These commenters are concerned that if practitioners and laboratories stop requesting reference assistance testing from NVSL, valuable data will be lost and the NVSL will not be able to continue effective surveillance of disease.

One commenter is of the opinion that the NVSL will become increasingly dependent on user fees for its funding, and will, as a result, "perform more and more of the procedures whereby it generates the fees it needs to operate at the expense of diagnostic investigation and new method development."

One commenter expressed concern that "when it becomes widely known that NVSL is charging fees which cover the full cost of that lab's operation, there * * * will be a push from State officials for a similar fee structure in the State diagnostic labs." According to the commenter, this would mean a tripling of charges for animal disease diagnostic testing in his State. He is concerned that animal owners could not afford such an increase.

After considering these comments, we have decided not to adopt, at this time, the user fees we proposed for NVSL and FADDL test services and for diagnostic reagents obtained from NVSL. Proposed 9 CFR 130.9 through 130.12 are therefore not included in this final rule.

We will consider further the comments we received on this issue and decide what action to take as soon as feasible.

Miscellaneous Comments Concerning Title 9

A commenter questioned why credit cards cannot be used at Veterinary Services Area Offices to pay APHIS user fees. At this time, Veterinary Services Area Offices are not equipped to accept credit card payments. If in the future this changes, we will amend the regulations to reflect that fact.

One commenter inquired if proposed 9 CFR 130.7 applies to "semen storage or distribution sites or the sealing of semen for international shipment." As of this time we have not proposed any APHIS user fees as described by the commenter. Proposed 9 CFR 130.7 does not apply to these services.

A commenter stated that we should include an APHIS user fee for inspecting animals crossing our land borders with Canada and Mexico. In fact, we are considering such an APHIS user fee. A document proposing that and other user fees will be published in the Federal Register as soon as feasible.

Several commenters suggested changes in regulations which are not connected with the proposed APHIS user fees. One change relates to reserving quarantine space at Animal Import Centers. We are considering this request. If we determine that an amendment to the regulations is warranted, we will publish proposed regulations in the Federal Register as soon as feasible.

One commenter expressed concern that many State agencies would be unable to comply with the 30-day payment limitation we proposed. The commenter stated that it is "unworkable * * * given the restrictions of working within a State system subject to fiscal deadlines etc."

Since thirty days is the standard time allowed for bill payment, we will not change the proposed regulations at this time. If we find that in practice 30 days is impractical, we will consider extending the amount of time we allow for payment.

Additional Changes to the Regulations

We have made minor non-substantive changes for clarity.

We are also amending proposed 7 CFR 354.3(i) and proposed 9 CFR 130.50 to clarify that we will accept payment only for the exact amount due. Most of our offices are not equipped to make change. Therefore we cannot accept any payment, including checks, which is for other than the exact amount due.

In order to clarify that we are charging a user fee for "endorsing" export health certificates, we are amending proposed 9 CFR 130.6 to insert "endorsing" in the heading, and to replace the word "issued" with the word "endorsed" in the text of that section.

We are also amending proposed 9 CFR 130.8 to clarify our intention that "an inspection" includes a bundle of related services—the inspection itself, testing, and supervision services. We are revising the first sentence in proposed 9 CFR 130.8(a) to read: "If inspection services, including inspection, testing, and supervision services, are performed outside the United States, in accordance with this title, and the regulations do not contain a provision for payment of the cost of the service, the person requesting the service must pay a user fee under this section."

Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, it has been determined that this rule is part of a series of documents which are being considered as a "major rule." This final rule is one of several rules requiring certain persons to pay user fees for APHIS services they receive. We have already published, in two separate documents, final rules adopting user fees for various passengers and means of conveyance. One final rule covered user fees for commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft arriving in the United States from outside the country. It was published April 12, 1991 (56 FR 14837–14846), and was effective May 13, 1991. The other final rule covered user fees for passengers on commercial airlines departing Hawaii and Puerto for other parts of the United States. It was published April 23, 1991 (56 18496–18502). As explained above, its effective date has been postponed indefinitely.

The Final Regulatory Impact Analysis indicates that the implementation of user fees on the three service categories (inspection of international commercial aircraft, issuance of phytosanitary certificates, and export/import of animals and birds) is expected to save taxpayers over $26 million per year. The total discounted value at 10 percent over 5 years is estimated to be about $108 million. Total administrative costs to the Department associated with fee collection for the inspection of international commercial aircraft and the issuance of phytosanitary certificates are estimated to be about $1.6 million annually, or a discounted value of about $6.5 million over 5 years.

The implementation of user fees for the inspection of international commercial aircraft is expected to provide tax savings of $19 million a year (a discounted value over 5 years of about $79 million). User fees for the issuance of phytosanitary certificates are expected to accrue savings of at least $3 million annually (a discounted value over 5 years of about $13 million).

Administrative costs associated with the collection and implementation of user fees for the inspection of international commercial aircraft is estimated at about $179,000 annually (a discounted value over 5 years of about $748,000). Administrative costs associated with the collection and implementation of fees for phytosanitary certificates are estimated at about $300,000 a year (a discounted value over 5 years about $1.3 million).

The implementation of user fees for services related to the export and import of animals or birds is expected to yield savings to taxpayers of $4 million per year (a discounted value over 5 years of about $17 million).

The two final user fee rules that have already been published (one for international air passengers and commercial trucks, rail cars and foreign vessels, and one for domestic air travel) were estimated to have a combined annual impact of $93 million in the form of savings to taxpayers. The savings estimated to accrue from the first rule on international air passengers and commercial vehicles comprise 83 percent of this total while the remaining 17 percent in savings is attributed to passenger fees for domestic travel.

These previous rules and the regulations proposed in this document are expected to provide a combined total savings of about $119 million annually. The discounted value of this amount is estimated at about $496 million over 5 years. The fees on the three categories of service proposed in this rule are expected to contribute 22 percent of the total savings.

Total administrative costs associated with implementing all user fee rules are estimated at about $2 million annually (a discounted value in the amount of $9 million). Only 20 percent of this amount is expected to be incurred in implementing the fees proposed in this rule.

The Regulatory Flexibility Act requires that APHIS specifically consider the economic impact of imposing user fees on "small" affected entities. The number of entities which may be qualified as small in each category is not available. However, except for airlines, it is likely that the majority of exporters of agricultural goods and importers of animals and birds can be categorized as small. The impact of user fees on all these groups is expected to be minor since the fee in each category represents a small fraction of the total operating costs for each small entity.

Our final Regulatory Impact Analysis is available for inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday,

except holidays, or by telephoning (202) 382–1368.

Executive Order 12606

We have analyzed these regulations in accordance with Executive Order 12606, and have determined that this rule has no potential impact on the family well-being. We have determined that this rule: does not affect the stability of the family, and particularly, the martial commitment; does not affect the authority and rights of parents in the education, nurture, and supervision of their children; does not help or hinder the family to perform its functions; does not substitute governmental activity for family functions; and does not affect family earnings. We have also determined that the benefits of this action justify and impact it may have on the family budget, and that this activity cannot be carried out by a lower level of government or by the family itself. This rule sends no message, intended or otherwise, to the public concerning the status of the family or to young people concerning the relationship between their behavior, their personal responsibiltity, and the norms of our society.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions that are included in this final rule have been submitted for approval to the Office of Management and Budget.

Executive Order 12372

This program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Lists of Subjects

7 CFR Part 354

Agricutural commodities, Exports, Government employees, Imports, Phytosanitary certificates, Plants (agriculture), Quarantine, Transportation.

9 CFR Part 130

Animals, Birds, Exports, Imports, Poultry, Quarantine, Tests.

Accordingly, we are amending 7 CFR part 354 and 9 CFR chapter I as follows:

7 CFR PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

§ 354.3 [Amended]

2. In § 354.3, paragraph (a) is amended to add, in alphabetical order, the following definitions:

* * * * *

Commercial purpose. The intention of receiving compensation, or making a gain or profit.

* * * * *

Commercial shipment. A shipment for gain or profit.

* * * * *

Designated State inspector. A State employee designated by APHIS to conduct inspections for phytosanitary export certification and to sign certificates on behalf of APHIS.

* * * * *

Phytosanitary certificate. A document certifying that agricultural products moving from one country to another are free from quarantine pests, and particularly free from other injurious pests.

Phytosanitary certificate for reexport. A document certifying that agricultural products which moved into the United States from another country and which are now moving from the United States to another country, remained free from quarantine pests, and practically free from other injurious pests while in the United States.

Processed product certificate. A document certifying that processed agricultural products moving from the United States are believed to be free from injurious plant pests.

3. In § 354.3, paragraph (e) is redesignated as paragraph (f), and a new paragraph (e) is added to read as follows:

§ 354.3 User fees for certain international services.

* * * * *

(e) *Fee for inspection of commercial aircraft.* (1) Except as provided in paragraph (e)(2) of this section, an APHIS user fee will be charged for each commercial aircraft which is arriving, or which has arrived and is proceeding from one United States airport to another under a United States Customs Service "Permit to Proceed," as specified in title 19, Code of Federal Regulations, §§ 122.81 through 122.85, or an "Agricultural Clearance or Safeguard Order" (PPQ Form 250), used pursuant to title 7, Code of Federal Regulations, § 330.400 and title 9, Code of Federal Regulations, § 94.5, and which is subject to inspection under part 330 of this chapter or 9 CFR chapter I, subchapter D. Each carrier is responsible for paying the APHIS user fee. The APHIS user fee is $76.75 for each arrival.

(2) The following categories of commercial aircraft are exempting from paying an APHIS user fee:

(i) Any aircraft moving solely between the United States and Canada;

(ii) Any aircraft used exclusively in the governmental services of the United States or a foreign government, including any Agency or political subdivision of the United States or a foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes;

(iii) Any aircraft making an emergency or forced landing when the original destination of the aircraft was a foreign port;

(iv) Any aircraft with 30 or fewer seats, which is not carrying cargo and which is not equipped to offer inflight food service;

(v) Any aircraft moving from the United States Virgin Islands to Puerto Rico; and

(vi) Any aircraft making an intransit stop at a port of entry, during which the aircraft does not proceed through any portion of the Federal clearance process, such as inspection or clearance by APHIS, by the United States Customs Service, or by the Immigration and Naturalization Service, no cargo is removed from or placed on the aircraft, no passengers get on or off the aircraft, no crew members get on or off the aircraft, no food is placed on the aircraft, and no garbage is removed from the aircraft.

(3) *Remittance and statement procedures.* (i) Each carrier must remit the appropriate fees to the United States Department of Agriculture, National Finance Center, COD Field Office, P.O. Box 73562, Chicago, IL 60673, for receipt no later than 31 days after the close of the calendar quarter in which the vessel arrivals occurred. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717).

(ii) At the same time a remittance is submitted the remitter must mail a written statement to the United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160. The statement must include the following information:

(A) Name and address of the person remitting payment;

(B) Taxpayer identification number of the person remitting payment;

(C) Calendar quarter covered by the payment;

(D) Ports of entry at which inspections occurred;

(E) Number of arrivals at each port; and

(F) Amount remitted.

(iii) Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to "The Animal and Plant Health Inspection Service."

(4) *Compliance.* Each carrier subject to this section must allow APHIS personnel to verify the accuracy of the APHIS user fees remitted and to otherwise determine compliance with 21 U.S.C. 136a and this paragraph. Each carrier must advise the United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160, of the name, address, and telephone number of a responsible officer who is authorized to verify APHIS user fee calculations and remittances. The United States Department of Agriculture, National Finance Center, Billings and Collections Branch, P.O. Box 60950, New Orleans, LA 70160, must be promptly notified of any changes in the identifying information submitted.

(5) *Limitations on charges.* (i) Airlines will not be charged reimbursable overtime for inspection of aircraft if the aircraft is subject to the APHIS user fee for arriving aircraft as prescribed by this section.

(ii) Airlines will not be charged reimbursable overtime for inspection of cargo from an aircraft if:

(A) the aircraft is subject to the APHIS user fee for arriving aircraft as prescribed by this section; and

(B) the cargo is inspected between 8 a.m. and 4:30 p.m., Monday through Friday; or

(C) the cargo is inspected concurrently with the aircraft.

§ 354.3 [Amended]

4. In § 354.3(f)(1), the words "paragraph (e)(2)" is removed and "paragraph (f)(2)" is added in their place.

5. In § 354.3, new paragraphs (g), (h), and (i) are added to read as follows:

§ 354.3 User fees for certain international services.

* * * * *

(g) *Fees for export certification of plants and plant products.* (1) For each certificate issued by APHIS personnel, the recipient must pay the applicable APHIS user fee at the time and place the certificate is issued, or, in the case of a block of certificates, at the time the certificates are given to the shipper.

(2) There is no APHIS user fee for a certificate issued by a designated State inspector.

(3) If a designated State inspector issues a certificate, the State where the certificate is issued may charge for inspection services provided in that State.

(4) Any State which wishes to charge a fee for services it provides to issue certificates must establish fees in accordance with the following guidelines:

(i) The State must:

(A) Estimate the annual number of certificates to be issued;

(B) Determine the total cost of issuing certificates by adding together delivery,[2] support,[3] and administrative [4] costs; and

(C) Divide the cost of issuing certificates by the estimated number of certificates to be issued to obtain a "raw" fee.

(ii) The State may round the "raw" fee up to the nearest quarter, if necessary for ease of calculation, collection, or billing.

(5) The APHIS user fees are:

(i)(A) $30 for a certificate for a commercial shipment; or

(B) $19 for a certificate for a low-value commercial shipment, if the following criteria are met:

(*1*) the items being shipped are identical to those identified on the phytosanitary certificate;

(*2*) the shipment is accompanied by an invoice which states that the items being shipped are worth less than $1,250; and

(*3*) the shipper requests that user fee charged be based on the low value of the shipment;

(ii) $19 for a certificate for a noncommercial shipment;

(iii) $30 for a certificate for reexport of a commercial shipment;

(iv) $30 for a processed product certificate for a commercial shipment;

(v) $6 for reissuing any certificate or certificate for reexport; and

(h) *Refunds of APHIS user fees.* (1) A shipper who pays for a block of certificates to cover commercial shipments may obtain a refund or a credit against future APHIS user fees under the following circumstances:

(i) If a certificate from the block is voided;

(ii) If a certificate from the block is returned unused;

(iii) If the shipper pays for inspection outside of normal business hours (8 a.m. to 4:30 p.m.) under § 354.1 of this part.

(iv) If a certificate from the block is used for a noncommercial shipment; or

(v) If a certificate from the block is used to reissue another certificate.

(2) The amount of any refund or credit will be the amount overcharged, less $6 to cover APHIS administrative expenses.

(i) *Payment methods.* For payment of any of the APHIS user fees required in paragraph (g) of this section, we will accept personal checks for amounts less than $100, and checks drawn on commercial accounts, cashier's checks, certified checks, traveler's checks, and money orders for any amount. All payments must be for the exact amount due.

6. In § 354.4 new paragraph (c) is added to read as follows:

§ 354.4 User fees for certain domestic services.

* * * * *

(c) *Individual agreements for inspection services at ports of entry.* (1) Operators and owners of vessels or aircraft, or their agents, may enter into agreements with APHIS to receive, at points of entry in the United States inspection services in addition to the regular or on-call services available in connection with such vessels or aircraft.

(2) Agreements may be made to cover the following types of services;

(i) Opening and operating a new inspection station at a port of entry; and

(ii) Providing one-time or occasional inspection services at a location where APHIS does not normally provide such services.

(3) Owners and operators of vessels or aircraft, or their agents, must contact the Regional Director, USDA, APHIS, Plant Protection and Quarantine,[5] for

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[2] Delivery costs are costs such as employee salary and benefits, transportation, per diem, travel, purchase of specialized equipment, and all costs associated with maintaining filed offices.

[3] Support costs are costs at supervisory levels which are similar to delivery costs, and costs such as training, automated data processing, public affairs, enforcement, communications, postage, budget and accounting services, and payroll, purchasing, billing and collection services.

[4] Administrative costs are costs incurred as a direct result of collecting and monitoring federal phytosanitary certificates.

[5] A list of the Regional Directors, USDA, APHIS, Plant Protection and Quarantine and the States for which they are responsible, may be obtained from the Deputy Administrator, Plant Protection and Quarantine, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

the State where they want APHIS to provide services, to make an agreement.

(4) All agreements must include the following:

(i) Name, mailing address, and telephone number of the operator or owner of the vessel or aircraft, or, if applicable, the operator's or owner's agent;

(ii) Explanation of inspection services to be provided;

(iii) Date(s) and time(s) inspection services will be provided;

(iv) Location (street address, port of entry, berth, dock, gate, etc.) and if applicable, identity (identification number, name, etc.) of vessel or aircraft or other thing to be inspected;

(v) An estimate of the actual cost, as calculated by APHIS, to provide the described inspection services for 6 months;

(vi) A statement that APHIS agrees to provide the described inspection services;

(vii) A statement that the owner or operator of the vessel or aircraft, or if appropriate, his or her agent, agrees to pay, at the time the agreement is entered into, a user fee equal to the estimated cost of providing the described inspection services for 6 months;

(viii) A statement that APHIS will credit an amount equal to all user fees received for services provided at the location to the owner or operator's account, until the total amount of user fees credited to the account is equal to the amount of money paid into the account by the owner or operator of the vessel or aircraft, or if appropriate, his or her agent, at the time the agreement was entered into; and

(ix) A statement that the owner or operator of the vessel or aircraft, or if appropriate, his or her agent, agrees to maintain a balance in the user fee payment account equal to the cost of providing the services described for 6 months, as calculated monthly by APHIS.

(5) APHIS will enter into an agreement only if qualified personnel can be made available to provide the services to be provided.

(6) An agreement can be terminated by either party on 30 days written notice.

(7) If, at the time an agreement is terminated, any unobligated funds remain in the user fee account, APHIS will return them to the owner or operator, or his or her agent.

7. A new § 354.5 is added to read as follows:

§ 354.5 Penalties for nonpayment or late payment of user fees.

(a) If a person requesting a service for which an APHIS user fee is payable, is delinquent in paying any APHIS user fee due under either title 7 or title 9, Code of Federal Regulations, or is delinquent in paying the interest on any delinquent APHIS user fee, then APHIS will not provide the service requested.

(b) If APHIS is in the process of providing a service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if the payment offered by the user is insufficient or not in compliance with the regulations in this part, then APHIS will take the following action:

(1) If an APHIS user fee is due for a certificate or a certificate for reexport, APHIS will not issue the certificate.

(2) If an APHIS user fee is past due by more than 30 days, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717.

9 CFR CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

8. Chapter I is amended by redesignating subchapters F, G, H, I, J and K as subchapters G, H, I, J, K and L, and a new subchapter F consisting of part 130 is added to read as follows:

SUBCHAPTER F—USER FEES

PART 130—USER FEES

Sec.

130.1 Definitions.
130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.
130.3 User fees for exclusive use of buildings at APHIS Animal Import Centers.
130.4 User fees for services at privately operated permanent import-quarantine facilities.
130.5 User fees for services at privately operated temporary import-quarantine facilities.
130.6 User fees for endorsing export health certificates.
130.7 User fees for inspection and supervision services provided within the United States for export animals and birds.
130.8 User fees for inspection services outside the United States.
130.9 through 99 [Reserved]
130.50 Payment of user fees.
130.51 Penalties for nonpayment or late payment of user fees.

Authority: 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(d).

§ 130.1 Definitions.

As used in this part, the following terms shall have the meaning set forth in this section.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal. All animals except birds, but including poultry.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Animal Import Center. Quarantine facilities operated by APHIS in Newburgh, New York; Miami, Florida; and Honolulu, Hawaii.[1]

APHIS animal health technician. An animal health technician employed by APHIS, who is authorized to perform services required by Title 9, Code of Federal Regulations, Chapter I.

APHIS veterinarian. A veterinarian employed by APHIS, who is authorized to perform the services required by Title 9, Code of Federal Regulations, Chapter I.

Bird. Any member of the class aves, other than poultry.

Domestic animal. Any animal imported into the United States for any purpose other than exhibition in a zoo, park or other place maintained for the exhibition of live animals for recreational or educational purposes.

Equine. Any horse, ass, mule, or zebra.

Export health certificate. An official document endorsed by an APHIS veterinarian which, as required by the importing country, states that animals or birds to be exported from the United States are free of certain diseases and pests.

Game cock. Any chicken bred, trained, or imported for cock fighting.

Person. An individual, corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

Poultry. Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys.

Standard feed. Seed, or dry feeds such as dog food or monkey biscuits, whether soaked in water or not.

Zoo animal. Any animal, including poultry, intended for exhibition in a zoo, park or other place maintained for the

[1] The addresses of Animal Import Centers may be obtained from the Deputy Administrator, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

exhibition of live animals for recreational or educational purposes.[2]

Zoo bird. Any bird intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals or birds for recreational or educational purposes.[3]

Zoo equine. Any equine intended for exhibition in a zoo, park or other place maintained for the exhibition of live animals for recreational or educational purposes.[4]

§ 130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.

(a) The following user fees, which include standard care, feed, and handling, must be paid for each animal or bird quarantined in an Animal Import Center: [5]

Animal or bird	Daily fee
Birds (including zoo birds):	
0–250 grams	$0.75
251–1,000 grams	2.75
over 1,000 grams, and any bird in nonstandard housing or receiving non-standard care and handling	6.50
Poultry (including zoo poultry):	
A. doves, pigeons, quail	1.75
B. chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants	3.00
C. game cocks, geese, swans, turkeys, any poultry housed in non-standard housing or receiving non-standard care and handling	7.00
Equines (including zoo equines):	
1st through 3rd day	128.50
4th through 7th day	93.25
8th and later days	79.00
Zoo animals (except equines, birds, and poultry)	28.00
Domest animals:	
Camels, cattle, bison, buffalo	49.00
All others:	13.00

(b) The importer may, at his or her option, request that birds or poultry be housed in nonstandard housing. Nonstandard housing is individual housing, any housing not normally available at the Animal Import Center, any housing constructed or purchased at the request of the importer, any housing with blinds, dense foliage, or plants, and any housing where the temperature can be adjusted.

(c) The importer may, at his or her option, request that birds or poultry be given nonstandard care and handling. Nonstandard care and handling includes hand-feeding, more than one feeding a day, frequent observation, and any handling or observation which requires personnel to attend to the birds or poultry outside of normal business hours.[6]

(d) If any bird or poultry is fed a diet other than seed, including but not limited to diets of fruit, insects, nectar or fish, the importer must either provide feed or pay for it on an actual cost basis, including the cost of delivery to the Animal Import Center.

(e) Any reservation fee paid by the importer under part 92 of this chapter, will be applied to the APHIS user fees due for animals or birds quarantined in an Animal Import Center.

§ 130.3 User fees for exclusive use of buildings at APHIS Animal Import Centers.

(a) An importer may, at his or her option, occupy entire quarantine buildings at the Animal Import Centers specified below. A user fee will be charged for each building as follows:

Animal Import center	Building size	Montly fee
Newburgh, New York.	72 feet x 82 feet	$39,450

(b) Users must provide APHIS personnel at the Animal Import Center, at the time they make a reservation for quarantine space, with the following information:

(1) Species of animals and birds to be quarantined;

(2) Ages of animals and birds to be quarantined; and

(3) Sizes of animals and birds to be quarantined.

(c) APHIS personnel at the Animal Importer Center will determine, based on the information provided by the importer under paragraph (b) of this section, and on routine husbandry needs, the maximum number of animals and birds permitted in the requested building.

(d) The importer must provide feed, or pay for it on an actual cost basis, including cost of delivery to the Animal Import Center.

§ 130.4 User fees for services at privately operated permanent import-quarantine facilities.

A daily user fee of $49.25 must be paid for each animal quarantined in a privately operated permanent import-quarantine facility.

§ 130.5 User fees for services at privately operated temporary import-quarantine facilities.

(a) A user fee must be paid for each animal quarantined in a privately operated temporary import-quarantine facility.

(b) The user fees are:

(1) $33.50 per hour for service performed by an APHIS veterinarian;

(2) $21.75 per hour for service performed by an APHIS Animal Health Technician.

§ 130.6 User fees for endorsing export health certificates.

(a) The following user fees must be paid for each export health certificate requested [7] for the following types of animals, regardless of the number of animals covered by the certificate:

Certificate categories	User fee
Slaughter animals, of any type, moving to Canada or Mexico	$10.00
Non-slaughter horses to Canada	10.00
Poultry	2.00
Hatching eggs	2.00
Other animals and birds	4.00

(b)(1) The following user fees must be paid for each export certificate requested for animals and birds, depending on the number animals or birds covered by the certificate and the number of tests required:

Number of tests required	Number of animals on certificate	Fee
1–2	First animal	$38.00
	Each additional animal.	1.00
3–6	First animal	41.50
	Each additional animal.	1.25
7 or more	First animal	44.00
	Each additional animal.	1.50

(2) If an export certificate covers more than one animal, but the number of tests required for different animals are not the same, the user fee for the certificate is the fee which would be due if all the animals on the certificate required the same number of tests as the animal which requires the greatest number of tests.

(c) The user fees prescribed in this section will not apply to an export health certificate if it is endorsed by an APHIS veterinarian in the course of performing inspection or supervision

[2] Regulations concerning approval of zoos and requirements for importing wild animals are found in part 92 of this chapter.

[3] See footnote 2.

[4] See footnote 2.

[5] APHIS Animal Import Centers are located in Honolulu, HI, Miami, FL, and Newburgh, NY. The addresses of these facilities are published in part 92 of this chapter.

[6] Normal business hours at the Animal Import Centers are: 7:30 a.m. to 11:30 a.m., Honolulu, HI; 7 a.m. to 3:30 p.m., Miami, FL; and 8 a.m. to 4:30 p.m., Newburgh, NY.

[7] An export certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export certificates as a service to the public.

services for the animals listed on the certificate, and an APHIS user fee is payable under § 130.7 of this part for the inspection or supervision services performed by the veterinarian.

§ 130.7 User fees for inspection and supervision services provided within the United States for export animals or birds.

(a) A user fee must be paid for the following APHIS services provided within the United States for export animals or birds:

(1) Inspect an export isolation facility;

(2) Supervise animal or bird rest periods prior to export; and

(3) Supervise loading or unloading of animals or birds for export shipment.

(b) The user fees are:

(1) $33.50 per hour for service performed by an APHIS veterinarian;

(2) $21.75 per hour for service performed by an APHIS Animal Health Technician.

§ 130.8 User fees for inspection services outside the United States.

(a) If inspection services (including inspection, testing, and supervision services) are performed outside the United States, in accordance with this title, and the regulations do not contain a provision for payment of the cost of the service, the person requesting the service must pay a user fee under this section.

(b) Any person who wants APHIS to provide inspection services outside the United States must contact the Import/Export Staff, USDA, APHIS, Veterinary Services, Federal Building, Hyattsville, MD 20782, to make an agreement.

(c) All agreements must include the following:

(1) Name, mailing address, and telephone number of either the person requesting the inspection services, or his or her agent;

(2) Explanation of inspection services to be provided, including the regulations in Title 9, Code of Federal Regulations which provide for the services;

(3) Date(s) and time(s) the inspection services are to be provided;

(4) Location (including street address) where inspection services are to be provided;

(5) An estimate of the actual cost, as calculated by APHIS, to provide the described inspection services for 6 months;

(6) A statement that APHIS agrees to provide the inspection services;

(7) A statement that the person requesting the inspection services, or, if appropriate, his or her agent, agrees to pay, at the time the agreement is entered into, a user fee equal to the estimated cost of providing the described inspection services for 6 months; and

(8) A statement that the person requesting the inspection services, or, if appropriate, his or her agent, agrees to maintain a user fee payment account equal to the cost of providing the described inspection services for 6 months, as calculated monthly by APHIS.

(d) APHIS will enter into an agreement only if qualified personnel can be made available to provide the inspection services.

(e) An agreement can be terminated by either party on 30 days written notice.

(f) If, at the time an agreement is terminated, any unobligated funds remain in the user fee payment account, APHIS will refund the funds to the person who requested the inspection services, or his or her agent.

§§ 130.9 through 130.49 [Reserved]

§ 130.50 Payment of user fees.

(a) All user fees must be paid as follows:

(1) User fees for animals in Animal Imports Centers or privately-operated permanent import-quarantine facilities must be paid at the time the animals are released from quarantine;

(2) User fees for animals in privately-operated temporary import-quarantine facilities must be paid when billed;

(3) User fees for supervision and inspection services specified in § 130.7 must be paid when billed; and

(4) User fees for export health certificates must be paid either prior to receipt of endorsed certificates or when billed. Payment prior to receipt of endorsed certificates must continue until APHIS determines that the user has established an acceptable credit history, at which time payment may, at the option of the user, be made when billed.

(b) User fees may be paid by the following methods:

(1) Cash, if payment is made at an area office * or an Animal Import Center;

(2) All types of checks, including traveler's checks;

(3) Money orders; or

(4) Credit cards (VISA and Master Card) if payment is made at the Animal Import Centers in Newburgh, NY, or in Miami, FL, or at the USDA, APHIS, VS, office at John F. Kennedy International Airport, Jamaica, NY.

(c) Payment must be for the exact amount due.

§ 130.51 Penalties for nonpayment or late payment of user fees.

(a) If a person requesting a service for which an APHIS user fee is payable, is delinquent in paying any APHIS user fee due under either title 7 or title 9, Code of Federal Regulations, or is delinquent in paying the interest on any delinquent APHIS user fee, then APHIS will not provide the service requested.

(b) If APHIS is in the process of providing a service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if the payment offered by the user is inadequate or unacceptable, then APHIS will take the following action:

(1) If an APHIS user fee is due for animals or birds in quarantine at an Animal Import Center or at a privately-operated import-quarantine facility, APHIS will not release them; and

(2) If an APHIS user fee is due for an export health certificate, APHIS will not release the certificate.

(c) If user fees are paid later than 30 days after payment is due, APHIS will impose a late payment penalty and interest charges as in accordance with 31 U.S.C. 3717.

(d) Animals or birds left in quarantine at an Animal Import Center for more than 30 days after the end of the required quarantine period will be deemed to be abandoned.

(1) After APHIS releases the abandoned animals or birds from quarantine, APHIS may seize them and sell or otherwise dispose of them, as determined by the Administrator, provided that their sale is not contrary to any Federal law or regulation, and may recover all expenses of handling the animals or birds from the proceeds of their sale or disposition.

(2) If animals or birds abandoned in quarantine at an Animal Import Center cannot be released from quarantine, APHIS may seize and dispose of them, as determined by the Administrator, and may recover all expenses of handling the animals or birds from the proceeds of their disposition.

Done in Washington, DC, this 6th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-536 Filed 1-8-92; 8:45 am]

BILLING CODE 3410-34-M

* A list of APHIS Area Offices may be obtained from the Deputy Administrator, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Farmers Home Administration

7 CFR Parts 1866, 1951, and 1965

Final Payment on Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding final payments on loans secured by real estate and redesignates and revises part 1866 (FmHA Instruction 451.4) as subpart D of part 1951 of this Chapter. The present regulation is outdated and does not recognize some existing authorities. The intent is to give the authority to release documents to the appropriate servicing officials and create uniformity within FmHA in the processing of final payoffs.

EFFECTIVE DATE: February 10, 1992.

FOR FURTHER INFORMATION CONTACT: Lucia A. McKinney, Loan Specialist or William M. Toney, Chief, Servicing Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, room 5309, Washington, DC 20250, telephone: (202) 720–1452.

SUPPLEMENTARY INFORMATION: This action is necessary to update the criteria for satisfaction and release of security documents upon receipt of final payoff balances on loans. 7 CFR part 1951, subpart D—Final Payment on Loans, is a new regulation and a rewrite of 7 CFR part 1866 (FmHA Instruction 451.4). This regulation identifies the acceptable forms of payment for release of security documents upon receipt of final payment. With the automation of loan account status information, previous procedures used for obtaining payoff balances are no longer appropriate. Field offices may now obtain payoff balances by accessing accounts under the Automated Data Processing System (ADPS). These revisions will be effective in minimizing errors in obtaining final payoff balances on rural housing accounts and in providing more efficient service to the public. Following are the major revisions incorporated in this rulemaking action: 1. Section 1951.154 provides authorization to appropriate servicing officials to execute and release security instruments and related documents when an account has been satisfactorily paid in full. 2. Section 1955.155(a) provides for disposition of funds remaining in a supervised bank account when the borrower is ready to pay off the loan. 3. Section 1955.155(c)(2) identifies acceptable forms of payments upon which documents can be released at the time of payoff.

Classification

This action has been reviewed under USDA procedures in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or affect more than one agency or to be controversial. The net result is to provide better service to rural communities.

Intergovernmental Consultation

The programs to which this activity is related are listed in the Catalog of Federal Domestic Assistance under the following numbers and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

10.404 Emergency Loans.
10.405 Farm Labor Housing Loans and Grants.
10.406 Farm Operating Loans.
10.407 Farm Ownership Loans.
10.410 Low Income Housing Loans (Section 502 Rural Housing Loans).
10.411 Rural Housing Site Loans.
10.414 Resource Conservation and Development Loans.
10.415 Rural Rental Housing and Water Loans.
10.416 Soil and Water Loans.
10.417 Very Low-Income Housing Repair Loans and Grants (Section 504 Rural Housing Loans and Grants).
10.418 Water and Waste Disposal Systems for Rural Communities.
10.419 Watershed Protection and Flood Protection Loans.
10.420 Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance).
10.421 Indian Tribes and Tribal Corporation Loans.
10.422 Business and Industrial Loans.
10.423 Community Facilities Loans.
10.427 Rural Rental Assistance Payments (Rental Assistance).

Environmental Impact Statement

This action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190), an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not directly involve small entities nor does it add or remove any authorities which would affect small entities.

Discussion of Comments

The proposed rule published in the **Federal Register** (56 FR 11520) on March 19, 1991, provided for a 60-day comment period ending May 20, 1991. There were no comments received.

List of Subjects in 7 CFR Parts 1951 and 1965

Accounting, Administrative practice and procedure, Foreclosure, Grant programs—Housing and community development, Loan programs—Agriculture, Low and moderate income housing—Rental, Mortgages, Reporting requirements, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1866—[REMOVED]

1. Part 1866 is removed and reserved.

PART 1951—SERVICING AND COLLECTIONS

2. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

3. Subpart D of part 1951 is added to read as follows:

Subpart D—Final Payment on Loans

Sec.
1951.151 Purpose.
1951.152 Definition.
1951.153 Chattel security or note-only cases.
1951.154 Satisfaction and release of documents.
1951.155 County and/or District Office Actions.
1951.156–1951.200 [Reserved].

Subpart D—Final Payment on Loans

§ 1951.151 Purpose.

This subpart prescribes authorizations, policies, and procedures of the Farmers Home Administration (FmHA) for processing final payment of all loans.

§ 1951.152 Definition.

As used in this subpart:

Mortgage. Includes real estate mortgage, deed of trust or any other form of security instrument or lien on real property.

§ 1951.153 Chattel security or note-only cases.

(a) If a loan secured by both real estate and chattels is paid in full, the chattel security instrument will be satisfied or released in accordance with subpart A of part 1962 of this chapter.

(b) When a loan is evidenced by only a note and the note is paid in full, FmHA will deliver the note to the borrower in the manner prescribed in § 1951.155(c) of this subpart.

§ 1951.154 Satisfaction and release of documents.

(a) *Authorization.* FmHA is authorized to execute the necessary releases and satisfactions and return security instruments and related documents to borrowers. Satisfaction and release of security documents takes place:

(1) Upon receipt of payment in full of all amounts owed to the Government including any amounts owed to the loan insurance account, subsidy recapture amounts, all loan advances and/or other charges to the borrower's account;

(2) Upon verification that the amount of payment received is sufficient to pay the full amount owed by the borrower; or

(3) When a compromise or adjustment offer has been accepted and approved by the appropriate Government official in full settlement of the account and all required funds have been paid.

(b) [Reserved]

(c) *Lost note.* If the original note is lost FmHA will give the borrower an affidavit of lost note so that the release or satisfaction may be processed.

§ 1951.155 County and/or District Office actions.

(a) *Funds remaining in supervised bank accounts.* When a borrower is ready to pay an insured or direct loan in full, any funds remaining in a supervised bank account will be withdrawn and remitted for application to the borrower's account. If the entire principal of the loan is refunded after the loan is closed, the borrower will be required to pay interest from the date of the note to the date of receipt of the refund.

(b) *Determining amount to be collected.* FmHA will compute and verify the amount to be collected for payment of an account in full. Requests for payoff balances on all accounts will be furnished in writing in a format specified by FmHA (available in any FmHA office).

(c) *Delivery of satisfaction, notes, and other documents.* When the remittance which paid an account in full has been processed by FmHA, the paid note and satisfied mortgage may be returned to the borrower. If other provisions exist, the mortgage will not be satisfied until the total indebtedness secured by the mortgage is paid. For instance, in a situation where a rural housing loan is paid-in-full and there is a subsidy recapture receivable balance that the borrower elects to delay repaying, the amount of recapture to be repaid will be determined when the principal and interest balance is paid. The mortgage securing the FmHA debt will not be released of record until the total amount owed the Government is repaid. To permit graduation or refinancing by the borrower, the mortgage securing the recapture owed may be subordinated.

(1) If FmHA receives final payments in a form other than cash, U.S. Treasury check, cashier's check, certified check, money order, bank draft, or check issued by an institution determined by FmHA to be financially responsible, the mortgage and paid note will not be released until after a 30-day waiting period. If other indebtedness to FmHA is not secured by the mortgage, FmHA will execute the satisfaction or release. When the stamped note is delivered to the borrower, FmHA will also deliver the real estate mortgage and related title papers such as title opinions, title insurance binders, certificates of title, and abstracts which are the property of the borrower. Any water stock certificates or other securities that are the property of the borrower will be returned to the borrower. Also, any assignments of income will be terminated as provided in the assignment forms.

(2) Delivery of documents at the time of final payment will be made when payment is in the form of cash, U.S. Treasury check, cashier's check, certified check, money order, bank draft, or check issued by an institution determined by FmHA to be responsible. FmHA will not accept payment in the form of foreign currency, foreign checks or sight drafts. FmHA will execute the satisfaction or release (unless other indebtedness to FmHA is covered by the mortgage) and mark the original note with a paid-in-full legend based upon receipt of the full payment balance of the borrower's account(s), computed as of the date final payment is received. In unusual cases where an insured promissory note is held by a private holder, FmHA can release the mortgage and deliver the note when it is received.

(d) [Reserved]

(e) [Reserved]

(f) *Cost of recording or filing of satisfaction.* The satisfaction or release will be delivered to the borrower for recording and the recording costs will be paid by the borrower, except when State law requires the mortgagee to record or file satisfactions or release and pay the recording costs.

(g) *Property insurance.* When the borrower's loan has been paid-in-full and the satisfaction or release of the mortgage has been executed, FmHA may release the mortgage interest in the insurance policy as provided in subpart A of part 1806 of this chapter (FmHA Instruction 426.1).

(h) [Reserved]

(i) *Outstanding Loan Balance(s).* FmHA will attempt to collect any account balance(s) that may result from an error by FmHA in handling final payments according to paragraph 1951.155(b) of this section. If collection cannot be made, the debt will be settled according to subpart B of part 1956 of this chapter or reclassified to collection-only. A deficiency judgment may be considered if the balance is a significant amount ($1,000 or more) and the borrower has known assets.

§§ 1951.156–1951.200 [Reserved]

Subpart E—Servicing of Community and Insured Business Program Loans and Grants

§ 1951.220 [Amended]

4. Section 1951.220(a) is amended in the first sentence by changing the reference from "Part 1866 of this chapter (FmHA Instruction 451.4)" to "Subpart D of Part 1951 of this chapter."

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

PART 1965—REAL PROPERTY

5. The authority citation for part 1965 continues to read as follows:

Authority: 7 CFR 2.23; 7 CFR 2.70.

§ 1965.13 [Amended]

6. Section 1965.13(a) is amended in the last sentence by changing the reference from "Part 1866 of this chapter (FmHA

Instruction 451.4)" to "Subpart D of Part 1951 of this chapter."

Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.90 [Amended]

7. Section 1965.90(c) is amended in the first sentence by changing the reference "Part 1866 of this chapter (FmHA Instruction 451.4" to "Subpart D of Part 1951 of this chapter."

Dated: November 13, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-434 Filed 1-8-92; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 91-193]

Post-Release Flock Testing for Chickens Affected by Salmonella Enteritidis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending our regulations concerning chicken disease caused by *Salmonella enteritidis* serotype *enteritidis* (SE) by establishing authority for the Animal and Plant Health Inspection Service to perform post-release testing of poultry flocks and poultry houses that have been released from regulatory restrictions imposed due to SE. We are also changing the requirement that flocks and houses may be released from test status only through negative tests for SE, to allow their release alternatively through depopulation, cleaning, and disinfection. These changes are necessary to reduce further the risk that poultry flocks and poultry houses declared free of SE may become reinfected. These changes affect persons in control of poultry flocks or poultry houses that were determined to be in test or infected status under the regulations, by making their flocks subject to additional testing for SE and by providing depopulation as an alternative for release from test status.

DATES: Interim rule effective January 6, 1992. Consideration will be given only to comments received on or before March 9, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-193. Comments may be inspected at room 1141 of the South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John Mason, Director, Salmonella Task Force, VS, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, 301-436-4363.

SUPPLEMENTARY INFORMATION:

Background

In a final rule published in the **Federal Register** on January 30, 1991 (56 FR 3730-3743, Docket No. 90-134) (referred to below as the final rule), we promulgated regulations to address the problem of chicken disease caused by *Salmonella enteritidis* serotype *enteritidis* (SE). At that time we established a system to test egg production flocks, and separate poultry houses in such flocks, in order to identify those containing chickens infected with SE.

The final rule focused on those flocks and houses that were implicated as the most probable source of outbreaks of SE in chickens or humans. This system involved classification of egg production flocks in the categories of study, test, or infected flocks or houses, and included requirements for testing of environmental, blood, and internal organ samples for evidence of SE under certain circumstances. Interstate movement restrictions were also imposed on articles from test and infected flocks and houses. Restricted articles include live chickens, eggs, manure, cages, coops, containers, troughs, and other equipment. Some of these articles are prohibited from moving, and some are allowed movement under a permit and special conditions. Eggs may be moved interstate from infected and test flocks or houses only for pasteurization, hard-boiled cooking, or for export under certain circumstances.

According to § 82.32(e) of the final rule, a flock or house may be released from infected status if it tests negative for SE, or if the flock or house is depopulated and cleaned and disinfected in accordance with the final rule. The final rule allows a flock or house to be released from study or test status only through negative testing for SE, not through depopulation. We are changing the provision of the rule allowing release from test status only through negative testing to allow release of test flocks or houses that are depopulated, cleaned, and disinfected. Depopulation is an effective and preferred alternative for many flock owners in test status, and limiting release from test status to flocks and houses with negative tests appears to be unnecessary.

Upon further consideration, APHIS has determined that the *Salmonella* control program would be more effective in preventing the spread of SE if we perform post-release testing of flocks and houses that were in test or infected status and were later released. SE can enter a flock through avenues that may continue to exist even after a flock is released from test or infected status because it has tested negative for SE or been depopulated. For example, if the flock uses a source of feed that is contaminated with SE, or has a serious rodent control problem, the flock could easily become reinfected with SE. Also, although the current regulations provide, in § 82.37, that depopulated test or infected flocks and houses must be cleaned, washed, and disinfected, the disinfection procedures are not always completely effective in destroying SE. Incomplete disinfection of a depopulated test or infected house could lead to infection of the poultry used to restock it.

To control this type of reinfection problem, we are beginning a program to test, at the discretion of the Administrator, test and infected flocks and houses that were released from such status under the regulations, for: (1) A period of 18 months following repopulation if they were released due to depopulation, cleaning, washing, and disinfection pursuant to § 82.37, or (2) a period of 18 months following their release if they were released due to testing negative for SE pursuant to § 82.32(c) and (d). Based on our study of the epidemiology of SE spread in poultry flocks, we believe that if a flock is exposed to sources of SE contamination sufficient to infect the flock, the flock is likely to become infected within 18 months. Also, in situations where repopulation is carried out, 18 months is the approximate time period required for a full cycle in an egg production house, from introduction of new chickens through their depopulation as spent hens.

The post-release testing program we are establishing will allow us to identify former test and infected flocks and houses that become reinfected with SE during the 18 months following their release from test or infected status, or

during the 18 months following repopulation, and to impose restrictions to prevent further spread of SE. Flocks and houses that test positive for SE in this post-release testing period will be determined to be in test status if manure or egg transport machinery tests positive for SE, and to be in infected status if internal organs of chickens test positive for SE.

In addition to enforcing our *Salmonella* regulations, APHIS is also working with the poultry industry to develop voluntary programs to test for and control SE in egg production flocks. Flocks that participate in such a voluntary program would be under a regular schedule of testing for SE that would make the post-release tests allowed by this rule redundant. Therefore, we are exempting former test and infected flocks and houses from the post-release test requirements of this rule if the flocks participate, during the 18 months following their release or repopulation, in a voluntary program approved by the Administrator to control SE.

Currently, no voluntary program to control SE in egg production flocks has been approved by the Administrator. If such a program is approved, we will publish details of the voluntary program's standards and application procedures for comment in the **Federal Register**.

To establish the post-release testing requirement, we are amending §§ 82.32(b)(2) and (e) of the regulations. Section 82.32(b)(2) currently reads as follows:

> (2) *Release from test poultry house or test flock status.* A Federal or State representative shall determine that a separate poultry house is no longer a test poultry house, or that a flock is no longer a test flock, and shall notify in writing the person in control of the house or flock of that determination, after the Federal or State representative determines that blood and internal organ samples from the house or flock have been collected and tested twice in accordance with paragraphs (c) and (d) of this section with no recovery of *Salmonella enteritidis* serotype *enteritidis*.

We are revising this paragraph to read as follows:

> (2) *Release from test poultry house or test flock status; post-release sampling and testing.* (i) A Federal or State representative shall determine that a separate poultry house is no longer a test poultry house, or that a flock is no longer a test flock, and shall notify in writing the person in control of the house or flock of that determination, after the Federal or State representative determines that, after the house or flock has been determined to be in test status:
>
> (A) the house or flock has been depopulated, and cleaned, washed, and disinfected in accordance with § 82.37 of this subpart; or,
>
> (B) blood and internal organ samples from the chickens in the house or flock have been collected and tested in accordance with paragraphs (c) and (d) of this section with no recovery of *Salmonella enteritidis* serotype *enteritidis*.
>
> (ii) For 18 months following the repopulation of a flock or house released from test status, due to depopulation, cleaning, washing, and disinfection pursuant to paragraph (b)(2)(i)(A) of this section, or for 18 months following release of a flock or house from test status, due to testing negative for *Salmonella enteritidis* serotype *enteritidis* pursuant to paragraph (b)(2)(i)(B) of this section, the Administrator may make such periodic collection and testing of samples from the flock or house as he or she determines to be necessary to ensure that the house or flock is free of *Salmonella enteritidis* serotype *enteritidis*; *provided:* that such sample collection and testing will not be performed if the flock or house is participating in a voluntary program approved by the Administrator to control *Salmonella enteritidis* serotype *enteritidis*. If one or more manure or egg transport machinery samples collected and tested in accordance with the provisions of paragraphs (b)(1) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be a test flock or test poultry house. If one or more internal organ samples collected and tested in accordance with the provisions of paragraphs (c)(2) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be an infected flock or infected poultry house. If the person in control of the flock or poultry house has refused to schedule sample collection within 48 hours of the time a Federal or State representative requests such sample collection, or has refused to allow completion of sample collection according to the schedule set by the Federal or State representative, the flock or poultry house shall be determined to be in test status.

This revision allows the Administrator to subject former test flocks and test poultry houses to post-release testing for 18 months following their release from test status or repopulation. It also provides that test flocks and test poultry houses may be released from test status if depopulated, cleaned, washed, and disinfected, in addition to the former procedure by which they could be released if the internal organs of their poultry tested negative for SE. Finally, it provides that owners who refuse to allow post-release testing will have their flocks or houses placed in test status and be subjected to the restrictions and testing requirements which the regulations provide for that status.

We are making similar changes to § 82.32(e) concerning infected flocks and infected poultry houses. Section 82.32(e) currently reads as follows:

> (e) *Release from infected poultry house status or infected flock status.* A Federal or State representative shall determine that a house or flock is no longer an infected poultry house or an infected flock, and shall notify in writing the person in control of the house or flock of that determination, if the Federal or State representative determines that, after the house or flock has been determined to be infected:
>
> (1) the house or flock has been depopulated, and cleaned, washed, and disinfected in accordance with § 82.37 of this subpart; or,
>
> (2) internal organ samples have been collected from the chickens in the house or flock and tested in accordance with paragraphs (c) and (d) of this section, with no recovery of *Salmonella enteritidis* serotype *enteritidis*.

We are revising this paragraph to read as follows:

> (e) *Release from infected poultry house status or infected flock status; post-release sampling and testing.* (1) A Federal or State representative shall determine that a house or flock is no longer an infected poultry house or an infected flock, and shall notify in writing the person in control of the house or flock of that determination, if the Federal or State representative determines that, after the house or flock has been determined to be infected:
>
> (i) the house or flock has been depopulated, and cleaned, washed, and disinfected in accordance with § 82.37 of this subpart; or,
>
> (ii) internal organ samples from the chickens in the house or flock have been collected and tested in accordance with paragraphs (c) and (d) of this section, with no recovery of *Salmonella enteritidis* serotype *enteritidis*.
>
> (2) For 18 months following the repopulation of a flock or house released from infected status, due to depopulation, cleaning, washing, and disinfection pursuant to paragraph (e)(1)(i) of this section, or for 18 months following release of a flock or house from infected status, due to testing negative for *Salmonella enteritidis* serotype *enteritidis* pursuant to paragraph (e)(1)(ii) of this section, the Administrator may make such periodic collection and testing of samples from the flock or house as he or she determines to be necessary to ensure that the house or flock is free of *Salmonella enteritidis* serotype *enteritidis*; *provided:* that such sample collection and testing will not be

performed if the flock or house is participating in a voluntary program approved by the Administrator to control *Salmonella enteritidis* serotype *enteritidis*. If one or more manure or egg transport machinery samples collected and tested in accordance with the provisions of paragraphs (b)(1) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be a test flock or test poultry house. If one or more internal organ samples collected and tested in accordance with the provisions of paragraphs (c)(2) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be an infected flock or infected poultry house. If the person in control of the flock or poultry house has refused to schedule sample collection within 48 hours of the time a Federal or State representative requests such sample collection, or has refused to allow completion of sample collection according to the schedule set by the Federal or State representative, the flock or poultry house shall be determined to be in test status.

Emergency Action

Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment.

SE is a communicable disease of poultry and is a serious public health concern. It is also a cause of economic concern for the United States egg-type chicken industry. Immediate action is necessary to prevent the spread of SE in chickens and to protect public health.

Losses due to SE currently represent a serious adverse economic effect, particularly to the $3.2 billion egg industry. The current SE control program is helping to reduce the spread of SE in poultry flocks and reduce the incidence of human disease outbreaks caused by SE, but for the program to be effective, it must address the continued freedom of flocks from SE after they are released from regulatory restrictions. By addressing post-release testing of former infected and test poultry flocks and houses, this rule will allow APHIS to immediately address the possible existence of SE infection in these previously regulated poultry flocks and houses. Any delay would allow the opportunity for increased spread of SE among and from possibly infected former test and infected poultry flocks and houses.

Under these circumstances, prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest. Therefore, there is good cause under 5 U.S.C. 553 to make the interim rule effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

As an alternative to the provisions of this rule, we have considered taking no action, and allowing the current regulations to remain in effect unchanged. The alternative of no action was rejected because it would not fulfill the APHIS mandate to prevent the dissemination of communicable poultry disease.

This rule would affect only flocks and houses that have been or are determined to be in test or infected status under the regulations. There are currently fewer than 20 such flocks in the United States, although continued enforcement of our SE regulations could increase this number.

As discussed in the preamble of the final rulemaking document (56 FR 3730–3743), any poultry flocks or houses that test positive for SE as a result of testing under this rule and are placed in test or infected status will suffer economic impacts, in the form of revenue loss due to the restrictions on interstate movement of chickens and eggs (eggs may be moved interstate for breaking and pasteurization, boiling, or export) for the period they are considered to be from test or infected flocks or houses. Based on the rate at which we have been identifying test and infected flocks and houses, the total number of egg production flocks that will be subjected to post-release testing in accordance with this rule will probably be fewer than 20 each year, of which fewer than 5 may be owned by small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 82

Animal diseases, Chlamydiosis, Exotic Newcastle disease, Ornithosis, Poultry and poultry products, Psittacosis, Salmonella, Quarantine, Transportation.

Accordingly, the regulations in subpart B of part 82 are amended as follows:

PART 82—EXOTIC NEWCASTLE DISEASE IN ALL BIRDS AND POULTRY; PSITTACOSIS AND ORNITHOSIS IN POULTRY; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

Subpart B—Poultry Disease Caused By Salmonella enteritidis Serotype enteritidis

The authority citation for part 82 continues to read as follows:

Authority: 21 U.S.C. 111-113, 115, 117, 120, 123-126, 134a, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 82.30 [Amended]

2. In § 82.30, the definitions of "Infected flock" and "Infected poultry house" would be amended by adding "or (e)(2)" immediately following the reference to "§ 82.32(c)".

3. In § 82.30, the definitions of "Test flock" and "Test poultry house" would be amended by adding "or (b)(2)(ii)" immediately following "§ 82.32(b)".

§ 82.32 [Amended]

4. Paragraphs (b)(2) and (e) of § 82.32 are revised to read as follows:

§ 82.32 Identification of study flocks, test poultry houses, test flocks, infected poultry houses, and infected flocks.

* * * * *

(b)* * *

(2) *Release from test poultry house or test flock status; post-release sampling and testing.* (i) A Federal or State representative shall determine that a separate poultry house is no longer a test poultry house, or that a flock is no longer a test flock, and shall notify in writing the person in control of the house or flock of that determination, after the Federal or State representative determines that, after the house or flock has been determined to be in test status:

(A) the house or flock has been depopulated, and cleaned, washed, and disinfected in accordance with § 82.37 of this subpart; or,

(B) blood and internal organ samples from the chickens in the house or flock have been collected and tested in accordance with paragraphs (c) and (d) of this section with no recovery of *Salmonella enteritidis* serotype *enteritidis*.

(ii) For 18 months following the repopulation of a flock or house released from test status, due to depopulation, cleaning, washing, and disinfection pursuant to paragraph (b)(2)(i)(A) of this section, or for 18 months following release of a flock or house from test status, due to testing negative for *Salmonella enteritidis* serotype *enteritidis* pursuant to paragraph (b)(2)(i)(B) of this section, the Administrator may make such periodic collection and testing of samples from the flock or house as he or she determines to be necessary to ensure that the house or flock is free of *Salmonella enteritidis* serotype *enteritidis*; *provided:* that such sample collection and testing will not be performed if the flock or house is participating in a voluntary program approved by the Administrator to control *Salmonella enteritidis* serotype *enteritidis*. If one or more manure or egg transport machinery samples collected and tested in accordance with the provisions of paragraphs (b)(1) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be a test flock or test poultry house. If one or more internal organ samples collected and tested in accordance with the provisions of paragraphs (c)(2) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be an infected flock or infected poultry house. If the person in control of the flock or poultry house has refused to schedule sample collection within 48 hours of the time a Federal or State representative requests such sample collection, or has refused to allow completion of sample collection according to the schedule set by the Federal or State representative, the flock or poultry house shall be determined to be in test status.

* * * * *

(e) *Release from infected poultry house status or infected flock status; post-release sampling and testing.* (1) A Federal or State representative shall determine that a house or flock is no longer an infected poultry house or an infected flock, and shall notify in writing the person in control of the house or flock of that determination, if the Federal or State representative determines that, after the house or flock has been determined to be infected:

(i) The house or flock has been depopulated, and cleaned, washed, and disinfected in accordance with § 82.37 of this subpart; or,

(ii) Internal organ samples from the chickens in the house or flock have been collected and tested in accordance with paragraphs (c) and (d) of this section, with no recovery of *Salmonella enteritidis* serotype *enteritidis*.

(2) For 18 months following the repopulation of a flock or house released from infected status, due to depopulation, cleaning, washing, and disinfection pursuant to paragraph (e)(1)(i) of this section, or for 18 months following release of a flock or house from infected status, due to testing negative for *Salmonella enteritidis* serotype *enteritidis* pursuant to paragraph (e)(1)(ii) of this section, the Administrator may make such periodic collection and testing of samples from the flock or house as he or she determines to be necessary to ensure that the house or flock is free of *Salmonella enteritidis* serotype *enteritidis*; *provided:* that such sample collection and testing will not be performed if the flock or house is participating in a voluntary program approved by the Administrator to control *Salmonella enteritidis* serotype *enteritidis*. If one or more manure or egg transport machinery samples collected and tested in accordance with the provisions of paragraphs (b)(1) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be a test flock or test poultry house. If one or more internal organ samples collected and tested in accordance with the provisions of paragraphs (c)(2) and (d) of this section test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be determined to be an infected flock or infected poultry house. If the person in control of the flock or poultry house has refused to schedule sample collection within 48 hours of the time a Federal or State representative requests such sample collection, or has refused to allow completion of sample collection according to the schedule set by the Federal or State representative, the flock or poultry house shall be determined to be in test status.

Done in Washington, DC, this 6th day of January, 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-534 Filed 1-8-92; 8:45 am]

BILLING CODE 3410-34-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ANE-38, Amendment No. 39-8093, AD 91-24-07]

Airworthiness Directives: Air Cruisers Company, TSO-C69 Evacuation Slide System, Part Number (P/N) D31005-( ) and D30543-( )

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Air Cruisers Company, TSO-C69 Evacuation Slide Systems, which requires modifications to the Air Cruisers Evacuation Slides P/N D31005-( ) and D 30543-( ). This amendment is prompted by the failure of an evacuation slide to properly deploy as a result of an incorrectly routed slide valve release cable. This condition, if not corrected, could result in an evacuation slide not inflating properly, hampering an emergency evacuation of the aircraft.

DATES: Effective February 10, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 1992.

ADDRESSES: The applicable service information may be obtained from Air Cruisers Co., P.O. Box 180, Belmar, NJ 07719-0180. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803-

5299, or the New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. D. Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone no. (516) 791-6427.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive that is applicable to Air Cruisers Company, TSO-C69 Evacuation Slide System, Part Numbers (P/N) D31005-( ) and D30543-( ), was published in the **Federal Register** on March 1, 1991 (56 FR 8732). That action proposed to require the replacement of the inflation cable, and to reidentify the emergency evacuation slides in accordance with Air Cruisers Co., Service Bulletin (SB) 201-25-15, dated September 17, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The economic analysis paragraph that is discussed below has been revised to reflect an increase in the specified hourly labor rate from $40 an hour, that was cited in the preamble of the notice of proposed rulemaking to $55 an hour. Therefore, it is necessary to increase the estimated total cost impact of the AD.

There are approximately 939 slides of the affected design in the worldwide fleet. It is estimated that the modification kit of each affected slide will cost approximately $60, and the modification would take approximately 0.3 manhours at $55 per manhour. Based on these figures the total maximum cost impact of the AD is estimated to be $71,834.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g), and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-24-07. Air Cruisers Co.: Amendment 39-8093, Docket No. 90-ANE-36

Applicability: Air Cruisers Co., TSO-C69 Emergency Evacuation Slide systems P/N D31005-( ), Serial Numbers 0001 through 0670, and P/N D30543-( ), Serial Numbers 0001 through 0067, installed on but not limited to British Aerospace Model BAe-146 series airplanes.

Compliance: Required within the next 3 months after the effective date of this AD, unless already accomplished.

To prevent the possibility of the emergency evacuation slide from inflating improperly which could result in hinderance of the emergency evacuation of the airplane, accomplish the following:

(a) Replace the inflation cable, and reidentify the emergency evacuation slide in accordance with paragraph 2, of the Accomplishment Instructions of Air Cruisers Co., Service Bulletin (SB) 201-25-13, dated September 17, 1990.

(b) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, operations or avionics, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance time specified in this AD may be approved by the Manager, New York Aircraft Certification Office, ANE-170, Engine & Propeller Directorate, Aircraft Certification Service, FAA, 181 South Franklin Avenue, Valley Stream, New York.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) The modification procedure shall be done in accordance with the following Air Cruisers Co. Service Bulletin:

Document No.	Pages	Date
201-25-13	1-6	9/17/90
Total Pages: 6		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Cruisers Co., P.O. Box 160, Belmar, New Jersey 07719-0610. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment (39-8093, AD 91-24-07) becomes effective February 10, 1992.

Issued in Burlington, Massachusetts, on December 16, 1991.

Jack A. Sain,

Manager Engine & Propeller Directorate, Aircraft certification Service

[FR Doc. 92-485 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-153-AD; Amendment 39-8130; AD 92-01-06]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires a visual inspection or functional test of the fuel shutoff valves (spar valves) and fuel crossfeed valve; and, if necessary, removal and re-installation of the valve. This amendment is prompted by a report of a fuel crossfeed valve that was incorrectly installed during factory assembly and would not close fully. This condition, if not corrected, could result in a valve which could not close fully, thereby allowing fuel to flow to the nacelle during an engine fire.

DATES: Effective February 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of February 17, 1992.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey E. Duven, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2688. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 757 series airplanes, was published in the Federal Register on October 4, 1991 (56 FR 50298). That action proposed to require a visual inspection or functional test of the fuel shutoff valves (spar valves) and fuel crossfeed valve and, if necessary, removal and re-installation of the valve.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

All commenters supported the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 352 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 129 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,570.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-01-06. Boeing: Amendment 39-8130. Docket No. 91-NM-153-AD.

Applicability: Model 757 series airplanes, as listed in Boeing Service Letter 757-SL-28-6-A, dated June 5, 1991, certificated in any category.

Compliance: Required within the next 3,000 hours time-in-service after the effective date of this AD, unless previously accomplished.

To assure that the fuel crossfeed valve and fuel shutoff valves close fully, accomplish the following:

(a) Perform a visual inspection or a functional test of the fuel crossfeed valve and fuel shutoff valves to determine if the valves are correctly installed, in accordance with Boeing Service Letter 757-SL-28-6-A, dated June 5, 1991. If an incorrectly installed valve is found, prior to further flight, remove and re-install it correctly, in accordance with the service letter.

(b) Within 30 days after accomplishing the inspection or functional test required by paragraph (a) of this AD, submit a report of the inspection or test findings from which it is determined that the fuel crossfeed valve or fuel shutoff valves were incorrectly installed, to: Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055; rapid fax: (206) 227-1181; telex 756388. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reductions Act of 1980 (PL 96-511) and have been assigned OMB Control Number 2120-0056.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) The inspection/test requirements of this AD shall be done in accordance with Boeing Alert Service Letter 757-SL-28-6-A, dated June 5, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(f) This amendment (39-8130), AD 92-01-06, becomes effective February 17, 1992.

Issued in Renton, Washington, on December 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-483 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-214-AD; Amendment 39-8129; AD 91-22-51]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 91-22-51, which was made effective previously to all known U.S. owners and operators of Boeing Model 757 series airplanes by individual telegrams. This AD requires repetitive inspections to detect delamination of or physical damage to the trailing edge wedges on the leading edge wing slats, and repair, if necessary. This amendment is prompted by reports of skin separation on trailing edge wedges on wing leading

edge slats. The actions specified by this AD are intended to prevent separation of one or more of the trailing edge wedges from the airplane, which could adversely affect the controllability of the airplane.

DATES: Effective January 24, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T91–22–51, issued October 17, 1991, which contained this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 1992.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2779.

SUPPLEMENTARY INFORMATION: On October 17, 1991, the FAA issued telegraphic AD T91–22–51, applicable to Boeing Model 757 series airplanes, which requires repetitive inspections to detect delamination of or physical damage to the trailing edge wedges on the leading edge wing slats, and repair, if necessary. That action was prompted by reports from four operators of indications of skin separation of the upper skin on the forward part of the trailing edge wedge on a wing leading edge slats on five Model 757 series airplanes. On two of the slats, inboard pieces of the upper skin were lost from the wedge. This condition, if not corrected, could result in separation of one or more of trailing edge wedges from the airplane, which could adversely affect controllability of the airplane.

The FAA reviewed and approved Boeing Alert Service Bulletin 757–57A0045, dated October 16, 1991, which describes procedures for a close detailed visual inspection, followed by repetitive detailed visual and "coin-tap" inspections, of the trailing edge wedges on the wing leading edge slats to detect delamination and physical damage.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued telegraphic AD T91–22–51 to require repetitive close visual and "coin tap" inspections of the trailing edge wedges on the wing leading edge slats to detect delamination and physical damage. The required inspections are to be accomplished in accordance with the alert service bulletin previously described. If damage or defective parts are found, they must be repaired in accordance with an FAA-approved procedure or replaced with new parts.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on October 17, 1991, to all known U.S. owners and operators of Boeing Model 757 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

This is considered to be interim action until the manufacturer develops non-destructive inspection (NDI) procedures, at which time the FAA may consider further rulemaking.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–22–51. Boeing: Amendment 39–8129. Docket 91–NM–214–AD.

Applicability: Model 757 series airplanes, line numbers 140 through 335, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the separation of the trailing edge wedges from the airplane, accomplish the following:

(a) Perform a close detailed visual inspection of the trailing edge wedges of slats 1 through 4 and 7 through 10, for delamination and physical damage in accordance with Boeing Alert Service Bulletin 757–57A0045, dated October 16, 1991, at the times specified below:

(1) For airplanes that have accumulated 5,000 or more flight hours as of the effective date of this AD: Within the next 10 calendar days after the effective date of this AD, and thereafter at intervals not to exceed 300 flight hours.

(2) For airplanes that have accumulated less than 5,000 flight hours as of the effective date of this AD: Within the next 300 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 300 flight hours.

(b) Within the next 300 flight hours after the effective date of this AD, perform a "coin-tap" inspection of the trailing edge wedges of slats 1 through 4 and 7 through 10 for delamination and physical damage, in accordance with Boeing Alert Service Bulletin 757–57A0045, dated October 16, 1991. Repeat this inspection at intervals not to exceed 1,500 flight hours.

(c) If delamination and/or physical damage are found as a result of the inspections required by paragraph (a) or (b) of this AD, prior to further flight, repair in accordance with an FAA-approved procedure or replace with new parts. If a repair is accomplished or if new parts are installed, the inspections required by paragraphs (a) and (b) of this AD must be continued.

(d) An alternative method of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(f) The inspections required by this AD shall be done in accordance with Boeing Alert Service Bulletin 757-57A0045, dated October 16, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment (39-8129), AD 91-22-51, becomes effective January 24, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T91-22-51, issued October 17, 1991, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 18, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-482 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-262-AD; Amendment 39-8142; AD 92-02-06]

Airworthiness Directives: Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747-400 series airplanes. This action requires inspection and, if necessary, replacement or rerouting of the oxygen hose supplying oxygen to the captain's and first officer's oxygen mask stowage boxes. This amendment is prompted by a report of a captain's oxygen mask with restricted oxygen flow because of a damaged hose. The actions specified in this AD are intended to prevent pilot incapacitation during an emergency situation requiring supplemental oxygen to the flight crew.

DATES: Effective January 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-262-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clayton R. Morris, Jr., Aerospace Engineer, Seattle Aircraft Certification Office, Systems & Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2794; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: One operator of a Boeing Model 747-400 series airplane reported that the oxygen flow rate to the captain's oxygen mask was below specification. Troubleshooting determined that a damaged oxygen hose restricted the flow of oxygen. The manufacturer performed a check of four production airplanes and found three of eight hose assemblies with similar damage. The damage is a bend, kink, or soft spot in the oxygen hose adjacent to the elbow fitting at the base of the oxygen mask stowage box. This condition, if not corrected, could result in pilot incapacitation during an emergency situation requiring supplemental oxygen to the flight crew.

Investigation of the problem identified two possible sources of damage. The first occurs during removal of the oxygen mask stowage box. Excessive tension is applied to the oxygen hose if the oxygen hose is routed under the air conditioning duct or is not disconnected from the stowage box during removal of the box.

A second source of damage occurs during installation of the oxygen mask stowage box. The oxygen hose can be pressed between the stowage box and the cabin floor if the elbow fitting at the base of the box is oriented towards the floor. Orientation of the elbow fitting away from the direction of the oxygen hose routing can result in the oxygen hose being bent over the elbow fitting.

The "Press-to-Test" button is only an indication of oxygen pressure in the oxygen mask stowage box and not an indication of oxygen flow rate to the oxygen mask. Tests have indicated that if the stowage box is pressurized and the hose is kinked or blocked, the button can be depressed 5 to 6 times before enough pressure is released to indicate low or not oxygen flow.

The FAA has reviewed and approved Being Alert Service Bulletin 747-35A2075, Revision 1, dated September 19, 1991, which describes procedures for inspection, replacement, and rerouting of the oxygen hoses to the captain's and first officer's oxygen mask stowage boxes.

Since the unsafe condition described is likely to exist or develop on other Boeing Model 747-400 series airplanes of the same type design, this AD is being issued to prevent pilot incapitation during an emergency situation requiring supplemental oxygen to the flight crew. This AD requires removal of the captain's and first officer's oxygen mask stowage boxes, removal and inspection of the oxygen hoses, replacement of damaged or shorter length hoses, verification of the elbow fitting orientation, proper routing of the oxygen hoses, installation of the stowage boxes, and an operational test of the crew oxygen system. The required actions are to be accomplished in accordance with the service bulletin previously described.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comment

received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–262–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–02–06. **Boeing:** Amendment 39–8142. Docket No. 91–NM–262–AD.

Applicability: Model 747–400 series airplanes, listed in Boeing Alert Service Bulletin 747–35A2075, Revision 1, dated September 19, 1991, certificated in any category.

Compliance: Required within the next 30 days after the effective date of this AD, unless accomplished previously.

To prevent pilot incapacitation during an emergency situation requiring supplemental oxygen to the flight crew, accomplish the following:

(a) Inspect the captain's and officer's oxygen hoses below the oxygen mask stowage boxes in accordance with Boeing Alert Service Bulletin 747–35A2075, Revision 1, dated September 19, 1991. Replace damaged or short hoses before further flight, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplane to a base in order to comply with the requirements of this AD.

(d) The inspection and replacement requirements of this AD shall be done in accordance with Boeing Alert Service Bulletin 747–35A2075, Revision 1, dated September 19, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment (39–8142), AD 92–02–06, becomes effective January 24, 1992.

Issued in Renton, Washington, on December 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–421 Filed 1–8–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–253–AD; Amendment 39–8124; AD 92–01–01]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP series airplanes. This action requires de-activation of the automatic alternative three-phase power supply to each transformer rectifier unit (TRU), an operational test to ensure that the auto-changeover system is inoperative, and inclusion of an associated temporary revision in the Airplane Flight Manual (AFM). This amendment is prompted by an incident in which both AC generators failed at the same time. The actions specified in this AD are intended to prevent the loss of primary electric power sources.

DATES: Effective January 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–253–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model ATP series airplanes. The United Kingdom CAA advises that an incident has occurred in which the transformer rectifier unit (TRU) changeover contactor failed, resulting in the failure of both AC generators at the same time. This condition, if not corrected, could result in the loss of primary electric power sources.

British Aerospace has issued Service Bulletin ATP–24–42–10244A, Revision 1, dated November 7, 1991, which describes procedures to de-activate the automatic alternative three-phase power supply to each transformer rectifier unit (TRU), to perform an operational test to ensure that the auto-changeover system is inoperative, and to include an associated temporary revision to Section 0.25.0 of the Airplane Flight Manual (AFM). The United Kingdom CAA has classified this service bulletin as mandatory.

British Aerospace has also issued AFM (Document No. ATP 004) Temporary Revision No. 22 (T/22), Issue 1, dated November 1, 1991, which provides revised flight crew procedures associated with certain equipment failures/ malfunctions involving the TRU.

This airplane model is manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the United Kingdom CAA has kept the FAA totally informed of the above situation. The FAA has examined the findings of the United Kingdom CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the loss of primary electric power sources. This AD requires de-activation of the automatic alternative three-phase power supply to each transformer rectifier unit (TRU), an operational test to ensure that the auto-changeover system is inoperative, and the inclusion of associated temporary revision in the FAA-approved AFM. The required actions are to be accomplished in accordance with the service bulletin previously described.

The revisions to the AFM that are required by this AD action are with regard to the Emergency Procedures and Abnormal Procedures Sections (rather than the Limitations Section). The effect of the requirement is to ensure that flight crews are advised of the correct procedures to address certain equipment failures/malfunctions.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **"ADDRESSES."** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–253–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–01–01. **British Aerospace:** Amendment 39–8124. Docket No. 91–NM–253–AD.

Applicability: Model ATP series airplanes, as listed in British Aerospace Service Bulletin

ATP-24-42-10244A, Revision 1, dated November 7, 1991, certificated in any category.

Compliance: Required within 30 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent the loss of primary electric power sources, accomplish the following:

(a) Trip and lock out the alternative three-phase circuit breaker to each transformer rectifier unit (TRU), and perform an operational test to ensure that the auto-changeover system is inoperative, in accordance with British Aerospace Service Bulletin ATP-24-42-10244A, Revision 1, dated November 7, 1991.

(b) Revise the Emergency Procedures and Abnormal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include AFM (Document No. ATP 004) Temporary Revision No. 22 (T/22), Issue 1, dated November 1, 1991.

(c) Amend the AFM, Section 0.25.0, in accordance with paragraph 2.(6) of British Aerospace Service Bulletin ATP-24-42-10244A, Revision 1, dated November 7, 1991.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The circuit breaker de-activation and operational test, and revision to Section 0.25.0 of the AFM, required by this AD shall be done in accordance with British Aerospace Service Bulletin ATP-24-42-10244A, Revision 1, dated November 7, 1991. The AFM revision required by this AD shall be done in accordance with AFM (Docket No. ATP 004) Temporary Revision No. 22 (T/22), Issue 1, dated November 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington; or at the Office of the Federal Register, 1100 L Street N.W., Room 8401, Washington, D.C.

(g) This amendment (39-8124), AD 92-01-01, becomes effective January 24, 1992.

Issued in Renton, Washington, on December 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-424 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-266-AD; Amendment 39-8133; AD 92-01-09]

Airworthiness Directives; British Aerospace Model 125-600A, -700A, and -800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain British Aerospace Model 125-600A, -700A, and -800A series airplanes. This proposal would require a one-time inspection to detect misalignment of fuel feed pipe joints and realignment, if necessary. This proposal is prompted by a recent incident report wherein the tailcone inside area of a British Aerospace Model 125-800A series airplane was soaked with fuel that leaked out of fuel feed pipe joints during a high altitude transatlantic flight. The actions specified in this AD are intended to prevent an in-flight fire hazard in the rear equipment bay.

DATES: Effective January 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-266-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA., Transport Airplane Directorate, 1601 Lind Avenue SW., Renton Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2113; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model 125-600A, -700A, and -800A series airplanes. The CAA advises that there have been recent incident reports wherein the tailcone inside areas of certain British Aerospace Model 125 series airplanes were soaked with fuel that leaked out of fuel feed pipe joints during high altitude operations. The most recent occurrence involved a British Aerospace Model 125-800A series airplane. The apparent cause of the leakage was misalignment of the fuel feed pipe joints at the pipe entry into the associated coupling. This condition, if not corrected, could result in an in-flight fire hazard in the rear equipment bay.

Since the subject tailcone area, fuel feed assembly, and the capability for sustained high altitude operations on Model 125-600A series airplanes with Garrett engines and Model 125-700A series airplanes are similar to those of the Model 125-800A, the potential unsafe condition exists with regard to those models as well.

Bristish Aerospace has issued Service Bulletin SB 28-86, dated June 28, 1991, which describes procedures for inspection of fuel feed pipe joints for misalignment, and realignment of the pipe joints, if necessary. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the CAA has kept the FAA totally informed of the above situation. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent an in-flight fire hazard in the rear equipment bay. This AD requires a one-time inspection to detect misalignment of fuel feed pipe joints, and realignment, if necessary. The required actions are to be accomplished in accordance with the service bulletin previously described.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment

hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-268-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rule Docket. A copy of it, if filled, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-01-09 British Aerospace: Amendment 39-8133. Docket 91-NM-268-AD.

Applicability: Model 125-800A, -700A, and -800A series airplanes; as listed in British Aerospace Service Bulletin 28-88, dated June 28, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an in-flight fire hazard in the rear equipment bay, accomplish the following:

(a) Within 60 days after the effective date of this AD, accomplish a visual inspection for proper alignment of fuel feed pipes at pipe joint couplings, in accordance with British Aerospace Service Bulletin SB 28-88, dated June 28, 1991. If misalignment is detected outside the specifications cited in the service bulletin, prior to further flight, correct the alignment by installing an "O" ring modification and a fuel pipe clamping modification, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and they send it to the Manager, Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and realignment required by this AD shall be done in accordance with British Aerospace Service Bulletin SB 28-88, dated June 28, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SE., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment (39-8133), AD 92-01-09, becomes effective January 24, 1992.

Issued in Renton, Washington, on December 20, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-422 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-258-AD; Amendment 39-8134; AD 92-01-10]

Airworthiness Directives; Dassault Aviation Model Fan Jet Falcon Series G and Mystere Falcon 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Dassault Aviation Model Fan Jet Falcon Series G and Mystere Falcon 200 series airplanes. This action requires inspections and replacement, if necessary, of the hinges and fasteners on the engine cowls. An optional modification of the latches, hinge pins, and small aprons on the engine cowls terminates the requirement for the inspections. This amendment is prompted by reports of uncrimped hinge and clamp articulation pins on the engine cowls, and fatigue cracks on the small aprons of the engine cowls on in-service airplanes. The actions specified in this AD are intended to prevent in-flight separation of the engine cowls.

DATES: Effective January 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of January 24, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-256-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, recently notified the FAA that an unsafe condition may exist on all Dassault Aviation Model Fan Jet Falcon Series G and Mystere Falcon 200 series airplanes. The French DGAC advises of reports of uncrimped hinge and clamp articulation pins in the engine cowls on several in-service airplanes. Additionally, fatigue cracks in the attachment screw area of the small aprons on the engine cowls on in-service airplanes have been reported. These conditions, if not corrected, could lead to in-flight separation of the engine cowls.

Dassault Aviation has issued the following service information:

a. Service Bulletin F200-59 (ATA Number F200-54-4), Revision 1, dated September 18, 1991, which describes procedures for reinforcement of the engine hinged cowl latches by installing an omega-shaped doubler on each of the latch bodies.

b. Service Bulletin F200-78 (ATA Number F200-54-7), Revision 1, dated September 18, 1991, which describes procedures for installation of a non-articulated latching system. This modification involves replacing the existing CAMLOC clamps with two bent sections.

c. Service Bulletin F200-87 (ATA Number F200-54-10), dated September 18, 1991, which describes procedures for reinforcement of the small aprons by increasing the thickness of the doublers in the area of apron-to-nacelle attachment strips. This service bulletin also describes procedures for modification of the hinged cowl attachment by attaching the hinged cowls to the air intake flange.

The French DGAC has classified these service bulletins as mandatory and has issued French Airworthiness Directive 91-197-018(B) in order to assure the airworthiness of these airplanes in France.

The Falcon 200 Maintenance Manual (Work Card 741-0, Revision A-1-b, dated December 1990) describes procedures to inspect the hinges and fasteners (latches and aprons) of the engine cowls.

This airplane model is manufactured in France and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the French DGAC has kept the FAA totally informed of the above situation. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent in-flight separation of the engine cowls. This AD requires inspections and replacement, if necessary, of the hinges and fasteners on the engine cowls. An optional modification of the latches, hinge pins, and small aprons on the engine cowls terminates the requirement for the inspections. The required actions are to be accomplished in accordance with the service bulletins previously described.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES**." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-256-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the

Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-01-10. Dassault Aviation (formerly Avions Marcel Dassault-Breguet Aviation): Amendment 39-8134. Docket 91-NM-256-AD.

Applicability: Model Fan Jet Falcon Series G and Mystere Falcon 200 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight separation of the engine cowls, accomplish the following:

(a) Within 14 days after the effective date of this AD, and thereafter at intervals not to exceed 7 days, perform an inspection of the hinges and fasteners (latches and aprons) on the engine cowls to verify their integrity, in accordance with the airplane maintenance manual (refer to Work Card 741-0, Revision A-1-b, dated December 1990). Replace discrepant hinges or fasteners (latches or aprons) prior to further flight, in accordance with the airplane maintenance manual.

(b) Accomplishment of subparagraphs (b)(1), (b)(2), and (b)(3) of this AD constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(1) Reinforce the latches in accordance with Dassault Aviation Service Bulletin F200-59 (ATA Number F200-54-4), Revision 1, dated September 18, 1991.

(2) Install new hinge pin latching systems in accordance with Dassault Aviation Service Bulletin F200-78 (ATA Number F200-54-7), Revision 1, dated September 18, 1991.

(3) Reinforce the small aprons and modify the hinged cowl attachments in accordance with Dassault Aviation Service Bulletin F200-87 (ATA Number F200-54-10), dated September 18, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modifications required by this AD shall be done in accordance with Dassault Aviation Service Bulletin F200-59 (ATA Number F200-54-4), Revision 1, dated September 18, 1991; Dassault Aviation Service Bulletin F200-78 (ATA Number F200-54-7), revision 1, dated September 18, 1991; and Dassault Aviation Service Bulletin F200-87 (ATA Number F200-54-10), dated September 18, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment (39-8134), AD 92-01-10, becomes effective January 24, 1992.

Issued in Renton, Washington, on December 20, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-425 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-136-AD; Amendment 39-8122; AD 91-26-09]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 Series Airplanes and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Model DC-9 series airplanes, which currently requires repetitive inspections and functional checks of the tailcone release system for proper operation. This amendment requires replacement or modification of internal and external tailcone release system cable and handle assemblies. This amendment is prompted by reports of the tailcone failing to drop away when release activation was attempted. This condition, if not corrected, could result in the inability of passengers and crew members to exit through the tail of the airplane during an emergency evacuation.

DATES: Effective February 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 17, 1992.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Publications, Technical Administration Support, C1-L5B(45-00). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, ANM-131L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91-02-13, Amendment 39-6967 (56 FR 1911, January 18, 1991), was published in the Federal Register on August 5, 1991 (56 FR 37169). That action proposed to require replacement or modification of the internal and external tailcone release system cable and handle assemblies on McDonnell Douglas Model DC-9 series airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter asked for a clearer definition of the repetitive functional tests of the tailcone release system once the replacement/modification of the cable and handle assembly is accomplished. This commenter stated that, although the proposal would require the repetitive functional tests to be performed in accordance with McDonnell Douglas Service Bulletin A53-243, parts of the test procedures outlined in that service document would no longer be applicable once the modification/replacement is finished. The commenter also suggested that the rule be revised to require instead that the continuing functional tests be performed in accordance with McDonnell Douglas Service Bulletin 53-245, Revision 1, dated June 12, 1991, which is more logical and is obviously a post-modification test congruent with

the FAA's intent. The FAA notes that the commenter is correct in that the accomplishment of portions of the functional test described in Service Bulletin A53–243 would no longer be necessary, which is why the proposal states that accomplishment of such replacement or modification constitutes terminating action for the repetitive inspections of the interior and exterior handles for cracks. Those procedures specified in paragraphs H. and L., and the second paragraph of the Notes of paragraphs F. and J. of the Accomplishment Instructions of Service Bulletin A53–243, Revision 1, and all of Service Bulletin A53–242, are no longer required after the accomplishment of paragraph (d) of this rule. The final rule has been revised to clarify this point. The FAA does not agree, however, that the procedures specified in Service Bulletin 53–245 (Revision 1) are sufficient for the intent of this rulemaking action; the procedures specified in Service Bulletin A53–243 contain additional steps that the FAA considers necessary in order to adequately monitor the integrity of the tailcone release system.

Another commenter stated that the proposed 90-day compliance time for replacement/modification of the cable and handle assembly is too short. The commenter requested that the compliance time be extended to 9 months, which would be comparable to the compliance time of a similar AD rulemaking action applicable to Model DC–9–80 (MD–80) series airplanes [see proposed rule, Docket 91–NM–137–AD (56 FR 36748, August 1, 1991)]. The commenter does not consider there to be any greater urgency for modification of the Model DC–9 series than for the Model DC–9–80 series, since both models are so similar. The FAA does not concur. Although the Model DC–9–80 and Model DC–9 are similar airplanes in many aspects, there is a major difference between their respective tailcone emergency exit release systems. For the Model DC–9–80, the system is designed to automatically drop the tailcone during an emergency evacuation as soon as the aft bulkhead door is opened; additionally, the tailcone interior handle exists as a backup system. This is not the same for the Model DC–9; its interior tailcone release handle is the only means of deploying the tailcone from inside the airplane. In light of this, the FAA has determined that the compliance time, as proposed, is warranted.

Another commenter pointed out that a conflict exists between McDonnell Douglas Service Bulletin 53–245, Revision 1, dated June 12, 1991, which is referenced in this proposed rule, and McDonnell Douglas Service Bulletin 53–199, Revision 2, dated March 17, 1989, which was referenced in a separate but related proposal [Docket 90–NM–87–AD (56 FR 28223, July 10, 1990)]. The conflict between these two service documents relates to the installation of two different designs of handle/support fitting assemblies. The commenter requested that this proposed rule be postponed until this issue is resolved. The FAA does not concur that postponement is necessary. Initially, a conflict did exist between the two service documents. However, subsequent to the issuance of the notice related to this AD action, the FAA reviewed and approved Revision 3 of McDonnell Douglas Service Bulletin 53–199, dated July 15, 1991, which contains corrected information that eliminates the previous conflict.

The same commenter requested that the FAA postpone any AD action pertaining to the Model DC–9 tailcone system until a comprehensive industry/FAA review is held and a consensus program developed. This commenter believes that a certain new McDonnell Douglas proposal may offer a better solution to the Model DC–9 tailcone emergency release system, and it would be prudent to postpone any pending AD activity and pursue a total system approach. The FAA disagrees with any postponement to this rule. The intent of this action is to correct a known airworthiness problem, which is a handle that cannot adequately support a sideload. The modification/replacement specified in this final rule will correct this design deficiency and ensure that the tailcone drops when release activation is attempted. Should additional design changes become available in the future, the FAA will review them as to their applicability to this and other issues.

Another commenter supported the proposed AD but asked for assurance that the proposed modified/replacement handle is designed to enable someone to open the tailcone from the floor, since it would be possible that people would be crawling on the floor to escape smoke. The FAA responds by noting that, during McDonnell Douglas functional tests of the improved handle design specified in this final rule, which were witnessed by the FAA, it was shown that an untrained person can activate the handle from a standing, kneeling or crawling position

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

There are approximately 910 Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 590 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor cost will be $55 per work hour. The cost of parts to accomplish the modification is approximately $1,370 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $970,550.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows

PART 39—[AMENDED]

1. The authority citation of part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6867 and by adding the following new airworthiness directive:

91–28–09. McDonnell Douglas: Amendment 39–8122. Docket No. 91–NM–136–AD. Supersedes AD 91–02–13, Amendment 39–6867.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (Military) series airplanes, operating in a passenger or passenger/cargo configuration, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

Note: The requirements of this AD become applicable at the time an airplane in an all-cargo configuration is converted to a passenger or passenger/cargo configuration.

To prevent failure of the tailcone release system, accomplish the following:

(a) Within 60 days after February 11, 1991 (the effective date of AD 91–02–13, Amendment 39–6867), unless previously accomplished within the last 60 days, inspect the interior and exterior tailcone release handles for cracks, in accordance with the Accomplishment Instructions of McDonnell Douglass Alert Service Bulletin A53–242, dated December 20, 1990, or Alert Service Bulletin A53–243, Revision 1, dated February 8, 1991; and accomplish a tailcone release system functional test in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A53–243, dated January 10, 1991, or Revision 1, dated February 8, 1991.

(1) Cracked or broken tailcone release handles must be replaced prior to further flight.

(2) Discrepancies in the operation of the tailcone release system found as a result of the functional test must be repaired prior to further flight.

(b) Repeat the inspection of the interior and exterior tailcone release handles and conduct the functional test required by paragraph (a) of this AD at intervals not to exceed 3,000 flight hours or 15 months, whichever occurs first.

(c) Within 30 days after discovery, report any cracked or broken tailcone release handles or any discrepancies found during the accomplishment of the inspection and functional tests required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

(d) Within 90 days after the effective date of this AD, replace or modify the internal and external tailcone release system cable and handle assemblies, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 53–245, Revision 1, dated June 12, 1991. Accomplishment of such replacement or modification constitutes terminating action for the repetitive inspections of the interior and exterior tailcone release handles for cracks, as required by paragraph (b) of this AD. However, the repetitive functional tests of the tailcone release system required by paragraph (b) of this AD must continue to be accomplished.

Note: The following portions of the continuing repetitive functional tests and inspections of the tailcone release system are not necessary to accomplish once the replacement/modification of the cable and handle assembly is completed: Those procedures specified in paragraphs H. and L., and the second paragraph of the Notes of paragraphs F. and J., of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A53–243, dated January 10, 1991 or Revision 1, dated February 8, 1991, and all of McDonnell Douglas Alert Service Bulletin A53–242 dated December 20, 1990.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(g) The inspection requirements of this AD shall be accomplished in accordance with McDonnell Douglas Alert Service Bulletin A53–242, dated December 20, 1990, or McDonnell Douglas Alert Service Bulletin A53–243, Revision 1, dated February 8, 1991. The functional test requirements of this AD shall be accomplished in accordance with McDonnell Alert Service Bulletin A53–243, dated January 10, 1991, or McDonnell Douglas Alert Service Bulletin A53–243, Revision 1, dated February 8, 1991. The replacement and modification requirements shall be accomplished in accordance with McDonnell Douglas Service Bulletin 53–245, Revision 1, dated June 12, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Publications, Technical Administration Support, C1–L5B(45–60). Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(h) This amendment (39–8122), AD 91–28–09, becomes effective February 17, 1992.

Issued in Renton, Washington, on December 5, 1991.

James B. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–484 Filed 1–8–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–237–AD; Amendment 39–8127; AD 92–01–04]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes, Equipped With McDonnell Douglas Electronic Systems Company Central Aural Warning System, Part Number H05A0035–50 or Part Number H05A0035–51

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires cycling of all three Central Aural Warning System (CAWS) circuit breakers prior to the first flight of the day, and the eventual replacement of the CAWS unit with an updated version as terminating action for the repetitive circuit breaker cycling. This amendment is prompted by the report of an anomaly in certain CAWS units which can cause the loss of multiple aural alert functions. This condition, if not detected and corrected, could result in the failure of numerous aural warning alerts that are needed to provide critical information to the flight crew during flight.

DATES: Effective January 24, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 24, 1992.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

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FOR FURTHER INFORMATION CONTACT: Mr. Brett Portwood, Aerospace Engineer, ANM-132L, FAA, Northwest Mountain Region, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5347.

SUPPLEMENTARY INFORMATION: One operator of Model MD-11 series airplanes recently experienced the loss of multiple aural alert functions while using the rotary test dial that is located on the front of the Central Aural Warning System (CAWS) unit. This operator had been performing the rotary test as a return-to-service operation any time a CAWS unit is installed on an airplane. When selected units were taken from the airline storage facility and installed on the airplane, the aural alerts for Windshear, Altitude, Radio Altitude, Autopilot Disconnect, and Stabilizer in Motion were not annunciated. Upon further analysis, it was determined that the tolerances of the circuitry on certain CAWS units may cause an anomaly that prevents the proper resetting of the unit upon application of power. When this anomaly occurs, the airplane will lose aural warning alerts that denote Autopilot Disconnect, Windshear, Altitude, Stabilizer in Motion, Radio Altitude, and Overspeed. The information provided by such warning alerts is critical to the flight crew for continued safe flight.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A31-18, dated November 11, 1991, which describes procedures for the replacement of the CAWS with an updated version that alleviates the reset anomaly.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires cycling of all three CAWS circuit breakers prior to the first flight of the day (with the airplane's power active), and the eventual replacement of the CAWS unit with an updated version. When this replacement is accomplished, the required repetitive cycling of the CAWS circuit breakers may be terminated. The replacement action is required to be accomplished in accordance with the alert service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-01-04. **McDonnell Douglas:** Amendment 39-8127. Docket No. 92-NM-237-AD.

Applicability: Model MD-11 series airplanes; equipped with McDonnell Douglas Electronic Systems Company Central Aural Warning System (CAWS), Part Number H05A0035-50 or Part Number H05A0035-51; certificated in any category.

Compliance: Required as indicated unless previously accomplished.

To eliminate the loss of Autopilot Disconnect, Windshear, Altitude, Stabilizer in Motion, Radio Altitude, and Overspeed aural alerts, accomplish the following:

(a) Within 5 days after the effective date of this AD, and thereafter prior to the first flight of each day, with the aircraft power active, accomplish the following:

(1) Position or verify that CAWS circuit breakers B1-1018, B1-1381, and B1-1019 are closed.

(2) Cycle all three CAWS circuit breakers to the open position. Leave the circuit breakers open for a minimum of five seconds.

(3) Return all three circuit breakers to the closed position.

(b) Within 60 days after the effective date of this AD, replace the CAWS unit in accordance with McDonnell Douglas Alert Service Bulletin A31-18, dated November 11, 1991. Such replacement constitutes terminating action for the requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) The replacement requirement of this AD shall be done in accordance with McDonnell Douglas Alert Service Bulletin A31-18, dated November 11, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, 90846. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(f) This amendment (39-8127), AD 92-01-04, becomes effective on January 24, 1992.

Issued in Renton, Washington, on December 17, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-423 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ANE-35; Amendment 39-8087, AD 91-24-02]

Airworthiness Directives; Turbomeca (TM) Arriel Series Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Turbomeca Arriel series turboshaft engines, which requires incorporation of a certain free wheel clutch, and installation of a free wheel shaft with improved free wheel shaft balancing. This amendment is prompted by four confirmed events of free wheel clutch failure that prevented power transmission to the main rotor drive shaft. This condition, if not corrected, could result in free wheel clutch failure and the inability to transmit engine power to the main rotor drive shaft.

DATES: Effective January 21, 1992.

Comments must be received no later than April 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 21, 1992.

ADDRESSES: Send comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–35, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Turbomeca, Technical Publication Department, 64511 Bordes Cedex, France. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert E. Guyotte, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, (617) 273–7094.

SUPPLEMENTARY INFORMATION: There have been four confirmed events of free wheel clutch failure on TM Arriel services turboshaft engines. The failures have resulted in the inability to transmit power from the engine to the main rotor drive shaft resulting in subsequent emergency helicopter autorotation landing. The FAA has determined that the combined effect of certain free wheel clutch manufacturing tolerances and current free wheel shaft balancing limits can result in free wheel clutch failure, resulting in power loss to the main rotor drive shaft.

Since this condition is likely to exist or develop on other engines of the same type design, this AD requires installation of a specific free wheel clutch and installation of a free wheel shaft with an improved balancing operation.

The FAA has reviewed and approved the technical contents of Turbomeca Service Bulletin 292.72.0146, dated August 5, 1991, and Turbomeca Service Document 72.292.0141, dated July 13, 1990, which describe the removal, replacement, and installation requirements for a free wheel clutch and a free wheel shaft.

Since this failure condition could result in loss of power to the main rotor, a situation exists that requires immediate adoption of this regulation and it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–35, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g), and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

91–24–02. Turbomeca: Amendment 39–8067, Docket No. 91–ANE–35

Applicability: Turbomeca Arriel 1B, 1D, Arriel 1D, and Arriel 1D1 turboshaft engines, installed on but not limited to, Aerospatiale AS350 Ecureuil aircraft.

Compliance: Required as indicated, unless already accomplished.

To prevent free wheel clutch failure and the inability to transmit power from the engine to the main rotor drive shaft, accomplish the following:

(a) For engines that have not incorporated the modifications contained in either Turbomeca Service Document 72.292.0140 (Modification TU 211), dated June 14, 1990, or Turbomeca Service Document 72.292.0141 (Modification TU 212), dated July 13, 1990, and have a free wheel assembly serial number (S/N) of 793 or higher; or a S/N less than 793 and have had a maintenance action performed on the free wheel assembly, accomplish the following:

(1) Install a free wheel clutch in accordance with Turbomeca Service Document 72.292.0141 (Modification TU 212), dated July 13, 1990, within 20 days from the effective date of this AD.

(2) Install a free wheel shaft in accordance with Turbomeca Service Bulletin 292.72.0146 (Modification TU 221), dated May 8, 1991, within 20 days from the effective date of this AD.

(3) Engines equipped with free wheel assemblies having a S/N lower than 793, that have not had a maintenance action

performed on the free wheel assembly, are not required to incorporate the above modifications.

Note: Information regarding free wheel clutch assembly S/N and free wheel clutch repair history may be found on the equipment Log Card and in the engine logbook.

(b) For engines that have incorporated the modifications contained in Turbomeca Service Document 72.292.0140 (Modification TU 211), dated June 14, 1990, comply with paragraphs (b)(1) and (b)(2) of this AD. For engines that have incorporated Turbomeca Service Document 72.292.0141 (Modification TU 212), dated July 13, 1991, comply with paragraph (b)(2) only, as follows:

(1) Install a free wheel clutch in accordance with the requirements of Turbomeca Service Document 72.292.0141 (Modification TU 212), dated July 13, 1990, at next shop visit or by March 31, 1992, whichever occurs first.

(2) Install a free wheel shaft in accordance with the requirements of Turbomeca Service Bulletin 292.72.0146 (Modification TU 221), dated May 8, 1991, at next shop visit or by March 31, 1992, whichever occurs first.

(c) For the purpose of this AD, a shop visit is defined as exposure of the free wheel assembly at a shop capable of performing the modification.

(d) For the purpose of this AD, maintenance action is defined as any maintenance performed on any free wheel assembly component.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(f) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts.

(g) The modification shall be done in accordance with the following Turbomeca service documents:

Document No.	Page No.	Date
292.72.0146	1-7	August 8, 1991.
Total Pages: 7		
72.292.0141	1-4	July 13, 1990.
Total Pages: 4		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca, Technical Publications Department, 64511 Bordes Cedex, France. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW, room 8401, Washington, DC.

This amendment (39-8087, AD 91-24-02) becomes effective January 21, 1992.

Issued in Burlington, Massachusetts, on December 26, 1991.

Jay J. Pardee,

Acting Manager, Manager Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92-481 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 284, 375, and 380

[Docket No. RM90-1-002]

Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities

Issued December 11, 1991.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final Rule; notice of questions arising from technical conference and request for comments.

SUMMARY: On November 12, 1991, the Federal Energy Regulatory Commission (Commission) convened a technical conference to examine issues related to the implementation of the environmental portions of Order No. 555, entitled "Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities." As a result of discussions which took place at the technical conference, various questions were identified for which further information would be helpful to inform Commission consideration of these matters.

DATES: Under an extension of time issued by the Commission on December 17, 1991, written comments must be filed with the Commission by January 15, 1992. Answers to comments must be filed by January 27, 1992.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary of the Commission, (202) (208-0400).

SUPPLEMENTARY INFORMATION:

Questions Arising From Technical Conference and Request for Comments

In the matter of Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

On November 12, 1991, the Commission convened a technical conference to examine issues related to the implementation of the environmental portions of Order No. 555, entitled "Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities," which was issued September 20, 1991.

As a result of discussions which took place at the technical conference, various questions have been identified relating to the environmental portions of the rule. Further information would be helpful to inform Commission consideration of these matters. Those questions are set forth below.

All interested persons may make filings with the Secretary of the Commission in response to the matters discussed at the technical conference and the questions contained below within 20 days of the date this notice is issued. Answers to such comments may be filed within 10 days thereafter.

Questions

1. What reviews embodied in the rule, undertaken either by the Commission or by other agencies, are duplicative and what procedures are recommended to reduce the alleged duplication and still comply with all of the procedural requirements of the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA)?

2. Provide recommendations as to how the Commission should ensure appropriate recovery of costs incurred by a project sponsor to comply with environmental conditions.

3. With regard to the environmental procedures in general, and the Erosion Control, Revegetation, and Maintenance Plan and Stream and Wetland Construction and Mitigation Procedure in particular, identify those criteria which are potentially counterproductive (for example, the requirement to revegetate wetlands with ryegrass). Explain the basis for each conclusion and the specific circumstances which would lead to the criteria being counterproductive. Suggest alternative standards, or delineate those circumstances under which the existing standard should not be applied.

4. Identify criteria contained in the rule which may conflict with specific desires, goals, or requirements of other Federal, state, or local land managing and regulatory agencies.

5. Provide specific examples of instances where another agency or organization will not take action until a filing is made with the Commission, or the Commission takes a specific action. Identify the time limits that are triggered

by the Commission-related action, including the relevant statute or regulation.

6. Identify situations in which direct consultation is required between the Commission and another agency, and it is thought that the other agency would not enter into consultations with the project sponsor unless the Commission were also involved. Describe why these situations are unique under Order No. 555 and do not occur under existing regulations, for example, under current rules governing section 311 construction.

7. Identify those projects or circumstances in which it is felt that the environmental standards contained in the rule should be relaxed, or a lesser degree of information should be required to demonstrate compliance (for example, new facilities at existing locations, or facilities costing less than a given amount). Specify why the standard should be relaxed, or what information would not be needed, and why. Also, specify what types of projects are thought not to require the filing of *any* information and discuss why. Responses should specify how compliance with NEPA, the ESA, NHPA, and any other relevant statutes or regulations would be achieved under the revised or eliminated standard.

8. The window for stream crossing construction has been criticized as unduly restrictive. Identify broad-based examples which demonstrate why this window is inappropriate. Also, identify appropriate windows, or standards that should be used to determine such windows, and the circumstances under which their use would be appropriate.

9. Suggest classifications of projects (and the underlying rationale) for which newspaper publication is deemed unnecessary, taking into consideration the NEPA requirement of public input into the review process. Also, provide information concerning existing publication requirements that would render Commission-related publication unnecessary, including when such publication would occur relative to Commission action and whether that publication would inform the public how to become involved in the Commission review process. Discuss alternatives to Commission-required publication (for example, certified letters to landowners instead of newspaper publication).

10. Discuss the circumstances under which it would be appropriate to move forward with construction, for all or part of the project, prior to resolving all issues, including those for which reconciliation is sought. Address conditions that should be placed on such construction.

11. Discuss modifications to the reconciliation procedure which could reduce the frequency with which it is felt reconciliation would be required (for example, initiate meetings at the outset of project planning to resolve potential problems).

12. Identify procedural alternatives to the reconciliation process and how such alternatives would be structured in contrast to the current procedure.

13. Assume that a project does not satisfy all the standard environmental conditions in § 157.103(c). Therefore, the reconciliation procedures would be used, and the project would not qualify for a NEPA categorical exclusion. What procedure/approach would you suggest the Commission adopt as an alternative to the reconciliation process (or in addition to the reconciliation process) to allow the project to qualify for a categorical exclusion? For example, can project-specific mitigation be developed and still qualify the project for categorical exclusion? Please explain why the alternative(s) suggested would be preferable.

14. Detail instances in which the criteria contained in the self-implementing environmental procedure will restrict the use of activities that would otherwise be allowed by other agencies.

15. Discuss ways in which flexibility can be added to the self-implementing environmental process to best accommodate site-specific needs or emergency situations. Include, as appropriate, a discussion of how the Commission would be informed of such action before it was taken.

16. Explain why pipelines have been able for the most part to comply with § 157.206(d), but anticipate problems complying with the similar provisions of § 157.103(c).

17. Discuss what would constitute appropriate review by the Commission of the compliance report and explain how the recommended action would be consistent with the Commission's statutory obligations.

18. Suggest environmental compliance procedures which would not require case-by-case staff participation and that would also be consistent with existing statutory requirements.

19. Identify non-DOT mandated facility replacement activities which should be exempted from certificate regulation pursuant to § 2.55(b); for each example explain why it should be exempt and why there would be no potential for significant environmental impact.

20. Discuss how the mandates of NEPA and other laws would be met if the Commission were to merely establish performance standards with no indication of what specific actions or mitigation measures would be undertaken by a project sponsor.

21. Which items in § 157.103(c) for which compliance could be deferred until after the prior notice period? How could such activities be reported to and approved by the Commission prior to the commencement of construction? Alternatively, what minimum requirements should be embodied in § 157.103?

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

Trabandt, Commissioner, *concurring:*

I concur in the instant order setting forth the questions arising from technical conference and request for comments. Since I was unable to attend the environmental technical conference because of attendance at the Annual Meeting of the National Association of Regulatory Utility Commissioners in San Antonio, Texas, I concur here for the purpose of discussing the environmental portions of Order No. 555, raising certain issues and posing a series of additional questions.

I. General

As the rehearing petitions demonstrate, Order No. 555 is a very tough environmental rule, which adopts a series of new substantive standards for environmental compliance and a new so-called "menu" approach to certificate authorization. There will no longer be a self-implementing process under section 311 of the Natural Gas Policy Act or any other authority for construction of any project of significant size or controversy (*i.e.*, protested). Rather, any such project will have to be reviewed by FERC staff and will have to receive a certification that the project is in compliance with all the environmental requirements before construction can commence. To that extent, the Final Rule effectively restores the affirmative review of such proposed projects prior to construction, that was the essence of the certificate process prior to the effectiveness of Order No. 436 on November 1, 1985.

For me, the central and quite crucial issue on rehearing of this Final Rule is whether the Commission has successfully streamlined its certificate procedures and requirements to achieve a more expeditious, less costly, and more flexible certification process for interstate pipeline construction. That objective was not only the

Commission's stated objective in the Notice of Proposed Rulemaking (NOPR) in this docket, it also is a key element of the Administration's National Energy Strategy (NES) as approved by President Bush. Additionally, legislative action already taken in our jurisdictional Committees in the Senate and House of Representatives demonstrate clearly that Congress intends that the Commission expedite significantly the pipeline construction certification process.

A similar concern has been expressed repeatedly in the ongoing Congressional oversight review of the Commission's certificate program being conducted by the Subcommittee on Environment, Energy, and Natural Resources of the House Committee on Government Operations. A study of the certificate program prepared by the General Accounting Office for the Subcommittee's oversight review also emphasized the need for expedited processing of pipeline construction applications. And, public hearings held by the Subcommittee included extensive testimony about the problems in the current program. So, it is abundantly clear that there is a well-established national energy policy imperative associated with the practical results of this Final Rule.

Unfortunately, for the reasons discussed below, it is now obvious that the new certification process for pipeline construction in the Final Rule will definitely not be more expeditious, less costly and more flexible for most projects. While it is possible that that result may be achieved for a few (particularly smaller) projects, it also is quite clear that larger projects and smaller controversial projects will not be expedited at all, and will in fact require longer and more costly processing. It also is quite likely that some future projects will not be able to be authorized at all, because of certain new requirements imposed in the Final Rule. I also suspect that some more recent, existing projects could not have been authorized or built under this new certification process.

In the end, the Commission in the Final Rule attempted to strike a delicate and, for me, quite tenuous balance between stronger environmental regulations and increased Commission staff control, on one hand, and increased expedition and flexibility on the other. Perhaps, there is no better demonstration of that result than the fact that there no longer is a truly self-implementing environmental review process, as has been available for any construction project under section 311 of the Natural Gas Policy Act, and as implemented by the regulations promulgated by Order No. 436 in 1985. Despite the generally acknowledged success of those section 311 self-implementing procedures for many large and small pipeline projects constructed since 1985, the Final Rule requires affirmative Commission staff participation, review and *prior* approval for almost any new project of any significance authorized under either sections 311 or 7(c) of the Natural Gas Act. Additionally, the Final Rule also requires the active participation, review and prior approval of Federal and state agencies for various types of public lands and under various circumstances. Consequently, there is no doubt that self-implementing environmental review, as such, is a dead letter under the Final Rule. And, it is quite probable that the new procedures, dubbed "semi-automatic" by a Commission spokesperson, will be very complicated and far from automatic.

I would suggest that one analytical difficulty in assessing the most probable result of the Final Rule is that the actual effect of the new regulations may largely be determined by how the Rule is implemented by the Commission's technical staff. That is an analytical imponderable not clear at this juncture and which in all likelihood will not be clear at the time of our final decision on rehearing. For example, the Commission adopted a new reconciliation procedure, which I championed in the development of the Final Rule, to provide some degree of flexibility to attempt to resolve environmental issues and filed protests prior to triggering a full blown, traditional section 7(c) process. The practical effect of the reconciliation procedure, however, is to delegate considerable discretionary authority to the Commission staff in terms of whether and how to proceed with reconciliation in any given case.

I do not doubt that today the Commission staff and at least a majority of the Commission would intend that the new reconciliation procedure lead to a successful resolution of environmental issues and protests whenever possible, thus avoiding the necessity of completing the full blown section 7(c) process. But, the proof of the pudding, so to speak, would come in the months ahead, as the Commission staff proceeded with actual implementation. And, it may even turn out that despite the best, good-faith efforts by the Commission staff, the reconciliation mechanism itself may not be as effective as we hope in the face of any concerted opposition by Federal agencies, state agencies or protesting parties. So, it is analytically challenging to make an informed assessment of exactly how the Final Rule will affect future projects, because of the form of the new certificate process and the substance of the new environmental requirements.

Nevertheless, I recognize that the Commission will need to make such an assessment in short order for purposes of making decisions about the Final Rule on rehearing. Also, I have often remarked that the results of such assessments of the Final Rule, when issued, would be important for gauging the actual need for statutory amendments to existing law. The Final Rule seemingly captured the most expedition and flexibility available to the Commission consistent with our environmental responsibilities under existing law (or at least as much as a majority of the current Commission was willing to support). The forthcoming order on rehearing, therefore, should be a bell-weather test of whether and how the governing statutes should be amended to satisfy the well-established national energy policy objective discussed previously. I hope the following sections on specific provisions in the Final Rule help facilitate such timely assessments.

II. Menu of Authorization Options for Pipelines

The Final Rule adopts the menu approach for certificate authorizations. The menu includes 5 basic options, as follows.

A. Part 2, § 2.55(G). Replacement of Facilities, limited to existing right of way with local permitting required.

B. Section 311, part 284. There is no restriction on type or extent of the Facility, but there also is no eminent domain. Additionally, the project is limited in operation to transportation services satisfying the so-called "on behalf of" test under Order No. 537. Among other requirements, there must be a 30 day prior notification to the Commission, and there must be a demonstration there that there will be compliance with the environmental requirements of § 157.103. New, so-called "reconciliation procedures" may be available (at the discretion of FERC staff) to attempt to resolve any compliance issues. In the absence of compliance, the project must file a full-blown, case-specific application under part 157, subpart A for a traditional sec. 7(c) certificate (option 5, below).

C. Automatic, part 157, subpart F. Project cost is limited to $10 million. There is eminent domain. But, each "Automatic" project must comply with

the environmental requirements of § 157.103, even though there would only be a semi-annual report addressing the facts of compliance for previously constructed "automatic" projects. The reconciliation procedures may be available (at the discretion of FERC staff) to attempt to resolve any compliance issues. Nevertheless, if a proposed automatic project cannot achieve compliance with § 157.103 requirements, the project still must file a full-blown, case-specific application under part 157, subpart A for a traditional 7(c) certificate.

D. Prior Notice, part 157, subpart F. There is no restriction on type or extent of the facility and eminent domain is available. There must be a 30-day prior notification to the Commission, and there must be a demonstration then that there will be compliance with the environmental requirements of § 157.103. An unresolved protest triggers a requirement for the part 157, subpart A case-specific procedures. The reconciliation procedures may be available (at the discretion of FERC staff) to attempt to resolve any compliance issues and any outstanding protest. In the absence of compliance with § 157.103, as well as in the event of an unresolved protest, the project must file a full-blown, case-specific application under part 157, Subpart A for a traditional section 7(c) certificate.

E. Case-Specific, part 157, subpart A. This procedure would be available for all types of projects, and it approximates the traditional section 7(c) certificate process. Eminent domain is available. The environmental requirements of § 157.103 form the basis for the more traditional environmental review process by Commission staff, including either an Environmental Assessment or an Environmental Impact Statement under the Commission's NEPA regulations. To the extent that a project proposed under the Automatic, section 311, or Prior Notice procedures was required to file a part 157, subpart A application because of an unresolved protest or an area of non-compliance with the requirements of § 157.103, there would be an effort to avoid duplication in the part 157, subpart A processing in areas where compliance had already been demonstrated.

This brief summary of the menu of authorization options provides a basis for further comments and analysis about several aspects of this particular menu approach. First, any unresolved protest for the Prior Notice option and any unreconciled environmental non-compliance under § 157.103 for the Automatic, the section 311 and the Prior Notice options will trigger a requirement for a full-blown, case-specific, traditional section 7(c) application and subsequent processing by the FERC staff. And, the availability of the new reconciliation procedure is a matter committed to the discretion of the Commission staff. And, if for any reason, the Commission staff is unwilling to proceed with the reconciliation process for any unresolved protest or any issue of environmental non-compliance, there would be no viable alternative to the part 157, subpart A application. And, in the end, even if the reconciliation procedure is initiated, the protest must be resolved under the Prior Notice option, and full environmental compliance must be achieved under the Automatic, the Prior Notice and the section 311 options. Consequently, those three options may in practice be quite fragile and of little value for many projects, particularly given the rigid substantive standards adopted in § 157.103.

Under these circumstances, it is quite probable (as noted previously) that any project of any significance and any protested project will have to file a part 157, subpart A application for processing under traditional section 7(c) procedures. That potential result has been a serious concern of mine since the original Task Force recommendations leading to the development of the NOPR in this docket. If, in fact, the only viable option for most projects of any consequence under the Final Rule is the part 157, subpart A application, the Commission will have repealed the self-implementing procedures under section 311 and Order No. 436 as a practical matter. And further, if that is the practical result, the Commission would now be forcing any and all significant projects through the full-blown, case-specific traditional section 7(c) process, with few conceivable exceptions. That result, in turn, would potentially add to the environmental processing demands on the Commission staff, entailing additional costs and delays in processing. Under those circumstances, it is difficult to conclude how the Final Rule can satisfy the national energy policy objectives discussed at the beginning of this opinion.

III. Effective Date

The effective date of the Final Rule was sixty days after issuance on September 20, 1991, or November 19, 1991. The sixty days delay in effectiveness was intended to provide sufficient opportunity for potential project sponsors to become familiar with the new procedures and standards prior to choosing a particular authorization option. The sixty days also was intended to give reviewing parties adequate time to analyze this complex rule and file rehearing petitions deemed necessary for Commission review prior to the effectiveness.

Numerous parties concluded that there are serious flaws in the Final Rule that should be fixed before effectiveness and they sought a further delay in the effectiveness of the rule pending the Commission's review of those flaws on rehearing. I am pleased that the Commission granted those requests, as we have done on several occasions in the past. For me, it is absolutely critical that the Final Rule in this docket be workable and have a high probability of achieving the stated objectives, as an important goal of our national energy policy, before it becomes legally effective. It is clear that the Commission must fix the identified serious flaws, and we should proceed a pace to do so.

It also is clear that the change from current certificate rules and practice to those of the Final Rule will impose significant new and time-consuming requirements leading to a virtual hiatus of new project proposals, as project sponsors are required to gear up to meet those requirements. Since that is the case, there may be some merit in further delaying the effectiveness on rehearing to provide additional time for such efforts after the order on rehearing issues. I believe the Commission should be sensitive to that possibility in acting on the rehearing petitions.

IV. Grandfather Provision

The Final Rule states, slip op. at 186, "Any construction project authorization under rules in effect prior to the effective date of this rule will be subject to those prior rules." There are several points to be made with regard to that formulation of a grandfather provision. First, those projects which already have an authorization for construction under current regulations as of the effective date may proceed with construction under the rules now in effect, rather than under the new or changed procedures and requirements adopted in the Final Rule on rehearing. For example, the existing requirements under § 157.206(d) for environmental compliance would apply as opposed to the new requirements under § 157.103. That will be important for the timely and orderly construction of authorized projects. Also, the term "authorization" should be interpreted broadly to encompass actual section 7(c) certificates and the self-implementing

authorization under section 311 and the existing implementing regulation.

Questions may arise, however, about how to handle, as a matter of law, proposed projects which have filed an application under the existing rules, but which have not yet received a certificate on the effective date. Similarly, proposed projects proceeding under the existing self-implementing authorization in the applicable regulations under section 311 may not have complied fully with all requirements of § 157.206(d) as of the effective date. The Final Rule does not address such projects in the grandfather provision, even though considerable cost and time has been expended under the existing rules. The application of the new procedures, requirements and standards to such projects could cause substantial delay, duplication of effort and increased costs.

Since the grandfather provision in the Final Rule is so skeletal in nature, I believe the Commission on rehearing should flesh out a more expansive and effective form of grandfathering projects in various stages of the authorization and actual construction activities. A liberal approach to grandfathering most projects now materially underway would prevent any potential hiatus of new pipeline construction. Such an approach also would possibly be a more equitable approach to the understandable concerns of proposed projects.

V. Reconciliation Procedures

A. General Discussion

Many parties have raised valid concerns about the degree of discretion delegated to the Director of OPPR, the length of the process and other aspects of the reconciliation procedures in the Final Rule. There have been recommendations for standards, more formality, and an appeal process.

It probably bears repeating that the initial proposal for a reconciliation procedure was motivated by the need (at least as I perceived it) to avoid the potential for a "guillotine" result in the initial formulation of the Final Rule. Under the original menu concept described at pages 4 and 5 above, the failure of a project sponsor to satisfy all requirements of the new § 157.103 at the time of filing a section 311 notice or a prior notice notification potentially could have led automatically to a requirement for a section 7 traditional application. The "guillotine" characterization of that result was based on the automatic "off with your head" effect for project sponsors forced into traditional section 7(c) processing for failure to satisfy any one of the myriad of rigid § 157.103 requirements.

And, it also seemed likely that the "guillotine" result of traditional section 7 processing would be triggered for many, if not most, projects (which based on the rehearing petitions was a reasonably accurate assessment). So, the theory of the initial reconciliation proposal was to give project sponsors at least some procedural opportunity to perfect their filing before the traditional section 7(c) "guillotine" dropped on them. And that theory appeared to have even more merit as the relative substantive impact of the § 157.103 requirements and standards became more apparent over time.

It also probably bears repeating that a truly self-implementing procedure for section 311 construction and section 7 prior notice construction, as has existed for the past six years under § 157.206(d), would be highly preferable to achieve the objectives of the NOPR in this docket. However, for better or for worse, the notion of truly self-implementing construction procedures has been the subject of a frontal attack since the original Task Force recommendations last year proposed eliminating altogether section 311 construction. The initial menu approach reflected the tension resulting from that particular reality, which continues to manifest itself in the rehearing debate.

Consequently, the concept of reconciliation was an effort to mitigate, or make less worse, the otherwise, apparently inevitable "guillotine" result of traditional section 7(a) processing for most projects, with all the additional delay, excessive costs, and lost projects which would occur. And, the form and substance of the reconciliation process as adopted in the Final Rule involved yet another series of compromises in its design and implementation. Another way of stating the proposition is that reconciliation should not be and would not be an appropriate or necessary feature of the Final Rule, but for the formulation of the menu approach and its total dependence on full satisfaction of the § 157.103 requirements, coupled with the very rigid and substantively harsh nature of those requirements.

I offer these observations not in defense of the reconciliation procedure *per se*, even though I did suggest and support it, but rather as an explanation of why it evolved as a pragmatic compromise (but not a preferred option) in the face of the frontal assault on truly self-implementing construction authorization. Reconciliation is only of potential value in the context of majority opposition to the retention of the § 157.206(d) approach or a suitable refinement of it. I would clearly prefer majority support for a § 157.206(d)-type approach on rehearing rather than the menu approach with dependency on § 157.103 satisfaction, including the reconciliation procedures, in the Final Rule. But, if there is no such majority support, those committed to expediting pipeline construction authorization are confronted as a practical matter with trying to make the best of a less preferable situation. And, it is in that context that interested parties should evaluate whether reconciliation has any value and, if so, how best to make it work effectively.

In any event, the objective should continue to be to avoid making traditional section 7(c) processing the inevitable "guillotine" result for most projects. A wholesale restructuring of § 107.103 might be successful in at least reducing the inevitability of section 7(c) processing for many projects, if not more hopefully retaining all of the procedural and substantive vitality of § 157.206(d). If, however, the industry is going to be collectively "stuck" with the menu approach and a more rigid formulation of § 157.103, then some form of procedural and substantive flexibility may be pragmatically attractive in order to provide some reasonable opportunity for a project sponsor to avoid traditional section 7(c) processing, the circumstances which spawned the original reconciliation proposal. Whether or not the procedural and substantive flexibility takes the form of the current reconciliation procedure, let alone what it's called, is far less important to me than the existence of some such flexibility as a much preferred alternative to the pre-November 1985 world of traditional section 7(c) processing for most projects.

If some form of reconciliation procedure is indeed considered to be desirable or essential under all these circumstances, interested parties should carefully consider the types of standards, formality and appeal procedures that are necessary to make the reconciliation process both effective and fair. Such consideration would involve of necessity the trade-offs in processing time, costs and resources associated with various formulations of formality, standards and appeals. As noted, there also appears to be an obvious trade-off between the formulation of any reconciliation procedures (if deemed desired) on one hand and the relative rigidity and substantive harshness of the final § 157.103 on rehearing. For example, if one assumes for purposes of analysis

that the current § 157.103 in the Final Rule remains largely unchanged in substantive effect on rehearing, then it might be desirable to retain and refine more formally the current form of reconciliation procedure. If, in the alternative, many or most recommendations for revision of § 157.103 back toward § 157.206(d) are adopted on rehearing, there might not be the need for anything like the current reconciliation procedure. Interested parties can gauge for themselves the likely disposition of the majority of the Commission for either alternative, or perhaps some middle ground in between. The key analytical point is that answers to the staff questions and more general recommendations about reconciliation should carefully consider the linkage to the substance of § 157.103, or its successor, or rehearing.

B. "Relatively Minor Issues"

The preamble and the regulatory text state that the reconciliation process is only supposed to be used for "relatively minor issues." Slip op. at 83 and 51 respectively. At the same time, the Final Rule requires that reconciliation be used on a *mandatory* basis in a number of situations, such as:

1. Pipeline crossing a designated fault area, land side, etc.
2. Pipeline crossing of hazardous waste site or contaminant.
3. Pipeline crossing of perennial water bodies or federally delineated wetlands.
4. Condemnation of any dwelling or permanent above ground structure.
5. Above ground facilities where more than 5 acres of prime agricultural land will be permanently disturbed or fenced.
6. New gas conditioning facility or new or modified LNG facility.
7. New or expanded gas storage.
8. Endangered Species Act compliance, where project may affect listed species or habitat.
9. National Historic Preservation Act compliance, where the project may affect an eligible historic property and where there is disagreement as to the need for a survey or the adequacy of a survey.
10. Alternative provisions for the Erosion Control, Revegetation and Maintenance Plan.
11. Alternative provisions for the Stream and Wetland Construction and Mitigation Plan.
12. Resolution of a land-owners protest. As this list demonstrates, the Final Rule not only contemplates, but it *requires*, the use of the reconciliation procedures for a whole series of very significant environmental matters and values. Consequently, I believe it is flatly inaccurate for the Rule to state that the reconciliation procedures should only be used for relatively minor issues, and that error should be corrected on rehearing.

C. Use of the Reconciliation Procedures

As I stated at the September 11, 1991, Commission Meeting when we voted on the Final Rule, any real hope of achieving the objectives discussed previously would depend directly on the success or failure of the reconciliation procedures, if they are retained on rehearing. Several points need to be made in that regard. First, the Director of the Office of Pipeline and Producer Regulation (OPPR) under the procedures in the Final Rule would have considerable discretion as to when, how and for how long the reconciliation procedure will be available for any proposed project under the Automatic, Prior Notice or section 311 options to resolve protests or issues of environmental compliance. I believe that all reasonable means should be utilized and exhausted by OPPR for any project in the reconciliation process to achieve expeditious and satisfactory resolution of any protests and any issues of environmental compliance, in order to avoid wherever possible the otherwise applicable requirement that the project file an application under part 157 subpart A. To that end, the Director will have to develop and implement the required OPPR organizational and processing approaches for such a concerted and focused effort on an individual project basis.

Also, OPPR would have to be prepared to proceed aggressively to address and attempt to resolve promptly protests under the Prior Notice option. The Final Rule requires that a protestant must at least make a *prima facie* showing in support of a protest. Thus, the Director should dismiss protests based on mere opposition to the project on a "Not In My Back Yard" (or NIMBY) basis. Additionally, affected landowners will be required to present concrete route modification proposals with substantial justification in order to avoid dismissal.

Similarly, OPPR would have to be prepared to proceed aggressively to address and attempt to resolve promptly issues of environmental compliance for proposed projects under the Automatic, Prior Notice, and section 311 options. Those environmental issues may involve compliance solely under FERC jurisdiction or compliance involving other federal and state agencies, as well as FERC, as set forth in the § 157.103(c) Standard Environmental Conditions. Therefore, OPPR will have to work closely and quickly with project sponsors and any such federal or state agencies involved in a particular issue to obtain a prompt resolution. It is important to note again that the § 157.103 environmental compliance requirement associated with the Automatic, Prior Notice, and section 311 options is a condition precedent for the authorization, as well as the commencement of construction in most circumstances. Consequently, extended delay in the reconciliation process would prevent authorization of the project (which could impact on financing the project) and would delay the timely commencement of construction for the project, as well as risking the triggering of the part 157, subpart A requirement, if reconciliation is not successful in the time available.

The Final Rule provides that the initial time for reconciliation is ninety days, subject to the possibility of an extension for an additional ninety days at the discretion of the Director. The Director should grant extensions for an additional ninety days on a very liberal basis, whenever there is the possibility that a protest or environmental issue can be resolved by further reconciliation efforts without traditional section 7(c) processing. If all else fails in reconciliation, as it were, the Final Rule then will require such traditional section 7(c) treatment, but the Director and OPPR must attempt to render that result a truly "last resort" alternative.

Careful study of the § 157.103(c) Standard Environmental Standards will demonstrate that a number of federal and state agencies, as well as unyielding protestants, could frustrate the reconciliation process if they fail to participate cooperatively and in a timely manner. The very best, good-faith efforts of the Director and OPPR could be to no avail for a number of potential environmental issues, if the other federal and state agencies fail to respond in a cooperative and timely manner in the reconciliation process. And, it goes without saying, that project sponsors will have to make a prompt and responsible effort to satisfy all of the Standard Environmental Conditions with OPPR and other federal and state agencies at the outset, as well as proceeding in reconciliation on an expeditious basis, when that process is initiated. In the absence of timely cooperation by the project sponsor with OPPR and other federal and state agencies in reconciliation, the part 157, subpart A "last resort" alternative will quickly become the only legally available option for a particular project, as a practical matter.

The Final Rule states that the Commission intends, if part 157, subpart A requirements are triggered by an unresolved protest or environmental compliance issue, that the environmental processing of the resulting subpart A application would examine only those portions of the project for which compliance with the requirements of § 157.103 has not been achieved. And, the new filing requirements for subpart A applications expressly provide that the project applicant can provide the appropriate certifications and documentation to demonstrate those areas where compliance has been previously achieved to facilitate focussed processing of the outstanding issues. In other words, the part 157, subpart A environmental processing need not, and decidedly should not, require starting all over, to conduct a full-blown, case-specific tradition section 7(c) environmental review, as if there had never been any prior demonstration of compliance with the § 157.103(c) Standard Environmental Requirements, either at the initiation of the Automatic, Prior Notice, or section 311 process or later during the subsequent reconciliation process.

Thus, there should not under any circumstances be any duplication of prior compliance efforts nor any necessity to "re-litigate" those issues previously demonstrated at the outset to be, or subsequently by reconciliation determined to be, in compliance with the § 157.103(c) requirements. No valid pubic policy purpose would be served by condoning, let alone inviting, any such duplication or re-litigation in the processing of the subpart A application. Further, under a worse case scenario where any significant or protested project under the Automatic, Prior Notice or section 311 options will trigger the part 157, subpart A requirement, it will be imperative that such duplication and re-litigation be rejected and avoided so that the Commission is not overwhelmed in the processing of subpart A applications. Clearly, were we to be overwhelmed as a result of duplication and re-litigation, proposed projects would again face extensive delays, additional costs, and extended uncertainty.

The Final Rule expressly authorizes the Director and Commission staff to meet informally during the reconciliation process with projects sponsors and other agencies to facilitate resolution of protests and environmental compliance issues. Such informal meeting, of course, would be subject to all applicable Commission regulations, such as those dealing with *ex parte* communications. The ability of the Commission staff to carry out the reconciliation mandate in seeking such resolutions under the Automatic, Prior Notice and section 311 options is dependent directly on the capability to have such an informal dialogue, albeit subject to applicable legal requirements. In the absence of such a capability, particularly in light of the relatively short deadlines for successful resolution before triggering part 157, subpart A, it would be unlikely that there would be much chance that reconciliation could be successful to satisfy the Automatic, Prior Notice or section 311 requirements. Therefore, the Director and the Commission staff should make full use of the informal meeting capability whenever possible.

The Final Rule requires that the Director issue a letter to the project sponsor stating simply that the project has satisfied the § 157.103(c) Standard Environmental Requirements under the Prior Notice and section 311 options. This letter would be issued after staff review of the initial compliance report filed with the prior notice/section 311 notification determines that compliance has been satisfactorily demonstrated. The letter also would be issued after successful resolution in reconciliation of any environmental compliance issues identified by the initial staff review. The Final Rule states that the Director's letter is a ministerial action not subject to judicial review.

I see no need for such a compliance letter in the first place, unless expressly requested by the project sponsor. If, however, there must be such a Director letter on a mandatory basis, it should not be subject to judicial review as a matter of policy. The theory of the Automatic, Prior Notice and section 311 options is that a project will have no significant impact on the environment if there is compliance with the § 157.103(c) Standard Environmental Requirements. The Final Rule itself will establish as a matter of law that a project in compliance with § 157.103(c) is accorded a finding of no significant impact. Consequently, the burden is placed on the project sponsor to demonstrate such compliance as a condition of the certificate authorization available under the Automatic, Prior Notice and section 311 options. If, in fact, a project is not in compliance at the time construction commences, the Final Rule contemplates a separate complaint procedure and grants authority for the issuance of a "stop work" order at that point. Consequently, the Director's letter should not be subject to judicial review, in that it is an intermediate step in the process and is largely ministerial in nature. If, however, a different analysis of the Automatic, Prior Notice and section 311 options would somehow lead to the conclusion that the Director's letter was an action subject to immediate judicial review, then the requirement for the letter should be removed from the rule.

VI. Questions for the Record

I have reviewed the petitions for rehearing filed in this proceeding and share many of the legal, policy and implementation concerns expressed in those petitions. I have also reviewed the transcript of the November 12, 1991 Technical Conference on environmental issues and agree with many of the points made by industry participants. However, there are additional concerns I have with respect to the permitting requirements, meanings of important environmental phrases, as well as other potential impediments to the expedited processing of pipeline projects. I'm also seeking views on the clarity of the grandfather provision contained in section XIII of the Preamble.

What follows is a series of questions that address my concerns. It is my sincere hope that the Commission on rehearing of this Final Rule will eliminate unnecessary impediments to the goal of developing a streamlined regulatory mechanism designed to facilitate the construction of needed pipeline facilities, as well as satisfy our environmental responsibilities. The answers to these questions will be useful in that effort.

A. Permit and Other Approval Requirements of § 157.103 (c)

1. Do the requirements of § 157.103 (c)(5) (requirement to satisfy Coastal Zone Management Act) give states *de facto* veto power over expedited process and does it frustrate reconciliation? If so, how should the requirements be modified?

2. What are the practical effects of § 157.103 (c)(6) (requiring project sponsors to evaluate all reasonable alternatives and make a finding that they are impracticable before construction) on pipeline construction in a floodplain? Does that provision effectively prohibit or prevent any or most construction in a flood plain? If so, how should the requirement be modified?

3. What does § 157.103 (c)(7) (above ground facility construction in wetlands) do to attempts to bring offshore platform production to the mainland? Does that provision effectively prohibit or prevent

any or most above ground facility construction in wetland areas? If the requirements have negative effects, how should they be modified?

4. With respect to § 157.103 (c)(11) (conditions subject to other agency or landowner approval, or specific installation methods) there are several subsections that contain phrases or requirements that may have a negative effect on pipeline construction or prohibit it altogether in certain designated areas. In that regard, please address the following:

Subsection (c)(11)(i): Is there substantial ambiguity in the phrase "ecologically unique or critical area?" Doesn't this provision requiring categorical exclusion or FONSI as a condition precedent effectively give other federal agencies *de facto* veto power? If so, how should it be modified?

It has been suggested that *all* public lands be designated as "environmentally sensitive" for purposes of § 157.103 (c)(11), so that the land managing agency would have to issue a FONSI or categorical exclusion, as well as impose any permitting requirements under its own regulations, as a condition precedent to construction authorization in § 157.103. What would be the effect of such a designation?

Subsection (c)(11)(ii): Is requiring approval by states to ensure protection of state listed endangered species or state designated sensitive areas (state parks, etc.) appropriate under federal law (*e.g.*, NGA, NGPA, *National Fuels* case, and NEPA)? Doesn't this provision effectively reverse the 2nd Circuit decision in the *National Fuels* case? And, doesn't this provision effectively give a state *de facto* veto power over any construction in any such area? If so, how should the requirement be modified?

Subsection (c)(11)(v): What is the effect of requiring approval from the appropriate agency before permitting a project to cross designated sole source aquifers extending to within excavation depth of a pipeline trench? Doesn't this provision effectively give a state *de facto* veto power over any construction in any such area? If so, how should the requirement be modified?

Subsection (c)(11)(vi): What is the effect of requiring approval from the appropriate water authority, before a pipeline may cross any water body within three miles upstream of the intake for a municipal water supply? Doesn't this provision effectively give a state *de facto* veto power over any construction in any such area? If so, how should the requirement be modified?

Subsection (c)(11) (viii) and (ix) requires landowner approval for new or additional easements as a condition precedent to any FERC authorization. Does that effectively extend a *de facto* veto power to all such landowners? If so, doesn't that provision defeat the *prima facie* protest requirement and also thereby frustrate the reconciliation process? If so, how should the requirement be modified?

5. Please address the effects of § 157.103(c)(12) (conditions for projects which require reconciliation) on the Commission's expedited construction program? Don't these provisions, as well as several other mandatory reconciliation requirements, effectively defeat any notion of self implementing activity? Would these requirements lead to mandatory reconciliation for most projects of any significance as well as many minor projects? Please discuss.

6. Please address more fully the effects of § 157.103(c)(16) (permits) on the Commission's expedited construction program. Does the requirement to have all permits for a discrete section of construction prior to any construction on that section effectively extend a *de facto* veto over *any* construction to a federal, state or local permitting authority? Doesn't this provision, coupled with the many other aforementioned "conditions precedent" to the NGA or NGPA authorization to commence construction, introduce additional opportunity for extended delay and increased costs, as well as such possible veto of the project? If so, how should the requirement be modified?

B. Procedures for Compliance with the Endangered Species Act

Does § 157.103(f) effectively limit construction of many western area projects because of some potential effect on some listed species or habitat or because of a disagreement over potential effects? In the event of such a potential effect or a disagreement, is the only practical alternative a subpart A application? If so, how should the requirement be modified? Please discuss.

C. Procedures for Compliance with National Historic Preservation Act

Does § 157.103(g) effectively limit construction of projects involving cultural resources, because the project may affect eligible properties (even if the effect is not adverse), or because there is disagreement with regards to surveys or potential effects? In the event of such a potential effect or a disagreement, is the only practical alternative a subpart A application? If so, how should the requirement be modified? Please discuss.

D. General Siting and Maintenance Requirements

Is the practical effect of the requirement in § 157.103(h) (to minimize effects on scenic, historic, wildlife, and recreational values to the maximum extent practicable and to the *maximum extent possible* to conform to the specified performance requirements for ROW and above ground facilities) to prohibit or make very difficult any pipeline construction where these values are raised in a proceeding? If so, how should these requirements be modified? Please discuss.

E. Grandfather Provisions

1. Should section XIII (effective date) contained in the Preamble to Order No. 555 be clarified or expanded to make clear that § 157.206(d) applies to all projects authorized or certified prior to the effective date?

2. Should section XIII (effective date) contained in the Preamble to Order No. 555 be clarified or expanded to provide that § 157.206(d) also applies to projects that have *not* received formal authorization, but have been subject to extensive activity before Order No. 555 becomes effective? (For example: those projects that have been given non-environmental approvals under FERC's "phasing" procedure.) Please discuss.

F. Conditions Precedent for Authorization

It now appears that a fundamental, and potentially fatal, flaw in Order No. 555 is the series of requirements (1) for obtaining various federal, state and local permits or approvals, (2) for resolving any contemplated, identifiable environmental issues under applicable statutes, and (3) for resolving various types of protests, including landowner opposition, which are imposed as *conditions precedent* to any construction authorization under § 157.103. As the parties at the technical conference pointed out, this feature of the Final Rule can create a virtual "Catch–22" for projects, because permitting agencies often won't act without a prior FERC authorization, and yet there could not be a FERC authorization unless the permitting agencies had already acted. Even without the Catch–22 result, these conditions precedent would in most case introduce significant delay and increased costs in pipeline construction. I remain convinced that there must be a clear distinction between (1) those requirements that must be satisfied in advance of authorization under section 7 of the NGA and section 311 of the NGPA and (2) those other requirements that

must be satisfied before actual construction can begin at a particular site after NGA or NGPA authorization has been granted by the Commission, either expressly or on a self-implementing basis.

The existing § 157.206(d) recognized such a distinction and effectively provided a procedure that has worked well and been affirmed by the DC Circuit Court as legally sufficient. In essence, Order No. 555 in § 157.103 has the practical effect of imposing all such requirements of both types as conditions precedent to authorization. Several of the staff questions in the instant order touch on this issue. I request that interested parties address this issue comprehensively and recommend an appropriate revamping of the authorization requirements as distinguished from the actual physical construction requirements, based on experience under the § 157.206(d) procedures.

I also would note that I believe the Commission has considerable legal discretion under NEPA and other applicable federal environmental statutes to formulate such an effective and streamlined procedure, as demonstrated in the opinions of the DC Circuit Court in *AGD* v. *FERC* and *CPUC* v *FERC*, Which reviewed aspects of the § 157.206(d) and the optional certificate procedures. For that reason, I believe it is inaccurate to conclude that the approach taken in Order No. 555 is necessary as a matter of law to satisfy NEPA or any other federal statute. For the same reason, I also believe it is inaccurate to suggest, as does question 13 in the instant order, that the use of the reconciliation procedure, in and of itself, means that the project does not qualify for a NEPA categorical exclusion. Reconciliation can be initiated because of a protest, rather than just a § 157.103 environmental problem. And, even with a § 157.103 problem, reconciliation can be used to resolve it and preserve the categorical exclusion under the Final Rule.

Finally, I would offer one last observation on this subject. The rehearing petitions and the discussion at the technical conference demonstrate that the effort to mechanically codify as conditions precedent for construction authorization the primary features of the Endangered Species Act, the National Historic Preservation Act, and other federal statutes potentially applicable to pipeline construction is a source of great difficulty. That mechanical codification has subsumed into FERC regulations both substantive standards and procedural requirements different from and more rigid and stringent than the standards and procedures that might otherwise apply to a project under the interpretations and practices of the primary agencies directly responsible for the implementation of those various statutes. While such codification has been defended as a way to provide uniform and predictable environmental requirements based on past experience, it now is clear that codification in the current form is counterproductive to the stated objectives for this rulemaking. Some parties have suggested more general guidelines and other parties have suggested general objectives (which was the approach taken in § 157.206(d)).

Whichever approach the Commission adopts on rehearing, I believe it is imperative that the resulting order not impose as a matter of FERC regulation, any different procedures or standards that otherwise would apply at any point in time under the interpretations and practices of the primary agencies. Furthermore, the order on rehearing must not adopt as FERC regulations more rigid procedures, premature requirements, or more stringent standards. I remain convinced that the Commission has the legal discretion and the policy mandate to fashion an approach that can be largely, and perhaps wholly, self implementing under flexible guidelines and general objectives for Section 311 authorizations and for section 7(c) automatic and prior notice authorizations and which will satisfy those other statutes in a manner supportive of a categorical exclusion under the generic FONSI, *without* such rigidity, prematurity and stringency. I urge interested parties to provide the Commission with appropriate recommendations in response to the instant order to achieve that result.

For these reasons, I concur.

Charles A. Trabandt,

Commissioner.

[FR Doc. 92-437 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 37

[Docket No. RM91-17-000; Order No. 538]

Generic Determination of Rate of Return on Common Equity for Public Utilities; Final Rule

Issued January 2, 1992.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is abolishing its generic benchmark determination of rate of return on common equity for public utilities and is rescinding part 37 of its regulations, 18 CFR part 37. While the benchmark has produced some benefits, it has not produced many of the benefits envisioned for it in 1984. The failure to achieve these other benefits leads the Commission to conclude that its continuation is not merited. The resources devoted to this task can and should be used more productively in other endeavors.

EFFECTIVE DATE: The final rule is effective February 3, 1992.

FOR FURTHER INFORMATION CONTACT: For further technical information contact: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208-1283.

For further legal information contact: Gary Cohen, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NW., Washington, DC 20426, (202) 208-2046.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting system (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

On August 9, 1991, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) [1] inviting comments on two

[1] 56 FR 41099 (Aug. 19, 1991), 56 FERC ¶ 61,276 (1991).

issues relating to its generic benchmark determination of the cost of common equity for public utilities (Benchmark).[2] First, the Commission invited comments on the growth rate and the flotation cost adjustment. Second, the Commission invited comments on whether parties have found the existence of benchmark returns to be useful or not, and whether the Commission should retain, abolish, or alter the generic benchmark rate of return on common equity for public utilities.

After consideration of the comments received in response to the NOPR, the Commission has determined to abolish the benchmark and rescind part 37 of the Commission's regulations,[3] which prescribes the rules governing the generic benchmark rate of return on common equity for public utilities.

II. Background

Section 205(a) of the Federal Power Act (FPA) requires that all electric rates subject to the jurisdiction of the Commission be "just and reasonable."[4] An important component of just and reasonable rates are rates of return on common equity that are fair to both utility ratepayers and utility stockholders.

In July 1984, the Commission adopted procedures for the annual determination of a benchmark.[5] Benchmark rates were originally intended to provide guidance to parties in rate proceedings and to serve as a reference point for the Commission in setting allowed rates of return. However, since that time, the benchmark rates have remained advisory, with the allowed rate of return for each individual utility determined on a case-by-case basis.

In accordance with prior practice and part 37 of the Commission's regulations, the Commission issued the August 9, 1991 NOPR, which initiated this eighth annual proceeding to establish the growth rate and flotation cost adjustment factors to be used in the quarterly indexing formula for the year beginning February 1, 1992.[6] This year, however, the Commission also requested that parties submit their views as to whether the Commission's publication of benchmark returns has been useful and whether the Commission should continue publication.

Thirty-three comments were received in response to the NOPR. Timely comments were filed by the following parties: Allegheny Power System (Allegheny);[7] American Electric Power Service Corporation (AEP);[8] American Gas Association;[9] American Public Power Association (American Public Power);[10] AUS Consultants—Utility Services Group (AUS Consultants);[11] Carolina Power & Light Company (Carolina Power & Light); Central Illinois Public Service Company (Central Illinois); Consumer-Owned Systems;[12] Consumers Power Company (Consumers Power); Larry J. Dobesh (Dr. Dobesh);[13] Edison Electric Institute (EEI);[14] Florida Power Corporation, Montaup Electric Company, Northern States Power Company, and Wisconsin Public Service Corporation, filing jointly (collectively Commenting Utilities); the General Services Administration (GSA);[15] Gulf States Utilities Company; Stephen G. Hill (Mr. Hill);[16] Kansas Power and Light Company; J. Makowski Company (Makowski);[17] Nantahala Power and Light Company (Nantahala); New England Power Company (New England Power); the New Hampshire Office of the Consumer Advocate (New Hampshire Consumer Advocate Office); the New York State Consumer Protection Board (New York Consumer Board); Potomac Electric Power Company (Pepco); Public Service Company of Colorado; Public Systems;[18] James A. Rothschild (Mr. Rothschild);[19] the South Dakota Public Utilities Commission (South Dakota Commission); Southern California Edison Company (Southern California Edison); Southern Companies;[20]

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[2] The terms "public utilities" and "electric utilities" are used interchangeably in this document.

[3] 18 CFR part 37.

[4] 16 U.S.C. 824d(a).

[5] *See* Order No. 369, 49 FR 29946 (Jul. 25, 1984), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,582 (Jul. 18, 1984), *reh'g denied*, Order No. 369–A, 49 FR 46351 (Nov. 26, 1984).

[6] As previously noted, the annual proceedings were first established by Order No. 369, 49 FR 29946 (Jul. 25, 1984), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,582 (Jul. 18, 1984), *reh'g denied*, Order No. 369–A, 49 FR 46351 (Nov. 26, 1984). The first annual proceeding resulted in Order No. 420, 50 FR 21602 (May 28, 1985), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,644 (May 20, 1985), *reh'g denied*, Order No. 420–A, 50 FR 34060 (Aug. 23, 1985). The second annual proceeding resulted in Order No. 442, 51 FR 343 (Jan. 6, 1986), III FERC Stats. & Regs. ¶ 30,677 (Dec. 26, 1985), *reh'g granted in part, denied in part*, Order No. 442–A, 51 FR 22505 (Jun. 20, 1986). The third annual proceeding resulted in Order. No. 461, 52 FR 11 (Jan. 2, 1987), III FERC Stats. & Regs. ¶ 30,722 (Dec. 24, 1986), *reh'g denied*, Order No. 461–A, 52 FR 5757 (Feb. 26, 1987). The fourth annual proceeding resulted in Order No. 489, 53 FR 3342 (Feb. 5, 1988), III FERC Stats. & Regs. ¶ 30,795 (Jan. 29, 1988), *reh'g denied*, Order No. 489–A, 53 FR 11991 (Apr. 12, 1988). The fifth annual proceeding resulted in Order No. 510, 53 FR 51752 (Dec. 23, 1988), III FERC Stats. & Regs. ¶ 30,843 (Dec. 19, 1988). The sixth annual proceeding resulted in Order No. 517, 55 FR 146 (Jan. 3, 1990), III FERC Stats. & Regs. ¶ 30,871 (Dec. 26, 1989). The seventh annual proceeding resulted in Order No. 532, 56 FR 10 (Jan. 2, 1991), III FERC Stats. & Regs. ¶ 30,909 (Dec. 26, 1990).

[7] Allegheny is filing on behalf of Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, the operating companies comprising the Allegheny Power System.

[8] AEP is filing on behalf of the following electric utility operating companies of the American Electric Power system: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Michigan Power Company, Ohio Power Company, and Wheeling Power Company.

[9] American Gas Association is a national trade association comprising approximately 250 natural gas distribution and transmission companies.

[10] American Public Power is the national service organization of approximately 2000 local, publicly-owned electric utilities located throughout the United States.

[11] AUS Consultants filed comments on behalf of American Electric Power Service Corporation (and the electric utility operating companies of the American Electric Power system: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Michigan Power Company, Ohio Power Company, and Wheeling Power Company), Atlantic City Electric Company, Delmarva Power & Light Company, Duquesne Light Company, Pennsylvania Power & Light Company, and Philadelphia Electric Company.

[12] Consumer-Owned Systems represents: the Virginia Municipal Electric Association No. 1, whose members are the municipalities of Blackstone, Culpeper, Elkton, Franklin, Manassas, and Wakefield, Virginia, and the Harrisonburg Electric Commission of Harrisonburg, Virginia; the Northern California Power Agency, consisting of the municipalities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, California, the Plumas-Sierra Rural Electric Cooperative, and the Turlock Irrigation District; the Town of South Hadley, Massachusetts; and the Town of Belmont, Massachusetts.

[13] Dr. Dobesh is a Professor of Economics at the University of North Dakota.

[14] EEI is the association of the nation's investor-owned utilities.

Carolina Power & Light, Florida & Power & Light Company, Potomac Electric Power Company, and Public Service Company of Colorado all supported and/or incorporated by reference the comments filed by EEI.

[15] The GSA represents the consumer interests of the Federal executive agencies under the authority of section 201(a) of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 481(a).

[16] Mr. Hill is a professional rate of return analyst who has testified in thirteen regulatory jurisdictions in more than ninety rate proceedings during the past decade.

[17] Makowski, a Boston-based energy project development and management firm, is a part owner and manager of the Ocean State Power Project.

[18] Public Systems consists of the National Rural Electric Cooperative Association, Golden Spread Electric Cooperative, Inc., Kansas Electric Power Cooperative, Inc., and Seminole Electric Cooperative, Inc.

[19] Mr. Rothschild has submitted testimony in over 150 rate cases. His comments are being sponsored by the Florida Office of the Public Counsel, the Illinois Citizens Utility Board, the Maine Consumer Advocate, and the Rhode Island Division of Public Utilities and Carriers.

[20] Southern Company Services, Inc. submitted these comments on behalf of the subsidiary operating companies of the Southern Companies electric system: Alabama Power Company, Georgia

Continued

Southwestern Public Service Company; the Wholesale Customer Group; [21] and Wisconsin Electric Power Company (Wisconsin Electric). Untimely comments were filed by Cincinnati Gas & Electric Company (Cincinnati Gas & Electric) and Florida Power & Light Company (Florida Power & Light).

III. Discussion

Notwithstanding that the comments filed by Cincinnati Gas & Electric and Florida Power & Light were untimely, the Commission will consider these comments in this proceeding, given the early stage of the proceeding and the apparent absence of any undue prejudice or delay.

A. Utility of and Continuation of the Benchmark

Although numerous comments were filed, the commenters shared mutual concerns. Accordingly, the Commission will address the comments by argument, rather than by party.

Most of the comments received responded to the specific request in the NOPR for comments on whether the benchmark has been useful in individual rate cases and whether the Commission should continue, abolish, or alter the benchmark. The comments were split between those parties favoring retention of the benchmark and those favoring its abandonment. In general, state agencies, customers (including the Federal Government, through the GSA, as a customer), and consumer protection organizations, support keeping the rule. Most utilities and trade associations favor abolishing the rule. However, two utilities and Makowski favor continuation of the rule.

The commenters disagree over whether the benchmark furthers settlements. Several parties argue that the benchmark hinders settlements because it is used at settlement conferences as an initial, "knee-jerk" substitute for company-specific risk profile analysis, and is ignored once serious settlement discussion or litigation begins.[22] However, other commenters maintain that the benchmark is a useful starting point that encourages more settlements, once the circumstances of an individual utility are taken into account. These parties argue that because the benchmark is impartially calculated, readily available, and constitutes an accepted and verifiable average return for the electric utility industry, it can help keep negotiations on an even keel, increase the predictability of outcome, and encourage settlement.[23]

Several commenters point out that the Commission must ensure just and reasonable rates for individual utilities. The benchmark, they note, fails to differentiate among risks encountered by different utilities and fails to translate the differences in risk into differences in rates of return.[24] Before the benchmark can be useful in individual cases, EEI explains, it must be adjusted to reflect: (1) The utility's specific risk factors; and (2) changes both in those risk factors and in the financial markets which occur after the close of the record in that case.

In contrast, other commenters state that the benchmark is useful in corroborating the results of company-specific rate of return studies,[25] especially as a tool to help potential intervenors decide whether to litigate a rate of return issue in any given proceeding.[26] Additionally, some commenters assert that the presence of the benchmark encourages utilities to apply for more realistic rates of return.[27]

There is also disagreement over the treatment of the benchmark by state commissions. Some commenters argue that the benchmark is susceptible to being misinterpreted and misused by state commissions, with some comments alleging that it has been a hindrance at state proceedings, where utilities are required to expend significant resources to rebut a presumption that the benchmark is applicable to each individual case.[28] Commenters supporting the benchmark, however, maintain that even though the benchmark is purely advisory, it provides valuable information to state commissions seeking to monitor industry trends and charged with determining the cost of equity in state utility rate cases.[29]

Many commenters attack the benchmark on economic grounds. Commenters allege that the calculation of the benchmark consistently understates the proper cost of equity.[30] Some of these parties maintain that the understatement results from the computation of the cost of equity based exclusively on the "unrealistic" assumptions of the DCF model.

Other commenters argue that the benchmark has provided a helpful mechanism for tracking industry changes in the cost of common equity, and has been useful in contract negotiations. They cite cases where utilities and their customers have agreed to use the benchmark as an index to modify rates without relitigation or renegotiation. Eliminating the benchmark, they conclude, would disrupt contracts accepted for filing by the Commission.[31]

Finally, those parties who oppose retention of the benchmark argue that it fails to accomplish the original goals set for the benchmark by the Commission: to provide a forum for the Commission periodically to review the condition of the electric industry, to save resources, and to provide greater accuracy and consistency. These commenters conclude that the annual development of the benchmark is a waste of resources by the utilities and by the Commission itself, because the benchmark provides no benefits.[32] Parties who support continuation of the benchmark, however, argue that the benchmark saves resources because the existence of the benchmark reduces the resources which need to be devoted to the

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Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company.

[21] The Wholesale Customer Group consists of the Cities of Arcadia, Arma, Ashland, Attica, Augusta, Beloit, Blue Mound, Bronson, Cawker City, Cimarron, Coffeyville, Elsmore, Erie, Fredonia, Girard, Glasco, Glen Elder, Greensburg, Haven, Hoisington, Isabel, La Harpe, Lincoln, Lucas, Mankato, Montezuma, Moran, Mount Hope, Mulberry, Mulvane, Osborne, Oxford, Pratt, Russell, Savonburg, Washington, Wellington, and Winfield, Kansas; Mindenmines, Missouri; and the Towns of Concord, Norwood, and Wellesley Massachusetts.

[22] This position is taken by: Allegheny, AUS Consultants, Cincinnati Gas & Electric, Consumers Power, Gulf States, Pepco, and Southern Companies.

[23] This position is taken by: Consumer-Owned Systems, Central Illinois, Nantahala, and Public Systems.

[24] This position is taken by: Allegheny, American Gas Association, Consumers Power, Kansas Power and Light, Southern Companies, Southwestern, and Wisconsin Electric.

[25] This position is taken by: Consumer-Owned Systems, Mr. Hill, the New Hampshire Consumer Advocate Office, the New York Consumer Board, Mr. Rothschild, and the South Dakota Commission.

[26] Public Systems and the Wholesale Customer Group make this assertion.

[27] Consumer-Owned Systems and the Wholesale Customer Group make this argument.

[28] Various portions of this position are presented by: Allegheny, American Gas Association, AUS Consultants, Cincinnati Gas & Electric, Gulf States, and Pepco.

[29] This position is taken by: Dr. Dobesh, the GSA, the New Hampshire Consumer Advocate Office, the New York Consumer Board, Mr. Rothschild, and the South Dakota Commission.

[30] This argument is made by: Allegheny, AEP, American Public Power, AUS Consultants, Consumers Power, EEI, Southern Companies, and Southwestern.

[31] This issue is raised by: Consumer-Owned Systems, Central Illinois, the GSA, Makowski, and Nantahala, as well as Carolina Power & Light, which opposes continuation of the benchmark.

[32] The parties taking this position, in whole or in part, are: American Gas Association, AUS Consultants, Consumers Power, EEI, Commenting Utilities, Kansas Power and Light, New England Power, Southern California Edison, Southern Companies, Southwestern, and Wisconsin Electric.

contentious issue of rate of return on common equity. Commenters supporting this position maintain that the benchmark should be retained, regardless of whether the benchmark has accomplished the goals originally envisioned for it, because it currently performs useful functions.[33]

In the Commission's July 18, 1984 order, annual proceedings were established to determine a generic benchmark rate of return on common equity for public utilities. The order delineated three principal purposes for establishing generic procedures for determining the cost of common equity: (1) To reduce the commitment of staff and outside resources by reducing some of the duplication involved in the case-by-case approach; (2) to make more accurate and consistent determinations of the cost of common equity, principally by concentrating Staff and outside resources on a single generic proceeding, rather than dividing them among numerous cases;[34] and (3) to permit the Commission to evaluate the current status of the electric utility industry.[35] The Commission also hoped that the benchmark would narrow the focus in individual proceedings from that of cost of common equity to that of relative risk [36] and result in more settlements by reducing uncertainty as to final results.[37]

In 1984, the Commission thus balanced hopes that creation of an annual proceeding to establish a benchmark rate of return would result in improved analysis of industry trends, resource savings, and an improved determination by the Commission of the cost of common equity, against warnings by others that this proceeding would waste resources and create problems. Despite this disagreement, the Commission's judgment at that time was to promulgate part 37 of the Commission's regulations, based on hopes that the anticipated benefits of the benchmark proceedings would in fact materialize and outweigh all objections.

After seven years of experience, the Commission is now in a better position to evaluate the actual benefits and shortcomings of the benchmark. In this, the Commission's eighth annual proceeding regarding the benchmark, comments were invited on the possible advantages of disadvantages of retaining or abolishing part 37 of the Commission's regulations. In promulgating this final rule, the Commission has considered whether the benchmark has achieved the benefits it was designed to accomplish or has provided other unforeseen benefits which would justify the continued existence of the rule.

A review of prior decisions regarding the benchmark discloses that the benchmark has been a contested and controversial issue since its inception. For the past seven years, the Commission annually has reviewed comments split in their praise and condemnation of this procedure. Not surprisingly, the relative positions of the parties generally have remained unchanged. Although many commenters favoring retention of the benchmark assert that it assists them in settlement negotiations, commenters favoring abolition of the benchmark maintain that it is not useful, and some claim that it actually hinders settlement.

The same arguments raised in this proceeding were raised in prior generic benchmark rate of return proceedings. However, with the passage of time it is now possible to better evaluate the benchmark—based not on predictions and expectations but on the actual experience of the parties and the Commission. It is now appropriate to assess whether, in light of the resources devoted to the annual calculation and publication of the benchmark on an ongoing basis, the benchmark has accomplished either the goals originally envisioned for it or other unforeseen benefits which would justify its retention.

The Commission has learned from experience that, while some anticipated benefits have been realized, *i.e.*, adoption of the more standardized methodology to determine the return on equity now often used in rate cases,[38] other anticipated benefits of the benchmark have failed to materialize, and the annual benchmark proceedings have not saved resources.[39] Although the Commission annually devotes resources to calculating the benchmark return, and numerous parties devote resources to assisting the Commission in this effort, the resulting benchmark does not appear to have significantly reduced the contentiousness of the determination of the allowed rate of return for individual utilities.[40] Despite arguments to the contrary, in the Commission's experience, the benchmark has not reduced parties' uncertainty in rate cases as to what will be the Commission's ultimate determination. Thus, hopes of conserving resources and of enhanced certainty have not been fulfilled.

The Commission's experience also has shown that the annual generic benchmark proceedings have not provided the Commission with a significantly better understanding of industry trends, nor provided an appropriate forum to study the financial and operating circumstances of the electric utility industry. Moreover, the Commission does not believe that the benchmark provides any special protection to consumers from excessive rates and charges.[41]

In sum, while the benchmark has produced some benefits, it has not produced many of the benefits envisioned for it in 1984. The failure to achieve these other benefits leads the Commission to conclude that its continuation is not merited. The resources devoted to their task can and should be used more productively in other endeavors.

The Commission also declines to continue to publish its annual benchmark solely based on possible benefits in other forums—*i.e.*, state ratemaking proceedings. The Commission's policy in this matter is analogous to the policy underlying its burden-reduction program, which provides that as a general matter the Commission will only collect data which it needs for its own purposes.

Moreover, while recognizing that judgment is involved in the selection of a growth rate and flotation cost adjustment in particular, and that therefore only the Commission can produce the benchmark, it nevertheless is also true that anyone using the published formula and publicly

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[33] The parties making this argument, in whole or in part, are: consumer-Owned Systems, Dr. Dobesh, the GSA, the New Hampshire Consumer Advocate Office, the New York Consumer Board, Public Systems, Mr. Rothschild, the South Dakota Commission, and the Wholesale Customer Group.

[34] The goal of increased consistency referred both to consistency over time and across companies. FERC Stats. & Regs., Regulations Preambles 1982–1986 at 31,019–20; *accord, id.* at 31,021.

[35] *Id.*; *accord, id.* at 31,021.

[36] *Id.* at 31,020.

[37] *Id.*

[38] The Commission does not intend, by its action here, to overturn its precedent regarding the proper computation of rate of return in individual rate cases.

[39] Resources are not being saved in the litigation context because, regardless of what the benchmark return is, the Commission sets the allowed return for an individual utility based on an analysis of the particular circumstances of that utility.

[40] It should be noted that the benchmark has only rarely been adopted or used in determining the allowed rate of return in individual cases.

[41] Sections 205 and 206 of the FPA, 16 U.S.C. 824d, 824e, require that rates and charges be just and reasonable. If, in the Commission's judgment, an individual utility's rates appear to be excessive, the Commission would review those rates in the context of a utility-specific proceeding.

available data could construct an industry-wide average rate of return on common equity approximating the Commission's benchmark. More to the point, the issue before the Commission is whether the public interest indicates that the Commission should continue to calculate and publish the benchmark. For the reasons given above, the Commission concludes that the Commission should not continue doing so. However, the Commission's action in this matter is not intended to preclude other institutions or individuals from continuing to calculate an average return in accordance with prior decisions.

Accordingly, based on the Commission's seven years of experience in implementing the benchmark mechanism, and based on a careful consideration of the comments, the Commission will rescind part 37 of its regulations and abolish the annual procedure for determining a generic benchmark rate of return.

Although several utilities currently have contracts on file which include formula rates which permit rate filings tied to the benchmark, the Commission's abolition of the benchmark should not create problems for such utilities or their customers. The parties may propose a revised procedure or a fixed rate of return to replace the current procedure.

B. DCF Methodology

Numerous comments were received on the current DCF methodology for estimating the rate of return on common equity. Some support the existing formula,[42] some suggest minor or major modifications,[43] some suggest use of an additional model or models,[44] and some favor replacement of the DCF methodology altogether.[45] Given the Commission's decision to abolish part 37 of its regulations, these comments are moot for the purposes of this rulemaking.

[42] This position was taken by the following parties: Consumer-Owned Systems, the GSA, Mr. Hill, and the South Dakota Commission.

[43] Mr. Rothschild suggests minor adjustments to the DCF model. AEP, Makowski, the New York Consumer Board, and Southern Companies all believe that the DCF methodology has more significant flaws.

[44] Allegheny, AUS Consultants, Makowski, Carolina Power & Light, Southern California Edison, and Southern Companies all protest exclusive reliance on the existing model.

[45] The following parties favor abandoning the DCF methodology: AEP, American Public Power, Consumers Power, EEI, Commenting Utilities, New England Power, and Wisconsin Electric.

IV. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act [46] requires the Commission to describe the impact that a rule will have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. Nearly all of the jurisdictional utilities that would be affected by this final rule are too large to be considered "small entities" within the meaning of the Act.[47] Accordingly, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. National Environmental Policy Act

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[48] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[49] The Commission has found that matters affecting rates for the purchase or sale of electricity are not major federal actions that have a significant environmental impact.[50] The generic benchmark rate of return is a factor considered in the determination of electric rates. Thus, no environmental assessment or environmental impact statement is required for promulgation of this final rule.

VI. Paperwork Reduction Act

The Paperwork Reduction Act [51] and Office of Management and Budget's (OMB's) regulations [52] require that OMB approve certain information collection requirements imposed by agency rule. The final rule in this proceeding does not impose any information collection requirement. Therefore, the Commission is not submitting this rule to OMB for review or approval.

VII. Effective Date of Rule

This rule will be effective February 3, 1992.

[46] 5 U.S.C. 601–612.

[47] The Act defines a "small entity" as a small business, a small not-for-profit enterprise or a small governmental jurisdiction. 5 U.S.C. 601(b). A "small business" is defined by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated" and which is not dominant in its field of operation. 15 U.S.C. 6.32(a).

[48] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); III FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987), *codified at* 18 CFR Part 380.

[49] *Id., codified* at 18 CFR 380.4.

[50] *Id., codified* at 18 CFR 380.4(a)(15).

[51] 44 U.S.C. 3501–3520 (1988).

[52] 5 CFR 1320.13.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission revokes part 37, chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 37—[REMOVED]

Part 37 is removed in its entirety.

[FR Doc. 92–438 Filed 1–8–92; 8:45 am]

BILLING CODE 6717–01–M

RAILROAD RETIREMENT BOARD

20 CFR Part 335

RIN 3220–AA93

Sickness Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends § 335.4(c) of its regulations under the Railroad Unemployment Insurance Act (RUIA) to allow a claimant 30 days (instead of 15) to file a claim for sickness benefits under the RUIA for a particular claim period. Previously, a claim was denied if filed after 15 days but could be allowed subsequently, depending on the explanation given in response to the notice of denial. This change will improve service by expediting the payment of benefits that otherwise would be delayed for a delayed filing determination and will provide for more effective use of the agency's resources.

EFFECTIVE DATE: January 9, 1992.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513), TDD (312) 751–4701, TDD (FTS 386–4701).

SUPPLEMENTARY INFORMATION: Section 5(a) of the RUIA provides that claims for benefits under the RUIA shall be made in accordance with such regulations as the Board shall prescribe. Section 5(b) of the RUIA authorizes the Board to establish by regulation or otherwise any procedure that it deems necessary or proper for the determination of a right to benefits.

Board regulations presently allow a claimant 15 days to file a claim for sickness benefits for a particular claim period (usually a period of 14 consecutive days). See 20 CFR 335.4(c). The 15-day period is measured from the ending date shown on the claim form, or the date on which the Board mailed the claim form to the claimant, whichever date is later. The Board initially denies benefits to any claimant who does not file his or her claim within that 15-day period. However, as explained in § 335.4(d)(3) of the regulations, failure to file within 15 days may be excused depending on the reason for the delay. To ascertain the reason requires consideration of the response made by the claimant to the notice of the initial denial of benefits.

A recent survey of claims filed after the 15-day time limit elapsed shows that the vast majority of claimants filed their forms late because of circumstances beyond their control, and not because of a lack of diligence. The finding parallels that of an earlier survey of applications that were filed late. These findings reflect the fact that sick and injured claimants are handicapped in their ability to conduct their business and financial affairs. The amended regulation acknowledges that handicap by allowing somewhat more time for filing claims for sickness benefits. This change will improve service by expediting the payment of benefits that otherwise would be delayed pending review and reconsideration of the delayed filing determinations and will provide for more effective use of the agency's resources. In addition, the change is consistent with the overall intent and purpose of the Railroad Unemployment Insurance Act to provide assistance in meeting the temporary financial needs of railroad employees who are out of work because of unemployment, sickness or injury.

Also, under the experience rating provisions of the 1988 amendments to the RUIA (title VII of Pub. L. 100–647), claims for sickness benefits are subject to prepayment verification with the applicable base year employer, which helps to assure the validity of claims filed by the employees of such employer.

On September 19, 1991, the Board published this rule as a proposed rule (56 FR 47430) and invited comments by October 21, 1991. No comments were received.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collections contemplated by this part have been approved by the Office of Management and Budget under control number 3220–0039.

List of Subjects in 20 CFR Part 335

Railroad employees, Railroad sickness benefits.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is amended as follows:

PART 335—SICKNESS BENEFITS

1. The authority citation for part 335 continues to read as follows:

Authority: 45 U.S.C. 362(i) and 362(l).

2. Section 335.4(c) is revised to read as follows:

§ 335.4 Filing statement of sickness and claim for sickness benefits.

* * * * *

(c) *Claim for sickness benefits.* An employee shall file a claim for sickness benefits within 30 days after the ending date shown on the claim form, or within 30 days after the date on which the Board mails the claim form to the employee, whichever date is later. Failure to comply with this provision shall bar the payment of sickness benefits with respect to any day included within the calendar period covered by the claim form.

Example: If a form for claiming sickness benefits is mailed to an employee on July 13, for the period from July 1 to July 14, the employee must file the claim within 30 days after July 14 [on or before August 13], to be paid benefits for the period July 1 to July 14. If the claim form was not mailed to the employee until July 16, the claim must be filed within 30 days after July 16 [on or before August 15].

* * * * *

Dated: January 3, 1992.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92–494 Filed 1–8–92; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions and additional requirements, a proposed amendment to the North Dakota permanent regulatory program (hereinafter referred to as the North Dakota program), as administered by the Public Service Commission (PSC) and Industrial Commission (IC) of North Dakota, under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Amendment XIV) pertains to definitions, rule promulgation procedures, areas unsuitable for mining, permit application and approval requirements, environmental protection performance standards, and inspection and enforcement. The amendment is intended to revise the North Dakota program to: Add rules that provide additional safeguards; incorporate additional flexibility afforded by revised Federal regulations; be consistent with SMCRA and the Federal regulations; correct minor editorial and typographical errors; and improve operational efficiency.

EFFECTIVE DATE: January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office; telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by PSC and IC. Information regarding the general background on the North Dakota program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval, can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Actions concerning program amendments taken subsequent to the approval of the North Dakota program are found at 30 CFR 934.15, 934.16, and 934.30.

II. Submission of Proposed Amendment

By letter dated November 20, 1990 (Administrative Record No. ND–L–01), North Dakota submitted a proposed amendment to its regulatory program pursuant to SMCRA. The proposed amendment consists of revisions to the North Dakota Century Code (NDCC) and proposed revisions to the North Dakota Administrative Code (NDAC). North Dakota submitted the proposed amendment on its own initiative, to provide additional safeguards and allow additional flexibility, and also in

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response to OSM's 30 CFR part 732.17(c) notifications of November 8, 1988; May 11, 1989; November 17, 1989; and June 22, 1990 (Administrative Record Nos. ND–L–03; ND–L–04; ND–J–01; and ND–L–08, respectively), that informed North Dakota of changes necessary to maintain its program in a form no less effective than the Federal regulations that implement SMCRA. Additionally, the amendment contains non-substantive revisions to eliminate editorial and typographical errors and accomplish necessary recodification required by the addition or deletion of provisions.

The sections of the program that North Dakota proposes for substantive addition or revision are: NDCC 28–32–02 (Rulemaking procedures); NDAC 69–05.2–01–02 (Definitions: Developed water resources; Fragile lands; Historic lands; Knowingly; Owned or controlled; Road; Violation, failure or refusal; Wetlands; and Willfully); NDAC 69–05.2–01–03 (Rulemaking procedures); NDAC 69.05.2–04–01 (Areas unsuitable for mining); NDAC 69–05.2–05–06 (Permitting coordination with other laws); NDAC Chapter 69–05.2–06 (Permit applications: section –01, identification of interests; section –02, compliance information); NDAC Chapter 69–05.2–08 (Permit applications: section –05, geology description; section –09, prime farmland reconnaissance; section –15, fish and wildlife resources); NDAC Chapter 69–05.2–09 (Permit applications, operations plans: section –01, general requirements; section –06, transportation facilities; section –09, surface water management, impoundments; section –17, fish and wildlife protection and enhancement plan; section –19, coal preparation plants not at a mine site); NDAC Chapter 69–05.2–10 (Permit applications: section –03, criteria for approval or denial; section –05, approval or denial actions); NDAC 69–05.2–11–03, applications for permit renewals; NDAC Chapter 69–05.2–12 (Performance bond and insurance: section –01, general requirements; section –12, bond release applications; section –18, amount to be forfeited; section –20, liability insurance); NDAC Chapter 69–05.2–13 (Performance standards: section –08, protection of fish and wildlife; section 12, auger mining; section –13, coal prep plants not at a mine site); NDAC 69–05.2–15–04 (redistribution of resoiling material); NDAC Chapter 69–05.2–16 (Performance standards, hydrologic balance: section –03, compliance with other state requirements; section –07, stream channel diversions; section –09, sedimentation ponds; section –12, permanent and temporary impoundments; section –14, ground water monitoring; section –20, steam buffer zones); NDAC Chapter 69–05.2–17 (Performance standards, use of explosives; section –01, general requirements; section –05, surface blasting procedures); NDAC 69–05.2–18–01 Performance standards, excess spoil disposal requirements; NDAC 69–05.2–20–03 Performance standards, coal processing waste dams and embankments, design and construction; NDAC 69–05.2–22–07 Performance standards, revegetation success standards; NDAC 69–05.2–23–01 Performance standards, determining premining land use; NDAC Chapter 69–05.2–24 (Performance standards, roads; section –01, general requirements; section –02, location; section –03, design and construction of primary roads; section –04, drainage; section –05, surfacing; section –06, maintenance; section –07, restoration; section –08, other transportation facilities; section –09, support facilities and utility installations); NDAC 69–05.2–25–03 Performance standards, alluvial valley floors, monitoring; NDAC 69–05.2–26–05 Performance standards, revegetation and restoration of productivity of prime farmland; and NDAC Chapter 69–05.2–28 (Inspection and enforcement: section –03, cessation orders; section –16, individual civil penalties; section –17, individual civil penalty, review; section –18, individual civil penalty, payment).

The Director announced receipt of the proposed amendment in the January 15, 1991, **Federal Register** (56 FR 1505), and in the same notice opened the public comment period and provided for a public hearing on its substantive adequacy (Administrative Record No. ND–L–08). The public comment period closed on February 14, 1991. A public hearing was not held because no one requested an opportunity to testify.

By letters dated March 26 and April 2, 1991 (Administrative Record Nos. ND–L–18 and ND–L–21, respectively), OSM notified North Dakota of a decision by the United States Court of Appeals for the District of Columbia Circuit overturning an earlier ruling by the United States District Court for the District of Columbia regarding state law limitations on correction of or compensation for subsidence-caused damages, and of concerns OSM had regarding the definition of wetlands and the payment of individual civil penalties. By a letter dated April 18, 1991 (Administrative Record No. ND–L–20), North Dakota responded with a clarification on the payment of individual civil penalties, by withdrawing the proposed new definition of wetlands, and with a statement that it wished to retain the proposed deletion of state law limitation on compensation for subsidence-caused damages, even though OSM was no longer requiring such a change. North Dakota further clarified some aspects of the proposed amendment in a telephone conversation dated September 6, 1991 (Administrative Record No. ND–L–24).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment submitted by North Dakota on November 20, 1990, and clarified on April 18, 1991 and September 6, 1991.

1. Provisions Not Discussed

North Dakota has proposed non-substantive revisions to correct editorial errors and implement recodification required by substantive additions and/or deletions. The Director finds these revisions render the North Dakota program no less effective than as already approved. North Dakota also proposes revisions to rules that are substantive in nature and contain language substantively the same as the corresponding Federal regulations. The Director, therefore, finds that these proposed rules and rule revisions are no less effective than the corresponding Federal regulations and is approving the proposed revisions. They include [Federal regulation counterparts indicated in brackets]:

Definitions, "fragile lands," "knowingly," "owned or controlled," and "willfully," NDAC 69–05.2–01–02(35), (52), (64), and (126) [30 CFR 762.5, 946.5, 773.5, and 946.5, respectively]; Identification of interests, NDAC 69–05.2–06–01(1)(d)-(f), (2)-(4) [30 CFR 778.13(b)-(d), (i)-(j)]; Transportation facilities, NDAC 69–05.2–09–06(1)(b), (d)-(h), (2) [30 CFR 780.37(a), (b)]. NDAC 69–05.2–09–09(1)(e), (2)(i) [30 CFR 780.25(a)(3)(iv)]; Fish and wildlife protection and enhancement, NDAC 69–05.2–09–17(1)(a)-(d), (2) [30 CFR 780.16(b), (c)]; Preparation plants, NDAC 69–05.2–09–19(1) [30 CFR 785.21]; Permit conditions, NDAC 69–05.2–10–05(3)(e) [30 CFR 773.17(i)]; Permit renewals, NDAC 69–05.2–11–03(1)-(4) [30 CFR 773.11(a), 774.15(a)]; Filing performance bond, NDAC 69–05.2–12–01(4) [30 CFR 800.11(b)(4)]; Liability insurance duration, NDAC 69–05.2–12–20(1), (2) [30 CFR 800.60(a), (b)]; Preparation plant requirements, NDAC 69–05.2–13–13 (introduction) [30 CFR 827.1]; Sediment ponds, NDAC 69–05.2–16–09(9), (17), (18) [30 CFR 816.49(a)(8)(i), (3), (10),

respectively]; Use of explosives, NDAC 69–05.2–17–01(2) [30 CFR 816.61(b)]; Excess spoil disposal inspections, NDAC 69–05.2–18–01(12) [30 CFR 816.71(h)]; Coal processing waste dams and impoundments, NDAC 69–05.2–20–03(1)(b), (d) [30 CFR 816.49(a)(3) & 816.84(b)(1), 816.84(b)(2), respectively]; Determining premining land use, NDAC 69–05.2–23–01 [30 CFR 816.133(b)]; Roads, NDAC 69–05.2–24–01 (1), (2), (4)–(6) [30 CFR 816.150 (a), (b), (d), (e)]; Primary roads, NDAC 69–05.2–24–03 [30 CFR 816.151]; deletion of NDAC 69–05.2–24 Sections –02, –04, –05, –06 [no Federal equivalents]; Road restoration, NDAC 69–05.2–24–07(1) [30 CFR 816.150(f)]; Prime farmland productivity restoration, NDAC 69–05.2–26–05(3)(a), (c)–(f) [30 CFR 823.15(b)(1), (3)–(6)]; Cessation orders, notice to owners and controllers, NDAC 69–05.2–28–03(7) [30 CFR 843.11(g)]; and Review of individual civil penalties, NDAC 69–05.2–28–17 [30 CFR 846.17(b)].

2. Rulemaking procedures

North Dakota proposes revisions to the Administrative Agencies Practice Act, NDCC 28–32–02, regarding opportunities for public participation in administrative rulemaking. The revisions would amend subsection (3) to require that interested persons be allowed to submit data respecting the impact of a proposed rule; require that the agency conduct an oral hearing on substantive rules; require that the agency fully consider all submissions unless the rule is of an emergency nature; and require that the agency make a written record of its consideration of all submissions respecting a proposed rule. The proposal would also add a new subsection (4), that would require: the notice of proposed rulemaking must include a brief explanation of the purpose of the proposed rulemaking; the notice must identify locations where the public can view the proposed rule and where comments may be sent, and the time and place of any hearing; the notice must be filed with the office of the legislative council and published at least twice in each newspaper of general circulation, and must be provided to anyone who makes timely request; the agency may supply the notice to interested persons; and the agency must receive comments for at least 30 days after the first publication of the notice.

North Dakota also proposes, at NDAC 69–05.2–01–03, revised regulatory rules to implement the statutory changes. The revisions would require the PSC to issue notices of public hearing that furnish a brief explanation of purpose, specify locations where the proposed rule's text might be reviewed, and advise the public of opportunity to testify at the hearing and submit written comments. The notice would be required to be published twice in official county newspapers in locations in which coal mining operations occur, as well as in papers of general circulation in the state; the hearing must be at least 30 days after the later of the first publication or filing with the legislative council. North Dakota would also be required to make a written record of its consideration of all comments and testimony.

Section 102(i) of SMCRA states that one of the purposes of SMCRA is to

> * * * assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this Act.

In addition, the criteria for the Director's approval of State programs amendments, at 30 CFR 732.15(b)(10), require that State programs

> provide for public participation in the development, revision, and enforcement of State regulations and the State program, consistent with the public participation requirements of the Act and this chapter * * *

Section 501 of SMCRA requires that interested persons be provided with at least 30 days to provide written comments after publication of proposed rules in the **Federal Register**.

As noted above, North Dakota's proposed statute and proposed rule both require a 30-day comment period. In the conditional approval of the North Dakota program, the Secretary noted that North Dakota has no official publication corresponding to the **Federal Register**, but that North Dakota provided information on locations where the proposed text may be read (45 FR 82214, 82232 (December 15, 1980)); the Secretary found this to be consistent with SMCRA. The proposed statute and rule retain this requirement.

The revised statute at NDCC 28–32–02(3) allows the PSC to omit consideration of public comment if a rule being adopted "is of an emergency nature." Emergency rulemaking procedures are further defined at NDCC 28–32–02(6); for an emergency rulemaking, the PSC would have to find an emergency rulemaking necessary because of imminent dangers to the public or because a delay in rulemaking would cause revenue loss that would prevent the PSC from fulfilling its mission. In either case, the emergency rule would remain valid for a maximum of six months.

OSM reviewed this provision for emergency rulemaking to determine whether it would constitute a substantial abrogation of the public participation requirements of SMCRA. OSM finds that the State provision for emergency rulemaking would not constitute a substantial abrogation of the public participation requirements of SMCRA for three reasons. First, emergency rulemakings would be limited to instances of imminent peril or loss of regulatory capability; this would be subject to oversight by OSM. Second, final rulemaking proceedings, with full public participation, would follow after no more than six months. Lastly, under 30 CFR 732.17(g), the Federal regulations require that no changes to State laws or rules are to take effect for purposes of a State program until approved as a program amendment. Therefore, any emergency rulemaking by North Dakota would have to be approved by OSM as an amendment to the North Dakota program; this would open the rulemaking to public comment under the rulemaking requirements of SMCRA. Therefore the Director finds that this proposed provision for emergency rulemaking is no less stringent than SMCRA, and no less effective than the Federal regulations.

The Director finds that the remaining provisions added in this proposal afford additional opportunities for public participation that are no less stringent than the requirements of SMCRA Section 501, and not inconsistent with the Federal regulations. The Director is therefore approving the proposals.

3. Definitions (NDAC 69–05.2–01–02)

a. "Developed Water Resources" (Land Use)

Subsection (22) of NDAC 69–05.2–01–02, the definition of "developed water resources," provides that, for land use purposes, "developed water resources" means land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, flood control, and water supply. North Dakota proposes to add "wildlife habitat" to the examples of beneficial uses for storing water. The North Dakota definition is substantively similar to the Federal definition at paragraph (i) of the definition of "land use" at 30 CFR 701.5. However, the Federal definition does not include wildlife habitat within the examples of beneficial uses.

OSM notes that the specified water uses in both the proposed State and the Federal definitions are intended as non-exhaustive examples, and agrees with North Dakota that creating or

maintaining fish and wildlife habitat is a beneficial use of stored water. Therefore, the Director is approving the proposal.

b. "Historic Lands"

Subsection (42) of NDAC 69-05.2-01-02 defines "historic lands" as meaning:

> historic or cultural districts, places, structures, or objects, including archeological and paleontological sites, national historic landmark sites, sites listed on or eligible for listing on the state historic sites registry or the national register of historic places, sites having religious or cultural significance to Native Americans or religious groups or sites for which historic designation is pending.

North Dakota proposes to revise the definition by replacing the phrase "historic or cultural districts, places, structures, or objects" with "areas containing historic, cultural or scientific resources," and move the reference to paleontological sites to the definition of "fragile lands" at subsection (35) of this section. In the subsequent list of examples, North Dakota proposes to: (1) Change the phrase "national historic landmark sites" to simply "national historic landmarks," and (2) in all other references, change the word "sites" to "places."

The proposed modifications to the North Dakota definition make the State definition substantively similar to the Federal definition of "historic lands" at 30 CFR 762.5. However, in the list of examples, the Federal definition refers to

> archeological sites, *properties* listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, *properties* having religious or cultural significance to Native Americans or religious groups, and *properties* for which historic designation is pending [emphasis added].

The Federal definition previously employed the term "sites," but this was revised on May 19, 1987, to "properties" in order to be consistent with other Department of the Interior regulations (52 FR 18792, 18793—18794).

The Director finds that North Dakota's proposed definition is limited to "places" only in the non-exhaustive examples, and that any "property" included under the Federal definition of "historic places" would be included, as an "historic, cultural, or scientific resource," under the proposed North Dakota definition of "historic lands." Therefore, the Director finds that the proposal is no less effective than the Federal requirements, and is approving the proposed revision.

c. "Road"

At subsection (92) of NDAC 69-05.2-01-02, North Dakota proposes to delete the current definition of "road" and replace it with a new definition. The proposed new definition is substantively similar to the Federal definition at 30 CFR 701.5, with one exception: The proposed definition does not include surface right-of-ways used in coal exploration.

In the North Dakota program, coal exploration is regulated by a different regulatory authority (IC) under different statutory (NDCC Chapter 38-12.1) and regulatory (NDAC Chapter 43-02-01) authorities. Therefore, the inclusion of coal exploration is not required in the definition of "road" in NDAC 69-05.2-01-02. For this reason, the Director is approving the proposed definition.

However, the Director notes that North Dakota must have, in the part of its program regulating coal exploration, provisions no less effective than those Federal regulations for coal exploration at 30 CFR Chapter VII, including definitions. Neither NDCC Chapter 38-12.1 nor NDAC Chapter 43-02-01 contain a definition for "road." The Director had previously notified North Dakota in accordance with 30 CFR 732.17, by letter dated November 17, 1989 (Administrative Record No. ND-J-1), that North Dakota must revise its rules regulating road performance standards on coal exploration operations. The Director now also finds that the North Dakota program lacks a definition of "road" applicable to coal exploration, and is requiring North Dakota to amend its program to include such a definition.

d. "Wetlands"

North Dakota proposed to add a definition for the term "wetlands" at NDAC 69-05.2-01-02(124). In its April 2, 1991, letter to North Dakota (Administrative Record No. ND-L-21), OSM stated its concern that, even though "wetlands" are not defined in the Federal regulations, the proposed North Dakota definition was not as effective as the Federal program requirements. North Dakota withdrew the proposed definition from the proposed amendment by letter dated April 18, 1991 (Administrative Record No. ND-L-20). The Director accepts this withdrawal and is therefore not considering the proposed definition in this rulemaking action.

4. Permit Applications: Areas Unsuitable for Mining

North Dakota proposes to revise the permit application requirements at NDAC 69-05.2-04-01(5)(b) regarding submission of documentation showing compliance with NDCC Chapter 38-18 [the Surface Owner Protection Act]. Currently, the rule requires this documentation of compliance if any proposed operations are to be conducted within 500 feet of a farm building; the proposed revision would require this only if "coal removal areas" are proposed within 500 feet of farm buildings. The Surface Owner Protection Act, at NDCC 38-18-07(2), requires that if any "coal removal area" comes within 500 feet of a farm building, the operator must compensate the building owner for the value of the building or the cost of relocating it, unless waived by the owner. Neither the North Dakota statute nor the North Dakota rules define either "coal removal area" or "farm building."

Another existing part of the North Dakota program, NDCC 38-14.1-07(5), prohibits among other things, surface coal mining operations within 500 feet of an occupied dwelling, unless approved by the owner. The State regulations at NDAC 69-05.2-01-02(60) [proposed to be recodified as subsection (61)] define "occupied dwelling" as any building currently used on a regular or temporary basis for human habitation. The statutory prohibition to mining within 500 feet of an occupied dwelling is implemented by the North Dakota rules at NDAC 69-05.2-04-01(1) and (5)(a). Neither the statutory provision at NDCC 38-14.1-07(5) nor the regulatory provisions at NDAC 69-05.2-04-01(1) and (5)(a) would be affected by this proposed revision to subsection (5)(b). Therefore, any farm building such as a barn that might be used for human habitation would be protected under the North Dakota program as an "occupied dwelling."

The Federal regulations do not prohibit or restrict mining operations in the vicinity of farm buildings. At 30 CFR 761.11(e), surface coal mining operations are prohibited within 300 feet of occupied dwellings except under certain circumstances, including where approved by the owner. The North Dakota program, both currently and as it would be revised, provides additional protection for farm buildings and additional protection for occupied dwellings. The Federal regulations at 30 CFR 731.11(b) provide that any State law or rule that provides for more stringent control and regulation of surface coal mining and reclamation operations shall not be construed to be inconsistent with the Federal regulations.

Therefore the Director finds that the proposed rule revision is in accordance

with the North Dakota Surface Owner Protection Act (NDCC Chapter 38–18), and is not inconsistent with SMCRA or the Federal regulations, and is therefore approving the proposed revision.

5. Permitting Coordination With Other Laws

At NDAC 69–05.2–05–06(1)(d), North Dakota proposes to require that permit review and issuance be coordinated with additional state permitting processes, namely those required by the State Water Commission and Water Resource Districts.

Section 503(a)(6) of SMCRA requires that state programs establish a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other State or Federal permitting processes that are applicable to the operation. This requirement is expressed in the Federal regulations at 30 CFR 731.14(g)(9). The Director finds that the proposed additions will facilitate the administration of the North Dakota program, and are not inconsistent with the Federal program. The Director is therefore approving the proposal.

6. Permit Applications: Compliance Information

At NDAC 69–05.2–06–02, North Dakota proposes to revise subsection (3) and add new subsections (4)–(6). As revised, these subsections are substantively similar to the Federal regulation requirements at 30 CFR 778.14(c) and (d), except as addressed below.

Proposed subsection (3) of NDAC 69–05.2–06–02, as revised, requires a permit application to include a list of violations as required by NDCC 38–14.1–14(1)(g), including violations by any person who owns or controls the applicant. That statutory provision, in turn, requires the submitted list to include:

> A schedule listing any and all notices of violation of this chapter [NDCC Chapter 38–14.1], [SMCRA], and any law, rule, or regulation of the United States or of the State of North Dakota, or of any department or agency in the United States or of the state of North Dakota pertaining to air or water environmental protection incurred in connection with any surface coal mining operation during the three-year period to the date of the application.

Proposed subsection (4) of NDAC 69–05.2–06–02 requires a permit application to also include:

> A list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant.

The Federal counterpart regulation, 30 CFR 778.14(c), requires, for any violation of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation:

> [1] a list of all violation notices received by the applicant during the three year period preceding the application date; and
>
> [2] a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant.

a. Applicable Laws

References to "the Act" in 30 CFR 778.14(c) and section 510(c) of SMCRA, include, in addition to SMCRA and its implementing regulations, all State and Federal programs approved under SMCRA. See 48 FR 44389 (September 28, 1983). See also 45 FR 82223 (December 15, 1980). Thus, 30 CFR 778.14(c) requires information regarding violations received pursuant to SMCRA or any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA. In addition, 30 CFR 778.14(c) requires information regarding violations received pursuant to any non-SMCRA Federal law, rule or regulation, or any non-SMCRA State law, rule or regulation which was enacted pursuant to Federal law, rule or regulation, which pertain to air or water environmental protection and were received in connection with any surface coal mining and reclamation operation.

Proposed subsection (3) of NDAC 69–05.2–06–02 refers to notices of violations of: (1) NDCC Chapter 38–14.1; (2) SMCRA; (3) any law, rule or regulation of the United States or of the state of North Dakota, or any department or agency in the United States or of the State of North Dakota pertaining to air or water environmental protection incurred by the applicant (and by any person owning or controlling the applicant) in connection with any surface coal mining operation during the three year period prior to the date of the application. The reference in proposed NDAC 69–05.2–06–02(3) to any violations of SMCRA is interpreted to mean any violation of SMCRA, its implementing regulations, or any State or Federal program approved pursuant to SMCRA. This is in accordance with OSM's interpretation of the phrase "the Act" in section 510(c) of SMCRA and in 30 CFR 778.14(c). In addition, the reference in proposed NDAC 69–05.2–06–02(3) to "any law, rule, or regulation of * * * any department or agency in the United States * * *," any department or agency in the United States * * *," is also interpreted to mean the laws, rules or regulations of any State. This language is similar to language used in section 510(c) of SMCRA. The preamble to the Federal permanent program regulations at 30 CFR 778.14 (44 FR 14902, 15023 (March 13, 1979)) indicates that

> [t]he phrase "in the United States" is construed by courts to mean physically located within the United States * * *. Therefore, the preferred way to read section 510(c) is to construe "department or agency in the United States" to mean "any governmental department or agency" physically located within the United States, which would include State and local governmental entities.

Thus, the proposed North Dakota rule at NDAC 69–05.2–06–02(3) requires information relative to violations of the same laws covered by the Federal regulation: SMCRA, any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA, any non-SMCRA Federal law, rule or regulation, or non-SMCRA State law, rule or regulation enacted pursuant to Federal law, rule or regulation, pertaining to air or water environmental protection and incurred in connection with any surface coal mining operation.

At subsection (4) of NDAC 69–05.2–06–02, the North Dakota proposal would require submission of a listing "of *all* unabated cessation orders and unabated * * * violation notices" received prior to the application on "any surface coal mining and reclamation operation" under applicable ownership or control [emphasis added]. Other than the words "all" and "any," which are most readily interpreted as being without limit, the proposal does not indicate which laws, rules, etc., apply to this provision.

The corresponding Federal requirement, at 30 CFR 778.14(c), refers to violations of "the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation" pertaining to environmental protection.

Although proposed subsection (4) of NDAC 69–05.2–06–02 does not explicitly state which laws, rules, etc. apply, it does follow immediately after subsection (3), which specifies the same laws, rules, etc., as does the Federal regulation. Additionally, subsection (4), taken by itself, appears to be absolutely without limit; i.e., "all" unabated

violations on "any" operation would appear to be inclusive of all laws, rules, etc., of any governmental entity in the United States. As a result, subsection (4) must be at least as inclusive as subsection (3), which renders subsection (4) at least as inclusive as the Federal requirement at 30 CFR 778.14(c).

b. Applicable Violations

Under the Federal regulations at 30 CFR 778.14(c), information about all "violation notices" must be reported. The term "violation notice" is defined in the Federal regulations at 30 CFR 701.5 as any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication:

> While all notices of violation (NOV's) are violation notices, not all violation notices are NOV's * * *. Under § 778.14(c), the permit applicant must list all violation notices, including NOV's, cessation orders, notices of noncompliance, and other citations, regardless of terminology, for any violation of any provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection in connection with any surface coal mining operation. [54 FR 8982, 8985 (March 2, 1989)]

The North Dakota program at NDAC 69-05.2-01-02(119) [proposed to be repromulgated as subsection (122)], contains a definition for the term "violation notice" which is identical to the Federal definition of that term at 30 CFR 701.5. However, the list of violations required by NDCC 38-14.1-14(1)(g), incorporated by reference into proposed NDAC 69-05.2-06-02(3), employs only the term "notices of violations." The proposed State rule does not explicitly interpret this to include the broader term "violation notice," as does the Federal regulation at 30 CFR 778.14(c). In order to be no less effective than the Federal regulations, North Dakota must further amend NDAC 69-05.2-06-02(3) to include all violation notices, rather than just the one type of violation notice.

c. Applicable Persons

The Federal regulations at 30 CFR 778.14(c) require permit applications to include two different types of information regarding violation notices. First, the permit application must include a list of "all violation notices received by the applicant during the three year period preceding the application date." Second, the permit application must include "all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant." As to the first type of required information, only those violation notices received directly by the applicant within the previous three-year period need be reported (54 FR 8982, (March 2, 1989)). The second type of information required has no time limitation, other than "prior to the date of the application." In addition, the second type of required information encompasses, in addition to violation notices received directly by the applicant, violation notices received by any surface coal mining and reclamation operations owned or controlled by the applicant or owned or controlled by any person who owns or controls the applicant. Thus, the second type of required information encompasses a much broader scope of persons than those encompassed by the first type of required information.

Proposed subsection (3) of NDAC 69-05.2-06-02, as revised, requires permit applications to include information regarding violations as required by NDCC 38-14.1-14(1)(g), "including violations received by any person who owns or controls the applicant." Thus, the proposed rule at NDAC 69-05.2-06-02(3) requires violation information about more persons than the Federal regulations require for the first type of required information. The Federal regulations at 30 CFR 731.11(b) provide that any State law or rule that provides for more stringent control and regulation of surface coal mining and reclamation operations shall not be construed to be inconsistent with the Federal regulations.

For the reasons discussed above, the Director finds the proposed provisions at NDAC 69-05.2-06-02(3)-(6) to be no less effective than the Federal regulations at 30 CFR 778.14(c)-(d), with one exception, and is approving the proposal. To address the exception, the Director is requiring North Dakota to further amend its program at NDAC 69-05.2-06-02(3) to require information for all violation notices.

7. Test Borings

a. Depth

At NDAC 69-05.2-06-05(2), North Dakota is proposing to revise the requirement that test borings or core samples be collected and analyzed through the stratum immediately below the lowest coal seam. The proposed revision would require borings or samples down through the lowest of either that stratum or any lower aquifer that might be adversely impacted by the operation.

The Federal regulations at 30 CFR 780.22(b)(2) also require the analysis of samples from the lower of either the stratum immediately below the lowest coal seam or any lower aquifer that might be impacted. The Director finds that the proposal is no less effective than the Federal regulations, and is therefore approving the proposal.

The Director notes that the approval of this provision satisfies the required program amendment at 30 CFR 934.16(k) that was placed on the North Dakota program in a January 19, 1990 rulemaking action (55 FR 1813, 1819), and is removing that amendment requirement.

Additionally, at a subsection (2)(e) of NDAC 69-05.2-06-05, North Dakota proposes to revise the requirement for geologic cross-sections. The proposed revision would require that the geologic cross sections show major subsurface variations down through the deeper of either the stratum immediately below the lowest coal seam or any lower aquifer that may be adversely impacted. The Federal regulations at 30 CFR 779.25(a)(3) require cross sections showing overburden strata, coal seams, and the stratum immediately below the lowest coal seam. Thus North Dakota's proposal imposes additional requirements beyond those in the Federal regulations.

The Federal regulations at 30 CFR 731.11(b) provide that any State rules that provide more stringent environmental controls or regulation than the Federal regulations shall not be construed to be inconsistent with the Federal regulations. Therefore the Director is approving the proposal.

b. Sample Interval

At NDAC 69-05.2-06-05(2)(c), the North Dakota rule currently requires that samples for physical and chemical analyses be taken at five-foot intervals within the overburden and the stratum immediately below the lowest coal seam to be mined. North Dakota proposes to revise this requirement so that samples would continue to be required at five-foot intervals down through the lowest coal seam to be mined; below this, physical and chemical analyses would have to include one sample from each stratum.

The Federal regulations at 30 CFR 780.22(b)(2) require the physical and chemical analysis of each stratum down to the deeper of either the stratum immediately below the lowest coal seam or any lower aquifer that might be adversely affected; they do not

specify any number of samples per stratum. The North Dakota proposed requirement for one sample per stratum is therefore not in conflict with the Federal requirement. The Director finds that the proposal is no less effective than the Federal regulations, and is therefore approving the proposal.

8. Prime Farmland Determination

At NDAC 69–05.2–08–09(3)(b), North Dakota proposes a revision to the procedure for determining whether land within a proposed permit area may include prime farmland historically used for cropland (PFL). The State rule at NDAC 69–05.2–08–09(3) currently requires that if the reconnaissance investigation indicates that any land within a proposed permit area may be PFL, then the applicant shall obtain a cooperative soil survey for those lands. If the cooperative soil survey indicates that PFL soil mapping units are present, the current State rule would automatically require the applicant to comply with the program requirements for PFL. The proposed revision would allow an applicant to avoid the program requirements for PFL where the cooperative soil survey indicates that prime farmland mapping units are present *if* the applicant presents information which demonstrates to the satisfaction of the State Conservationist (SC) of the United States Soil Conservation Service (SCS) that no prime farmland mapping units actually are present. That is, if the applicant can demonstrate satisfactorily to the SC that the cooperative soil survey is in error, then the applicant would not be subject to the program requirements for PFL.

North Dakota presents the argument that the soils information and maps required by NDAC 69–05.2–08–10 are often much more detailed than are the cooperative soil surveys, and often indicate that different soils mapping units are present; according to this argument, this proposed provision would allow the SC to determine whether PFL soils units are present, using the most detailed information (side-by-side portion of amendment submittal, Administrative Record No.ND–L–01). The definition of "prime farmland" at NDAC 69–05.2–01–02(70) [proposed to be recodified as subsection (72)] states, in part, that: "[p]rime farmlands are identified based on cooperative soil surveys and soil mapping units designated as prime farmland by the [SCS]."

The Federal regulations at 30 CFR 785.17(b)(3), together with the definition of "soil survey" at 30 CFR 701.5, specify that PFL mapping units be identified on soil surveys meeting the standards of the National Cooperative Soil Survey, which standards are established by the SCS. Further, under 30 CFR 785.17(d)(1), (2), and (3), certain responsibilities regarding PFL in each state are delegated to the SC, including the responsibility to identify PFL soils; the SC is also assigned to assist the state regulatory authority in defining the nature and extent of the reconnaissance inspection. In summary, these provisions of the Federal regulations require that PFL be defined and identified by the SCS in accordance with its expertise. North Dakota's proposal would also provide for the identification of PFL as an SCS responsibility. Therefore, the Director finds that the proposal is no less effective than, and not inconsistent with, the requirements of the Federal regulations, and is approving the proposals.

9. Fish and Wildlife Resources Information

At NDAC 69–05.2–08–15, North Dakota proposes to revise the requirements for information on fish and wildlife (F&W) resources to be included in permit applications. The revised requirements would retain the existing requirement that F&W habitats be identified on aerial photos, but otherwise are substantively the same as those required in the Federal regulations at 30 CFR 780.17(a) and (c), with the exceptions noted below. The Director is approving the proposal except as addressed below.

a. The North Dakota proposal requires the applicant to first submit, for PSC approval, a study plan for acquiring F&W information. The resulting study report must then be included in the permit application. The Federal regulations at 30 CFR 780.16(a) require the submission of F&W information in the permit application, at which time its adequacy is evaluated. Under the Federal rules, an applicant is not required to first submit, and obtain approval for, a study plan for acquiring F&W information. Prior consultation and/or approval regarding the scope and level of detail of F&W information is encouraged, but not required, under the Federal regulation.

The Director finds that the North Dakota proposal will ensure timely resolution of questions regarding the scope and level of detail of the required information early in the permitting process, and thereby assist in the administration of the North Dakota program; further, the proposal is not inconsistent with the requirements of the Federal regulations. The Director is therefore approving the proposal's two-stage process.

b. At proposed NDAC 69–05.2–08–15(1), North Dakota would require that the study plan for obtaining F&W information, including the scope and level of detail, be approved by the PSC; further, the PSC, in consultation with State and Federal F&W agencies, would ensure that the information resulting from the study plan is sufficient to design the protection and enhancement plan.

The Federal regulations at 30 CFR 780.17(a)(1) require that the regulatory authority consult with F&W agencies regarding the scope and level of detail of the information to be submitted. The preamble to the Federal rule clarifies that the clause regarding sufficiency for the protection and enhancement plan defines the minimum premissible scope and level of detail that the regulatory authority may approve (52 FR 47352, 47354–47355 (December 11, 1987)).

The North Dakota proposal requires consultation with F&W agencies regarding whether the study plan will produce information that is "sufficient to design the protection and enhancement plan"; it does not explicitly require consultation regarding the scope and level of detail to be included in the study plan. However, a F&W agency would not be able to address the question of whether a proposed plan would be sufficient to meet the needs of the protection and enhancement plan, without also addressing the scope and level of detail of the plan. Thus, consultation on the scope and level of detail of the required F&W information is implicitly included in the North Dakota proposal. Therefore the Director finds that the proposal is no less effective than the Federal regulation, and is approving the proposal.

c. At NDAC 69–05.2–08–15(3)(a), the North Dakota proposal would require site-specific information when the permit or adjacent areas are likely to include Federally-listed threatened or endangered species or their habitats. It does not extend this requirement to State-listed species or habitats, as does the Federal regulation at 30 CFR 780.16(a)(2)(i).

The likely presence of State-listed or proposed species or habitats would require site-specific information under proposed NDAC 69–05.2–08–15(3)(c) when they are identified, by Federal or other State agencies during interagency consultation or permit application review, as requiring special protection under state or Federal laws.

However, this provision would not require the submission of site-specific information when the PSC is informed of the presence of State-listed species

through other channels (such as, e.g., public comment). In most of these cases, the consultation process would also identify the likely presence. However, if interagency consultation did not also identify the likely presence, the requirement for site-specific information would not be triggered, as it would be by the Federal regulation. Because of this, the State regulatory authority must require site-specific information when informed by any source of the likely presence of State-listed species or habitats, not just when so informed through interagency consultation.

Therefore the Director is approving proposed NDAC 69-05.2-08-15(3)(a), but is requiring North Dakota to further amend the rule to explicitly require site-specific F&W resource information when the permit area or adjacent area is likely to include North Dakota-listed or proposed listed species or their habitats.

10. Plans for Transportation Facilities

a. The Federal regulations at 30 CFR 780.38 require the submission of maps, plans, etc., for each support facility, to demonstrate compliance with 30 CFR 816.181, that specifies the performance standards for support facilities. The Federal definition of "support facilities" has been deleted; however, the preamble to 30 CFR 816.181 makes it clear that the term support facilities includes all transportation facilities other than roads (53 FR 45190, 45197 (November 8, 1988)).

The North Dakota proposal was unclear as to where the equivalent State provisions, for transportation facilities other than roads, were located: whether they were intended to be included among "support facilities" in the proposed new rule at NDAC 69-05.2-09-01(4), or rather included with the "Operation Plans-Transportation Facilities" in the proposed revision of NDAC 69-05.2-09-06. North Dakota clarified in a telephone conversation dated September 6, 1991 (Administrative Record No. ND-L-24), that the application requirements for transportation facilities other than roads were intended to be retained at NDAC 69-05.2-09-06.

The proposed revision to NDAC 69-05.2-09-06 would delete the current provision, at NDAC 69-05.2-09-06(6), that requires a general operations description of each transportation facility (besides roads). An equivalent provision would be retained at subsection (1) which requires a detailed description of conveyors and rail systems to be constructed, used, or maintained; appropriate maps, descriptions profiles, and cross sections would be required. However, the subsequent list of design and performance standards required to be shown in the maps, descriptions, etc., is limited to roads; there is no mention of specific design and performance standards for other transportation facilities. Therefore, the designs, maps, plans, etc., for other transportation facilities would not be required to demonstrate compliance with the applicable performance standards, as required by the Federal regulation at 30 CFR 780.38 [North Dakota's applicable performance standards are located at NDAC 69-05.2-24-08].

Since the proposed revisions to NDAC 69-05.2-09-06 would not require the design, plans, etc. for other transportation facilities to demonstrate compliance with the applicable performance standards, the Director finds that the proposal is less effective than the Federal regulation. The Director is approving the proposed revisions, but is requiring North Dakota to further amend its program to explicitly require the designs, etc., for transportation facilities other than roads to demonstrate compliance with the performance standards at NDAC 69-05.2-24-08.

b. North Dakota proposes to revise NDAC 69-05.2-09-06(3) [proposed to be recodified as subsection (10(c)] by rewording "specifications for stabilization and erosion prevention" for road structures to "plans for stabilizing" these structures.

The Federal regulations do not require plans for stabilization to be included in permit applications, although there are performance standards requiring stabilization and erosion prevention (see, e.g., 30 CFR 816.150(b)(1)). The Director finds that requiring plans for stabilization to be included in permit applications will assist North Dakota in administering its program, and is not inconsistent with the Federal regulations. The Director is therefore approving the proposal.

c. North Dakota proposes to delete existing subsection (4) of NDAC 69-05.2-24-06, that requires geotechnical analyses where required under the road performance standards at NDAC 69-05.2-09-03. OSM notes that North Dakota is proposing to delete the detailed performance standards requiring these analyses (see Finding No. 27 of this notice), and that the Federal regulations at 30 CFR 780.37 do not require the submission of geotechnical analyses. Therefore the Director finds the proposed deletion to be no less effective than the Federal application requirements and not inconsistent with the appropriate North Dakota performance standards, and is therefore approving the deletion.

11. Permit Applications: Plans for Ponds and Impoundments

a. North Dakota proposes to delete requirements at NDAC 69-05.2-09-09(1)(c) (7) and (8) that require submitted plans to contain elevation-area-capacity curves and proposed calculated detention times to meet the criteria of the sedimentation pond performance standards.

OSM notes that the requirement regarding elevation-area-capacity curves is duplicated at subsection (2)(c) of NDAC 69-05.2-09-09, and the requirement regarding detention time and supporting calculations is duplicated at NDAC 69-05.2-16-09(3). Therefore the proposal would only delete unnecessary duplications; the requirements would remain in effect. For this reason, the Director finds the proposed deletions would render the North Dakota program no less effective than as already approved, and is approving the deletions.

b. At NDAC 69-05.2-09-09 (2) (c) and (d), North Dakota proposes to add requirements that the elevation-area-capacity curves include the top of the embankment, and that spillway descriptions include stage-discharge curves.

The Federal regulations at 30 CFR 780.25 do not include these requirements. However, the Director finds that the proposed additions will assist North Dakota in coordinating its activities with other state programs, particularly those of the State Water Commission, will assist in the review of permit applications, and are not inconsistent with the Federal regulations at 30 CFR 780.25. The Director is therefore approving these revisions.

c. At NDAC 69-05.2-09-09(2)(e), North Dakota proposes to revise the requirement to submit computed safety factors for each impoundment that "meets or exceeds the size criteria of [NDAC 69-05.2-16-09(17)]" by deleting the qualifying word "size." Thus, the rule as revised would require any impoundment that meets any of the cited criteria to have a computed safety factor submitted. The criteria cited in the referenced rule include both the criteria of 33 CFR 77.216(a) [requirements of the Mine Safety and Health Administration (MSHA)] and location of the impoundment where failure would be expected to cause loss of life or serious property damage (hereinafter, "size/hazard criteria"). Further, NDAC 69-05.2-16-09(17) specifies that these impoundments be

designed and constructed with a static safety factor of 1.5 and a seismic safety factor of 1.2.

The Federal regulations at 30 CFR 780.25(c)(2) require impoundments meeting the criteria at 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage to comply with 30 CFR 77.216–2. 30 CFR 77.216–2(a)(13) requires that the submitted plan include the computed minimum safety factor range. 30 CFR 816.49(a)(3)(i) requires that these impoundments have the same safety factors specified in North Dakota's proposed rule. The Director therefore finds that North Dakota's proposed revision is no less effective than the Federal regulations, for impoundments meeting the cited size/hazard criteria, and is approving it.

In a November 17, 1989, 30 CFR part 732 notification (Administrative Record No. ND–J–1, Item B–1), the Director informed North Dakota of deficiencies in its program regarding the requirements for stability (1) for impoundments that do meet the size/hazard criteria discussed above, and (2) for impoundments that do not meet those size/hazard criteria (hereinafter, "small and nonhazardous" impoundments). In the November 20, 1990, submission (Administrative Record No. ND–L–01), North Dakota addressed only the deficiency for impoundments that do meet the size/hazard criteria; the submission did not address the stability requirement for small and nonhazardous impoundments.

However, North Dakota subsequently informed OSM by telephone conversation dated September 6, 1991 (Administrative Record No. ND–L–24) that it wished OSM to evaluate the design criteria specified in NDAC 69–05.2–16–09(10)–(16) to determine whether they would ensure, for small and nonhazardous impoundments, a stability comparable to a 1.3 minimum static safety factor. The Federal regulations at 30 CFR 780.25(c)(3) allow State programs to specify stability requirements for small and nonhazardous impoundments in either of two ways: (1) By specifying the 1.3 minimum static safety factor; or (2) by specifying engineering design criteria, approved by OSM through the state program amendment process, that would ensure stability comparable to the minimum 1.3 static safety factor. Thus North Dakota has requested that OSM review its engineering design criteria to determine whether they would ensure a stability comparable to the 1.3 minimum static safety factor. If OSM finds that they do so ensure, and approve them as such, then North Dakota would not be required to specify the stability requirement for small and nonhazardous impoundments by requiring a 1.3 minimum static safety factor.

North Dakota's specified design criteria include: a minimum freeboard of 1 foot above the design flow depth of the emergency spillway, after allowance for settling; minimum top widths in feet of (H+35)/5 [H=height of embankment above the upstream toe]; maximum slopes of the upstream and downstream faces of 1v:2h, and maximum combined slopes of 1v:5h; foundation area may be no steeper than 1v:1h, with cutoff trenches if necessary; prohibition from including in the fill material any sod, large roots, frozen soil, or coal processing wastes; and placement and compaction of the fill material in horizontal lifts in the thicknesses required to facilitate compaction.

OSM has reviewed the design criteria specified in SCS Technical Guide 378–1 (SCS, Colorado; January 1989). As noted in the preamble to the Federal regulation (53 FR 43584, 43588 (October 27, 1988)), OSM considers these criteria adequate, in most cases, to indicate compliance with the 1.3 static safety factor, in lieu of engineering tests. SCS's criteria include: tables for minimum top widths [but embankment height is defined differently, making it difficult to compare directly to North Dakota's]; combined upstream and downstream embankment slopes of 1v:5h, with the maximum slope on the upstream side of 1v:2.5h; minimum elevation of settled embankment at 1' above the design flow depth of the emergency spillway; foundation surfaces must be no steeper than 1v:1h; a cutoff trench must be excavated at least 5' wide and 4' deep; excavation of fill material from the water basin is limited in some cases; and fill material must be relatively free of sod, roots, frozen soil, and stones larger than 6". Additionally, the following compaction criteria are specified: the fill must be constructed in continuous horizontal layers only thick enough to allow the required compaction; each layer shall be compacted by routing construction equipment, rollers (corrugated or sheep's-foot), or heavily loaded cultivators over the layer; a minimum of two longitudinal passes shall be made, with each pass consisting of at least one passage of wheel, track, or equipment surface (cultivator or roller) over the entire surface of the layer; and fill adjacent to pipe conduits, anti-seep collars, etc., shall be compacted by hand tamping or manually directed power tampers or plate vibrators.

Thus the North Dakota criteria contain most of the criteria specified by the SCS. There are, however, at least two notable exceptions. The slope on the upstream side of the embankment is allowed to be steeper in the North Dakota criteria; and North Dakota includes no compaction specifications. Additionally, while minimum top widths are difficult to compare, it appears as though SCS requires more top width than North Dakota for some of the higher embankments (e.g., for 20' height, the SCS requires 12' top width, while North Dakota would allow 11'). Also, the North Dakota criteria do not require cutoff trenches in all cases.

OSM's review indicates that the maximum embankment slope and the compaction specifications are two critical factors in achieving embankment stability; the other design criteria differences may also greatly affect embankment stability. For these reasons, the Director cannot find that North Dakota's existing design criteria are sufficient to ensure that embankments achieve stability comparable to a minimum 1.3 static safety factor.

Since the North Dakota program as proposed to be revised does not specify the stability requirement for small and nonhazardous impoundments by either requiring the achievement of a 1.3 minimum static safety factor or by including engineering design criteria adequate to ensure stability comparable to a 1.3 minimum static safety factor, the Director finds the North Dakota program to be less effective than the Federal regulations. The Director is requiring North Dakota to further revise its program to specify the stability requirements for small and nonhazardous impoundments in a manner no less effective than 30 CFR 780.25(c).

d. North Dakota has proposed to delete the requirement at NDAC 69–05.2–09–09(2)(h) that the submitted plan describe the maintenance and operation requirements for each structure. In the side-by-side portion of the submission, North Dakota indicates that it believes the requirement to be redundant.

The Federal regulations at 30 CFR 780.25(a)(2)(iii) and (3)(iii) require that the plans describe the operation and maintenance requirements for each impounding structure. OSM has reviewed the North Dakota program and has found no other provisions corresponding precisely to the requirements of the Federal regulations cited above.

However, the North Dakota program includes performance standards for the

maintenance and operation of impoundments (at, e.g., NDAC 69–05.2–16–09. –10, and –12). Also, an existing requirement at NDAC 69–05.2–09–09 (2) requires that the detailed design plans must meet "all applicable requirements"; this would include the operational and maintenance performance standards cited above. Thus, while not explicitly stated, the North Dakota rule as revised would implicitly require the submitted design plans to meet operation and maintenance requirements. Therefore, the Director finds that the proposed deletion would not render the North Dakota program any less effective than the Federal regulations, and is approving this proposed deletion.

12. Fish and Wildlife Protection and Enhancement Plan

At NDAC 69–05.2–09–17, North Dakota is proposing to delete existing subsections (1) and (2), and replace them with new language substantively the same as the Federal requirements at 30 CFR 780.16(b) and (c), with the following exception.

Proposed NDAC 69–05.2–09–17(1)(e) would require that the plan include monitoring of indicator species to assess the effects of the operation on fish and wildlife resources; the indicator species are to be selected in consultation with PSC and the State game and fish department. Existing subsection (2), proposed for deletion, imposes a similar requirement, but only if impacts are expected.

The Federal regulations at 30 CFR 780.16(b) do not require the monitoring of indicator species. However, the preamble to the Federal rulemaking of December 11, 1987 (52 FR 47352, 47356) indicates that biological monitoring is an additional possible protective measure, and might also be applied to determining whether enhancement has been achieved. The Director therefore finds that the proposed revision is no less effective than, and not inconsistent with, the Federal regulation requirements, and is approving the proposal.

13. Permit Approval/Denial: Review of Violations

At NDAC 69–05.2–10–03, North Dakota proposes to delete existing subsections (1) and (2), and replace them with new language (proposed subsections (1)–(5)) modelled largely after the Federal regulations at 30 CFR 773.15 (b) and (e) that provide for a review of violations and a final compliance review prior to permit issuance. The proposed requirements are substantively equivalent to the Federal regulation requirements, with the exceptions noted below. Except as noted below, the Director is approving the proposed revisions.

a. The Federal regulations at 30 CFR 773.15(b)(1) require that no permit be issued if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant (hereinafter, "any applicable operation") "is currently in violation of the Act [SMCRA] or any other law, rule or regulation referred to in this paragraph," as indicated by any available information, including the list of violation notices submitted in the application. Among the specified violations are:

> Federal and State failure-to-abate cessation orders, unabated Federal and State imminent harm cessation orders, delinquent civil penalties pursuant to section 518 of the Act [SMCRA], bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal and State laws, rules and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation * * *.

The preamble to the Federal regulation (53 FR 38886 (October 3, 1988)) clarifies that all unabated violations are included, no matter when they were issued:

> The Act requires regulatory authorities to consider past conduct in the permitting process * * * In view of [sections 507 (b)(4), (b)(5), and 510(c)] of the Act, it is clear that the Congress both contemplated and authorized holding applicants responsible for past violations.

Further, permit denial is based on violations of any State or Federal program under SMCRA, and for delinquent civil penalties issued under any State or Federal program. As explained in the preamble to 30 CFR 778.14(c) (48 FR 44344, 44389 (September 28, 1983)) and in the conditional approval of the North Dakota program (45 FR 82214, 82223 (December 15, 1980); Finding No. 3(d)(iii)), the reference to "the Act" in SMCRA Section 510(c), on which these Federal regulations are based, includes all State and Federal programs approved under SMCRA. See also 53 FR 38868, 38882–38883 (October 3, 1988).

North Dakota proposes at NDAC 69–05.2–10–03(1) to require that the PSC will not issue a permit if any applicable operation is "currently in violation of [NDCC] Chapter 38–14.1," or if any of several specified violations are outstanding. The specified violations include:

> (a) Delinquent civil penalties under [NDCC] section 38–14.1–32.
>
> (b) Bond forfeitures where violations upon which the forfeitures were based have not been corrected.
>
> (c) Delinquent abandoned mine reclamation fees.
>
> (d) Unabated violations of federal and state laws, rules and regulations pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation.
>
> (e) Unresolved federal and state imminent harm and failure-to-abate cessation orders.
>
> (f) Unresolved imminent harm cessation orders.

Like the Federal regulations, the proposed North Dakota rule would encompass any surface coal mining and reclamation operation owned or controlled by either the applicant or anyone who owns or controls the applicant. However, the proposed North Dakota rule would limit the requirement that the regulatory authority deny permit applications to situations where any applicable surface coal mining and reclamation operation was in violation of the North Dakota surface mining program; violations of North Dakota's coal exploration program (governed by NDCC Chapter 38–12.1), violations of North Dakota's Surface Owner Protection Act (governed by NDCC Chapter 38–18), and violations of Federal programs and other State programs under SMCRA would not be included. As discussed in Finding No. 6a, the reference in the Federal regulation to "the Act" (SMCRA) encompasses all State and Federal programs approved under SMCRA. Therefore, pursuant to the Federal regulations, a permit application must be denied if any applicable operation is currently in violation of SMCRA, its implementing regulations, or any Federal or State program approved pursuant to SMCRA. Similarly, as to civil penalties, the North Dakota proposed rule explicitly requires denial of a permit application only where any applicable surface coal mining and reclamation operation has delinquent civil penalties under the North Dakota program. However, the Federal regulations require permit denial whenever an applicable operation has outstanding civil penalties under SMCRA, its implementing regulations, or any Federal or State program approved under SMCRA.

In the course of reviewing the proposal, OSM also noted an additional apparent deficiency in the North Dakota program. The existing North Dakota

statutory provision governing permit denial due to current violations, NDCC 38–14.1–21(5), requires permit denial when operations owned or controlled by the applicant are

> currently in violation of this chapter [i.e., NDCC Chapter 38–14.1], the Surface Mining Control and Reclamation Act of 1977, or any law or rule of the United States or the state of North Dakota, or any department or agency in the United States or the state of North Dakota pertaining to air or water environmental protection, incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application * * *

As noted in the review of a previous program amendment (51 FR 5709 (February 18, 1986)), this provision limits the denial to unabated violations received within the three-year period prior to the application. So, while this statutory provisions would extend permit denial to all violations under SMCRA, which would include violations and delinquent civil penalties under all State and Federal programs, it contains a temporal limitation not present in either the Act or the Federal regulation requirements. The Director will separately undertake to notify North Dakota, in accordance with 30 CFR Part 732, of this apparent deficiency in the North Dakota program.

For the above reasons, the Director finds the proposed revision (NDAC 69–05.2–10–03(1)) to be less effective than the Federal regulations. The Director is approving the proposal, but is requiring North Dakota to further amend its program as follows. The Director is requiring North Dakota to revise its rules at NDAC 69–05.2–10–03(1) to require permit denial when any applicable operation is in violation of, or delinquent in paying civil penalties under, the North Dakota coal exploration program, the North Dakota Surface Owner Protection Act, or any Federal program or State program under SMCRA, regardless of when the violation was issued or the delinquency began, in a manner no less effective than the Federal regulation requirements at 30 CFR 773.15(b)(1).

b. At NDAC 69–05.2–10–03(2)(b), North Dakota proposes that a permit may be conditionally issued, when a current violation by any applicable person exists, if the applicant establishes that the applicable person has filed and is in good faith pursuing an administrative or judicial appeal of the validity of the violation. The proposal would require that operations conducted under a permit issued under this provision must immediately cease, until proof is provided that the violation is being abated, if the appeal authority affirms the violation or if "a stay applied for in the appeal" is denied. The North Dakota program does not elsewhere refer to "stays"; presumably, temporary relief under NDCC 38–14.1–30(4) is intended.

The Federal regulations at 30 CFR 773.15(b)(1)(ii) similarly allow for a permit to be issued when an appeal of the violation is being pursued. The regulation provides that if the initial appeal affirms the violation, the applicant must within 30 days provide evidence that the violation is being abated.

Regarding the time period during which a conditional permit may be exercised following an administrative or judicial affirmation of a violation, the North Dakota proposal would require immediate cessation of mining, until proof is provided, while the Federal regulation allows the applicant 30 days to provide the proof. The Federal regulations at 30 CFR 732.11(b) provide that any State regulations providing for more stringent regulation of surface coal mining operations shall not be construed to be inconsistent with the Federal regulations.

Regarding the application of this provision to denials of temporary relief, OSM notes that the Federal regulations at one time contained an equivalent provision; that provision was removed in an October 3, 1988, rulemaking (53 FR 38868, 38890). The preamble to that rulemaking explained that two considerations justified deletion of the provision: denial of a stay does not terminate a good-faith pursuit of an appeal, and the provision might discourage requests for temporary relief (53 FR 38868, 38887).

However, the preamble did not state that these considerations required removal of the provision; further, it noted that a State program need not even allow for any conditional permit issuance pending appeal of a violation: "[a] State program without a provision for conditional permit approval would be more stringent and no less effective than [30 CFR] 773.15(b)(2)" (53 FR 38868, 38888). Therefore, North Dakota's proposal to require cessation of mining (under a conditionally-issued permit) upon denial of a stay constitutes a more stringent, and no less effective, regulation of surface coal mining reclamation operations than does 30 CFR 773.15(b)(2). Under 30 CFR 732.11(b), this shall not be construed as being inconsistent with the Federal regulations.

For the reasons above, the Director finds that North Dakota's proposal is no less effective than, and not inconsistent with, the Federal regulations; he is therefore approving the proposed provisions at NDAC 69–05.2–10–03(2)(b).

c. The Federal regulations at 30 CFR 773.15(b)(3) require permit denial when the regulatory authority finds patterns of willful violations of SMCRA (thus including violations of all State and Federal programs under SMCRA) by the applicant, the operator, or any person owning or controlling the applicant.

At proposed NDAC 69–05.2–10–03(4), North Dakota proposes a requirement that PSC not issue a permit if it finds that the applicant, anyone who owns or controls the applicant, or the operator, have controlled surface coal mining operations with a pattern or willful violations of NDCC Chapter 38–14.1 of such an extent as to indicate an intent not to comply with that NDCC Chapter. Thus the proposal would not include for consideration of patterns any violations of the North Dakota coal exploration program (governed by NDCC Chapter 38–12.1), the Surface Owner Protection Act (governed by NDCC Chapter 38–18), or violations of Federal or other State programs under SMCRA.

The existing statutory requirement at NDCC 38–14.1–33(3) requires that no permit be issued if PSC finds a pattern or willful violations of SMCRA, and would thus include violations of all of the North Dakota program and violations of all State and Federal programs under SMCRA. However, this statutory requirement is limited to violations on surface mining operations controlled by the applicant or the operator; it does not include violations on operations owned or controlled by persons owning or controlling the applicant.

In summary, the proposed rule at NDAC 69–05.2–10–03(4) interprets the statutory provision at NDCC 38–14.1–33(3) to apply to operations controlled by persons owning or controlling the applicant or operator; this breadth of application is no less effective than the Federal regulation at 30 CFR 773.15(b)(3). However, the proposed rule interprets the statutory provision to apply only to violations under NDCC Chapter 38–14.1; this is less extensive than the Federal regulation, which requires for consideration (for patterns) violations of any State or Federal program under SMCRA.

Therefore, the Director finds the proposed rule at NDAC 69–05.2–10–03(4) to be less effective than the Federal regulation at 30 CFR 773.15(b)(3). The Director is approving the proposal, but is requiring North Dakota to further amend the rule to include, in considering patterns of violations prior to permit

issuance, violations of all State and Federal programs under SMCRA.

d. Existing subsection (3) OF NDAC 69–05.2–10–03 is proposed to be recodified as subsection (6) due to the addition of the proposed new language in proposed subsections (1)–(5). However, existing subsection (3) is cited in a cross-reference at NDAC 69–05.2–11–02(5)(d). The Director is approving the recodification of existing subsection (3) of NDAC 69–05.2–10–03 to subsection (6). However, he is requiring that North Dakota further amend its program to correct the cross-reference at NDAC 69–05.2–11–02(5)(d).

14. Bond Documents

Existing NDAC 69–05.2–12–01(10) specifies requirements for the signing of bond documents. North Dakota proposes to delete a provision requiring that any person signing a bond document who holds more than one position must also indicate the capacity in which that person is signing.

The Federal regulations at 30 CFR 800.4(a) allow for the regulatory authority to prescribe forms for bonds. In conducting oversight of state programs, OSM reviews the effectiveness of bonding documents to achieve their purpose. The Director finds that the proposed revision will assist in the administration of the North Dakota program and is not inconsistent with the Federal requirements, and is therefore approving the proposed revision.

15. Bond Release Applications

North Dakota proposes to revise NDAC 69–05.2–12–12(3) by adding the additional requirement that the public advertisement for application for bond release also include the name of the permittee. The same requirement is specified in the Federal regulations at 30 CFR 800.40(a)(2); therefore, the Director is approving the proposed revision.

In the course of reviewing the proposal, OSM also noted an additional requirement present in the Federal regulation at 30 CFR 800.40(a)(2) which is apparently not represented in the North Dakota program. This is the requirement that the public notice include the name and address of the regulatory authority to which the public may submit comments, objections, and requests for hearings or informal conferences. The Director will separately undertake to notify North Dakota, in accordance with 30 CFR Part 732, of this apparent deficiency in the North Dakota program.

16. Bond Forfeiture: Amount To Be Forfeited

North Dakota proposes to revise NDAC 69–05.2–12–18 to require that when PSC requires bond forfeiture, the total amount of all bonds "for the bonded area" for which liability is outstanding must be forfeited. If more than one bond has liability "for a bonded area," refunding of any proceeds remaining after reclamation will be proportional to the amounts forfeited.

North Dakota has defined neither "the bonded area" nor "a bonded area," rendering the effect of the proposal unclear. If "the bonded area" represented the whole area of an operation covered by bond or bonds, and "a bonded area" represented the area covered by a given bond, then the proposal would have required all bonds covering an operation to be forfeited; this would create questions regarding the liability of incrementally-filed bonds being extended to the entire operation.

However, in a telephone conversation dated September 6, 1991 (Administrative Record No. ND–L–24), North Dakota clarified that it intends both terms to refer to the area forfeited: all bonds with liability for a defined geographic section of an operation must be forfeited if the PSC orders bond forfeiture for that area; any proceeds remaining after reclamation of that geographic area are to be refunded among the bond holders in proportion to the amounts forfeited. For example, if both a surety bond and a collateral bond (e.g., a certificate of deposit) have been posted with liability for the forfeited area, then both must be forfeited, rather than only one or the other.

The Federal regulations at 30 CFR 800.50(a) and (c) allow the regulatory authority to forfeit any or all bonds posted to complete reclamation work for which the bonds were posted. At 30 CFR 800.50(d)(2), the Federal regulations require any forfeited funds in excess of the amount required to complete the reclamation to be refunded. The Director finds that North Dakota's proposal to forfeit all bonds with liability for the forfeited area is consistent with the Federal regulation; also, the proposal to refund excess monies in proportion to the amount forfeited is not inconsistent with the Federal regulation and represents an equitable approach for the regulatory authority to fulfill this duty. Therefore, the Director is approving the proposed revision.

17. Protection of Threatened and Endangered Species

a. At NDAC 69–05.2–13–08(2), North Dakota proposes to add a provision for the protection of threatened and endangered species that duplicates the Federal requirement at 30 CFR 816.97(b), with one minor exception. The Federal regulation requires the regulatory authority, when notified of the existence of a listed species, to consult with appropriate State and Federal fish and wildlife agencies, then identify whether and under what conditions the operation may continue. The North Dakota proposal would add to this the requirement that PSC also consult with the operator before making this determination.

Consultation with the operator in this instance would assist PSC in identifying possible revisions to the operation and reclamation plan, alternative locations of facilities, or changes in the permit boundary, that would prevent adverse effects on the listed species or critical habitat. Under the proposal, the operator would not be making the decision as to whether to continue the operation, but would only be providing additional possibilities for PSC to consider. If the operation would be allowed to continue, a permit revision would be required, and PSC would retain the responsibility, under NDAC 69–05.2–10–03(3)(d) [proposed to be recodified as NDAC 69–05.2–10–03(6)(d)] and 69–05.2–11–02(5)(d), to make a written finding that the revised operation, if allowed to continue, would not affect the species or its habitat. If PSC cannot make this finding, then the operation would be required to cease. Additionally, as noted in the preamble to the Federal regulation regarding written findings (30 CFR 773.15(c); 48 FR 44344, 44369 (September 28, 1983)), requiring the regulatory authority to make this finding does not relieve the operator of responsibility, under both SMCRA and the Endangered Species Act, not to adversely affect listed species or their habitats. For these reasons, the Director finds that the proposed revision is no less effective than the Federal regulation requirements, and is approving the proposal.

b. At NDAC 69–05.2–13–08(3), North Dakota proposes to delete certain notification and consultation requirements regarding threatened or endangered plants or animals. These notification and consultation provisions are proposed to be moved to subsection (2) of the rule (see Finding No. 3c above). Thus, as revised, subsection (3) of NDAC 69–05.2–13–08 would apply only to bald and golden eagles, and their nests and eggs. The permittee would be required to notify PSC when becoming aware of the presence of bald or golden

eagles, nests, or eggs; PSC would then be required to consult with the appropriate F&W agencies in accordance with subsection (2) of the rule.

The Federal regulations at 30 CFR 816.97(c) require a substantively idenitical notification and consultation process. In addition, the Federal regulations require that "no surface mining activity shall be conducted in a manner that would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs." At 30 CFR 816.97(d), the Federal regulations further provide that "[n]othing in this chapter shall authorize the taking of * * * a bald or golden eagle, its nest, or any of its eggs in violation of the * * * Bald Eagle Protection Act, as amended, 16 U.S.C. 668 *et seq.*" The Bald Eagle Protection Act also protects golden eagles.

The North Dakota proposal does not similarly forbid mining operations from resulting in unlawful takings, or specify that the North Dakota program does not authorize takings in violation of the Bald Eagle Protection Act. By including protection under the Endangered Species Act (ESA) in subsection (2) of the rule, the proposal would effectively protect bald eagles to the extent required by the Federal regulations at 30 CFR 816.97(c) and (d), since bald eagles are currently listed as threatened or endangered under ESA. However, *golden* eagles are not at this time listed under ESA; therefore, the North Dakota proposal does not afford golden eagles the protection required by 30 CFR 816.97(c) or (d). Additionally, the North Dakota proposal would no longer afford bald eagles the required protection if they were removed from listing under the Endangered Species Act. For this reason, the Director finds the North Dakota proposal to be less effective than the Federal regulations. The Director is approving the proposal, but is requiring North Dakota to further amend its program to include protections for bald and golden eagles no less effective then those specified in the Federal regulations at 30 CFR 816.97(c) and (d).

18. Correction/Compensation of Subsidence Damage

At NDAC 69-05.2-13-12(4), North Dakota proposes to delete the limitation "to the extent required under state law" from the requirement for correction of or compensation for subsidence damages caused by auger mining.

As a result of a February 12, 1990, decision by the United States District Court for the District of Columbia in the case of *National Wildlife Federation* v. *Lujan*, 733 F. Supp. 419 (D.D.C. 1990), the Director had notified North Dakota, by letter dated June 22, 1990 (Administrative Record ND-L-06), in accordance with 30 CFR part 732, of a need to amend its program to remove the limitation of required correction/compensation to the extent required by state law. Subsequently, on April 2, 1991 (Administrative Record No. ND-L-21), the Director notified North Dakota that due to a ruling on appeal by the United States Court of Appeals for the District of Columbia Circuit (*NWF* v. *Lujan*, 928 F.2d 453 (D.C. Cir. 1991) that overturned the district court ruling, the North Dakota program would not need to be amended in this respect. However, North Dakota, by letter dated April 18, 1991 (Administrative Record No. ND-L-20), stated that it wished the proposed deletions to remain as part of this proposed amendment.

The Director finds that removing the limitation of required correction/compensation to the extent required by state law is not inconsistent with the Federal regulations; further, it may result in potential increased protection of property and land productivity, and would thus render the North Dakota program more stringent than the Federal regulations. The Director therefore approves the proposed deletion.

19. Suitable Plant Growth Material: Required Depth Based on Spoil Characteristics; Time Extension

On October 21, 1986 (51 FR 37273, Finding No. 8), the Director approved an addition to the North Dakota program at NDAC 69-05.2-15-04(4)(a)(2) that allows an alternative method for determining the depth of suitable plant growth material (hereinafter, "resoiling material") required to be restored. Under the approved alternative method, the required depth is determined by the physical and chemical characteristics of the spoil. As originally approved, the rule allows use of this alternative only through 1991, to allow North Dakota to evaluate the effectiveness of the alternative before allowing it on a permanent basis. North Dakota now proposes to extend authorization for the alternative through 1996, to allow for additional data collection and analysis for evaluating the alternative.

On July 29, 1990 (Administrative Record No. ND-L-23), North Dakota provided the following information regarding the implementation of this alternative. Although the alternative was promulgated on January 1, 1987, no permits incorporated the alternative for almost a year after that date; hence, the oldest permit areas incorporating the alternative were resoiled less than four years ago. About 2500 acres have been resoiled pursuant to the alternative; on about one-third of these acres, the required depth under the alternative is the maximum 48 inches, which is about the same depth as would be required under the standard resoiling requirements. Further, two of the years since the alternative was incorporated have been drought years; hence, movement of toxic materials from spoils into the resoiling material would be less than normal, and any adverse effects that might result would not yet be evident. Also, areas to be reclaimed to cropland under the alternative have so far mostly been revegetated to a precrop mixture of grasses and legumes; hence, actual crops have not yet been exposed to the alternative, so any possible adverse effects of the alternative on crops would not yet be evident. For all of these reasons, North Dakota has not yet been able to obtain sufficient information on the success or possible adverse effects of the alternative depths; therefore, North Dakota wishes to keep the alternative in effect until the areas employing the alternative are well into the revegetation responsibility period.

OSM has reviewed North Dakota's reasons for proposing to extend the effective date of the alternative and agrees that insufficient information has been obtained to date to fully evaluate the effectiveness of this alternative. However, OSM notes that a primary factor limiting the amount of information obtained is the amount of time elapsed, not the number of acres involved; even were the authorization period not to be extended, North Dakota could, over the next five years, obtain data on the areas already resoiled under the alternative (i.e., on a minimum of 1600 acres). Further, any adverse effects might not evidence themselves until late into the responsibility period. In that scenario, third stage bond [equivalent to the Federal Phase II] would probably have been released on the areas, leaving only sufficient bond to reestablish revegetation (NDCC 38-14.1-17(7)(C)). If the lesser depths of resoiling should result in failure of revegetation due to migration of salts or other effects on vegetation, that amount of bond might not be sufficient to both add more resoiling material or treat toxic spoils and reestablish revegetation.

On the other hand, OSM notes that the technical information submitted when the alternative was first approved indicates that adverse effects on vegetation are unlikely. Further, permittees employing the alternative are still responsible for meeting revegetation success standards at the end of the responsibility period. Also, the areas

approved to employ the alternative to date may not represent all combinations of soil mapping units and overburden types in the North Dakota coal region; information on these additional combinations, if any, would be an important factor in evaluating the alternative.

For the above reasons, the Director finds that extending the authorization period would be of value in evaluating the alternative. The Director is therefore approving the proposed extension of the authorization.

20. Impoundments and Diversions: Compliance With Other State Laws

North Dakota proposes to add the requirements of water resource districts to the other State requirements cited in NDAC 69–05.2–16–03. The rule requires that all water impounding or diverting structures meet the cited State requirements and that the necessary State permits be obtained before conducting surface mining operations under a permit issued by PSC. Similarly, North Dakota proposes to add the requirements of "The North Dakota Dam Design Handbook" to other requirements placed on permanent impoundments at NDAC 69–05.2–16–12(1).

There are no direct corresponding provisions in the Federal regulations at 30 CFR chapter VII. However, Federal regulations at 30 CFR 732.15 require State programs to implement permitting systems that include the coordination of review and permit issuance with other regulatory authorities. North Dakota's proposed changes do not eliminate any requirements for impoundments and diversions identified under the Federal regulations; they would instead provide additional requirements, and ensure effective coordination of application review and permit issuance with other State regulatory requirements. Therefore, the Director finds that the proposals are not inconsistent with the Federal program, and is approving the additional requirements.

21. Impoundment Inspection: Frequency

At NDAC 69–05.2–16–09(20), North Dakota proposes revisions to require that impoundments meeting the criteria of 30 CFR 77.216, or located where failure would be expected to cause loss of life or serious property damage (hereinafter, "in hazardous locations"), be inspected in accordance with 30 CFR 77.216–3. Other impoundments would be required to be inspected semiannually, specified as once in addition to the annual inspection required under subsection (18). These inspections are to include observations of erosion, structural weakness, and other hazardous conditions.

The North Dakota program has included a provision (at NDAC 69.05–2–16–09(20)) allowing impoundments not meeting the criteria of 30 CFR 77.216(a) to be inspected only semi-annually since the program was approved by the Secretary on December 15, 1980. However, the Director subsequently informed North Dakota in accordance with 30 CFR Part 732 (by letter dated November 17, 1989), that this provision is less effective than the Federal regulations.

The Federal regulations at 30 CFR 816.49(a)(11) similarly require impoundments meeting the criteria of 30 CFR 77.216 to be inspected in accordance with 77.216–3. However, they require impoundments not meeting the criteria of 30 CFR 77.216 to be inspected at least quarterly. The preamble to the Federal rule indicates that inspections were initially proposed to be required at 30-day intervals. This was revised in the final rule to quarterly, in order to minimize the burden on operators; however, the preamble concluded that these impoundments "must be examined at least quarterly" [48 FR 43994, 44000; September 26, 1983]. The North Dakota rule requires only two inspections per year for these impoundments.

By letter dated January 9, 1990 (Administrative Record No. ND–J–2), North Dakota presented arguments that, in the semiarid climate of North Dakota, semiannual inspections are adequate to identify any problems with embankments or other structures. North Dakota indicated that most impoundments are frozen for 4 to 5 months, and that it is customary practice in North Dakota for impoundments to be inspected in the spring after snowmelt runoff, and in autumn before they are subjected to freezing.

The Federal regulations cited above are designed to minimize the hazards of impoundments to the environment and the public by early identification of hazardous conditions of impoundment embankments, allowing repairs to be made before failure occurs. OSM has further indicated that this requirement is directed toward the structural integrity of the embankment, and has allowed total exemption from the quarterly inspection requirement for water impoundments created by excavation (i.e., "incised impoundments," those that have no embankment or "dam" to fail); see OSM policy Directive TSR–2 [dated September 14, 1987]. Thus OSM has allowed exemption from quarterly inspections for impoundments which present no hazard through structural failure of an embankment.

North Dakota is not proposing a complete exemption, but rather a decrease in frequency of inspection. OSM agrees that North Dakota's proposed semiannual inspections, when applied to incised impoundments, would be no less effective than the complete exemption of inspection for incised impoundments allowed by OSM's policy.

When applied to impoundments with embankments, OSM does not agree that an impoundment being frozen over necessarily eliminates any possibility of failure. On the contrary, the freezing of saturated fill materials can be a cause of failure, particularly if repeated freeze-thaw cycles occur. For this reason, OSM believes that most impoundments should be inspected during the winter months, particularly prior to receiving snowmelt runoff in the spring (as opposed to North Dakota's proposed inspection after the snowmelt).

Another possible argument for exempting inspections of impoundments during the winter is that snow cover might obscure the embankments and prevent observations necessary to determine structural stability. While this may frequently occur, it would not be universally true; many embankments would be observable at some point during the winter. Additionally, some important indications of instability (such as major slips on the outslope of an embankment) may well be observable even under snow cover. In the absence of further data, OSM believes that the value of such observations as are possible would outweigh the burden on the operator, particularly since personnel would occasionally be on site for other purposes (e.g., water monitoring).

OSM is also not convinced that inspection frequency may be reduced during the summer months, even in a semiarid climate. Heavy thunderstorms can produce high peak runoffs, which both (1) increase the potential for erosion damage to embankments and (2) lead to high inflows into impoundments. Both situations can threaten impoundment embankments.

For the reasons discussed above, the Director finds that North Dakota's proposed semiannual inspections are no less effective than the Federal regulations, when applied to incised impoundments not meeting the criteria of 30 CFR 77.216 and not in hazardous locations, and is approving the proposal insofar as it applies to those impoundments.

However, the Director finds the proposed semiannual inspections to be less effective than the Federal regulations when applied to impoundments that are not incised, and is not approving the proposal insofar as it applies to those impoundments. The Director is requiring that North Dakota further amend its program to require quarterly inspections of non-incised impoundments which do not meet the criteria of 30 CFR 77.216 and are not in hazardous locations.

22. Ground Water Monitoring

At NDAC 69-05.2-16-14(3), North Dakota proposes to add to the monitoring requirements: (1) That the operator review ground water monitoring data annually, or more frequently if so required by PSC; and (2) any changes in aquifers are to be described and interpreted in the quarterly monitoring reports as to significance and possible effect on "water supplies." These requirements would be in addition to the existing requirements that monitoring data be submitted at least quarterly, include analytical results, and that if any analysis indicates noncompliance with permit conditions, that PSC be notified and remedial measures be undertaken.

The Federal regulations at 30 CFR 816.41(c) require ground water monitoring data to be submitted quarterly and monitoring to be conducted in accordance with the plan approved under 30 CFR 780.21(i). That regulation, in turn, requires the monitoring plan to describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

Thus the North Dakota proposal adds an additional yearly data review to the quarterly reports required by the Federal rule. The Director finds that this requirement is not inconsistent with the Federal requirement, and will assist North Dakota in its enforcement and permitting tasks. The Federal regulation requires monitoring data be used to determine effects on the "hydrologic balance"; North Dakota's proposal would require that the quarterly reports describe changes in monitored aquifers in terms of their effects on "water supplies." However, as noted above, the existing rule requires monitoring data to also be reviewed to see if it indicates noncompliance with permit conditions. Permit conditions would include the requirements of NDCC 38-14.1-24(8), which requires minimizing disturbances to the prevailing hydrologic balance and to the quality and quantity of water in ground water systems. Therefore, the proposal is no less effective than the Federal regulation.

For the reasons given above, the Director is approving the proposal.

23. Stream Buffer Zones

North Dakota proposes to revise the requirements concerning stream buffer zones at NDAC 69-05.2-16-20. The proposed revisions are substantively the same as the Federal regulation at 30 CFR 816.57(a), except that North Dakota proposes to retain the requirement that PSC consult with the State Engineer and the State Department of Health and Consolidated Laboratories (the State regulatory authority under the Clean Water Act) prior to making a finding allowing mining within a buffer zone. OSM notes that coordination with other agencies is in any case required under NDAC 69-05.2-10-01(5), which is substantively equivalent to 30 CFR 773.13(a)(3)(i).

The Director finds that the proposed revisions are no less effective than the Federal rule requirements, and will assist in the administration of the North Dakota program, and is therefore approving the proposed revisions. The Director notes that the proposal adds the requirement that PSC find, prior to allowing mining operations within a buffer zone, that the activities will not cause or contribute to a violation of applicable State and Federal water quality standards. The approval of this proposal will satisfy the required program amendment at 30 CFR 934.16(j), imposed as a result of a rulemaking action of January 19, 1990 (55 FR 1813, 1819); therefore this amendment requirement will be removed.

24. Night Time Blasting

North Dakota proposes to revise NDAC 69-05.2-17-05(1) by adding new language at subsection (1) and deleting previously approved language at subsections (1)(a) and (1)(b).

The proposed deletion of subsections (1)(a) and (1)(b) would remove some specific factors PSC is required to use in approving night time blasting. The Federal requirements at 30 CFR 816.64(a)(2) specify only one requirement for regulatory approval of night time blasting: a showing that the public will be protected from adverse noise and other impacts. North Dakota has added at subsection (1) a substantively equivalent requirement. Thus the proposed amendment does not render the North Dakota program any less effective than the Federal regulation. Therefore the Director is approving the revisions.

25. Waste Banks/Impoundments: Drawdown After Design Storm

North Dakota proposes to revise a requirement, at NDAC 69-05.2-20-03(3), for dams and embankments constructed of or intended to impound coal processing waste. The existing provision requires that the structures be designed so that at least 90 percent of the water stored during the design event will be removed within a ten-day period. The proposed revision would change this to a performance standard, so that for these structures, 90 percent of the stored water must be removed within the ten-day period.

The Federal regulations at 30 CFR 816.84(e) require that these structures be designed so that the 90 percent can be removed within 10 days. At subsection (f), the regulation additionally requires that the 90 percent must actually be removed within the 10 days. In other words, the Federal regulations include both a design standard and a performance standard. The preamble to the Federal regulation states explicitly that these two paragraphs (i.e., 30 CFR 816.84(e) and (f)) serve two distinct functions (53 FR 43584, 43603 (October 27, 1988)).

The existing North Dakota requirement has the design standard but not the performance standard. The proposed revision would reverse this, so that North Dakota's requirement would have the performance standard but not the design standard.

The Director is approving the proposed revision, but is requiring North Dakota to further amend its rule to include a design standard no less effective than the Federal regulation at 30 CFR 816.84(e).

26. Revegetation Success Standards

The North Dakota program includes both rules specifying general requirements for determining revegetation success, at NDAC 69-05.2-22-07, and a revegetation policy document specifying detailed standards, titled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" (dated June 1988) (hereinafter, "Revegetation Guidelines"). North Dakota proposes to revise NDAC 69-05.2-22-07(4) as described below.

a. At subsection (4)(e) of NDAC 69-05.2-22-07, regarding woodlands and woodland-type fish and wildlife habitat, North Dakota proposes to change the period for which at least 80 percent of the counted stems must be in place from "eight growing seasons" to "six years."

At subsection (4)(f), regarding shelterbelts, North Dakota is proposing revisions to add health and time-in-place requirements for the stems to be counted toward revegetation success. The proposed changes are substantively the same as the Federal requirements at 30 CFR 816.116(b)(3)(ii). Therefore, the Director is approving the proposed revisions. However, as noted in previous rulemakings on March 10, 1989 (54 FR 10141, 10145) and January 19, 1990 (55 FR 1813, 1817), North Dakota's Revegetation Guidelines have not been revised and are less effective than the Federal regulations.

The Director notes that the proposed changes satisfy, in part, required program amendments at 30 CFR 934.16(b) and (f) that resulted from a March 10, 1989 (54 FR 10141, 10145) rulemaking action. Therefore, the Director is modifying the requirements at 30 CFR 934.16(b) and (f) to remove the references to the North Dakota rules.

b. At subsection (4)(e) of NDAC 69–05.2–22–07, North Dakota proposes to change the period for which revegetation success standards must be met from the last year of the responsibility period to the last two years of the responsibility period; this subsection applies to woodlands and woodland-type fish and wildlife habitat. At subsection (4)(f), North Dakota is proposing the same requirement for shelterbelts, and at subsections (4)(g) and (4)(h), for the remaining fish and wildlife habitat types. The proposed changes are substantively the same as the Federal requirements at 30 CFR 816.116(c)(3). Therefore, the Director is approving the proposed revisions. However, as noted in previous rulemakings on March 10, 1989 (54 FR 10141, 10145) and January 19, 1990 (55 FR 1813, 1817), North Dakota's Revegetation Guidelines have not been revised and are less effective than the Federal regulations.

The Director notes that the proposed changes satisfy, in part, the required program amendment at 30 CFR 934.16(e) that resulted from a March 10, 1989 (54 FR 10141, 10145) rulemaking action. Therefore, the Director is modifying the requirement at 30 CFR 934.16(e) to remove the references to the North Dakota rules.

c. At subsection (4)(i) of NDAC 69–05.2–22–07, North Dakota is proposing to revise the success standards for previously mined areas by deleting the phrase "that were not reclaimed to the requirements of this chapter," and by adding the requirement that "any reclamation requirements in effect when the areas were mined must be met." Thus the proposed rule would read:

"For previously mined areas, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover * * * must not be less than can be supported by the best available * * * material, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion * * *."

The North Dakota program has no separate definition of "previously mined area" that limits the term to apply only to those lands mined prior to SMCRA. Thus the rule, as proposed, would require that for areas redisturbed by surface coal mining operations, even if the original mining and reclamation was conducted under SMCRA, the revegetation standards in effect at the time of that original mining must be met, plus the standards in the existing rule for ground cover and erosion control.

The Federal regulations at 30 CFR 816.116(b)(5) require that, for "areas previously disturbed by mining and not reclaimed to the requirements of [the permanent program performance standards at 30 CFR subchapter K]", the ground cover must be at least as great as that which existed prior to redisturbance and must also be adequate to control erosion.

Regarding the proposed addition, North Dakota regulated surface coal mining and reclamation operations, to some extent, as early as 1969. Areas mined between that date and the date of SMCRA were required to meet some reclamation requirements, including some revegetation requirements. Therefore, the proposal to add the pre-SMCRA North Dakota reclamation requirements when the areas are redisturbed would impose additional revegetation requirements to the ground-cover requirement present in the Federal regulation; these additional requirements in some cases include productivity standards or tree planting requirements. When applied to sites mined prior to SMCRA, then, this proposed addition would impose additional requirements beyond those in the Federal regulation at 30 CFR 816.116(b)(5).

However, North Dakota's proposed deletion, by removing the phrase limiting this subsection to sites not reclaimed to the requirements of the North Dakota program under SMCRA, would apply this subsection to sites mined and reclaimed under SMCRA. Thus the proposal would limit reclamation requirements for those sites, when mined and reclaimed for a second time under SMCRA, to the requirements in effect when the initial post-SMCRA reclamation occurred. For example, this proposal would allow a site mined and reclaimed under the North Dakota program in 1983, then remined in 1998, to meet the revegetation success standards of 1983. If the revegetation success standards are made more stringent in the interim, this proposal would allow the more stringent standards to be bypassed, since reclamation would be conducted according to the less stringent 1983 standards.

In contrast, the Federal revegetation success standards at 30 CFR 816.116(b) require sites mined for a second time under SMCRA to be reclaimed to the full standards of pastureland, cropland, etc., that would be in effect at the time of the second operation. The Federal regulations allow a waiver of full contemporary reclamation standards only if the area was previously mined and *not* reclaimed to SMCRA requirements. Thus the proposed deletion would render the North Dakota program less effective than the Federal regulations.

Therefore the Director finds that the proposed addition of new language at subsection (4)(i) of NDAC 69–05.2–22–07, if limited to sites not reclaimed to the requirements of SMCRA, would provide for additional reclamation requirements beyond those required in the Federal regulations. The Federal regulations at 30 CFR 730.11(b) provide that State regulations which provide for more stringent environmental controls are not inconsistent with the Federal requirements. Therefore the Director is approving this proposed addition.

However, for the reasons stated above, the Director finds that the proposed deletion of the phrase "that were not reclaimed to the requirements of this chapter" would render the North Dakota program less effective than the Federal requirements; he is therefore not approving the proposed deletion.

27. Roads

North Dakota proposes a major revision of NDAC Chapter 69–05.2–24–01 through –06. The proposal would delete the entire text of those sections, and add new text at sections –01 and –03 (sections –02, –04, –05, and –06 would be repealed). In general, this propsoed revision parallels OSM's revision of road performance standards at 30 CFR 816.150 and 816.151 (48 FR 22110, 22122–22124 (May 16, 1983); and 53 FR 45190, 45210–45214 (November 8, 1988)). With the following exception, the proposed revisions are substantively the same as the Federal regulations, and are addressed in Finding No. 1.

At 69–05.2–24–01(3), North Dakota proposes road design requirements that are substantively the same as the

Federal requirements at 30 CFR 816.150(c), except that the proposal omits the Federal introductory phrase "to ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, * * *". However, the proposal requires (as does the Federal regulation) that road designs be in accordance with current, prudent, engineering practices and any design criteria established by the regulatory authority. The planned duration and use of the road and the equipment that will be using the road are factors that must be taken into account in any road design reflecting prudent engineering practices. Additionally, PSC would be given the authority to require additional design standards, if needed, on a case-by-case basis. Therefore, North Dakota's proposal meets the intent of and is no less effective than the Federal requirement, and the Director is approving the proposed revision.

28. Prime Farmland Productivity Restoration

At NDAC 69–05.2–28–05(3), North Dakota proposes to add requirements concerning the restoration of the productivity of prime farmlands.

a. North Dakota proposes, at subsection (3)(b) of NDAC 69–05.2–28–05(3), provisions regarding measurement of productivity that are the same as the Federal requirements at 823.15(b)(2), except that the proposal does not include the Federal requirements that the sampling technique employ a 90 percent or greater statistical confidence level and that the sampling methodology be approved in consultation with the U.S. Soil Conservation Service (SCS). However, the requirement for statistical confidence is present in North Dakota's general rule on revegetation success, NDAC 69–05.2–22–07(3)(c), which does require that a 90 percent statistical confidence level be employed for prime farmland. Therefore, the North Dakota program as proposed is no less effective than the Federal regulations in this regard.

Regarding the requirement for sampling methodology, North Dakota's approved methodologies for measuring productivity are contained in the Revegetation Guidelines. However, North Dakota has provided no documentation that these methodologies were approved in consultation with the SCS. Without SCS consultation on the measurement methodologies, the proposal is less effective than the Federal requirements. The Director is approving the proposal, but is requiring that North Dakota further amend its Revegetation Guidelines to provide documentation of SCS consultation on the approved methods for measuring productivity on prime farmlands.

b. At NDAC 69–05.2–28–05(3)(g), North Dakota proposes a provision stating that crop yield standards for nomined prime farmland must be determined by the methods in the Revegetation Guidelines, or by other methods approved by PSC and OSM.

The Federal regulations at 30 CFR 823.15(b)(7) require that the yield standard be obtained from representative local farms, with concurrence by the SCS, or by average county yields adjusted by the SCS to account for the difference between nonmined prime farmlands and all other soils reflected in the county average.

The North Dakota Revegetation Guidelines specify two methods for determining yield standards: reference area yields adjusted by applying SCS productivity indices, or SCS county soil survey yield data in conjunction with the productivity indices. The Revegetation Guidelines provide no documentation of SCS concurrence with the yield determination methods. With SCS concurrence on the yield standards, the North Dakota proposal is less effective than the Federal requirements at 30 CFR 823.15(b)(7). The Director is approving the proposed revision to NDAC 69–05.2–28–05(3)(g), but is requiring North Dakota to further amend the Revegetation Guidelines to provide documentation of SCS concurrence with the methods in the Revegetation Guidelines for determining the yield standard.

The proposed provision that other productivity measurement methods (besides those specified in the Revegetation Guidelines) may be used, with PSC and OSM approval, has no counterpart in the Federal requirement. The Director finds that it is not inconsistent with the Federal requirements. However, the Director notes that other methods may be approved by OSM only through the program amendment process. With this proviso, the Director is approving the proposed provision.

29. Individual Civil Penalties

a. North Dakota proposes to add a new rule, NDAC 69–05.2–28–16, that would allow PSC, where appropriate, to assess individual civil penalties (ICP's) in accordance with NDCC 38–14.1–32(6). The referenced statutory provision provides that whenever a corporate permittee violates a permit condition or fails or refuses to comply with enforcement orders issued by PSC under NDCC 38–14.1–28 or any order incorporated in a final decision issued by PSC (except orders for payment of penalties), any director, officer, or agent of the corporation who willfully and knowingly authorized or carried out such violation, failure, or refusal, is subject to the same criminal and civil penalties that may be assessed against the corporate permittee pursuant to NDCC 38–14.1–32(1) and (3). North Dakota is also proposing to add, at NDAC 69–05.2–01–02(121), a definition of "violation, failure, or refusal." The proposed definition defines "violation" to mean a violation of a condition of a permit issued by PSC. In addition, the proposed definition defines "failure or refusal" to mean failure or refusal to comply with any enforcement orders issued by PSC under NDCC 38–14.1–28 or with any order incorporated in a final decision issued by PSC under NDCC Chapter 38–14.1 (except orders requiring payment of penalties).

As discussed in Finding No. 3c, in the North Dakota program, coal exploration is regulated not by PSC, but by the State Industrial Commission (IC), under statutory and regulatory authorities different from those that govern the PSC's regulation of surface coal mining and reclamation operations. Thus, since the North Dakota proposal regarding ICP's is limited to activities regulated by PSC under NDCC Chapter 38–14.1, the proposed addition of NDAC 69–05.2–28–16, along with the proposed definition of "violation, failure or refusal" at NDAC 69–05.2–01–02(121), have no application to the coal exploration program in North Dakota.

North Dakota's coal exploration program, at NDCC 38–12.1–08(1), does provide for the assessment of civil penalties against any person who violates the requirements of the coal exploration program or any permit condition or regulation implementing the program. However, the North Dakota coal exploration program does not provide for the assessment of ICP's against the directors, officers, or agents of corporate permittees under any circumstances.

The State's proposal regarding ICP's is substantively similar to the Federal regulations at 30 CFR Part 846. However, the Federal provisions for the assessment of ICP's apply to coal exploration activities as well as surface coal mining and reclamation operations. In contrast, the North Dakota proposal would only allow for ICP's to be issued for violations, failures, or refusals regarding the surface coal mining program; violations, failures, or refusals regarding the coal exploration program are not included. This renders the North

Dakota proposal less effective than the Federal requirements.

In approving the North Dakota program (45 FR 82214, 82226 (December 15, 1980)) the Secretary noted that the inspection and enforcement authority for the coal exploration program (NDAC 43–02–01–17 and 43–02–01–05) was significantly less extensive than the Federal regulations. North Dakota indicated at that time that the provisions for inspection, enforcement, penalties, and sanctions in 30 CFR Parts 840, 842, 843, and 845 and 43 CFR part 4 would be made applicable to coal exploration permits by specific pre-issuance permit conditions, and the North Dakota program was approved on that basis. Since OSM had not yet promulgated the regulations governing ICP's at 30 CFR Part 846, those provisions were not included in this understanding in the program approval.

For the reasons above, the Director finds the proposed new rule and new definition to be no less effective than the Federal requirements when applied to the North Dakota surface coal mining program, and is approving them. However, he is requiring North Dakota to further amend its program to provide for ICP's under the North Dakota coal exploration program in a manner no less effective than the Federal requirements at 30 CFR Part 846.

b. Although the State's proposal at NDAC 69–05.2–28–16 does not specifically address how the regulatory authority is to determine the amount of any particular ICP, it does refer to the statutory provision at NDCC 38–14.1–32. This statutory provision does provide a method for determination of the amount of civil penalties. Subsection (1) of NDCC 38–14.1–32 requires the State regulatory authority, in determining the amount of a civil penalty, to consider the seriousness of the violation, the permittee's history of violations at the site, permittee negligence, and demonstrated good faith of the operator in abating the violation. Penalties are limited to $10,000 per day.

The Federal regulations at 30 CFR 846.14 require that the amount of ICP's be based on the criteria of Section 518(a) of the Act (history of violations, seriousness, negligence, and good faith). The Federal regulation modifies these somewhat: the history to be considered is not the history of the permittee at the site, but rather the individual's history of authorizing, ordering, or carrying out violations, failures, and refusals at the site; seriousness may include the cost of reclamation, as well as environmental harm and public hazard; and good faith is limited to the efforts of the individual to achieve rapid compliance after the notice of proposed ICP. The amount of an ICP is limited to $5000 per day.

Thus the North Dakota proposal differs in some respects from the Federal regulations. Section 518(i) of SMCRA requires State programs to have the same or similar procedural requirements for establishing civil and criminal penalties. However, the District Court for the District of Columbia ruled in *In re: Permanent Surface Mining Regulation Litigation,* Civil Action No. 79–1144 (D.D.C. February 26, 1980) that States need not adopt identical methods for assessing penalties, so long as the four criteria enumerated in Section 518(a) of SMCRA are incorporated. The Director finds that the North Dakota proposal is consistent with this standard, and is approving the proposal.

c. Neither proposed NDAC 69–05.2–28–16 nor the referenced statutory provision at NDCC 38–14.1–32 contains a provision equivalent to the Federal provision at 30 CFR 846.12(b), that specifies that OSM will not assess an ICP until a cessation order has been issued and the cessation order remains unabated for 30 days.

The Director notes that under both the proposed North Dakota rule and the Federal rule, issuance of an ICP is discretionary; the regulatory authority is empowered, but not required, to assess ICP's. In conducting oversight of State programs, OSM reviews, among other things, a State's record in assessing ICP's. North Dakota's proposal would allow the assessment of ICP's in more instances that does the Federal regulation, and thus may be implemented in a manner more stringent than the Federal regulation. Therefore, the Director finds that the lack of this provision does not render the North Dakota proposal any less effective than the federal requirements, and may make the North Dakota proposal more stringent than the Federal regulation. Therefore the Director is approving the proposal.

d. North Dakota's proposed rule at NDAC 69–05.2–28–16 also requires notice and service requirements substantively the same as the Federal requirements at 30 CFR 846.17 (a) and (c), except that the proposed North Dakota rule would require the notice of proposed ICP to include notice of opportunity for formal review of the penalty. The Director finds that this additional requirement is not inconsistent with the Federal regulations. The Director, by policy, requires a similar notice to be included in ICP's issued by OSM [see Directive INE–40, dated March 1, 1990].

e. North Dakota proposes to add a new rule at NDAC 69–05.2–28–18 that specifies the requirements for the payment of ICP's. The proposal is substantively the same as the Federal requirements at 30 CFR 846.18 (a)–(c), with the following exception. The Federal regulation allows that, when an abatement plan has been agreed upon, the individual assessed an ICP may postpone payment until receiving a final order (stating that payment is due on the date of the final order) or until the ICP has been withdrawn. The corresponding North Dakota proposed provision allows postponement until a final order is issued or until the penalty is withdrawn; it does not specify that payment is due on the date of the final order. By letter dated April 18, 1991 (Administrative Record No. ND–L–20), North Dakota stated its intent to interpret the proposed rule as requiring that payment is due on the date of the final order. With this understanding, the Director finds the proposal to be no less effective than the federal requirements, and is approving the proposal.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No comments were received, and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11), OSM solicited comments from various Federal agencies with an actual or potential interest in the North Dakota program.

By letter dated January 18, 1991 (Administrative Record No. ND–L–12), the Bureau of Indian Affairs responded that it had no comments. By letter dated January 16, 1991 (Administrative Record No. ND–L–11), the Army Corps of Engineers responded that it found the proposed amendment satisfactory. By letter dated January 14, 1991 (Administrative Record No. ND–L–09), the Bureau of Reclamation responded that it had no comment.

By letter dated February 4, 1991 (Administrative Record No. ND–L–14), the U.S. Soil Conservation Service (North Dakota State Conservationist) responded that it had no comment.

By letter dated January 29, 1991 (Administrative Record No. ND–L–10), the U.S. Fish & Wildlife Service responded that it had no substantive comments. The letter correctly identified

the amendment number and date of request for comments, but incorrectly stated that the proposed amendment dealt with permit rescission and termination of jurisdiction, apparently the result of misreading North Dakota's cover letter to the amendment.

By letter dated March 25, 1991 (Administrative Record No. ND–L–19), the Mine Safety and Health Administration (MSHA) responded that it found no conflicts with MSHA regulations. MSHA did identify one conflict between the proposed amendment and MSHA's design guidelines. MSHA directed the comment at NDAC 69–05.2–16–09(17)(a); which was not proposed for revision; however, the comment also pertains to a proposed addition at NDAC 69–05.2–20–03(1)(d). MSHA commented that MSHA's regulations do not specify a design precipitation event for spillway capacities for dams classified as high hazard (presumably, those meeting the criterion at 30 CFR 77.216(a)(3)). However, MSHA's design guidelines for these dams would specify that spillway capacity be designed for the Probable Maximum Flood. Further, MSHA commented that it believes that current, prudent engineering practice requires use of the Probable Maximum Flood as the design precipitation event for these dams.

The Director has reviewed the existing and proposed North Dakota provisions cited above, and finds that they are substantively the same as OSM's regulatory requirements. The Federal regulations at 30 CFR 816.49(a)(8)(ii)(A) and 816.84(b)(2) require impoundments meeting the criteria of 216.77(a) to be designed for a 100-year 6-hour event; if constructed of or impounding coal mine waste, the design event is the probable maximum precipitation of a 6-hour event. The North Dakota provisions specify these same design precipitation events. The Director does not have the authority to require standards in excess of the Federal regulations that implement SMCRA.

However, the Director notes that under NDAC 69–05.2–09–09(1)(h), the plan for each impoundment must be certified as meeting current, prudent engineering practices. The Director will forward MSHA's comment to the PSC, so that PSC can consider the comment in its review of impoundment designs.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and the ACHP for comment. As discussed in Finding No. 3b of this notice, the amendment did contain minor revisions to the definition of "historic lands." By notation dated January 3, 1991 (Administrative Record No. ND–L–15), the State Historic Preservation Officer responded that the amendment would have no effect on significant cultural resources. No response was received from the ACHP.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

North Dakota did not propose in this amendment any revisions to its program that relate to air or water quality standards. However, EPA's Regional and Headquarters offices were afforded opportunity to comment on this amendment.

By letter dated February 8, 1991 (Administrative Record No. ND–L–13), EPA's Region VIII responded that it had no comments. No response was received from EPA's Headquarters office.

V. Director's Decision

Based on the above findings, the Director approves, with the exceptions and additional requirements noted below, North Dakota's proposed program amendment as submitted November 20, 1990 and clarified on April 18, 1991.

As discussed in Finding No. 21, the Director is not approving NDAC 69–05.2–16–09(20) to the extent that it allows less than quarterly inspections of impoundments which are not incised and do not meet the criteria of 30 CFR 77.216 and are not located in hazardous locations; as discussed in Finding No. 26c, the Director is not approving the proposed deletion of the phrase "that were not reclaimed to the requirements of this chapter" at NDAC 69–05.2–22–.07(4)(i).

The Director is requiring the following program amendments at 30 CFR 934.16: as discussed in Finding No. 3c, a definition of the term "road" within the coal exploration program; as discussed in Finding No. 6b, further revision of NDAC 69–05.2–06–02(3) to require information in permit applications on all types of violation notices; as discussed in Finding No. 9c, further revision of NDAC 69–05.2–08–15(3)(a) regarding submission of site-specific fish and wildlife resource information when state-listed or proposed listed species may be present; as discussed in Finding No. 10a, further revision of NDAC 69–05.2–09–06 to require that the plans, etc., for transportation facilities other than roads demonstrate compliance with NDAC 69–05.2–24–06; as discussed in Finding No. 11c, further revision to NDAC 69–05.2–09–09(2)(e) or other revision to include stability requirements for small and nonhazardous impoundments; as discussed in Finding No. 13a, revision to NDAC 69–05.2–10–03(1), to require permit denial for violations of, or delinquent civil penalties under, any Federal or State program under SMCRA, without temporal limitation; as discussed in Finding 13c, revision of NDAC 69–05.2–10–03(4) to require that all violations of Federal and all State programs under the Act be considered for patterns of violations; as discussed at Finding 13d, revision of NDAC 69–05.2–11–02(5)(d) to correct the cross-reference to the recodified subsection (6) of NDAC 69–05.2–10–03; as discussed in Finding No. 17b, further revision to NDAC 69–05.2–13–06(3) to prohibit mining operations from resulting in the unlawful taking of bald or golden eagles, nests, or eggs, and specifying that the North Dakota program shall not authorize the taking of bald or golden eagles, nests, or eggs in violation of the Bald Eagle Protection Act; as discussed in Finding No. 21, revision of NDAC 69–05.2–16–09(20) to require quarterly inspections of impoundments which are not incised and which do not meet the size/hazard criteria; as discussed in Finding No. 25, further revision to NDAC 69–05.2–20–03(3) or other revision to require a drawdown design requirement no less effective than 30 CFR 816.84(e); as discussed in Finding No. 28a, further revision to the Revegetation Guidelines to provide documentation of SCS consultation on the approved methodologies for measuring productivity on prime farmlands; as discussed in Finding No. 28b, further revision to the Revegetation Guidelines to document SCS concurrence with the approved methods for determining yield standards for prime farmlands; as discussed in Finding No. 29a, further revision of the program to make violations, failures, and refusals under the coal exploration part of the program also subject to individual civil penalties.

Director's decisions on previously-required amendments: as discussed in Finding No. 7a, the requirements of 30 CFR 934.16(k) have been satisfied, and the Director will remove the

requirement; as discussed in Finding No. 23, the requirements of 30 CFR 934.16(j) have been satisfied, and the Director will remove the requirement; and as discussed in Finding Nos. 26a and 26b, the requirements of 30 CFR 934.16(b), (e), and (f) have been partially satisfied by this revision of the State rules, and the required amendments will be revised to remove that requirement.

The Federal regulations at 30 CFR Part 934 codifying decisions concerning the North Dakota program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary of the Interior. Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. Thus, any changes to the State program are not enforceable by the State as part of the approved State program until approved by the Director. In the oversight of the North Dakota program, the Director will recognize only statutes, regulations, and other materials approved by the Director, together with any consistent implementing policies, directives and other materials, and will require the enforcement by North Dakota of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions related directly to approval or conditional approval of State regulatory programs. Accordingly, this action by OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 27, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, the Code of Federal Regulations is amended as set forth below.

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.10 is amended by revising paragraphs (a) and (b), and removing paragraph (c), to read as follows:

§ 934.10 State program approval.

* * * * *

(a) North Dakota Public Service Commission, Reclamation Division; State Capitol Building; Bismarck, ND 58505–0165; Telephone: (701) 224–4096.

(b) Office of Surface Mining; Casper Field Office; 100 East B Street, room 2128; Casper, WY 82601–1918; Telephone: (307) 261–5776.

3. Section 934.15 is amended by adding paragraph (n) to read as follows:

§ 934.15 Approval of regulatory program amendments.

* * * * *

(n) The following provisions of the North Dakota Century Code (NDCC) and North Dakota Administrative Code (NDAC), as submitted on November 20, 1990, and clarified on April 18, 1991, and September 6, 1991, are approved effective January 9, 1992. The Director is approving the revisions proposed for the following laws and rules: NDCC 28–32–02(3), (4) (Rulemaking procedures); NDAC 69–05.2–01–02 (Definitions); NDAC 69–05.2–01–03(4), (5), (7) (Rulemaking procedures); NDAC 69.05.2–04–01(5)(b) (Areas unsuitable for mining); NDAC 69–05.2–05–06(1), (1d) (Permitting coordination with other laws); NDAC Chapter 69–05.2–06 Sections: –01; –02(3)–(6) (Permit applications; legal, financial, and related topics); NDAC Chapter 69–05.2–08 Sections: –05(2), (2C), (2e); –09(3b); –15 (Permit applications; environmental resources); NDAC Chapter 69–05.2–09 Sections: –01(4); –06(1), (2); –09(1)(c)(7–8), (1e), (2)(c–e), (h); –17(1), (2); –19(1) (Permit applications, operations plans); NDAC Chapter 69–05.2–10 Sections: –03; –05(3a, e) (Permit applications, review and approval/disapproval); NDAC 69–05.2–11–03 (Permit renewals); NDAC Chapter 69–05.2–12 Sections: –01(4), (10); –12(3); –18; –20 (Performance bond and insurance); NDAC Chapter 69–05.2–13 Sections: –08(2)–(6): –12(4); –13 (introduction) (Performance standards, general); NDAC 69–05.2–15–04(4)(a)(2)(c) (redistribution of resoiling material); NDAC Chapter 69–05.2–16 Sections: –03; –07(2a); –09(9), (17), (18), (20, in part only); –12(1); –14(3); –20 (Performance standards, hydrologic balance); NDAC Chapter 69–05.2–17 Sections –01(2); –05(1) (Performance standards, use of explosives); NDAC 69–05.2–18–01 (12, deletion of (f)) (Performance standards, excess spoil disposal); NDAC 69–05.2–20–03(1b, d), (3) (Coal processing waste dams and embankments, design and construction); NDAC 69–05.2–22–07(4)(e)–(h) and (i in part) (Revegetation success standards); NDAC 69–05.2–23–01 (Determining premining land use); NDAC Chapter 69–05.2–24 Sections: –01 through –09 (Performance standards, roads); NDAC 69–05.2–25–03(2),(4) (Aluvial valley floors, monitoring); NDAC 69–05.2–28–05 (title),(3) (Prime farmland, revegetation and restoration of productivity); and NDAC Chapter 69–05.2–28 Sections: –03(title),(7); –16; –17; –18 (Individual civil penalties). The following proposed provisions of the above amendment are not being approved: the proposed revisions to NDAC 69–05.2–16–09(20) to the extent that they would permit less than quarterly inspections for impoundments that are not incised, do not meet the criteria of 30 CFR 77.216, and are not in hazardous locations; and the deletion of the phrase "that were not reclaimed to the requirements of this chapter" at NDAC 69–05.2–22–07(4)(i).

4. Section 934.16 is amended by revising paragraphs (b), (e), and (f), removing and reserving paragraphs (j) and (k), and adding new paragraphs (l) through (y) to read as follows:

§ 934.16 Required regulatory program amendments.

* * * * *

(b) By March 20, 1990, North Dakota shall submit proposed revisions to the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" or otherwise propose to amend its program to require that at least 80 percent of the trees and shrubs counted to determine revegetation success have been in place for at least 60 percent of the 10-year period of revegetation responsibility.

* * * * *

(e) By June 8, 1989, North Dakota shall submit proposed revisions to the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" or otherwise propose to amend its program to require that revegetation success standards for woodlands and fish and wildlife habitats be met for at least the last two consecutive years of the revegetation responsibility period.

(f) By March 20, 1990, North Dakota shall submit proposed revisions to the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" to include tree and shrub stocking and vegetative ground cover success standards for all types of shelterbelts and require that trees and shrubs considered in determining revegetation success in shelterbelts meet time-in-place and related requirements no less effective than those established in 30 CFR 816.116(b)(3)(ii).

* * * * *

(j) [Reserved]

(k) [Reserved]

(l) By March 9, 1992, North Dakota shall submit a proposed definition of the term "road" that will be applicable to the coal exploration program.

(m) By March 10, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-06-02(3) or other revision to require the submission in permit application of information on all types of violation notices.

(n) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-08-15(3)(a) or other revision to require the submission of site-specific fish and wildlife resource information when the permit or adjacent areas are likely to include species listed or proposed to be listed by North Dakota under State statutes similar to the Endangered Species Act, to be no less effective than 30 CFR 780.16(a)(2)(i).

(o) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-09-06 or other revision to require the plans, etc., for transportation facilities other than roads demonstrate compliance with NDAC 69-05.2-24-06.

(p) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-09-09(2)(e) or other revision to include stability requirements for impoundments that do not meet the criteria of 30 CFR 77.216(a) and are not located where failure would not be expected to cause loss of life or serious property damage, to be no less effective than the requirements of 30 CFR 780.25(c)(3).

(q) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-10-03(1), to require permit denial for violations of, or delinquent civil penalties under, any Federal or State program under SMCRA, without temporal limitation, to be no less effective than 30 CFR 773.15(b)(1).

(r) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-10-03(4) to require that all violations of Federal and all State programs under the Act be considered for patterns of violations, to be no less effective than 30 CFR 773.15(b)(3).

(s) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-11-02(5)(d) to correct the cross-reference to reflect the recodification of NDAC 69-05.2-10-03.

(t) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-13-06(3) or other revision to prohibit surface coal mining activities from being conducted in a manner that would result in the unlawful taking of bald or golden eagles, their nests, or their eggs, and to specify that nothing in the North Dakota program shall authorize the taking of a bald or golden eagle, its nest, or its eggs in violation of the Bald Eagle Protection Act.

(u) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-16-09(20) or other revision to require quarterly inspections of impoundments which are not incised and which do not meet the criteria of 30 CFR 77.216 and are not located where failure would be expected to cause loss of life or serious property would be expected to cause loss of life or serious property damage, to be no less effective than 30 CFR 816.49(a)(11).

(v) By March 9, 1992, North Dakota shall submit proposed revisions to NDAC 69-05.2-20-03(3) or other revision to impose on impounding structures constructed of or impounding coal mine waste design standards no less effective than 30 CFR 816.84(e).

(w) By March 9, 1992, North Dakota shall submit proposed revisions to the revegetation policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" to document U.S. Soil Conservation Service consultation on the approved methodologies for measuring productivity on prime farmlands.

(x) By March 9, 1992, North Dakota shall submit proposed revisions to the revegetation policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" to document U.S. Soil Conservation Service concurrence with the approved methods for determining yield standards for prime farmlands.

(y) By March 9, 1992, North Dakota shall submit proposed revisions to its program to make any violations, failures, or refusals applicable to the North Dakota coal exploration program subject to individual civil penalties.

[FR Doc. 92-239 Filed 1-8-92; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AE58

Loan Guaranty: Lender Participation Fees

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations (38 CFR part 36) by requiring lenders to pay fees to participate in VA's Automatic Lending Program. These fees will defray in part the expenses incurred by VA in overseeing its activities of lenders.

EFFECTIVE DATE: February 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233-3042.

SUPPLEMENTARY INFORMATION: On November 27, 1990, VA published in the **Federal Register** (55 FR 49302) proposed regulatory amendments to 38 CFR 36.4225 and 36.4348. Public comments were requested on a proposal to provide

for the payment of fees by lenders participating in VA's Automatic Lending Program. Please refer to the November 27, 1990, **Federal Register** for a complete discussion of the proposed amendments. For the reasons discussed below, VA is adopting the original proposal. Paragraphs (a), (b), and (c) of §§ 36.4225 and 36.4348 of the proposed amendments set forth the requirements, other than payment of fees, which lenders must satisfy to process VA guaranteed home loans on the automatic basis. These paragraphs were published in 56 FR 40559, August 15, 1991 and are not reprinted here.

VA received only three comments on the proposal. One expressed concern that increasing costs may discourage lender participation in the Loan Guaranty Program, another expressed concern that fees may discourage participation in the Automatic Lending Program, resulting in an increased workload for VA regional offices, and a third expressed both concerns. We do not believe the cost of these fees will cause lenders to stop processing loans on the automatic basis or cause them to withdraw from VA's Loan Guaranty Program. The fees VA will charge lenders are not large amounts, and they will be charged on either a one time or infrequent basis for each lender. Also, the fees are very small in comparison with the operating income and expenses of home mortgage lenders. In addition, they are similar to the fees charged lenders by the Department of Housing and Urban Development for participating in the Federal Housing Administration's Direct Endorsement Program.

All three commenters noted that administrative costs to VA are reduced when lenders participate in the Automatic Lending Program because the lender, rather than VA, underwrites and approves the loans. While VA does not underwrite loans processed on the automatic basis, there are still substantial administrative costs incurred because the loan documents for these loans must be reviewed by VA personnel to ensure that the loan is for an eligible purpose, made to an eligible veteran, and that the lender's underwriting of the loan is appropriate. In addition, VA incurs administrative costs in providing automatic approval of lenders, branch offices, and underwriters, as well as in monitoring lenders who participate in the Automatic Lending Program.

Further, by being able to process loans without prior VA approval, lenders are receiving a special benefit which is not shared by other lenders or the public. VA believes it is reasonable to assess a charge incident to the automatic lender's voluntary act of seeking, renewing, or expanding this automatic authority. VA has concluded that the new fees reflect not only the administrative costs of administering the automatic processing program, but also the added value to the lender of having the benefit of automatic processing privileges.

One commenter objected to the proposed $100 application fee for each underwriter because a $100 application and a $100 annual recertification fee is also proposed for regional underwriting centers. We believe these fees are appropriate. The application fee for each underwriter is for the review of the qualifications of individuals who will be underwriting VA guaranteed loans and is charged on a one time basis. On the other hand, the fees for underwriting centers are for approval and recertification of centers which allow lenders to underwrite loans in locations other than their home offices.

The Secretary hereby certifies that these final regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The fees VA will charge lenders are not large amounts and should have a minimal impact on small entities. These fees will be charged on either a one time or infrequent basis for each lender. These fees are also very small in comparison with the operating income and expenses of home mortgage lenders. Furthermore, they are similar to the fees charged lenders by the Department of Housing and Urban Development for participating in the Federal Housing Administration's Direct Endorsement Program.

The Secretary has also determined that the final amendments are not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries, nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

These amendments are made final under the authority granted the Secretary by sections 501(a), 3703(c)(1), and 3712(g) of title 38, United States Code.

Approved: December 9, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36, is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36, §§ 36.4201 through 36.4287 continues to read as follow:

Authority: Sections 36.4201 through 36.4287 issued under 72 Stat. 1114, 64 Stat. 1110 (38 U.S.C. 501(a), 3712).

In § 36.4225, paragraphs (d) and (e) are added to read as follows:

§ 36.4225 Authority to close manufactured home loans on the automatic basis.

* * * * *

(d) To participate in VA's automatic program nonsupervised lenders of the class described in paragraph 3702(d)(3) of title 38 U.S. Code shall pay fees as follows:

(1) $500 for new applications;

(2) $200 for reinstatement of lapsed or terminated automatic authority;

(3) $100 for each underwriter approval;

(4) $100 for each agent approval;

(5) $100 for each regional underwriting office approval;

(6) A minimum fee of $100 for any other VA administrative action pertaining to a lender's participation in ALP;

(7) $200 annually for certification of home offices;

(8) $100 annually for certification of regional offices; and

(9) $100 annually for each agent renewal.

(e) Supervised lenders of the classes described in paragraphs (d)(1) and (d)(2) of 38 U.S. Code 3702 participating in VA's Loan Guaranty Program shall pay fees as follows:

(1) $100 fee for each agent approval; and

(2) $100 annually for each agent renewal.

(Authority: 38 U.S.C. 3712(g))

3. The authority citation for part 36, §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 72 Stat. 1114 (38 U.S.C. 501(a)).

4. In § 36.4348, paragraphs (d) and (e) are added to read as follows:

§ 36.4348 Authority to close loans on the automatic basis.

* * * * *

(d) To participate in VA's Automatic Lending Program (ALP) nonsupervised lenders of the class described in paragraph 3702(d)(3) of title 38 U.S. Code shall pay fees as follows:

(1) $500 for new applications;

(2) $200 for reinstatement of lapsed or terminated automatic authority;

(3) $100 for each underwriter approval;

(4) $100 for each agent approval;

(5) $100 for each regional underwriting office approval;

(6) A minimum fee of $100 for any other VA administrative action pertaining to a lender's participation in ALP;

(7) $200 annually for certification of home offices;

(8) $100 annually for certification of regional offices;

(9) $100 annually for each agent renewal.

(e) Supervised lenders of the classes described in paragraphs (d)(1) and (d)(2) of 38 U.S. Code 3702 participating in VA's Loan Guaranty Program shall pay fees as follows:

(1) $100 fee for each agent approval; and

(2) $100 annually for each agent renewal.

(Authority: 38 U.S.C. 501(a) and 3703(c)(1))

[FR Doc. 92-472 Filed 1-8-92; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90-6; DA 91-1624]

Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; filing deadlines waived.

SUMMARY: Common Carrier Bureau waives deadlines for filing updated cellular system information which were announced in the Commission's Report and Order (CC Docket Nos. 90-6 and 85-388, FCC 91-306), 6 FCC Rcd 6185 (1991), 56 FR 58503 (November 20, 1991) and postpones the acceptance of applications for unserved areas. See also 47 CFR 22.925. In its Further Notice of Proposed Rulemaking (CC Docket No. 90-6, FCC 91-311), 6 FCC Rcd 6158 (1991), 55 FR 4882, (February 12, 1990) the Commission proposes to redefine the existing cellular geographic service areas of current licensees using a formula that approximates the Carey predicted 32 dBu contour. By temporarily suspending the filing deadlines and postponing acceptance of applications, the Bureau will avoid potentially unnecessary expenditure of staff and licensee resources.

EFFECTIVE DATE: December 26, 1991 pending Commission action on CTIA's motion. A document will be published in the **Federal Register** removing the suspension.

FOR FURTHER INFORMATION CONTACT: Joanne Foster Wall or Andrew Nachby, Mobile Services Division, Common Carrier Bureau (202) 632-6450 or Steve Markendorff, Mobile Services Division, Common Carrier Bureau, (202) 653-5560.

SUPPLEMENTARY INFORMATION:

Order

Adopted: December 24, 1991.

Released: December 26, 1991.

By the Deputy Chief (Operations), Common Carrier Bureau:

In the matter of Amendment of Part 22 of the Commission's rules to provide for filing and processing of applications for unserved areas in the cellular service and to modify other cellular rules.

I. Introduction

1. On October 18, 1991, the Commission issued rules for the acceptance, processing and selection of applications for unserved areas in the cellular service, and deadlines for the submission of updated cellular system information.[1] Concurrently, the Commission issued a Further Notice of Proposed Rulemaking requesting comments on its proposal that the Cellular Geographic Service Areas (CGSAs) of all cellular systems be altered to more closely reflect the area where service is actually provided by licensees.[2] Cellular Telecommunications Industry Association (CTIA) filed a motion for temporary suspension of the dates for filing updated cellular system information and the filing of unserved area applications as announced in the *Report and Order*. For the reasons set forth below, we will waive the deadlines for filing updated cellular system information as announced in the *Report and Order* and postpone the acceptance of applications for unserved areas.

II. Discussion

2. In its *Report and Order*, the Commission established deadlines for cellular licensees to submit updated (1) maps of their systems showing their existing 39 dBu contours and CGSAs and (2) frequency utilization charts or frequency plans (updated system information).[3] An unserved area is defined as "[a]ny area * * * which is outside of an existing cellular geographic service area in a specific frequency block." See 47 CFR 22.2. Therefore, a cellular system's CGSA determines which parts of a given Metropolitan Statistical Area or Rural Service Area constitute unserved areas. Under the Commission's current rules, a licensee must cover seventy-five percent of its proposed CGSA using 39 dBu contours. See 47 CFR 22.903. In its FNPRM, however, the Commission proposes to redefine the existing CGSAs of current licensees using a formula that approximates the Carey predicted 32 dBu contour.

3. CTIA contends that "the Commission's present plan [as announced in its FNPRM] to redefine CGSAs around a more realistic standard only after the unserved application and licensing process has begun will result in years of interference litigation, and marketing uncertainty." See CTIA

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[1] *See* Amendment of part 22 of the Commission's rules to provide for filing and processing applications for unserved areas in the Cellular Service and to modify other cellular rules, First Report and Order and Memorandum Opinion and Order on Reconsideration, CC Docket Numbers 90-6 and 85-388, FCC 91-306, 6 FCC Rcd 6165 (1991) (Report and Order).

[2] *See* Amendment of part 22 of the Commission's rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules, Further Notice of Proposed Rulemaking, CC Docket Number 90-6, FCC 91-311, 6 FCC Rcd 6158 (1991) (FNPRM).

[3] Specifically, the Report and Order sets January 21, 1992 as the deadline for filing updated system information for markets where the five-year fill-in period expires on or before March 20, 1992. See Report and Order at 6206 and 6207; see also 47 CFR 22.925(c); see also 56 FR 56,903 (November 20, 1991); see also Public Notice, Report No. CL-92-30 (released December 11, 1991) (in clarifying the dates for filing updated system information, the Common Carrier Bureau announces that "licensees in markets whose five-year fill-in period expires between February 19, 1992 and March 20, 1992, need not file the information required by Section 22.925 until January 21, 1991"). For all other markets, the deadline for filing updated system information is "60 days prior to the expiration of the five-year fill-in period." See Report and Order at 6206 and 6207; see also 47 CFR 22.925(a). Sections 22.31 (a)(1) and (f) of the rules provided initial licensees with a five-year fill-in period during which they could expand their systems within the markets without challenge from competing applications.

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Motion at 3. Because the boundaries for unserved areas are measured by existing cellular licensees' CGSAs, the Commission's proposal would result in a redefinition of the boundaries for unserved areas. We are persuaded that we should temporarily suspend the dates for filing updated system information and postpone acceptance of applications until the Commission has the opportunity to consider CTIA's motion. This action will avoid potentially unnecessary expenditure of staff and licensee resources.

III. Ordering Paragraph

4. Accordingly, we are waiving the deadlines for the submission of updated cellular system information as announced in the Report and Order and postponing acceptance of applications for unserved areas pending Commission action on CTIA's motion. This action is taken pursuant to §§ 1.3 and 0.291 of the Commission's rules, 47 CFR 1.3 and 0.291.

Federal Communications Commission.

Gerald P. Vaughan,

Deputy Chief (Operations), Common Carrier Bureau.

[FR Doc. 92-352 Filed 1-8-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 22

[CC Docket No. 88-411; FCC 91-399]

The Use of Cellular Telephones in Aircraft.

AGENCY: Federal Communications Commission.

ACTION: Final rule; interpretation.

SUMMARY: The Commission adopted rules prohibiting the use of cellular telephones in airborne aircraft. However, the FCC will allow the on-ground use and installation of cellular telephones in aircraft subject to Federal Aviation Administration (FAA) regulations. As consumer demand for cellular services has increased, demand for variants of mobile service developed, such as authority to use cellular telephones in airplanes, helicopters, balloons and airborne vehicles. The Commission was contacted on numerous occasions for an interpretation of the rules concerning the use of cellular telephones in aircraft. The adopted rules clarify and concisely state the prohibition of airborne use of cellular telephones in aircraft and that the use of cellular telephones while the aircraft is on the ground is subject to FAA guidelines. In a separate portion of the decision not dealing with aircraft issues, the Commission authorized the routine licensing of cell enhancers or repeaters, devices that receive, amplify and retransmit the signals of a particular cell site and its mobile units to and from areas of poor coverage. Because these devices have proven successful in solving problems of poor coverage, the Commission believed that it would be in the public interest to adopt new rules governing their use. The adopted rules permit the use of all cell enhancers, consistent with the technical requirements adopted for the cellular service in Auxiliary Cellular Service Order, 3 FCC Rcd 7033 (1988), recon., 5 FCC Rcd 1138 (1990).

EFFECTIVE DATE: March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Ferrante ((202) 653-5560 or Dan Abeyta ((202) 632-6450), Mobile Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, in CC Docket No. 88-411, adopted December 12, 1991 and released December 30, 1991. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036

Paperwork Reduction

These rules have been found to impose no reporting burdens on the public.

Summary of Report and Order

On September 2, 1988, the Commission released a Notice of Proposed Rulemaking, 3 FCC Rcd 5265 (1988), 53 FR 35851 (September 15, 1988) seeking comments on proposed rules to prohibit the airborne use of cellular telephones in aircraft and to allow the use of cellular enhancers on a routine basis.

In response to the Notice, the commenting parties distinguished between the airborne use of cellular telephones and the use of cellular telephones while the aircraft is on the ground. The parties overwhelmingly agree that the airborne use of cellular telephones would likely cause interference to cellular operations. The Report and Order therefore adopts rules to prohibit such use.

With respect to the use of cellular telephones in aircraft while the aircraft is on the ground, the record generally supports a finding the there are public interest benefits to allowing such use. Permitting the on-ground use of cellular telephones in aircraft would, for example, allow commercial airline passengers who are faced with substantial ground delays after boarding their flights to use their portable telephones for business and personal reasons. As to concerns that the on-ground use of cellular telephones in aircraft may interfere with aircraft operations, the Federal Aviation Administration (FAA) has recently indicated that it is developing operational guidelines to restrict cellular telephones to use at the gate and during extended waits on the ground when specifically authorized by the captain of the aircraft. The Report and Order defers to the FAA to establish regulations for the use of cellular telephones while the aircraft is on the ground.

The majority of commenters also state that we should permit cellular telephones to be installed in private aircraft provided that these telephones are used only while the aircraft is on the ground. In view of the lack of evidence showing that the mere installation of cellular telephones in aircraft would cause interference and the legitimate reasons to allow such installation, the Report and Order adopts rules allowing such installation. Where cellular telephones are installed in aircraft, the Report and Order requires that a notice be posted adjacent to the telephone stating that the use of cellular telephones while the aircraft is airborne is prohibited by Federal Communications Commission rules and the violation of this rule could result in suspension of service and/or a fine. The posted notice will also state that the use of cellular telephones while the aircraft is on the ground is subject to FAA regulations. In addition, our rules will require that all cellular telephones must be turned off once the aircraft is airborne.

Finally, in a separate part of the Report and Order not dealing with aircraft, the Commission adopted specific rules governing the routine use of cellular enhancers on a regular non-developmental basis consistent with the technical requirements adopted for the cellular service in the Auxiliary Cellular Service Order, 3 FCC Rcd 7033 (1988), recon., 5 FCC Rcd 1138 (1990).

Ordering Clauses

Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 4(j) and (j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 154(j) and 303(r), that Part 22 is amended

as set forth below, effective 60 days from the date of publication.

List of Subjects in 47 CFR Part 22

Domestic public cellular radio telecommunications service radio, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. 154, 303.

2. Section 22.2 is amended by adding a new definition in alphabetical order to read as follows:

§ 22.2 Definitions.

* * * * *

Cellular repeater. A fixed station in the Domestic Public Cellular Radio Telecommunications Service which retransmits the transmission of a particular cell site, with or without frequencies translation.

* * * * *

3. Section 22.904 is revised to read as follows:

§ 22.904 Power Limitations.

Stations in this service shall not be permitted to exceed the effective radiated power indicated below.

	Watts (ERP)
Base stations	500
Mobile stations	7
Auxiliary test stations	7
Cellular Repeaters	500

4. Section 22.911 is amended by adding paragraph (a)(1) to read as follows:

§ 22.911 Permissible communications.

(a) * * *

(1) Cellular telephones shall not be operated in airplanes, balloons or any other aircraft capable of airborne operation while airborne. Once the aircraft is airborne, all cellular telephones on board such vehicles must be turned off. The term *airborne* means the aircraft is not touching the ground. Cellular telephones may be installed in aircraft. A cellular telephone which is installed in an aircraft must contain a posted notice which reads: "The use of cellular telephones while this aircraft is airborne is prohibited by FCC rules, and the violation of this rule could result in suspension of service and/or a fine. The use of cellular telephones while this aircraft is on the ground is subject to FAA regulations."

(2) [Reserved]

* * * * *

5. Section 22.912 is amended by adding new paragraph (c) to read as follows:

§ 22.912 Responsibility for operational control and maintenance of mobile stations.

* * * * *

(c) A cellular carrier may either refuse or terminate service to a subscriber, in accordance with any applicable local requirements for timely notification, for using a cellular telephone in an airborne aircraft in violation of § 22.911(a)(1).

(6) Section 22.930 is amended by adding a last sentence to paragraph (d) to read as follows:

§ 22.930 Special provisions for alternative cellular technologies and auxiliary services.

* * * * *

(d) * * * For purposes of this paragraph, cellular repeaters will be treated as a cellular facility.

[FR Doc. 92-542 Filed 1-8-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-250; RM-7461]

Radio Broadcasting Services; Gilmer, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Curtis Broadcasting Stations, Inc., licensee of Station KLSQ(FM), Channel 237A, Gilmer, Texas, substitutes Channel 237C3 for Channel 237A at Gilmer, and modifies its license for Station KLSQ(FM) to specify operation on the higher powered. See 56 FR 42967, August 30, 1991. Channel 237C3 can be allotted to Gilmer in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) southeast to accommodate Curtis' desired transmitter site. The coordinates for Channel 237C3 are 32-42-02 and 94-55-14. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 20, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-250, adopted December 20, 1991, and released January 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 237A and adding Channel 237C3 at Gilmer.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-543 Filed 1-8-92; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1806, 1807, 1812, 1815, 1816, 1823, 1825, 1830, 1831, 1832, 1842, 1844, 1852, and 1853

[NASA FAR Supplement Directive 89-10]

RIN 2700-AB16

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters. The major changes involve: (1) Revision of Points of Contact in NASA's Office of Procurement; (2) Revision to

permit negotiation and contractual identification of delivery schedules based on specific milestones; (3) Clarification of the price negotiation memorandum coverage; (4) Rewrite of coverage on Types of Contracts and related NASA FAR Supplement clauses; (5) Revision of section title and FAR reference regarding hazardous material identification and material safety data to implement FAC 90–8; (6) Revision of coverage on the Omission of the Examination of Records clause; (7) Removal of redundant language and clarification of terminology in the Cost Accounting Standards coverage; (8) Revision of coverage on Contract Cost Principles and Procedures; (9) Revision of NFS Advance Payment coverage; (10) Revision of coverage on Contract Financing; (11) Revision to NFS policy on consent to subcontract and contractor purchasing system reviews; and (12) Clarification of language and revision of coverage on Indirect Cost Rates and Disallowance of Costs.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: David K. Beck, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453–8250.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no new burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320, nor does it significantly alter any reporting or recordkeeping requirements currently approved under OMB control number 2700–0042.

List of Subjects in 48 CFR Parts 1801, 1806, 1807, 1812, 1815, 1816, 1823, 1825, 1830, 1831, 1832, 1842, 1844, 1852, and 1853

Government procurement.

Darleen A. Druyun,

Assistant Administrator for Procurement.Q02

1. The authority citation for 48 CFR parts 1801, 1806, 1807, 1812, 1815, 1823, 1825, 1830, 1832, 1842, 1844, 1852, and 1853 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Subpart 1801.3 is amended as set forth below:

1801.370 [Amended]

a. In section 1801.370, paragraph (a)(1)(i) and (a)(1)(ii), the name "Bailets" is revised to read "King" in every occurrence, and in section 1801.370, paragraph (a)(1)(ii), the names "King/Pesnell" are revised to read "Nelson/Pesnell."

b. In section 1801.370, paragraph (b), the name "Bailets, Lynn W. (HP) 8252" is removed; the name "King, Bruce C. (HH) 1803" is revised to read "King, Bruce C. (HP) 8252"; the name "Nelson, Harold (HH) 8924" is revised to read "Nelson, Harold (HS) 8924"; and the name "Wilson, Roger (HH) 8009" is revised to read "Wilson, Roger (HM) 1803."

PART 1806—COMPETITION REQUIREMENTS

3. Part 1806 is amended as set forth below:

1806.202–70 [Amended]

a. In section 1806.202–70, paragraphs (a)(2)(i) and (a)(3), "(Code HH)" is revised to read "(Code HS)."

1806.302–770 [Amended]

b. In section 1806.302–770, paragraphs (a) and (c), "Code HH" is revised to read "Code HS."

1806.304 [Amended]

c. In section 1806.304, paragraph (c), "(Code HH)" is revised to read "(Code HS)."

PART 1807—ACQUISITION PLANNING

1807.7204, 1807.7206 [Amended]

4. Throughout sections 1807.7204 and 1807.7206, "(Code HH)" is revised to read "(Code HS)."

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

1812.104–70 [Amended]

5. In section 1812.104–70, paragraph (d), the last sentence is removed and the following sentence is added in its place:

* * * * *

(d) * * * In the alternative, the delivery date may also be shown as a specified number of days from a specified milestone; for example, 90 days after contract award. The column heading "Delivery Date" may be changed to "Within Days After (Identify specific milestone)."

* * * * *

PART 1815—CONTRACTING BY NEGOTIATION

6. Part 1815 is amended as set forth below:

1815.808 [Amended]

a. In section 1815.808, paragraph (b), the sentence beginning with "However, when a * * *" and ending with "* * * of FAR 15.806–2(a)." is removed, and the following sentence is inserted in its place:

* * * * *

(b) * * * However, when a PPM has been prepared under 1815.807, the subsequent PNM need only provide any information required by FAR 15.808 that was not provided in the PPM and explain the differences between the prenegotiation objective position and the final negotiated settlement, including each proposed subcontract that meets the requirement of FAR 15.806–2(a).

* * *

1815.970 [Amended]

b. In section 1815.970, paragraph (e), the citation "1815.807–70(c)(3)" is revised to read "1815.807–70(d)(3)."

1815.970–2 [Amended]

c. In section 1815.970–2, paragraph (d), the last two sentences are removed.

PART 1816—TYPES OF CONTRACTS

7. Part 1816 is revised to read as follows:

PART 1816—TYPES OF CONTRACTS

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Authority: 42 U.S.C. 2473(c)(1).

Subpart 1816.2—Fixed-Price Contracts

1816.202 Firm-fixed-price contracts.

1816.202–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.216–78, Firm-Fixed-Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

1816.203 Fixed-price contracts with economic price adjustment.

1816.203–4 Contract clauses.

(a) In addition to the approval requirements in the prescriptions at FAR 52.216–2, –3, and –4, the contracting officer shall coordinate with the installation's Financial Management Officer before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216–2, –3, and –4.

(b) This paragraph (b) applies to adjustments based on cost indexes of labor or material.

(1) All price adjustment clauses using cost indexes require advance approval by the Assistant Administrator for Procurement. Requests for approval shall be submitted to the Office of Procurement, NASA Headquarters (Code HC).

(2) The factors in paragraphs (b)(2) (i) through (x) of this section should be considered in preparing any price adjustment clause in situations meeting the criteria of FAR 16.203–4(d):

(i) The clause should not be overly complex.

(ii) The clause shall provide for a ceiling for adjustment if a floor is included in the clause.

(iii) The clause shall cover only those elements of cost that are subject to unpredictable economic fluctuation.

(iv) (A) The clause must positively and accurately identify the index(es) upon which adjustments will be based and must provide an alternative in the event publication of the designated index is discontinued. The alternative might include the substitution of another index, if the time remaining would justify it and an appropriate index is reasonably available, or some other method for repricing the remaining portion of the work.

(B) There should normally be no need to make an adjustment if computation of the identified index is altered; however, provision may be made to adjust the economic fluctuation computations if the method of computing the index is so substantially altered as to negate the original intent of the parties. When an index to be used is subject to revision (e.g., the Bureau of Labor Statistics Producer Price Indexes), the price adjustment clause shall further specify that any adjustment shall be based upon the applicable revised index.

(v) An index should be structured to encompass a large sample of relevant items, yet bear a logical relationship to the type of contract costs measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to contract performance. However, it must be broad enough to ensure that the effect created by any single company, including the anticipated contractor, is minimal.

(vi) The clause must establish and properly identify a contract cost base against which an index, established in the contract, will be applied.

(vii) The clause should provide for definite times or events for price adjustments from the point when economic uncertainty commences. It should not provide for adjustment beyond the original contract performance period. Adjustments should be frequent enough to afford the contractor appropriate economic relief without creating a burdensome administrative effort. The adjustment frequency should normally range from six to twelve months.

(viii) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor use as related to total contract price) in lieu of actual cost incurred. If the clause is to be used in a competitive procurement, the labor and material allocations, with regard to both mix and percentage rate of expenditure, shall be determined by the contracting officer in a manner approximating, as nearly as possible, the average-expenditure profile of all companies likely to make offers. If the clause is to be used in a noncompetitive procurement, the labor and material allocations determined by the contracting officer may be subject to negotiation and agreement.

(ix) (A) The clause should state the percentage of the contract price or the amount subject to adjustment. Adjustments shall not be applied to profit.

(B) Additionally, the labor and material portions of the contract must be examined to exclude areas not requiring adjustment. It may not be necessary, for example, to include all subcontracting, because some subcontract efforts could be completed during the early life of the contract and/or be firm-fixed-price. Certain areas of overhead should be excluded from escalation protection; e.g., depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges. Economic fluctuation protection should not apply to that portion of labor for the period for which a definitive union agreement exists or for which Department of Labor wage determinations are known.

(C) That portion of the contract determined to be proper for economic fluctuation protection shall then be allocated to specific time periods (e.g., semiannually) on the basis of the expenditure profile.

(x) The economic price adjustment clause should provide that once the labor and material allocations have been established, they remain fixed through the life of the contract. Subsequent modifications which affect contract price are generally not subject to economic price adjustment. If the contracting officer determines that such an action should be subject to economic price adjustment, a new economic price adjustment clause should be incorporated into the contract. Such a clause would require prior approvals in accordance with 1816.203–4(b)(1).

(c) When economic price adjustment clauses are included in contracts that do not require submission of cost or pricing data (see FAR 15.804–2 and –3), the contracting officer shall obtain adequate information to establish the contract cost base from which adjustments will be made. In addition, the contracting officer may require verification of this information to the extent necessary to permit reliance upon it as reasonable.

(d) The contracting officer shall insert the provision at 1852.216–72, Evaluation of Offers Subject to Economic Price Adjustment, in all negotiated, fixed-price solicitations that contain an economic price adjustment clause.

1816.207 Firm-fixed-price, level-of-effort term contracts.

1816.207-70 NASA contract clause.

(a) The contracting officer shall insert a clause substantially as stated at 1852.216-79, Level-of-Effort (Fixed-Price), in fixed-price term solicitations and contracts. Insert the minimum direct labor hours, the labor categories and associated direct labor hours, and a formula or rates(s) (dollar amount(s)) by which the fixed price may be reduced if the minimum direct labor hours have not been provided. The labor category information may be simplified (e.g., "engineering" or "drafting") for smaller, less complex procurements.

(b) For task ordering procedures for firm-fixed-price, level-of-effort term contracts, see 1816.307-70(d)

Subpart 1816.3—Cost-Reimbursement Contracts

1816.301 General.

1816.301-3 Limitations.

The determination and findings required by FAR 16.301-3 and 16.403(c) may be signed by the contracting officer for individual purchases and contracts. The format shown below shall be used.

National Aeronautics and Space Administration

Determination and Findings

Authority to Use a (a) Contract

Upon the basis of the following findings and determination, which I make under the authority of 10 U.S.C. 2306(c), the contract described below may be entered into on a (a) basis.

Findings

1. The (b) proposes to enter into a (a) contract for the acquisition of (c). The cost of this work is estimated at $_____.

2. The work to be performed is (d).

Determination

(This contract type is likely to be less costly than any other type.) (It is impractical to obtain supplies or services of the kind or quality required without the use of this contract type.) (e)

Date: _____

NOTES—The contracting officer shall insert, where shown, the following information:

(a) Specific type of contract contemplated.
(b) Installation name.
(c) Brief description of supplies or services.
(d) Description of the nature of the proposed work and related specific facts that show why the contemplated contract type is the best alternative for this particular acquisition.
(e) The appropriate sentence or, when both apply, insert both connected by "and."

1816.303 Cost-sharing contracts.

(a) *When cost sharing is applicable.* (1) Except as provided for in paragraph (b) of this section, cost sharing by non-Federal organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal.

(2) (i) Cost sharing by non-Federal organizations may be accepted in any contract when offered by a performing organization.

(ii) Cost sharing by educational institutions may be accepted, when voluntarily offered, if the institution is aware of NASA's policy that the amount of cost sharing is not a factor in determining whether to support a given proposal.

(b) *When cost sharing is not applicable.* (1) Cost sharing is not applicable to contracts for basic or applied research resulting from an unsolicited proposal when (i) the offeror certifies in writing to the contracting officer that it has no commercial, production, educational, or service activities on which to use the results of the research, and no means of recovering any cost sharing on such projects, and (ii) the contracting officer determines that cost sharing does not apply and documents the file with a memorandum. In these situations, where there is no measurable potential gain to the performing organization, mutuality of interest does not exist and it would not be equitable for the Government to require cost sharing.

(2) (i) NASA's normal policy is to fully reimburse universities for research performed on its behalf. However, to establish on a case-by-case basis that there is no clear potential for significant future benefit or measurable gain to the university, and that cost sharing is not appropriate, the contracting officer shall document the file with a determination substantively the same as that required by 1816.303(b)(1) of this section. The determination shall identify the information on which it is based. If the determination cannot reasonably be made from the available information, the contracting officer shall request the university to certify as in 1816.303(b)(1) of this section. Blanket procedures shall not be established for routinely obtaining certifications from all universities.

(ii) NASA does not request inclusion of cost-sharing information in proposals from educational institutions. If cost sharing is determined applicable, a cost-sharing offer will be requested during negotiations.

(c) *Amount of cost sharing.*—(1) Educational institutions and affiliated not-for-profit institutions. Cost sharing, if used for educational institutions and affiliated not-for-profit institutions, normally varies from one percent to as much as five percent of the project's cost.

(2) *Other performing organizations.* (i) Cost sharing for organizations other than those in paragraph (c)(1) of this section may be any percentage of the research cost. Mutuality of interest in the results of the work being performed is of primary significance in assessing the appropriateness of any particular level of cost sharing.

(ii) Factors that should be considered in determining mutuality of interest include—

(A) The potential of the contractor to recover its contribution from non-Federal sources;

(B) The extent to which the particular area of research requires special stimulus in the national interest; and

(C) The extent to which a research effort or result is likely to enhance the contractor's capability, expertise, or competitive position.

(d) *Implementation*—(1) *Payment of fee or profit.* No fee or profit may be paid to a cost-sharing contractor, and only an agreed-to portion of allowable costs shall be reimbursed.

(2) *Method of cost sharing.* Cost sharing shall be accomplished by a contribution of part or all of one or more elements of the allowable cost of the work being performed. It normally shall be expressed as a stated minimum percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(3) *Documentation.* Contract files shall contain appropriate documentation of the reasons for cost sharing and support for the amount or percentage of cost sharing agreed upon. For educational institutions, the reasons for any cost sharing exceeding (i) five percent or (ii) the amount originally offered shall be documented.

1816.307 Contract clauses.

(a) In solicitations and contracts containing the clause at FAR 52.216-8, Fixed Fee, or FAR 52.216-10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(b) In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216-7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required

in paragraph (d) of the clause at FAR 52.215–1, Examination of Records by Comptroller General.

(c) In paragraph (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216–13, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor, provided, that a corresponding increase is made in the period for retention of records required in paragraph (d) of the clause at FAR 52.215–1, Examination of Records by Comptroller General.

1816.307–70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.216–73, Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303.

(b) The contracting officer shall insert the clause, or one substantially like the clause, at 1852.216–74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts.

(c) The contracting officer may insert the clause at 1852.216–75, Payment of Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(d)(1) The contracting officer may insert a clause substantially as stated at 1852.216–80, Task Ordering Procedure, in level-of-effort term solicitations and contracts where (i) the statement of work is general in nature and (ii) task orders are needed to further define and clarify the effort required. This clause is applicable to both fixed-price and cost-reimbursement type term contracts.

(2) The contracting officer may issue task orders which tailor the list of information which the contractor is directed to provide in paragraph (b)(2) of the clause at 1852.216–80.

(e) The contracting officer shall insert the clause at 1852.216–81, Estimated Cost, in cost-no-fee contracts that are not cost sharing or facilities contracts.

(f)(1) The contracting officer shall insert a clause substantially as stated at 1852.216–82, Level-of-Effort (Cost), in term cost reimbursement type solicitations and contracts. Insert the required information in the blanks provided.

(2) Prior to reducing the contract fee in accordance with paragraph (d) of clause 1852.216–82, the contracting officer shall analyze the information, if any, provided by the contractor. The analysis and its bearing on the amount of the reduction shall be documented in the contract file.

(g) The contracting officer may insert a clause substantially as stated at 1852.216–87, Submission of Vouchers for Payment, in cost-reimbursement solicitations and contracts.

1816.370 Forms.

Contractors shall use NASA Form 778, Contractor's Release; NASA Form 779, Assignee's Release; NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts, to fulfill the assignment and release requirements of the clauses prescribed at FAR 16.307 (a) and (g) (i.e., the clauses at FAR 52.216–7, Allowable Cost and Payment, and 52.216–13, Allowable Cost and Payment—Facilities). Computer-generated forms may be accepted provided they comply with FAR clause 52.253–1.

Subpart 1816.4—Incentive Contracts

1816.403 Fixed-price incentive contracts.

A determination and findings is required by FAR 16.403(c) for fixed price incentive contracts. It shall be executed in accordance with 1816.301–3.

1816.404 Cost-reimbursement incentive contracts.

1816.404–2 Cost-plus-award-fee contracts.

(a) To assure compliance with FAR 16.404–2(b)(2), all contract performance areas subject to evaluation on a judgmental basis, including performance areas such as cost and technical management, quality, timeliness, and productivity, shall be consolidated in a single award fee criteria and rating plan. The objective is a balanced evaluation of the contractor's overall performance resulting in a single award fee determination consistent with NASA's management concerns and priorities.

(b) The amount of the base fee should normally not exceed three percent of the estimated cost of the contract exclusive of the fee; the maximum fee (base plus award fee) shall not exceed the limitations stated in FAR 15.903(d).

(c) Additional information on award fee contracting is contained in NASA's "Guidance on Award Fee Contracting" handbook dated June 1989 (available from Headquarters, Code HC).

1816.405 Contract clauses.

1816.405–70 NASA contract clauses.

(a) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216–76, Award Fee, in solicitations and contracts when a cost-plus-award-fee contract is contemplated.

(b) The contracting officer may insert a clause substantially as stated at 1852.216–83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items to be subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(c) The contracting officer shall insert the clause at 1852.216–84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(d) The contracting officer may insert a clause substantially as stated at 1852.216–85, Estimated Cost and Award Fee, in cost-plus-award-fee solicitations and contracts.

Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.

1816.03–2 Application.

Although there is no set format for a letter contract, certain items must be included. In addition to the clauses prescribed in FAR 16.603–4, the following information, must be included in all letter contracts:

(a) Statement of work.

(b) Delivery or performance schedule and place(s) of inspection and acceptance.

(c) A statement that no profit or fee shall be paid under the letter contract except as provided in the Termination clause (see 1815.971).

1816.603–3 Limitations.

(a) Letter contracts having an estimated definitive contract amount below the dollar thresholds specified in 1807.7102.

(1) Authority to approve the issuance of such letter contracts is delegated to the procurement officer. Each request for approval shall include the following:

(i) Proposed contractor's name and address.

(ii) Location where contract is to be performed.

(iii) Contract number, including modification number, if applicable.

(iv) Brief description of the work or services to be performed.

(v) Performance period or delivery schedule.

(vi) Amount of letter contract.

(vii) Performance period of letter contract.

(viii) Estimated total amount of definitive contract.

(ix) Type of definitive contract to be executed.

(x) A statement that the definitive contract will contain all required clauses or that deviations have been approved.

(xi) A statement as to the necessity and advantage to the Government of the proposed letter contract.

(2) The procurement officer shall provide a copy of the approval to issue a letter contract, along with the documentation required in paragraph (a)(1) of this section, to the Assistant Administrator for Procurement (Code HS) within 10 days of approval.

(3) The procurement officer shall notify the Assistant Administrator for Procurement (Code HS) of the date of definitization and contract amount.

(b) Letter contracts having an estimated definitive contract amount equal to or exceeding the dollar thresholds specified in 1807.7102.

(1) Requests for authority to issue such letter contracts shall be signed by the procurement officer and submitted to the Assistant Administrator for Procurement (Code HS) for approval. They shall include the information cited in subparagraph (a)(1) of this section.

(2) Any modification of an undefinitized letter contract approved under (b)(1) of this section must be approved by the Assistant Administrator for Procurement.

(3) Any modification of an undefinitized letter contract approved by a procurement officer in accordance with (a)(1) of this section that increases the estimated definitized contract amount to or above the dollar thresholds specified in 1807.7102 must have the prior approval of the Assistant Administrator for Procurement.

1816.603-4 Contract clause.

1816.603-470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.216-86, Settlement of Letter Contract, in contracts definitizing letter contracts.

PART 1823—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

8. Part 1823 is amended as set forth below:

1823.302 [Amended]

a. In section 1823.302, the section heading "General" is revised to read "Policy", and in the introductory paragraph, the citation "FAR 23.302(c)(3)" is revised to read "FAR 23.302(c)(2)."

1823.303-70 [Amended]

b. In section 1823.303-70, the sentence "Insert the potentially hazardous items or components." is revised to read "Identify in the clause the potentially hazardous items or components."

1823.370 [Amended]

c. In section 1823.370, the word "by" is added in front of the phrase "the clause at FAR 52.223-3."

1823.7002 [Amended]

d. In section 1823.7002, paragraph (c), "(Code NPG)" is revised to read "(Code FO)."

PART 1825—FOREIGN ACQUISITION

9. Part 1825 is amended by revising Subpart 1825.9 to read as follows:

Subpart 1825.9—Additional Foreign Acquisition Clauses

1825.901 Omission of the Examination of Records clause.

(a) The contracting officer's request for exclusion of the clause at 52.215-1, Examination of Records by the Comptroller General, shall consist of the proposed determination and findings (together with any relevant support information) prepared for the Administrator's signature according to the format in FAR 25.901(d). The procurement officer shall forward the package to the Assistant Administrator for Procurement (Code HC).

(b) When the clause at 52.215-1 is omitted pursuant to FAR 25.901(c)(1)(i)(B), the contracting officer shall prepare a written report in triplicate to be furnished to the Congress. The head of the installation concerned shall sign the report and forward it to the Assistant Administrator for Procurement (Code HC), who shall submit it to the Administrator for the Administrator's signature and forwarding to Congress.

PART 1830—COST ACCOUNTING STANDARDS

10. Part 1830 is amended by revising Subpart 1830.70 to read as follows:

Subpart 1830.70—Facilities Capital Employee for Facilities in Use or for Facilities Under Construction

1830.7001 Facilities capital employed for facilities in use.
1830.7001-1 Contract facilities capital estimates.
1830.7001-2 Pre-award facilities capital applications.
1830.7001-3 Post-award facilities capital applications.
1830.7002 Facilities capital employed for facilities under construction.
1830.7002-1 Definitions.
1830.7002-2 Measurement.

Subpart 1830.70—Facilities Capital Employed for Facilities in Use or for Facilities Under Construction

1830.7001 Facilities capital employed for facilities in use.

1830.7001-1 Contract facilities capital estimates.

(a) After the appropriate Forms Cost Accounting Standards Board-Cost of Money (CASB-CMF) have been analyzed and CMFs have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. DD Form 1861 "Contract Facilities Capital and Cost of Money" has been provided for this purpose and, when properly completed, becomes a connecting link between the Forms CASB-CMF and any applicable agency structured approach to determination of profit or fee objectives. An evaluated contract cost breakdown reduced to the contracting officer's pre-negotiation cost objective must be available. The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) DD Form 1861 provides for listing indirect cost pools and direct-charging service centers (if used) in the same structure they appear on the contractor's cost proposal and Forms CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays. The base for each indirect cost pool must be broken down by year to match each separate Form CASB-CMF. Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or pre-negotiation cost objective, and are listed against each separate Form CASB-CMF. Each allocation base is multiplied by its corresponding cost of money factor, to get the Facilities Capital Cost of Money estimated to be incurred each year. The sum of these products represents the estimated Contract Facilities Capital Cost of Money for the Year's effort. Total contract facilities cost of money is the sum of the yearly amounts.

1830.7001-2 Pre-award facilities capital applications.

Facilities Capital Cost of Money as determined above is applied in establishing cost and price objectives as follows:

(a) *Cost objective.* This special, imputed cost of money shall be used, together with normal, booked costs, in establishing a cost objective or the target cost when structuring an incentive type contract. Target costs thus

established at the outset, shall not be adjusted as actual cost of money rates become available for the periods during which contract performance takes place.

(b) *Profit objective.* Cost of Money shall not be included as part of the cost base when measuring the contractor's effort in connection with establishing a pre-negotiation profit objective. The cost base for this purpose shall be restricted to normal, booked costs.

1830.7001-3 Post-award facilities capital applications.

(a) *Interim billings based on costs incurred.* Contract Facilities Capital Cost of Money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the Allowable Cost and Payment or Progress Payment clause of the contract is the result of multiplying the incurred portions of the indirect cost pool allocation bases by the latest available Cost of Money Factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual Cost of Money Factors under CAS 414 and FAR 31.205-10, the new factors should be used to calculate contract facilities cost of money for the next accounting period.

(b) *Final settlement.* Contract Facilities Capital Cost of Money for final cost determination or repricing is based on each year's final Cost of Money Factors determined under CAS 414 and supported by separate Form CASB-CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

1830.7002 Facilities capital employed for facilities under construction.

1830.7002-1 Definitions.

The following definitions have been taken or developed from Cost Accounting Standard (CAS) 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction.

(a) *Cost of money rate.* The cost of money rate is either the interest rate determined by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat 97), or the time-weighted average of such rates for each cost accounting period during which the asset is being constructed, fabricated, or developed. The time-weighted average interest rate is calculated by multiplying the various rates in effect during the months of construction by the number of months each rate was in effect. The sum of the products is divided by the total number of months in which the rates were experienced.

(b) *Representative investment.* The representative investment is the calculated amount considered invested by the contractor in the project to construct, fabricate, or develop the asset during the cost accounting period. In calculating the representative investment, consideration must be given to the rate or expenditure pattern of the investment, i.e., if most of the investment was at the end of the cost accounting period, the representative investment calculation must reflect this fact.

(1) If the contractor experiences an irregular or uneven expenditure pattern in the construction, fabrication, or development of a capital asset, i.e., a majority of the construction costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor must either:

(i) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

(2) If the construction, fabrication, or development costs were incurred in a fairly uniform expenditure pattern throughout the construction period, the contractor may:

(i) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

1830.7002-2 Measurement.

(a) The imputed cost of money for an asset under construction, fabrication, or development is calculated by applying a cost of money rate (see 1830.7002-1(a)), to the representative investment amount (see 1830.7002-1(b)).

(1) When a representative investment amount is determined for a cost accounting period following 1830.7002-1(b)(1)(i) or 1830.7002-1(b)(2)(i), the cost of money rate used shall be the time-weighted average rate.

(2) When a monthly representative investment amount (see 1830.7002-1(b)(1)(ii) or 1830.7002-1(b)(2)(ii)) is used, the cost of money rate shall be the rate in effect each month. (Note: Under this method, the cost of money calculating is made monthly and the total for the cost accounting period is the sum of the monthly calculations.)

(b) The method chosen by a contractor for determining the representative investment amount may be different for each capital asset being constructed, fabricated, or developed as long as the method fits the expenditure pattern of the construction costs incurred.

(c) The imputed cost of money will be capitalized only once in any cost accounting period; either at the end of the period or at the end of the construction period, whichever comes first.

(d) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

11. Part 1831 is revised to read as following

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.1—Applicability

1831.101 Objectives.

Subpart 1831.2—Contracts with Commercial Organizations

1831.205 Selected Costs.
1831.205-32 Pre-contract costs.
1831.205-70 Contract clause.

Authority. 42 U.S.C. 2473 (c)(1).

Subpart 1831.1—Applicability

1831.101 Objectives.

Requests for individual deviations from FAR cost principles under FAR 31.101 shall be forwarded for the approval of the Assistant Administrator for Procurement (Code HC). The following should accompany each request for deviation: (1) The name and phone number of the contracting officer, (2) a copy of the contractor's request for cost allowance, (3) the rationale for granting the deviation and any supporting information, including the benefit to the Government, (4) the dollar amount involved, and (5) any other information considered relevant to the request.

Subpart 1831.2—Contracts with Commercial Organizations

1831.205 Selected costs.

1831.205–32 Precontract costs.

The authorization of precontract costs is not encouraged and shall be granted only in exceptional circumstances where a written request and justification has been submitted to and approved by the procurement officer. The justification shall (1) substantiate the necessity for the contractor to proceed prior to the contract award, (2) specify the start date of such contractor effort, (3) identify the total estimated time of the advanced effort, and (4) specify the cost limitation.

1831.205–70 Contract clause.

(b) The contracting officer shall insert the clause 1852.231–70, Date of Incurrence of Costs, in cost-reimbursement contracts for which specific coverage of precontract costs is authorized under 1831.205–32.

PART 1832—CONTRACT FINANCING

12. Part 1832 is amended as set forth below:

a. Subpart 1832.4 is revised to read as follows:

Subpart 1832.4—Advance Payments

1832.402 General.
1832.402–1 Small Business Innovative Research contracts.
1832.406 Letters of credit.
1832.406–70 Federal Cash Transaction Report.
1832.407 Interest.
1832.409–3 Security, supervision, and covenants.
1832.410 Findings, determination, and authorization.
1832.410–70 Instructions for determinations and findings.
1832.412 Contract clause.

Subpart 1832.4—Advance Payments

1832.402 General.

Determinations and findings in support of advance payments, as authorized by the Armed Services Procurement Act of 1947, as amended (10 U.S.C. 2307(c) and 2310(b)), shall be prepared in accordance with 1832.410. The lowest level of authority at which these determinations and findings shall be made is:

(a) The Assistant Administrator for Procurement (Code HC), for advance payments—

(1) Where the cumulative potential value for a single contract is greater than $25,000,000, or where a contract modification will increase the amount outstanding at any time and the cumulative potential contract value will exceed $25,000,000. When the advance payments outstanding at any time will exceed $25,000,000, the appropriate 60-day notification will be given to Congress in accordance with 10 U.S.C. 2307(d). Additional determinations and findings for increases to such contracts need not be prepared and submitted to the Assistant Administrator for Procurement as long as the advance payment amount outstanding at any time is not increased;

(2) In any amount to a foreign entity; or

(3) In any amount when the organization will receive a fee for the effort involved.

(b) The procurement officer, for advance payments involving a single action or which results in the cumulative potential contract value of $25,000,000 or less (other than to foreign entity or an organization that will receive a profit or fee), provided the action has been coordinated with the installation's Financial Management Officer.

1832.402–1 Small Business Innovative Research Contracts.

Advance payments for all Small Business Innovative Research (SBIR) Phase I contracts have been authorized through a class deviation. This authorization is for the Government fiscal years ending September 30, 1993.

1832.406 Letters of credit.

For the purposes of FAR 32.406(b)(1), each installation is considered a contracting agency.

1832.406–70 Federal Cash Transactions Report.

The report required by paragraph (m) of the clause at FAR 52.232–12, Advance Payments, or paragraph (j) of Alternate V of that clause, shall be submitted on Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272–A, Federal Cash Transactions Report Continuation.

1832.407 Interest.

Advance payments without interest are hereby authorized, pursuant to FAR 32.407(d)(1).

1832.409–3 Security, supervision, and covenants.

The contracting officer, in consultation with the General Counsel, may require special security conditions, if appropriate, in particular cases. Those conditions may be included in solicitations and contracts that include the clause at FAR 52.232–12, Advance Payments.

1832.410 Findings, determination, and authorization.

1832.410–70 Instructions for determinations and findings.

(a) Requests for Headquarters approval of advance payments, in accordance with 1832.402(a), shall be forwarded to the Assistant Administrator for Procurement (Code HC). They should include (1) the name of the cognizant NASA Headquarters program or staff office; (2) the name and phone number of the contracting officer or negotiator; (3) a copy of the proposed advance payments clause; (4) a copy of the contractor's request for advance payments, along with any supporting information; and (5) if a profit/fee is contemplated, the factors considered in determining the profit/fee (see Subpart 18 15.9), and (6) information as to how a determination was made that the Government has adequate security to cover the maximum advance payment amount at any time outstanding.

(b) 10 U.S.C. 2307 is normally the statutory authority cited for authorizing advance payments. When appropriate, advance payments may also be authorized under 42 U.S.C. 2473(c)(5) or under Public Law 85–804 as implemented by Executive Order 10789 (see FAR Part 50).

(c) Generally, the format in FAR 32.410 should be used, tailored as follows:

(1) The phrase "Advance payments (in an amount not to exceed $ . . . at any time outstanding)" at format paragraph (a)(2), and not the alternate phrase "(in an aggregate amount not exceeding . . .)," shall be used for all determinations and findings. The phrase means the maximum unliquidated dollar amount a contractor would need in advance payments at any point in time for the particular contract. The amount would not usually be the full contract value. The amount inserted should be based on an analysis of the contractor's financing needs (monthly or other appropriate period) for the specific contract involved.

(2) In the second sentence of format subparagraph (a)(4), delete the reference to a special bank account.

(3) Use format subparagraph (a)(6), not (a)(7) or (a)(8).

(4) At the end of format paragraph (b), use "is in the public interest."

1832.412 Contract clause.

Whenever the clause at FAR 52.232–12 is used, it shall be modified as set forth at 1852.232–12. In addition, the dollar amount to be inserted in the blank of the modified language of the "Maximum

Payment" paragraph of the clause is the same amount determined for 1832.410–70(c)(1).

b. Subpart 1832.7 is revised to read as follows:

Subpart 1832.7—Contract Funding

1832.702 Policy.
1832.702–70 NASA policy.
1832.704 Limitation of cost or funds.
1832.705 Contract clauses.
1832.705–2 Clauses for limitation of cost or funds.
1832.705–270 Additional clauses for limitation of cost or funds.

1832.702 Policy.

1832.702–70 NASA policy.

(a) Cost-reimbursement contracts may be incrementally funded only if all the following conditions are met (except that, for cost-reimbursement R&D contracts under which no supplies are deliverable, only the condition in subparagraph (a)(3) of this section applies):

(1) The total value of the contract (including options as defined in FAR subpart 17.2) is $1,000,000 or more.

(2) The period of performance under the contract is in excess of twelve months or overlaps the succeeding fiscal year.

(3) The funds are not available to fund the total contract value fully at the time of entering into the contract.

(b) Fixed-price contracts, other than those for research and development, shall not be incrementally funded.

(c)(1) Fixed-price contracts for research and development may be incrementally funded if—

(i) The total fixed price of the contract (including options as defined in FAR subpart 17.2) is $1,000,000 or more;

(ii) The period of performance under the contract is in excess of twelve months or overlaps the succeeding fiscal year;

(iii) Funds are not available to fund the total fixed price of the contract at the time of entering into the contract; and

(iv) Initial funding of the contract is not less than 50 percent of the total fixed price.

(2) Notwithstanding the grant of authority to fund contracts incrementally under the circumstances in subparagraph (1) of this section, fixed-price contracts shall be fully funded whenever possible, and incremental funding of such contracts shall be kept to an absolute minimum.

(d) Except as noted in paragraph (e) of this section, waiver of any of the conditions set forth in paragraphs (a), (b), and (c) of this section shall be submitted for approval to the installation procurement officer. Concurrence of the installation Comptroller must be obtained on all requests prior to approval by the procurement officer. The procurement officer shall maintain a record of all such approvals during the fiscal year and submit a summary report to the Headquarters Financial Management Division (Code BFC) by October 31. The report will include: contract number, description and type; dollar value; amount of funds initially available; and the reason(s) for the waiver.

(e) A class deviation from the conditions set forth in paragraphs (a), (b), and (c) of this section exists to permit incremental funding of contracts under Phase II of the SBIR Program until the last year of the program (FY 1993 unless extended). This deviation exists with the understanding that the contracts will be fully funded when funds become available.

1832.704 Limitation of cost or funds.

(a) When a contract contains the clause at 1852.232–77, Limitation of Funds (Fixed-Price Contract), the procedures in FAR 32.704 are applicable.

(b) The amount obligated for fee should always be at least sufficient to pay fee anticipated to be earned by the contractor for the work to which the amount allotted for the estimated cost applies.

1832.705 Contract clauses.

1832.705–2 Clauses for limitation of cost or funds.

As authorized by FAR 52.232–22, the contracting officer shall substitute "Contract Funding clause" for "Schedule," wherever that word appears in the clause at FAR 52.232–22.

1832.705–270 Additional clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 1852.232–77, Limitation of Funds (Fixed-Price Contract), in solicitations and contracts for fixed-price incrementally funded research and development.

(b) The contracting officer shall insert a clause substantially as stated at 1852.232–81, Contract Funding, in solicitations and contracts containing the clause at FAR 52.232–22, Limitation of Funds. Insert the amounts of funds available for payment, the items covered, and the applicable period of performance. The contracting officer may add additional funding information (such as a summary of old amounts, amount(s) added in contract modifications, and new totals) as appropriate for the particular procurement.

c. Subpart 1832.9 is revised to read as follows:

Subpart 1832.9—Prompt Payment

1832.903 Policy.
1832.908 Contract clauses.
1832.970 Payments to Canadian Commercial Corporation.

1832.903 Policy.

As authorized at FAR 32.903, payments for contracts (other than Fixed-Price Architect-Contracts, Construction Contracts, and contracts for meats, perishables and dairy products) with the Canadian Commercial Corporation (CCC) shall be made earlier than the standard contract payment due dates.

1832.908 Contract clauses.

(a) When a clause at FAR 52.232–25, 52.232–26 or 52.232–27 is used, the clause at 52.232–28 shall be used as authorized by FAR 32.908(d), modified by deleting the words "and contract number" from paragraph (d). The following paragraph shall be inserted in FAR 52.232–28(b)(4) in lieu of the language at that location:

The Contractor shall submit a Standard Form 3881 to the installation awarding this contract. If a Standard Form 3881 previously submitted to the installation awarding this contract is still valid, resubmittal is not necessary, unless requested by NASA.

(b) When the clause at FAR 52.232–25, Prompt Payment, is used in contracting with the CCC subject to the conditions at 1832.970—

(1) The number "17" shall be used in lieu of "30" in paragraphs (a)(2)(i) and (a)(2)(ii) of the clause; and

(2) The number "17th" shall be inserted in paragraph (b)(2) of the clause.

1832.970 Payments to Canadian Commercial Corporation.

As authorized by FAR 32.903, the phrase "the 17th day" shall be used in lieu of the "the 30th day" at FAR 32.905(a)(1), 32.905(a)(2) and 32.906(a).

PART 1842—CONTRACT ADMINISTRATION

13. Subpart 1842.2 is amended as set forth below:

1842.202 [Amended]

a. In section 1842.202, paragraph c is revised to read as follows:

* * * * *

(c) *Restricted functions.* The functions listed below may not be delegated, except as indicated.

(1) Approval of the final voucher (FAR 42.302(a)(7)).

(2) Countersigning NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved (FAR 42.302(a)(8)).

(3) Issuance of decisions under the disputes clause (FAR 42.302(a)(10)).

(4) Contract payment (FAR 42.302(a)(13)).

(5) Execution of supplemental agreements involving spare parts or other items selected through provisioning procedures. However, delegation of the negotiation of supplemental agreements for spare parts and other items and forwarding for approval and signature of the NASA contracting officer is permitted (FAR 42.302(a)(22)).

(6) Execution of change orders (FAR 42.302(b)(8)). However, delegation of the negotiation of supplemental agreements for change order definitization and forwarding for approval and signature of the NASA contracting officer is permitted (FAR 42.302(b)(1)).

(7) Issuing termination notices and executing supplemental agreements for settlement of termination for default or for convenience of the Government. However, delegation of the negotiation of termination settlements and forwarding for approval and signature of the NASA contracting officer is permitted using NASA Form 1432 (FAR 42.302(a)(23)).

(8) Consent to placement of subcontracts under FAR 42.302(a)(51). However, in those situations where the contracting officer considers it necessary to delegate consent to subcontract, the requirements of 1844.102(b) shall be met prior to delegation.

1842.202-70 [Amended]

b. In section 1842.202-70, paragraph (f) is added to read as follows:

* * * * *

(f) *Contractor Purchasing System Reviews.* When delegating contract administration to a DOD contract administration office under FAR 42.202 and 42.302(a)(50), the NASA contracting officer shall include in the letter of delegation of contract administration functions a required for the contract administration office to provide the NASA contracting officer with:

(1) Adequate advance notification of scheduled CPSRs, to allow for the necessary NASA coordination of participation; and

(2) One copy of each CPSR report.

1842.705-70 [Amended]

c. In section 1842.705-70, paragraphs (b) and (c) are revised to read as follows:

* * * * *

(b) When NASA has been assigned the final indirect cost rate determination authority, settlement of indirect costs shall be conducted by the cognizant NASA contracting officer (normally from the installation providing the preponderance of NASA funding).

(c) Final indirect cost rates are to be established in accordance with FAR 42.705 unless quick-closeout procedures are used, in which case FAR 42.708 and NFS 1842.708 are to be followed.

d. Subpart 1842.8 is revised to read as follows:

Subpart 1842.8—Disallowance of Costs

1842.801 Notice of contract costs suspended and/or disallowed.

(a) Following a prompt and careful review of the facts and circumstances leading the auditor to initiate the NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved, and after coordination with other NASA and DOD contracting officers administering contracts with the same contractor under which a NASA Form 456, or a CDAA Form 1 in the case of a DOD contract, has been issued for the same items of a cost, the contracting officer shall take one of the following actions:

(1) Countersign the NASA Form 456 disapproving the costs.

(2) Countersign the NASA Form 456 suspending the costs.

(3) Issue a new NASA Form 456 suspending the costs rather than disapproving them pending resolution of the issues.

(4) Have the contractor issue a new voucher removing the costs in question from its claim and return the NASA Form 456 to the auditor unsigned.

(5) Return the unsigned NASA Form 456 to the auditor with a detailed explanation of why the suspension or disapproval is not being countersigned, and process the contractor's claim for payment.

(b) The contracting officer, when in agreement with the NASA Form 456 initiated by the auditor, shall assign a notice number and shall countersign the form. An original and three copies (which includes two acknowledgement copies, one each for return to the contracting officer and the auditor) of the form shall be sent to the contractor by certified mail, return receipt requested; one copy shall be attached to the Standard Form 1034 and each copy of the Standard Form 1034A (see 1842.9(c)) on which the deduction is made, and one copy shall be sent to the auditor.

(c) The total amount suspended or disapproved, as shown on the NASA Form 456, shall be inserted in the Differences block of the Standard Form 1034 and Standard Form 1034A, citing the applicable NASA Form 456.

(d)(1) If the amount of the deduction is more than the amount of the public voucher, the installment method of deduction shall be applied to this and subsequent public vouchers until the amount is fully liquidated. The deductions on any voucher may not exceed the voucher amount, to avoid processing of a voucher in a credit amount. Public voucher(s) with zero amounts must be forwarded to the fiscal or financial management office for appropriate action.

(2) If deductions are in excess of contractor claims, recovery may be made through a direct refund from the contractor, in the form of a check payable to NASA, or by a set-off deduction from the voucher(s) submitted by the contractor under any other contract, unless those contracts contain a "no set-off" provision. If a set-off is effected, the voucher(s) from which the deduction is made should be annotated to identify the contract and appropriation affected and the applicable NASA Form 456.

1842.1008 [Amended]

e. In section 1842.1008, the word "chairman" is revised to read "chairperson".

f. Subpart 1842.71 is added to read as follows:

Subpart 1842.71—Submission of Vouchers

1842.7101 Processing of vouchers.

(a) Under the authority of FAR 42.803, NASA had designated the contract auditor as the contracting officer's representative for (1) promptly examining reimbursement vouchers received directly from contractors, (2) promptly transmitting vouchers approved for provisional payment to the cognizant fiscal or financial management officer, and (3) regarding costs claimed, but not considered allowable, preparing and sending to the cognizant contracting officer NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved. Normally, the NASA Form 456 is initiated by the auditor; however, the contracting-officer also may initiate it or direct is initiation. In accordance with any instructions received from the contracting officer, the contract auditor shall promptly examine and approve (but see paragraph (b) of this section) separate fee vouchers and fee portions of vouchers for provisional payment

under the contract. After examination, the auditor shall forward completion vouchers to the contracting officer for approval and transmittal to the cognizant fiscal or financial management officer.

(b) When the audit functions are delegated, special instructions may be issued to the contract auditor to—

(1) Require submission of separate vouchers for reimbursable costs and for payment of earned fee; and/or

(2) Reserve to the contracting officer approval of separate fee vouchers and all vouchers submitted by contractors performing at a NASA installation.

(c) Unless otherwise notified, the contractor shall be required to submit public vouchers to the auditor as follows:

(1) One original Standard Form 1034, Standard Form 1035, or equivalent contractor's attachment shall be submitted.

(2) Seven copies of Standard Form 1034A, Standard Form 1035A, or equivalent contractor's attachment shall be submitted.

(3) The contractor shall mark Standard Form 1034A copies 1, 2, 3, 4, and such other copies as may be directed by the contracting officer by inserting in the memorandum block names and addresses as follows:

(i) Copy 1, NASA contracting officer.

(ii) Copy 2, cognizant audit office.

(iii) Copy 3, Contractor.

(iv) Copy 4, Contract administration office.

(v) Copy 5, project management office (when required by the NASA contracting officer).

(4) The auditor shall retain an unpaid copy of the voucher.

(5) When a voucher contains one or more individual direct freight charges of $100 or more, an additional copy of Standard Form 1034A and Standard Form 1035A shall be submitted and marked for return to the contractor after payment. This copy shall be transmitted quarterly by the contractor with the freight bills to the General Services Administration. When a voucher is identified as the "Completion Voucher," an additional copy shall be submitted for transmittal to the NASA contracting officer.

(d) When necessary, the contracting officer should consult with the auditor or the financial management officer concerning preparation, examination, and payment of vouchers. Functions to be performed by auditors and financial management and fiscal office personnel during the examination of vouchers are in FMM 9630.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

14. Part 1844 is amended as set forth below:

a. In Subpart 1844.1, sections 1844.102 and 1844.102–70 are revised to read as follows:

1844.102 Policy.

(a) It is NASA policy to retain consent to subcontract authority—

(1) Under fixed-price contracts required to include the clause at FAR 52.244–1;

(2) Under cost reimbursement and letter contracts required to include the clause at FAR 52.244–2;

(3) Under time-and-material and labor-hour contracts required to include the clause at FAR 52.244–3;

(4) For all subcontracts designated as requiring special surveillance. (See 1844.102–70 on special surveillance.)

(b) However, if the contracting officer considers it necessary to delegate consent to subcontract authority, the contracting officer shall—

(1) Justify in writing the rationale for such delegation;

(2) Obtain written approval of the justification from the procurement officer or a designee; and

(3) Include the approved justification in the contract file.

1844.102–70 Contracting officer designated special surveillance and consent requirements.

(a) Notwithstanding approval of a contractor's purchasing system, the contracting officer may require the contractor to obtain consent for any subcontract or class of subcontracts selected for special surveillance. Such subcontracts shall be identified in the schedule of the contract. In making subcontracts subject to special surveillance consent requirements, the contracting officer should consider specific subcontract awards, as well as any individual systems, subsystems, components, technologies, and services which would have contracting officer consent prior to being subcontracted. Any subcontract for which consent was not provided at the time of contract award, under a cost type prime contract (FAR 44.102–1(c)), for which the Government would have required cost and pricing data in accordance with FAR 15.806–2(a) (1) or (2), shall be identified for special surveillance.

(b) For each planned contract award expected to exceed $1 million in total estimated value (inclusive of options), the contracting officer, in conjunction with the technical representative, when appropriate, shall review the information available at the time of contract award to determine whether certain subcontracts require special surveillance. At a minimum, the contracting officer review should consider such factor as—

(1) The degree of subcontract pricing uncertainties at the time of contract award;

(2) The overall quality of the contractor's approach to pricing subcontracts;

(3) The extent of competition achieved, or to be achieved, by the contractor in the award of subcontracts;

(4) Technical complexity and the criticality of specific supplies, services, and technologies on the successful performance of the contract; and

(5) The potential impact of planned subcontractors on source selection or incentive arrangements.

(c) The contracting officer shall document results of the review in the contract file, and include the requirement to obtain consent for subcontracts identified for special surveillance in the schedule of the contract. For contract modifications and change orders, the contracting officer shall make the determination required by paragraph (b) of this section whenever the value of any subcontract resulting from the change order or modification:

(1) Is proposed to exceed $100,000; or

(2) Is one of a number of subcontracts with a single subcontractor, under the contract, for the same or related supplies or services, that in the aggregate are expected to exceed $100,000.

1844.102–71 [Amended]

b. In the section heading and paragraph (a) of section 1844.102–71, the word "critical" is removed.

c. In Subpart 1844.3, sections 1844.302–70 and 1844.302–71 are revised, and sections 1844.304–70, 1844.305, and 1844.307–70 are added to read as follows:

1844.302–70 DCMC-conducted contractor purchasing system reviews.

For contracts within their cognizance, NASA contracting officers shall be aware of purchasing system approval status and are encouraged to become actively involved with the Defense Contract Management Command (DCMC) in the Contractor Purchasing System Review (CPSR) process. Involvement should include the following:

(a) Verifying that CPSRs are being conducted as required for each contractor meeting the thresholds in FAR 44.302.

(b) Ensuring that purchasing system review specifically includes the business unit performing the NASA contract.

(c) Actively participating as a team member, or arranging NASA representation, on DCMC CPSRs. At a minimum, such participation or representation shall be arranged when the DCMC CPSR review involves—

(1) Contractors with major NASA programs;

(2) Contractors' business units where the total dollar value of NASA contracts is substantial; or

(3) Any contractor system where the contracting officer has special concerns.

Participation should be oriented towards reviewing those areas of NASA-specific interest within the contractor's procurement operation.

(d) Ensuring that the selected CPSR sample to be reviewed reflects the level of NASA business in the contractor's purchasing organization.

(e) Providing to the cognizant DCMC CPSR team leader any areas of special emphasis regarding the contractor's procurement operation, to ensure that the review is tailored to address any NASA concerns, in addition to complying with FAR requirements for the review format.

§ 1844.302–71 NASA-conducted contractor purchasing system reviews.

If a NASA activity is the cognizant contract administration office, or after coordination with the cognizant DCMC CPSR office, it is determined that a CPSR is required but cannot be accomplished by DCMC, then a CPSR should be conducted by NASA personnel. The NASA CPSR team leader:

(a) May use DOD FAR Supplement, Contractor Purchasing System Review (CPSR) guidance, as a general guide to conducting the CPSR.

(b) May vary the scope of review depending on the contractor and contracts involved.

(c) Shall maintain close coordination with the cognizant ACO during CPSRs at contractors under DOD cognizance.

§ 1844.304–70 Surveillance.

(a) In the period between complete CPSRs, NASA contracting officers shall maintain a sufficient level of surveillance to ensure contractor purchasing efforts in support of NASA contracts are accomplished in an appropriate manner and protect the interests of the Agency.

(b) Surveillance shall be accomplished primarily through performance of consent-to-subcontract reviews (see FAR 44.202). Other methods of surveillance, including periodic reviews of contractor purchasing records may also be conducted. Contracting officers shall document the results of consent-to-subcontract reviews and periodic reviews, maintaining a record of contractor subcontract or purchase order award performance on NASA contracts. Contractor performance shall be summarized on an annual basis and provided to the ACO cognizant of the contractor's purchasing system. Annual reports should summarize the number of consent reviews and other reviews conducted during the year by NASA representatives, and summarize the types and quantity of deficiencies identified during reviews, need for special reviews, and recommended areas of emphasis during future CPSRs.

§ 1844.305 Granting, withholding, or withdrawing approval.

ACO actions related to purchasing system approval have a potential impact on NASA contracting officer consent requirements. Accordingly, NASA contracting officers should review system deficiencies documented in CPSR reports and when results of consent reviews and other sources conflict with CPSR or DOD surveillance conclusions, formally communicate such concerns to the ACO having cognizance of procurement system approval. Significant issues or significant conflicts with DOD CPSR results should be formally referred to Headquarters, Code HM.

§ 1844.307–70 Reporting.

NASA contracting officers, when delegating contract administration to a DOD contract administration office under FAR 42.202 and 42.302(a)(50), are required by 1842.202–70(f) to include in the letter of delegation of contract administration functions a requirement for the contract administration office to provide the NASA contracting officer with adequate advance notification of scheduled CPSRs and a copy of each CPSR report.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

15. Part 1852 is amended as set forth below:

a. Sections 1852.216–72, 1852.216–73, and 1852.216–74 are revised to read as follows:

1852.216–72 Evaluation of offers subject to economic price adjustment.

As prescribed in 1816.203–4(d), insert the following provision:

Evaluation of Offers, Subject to Economic Price Adjustment

(Dec. 1991)

(a) Notwithstanding the requirements of the _____ * clause, offers shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Offers that provide for a ceiling lower than any ceiling stipulated in the clause, shall be awarded at the lower ceiling.

(b) Offers that provide for adjustment(s) that may exceed any maximum adjustment stipulated in the clause, or that limit or delete any downward adjustment stipulated in the clause, shall be rejected.

1852.216–73 Estimated cost and cost sharing.

As prescribed in 1816.307–70(a), insert the following clause:

Estimated Cost and Cost Sharing

(Dec. 1991)

(a) It is estimated that the total cost of performing the work under this contract will be $_____.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than _____ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining _____ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the _____ [insert "Limitation of Cost" or "Limitation of Funds"] clause, the total estimated cost to the Government is hereby established as $_____ (insert estimated Government share); this amount is the maximum cost for which the Government is obligated.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program). (End of clause)

1852.216–74 Estimated cost and fixed fee.

As prescribed in 1816.307–70(b), insert the following claus:

Estimated Cost and Fixed Fee

(Dec. 1991)

The estimated cost of this contract is _____ exclusive of the fixed fee of _____. The total estimated cost and fixed fee is _____. (End of clause)

b. Section 1852.216–76 is revised to read as follows:

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* Insert the title of the clause providing for economic price adjustment. (End of provision)

1852.216-76 Award Fee.

As prescribed in 1816.405-70(a), insert the following clause:

Award Fee

(Dec. 1991)

(a) The Government shall pay the Contractor for performing this contract such base fee, if any, and such additional fee as may be awarded, as provided in the Schedule.

(b) Payment of the base fee and award fee shall be made as specified in the Schedule; provided that, after payment of 85 percent of the base fee and potential award fee, the Contracting Officer may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) Award fee determinations made by the Government under this contract are not subject to the Disputes clause. (End of clause)

c. Sections 1852.216-79 and 1852.216-80 are revised to read as follows:

1852.216-79 Level-of-Effort (Fixed-Price).

As prescribed in 1816.207-70(a), insert the following clause:

Level-of-Effort (Fixed-Price)

(Dec. 1991)

(a) In accomplishing the work required under this contract, the Contractor shall provide _____ direct labor hours as a minimum. These hours shall be expended as follows:

Labor Category and Minimum Direct Labor Hours

(Insert the labor categories and associated direct labor hours.)

(b) "Direct labor hours" are those productive hours expended by Contractor personnel in performing work under this contract that are charged as direct labor under the Contractor's established accounting policy and procedures. The term *does not* include sick leave, vacation, holiday leave, military leave, or any type of administrative leave but does include direct labor hours provided under level-of-effort subcontracts.

(c) The Contractor may, at its own option, furnish more than the stated direct labor hours; however, the Contractor shall not be entitled to any increase in the fixed price of the contract for exceeding the stated direct labor hours.

(d) Within thirty (30) days after the end of the performance period and before submission of an invoice for final payment, the Contractor shall submit to the Contracting Officer a statement certifying the actual total number of direct labor hours expended under this contract. The Contractor further agrees to make available to the Contracting Officer such records as the Contracting Officer may reasonably require to determine that the minimum number of labor hours specified in this clause were expended in the performance of the work.

(e) If, at the end of the contract term, the Contractor has not provided the minimum direct labor hours specified above, the total fixed price of this contract shall be reduced as follows:

(Insert either a formula based upon the number of hours expended in the separate labor categories or the product of the hours of unexpended labor multiplied by one specified rate.) (End of clause)

1852.216-80 Task Ordering Procedure.

As prescribed in 1816.307-70(d), insert the following clause:

Task Ordering Procedure

(Dec. 1991)

Performance under this contract is subject to the following ordering procedure.

(a) Within the direct labor hours specified in the Level-of-Effort clause of this contract, the Contractor shall incur costs under this contract in the performance of task orders and task order modifications issued in accordance with this ordering procedure. No other costs are authorized without the express written consent to the Contracting Officer.

(b) From time to time during the term of this contract, the Contracting Officer will issue task orders in writing to the Contractor, providing specific information on work to be performed within the scope of the contract.

(1) Task orders will contain, as a minimum, the following information:

(i) Signature of the Contracting Officer.

(ii) Contract number, order number, and date.

(iii) Description of work.

(iv) Maximum dollar amount authorized (cost and fee or price).

(v) Maximum number of contract labor hours and other resources authorized.

(vi) Documentation requirements.

(vii) Delivery/performance schedule.

(viii) Quality assurance standards, as appropriate.

(ix) Travel authorized.

(x) Any other necessary information.

(2) Unless otherwise directed by the Contracting Officer, the Contractor shall submit the following information for each task order:

(i) Discussion of the technical approach for performing the work.

(ii) Estimated date of commencement of work, and any changes proposed to the schedule of performance.

(iii) Direct labor hours, both straight time and overtime (if authorized), on a monthly basis by applicable labor category, and the total direct labor hours, including those in (2)(b)(iv)(B) of this clause, estimated to complete the task.

(iv) The total estimated cost and fee, where appropriate, for completion of the task order, including:

(A) The travel and material estimates.

(B) An estimate for subcontractors and consultants, including the direct labor hours, if applicable.

(C) Estimated computer use time required, if applicable.

(D) Other pertinent information, such as indirect costs and inter-divisional transfers.

(3) Each task order shall require the Contractor to acknowledge receipt and acceptance of the task order within ten calendar days after receipt. If the Contractor cannot comply with a task order requirement, the Contractor shall indicate in his acknowledgment, the changes required prior to his acceptance. Any differences must be resolved between the parties and the order modified to reflect the agreement. (End of clause)

d. Sections 1852.216-82, 1852.216-83, 1852.216-84, 1852.216-85, and 1852.216-86 are revised to read as follows:

1852.216-82 Level-of-effort (cost).

As prescribed in 1816.307-70 (f), insert the following clause:

Level-of-Effort (Cost)

(Dec. 1991)

(a) (1) During the term of the contract, the Contractor is obligated to provide not less than _____ (insert minimum percentage or minimum number of hours) nor more than _____ (insert maximum percentage or maximum number of hours) of _____ total direct labor hours. The total direct labor hours are distributed between the contractor's applicable labor categories as follows:

Labor Category and Direct Labor Hours

(Insert the labor categories and associated direct labor hours.)

(2) The allocation of total direct labor hours between labor categories, as shown in paragraph (a)(1), reflects the best estimate of the skill mix required to perform the contract. It is understood and agreed that this allocation of direct labor hours may be varied, if necessary, in the actual performance of the work.

(b) "Direct labor hours" are those productive hours expended by Contractor personnel in performing work under this contract that are charged as direct labor under the Contractor's established accounting policy and procedures. The term *does not* include sick leave, vacation, holiday leave, military leave, or any type of administrative leave but does include direct labor hours provided under level-of-effort subcontracts.

(c) Once the maximum number of direct labor hours is reached or the contract term has ended, the Contractor's obligations under the contract are fulfilled, even though the specified work may not have been completed. The Contractor is not authorized to exceed the maximum of the direct labor hours specified in paragraph (a) of this clause. Any estimated cost and fee(s) adjustments for additional direct labor hours shall be based solely upon those hours being added to the maximum number of direct labor hours specified in this clause.

(d) The fee, if any, is based upon the furnishing of at least the specified minimum number of direct labor hours, including subcontract hours. If the Contractor provides less than that specified minimum number of hours prior to expiration of the contract term, and the Government has not invoked its

rights under the Termination clause of this contract to adjust the contract for such reduced effort, the Contracting Officer may unilaterally make an equitable downward adjustment to the contract fee. The downward adjustment in fee will be based upon the difference between the minimum direct labor hours specified under this clause and the amount of direct labor hours provided by the Contractor. Prior to making such an adjustment, the Contracting Officer will request the Contractor provide a written discussion of any extenuating circumstances (e.g., productivity improvements or reductions in contract scope) which contributed to the underrun. Any information provided by the Contractor will be considered by the Contracting Officer in determining the amount of the downward adjustment in fee. (End of clause)

1852.216-83 Fixed Price Incentive.

As prescribed in 1816.405-70(b), insert the following clause:

Fixed Price Incentive

(Dec. 1991)

The target cost of this contract is $_____. The Target profit of this contract is $_____. The target price (target cost plus target profit) of this contract is $_____. [The ceiling price is $_____.] (End of clause)

1852.216-84 Estimated Cost and Incentive Fee.

As prescribed in 1816.405-70(c), insert the following clause:

Estimated Cost and Incentive Fee

(Dec. 1991)

The target cost of this contract is $_____. The target fee of this contract is $_____. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract are $_____. (End of clause)

1852.216-85 Estimated Cost and Award Fee.

As prescribed in 1816.405-70(d), insert the following clause:

Estimated Cost and Award Fee

(Dec. 1991)

The estimated cost of this contract is $_____. The base fee is $_____, and the maximum available award fee is $_____. Total estimated cost, base fee, and maximum award fee are $_____. (End of clause)

1852.216-86 Settlement of Letter Contract.

As prescribed in 1816.603-470, insert the following clause:

Settlement of Letter Contract

(Dec. 1991)

(a) This contract constitutes the definitive contract contemplated by issuance of letter contract _____ (insert number), dated _____. It supersedes the letter contract and its modification no.(s) _____ and, to the extent of any inconsistencies, governs.

(b) The cost(s) and fee(s), or price(s), established in this definitive contract represent full and complete settlement of letter contract _____ and modification no.(s) _____. (End of clause)

1852.216-87 [Amended]

e. In section 1852.216-87, the citation "1816.307-70(h)" is revised to read "1816.307-70(g)."

1852.232-80 [Redesignated]

f. Section 1852.232-80, Date of Incurrence of Costs, is redesignated as section 1852.231-70, and is revised to read as follows:

1852.231-70 Date of Incurrence of Costs.

As prescribed in 1831.205-70, insert the following clause:

Date of Incurrence of Costs

(Dec. 1991)

The Contractor shall be entitled to reimbursement for costs incurred on or after _____ in an amount not to exceed $_____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract. (End of clause)

1852.232-76 [Redesignated]

g. Section 1852.232-76, Advance Payments, is redesignated as 1852.232-12 and revised to read as follows:

1852.232-12 Advance Payments.

As prescribed at 1832.412, modify the "Maximum Payment" paragraph (either paragraph (d) or (e)) of 52.232-12, Advance Payments, as follows:

In the sentence that begins "When the sum of", change the word "When" to lower case and insert before it the following: "Unliquidated advance payments shall not exceed $ * * * at any time outstanding. In addition * * *".

1852.232-75 [Removed]

h. Section 1852.232-75 is removed in its entirety.

PART 1853—FORMS

16. Part 1853 is amended as set forth below:

1853.215-2 [Amended]

a. Section 1853.215-2 is revised to read as follows:

1853.215-2 Price negotiation (NASA Form 634 and DD Form 1861).

(a) NASA Form 634, Structured Approach—Profit/Fee Objective. NASA Form 634, prescribed at 1815.970(a), shall be used for determining the profit or fee objective by the structured approach.

(b) DD Form 1861, Contract Facilities Capital Cost of Money. DD Form 1861, prescribed at 1815.970-3(b), shall be used to calculate facilities capital cost of money.

1853.242-70 [Amended]

b. In section 1853.242-70, paragraph (d), the citation "1842.202(a)(2)(i)" is revised to read "1842.202(c)(7)".

[FR Doc. 92-273 Filed 1-8-92; 8:45 am]
BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 900124-0127]

Atlantic Surf Clam and Ocean Quahog Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Temporary notification requirements; removal.

SUMMARY: NMFS issues this notice to remove temporary notification requirements for the surf clam and ocean quahog fisheries. NMFS has determined more industry comment is appropriate before final requirements are implemented. These requirements were published in the **Federal Register** on December 2, 1991 (56 FR 61182).

EFFECTIVE DATE: The temporary notification requirements are removed effective January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Myles A. Raizin, Resource Policy Analyst (508-281-9104).

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (Amendment 8) were published on June 14, 1990 (55 FR 24184), with the regulations becoming fully effective on September 30, 1990.

Prior to the implementation of Amendment 8, vessel owners operating in the Mid-Atlantic surf clam fishery were required to provide written notice of their intention to fish for surf clams, up to 15 days prior to the fishing trip. Scheduled fishing trips could be canceled with advance notice. Also, during the months of November through April, vessel owners or operators could claim a bad weather "make up" day if, in their opinion, the weather conditions did not permit safe fishing operations. The make up day was the authorized fishing day immediately following the

day on which the fishing trip was scheduled.

Amendment 8 changed the management system from one of strict effort restrictions and notice requirements to an individual transferable quota (ITQ) based system. ITQs are issued as a portion of the total annual quota based on a percentage derived from a regulatory formula. Vessel operators fish for their respective ITQs at will, as long as there is remaining quota to be caught. Under such a system, the monitoring of the harvest on a vessel by vessel basis becomes critical to ensure that no one exceeds their ITQ and the integrity of the annual quota remains intact. Monitoring is accomplished through the use of an enhanced vessel and processor reporting system and shellfish cage tagging requirements.

Since enforcement is a critical aspect of an effective ITQ system, the regulations implementing Amendment 8 contain a provision that allows the Regional Director to specify notification requirements by publishing a notice in the **Federal Register**. For more than a year, the vessels in the fishery have operated without any scheduled fishing times. While enforcement agents were able to inspect some boats upon landing for compliance with the reporting and cage tagging requirements, the agents have had no advance knowledge during the last year regarding which boats were conducting fishing operations on any given day.

Those administering the ITQ system believe that knowledge of which vessels are fishing on any day is a necessary adjunct to the reporting requirements. Consequently, proposed notification requirements were published on October 11, 1991 (56 FR 51368). One set of written comments were received from the industry. The notification requirements were finalized and published on December 2, 1991 (56 FR 61182) and made effective from November 26, 1991 through December 31, 1992. The temporary notification requirement provided that vessel owners or operators notify the Regional Director at least 24 hours prior to departure on a fishing trip.

Possibly because the fishery has been virtually unregulated with respect to the actual fishing operations for over a year, the industry took little notice of the proposed notification requirements process. Prior to Amendment 8, proposals such as notification requirements were developed mainly within the Mid-Atlantic Fishery Management Council. Industry had ample opportunity to air its views and debate the merits of such a proposal. According to some recent industry comments, the 24-hour notice requirement may possibly be less flexible than requirements that existed prior to Amendment 8. This results from the fact that there is no make up day in place under the Amendment 8 regulations. Thus, weather conditions again become a complicating factor relative to the notification requirements. For example, processing plants that schedule vessels to fish on a certain day lose some flexibility if those boats are unable to leave port due to weather and the plant is unable to contact other vessels to make trips to supply the product it needs to keep its processing lines operating.

The Regional Director is concerned over the problems recently raised by industry. Notification requirements should be at the least intrusive on industry yet adequate for effective enforcement. Consequently, the notification requirements are being removed in favor of a more deliberative process. A proposed rulemaking will be published containing revised notification requirements after soliciting input from industry advisors, the Mid-Atlantic Council, and law enforcement personnel. Incorporating the notification requirements as actual regulatory text will also obviate the need to publish a notice in the **Federal Register** each year reimposing the notification requirements.

Other Matters

This action is taken under the authority of 50 CFR part 652 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: January 3, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-455 Filed 1-6-92; 3:08 pm]

BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 57, No. 6
Thursday, January 9, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-194]

Importation of Apricots, Persimmons, and Pomegranates From Sonora, Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow apricots, persimmons, and pomegranates to be imported into the United States from certain municipalities in Sonora, Mexico. This action appears warranted because these municipalities are free of certain injurious insect pests that attach the fruits. Apricots, persimmons, and pomegranates currently may not be imported from Mexico because of the existence of various fruit flies in that country and the lack of a suitable treatment to eliminate the fruit flies from these fruits. Adoption of this proposal would provide importers and consumers in the United States with additional source of apricots, persimmons, and pomegranates.

DATES: Consideration will be given only to comments received on or before January 20, 1992.

ADDRESSES: To help insure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-194. Comments received may be inspected at USDA room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 639-C, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-5231.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 *et seq.* (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables into the United States from certain foreign countries and localities to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within the United States.

Section 319.56-2, paragraph (e), of the regulations provides, among other things, that fruits and vegetables may be imported into the United States without treatment for certain injurious insects that attach the fruit or vegetable, if the fruit or vegetable is imported from a "definite area or district" of the country of origin that is free from those injurious insects. Paragraph (f) of § 319.56-2 contains criteria for importation of fruits and vegetables from a definite area or district.

Paragraph (h) of § 319.56-2 states that the Administrator has determined that the following municipalities in Sonora, Mexico, meet the criteria of § 319.56-2 (e) and (f) with regard to the insect pests *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus:* Altar, Atil, Caborca, Carbo, Empalme, Hermosillo, Pitiquito, Puerto Penasco, and San Miguel. Paragraph (h) further provides that apples, grapefruit, oranges, peaches, and tangerines may be imported from these areas without treatment for the insect pests named.

We are proposing, in addition, to allow apricots, persimmons, and pomegranates to be imported from these areas without treatment for the insect pests named.

Pest risk analyses conducted by the agency have determined that any other injurious insects that might be carried by these fruits would be readily detectable by a U.S. Department of Agriculture inspector. In accordance with § 319.56-6 of the regulations, the fruits would be subject to inspection at the port of first arrival and to such treatment as may be required by an inspector.

Therefore, it appears that this proposed change in the regulations can be made without increasing the risk of introducing injurious insect pests, including fruit flies, into the United States.

Comment Period

Mr. Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by providing for a 10-day comment period on this proposed rule. This proposed rule would relieve restrictions on the importation of apricots, persimmons, and pomegranates from municipalities in Sonora, Mexico, that have previously been determined to be free of certain insect pests that attack the fruit. The 10-day comment period will allow the agency to promulgate and implement a final rule in time for the spring shipping season for the fruit. This rulemaking would benefit interested U.S. importers, distributors, and retailers by allowing them the opportunity to import, distribute, and sell Mexican apricots, persimmons, and pomegranates. It also would provide U.S. consumers with additional sources of these fruits.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule has been reviewed in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would allow fresh apricots, persimmons, and pomegranates to be imported into the United States from certain municipalities in Sonora, Mexico. Small entities that could be affected by this action include importers of apricots, persimmons, and pomegranates, and

domestic growers, distributors, and retailers of these fruits.

We anticipate, however, that the economic impact on these entities would be insignificant, based on the amount of apricots, persimmons, and pomegranates that we expect to be imported from the specified municipalities.

The United States produces approximately 19,000 tons of fresh apricots annually. Approximately two-thirds of all fresh apricots are produced in California. Mexico produces about 5,500 tons of apricots annually, with Sonora producing 730 tons. Sonora estimates it will export close to 300 tons of fresh apricots to the United States annually, which represents 1.6 percent of total U.S. production and 2.4 percent of California production.

California produces approximately 99 percent of the 20,000 tons of pomegranates grown in the United States each year. Mexico produces 4,342 tons annually, while Sonora produces 640 tons. It is not known what portion of Sonoran pomegranates would be exported to the United States. However, if all Sonoran pomegranates were sent to the United States, they would comprise only 3.3 percent of the total U.S. crop.

Sonora is the dominant persimmon producer in Mexico. This region produces 235 of the 255 tons of Mexican persimmons grown each year. Again, California produces almost 100 percent of the 3,700 tons of persimmons each year in the United States. If the entire 235 tons of Sonoran persimmons were shipped to the United States, it would be about 6.4 percent of the total U.S. supply.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

§ 319.56–2 [Amended]

2. In § 319.56–2, paragraph (h) would be amended by adding the word "apricots," immediately after the word "Apples,"; and by adding the words "persimmons, pomegranates," immediately after the word "peaches,".

Done in Washington, DC, this 6th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–535 Filed 1–8–92; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AE13

Limited Revision of Fee Schedules

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing two limited amendments to its regulations governing the assessment on license and annual fees. The proposed rule would assess license fees which are based on the full cost method quarterly instead of semiannually. The proposed rule would establish a lower tier small entity annual fee for those licensees that are small entities with relatively low annual gross receipts or supporting populations. The proposed amendments would improve NRC financial management and further mitigate the impact of the annual fee on small licensees with relatively low annual gross receipts or supporting populations.

DATES: The comment period expires February 10, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure only that comments received on or before this date will be considered. Because the Commission needs to incorporate the final results of this proposed rule in developing the FY 1992 annual fees, including those reduced fees for small entities, requests for extensions of the comment period will not be granted.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm Federal workdays. (Telephone 301–504–1966).

Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street, NW., Washington, DC 20555, in the lower level of the Gelman Building.

The agency workpapers that support these proposed changes to 10 CFR parts 170 and 171 are available in the Public Document Room at 2120 L Street, NW., Washington, DC, in the lower level of the Gelman Building.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–4301.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Proposed Action.
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I. Background

The NRC assesses two types of fees: (1) License and inspection fees are assessed under 10 CFR part 170 to recover the costs to the NRC of providing individual services (e.g., inspections and license application reviews) to specific applicants for, and holders of, NRC licenses and approvals; and (2) Annual fees are assessed under 10 CFR part 171 to recover NRC generic and other regulatory costs not recovered under 10 CFR part 170.

On July 10, 1991, the Commission published a final rule that revised the fee schedules contained in 10 CFR parts 170 and 171 (56 FR 31472). These revisions were necessary to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA) (Public Law 101–508) which requires the NRC to recover approximately 100 percent of its budget authority for FY 1991 through 1995 from

the assessment of license and annual fees.

In implementing the Public Law, the NRC is required to evaluate the impact of its fees on small entities by the Regulatory Flexibility Act of 1980 (RFA). To obtain information to evaluate these impacts, the proposed rule, published by the Commission on April 12, 1991, specifically requested comments on the impact of the proposed fees on small entities (56 FR 14870). Using the comments received on the proposed rule, the Commission concluded that the revised annual fees would significantly impact upon a substantial number of materials licensees that are small entities. Therefore, a regulatory flexibility analysis was prepared for the final rule as required by the RFA. For the analysis, the Commission examined the impacts of the annual fees on small entities and addressed specific alternatives to minimize these impacts. As a result of this analysis, the NRC established a maximum annual fee of $1,800 per licensed category for those materials licensees who could qualify as a small entity under the NRC's size standards. The Commission noted that this decision balanced the objectives of the OBRA and the RFA by reducing, but not eliminating, the impact of the annual fees on small entities. The NRC adopted size standards for determining which NRC licensees qualify as small entities on December 9, 1985 (50 FR 50241), and clarified these size standards on November 6, 1991 (56 FR 56672). The NRC size standards for small entities are as follows:

1. A small business is a business with annual receipts of $3.5 million or less except private practice physicians for which the standard is annual receipts of $1 million or less.

2. A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of $3.5 million or less.

3. Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

4. A small educational institution is one that is (1) supported by a qualifying small governmental jurisdiction, or (2) one that is not state or publicly supported and has 500 employees or less.

In subsequent sections of this proposed rule, the $3.5 million size standard (Standard 1) will be used to represent small entities unless it is necessary to distinguish between the types of small entities.

The Commission followed the requirements of Public Law 101-508, and the guidance of the Conference Report accompanying the Public Law, in establishing the license and annual fees for FY 1991. Section 170.12 of the license fee regulations establishes the payment intervals for Part 170 license and inspection fees. Section 171.16(c) of the annual fee regulations establishes a maximum annual fee of $1,800 for those materials licensees who can qualify as a small entity under the NRC's size standards.

II. Proposed Action

The following discussion addresses proposed limited changes to 10 CFR parts 170 and 171. The proposed change to part 170 would reduce the interval between the time the NRC provides a specific service and the time NRC issues a bill for that service. The proposed change to part 171 would further reduce the impact of the annual fees on small materials licensees.

A. Change to 10 CFR Part 170 Billing Interval

Currently, all part 170 fees are paid upon submission of an application or are billed at least quarterly, except for fees for licensing actions (e.g., amendments, renewals or approvals) relating to reactors and certain materials licensees which are billed every six months. Sound financial management requires that bills for fees be sent promptly. Some licensees have suggested that if they received NRC bills more frequently, they would have useful cost information sooner. These licensees have indicated that information on these bills would assist them in making more timely business decisions on items such as contract modifications. The Commission is therefore proposing that the billing interval be changed from semiannually to quarterly for reactor and certain materials licensing actions.

B. Change to 10 CFR Part 171 Small Entity Fee

The Commission continues to receive written and oral comments from small materials licensees concerning the impact of the part 171 annual fees. According to these comments, the $3.5 million threshold for small entities is not representative of small businesses with gross annual receipts in the thousands of dollars. These commenters indicate that the $1,800 maximum annual fee for small entities represents a relatively high percentage of gross annual receipts for these types of businesses and could have a significant impact on their ability to continue to operate. Clearly, some of the over 1,000 termination requests that have been received since the revised fees were implemented represent these relatively small entities.

Members of Congress, in many of the more than 100 letters the NRC has received from them since the final rule was published, have expressed concern about the size of the annual fees and their economic impact on small entities. Some of these letters have suggested that the Commission should act to further reduce the economic impact on those materials licensees conducting limited operations.

The Small Business Administration (SBA), while commending the Commission for complying with and using the Regulatory Flexibility Act in the final rulemaking, suggested that the Commission should act to further alleviate the impact of the annual fees on small businesses. The American Nuclear Society has also recently expressed concern about the impact on the annual fees on small entities and suggested that the Commission examine alternatives to further reduce these impacts.

The Commission agrees that the current maximum annual fee of $1,800 for small entities, when added to the part 170 license and inspection fees, could have a significant economic impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, the Commission is proposing to further reduce the impact on small entities with relatively low gross annual receipts. Although the NRC would, for FY 1992, continue the maximum annual fee of $1,800 for certain small entities, the NRC is proposing that a second, lower tier small entity fee of $400 be established. Small businesses and non-profit organizations with gross annual receipts of less than $250,000 and small governmental jurisdictions with populations of less than 20,000 would qualify for the lower tier small entity fee. The basis for this proposal is discussed in detail in the Regulatory Flexibility Analysis included as Appendix A to this proposed rule.

The Commission believes that by defining relatively small gross annual receipts as less than $250,000, a significant number of small entities (approximately 50%) would be eligible for a further reduction of the impact of the annual fees. The Commission also believes that by defining a relatively small governmental jurisdiction as a population of less than 20,000, approximately 50 percent of the small governmental jurisdictions would be eligible for a further reduction in fees. These annual gross receipt and population levels would also help

ensure that those licensees who probably would be impacted the most by the annual fee would pay the lower amount. The Commission believes that the $400 fee would ensure that the lower tier small entities would receive a reduction (e.g., 75% for qualifying nuclear gauge licensees) substantial enough to mitigate any severe impact resulting from the annual fee. In addition, the amount of the small entity costs borne by other licensees would be equivalent to the $5.0 million estimated in the current rule, increased by 20% to account for the FY 1992 budget increase and the reduction in the number of material licensees due to license terminations.

The Commission emphasizes that the scope of this proposed rule has a very narrow focus. The proposed amendments are limited to the questions of (1) whether and how the Part 170 license fee billing interval should be modified and (2) whether and how to further alleviate the impact of the part 171 annual fees on those materials licensees that meet the existing NRC small entity size standards. Comments will only be considered which address these two questions. This narrow focus is necessary in order that the Commission be in a position to issue a final rule acknowledging and responding to the comments on these amendments by early spring. The NRC is not seeking, and will not consider, comments relating to a change in the NRC's existing size standards under which a licensee could qualify as a small entity for annual fee purposes, suggested changes in the structure of the specific fee categories, or suggested changes in the methods for allocating costs and calculating the annual fees.

Because the Commission intends to incorporate the comments received from this proposed rule in developing the FY 1992 annual fees, the annual fees for FY 1992 will be published in the **Federal Register** as a General Notice in Spring 1992, rather than in December 1991, as indicated in the July 10, 1991, final rule (56 FR 31724). In accordance with § 171.13, the NRC will continue to issue quarterly bills for the annual fees, beginning in December 1991, for annual fees greater than $100,000 which are based on the current 10 CFR part 171 annual fee schedule (56 FR 31506). The NRC will publish in the **Federal Register**, a General Notice in January 1992, updating the part 170 hourly rate and flat fees based on the NRC's FY 1992 appropriation.

III. Section-By-Section Analysis

The following analysis of those sections that would be affected under this proposed rule provides additional explanatory information. All references are to title 10, chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.12 Payment of Fees.

Paragraphs (b)(2), (c)(2), (d)(2), (e)(1), (f), and (i) of this section are amended by changing the interval at which the NRC bills applicants and licensees from six months to quarterly. This change would result in NRC billing fees for licensing and approval actions, based on the full cost method (professional staff hours and contractual costs), at quarterly intervals rather than every six months. This proposed amendment would be applicable primarily to reactors and fuel cycle facilities and would result in all part 170 full cost fees being billed at least quarterly. Good financial management practice requires that fee billings be made as promptly as is possible. Some licensees have suggested that the current six month billing interval be shortened in order that bills be issued on a more prompt and timely basis. More frequent billings would assist licensees in making business decisions on a more timely basis on items such as contract negotiations. The Commission is therefore proposing that licensing fees based on the full cost method be billed at quarterly intervals, e.g., December, March, June and September.

Part 171

Section 171.16 Annual Fees

Materials licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government agencies licensed by the NRC.

The introduction to paragraph (c) is amended (1) to provide for the continuation, in FY 1992, of a maximum annual fee of $1,800 per licensed category for those NRC licensees that meet NRC small entity size standards and (2) to establish a lower tier small entity annual fee of $400 per licensed category for those small businesses and non-profit organizations with gross annual receipts of less than $250,000 and for those small governmental jurisdictions with a population of less than 20,000. Data from an NRC survey of materials licensees and the Department of Commerce industry census show that about 50 percent of small businesses with gross annual receipts of less than $3.5 million have gross annual receipts of less than $250,000. Thus, the Commission is proposing to define a lower tier of small businesses with relatively low gross annual receipts as those with gross annual receipts less than $250,000. Under this proposal, a significant number of small entities would qualify for the further reduction of the annual fee. The proposed eligibility criterion would also help ensure that those small businesses who would probably be impacted the most by the annual fee would pay the lower amount.

The Commission used a similar approach in proposing a reduced annual fee for the small governmental jurisdiction standard of populations of less than 50,000. Data provided by the National Association of Counties show that about 50 percent of the counties located in non-Agreement States have a population of less than 20,000. Therefore, the Commission is proposing to establish a lower tier level of less than 20,000 population in order for a small governmental entity to qualify for the reduced annual fee of $400. This would ensure that at least 50 percent of the cities, towns, townships, villages, school districts, and other special districts would also receive the benefit because these jurisdictions are typically smaller than counties.

The Commission has not changed its basic definition of a small entity, that is, gross annual receipts of $3.5 million or less for businesses and nonprofit organizations; private practice physicians with gross annual receipts of $1 million or less, and small governmental jurisdictions with a population of less than 50,000.

Under this proposed rule, these three groups of NRC licensees would qualify for one of the two reduced annual fees depending on the level of the annual gross receipts or the respective population. A licensee with gross annual receipts of $1.5 million would pay a maximum small entity annual fee of $1,800 per licensed category. A licensee with annual gross receipts of $200,000 would qualify for the lower tier small entity fee of $400 per licensed category. Private practice physicians whose annual gross receipts are from $250,000 to $1 million, would pay the maximum annual fee of $1,800 per licensed category, while those private practice physicians with annual gross receipts of less than $250,000 would pay the reduced annual fee of $400 per licensed category. Licenses issued to city or county governments, for example, with a population of less than 20,000 would qualify for the lower tier small entity fee of $400. The Commission believes that this proposed two-tiered approach will further alleviate the impact of fees on small entities with relatively low annual

gross receipts and the smaller governmental jurisdictions.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for this proposed rule.

V. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VI. Regulatory Analysis

The Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) requires the NRC to recover approximately 100 percent of its budget authority for Fiscal Year 1991 and the succeeding four years through the assessment of license and annual fees. With respect to part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. The proposed limited change to part 170 would revise the fee billing interval to quarterly for those license fees that are currently billed every six months. This would result in all part 170 fees being billed at least quarterly. With respect to the limited changes to part 171, the Commission is proposing to adjust the maximum annual fee assessed to materials licensees who qualify as a small entity under the NRC's size standards. Although the Commission would continue the $1,800 maximum annual fee per licensed category for small entities, it is proposing a lower tier annual fee of $400 per licensed category for those small materials entities that have annual gross receipts of less than $250,000 and for those small governmental jurisdictions with a population of less than 20,000. This constitutes the regulatory analysis for this proposed rule.

VII. Regulatory Flexibility Certification/ Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover 100 percent of its budget authority through the assessment of license and annual fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

The NRC is proposing two limited amendments to its regulations governing the assessment of license and annual fees. The proposed limited changes to 10 CFR part 170 would assess license fees, which are based on the full cost method, quarterly instead of semiannually. This proposed change affects only the frequency of the billings and not the amount of the fees to be billed. In addition, this proposed change applies primarily to reactors and large fuel cycle facilities that are not small entities. Therefore, the Commission certifies that the proposed change to 10 CFR part 170, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule would continue, in 10 CFR part 171 of the Commission's regulations, the existing maximum annual fee of $1,800 per licensed category for small entities. However, the proposed rule would establish a lower tier small entity annual fee of $400 per licensed category for those NRC materials licensees who can qualify as a small entity under the existing NRC's size standards and whose annual gross receipts are less than $250,000 or, for those small governmental jurisdictions who have a population of less than 20,000. This reduced annual fee would be established one level or tier below the current $1,800 annual fee. The basis for this proposed amendment to 10 CFR part 171 is discussed in detail in the regulatory flexibility analysis which is included as appendix A to this proposed rule. The regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Consistent with the requirements of the Regulatory Flexibility Act, this proposed change to 10 CFR Part 171 would further alleviate the impact of future annual fees on the smallest materials licensees.

VIII. Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109 does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct, or operate a facility.

Lists of Subjects

10 CFR 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material: Special nuclear material.

10 CFR 171

Annual charges, Byproduct material, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material, Holders of certificates, registrations, or approvals, Penalties.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACTION OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051, sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 170.12, paragraphs (b)(2), (c)(2), (d)(2), (e)(1), (f), and (i) are revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(b) *License fees.* * * *

(2) Fees for applications for permits and licenses that are subject to fees based on the full cost of the reviews are payable upon notification by the Commission. The NRC shall bill each applicant at quarterly intervals for all accumulated costs for each application the applicant has on file for Commission review until the review is completed. Each bill will identify the applications and costs related to each.

(c) *Amendment fees and other required approvals.* * * *

(2) Fees for applications for license amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities that are subject to full cost recovery are payable upon

notification by the Commission. The NRC shall bill each applicant at quarterly intervals for all accumulated costs for each application the applicant has on file for Commission review until the review is completed except for those costs relating to amendment and other approvals for early site permits that were deferred before August 9, 1991. These costs will be billed in a deferred manner consistent with that addressed in paragraph (d)(4) of this section. Each bill will identify the applications and costs related to each.

(d) *Renewal fees.* * * *

(2) Fees for applications for renewals that are subject to the full cost of the review are payable upon notification by the Commission. Except for those costs deferred before August 9, 1991, as noted in paragraphs (d)(3) and (d)(4) of this section, the NRC shall bill each applicant at quarterly intervals for all accumulated costs for each application that the applicant has on file for Commission review until the review is completed. Each bill will identify the applications and the costs related to each.

(e) *Approval fees.* (1) Fees for applications for materials approvals that are not subject to full cost recovery must accompany the application when it is filed. Fees for applications or preapplication consultations and reviews subject to full cost are payable upon notification by the Commission. The NRC shall bill each applicant at quarterly intervals until the review is completed. Each bill will identify the applications and the costs related to each.

* * * * *

(f) *Special Project Fees.* Fees for applications for special projects such as topical reports are based on full cost of the reviews and are payable upon notification by the Commission. The NRC shall bill each applicant at quarterly intervals until the review is completed. Each bill will identify the applications and the costs related to each.

* * * * *

(i) *Part 55 review fees.* The costs for Part 55 review services will be subject to fees based on NRC time spent in administering the examinations and tests that are generally given at the reactor site and any related contractual costs. The costs also include related items such as preparing, reviewing, and grading of the examinations and tests. The costs will be billed at quarterly intervals to the licensee employing the operators.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY NRC

3. The authority citation for part 171 is revised to read as follows:

Authority: Section 7601, Pub. L. 99–272, 100 Stat. 146, as amended by Sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by Sec. 6101, Pub. L. 101–508, 104 Stat. 1338 (42 U.S.C. 2021b, 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

4. In § 171.16, the introductory text of paragraph (c) is revised to read as follows:

§ 171.16 Annual fees.

Material licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1992 based on gross annual receipts, or for small governmental jurisdictions, population density as follows:

* * * * *

Small businesses and small not-for-profit organizations (gross annual receipts)	Annual fee per licensed category
$250,000 to $3.5 million	$1,800
Less than $250,000	400
Private Practice Physicians (gross annual receipts):	
$250,000 to $1.0 million	1,800
Less than $250,000	400
Small governmental jurisdictions (population):	
20,000 to 50,000	1,800
Less than 20,000	400

* * * * *

Dated at Rockville, Maryland, this 3d day of January, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Appendix A to This Proposed Rule—Regulatory Flexibility Analysis for the Limited Amendment to 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et. seq.) establishes as a principle of regulatory practice, that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act request that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in the consideration of impacts under the Regulatory Flexibility Act, the NRC has adopted size standards for determining which NRC licensees qualify as small entities on December 9, 1985 (50 FR 50241). These size standards were clarified November 6, 1991 (56 FR 56672). The NRC size standards are as follows:

(1) A small business is a business with annual receipts of $3.5 million or less except private practice physicians for which the standard is annual receipts of $1 million or less.

(2) A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of $3.5 million or less.

(3) Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

(4) A small educational institution is one that is (1) supported by a qualifying small governmental jurisdiction, or (2) one that is not state or publicly supported and has 500 employees or less.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. For FY 1991, the amount to be collected was

approximately $445 million, and for FY 1992, the amount to be collected is approximately $493 million.

To comply with Public Law 101–508, the Commission proposed amendments to its fee regulations in 10 CFR parts 170 and 171 on April 12, 1991 (56 FR 14870). Based on careful evaluation of over 400 comments, the Commission issued a final rule on July 10, 1991 (56 FR 31472). Consistent with the Conference Report accompanying the Public Law, the NRC fairly and equitably allocated its budget costs. This resulted in the assessment of annual fees for all classes of licensees, including those classes of licensees with a substantial number of small entities.

II. Impact on Small Entities

Previous surveys, the comments received on the proposed FY 1991 fee rule revisions and small entity certifications received in response to the final FY 1991 fee rule indicate that NRC licensees that qualify as a small entity under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these material licensees, the NRC estimates that about 25 percent (approximately 2,000 licensees) would qualify as a small entity. Therefore, in recognition of this substantial number of small entities, the NRC requested comments from small entities on the proposed FY 1991 rule. Comments were specifically requested on: (1) How the proposed regulations would affect each class of licensee; and (2) how the regulations could be structured to further minimize the economic impact on the licensee, but still meet the statutory mandate of Public Law 101–508.

For materials licensees, the increase in fees assessed in FY 1991 consisted of (1) an increase of 25 percent in the license and inspection fees assessed under 10 CFR part 170, and (2) a new annual fee assessed under 10 CFR part 171 that ranges from $290 to over $10,000. A number of small entities indicated that the 25 percent increase in license and inspection fees, although not desirable, would not have a significant economic impact on them. However, many of the materials licensees commented on the negative economic impact of the new annual fee. Therefore, the regulatory flexibility analysis prepared for the July 10, 1991, final rule, as well as this regulatory flexibility analysis, concentrates on the new annual fee.

The commenters indicated the following results if the annual fees proposed on April 12, 1991, were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put them at an extreme disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in around 10 percent of the well logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Although it was not clear to what extent these impacts would materialize at the time the July 10, 1991, final rule was promulgated, it was clear that the proposed annual fees would be a relatively high portion of the gross revenues of some licensees and far less a portion for other larger material licensees. After the final rule was published, approximately 1,000 license, approval and registration terminations were requested. Although some of these terminations were requested because the license was no longer needed, there are indications that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the $3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these types of businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

Members of Congress, in many of the more than 100 Congressional letters the NRC has received from them since the final rule was published, have expressed concern about the size of the NRC annual fees and their economic impact on small entities. Some of these letters have suggested that the Commission should act to further reduce the economic impact on those licensees who conduct limited operations. The Small Business Administration (SBA), while commending the Commission for complying with and using the RFA in the final rulemaking, suggested that the Commission should act to further alleviate the impact of the fees on small businesses. The American Nuclear Society (ANS) also expressed concern about the impact of the annual fees on small entities and suggested that the Commission examine alternatives to further reduce the impacts.

Therefore, the NRC concludes that additional alternatives, in accordance with the Regulatory Flexibility Act, should be considered because of the continuing significant impact of the annual fees on a substantial number of small entities.

III. Alternatives

Commenters on the proposed rule published April 12, 1991, and comments received subsequent to publication of the final rule on July 10, 1991, suggested alternatives to reduce the impact on small entities. These comments are categorized as follows:

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).
—Base fees on the NRC size standards for small entities.

The first alternative would result in the annual fee being in direct proportion to the amount of radioactivity (e.g., number of radioactive sources) possessed by the licensee, independent of whether the licensee meets the size standard for a small business. Thus, a large diversified firm that owns one source would get a reduced fee, while a small entity, whose business may depend solely on the use of radioactive materials, would pay a larger fee because it has more than one source. Thus, this alternative does not necessarily achieve the goal of the Regulatory Flexibility Act to minimize the impact on small entities. The NRC also believes that this approach would not result in a fair and equitable allocation of its generic and other costs not recovered under part 170. Therefore, the NRC rejected this approach.

For similar reasons, basing the fee on the frequency of use of the licensed radioactive source, the second suggested alternative, would not necessarily reduce the cost for small entities that meet the size standards discussed earlier. Therefore, the NRC also rejected this approach.

The last alternative would base fees on the size standards that the NRC has used to define small entities. This alternative would ensure that any benefits from modifying the proposed fees would apply only to small entities. Three basic options, each using the NRC size standards, were considered for modifying the annual fees imposed on small entities:

1. Exempt all small entities that meet the size standards from annual fees.
2. Require small entities to pay a fixed percent of the amount of the fee in each of the specific material license fee categories.
3. Establish a maximum fee for small entities.

Under Option 1, all small entities would be exempted from fees. However, because small entities would not pay any of the generic costs attributable to their class of licensees this option could be viewed as not consistent with the objectives of Public Law 101–508. Under this option, all the annual fees attributable to small entities would be paid by other NRC licensees.

Under Option 2, small entities would pay a percentage (e.g., 50 percent) of the proposed fee for each specific category of material license, regardless of how small or large the fee is. This option could result in a reduction in annual fees that are already relatively small and do not have a significant impact on a substantial number of small entities. On the other hand, for those fee categories assessed large annual fees, the percentage of reduction may result in assessing small entities licensed under those fee categories relatively large annual fees.

Option 3 would establish a maximum fee for all small entities. Under this option, a small entity would pay either the smaller of the annual fee for the category or the maximum small entity fee. This alternative strikes a balance between the requirements of Public Law 101–508 and the Regulatory Flexibility Act, which is to consider and reduce, as appropriate, the impact of an agency's regulatory actions on small entities. Therefore, the NRC has adopted Option 3 as the most appropriate to reduce the impact on small entities.

IV. Maximum Fee

To implement Option 3, the NRC established a maximum annual fee for small entities. The Regulatory Flexibility Act and implementing guidance do not provide specific guidelines on the amount or the percent of gross receipts that should be charged to small entity. To determine a maximum annual fee for a small entity, the NRC examined the NRC to CFR part 170 license and inspection fees established in 1991 and the 1991 Agreement State fees for those fee categories which are expected to have a substantial number of small entities. Because these fees have been charged to small entities, the NRC believes that these fees do not have a significant impact on them. In fact, the NRC concluded, in issuing the July 10, 1991, final rule, that the existing materials license and inspection fees do not have a significant impact on small entities.

The maximum fees per year charged in 1991 by several Agreement States and by the NRC for materials license fee categories with a significant number of small entities are shown below.

	1991 maximum average total fee per year
Washington	$3,760
Texas	2,100
Illinois	2,000
NRC	1,590
Nebraska	1,480
New York	1,030
Utah	440

Table 1 shows the estimated total fees (part 170 plus part 171) for materials licensees, assuming maximum annual fees for small entities of $2,000 or $1,500 and an average number of licensing actions and inspections per year. If the maximum annual fee for small entities is established at $2,000, the average fee per year for all of the categories would be below the approximately $3,800 maximum fee charged by Agreement States, except for radiography, waste receipt and packaging, and broad scope medical licensees. The broad scope medical, and waste receipt and packaging licensees are primarily large entities. Therefore, with a $2,000 maximum small entity annual fee and the average license and inspection fees, only small entities who are radiographers would pay slightly more than the current maximum Agreement State fee of approximately $3,800. If the maximum fee is reduced by $200 (from $2,000 to $1,800), then all categories of materials licensees, including radiographers, would pay no more for each category than the 1991 maximum Agreement State fee of about $3,800 if the licensee qualifies as a small entity.

By establishing the maximum annual fee for small entities at $1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, would pay for most of the FY 1991 costs ($22.3 million of the total $27.2 million) attributable to them. Therefore, the NRC has established and will continue, for FY 1992, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity. Note that the costs not recovered from small entities are allocated to other material licensees and to operating power reactors.

While reducing the impact on many small entities, the Commission agrees that the current maximum annual fee of $1,800 for small entities, when added to the part 170 license and inspection fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, the Commission is proposing to further reduce the impact on small entities with relatively low gross annual receipts.

Commenters have suggested that the NRC could reduce the impact of the fees for materials licensees by basing them on the licensee's nuclear capacity (e.g., the number of sources possessed, the number of hospital beds, or the amount of radioactive material possessed), or the frequency of use of the radioactive material). In adopting the July 10, 1991, final rule, the Commission recognized that there are inherent differences in the

nuclear capacity and the frequency of source use for many of the classes of materials licensees. However, as indicated in Section III of this analysis, the Commission concludes that basing the fee on the number of sources, frequency of use, or amount of radioactive material possessed does not necessarily reduce the impact of the fees on small entities, which is the goal of the RFA. The Commission continues to believe that uniformly allocating the generic and other regulatory costs to the specific license to determine the amount of the annual fee is a fair and equitable way to recover its costs and that establishing reduced annual fees based on gross receipts (size) is the most appropriate approach to minimize the impact on small entities. Consistent with this approach, the Commission will continue the $1,800 maximum annual fee for small entities. In addition, the Commission proposes to create a lower tier annual fee for small entities with relatively small gross annual receipts or with a relatively small population.

To implement this proposal, relatively small annual receipts must first be defined. Based on data from an NRC survey of materials licensees and the Department of Commerce industry census, the table below shows the distribution of businesses with annual gross receipts of less than $3.5 million.

Annual gross receipts	NRC survey (percent)	Department of Commerce (percent)
Less than $250K	45	55
$250–$499K	14	22
$500–$749K	8	6
$750–$999K	9	6
$1,000–$3,500K	24	11

As this table shows, 45 to 55 percent (or about 50%) of small businesses with gross annual receipts of less than $3.5 million have gross annual receipts that are less than $250,000. Thus, by defining relatively small gross annual receipts as less than $250,000, a significant number of small entities would be eligible for a further reduction of the impact of the annual fees. This level would also help ensure that those small businesses who probably would be impacted the most would pay the lower fee.

A similar approach has been used to define a relatively small governmental jurisdiction. Using 1990 data from the National Association of Counties, the distribution below for those counties located in non-Agreement States with a population of less than 50,000, shows that a population level of less than 20,000 would ensure that at least 50 percent of the small counties would be eligible for reduced fees. This would also ensure that at least 50 percent of other governmental jurisdictions (cities, towns, villages, school districts, etc.) could also receive the benefits because these other jurisdictions are typically smaller than counties.

Population	Percent of total
Less than 5,000	10
5,000–9,999	18
10,000–14,999	16
15,000–19,999	14
20,000–24,999	10
25,000–50,000	26

The NRC must also determine the amount of the annual fee that should be assessed to lower tier small entities (less than $250,000 for small businesses and small non-profit organizations, or less than 20,000 population for small governmental jurisdictions). The RFA and its implementing guidance do not provide specific guidelines on the amount or percent of gross receipts that should be charged to a small entity. In determining the amount of the annual fee for lower tier small entities, the Commission believes that the reduced fee should retain a balance between the objectives of the RFA and OBRA. This balance can be measured by (1) the amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower tier small entity. Nuclear gauge users are used to measure the reduction in fees because they represent about 40 percent of the material licensees and most likely would include a larger percentage of lower tier small entities than other categories of materials licensees.

Before presenting alternative fees, the NRC notes that the number of licensees filing small entity certifications for the FY 1991 annual fees is lower than originally estimated. The NRC estimated 3,000 certifications in the current rule which would have resulted in an estimated cost of about $5 million in the small entity subsidy. Based on the response to the FY 1991 billings, NRC's current estimate is that there are about 2,000 small entities.

The table below shows four different lower tier small entity fees and their impact on the licensees, and their impact on the balance between OBRA and RFA.

Lower tier small entity annual fee	Reduction in fee for gauge users (%)	Estimated FY 1992 small entity subsidy ($ M)	Estimated FY 1992 annual fees paid by small entities ($ M)
$1,200	30	$5.0	$4.5
900	50	5.3	4.2
700	60	5.5	4.0
400	75	6.0	3.5

Each of the alternative lower tier annual fees reduces the annual fee for qualifying nuclear gauge licensees. However, the Commission proposes that an annual fee of $400 be established for the lower tier small entities because this amount should ensure that the lower tier small entities receive a reduction (75% for small gauge users) substantial enough to mitigate any severe impact. The amount of the small entity subsidy resulting from this fee would be equivalent to the amount estimated in the July 10, 1991, final rule, increased by 20 percent to account for the FY 1992 budget increase and the reduction in the number of material licensees resulting from license terminations after the FY 1991 rule became effective. Although the other reduced fees would result in lower subsidies, the Commission believes that the amount of the associated annual fees, when added to the license and inspection fees, would still be considerable for small businesses and organizations with gross receipts that are less than $250,000 or for governmental entities in jurisdictions with a population of less than 20,000.

V. Summary

Comments received on the proposed rule and implementation of the final rule provide evidence that the annual fee would significantly impact upon a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirements to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower tier small entity annual fee of $400 for small businesses and non-profit organizations with gross annual receipts of less than $250,000, and small governmental entities with a population of less than 20,000, would reduce the impact on small entities. At the same time, these reduced annual fees would be consistent with the objectives of Public Law 101–508. Thus, the proposed fees for small entities maintain a balance between the objectives of Public Law 101–508 and the

Regulatory Flexibility Act.

TABLE 1.—1991 AVERAGE TOTAL SMALL ENTITY FEES PER YEAR

License fee category	Total small entity fee*	
	Max annual fee=$2K	Max annual fee=$1.5K
Special Nuclear Material (SNM):		
1C. Industrial Gages	$1,672	$1,672
1D. All Other SNM	2,506	2,006
Source Material:		
2B. Shielding	463	463
2C. Other Source Materials	2,867	2,367
Byproduct Material:		
3A. Manufacturing—Broad	3,560	3,060
3B. Manufacturing—Other	3,343	2,843
3C. Radiopharmaceuticals	3,207	2,707
3D. Radiopharmaceuticals—Manufacturing	2,677	2,177
3E. Irradiators—Self-Shield	1,699	1,699
3F. Irradiators—<10,000 Ci	2,623	2,123
3G. Irradiators—>10,000 Ci	3,840	3,340
3H. Exempt Distribution—Device Review	2,815	2,315
3I. Exempt Distribution—No Device Review	2,682	2,182
3J. Gen. License—Device Review	2,679	2,179
3K. Gen. License—No Device Review	2,706	2,206
3L. R&D—Broad	3,210	2,710
3M. R&D—Other	3,050	2,550
3N. Service License	2,733	2,233
3O. Radiography	4,050	3,550
3P. All Other Byproduct Materials	2,120	2,120
Waste Disposal and Processing:		
4B. Waste Receipt/Packaging	4,680	4,180
4C. Waste Receipt—Prepackaged	3,216	2,716
Well Logging:		
5A. Well Logging	3,207	2,707
Nuclear Laundry:		
6A. Nuclear Laundry	3,030	2,530
Human Use of Byproduct, Source, or SNM:		
7A. Teletherapy	3,766	3,266
7B. Medical—Broad	4,360	3,860
7C. Medical Other	3,130	2,630
Civil Defense:		
8A. Civil Defense	1,789	1,789
Device, Product, or Sealed Source Safety Evaluation:		
9A. Device/Product—Broad	3,200	2,700
9B. Device/Product—Other	2,580	2,080
9C. Sealed Sources—Broad	1,530	1,530
9D. Sealed Sources—Other	770	770

*Based on average 10 CFR Part 170 fees plus maximum annual fees.

[FR Doc. 92-506 Filed 1-8-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

10 CFR Parts 820, 830, and 835

[Docket Nos. NS-RM-91-820 NE-RM-91-830, and EH-RM-91-835]

Procedural Rules for DOE Nuclear Activities, Nuclear Safety Management, Radiation Protection for Occupational Workers

AGENCY: Department of Energy.

ACTION: Hearings on proposed rules; notice of change of dates and addresses.

SUMMARY: On December 9, 1991, the Department of Energy (DOE) published Notices of Proposed Rulemaking on Procedural Rules for: DOE Nuclear Activities, 10 CFR part 820 (NS-RM-91-820) at 56 FR 64290; Nuclear Safety Management, 10 CFR part 830 (NE-RM-91-830) at 56 FR 64316; and Radiation Protection for Occupational Workers, 10 CFR part 835 (EH-RM-91-835) at 56 FR 64334. This notice changes certain dates and addresses for written comments and public hearings concerning these Notices.

DATES: The period for written comments on all three notices has been extended until March 25, 1992. The dates for the public hearings on these Notices have been changed to February 24, 1992 for 10 CFR part 820, February 25, 1992 for 10 CFR part 830, and February 27, 1992 for 10 CFR part 835. The hearings will commence at 9 a.m. Written requests to speak at these public hearings must be received by February 18, 1992 at the address for written comments. DOE should receive 20 copies of the statement to be presented at the public hearing by February 20, 1992 at the address for written comments.

ADDRESSES: Written comments (20 copies) on each Notice should be submitted to: Ben McRae, Office of General Counsel, GC-31, room 6B-234, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

The hearings will be held in the U.S. DOE Germantown Auditorium, 19901 Germantown Rd. (Route 118), Germantown, MD. 20874.

FOR FURTHER INFORMATION CONTACT: Any procedural questions concerning the submission of written comments or participation in the public hearing should be directed to Andi Kasarsky at (202) 586-3012. Any policy or legal questions concerning the proposed rules should be directed to the persons listed in the original notices in the **FOR FURTHER INFORMATION** section.

SUPPLEMENTARY INFORMATION: Separate written comments should be submitted for each Notice. The docket number of the proposed rule to which the comments refer should be clearly visible on the outside of the package containing the comments and on the first page of the comments. Written comments should be organized to identify what aspect of the proposed rule a specific comment relates. To the extent practicable, reference should be made to the specific proposed regulatory section to which a comment relates.

Oral comments presented at the hearings will be limited to 10 minutes. A longer statement may be submitted for inclusion in the record. To the extent practicable, an oral presentation should summarize the views anticipated to be set forth in the written comments on the proposed rule and, in particular, should indicate what, if any, changes should be made in the proposed rule. Any procedural questions concerning the submission of written comments or participation in the public hearing should be directed to Andi Kasarsky at (202) 586-3012. Any policy or legal questions concerning the proposed rules should be directed to the persons listed in the original notices in the **FOR FURTHER INFORMATION** section.

Issued in Washington, DC, on January 6, 1992.

John J. Easton, Jr.,
General Counsel.

[FR Doc. 92-524 Filed 1-8-92; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-244-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which currently requires a one-time inspection to detect chafing on the engine fire extinguishing pipe in the pylon area at rib 12, and repair, if necessary. This condition, if not corrected, could result in a hole in the fire extinguishing pipe, rendering the fire extinguishing system ineffective. This action would require repetitive visual inspections to detect chafing of the engine fire extinguishing pipe, and

repair or replacement of worn pipes, if necessary; and eventual modification of the fire extinguishing pipe. This proposal is prompted by the development of a modification by the manufacturer which, when installed, will eliminate the need for repetitive inspections of the fire extinguishing pipe.

DATES: Comments must be received no later than February 24, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-244-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113, telephone (206) 227-2140; fax (206) 227-1320. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-244-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-244-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On July 23, 1990, the FAA issued AD 90-14-05, Amendment 39-6648 (55 FR 27803, July 6, 1990), to require a one-time inspection of Model A300 series airplanes to detect chafing on the engine fire extinguishing pipe in the pylon area at rib 12, and repair, if necessary. That action was prompted by reports of chafing of the engine fire extinguishing pipe due to the pipe rubbing against the metal collars of the firewall rings. This condition, if not corrected, could result in a hole in the fire extinguishing pipe, rendering the fire extinguishing system ineffective.

Since issuance of that AD, Airbus Industrie has issued Service Bulletin A300-26-055, Revision 1, dated September 4, 1991, which describes procedures to perform repetitive visual inspections to detect chafing of the engine fire extinguishing pipe, and repair or replacement of worn pipes, if necessary. This service bulletin also describes a modification of the fire extinguishing pipe, which consists of adding clamp blocks to maintain the pipe so that it is attached to the firewall, thus preventing any friction, wear, and damage to the pipe. The French Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has issued French Airworthiness Directive 90-056-106(B)R1, dated March 20, 1991, addressing this subject. However, the French DGAC has not classified Airbus Service Bulletin A300-26-055 as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the DGAC has kept the FAA totally informed of the above situation. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition addressed is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 90-14-05 with a new airworthiness directive that would continue to require repetitive visual inspections to detect chafing of the engine fire extinguishing pipe, and repair or replacement of worn pipes, if necessary. This proposal would add a requirement for the eventual modification of the fire extinguishing pipe; once the modification is installed, the need for the repetitive inspections of the pipe would be eliminated. The actions would be required to be accomplished in accordance with the service bulletin previously described.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The modification requirement proposed in this action is in consonance with the policy decision.

It is estimated that 63 airplane of U.S. registry would be affected by this AD, it would take approximately 4 work hours per airplane to accomplish the inspection required by paragraph (a) of this AD; it would take approximately 176 work hours (88 work hours per pylon) per airplane to accomplish the modification required by this AD. The average labor cost would be $55 per work hour. The estimated cost for required parts is $896 ($448 per pylon) per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $680,148.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1)

is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6648 and by adding the following new airworthiness directive:

Airbus Industrie: Docket No. 91-NM-244-AD. Supersedes AD 90-14-05, Amendment 39-6648.

Applicability: Model A300 series airplanes equipped with General Electric engines; up to and including airplane serial number 153 and serial number 157; on which Airbus Industrie modification 6430 has not been installed; certificated in any category.

Compliance: Required as indicated, unless previously accoplished.

To ensure proper operation of the fire extinguishing system, accomplish the following:

(a) Within 400 hours time-in-service after July 23, 1990 (the effective date of Amendment 39-6648, AD 90-14-05), perform an inspection of the engine fire extinguishing pipe in the pylon area at rib 12, in accordance with Airbus Industrie All Opertors Telex (AOT) 26/90/01, dated February 9, 1990, and Correction dated February 28, 1990. If chafing is found, prior to further flight, repair in accordance with the AOT.

(b) If no evidence of chafing is found as a result of the inspection required by paragraph (a) of this AD, perform repetitive visual inspections of the engine fire extinguishing pipe in the pylon are at rib 12 at intervals not exceed 8,000 hours time-in-service, in accordance with Airbus Industrie Service Bulletin A300-26-055, Revision 1, dated September 4, 1991. If wear is found which exceeds 0.6 mm (0.023 inch), prior to further flight, repair or replace the worn pipe in accordance with the service bulletin.

(c) Within 18 months after the effective date of this AD, modify the engine fire extinguishing pipe, and test the fire extinguishing bottles, in accordance with Airbus Industrie Service Bulletin A300-26-055, Revision 1, dated September 4, 1991.

(d) Modification of the engine fire extinguishing pipe, in accordance with Airbus Industrie Service Bulletin A300-26-055, Revision 1, dated September 4, 1991, constitutes terminating action for the repetitive visual inspections required by paragraph (b) of this AD.

(e) An alternative method of compliance of adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 20, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-460 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ANE-45]

Airworthiness Directives; General Electric (GE) GF6-80A Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to GE CF6-80A series turbofan engines. This proposed AD would require a one time inspection of the high pressure turbine rotor (HPTR) stage 1 disk rim bolt holes for cracks. This proposal is prompted by a report of an uncontained HPTR stage 1 disk failure which resulted in an aborted takeoff. This condition, if not corrected, could result in an uncontained HPTR stage 1 disk failure, inflight shutdown, aborted takeoff, or damage to the aircraft.

DATES: Comment must be received no later than February 24, 1992.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91-ANE-45, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from General Electric Aircraft Engines, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Karen M. Grant, Engine Certification Office, ANE-140, Engine & Propeller Directorate Aircraft Certification Service, New England Region, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, (617) 273-7096.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-ANE-45". The postcard will be date/time stamped and returned to the commenter.

Discussion

During application of take-off power, a six post rim segment of the HPTR stage one disk separated due to cracks found in a single rim bolt hole, resulting

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in an uncontained engine failure. Evaluation of the fracture surface revealed four fatigue cracks, two of which propagated to failure and liberated the six post rim segment from the disk. This condition, if not corrected, could result in an uncontained HPTR stage 1 disk failure, inflight shutdown, aborted takeoff, or damage to the aircraft.

The FAA has reviewed and approved the technical content of GE CF6–80A Commercial Engine Service Memorandum (CESM), Number 27, dated September 27, 1991, which describes the equipment and procedures necessary to accomplish and eddy current inspection of the rim bolt holes.

Since this condition is likely to exist or develop on other engines of this same type design, an AD is proposed which would require a one time inspection of the HPTR stage 1 disk, and removal and replacement of cracked parts in accordance with the CESM previously described.

There are approximately 420 GE CF6–80A series engines of the affected design in the worldwide fleet. It is estimated that there are 160 engines installed on aircraft of U.S. registry which would be affected by this AD, that it would take approximately 8 manhours per inspection per engine to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $73,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Co. Docket No. 91–ANE–45

Applicability: General Electric (GE) CF6–80A series engines, installed on, but not limited to, Boeing 767 and Airbus A310 aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent uncontained high pressure turbine rotor (HPTR) stage 1 disk failure, which could result in inflight shutdown, aborted takeoff, or aircraft damage, accomplish the following:

(a) Eddy current inspect rim bolt holes of HPTR stage 1 disks Part Numbers (P/N) 9234M67 and 9367M45 in accordance with GE CF6–80A Commercial Engine Service Memorandum Number 27, dated September 27, 1991, at the next shop visit after the effective date of this AD, but no later than December 31, 1995.

(b) For the purpose of this AD, a shop visit is defined as the induction of an engine into the shop for maintenance action.

(c) Eddy current inspect rim bolt holes of HPTR stage 1 disks P/N 9362M58 in accordance with GE CF6–80A CESM Number 27, dated September 27, 1991, at the next exposure of the high pressure turbine (HPT) after the effective date of this AD, but no later than December 31, 1995.

(d) For the purpose of this AD, HPT exposure is defined as the HPT module at piece part level.

(e) Remove from service, prior to further flight, HPTR stage 1 disks found cracked.

(f) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(g) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), an alternative method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to General Electric Aircraft Engines, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Room 311, 12 New England Executive Park, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on December 27, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92–461 Filed 1–8–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 333 and 369

[Docket No. 75N–183F]

RIN 0905–AA06

Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for First Aid Antiseptic Drug Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration is correcting a proposed rule that appeared in the **Federal Register** of July 22, 1991 (56 FR 33644), in the form of an amended tentative final monograph that would establish conditions under which over-the-counter (OTC) first aid antiseptic drug products are generally recognized as safe and effective and not misbranded. The proposal was published with some inadvertent typographical errors. This document corrects those errors.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by January 21, 1992. New data by July 22, 1992. Comments on the new data by September 22, 1992. Written comments on the agency's economic impact determination by January 21, 1992.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

In FR Doc. 91–17107, appearing on page 33644 in the **Federal Register** of Monday, July 22, 1991, the following corrections are made:

1. On page 33650, in the second column, in item "14.," first paragraph, in

the second line from the bottom, the word "growth" should appear after the word "the".

§ 333.50 [Corrected]

2. On page 33677, in § 333.50 Labeling of first aid antiseptic drug products, paragraph (d)(5) is corrected by changing "§ 330.10" to read "§ 333.10".

§ 333.70 [Corrected]

3. On page 33679, in § 333.70 *Testing of first aid antiseptic drug products*, paragraph (c)(5)(i) in the heading of the table, the fourth entry "5 min" is corrected to read "15 min".

Dated: January 3, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-551 Filed 1-8-92; 8:45 am]

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Notice No. 1]

The Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Notice of public meetings.

SUMMARY: The United States Information Agency (the "Agency") is in the process of revising the Exchange Visitor Program (J-1) regulations. Notice of proposed rulemaking regarding general provisions and training regulations for the Exchange Visitor Program was published in the **Federal Register** (56 FR 59822-42) on November 25, 1991, and the Agency set a 90-day period for written comments. The Agency will convene two public meetings to provide additional opportunity for public comment on the proposed regulations. The National Association for Foreign Student Affairs, the International Exchange Association, the Liaison Group for International Educational Exchange, and other organizations have been asked to assist the Agency in informing interested individuals about the meetings. All persons are welcome to attend. Reservation is requested as stated in this notice.

DATES: Public meetings will be held on February 10, 11, 18 and 19, 1992. See supplementary information for further details.

ADDRESSES: Public meetings will be held in Washington, DC and San Diego, California. See supplementary information for further details.

FOR FURTHER INFORMATION CONTACT: Persons who request more information about the public meetings should contact Tonya Reed, Office of the General Counsel, United States Information Agency, 301 4th Street, SW., room 700, Washington, DC 20547, (202) 401-1707 between 9 a.m. and 5 p.m., e.s.t.

SUPPLEMENTARY INFORMATION: The public meetings are scheduled to be held as follows:

February 10, 1992: Meeting on the general provisions at: VOA Auditorium, Cohen Building, United States Information Agency, C Street Entrance (between 3rd & 4th Sts., SW.) Washington, DC 20547, 10 a.m.-12:30 p.m., 2 p.m.-4p.m.

February 11, 1992: Meeting on the training regulations at the address in Washington listed above, 9:30 a.m.-12:30 p.m.

February 18, 1992: Meeting on the general provisions at: North Terrace Room, The San Diego Concourse, 202 C Street, San Diego, CA 92101, 10 a.m.-12:30 p.m., 2 p.m.-4 p.m.

February 19, 1992: Meeting on the training regulations at the address in San Diego listed above, 9:30 a.m.-12:30 p.m.

The public meetings will be conducted by senior Agency officials, and interested parties are invited to be present or represented at the sessions. The Agency Director encourages the widest possible participation from all interested parties, such as Exchange Visitor Program sponsors, educational associations, educators, educational administrators, researchers, corporate training personnel, government agencies, exchange visitors, and members of the community at large.

RESERVATIONS: Persons planning to attend one or more of the public meetings are requested to make reservations by calling Tonya Reed, Office of the General Counsel, United States Information Agency, at (202) 401-1707.

FORMAT OF PRESENTATION: Interested parties may present comments or ask questions at the public meetings orally or in writing. Each speaker will be asked to limit his or her comments to ten (10) minutes. Oral statements will be heard and transcribed by a stenographer or tape recorded; however, to assure accuracy the Agency recommends that statements also be submitted in writing. A party submitting a written statement may provide the Agency (at the address listed below) with an advance copy, or submit the written statement at the public meeting. Both oral and written statements will become part of the public record, and will be considered prior to the issuance of the notice of final rulemaking for the general provisions and training regulations. The Agency reserves the right to shorten the period of time of the meetings based on the number or oral statements presented.

SUBMISSION OF WRITTEN STATEMENTS: Written statements sent to the Agency should be addressed to: Task Force, Office of the General Counsel, United States Information Agency, 301 4th Street, SW., room 700, Washington, DC 20547. A party submitting an advance copy should indicate the location and date of any public meeting for which the submission is intended. To facilitate the Agency's review, an original and four additional copies of the written statement should be submitted.

Dated: January 3, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-499 Filed 1-8-92; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-106-89]

RIN 1545-AP71

Sourcing of Certain Payments Made Pursuant to a Transfer of Securities Subject to Section 1058; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations relating to the taxation of certain payments made pursuant to cross-border transfer of securities subject to section 1058 of the Internal Revenue Code. These regulations would provide guidance concerning the source, character, and treaty treatment of such payments and would affect United States payors and recipients and foreign payors and recipients.

DATES: The public hearing will be held on Wednesday, April 15, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, April 1, 1992.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the

Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (INTL–106–89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is regulations proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 861 of the Internal Revenue Code of 1986. These regulations appear in the proposed rules section of this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, April 1, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An Agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–414 Filed 1–8–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[INTL–106–89]

RIN 1545–AP71

Certain Payments Made Pursuant to a Securities Lending Transaction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to the taxation of certain payments made pursuant to a cross-border securities lending transaction. These regulations would provide guidance concerning the source, character, and income tax treaty treatment of such payments and would affect United States payors and recipients and foreign payors and recipients.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for April 15, 1992, at 10 a.m., must be received by April 1, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear, and outlines or oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 [Attention: CC:CORP:T:R (INTL–106–89), room 5228].

FOR FURTHER INFORMATION CONTACT: Concerning the hearing on the proposed rulemaking, Robert Boyer, Regulations Unit, (202–377–9231), not a toll-free call); concerning the regulations, Teresa Burridge Hughes of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL–106–89) (202–566–6284, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 861, 871, 881, 894, and 1441 of the Internal Revenue Code of 1986. These regulations are proposed to be effective with respect to transfers of securities made more than 30 days after the date the regulations are published in final form in the **Federal Register**.

Explanation of Provisions

This document contains proposed regulations relating to the source, character, and income tax treaty treatment of substitute interest and dividend payments made pursuant to a transfer of securities that is described in section 1058(a) or a substantially similar transaction ("a securities lending transaction") between a United States person and a foreign person. A substitute interest or dividend payment is defined as a payment, made to the transferor of a security in a securities lending transaction, of an amount equivalent to an interest payment or dividend distribution which the owner of the transferred security is entitled to receive during the term of the transaction. These regulations provide that, for purposes of determining the source and character of cross-border substitute payments, a substitute payment will be treated as interest or dividend income received with respect to the transferred security. Thus, substitute dividend payments with respect to U.S. corporate stock transferred in a cross-border securities lending transaction will be treated as U.S.-source dividends for withholding, foreign tax credit limitation, and income tax treaty purposes. Substitute interest payments with respect to bonds, notes or other debt obligations of U.S. residents, U.S. corporations, or the U.S. Government transferred in a cross-border securities lending transaction will be treated as U.S.-source interest for withholding foreign tax credit limitation, and income tax treaty purposes. In addition, where a foreign person transfers United States securities the interest on which qualifies as portfolio interest under section 871(h) or 881(c), the substitute interest payments will qualify as portfolio interest, provided a Form W–8 or substantially similar form executed by the payee has been received by the withholding agent. However, no changes have been made to the existing rules that substitute dividend payments are not eligible for the dividends received deduction under section 243 and that substitute interest payments received on state and local bonds are not eligible for the section 103 exclusion from income. See Rev. Rul. 60–177, 1960–1 C.B. 9; Rev. Rul. 80–135, 1980–1 C.B. 18. Source, character, and income tax treaty treatment of substitute payments made prior to the effective date of these regulations will be determined under all the facts and circumstances of a particular transaction.

The Service is generally concerned that payments designed to replicate interest or dividend payments may be used to attempt to avoid U.S. withholding tax or increase the foreign tax credit limitation of a United States taxpayer, Thus, the proposed regulations apply to substitute payments made in cross-border transactions that either qualify as section 1058 transactions or are substantially similar to section 1058 transactions (whether or not each of the requirements is satisfied). Comments are invited on the extent to which the proposed regulations should apply to substitute payments made in connection with sale repurchase agreement ("repos").

The Service is considering whether the scope of the proposed regulations

should be expanded to prevent tax avoidance through other transactions that generate analogous payments. For example, the Service is considering whether the proposed regulations should apply to dividend equivalent payments made in connection with certain notional principal contracts, such as an equity index swap structured to replicate the case flows that would arise from an installment purchase of one or more equity securities. Taxpayers are invited to comment on this issue.

Further, comments are invited concerning the source, character, and income tax treaty treatment of fees paid to a lender of securities.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests To Appear at the Public Hearing

Before adopting these proposed regulations, consideration will be given to any timely written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirely. A public hearing is scheduled for April 15, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Teresa Burridge Hughes of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR 1.861–1 through 1.897–9T

Aliens, Foreign investments in United States, Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.1441–1 through 1.1445–11T

Aliens, Foreign investments in United States, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * *

Par. 2. Section 1.861–2 is amended by adding a new sentence to the end of paragraph (a)(1) and by adding a new paragraph (a)(7) to read as follows:

§ 1.861–2 Interest.

(a) *In general*—(1) * * * See paragraph (a)(7) of this section for special rules concerning substitute interest payments received pursuant to a securities lending transaction.

* * * * *

(7) A substitute interest payment is a payment, made to the transferor of a security in a securities lending transaction, of an amount equivalent to an interest payment which the owner of the transferred security is entitled to receive during the term of the transaction. A securities lending transaction is a transfer of one or more securities that is described in section 1058(a) or a substantially similar transaction. A substitute interest payment received by a foreign person from a United States person (or received by a United States person from a foreign person) pursuant to a securities lending transaction shall be treated as interest income received pursuant to the terms of the transferred security for purposes of this section and § 1.862–1. See also §§ 1.871–7(b)(2), 1.881–2(b)(2), 1.894–1(c), and 1.1441–2(a)(1).

* * * * *

Par. 3. Section 1.861–3 is amended by adding a new sentence to the end of paragraph (a)(1) and by adding a new paragraph (a)(6) to read as follows:

§ 1.861–3 Dividends.

(a) *General*—(1) * * * See also paragraph (a)(6) of this section for special rules concerning substitute dividend payments received pursuant to a securities lending transaction.

* * * * *

(6) *Substitute dividend payments.* A substitute dividend payment is a payment, made to the transferor of a security in a securities lending transaction, of an amount equivalent to a dividend distribution which the owner of the transferred security is entitled to receive during the term of the transaction. A securities lending transaction is a transfer of one or more securities that is described in section 1058(a) or a substantially similar transaction. A substitute dividend payment received by a foreign person from a United States person (or received by a United States person from a foreign person) pursuant to a securities lending transaction shall be treated as dividend income received with respect to the transferred security for purposes of this section and § 1.862–1. See also §§ 1.871–7(b)(2), 1.881–2(b)(2), 1.894–1(c), and 1.1441–2(a)(1).

* * * * *

Par. 4. Section 1.871–7 is amended by redesignating the existing language in paragraph (b) as paragraph (b)(1), by adding the paragraph heading "*General rule.*" immediately after such paragraph (b)(1) redesignation, and by adding a new paragraph (b)(2) to read as follows:

§ 1.871–7 Taxation of nonresident alien individuals not engaged in U.S. business.

* * * * *

(b) *Fixed or determinable annual or periodical income.*

(1) *General rule.* * * *

(2) *Substitute payments.* For purposes of this section, a substitute interest payment (as defined in § 1.861–2(a)(7)) received by a foreign person from a United States person pursuant to a securities lending transaction (as defined in § 1.861–2(a)(7)) shall be treated as interest income received pursuant to the terms of the transferred security. Similarly, for purposes of this section, a substitute dividend payment (as defined in § 1.861–3(a)(6)) received by a foreign person from a United States person pursuant to a securities lending transaction (as defined in § 1.861–3(a)(6)) shall be treated as dividend income received with respect to the transferred security. Where, pursuant to a securities lending transaction, a foreign person transfers to a United States person a security the interest on which qualifies as portfolio interest under section 871(h), substitute interest payments made with respect to the transferred security will be treated as portfolio interest, provided a Form W–8 or substantially similar form, executed

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by the payee in accordance with § 1.6049–5(b)(2)(iv), has been received by the withholding agent. See also §§ 1.881–2(b)(2), 1.894–1(c), and 1.1441–2(a)(1).

* * * * *

Par. 5. Section 1.881–2 is amended by redesignating the existing language in paragraph (b) as paragraph (b)(1), by adding the paragraph heading "*General rule.*" immediately after such paragraph (b)(1) redesignation, and by adding a new paragraph (b)(2), to read as follows:

§ 1.881–2 Taxation of foreign corporations not engaged in U.S. business.

* * * * *

(b) *Fixed or determinable annual or periodical income.*

(1) *General rule.* * * *

(2) *Substitute payments.* For purposes of this section, a substitute interest payment (as defined in § 1.861–2(a)(7)) received by a foreign person from a United States person pursuant to a securities lending transaction (as defined in § 1.861–2(a)(7)) shall be treated as interest income received pursuant to the terms of the transferred security. Similarly, for purposes of this section, a substitute dividend payment (as defined in § 1.861–3(a)(6)) received by a foreign person from a United States person pursuant to a securities lending transaction (as defined in § 1.861–3(a)(6)) shall be treated as dividend income received with respect to the transferred security. Where, pursuant to a securities lending transaction, a foreign person transfers to a United States person a security the interest on which qualifies as portfolio interest under section 881(c), substitute interest payments made with respect to the transferred security will be treated as portfolio interest, provided a Form W–8 or substantially similar form, executed by the payee in accordance with § 1.6049–5(b)(2)(iv), has been received by the withholding agent. See also §§ 1.871–7(b)(2), 1.894–1(c), and 1.1441–2(a)(1).

* * * * *

Par. 6. Section 1.894–1 is amended by redesignating paragraph (c) and (d) and by adding a new paragraph (c), to read as follows:

§ 1.894–1 Income affected by treaty.

* * * * *

(c) *Relevant law.* Where a provision of an income tax convention refers to United States law, the relevant United States law is the section or sections of the Internal Revenue Code and regulations thereunder governing the tax which is the subject of such provision. For example, where a provision of an income tax convention governing the withholding tax on dividends paid to a nonresident of the United States defines the term "dividend" to include payments treated as a dividend under United States law, the relevant sections of United States law are those which define the term "dividend" for purposes of that withholding tax. Accordingly, a substitute dividend payment (as defined in § 1.861–3(a)(6)) is treated as a dividend for purposes of the relevant provisions of the convention. See § 1.871–7(b)(2). See also §§ 1.861–2(a)(7), 1.881–2(b)(2), and 1.1441–2(a)(1).

* * * * *

Par. 7. Section 1.1441–2 is amended by adding the following language after the third sentence in paragraph (a)(1) to read as follows:

§ 1.1441–2 Income subject to withholding.

(a) *Fixed or determinable annual or periodical income.* (1) * * * For purposes of the second preceding sentence, the term "interest" also includes a substitute interest payment (as defined in § 1.861–2(a)(7)) and the term "dividend" includes a substitute dividend payment (as defined in § 1.861–3(a)(6)). The rules of § 1.1441–7 shall apply in determining the withholding agent with respect to such substitute payments. See also §§ 1.871–7(b)(2), 1.881–2(b)(2), and 1.894–1(c). * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 92–413 Filed 1–8–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

28 CFR Parts 50 and 80

[Order No. 1552–91]

Antibribery Provisions of the Foreign Corrupt Practices Act

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice publishes for public comment proposed regulations establishing a Foreign Corrupt Practices Act Opinion Procedure. The proposed procedure will enable issuers and domestic concerns to obtain an opinion of the Attorney General regarding whether prospective conduct would conform with the Department of Justice's present enforcement policy regarding the antibribery provisions of the Foreign Corrupt Practices Act, 15 U.S.C. 78dd–1 and 78dd–2. This procedure would implement amendments made to the antibribery provisions of the Foreign Corrupt Practices Act by title V of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418.

DATES: Written comments must be submitted on or before February 10, 1992.

ADDRESSES: Interested persons are invited to submit written comments on the proposed regulations. Persons submitting comments should file seven copies of their comments with the Criminal Division, Fraud Section, P.O. Box 28188, Central Station, Washington, DC 20038. Copies of all communications received will be available for inspection and copying in room 7120, Bond Building, 1400 New York Avenue, NW., Washington, DC, between the hours of 10 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter B. Clark, Deputy Chief, Fraud Section, Criminal Division, U.S. Department of Justice, room 2424, Bond Building, 1400 New York Avenue, NW., Washington, DC 20530, (202) 514–0651.

SUPPLEMENTARY INFORMATION: The antibribery provisions of the Foreign Corrupt Practices Act of 1977, as amended (FCPA or the Act), 15 U.S.C. 78dd–1 and 78dd–2, are aimed at eliminating bribery of foreign government officials by issuers and domestic concerns. In 1988, the antibribery provisions of the FCPA were amended by section 5003 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418. As amended, the antibribery provisions require the Attorney General to establish a procedure to respond to inquiries concerning whether prospective conduct would conform with the Department of Justice's present enforcement policy. 15 U.S.C. 78dd–1(e) and 78dd–2(f).

Set forth below for public comment is the proposed FCPA Opinion Procedure. It is based upon the existing FCPA Review Procedure, 28 CFR 50.18, established by the Department of Justice in 1980. The FCPA Review Procedure will be revoked when the proposed FCPA Opinion Procedure becomes effective.

Under the proposed FCPA Opinion Procedure, issuers and domestic concerns within the meaning of 15 U.S.C. 78dd–1 and 78dd–2, respectively, may submit a proposed transaction to the Attorney General for review. The Attorney General will then issue an opinion stating whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the Act's antibribery provisions and lead the Department of Justice to take enforcement action. The proposed FCPA Opinion Procedure will not be available for matters relating to the recordkeeping provisions of the FCPA. 15 U.S.C. 78m(b)(2) and (3).

As amended, Sections 78dd–1(e) and 78dd–2(f) provide that the Attorney General's opinion that disclosed conduct conforms with the Department of Justice's present enforcement policy creates a rebuttable presumption of compliance with the antibribery provisions of the FCPA. This presumption may be rebutted by a preponderance of the evidence. These

provisions are incorporated in § 80.10 of the proposed FCPA Opinion Procedure.

As is the case with the existing FCPA Review Procedure, the Attorney General's opinion will be binding on the Department of Justice only as to the issuer or domestic concern submitting the request and no agency other than the Department of Justice will be bound. The Department of Justice has responsibility for all criminal enforcement of the antibribery provisions of the FCPA, and also for civil enforcement of 15 U.S.C. 78dd–2, which applies to domestic concerns. The Securities and Exchange Commission (SEC) has responsibility for civil enforcement of 15 U.S.C. 78dd–1, which applies to issuers. Notwithstanding the issuance of an FCPA Opinion by the Attorney General, the SEC remains free to take a civil enforcement action against any domestic concern. Nevertheless, by statute the rebuttable presumption arising from an FCPA Opinion applies "(i)n *any* action brought" under the applicable provisions of the Act. 15 U.S.C. 78dd–1(e)(1) and 78dd–2(f)(1) (emphasis supplied). Collateral consequences of a violation of the antibribery provisions of the Act may include government-wide suspension or debarment from participation in Federal programs under guidelines issued by the Office of Management and Budget (53 FR 19161, May 26, 1988).

The proposed FCPA Opinion Procedure differs from the existing FCPA Review Procedure in several respects to reflect the amendments made to 15 U.S.C. 78dd–1 and 78dd–2 in 1988. Among the differences, the proposed procedure eliminates the Department of Justice's discretion, under the existing FCPA Review Procedure, to refuse to review a request. Further, the proposed procedure requires the Attorney General to issue an opinion within 30 days after a request is deemed complete. In contrast, the existing FCPA Review Procedure states that "every reasonable effort" will be made to respond to requests within 30 days after receipt of the request or any additional information sought by the Department. Both the current procedure and the proposed procedure permit the Department of Justice to request additional information, where needed, within 30 days.

The proposed FCPA Opinion Procedure also contains an exemption from disclosure under the Freedom of Information Act, 5 U.S.C. 552, of any document or other material which is provided to, received by, or prepared in connection with a request. This exemption incorporates the statutory exemption from disclosure set forth in 15 U.S.C. 78dd–1(e)(2) and 78dd–2(f)(2).

Finally, the proposed FCPA Opinion Procedure provides that a request may only be withdrawn before the Attorney General issues an opinion, and that a withdrawn request shall have no force or effect. This accommodates the statutory requirements of 15 U.S.C. 78dd–1(e)(3) and 78dd–2(f)(3). The existing FCPA Review Procedure allows a request to be withdrawn at any time, and permits the Department to submit to the requesting party any comments on the withdrawn request that it deems appropriate.

The Department, in cooperation with the Department of Commerce, intends to produce for public distribution a brochure explaining, generally, the provisions of the FCPA.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects

28 CFR Part 50

Administrative practice and procedure, Foreign Corrupt Practices Act.

28 CFR Part 80

Administrative practice and procedure, Foreign Corrupt Practices Act.

By virtue of the authority vested in me by 28 U.S.C. 509 and 510, 5 U.S.C. 301, and Public Law 100–418, Chapter I of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 50—STATEMENTS OF POLICY

1. The authority citation for part 50 continues to read as follows:

Authority: 28 U.S.C. 509, 510, 516, 517, 518, 519; 5 U.S.C. 301, 552, 552a; 15 U.S.C. 16(d), E.O. 11247; 3 CFR (1964–65 Comp.) 348, 21 U.S.C. 881(f)(2).

§ 50.16 [Removed]

2. Section 50.16 is removed.

3. Part 80 is added to read as follows:

PART 80—FOREIGN CORRUPT PRACTICES ACT OPINION PROCEDURE

Sec.

80.1 Purpose.
80.2 Submission requirements.
80.3 Transaction.
80.4 Issuer or domestic concern.
80.5 Affected parties.
80.6 General requirements.
80.7 Additional information.
80.8 Attorney General opinion.
80.9 No oral opinion.
80.10 Rebuttable presumption.
80.11 Effect of FCPA Opinion.
80.12 Accounting requirements.
80.13 Scope of FCPA Opinion.
80.14 Disclosure.
80.15 Withdrawal.
80.16 Additional requests.

Authority: 28 U.S.C. 509, 510; 15 U.S.C. 78dd–1, 78dd–2.

§ 80.1 Purpose.

These procedures enable issuers and domestic concerns to obtain an opinion of the Attorney General as to whether certain specified, prospective—not hypothetical—conduct conforms with the Department's present enforcement policy regarding the antibribery provisions of the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. 78dd–1 and 78dd–2. An opinion issued pursuant to these procedures is a Foreign Corrupt Practices Act opinion (hereinafter FCPA Opinion).

§ 80.2 Submission requirements.

A request for an FCPA Opinion must be submitted in writing. An original and five copies of the request should be addressed to the Assistant Attorney General in charge of the Criminal Division, Attention: FCPA Opinion Group. The mailing address is P.O. Box 28188, Central Station, Washington, DC 20038. The address for hand delivery is room 2424, Bond Building, 1400 New York Avenue, NW., Washington, DC 20005.

§ 80.3 Transaction.

The entire transaction which is the subject of the request must be an actual—not a hypothetical—transaction but need not involve only prospective conduct. However, a request will not be considered unless that portion of the transaction for which an opinion is sought involves only prospective conduct. An executed contract is not a prerequisite and, in most—if not all—instances, an opinion request should be made prior to the requestor's commitment to proceed with a transaction.

§ 80.4 Issuer or domestic concern.

The request must be submitted by an issuer or domestic concern within the meaning of 15 U.S.C. 78dd–1 and 78dd–2, respectively, that is also a party to the transaction which is the subject of the request.

§ 80.5 Affected parties.

An FCPA opinion shall have no application to any party which does not join in the request for the opinion.

§ 80.6 General requirements.

Each request shall be specific and must be accompanied by all relevant and material information bearing on the conduct for which an FCPA Opinion is requested and on the circumstances of the prospective conduct, including background information, complete copies of all operative documents, and detailed statements of all collateral or oral understandings, if any. The requesting issuer or domestic concern is under an affirmative obligation to make full and true disclosure with respect to the conduct for which an opinion is requested. Each request on behalf of requesting issuer or corporate domestic concern must be signed by an appropriate senior officer with operational responsibility for the conduct that is the subject of the request and who has been designated by the requestor's chief executive officer to sign the opinion request. In appropriate cases, the Department of Justice may require the chief executive officer of each requesting issuer or corporate domestic concern to sign the request. All requests of other domestic concerns must also be signed. The person signing the request must certify that it contains a true, correct and complete disclosure with respect to the proposed conduct and the circumstances of the conduct.

§ 80.7 Additional information.

If an issuer's or domestic concern's submission does not contain all of the information required by § 80.6, the Department of Justice may request whatever additional information or documents it deems necessary to review the matter. The Department must do so within 30 days of receipt of the opinion request, or, in the case of an incomplete response to a previous request for additional information, within 30 days of receipt of such response. Each issuer or domestic concern requesting an FCPA Opinion must promptly provide the information requested. A request will not be deemed complete until the Department of Justice receives such additional information. Such additional information, if furnished orally, shall be promptly confirmed in writing, signed by the same person or officer who signed the initial request and certified by this person or officer to be a true, correct and complete disclosure of the requested information. In connection with any request for an FCPA Opinion, the Department of Justice may conduct whatever independent investigation it believes appropriate.

§ 80.8 Attorney General opinion.

The Attorney General or his designate shall, within 30 days after receiving a request that complies with the foregoing procedure, respond to the request by issuing an opinion that states whether the prospective conduct, would, for purposes of the Department of Justice's present enforcement policy, violate 15 U.S.C. 78dd–1 and 78dd–2. The Department of Justice may also take such other positions or action as it considers appropriate. Should the Department request additional information, the Department's response shall be made within 30 days after receipt of such additional information.

§ 80.9 No oral opinion.

No oral clearance, release or other statement purporting to limit the enforcement discretion of the Department of Justice may be given. The requesting issuer or domestic concern may rely only upon a written FCPA Opinion letter signed by the Attorney General or his designate.

§ 80.10 Rebuttable presumption.

In any action brought under the applicable provisions of 15 U.S.C. 78dd–1 and 78dd–2, there shall be a rebuttable presumption that a requestor's conduct, which is specified in a request, and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department's present enforcement policy, is in compliance with those provisions of the FCPA. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption, a court, in accordance with the statute, shall weigh all relevant factors, including but not limited to whether information submitted to the Attorney General was accurate and complete and whether the activity was within the scope of the conduct specified in any request received by the Attorney General.

§ 80.11 Effect of FCPA Opinion.

Except as specified in § 80.10, an FCPA Opinion will not bind or obligate any agency other than the Department of Justice. It will not affect the requesting issuer's or domestic concern's obligations to any other agency, or under any statutory or regulatory provision other than those specifically cited in the particular FCPA Opinion.

§ 80.12 Accounting requirements.

Neither the submission of a request for an FCPA Opinion, its pendency, nor the issuance of an FCPA Opinion, shall in any way alter the responsibility of an issuer to comply with the accounting requirements of 15 U.S.C. 78m(b) (2) and (3).

§ 80.13 Scope of FCPA Opinion.

An FCPA Opinion will state only the Attorney General's opinion as to whether the prospective conduct would violate the Department's present enforcement policy under 15 U.S.C. 78dd–1 and 78dd–2. If the conduct for which an FCPA Opinion is requested is subject to approval by any other agency, such FCPA Opinion shall in nor way be taken to indicate the Department of Justice's views on the legal or factual issues that may be raised before that agency, or in an appeal from the agency's decision.

§ 80.14 Disclosure.

(a) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by an issuer or domestic concern under the foregoing procedure shall be exempt from disclosure under 5 U.S.C. 552 and shall not, except with the consent of the issuer or domestic concern, be made publicly available, regardless of whether the Attorney General responds to such a request or the issuer or domestic concern withdraws such request before receiving a response.

(b) Nothing contained in paragraph (a) of this section shall limit the Department of Justice's right to issue, at its discretion, a release describing the identity of the requesting issuer or domestic concern, the identify of the foreign country in which the proposed conduct is to take place, the general nature and circumstances of the proposed conduct, and the action taken by the Department of Justice in response to the FCPA Opinion request. Such release shall not disclose either the identity of any foreign sales agents or other types of identifying information. The Department of Justice shall index such releases and place them in a file available to the public upon request.

(c) A requestor may request that the release not disclose proprietary information.

§ 80.15 Withdrawal.

A request submitted under the foregoing procedure may be withdrawn prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect. The Department of Justice reserves the right to retain any FCPA Opinion request, documents and information submitted to it under this procedure or otherwise and to use them for any governmental purposes, subject to the restrictions on disclosures in § 80.14.

§ 80.16 Additional requests.

Additional requests for FCPA Opinions may be filed with the Attorney General under the foregoing procedure regarding other prospective conduct that is beyond the scope of conduct specified in previous requests.

Dated: December 28, 1991.

William P. Barr,

Attorney General.

[FR Doc. 92-404 Filed 1-8-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010-AB29

Amendment of Valuation Benchmarks in Gas Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on the proposed rule published in the **Federal Register** on December 12, 1991, (56 FR 64724). In response to requests for additional time, MMS will extend the comment period from January 13, 1992, to February 14, 1992.

DATES: Comments must be received on or before February 14, 1992.

ADDRESSES: Written comments may be mailed to the Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3910, Denver, Colorado 80225-0165, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, at (303) 231-3432 or FTS 328-3432.

Dated: January 3, 1992.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 92-456 Filed 1-8-92; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AF12

Veterans Education; Changing Programs of Education

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs Nurse Pay Act of 1990 contains a section which affects most of the educational programs VA (Department of Veterans Affairs) administers. The section revises the rules for determining whether an individual can change programs of education. This proposal will acquaint the public with the way in which VA intends to implement this provision of law with regard to the Survivors' and Dependents' Educational Assistance program and the Montgomery GI Bill-Active Duty.

DATES: Comments must be received on or before February 10, 1992. Comments will be available for public inspection until February 20, 1992. VA intends to make these amended regulations, like the section of law they implement, effective June 1, 1991.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until February 20, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs Nurse Pay Act (Pub. L. 101-366) liberalizes the rules for determining whether a veteran or eligible person can change a program of education. It is applicable to all changes of program which occur after May 31, 1991. This proposal implements that change in law for two of the educational programs VA administers.

VA will implement this statutory change by applying the procedures now used to determine whether a veteran's second change of program may be approved to the second change and all subsequent changes of program made after May 31, 1991. Thus, approval of changes after a second program change will not be limited to cases in which the change is necessitated by reasons beyond the individual's control. Under these procedures counseling is available for those who wish it.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.117 and 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 16, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subparts D and K are amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210

2. In § 21.4234, paragraph (d)(4) and its authority citation are added to read as follows:

§ 21.4234 Change of program.

* * * * *

(d) *Other changes of program.*

* * * * *

(4) Notwithstanding any provision of any other paragraph of this section, if a third or subsequent change of program occurs after May 31, 1991, VA will apply only the applicable provisions of paragraph (d)(2) of this section. If the applicable provisions of paragraph (d)(2) of this section are met, VA will approve the change of program. VA will not apply any of the provisions of paragraph (d)(3) of this section in determining whether the change of program should be approved.

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 210(c)

3. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 210(c)

4. Section 21.7114 and its authority citation are revised to read as follows:

§ 21.7114. Change of program.

In determining whether a veteran or servicemember may change his or her program of education under 38 U.S.C. ch. 30, VA will apply the provisions of § 21.4234 of this part. VA will not consider programs of education a veteran or servicemember may have pursued under 38 U.S.C. ch. 34 or 36 before January 1, 1990, if he or she wishes to change programs of education under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 3034, 3691; Pub. L. 98–525, Pub. L. 101–366) (June 1, 1991)

[FR Doc. 92–473 Filed 1–8–92; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–363, RM–7877]

Television Broadcasting Services; Springdale, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Total Life Community Educational Foundation, seeking the allotment of UHF television Channel 57 to Springdale, Arkansas, as that community's first local television broadcast service. Coordinates used for this proposal are 36–11–00 and 94–08–18.

Although the Commission has imposed a temporary freeze on new television allotments in specified metropolitan areas pending the outcome of an inquiry into the use of advanced television systems in broadcasting, this proposal is not affected thereby. (See Order, Advanced Television Systems and Their Impact on Existing Television Broadcast Service, 52 FR 28346, July 29, 1987.)

DATES: Comments must be filed on or before February 27, 1992, and reply comments on or before March 13, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Ashton R. Hardy, Bradford D. Carey and Craig E. Frosch, Esqs., Walker, Bordelon, Hamlin, Theriot and Hardy, 701 South Peters Street, New Orleans, LA 70130.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–363 adopted December 19, 1991, and released January 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st St. NW., Washington, DC 20036

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–549 Filed 1–8–92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91–361, RM–7502]

Radio Broadcasting Services; Houma and Chalmette, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Guaranty Broadcasting Corporation, licensee of Station KCIL(FM), Channel 298C1, Houma, Louisiana, seeking the reallotment of Channel 298C1 to Chalmette, Louisiana, and modification of Guaranty's license to specify Chalmette as the station's community of license. Guaranty also proposes the allotment of Channel 298A to Houma, Louisiana. The petitioner is requested to provide additional information regarding the public interests benefits of its proposals. See Supplementary Information, infra.

DATES: Comments must be filed on or before February 27, 1992, and reply comments on or before March 13, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Carl R. Ramey, Esq., Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–361, adopted December 19, 1991, and released January 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Channel 298C1 can be allotted to Chalmette in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.1 kilometers (3.8 miles) west to accommodate petitioner's desired transmitter site. Channel 296A can be allotted to Houma with a site restriction of 11.9 kilometers (7.4 miles) south to avoid a short-spacing to Station WHMD(FM), Channel 296A, Hammond, Louisiana. The coordinates for Channel 298C1 at Chalmette are 29–55–11 and 90–01–29. The coordinates for Channel 296A at Houma are 29–29–30 and 90–44–26. In accordance with § 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 298C1 at Chalmette or require Guaranty to demonstrate the availability of an additional equivalent class channel for use by such parties.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–544 Filed 1–8–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–364, RM–7792]

Radio Broadcasting Services; Nassawadox, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Tobacco Country Radio, Inc., seeking the allotment of Channel 250A to Nassawadox, Virginia, as the community's first local FM service. Channel 250A can be allotted to Nassawadox without the imposition of a site restriction. The coordinates for Channel 250A at Nassawadox are North Latitude 37–28–24 and West Longitude 75–51–30.

DATES: Comments must be filed on or before February 27, 1992, and reply comments on or before March 13, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Stuart A. Shorenstein, Esq., Lowenthal, Landau, Fischer, Ziegler & Bring, P.C., 250 Park Avenue, New York, New York 10177 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–364, adopted December 20, 1991, and released January 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–547 Filed 1–8–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–362, RM–7873]

Radio Broadcasting Services; Jourdanton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Seventh Day Christian Group requesting the allotment of Channel 239A to Jourdanton, Texas. Channel 239A can be allotted to Jourdanton, Texas, without the imposition of a site restriction. The coordinates for Channel 239A at Jourdanton are 28–54–48 and 98–32–36. Mexican concurrence will be requested for this proposal.

DATES: Comments must be filed on or before February 27, 1992, and reply comments on or before March 13, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee J. Peltzman, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 5335 Wisconsin Avenue, NW., suite 300, Washington, DC 20015–2003 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–362, adopted December 19, 1991, and released January 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-545 Filed 1-8-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-272; RM-7326]

Radio Broadcasting Services; Trinity, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: This document dismisses the petition of Roy E. Henderson, d/b/a Trinity Broadcasting Company, proposing the allotment of Channel 251A to Trinity, Texas, at petitioner's request. See 56 FR 50305, October 4, 1991. With this action, this proceeding is terminated.

DATES: This dismissal of proposed rule is effective February 20, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-272, adopted December 19, 1991, and released January 6, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-546 Filed 1-8-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 76

[MM Docket No. 82-434; FCC 91-405]

Network-Cable Cross-Ownership Rule

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission in this second further notice of proposed rulemaking invites further comment on its proposal to eliminate § 76.501(a)(1) of the Commission's rules, which prohibits common ownership of cable television systems and national television networks.

DATES: Comments are due on or before March 2, 1992, and reply comments are due on or before March 17, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James Coltharp, Policy and Rules Division, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *second further notice of proposed rulemaking* in MM Docket No. 82-434 adopted December 12, 1991, and released December 30, 1991. The complete text of this *second further notice of proposed rulemaking* is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC.

Synopsis of Second Further Notice of Proposed Rule Making

1. By this *second further notice of proposed rulemaking* ("*Second FNPRM*"), the Commission invites further comment on its proposal to eliminate § 76.501(a)(1) of the Commission rules, which prohibits common ownership of cable television systems and national television networks (the "network-cable cross-ownership rule"). In light of the significant changes in the video marketplace since the most recent comments in this docket were submitted in 1988, the Commission believes it is useful to revisit this proceeding and update its record. These changes, which were closely examined in a recent FCC Office of Plans and Policy Working Paper, Broadcast Television in a Multichannel Marketplace, include a continued decline in the broadcast networks' audiences and financial base, as well as the emergence of cable television as a more substantial competitive force in the video marketplace.

2. Through this *second FNPRM*, the Commission seeks to update the record on whether it may safely eliminate its network-cable cross-ownership rule and whether its repeal would promote increased efficiencies and benefits to the public. We recognize that parties commenting on the prior notices have raised serious questions regarding the impact of repeal on diversity and competition in the video marketplace. As a result, we believe that we should carefully consider these concerns to assess their legitimacy and to determine whether minimally intrusive regulatory safeguards are warranted to alleviate them if we decide to relax or repeal the rule. In this regard, we seek comment on certain alternative proposals aimed at addressing these concerns, and we also invite parties to propose any other safeguards or modification that they consider appropriate.

3. When adopting the network-cable cross-ownership rule in 1970, the Commission expressed its concern that the networks, if permitted to own cable systems at this critical stage of their development, could potentially thwart the industry's growth and inhibit competition. The Commission also stated that "the networks already have a predominant position nationwide through their affiliated stations in all markets, their control over network programming presented in prime time, and their share of the national television audience." Although the Commission did not elaborate further on this rule's rationale, its policy concerns were illuminated in its discussion of the broadcast-cable cross-ownership rule, which was simultaneously adopted and prohibits common ownership of local television stations and cable systems that serve the same area. This discussion suggests that the principal concerns underlying the network-cable rule were that: (1) the networks could restrict the amount of competing programming supplied by their cable television systems due to their incentive to maximize the audience for their own network programming; (2) cable systems owned by a network could refuse to carry the programming of rival networks, thus hindering the development of new cable networks as

well as limiting network competition nationwide; and (3) cable ownership could enhance the networks' dominance as suppliers of television programming, thus limiting the diversity of voices in the video marketplace.

4. Beginning in 1980, several studies questioned the necessity of the network-cable cross-ownership rule and emphasized the increasingly competitive nature of the video marketplace. We cited these studies in our first notice, 91 FCC 2d 76 (1982) 47 FR 39212, September 7, 1982, issued in 1982, that proposed to eliminate the cross-ownership rule in light of the growth of the video marketplace and the development of cable television services. In 1988, we issued a further notice, 3 FCC Rcd 5283 (1988) 53 FR 36080, September 16, 1988, to solicit additional comment on our proposal to eliminate the rule. Given the time elapsed since the notice, we allowed interested parties to comment on any intervening developments or circumstances that might affect our evaluation of the network-cable cross-ownership rule. In particular, we noted a report by the National Telecommunications and Information Administration, which concluded that broadcast television networks should not be prohibited from owning local cable systems. The further notice also observed that significant statutory or regulatory changes may have altered the nature of competition between the cable and broadcasting industries, including the adoption of the 1984 Cable Act, the elimination of our "must carry" rules, and the reimposition of our syndicated exclusivity rules. Accordingly, we sought specific comment on whether the opportunity for networks to own cable systems in markets containing their affiliated stations might adversely influence negotiations for affiliation contracts. Considering the absence of must carry, we also asked whether a network that affiliates with a local station while owning a cable system in the same market could undermine the competitive position of other broadcast facilities in that market.

5. In response to continuing fundamental changes within the video marketplace, we found that it is now useful to revisit the issue of whether eliminating the network-cable cross-ownership rule would enhance network efficiency and generate public benefits. However, we also recognize that a number of commenters responding to our prior Notices have expressed concerns that repealing the current restriction could undermine competition and diversity in local and national video markets. Therefore, we seek to explore those concerns in this proceeding to assess their validity, to analyze whether they could be satisfactorily addressed through imposing minimally intrusive regulatory safeguards, and to determine whether the record supports relaxing the rule.

6. We ask commenters first to address whether, in light of the significant changes within the video marketplace, the network-cable cross-ownership rule should be eliminated. In this regard, we note that the near complete dominance of the three broadcast networks, which existed when the rule was adopted and persisted for many years, has clearly diminished and left the networks with the need to adapt to a changing economic and competitive environment. According to the recent Office of Plans and Policy Working Paper, the reduction in advertising revenue as the traditional base of economic support will force the networks either to reduce their costs and "downsize" their operations, or to develop supplementary revenue streams. One potential means of both reducing costs and increasing revenues would be for the networks to enter the cable television industry, particularly given their experience and expertise in selling national advertising, acquiring and distributing programming, producing news programming, and working with a diverse group of local affiliates. Moreover, allowing the networks into cable television would enable them to take advantage of the benefits from vertical integration into cable system ownership and television programming services, as detailed in our July 1990 Report to Congress, 5 FCC Rcd 4962 (1990), on the status of competition in the cable industry. We also note that the increased revenues that may flow from network entry into cable system ownership could also benefit cable subscribers, affiliate stations that depend on a network's programming and economic resources, as well as independent stations that rely upon a diversity of off-network syndicated programming. We stress that any repeal of the network cable cross-ownership restriction would not be designed to provide an artificial boost to the network's competitive position. Rather, in light of their fundamental support to the free, over-the-air broadcast system, we seek to remove undue barriers to the network's continued competitive vitality.

7. Second, we note that some parties have raised valid concerns that network ownership of cable systems—or cable ownership of networks—may harm competition and diversity in local and national markets. These parties also raise a variety of questions pertaining to the possibility that networks could bypass or discriminate among local affiliates and independent stations. We seek comment on the merit and significance of these concerns in the current video marketplace. To the extent that the updated record establishes that these or other concerns may warrant relaxing, but not completely repealing the rule, we also seek comment on several options that would permit network ownership of cable systems subject to various constraints. These options consist of allowing networks to own cable systems in "large" or "competitive" markets, including where second competitive cable systems exist. We also request comment on the merits of options that would allow networks to own cable systems up to a national subscriber limit, or subject to must carry and discrimination safeguards. Parties may consider the options individually or in certain combinations, and are also encouraged to present alternative suggestions. Parties may also wish to weigh the extent to which other existing rules—such as the broadcast-cable cross-ownership rule or our regulations limiting network control over their affiliates—might ameliorate these concerns.

Initial Regulatory Flexibility Analysis

8. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds:

I. Reason for Action

The proposals under consideration will modify or eliminate the existing prohibition on cross-ownership between cable television systems and national television networks. The Commission believes that, in its current form, this prohibition is not longer necessary in terms of its original purposes and that possible cost benefits attributable to cross-ownership are being needlessly forgone by continuation of the rule in its entirety.

II. Objectives

The objective of this action is to eliminate unnecessary regulation, thus permitting the marketplace to operate more freely and efficiently. In particular, networks may benefit by their ability to own cable systems, and cable systems may benefit through being owned by networks.

III. Legal Basis

The proposed Rule Making action is authorized by sections 1, 2, 3, 4(i) and (j), 303, 307, 308, 309 and 403 of the

Communications Act of 1934, as amended.

IV. Reporting, Recordkeeping and Other Compliance Requirements

No recording, recordkeeping or reporting requirements for cable television operators are involved. Depending on the proposed action, however, it may eliminate the need for possible Commission compliance actions or waiver proceeding related to the existing rule.

V. Federal Rules Which Overlap, Duplicate or Conflict With This Rule

None.

VI. Description, Potential Impact and Number of Small Entities Affected

The proposals under consideration are not expected to have a significant impact on most small cable systems. However, to the extent that networks purchase existing small cable systems, the systems may benefit from expertise of the network, or from the possible infusion of additional capital into the cable system. To the extent that networks choose to purchase large cable systems or that large cable systems choose to purchase networks, there should be little or no direct impact on small business entities.

VII. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent With Stated Objective

Several of the proposals under consideration minimize the impact on small entities.

9. The Secretary shall cause a copy of this second further notice of proposed rulemaking, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981).

Ex Parte

10. This is a non-restricted notice and comment rule-making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.203, and 1.206(a).

11. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before March 2, 1992, and reply comments on or before March 17, 1992. To file formally in this proceeding, you must file an original plus five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

12. Authority for this proposed Rule Making is contained in sections 4(i) and (j), and 303 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–548 Filed 1–8–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–09; Notice 24]

RIN 2127–AE28

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend Standard 213, *Child Restraint Systems*, to expand the definition of a built-in child restraint system. The current definition is limited to child restraint systems installed in passenger cars. The effect of eliminating the limitation to cars would be to apply the standard's dynamic performance requirements for built-in restraints to a greater number of child restraint systems. Also, the agency proposed to amend Standard 213's application section so that the standard applies to motor vehicles that are manufactured with a built-in restraint system. This proposed amendment would make the vehicle manufacturer responsible for certifying compliance to Standard 213. Finally, in response to a petition for rulemaking from Ford Motor Company, NHTSA proposed several amendments to simplify the standard's labeling requirements for built-in restraints.

DATES: Comments on this notice must be received by the agency no later than March 9, 1992. The proposed effective date is 180 days after the date of publication of a final rule.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5267. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hott, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366–0247.

SUPPLEMENTARY INFORMATION: This notice proposes to amend Standard 213, *Child Restraint Systems*, to expand the definition of a built-in child restraint system. The standard defines a built-in child restraint system as "any child restraint system that is an integral part of a passenger car." (S4) The amendment would eliminate the limitation to cars, thus applying the standard's dynamic performance requirements for built-in restraints to a greater number of child restraint systems. Also, the agency proposes to amend Standard 213's application section so that the standard applies to motor vehicles that are manufactured with a built-in restraint system. This proposed amendment would make the vehicle manufacturer responsible for certifying compliance to Standard 213. In addition, NHTSA is proposing several amendments to simplify the standard's labeling requirements for built-in restraints. The agency is proposing the labeling amendments in response to a petition for rulemaking from Ford Motor Company.

Definition of Built-In Child Restraint System

NHTSA proposes to amend the definition of a built-in child restraint system in two ways. First, the agency proposes to expand the definition to include child restraint systems that are integral to vehicles other than passenger cars, such as multipurpose passenger vehicles (MPV's). Those restraints are "child restraint systems" under S4 of Standard 213, and therefore must comply with all the provisions of the standard that are generally applicable to

"child restraint systems." However, since those restraints do not fall within the standard's definitions of a "built-in system" or an "add-on" system (see S4 of Standard 213), the restraints are not subject to Standard 213's dynamic performance requirements that expressly apply to either add-on systems or built-in systems.

NHTSA tentatively concludes that the dynamic performance requirements should apply to all child restraints that are built into a motor vehicle, or designed to be built into a motor vehicle, regardless of the type of motor vehicle involved. Evaluating the performance of a child restraint in a dynamic simulation of a vehicle impact provides the greatest assurance that the restraint will protect a child in an actual crash. NHTSA further believes that the dynamic performance requirements for built-in restraints in passenger cars are appropriate for built-in restraints installed in other vehicle types. Accordingly, NHTSA is proposing to replace the term "passenger car" with the term "motor vehicle" wherever the former term appears in Standard 213's specifications for built-in systems.

Second, NHTSA proposes to clarify the definition of a "built-in child restraint system" to make it clear that the definition includes both restraints that are integral parts of new vehicles as well as restraints that are designed to be integral parts of a motor vehicle, such as aftermarket restraint systems.

NHTSA believes that the impact of the proposal would be minimal. Based on correspondence and other contacts with manufacturers, the agency believes that the manufacturers whose restraint systems would be newly included in the definition of a "built-in child restraint system" (as a result of today's proposal) already make efforts to meet Standard 213's dynamic performance requirements.

Application

NHTSA also proposes to amend S3, *Application*, of Standard 213 to convert the standard from just an equipment standard into both a vehicle standard and an equipment standard. S3 states: "This standard applies to child restraint systems for use in motor vehicles and aircraft." The agency proposes that S3 be amended to apply the standard also to passenger cars, multipurpose passenger vehicles, trucks and buses equipped with a built-in child restraint system. The amendment would make the vehicle manufacturer responsible for certifying compliance with Standard 213. The practical effect of this amendment would be minimal, since the vehicle manufacturer is already responsible under 49 CFR part 579, *Defect and Noncompliance Responsibility*, for recalling the vehicle in the event the restraint it installed does not comply with Standard 213 or contains a safety-related defect.

Labeling Requirements for Built-in Systems (Ford Petition)

This notice proposes several changes to Standard 213's labeling requirements for built-in child restraint systems. Two of those changes are proposed in response to a petition for rulemaking from Ford. The third change is proposed to better inform persons installing built-in child restraints how to do so properly.

Commenters should note that the structure and language of the amendments proposed today reflect the standard's labeling requirements as they currently are in effect. Commenters should note also that in February and August 1991, NHTSA issued separate NPRMs that contain proposals that would make changes in the structure and language of those labeling requirements. (*See*, 56 FR 6603; 56 FR 38105) Those proposals are still pending. If the amendments proposed by the earlier NPRMs are adopted, any amendments that might ultimately be adopted based on this proposal would have to be modified to account for those changes.

1. Identifying Information

Ford petitioned NHTSA to remove the requirement in S5.5.4 of the standard that a built-in system must be labeled with the information specified in S5.5.5 (a) through (d) of the standard, i.e., the restraint's model name or number, manufacturer's name, and month, year and place of manufacture. Ford believed the information is unnecessary because "the vehicle manufacturer who installs the seats would be responsible for the design and service of the vehicle, including the built-in seat."

Ford also requested that NHTSA remove the requirement in S5.6.2 that the information be included in the vehicle owner's manual. Ford stated that the lack of a need for the requirement is shown by the absence from Standard 213 of any comparable requirement for add-on restraints. (The standard requires only that the information be labeled on the add-on restraint.) Ford also stated that it could not practicably print the date of manufacture of the restraint system in the vehicle owner's manual. The petitioner did not explain its statement, but NHTSA presumes that Ford believes it would be difficult for the owner's manual to contain the date of manufacture of the child restraint system because the date is unique to each child restraint system, while the manuals are generally printed at one time.

NHTSA has decided to propose the requested changes to S5.5.4 and S5.6.2 for factory-installed built-in child restraints. "Factory-installed built-in child restraint" would be defined in S4 of the standard as a built-in restraint system that was installed in a motor vehicle at the time of its delivery to a dealer or distributor for distribution. The agency has tentatively determined that placing the information required by S5.5.5 (a) through (d) is unnecessary for factory-installed built-in child restraints because the motor vehicle manufacturer is responsible under the National Traffic and Motor Vehicle Safety Act for recalling and remedying any vehicle whose factory-installed restraint contains a safety defect or fails to comply with any applicable Federal Motor Vehicle Safety Standard. Since the vehicle manufacturer is identified on the vehicle certification label and elsewhere in the vehicle, neither the manufacturer nor the manufacturer of the built-in child restraint, if different from the vehicle manufacturer, need be identified for the benefit of the owner of such a vehicle who is seeking a remedy of a defect or noncompliance involving the child restraint.

The agency requests comments on whether the information of S5.5.2 (a) through (d) and S5.5.5 (a) through (d) should continue to be required for add-on restraints and built-in restraints intended for used vehicles, in the event its proposal regarding child restraint registration proposal is adopted. In February 1991, NHTSA proposed a child restraint registration requirement to improve the dissemination of recall information to owners of add-on and some built-in restraint systems. 56 FR 6603; February 19, 1991. Under the proposal, restraint manufacturers must provide a registration card with each restraint system (excluding built-in systems installed in new vehicles), and keep records of the names and addresses of persons who have returned registration information. One purpose of the proposal is to aid manufacturers in informing an owner that the restraint system is recalled. NHTSA notes that the information labeled on the restraint pursuant to Standard No. 213 would allow those restraint owners whose names and addresses are not known to the manufacturer to determine if their restraint is among those recalled.

NHTSA recognizes that as a practical matter, today's proposal to limit labeling requirements might affect only a few manufacturers of built-in restraint

systems. A restraint manufacturer may have to label all restraints with the information required by S5.5.5. (a) through (d) unless the manufacturer can identify with certainty which restraints become factory-installed built-in child restraints.

2. Inadvertently Required Information

Ford's second suggestion was that NHTSA remove S5.6.3 through S5.6.6 of Standard 213, which describe various statements that must be included in the printed instructions accompanying each child restraint. Ford believed that NHTSA intended to remove those paragraphs in a 1988 rulemaking, but did not effectuate the intended change in the rule.

NHTSA tentatively agrees with Ford that the statements of S5.6.3 through S5.6.6 should not be required for built-in restraint systems. It appears that it was inadvertent that the standard required the statements for built-in systems. The statements are appropriate for add-on systems (and are required for them by S5.6.1.3 through S5.6.1.6), but as explained below, do not appear relevant for built-in ones.

S5.6.3 states that the instructions "shall explain the primary consequences of [not] following the warnings required to be labeled on the child restraint system in accordance with S5.5.2 (g) through (k)." The statement is inappropriate because the information of 5.5.2 (g) through (k) are required to be labeled on add-on restraints, not built-in ones.

S5.6.4 states that "The instructions for each car bed shall explain that the car bed should [be] position[ed] in such a way that the child's head is near the center of the vehicle." The statement is inappropriate for a built-in system because, once installed, the position of the system cannot be changed.

S5.6.5 states that the instructions "shall state that child restraint systems should be securely belted to the vehicle, even when they are not occupied, since in a crash an unsecured child restraint system may injure other occupants." The statement addresses the situation where an unsecured add-on restraint can become a flying missile in a crash and injure other vehicle occupants. There is no such danger for a built-in system.

S5.6.6 states "Each child restraint system shall have a location on the restraint for storing the manufacturer's instructions." This requirement appears to be inappropriate for restraints installed by the vehicle manufacturer on a new vehicle because the instructions for these systems are required to be "included in the vehicle owner's manual" (S5.6.2). It is unlikely that the vehicle owner's manual would be stored on the restraint.

However, NHTSA is proposing a storage location on the restraint for built-in systems other than factory-installed ones. The printed instructions would not be required to be in the vehicle owner's manual under today's proposal. The instructions would be provided separately, with the restraint. In those cases, the agency tentatively believes a storage location for the instructions would help ensure that the instructions are readily available when needed.

3. Installation Instructions for Built-In Restraints

NHTSA proposes a new requirement to increase the likelihood that a built-in restraint system will be correctly installed. The proposal would require a restraint that has not been installed in a vehicle to be accompanied by instructions that provide a step-by-step procedure for the installation. Also, NHTSA proposes that the instructions must specify the types of vehicles and the locations of seating positions into which the restraint can or cannot be installed. The agency requests comments on how specific the information should be. For example, one possibility is that the information should specify the vehicle makes and models into which the restraint could be installed, and where in the vehicle the restraint should be located.

The agency has tentatively determined that the instructions would make it easier for manufacturers of some built-in restraints to meet their certification responsibility. The restraints are those that are not factory-installed. Some manufacturers of these "aftermarket" built-in seats have asked NHTSA for guidance on how they can certify to Standard 213 when their restraint can be installed in different types of vehicles with varying interiors. If the restraint were installed in a manner that the restraint manufacturer did not intend, the installation could affect the seat's performance. For example, the restraint might be installed too close to a hard structure, such as a console assembly or a roof pillar, to sufficiently protect against head impact in a crash. When the vehicle's interior varies from that anticipated by the restraint manufacturer, so too can the performance of the built-in system.

The instructions would establish the assumptions that the manufacturer had about the vehicle interior that form the basis for the certification. The instructions specify attributes about the vehicle interior that are compatible or incompatible with the restraint. For example, the instructions could state that the restraint must not be installed within a specified distance from any rigid interior structures. The instructions would help ensure that a built-in restraint performs as intended in the real world.

NHTSA also believes that the installation instructions would help facilitate compliance testing. If the instructions were specific as to the vehicle types suitable for the restraint, the agency could determine the configuration of the "specific vehicle shell or the specific vehicle" (S6.1.1.1(a)) for testing the restraint. The agency would install the restraint pursuant to the manufacturer's instructions. The restraint's performance in the test would be representative of its performance in the vehicle.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are minor and that preparation of a full preliminary regulatory evaluation is not warranted. The agency believes that manufacturers would be minimally affected by the proposed amendment to the definition of a "built-in child restraint system." Based on available information, manufacturers of restraint systems that would be newly included in the proposed definition now design their product to meet Standard 213 requirements for "built-in" systems. NHTSA also believes that manufacturers would be minimally affected by the proposed amendment to the labeling requirements. The amendment would affect some but not all of the information that is required to be labeled on or provided with the restraint. Overall, the requirements to label and provide informational instructions would be minimally affected.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. To our knowledge there are fewer than 10

manufacturers of built-in systems. Regardless of the number of small entities, NHTSA believes the economic impact on them would not be significant, since currently, manufacturers presently design their product to meet the dynamic performance requirements for "built-in" systems. NHTSA also believes that manufacturers would not be significantly affected by the amendment to the labeling requirements. The amendment would affect some but not all of the information that is required to be labeled on or provided with the restraint. Overall, the requirements to label and provide informational instructions would be minimally affected. The agency believes that there would not be any impact on the cost of most child seats, and that small organizations and governmental jurisdictions that purchase these seats would not be significantly affected by the proposals. In view of the above, the agency has not prepared an initial regulatory flexibility analysis.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Comments on the Proposal

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

§ 571.213 [Amended]

2. S3 would be revised to read as follows:

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks and buses, and to child restraint systems for use in motor vehicles and aircraft.

3. S4 would be amended by adding a definition of "factory-installed built-in child restraint system" and by revising the definitions of "built-in child restraint system" and "specific vehicle shell" to read as follows:

S4. **Definitions.**

* * * * *

Built-in child restraint system means a child restraint system that is designed to be an integral part of a motor vehicle.

* * * * *

Factory-installed built-in child restraint system means a built-in child restraint system that was installed in a motor vehicle at the time of its delivery to a dealer or distributor for distribution.

* * * * *

Specific vehicle shell means the actual vehicle model part into which the built-in child restraint system is or is intended to be fabricated, including the complete surroundings of the built-in system. If the built-in child restraint system is or is intended to be manufactured as part of the rear seat, these surroundings include the back of the front seat, the interior rear side door panels and trim, the rear seat, the floor pan, the B and C pillars, and the ceiling. If the built-in system is or is intended to be manufactured as part of the front seat, these surroundings include the dashboard, the steering mechanism and its associated trim hardware, any levers and knobs installed on the floor or on a console, the interior front side door panels and trim, the front seat, the floor pan, the A pillars and the ceiling.

* * * * *

5. The introductory text of S5 would be revised to read as follows:

S5. *Requirements for motor vehicles with built-in child restraint systems and for child restraint systems manufactured for use in motor vehicles.* Each motor vehicle with a built-in child restraint system shall meet the requirements in this section when, as specified, tested in accordance with S6.1. Each child restraint system manufactured for use in motor vehicles shall meet the requirements in this section when, as specified, tested in accordance with S6.1.

* * * * *

6. S5.1.3.1 (introductory text) would be republished and S5.1.3.1(a) and S5.1.3.1(b) would be revised to read as follows:

S5.1.3.1 *Child restraint systems other than rear-facing ones and car beds.* Each child restraint system other than a rear-facing child restraint system or a car bed, shall retain the test dummy's torso within the system.

(a) In the case of an add-on child restraint system, no portion of the test dummy's head shall pass through a vertical transverse plane that is 32 inches forward of point z on the standard seat assembly, measured along the center SORL (as illustrated in figure 1B), and neither knee pivot point shall pass through a vertical, transverse plane

that is 36 inches forward of point z on the standard seat assembly, measured along the center SORL.

(b) In the case of a built-in child restraint system, neither knee pivot shall pass through a vertical, transverse plane that is 36 inches forward of the hinge point of the specific vehicle seat into which the system is or is intended to be built, measured along a horizontal line parallel to the vehicle's longitudinal center line and the center line of the vehicle seat.

* * * * *

7. S5.2.1.2 (introductory text) and S5.2.1.2(a) would be republished and S5.2.1.2(b) would be revised to read as follows:

S5.2.1.2 A front-facing child restraint system is not required to comply with S5.2.1.1 if the target point on either side of the dummy's head is below a horizontal plane tangent to the top of—

(a) the standard seat assembly, in the case of an add-on child restraint system, when the dummy is positioned in the system and the system is installed on the assembly in accordance with S6.1.2.

(b) the vehicle seat, in the case of a built-in child restraint system, when the system is activated and the dummy is positioned in the system in accordance with S6.1.2.

8. S5.2.2.2(a)(2) would be revised to read as follows:

S5.2.2.2 Each forward-facing child restraint system shall have no fixed or movable surface—

(a) * * *

(2) Parallel to a vertical plane through the longitudinal center line of the vehicle seat, in the case of the built-in child restraint system, and

* * * * *

9. S5.5.4 and the introductory text of S5.5.5 would be revised to read as follows:

S5.5.4 (a) Each built-in child restraint system, except for a factory-installed built-in restraint, shall be permanently labeled with the information specified in S5.5.5 (a) through (j). The information shall be visible when the system is activated for use.

(b) Each factory-installed built-in child restraint shall be permanently labeled with the information specified in S5.5.5 (e) through (j), so that the information is visible when the seat is activated for use. The information shall also be included in the vehicle owner's manual.

S5.5.5 The information specified in paragraphs (a) through (j) of this section that is required by S5.5.4 shall be in English and lettered in letters and numbers that are not smaller than 10-point type and are on a contrasting background.

* * * * *

10. S5.6.2 would be revised, S5.6.2.1 would be republished, S5.6.2.2 would be reserved, and S5.6.2.3 would be added to read as follows:

S5.6.2 *Built-in child restraint systems.* Each built-in child restraint system shall be accompanied by printed instructions in English that provide a step-by-step procedure, including diagrams, for activating the restraint system, positioning a child in the system, adjusting the restraint and, if provided, the restraint harness to fit the child. In the case of each motor vehicle equipped with a factory-installed built-in restraint, this information shall be included in the vehicle owner's manual.

S5.6.2.1 The instructions shall explain the primary consequences of not following the manufacturer's warnings for proper use of the child restraint system in accordance with S5.5.5 (f) through (i).

S5.6.2.2 [Reserved]

S5.6.2.3 Each built-in child restraint system, except for an original equipment built-in restraint, shall have a location on the restraint for storing the instructions.

11. S5.6.3 would be revised to read as follows:

S5.6.3 Each built-in child restraint system that has not been installed in a vehicle shall be accompanied by instructions in English that provide a step-by-step procedure for installing the system in a motor vehicle. The instructions shall specify the types of vehicles and the seating positions into which the restraint can or cannot be installed.

12. S5.6.4 through S5.6.6 would be removed.

* * * * *

Issued on January 3, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-430 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 57, No. 6
Thursday, January 9, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 3, 1992.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collecting; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Office, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

New Collection

• Farmers Home Administration.
7 CFR 1942–G, Rural Business Enterprise Grants—Addendum I.
On occasion.
State or local governments; Non-profit institutions; Small businesses or organizations; 520 responses; 505 hours.
Jack Holston (202) 720–9736.

• Food and Nutrition Service.
Validation of Competencies and Determination of Training needs for Managers in School Food Service.
One time only.
Individuals or households; Non-profit institutions; 1,800 responses; 600 hours.
Dr. Jeannie Sneed (601) 206–5773.

Reinstatement

• Farmers Home Administration.
7 CFR 1941–A, Operating Loan Policies, Procedures and Authorizations.
FmHA 403–1, 441–8, 441–10, 441–13, 441–18, 441–25, 1940–51, 1940–53, 1940–55, –56.
On occasion.
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 79,500 responses; 15,213 hours.
Jack Holston (202) 720–9736.

Extension

• Farmers Home Administration.
7 CFR 1951–O, Servicing Cases Where Unauthorized Loan or Other Financial Assistance was Received—Community and Business Programs.
On occasion.
State or local governments; Non-profit institutions; 14 responses; 12 hours.
Jack Holston (202) 720–9736.

• Food and Nutrition Service.
Evaluation of State-Initiated EBT Demonstrations.
On occasion.
State of local governments; Businesses or other for-profit; Federal agencies or employees; Small Business or organizations; 7,953 responses; 1,141 hours.
Kilo (Sharon) Bingham (703) 305–2115.

• Federal Crop Insurance Corporation.
Macadamia Orchard Inspection Report.
FCI–554.
On occasion.
Individuals or households; Farms; 200 responses; 200 hours, Bonnie L. Hart (202) 254–8393.

• Federal Crop Insurance Corporation.
Crop Appraisal and Adjuster Worksheets.
36 different forms.
On occasion.
Individuals or households; Farms; 61,468 responses; 104,496 hours, Bonnie L. Hart (202) 254–8393.

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 92–435 Filed 1–8–92; 8:45 am]
BILLING CODE 3410–01–M

Packers and Stockyards Administration

Proposed Study of Concentration in Red Meat Packing Industry; Request For Public Comment

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Request for public comment on proposed study of concentration in red meat packing industry.

SUMMARY: The Packers and Stockyards Administration was appropriated $500,000 in fiscal year 1992 to study concentration in the red meat packing industry. The Agency requests comments on project selection, research methodology, data needs and sources, and potential participants.

DATE: Comments are due on or before February 7, 1992.

ADDRESS: Send comments to: Gerald E. Grinnell, IAS–P&SA–USDA, room 3052–S, Washington, DC 20250–2800.

FOR FURTHER INFORMATION CONTACT: Gerald E. Grinnell, telephone (202) 720–7455.

SUPPLEMENTARY INFORMATION: A sum of $500,000 was included in the Packers and Stockyards Administration's fiscal year 1992 appropriation to conduct a study and report on concentration in the red meat packing industry. At least $250,000 of this amount will be used to contract with other organizations and universities.

The possible topics or projects of a concentration study in the red meat industry are numerous. In order to narrow the scope of the study to meet budget limitations, the Packers and Stockyards Administration will decide upon specific projects and arrange to have the projects completed.

To assist in its decisions, the Agency requests public comments on project selection. Commenters also may comment on research methodology, data needs and sources, and potential participants for the study. Recommendations should be concise, yet specific and accompanied by supporting statements.

Project Selection

In providing the funds for the study, Congress discussed possible subjects for a concentration study. For example, while not limited to the following, the

study could define relevant markets, measure concentration, review changes in price information systems and pricing practices, review annual reports, and assess the role of futures markets and forward contracts. Other topics might include trends and implications of increased vertical integration and coordination, potential for changes in concentration (including size economies and entry conditions), etc. It also may be desirable and necessary to limit the study to one or two species of livestock.

Research Methodology, and Data Needs and Sources

Commenters who care to do so, are invited to discuss the types of data and methodology needed to address the projects they think are most important. Commenters may also indicate data sources. Data for the study may be obtained under the Packers and Stockyards Administration's authorities, including its confidentiality restrictions.

Persons wishing to identify topics that they believe cannot be addressed due to methodological and data limitations should also identify the limitations.

Potential Participants

P&SA invites recommendations for participants to assist in addressing questions relating to concentration in the red meat packing industries.

This is not an invitation to bid on projects. After P&SA has selected research projects, the Agency will determine the most appropriate method to obtain the services needed to complete the work.

Authority: Public Law 102–142.

Dated: January 6, 1992.

Virgil M. Rosendale,

Administrator, Packers and Stockyards Administration.

[FR Doc. 92–505 Filed 1–8–92; 8:45 am]

BILLING CODE 3410–KD–M

CENTRAL INTELLIGENCE AGENCY

Nondisclosure Obligations and Prepublication Review; Access to and Release of Official Information

In accordance with the terms of the Settlement Agreement filed with the United States District Court for the District of Columbia on 16 July 1991 in the case of *Patti A. Goldman* v. *Central Intelligence Agency*, Civil No. 90–2138, the following notice is hereby given.

CIA internal regulations HR 6–2 and HR 6, Attachment 1 reflect the Agency's current policies and requirements with regard to nondisclosure obligations and prepublication review. These regulations are available to the public upon written request to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

The term "official information," as used in CIA's regulation on access to and release of official information (HR 10–22), includes all information, whether classified or unclassified, that is originated, received, or controlled by the Agency in pursuance of law or in connection with the discharge of official duties. This definition encompasses information that concerns sources and methods, is unique to the Agency, or can be traced to the Agency. Excluded from this definition are personal copies of unclassified/uncontrolled administrative notices, personnel actions, financial statements, medical records, and items meant for public consumption, such as newspapers, magazines, books, and reference materials. All official information as defined in HR 10–22 is the property of the U.S. Government.

Official information is not to be used for personal use or benefit and may not be copied or removed from the files of the Agency for any purpose except in connection with official business.

CIA will not provide official information to or permit its use by an individual unless it is required in the course of official duties. Classified information is further restricted to those persons having a need-to-know who also have the necessary security clearances or access approvals.

Certain violations involving the misuse or mishandling of classified information can constitute a criminal offense, penalties for which are specified in sections 793, 794, and 798, Title 18 U.S. Code. Other violations, while not constituting a criminal offense, represent violations of the Executive order on classification of national security information and Agency security policy, and will be handled under appropriate provisions of Agency regulations.

CIA will not provide official information to former Agency employees unless it is properly released to them through designated official channels. Need-to-know and possession of the appropriate security clearances must be demonstrated prior to release of any classified information. In general, the Agency treats former employees like other members of the general public who request information under the provisions of the Freedom of Information or Privacy Acts or the mandatory review procedures in the Executive order on classification of national security information.

Dated: December 23, 1991.

Approved:

R.M. Huffstutler,

Deputy Director for Administration.

[FR Doc. 92–495 Filed 1–8–92; 8:45 am]

BILLING CODE 6310–02–M

COMMISSION ON CIVIL RIGHTS

Florida Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m on Thursday, January 23, 1992, at the Metro-Dade Government Center, 111 NW 1st Street, 16th Floor, Conference Room 4, Miami, Florida 33128. The purpose of the meeting is to discuss the status of the Commission and follow-up plans to the Tampa police project. In addition, the committee will receive information from community leaders on racial tensions in Florida (Miami).

Persons desiring additional information, or planning a presentation to the Committee should contact Florida Chairperson Bradford Brown 305/361–4991 or Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730–2476, TDD 404/730–2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 6, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–504 Filed 1–8–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held January 29, 1992 at 9:30 a.m., in the Herbert C. Hoover Building, room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in

the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

Agenda: General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Restructuring Militarily Critical Export Controls.
5. Underlying Policy Guidelines for Future Export Controls.
6. Other Business.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address:

Ms. Ruth D. Fitts, TAC Unit/OTPA/EA/BXA, room 1621, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 28, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: January 6, 1992

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 92-539 Filed 1-8-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Sanctions for Violation of Administrative Protective Order

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Status of Investigation into Charges of Violation of Administrative Protective Orders in Antidumping and Countervailing duty proceedings.

SUMMARY: This is a notice of the status of investigations into charges of violations of administrative protective orders in antidumping and countervailing duty proceedings.

EFFECTIVE DATE: January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, (202) 377-0916.

SUPPLEMENTARY INFORMATION: The International Trade Administration, U.S. Department of Commerce (ITA), wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained pursuant to an administrative protective order (APO) during the course of those proceedings. In order that the gravity with which ITA views violations of its APOs might be better appreciated, ITA is publishing the following report on a violation of an APO.

An individual violated his APO by sending a submission, which included business proprietary information, to persons not on Commerce's APO list for an Administrative Investigation. By failing to ascertain which parties should receive the submission, the individual violated the application for access to business proprietary information filed by the individual that was incorporated by reference into the APO.

In this case, the individual involved was (1) issued a private reprimand which warned that any future violation would be treated more severely; (2) required to attend a training session on procedures for protecting proprietary data; and (3) required to send a letter of apology to the party whose business proprietary information was mishandled. Although it is clear that a violation occurred, we consider these sanctions appropriate for the following reasons: First, the violation appears to have been inadvertent. Second, there appears to be no harm to the submitter of the information caused by the failure to protect the information and the unauthorized recipients promptly returned the materials and did not disseminate the material to anyone. Third, the individual cooperated fully with ITA's investigation.

Serious harm can result from failure to properly protect business proprietary information received under APO. ITA will continue to investigate vigorously allegations that the provisions of APOs have been violated, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to business proprietary information, and debarment from practice before the ITA.

Dated: January 2, 1992.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

[FR Doc. 92-540 Filed 1-8-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-570-817]

Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks From the People's Republic of China ("PRC")

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager or Paulo F. Mendes, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5055 or (202) 377-5050.

INITIATION:

The Petition

On December 12, 1991, we received a petition in proper form filed by Consolidated International Automotive, Inc. on behalf of the United States industry producing chrome-plated lug nuts and wheel locks (collectively "lug nuts"). Petitioner alleges that manufacturers, producers or exporters of lug nuts in the PRC receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act"). Since the PRC is not a "country under the Agreement" within the meaning of section 701(b) of the Act, the International Trade Commission

("ITC") is not required to determine whether, pursuant to section 303(a)(2), imports of the merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 355.2(i), and because it has filed the petition on behalf of the U.S. industry producing lug nuts. If any interested party, as described in 19 CFR 355.2(i)(3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration, room B099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Allegations of Bounties or Grants

Petitioner contends that the lug nuts sector in the PRC is sufficiently outside of government control that this sector is no longer within the scope of *Georgetown Steel Corporation* v. *United States*, 801 F.2d 1308 (Fed. Cir. 1986) ("Georgetown Steel"). Petitioner also lists a number of practices by the PRC Government which allegedly confer bounties or grants on manufacturers, producers or exporters of lug nuts.

We have reviewed the evidence provided in the petition and, consistent with our initiation determination in Oscillating Fans and Ceiling Fans from the People's Republic of China (56 FR 57616, November 13, 1991), we find that the lug nuts industry is characterized by:

- Collective ownership, with the possibility of joint ventures;
- PRC-sourced inputs purchased at negotiated prices, *i.e.*, they are not provided through or as a result of a central plan; and
- Pricing and production decisions are left to the producing entity.

Based on this, we determine that petitioner has provided sufficient information to indicate that the PRC lug nuts producers operate in an economic environment which differs significantly from the nonmarket economic systems described in Georgetown Steel. Therefore, for purposes of this initiation, we conclude that it is appropriate to investigate whether the CVD law applies to lug nuts producers and, if so, whether lug nuts producers in the PRC receive bounties or grants within the meaning of section 303 of the Act. We are initiating on the following programs.

1. Multiple Exchange Rates
2. Benefits for enterprises in Special Economic Zones—Reduced Tax Rates or Exemptions

We are not initiating on the programs listed below because the requirements of section 303 of the Act were not fulfilled in the petition.

1. Upstream Subsidies

Petitioner has alleged that the lug nuts industry in the PRC is benefitting from upstream subsidies bestowed upon its steel and chemical suppliers. Specifically, petitioner has alleged: (1) That the steel and chemical sectors, like the lug nuts sector, are sufficiently outside of government control so as to be no longer within the scope of Georgetown Steel; (2) that subsidies within the meaning of section 771(5)(A)(ii) are being bestowed on the PRC steel and chemical industries; (3) that the subsidies to the upstream suppliers confer a competitive benefit on the PRC lug nuts industry; and (4) that the subsidies to the upstream suppliers have a significant effect on the cost of manufacturing or producing lug nuts.

We have reviewed the evidence submitted by petitioner with respect to the degree of government control in the PRC steel and chemical sectors and have determined, contrary to petitioner's allegation, that there is a significant degree of state control in these sectors. Our conclusion is based on the fact that "in-plan" production exists in both sectors. With respect to steel, approximately 45 percent of steel produced nationally is sold in-plan, with respect to chemicals, approximately ten percent falls under in-plan controls.

The fact that there is in-plan production of a commodity is significant because it means that, for that portion of output, the government sets target amounts to be produced each year, allocates (at set prices) the required inputs to ensure production of the target amounts, directs the amount of production to be delivered to state-owned enterprises, and sets the prices to be charged for those deliveries. In short, government directives replace the market as the allocator of resources, the very situation in which the Georgetown Steel court states that the countervailing duty law could not be applied.

Moreover, the types of "subsidies" allegedly received by the PRC steel and chemical sectors are similar to those identified by the Department in Carbon Steel Wire Rod from Czechoslovakia; Final Negative Countervailing Duty Determination, 49 FR 19370, 19371–19372, May 7, 1984 as typical in nonmarket economy countries:

> By market standards, the nonmarket environment is riddled with distortions. Prices are set by central planners. "Losses" suffered by production and foreign trade enterprises are routinely covered by government transfers. Investment decisions are controlled by the state. Money and credit are allocated by the central planners. The wage bill is set by government.

Thus, although the the steel and chemicals purchased by the lug nuts industry in the PRC are sold outside of the plan, we have determined that the significant government presence in theses industries renders subsidies incapable of being identified or fairly quantified. As a result, we have determined not to initiate an upstream subsidies investigation of the steel and chemical suppliers to the PRC lug nuts industry.

2. Convict Labor

Petitioner alleges that "temporary workers" for the lug nut producers in the PRC may be convict labor. Petitioner has not provided sufficient documentation to support its allegation that convict labor is used by Chinese lug nut producers, and we found no indication of this at verification in the antidumping case on lug nuts (see 56 FR 46153). Therefore, we are not initiating on this program.

Scope of Investigation

The lug nuts covered by this investigation are one-piece and two-piece chrome-plated lug nuts, finished or unfinished. These include chrome-plated lug nuts, finished or unfinished, which are more than 1 1/16 inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least 3/4 inches (19.05 millimeters) but not over one inch (25.4 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts.

The wheel locks covered by this investigation include finished or unfinished wheel locks. These include wheel locks which are more than 1 1/16 inches (17.45 millimeters) in height and which have an outside diameter of at least 3/4 inches (19.05 millimeters) but not over one inch (25.4 millimeters), with a somewhat undulating or splined pattern for use with a matching key or wrench. The term "finished" refers to wheel locks that are chrome-plated and include a locking mechanism with or without a key or similar access device. The term "unfinished" refers to wheel locks that are unplated and with or without a locking mechanism. Locking mechanisms for wheel locks, if shipped separately, are within the scope of this investigation.

The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. The wheel lock, in addition, contains a locking mechanism which prevents removal except with a distinct access device such as a key. The subject merchandise

is currently provided for under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This determination is published pursuant to section 702(c) of the Act and 19 CFR 355.13.

Dated: January 2, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-466 Filed 1-8-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration.

[C-549-701]

Certain Steel Wire Nails From Thailand; Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind Countervailing Duty Order, in Part

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review and intent to rescind countervailing duty order, in part.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain steel wire nails from Thailand for the period January 1, 1989 through December 31, 1989. We find that the scope of the countervailing duty order included certain non-dutiable merchandise from a GATT-signatory country. This notice hereby announces the Department's intent to rescind that portion of the countervailing duty order on the duty-free merchandise. We invite interested parties to comment on the intent to rescind the countervailing duty order, in part.

With regard to the dutiable merchandise covered by the remainder of the countervailing duty order, we preliminarily determine the total bounty or grant to be 0.46 percent *ad volorem*. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 40901) of the countervailing duty order on certain steel wire nails from Thailand (52 FR 36987, October 2, 1987) for the period January 1, 1989 through December 31, 1989. On October 31, 1990, certain petitioners in the original investigation requested an administrative review of the order. We initiated the review on December 10, 1990 (55 FR 50739). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope

In our notice of Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (52 FR 36987, October 2, 1987), the merchandise covered by the investigation was described as follows:

> The products covered by this investigation are certain steel wire nails from Thailand. These nails are: One-piece steel nails made of round wire, as currently provided for in Tariff Schedules of the United States Annotated item numbers 646.2500, 646.2810-90 and 646.3040; two-piece steel wire nails as currently provided for in item number 646.3200; and nails with steel wire shanks and lead heads, as currently provided for in item number 646.3600. These products are currently classifiable under Harmonized System item numbers 7317.00.55, 7317.00.65, 7317.00.75 and 7616.10.10.

With respect to Harmonized Tariff Schedule (HTS) item number 7616.10.10, this number applies only to aluminum nails. In the petition, petitioners did not include aluminum nails in the description of the covered merchandise and the Department did not investigate aluminum nails. Accordingly, we are clarifying the scope of the order to exclude aluminum nails imported under HTS number 7616.10.10.

In addition, the Department intends to rescind that portion of the countervailing duty order covering those items which were duty-free at the time of the investigation. This merchandise includes certain steel wire nails, previously provided for in Tariff Schedules of the United States Annotated (TSUSA) item number 646.3040; TSUSA item number 646.3200, two piece steel wire nails; and TSUSA item number 646.3600, nails with steel wire shanks and lead heads. These products are currently provided for under HTS item numbers 7317.00.55 and 7317.00.75, both of which continue to have duty-free treatment.

The merchandise covered by the remainder of the countervailing duty order, and subject of this administrative review, is described as: One-piece steel nails made of round wire, as previously provided for in TSUSA item number 646.2500 and 646.2810-90. These products are currently provided for under HTS item number 7317.00.55. The TSUSA and HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This administrative review covers the period January 1, 1989 through December 31, 1989, and seven programs. One producer, K.Y. Intertrade (KYI), and one trading company, Asoke, accounted for substantially all exports of the subject merchandise from Thailand to the United States during the review period. Both of these companies, and the firms supplying substantially all nails to the trading company, responded to the Department's questionnaires.

Intent to Rescind Countervailing Duty Order, in Part

During the conduct of this administrative review, the Department found that certain merchandise covered by the countervailing duty order (the Order) was duty-free under the Generalized System of Preferences (GSP) and had been duty-free at the time of the investigation.

Since Thailand is a member of the General Agreement on Tariffs and Trade (GATT), and as certain of the nails covered by the Order are non-dutiable, petitioner was required to allege that, and the U.S. International Trade Commission was required under section 303(a)(2) of the Act, to determine whether imports of these duty free products caused or threatened to cause material injury to the U.S. industry in question. Under the provisions of this paragraph, the Department lacks the authority to impose duties on duty-free merchandise from Thailand unless an affirmative injury determination has been made. (See, e.g., Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order (47 FR 44129, October 6, 1982); Wool from Argentina; Termination of Countervailing Duty Investigation (47 FR 57981, December 29, 1982); Carbon Steel Wire Rod from Trinidad and Tobago; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order (52 FR 45982, December 3, 1987); and, Amendment to Scope of Investigation;

Leather from Argentina (55 FR 13303, April 10, 1990).)

By letter of November 15, 1991, the Royal Thai Government (RTG) requested that the Department revoke the countervailing duty order on this merchandise, and, on November 21, 1991, petitioners formally withdrew that portion of the petition covering the duty-free merchandise.

Accordingly, The Department intends to rescind that portion of the countervailing duty order on imports of non-dutiable nails from Thailand, as described in the "Scope" section of this notice.

Analysis of Programs

I. Programs Preliminarily Determined to Confer Bounties or Grants

A. Export Packing Credits

Export packing credits (EPCs) are short-term pre-shipment and post-shipment export loans. Exporters apply to commercial banks for EPCs and the commercial banks, in turn, submit the applications to the Bank of Thailand (BOT) for approval. Under the "Regulations Governing the Purchase of Promissory Notes Arising from Exports" (B.E. 2528), effective January 2, 1986, the BOT repurchases promissory notes issued by creditworthy exporters through commercial banks. To qualify for the repurchase arrangement, promissory notes must be supported by a letter of credit, sales contract, purchase order, usance bill or warehouse receipt. The notes are available for a maximum of 180 days and interest is payable on the due date of the loan.

The BOT charges the commercial bank account for the principal amount plus five percent interest per annum on repurchased packing credits issued in connection with exports of goods specified in categories one and two of the "Notification of the Board of Investment No. 40/2521." The commercial bank then charges the exporter's account for the principal amount plus up to seven percent interest on the due date of the loan.

If the commercial bank does not meet the terms of the loan, the BOT charges the commercial bank a penalty, retroactive to the first day of the loan, at an eight percent interest rate. If the exporter does not meet the terms of the loan, the commercial bank passes on to the borrower the additional eight percent penalty charge.

If the exporter can prove that shipment of the goods took place within 60 days after the due date (in the case of pre-shipment loans), or the foreign currency was received within 60 days after the due date (in the case of post-shipment loans), the penalty is refunded to the commercial bank by the BOT and the commercial bank credits the exporter's account. If only a portion of the goods was shipped or only a portion of the foreign currency was received by the due date, the exporter receives only a partial refund, proportional to the value of the goods shipped or the foreign currency received The purpose of the penalty charge is to ensure that companies are using the EPCs to finance export sales.

On October 1, 1988, the RTG issued new regulations that coexisted with the prior regulations until December 31, 1988. Effective October 1, 1988, all first-time applicants for EPCs had to apply under the new regulations. Established users of the EPC program had the option of taking out promissory notes under either the old or the new regulations. EPCs received under the previous regulations, but still outstanding as of January 1, 1989, continued under the previous regulations until their expiration dates.

The new regulations implemented several changes in the EPC program. Now, only pre-shipment financing is permitted, the maximum interest rate that commercial banks can charge exporters was increased from 7 to 10 percent, and the BOT repurchase rate was changed to 4 percent for small exporters and 5 percent for large exporters. The penalty charge to exporters was reduced from 8 to 5 percent. In addition, commercial banks can lend up to 100 percent of the shipment value, but can only rediscount up to 50 percent of the loan amount with the BOT. Under the previous regulations, the commercial banks could only lend up to 90 percent of the shipment value and the BOT rediscounted 100 percent of the loan amount.

Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates.

For our benchmark interest rate, we used an average of the interest rates charged on, loans and overdrafts during the review period. The average rate was 11.75 percent for loans taken out in 1988, and 12.23 percent for loans taken out in 1989. In the countervailing duty investigation of steel wire rope from Thailand (See, Final Affirmative Countervailing Duty Determination and Order; Steel Wire Rope from Thailand (56 FR 46299, September 11, 1991)), the Department determined that these were the most appropriate rates to determine the benchmark because loans and overdrafts accounted for approximately 70 percent of all short-term financing in Thailand during the period of review.

Comparing the benchmarks for 1988 and 1989 to the rates charged on the EPCs, we find that the rate on EPCs is preferential and, therefore confers a bounty or grant on exports of steel wire nails. Only KYI used these EPC loans to finance U.S. exports of the subject merchandise during the review period.

To calculate the benefit from the EPC loans on which interest was paid during 1989, we followed the short-term loan methodology which has been applied consistently in our past determinations (See, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Butt-Weld Pipe Fittings from Thailand (55 FR 1695, January 18, 1990) and Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Ceramic Tile from Mexico (53 FR 15090, April 27, 1988)), and § 355.44(b)(3) of "Notice of Proposed Rulemaking and Request for Public Comment" (54 FR 23366, May 31, 1989).

As KYI was able to provide information on EPCs taken out specifically for exports of nails to the United States, we compared the amounts of interest it paid on these EPCs to the amount of interest which would have been paid on similar loans at the benchmark rates. We deducted the total amount of interest (including unrefunded penalties paid during the period) paid by KYI from the amount of interest which would have been paid at benchmark rates, then divided the resulting interest differential by the value of KYI's U.S. nail exports for the period. We then weighted the benefits received by KYI by its share of nail exports to the United States during the period of review. As a result, we preliminarily determine the weighted average bounty or grant under this program to be 0.33 percent *ad valorem*.

B. Tax Certificates for Exports

The Tax and Duty Compensation of Exported Goods produced in the Kingdom Act of 1981 (Tax and Duty Act) provides for rebates to exporters for indirect taxes and imported duties on inputs used to produce exported goods. These rebates are provided to the exporters in the form of tax certificates. These certificates may be used by the companies to pay various tax liabilities or they may be sold or traded to other companies. These are two rates for the tax certificates for each eligible product sector, the "A" rate rebates both import duties and indirect domestic taxes, and is claimed by exporters that have

incurred import charges and have not otherwise had duties refunded. The "B" rate rebates only indirect domestic taxes and is claimed by exporters who have not paid import duties or who participate in Thailand's customs duty drawback program or duty exemption program on imported raw materials, or who do not import raw materials for use is production.

In all previous investigations and administrative reviews involving Thailand's program of tax rebates, these rebate rates have been computed on the basis of an Input/Output (I/O) study initially published in 1980, based on 1975 data, and updated in 1985 using 1980 data. Thailand's Ministry of Finance (MOF) used the I/O study to compute the value of total inputs (both imports and local purchases) used in a discrete range of sector-specific products at ex-factory prices. The Ministry then calculates the import duties and indirect domestic taxes on each input, and the A and B rebate rates described above.

In the Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Steel Wire Nails from Thailand (52 FR 36987, October 2, 1987), the Department examined Thailand's rebate system under the Tax and Duty Act and found that the program was intended to rebate indirect taxes and import duties and that, based on the methodology employed by the MOF at that time, the rebate rates had been reasonably calculated. (For more detailed discussions of the sector-specific rebates see, Final Affirmative Countervailing Duty Determination; Certain Textile Mill Products from Thailand (52 FR 7638, March 12, 1987), Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Butt-Weld Pipe Fittings from Thailand (55 FR 1695, January 18, 1990), and Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Steel Wire Rope from Thailand (56 FR 46299, September 11, 1991)).

In 1987, the Ministry of Finance (MOF) devised a new methodology for calculating product-specific rebate rates for nails, first, to eliminate rebates on non-physically incorporated inputs, and second, to adjust the denominator used in the calculation of the rebate rate to f.o.b value, the basis upon which the certificates are granted. This new product-specific methodology used by the MOF is called the physical input coefficient methodology (PHIC).

To establish the new rebate rates, the MOF first surveyed nail producers in 1987, to obtain 1986 data on the source, amount and value of inputs used in nail production, and information on sales of finished products.

Based on the survey responses, the MOF identified the physically incorporated inputs for nails and calculated corresponding values for each input, per ton, of nails produced. This per-ton value is called the "input coefficient." The calculation of tax incidence varies by input based on sourcing. The indirect taxes rebated in the PHIC methodology are (1) the final stage business tax on the sale of the inputs to the nail producer by the input supplier, and (2) the prior stage business tax and import duties on the sale of materials to the input supplier. Under the PHIC methodology, the final stage business tax is calculated by multiplying the input coefficient for each input by the business and municipal tax rate. The prior stage indirect tax and duty incidence is calculated by utilization of the A and B rebate rates (sector rates) for the I/O sector to which each physically incorporated input corresponds, as applied to its input coefficient.

On imported raw materials, the PHIC methodology rebates the import tariff and business tax. The import tariff rate is obtained directly from the Customs Tariff of Thailand. The business tax rate for this product is a maximum of five percent before adjustment. Under certain circumstances, it may be less. For the PHIC methodology, the reduced rate business tax was utilized and the lowest tax rate available was used to calculate the total business and municipal taxes.

The incidence of import duties on imported raw materials is calculated by multiplying the customs tariff rate by the input coefficient. The incidence of business tax on imported raw materials is derived by multiplying the business tax rate by the input coefficient plus the incidence of import duties, plus an increment entitled "standard profit." This "standard profit" is an addition to the import price of the goods, utilized solely by Thai Customs to increase the assessment base used in determining the amount of business taxes to be charged on imports.

For the PHIC A rebate rate, the total tax incidence is the sum of business taxes, municipal taxes and import duties. For the PHIC B rebate rate, it is the sum of business and municipal taxes.

For the denominator to be used in determining the rates of the tax refunds, the MOF compared the export sale value derived from responses in the survey, to a 'variable cost-price' figure. The MOF selected the higher of these two prices to use as the denominator in determining the A and B export tax rebate rates.

In 1987, these new rates were published in No. Or. 2/2530. The PHIC rebate rates for nails classified in CCCN 73.31 were 6.78 percent (A rate) and 0.13 percent (B rate). This No. Or. 2/2530 was superseded on February 29, 1988 by No. Or. 1/2351, which republished all existing rebate rates by Harmonized System (HS) classification item number. The No. Or. 1/2351 rates for steel wire nails classified under HS 7317.00 are 6.78 percent (A rate) and 0.13 percent (B rate). These rates were in effect during the entire review period.

Because the PHIC methodology is now used by the RTG to determine the rebate rates for nail exports, the Department must treat these revisions as it would an entirely new program and revisit the issue of whether or not the program meets our criteria as a legitimate rebate of indirect taxes and import duties.

To determine whether an indirect tax rebate system, which incorporates rebates of imports duties, confers a bounty or grant, we must apply the following analysis. First, we examine whether the system is intended to operate as a rebate of both indirect taxes and import duties. Next, we analyze whether the government properly ascertained the level of the rebate. This includes a review of the sample used in the study, including the documentation and the accuracy of the information gathered from the sample on input coefficients, import prices and rates of duty on imported inputs, and the exchange rates used to convert import prices denominated in a foreign currency to the local currency. We must also determine that, where there is a fixed duty drawback system in place, the import duties are not being refunded or rebated in an amount greater than the actual duty amount. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of duty and indirect taxes paid. (See, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Apparel from Thailand (50 FR 9818, March 12, 1985).)

When the study upon which the indirect tax and import duty rebate system meets the criteria outlined above, the Department will consider that the system does not confer a bounty or grant unless the amount set forth in the rebate schedule for the exported product exceeds the amount of duties and indirect taxes on physically incorporated inputs.

In the Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Apparel from Thailand (50 FR 9818, March 12, 1985), we examined the RTG's rebate system under the Tax and Duty Act. We found that the program was intended to rebate indirect taxes and import duties. We compared the bases for the I/O and the PHIC studies, and analyzed the information submitted by the respondents. Having examined the methodology utilized in determining the PHIC rebates we find, preliminarily, that these rebates also are intended to rebate indirect taxes and import duties.

We reviewed Thailand's duty drawback system and found that, in order to participate in this drawback system, a firm must be registered and cannot receive the A rebates which include the import duties in the calculation. Only unregistered firms may utilize the A rate tax rebates. Based on the above, we find that there are no overrebates of import duties.

We also find that the RTG properly ascertained the tax and duty rates applicable to each of the claimed input categories utilized in the production of nails, and that the rates were correctly applied in the RTG's input coefficient calculation.

However, the respondents did not provide any of the requested supporting documentation, such as the companies' questionnaire responses or the RTG's calculations of the input coefficients which were based on these responses. Accordingly, there was not sufficient supporting documentation for the Department to make a determination as to whether the input coefficients had been properly calculated.

Based on the above, the Department determines, preliminarily, that respondents have failed to demonstrate that the rebate rates were reasonably calculated, and, since the program is available only to exporters, the entire amount of the export tax rebate is countervailable.

Asoke and KYI accounted for substantially all exports of Thai nails to the United States during the period. These two firms received only the B tax rebate rate, 0.13 percent, on their nail exports to the United States.

Accordingly, we preliminarily determine the total net bounty or grant received under this program to be 0.13 percent.

II. Programs Preliminarily Determined Not to be Used

The Department has examined the following programs and preliminarily determines that the producers, manufacturers and exporters of the subject merchandise to the United States did not use them during the period of review.

A. Rediscount of Industrial Bills
B. Electricity Discounts for Exporters
C. Export Processing Zones
D. International Trade Promotion Fund
E. Incentives Under the Investment Promotion Act (IPA)
(1) Assistance to Trading Companies under the IPA (Section 16)

- Exemption of business taxes for suppliers
- Exemption of business taxes for subcontractors
- Entitlement to Export Packing Credits
- A double deduction from taxable income of taxes paid by branch offices outside Thailand
- A double deduction from taxable income of foreign marketing expenses
- Permission to maintain foreign currency bank accounts

(2) Other Incentives

- Section 28, Exemption on import duties and business taxes on machinery used to produce promoted products
- Section 31, Income tax exemption
- Section 33, Goodwill and royalties tax exemption
- Section 34, Additional tax deduction for dividends paid on promoted activities
- Section 36(2), Exemption of import duties and business taxes on items imported for export
- Section 36(3), Exemption on export duties and business taxes on products produced or assembled by promoted firms
- Section 36(4), Deduction form assessable income of an amount equal to 5 percent of the increase over the previous year of income derived from exports

It should be noted that under item E. 1), "Assistance to Trading Companies Under the Investment Promotion Act, Permission to Hold Foreign Currency Accounts," Asoke does maintain a foreign currency account denominated in U.S. dollars. However, according to the questionnaire response, this account was not used to conduct transactions involving steel wire nail exports to the United States, or to import inputs for the production of steel wire nails during the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net bounty or grant on the dutiable merchandise to be 0.46 percent *ad valorem* for all shipments of certain dutiable steel wire nails from Thailand to the United States during the period January 1, 1989 through December 31, 1989. Pursuant to 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*.

With regard to the rescission of that part of the order covering the duty-free merchandise, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all such entries upon which liquidation has been suspended, and, further, to terminate the suspension of liquidation on future entries of this merchandise.

Regarding the dutiable merchandise covered by this administrative review, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of the merchandise subject to the countervailing duty order exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department intends to instruct the Customs Service to waive cash deposits or estimated countervailing duties, as provided by section 751(a)(1) of the Act, on all shipments of the covered merchandise from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. The case briefs must present in full all arguments that interested parties feel are relevant to the Secretary's final results in this administrative review. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 355.38(e) of the Commerce regulations.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review, including the results of its analysis of

issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and 19 CFR 355.22.

Dated: January 3, 1992

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-541 Filed 1-8-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended export trade certificate of review.

SUMMARY: The Department of Commerce, has issued an amendment to the Export Trade Certificate of Review granted to the CISA Export Trade Group, Inc. Notice of issuance of the Certificate was published in the **Federal Register** on October 26, 1988 (53 FR 43253).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b) which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 3905(a) of the Act and 15 CFR 325 11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 88-00013 was issued to the CISA Export Trade Group, Inc. (CISAETG) on October 19, 1988. Notice of issuance of the Certificate was published in the **Federal Register** on October 26, 1988 (53 FR 43253).

The CISA Export Trade Group, Inc. (CISA ETG) has amended its certificate to:

1. Delete Beardsley & Piper Division, Chicago, IL; Georgia-Pacific Corporation, Atlanta, GA; Metaullics Systems, Solon, OH; Capital Resin Corporation, Columbia, OH; and Simplicity Engineering, Inc., Durand, MI as "Members" of the Certificate.

2. Add the following "Members" to the Certificate: Didion Manufacturing Company, St. Peters, MO; GMD Engineered Systems, Inc., Forth Worth, TX; Hartley Engineered Control Systems, Division of Hartley Controls Corporation, Neenah, WI and its controlling entity The Neenah Corporation, Neenah, WI; Stackpole Carbon Company, St. Marys, PA and its controlling entity The Carbone USA Corporation, Boston, MA.

3. Amend the mailing address of a "Member" company as follows: Dependable Foundry Equipment Co., Inc./Redford-Carver Foundry Products, Sherwood, OR and its controlling entity Tromley Industrial Holdings, Inc., Tualatin, OR.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 17, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-498 Filed 1-8-92; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[Docket No. 920101-2001]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of finding of conformance.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), announces that Ecuador and Panama have submitted documentary evidence that establishes that, during the 1991 fishing season, these nations have met the criteria established for the importation of yellowfin tuna and yellowfin tuna products from countries that have enacted legislation to prohibit intentional purse seine nets on marine mammals. Therefore, yellowfin tuna and yellowfin tuna products may be imported from Ecuador and Panama into the United States through December 31, 1992.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, room 2005, Terminal Island, CA 90731-7415 (213/514-6196).

SUPPLEMENTARY INFORMATION: On November 16, 1990, NMFS published an interim final rule (55 FR 47880) that established a provision for timely consideration and granting of an affirmative finding under the yellowfin importation regulations to a nation that prohibits its vessels from intentionally deploying purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the eastern tropical Pacific Ocean. With an affirmative finding, yellowfin tuna and yellowfin tuna products from the harvesting nation can be imported into the United States.

The regulation at 50 CFR 216.24(e)(5) provides, consistent with the purposes and policies of the Marine Mammal Protection Act, specific criteria for issuing initial and subsequent affirmative findings to a harvesting nation that implements a prohibition against the intentional setting on marine mammals by its purse seine vessels. The Assistant Administrator has determined that the nations of Ecuador and Panama complied with the criteria established by the regulations during the 1991 fishing season—October 1, 1990, through September 30, 1991.

Therefore, all yellowfin tuna and yellowfin tuna harvested products by Panama or Panamanian-flag vessels and Ecuador or Ecuadorian-flag vessels may be imported into the United States through December 31, 1992, or until the Assistant Administrator determines otherwise.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: January 3, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 92-456 Filed 1-8-92; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council (Council) will hold a public meeting on January 15, 1992, at 10 a.m., at the Kings Grant Inn, rt. 128 at Trask Lane, Danvers, MA; telephone: 508–774–6800.

The meeting will begin with reports by the Atlantic Sea Scallop, the Groundfish and the Large Pelagics Oversight Committees. Following these reports there will be a briefing on the field hearing of the Committee on Merchant Marine and Fisheries Subcommittee and Wildlife Conservation regarding the New England Groundfish Restoration Act of 1992. There also will be a report on the status of the Council's Committee on Fisheries Interrelationships.

The meeting will conclude with reports by the Council Chairman, the Council Executive Director, the National Marine Fisheries Service Regional Director, and the Northeast Fisheries Science Center and Mid-Atlantic Council liaisons. Representatives from the U.S. Department of State, U.S. Coast Guard, U.S. Fish and Wildlife Service and the Atlantic States Marine Fisheries Commission will then also report to the Council.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone (617) 231–0422.

Dated: January 3, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–415 Filed 1–8–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Termination of the Export Visa Arrangement for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

January 2, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs terminating the existing export visa arrangement.

EFFECTIVE DATE: March 5, 1992.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The U.S. Government has notified the Government of the Socialist Federal Republic of Yugoslavia that the existing export visa arrangement, established under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated October 26 and 27, 1978, as amended, is being terminated. (See 55 FR 5053, published in the **Federal Register** on February 13, 1990.)

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on March 5, 1992, to permit entry of shipments of textile products, produced or manufactured in Yugoslavia and exported from Yugoslavia on and after March 5, 1992 which are not accompanied by an export visa. The import restraint limits published in the **Federal Register** on December 16, 1991 (56 FR 65244) are still in effect for 1992.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 2, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the directive issued to you on February 7, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Yugoslavia which are not properly visaed by the Government of the Socialist Federal Republic of Yugoslavia.

Effective on March 5, 1992, an export visa shall no longer be required for shipments of textile products, produced or manufactured in Yugoslavia and exported from Yugoslavia on and after March 5, 1992.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–407 Filed 1–8–92; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000–XXXX; FAR Case 91–13]

OMB Clearance Request Concerning Written Refusal of a Utility Supplier To Execute a Utility Contract

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Written Refusal of a Utility Supplier to Execute a Utility Contract.

DATES: Comments may be submitted on or before March 9, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Regulation requires that contracts comply with the applicable Federal laws and the relevant parts of the FAR. The written and definite refusal by a utility supplier to execute a tendered contract (41.004–2) is intended to identify those suppliers who refuse to do so and the rationale of the supplier for refusing.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 50; responses per respondent, 1; total annual responses, 50; preparation hours per response, .30; and total response burden hours, 25.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0002, Written Refusal of a Utility Supplier to Execute a Utility Contract, in

all correspondence. FAR 41.604–2(c) was contained in a proposed rule, FAR Case 91–13, Acquisition of Utility Services, published in the Federal Register, 56 FR 23982, May 24, 1991

Dated: December 31, 1991.

Laurie A. Frazier,

FAR Secretariat.

[FR Doc. 92–407 Filed 1–8–92; 8:45 am]

BILLING CODE 6820–JC–M

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000–XXXX; FAR Case 91–13]

OMB Clearance Request Concerning Change in Rates or Terms and Conditions of Service for Regulated Services

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for a new information collection requirement concerning FAR clause 52.214–6, Change in Rates or Terms and Conditions of Service for Regulated Services.

DATES: Comments may be submitted on or before March 9, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–8755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause at 52.241–6 requires the utility to furnish the Government with a complete set of rates, terms and conditions, and any subsequently approved or proposed revisions when proposed.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 1000; responses per respondent, 5; total annual responses, 5000, preparation hours per response, 15 mins; and total response burden hours, 1250.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 1000; hours per recordkeeper, 1; and total recordkeeping burden hours, 1000.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–XXXX, FAR case 91–13, Change in Rates or Terms and Conditions of Service for Regulated Services, in all correspondence. The clause at 52.241–6 was contained in a proposed rule, FAR case 91–13, Acquisition of Utility Services, published in the Federal Register (56 FR 23982), May 24, 1991.

Dated: December 31, 1991.

Laurie A. Frazier,

FAR Secretariat.

[FR Doc. 92–406 Filed 1–8–92; 8:45 am]

BILLING CODE 6820–JC–M

[OMB Control No. 9000–XXXX; FAR Case 91–13]

OMB Clearance Request Concerning Capital Credits

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for a new information collection requirement concerning FAR clause 52.241–13, Capital Credits.

DATES: Comments may be submitted on or before March 9, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause 52.241–13, Capital Credits, is designed to obtain an accounting of Capital Credits due the Government when the Government is a member of a cooperative.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 450; responses per respondent, 1; total annual responses, 450; preparation hours per response, 2; and total response burden hours, 900.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 450; hours per recordkeeper, 1; and total recordkeeping burden hours, 450.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–XXXX, FAR Case 91–13, Capital Credits, in all correspondence. The clause at 52.241–13 was contained in a proposed rule, FAR case 91–13, Acquisition of Utility Services, published in the Federal Register (56 FR 23982) May 24, 1991.

Dated: December 31, 1991.

Laurie A. Frazier,

FAR Secretariat.

[FR Doc. 92–408 Filed 1–8–92; 8:45 am]

BILLING CODE 6820–JC–M

[OMB Control No. 9000–XXXX; FAR Case 91–13]

OMB Clearance Request Concerning Scope and Duration of Contract

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for a new information collection requirement concerning FAR clause 52.241–2, Scope and Duration of Contracts.

DATES: Comments may be submitted on or before March 9, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause at 52.241–2 requires the utility to furnish the Government with a complete set of rates, terms and conditions, and any subsequently approved or proposed revisions when proposed.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 1000; responses per respondent, 5; total annual responses, 5000; preparation hours per response, 15 mins; and total response burden hours, 1250.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 1000; hours per recordkeeper, 1; and total recordkeeping burden hours, 1000.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–XXXX, FAR case 91–13, Scope and Duration of Contract, in all correspondence. The clause at 52.241–2 was contained in a proposed rule, FAR Case 91–13, Acquisition of Utility Services, published in the **Federal Register**, 56 FR 23982, May 24, 1991.

Dated: December 31, 1991.

Laurie A. Frazier,

FAR Secretariat.

[FR Doc. 92–410 Filed 1–8–92; 8:45 am]

BILLING CODE 6820–JC–M

[OMB Control No. 9000–XXXX; FAR Case 91–13]

OMB Clearance Request Concerning Electric Service Territory Compliance Representation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for a new information collection requirement concerning the provision at FAR 52.241–11, Electric Service Territory Compliance Representation.

DATES: Comments may be submitted on or before March 9, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The representation at 52.241–11, Electric Service Territory Compliance Representation, is required when proposed alternatives of electric utility suppliers are being solicited. The representation is to ensure compliance with Public Law 100–202.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 200; responses per respondent, 2.5; total annual responses, 500; preparation hours per response, 1; and total response burden hours, 500.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–XXXX, FAR Case 91–13, Electric Service Territory Compliance Representation, in all correspondence. The clause at 52.241–11 was contained in a proposed rule, FAR case 91–13, Acquisition of Utility Services, published in the **Federal Register** (56 FR 23982) May 24, 1991.

Dated: December 31, 1991.

Laurie A. Frazier,

FAR Secretariat.

[FR Doc. 92–411 Filed 1–8–92; 8:45 am]

BILLING CODE 6820–JC–M

Department of the Navy

Intention to Prepare an Environmental Impact Statement for the Wastewater Treatment System Upgrade at Marine Corps Base,Camp LeJeune, NC

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Guidelines (40 CFR part 1500), the Department of the Navy (DON), U.S. Marine Corps is preparing a DEIS for modifications to the existing Wastewater Treatment System at the Camp Lejeune Complex which includes the Marine Corps Base (MCB) and the Marine Corps Air Station (MCAS), New River (Onslow County).

The State of North Carolina has indicated that discharges into portions of the New River and its tributaries are in conflict with its goal to upgrade water quality in the region. The North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Management (DEM) has conducted studies which indicate the river is no longer able to absorb all of the nutrients being discharged to it. Camp Lejeune currently maintains seven separate wastewater treatment plants, six of which discharge into the New River. The seventh plant discharges to the intracoastal waterway.

As a result of the DEM concerns, MCB Camp Lejeune initiated a multi-phased Wastewater Treatment Master Plan to evaluate alternative approaches to meet the overall treatment needs. Five alternatives were developed and investigated from a technical and economic feasibility standpoint. Three alternatives are being further investigated based on a combination of factors: Economic, regulatory, phasing and environmental. Along with the no action alternative, the three alternatives to be evaluated within the context of the EIS will be: (1) A new 15 MGD secondary treatment plant at the Hadnot Point area with an ocean outfall to accommodate all flows, (2)-a new 15 MGD advanced treatment plant at the Hadnot Point area with a river discharge to accommodate all flows, (3) a combination of land application for the southern plants, and construction of a new advanced treatment plant with a river discharge for the remaining flows.

Scoping for this DEIS was initiated in November 1991 by letters to potentially affected entities, and cognizant local, state, and Federal agencies. The letter described the proposed action and requested formal input to identify environmental issues meriting in-depth analysis.

In order that comments be considered in a timely fashion, all scoping correspondence should be received not later than four (4) weeks after the publication of this notice. When the DEIS is completed, a public notice of its availability will be made which will request review and comment by all

interested parties. A Final Environmental Impact Statement (FEIS) will then be prepared to respond to the review comments.

The Marine Corps wishes to ensure that all interested parties have the opportunity to focus the environmental analysis, and requests comments be addressed to: Atlantic Division, Naval Facilities Engineering Command, Norfolk, Virginia 23511-6287. Attn: Ms. Pam Anderson (Code 2032).

Dated: January 2, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-488 Filed 1-8-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Intent To Prepare a Remedial Investigation/Feasibility Study-Environmental Impact Statement: Response Actions at Sites in St. Louis, MO

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare a remedial investigation/feasibility study-environmental impact statement.

SUMMARY: Notice is hereby given that the Department of Energy (DOE), under its Formerly Utilized Sites Remedial Action Program (FUSRAP), intends to conduct a comprehensive environmental review and analysis of the "St. Louis Site" (composed of several sites located in and near St Louis, Missouri) to determine the nature and extent of existing contamination and to evaluate alternative response actions. The St Louis Site is composed of the St. Louis Downtown Site (SLDS) and vicinity properties; the St. Louis Airport Site (SLAPS) and vicinity properties; and the Latty Avenue properties consisting of the Hazelwood Interim Storage Site (HISS), the Futura Coatings property, and six commercial or industrial vicinity properties along Latty Avenue. (These vicinity properties are areas not owned or controlled by DOE which are radioactively contaminated above DOE guidelines for residual radioactive material as a result of the previous processing of radioactive materials at the St. Louis Site where DOE is undertaking remedial action.) The environmental review and analysis will integrate the values of the National Environmental Policy Act (NEPA) and requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA)—hereafter referred to as CERCLA. NEPA values under NEPA will be incorporated into the remedial investigation/feasibility study (RI/FS) requirements of CERCLA. The resulting report will be the RI/FS-EIS. Nothing in this Notice of Intent (NOI), or in other documents to be prepared, is intended to represent a statement on the legal applicability of NEPA to remedial actions under CERCLA.

DATES: Written comments or suggestions postmarked on or before February 7, 1992, will be considered in the course of implementing the integrated CERCLA/NEPA process and its documentation. Comments or suggestions postmarked after that date will be considered to the maximum extent practicable. A scoping meeting will be held at the Berkeley Senior High School, 8710 Walter Avenue, Berkeley, Missouri 63134, on January 28, 1992, at 7 p.m. local time. Requests to speak at this meeting should be forwarded to Mr. Lester K. Price by January 22, 1992, at the address indicated below. Persons who have not submitted a request to speak in advance may register at the scoping meeting. Those who register to speak at the meeting will be called on to present their comments as time permits.

ADDRESSES: Comments or suggestions on the scope of the RI/FS-EIS and requests to speak at the scoping meeting discussed below in the Scoping section should be addressed to Mr. Lester K. Price, Director, Former Sites Restoration Division, U.S. Department of Energy, DOE Field Office, Oak Ridge, Post Office Box E, Oak Ridge, Tennessee 37831, (615) 576-0948 or 1-800-253-9759 Fax comments to: (615) 576-0956.

Documents are available for inspection at locations set forth later in this notice.

FOR FURTHER INFORMATION CONTACT: For further information on DOE's EIS process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4700 or 1-800-472-2756.

For further information on DOE's RI/FS process, please contact: Ms. Kathleen Taimi, Director, Office of Environmental Compliance, EH-22, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9024.

SUPPLEMENTARY INFORMATION: The St. Louis Site contains residual radioactivity above DOE guidelines, and cleanup of the Site has been designated as part of FUSRAP. FUSRAP was established in 1974 by the Atomic Energy Commission (AEC), a predecessor agency of DOE. The primary objective of FUSRAP is to identify and remediate sites where radioactive contamination remains from the early years of the nations' atomic energy program or from other activities that resulted in conditions that Congress has authorized DOE to remediate. The goals of FUSRAP are to: (1) Control radioactive contamination at the sites, in compliance with applicable or relevant and appropriate requirements for the protection of human health and the environment, and (2) to the extent possible, certify the sites for use without radiological restrictions following decontamination.

Background

The St. Louis Site consists of several noncontiguous areas located in and near St. Louis, Missouri. The St. Louis Site consists of SLDS and vicinity properties; SLAPS and vicinity properties; and the Latty Avenue properties consisting of HISS, the Futura Coatings property, and six commercial or industrial vicinity properties along Latty Avenue. Contamination at these sites is the result of uranium processing and waste management activities that took place from the 1940s, 1950s, and 1960s. All the properties, with the exception of SLDS and its vicinity properties, are on the National Priorities List of the Environmental Protection Agency (EPA).

The SLDS located in an industrialized area on the eastern border of St. Louis, about 90 m (300 ft) west of the Mississippi River and approximately 17.7 km (11 mi) southeast of SLAPS. The SLDS is owned by Mallinckrodt, Inc., and is utilized as an operating plant for the production of various chemical products. The property occupies approximately 18.2 ha (45 acres) and includes numerous buildings and facilities. The SLDS is traversed by the tracks of three railroad lines, and several spurs service the property from the main lines. The property is fenced, and Mallinckrodt, Inc., maintains 24-hour security.

The SLAPS, an 8.8-ha (21.7-acre) property approximately 24 km (15 mi) from downtown St. Louis, lies immediately north of the Lambert-St. Louis International Airport. It is bounded on the south by the Norfolk and Western Railroad and Banshee Road, on the west by Coldwater Creek, on the north by a ball field area, and on the north and east by McDonnell Boulevard. The area is zoned for industrial use, with the nearest residential areas located approximately 0.8 km (0.5 mi) west, 1.6 km (1 mi)

northwest and 2.4 km (1.5 mi) north of SLAPS. The property is currently owned by the city of St. Louis and is managed by the St. Louis Airport Authority. Transfer of SLAPS property back to DOE prior to remediation is being considered. However, this transfer is not a condition for the proposed alternatives to be evaluated as part of the RI/FS-EIS. Currently, the entire site is fenced to restrict public access, and maintenance and routine environmental monitoring are the only activities taking place at the property. The SLAPS vicinity properties include ditches to the north and south of the property, an adjacent athletic field, transportation routes termed as "haul roads" (i.e., McDonnell Boulevard, Latty Avenue, Hazelwood Avenue, Pershall Road, Eva Avenue, and Frost Avenue), and the areas along transportation routes and Coldwater Creek that have been identified as containing residual radioactivity that exceeds DOE guidelines. Seventy-eight such properties along the haul roads and Coldwater Creek have been identified; five of these properties are zoned for residential use, with the rest zoned for commercial use. Bansheed Road on the southern border of SLAPS, a 30-m (100-ft) strip of St. Louis Airport property south of and parallel to Banshee Road, and seven railroad properties in the area of SLAPS are also considered SLAPS vicinity properties.

The Latty Avenue properties consist of HISS and Futural Coatings properties at 9200 Latty Avenue and six additional commercial or industrial vicinity properties along Latty Avenue. These properties are located in northern St. Louis County within the city limits of Hazelwood and Berkeley, Missouri, approximately 1.2 km (0.75 mi) northeast of SLAPS. The HISS and Futura Coatings properties, which are separated by a chain-link fence, occupy the eastern and western halves of 9200 Latty Avenue, respectively. The HISS and Futura Coatings properties are completely fenced to restrict public access.

The Latty Avenue properties are located in an area that is primarily commercial/industrial, with the nearest residential area located approximately 0.5 km (0.3 mi) to the east. Storm-water runoff from the Latty Avenue properties drains into ditches and a storm sewer that empties into Coldwater Creek, which is located to the west of the properties. The HISS property, which is currently leased by DOE, contains a vehicle docontamination facility, two office trailers, and two covered surface storage piles that contain approximately 27,700 m^3 (32,000 yd^3) of radioactive material. The Futura Coatings property is owned by Jarboe Realty and Investment Company and is leased to Futura Coatings, Inc., which currently manufactures plastic coatings on the property.

From 1942 to 1957, the former Maillinckrodt Chemical Works performed work at SLDS under contracts with the Manhattan Engineer District (MED) and AEC. Several operations were performed, including process development and production of various forms of uranium compounds and metal, and recovery of uranium metal from residues and scrap. From 1942 to 1945, MED/AEC activities were carried out in areas designated as Plants 1 and 2 and in the original Plant 4 (now Plant 10). In 1946, manufacturing of uranium dioxide from pitchblende ore began at the newly constructed Plant 6. From 1948 through 1950, decontamination activities were conducted and supervised by Mallinckrodt personnel at Plants 1 and 2. These decontamination efforts were conducted to meet AEC criteria in effect at that time, and the plants were released in 1951 for use without radiological restrictions. During 1950 and 1951, uranium processing operations began at Plant 6E; Plant 4 was modified and used as a metallurgical pilot plant for processing uranium metal until it was closed in 1956. AEC operations in Plant 6E ended in 1957, and AEC managed the decontamination efforts in Plants 4 and 6E, returning them to Mallinckrodt for use without radiological restrictions in 1962. Contaminated buildings, equipment, and soil from Plants 4 and 6E were removed. Some buildings that existed in 1962 have been razed, and some new buildings have been constructed at the former locations of Plants 4 and 6. Plant 7 was used for storing reactor cores, removing metallic uranium from salt by a wet grinding/mill flotation process, and continuous processing of green salt (i.e., production of uranium tetrafluoride). These operations at Plant 7 began in 1950 and 1951, continuing until the plant closed in 1957. Plant 7 was released for use without radiological restrictions in 1962 following decontamination, based on criteria in effect at that time. Plant 7 is now used primarily for storage of materials and equipment related to current chemical plant operations.

The SLAPS was acquired by MED/AEC in 1946. From 1946 until 1966, the property was used to store residues (i.e., uranium-bearing material generated as a by-product of uranium processing) from SLDS. In 1966, the wastes were purchased by the Continental Mining and Milling Company, removed from the SLAPS, and placed in storage at 9200 Latty Avenue. After most of the residues had been removed from SLAPS, the buildings were demolished and buried on-site, and the whole area was covered with 0.3 to 1 m (1 to 3ft) of clean fill material. At 9200 Latty Avenue, all the wastes transferred from SLAPS were deposited directly on the ground surface. During 1967 and 1970, the residues were dried and shipped to Canon City, Colorado, by the Commercial Discount Corporation and Cotter Corporation. The material in the storage piles currently on HISS originated from a 1979 demolition and excavation activity on the Futura Coatings property and remedial action and construction activities on and around the Latty Avenue properties that took place in 1984 and 1986.

Radiological surveys at SLDS indicate that current contamination in structures and radionuclide concentrations in soil exceed DOE limits for release for use without radiological restrictions (as given in DOE Order 5400.5). Radon concentrations in three buildings also exceed DOE nonoccupational radiation exposure guidelines in DOE Order 5400.5. Results of surveys performed by Bechtel National, Inc., indicate that at SLDS, uranium-238, radium-226, thorium-232, and thorium-230 concentrations in the soil range from background levels up to 95,000 pCi/g, 2,800 pCi/g, 440 pCi/g, and 98,000 pCi/g, respectively. The surveys indicated surface contamination on virtually all portions of SLDS that were examined. The volume of contaminated soil at SLDS is estimated to be 220,000 m^3 (288,000 yd^3).

Radiological surveys performed at SLAPS indicate radionuclide concentrations in the soil exceeding DOE guidelines for release for use without radiological restrictions. Contamination was identified as deep as 5.5 m (18 ft) beneath the ground surface. Uranium-238, thorium-230, and radium-226 have been determined to be the primary contaminants, with concentrations ranging up to 1,600 pCi/g, 2,600 pCi/g, and 5,620 pCi/g, respectively. The volume of contaminated soil at SLAPS is estimated to be 191,000 m^3 (250,000 yd^3).

A large portion of the ground surface and subsurface soil at HISS/Futura Coatings property still remains radioactively contaminated in excess of DOE guidelines for release for use without radiological restrictions. Subsurface contamination is as deep as 2 m (6 ft) at HISS, with concentrations of uranium-238, thorium-230, and radium-226 ranging up to 800 pCi/g, 7,900 pCi/g.

and 700 pCi/g, respectively. The estimated volume of contaminated soil at HISS is 53,520 m^3 (70,000 yd^3). At the Futura Coatings property, contamination is as deep as 4.6 m (15 ft) beneath the surface, and the maximum measured concentrations of thorium-230, radium-226, uranium-238, and thorium-232 in the soil were 2,000 pCi/g, 2,300 pCi/g, 2,500 pCi/g, and 26 pCi/g, respectively. The estimated volume of contaminated soil at the Futura Coatings property is 26,000 m^3 (34,000 yd^3).

Radiological surveys have also been conducted at all vicinity properties. The major radioactive contaminant on these properties is thorium-230. The average concentration of thorium-230 measured in soil at these vicinity properties ranges from background levels up to 145 pCi/g.

Surveys for possible chemical contaminants were also performed at various properties considered to be representative of those comprising the St. Louis Site. The purpose of these surveys was to: (1) Identify and quantify any "hazards waste" as defined under the Resource Conservation and Recovery Act (RCRA); (2) to provide a basis for assessing the potential health hazardous from the handling of materials at the Site while performing remedial actions; (3) to ensure proper design and implementation of a health and safety plan; (4) to define chemical characteristics; (5) to investigate potential migration pathways; and (6) to determine any resulting impact on the design criteria for final disposition of the waste. Chemical analyses for metals, anions, organics, and characteristics of RCRA hazardous waste were performed on soil samples collected from SLDS, SLAPS, HISS, Futura Coatings property, and the athletic field. Limited chemical analyses were also performed on groundwater samples from SLDS, SLAPS, HISS, Futura Coatings property, with surface-water samples from Coldwater Creek also analyzed. In conjunction with historical records of activities at the various St. Louis Site properties, chemical surveys at these selected sites can provide indications of maximum chemical contamination. These values are used as conservative, upper-level indications of chemical contamination on other vicinity properties where chemical surveys were not taken.

The results of the chemical surveys indicate potential contamination with metals similar to, and thus possibly attributable to, those occurring in the materials processed at SLDS. A few organic compounds commonly found in many industrial areas have also been detected at SLDS. These organic compounds are not related to DOE processing activities conducted at SLDS.

In June 1990, DOE executed a Federal Facility Agreement (FFA) with EPA Region VII. The FFA was made available on July 12, 1990, for public review and comment. The public comment period ended on August 17, 1990, and the final agreement became effective on September 13, 1990. Under the FFA, DOE has assumed responsibility for:

—All contamination, both radioactive and chemical, whether commingled or not, at HISS and SLAPS.

—All radioactive contamination present at SLDS and on any vicinity property that is above DOE guidelines for residual radioactive material and is related to uranium processing at SLDS.

—Any chemical or nonradioactive contamination at SLDS and on vicinity properties that has been mixed or commingled with radioactively contaminated wastes resulting from, or associated with, uranium manufacturing or processing activities conducted at SLDS.

The FFA does not assign responsibility to DOE for managing areas, other than SLAPS and HISS, that are only chemically contaminated with no connection to processing of radioactive materials at SLDS.

Environmental Review Process

DOE intends to conduct a comprehensive environmental review and analysis to meet the requirements of CERCLA and incorporate the values of NEPA for implementing response actions at the St. Louis Site. The St. Louis Site consists of approximately 765,000 m^3 (1,000,000 yd^3) of contaminated materials.

The CERCLA environmental review and analysis process has two major phases: a remedial investigation and a feasibility study, which are also the titles or partial titles of the reports resulting from these phases. It is DOE policy, under DOE Order 5400.4, to integrate the values of NEPA and the requirements of CERCLA for remedial actions at sites for which it is responsible. Under the integration policy, the CERCLA process is supplemented, as appropriate, to incorporate the values of NEPA.

The integrated CERCLA/NEPA process begins with scoping and planning phases that culminate in a series of planning documents, including the RI/FS–EIS work plan. In the work plan, the problems at a site are scoped by analyzing existing data, identifying the contaminants of concern, projecting potential exposure routes, identifying any additional specific information that is available, and specifying tasks required throughout the entire remediation process to fully remediate the site problem(s).

From the work plan, a field sampling plan is written to obtain the remaining required data. Companion documents include the health and safety plan, the quality assurance project plan, and the community relations plan. The health and safety plan specifies the procedures needed to protect workers and the general public. The quality assurance project plan specifies the procedures, detection levels, and data quality checks to be used in the laboratory analyses. The community relations plan outlines procedures to ensure that the public is kept informed and given the opportunity to provide information, suggestions, and comments.

The RI phase of the remediation decisionmaking process includes activities associated with site investigations, sample analyses, and data evaluation, which are performed to characterize the site and to determine the nature and extent of contamination. In addition, applicable or relevant and appropriate requirements must be identified to determine what standards, criteria, regulations, or other constraints should be applied to the proposed action. Bench-scale or pilot studies may be performed to test potentially applicable technologies. The RI phase also includes a baseline risk assessment, which is a quantitative assessment of the primary health and environmental threats under the no action alternative.

The FS phase includes screening of remedial technologies, identification and screening of response alternatives, development of general performance criteria for such alternatives, and detailed evaluation and comparison of alternatives consistent with both CERCLA and NEPA. Alternatives to be considered for the St. Louis Site include: (1) No action; (2) treatment and disposal of wastes either on-site or off-site (off-site disposal would be considered generically, not specifically); and (3) (on-site or off-site) containment or institutional control alternatives that control the threats posed by hazardous substances to prevent exposure. The no action alternative provides an environmental baseline against which the impacts of the other alternatives can be compared.

The data collected during the RI phase will influence the development of the remedial alternatives in the FS phase, which in turn affects the data needs and scope of treatability studies and can result in additional field investigations.

Consistent with DOE policy, the RI/FS process will be supplemented, as necessary, to be consistent with NEPA and the Council on Environmental Quality's regulations (40 CFR parts 1500–1508). DOE has determined that an EIS is the appropriate level of NEPA documentation for the St. Louis Site. DOE will prepare an EIS implementation plan to record the results of the scoping process and to present the approach for preparation of the EIS (i.e., RI/FS–EIS). The EIS implementation plan will be prepared following the scoping meeting and will be appended to the work plan for the St. Louis Site.

Nothing in this NOI, or in other documents to be prepared, is intended to represent a statement on the legal applicability of NEPA to remedial actions under CERCLA.

Preliminary List of Potential Issues

Potential issues related to response actions at the St. Louis Site include environmental impacts, as well as factors that may result from or be influenced by implementation of one or more of the remedial alternatives. The preliminary list that follows is based on issues that have been raised relative to other DOE proposals of this nature. Interested parties are invited to participate in the scoping process discussed below and to help refine this list to arrive at the significant issues to be analyzed in depth in the integrated CERCLA/NEPA process and to eliminate from detailed study the issues that are not significant.

The potential major issues that may arise and therefore require analysis in the integrated CERCLA/NEPA process are as follows:

1. Potential radiological/chemical impacts in terms of both radiation/chemical doses and resulting health risks:
   —On people, including workers and the general public (i.e., individuals and the total population, children and adults, present and future generations);
   —Along transportation routes relevant to the proposed alternatives;
   —Associated with routine remedial operations and accidents;
   —Associated with various pathways to humans, including air, soil, surface water, groundwater and biota;
   —Due to natural forces, such as erosion and flooding; and
   —Associated with human intrusion into the contaminated materials.
2. Potential engineering and technical issues:
   —The most reasonable engineering options for each type of waste/residue;
   —Probable duration of contamination isolation;
   —Rates and magnitude of loss of containment;
   —Related to site-specific geohydrology and ecology;
   —Related to site-specific wind patterns; and
   —Site characterization and research and development work necessary before the decision or before actual implementation of an alternative.
3. Potential issues relative to mitigative measures and monitoring:
   —Health-physics and industrial-hygiene procedures for workers; and
   —Control measures for erosion, gases, and dusts.
4. Potential institutional issues:
   —Project-specific criteria for decontamination, effluents, environmental concentrations, and release of site for use without radiological restrictions;
   —Future institutional controls (i.e., monitoring and maintenance); and
   —Institutional issues that need to be resolved before an alternative can be implemented.
5. Potential socioeconomic issues:
   —Effects on land uses, values, and marketability; and
   —Effects on local transportation systems.
6. Cumulative impacts associated with the remedial actions proposed to be taken or reasonably foreseeable at the St. Louis Site.
7. Issues related to CERCLA criteria for selection of a remedial action:
   —Overall protection of human health and the environment;
   —Compliance with applicable or relevant and appropriate requirements;
   —Long-term effectiveness and permanence;
   —Reduction of waste toxicity, mobility, and volume through treatment;
   —Short-term effectiveness;
   —Implementability;
   —Cost;
   —State acceptance; and
   —Community acceptance.

Scoping

The results of the integrated CERCLA/NEPA assessment process for the St. Louis Site will be presented in the draft RI/FS–EIS. The draft work plan and companion documents, fact sheets, technical reports, and other information related to DOE activities at the St. Louis Site have been placed in the repositories at the addresses noted below.

The scoping process will involve all interested government agencies (i.e., Federal, State, and local), groups, and members of the public. Comments are invited on the alternatives and the issues to be considered in the integrated CERCLA/NEPA process, as discussed in this NOI and in the draft RI/FS–EIS work plan. A public scoping meeting is scheduled to start at 7 p.m., to be held on January 28, 1992, in the Berkeley Senior High School, 8710 Walter Avenue, Berkeley, Missouri 63134. This will be an informal meeting, but a complete record will be taken and copies of the transcript will be made available as detailed below.

The meeting will be presided over by an independent facilitator, who will explain DOE procedures for conducting the meeting. The meeting will not be conducted as an evidentiary hearing, and those who choose to make statements will not be subject to cross examination by other speakers. However, to facilitate the exchange of information and to clarify issues, DOE and its representatives may respond by answering questions and making short clarifying statements, as necessary or appropriate. To ensure that everyone who wishes to speak has a chance to do so, 5 minutes will be allotted for each speaker, and speakers are encouraged to submit a written summary of comments.

Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations; persons wishing to speak on behalf of an organization should identify the organization in their request. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting; they will be called on to present their comments if time permits. Written comments or suggestions will also be accepted at the meeting or should be sent to Mr. Lester K. Price at the address given above in the Addresses section and should be postmarked no later than February 7, 1992. Comments or suggestions postmarked after that date will be considered to the maximum extent practicable. Oral and written comments will be given equal weight. Copies of the scoping meeting transcript, the draft work plan and companion documents, and major references used in preparing these documents will be available for inspection during normal business hours at the following locations:

St. Louis Public Library, Government Information Section, 1301 Olive Street, St. Louis, MO, 63103, (314) 241–2288.

St. Louis County Library, Prairie Commons Branch, 915 Utz Lane,

Hazelwood, MO, 63042, (314) 895–1023.

DOE Public Information Office, 9200 Latty Avenue, Hazelwood, MO, 63042, (314) 524–4083.

Certain materials have already been placed at the above repositories, including preliminary assessment and site investigation reports, the draft work plan, the community relations plan, and reports on work that has previously been conducted at the Site. Other documents will be added to the repositories as work at the Site progresses. These additional documents may include, but are not limited to, the scoping meeting transcript, implementation plan, major references used in preparing the RI/FS–EIS, other technical reports, comments and new data submitted by interested persons, and DOE responses to comments.

DOE will retain the transcript of the scoping meeting, and, in addition to the locations noted above, will make a copy available for inspection at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, Monday through Friday during business hours (i.e., 9 a.m. to 4 p.m.). In addition, anyone may make arrangements with the recorder to purchase a copy. When the draft RI/FS–EIS is available, a notice will be published in the **Federal Register** and local newspapers to announce the locations where the documents can be reviewed.

Persons who do not wish to submit comments or suggestions during the comment period but who would like to receive a copy of the draft RI/FS–EIS for review and comment should notify Mr. Lester K. Price at the address given above in the Addresses section.

DOE expects by the end of 1994 to issue the final RI/FS–EIS, which will include a description of the proposed plan and responses to public comments received on the draft RI/FS–EIS (responsiveness summary). DOE will announce a remedial action selection for the Site in the Record of Decision to be issued no earlier than 30 days after the final RI/FS–EIS is issued.

Issued in Washington, DC, this 3d day of January 1992.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 92–531 Filed 1–8–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES92–24, et al.

UtiliCorp United Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES92–24–000]

December 30, 1991.

Take notice that on December 23, 1991, UtiliCorp United Inc. filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authority to issue not more than 1 million shares of preference stock, without par value, and for exemption from the Commission's competitive bidding regulations.

Comment date: January 22, 1992, in accordance with Standard Paragraph E end of this notice.

2. Gulf States Utilities Co.

[Docket No. ES92–23–000]

December 30, 1991.

Take notice that on December 23, 1991, Gulf States Utilities Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authority to issue not more than $100 million of unsecured notes with a final maturity date no later than three years after commencement of the line of credit and for exemption from the Commission's competitive bidding regulations.

Comment date: January 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. William G. Kuhns

[Docket No. ID–1353–002]

December 30, 1991.

Take notice that on August 18, 1991, William G. Kuhns (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Chairman, President Chief Executive Officer, Director.	General Public Utilities Corporation.
Director, Chairman and Chief Executive Officer.	Jersey Central Power & Light Company.
Director, Chairman and Chief Executive Officer.	Metropolitan Edison Company.
Director, Chairman and Chief Executive Officer	Pennsylvania Electric Company.
Director	Marine Midland Banks, Inc.
Director	Home Life Insurance Company.
Director	Ingersoll-Rand Company.

Comment date: January 10, 1992, in accordance with standard paragraph E at the end of this notice.

4. Portland General Exchange, Inc.

[Docket No. ER91–662–000]

December 31, 1991.

Take notice that on December 11, 1991, Portland General Exchange, Inc. tendered for filing a revised notice of cancellation of service schedule PGX–1.

Comment date: January 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Keystone Energy Service Company, L.P. and Keystone Urban Renewal Limited Partnership

[Docket No. QF87–617–001]

December 31, 1991.

On December 19, 1991, Keystone Energy Service Company, L.P. and Keystone Urban Renewal Limited Partnership (Applicants) of Township of Logan, Gloucester County, New Jersey, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is presently certified for 200 MW (41 FERC ¶ 62,222 (1987)). The instant recertification is requested to reflect a change in the design of the facility from four boilers and two extraction/condensing steam turbine generators with 200 MW capacity to one boiler and one extraction/condensing steam turbine generator with 202 MW capacity. The construction of the facility is now expected to commence in March of 1992. In addition, the ownership of the facility has changed. Under the proposed ownership structure Pacific Gas and Electric Corporation will have an indirect ownership interest in the facility.

Comment date: 30 days from publication in the **Federal Register**, in accordance with standard Paragraph E at the end of this notice.

6. Chevron U.S.A. Inc.

[Docket No. QF85–703–001]

December 31, 1991.

On December 23, 1991, Chevron U.S.A. Inc. tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to the use of thermal energy and operating and efficiency value calculations.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 92-451 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-780-000 and CP91-780-002; and CP91-2322-000 and CP91-2322-002]

Northwest Pipeline Corp. and Paiute Pipeline Co.; Availability of the Draft Environmental Impact Statement for the Northwest Pipeline Expansion Project

January 3, 1992.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) has made available a draft environmental impact statement (DEIS) on the natural gas pipeline facilities proposed in the above-referenced dockets. The facilities proposed by the two applicants are considered jointly as the Northwest Pipeline Expansion Project.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act. Construction of the proposed Northwest Pipeline Expansion Project would result in a limited, adverse environmental impact. The staff's analyses indicate that most of the impact would occur during construction of the proposed facilities. However, based on the information contained in this document, the staff has concluded that if this project is constructed and operated in accordance with the recommended mitigation recommendations, including the receipt of the necessary permits and approvals, it would be an environmentally acceptable action. The DEIS also evaluates alternatives to the proposals, including the No Action Alternative.

Northwest Pipeline Corporation (Northwest) proposes, in Docket Nos. CP91-780-000 and CP91-780-002, to expand the capacity of its existing natural gas transmission system which extends from the United States/Canadian border at Sumas, Washington south and west through Washington, Oregon, Idaho, Wyoming, Utah, and Colorado. Northwest proposes to construct pipeline facilities capable of transporting up to 433,415 thousand cubic feet per day (Mcfd) of both domestic and Canadian natural gas. These volumes would be delivered to various locations in the western United States and used by 9 local distribution companies, 16 end-users (i.e., various commercial and industrial gas users), 4 producers, 9 marketers, and 1 interstate gas shipper.

The proposed Northwest pipeline facilities would consist of 378.6 miles of new pipeline loop on Northwest's existing mainline and lateral systems. Mainline expansion would include construction of 243.4 miles of new loop pipeline consisting of 39 miles of 30-inch-diameter and 204.4 miles of 24-inch-diameter pipeline in 11 major segments or loops. New pipeline proposed to be built on the lateral systems would include 134.6 miles of pipeline consisting of 8.7 miles of 20-inch-diameter loop, 52.1 miles of 16-inch-diameter loop, 23.7 miles of 12-inch-diameter loop, 35.3 miles of 10-inch-diameter loop, and 14.8 miles of 6-inch-diameter lateral that would replace an existing 4-inch-diameter lateral. The lateral system expansion would consist of seven loops and one replacement lateral.

Northwest's proposed facilities would also include about 66,610 horsepower (hp) of compression at 10 new compressor stations, about 44,460 hp of additional compression at 7 existing compressor stations, and modifications of existing compressor equipment and/or piping at 6 existing compressor stations.

Additionally, Northwest proposes to requalify to a higher maximum allowable operating pressure (MAOP) about 89 miles of existing 26-inch-diameter mainline in 2 segments, and to construct upgrades and/or crossover taps to loop lines at 60 existing meter stations. Northwest also requests Commission authorization for the abandonment of 14.8 miles of 4-inch-diameter pipeline (to be replaced with 6-inch-diameter, as described above) on its Klamath Falls Lateral and various other existing equipment which would be replaced by upgraded equipment at 33 existing meter stations and 2 existing compressor stations.

Finally, Northwest proposes the construction of, or addition to 35 communication sites. Twelve of these sites would be constructed at new or existing compressor station sites. Twenty-two of the remaining sites would be located at existing communication sites. Eleven of these would require the erection of a new tower and/or a small building while the remaining 11 would require either new dishes installed on existing towers or the installation of a small repeater antenna. One entirely new communication site would be developed near Red Wash, Utah.

In its application (Docket Nos. CP91-2322-000 and CP91-2322-002) Paiute proposes to construct and operate 2.6 miles of 8-inch-diameter pipeline loop on its North Tahoe Lateral, 0.7 mile of 10-inch-diameter pipeline that would replace an existing 6-inch-diameter line on its South Tahoe Lateral, and 12.4 miles and 26.3 miles of 12-inch-diameter loop on its Reno and Elko Laterals, respectively. Additionally, Paiute would requalify to a higher MAOP 31.9 miles of 10-inch-diameter pipeline on its Carson Lateral.

Paiute's proposed facilities would also include the uprating and restaging of compressor units at four existing compressor stations, the installation of a new compressor engine/gas booster at one existing station, and relocation of an existing compressor engine from one station to another station. Paiute also proposes to construct a temporary compressor facility that would consist of a 300-hp skid-mounted compressor installed near the terminus of the Elko Loop. Finally, Paiute proposes to construct 4 new pressure regulating stations and to replace, uprate, or otherwise modify 16 meter stations or taps.

The DEIS has been mailed to Federal, State, and local agencies, public interest groups, interested individuals, libraries, and parties in the FERC proceeding interested in environmental issues, and other interested individuals. A 45-day comment period is being provided for review and receipt of the comments on the DEIS.

Written comments are requested to help identify significant new issues or concerns related to the proposed actions. All comments should focus on specific environmental issues and should contain supporting

documentation and rationale. Written comments should be filed on or before February 18, 1992, must reference Docket No. CP91–780–002 when discussing the Northwest facilities or Docket No. CP91–2322–002 when discussing the Paiute facilities, and must be addressed to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

A copy of the comments should also be sent to the FERC Project Manager identified below.

Comments on the DEIS will also be accepted from State and local agencies, and the general public at a limited number of public meetings. These meetings are tentatively scheduled for the week of January 20, 1992 in Albany, Oregon; Vancouver, Washington; Reno, Nevada; and Twin Falls, Idaho. Further information concerning the precise dates and locations of the public meetings will be mailed as soon as possible to all of the parties receiving this notice.

After these comments are reviewed, any new issues are investigated, and modifications are made to the document, a final EIS (FEIS) will be published and distributed. The FEIS will contain the staff's responses to comments received on the DEIS.

The DEIS has been placed in the public files of the FERC and is available for public inspection in the FERC's Division of Public Information, room 3104, 941 North Capitol Street, NE., Washington, DC 20426. The DEIS will also be available for review at the various Bureau of Land Management state, district, and resource area offices within the project area. Additional copies of the DEIS, in limited quantities, are available from the FERC's Division of Public Information or from Ms. Lauren O'Donnell, Project Manager, telephone (202) 208–0874. Any person may file a motion to intervene on the basis of the staff's DEIS (18 CFR 380.10(a) and 385.214).

An Executive Summary of this DEIS was prepared and sent to the property owners directly affected by this project, as well as other environmental groups and organizations, and parties in the FERC proceedings. Those individuals receiving the Executive Summary who wish to receive the entire DEIS may request copies from Ms. O'Donnell while the supplies last; however, this will not extend the comment period.

Lois Cashell,

Secretary

[FR Doc. 92–449 Filed 1–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2579–010, et al]

Indiana Michigan Power Co., et al.; Relicensing of Hydroelectric Projects

Take notice that the following filings have been with the Commission:

1. Indiana Michigan Power Co.

[Project No. 2579–010 Indiana]

December 19, 1991.

Take notice that on December 9, 1991, the Indiana Michigan Power Company filed an application to relicense the Twin Branch Hydroelectric Project No. 2579.

The Twin Branch Project is located on the St. Joseph River, in St. Joseph County, Indiana. The project consists of a 402-foot-long and 28-foot-high concrete topped timber crib dam, a 1,065-acre reservoir, and a powerhouse with an installed capacity of 4,800 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

2. Indiana Michigan Power Co.

[Project No. 2551–004 Michigan]

December 19, 1991.

Take notice that on December 11, 1991, the Indiana Michigan Power Company filed an application to relicense the Buchanan Hydroelectric Project No. 2551.

The Buchanan Project is located on the St. Joseph River, in Berrien County, Michigan. The project consists of a 400-foot-long and 10-foot-high concrete spillway, a 423-acre reservoir, and a powerhouse with an installed capacity of 4,104 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

3. Alabama Power Co.

[Project No. 2408–007 Alabama]

December 30, 1991.

Take notice that on December 17, 1991, the Alabama Power Company filed an application to relicense the Thurlow Hydroelectric Project No. 2408.

The Thurlow Project is located on the Tallapoosa River, in Tallapoosa and Elmore Counties, Alabama. The project consists of 1,129.92-foot-long and 62-foot-high concrete spillway, a 574-acre reservoir, and a powerhouse with an existing installed capacity of 58,000 kW. The licensee proposes the rewinding of the generators to increase the project capacity to 66,250 kW. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

4. Alabama Power Co.

[Project No. 2407–006 Alabama]

December 30, 1991.

Take notice that on December 17, 1991, the Alabama Power Company filed an application to relicense the Yates Hydroelectric Project No. 2407.

The Yates Project is located on the Tallapoosa River, in Tallapoosa and Elmore Counties, Alabama. The project consists of 619-foot-long and 61-foot-high concrete spillway, a 2,000-acre reservoir, and a powerhouse with an existing installed capacity of 32,000 kW. The licensee proposes the rewinding of the generators to increase the project capacity to 36,800 kW. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

5. Wisconsin Public Service Corp.

[Project No. 2525–004 Wisconsin]

December 30, 1991.

Take notice that on December 17, 1991, the Wisconsin Public Service Corporation filed an application to relicense the Caldron Falls Hydroelectric Project No. 2525.

The Caldron Falls Hydro Project is located on the Peshtigo River, in Marinette County, Wisconsin. The project consists of the approximately 1,000-foot-long concrete dam, a 1,180-acre reservoir, and a powerhouse with an installed capacity of 6,400 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

6. Wisconsin Public Service Corporation

[Project No. 2433–004 Wisconsin/Michigan]

December 30, 1991.

Take notice that on December 17, 1991, the Wisconsin Public Service Corporation filed an application to relicense the Grand Rapids Hydroelectric Project No. 2433.

The Grand Rapids Hydro Project is located on the Menominee River, in Marinette County, Wisconsin and Menominee County, Michigan. The project consists of the 1,402-foot-long

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concrete Grand Rapids Dam, a 300-acre reservoir, and a powerhouse with an installed capacity of 7,029 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L end of this notice.

Standard Paragraph

L. Any resource agency, Indian tribe, or person believing that additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with § 4.32 of the Commission's regulations, must be filed no later than 60 days after the date of filing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-453 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-258-000, et al.]

Arkla Energy Resources, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

Take notice that the following filings have been made with the Commission:

1. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP92-258-000]

December 20, 1991.

Take notice that on December 19, 1991, Arkla Energy Resources, a division of Arkla, Inc. (AER), 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP92-258-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act [18 CFR 157.205], for authorization to construct and operate certain facilities in Arkansas and Kansas and to abandon certain facilities in Oklahoma, under its blanket certificate issued in Docket No. CP82-384-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that AER requests authorization to construct and operate two sales taps and related facilities for delivery of natural gas to Arkansas Louisiana Gas Company (ALG) for resale to domestic consumers in Logan County, Arkansas and Sedgwick County, Kansas; to operate two existing taps in Union Parish, Louisiana and Hot Spring County, Arkansas, for delivery of natural gas to ALG for resale to consumers other than the right-of-way grantors for whom the taps were originally installed; and to abandon one domestic sales tap in Hughes County, Oklahoma.

It is further stated that the natural gas required for the performance of the above services will be delivered from AER's general system supply, which AER states is adequate to provide the service.

Comment date: February 10, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP92-261-000]

December 20, 1991.

Take notice that on December 20, 1991, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP92-261-000 an application pursuant to Sections 4, 5 and 7 of the Natural Gas Act, its restructuring proposal to finalize compliance with the Notice of Proposed Rulemaking issued in Docket No. RM91-11-000 (MEGA-NOPR) including application for certificates, approval of tariff filing and any other necessary authorizations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that it seeks pursuant to Sections 4, 5 and 7 of the Natural Gas Act a blanket sales certificate pursuant to proposed Subpart J, Part 284 of the Commission's Regulations; such authorization as may be necessary to permit the requested blanket sales certificate to supersede El Paso's presently effective certificate authorizing its Gas Inventory Charge mechanism; abandonment of the certificate authorizing El Paso's Interruptible Sales program and the service rendered pursuant thereto; tariff sheets applying standards of conduct to El Paso's unbundles sales service consistent with proposed § 284.285(h) of the Commission's Regulations; a certificate, pursuant to section 7(c) of the Natural Gas Act and proposed § 284.8(f)(3) of the Commission's Regulations, authorizing implementation of a capacity release program or, in the alternative, a capacity brokering program; and approval for El Paso to modify its rates so as to incorporate a straight fixed-variable rate design methodology, consistent with the Commission's partial modification of its Rate Design Policy Statement, as announced in the MEGA-NOPR.

El Paso states that the tariff, certificate and abandonment authorizations are intended to comprise its "Restructuring Proposal" to comply with any Final Rule that may be issued as a result of the MEGA-NOPR in Docket No. RM91-11-000. El Paso proposes that the tariff changes, including in particular, the rate design changes proposed by El Paso, not be made effective until the Final Rule at Docket No. RM91-11-000 has been promulgated and the Commission has specifically approved such proposed tariff changes. El Paso requests all necessary waivers, including waiver of any applicable notice requirements, to permit such tariff changes to be made effective on the date of a final Commission order approving El Paso's proposed tariff sheets.

El Paso states that it has elected to file its restructuring proposal at this time, rather than wait for issuance of a Final Rule in Docket No. RM91-11-000 because of the unique procedural and substantive posture of El Paso's service arrangements and rates. El Paso states that it believes it has already largely modified its tariff and service structure in ways that meet the proposed requirements of the MEGA-NOPR, therefore, there are likely to be few remaining steps required in El Paso's system to comply with the Final Rule. In addition, El Paso maintains that this filing will facilitate coordination of the compliance filing to be required by the MEGA-NOPR with El Paso's rate case pending at Docket No. RP91-188-000. El Paso states that this system-wide rate change was filed on July 1, 1991, and will go into effect on January 1, 1992. El Paso also states that the preparation of testimony, the commencement of a hearing, and the conduct of any settlement discussion will, in the normal course of events, occur in that case in 1992. El Paso further states that because the rate design aspects of El Paso's compliance filing in response to the MEGA-NOPR comprises one of its most significant components, a substantial potential for wasted or duplicative effort would exist if El Paso withheld its rate design proposal until some later date.

El Paso states that it is its present intention that, upon issuance of the Final Rule at Docket No. RM91-11-000, El Paso will request the Commission to consolidate all or part of this restructuring proposal with the proceeding at Docket No. RP91-188-000 and make such further procedural requests as may be appropriate in light of the content of the Final Rule and procedural status at the time of Docket No. RP91-188-000. El Paso requests that

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the authorizations be made effective on a date to be established through the procedural process associated with the consolidated proceedings. El Paso also states that it reserves the right to amend this application, as may be necessary or appropriate, to reflect the provisions of any Final Rule that may be issued at Docket No. RM91–11–000.

Comment date: January 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Co.

[Docket No. CP92–268–000]

December 30, 1991.

Take notice that on December 24, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92–268–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish a new delivery point to its existing firm sales customer, Piedmont Natural Gas Company, Inc. (Piedmont) under Tennessee's blanket certificate, issued in Docket No. CP82–143–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to Piedmont's request it has agreed to establish a new delivery point near Greenbrier, Robertson County, Tennessee. The new delivery point is required to enable Piedmont to render service to an industrial customer and to provide for additional customer growth in the area. It is stated that all costs associated with such delivery point would be borne by Piedmont.

Tennessee states that it does not propose to increase or decrease the total authorized daily and/or annual quantities to Piedmont. In addition Tennessee states that there would be no detriment to Tennessee's other customers and its currently effective tariff does not prohibit the establishment of such new point.

Comment date: February 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Trunkline Gas Co.

[Docket No. CP92–250–000]

December 31, 1991.

Take notice that on December 17, 1991 Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP92–250–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain compression facilities by conveyance to Exxon Corporation (Exxon), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Trunkline requests authorization to abandon, effective March 1, 1992, one 3,000 horsepower compressor unit and appurtenant facilities located on Exxon's Platform A in South Timbalier Block 165, Offshore Louisiana. Pursuant to an August 1, 1990 gas purchase and sales agreement, fifty percent of Exxon's production from South Timbalier 172 field is dedicated to Trunkline. Trunkline and Exxon entered into a Conveyance Agreement dated November 4, 1991, wherein Trunkline would convey the compressor unit and appurtenant facilities to Exxon at no cost, it is stated. Trunkline further states that in return for conveying the facilities, Trunkline's obligation to install, maintain, and operate compression at South Timbalier 165/172 would be eliminated. It is further stated, that Exxon would become responsible for any compression necessary to meet Trunkline's operating pressure at South Timbalier 165/172 field, and for any future maintenance costs concerning the compressor facilities.

Comment date: January 21, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. El Paso Natural Gas Co.

[Docket No. CP92–270–000]

December 31, 1991.

Take notice that on December 27, 1991, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request with the Commission in Docket No. CP92–270–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by conveyance to the Navajo Tribal Utility Authority (NTUA) various sales lateral pipelines and metering facilities in San Juan County, Utah, and the related transportation services to NTUA, Texas-New Mexico Pipeline Company (Texas-New Mexico), and Texaco Inc. (Texaco) under El Paso's blanket certificates issued in Docket Nos. CP82–435–000 and CP88–433–000, all as more fully set forth in the application which is open to public inspection.

El Paso proposes to abandon by conveyance to NTUA the Montezuma Creek School sales lateral pipeline (approximately 1.4 miles of 2⅜ inch and 6⅝ inch O.D. pipe), the Texas-New Mexico sales lateral (approximately 0.33 miles of 2⅜ inch pipe) the Montezuma School meter station, the Aneth School meter station, the Texas-New Mexico meter station, and the Texaco return residue sales meter station. The Commission authorized El Paso to construct and operate these facilities in the orders issued January 24, 1963, and October 1, 1963, in Docket Nos. CP63–07 (29 FPC 135) and CP63–287 (30 FPC 930), respectively. El Paso states that it no longer needs these distribution-type facilities because they are isolated from and no longer connected to El Paso's interstate system.[1]

El Paso further states that no interruption of natural gas service to NTUA, Texas-New Mexico, or Texaco would occur. NTUA would operate these facilities as part of its distribution system and has executed a gas supply and gathering contract with Western. Texas-New Mexico and Texaco would use their own natural existing production properties in the Aneth area in lieu of natural gas formerly transported by El Paso.

Comment date: February 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Trunkline Gas Co.

[Docket No. CP92–251–000]

December 31, 1991.

Take notice that on December 17, 1991, Trunkline Gas Company (Trunkline), P.O. 1642, Houston, Texas 77251–1642 filed in Docket No. CP92–251–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a portion of natural gas transportation service performed by Trunkline for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline proposes to abandon the transportation of 25,000 Mcf per day of natural gas to Southern under Trunkline's Rate Schedule T–1 to be effective November 1, 1992. Trunkline states that it transports up to 85,000 Mcf per day of natural gas, on a firm basis, authorized in an order issued on May 23, 1979, in Docket No. CP75–140–000, from reserves produced in South Marsh Island Area Blocks 268, 280 and 281, offshore Louisiana pursuant to a transportation agreement dated September 11, 1974, as amended November 12, 1974, and September 27, 1978. Since the time initial deliveries commenced on May 29, 1979, Trunkline

[1] The Commission authorized El Paso to abandon its San Juan River gathering systems (downstream from the facilities El Paso proposes to abandon herein) to Western Gas Resources, Inc. (Western) in the order issued November 8, 1991, at Docket Nos. CP91–7000–000 (57 FERC ¶61,166).

delivers the gas to Southern in St. Mary's Parish, Louisiana, it is indicated.

Trunkline states that Trunkline and Southern have mutually agreed to a reduction of 25,000 Mcf per day of Southern's maximum daily contract quantity under Rate Schedule T–1 pursuant to Southern's written request dated November 20, 1991, to be effective November 1, 1992.

No facilities are proposed to be abandoned herein.

Comment date: January 21, 1992, in accordance with Standard Paragraph F at the end of the notice.

7. Equitrans, Inc.

[Docket No. CP92–269–000]

December 31, 1991.

Take notice that on December 23, 1991, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP92–269–000 a request to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to install a sales tap under its blanket certificate issued to Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), in Docket No. CP83–508–000 and transferred to Equitrans in Docket No. CP86–676–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans states that the proposed sales tap will be installed on its transmission line H–126 in Gastonville, Pennsylvania, to provide gas service to Equitable. Equitrans further states that the projected quantity of gas to be delivered through the proposed sales tap will be one Mcf on a peak day. It is stated that Equitrans will charge Equitable the applicable rate contained in Equitrans' tariff on file with and approved by the Commission.

Comment date: February 13, 1992, in accordance with Standard Paragraph G at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157 10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary

[FR Doc. 92–452 Filed 1–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–185–009]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 2, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 30, 1991, tendered for filing proposed changes in its FERC Gas Tariff as set forth in the revised tariff sheets:

Second Revised Volume No. 1

Proposed to be effective December 1, 1990

Sub Original Sheet No. 225

Proposed to be effective January 1, 1991

Sub 1 Rev Sheet No. 225

Third Revised Volume No. 1

Proposed to be effective February 1, 1991

2 Sub Original Sheet No. 64

Algonquin states that it is filing Sub 1 Rev Sheet No. 225 and 2 Sub Original Sheet No. 64 to implement the Commission's Order on Rehearing of June 21, 1991 which granted Algonquin's rehearing request and authorized use of a one part 100% Demand rate for service under Rate Schedule FTP. Algonquin also states that it is filing Sub Original Sheet No. 225 to implement rates for Rate Schedule FTP service for the period December 1, 1990 through December 31, 1990.

Algonquin notes that copies of this filing were served upon each affected party and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–448 Filed 1–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ92–2–21–000 and TM92–7–21–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 2, 1992.

Take notice that on December 30, 1991, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective February 1, 1992:

Fourteenth Revised Sheet No. 26
Sixth Revised Sheet No. 26.1
Fourteenth Revised Sheet No. 26A

Sixth Revised Sheet No. 28A.1
Fourteenth Revised Sheet No. 28B
Fifth Revised Sheet No. 28B.1
Thirteenth Revised Sheet No. 28C
Fourth Revised Sheet No. 28D
Fourteenth Revised Sheet No. 163

Columbia states that the purpose of the tariff sheets is to reflect a current purchased gas cost adjustment applicable to sales rate schedules; a continuation of certain surcharges which were accepted by the Commission to be effective through April 30, 1992; a transportation fuel charge adjustment; and a transportation cost recovery adjustment.

Columbia states that copies of the filing were served on Columbia's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 92-443 Filed 1-8-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM92-2-2-000]

East Tennessee Natural Gas Co.; Filing

December 31, 1991.

Take notice that on December 20, 1991, East Tennessee Natural Gas Company (East Tennessee) tendered for filing revisions to Fourth Revised Sheet No. 6 of First Revised Volume No. 1 of its FERC Gas Tariff, to be effective January 1, 1992.

East Tennessee states that the revised tariff sheet reflects (i) the allocation of additional fixed take-or-pay charges billed to it by Tennessee Gas Pipeline Company (Tennessee) in Docket No. RP92-51 in the amount of an $22,214.00, (ii) customer payments through December 31, 1991, and (iii) a reduction in carrying charges utilized to compute the future amortization due to a reduction in interest rates, for an overall reduction in the monthly Demand Rate Surcharges.

East Tennessee also requests the Commission to waive section 26(a)(7) of its FERC Gas Tariff in order to allow the amortization of the new transition costs over the remaining amortization period which began on May 1, 1991. East Tennessee states that an extension of the amortization period is not necessary since the filing results in an overall decrease in monthly Demand Rate Surcharges as well as the fact that the instant filing will have a *de minimis* impact on the monthly surcharge level.

East Tennessee also requests a waiver of the 30 day notice period related to tariff filings in order to place the instant tariff sheets into effect on January 1, 1992. East Tennessee states that good cause for the waiver is shown because the filing results in an overall decrease in Demand Rate Surcharges.

East Tennessee states that copies of the filing were served on East Tennessee's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of East Tennessee's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-445 Filed 1-8-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-71-000]

El Paso Natural Gas Co.; Tariff Filing

January 2, 1992.

Take notice that on December 27, 1991, El Paso Natural Gas Company ("El Paso"), filed, pursuant to part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act and § 22.8 contained in the General Terms and Conditions of its Second Revised Volume No. 1 Tariff, Fourteenth Revised Sheet No. 100 reflecting the confidential nature of the Gas Inventory Charge and Gas Cost Ceiling Charge rates to be effective January 1, 1992.

El Paso states that § 22.8, Filing with Commission, of said tariff, states that "Seller shall file with the Commission at least seventy-two (72) hours before the effective date * * * the Gas Inventory Charge rates and the Gas Cost Ceiling Charge rates and the period(s) during which such rates will be in effect." El Paso states that it will be implementing a GIC Sales Service Agreement with Southern California Gas Company, Southern Union Gas Company, A Division of Southern Union Company, Citizens Utilities Company, and Gas Company of New Mexico, A Division of Public Service Company of New Mexico to be effective January 1, 1992. Accordingly, El Paso states that it is tendering for filing and acceptance Fourteenth Revised Sheet No. 100 to be effective January 1, 1992. El Paso also is requesting confidential treatment of the Gas Inventory Charge and Gas Cost Ceiling Charge rates until February 1, 1992.

El Paso also states that a similar request for confidential treatment was approved by the Commission's November 27, 1991 order at Docket No. RP92-18-000.

El Paso respectfully requested that the Commission accept the tendered tariff sheet for filing and permit it to become effective on January 1, 1992.

El Paso states that copies of the filing were served upon all interstate pipeline system sales customers of El Paso and interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary

[FR Doc. 92-440 Filed 1-8-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TQ92-6-4-000 and TM92-10-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

January 2, 1992.

Take notice that on December 30, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581–5039, tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on January 1, 1992:

Eighth Revised Sheet No. 21
Fourth Revised Sheet No. 22

According to Granite State, this filing reflects the effect of revised projected gas costs for the first quarter of 1992 on its projected sales for the quarter Granite State further states that it initially filed revised rates for the first quarter of 1992 in its Annual Purchased Gas Cost Adjustment on November 18, 1991. (Docket No. TA92–2–4–000) It is stated that the revised rates in its filing reflect current gas costs that will be in effect on January 1, 1992 and result in a reduction in the rates originally proposed in the November 18th filing. It is stated that the revised rates also reflect a change in the Transportation Cost Adjustment in the sales rates attributable to a change in the commodity component in Rate Schedule CGT–NE of Tennessee Gas Pipeline Company and a recalculation of the demand component of the Transportation Cost Adjustment to reflect increased demand billing determinants now applicable to Granite State's sales rates as a result of the effectiveness of its motion rates in Docket No. RP91–164–000.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 92–441 Filed 1–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–9–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

January 2, 1992.

Take notice that on December 27, 1991, Granite State Gas Transmission, Inc. (Granite State) 300 Friberg Parkway, Westborough, Massachusetts 01581 tendered for filing the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on the dates indicated:

	Proposed effective dates
Revised Ninth Revised Sheet No. 25.	December 1 1991.
Tenth Revised Sheet No. 25....	January 1, 1992.

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided in a facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's Rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains storage capacity from CNG.

Granite State further states that on December 13, 1991, CNG made a filing in Docket No. RP90–143–00 in compliance with a Commission order, dated November 29, 1991, in that docket revising its Rate Schedule GSS rates effective December 1, 1991 and January 1, 1992. According to Granite State, its filing tracks in its Rate Schedule GSS the changes proposed by CNG in its rates for Rate Schedule GSS service.

Granite State states that copies of its filing were served on Bay State Gas Company and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 92–439 Filed 1–8–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–70–000]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 2, 1992.

Take notice that on December 27, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing Third Revised Sheet No. 68 to its FERC Gas Tariff, Original Volume No. 1–A.

MRT states that the tariff filing is being made in compliance with the Commission's Final Rule in Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, FERC Statutes and Regulations Paragraph 30,927 (1991) ("Order No. 537"). Specifically, MRT states that its filing is in compliance with revised 18 CFR 284.12(e), reflecting the Commission's interpretation of the "on behalf of" standard of section 311 of the Natural Gas Policy Act of 1978.

MRT states that a copy of this filing has been mailed to each of MRT's jurisdictional customers, and to the State commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214. All such motions or protests should be filed on or before January 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-446 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

January 2, 1992.

Take notice that on December 30, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing Seventy-First Revised Sheet No. 4, and Thirtieth Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective January 1, 1992. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Seventy-First Revised Sheet No. 4 and Thirtieth Revised Sheet No. 4.1 reflect a decrease of 11.64 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed to be effective December 1, 1991 in Docket No. TQ92-2-25-000. MRT also states that since the October 31, 1991 filing date, MRT has experienced decreases in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-447 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-66-000]

Pacific Gas Transmission Co.; Change in FERC Gas Tariff

January 2, 1992.

Take notice that on December 23, 1991, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance Section Revised Sheet Nos. 50 and 51, Original Sheet No. 51A, First Revised Sheet No. 79 and First Revised Sheet No. 88 to be a part of its FERC Gas Tariff, Original Volume No. 1-A, with a proposed effective date of January 22, 1992.

PGT states that the purpose of this filing is to revise the tariff sheets in compliance with the Commission's final Rule in Order No. 537, issued on September 20, 1991.

PGT states that copies of the filing were served upon PGT's jurisdictional customers and affected State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-444 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-67-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 2, 1992.

Take notice that on December 23, 1991, Transwestern Pipeline Company (Transwestern) tendered for filing the following revised tariff sheets to become part of its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of January 1, 1992.

2nd Revised Sheet No. 30E
5th Revised Sheet No. 30F
2nd Revised Sheet No. 34C
Original Sheet No. 34C.1

Transwestern states that the above tariff sheets are being filed to comply with the Commission's Final Rule in Order No. 537 issued September 20, 1991 in Docket No. RM90-7-000.

Transwestern states that copies of the filing were served on its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 9, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-442 Filed 1-8-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. F-033]

Energy Conservation Program for Consumer Products; Decision and Order Granting a Waiver from the Furnace Test Procedures to Armstrong Air Conditioning, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-033) granting a Waiver to Armstrong Air Coniditoning, Inc. (Armstrong), from the existing Department of Energy (DOE) test procedures for furnaces. The Department is granting Armstrong its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its EG8G series of induced draft gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasser, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

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Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Armstrong has been granted a Waiver for its EG8G series of induced draft gas furnaces, permitting the company to use an alternate test method in determining the Annual Fuel Utilization Efficiency (AFUE).

Issued in Washington, DC, December 30, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Armstrong filed a "Petition for Waiver" dated December 14, 1990, in accordance with section 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on July 26, 1991, Armstrong's petition and solicited comments, data and information respecting the petition. 56 FR 34200. Armstrong also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on July 22, 1991. 56 FR 34200, July 26, 1991.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with The Federal Commission (FTC), concerning the Armstrong Petition. The FTC did not have any objections to the issuance of the waiver to Armstrong.

Assertions and Determinations

Armstrong's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Armstrong requests the allowance to test using a 30-second blower time delay when testing its EG8G series of induced draft gas furnaces. Armstrong states that, since the 30-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 0.6 percent, the petition should be granted.

Under specific circumstances, the DOE test procedures contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Armstrong indicates that it is unable to take advantage of any of these exceptions for its EG8G series of induced draft gas furnaces.

Since the blower controls incorporated on the Armstrong furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Armstrong EG8G series of induced draft gas furnaces. Accordingly, with regard to testing the EG8G series of induced draft gas furnaces, today's Decision and Order exempts Armstrong from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Armstrong Air Conditioning, Inc. (Case No. F–033), is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Armstrong Air Conditioning, Inc., shall be permitted to test its EG8G series of induced draft gas furnaces on the basis of the test procedures specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted

to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modification set forth above, Armstrong Air Conditioning, Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the EG8G series of induced draft gas furnaces manufactured by Armstrong Air Conditioning, Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective (January 9, 1992), this Waiver supersedes the Interim Waiver granted Armstrong Air Conditioning, Inc., on July 22, 1991. 56 FR 34200, July 26, 1991 (Case No. F-033).

Issued in Washington, DC, December 30, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-527 Filed 1-8-92; 8:45 am]

BILLING CODE 6450-01-M

[Case No. F-041]

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Furnace Test Procedures from Consolidated Industries Corp.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Consolidated Industries Corp. (Consolidated Industries) from the existing Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the company's MAA series of gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Consolidated Industries. Consolidated Industries' Petition for Waiver requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification. Consolidated Industries seeks to test using a blower delay time of 30 seconds for its MAA series of gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than February 10, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-041, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On September 18, 1991, Consolidated Industries filed an Application for an Interim Waiver regarding blower time delay and an amended application on November 4, 1991. Consolidated Industries' Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Consolidated Industries requests the allowance to test using a 30-second blower time delay when testing its MAA series of gas furnaces. Consolidated Industries states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.8 percent. Since current DOE test procedures do not address this variable blower time delay.

Consolidated Industries asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 55 FR 37521, September 12, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; Lennox Industries, 54 FR 50525, December 7, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Inter-City Products Corporation, 55 FR 31099, July 31, 1990, and 56 FR 27959, June 18, 1991; Amana Refrigeration Inc., 56 FR 853, January 9, 1991, and 56 FR 29957, July 1, 1991; Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991, and 56 FR 34200, July 26, 1991; Snyder General Corporation, 56 FR 14511, April 10, 1991; Goodman Manufacturing Corporation, 56 FR 20421, May 3, 1991; Thermo Products, Inc., 56 FR 32205, July 15, 1991; and The Ducane Company, 56 FR 45950, September 9, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Consolidated Industries an Interim Waiver for its MAA series of gas furnaces. Pursuant to paragraph (e) of section 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver to Consolidated Industries was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC., December 30, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Department of Energy

Washington, DC 20585

December 30, 1991.

Mr. Richard H. Weber, President,
Consolidated Industries Corp., P.O. Box 7800, Lafayette, IN 47903–7800.

Dear Mr. Weber: This is in response to your November 4, 1991, amended Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces regarding blower time delay for Consolidated Industries Corp. (Consolidated Industries) MAA series of gas furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 55 FR 37521, September 12, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; Lennox Industries, 54 FR 50525, December 7, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Inter-City Products Corporation, FR 31099, July 31, 1990, and 56 FR 27959, June 18, 1991; Amana Refrigeration Inc., 56 FR 853, January 9, 1991, and 56 FR 29957, July 1, 1991; Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991, and 56 FR 34200, July 26, 1991; Snyder General Corporation, 56 FR 14511, April 10, 1991; Goodman Manufacturing Corporation, 56 FR 20421, May 3, 1991; Thermo Products, Inc., 56 FR 32205, July 15, 1991; and The Ducane Company, 56 FR 45950, September 9, 1991.

Consolidated Industries' Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Consolidated Industries will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Consolidated Industries' Application for an Interim Waiver from the DOE test procedures for its MAA series of gas furnaces regarding blower time delay is granted.

Consolidated Industries shall be permitted to test its line of MAA series of gas furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Consolidated Industries

November 4, 1991.

Assistant Secretary of Conservation and Renewable Energy,
U.S. Department of Energy, 1000 Independence Avenue S.W., Washington, DC 20585.

Gentlemen: This letter is in reference to my letter of September 18, 1991, to Petition for Waiver and Application for Interim Waiver as submitted in compliance with title 10 CFR 430.27.

By this letter Consolidated Industries is amending our September 18, 1991 request such that our MAA series furnaces will be tested with a 30 second time delay used in place of the current test procedure's 1.5 minute time delay. Thirty seconds is the maximum time delay, including manufacturing tolerance, of the non-adjustable time delay relay used in the MAA Series furnaces.

Test results show an average of 0.8% improvement in AFUE using th4 30 seconds fixed time delay in place of the present standards 1.5 minute time delay. Data and documentation can be supplied at your request.

Sincerely,

Richard H. Weber,

President.

September 18, 1991.

Assistant Secretary of Conservation and Renewable Energy.

U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585

Gentlemen: This Petition for Waiver and Application for Interim Waiver is submitted in compliance with title 10 CFR 430.27. This request is for a modification to the Test Procedures for Measuring the Energy Consumption of Furnaces found in appendix N to subpart B of Part 430.

The current test procedure uses a 1.5 minute time delay between the burner start-up and the blower start-up. Consolidated Industries' MAA series of furnaces utilizes a 25 second non-adjustable fixed time delay between the burner ignition and blower startup. This timer has a manufacturer's tolerance of ±5 seconds. For the MAA series of furnaces, Consolidated Industries is requesting that the fixed time delay be substituted for the current test procedure's 1.5 minute time delay.

We submit that the current test procedure using the 1.5 minute blower start-up time delay requires a bypass of the furnace safety limit switch and does not represent the true product performance and efficiency. The MAA furnace series has a light weight, compact heat exchanger that was designed to heat up very quickly with an ensuing blower start-up time optimized at 25 seconds. The advanced heat exchanger design along with improved operating controls has improved the efficiency of this furnace in such a way that the current standard does not credit Consolidated Industries for the true efficiency improvements of this furnace. The product performance will be more accurately depicted using the proposed ASHRAE Standard 103–1988 which accounts for the design flexibility and improvement without the penalty incurred by using the current test procedure. The test results show an average of 0.9% improvement in AFUE using the 25 second fixed time delay.

Other manufacturers have submitted similar waiver requests for similar reasons.

Data and documentation can be supplied at your request.

This waiver request letter has been sent to GAMA and gas furnace manufactures that market similar products.

Sincerely,

Richard H. Weber,

President Consolidated Industries Corp.

[FR Doc. 92–530 Filed 1–8–92; 8:45 am]

BILLING CODE 6450–01–M

[Case No. F–034]

Energy Conservation Program for Consumer Products; Decision and Order Granting a Waiver From the Furnace Test Procedures to Thermo Products, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–034) granting a Waiver to Thermo Products, Inc. (Thermo) from the existing Department of Energy (DOE) test procedures for furnaces. The Department is granting Thermo its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GLC and GHC condensing gas furnaces.

FOR FURTHER INFORMATION CONTACT:
Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Thermo has been granted a Waiver for its GLC and GHC condensing gas furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, December 30, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Thermo filed a "Petition for Waiver", dated May 2, 1991, with supplemental information presented by letter of June 4, 1991, in accordance with section 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on July 15, 1991. Thermo's Position and solicited comments, data and information respecting the Petition. 56 FR 32205. Thermo also filed an "Application for Interim Waiver" under section 430.27(g), which DOE granted on July 9, 1991. 56 FR 32205, July 15, 1991.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with the Federal Trade Commission (FTC), concerning the Thermo Petition. The FTC did not have any objections to the issuance of the waiver to Thermo.

Assertions and Determinations

Thermo's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the

ignition of the burner and the starting of the circulating air blower. Thermo requests the allowance to test using a 30-second blower time delay when testing its GLC and GHC condensing gas furnaces. Thermo states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 1.5 percent, the Petition should be granted.

Under specific circumstances, the DOE test procedures contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Thermo indicates that it is unable to take advantage of any of these exceptions for its GLC and GHC condensing gas furnaces.

Since the blower controls incorporated on the Thermo furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Thermo GLC and GHC condensing gas furnaces. Accordingly, with regard to testing the GLC and GHC condensing gas furnaces, today's Decision and Order exempts Thermo from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is therefore, ordered that:

(1) The "Petition for Waiver" filed by Thermo Products, Inc. (Case No. F-034) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Thermo Products, Inc. shall be permitted to test its GLC and GHC condensing gas furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measuremennts shall be as specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas-and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103-82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modification set forth above, Thermo Products, Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GLC and GHC condensing gas furnaces manufactured by Thermo Products, Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective January 9, 1992, this Waiver supersedes the Interim Waiver granted Thermo Products, Inc. On July 9, 1991. 56 FR 32205, July 15, 1991 (Case No. F-034).

Issued in Washington, DC, December 30, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-528 Filed 1-8-92; 8:45 am]

BILLING CODE 6450-01-M

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Furnace Test Procedures From The Trane Company (Case No. F-040)

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to The Trane Company (Trane) from the existing Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the company's TUD-C, TUD-R, TDD-C and TDD-R central furnaces.

Today's notice also publishes a "Petition for Waiver" from Trane. Trane's Petition for Waiver requests DOE test procedures relating to the blower time delay specification. Trane seeks to test using a blower delay time of 45 seconds for its TUD-C, TUD-R, TDD-C and TDD-R central furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATE: DOE will accept comments, data, and information not later than February 10, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-040, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National

Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On October 16, 1991, Trane filed an Application for an Interim Waiver regarding blower time delay. Trane's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Trane requests the allowance to test using a 45-second blower time delay when testing its TUD–C, TUD–R, TDD–C and TDD–R central furnaces. Trane states that the 45-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.0 percent. Since current DOE test procedures do not address this variable blower time delay, Trane asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 55 FR 37521, September 12, 1990; Trane Company, 54 FR 19228, May 4, 1989, and 55 FR 41589, October 12, 1990; Lennox Industries, 54 FR 50525, December 7, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Inter-City Products Corporation, 55 FR 31099, July 31, 1990, and 56 FR 27959, June 18, 1991; Amana Refrigeration Inc., 56 FR 853, January 9, 1991, and 56 FR 29957, July 1, 1991; Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991, and 56 FR 34200, July 26, 1991; Snyder General Corporation, 56 FR 14511, April 10, 1991; Goodman Manufacturing Corporation, 56 FR 20421, May 3, 1991; Thermo Products, Inc., 56 FR 32205, July 15, 1991; and The Ducane Company, 56 FR 45958, September 9, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Trane an Interim Waiver for its TUD-C, TUD-R, TDD-C and TDD-R central furnaces. Pursuant to paragraph (e) of §430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver to Trane was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC., December 30, 1991.

J. Michael Davis, P.E.

Assistant Secretary, Conservation and Renewable Energy.

Mr. James T. Vershaw,
Manager, Furnace System Technology, The Trane Company, P.O. Box 9010, Tyler, TX 75711

December 30, 1991.

Dear Mr. Vershaw: This is in response to your October 16, 1991, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces regarding blower time delay for The Trane Company (Trane) TUD–C, TUD–R, TDD–C and TDD–R central furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 55 FR 37521, September 12, 1990; Trane Company, 54 FR 19228, May 4, 1989, and 55 FR 41589, October 12, 1990; Lennox Industries, 54 FR 50525, December 7, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Inter-City Products Corporation, 55 FR 31099, July 31, 1990, and 56 FR 27959, June 18, 1991; Amana Refrigeration Inc., 56 FR 853, January 9, 1991, and 56 FR 29957, July 1, 1991; Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991, and 56 FR 34200, July 26, 1991; Snyder General Corporation, 56 FR 14511, April 10, 1991; Goodman Manufacturing Corporation, 56 FR 20421, May 3, 1991; Thermo Products, Inc., 56 FR 32205, July 15, 1991; and The Ducane Company, 56 FR 45958, September 9, 1991.

Trane's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Trane will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Trane's Application for an Interim Waiver from the DOE test procedures for its TUD–C, TUD–R, TDD–C and TDD–R central furnaces regarding blower time delay is granted.

Trane shall be permitted to test its line of TUD–C, TUD–R, TDD–C and TDD–R central furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B,

appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Assistant Secretary Conservation and Renewable Resources,

United States Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585

October 16, 1991.

Gentlemen: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to title 10 CFR 430.27. Waiver is requested from the furnace test procedure found in appendix N to subpart B of part 430.

The current test procedure requires a 1.5 minute delay between burner and supply air blower startup. Trane is requesting the use of 45 seconds instead of 1.5 minutes when testing our TUD–C, TUD–R, TDD–C and TDD–R central furnace families incorporating a timed fan control with a fixed timed on adjustment of 45 seconds. The current procedure does not credit Trane for additional energy savings that are realized when a shorter blower on time is utilized. Test data for each model series indicates an average 1% AFUE increase when a 45 second timed on delay is used. Copies of confidential test data confirming these energy savings will be forwarded to you upon request.

Trane is confident that this petition for Waiver will be granted, and therefore, requests an Interim Waiver until the final ruling is made. Similar waivers have been granted to Evcon, Rheem Manufacturing, Carrier, Inter-City Products, and Lennox Industries. Also, the proposed ASHRAE 103–88 currently under consideration by DOE contains the coverage requested in this Petition for Waiver.

Manufacturers that domestically market similar products have been sent a copy of this Petition for Waiver and Application for Interim Waiver.

Sincerely,

James T. VerShaw,

Manager, Furnace Systems Technology.

[FR Doc. 92–529 Filed 1–8–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[Docket No. FE C&E 91–25; Certification Notice-93]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Four owners and operators of proposed new electric base load powerplants have filed self-certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION:

The following companies have filed self-certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
United Technologies Corporation, Pratt & Whitney, East Hartford, CT	12–20–91	Topping Cycle	24.9	East Hartford, CT
Pasco Cogen, Ltd., Orange, CA	12–24–91	Topping Cycle	106	Pasco County, FL
Lake Cogen, Ltd, Orange, CA	12–24–91	Topping Cycle	106	Lake County, FL
Ag-Energy, L.P., New York, New York	12–26–91	Combined Cycle	79.9	Ogdensburg, NY

Amendments to the FUA on May 21, 1987 (Pub. L. 100–42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE/52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586–6769.

Issued in Washington, DC on January 2, 1992.

Anthony J. Como,

Director, Office of Coal & Electricity; Office of Fuels Programs, Fossil Energy.

[FR Doc. 92–525 Filed 1–8–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $83,750,000 in crude oil overcharge funds, plus accrued interest, obtained from Salomon Inc. Case No. LEF-0033. The DOE has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for Refund submitted pursuant to this Decision must be filed in duplicate, postmarked no later than June 30, 1992, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Any party that has previously submitted a refund application in crude oil proceedings need not file another application; that application will be deemed filed in all crude oil proceedings finalized to date.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, William Robinson, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8018 (Tedrow), (202) 586-6602 (Robinson).

SUPPLEMENTARY INFORMATION:

In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from Salomon Inc. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986) (MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of crude oil and refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of crude oil price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

As the Decision and Order indicates, Applications for Refund may now be filed by injured purchasers of crude oil and refined petroleum products. Applications must be filed in duplicate and postmarked no later than June 30, 1992. The specific information required in an Application for Refund is set forth in the Decision and Order. As we state in the Decision, any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed filed in all crude oil proceedings finalized to date.

Dated: January 2, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

January 2, 1992.

Name of Firm: Salomon Inc.
Date of Filing: May 24, 1991.
Case Number: LEF-0033.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

This Decision and Order considers a Petition for the Implementation of Special Refund Procedures filed by the ERA for crude oil overcharge funds. The petition deals with monies obtained from Salomon Inc, Case No. LEF-0033. Salomon remitted $83,750,000.00 in crude oil overcharge funds to the DOE pursuant to a proposed Consent Order entered into by Salomon and the DOE on September 12, 1990 and finalized on November 13, 1990. This Consent Order resolved allegations that Salomon committed violations of the federal petroleum price and allocation regulations during the period January 1, 1978 through January 28, 1981 (Consent Order number 9C0X00294A). An additional $4,863,572.11 has accrued in interest on Salomon's escrow account as of October 31, 1991. This Decision and Order establishes the OHA's procedures for distributing these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶82,508 (1981) and *Office of Enforcement*, 8 DOE ¶82,597 (1981). We have considered the ERA's requests to implement subpart V procedures with respect to the monies received from Salomon and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (hereinafter the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (hereinafter the August 1986 Order). That Order provided a period of thirty days for the filing of any objections to the application of the MSRP and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) hereinafter the April 10 Notice). The April 10 Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the subpart V regulations. In that Notice, the OHA stated that all applicants for crude oil refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The April 10 Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, the OHA stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures, which the OHA has applied in numerous cases since the April 10

Notice, see, *e.g., New York Petroleum, Inc.*, 18 DOE ¶85,435 (1988); *Shell Oil Co.*, 17 DOE ¶85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶85,079 (1988), have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states had filed a Motion with the Kansas District Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, the Court issued an Opinion and Order denying the states' Motion in its entirety. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan. 1987). The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *id.* at 1323–24. The states appealed the latter ruling, but the Temporary Emergency Court of Appeals affirmed the Kansas District Court's decision. *In re: The Department of Energy Stripper Well Exemption Litigation*, 857 F.2d 1481 (T.E.C.A. 1988).

II. The Proposed Decision and Order

On October 1, 1991, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the alleged crude oil violation amount obtained from Salomon Inc. 56 FR 50721 (October 8, 1991). The OHA tentatively concluded that the funds should be distributed in accordance with the MSRP and the April Notice. Pursuant to the MSRP, the OHA proposed to reserve initially 20 percent of the crude oil violation funds for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining 80 percent of the funds would be distributed to the states and the federal government for indirect restitution. After all valid claims have been paid, any remaining funds in the claim reserve would also be divided between the states and the federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PD&O, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PD&O stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry are presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April Notice. The PD&O provided a period of 30 days from the date of its publication in the **Federal Register** in which comments could be filed regarding the tentative distribution process. More than 30 days have elapsed, and the OHA has received comments from only one party concerning the proposed procedures for the distribution of Salomon Inc funds.

III. Discussion of the Comments Received

In response to the PD&O, the OHA received comments from Philip P. Kalodner as counsel for six electric utilities, fourteen foreign-flag shipping companies, and four pulp and paper manufacturers. Mr. Kalodner's comments focus on two elements of the crude oil proceeding: The 20 percent reserve and $0.0006 per gallon volumetric refund amount. He first contends that the 20 percent reserve for claimants will be insufficient "to enable OHA to distribute the 'volumetric' which it has determined is due." Kalodner comments at 3. Kalodner asserts that the "OHA should either reserve its adoption of the 20% limitation, or if it believes it cannot do [so] without the approval of Judge Theis, it should seek such approval." *Id.* at 6.

Kalodner's second objection is related to the first. He holds that "[a]s long as [the] OHA continues to insist on the 20% limitation," then the OHA's "policy to permit late-filing claimants to be paid at the $0.0006 per gallon level . . . will reduce the amounts available for distribution to first pool claimants such as these commenters." Kalodner comments at 6. Kalodner argues that only those applicants who filed crude oil claims before October 31, 1989 should receive a volumetric refund of $0.0006 per gallon and that applicants filing after that date should receive refunds based on mere fractions of that per-gallon figure.

These exact comments were addressed at length in recent Decisions and Orders issued by the OHA. *See Seneca Oil Company*, 21 DOE ¶ 85,327 (1991) (*Seneca*); *Diamond Shamrock R&M, Inc.*, 21 DOE ¶ 85,352 (1991). We will therefore refrain from repeating our analysis of those contentions in the same detail at this time. Instead, we will summarize our determinations in Seneca. With respect to Kalodner's argument that the 20 percent reserve would be insufficient to pay claimants, we stated that he had advanced similar arguments before the OHA and the courts and had been rebuffed at each attempt. Seneca at 88,970. We also noted that at no time has the DOE given assurances as to the precise level of restitution that would be ultimately paid to claimants from the 20 percent reserved from oil overcharge funds. *Id.*, citing *Amorient Petroleum Co.*, 18 DOE ¶ 85,595 (1989). We further reminded Kalodner that the United States District Court for the District of Delaware had rejected this same argument, deciding instead that "[a]t this late date, all parties would best be served by the equitable compromise of paying 80% of the fund out immediately while retaining 20% for individual claimants." *Id.* See *Getty Oil* v. *Department of Energy*, Civ. No. 77–434 MMS (D. Del. Dec. 28, 1988), *aff'd*, 890 F.2d 425 (Temp. Emer. Ct. App. 1989). As in *Seneca*, we agree with the courts and reject Kalodner's argument about the 20 percent reserve which seeks to inflate the level of restitution to the successful claimants that he represents in DOE's crude oil refund proceedings.

Kalodner's objection to the OHA policy of paying claimants who filed subpart V crude oil refund applications before June 20, 1992 at the rate of $0.0006 per gallon was also addressed at length, and ultimately rejected, in *Seneca*. As we stated in that Decision, we believe that all purchasers of covered products during the crude oil refund period was injured equally by the overcharges. Therefore, it would be inequitable to preclude any applicants who file before the June 30, 1992 deadline from receiving a pro rata share of the monies available, which at this time has been set at the $0.0006 level (per gallon volumetric). *Seneca* at 88,971. As we stated in *Seneca*, we do not wish to penalize equally eligible applicants for lacking the resources that large applicants, such as Kalodner's, possess.

IV. The Refund Procedures

A. Refund Claims

The OHA has concluded that the $83,750,000 remitted by Salomon Inc, plus the interest that has accrued on that amount, should be distributed in accordance with the crude oil refund procedures discussed above. We have decided to reserve the full 20 percent of the alleged crude oil violation amount, or $16,750,000 plus interest, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See MAPCO, Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶ 85,028, at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of crude oil price controls. *See A. Tarricone Inc.*, 15 DOE ¶ 85,495, at 88,893–86 (1987). The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE ¶ 85,405, at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on whether the specific end-user in question was injured, the applicant will be required to produce further evidence of injury. *See New York Petroleum*, 18 DOE at 88, 701–03. The United States District Court for the District of Kansas recently upheld the OHA's position that generalized evidence

does not suffice to rebut the end-user presumption. If an interested party wishes to rebut the end-user presumption, it must present evidence relevant to the specific factual situation of the applicant. *In re: The Department of Energy Stripper Well Exemption Litigation*, 746 F. Supp. 1446 (D. Kan. 1990).

Reseller and retailer claimants must submit detailed evidence of injury and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the *Report by the Office of Hearings and Appeals to the United States District Court of the District of Columbia, In re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507 (1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under Supart V. *Boise Cascade Corp.*, 16 DOE ¶ 85,214, at 88,411, *Reconsideration denied*, 16 DOE ¶ 85,494, *aff'd sub nom. In re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan. 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amount involved in this determination ($83,750,000) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, .4 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.00004143993 per gallon for the proceeding involved in this determination. The use of this approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.[1]

As we have stated in previous Decisions, a crude oil refund applicant is required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil application will be deemed to be filed in all crude oil proceedings finalized to date. The deadline for filing an Application for Refund for crude oil implementation orders issued since January 16, 1991 is June 30, 1992. *See Quintana Energy Corporation*, 21 DOE ¶ 85,327 (January 16, 1991). It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1992 at the rate of .0006 per gallon. However, while we anticipate that applicants which filed their claims by June 30, 1988 will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional refunds. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register**.

To apply for a refund, a claimant should submit an Application for Refund. Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to: Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585.

Each crude oil Application for Refund should contain the type of information specified by the OHA in past decisions. *See Texaco Inc.*, 19 DOE ¶ 85,200 at 88,734, *corrected*, 19 DOE ¶ 85,236 (1989); *Hood Goldsberry*, 18 DOE ¶ 85,902 at 89,477–78 (1989); *Wickett Refining Co.*, 18 DOE ¶ 85,659 at 89,081–82 (1989).

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amount subject to this Decision or $67,000,000 in principal, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or $33,500,000, plus interest, into an interest-bearing subaccount for the states, and one-half, or $33,500,000, into an interest-bearing subaccount for the federal government. In accordance with previous practice, when the amount available for distribution to the states reaches $10 million, we will direct the DOE's Office of the Controller to make the appropriate disbursements to the individual states. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Salomon Inc may now be filed.

(2) All Applications submitted pursuant to paragraph (1) above must be filed in duplicate and postmarked no later than June 30, 1992.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $83,750,000.00 (plus accrued interest) from the Salomon Inc escrow account, Number 6C0X00249A, as specified in paragraphs (4), (5), and (6) of this Decision.

(4) The Director of Special Accounts and Payroll shall transfer $33,500,000 (plus accrued interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $33,500,000 (plus accrued interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $16,750,000 (plus accrued interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE0010Z.

(7) This is a final Order of the Department of Energy.

Dated: January 2, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–528 Filed 1–8–92; 8:45 am]

BILLING CODE 6450–01–M

[1] The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See Amber Refining Inc.*, 13 DOE ¶ 85,217 at 88,564 (1985).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4091–3]

California State Motor Vehicles Pollution Control Standards; Opportunity for Public Hearings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearings and public comment periods.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has taken three actions for which it is requesting waiver of Federal preemption. California has (1) amended its motor vehicle emission standards and test procedures to phase-in substantially more stringent "low-emission vehicle" (LEV) standards for light and medium-duty vehicles (hereinafter "LEV" request), (2) amended its emission standards, certification and compliance test procedures and durability requirements applicable to light-duty trucks and medium-duty and light heavy-duty vehicles and engines for the control of hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_x) emissions and particulate matter (PM) as those standards apply to gasoline, gaseous, diesel and methanol-fueled vehicles and engines (hereinafter "MDV" request), and (3) amended its emission standards and test procedures for gasoline and diesel vehicles and engines that make them applicable to all classes of dedicated-methanol-fueled vehicles and engines and fuel-flexibile vehicles (hereinafter "methanol" request).

This is the first opportunity for public hearing and comment period to be offered on the "LEV" and "MDV" requests. With regard to the "methanol" request, EPA published a notice of

opportunity for hearing on June 11, 1991 in which notice it was stated that the comment period would expire on August 15, 1991 (56 FR 26817). EPA received no requests for a hearing nor comments concerning this matter. By letter dated October 9, 1991 CARB extended its original request to encompass California's methanol vehicle standards and test procedures as revised by its new hydrocarbon and carbon monoxide exhaust emission standards for new passenger cars and light duty trucks (HC/CO standards) and its new hydrocarbon, carbon monoxide and oxides of nitrogen exhaust emission standards for light-duty trucks, medium-duty vehicles and light heavy-duty vehicles and engines (MDV standards). Because CARB's revised "methanol" request reflects substantive changes to California's standards, EPA is offering an additional opportunity for interested parties to request a hearing or submit written comments.

CARB has requested that, pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), EPA waive Federal preemption for these amendments. This notice announces that EPA has tentatively scheduled three public hearings which will occur consecutively beginning on February19, 1992 and continuing (if necessary) on February 20, 1992, to hear comments form the general public concerning CARB's requests. Any party desiring to present oral testimony for the record on one or more of CARB's requests at the public hearings, instead of or in addition to submitting written comments, must notify EPA by January 29, 1992. If on any of the three requests, no party informs EPA that it wishes to testify, no hearing will be held on that request and EPA will consider CARB's request based on written submissions to the record.

DATES: For administrative expediency, EPA has scheduled two consecutive days for hearings regarding the three separate CARB waiver requests. EPA has tentatively scheduled public hearings for CARB's "low-emission vehicle" (LEV) and "medium-duty vehicle) (MDV) and "methanol" waiver requests [1] on February 19, 1992 beginning at 9:30 a.m. and continuing (if necessary) on February 20, 1992. A hearing will be held on a given waiver request only if a party notifies EPA by January 29, 1992 that it wished to present oral testimony regarding such CARB request. Please note that if one or more tentative public hearing is canceled, EPA will not publish a notice of cancellation in the **Federal Register**. Therefore, any person who plans to attend the hearing should call Robert M. Doyle (LEV), or Lee Holmes Cook (MDV), or Tiffany Schauer (Methanol) of EPA's Manufacturers Operation Division at (202) 260-2491, on or after January 31, 1992 to learn whether or not a particular hearing will be held. Regardless of whether or not a hearing is held, written comments regarding CARB's request will be accepted until March 24, 1992.

ADDRESSES: The tentatively scheduled public hearings will be held at: Best Western Domino's Farms Hotel and Conference Center, 3600 Plymouth Road, Ann Arbor, Michigan 48105, (313) 769-9800. Parties wishing to testify at the hearing should provide written notice to: Charles N. Freed, Director, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street, Washington, DC 20460. In addition, written comments, in duplicate, should be sent to Mr. Freed at the same address. Copies of material relevant to the waiver request (LEV Docket No. A-91-71, MDV Docket No. A-91-55, and Methanol Docket No. A-90-29) will be available for public inspection during the working hours of 8:30 a.m. to 12:00 p.m. and 1:30 p.m. to 3:30 p.m., Monday through Friday, at: U.S. Environmental Protection Agency, Air Docket (LE-131), room M1500, First Floor Waterside Mall, 401 M Street, SW., Washington, DC 20460 (telephone (202) 260-7548).

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Lee Holmes Cook, or Tiffany Schauer, Attorney/Advisors, Manufacturers Operations Division (EN-340F). U.S. Environmental Protection Agency, Washington, DC 20460, Telephone: (202) 260-2491.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(a) of the Act as amended, 42 U.S.C. 7543(a), provides in part: "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part * * * [or] require certification, inspection, or any other approval relating to the control of emissions * * * as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

Section 209(b) of the Act requires the Administrator, after notice and an opportunity for public hearing, to waive application of the prohibitions of section 209(a) for California "if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—(A) the determination of the State is arbitrary and capricious. (b) [California] does not need such * * * standards to meet compelling and extraordinary conditions, or (c) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act]."

Once California has been granted waiver for a set of standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without having to receive a further waiver of Federal preemption.

1. By letter dated October 4, 1991 CARB submitted to EPA a request for waiver of Federal preemption for amendments to its emission standards and test procedures. These amendments:

a. Establish four new categories of light-duty vehicles [2] based on levels of exhaust emission standards. The vehicle categories, in order of increasing stringency, are called transitional low-emission vehicles (TLEVs), low-emission vehicles (LEVs), ultra-low-emission vehicles (ULEVs), and zero emission vehicles (ZEVs). Each vehicle category has specific exhaust emission certification standards for hydrocarbons,[3] carbon monoxide (CO), oxides of nitrogen (NOx), particulate matter (PM) [4] and formaldehyde (HCHO).[5] These standards will be effective as early as the 1994 model year, but some categories may not be introduced until later model years when manufacturers are faced with increasingly more stringent "fleet average" requirements (explained below);

b. Establish two new categories for medium-duty vehicles: LEVs and ULEVs. Each of these categories has the same pollutant emission certification standards as the light-duty vehicle LEV and ULEV categories;

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[1] The LEV, MDV and Methanol requests are available in EPA Air Dockets A-91-71, A-91-55, and A-90-29 respectively.

[2] The term "Light-duty vehicles," as used in this notice, encompasses passenger cars and small (up to 3750 lbs. loaded vehicle weight) light-duty trucks.

[3] The new hydrocarbon emission standards will be expressed in terms of "non-methane organic gases" (NMOG) which include measurement of non-methane hydrocarbons, aldehydes, ketones, alcohols, and ethers.

[4] The PM standards are for diesel vehicles only.

[5] The HCHO standards are for methanol vehicles only.

c. Establish, for light duty vehicles only, a fleet average NMOG requirement that manufacturers must meet. The fleet average requirement, which begins in model year 1994, becomes more stringent each successive model year, through model year 2003. Manufacturers may choose whatever mix of vehicle categories they wish for their light-duty vehicle fleet to comply with the fleet average requirement, subject only to a production requirement for ZEVs. (The ZEV production requirement begins in model year 1998, when two percent of a manufacturers sales of light duty vehicles must be ZEVs, and increases at certain points in succeeding model years until it reaches a maximum production requirement of 10 percent of sales in model year 2003 and beyond.) Manufacturers may earn marketable credits for having a sales-weighted fleet emission average lower than the fleet average requirement. Manufacturers who do not meet the fleet average requirement will be assessed deficits which must be made up within certain time limits;

d. Establish interim in-use standards which are up to 30 percent less stringent than the corresponding certification standards for TLEVs, LEVs, and ULEVs, and will be applicable for only two model-years after the expected introduction date of each vehicle category; and

e. Include regulations which establish a mechanism for adjusting the NMOG emissions from vehicles powered by fuels other than conventional gasoline, based on whether the emissions from such vehicles are more or less ozone-reactive. The reactivity adjustment factors will effectively make more equitable the NMOG comparisons between vehicles operating on gasoline and those operating on other fuels.

2. By letter dated July 15, 1991, CARB submitted to EPA a request for waiver of federal preemption for amendments to its emission standards and test procedures. These amendments, which apply to light-duty trucks, medium-duty and light heavy-duty vehicles and engines:

a. Establish and provide for the phase-in beginning in model year 1995 of new more stringent exhaust standards for HC, CO and NOx and establish PM standards of comparable stringency (as measured by a new test procedure) to existing PM standards and extend the durability requirements for medium-duty vehicles (MDVs) and light heavy-duty vehicles and engines (LHDVs);

b. Expand the definition of MDV to include all vehicles and engines with a GVWR of 6001–14000 lbs.[6] (which were previously categorized as light heavy-duty vehicles and engines);

c. Revise the certification and in-use chassis test procedures for current MDVs and LHDV and engines (to include the expanded MDV class) [7];

d. Revise weight categories to account for the effect of vehicle loading;

e. Make California's in-use enforcement and Onboard Diagnostic regulations applicable and more practical for MDVs and LHDVs; and,

f. Increase the strigency of the NOx standard applicable to 1995 and later model year light-duty trucks.

3. By letter dated August 20, 1990, CARB submitted to EPA a request for a waiver of Federal preemption for amendments to California's evaporative and exhaust emission standards and test procedures for gasoline and diesel vehicles and engines that make them applicable to all classes of dedicated-methanol-fueled vehicles and engines and fuel-flexible vehicles (methanol standards). In the notice for opportunity for public hearing concerning this waiver, EPA stated that the comment period would expire on August 15, 1991 (58 FR 26817 (6/11/91)). EPA received no requests for a hearing or comments concerning this matter.

Upon review of CARB's original request, EPA identified two additional findings which CARB would need to submit in order for EPA to complete its review of California's request. Specifically, CARB needed to provide EPA with its finding regarding the relative protectiveness of (1) the California 1993 model year HC/CO standards as applicable to methanol vehicles as compared to the applicable Federal 1993 and later model year methanol vehicle standards and, (2) the California 1993 HC/CO standards as applicable to methanol vehicles as compared to the new federal standards passed in the Clean Air Act Amendments of 1990 applicable to 1994 and later model year methanol vehicles (Federal tier 1 standards) [8].

Pursuant to EPA's request, on October 9, 1991, CARB supplemented its original methanol waiver request to encompass California's HC/CO standards as applicable to methanol vehicles and its new MDV standards as applicable to methanol vehicles.[9] CARB also revised its findings to take into consideration the new Federal tier 1 standards (56 FR 25724 (6/5/91)) as applicable to methanol vehicles in its analysis.

Because CARB's supplemental request reflects substantive changes to California's standards and includes new findings regarding the relative protectiveness of the California standards as compared to the applicable Federal standards, the Agency is offering an additional opportunity for interested parties to request a hearing or submit comments concerning CARB's supplemental waiver request. Consistent with CARB's revised request, this notice solicits comment on the waiver criteria described above as applied to California's HC/CO and MDV standards for 1993 and later model year methanol vehicles.

For each of the requests described above, California has stated (in its letter, dated October 4, 1991) that it has determined that its amended standards are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards. Further, California states that it continues to need separate standards to meet compelling and extraordinary conditions. Finally, California states that the amendments are not inconsistent with section 202(a) of the Act. Section 202(a) requires that the procedures provide sufficient lead time to permit the development and application of requisite technology, giving appropriate consideration to the cost of compliance within such period. In addition, the Agency has held that to avoid inconsistency with section 202(a), California's procedures may not impose inconsistent certification requirements such that manufacturers would be unable to meet both the California and Federal requirements with the same test vehicle.

Once California has been granted waiver of Federal preemption for a set of standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without having to receive a further waiver of Federal preemption.

California's requests will be considered according to the procedures for a waiver decision, which includes providing the opportunity for a public

[6] Previously MDVs were limited to 6,001–8,500 lbs. gvwr.

[7] As an option, diesel and incomplete vehicles from 8,501–14,000 lbs. gvwr may chose to certify to engine test procedures if additional in-use compliance requirements, which would make in-use testing more cost effective, are met.

[8] The final rule implementing the new federal standards was effective on June 5, 1991.

[9] By letter dated July 15, 1991, CARB had already submitted to EPA a separate request for a waiver of Federal preemption for its MDV standards which were intended in part to revise MDV standards as applied to methanol vehicles.

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hearing. Any party wishing to present testimony at the hearing should address the following issues:

(1) Whether California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs separate standards to meet compelling and extraordinary conditions; and,

(3) Whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

II. Procedures for Public Participation

Any person desiring to make an oral statement on the record should file ten (10) copies of his or her proposed testimony and other relevant material with the Director of EPA's Manufacturers Operations Division at the Director's address listed above not later than February 4, 1992. In addition, that person should submit 25 copies, if feasible, of the planned statement to the presiding officer at the time of the hearing.

Because a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any witness.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested persons may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense.

If a given hearing is not held, EPA will keep the record open until March 24, 1992. Upon expiration of the comment period, the Administrator will render a decision concerning California's request based on the record of the public hearing, if one is held, relevant written submissions, and other information which he deems pertinent. All information will be available for public inspection at the EPA Air Docket.

Dated: January 2, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-515 Filed 1-8-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4091-2]

Technology Innovation and Economics Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT); Open Meeting

Under Public Law 92-463 (The Federal Advisory Committee Act), EPA gives notice of the fourth meeting of the Diffusion Focus Group of the Technology Innovation and Economics (TIE) Committee. The TIE Committee is a standing committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory committee to the Administrator of the EPA. The TIE Committee and NACEPT are seeking ways to encourage the diffusion, or transfer, of environmentally beneficial technology. The meeting will convene January 22-23, 1992, at 9 a.m. and will be held at the Madison Hotel, 1177 15th Street, NW., Washington, DC 20005.

The Diffusion Focus Group is developing recommendations to EPA's Administrator about what EPA's unique role in the diffusion of environmentally beneficial technologies should be. In developing these recommendations, the Focus Group is examining current EPA practices, other government agency practices, and those of the private sector in the transfer to technology and information. The Focus Group is attempting to determine the barriers to the diffusion of environmentally beneficial technologies and what EPA can do to address these barriers. The Focus Group will be addressing three substantive issues at this meeting: (1) The differences between EPA's roles in the diffusion of pollution prevention and other types of environmentally beneficial technology, (2) how to achieve mutually supportive diffusion efforts among EPA, state agencies, and local environmental authorities, and (3) how EPA's roles in domestic and international diffusion differ. The Focus Group will be discussing what will be the contents and major recommendations in its upcoming report and recommendations to the Administrator.

The January 22 and 23 meeting will be open to the public. Written comments will be received and reviewed by the Focus Group. Additional information may be obtained from David R. Berg or Morris Altschuler at EPA (A-101 F6) 401 M Street, SW., Washington, DC 20460, or by calling 202-260-9153, or by fax 202-260-6882.

Dated: December 20, 1991.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 92-514 Filed 1-8-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4091-1]

Science Advisory Board Research Strategies Advisory Committee; Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB) will hold a meeting on January 22, 1992. The meeting will be held at the Marriott Suites Hotel, 801 North St. Asaph Street, Alexandria, Virginia 22314. The hotel telephone number is (703) 836-4700. The meeting will begin at 9 a.m., ending no later than 2 p.m.

The purpose of the meeting will be to review the Social Sciences Research Plan being developed by the U.S. EPA. The Committee will: (1) Determine whether the Agency has used appropriate criteria in identifying and applying its priorities; (2) determine whether a proper balance is struck between short-term and long-term research; (3) examine how such research efforts are integrated into related, but broader efforts elsewhere in the United States and overseas; and, (4) discuss the plan's responsiveness to recommendations in the SAB Future Risk report. Copies of the EPA draft document (Stimulating Environmental Progress: A Social Science Research Agenda, December 30, 1991 draft report) are available from Mr. Jim Cole, U.S. EPA, OPPE (PM-223X), 401 M Street, SW., Washington, DC 20460, telephone: (202) 260-4538. Copies are not available from the Science Advisory Board.

The meeting is open to the public and seating is on a first come basis. Any member of the public wishing further information concerning the meeting should contact Mr. Randall C. Bond, Designated Federal Official, Research Strategies Advisory Committee, Science Advisory Board (A-101F), U.S. EPA, 401 M Street, SW., Washington, DC 20460, telephone: (202) 260-6552, or FAX: (202) 260-7118. Those individuals requiring a copy of the Agenda should contact Ms. Janice Jones at the same number. Members of the public wishing to provide oral comments at the meeting should provide a copy of those comments to Mr. Bond no later than January 14, 1992. Oral comments are limited to 5 minutes, and the Science

Advisory Board expects that such comments will not be repetitive of previously submitted materials.

Dated: December 30, 1991.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 92-516 Filed 1-8-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-59928; FRL 4042-9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 4 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92-74, January 1, 1992.

Y 92-77, 92-78, 92-79, January 12, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-74

Manufacturer. U.S. Polymers Inc.

Chemical. (S) Polymer of di-ethylene glycol, trimethylol propane, trimethylol ethane, pentaerythritol, neopentyl glycol, polyrthyleneterephthlate, phthalic anhydride, and tofa.

Use/Production. (S) As an industrial fast air drying primer or as a baking enamel. Prod. range: 200,000-300,000 kg/yr.

Y 92-77

Manufacturer. Confidential.

Chemical. (G) Olefin copolymer.

Use/Production. (G) Films, fabrics. Prod. range: Confidential.

Y 92-78

Manufacturer. Confidential.

Chemical. (G) Olefin copolymer.

Use/Import. (G) Film, textiles, molded/extruded parts, compounds. Import range: Confidential.

Y 92-79

Importer. Confidential.

Chemical. (G) Olefin copolymer.

Use/Import. (G) Electrostatic powder coatings. Import range: Confidential.

Dated: January 3, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-518 Filed 1-8-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-51781; FRL 4042-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 15 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92-293, 92-294, March 7, 1992.

P 92-295, 92-296, March 8, 1992.

P 92-297, 92-299, 92-300, 92-301, 92-302, 92-303, 92-304, 92-305, March 9, 1992.

P 92-306, March 10, 1992.

P 92-307, March 11, 1992.

P 92-308, March 14, 1992.

Written comments by:

P 92-293, 92-294, February 6, 1992.

P 92-295, 92-296, February 7, 1992.

P 92-297, 92-299, 92-300, 92-301, 92-302, 92-303, 92-304, 92-305, February 8, 1992.

P 92-306, February 9, 1992.

P 92-307, February 10, 1992.

P 92-308, February 13, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS-51781)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. L-100, Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92-293

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified phenylene ether polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-294

Importer. Colorin Systems.

Chemical. (G) Diphenylmethane diisocyanate (MDI) modified.

Use/Import. (G) Reactive component. Import range: Confidential.

P 92-295

Manufacturer. Rohm and Haas Company.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2.0 g/kg species (rat). Eye irritation: practically none species (rabbit). Skin irritation: minimal species (rabbit).

P 92-296

Manufacturer. Rohm and Haas Company.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2.0 g/kg species (rat). Eye irritation: practically none species (rabbit). Skin irritation: minimal species (rabbit).

P 92-297

Importer. Novo Nordisk Bioindustrials, Inc.

Chemical. (G) Hydrolystic enzyme produced in a recombinant strain of bacillus.

Use/Import. (G) Processing aid for starch liquifaction. Import range: Confidential.

P 92-298

Manufacturer. Confidential.

Chemical. (G) Biophenol A polyether terphthalene.

Use/Production: (G) Resin for photocopy toner. Prod. range: Confidential.

P 92-299

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-301

Manufacturer. Shell Oil Company.

Chemical. (S) Pyrolyzed subbituminous coal.

Use/Production. (S) Solid fuel for utilities and power plants. Prod. range: Confidential.

P 92-302

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 92-303

Manufacturer. Champion Technologies, Inc.

Chemical. (G) Reaction product of trisubstituted phenol, sodium hydroxide and benzyl chloride.

Use/Production. (G) Oil and gas well stimulation additive. Prod. range: Confidential.

P 92-304

Manufacturer. Confidential.

Chemical. (G) Acrylated chain extended maleated polybutadiene.

Use/Production. (S) Graphic arts printing plate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: > 2 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit).

P 92-305

Manufacturer. Confidential.

Chemical. (G) Acrylated chain extended maleated polybutadiene.

Use/Production. (S) Graphic arts printing plate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: > 2 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit).

P 92-306

Manufacturer. Mooney Chemicals, Inc.

Chemical. (G) Aluminum alkoxide chelate.

Use/Production. (S) Drier for coatings. Prod. range: 100,000–500,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit). Eye irritation: extreme species (rabbit). Skin irritation: mild species (rabbit). Mutagenicity: negative. Skin sensitization: negative mild species (guinea pig).

P 92-307

Manufacturer. Confidential.

Chemical. (G) Mixed isomers of 2-propenoic acid, 2-methyl-, alkoxy ester and hexanedioic acid.

Use/Production. (S) Reactive intermediate. Prod. range: Confidential.

P 92-308

Manufacturer. Confidential.

Chemical. (G) Cyanated phenolic resin.

Use/Production. (G) Industrial molding and composities resin. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 3.2 g/kg species (rat). Acute dermal toxicity: > 2 g/kg species (rabbit). Eye irritation: moderate species (rabbit). Skin irritation: mild species (rabbit). Mutagenicity: negative. Skin sensitization: positive species (guinea pig).

Dated: January 3, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-519 Filed 1-8-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-925-DR]

Republic of the Marshall Islands; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Republic of the Marshall Islands (FEMA-925-DR), dated December 7, 1991, and related determinations.

DATED: December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the Republic of the Marshall Islands, dated December 7, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 7, 1991:

Arno Atoll and Aur Atoll for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92-497 Filed 1-8-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-930-DR]

Texas; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-930-DR), dated December 26, 1991, and related determinations.

DATES: January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated December 26, 1991, is hereby amended to include the following areas among those areas

determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 26, 1991:

The counties of Bell, Fort Bend, McLennan, Tarrant, Trinity, and Walker for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92-498 Filed 1-8-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; American Transport Lines, Inc., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: (1) 212-010388-022 (2) 212-010388-017.

Title: (1) Argentina/U.S. Atlantic & Gulf Ports Pool Agreement. (2) U.S. Atlantic & Gulf Ports/Argentina Pool Agreement.

Parties: America Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A. Columbus Line, Empress de Navegacao Alianca S.A., Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional.

Synopsis: The proposed amendments would add A. Bottacchi S.A. de Navegacion C.F.I.I as a party to each Agreement. The parties have requested shortened review periods.

Agreement No.: 224-200510-001.

Title: Tampa Port Authority/Tampa Bay International Terminals, Inc. Wharfage Incentive Agreement.

Parties: Tampa Port Authority, Tampa Bay International Terminals, Inc.

Synopsis: The agreement, filed December 23, 1991, provides for an incentive charge for weighing of vehicles used in transporting the iron or steel billets and reinforcing bars, as provided for in the original agreement of $2.40 for each weigh. The term of the agreement is through April 16, 1992.

Dated: January 3, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-454 Filed 1-8-92; 8:45 am]

BILLING CODE 6730-01-M

Organization and Functions of the Federal Maritime Commission; Commission Order No. 1, Amendment No. 16

As a result of the recent reorganization of the Commission staff, the Bureau of Trade Monitoring has become the Bureau of Trade Monitoring and Analysis, and the Bureau of Domestic Regulation has become the Bureau of Tariffs, Certification and Licensing. In addition, the function of processing marine terminal agreements has been transferred from the former Bureau of Domestic Regulation to the newly formed Bureau of Trade Monitoring and Analysis.

The Commission is contemplating a complete revision to Commission Order No. 1. However, in order to reflect the changes effected by the recent reorganization and avoid any administrative problems, Commission Order No. 1 is amended to reflect the organizational changes and transfer of functions as follows:

(1) All references in Commission Order No. 1 to the "Bureau of Trade Monitoring" are changed to the "Bureau of Trade Monitoring and Analysis";

(2) All references in Commission Order No. 1 to the "Bureau of Domestic Regulation" are changed to the "Bureau of Tariffs, Certification and Licensing"; and

(3) All delegations of authority in section 9 of Commission Order No. 1 pertaining to marine terminal agreements are redelegated to the "Director, Bureau of Trade Monitoring and Analysis," in addition to the other delegations to the "Director, Bureau of Trade Monitoring and Analysis," in section 8 of Commission Order No. 1.

Dated: January 2, 1992.

Christopher L. Koch,

Chairman.

[FR Doc. 92-487 Filed 1-8-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank of Montreal, et al.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 30, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bank of Montreal, Montreal, Canada; Bankmont Financial Corp., New York, New York; and Harris Bankcorp, Inc., Chicago, Illinois; to engage *de novo* through their subsidiary, Harris Investors Direct, Inc., Chicago, Illinois, in buying and selling securities on the order of a customer as a riskless principal pursuant to *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) and *Norwest* 76 Federal Reserve Bulletin 79 (1990).

These activities will be conducted in Illinois, Arizona, California, Colorado, Florida, Iowa, Indiana, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Texas, Virginia, and Wisconsin.

Board of Governors of the Federal Reserve System, January 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-417 Filed 1-8-92; 8:45 am]

BILLING CODE 6210-01-F

NGLC, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 30, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. NGLC, Inc., Miami, Florida; to become a bank holding company by acquiring 92 percent of the voting shares of Peoples National Bank of Commerce, Miami, Miami, Florida.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. BanCentral Corporation, Champaign, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Singer & Associates, Inc., Mattoon, Illinois, and thereby indirectly acquire Central National Bank of Mattoon, Mattoon, Illinois.

2. Sandwich Banco, Inc., Yorkville, Illinois; to acquire 100 percent of the voting shares of B.O.Y. Bancorp, Inc., Yorkville, Illinois, and thereby indirectly acquire The Bank of Yorkville, Yorkville, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Banks, Inc., St. Louis, Missouri; to acquire at least 57.28 percent of the voting shares of WIN Bancorp, Inc., Winchester, Illinois, and thereby indirectly acquire Winchester National Bank, Winchester, Illinois.

2. Golden Financial Corporation, Elizabethtown, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Fort Knox National Bank, Radcliff, Kentucky.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to merge with First Interstate of North Dakota, Inc., Fargo, North Dakota, and thereby indirectly acquire First Interstate of Fargo, N.A., Fargo, North Dakota.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Summit Bancorp, Inc., Bellevue, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Summit Savings Bank, Bellevue, Washington.

Board of Governors of the Federal Reserve System, January 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-418 Filed 1-8-92; 8:45 am]

BILLING CODE 6210-01-F

Valley Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 30, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Valley Bancorporation, Appleton, Wisconsin; to acquire United Savings and Loan Association, Sheboygan, Wisconsin, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-419 Filed 1-8-92; 8:45 am]

BILLING CODE 6210-01-F

Western Commerce Bank; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than January 30, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Western Commerce Bank, Trustee of The Western Commerce Bank Stock Bonus Plan and Trust Agreement, to acquire an additional 4.57 percent of the voting shares of Western Commerce Bancshares of Carlsbad, Inc., Carlsbad, New Mexico, for a total of 11.8 percent, and thereby indirectly acquire Western Commerce Bank, Carlsbad, New Mexico.

Board of Governors of the Federal Reserve System, January 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-420 Filed 1-8-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Challenge of Multidrug-Resistant Tuberculosis: Building a Coalition

The National Center for Prevention Services (NCPS) and the National Center for Infectious Diseases (NCID) of the Centers for Disease Control (CDC) announce the following meeting.

Name: The Challenge of Multidrug-Resistant Tuberculosis: Building a Coalition.

Times and Dates: 12 noon–8 p.m., January 22, 1992. 8 a.m.–1 p.m., January 23, 1992.

Place: CDC, Auditorium B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to provide information concerning tuberculosis in the United States, in particular, multidrug-resistant tuberculosis, and to obtain ideas and comments concerning the tuberculosis problem from State health department officials, representatives of professional societies, and other organizations involved in public health.

Matters To Be Discussed: The current tuberculosis situation in the United States; tuberculosis and HIV/AIDS; recent multidrug-resistant tuberculosis outbreaks; and issues in treatment and preventive therapy, public health response, drug availability, infection control, and laboratory and research issues. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Walter W. Ihle, Jr., Deputy Chief, Surveillance and Epidemiologic Investigations Branch, Division of Tuberculosis Elimination, NCPS, CDC, 1600 Clifton Road, NE., Mailstop E-10, Atlanta, Georgia 30333, telephone 404/639-2519 or FTS 236-2519.

Dated: January 3, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-459 Filed 1-8-92; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Reconsideration of Disapproval of Tennessee State Plan Amendment (SPA) 91-13; Hearing

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing at 10 a.m. on February 26, 1991, in room 721, 101 Marietta Street, Atlanta, Georgia to reconsider our decision to disapprove Tennessee SPA 91-13.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by January 24, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, telephone (410) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Tennessee State plan amendment (SPA) 91-13.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish an additional notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Tennessee SPA 91-13 proposes to reimburse physicians at 60 percent of the State's usual Medicaid payment rate for physician services provided to children under 21 for those visits in excess of the current limits of: 24 office visits, 20 hospital visits, and hospital visits for approved organ transplants.

The issue in this matter is whether the 40 percent reduction in the payment level would: (1) Be sufficient to satisfy coverage required by section 6403 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89); (2) satisfy the amount, duration and scope requirements at 42 CFR 440.230 for children under 21; and, (3) be sufficient to enlist enough providers so that services under the plan are available to recipients at least to the extent that those services are available to the general public under 42 CFR 447.204.

Section 6403 of OBRA 89 requires States to provide coverage for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services for all individuals under the age of 21. EPSDT services include screening services, vision services, hearing services and any other health care described in section 1905(a) of the Act that is necessary to correct or ameliorate defects and physical or mental illness or conditions discovered during the screening process. This care is required regardless of whether such services are covered for other individuals under the Title XIX State Plan.

Regulations at 42 CFR 447.204 require that an agency's payments for services must be sufficient to enlist enough providers to that services under the plan are available to recipients at least to the extent that those services are available to the general population. In addition, regulations at 42 CFR 440.230 require that each service must be sufficient in amount, duration and scope to reasonably achieve its purpose.

The State believes that the plan amendment represents an expansion of coverage and an increase in reimbursement for those entitled to receive EPSDT benefits because in the past physicians received no reimbursement for services in excess of the plans limits. The State also believes that this expansion would have a positive impact on provider participation.

HCFA believes the State has failed to demonstrate that the proposed Medicaid reimbursement rate would ensure the required access to necessary medical care. HCFA believes that a forty percent reduction in payment levels is likely to severely restrict service coverage required by section 6403 of OBRA 89 and would not satisfy the regulatory requirements concerning the amount, duration, and scope of medical services. Moreover, the State has not demonstrated that the proposed payment level would be sufficient to encourage provider participation. HCFA believes that a forty percent reduction in the State's payment level for physician services would not meet the statutory requirements of section 1902(A)(30) of the Act and the requirements in regulations at 42 CFR 440.230.

The notice to Tennessee announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Manny Martins,
Assistant Commissioner,
Bureau of Medicaid, 729 Church Street, Nashville, Tennessee 37219.

Dear Mr. Martins: I am responding to your request for reconsideration of the decision to disapprove Tennessee State Plan Amendment (SPA) 91–13. This request was received by the Health Care Financing Administration on December 5, 1991.

Tennessee SPA 91–13 would reimburse physicians at 60 percent of the usual State's Medicaid payment rate for physician services provided to children under 21 for those visits in excess of the current limits of: 24 office visits, 20 hospital visits, and hospital visits for approved organ transplants.

The issue in this matter is whether the 40 percent reduction in the payment level would: (1) be sufficient to satisfy coverage required by section 6403 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89); (2) satisfy the amount, duration and scope requirements at 42 CFR 440.230 for children under 21; and, (3) be sufficient to enlist enough providers so that services under the plan are available to recipients at least to the extent that those services are available to the general public under 42 CFR 447.204.

Section 6403 of OBRA 89 requires States to cover services for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) for all individuals under the age of 21. EPSDT services include screening services, vision services, hearing services, and any other health care described in section 1905(a) of the Social Security Act that is necessary to correct or ameliorate defects and physical or mental illness or conditions discovered during the screening process. This care is required regardless of whether such services are covered for other eligible individuals under the Title XIX State Plan.

Federal regulations at 42 CFR 430.12(c) require a State plan to be amended to reflect new or revised Federal statutes or regulations or a material change in any phase of State law, organization, policy, or State agency operation. 42 CFR 447.201(b) requires that the State plan describe the policy and methods to be used in setting payment rates for each type of service included in the State's Medicaid program. Federal regulations at 42 CFR 430.12(c) require a State plan to be amended to reflect new or revised Federal statutes or regulations or a material change in any phase of State law organization, policy, or State agency operation. 42 CFR 447.201(b) requires that the State plan describe the policy and methods to be used in setting payment rates for each type of service included in the State's medical program.

HCFA has considered the State's modification proposing to provide payment at the State's full payment rate for EPSDT services and has found that, because of the inconsistent wording remaining in the State plan, the modification has in effect, not changed the meaning from that of the disallowed proposed SPA.

I am scheduling a hearing on your request for reconsideration to be held at 10:00 a.m. on February 20, 1991, in Room 721, 101 Marietta Street, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

Gail R. Wilensky, Ph.D.,
Administrator.

Authority: Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: January 3, 1992.

Gail R. Wilensky,
Administrator, Health Care Financing Administration.

[FR Doc. 92–429 Filed 1–8–92; 8:45 am]
BILLING CODE 4120-03-M

National Institutes of Health

National Institutes on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, February 6–7, 1992, to be held at the National Institutes of Health, Building 31, Conference Room 6, Bethesda, Maryland. This meeting will be open to the public on Thursday, February 6, from 8:30 a.m. until 2 p.m. for a status report by the Acting Director, NIA; a report on the Geriatrics Program; and for discussion of the NIA budget, program policies and issues, recent legislation, and other items of interest.

It will again be open to the public on Friday, February 7, Conference Room 6, from 8:30 a.m. to adjournment for reports on the NIA Intramural Program; and a report on Peer Review Procedures. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on February 6 from 2 p.m. to recess for the review, discussion and evaluation of grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: December 30, 1991.

Susan K. Feldman,
Committee Management Officer, NIH.

[FR Doc. 92–558 Filed 1–8–92; 8:45 am]
BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meetings of National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on January 23–24, 1992 at the National Institutes of Health, Building 31C, Bethesda, Maryland 20892.

The meeting of the full Council will be open to the public on January 23 in Conference Room 6 from approximately

1 p.m. until 4 p.m. for opening remarks of the Institute Director, discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include a DMID Task Force report as well as presentations on emerging microbes in tuberculosis; future research directions; peer review and future housing of non-human primates. On January 24 the meetings of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public from 8:30 a.m. until adjournment. All three subcommittees will meet at the National Institutes of Health, Building 31C in Conference Rooms 6, 7 and 9 respectively.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three houts for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:30 a.m. until approximately 1 p.m. on January 23, in conference rooms 6, 7 and 9 respectively. The meeting of the full Council will be closed from approximately 4 p.m. until recess on January 23 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John J. McGowan, Director, Division of Extramural Activities, NIAID, NIH, Solar Building, room 4C07, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone (301–496–7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855 Immunology, Allergic and Immunologic Diseases Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: December 30, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–554 Filed 1–8–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting of Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on February 10, 1992, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting will be open to the public from 8:30 a.m. to 10 a.m. on February 10, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10 a.m. until adjournment on February 10. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Mark L. Rohrbaugh, Scientific Review Administrator, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Solar Building, room 4C39, Rockville, Maryland 20892, telephone (301–496–8208), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.855 Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health)

Dated: December 30, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–555 Filed 1–8–92; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, January 23–24, 1992, Executive Plaza North, Conference Room H, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public on January 23 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on January 23 from 10 a.m. to recess and on January 24 from 9 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commerical property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, Tel. 301/496–5708, will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Scientific Review Administrator, Biometry and Epidemiology Contract Review Committee, 5333 Westbard Avenue, room 807, Bethesda, Maryland 20892, telephone 301/496–7030, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research: 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers

Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control.)

Dated: December 30, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-553 Filed 1-8-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on February 12-13, 1992, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public February 12, from 8:30 a.m. to 12 noon and again on February 13, from 10:30 a.m. to adjournment to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the subcommittee and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on February 12, from 1 to 5 p.m.: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on February 13, from 8:30 a.m. to 10:30 a.m.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, room 657, Bethesda, Maryland 20892, (301) 496-7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6917.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: December 30, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-556 Filed 1-8-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, January 30-31, 1992, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on January 30 from 9 a.m. to approximately 2 p.m. and 8:30 a.m. to 10 a.m. on January 31 for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on January 30, from approximately 2 p.m. to 5 p.m. and on January 31 from 10 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, rm. 2B55, NIH, Bethesda, Md. 20892 (301) 496-3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Suassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541-7723, FTS 629-7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: December 30, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-557 Filed 1-8-92; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on February 6-7, 1992, convening at 9 a.m. on February 6 and at 8:30 a.m. on February 7 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on February 6 will be open to the public from 9 a.m. to 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(9)(B), title 5, U.S.C., Public Law 92-463, the meeting will be closed on February 6 from 10:30 a.m. to approximately 5 p.m. and on February 7 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93-879—Medical Library Assistance, National Institutes of Health.)

Dated: December 30, 1991.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 92-559 Filed 1-8-92; 8:45 am]
BILLING CODE 4140-01-M

National Library of Medicine; Meetings of the Board of Regents and Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on January 30-31, 1992, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Extramural Programs Subcommittee will meet on January 29 in the 5th-Floor Conference Room, Building 38A, 2:30 to approximately 4 p.m., and will be closed to the public.

The meeting of the Board will be open to the public from 9 to approximately 4:30 p.m. on January 30 and from 9 to adjournment on January 31 for administrative reports and program discussions. Attendance will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4), 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the entire meeting of the Extramural Programs Subcommittee on January 29 will be closed to the public, and the regular Board meeting on January 30 will be closed from approximately 4:30 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: December 30, 1991.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 92-560 Filed 1-8-92; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-030-00-4320-12]

Meeting: Idaho Falls District

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Idaho Falls District Grazing Advisory Board.

SUMMARY: The Idaho Falls District Grazing Advisory Board will meet Thursday, February 13, 1992. Notice of this meeting is in accordance with Public Law 92-463. The meeting will begin at 9 a.m. at the Idaho Falls District Office at 940 Lincoln Road, Idaho Falls, Idaho. The meeting is open to the public; public comments will be accepted from 9:30 a.m. to 10 a.m.

The agenda for this meeting includes, but is not limited to: Election of officers, Field Enhancement Effort, subleasing, Range Inventory, Allotment Management Plans, and project funding to include both 8100 and Advisory Board projects.

Detailed minutes of the meeting will be maintained in the District Office and will be available for public review during regular business hours (7:45 a.m. to 4:30 p.m. Monday through Friday) within 30 days following the meeting.

Dated: January 2, 1992.
Gary L. Bliss,
Acting District Manager.
[FR Doc. 92-489 Filed 1-8-92; 8:45 am]
BILLING CODE 4310-GG-M

[ID-030-02-4212-14]

Intent To Prepare a Planning Amendment to the Medicine Lodge Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a planning amendment to the Medicine Lodge Resource Management Plan.

SUMMARY: The following described public land in Fremont County, Idaho, will be examined for possible disposal by direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719:

Boise Meridian, Idaho

T. 7 N., R. 38 E.,
sec. 5, SE¼NE¼SE¼SW¼, E½SE¼SE¼SW¼.

The lands described above contain 7.5 acres, more or less.

An environmental assessment will be completed for this action. If the lands are found to be suitable for disposal, the United States will offer these lands for direct sale to Delmar Raybould at fair market value. This action would resolve a longstanding unauthorized use.

For a period of 30 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

Dated: December 30, 1991.
Lloyd H. Ferguson,
District Manager.
[FR Doc. 92-490 Filed 1-8-92; 8:45 am]
BILLING CODE 4310-GG-M

Fish and Wildlife Service

Meeting, Klamath River Basin Fisheries Task Force

AGENCY: Department of the Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) (and pending renewal of a charter) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 8:30 a.m. to 5 p.m. on Monday, January 13; from 8:30 a.m. to 5 p.m., and 7 p.m. to 9 p.m. on Tuesday, January 14; and from 8:30 a.m. to 4:30 p.m. on Wednesday, January 15, 1992. Because the renewal of a charter required by 5 U.S.C. app. I is pending, please contact the office listed for further information to verify meeting dates.

PLACE: The daytime meetings will be held at the National Marine Fisheries Service Southwest Fisheries Science Center Conference Room, 8604 La Jolla Shores Drive, La Jolla, California. The evening meetings will be held at the Inn-By-The-Sea Hotel Conference Room, 7830 Bay Avenue, La Jolla, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main, suite 212), Yreka, California 96097-1006, telephone (916) 842-5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR

25639). Main agenda items will include selection of a management concept for implementing the long-range plan for fish restoration, and preparation of a short term action plan. The Task Force will consider adopting a management concept of organizing restoration actions on a watershed basis, emphasizing involvement of local citizen groups. Other agenda items will include drafting a Request for Proposals for Fiscal Year 1993, and choosing a procedure for completing the long-range plan amendment for the upper Klamath River basin.

Dated: December 31, 1991.

David L. McMullen,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-406 Filed 1-8-92; 8:45 am]

BILLING CODE 4310-55-M

Development of an Agreement on Interpretation and Implementation of a Protocol on Subsistence Hunting of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public involvement.

SUMMARY: This Notice is to inform the public that the U.S. Fish and Wildlife Service (FWS), in coordination with the Department of State, is working with the Canadian Wildlife Service (CWS), the Canadian Department of External Affairs and other interested groups on development of an agreement to amend the subsistence hunting provisions of the Convention for the Protection of Migratory Birds concluded by the U.S. and Great Britain, on behalf of Canada, in 1916. The amendment would provide a basis for managing subsistence hunting of migratory birds in Alaska and Canada during what is otherwise the closed period presently prescribed by the Convention. The CWS is now conducting national public consultations in Canada and in the near future will hold other meetings to receive public input on the process and options for producing desired changes in Convention provisions. The FWS proposes similar consultations and public meetings in the U.S.

DATES: Comments on this Notice must be received by May 15, 1992.

ADDRESSES: Communications regarding this Notice should be addressed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 Arlington Square, Washington, DC 20240, or Regional Director, Region 7, U.S. Fish and Wildlife Service, 1011 E Tudor Road, Anchorage, AK 99503. Comments received on this notice will be available for public inspection during normal business hours in Room 634 Arlington Square Building, 4401 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 634 Arlington Square, Washington, DC 20240 (703/358-1714), or Regional Director, Attention Migratory Bird Coordinator, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503 (907/786-3423). Information on Canadian views can be obtained from Gregory Thompson, Director, Migratory Birds and Wildlife Conservation Branch, Canadian Wildlife Service, Ottawa, Ontario K1A 0H3 (819/957-2957).

SUPPLEMENTARY INFORMATION:

Background

Through the FWS and the CWS, the Secretary of the Interior of the U.S. and the Minister of the Environment of Canada are working toward development of a protocol to amend the subsistence hunting provisions of the 1916 Convention for the Protection of Migratory Birds. Although the FWS is currently addressing the issue of subsistence hunting of resident wildlife species in Alaska, migratory birds will not be covered by that action.

The 1916 Convention is between the U.S. and Great Britain (acting on behalf of Canada) and is hereinafter referred to as the 1916 Treaty. The FWS' immediate intent is to develop amendment language that would make the subsistence hunting provisions of the 1916 Treaty consistent with those of the Convention between the U.S. and the Union of Soviet Socialists Republics Concerning the Conservation of Migratory Birds and Their Environment, signed in 1976 (hereinafter referred to as the U.S.-U.S.S.R. Treaty). The FWS' ultimate goal is to modify the 1916 Treaty to allow subsistence hunting of migratory birds.

In the far north, spring use of migratory birds and their eggs as a source of fresh meat is a traditional and customary use. Subsistence use of migratory birds in this way is a centuries-old practice. Migratory birds returning from the south provide nutritional and other essential needs of the indigenous inhabitants. However this subsistence hunting activity as currently practiced in Canada and the U.S. does not comply with the requirements of the 1916 Treaty.

The pertinent wording of the 1916 Treaty is contained in Article II and is described in the following excerpts:

Introductory Paragraph

"The High Contracting Powers agree that, as an effective means of preserving migratory birds, there shall be established the following close seasons during which no hunting shall be done except for scientific or propagating purposes under permits issued by proper authorities."

Section 1

"The close season on migratory game birds shall be between March 10 and September 1, except . . . that Indians may take at any time scoters for food but not for sale."

Section 3

"The close season on other migratory birds shall continue throughout the year, except that Eskimos and Indians may take at any season auks, auklets, guillemots, murres, and puffins, and their eggs for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale."

In contrast, the U.S.-U.S.S.R. Treaty provides that residents of rural Alaska (not just Indians and Eskimos) may take migratory birds for their own nutritional and other essential needs in accordance with season(s) set by the competent authority, i.e., the Secretary of the Interior. The U.S.-U.S.S.R. Treaty provides also that the season(s) may occur during the closed period, when hunting would otherwise be prohibited by the 1916 Treaty. The U.S.-U.S.S.R. Treaty further requires that any hunting seasons set by the competent authority must provide for the preservation and maintenance of stocks of migratory birds. There is a clear provision for regulation and control of subsistence hunting in the U.S.-U.S.S.R. Treaty, which is presently lacking in the 1916 Treaty.

The pertinent wording of the U.S.-U.S.S.R. Treaty, toward which an intended 1916 Treaty protocol is directed, is as follows:

Article II

1. Each Contracting Party shall prohibit the taking of migratory birds, the collection of their nests and eggs and the disturbance of nesting colonies. Also, any sale, purchase or exchange of these birds, whether dead or alive, or their nests or eggs, and any sale, purchase or exchange of their products or parts, shall be prohibited. The importation and exportation of migratory birds and their nests, eggs, parts, and products shall also be prohibited. Exception to these prohibitions may be made on the basis of laws, decrees, or regulations of the respective Contracting Parties in the following cases:

(a) For scientific, educational, propagative, or other specific purposes not inconsistent with the principles of this convention;

(b) For the establishment of hunting seasons in accordance with Paragraph 2 of this Article;

(c) For the taking of migratory birds and the collection of their eggs by the indigenous inhabitants of the Chukchi and Koryaksk

national regions, the Commander Islands and the State of Alaska for their own nutritional and other essential needs (as determined by the competent authority of the relevant Contracting Party) during seasons established in accordance with Paragraph 2 of this Article; and

(d) For the purpose of protecting against injury to persons or property.

2. The hunting seasons for migratory birds provided for in Paragraph 1(b) of this Article and the seasons during which the indigenous inhabitants mentioned in Paragraph 1(c) of this Article may take such birds and collect their eggs for their nutritional and other essential needs (as determined by the competent authority of the relevant Contracting Party) shall be determined by the competent authority of each Contracting Party, respectively. The seasons shall be set so as to provide for the preservation and maintenance of stocks of migratory birds.

The negotiation report for the U.S.–U.S.S.R. Treaty states that the term "indigenous inhabitants" was chosen purposefully to allow for the inclusion of non-Native Alaskans with legitimate subsistence hunting needs.

The Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712) is the instrument authorizing the Secretary of the Interior to implement the provisions of the U.S.-U.S.S.R. Treaty. This Improvement Act directs the Secretary to ensure that subsistence hunting of migratory birds in Alaska be guided by the language of that Treaty, as well as the others with Canada, Japan and Mexico. In effect, because of the nature of the language in the Fish and Wildlife Improvement Act, it would seem that the U.S. Congress established the language of the U.S.-U.S.S.R. Treaty as the standard for dealing with subsistence hunting of migratory birds in Alaska. The subsistence hunting provisions of the 1916 Treaty are inconsistent with this standard.

The changes sought would reconcile for the U.S. the different provisions of the two treaties, and would be modeled after the subsistence hunting provisions of the U.S.-U.S.S.R. Treaty. The intent is to provide a basis for managing subsistence hunting of migratory birds in Alaska and Canada. The 1916 Treaty prohibits hunting between March 10 and September 1, the period when waterfowl are most available and most needed for food in the far north. Exceptions are made for some subsistence hunting but they apply only to Indians for the taking of scoters and to Eskimos and Indians for the taking of certain seabirds and their eggs. These species may be taken by these people at any time of the year and in any number but they are either not generally available or not traditionally utilized in many areas of Alaska. Waterfowl are important for subsistence in many of these areas, however. Although migratory birds generally provide for a relatively small part of the total subsistence needs of the people in these areas, they are a very important element at certain times of the year in some locations where the people still depend on them. Thus, the 1916 Treaty does not adequately address the legitimate subsistence needs of some people in Alaska and Canada.

Canada has the same problem as the U.S. has in Alaska with the requirements of the 1916 Treaty and the needs of northern people to have equitable access to migratory birds. An additional issue in Canada involves the managed harvest of common and thick-billed murres by the residents of Newfoundland. Newfoundland, where the practice of harvesting murres has been ongoing since the earliest days of settlement, was not a Province of Canada at the time the 1916 Treaty was executed.

It is with the foregoing factors in mind that efforts are being renewed to finally resolve the issue.

Recent Progress

In the late-1970s and 1980s, there was an attempt to effect changes in the 1916 Treaty such as those described above. A modification to the 1916 Treaty was agreed upon by both countries in 1979 and forwarded to the U.S. Senate for ratification in 1980. Public concern in the U.S. led to a decision by the Department of the Interior to request a delay in Senate action on the amendment. While these concerns were bring addressed, Constitutional questions were raised in Canada. After several years of internal discussions in Canada, it became clear that changes to the 1916 Treaty originally proposed in 1979 must be modified.

In recent years the failure to adequately resolve this issue has complicated management of declining goose populations on the Yukon-Kuskokwim (Y–K) Delta of Alaska. In order to better manage these declining stocks, an agreement was signed between the native inhabitants of the Y–K Delta, the FWS, the State of California and the State of Alaska. This initial agreement was nullified by the U.S. Court of Appeals for the Ninth Circuit that found it in violation of the 1916 Treaty (*Alaska Fish and Wildlife* v. *Dunkle*, 829 F.2d 933 (9th Cir. 1987). In its finding, the Court said that any subsistence hunting regulation must be in accord with all four migratory bird treaties that the U.S. was party to. Subsequently, the agreement was modified to avoid the conflict and it now exists as the Y–K Delta Waterfowl Management Plan.

Since the fall of 1990, the pace of activity by the FWS, CWS, and other groups has increased with regard to development of a new protocol to resolve the issue of subsistence hunting in the 1916 Treaty. The CWS and the FWS have worked independently and jointly to begin to seek public input, settle the legal and technical questions remaining, and recommend courses of actions within the respective countries and between the two countries. A principal purpose of this Notice is to inform the public that meetings to obtain public input are being scheduled for the near future in the contiguous 48 States and in the State of Alaska. A similar process is occurring in Canada.

Public Meetings and Proposed Schedule for Negotiations

To better inform the public and to gather information to be used in establishing a final FWS position for negotiations, open meetings will be scheduled and conducted over the period March 1 through April 30, 1992, in Washington, DC; Denver, CO; Portland, OR; and Sacramento, CA. The exact dates and locations of these four meetings will be published in a notice in the **Federal Register** approximately the middle of February.

In Alaska, meetings will be scheduled and conducted during the period February 1 through April 30, 1992, in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Fort Yukon, Galena, Hooper Bay, Juneau, Kodiak, Kotzebue, Nome, Tok, and Toksook Bay to provide additional opportunity for public comment. Due to logistics and weather conditions, dates of the Alaska public meetings may have to be adjusted and, therefore, will not be published in the **Federal Register**. Alaska public meetings will be publicized within the State as soon as a schedule can be determined in consultation with potentially affected State, local and regional interests. Information on dates and exact meeting places in the Alaskan communities listed above may be obtained by contacting the FWS Region 7 Director in Anchorage using the information provided under the **FOR INFORMATION CONTACT** section of this notice.

In addition to the meetings outlined above, the FWS also intends to expand less formal consultation with Native groups, State wildlife agencies, conservation organizations, Flyway Councils, and other groups whenever possible. The FWS intends to consult particularly closely with the State of Alaska, especially regarding the conduct

of meetings in that State and the development of a position on amendment of the 1916 Treaty.

Results of the scheduled meetings, other discussions, and written comments will be published in the **Federal Register** by the end of summer 1992. It is the intent of the FWS to propose at that time a preliminary U.S. negotiation position, and possibly draft amendment language, for further public review. Initial negotiations between the FWS and CWS could begin as early as fall 1992. Formal negotiations with Canada, led by the U.S. Department of State, could begin as early as winter 1992–93.

If it appears that efforts to amend the 1916 Treaty will be unsuccessful or long delayed, as has been the case since 1979, consideration will be given to pursuing a legislative solution.

Language previously proposed to amend the 1916 Treaty prompted public concerns in seven major areas. These are: (1) Definition of competent authority; (2) clarification of bag limits, season lengths, and how birds may be taken; (3) commercial use of birds taken for subsistence purposes; (4) regulation of subsistence harvest size; (5) beneficiaries of harvest; (6) geographic areas involved; and (7) enforcement and compliance of subsistence hunting regulations. The FWS invites the public to address these and other issues in testimony at the public hearings or in written comments.

Dated: December 30, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–465 Filed 1–8–92; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0067); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Acting Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR Part 250, Subpart E, Well-Completion Operations

OMB approval number: 1010–0067.

Abstract: Respondents submit this information to MMS's District Supervisors so they can evaluate and approve or disapprove the adequacy of equipment and/or procedures to be used during the conduct of well-completion operations.

Bureau form number: None.

Frequency: Varies.

Description of respondents: Federal Outer Continental Shelf oil and gas lessees.

Estimated completion time: .9 hour.

Annual responses: 17.5.

Recordkeeping hours: 538.

Annual burden hours: 553.

Bureau clearance officer: Dorothy Christopher, (703) 787–1239.

Dated: December 3, 1991.

G.R. Daniels,

Acting Deputy Associate Director for Operations and Safety Management.

[FR Doc. 92–491 Filed 1–8–92; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–542 through 544 (Preliminary)]

Potassium Hydroxide From Canada, Italy, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–542 through 544 (Preliminary) under section 733(a)) of the Tariff Act of 1930 (19 U.S.C. 1673b(a) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada, Italy, and/or the United Kingdom of potassium hydroxide, provided for in subheading 2815.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by February 18, 1992.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on January 2, 1992, by LinChem, Inc., Edison, NJ.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.22 and 207.10 of the Commission's rules, not later than seven (7) days after a public service list containing the names and addresses of all persons, of their representatives, who are parties to these investigations upon the expiration of the period of filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained

by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in accordance with these investigations for 9:30 a.m. on January 23, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia Hand (202–205–3182) not later than January 17, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 28, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3 and 207.7 of the Commission's rules.

In accordance §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: January 3, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–552 Filed 1–8–92; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Accurate Partitions; Lodging of Consent Decree

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on December 30, 1991, a proposed consent decree in *United States* v. *Accurate Partitions, et al.*, Civil Action No. S91–00646M, was lodged with the United States District Court for the Northern District of Indiana. The United States filed this action pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for the cleanup of the Fisher-Calo Chemicals and Solvents Site ("Site"), located in La Porte County, Indiana, and for the recovery of costs expended by the United States in connection with the Site.

The proposed consent decree is entered into between the United States (on behalf of the United States Environmental Protection Agency ("U.S. EPA")), the State of Indiana (co-plaintiff), and 261 defendants. Under the proposed decree, the defendants have agreed to perform a remedial action at the Site that is estimated to cost $30 million. The principal general components of the remedy for the Site include the following: Extensive soil and groundwater remediation; fencing of those portions of the site being remediated; and additional investigation of contamination in certain portions of the site. The groundwater will be treated by a traditional extraction well, and a pump and treat system using air strippers and activated carbon. The soils which contain PCBs in excess of 10 ppm or bis(2-ethylhexyl) phthalate in concentrations in excess of 6.1 ppm will be excavated and incinerated. The soils contaminated with volatile organic compounds will be treated with soil flushing technologies or, if deemed equally effective by EPA, by soil vapor extraction technologies ("SVE").

The proposed decree also requires the settling parties to pay $3,068,323 in past costs incurred by U.S. EPA, as well as the oversight costs that U.S. EPA will incur in connection with the remedial action. The defendants must also pay $20,000 to the U.S. Department of the Interior in settlement of federal natural resource damage. Further, the defendants must pay additional sums to the State of Indiana for its costs and state natural resource damage.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. All comments should refer to *United States* v. *Accurate Partitions, et al.*, DJ Ref. #90–11–2–549.

The proposed consent decree may be examined at the following offices: (1) The United States Attorney's Office, M01 Federal Building, 204 South Main Street, South Bend, Indiana; (2) the United States Environmental Protection Agency, 77 W. Jackson, Chicago, Illinois 60604; and (3) the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004. Copies of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004.

Any request for a copy of the decree, not including appendices or Settling Defendant signature pages, should be accompanied by a check in the amount of $16.75 ($.25 per page) for copying costs. Any request for a copy of the decree including appendices and Settling Defendant signature pages should be accompanied by a check in the amount of $112.50 ($.25 per page) for copying costs. The check should be made payable to the "Consent Decree Library."

Roger B. Clegg,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92–493 Filed 1–8–92; 8:45 am]

BILLING CODE 4410–01–M

Asarco, Inc.; Lodging of Consent Decree Pursuant to the Comprehensive Environmental

In accordance with Department of Justice Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on December 30, 1991, a Complaint was filed and proposed Consent Decree was lodged with the United States District Court for the Western District of Washington in *United States* v. *Asarco, Inc.*, Civil Action No. C91–5528B. The proposed consent decree addresses an interim remedial action at the Asarco Smelter Site (the Asarco Site) in Tacoma and Ruston, Washington. The remedial action will be performed pursuant to the Record of Decision for the Asarco Demolition Operable Unit of the

Commencement Bay Nearshore/ Tideflats (CB N/T) Superfund Site.

The Complaint asserts claims under sections 104, 106, and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9604, 9606, and 9607, and section 7003 of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. 6973. The Complaint seeks reimbursement of response costs, a declaration that defendant is liable for all future response costs incurred by the United States, and implementation of an interim remedial action at the Asarco Site.

Pursuant to the Consent Decree, Asarco has agreed to implement the proposed interim remedial action. The estimated cost of this action is approximately $12 million. Asarco has also agreed to pay $333,500 in partial reimbursement of EPA's past response costs at the Site and has agreed to compensate EPA for its future response costs incurred in connection with the interim remedial action. The proposed Consent Decree contains a covenant not to sue only for the work to be done and the costs actually reimbursed under the Decree. The United States reserves all rights against Asarco with respect to unreimbursed response costs and other remedial activities.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Asarco, Inc.*, D.J. Ref. No. 90–11–2–698.

The proposed Consent Decree and exhibits may be examined at the office of the United States Attorney, Western District of Washington at Tacoma, 1145 Broadway Plaza, Tacoma, Washington 98402; at the Region 10 Office of EPA, Lynn M. Williams, Administrative Records Coordinator, Superfund Branch, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Environmental Enforcement Section, Environment and Natural Resources Division of the U.S. Department of Justice, room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530.

Simultaneously with this notice, EPA is undertaking a public outreach program to give notice of an Explanation of Significant Differences (ESD) in connection with the interim remedial action which Asarco will perform under the proposed Consent Decree. The ESD provides options for temporary on-site storage of demolition debris prior to permanent disposal in addition to those included in the Record of Decision for the Asarco Demolition Operable Unit. The United States will withhold final action on the proposed Consent Decree until after EPA has taken final action on the ESD.

The proposed Consent Decree and exhibits may be examined at the following locations: The Region 10 Office of EPA, Lynn M. Williams, Administrative Records Coordinator, Superfund Branch, 1200 Sixth Avenue, Seattle, WA 98101; the Ruston Town Hall, 5117 North Winnifred, Ruston, WA 98407; the Washington Department of Ecology, 4415 Woodview Drive S.E., Olympia, WA 98504; the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Northwest Room, Tacoma, WA 98402; the McCormick Regional Branch Library, 3722 North 26th, Tacoma, WA 98407; the City of Tacoma Environmental Commission, 747 Market Street, suite 345, Tacoma, WA 98402; the Tacoma Pierce County Health Department, 3633 Pacific Avenue, Tacoma, WA 98404; the Pacific Lutheran University Library, 121st and South Park Avenue, Tacoma, WA 98444; and Citizens for a Healthy Bay, 771 Broadway, Tacoma, WA 98402. The complete Administrative Record for the Asarco Site may be reviewed at the EPA Region 10 office in Seattle and at the Main Branch of the Tacoma Public Library.

A copy of the Consent Decree and exhibits (if requested) may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347–7829. In requesting copies, please enclose a check in the amount of $21.25 (without exhibits) or $41.50 (with exhibits) (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–492 Filed 1–8–92; 8:45 am]

BILLING CODE 4410–01–M

William C. Dixon et al.; Lodging of Consent Decree Under the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on the 3 day of December 1991, two proposed Consent Decrees in *United States* v. *William C. Dixon, et al.*, C–91–0043 JPV, were lodged with the United States District Court for the Northern District of California. The Compliant sought civil penalties and injunctive relief against William C. Dixon and Patrick McCormick, pursuant to sections 111 and 112 of the Clean Air Act ("Act"), 42 U.S.C. 7411 and 7412, and the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for asbestos at 40 CFR part 61.

The proposed Consent Decree relating to William C. Dixon requires that he pay $6,000 in settlement of the United States" claims for civil penalties. The defendant, William Dixon, is subject to a three year injunction against violation of the Act and/or the NESHAP for asbestos. The decree requires payment of stipulated penalties in the event of violation of certain notice requirements and work performance standards applicable to renovations involving removal of asbestos.

The proposed Consent Decree relating to Patrick McCormick requires that he pay $2,000 in settlement of the United States claims.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decrees from persons who are not parties to the action. Comments should be addressed to the Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, Washington DC 20530 and should refer to *United States* v. *Williamm C. Dixon, et al.*, D.J. Ref. No. 90–5–2–1489.

The proposed Consent Decrees may be examined at the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

Copies of the Consent Decrees also may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, telephone number (202) 347–2072. A copy of either of the Consent Decrees may be obtained in person or by mail from the Environmental Enforcement Section Document Center. In requesting a copy, please tender a check in the amount of $2.00 for the McCormick Decree and/or $4.75 for the Dixon Decree (25 cents per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–405 Filed 1–8–92; 8:45 am]

BILLING CODE 4410–01–M

Bureau of Justice Assistance

State Reimbursement Program for Incarcerated Mariel Cubans

AGENCY: Office of Justice Programs, Bureau of Justice Assistance (BJA).

ACTION: Notice of issuance of solicitation for applications to reimburse States for partial expenses incurred by the incarceration of certain Mariel Cubans.

SUMMARY: The Department of Justice Appropriations Act, 1992, title I of Public Law 102–140, allocates up to $4.963 million to implement the State Reimbursement Program for Incarcerated Mariel Cubans. The State Reimbursement Program for Incarcerated Mariel Cubans provides assistance to the States to defray expenses associated with the incarceration of Mariel Cubans in State facilities. Mariel Cubans affected by the Act are those individuals incarcerated after conviction of a felony, following their parole by the Attorney General, during the influx of Cubans leaving the Port of Mariel in 1980. One of the serious consequences of the 1980 Mariel Cuban Boatlift was the added burden placed upon the criminal justice systems of many states. The Mariel Boatlift included a minority of extremely violent offenders released from Cuban prisons. Many were subsequently convicted of felonies, and were incarcerated in State prisons in the United States. As a result, these States have been burdened with the additional costs of incarceration. The period of incarceration for reimbursement purposes is October 1, 1991, to September 30, 1992.

DATES: The State applications (S.F. 424) must be postmarked no later than February 1, 1992. All inmate data shall be electronically transmitted by the applicant to the Bureau of Justice Assistance for verification purposes no later than February 1, 1992.

ADDRESSES: Bureau of Justice Assistance, Special Programs Division, 633 Indiana Avenue, NW., room 1058, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Louise Lucas, BJA, 202/307–1065.

SUPPLEMENTARY INFORMATION: On October 18, 1991, a survey to determine the feasibility of establishing an electronic data entry system for the Mariel Cuban Reimbursement Program was mailed to all State Departments of Corrections. Based on the completed surveys from 46 States, it was determined that the electronic data entry system would enhance the operation of the program as well as reduce the paper flow of documents from the States. BJA, under separate cover, will provide to the States the necessary information to access the automated data entry system.

I. General Provisions

Eligible Applicants

All States are eligible to apply for and receive grants. "State" means any State of the United States and includes the District of Columbia and the Commonwealth of Puerto Rico.

Participating States

It is expected that the 39 States that participated in the State Reimbursement Program last year will participate again this year. Those States participating in 1991 included: Alaska, Arkansas, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and Wisconsin. There is the possibility that a few additional States will participate in 1992.

II. Allocations and Use of Funds

Fund Availability

The Act provides a total of $4.963 million for the purpose of making grants to States. Awards will be calculated by taking the aggregate number of verified inmate months from all applications submitted and dividing the months into the appropriation. The verified number of months for each application will then be multiplied by the average inmate cost per month. The amount of reimbursement per prisoner, per annum, shall not exceed $12,000.

Fund Use

The intent of the public law is to reimburse the States for partial expenses incurred by reason of Mariel Cubans having to be incarcerated in State facilities. Therefore, a budget or expenditure plan is not required, as the award will be used solely for reimbursement purposes. Matching funds are not required.

III. Application Content

(a) All State applicants must submit Standard Form 424 (Application for Federal Assistance), and a certified listing of incarcerated Mariel Cuban prisoners. The certified listing shall be a "hard copy" of the electronically transmitted inmate data to BJA. The automated data entry system is designed to include information in the following sequence:

(1) Name (last name first).
(2) AKA (also known as).
(3) Alien Identification Number (e.g., A24 456 789).
(4) Inmate Number.
(5) Date of Birth.
(6) Incarceration Date:
(7) Probable Earliest Release Date.

Submission of Mariel Cuban data in an alternative format must be approved by BJA prior to submission of an application.

(b) The certified listing must be signed by the Governor or one of his or her authorized representatives.

(c) The period of incarceration for reimbursement purposes is October 1, 1991, to September 30, 1992. The computation of funds will be based on an aggregate total of certified prisoners incarcerated for a 12-month period (e.g., if two prisoners are incarcerated for six months during the period, the State will be reimbursed the full amount for one year).

(d) The Act is specific in that the prisoner must have been paroled into the United States by the Attorney General during the 1980 influx of Mariel Cubans. This means those Cubans who Entered Without Inspection (EWI), earlier arrivals (preboatlift), and/or later arrivals (post-boatlift) will not be included and, thus, expenses incurred will not be reimbursed.

(e) State will prevail when a determination is required as to what constitutes a State facility and/or a State prisoner.

IV. Review of State Applications

State applications must be submitted in the required format and at the time prescribed.

(a) The application and certified listing will be reviewed by BJA and a cross-check verification of prisoners will be made by the Immigration and Naturalization Service of the U.S. Department of Justice. This review will be completed no later than April 1, 1992, and grants will be made to the States immediately thereafter.

(b) Compliance is required with Executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice implementing regulations 28 CFR part 30. At the same time applications (S.F. 424) are submitted to BJA, States must submit grant applications to the State's Single Point of Contact, if there is a Single Point of

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Contact, and if this program has been selected for coverage by the State process. State processes have 60 days starting from the application deadline to comment on applications.

(c) Compliance is required with Executive Order 12549, Debarment and Suspension, 34 CFR part 85, § 85.510, Participants' Responsibilities, which requires a certification regarding debarment, suspension, ineligibility, and voluntary exclusion (OJP Form 4061/2) from all recipients of Federal funds. This form should be submitted by the State as part of its application.

(e) Upon completion of a review of State applications, BJA will notify the applicant, in writing, of any specific reasons for disapproval of the application, in whole or in part.

V. Civil Rights Assurances

The applying State must specifically assure that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination laws and regulations, including the following:

(a) Title VI of the Civil Rights Act of 1964;

(b) Section 809(c) of the Anti-Drug Abuse Act of 1988;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975; and,

(f) The Department of Justice Non-Discrimination Regulations, 28 CFR part 42, subparts C, D, E, and G.

Any application for $500,000 or more must be accompanied by a copy of the current Equal Employment Opportunity Program of the corrections department in accordance with the provisions of 28 CFR 42.301 *et. seq.* State applicants that previously applied for and received funding under this initiative, and have also received an Office of Justice Programs approval of their Equal Employment Opportunity Program, need only submit a statistical update of the previously approved program.

Gerald (Jerry) P. Regier,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 92-517 Filed 1-8-92; 8:45 am]

BILLING CODE 4410-18-M

Drug Enforcement Administration

[Docket No. 90-51]

Alan H. Olefsky, M.D., Revocation of Registration

On June 7, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Alan H. Olefsky, M.D., (Respondent), of 5701 W. Sunrise Blvd., Plantation, Florida 33313, proposing to revoke his DEA Certificate of Registration, B01163257, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing in a letter dated July 25, 1990. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Chicago, Illinois on April 25, 1991. On July 26, 1991, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. On August 23, 1991, Respondent submitted exceptions to Judge Bittner's opinion and recommended ruling and on September 6, 1991, Government counsel filed a response to Respondent's exceptions. On September 13, 1991, the administrative law judge transmitted the record of these proceedings, including Respondent's exceptions and the Government's response thereto, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that on January 4, 1989, Respondent presented two prescriptions for controlled substances at a pharmacy in Fort Lauderdale, Florida. One prescription was for 60 dosage units of Percocet, a Schedule II narcotic controlled substance, and the other was for 30 dosage units of Halcion .25 mg., a Schedule IV controlled substance. Both prescriptions listed the patient as "Chris Pulin" and bore the purported signature and DEA registration number of Evan K. Newman, M.D. The owner and operator of the pharmacy contacted Dr. Newman who stated that he did not issue either prescription, nor did he have a patient named Chris Pulin. The pharmacist then telephoned the police to report that an individual was at the pharmacy and had presented two fraudulent prescriptions for controlled substances.

Accordingly, officers of the Fort Lauderdale Police Department immediately went to the pharmacy. Both the owner of the pharmacy and his son, who was also a pharmacist and was working as a pharmacy clerk, identified Respondent as the person who presented the prescriptions. Respondent was taken from the pharmacy to the Fort Lauderdale Police Headquarters, where he was interviewed by a detective employed by the Fort Lauderdale Police Department.

During the interview, Respondent insisted that someone else in the pharmacy had tried to present the prescriptions, and that the wrong individual had been arrested. Respondent further said that the incident could jeopardize his life and career, and he refused to reveal his name or birth date. Respondent was subsequently charged in the Circuit/County Court in Broward County, Florida with two counts of obtaining controlled substances by fraud in violation of state law. After the state's witnesses testified, the court directed a verdict of acquittal. The case was dismissed because the information was filed incorrectly as to the charge.

The administrative law judge further found that after Respondent's arrest, his attorney contacted the detective to explain that someone had slipped the prescriptions under Respondent's front door. The detective asked for the address of the person named in the prescriptions and the attorney responded that neither he nor the Respondent had any idea of the address. Further, in a posthearing submission the detective stated that a search of Broward County and Fort Lauderdale records failed to disclose any record regarding a Chris Pulin. Additionally, the Government offered into evidence an affidavit from Dr. Newman stating that he did not issue, nor authorize, the two prescriptions at issue and that the signatures on the prescriptions were forged. Dr. Newman further stated that the DEA registration number appearing on the two prescriptions was his registration number. Dr. Newman also said that he and Respondent had worked at the same health maintenance organization. Additionally, the Government offered other sworn statements regarding the Respondent's conduct and behavior.

At the administrative hearing, Respondent testified that he had received a telephone call from someone he did not know who identified herself as a Ms. Schwartz. According to Respondent, Ms. Schwartz asked him if he could examine an elderly friend of hers who had had a fall and who did not have any health insurance. Respondent advised Ms. Schwartz to take her friend to Health America, a health maintenance organization, since a more thorough examination might be required.

Respondent further testified that a couple of days later, Ms. Schwartz telephoned again and said that her friend had received medical attention and asked if Respondent could fill his prescriptions at a reduced price. That same day, Respondent found an envelope pushed under the door of his apartment. The envelope contained the two prescriptions at issue and a note that contained the name Chris Pulin and his address. Respondent testified that Percocet and Halcion would have been appropriate medications for someone who has sustained injuries in a fall, that the prescriptions did not appear unusual, and that he did not know they were forged. Consequently, Respondent took the prescriptions to the pharmacy to be filled and presented the note bearing Chris Pulin's name and address to the pharmacy clerk along with the prescriptions.

The administrative law judge did not find the Respondent to be a credible witness and concluded that Respondent's explanation of his conduct could most charitably be described as inherently implausible. The administrative law judge recommended that the Administrator revoke Respondent's DEA Certificate of Registration. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirely. Respondent's registration is clearly inconsistent with the public interest.

Under 21 U.S.C. 823(f) and 824(a)(4), the Administrator has the authority to revoke a registration based upon a sufficient showing that the continued registration would be inconsistent with the public interest. The factors which are considered in determining whether the continued registration would be inconsistent with the public interest are:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority;

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances;

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances;

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances;

(5) Such other conduct which may threaten the public health and safety.

There is no requirement that the Administrator make findings with respect to all five of the listed factors. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances presented in each case, in determining the public interest. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989); *England Pharmacy*, 52 FR 1674 (1987); and *Felix Seisin, M.D.*, Docket No. 85–53, 51 FR 3863 (1986).

While all of the factors have been considered in this case, the Administrator finds that the fourth and fifth factors under 21 U.S.C. 823(f) are of importance in evaluating whether the continued registration of the Respondent is contrary to the public interest. The administrative law judge concluded that the Respondent attempted to obtain controlled substances for other than a legitimate medical purpose. Without restating all of the administrative law judge's findings, it is sufficient to state that the substantial evidence in the record clearly supports such findings.

Additionally, and significantly, the Administrator finds that Respondent refuses to accept responsibility for his actions and does not even acknowledge the criminality of his behavior. Instead, the Respondent has chosen to characterize his actions as a "mistake" and attempted to explain or justify his actions by saying that he was simply trying to assist an elderly stranger. The administrative law judge rejected this testimony, as does the Administrator. The Respondent's version of the incident is simply unworthy of belief.

Although the state charges against the Respondent were dismissed, the Administrator is nevertheless greatly concerned about the conduct which led to the arrest. Respondent's conduct demonstrates an absolute disregard for Federal and state law and nothing presented during Respondent's case persuades the Administrator that the Respondent is now willing to carefully abide by the laws and regulations relating to controlled substances. Thus, the Administrator cannot permit the Respondent to maintain his DEA registration. Concern for the public interest demands no less a remedy.

In his exceptions to the administrative law judge's opinion and recommended ruling, Respondent raised several points in urging that he be permitted to retain his registration. First, he argued that the administrative law judge erred in failing to consider all of the factors for determining the public interest. The Administrator disagrees. It is clear that in determining which of the five factors were relevant, the administrative law judge necessarily considered all of the factors in order to arrive at her decision as to the relevant factors. The administrative law judge clearly acted properly.

Second, Respondent argued that the administrative law judge gave undue weight to written statements introduced as evidence by the Government. The Administrator rejects Respondent's argument. The statements were given limited consideration by the administrative law judge. The affidavits in question regarded the Respondent's behavior as it was observed by the attesting individuals. Such affidavits were opinions based on those observations, and they were treated as lay observations by the administrative law judge. No greater weight was given to these statements than that to which they were entitled. The affidavits were not inherently unreliable. They were taken under oath by a police sergeant. Had that individual testified, his testimony concerning the two statements, though hearsay, would have been admissible and worthy of consideration.

Third, the Respondent argued that the suspension of his registration would be grossly disproportionate to the alleged wrongdoing and that if a penalty is warranted under the facts in this case, the Administrator should consider a modified registration subjecting Respondent's prescribing practices to quarterly review. Revocation is an acceptable remedy under the facts in this case. *Sokoloff* v. *Saxbe*, 501 F.2d 571 (2d Cir. 1974).

After considering all of the evidence in the record, the Administrator concludes that Respondent's registration must be revoked at this time. In keeping with the evidence presented, the Administrator will give favorable consideration to a new application for DEA registration, provided that such application is filed not sooner than one year from the effective date of this final order. Such application must be accompanied by evidence that the Respondent has completed continuing education courses totalling at least 30 hours of instruction and has, in all other respects, remained properly licensed and in compliance with all Federal, state and local laws and regulations relating to controlled substances.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, B01163257, be, and it hereby is, revoked. Any pending applications for registration or renewal are hereby denied.

This order is effective February 10, 1991.

Dated: January 2, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-463 Filed 1-8-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ([202] 523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ([202] 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Employment and Training Administration

Certification of Unexpended "Reed Act" Obligation Amounts by State Employment Security Agencies (SESAs).
1205-0280.
On occasion.
State or local governments.
11 respondents; 33 total hours; 1 hour per response; no forms.
To identify, account for and monitor balances of obligated "Reed Act" funds in State unemployment trust fund accounts. States with unexpended balances of Reed Act obligations desiring to protect the availability of such must certify the amount by letter to ETA/UIS to establish a "sub-account". Future obligation/deobligation amounts must also be certified in a similar manner.

Work Application/Job Order Recordkeeping.
1205-0001.
Recordkeeping only.
State or local governments.
52 recordkeepers; 416 total hours; 8 hrs. per recordkeeper.
Request is only for retention of information on work applications and job orders.

Title 29 CFR Part 29—Labor Standards for the Registration of Apprenticeship Programs.
1205-0223.
ETA 671.
On occasion.
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.
Needed by employers, apprentices, and State apprenticeship agencies to set forth labor standards to safeguard the welfare of apprentices and to extend the application of such standards by subscribing policies and procedures concerning the registration for certain Federal purposes of acceptable apprenticeship programs.

Employment Standards Administration

Claims for Compensation by Dependents Information Reports
1215-0155.
CA-5, 5b; 1031; 1074; 1085; 1093; 1615; 1617; 1618.
Individuals or households.
1,835 total hours.

Form	No. respondents	Min. per response	Frequency
CA-5	235	90	On occasion.
CA-5b	70	90	On occasion.
CA-1615	120	30	On occasion.
CA-1617	600	30	Semi-annually.
CA-1085	450	45	On occasion.
CA-1031	1,700	15	On occasion.
CA-1074	70	60	On occasion.
CA-1093	50	30	On occasion.
CA-1618	320	30	Semi-annually.

Reports are claims for compensation by survivors due to the death of a Federal employee, and supplemental reports concerning dependency status in various types of cases.

Patient Pilot Advocate Questionnaire—Physician Interview.
1215-0174
OWCP 54.
One time basis.
Business or other for profit; Small businesses or organizations 800 respondents; 528 total hours; .33 hr. per response OWCP is collecting medical data through telephone interview from treating physicians who are caring for employees covered under the Federal Employees' Compensation Act (FECA) to provide baseline information for a claimant advocate pilot program that will test intervention techniques developed to improve injury outcome and encourage return to work. This is a one-time application, although if successful, it may be continued.

Signed at Washington, DC this 3rd day of January, 1992.

Doris Carter,

Acting Departmental Clearance Officer.

[FR Doc. 92-475 Filed 1-8-92; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-23,874]

General Motors Corp., Boc Linden, Linden, NJ; Second Notice of Negative Determination on Reconsideration

Pursuant to a U.S. Court of International Trade order in *United Auto Workers, Local 595,* versus *Secretary of Labor* (USCIT 90-05-00263), dated December 18, 1991, the Department on reconsideration is affirming its initial denial of eligibility to apply for adjustment assistance for workers at General Motors Corporation's BOC plant in Linden, New Jersey.

On September 30, 1991, the Department, as a result of a U.S. Court of International Trade (USCIT) court order of June 7, 1991, affirmed, on reconsideration, its original notice of negative determination regarding eligibility to apply for adjustment assistance for workers and former workers of General Motors Corporation's BOC plant in Linden, New Jersey.

In its latest submission to the USCIT, the union contended that the Department should have used Ward's 1990 Automotive Yearbook as a source for Volkswagen Golf and Jettas sales instead of the Motor Vehicle Manufacturers Association. The union also argued that Canadian imports of Honda Civics and Toyota Corollas were not included in the Department's analysis. Finally, the union stated that the Department should have used the Automotive News to separate out Subaru wagon sales from Subaru hatchbacks and sedans.

After having further reviewed and obtained further data regarding the subject vehicle sales which the union claimed were not included in the Department's analysis, the Department is revising its analysis to include the new information. The Department's revised analysis includes sales data from Ward's 1990 Automotive Yearbook for Volkswagen Golfs and Jettas. The Toyota. Also, the Department obtained other data that separated the sales for Subaru wagons from Subaru hatchbacks and sedans. The Department also surveyed the Ford Motor Company for its imports of passenger cars from Canada and Mexico in 1988, 1989 and 1990.

The revised sales data show that the sale of imports decreased twice as much as the subject models and twicé as much as the sale of other domestic. The revised sales data show that the subject models decreased by 54,295 units; other domestics decreased by 48,108 units while imports decreased by 119,788 units.

The Department's revised analysis found, as before, that both the subject models (Chevrolet Beretta and Corsica passenger cars) and the imports lost market share, while the other domestic segment gained marketshare. The revised sales data show that the subject models decreased their market share by 0.8 percent and imports decreased their market share by 1.1 percent. Other domestic units; however, increased their market share by 1.9 percent. Therefore, the Department's conclusion is the same as before, namely, that imports did not contribute importantly to the unemployment or underemployment of workers at the subject plant.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of General Motors Corporation's BOC plant in Linden, New Jersey.

Signed at Washington, DC, this January 1, 1992.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-477 Filed 1-8-92; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of December 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision therepf, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,466; Johnson & Johnson Consumer Products, Inc., New Brunswick, NJ

TA-W-26,355; Crown Cork & Seal Co., Inc., Crown Beverage Packaging, Inc., Edison, NJ

TA-W-26,526; Spokane Lumber Co., Tonasket, WA

TA-W-26,504; Carbonaire, Inc., Palmerton, PA

TA-W-26,424; Brown & Sharpe Manufacturing Co., Measuring Systems Div., North Kingstown, RI

TA-W-26,424A; Brown & Sharpe Manufacturing Co., Prescision Measuring Div., North Kingstown, RI

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-26,479; Bayeux Fabrics, Inc., Lincoln Park, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,555; Terex Corp., Hudson, OH

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-26,599; General Safety Corp., Plan #6, Mt. Clemens, MI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,535; Exploration Employment, Inc., Livingston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-26,544; Northern Processors, Inc., Traverse City, MI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-26,488; Golden City Trailers, Inc., Williston, ND

U.S. imports of oil and gas field machinery is negligible.

TA-W-26,513; GE Astro Space Div., Princeton, NJ

U.S. imports of communication satellites were negligible.

TA-W-26,454; Copperweld Steel Co., Inc., Warren, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,522; Mitel, Inc., Boca Raton, FL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-26,266; Dunlop Tire Corp., Huntsville, AL

The investigation revealed that criterion (1) has not been met. Significant number or proportion of the workers did not become totally or totally or partially separated as required for certification.

TA-W-26,149; Corry Hiebert Corp., Corry, PA

U.S. imports of metal office furniture declined in the relevant time period.

TA-W-26,494; Teledyne Adams, Union, NJ

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-26,469; Pilgrim Sportswear, Summit Hill, PA

A certification was issued covering all workers separated on or after October 7, 1990.

TA-W-26,452; Brockton Sole & Plastic, Inc., Brockton, MA

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,470; Pittsburgh Cut Flower Co., Gibsonia, PA

A certification was issued covering all workers separated on or after October 9, 1990.

TA-W-26,462; GE Aerospace—GESD, Gibbsboro, NJ

A certification was issued covering all workers separated on or after October 7, 1990.

TA-W-26,472; Tri-Teck Controls, Midland, TX

A certification was issued covering all workers separated on or after September 2, 1990 and before July 31, 1991.

TA-W-26,517; Harkins & Co., Alice, TX

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,500; Anadrill Schlumberger, Scott, LA

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,501; Parker Hannifin Corp., Atlas Cylinder Div., Eugene, OR

A certification was issued covering all workers separated on or after October 14, 1990.

TA-W-26,497; Western Atlas International/Atlas Wireline Service, Magnolia, AR

A certification was issued covering all workers separated on or after January 1, 1991 and before December 1, 1991.

TA-W-26,474; Aero-Motive, Kalamazoo, MI

A certification was issued covering all workers separated on or after October 28, 1990.

TA-W-26,435; M. Liman Co., Minneapolis, MN

A certification was issued covering all workers separated on or after September 4, 1990.

TA-W-26,436; M. Liman Co., Onamia, MN

A certification was issued covering all workers separated on or after September 4, 1990.

TA-W-26,437; M. Liman Co., Lake City, MN

A certification was issued covering all workers separated on or after September 4, 1990.

TA-W-26,524; Power Tongs, Inc., Farmington, NM

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,503; Bigard Drillers, Inc., Mt. Pleasant, MI

A certification was issued covering all workers separated on or after November 4, 1991.

TA-W-26,486; Encore Shoe Corp., Chase City, VA

A certification was issued covering all workers separated on or after October 17, 1990.

TA-W-26,247; Kamei USA, Inc., North Haven, CT

A certification was issued covering all workers separated on or after August 13, 1990.

TA-W-26,499; Akerman, Inc., Waukesha, WI

A certification was issued covering all workers separated on or after October 11, 1990.

TA-W-26,407; G-III Leather Fashion, New York, NY

A certification was issued covering all workers separated on or after September 30, 1990.

TA-W-26,519; Leaf, Inc., Chicago, IL

A certification was issued covering all workers separated on or after October 18, 1990.

TA-W-26,321; Bentley Industries, Inc., Evans City, PA

A certification was issued covering all workers separated on or after September 5, 1990.

I hereby certify that the aforementioned determinations were issued during the month of December, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: January 2, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-480 Filed 1-8-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,446]

Stroehmann Bakeries, Inc., Williamsport, PA.; Negative Determination Regarding Application for Reconsideration

By an application dated December 30, 1991, Local # 6 of the Bakery, Confectionery and Tobacco Workers Union (BC&T) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on December 6, 1991 and published in the **Federal Register** on December 27, 1991 (56 FR 67104).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produce bakery products—snack cakes, sweet goods and donuts.

The union states that the predominant portion of its bakery products, including

fruit cake production, was transferred to Canada. Also, the application confuses the U.S. import ratio to domestic production with the subject firm's domestic market share.

The Department's denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. Investigation findings show that U.S. imports of bakery products were negligible in 1990 compared to 1989. The ratio of imports to total domestic production was less than two percent in 1990 compared to 1989. This ratio has nothing to do with the subject firm's domestic market share.

The findings show that the predominate share of business was for the export market (Canadian) and that none of the exported baker production is imported. The findings show that all fruit cake production was transferred to Canada in 1989—a period outside the scope of the workers' petition. The findings also show that the production of snack cakes was transferred to Canada and sweet goods to another domestic facility by December 1991. The loss of export production and the loss of production to another domestic facility would not form a basis, in themselves, for a worker group certification. Also, the findings show that the production of donuts at Williamsport will cease in mid-1992.

The union may wish to file a new petition, if within the next year the Canadian affiliate exports bakery products into the U.S.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 2nd day of January 1992.

Barbara Ann Farmer,

Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 92–479 Filed 1–8–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–26,369]

Teledyne Wisconsin Motor West Allis, WI; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated December 27, 1991, Local 283 of the United Auto Workers (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on November 27, 1991 and published in the **Federal Register** on December 20, 1991 (56 FR 66086).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produce component parts for air-cooled engines.

The union claims that the workers were certified earlier for trade adjustment assistance and should be certified again since their situation has not changed.

Investigation findings show that the workers were certified earlier under petition TA–W–23,244. That certification was based on the company's internal imports of complete air-cooled engines. The plant has not produced complete engines since April 1990 when all engine production was transferred to an existing company facility in Tennessee.

The Department's denial was based on the fact that the increased import criterion as well as the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. Investigation findings show that there were no company imports of air-cooled engine component parts. The findings also show that production of component parts at West Allis is integrated into the production at other Teledyne facilities. Consequently, workers at West Allis may be certified if their separation was caused importantly by a reduced demand for their production from corporately-affiliated production facilities whose workers independently meet the statutory criteria for certification. These conditions have not been met for workers producing air-cooled engine parts at West Allis.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 1st day of January 1992.

Robert O. DeSlongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92–476 Filed 1–8–92; 8:45 am]

BILLING CODE 4510–30–M

Revised Schedule and Remuneration for the UCX Program

Under section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 1992.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 5 U.S.C. 8521(a)(2) and 20 CFR 614.12, applies to "First Claims" for UCX which are effective beginning with the first day of the first week which begins after April 4, 1992.

Pay grade	Monthly rate
(1) Commissioned Officers:	
O–10	$10,157
O–9	9,189
O–8	8,437
O–7	7,597
O–6	6,435
O–5	5,432
O–4	4,462
O–3	3,593
O–2	2,875
O–1	2,144
(2) Commissioned Officers With Over 4 Years Active Duty As An Enlisted Member Or Warrant Officer:	
O–3E	4,103
O–2E	3,432
O–1E	2,827
(3) Warrant Officers:	
W–4	4,056
W–3	3,429
W–2	2,953
W–1	2,461
(4) Enlisted Personnel:	
E–9	3,707
E–8	3,150
E–7	2,731
E–6	2,355
E–5	2,007
E–4	1,679
E–3	1,478
E–2	1,354
E–1	1,191

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, DC, on January 2, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92-478 Filed 1-8-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-436), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Advancement Expansion Arts Section) to the National Council on the Arts will be held on January 28-29, 1992 from 9 a.m.-5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 28, from 9 a.m.-9:30 a.m. The topic will be introductory remarks.

The remaining portions of this meeting on January 28 from 9:30 a.m.-5 p.m. and January 29 from 9 a.m.-5 p.m. are for the purpose of application review on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: January 3, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-469 Filed 1-8-92; 8:45 am]

BILLING CODE 7537-01-M

Panel; Media Arts Advisory

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Prescreening #2 Section)) to the National Council on the Arts will be held on January 21-22, 1992 from 9 a.m.-6:30 p.m. and January 23 from 9 a.m.-6 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: January 3, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-468 Filed 1-8-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

DOE/NSF Nuclear Science Advisory Committee; Meeting

The National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: February 7, 1992 from 8:30 a.m. to 5 p.m.

Place: NSF Conference and Training Center, National Science Foundation, 1110 Vermont Avenue, NW., room 500-A, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: John W. Lightbody, Program Director for Nuclear Physics, National Science Foundation, Washington, DC 20550, (202) 357-7993.

Minutes: May be obtained from contact person.

Purpose of meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda:

- Discussion of FY 1993 Budget—Agency Representatives.
- Interim Discussion of Charge on Budget Priorities.
- Nuclear Data Subcommittee Report.
- Discussion of Actions on Separated Stable Isotope Availability.
- Public Comment.

Dated: January 6, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-522 Filed 1-8-92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Engineering Centers Division; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate the project and provide advice and recommendations. Because the project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), The Government in the Sunshine Act.

Name: Advisory Panel for Engineering Centers Division.

Date: February 5-6, 1992.

Time: 8:30 a.m.—5 p.m.

Place: Mississippi State University Mississippi State, Mississippi 39762.

Type of Meeting: Closed.

Agenda: Site visit to review and evaluate the Engineering Research Center for Computational Field Simulation.

Contact: Dr. Frederick Betz, Program Director, Engineering Centers Division, National Science Foundation, room 1121, Washington, D.C. 20550, Telephone: 202-357-9707.

Dated: January 6, 1992.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 92-520 Filed 1-8-92; 8:45 am]
BILLING CODE 7555-01-M

Federal Network Council Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Federal Network Council Advisory Committee.

Date and Time: January 29, 1992; 9 a.m. to 4 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Ms. Lynn Behnke, Executive Assistant, Federal Networking Council, 4001 N. Fairfax Drive, suite 200, Arlington, VA 22203-1614. Telephone: (703) 522-6410.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide the Federal Networking Council (FNC) with technical, tactical, and strategic advice concerning policies and issues raised in the implementation and deployment of the National Research and Education Network (NREN).

Agenda: FNC Working Group updates, discussion of network usage rules, discussion of intellectual property rights and liability issues, briefing on legislation progress, update of plans for achieving operational coordination among FNC members, and on overview of projects concerning networking in education.

Dated: January 6, 1992.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 91-521 Filed 1-8-91; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR parts 50 and 52—Training and Qualification of Nuclear Power Plant Personnel.

3. The form number if applicable: NA.

4. How often the collection is required: Continuing maintenance of training program records and job performance qualification records for the duration of employment.

5. Who will be required or asked to report: Power reactor applicants and licensees.

6. An estimate of the number of responses: 85.

7. An estimate of the total number of hours needed to complete the requirements or request: 66,300 hours (780 hours per applicant/licensee).

8. An indication of whether Section 3504(h), Public Law 96-511 applies: Applicable.

9. Abstract: 10 CFR 50.120, and conforming amendments to 10 CFR part 52 require each applicant for and each holder of a license to operate a nuclear power plant to establish, implement, and maintain a training program for nuclear power plant personnel that provides qualified personnel to operate and maintain the facility in a safe manner in all modes of operation.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0011 and 3150-0150), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance officer is Brenda Jo Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 31st day of December 1991.

For the Nuclear Regulatory Commission.
Gerald F. Cranford,
Designated Senior Official for Information Resources Management.
[FR Doc. 92-510 Filed 1-8-92; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43 issued to Detroit Edison Company (the licensee) for operation of the Fermi-2 facility located in Monroe County, Michigan.

The proposed amendment would reconcile the Technical Specification (TS) required actions for the Emergency Equipment Cooling Water (EECW) and Emergency Equipment Service Water (EESW) systems and the TS required actions for certain systems which receive EECW/EESW cooling.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safely. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not create any new initiating mechanisms or affect any postulated initiating mechanisms for evaluated accidents. The proposed change provides action requirements that address the impact of EECW cooling on certain systems which receive EECW cooling. These action requirements assure that sufficient equipment remains available to safely shutdown the plant as currently evaluated in the (Updated Final Safety Analysis Report) USFAR. The USFAR

evaluation of ECCS performance shows that equipment supported by a single EECW subsystem can meet the acceptance criteria of (10 CFR 50.46). Therefore, the proposed change does not represent a significant increase in the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not result in any modifications to the plant design or manner of system operation and no safety-related equipment or function will be altered. As stated in (1) above, sufficient equipment will be maintained and will be available to initiate safe shutdown of the plant. The requested changes do not create any new accident mode.

(3) Involve a significant reduction in a margin of safety. As stated in (1) above, the proposed action requirements assure that sufficient equipment is available to safely shutdown the plant. The proposed change may also promote safe plant operation by giving a reasonable out-of-service time for corrective and preventive maintenance and testing activities on the EECW and EESW systems without requiring unnecessary reactor shutdowns.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 10, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Monroe County Public Library System, 3700 South Custer Road, Monroe, Michigan 48161. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the

license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Ledyard B. Marsh: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Senior Attorney, Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 5, 1991, as supplemented December 30, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Monroe County Public Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 2d day of January 1992.

For the Nuclear Regulatory Commission.

John Stang,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–509 Filed 1–8–91; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–8008 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Planned Special Exposures" and is intended for Division 8, "Occupational Health." This guide is being developed to provide guidance on the conditions, prerequisites, and requirements for monitoring and reporting for planned special exposures to radiation that are allowed by the revision to 10 CFR part 20, "Standards for Protection Against Radiation."

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an offician NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. Comments will be most helpful if received by March 6, 1992.

Although a time limit is given for comments on this draft, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 30th day of December 1991.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 92–511 Filed 1–8–92; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

This draft guide, temporarily identified by its task number, DG–0002, is a proposed appendix X, "Guidance on Complying with New Part 20 Requirements," to Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Use Programs." This proposed appendix discusses the major differences introduced by the revision to 10 CFR part 20, "Standards for Protection Against Radiation," that modify the guidance provided in Regulatory Guide 10.8 for the conduct of medical use programs.

This draft guide is being issued to involve the public in the early stages of the development a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data.

Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by March 6, 1992.

Although a time limit is given for comments on this draft, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Station. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S. 552(a))

Dated at Rockville, Maryland, this 30th day of December 1991.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 92-512 Filed 1-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-528-OLA-3 et al.]

Arizona Public Service Co., et al.; Prehearing Conference and Order Scheduling Filing of Pleadings

Before Administrative Judges: Robert M. Lazo, Chairman, Jerry R. Kline, Peter S. Lam; In the Matter of: Arizona Public Service Co., et al. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3)

[Docket Nos. 50-528-OLA-3, 50-529-OLA-3, 50-530-OLA-3; ASLBP No. 92-654-01-OLA-3; (Automatic Closure Interlock for Shutdown Cooling Valves)]

January 2, 1992.

I.

Petitioners for Leave to Intervene, Allan L. Mitchell and Linda E. Mitchell, or their respective counsel; counsel for Licensees, Arizona Public Service Company *et al.*; and counsel for the NRC Staff are directed to attend a prehearing conference on March 24, 1992 beginning at 9:30 a.m. at: Courtroom No. 5, Sixth Floor, United States District Courthouse, 230 North First Avenue, Phoenix, Arizona 85025.

The prehearing conference will continue, to the extent necessary, on March 25, 1992.

The purpose of the prehearing conference is to hear oral arguments on amended and supplemental petitions for leave to intervene and answers thereto. Among matters to be considered by the Atomic Safety and Licensing Board at the conference are those necessary to make a determination as to the parties, if any, to the proceeding and to identify key issues, if any, in the proceeding.

II.

Pleadings shall be filed in accordance with the following schedule:

Pursuant to the provisions of 10 CFR 2.714(b), petitioners, who have filed a request for a hearing and a request for leave to intervene, shall file no later than January 27, 1992 a Supplemental Petition which must include a list of the contentions which petitioners seek to have litigated in the hearing and which satisfy the requirements of paragraph (b)(2) of § 2.714 of the Commission's Rules of Practice.

An answer addressing the admissibility of each contention set forth in a Supplemental Petition shall be filed by Licensees no later than February 14, 1992, and by the NRC Staff no later than March 2, 1992.

The pleadings are to be in the hands of the Licensing Board and other parties on the due date.

The prehearing conference is open to the public.

It is so *Ordered.*

Issued at Bethesda, Maryland, this 2nd day of January 1992.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 92-412 Filed 1-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-317]

Baltimore Gas & Electric Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-53, issued to Baltimore Gas & Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant Unit No. 1 located in Calvert County, Maryland.

The proposed amendment would revise Technical Specification (TS) 4.5.1.a.2, Safety Injection Tanks Surveillance Requirements, to exempt Safety Injection Tank (SIT) Isolation Value MOV-644 from the requirement to verify that it is in the open position.

Specifically, the licensee indicates that compliance with TS 4.5.1.a.2 for value MOV-644 would require entry into containment every 12 hours during operation which results in unnecessary radiation exposure with no corresponding safety benefit.

The licensee further indicates that the need for this change could not have been foreseen: MOV-644 was closed to permit repairs to a leaking check value during an unplanned shutdown on December 22, 1991. Upon completion of the repairs, MOV-644 failed to reopen. Eventually, the licensee succeeded in opening the value. Failure of the value to reopen is attributed to a bent value stem. The licensee has welded MOV-644 in the open position until the spring 1992 refueling outage during which repairs or replacement will be performed. In the interim, the licensee is proposing to amend TS 4.5.1.a.2 to exempt MOV-644 from the surveillance requirement.

The remote position indication for MOV-644 has been disabled as the result of a temporary modification. Therefore, the licensee proposes to eliminate, for MOV-644 only, the TS 4.5.1.a.2 surveillance requirement. Welding of the value stem to the value yoke maintains value MOV-644 in the open position, therefore eliminating the need to comply with the TS 4.5.1.a.2 surveillance requirement. This TS change would be effective until the end of the spring 1992 refueling outage.

The licensee states that exigent circumstances pursuant to 10 CFR 50.91 exist with respect to the need for consideration of the proposed amendment. The need for this change could not have been foreseen in that it resulted from corrective maintenance activities being performed during an unplanned outage to repair a leaking check value. Application for an amendment was made as soon as possible following the determination of the appropriate course of action. The current TSs require personnel to enter the containment during power (Mode 1) operation every 12 hours to verify that MOV-644 is in the open position even though it is welded open. This results in unnecessary radiation exposure with no

corresponding safety benefit, which is inconsistent with the objectives of maintaining occupation radiation exposures to as low as reasonably achievable (ALARA). On this basis, the staff finds that a condition of exigency exists and is providing a notice period of 15 days in this notice for the receipt of comments.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change has been evaluated against the standards in 10 CFR 50.92 and has been determined to not involve a significant hazards consideration, in that operation of the facility in accordance with the proposed amendment:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The open or closed position of Safety Injection Task isolation values are not considered an initiator for any accidents previously evaluated. Therefore, the probability of previously evaluated accidents would not be increased by the requested change.

Previously evaluated accident analyses assume that Safety Injection Tank isolation values are open. The requested change eliminates the verification of that condition for one value but the value has been welded in the open position. Therefore, it has been assured that the value will function as required during any previously analyzed accident and that there will be no increase in consequences due to the requested change.

Therefore, this change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

Welding the valve yoke stem to the valve yoke on MOV–644 ensures that the valve will remain open during Modes 1, 2 and 3, thus eliminating the need for periodic verification of valve position in those Modes. The only new or different type of accident that could be created by failing to verify the isolation valve position would be the unknown closure of the valve. However, this possibility is precluded by welding the valve in the open position. This change in surveillance requirements does not affect the design and function of the isolation valve, nor the operation of the isolation valve as the valve's design and function is to remain open in Modes 1, 2 and 3 and the valve is not allowed to be operated in those Modes.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The margin of safety provided by this surveillance requirement is the assurance that the isolation valve is open. The need to verify that the valve is open has been eliminated by welding the valve in the open position. Therefore, the proposed change would not involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazard consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 10, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, a petitioner shall file a supplement to the

petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to D. A. Brune, Esq., General Counsel, Baltimore Gas and Electric Company, P.O. Box 1475, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 31, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 31st day of December 1991.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–513 Filed 1–8–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Portland General Electric Company, (Trojan Nuclear Plant, Unit 1); Exemption

I.

Portland General Electric Company (PGE, the licensee) is the holder of Facility Operating License No. NPF–1, which authorizes operation of the Trojan Nuclear Plant. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Columbia County, Oregon, on the Columbia River.

II.

Pursuant to 10 CFR 55.59(a), "Each licensee shall—(1) Successfully complete a requalification program developed by the facility licensee that has been approved by the Commission. This program shall be conducted for a continuous period not to exceed 24 months in duration. (2) Pass a comprehensive requalification written examination and an annual operating test." Also, pursuant to 10 CFR 55.59(c)(1), "The requalification program must be conducted for a continuous period not to exceed two years, and upon conclusion must be promptly followed, pursuant to a continuous schedule, by successive requalification programs."

III.

By letter dated March 27, 1991, the licensee requested an exemption under 10 CFR 55.11 from the annual and biennial schedule requirements of 10 CFR 55.59 (a) and (c). The licensee is requesting a 6-month extension in 1991 to align the Trojan requalification program with the National Examination Schedule. This one-time exemption will result in a permanent adjustment to the 24-month requalification cycle and the

annual requalification examination schedule.

Generic Letter 89–03 established the National Examination Schedule and allotted examination months of December and June to Trojan Nuclear Plant. The licensee stated that the current examination schedule would cause hardships due to the compression of the training cycle which would be required. Also, the exemption is necessary to avoid operators' duplicative effort because of the misaligned schedules between the NRC- and licensee-administered requalification examinations.

Compliance with the regulations would create the hardship discussed above. Granting the exemption would allow a one-time, 6-month extension to the annual and biennial schedule requirements, and it would alleviate the hardship discussed above. Also, the licensee has stated that the annual requalification examination for the current retraining cycle will not be affected by the proposed extension.

Pursuant to 10 CFR 55.11, "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest."

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 55.11, that an exemption as described in section III is authorized by law, will not endanger life or property, and is otherwise in the public interest. Therefore, the Commission hereby grants Portland General Electric Company an exemption from the requirements of 10 CFR 55.59 (a) and (c) not to exceed December 31, 1991.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant impact on the quality of the human environment (56 FR 67637).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of December 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–507 Filed 1–8–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, San Diego Gas and Electric Company, the City of Anaheim, California, and the City of Riverside, California; (San Onofre Nuclear Generating Station, Units 2 and 3)

Exemption

I.

The Southern California Edison Company, the San Diego Gas & Electric Company, the City of Anaheim, California, and the City of Riverside, California (the licensees) are holders of Facility Operating License Nos. NPF–10 and NPF–15 which authorize operation of San Onofre Nuclear Generating Station Units 2 and 3. The license provides, among other things, that the licensees are subject to all rules, regulations and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized water reactors at the licensees' site located in San Diego County, California.

II.

Purusant to 10 CFR 55.59(a) and (c), each licensed operator is required to successfully complete a requalification program. This program is to be conducted for a continuous period not to exceed 24 months in duration and upon its conclusion must be promptly followed by a successive requalification program.

III.

By letter dated November 5, 1991, the licensees requested an exemption under 10 CFR 55.11 from the requirements of 10 CFR 55.59 (a) and (c). Pursuant to a recommendation contained in NUREG–1021, "Administration of NRC Requalification Program Evaluations," the licensees are realigning the San Onofre operator requalification program with an NRC National Examination Schedule. The realignment necessitates extending the end date of the current San Onofre requalification program from December 1991 to January 1992. The exemption constitutes a one-time extension of the requalification program duration from 24 to 25 months.

Pursuant to 10 CFR 55.11, "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest."

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 55.11, that an exemption as described in section III is authorized by law, will not endanger life or property, and is otherwise in the public interest. Therefore, the Commission hereby grants the Southern California Edison Company, et al., an exemption from the requirements of 10 CFR 55.59(a) and (c) not to exceed January 31, 1992.

Pursuant to 10 CFR 51.21, 51.32, and 51.35 the Commission determined that the granting of this exemption will not have a significant effect on the quality of the human environment (56 FR 67637).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of December 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–508 Filed 1–8–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash (202) 272–2142.

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002.

Extension: Rule 15c3–3; File No. 270–87; Rule 23c–1; File No. 270–253; Form N–5; File No. 270–172.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980, the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15c3–3 [17 CFR 240.15c3–3] under the Securities Exchange Act of 1934, Rule 23c–1 [17 CFR 270.23c–1], under the Investment Company Act of 1940, and Form N–5 [17 CFR 274.5] under Securities Act of 1933 and the Investment Company Act of 1940.

Rule 15c3–3 requires broker-dealers to maintain certain records in connection with their compliance with the Rule's requirements that broker-dealers maintain possession of and segregate customer funds and securities. Approximately 1,000 respondents incur an average burden of 110 hours per year to comply with this rule.

Rule 23c–1 sets forth conditions for the repurchase, by a registered closed-

end investment company, of its own securities. Approximately 23 registered closed-end investment companies use the rule annually. Estimated annual compliance time per registrant is 2.5 hours.

Form N–5 is the registration statement for small business investment companies under the Securities Act of 1933 and the Investment Company Act of 1940. Approximately two registration statements on Form N–5 are filed annually, with an estimated compliance time of 350 hours.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 2, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–523 Filed 1–8–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30135; File No. SR–GSCC–91–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Proposed Rule Change Concerning Changes to the Margin and Funds Collection Process

December 31, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on November 7, 1991, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify GSCC's procedures for determining member clearing fund requirements, and it would modify the time and manner of collecting required deposits. Specifically, the proposal would: (1) Establish formal procedures that GSCC would use to determine whether a bank or trust company may be approved as an issuer of letters of credit for clearing fund purposes; (2) make all Treasury securities eligible as clearing fund collateral; (3) allow GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceeded 20% of the total clearing fund; (4) allow GSCC to collect 100% of marks-to-the-market on account of a netting member's eligible forward-settling trades; (5) allow GSCC to include in the calculation of a netting member's required clearing fund deposit the weighted average of the netting member's forward net settlement positions over the most recent 20 business days; (6) allow GSCC to correlate quarterly returns of excess clearing fund collateral with refunding periods; (7) require netting members to satisfy a deficiency in the required clearing fund deposit on the day the member is notified of the deficiency; (8) require, in most cases, that clearing fund deficiencies be satisfied by 12 noon or two hours after the deficiency notice has been provided to the netting member, whichever is later; (9) require members to make funds-only settlement payments by 9 a.m.; and (10) supplement GSCC's authority to require additional margin deposits.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Based on almost two years of experience in netting, GSCC has assessed the means by which, through margin (*i.e.*, clearing fund deposits and forward mark allocation payments) and funds payments, it protects itself from the consequences of a potential default by a netting member on its obligations to GSCC. As a consequence of this assessment, GSCC believes that certain changes in its margin and funds collection processes are now appropriate in order to further ensure that a member's activity would not present undue exposure to GSCC. In making these changes, GSCC has sought to avoid imposing undue administrative burdens on its members.

The various changes made by this rule filing are reviewed below (in no particular order).

1. Standards for Approving Issuers of Letters of Credit for Clearing Fund Purposes

The acceptance by GSCC of letters of credit to secure a member's open account indebtedness to the clearing fund is subject to scrutiny based on a number of areas of concern to GSCC, one of which is whether the issuer of the letter of credit is a sufficiently liquid and creditworthy institution. In recent years, this concern has been heightened as the general financial status of the banking industry has become weaker.

Currently, a bank or trust company that is organized under federal or state law may become an approved issuer if it:

(i) Is permitted by law to lend to any single borrower an amount equal to at least $10 million, *or*

(ii) Has a rating for its short-term obligations of "A–1" or better by Standard & Poor's Corporation or "P–1" or better by Moody's Investors Service, Inc.

A foreign bank with a State or Federal branch in the United States may become an approved issuer if: (1) It has either a "P–1" or an "A–1" short-term obligations rating, and (2) it has total worldwide consolidated bank assets of at least $1 billion.

GSCC would revise the standards that it uses to determine whether a bank or trust company may be approved as an issuer of letters of credit for clearing fund purposes—which standards are based on the current standards of the National Securities Clearing Corporation ("NSCC"). These standards for approving issuers of letters of credit for clearing fund purposes would be revised such that any domestic or foreign bank would be required—in order to qualify as an issuing bank—to have: (1) Either $750 million in total shareholders' equity and a short-term obligations rating of not less than A–2 (by Standard & Poor's Corporation) or P–2 (by Moody's Investors Service, Inc.), or $300 million in total shareholders' equity and a short-term obligations rating of not less than A–1 or P–1, and (2) its letters of credit be able to be readily pledged by GSCC pursuant to an arrangement established by GSCC with the trust company that holds GSCC's

margin collateral to obtain credit in an amount equal to at least 80 percent of the letters' stated value.

These standards would be subject to the following understandings, which have been made expressly clear in the rule filing:

(1) The relevant short-term ratings are those for the unsecured, uninsured, unguaranteed short-term obligations of the issuing bank, and not of its parent holding company.

(2) A bank may not be approved as a letter of credit issuer if one of its short-term obligations ratings is lower than A–2 or P–2; thus, a "split" rating of A–2/P–3 or P–2/A–3 is not acceptable.

(3) For a bank to be approved and to continue as an issuing bank for GSCC letter of credit purposes, it must confirm periodically that it is maintaining continued compliance with the applicable capital standards established for it by each of its regulatory authorities.

(4) A foreign bank acting through a branch or agency in the United States may not be approved as a letter of credit issuer unless a sufficient guarantee of performance of such branch or agency is received by GSCC from the bank.

The new issuer standards would ensure that an issuing bank is of sufficient creditworthiness and liquidity, without unduly limiting the choice that members have as to which bank they use to issue letters of credit on their behalf. Specifically, the $750 million equity and top two short-term obligations rating standard would ensure that only a domestic bank that is among the roughly 30 largest banks in the United States and that has a strong short-term obligations rating would be eligible to be approved as a letter or credit issuer. The alternative criterion would allow a smaller (roughly the top 100 largest in the United States), yet still sizable, bank that has a top short-term credit rating to be eligible to be approved as a letter of credit issuer. Thus, size would not be the sole factor in determining whether a bank is eligible to be approved as a letter of credit issuer.

Further, the second requirement (able to be readily pledged under GSCC's pledge arrangement—which currently is with Security Pacific National Trust Company (New York)—for at least 80 percent credit) would ensure that the liquidity benefits provided by the pledge arrangement would be sufficiently realized.

2. Scope of Eligible Collateral

Currently, only Treasury securities with a remaining maturity of one year or less are eligible as margin collateral. Given the safety and liquidity of Treasury securities in general, GSCC believes it is appropriate, in order to provide its netting members with increased flexibility as regards which collateral may be posted for clearing fund deposit purposes, to make all Treasury securities eligible as clearing fund collateral. Those with remaining maturities of more than one year would carry an appropriate haircut—3 percent for Treasury securities with a remaining maturity of up to and including 10 years, and 5 percent for Treasury securities with a remaining maturity of over 10 years.

3. 20 Percent Concentration Limit

Currently, GSCC may not accept a letter of credit issued by any institution, if, as a result of such acceptance, more than 20 percent of the letters of credit held by GSCC as collateral (both for clearing fund and forward mark allocation purposes) would consist of letters of credit issued by the institution, unless the Board of Directors ("Board") determines a higher amount to be appropriate. To date, the application of this limit has been waived by the GSCC Board.

During the roughly two years that GSCC has been providing netting services and requiring margin from its netting members, letters of credit have remained a relatively small portion of the total clearing fund; normally, the level of letters of credit has been between one-fifth to one-fourth of the total value of the clearing fund. In view of this and given that the more relevant measure of exposure to any single issuing bank is the relationship of the bank's letters of credit to the entire clearing fund, the rule filing changes the cap to one that would prohibit GSCC from accepting a letter of credit issued by any institution if, as a result of such acceptance, the lesser of either 20 percent of the total clearing fund or the portion of such letters of credit that are eligible for ready pledge to GSCC's agent bank or banks in order to obtain temporary credit would consist of letters of credit issued by that institution. GSCC would have the discretion to, on a case-by-case basis, waive the application of this limitation.

4. Raise to 100 Percent the Cap on Forward Mark Allocation Amounts

GSCC's margining system for forward-settling trades is designed to ensure that the failure of the five members with the largest debit mark levels on any given day on forward-settling trades (on a per-CUSIP basis) would not disrupt GSCC's ability to successfully settle the day's government securities trades. The applicable margin requirement is calculated each day on a CUSIP-by-CUSIP basis for dealers in a debit position by multiplying their debit mark amount by a fraction, the numerator of which is the total of the debit mark amounts of the members with the five largest debit mark amounts, and the denominator of which is the total of the debit mark amounts of all dealer members.

In view of the concerns regarding depleting large amounts of liquidity from members, a cap of 75 percent was placed on this percentage when forward trades were made eligible for the net in April 1990. After a year's experience in netting and margining forward trades, GSCC now beleves—in view of the large forward net settlement positions that members can and often do incur (particularly during refunding periods)—that the maintenance of this cap at this level is not appropriate.

Thus, the rule filing raises this cap to 100 percent. This would allow GSCC to collect, in most situations, the entire amount of the top five daily member debits in each CUSIP. While the imposition of this measure would not increase the actual dollar amount of margin collected by GSCC in all situations (i.e., forward net settlement positions may be fairly evenly distributed, such that the 75 percent level is not reached), it would increase the dollar amount collected by GSCC in the event that certain members create a relatively large exposure for GSCC vis-a-vis other members.

5. Factor Forward Net Settlement Positions in the 20-Day Average for Clearing Fund Calculation Purposes

GSCC's clearing fund formula provides for the collection of 125 percent of the member's average daily funds-only settlement amount over the most recent 20 business days (which 20-day period may be weighted by GSCC to reflect the currentness of such amounts) and the greater of: (1) the margin amount on the member's net settlement positions taking into account offsetting positions averaged over the most recent 20 business days (which 20-day period may be weighted by GSCC to reflect the currentness of such amounts) or, (2) 50 percent of the margin amount for that business day on the member's net settlement positions calculated without taking into account offsetting positions.

Currently, a member's net securities and funds-only settlement obligations arising from forward-settling trades are factored into the calculation of such member's clearing fund requirement during the post-auction forward-settling

period essentially in the same manner as is done with regard to regular-way trading, except that forward net settlement positions are factored into the 20-day average only for purposes of the current day's calculation. This latter feature was designed to avoid having members' clearing fund requirements be artificially inflated during the post-settlement period as the result of periodic forward trading activity that has since been settled.

GSCC has reconsidered this limited use of forward settlement positions for clearing fund calculation purposes in light of the growing amount of forward activity that enters the net—particularly in non-new issue securities—and the ever increasing amounts of new Treasury security issuances, and now believes that is is more appropriate to have members' settlement obligations arising from forward-settling trades be factored into each 20-day average. In order to avoid draining large amounts of liquidity from members, GSCC would retain the discretion to take specific CUSIPs out of the 20-day average after their issue date had been reached. This discretion likely would be exercised for certain "non-routine" issues, such as members' quarterly refunding activity, which normally is much larger than any other forward trading activity.

6. Correlate Quarterly Returns of Excess Collateral With Refunding Periods

Currently, excess clearing fund collateral is returned in the ordinary course at the end of each quarter. Excess clearing fund collateral otherwise may be returned on a case-by-case determination; this is commonly done after a refunding period has ended because the amount of members' required clearing fund deposits falls dramatically after the settlement of the refunding.

Given this situation, GSCC believes it is more appropriate to use the second business day after each quarterly refunding issue date (when GSCC may have exercised its discretion to take specific CUSIPs out of the 20 day average, as discussed above) as the date on which the amount of excess collateral available for return is calculated. This would likely end the burdensome practice of having returns of clearing fund deposits being made to a large number of members more than once in a quarter.

It should be noted that, whenever GSCC informs members that they may request the return of excess collateral, the members are encouraged to maintain a "cushion" of excess collateral, so that repeated calls for additional collateral can be avoided. After a refunding period, members' clearing fund requirements often drop to a relatively low level, such that if the return of all of the excess collateral is requested, the member could be called for additional collateral prior to or at the time of the return of the "excess" amount. Thus, in order to bridge the readjustment period after a refunding in a manner least burdensome to members, GSCC would intend to strongly urge members—in its notice to them informing them of the amount of excess collateral, if any, that they may have returned—that they maintain an excess amount of collateral in the amount of the lesser of 25 percent of the excess amount or $1 million.

7. Convert All Clearing Fund Deficiency Calls to a Same-Day Basis

There are various circumstances pursuant to which a member may be asked to post additional clearing fund collateral to make up a deficiency. These may be said to fall within three general categories:

(1) There is a monthly call for any clearing fund deficit amount. If there is a deficit call, the member has three business days thereafter to deposit that amount. In practice, few deficiency calls are made pursuant to this monthly report; in most cases, the need for such has been taken care of by GSCC's other deficiency request procedures.

(2) A three-business-day call is triggered if a member's required clearing fund deposit level is 110 percent or more of the value of the member's deposits to the clearing fund as of a particular day.

(3) A same-day call is triggered for various reasons, including if a member's current day's required clearing fund deposit level exceeds by more than either 25 percent or $250,000 the value of its clearing fund collateral.

Given the obvious desirability of having margin deficiencies of any significance be collected as soon as possible, the rule filing eliminates the three-business-day call category, and has all deficiency calls, including the monthly call, be made on a same-day basis. Also, in view of the fact that a same-day call would be triggered by a clearing fund deficit of $250,000, the 110 percent parameter would be eliminated. These procedures, which were originally crafted based on standards applied by GSCC's affiliate, NSCC, are, based on GSCC's experience to date, most appropriate for the government securities marketplace.

8. Move to Earlier in the day the Deadline for Receipt of Additional Required Clearing Fund Deposit

Currently, if GSCC makes a clearing fund call on a same-day basis, the requisite deposit is due by 5 p.m. (except that, if the call is not made until 3 p.m. or later, the deposit is due by noon of the following day). In almost all situations, the deficiency call is made early in the morning; however, the deposit often is not received until late in the day. This is undesirable, for two reasons. First, the additional clearing fund collateral is needed to protect GSCC from the risk of default presented by the current day's settlement activity; thus, the collateral, to serve its function, should be received early in the day. Also, the current 5 p.m. deadline leads to unwarranted uncertainly as to whether the deposit would be made that day.

As a result, GSCC would require deposits to be made by the later of noon or two hours after the deficiency notice has been provided to the member (except that, if the notice is not provided until less than two hours before the close of the cash Fedwire on that day, the member would have until its applicable time deadline for the payment of funds-only settlement amounts to GSCC on the following day to make the additional deposit). GSCC believes that this timeframe is sufficient for a member to arrange for the necessary wire transfer of funds and/or securities or the delivery of an amendment to an outstanding letter of credit increasing the amount of such letter.

It should be noted that this proposed change would compliment the above described change to eliminate three-day deficiency calls, in that both changes would promote a more prompt collection by GSCC of margin deficiencies.

9. Require Funds-Only Payment to be Made One Hour Earlier

Currently, if a member owes funds to GSCC, payment of such funds obligation is required to be made by one-and-a-half hours after the opening of the Fedwire (i.e., normally, by 10 a.m.). GSCC believes that moving to earlier in the day the deadline for funds-only payments to be made by members to GSCC is an appropriate measure in order to collect mark and margin amounts closer in time to the period of exposure that they are designed to provide protection to GSCC. Thus, the rule filing would move the deadline for members' morning funds payments to GSCC to a half hour after the opening of

the cash Fedwire (*i.e.*, normally, by 9 a.m.). GSCC would, however, grant an exception for members whose principal operational location is outside of the New York City time zone; such members would remain with the current deadline for making funds payments to GSCC.

GSCC would continue to make funds payments to all members in a funds credit position by two-and-a-half hours after the opening of the Fedwire (*i.e.*, normally, by 11 a.m.), at least until some experience is gained with the new funds debit payment deadline.

10. Discretionary Measures

The rule filing would supplement GSCC's authority to call for additional margin in times of stress, relatively high market volatility, and/or relatively high levels of member activity, by establishing the following enhanced measures of margin that would be triggered—for particular members or for all members—should GSCC determine such to be appropriate. These measures would be implemented only upon notice to, and with the concurrence of, the Membership and Standards Committee.

Specifically, GSCC would be able to raise margin requirements under the following specified circumstances:

A. *Periods of particularly high market activity leading to relatively large member positions.* During a refunding period, or other period of relatively great market activity, during which GSCC has higher-than-normal overall exposure from its members, GSCC would have the authority to calculate a member's clearing fund requirement based on the applicable margin amount on the member's current day's net settlement positions, taking into account offsets, if that amount is greater than either the average margin amount asking into account offsets over a prior set period or 50 percent of the current day's gross margin amount. This would, in effect, allow GSCC to collect, at a minimum, during a "large activity" period, the entire amount of the securities settlement exposure presented on each business day by a member to GSCC.

B. *Circumstances leading to the desirability of using GSCC's own price volatility data as an alternate pricing criterion.* GSCC's margin factor schedule is based on daily price volatility data supplied by a third party (Carroll, McEntee and McGinley, Inc.). This data is delineated based on certain set parameters, such as: (1) Being calculated on a quarterly basis, (2) providing for groups of securities based on the particular maturity range that they fall in, (3) reflecting mean plus two standard deviations, to obtain a 95.4 percent confidence level, and (4) being limited to non-zero coupon Treasury securities.

GSCC now has its own price volatility data base, which reflects prices derived from par-weighted averages of compared trades in every government security CUSIP that is eligible for comparison by GSCC, including zero-coupon government securities, for which there is very limited third-party data available. In certain circumstances—for example, for specific CUSIPs that do not follow the yield curve or for time periods that are shorter and more focused than a quarter (*i.e.*, a refunding period)—this alternate price monitoring data may be a more valid indicator of price volatility for margining purposes.

Thus, the rule filing would allow GSCC to routinely consider, in setting members' clearing fund requirements, using margin factors that also reflect GSCC's price volatility data base.

C. *Significant or potentially significant market volatility over a short time period.* GSCC's clearing fund calculation is, as stated above, based on a member's activity over the prior 20 business day period (except that, as noted above, as regards securities settlement exposure, 50 percent of the non-offsetted margin amount for a particular business day can be triggered as an alternate measure). This measure may not be a sufficiently prudent one during a short time period of relatively high market volatility. Therefore, the rule filing would provide GSCC with the authority to set—on a day-to-day basis—members' clearing fund requirement based on a business day period that is shorter than 20.

D. *Significant or potentially significant market volatility leading to uncertainty of offset class correlations.* The margin amount on a member's net settlement positions is calculated using factors (percentages) that are set based on an assessment of historical daily price volatility data. GSCC gives "credit" for offsetting net settlement positions; in order to allow it to do so only to the extent appropriate, "offset classes" for securities of varying maturity, and "disallowance percentages" among those different offset classes, were established (however, irrespective of the nature of the offset between positions, a minimum margin of 50 percent of the margin amount on the member's "gross" positions is collected).

Given the possibility that, during a short-term period, the yield curve may be such as to lead to uncertainty as to the validity of GSCC's general offset class correlations, the rule filing gives GSCC the authority to suspend, for a temporary or indefinite period, the applicability of certain or all of such offsets.

(b) The proposed rule change would enhance GSCC's ability through margin and funds payments, to protect itself from the consequences of a potential default by a netting member of its obligations to GSCC, and would further ensure that a member's activity would not present undue exposure to GSCC. Thus, they are consistent with the requirements of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not perceive that the proposed rule change will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members would be notified of the rule filing, and comments would be solicited, by an Important Notice. GSCC would notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of GSCC. All submissions should refer to File No. SR-GSCC-91-04 and should be submitted by January 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-431 Filed 1-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30145; File No. SR-NASD-91-71]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to a Fee for Form 211 Filings

January 2, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 26, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one constituting a fee that is imposed exclusively on its members under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change that would add new section 15 to Schedule A of the NASD By-Laws. The NASD also proposes that the rule change be implemented on January 1, 1992. Proposed new language is italicized.

Schedule A

Section 15—Fee for Filing Form 211

Each member submitting information to the NASD on Form 211 shall pay a fee of $200.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

(a) Form 211 is required to be filed with the NASD by any member wishing to enter quotes for a security into an interdealer quotation medium. Form 211 contains questions which, when answered fully and truthfully, will demonstrate to the NASD that the member has in its possession the information required under SEC Rule 15c2-11 relating to the issuer whose securities the member wishes to quote.

The NASD estimates that the number of Form 211 filings in 1992 will be at least 1,250, based on present volume. However, in the event the National Quotation Bureau ceases to publish its Pink Sheets, there may be a significant increase in the number of Form 211 filings by members seeking to quote former Pink Sheet securities in the NASD's OTC Bulletin Board.

Upon the filing of a Form 211, the NASD conducts a substantive analysis of the information and makes a determination as to whether the information appears complete and accurate, or whether further inquiry about questionable information is warranted. The NASD estimates that the resources, both staff and equipment, necessary to evaluate the projected number of Form 211 filings will be approximately $330,000 in 1992 based on actual 1991 experience. This figure does not include the resources which would be required to conduct a formal investigation and disciplinary action resulting from a further inquiry into Form 211 filings that contain false or misleading information, or which otherwise may violate Schedule H to the NASD By-Laws or SEC Rule 15c2-11.

In order to recover some of the costs associated with meeting its regulatory obligations, the NASD is proposing to amend Schedule A to the By-Laws by adding a new Section 15 requiring members who submit information to the NASD on Form 211 to pay a fee of $200. The NASD's proposed rule change is expected to generate approximately $250,000 in fees, sufficient to cover approximately seventy-five (75%) of the NASD's projected review costs. The NASD believes that the proposed filing fee is an appropriate method of recovering the costs of an important market regulatory program.

(b) The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other changes among issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of rule 19b-4 thereunder in that it constitutes a rule change that establishes a fee imposed by a self-regulatory organization.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments,

all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-433 Filed 1-8-92; 8:45 am]

BILLING CODE 8010-10-M

[Release No. 34-30137; File No. SR-PTC-91-13]

Self-Regulatory Organizations; Participating Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Close-Out of Repurchase Agreement Accounting Records

December 31, 1991.

On November 4, 1991, Participating Trust Company ("PTC") submitted a proposed rule change (File No. SR-PTC-91-13) to the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change appeared in the **Federal Register** on December 16, 1991.[2] No comments were received. This order approves the proposal on an accelerated basis.

I. Description

The proposed rule change would allow PTC to close-out the positions maintained by parties to a repurchase agreement ("repo") [3] upon receipt of a representation from the buyer of securities ("repo buyer" or "repo in participant") that it has the legal right to close-out the repo.[4] The proposed rule change would allow PTC to terminate the crediting of principal and interest ("P&I") equivalents to the repo seller in connection with the close-out.[5]

PTC's rules currently provide that the repo in participant may request a debit to its repo in position "to reflect the fulfillment of its obligation to resell the securities" to the original seller of the securities.[6] If so requested, PTC would debit the repo in position and make a corresponding debit to the repo out position thus eliminating the repo entries and terminating the crediting of the P&I equivalents to the repo seller.

Although not specified in the rule, PTC has allowed the repo in participant, pursuant to the provision regarding the resale of securities,[7] to instruct PTC to eliminate the repo positions in situations, other than the resale of securities to the repo out participant, where, consistent with the participant's contractual rights under a repo, the repo in participant has closed-out its position or otherwise has taken action to terminate its obligations to the repo out participant. The proposal would clarify the procedures PTC would follow in eliminating its repo accounting entries in situations other than the resale of securities to the repo out participant (*e.g.*, the default of the repo out participant of its payment obligations under the terms of the repo).

Under the proposal, the repo in participant would provide to PTC a representation that states the repo in participant has the legal right to close-out the repo and instructs PTC to debit the repo positions of the repo buyer and the repo seller.[8] Pursuant to the repo in participant's representation and instruction, PTC would eliminate the repo out and repo in positions as of the effective date specified by the repo in participant.

In connection with the distribution of P&I attributable to the underlying securities, as long as the effective date of the close-out specified in the representation is prior to a PTC P&I distribution date, the repo buyer would be credited with the P&I equivalent attributable to the underlying securities.[9] PTC would notify the repo out participant of the elimination of the elimination of the positions.

II. Discussion

The Commission believes that the proposed rule change is consistent with the Act and particularly with sections 17A(b)(3)(A) [10] and (F) [11] of the Act. Sections 17A(b)(3)(A) and (F) require that a clearing agency be organized, have the capacity to facilitate, and have rules designed to promote the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in its custody or control or for which it is responsible.

The proposal should better enable PTC to safeguard securities and funds by providing efficient procedures for managing repo positions. The Commission also believes that the procedures embodied in PTC's proposal should aid PTC in meeting this statutory requirement by removing any misunderstandings or ambiguities about PTC's procedures governing the close-out of repo transactions.

The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of filing. Accelerated approval will permit PTC to clarify immediately its repo accounting procedures and will remove the risks associated with any misunderstandings or ambiguities that currently exist.

III. Conclusion

On the basis of the foregoing, the Commission finds that PTC's proposed rule change is consistent with the Act and in particular with section 17A of the Act. The Commission also finds good

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[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 30052 (December 9, 1991), 56 FR 65298.

[3] A "repurchase agreement" is a contractual agreement between a seller of securities and a buyer of securities whereby the seller agrees to repurchase the securities at an agreed upon price within a specified period of time (typically less than thirty days) and the buyer agrees to resell the securities.

[4] PTC provides its participants with a repo accounting facility to facilitate the transfer by book-entry of securities issued by the Government National Mortgage Association ("GNMA"). Under this repo accounting facility, the securities seller ("repo seller" or repo out participant") is credited with a "repo out" position, and the repo buyer is credited with a "repo in" position. The parties to a repo are so credited to reflect the right of the repo seller to repurchase the securities and the repo buyer's corresponding obligation to resell the securities.

[5] PTC's repo accounting facility is a book-entry system that, among other things, provides a method for debiting the repo buyer's account and crediting the repo seller's account for the amount of the P&I payment attributable to the underlying securities ("P&I equivalent").

[6] *E.g.*, in situations where the repo buyer has returned the securities to the repo seller by a regular securities transfer instruction message instead of by the appropriate repo retransfer instruction and the positions remain open by mistake, the repo buyer would make such a request. PTC Rules, article III, rule 1, section 1(b).

[7] PTC's Rules, article III, rule 1, section 1(b).

[8] If the repo buyer does not have such right, the repo seller will have recourse to legal action outside of PTC to enforce its contract.

[9] The PTC P&I distribution date, rather than the record date is the specified deadline because upon default of the repo seller, the repo seller's right under the repo agreement to receive P&I payments terminates. In order to have time to make the new entries to the repo accounting system, PTC requires that it receive the repo buyer's representation at least two days before a PTC distribution date.

[10] 15 U.S.C. 78q-1(b)(3)(A).

[11] 15 U.S.C. 78q-1(b)(3)(F).

cause for approving the proposal prior to the thirtieth day after the date of publication of the notice of filing.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–PTC–91–13) be, and hereby is, approved on an accelerated basis.

For the Commission, by the division of Market Regulation, pursuant to the delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–432 Filed 1–8–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1546]

U.S. MAB National Committee for Man and the Biosphere; U.S. MAB Request for Proposals for Urban Environmental Projects

The United States Man and the Biosphere (U.S. MAB) Program, hereby announces its request for proposals to continue its assistance to the U.S. Peace Corps in the development of a worldwide urban environmental projects initiative as described below.

U.S. MAB will accept proposals of a maximum length of six (6) pages which outline how the objectives described below could be accomplished. A curriculum vitae (c.v.) of a maximum length of four (4) pages for each principal(s), that clearly demonstrates a history of competency in the implementation of such tasks, must accompany the proposal. Proposals may not request more than the sum of forty four thousand, eight hundred and eighty four ($44,884) dollars to implement this initiative. All proposals must specify that all tasks will be completed within twelve months at the headquarters of the U.S. Peace Corps or at other appropriate sites, as directed, beginning, approximately, the last week of February 1992. Payments will be made on a quarterly basis in equal installments.

All proposals and accompanying documents must be received by the U.S. MAB Secretariat no later than the close of business (COB) on February 14, 1992. Proposals and c.v.s will be evaluated on the criteria noted in the following section.

Selection will be made during the week of February 17, 1992. Selected candidate principals must be prepared to implement their proposals on or about February 24, 1992.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

Proposals should be sent to: U.S. MAB Secretariat, room 608 SA–37, OES/EGC/MAB, U.S. Department of State, Washington, DC 20522–3706.

Objectives

To provide technical assistance to the U.S. Peace Corps, including but not limited to:

—Coordinate Peace Corps/U.S. Agency for International Development (USAID) support for the Peace Corps urban development initiative, including the identification of project opportunities, developing scopes of work, arranging of contracts and travel for consultancies;

—Review and summarize the Peace Crops' urban development initiative as developed in the Peace Corps annual Integrated Planning and Budget System (IPBS) submission received from Peace Corps field operations and organize the Peace Crops' Office of Training and Program Support (OTAPS) annual support program. The resulting work plan(s) will include the integration of non-Peace Corps resources (e.g., USAID/Regional Housing and Urban Development Offices and the Water and Sanitation and Health (WASH) project) and are reviewed and approved by the appropriate officials in each of the Peace Corps' regional offices.

—Periodically prepare articles and guidelines to be used by the Peace Corps in promoting its urban environmental development initiative.

—Visit U.S. universities to promote the urban environmental program as well as recruit professionally qualified volunteers to participate in Peace Corps' expanding urban program. The urban projects envisioned include such environmental issues as solid waste management, potable water/appropriate sanitation systems and the development of overall growth guidelines for rapidly urbanizing cities of the third world.

—Based on the Cote d'Ivoire urban environmental management project, design and conduct other pilot country specific environmental projects.

—Organize the development of In-Service Training (IST) model(s) for Peace Corps Volunteers (PCVs) working in urban environmentally oriented projects and for local-level host country counterparts, as well as implement country-specific ISTs based on these models.

Selection Criteria

Performance record of the proposed principal.

Demonstrated ability of the proposer to design and deliver assistance in the development of Peace Corps urban development projects and related pre-service and in-service training activities.

Demonstrated ability of the proposer to manage budgets and personnel.

Demonstrated ability of proposer to conduct needs assessments and development project designs.

Fluency in one or more of Peace Corps' official languages: Spanish or French preferred.

For further information concerning technical or grant performance related inquiries, please contact: George Mahaffy, Director, Office of Training and Program Support, U.S. Peace Corps, room 800, 1990 K Street NW., Washington, DC 20526, Telephone: (202) 606–3100.

For further information concerning administrative and grant management inquiries, please contact: Robert E. Soles, Executive Director U.S. MAB, room 608 SA–37, OES/EGC/MAB, U.S. Department of state, Washington, DC 20522–3706, Telephone: (703) 235–2946.

Dated: December 30, 1991.

Roger E. Soles,

Executive Director, U.S. Man and the Biosphere Program.

[FR Doc. 92–403 Filed 1–8–92; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 27, 1991

The following Applications for Certicates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47927.

Date filed: December 23, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 20, 1992.

Description: Joint Application of United Air Lines, Inc. and Pan American World Airways, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations, requests approval of the transfer to United of certain of Pan Am's

certificate, exemption authorities and related flight frequency allocations.

Docket Number: 47929.
Date filed: December 23, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 21, 1992.
Description: Joint Application of Executive Airlines, Inc., Flagship Airlines, Inc., Simmons Airlines, Inc., and Wings West Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, including (to the extent applicable) section 401(h) concerning transfer of certificates, that Executive's certificate of public convenience and necessity for Route 537 be amended and reissued in the names of all of the Joint Applicants, subject to a condition that at any given time only one of them may operate or be designated to operate over a limited-entry route.

Docket Number: 47930.
Date filed: December 24, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 21, 1992.
Description: Joint Application of Trans World Airlines, Inc., and USAir, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations for approval of the transfer to USAir of TWA's certificate authority to serve the nonstop Philadelphia-London and Baltimore-London routes.

Docket Number: 47931.
Date filed: December 24, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 21, 1992.
Description: Application of Worldwide Airline Services, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Act for a certificate of public convenience and necessity authorizing it to engage in scheduled interstate and overseas air transportation of persons, property and mail between points in the United States, its territories and possessions (including the District of Columbia).

Docket Number: 47932.
Date filed: December 24, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 21, 1992.
Description: Application of Worldwide Airline Services, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of persons, property and mail between a point or points in the United States, its territories and possessions (including the District of Columbia) and a point or points in the Caribbean Basin, Mexico and Europe.

Phyllis T. Kaylor,
Chief, Documentary Services Divisions.

[FR Doc. 92-450 Filed 1-8-92; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Albuquerque International Airport, Albuquerque, NM

AGENCY: Federal Aviation Administration, DOT.
ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Albuquerque, New Mexico, for Albuquerque International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Albuquerque International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before June 27, 1992.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 31, 1991. The public comment period ends February 28, 1992.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Airports Division, Southwest Region Office, Fort Worth, TX, 76193-0651, telephone (817) 624-5612. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Albuquerque International Airport are in compliance with applicable requirements of part 150, effective December 30, 1991. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 27, 1992. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The city of Albuquerque, New Mexico, submitted to the FAA on July 16, 1991, noise exposure maps, descriptions and other documentation which were produced during development of the Albuquerque International Airport FAR Part 150 Airport Noise Compatibility Plan from 1987 through 1991. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the three airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Albuquerque, New Mexico. The specific maps under consideration are identified in Exhibit Numbers 7 and 9 in the submission. The FAA has determined that these maps for Albuquerque International Airport are in compliance with the applicable requirements. This determination is effective on December 31, 1991. FAA's determination on an airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map

submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Albuquerque International Airport, also effective on December 31, 1991. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 27, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses. Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination of the following locations.

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Southwest Region Airports Division, 4400 Blue Mound Road, Fort Worth, TX 76193-0651.

Mr. Carl B. Rodolph, Acting Aviation Director, Albuquerque International Airport, P.O. Box 9022, Albuquerque, NM 87119.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, TX, December 31, 1991

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 92-462 Filed 1-8-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 733]

Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of section 841(d) of title 18, United States Code, and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco, and Firearms, must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of title 18, United States Code.

Accordingly, the following is the 1992 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40, which includes both the list of explosives (including detonators) required to be published in the **Federal Register** and blasting agents. The list is intended to also include any and all mixtures containing any of the materials in the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in section 841 of Title 18, United States Code. Explosive materials are listed alphabetically by their common names followed by Chemical names and synonyms in brackets. This revised list supersedes the List of Explosive Materials dated January 9, 1991, (56 FR 910) and will be effective as of the date of publication in the **Federal Register.**

List of Explosive Materials

A

Acetylides of heavy metals
Aluminum containing polymeric propellant
Aluminum ophorite explosive
Amatex
Amatol
Ammonal
Ammonium nitrate explosive mixtures (cap sensitive)
*Ammonium nitrate explosive mixtures (non cap sensitive)
Aromatic nitro-compound explosive mixtures
Ammonium perchlorate explosive mixtures
Ammonium perchlorate composite propellant
Ammonium picrate [picrate of ammonia, Explosive D]
Ammonium salt lattice with isomorphously substituted inorganic salts
*ANFO [ammonium nitrate-fuel oil]

B

Baratol
Baronol
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)]
Black powder
Black powder based explosive mixtures
*Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water-gel explosives
Blasting caps
Blasting gelatin
Blasting powder
BTNEC [bis (trinitroethyl) carbonate]
Bulk salutes
BTNEN [bis (trinitroethyl) nitramine]
BTTN [1,2,4 butanetriol trinitrate]
Butyl tetryl

C

Calcium nitrate explosive mixture
Cellulose hexanitrate exposive mixture
Chlorate explosive mixtures
Composition A and variations
Composition B and variations
Composition C and variations
Copper acetylide
Cyanuric triazide
Cyclotrimethylenetrinitramine [RDX]
Cyclotetramethylenetetranitramine [HMX]
Cyclonite [RDX]
Cyclotol

D

DATB [diaminotrinitrobenzene]
DDNP [diazodinitrophenol]
DEGDN [diethyleneglycol dinitrate]
Detonating cord
Detonators
Dimethylol dimethyl methane dinitrate composition
Dinitroethyleneurea
Dinitroglycerine [glycerol dinitrate]
Dinitrophenol
Dinitrophenolates
Dinitrophenyl hydrazine
Dinitroresorcinol

Dinitrotoluene-sodium nitrate explosive mixtures
DIPAM
Dipicryl sulfone
Dipicrylamine
DNDP [dinitropentano nitrile]
DNPA [2,2-dinitropropyl acrylate]
Dynamite

E

EDDN [ethylene diamine dinitrate]
EDNA
Ednatol
EDNP [ethyl 4,4-dinitropentanoate]
Erythritol tetranitrate explosives
Esters of nitro-substituted alcohols
EGDN [ethylene glycol dinitrate]
Ethyl-tetryl
Explosive conitrates
Explosive gelatins
Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons
Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies
Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels
Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels
Explosive mixtures containing sensitized nitromethane
Explosive mixtures containing tetraintromethane (nitroform)
Explosive nitro compounds of aromatic hydrocarbons
Explosive organic nitrate mixtures
Explosive liquids
Explosive powders

F

Flash powder
Fulminate of mercury
Fulminate of silver
Fulminating gold
Fulminating mercury
Fulminating platinum
Fulminating silver

G

Gelatinized nitrocellulose
Gem-dinitro aliphatic explosive mixtures
Guanyl nitrosamino guanyl tetrazene
Guanyl nitrosamino guanylidene hydrazine
Guncotton

H

Heavy metal azides
Hexanite
Hexanitrodiphenylamine
Hexanitrostilbene
Hexogen [RDX]
Hexogene or octogene and a nitrated N-methylaniline
Hexolites
HMX [cyclo-1,3,5,7-tetramethylene-2,4,6,8-tetranitramine; Octogen] Hydrazinium nitrate/hydrazine/aluminum explosive system
Hydrazoic acid

I

Igniter cord
Igniters
Initiating tube systems

K

KDNBF [potassium dinitrobenzo-furoxane]

L

Lead azide
Lead mannite
Lead mononitroresorcinate
Lead picrate
Lead salts, explosive
Lead styphnate [styphnate of lead, lead trinitroresorcinate]
Liquid nitrated polyol and trimethylolethane
Liquid oxygen explosives

M

Magnesium ophorite explosives
Mannitol hexanitrate
MDNP [methyl 4,4-dinitropentanoate]
MEAN [monoethanolamine nitrate]
Mercuric fulminate
Mercury oxalate
Nitric acid and carboxylic fuel explosive
Nitric acid explosive mixtures
Nitro aromatic explosive mixtures
Mercury tartrate
Metriol trinitrate
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum]
MMAN [monomethylamine nitrate; methylamine nitrate
Mononitrotoluene-nitroglycerin mixture
Monopropellants

N

NIBTN [nitroisobutametriol trinitrate]
Nitrate sensitized with gelled nitroparaffin
Nitrated carbohydrate explosive
Nitrated glucoside explosive
Nitrated polyhydric alcohol explosives
Nitrates of soda explosive mixtures
Nitric acid and a nitro aromatic compound explosive
Nitro compounds of furane explosive mixtures
Nitrocellulose explosive
Nitroderivative of urea explosive mixture
Nitrogelatin explosive
Nitrogen trichloride
Nitrogen tri-iodide
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine]
Nitroglycide
Nitroglycol [ethylene glycol dinitrate, EGDN]
Nitroguanidine explosives
Nitroparaffins Explosive Grade and ammonium nitrate mixtures
Nitronium perchlorate propellant mixtures
Nitrostarch
Nitro-substituted carboxylic acids
Nitrourea

O

Octogen [HMX]
Octol [75 percent HMX, 25 percent TNT]
Organic amine nitrates
Organic nitramines

P

PBX [RDX and plasticizer]
Pellet powder
Penthrinite composition
Pentolite
PYX [2,6-bis(picrylamino)-3,5-dinitropyridine
Perchlorate explosive mixtures
Peroxide based explosive mixtures
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate]
Picramic acid and its salts
Picramide
Picrate of potassium explosive mixtures
Picratol
Picric acid (manufactured as an explosive)
Picryl chloride
Picryl fluroide
PLX [95% nitromethane, 5% ethylenediamine]
Polynitro aliphatic compounds
Polyolpolynitrate-nitrocellulose explosive gels
Potassium chlorate and lead sulfocyanate explosive
Potassium nitrate explosive mixtures
Potassium nitroaminotetrazole

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine]

S

Safety fuse
Salutes, (bulk)
Salts of organic amino sulfonic acid explosive mixture
Silver acetylide
Silver azide
Silver fulminate
Silver oxalate explosive mixtures
Silver styphnate
Silver tartrate explosive mixtures
Silver tetrazene
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive)
Smokeless powder
Sodatol
Sodium amatol
Sodium azide explosive mixture
Sidium dinitro-ortho-cresolate
Sodium nitrate-potassium nitrate explosive mixture
Sodium picramate
Special fireworks
Squibs
Styphnic acid explosives

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a-tetrazapentalene]
TATB [triaminotrinitrobenzene]
TEGDN [triethylene glycol dinitrate]
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate]
Tetranitrocarbazole
Tetryl [2,4,6 tetranitro-N-methylaniline]
Tetrytol
Thickened inorganic oxidizer salt slurried explosive mixture
TMETN [trimethylolethane trinitrate]
TNEF [trinitroethyl formal]
TNEOC [trinitroethylorthocarbonate]
TNEOF [trinitroethyl orthoformate]
TNT [trinitrotoluene, trotyl, trilite, triton]
Torpex
Tridite
Trimethylol ethyl methane trinitrate composition
Trimethylolthane trinitrate-nitrocellulose
Trimonite
Trinitroanisole
Trinitrobenzene
Trinitrobenzoic acid
Trinitrocresol

Trinitro-meta-cresol
Trinitronaphthalene
Trinitrophenetol
Trinitrophloroglucinol
Trinitroresorcinol
Tritonal

U

Urea nitrate

W

Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive)
Water-in-oil emulsion explosive compositions

X

Xanthamonas hydrophilic colloid explosive mixture

FOR FURTHER INFORMATION CONTACT: Linda Deel, Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8310).

Approved: January 2, 1992.

Stephen E. Higgins,

Director.

[FR Doc. 92–503 Filed 1–8–92; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee; Meetings

The Department of Veterans Affairs (VA) in accordance with Public Law 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, January 22, 1992, at 2 p.m.
Wednesday, January 29, 1992, at 2 p.m.
Wednesday, February 12, 1992, at 2 p.m.
Wednesday, February 26, 1992, at 2 p.m.
Wednesday, March 11, 1992, at 2 p.m.
Wednesday, March 25, 1992, at 2 p.m.

The meetings will be held in room 1161, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552(b) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, room 1161, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: December 30, 1991.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–470 Filed 1–8–92; 8:45 am]

BILLING CODE 8320–01–M

Performance Review Board Members

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises that list of members of the Department of Veterans Affairs (VA's) Performance Review Boards which was published in the **Federal Register** (55 FR 49972, dated December 3, 1990).

EFFECTIVE DATE: November 25, 1991.

FOR FURTHER INFORMATION CONTACT: K. Joyce Edwards, Office of Personnel and Labor Relations (053), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 535–8723.

VA Performance Review Board (PRB)

Ronald E. Ray, Assistant Secretary for Human Resources and Administration (Chairperson)
C. Wayne Hawkins, Deputy Chief Medical Director for Administration and Operations
Sylvia Chavez Long, Assistant Secretary for Congressional Affairs
S. Anthony McCann, Assistant Secretary for Finance and Information Resources Management
William T. Merriman, Deputy Inspector General
Bill B. Pearson, Deputy Chief Benefits Director
Richard Pell, Jr., Director, Operations and Policy Staff
Roger R. Rapp, Director of Field Operations, National Cemetery System

Veterans Benefits Administration PRB

Harold F. Gracey, Chief of Staff (Chairperson)
James A. Maye, Director Southern Area
Richard Pell, Jr., Director, Operations and Policy Staff
William D. Stinger, Assistant Chief Benefits Director for Planning
David M. Walls, Director, Western Area

Veterans Health Administration PRB

John T. Farrar, M.D., Deputy Chief Medical Director (CMD) (Chairperson)
Galen Barbour, M.D., Associate CMD for Quality Management
Donald E. Burnette, Regional Director, Eastern Region
Clark R. Doughty, Regional Director, Western Region
Robert H. Roswell, M.D., Associate Deputy CMD (Clinical Programs)
John R. Fears, Associate CMD for Resource Management
Sanford M. Garfunkel, Associate CMD for Operations
Joseph G. Gray, Associate CMD for External Relations
C. Wayne Hawkins, Deputy CMD for Administration and Operations
Richard P. Miller, Regional Director, Southern Region
Richard Pell, Jr., Director, Operations and Policy Staff
Dennis H. Smith, Executive Assistant to CMD
Charles V. Yarbrough, Associate CMD for Administration
Albert Zamberlan, Regional Director, Central Region

Office of Inspector General PRB

Milton McDonald, Deputy Assistant Inspector General for Audit, Department of State (Chairperson)
David A. Brinkman, Assistant Inspector General for Analysis and Follow-up, Department of Defense
H. Rae Scott, Assistant Inspector General for Investigations, Department of Transportation

Dated: December 31, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 92–471 Filed 1–8–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 6
Thursday, January 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, January 22, 1992.

PLACE: 2033 K St., NW., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application of the Mid/America Commodity Exchange for contract market in options on Rough Rice futures
—Program review/1st quarter, FY 92

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–613 Filed 1–7–92; 11:32 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Wednesday, January 22, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Review

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–614 Filed 1–7–92; 11:32 am]

BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

* * * * *

DATE AND TIME: Tuesday, January 14, 1992, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 16, 1992, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1991–37: Ms. Linda Michelsen of Democratic Election Reporting Education Fund
Advisory Opinion 1991–38: Mr. Gene Karp on behalf of Senator Dennis DeConcini
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Harris,

Administrative Assistant.

[FR Doc. 92–719 Filed 1–7–92; 3:36 pm]

BILLING CODE 6715–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS OFFICE OF THE INSPECTOR GENERAL OVERSIGHT COMMITTEE

Notice

TIME AND DATE: A meeting of the Board of Directors Office of the Inspector General Oversight Committee will be held on January 12, 1992. The meeting will commence at 6:00 p.m.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, NW., The Ballroom Center, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.
2. Approval of Minutes of July 9, 1991 Meeting.
3. Consideration of Committee Chairman's Report on December 19, 1991 Meeting with Senate Committee on Governmental Affairs.
4. Consideration of Draft Management Report on the Inspector General's 1990 and 1991 Semiannual Reports.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

Date Issued: January 7, 1992.

Patricia D. Batie,

Corporate Secretary.

The Legal Services Corporation's billing code number is #7050–01. AGDA112.OIG/

[FR Doc. 92–654 Filed 1–7–92; 1:35 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS OPERATIONS AND REGULATIONS COMMITTEE MEETING

Notice

TIME AND DATE: A meeting of the Board of Directors Operations and Regulation Committee will be held on January 13, 1992. The meeting will commence at 8:00 a.m.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, NW., The Ballroom Center, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.
2. Approval of Minutes of November 13, 1991 Meeting.
3. Consideration of Matters Related to the Design and Development of a Demonstration Project for the Competitive Bidding of Funds Granted by the Legal Services Corporation.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Executive Office, (202) 863–1839.

Date Issued: January 7, 1992.

Patricia D. Batie,

Corporate Secretary.

The Legal Services Corporation's billing code number is #7050–01. AGDA113.OPS/

[FR Doc. 92–655 Filed 1–7–92; 1:35 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS AUDIT AND APPROPRIATIONS COMMITTEE MEETING

NOTICE

TIME AND DATE: A meeting of the Board of Directors Audit and Appropriations Committee will be held on January 12, 1992. The meeting will commence at 4:00 p.m.[1]

[1] Please note that this meeting will be canceled should the President of the United States not reappoint members of the Legal Services Corporation Board of Directors prior to January 12, 1992.

Should the Audit and Appropriations Committee not complete its business by 6:00 p.m., the meeting will recess briefly to permit the Board of Directors Office of the Inspector General Oversight Committee (OIG Committee) to meet. Should this occur, the Audit and Appropriations Committee will reconvene immediately following conclusion of the OIG Committee meeting.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, NW., The Ballroom Center, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of December 8, 1991 Meeting.
3. Consideration of Fiscal Year 1991 Carryover Funds.
4. Consideration of Fiscal Year 1992 Consolidated Operating Budget.
5. Consideration of Fiscal Year 1993 Budget Request.
   a. Consideration of the Provision for the Delivery of Legal Services Committee Recommendation Regarding Guidelines Used for Unsolicited Proposals for Corporation Funds.
   b. Consideration of the Provision for the Delivery of Legal Services Committee Recommendation Regarding the Current Corporation Policy Governing Interstate Subgrants.
   c. Consideration of the Fiscal Requirements of the Provision for the Delivery of Legal Services Committee Recommendation Regarding Vehicles Through Which the Corporation Could Assist LSC-Funded Grantees to Recruit and Retain Staff Attorneys.
   d. Consideration of the Fiscal Requirements of the Provision for the Delivery of Legal Services Committee Recommendation Regarding Vehicles Through Which the Corporation Could Facilitate the Work of Client Organizations on a National Level.
   e. Consideration of the Fiscal Requirements of the Provision for the Delivery of Legal Services Committee Recommendation Regarding the Continued Annual Funding of Law School Clinics.
   f. Consideration of the Fiscal Requirements of the Provision for the Delivery of Legal Services Committee Recommendation Regarding Funding for Innovative Grant Proposals.
6. Consideration of Adequate Funding for the Micronesian Legal Services Corporation.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 863–1893.

Date Issued: January 7, 1992.

Patricia D. Batie,

Corporate Secretary.

The Legal Services Corporation's billing code number is #7050–01. AGDA112.AA/

[FR Doc. 92–656 Filed 1–7–92; 1:35 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS PROVISION FOR THE DELIVERY OF LEGAL SERVICES COMMITTEE MEETING

Notice

TIME AND DATE: A meeting of the Board of Directors Provision for the Delivery of Legal Services Committee will be held on January 12, 1992. The meeting will commence at 12:00 p.m.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, NW., The Ballroom Center, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of August 24–25, 1989 and December 7, 1991 Meeting Minutes.
3. Consideration of Guidelines Used for Unsolicited Proposals for Corporation Grants.
4. Consideration of the Current Corporation Policy Governing Interstate Subgrants.
5. Consideration of Vehicles Through Which the Corporation Could Assist LSC-Funded Grantees To Recruit and Retain Staff Attorneys.
6. Consideration of Vehicles Through Which the Corporation Could Facilitate the Work of Client Organizations on a National Level.
7. Consideration of Matters Related to the Continued Annual Funding of Law School Clinics.
8. Consideration of the Provision of Funding for Innovative Grant Proposals.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Executive Office, (202) 863–1839.

Date Issued: January 7, 1992.

Patricia D. Batie,

Corporate Secretary.

The Legal Services Corporation's billing code number is No. 7050–01. AGDA112.PRV/

[FR Doc. 92–657 Filed 1–7–92; 1:35 pm]

BILLING CODE 7050–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Wednesday, January 15, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Central Liquidity Facility Report and Review of CLF Lending Rate.
3. Proposed Amendment: Part 705, NCUA's Rules and Regulations, Community Development Revolving Loan Program.
4. Proposed Amendment: Part 722, NCUA's Rules and Regulations, Appraisals.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Wednesday, January 15, 1992.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 92–689 Filed 1–7–92; 1:46 pm]

BILLING CODE 7535–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 13, 1992.

A closed meeting will be held on Tuesday, January 14, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 14, 1992, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the

scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2100.

Jonathan G. Katz,

Secretary.

January 6, 1992.

[FR Doc. 92–722 Filed 1–7–92; 3:58 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 57, No. 6
Thursday, January 9, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 401

RIN 0960-AC79

Blood Donor Locator Service

Correction

In rule document 91-30610, beginning on page 66561, in the issue of Tuesday, December 24, 1991, make the following corrections:

1. On page 66562, in the 1st column, in the 2nd full paragraph, in the 13th line, after the word "Secretary", insert "requests for address information, and to accept from the Secretary".

§ 401.600 [Corrected]

2. On page 66565, in the second column, under *Related blood donor records*, in § 401.600 (b)(2)(iii), in the sixth line, "individual" was misspelled.

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31957]

Norfolk and Western Railway Company—Corporate Family Transaction Exemption—Wabash Railroad Company

Correction

In notice document 91-26529 appearing on page 56663 in the issue of Wednesday, November 6, 1991, in the second column, in the file line at the end of the document, "FR Doc. 91-06529" should read "FR Doc. 91-26529".

BILLING CODE 1505-01-D

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federal register

Thursday
January 9, 1992

Part II

Environmental Protection Agency

40 CFR Parts 148, 260, 261, et al.
Land Disposal Restrictions for Newly Listed Wastes and Contaminated Debris; Proposed Rule

VOL 57 ISS 6 JA 9 1992 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 260, 261, 262, 264, 265, 268, 270 and 271

[FRL-4014-1]

Land Disposal Restrictions for Newly Listed Wastes and Contaminated Debris

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing treatment standards under the land disposal restrictions (LDR) program for certain wastes listed after November 8, 1984, and is also proposing to revise treatment standards for debris contaminated with certain listed hazardous waste or debris that exhibits certain hazardous waste characteristics (hereinafter referred to as contaminated debris). EPA is also proposing several revisions to previously promulgated standards and requirements. Due to critical deadlines for this rulemaking, today's proposal does not reflect the decision in *Shell Oil Co.* v. *EPA*, No. 80-1532 (D.C. Cir. December 6, 1991), where the court found procedural defects in promulgation of the mixture and derived-from rules. EPA recognizes that the court's remand of these rules may affect this proposal and the final rule. EPA requests comment on the impact of that ruling on this proposal.

DATES: Comments on this proposed rule must be submitted on or before February 24, 1992. (Since the Agency has entered into a settlement agreement to promulgate this rule by May 1992, and the capacity variance for much contaminated debris ends on May 8, 1992, no extensions to the comment period will be granted.)

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket Number F-91-CD2P-FFFFF, room 2427 (OS-305), 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. A maximum of 100 pages from the docket may be copied at no cost. Additional copies cost $0.20 per page.

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskette is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Rather, EPA is experimenting with this procedure solely as an attempt to expedite our internal review and response to comments. For further information on the submission of diskettes, contact the Waste Treatment Branch at the phone number listed below.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424-9346 (toll free) or (703) 920-9810 locally. For information on treatment standards for newly listed wastes or contaminated debris, contact the Waste Treatment Branch, Office of Solid Waste (OS-322W), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8434. For information on capacity determinations or national capacity variances, contact the Capacity Programs Branch, Office of Solid Waste (OS-322W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308-8440.

SUPPLEMENTARY INFORMATION:

Outline

I. Background
- A. Summary of the Hazardous and Solid Waste Amendments of 1984.
- B. Pollution Prevention (Waste Minimization) Benefits.

II. Summary of Proposed Rule
- A. Newly Listed Wastes.
- B. Changes to Current Regulations.
- C. Contaminated Debris.

III. Detailed Discussion of Today's Proposed Rule: Newly Listed Wastes
- A. Recent Petroleum Refining Wastes (F037 and F038).
- B. Wastes from the Production of Unsymmetrical Dimethylhydrazine (K107-K110).
- C. Wastes from the Production and Dinitrotoluene and Toluenediamine (K111 and K112).
- D. Wastes from the Production of Ethylene Dibromide (K117, K118 and K136).
- E. Wastes from the Production of Ethylenebisdithiocarbamic Acid (K123-K126).
- F. Wastes from the Production of Methyl Bromide (K131 and K132).
- G. Additional Organic U Wastes (U328, U353, and U359).

IV. Detailed Discussion of Today's Proposed Rule: Changes to Existing Regulations
- A. Proposed Revisions to the F001-F005 Spent Solvents Treatment Standards.
- B. Conversion of Wastewater Standards Based on Scrubber Water.
- C. Proposed Revisions to Treatment Standards for K061, F006, and K062.
- D. Inorganic Constituents to be Added to Appendix VIII.
- E. Notification and Certification for Characteristic Wastes.
- F. Applicability of Part 268 for Certain Waste Mixtures No Longer Exhibiting a Characteristic.
- G. Storage and Treatment in Containment Buildings.

V. Detailed Discussion of Today's Proposed Rule: Contaminated Debris
- A. Overview.
- B. Definitions.
- C. Contaminant Categories.
- D. Determining Contaminants Subject to Treatment.
- E. Exclusion of Contaminated Debris from Subtitle C.
- F. Contaminated Debris Treatment Standards.
- G. Regulation of Treatment Residuals.
- H. Other Provisions of the Rule.
- I. Permits for Treatment Facilities.
- J. Comments on the May 30, 1991 ANPRM.

VI. Capacity Determinations
- A. Capacity Analysis Results Summary.
- B. Petroleum Refining Wastes and Other Organic Wastes.
- C. Required and Available Capacity for Newly Listed Wastes Mixed with Radioactive Contaminants.
- D. Required and Available Capacity for Debris Contaminated with Newly Listed Wastes.
- E. Capacity Determination for Underground Injected Wastes.

VII. State Authority
- A. Applicability of Rules in Authorized States.
- B. Effect on State Authorization.

VIII. Effect of Proposed Rule on Other Environmental Programs
- A. Discharges Regulated Under the Clean Water Act.
- B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act.
- C. Groundwater Protection Principles.
- D. Wellhead Protection Under the Safe Drinking Water Act (SDWA).
- E. Air Emissions Regulated Under the Clean Air Act (CAA).
- F. Clean Up Actions Under the Comprehensive Environmental Response, Compensation, and Liability Act.
- G. Applicability of Treatment Standards to Wastes from Pesticides Regulated Under the Federal Insecticide, Fungicide, and Rodenticide Act.
- H. Regulatory Overlap of Polychlorinated Biphenyls (PCBs), Under the Toxic Substances Control Act (TSCA) and RCRA.
- I. Disposal of Asbestos Regulated Under TSCA.

IX. Regulatory Requirements
- A. Economic Impact Screening Analysis Pursuant to Executive Order 12291.

B. Paperwork Reduction Act.

List of Subjects in 40 CFR parts 148, 260, 261, 262, 264, 265, 268, 270 and 271.

Appendix I to the Preamble: Overview of Debris Treatment Technologies

Appendix II to the Preamble: Asbestos Treatment Standards

I. Background

A. Summary of Hazardous and Solid Waste Amendments of 1984

The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, prohibit the land disposal of untreated hazardous wastes. HSWA requires EPA to set "* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." RCRA section 3004(m)(1). Wastes that meet the treatment standards established by EPA may be land disposed. For purposes of the restrictions, land disposal includes any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave. RCRA section 3004(k).

EPA was required to promulgate land disposal prohibitions and treatment standards by May 8, 1990 for all wastes that were either listed or identified as hazardous at the time of the 1984 amendments, a task EPA completed within the statutory timeframes. RCRA section 3004(d), (e) and (g). EPA is to promulgate prohibitions and treatment standards for wastes identified or listed after the date of the 1984 amendments (wastes referred to in this notice as "newly listed and identified wastes") within six months after the listing or identification takes effect. RCRA section 3004(g)(4). EPA has filed with the District Court a proposed consent decree that would put the Agency on a schedule for adopting prohibitions and treatment standards for newly identified and listed wastes. The promulgation date for the newly identified and listed wastes dealt with in this proposal would be May 1992. (*EDF* v. *Reilly*, Civ. No. 89–0598, D.D.C.)

The land disposal restrictions are effective upon promulgation. RCRA section 3004(h)(1). However, the Administrator may grant a national capacity variance from the immediate effective date and establish a later effective date (not to exceed two years) based on "* * * the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and environment will be available." RCRA section 3004(h)(2). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant successfully makes certain demonstrations. RCRA section 3004(h)(3). See 55 FR 22526 (June 1, 1990) for a more detailed discussion on national capacity variances and case-by-case extensions.

In addition to prohibition land disposal of hazardous wastes, Congress prohibited storage of any waste which is prohibited from land disposal unless "* * * such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal." RCRA section 3004(j). For storage up to one year, EPA bears the burden of proving that such storage was not solely for the purpose of accumulation of quantities necessary to facilitate proper recovery, treatment or disposal. 40 CFR 268.50(b). For storage beyond one year, the burden of proof shifts to the owner/operator of a treatment, storage or disposal facility to demonstrate that such storage was solely for the purpose of accumulation of quantities necessary to facilitate proper recovery, treatment or disposal. 40 CFR 268.50(c). The provision applies, of course, only to storage which is not also defined as land disposal in section 3004(k).

B. Pollution Prevention (Waste Minimization) Benefits

EPA's progress over the years in improving environmental quality through its media-specific pollution control programs has been substantial. Over the past two decades, standard industrial practice for pollution control concentrated to a large extent on: "end of pipe" treatment or land disposal of hazardous and non-hazardous wastes. However, EPA realizes that there are limits to how much environmental improvement can be achieved under these programs which emphasize management after pollutants have been generated. EPA believes that reducing or eliminating discharges and/or emissions to the environment through the implementation of cost-effective and environmentally sound recycling and source reduction practices can provide additional environmental improvements.

In this section, RCRA requirements and state legislative activities regarding pollution prevention/waste minimization are briefly described. Also described are activities undertaken by the regulated community to incorporate pollution prevention/waste minimization into their waste management plans. Finally, this section outlines how pollution prevention/waste minimization is incorporated into today's proposed rule.

1. General Discussion of Pollution Prevention/Waste Minimization

Under RCRA sections 3002(b) and 3005(h), hazardous waste generators and owners/operators of treatment, storage and disposal facilities (TSDFs) are required to certify that they have a program in place to reduce the volume or quantity and toxicity of hazardous waste to the degree determined to be economically practicable. EPA encourages hazardous waste generators and owners/operators of TSDFs to pursue source reduction and environmentally sound recycling wherever cost effective to reduce the need for and costs of subsequent treatment, storage, and disposal. In many cases, there may be economic as well as environmental benefits for companies that pursue pollution prevention options. Waste minimization planning programs have been mandated by some state governments. For example, several state governments have already enacted waste minimization legislation (e.g., Massachusetts Toxics Use Reduction Act of 1989; Oregon Toxics Use Reduction and Hazardous Waste Reduction Act, July 2, 1989). About six other states have legislation pending that will mandate some type of waste minimization program and/or facility planning. An additional 25 states offer some type of technical assistance to companies that seek alternatives to treatment, storage, and disposal of waste. In addition, several EPA documents on waste minimization are available to the public (see, e.g., Draft Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program: Notice and Request for Comment, **Federal Register** Vol. 54, No. 111, June 12, 1989 (56 FR 25056); and The EPA Manual for Waste Minimization Opportunity Assessments, EPA 600/2–88/025, April 1988).

Program success generally requires that each individual within an organization, regardless of status or rank, be encouraged to make a contribution to minimize waste. Collective and individual pay incentives can be provided for productivity improvements. Waste minimization circles can be established using self-managing teams chosen from a broad spectrum of production and

management personnel. These management teams can be provided with all information necessary to adequately assess waste minimization opportunities. Additionally, it is very beneficial for production personnel to be trained and retrained in the optimum use of plant equipment and raw materials.

Some companies set explicitly defined objectives for the reduction of waste volume and toxicity that are achievable within reasonable time frames. Typically, the objectives should not exceed the ability of the operations personnel to support and maintain them.

In all cases, it is necessary to determine the causes of waste generation. This can be done for individual processes or for several combined processes if the plant process waste streams are particularly complex. Many corporations have implemented this type of "waste minimization assessment" as part of an overall waste minimization program.

For a waste minimization assessment, it is generally necessary to accurately characterize the type of waste generated by volume, toxicity, and source(s). Most companies track their waste generation by a variety of means and then normalize the results to account for variations in production rate(s). One state (Massachusetts) requires each generator of a toxic or hazardous substance to track the rate of waste generation and release/transfer per unit of product. The EPA Manual for Waste Minimization Opportunity Assessments aids generators in identifying waste sources (which can be quite difficult to analyze in complex plant operations) where many processes discharge into one waste stream.

Next, individual processes can be examined to search for cost effective opportunities for waste reduction such as substituting less hazardous raw materials, modifying existing equipment, using novel technologies, making capital improvements, increasing process efficiency, and recycling. EPA and state funded technical assistance programs (e.g., Minnesota Technical Assistance Program—MnTAP, California Waste Minimization Clearing House, U.S. EPA Pollution Prevention Information Clearinghouse) are becoming increasingly available to identify cost effective waste reduction opportunities. Information is also available through industry trade associations, professional consultants specializing in waste minimization, technical literature, and chemical and equipment vendors.

It is important to realize that waste minimization, especially when incorporated into company policy, is a continuous process. Ideally, a cost effective waste minimization program becomes an integral part of the company strategic plan to increase manufacturing productivity.

2. Incorporation of Pollution Prevention/Waste Minimization in Today's Proposal

The Agency has identified a number of waste streams where environmentally sound recycling has been identified as BDAT. For example, we are proposing today in section IV.C to set alternate treatment standards for electroplating sludges (F006) and spent pickle liquor (K026), based on high temperature metals recovery (HTMR). The Agency has determined that these wastes have sufficient concentrations of metals (nickel and chromium), with low concentrations of interfacing chemicals, to be amenable for recovery in HTMR units. Moreover, the Agency is proposing to grant a generic exclusion for F006 and K062 HTMR nonwastewater residuals, provided that these residuals meet designated concentration levels, are disposed of in Subtitle D units, and exhibit no characteristics of hazardous waste. (This exclusion is similar to the one that was promulgated on August 8, 1991 for K061. See 56 FR 41164, August 19, 1991.) The Agency expects that these provisions will encourage more generators to recycle their wastes, if this alternative is more cost effective than conventional treatment and disposal. In addition, treatment standards for the newly listed petroleum refining wastes (F037 and F038) are based on the recovery technologies critical fluid extraction and thermal desorption, as well as incineration.

II. Summary of Proposed Rule

On May 30, 1991, EPA published an advance notice of proposed rulemaking to solicit comment on most of what is included in today's proposed rule. EPA also solicited comment at that time on several ideas to streamline the LDR program, such as universal standards for organic wastes. EPA is still evaluating the comments received on streamlining the LDR program and expects to publish a proposal regarding these ideas in the summer of 1992.

A. Newly Listed Wastes

EPA has promulgated a number of hazardous waste listings since enactment of HSWA in 1984. Section III of today's notice describes the treatment and/or recycling technologies that have been identified as BDAT for 20 of these listings and proposes LDR treatment standards based on BDAT. Wastes included in today's proposal include petroleum refining wastes (F037 and F038), wastes from the production of unsymmetrical dimethylhydrazine (K107–K110), wastes from the production of dinitrotoluene and toluenediamine (K111 and K112), wastes from the production of ethylene dibromide (K117, K118, and K136), wastes from the production of ethylenebisdithiocarbamic acid (K123–K126), wastes from the production of methyl bromide (K131 and K132), and several organic U wastes (U328, U353, and U359). Future proposals will include newly listed wastes not covered in today's proposal. Soil contaminated with the newly listed wastes for which standards are proposed today will be addressed in a future proposal.

B. Changes to Current Regulations

The Agency is proposing revisions to the existing treatment standards for organic constituents in F001–F005 wastes, including conversion from the existing TCLP standards to standards based on total concentrations. The existing numerical treatment standards include concentrations for 25 solvent constituents. In addition, the Agency is proposing the conversion of wastewater standards for 24 F and K waste codes based on actual wastewater treatment data for the constituents of concern. Several of the proposed revisions to existing standards and the proposed standards for newly listed wastes in today's notice are based on transfer of data used to develop standards for F039 (multisource leachate); in these cases, the Agency particularly requests comment on whether data submitted by commenters should be considered in regard to F039 as well as the proposed revision or standard.

EPA is proposing today alternate treatment standards for F006 and F062, and EPA is also proposing to extend the K061 generic exclusion published on August 19, 1991 (56 FR 41164) to certain F006 and K062 wastes. Also, revisions are proposed regarding notification and certification for characteristic wastes, and regarding the status under part 268 of wastes listed for a characteristic.

Finally, EPA is proposing to establish a new waste management unit known as a containment building. (The two types of wastes presently intended for storage in containment buildings (of which EPA is aware) are spent potliners from primary aluminum production and lead plates and groups from processing spent lead acid batteries. There is no question that the land disposal prohibitions apply to these materials because they are both solid wastes and hazardous wastes. With regard to lead plates and groups,

the materials are solid wastes under the federal regulations because they are spent materials being reclaimed. 40 CFR 261.2(c)(3). (The plates and groups are "spent material" because they are part of the spent lead acid battery, which battery is a spent material because it has been used, become contaminated, and cannot be used further without processing. See § 261.1(c)(1).) There is also no jurisdictional bar to these materials being classified as solid wastes. The plates and groups are discarded material within the meaning of RCRA section 1004(27) because they are part of the spent battery, which is discarded by its user. *American Petroleum Institute* v. *EPA*, 906 F.2d 729, 741 (D.C. Cir. 1990) ("*API*"); *American Mining Congress* v. *EPA*, 824 F.2d 1177, 1187 n.14 (D.C. Cir. 1987). The spent plates and groups are also "part of the waste disposal problem" and therefore solid wastes. *API*, 906 F.2d at 741; *American Mining Congress* v. *EPA*, 907 F.2d 1179, 1186 (D.C. Cir. 1990).[1] EPA also has interpreted the regulations as defining battery plates and groups to be solid wastes.[2] Since battery plates and groups typically exhibit the TCLP for lead, 55 FR 22637 (June 1, 1990), they are also hazardous wastes and thus covered by the land disposal prohibitions if land disposed. *Id.*)

C. Contaminated Debris

Debris contaminated with listed prohibited wastes is already subject to the treatment standards for those wastes, as is debris exhibiting a hazardous waste characteristic for which EPA has promulgated treatment standards. Today, the Agency is proposing to revise the treatment standards for debris. The Agency is also proposing treatment standards for debris that is contaminated with those newly listed wastes for which standards are proposed in this notice. The Agency is proposing to require contaminated debris to be treated prior to land disposal, using specific technologies from one or more of the following families of debris treatment technologies: extraction, destruction, or immobilization. In the alternative, contaminated debris may continue to be handled in accordance with the Agency's contained-in policy.

The LDR standards for contaminated debris specify the use of a particular technology, or one of several alternative technologies, for a particular debris type/contaminant combination. Six different categories of debris have been specified as well as ten different categories of contaminants.

To ensure effective treatment (i.e., treatment sufficient to constitute BDAT), the treatment must be performed in accordance with the proposed performance standards (see Appendix IX). The consequence of performing this treatment would be two-fold. Not only would the debris no longer be prohibited from land disposal, but EPA would consider the treated debris to no longer be or require management as a hazardous waste provided that a destruction or extraction technology is used for all debris types/contaminant combinations and provided that the treated debris does not exhibit any characteristic of hazardous waste. Such treated debris could, therefore, be reused, returned to the natural environment, or disposed of in a Subtitle D facility. See section V.E.1 where EPA requests comment and data to support the design of performance standards for immobilization technologies that would be sufficient to allow contaminated debris treated by such technologies to be excluded from Subtitle C management.

However, if the treatment unit was not operated in accordance with the specified performance standards, the treated debris ordinarily would remain prohibited from land disposal because it had not been treated by the specified methods and would likewise be subject to the rest of the Subtitle C regulations.

The debris could be determined to meet levels protective of human health and the environment in accordance with the contained-in policy.

Residuals generated from the treatment of debris contaminated with listed wastes would still be hazardous wastes by virtue of the derived-from rule and would be subject to the hazardous waste management system. The Agency is today proposing that residuals generated from the treatment of contaminated debris be subject to the F039 nonwastewater and wastewater numerical treatment standards. A detailed discussion is provided in section V.E.

The Agency considered and rejected proposing numerical standards for contaminated debris because of the difficulty of sampling contaminated debris. Nevertheless, the Agency requests comment on the feasibility of setting such numerical standards; in addition, the Agency requests comment on whether such standards should apply to all contaminated debris or just certain types of debris that can be sampled without difficulty. Further, the Agency requests comment on how such samples should be collected. As an alternative method of compliance, the Agency requests comment on continued application of the existing LDR standards.

Today's proposal also deals with the issue of inherently hazardous contaminated debris. Inherently hazardous contaminated debris is debris that is fabricated from metals identified as D004–D011 and that exhibits as fabricated the toxicity characteristic under both the Toxicity Characteristic Leaching Procedure and the Extraction Procedure. The Agency is proposing today to require treatment of inherently contaminated debris for: other contaminants subject to treatment that are present. If the debris continues to exhibit the toxicity characteristic due to its inherent content after treatment, it must be either immobilized prior to land disposal under Subtitle C or recycled as provided in § 261.6(a)(3)(iv). Inherently hazardous debris that is not contaminated with other contaminants subject to treatment may be recycled without treatment or immobilized and disposed in a Subtitle C facility, under today's proposal.

Finally, the Agency is proposing that debris contaminated with both radioactive and hazardous waste (mixed waste) comply with the treatment standards for contaminated debris in addition to any regulation of that material under the Atomic Energy Act (AEA). The Agency is also proposing that debris contaminated with mixed waste for which special treatability groups have been established be subject to the debris standards rather than to

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[1] Spent plates and groups can clearly be viewed as part of the waste disposal problem not only because they are discarded by their initial users, *API*, 906 F.2d at 741, but also because they are presently stored in the open in piles (hence the need to develop containment building standards to accommodate management that is not within the clear scope of the land disposal definition in section 3004(k)), and because of the history of environmental damage incidents resulting from improper management of these wastes. 50 FR 650, 658–60 (January 4, 1985).

[2] See Memorandum from Sylvia Lowrance, Director, Office of Solid Waste to Regional Waste Management Division Directors, August 26, 1988 (battery plates and groups are potentially eligible for a variance from being a solid waste pursuant to § 260.31(c) as a material that has been partially but not fully reclaimed provided the variance criteria are satisfied; however, the battery plates and groups are obviously solid wastes while application for a variance is pending, since the variance only applies to materials classified as solid wastes); Letter from Stephen Cochran, Acting Chief, Review Section to Lee Norman, Industrial Safety and Health Consultants, Inc., November 28, 1988 (battery plates and groups are spent materials, and therefore solid wastes when reclaimed, because they are part of the spent battery); 55 FR at 22637 (June 1, 1990) (storage of battery plates and groups (referred to as "battery parts" in this FR notice) is a form of prohibited land disposal and is prohibited under the prohibition for D008 wastes, but a two-year national capacity variance is warranted).

the specified treatability group standards. The exception to this is standards promulgated for the D008 radioactive lead treatability group; in this case, the contaminated debris will be subject to both the debris standards and the D008 radioactive lead standards. Treatment of the contaminated debris must occur before treatability group treatment.

It should be noted that the Agency is currently evaluating issues related to contaminated media. In order to improve the overall quality of its regulatory decision-making, the Agency has begun to look at groups or clusters of regulations in a specific area to develop a more integrated approach. One of these regulatory clusters, the "contaminated media cluster," is designed to develop a more integrated Agency approach for its policies and regulations dealing with waste remediation programs. The contaminated media cluster project is gathering information to develop a comprehensive view of the quantities and types of waste needing remediation, the types of risks they represent, the current regulatory and statutory framework for these wastes, elements of an effective clean up process, and the costs and benefits of such clean up. The culmination of that work will be a strategy that will include a set of objectives and operating principles for the Agency's remediation programs.

This proposed LDR rule for contaminated debris has been closely coordinated with the regulatory cluster on contaminated media. In an ongoing effort of this cluster, the Agency is considering a strategic approach that focuses on waste management standards specific to the problems of remediating already contaminated soil and debris. This proposal supports that approach by considering contaminated debris a unique entity and providing flexibility in treating and disposing of contaminated debris.

III. Detailed Discussion of Today's Proposed Rule: Newly Listed Wastes

Since the enactment of HSWA in 1984, EPA has promulgated a number of hazardous waste listings under 40 CFR part 261 subpart D and has expanded the number of wastes covered under 40 CFR part 261 subpart C. This section of today's notice describes the treatment and/or recycling technologies that have been identified as BDAT for 20 of these "newly listed" wastes. The Agency is proposing treatment standards under 40 CFR 268.41, .42, and .43 for these wastes based on the transfer of performance data from treating other hazardous wastes that have been determined to be similar or more difficult to treat than these wastes.

This section does not, however, propose treatment standards for the following newly listed hazardous wastes: those recently identified under the TC rule (D018–D043); characteristic wastes generated by mineral processing activities; spent potliners from aluminum manufacturing (K088); and listed wastes from wood preserving (F032, F034, and F035). These wastes, as well as wastes from coking operations and chlorotoluene production, will be addressed in subsequent **Federal Register** notices. EPA anticipates proposing land disposal restrictions for many of the aforementioned wastes in the spring of 1992, with the remainder addressed in the spring of 1993.

A. Recent Petroleum Refining Wastes (F037 and F038)

F037—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: Oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in storm water units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in 40 CFR 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.

F038—Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in storm water units that do not receive dry weather flow, sludges generated from once-through non-contact cooling waters segregated for treatment from other process or oil cooling wastes, sludges and floats generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 are not included in this listing.

On November 2, 1990 (55 FR 46354), EPA listed two additional wastes generated by the petroleum refining industry as hazardous wastes F037 and F038. These two newly listed hazardous wastes are generated in the primary and secondary separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters. These sludges have waste properties similar to other petroleum refining wastes listed as K048 and K051. (For a more detailed description of all of these petroleum refining wastes, see 45 FR 74884, May 19, 1980; 55 FR 46354, November 2, 1990; 56 FR 21955, May 13, 1991; and the associated listing background documents.) These listings became effective on April 2, 1991.

1. Characterization Data

The Agency has two sets of waste characterization data for untreated F037 and F038 wastes. One is a compilation of data gathered by EPA from 1981 to 1984, including data submitted by the regulated community. These data, which characterize wastes from petroleum refining wastewater treatment systems, were published in a Notice of Data Availability on February 11, 1985, (50 FR 5637). A second set of data, consisting of waste characterization data collected by EPA after 1984, was presented as part of a Notice of Data Availability published on April 13, 1988 (53 FR 12182). All of these data are summarized in the proposed BDAT Development Background Document for F037 and F038 which is available in today's docket.

Based on somewhat limited characterization data, EPA has identified 18 hazardous constituents that are known to be present in wastewater or nonwastewater forms of F037 and/or F038. These 18 constituents have also been demonstrated to be present in other related petroleum refining wastes (K051 and K048) at approximately the same levels (i.e., many constituents are present in concentrations with the same order of magnitude). This appears to be directly related to the similarities in generation of these wastes: F037 and F038 are generated in similar waste management units as those generating K051 and K048; all four of these wastes result from the processing and refining of similar raw materials (i.e., petroleum products); and all four of these wastes are generated from the treatment of similar oily wastewaters.

EPA believes, however, that additional hazardous constituents are likely to be present in F037 and F038 wastes because they are known to be present in K048 and K051 wastes. Up to six additional organics that are present in K048 wastes could: also be found in wastewater or nonwastewater forms of

F038 (i.e., ethyl benzene, xylenes, bis(2-ethylhexyl) phthalate, di-n-butyl phthalate, flourene, and phenol). Similarly, there are up to eight organics in K051 that EPA believes could be present in F037 wastes (i.e., ethyl benzene, xylenes, acenaphthene, anthracene, bis(2-ethylhexyl) phthalate, di-n-butyl phthalate, flourene, and phenol). Cyanides are also believed to be present in both F037 and F038 wastes. In an Advance Notice of Proposed Ruelmaking (ANPR) published on May 30, 1991 (56 FR 24444), EPA solicited additional characterization data for F037 and F038 wastes. In response, the American Petroleum Institute indicated that it was gathering such information. As of the writing of this rule, EPA has not yet received these characterization data, but will place them in the administrative record for today's notice if they become available.

Based on the above, EPA is proposing to regulate the same constituents in F037 wastewaters and nonwastewaters that are currently regulated in the corresponding wastewater and nonwastewater forms of K051. Similarly, those constituents currently regulated in K048 wastes are proposed for regulation in F038 wastes. A detailed discussion of those constituents proposed for regulation and those for which EPA lacks characterization data can be found in the Proposed BDAT Background Document for F037 and F038.

The specific constituents proposed for regulation in F037 and F038 wastes along with their treatment standards, are presented in the tables at the end of this section. EPA believes that, by requiring treatment of these constituents, all other constituents being present will also be treated. Some of the proposed constituents are believed to be at detectable levels in F038 and F037 and thus, may deserve regulation as in K048 and K051. EPA also believes that the constituents proposed for regulation are as difficult to treat as other constituents of the same type that may be present in F037 and F038. Also, EPA does not expect that either the proposed or any other constituents would interfere with the treatment of the regulated constituents. In addition, there is available information that K048–K052, F037, and F038 can be and may have been co-treated in the same or similar treatment units. As such, EPA believes that regulating the same constituents present in K048 and K051 should reduce the administrative requirements and compliance efforts for all of these petroleum wastes.

2. Identification of Technologies Capable of Complying with BDAT Standards for F037 and F038

F037 and F038 are generated by the petroleum refining industry in units similar in design and purpose to API separators and DAF float units generating K048 and K051. Also, F037 and F038 result from the processing of similar raw materials (i.e., petroleum products) and from the treatment of similar wastewaters. Owing to these similarities, all of the applicable and demonstrated technologies for K048 and K051 wastes are also believed to be applicable to F037 and F038 wastes. EPA requested comment on this point in the May 30, 1991 ANPR. While several commenters generally concurred with this observation, others pointed out that F037 and F038 are likely to show "higher percentages of soil particles and lower concentrations of oil." They believe, therefore, that these wastes could be "characteristically different from K048 and K051 wastes." They also pointed out that the heat content of F037 and F038 is variable and is typically under 5,000 BTU/lb. Based on these physical and chemical characteristics, some commenters appear to believe that F037 and F038 could be less suitable for recovery and fuel burning practices.

EPA's data show that many hazardous wastes (including K048–K052) are routinely commingled for the purpose of treatment by technologies such as incineration and fuel substitution. The commingling of K048–K052 wastes may also occur for recovery purposes in units such as solvent recovery, thermal desorption, or high temperature thermal distillation. Therefore, F037 and F038 can presumably be commingled with K048–K052 for the purpose of treatment or recovery.

The practice of commingling F037 and F038 with K048–K052 for incineration or fuel substitutional purposes appears to be supported by at least one commenter. In addition, several commenters pointed out similarities between the physical and chemical behaviors of F037 and F038 to K051 and K048 when treated by incineration or when burned in cement kilns. Based on waste characterization data, F037 and F038 also appear to be amenable to incineration, fuel substitution, and recovery technologies. EPA thus believes these two wastes are amenable to all these treatment technologies on which the existing K048–K052 treatment standards for organics are based.

Envex and Southern Thermal Dynamics (STD) submitted comments to the ANPR describing thermal processes that may enable the recovery of valuable organics from petroleum wastes as well as volume reduction of those wastes needing land disposal. None of these recovery technologies are prohibited from being used to treat K048–K052, F037, or F038, provided all treatment residues from these processes comply with all applicable treatment standards. EPA lacks performance data for evaluating Envex's recovery process at this time.

EPA has received two data sets from STD. One data set, submitted on July 1, 1991, was previously submitted to EPA during the development of K048–K052 treatment standards (55 FR 22595 (June 1, 1990)). These data are based on the performance of STD's high temperature thermal distillation unit (identified as the "HT–5" process) on simulated petroleum wastes. For K048–K052 wastes, EPA determined that STD's HT–5 process (formerly owned, exclusively, by T.D.I. Systems, Inc.) could achieve the treatment standards promulgated for K048–K052 wastes and, as such, was considered to be an equivalent BDAT technology to incineration and solvent extraction. (See June 1, 1990 (55 FR 22596)). The second data set, submitted on August 21, 1991, consists of 17 hour composite samples characterizing untreated and treated K051 wastes using the HT–5 process. These preliminary data also appear to indicate that this process can achieve the treatment standards promulgated on June 1, 1990. These two data sets are also part of our data base and are subject to further review and analysis.

CF Systems submitted performance data to EPA during the Third Third rulemaking showing that wastes having lower concentrations of organics, such as those in F037 and F038, can also be treated by their solvent extraction process to the levels proposed today. CF has submitted additional data in response to EPA's ANPR. These data are currently under review and available for public comment. Other solvent extraction processes and incineration (both of which are considered BDAT for K048–K052 wastes) have also been demonstrated on sludges that have similar physical and chemical characteristics to F037 and F038.

It appears from these data (including data supporting K048–K052 treatment standards) that F037 and F038 can be treated to meet the treatment standards applicable to K048–K052 and that these proposed treatment standards may substantially reduce the mobility and toxicity of hazardous constituents in F037 and F038. As a result, EPA is

proposing to transfer K051 and K048 nonwastewater performance data to F037 and F038 nonwastewaters.

Treatment standards for the metals in K048–K052 nonwastewaters were based on the performance of stabilization as BDAT. Owing to the similarities in waste composition of F037 and F039 to K048–K052, stabilization is also considered BDAT for the metals in F037 and F038 nonwastewaters.

In today's rule, EPA, is also proposing to revise existing treatment standards for organic constituents in K048–K052 wastewaters (see Section IV.B. of today's preamble). The existing K048–K052 wastewater treatment standards are based on the levels of detection that organic constituents achieved in incineration scrubber waters. The proposed revisions, if adopted, would promulgate instead, treatment standards that are based on the levels the organics of concern can achieve in treated wastewater effluents resulting from one or more wasetwater treatment processes. Thus, consistent with today's proposed revisions for wastewater forms of K051 and K048, EPA is proposing the transfer of wastewater treatment performance data that were used to develop treatment standards for organics in F039 wastewaters as the basis of the proposed wastewater treatment standards for wastewater forms of F037 and F038. In the May 30, 1991, ANPR, EPA requested comment on this transfer of wastewater performance data to F037 and F038 (as well as to K048–K052). The ANPR also specifically requested comments documenting the treatment of organics in wastewater forms of F037 and F038 by biological treatment, carbon adsorption, PACT treatment, and wet air oxidation.

Wastewater treatment data available on the constituents known or believed to be present in F037 and F038 wastes indicate that biological treatment would be able to treat the organics in F037 and F038. Comments from the American Petroleum Institute and the Petroleum Environmental Research Forum to the ANPR appear to support this conclusion.

For metals in wastewater forms of K048–K052, BDAT was determined to be chemical precipitation with lime and sulfide followed by vacuum filtration, EPA does not expect any constituents in F037 and F038 to interfere or behave differently from those constituents in K048 and K051.

Since EPA is proposing concentration levels as the treatment standards for all forms of F037 and F038, other treatment or recovery technologies capable of reaching the proposed treatment standards would not be precluded from being used except where achieved through impermissible dilution.

3. Potential Overlap with the TC

The rule expanding the universe of wastes exhibiting the toxicity characteristic (TC) became effective on September 25, 1990, large-quantity generators and treatment, storage, and disposal facilities. The rule became effective on March 29, 1991, for small-quantity generators. Because a sizable number of the F037 and F038 sludges and/or the wastewaters from which these sludges are generated also may exhibit the TC, some of these wastes may have been regulated as hazardous under the TC rule before the F037 and F038 listing rule became effective. The percentage of wastes that will exhibit the TC is uncertain, and depends largely on the behavior of oily waste in the Toxicity Characteristic Leaching Procedure (TCLP).

EPA believes that some refineries may have responded to the TC rule and/or the F037 and F038 listings by reconfiguring their wastewater treatment process such that the wastes are no longer hazardous or are managed in API separators or in DAF units and, as such, are considered K048 or K051 wastes, which are already subject to the LDR treatment standards. The exact quantities of newly identified F037 and F038 sludge that are currently being managed in this manner (or may be managed this way in the future) is unclear. As such, the Agency is soliciting data and comment on these potential changes in management of F037 and F038 wastes, the resultant increases in quantities of K048 and K051 wastes generated, and their effect on demand in treatment capacity.

PROPOSED BDAT TREATMENT STANDARDS FOR F037

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Anthracene	28
Benzene	14
Benzo(a)anthracene	20
Benzo(s)pyrene	12
Bis(2-ethylhexyl)phthalate	7.3
Chrysene	15
Di-n-butyl phthalate	3.6
Ethylbenzene	14
Naphthalene	42
Phenanthrene	34
Phenol	3.6
Pyrene	36
Toluene	14
Xylenes (total)	22

PROPOSED BDAT TREATMENT STANDARDS FOR F037—Continued

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Cyanides (total)	1.8

Regulated constituent	Maximum for any single grab sample—TCLP (mg/l)
Chromium (total)	1.7
Nickel	0.20

PROPOSED BDAT TREATMENT STANDARDS FOR F037

[Wastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/l)
Acenaphthene	0.059
Anthracene	0.059
Benzene	0.14
Benzo(a)anthracene	0.059
Benzo(a)pyrene	0.061
Bis(2-ethylhexyl)phthalate	0.28
Chrysene	0.059
Di-n-butyl phthalate	0.057
Ethylbenzene	0.057
Fluorene	0.059
Naphthalene	0.059
Phenanthrene	0.059
Phenol	0.039
Pyrene	0.067
Toluene	0.080
Xylenes (total)	0.32
Cyanides (total)	0.028
Chromium (total)	0.20
Lead	0.037

PROPOSED BDAT TREATMENT STANDARDS FOR F038

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Benzene	14
Benzo(a)pyrene	12
Bis(2-ethylhexly)phthalate	7.3
Chrysene	15
Di-n-butyl phthalate	3.6
Ethylbenzene	14
Naphthalene	42
Phenanthrene	34
Phenol	3.6
Pyrene	36

PROPOSED BDAT TREATMENT STANDARDS FOR F038—Continued

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Toluene	14
Xylenes (total)	22
Cyanide (total)	1.8

Regulated constituent	Maximum for any single grab sample—TCLP (mg/l)
Chromium (total)	1 7
Nickel	0.20

PROPOSED BDAT TREATMENT STANDARDS FOR F038

[Wastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/l)
Benzene	0.14
Benzo(a)pyrene	0.061
Bis(2-ethylhexiy)phthalate	0.28
Chrysene	0.059
Di-n-butyl phthalate	0.057
Ethylbenzene	0.057
Fluorene	0.059
Naphthalene	0.059
Phenanthrene	0.059
Phenol	0.039
Pyrene	0.067
Toluene	0.080
Xylenes (total)	0.32
Cyanides (total)	0.028
Chromium (total)	0.20
Lead	0.037

B. Wastes from the Production of Unsymmetrical Dimethylhydrazine (K107–K110)

K107—Column bottoms from product separation from the production of 1,1-dimethylhydrazine from carboxylic acid hydrazine.

K108—Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine from carboxylic acid hydrazine.

K109—Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine from carboxylic acid intermediates.

K110—Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine from carboxylic acid intermediates.

Four wastes generated in the production of 1,1-dimethylhydrazine (UDMH) salts from carboxylic acid hydrazides were listed as hazardous on May 2, 1990 (55 FR 18496). (For a detailed description of wastes K107 through K110, refer to the final rule listing these wastes as hazardous and the associated listing background document.)

The Agency has also proposed to list two additional wastes, K137 and K138, generated in the production of 1,1-dimethylhydrazine (UDMH) salts from carboxylic acid hydrazides as hazardous on May 2, 1990 (55 FR 18507). These two additional wastes were proposed for listing on the basis of comments received in response to the proposed listings of K107–K110 (49 FR 49556). [3] For a detailed description of K137 and K138, refer to the Federal Register notice proposing to list these wastes as hazardous (155 FR 18507).

EPA is proposing to regulate wastes from the production of unsymmetrical imethylhydrazine by setting methods of treatment as the standard. This is based on the decision to regulate U098—the listing for off-specification, out-dated, or discarded 1,1-dimethylhydrazine—as set forth in the Final Rule for Third Third wastes (55 FR 22520 (June 1, 1990)). In that rule, the treatment standards for U098 wastes were established that specify the use of thermal or chemical treatment as BDAT. In particular, the standards specified the use of incineration as a method for nonwastewater forms of U098, and incineration or chemical oxidation followed by carbon adsorption for wastewater forms of U098. EPA believes that specifying methods of treatment appears to be the most appropriate type of standard for wastes containing primarily UDMH due to its relative instability in water and the resultant difficulties in accurate quantification in treatment residues. (In fact, the Third Thirds rulemaking classified U098, 1,1-dimethylhydrazine, as a reactive waste rather than a toxic organic waste based on its instability in water and amenability to oxidation.) While certain analytical methods were used successfully in the investigations that supported the listing of these wastes as hazardous, these methods were designed to measure UDMH present at high concentrations rather than at levels near the detection limit (as expected in residues from treatment).

While preliminary contacts with industry did not confirm that any facility is currently generating these UDMH wastes, the Agency is proposing standards in the event that these wastes may be generated some time in the future.

In the May 30, 1991 Advance Notice of Proposed Rulemaking, EPA solicited detailed comment about the compositions of these waste streams, performance data from attempts to treat these or similar waste streams by thermal, biological or other treatment processes, and analytical problems encountered or anticipated in quantifying constituents in these wastes. EPA received no comments specific to these wastes.

C. Waste from the Production of Dinitrotoluene and Toluenediamine (K111 and K112)

K111—Product wash waters from the production of dinitrotoluene via nitration of toluene.

K112—Reaction byproducts from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.

On October 23, 1985, six wastes (K111 through K116) generated in the production of dinitrotoluene (DNT), toluenediamine (TDA), and toluene diisocyanate (TDI) were listed as hazardous (50 FR 42936). (For a detailed description of the wastes, refer to the final rule listing these wastes as hazardous and the associated listing background document.) Treatment standards for four of the six wastes, K113 through K116, were promulgated in the Second Third final rule (54 FR 26623). The Agency is now developing treatment standards for the two remaining wastes, K111 and K112.

K111 wastes—defined as product wash waters from the production of dinitrotoluene via nitration of toluene—are generated at facilities engaged in manufacturing inorganic chemicals, dyes and pigments, explosives, and organic chemicals in the course of organic synthesis operations. K112 wastes—defined as reaction by-product water from the drying column in the production of toluenediamine via the hydrogenation of dinitrotoluene—are generated in intermediate processes at facilities engaged in manufacturing photographic chemicals, plastics and resins, organic chemicals, textiles and polyurethane, as well as in the production of toluenediamine as an end product.

[3] A proposed consent decree between EPA and the Environmental Defense Fund pledges EPA to determine whether K137 and K138 are to be generated anytime between the signature of the Consent Decree and July 31, 1997; if this is the case, EPA must list these wastes as hazardous wastes by July 31, 1998 and promulgate final treatment standards by January 31, 1999.

Characterization information indicates that K111 wastes are generated as aqueous liquids with significant quantities of sulfuric and nitric acids, and are likely to be corrosive. As corrosive wastes meeting the D002 definition criteria (40 CFR 261.22) such streams are already subject to land disposal restrictions. Other organic components that could be present and potentially used as surrogates for concentration-based standards are nitrocresols, nitrophenols, nitrobenzoic acid and the more stable dinitrotoluenes. K112 is an aqueous liquid with small quantities of toluenediamines. K111 and K112 wastes also may include metals such as nickel (from catalysts).

EPA is proposing to regulate K111 and K112 wastewaters and nonwastewaters by specifying methods of treatment as standards. This is primarily due to the fact that the major organic constituents of K111 and K112 (the dinitrotoluenes and toluidines) are relatively unstable in water, and SW–846 (and equivalent) test methods cannot quantify them reliably so that the regulated community can analyze these wastes and their treatment residues on a routine basis to demonstrate compliance.

The alternative to establishing treatment standards expressed as required methods is to develop concentration-based standards. Concentration-based standards for the organics in K111 and K112 wastes (as stated above) appear to be inappropriate because the toxic organics anticipated to be present are not amenable to quantification in complex matrices.

However, if surrogate organics could be identified that could be used to demonstrate that these organic constituents of concern could be treated, the Agency would consider developing concentration-based standards. In fact, EPA solicited analytical data on the composition of these streams in the May 30 ANPR, in order to determine whether they contain constituents that can act as analytical surrogates to verify destruction of the organic constituents of concern, but received no response on this issue.

Thus, incineration for nonwastewaters, and incineration or chemical oxidation followed by activated carbon adsorption for wastewaters are being proposed as treatment standards for K111 and K112 wastes. One commenter responding to the May 30 ANPR, 56 FR 24462, suggested that K111 may be explosive because of the high DNT concentration and that incineration is therefore not an appropriate method of treatment. This commenter also provided EPA with preliminary treatability data for K111 and K112 wastes in biological treatment systems. EPA has solicited additional treatability data from this commenter and is currently evaluating whether standards based on biological treatment are appropriate. EPA requests data characterizing the treatability of these wastes in biological systems from other commenters.

D. Wastes from the Production of Ethylene Dibromide (K117, K118, and K136)

K117—Wastewater production from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethylene.

K118—Spent adsorbent solids from purification of ethylene dibromide via bromination of ethylene dibromide via bromination of ethylene.

K136—Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethylene.

Three wastes generated in the production of ethylene dibromide (EDB) were listed as hazardous on February 13, 1986 (51 FR 5327). (For a detailed description of K117, K118, and K136, refer to the final rule listing these wastes as hazardous and the associated listing background document.) Although EPA banned the use of ethylene dibromide (EDB) in the US, EPA believes that EDB wastes may still be generated by pesticide manufacturers intending to sell EDB overseas.

K117 is a liquid stream containing ethylene dibromide, bromoethane, bromochloroethane and chloroform. K118 is a solid waste consisting of spent adsorbents saturated with ethylene dibromide, 1,1,2-tribromomethane, bromochloroethane, bromomethane and bis(2-bromo)ethyl ether. K136 is an organic liquid with high concentrations of ethylene dibromide.

Information available to the Agency suggests that only one facility generates K118 and reports disposing of it in a hazardous waste permitted landfill. This facility also reports recycling its K117 stream, a briny high-bromine stream that it returns to the bromine production unit.

The EDB wastes K117, K118 and K136 resemble very closely the organobromine wastes U029 (bromomethane), U030 (4-bromophenyl phenyl ether), U066 (1,2-dibromo-3-chloropropane), U067 (ethylene dibromide, EDB), U068 (dibromomethane) and U225 (bromoform) regulated in the Third Third final rule. Therefore, concentration-based standards have been developed for K117, K118 and K136 wastes based on a transfer of data used to calculate the U029, U030, U066, U067, U068 and U225 Third Third standards; these data were based on incineration of EDB wastes performed and monitored by EPA's Office of Toxic Substances (see the two tables at the end of this section for the proposed standards).

Incinerating brominated organic compounds raises the issue of preventing emissions of molecular bromine (Br_2) from the incinerator by shifting the combustion reaction product equilibrium to favor the formation of hydrogen bromide (HBr). These concerns can be addressed on a site specific basis through the omnibus permitting provision. Limited data available to EPA suggest that adding sulfur to the combustion mixture prevents generation and subsequent emissions of molecular bromine. EPA also realizes that organobromine wastes also offer opportunities for recycling—at least one facility is known to recover bromine from brominated wastes by thermal processing.

In response to the May, 1991, Advance Notice of Proposed Rulemaking (ANPR) soliciting comment and data on the composition and treatment of these wastes, a commenter discussed the difficulties in incinerating brominated wastes, but presented no engineering data describing how an incinerator could be designed or operated to reduce bromine emissions. One commenter also indicated that steam stripping could also be used to treat these wastes. As a result, EPA is currently evaluating performance data submitted on steam-stripping and may specify its use as BDAT for K117 and K118 or promulgate a numerical treatment standard based on these data as an alternative to the incineration-based numbers proposed here. These data are included in the public record for the ANPR.

Comments from another facility described a process for recycling K117 which includes bromine recovery. This commenter requested EPA to set incineration followed by bromine reclamation from the incinerator scrubber water as BDAT. EPA solicits comment on this.

PROPOSED BDAT TREATMENT STANDARDS FOR K117, K118, AND K136

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Ethylene dibromide	15
Bromomethane	15
Chloroform	5.6
1,1,2-Tribromomethane	15

PROPOSED BDAT TREATMENT STANDARDS FOR K117, K118, AND K136

[Wastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/1)
Ethylene dibromide	0.028
Bromomethane	0.11
Chloroform	0.046
1,1,2-Tribromomethane	0.63

E. Wastes from the Production of Ethylenebisdithiocarbamic Acid (K123–K126)

K123—Process wastewater (including supernatants, filtrates and wash waters) from the production of ethylenebisdithiocarbamic acid and its salts.

K124—Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.

K125—Purification solids (including filtration, evaporation and centrifugation solids) from the production of ethylenebisdithiocarbamic acid and its salts.

K126—Baghouse dust and floor sweepings in milling and packaging operations from the production of ethylenebisdithiocarbamic acid and its salts.

Four wastes generated in the production and formulation of the fungicide ethylenebisdithiocarbamic acid (EBDC) and its salts were listed as hazardous on October 24, 1986 (51 FR 37725). (For a detailed description of K123 through K126, refer to the final rule listing these wastes as hazardous and the associated listing background document).

In general, waste characterization information indicate that K123 wastes are aqueous liquids, K124 wastes are caustic aqueous liquids, K125 wastes are filtration and distillation solids, and K126 wastes are dry dust-like solids. Ethylene thiourea appears to be the primary organic component of all four wastes.

The Agency's preliminary contacts with industry indicate that one facility generates these wastes; this facility currently sends them to a publicly owned treatment works (POTW) after neutralization to an appropriate pH.

Methods of treatment are being proposed for K123, K124, K125, and K126 wastes because the principal organic components of these wastes are ethylenebisdithiocarbamic acid (EBDC) and ethylene thiourea, both of which are relatively unstable in water and thus appear to be particularly difficult to quantify. EDBC and ethylene thiourea were regulated in the Third Third rulemaking U114 and U116 respectively, both with methods of treatment as standards.

Concentration-based standards are an alternative to specifying treatment methods. EPA will, however, only set concentration-based standards for organics in K123 through K126 wastes if reliable analytical information shows the wastes contain significant concentrations of organics that are consistently amenable to quantification in complex matrices (i.e., the treatment residues) or if surrogate treatment parameters can be identified. Available data suggest that none of the hazardous organic constituents of concern in K123 through K126 wastes are easily quantified in treatment residues from treatment of other types of wastes. Nevertheless, to determine whether concentration-based standards are appropriate for the organics in these four wastes, EPA solicited analytical data on their composition in both treated and untreated wastes in the May 30, 1991, ANPR, 56 FR 24463. Based on the lack of comments received, other constituents or parameters could not specifically be identified that could act as analytical surrogates (i.e., indicators to verify destruction of the organic constituents of the stream that are difficult to analyze). Consequently, EPA could not propose concentration-based standards using surrogates. EPA is, therefore, proposing thermal and chemical methods of treatment as standards for K123, K124, K125 and K126. These methods of treatment, incineration for nonwastewaters and incineration or chemical oxidation followed by either biological treatment or carbon adsorption for wastewaters, appear to be appropriate standards for these wastes.

In the May 30, 1991 Advance Notice of Proposed Rulemaking, EPA solicited detailed comment about the compositions of these waste streams, performance data from attempts to treat these or similar waste streams by thermal, biological or other treatment processes, and analytical problems encountered or anticipated in quantifying constituents in these wastes. EPA received no comments specific to these wastes.

F. Wastes from the Production of Methyl Bromide (K131 and K132)

K131—Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.

K132—Spent adsorbent and wastewater separator solids from the production of methyl bromides.

Two wastes generated during the production of methyl bromide were listed has hazardous on October 6, 1989 (54 FR 41402). For a more detailed description of wastes K131 and K132, please refer to the October 1989 rule for the initial listing of these wastes and the associated listing background documents.[4]

K131 wastes are extremely acidic aqueous liquids containing methyl bromide, dimethyl sulfate and sulfuric acid, plus other brominated ethanes and methane- and ethane-based alcohols and ethers. K132 wastes consist of adsorbent solids saturated with liquids containing methyl bromide.

The methyl bromide wastes resemble the organobromine wastes U029, U030, U066, U067, U068 and U225 regulated in the May 1990 Third Third final rule. Because of this similarity, EPA is proposing to regulate methyl bromide in the K131 and K132 waste streams with the standards promulgated for U029 (methyl bromide) in the Third Thirds rulemaking: 0.11 mg/1 in wastewaters and 15 mg/kg in nonwastewaters. BDAT for these wastes is incineration.

However, responses to the May, 1991, Advanced Notice of Proposed Rulemaking, in which EPA solicited detailed comment about these waste streams in terms of composition, feasibility of analysis and treatability, indicate that the one generator of these wastes uses steam stripping to treat these wastes. EPA is currently evaluating steam-stripping performance data from this commenter in order to evaluate steam stripping as BDAT for these wastes. Therefore, EPA may designate steam-stripping as BDAT for

[4] One plant recycles a particular methyl bromide stream in a way that may not involve discarding. EPA requested, and obtained, a voluntary remand to investigate further whether such stream is a RCRA solid waste. Today's proposal would not apply to this material if it is ultimately determined not to be a solid waste, and also does not apply during the period the Agency is studying the issue.

K131 and K132 and promulgate a set of numerical treatment standards based on steam stripping rather than the incineration-based numbers proposed here.

PROPOSED BDAT TREATMENT STANDARDS FOR K131 AND K132

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample	Total composition (mg/kg)
Bromomethane (methyl bromide)		15

PROPOSED BDAT TREATMENT STANDARDS FOR K131 AND K132

[Wastewaters]

Regulated constituent	Maximum for any single grab sample	Total composition (mg/1)
Bromomethane (methyl bromide)		0.11

G. Additional Organic U Wastes (U328, U353, and U359)

This section addresses the investigation of BDAT for three specific wastes listed under 40 CFR 261.33 since November, 1984. These are identified with the alphanumeric waste code that starts with a "U".

1. Ortho-toluidine and Para-toluidine (U328 and U353)

Ortho-toluidine and para-toluidine, which when discarded become U328 and U353, are manufactured from processes similar to those used in manufacturing dinitrotoluene and toluenediamine. U328 and U353, thus, may be similar to wastes identified as K111 and K112. The textile industry and the dyes and pigments industry generate o-toluidine and p-toluidine as intermediates and reagents for printing textiles and making colors fast to acids in the dyeing process. Both compounds also are components in ion exchange column preparation, used as antioxidants in rubber manufacturing, and used as lab reagents in medical glucose analyses.

EPA is proposing methods of treatment as the standards for U328 and U353 wastewaters and nonwastewaters. Methods of treatment, rather than treatment levels, appear to be the most appropriate type of treatment standard for these wastes, because the organic compounds for which the wastes are listed are considered to be relatively unstable in water such that consistent quantification of o-toluidine and p-toluidine in raw wastes and treated residuals may preclude the development of a concentration-based standard for these wastes, i.e., the alternative to specifying methods of treatment. In addition, these two organic compounds resemble other organic compounds, namely 4-chloro-o-toluidine (U049) and o-toluidine hydrochloride (U222) for which similar standards have been promulgated.

The Agency, therefore, is proposing incineration or thermal destruction as required methods of treatment for the nonwastewater forms of these wastes, and chemical oxidation followed by either biological treatment or carbon adsorption for the wastewater forms of these wastes. (Although not a primary technology for wastewaters, incineration could be proposed as an alternative method of treatment for wastewaters.)

The molecular structures of these compounds—but not their stability in water—resemble U049, 4-chloro-o-toluidine and U222, o-toluidine hydrochloride. U049 and U222 are amenable to analytical quantification and were demonstrated to be amenable to treatment by incineration by data from EPA's incinerator tests performed to support earlier rulemaking. Therefore EPA believes that incineration as a method of treatment is the appropriate standard for these wastes.

The Agency's preliminary contacts with industry indicate that one facility generates both U328 and U353. This facility estimates U328 generation at 4000 lb/yr and U353 generation at 1000 lb/yr but did not say how they disposed of these wastes.

In the May, 1991, Advanced Notice of Proposed Rulemaking, EPA solicited detailed comment about the compositions of these waste streams, performance data from attempts to treat these or similar waste streams by thermal, biological or other treatment processes, and analytical problems encountered or anticipated in quantifying constituents in these wastes. EPA received no comments specific to these wastes.

2. 2-Ethoxyethanol, U359

U359 is generated in the printing, organic chemical manufacturing and leather and tanning industries and then used in various other processes in paint removers, cleansing solutions and dye baths, as a solvent for inks, duplicating fluids, nitrocellulose, lacquers and other substances, as a chemical intermediate in 2-ethoxyacetate manufacture and in the process of leather finishing. EPA anticipates this waste to be co-treated and co-disposed with F005 wastes listed for 2-ethoxyethanol.

The Agency's preliminary contacts with industry indicate that only two facilities generate U359. One reports generating U359 as minimal spills and other losses during handling and also as laboratory waste (about 100 gallons a year); the facility sends these wastes off-site for treatment and disposal. The other reports generating unspecified quantities of U359 from spill cleanups and other sources; these wastes are treated by incineration and biological treatment depending on water content.

EPA is proposing to regulate U359 wastewaters and nonwastewaters by setting methods of thermal and chemical treatment as the standard. Methods of treatment, namely (1) incineration for nonwastewaters and (2) incineration or chemical oxidation followed by either biological treatment or carbon adsorption for wastewaters, appear to be appropriate standards for this waste because no SW–846 methods exist for quantifying 2-ethoxyethanol which is unstable in water and thus particularly difficult to quantify.

The proposed treatment standards for U359 wastes are the same treatment methods set in the Third Thirds rulemaking for U154, methanol wastewaters and nonwastewaters, namely (1) incineration for nonwastewaters and (2) incineration or chemical oxidation with carbon adsorption or biodegradation for wastewaters. Furthermore, in incineration tests performed to support previous rulemakings, incineration was demonstrated to reduce butanol to levels near the analytical limit of detection.

In the May, 1991, Advanced Notice of Proposed Rulemaking, EPA solicited detailed comment about the compositions of 2-ethoxyethanol waste streams, performance data from attempts to treat these or similar waste streams by thermal, biological or other treatment processes, and analytical problems encountered or anticipated in quantifying constituents in these wastes. One commenter offered to work with

EPA to develop an analytical method to quantify 2-ethoxyethanol in wastewaters. This commenter submitted preliminary data from biological treatment of a wastewater high in 2-ethoxyethanol and encouraged EPA to develop numerical treatment standards for 2-ethoxyethanol. EPA is currently soliciting further information from this commenter.

IV. Detailed Discussion of Today's Proposed Rule: Changes to Existing Regulations

A. Proposed Revisions to the F001–F005 Spent Solvent Treatment Standards

F001—The following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of 10 percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005 and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F002—The following spent holgenated solvents: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,1,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,2,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F003—The following spent nonhalogenated solvents: Xylene acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent nonhalogenated solvents; and all spent solvent mixtures/blends containing before use, one or more of the above nonhalogenated solvents, and a total of 10 percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F004—The following spent nonhalogenated solvents: Cresol and cresylic acid and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the above nonhalogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F005—The following spent nonhalogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing before use, a total of 10 percent or more (by volume) of one or more of the above nonhalogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

The agency is, today, proposing revisions to the treatment standards for organic constituents in both the nonwastewater and wastewater forms of F001–F005 wastes. The Agency is soliciting comments on the proposed changes to the treatment standards as well as any treatment data that may be available to assist in further refinement of the treatment standards.

1. Regulatory Background

a. *Listing definitions.* On May 19, 1980 (45 FR 33119), the Environmental Protection Agency (EPA) listed 27 commonly used organic solvents as hazardous wastes when spent or discarded. The solvents were listed as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005. These listed wastes included certain spent halogenated and nonhalogenated solvents, including still bottoms from the recovery of these solvents.

On December 31, 1985 (50 FR 53315), the Agency promulgated an amendment to the listings to include mixtures containing a total of 10 percent or more (by volume) of one or more of the listed solvents (the 10 percent threshold always applied to solvent mixtures before use). The Agency believed that establishing a threshold level well below the minimum solvent concentration typically used in solvent formulations would bring the majority of solvent mixtures used in commerce into the hazardous waste management system, while excluding dilute mixtures. Furthermore, data showed that, at concentrations above 10 percent, solvents have been demonstrated to cause substantial harm to human health. The Agency also received numerous comments regarding the scope to the spent solvent listings. As clarified in the December 31, 1985, **Federal Register** (50 FR 53315), the listings cover only those solvents that are used for their "solvent" properties, i.e., to solubilize (dissolve) or mobilize other constituents. Manufacturing process wastes where solvents were used as reactants or ingredients in the formulation of commercial chemical products are not covered by the listing.

The final definition of the spent solvents listing did not include four solvents that were added to the F001–F005 listing on February 25, 1986: Benzene, 2-ethoxyethanol, 2-nitropropane, and 1,1,2-trichloroethane (51 FR 40607).

b. *F001–F005 Treatment Standards.* The Agency promulgated treatment standards for F001–F005 spent solvent wastes on November 7, 1986 (51 FR 40593). Lab packs containing these solvents were also subject to these treatment standards. The Agency did not include treatment standards for commercial chemical products, manufacturing chemical intermediates, and off-specification commercial chemical products (U and P wastes) that corresponded to the F001–F005 listings. The rule also did not cover the four newly listed solvents in the F001–F005 listings: Benzene, 2-ethoxyethanol, 2-nitropropane, and 1,1,2-trichloroethane (51 FR 6537).

The Agency promulgated the TCLP (i.e., the leaching procedure itself, but not the characteristic) in the final rule specifically for evaluation of the solvent and dioxin-containing wastes. As stated in 53 FR 17584, EPA's land disposal restrictions for solvent waste codes F001–F005 (51 FR 40572) uses the TCLP value as a measure of performance. At the time that EPA promulgated the treatment standards for F001–F005, useful data were not available on total constituent concentrations in treated residuals, and as a result, the TCLP data were considered to be the best measure of performance.

However, for all organic constituents whose treatment standards have been promulgated after the November 7, 1986 rule, EPA has based the treatment standards on the total constituent concentration found in the treated waste. EPA has based its decision on the fact that these technologies exist to destroy the various organic compounds. Accordingly, the best measure of performance should reflect the extent to which the various organic compounds have been destroyed or the total amount of constituent remaining after treatment.

c. *Methylene chloride standard revised.* As part of the First Third rule, the Agency revised and promulgated the BDAT treatment standard for methylene chloride in F001–F005 wastewaters from the pharmaceutical industry (53 FR 31152). The revised treatment standard was based on the transfer of treatment data for wastewater from agricultural facilities. The revised treatment standard was based on steam stripping data for methylene chloride and was based on total constituent analysis.

d. *Amendment to F001–F005 listing definition.* In the Third Third rule (55 FR 22576), the Agency promulgated treatment standards for 1,1,2-trichloroethane, benzene, 2-ethoxyethanol, and 2-nitropropane for the F002 and F005 spent solvents. These four organic constituents were added as hazardous constituents to the F002 and F005 hazardous waste listings in 1986 (see 51 FR 6737, February 25, 1986). EPA did not amend treatment standards for the other solvent constituents in F002 and F005. The Agency promulgated concentration-based treatment standards for wastewater forms of 1,1,2-trichloroethane and benzene based on performance data generated from one, or a combination of two or more, of the following BDAT technologies: Biological treatment, steam stripping, carbon adsorption, and liquid extraction, among others. The treatment standards promulgated for 1,1,2-trichloroethane and benzene in nonwastewater forms of F002 and F005 were based on performance data from incineration. These treatment standards are expressed as concentration-based standards in the treated waste.

EPA had determined that the available data were insufficient to establish concentration-based treatment standards for wastewater and nonwastewater forms of F005 containing 2-nitropropane and 2-ethoxyethanol and instead promulgated methods of treatment as the treatment standards.

2. Overlap Between F001–F005 Solvents and Other BDAT Standards

Many of the solvent constituents that are regulated in F001–F005 wastes are also regulated in the First, Second, and Third Third rules. In the April 18, 1988 and the May 17, 1988 proposed First Third rules, treatment standards for the following K wastes, containing solvent constituents also regulated in F001–F005 wastes, were proposed: K001, K015, K016, K018, K019, K020, K021, K022, K025, K030, K037, K048, K049, K050, K051, K052, K066, K087, K103, and K110. The treatment standards for these wastes were promulgated on August 17, 1988.

In the Second Third proposed rule, treatment standards for the following K wastes containing constituents that are also regulated in F001–F005 wastes were proposed: K011, K013, K014, K028, K029, K060, and K096. These treatment standards were promulgated on June 23, 1989.

In the November 22, 1989 proposed rule for the Third Third wastes, EPA proposed two alternative sets of concentration-based treatment standards for wastewater forms of the majority of the U and P wastes, many of which were solvent constituents found in F001–F005 wastes. One set of treatment standards was based on the concentration of each constituent in incinerator scrubber water. The second set of standards was based on wastewater treatment performance data for each constituent. On the basis of comments received, the Agency established and promulgated treatment standards for wastewater forms of the Third Third waste codes based on wastewater treatment performance data. These treatment standards were promulgated on June 1, 1990 (55 FR 22601). The solvent wastes affected by this change included: Acetone (U002), n-butyl alcohol (U031), carbon disulfide (P022), carbon tetrachloride (U211), chlorobenzene (U037), cresols and cresylic acid (U052), cyclohexanone (U057), 1,2-dichlorobenzene, ethyl acetate (U112), ethylbenzene, ethyl ether (U117), isobutanol (U140), methanol, methylene chloride (U080), methyl ethyl ketone (U161), methyl isobutyl ketone (U161), nitrobenzene (U169), pyridine (U196), tetrachloroethylene (U210), toluene (U220), 1,1,1-trichloroethane (U226), 1,1,2-trichloro-1,2,2-trifluoroethane, trichloroethylene (U228), trichlorofluoromethane, and xylene (U239).

The Agency also proposed treatment standards for nonwastewater forms of U and P wastes on November 22, 1989. (The U wastes that contain constituents regulated in the F001–F005 final rule are the same as the Third Third U wastes discussed above.) After the comment period, the Agency revised the proposed treatment standards for approximately 75 constituents. These changes were based on three data sources: The Interlaboratory Ash Study, an in-house study by EPA's Office of Research and Development, and EPA's reevaluation of its own calculation and methodology. These changes took the form of either different numerical values for concentration-based standards or promulgating incineration as a method of treatment for wastes for which EPA had not proposed concentration-based standards. The nonwastewater concentration-based standards, promulgated on June 1, 1990, reflect the performance of well-designed and well-operated incineration systems and were developed primarily using the results from 14 incineration test burns (55 FR 22604).

Treatment standards for the following F and K wastes containing solvent constituents present in F001–F005 solvent wastes were also proposed and promulgated in the Third Third: F025, K001, K011, K013, K014, K015, K021, K022, K025, K026, K029, K035, K037, K042, K048, K049, K050, K051, K060, K073, K083, K085, K086, K095, K096, and K105.

3. Comments Received from the May 30, 1991, Advance Notice of Proposed Rulemaking on Revisions to Standards for F001–F005 Solvent Wastes

The Agency received a number of comments on the proposed rulemaking revisions to the F001–F005 solvent waste treatment standards that were outlined in the ANPR; all the comments were generally favorable to the idea of basing the nonwastewater treatment standards for organic constituents in F001–F005 spent solvents from the existing TCLP standards to standards based on total concentrations as an alternative to the existing TCLP standards.

4. Proposed Changes to the F001–F005 Treatment Standards

The Agency is today proposing to revise the treatment standards for both nonwastewater and wastewater forms of F001–F005 wastes. (See Table at end of this section for specific treatment levels.) The methodology used to develop the treatment standards for both nonwastewater and wastewater forms of F039 (multisource leachate) was used in determining the revised treatment standards for the F001–F005 spent solvents. These revisions do not, however, include the four solvents that were added to the solvents listings: Benzene, 2-exthoxyethanol, 2-nitropropane, and 1,1,2-trichloroethane. Treatment standards for these constituents were promulgated in the Third Third final rule in accordance with the previously mentioned methodology.

In addition, the Agency is changing the measure of performance for F001–F005 solvents from treatment standards based on the TCLP to standards based on total concentration of organic constituent in the waste. This is appropriate in that EPA has previously determined that treatment technologies for organics exist to destroy the various organic compounds. Accordingly, the best measure of performance is the extent to which the various organic compounds have been destroyed or the total amount of constituent remaining after treatment.

a. *Revisions to the Standards for Cresols.* In the Solvents and Dioxins rule, the Agency promulgated BDAT treatment standards for "cresols." At that time, the Agency did not distinguish between the various isomers that are present in cresols. As a result, the Agency promulgated a concentration-

based treatment standard for cresol wastewaters of 2.82 mg/1 based on the performance of activated carbon adsorption. For nonwastewaters, the Agency had no data on TCLP extracts of residues from the incineration of cresols (cresylic acid) to use in the derivation of the BDAT treatment standard. EPA, instead, used chemical structure as the basis for transferring the treatment data to cresols (cresylic acid) spent solvents. The data from which the treatment standard for incineration of methylethyl ketone was derived was transferred to cresols (cresylic acid). The treatment standard of 0.75 mg/1 for nonwastewaters is based on the transferred data.

In the Third Third rule, EPA promulgated treatment standards for U052 waste. U052 is listed as "cresols (cresylic acid)." Cresylic acid is the name given to a mixture of three isomeric cresols (methyl phenols), in which the meta-cresol predominates. U052 typically contains various levels of ortho-cresol, metacresol, and para-cresol. Analytical methods are usually reported for o-cresol (CAS No. 95–48–7) and a combination of m- and p-cresols, because m-cresol and p-cresol cannot be distinguished by the analytical methods. Thus, the Agency promulgated concentration-based standards for U052 based on an analysis for o-cresol and the mixture of m-cresol and p-cresol.

Based on this, the Agency is today proposing to modify the current treatment standards for the constituent "cresols" in F001–F005 wastes. The Agency is proposing to transfer the treatment standards from U052 wastes for o-cresol and a mixture of m-cresol and p-cresol wastewaters and nonwastewaters to F001–F005 wastes based on total concentration of constituent(s) in the waste stream.

b. *Modification to the Regulatory Placement of F001–F005 Standards.* The Agency is also proposing to change the regulatory table as it pertains to F001–F005 wastes. The Agency has identified a placement error for F001–F005 spent solvent wastewaters. The regulated hazardous constituents in F001–F005 and their respective wastewater treatment standards are in Table CCWE—Constituent Concentrations in Waste Extract (40 CFR 268.4). However, this placement is in error; the correct location for these standards should be in Table CCW—Constituent Concentrations in Wastes (40 CFR 268.43). As such, the tables will be changed accordingly. Furthermore, in that the Agency is proposing to change the nonwastewater treatment standards from the TCLP standard to a total concentration-based standards, this part of the table will also change (if the proposal is finalized) by placing the nonwastewater standards for F001–F005 spent solvents in Table CCW—Constituent Concentrations in Wastes.

PROPOSED REVISIONS TO TREATMENT STANDARDS FOR F001–F005 SPENT SOLVENT WASTES

Regulated constituent	Proposed treatment standard		
	Treatment	Wastewater (mg/1)	Nonwastewater (mg/kg)
Acetone	BT	0.28	160
n-Butyl alcohol	BT	5.6	2.6
Carbon disulfide.	BT	0.014	NR
Carbon tetrachloride.	BT	0.057	5.6
Chlorobenzene	BT	0.057	5.7
Cresol (m- and p- isomers.	AS	0.77	3.2
o-Cresol	BT	0.11	5.6
Cyclohexanone	BT	0.36	NR
1,2-Dichlorobenzene.	BT	0.088	6.2
Ethyl acetate	AS	0.34	33
Ethyl benzene	BT	0.057	6.0
Ethyl ether	RO	0.12	160
Isobutyl alcohol	BT	5.6	170
Methanol	BT	5.6	NR
Methylene chloride.	SS	[2]0.089	33
Methyl ethyl ketone.	BT	0.28	36
Methyl isobutyl ketone.	BT	0.14	33
Nitrobenzene	SS+AC	0.068	14
Pyridine	ANFF	0.014	16
Tetrachloroethylene.	SS	0.056	5.6
Toluene	SS	0.08	28
1,1,1-Trichloroethane.	SS	0.054	5.6
Trichloroethylene.	SS	0.054	5.6
1,1,2-Trichloro-1,2,2-trifluoroethane.	As+Fil	0.057	28
Trichloromonofluoromethane.	LL+SS+AC	0.02	33
Xylenes (total)	WAO	0.32	28

[1] Wastewater treatment technologies on which the treatment standards were based are indicated in this column; all of the nonwastewater treatment standards were based on incineration.

[2] The methylene chloride treatment standard for wastewaters generated from pharmaceutical plants is 0.44 mg/1.

NR: Not regulated.

Key to Treatment Technologies

AC—Activated carbon; ANFF—Anaerobic fixed film biological treatment; As—Activated sludge biological treatment; BT—Biological treatment; GAC—Granulated Activated Carbon; Fil—Filtration; LL—Liquid liquid extraction; PACT—Powdered Activated Carbon Treatment; RO—Reverse osmosis; SS—Steam stripping; WAO—Wet air oxidation.

B. Conversion of Wastewater Standards Based on Scrubber Water

K015—Still bottoms from the distillation of benzyl chloride.

K016—Heavy ends or distillation residues from the production of carbon tetrachloride.

K018—Heavy ends from the fractionation column in ethyl chloride production.

K019—Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.

K020—Heavy ends from the distillation of vinyl chloride in vinyl chloride production.

K023—Distillation light ends from the production of phthalic anhydride from naphthalene.

K024—Distillation bottom tars from the production of phthalic anhydride from naphthalene.

K028—Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.

K030—Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.

K046—Dissolved air flotation (DAF) float from the petroleum refining industry.

K049—Slop oil emulsion solids from the petroleum refining industry.

K050—Heat exchanger bundle cleaning sludge from the petroleum refining industry.

K051—API separator sludge from the petroleum refining industry.

K052—Tank bottoms (leaded) from the petroleum refining industry.

K087—Decanter tank tar sludge from coking operations.

K093—Distillation light ends from the production of phthalic anhydride from ortho-xylene.

K094—Distillation bottoms from the production of phthalic anhydride from ortho-xylene.

U028—Bis (2-ethylhexyl) phthalate.

U069—Di-n-butyl phthalate.

U088—Diethyl phthalate.

U102—Dimethyl phthalate.

U107—Di-n-octyl phthalate.

U190—Phthalic anhydride (measured as Phthalic acid).

On November 22, 1989 (54 FR 48372), EPA proposed as part of the Third Third rule concentration-based treatment standards for numerous listed wastes based on the performance of incineration. For the wastewaters, the treatment standards were based on the concentration of the constituents of concern in incineration scrubber waters. In the final rule (55 FR 22520), however, EPA altered its approach to setting these standards and promulgated treatment standards for wastewaters based on actual wastewater treatment data for the constituents of concern. This change was adopted for a number of reasons.

First, it was stated in the final rule for the Second Third wastes (54 FR 26629) and reiterated in the final rule for Third Third wastes (55 FR 22577) that, when the Agency had appropriate wastewater treatment data from well-designed and well-operated wastewater treatment

units, it preferred to use those data rather than scrubber water data to develop wastewater treatment standards. This is because incineration is not a normal treatment method for wastewaters. In addition, alternative standards were proposed in the Third Third notice for multisource leachate (F039) wastewaters based on a transfer of performance data from various sources, including: The Office of Water's Industrial Technology Division (ITD) and National Pollution Discharge Elimination System (NPDES) data (specifically from the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) database); the Hazardous Waste Engineering Research Laboratory (HWERL) database (HWERL is the former name of EPA's Risk Reduction Engineering Laboratory); the Office of Solid Waste's BDAT data (from previous land disposal restriction rules); and additional wastewater treatment data from articles on wet air oxidation (WAO) and powdered activated carbon treatment (PACT).

Second, commenters on the proposed Third Third rule had urged the Agency to develop treatment standards for wastewater forms based on residues from wastewater treatment technologies rather than incineration scrubber waters. Commenters on previous rules had also stated that when EPA had performance data from technologies treating wastewaters containing the same or similar constituents that EPA could use it to develop BDAT treatment standards. Commenters emphasized that these performance data represented the treatment of organic-containing wastewaters better than incineration scrubber waters alone. Finally, comments on the proposed rules for the First Third, Second Third, and Third Third wastes almost unanimously supported the option of promulgating wastewater treatment standards based on the performance of specific wastewater treatment rather than incinerator scrubber water constituent levels.

The Agency reviewed all of the aforementioned data during the Third Third comment period to determine whether it could be considered BDAT. In reviewing these data, the Agency considered influent concentrations of the treated constituent, whether the treated stream was representative of that U, P, F, or K wastewater, and how achievable the detection limit was in similar or other matrices based on other data received. Upon conclusion of these analyses, the Agency revised the proposed wastewater standards for most of the Third Third F, K, U, and P wastes based on the data received prior to proposal: constituent-specific concentration-based standards as found in F039 wastewaters. Detailed information on the development of the wastewater treatment standards can be found in the amendment to the background document titled "Final Best Demonstrated Available Technology (BDAT) Background Document for U and P Wastes and Multi-Source Leachates (F039)," Volume A: "Wastewater Forms of Organic U and P Wastes and Multi—Source Leachates (F039) for Which There Are Concentration-Based Treatment Standards." (This document can be found in the RCRA docket for the Third Third final rule.)

As part of the First Third and Second Third rules, EPA promulgated treatment standards for wastewater forms of 24 K and U wastes (i.e., K015, K016, K018, K019, K020, K023, K024, K028, K030, K048, K049, K050, K051, K052, K087, K093, K0494, U028, U069, U088, U102, U107, and U190). These wastewater treatment standards were based on data from incineration scrubber waters. Upon review of all available data and comments, the Agency believes that the best demonstrated available technology for these wastewaters is better represented by concentration-based treatment standards based on wastewater treatment data rather than scrubber waters. Therefore, the Agency is proposing to modify the concentration-based treatment standards for these wastewaters. The waters affected by this change come primarily from three general treatability groups: chlorinated organics, petroleum wastes, and phthalate wastes. The Agency believes that this proposed change is consistent with the changes made to the wastewater standards in the final Third Third rule. It should be noted, however, that any technology not otherwise prohibited (e.g., impermissible dilution) may be used to meet the concentration-based treatment standard for these wastewaters, including incineration.

Finally, during the development of the Third Third rule, the Agency determined that for pentachloroethane (a regulated constituent in K018, K028, and K031), complications arose in terms of how reliably the constituent could be quantified (55 FR 22611). As such, the Agency made a decision to promulgate technology-specific treatment standards (i.e., a method (or methods) of treatment) rather than a constituent specific standard. As such, the Agency is today proposing to delete pentachloroethane from further regulation in the wastewater forms of K018, K028, and K030, and to rely on other constituents to act as surrogates for the treatment of pentachloroethane.

COMPARISON OF PROMULGATED WASTEWATER STANDARDS TO THE PROPOSED REVISIONS FOR VARIOUS F AND K WASTES

Waste code and regulated organic constituent	Promulgated standard (mg/l)	Proposed revision (mg/l)	Technology basis for BDAT
K015—Anthracene	1.0	0.059	BT
Benzal chloride	0.28	0.28	—
Benzo (b and/or k) fluoranthene	0.29	0.055	AS
Phenanthrene	0.27	0.059	BT
Toluene	0.15	0.080	SS
K016—Hexachlorobenzene	0.033	0.055	AS+Fil
Hexachlorobutadiene	0.007	0.055	AS+Fil
Hexachlorocyclopentadiene	0.007	0.057	BT
Hexachloroethane	0.033	0.055	AS+Fil
Tetrachloroethene	0.007	0.056	SS
K018—Chloroethane	0.007	0.27	SS
Chloromethane	0.007	0.19	SS
1,1-Dichloroethane	0.007	0.059	SS
1,2-Dichloroethane	0.007	0.21	SS
Hexachlorobenzene	0.033	0.055	AS+Fil
Hexachlorobutadiene	0.007	0.055	AS+Fil
Pentachloroethane	0.007	NR	—
1,1,1-Trichloroethane	0.007	0.054	SS

COMPARISON OF PROMULGATED WASTEWATER STANDARDS TO THE PROPOSED REVISIONS FOR VARIOUS F AND K WASTES—Continued

Waste code and regulated organic constituent	Promulgated standard (mg/l)	Proposed revision (mg/l)	Technology basis for BDAT
Hexachloroethane	0.007	0.055	AS+FII
K019—bis(2-chloroethyl)ether	0.007	0.033	AS
Chlorobenzene	0.006	0.057	BT
Chloroform	0.007	0.046	SS
1,2-Dichloroethane	0.007	0.21	SS
p-Dichlorobenzene	0.008	0.09	AS
Fluorene	0.007	0.059	BT
Hexachloroethane	0.033	0.055	AS+FII
Naphthalene	0.007	0.059	BT
Phenanthrene	0.007	0.059	BT
1,2,4,5-Tetrachlorobenzene	0.017	0.055	SS
Tetrachloroethene	0.007	0.056	SS
1,2,4-Trichlorobenene	0.023	0.055	PACT
1,1,1-Trichloroethane	0.007	0.054	SS
K020—1,2-Dichloroethane	0.007	0.21	SS
1,1,2,2-Tetrachloroethane	0.007	0.057	GAC
Tetrachloroethene	0.007	0.056	SS
K023—Phthalic anhydride (measured as phthalic acid)	0.54	0.059	BT
K024—Phthalic anhydride (measured as phthalic acid)	0.54	0.059	BT
K028—1,1-Dichloroethane	0.007	0.059	SS
trans 1,2-dichloroethane	0.033	0.054	SS
Hexachlorobutadiene	0.007	0.055	BT
Hexachloroethane	0.033	0.055	AS+FII
Pentachloroethane	0.033	NR	—
1,1,1,2-Tetrachloroethane	0.007	0.057	PACT
1,1,2,2-Tetrachloroethane	0.007	0.057	GAC
Tetrachloroethene	0.007	0.056	SS
1,1,1-Trichloroethane	0.007	0.054	SS
1,1,2-Trichloroethane	0.007	0.054	SS
K030—o-Dichlorobenezne	0.006	0.059	BT
p-Dichlorobenzene	0.008	0.09	AS
Hexachlorobutadiene	0.007	0.055	AS+FII
Hexachloroethane	0.033	0.055	AS+FII
Pentachloroethane	0.007	NR	—
1,2,4,5-Tetrachlorobenzene	0.017	0.055	AS+FII
Tetrachloroethene	0.007	0.056	SS
1,2,4,-Trichlorobenzene	0.023	0.055	PACT
K048—Benzene	0.011	0.14	SS
Benzo(a)pyrene	0.047	0.061	BT
Bis(2-ethylhexyl)phthalate	0.043	0.28	BT
Chrysene	0.043	0.059	BT
Di-n-butyl phthalate	0.06	0.057	BT
Ethylbenzene	0.011	0.057	BT
Flourene	0.05	0.059	BT
Napthalene	0.033	0.059	BT
Phenanthrene	0.039	0.059	BT
Phenol	0.047	0.039	BT
Pyrene	0.045	0.067	BT
Toluene	0.011	0.080	WAO+PACT
Xylenes (total)	0.011	0.32	WAO
K049—Anthracene	0.039	0.059	BT
Benzene	0.011	0.14	SS
Benzo(a)pyrene	0.047	0.061	BT
Bis(2-ethylhexyl)phthalate	0.043	0.28	BT
Carbon disulfide	0.011	0.014	BT
Chrysene	0.043	0.059	BT
2,4-Dimethylphenol	0.033	0.036	BT
Ethylbenzene	0.011	0.057	BT
Napthalene	0.033	0.059	BT
Phenanthrene	0.039	0.059	BT
Phenol	0.047	0.039	BT
Pyrene	0.045	0.067	WAO+PACT
Toluene	0.011	0.080	SS
Xylenes (total)	0.011	0.32	WAO
K050—Benzo(a)pyrene	0.047	0.061	BT
Phenol	0.047	0.039	BT
K051—Acenaphthene	0.05	0.059	BT
Anthracene	0.039	0.059	BT
Benz(a)anthracene	0.043	0.059	BT
Benzene	0.011	0.14	SS
Benzo(a)pyrene	0.047	0.061	BT
Bis(2-ethylhexyl)phthalate	0.043	0.28	BT
Chrysene	0.043	0.059	BT
Di-n-butyl phthalate	0.06	0.057	BT
Ethylbenzene	0.011	0.057	BT
Fluorene	0.05	0.059	BT
Napthalene	0.033	0.059	BT

COMPARISON OF PROMULGATED WASTEWATER STANDARDS TO THE PROPOSED REVISIONS FOR VARIOUS F AND K WASTES—Continued

Waste code and regulated organic constituent	Promulgated standard (mg/l)	Proposed revision (mg/l)	Technology basis for BDAT
Phenanthrene	0.047	0.059	BT
Phenol	0.047	0.039	BT
Pyrene	0.045	0.067	WAO+PACT
Toluene	0.011	0.080	SS
Xylenes (total)	0.011	0.32	WAO
K052—Benzene	0.011	0.14	SS
Benzo(a)pyrene	0.047	0.061	BT
o-Cresol	0.011	0.11	BT
p-Cresol	0.011	0.77	AS
2,4-Dimethylphenol	0.033	0.036	BT
Ethylbenzene	0.011	0.057	BT
Naphthalene	0.033	0.059	BT
Phenanthrene	0.039	0.059	BT
Phenol	0.047	0.039	BT
Toluene	0.011	0.080	SS
Xylenes (total)	0.011	0.32	WAO
K087—Acenaphthalene	0.028	0.059	BT
Benzene	0.014	0.14	SS
Chrysene	0.028	0.059	BT
Fluoranthene	0.028	0.068	BT
Indeno(1,2,3-cd)pyrene	0.028	0.055	AS
Naphthalene	0.028	0.059	BT
Phenanthrene	0.028	0.059	BT
Toluene	0.008	0.080	SS
Xylenes (total)	0.014	0.32	WAO
K093—Phthalic anhydride (measured as Phthalic acid)	0.54	0.069	BT
K094—Phthalic anhydride (measured as Phthalic acid)	0.54	0.069	BT
U028—Bis(2-ethylhexyl)phthalate	0.54	0.028	BT
U069—Di-n-butyl phthalate	0.54	0.057	BT
U088—Diethyl phthalate	0.54	0.2	BT
U102—Dimethyl phthalate	0.54	0.047	BT
U107—Di-n-octyl phthalate	0.54	0.017	AS
U190—Phthalic anyhdride (measured as phthalic acid)	0.54	0.069	BT

Key to Treatment Technologies: AC—Activated Carbon; ANFF—Anaerobic fixed film biological treatment; As—Activated sludge biological treatment; BT—Biological treatment; Fil—Filtration; GAC—Granulated Activated Carbon; LL—Liquid liquid extraction; PACT—Powdered Activated Carbon Treatment; RO—Reverse osmosis; SS—Steam stripping; WAO—Wet air oxidation; NR—Not regulated.

C. Proposed Revisions to Treatment Standards for K061, F006, and K062

1. Removal of the Low Zinc Subcategory for K061 Wastes

The Agency is today proposing to transfer the treatment standards recently promulgated for high zinc K061 nonwastewaters (56 FR at 41164–41178 (August 19, 1991)) to K061 nonwastewaters in the low zinc subcategory. By so doing, there would no longer be a need for subcategorization of K061 wastes by their zinc content. Thus, EPA is also proposing to abolish both the high zinc and the low zinc subcategories. In the First Third rulemaking, the decision to separate K061 nonwastewaters was based on the premise that high temperature metals recovery (HTMR) was not typically applied to wastes containing less than 15 percent zinc, because zinc was not considered to be technically or economically recoverable for all wastes in this low zinc subcategory. Consequently, the high zinc standards were developed based on the performance of HTMR as BDAT and the low zinc standards on the performance of stabilization as BDAT. (Note: This did not preclude, however, the recovery of zinc from wastes in the low zinc subcategory.)

After the First Third rulemaking, EPA received data and comment concerning the decision to divide K061 based on zinc content. Commenters said that many K061 wastes with a zinc content less than 15 percent are sent for recovery and that the cutoff level was unnecessary. In addition, data were submitted demonstrating that there exist HTMR technologies capable of recovering metals other than zinc (e.g., chromium and nickel) from the low zinc K061 wastes. In addition, these data show that residues from the HTMR of other metals from K061 wastes in the low zinc subcategory will comply with the same standards as the residues from the HTMR of zinc from K061 wastes in the high zinc subcategory. In addition, EPA believes HTMR of either zinc or these other metals is the "best" treatment technology for all K061 wastes because HTMR decreases the amount of material sent for land disposal, recovers potentially valuable resources, and incorporates metals that are not recovered into an stable slag matrix. Hence, the Agency is proposing to establish HTMR as BDAT for all K061 wastes and transfer the existing standards for high zinc subcategory wastes to all other K061 wastes. By establishing these standards as concentration-based standards, the Agency is not requiring that HTMR be used; rather, any technology that can meet the revised treatment standard can be used, including stabilization.

In today's rule, the Agency is also proposing a concentration-based treatment standard for vanadium based on the performance of HTMR. In the rulemaking for K061 high zinc, several commenters submitted performance data for vanadium while others stressed concern about meeting the originally proposed vanadium treatment standard but claimed because of the short time-frame of the K061 high zinc comment period they could not gather data. Since vanadium has a high boiling point and can concentrate in the slag residual instead of volatilizing (like zinc, lead, and cadmium), the Agency believed that more data should be gathered before developing a final treatment standard

for vanadium. Consequently, EPA reserved the vanadium treatment standard to give facilities an opportunity to gather and submit data on vanadium. The proposed standard shown below as developed based on available HTMR performance data for vanadium. The Agency encourages those commenters who indicated difficulties achieving the vanadium level to submit data.

PROPOSED TREATMENT STANDARDS FOR K061 (LOW AND HIGH ZINC SUBCATEGORIES)

[Nonwastewaters]

Regulated constituent	Maximum for any single composite sample— TCLP (mg/l)
Antimony	2.1
Arsenic	0.055
Barium	7.6
Beryllium	0.014
Cadmium	0.19
Chromium (Total)	0.33
Lead	0.37
Mercury	0.009
Nickel	5.0
Selenium	0.16
Silver	0.30
Thallium	0.078
Vanadium	0.23
Zinc	5.3

2. Alternative Treatment Standards for F006 and K062 Nonwastewaters Based on HTMR

The Agency is proposing alternative treatment standards based on HTMR as BDAT for F006 and K062 nonwastewaters with recoverable amounts of metals (e.g., greater than 1.5 percent chromium and nickel combination). In addition, EPA is proposing a new regulatory section (40 CFR 268.46) for such alternative standards. This section would be used for any treatment standards that would serve as alternatives for compliance with standards in 40 CFR 268.41, .42, and .43. These alternative standards are being proposed in order to achieve the same goal of treatment using BDAT, but generally are designed to provide alternative means of compliance with the promulgated standards.

The Agency has received data and comment indicating that other listed metal-bearing wastes, such as F006 and K062 containing chromium and nickel, have sufficient concentrations of metals and low concentrations of interfering chemicals that make them amenable for recovery of metals in various types of HTMR units. Data indicate that residues from their recovery (the require land disposal) can apparently achieve the BDAT standards based on HTMR that were recently promulgated for high zinc K061 nonwastewaters, but for a few constituents cannot achieve the treatment standards based on stabilization for F006 and K062. EPA believes that because the stabilization performance data represented treatment of less concentrated wastes than the HTMR data (e.g., average F006 nickel concentrations of 6450 mg/kg compared to 180,400 mg/kg), and because HTMR recovers metals (e.g., 99 percent of the nickel), treatment standards for 14 metals based on HTMR will provide a better level of protection to human health and the environment than the treatment standards based on stabilization.

The Agency is not proposing these standards as replacement of the existing standards for F006 and K062 wastes, but rather as alternatives to them. While many F006 and K062 wastes are amenable to recovery, the Agency does not have sufficient waste characterization information to specifically define the universe of F006 and K062 wastes that are recoverable. However, by establishing generic exclusion levels (see below) and alternative treatment standards for HTMR residues from the recovery of these wastes, EPA is providing a mechanism that will encourage recovery of metals rather than land disposal. (See also the discussion of how these generic exclusion levels apply to HTMR residues rather than stabilized K061 wastes in the final rule for K061 high zinc subcategory.)

The Agency is proposing to establish HTMR as an alternative BDAT for F006 and K062 nonwastewaters and is proposing to transfer the treatment performance of HTMR for high zinc K061 wastes to F006 and K062 as alternative treatment standards. Some HTMR data submitted for the development of standards for the high zinc K061 wastes also represented treatment of K062 and F006 (i.e., influent to the HTMR process contained a mixture of K061 (both high and low zinc subcategories), K062, and F006). Furthermore, it appears to be common to mix different metal waste types to achieve specific feed mixtures as a means of optimizing metals recovery.

For F006 nonwastewaters, the Agency is also proposing to establish a treatment level for cyanide because it is a common constituent in most F006 wastes. While the Agency has no specific performance data on the destruction of cyanides in HTMR units, HTMR provides technical similarities to incineration and is expected to achieve a level of destruction similar to incineration. (In fact, HTMR occurs at higher temperatures than incineration: Approximately 1200–1600°C versus less than 1100°C.)

TREATMENT STANDARDS FOR K062

[Nonwastewaters]

Regulated constituent	Proposed alternative treatment standards based on HTMR performance maximum for any single composite sample TCLP (mg/l)	Promulgated treatment standards based on stabilization maximum for any single grab sample TCLP (mg/l)
Antimony	2.1	NA
Arsenic	0.055	NA
Barium	7.6	NA
Beryllium	0.014	NA
Cadmium	0.19	NA
Chromium (total)	0.33	0.094
Lead	0.37	0.37
Mercury	0.009	NA
Nickel	5.0	NA
Selenium	0.16	NA
Silver	0.30	NA
Thallium	0.078	NA
Vanadium	0.23	NA
Zinc	5.3	NA

NA—Not Applicable

TREATMENT STANDARDS FOR F006

[Nonwastewaters]

Regulated constituent	Proposed alternative treatment standards based on HTMR performance maximum for any single composite sample TCLP (mg/l)	Promulgated treatment standards based on stabilization maximum for any single grab sample TCLP (mg/l)
Antimony	2.1	NA
Arsenic	0.055	NA
Barium	7.6	NA
Beryllium	0.014	NA
Cadmium	0.19	0.066
Chromium (Total)	0.33	5.2
Lead	0.37	0.51
Mercury	0.009	NA
Nickel	5.0	0.32
Selenium	0.16	NA
Silver	0.30	0.072
Thallium	0.078	NA
Vanadium	0.23	NA
Zinc	5.3	NA

Regulated constituent	Proposed alternative treatment standards based on HTMR performance maximum for any single composite sample (mg/kg)	Promulgated treatment standards based on alkaline chlorination maximum for any single grab sample (mg/kg)
Cyanides (Total)	1.8	590
Cyanides (Amenable)	NA	30

NA—Not Applicable

3. Generic Exclusion of F006 and K062 HTMR Nonwastewater Residues

The Agency is proposing to exclude nonwastewater residues generated by HTMR of F006 and K062 wastes in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, and rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in 40 CFR 260.10) from the hazardous waste regulations when disposed in a subtitle D unit, provided the residues meet the generic exclusion levels and part 268 treatment standards for all constituents, and provided the residues do not exhibit one or more of the hazardous waste characteristics.

Generic exclusion levels have already been established for K061 and EPA believes that a similar rationale can be used to develop exclusion levels for F006 and K062. The Agency concluded in the final rulemaking for K061 high zinc wastes that K061 (both low and high zinc) HTMR nonwastewater residues that meet the generic exclusion levels and part 268 treatment standards for all constituents and that exhibit no characteristics will not be hazardous. The decision to generically exclude nonwastewater HTMR K061 residues was based on the fact that the treatment process is well-defined and thus does not require an in-depth evaluation of each facility's processes. The Agency determined that the "derived-from" rule's presumption of hazardousness no longer should apply to HTMR K061 residues with toxic metals treated to specified levels. The Agency made this determination after considering the factors in section 3001(f) specified for delisting decisions and after satisfying the underlying philosophy of the delisting provisions.

The proposed generic exclusion levels include all of the Appendix VIII and indicator metals that might reasonably be expected to be present in the HTMR nonwastewater residues from processing F006 and K062 wastes by HTMR. (This is consistent with RCRA section 3001(f) requiring EPA to evaluate whether toxic constituents in addition to those for which a waste is listed could make a waste hazardous.)

The Agency evaluated the treatment standard levels using its vertical and horizontal spread (VHS) landfill model, which predicts the potential for groundwater contamination from wastes that are landfilled. See 50 FR at 7882 (Feb. 26, 1985), 50 FR at 48896 (Nov. 27, 1985), and the RCRA public docket for this notice for a detailed description of the VHS model and its parameters. Using the health-based levels developed for delisting (i.e., removing a listed waste from 40 CFR part 261) and a waste volume of greater than 8,000 cubic yards per facility which corresponds to a dilution factor of 6.3 (a worst case estimate for purposes of the VHS model), EPA determined the "generic" concentration levels which it considers safe to human health and the environment.

The BDAT and VHS-based levels are not identical, since each set was calculated for a different purpose: The BDAT standards are technology-based levels, while the VHS results derive from health-based modeling. The Agency determined that to be eligible for this generic exclusion, the residues must meet the lower of the two sets of standards for each constituent, because the exclusion was not site-specific and the difference between the technology and health-based levels was quite small (see 56 FR at 41170, August 19, 1991 for more detail about this determination).

Since the high zinc rulemaking, EPA has proposed to use the EPA Composite Model for Landfills (The "EPACML") instead of the VHS model to evaluate hazardous waste delisting petitions. 56 FR at 32993 (July 19, 1991). If this new model is finally adopted and replaces the VHS model, it may be used to establish generic exclusion levels for K061, K062, and F006 HTMR nonwastewater residues. At this time, however, the Agency has decided to propose the generic exclusion levels developed using the VHS model.

The proposed exclusion levels would apply only if the residues are land disposed in a subtitle D unit. The residues would remain a hazardous waste if used in a manner constituting disposal because EPA does not yet have proper means of evaluating hazards posed by uses, since the VHS or EPACML models do not evaluate the potential exposure pathways posed by these uses.

It is important to point out that the current vanadium exclusion level for HTMR residues (i.e., the level finalized in the K061 high zinc rulemaking) is health-based since the treatment standard was reserved. Also, the Agency is proposing to add an exclusion level for zinc. Using the health based level of 7 mg/l for zinc (see 1990 Health Effects Assessment Summary Table, Third Quarter, OERR, 9200.b–303–(90–3)) multiplied by the 6.3 dilution factor, a concentration level of 44 mg/l is calculated using the VHS model.

For F006 nonwastewaters, the Agency is not proposing exclusion levels for organics although they can be common constituents in F006 wastes. While the Agency has no specific performance data on the destruction of organics in HTMR units, HTMR operates at higher temperatures and longer residence times than incineration; hence, HTMR is expected to achieve a level of destruction similar to or better than incineration. Consequently, the Agency believes that regulation of organic constituents in HTMR residues is not required since any organic constituents will be destroyed to nondetectable levels in the HTMR residents, and that regulation of the fourteen metals and cyanide will ensure proper operation of the HTMR system. The following tables present the proposed concentration levels which must be met to qualify for the generic exclusion.

Finally, the Agency requests comment on requiring those who seek to exclude their F006 and K062 nonwastewater HTMR residues from Subtitle C regulation through the proposed generic exclusion, to carry the burden of proving their compliance with the generic exclusion requirements by "clear and convincing" evidence. This standard of proof is a widely recognized legal concept that requires proof beyond a slight balance (a standard often referred to as proof by a "preponderance" of the evidence). However, this standard is less than the "beyond a reasonable doubt" standard applied in criminal cases.

Although the exclusion criteria clearly require HTMR treatment and disposal in a Subtitle D unit, it may not always be clear that the HTMR residues meet the specified exclusion levels and treatment standards, and do not exhibit a characteristic of hazardous waste. Under this allocation of the burden of proof, if EPA raises significant questions (e.g., whether testing was performed according to proper protocols), those seeking to exclude their waste would be required to satisfy EPA that the terms of the exclusion have been met. (This could

be particularly appropriate where the relevant information is in the control of those seeking to exclude their waste.) No additional procedures or submissions necessarily would be required to implement this approach. However, EPA seeks comment on appropriate procedures, if any, should the Agency finalize this approach.

PROPOSED GENERIC EXCLUSION LEVELS FOR K061 AND K062 HTMR RESIDUES

[Nonwastewaters]

Constituent	Maximum for any single composite sample—TCLP (mg/l)
Antimony	0.063
Arsenic	0.055
Barium	6.3
Beryllium	0.0063
Cadmium	0.032
Chromium (total)	0.33
Lead	0.095
Mercury	0.009
Nickel	0.63
Selenium	0.16
Silver	0.30
Thallium	0.013
Vanadium	0.23
Zinc	44.0

PROPOSED GENERIC EXCLUSION LEVELS FOR F006 HTMR RESIDUES

[Nonwastewaters]

Constituent	Maximum for any single composite sample TCLP (mg/1)
Antimony	0.063
Arsenic	0.055
Barium	6.3
Beryllium	0.0063
Cadmium	0.032
Chromium (total)	0.33
Lead	0.095
Mercury	0.009
Nickel	0.63
Selenium	0.16
Silver	0.30
Thallium	0.013
Vanadium	0.23
Zinc	44.0

Regulated constituent	Maximum for any single composite sample (mg/kg)
Cyanide (Total)	1.8

D. Inorganic Constituents To Be Added to Appendix VIII

In today's rule, the Agency is proposing to begin expanding the list of inorganic constituents in Appendix VIII by adding vanadium, and its compounds. These constituents have either been demonstrated to be aquatic toxins and/or of sufficient human toxicity to warrant inclusion in Appendix VIII. (See the record for this rulemaking located in the RCRA docket for environmental and health effects information.) In addition, vanadium and its compounds have the potential to be present in metal-bearing wastes that can be processed in HTMR units and HTMR residues. Hence, EPA determined in the Land Disposal Restrictions (LDR) rulemaking for high zinc K061 that enough information existed to regulate these constituents so that human health and the environment are protected.

The LDR program typically considers all inorganic constituents currently in 40 CFR part 261 Appendix VIII as potential subjects of treatment standards. The Agency could permissibly regulate these constituents under the ultimate protectiveness standard in sections 3004(d), (e), and (g), which complements the requirement in section 3004(m) that treatment standards minimize migration of or concentration of Appendix VIII constituents. See *NRDC* versus *EPA*, 907 F. 2d 1146, 1171–72 (D.C. Cir. 1990) (dissenting opinion). However, it would be simpler, in EPA's view, to include these constituents in Appendix VIII and avoid the need for continued explanations in future rules that might control these constituents.

The Agency believes that it is important that vanadium and its compounds be added to Appendix VIII, and regulated in residuals resulting from metals recovery. In past LDR rulemakings, commenters have expressed concern that cross-media transfer should be evaluated when determining the Best Demonstrated Available Technology. By expanding Appendix VIII to include these inorganic constituents, EPA hopes in the future to eventually establish a comprehensive list of inorganic constituents that will enhance the Agency's ability to accomplish this goal by evaluating the potential for constituent releases to air, land, and water that may impact aquatic ecosystems and potentially have acute or cumulative effects on humans. EPA is currently investigating sources such as RCRA, CERCLA, SARA, the Clean Air Act (CAA), the Safe Drinking Water Act (SDWA), and the Clean Water Act (CWA) to help determine which inorganics are candidates for inclusion into the comprehensive multi-media list of inorganics.

Besides aiding in treatment technology selection, another potential use of a multi-media composite list of constituents would be the establishment of universal treatment standards and universal generic exclusion levels for inorganic constituents. Inorganic constituents, particularly metals, are of special concern to EPA since they cannot be broken down into an innocuous form the way hazardous organics can be. EPA believes that a comprehensive list of inorganic constituents is an integral part of formulating these universal treatment standards and generic exclusion levels. Investigating a composite list of constituents would allow the Agency to address the potential for cross-media transfer of these constituents.

E. Notification and Certification for Characteristic Wastes

One of the issues in the Third Third rulemaking involved the § 268.9 tracking requirements for characteristic waste. Section 268.9(d) requires the generator or treater of a characteristic waste that is no longer hazardous to send a notification and certification to the appropriate EPA Regional Administrator or authorized state, stating that the waste has been treated as required, and identifying the Subtitle D facility receiving the waste. This documentation is required for each off-site shipment to a subtitle D facility. Similarly, § 261.3(c)(2)(ii)(C) requires an LDR notification and certification to be sent to the appropriate EPA Regional Administrator or authorized state prior to Subtitle D landfill disposal of K061 residues from high temperature metal recovery that meet the generic exclusion levels and do not exhibit any hazardous waste characteristics. The Agency believed that sending the tracking forms to Subtitle D facilities would have counterproductive effects, and determined that the notifications and certifications should be sent to the appropriate EPA Regional Administrator or state authorized to implement the land disposal restrictions program. The Agency requests comment regarding the level of burden on the regulated community being caused by these tracking requirements. See 55 FR 22662–64.

In an effort to reduce the paperwork burden on the regulated community, the Agency is proposing to amend §§ 268.9(d) and 261.3(c)(2)(ii)(C) to replace the current reporting requirement. The Agency requests

comment on its proposal and on several alternatives.

EPA proposes to require that, in the case of characteristic waste that meets the treatment standards and is no longer hazardous and for K061 residues that meet the generic exclusion levels, the initial generator or treatment facility prepare a one-time notification and certification to be kept on-site, but not sent to EPA or the states. The notification and certification would need to be updated if the process generating the waste changed and/or if the Substitle D facility receiving the waste changed. The rationale for proposing the change is that it may not be necessary for EPA or the states to be notified of K061 that meets generic exclusion levels or characteristic wastes that meet treatment standards and are nonhazardous; however, EPA and the states still need to be able to verify such treatment and shipments when conducting inspections of waste management operations.

EPA requests comment on this proposal and on the following three alternatives. The first alternative would be to require the initial generator or treatment facility to send a one-time notice to the EPA Regional Administrator or authorized state with a new notice if the waste changes. This would reduce the paperwork burden of the current notification requirement for each shipment, while still keeping regulatory authorities informed when a particular waste type that is treated and nonhazardous is disposed. The second alternative would be to require the initial generator or treatment facility to maintain records on-site for each shipment. Facilities would be saved the trouble of notifying regulatory authorities, yet would provide EPA with a means to measure volumes of the treated wastes. This alternative would, however, still impose the burden of keeping records for each shipment. The last alternative would be a periodic notification and certification submitted by the generator and/or treatment facility to the EPA Region or authorized state on a monthly, quarterly, or annual basis. Such a report would include information on all treated waste that was shipped to a Subtitle D facility during the reporting period. Periodic reporting would reduce the frequency of reports over the current per-shipment requirement, while still allowing EPA and the states to assess waste volumes.

F. Applicability of Part 268 for Certain Waste Mixtures No Longer Exhibiting a Characteristic

EPA is proposing a clarification regarding the applicability of the part 268 treatment standards to certain waste mixtures described at 40 CFR 261.3(a)(2)(iii): "a mixture of a solid waste and a hazardous waste that is listed in subpart D (of Part 261) solely because it exhibits one or more characteristics of hazardous waste as identified in subpart C, (but which) no longer exhibits a characteristic." The issue concerns the standards which must be met before a waste listed for a characteristic is in compliance with the land disposal restrictions.

In the preamble to the technical amendment to the Third Third rule, the Agency stated that even after the characteristic is removed from a waste listed for a characteristic, the waste must be treated to meet part 268 treatment standards (56 FR 3871, January 31, 1991). This would mean, for example, that wastes such as F003 must meet the numerical standards set for those wastes. Today's proposal would further clarify the point by amending § 261.3(a)(2)(iii) to indicate, consistently, that the same requirement applies to mixtures involving these wastes. As stated in the technical amendment to the Third Third rule (56 FR 3871, January 31, 1991), for waste listed for a characteristic, once the characteristic is removed and part 268 treatment standards are met, the waste need not be disposed in a Subtitle C disposal unit.

G. Storage and Treatment in Containment Buildings

In some cases, hazardous wastes that are prohibited from land disposal must be stored or treated for short periods of time to facilitate recycling, recovery, treatment, or transport off site to meet LDR standards. Some of these hazardous wastes are generated in large volumes (often in batches), contain no or very small quantities of free liquids, and may not easily be amenable to management in RCRA tanks or containers. Rather, this type of hazardous waste is sometimes stored or treated on concrete pads inside a building. EPA currently classifies this type of management unit as an indoor waste pile, which is considered prohibited land disposal (see section 3004(k)). Lead slags and spent potliners from primary aluminum production are examples of hazardous wastes that may be managed in such units; contaminated debris may also be managed in such units. Many believe that if a hazardous waste is managed inside a unit that is designed and operated to contain the hazardous waste within the unit, akin to storage in a RCRA tank or container, this mode of hazardous waste management does not pose the types of potential harms Congress sought to address in defining land disposal, such as uncertainties as to containment of hazardous constituents placed on the land, the goal of initial appropriate management of the waste, and the potential for persistence, toxicity, mobility and bioaccumulation of hazardous wastes placed on the land. See section 3004(d)(a)(A)—(C). Therefore, in order to examine this issue fully, EPA is proposing that the management of hazardous wastes such as lead slags, spent potliners, and contaminated debris within such units, to be termed "contaminant buildings," would not be viewed as placement on the land and consequently not land disposal if this proposal is finalized. To allow storage and treatment of prohibited wastes in containment buildings, EPA is proposing to establish a new definition of containment building, amend the existing definition of pile to exclude containment buildings, and include containment buildings within the storage prohibition of § 268.40. Also, EPA is proposing to establish specific design and operating standards for such units under parts 264 and 265 and also to allow generators' containment buildings to be eligible, under § 262.34, for a 90-day generator exemption from permitting if their unit(s) meets all of the technical requirements for containment buildings. (It should be noted that this proposal, if adopted, would also remove such units at generator sites from the scope of the loss of interim status provisions in section 3005(e) (2) and (3).) EPA requests public comment on the appropriateness of establishing a new unit—"containment building"—to manage hazardous wastes. EPA is also considering and seeking comment on other ways to accomplish the same goal of allowing protective management of wastes in indoor buildings without necessitating compliance with the LDR treatment standards.

1. Revised Definition of Pile

EPA is proposing to revise the regulatory definition of pile to exclude containment buildings. Specifically, the Agency proposes to revise the definition of "pile" explicitly to exclude containment buildings that accumulate or treat prohibited wastes under the proposed requirements of parts 264 and 265. Although the Agency has previously classified roofed structures used to manage dry wastes as indoor waste piles, the Agency believes that there could be distinctions between an indoor waste pile that constitutes land placement and a containment building.

Under existing § 264.250, indoor waste piles are required to exclude liquids or material containing free liquids, be protected from surface water run-on, control dispersal of waste by means other than wetting, and not generate leachate through decomposition or other reactions. In contrast, the containment building design and operating standards (discussed below) generally provide a higher level of containment and may be in many ways comparable to RCRA tanks—that is, the hazardous waste is contained during storage or treatment. For example, containment buildings would be fully enclosed, have self-supporting wall and floor systems, are equipped with a secondary containment system if the hazardous waste contains very small quantities of free liquids, and are provided with fugitive dust emission controls.

2. Definition of Containment Building

EPA is proposing to define in § 260.10 a new unit, "containment building," that is used to store or treat hazardous wastes and that is designed and operated in compliance with special requirements that ensure containment. (Although EPA is defining containment buildings to allow storage and treatment of certain types of prohibited wastes, hazardous wastes that are not yet prohibited may also be managed in such units subject to the special requirements discussed below.)

3. Applicability of the 90-Day Accumulation Exclusion in § 262.34

Under § 262.34, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided, among other requirements, that he complies with the subject I, J, or W requirements in 40 CFR part 265. To date, the Agency has limited applicability of the 90-day provision to containers, tanks, or drip pads (see 55 FR 50450, December 6, 1990). EPA solicits comment on the association of containment buildings with generator production activities. See 45 FR 12730 (February 26, 1980). EPA today proposes to extend the 90-day generator exemption in § 262.34 to containment buildings.

Under today's proposal, all containment buildings would have to meet the same technical standards and, consequently, provide the same level of protection to human health and the environment. As such, EPA today is proposing to require that containment buildings operating under the proposed Part 265, Subpart DD interim status standards be designed, operated, and maintained to meet the same technical requirements as permitted containment buildings.

EPA is requesting comment on whether generators who store or treat hazardous waste in containment buildings pursuant to the 90-day accumulator exemption should be required to maintain, on site for the operating life of the containment building, a description of all procedures that would be followed to ensure that all wastes are removed from the containment building at least once every 90 days. Documentation of each waste removal would be required to be in the generator's on site files recording, at a minimum, the quantity of waste removed, and the date and time of removal. The Agency is aware that certain operations, for example, the continuous processing of wastes, or blending of wastes, may complicate the generator's ability to determine and thus document when a waste ceased to be accumulated within the containment building. EPA is requesting public comment on how best to ensure and document that a generator complies with the requirement limiting the time any waste is accumulated within the containment building to less than 90 days.

If the generator can not meet the 90-day time limit or if a hazardous waste is stored or treated in a containment building off site, the unit must be permitted in accordance with the existing permitting regulations.

It is anticipated that some existing units, previously classified as piles, would, as a result of today's proposal, be modified so as to be converted to a containment building. It is feasible that there may be releases of hazardous wastes that could be impacted by today's proposal. An issue that EPA is evaluating is whether the Agency will or should retain RCRA corrective action authority at new units and at those existing interim status or permitted units that subsequently become 90-day generators with containment buildings as their only RCRA activity. The Agency points out that, even without RCRA corrective action authority, generators would still be liable for any releases under the provisions of CERCLA. Also, EPA solicits comments on the extent facility wide corrective action authority for releases of hazardous constituents for solid waste management units at generator facilities will be forgone under this proposal. Public comment regarding the issue of corrective actions at generators' containment buildings, particularly for indoor piles that have been or will be converted to containment buildings, is welcome. In addition EPA, requests public comment on whether the 90-day generator accumulation provision should be extended to containment buildings or whether all such containment building should be required to be RCRA-permitted under subtitle C. In providing comments on this point, the Agency specifically requests commentors to articulate the rationale for requiring all containment buildings to be RCRA-permitted under subtitle C.

4. Special Requirements

The special requirements for containment buildings restrict the types of hazardous wastes that may be stored or treated in the unit and specify performance standards for the design and operation of the unit to ensure a measure of protection of human health and the environment greater than that provided by an indoor waste pile. See proposed subpart DD, parts 264 and 265.

(a) Acceptable Wastes. EPA intends that containment buildings be used to store or treat only dry wastes, i.e., those with no free liquids or those hazardous wastes that contain very small quantities of free liquids. The containment standards discussed below will ensure that hazardous waste that is dry or contains very small quantities of liquids will not pose a hazard to human health or the environment. The Agency's intent regarding the meaning of a very small quantity of liquid may best be indicated by the following example.

Example: A secondary lead smelting facility processes used lead-acid batteries to recover the lead. One of the steps involved in this process, battery cracking, necessarily generates wet lead-bearing materials. For process efficiency, among other reasons, free liquids are removed to the extent feasible prior to the materials being staged for furnace feed. However, some residual moisture (free liquid) remains and cannot easily be removed. In this example, although an attempt has been made to eliminate free liquids, the nature of the material precludes the complete removal of such liquid and, as such, can be viewed as incidental.

If liquids cannot be removed from the hazardous waste to a very small level, the hazardous waste stored in such a building would be considered a waste pile, a form of land disposal. Also, please note that if EPA allows very small quantities of liquids in hazardous waste to be stored in a containment building, the Agency would be making a distinction between these units and indoor waste piles which must only be used to manage no free-liquid wastes. Public comment is invited on the Agency's proposal to allow hazardous waste containing very small quantities of free liquids to be stored in

containment buildings and, if so, how EPA should define the term "very small." The Agency specifically requests comment on whether the liquids release test or paint filter liquids test should be used for testing wastes to be stored.

(b) Design and Operating Standards. EPA is proposing the following design and operating standards for both permitted units and units operated under interim status. (See proposed subpart DD, parts 264 and 265.)

Hazardous wastes managed in these units must be fully contained within the unit. As such, the Agency believes the unit must be completely enclosed with a floor, walls and a roof to prevent exposure to precipitation and wind. Many of the hazardous wastes presently managed in these units may have a significant volume of fine particulates. Enclosure within a structure will prevent the escape of these fine particulates from the unit. Contact of the waste with precipitation also needs to be avoided to prevent the formation of and migration of leachate which could potentially result in release of hazardous waste into the environment. Also, exposure to precipitation could cause chemical reactions, including corrosion of the unit, to occur.

The unit would need to be constructed of man-made materials with sufficient structural strength to support itself, the waste contents, and any personnel and heavy equipment that operate within the unit. Factors such as settlement, frost-heave, and exposure to wind force need to be taken into consideration in designing the unit. Any surface that is to be in contact with the hazardous waste should be chemically compatible with the waste. Because the intended use for these units is storage or treatment, the unit would have to be designed to accommodate appropriate levels of loading and unloading activity during its operating lifetime.

As previously stated, this proposal requires a containment building to be designed and operated in a manner so that any hazardous waste placed inside the unit be contained. EPA is proposing several measures to ensure that the hazardous waste does not escape into the environment. Although these units are intended for dry hazardous wastes (i.e., those with no free liquids), the Agency realizes that very small quantities of free liquids may be associated with certain hazardous wastes not capable of storage/treatment in a tank or container. Containment buildings used to store/treat hazardous wastes with very small quantities of free liquids would have to be provided with a means by which to manage any such liquid that collects on the containment building floor. Surfaces (e.g., the floor) that would be in contact with free liquids must inhibit the migration of liquid into the concrete matrix and facilitate the collection and removal of such liquid. For example, concrete surfaces must be provided with a penetrating sealer or a coating that inhibits the migration of liquid into the concrete matrix. EPA requests comment on appropriate methods for ensuring compliance with this criteria. Containment buildings used to manage hazardous wastes containing very small amounts of free liquid also would need to be provided with secondary containment that is capable of detecting, collecting, and holding any leaks/accumulated liquid until the collected material is removed. A secondary containment system for a containment building that manages hazardous waste with very small levels of liquids must meet the same performance standards as required for a hazardous waste tank system under 40 CFR parts 264 and 265, subpart J. EPA is proposing that secondary containment only need be provided if the containment building will be used to manage hazardous waste containing a very small quantity of free liquid. The Agency invites public comment on whether secondary containment should be a requirement for every containment building, including those that only will be used to store or treat hazardous waste containing no free liquids. Under this approach, if hazardous wastes with more than very small quantities of free liquids or hazardous wastes that decompose and generate free liquids are stored in a unit that otherwise meets the special requirements for a containment building, the unit would be subject to regulation as a waste pile land disposal unit.

Another measure to ensure containment of hazardous waste managed in these units is a requirement that the level of the waste inside the unit cannot exceed the height of the unit's walls intended to come in contact with the hazardous waste. The Agency believes it is a good housekeeping practice to prevent stored/treated hazardous waste from spilling over the walls of the unit and, in the case of certain hazardous wastes, to be able to contain any potential "landsliding" of material out of the unit. It is important to note that the walls being referred to in this provision are those walls, or portions of the unit's walls, that have been designed and constructed to be in contact with the hazardous waste and capable of supporting the weight of the waste. The following example makes this distinction.

Example: A facility has constructed a containment building to accumulate its hazardous waste prior to conducting treatment to meet LDR standards. The unit has a reinforced concrete floor and 10-foot high reinforced concrete walls. The remainder of the sidewalls, built atop the concrete wall and extending to the roof, is steel framing with fiberglass panels. In this example, the hazardous waste stored/treated inside the unit must not be piled any higher than the 10-foot reinforced concrete walls. The remainder or upper portion of the walls are not designed to support the weight of the waste and may not provide adequate containment of the waste, i.e., hazardous waste may escape through the panel joints.

Yet another concern that needs to be addressed regarding wall construction is the issue of specifications for doors and other openings that are part of a wall and used for equipment and/or personnel. EPA believes these doors and openings should be capable of providing the same level of structural support and containment as the rest of the wall. Although EPA today is not proposing specific standards for doors and openings that are part of a wall providing support and containment of hazardous waste managed within a containment building, public comment is invited on this issue.

As noted earlier, EPA believes the routine handling of hazardous waste within these units demands the frequent, if not constant, presence of personnel and handling equipment, e.g., front-end loaders, cranes. As such, particularly when the hazardous waste is comprised of small particulates or where handling of the hazardous waste generates dust, the potential for tracking hazardous waste out of the unit may be significant. A containment building must contain any hazardous waste stored/treated inside it. Therefore, EPA is proposing that measures be taken to ensure the containment of hazardous waste within the unit. Washing-down of vehicles prior to exiting the unit and dedicating vehicles for the sole purpose of operating within the unit are examples of measures that owners/operators of these units would need to take when the potential exists for tracking of hazardous waste out of the unit. (These measures could only occur, however, if EPA decides to allow the introduction of free liquids in containment buildings as part of treatment.)

Given the dusty nature of certain hazardous wastes that may be managed in these units and/or the dusty conditions that may be caused by the handling of the hazardous waste within the unit, EPA is proposing that measures also be taken to control fugitive dust emissions. In these situations, the

owner/operator would be required to install and operate a system whereby a negative pressure is maintained within the unit and particulates are collected, e.g., by fabric filter or electrostatic precipitator. Such a system would be designed and operated to function effectively at all times, including those periods when doors are opened for vehicle entry/departure.

An important goal of an inspection plan is the need to ensure the unit is operating as designed This goal is achieved through the establishment of an inspection program that ensures maintenance of the structural integrity of the unit and leaks/releases will be promptly detected, should they occur. EPA is proposing that an inspection schedule for these units be adhered to whereby, at least once each operating day (as is required for tanks and tank systems), monitoring/leak detection equipment, the containment building, and the area surrounding the containment building is checked to ensure the unit is being properly operated and that no leaks/releases have occurred. These observations would need to be recorded in the facility's operating log. Comment on the applicability and adequacy of each of the design and operating measures discussed above is welcomed. A requirement that the Agency is considering but is not proposing today is the written certification by an independent registered professional engineer (i.e., one who is not an employee of the company, or of its parent or subsidiary); the benefit of such a certification would be to ensure that any new or existing containment building is designed and constructed with sufficient structural integrity to safely manage and contain the hazardous waste. Public comment is requested on the need for this certification and which factors should be considered in an assessment of the integrity of the unit.

Finally, EPA is aware that in certain situations, such as hazardous waste site remediation efforts, a containment building can serve to enhance the performance of bioremediation treatment technologies; however, because such structures for site remediation are likely to be temporary in nature, they currently are not constructed with floors or sidewalls that would meet performance standards proposed today. EPA is evaluating if such temporary containment buildings should be designed and constructed to the same standards as more permanent containment buildings or whether perhaps a separate subcategory of design and operating requirements is merited for these bioremediation treatment buildings. Public comment is invited on this issue. In particular, EPA solicits comment on whether less stringent requirements, such as allowing the use of synthetic liners and non-load bearing walls, can be considered adequately protective.

As noted elsewhere in today's preamble, EPA would allow wastes to be treated as well as stored in containment buildings. Examples of such treatment could include the various types of technologies that are discussed in Appendix I to this preamble for treatment of contaminated debris. Because many of these technologies require the use of liquid, the Agency proposes to allow such technologies to be conducted in containment buildings. In some cases, such treatment would be conducted in tanks or containers in such buildings. When this occurs, the standards for tanks and containers would also apply. For example, a treatment system to treat debris waste could include a containment building with a tank inside that is used for stabilization; following treatment the waste may be stored in the containment building (subject to all existing storage requirements). In this example, the tank standards would have precedence in regard to the debris being treated in the tank, while the containment building standards would have precedence in regard to the treated debris that is being stored in the containment building.

In other cases, treatment in tanks and containers may not be possible. For example, personnel may not be able to apply safely many of the prescribed debris treatment technologies to large bulky debris in confined tanks and containers. Therefore, EPA is also proposing to allow the actual treatment in containment buildings that utilizes the addition of liquid as part of BDAT treatment. Where this is done, appropriate mechanisms need to be provided to control liquids utilized during the treatment of waste. The design standards EPA proposes today include primary containment via walls and floors along with secondary containment. Also, any drainage or accumulation of liquids applied to contaminated debris must comply with relevant statutes and regulations. For example, if debris liquid residuals are land disposed from the containment building they must first be treated to meet the F039 treatment standards. EPA believes that liquids should be removed from the containment building at the earliest practicable time that protects human health and the environment. EPA also solicits comments as to what other, if any, performance standards may be necessary to ensure that liquids in containment buildings are managed to protect human health and the environment. The Agency specifically requests comments on how often liquid application as part of contaminated debris treatment occurs or may occur. Also, the Agency requests comment on whether treatment utilizing the addition of liquid should be done in a dedicated portion of the containment building or whether the whole building could be used.

5. Wastes Eligible for Accumulation/Treatment in Containment Buildings

Under this proposal, many land disposal prohibited wastes potentially may be eligible to be stored or treated in containment buildings in order to facilitate/accomplish compliance with the prescribed BDAT standards. EPA considered two options regarding which hazardous wastes should be eligible for management in these units: (1) All hazardous wastes, including contaminated debris; and (2) only contaminated debris and certain additional bulky, high volume hazardous wastes that the Agency currently understands cannot be practicably stored/treated in tanks or containers.

Prior to being incorporated into this proposal, EPA was considering developing a Policy Directive whereby certain hazardous wastes, i.e., aluminum spent potliners, recycled lead batteries, and possibly electric arc furnace dusts, were definitively identified as candidates for management within containment buildings. Although EPA believes other hazardous wastes with no or very small quantities of liquids could also be more practicably managed in containment buildings rather than tanks or containers, information on such wastes was and remains lacking. EPA requests data on other hazardous wastes that could qualify for management within containment buildings.

EPA is proposing today to allow any hazardous waste, including contaminated debris, that is dry or contains only very small quantities of liquids to be stored/treated in containment buildings. Although EPA conceived these units to manage dry, bulky land disposal restricted wastes whose volume and/or physical characteristics make storage or treatment in a tank or container infeasible or impractical, the Agency sees no reason to restrict the eligibility of hazardous wastes for management in these units only to those hazardous

wastes for which EPA has data available (or even only to land disposal prohibited wastes), no matter what type of hazardous waste is accumulated. A containment building managing any hazardous waste that is dry or containing only very small incidental quantities of liquids, when designed and operated in accordance with the standards being proposed today, should ensure protection of human health and the environment. Nevertheless, the Agency requests comment on whether the applicability of this particular provision should be limited to certain types of wastes; if so, please indicate which wastes.

6. Amendment of § 268.50 Storage Prohibition and Permit Requirements

Under existing § 268.50, the storage of hazardous wastes prohibited from land disposal is also prohibited unless, among other requirements, the waste is stored in tanks or containers on site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate recovery, treatment, or disposal. At the time EPA adopted this provision, tanks and containers were the only types of storage units that did not also involve land disposal. Under today's proposal, there would be other types of storage units (i.e., containment buildings, subpart X storage units) not involving land disposal. EPA is thus proposing to conform § 268.50 to include these units.

Today's rule also proposes to amend Appendix I of § 270.42 by adding section M which will classify permit modifications for containment buildings. In addition, today's proposal would amend the modifications for enclosed waste piles by adding an item which classifies a modification to an enclosed waste pile to meet the standards for a containment building as a Class 2 modification. EPA believes that many facilities will make modifications to their permitted enclosed waste piles to meet the standards for containment buildings. For more information on these permit modification procedures, see 53 FR 37912, September 28, 1988.

V. Detailed Discussion of Today's Proposed Rule: Contaminated Debris

A. Overview

Debris that is contaminated with a prohibited waste or that exhibits a prohibited characteristic is presently subject to the treatment standard for that listed waste or characteristic. See, e.g., 55 FR 22649 and RCRA section 3004(e)(3). However, although contaminated debris (as well as contaminated media) are subject to the LDR prohibitions, there is no requirement that they have the same treatment standards as the wastes with which they are contaminated. Indeed, because contaminated debris may be a matrix significantly different from the underlying prohibited waste, it is appropriate as a technical matter to investigate whether different treatment standards are needed.

Today, EPA is proposing separate treatment standards for contaminated debris, so that, in effect, contaminated debris would be dealt with as a separate treatability group. Under today's proposal, contaminated debris must be treated by specified technologies based on the type of debris and type of contaminant(s) present. In addition, as described more fully below, debris also may be treated by any method (other than impermissible dilution) and would no longer be a prohibited waste or a hazardous waste if it achieves levels at which debris no longer "contains" hazardous waste. If the debris already achieves those levels as generated, it also would not be a hazardous waste or require treatment.

EPA has sought to specify a group of BDAT technologies for each type of debris, with the choice of which technology from within the group left up to the person managing the waste. The technologies in each group include widely used treatment methods. EPA is thus seeking to preserve as much flexibility for treatment of debris as possible.

Contaminated debris would be defined as debris that exhibits a prohibited characteristic of hazardous waste or that is contaminated with a prohibited listed waste. Contaminated debris must be treated by one of the specified treatment technologies for each "contaminant subject to treatment" defined as: (1) For debris contaminated with a prohibited listed waste, the BDAT constituents for the listed waste and any Appendix VIII, part 261, constituent that the owner or operator could reasonably know may be contaminating the debris; and (2) for debris exhibiting the Extraction Procedure [5] toxicity characteristic, the constituent(s) for which it fails the characteristic. (The Agency is also requesting comment on requiring treatment of any appendix VIII, part 261, constituent that the owner or operator could reasonably know may be contaminating any contaminated debris—i.e., debris that exhibits a prohibited characteristic as well as debris that is contaminated with a prohibited listed waste.) An owner or operator need not identify "contaminants subject to treatment" if a generic treatment technology is used. A generic treatment technology is one that the Agency believes will provide effective treatment for all Appendix VIII constituents. EPA is proposing six such technologies in this rule.

To ensure effective treatment, the treatment unit would be required to meet performance standards or design and operating conditions specified in the rule. In addition, the treatment unit would be subject to the part 264 and 265 standards for treatment facilities to ensure protection of human health and the environment.

As noted above, the proposal addresses not only the issue of when contaminated debris is sufficiently treated, but the further question of when it is a hazardous waste. Under the proposal, treated debris would be conditionally excluded from the definition of hazardous waste. The exclusion is conditioned on: (1) The use of an extraction or destruction treatment technology rather than an immobilization technology; and (2) the treated debris must not exhibit a characteristic of a hazardous waste. If an immobilization technology is used, the treated debris remains subject to Subtitle C regulation.[6]

In addition, EPA may determine on a case-by-case basis that untreated contaminated debris, or contaminated debris treated by a technology other than that specified by the proposed rule (and other than impermissible dilution), is not mixed with, or does not contain hazardous waste and, thus, need not be managed as a hazardous waste. The rule, if adopted, would thus codify the contained-in principle that the Agency currently applies on a case-by-case basis. If toxic constituents are not present at levels that could pose a hazard to human health or the

[5] If debris is a hazardous waste solely because it exhibits the toxicity characteristic for any of the 40 constituents listed in § 261.24, it would be defined as contaminated debris only if it exhibited the toxicity characteristic for one or more of the 14 constituents of the EP toxicity characteristic. Further, today's proposal would require such debris to be treated only for those EP constituents for which it exhibited the toxicity characteristic. EPA is proceeding in this fashion because it prefers to deal with all issues relating to prohibitions for wastes identified by the expanded toxicity characteristic in one single proceeding. See 50 FR 55166–172 (October 24, 1991) soliciting data to be used in developing treatment standards for wastes identified by the TC.

[6] See section V.E.1. where EPA requests comment and data to support the design of performance standards for immobilization technologies that would be sufficient to allow contaminated debris treated by such technologies to be excluded from Subtitle C management.

environment (and if the debris does not exhibit a characteristic), the debris would be excluded from the definition of hazardous waste. EPA seeks comment on further criteria to be applied in making this case-by-case exclusion determination.

Residuals generated by treatment of contaminated debris would be subject to the numerical LDR standards EPA established for waste code F039 (multi-source leachate wastewater and nonwastewater treatment standards) under §§ 268.41 and 268.43. Unlike the debris treated using extraction or destruction technologies, these residuals are not excluded from the hazardous waste rules—that is, after these residuals meet the LDR standards, they must be managed at a subtitle C facility, unless the residuals are no longer defined as a hazardous waste.[7]

B. Definitions

Before discussing the specific standards that are being proposed today for contaminated debris, it is necessary to first define several terms.

1. Definition of Debris

Debris is defined as solid material that: (1) Has been originally manufactured or processed, except for solids that are listed wastes or can be identified as being residues from treatment of wastes and/or wastewaters, or air pollution control devices; or (2) is plant or animal matter; or (3) is natural geologic material exceeding a 9.5 mm sieve size including gravel, cobbles, and boulders (sizes as classified by the U.S. Soil Conservation Service), or is an inseparable mixture of such materials with soil, liquid, sludge, or other solid waste materials (i.e., inseparable by simple mechanical removal processes). See proposed amendment to § 268.2. (This definition would essentially incorporate the existing regulatory definition of inorganic solid debris in § 268.2, and adds further categories of materials that can legitimately be viewed as debris.) EPA requests comment on the proposed definition of debris, and particularly on the terms or phrases "solid material," "originally manufactured or processed," and "simple mechanical removal."

We identified the following six categories of debris—in essence, six treatability groups. The groups are specifically designed to reflect the ability of treatment technologies to decontaminate them: (1) Metal objects; (2) brick, concrete, rock, and pavement; (3) glass; (4) wood; (5) paper and cloth; and (6) rubber and plastic. The treatment standards discussed in Section V.F below are established as a function of these debris categories as well as the type of contaminant(s) present (see Section V.C below).

Debris can be generated from a wide variety of activities including remedial actions at Superfund and RCRA corrective action sites, routine generation (e.g., discarded drums and containers), and sporadically generated debris (e.g., building demolition materials). Debris includes many different objects, such as concrete blocks and bricks, structural steel, drums and tanks, glass and plastic bottles, cloth, paper, appliances, battery cases, tires, and gas cylinders. A survey of the types of debris found at over 200 waste sites (primarily Superfund sites) revealed that the most frequently found debris consists of metal objects (typically drums and tanks), brick, concrete, and rock.

Categories of debris at hazardous waste sites, in order of decreasing frequency of occurrence, are:

- Metal objects, including drums, tanks, pipes, iron bars, and steel beams;
- Brick, concrete, rock, and pavement, including concrete blocks, concrete foundations, cinder blocks, concrete sidewalks, and asphalt pavement;
- Wood, including wood furniture, pallets, plywood, wood walls, wood floors, leaves, live vegetation, wood telephone poles, trees, and railroad ties;
- Rubber and plastic, including tires, hoses, battery cases, PVC piping, plastic bags, fiberglass tanks, and plastic sheets;
- Paper and cloth, including books, magazines, cardboard, paper packing, paper insulation, fiber drums, rags, and mattresses; and
- Glass, including bottles, windows, beads, glass bricks, and glass containers.

In addition to the six categories of debris listed above, EPA identified other miscellaneous types of debris (PCB-contaminated debris and debris contaminated with radioactive materials, see Sections V.H.2 and V.H.4). Special standards would apply to these types of debris. In addition, EPA determined late in the development of today's proposed rule that standards are needed for asbestos debris. Accordingly, the Agency is requesting comment on technologies that would be considered BDAT for contaminated asbestos debris. See Section V.H.3. Finally, EPA specifically requests comment on whether there are other types of debris for which treatment standards should be established.

2. Definition of Contaminated Debris

The Agency is proposing to define contaminated debris as debris that contains a hazardous waste listed in subpart D of part 261 for which land disposal restriction (LDR) standards have been promulgated under 40 CFR part 268, or that exhibits a characteristic of hazardous waste identified in subpart C of part 261 for which LDR standards have been promulgated under part 268.[8] The Agency is proposing to define "contains RCRA hazardous wastes" to mean that RCRA listed hazardous wastes are contained on the surface or contained in the pore structure of the debris. This proposed definition would to a large extent codify the Agency's current interpretations of when debris would be a hazardous waste, and obviously does not alter the fact that such contaminated debris is already subject to regulation under the Subtitle C rules. See *Chemical Waste Management* v. *EPA*, 869 F.2d 1526, 1539–40 (D.C. Cir. 1989) upholding as a reasonable interpretation of the mixture and derived from rules EPA's conclusion that environmental media contaminated with listed wastes remain subject to regulation as hazardous waste.

We note that material-specific LDR standards have already been established for some materials that meet the definition of contaminated debris (e.g., lead acid batteries). In such cases, the LDR standard for the specific debris would take precedence over the standards proposed today.

A person who generates debris must determine if the debris is contaminated. The debris is contaminated if it contains a prohibited listed waste or if it exhibits a prohibited characteristic of hazardous waste. For newly-generated debris, the generator can readily determine if the debris is contaminated with a listed hazardous waste. For debris that has been re-generated by, for example, a Superfund clean-up or RCRA Corrective Action, the generator must use all information that is reasonably available to determine if the debris is contaminated with a listed hazardous waste.[9] To determine whether the

[7] See footnote 6.

[8] Although debris that exhibits the TC (see § 261.24) for any of the 40 constituents regulated under the TC is a hazardous waste, only debris that exhibits the TC for the 14 Extraction Procedure (EP) constituents would be defined by today's proposal as contaminated debris subject to the proposed treatment standards. When the Agency proposes BDAT standards for wastes that exhibit the TC for the remaining 26 constituents, we plan also to propose to expand the definition of contaminated debris to include debris exhibiting the TC for those additional constituents.

[9] See, e.g., the preamble to the National Contingency Plan (55 FR 8666 (March 8, 1990)).

debris exhibits a characteristic of hazardous waste, the generator must use either best professional judgment or, as practicable, analysis of a representative sample of debris.

3. Debris Subject to the Proposed Rule

As summarized above, EPA is proposing that all debris that is contaminated with (1) prohibited listed wastes and (2) listed wastes for which EPA is proposing prohibitions and treatment standards in today's rule, be subject to the debris treatment standards proposed here. In addition, any debris exhibiting the characteristic of ignitability, corrosivity (probably impossible, since only liquids can be corrosive, see § 261.22(a)), or reactivity would be covered, as would wastes identified by the toxicity characteristic that also exhibit the old EP characteristic. The types of contaminated debris not covered in this rule may be amenable to the same approach proposed here, but EPA prefers to defer these issues until such time as the debris becomes prohibited from land disposal. Given the time constraints of the May 8, 1992 lapsing of national capacity variances for already prohibited debris, the Agency believes it appropriate not to increase the scope of this rulemaking.

C. Contaminant Categories

To develop treatment standards for contaminated debris, the Agency divided the toxic constituents that may contaminate debris into 10 categories based on similar physical and chemical properties:

- Halogenated pesticides and aromatics;
- Dioxins, furans, and their precursors;
- Halogenated aliphatic compounds;
- Nitrated compounds;
- Non-polar aromatics, heterocycles, and other organic compounds;
- Polynuclear aromatic hydrocarbons;
- Other nonhalogenated polar organic compounds;
- Nonvolatile metals;
- Volatile metals; and
- Non-metal inorganics.

These contaminant categories take into account differences in the applicability and effectiveness of treatment technologies for those particular contaminants. EPA proposes to assign all toxic constituents listed in Appendix VIII, part 261, except for radionuclides (see Section V.H.4), to these contaminant categories as indicated in Table 2 of proposed § 268.45. (In addition, we note that proposed Table 2 contains several constituents that are not on Appendix VIII, part 261. As discussed in Section D below, contaminated debris that is contaminated with a prohibited listed waste must be treated for the BDAT constituents for that listed waste. For reasons discussed in Section D below, some BDAT constituents are not on Appendix VIII.)

One determines the contaminant category for which the debris must be treated by the type of hazardous constituent with which the waste is contaminated. For example, if debris is contaminated with F001 solvents, the debris must be treated using a technology specified in proposed Table 1 of § 268.45 (see discussion in Section V.F.2 below) as acceptable for halogenated aliphatics. This is determined by identifying the BDAT constituents for F001 in existing §§ 268.41 and 268.43 and determining from Table 2 of proposed § 268.45 that they all are included in the halogenated aliphatics contaminant category. If the debris also exhibits EP toxicity for cadmium, for example, the debris must also be treated using a technology specified in Table 1 of § 268.45 as acceptable for nonvolatile metals, because proposed Table 2, § 268.45, assigns cadmium to the nonvolatile metal category. This approach allows EPA to regulate debris contaminated with any prohibited listed waste without individually addressing every RCRA listed waste.

EPA specifically requests comment on whether the proposed contaminant categories and the assignment of constituents to those categories as proposed in Table 2 of § 268.45 is an appropriate scheme for assigning constituents to similar treatability groups. We note that one alternative approach is the "Table of Treatability Groups Used to Develop the Proposed Treatment Standards for U and P Waste Codes" that the Agency previously developed. See 54 FR 48392–48418 (Nov. 22, 1989).

D. Determining Contaminants Subject to Treatment

Contaminated debris must be treated for each contaminant category (e.g., polynuclear aromatics; volatile metals) represented by each contaminant that is "subject to treatment." See proposed Table 2 to § 268.45. The contaminants that are "subject to treatment" are: (1) For each listed hazardous waste known to contaminate the debris, the constituents for which LDR concentration limits have been established (i.e., "BDAT constituents") that are present at detectable levels as well as all constituents on Appendix VIII, part 261, that an owner or operator of a treatment facility could reasonably know may contaminate the debris at detectable levels; (2) for debris that exhibits the Toxicity Characteristic (TC), those constituents for which the debris exhibits the Extraction Procedure (EP) [10] toxicity characteristic; and (3) for debris that exhibits the reactivity characteristic due to presence of cyanide, cyanide.

When debris is contaminated with a prohibited listed waste, EPA is proposing that the debris be treated for any Appendix VIII, Part 261, constituent that the owner or operator could reasonably know may contaminate the debris at levels of analytical detection (using procedures prescribed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846 (Second Edition, 1982 as amended by Update I (April 1984), and Update II (April 1985)) because the Agency wants to ensure treatment of all toxic constituents given that the treated debris is conditionally excluded from Subpart C regulation.[11] See section V.E. below. If, for example, an owner or operator of a treatment facility could reasonably know that a debris is contaminated with a solid waste that may contain Appendix VIII constituents (for example, because a particular material was produced or used at a site), and if the debris could subsequently be contaminated with detectable levels of those Appendix VIII constituents, the debris must be treated for the contaminants. EPA requests comment on how to define what "reasonably know" means in regard to appendix VIII constituents that may be contaminating debris.

Further, the Agency specifically requests comment on whether the rule

[10] See footnote 8.

[11] EPA requests comment on whether in the final rule to waive the requirement to identify as contaminants subject to treatment any Appendix VIII constituent that an owner or operator could reasonably know may contaminate the debris at levels of analytical detection if an owner or operator elects to continue to manage the treated debris as hazardous waste. In addition, EPA requests comment on whether Appendix VIII constituents that an owner or operator could reasonably know may contaminate the debris should be considered "contaminants subject to treatment" only if they are present at levels of potential health significance rather than merely at detectable levels as proposed. Commenters should provide supporting rationales for measures of significance. One possibility on which EPA solicits comment are the F039 levels, which correspond to the levels that residues from debris treatment would meet in order to be land disposed (albeit in Subtitle C facilities). Ultimately, EPA would use the *de minimis* levels, assuming it proves technically feasible to develop such levels, as the measure of when treatment of hazardous constituents is unnecessary. See 55 FR 6642 (February 26, 1991).

should also require that debris that is hazardous solely because it exhibits a characteristic (i.e., toxicity, ignitability, or reactivity) be treated for all constituents on appendix VIII, part 261, that an owner or operator of a treatment facility could reasonably know may contaminate the debris at detectable levels. The Agency noted in the Third Third rule that it would seek to adopt this approach where feasible. See 55 FR 22654. This approach clearly fulfills the statutory goal of requiring treatment that minimizes short- and long-term threats posed by land disposal of hazardous waste. See section 3004(m) and 55 FR 22652. In the Third Third rule, EPA was able to develop such treatment standards for only a few characteristic wastes (certain reactive cyanides, lead batteries, certain mercury wastes, and high TOC ignitable liquids) due partially to time constraints, and to the formidable technical problems of determining appropriate treatment levels for all possible hazardous constituents found in the huge variety of characteristic waste matrices.

It appears that the technical task may be easier for characteristic debris. There are fewer matrices to consider (there is probably no corrosive debris, and little ignitable debris, since these characteristics identify chiefly liquid wastes), and there may be little reactive debris. Also, because the treatment standards for debris consist of treatment methods, and treatment of residues to F039 levels, the problem in the Third Third of determining *a priori* a whole range of treatment concentrations is not present here.[12] EPA solicits comment on these points, and also notes (as discussed more fully below) that today's rule applies the Third Third approach to reactive cyanide debris by requiring effective treatment of cyanide in both the debris and treatment residues so that, for at least this waste, EPA anticipates a standard resulting in treatment that removes a characteristic and treats hazardous constituents.

To determine whether debris contaminated with a listed prohibited waste may be contaminated with appendix VIII constituents (other than the BDAT constituents for the prohibited waste) at levels of analytical detection, an owner or operator of a treatment facility must make a reasonable effort to identify the generator of the debris. If the generator can be identified, generator or other information (e.g., general knowledge about the types and concentrations of chemicals used by the generator that may be in waste or other materials that may contaminate debris) must be used to identify Appendix VIII constituents that may contaminate the debris at detectable levels. Sampling and analysis of the debris is not required given the difficulty of obtaining representative samples of complicated matrices (e.g., mixtures of debris types such as stumps, plastic or metal piping, boulders, lumber).

EPA solicits comment on documentation to support the determination of contaminants subject to treatment. In particular, EPA requests comment on whether documentation must include a description of efforts to identify the generator of the debris and determinations regarding the types of appendix VIII constituents that are present at the site of generation and that may be contaminating the debris, and whether such documentation must be provided in the operating record for the treatment facility (or for debris treated on site, in a generator's waste analysis plan developed pursuant to § 268.7(a)(4)).

EPA notes that an owner or operator need not make determinations regarding the presence of contaminants subject to treatment if a treatment technology that effectively treats all appendix VIII constituents is used. Such generic treatment technologies (for one or more debris categories) are identified in proposed appendix X to the rule. (Note that the generic treatment technologies are generic for all contaminants but are not generic for all debris types.) We are proposing that five surface removal technologies and thermal destruction be considered generic technologies. Surface removal technologies (e.g., abrasive blasting, scarification and grinding) effectively treat all types of contaminants because the contaminants are removed from the debris with the surface layer. As noted in proposed appendix X (see discussion in Section V.F.3 below), EPA believes that many debris types can be effectively treated by these technologies (i.e., when the performance standards of proposed appendix IX are met). EPA considers thermal destruction to be a generic technology because organic contaminants are destroyed and metal contaminants partition to the ash residue which is subject to the F039 treatment standards (see Section V.G below). Thermal destruction would be a generic technology for organic debris types only, however, because if inorganic debris contaminated with a metal contaminant of concern is treatment by thermal destruction, the inert debris that may be separated from the residue would continue to be considered contaminated debris subject to treatment for the metal. Thus, when an inert debris contaminated with a metal contaminant is treated by thermal destruction, a treatment train is required to treat the inert debris remaining for the metal contaminant. Given that presence of a metal contaminant subject to treatment drives this decision, thermal destruction cannot be a generic treatment technology for inert debris.

E. Exclusion of Contaminated Debris from Subtitle C

Under today's proposed rule, contaminated debris may be excluded from the definition of hazardous waste by either: (1) Treatment by the technology specified in proposed § 268.45 and appendix IX (see Section V.F below), provided that the technology is an extraction or destruction technology [13] and that the treated debris does not exhibit a hazardous characteristic; or (2) a case-by-case determination by EPA upon request of the generator or treatment facility owner or operator that an untreated debris, or a debris treated by a technology other than specified in § 268.45 and appendix IX, is a solid waste (e.g., discarded concrete, metal or plastic drums, or piping) that is not mixed with a hazardous waste, or is not a solid waste (e.g., rock) that does not contain hazardous waste at significant levels. The latter approach would codify the Agency's existing practice with respect to when hazardous wastes are "contained-in" or mixed with debris.

EPA is proposing the following decision rules regarding the interplay of the debris treatment standards and the contained-in policy. First, if debris is found not to contain or be mixed with a hazardous waste it need not be treated by a prescribed method of treatment. The debris may be deemed not to contain or be mixed with a hazardous waste as a result of treatment (which need not be a prescribed treatment method) or as generated. The level could not be achieved by impermissible dilution. The legal basis for this decision rule is that the Agency tentatively believes that these levels could be viewed as levels at which potential threat to human health and the environment are minimized and

[12] Under the Third Third, however, residue from treating characteristic debris would not require further treatment if the residue was a new treatability group not exhibiting a characteristic. See 55 FR 22661. If the debris and residue are considered to be the same nonwastewater treatability group, however, then the residue would remain prohibited. If EPA were to take this view, the F039 standards would appear to be the appropriate treatment standards.

[13] See footnote 0.

therefore that further treatment is unnecessary. See section 3004(m).

Second, the same principles apply in the case of toxic characteristic debris (i.e., debris that exhibits both TC and EP toxicity, plus the type of reactive debris known to be contaminated with toxic constituents, namely reactive cyanide debris). Thus, such debris, if found to no longer be contaminated with hazardous constituents at the contained-in level, would not require further treatment in order to be land disposed and would not be a hazardous waste. On the other hand, merely removing the characteristic but not treating by a prescribed method (or determining that the debris does not contain hazardous constituents at the contained-in level) would not be sufficient. Although such debris would no longer be a hazardous waste, it could not be legally land disposed. See generally 55 FR 22651–654 (June 1, 1990). Such a result appears necessary here if the prescribed treatment methods are to have any practical applicability to toxic characteristic debris. The result is also needed to prevent dilution to remove the characteristic in lieu of treatment that adequately minimizes threats posed by the contaminated debris.

EPA is thus proposing to allow two alternatives that can be followed so that contaminated debris is no longer prohibited from land disposal and is no longer a hazardous waste. The first is to treat by one of the methods specifically listed in the rule (see proposed § 268.45) [14] in accordance with the conditions set out in proposed Appendix IX (or by an alternative equivalent method approved on a case-by-case basis). The other is to treat by a different method and obtain a determination that the debris no longer contains hazardous waste, or to obtain that demonstration before treating the waste. See proposed § 261.3(e). The levels could not be achieved by impermissible dilution. Residues from treating debris contaminated with listed wastes would still be listed wastes and could not be land disposed unless and until they meet the F039 treatment standards. In addition, such residues would remain hazardous wastes unless and until delisted.

1. When Debris Stops Being a Hazardous Waste

As just discussed, the first way contaminated debris would no longer be a hazardous waste would be to treat the debris with an extraction or destruction technology [15] according to the provisions of the proposed rule (and for the debris not to exhibit a hazardous characteristic after treatment). The Agency believes that, based on literature surveys, data analyses, and engineering judgment, the extraction and destruction technologies specified in today's proposed rule under § 268.45 when certified by the owner or operator to be designed and operated in compliance with the standards of appendix IX, coupled with the oversight by EPA (or authorized State) will effectively reduce the hazardous waste contaminant in or on the debris to levels that will not pose a hazard to human health or the environment absent Subtitle C control.[16]

EPA is also considering extending the proposed exclusion from Subtitle C management for debris that is treated by extraction and destruction technologies to debris that is treated by immobilization technologies. However, the Agency does not have sufficient data or information to support such an outcome at the time of this proposal. Therefore, we specifically solicit comment and data to support the design of performance standards for immobilization technologies that would be sufficient to allow contaminated debris treated by such technologies to be excluded from Subtitle C management. If such information is provided, the Agency will extend the exclusion accordingly.

EPA is also soliciting comment on the issue of whether certain types of treated debris should remain within the Subtitle C program. In particular, there may be debris that is contaminated with hazardous constituents, such as dioxins, that adhere strongly to debris surfaces and so are less amenable to surface removal treatment technologies such as water washing or spalling. Thus, it may be that the final rule will differentiate among certain debris types, contaminants, and removal (and conceivably destruction) technologies in determining which types of treated debris are no longer subject to Subtitle C regulation following BDAT treatment. (The foregoing discussion assumes, of course, that no case-by-case contained-in demonstration is made for the treated debris.)

The Agency's "contained-in" policy states that environmental media (groundwater, soil, and sediment) contaminated with a RCRA listed hazardous waste must be managed as if the media were a hazardous waste until it no longer "contains" the hazardous waste. The Agency has interpreted the contained-in policy to apply to media and debris that contain a waste (such as contaminated soil, groundwater, clothing, and rock). Currently, media that are contaminated with hazardous waste must be managed as if they were hazardous wastes until they no longer "contain" the listed waste, no longer exhibit a characteristic, or are delisted. The Agency has not issued any general rules as to when, or at what levels, environmental media or debris contaminated with hazardous wastes are no longer considered to "contain" those hazardous wastes. EPA believes that such levels for media are most appropriately determined on a site-specific basis by the EPA Region (or authorized State) overseeing the cleanup of such materials, such as a Superfund or Corrective Action remediation. Such levels for media are generally determined according to risk.

Under a close reading of existing rules, debris (such as concrete or piping) is a solid waste when discarded. If the debris is contaminated with a listed hazardous waste, it remains in the Subtitle C system unless and until delisted. (See § 261.3(a)(2)(iv) (the mixture rule).) Other debris is not a "solid waste" and so would not be subject to the mixture rule when contaminated with a listed hazardous waste. Such debris would stop being managed as a hazardous waste once it no longer "contains" a listed waste (see further discussion below). 53 FR 31147 (August 17, 1988) and *Chemical Waste Management* v. *EPA*, 869 F.2d 1356 (D.C. Cir. 1989).

EPA is proposing to deal with these two classes of debris (i.e., debris that is a solid waste and debris that is not a solid waste) in the same manner in this rule. By doing so, the debris would no longer be subject to Subtitle C if it is treated in accord with the methods designated in the rule, or no longer has listed wastes present at concentrations at which the debris would be considered to contain hazardous waste. EPA is proposing this result because there may be no environmental difference between solid waste debris and debris that is not a solid waste, and so the same rules as to when the debris no longer should be subjected to Subtitle C regulation could apply in either case. It simply appears to make no sense that two classes of debris which appear environmentally indistinguishable be subject to very different regulatory regimes for exiting the hazardous waste system (i.e., delisting for one class, but case-specific determinations for the other). (In

[14] See footnote 6.

[15] See footnote 6.

[16] Note that, to be excluded, treated debris may not exhibit a hazardous characteristic.

addition, EPA will refer to both classes of debris as "contaminated debris" from this point on in this notice.) EPA also requests comment on an alternative approach, which would continue to apply the "derived from" and "mixture" rules to contaminated debris that is composed of solid waste and listed hazardous waste.

EPA also requests comment on requiring the generator or owner or operator to maintain the burden of demonstrating compliance with the treatment and certification requirements.

2. Case-by-Case Determination that Untreated Debris is Excluded from Subtitle C

Some contaminated debris may contain or be mixed with very low levels of toxic (appendix VIII, part 261) constituents, even before treatment. In addition, an owner or operator of a treatment facility may choose to treat contaminated debris by a technology that does not meet the requirements of § 268.45 and appendix IX. In either case, today's rule would codify the existing contained-in policy. The owner or operator of the treatment facility (or any person in possession of the debris, such as the generator) thus may request from EPA (or an authorized State) a case-by-case determination that the levels of toxic constituents present will not pose a hazard to human health and the environment absent Subtitle C control.

F. Contaminated Debris Treatment Standards

In this section, we discuss: (1) The 18 treatment technologies proposed as BDAT; (2) the debris treatment standards as a function of debris and contaminant category; (3) performance standards that must be met to ensure effective treatment and to comply with the BDAT standards; (4) how the rule would apply to mixtures of contaminant categories; (5) how the rule would apply to mixtures of debris categories; (6) deactivation of characteristic debris; (7) standards for debris that is inherently toxic (i.e., it fails the TC and EP for metal contamination because it is fabricated from a toxic metal); and (8) mixtures of soil and contaminated debris.

1. Identification of BDAT Treatment Technologies

The Agency has identified 18 treatment technologies as Best Demonstrated Available Technology (BDAT) for one or more debris types and contaminant categories. We considered a treatment technology to be "available" if the technology itself or the services of the technology are able to be purchased, and the technology substantially diminishes the toxicity of the waste or reduces the likelihood of migration of the waste's hazardous constituents. The technologies identified in today's notice have been used to treat contaminated debris at Superfund sites, to remove radioactive metals from debris, to treat debris-like material contaminated with compounds similar to one or more of the compounds in the debris contaminant categories or, based on engineering judgment, are applicable to debris.

A technology is considered to be demonstrated for a particular waste if the technology currently is in commercial operation for treatment of the waste or constituent of interest or similar wastes or constituents of interest, including wastes not regulated under RCRA, such as PCBs and radioactive waste. For some of the debris/contaminant combinations identified in today's proposal, EPA identified demonstrated technologies either through a review of the literature in which current waste treatment practices were discussed, or through information provided by specific facilities currently treating the waste or similar wastes. EPA also considered as demonstrated technologies those used to separate or otherwise process chemicals and other materials which are similar to the waste or constituent of interest. Due to the variable nature of debris and the number of combinations of contaminants which may exist on debris, no single technology is identifiable as BDAT for all possible cases within each specific debris/contaminant combination. EPA is proposing to identify more than one technology as the BDAT standard for debris/contaminant combinations in order to give the regulated community flexibility in addressing particular contaminated debris wastes.

To identify BDAT technologies, the Agency also reviewed the properties of debris which may directly affect the efficiency of treatment technologies. Debris characteristics which may affect the performance or effectiveness of treatment technologies to clean various types of debris include:

- Destructibility;
- Hardness and brittleness;
- Moisture content;
- Permeability;
- Size, homogeneity, and location (in situ versus ex situ);
- Surface texture; and
- Total organic carbon (TOC).

All treatment standards for debris in today's rule are expressed as a treatment method. EPA considered establishing concentration-based standards whereby a numerical treatment level would be required for the treated debris. A concentration-based treatment standard would provide maximum flexibility in the choice of treatment technology because any effective treatment, including recycling or any combination of treatment technologies, unless prohibited (e.g., impermissible dilution) or unless designed as land disposal (e.g., land treatment), could be used to achieve the standards. However, the Agency did not have a means of calculating valid concentration-based standards given the matrix variations of debris and the difficulties in sampling and analyzing many debris types. By identifying numerous technologies that qualify as BDAT, the Agency is seeking to provide substantial flexibility.

The Agency is today proposing that the following 18 treatment technologies are BDAT for contaminated debris for specific combinations [17] of contaminants and debris types:

- Extraction Technologies:

—Abrasive blasting
—Acid washing
—Electropolishing
—Liquid phase solvent extraction
—Thermal desorption
—Scarification and Grinding
—Spalling
—Vapor phase solvent extraction
—Vibratory finishing
—Water washing and spraying

- Destruction Technologies

—Biodegradation
—Chemical oxidation
—Chemical reduction
—Photochemical treatment
—Thermal destruction

- Immobilization Technologies

—Macroencapsulation
—Microencapsulation
—Sealing

Additional information on these technologies can be found in Appendix I of today's preamble. Detailed information on the various treatment technologies can be found in the Technical Support Document.[18]

2. Contaminated Debris Treatment Standards

EPA has grouped the 18 treatment technologies that EPA is proposing as BDAT (see section V.F) into three

[17] We note that EPA considers six technologies (see proposed Appendix X to the rule) to be generic treatment technologies that can effectively treat all contaminants on specific debris types.

[18] See U.S. EPA, *Technical Support Document for the Contaminated Debris Proposed Rule*, November 1991.

general families of technologies: (1) Extraction; (2) destruction; and (3) immobilization. Based on an extensive review of the available technical literature, data received following the May 30, 1991 ANPR, contacts with trade associations, and the Agency's best engineering judgment, EPA developed a Debris Treatment Standards table (proposed Table 1 to § 268.45) establishing which specific technologies are BDAT for specific combinations of debris and contaminant categories. When marked "YES" on that table, the Agency believes that a treatment technology operated in compliance with the design and operating standards or the performance standards provided by appendix IX, part 268, will effectively treat the debris contaminated with one or more contaminants from the designated contaminant category.[19] When marked "NO", the Agency believes that the technology is not appropriate or acceptable for that debris/contaminant combination and may not provide adequate treatment of toxic constituents. Note that technologies marked "YES" may not always be appropriate (e.g., operator safety concerns, equipment damage) for the debris/contaminant category, but the Agency believes they will effectively remove or destroy the contaminant. Contaminants that may present a safety hazard to workers when using a particular treatment technology are noted in appendix IX where the design and operating or performance standards are specified.

Technologies marked "NO" in Table 1 are not prohibited from being used on debris as a pretreatment step, but do not qualify as BDAT. Use for initial treatment will allow mixtures of debris or debris contaminated with many contaminants to be treated for all debris/contaminant combinations using a treatment train. For example, crushed metal drums that are contaminated with both metal and organic contaminants subject to treatment may be treated with a treatment train using an extraction technology (e.g., thermal desorption) to remove the organic contaminants followed by an immobilization technology (e.g., macroencapsulation) to treat the metal contaminants.

The proposed technology-based approach offers the regulated community flexibility in selecting technologies for treatment of debris. However, until EPA can develop performance standards for immobilization technologies, EPA prefers extraction and destruction technologies over immobilization because the contaminants are either removed or destroyed.[20] When a treatment train is employed which involves an immobilization technology, for obvious reasons, immobilization must be the final treatment employed. See proposed § 268.45(a)(3). Further treatment of immobilized products would result in a deterioration of the immobilized waste and an increase in the likelihood that the immobilization product will leach hazardous constituents.

Further, as discussed below, because the contaminants have been removed or destroyed, most contaminated debris treated by extraction or destruction technologies in compliance with the standards of proposed appendix IX, part 268, would no longer be considered to be contaminated (unless it exhibits a characteristic of hazardous waste), and would be excluded from the definition of hazardous waste. Contaminated debris treated by immobilization technologies are still considered to contain a hazardous waste, and thus must be land disposed in a Subtitle C facility.[21]

EPA recommends that the owner or operator of the treatment facility consider the thermal, chemical, physical, and biological properties of the debris and the contaminants on the debris before selecting a treatment technology. The Agency plans to develop a nonregulatory implementation assistance document to provide assistance on how to select the most appropriate technologies for a given debris/contaminant combination.

3. Requirements to Ensure Effective Treatment

To ensure effective treatment and that the debris no longer contains hazardous waste and, thus, is excluded from the definition of hazardous waste (provided that an extraction or destruction technology is used and that the treated debris does not exhibit a hazardous characteristic), the rule would require that the treatment technology meet specific performance standards or be designed and operated under specific operating conditions. See Appendix IX to the proposed rule. In addition, we are requesting comment on whether to require a treatment facility owner or operator that intends to claim the exclusion for the treated debris to submit to EPA a one-time written notice at least 30 days prior to first treating a debris/contaminant category stating that the owner or operator intends to claim the exclusion and certifying that the treatment technology will be operated in compliance with the design and operating or performance standards provided by appendix IX. These issues are discussed below.

a. *Performance and design and operating standards.* The Agency developed performance standards or design and operating requirements for each of the treatment technologies based on an analysis of the supporting data base.[22] The data base was developed by conducting an extensive review of the available technical literature, reviewing the data received following the May 30, 1991 ANPR, and contacting vendors and trade associations to obtain reports describing treatment of contaminated debris at waste sites in the United States. The literature search identified the types of debris and types of contaminants on debris typically found at waste sites, and treatment technologies applicable for debris treatment. In particular, the Agency searched the Record of Decision data base and the Alternative Treatment Technology Information Center data base for information on debris treatment methods, contacted Remedial Project Managers and other governmental officials at the State level to discuss debris treatment technologies in use or under evaluation in their Region or State, and contacted over 50 vendors to collect information about the operation, performance, and effectiveness of their technology. The Agency summarized the design and operating and performance standards for successfully demonstrated treatment operations and incorporated them into proposed Appendix IX to part 268.

When data were not available for treatment of specific debris/contaminant combinations, the Agency used best engineering judgment to transfer design and operating and performance standards from technologies that are expected to be effective on those specific debris/contaminant combinations.

The Agency is proposing performance standards rather than design and operating standards for a technology where supporting data are available. An example of a performance standard is the requirement that abrasive blasting of metal debris must remove all paint, surface coating, rust, visible cracks and crevices, scale, corrosion, and visible staining to leave a white metal finish. An example of design and operating standards are the standards for biodegradation that specify the pH,

[19] See footnote 13.

[20] See footnote 6.

[21] See footnote 6.

[22] See footnote 13.

temperature, moisture level, and oxygen concentration of the slurry. We are proposing performance standards where possible because performance standards may provide more effective treatment for a debris/contaminant category given the variability in physical forms of debris within a category. Further, performance standards give the owner and operator the flexibility to tailor the design and operation of the treatment unit to the specific debris being treated to ensure effective treatment as demonstrated by compliance with a performance standard.

EPA specifically requests comments and supporting data on whether the standards proposed in appendix IX will ensure completely effective treatment—leaving a nonhazardous debris as well as significantly reducing the toxicity and mobility of hazardous constituents—for the debris/contaminant categories specified in § 268.45. Further, EPA specifically requests data or information supporting the development of performance standards for those technologies where the Agency is currently able to propose primarily design and operating requirements only. If EPA determines based on public comments and further analysis that the performance standards for a particular technology may not ensure effective treatment for particular debris types or contaminant categories specified in proposed Table 1 of § 268.45 as acceptable, the final rule could provide either that such technology is not BDAT in that situation or that the treated debris could be land disposed but would not be excluded from Subtitle C regulation.

Late in the process of developing today's proposed rule, we realized that the performance standards proposed in appendix IX, part 268, may preclude the need for specifying acceptable technologies as a function of debris type as provided by Table 1 of § 268.45. Appendix IX provides performance standards that vary, when necessary, according to type of debris. Thus, it may be redundant to specify acceptable technologies by debris category in Table 1.[23] Table 1 could be revised in the final rule to specify acceptable technologies solely as a function of contaminant category.

We note further that the performance standards and design and operating conditions being proposed for the various methods of treatment would not be part 264 or 265 standards and so need not be implemented by means of permits or interim status standards. Nor is the Agency finding that performing these types of treatment in these ways is necessary to protect human health and the environment.[24] Rather, these standards are adopted pursuant to section 3004(m) to assure that treatment minimizes the hazardous constituents' toxicity or mobility. Furthermore, by optimizing treatment, rather than simply performing the treatment without any criteria of how it is to be properly operated, the Agency can find further that most treated debris no longer contains a hazardous waste, and so is no longer subject to subtitle C regulation (assuming that the treatment is an extraction or destruction technology[25]).

b. *Notification and certification requirements.* In addition to the standards being proposed today, the Agency also requests comment on whether to apply new notification and certification requirements in order for EPA to provide oversight to ensure that a treatment unit is meeting the design and operating or performance standards established in appendix IX, part 268. EPA may need the opportunity to provide such oversight for debris that will be excluded from regulation (i.e., debris that is treated with an extraction or destruction technology and that does not exhibit a hazardous characteristic) upon treatment to ensure that the debris is effectively treated. For contaminated debris that remains within the subtitle C hazardous waste management system upon treatment, the existing notification and certification requirements of § 268.7 will apply. For contaminated debris that is no longer considered hazardous, EPA proposes in § 268.7(d) a one-time notification and certification to be kept in the facility files for each combination of debris/contaminant categories.

In particular, for debris that will be excluded from Subtitle C upon treatment, the Agency is requesting comment on whether to require the owner or operator of the treatment unit to provide EPA a written notification prior to treating a debris/contaminant category that provides certain information (as discussed below) and certifies that the technology will be operated under the standards of appendix IX, part 268. This would give EPA the opportunity to review the information and inspect the facility (if considered necessary) where EPA has questions on whether the technology will, in fact, be operated in compliance with the standards because of factors such as an unusual or difficult to treat debris or contaminant, or the enforcement history of the facility. In providing comments, EPA specifically requests suggestions on the timing of the notice.

EPA could require that the following information be included in the notification to enable EPA to determine the difficulty of meeting the standards of appendix IX, part 268:

- Name and address of the owner and operator of the facility as well as the location of the treatment unit;
- Date that the notification is submitted to EPA;
- Brief description of the treatment technology;
- Types and quantities of debris to be treated, and source of the debris; and
- Each contaminant for which the debris is subject to treatment, and a determination whether the untreated debris exhibits a hazardous characteristic.

4. Mixtures of Contaminant Categories

Today's treatment standards apply to mixtures of different waste streams. Where a waste mixture consists of different debris or contaminant categories and has more than one technology treatment standard, all standards must be met prior to land disposal. See proposed § 268.45 (a)(3) and (a)(4). This may result in the use of a treatment train, in which several technologies are employed to treat the waste. In such cases, as noted previously, immobilization, where required, must be the last technology employed. In the event that such a waste mixture cannot feasibly be treated by the different treatment methods, the Agency will accept petitions for a variance from the treatment standard pursuant to § 268.44.

5. Mixtures of Debris Categories

When debris is a mixture of debris categories, treatment would be required for each debris category according to proposed § 268.45(a)(3). The owner or operator of the treatment facility may

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[23] We also noted that the performance standards for a particular technology could be met for some debris/contaminant category combinations even though Table 2 would preclude use of the technology. For example, Table 2 precludes the use of abrasive blasting of plastic even though abrasive blasting of rigid plastic pipe to remove surface combination should be an effective treatment technology and could meet the performance standards specified in Appendix IX for nonpermeable debris like glass (i.e., removal of all paint, surface coatings, scale, visible cracks and crevices, and visible staining).

[24] Although the performance standards are not intended to provide protection of human health and the environment (HHE) from the treatment operation itself, the standards will ensure protection of HHE when the treated debris becomes excluded from Subtitle C and may be disposed of in a municipal waste landfill. Thus, EPA expects that permit writers will add conditions to the permit to ensure compliance with the performance standards.

[25] See footnote 6.

either: (1) Treat the debris using a technology which qualifies as BDAT for all debris/contaminant combinations within the matrix, or (2) treat the debris using a treatment train such that BDAT for each debris/contaminant category is achieved by at least one of the technologies in the treatment train.

If a debris is a mixture of debris categories but the application of the specified treatment technology for one debris category (normally the primary debris category) will cause the secondary debris category to be removed from the primary debris in the treatment residue in a form such that it no longer meets the definition of debris, the debris treatment standards have been met. The treatment residue is subject to the numerical F039 treatment standards and remains subject to Subtitle C (like all treatment residues). An example is metal equipment that is contaminated with a prohibited listed waste, and has a paper label. If abrasive blasting is used to treat the pipe, the paper label will be removed and shredded, and will become part of the treatment residue.

6. Treatment of Characteristic Debris

Contaminated debris that exhibits ignitability or reactivity [26] must be treated to deactivate the ignitability or reactivity characteristic. See proposed § 268.45(a)(2). If such debris is also contaminated with "contaminants subject to treatment," [27] it must be deactivated before the debris can be treated for the contaminants subject to treatment unless the treatment for the contaminants also will deactivate the debris.

As discussed above, EPA is also soliciting comment as to whether there should be treatment of "contaminants subject to treatment" if debris that is hazardous waste solely because it exhibits the ignitability or reactivity characteristic is contaminated with appendix VIII, part 261, constituents. Effective treatment of such contaminants would require deactivation as an initial treatment step. EPA also solicits comment on whether dilution should be considered permissible treatment for ignitable and reactive debris.

Debris that exhibits reactivity because of the presence of cyanide, however, would be subject to treatment with a technology specified for cyanide. Cyanides would be included in CC10 (nonmetal inorganics) in proposed Table 2 of § 268.45. We are proposing to require treatment of cyanide rather than simply deactivation of the reactivity characteristic because cyanide is a toxic constituent. In addition, treating cyanide-reactive waste for cyanide would be consistent with the existing land disposal restrictions. See existing § 268.43—Waste Code D003 (Reactive cyanides subcategory identified by § 261.23(a)(5)).

7. Debris That Continues to Exhibit the Toxicity Characteristic Due to Fabrication With Toxic Metals

Some types of debris may continue to exhibit the (prohibited) Extraction Procedure (EP) toxicity characteristic. Examples are: Refractory brick containing metals such as chromium; certain metal alloys containing nickel and chromium, such as stainless steel; treated wood that contains wood preserving compounds such as chromium, and arsenic; battery casings that contain lead; lead pipe; and lead paint chips. EPA is proposing rules covering two possibilities: Where such debris is contaminated with contaminants subject to treatment, and when the debris is not. Where the debris is contaminated, EPA is proposing that the contaminants be treated by the appropriate method. If the debris continued to exhibit a characteristic because of its fabricated content (i.e., exhibited both the TC and EP for a metal), it would have to be immobilized before land disposal. An alternative, however, would be to recycle the debris, which in most cases would be scrap metal (as defined in § 261.1) exempt from further subtitle C regulation. See § 261.1(a)(3)(iv). EPA in fact is proposing treatment of contaminants subject to treatment for this type of characteristic debris, but soliciting comment on this alternative for other types of characteristic debris, because of the likelihood that most of the debris will be managed in this unregulated mode as recycled scrap metal. It is thus important that other contaminants not be present to avoid environmental contamination at unregulated sites and also to avoid unexpected contaminants in the recycling process itself.[28]

If the inherently hazardous debris is not contaminated with contaminants subject to treatment, it could either be immobilized and disposed, or recycled, and if scrap metal, be exempt from further regulation.

To illustrate, suppose a restaurant is demolished and several stainless steel counters are the only metal included among other debris consisting of concrete, brick, wood, plaster, and glass. There are no listed wastes present, and the restaurant demolition debris does not exhibit ignitability, corrosivity, or reactivity. A representative sample of the debris would include stainless steel, concrete, brick, wood, plaster, and glass in the same proportions as they are found in the restaurant demolition debris. Unless such a representative sample exhibits the toxicity characteristic under the Toxicity Characteristic Leaching Procedure (TCLP), the restaurant demolition debris would not be considered hazardous.

However, if a representative sample of the restaurant demolition debris exhibits the toxicity characteristic for chromium under the TCLP, due to the presence of the stainless steel, all the restaurant demolition debris would be considered hazardous. Deliberate dilution of the debris to obtain a sample that would not exhibit the toxicity characteristic is prohibited; such deliberate dilution of a sample would violate the sampling protocols of SW–846 which are incorporated by reference in § 260.11. If the stainless steel in this example is segregated from the other restaurant demolition debris, it may be recycled as provided in § 261.6(a)(3)(iv) without treatment under proposed § 268.45 because it is not contaminated with any other contaminants subject to treatment. The Agency suggests that metal be removed from demolition sites for recycling prior to demolition, to the most cost effective extent possible, particularly where the site does not involve the production or use of listed hazardous wastes; in this way, the potential for generating contaminated debris may be lessened.

EPA recognizes, however, that in some situations where recycling is impracticable, treatment with an immobilization technology may also be impracticable. EPA specifically requests comment and supporting information on situations where recycling is impracticable for inherently hazardous debris and where immobilization is also

[26] We note that contaminated debris cannot exhibit corrosivity under § 261.22 because only liquids may exhibit corrosivity while debris is defined as a solid material. However, contaminated debris (i.e., debris that is mixed with a listed waste or exhibits a hazardous characteristic) may *contain* a corrosive waste (e.g., crumpled drums containing corrosive liquids). In this situation, not only would the debris be subject to the debris treatment technology requirements, but the corrosive waste must be deactivated.

[27] I.e., because it exhibits the TC and EP or is contaminated with a listed prohibited waste.

[28] Residues from treating inherently hazardous debris, however, could be considered a new treatability group not exhibiting a characteristic and therefore not prohibited. An alternative would be to require treatment to F039 standards, viewing both the debris and treatment residues as part of a nonwastewater treatability group.

impracticable for such debris. Further, EPA requests comment on regulatory controls that may be applied to such debris in a manner that is workable and protective of human health and the environment.

8. Mixtures of Soil and Contaminated Debris

When soil is agglomerated on debris or compacted/contained inside the cracks and crevices of debris, it is difficult to separate. Soil (e.g., clay) adhering to debris is considered contaminated soil if it is removed during treatment of contaminated debris (e.g., water washing and spraying). Nonwastewater residuals containing soil that are separated during the treatment of residuals from debris treatment will be subject to the forthcoming contaminated soil standards.

G. Regulation of Treatment Residuals

Four general categories of residuals from the treatment of contaminated debris have been identified: (1) Nonwastewater residuals containing soil; (2) treated debris; (3) nonwastewater residuals derived from the treatment of contaminated soil and debris that are neither soil nor debris; and (4) wastewater [29] residuals derived from the treatment of contaminated soil and debris. (This discussion assumes contamination with a listed waste.) The Agency is today proposing to continue to subject nonwastewater residuals containing soil to the existing LDR standards, to conditionally exclude treated debris from Subtitle C as discussed previously, and to transfer the F039 nonwastewater and wastewater treatment standards to the non-soil, non-debris, nonwastewater, and wastewater residuals (i.e., categories 3 and 4) generated by the treatment of contaminated debris.

We also discuss in the section the rationale for transferring the F039 multisource leachate standards to debris treatment residues. Finally, we also discuss the special requirements for residues from the treatment of cyanide-reactive debris and ignitable nonwastewater residue.

1. Nonwastewater Residues Containing Soil

Nonwastewater residuals containing soil may be generated when soil is removed from contaminated debris during debris treatment operations (e.g., water washing and spraying). Nonwastewater residuals containing soil that are separated from debris during the treatment of contaminated debris are subject to the existing LDR standards for the listed waste that contaminated the debris and the LDR standards for the toxicity characteristic that the debris exhibited until standards specific for contaminated soil are promulgated.

2. Treated Debris

Treatment technologies other than thermal destruction of an organic debris will generate a treated debris residue. (See discussion below regarding residue from thermal destruction.) If the debris has been treated for all "contaminants subject to treatment," the treated debris is excluded from Subtitle C provided it was treated with an extraction or destruction technology [30] and the treated debris does not exhibit a hazardous characteristic.

3. Nonwastewater, Nonsoil, Nondebris Residuals

Under today's proposed rule, nonwastewater residuals that are nonsoil and nondebris would be subject to the F039 nonwastewater treatment residual standards. These residuals may be land disposed after meeting the F039 standards, but are subject to Subtitle C. The residue would be subject to the F039 nonwastewater treatment standards under existing § 268.43 for all contaminants subject to treatment (see proposed § 268.45(b)) and for all constituents in appendix VIII, part 261, that are added to the debris or residue during treatment.

Note that EPA considers residue generated by surface removal technologies other than spalling (e.g., abrasive blasting, electropolishing, acid washing, waster washing and spraying) to be nonwastewater, nonsoil, nondebris residue. Although the residue will usually contain particles of debris (e.g., abrasive blasting of concrete) along with the contaminants, we believe that it is more appropriate to subject the residue to the F039 standards rather than to further treatment as contaminated debris. Such residues generally have the physical characteristics of a treatment residue (e.g., small particle size) rather than the debris. Residue from spalling, however, will generally closely resemble the debris and so would be subject to further treatment as contaminated debris.

We note further that the solid residue from thermal treatment (e.g., incineration) may contain both inert debris as well as ash resulting from destruction of waste and organic debris. If the contaminated debris is not contaminated with a metal "contaminant subject to treatment," inert debris that is separated from the ash residue is considered treated debris rather than residue subject to F039 standards.[31] (The ash residue would be subject to the F039 standards).

4. Wastewater Residuals

Wastewater residuals are liquid residuals derived from the treatment of contaminated debris (e.g., rinsate from acid washing operations) that are neither soil nor debris. These wastewater residuals would be subject to the F039 wastewater treatment residual standards under the proposed rule. (Any nonwastewaters generated in the course of treating the wastewater such as precipitated solids will be subject to the F039 nonwastewater standards). As with nonwastewater residuals, the wastewater residual would be subject to the F039 wastewater treatment standards under existing § 268.43 for all contaminants subject to treatment (see proposed § 268.45(b)) and for all constituents in appendix VIII, part 261, that are added to the debris or residue during treatment.

5. Nonanalyzable Constituents

The Agency has also considered the issue of nonanalyzable constituents. Nonanalyzable constituents may be identified as "contaminants subject to treatment" if debris is contaminated with a prohibited listed waste and the owner or operator of the treatment facility could reasonably know that the debris is also (i.e., in addition to the BDAT constituents for the prohibited

[29] Wastewaters are wastes that contain less than 1 percent by weight total organic carbon (TOC) and less than 1 percent by weight total suspended solids (TSS). See existing § 268.2(f).

[30] See footnote 6.

[31] We note that, although the separated inert debris may be contaminated with the ash residue through surface coating (e.g., dust) or by entrainment within the debris (e.g., pockets of ash residue entrained in crumpled metal containers), the inert debris will pose little hazard to human health and the environment because the nonmetal toxic contaminants in the debris have been destroyed. If debris is contaminated with a metal contaminant subject to treatment, the inert debris remaining in the residue from thermal treatment would be subject to additional treatment (e.g., extraction, immobilization) for the metal contaminant. We note further that if organic debris (e.g., wood, cloth or paper, or rubber or plastic) remains after treatment by thermal destruction, EPA considers such debris to be contaminated debris subject to the treatment standards. If the organic debris has not been destroyed, EPA is concerned that the organic contaminants subject to treatment may not have been destroyed (or metal contaminants subject to treatment contaminating the organic debris may not have been liberated and partitioned to the ash residue (where they are subject to the F039 treatment standards)).

waste) contaminated with an appendix VIII, part 261, constituent that is nonanalyzable.[32] Even though the owner or operator will not be able to determine whether the nonanalyzable constituent contaminates the debris at detectable levels, the Agency believes it is reasonable to take the conservative view to require treatment of such nonanalyzable constituents.

Treatment residues must be treated to meet the F039 multisource leachate standards for all contaminants subject to treatment. See proposed § 268.45(e). When a prohibited hazardous waste containing a constituent without an EPA-approved analytical method contaminates the debris, EPA considers the treatment residue to be treated for the nonanalyzable constituent when the residue is shown to meet the F039 standards for the BDAT constituents for the prohibited waste. This is because the BDAT constituents act as a surrogate for the nonanalyzable constituent. This is consistent with the approach taken by the Agency during the regulation of F039 multisource leachate. At that time, the Agency believed that the constituents with EPA-approved analytical methods would act as surrogates for constituents without EPA-approved methods.

6. Rationale for Transferring F039 Standards to Debris Treatment Residuals

Limited characterization data are available on the residuals from debris treatment and no specific treatment performance data on debris residuals are currently available. As part of the F039 regulation effort, the Agency did collect and summarize treatment performance data on several wastewater treatment technologies. For nonwastewater F039, the Agency compiled treatment performance data from the incineration of many waste codes subject to LDRs. These two databases (the F039 wastewater and nonwastewater databases) represent an appropriate data source for transfer to residuals from the treatment of contaminated debris.

The advantage of using the F039 wastewater database is that this data represents treatment performance of the best demonstrated and available wastewater technologies currently in use for treating various wastes. This database represents treatment of wastes with high variabilities of constituents and constituent concentrations.

The F039 nonwastewater database represents incineration treatment performance data for various wastes with high variabilities of constituents and constituent concentrations. Incineration has often been identified as the best demonstrated and available technology for the treatment of organic constituents in nonwastewaters. The use of F039 treatment performance data to determine concentration-based treatment standards for contaminated debris treatment residuals, therefore, represents a feasible and environmentally sound option. This regulatory approach maximizes use of the Agency's available treatment performance data and has been promulgated successfully with the multisource leachate regulation during the Third Third rulemaking.

For those contaminants subject to treatment that partition to the debris treatment residual and that do not have treatment standards under F039, standards could be developed in the future using a transfer of data from a similar constituent in F039 or in another waste code. This procedure is common in the BDAT program and will allow all of the debris contaminants subject to treatment to have a concentration-based residue treatment standard. In the interim, however, EPA believes that constituents with approved analytical methods would act as surrogates for constituents that do not have such approved methods. Thus, when the residue is treated to meet the F039 standards for contaminants with approved methods, the contaminants without approved methods will also be effectively treated. The Agency also addressed this concern in the same manner during the regulation of F039 multisource leachate.

There are several advantages to using the F039 transfer approach for the regulation of contaminated debris treatment residuals. The residuals likely to be generated from the treatment of contaminated debris will contain, in many cases, treatable concentrations of various contaminants that have been removed during the debris treatment process. For example, extraction technologies would include the removal of contaminants from the debris material. The contaminants removed and any extraction chemicals used (e.g., spent solvent wash or rinsing solution) would constitute the contaminated debris treatment residual. This residual could contain any number of contaminants at varying concentrations. This residual would require additional treatment before it would be safe to land dispose.

As is the case with multisource leachate, the types of contaminants and their concentrations in contaminated debris treatment residuals will vary greatly. The characterization of debris treatment residuals will depend on many factors, such as the hazardous waste on the contaminated debris, the degree to which the treatment technology (such as extraction) removes the contaminants, etc. In addition, this approach does not require that the original waste codes contaminating the debris be identified; only the constituents of concern on/in the debris that are likely to be in the residuals from debris treatment must be identified. The approach is thus consistent with the universal treatment standard approach discussed in EPA's ANPR of May 30, 1991 (56 FR 24444).

The Agency also explored the development of new treatment standards for debris treatment residuals but believes that this action would be both costly and time consuming. Since debris residuals are likely to be highly variable, it would be very difficult to characterize these wastes as a group.

The Agency also evaluated establishing specified technology-based treatment standards for wastewater and nonwastewater forms of these residuals. However, this regulatory option is more restrictive than setting a numerical treatment standard since it would require industry to use a specific technology. Setting concentration-based treatment standards allows industry greater flexibility in choosing innovative treatment technologies; it also helps to promote the development of new treatment technologies.

7. Special Requirements for Cyanide-Reactive Residue

Residue from the treatment of debris that is reactive because of cyanide would be subject to the F039 standards for cyanide under § 268.43 of this chapter. As with cyanide-reactive waste, EPA believes that BDAT for cyanide-reactive debris should require treatment of cyanide because of its toxicity.

8. Special Requirements for Ignitable Nonwastewater Residue

Today's rule would subject ignitable nonwastewater residue containing equal to or greater than 10 percent total organic carbon to the technology-based standards for D001: "Ignitable Liquids

[32] We note that the prohibited listed waste may also contain toxic nonenalyzable constituents. The list of BDAT constituents for the prohibited waste, however, accounts for the presence of nonanalyzable constituents by, in some cases, designating as BDAT constituents nontoxic, surrogate constituents. When the prohibited waste (or contaminated debris) is treated for the surrogate constituent, EPA believes that the nonanalyzable constituent will also be treated.

based on § 261.21(a)(1)" under § 268.42. Those standards would require that the residue be treated by fuel substitution (i.e., burning as fuel in a boiler or industrial furnace), recovery of organic constituents (e.g., distillation, carbon adsorption), or incineration. EPA has established these technologies as BDAT for high total organic carbon ignitable liquids because they will effectively remove or destroy toxic organic constituents.

H. Other Provisions of the Rule

In this section, we discuss several other provisions of the proposed rule: (1) Waste codes for contaminated debris; (2) relationship of the proposed rule to existing TSCA rules for PCBs; (3) standards for debris containing asbestos and asbestos debris; (4) special requirements for debris contaminated with radioactive waste; (5) sham contamination of debris with a waste to avoid LDR number standards for the waste; (6) sampling and analysis of debris; (7) procedures for demonstrating the equivalency of new technologies; and (8) applicability of existing treatment standards to contaminated debris.

1. Waste Codes for Contaminated Debris

The waste code applicable to contaminated debris is determined under the same approach used for other hazardous waste. For example, if debris is contaminated with a listed waste F006, the contaminated debris carries that waste code. If the debris exhibits the toxicity characteristic for arsenic, it carries waste code D004.

Contaminated debris that is treated according to proposed § 268.45(a)(1) and appendix IX, part 268, by an extraction or destruction technology and that does not exhibit a characteristic would no longer be a hazardous waste (and would no longer carry a waste code). Contaminated debris that is treated by an immobilization technology and remains in Subtitle C [33] would carry the waste code for the waste or the toxicity characteristic for which it was immobilized.

Although residues from the treatment of contaminated debris are subject to the LDR standards for F039, the residue normally carries the waste code of the contaminated debris. However, residue from treating debris that is hazardous solely because it exhibits a characteristic would not carry the waste code for the characteristic after treatment to deactivate the residue.

[33] See footnote 6.

2. Relationship of Debris Rule to TSCA PCB Rules

a. *TSCA disposal requirements.* Under the Toxic Substances Control Act (TSCA), disposal of debris contaminated with PCBs is regulated under 40 CFR 761.60. In addition, disposal of debris and materials resulting from the cleanup of certain PCB spills is subject to the PCB Spill Cleanup Policy, as provided under 40 CFR 761.125. On June 10, 1991, EPA published (56 FR 26738) an Advance Notice of Proposed Rulemaking which, among other things, asked for suggestions on how to amend the current PCB disposal rules to provide flexibility in disposing of PCB contaminated media (see 1.A. Large Volume, Non-Liquid Wastes). The current PCB disposal rules (40 CFR 761.60) were not designed to address large volumes of non-liquid wastes, such as certain classes of soils, sludges, and sediments. EPA is reviewing the comments submitted on the ANPR in anticipation of publishing a Notice of Proposed Rulemaking.

b. *Proposed approach for overlap of RCRA and TSCA requirements.* The Agency is today proposing that RCRA contaminated debris that is also a waste PCB under 40 CFR part 761 be required to comply with both the TSCA and RCRA regulations, by satisfying the more stringent applicable requirements, including incineration or treatment followed by land disposal in a Subtitle C facility. This is EPA's consistent approach to this issue. See 55 FR 22678 (June 1, 1990), and 52 FR 25770 (July 8, 1987).

The Agency is today proposing the use of specific treatment technologies as standards for the treatment of contaminated debris. These standards also apply to debris contaminated with PCBs and RCRA hazardous wastes. Debris treated by an extraction or destruction technology would remain subject to TSCA rules only, whereas debris treated by an immobilization technology would remain subject to applicable requirements under both statutes.

3. Treatment Standards for Asbestos Debris

Asbestos is a naturally occurring family of fibrous mineral substance. The typical size of asbestos fibers is 0.1 to 10 micrometers in length, a size that is not generally visible to the human eye. Some longer fibers are used in making textile products. Asbestos is a popular commercial product because it is noncombustible, resistant to corrosion, has a high tensile strength, and a low electrical conductivity. When disturbed, asbestos fibers may become suspended in the air for many hours, thus increasing the extent of asbestos exposure for individuals within the area.

Asbestos fibers have been mixed with various types of binding materials to create an estimated 3,000 different commercial products. Asbestos has been used in brake linings, floor tile, sealants, plastics, cement pipe, cement sheet, paper products, textile products and insulation, and other products such as fireproof garments, curtains, and shields, paper, insulating boards, and insulating cements. The amount of asbestos contained in these products varies significantly from 1 to 100 percent, but is typically less than 50 percent.

We determined late in the process of developing this proposed rule that asbestos itself could also be contaminated debris if it is mixed with a prohibited waste or exhibits a prohibited characteristic.[34] However, asbestos is not included in the six categories of debris in proposed Table 1 to § 268.45 for which the Agency is proposing treatment technologies as BDAT. Consequently, we specifically request comment on whether the final rule should include a column in proposed Table 1 for asbestos debris.[35] In addition, we request comment on whether the technology/contaminant category combinations presented in appendix II to this preamble will provide effective treatment for toxic constituents in asbestos debris. As discussed below, although the treated asbestos debris would be excluded from Subtitle C if it was treated with an extraction or destruction technology and the asbestos debris did not exhibit a hazardous characteristic, the treated debris will still be subject to applicable controls under OSHA, NESHAPS, and TSCA.

a. *Existing federal regulatory controls on asbestos.* The EPA and the Occupational Safety and Health Administration (OSHA) have major responsibility for the regulatory control over exposure to asbestos. Emissions of asbestos to the ambient air are controlled under section 112 of the Clean Air Act, which establishes the National Emission Standards for Hazardous Air Pollutants (NESHAPs).

[34] Note that if asbestos which is not contaminated with a prohibited waste and does not exhibit a prohibited characteristic is separated from contaminated debris, the asbestos debris would not be subject to the proposed debris treatment standards.

[35] If a debris is comprised of asbestos and another type of debris, the debris must be treated for each debris category. See section V.E. 5 of the text.

The regulations specify control requirements for most asbestos emissions, including work practices to be followed to minimize the release of asbestos fibers during handling of asbestos waste materials. These regulations do not identify a safe threshold level for airborne asbestos fibers.

The OSHA regulations are established to protect workers handling asbestos or asbestos-containing products. The current OSHA regulations include a maximum workplace airborne asbestos concentration limit of 0.2 fibers/cc on an 8-hour time weighted average basis, and a ceiling limit of 10 fibers/cc in any 15-minute period. The standards include requirements for respiratory protection and other safety equipment, and work practices to reduce indoor dust levels. See 29 CFR part 1910.

The transport and disposal of asbestos is regulated by TSCA under 40 CFR part 763, subpart E, appendix E, and by NESHAPs under 40 CFR part 61, subpart M. The NESHAP requirements for asbestos disposal begin at the point of removal. The asbestos material must be wet when removed and should be kept wet through the final disposal. A surfactant must be used in wetting of the asbestos. If an asbestos waste is removed dry, it must be wetted after removal until it is collected and sealed in leak-tight containers while wet. The recommended container is a leak-tight 6 millimeter thick plastic bag. The void space or air should be minimized prior to sealing the bag. Double bagging, plastic lined cardboard, or plastic-lined metal containers are considered to provide better containerization. Slurries of asbestos waste can be contained in leak tight drums if they are too heavy for plastic bags. Both EPA and OSHA specify that the containers be tagged with a warning label, e.g., Caution: Contains Asbestos Fibers. Avoid Creating Dust. May Cause Serious Bodily Harm.

An alternative handling method for wet asbestos waste is to use a vacuum truck. The slurry is transported in the vacuum truck to the disposal site. Air from the vacuum intake is dried and filtered through High Efficiency Particulate Air (HEPA) filter.

Improperly containerized waste is a violation of NESHAPs and the EPA should be notified. As a form of recordkeeping, a "cradle-to-grave" system is established under TSCA by a chain-of-custody form.

At the disposal site, EPA requires either no visible emissions to the air or the minimization of emissions by covering the containerized waste within 24 hours of receipt with at least 6 inches of a non-asbestos material or an approved dust suppressing agent. It is recommended that the landfill operator have a separate area for asbestos disposal. The final closure of an area containing asbestos requires a cover of an additional 30 inches of compacted non-asbestos material to provide a 36 inch final cover. Other disposal site requirements include the control of public access by the use of approved warning signs and, if necessary physical barriers. Any variation to the disposal methods must receive prior approval by the Administrator.

b. *Treatment standards.* The single largest use of asbestos in the U.S. is in building products. Given the tremendous versatility of asbestos-containing material used in these products, EPA believes that a significant portion of asbestos debris will be generated through building renovation and demolition. EPA also believes that some of this debris may be contaminated with a prohibited listed waste (or may exhibit a prohibited characteristic) either as initially generated or after improper land disposal subject to Superfund or Corrective Action. Thus, asbestos debris could be contaminated debris subject to today's proposal rule (e.g., chromium-contaminated asbestos pipe and equipment insulation). Given that asbestos debris is not included in the six categories of debris for which we are today proposing treatment technologies in Table 1 of § 268.45, we specifically request comment on adding required treatment technologies for asbestos debris to Table 1.

Although it may be technically feasible to treat contaminated asbestos debris (or a debris mixture containing asbestos) using many of the 18 debris treatment technologies discussed in previous sections, many of the treatment technologies are not practicable for asbestos debris because of the potential for occupational exposure or environmental release of asbestos. In particular, based on engineering judgment, EPA believes that the following debris treatment technologies, while perhaps technically feasible in some situations, are not practicable for asbestos treatment because of the potential for occupational or environmental exposure (i.e., controls under OSHA, NESHAPs, and TSCA could not reasonably be met): Abrasive blasting, electropolishing, scarification and grinding, spalling, thermal desorption, vibratory finishing, thermal destruction (except vitrification), microencapsulation, and sealing.

On the other hand, EPA believes that the following technologies will be effective in treating specific contaminants present in or on asbestos debris, but would probably require the use of filtration devices to control air or wastewater emissions containing asbestos to prevent occupational and environmental exposure in compliance with applicable controls under OSHA, NESHAPs, and TSCA: Acid washing; liquid phase solvent extraction; vapor phase solvent extraction; water washing and spraying; biodegradation; chemical oxidation; chemical reduction; photochemical treatment; and macroencapsulation.

Accordingly, we have evaluated these nine technologies that may be applied to asbestos debris in compliance with applicable controls under OSHA, NESHAPs, and TSCA to identify those contaminant categories that they could effectively treat. See Appendix II of this preamble. The Agency specifically requests comment on the applicability of these technologies to asbestos debris and whether effective treatment would be ensured for the contaminant categories identified in appendix II when the technology performs according to the requirements of proposed Appendix IX to the rule.[36]

4. Special Requirements for Radioactive Debris

a. *Definition of mixed wastes.* Mixed wastes are those wastes that satisfy the definition of radioactive waste subject to the Atomic Energy Act (AEA) and also contain a RCRA listed hazardous waste or exhibit a hazardous characteristic. On July 3, 1986 (51 FR 4505), EPA determined that the hazardous waste portions of mixed waste are subject to RCRA regulation.

The majority of mixed wastes can be divided into three categories based on the radioactive component of the waste: (1) Low-level wastes, (2) transuranic (TRU) wastes, and (3) high-level wastes. Low-level wastes include radioactive waste that is not classified as spent fuel from commercial nuclear power plants, or that is not defense high-level radioactive waste from producing weapons. TRU wastes are those wastes containing elements with atomic numbers greater than 92, the atomic number of uranium. High-level radioactive wastes are defined as spent fuel from commercial nuclear power plants, and defense high-level radioactive waste from the production of weapons.

b. *RCRA Requirements.* On June 1, 1990 (55 FR 22520), EPA promulgated

[36] Residues from the treatment of asbestos debris would be subject to the F039 standards as proposed for residues from treatment of any other debris.

treatment standards for four treatability groups of mixed waste: (1) Specific high level wastes, (2) D008 radioactive lead solids, (3) mixed waste containing elemental mercury, and (4) mercury containing hydraulic oil contaminated with radioactive materials. The Agency further asserted that "all promulgated treatment standards for RCRA listed and characteristic wastes apply to the RCRA hazardous portion of mixed radioactive (high-level, TRU, and low-level) wastes, unless EPA has specifically established a treatability group for that specific category of mixed waste."

However, there are a number of potential problems presented by applying the existing land disposal restriction standards to mixed waste contaminated debris, including the achievability of the existing standard and the consistency of these standards with AEA regulations. For instance, the specified technology to be used for mixed waste containing elemental mercury is "Amalgamation with Zinc as a Method of Treatment." This technology effectively reduces the leachability of liquid mercury. However, this technology may not effectively reduce the leachability of mercury contained in the pores of wood or cloth debris.

Also, incineration of mixed wastes containing radioisotopes of carbon and hydrogen would result in the spread of these isotopes through uncontrolled emissions of carbon dioxide and water vapor. This could result in an increase of the radiation hazard, which would conflict with the requirements of AEA.

The Agency is today proposing that mixed waste contaminated debris be required to comply with the treatment standards for contaminated debris (in addition to any regulation of that material under AEA), rather than to the treatment standards for the contaminating waste. This includes debris contaminated with mixed waste for which special treatability groups have been established (as discussed above) will be subject to debris standards rather than to the specified treatability group standards.

The exception would be the D008 radioactive lead treatability group, which would be subject to both debris standards and the treatability group standards when contamination includes other hazardous waste in addition to D008. EPA views that debris which is also in the radioactive lead treatability group to be similar to inherently hazardous debris, and is thus proposing a similar approach. We note further that application of both the D008 lead solids standard and the applicable debris standard would not conflict with the existing D008 lead solids standard unlike the existing standards for mixed waste, as noted above. Further, application of both standards would also address the hazardous associated with D008 as well as any other hazardous wastes present on the debris.

5. Sham Contamination of Debris

a. *Sham contamination.* Sham contamination of debris is the deliberate addition of a hazardous waste to debris to avoid compliance with the LDR standards for that hazardous waste. When a rule is promulgated that defers or excludes certain solid wastes from regulation, the ability to differentiate whether the addition of hazardous waste is a sham situation or a legitimate situation is always an issue. The Agency believes, however, that there is little incentive to deliberately contaminate debris to avoid compliance with the treatment standards because the debris would still have to be treated prior to land disposal and any residual generated from the treatment would still have to meet the F039 treatment standards.

The Agency considered requiring generators to certify that debris had been contaminated inadvertently and not as a result of deliberate action to avoid compliance with the LDRs. However, the Agency felt it would be difficult to require such certification, particularly at sites where the source of the original contamination is unknown, and it would be difficult to manage from an enforcement perspective.

b. *Impermissible dilution.* The Agency also considered whether deliberate contamination of debris is likely to occur followed by impermissible dilution of the contaminant to avoid compliance with the debris treatment standards. However, the Agency feels that existing regulations on permissible and impermissible dilution are quite specific as to when they apply. Current regulations (40 CFR 268.3(a) and (b)) specify when dilution is a permissible or impermissible treatment process.

The rules on dilution and the Agency's interpretive statements regarding those rules indicate that the dilution prohibition has a two-fold objective: (1) To ensure that prohibited wastes are actually treated; and (2) to ensure that prohibited wastes are treated by methods that are appropriate for that type of waste. EPA has indicated that prohibited wastes which are aggregated are normally not diluted impermissible if they are treated legitimately (i.e., subject to effective treatment, 55 FR 22666) in centralized treatment systems, irrespective of the dilution inherent in such a system. Thus, if dilution is a legitimate type of treatment, or a necessary pretreatment step in a legitimate treatment system, such dilution is permissible.

EPA is proposing that in the case of debris that is ignitable or reactive, but nontoxic (i.e., it is not contaminated with a prohibited listed waste and does not exhibit EP toxicity), any type of deactivation would be a permissible means of removing the characteristic property. However, the Agency is soliciting comment on treating "contaminants subject to treatment" in characteristic debris, and were EPA to adopt such an approach, dilution prohibitions would probably apply due to concern for adequate treatment of toxics. 55 FR 22657, 22665–66. For toxic debris, including reactive cyanide debris that must be treated for cyanide, dilution in lieu of the prescribed method of treatment or to reach contained-in levels is impermissible since such dilution would occur for purposes of evading the treatment standards. See § 268.3. Since no wastewater treatment is involved (i.e. debris is a solid, not a liquid), the Agency need not balance any of the difficult issues relating to relationship of the RCRA prohibition and Clean Water Act subtitle D treatment impoundments receiving diluted non-hazardous, formerly characteristic wastewaters. See 55 FR at 22656–58. Centralized treatment of contaminated debris would be allowed under the proposal, of course, so that aggregation of debris amendable to the same type of treatment is permissible under the proposal.

6. Sampling and Analysis

Sampling and analysis of contaminated debris would not required to comply with the proposed treatment standards. Nonetheless, the Agency is considering developing implementation assistance regarding sampling and analysis techniques for debris because it will: (1) Facilitate the actions at Superfund sites of the on-scene coordinators (OSCs) and remedial project managers (RPMs); and (2) assist the Agency and generators and treatment facility operators in determining whether debris exhibits the toxicity characteristic or whether debris contaminated with a prohibited listed waste is contaminated with detectable levels of appendix VIII, part 261, constituents.

The Agency considered requiring sampling and analysis of treated debris to demonstrate that the treatment technologies effectively treated the toxic contaminants. Sampling would

potentially identify inadequate or fraudulent debris treatment, as well as other conditions where performance of the specific technology was insufficient. However, the Agency believes that requiring sampling and analysis of treated debris, or establishing concentration-based treatment standards, is not workable given the difficulty of sampling debris. Nevertheless, the Agency requests comment on the feasibility of numerical standards for those types of debris that can be sampled without difficulty. The Agency also requests comment on which types of debris are amendable to sampling and how such samples should be collected.

The Agency believes that when the specified treatment technologies are designed and operated to meet the performance standards prescribed by proposed appendix IX of the rule, the debris will be effectively treated. As discussed previously, EPA specifically requests comment on whether the performance standards are adequate to ensure effective treatment.

7. Procedures for Demonstrating Equivalency of New Technologies

A generator or treater can demonstrate that an alternative technology can achieve the equivalent level of performance as that of the specified treatment method (40 CFR 268.42 (b)). This demonstration must be specific for both debris category and contaminant category and may be based on: (1) The demonstration of a technology utilizing a target analyte or surrogate or indicator compound that indicates effective treatment of the hazardous waste constituents contaminating a particular debris type; (2) the development of new analytical and/or sampling methods for quantifying the hazardous constituents; or (3) other demonstrations of equivalence for alternative method of treatment based on statistical comparisons of technologies, including comparisons of specific design and operating parameters. As a result, a new treatment standard based on this demonstration, as well as any analytical and sampling methodology used in the demonstration, could then be proposed to be applicable to other debris categories and contaminant categories.

8. Applicability of Existing Treatment Standards to Contaminated Debris

EPA is specifically requesting comment on whether the existing LDR standards for the listed waste(s) with which a debris is contaminated and the existing LDR standards for the EP toxicity characteristic should be allowed as an alternative to the debris treatment standards of proposed § 268.45 and appendix IX, part 268.

I. Permits for Treatment Facilities

EPA is concerned that adequate treatment capacity may not be available for contaminated debris. The national capacity variances for these wastes have expired, or will expire by May, 1992. Consequently, EPA intends to use the discretion provided by existing permitting standards to allow the construction of new treatment units at both permitted facilities and facilities operating under interim status.

1. Capacity Shortfall

EPA's capacity analysis is based on data received in response to the ANPR for wastes covered in this proposal, from a series of "Roundtable meetings" that EPA held in May and June of 1991 with representatives of companies involved in the management and disposal of contaminated debris, and from the TSDR and Generator Surveys. Comments from the Roundtable meetings indicate that decommissioning of large chemical plants and increasing remediation activities can significantly increase the estimated volume of contaminated debris.

Waste generators and TSDFs report that most of the contaminated debris volumes are currently landfilled without prior treatment. Stabilization or incineration are the reported treatment technologies for the small amounts of contaminated debris that are currently treated before landfilling. In addition, EPA has received information on materials-handling problems limiting the amount of contaminated debris that currently can be treated by stabilization and incineration. In general, the size of the debris must be reduced (e.g., by shredding, grinding, etc.) before it can be treated, and heavy duty equipment reportedly is currently not available at most treatment facilities. Therefore, EPA believes, based on qualitative assessment, that very large quantities of contaminated debris will require treatment and that available treatment capacity will be very limited in the short term. By May 8, 1992, all the national capacity variances will expire for as much as 800,000 tons of debris contaminated with previously regulated wastes (i.e., wastes for which LDR standards have been promulgated). This is coincidental to the effective date for LDR standards for additional newly listed and identified wastes.

Notwithstanding this projected capacity shortfall in the near term, EPA believes that there is sufficient flexibility in its existing regulations for facilities and generators to add additional treatment capacity and new waste treatment processes in a short period of time. However, EPA welcomes any additional capacity information that commenters can provide to aid the Agency's decisions in the final rule.

2. Permitted Facilities

Permitted treatment, storage, and disposal facilities may add new treatment processes and additional capacity by applying for a permit modification under the Federal regulations at § 270.42 (see 53 FR 37912, September 28, 1988, for a full explanation of the permit modification procedures). Although the regulations at § 270.42 were promulgated under pre-HSWA authority, EPA may use these regulations in authorized States when necessary to implement HSWA provisions such as the land disposal restrictions. See 53 FR 37933.

The types of modifications needed to add new capacity or processes would likely require the submittal of a Class 2 or 3 modification. The Class 2 modification process requires Agency action on the request within 120 days. This action would consist of approval or denial, reclassification as a Class 3 modification, or authorization to conduct the activities for up to 180 days pending Agency action. Furthermore, for Class 2 modifications, construction to implement the requested facility change may commence 60 days after submission of the request. There is no deadline for Agency action for Class 3 modifications, which apply to more substantial facility changes. Permitted facilities may also apply for a temporary authorization to initiate necessary activities while a Class 2 or 3 permit modification request is undergoing review, or to undertake a treatment or storage activity which will be of short duration. EPA may grant a temporary authorization for a term of up to 180 days. Any request for a temporary authorization must demonstrate compliance with the part 264 standards and also meet the criteria of § 270.42(e) for approval. Interested public (i.e., those that have previously expressed interest in any permitting action for the facility) will receive notice by mail of a facility's request for a temporary authorization, and another mail notice if EPA approves the request. The temporary authorization may be renewed once if the additional procedures of § 270.42(e) are followed, including the submission of appropriate permit modification information and the initiation of public meetings and public comment period. See 53 FR 27919, September 28, 1988 for additional discussion of temporary authorizations.

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Some of the contaminated debris treatment processes that are proposed as BDAT under § 268.45 would take place in units that EPA is proposing to define as containment buildings. See discussion above in Section IV.G. To assist in the development of treatment capacity by permitted facilities to meet the requirements of this proposed rule, the Agency is proposing a change to the criteria that must be met to grant a temporary authorization. The existing regulation at § 270.42(e)(3)(ii)(B) allows approval of the request if the activity is necessary to treat or store restricted wastes in tanks or containers in accordance with part 268. Today's proposal would amend these criteria to include the treatment or storage of contaminated debris in containment buildings meeting the requirements in proposed subpart DD, parts 264 and 265.

3. Interim Status Facilities

Treatment, storage, and disposal facilities managing hazardous waste under interim status may add new treatment processes or additional treatment or storage capacity by using the existing procedures for changes during interim status in § 270.72. Under these procedures, a facility must submit to EPA a revised Part A permit application and justification explaining the need for the change. The change must then be approved by EPA.

In order for the change to be approved by EPA, it must meet one of several criteria, such as being necessary to comply with a Federal, State, or local requirement. However, changes may not be made if they amount to reconstruction of the facility. This occurs when the capital investment for the changes to the facility exceed 50 percent of the capital cost of a comparable entirely new facility.

Section 270.72(b)(6) lifts the reconstruction limit for changes to treat or store in tanks and containers hazardous waste subject to land disposal restrictions imposed by part 268, provided that such changes are made solely for the purpose of complying with part 268. EPA believes that this exemption should also apply to treatment or storage of contaminated debris in containment buildings for the reasons stated above. Accordingly, today's rule proposes to amend § 270.72(b)(6) to make treatment or storage in containment buildings as regulated under proposed subpart DD, parts 264 and 265, exempt from the reconstruction limit.

4. Documentation of Compliance with Proposed Appendix IX, Part 268

Proposed appendix IX, part 268, would establish performance or design and operating requirements for the treatment technology specified by proposed Table 1, § 268.45, for each combination debris/containment category. Although contaminated debris treatment facilities are subject to the appropriate part 264 or 265 facility standards, we did not codify the proposed Appendix IX treatment technology requirements under part 264 or 265 because the treatment technology requirements would apply to any (nonprohibited) waste treatment unit treating contaminated debris, including, subpart J tank systems, subpart I containers, subpart O incinerators, subpart X miscellaneous units, and proposed subpart DD containment buildings.[37] Rather than amending each of those subparts to include the Appendix IX requirements or to reference Appendix IX, today's proposed rule would simply require (in proposed § 268.45) owners and operators of contaminated debris treatment facilities to comply with the requirements and to document compliance in the operating record required under subpart E, parts 264 and 265.

In addition, we expect that permit writers will use the omnibus permit authority of § 270.32(b)(2) to add conditions to the RCRA operating permit issued under subpart B, part 270, to ensure that contaminated debris treatment facilities comply with the appendix IX requirements. EPA believes that compliance with the appendix IX requirements are necessary to protect human health and the environment from treated debris given that it would be conditionally excluded from Subtitle C regulation. EPA specifically requests comment on whether the use of omnibus permit authority would be an effective approach to ensure compliance with the appendix IX requirements, or whether EPA should amend the facility standards under parts 264, 265, 266 (for boilers and industrial furnaces), and 268 (for containment buildings, as proposed today) to require contaminated debris treatment facilities to comply with the appendix IX requirements.

5. On-Site Treatment in Containers and Tanks

EPA notes that generators who store or treat contaminated debris on-site in tanks or containers for a period not exceeding 90 days are not subject to permit requirements. See existing § 262.34. However, the tank or container must be designed and operated in compliance with the requirements of subparts I or J of part 265 to ensure protection of human health and the environment. (Further, today's rule would require that treatment of contaminated debris in tanks or containers (or any other treatment unit) meet the requirements of proposed § 268.45(a) and appendix IX, part 268, to ensure effective treatment. See proposed § 268.45(c)). In section IV.G.3 of today's notice, EPA proposes to extend the 90-day generator exemption in § 262.34 to containment buildings, a new waste management unit proposed today.

J. Comments on the May 30, 1991 ANPRM

Sixty-six commenters responded to the May 30, 1991 ANPR. Of these 66, 40 commenters provided over 250 comments on the potential BDAT for contaminated debris section in the ANPR. Almost half of the comments received focus on the treatment standards and their applicability to debris. Many of the commenters suggested a different approach to the establishment of treatment standards, while others agreed with EPA's approach or requested clarifications of statements that were made in the ANPRM.

Of the remainder of the comments, 15 addressed the Agency's contained-in policy. Almost all of these 15 comments supported the establishment of a level at which debris would no longer "contain" hazardous waste. One commenter suggested that health-based standards be established for these levels and that the contained-in policy be codified with these levels. In other issues, 36 comments were received concerning how to establish a waste code for contaminated debris. Of these, 16 supported a new waste code for debris and 5 supported the retention of existing waste codes. Three comments suggested a new waste code for debris, but only if the source of contamination was unknown.

Nine comments were received on the issue of how to manage refractory brick. Most of these comments addressed refractory brick content and recycling. About half noted that refractory bricks are recycled into cement. The other comments noted that the chromium content is much lower than 40 percent and suggested that the bricks may not even be considered hazardous.

Other issues raised by commenters addressed inherent content, permitting, representative sampling, and capacity

[37] And subpart H, part 266 boilers and industrial furnaces.

concerns over disposal of debris. Most of the comments on inherent content supported macroencapsulation or some other type of treatment for inherently hazardous debris. For permitting, commenters were concerned that the Agency not include decontamination as an activity requiring a RCRA permit. One commenter suggested a "permit by rule" provision for decontamination or debris washing. Several commenters requested additional guidance on representative sampling of debris, and one commenter urged the Agency to expedite de minimis rulemaking in order to relieve capacity concerns over disposal of debris.

VI. Capacity Determinations

This section presents the data sources, methodology, and results of EPA's capacity analysis for today's newly listed wastes. Specifically, Section VI summarizes the results of the capacity analysis for petroleum refining wastes and other organic wastes; wastes mixed with radioactive contaminants; and debris contaminated with the newly listed wastes.

The capacity analysis for the newly listed wastes for which the Agency is today proposing treatment standards relied on information obtained from several sources. Primary data sources include the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey), the National Survey of Hazardous Waste Generators (the Generator Survey), data received in response to the ANPRM for the Newly Identified and Listed Wastes (56 FR 24444), data received in voluntary data submissions, and information requests authorized under section 3007 of RCRA.

EPA conducted the TSDR Survey during 1987 and 1988 to obtain comprehensive data on the nation's capacity for managing hazardous waste and on the volumes of hazardous waste being land disposed. For the capacity analysis, EPA used the TSDR Survey information on the volumes of waste streams managed in land-disposal units and requiring alternative treatment/recovery due to the land disposal restrictions and on available capacity of hazardous waste management technologies.

EPA conducted the Generator Survey in 1987. This survey requested information on waste volumes and waste characteristics of hazardous waste generated, and provided capacity information for facilities not included in the TSDR Survey.

In general, EPA's capacity analysis methodologies focus on the amount of waste currently land disposed that will require alternative treatment. Wastes that are not land disposed (e.g., discharges under NPDES or to a POTW) are not included in the required capacity estimates. Also, land-disposed wastes that do not require alternative treatment (e.g., those that are currently treated using an appropriate technology) are excluded form the required capacity estimates. Land-disposed wastes requiring alternative treatment or recovery capacity that is available on site or within the same company are also omitted from required commercial capacity estimates. Therefore estimates for available capacity at commercial hazardous waste management facilities are based on the net available commercial capacity for the newly listed wastes.

A. Capacity Analysis Results Summary

Table VI.A.1 lists each waste code for which EPA is proposing LDR standards today. For each code, this table indicates whether EPA is proposing to grant a two-year national capacity variance for surface-disposed or deepwell disposed wastes. As seen by this table, the Agency is proposing to grant national capacity variances only for storage and treatment of petroleum wastes in surface impoundments, debris contaminated with newly listed wastes, and mixed radioactive wastes.

TABLE VI.A.1.—SUMMARY OF PROPOSED CAPACITY VARIANCE DECISIONS FOR NEWLY LISTED WASTES

Waste code	Variance for surface-disposed wastes?	Variance for deepwell-disposed wastes?
F037–S.I.	Yes	No.
F038–S.I.	Yes	No.
F037	No	No.
F038	No	No.
K107	No	No.
K108	No	No.
K109	No	No.
K110	No	No.
K111	No	No.
K112	No	No.
K117	No	No.
K118	No	No.
K123	No	No.
K124	No	No.
K125	No	No.
K126	No	No.
K131	No	No.
K132	No	No.
K136	No	No.
U328	No	No.
U353	No	No.
U359	No	No.
Mixed Rad. Waste	Yes	No.
Contam. Debris	Yes	No.

B. Petroleum Refining Wastes and Other Organic Wastes

This section presents the capacity analysis for today's newly listed petroleum refining wastes and other organic wastes.

1. Comparison of Required and Available Capacity for Newly Listed Petroleum Refining Wastes (F037 and F038) and Other Organic Wastes

Table VI.B.1 summarizes available capacity for each alternative treatment or recovery technology required for petroleum refining wastes (F037 and F038) and newly listed organic wastes. This table also summarizes the required capacity for each technology. The analysis of commercial capacity for newly listed wastes is based primarily on data from the TSDR Survey capacity data set, data received in response to previous LDR notices and regulations, and data received in voluntary data submissions. Analysis of data indicates that commercial capacity is currently available for wastewater treatment, stabilization and combustion of liquids. However, commercial capacity for combustion of sludges and solids is currently expanding, and the expected availability of capacity for the newly listed wastes is dependent on planned capacity being fully operational by May 1992.

Commercial capacity for combustion of sludges and solids is available at both incinerators and at industrial furnaces (primarily cement kilns that have used hazardous waste as fuel). Due to the expected increase in demand for combustion of sludges and solids (because many wastes have BDAT standards based on incineration), and also because of the new regulations for burning of hazardous wastes in boilers and industrial furnaces, many commercial cement kiln facilities are currently changing their operating practices to comply with new regulatory requirements and to significantly expand their capacity. Current analyses of these planned changes indicate a major increase in capacity will occur prior to May 1992, and that consequently there is no need for a national capacity variance. However, the Agency does recognize that planned activities are not always completed as scheduled. Thus, the Agency plans to continue to monitor the on-going changes in commercial combustion capacity, and will modify the capacity estimates as new data indicates. The Agency requests public comment on the current and planned commercial capacity for combustion of sludges and solids, and is especially

interested in receiving data on the status of planned changes to that capacity.

TABLE VI.B.1.—COMPARISON OF REQUIRED AND AVAILABLE CAPACITY FOR NEWLY LISTED PETROLEUM REFINING AND OTHER ORGANIC WASTES

Technology	Available capacity (thousand tons/year)	Required capacity (thousand tons/year)
Biological Treatment	168	<1
Chemical Precipitation	813	<1
Combustion of Liquids	696	<1
Combustion of Sludges and Solids	301	76
Stabilization	1,204	16

2. Required Capacity for Petroleum Refining Wastes (F037 and F038)

EPA is proposing treatment standards for F037 and F038 nonwastewaters that are based on a transfer of the performance of the technologies previously established for K048–K052 nonwastewaters (55 FR 22520). Nonwastewater treatment standards for F037 and F038 wastes are based on solvent extraction or thermal desorption, and incineration for organic constituents, and stabilization for metals. EPA is proposing to transfer multi-source leachate (F039) wastewater performance to F037 and F038. That is, for F037 and F038 wastewaters, the proposed standards are based on biological treatment for organics and chemical precipitation for metals.

The capacity analysis for the F037 and F038 petroleum refining wastes was conducted using information collected from a number of data sources. The primary data sources include data submitted voluntarily from refineries, the F037 and F038 Regulatory Impact Analysis (RIA), from the listing of the F037 and F038 wastes, the Petroleum Refinery Data Base (PRDB), the TSDR Survey, and the Generator Survey.

The RIA was prepared by EPA in 1990 in support of the listing rule for F037 and F038 wastes (55 FR 46354). The RIA includes in industry overview and profile of facilities affected by the listings, an analysis of baseline waste management practices, and regulatory compliance scenarios. The PRDB is based on a mail survey conducted by EPA in 1983 and has been updated to contain 1985 refining information. The TSDR Survey and Generator Survey were discussed previously (in the introduction to section VI).

Supplemental data sources include two reports prepared by Midwest Research Institute (MRI), which support the F037 and F038 listing and the Toxicity Characteristic (TC) rule, and which summarize sampling and analysis data collected by EPA for 16 petroleum refining facilities; no-migration petitions submitted by petroleum refineries for land treatment units; and the California Hazardous Petroleum Waste Data Base, which contains information on wastes that fit the F037 and F038 definition.

Using the available data and the Agency's best engineering judgment, EPA developed estimates of F037 and F038 waste volumes based on current management practices as well as options for alternative management due to the LDR requirements. The Agency also developed estimates of available on-site treatment/recovery capacity and evaluated information submitted by refineries and treatment technology vendors on the viability of constructing on-site treatment/recovery capacity and the time that would be required to make such additions.

EPA estimates that approximately 74,000 tons per year of dewatered F037 and F038 wastes (nonwastewaters) from routine waste treatment will require alternative treatment. The Agency also considered the accumulated sludge quantities in surface impoundments, but believes that this waste will either be disposed of prior to the LDR effective date or will be managed by on-site closure of surface impoundments. Although there apparently is treatment capacity sufficient to accommodate these wastes, there is a complexity factor due to the fact that many of these wastes are generated in unretrofitted impoundments (i.e., impoundments not satisfying the minimum technology requirements specified in sections 3004(o) and 3005(j)(11)). These wastes would thus be land disposed in a prohibited manner before they are treated. These impoundments can of course be retrofitted or replaced with tank systems, but not by the effective date of this rule, or for some time thereafter. See RCRA section 3005(j)(6), allowing four years to retrofit or close impoundments receiving newly identified or listed wastes (and no other hazardous wastes). Because alternative treatment or storage capacity that could accommodate these wastes before they are land disposed is not available, EPA is proposing a national capacity variance for F037 and F038 wastes generated in surface impoundments.

The lack of alternative storage/treatment capacity raises two significant legal issues. The first is that during the period of a national capacity variance, restricted wastes disposed in surface impoundments can only do so in impoundments meeting the minimum technology requirements of section 3005(j). See § 268.5(h), RCRA section 3004(h)(4) and *Mobil Oil* v. *EPA*, 871 F. 2d 149 (D.C. Cir. 1989). On the other hand, section 3005(j)(6) states that impoundments receiving newly identified or listed hazardous wastes have up to four years from the date of promulgation of the rule making the waste hazardous to retrofit or close the impoundment. As will be described more fully in another **Federal Register** notice, EPA believes tentatively that these provisions are in irreconcilable conflict, and accordingly that EPA has significant discretion in determining how best to interpret them. The Agency further intends to propose that in the case of wastes subject to a national capacity variance, that impoundments managing such wastes (and no other wastes subject to an earlier prohibition) that the impoundments still have four years to retrofit or close.

EPA is using that same resolution here. However, this is not the only issue to reconcile in the present proceeding. This is because there is available treatment capacity for these petroleum refining wastes. In such cases, the strong statutory policy is to treat hazardous wastes rather than allow them to be land disposed. See RCRA sections 1002(7) and 1003 (4), (5), and (6). Although land disposal in impoundments remains necessary during the four year period allocated by statute for retrofitting, the Agency does not see why the wastes have to stay in the impoundments untreated for that period. They can be removed and sent for the mandated treatment. In this regard, section 3005(j)(11) requires that hazardous wastes in retrofitted impoundments be removed annually for treatment. The required annual sludge removal practice would be compatible with continuous use of the surface impoundment and would not require that they be taken out of service to conduct sludge removal. The Agency is of the initial view that the same result should apply to the unretrofitted impoundments holding restricted wastes for which treatment capacity exists. The Agency's initial view is that this is a reasonable resolution of the conflict between sections 3004(h) and 3005(6) in that it gives maximum effect to both the policy to use treatment where treatment is available, but not eliminating the four year retrofit period for impoundments receiving exclusively newly identified and listed wastes. EPA requests comment on this issue.

EPA is also considering a similar resolution with respect to closing those impoundments that choose to close

rather than to retrofit at the end of the four-year period. The Agency is considering prohibiting impoundments from leaving prohibited wastes in place when they close if capacity is available to treat the wastes. Thus, if there is treatment available, the impoundments must be clean closed. In this way, not only is the statutory goal of treatment accommodated, but hazardous wastes are not left in the least secure type of land disposal unit for an indefinite period, raising the very environmental concerns that the land disposal prohibitions were enacted to prevent (RCRA sections 3004(d)(1) (A)–(C) and 1002(7)). Consequently, EPA may limit the options available for impoundments managing wastes for which there is available treatment to retrofitting or clean closure. Owners and operators would, however, have up to four years from the date of promulgation of the rule listing or identifying the waste to make these changes. The Agency requests comment on this issue; in responding to this issue, the Agency specifically requests comment on how much additional F037 and F038 would become subject to LDRs if such impoundments were requested to clean close.

Thus, the estimate of the total F037 and F038 waste generation requiring alternative treatment is 74,000 tons per year (nonwastewaters). There are no data indicating that any land-disposed wastewaters will require alternative treatment, and therefore this volume is assumed to be zero.

Based on the estimate that 74,000 tons per year of dewatered F037 and F038 wastes will require alternative treatment, EPA believes that there is adequate capacity for the treatment of all land disposed F037 and F038 wastes, except those wastes that are generated in surface impoundments; therefore, EPA is proposing to grant a national capacity variance only for F037 and F038 wastes that are generated in surface impoundments. EPA is not proposing a variance for other nonwastewaters or for wastewaters.

3. Required Capacity for Other Newly Listed Organic Wastes

This section presents EPA's analysis of required capacity for other newly listed organic wastes including organic U waste, UDMH wastes, toluene diisocyanate (TDI) wastes, ethylene dibromide (EDB) wastes, ethylenebisdithiocarbamic (EBDC) wastes, and methyl bromide wastes.

(a) Organic U Wastes (U328, U353, and U359).

U328—Ortho-toluidine
U353—Para-toluidine
U359—2-Ethoxyethanol

For U328, U353 wastes, EPA is proposing to establish incineration or thermal destruction as methods of treatment for the nonwastewater forms of these waters, and chemical oxidation followed by either biological treatment or carbon adsorption as methods of treatment for the wastewater forms of these wastes. For U359, EPA is proposing to establish concentration standards based on incineration for the nonwastewaters and incineration or chemical oxidation followed by carbon adsorption or biodegradation for the wastewaters.

Generation and management information of the organic U wastes was collected by EPA during 1990 and early 1991 under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request.

The Agency estimates that less than 100 tons of U328, U353, and U359 wastes are being land disposed and require further treatment. Most of the U359 waste generated in 1989 was incinerated on-site, and the remainder (less than one percent) was incinerated off-site. In addition, unspecified and variable volumes of untreated wastewater contaminated with U359 are reportedly generated on occasion at one generator's facility, however this wastewater undergoes biological treatment on site. Because these wastes are rejected products, and the product has a market value, the Agency believes these wastes would be generated in small volumes.

Based on the available data (see Table VI.B.1), EPA believes that sufficient capacity exists for treatment of the U328, U353, and U359 wastes; therefore, EPA is not proposing to grant a national capacity variance for U328, U353, and U359 wastewaters or nonwastewaters.

(b) UDMH Wastes (K107, K108, K109, K110).

K107—Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.
K108—Condensed column overheads from product separation and condensed reactor vent gases from the production of UDMH for carboxylic acid hydrazines.
K109—Spent filter cartridges from product purification from the production of UDMH for carboxylic acid hydrazines.
K110—Condensed column overheads from intermediate separation from product purification from the production of UDMH for carboxylic acid hydrazines.

For UDMH wastes, EPA is proposing to establish incineration as the method of treatment for the nonwastewaters, and incineration or chemical oxidation followed by carbon adsorption as methods of treatment for the wastewaters.

EPA listed four UDMH waste (K107, K108, K109, K110) that are generated from the production of UDMH (unsymmetrical dimethylhydrazine, or 1,1-dimethylhydrazine) from carboxylic acid hydrazides. Also, some of these wastes are ignitable or corrosive and as such are currently subject to LDR standards.

Generation and management information concerning the UDMH wastes was collected by EPA during 1990 and early 1991 under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request.

The response to the section 3007 request noted that the only manufacturer who used the proprietary process generating UDMH wastes has ceased UDMH production. Therefore, the Agency assumes that no UDMH will require treatment prior to land disposal.

Based on available data, EPA believes that sufficient capacity exists for treatment of the UDMH wastes; therefore, EPA is not proposing to grant a national capacity variance for K107, K108, K109, and K110 wastewaters and nonwastewaters.

(c) Toluene Diisocyanate Wastes (K111–K112).

K111—Product washwaters from the production of dinitrotoluene via nitration of toluene.
K112—Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.

For toluene diisocyanate (TDI) wastes, EPA is proposing to establish incineration as the method of treatment for nonwastewaters, and incineration or chemical oxidation followed by carbon adsorption as methods of treatment for wastewaters.

Generation and management information concerning the TDI wastes was collected by EPA during 1990 and early 1991 under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request. In addition, the Agency has contacted other facilities in order to obtain further information concerning K111 and K112 waste generation, management practices, and residuals.

The Agency has identified less than 100 tons of K111 and K112 nonwastewaters and no K111 or K112 wastewaters requiring alternative treatment. The majority of the K111 and K112 wastes generated are currently treated using a variety of alternative

treatment or recovery methods and discharged through NPDES. The data indicate that the residuals from treatment of K111 and K112 were further treated before being land disposed.

Based on available data (see Table VI.B.1), EPA believes that sufficient capacity exists for treatment of the TDI wastes; therefore, EPA is not proposing to grant a national capacity variance for K111 and K112 wastewaters or nonwastewaters.

(d) Ethylene Dibromide (EDB) Wastes (K117–K118, K136).

K117—Wastewaters from the reactor vent gas scrubber in the production of ethylene dibromide (EDB) via the bromination of ethene.

K118—Spent absorbent solids from the purification of EDB produced by bromination of ethene.

K136—Still bottoms from the purification of EDB.

For K117, K118, and K136 wastes, EPA is proposing to establish concentration-based standards based on a transfer of data used to calculate the U029 (bromomethane), U030 (4-bromophenyl phenyl ether), U066 (1,2-dibromo-3-chloropropane), U067 (ethylene dibromide, EDB), U068 (dibromomethane) and U225 (bromoform) Third Third Rule standards for nonwastewaters and wastewaters.

Generation and management information concerning EDB wastes was collected by EPA during 1990 and early 1991 under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request. In addition, the Agency reviewed information provided in response to the ANPR (56 FR 24444).

Based on the available information, EPA has identified 1,650 tons of nonwastewater residuals from treatment of K118 that is currently land disposed and will require alternative treatment. K118 wastewater streams currently undergo treatment before disposal, and EPA has identified no K117 or K136 waste generation.

Based on available data and using incineration as the treatment technology (see Table VI.B.1), the Agency believes that sufficient capacity exists for treatment of the EDB wastes, and, therefore, the Agency is not proposing to grant a national capacity variance for K117, K118, and K136 wastewaters or nonwastewaters.

(e) Ethylenebisdithiocarbamic (EBDC) Wastes (K123, K124, K125, and K126).

K123—Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid (EBDC) and its salts.

K124—Reactor vent scrubber water from the production of EBDC and its salts.

K125—Purification solids (including filtration, evaporation, and centrifugation solids) from the production of EBDC and its salts.

K126—Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of EBDC and its salts.

For EBDC wastes, EPA is proposing to establish incineration or thermal destruction as the method of treatment for nonwastewaters, and incineration, thermal destruction, or chemical oxidation followed by activated carbon as methods of treatment for wastewaters.

Generation and management information concerning the EBDC wastes was collected by EPA during 1990 and early 1991 under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request.

The Agency has identified less than 100 tons of K125 nonwastewaters which are currently land disposed and will require alternative treatment; no volumes of K123, K124, or K126 wastes are currently being land disposed, and there is no generation of K125 wastewaters, K124 wastes, or K126 wastes.

Based on available data, EPA believes, sufficient capacity exists for treatment of the EBDC wastes; therefore, EPA is not proposing to grant a national capacity variance for K123, K124, K125, and K126 wastewaters or nonwastewaters.

(f) Methyl Bromide Wastes (K131 and K132).

K131—Wastewater from the reactor and acid dryer from the production of methyl bromide.

K132—Spent adsorbent and wastewater separator solids from the production of methyl bromide.

For methyl bromide wastes, the Agency is proposing concentration-based standards based on standards promulgated for U029 (methyl bromide) in the Third Third rulemaking.

Generation and management information of the methyl bromide wastes was collected by EPA during 1990 and early 1991 under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request. In addition, the Agency reviewed information provided in response to the ANPR (56 FR 24444).

EPA has identified no K131 wastes or K132 wastewaters currently being land disposed and less than 100 tons of K132 nonwastewaters being land disposed and requiring alternative treatment or recovery. All identified K131 wastes currently generated are sent off site for acid reclamation. EPA identified less than ten tons of K132 nonwastewaters that are steam stripped before being landfilled off-site.

Based on available data and using incineration as the treatment technology (see Table VI.B.1), the Agency believes that sufficient treatment capacity exists for treatment of the methyl bromide wastes; therefore, EPA is not proposing to grant a national capacity variance for K131 and K132 wastewaters or nonwastewaters.

C. Required and Available Capacity for Newly Listed Wastes Mixed With Radioactive Contaminants

EPA has defined a mixed RCRA/radioactive waste as any matrix containing a RCRA hazardous waste and a radioactive waste subject to the Atomic Energy Act (53 FR 37045, 37046, September 23, 1988). Regardless of the type of radioactive constituents that these wastes contain (e.g., high-level, low-level, or transuranic), they are subject to the RCRA hazardous waste regulation, including the land disposal restrictions.

Radioactive wastes that are mixed with spent solvents, dioxins, California list wastes, or First Third, Second Third, and Third Third wastes are subject to the land disposal restrictions already promulgated for those hazardous wastes. EPA granted national capacity variances for all of these wastes because of a lack of national treatment capacity. Today's rule addresses the radioactive wastes that contain newly listed hazardous wastes being restricted in today's rulemaking.

Based on comments received from previous rulemakings and from the ANPR (56 FR 24444), the Department of Energy (DOE) is the primary generator of mixed RCRA/radioactive wastes. A variety of non-DOE facilities also may generate these mixed RCRA/radioactive wastes, including nuclear power plants, academic and medical institutions, and industrial facilities.

After reviewing the data, EPA believes there is uncertainty about exactly how much mixed wastes are produced, although comments indicated in the ANPR that volumes generated are small. Although DOE is in the process of increasing its capacity to treat mixed RCRA/radioactive wastes, data supplied by DOE indicate a significant current capacity shortfall for the treatment of all already generated and stored mixed RCRA/radioactive wastes (i.e., spent solvents, wastes mixed with dioxins, California list wastes, and First,

Second, and Third Third wastes). EPA's review of non-DOE data sources showed a significant lack of commercial treatment capacity as well. In addition, the quantities of mixed radioactive wastes containing newly listed wastes are uncertain. Consequently, the volumes of mixed radioactive wastes requiring commercial treatment cannot be predicted. Although this uncertainty exists, any new commercial capacity that becomes available will be needed for mixed radioactive wastes that were regulated in previous LDR rulemakings and whose variances expire by May 1992. Thus, EPA has determined that sufficient alternative treatment capacity is not available and is proposing to grant a two-year national capacity variance for mixed RCRA/radioactive wastewaters and nonwastewaters contaminate with newly listed wastes whose standards are being proposed today.

D. Required and Available Capacity for Debris Contaminated with Newly Listed Wastes

This capacity analysis focuses on debris contaminated with wastes whose treatment standards are proposed herein.[38] An estimated 80 percent of all debris contaminated with previously regulated wastes is presently disposed in hazardous waste landfills without prior treatment and will require treatment after May 8, 1992.[39] In order to determine the available capacity to treat debris with wastes covered by this rule, EPA has assumed that any new commercial capacity that becomes available will be needed for debris that is contaminated with wastes regulated in previous LDR rulemakings and whose variances expire by May 1992.

EPA used several data sources to estimate the total volume of land-disposed contaminated debris. These sources include: responses to the ANPR for the newly listed and identified wastes (56 FR 24444); information provided during a series of roundtable meetings held by the Agency in May and June of 1991 with representatives of companies involved in the management and disposal of contaminated debris; Records of Decision (RODs) of Superfund sites; the National Survey of Treatment, Storage, Disposal and Recycling Facilities (TSDR Survey); and the National Survey of Hazardous Waste Generators (Generator Survey).[40]

In general, EPA found severe limitations in estimating the total volume of contaminated debris because the available data are incomplete and poorly defined. The reason for this lack of comprehensive data is several-fold: First, the regulated community reported that their data generally are not classified by debris but rather by waste code and waste description; second, the data from the TSDR and Generator Surveys were not collected and categorized specifically for debris; and debris were often mixed with soils,[41] and were frequently contaminated with more than one waste, thereby making the contaminated debris matrix and volume determinations difficult; third, TSDR and Generator Surveys do not include data on debris contaminated with newly listed and identified wastes because they were not considered hazardous wastes in 1986; and fourth, debris that have been cleaned [decontaminated] are generally not reported as hazardous wastes because they are no longer considered contaminated debris.

1. Waste Generation

The capacity analysis in today's proposed rule is based on data received in response to the ANPR for wastes covered in this proposal, the industry roundtable meetings, and the TSDR and Generator Surveys. For the total of currently land-disposed debris contaminated with RCRA hazardous wastes, EPA's most likely estimate is approximately one million tons per year based on the reported percentage of the total of all hazardous waste land disposed. EPA solicits comment on its estimate of the quantity of contaminated debris that is land disposed. Comments from the roundtable meetings indicate that decommissioning of large chemical plants and increasing remediation activities can significantly increase the estimated volume of contaminated debris.

The largest volume of debris generated from routine operations and contaminated with wastes covered in this proposal results from debris contaminated with F037 and F038 petroleum refining wastes. EPA's estimate for this volume is 8000 tons per year. In addition, industry response to the ANPR indicates that additional volumes of debris contaminated with F037 and F038 wastes may be generated from modernization of petroleum refinery sewer and wastewater systems. EPA's estimate for debris contaminated with the remainder of wastes covered in this proposal is less than 2,000 tons per year.

2. Current Management Practices

Waste generators and TSDFs report that most of the contaminated debris volumes are currently landfilled without prior treatment. Stabilization or incineration are the reported treatment technologies for the small amounts of contaminated debris that are treated prior to landfilling. However, EPA has received information that materials-handling problems may limit the quantity of contaminated debris that currently can be treated by stabilization and incineration. Specifically, the size of many types of debris must be reduced before they can be treated (e.g., by shredding or grinding). However, heavy duty equipment such as shredders and grinders are generally not part of the treatment process at hazardous waste treatment facilities and could be difficult to install prior to the effective date of this rule, although EPA is exploring options that will expedite the permitting process for such equipment. Consequently, the available capacity to treat contaminated debris may initially be limited. In addition, large volumes of materials that are currently cleaned (decontaminated) and then managed as nonhazardous wastes may require additional management as contaminated debris.

3. Available Capacity and Capacity Implications

EPA is proposing that contaminated debris be treated prior to land disposal using one or more of the following families of debris treatment: Extraction, destruction, or immobilization. While materials-handling problems may limit the available destruction (e.g., incineration) and immobilization (e.g., stabilization) capacities, inadequate capacity exists for many of the proposed technologies in the extraction family. Much of the capacity of extraction technologies currently used to decontaminate debris, such as water washing and steam cleaning, will not be permitted prior to the effective date of

[38] UDMH (K107–K110), dinitrotoluene (K111), toluene diamine (K112), ortho and para toluidine, ethylene dibromide, methyl bromide, 2-ethoxy ethanol (U359), ethylene bis-dithiocarbomic acid, and F307 and F038 petroleum refining wastes.

[39] Previously regulated wastes include solvents and dioxin wastes, California list wastes, and First Third, Second Third, and Third Third wastes. EPA has granted national capacity variances to soil and debris contaminated with First Third, Second Third, and Third Third wastes. The variances for debris contaminated with Third Third wastes will expire on May 8, 1992.

[40] EPA conducted the surveys during 1987 and 1986 to obtain comprehensive data on the nation's capacity for managing hazardous waste and the volumes of hazardous waste being land disposed as well as data on waste generation, waste characterization, and hazardous waste treatment capacity in units exempt from RCRA permitting.

[41] Data submitted by TSDFs in roundtable meetings sometimes combine contaminated debris with soil. Furthermore, TSDFs have stated that historical waste data are generally not kept by debris classifications.

this rule, although EPA is exploring options to expedite the permitting of these technologies. In conclusion, EPA anticipates that the capacity available to treat contaminated debris at the time this rule becomes effective will be limited.

EPA is proposing to grant a two-year national capacity variance for debris contaminated with newly listed wastes. The treatment capacity available for contaminated debris will be very limited due to the very large quantities of debris contaminated with previously listed wastes requiring treatment at the same time this rule becomes effective. This variance would allow sufficient time for the installation and permitting of the treatment systems necessary to handle the quantities of contaminated debris affected by this rule.

As discussed above, by May 8, 1992, all the capacity variances will expire for as much as 800,000 tons of debris contaminated with previously regulated wastes. This date is coincidental to the effective date of standards proposed for these newly listed and identified wastes. Any new commercial capacity will be needed for debris that is contaminated with wastes regulated in previous LDR rulemakings and whose variances expire by May 1992. This, as well as the condition that required materials handling equipment (such as grinding) has not come on-line or may be delayed, is the basis of our qualitative argument. The Agency solicits comments on this approach and on estimates of available treatment capacity.

E. Capacity Determination for Underground Injected Wastes

As explained in previous preambles concerning land disposal restrictions (see, e.g., 52 FR 32450, August 27, 1987; 53 FR 30912, August 16, 1988; 55 FR 22520, June 1, 1990), EPA is allocating available capacity first to those wastes disposed in surface units, next to wastes resulting from CERCLA and RCRA clean ups, and finally to underground injected wastes. Based on this approach, the Agency is proposing the following effective dates for injected wastes.

1. Newly Listed Wastes With Proposed Treatment Standards Which Current Data Indicate Are Not Being Injected

The wastes K107, K108, K109, K110, K111, K112, K123, K124, K125, K126, K136, U328, U353 and U359 are the newly listed wastes, for which numerical standards or specified methods are being proposed, and which current data indicate are not being underground injected. Therefore, EPA is proposing that these wastes be prohibited from underground injection upon the date of final promulgation of this rule. The Agency requests comment on whether any of these wastes are being injected; comment is also requested on what quantities of wastes are being injected, and on the characteristics of these wastes.

2. Newly Listed Wastes With Proposed Treatment Standards Which Current Data Indicate Are Being Injected

The wastes F037, F038, K117, K118, K131, and K132 are the newly listed wastes for which current data indicate are being underground injected by UIC Class I hazardous waste injection wells. The treatment standards for F037 and F038, petroleum refining wastes, are based upon transfer of the performance of technologies previously established for K048–K052 wastes. Based on the Hazardous Wastes Injection Wells Inventory data base, EPA believes that F037 and F038 wastes are being underground injected yearly by permitted injection wells. Although the amount of F037 and F038 so disposed is uncertain, EPA believes that it is relatively small and therefore, the Agency believes that there is adequate alternative treatment capacity for these wastes. Based on preliminary evaluation of data received during the comment period of the ANPR, and the Agency believes that there is adequate available alternative treatment capacity for the currently injected volumes of K117, K118, K131, and K132 wastes assuming segregation of K117, K118, K131, and K132 source wastewaters from the other process waters.

Therefore, the Agency is not proposing to grant any national capacity variances for any underground injected F037, F038, K117, K118, K131, and K132 wastes, and is proposing that these wastes be prohibited from underground injection upon the date of final promulgation of this rule. The Agency specifically requests comments on volumes and characteristics of these wastes being injected, and current and planned management.

VII. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements was promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is being proposed pursuant to sections 3004 (d) through (k), and (m), of RCRA (42 U.S.C. 6924 (d) through (k), and (m)). It is proposed to be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble. Table 2 in 40 CFR 271.1(j) is also proposed to be modified to indicate that this rule is a self-implementing provision of HSWA.

EPA is also proposing the new management unit, containment buildings, which involves redefinition of the term "pile," pursuant to HSWA. This proposed provision would assure adequate means of implementing the treatment standards, either by providing a means that treatment can occur without constituting impermissible land disposal, or by providing a safe staging area that would not constitute land disposal before best treatment. Cf. 56 FR at 41175 (August 19, 1991) (portion of rule assuring availability of capacity adopted pursuant to HSWA). Thus, this portion of the rule would also be adopted pursuant to HSWA and take effect immediately in authorized States.

B. Effect on State Authorization

As noted above, EPA is today proposing a rule that, when final, will be implemented in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see 40 CFR 271.24(c)).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. The deadline by which the State would have to modify its program to adopt these regulations is specified in § 271.21(e). The deadline would be July 1, 1993 if this rulemaking is finalized before June 30, 1992. This deadline can be extended in certain cases (see § 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, states with existing standards could continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a state must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

The regulations being proposed today need not affect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) could continue to do so without seeking authority to administer the amendments that will be promulgated at a future date. However, a State which wished to implement Part 148 and receive authorization to grant exemptions from the land disposal restrictions would have to demonstrate that it had the requisite authority to administer sections 3004 (f) and (g) of RCRA. The conditions under which such an authorization may take place are summarized below and are discussed in a July 15, 1985 final rule (50 FR 28728).

VIII. Effect of Proposed Rule on Other Environmental Programs

A. Discharges Regulated Under the Clean Water Act

As a result of the LDR program, some generators might switch from land disposal of restricted wastes to discharge of the wastes to publicly-owned treatment works (POTWs) to avoid incurring the costs of alternative treatment. Also as a result of LDRs, additional hazardous waste generators might discharge their wastes to surface waters. Any shift from land disposal to direct or indirect discharge has some potential to impact local ecosystems.

B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act

There could have been a potential demand for some of the hazardous wastes included in today's proposed rulemaking to be shifted from land disposal to ocean dumping and ocean-based incineration. If the cost of ocean-based disposal plus transportation were lower than the cost of land-based treatment, disposal, and transportation, this option could seem to be an attractive alternative. In addition, ocean-based disposal could seem attractive to the regulated community if land-based treatment were not available.

However, the Ocean Dumping Ban Act of 1988 has restricted ocean dumping of sewage sludge and industrial wastes to existing authorized dumpers until December 31, 1991, after which "* * * it shall be unlawful for any person to dump (sewage sludge or industrial wastes) into ocean waters * * *". Therefore, the Ocean Dumping Ban Act has made moot any economic or other incentive to ocean dump industrial hazardous wastes, including the wastes subject to this regulation.

C. Groundwater Protection Principles

In July 1989, EPA Administrator Reilly established a Groundwater Task Force chaired by Deputy Administrator Habicht to develop concrete principles and objectives to ensure effective and consistent decisionmaking in all Agency decisions affecting groundwater. The outcome of this effort is the current EPA Groundwater Protection Strategy, intended to set forth an aggressive approach to protecting the nation's currently used and reasonably expected to be used groundwater resources and direct the course of the Agency's efforts over the coming years. The final strategy was released on May 8, 1991.

The Groundwater Protection Strategy sets forth a statement of EPA groundwater principles that has as its overall goal the prevention of adverse affects to human health and the environmental integrity of the nation's currently used and reasonably expected to be used groundwater resources. The strategy also provides for the Groundwater Regulatory Cluster which will implement the strategy. This proposed rule is part of the Groundwater Regulatory Cluster and will integrate the groundwater principles on prevention, remediation, and federal, state and local responsibilities. For this proposed rule, the applicable principles of the strategy deal with prevention and the appropriate federal and state roles in implementation.

This proposed rule incorporates and is consistent with the groundwater protection principles. This is a source control rule supporting prevention of groundwater contamination. This proposed rule restricts certain wastes and contaminated debris to be disposed of only after treatment, thereby providing protection of groundwater at disposal sites.

With respect to prevention, the strategy specifies that groundwater should be protected to ensure that the nation's currently used and reasonably expected to be used drinking water supplies, both public and private, do not present adverse health effects. Groundwater that is hydrologically connected to surface water should also be protected to the extent that it does not interfere with the attainment of surface water quality standards, which

are designed to protect the integrity of associated ecosystems. Groundwater protection could be achieved through a variety of means including: Pollution prevention programs, source control, siting controls, the designation of wellhead protection areas and future water supply areas, and the protection of aquifer recharge areas.

With respect to federal, state and local responsibilities, the primary responsibility for developing and implementing comprehensive groundwater protection programs continues to and should be vested with the states. Key supporting principles of the strategy which this proposed rule addresses are: (1) The states should retain the primary responsibility for the management and protection of groundwater resources, and (2) EPA should support states in developing adequate groundwater protection programs. In carrying this out, EPA is committed to identifying opportunities for providing deference to state regulations, standards or policies as implementation objectives.

The relation of this proposed rule to wellhead protection as a method of prevention is described below.

D. Wellhead Protection Under the Safe Drinking Water Act (SDWA)

Section 1428 of the SDWA contains requirements for the development and implementation of state Wellhead Protection (WHP) Programs to protect wells and wellfields which are used or may be used to provide drinking water to public systems. Under section 1428, each state must adopt and submit to EPA for approval a WHP program. These state WHP programs are major components of states' comprehensive approach to groundwater protection described in the groundwater protection principles defining federal/state relationships.

SDWA required all states to submit a WHP program to EPA by June 19, 1989 for EPA review and approval. SDWA requires all federal agencies having jurisdiction over any potential source of contaminants identified by a state program to comply with all the requirements of the state program.

Any private or public entity subject to LDR regulations must also be in compliance with the appropriate state's wellhead protection program. The Agency reiterates that the land disposal of hazardous wastes must comply not only with the land disposal restrictions and other RCRA regulations, but with other environmental programs, such as the Wellhead Protection Program under the Safe Drinking Water Act.

E. Air Emissions Regulated Under the Clean Air Act (CAA)

There are two air emission concerns with respect to the land disposal restrictions. The first is a cross-media concern about air emissions that occur as a result of treatment, such as incineration, of metal-bearing waste causing a release of metal emissions to the atmosphere. Another concern is with air emissions from the land disposal of the treatment residual. Air emissions control programs are under development using both the CAA and RCRA to address these concerns.

1. Cross-media Concerns

Specific cross-media air emissions concerns have been identified for certain treatment standards applicable to the newly listed wastes and contaminated debris included in this proposal, but EPA believes that existing Clean Air Act controls adequately address the potential problems. Incineration of debris containing mercury can result in air emissions of elemental mercury and other hazardous air pollutants that may be "contained-in" the debris. The Agency has promulgated a National Emission Standard for Hazardous Air Pollutants (NESHAP) for mercury emissions under section 112 of the CAA (40 CFR part 61, subpart E). There are also regulations for the prevention of significant deterioration (PSD) of air quality that would address any mercury emissions that are not regulated by the NESHAP.

The NESHAP limits mercury emissions to the atmosphere from mercury processing facilities, mercury cell chlor-alkali plants, and plants that incinerate and/or dry wastewater treatment plant sludges. In all these cases, the NESHAP limits mercury emissions across the entire processing facility to the extent necessary to protect human health.

Under the amendments to the CAA, almost all sources of significant air emissions will be required to apply for and obtain a permit. Permits are required for any major source, any source subject to air toxics regulation and all sources subject to new source performance standards. If the mercury emissions from the incineration of the hazardous waste debris were to come from a major source, a source subject to air toxics regulations or a source subject to NSPS, then such emissions would be limited by conditions specified in the permit and be subject to monitoring, recordkeeping, and reporting requirements.

The Agency is also concerned whether incineration of hazardous waste containing brominated organics or organo-nitrogen compounds, including contaminated debris, may adversely affect air quality. The presence of bromine complicates the evaluation of incineration of these contaminated debris wastes.

2. Air Emissions from Land Disposal of Treatment Residuals

There are several general regulatory development programs under RCRA that address treatment technology air emissions. The Agency has initiated a three-phased program under section 3004(n) of RCRA to address air emissions from hazardous waste management units other than incinerators. The first phase addresses organic air emissions as a class from two types of emission sources. The first source category is process equipment (pumps, valves, etc.) that contact hazardous waste that contain greater than 10 percent organic compounds, including units such as distillation columns and incinerators. The second source category is certain vents on various treatment technologies, such as air or steam strippers. These standards were finalized in the **Federal Register** on June 21, 1990 (55 FR 25454).

The second phase of standards development under section 3004(n) of RCRA addresses organic air emissions as a class from tanks, containers, and surface impoundments. Treatment technologies that occur in tanks or containers that are not controlled by the Phase I standards would be controlled by these standards. With respect to surface impoundments, the Agency has also proposed standards to control air emissions from the management of wastes in them (see 56 FR 33490, July 22, 1991). In the third phase of the section 3004(n) standards development, the Agency will develop additional standards for the sources addressed in the first two phases as necessary to address residual risks.

In addition to the section 3004(n) standards, standards to control both organic and metal emissions from the combustion of hazardous waste in incinerators and boilers and industrial furnaces have been promulgated.

In particular, on February 21, 1991 (56 FR 7134), EPA promulgated regulations expanding controls on hazardous waste combustion to regulate air emissions from the burning of hazardous waste in boilers and industrial furnaces. The final rule limits emissions of toxic organic compounds, toxic metals, hydrogen chloride, chlorine gas, and particulate matter from boilers and industrial furnaces burning hazardous waste.

In certain cases, waste treatment may occur using treatment technologies or in units that are not required to obtain RCRA permits. Guidance for the control of air emissions from these sources, such as exempt biological treatment tanks, is being developed under the CAA.

None of the regulatory efforts discussed above specifically address air emissions from the land disposal of treatment residuals in landfills, land treatment units, or waste piles because the Agency presently presumes that these units will only receive wastes that have been treated to meet the BDAT treatment standards and, thus, not present an air emissions problem. However, while the Agency is still evaluating whether such standards are needed for landfills, land treatment units, or waste piles, EPA has proposed new standards and amendments to existing standards that would reduce organic air emissions from certain tanks, surface impoundments, and containers. See 56 FR 33490, July 22, 1991. The Agency is also developing a proposed rule to limit air emissions from land disposal units seeking to land dispose of wastes under a no migration variance.

F. Clean Up Actions Under the Comprehensive Environmental Response, Compensation, and Liability Act

LDRs for contaminated debris may have significant effects on the selection and implementation of response actions that are taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). However, it should be noted that EPA's proposed treatment standards for debris will limit that impact, compared to existing standards.

The clean-up standard set at CERCLA sites are risk-based, while LDR treatment standards are technology-based. Therefore, the technology-based treatment standards may be more or less stringent than the risk-based clean-up standards developed based on the CERCLA selection of remedy criteria. However, if the remedial action did not involve "placement" of the waste on the ground, then only the risk-based clean-up standards would be applicable. If "placement" were to occur, then the more stringent standard would apply.

It should be noted that even though the hazardous substances at a CERCLA remediation site may have been disposed prior to the effective date of RCRA, if the action involves removal of wastes subject to RCRA LDRs after the prohibition effective date for those wastes, the land disposal restrictions are legally applicable (51 FR 45077, November 7, 1986). See also *Chemical Waste Management* v. *EPA*, 869 F.2d at 1535–37 (D.C. Cir. 1989). For example, if contaminated debris is excavated from a unit, treated, and redisposed, EPA has indicated that "placement" (see RCRA section 3004(k)) of the waste in a land disposal unit has occurred, and the applicable treatment standards must be met (see 53 FR 51444 and 51445, December 21, 1988). However, if the waste is capped in place, removal or "placement" has not occurred, and the treatment standards are not legally applicable.

G. Applicability of Treatment Standards to Wastes from Pesticides Regulated Under the Federal Insecticide, Fungicide, and Rodenticide Act

A number of pesticide waste generators have been unaware of the LDRs because their industry has not been affected to the same extent as other industries, such as manufacturing. Still these generators might only be regulated under today's proposal to a small extent. Generators of significant quantities of pesticide P and U wastes are farmers and commercial pesticide applicators. The provisions of 40 CFR 262.70 and 268.1 exempt farmers from regulation under the LDR program; however, no such exemption exists for commercial applicators. Such generators of hazardous wastes have traditionally land disposed their pesticide wastes. With the implementation of the Third Third final rule, these generators must comply with LDR requirements when they dispose of a restricted hazardous waste. Under today's proposal, U and P pesticide wastes that contaminate debris would be subject to the new debris treatment standards.

H. Regulatory Overlap of Polychlorinated Biphenyls (PCBs) Under the Toxic Substances Control Act (TSCA) and RCRA

Certain P and U listed wastes contain PCBs. The PCB component of such a waste mixture is regulated primarily under TSCA (although it may also be a California list waste and subject to RCRA regulation), while the listed P or U component of the waste is regulated under RCRA. Such a mixture of listed/PCB waste must meet the applicable requirements under both statutes. If incineration is the specified treatment standard for a contaminated debris, then such a waste must go to an incinerator permitted under both TSCA and RCRA. Any ash residual from incineration must meet the treatment standard for the listed hazardous waste component prior to land disposal. For PCB-containing items, the option to dispose of them in a TSCA landfill would also be an option provided that no RCRA hazardous waste had contaminated the debris.

I. Disposal of Asbestos Regulated Under TSCA

Asbestos is not regulated as a hazardous waste under RCRA, but for today's proposal, asbestos-containing material is an issue. In many instances, asbestos debris will contain hazardous waste. This type of debris can come from a number of sources, including demolition of old manufacturing plants or asbestos abatement activities at hazardous waste management facilities. Generators of asbestos-containing debris would be required to comply with treatment standards specified in section V.K of today's proposal.

IX. Regulatory Requirements

A. Economic Impact Screening Analysis Pursuant to Executive Order 12291

Executive Order No. 12291 requires that regulatory agencies determine whether a new regulation constitutes a major rulemaking and, if so, it requires that the agency conduct a Regulatory Impact Analysis (RIA). An RIA consists of the quantification of the potential benefits, costs, and economic impacts of a major rule. A major rule is defined in Executive Order No. 12291 as a regulation likely to result in:

- An annual effect to the economy of $100 million or more; or
- A major increase in costs or prices for consumers, individuals, industries, Federal, State, and local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

The Agency estimated the costs of today's proposed rule to determine if it is a major regulation as defined by the Executive order. The Agency expects today's rule to have an annual incremental effect below $100 million. Also, the Agency does not believe the rule will significantly effect consumers, individuals, industries, Federal, State and local government agencies, or geographic regions, or have significant adverse effects on competition, employment, investment, innovation, or international trade. Therefore, the Agency determines that today's proposed rule is not a major rule.

Because today's proposed rule is not a major rule, the Agency has performed an

Economic Impact Screening Analysis, rather than an RIA, focusing its analyses on the costs and economic impacts of the rule only. The Agency has not assessed the benefits attributable to today's proposed rule.

1. Approach for Petroleum Refining Wastes (F037 and F038)

In the analysis of the petroleum refining wastes, the Agency first reviewed the work completed for the listing of F037 and F038, which EPA promulgated in October 1990, (see 55 FR 46386; subsequently referred to here as the Listing Rule or Listing RIA).[42] At that time, EPA recognized the the listing of F037 and F038 would eventually necessitate treatment of these wastes prior to their disposal, although a slight delay would occur before promulgation of LDR treatment standards for the wastes. Because the composition of F037 and F038 is very similar to that of K048–52 wastes, for which LDRs had been established in the First Third and Third scheduled waste rules, the Listing RIA developed costs, benefits, and economic impacts for the land disposal restrictions for F037 and F038 based on the BDATs previously specified for K048–52.

For the Listing RIA, the Agency assessed the cost and economic impacts by using a compliance scenario that included treatment before land disposal: dewatering of the waste, followed by incineration (either on-site or off-site) or solvent extraction (on-site). EPA estimated that 474,000 tons of F037 and F038 sluges (with an average water content of 55 percent) were generated annually. The costs for the listing and treatment of F037 and F038 were captured for the portion of these wastes not already regulated as hazardous by the Toxicity Characteristic (TC). This portion was estimated to be a volume within the range of 172,000 tons to 330,000 tons annually.

For today's proposed rule, the Agency had updated the volume estimates from the Listing RIA based on additional information obtained on the generation of these wastes as a part of the capacity determination. (See section VI.B for the capacity analysis of F037 and F038). Currently, the Agency projects that the petroleum refining industry generates a total of 173,000 tons of F037 and F038 petroleum sludges annually from routine operations (including F037/38 wastes that also exhibit the toxicity characteristic), of which 117,000 tons are land disposed. EPA has not included aqueous wastes from the dewatering of F037 and F038 in this estimate, because these wastewaters are discharged to POTWs or under provisions of NPDES permits, and thus are not subject to RCRA regulation.

In some cases the Agency used assumptions for waste volumes in the cost analysis which differed from those in the capacity analysis. The capacity analysis estimated 74,000 tons of F037 and F038 would require alternative treatment as a result of today's rule. On-site treatment capacity was expected to be in place for the remaining 99,000 annual tons by the time the rule is final. The cost analysis estimated only 56,000 tons are treated to meet the BDAT standards for this rule in the baseline. This volume is based on a capacity estimate for an earlier point in time, which examined the capacity in use prior to upgrading by facilities to prepare for the final rule's promulgation. The cost analysis therefore includes these facility preparation costs as costs attributed to today's proposed rule, costs that technically need not be considered attributed to this rule. The 56,000 tons per year falls out of the cost analysis because it does not result in any incremental costs for the rule. EPA therefore estimates 117,000 annual tons of F037 and F038 are land-disposed and would require alternative treatment.

The Agency is aware that some additional quantity of petroleum refining wastes is currently managed in surface impoundments, and that these surface impoundments are likely to be replaced, as a result of today's rule, with tank units capable of achieving equivalent wastewater treatment. These surface impoundments were not included in the capacity analysis due to their greater-than-two-year clean out period. Two years is the capacity analysis time window. The Agency does request comments on the potential costs of its proposed requirement that these wastes in unretrofitted surface impoundments be removed and treated annually.

The annual amount of F037 and F038 generated in these replacement units is difficult to predict. The Agency is currently uncertain what the difference in sludge generation rates would be in tanks which are likely to replace the existing surface impoundments. In addition, alterations in the process flow could change both the type and amount of wastes produced at a facility. Furthermore, it is likely that facilities would implement waste minimization practices in conjunction with their switch from surface impoundments to tanks. The Agency specifically solicits information about these wastes and their disposal costs. Late comments on these wastes received in response to the May 31, 1991 ANPR are being considered.

EPA estimates that of the 117,000 annual tons of land disposed F037 and F038, 14 percent is generated and land disposed in California. California has its own LDR program, and under it F037 and F038 waste will be restricted from land disposal as of May 8, 1992 under final standards substantially equivalent to those proposed in today's rule. Therefore, even if federal regulations are not promulgated, F037 and F038 waste would be restricted in this state. As a result, EPA estimates that 100,000 tons annually of F037 and F038 will require treatment prior to land disposal as a result of today's proposed rule.

For the baseline scenario, the Agency estimates that 64 percent of land disposed waste is managed on-site and the remaining 36 percent is sent off-site. Of the waste managed on-site, 95 percent is managed using land treatment and 5 percent is managed using landfilling. Of the waste sent off-site, all is disposed by landfilling.

For the Phase I LDR cost analysis, the Agency made the following assumptions for the off-site post-regulatory compliance scenario: (1) 13 percent of the F037 and F038 volume would be treated off-site, (2) 10 percent of the waste treated off-site would go to incineration at a cost of $1,700 per ton, and the remaining 90 percent would go to cement kilns at a price range from $700 per ton to $1,200 per ton. The post-regulatory scenario assumes disposal of residuals in Subtitle C units.

Estimated volumes of off-site and on-site F037 and F038 wastes provide another example of differing assumptions made for the capacity and economic analyses. The capacity analysis assumes 74,000 tons per year will be treated off-site once the rule is promulgated. The cost analysis assumes approximately 13,000 tons per year is treated off-site in the post-regulatory scenario. This difference in assumptions is due to the separate roles of each analysis. The capacity analysis provides a snapshot of the compliance scenarios directly following the promulgation of the rule in order to determine if there is a need for a national capacity variance. The cost analysis attempts to reflect probable compliance scenarios based on reasonable long-term economic choices. For today's proposed rule, the Agency believes that much of the F037 and F038 waste will have to be treated off-site directly following the rule's

[42] *Regulatory Impact Analysis for the Listing of Primary and Secondary Oil/Water/Solids Separation Sludges from the Treatment of Petroleum Refinery Wastewaters*, prepared for EPA Office of Solid Waste by DPRA, October 1990.

promulgation. However, EPA expects that on-site treatment capacity will be developed as soon as possible due to the high cost of the off-site treatments. Therefore, the Agency believes that the use of different off-site assumptions is valid, and is consistent with the distinct perspectives each analysis embraces.

The Agency assumed that 87% of the F037 and F038 waste would be treated on-site in the post-regulatory scenario. Of this on-site volume, 37 percent would be treated by solvent extraction at $250 per ton, 37 percent would go to incineration at $400 per ton, and 26 percent would go to on-site cokers at $200 per ton. The post-regulatory scenario also assumes disposal of residuals in Subtitle C units. Although the Listing RIA did not include a volume of waste going to on-site cokers, recent information gathered for the capacity analysis indicates that some F037 and F038 wastes would be disposed of in such a manner.

2. Approach for Remaining Wastes

To determine the cost and economic impacts of the proposed rule for wastes other than F037 and F038, EPA first identified the industries that would be affected. The Agency analyzed these industries to determine the amounts of the affected wastes that they generate, how these wastes are currently managed, and how these wastes would have to be managed to comply with LDR treatment standards.

The incremental cost of today's proposed rule for each waste was estimated by comparing resulting Phase I post-regulatory costs with the costs of current, or baseline, conditions. Because of the lack of site-specific data for this screening analysis, the Agency developed costs for the baseline and post-regulatory scenarios assuming off-site commercial treatment for all wastes included in the cost analysis. Off-site treatment is based on prices quoted by vendors, and generally exceeds the costs of on-site treatment.

The following paragraphs explain the approach used to evaluate costs for each of the wastes covered by today's proposed rule.

a. *Newly listed organic wastes.* All newly listed organic wastes included in today's rule are land disposed in relatively small quantities. The baseline for all newly listed wastes is defined as continued land disposal in units meeting minimum technological requirements.

b. *K061, F006, K062.* Today's proposed rule establishes numeric treatment standards for the low zinc subcategory of K061 based on high temperature metals recovery (HTMR). Simply stated, the Agency is proposing to abolish the high and low subcategorization and establish one set of treatment standards for all K061 nonwastewaters. The baseline for the cost analysis assumes compliance with the existing treatment standards for low-zinc K061, which are based on stabilization.

Today's rule establishes numeric treatment standards based on HTMR as alternative treatment standards for K062 and F006. The Agency has not quantified the costs of HTMR for these two wastes. It believes that any operators using HTMR for K062 and F006 will be using the technology only because it is more cost-effective (i.e., less expensive) than current management practices.

c. *Contaminated debris.* The majority of contaminated debris is already regulated under the Solvents and Dioxins, California list, and the First Third, Second Third, and Third Third LDR rules due to the waste code-carry-through principle.[43] A significant volume of contaminated debris is currently under a national capacity variance that expires May 8, 1992. Once this capacity variance expires, under the current regulatory structure all regulated contaminated debris would be required to meet the existing treatment standards for the RCRA waste code which is the source of the contamination.

For this contaminated debris with existing regulations, the standards in today's proposed rule are expected to be simpler and less costly than the existing standards. The cost savings are expected to result from the use of extractive technologies to meet the new standards. If the Agency promulgates today's rule by May 8, 1992 (as is currently scheduled), most contaminated debris would then be subject to these potentially less costly treatment standards. Therefore, no significant cost impacts for debris already regulated by LDRs are expected to be associated with the proposed rule, and may in some cases represent negative costs (i.e., cost savings) from the existing treatments established in the previous regulations covering contaminated debris. EPA requests data and comment from affected parties on cost savings associated with this proposal.

EPA estimates that fewer than 10,000 tons of debris contaminated with Phase I wastes are land disposed annually (the cost analysis is based upon a contaminated debris volume of 8000 tons per year). Because LDR treatment standards have not previously applied to debris contaminated with Phase I wastes, the Agency assumes that in the baseline, contaminated debris is disposed of in subtitle C landfills. In the post-regulatory scenario, EPA projects that 21 percent of debris would be treated using an extraction technology, 63 percent would be treated using an immobilization technology, and the remaining 16 percent would be treated using a destruction technology. Today's rule provides a generic exclusion from hazardous waste regulation for debris treated by extraction and destruction technologies. Therefore, it is assumed that debris treated by extraction technologies will be disposed of in subtitle D landfills. However, the cost analysis conservatively assumes that residuals from destruction technologies may often continue to go to subtitle C landfills. The use of immobilization technologies still requires disposal in a subtitle C landfill (note that EPA is today soliciting comment and data to support the design of performance standards for immobilization technologies that would be sufficient to allow contaminated debris treated by such technologies to be excluded from Subtitle C management).

To simplify its cost analysis, the Agency modeled one treatment technology for each of the three general categories, i.e., washing as the extraction technology, stabilization as the immobilization technology, and incineration as the destruction technology. The unit costs used for washing, stabilization, and incineration of contaminated debris were, respectively, $550 per ton, $800 per ton, and $2,300 per ton. These costs include treatment of residuals.

However, the Agency expects to clarify its cost analysis when it publishes the final rule. Therefore, EPA encourages commenters to provide any information on the costs of the specific treatment technologies EPA is proposing for contaminated debris. EPA also specifically asks for any estimates on the costs of constructing, permitting and conducting treatment inside the proposed containment buildings. EPA also welcomes comments on the differences in contaminated debris treatment costs if EPA excluded immobilized debris from Subtitle C management.

d. *Wastes not considered.* The costs associated with two groups of wastes—F001 through F005 spent solvents and 24 K- and U-wastes with wastewater standards based on scrubber waters—were not quantified by the Agency in this screening analysis. The Agency previously regulated these wastes and is revisiting them in the proposed rule only to modify the basis for concentration

[43] The waste code-carry-through principle states that a material mixed with a listed waste bears the waste code of the listed waste.

standards for the purpose of standardization (i.e., consistency in testing procedures and bases for treatment standards) and clarification (i.e., appropriate placement in the Code of Federal Regulations). These proposed modifications would not significantly change the required management practices for any of these wastes, and therefore the Agency expects such changes to have negligible cost impacts.

3. Results

a. *Total cost estimate.* Altogether, the standards promulgated in the proposed rule are estimated to cost industry between $39 million and $45 million per year.[44] Table IX–1 presents quantities of the wastes affected by today's proposed rule. The estimated cost of compliance with the proposed rule for each waste is presented in Table IX–2. Neither table includes F001 through F005 spent solvents or the 24 K- and U-wastes covered by today's proposed rule, because the effect of the rule on these wastes is very small, as explained above.

b. *Wastestream cost estimates.*/ Petroleum Refining Wastes (F037 and F038)

For the Phase I LDRs for F037 and F038, the Agency estimates a total annual incremental cost to range between $30 million and $37 million. This figure is based on an annual F037 and F038 land disposed volume of 100,000 tons per year in states other than California. Also, this figure excludes the costs associated with the quantity of tank-generated F037/F038 that will result after the conversion of surface impoundments.

On the high end of the cost range shown, 35% of the post-regulatory cost are from off-site treatment of petroleum refining wastes. The high cement kiln price used in this analysis, $1200 per ton, may be an overestimate of the long term price for cement kilns. Presently, cement kilns appear to be charging at rates below incinerators; as more cement kilns are able to handle wastes their prices may decrease. Because of the high prices charged by cement kilns, the Agency has analyzed the costs for F037/38 in a range, as shown above.

Newly Identified Organic Wastes

1. Three organic U wastes (U328, U353, U359). The Agency estimated an annual incremental cost of $150,000 for the standards developed for these wastes from the three organic U wastes (U328, U353, and U359). This figure is based on an annual land disposal volume estimate of 100 tons.

The standards for these wastes developed in the proposed rule are chemical oxidation followed by carbon adsorption for the wastewaters, and incineration for the nonwastewaters.

2. Wastes from unsymmetrical dimethlyhydrazine (UDMH) production (K107, K108, K109, K110). The Agency did not calculate costs of treatment standards for wastes from the production of unsymmetrical dimethlhydrazine (UDMH) (K107, K108, K109, and K110). This decision was made based on information that these are no longer generated.

3. Wastes from toluene diisocyanate (TDI) production (K111, K112). The Agency estimated an annual incremental cost of $150,000 for the standards developed for the wastes from the production of TDI (K111 and K112). This figure is based on an annual land disposal estimate of 100 tons for these two waste codes. The Agency has identified no K111 or K112 requiring further treatment.

TABLE IX-1.—SUMMARY OF QUANTITIES OF LDR PHASE I WASTES

Waste	Annual land disposal rate	Waste form	Generation type	Management type
Newly Listed Wastes:				
Petroleum Refining Sludges (F037 and F038).	100,000 tons of routinely generated waste currently land disposed, excluding waste generated in California.[a]	Dewatered Sludge	Routine	Solvent Extraction; Incineration; Cement Kilns.
Three Organic U Wastes (U328, U353, and U359).	Fewer than 100 tons.	Nonwastewater; Wastewater	Routine	Incineration or Thermal Destruction; Chemical Oxidation and Carbon Adsorption or Bio Treatment.
Production Wastes from Unsymmetrical Dimethlhydrazine (K107, K108, K109, and K110).	No longer produced.	Nonwastewater; Wastewater	Routine	Chemical Oxidation and Carbon Adsorption.
Wastes from Toluene Diisocyanate Production (K111 and K112).	Fewer than 100 tons.	Nonwastewater; Wastewater	Routine	Incineration; Incineration or Chemical Oxidation and Carbon Adsorption.
Wastes from Ethylene Dibromide Production (EDB) (K117, K118, and K136).	1,650 tons of K118; no K117 or K136.	Nonwastewater; Wastewater	Routine	Incineration.
Ethylene Bisdithiocarbamic Acid (EBDC) Production Wastes (K123-K126).	Fewer than 100 tons of K125. K123, K124, and K126 no longer land disposed.	Nonwastewater; Wastewater	Routine	Incineration.
Methyl Bromide Wastes (K131 and K132).	100 tons of K132 nonwastewater; K131 no longer land disposed.	Nonwastewater; Wastewater	Routine	Incineration.
Wastes with Existing Treatment Standards:				
Electric Arc Furnace Dust (K061)	67,000 tons of low zinc K061.[b]	Solid	Routine	High Temperature Metals Recovery.
Phase I Contaminated Debris[c]	8,000 tons.	Solid	Routine and Intermittent	Destruction; Immobilization; Extraction.

[a] EPA is aware that this estimate excludes an unknown quantity of F037 and F038 that will be generated as a result of settling operations in tanks after refineries undergo conversion of surface impoundments to tanks.

[b] Of the set of wastes potentially affected by a new BDAT of high temperature metal recovery (including K061, K062, and F006), the Agency is considering cost effects for K061 only. The quantity given for K061 is based on *generation* quantity instead of on quantity land disposed.

[c] The quantity presented here is for newly regulated debris. Debris that already has existing LDR treatment standards will also be affected by the change in treatment standards. Land disposal of a proportion of the newly regulated debris, contaminated with F037 and F038, may be restricted regardless of the enactment of provisions contained in the proposed rule due to the California Land Ban, effective May 8, 1992.

[44] Wastewaters account for only $150,000 per year, or less than one percent, of the cost of the proposed rule. The costs estimated for the quantities of wastewater shown in Table IX–1 are relatively low because most wastewaters are discharged to publicly owned treatment works (POTWs) or to coastal and inland waterways under National Pollution Discharge Elimination System (NPDES) permit provisions. When wastewaters are discharged in this manner, they are not subject to the treatment standards required by the LDRs under RCRA.

TABLE IX-2.—SUMMARY OF ANNUAL COSTS OF LDR PHASE I WASTES

Waste	Annual land disposal rate	Post-regulatory costs	Baseline costs [a]	Incremental costs
Newly Listed Wastes:				
Petroleum Refining Sludges (F037 and F038)	100,000 tons of routinely generated waste currently land disposed, excluding waste generated in California.[b]	$44,100,000 to $50,400,000 [b]	$13,900,000 [b]	$30,200,000 to $36,500,000 [b]
Three Organic U Wastes (U328, U353, and U359)	Less than 500 tons	$230,000	$80,000	$150,000
Production Wastes from Unsymmetrical Dimethlhydrazine (K107, K108, K109, and K110).	No longer produced	$0	$0	$0
Wastes from Toluene Diisocyanate Production (K111 and K112).	Less than 200 tons	$200,000	$50,000	$150,000
Wastes from Ethylene Dibromide Production (EDB) (K117, K118, and K136).	1650 tons K118; K117 treated pre-land disposal; K136 not land disposed.	$2,800,000	$410,000	$2,400,000
Ethylene Bisdithiocarbamic Acid (EBDC) Production Wastes (K123–K126).	Less than 100 tons of K125; K123, K124, and K126 no longer land disposed.	$170,000	$25,000	$150,000
Methyl Bromide Wastes (K131 and K132)	100 tons of K132. K131 no longer land disposed.	$170,000	$25,000	$150,000
Wastes with Existing Treatment Standards:				
Electric Arc Furnace Dust (K061)	67,000 tons of Low Zinc K061.[c]	$20,000,000 [d]	$30,000,000 [c]	($10,000,000) [c]
Newly Regulated Contaminated Debris [e]	8,000 tons	$7,700,000 [d]	$2,000,000 [d]	$5,700,000 [d]
Total		$55,400,000 to $61,700,000 [e]	$16,500,000 [e]	$38,900,000 to $45,200,000 [e]

[a] Baseline for all wastestreams presented in the table assumes all wastes are landfilled.

[b] The range of costs shown represents a unit price for cement kilns of between $700 per ton and $1200 per ton. This range is reflected in the total costs shown for each column as well. EPA is aware that this estimate excludes an unknown quantity of F037 and F038 that will be generated as a result of settling operations in tanks after refineries undergo conversion of surface impoundments to tanks.

[c] Of the wastes in the group that includes K061, K062, and F006, the Agency is developing costs for K061 only. For the baseline management practices for high chromium and high nickel K061, the Agency assumed stabilization is used, while in the post-regulatory management scenario, high temperature metal recovery is used.

[d] The contaminated debris affected by the proposed rule is divisible into two groups: first, debris that already has existing LDR treatment standards from previous rules (costs associated with this category of debris are expected to be negative), and second, debris that would be newly regulated by the LDRs because of its contamination with wastes included in today's proposed rule. Only costs for this second group of debris have been included in the agency's analysis.

[e] These totals do not include the costs for K061, which is currently calculated to have a negative incremental cost.

The standards for TDI wastes developed in the proposed rule are incineration or chemical oxidation followed by carbon adsorption for the wastewaters, and incineration for the nonwastewaters.

4. Wastes from ethylene dibromide (EDB) production (K117, K118, K136). The standards for wastes from ethylene dibromide production (EDB) (K117, K118, and K136) have an estimated annual incremental cost of $2.4 million. This figure is based on annual land disposal estimates of 1,650 tons of K118 nonwastewater residuals.

The Agency has identified no K136 generation. Currently, K117 wastewater streams undergo treatment before disposal, and therefore these wastes will not be affected by the proposed rule. The standards for EDB wastes are concentration-based. The Agency expects that these numerical standards will be met through incineration for the K118 wastes.

5. Wastes from ethylene bisdithiocarbamic acid (EBDC) production (K123–K126). The annual incremental cost estimated for ethylene bisdithiocarbamic acid production wastes (K123–K126) is $150,000. This figure is based on the Agency's determination that less than 100 tons of K125 nonwastewaters are currently land disposed and will require alternative treatment. EPA has identified no quantities of K123, K124, or K126 currently being land disposed. The method of treatment established for the EBDC nonwastewaters is incineration.

6. Wastes from methyl bromide production (K131, K132). The standards for wastes from methyl bromide production (K131, K132) have an estimated annual incremental cost of $150,000. The standards for K131 and K132 in today's proposed rule are concentration-based. The Agency expects that these numerical standards will be met through incineration.

The estimated incremental cost is based on an annual land disposal estimate of 100 tons of K132 nonwastewater. EPA has identified no K131 wastewaters or nonwastewaters being land disposed and requiring alternative treatment or recovery.

7. K061, F006, K062. The only wastes in this group for which the Agency developed cost estimates is K061 low-zinc wastes. The standards for these wastes are based on high temperature metals recovery. These standards, as applied to K061, have an estimated annual decremental cost of $10 million, i.e., the new standards are less costly than the existing standards. This figure is based on an annual generation estimate of 67,000 tons. The Agency has used a generation estimate rather than a land disposal estimate for this waste because of uncertainty regarding the quantity of low zinc K061 that is currently land disposed.

Contaminated Debris

There are two groups of contaminated debris in this rule. The first group includes all previously regulated debris. This group includes contaminated debris regulated under the HSWA land disposal restriction scheduled waste rules (i.e., Solvents and Dioxins, California List Wastes, First Thirds, Second Thirds, Third Thirds), and is estimated to be approximately 1 million tons per year. The second group includes all debris contaminated with wastes regulated in today's proposed rule;[48] the Agency estimates that less than 10,000 tons per year of debris is contaminated with these wastes (the cost analysis is based on a volume of 8000 tons annually). (See section VI.B for the capacity analysis of contaminated debris.)

The Agency has proposed three technology categories for the treatment of debris in order to handle the diverse composition of contaminated debris. These three categories of treatment are immobilization, extraction, and destruction. Under each treatment category there exist many technologies which may be used for compliance with the debris standards. For the cost analysis of contaminated debris, the following technologies were selected to correspond with each treatment category: For immobilization, stabilization was selected; for extraction, washing was selected; and for destruction, incineration was used.

On May 8, 1992, all of the national capacity variances for the debris regulated in the HSWA land disposal restriction scheduled waste rules will have expired. All contaminated debris in the first group would then be required to meet the existing standards for debris established in the scheduled waste rules. Since the management standards proposed today are expected to be no more costly, and in some cases less costly than the treatment standards currently required for contaminated debris under the waste code carry-through principle, today's proposed rule is estimated to have no cost impact for this group of debris.

Based on preliminary data submitted by several large commercial facilities as part of the capacity analysis being conducted for this rule, the Agency was able to estimate the percentage of debris contaminated with newly regulated wastes which would be treated under each treatment category. For the cost analysis the Agency estimated that approximately 1,700 tons will be treated with extraction technologies, 5,000 tons will be treated by immobilization, and 1,300 tons will be treated by incineration. Based on these figures, the total incremental cost of treated debris contaminated with newly regulated wastes is estimated to be $6 million annually.

c. *Economic impacts.* Because this analysis is limited to a screening analysis, a full economic impacts analysis was not performed. The Agency, however, did qualitatively assess the economic impacts attributable to today's rule.

1. Petroleum Refining Wastes (F037 and F038)

The Listing RIA considered the economic impact of the F037 and F038 listing in light of anticipated land disposal restrictions on these wastes. The impacts estimated in the Listing RIA were driven by facility costs and the economic viability of facility owners. The results of the Listing RIA's economic impacts analysis are summarized below.

In the Listing RIA, four to eight refineries (depending on the cost scenario) had cost impacts greater than one percent of sales (cost impacts exceeding one percent of sales can be viewed as an indicator of potentially significant economic impact). Three refineries exceeded two percent under a high-cost scenario (indicating more severe economic impacts). Nine out of ten affected refineries in a high-cost scenario had costs below 0.5 percent of sales, and over three-quarters of the refineries fell below 0.25 percent, indicating no significant impacts.

The analysis of small entities presented in the Listing RIA indicated that there were potentially seven non-integrated refineries (i.e., refineries that did not produce their own crude and market their own products) with cost-to-sales ratios greater than one percent under the high-cost scenario. A further analysis of employment effects and potential closures was not possible due to insufficient financial data for individual refineries.

Therefore, drawing the comparison for economic impacts between the Listing RIA and today's proposed rule, the Agency estimates that today's rule will have annual incremental compliance cost for F037 and F038 waste of between

[48] A third group of contaminated debris, debris considered hazardous because of contamination with waste without current or proposed LDR treatment standards, is unaffected by this rule.

$30 million and $37 million, while the F037/38 Listing RIA estimated an annual cost of $37 million to $71 million.[48] Therefore, the Agency believes that the economic impacts of today's rule, qualitatively, will be less than the impacts estimated by the Listing Rule RIA.

2. Remaining Wastes

Considering the economic impacts of LDRs for the newly listed organic wastes other than F037 and F038, the Agency estimates the costs associated with all wastes to be insignificant. The only newly listed waste having an annual incremental cost above $150,000 is ethylene dibromide (EDB) production wastes at $2.4 million. The major producers of EDB are Dow Chemical, Ethyl Corporation, Great Lakes Chemical, and PPG Industries. Of these firms, only Great Lakes Chemical land disposes waste from EDB production. Based on the financial viability of Great Lakes Chemical, it is unlikely that it would be significantly affected by regulation of EDB wastes.

A quantitative assessment of the economic impacts associated with the contaminated debris standards was not possible due to data limitations. The Agency has no site-specific information on the volumes of either the previously regulated or the newly listed contaminated debris by waste code or SIC code.

The Agency expects that the impacts for the previously regulated debris will not be significant since today's proposed standards are likely to be no more costly, and in some cases less costly than the standards which currently exist. The impacts of the newly listed debris standards are uncertain. The estimated incremental cost for these standards is $6 million annually. If a relatively large number of facilities bear the burden of this cost, it is likely that these standards will not have a significant impact.

B. Paperwork Reduction Act

The information collection requirements in this proposal were promulgated in previous land disposal restriction rulemakings and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2050–0085. No new information collection requirements are being proposed today.

It should be noted that today's proposal seeks to reduce the paperwork burden on the regulated community by proposing to minimize reporting for wastes that are no longer hazardous.

Send comments regarding any aspect of this collection of information to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 148, 260, 261, 262, 264, 265, 268, 270 and 271

Administrative practice and procedure, Designated facility, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Labeling, Packaging and containers, Penalties, Recycling, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: December 18, 1991.

William K. Reilly,

Administrator.

For the reasons set out in preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

2. Section 148.17 is added to subpart B to read as follows:

§ 148.17 Waste specific prohibitions—newly listed wastes.

(a) Effective (insert effective date of regulations), the wastes specified in 40 CFR 261 as EPA hazardous waste numbers F037, F038, K107, K109, K110, K111, K112, K117, K118, K123, K124, K125, K126, K131, K136, U328, U353, and U359 are prohibited from underground injection.

(b) The requirements of paragraph (a) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in subpart D of part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this part.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

3. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

4. In § 260.10 a definition for "containment building" is added in alphabetical order and the definition of "pile" is revised to read as follows:

§ 260.10 Definitions.

* * * * *

Containment building means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of subpart DD of parts 264 or 265 of this chapter.

* * * * *

Pile means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

6. In § 261.3 paragraphs (a)(2)(iii) and (c)(2)(ii)(C) are revised and paragraph (e) is added to read as follows:

§ 261.3 Definition of hazardous waste.

* * * * *

(a) * * *

(2) * * *

(iii) It is a mixture of a solid waste and a hazardous waste that is listed in subpart D of this part solely because it exhibits one or more of the characteristics of hazardous waste identified in subpart C of this part, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in subpart C of this part, or unless the solid waste is excluded from regulation under § 261.4(b)(7) and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in subpart C of this part for which the hazardous waste listed in subpart D of this part was listed. (However, such mixtures are still subject to the requirements of part 268 of this chapter, even if they no

[48] The Listing RIA provided a range of $53 to $102 million. The revised range shown reflects the following two changes: (a) subtraction of baseline Subtitle C landfill costs, and (b) conversion of the 1989 dollars used in the Listing RIA to 1991 dollars.

longer exhibit a characteristic at the point of land disposal.)

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(C) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in 40 CFR 260.10 (6), (7), and (12)), that are disposed in Subtitle D units, provided that these residues meet the generic exclusion levels identified below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes.

Constituent	Maximum for any single composite sample
	TCLP (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.063
Arsenic	0.055
Barium	6.3
Beryllium	0.0063
Cadmium	0.032
Chromium (total)	0.33
Lead	0.095
Mercury	0.009
Nickel	0.63
Selenium	0.16
Silver	0.30
Thallium	0.013
Vanadium	0.23
Zinc	44.0
Generic exclusion levels for F006 nonwastewater HTMR residues	
Antimony	0.063
Arsenic	0.056
Barium	6.3
Beryllium	0.0063
Cadmium	0.032
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.095
Mercury	0.009
Nickel	0.63
Selenium	0.16
Silver	0.30
Thallium	0.013
Vanadium	0.23
Zinc	44.0

A one-time notification and certification must be placed in the facility's files for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to subtitle D units; however, the one-time notification and certification must be updated if the process or operation generating the waste changes and/or if the Subtitle D unit receiving the waste changes. The notification must include the following information: (*1*) The name and address of the Subtitle D unit receiving the waste shipments; (*2*) the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and (*3*) the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristics of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

* * * * *

(e) Notwithstanding paragraphs (a) through (d) of this section and provided the debris as defined in part 268 of this chapter does not exhibit a characteristic identified at subpart C of this part, the following materials are not subject to regulation under 40 CFR parts 260, 261 to 266, 268, or 270:

(1) Contaminated debris as defined in part 268 that has been treated using one of the required extraction or destruction technologies specified in table 2 of § 268.45 of this chapter; or

(2) Debris as defined in part 268 that the Regional Administrator, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

7. Appendix VIII of part 261 is amended by adding the following inorganic compound in alphabetical order to read as follows:

APPENDIX VIII.—HAZARDOUS CONSTITUENTS

Common name	Chemical abstracts name	Chemical abstracts no.	Hazardous waste no.
*	*	*	*
Vanadium.	Same	7440-62-2	
*	*	*	*

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

8. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937.

9. In § 262.34 paragraphs (a)(3) through (a)(4) are redesignated as (a)(4) through (a)(5) and a new paragraph (a)(3) is added to read as follows:

§ 262.34 Accumulation time.

(a) * * *

(3) The waste is placed in containment buildings and the generator complies with subpart DD of 40 CFR part 265 and maintains the following records at the facility:

(i) A description of procedures that will be followed to ensure that all wastes are removed from the containment building at least once every 90 days; and

(ii) Documentation of each waste removal, including the quantity of waste removed from the containment building and the date and time of removal.

In addition, such a generator is exempt from all the requirements in subparts G and H of 40 CFR part 265, except for §§ 265.111 and 265.114.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

10. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

11. Subpart DD is added to read as follows:

Subpart DD—Containment Buildings

§ 264.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste that contains no or only very small quantities of free liquids in units designed and operated under § 264.1101 of this subpart.

§ 264.1101 Design and operating standards.

(a) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, e.g., precipitation, wind, and to prevent run-on or infiltration of precipitation.

(b) The floor and walls of the unit, including the secondary containment

system, if required under paragraph (d)(1) of this section, must be designed and constructed of man-made materials of sufficient strength and thickness to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed, climatic conditions, and the stresses of daily operation, including the movement of heavy equipment within the unit. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure.

(c) Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(d) The owner or operator must use controls and practices to ensure containment of the hazardous waste within the unit and at a minimum, must:

(1) For a containment building that is used to store hazardous wastes containing very small quantities of free liquids or to treat hazardous wastes when the treatment involves liquids:

(i) Ensure that any surface that will be in contact with liquid is constructed of a material or otherwise sealed or coated so that it will prevent the migration of liquid into or out of the supporting structure;

(ii) Provide a liquid collection system to prevent the accumulation of liquid on the floor of the containment building; and

(iii) Provide a secondary containment system that prevents any migration of hazardous waste or liquid out of the system to the soil, ground water, or surface water at any time during the use of the unit and is capable of detecting and collecting accumulated hazardous wastes and liquids at the earliest practicable time. Liquids must be collected and removed at the earliest practicable time that protects human health and the environment to minimize the hydraulic head on the containment system.

(2) Maintain the level of the stored/treated hazardous waste within the walls of the unit intended to come in contact with the hazardous waste so that the height of any wall is not exceeded.

(3) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste.

(4) Take measures to control fugitive dust emissions by maintaining a negative pressure within the unit and a particulate collection system. This system must function effectively at all times, including when vehicles and personnel are entering and exiting the unit.

(e) Liquid residuals from debris treatment in a containment building that are to be land disposed must be treated to meet F039 treatment standards.

(f) Inspect and record in the facility's operating log, at least once each operating day, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

§§ 264.1102–264.1110 [Reserved]

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

13. Subpart DD is added to read as follows:

Subpart DD—Containment Buildings

§ 265.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste that contains no or only very small quantities of free liquids in units designed and operated under § 265.1101 of this subpart.

§ 265.1101 Design and operating standards.

(a) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, e.g., precipitation, wind and to prevent run-on or infiltration of precipitation.

(b) The floor and walls of the unit, including the secondary containment system, if required under paragraph (d)(1) of this section, must be designed and constructed of man-made materials of sufficient strength and thickness to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed, climatic conditions, and the stresses of daily operation, including the movement of heavy equipment within the unit. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure.

(c) Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(d) The owner or operator must use controls and practices to ensure containment of the hazardous waste within the unit and, at a minimum, must:

(1) For a containment building that is used to store hazardous wastes containing very small quantities of free liquids or to treat hazardous wastes when the treatment involves liquids:

(i) Ensure that any surface that will be in contact with liquid is constructed of a material or otherwise sealed or coated so that it will prevent the migration of liquid into or out of the supporting structure:

(ii) Provide a liquid collection system to prevent the accumulation of liquid on the floor of the containment building; and

(iii) Provide a secondary containment system that prevents any migration of hazardous waste or liquid out of the system to the soil, ground water, or surface water at any time during the use of the unit and is capable of detecting and collecting accumulated hazardous waste and liquids at the earliest practicable time. Liquids must be collected and removed at the earliest practicable time that protects human health and the environment to minimize the hydraulic head on the containment system.

(2) Maintain the level of the stored/treated hazardous waste within the walls of the unit intended to come in contact with the hazardous waste so that the height of any wall is not exceeded.

(3) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste.

(4) Take measures to control fugitive dust emissions by maintaining a negative pressure within the unit and a particulate collection system. This system must function effectively at all times, including when vehicles and personnel are entering and exiting the unit.

(e) Liquid residuals from debris treatment in a containment building that are to be land disposed must be treated to meet F039 standards.

(f) Inspect and record in the facility's operating log, at least once each operating day, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

§§ 265.1102-265.1110 [Reserved]

PART 268—LAND DISPOSAL RESTRICTIONS

14. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

15. In § 268.2 paragraph (g) is revised and paragraph (h) added to read as follows:

§ 268.2 Definitions applicable in this part.

* * * * *

(g) Debris means solid material that:

(1) Has been originally manufactured or processed, except for solids that are listed wastes or can be identified as being residuals from treatment of wastes and/or wastewaters, or air pollution control devices; or

(2) Is plant or animal matter; or

(3) Is natural geologic material exceeding a 9.5 mm sieve size including gravel, cobbles, and boulders (sizes as classified by the U.S. Soil Conservation Service), or is an inseparable mixture of such materials with soil, liquid, sludge, or other solid waste materials (i.e., inseparable by simple mechanical removal processes).

(h) Contaminated Debris means debris that contains a hazardous waste listed in subpart D of part 261 that is subject to the land disposal restrictions of this part, or that exhibits a characteristic of hazardous waste identified in subpart C of part 261 that is subject to the land disposal restrictions of this part.

* * * * *

16. In § 268.7 paragraph (a) is revised and paragraph (d) is added to read as follows:

§ 268.7 Waste analysis.

(a) Except as specified in §§ 268.32, 268.40(d), or 268.43 of this part, the generator must test his waste, or test an extract developed using the test method described in appendix I of part 261, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part.

* * * * *

(d) For contaminated debris that is no longer considered hazardous, a one-time notification and certification must be placed in the facility's files for each combination of the debris and contaminant categories; however, the one-time notification and certification must be updated if the facility receiving the waste changes.

(1) The notification must include the following information:

(i) The name and address of the Subtitle D facility receiving the waste shipment;

(ii) A description of the waste as initially generated, including applicable EPA Hazardous Waste Numbers and treatability groups;

(iii) The treatment standards applicable to the waste at the point of generation.

(2) The certification must be signed by an authorized representative and must state the language found in § 268.7(b)(5).

17. In § 268.9 paragraph (d) is revised to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

* * * * *

(d) Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the facility's files; however, the one-time notification and certification must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes.

(1) The notification must include the following information:

(i) The name and address of the subtitle D facility receiving the waste shipment;

(ii) A description of the waste as initially generated, including the applicable EPA Hazardous Waste Number(s) and treatability group(s);

(iii) The treatment standards applicable to the waste at the point of generation.

(2) The certification must be signed by an authorized representative and must state the language found in § 268.7(b)(5).

18. In subpart C § 268.36 is added to read as follows:

§ 268.36 Waste specific prohibitions—newly listed wastes.

(a) Effective (insert effective date), the following wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Numbers F037 and F038 (that is not generated in a surface impoundment); the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K107, K108, K109, K110, K111, K112, K117, K118, K123, K124, K125, K126, K131, K132, and K136; and the wastes specified in 40 CFR 261.33 as EPA Hazardous Waste numbers U328, U353, and U359 are prohibited from land disposal.

(b) Effective (insert date two years from effective date), the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Numbers F037 and F038 that are generated in surface impoundments are prohibited from land disposal.

(c) Effective (insert date two years from effective date), radioactive wastes that are mixed with hazardous wastes specified in 40 CFR 261.31 and EPA Hazardous Waste Numbers F037 and F038; the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K107, K108, K109, K110, K111, K112, K117, K118, K123, K124, K125, K126, K131, K132, and K136; or the wastes specified in 40 CFR 261.33(f) as EPA Hazardous Waste Numbers U328, U353, and U359 are prohibited from land disposal.

(d) Effective (insert date two years from effective date), debris contaminated with hazardous wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Numbers F037 and F038; the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K107, K108, K109, K110, K111, K112, K117, K118, K123, K124, K125, K126, K131, K132, and K136; or the wastes specified in 40 CFR 261.33(f) as EPA Hazardous Waste Numbers U328, U353, and U359; and which is not contaminated with any other waste already subject to a prohibition are prohibited from land disposal.

(e) Between (insert effective date) and (insert date two years from effective date), the wastes included in paragraphs (b), (c), and (d) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2), except that F037 and F038 are wastes generated in a surface impoundment. Such impoundments must comply with the requirements relating to removal under § 268.4(a)(2)(ii).

(f) The requirements of paragraphs (a), (b), (c), and (d) of this section do not apply if:

(1) The wastes meet the applicable standards specified in Subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate standards established pursuant to a petition granted under § 268.44;

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to the wastes covered by the extension.

(g) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.41 and 268.43, the initial generator must test a

representative sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable subpart D levels, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

19. In § 268.40 paragraph (b) is revised and paragraph (d) is added to read as follows:

§ 268.40 Applicability of treatment standards

* * * * *

(b) A restricted waste for which a treatment technology is specified under § 268.42(a) or contaminated debris for which a treatment technology is specified under § 268.45 may be land disposed after it is treated using that specified technology or an equivalent treatment method approved by the Administrator under the procedures set forth in § 268.42(b).

* * * * *

(d) If a treatment standard has been established in §§ 268.41 through 268.43 for a hazardous waste that is itself contaminated debris, the waste is subject to those standards rather than the standards for contaminated debris under § 268.45.

20. In § 268.41(a) Table CCWE is amended by removing the entries for F001–F005 and K061 (Low Zinc Subcategory—less than 15% total zinc), revising the entry for K061 High Zinc Subcategory, and by adding entries for F037 and F038 to read as follows:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) * * *

TABLE CCWE.—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT

Waste Code	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewater concentration (mg/l)	Non-wastewater concentration (mg/l)
F037	Table CCW in 268.43	Chromium (Total)	7440-47-32	NA	1 7
		Nickel	7440-02-0	NA	0.20
F038	Table CCW in 268.43	Chromium (Total)	7440-47-32	NA	1 7
		Nickel	7440-02-0	NA	0.20
K061	Table CCW in 268.43	Antimony	7440-36-0	NA	2.1
		Arsenic	7440-38-2	NA	0.055
		Barium	7440-39-3	NA	7.6
		Beryllium	7440-41-7	NA	0.014
		Cadmium	7440-43-9	NA	0.19
		Chromium (Total)	7440-47-32	NA	0.33
		Lead	7439-92-1	NA	0.37
		Mercury	7439-97-6	NA	0.009
		Nickel	7440-02-0	NA	5
		Selenium	7782-49-2	NA	0.16
		Silver	7440-22-4	NA	0.3
		Thallium		NA	0.078
		Vanadium	7440-62-2	NA	0.23
		Zinc	7440-66-6	NA	5.3

NA—Not applicable.

21. In § 268.42 paragraphs (b) and (d) are revised to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

* * * * *

(b) Any person may submit an application to the Administrator demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achieved by methods specified in paragraphs (a), (c), and (d) of this section for wastes or specified in § 268.45 for contaminated debris. The applicant must submit information demonstrating that his treatment method is in compliance with federal, state, and local requirements and is protective of human health and the environment. On the basis of such information and any other available information, the Administrator may approve the use of the alternative treatment method if he finds that the alternative treatment method provides a measure of performance equivalent to that achieved by methods specified in paragraphs (a), (c), and (d) of this section for wastes or in § 268.45 for contaminated debris. Any approval must be stated in writing and may contain such provisions and conditions as the Administrator deems appropriate. The person to whom such approval is issued must comply with all limitations contained in such a determination.

* * * * * *

(d) Radioactive hazardous mixed wastes with treatment standards specified in table 3 of this section are not subject to any treatment standards specified in §§ 268.41 or 268.43, or table 2 of this section. Radioactive hazardous mixed wastes not subject to treatment standards in table 3 of this section remain subject to all applicable treatment standards specified in §§ 268.41, 268.43, and table 2 of this section. Contaminated debris containing radioactive waste is not subject to the treatment standards specified in table 3 of this section but is subject to the treatment standards specified in § 268.45.

22. In § 268.42(a)(2) table 2 is amended by adding entries for K107, K108, K109, K110, K111, K112, K123, K124, K125, K126, U328, U353, and U359 in alphanumerical order to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

* * * * *

TABLE 2.—TECHNOLOGY-BASED STANDARDS BY RCRA WASTE CODE

Waste code	See also	Waste descriptions and/or treatment subcategory	CAS No. for regulated hazardous constituents	Technology code	
				Wastewaters	Nonwastewaters
K107		Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.	NA	INCIN; or CHOXD fb CARBN	INCIN
K108		Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.	NA	INCIN; or CHOXD fb CARBN	INCIN
K109		Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.	NA	INCIN; or CHOXD fb CARBN	INCIN
K110		Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.	NA	INCIN; or CHOXD fb CARBN	INCIN
K111		Product wastewaters from the production of dinitrotoluene via nitration of toluene.	NA	INCIN; or CHOXD fb CARBN	INCIN
K112		Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	INCIN; or CHOXD fb CARBN	INCIN
K123		Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	NA	INCIN; or CHOXD fb (BIODG or CARBN).	INCIN
K124		Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	NA	INCIN; or CHOXD fb (BIODG or CARBN).	INCIN
K125		Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	NA	INCIN; or CHOXD fb (BIODG or CARBN).	INCIN
K126		Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylene bisdithiocarbamic acid and its salts.	NA	INCIN; or CHOXD fb (BIODG or CARBN).	INCIN
U328		2-methyl-benzenamine	95-53-4	CHOXD fb (BIODG or CARBN)	INCIN; or Thermal Destruction
U353		4-methyl-benzenamine	106-49-0	CHOXD fb (BIODG or CARBN)	INCIN; or Thermal Destruction
U359		2-ethoxy-ethanol	110-80-5	INCIN; or CHOXD fb (BIODG or CARBN).	INCIN

NA—Not applicable.

* * * * *

23. In § 268.43(a) Table CCW is amended by revising the entries for F001–F005, K015, K016, K018, K019, K020, K023, K024, K028, K030, K043, K046, K049, K050, K051, K052, K087, K093, K094, U028, U069, U088, U102, U107, and U190, by removing the entry for U042, and by adding the entries for F037, F038, K117, K118, K131, K132, and K136 in alphanumerical order to read as follows:

(a) * * *

TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
F001–F005 spent solvents.	NA		Acetone	67-64-1	0.28		160	
			Benzene	71-43-2	0.070		3.7	
			n-Butyl alcohol	71-36-3	5.6		2.6	
			Carbon disulfide	75-15-0	0.014		NA	
			Carbon tetrachloride	56-23-5	0.057		5.6	
			Chlorobenzene	108-90-7	0.057		5.7	
			Cresol (m- and p-isomers)		0.77		3.2	
			o-cresol		0.11		5.6	
			Cyclohexanone	108-94-1	0.36		NA	
			o-Dichlorobenzene	95-50-1	0.088		6.2	
			Ethyl acetate	141-7-6	0.34		33	
			Ethyl benzene	100-41-4	0.057		6.0	

TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
			Ethyl ether	60-29-7	0.12		160	
			Isobutyl alcohol	78-83-1	5.6		170	
			Methanol	67-56-1	5.6		NA	
			Methylene chloride	75-9-2	0.089		33	
			Methyl ethylketone	78-93-3	0.28		36	
			Methyl isobutylketone	108-10-1	0.14		33	
			Nitrobenzene	98-95-3	0.068		14	
			Pyridine	110-86-1	0.014		16	
			Tetrachloroethylene	127-18-4	0.056		5.6	
			Toluene	108-88-3	0.08		28	
			1,1,1-Trichloroethane	71-55-6	0.054		5.6	
			1,1,2-Trichloroethane	79-00-5	0.030		7.6	(1)
			Trichloroethylene	79-01-6	0.054		5.6	
			1,1,2-Trichlor1,2,2-trifluoromethane.	76-13-1	0.057		28	
			Trichloromono-fluoromethane	75-69-4	0.02		33	
			Xylenes (total)		0.32		28	
F037	NA	Table CCWE in 268.41.	Acenaphthene	208-96-8	0.059		NA	
			Anthracene	120-12-7	0.059		28	(1)
			Benzene	71-43-2	0.14		14	(1)
			Benzo (a) anthracene	50-32-8	0.059		20	(1)
			Benzo (a) pyrene	117-81-7	0.061		12	(1)
			Bis (2-ethylhexyl) phthalate	75-15-0	0.28		7.3	(1)
			Chrysene	218-01-9	0.059		15	(1)
			Di-n-butyl phthalate	105-67-9	0.057		3.6	(1)
			Ethylbenzene	100-41-4	0.057		14	(1)
			Fluorene	86-73-7	0.059		NA	
			Naphthalene	91-20-3	0.059		42	(1)
			Phenanthrene	85-01-8	0.059		34	(1)
			Phenol	108-95-2	0.039		3.6	(1)
			Pyrene	129-00-0	0.067		36	(1)
			Toluene	108-88-3	0.08		14	(1)
			Xylene(s)		0.32		22	(1)
			Cyanides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
F038	NA	Table CCWE in 268.41.	Benzene	71-43-2	0.14		14	(1)
			Benzo(a)pyrene	50-32-8	0.061		12	(1)
			Bis (2-ethylhexyl) phthalate	117-81-7	0.28		7.3	(1)
			Chrysene	218-01-9	0.059		15	(1)
			Di-n-butyl phthalate	84-74-2	0.057		3.6	(1)
			Etylbenzene	100-41-4	0.057		14	(1)
			Fluorene	86-73-7	0.059		NA	
			Naphthalene	91-20-3	0.059		42	(1)
			Phenanthrene	85-01-8	0.059		34	(1)
			Phenol	108-95-2	0.039		3.6	(1)
			Pyrene	129-00-0	0.067		36	(1)
			Toluene	108-88-3	0.080		14	(1)
			Xylene(s)		0.32		22	(1)
			Cyanides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K015	NA	Table CCWE in 268.41.	Anthracene	120-12-7	0.059		3.4	(1)
			Benzal Chloride	98-87-3	0.28		6.2	(1)
			Sum of Benzo(b) fluoranthene and Benzo(k) fluoranthene.	205-99-2 207-08-9	0.055		3.4	
			Phenanthrene	85-01-8	0.059		3.4	(1)
			Toluene	108-88-3	0.08		6.0	(1)
			Chromium (Total)	7440-47-32	0.32		NA	
			Nickel	7440-02-0	0.44		NA	
K016	NA		Hexachlorobenzene	118-74-1	0.055		28	(1)
			Hexachlorobutadiene	87-68-3	0.055		5.6	(1)
			Hexachlorocyclopentadiene	77-47-4	0.057		5.6	(1)
			Hexachloroethane	67-72-1	0.055		28	(1)
			Tetrachloroethene	127-18-4	0.056		6.0	(1)

TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters Concentration (mg/l)	Wastewaters Notes	Nonwastewaters Concentration (mg/kg)	Nonwastewaters Notes
K018	NA		Chloroethane	76-00-3	0.27		6.0	(1)
			Chloromethane	74-87-3	0.19		NA	
			1,1-Dichloroethane	75-34-3	0.059		6.0	(1)
			1,2-Dichloroethane	107-06-2	0.21		6.0	(1)
			Hexachlorobenzene	118-74-1	0.055		28	(1)
			Hexachlorobutadiene	87-68-3	0.055		5.6	(1)
			Pentachloroethane	76-01-7	NA		5.6	(1)
			1,1,1-Trichloroethane	71-55-6	0.054		6.0	(1)
			Hexachloroethane	67-72-1	0.055		28	(1)
K019	NA		Bis (2-chloroethyl) ether	111-44-4	0.033		5.6	(1)
			Chlorobenzene	108-90-7	0.057		6.0	(1)
			Chloroform	67-66-3	0.046		6.0	(1)
			p-Dichlorobenzene	106-46-7	0.09		NA	
			1,2-Dichloroethane	107-06-2	0.21		6.0	(1)
			Fluorene	86-73-7	0.059		NA	
			Hexachloroethane	67-72-1	0.055		28	(1)
			Naphthalene	91-20-3	0.059		5.6	(1)
			Phenanthrene	85-01-8	0.059		5.6	(1)
			1,2,4,5-Tetrachlorobenzene	95-94-3	0.055		NA	
			Tetrachloroethene	127-18-4	0.056		6.0	(1)
			1,2,4-Trichlorobenzene	120-82-1	0.055		19	(1)
			1,1,1-Trichloroethane	71-55-6	0.054		6.0	(1)
K020	NA		1,2-Dichloroethane	106-93-4	0.21		6.0	(1)
			1,1,2,2-Tetrachloroethane	79-34-5	0.057		5.6	(1)
			Tetrachloroethene	127-18-4	0.056		6.0	(1)
K023	NA		Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.069		28	(1)
K024	NA		Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.069		28	(1)
K026	NA	Table CCWE in 268.41.	1,1-Dichloroethane	75-34-3	0.059		6.0	(1)
			trans-1,2-Dichloroethane		0.054		6.0	(1)
			Hexachlorobutadiene	87-68-3	0.055		5.6	(1)
			Hexachloroethane	67-72-1	0.055		28	(1)
			Pentachloroethane	76-01-7	NA		5.6	(1)
			1,1,1,2-Tetrachloroethane	630-20-6	0.057		5.6	(1)
			1,1,2,2,-Tetrachloroethane	79-34-5	0.057		5.6	(1)
			1,1,1,-Trichloroethane	71-55-6	0.054		6.0	(1)
			1,1,2-Trichloroethane	79-00-5	0.054		6.0	(1)
			Tetrachloroethylene	127-18-4	0.056		6.0	(1)
			Cadmium	7440-43-9	6.4		NA	
			Chromium (Total)	7440-47-32	0.35		NA	
			Lead	7439-92-1	0.037		NA	
			Nickel	7440-02-0	0.47		NA	
K030	NA		o-Dichlorobenzene	95-50-1	0.088		NA	
			p-Dichlorobenzene	106-46-7	0.09		NA	
			Hexachlorobutadiene	87-68-3	0.055		5.6	(1)
			Hexachloroethane	67-72-1	0.055		28	(1)
			Hexachloropropene	1888-71-7	NA		19	(1)
			Pentachlorobenzene	608-93-5	NA		28	(1)
			Pentachloroethane	76-01-7	NA		5.6	(1)
			1,2,4,5-Tetrachlorobenzene	95-94-3	0.055		14	(1)
			Tetrachloroethene	127-18-4	0.056		6.0	(1)
			1,2,4,-Trichlorobenzene	120-82-1	0.055		19	(1)
K043	NA		2,4-Dichlorophenol	120-83-2	0.044		0.36	(1)
			2,6-Dichlorophenol	187-65-0	0.044		0.34	(1)
			2,4,5-Trichlorophenol	95-95-4	0.18		8.2	(1)
			2,4,6-Trichlorophenol	88-06-2	0.035		7.6	(1)
			Tetrachlorophenols (Total)		NA		0.66	(1)
			Pentachlorophenol	87-86-5	0.089		1.9	(1)
			Tetrachloroethene	79-01-6	0.056		1.7	(1)
			Hexachlorodibenzo-p-dioxins		0.000063		0.001	(1)
			Hexachlorodibenzofurans		0.000063		0.001	(1)
			Pentachlorodibenzo p-dioxins		0.000063		0.001	(1)
			Pentachlorodibenzo furans		0.000063		0.001	(1)
			Tetrachlorodibenzo-p-dioxins		0.000063		0.001	(1)
			Tetrachlorodibenzofurans		0.000063		0.001	(1)
K048	NA	Table CCWE, in 268.41.	Benzene	71-43-2	0.14		14	(1)
			Benzo(a)pyrene	50-32-8	0.061		12	(1)
			Bis (2-ernythexyl) phthalate	117-81-7	0.28		7.3	(1)
			Chrysene	218-01-9	0.059		15	(1)

TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
			Di-n-butyl phthalate	84-74-2	0.057		3.6	(1)
			Ethylbenzene	100-41-4	0.057		14	(1)
			Fluorene	86-73-7	0.059		NA	(1)
			Naphthalene	91-20-3	0.059		42	(1)
			Phenanthrene	85-01-8	0.059		34	(1)
			Phenol	108-95-2	0.039		3.6	(1)
			Pyrene	129-00-0	0.067		36	(1)
			Toluene	108-88-3	0.080		14	(1)
			Xylene(s)		0.32		22	(1)
			Cyanides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K049	NA	Table CCWE in 268.41.	Anthracene	120-12-7	0.059		28	(1)
			Benzene	71-43-2	0.14		14	(1)
			Benzo(a)pyrene	117-81-7	0.061		12	(1)
			Bis (2-ethylhexyl) phthalate	75-150-0	0.28		7.3	(1)
			Carbon disulfide	75-15-0	0.014		NA	
			Chrysene	2218-01-9	0.059		15	(1)
			2,4-Dimethyl phenol	105-67-9	0.036		NA	
			Ethylbenzene	100-41-4	0.057		14	(1)
			Naphthalene	91-20-3	0.059		42	(1)
			Phenanthrene	85-01-8	0.059		34	(1)
			Phenol	108-95-2	0.039		3.6	(1)
			Pyrene	129-00-0	0.067		36	(1)
			Toluene	108-88-3	0.08		14	(1)
			Xylene(s)		0.32		22	(1)
			Cyanides (Total)	56-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K050	NA	Table CCWE in 268.41.	Benzo (a) pyrene	50-32-8	0.061		12	(1)
			Phenol	108-95-2	0.039		3.6	(1)
			Cyanides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	02		NA	
			Lead	7439-92-1	0.037		NA	
K051	NA	Table CCWE in 268.41.	Acenaphthene	83-32-9	0.059		NA	
			Anthracene	120-12-7	0.059		28	(1)
			Benzene	71-43-2	0.14		14	(1)
			Benzo (a) anthracene	50-32-8	0.059		20	(1)
			Benzo (a) pyrene	117-81-7	0.061		12	(1)
			Bis (2-ethylhexyl) phthalate	75-15-0	0.28		7.3	(1)
			Chrysene	2218-01-9	0.059		15	(1)
			Di-n-butyl phthalate	105-67-9	0.057		3.6	(1)
			Ethylbenzene	100-41-4	0.057		14	(1)
			Fluorene	86-73-7	0.059		NA	
			Naphthalene	91-20-3	0.059		42	(1)
			Phenanthrene	85-01-8	0.059		34	(1)
			Phenol	108-95-2	0.039		3.6	(1)
			Pyrene	129-00-0	0.067		36	(1)
			Toluene	108-88-3	0.08		14	(1)
			Xylene(s)		0.32		22	(1)
			Cyanides Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K052	NA	Table CCWE in 268.41.	Benzene	71-43-2	0.14		14	(1)
			Benzo (a) pyrene	50-32-8	0.061		12	(1)
			o-Cresol	95-48-7	0.11		6.2	(1)
			p-Cresol	106-44-5	0.77		6.2	(1)
			2,4-Dimethylphenol	105-67-9	0.036		NA	
			Ethylbenzene	100-41-4	0.057		14	(1)
			Naphthalene	91-20-3	0.059		42	(1)
			Phenanthrene	85-01-8	0.059		34	(1)
			Phenol	108-95-2	0.039		3.6	(1)
			Toluene	108-88-3	0.08		14	(1)
			Xylenes		0.32		22	(1)
			Cyanides (Total)	56-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K087	NA	Table CCWE in 268.41.	Acenaphthalene	208-96-8	0.059		3.4	
			Benzene	71-43-2	0.14		0.071	(1)
			Chrysene	218-01-9	0.059		3.4	(1)
			Fluoranthene	206-44-0	0.068		3.4	(1)

TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
			Indeno (1,2,3-cd) pyrene	193-39-5	0.0055		3.4	[1]
			Naphthalene	91-20-3	0.059		3.4	[1]
			Phenanthrene	85-01-8	0.059		3.4	[1]
			Toluene	108-88-3	0.08		0.65	[1]
			Xylenes		0.32		0.07	[1]
			Lead	7439-92-1	0.037		NA	
K093	NA		Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.069		28	[1]
K094	NA		Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.069		28	[1]
K117	NA		Ethylene dibromide		0.028		15	
			Methyl bromide		0.11		15	
			Chloroform		0.046		5.6	
			1,1,2-Tribromoethane		0.63		15	
K118	NA		Ethylene dibromide		0.028		15	
			Methyl bromide		0.11		15	
			Chloroform		0.046		5.6	
			1,1,2-Tribromoethane		0.63		15	
K131	NA		Methyl bromide		0.11		15	
K132	NA		Methyl bromide		0.11		15	
K136	NA		Ethylene dibromide		0.028		15	
			Methyl bromide		0.11		15	
			Chloroform		0.046		5.6	
			1,1,2-Tribromoethane		0.63		15	
U028	Bis(2-ethylhexyl) phthalate.		Bis(2-ethylhexyl) phthalate	117-81-7	0.28		28	[1]
U069	Di-n-butyl phthalate.		Di-n-butyl phthalate	84-74-2	0.057		28	[1]
U088	Diethyl phthalate.		Diethyl phthalate	84-66-2	0.2		28	[1]
U102	Dimethyl phthalate.		Dimethyl phthalate	131-11-3	0.047		28	[1]
U107	Di-n-octyl phthalate.		Di-n-octyl phthalate	117-84-0	0.017		28	[1]
U190	Phthalate anhydride (measured as Phthalic acid).		Phthalate anhydride (measured as Phthalic acid).	85-44-9	0.069		28	[1]

[1] Treatment standards for this organic constituent were established based upon incineration in units operated in accordance with the technical requirements of 40 CFR 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may certify compliance with these treatment standards according to provisions in 40 CFR Section 268.7.

Note: NA means not applicable.

* * * * *

24. In subpart D § 268.45 with tables 1 and 2 is added to read as follows:

§ 268.45 Treatment standards for contaminated debris.

(a) Treatment standards. Contaminated debris must be treated prior to land disposal as follows unless EPA determines under § 261.3(e)(2) of this chapter that the debris is no longer contaminated with hazardous waste:

(1) General. Contaminated debris that is contaminated with a "contaminant subject to treatment" defined by paragraph (b) of this section must be treated using the technology or technologies identified in appendix IX to this part 268, as specified in table 1 of this section for each contaminant category represented by a "contaminant subject to treatment". Table 2 of this section assigns each potential contaminant to a contaminant category for determining the required treatment technology. The acceptable treatment technologies for each combination of debris category and contaminant category are identified by a "YES" in table 1.

(2) Characteristic debris. Contaminated debris that exhibits the characteristic of ignitability or reactivity identified under §§ 261.21 and 261.23 of this chapter, respectively, must be treated to deactivate the ignitability or reactivity characteristic.

(3) Mixtures of debris types. If a mixture of debris types is not separated according to the debris categories identified in table 1 of this section for subsequent treatment of each category, each debris type in the mixture must be treated by technologies identified with a YES in table 1 of this section. If table 1 does not allow use of the same treatment technology for all debris categories (and contaminant categories) in the mixture, a treatment train of sequential treatment technologies must be used. If an immobilization technology is used in a treatment train, it must be the last treatment technology in the train.

(4) Mixtures of Contaminant Types. Debris that is contaminated with contaminants subject to treatment identified under paragraph (b) of this section that are assigned to two or more contaminant categories provided in table 2 of this section must be treated

for each contaminant category by a technology identified with a YES in table 1 of this section. If table 1 does not allow use of the same treatment technology for all contaminant categories (and debris categories) in the debris, a treatment train of sequential treatment technologies must be used. If an immobilization technology is used in a treatment train, it must be the last treatment technology in the train.

(5) Waste PCBs. Contaminated debris that is also a waste PCB under 40 CFR part 761 is subject to the requirements of either 40 CFR part 761 or the requirements of this section, whichever are more stringent.

(b) Contaminants subject to treatment. Contaminated debris must be treated for each "contaminant subject to treatment." Except as provided by paragraph (b)(4) of this section, the contaminants subject to treatment must be determined as follows:

(1) Toxicity characteristic debris. The contaminants subject to treatment for debris that exhibits the Toxicity Characteristic (TC) by § 261.24 of this chapter, and also would exhibit the Extraction Procedure (EP) toxicity characteristic under old § 261.24 are those constituents for which the debris exhibits the TC and EP toxicity characteristic.

(2) Debris contaminated with listed waste. The contaminants subject to treatment for debris that is contaminated with a prohibited listed hazardous waste are those constituents for which BDAT standards are established for the waste under §§ 268.41 and 268.43, and all toxic constituents on appendix VIII, part 261 of this chapter, that the owner or operator could have reason to know may contaminate the debris at detectable levels using procedures prescribed by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW–846, incorporated by reference SW–846. When reasonably available, information from generators must be used to identify appendix VIII constitutents that may contaminate the debris at detectable levels; sampling and analysis is not required.

(3) Cyanide reactive debris. Contaminated debris that is reactive because of cyanide must be treated for cyanide.

(4) Generic treatment technologies. The owner or operator of a treatment facility need not make determinations regarding the presence of contaminants subject to treatment if the debris is treated with a generic treatment technology that will effectively treat all contaminants. Generic treatment technologies for particular debris categories are identified in appendix XI to this part 268.

(5) Inherently contaminated debris. (i) Debris that is fabricated from metals identified as D004–D011 and that exhibits as fabricated the toxicity characteristic under both the Toxicity Characteristic Leaching Procedure and the Extraction Procedure is considered to be inherently contaminated debris.

(ii) Inherently contaminated debris must be treated in compliance with paragraph (a)(1) of this section for other contaminants subject to treatment. Following such treatment, if the debris continues to exhibit the toxicity characteristic under both the Toxicity Characteristic Leaching Procedure and the Extraction Procedure due to its inherent content, it must be either immobilized prior to land disposal in a RCRA subtitle C facility or recycled as provided in § 261.6(a)(3)(iv) of this chapter. Inherently hazardous debris that is not contaminated with other contaminants subject to treatment may be recycled as provided in § 261.6(a)(3)(iv) of this chapter without treatment under paragraph (a)(1) of this section, or immobilized and disposed in a RCRA subtitle C facility.

(c) Requirements to ensure effective treatment. Owners and operators of contaminated debris treatment units must comply with the performance standards specified in appendix IX to this part 268, in order for the debris to be considered to meet the treatment standards of this section.

(d) Conditioned exclusion of treated debris. Contaminated debris that has been treated using one of the required extraction or destruction technologies in table 1 of this section and that does not exhibit a characteristic of hazardous waste identified under subpart C, part 261, of this chapter after treatment is not a hazardous waste. Contaminated debris contaminated with listed waste that is treated by an immobilization technology specified in table 1 is a hazardous waste and may be managed in a subtitle C facility only. Contaminated debris that exhibits a characteristic identified in 40 CFR part 261 subpart C that exhibits a characteristic after being treated by such immobilization technology is a hazardous waste and may be managed in a subtitle C facility only.

(e) Treatment residuals. (1) General requirements. Except as provided by paragraphs (e)(2) and (e)(4) of this section:

(i) Residue from the treatment of contaminated debris is subject to the F039 nonwastewater and wastewater treatment standards under § 268.43 for all contaminants subject to treatment defined by paragraph (b) of this section and for all constituents in appendix VIII, part 261 of this chapter, that are added to the debris or residue during treatment; and

(ii) Residue from the deactivation of contaminated debris that exhibits the ignitability or reactivity characteristic of §§ 261.21 or 261.23 of this chapter, respectively, must be deactivated prior to land disposal.

(2) Nontoxic debris. Residue from the deactivation of ignitable or reactive characteristic contaminated debris that is not contaminated with a contaminant subject to treatment defined by paragraph (b) of this section, must be deactivated prior to land disposal and is not subject to the F039 nonwastewater and wastewater treatment standards under § 268.43.

(3) Cyanide-reactive debris. Residue from the treatment of debris that is reactive because of cyanide must meet the F039 standards for D003 under § 268.43.

(4) Ignitable nonwastewater residue. Ignitable nonwastewater residue containing equal to or greater than 10% total organic carbon is subject to the technology-based standards for D001: "Ignitable Liquids based on 261.21(a)(1)" under § 268.42.

(5) Residue from spalling. Layers of debris removed by spalling are contaminated debris that remain subject to the treatment standards of this section.

(6) Residue from thermal destruction. Inert debris separated from the residue resulting from the thermal destruction of contaminated debris that is not contaminated with a metal contaminant subject to treatment identified by paragraph (b) of this section is excluded from regulation as hazardous waste under § 261.3(e)(1) of this chapter.

TABLE 1.—DEBRIS TREATMENT STANDARDS

Contaminant category and treatment technology [1]	Debris category					
	Metal objects	Brick, concrete, rock, pavement	Glass	Wood	Paper, cloth	Rubber, plastic
Halogenated Pesticides and Aromatics CCO1:						
Extraction (EXTRC) [2]						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	YES	YES	YES	YES	YES	YES
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	YES	YES	YES	YES	YES	YES
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	YES	YES	YES	YES	YES	YES
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	YES	YES	YES	NO	NO	YES
Photochemical treatment	YES	YES	YES	NO	NO	YES
Thermal destruction	YES	YES	YES	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Dioxins, Furans, and Their Precursors CCO2:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	YES	YES	YES	YES	YES	YES
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	YES	YES	YES	YES	YES	YES
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	NO	NO	NO	NO	NO	NO
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	YES	YES	YES	NO	NO	YES
Photochemical treatment	YES	YES	YES	NO	NO	YES
Thermal destruction	YES	YES	YES	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Halogenated Aliphatic Compounds CCO3:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	YES	YES	YES	YES	YES	YES
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	YES	YES	YES	YES	YES	YES
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	YES	YES	YES	YES	YES	YES
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	YES	YES	YES	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Nitrated Aromatic and Aliphatic Compounds CCO4:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	YES	YES	YES	YES	YES	YES

TABLE 1.—DEBRIS TREATMENT STANDARDS—Continued

Contaminant category and treatment technology [1]	Debris category					
	Metal objects	Brick, concrete, rock, pavement	Glass	Wood	Paper, cloth	Rubber, plastic
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	YES	YES	YES	YES	YES	YES
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
(Biodegradation	YES	YES	YES	YES	YES	YES
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	YES	YES	YES	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Non-Polar Aromatics, Heterocycles, and Other Organic Compounds CC05:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing [3]	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	YES	YES	YES	YES	YES	YES
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	YES	YES	YES	YES	YES	YES
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	YES	YES	YES	YES	YES	YES
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	YES	YES	YES	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Polynuclear Aromatics CC06:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	YES	YES	YES	YES	YES	YES
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	YES	YES	YES	YES	YES	YES
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	YES	YES	YES	YES	YES	YES
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	YES	YES	YES	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Other Non-Halogenated Polar Organic Compounds CC07:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	NO	NO	NO	NO	NO	NO
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	YES	YES	YES	YES	YES	YES
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	YES	YES	YES	YES	YES	YES
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	YES	YES	YES	YES	YES	YES
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	YES	YES	YES	YES	YES	YES

TABLE 1.—DEBRIS TREATMENT STANDARDS—Continued

Contaminant category and treatment technology [1]	Debris category					
	Metal objects	Brick, concrete, rock, pavement	Glass	Wood	Paper, cloth	Rubber, plastic
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Non-Volatile Metals CC08:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	NO	NO	NO	NO	NO	NO
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	NO	NO	NO	NO	NO	NO
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	NO	NO	NO	NO	NO	NO
Chemical oxidation	NO	NO	NO	NO	NO	NO
Chemical reduction [4]	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	NO	NO	NO	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	YES	YES	YES	NO	NO	NO
Microencapsulation	YES	YES	YES	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Volatile Metals CC09:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing [5]	YES	YES	YES	YES	YES	YES
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	NO	NO	NO	NO	NO	NO
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	NO	NO	NO	NO	NO	NO
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	NO	NO	NO	NO	NO	NO
Chemical oxidation	NO	NO	NO	NO	NO	NO
Chemical reduction	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	NO	NO	NO	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	YES	YES	YES	NO	NO	NO
Microencapsulation [6]	YES	YES	YES	NO	NO	NO
Sealing	YES	YES	YES	NO	NO	NO
Non-Metal Inorganics CC10:						
Extraction (EXTRC):						
Abrasive blasting	YES	YES	YES	YES	NO	NO
Acid washing	NO	NO	NO	NO	NO	NO
Electropolishing	YES	NO	NO	NO	NO	NO
Liquid phase solvent extraction	YES	YES	YES	YES	YES	YES
Scarification and grinding	NO	YES	NO	YES	NO	NO
Spalling	NO	YES	YES	NO	NO	NO
Thermal desorption	NO	NO	NO	NO	NO	NO
Vibratory finishing	YES	YES	YES	YES	NO	YES
Vapor phase solvent extraction	NO	NO	NO	NO	NO	NO
Water washing and spraying	YES	YES	YES	YES	YES	YES
Destruction (DSTRC):						
Biodegradation	NO	NO	NO	NO	NO	NO
Chemical oxidation	YES	YES	YES	NO	NO	YES
Chemical reduction	NO	NO	NO	NO	NO	NO
Photochemical treatment	NO	NO	NO	NO	NO	NO
Thermal destruction	YES	YES	YES	YES	YES	YES
Immobilization (IMMBL):						
Macroencapsulation	NO	NO	NO	NO	NO	NO
Microencapsulation	NO	NO	NO	NO	NO	NO
Sealing	NO	NO	NO	NO	NO	NO

Key: YES-Technology is BDAT for specific debris/contaminant combination table; NO-Technology is not BDAT for specific debris/contaminant combination.

[1] Treatment technologies are defined in Table 1 of 40 CFR 268.45. Non-wastewater, and wastewater residuals from treatment of debris are subject to numerical standards for F039.

[3] Contaminated surfaces layers that have been removed by spalling are contaminated debris and must be treated to meet the debris standard.

[5] Acid washing is BDAT for heterocycles but is not BDAT for simple, non-polar aromatics.

[a] Chemical reduction of hexavalent chromium contaminated debris is BDAT.
[b] Acid washing is not BDAT for arsenic contaminated debris.
[c] Macroencapsulation is not BDAT for arsenic and mercury contaminated debris.

TABLE 2.—SPECIFIC CONSTITUENTS FOR EACH CONTAMINANT CATEGORY

Contaminant category	Description of contaminant category	
	Constituent	CAS No.
Halogenated Pesticides and Aromatics, CC01:		
Halogenated Non-Polar Aromatic Compounds:		
	Chlorinated benzenes, N.O.S.[a]	—
	Chlorobenzene	108-90-7
	Chlorobenzilate	510-15-6
	beta-Chloronaphthalene	91-58-7
	o-Dichlorobenzene	95-50-1
	m-Dichlorobenzene	541-73-1
	p-Dichlorobenzene	106-46-7
	Dichlorobenzene, N.O.S.[a]	25321-22-6
	Dichlorophenylarsine	696-28-6
	Hexachlorobenzene	118-74-1
	Hexachlorophene	70-30-4
	Chlorinated napthalene, N.O.S.[a]	—
	Pentachlorobenzene	608-93-5
	1,2,4,5-Tetrachlorobenzene	95-94-3
	1,2,4-Trichlorobenzene	120-82-1
	Benzal chloride	98-87-3
	p,p'-DDD	72-54-8
	p,p'-DDE	72-55-9
	p,p'-DDT	50-29-3
	Hexachlorocyclopentadiene	77-47-4
	1-(o-Chlorophenyl)thiourea	5344-82-1
	Benzotrichloride	98-07-7
	Benzyl chloride	100-44-7
	Heptachlor	76-44-8
Halogenated Phenols, Cresols, and Other Polar Aromatics:		
	Chlorinated phenol, N.O.S.[a]	—
	p-Chloroaniline	106-47-8
	o-Chlorophenol	95-57-8
	3,3'-Dichlorobenzidine	91-94-1
	2,4-Dichlorophenol	120-83-2
	2,6-Dichlorophenol	87-65-0
	4,4'-Methylenebis(2-chloroaniline)	101-14-4
	Pentachlorophenol	87-86-5
	2,3,4,6-Tetrachlorophenol	58-90-2
	2,4,5-Trichlorophenol	95-95-4
	2,4,6-Trichlorophenol	88-06-2
	p-Chloro-m-cresol	59-50-7
	Methoxychlor	72-43-5
	4-Bromophenyl phenyl ether	101-55-3
	Pentachloronitrobenzene	82-68-8
	3-Chloropropionitrile	542-76-7
	Acetyl chloride	75-36-5
	Allyl chloride	107-05-1
	Bromoacetone	598-31-2
	Chloral	75-87-6
	Chlorambucil	305-03-3
	Chloroacetaldehyde	107-20-0
	Chloromethyl methyl ether	107-30-2
	Chloroprene	126-99-8
	Diallate	2303-16-4
	Endosulfan	115-29-7
	Epichlorohydrin	106-89-8
	Fluoroacetamide	640-19-7
	Fluoroacetic acid, sodium salt	62-74-8
	Melphalan	148-82-3
	Methyl chlorocarbonate	79-22-1
	Methyl iodide	74-88-4
	Mustard gas	505-60-2
	Nitrogen mustard	51-75-2
	Nitrogen mustard N-oxide	126-85-2
	Nitrogen mustard, hydrochloride salt	—
	Nitrogen mustard, N-Oxide, hydro-chloride salt	—
	Propylene dichloride	78-87-5
	Uracil mustard	66-75-1
Halogenated Cyclic Aliphatics, Ethers, Esters, and Ketones:		
	Aramite	140-57-8
	Aldrin	309-00-2
	Lindane	58-89-9
	Chlordane	57-74-9
	Chloroalkyl ethers, N.O.S.[a]	—
	Dieldrin	60-57-1
	Endrin	72-20-8

TABLE 2.—SPECIFIC CONSTITUENTS FOR EACH CONTAMINANT CATEGORY—Continued

Contaminant category	Description of contaminant category	
	Constituent	CAS No.
	Endrin metabolites	—
	Hexachlor epoxide	1024-57-3
	Isodrin	465-73-6
	Kepone	143-50-0
	Toxaphene	8001-35-2
	2-Chloroethyl vinyl ether	110-75-8
	Bis(2-chloroethoxy)methane	111-91-1
	Bis2-chloroethyl)ether	111-44-4
	Bis2-Chloroisopropyl)ether	108-60-1
	Dichloromethyl ether	542-88-1
	2-Picoline	109-06-8
	4-Aminopyridine	504-24-5
	Allatoxins	1402-68-2
	Amitrole	61-82-5
	Benzidine	92-87-5
	Brucine	357-57-3
	Cyclophosphamide	50-18-0
	Dihydrosafrole	94-58-6
	Mitomycin C	50-07-7
	N-Nitrosonornicotine	16543-55-8
	N-Nitrosopyrrolidine	930-55-2
	N-Nitrososarcosine	13256-22-9
	Nicotine	54-11-5
	Nicotine salts	—
	O,O-Diethyl O-pyrazinyl phosphorothioate	297-97-2
	o-Toluidine	95-53-4
	o-Toluidine hydrochloride	636-21-5
	p-Toluidine	106-49-0
	Phenylthiourea	103-85-5
	Saccharin	81-07-2
	Saccharin salts	—
	Strychnine	57-24-9
	Strychnine salts	—
	Trypan blue	72-57-1
	Warfarin (<0.3%)	81-81-2
	Warfarin (>0.3%)	81-81-2
	Warfarin salts (<0.3%)	—
	Warfarin salts (>0.3%)	—
Dioxins, Furans, and Their Precursors, CC02: Dioxins/Furans, and Their Precursors:		
	Hexachlorodibenzo-p-dioxins	—
	Hexachlorodibenzofurans	—
	Pentachlorodibenzo-p-dioxins	—
	Pentachlorodibenzofurans	—
	Tetrachlorodibenzo-p-dioxins	—
	Tetrachlorodibenzofurans	—
	2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6
	2,4-Dichlorophenoxyacetic acid	94-75-7
	2,4, D salts and esters	—
	Silvex (2,4,5-TP)	93-72-1
	2,4,5-Trichlorophenoxyacetic acid	93-76-5
	Trichloromethanethiol	75-70-7
Halogenated Aliphatic Compounds, CC03: Halogenated Aliphatic Compounds:		
	Halomethanes, N.O.S.*	—
	Methyl bromide	74-83-9
	Carbon tetrachloride	56-23-5
	Chlorinated ethane, N.O.S.*	—
	Chlorinated fluorocarbons, N.O.S.*	—
	Chloroform	67-66-3
	Methyl chloride	74-87-3
	1,2-Dibromo-3-chloropropane	96-12-8
	Ethylene dibromide	106-93-4
	Methylene bromide	74-95-3
	Dichlorodifluoromethane	75-71-8
	1,1-Dichloroethane	75-34-3
	Ethylene dichloride	107-06-2
	1,1-Dichloroethylene	75-35-4
	1,2-Dichloroethylene	156-60-5
	1,3-Dichloropropene	542-75-6
	1,4-Dichloro-2-butene	764-41-0
	Dichloroethylene, N.O.S.*	—
	Dichloropropane, N.O.S.*	26638-19-7
	Dichloropropanol, N.O.S.*	26545-73-3
	Dichloropropene, N.O.S.*	26952-23-8
	Methylene chloride	75-09-2
	Tetrachloroethane, N.O.S.*	—
	1,1,1,2-Tetrachloroethane	630-20-6

TABLE 2.—SPECIFIC CONSTITUENTS FOR EACH CONTAMINANT CATEGORY—Continued

Contaminant category	Description of contaminant category	
	Constituent	CAS No.
	1,1,2,2-Tetrachloroethane	79-34-5
	Tetrachloroethene	127-18-4
	Bromoform	75-25-2
	Methyl chloroform	71-55-6
	1,1,2-Trichloroethane	79-00-5
	Trichloroethylene	79-01-6
	Trichloromonofluoromethane	75-69-4
	Trichloropropane, N.O.S.*	—
	1,2,3-Trichloropropane	96-18-4
	Vinyl chloride	75-01-4
	Hexachlorobutadiene	87-68-3
	Hexachloroethane	67-72-1
	Hexachloropropene	1888-71-7
	Pentachloroethane	76-01-7
	Tris(2,3-dibromopropyl)phosphate	126-72-7
	1,3,5-Trinitrobenzene	99-35-4
	2-Cyclohexyl-4,6-dinitrophenol	131-89-5
	2-Nitropropane	79-46-9
	Diethyl-p-nitrophenyl phosphate	311-45-5
	Dimethylcarbamoyl chloride	79-44-7
	MNNG	70-25-7
	Nitroglycerin	55-63-0
	Tetranitromethane	509-14-8
Nitrated Aromatic and Aliphatic Compounds, CC04: Nitrated Aromatic and Aliphatic Compounds:		
	Cyanogen	460-19-5
	Cyanogen bromide	506-68-3
	Cyanogen chloride	506-77-4
	Dinoseb	88-85-7
	4,6-Dinitro-o-cresol	534-52-1
	2,4-Dinitrophenol	51-28-5
	2,4-Dinitrotoluene	121-14-2
	2,6-Dinitrotoluene	606-20-2
	5-Nitro-o-toluidine	99-55-8
	Methyl parathion	298-00-0
	Parathion	56-38-2
	Dinitrobenzene, N.O.S.*	25154-54-5
	p-Nitroaniline	100-01-6
	Nitrobenzene	98-95-3
	p-Nitrophenol	100-02-7
	[Deleted: 2-Nitropropane]	79-46-9
	7,12-Dimethylbenz(a)anthracene	57-97-6
	Benzo[j]fluoranthene	205-82-3
	Citrus red No. 2	6358-53-8
	Dibenzo(a,h)pyrene	189-64-0
	Dibenzo(a,i)pyrene	189-55-9
	Chloramphazin	494-03-01
	7H-Dibenzo(c,g)carbazole	194-59-2
	Benz[c]acridine	225-51-4
	Dibenz(a,h)acridine	226-36-8
	Dibenz(a,j)acridine	224-42-0
	Nitrosamines, N.O.S.*	35576-91-10
Non-Polar Aromatics, Heterocycles, and Other Organic Compounds, CC05: Non-Polar Aromatics, Heterocycles, and Other Organic Compounds:		
	Coal tar creosote	8007-42-2
	Toluene	108-88-3
	Isosafrole	120-58-1
	Safrole	94-59-7
	Pyridine	110-86-1
	Benzene	71-43-2
	1,1-Dimethylhydrazine	57-14-7
	1,2:3,4-Diepoxybutane	1464-53-5
	1,2-Dimethylhydrazine	540-73-8
	1,2-Propylenimine	75-55-8
	1-Acetyl-2-thiourea	591-08-2
	2-Methyllactonitrile	75-86-5
	Aldicarb	116-06-3
	alpha,alpha-Dimethylphenethylamine	122-09-8
	alpha-Naphthylthiourea	86-88-4
	4,6-Dinitro-o-cresol salts	—
	Azaserine	115-02-6
	Creosote	—
	Cresols (Cresylic acid)	1319-77-3
	Crotonaldehyde	4170-30-3
	Cycasin	14901-08-7
	Diethylstilbesterol	56-53-1

TABLE 2.—SPECIFIC CONSTITUENTS FOR EACH CONTAMINANT CATEGORY—Continued

Contaminant category	Description of contaminant category	
	Constituent	CAS No.
	Diisopropylfluorophosphate (DFP)	55-91-4
	Dimethoate	60-51-5
	Dimethyl sulfate	77-78-1
	Dithiobiuret	541-53-7
	Endothal	145-73-3
	Epinephrine	51-43-4
	Ethyl carbamate (urethane)	51-79-6
	Ethyl methanesulfonate	62-50-0
	Ethylene glycol monoethyl ether	110-80-5
	Ethylenebisdithiocarbamic acid	111-54-6
	Ethylenebisdithiocarbamic acid, salts and esters	—
	Ethylenimine	151-56-4
	Ethylenethiourea	96-45-7
	Formaldehyde	50-00-0
	Formic acid	64-18-6
	Glycidylaldehyde	765-34-4
	Hexaethyl tetraphosphate	757-58-4
	Maleic anhydride	108-31-6
	Maleic hydrazide	123-33-1
	Malononitrile	109-77-3
	Methomyl	16752-77-5
	Methyl ethyl ketone peroxide	1338-23-4
	Methyl hydrazine	60-34-4
	Methyl isocyanate	624-83-9
	Methylthiouracil	56-04-2
	N,N'-Diethylhydrazine	1615-80-1
	N-Nitroso-N-ethylurea	759-73-9
	N-Nitroso-N-methylurea	684-93-5
	N-Nitroso-N-methylurethane	615-53-2
	N-Nitrosodiethanolamine	1116-54-7
	N-Nitrosomethylvinylamine	4549-40-0
	n-Propylamine	107-10-8
	O,O,O-Triethyl phosphorothioate	126-68-1
	O,O-Diethyl S-methyldithiophosphate	3288-58-2
	Octamethylpyrophosphoramide	152-16-9
	Paraldehyde	123-63-7
	Phenylenediamine	25265-76-3
	Propargyl alcohol	107-19-7
	Propylthiouracil	51-52-5
	Reserpine	50-55-5
	Streptozotocin	18883-66-4
	Tetraethyl pyrophosphate	107-49-3
	Tetraethyldithiopyrophosphate	3689-24-5
	Thioacetamide	62-55-5
	Thiomethanol	74-93-1
	Thiosemicarbazide	79-19-6
	Thiourea	62-56-6
	Thiram	137-26-8
	Toluene diisocyanate	26471-62-5
	2,4-Toluenediamine	95-80-7
	2,6-Toluenediamine	823-40-5
	3,4-Toluenediamine	496-72-0
	Toluenediamine	25376-45-8
	Tris(1-aziridinyl)phosphine sulfide	52-24-4
	1,3-Propane sultone	1120-71-4
	5-(Aminomethyl)-3-isoxazolol	2763-96-4
	Auramine	492-80-8
	Daunomycin	20830-81-3
	Lasiocarpine	303-34-1
	Phosgene	75-44-5
	Selenourea	630-10-4
	Thiofanox	39196-18-4
Polynuclear Aromatics, CC06: Polynuclear Aromatics:		
	Benz(a)anthracene	56-55-3
	Benzo(b)fluoranthene	205-99-2
	Benzo(a)pyrene	50-32-8
	Chrysene	218-01-9
	Dibenz(a,h)anthracene	53-70-3
	Dibenzo(a,e)pyrene	192-65-4
	Fluoranthene	206-44-0
	Indeno(1,2,3-cd)pyrene	193-39-5
	Methapyrilene	91-80-5
	3-Methylcholanthrene	56-49-5
	Naphthalene	91-20-3
	Dichlorophenylarsine	696-28-6
	Aluminum phosphide	20859-73-8
	Ammonium vanadate	7803-55-6

TABLE 2.—SPECIFIC CONSTITUENTS FOR EACH CONTAMINANT CATEGORY—Continued

Contaminant category	Description of contaminant category	
	Constituent	CAS No.
	Benzenearsonic acid	98-05-5
	Cacodylic acid	75-60-5
	Diethylarsine	692-42-2
	Osmium tetroxide	20816-12-0
	Tetraethyl lead	78-00-2
Other Nonhalogenated Polar Organic Compounds, CC07: Other Nonhalogenated Polar Organic Compounds:		
	2-Acetylaminofluorene	53-96-3
	Acrylamide	79-06-1
	4-Aminobiphenyl	92-67-1
	Allyl alcohol	107-18-6
	Aniline	62-53-3
	3,3'-Dimethoxybenzidine	119-90-4
	p-Dimethylaminoazobenzene	60-11-7
	3,3'-Dimethylbenzidine	119-93-7
	Di-n-propylnitrosamine	621-64-7
	Diphenylamine	122-39-4
	1,2-Diphenylhydrazine	122-66-7
	alpha-Naphthylamine	134-32-7
	beta-Naphthylamine	91-59-8
	N-Nitrosodi-n-butylamine	924-16-3
	N-Nitrosodiethylamine	55-18-5
	*N-Nitrosodimethylamine	62-75-9
	N-Nitrosomethylethylamine	10595-95-6
	N-Nitrosomorpholine	59-89-2
	N-Nitrosopiperidine	100-75-4
	Phenacetin	62-44-2
	2,4-Dimethylphenol	105-67-9
	Phenol	108-95-2
	Resorcinol	108-46-3
	Acrolein	107-02-8
	Carbon disulfide	75-15-0
	Ethyl methacrylate	97-63-2
	Isobutyl alcohol	78-83-1
	Ethylene oxide	75-21-8
	Thiophenol	108-98-5
	Methyl ethyl ketone	78-93-3
	Methyl methacrylate	80-62-6
	Methyl methanesulfonate	66-27-3
	Acetophenone	98-86-2
	p-Benzoquinone	106-51-4
	Bis(2-ethylhexyl)phthalate	117-81-7
	Butylbenzyl phthalate	85-68-7
	Phthalic acid esters, N.O.S.*	—
	Diethyl phthalate	84-66-2
	Dimethyl phthalate	131-11-3
	Di-n-butyl phthalate	84-74-2
	Di-n-octyl phthalate	117-84-0
	1,4-Naphthoquinone	130-15-4
	Acetonitrile	75-05-8
	Acrylonitrile	107-13-1
	Ethyl cyanide	107-12-0
	Methacrylonitrile	126-98-7
	Disulfoton	298-04-4
	Famphur	52-85-7
	Phorate	298-02-2
	Phthalic anhydride	85-44-9
	1,4-Diethyleneoxide	123-91-1
	Pronamide	23950-58-5
	Phenylmercury acetate	62-38-4
Non-Volatile Metals, CC08: Non-Volatile Metals:		
	Barium	7440-39-3
	Barium compounds, N.O.S.*	—
	Barium cyanide	542-62-1
	Beryllium	7440-41-7
	Beryllium compounds, N.O.S.*	—
	Calcium chromate	—
	Chromium compounds, N.O.S.*	—
	Chromium (total)	7440-47-3
	Cobalt	7440-48-4
	Copper	7440-50-8
	Copper cyanide	544-92-3
	Manganese	7439-96-5
	Nickel	7440-02-0
	Nickel compounds, N.O.S.*	—
	Silver	7440-22-4
	Silver compounds, N.O.S.*	—

TABLE 2.—SPECIFIC CONSTITUENTS FOR EACH CONTAMINANT CATEGORY—Continued

Contaminant category	Description of contaminant category	
	Constituent	CAS No.
	Carbon oxyfluoride	353-50-4
	Vanadium	7440-6-2
	Nickel carbonyl	13463-39-3
	Nickel cyanide	557-19-7
	Silver cyanide	506-64-9
	Vanadium pentoxide	1314-62-1
Volatile Metals, CC09:		
Volatile Metals:		
	Antimony	7440-36-0
	Antimony compounds, N.O.S.*	—
	Arsenic	7440-38-2
	Arsenic compounds, N.O.S.*	—
	Arsenic acid	7778-39-4
	Arsenic pentoxide	1303-28-2
	Arsenic trioxide	1327-53-3
	Bismuth	7440-69-9
	Cadmium	7440-43-9
	Cadmium compounds, N.O.S.*	—
	Lead	7439-92-1
	Lead compounds, N.O.S.*	——
	Lead acetate	301-04-2
	Lead phosphate	7446-27-7
	Lead subacetate	1335-32-6
	Mercury	7439-97-6
	Mercury compounds, N.O.S.*	—
	Mercury fulminate	628-86-4
	Selenium	7778-49-2
	Selenium compounds, N.O.S.*	—
	Selenium sulfide	7488-56-4
	Selenium dioxide	7783-00-8
	Thallium	7440-28-0
	Thallium oxide	1314-32-5
	Thallium acetate	563-68-8
	Thallium carbonate	6533-73-9
	Thallium chloride	7791-12-0
	Thallium nitrate	10102-45-1
	Thallium selenite	12039-5-0
	Thallium sulfate	7446-18-6
	Thallium compounds, N.O.S.*	—
	Zinc	7440-66-6
	Zinc cyanide	557-21-1
	Zinc phosphide	1314-84-7
Non-Metal Inorganics, CC10:		
Non-Metal Inorganics:		
	Cyanides, N.O.S.*	—
	Hydrazine	57-12-5
	Nitric Oxide	302-01-2
	Nitrogen Dioxide	10102-43-9
	Phosphine	10102-44-0
	Radionuclides	7803-51-2
	Strontium sulfide	1314-96-1
	Sodium cyanide	143-33-9
	Calcium cyanide	592-01-8
	Hydrogen cyanide	74-90-8
	Fluorine	7782-41-4
	Hydrogen fluoride	7664-39-3
	Hydrogen sulfide	7783-06-4
	Potassium cyanide	151-50-8
	Potassium silver cyanide	506-61-6

*The abbreviation N.O.S. (not otherwise specified) signifies those members of a general class not specifically listed by name in this table.

25. In subpart D, § 268.46 is added to read as follows:

§ 268.46 Alternative treatment standards based on HTMR.

(a) Table 1 identifies alternative treatment standards for F006 and K062 nonwastewaters.

TABLE 1.—ALTERNATIVE TREATMENT STANDARDS

Waste code	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Non-wastewater concentration (mg/l) TCLP
F006; See Also Table CCWE in 268.41 and Table CCW in 268.43	Antimony	7440-36-0	2.1
	Arsenic	7440-38-2	0.055
	Barium	7440-39-3	7.6
	Beryllium	7440-41-7	0.014
	Cadmium	7440-43-9	0.19
	Chromium (Total)	7440-47-32	0.33
	Cyanide (Total) (mg/kg)	57-12-5	1.8
	Lead	7439-92-1	0.37
	Mercury	7439-97-6	0.009
	Nickel	7440-02-0	5.0
	Selenium	7782-49-2	0.16
	Silver	7440-22-4	0.30
	Thallium		0.078
	Vanadium	7440-62-2	0.23
	Zinc	7440-66-6	5.3
K062; See Also Table CCWE in 268.41 and Table CCW in 268.43	Antimony	7440-36-0	2.1
	Arsenic	7440-38-2	0.055
	Barium	7440-39-3	7.6
	Beryllium	7440-41-7	0.014
	Cadmium	7440-43-9	0.19
	Chromium (Total)	7440-47-32	0.33
	Lead	7439-92-1	0.37
	Mercury	7439-97-6	0.009
	Nickel	7440-02-0	5.0
	Selenium	7782-49-2	0.16
	Silver	7440-22-4	0.30
	Thallium		0.078
	Vanadium	7440-62-2	0.23
	Zinc	7440-66-6	5.3

26. In § 268.50 paragraphs (a)(1) and (a)(2) introductory text are revised to read as follows:

§ 268.50 Prohibitions on storage of restricted wastes.

(a) * * *

(1) A generator stores such wastes in tanks, containers, containment buildings or subpart X storage units on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in § 262.34 and parts 264 and 265 of this chapter.

(2) An owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, containment buildings, or subpart X storage units solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:

* * * * * *

27. In part 268, appendices IX and X are added to read as follows:

Appendix IX Requirements for Effective Treatment

ABRASIVE BLASTING

Removal of contaminated debris surface layers using water and/or air pressure to propel a solid media (e.g., steel shot, aluminum oxide grit, plastic beads).

Debris type	Performance standard
Metal objects	White metal finish, all paint, surface coatings, rust, visible cracks and crevices, scale, corrosion, and visible staining removed
Glass	All paint, surface coatings, scale, visible cracks and crevices and visible staining removed
Brick, concrete, rock, pavement, wood.	>0.6 centimeter surface layer removed, and all paint, surface coatings, scale, and visible staining removed

Non-Applicable Debris or Application Restriction

Objects with small or narrow surfaces.

Special Safety Precautions

Abrasive blasting frequently causes heat and sparks at the debris surface. This may cause flammable debris or contaminants to ignite and explosive contaminants to explode. Use of nonsparking abrasive or water propelled abrasive may reduce the probability that ignitable and explosive debris and contaminants will ignite or explode during abrasive blasting.

ACID WASHING

Surface treatment of contaminated debris using solutions of low pH, including (1) hydrochloric; (2) sulfuric; (3) nitric; (4) hydrofluoric; (5) chromic; (6) fluoboric; (7) phosphoric; and/or (8) other acids of equivalent efficiency applied to debris surfaces using a spray or bath with sufficient residence time and agitation such that surface contaminants and contaminated surface layers are removed.

Debris type	Performance standard
Metal objects	White metal finish, all paint, surface coatings, rust, scale, corrosion, visible cracks and crevices, and visible staining removed
Glass	All paint, surface coatings, scale, and visible staining removed
Brick, concrete, rock, pavement, wood washing quality.	Remove all paint, coatings, scale, visible staining, and visible cracks and crevices
Paper, cloth, rubber, plastic, washing quality.	Remove all visible staining

Non-Applicable Debris or Application Restrictions

Objects with small or narrow surface.[a]

Special Safety Precautions

Acids may react with some debris and contaminants to form hazardous compounds. For example, acid washing of cyanide contaminated debris could result in the formation of hydrogen cyanide (HCN).

Some acids may also react violently with some debris and contaminants, depending on the concentration of the acid and the type of debris and contaminants. Debris treaters should refer to the safety precautions specified in Material Safety Data Sheets for various acids to avoid incompatible debris/contaminant combinations. For example, concentrated sulfuric acid may react violently with certain organic compounds, such as acrylonitrile.

ELECTROPOLISHING

Surface treatment of electrically conductive debris by passing electricity of sufficient current density through an electrolytic solution in which the debris has been submerged, with sufficient residence time, temperature, and agitation such that surface contaminants and contaminated surface layers are removed.

Debris type	Performance standard
Metal objects.....	White metal finish, all paint, coatings, rust, scale, corrosion, visible staining, and visible cracks and crevices removed

Non-Applicable Debris or Application Restriction

Metal objects that do not conduct electricity.

Special Safety Precautions

Some electrolytes employed for electropolishing may react with debris or contaminants to form toxic or hazardous compounds. For example, acidic electrolytes may react with cyanide to form toxic hydrogen cyanide (HCN) gas. Also, some electrolytes may react violently with some debris and contaminant types, depending on the electrolyte concentration and the type of debris and contaminants.

LIQUID PHASE SOLVENT EXTRACTION

Removal of hazardous contaminants from debris surfaces and surface pores by applying an organic liquid or organic liquid solution which causes the hazardous components to enter the liquid phase and be flushed away from the debris along with the organic liquid or organic liquid solution using appropriate agitation, temperature, and residence time.

[a] Applicable to Acid Spray techniques.

Debris type	Performance standard
All debris types.....	Treatment must be performed in accordance with the design and operating parameters below
Design and Operating Parameters	
Contaminant solubility in solvent.	Double to at least 5% by weight
Enclosure type.....	Fully enclosed solvent bath or fully enclosed solvent application room
Enclosure pressure...	Negative
Solvent contact.....	All debris surfaces during entire treatment time
Solvent contact with debris surface.	> 15 minutes
Solvent extraction quality.	Removal of all paint, coatings, and visible staining

Non-Applicable Debris or Application Restriction

Solvent selection should be based on a case-by-case determination of the permeability of the debris and the nature of the contaminant.

Special Safety Precautions

Some solvents may react violently with debris or contaminants, or they may react to form toxic or corrosive compounds. For example, acidic solvents, such as acetic acid solutions, may react with cyanides to form hydrogen cyanide (HCN) gas.

SCARIFICATION AND GRINDING

Process utilizing striking piston heads or rotating grinding wheels such that contaminated surface layers are removed and dust and airborne contaminant emissions are contained in an enclosure or captured by application of a vacuum at the point of scarification or grinding.

Debris type	Performance requirement
Brick, concrete, rock, pavement, wood.	>0.6 centimeter surface layer removed, and all paint, surface coatings, scale, visible cracks and crevices, and visible staining removed.

Non-Applicable debris or Application Restriction

Objects with small or narrow surfaces.

Special Safety Precautions

Scarification and grinding may cause heat and sparks at the debris surface, which may cause ignitable or explosive debris or contaminants to ignite or explode. Equipment that employs a water spray at the point of scarification or grinding, or wetting of the debris surface prior to treatment, may reduce the probability that ignitable or explosive debris or contaminants will ignite or explode.

SPALLING

Drilling holes at appropriate locations and depth in the debris surface and applying a tool which exerts a force on the sides of those holes such that contaminated debris surface layers are removed from the debris. The surface layer that is removed is still considered to be contaminated debris and is subject to further treatment to meet the debris standard.

Debris type	Performance standard
Brick, concrete, rock, pavement, glass.	>0.6 centimeter surface layer removed, and all paint, surface coatings, scale, visible staining and visible cracks and crevices removed

Non-Applicable Debris or Application Restrictions

Objects with small or narrow surfaces.

Special Safety Considerations

Spalling may cause heat and sparks at the debris surface, which may cause ignitable or explosive debris and contaminants to ignite or explode. Wetting the debris surface prior to treatment may reduce the probability that heat and sparks will be produced by drilling and spalling.

THERMAL DESORPTION

Heating in an enclosed chamber under either oxidizing or non-oxidizing atmospheres at sufficient operating temperature and residence time such that hazardous organic compounds are vaporized and removed from the heating chamber in a gaseous exhaust stream.

Debris type	Performance standard
All debris types.....	Treatment must be performed in accordance with the design and operating parameters specified below
Design and operating parameters	
Heating chamber type.	Fully enclosed
Heating chamber residence time.	≥ 00 minutes
Debris feed particle size.	< 10 cm [a]
Debris temperature at heating chamber exit.	≥ 200°C

[a] Applicable only to thermal desorption of debris other than metal or glass.

Non-Applicable Debris or Application Restrictions

None.

Special Safety Precautions

Thermal desorption debris treatment requires that debris be heated, which may cause ignitable or explosive debris or contaminants to ignite or explode. Maintaining an inert, non-oxidizing atmosphere (e.g., nitrogen) in the heating chamber may reduce the probability that ignitable or explosive debris or contaminants will ignite or explode.

VIBRATORY FINISHING

Process utilizing scrubbing media, flushing fluid, oscillating energy, and residence time such that surface contaminants and contaminated surface layers are removed from debris.

Debris type	Performance standard
Metal objects	White metal finish, all paint, surface coatings, rust, scale, corrosion, visible cracks and crevices, and visible staining removed
Brick, concrete, rock, pavement, wood, rubber, plastic.	All paint, surface coatings, scale, visible cracks and crevices, and visible staining removed
Glass	All paint, surface coatings, scale, visible cracks and crevices, and visible staining removed

Non-Applicable Debris Type or Application Restriction

None.

Special Safety Considerations

Some flushing compounds may react violently with debris or contaminants, or they may react to form toxic or corrosive compounds. For example, acidic solvents, such as acetic or hydrochloric acid, may reach with cyanides to form hydrogen cyanide (HCN).

VAPOR PHASE SOLVENT EXTRACTION

Application to debris of an organic vapor which causes hazardous components to enter the vapor phase using sufficient agitation, residence time, and temperature such that hazardous contaminants are removed from debris surfaces and surface pores and are flushed away with the organic vapor.

Debris type	Performance standard
All debris types	Treatment must be performed in accordance with the design and operating parameters specified below
Design and operating parameters	
Solvent	Vapor phase
Contaminant solubility in solvent.	Soluble to at least 5% by weight
Treatment enclosure.	Fully enclosed
Solvent treatment system pressure.	Negative
Solvent temperature.	≥ Solvent boiling point at system pressure
Debris surface exposure to solvent.	All debris surfaces ≥ 60 minutes
Solvent extraction quality.	Removal of all paint, coatings, and visible staining

Non-Applicable Debris or Application Restriction

Solvent selection should be based on a case-by-case determination of the permeability of the debris and the nature of the contaminant.

Special Safety Considerations

Some solvents may react violently with debris or contaminants, or they may react to form toxic or corrosive compounds. For example, acidic solvents, may react with cyanides to form toxic hydrogen cyanide (HCN) gas.

WATER WASHING AND SPRAYING

Application of water or steam sprays or water baths of sufficient temperature, pressure, residence time, agitation, surfactants, and detergents to remove hazardous constituents from debris surfaces or to remove contaminated debris surface layers.

Water Baths

Debris type	Performance standard
All debris types	Treatment must be performed in accordance with the design and operating parameters below
Design and operating parameters	
Contaminant solubility.	Soluble to at least 5% by weight in water solution
Treatment quality	All visible staining removed

Non-Applicable Debris or Application Restrictions

None.

Special Safety Requirements

None.

High Pressure Steam Sprays

Debris type	Performance standard
All debris types	Treatment must be performed in accordance with the design and operating parameters below
Design and operating parameters	
Pump power	≥0.75 kilowatts
Boiler power	≥5 kilowatts
Pump flow rate	≥7 kilograms per hour
Treatment enclosure.	Fully enclosed chamber or vacuum nozzle
Treatment enclosure pressure.	Negative
Steam spray pressure.	≥275 kilopascals
Temperature	≥100°C
Spray pattern width.	<25 cm
Treatment rate	<140 square meters per hour per nozzle
Treatment quality	All visible staining removed

Non-Applicable Debris or Application Restrictions

Objects with small or narrow surfaces.

Special Safety Requirements

None.

High Pressure Water Sprays

Debris type	Performance standard
All debris types.	Treatment must be performed in accordance with the design and operating parameters below
Design and operating parameters	
Pump power	≥0.75 kilowatts
Pump flow rate.	≥7.5 liters per minute
Treatment enclosure.	Fully enclosed or vacuum nozzle
Treatment enclosure pressure.	Negative
Water spray pressure.	≥700 kilopascals
Spray pattern width.	<25 cm
Treatment rate.	<140 square meters per hour per nozzle
Treatment quality.	All visible staining removed

Non-Applicable Debris or Application Restrictions

Objects with small or narrow surfaces.

Special Safety Requirements

None.

BIODEGRADATION

Biodegradation of organics or non-metallic inorganics (i.e., degradable inorganics that contain elements of phosphorus, nitrogen, or sulfur) in units operated under either aerobic or anaerobic conditions such that a surrogate compound or indicator parameter has been

substantially reduced in concentration in the residuals (e.g., total organic carbon can often be used as an indicator parameter for the biodegradation of many organic constituents that cannot be directly analyzed in wastewater residues).

Debris type	Performance standard
All debris types.	Treatment must be performed in accordance with the design and operating parameters specified below

Design and operating parameters

Treatment enclosure.	Fully enclosed
Treatment enclosure pressure.	Negative
Oxygen concentration.	≥2 milligrams per liter
Moisture level	≥2 % of saturation
Temperature	20–35°C
pH	4.5–8

Non-Applicable Debris or Application Restriction

None.

Special Safety Precautions

None.

CHEMICAL OXIDATION

Chemical or electrolytic oxidation utilizing the following oxidation reagents (or waste reagents) or combinations of reagents: (1) hypochlorite (e.g., bleach); (2) chlorine; (3) chlorine dioxide; (4) ozone or UV (ultraviolet light) assisted ozone; (5) peroxides; (6) persulfates; (7) perchlorates; (8) permanganates; and/or (9) other oxidizing reagents of equal efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals. Chemical oxidation specifically includes what is referred to as alkaline chlorination.

Debris type	Performance standard
Metal objects, brick, concrete, rock, pavement, glass.	Treatment must be performed in accordance with the design and operating parameters specified below

Design and operating parameters

Treatment enclosure.	Fully enclosed treatment unit
Treatment enclosure pressure.	Negative
Oxidant	Hypochlorite, chlorine; chlorine dioxide; ozone or ultraviolet assisted ozone; peroxides; persulfates; perchlorates; or permanganates
Treatment quality	All visible staining removed

Non-Applicable Debris or Application Restriction

None.

Special Safety Requirements

None.

CHEMICAL REDUCTION

Chemical reaction utilizing the following reducing reagents (or waste reagents) or combination of reagents: (1) sulfur dioxide; (2) sodium, potassium, or alkali salts of sulfides, bisulfites, and metabisulfites, and polyethylene glycols (e.g., NaPEG and KPEG); (3) sodium hydrosulfide; (4) ferrous salts; and/or (5) other reducing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., total organic halides can often be used as an indicator parameter for reduction of many halogenated organic constituents that cannot be directly analyzed in wastewater residues). Chemical reduction is commonly used for the reduction of hexavalent chromium to the trivalent state.

Debris type	Performance standard
Metal objects, brick, concrete, rock, pavement, glass.	Treatment must be performed in accordance with the design and operating parameters specified below

Design and operating parameters

Treatment enclosure.	Fully enclosed treatment unit
Treatment enclosure pressure.	Negative
Residence time	≥ 2 hours
Reducing agent	Sulfur dioxide; sodium, potassium, or alkali salts of sulfides, bisulfates, metabisulfites, and polyethylene glycols; sodium hydroxides; or ferrous salts
Treatment quality	All visible staining removed

Non-Applicable Debris or Application Restriction

None.

Special Safety Requirements

None.

PHOTOCHEMICAL TREATMENT

Treatment of chlorinated organic contaminants utilizing ultraviolet (UV) light from a natural (sunlight) or artificial (UV lamp) source such that halogenated contaminants are substantially degraded on the surface of debris.

Debris type	Performance standard
All debris types	Treatment must be performed in accordance with the design and operating parameters specified below.

Design and operating parameters

UV lamp capacity	≥ 20 microwatts/square centimeter
Treatment time	≥ 24 hours

Non-Applicable Debris or Application Restriction

Objects with cracks, crevices, corrosion, rust, or scale.

Special Safety Requirements

None.

THERMAL DESTRUCTION

Treatment in an incinerator operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or 40 CFR Part 265 Subpart O, boilers or industrial furnaces operating under either interim status or a RCRA permit, or in other thermal treatment devices, such as pyrolysis units operating under interim status in accordance with the requirements of 40 CFR Part 265, Subpart P.

Debris type	Performance standard
All debris types	Performance standards for thermal destruction of hazardous wastes, including contaminated debris, are contained in 40 CFR parts 260, 261, 264, 265, 266, 270 and 271

Non-Applicable Debris or Application Restriction

None.

Special Safety Requirements

None.

MACROENCAPSULATION

Application of surface coating materials such as polymeric organics (e.g., resins and plastics) or with a jacket of inert organic materials to substantially reduce surface exposure to potential leaching media. The use of a tank or container, as defined in 40 CFR 260.10, does not qualify as macroencapsulation.

Debris type	Performance standard
Metal objects, brick, concrete, rock, pavement, glass.	Treatment must be performed in accordance with the design and operating parameters listed below

Debris type	Performance standard
Design and operating parameters	
Encapsulant layer thickness.	≥ 0.6 cm
Encapsulation quality layer of encapsulant type.	Debris completely encapsulated in unbroken encapsulant
Encapsulant type	Non-biodegradable and impermeable to aqueous solutions and contaminants on debris

Non-Applicable Debris or Application Restriction

Wood, paper, cloth, rubber, plastic.

Special Safety Precautions

None.

MICROENCAPSULATION

Stabilization with the following reagents (or waste reagents) or combinations of reagents: (1) Portland cement; or (2) lime/pozzolans (e.g., fly ash and cement kiln dust)—this does not preclude the addition of reagents (e.g., iron salts, silicates, and clays) designed to enhance the set/cure time and/or compressive strength, or to reduce the leachability of the hazardous constituents.

Debris type	Performance standard
Metal objects, brick, rock, pavement, glass.	Treatment must be performed in accordance with the design and operating parameters below
Design and operating parameters	
Debris feed particle size.	< 10 centimeter
Curing time	≥ 7 days
Microencapsulation quality.	No free liquids present
Unconfined compressive strength of microencapsulation product.	≥ 350 kilopascals

Non-Applicable Debris or Application Restriction

None.

Special Safety Requirements

None.

SEALING

Application of an appropriate material which adheres tightly to debris surface to minimize the surface area exposed to potential leaching media. Sealing entails surface pretreatment of debris to remove contamination and to clean and roughen debris surface where appropriate. Sealing includes use of epoxy, silicone, and urethane compounds, but excludes use of paint.

Debris type	Performance standard
Metal objects, brick, concrete, rock.	Treatment must be performed in accordance with the design and operating parameters below
Design and operating parameters	
Sealant type	Epoxy, urethane, or silicone based, and non-biodegradable and impermeable to aqueous solutions or contaminants on debris
Number of coats of sealant	≥ 2
Sealant coat integrity	Unbroken sealant coat completely surrounding debris

Non-Applicable Debris or Application Restriction

None

Special Safety Precautions

None

VITRIFICATION

This technology uses heat generated by electrodes or direct flame to melt a mixture of glass formers and waste materials into non-asbestiform glass.

Debris type	Performance standard
All debris types	No visible debris in solid vitrification product [b]

[a] Vitrification is BDAT for contaminated asbestos debris.
[b] With the exception of debris with high melting points, such as refractory materials, which do not melt during vitrification.

Non-Applicable Debris or Application Restriction

None.

Special Safety Precautions

None.

APPENDIX X—GENERIC TREATMENT TECHNOLOGIES FOR CONTAMINATED DEBRIS [a]

Treatment technology	Debris category					
	Metal objects	Brick, concrete, rock, pavement	Glass	Wood	Paper, cloth	Rubber, plastic
Extraction:						
Abrasive blasting [b]	Yes	Yes	Yes	Yes	No	No
Scarification and grinding [b]	No	Yes	No	Yes	No	No
Spalling [b]	No	Yes	Yes	No	No	No
Vibratory finishing	Yes	Yes	Yes	Yes	No	Yes
Water washing and spraying [b,c]	Yes	Yes	Yes	Yes	No	No
Destruction:						
Thermal destruction	No	No	No	Yes	Yes	Yes

[a] Generic treatment technologies are effective on all contaminants of concern for the debris categories shown on this table.
[b] Applicable only to broad, flat surfaces. All visible cracks and crevices must be removed by surface removal technology.
[c] High pressure water sprays applicable to metal objects and glass only. Ultra-high pressure water sprays applicable to metal objects, brick, concrete, rock, pavement, glass, and wood. Water baths not applicable.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

28. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

29. In § 270.13 paragraph (n) is added to read as follows:

§ 270.13 Contents of part A of the permit application.

* * * * *

(n) For contaminated debris, a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility.

30. In § 270.14 paragraph (b)(2) is revised to read as follows:

§ 270.14 Contents of part B: General requirements.

* * * * *

(b) * * *

(2) Chemical and physical analyses of the hazardous waste and contaminated debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with part 264 of this chapter.

* * * * *

31. In § 270.42 paragraph (e)(3)(ii)(B) is revised to read as follows:

§ 270.42 [Revised]

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(B) To allow treatment or storage in tanks or containers, or in containment buildings in accordance with 40 CFR part 268.

32. In § 270.42 Appendix I is amended by adding item 6 to section I, and by adding new section M and items underneath it to read as follows:

Appendix I to Section 270.42—Classification of Permit Modifications

Modifications	Class
* * * * *	
I. Enclosed waste piles	
* * * * *	
6. Conversion of an enclosed waste pile to a containment building unit	2
* * * * *	
M. Containment Buildings:	
1. Modification or additional of containment building units:	
a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity	3
b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity	2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit	2
3. Replacement of a containment building with a containment building that meets the same design standards provided:	
—The unit capacity is not increased	
—The replacement containment building meets the same conditions in the permit	1
4. Modification of a containment building management practice	2
5. Storage or treatment of different wastes in containment buildings:	
a. That require additional or different management practices	3
b. That do not require additional or different management practices	2

33. In § 270.72 paragraph (b)(6) is revised to read as follows:

§ 270.72 Changes during interim status.

* * * * *

(b) * * *

(6) Changes to treat or store, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by part 268 or RCRA section 3004, provided that such changes are made solely for the purpose of complying with part 268 or RCRA section 3004.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

34. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

35. Section 271.1(j) is amended by adding the following entry to table 1 in chronological order by date of promulgation in the **Federal Register** and by adding the date of publication and the **Federal Register** page numbers to the following entry in table 2:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

Table 1.—Regulations Implementing the Hazardous and Solid Waste Amendments of 1984.

Promulgation date	Title of regulation	Federal Register reference	Effective date
* * * * *			
(Insert date of publication of final rule in the Federal Register).	Land disposal restrictions for newly listed wastes & contaminated debris & generic exclusion for K062 & F006 non-wastewaters.	(Insert Federal Register page numbers).	
* * * * *			

* * * * *

Table 2.—Self Implementing Provisions of the Hazardous and Solid Waste Amendments of 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* * * * *			
	Prohibition on land disposal of newly listed wastes & contaminated debris.	3004(g)(6)(A)	(Insert date of publication) 56 FR (Federal Register page numbers).
* * * * *			

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Appendix I to the Preamble: Overview of Debris Treatment Technologies

The Agency is today proposing the following eighteen specific treatment technologies for contaminants on six different categories of debris.

1. Extraction Technologies

a. Abrasive Blasting. Abrasive blasting techniques are treatment technologies designed to remove contamination by removing surface layers from debris. These technologies rely on the force of a solid object which impacts against the debris surface to remove the surface of more brittle objects. These techniques are useful for treatment of debris in which contamination has penetrated beyond the debris surface. However, these techniques do not remove contaminants which have diffused well into debris below the surface layer and would not be considered BDAT in these situations. Consequently, the appendix IX performance standards would require for porous debris such as brick, concrete, rock, pavement, and wood, that at least a 0.6 centimeter surface layer be removed, and all paint surface coatings, scale, and visible staining be removed.[47] Thus, if contamination has penetrated beyond the surface, EPA believes that compliance with the performance standard will ensure removal. The performance standard for nonporous debris would also ensure effective removal of contaminants by requiring removal of all paint, surface coatings, scale, visible cracks and crevices, and visible staining.

[47] For permeable debris where contamination may penetrate beyond 0.6 centimeters, the Agency is relying primarily on the requirement that visible staining be removed to ensure effective treatment by surface removal technologies (i.e., abrasive blasting, acid washing, scarification and grinding, spalling, and vibratory finishing). We specifically request comment on whether removal of visible staining is an adequate requirement to ensure effective treatment in all cases (i.e., data or information on situations where the contaminant may not cause visible staining).

Debris surface layers removed are considered residue subject to F039 treatment standards for nonwastewater See section V.G.3 of the preamble. The debris treated with surface removal technologies must be firmly mounted to withstand the forces associated with these techniques, which are generally applicable only to large structural surfaces, such as concrete walls, wooden floors, or steel tanks.

Abrasive blasting involves forcing an abrasive medium (e.g., steel shot, aluminum oxide grit, plastic beads) at the surface of debris at high speeds. The force of impact of the abrasive causes the debris surface to chip, flake, or erode off. The type of abrasive used varies, depending upon the thickness of the debris surface layer which must be removed and the desired smoothness of the post-abrasive blasted surface. Generally, the use of smaller and softer abrasives results in a thinner surface layer removed and a more finely finished debris surface. Commonly used abrasives include sand, typically used to remove thin layers of paint or corrosion from metal surfaces and leave a smooth finish; and steel shot, which has been used to remove concrete, leaving a rough, pitted surface.

The abrasive can be propelled with either air or water pressure, or can use a spinning wheel to hurl abrasive at debris surfaces. Abrasive can be applied with hand-held wands or can be applied in automated systems which pass debris below the abrasive spray. Rotating drums or racks may be used for treating loose debris. Abrasive blasting systems are also frequently operated in conjunction with a vacuum system to reduce dust [48] and to collect spent abrasive and the debris surface layer removed. The spent abrasive can be disposed of with the debris surface layer removed or can be separated and recycled. The debris surface layer that is removed is considered residue subject to the F039 nonwastewater LDR standards. Abrasive blasting systems are currently used in industry to remove surface layers of paint or corrosion from metal and at Superfund sites to remove layers of contaminated concrete. Abrasive blasting systems are available commercially from several manufacturers.

b. Acid Washing. This debris treatment technology uses acid to promote corrosion and removal of the surface layer of contaminated debris. Acid can either be sprayed onto a surface, or the material to be treated can be dipped into an acid bath. This method may be used to remove contaminants entrained on or near the surface of materials such as metal and wood. It may also be effective on concrete, brick, and some plastic materials. The time required for treatment depends on the acid used and the type of debris being treated. Thermal or chemical treatment of the removed material may be required to destroy or remove the contaminant before disposal. Debris surface layers removed and other treatment residues are considered residue subject to the F039 LDR treatment standards.

[48] We note that debris treatment facilities are subject to the applicable requirements of parts 264, 265, and 266 that ensure protection of human health and the environment.

Various acids can be used for this technique, including hydrochloric acid (HCl), nitric acid (HNO3), sulfuric acid (H2SO4), and hydrofluoric acid (HF). Hydrochloric acid has been used to clean metal parts. Hydrofluoric acid is also commonly used to etch window glass. In addition, mixtures of hydrofluoric and nitric acid have been shown to effectively treat stainless steel contaminated with radioactive contaminants.

Acid washing is applicable mainly to metals and may be suitable to remove surface contamination from glass, wood, and some concrete materials. However, it is not effective on deeply imbedded contamination of debris, and may not meet the performance standards proposed in appendix IX in those situations. If the acid washing performance standards could not be met, another treatment technology specified by proposed table 2 of § 268.45 must be selected. Typical treatment times for this technology range from several minutes to several hours.

Debris treated by acid washing may also require washing to remove residual acid from the debris surface; this residual would also be subject to the F039 treatment standards. The acid washing process often forms insoluble metal oxides and salts in the acid washing solution that may require additional treatment, such as filtration. (Again, all residues are subject to the F039 LDR standards.)

Immersion operations usually require the acid solution to be agitated to maximize contaminant removal. The amount of contaminant that can be removed from the debris is based on the immersion time in the acid solution and on the shape and composition of the debris. Complex shapes require longer times and stronger solutions than simple objects or shapes. After acid washing, the cleaned debris is usually rinsed with a water wash to remove the acid solution. The use of acid washing immersion operations will result in the accumulation of appreciable amounts of hazardous contaminants and metals (when metal debris is treated) as a result of dissolution from the debris and from the holding racks that are recycled through the acid bath. As a result, the acid baths usually have a relatively short operational life, and when they are discharged, large amounts of hazardous materials must be treated or reclaimed. These materials also can enter the treatment facility waste stream as dragout from the acid solutions into rinse waters.

We specifically request comment and supporting data and information on whether additional performance standards are needed (see proposed appendix IX) to ensure effective treatment by addressing parameters including retention time, ratio of acid volume to debris surface area, and solubility of contaminants in acid.

c. Electropolishing. This type of debris treatment technology uses electrochemical energy to remove contamination from metallic debris. It has been used to successfully remove radiological contamination from a variety of metallic materials, including carbon steel, stainless steel, copper, aluminum, and highly-alloyed, corrosion-resistant and heat-resistant materials. A variety of contaminants can be removed including plutonium, uranium, radium, cobalt, strontium, cesium, and americium, as well as other contaminants that are baked on, ground in, or otherwise difficult to remove using more conventional procedures. The surface layer that is removed is considered residue subject to the F039 LDR treatment standards.

Electropolishing is an electrochemical process used to produce a smooth, polished surface on a variety of electrically conductive metals and alloys. The object to be treated serves as the anode in an electrolytic cell. The passage of a high-density electric current results in the anodic dissolution of the surface metal, the establishment of a concentration gradient at the anode surface, and a progressive smoothing of the surface. Any contamination that is present either on the surface or entrapped within surface scratches and other surface imperfections is removed and released into the electrolyte by the surface dissolution process. A simple water wash after electropolishing is usually sufficient to remove the residual electrolyte and leave a contamination-free surface.

Most electropolishing treatment studies have used a phosphoric acid solution as the electrolyte because of its stability, safety, and applicability to a number of alloy systems. The hygroscopic nature of phosphoric acid helps minimize airborne contamination problems, and the complexing characteristics of phosphoric acid for metal ions may be a significant factor in minimizing recontamination from the electrolyte.

In general, electropolishing is limited to treatment of electrically conductive metallic objects of fairly regular geometry and size and does not show applicability to other types of debris. Electropolishing has been used primarily as a metal finishing technique and in the removal of radioactive contamination from metal debris.

d. Liquid Phase Solvent Extraction. This method of treatment, also called solvent washing or solvent soaking, uses an organic solvent in the liquid phase to solubilize contaminants for removal. This technique can be used on many solvent-soluble contaminants and with many forms of debris. Solvents can be applied to the surface of large debris or standing buildings, or small pieces of debris can be soaked in baths of solvent. The solvent may be heated or applied at ambient temperatures. A wide variety of wash/soak/rinse cycles can be used to optimize treatment. Water washing or secondary treatment/removal (e.g., heating or vacuum removal) after treatment may be necessary to remove residual solvent from the debris. After treatment, it is sometimes possible to reuse solvent in the treatment system.

A wide variety of organic solvents are commonly used, including trichloroethylene (TCE), methylene chloride, and alcohols. The solvent used depends on the debris contaminant combination being treated and would have to be made on a case-by-case basis by the treater based on the permeability of the debris and the nature of the contaminant. In addition, other chemicals may be added to the solvent to aid in treatment of residuals, or surfactants can be

added to prevent solubilized contaminants from migrating further into the surface of porous debris.

e. Thermal Desorption. This type of debris treatment technology relies primarily upon the use of temperatures from 90 °C to 1200 °C to volatilize contaminants. Some contaminants may also degrade to simpler compounds under these temperatures. Data from treatment tests indicate that it has been used to successfully treat concrete and metal contaminated with chemicals similar to constituents of the halogenated aromatics and pesticides group and to remove volatile organics from plastic and rubber. Low temperature desorption systems can be designed to be applied to debris either in-situ or ex-situ.

In-situ low temperature desorption systems are generally employed in the treatment of intact buildings.[49] The building is sealed and insulated to contain heat and volatilized contaminants. A burner or a boiler is used to produce hot gas or steam, respectively, which is drawn through the building by an induction fan or a blower. Exhaust gases from the building are passed through a separation system or an incinerator to remove contaminants. In-situ low temperature desorption systems must be tailor-made for each debris treatment conducted.[50]

Ex-situ systems employ an oven or heating chamber Debris is placed into the oven and heated by convection using heating fuel or electric heating element, or heated by radiation using infrared radiation or microwaves. Ovens may be filled with a nitrogen atmosphere in order to prevent contaminants and debris from combusting or exploding. Volatilized contaminants can be separated from the oven's gas effluent or incinerated. The debris oven can be designed to be run on either batch or continuous mode. Ex-situ low temperature desorption systems for soil treatment are currently available commercially and may be modified to treat contaminated debris.

The primary contaminated treatment residual produced by low temperature desorption is a vapor stream contaminated with volatilized contaminants. This vapor waste stream may be passed through a separation system, such as an activated carbon filter or a packed bed scrubber, or the vapor stream may be incinerated. Residuals from the separation system or incinerator are subject to the F039 LDR treatment standards.

We note that we are not proposing in appendix X separate performance standards for low versus high temperature thermal desorption. We specifically request comment and supporting data and information on whether and how to establish performance standards for low versus high temperature desorption.

f. Scarification and Grinding. This treatment technology utilizes a device, which contains several pistons that are forced rapidly against the surface of debris, or a series of grinding wheels, which grind away debris surfaces. Scarification devices employ the force of impact to cause up to 2.54 centimeters of the debris surface to chip off. Consequently, the appendix IX performance standards would require for debris such as brick, concrete, rock, pavement, and wood, that at least a 0.6 centimeter surface layer be removed, and all paint, surface coatings, scale, visible cracks and crevices, and visible staining be removed. Thus, if contamination has penetrated beyond 2.54 centimeters of the surface layer and visible staining and/or cracks and crevices are visible after treatment, the performance standard has not been met and another treatment must be used to ensure effective treatment of the debris (or treatment by scarification and grinding must continue until the performance standard is met).

Scarification equipment can be used in conjunction with a vacuum system to collect the debris surface layer removed. The scarified surface may also require washing or vacuuming to remove residual dust. Scarification generates several waste streams, including the debris surface removed, airborne dust,[51] and possibly a wash water, which may require additional treatment and disposal. Scarification equipment may be operated by hand or mounted on a backhoe or forklift. Scarification equipment is currently used in the construction industry in the demolition or cleaning of concrete structures and to prepare concrete surfaces for coating.

Grinding systems use the force of a grinding wheel on the debris surface to leave a rough, pitted surface. Grinding equipment may be used in conjunction with a vacuum system to collect the debris surface layer removed.

The debris surface removal techniques are expected to remove surface contamination and surface layers of contaminated debris. Contaminated surface layers of debris and other treatment residuals are considered residue subject to the F039 LDR treatment standards.

g. Spalling. This technology uses a two-step process to remove the surface layer from debris. The first step involves drilling holes into the surface of the contaminated debris. The second step involves inserting the bit of a spalling tool, consisting of two metal feathers, into the holes. Hydraulic pressure is then used to force a push rod between the metal feathers, causing them to push outward against the sides of the hole. This causes up to 50 mm of the debris surface layer to fracture and crack off.

Because spalling does not react with or dissolve contaminants, but rather relies on the removal of debris layers in which the contaminant is contained, contaminants not entrained in the debris layer removed will not be effectively treated by spalling. Consequently, the appendix IX performance standards would require for contaminated brick, concrete, rock, pavement, and glass (the only applicable debris categories), that at least a 0.6 centimeter surface layer removed, and all paint, surface coatings, scale, visible staining and visible cracks and crevices removed. Thus if contamination has penetrated beyond the surface, EPA believes that compliance with the performance standard will ensure removal. Contaminated surface layers that have been removed by spalling are still considered contaminated debris, however, and must be treated to meet the debris standard. (EPA considers debris layers removed by spalling to be contaminated debris rather than residue because spalling can remove deeper layers of debris.) It should be noted that the spalling technique may produce contaminated dust that may settle on the debris.[52] The spalled debris surface must be vacuumed or washed to remove this dust, and the resulting residual dust or wash water is considered residue subject to the F039 LDR treatment standards.

h. Vapor Phase Solvent Extraction. This method of treatment uses an organic solvent in the vapor phase to solubilize contaminants for removal. This technique is similar to the process using solvent mixtures that are used for vapor degreasing in industry. Depending on the choice of solvent, this method has potential to treat many solvent-soluble contaminants and a wide range of debris types.

In this process, a solvent is vaporized and allowed to circulate inside or around the contaminated debris (in a closed chamber). The hot vapors condense on and into the surface of the contaminated material, where they solubilize contaminants and diffuse outward. The contaminant-laden liquid solvent is collected and treated prior to recycling or reusing the solvent. Complete treatment can take several hours or more.

i. Vibratory Finishing. Vibratory finishing is a debris treatment process that combines the use of mechanical energy to scrub the surface of debris with solvent washing to dissolve contaminants and flush away particulates removed by the mechanical scrubbing. Vibratory finishing takes place in a vibrating tub of small particles, or abrasives, through which flows a liquid chemical compound. The energy from the vibrating tub causes the abrasive to vibrate. The vibrating abrasive scrubs the surfaces of debris placed in the tub. A liquid chemical compound which flows through the abrasive dissolves contaminants and flushes away particulates scrubbed from the debris.

The abrasives used in vibratory finishers are usually constructed of ceramic or metal and come in a variety of shapes and sizes. Abrasive shape, size, and material determine the rate at which the debris is scrubbed and the effectiveness of the vibratory finishing process on debris from a particular debris category.

The liquid flushing compound employed in the vibratory finishing process is usually one in which the contaminant is soluble. This enhances the treatment of the debris by dissolving contaminants. The liquid compound is sprayed on top of the abrasive and debris, percolates through the abrasive

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[49] A building contaminated with a prohibited waste would be subject to today's proposed rule if it is decontaminated prior to demolition. If, however, the building is decontaminated and continues to be used as a building, the building is not debris and the decontamination is not subject to today's proposed rule.

[50] See footnote 8 in the preamble to today's proposed rule.

[51] See footnote 8 in the preamble to today's proposed rule.

[52] See footnote 8 in the preamble to today's proposed rule.

and debris, where it flushes away contamination and particulates scrubbed off the debris, and flows out of a drain at the bottom of the tub. Spent flushing fluid is usually recycled by passing it through a separation system which removes particulates and dissolved contaminants.

The residuals produced by vibratory finishing techniques include spent flushing compound and particulates scrubbed from the debris surface. The vibratory finishing abrasive usually does not become contaminated because it is treatment by the same scrubbing action which treats the debris. The scrubbed particulates can be removed from the flushing liquid through filtration or settling. All residuals, including the surface layer that is removed, are considered residue subject to the F039 LDR treatment standards.

j. Water Washing and Spraying. This section discusses debris treatment techniques that rely primarily on the use of water or steam. The techniques in this section have been divided into two categories: water washing and spray application techniques.

Water washing techniques rely primarily upon the solubility of contaminants in water and can be conducted by submerging, rinsing, or spraying debris with water. During submersion, the water may be circulated, or the water and/or debris may be agitated to increase the rate at which the contaminants dissolve. A water-soluble detergent is frequently added to the water to enhance contaminant solubility or mobility to remove the contaminant from the surface of the debris by breaking the surface tension.[83] For example, data indicate that benzonitrile, a non-soluble contaminant on 55-gallon drums was effectively lifted off the metal surface through the use of high pressure steam sprays. See Background Document for additional information. In addition, water may be circulated through a separation system such as a filter or distillation column to remove contaminants from the circulating water. Treatment residuals include the treated debris, wastewater, and the treatment residuals produced by any separation systems employed, such as spent filters or sludge. Residuals are subject to the F039 LDR treatment standards.

Spray application techniques rely upon several principles to remove contaminants from debris: (1) The force of impact of a pressurized stream of water or steam to physically remove contaminants; (2) the solubility of contaminants in water to dissolve contaminants; and (3) in the case of steam cleaning, the use of heat to volatilize contaminants.

Spray application techniques generally entail the use of a pump to pressurize the water or steam, a nozzle to direct the flow of the pressurized stream, and a hose or pipe to connect the nozzle to the pump. For steam cleaning systems, a boiler must be added to the system to vaporize the water. Water-soluble detergents are frequently added to the water or steam to enhance contaminant removal. After application to the object to be cleaned, water may be recycled through a wastewater treatment system.

Spray technologies consist of the following processes: (1) High pressure water sprays; (2) steam sprays; and (3) ultra-high pressure water sprays.

High pressure water sprays (usually defined as pressures up to 34,000 kPa) may be used to remove surface contamination from debris. These sprays are generally effective in removing all types of contaminants from debris surfaces. However, they are usually ineffective in removing contaminants which have diffused below the surface of debris. Accordingly, the performance standards would require that all visible staining be removed in addition to design and operation under specified conditions. High pressure water sprays do not apply water to the debris surface for a sufficient time to leach contaminants that have diffused into the debris. For this reason, the use of high pressure water sprays may not meet the performance standards of appendix IX when used on debris categories that are permeable to contaminants, such as wood and paper.

Ultra-high pressure water sprays (21,000 to 241,000 kPa) may be used to remove debris surface layers. Ultra-high pressure water sprays are useful in removing surface layers from debris that is firmly mounted to withstand the force of the water stream. This technique is applicable primarily on structural surfaces, such as concrete walls or steel tanks. We do not anticipate that the performance standards for this technique can be met when used to decontaminate small objects or loose debris, such as paper, cloth, or loose wooden boards.

All pressurized spray application techniques generate a contaminated wastewater stream that must be further treated to remove or reduce contaminant levels to meet the F039 treatment standards. Steam spray techniques generally generate less wastewater than water spray techniques, but also tend to volatilize contaminants, generating an air emission or a contaminated vapor stream. Volatilized contaminants have to be separated from the vapor stream or incinerated.[84] Ultra-high pressure water spray techniques also generate a solid waste stream in the form of the debris surface layer removed which must be treated or disposed. The dislodged debris surface layer and other residuals are subject to the F039 LDR treatment standards.

2. Destruction Technologies.

a. Biodegradation. Biodegradation is a destruction technology that uses the capacity of microorganisms to degrade and transform organic hazardous compounds into compounds of reduced toxicity. Bacteria, fungi, and yeasts are the microorganisms most frequently employed to biodegrade hazardous compounds. Under aerobic conditions (in the presence of oxygen), microorganisms biodegrade organic contaminants to carbon dioxide, water, nitrate, sulfate, and cell protein. Under anaerobic conditions (in the absence of oxygen), microorganisms can biodegrade organic contaminants into methane, carbon dioxide, and cell protein. Biodegradation is applicable to contaminants which are on the surface or contained in the pores of all types of debris.

Microorganisms require nutrients, oxygen, and water to biodegrade contaminants. Two types of biotreatment systems are commonly employed to provide microorganisms with the proper environment to facilitate biodegradation of hazardous contaminants and include solid phase (biofilm) systems, and bioslurry systems.

In solid phase (biofilm) bioremediation systems, contaminated material is placed on a lined treatment bed. A layer of sand and perforated laterals may be placed on the liner, below the contaminated material, to collect leachate. The treatment bed may be covered to conserve water and capture fugitive volatile emissions. An overhead spray irrigation system is used to provide moisture and a means of distributing nutrients and microbial innoculum. Air may be provided by mixing or by pumping air through pipes buried in the material being treated. Contaminated debris may have to be homogenized and preprocessed into small pieces to provide a high surface-to-volume ratio.

Bioslurry treatment entails mixing the contaminated material with water to form a slurry. Nutrients and oxygen are added to the water, and the slurry is mixed to keep the solids in suspension. Bioslurry treatment has the advantages of providing greater process management and control, and increased contact between microorganisms and contaminants. This frequently results in faster biodegradation rates. Debris may have to be preprocessed into very small pieces, to enable it to be suspended in water. For example, contaminated plastic may be preprocessed into pellets. Bioslurry treatment would be most effective on debris which has a density similar to water.

We are concerned that the design and operating requirements for biodegradation proposed in appendix IX may not be comprehensive enough to ensure effective treatment. We therefore, specifically request data or information that would support additional operating conditions addressing retention time, microbial population acclimation period, and other parameters as appropriate.

b. Chemical Oxidation. Chemical oxidation is a treatment process used to chemically oxidize organic compounds, cyanides, and sulfides to yield carbon dioxide, water, salts, simple organic acids, and in the cases of sulfides, sulfates. Chemical oxidation has been used to treat metal debris contaminated with cyanide.

Chemical oxidation processes which treat debris involve the submersion of debris in one or more chemical baths containing chemicals which oxidize hazardous organic compounds, cyanides, and sulfides. The

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[83] The proposed performance standards in appendix X, part 268 require the contaminant to be soluble to at least 5 percent by weight in a water solution. We acknowledge that detergents can effectively remove contaminants that have low solubility in water through the use of surfactants. We specifically request data and information that would support a performance standard addressing the use of surfactants for low solubility contaminants.

[84] See footnote 8 in the preamble to today's proposed rule.

principal chemical oxidants used are hypochlorite, chlorine gas, chlorine dioxide, hydrogen peroxide, ozone, and potassium permanganate. Debris is lowered into the chemical baths in wire baskets. Agitation of the wire basket or debris may be conducted to increase chemical contact with debris surfaces. Treated debris may require rinsing in order to remove residual chemicals from the debris. The spent chemical bath solution is considered residue subject to the F039 LDR treatment standards.

c. Chemical Reduction. Chemical reduction is a treatment technology which may be used to treat halogenated organic compounds and hexavalent chromium. The treatment technology dehalogenates halogenated compounds and reduces hexavalent chromium to its less toxic trivalent state.

Chemical reduction techniques include spraying foams or solutions containing reducing agents onto debris surfaces or submerging debris into solutions of reducing agents. Spray techniques require several applications and may require rinsing or steam cleaning after treatment to remove residual reducing agents from debris surfaces. Submersion techniques also require rinsing or steam cleaning after,treatment to remove residual reducing agents.

Reducing agents typically used include: Sulfur dioxide; sodium, potassium or alkali salts of sulfides, bisulfides, or metabisulfides and polyethylene glycol (including NaPEG and KPEG); sodium hydrosulfide; and ferrous salts.

Debris containing hexavalent chromium which is reduced to the trivalent state requires additional treatment for trivalent chromium. Spent reducing solutions and post-treatment debris wash water are considered residue subject to the F039 LDR treatment standards.

d. Photochemical Treatment. This type of debris treatment technology uses photochemical energy in the form of ultraviolet (UV) radiation to degrade halogenated contaminants such as polychlorinated biphenyls (PCBs), and polychlorinated dibenzodioxins (PCDDs), and polychlorinated dibenzofurans (PCDFs). These compounds are quite reactive in the presence of UV radiation. The photoreduction mechanism involves the substitution of hydrogen for chlorine, leading to the formation of detoxified substances. Contaminated debris types tested include concrete, vegetation, and glass. In photochemical treatment, the source of the UV radiation is usually artificial, although tests have been performed using natural UV light in conjunction with a solvent.

In photochemical treatment, the material to be treated is exposed to UV radiation, which causes the contaminants (PCBs, PCDDs, or PCDFs) to photodegrade. The presence of a hydrogen donor molecule is thought to be necessary for treatment of PCDDs and PCDFs, but has been found to be not necessary for the treatment of PCBs. However, the presence of an organic solvent such as methanol or hexane can greatly improve the efficiency of the photodegradation.

Photochemical treatment can be used to degrade PCBs, PCDDs, and PCDFs from the surface of materials such as concrete, vegetation, and glass. Photochemical degradation will not work on deeply imbedded contaminants, because UV light cannot penetrate through these surfaces. The presence of dust and dirt will also reduce the effectiveness of this technique.

We are concerned that the proposed performance standards for photochemical treatment may not ensure effective treatment in all cases. We specifically request data or information that would support additional operating conditions addressing use of natural sunlight, presence of adequate hydrogen donor molecules, presence of dust or dirt, and penetration of contaminants below the surface layer of permeable debris types.

e. Thermal Destruction. Thermal destruction includes treatment in an incinerator operated under subpart O, parts 264 or 265, boilers or industrial furnaces operating under subpart H, part 266, or in other thermal treatment devices, such as pyrolysis units, operating under subpart P, part 265, (for interim status facilities) or subpart X, part 264.

Thermal destruction uses heat to cause contaminants to chemically react to form nonhazardous chemicals and/or to cause debris to chemically react to achieve a volume reduction of the debris. Thermal destruction units may use either an oxidizing or a nonoxidizing atmosphere. Units in which an oxidizing atmosphere is employed cause combustible debris and contaminants to oxidize (ideally) to carbon dioxide and water. Units that employ a non-oxidizing atmosphere frequently employ nitrogen. In these units, organic debris and contaminants are reacted to form carbon monoxide and methane gas.

Many incinerators require size-reduction of debris or debris agitation during incineration in order to ensure that all of the debris being treated reaches the operating temperature of the unit. Units can be run under a slightly negative pressure to prevent fugitive emissions of volatilized or incompletely combusted contaminants. Thermal destruction units must also control emissions of metals, particulate matter, acid gases, and products of incomplete combustion.

Thermal destruction units must produce wastewater from air pollution scrubbers and a solid treatment residual, the ash, which consists of the noncombustible portion of debris and contaminants. These residuals would be subject to the F039 treatment standards. Inert debris separated from residue (i.e., ash) would be treated debris excluded from subtitle C if the contaminated debris did not contain a metal contaminant subject to treatment.

3. Immobilization Technologies. EPA considers three immobilization technologies to be BDAT for contaminated debris: macroencapsulation, microencapsulation, and sealing. These technologies are not acceptable, however, for organic debris types—wood, paper and cloth, and rubber and plastic—because the organic material may degrade over time. This could result in the treated material losing its structural stability, which may cause a release of contaminated debris. Further, immobilization technologies are not appropriate for organic contaminants because the organic compounds may degrade the encapsulating coat or diffuse through the encapsulating coat provided by macroencapsulation or sealing or leach from microencapsulated debris.

a. Macroencapsulation. Macroencapsulation is a treatment technology that encases debris to provide a physical barrier that prevents contaminants from leaching from the debris. In this process, debris is placed into sealed containers entombed in concrete, or a jacket of an impermeable substance, such as polyethylene, is placed around the debris. The encapsulating material must be one which is impermeable to both water and the contaminants on the debris. Debris which is macroencapsulated may be shredded or otherwise sized before encapsulation or large pieces of debris may be encapsulated. Macroencapsulation processes must employ coatings able to withstand stresses expected to be applied to the coating in a landfill without rupturing or breaking. Macroencapsulation processes that use jacketing materials do not need to employ materials which adhere tightly to the debris surface. Jacketing materials are typically applied to debris by heating the material to slightly above its melting point to form the jacket to the shape of the debris and then allowing it to cool, or by applying a liquid monomer to the debris surface and then adding heat or a catalyst to the monomer to form an impermeable polymer. The use of a tank or container, as defined in 40 CFR 260.10, does not qualify as macroencapsulation.

b. Microencapsulation. Two types of microencapsulation processes are typically used for treatment of debris. The first involves mixing the waste with cement, lime, and fly ash, silicates, or other pozzolanic-type materials; and second involves mixing the waste with asphalt and/or plastic. In the latter process, the mixture is heated to slightly above the melting point of the plastic or asphalt, which causes the waste or debris particles to be covered with a polymeric or asphalt coating. The mixture is then cooled and allowed to set (cure) prior to disposal.

In order to obtain a uniform stabilized material, the particle size of the material being stabilized should be kept at a fairly small size (i.e., the large masses of material should be reduced in size before being stabilized). This may require shredding, crushing, or grinding of the debris.

Vendors of various microencapsulation processes have different size requirements, but the particle sizes generally range in diameter from 6.35 to 100 mm. Sizing equipment is commercially available to size most debris to meet the requirements for microencapsulation processes. Currently, shredding equipment is used to process debris-like materials such as municipal solid waste and scrap metal for volume reduction and as an initial step in recycling processes. Most shredders are equipped to reject unshreddable objects from the shredder, effectively separating them from shreddable debris. This unshreddable debris, which consists mostly of thick metal, such as

railroad rails, can be treated using an alternative technology (e.g., water washing or sealing).

We note that the proposed rule would not allow microencapsulation of debris where arsenic or mercury are contaminants subject to treatment. See note to proposed table 2, § 268.45. This is because arsenic and mercury may leach from microencapsulated debris.

c. Sealing. Sealing is a process which involves the application of a surface coating which tightly adheres to the debris surface. This surface coating must be an impermeable barrier to both water and the contaminant on the debris. Sealants are generally applied using brushes, rollers, or by dipping debris into the sealant. Several applications of sealant may be required.

Before sealants are applied, debris must be cleaned or otherwise prepared to remove gross contamination and to clean and roughen the debris surface to ensure that the sealant adheres to the debris surface. [We specifically request comment on how to develop a performance standard that ensures that the surface of the debris is properly prepared.]

Typical sealants include epoxy, silicone, and urethane resins. Sealants may be applied as solutions of water or non-polar solvents. The solvents are then allowed to evaporate, which causes the sealant to solidify and adhere to the debris surface.

Appendix II to the Preamble: Asbestos Treatment Standards

Contaminant category	Treatment technology									
	Acid washing	Liquid phase solvent extraction	Vapor phase solvent extraction	Water washing and spraying	Biodegradation	Chemical oxidation	Chemical reduction	Photochemical treatment	Macroencapsulation	Verification
CC01	X	X	X	X	X	X	X	X		X
CC02	X	X	X	X		X	X	X		X
CC03	X	X	X	X	X	X				X
CC04	X	X	X	X	X	X				X
CC05	X	X	X	X	X	X				X
CC06	X	X	X	X	X	X				X
CC07		X	X	X	X	X				X
CC08	X	X	X	X					X	X
CC09	X	X		X					X	X
CC10		X		X	X					X

X means the technology is acceptable for the contaminant category.

[FR Doc. 92-284 Filed 1-8-92; 8:45 am]
BILLING CODE 6560-50-M

federal register

Thursday
January 9, 1992

Part III

Department of Agriculture

Rural Electrification Administration

7 CFR Part 1710

General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans; Final Rule

VOL 57 ISS 6 JA 9 1992

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1710

RIN 0572-AA43

General and Pre-loan Policies and Procedures Common to Insured and Guaranteed Electric Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR chapter XVII, by adding a new part 1710, General and Pre-loan Policies and Procedures Common to Insured and Guaranteed Electric Loans. This part consolidates, updates, clarifies and, in some instances, revises the policies and requirements contained in several existing REA Bulletins:

This part contains the provisions and requirements of the Rural Electrification Act (RE Act), as amended, and the administrative policies, requirements, and procedures of the REA electric program for applicants seeking financial assistance from REA for facilities to furnish electric service in rural areas. The primary objective of the rule is to update, consolidate, clarify, and simplify REA policies and procedures common to electric insured and guaranteed loans.

EFFECTIVE DATE: This rule is effective February 10, 1992.

FOR FURTHER INFORMATION CONTACT: Frank W. Bennett, Deputy Assistant Administrator-Electric, U.S. Department of Agriculture, Rural Electrification Administration, Room 4048–S, 14th and Independence Avenue, SW., Washington, DC 20250–1500, Telephone: (202) 382–9547.

SUPPLEMENTARY INFORMATION: This rule is issued in conformance with Executive Order 12291, Federal Regulation. This action will not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices to consumers, individual industries, Federal, state or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule does not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321 *et seq.* (1976)), and therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the Final Rule related notice to 7 CFR part 3015, subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The existing reporting and recordkeeping requirements contained in this rule were approved by the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under control numbers 0572–0032 and 0572–0017. The public reporting burden is estimated to average 59 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, completing and reviewing the collection of information and maintaining the data needed. The public recordkeeping burden for this collection of information is estimated to average 67 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, completing and reviewing the collection of information and maintaining the data needed.

Additional reporting requirements contained in this rule have been submitted for approval to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980. They will not be effective until approved by OMB. The public reporting burden for this new collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, completing and reviewing the collection of information and maintaining the data needed. There is no additional record keeping burden for this new collection.

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for USDA, Room 3201, NEOB, Washington, DC 20503.

Background

REA makes loans and loan guarantees to electric systems to provide and improve electric service in rural areas. These loans are limited to the purposes authorized in the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*)

REA policies and requirements covering pre-loan activities are contained in several REA regulations and bulletins. Many of these are out of date and some contain ambiguous or redundant information. It is necessary to consolidate this information and make it available to the public by codifying and publishing it in the **Federal Register.**

This part consolidates, updates, clarifies and, in some instances, revises the policies and requirements contained in the following existing REA bulletins:

20–2 Electric Loan Policies and Application Procedures
20–5 Extensions of Payments of Principal and Interest
20–6 Loans for Generation and Transmission
20–14 Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act
20–20 Deferment of Principal Repayments for Investment in Supplemental Lending Institutions
20–22 Guarantee of Loans for Bulk Power Supply Facilities
20–23 Section 12 Extensions for Energy Resources Conservation Loans
60–10 Construction Work Plans, Electric Distribution Systems
86–3 Headquarters Facilities for Electric Borrowers
105–5 Financial Forecast—Electric Distribution Systems
111–3 Power Supply Surveys
112–3 Area Coverage Service
120–1 Development, Approval, and Use of Power Requirements Studies
145–1 Development, Approval, and Use of Irrigation Studies

When this rule and other related rules are published in final form, the above bulletins will be rescinded, in whole or in part, or revised. In the future, REA bulletins will be used to provide certain procedural information, illustrative examples, and other guidance to assist borrowers in complying with REA's published rules.

The primary purpose of this rule is to consolidate, clarify, update and, in some instances, revise REA general loan policies and pre-loan policies and requirements applicable to electric loans. Most of the provisions of this rule represent policies and requirements that have been in effect for some time, having been implemented through REA bulletins, mortgages, notes or loan contracts, and other agency issuances.

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Some provisions are either new, or a revision of existing policies and procedures, or an explicit statement of policies and procedures that formerly were implicit.

Another purpose of this rule is to strengthen the agency's credit policies. During the past few years, a number of electric borrowers have experienced considerable financial stress. By adopting the policies outlined in this rule, the agency hopes to avoid the recurrence of these situations.

This rule sets forth general and pre-loan policies and requirements that are common to insured loans and guaranteed loans. It was published as a proposed rule at 56 FR 8234 on February 27, 1991. Pre-loan policies, requirements and procedures that are specific to guaranteed loans, including 90 percent guaranteed loans recently authorized by the Omnibus Budget Reconciliation Act of 1990, are set forth in 7 CFR part 1712, published August 27, 1991 at 56 FR 42460. Pre-loan policies, requirements and procedures specific to insured loans will be set forth in proposed 7 CFR part 1714 in the near future.

Comments

A total of 88 commentors submitted comments on the proposed rule. They included 76 borrowers, the National Rural Electric Cooperative Association, the National Rural Utilities Cooperative Finance Corporation, the American Public Power Association, four state borrowers associations and five others.

REA considered all comments received. The more significant and the most commonly made comments are addressed individually herein.

Section 1710.1 (c)

It was suggested that the portions of REA bulletins to be rescinded or revised as a result of codifying part 1710 be specifically identified. This will in effect be accomplished as REA codifies the remainder of its regulations. REA's codified rules supersede any bulletins or portions thereof that may be in conflict. Any procedures or requirements that are still relevant and are not included in REA's codified rules will be included in future bulletins. As this process proceeds outdated bulletins will be rescinded.

A technical change has been made to this paragraph by adding REA bulletin 20–23 to the list of bulletins that may contain material that is in conflict with this rule and therefore superseded by it. Bulletin 20–23 was listed in the background section of the preamble to the proposed rule, but was inadvertently left out of the list in § 1710.1(c).

Section 1710.2 Definitions and Rules of Construction

It was suggested that the definition of Administrator be modified to add, "or his or her designee." This has been done.

A technical change was also suggested in the definition of PRR with respect to its use in determining the amount of supplemental financing required of a borrower. REA has considered other criteria that more closely reflect a borrower's ability to pay market rates for supplemental financing. However, appropriation acts for the past several years have prohibited any changes in the criteria and standards used to determine supplemental financing requirements from those that existed on July 15, 1982. Therefore, no changes have been made in the criteria and standards, including the definition of PRR. It should also be mentioned that the use of 1978–1980 data in the definition of APRR stems from the legislative prohibition against changes.

It was also suggested that the formulas for DSC, TIER, and PRR needed to be modified to identify the current year column of Forms 7 and 12. REA does not believe this would be desirable since these terms are sometimes used in reference to years other than the current year.

Finally, a technical change has been made in the definition of loan guarantee by deleting specific reference to sections 306 and 314 of the RE Act. While these two are the most generic authorities, there was no intention to exclude loan guarantees made under the narrower authorities of sections 306A and 311.

Section 1710.4 Exception Authority

Some questions were raised as to whether the Administrator's authority to grant an exception to regulatory requirements applies only to requirements imposed on borrowers and lenders with a loan guaranteed by REA, or also applies to any obligations or requirements imposed on REA. It was also asked whether the exception authority could be used to impose additional or more onerous requirements on borrowers and lenders.

The exception authority applies only to borrowers and lenders participating in REA loan and guarantee programs. It does not apply to any obligations or requirements imposed on REA. The authority could not be used by REA to impose additional or more onerous requirements on borrowers or lenders. The section has been revised to clarify these points. The term "Government's interest" has also been modified to make it clear that the specific interest referred to here is the Government's "financial" interest.

One commentor suggested that the standard for granting an exception should be based on whether application of the regulatory provision would adversely affect the borrower's interests and/or the government's interests, not just the latter. REA disagrees since many regulatory provisions relate to loan feasibility and security, and may be interpreted as adversely affecting the borrower's interests in some sense. Requirements to assure loan feasibility and security, which protect the government's financial interests, may at times appear at odds with a borrower's interests, but generally these provisions cannot be waived or reduced without adversely affecting the government's interests.

Another commentor suggested that the standard for making an exception to the regulations be broadened to include the promotion of the goals and purposes of the RE Act. REA disagrees since such a standard would be too broad and too vague, and would run the risk of inconsistent benefits being offered and decisions being made on an ad hoc basis without the benefit of public comment. REA anticipates that this exception authority will be used only rarely and only when it is clearly necessary to protect the Government's financial interests.

Section 1710.6 Applicability of Certain Provisions to Completed Loan Applications

A new section has been added to make it clear that certain new or revised policies and requirements set forth in this rule will not apply to a pending loan application that has been determined by REA to be complete as of the date the rule is published in final form in the **Federal Register**. This is being done to ensure that the processing of completed loan applications will not be delayed, which could happen if borrowers with already completed applications were required to amend their applications to provide the information needed to demonstrate compliance with certain of the new policies and requirements. The specific policies and requirements that will not apply to already completed applications are identified in the new section.

Section 1710.50 Insured Loans

One commentor suggested that REA authority to grant a deferral of principal and interest payments on insured loans for up to 5 years be added to this section. That authority, since it applies

only to insured loans, will be addressed in a new proposed regulation on post-loan policies and that apply specifically to insured loans.

Section 1710.101 Types of Eligible Borrowers

One commentor suggested that "basic" be dropped from the description of the retail electric service financed by REA, and that all methods of meeting the power supply needs of distribution borrowers be recognized, not just those involving a wholesale power contract. This section has been modified to incorporate these suggestions.

One commentor suggested that, in the case of a former borrower that has paid off all of its outstanding REA loans and reapplies for a loan, that REA should finance RE Act beneficiary loads accruing from the date the former loans were paid off rather than from the date the applicant's new, completed loan application is received by REA. REA disagrees with this suggestion since the loads accruing in the suggested earlier period would have already been served by the applicant, and financing of these loads by REA would constitute refinancing, which is strictly limited under the RE Act. The policy set forth in the rule on this question has been in effect for many years.

A related question is the time frame used for defining a rural area when a former, paid-off borrower applies for a new loan. The section has been modified to make it clear that areas previously designated by REA as rural and served by facilities financed by REA will be classified as rural.

Section 1710.103 Area Coverage

Several commentors expressed concern that the proposed section was intended to make area coverage requirements more stringent and/or to prohibit assessment of contributions in aid of construction. That was not the intention. REA recognizes that consumers in certain situations impose a capital and/or operating cost on the borrower that is substantially out of proportion with the revenues that would be generated at the normal rates and minimum charges assessed the typical consumer. The section has been amended to make it clear that borrowers may continue to assess contributions in aid of construction consistent with the general policy on area coverage set forth in this section.

One commentor suggested that the requirements of paragraph (b) of this section with respect to assessing a contribution in aid of construction should not apply to seasonal consumers. REA agrees and has so revised the paragraph to make it clear that the restrictions on assessing contributions in aid of construction set forth therein do not apply to either seasonal or temporary consumers.

Section 1710.104 Service of Non-RE Act Beneficiaries

One commentor suggested that this section should explicitly permit the sale of power and energy to non-RE Act beneficiaries from REA-financed plants until the entire capacity of the plant is required by RE Act beneficiaries, and that joint power supply and joint transmission arrangements be explicitly allowed. This section does not preclude these activities, which have been authorized in the past, provided that they meet the conditions set forth. REA believes that the section correctly and comprehensively states REA's policy on use of loan funds to serve non-RE Act beneficiaries.

Section 1710.105 State Regulatory Approvals

Several commentors suggested that the section be modified to make it clear that it applies only to borrowers that are required to obtain approval from their state regulatory authority for proposed construction projects and/or the related financing. Paragraph (b) has been revised to make this clear.

It was also suggested that REA should not have the flexibility to require a borrower to obtain such state approvals before REA makes a loan, as opposed to after the loan is made but before loan funds are advanced. REA disagrees and believes that it should be able, on a case by case basis, to require that the state approvals be obtained before a loan is made when the loan requires an Environmental Impact Statement and for loans to finance generation and transmission facilities when the loan request is $25 million or more. These kinds of projects generally involve higher risk than others, and in some cases it may be prudent to obtain the state approval before the loan is made. Also, the process of obtaining state approval often produces additional information valuable in assessing the feasibility and security of the proposed loan.

One commentor asked for clarification of the provision that REA may require a borrower to obtain reaffirmation of a project and its financing from the state authority before additional loan funds are advanced, if the borrower has failed to proceed with the project in a timely manner or if there are cost overruns or other developments that threaten loan feasibility or security. Under such circumstances REA believes it would be only prudent to obtain reaffirmation from the state authority. If a state authority were not willing to reaffirm the project and its financing, serious questions would be raised as to whether the state authority would allow the borrower to collect sufficient revenues to repay the loan, and REA would have to take this into consideration in deciding whether to approve additional advances of loan funds.

Section 1710.106 Uses of Loan Funds

Several commentors requested clarification of paragraph (d) of this section, which provides that the amount lent to any one borrower in a given year may be limited to less than the total amount eligible for REA financing, taking into consideration the amount of loan funds available and the size of REA's loan application inventory. This provision is intended to apply only in years when the loan funds available are substantially less than the eligible requests for loan funds. This has occurred in the past, and in several years REA has approved insured loans equal to only one-half of borrowers' financing requests, and lent the remainder in subsequent years. The paragraph has been revised to make clear that it applies only when there is a substantial shortfall in available funds. It has also been clarified that any reduction would be on an equal proportional basis for all applicants based on the amount of funds for which the applicant is eligible, and that any amount of an eligible request not lent one year would be eligible for a loan in subsequent years, provided that a resolution is submitted to REA by the borrower's board of directors certifying that the funds are still needed to complete purposes contained in the original loan application.

There also appears to be a misconception that paragraph (d) refers to the withholding of advances of loan funds after a loan is made. That is not correct, since paragraph (d) refers specifically to loan approval.

One commentor requested clarification of the statement in paragraph (c)(3) that REA will not finance any facilities that a state regulatory authority having jurisdiction will not approve for inclusion in the borrower's rate base, or will not otherwise allow rates sufficient to repay the debt incurred for the facilities. This is meant to be a general statement of policy of what REA will not finance, in the same vein as the statements in paragraphs (c) (1) and (2) of this section. This policy is consistent with the restriction in section 4 of the RE Act that

"no loan for the construction, operation, or enlargement of any generating plant shall be made unless the consent of the State authority having jurisdiction in the premises is first obtained." REA realizes that it often may not be possible at the time of loan approval to determine that a state regulatory authority will not allow sufficient revenues to repay a loan for certain facilities. Nevertheless, as a matter of basic policy REA will not knowingly lend for such facilities and may deny a loan for certain facilities or in certain circumstances if there is substantial evidence, based on state law, past regulatory practice, or preliminary decisions or statements by the state authority about the facilities in question, that sufficient revenues will not be allowed to repay the related debt.

One commentor suggested that REA explicitly state that costs associated with the decommissioning of nuclear power plants are eligible for REA financing. REA disagrees that such costs should be eligible for REA financing since all utilities that have nuclear power plants are required to establish financial reserves to pay for decommissioning costs. It is intended that these costs be collected from the consumers that benefit from the nuclear facility during its useful life. Suggesting that future REA financing may be required for decommissioning suggests that the reserves in some cases may be too small, and that larger reserves may be needed to ensure loan feasibility. Moreover, such financing would raise issues about loan collateral since the financing would be for the dismantling of facilities rather than their construction.

One commentor suggested that financial hardship be defined and that the criteria be specified regarding those facilities that may be financed by REA under paragraph (b) of this section. REA believes that it is important that the Administrator continue to have flexibility in determining what is a financial hardship with respect to REA financing of headquarters offices, general plant equipment, and working capital. Such flexibility has worked well in the past. Since the facts relating to financial hardship vary substantially from case to case, it is difficult to spell out beforehand all the relevant factors that may need to be considered in a particular case. Nevertheless, in the near future REA will outline in a proposed rule the general factors that should be considered in determining financial hardship.

It was also suggested that the type of load management equipment eligible for REA financing be clarified. This has been done in § 1710.251(c).

Section 1710.107 Amount Lent for Acquisitions

One commentor suggested that REA should finance the purchase, rehabilitation, and integration of facilities resulting from a sale and acquisition between two REA borrowers. REA disagrees that it should finance the purchase of one borrower's facilities by another borrower. This would amount to financing the same facilities twice, if the original REA debt was paid off, or it would constitute refinancing, which is strictly limited under the RE Act. However, applications for REA financing of the rehabilitation or integration of electric facilities in the case of an acquisition of one borrower by another will be treated the same, pursuant to § 1710.106, as other applications for these purposes.

Section 1710.108 Mergers and Consolidations.

A question was raised as to whether the priority consideration to be given to a loan application after a merger or consolidation refers only to moving the application forward in the application queue. The answer is yes, and the section has been modified to make it clear that the priority consideration refers to the order of processing an application as set forth in § 1710.119.

It was suggested that REA financing in connection with mergers and consolidations not be limited to financing the integration and rehabilitation of electric facilities and the extension of electric service in rural areas, but that it also include the costs incurred in effectuating mergers or consolidations, such as legal expenses or feasibility study costs. REA disagrees since such legal and study costs ordinarily are not financed by REA unless they are directly related to the construction or procurement of new facilities and are capitalized in the cost of those facilities. Mergers and consolidations worth pursuing should result in sufficient efficiencies and cost savings to more than offset the legal expenses and study costs associated with their planning and execution. If that is not the case, and the economics of the merger or consolidation depend on obtaining REA financing for these costs, then such costs may be excessive or the benefits of the merger or consolidation may be insufficient.

Section 1710.109 Reimbursement of General Funds and Interim Financing

Several commentors said that the 24 month period allowed for reimbursement of general funds was too short, especially for generation and transmission projects. Some commentors appeared to misunderstand the meaning of the section. They seemed to think that the limitation is meant to apply to all construction and procurement costs incurred prior to the loan period, regardless of whether or not the construction and procurement is completed prior to or during the loan period. That is not the intent. The 24-month reimbursement limit will not apply to equipment and facilities whose procurement and construction is completed during the loan period. Thus if legitimate front-end costs for environmental studies, design, engineering and other necessary functions are incurred for a generation and transmission project four or five years before the start of the loan period, they could be included as part of the cost of the project to be funded and completed during the loan period. The section has been revised to make it clear that the 24 month limitation applies only to reimbursements, including replacement of interim financing, for approved expenditures incurred for equipment and facilities whose procurement and/or construction is completed before the beginning of the loan period.

One commentor requested that loan period be defined. Loan period was defined in § 1710.2 of the proposed rule and its meaning remains unchanged. As defined, the loan period commences with the date shown on page 1 of REA Form 740c, Cost Estimates and Loan Budget for Electric Borrowers. Normally, this date is 60 days or less prior to the time the completed loan application is sent to the REA Washington office.

One commentor suggested that the 24 month reimbursement period be phased in over a period of years. This has been done, and it has been made clear that the new requirement applies only to complete loan applications received after the effective date of this rule.

Some comments were received suggesting that limiting reimbursement to 24 months would result in more frequent applications and could overwhelm REA staff. REA believes that any increase in the frequency of applications will be manageable and will not delay loan processing.

Some concern was expressed that reducing the reimbursement period to 24 months will result in legitimate expenditures for facilities becoming ineligible for reimbursement due to the time required to process a loan. REA does not believe that this will become a problem because the time limit applies

only to equipment and facilities completed before the beginning of the current loan period, while other legitimate expenditures are allowed to be included in the loan for facilities completed during the current loan period. Also, virtually all loans are processed within 12 months of receiving the complete loan application.

One commentor suggested that limiting reimbursement of general funds to 24 months for equipment and facilities completed before the current loan period without placing a similar limit on loans to replace interim financing will cause borrowers to rely more on interim financing. This conclusion apparently derives from a narrower interpretation of reimbursement of general funds than commonly used by REA. As used by REA, reimbursement of general funds includes replacement of interim financing, and the section has been modified to make this clear.

Section 1710.110 Supplemental Financing

One commentor requested clarification as to whether the supplemental financing requirements of this section apply to all REA financing or only to insured loans. The requirements of this section for borrowers to obtain supplemental financing apply only to insured loans. The section has been revised to make this clear.

REA does not require supplemental financing in conjunction with an REA guaranteed loan. However, if a borrower elects to obtain supplemental financing in conjunction with a guaranteed loan, the granting of REA's loan guarantee may be conditioned on the borrower's acquisition of the supplemental financing.

One commentor suggested that the condition, "except in cases of financial hardship," be added to the provision requiring supplemental financing with insured loans to conform this section with proposed § 1710.102(b), which was published on February 20, 1991 at 56 FR 6912. This has been done.

One commentor stated that if REA will continue to require supplemental financing, a lien accommodation should be granted automatically. REA understands that a lien accommodation usually is required for borrowers to obtain supplemental financing. In the case of supplemental financing required with insured loans, a lien accommodation is routinely granted. The section has been amended to clarify that REA will consider a lien accommodation for the supplemental lender.

Some commentors suggested that REA needs to streamline the process of granting a lien accommodation to a supplemental lender or consider modifying its security arrangements to facilitate additional financing from other sources. REA is studying its loan and security documents and related questions. Many of these questions will be addressed in the Agency's post-loan regulations.

Section 1710.111 Refinancing

One commentor stated that REA has much broader authority to refinance borrower debt than set forth in this section. REA disagrees. The language of the RE Act and a long history of interpretation of REA's authority to refinance borrower debt clearly indicate that REA's authority to refinance is very limited. The most commonly occurring circumstances where such authority may be exercised are set forth in this section.

Section 1710.112 Loan Feasibility

Several commentors questioned whether the intent of this section is to raise the threshold for loan feasibility and make it more difficult for borrowers to demonstrate feasibility. That is not the intent. The purpose of this section is to establish explicit and comprehensive criteria for assessing loan feasibility and ensuring that there is reasonable assurance that the loan will be repaid. The criteria set forth have been used routinely by REA either formally or informally in assessing loan feasibility, and are not being codified so that all borrowers will know exactly what factors are considered in determining loan feasibility.

One commentor expressed concern that the criteria are inflexible and do not allow for judgment, and will thus result in some loans being denied as a result of inflexible application of the criteria by REA staff. REA disagrees since the criteria deal mainly with the forecast of financial performance and the factors that are likely to affect that performance, which necessarily involves a substantial amount of judgment. This has always been the case.

Some commentors stated that the requirement that there be a reasonable expectation that consumers will be able to pay the rates required to meet expenses and repay the loan and that borrowers will be reasonably able to compete with other utilities sets too high a standard. REA disagrees with that position, since if consumers cannot pay the rates required to meet expenses and repay the loan and if the borrower cannot compete to prevent serious load loss, then the loan would not be feasible. Section 4 of the RE Act prohibits the Administrator from making a loan unless the Administrator finds and certifies that the loan will be repaid within the time agreed.

One commenter suggested that the problem was not only competition with other utilities, but also competition with other fuels. REA agrees and has so revised the section. Also, it has been made clear that substantial load loss, not any load loss, is the concern with respect to competing with other utilities or fuels, and that substantial impairment of loan feasibility, not any impairment, is likewise the concern.

Several commentors expressed concern that references to "any" risks of load loss from large consumers or from loss of service territory would establish too high a standard. REA intended "any" to convey that there might not be any such risks, but nevertheless "any" has been deleted.

Some commentors suggested that the list of criteria for assessing loan feasibility is exhaustive and that the catchall "other factors" is not needed. REA agrees and has deleted "other factors."

One commentor suggested several procedures and information collections for assessing possible risks of loss of a borrower's service territory from annexation. REA does not believe that suggested reporting burden should be imposed routinely in the case of every loan application. However, when there is a high risk of annexation in an individual case, some of the information suggested would be obtained by REA, and the section has been so revised.

Section 1710.113 Loan Security

One commentor requested clarification of what information would be required in the case of joint projects to demonstrate that the non-REA financed system is financially sound and under capable management. This has been clarified.

One commentor expressed a concern that REA is seeking an unqualified guarantee in paragraph (d) of this section that a jointly owned project will be running continuously at planned capacity. That is not the case. What REA is seeking is adequate assurance from the borrower, in the form of contractual or other security arrangements, that the jointly owned project will be operated on an efficient and continuous basis.

Section 1710.114 TIER and DSC Requirements

Several commentors stated that raising the minimum Times Interest

Earned Ratio (TIER) from 1.0 to 1.05 for power supply borrowers that receive a loan after the effective date of this rule may pose economic hardship for those borrowers operating in financially pressed areas. REA recognizes that this could be a temporary problem in certain limited cases. Therefore a provision has been added to paragraph (b) of this section whereby the Administrator may, on a case by case basis, reduce the TIER level below 1.05 for power supply borrowers, but not below 1.0, if the Administrator determines that a 1.05 TIER require said borrowers to raise the rates they charge for power so high as to substantially reduce the kWh sales and revenues and threaten loan feasibility.

In the longer term, REA anticipates that all power supply borrowers should be able to meet this modest increase in TIER without undue effects on power costs to their member systems. Ten of the 61 power supply borrowers already are required to meet a minimum TIER of 1.05 on an annual basis. Other power supply borrowers have routinely achieved a TIER of 1.05 or greater. Over the past three years, 1987–89, 36 power supply borrowers, out of the 55 for which data were available, achieved an average TIER of at least 1.05, and 28 achieved an average TIER of greater than 1.1.

One commentor suggested that the new 1.05 TIER requirement ought to be phased in. This requirement, like all other requirements in this section, applies only to borrowers that receive a loan after the effective date of this rule. REA has no problem with the suggestion and has revised the section to phase in the requirement as follows: 1.0 in calendar year (CY) 1991, 1.03 in CY 1992, and 1.05 in CY 1993.

Several commentors expressed concerns about the requirement in paragraph (d) of this section that rates must be designed to achieve the required TIER and Debt Service Coverage (DSC) levels on an annual basis. Concerns were raised that unforeseen events such as ice storms, hurricanes or tornadoes could reduce anticipated revenues and margins in a given year and result in defaults. It was also argued that it is unnecessary or unreasonable to routinely require all borrowers to design rates so that such unforeseen events in a single year will not result in a default with respect to TIER or DSC.

In light of these concerns, paragraph (d) has been revised. The design of rates requirement has been divided into two parts: a prospective requirement and a retrospective requirement. As in the proposed rule, borrowers will be required prospectively to design and implement rates so as to meet the required TIER and DSC levels on an annual basis. However, it has been made clear that average weather conditions in the borrower's service territory may be assumed in designing rates. Average weather is interpreted as including the average occurrence of system damage and outages due to storms, but not the rare extreme outages. Retrospectively, the average TIER and DSC levels actually achieved by a borrower in the two best years out of the three most recent calendar years must meet the required levels. This is similar to the current mortgage requirement. To summarize, REA will expect borrowers to design and implement rates to meet TIER and DSC each year, but recognizes that unusual unforeseen events may prevent TIER and DSC from being met in a given year.

Concerns were also raised about the provision in paragraph (b) of this section that the Administrator, in his or her sole discretion, could raise TIER or DSC requirements to ensure loan feasibility and security and improve the credit worthiness of borrowers. The commentors felt that this authority was too broad and that general increases in TIER or DSC requirements should be made through rulemaking. Given these concerns, this provision has been dropped.

Concerns were also expressed about paragraph (e)(1) regarding TIER and DSC requirements for the advance of funds. This paragraph deals with conditions that will be imposed on the advance of funds for a new loan if the borrower has failed to achieve the required TIER and DSC levels during the calendar year or latest 12 month period immediately preceding approval of the loan, or if the borrower's average TIER or DSC for the 2 best years of the most recent 3 years was below the required level. The latter test has been used by REA for many years, but the latest calendar year or 12 month period provision was a new proposal. Some commentors felt that there was unnecessary overlap between the latest calendar year and the latest 12 month period, and that this would cause confusion as to what standard a borrower would have to meet. Given these concerns, the latest calendar year has been dropped.

Some commentors suggested that if failure to meet the TIER or DSC requirements of paragraph (e)(1) were due to unusual events beyond the borrower's control, such as unusual weather, system outage due to a storm, or regulatory delay in approving rate increases, then remedial action by the borrower should not necessarily be required. REA agrees and has revised paragraph (e)(1) to provide for a waiver under such circumstances, at the Administrator's discretion. This paragraph has also been amended to make it clear that, in addition to demonstrating that TIER and DSC will be met, it must also be demonstrated that the loan will be repaid within the time agreed.

With respect to paragraph (e)(2), some commentors expressed the view that, once a loan is approved, REA should not impose any new conditions on the advance of funds. REA disagrees since it is required by law to ensure that all loans are feasible and will be repaid. If a borrower's circumstances change after a loan is made or if new information becomes available indicating that the borrower may not achieve the required TIER and DSC levels, then REA must have the authority to withhold loan fund advances until the borrower has taken satisfactory remedial action. Paragraph (e)(2) does not provide that REA will automatically withhold loan advances until the borrower takes remedial action, only that it may do so.

One commentor asked for clarification as to whether borrowers currently subject to a blended TIER requirement because they provide both power supply and distribution functions will continue to be subject to such requirement. The answer is, Yes. Paragraph (b) has been amended to explicitly provide for a blended TIER.

Section 1710.115 Loan Maturity

A question was asked whether a deferral of loan payments under section 12 of the RE Act would extend the maturity of a loan beyond its original maturity. REA has followed a policy of not extending loan maturity for loan payment deferrals made under section 12 of the Act. That section was redesignated section 12(a) by an amendment to the Act in 1990 (104 Stat. 3979), and a new paragraph (b) was added on loan payment deferrals for rural development. The existing REA policy not to extend loan maturities will continue for deferrals made under the amended section 12(a) of the Act. Deferrals made under the new section 12(b) of the Act for rural development purposes will be addressed in forthcoming regulations.

Section 1710.116 Equity Development Plan

Several comments were received on this section. Several commentors supported the need to develop adequate equity levels; some others questioned this. Most commentors suggested that

greater specificity was needed as to what will be expected of borrowers.

Several commentors pointed out that borrowers with relatively low equity could not be expected to achieve the target levels in a short time. REA understands this and has revised the section to place the emphasis on achieving progress during a 10-year planning cycle toward meeting the equity target.

A borrower's 10-year equity development plan will be expected to show reasonable progress toward achieving the equity target without raising power costs or retail rates for electricity unreasonably, placing an unreasonable burden on rate payers, or substantially reducing the borrower's ability to compete with neighboring utilities or other power sources. The amount of progress to be made during each 10-year plan will be determined individually for each borrower based on the economic strength of the borrower's service territory, the inherent cost of providing service to the territory, the disparity in rates between the borrower and neighboring utilities, the intensity of competition faced by the borrower from neighboring utilities and other energy sources, and the relative amount of new capital investment required to serve existing or new loads. REA will determine the improvement to be made under each plan, case by case, based on these factors and the information and recommendations provided by the borrower. It is recognized that more than one 10-year cycle may be required to achieve the equity target.

Several commentors suggested that different equity levels be set for power supply borrowers than for distribution borrowers. REA agrees that equity targets ought to be different for power supply borrowers since most of them would be starting from a much lower equity level than the typical distribution borrower. About 60 percent of power supply borrowers currently have less than 10 percent equity, while nearly two-thirds of distribution borrowers have 35 percent or more equity.

The section has been revised to require power supply borrowers to make reasonable progress toward increasing their equity if it is below 20 percent of total assets. Once that level is reached, a power supply borrower would be required to either maintain equity of 20 percent or continue to increase equity, depending on the borrower's particular financial circumstances and needs.

The proposed 40 percent target for distribution borrowers has not been changed. However, a provision has been added to this section whereby the Administrator may set a lower target for individual borrowers, on a case by case basis, if the higher standard target would unreasonably increase power costs or retail rates for electricity.

Several commentors expressed concerns that raising equity too fast would cause power costs and retail rates to rise unreasonably. REA recognizes that this is a potential problem and has revised the section to make it clear that the schedule selected for increasing equity must be reasonable and not unreasonably raise power costs or retail rates or substantially reduce a borrower's ability to compete for sales.

Some commentors questioned the basis for setting 40 percent as the minimum equity target. This level for distribution borrowers is based on the experience of REA borrowers, typical industry standards, and the long established threshold in the REA mortgage for determining whether REA approval is required for borrowers to retire capital credits. Forty-eight percent of distribution borrowers already have an equity of 40 percent or more, and 31 percent have between 30 and 40 percent equity. For investor-owned utilities, where power supply and distribution typically are integrated, about one-third have an equity of 40 percent or more of total assets, and around 40 percent have between 30 and 40 percent equity. Of the municipal systems, many of which have integrated power supply and distribution systems, about three-fourths have an equity of 40 percent or more, and some 5 percent have equity of between 30 and 40 percent.

Finally, definitions of the terms "equity" and "total assets" have been added to § 1710.2. The standard definitions used traditionally by REA for these terms have been adopted.

Section 1710.119 Loan Processing Priorities

One commentor requested clarification of paragraph (b)(4) of this section, which would allow priority based on other objectives of the RE Act, while another commentor suggested that it be deleted because it was too broad. Given these concerns, the paragraph has been deleted and a new specific priority has been added, namely the correction of serious safety problems.

Section 1710.151 Required Findings for all Loans

One commentor suggested that criteria were needed in paragraph (b) of this section to determine when the Administrator may require a borrower to demonstrate that its loan remains feasible. This has been done.

One commentor questioned the proposed requirement in paragraph (d) that satisfactory evidence must be provided to REA that funds requested to replace interim financing are necessary. This phrase was included to reinforce the requirement set forth in this paragraph that the interim financing must have been used for purposes approved by REA. The intent was not to impose an additional requirement on interim financing that is not imposed on most other REA financing. The phrase has been dropped.

Some commentors questioned the requirement in paragraph (f) that borrowers located in states having jurisdiction must provide satisfactory evidence based on the information available, such as an opinion of counsel, that the state regulatory authority will not prevent the borrower from obtaining sufficient revenues to repay REA's loans with interest. The main concern was that a borrower cannot guarantee what a state regulatory authority will do about allowing facilities in the rate base or otherwise allowing sufficient revenues to repay the borrower's debt.

REA understands that a borrower cannot guarantee what actions a state regulatory authority will take. What is required in this paragraph is that the borrower provide the best evidence available at the time a loan request is being considered by REA of what the state authority is most likely to do. This can be based on state law and the rules and policies of the state authority, on precedents in other similar cases, on statements made by the state authority, on any assurances given to the borrower by the state authority, and on other relevant information and experience. Paragraph (f) has been amended to include these examples of the types of information that may be used in providing the required evidence.

Subpart E, Power Requirements Studies

Sixty-one commentors made comments about the proposed requirements for power requirements studies (PRSs). Of the 61 commentors, 39 are associated with a single large power supply borrower.

Several commentors stated that the asset level of $100 million for determining whether a power supply borrower would have to prepare and maintain a current PRS on an ongoing basis was too low. Several recommended a minimum level of $300 million, while others recommended that the requirement be dropped entirely. REA has decided to set the asset level at $300 million. Borrowers with assets of this amount or more have adequate resources to maintain PRSs on an ongoing basis. They account for over 90

percent of the combined total assets of power supply borrowers and about the same proportion of lending activity.

Several commentors felt that the requirement that this group of large power supply borrowers must revise their PRS every 3 years and update it every year is too burdensome. REA disagrees since this is too burdensome. REA disagrees since this is typical practice throughout the electric utility industry. Nevertheless, the subpart has been revised to provide borrowers greater flexibility by offering them two options: Either revise the PRS every 3 years and update each intervening year, or revise the PRS every other year, with no intervening update. These options reflect the practice currently followed by several power supply borrowers.

The rule has also been revised to reduce the burden on those borrowers that are not required to maintain a current PRS on an ongoing basis but who must, under current practice and as set forth in the proposed rule, provide a current, acceptable PRS in support of a loan application. The rule has been revised so that a PRS is required from those borrowers only if the loan exceeds the lesser of 10 percent of total utility plant or either $3 million for a distribution borrower or $25 million for a power supply borrower. This change will reduce the burden on borrowers in comparison with both current requirements and the proposed rule.

Several commentors opposed the requirement that a consumer demand survey must be conducted at least every 3 years if the power supply borrower must maintain a PRS on an ongoing basis. This requirement is consistent with typical industry practice and remains in this rule. The subpart has been amended, however, to clarify that the survey may be conducted by aggregating the surveys of individual members or by a system-wide sample, which generally requires less coordination and is less expensive.

Several commentors criticized § 1710.203(e) as giving too much discretion to REA to require a borrower to prepare a PRS if required to determine loan feasibility or if required for other purposes, including the effective administration of the electric program. The latter purpose was especially criticized as too broad and vague, and it has been deleted from the rule.

Several commentors criticized the requirement for sensitivity analyses as being too broad and open ended. Given these concerns, § 1710.203(f)(6) has been revised to limit the number of scenarios that must be analyzed to five. To further ease the burden on borrowers and allow them time to gear up to meet this requirement, it will not be put into effect until January 1, 1993. Similarly, § 1710.203 has been amended to give a borrower the option of meeting the requirements of § 1719.203(f), with respect to what must be included in PRS, or corresponding requirements of REA Bulletin 120–1, if its PRS was submitted to REA for approval prior to the effective date of this rule, or if its PRS was prepared under a PRS work plan approved by REA prior to said date.

Subpart F, Construction Work Plans and Related Studies

Several comments were received on this subpart. They are addressed below section by section.

Section 1710.250 General

A question was raised as to whether construction work plans (CWPs) must include all applicable facilities or just those for which REA financing will be sought. All facilities, regardless of the source of financing, must be included in a CWP. Paragraph (b) of this section has been revised to make this clear.

One commentor requested clarification as to whether the engineering activities required by this subpart could be performed by either outside consulting engineers or in-house engineers employed by the borrower. Either type of qualified engineer is acceptable, and the section has been revised to make this clear.

Several commentors suggested that REA should consult with the borrower before adjusting the cost on an item included in the CWP when the cost of the item is in dispute. REA agrees and has so modified paragraph (e) of this section.

One commentor requested clarification as to whether the provision in paragraph (f) of this section that REA approval is required, prior to the start of construction, also applies to amendments of a CWP to change the cost estimates. It does not. It applies only to approval of the facilities included in the CWP, any significant physical changes to those facilities, and any additions of facilities to the CWP. The paragraph has been amended to make this clear. Moreover, the public is reminded that there has been no change in 7 CFR 1721.1 as to advances of insured funds being limited to 130 percent of the project cost estimate on the approved REA Form 740c.

One commentor asked whether the costs of engineering, environmental and other studies, and the development of plans and specifications required to support the construction of facilities are eligible for REA financing. They are, subject to the limitations of § 1710.106, provided that such costs are capitalized as part of the cost of the facilities. Sections 1710.251 and 1710.252 have been revised to make this clear.

Section 1710.252 Construction Work Plans—Power Supply borrowers

Some commentors objected to the requirement that power supply borrowers must maintain a current CWP for distribution and transmission plant and for any improvements, replacements, and retirements of generation plant. One commentor stated that REA did not have the resources to review and approve such plans on a timely basis.

The requirement that power supply borrowers maintain and receive REA approval of a current CWP for distribution facilities is not new, having been required by REA for many years. The new CWP requirement for improvements, replacements and retirements of generation plant is needed to improve the coordination of planning for these investments and the financing required. REA has the right under the REA mortgage to approve borrower investments in plant, regardless of the source of financing. The agency has sufficient resources to review all CWPs on a timely basis and does not anticipate and delays in this area.

One commentor suggested that sufficient flexibility be provided to allow for amendments to the CWP to deal with unforeseeable circumstances. REA agrees that reasonable flexibility is needed to allow for amendment of a CWP as circumstances change. Paragraph (h) of § 1710.250 provides for the amendment of a CWP, and a new paragraph (g) has been added to § 1710.250 to provide greater flexibility in dealing with unforeseen events.

Section 1710.254 Alternative Sources of Power

Several commentors expressed concern about the proposed requirement that applicants for a loan to add generation capacity must solicit proposals on a national basis from independent power producers. Some commentors said the requirement was too far reaching while others said it might not be possible to transmit power produced by a distant power producer.

This requirement applies only to loans for the addition of generation capacity, which, as been clarified in § 1710.254(b) of this final rule, includes the replacement of existing capacity. It does

not apply to separate transmission facilities.

The intent of this requirement, set forth in renumbered paragraph (c)(2) of this section, is to ensure that active consideration is given to the possibility of obtaining the needed power from an independent power producer. Such producers often operate nation-wide, building facilities in various parts of the country in response to local demands. Thus the concern of having to transmit power long distances does not enter the picture. Nevertheless, the requirement has been modified by deleting the reference to solicitation on a national basis, and adding that the solicitations must be placed in at least three national newspapers or trade publications. Renumbered paragraph (c) of this section has also been modified to make it clear that consideration of alternative sources of power and energy extends to both existing and new alternative sources.

Other commentors suggested that a minimum megawatt limit be established for the requirement to solicit bids from independent power producers. REA agrees and has modified renumbered paragraph (c)(2) to establish a minimum limit of 10 megawatts for additions of new capacity and replacements of existing capacity. Also, in the case of modification of an existing unit, the solicitation requirement will not apply unless the modification increases the capacity of the existing unit by more than 10 percent.

Several commentors expressed concern that renumbered paragraph (e) of this section would place REA in the middle of negotiations between the borrower and the power supplier and would lead to inordinate delays in obtaining REA approval of construction or power-purchase contracts. REA appreciates these concerns and has modified the paragraph to minimize any such unintended results. REA does not wish to impose itself into the negotiations between the borrower and the power supplier. The intent of the first sentence of renumbered paragraph (e) is to obtain assurance that the borrower has met the requirements of renumbered paragraph (d) of this section regarding the evaluation of alternative proposals before the borrower proceeds to final negotiations on the best acceptable offers. However, REA retains its long-established policy of granting approval of long-term power contracts and similar actions only when the proposed alternative is the most economical and effective alternative.

As to the process possibly resulting in inordinate delays in obtaining REA approval of the contracts negotiated by borrowers, a sentence has been added indicating that the Administrator will approve such contracts in a timely manner if the borrower has met all applicable requirements and provided adequate evidence that the alternative selected is the most economical and effective alternative.

One commentor also objected to the requirement that all construction or power-purchase contracts either be approved in advance by the Administrator or indicate that they are not valid until approved by the Administrator. This is a long-standing REA requirement exercised through loan contracts and mortgages. It has been retained in the final rule because construction and power-purchase contracts have a major effect on a borrower's financial condition and its ability to repay its loans and provide adequate loan security.

A commentor also questioned whether REA has the authority to deny a loan for facilities on the basis that one or more other available alternatives are more cost-effective and otherwise acceptable. In fact, REA has exercised such authority since at least 1969 when REA Bulletin 20–6 was reissued. This bulletin was cited in proposed paragraph (f) of this section (renumbered paragraph (g)) as an additional requirement that must be met. To clarify this point, the requirements of REA Bulletin 20–6, with minor editorial changes, have been set forth in a new paragraph (a) of this section, and the reference to Bulletin 20–6 in renumbered paragraph (g) has been deleted.

Some commentors expressed the concern that renumbered paragraph (f) of this section, wherein REA may make independent inquiries with potential power suppliers, could result in interference in the borrower's business and undue delays in obtaining REA approval of projects. Others suggested that any information obtained by REA should be shared with the borrower.

The intent of this provision is to allow REA to become better informed about potential sources of power so that it can effectively evaluate whether a borrower has met the requirements of renumbered paragraph (c) regarding searching out alternative sources of power. It is REA's intent to make such inquiries informally from time to time to keep abreast of market developments, as well as on a case-specific basis when such information may be needed to assure that the requirements of renumbered paragraph (c) have been met. Such information will be shared with borrowers upon request, and the paragraph has been modified to provide for this, as well as to make clear that the intent is not to limit REA's inquires only to specific loan applications.

REA does not believe that this provision will result in delays in approving a borrower's request for financing. If REA suspects that a borrower has not made an adequate effort to inquire into alternative sources of power, any independent inquiry made by REA would be made in a timely manner and as early in the process as feasible.

Some commentors expressed concerns that the requirements of this section could lead to delays in obtaining capacity that might threaten system reliability. In view of these concerns, a provision has been added to this section wherein a waiver could be granted for any requirements that would cause unreasonable delays that might threaten system reliability. A waiver provision has also been added to § 1710.253.

One commentor asked whether the solicitation of proposals from independent power producers under renumbered paragraph (c)(2) is meant to be a separate process from the solicitation of proposals from other potential sources of power under renumbered paragraph (c)(1). The two solicitations may be combined, although separate solicitations would appear to be a more logical approach.

Subpart G, Long-Range Financial Forecasts

The comments received on this section are discussed below section by section.

Section 1710.300 General

One commentor suggested that the provision in paragraph (c)(12) of this section that requires the borrower to analyze its historical experience in market competitiveness was too vague and too narrow in focus and may not be necessary in all cases. REA agrees, and has revised the paragraph to require only a discussion of historical market competitiveness by all borrowers, with the proviso that further data and analysis may be required of those borrowers with a history of serious competitive problems. Also, consideration of factors affecting competitiveness has been expanded beyond rates charged for electricity.

A similar criticism was made regarding paragraph (c)(13), which required an analysis of the effects of projected increases in rates on a borrower's future competitiveness. The requirement has been modified to include other factors that may affect competitiveness as well as to recognize that the competition may be with other

fuels as well as with neighboring utilities.

One commentor objected to having to report assumptions about wage rates as provided under paragraph (c)(8). Wages are an important component of cost, and failure to take escalation in wage rates into consideration would undermine the value of the financial forecast. Individual rate schedules are not required to be reported, only the assumptions made about the average per unit cost of labor.

Section 1710.302 Financial Forecasts—Power Supply Borrowers.

Some commentors questioned the provision in paragraph (d) that REA may request projections for a period longer than 10 years if it is deemed necessary. REA understands that financial projections become more uncertain further into the future, but believes that there may be some circumstances when a projection beyond 10 years may be helpful in assessing the feasibility of a loan for generation or transmission projects.

Several commentors questioned the value of the requirement in this section and in § 1710.303 that sensitivity analyses be completed of the major assumptions used in the forecast. Concern was also expressed that the number of sensitivity analyses required may be unlimited and onerous for borrowers.

REA appreciates these concerns and has no intention of requiring more sensitivity analyses than a prudent utility or lender would require for similar financial forecasts. It would not be prudent for REA to lend millions of dollars for a project without knowing how the financial forecast is affected by changing important assumptions. In view of the concerns raised, however, both sections have been modified to make it clear that the sensitivity analyses required will be limited to a reasonable range of assumptions. In addition, the sections have been revised to limit the requirement for such sensitivity analyses to cases where the financial forecast is used in support of a loan or loan guarantee that exceeds the smaller of 10 percent of the borrower's total utility plant or the following dollar amount: $25 million for power supply borrowers, or $3 million for distribution borrowers.

Concerns were also expressed as to whether duplicative sensitivity analyses were being required by this section and § 1710.303. In response to these concerns, § 1710.303(b)(4) has been amended to make it clear that duplicative sensitivity analyses are not required.

One commentor objected to the requirement in § 1710.302(d)(4) that power supply borrowers furnish REA with all information on operating and other agreements that affect costs. The same commentor also objected to the requirement in § 1710.302(e) that power supply borrowers' financial forecasts must be coordinated in advance with REA as to major assumptions and other factors.

Both of these requirements are similar to current REA practice. To allay concerns that unlimited information about agreements could be required under paragraph (d)(4), it has been modified to require only material information determined to be necessary by REA on a case by case basis. No change has been made to paragraph (e) of this section because REA believes the requirement to coordinate in advance on major aspects of the financial projections is reasonable and necessary and will generally save borrowers time and resources by minimizing the need to revise analyses later in the process.

One commentor asked whether the need to coordinate in advance with REA applies to all financial forecasts prepared by a power supply borrower or only to financial forecasts submitted in support of a loan from REA. This and the other requirements of this section apply only to financial forecasts used in support of a loan. Paragraph (a) of this section has been modified to make this clear.

Section 1710.303 Power Cost Studies—Power Supply Borrowers

A question was raised as to whether power cost studies were intended to be separate studies or integrated with the financial forecast. These studies are usually separate, but they may be integrated with the financial forecast. Paragraph (a) of this section has been amended to make this clear.

A concern was raised that the requirement in paragraph (c) of this section to use current, REA-approved power requirements data may not be consistent with sensitivity analyses required by paragraph (b)(4) of this section that may involve power costs higher or lower than those used in the REA-approved power requirements projections. This point is well taken, and paragraph (c) has been amended to provide that alternative assumptions about future power requirements may be used in conjunction with the sensitivity analyses.

List of Subjects in 7 CFR Part 1710

Administrative practices and procedures, Electric utilities, Guaranteed loan programs, Insured loan program, Loan programs.

For the reasons given in the preamble, REA amends 7 CFR chapter XVII by adding a new part 1710 to read as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

Subpart A—General

1710.1 General statement.
1710.2 Definitions and rules of construction.
1710.3 Form revisions.
1710.4 Exception authority.
1710.5 Availability of forms.
1710.6 Applicability of certain provisions to completed loan applications.
1710.7–1710.49 [Reserved]

Subpart B—Types of Loans and Loan Guarantees

1710.50 Insured loans.
1710.51 Loan guarantees.
1710.52–1710.99 [Reserved]

Subpart C—Loan Purposes and Basic Policies.

1710.100 General.
1710.101 Types of eligible borrowers.
1710.102 Borrower eligibility for different types of loans. [Reserved]
1710.103 Area coverage.
1710.104 Service to non-RE Act beneficiaries.
1710.105 State regulatory approvals.
1710.106 Uses of loan funds.
1710.107 Amount lent for acquisitions.
1710.108 Mergers and consolidations.
1710.109 Reimbursement of general funds and interim financing.
1710.110 Supplemental financing.
1710.111 Refinancing.
1710.112 Loan feasibility.
1710.113 Loan security.
1710.114 TIER and DSC requirements.
1710.115 Loan maturity.
1710.116 Equity development plan.
1710.117 Environmental considerations.
1710.118 Energy conservation and land management.
1710.119 Loan processing priorities.
1710.120 Construction standards and contracting.
1710.121 Insurance requirements.
1710.122 Equal opportunity and nondiscrimination.
1710.123 Debarment and suspension.
1710.124 Uniform relocation act.
1710.125 Restrictions on lobbying.
1710.126 Federal debt delinquency.
1710.127 Drug free workplace.
1710.128–1710.149 [Reserved]

Subpart D—Basic Requirements for Loan Approval

1710.150 General.
1710.151 Required findings for all loans.
1710.152 Primary support documents.
1710.153 Additional requirements and procedures.
1710.154–1710.199 [Reserved]

Subpart E–Power Requirements Studies

1710.200 Purpose.
1710.201 Requirement to prepare a PRS—power supply borrowers.
1710.202 Requirements to prepare a PRS—distribution borrowers.
1710.203 Basic policies and requirements for a PRS.
1710.204 PRS work plan requirements.
1710.205 Basic criteria for REA approval of a PRS.
1710.206 Waiver of borrower requirements.
1710.207–1710.249 [Reserved]

Subpart F—Construction Work Plans and Related Studies

1710.250 General.
1710.251 Construction work plans—distribution borrowers.
1710.252 Construction work plans—power supply borrowers.
1710.253 Engineering and cost studies—addition of generation capacity.
1710.254 Alternative sources of power.
1710.255–1710.299 [Reserved]

Subpart G—Long-Range Financial Forecasts

1710.300 General.
1710.301 Financial forecasts—distribution borrowers.
1710.302 Financial forecasts—power supply borrowers.
1710.303 Power cost studies—power supply borrowers.
1710.304–1710.349 [Reserved]

Subpart H—Credit Support of Power Supply Borrowers [Reserved]

Authority: 7 U.S.C. 901–950(b); Public Law 99–591; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart A—General

§ 1710.1 General statement.

(a) This part establishes general and pre-loan policies and requirements that apply to both insured and guaranteed loans to finance the construction and improvement of electric facilities in rural areas, including generation, transmission, and distribution facilities.

(b) Additional pre-loan policies, procedures, and requirements that apply specifically to guaranteed and/or insured loans are set forth elsewhere:

(1) For guaranteed loans, in 7 CFR part 1712 and REA Bulletins 20–2, 20–22, 60–10, 86–3, 105–5, 111–3, 112–3, and 145–1, or the successors to these bulletins; and

(2) For insured loans, in 7 CFR part 1714 and REA Bulletins 20–2, 20–14, 60–10, 86–3, 105–5, 111–3, 112–3, and 145–1, or the successors to these bulletins.

(c) This part supersedes those portions of the following REA Bulletins and supplements that are in conflict.

20–2 Electric Loan Policies and Application Procedures
20–5 Extensions of Payments of Principal and Interest
20–6 Loans for Generation and Transmission
20–14 Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act
20–20 Deferment of Principal Repayments for Investment in Supplemental Lending Institutions
20–22 Guarantee of Loans for Bulk Power Supply Facilities
20–23 Section 12 Extensions for Energy Resources Conservation Loans
60–10 Construction Work Plans, Electric Distribution Systems
86–3 Headquarters Facilities for Electric Borrowers
105–5 Financial Forecast—Electric Distribution Systems
111–3 Power Supply Surveys
112–3 Area Coverage Service
120–1 Development, Approval, and Use of Power Requirements Studies
145–1 Development, Approval, and Use of Irrigation Studies

(d) When parts 1710, 1712, and 1714 are published in final form, the bulletins cited in paragraph (b) of this section will be rescinded, in whole or in part, or revised.

§ 1710.2 Definitions and rules of construction.

(a) *Definitions.* For the purpose of this part, the following terms shall have the following meanings:

Administrator means the Administrator of REA or his or her designee.

APRR means Average Adjusted Plant Revenue Ratio calculated as a simple average of the adjusted plant revenue ratios for 1978, 1979 and 1980 as follows:

$$APRR = \frac{A+B}{C-D}$$

where:

A=Distribution (plant), which equals Part E, Line 14(e) of REA Form 7;

B=General Plant, which equals Part E, Line 24(e) of REA Form 7;

C=Operating Revenue and Patronage Capital, which equals Part A, Line 1 of REA Form 7; and

D=Cost of Power, which equals the sum of Part A, Lines 2, 3, and 4 of REA Form 7.

Area Coverage means the provision of adequate electric service to the widest practical number of rural users in the borrower's service area during the life of the loan.

Borrower means any organization that has an outstanding loan made or guaranteed by REA for rural electrification, or that is seeking such financing.

Bulk Transmission Facilities means the transmission facilities connecting power supply facilities to the subtransmission facilities, including both the high and low voltage sides of the transformer used to connect to the subtransmission facilities, as well as related supervisory control and data acquisition systems.

Consolidation means the combination of 2 or more borrower or nonborrower organizations, pursuant to state law, into a new successor organization that takes over the assets and assumes the liabilities of those organizations.

Distribution Borrower means a borrower that sells or intends to sell electric power and energy at retail in rural areas.

Distribution Facilities means all electrical lines and related facilities beginning at the consumer's meter base, and continuing back to and including the distribution substation.

DSC means Debt Service Coverage calculated as:

$$DSC = \frac{A+B+C}{C-D}$$

where:

A=Depreciation and Amortization Expense, which equals Part A, Line 12 of REA Form 7 (distribution borrowers) or Section A, Line 20 of REA Form 12a (power supply borrowers);

B=Interest on Long-term Debt, which equals part A, Line 15 of REA Form 7 or Section A Line 22 of REA Form 12a except that Interest on Long-term debt shall be increased by ⅓ of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of REA Form 7 or Section K, Line 4 or REA Form 12h) exceeds 2 percent of Total Margins and Equities (Part C, Line 32 of REA Form 7 or Section B, Line 33 of REA Form 12a;

C=Patronage Capital or Margins, which equals Part A, Line 27 of REA Form 7 or Section A, Line 34 or REA Form 12a; and

D = Debt Service Billed (REA + other) which equals all interest and principal billed during the calendar year plus 1/3 of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of REA Form 7 or Section K, Line 4 of REA Form 12h) exceeds 2 percent of Total Margins and Equities (Part C, Line 32 of REA Form 7 or Section B, Line 33 of REA Form 12A).

Equity means total margins and equities, which equals Part C, Line 32 of REA Form 7 (distribution borrowers) or Section B, Line 33 of REA Form 12a (power supply borrowers).

Generation Facilities means the generating plant and related facilities, including the building containing the plant, all fuel handling facilities, and the stepup substation used to convert the generator voltage to transmission voltage, as well as related energy management (dispatching) systems.

Insured Loan means a loan made pursuant to Section 305 of the RE Act, and may include a direct loan made under Section 4 of the RE Act.

Loan means any loan made or guaranteed by REA.

Loan Contract means the agreement, as amended, supplemented, or restated from time to time, between a borrower and REA providing for loans made or guaranteed pursuant to the RE Act.

Loan Feasibility means that the borrower has the capability of repaying the loan in full as scheduled, in accordance with the terms of the mortgage, note, and loan contract.

Loan Guarantee means a loan guarantee made by REA pursuant to the RE Act.

Loan Period means the period of time during which the facilities included in a loan application will be constructed. It commences with the date shown on page 1 of REA Form 740c, Cost Estimates and Loan Budget for Electric Borrowers. The loan period is generally 2 years for distribution borrowers and, except in the case of a loan for new generating and associated transmissions facilities, 3 years for the transmission facilities and improvements or replacements of generation facilities of power supply borrowers. The loan period for new generating facilities is determined on a case by case basis.

Merger means the combining, pursuant to state law, of borrower or nonborrower organizations into an existing survivor organization that takes over the assets and assumes the liabilities of the merged organizations.

Mortgage means any and all instruments creating a lien on or security interest in the borrower's assets in connection with loans or guarantees under the RE Act.

Ordinary Replacement means replacing one or more units of plant, called "retirement units", with similar units when made necessary by normal wear and tear, damage beyond repair, or obsolescence of the facilities.

Power Requirements Study (PRS) means the thorough study of a borrower's electric loads and the factors that affect those loads in order to determine, as accurately as practicable, the borrower's future requirements for energy and capacity.

Power Supply Borrower means a borrower that sells or intends to sell electric power at wholesale to distribution or power supply borrowers pursuant to REA wholesale power contracts.

PRR means Plant Revenue Ratio calculated as;

$$PRR = \frac{A}{B-C}$$

where:

A = Total Utility Plant, which equals Part C, Line 3 of REA Form 7;

B = Operating Revenue and Patronage Capital, which equals Part A, Line 1 of REA Form 7; and

C = Cost of Power, which equals the sum of Part A, Lines 2, 3, and 4 of REA Form 7.

PRS Work Plan means the plan that sets forth the resources, methods, schedules, and milestones to be used in the preparation and maintenance of a power requirements study.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

RE Act Beneficiary means a person, business, or other entity that is located in a rural area and is not receiving adequate central-station electric service, or that initially received central-station service through facilities financed by REA, or successors to such entities.

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

Retirement Unit means a substantial unit of property, which when retired, with or without being replaced, is accounted for by removing its book cost from the plant account.

Rural Area means any area of the United States, its territories and possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 1,500. The population figure is obtained from the most recent data available, such as from the Bureau of the Census and Rand McNally and Company. For purposes of the "rural area" definition, the character of an area is determined as of the time the initial loan for the system is made.

Subtransmission Facilities means the transmission facilities that connect the high voltage side of the distribution substation to the low voltage side of the bulk transmission or generating facilities, as well as related supervisory control and data acquisition facilities.

System Improvement means the change or addition to electric plant facilities to improve the quality of electric service or to increase the quantity of electric power available to RE Act beneficiaries.

TIER means Times Interest Earned Ratio calculated as:

$$TIER = \frac{A+B}{A}$$

where:

A = Interest on Long-Term Debt, which equals Part A, Line 15 of REA Form 7 (distribution borrowers) or Section A Line 22 of REA Form 12a (power supply borrowers), except that Interest on Long-Term debt shall be increased by ½ of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of REA Form 7 or Section K, Line 4 of REA Form 12h) exceeds 2 percent of Total Margins and Equities (Part C, Line 32 of REA Form 7 or Section B, Line 33 of REA Form 12a; and

B = Patronage Capital or Margins, which equals Part A, Line 27 of REA Form 7 or Section A, Line 34 of REA Form 12a.

Total Assets means Part C, Line 25 of REA Form 7 (distribution borrowers) or Section B, Line 28 of REA Form 12a (power supply borrowers).

Total Utility Plant means Part C, Line 3 of REA Form 7 (distribution borrowers) or Section B, Line 3 of REA Form 12a (power supply borrowers).

Transmission Facilities means all electrical lines and related facilities, including certain substations, used to connect the distribution facilities to generation facilities. They include bulk transmission and subtransmission facilities.

(b) *Rules of Construction.* Unless the context otherwise indicates, "includes" and "including" are not limiting, and "or" is not exclusive. The terms defined in paragraph (a) of this part include the plural as well as the singular, and the singular as well as the plural.

§ 1710.3 Form revisions.

References in this part to REA forms or line numbers in REA forms will apply to corresponding information in future versions of the forms.

§ 1710.4 Exception authority.

Consistent with the RE Act and other applicable laws, the Administrator may waive or reduce any requirement imposed by this part or other REA regulations on an electric borrower, or a lender whose loan is guaranteed by REA, if the Administrator determines that imposition of the requirement

would adversely affect the Government's financial interest.

§ 1710.5 Availability of forms.

Information about the availability of REA forms and publications cited in this part is available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250–1500. These REA forms and publications may be reproduced.

§ 1710.6 Applicability of certain provisions to completed loan applications.

(a) Certain new or revised policies and requirements set forth in this part, which are listed in this paragraph, shall not apply to a pending loan application that has been determined by REA to be complete as of the date such policies and requirements are published in final form in the **Federal Register**. This exception does not apply to loan applications received after said vote, nor to incomplete applications pending as of said date. This exception applies only to the following provisions:

(1) Paragraph 1710.115(b)—with respect to limiting loan maturities to the expected useful life of the facilities financed;

(2) Section 1710.116—with respect to the requirement to develop and follow an equity development plan;

(3) Paragraph 1710.151(f)—with respect to the borrower providing satisfactory evidence that a state regulatory authority will allow the facilities to be included in the rate base or otherwise allow sufficient revenues to repay the loan;

(4) Paragraphs 1710.250(b), 1710.251(a), and 1710.252(a)—with respect to the requirement that improvements, replacements, and retirements of generation plant be included in a Construction Work Plan; and

(5) Paragraph 1710.300(d)(5)—With respect to the requirement that a borrower's financial forecast include a sensitivity analysis of a reasonable range of assumptions for each of the major variables in the forecast.

(b) Certain provisions of this part apply only to loans made on or after the effective date of this rule. These provisions are identified in the individual sections of this part.

§§ 1710.7–1710.49 [Reserved]

Subpart B—Types of Loans and Loan Guarantees

§ 1710.50 Insured loans.

REA makes insured loans under section 305 of the RE Act for the extension and improvement of electric facilities in rural areas. Generally, insured loans are made for distribution and subtransmission facilities, including ordinary replacements and warehouse and garage facilities, and in the case of financial hardship, other headquarters facilities, general plant equipment, and working capital if required for the initial operation of a distribution system. These loans are made for a term of up to 35 years, and the standard interest rate is 5 percent per annum. Under certain circumstances, as set forth in the RE Act, the interest rate may be as low as 2 percent per annum.

§ 1710.51 Loan guarantees.

REA provides financing through 100 percent loan guarantees made under sections 306 and 306A of the RE Act. REA also provides 90 percent loan guarantes under sections 311 and 314 of the RE Act to enable borrowers to secure financing from certain private lenders. The loan guarantees are made for a term of up to 35 years, and the interest rate is established at a rate agreed to by the borrower and the lender, with REA concurrence. The guarantee applies to the repayment of both principal and interest.

§§ 1710.52–1710.99 [Reserved]

Subpart C—Loan Purposes and Basic Policies

§ 1710.100 General.

The Rural Electrification Administration (REA) makes loans and loan guarantees to finance the construction of electric distribution, transmission and generation facilities, including system improvements and replacements, required to provide adequate electric service in rural areas. In some circumstances, REA may finance selected operating expenses of its borrowers. Loans made or guaranteed by the Administrator of REA will be made in conformance with the Rural Electrification Act of 1936, as amended (7 U.S..C. 901 *et seq.*), and 7 CFR chapter XVII. REA provides certain technical assistance to borrowers when necessary to aid the development of rural electric service and to protect loan security.

§ 1710.101 Types of eligible borrowers.

(a) REA makes loans to corporations, states, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, limited-dividend, or mutual associations that provide or propose to provide:

(1) The retail electric service needs of rural areas, or

(2) The power supply needs of distribution borrowers under the terms of power supply arrangements satisfactory to REA.

(b) In making loans, REA gives preference to states, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, or limited-dividend associations. REA does not make loans to individual consumers.

(c) Former borrowers that have paid off all outstanding loans may reapply for a loan to serve RE Act beneficiary loans accruing from the time the former borrower's complete loan application is received by REA. The determination of whether an area is rural will be based on the population of the area at the time of the reapplication for a loan, if the area is not served by electric facilities financed by REA. If the area is served by electric facilities financed by REA, the original rural classification of the area will apply.

(d) Former borrowers that have prepaid all then outstanding insured and direct loans in accordance with section 306B of the RE Act must comply with the provisions of 7 CFR Part 1786 before being considered eligible to borrow additional funds from REA.

§ 1710.102 Borrower eligibility for different types of loans. [Reserved]

§ 1710.103 Area coverage.

(a) Borrowers shall make a diligent effort to extend electric service to all unserved persons within their service area who:

(1) Desire electric service; and

(2) Meet all reasonable requirements established by the borrower as a condition of service.

(b) If economically feasible and reasonable considering the cost of providing such service and/or the effects on all consumers' rates, such service shall be provided, to the maximum extent practicable, at the rates and minimum charges established in the borrower's rate schedules, without the payment by such persons, other than seasonal or temporary consumers, of a contribution in aid of construction. The loan contract shall contain provisions to this effect. A seasonal consumer is one that demands electric service only during certain seasons of the year. A temporary consumer is a seasonal or year-round consumer that demands electric service over a period of less than five years.

(c) Borrowers may assess contributions in aid of construction provided such assessments are

consistent with the policy set forth in this section.

§ 1710.104 Service to Non-RE Act beneficiaries.

(a) To the greatest extent practical, loans are limited to providing electric facilities that serve RE Act beneficiaries. When it is determined by the Administrator to be necessary in order to furnish or improve electric service in rural areas, loans may be made to finance electric facilities that will also serve consumers in nonrural areas, or consumers in rural areas who are already receiving adequate central station service.

(b) Loan funds may be approved for facilities to serve non-RE Act beneficiaries only if:

(1) The primary purpose of the loan is to furnish or improve service for RE Act beneficiaries; and

(2) The use of loan funds to serve non-RE Act beneficiaries is necessary and incidental to the primary purposes of the loan.

(c) The determination whether adequate central station service is being provided in a rural area will be made by the Administrator on a case by case basis. It will be based on current normal standards for electric service, taking factors such as the following into consideration:

(1) The continuity of service;

(2) Voltage and frequency regulation;

(3) The age and condition of the existing electric facilities;

(4) The adequacy of capacity to meet the requirements of existing consumers; and

(5) The ability of existing consumers to use modern electric appliances efficiently under the existing service.

§ 1710.105 State regulatory approvals.

(a) In states where a borrower is required to obtain approval of a project or its financing from a state regulatory authority, REA may require that such approvals be obtained, if feasible for the borrower to do so, before the following types of loans are approved by REA:

(1) Loans requiring an Environmental Impact Statement; and

(2) Loans to finance generation and transmission facilities, when the loan request for such facilities is $25 million or more.

(b) At minimum, in the case of all loans in states where state regulatory approval is required of the project or its financing, such state approvals will be required before loan funds are advanced.

(c) In case where state regulatory authority approval has been obtained, but the borrower has failed to proceed with the project in a timely manner according to the schedule contained in the borrower's project design manual, or if there are cost overruns or other developments that threaten loan feasibility or security, REA may require the borrower to obtain a reaffirmation of the project and its financing from the state authority before any additional loan funds are advanced.

§ 1710.106 Uses of loan funds.

(a) REA loan funds may be used to finance:

(1) *Distribution facilities.* (i) The construction of new distribution facilities or systems and the cost of system improvements and removals, less salvage value, needed to meet load growth requirements or improve the quality of service.

(ii) The purchase, rehabilitation and integration of existing distribution facilities and associated service territory when the acquisition is an incidental and necessary means of providing or improving service to persons in rural areas who are not receiving adequate central station service, and the borrower is unable to finance the acquisition from other sources. See § 1710.107.

(2) *Transmission and generation facilities.* (i) The construction of new transmission and generation facilities or systems and the cost of system improvements and removals, less salvage value, needed to meet load growth and improve the quality of service.

(ii) The purchase of an ownership interest in new or existing transmission or generation facilities to serve RE Act beneficiaries.

(3) *Ordinary plant replacements.* The excess of the total cost of ordinary replacements over the original cost of the facilities being replaced, unless financing of the total cost is specifically authorized by the Administrator.

(4) *Warehouse and garage facilities.* The purchase, remodeling, or construction of warehouse and garage facilities required for the operation of a borrower's system. See paragraph (b) of this section.

(5) *Interest.* The payment of interest on indebtedness incurred by a borrower to finance the construction of generation and transmission facilities during the period preceding the date such facilities are placed into service, if requested by the borrower and found necessary by REA.

(b) In cases of financial hardship, as determined by the Administrator, loans may also be made to finance the following items:

(1) The headquarters office and other headquarters facilities in addition to those cited in paragraph (a)(4) of this section;

(2) General plant equipment, including furniture, office, transportation, data processing and other work equipment; and

(3) Working capital required for the initial operation of a new system.

(c) REA will not make loans to finance the following items:

(1) Electric facilities, equipment, appliances, or wiring located inside the premises of the consumer, except certain load-management equipment;

(2) Facilities to serve consumers who are not beneficiaries of the RE Act unless those facilities are necessary and incidental to providing or improving electric service in rural areas (See § 1710.104); and

(3) Any facilities that a state regulatory authority having jurisdiction will not approve for inclusion in the borrower's rate base, or will not otherwise allow rates sufficient to repay with interest the debt incurred for the facilities.

(d) To make optimal use of available loan funds in furthering the purposes of the RE Act, the amount lent to any one borrower in a given year may be limited to less than the total amount eligible for REA financing, taking into consideration the amount of loan funds available and the size of REA's loan application inventory. Such limitation will not be imposed unless the amount authorized for lending in a given year is substantially less, as determined by the Administrator, than the amount of eligible loan funds requested. Such reductions will be made on an equal proportion basis for all applicants based on the amount of funds for which an applicant is eligible. The portion of a request for which a borrower is eligible that is not loaned in one year will be eligible for a loan in subsequent years, provided that a resolution is submitted to REA by the borrower's board of directors certifying that the funds are still needed to complete purposes contained in the original loan application.

§ 1710.107 Amount lent for acquisitions.

The maximum amount that will be lent for an acquisition is limited to the value of the property, as determined by REA. If the acquisition price exceeds this amount, the borrower shall provide the remainder without REA financial assistance.

§ 1710.108 Mergers and consolidations.

(a) REA encourages its borrowers to consider merging or consolidating with another electric borrower when such action will contribute to greater operating efficiency and financial soundness.

(b) After a merger or consolidation, REA will give priority consideration per § 1710.119 to the processing of loans for the surviving system to finance the integration and rehabilitation of electric facilities, if necessary, and the improvement or extension of electric service in rural areas. Such priority consideration will also be given in the case of a borrower that has merged or consolidated with an electric system that has not previously received REA financial assistance, if such system was serving primarily rural residents at the time of the merger or consolidation and such rural residents will continue to be served by the merged or consolidated system. REA does not make loans for costs incurred in effectuating mergers or consolidations, such as legal expenses or feasibility study costs.

§ 1710.109 Reimbursement of general funds and interim financing.

(a) Borrowers may request that a loan include funds to reimburse general funds and/or replace interim financing used to finance equipment and facilities that were included in an REA-approved construction work plan, work plan amendment or other REA-approved plan, and for which loan funds have not been provided by REA. Such reimbursement and/or replacement of interim financing may include the direct costs of procurement and construction, as well as the related cost of engineering, architectural, environmental and other studies and plans needed to support the project, when such cost is capitalized as part of the cost of the facilities.

(b) If procurement and/or construction of the equipment and facilities was completed prior to the current loan period, reimbursement, including replacement of interim financing, will be limited, except in cases of extreme financial hardship as determined by the Administrator, to the cost of procurement and construction completed during the period immediately preceding the current loan period, as specified in paragraph (c) of this section. As defined in § 1710.2, the loan period begins on the date shown on page 1 of REA Form 740c, Cost Estimates and Loan Budget for Electric Borrowers.

(c) The period immediately preceding the current loan period for which reimbursement and replacement of interim financing is authorized under paragraph (b) of this section is as follows:

(1) The number of months agreed to by REA and the borrower for complete loan applications received by REA before the effective date of this rule;

(2) 36 months for complete loan applications received on or up to one year after the effective date of this rule; or

(3) 24 months for complete loan applications received one or more years after the effective date of this rule.

(d) If the reimbursement of general funds and/or replacement of interim financing is for approved expenditures for equipment and facilities whose procurement and/or construction is completed during the current loan period, the time limits of paragraph (c) of this section do not apply.

§ 1710.110 Supplemental financing.

(a) Except in cases of financial hardship, as determined by the Administrator, applicants for an insured loan will be required to obtain a portion of their loan funds from a supplemental source without an REA guarantee, in the amounts set forth in paragraph (c) of this section. REA will consider granting a lien accommodation to the supplemental lender. REA does not require supplemental financing in conjunction with an REA guaranteed loan. However, if a borrower elects to obtain supplemental financing in conjunction with a guaranteed loan, the granting of REA's loan guarantee may be conditioned on the borrower's acquisition of the supplemental financing.

(b) The terms and conditions of supplemental financing and any security offered to the supplemental lender are subject to REA approval. Generally, supplemental loans must bear the same maturity and be amortized in the same manner as REA loans made concurrently. Borrowers may elect to repay the loans either in substantially equal periodic installments covering interest and principal, or in periodic installments that include interest and level amortization of principal.

(c) *Supplemental financing required for insured loans.*—(1) *Distribution borrowers.*

(i) Distribution borrowers that had, as of December 31, 1980, an average consumer density of 2 or fewer consumers per mile or an average adjusted plant revenue ratio (APRR), as defined in § 1710.2, of over 9.0 shall obtain supplemental financing equal to 10 percent of their loan request.

(ii) All other distribution borrowers must obtain supplemental financing based on their plant revenue ratio (PRR), as follows:

PRR	Supplemental loan percentage
9.00 and above	10
8.01—8.99	20
8.00 and below	30

(2) *Power supply borrowers.* The supplemental loan proportion required of a power supply borrower is based on the simple arithmetic mean of the supplemental loan proportions required of the borrower's distribution members.

§ 1710.111 Refinancing.

(a) REA makes loans or loan guarantees to refinance the outstanding indebtedness of borrowers in the following cases:

(1) Loans or loan guarantees to refinance long-term debt owed by borrowers to the Tennessee Valley Authority for credit extended under the terms of the Tennessee Valley Authority Act of 1933, as amended.

(2) Loan guarantees made in accordance with the provisions of section 306A of the RE Act to prepay a loan (or any loan advance thereunder) made by the Federal Financing Bank.

(b) In certain circumstances, REA may make a loan to replace interim financing obtained for the construction of facilities (See § 1710.109).

§ 1710.112 Loan feasibility.

(a) REA will make a loan only if there is reasonable assurance that the loan, together with all outstanding loans and other obligations of the borrower, will be repaid in full as scheduled, in accordance with the mortgage, notes, and loan contracts. The borrower must provide evidence satisfactory to the Administrator that the loan will be repaid in full as scheduled, and that all other obligations of the borrower will be met.

(b) Based on evidence submitted by the borrower and other information, REA will use the following criteria to evaluate loan feasibility:

(1) Projections of power requirements, rates, revenues, expenses, margins, and other factors for the present system and proposed additions are based on reasonable assumptions and adequate supporting data and analysis, including analysis of a range of assumptions for the significant variables, when required by § 1710.300(d)(5).

(2) Projected revenues from the rates proposed by the borrower are adequate to meet the required TIER and DSC

ratios based on the borrower's total costs, including the projected maximum debt service cost of the new loan.

(3) The economics of the borrower's operations and service area are such that consumers can reasonably be expected to pay the proposed rates required to cover all expenses and meet REA TIER and DSC requirements, and the borrower can reasonably compete with other utilities and other energy sources to prevent substantial loan loss while providing satisfactory service to its consumers.

(4) Risks of possible loss of substantial loads from large consumers or from load concentrations in particular industries will not substantially impair loan feasibility.

(5) Risks of loss of portions of the borrower's service territory from annexation or other causes will not substantially impair loan feasibility. If there appears to be a substantial risk, REA may require additional information from the borrower, such as a summary and analysis of the risk by the borrower; state, county or local planning reports having information on projected growth or expansion plans of local communities; annexation plans of the municipalities in question; and any other relevant information.

(6) In states where rates or investment decisions are subject to approval by state regulatory authorities, there is reasonable expectation that such approvals will be forthcoming to enable repayment of the loan in full according to its terms.

(7) The experience and performance of the system's management is acceptable.

(8) In the case of joint ventures, the borrower has sufficient management control or other contractual safeguards with respect to the construction and operation of the jointly owned facility to ensure that the borrower's interest are protected and the credit risk is minimized.

(9) The borrower has implemented adequate financial and management controls and there are and have been no significant financial or other irregularities.

§ 1710.113 Loan security.

(a) REA makes loans only if, in the judgment of the Administrator, the security therefor is reasonably adequate and the loan will be repaid according to its terms within the time agreed.

(b) REA generally requires that borrowers provide it with a first lien on all of the borrower's real and personal property, including intangible personal property and any property acquired after the date of the loan. This lien shall be in the form of a mortgage by the borrower to the Government or a deed of trust between the borrower and a trustee satisfactory to the Administrator, together with such security documents as REA may deem necessary in a particular case.

(c) When a borrower is unable by reason of preexisting encumbrances, or otherwise, to furnish a first mortgage lien on its entire system the Administrator may accept other forms of security, such as a pledge of revenues, if he or she determines such security is reasonably adequate and the form and nature thereof is otherwise acceptable.

(d) In the case of loans that include the financing of electric facilities that are operated as an integral component of a non-REA financed system (such as generation and transmission facilities co-owned with other electric utilities), the borrower shall, in addition to the mortgage lien on all of the borrower's electric facilities, furnish adequate assurance, in the form of contractual or other security arrangements, that the system will be operated on an efficient and continuous basis. Satisfactory evidence must also be provided that the non-REA financed system is financially sound and under capable management. Examples of such evidence include financial reports, annual reports, Security and Exchange Commission 10K reports if the system is required to file them, credit reports from Standard and Poor's, Moodys or other recognized sources, reports to state regulatory authorities and the Federal Energy Regulatory Commission, and evidence of a successful track record in related construction projects.

(e) Additional controls on the borrower's financial, investment and managerial activities appear in the loan contract and mortgage required by REA.

§ 1710.114 TIER and DSC requirements.

(a) *General.* TIER and DSC requirements are set forth in the borrower's mortgage, loan contract, or other contractual agreements with REA. The requirements set forth in this section apply to borrowers that receive a loan after the effective date of this rule. Nothing in this section, however, shall reduce the TIER or DSC requirements of a borrower that has contractually agreed with REA to a higher requirement.

(b) *TIER and DSC levels.* (1) The minimum TIER and DSC levels required, whether applied on an annual or average basis, are 1.50 and 1.25, respectively, for distribution borrowers, and 1.05 and 1.00, respectively, for power supply borrowers. The 1.05 TIER for power supply borrowers shall be phased in as follows: 1.0 in calendar year (CY) 1991, 1.03 in CY 1992, and 1.05 in CY 1993 and all subsequent years. The Administrator may, on a case by case basis, reduce the TIER level below 1.05 for power supply borrowers, but not below 1.0, if the Administrator determines that a 1.05 TIER will require said borrowers to raise the rates they charge for power so high as to substantially reduce kWh sales and revenues and threaten loan feasibility.

(2) If a distribution borrower has in service or under construction a substantial amount of generation and associated transmission plant financed at a cost of capital substantially higher than the standard cost of funds under section 305 of the RE Act, then the Administrator may establish, in his or her sole discretion, a blended TIER and DSC level based on the respective shares of total utility plant represented by said generation and associated transmission plant and by distribution and other transmission plant.

(c) *Requirements for loan feasibility.* To be eligible for a loan, borrowers must demonstrate to REA that they will, on a pro forma basis, earn the TIER and DSC levels required by 1710.114(b) in each of the years included in the borrower's long-range financial forecast prepared in support of its loan application, as set forth in subpart G of this part.

(d) *Requirements for maintenance of TIER and DSC.*—(1) *Prospective requirement.* Borrowers must design and implement rates for electric power and energy and other services to provide sufficient revenue to pay all fixed and variable expenses, to provide and maintain reasonable working capital and to maintain on an annual basis the TIER and DSC levels required by paragraph (b) of this section. Rates must be designed and implemented to produce at least enough revenue to meet the requirements of this paragraph under the assumption that average weather conditions in the borrower's service territory will prevail in the future, including average system damage and outages due to weather and the related costs. Failure to design and implement rates pursuant to the requirements of this paragraph shall be an event of default upon notice provided in accordance with the terms of the borrower's mortgage.

(2) *Retrospective requirement.* The average TIER and DSC levels achieved by a borrower in the 2 best years out of the 3 most recent calendar years must meet the levels required by paragraph (b) of this section. If a borrower fails to

achieve these average levels, it must immediately notify REA in writing. Within 30 days of such notification or of the borrower being notified in writing by REA, whichever is earlier, the borrower, in consultation with REA, must provide a written plan satisfactory to REA setting forth the actions that will be taken to achieve the required TIER and DSC levels on a timely basis. Failure to develop and implement a plan satisfactory to REA shall be an event of default upon notice provided in accordance with the terms of the borrower's mortgage.

(3) As used in this section, fixed and variable expenses include, but are not limited to: All taxes, depreciation, maintenance expenses, and the cost of electric power and energy and other operating expenses of the electric system, including all obligations under the wholesale power contract, all lease payments when due, and all principal and interest payments on outstanding indebtedness when due.

(e) *Requirements for advance of funds.* (1) If a borrower applying for a loan has failed to achieve the TIER or DSC levels required by paragraph (b) of this section during the latest 12 month period immediately preceding approval of the loan, or the borrower's average TIER or average DSC for the 2 best years out of the most recent 3 calendar years was below the levels required in said paragraph (b), REA may withhold the advance of loan funds until the borrower has adopted an annual financial plan and operating budget satisfactory to REA and taken such other action as REA may require to demonstrate that the required TIER and DSC levels will be maintained in the future and that the loan will be repaid with interest within the time agreed. Such other action may include, for example, increasing system operating efficiency and reducing costs or adopting a rate design that will achieve the required TIER and DSC levels, and either placing such rates into effect or taking action to obtain regulatory authority approval of such rates. If failure to meet TIER or DSC is due to unusual events beyond the control of the borrower, such as unusual weather, system outage due to a storm or regulatory delay in approving rate increases, then the Administrator may waive the requirement that the borrower take the remedial actions set forth in this paragraph, provided that such waiver will not threaten loan feasibility.

(2) With respect to any outstanding loan made after the effective date of this rule, if based on actual or projected financial performance of the borrower, REA determines that the borrower may not achieve its required TIER or DSC levels in the current or future years, REA may withhold the advance of loan funds until the borrower has taken remedial action satisfactory to REA.

§ 1710.115 Loan maturity.

(a) REA is authorized to make loans and loan guarantees with a maturity of up to 35 years. Most of the electric facilities financed by REA have a long useful life, often approximating 35 years. Some facilities, such as load management equipment and Supervisory Control and Data Acquisition equipment, have a much shorter useful life due to obsolescence. Operating loans to finance working capital required for the initial operation of a new system are a separate class of loans and usually have a maturity of less than 10 years.

(b) Except for operating loans, loans made or guaranteed by REA generally must be repaid with interest within a period, up to 35 years, that approximates the expected useful life of the facilities financed. The expected useful life shall be based on the weighted average of the depreciation rates that the borrower proposes for the facilities financed by the loan, provided that these rates are deemed appropriate by REA. In states where the borrower must obtain state regulatory authority approval of depreciation rates for rate making purposes, the depreciation rates used for the purposes of this paragraph shall be the rates currently approved by the state authority or rates for which the borrower plans to seek state authority approval, provided that these rates are deemed appropriate by REA. In other states, if the rates proposed by the borrower are not deemed appropriate by REA, REA will base expected useful life on the depreciation rates listed in Bulletin 183–1, or its successor, revising such rates as necessary to reflect current industry practice.

(c) Borrowers may request a repayment period shorter than the expected useful life of the facilities financed.

(d) The Administrator may approve a repayment period longer than the expected useful life of the facilities financed, up to 35 years, if a longer maturity is required to ensure repayment of the loan and loan security is adequate.

(e) The maturity of a loan established pursuant to the provisions of this section shall not be extended as a result of extending loan payments under section 12(a) of the RE Act.

§ 1710.116 Equity development plan.

(a) As a condition for obtaining a loan or loan guarantee, a borrower whose total equity as a percentage of its total assets is, or is projected to be, less than the target level set forth in this section, after taking into consideration the effects on the balance sheet of a new loan, is required to prepare and follow a 10-year equity development plan acceptable to REA. The plan must be consistent with the borrower's financial forecast required by subpart G of this part.

(b) Distribution borrowers are subject to a minimum equity target of 40 percent of total assets. Distribution borrowers with equity below this level are required to develop and follow a 10-year equity development plan designed to make reasonable progress toward achieving an equity of 40 percent. More than one 10-year planning cycle may be required to reach this equity target, with the number of cycles depending mainly on the borrower's beginning equity and the factors cited in paragraph (d) of this section. The Administrator, at his or her discretion, may approve an equity target lower than 40 percent if the higher target would unreasonably increase retail rates for electricity. In making such a determination, the Administrator will take into consideration the factors set forth in paragraph (d) of this section.

(c) Power supply borrowers that have equity of less than 20 percent must develop and follow a 10-year equity development plan designed to achieve reasonable progress toward increasing equity as a percentage of total assets. Once a power supply borrower reaches 20 percent equity, which may require more than one 10-year planning cycle, it must either maintain its equity at 20 percent or continue to make progress toward increasing its equity percentage, depending on the borrower's particular financial circumstances and needs.

(d) A borrower's 10-year equity development plan shall be designed to achieve reasonable progress toward increasing equity as a percentage of total assets without raising power costs or retail rates for electricity unreasonably, placing an unreasonable burden on rate payers, or substantially reducing the borrower's ability to compete with neighboring utilities or other energy sources. Among the factors to be considered in establishing the improvement in equity to be made during the 10-year period are the economic strength of the borrower's service territory, the inherent cost of providing service to the territory, the disparity in rates between the borrower and neighboring utilities, the intensity of

competition faced by the borrower from neighboring utilities and other power sources, and the relative amount of new capital investment required to serve existing or new loads. REA will determine the improvement to be made under each plan, case by case, based on the general principles of this paragraph and the information and recommendations provided by the borrower. At a borrower's request, REA may approve an amendment to an established equity development plan if necessary to eliminate undue burdens on the borrower or its members.

§ 1710.117 Environmental considerations.

Borrowers are required to comply with 7 CFR part 1794, which sets forth applicable requirements of the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508); and certain other statutes, regulations and orders. Borrowers must also comply with any other applicable Federal or state environmental laws and regulations.

§ 1710.118 Energy conservation and load management.

Borrowers are encouraged to promote the efficient use of electric energy and to promote load management in order to improve system load factors, to reduce losses, to use existing facilities more effectively, and to reduce the need for new generating facilities.

§ 1710.119 Loan processing priorities

(a) Generally loans are processed in chronological order based on the date the complete application is received in the Regional office.

(b) The Administrator may give priority to processing loans that are required to meet the following needs:

(1) To restore electric service following a major storm or other catastrophe;

(2) To bring existing electric facilities into compliance with any environmental requirements imposed by Federal or state law that were not in effect at the time the facilities were originally constructed;

(3) To finance the capital needs of borrowers that have merged or consolidated after the effective date of this regulation, provided that the merger or consolidation has been approved by REA and determined to enhance the repayment or security of REA loans. Such priority will be considered for a period up to 5 years after REA approval of the merger or consolidation; or

(4) To correct serious safety problems, other than those resulting from borrower mismanagement or negligence.

(c) The Administrator may also change the normal order of processing loan applications when it is necessary to ensure that all loan authority for the fiscal year is utilized.

§ 1710.120 Construction standards and contracting.

Borrowers shall follow all REA requirements regarding construction work plans, construction standards, approved materials, construction and related contracts, inspection procedures, and bidding procedures.

§ 1710.121 Insurance requirements.

Borrowers are required to comply with certain requirements with respect to insurance and fidelity coverage as set forth in 7 CFR part 1788.

§ 1710.122 Equal opportunity and nondiscrimination.

Borrowers are required to comply with certain regulations on nondiscrimination in program services and benefits and on equal employment opportunity as set forth in REA Bulletins 20–15 and 20–19 or their successors; 7 CFR parts 15 and 15b; and 45 CFR part 90.

§ 1710.123 Debarment and suspension.

Borrowers are required to comply with certain requirements on debarment and suspension as set forth in 7 CFR part 3017.

§ 1710.124 Uniform Relocation Act.

Borrowers are required to comply with applicable provisions of 49 CFR part 24, which sets forth the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91–646; 84 Stat. 1894), as amended by the Uniform Relocation Act Amendments of 1987 (Pub. L. 100–17; 101 Stat. 246–256) and the Intermodal Surface Transportation Efficiency Act of 1991.

§ 1710.125 Restrictions on lobbying.

Borrowers are required to comply with certain requirements with respect to restrictions on lobbying activities. See 7 CFR part 3018.

§ 1710.126 Federal debt delinquency.

(a) Prior to approval of a loan or advance of funds, a borrower must report to REA whether or not it is delinquent on any Federal debt, such as Federal income tax obligations or a loan or loan guarantee from another Federal agency. If delinquent, the reasons for the delinquency must be explained, and REA will take such explanation into consideration in deciding whether to approve the loan or advance of funds.

(b) Applicants for a loan or loan guarantee must also certify that they have been informed of the collection options the Federal government may use to collect delinquent debt.

§ 1710.127 Drug free workplace.

Borrowers are required to comply with the Drug Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D) and the Act's implementing regulations (7 CFR part 3017) when a borrower receives a Federal grant or enters into a procurement contract awarded pursuant to the provisions of the Federal Acquisition Regulation (title 48 CFR) to sell to a Federal agency property or services having a value of $25,000 or more.

§ 1710.128–1710.149 [Reserved]

Subpart D—Basic Requirements for Loan Approval

§ 1710.150 General.

The RE Act and prudent lending practice require that the Administrator make certain findings before approving an electric loan or loan guarantee. The borrower shall provide the evidence determined by the Administrator to be necessary to make these findings.

§ 1710.151 Required findings for all loans.

(a) *Area coverage.* Adequate electric service will be made available to the widest practical number of rural users in the borrower's service area during the life of the loan. See § 1710.103.

(b) *Feasibility.* The loan is feasible and it will be repaid on time according to the terms of the mortgage, note, and loan contract. At any time after the original determination of feasibility, the Administrator may require the borrower to demonstrate that the loan remains feasible if there have been, or are anticipated to be, material changes in the borrower's costs, loads, rates, rate disparity, revenues, or other relevant factors from the time that feasibility was originally determined. See § 1710.112 and subpart G of this part.

(c) *Security.* REA will have a first lien on the borrower's total system or other adequate security, and adequate financial and managerial controls will be included in loan documents. See § 1710.113.

(d) *Interim financing.* For loans that include funds to replace interim financing, there is satisfactory evidence that the interim financing was used for purposes approved by REA and that the loan meets all applicable requirements of this part.

(e) *Facilities for nonrural areas.* Whenever a borrower proposes to use loan funds for the improvement, expansion, construction, or acquisition of electric facilities for non-RE Act beneficiaries, there is satisfactory evidence that such funds are necessary and incidental to furnishing or improving electric service for RE Act beneficiaries. See § 1710.104.

(f) *Facilities to be included in rate base.* In states having jurisdiction, the borrower has provided satisfactory evidence based on the information available, such as an opinion of counsel, that the state regulatory authority will not exclude from the borrower's rate base any of the facilities included in the loan request, or otherwise prevent the borrower from charging rates sufficient to repay with interest the debt incurred for the facilities. Such evidence may be based on, but not necessarily limited to, the provisions of applicable state laws; the rules and policies of the state authority; precedents in other similar cases; statements made by the state authority; any assurances given to the borrower by the state authority; and other relevant information and experience.

§ 1710.152 Primary support documents.

The following primary support documents and studies must be prepared by the borrower for approval by REA in order to support a loan application:

(a) *Power requirements study (PRS).* This study provides the borrower and REA with an understanding of the borrower's system loads, the factors influencing those loads, and valid estimates of future loads. It provides a basis for projecting annual kWh sales and revenues, and for engineering estimates of plant additions required to accommodate the forecasted loads. The requirements for a PRS and the circumstances under which one must be submitted to REA are set forth in subpart E of this part.

(b) *Construction work plan (CWP).* The CWP shall specify and document the capital investments required to serve a borrower's planned new loads, improve service reliability and quality, and service the changing needs of existing loads. The requirements for a CWP are set forth in subpart F of this part.

(c) *Long-range financial forecasts.* REA encourages borrowers to maintain on a current basis a long-range financial forecast, which should be used by a borrower's board of directors and manager to guide the system toward its financial goals. The forecast submitted in support of a loan application shall show the projected results of future actions planned by the board of directors. The requirements for a long-range financial forecast are set forth in subpart G of this part.

(d) *Borrower's environmental report (BER).* This document is used to determine what effect the construction of the facilities included in the construction work plan will have on the environment. In developing a BER a borrower shall follow the policy and procedural requirements set forth in 7 CFR Part 1794. After reviewing the BER, REA will determine whether additional environmental studies will be required.

§ 1710.153 Additional requirements and procedures.

Additional requirements and procedures for obtaining REA financial assistance are set forth in 7 CFR part 1712 for loan guarantees, and in 7 CFR part 1714 for insured loans.

§§ 1710.154–1710.199 [Reserved].

Subpart E—Power Requirements Studies

§ 1710.200 Purpose.

This subpart sets forth the policies, procedures and criteria for the preparation, approval and use of power requirements studies (PRSs) and PRS work plans. A PRS is a thorough study of a borrower's electric loads and the factors that affect those loads in order to determine, as accurately as practicable, the borrower's future requirements for energy and capacity. The PRS of a power supply borrower includes and integrates the PRSs of its member systems.

§ 1710.201 Requirement to prepare a PRS—power supply borrowers.

(a) A power supply borrower having total assets of $300 million or more shall:

(1) Meet one of the following two requirements:

(i) Prepare and obtain REA approval of a new PRS not less frequently than every 3 years, which shall include new or revised equations and models, and annually update the PRS in the intervening years based on new data and assumptions, but not necessarily new or revised equations and models, and file the annual updates with REA; or

(ii) Prepare and obtain REA approval of a new PRS not less frequently than every 2 years, which shall include new or revised equations and models;

(2) Maintain a current PRS work plan approved by REA which shall set forth the resources, methods, schedules and milestones required for the preparation and maintenance of the PRS; and

(3) Provide a current PRS approved by REA in support of any request for REA financial assistance or for REA approval of long-term power contracts or other actions as appropriate.

(b) A power supply borrower with total assets of less than $300 million is not required to have a current, REA-approved PRS on an ongoing basis but is required to provide a current, REA-approved PRS in support of:

(1) An application for an REA loan or loan guarantee if said loan or guarantee exceeds $25 million or 10 percent of the borrower's total utility plant, whichever is smaller; and

(2) Requests for REA approval of long-term power contracts or other actions, as may be required by REA on a case by case basis.

(c) A power supply borrower that is a member of another power supply borrower that has total assets of $300 million or more is subject to the requirements of § 1710.201(a), except that such member is not required to have a separate PRS work plan. The distribution members of such a power supply borrower are also subject to the requirements of § 1710.201(a), except that such members are not required to have separate PRS work plans.

(d) At the borrower's request, REA may extend for up to 3 months the time frames set forth in § 1710.201(a)(1) if REA determines the borrower is in substantial compliance with its REA-approved work plan and significant changes in existing PRS models and assumptions are not required.

(e) For purposes of paragraphs (a)(3) and (b) of this section, the determination of whether a borrower's PRS is current will be made by REA at the time financial assistance or other REA action is requested. The borrower may be required to update the PRS to incorporate the most recently available operating data and other information.

§ 1710.202 Requirement to prepare a PRS—distribution borrowers.

(a) If a distribution borrower is a member of a power supply borrower that has total assets of $300 million or more, it must meet the requirements of § 1710.201(a), except for the requirement to prepare a work plan, which is the responsibility of the power supply borrower. Certain other distribution borrowers, as set forth in § 1710.201(c), are also subject to provisions of § 1710.201(a).

(b) All other distribution borrowers, including unaffiliated distribution systems as well as members of power supply borrowers with total assets of less than $300 million, must either:

(1) Meet the requirements of § 1710.201(a), if the distribution borrower owns generation and bulk transmission plant valued at $300 million or more, or

(2) Meet the requirements of § 1710.201(b), except that the loan threshold set forth in paragraph (b)(1) in the case of these distribution borrowers shall be $3 million and 10 percent of total utility plant.

§ 1710.203 Basic policies and requirements for a PRS.

(a) A PRS or PRS update must be completed and submitted to REA on a timely basis to enable prompt review by REA.

(b) A PRS completed more than 12 months prior to submission will not be considered by REA.

(c) Adequate coordination is required between power supply borrowers and their members in the preparation of their respective PRSs or PRS updates.

(d) To facilitate REA review of the PRS work plan and the PRS, the borrower shall make available to REA appropriate staff for consultation, and all essential documentation, data, and other relevant information, in formats acceptable to REA, that support the PRS work plan and the PRS.

(e) Notwithstanding any other provisions of this subpart, any power supply or distribution borrower may be required to prepare a new or updated PRS, or to maintain a current PRS on an ongoing basis, if required for REA to determine loan feasibility, to ensure loan security, or to consider requests submitted for approval under a borrower's loan contract or mortgage.

(f) All PRSs shall include the following information, using a format approved by REA, unless such information has already been provided to REA in the PRS work plan or other submissions:

(1) A discussion of the scope of the PRS, including the proposed uses of the information developed for planning load management and energy efficiency programs, plant investments, and financial requirements;

(2) A discussion of the borrower personnel, consultants, data, and other resources used in the preparation of the PRS;

(3) A discussion of the procedures used to collect, validate, process, and update the data used in the study;

(4) Documentation of the analysis and modeling of the borrower's electric system loads and other pertinent information used in the PRS. All relevant data, primary sensitivity analyses and other substantive procedures used to test significant assumptions and to generate the load estimates and related factors must be included in the PRS or otherwise made available to REA, and clearly identified, sourced and dated;

(5) An analysis of the borrower's past, existing, and future electric system loads of RE Act beneficiaries and others, including explanation and documentation of all substantive assumptions, primary sensitivity analyses and other substantive considerations used to prepare the estimates. Areas of analysis shall normally include, but are not limited to: developing land use patterns; potential losses of load due to annexation or other causes; prospective residential and commercial development; probable rate levels; the effects of rates and competition from neighboring utilities on loads; existing and anticipated patterns of energy usage and appliance saturation; and availability of alternative energy sources. Load management, conservation, and power marketing considerations must also be included;

(6) A discussion and analysis of alternative scenarios, which shall be required for all PRSs submitted to REA for approval after January 1, 1993. Normally, unless waived by REA under § 1710.206, the borrower shall provide a discussion and analysis of the following five scenarios:

(i) Most-probable economic assumptions, with normal weather;

(ii) Most-probable economic assumptions, with severe weather causing higher loads;

(iii) Most-probable economic assumptions, with mild weather causing lower loads;

(iv) Normal weather with more pessimistic macroeconomic assumptions causing lower loads; and

(v) Normal weather with more optimistic macroeconomic assumptions causing higher loads;

(7) Completed REA Forms 341 and 345 and 10 years data from REA Form 7 part R. Computer-generated facsimiles may be used if acceptable in form to REA. Graphs, tables, spreadsheets or other exhibits shall be included as appropriate;

(8) A discussion and documentation of the coordination activities between a power supply borrower and its REA-borrower members, as applicable, and between the borrower and REA. If a power supply borrower and any member disagree on an issue or estimate, REA will provide assistance, if requested, in attempting to resolve the disagreement;

(9) The borrower's general manager's recommendation to the board of directors on adoption of the PRS; and

(10) Approval of the PRS by the borrower's board of directors.

(g) A PRS and its essential supporting data and analysis shall be retained in the borrower's records until the next new PRS is approved by REA.

(h) Completed PRSs submitted to REA for approval prior to the effective date of this part, as well as PRSs prepared under work plans approved by REA prior to the effective date of this part, may meet the requirements of paragraph (f) of this section or corresponding requirements of REA Bulletin 120–1, at the option of the borrower. All other PRSs must meet the requirements of paragraph (f) of this section.

§ 1710.204 PRS work plan requirements.

(a) All borrowers are required to prepare and maintain a PRS on an ongoing basis are required to prepare and obtain REA approval of a PRS work plan, except for those borrowers that are members of a power supply borrower that is required to prepare a PRS work plan. The PRS work plan shall establish the resources, methods, schedules, and milestones to be used in the preparation and maintenance of the PRS.

(b) A power supply borrower's work plan shall include the member inputs and coordination mechanisms required for the preparation of its PRS as well as the PRSs of the system's members. Member concurrences in the work plan are required before the plan is submitted to REA for approval. The member systems, as well as the power supply borrower, are required to follow the work plan in preparing their respective PRS.

(c) A PRS work plan must be approved by the borrower's board of directors.

(d) A borrower may amend its work plan subject to REA approval. A new or revised work plan may be required by REA if REA concludes the existing plan will not result in a satisfactory PRS on a timely basis.

(e) In addition, a PRS work plan shall:

(1) Identify the borrower and, as applicable, member personnel that will serve as project leaders or liaisons with the authority to make decisions and commit resources within the scope of the work plan;

(2) Provide for residential consumer surveys at least every 3 years to obtain data on appliance and equipment saturation and electricity demand, when residential demand is 50 percent or more of total kWh sales. In the case of a

power supply borrower, such surveys shall be coordinated with the borrower's members. They may be based on the aggregation of member-based samples or on a system-wide sample, provided that the latter provides for relevant regional breakdowns as appropriate;

(3) Provide for all other data collection and verification, analyses, modeling, and documentation required in § 1710.203; and

(4) Provide for an ongoing REA review of the PRS.

(f) Generally, a work plan shall cover a period of 1 to 3 years.

§ 1710.205 Basic criteria for REA approval of a PRS.

REA will use the following basic criteria in deciding whether to approve a PRS:

(a) The borrower objectively analyzed all relevant factors that influence the consumption of electricity and the requirements for generation and transmission capacity;

(b) The borrower accurately analyzed power requirements stemming from RE Act beneficiaries and non-RE Act beneficiaries;

(c) The borrower developed adequate supporting data, used valid assumptions, analyzed a reasonable range of relevant alternative assumptions and scenarios, and used valid and verifiable analytical techniques and models;

(d) The borrower provided REA with adequate documentation and assistance to allow for a thorough and independent review;

(e) In the case of a power supply borrower, the preparation of the work plan and PRS was adequately coordinated with its members; and

(f) The PRS was recommended for approval by the borrower's general manager and has been approved by the borrower's board of directors.

§ 1710.206 Waiver of borrower requirements.

For good cause shown by the borrower, the Administrator may waive any of the requirements applicable to borrowers in this subpart if the Administrator determines that waiving the requirement will not significantly affect accomplishment of the objectives of this subpart and if the requirement imposes a substantial burden on the borrower. The waiver must be requested in writing by the borrower's general manager.

(Approved by the Office of Management and Budget under control number 0572-0032.)

§§ 1710.207-1710.249 [Reserved]

Subpart F—Construction Work Plans and Related Studies

§ 1710.250 General.

(a) An ongoing, integrated planning system is needed by borrowers to determine their short-term and long-term needs for plant additions, improvements, replacements, and retirements. The primary components of the system consist of long-range engineering plans, construction work plans (CWPs), CWP amendments, and special engineering and cost studies. Long range engineering plans identify plant investments required over a period of 10 years or more. CWPs specify and document plant requirements for the short-term, usually 2 to 3 years, and special engineering and cost studies are used to support CWPs and to identify and document requirements for specific items or purposes, such as load management equipment, System Control and Data Acquisition equipment, sectionalizing investments, and additions of generation capacity and associated transmission plant.

(b) Generally, all borrowers are required to maintain up-to-date long range engineering plans approved by their boards of directors and REA. Current CWPs approved by the borrower's board and REA must also be developed and maintained for distribution and transmission facilities and for improvements and replacements of generation facilities. All such distribution, transmission or generation facilities must be included in the respective CWPs regardless of the source of financing. Applications for REA financial assistance (new loans or budget reclassifications) must be supported by a current, approved CWP.

(c) A long range engineering plan specifies and supports the major system additions, improvements, replacements, and retirements needed for an orderly transition from the existing system to the system required 10 or more years in the future. The planned future system should be based on the most technically and economically sound means of serving the borrower's long-range loads in a reliable and environmentally acceptable manner, and it should ensure that planned facilities will not become obsolete prematurely.

(d) A CWP shall include investment cost estimates and supporting engineering and cost studies to demonstrate the need for each proposed facility or activity and the reasonableness of the investment projections and the engineering assumptions used in sizing the facilities. The CWP must be consistent with the borrower's long range engineering plan and both documents must be consistent with the borrower's REA-approved power requirements study.

(e) RES approval is required for all facilities included in a CWP or CWP amendment. If REA disagrees with a borrower's estimate of the cost of one or more facilities included in CWP or CWP amendment, REA may adjust the estimate after consulting with the borrower and explaining the reasons for the adjustment.

(f) Except as provided in paragraph (g) of this section, to be eligible for REA financing, the facilities, including equipment and other items, included in a CWP must be approved by REA before the start of construction. This requirement also applies to any amendments to a CWP required to add facilities to a CWP or to make significant physical changes in the facilities already included in a CWP.

(g) In the case of damage caused by storms and other natural catastrophes, a borrower may proceed with emergency repair work before a CWP or CWP amendment is prepared by the borrower and approved by REA, without loosing eligibility for REA financing of the repairs. The borrower must notify the REA regional office in writing, not later than 45 days after the natural catastrophe, of its preliminary estimates of damages and repair costs. Not later than 120 days after the natural catastrophe, the borrower must submit to REA for approval, a CWP or CWP amendment detailing the repairs.

(h) A CWP may be amended or augmented when the borrower can demonstrate the need for the changes.

(i) A borrower's CWP or special engineering studies must be supported by a Borrower's Environmental Report, and when necessary by an Environmental Analysis or Environmental Impact Statement, as set forth in 7 CFR 1794 or required by other Federal or state regulations or laws.

(j) All engineering activities required by this subpart must be performed by qualified engineers, who may be staff employees of the borrower or outside consultants.

§ 1710.251 Construction work plans—distribution borrowers.

(a) All distribution borrowers must maintain a current CWP approved by their board of directors and REA covering all new construction, improvements, replacements, and retirements of distribution and transmission plant, and improvements replacements, and retirements of any

generation plant. Construction of new generation capacity need not be included in a CWP but must be specified and supported by specific engineering and cost studies. (See § 1710.253.)

(b) A distribution borrower's CWP shall cover at least a 2-year construction period and include all facilities to be constructed, whether or not REA financial assistance will be sought or be available of certain facilities. Any REA financing provided for the facilities will be limited to a 2-year construction period.

(c) The facilities, equipment and other items included in distribution borrower's CWP may include:

(1) Line extensions required to connect consumers, improve service reliability or improve voltage conditions;

(2) Distribution tie lines to improve reliability of service and voltage regulation;

(3) Line conversions and changes required to improve existing services or provide additional capacity for new consumers;

(4) New substation facilities or additions to existing substations;

(5) Transmission and substation facilities required to support the distribution system;

(6) Distribution equipment required to serve new consumers or to provide adequate and dependable service to existing consumers, including replacement of existing plant facilities;

(7) Residential security lights;

(8) Communications equipment and meters;

(9) Headquarters facilities;

(10) Improvements, replacements, and retirements of generation facilities;

(11) Load management equipment, automatic sectionalizing facilities, and centralized System Control and Data Acquisition equipment. Load management equipment eligible for financing, including the related costs of installation, is limited to capital equipment designed to influence the time and manner of consumer use of electricity, which includes peak clipping and load shifting. To be eligible for financing, such equipment must be owned by the borrower, although it may be located inside or outside a consumer's premises; and

(12) The cost of engineering, architectural, environmental and other studies and plans needed to support the construction of facilities, when such cost is capitalized as part of the cost of the facilities.

§ 1710.252 Construction work plans—power supply borrowers.

(a) All power supply borrowers must maintain a current CWP approved by the borrower's board of directors and REA covering all new construction, improvements, replacements, and retirements of distribution and transmission plant, and improvements, replacements, and retirements of generation plant. Applications for REA financial assistance for such facilities must be supported by a current, REA-approved CWP. Construction of new generation capacity need not be included in a CWP but must be specified and supported by specific engineering and cost studies.

(b) Normally, a power supply borrower's CWP shall cover a period of 3 years. While comprehensive CWPs are desired, if there are extenuating circumstances REA may accept a single-purpose transmission or generation CWP in support of a loan application or budget reclassification.

(c) Facilities, equipment, and other items included in a power supply borrower's CWP may include:

(1) Distribution and related facilities as set forth in § 1710.251(c);

(2) Transmission facilities required to deliver the power needed to serve the existing and planned new loads of the borrower and its members, and to improve service reliability, including tie lines for improved reliability of service, line conversions, improvements and replacements, new substations and substation improvements and replacements, and Systems Control and Data Acquisition equipment, including communications, dispatching and sectionalizing equipment, and load management equipment;

(3) The borrower's proportionate share of transmission facilities required to tie together the operating systems of supporting power pools and to connect with adjacent power suppliers;

(4) Improvements and replacements of generation facilities; and

(5) The cost of engineering, architectural, environmental and other studies and plans needed to support the construction of facilities, when such cost is capitalized as part of the cost of the facilities.

(d) A CWP for transmission facilities shall normally include studies of load flows, voltage regulation, and stability characteristics to demonstrate system performance and needs.

§ 1710.253 Engineering and cost studies—addition of generation capacity.

(a) The construction or purchase of additional generation capacity and associated transmission facilities by a power supply or distribution borrower, including the replacement of existing capacity, shall be supported by comprehensive project-specific engineering and cost studies as specified by REA. The studies shall cover a period from the beginning of the project to at least 10 years after the start of commercial operation of the facilities.

(b) The studies must include comprehensive economic present-value analyses of the costs and revenues of the available self-generation, load management, energy conservation, and purchased-power options, including assessments of service reliability and financing requirements and risks. Requirements for analyzing purchased-power options are set forth in § 1710.254.

(c) Generally, studies of self-generation, load management, and energy conservation options shall include, as appropriate, analyses of:

(1) Capital and operating costs;

(2) Financing requirements and risks;

(3) System reliability;

(4) Alternative unit sizes;

(5) Alternative types of generation;

(6) Fuel alternatives;

(7) System stability;

(8) Load flows; and

(9) System dispatching.

(d) At the request of a borrower, REA, in its sole discretion, may waive specific requirements of this section if such requirements imposed a substantial burden on the borrower and if such waiver will not significantly affect the accomplishment of the objectives of this subpart.

§ 1710.254 Alternative sources of power.

(a) General. (1) REA will make loans to finance the construction of generation facilities by distribution or power supply borrowers and transmission facilities by power supply borrowers only under the following conditions if said borrowers do not already own and operate such types of facilities:

(i) Where no adequate and dependable source of power is available to meet the consumers' needs; or

(ii) Where the rates offered by other power sources would result in a higher cost of power to the consumers than the cost from facilities financed by REA, and the amount of the power cost savings that would result from the REA-financed facilities bears a significant relationship to the amount of the proposed loan.

(2) If a borrower already owns and operates the types of facilities included in a loan request, then a loan for the purposes set forth in paragraph (a)(1) of this section, as well as for the construction of transmission facilities by a distribution borrower, will be considered and evaluated by REA in terms of whether the proposed facilities constitute the most effective and

economical means of meeting the power requirements of the consumers.

(b) Loan requests for addition of generation capacity, including replacement of existing capacity, will be accepted by REA only when the applicant has satisfactorily completed the investigations of possible alternative sources of power as set forth in this section. The investigations must be coordinated in advance with REA. The capacity in question may be owned solely by the borrower or owned on an undivided ownership basis with other utilities.

(c) The applicant is required to search out and attempt to utilize capacity available from REA borrowers and other organizations before developing plans for additional generation capacity. The applicant shall:

(1) Solicit power and energy purchase proposals from all reasonable potential sources of power, such as other electric cooperatives, investor-owned utilities, municipal utility organizations, and Federal and state power authorities.

(2) Except as herein exempted, solicit proposals from independent power producers, including co-generators, to determine the terms and conditions under which these producers can supply the additional power and energy needs of the applicant, without REA financial assistance. Such solicitations shall be placed in at least three national newspapers or trade publications, and they shall meet all planning, coordination or other requirements imposed by state authorities, as well as REA's environmental requirements. The following projects are exempted from this requirement to solicit proposals:

(i) Additions to or replacements of generation capacity of less than 10 megawatts.

(ii) Modifications of existing generation units if any resulting increase in generation capacity does not exceed 10 percent of the capacity of the existing unit.

(d) The applicant will evaluate all alternative proposals on an economic, present-value basis, giving consideration to cost-effectiveness, reliability of service, the short- and long-term financial viability of the supplier, and the financial risk to the borrower and its creditors. The applicant will keep REA fully informed on these evaluations and provide supporting information and analysis as requested by REA.

(e) After evaluation of all proposals and having informed REA of the results, the applicant will be expected to negotiate final proposals with the entities submitting the best acceptable offers, if any, keeping REA fully informed. All contracts entered into shall either be approved in advance by the Administrator or contain language to the effect that the contract is not valid until approved in writing by the Administrator. The Administrator will approve such contracts in a timely manner provided that the borrower has met all applicable requirements, including REA's environmental requirements, and provided adequate evidence that the alternative selected is the most economical and effective alternative.

(f) REA may make independent inquiries with potential power suppliers as to the availability of power to meet borrowers' needs. Information developed by REA will be shared with borrowers at their request.

(g) Further details of REA requirements for financing of generation and bulk transmission facilities are set forth in 7 CFR part 1712.

(h) At the request of a borrower, REA, in its sole discretion, may waive specific requirements of paragraphs (b) through (e) of this section if such waiver is required to prevent unreasonable delays in obtaining generation capacity that could result in system reliability problems.

(Approved by the Office of Management and Budget under control number 0572-0032.)

§§ 1710.255-1710.299 [Reserved]

Subpart G—Long-Range Financial Forecasts

§ 1710.300 General.

(a) REA encourages borrowers to maintain a current long-range financial forecast. The forecast should be used by the board of directors and the manager to guide the system towards its financial goals.

(b) A borrower must prepare, for REA review and approval, a long-range financial forecast, approved by its board of directors, in support of its loan application. The forecast must demonstrate that the borrower's system is economically viable and that the proposed loan is financially feasible. Loan feasibility will be assessed based on the criteria set forth in § 1710.112.

(c) The financial forecast and related projections submitted in support of a loan application shall include:

(1) The projected results of future actions planned by the borrower's board of directors;

(2) The financial goals established for margins, TIER, DSC, equity, and levels of general funds to be invested in plant;

(3) A pro forma balance sheet, statement of operations, and general funds summary projected for each year during the forecast period;

(4) A full explanation of the assumptions, supporting data, and analysis used in the forecast, including the methodology used to project loads, rates, revenue, power costs, operating expenses, plant additions, and other factors having a material effect on the balance sheet and on financial ratios such as equity, TIER, and DSC;

(5) Current and projected cash flows;

(6) Projections of future borrowings and the associated interest and principal expenses required to meet the projected investment requirements of the system;

(7) Current and projected kW and kWh energy sales;

(8) Current and projected unit prices of significant variables such as retail and wholesale power prices, average labor costs, and interest;

(9) Current and projected system operating costs, including, but not limited to, wholesale power costs, depreciation expenses, labor costs, and debt service costs;

(10) Current and projected revenues from sales of electric power and energy;

(11) Current and projected non-operating income and expense;

(12) A discussion of the historical experience of the borrower, and in the case of a power supply borrower its member systems as appropriate, with respect to the borrower's market competitiveness as it relates to the rates charged for electricity, competition from other fuels, and other factors. Additional data and analysis may be required by REA on a case by case basis to assess the probable future competitiveness of those borrowers that have a history of serious competitive problems; and

(13) An analysis of the effects of major factors, such as projected increases in rates charged for electricity, on the ability of the borrower, and in the case of a power supply borrower its member systems, to compete with neighboring utilities and other energy sources.

(d) The following plans, studies and assumptions shall be used in developing the financial forecast:

(1) The REA-approved CWP;

(2) REA-approved power requirements data;

(3) The current rate schedules or new rates already approved by the board of directors;

(4) Future plant additions and operating expenses projected at anticipated future cost levels rather than in constant dollars, with the annual rate of inflation for major items specified; and

(5) A reasonable range of assumptions for each of the major variables to test the sensitivity of the results to changes in assumptions, if the financial forecast is used in support of a loan or loan guarantee that exceeds the smaller of 10 percent of the borrower's total utility plant or the following dollar amount: $25 million for power supply borrowers, or $3 million for distribution borrowers.

(e) The financial forecast shall use the accrual method, as approved by REA, for analyzing costs and revenues, and, as applicable, compare the economic results of the various alternatives on a present value basis.

(f) REA will obtain and review commercially available credit reports on applicants for a loan or loan guarantee to verify income, assets, and credit history, and to determine whether there are any outstanding delinquent Federal or other debts. Such reports will also be reviewed for parties that are or propose to be joint owners of a project with a borrower.

§ 1710.301 Financial forecasts—distribution borrowers.

(a) Financial forecasts prepared by distribution borrowers shall cover at least a ten-year period, unless a shorter period is authorized by other REA regulations.

(b) In addition to the requirements set forth in § 1710.300 of this part, financial forecasts prepared by distribution borrowers in support of a loan application shall:

(1) Include expenditures for any maintenance determined to be needed in the current system's operation and maintenance review and evaluation in order to comply with mortgage covenants and prudent utility practice;

(2) Fully explain the basis for the power cost projections used. Generally, the power supplier's most recent forecasted rates shall be used; and

(3) Use REA Form 325 or computer-generated equivalent reports.

§ 1710.302 Financial forecasts—power supply borrowers.

(a) The requirements of this section apply only to financial forecasts submitted by power supply borrowers in support of a loan from REA. The financial forecast prepared by power supply borrowers shall demonstrate the effects that the addition of generation, transmission and any distribution facilities will have on the power supply borrower's sales, costs, and revenues, and on the cost of power to the member distribution systems.

(b) The financial forecast shall cover a period beginning with the present and extending at least 10 years beyond the projected in-service date of proposed generation and transmission facilities.

(c) Financial forecasts prepared in support of loan applications to finance additional generation capacity shall include a power cost study as set forth in § 1710.303.

(d) In addition to the requirements set forth in § 1710.300, financial forecasts prepared by power supply borrowers shall:

(1) Identify all plans for generation and transmission capital additions and system operating expenses on a year-by-year basis, beginning with the present and running for a minimum of 10 years after initial commercial operation of the facilities. REA may request projections for a longer period of time if deemed necessary;

(2) Integrate projections of operation and maintenance expenses associated with existing plant with those of new proposed facilities to determine total costs of system operation as well as the costs of new generation and generation-related facilities;

(3) Provide an in-depth analysis of the regional markets for power if loan feasibility depends to any degree on a borrower's ability to sell surplus power while its system loads grow to meet the planned capacity of a proposed plant;

(4) If not previously submitted, furnish REA with all material information on operating agreements, ownership agreements, fuel contracts and any other special agreements that affect annual cost projections, as may be required by REA on a case by case basis; and

(5) Include sensitivity analysis as required by § 1710.300(d)(5). Examples of sensitivity analysis that might be used are:

(i) Effects of a 100 to 200 basis point increase in the financing interest rate;

(ii) Effects of a 50 percent reduction in the rate of projected RE Act beneficiary load growth;

(iii) Effects of a 10 to 20 percent increase in the projections for fuel costs;

(iv) Effects of a 20 percent or more increase in construction costs; and

(v) Effects of a 20 percent or more increase in maintenance, retrofit and decommissioning costs of nuclear power plants.

(e) The projections shall be coordinated in advance with REA so that agreement can be reached on major aspects of the economic studies. These include, but are not limited to, projections of future kW and kWh requirements, RE Act beneficiary loads, electricity prices, revenues from system and off-system power sales, the cost of prospective plant additions, interest and depreciation rates, fuel costs, cost escalation factors, the discount rate, and other factors.

(f) The projections, analysis, and supporting information must be included in a report that will provide REA with the information needed to:

(1) Understand and compare various power supply plans;

(2) Determine that the facilities to be financed will perform satisfactorily; and

(3) Determine that the overall system is economically viable and the loan is financially feasible and secure.

§ 1710.303 Power cost studies—power supply borrowers.

(a) All applications for financing of additional generation capacity and the associated bulk transmission facilities shall be supported by a power cost study to demonstrate that the proposed generation and associated transmission facilities are the most economical and effective means of meeting the borrower's power requirements. This study usually is a separate study but it may be integrated with the financial forecast required by § 1710.302.

(b) A power cost study shall include the following basic elements:

(1) A study of all reasonably available self-generation, purchased-power, load management, and energy conservation alternatives as set forth in §§ 1710.253 and 1710.254;

(2) A present-value analysis of the costs of the alternatives and their effects on total power costs, covering a period of at least 10 years beyond the projected in-service date of the facilities;

(3) A description of proposed new power-purchase contracts or revisions to existing contracts, and an analysis of the effects on power costs;

(4) Use of sensitivity analyses to determine the vulnerability of the alternatives to a reasonable range of assumptions about fuel costs, failure to achieve projected load growth, changes in operating and financing costs, and other major factors, if the financial forecast is used in support of a loan or loan guarantee that exceeds the smaller of $25 million or 10 percent of the borrower's total utility plant. Individual sensitivity analyses need not be duplicated if they have been included in other materials submitted to REA; and

(5) Assessment of the financial risks of the various alternatives, especially as between capital-intensive and non-capital-intensive alternatives, under the range of assumptions set forth in paragraph (b)(4) of this section.

(c) Power cost studies must use current, REA-approved power requirements data, and all major assumptions are subject to REA

approval. Alternative assumptions about projected power requirements may be used, however, in conjunction with the sensitivity analyses required by paragraph (b)(4) of this section.

(Approved by the Office of Management and Budget under control number 0572–0032.)

§§ 1710.304–1710.349 [Reserved]

Subpart H—Credit Support of Power Supply Borrowers [Reserved]

Dated: October 31, 1991.

Roland B. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 92–222 Filed 1–8–92; 8:45 am]

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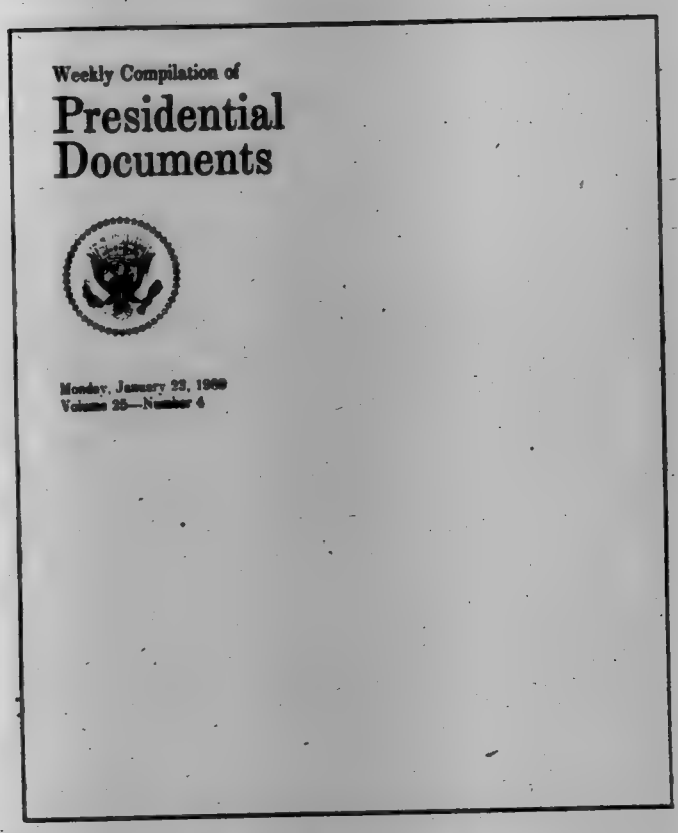

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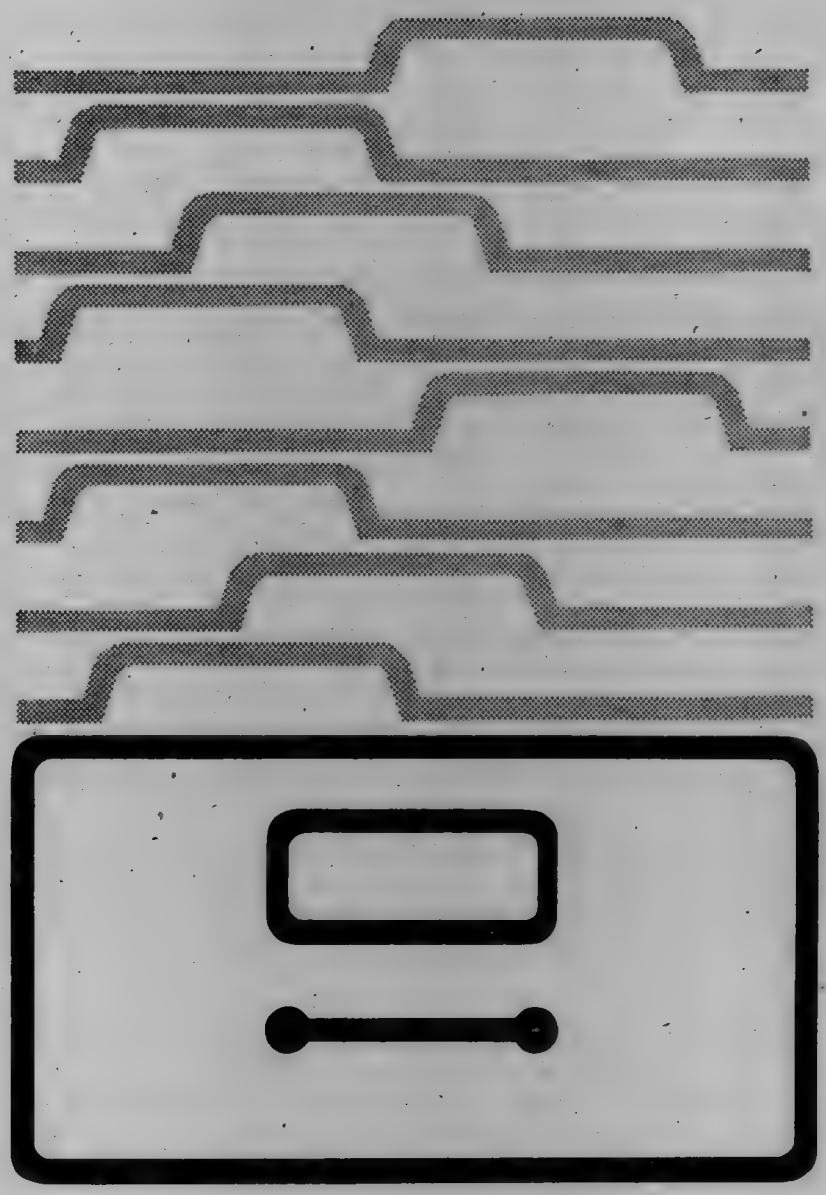

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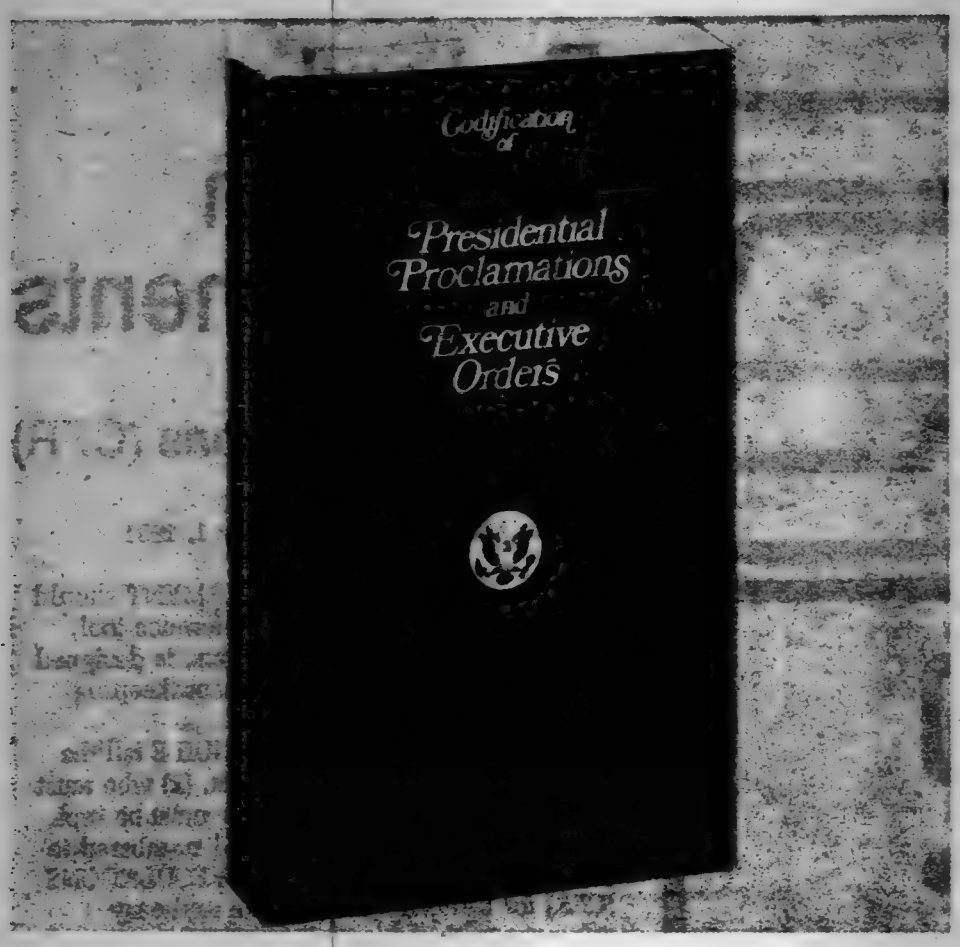

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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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Friday, January 10, 1992

Presidential Documents

Title 3—

The President

Memorandum of December 27, 1991

Delegation of Authority With Respect to Certification and Reporting Obligations Regarding Middle East Arms Control

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code, I hereby direct you to undertake on my behalf the certification and reporting obligations under sections 403 and 404 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (Public Law 102–138). I further direct that you consult with the Secretary of Defense and the heads of other executive departments and agencies as appropriate in the discharge of these obligations.

You are authorized and directed to publish this memorandum in the Federal Register.

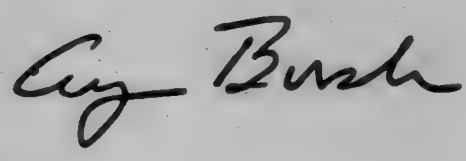

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Washington, December 27, 1991.

[FR Doc. 92-843
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Presidential Documents

Presidential Determination No. 92–10 of December 30, 1991

Determination Pursuant to Section 545 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, and Applicable Continuing Resolutions

Memorandum for the Secretary of State

Pursuant to Section 545 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513), made applicable to FY 1992 by the terms of the Further Continuing Appropriations, Fiscal Year 1992 (Public Law 102–145), I hereby certify that withholding funds to multilateral development banks and other international organizations and programs during FY 1992, pursuant to the limitation contained therein prohibiting the obligation of funds appropriated by that Act to finance indirectly any assistance or reparations to certain specified countries, is contrary to the national interest.

You are authorized and directed to publish this determination in the Federal Register.

George Bush

THE WHITE HOUSE,
Washington, December 30, 1991.

[FR Doc. 92–844
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Vol. 57, No. 7
Friday, January 10, 1992

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[FV-91-447IFR]

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1991-92 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1991-92 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages indicate the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This action was recommended by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

DATES: This interim final rule is effective on January 10, 1992. Comments which are received by February 10, 1992, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2524-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 690-0281.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 982 [7 CFR part 982], as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order and approximately 1,000 producers in the Oregon and Washington production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Board's recommendation and this interim final rule are based on requirements specified in the order. This interim final rule will restrict the amount of inshell filberts/hazelnuts that can be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the establishment of interim and final free and restricted percentages will benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the market can utilize throughout the season, and the percentages release the inshell trade demand. The preliminary percentages release 80 percent of the inshell trade demand, while the interim and final percentages release 100 percent and 115 percent, respectively, of the inshell trade demand.

The inshell trade demand, rounded to the nearest whole number, equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, with the provision that the Board may increase such estimate by no more than 25 percent, if market conditions warrant such an increase.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported or shelled (restricted) early in the 1991-92 season. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates.

At its August 28, 1991, meeting, the Board computed and announced preliminary free and restricted percentages of 12 and 88 percent, respectively, to release 80 percent of the inshell trade demand. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against underestimates of the crop. The preliminary restricted percentage is 100

percent minus the free percentage. The majority of domestic inshell filberts/hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

On or before November 15, the Board must meet to recommend to the Secretary interim percentages which release 100 percent of the inshell trade demand and final percentages which release an additional 15 percent of the three-year-average trade acquisitions.

The Board uses current crop estimates to calculate the interim final and final percentages. The interim percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. Final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions to ensure an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

In accordance with order provisions, the Board met on November 14, 1991, reviewed and approved an amended marketing policy and recommended the establishment of interim and final free and restricted percentages of 16 and 84 percent and 19 and 81 percent, respectively. The Board also recommended that the final percentages be effective on May 1, 1992, which is 60 days prior to the end of season. The marketing percentages are based on the industry's final production estimates and release 25,133 tons to the domestic inshell market. The Oregon Agricultural Statistics Service provided an early estimate of 25,300 tons total production for the Oregon and Washington area. However, a handler survey conducted by the Board provided a more current estimate of 25,133 tons total production for the area. Therefore, the Board voted to unanimously accept the more current estimate of 23,133 tons.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1991–92 marketing year:

Inshell supply	Tons
(1) Total production (Filbert/Hazelnut Marketing Board handler survey estimate)	25,133
(2) Less substandard, farm use (disappearance)	2,161
(3) Merchantable production (the Board's adjusted crop estimate)	22,972
(4) Plus undeclared carrying as of July 1, 1992, subject to regulation	37
(5) Supply subject to regulation (Item 3 plus Item 4)	23,009
(6) Average trade acquisition based on three prior years' domestic sales	4,252
(7) Increase to encourage increased sales (10 percent)	425
(8) Less declared carrying as of July 1, 1992, not subject to regulation	1,052
(9) Inshell Trade Demand	3,625
(10) 15 percent of the average trade acquisitons based on three years domestic sales	638
(11) Inshell Trade Demand plus 15 percent (Item 9 plus Item 10)	4,263

Percentages	Free	Restricted
(12) Interim percentages (Item 9 divided by Item 5) × 100	16	84
(13) Final percentages (Item 11 divided by Item 5) × 100	19	81

In addition to complying with the provisions of the marketing order, the Board also considers the U.S. Department of Agriculture's 1982 "Guideline for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts/hazelnuts available for sale in domestic markets. The Guidelines require this primary market to have available a quantity equal to 110 percent of recent years' sales in those outlets before secondary market allocations are approved. This is to provide for plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. In order to meet expected needs of the trade and to comply with the Guidelines, an increase of 10 percent (425 tons) has been included in the calculations used in determining the inshell trade demand. The established interim and final percentages, which release 100 percent and 115 percent, respectively, of the inshell trade demand, will make available 110 percent and 125 percent, respectively, of prior years' sales, thus exceeding the requirements of the Guidelines.

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that the establishment of interim and final free and restricted percentages, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1991–92 marketing year began July 1, 1991, and the percentages established herein apply to all merchantable filberts/hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this action, which was recommended at an open Board meeting, and need no additional time to comply with these percentages which release more filberts/hazelnuts than the preliminary percentages; and (3) interested persons are provided a 30-day comment period in which to respond. All comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts/hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—[AMENDED]

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Grade and Size Regulation

2. Section 982.241 is added to read as follows:

[Note: This section will not be published in the annual Code of Federal Regulations.]

§ 982.241 Final free and restricted percentages—1991–92 marketing year.

(a) The interim free and restricted percentages for merchantable filberts/hazelnuts for the 1991–92 marketing year shall be 16 and 84 percent, respectively.

(b) The final free and restricted percentages for merchantable filberts/hazelnuts for the 1991–92 marketing year shall be 19 and 81 percent, respectively. These percentages will be effective on May 1, 1992.

Dated: January 6, 1992.
Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 92-646 Filed 1-9-92; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-87-AD; Amendment 39-8121; AD 91-26-06]

Airworthiness Directives; Airbus Industrie Models A310 and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A310 and A300-600 series airplanes, which requires the installation of three modified Generator Control Units (GCU) with protective covers. This amendment is prompted by reports of internal shorts in the GCU's due to foreign liquid entering the units. The actions specified by this AD are intended to prevent loss of the GCU's and AC electrical power.

DATES: Effective February 14, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 14, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive that is applicable to certain Airbus Industrie Model A310, A320, and A300-600 series airplanes, was published in the Federal Register on June 24, 1991 (56 FR 28726). That action proposed to require the installation of three modified Generator Control Units (GCU) with protective covers.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Both commenters requested that Model A320 series airplanes be deleted from the final rule as: (1) The French Direction Générale de l'Aviation Civile (DGAC) airworthiness directive addressing this subject did not include Model A320 series airplanes; (2) the three GCU's on the Model A320 are installed in an area which is not susceptible to fluid leakage and in a different location from that of Model A310 and A300-600 series airplanes; (3) there have been no reported in-service occurrences of water leakage on GCU's installed in Model A320 series airplanes; and (4) Airbus Industrie Service Bulletin A320-24-1050, which the French DGAC did not classify as mandatory, was issued for the purposes of increasing commonality with regard to the installation of GCU's on Model A320 and Model A310/A300-600 series airplanes. Upon further consideration, the FAA concurs with the commenters, and the Model A320 has been deleted from the applicability of the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 67 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate will be $55 per work hour. Required parts will cost appxoximately $333 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,996.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-26-06. Airbus Industrie: Amendment 39-8121. Docket No. 91-NM-87-AD.

Applicability: Model A310 and A300-600 series airplanes, on which Modification 7769 has not been accomplished, certificated in any category.

Compliance: Required within 180 days after the effective date of this AD, unless accomplished previously.

To prevent loss of the Generator Control Units (GCU) and AC electrical power, accomplish the following:

(a) Remove the three currently installed GCU's and replace them with three modified GCU's having protective covers, in accordance with Airbus Industrie Service Bulletins A310-24-2040, Revision 1, dated January 28, 1991 (for Model A310); A300-24-6029, Revision 1, dated February 22, 1991 (for Model A300-600); and Sundstrand Service Bulletin 735228/740206/740120-24-0 (for Models A310 and A300-600), dated June 15, 1989 (Modification 7769); as applicable.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level or safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Avionics Inspector, who may concur or

comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation required by this AD shall be done in accordance with Airbus Industrie Service Bulletin A310-24-2040, Revision 1, dated January 28, 1991 (for Model A310); Airbus Industrie Service Bulletin A300-24-6029, Revision 1, dated February 22, 1991 (for Model A300-600); and Sundstrand Service Bulletin 735226/740206/740120-24-9 (for Models A310 and A300-600), dated June 15, 1989 (Modification 7769). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment (39-8121), AD 91-26-08, becomes effective February 14, 1992.

Issued in Renton, Washington, on December 5, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-602 Filed 1-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-137-AD; Amendment 39-8126; AD 92-01-03]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 (MD-80) Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Model DC-9-80 series airplanes and Model MD-88 airplanes, which currently requires repetitive inspections and functional checks of the tailcone release system for proper operation. This amendment requires replacement or modification of the external tailcone release system cable and handle assemblies. This amendment is prompted by reports of the tailcone failing to drop away when release activation was attempted. This condition, if not corrected, could result in the inability of passengers and crew members to exit through the tail of the airplane during an emergency evacuation.

DATES: Effective February 14, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 14, 1992.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Publications, Technical Administration Support, C1-L5B(45-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, ANM-131L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California, 90806-2425; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 91-07-06, Amendment 39-6934 (56 FR 11359, March 18, 1991), was published in the Federal Register on August 1, 1991 (56 FR 36748). That action proposed to require replacement or modification of the external tailcone release system cable and handle assemblies on McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the proposed AD.

Another commenter pointed out that a conflict exists between McDonnell Douglas Service Bulletin 53-245, Revision 1, dated June 12, 1991, which is referenced in this proposed rule, and McDonnell Douglas Service Bulletin 53-199, Revision 2, dated March 17, 1989, which was referenced in a separate but related notice [Docket 90-NM-97-AD (56 FR 28223, July 10, 1990)]. The conflict between these two service documents relates to the installation of two different designs of handle/support fitting assemblies. The commenter requested that this proposed rule be postponed until this issue is resolved.

The FAA does not concur that postponement is necessary. Initially, a conflict did exist between the two service documents. However, subsequent to the issuance of the notice related to this AD action, the FAA reviewed and approved Revision 3 of McDonnell Douglas Service Bulletin 53-199, dated July 15, 1991, which contains corrected information that eliminates the previous conflict.

One commenter requested that the compliance time for accomplishment of the modification/replacement be extended from the proposed 9 months to 12 months in order to ensure that adequate time is provided for operators to obtain and install necessary parts. The FAA does not concur that an extension of the compliance time is warranted. In developing an appropriate compliance time, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required modifications during operator's normal maintenance schedules. The compliance time, as proposed, represents the maximum interval of time allowable wherein the modification could reasonably be accomplished, parts could be obtained, and an acceptable level of safety could be maintained.

One commenter requested that the FAA postpone any AD action pertaining to the Model DC-9-80 tailcone system until a comprehensive industry/FAA review is held and a consensus program developed. This commenter believes that a certain new McDonnell Douglas proposal may offer a better solution to the tailcone emergency release system problem, and that it would be prudent to postpone any pending AD activity and pursue a total system approach. The FAA disagrees with any postponement to this rule. The intent of this action is to correct a known airworthiness problem, which is a handle that cannot adequately support a sideload. The modification/replacement specified in this final rule will correct this design deficiency and ensure that the tailcone drops when release activation is attempted. Should additional design changes become available in the future, the FAA will review them as to their applicability to this and other issues.

The final rule has been revised to include a note to clarify that, once the required replacement or modification has been accomplished, only certain portions of the continuing repetitive functional tests of the tailcone release system are required to be conducted.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change

described. This change will neither increase the economic burden on any operator nor increase the scope of the rule.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

There are approximately 870 Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 500 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4.5 work hours per airplane to accomplish the required actions, and that the average labor cost will be $55 per work hour. The cost of parts to accomplish the modification is approximately $1,310 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $778,750.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6934 and by adding the following new airworthiness directive:

92-01-03. McDonnell Douglas: Amendment 39-8126. Docket 91-NM-137-AD. Supersedes AD 91-07-06, Amendment 39-6934.

Applicability: Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, operating in a passenger of passenger/cargo configuration, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

Note: The requirements of this AD become applicable at the time an airplane in an all-cargo configuration is converted to a passenger or passenger/cargo configuration.

To prevent failure of the tailcone release system, accomplish the following:

(a) Prior to 12 months in service since new, or within 90 days after March 26, 1991 (the effective date of AD 91-07-06, Amendment 39-6934), whichever occurs later, accomplish a tailcone release system functional test and inspection in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin A53-244, Revision 1, dated February 8, 1991.

(b) Discrepancies in the operation of the tailcone release system found as result of the functional test must be repaired prior to further flight.

(c) Repeat the tailcone release system functional test and inspection required by paragraph (a) of this AD at intervals not to exceed 3,500 flight hours or 18 months, whichever occurs first.

(d) Within 30 days after discovery, report any discrepancies found during the accomplishment of the inspection and functional tests required by paragraph (a) of this AD to the Manager, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96-511) and have been assigned OMB Control Number 2120-0056.

(e) Within 9 months after the effective date of this AD, replace or modify the external tailcone release system cable and handle assemblies in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 53-245, Revision 1, dated June 12, 1991. Accomplishment of such replacement or modification constitutes terminating action for the repetitive inspection of the exterior tailcone release handle for cracks, as required by paragraph (c) of this AD. However, the repetitive functional tests and inspections of the tailcone release system required by paragraph (c) of this AD must continue to be accomplished.

Note: The following portions of the continuing repetitive functional tests and inspections of the tailcone release system are not necessary to accomplish once the replacement/modification of the cable and handle assembly is completed: Those procedures specified in Paragraph Q. and the second paragraph of the Notes of Paragraph O., of the Accomplishment Instructions of McDonnel Douglas Alert Service Bulletin A53-244, Revision 1, dated February 8, 1991.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO).

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(h) The functional test and inspection requirements of this AD shall be accomplished in accordance with McDonnell Douglas Alert Service Bulletin A53-244, Revision 1, dated February 8, 1991. The replacement or modification requirements shall be accomplished in accordance with McDonnell Douglas Service Bulletin 53-245, Revision 1, dated June 12, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Publications, Technical Administration Support, C1-L5B(45-60). Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(i) This amendment (39-8126), AD 92-01-03, becomes effective February 14, 1992.

Issued in Renton, Washington, on December 16, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-608 Filed 1-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26724; Amdt. No. 1472]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain

airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents in unnecessary. The provisions of this amendment state the affected CFR and (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impractical, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on December 20, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
10/10/91	FL	Pensacola	Pensacola Regional	FDC 1/4998	NDB Rwy 34 Amdt 15.
10/10/91	FL	Pensacola	Pensacola Regional	FDC 1/4999	ILS Rwy 16 Amdt 13.
10/10/91	FL	Pensacola	Pensacola Regional	FDC 1/5000	NDB Rwy 16 Orig.
12/04/91	MN	Eveleth	Eveleth-Virginia Muni	FDC 1/6164	VOR/DME RNAV Rwy 27 Amdt 1.
12/06/91	CT	Windsor Locks	Bradley Intl	FDC 1/6124	ILS Rwy 6 Amdt 29.
12/06/91	MD	Ocean City	Ocean City Muni	FDC 1/6084	LOC Rwy 14 Orig.
12/06/91	MN	International Falls	Falls Intl	FDC 1/6112	VOR/DME or TACAN Rwy 31 Amdt 3.
12/06/91	MN	International Falls	Falls Intl	FDC 1/6113	LOC BC Rwy 13 Amdt 8.
12/06/91	MN	International Falls	Falls Intl	FDC 1/6114	VOR Rwy 31 Amdt 14.
12/06/91	MN	International Falls	Falls Intl	FDC 1/6115	VOR Rwy 13 Amdt 12.
12/06/91	MN	International Falls	Falls Intl	FDC 1/6116	NDB Rwy 31 Amdt 7.
12/06/91	MN	International Falls	Falls Intl	FDC 1/6120	ILS Rwy 31 Amdt 7.
12/09/91	NY	Syracuse	Syracuse-Hancock Intl	FDC 1/6155	HI-ILS Rwy 28 Amdt 2.
12/16/91	NY	New York	La Guardia	FDC 1/6248	ILS/DME Rwy 13 Amdt 2.
12/16/91	NY	New York	La Guardia	FDC 1/6256	ILS Rwy 4 Amdt 34.
12/16/91	TX	Waco	Waco Regional	FDC 1/6295	ILS Rwy 19 Amdt 13.
12/17/91	TN	Humboldt	Humboldt Muni	FDC 1/6320	VOR/DME-A Amdt 4.

NFDC Transmittal Letter Attachment

Windsor Locks

Bradley Intl, Connecticut, ILS RWY 6 AMDT 29 * * *, Effective: 12/06/91.

FDC 1/6124/BDL/FI/P Bradley Intl, Windsor Locks, CT. ILS RWY 6 AMDT 29 * * * S–ILS 6 CAT D RVR 1800. This is AMDT 29A.

Pensacola

Pensacola Regional, Florida, NDB RWY 34 AMDT 15 * * *, Effective: 10/10/91.

FDC 1/4998/PNS/FI/P Pensacola Regional Pensacola, FL. NDB RWY 34 AMDT 15 * * * min alt PKZ NDB 800. FAF to MAP 1.7 NM. MSA from PKZ NDB 000–270 1800, 270–360 2900. Change all references to RWY 16–34 to RWY 17–35. Proc turn outbound min alt 1600. This becomes NDB RWY 35 AMDT 15A.

Pensacola

Pensacola Regional, Florida, ILS RWY 16 AMDT 13 * * *, Effective: 10/10/91.

FDC 1/4999/PNS/FI/P Pensacola Regional, Pensacola, FL ILS RWY 16 AMDT 13 * * * alt Mins NA when Pensacola Tower CLSD. MSA from NUN VOR 040–280 1800, 280–040 2900. Change all references to RWY 16–34 to RWY 17–35. This becomes ILS RWY 17, AMDT 13A.

Pensacola

Pensacola Regional, Florida, NDB RWY 16 ORIG * * *, Effective: 10/10/91.

FDC 1/5000/PNS/FI/P Pensacola Regional, Pensacola, FL. NDB RWY 16 ORIG * * * MSA from PKZ NDB 000–270 1800, 270–360 2900. Change all references to RWY 16–34 to RWY 17–35. This becomes NDB RWY 17, ORIG A.

Ocean City

Ocean City Muni, Maryland, LOC RWY 14 ORIG * * *, Effective: 12/06/91.

FDC 1/6084/N80/FI/P Ocean City MUNI, Ocean City, MD. LOC RWY 14 ORIG * * * Salisbury ALSTG mins * * * S–14 CAT D MDA 760, CIRC CAT D HAA 768. This becomes LOC RWY 14 AMDT 1.

International Falls

Falls Intl, Minnesota, VOR/DME or TACAN RWY 31 AMDT 3 * * *, Effective: 12/06/91.

FDC 1/6112/INL/FI/P Falls Intl, International Falls, MN. VOR/DME or TACAN RWY 31 AMDT 3 * * * Delete note, "Contact HIB FSS 123.6 for MALSR RWY 31." Activate HIRL RWY 13–31 and REIL RWY 13–122.8.

International Falls

Falls Intl, Minnesota, LOC BC RWY 13 AMDT 8 * * *, Effective: 12/06/91.

FDC 1/6113/INL/FI/P Falls Intl, International Falls, MN. LOC BC RWY 13 AMDT 8 * * * Delete Note, "Contact HIB FSS 123.6 for MALSR RWY 31." This is LOC BC RWY 13 AMDT 8A.

International Falls

Falls Intl, Minnesota, VOR RWY 31 AMDT 14 * * *, Effective: 12/06/91.

FDC 1/6114/INL/FI/P Falls Intl, International Falls, MN. VOR RWY 31 AMDT 14 * * * Delete notes, "Contact HIB FSS 123.6 for MALSR RWY 31. Activate HIRL RWY 13–31 and REIL RWY 13–122.8." This is VOR RWY 13 AMDT 14A.

International Falls

Falls Intl, Minnesota, VOR RWY 13 AMDT 12 * * *, Effective: 12/06/91.

FDC 1/6115/INL/ FL/P Falls Intl, International Falls, MN. VOR RWY 13 AMDT 12 * * * Delete note, "Contact HIB FSS 123.6 for MALSR RWY 31." This is VOR RWY 13 AMDT 12A.

International Falls

Falls Intl, Minnesota, NDB RWY 31 AMDT 7 * * *, Effective: 12/06/91.

FDC 1/6116/INL/ FL/P Falls Intl, International Falls, MN. NDB RWY 31 AMDT 7 * * * Delete notes, "Contact HIB FSS 123.6 for MALSR RWY 31. Activate HIRL RWY 13–31 And REIL RWY 13–122.8" Add * * * alternative minimums NA. This is NDB RWY 31 AMDT 7A.

International Falls

Falls Intl, Minnesota, ILS RWY 31 AMDT 7 * * *, Effective: 12/06/91.

FDC 1/6120/INL/ FL/P Falls Intl, International Falls, MN. ILS RWY 31 AMDT 7 * * * Delete notes, "Contact HIB FSS 123.6 for MALSR RWY 31. Activate HIRL RWY 13–31 And REIL RWY 13–122.8" This is ILS RWY 31 AMDT 7A.

Eveleth

Eveleth-Virginia Muni, Minnesota, VOR/DME RNAV RWY 27 AMDT 1 * * *, Effective: 12/04/91.

FDC 1/6164/EVM/ FI/P Eveleth-Virginia, Muni, Eveleth, MN. VOR/DME RNAV RWY 27 AMDT 1 * * * S–27 MDA 1900/HAT 531 ALL CATS; VIS CATS A/B 1, CAT C 1–½, CAT, D 1–¾. CIRCLING MDA/HAA CATS A/B 1920/536, CAT C 1940/556, CAT D 1980/596, VIS CATS A/B 1, CAT C 1–½, CAT D 2. This is VOR/DME RNAV RWY 27 ADMT 1A.

Syracuse

Syracuse-Hancock Intl, New York, HI–ILS RWY 28 AMDT 2 * * *, Effective: 12/09/91.

FDC 1/6155/SYR/ FI/P Syracuse-Hancock Intl., Syracuse, NY. HI–ILS RWY 28 AMDT 2 * * * S–ILS–28 DH/HAT 662/250 ALL CATS. VIS/RVR CATS A/B/C 2400, D 4000. MSA SY LOM 3700. This becomes HI–ILS RWY 28 AMDT 2A.

New York

La Guardia, New York, ILS/DME RWY 13 AMDT 2 * * *, Effective: 12/16/91.

FDC 1/6248/LGA, FI/P La Guardia, New York, NY. ILS/DME RWY 13 AMDT 2 * * * Add Note * * * G/S unusable below 200 feet. This becomes ILS/DME RWY 13 AMDT 2A.

New York

La Guardia, New York, ILS RWY 4 AMDT 34 * * *, Effective: 12/16/91.

FDC 1/6256/LGA, FI/P La Guardia, New York, NY. ILS RWY 4 AMDT 34 * * * Add Note * * * S–ILS–4 DH not increased for INOP MM. This becomes ILS RWY 4 AMDT 34A.

Humboldt

Humboldt Muni, Tennessee, VOR/DME–A AMDT 4 * * *, Effective: 12/17/91.

FDC 1/6320/M52/ FI/P Humboldt Muni, Humboldt, TN. VOR/DME–A AMDT 4 * * * Increase MSA to 2500 FT. This becomes VOR/DME–A AMDT 4A.

Waco

Waco Regional, Texas, ILS RWY 19 AMDT 13 * * *, Effective: 12/16/91.

FDC 1/6295/ACT/ FI/P Waco Regional, Waco, TX. ILS RWY 19 AMDT 13 * * * Change terminal RTE BOSEL to COFFI LOM/I–ACT 5.7 DME course and distance 359/15.9. Add note * * * Increase CAT D S–LOC–19 VIS ¼ mile for inoperative MALSR. This becomes AMDT 13A.

[FR Doc. 92–600 Filed 1–9–92; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 26723; Amdt. No. 1471]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments require making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on December 20, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

Part 97—Standard Instrument Approach Procedures

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended].

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective March 5, 1992

Hooper Bay, AK—Hooper Bay, VOR RWY 31, Amdt. 1 Hooper Bay, AK—Hooper Bay, VOR/DME RWY 31, Orig., Cancelled
Laurel, DE—Laurel Airport, VOR/DME RWY 32, Orig.
Winder, GA—Winder, VOR/DME RNAV RWY 23, Orig.
Louisville, KY—Bowman Field, VOR RWY 1, Amdt. 3
Louisville, KY—Bowman Field, VOR RWY 14, Amdt. 6
Louisville, KY—Bowman Field, VOR RWY 19, Amdt. 4
Louisville, KY—Bowman Field, VOR RWY 24, Amdt. 4
Louisville, KY—Bowman Field, VOR RWY 32, Amdt. 13
Louisville, KY—Bowman Field, NDB RWY 32, Amdt. 13
Paducah, KY—Barkley Regional, VOR RWY 4, Amdt. 15
Paducah, KY—Barkley Regional, VOR/DME RWY 22, Amdt. 4
Paducah, KY—Barkley Regional, NDB RWY 22, Amdt. 2
Paducah, KY—Barkley Regional, ILS RWY 4, Amdt. 7
Bogalusa, LA—George R Carr Memorial Air Fld., VOR/DME–A, Amdt. 4
Bogalusa, LA—George R Carr Memorial Air Fld., LOC RWY 18, Amdt. 1
Bogalusa, LA—George R Carr Memorial Air Fld., NDB RWY 18, Amdt. 3
Grand Isle, LA—Grand Isle Seaplane Base, VOR–A, Amdt. 7
Grand Isle, LA—Grand Isle Seaplane Base, VOR/DME–C, Amdt. 6
Grand Isle, LA—Grand Isle Seaplane Base, NDB–B, Amdt. 8
Port Sulphur, LA—Port Sulphur Seaplane Base, VOR/DME–A, Amdt. 5
Port Sulphur, LA—Port Sulphur Seaplane Base, VOR/DME–B, Amdt. 4
Sanford, ME—Sanford Muni, NDB RWY 7, Orig.
Grand Rapids, MI—Kent County Intl, VOR RWY 18, Amdt. 6
Grand Rapids, MI—Kent County Intl, VOR RWY 36, Amdt. 11
Grand Rapids, MI—Kent County Intl, NDB RWY 26L, Amdt. 18
Grand Rapids, MI—Kent County Intl, ILS RWY 8R, Amdt. 3
Grand Rapids, MI—Kent County Intl, ILS RWY 26L, Amdt. 18
Grand Rapids, MI—Kent County Intl, RADAR–1, Amdt. 9
Maryville, MO—Maryville MEML, VOR/DME RW 36, Amdt. 4
Kennett, MO—Kennett Memorial, VOR RWY 36, Amdt. 5
Kennett, MO—Kennett Memorial, NDB RWY 18, Amdt. 2
Lee's Summit, MO—Lee's Summit Municipal, VOR–B, Amdt. 2
St. Louis, MO—Arrowhead, VOR RWY 2, Amdt. 4
St. Louis, MO—Arrowhead, VOR–B, Amdt. 2
Sikeston, MO—Sikeston Memorial Muni, VOR/DME RWY 2, Orig.
Newburgh, NY—Stewart Intl, NDB RWY 9, Amdt. 7
Newburgh, NY—Stewart Intl, ILS RWY 9, Amdt. 6
Medina, OH—Medina Muni, NDB RWY 27, Amdt. 7
Piqua, OH—Piqua, VOR–A, Amdt. 11
Piqua, OH—Piqua, VOR RWY 26, Amdt. 4
Piqua, OH—Piqua, VOR/DME RNAV RWY 26, Amdt. 5
Maryville, MO—Maryville MEML, NDB RWY 14, Amdt. 3
Belle Fourche, SD—Belle Fourche Muni, NDB RWY 32, Orig.
Tooele, UT—Bolinder Field-Tooele Valley, NDB RWY 6, Orig., Cancelled
Danville, VA—Danville Regional VOR RWY 2, Amdt. 12
Danville, VA—Danville Regional, VOR RWY 24, Amdt. 9
Staunton/Waynesboro/Harrisonburg, VA—Shenandoah Valley Regional, ILS RWY 5, Amdt. 8
Huntington, WV—Tri-State/Milton J. Ferguson Field, NDB RWY 12, Amdt. 16
Huntington, WV—Tri-State/Milton J. Ferguson Field, ILS RWY 12, Amdt. 9
Huntington, WV—Tri-State/Milton J. Ferguson Field, ILS RWY 30, Amdt. 3
Rice Lake, WI—Rice Lake Muni, VOR RWY 18, Amdt. 1
Rice Lake, WI—Rice Lake Muni, VOR RWY 36, Amdt. 1
Rice Lake, WI—Rice Lake Muni, NDB RWY 36, Amdt. 7

Effective February 6, 1992

Indianapolis, IN—Greenwood Muni, VOR–A, Amdt. 3
Indianapolis, IN—Greenwood Muni, NDB RWY 36, Amdt. 1
Eliot, ME—Littlebrook Air Park, RADAR–1, Amdt. 2
Bedford, MA—Laurence G Hanscom Fld., NDB RWY 29, Amdt. 5
Kansas City, MO—Richards-Gebaur, ILS 1 RWY 36, Amdt. 3
Kansas City, MO—Richards-Gebaur, ILS 2 RWY 36, Orig.
Keene, NH—Dillant-Hopkins, VOR RWY 2, Amdt. 10
Bowman, ND—Bowman Muni, NDB RWY 29, Amdt. 2

Effective January 9, 1992

Scottsdale, AZ—Scottsdale Muni, VOR–A, Amdt. 5, Cancelled
Scottsdale, AZ—Scottsdale Muni, VOR–A, Orig.
Chicago (West Chicago), IL—Du Page, VOR RWY 1L, Orig.
Chicago (West Chicago), IL—Du Page, ILS RWY 1L, Orig.
Abbeville, LA—Abbeville Municipal, VOR/DME–A, Amdt. 4, Cancelled
Abbeville, LA—Abbeville Municipal, VOR/DME–B, Amdt. 1, Cancelled
Abbeville, LA—Abbeville Municipal, VOR/DME–A, Orig.

Abbeville, LA—Abbeville Municipal, VOR/DME–B, Orig.
Eunice, LA—Eunice, VOR/DME–A, Amdt. 4, Cancelled
Eunice, LA—Eunice, VOR/DME–A, Orig.
Lafayette, LA—Lafayette Regional, VOR RWY 4R, Orig.
Lafayette, LA—Lafayette Regional, VOR/DME RWY 11, Orig.
Lafayette, LA—Lafayette Regional, NDB RWY 10, Amdt. 3, Cancelled
Lafayette, LA—Lafayette Regional, NDB RWY 22L, Amdt. 4
Lafayette, LA—Lafayette Regional, NDB RWY 28, Amdt. 6, Cancelled
Lafayette, LA—Lafayette Regional, ILS RWY 22L, Amdt. 4
Lafayette, LA—Lafayette Regional, RADAR–1, Amdt. 8
Lafayette, LA—Lafayette Regional, RNAV RWY 3R, Amdt. 3, Cancelled
Lafayette, LA—Lafayette Regional, RNAV RWY 10, Amdt. 2, Cancelled
New Iberia, LA—Acadiana Regional, VOR RWY 16, Amdt. 8, Cancelled
New Iberia, LA—Acadiana Regional, VOR/DME OR TACAN RWY 16, Orig.
New Iberia, LA—Acadiana Regional, VOR/DME RWY 34, Amdt. 5, Cancelled
New Iberia, LA—Acadiana Regional, VOR/DME RWY 34, Orig.
New Iberia, LA—Acadiana Regional, LOC RWY 34, Amdt. 7
New Iberia, LA—Acadiana Regional, NDB RWY 16, Amdt. 1, Cancelled
New Iberia, LA—Acadiana Regional, NDB RWY 34, Amdt. 7
Opelousas, LA—St Landry Parish-Ahart Field, VOR/DME RWY 35, Orig., Cancelled
Opelousas, LA—St Landry Parish-Ahart Field, VOR/DME RWY 35, Orig.
Opelousas, LA—St Landry Parish-Ahart Field, NDB RWY 17, Amdt. 1
Patterson, LA—Harry P Williams Memorial, VOR/DME–A, Amdt. 8
Patterson, LA—Harry P Williams Memorial, LOC/DME RWY 23, Amdt. 2
Patterson, LA—Harry P Williams Memorial, NDB RWY 5, Amdt. 8

Effective December 12, 1991

Columbia, SC—Columbia Metropolitan, RADAR–1, Amdt. 9

[FR Doc. 92–601 Filed 1–9–92; 8:45 am]
BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–30146; File No. S7–27–91]

RIN 3235–AE19

Acceptance of Signature Guarantees From Eligible Guarantor Institutions

AGENCY: Securities and Exchange Commission.

ACTION: Final rulemaking.

SUMMARY: The Securities and Exchange Commission today is adopting new Rule 17Ad–15 (17 CFR 240.17Ad–15) under the Securities Exchange Act of 1934 designed to: Provide for the protection of investors; facilitate the equitable treatment of financial institutions which guarantee signatures of endorsers of securities; increase the efficiency of the security transfer process; and, reduce the risk associated with a signature guarantor's inability to meet its obligations. The rule will: (1) Prohibit inequitable treatment of eligible guarantor institutions, (2) require transfer agents to establish written standards for the acceptance of signature guarantees, and (3) enable transfer agents to reject a request for transfer because the guarantor is neither a member of nor a participant in a signature guarantee program. The rule implements section 17A(d)(5) of the Act, as amended by section 206 of the securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Enforcement Act"). Section 206 of the Enforcement Act clarifies the Commission's rulemaking authority to implement rules to facilitate the equitable treatment of financial institutions which issue signature guarantees.

EFFECTIVE DATE: February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Anthony Bosch, Attorney, Branch of Transfer Agent Regulation, at 202/272–2775, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting new Rule 17Ad–15 (17 CFR 240.17Ad–15) under the Securities Exchange Act of 1934 ("Exchange Act") that amends title 17 of chapter II, part 240 of the Code of Federal Regulations. The rule requires, among other things, that registered transfer agents treat all financial institutions in the acceptance of signature guarantees on an equitable basis. The rule implements section 17A(d)(5) of the Exchange Act, as amended by section 206 of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Enforcement Act").[1]

I. Introduction and Summary

In Securities Exchange Act Release No. 29663 ("Proposing Release"),[2] the Commission published for comment Rule 17Ad–15 pursuant to section 17A(d)(5) of the Exchange Act to implement section 206 of the Enforcement Act. The rule is designed to facilitate the equitable treatment of financial institutions which issue signature guarantees and other guarantees related to the transfer of securities. In general, the rule prohibits inequitable treatment of eligible guarantor institutions and requires transfer agents to establish written standards for the acceptance of signature guarantees.

A total of eighty commentators provided comments relating to the proposed rule.[3] Forty-three commentators favored the proposed rule (twenty-three of whom provided additional comments on specific sections of the proposed rule). Additionally, twenty-five commentators offered observations or suggestions without explicitly supporting the proposed rule. Twelve commentators objected to the proposed rule. The views of the commentators are discussed in detail below.

The Commission has modified Rule 17Ad–15 to account for many commentator suggestions and concerns. The Commission has rejected some suggestions offered by commentators and these are also discussed below. Finally, for the reasons discussed in the Proposing Release and below the Commission is adopting Rule 17Ad–15 as revised.

II. List of Commentators

The following commentators submitted comments relating to Rule 17Ad–15.

Federal Regulatory Authorities

National Credit Union Administration ("NCUA")
Office of Thrift Supervision ("OTS")

Self-Regulatory Organizations

The Depository Trust Company ("DTC")

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[1] 15 U.S.C. 78q–6(d)(5) as amended by Pub. L. No. 101–429, Section 206, 104 Stat. 941 (1990).

[2] Securities Exchange Act Release No. 29663 (September 9, 1991), 56 FR 46748.

[3] A summary of these comments has been prepared and a copy of the summary has been placed in the public file.

Industry Organizations

Alaska Credit Union League ("Alaska League")
American Bankers Association, Trust and Securities ("ABA")
Corporate Transfer Agents Association ("CTAA")
Credit Union National Association, Inc. ("CUNA")
Hawaii Credit Union League ("Hawaii League")
Indiana Credit Union League ("Indiana League")
Investment Company Institute ("ICI")
National Association of Federal Credit Unions ("NAFCU")
New Jersey Savings League ("New Jersey League")
New York League of Savings Institutions ("New York League")
North Carolina Alliance Community Financial Institutions ("Alliance")
Securities Industry Association ("SIA")
Texas Credit Union League and Affiliates ("TCUL")
The Cashiers Association of Wall Street, Inc. ("Cashiers")
The Midwest Securities Transfer Association, Inc. ("MWSTA")
The Securities Transfer Association, Inc. ("STA")
The Southwest Securities Transfer Association, Inc. ("SWSTA")
United States League of Savings Institutions ("U.S. League")
Western Securities Transfer Association, Inc. ("WSTA")

Credits Unions

AEDC Federal Credit Union
Educational Employees Credit Union
First Educators Credit Union
Homestead Air Force Base Federal Credit Union
Honolulu City & County Employees Federal Credit Union
IBM Endicott/Owego Employees Federal Credit Union
Langley Federal Credit Union ("Langley")
Long Beach School Employees Federal Credit Union
Melrose Credit Union
Navy Federal Credit Union
NBC Employees Federal Credit Union
Orange County Federal Credit Union
Pacific IBM Federal Credit Union (submitted two comment letters)
Pentagon Federal Credit Union
Professional Federal Credit Union
San Antonio Teachers Credit Union
TRW Systems Federal Credit Union ("TRW")
United BN Credit Union
Wisconsin Corporate Central Credit Union

Banks, Savings Banks, and Savings and Loan Associations

Badger Bank S.S.B.
Family Bank of Hallandale
Fiduciary Trust Company International ("FTC")
Harbor Federal
Household Bank
First Northern Savings Bank (submitted two comment letters)
Loyola Federal Savings and Loan Association
Marshfield Savings Bank, S.A.
Roma Federal Savings Bank
Sharon Savings Bank
The First, F.A.
Virginia First Savings Bank

Transfer Agents and Corporations

AmeriCorp Securities Services, Inc. ("Ameritrust")
CILCORP
DQE
First Chicago Trust Company of New York ("First Chicago")
Gulf States Utilities Company ("Gulf States")
Harris Trust and Savings Bank ("Harris Bank")
Manufacturers Hanover
Mellon Financial Services ("Mellon")
Meridian Point
Otter Tail Power Company ("Otter Tail")
Registrar and Transfer Company ("Registrar and Transfer")
The Procter & Gamble Company ("Procter & Gamble")
T. Rowe Price Associates, Inc. ("T. Rowe Price")
Union Electric
United States Trust Company of New York ("U.S. Trust")
USX Corporation ("USX")
Washington Water Power
Wisconsin Energy Corporation ("Wisconsin Energy")
WPL Holdings, Inc. ("WPL Holdings")

Brokers and Dealers

Bear, Stearns & Co., Inc. ("Bear Stearns")
Merrill Lynch ("Merrill")
Shearson Lehman Brothers ("Shearson")
Smith Barney Harris Upham & Co., Inc. ("Smith Barney")

Lawyers, Law Firms, and Professors

Professors Egon Guttman, Washington College of Law, The American University ("Professor Guttman")

Insurance Companies

CUNA Mutual Insurance Group, CUMIS Insurance Society, Inc. ("CUNA Mutual")

Other

Financial Data Resources, Inc. ("FDR")
Kemark Financial Services, Inc. ("Kemark")

III. Basis and Purpose

The Proposing Release set forth three reasons why adoption of Rule 17Ad–15 might be viewed as necessary or appropriate. First, Rule 17Ad–15 would facilitate the equitable treatment of signature guarantors. Second, it would improve the signature guarantee process. Third, it would carry out the Congressional expectation, implicit in the grant of rulemaking authority, that the Commission adopt rules prohibiting, among other things, disparate treatment of various financial institutions in the acceptance of signature guarantees.[4]

A substantial majority of the commentators expressed support for the proposed rule. The supporting commentator noted their approval of the proposed rule's requirement that registered securities transfer agents treat all financial institutions that guarantee signatures on an equitable basis. For example, OTS stated that transfer agents have not treated thrifts on an equitable basis with commercial banks and other financial institutions as signature guarantors and the proposed rule should "level the playing field" for various financial institutions. CUNA stated its support for the proposed rule and noted that "many years of effort of trying to achieve a self-regulatory solution proved fruitless." CUNA commented that many credit unions must still send their members "down the street" to a commercial bank or broker to guarantee the signature on securities, a service credit unions want to provide in order to "serve as a full service financial institution."

Many commentators expressed concern about the costs they will incur as a result of adoption of the proposed rule either in their capacity as transfer agents or signature guarantors. Commentators representing organizations whose signature guarantees generally are now accepted urged that the way they currently guarantee signatures and related expenses should remain the same. These commentators also opposed any action that would result in such change,[5] and

[4] See Proposing Release, *supra* note 2, 56 FR at 46748.

[5] But see letter from ABA. The ABA commented that it has no objection to the intent of the proposed rule to ensure the equitable treatment of guarantor institutions.

even suggested that the matter required further study.[6] Commentators representing organizations whose signature guarantees are not generally accepted by transfer agents overwhelmingly supported the proposed rule. These commentators expressed concerns, however, that the cost of getting authorization cards to transfer agents and of implementing system changes necessary to accommodate a larger universe of guarantors not fall exclusively on them.

Transfer agents commented that the cost of the proposed rule, including the cost to assess the creditworthiness of an expanded universe of guarantor institutions, would outweigh the benefits.[7] Commentators representing transfer agents also objected to the proposed rule because it would force them to accept guarantees from a larger universe of guarantors without, at the same time, clearly allowing them to establish efficient authorization card systems for all guarantors. These commentators objected to the proposed rule but stated their support for either a transfer agent or Commission mandated signature guarantee program.[8]

As explained in the Proposing Release and below, accepting signature guarantees requires transfer agents to make credit decisions on the responsibility of the guarantor institution. Thus, transfer agents must be given flexibility in exercising credit judgments as to whether guarantors are responsible, provided those credit judgments are reasonable. In addition, transfer agents' written standards, with respect to responsibility, cannot be manifestly unreasonable. This is the standard set forth in state commercial laws and this is the standard the Commission is seeking to adopt and enforce.

The Commission is rejecting commentator suggestions that the Commission defer adoption of the proposed rule pending further study. More than seven years ago the Commission advised transfer agents that relying solely on the type of institution in determining whether or not to accept that institution's signature guarantee is inconsistent with appropriate state commercial law. For the past seven years, the Commission sought, to no avail, to resolve this matter through study and discussion with banking, brokerage and other interested industry representatives.[9]

The Commission believes that the rule achieves the appropriate balance between facilitating the equitable treatment of guarantor institutions and the need for a transfer agent to protect itself from risks associated with the acceptance of signature guarantees. Rule 17Ad–15 requires reasonable credit decisions, prohibits inequitable treatment of guarantor institutions, and provides a framework for the timely flow of necessary information between guarantors, transfer agents and presentors about transfer agent acceptance standards and rejections. Additionally, Rule 17Ad–15 provides a basis for more effective control by each transfer agent of its credit decisions and its signature guarantee procedures. The Commission will continue to take an active role in monitoring the signature guarantee process, enforcing Rule 17Ad–15, and will take further action, if necessary, to address inequities or other problems that may arise.

IV. Rule 17Ad–15(a): Definitions

Rule 17Ad–15(a) defines certain terms used in the rule, such as "eligible guarantor institutions" and "signature guarantee." Commentators addressed only a few of the proposed defined terms in the rule, including "eligible guarantor institution" and "guarantee." Accordingly, these terms are discussed below. Other defined terms that were not addressed by the commentators have not been revised and are being adopted as proposed.

A. Definition of Eligible Guarantor Institution

Rule 17Ad–15(a)(2) as adopted defines "eligible guarantor institutions" to include banks, brokers, dealers, municipal securities dealers, municipal securities brokers, government securities dealers, government securities brokers, credit unions, national securities exchanges, registered securities associations, clearing agencies and savings associations. The rule defines the eligible guarantor institutions that would be protected by the rule. The rule has been adopted substantively as proposed, except with a modification to the term "credit union" as that term relates to the definition of "eligible guarantor institution."

As proposed, rule 17Ad–15(a)(2)(iii) would have defined as eligible guarantor institutions credit unions that are "insured credit unions" as that term is defined in section 101(7) of the Federal Credit Union Act [12 U.S.C. 1752(7)]. This would include all federally insured credit unions—in essence, all federally chartered credit unions as well as most state chartered credit unions. The Commission's intent in using this definition was to include all guarantor institutions authorized to provide signature guarantee services.

Eleven commentators addressed the proposed definition of eligible guarantor institution.[10] Five commentators requested that the definition of "eligible guarantor institution" be amended to include privately insured credit unions as well as federally insured credit unions.[11] for example, CUNA urged the Commission to expand the definition of "eligible guarantor institution" to include credit unions that are not federally insured. CUNA noted that approximately 800 credit unions in the United States today are not federally insured, but rather are privately insured by companies chartered under state law. CUNA requests a broader definition of eligible guarantor institution to include credit unions as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act [12 U.S.C. 461(b)]. CUNA also noted that the authority of state chartered credit unions to provide guarantees will be a question of state law and regulatory interpretation. Although there exists no across-the-board ruling that can be cited for state chartered credit

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[6] See letter from SIA. The SIA commented that the proposed rule be studied by the Securities and Exchange Commission's Market Transactions Advisory Committee.

[7] For example, USX stated that the Commission "seriously understates the cost to transfer agents of compliance with the proposed rule" and "leaps to the conclusion that 'the benefits of proposed [R]ule 17Ad–15 would outweigh the costs incurred by transfer agents in complying with the proposed rule.' "

Procter & Gamble stated that the proposed rule would increase costs without meaningfully improving the signature guarantee process and that transfer agents would be unable to closely monitor the expanded universe of guarantor institutions.

[8] For example, STA stated that it "strongly believes that the Commission's goals of ensuring the equitable treatment of eligible guarantor institutions and providing a more efficient security transfer process cannot be met unless the Commission requires guarantor participation in a particular signature guarantee program or permits transfer agents to accept guarantees only from guarantors participating in an acceptable program." The STA indicated that it stands ready to cooperate with the Commission in connection with the further development of proposed Rule 17Ad–15. Nevertheless, the STA stated that except for "the attention which the Rule pays to signature guarantee programs, the STA regards the proposed rule as essentially misguided."

[9] See Proposing Release, Securities Exchange Act Release No. 29663, *supra* note 2, 56 FR at 46749–50.

[10] FDR, CTAA, CUNA, Educational Employees Credit Union, Indiana League, NAFCU, NCUA, Navy Federal Credit Union, Pacific IBM Federal Credit Union, STA, and TCUL.

[11] CUNA, Educational Employees Credit Union, Indiana League, Pacific IBM Federal Credit, and TCUL.

unions, CUNA believes that state credit union authorities, if they have not already done so, will interpret their state laws to allow such guarantees as an "incidental power" or "goodwill service." CUNA thus believes that all credit unions should be eligible guarantor institutions, unless a specific state interpretation to the contrary governs.[12]

In response to these commentators, the Commission has revised the definition of "eligible guarantor institution" to include credit unions as that term is defined in section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)]. The Commission revised the definition so that all guarantor institutions, including non-federally insured credit unions, that are authorized to provide signature guarantees are included in the definition of eligible guarantor institution.

In revising and adopting this definition, however, the Commission is not authorizing eligible guarantor institutions to issue signature guarantees because it is not within the Commission's authority to do so. The authority to issue signature guarantees for state chartered credit unions may be found in state law and state commercial codes, and state regulatory authorities.[13] Accordingly, transfer agents may require assurance that the guarantor institution is authorized to issue signature guarantees, to the extent it is not a matter of general knowledge that such institutions have signature guarantee authority.[14] Nevertheless, transfer agents making such a request should remember that an issuer or its transfer agent is liable to the person presenting a certificated security or an instruction for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge, or release.[15]

Two commentators, FDR and CTAA urged further clarification of the types of financial institutions that are included within "eligible guarantor institutions." For example, FDR commented that the reference in the rule to "clearing agency" should explicitly note that clearing agencies include securities depositories, and that the reference to "savings association" includes "savings and loan associations." CTAA also requested that the definition of savings association specify "savings and loan association."

The Commission is not making these changes because it believes the changes are unnecessary. The definition of "clearing agency" under section 3(a)(23) of the Exchange Act [15 U.S.C. 78c(a)(23)] includes, among other things, securities depositories. In addition, the definition of "savings association," as that term is defined in section 3(b) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)] includes, among other things, any savings and loan association which is organized and operating according to the laws of the state in which it is chartered or organized.

B. Definition of Guarantee

In response to commentators, as discussed below, the Commission has revised the definition of "guarantee" by deleting references made to "'guarantees of erasures, alterations, or similar changes material to the certificate," and guarantees of "endorsements on the certificate." As revised, the term "guarantee" means a guarantee of the signature of the person endorsing a certificated security, or originating an instruction to transfer ownership of a security, or instructions concerning transfer of securities.

Three commentators [16] stated that the proposed definition of "guarantee" is too broad because it includes endorsement guarantees. One of these commentators noted that reference in the rule to include "guarantee of endorsers" would require signature guarantors to become a guarantor of endorsement which would change state law. This commentator explained that the accepted doctrine, as embodied in the U.C.C., does not allow the issuer to demand a guarantee other than the signature guarantee and suggested that "guarantee" only include the traditional "signature guarantee" without reference to "guarantee of endorsers." [17]

Bear Stearns objected to the broad definition of guarantees and the inclusion of erasure guarantees. Bear Stearns believes that the act of guaranteeing the authenticity of an endorser's signature should not include an erasure guarantee which could extend a broker-dealer's liability to alterations that are not within the broker-dealer's control. Bear Stearns further explained that liability currently attaches to the firm that erases or otherwise alters a certificate by requiring that firm to affix its own specific erasure guarantee.

In proposing the definition of "guarantee," the Commission intended to define "guarantee" broadly to protect the various types of guarantees used by the financial community from inequitable treatment of transfer agents. The Commission did not and does not intend to extend what an issuer or its transfer agent may require from presentors of certificates or instructions or to change existing guarantee or warranty liabilities.[18]

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[12] Similarly, TCUL noted that a significant number of state chartered credit unions are not federally insured. TCUL provided an example of specific authority granted to credit unions chartered in Texas, under Texas law. [article 2461–4.01(a)25 V.A.T.S.]. TCUL also commented that virtually all state credit union acts have incidental power provisions that would provide state credit unions authority to provide signature guarantees since incidental provisions give credit unions the right to exercise such powers as may be necessary to accomplish the purposes for which credit unions are authorized. TCUL also suggested that federal statutes, as they have been applied in the past, may be applied to state credit unions by making them applicable not only to those which are actually federally insured but to those which are eligible to apply for such insurance.

[13] NCUA offered clarification of a reference in the Proposing Release concerning credit union authority to issue signature guarantees. NCUA noted that the 1986 NCUA General Counsel Opinion Letter cited in the Proposing Release only addressed the authority of federal credit unions because the NCUA only has authority to interpret the powers of federal credit unions. NCUA also noted that the authority for state chartered credit unions to offer signature guarantee services would have to come from the appropriate state enabling act, state regulations or the state supervisory authority.

[14] For example, a citation to specific statutory authority or an opinion of general counsel of the state regulatory authority should be sufficient.

[15] U.S.C. 8–401(2).

[16] Professor Guttman, FDR, and STA.

[17] The STA and FDR expressed similar views. See letters from the STA and FDR. FDR also requested that the proposed definition of guarantee be expanded to include "one-and-the-same" guarantees, which are different in nature from "guarantees of erasures, alterations, or similar changes."

[18] Under section 8–402(1) of the U.C.C., an issuer or its transfer agent may require assurance that each necessary endorsement of a certificated security or each instruction is genuine and effective. This assurance may include, in all cases, a guarantee of the signature (section 8–312(1) or 8–312(2)) of the person endorsing a certificated security or originating an instruction. Section 8–312(1) states that any person guaranteeing a signature of an endorser of a certificated security warrants that at the time of signing: (a) The signature was genuine; (b) The signer was an appropriate person to endorse (Section 8–308); and (c) The signer had legal capacity to sign. Section 8–312(2) states that any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing: (a) The signature was genuine; (b) The signer was an appropriate person to originate the instruction (section 8–308) if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the registered owner or registered pledgee of the security, as to which fact the signature guarantor makes no warranty; (c) The signer had legal capacity to sign; and (d) The taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the signer was acting.

Accordingly, in response to these comments and to avoid any confusion, the Commission revised the definition of guarantee to delete references to "guarantees of erasures, alterations, or similar changes material to the certificate," and guarantees of "endorsements on the certificate."

Four commentators requested clarification of the proposed definition of guarantee to the extent the definition relates to investment companies.[19] U.S. League commented that the proposal does not make reference to the abuses of investment companies in their requirements for signature guarantees for various aspects of their operations, (*i.e.*, for check-writing privileges, many investment companies require a customer to have his or her signature guaranteed by a bank). U.S. League recommends that the definition of guarantee be expanded to include guarantees required by investment companies. Professional Federal Credit Union also urged that the definition of guarantees include modification of ownership or liquidation of shares in a mutual fund.

ICI and T. Rowe Price commented that the definition of guarantee does not contemplate that the vast majority of mutual fund shares outstanding that are not in certificated form and the vast majority of transactions in mutual fund shares do not involve transfers of ownership. These commentators noted that mutual fund transfer agents accept signature guarantees on several instructions that do not have immediate financial consequences (such as changes in the bank or bank account to which proceeds are to be sent in the event a future redemption instruction is sent by the registered owner) and those "transactions" should not be lumped in automatically with certificate transfers in determining signature guarantee requirements.[20]

The ICI and T. Rowe Price also commented that, to the extent the proposed rule applies to mutual fund transfer agents, the proposed rule would be extremely burdensome, add significantly to processing time, and create significant delays in the completion of transactions. These commentators explained that mutual funds continuously sell and redeem their shares directly to investors and are required by the Investment Company Act of 1940 to honor purchase and redemption orders on the day of receipt at the next computed price per share.[21] Thus, mutual fund transfer agents must pay out large amounts of cash directly from the mutual fund on a daily basis to satisfy the redemption orders of fund shareholders. These commentators believe that mutual funds would be unable to obtain sufficient and reliable current information about potential guarantors and thus, the proposed rule would expose funds and their transfer agents to significant potential liability to shareholders whose redemption requests are delayed. Further, they believe that the proposed rule would add significantly to the cost for transfer agent services, which is a typical mutual fund's single largest expense item after portfolio management.

The Commission agrees with the U.S. League that transfer agent guarantee acceptance practices in connection with mutual fund transactions should be subject to Rule 17Ad–15. The definition in Rule 17Ad–15 of "guarantee" includes guarantees required by "closed end" investment companies and "open end" mutual funds to transfer or "redeem" these securities.[22]

To clarify that all mutual fund transactions are covered by the rule, including instructions that do not have immediate financial consequences (*i.e.*, instructions to change standing instructions about wiring mutual fund proceeds to a designated bank account), the definition of "guarantee" includes "instructions concerning the transfer of securities." The Commission believes that if a mutual fund or its transfer agent chooses to rely on signature guarantees as its safeguard against forged or unauthorized signatures, the mutual fund or its transfer agent must accept signature guarantees on an equitable basis.[23]

The Commission cannot accept the ICI's views and suggestions. The ICI raises many of the same objections to the proposed rule that transfer agents handling other types of securities have raised, which are the subject of discussion elsewhere in this release. The ICI correctly notes that mutual funds are required to act on shareholder instructions, including redemption instructions, within specific timeframes. Those obligations do not require action, however, unless the mutual fund is satisfied that the shareholder authorized to redeem shares has in fact issued that instruction. Indeed, mutual funds often require redemption instructions to include a signature guarantee from an acceptable guarantor institution to protect themselves against potential financial risk.[24] Moreover, because mutual funds often limit acceptable guarantors to commercial banks or broker-dealers who are members of a national securities exchange or association,[25] it cannot be said that these transfer agents do not already have standards for acceptance of guarantors and internal procedures to carry out those standards. Accordingly, the Commission is not aware of any reason why transfer agents that process mutual fund transactions should not be included within the scope of Rule 17Ad–15.

V. Rule 17Ad–15(b): Acceptance of Signature Guarantees

Rule 17Ad–15(b) is adopted with one clarifying change.[26] As clarified, Rule 17Ad–15(b) prohibits a registered transfer agent from engaging in any activity in connection with a guarantee, including the acceptance or rejection of such guarantee, that results in the inequitable treatment of any eligible guarantor institution, or a class of institutions. Rule 17Ad–15(b) implements section 17A(d)(5) of the Exchange Act as amended by section 206 of the Enforcement Act. No commentators directly addressed Rule 17Ad–15(b).

[19] ICI, Professional Federal Credit Union, T. Rowe Price, and U.S. League.

[20] The ICI argues that mutual funds often require signature guarantees when a shareholder changes information on file, such as where the proceeds of a redemption should be sent. The ICI argues that these "instructions" do not involve immediately identifying values and do not involve transfer of ownership.

[21] The Commission is not aware of any circumstances under which mutual funds or their transfer agents request signature guarantees as a condition to processing a purchase order from customers. That may not be the case, however, where a sale order precedes or accompanies a purchase order. Nevertheless, this should be considered a sale followed by a purchase.

[22] The Commission's rules concerning transfer agents treat redemptions of mutual funds as transfers of securities. See Securities Exchange Act Rule 17Ad–4 which exempts redeemable securities from rules concerning the turnaround of items presented for transfer (*e.g.*, Rule 17Ad–2) and Securities Exchange Act Rule 17Ad–9(a)(7) which defines "certificate detail" with respect to redeemable securities.

[23] For example, if a mutual fund transfer agent requires a signature guarantee to authorize the mutual fund to deposit proceeds from the sale of securities, then it must accept such guarantees from all qualified guarantor institutions on an equitable basis.

[24] These signature guarantees are the same signature guarantees that any issuer or transfer agent may require under state law

[25] These limitations are usually included in the mutual fund's prospectus. Accordingly it seems difficult to argue that mutual fund transfer agents currently do not have signature guarantee standards and procedures for implementing the same, although those standards do not comply with the requirements of Rule 17Ad–15.

[26] The Commission has modified the rule to clarify that practices that result in the inequitable treatment of a class of eligible guarantor institutions also would be prohibited.

VI. Rule 17Ad–15(c): Written Standards and Procedures

As proposed, Rule 17Ad–15(c) requires transfer agents to establish written standards for the acceptance of guarantees of securities transfers from eligible guarantor institutions and written procedures, including written guidelines where appropriate, to ensure that those standards are used by the transfer agent in determining whether to accept or reject guarantees from eligible guarantor institutions. In proposing Rule 17Ad–15(c), the Commission intended transfer agents to establish and follow written standards, in accepting or rejecting signature guarantees, that will facilitate the equitable treatment of eligible guarantor institutions as required by Rule 17Ad–15(b). Rule 17Ad–15(c) also will facilitate monitoring transfer agent compliance with the rule and will help ensure that the criteria a transfer agent uses to determine whether to accept a guarantee from any particular financial institution are not manifestly unreasonable and do not, as written or applied, treat different classes of eligible guarantor institutions inequitably.

Thirty-two commentators addressed proposed Rule 17Ad–15(c).[27] Four of these commentators supported the proposal without change.[28] The remainder expressed objections either to the proposed requirements as drafted or to the approach underlying these requirements—mandating that each transfer agent be responsible for establishing, maintaining and administering independent standards for acceptance of guarantees. Sixteen of the thirty-two commentators urged that the Commission revise its regulatory approach to ensure that transfer agents' written standards and procedures are consistent and uniform.[29] For example, the Alliance commented that the Commission cannot effectively ensure equitable treatment among signature guarantors without uniform specific standards applicable to all transfer agents. The Alliance noted that the rule as proposed would place a tremendous burden on transfer agents to develop standards on an individual basis. Additionally, guarantors would be faced with many different standards and procedures, and would have the costly and time-consuming burden of determining what those standards are for a particular transfer agent.

Eight of the sixteen commentators requested direct Commission involvement in writing, approving, or reviewing transfer agents' standards and procedures.[30] For example, the NAFCU supported established written standards and procedures, subject to Commission review to ensure consistency and compliance. TRW suggested that the Commission establish minimum guidelines that would lend some degree of uniformity to the transfer agents' standards.

Five of the thirty-two commentators commented that written standards and procedures would not ensure the equitable treatment of guarantor institutions.[31] The STA commented that written standards and procedures would not ensure equitable treatment of guarantors on an across-the-board basis, because there would necessarily be variations among the standards of individual transfer agents. The STA noted that the rule as proposed would require examination of a guarantor's creditworthiness in individual instances and the necessary fact-finding and related recordkeeping with regard to rejected guarantees which would not only be exceedingly costly and burdensome but would also introduce heretofore unknown inefficiencies into the security transfer process.

Similarly, the U.S. League commented that the use of written standards in isolation would not accomplish the desired results of eliminating inequities and improving efficiency in handling guarantees and transfers. The U.S. League urged the Commission to be more directly involved in the establishment of a centrally administered program. The U.S. League noted that the rule as proposed would leave guarantors with no reasonable means of knowing the idiosyncratic standards of those stock transfer agents, and thus, guarantors would be unable to act on behalf of their customers with the assurance that their guarantees would be accepted. The U.S. League commented that the proposed rule would require transfer agents to develop and administer elaborate standards and would require guarantors to establish a means of determining whether or not each guarantee transaction actually met a guarantor's standards. The U.S. League also noted that standards based on capital would lead to confusion since capital is defined in many ways and would be hard to interpret.

Several commentators objected to Rule 17Ad-15(c) because they believe that the costs of assessing the creditworthiness of the increased number of guarantor institutions would outweigh the benefits of the proposed rule. The views of these commentators are explained below, in section VII, Proposed Rule 17Ad-15(d).

The Commission is adopting Rule 17Ad-15(c) as proposed. The Commission believes that the proposed rule is the best approach to ensure that the criteria used by transfer agents in accepting or rejecting signature guarantees treats all eligible guarantor institutions equitably.

First, the Commission does not believe it should make credit decisions for third parties. Establishing minimum or uniform standards would require the Commission to do just that.

Second, this approach—not adopting minimum standards for transfer agents—is more consistent with state law than an approach where the Commission adopted uniform standards for transfer agents. Under state commercial law, transfer agents may require a guarantee of the signature signed on behalf of a person reasonably believed by the issuer, or its transfer agent, to be responsible.[32] State commerical law does not require transfer agents to establish particular standards and, for that matter, neither does Rule 17Ad-15(c). State commercial law also allows the issuer or its transfer agent to adopt standards with respect to responsibility if they are not manifestly unreasonable.[33] Similarly, Rule 17Ad-15(c) would require transfer agents to adopt standards, in writing, and to have procedures to apply those standards consistent with equitable treatment of eligible guarantors.

Third, the Commission's approach is consistent with industry practice and could be sufficient to address current practices that result in inequitable

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[27] ABA, Alliance, Bear Stearns, CTAA, CUNA, Educational Employees Credit Union, FDR, Hawaii League, Harbor Federal, IBM Endicott/Owego Employees Federal Credit Union, ICI, Indiana League, Langley Federal Credit Union, Manufacturers Hanover, Mellon, Merrill, NAFCU, Navy Federal Credit Union, New Jersey League, New York League, OTS, Pacific IBM Federal Credit Union, Professional Federal Credit Union, Professor Guttman, Shearson, SIA, STA; TCUL, TRW, U.S. League, USX, and Wisconsin Energy.

[28] Indiana League, Langley Federal Credit Union, Orange County Federal Credit Union, and OTS.

[29] Alliance, Educational Employees Credit Union, Harbor Federal, IBM/Endicott/Owego Employees Federal Credit Union, Mellon, Merrill, NAFCU, Navy Federal Credit Union, New Jersey League, New York League, Pacific IBM Federal Credit Union, SIA, STA, TCUL, TRW, and Wisconsin Energy Corp.

[30] Alliance, Educational Employees Credit Union, NAFCU, New Jersey League, New York League, Pacific IBM Federal Credit Union, SIA, and TRW.

[31] CTAA, FDR, Manufacturers Hanover, STA, and U.S. League.

[32] U.C.C. 8-402.

[33] *Id.*

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treatment of eligible guarantor institutions. Issuers and their transfer agents have made these credit determinations with respect to the guarantor's responsibility for many years. Many transfer agents now have policies that exclude guarantor institutions based solely on the type of institution, which the Commission has advised is contrary to state law. Rule 17Ad-15, analogous to state commercial law, requires transfer agents to adopt written standards and procedures that do not establish terms and conditions (including those pertaining to financial condition) that, as written or applied, treat different classes of eligible guarantor institutions inequitably, or result in the rejection of a guarantee from an eligible guarantor institution solely because the guarantor institution is of a particular type of eligible guarantor institution.

VII. Rule 17Ad–15(d): Rejection of Items Presented for Transfer

Rule 17Ad–15(d) is adopted with modifications, as discussed below, to require a transfer agent to provide notice to guarantors and presentors of a determination to reject a transfer if the guarantor does not satisfy the transfer agent's written standards or procedures. As adopted and as proposed, Rule 17Ad–15(d) requires a transfer agent to make certain determinations before rejecting a transfer request because of the signature guarantor. In particular, Rule 17Ad–15(d) requires the transfer agent to make a determination that the guarantor, if it is an eligible guarantor institution, does not satisfy the transfer agent's written standards or procedures.

Three commentators stated that the cost of establishing written standards and procedures and assessing whether a guarantor institution's creditworthiness satisfies those standards would outweigh the benefits of the proposed rule.[34] The CTAA commented that the cost of establishing and maintaining such standards would far exceed current expenditures to maintain and review signature cards. Further, the CTAA noted that the proposed standards would require continued monitoring, either annually or quarterly, when interim financial results are published. The CTAA believes that it would be difficult, if not impossible, to establish purely objective guidelines to enable transfer agents to eliminate possible inequitable treatment.

USX commented that the cost of complying with the proposed rule would be substantially more than the Commission indicates. USX stated that it believes that the cost to assess the creditworthiness of guarantor institutions through commercial vendors or government agencies would be up to $3.5 million per year. USX also noted that transfer agents could not afford to hire the necessary number of employees with the specialized skills to do in-house analysis of every guarantor (*i.e.*, it requires twenty to thirty USX employees to perform credit analyses of its steel customers alone). Therefore, USX believes that the proposed rule would be impracticable to administer and would make it more difficult to meet turnaround deadlines as required by Rule 17Ad–2.[35]

Several commentators noted that transfer agents will require additional time to process transfers and that the Commission should consider extending the current timeframes for turnaround of routine items under Rule 17Ad–2 or otherwise adjusting current regulatory requirements related to processing ownership transfers. For example, FDR commented that the cost of looking up credit information for each guarantor would likely exceed the cost of checking signatures against signature cards as is done under the present system, would significantly delay the transfer process, and, for that reason, the Commission should define such transfers as non-routine under Rule 17Ad–1(i)(4) "supporting documentation."[36]

Two commentators, the Alliance and the U.S. League, requested the Commission to require transfer agents to notify guarantors in a timely manner of the specific reason for any signature guarantee rejection and to specify in writing the specific standard or procedure on which the rejection was based. The Alliance also requested the transfer agents notify any guarantor whose guarantee was rejected within a certain number of days of rejection.

The Commission is adopting Rule 17Ad–15(d) with a modification to require a transfer agent to provide notice to guarantors and presentors of a determination to reject a transfer if the guarantor does not satisfy the transfer agent's written standards or procedures. As amended, Rule 17Ad–15(d) requires registered transfer agents to notify the guarantor and the presentor of the rejection and the reasons for such rejection within two business days after rejecting a transfer request because of a determination that the guarantor does not satisfy the transfer agent's written standards or procedures. A transfer agent may satisfy the two-day notification requirement to the presentor by returning the rejected item to the presentor along with a copy of the transfer agent's standards and the reasons for the rejection. With regard to notification to a guarantor, a transfer agent may satisfy this notification requirement by sending a copy of the transfer agent's standards at the time the transfer agent notifies the guarantor of the rejection.

The Commission believes that Rule 17Ad–15(d) is consistent with state commercial law with respect to transfer agent credit determinations. Although Rule 17Ad–15(d) requires transfer agents to assess the creditworthiness of the guarantor institution, transfer agents currently make those credit determinations in accepting or rejecting signature guarantees and state commercial law requires these determinations to be reasonable. Rule 17Ad–15(d) is consistent with state commercial law and, specifically, U.C.C. 8–402, which allows transfer agents to make a determination that the guarantee is signed by a person the issuer or its transfer agent reasonably believes is responsible.

Under Commission rules, transfer agents are required to turn around within three business days of receipt at least 90 percent of all routine items presented for transfer during a month.[37] However, determinations made with respect to signature guarantees may be considered "non-routine" under Rule 17Ad–1(a)(1)(i) if the transfer agent requires, among other things, "additional certificates, documentation, instructions, assignments, guarantees, endorsements, explanations or opinions of counsel before transfer may be effected."

The Commission notes that a tranfer agent may need additional documentation to determine whether the signature guarantor satisfies the transfer agent's written standards. As noted above, however, state commercial laws generally impose liability on the issuer or its transfer agent in favor of the person presenting a certificated security or an instruction for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge, or release.[38]

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[34] CTAA, Procter & Gamble, and USX.

[35] Similarly, Procter & Gamble stated that transfer agents would be unable to closely monitor the financial condition of the expanded universe of guarantor institutions. Procter & Gamble stated that the proposed rule would require it to add at least two additional employees at a cost of approximately $100,000 annually to verify the creditworthiness of guarantors.

[36] Professor Guttman, FDR, and USX.

[37] Securities Exchange Act Rule 17Ad–2, 17 CFR 240.17Ad–2.

[38] U.C.C. 8–401(2).

Two commentators stated that transfer agents should bear the burden of proof in determining whether the criteria used to accept or reject signature guarantees satisfies the proposed rule. The NAFCU commented that transfer agents should bear the burden of proof of determining whether the criteria used to accept or reject signature guarantees satisfies the proposed rule. Pacific IBM Federal Credit Union believes that transfer agents should bear the burden of proof only if procedures are in place to allow near instant dial-up between transfer agents and the Federal Deposit Insurance Corporation ("FDIC") and NCUA.

Another commentator suggested that signature guarantors should bear the burden of proof. According to this commentator, there is no reason why the burden of showing discriminatory standards or inequitable application of those standards should not be on the party alleging a violation of a Commission requirement.

As adopted, the rule is designed to require transfer agents to have written standards, to determine whether the guarantor meets those standards and to apply such standards equitably among eligible guarantor institutions. Thus, a transfer agent rejecting a signature guarantor must explain why the guarantor institution did not meet the transfer agent's guarantee standards. A guarantor challenging that determination or the transfer agent's written standards, however, would bear the burden of proof to show that the transfer agent's standards, as written, violated Rule 17Ad–15.

VIII. Rule 17Ad–15(e): Record Retention

Rule 17Ad–15(e)(1) requires registered transfer agents to maintain a copy of their standards and procedures in an easily accessible place. Rule 17Ad–15(e)(2) requires transfer agents to provide any requesting party, within three days of the request, a copy of the transfer agent's standards and procedures. Rule 17Ad–15(e)(3) requires transfer agents to maintain, for a period of three years following the date of the rejection, a record of all transfers rejected, along with the reason for the rejection, who the guarantor was and whether the guarantor failed to meet the transfer agent's guarantee standard.

The Commission made one modification to the proposed rule to require transfer agents to provide copies of their standards to the public upon request.

Eleven commentators addressed proposed Rule 17Ad–15(e).[39]

Six commentators stated that transfer agents should provide written standards and procedures upon request.[40] For example, the Alliance requested that the Commission include comprehensive and specific requirements for making standards available upon request and require that the standards and procedures be maintained in the transfer agent's main office. The Alliance also requested that transfer agents provide the standards within a certain number of days and that the Commission prohibit any charge for providing the standards and procedures.

The Commission agrees with commentators that the public should have ready access to a transfer agent's written standards and procedures and that the transfer agent should provide those standards upon request. Thus, the Commission has renumbered proposed Rule 17Ad–15(e)(2) to Rule 17Ad–15(e)(3) and added a new Rule 17Ad–15(e)(2) which requires transfer agents to provide a requesting party, within three days of receipt of the request, a copy of the transfer agent's standards and procedures.

The Commission believes that the transfer agent may refuse to make available the standards, until a reasonable fee to cover its expenses of providing such standards is paid, when the request for or the mailing of such transfer agent standards is from the general public and is not incident to a guarantee or transfer rejection because the guarantor did not meet the transfer agent's guarantee standards.[41] While transfer agents may charge a reasonable fee, the Commission believes that it is in the best interest of transfer agents and issuers to make such information as widely available as possible to minimize transfer delays.

Five commentators argued that the recordkeeping burden imposed by Rule 17Ad–15(e) would be too costly.[42] For example, the STA stated that the recordkeeping burden with regard to rejected guarantees will not only be exceedingly costly and burdensome but will introduce heretofore unknown inefficiencies into the security transfer process. Procter & Gamble stated that the recordkeeping and tracking systems required by the proposed rule would likely cost approximately $50,000 annually.

The Commission believes that the cost to transfer agents to maintain a copy of their individual standards and procedures are minimal. The cost associated with the recordkeeping of rejected items will vary from transfer agent to transfer agent. There are, of course, going to be costs associated with establishing standards that provide for equitable treatment of guarantors, to the extent that a transfer agent's current standards do not comply with the Rules as adopted. Nevertheless, transfer agents that have established clear standards and seek to have those standards widely known should not have a lot of rejected items once guarantors learn about the transfer agents' standards. Thus, recordkeeping costs should be lower for such transfer agents. Likewise, transfer agents that require all guarantors to be participants in or members of a signature guarantee program should have fewer rejected items once guarantors know of the transfer agents' standards. Moreover, the record retention requirement is important to the Commission's and other regulatory agencies' efforts to monitor and enforce the rule.

IX. Rule 17Ad–15(f): Exclusions

Rule 17Ad–15 specifies certain instances where transfer agents may reject signature guarantees from guarantor institutions without violating Rule 17Ad–15. Rule 17Ad–15(f)(1) provides that a transfer agent may reject a transfer request for reasons unrelated to acceptance of the guarantor institution.[43] Rule 17Ad–15(f)(2) allows a transfer agent to reject a transfer if the person purportedly acting on behalf of the guarantor institution is not authorized by that institution to act on its behalf. Rule 17Ad–15(f)(3) allows a transfer agent to reject transfers from broker-dealers that are not members of a registered clearing agency and do not

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[39] Alliance, CTAA, FDR, NAFCU, Navy Federal Credit Union, Orange County Federal Credit Union, TCUL, TRW, Procter & Gamble, STA, and Wisconsin Energy.

[40] Alliance, NAFCU, Navy Federal Credit Union, Orange County Federal Credit Union, TCUL, and TRW.

[41] A transfer agent may not hold up sending such standards when the transfer involves a rejection because the guarantor did not meet the transfer agent's guarantee standards. See discussion regarding notification of a rejected item under Rule 17Ad–15(d), *supra*, p. 28.

[42] CTAA, FDR, Procter & Gamble, STA, and Wisconsin Energy

[43] For example, a transfer agent may reject a transfer where the transfer agent reasonably believes that the transfer would be wrongful, the issuer has a duty as to adverse claims, the signature is forged, or the transfer would result in a violation of any applicable law relating to the collection of taxes.

maintain net capital in excess of $100,000.

The Commission proposed Rule 17Ad–15(f) as a "safe harbor" for transfer agents for rejections of securities transfers that some might otherwise view as a violation of the rule. Subsection (1), (2), and (3) of proposed Rule 17Ad–15(f) is the same as the adopted rule. Proposed Rule 17Ad–15(f)(4) would have provided a "safe harbor" for transfer agents for rejected securities transfers if the dollar value of the securities subject to the requested transfer exceeds a maximum dollar value as specified in the transfer agent's standards or procedures, provided that the maximum dollar value specified applies to all eligible guarantor institutions or bears a reasonable relationship to the financial condition of the eligible guarantor institution whose guarantee was rejected.

Seventeen commentators addressed the safe harbor exclusions enumerated in proposed Rule 17Ad–15(f). Two commentators addressed proposed Rule 17Ad–15(f)(1). The U.S. League stated that it supported Rule 17Ad–15(f)(1). The TCUL suggested that the proposed exclusion is too broad and recommended the rule be revised to provide an exclusion for "reasons unrelated to the guarantor institution if such rejection is otherwise permitted by applicable law."

The Commission has decided to adopt Rule 17Ad–15(f)(1) as proposed. Rule 17Ad–15(f)(1) is designed to clarify that the Rule does not change current transfer agent practices in areas unrelated to acceptance or rejection of guarantors. Today, a transfer agent relies upon its own experience and industry practice to determine if it has a reasonable legal basis for rejecting a transfer. The Commission believes that adding the language, "if such rejection is otherwise permitted by applicable law," may create uncertainty about whether a transfer agent can rely upon its own experience and industry practice in determining if it has a reasonable basis for a rejection that is unrelated to the guarantee.

Three commentators addressed proposed Rule 17Ad–15(f)(2). The U.S. League stated that it supported Rule 17Ad–15(f)(2). The CTAA generally supports Rule 17Ad–15(f)(2) and believes that tighter controls should be the responsibility of the financial institutions and that transfer agents should not have the responsibility to assure authorized signatures on behalf of eligible guarantors are proper and genuine. FDR commented that the rule should include an exclusion that reads: "because the security bears a signature guarantee by a person which is not an eligible guarantor institution."

The Commission has decided to adopt Rule 17Ad–15(f)(2) as proposed. The provision is designed to allow transfer agents to require reasonable assurances that the person signing the guarantee has the authority to act on behalf of that institution as currently is the practice in the securities industry through signature card programs. The Commission declined to establish a safe harbor for rejections because the security or instruction bears a signature guarantee from a non-eligible guarantor institution. Because the rule only deals with signature guarantees from eligible institutions, the Commission does not believe that such an exclusion is needed.

Three commentators addressed proposed Rule 17Ad–15(f)(3). The U.S. League stated that it supported Rule 17Ad–15(f)(3). Bear Stearns suggested that the proposed rule needs to be clarified so that transfer agents' scope and discretion are defined. FDR commented that transfer agents must have knowledge of the guarantor's membership in a registered clearing agency or about its net capital. FDR noted that transfer agents do not maintain such information today. Accordingly, FDR argued that an agent would have to establish and continuously update a new data base—the cost of which could conceivably approach the cost of the present signature card system.

The Commission has decided to adopt Rule 17Ad–15(f)(3) as proposed. As the Commission stated in the Proposing Release, the proposed safe harbor is permissive and not mandatory. The Commission believes that no clarification is needed regarding the scope of this rule and that any cost associated with this safe harbor is totally discretionary.

Thirteen commentators addressed proposed Rule 17Ad–15(f)(4).[44] Seven commentators supported the proposed exclusion.[45] For example, the STA stated that a transfer agent should be able to reject transfers in which the value of the securities involved exceeds an amount with which the transfer agent is comfortable on an objective basis since the very nature of the signature guarantee is that it is given repeatedly in a multitude of situations. The STA also stated that while the chances of forged or unauthorized endorsements are few, there is still a substantial risk to the transfer agent that the guarantor will not be financially responsible when called upon. Therefore, the STA believes that transfer agents should be permitted to continue to exercise basic business judgment, objectively applied, in accepting guarantees where the value of the securities involved is excessive.

CUNA supported the exclusion, but stated that a maximum dollar figure that a credit union can guarantee within a certain period should be set on a non-discriminatory basis. CUNA also suggested that transfer agents should consider not only criteria within the institutions themselves, such as its capital, but also the financial institution's insurance limits.

Langley stated that it supported the exclusion enumerated in Rule 17Ad–15(f)(4) since it is appropriate to be able to guarantee up to, but not exceeding, an institution's guarantee capability. Langley stated that capital requirements should be similar to those minimal capital requirements established for the guarantor by the regulatory bodies with regulatory jurisdiction or insurance coverage responsibility for the guarantor (*e.g.*, in Langley's case, NCUA and Navy Federal Credit Union). Langley also commented that transfer agents should be permitted to use NCUA's "5300" reports to determine a credit union's credit-worthiness. Langley suggested that these reports provide feasible access to information about credit unions.

Six commentators objected to proposed Rule 17Ad–15(f)(4).[46] For example, NAFCU stated that it strongly objects to the ambiguous language of Rule 17Ad–15(f)(4) since the exclusion could be inappropriately used by some stock transfer agents to reject signature guarantees from credit unions. NAFCU believes that surety bond coverage rather than the financial condition of the institutions should be sufficient to justify the acceptance of a guarantee. NAFCU also commented that the proposed exclusion would be detrimental to small institutions and administratively impracticable for transfer agents to monitor accurately the contingent liabilities of a guarantor institution.

FTC stated that the exclusion in proposed Rule 17Ad–15(f)(4) would be unfair and impractical since any criteria regarding the guarantor's capital should be linked to its credit rating. FTC also

[44] Bear Stearns, CUNA, FTC, Indiana Credit League, Langley, Merrill, NAFCU, Navy Federal Credit Union, Orange County Federal, Professional Federal Credit Union, Shearson, STA, and U.S. League.

[45] CUNA, Indiana League, Langley, Navy Federal Credit Union, Orange County Federal Credit Union, Professional Federal Credit Union, and STA.

[46] Bear Stearns, FTC, Merrill, NAFCU, Shearson, and U.S. League.

commented that a seller of a large amount of stock represented by a single certificate exceeding the transfer agent's maximum would first have to submit the certificate to the transfer agent and request that the stock be re-issued to the seller in smaller denominations. FTC explained that this would slow down the transfer process, thereby reducing the liquidity of any stock that is certificated rather than book-entry. FTC believes that the result of the exclusion would be contrary to the goal of the Group of Thirty since the exclusion would require custodian banks to request and hold an increased number of physical certificates in smaller denominations, and thus would increase unnecessarily the overall number of transactions and certificates.[47]

The U.S. League objected to proposed Rule 17Ad–15(f)(4) because the U.S. League believes that it would be impossible for transfer agents to know what the current inventory of guarantees is for any guarantor at any given time. The U.S. League also commented that it would be impossible for guarantors to determine whether or not a particular signature guarantee transaction will meet the threshold of a particular transfer agent.

The Cashiers, Merrill, Bear Stearns, and Shearson expressed concern about how the proposed exclusion could affect broker-dealer practices in the handling (*i.e.*, delivery or receipt) of physical certificates (*e.g.*, what constitutes a "good delivery" of securities and good delivery criteria such as number of shares per certificate or dollar value per certificate). Merrill stated that the exclusion would present a burden on the financial community in the area of physical deliveries. Shearson stated that it believes the exclusion would result in a connection being established between what dealers will accept as "good delivery" and the amount of monies involved in a transfer.[48] The Cashiers also objected to the exclusion since the exclusion would prevent a broker-dealer from making a delivery of securities having a market value in excess of the broker-dealer's surety limit (*e.g.*, $1,000,000).

Shearson explained that "the extension of credit or a guarantee signed by a brokerage financial intermediary to its clients clearly speaks to the intermediatory management process and accountabilities, including credit assessments. Any expectation that such financial intermediary should pass 'judgment' on someone else's clients is unrealistic, especially when the result is to shift the financial burdens to those who are clearly not engaged in that business, and at a time after money has changed hands upon receipt of delivery."

The Commission has deleted proposed Rule 17Ad–15(f)(4) from the final rule to avoid confusion. Several of the commentators stated that insurance and bond coverage should be considered rather than the financial condition of the guarantor institution. There also was confusion over the effect the safe harbor would have on "good delivery" rules. To avoid such confusion, the Commission believes that it is better if the rule is silent on whether transfer agents may set a maximum dollar amount threshold on the value of securities subject to a single guarantee. In deleting the safe harbor, however, it is the Commission's explicit intent not to affect existing agreements between clearing agencies and transfer agents concerning procedures or incidental guarantees.[49]

X. Rule 17Ad–15(g): Signature Guarantee Programs

Rule 17Ad–15(g) has been adopted to permit transfer agents to reject a request for transfer because the guarantor was neither a member of nor a participant in a "signature guarantee program," and to permit transfer agents to accept signature guarantees only from guarantors who are participants in a "signature guarantee program." Rule 17Ad–15(g) defines a "signature guarantee program" to be a program the terms and conditions of which the transfer agent reasonably determines are designed to facilitate the equitable treatment of eligible guarantor institutions, and to promote the prompt, accurate and safe transfer of securities by providing: (i) Adequate protection to the transfer agent against risk of financial loss in the event persons have no recourse against the eligible guarantor institution; and (ii) adequate protection to the transfer agent against the issuance of unauthorized guarantees. Rule 17Ad–15(g) also will require a transfer agent, during a transition period, to provide that guarantor ninety days written notice of the transfer agent's intent to reject transfers with guarantees from non-participating or non-member guarantors before rejecting any guarantees for that reason. The transition period would be six months, starting on the date the transfer agent revises its standards and procedures to include a signature guarantee program.

The Commission proposed Rule 17Ad–15(g) to permit a transfer agent to comply with Rule 17Ad–15(c) if the transfer agent's standards and procedures provide for the acceptance of guarantees from eligible guarantor institutions who are participants in a signature guarantee program. The rule, as proposed, did not expressly permit transfer agents to mandate participation in a signature guarantee program. The Commission intended Rule 17Ad–15(g) to alleviate transfer agents' burden in assessing the creditworthiness of the increased number of guarantor institutions. The Commission also intended Rule 17Ad–15(g) to encourage the development of signature guarantee programs that would provide a more efficient transfer process.

Fifty commentators addressed Rule 17Ad–15(g).[50] Of the fifty commentators, forty-three commentators supported a signature guarantee program (voluntary, transfer-agent directed, or Commission mandated),[51] and seven commentators objected to any use of signature guarantee programs.[52]

Twenty-nine of the commentators supported the development of signature guarantee programs and believe participation in such a program should be mandatory.[53] Two predominant

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[47] Bear Stearns and Shearson also objected to the proposed exclusion because they believed it would contravene the intended goals of the Group of Thirty.

[48] Shearson explained that "a good delivery is always transferrable. However, a good transfer item is not always necessarily considered a good delivery transaction."

[49] See letter from DTC.

[50] ABA, Alliance, Ameritrust, Bear Stearns, CILCORP, CTAA, CUNA, CUNA Mutual, DQE, DTC, FDR, First Chicago, Gulf States, Harris Bank, ICI, Kemark, Langley, Manufactures Hanover, Meridian Point, Merrill, MWSTA, NAFCU, Navy Federal Credit Union, New Jersey League, New York League, Orange County Federal Credit Union, Otter Tail, Pacific IBM Federal Credit Union, Pentagon Federal Credit Union, Procter & Gamble, Professional Federal Credit Union, Professor Guttman, Registrar and Transfer, San Antonio Teachers Credit Union, Shearson, Smith Barney, STA, SWSTA, TCUL, TRW, U.S. League, U.S. Trust, Union Electric, Mellon, USX, Washington Water Power, WPL Holdings and WSTA.

[51] ABA, Alliance, Ameritrust, Cashiers, CILCORP, CTAA, CUNA, CUNA Mutual, DQE, FDR, ICI, Kemark, Langley, First Chicago, Gulf States, Harris Bank, Manufactures Hanover, Meridian Point, MWSTA, Navy Federal Credit Union, New Jersey League, New York League, NCUA, Orange County Federal Credit Union, Otter Tail, Pacific IBM Employees Federal Credit Union, Pentagon Federal Credit Union, Procter & Gamble, Professional Federal Credit Union, Professor Guttman, Registrar and Transfer, San Antonio Teachers Credit Union, SIA, STA, SWSTA, TCUL, TRW, U.S. League, U.S. Trust, Mellon, Union Electric, USX, Washington Water Power, WPL Holdings and WSTA.

[52] Bear Stearns, Cashiers, DTC, Merrill, SIA, Shearson, and Smith Barney.

[53] ABA, Ameritrust, CILCORP, CTAA, DQE, First Chicago, FDR, Gulf States, Harris Bank, Manufactures Hanover, Mellon, Meridian Point,

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concerns of these commentators were the burden for transfer agents to develop individual written standards and procedures and the difficulty for transfer agents to assess the creditworthiness of guarantor institutions. Although the rule as proposed provides for acceptance of signature guarantees from members in a signature guarantee program, these commentators noted that transfer agents would still be required to assess the financial condition of guarantor institutions that are not members of a signature guarantee program.

The ABA commented that permitting transfer agents to mandate participation in a signature guarantee program would be the least expensive alternative and believes that further cost savings may be realized by eliminating the distribution and maintenance of updated signature cards. The ABA commented that it would be difficult and costly for transfer agents to establish standards and to assess the creditworthiness of the expanded universe of signature guarantors. The ABA estimated that these costs would run in the millions of dollars. The ABA also questioned whether transfer agents would be able to assess the creditworthiness of financial institutions without extending the requisite turnaround time under Rule 17Ad–2. The ABA also expressed concern about the potential cost of participation in a signature guarantee program and the potential for disproportionate impact on many smaller bank members, who may as an accommodation to customers, only guarantee one or two signatures per year.

The STA and the CTAA also urged the Commission to authorize transfer agents to mandate participation in a signature guarantee program, or, alternatively, to require participation in a Commission approved signature guarantee program. The STA and CTAA believe that mandating a signature guarantee program would be the most effective way to meet the Commission's concerns to facilitate the equitable treatment of eligible guarantors and to provide the necessary protection for transfer agents at a reasonable cost.[54]

The NCUA also stated that it supported a requirement that all signature guarantors must participate in a program so long as the Commission prohibits the programs from imposing large fees and cumbersome requirements. The NCUA believes that the current signature card program is outdated, labor intensive, costly, and inefficient, but would oppose any program that operated as a monopoly to exclude other entities in the marketplace from offering similar types of signature guarantee programs.

Procter & Gamble, USX, U.S. Trust, and Mellon, urged the Commission to permit transfer agents to require participation in a signature guarantee program since the cost to assess the creditworthiness of the expanded number of guarantors, including costs to employ the necessary skilled personnel and to receive credit information from government agencies or commercial vendors, would outweigh the benefits of the rule. Procter & Gamble estimated that absent such a rule, it would need to employ two additional people at a cost of approximately $100,000 annually to verify the creditworthiness of guarantors and recordkeeping and tracking systems would likely add another $50,000 annually. USX stated that the cost to a guarantor to participate in a signature guarantee program would be small in comparison to the cost to a transfer agent of having to add employees or purchase additional services on the outside.

Several commentators stated their concern that as a result of the proposed rule guarantor institutions would be confronted with numerous and possibly differing standards since the proposed rule would require each of an estimated 2,000 transfer agents to develop standards and procedures relating to the acceptance of signature guarantees. The U.S. League noted that it would be difficult, costly, and time-consuming for a guarantor to determine whether it meets a specific transfer agent's standards. The U.S. League suggested that program participation should be required to ensure guarantors that transfer agents apply consistent standards relating to the acceptance of signature guarantees.

The Navy Federal Credit Union and the Orange County Federal Credit Union stated that if signature guarantee programs were mandated, there would be some assurance that procedures and guidelines would be consistent and all eligible guarantors would be treated equitably. However, the Navy Federal Credit Union stated that it believes it would be difficult to mandate that all transfer agents and all eligible guarantors must participate in a signature guarantee program.

Several commentators objected to any use of signature guarantee programs. Opponents of signature guarantee programs included Bear Stearns,[55] Cashiers,[56] DTC,[57] Merrill,[58] SIA,[59]

MWSTA, NAFCU, Navy Federal Credit Union, Orange County Federal Credit Union, Otter Tail, Procter & Gamble, Professor Gottman, Registrar and Transfer, STA, SWSTA, Union Electric, U.S. Trust, U.S. League, USX, Washington Water Power, WPL Holdings, WSTA.

[54] Ameritrust, CILCORP, DQE, First Chicago, Gulf States, Harris Bank, Meridian Point, MWSTA, Otter Tail, Registrar and Transfer, SWSTA, Union Electric, Washington Water Power, WPL Holdings, and WSTA supported the STA comment letter.

[55] Bear Stearns objected to the proposed signature guarantee program because it believes that the program as proposed would, by the affixation of a universal medallion, automatically render the certificate fully negotiable. Since the transmittal of negotiable certificates creates substantially greater risk for broker-dealers, as well as greater cost (insurance for negotiable certificates is four times greater), Bear Stearns requests that the power of distribution remain separate and distinct.

[56] Cashiers objected to the use of a signature guarantee program and urged an industry wide consensus in any uniform signature guarantee procedure. Cashiers believes that if some transfer agents decide to only accept a STAMP/Medallion guarantee it would not be operationally possible to carry out daily receipt and delivery of securities. Cashiers also stated its concern with the apparent shift in liability for security registration changes and questioned whether individual firms who affix medallions would be fully liable for the security registration change.

[57] DTC urged the Commission to amend or clarify the proposed rule to require transfer agents to accept facsimile signatures without separate signature guarantees or medallions from registered clearing agencies. DTC stated its concern that the proposed rule would cause some transfer agents to introduce unnecessary and burdensome changes in the process by which certificates registered in the name of DTC's nominee, Cede & Co., are transferred. Currently, certificates registered in the name of Cede & Co. are endorsed by a facsimile signature without a separate signature guarantee. DTC commented that the proposed rule may lead transfer agents to require a signature or medallion guarantee for Cede & Co. certificates which would severely disrupt DTC's operations.

[58] Merrill objected to Rule 17Ad–15(g) as proposed. Merrill believes that before such a program is mandated, the program must establish a specific process that clearly defines "good transfers" or "good delivery" including a clear set of rules or regulations to identify what certifications and/or guarantees are required by the program. Merrill stated that the current value of physical deliveries may have to be analyzed along with direct impact on liquidity. Merrill also urged that any program insurance should cover all program participants.

[59] The SIA stated that the costs involved to broker-dealers to switch from the current system to a system as suggested by the STAMP program would be burdensome and inequitable to broker-dealers and urged the Commission not to mandate participation in a signature guarantee program. The SIA also stated that "[i]n no regard does the [SIA] believe participation in a signature guarantee program, such as STAMP, be mandatory." The SIA urged the Commission to "more clearly provide that broker-dealers who are members of a nationally registered clearing house would automatically be considered guaranteed." Noting the formation of the Market Transactions Advisory Committee, the SIA suggested that signature guarantees is an appropriate topic for the Advisory Committee and suggests that this proposal be studied more closely by the Advisory Committee prior to its enactment. Thus, the SIA believes that the Commission approve as part of the proposal either an exemption for broker-dealers or a safe harbor for transfer agents to use the current system. As further explanation,

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Shearson Lehman Brothers,[60] and Smith Barney. These commentators were concerned that the costs to broker-dealers to switch from the current system to a signature guarantee program would be burdensome and inequitable to broker-dealers. These commentators believe that a signature guarantee program would change the industry practices concerning requirements for what constitutes "good transfers" or "good delivery" of securities and that, if adopted, it would not be operationally possible for brokers and dealers to carry out daily receipt and delivery of securities. These commentators also stated their concern that a signature guarantee program would shift liability for security registration changes and questioned whether individual firms who affix medallions would be fully liable for the security registration change.

The ICI commented that the only way mutual funds and their transfer agents could comply with the proposed rule would be the development and acceptance of a signature guarantee program. However, the ICI noted its concern with insurance coverage limits in signature guarantee programs and stated that the limits in STAMP do not appear to be adequate. The ICI also commented that the STAMP program would not provide mutual funds and mutual fund transfer agents protection against fraud.

Several commentators objected to transfer agents mandating a signature guarantee program,[61] or urged Commission involvement in approving or monitoring signature guarantee programs.[62] These commentators are concerned that enabling transfer agents to mandate participation in signature guarantee programs may lead to inequitable treatment of guarantor institutions, and specifically, smaller guarantor institutions that may provide guarantor services to accommodate their customers on an exception basis.

Six commentators encouraged the development of signature guarantee programs as proposed in Rule 17Ad–15(g) and do not believe that participation in such a program should be mandatory.[63] For example, CUNA anticipated that the key means of access to provide signature guarantees will be through acceptance in a signature guarantee program which provides insurance coverage to stock transfer agents relying upon credit union guarantors. CUNA believes that the rule as proposed has struck the right balance between encouraging, without mandating, the use of signature guarantee programs. CUNA also commented that it believes it is an absolutely essential element for credit unions that any authorized program recognize the need for reasonable pricing for those institutions that want to provide a relatively limited number of guarantees annually .

Similarly, the Alliance stated its support for the Commission's involvement in the development of a signature guarantee program similar to the STAMP and GAP programs, but believes that the rule should not allow transfer agents to accept signature guarantees only from eligible guarantor institutions that participate in a program acceptable to the transfer agent. The Alliance commented that would be "to large a loophole for allowing disparate treatment of institutions that are otherwise eligible to guarantee signatures."[64]

Nine of the commentators urged the Commission to take a more direct role in either the approval of review of signature guarantee programs.[65] For example, the U.S. League uged the Commission to take an active role in establishing the requirements for such a program and in approving the standards and procedures of such a program. The U.S, League believes that the only way to achieve both equality and efficiency is to mandate development of a uniform signature guarantee program which is administered by a central party and requiring all eligible guarantor institutions to participate in an approved signature guarantee program. The U.S. League stated that this will enable the development of universal minimum standards understood by and applicable to all. The U.S. League believes that such a program will significantly streamline the administration of the process by eliminating the signature guarantor cards and individual transactions can be directly tied to the appropriate guarantor institution.

Similarly, FDR commented that participation in a signature program should be mandatory, otherwise FDR believes that transfer agents would have to operate two systems. FDR stated that it believes transfer agents should be permitted to require participation and the role of the Commission should be limited to initial approval of the signature guarantee programs.[66]

In response to these concerns, the Commission has determined to revise proposed Rule 17Ad–15(g) to permit transfer agents to reject signature guarantees from eligible guarantors that are not members of or participants in a signature guarantee program recognized by that transfer agent, even if those guarantors otherwise meet the transfer agents standards for guarantor acceptance. To help reduce confusion during the transition, however, the Commission has also revised the proposed rule to require transfer agents to give notice to guarantor institutions before rejecting guarantees from non-member, financially responsible guarantors.

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the SIA noted: "[t]o present the proposal in any other form would be to make it inequitable for those who use the current system."

[60] Shearson urged that the proposed rule not permit transfer agents to comply with the proposed rule by accepting guarantees from a signature guarantee program. Shearson commented that it believes that such a program would shift on-going credit evaluations and monitoring to a third party which would contradict the definition of good delivery

[61] Alliance, CUNA, Langley, Pacific IBM Federal Credit Union, TCUL, and TRW.

[62] Alliance, CUNA, FDR, Navy Federal Credit Union, Orange County Federal Credit Union, Pacific IBM Employees Federal Credit Union, Professional Federal Credit Union, TCUL, and U.S. League.

[63] Alliance, CUNA, Langley, Pacific IBM Federal Credit Union, TCUL, and TRW.

[64] TCUL supported the implementation of a signature guarantee program stating that such a program would be "the best solution for all involved." However, TCUL believes transfer agents should not require participation in a program since this would "not appear to be equitable." Langley, Pacific IBM Federal Credit Union, and TRW stated that the rule should not allow transfer agents to require a credit union's participation in a program. Pacific IBM Federal Credit Union stated that it may be more costly for smaller guarantors to participate in a signature guarantee program since many small guarantors deal with one or two primary transfer agents.

[65] Alliance, CUNA, FDR, Navy Federal Credit Uion, Orange County Federal Credit Union, Pacific IBM Employees Federal Credit Union, Professional Federal Credit Union, TCUL, and U.S. League.

[66] CUNA and Pacific IBM Employees Federal Credit Union urged the Commission to monitor signature guarantee programs to ensure the equitable treatment of smaller guarantor institutions. CUNA stated that it is an essential element for credit unions that any authorized program recognize the need for reasonable pricing for those institutions that want to provide a relatively limited number of gurantees annually. Professional Federal Credit Union stated that the Commission should review all signature guarantee programs to avoid discrimination. However, Professional Federal believes that there should be no requirement for participation if outside bonding or capital is available. Navy Federal Credit Union and Orange County Federal Credit Union urged Commission involvement in review, recognition, monitoring, and enforcement of signature guarantee programs to ensure that procedures and guidelines are consistent. Navy Federal Credit Union commented that a signature guarantee program may be one means to ensure the establishment of equitable guidelines and to reduce paperwork and financial risk. TCUL stated that it believes that signature guarantee programs would be the best solution for all concerned and that the Commission should review various programs prior to approval to ensure that the programs fulfill the requirements of the proposed rule.

The Commission believes this is the best way to foster equitable treatment of eligible guarantors and at the same time facilitate the efficient transfer of securities. As explained in the Proposing Release, transfer agents for many years have exercised credit judgments in determining whether to accept guarantees in connection with securities transfers and the standard for exercising those credit judgments, for many years, has been rooted in state commercial law. For many years commercial banks and broker-dealers effectively were the only financial institutions authorized to guarantee signatures and were the only organizations that had established systems and procedures to disseminate to transfer agents "signature cards" with lists of their authorized agents, usually through organizations like the New York or American Stock Exchanges. Implicit in comments from brokers and dealers is the suggestion that other authorized guarantors should establish their own signature card dissemination services. Transfer agent commentators argue, however, that signature card systems are antiquated and cannot be the basis for efficient transfer agent operations today. Thus, transfer agent commentators argue, they must be permitted to upgrade their guarantee acceptance system for all guarantors, not just eligible guarantors whose signature cards are not now accepted. Commentators representing existing guarantor institutions, however, express concern about the cost of a new signature guarantee system and the collateral consequences of such a system.

The Commission does not believe it is appropriate for the Commission to mandate either participation in, or acceptance of, one or more specific signature guarantee programs. This could require the Commission to make, in effect, credit decisions for transfer agents and program participants. It would also require the Commission to review and regulate the design and operation of signature guarantee programs. That approach would be expensive and could stifle innovation. Requiring transfer agents to establish written standards that provide for equitable treatment without allowing transfer agents to establish uniform procedures for all guarantors also would be inappropriate given the statutory goal of efficient transfer of ownership of securities.

The Commission shares commentator concerns about the potential cost to eligible guarantors, particularly small institutions, of gaining acceptance by transfer agents generally and participation in a signature guarantee program in particular. By allowing transfer agents to designate an acceptable signature guarantee program, free market forces should keep the cost of such programs low. Nothing would prevent an organization that currently offers signature card distribution services (or any other organization, for that matter) from establishing and offering a signature guarantee program at competitive rates.

Finally, the Commission believes that the rule will further the public interest and the protection of investors. As many commentators noted, it is often the public investor who bears the costs of a rejected signature guarantee—delays in the completion of securities transfers, lost opportunities, and aggravation, to name a few. Many public investors do not have accounts with a commercial bank or a broker-dealer and yet must obtain a signature guarantee from such an institution before they can dispose of their securities. In many of those cases, the guarantor does not have a basis to know whether the person seeking a guarantee is who they claim to be.

XI. Summary of the Final Regulatory Flexibility Analysis

On September 6, 1991, the Commission prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603, as amended by the Regulatory Flexibility Act (the "FRA"), regarding proposed Rule 17Ad–15. No commentators specifically referred to the IRFA, however, some commentators noted that costs related to the implementation of the proposed rule might have a significant impact on smaller entities.

The Commission has prepared a Final Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 604, as amended by the FRA, regarding Rule 17Ad–15. The Analysis notes that the Rule, while requiring transfer agents to have written standards and procedures for the acceptance of signature guarantees, is only seeking to assure the equitable treatment of eligible guarantors by requiring transfer agents to follow what the Commission believes is already required by state law. Thus, the cost to implement written standards and procedures should not be significant for transfer agents already complying with applicable state law regarding acceptance of signature guarantees.

In the Analysis, the Commission shared commentators' concerns about the potential cost to eligible guarantors, particularly small institutions, of gaining acceptance by transfer agents generally and participation in a signature guarantee program in particular. Rule 17Ad–15(g) is revised to provide that a transfer agent may reject a request for transfer because the guarantor was neither a member of nor a participant in a signature guarantee program and to permit transfer agents to accept signature guarantees from guarantors who are participants in a signature guarantee program. By allowing transfer agents to designate acceptable signature guarantee programs, free market forces should keep the cost of such programs low. Nothing would prevent an organization that currently offers signature card distribution service (or any other organization, for that matter) from establishing and offering a signature guarantee program at competitive rates.

Accordingly, the Commission believes that any cost incurred by small transfer agents and guarantor institutions would be outweighed by the benefits derived from the equitable treatment of eligible guarantor institutions, greater efficiency in the transfer of securities, and the reduced risk associated with the acceptance of signature guarantees.

A copy of the Analysis may be obtained by contacting Anthony Bosch, Esq., Division of Market Regulation, Mail Stop 5–1, 450 Fifth Street, NW., Washington, DC 20549.

XII. Competitive Considerations

As required by Section 23(a) of the Exchange Act, the Commission has specifically considered the impact that these rules would have on competition. For the reasons discussed above, the Commission finds that any increased burden imposed, including any increase in the costs imposed on transfer agents and guarantor institutions, is outweighed by the benefits obtained from the equitable treatment of all guarantor institutions, increased efficiency of the securities transfer process, and the reduced risk associated with a guarantor's inability to meet its obligation. Thus, the Commission finds that the rules would not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act and, in particular, Section 17–A of the Exchange Act.

XIII. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 3, 17, 17A(d), and 23(a) thereof, 15 U.S.C 78c, 78q, 78q–1(d) and 78w(a), the Commission adopts Rule 17Ad–15.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

XIV. Text of Rule

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 240—AMENDED

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

2. Section 240.17Ad–15 is added to read as follows:

§ 240.17Ad–15 Signature guarantees.

(a) *Definitions.* For purposes of this section, the following terms shall mean:

(1) Act means the Securities Exchange Act of 1934;

(2) Eligible Guarantor Institution means:

(i) Banks (as that term is defined in section 3(a) of the Federal Deposit Insurance Act [12 U.S.C. 1813(a)]);

(ii) Brokers, dealers municipal securities dealers, municipal securities brokers, government securities dealers, and government securities brokers, as those terms are defined under the Act;

(iii) Credit unions (as that term is defined in Section 19 (b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)]);

(iv) National securities exchanges, registered securities associations, clearing agencies, as those terms are used under the Act; and

(v) Savings associations (as that term is defined in section 3(b) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)]).

(3) Guarantee means a guarantee of the signature of the person endorsing a certificated security, or originating an instruction to transfer ownership of a security or instructions concerning transfer of securities.

(b) *Acceptance of Signature Guarantees.* A registered transfer agent shall not, directly or indirectly, engage in any activity in connection with a guarantee, including the acceptance or rejection of such guarantee, that results in the inequitable treatment of any eligible guarantor institution or a class of institutions.

(c) *Transfer agent's standards and procedures.* Every registered transfer agent shall establish:

(1) Written standards for the acceptance of guarantees of securities transfers from eligible guarantor institutions; and

(2) Procedures, including written guidelines where appropriate, to ensure that those standards are used in determining whether to accept or reject guarantees from eligible guarantor institutions. Such standards and procedures shall not establish terms and conditions (including those pertaining to financial condition) that, as written or applied, treat different classes of eligible guarantor institutions inequitably, or result in the rejection of a guarantee from an eligible guarantor institution solely because the guarantor institution is of a particular type specified in paragraphs (a)(2)(i)–(a)(2)(v) of this section.

(d) *Rejection of items presented for transfer.* (1) No registered transfer agent shall reject a request for transfer of a certificated or uncertificated security because the certificate, instruction, or documents accompanying the certificate or instruction includes an unacceptable guarantee, unless the transfer agent determines that the guarantor, if it is an eligible guarantor institution, does not satisfy the transfer agent's written standards or procedures.

(2) A registered transfer agent shall notify the guarantor and the presentor of the rejection and the reasons for the rejection within two business days after rejecting a transfer request because of a determination that the guarantor does not satisfy the transfer agent's written standards or procedures. Notification to the presentor may be accomplished by making the rejected item available to the presentor. Notification to the guarantor may be accomplished by telephone, facsimile, or ordinary mail.

(e) *Record retention.* (1) Every registered transfer agent shall maintain a copy of the standards and procedures specified in paragraph (c) of this section in an easily accessible place.

(2) Every registered transfer agent shall make available a copy of the standards and procedures specified in paragraph (c) of this section to any person requesting a copy of such standards and procedures. The registered transfer agent shall respond within three days of a request for such standards and procedures by sending the requesting party a copy of the requested transfer agent's standards and procedures.

(3) Every registered transfer agent shall maintain, for a period of three years following the date of the rejection, a record of transfers rejected, including the reason for the rejection, who the guarantor was and whether the guarantor failed to meet the transfer agent's guarantee standards.

(f) *Exclusions.* Nothing in this section shall prohibit a transfer agent from rejecting a request for transfer of a certificated or uncertificated security:

(1) For reasons unrelated to acceptance of the guarantor institution;

(2) Because the person acting on behalf of the guarantor institution is not authorized by that institution to act on its behalf, provided that the transfer agent maintains a list of people authorized to act on behalf of that guarantor institution; or

(3) Because the eligible guarantor institution of a type specified in paragraph (a)(2)(ii) of this section is neither a member of a clearing corporation nor maintains net capital of at least $100,000.

(g) *Signature guarantee program.* (1) A registered transfer agent shall be deemed to comply with paragraph (c) of this section if its standards and procedures include:

(i) Rejecting a request for transfer because the guarantor is neither a member of nor a participant in a signature guarantee program; or

(ii) Accepting a guarantee from an eligible guarantor institution who, at the time of issuing the guarantee, is a member of or participant in a signature guarantee program.

(2) Within the first six months after revising its standards and procedures to include a signature guarantee program, the transfer agent shall not reject a request for transfer because the guarantor is neither a member of nor participant in a signature guarantee program, unless the transfer agent has given that guarantor ninety days written notice of the transfer agent's intent to reject transfers with guarantees from non-participating or non-member guarantors.

(3) For purposes of paragraph (g) of this section, the term "signature guarantee program," means a program, the terms and conditions of which the transfer agent reasonably determines:

(i) To facilitate the equitable treatment of eligible guarantor institutions; and

(ii) To promote the prompt, accurate and safe transfer of securities by providing:

(A) Adequate protection to the transfer agent against risk of financial loss in the event persons have no recourse against the eligible guarantor institution; and

(B) Adequate protection to the transfer agent against the issuance of unauthorized guarantees.

Dated: January 6, 1992.

VOL 57 ISS 7 JA 10 1992 UMI

By the Commission.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 92-570 Filed 1-9-92; 8:45 am]
BILLING CODE 8010-01-M

17 CFR Parts 240 and 270

[Release No. 34-30147; IC-18467; File No. S7-23-91]

RIN 3235-AE38

Shareholder Communications Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today announced the adoption of amendments to the shareholder communications and related rules to implement provisions of the Shareholder Communications Improvement Act of 1990 ("SCIA"). The amendments, adopted substantially as proposed, require: (1) Investment companies registered under the Investment Company Act of 1940 ("Investment Company Act") to distribute information statements to shareholders in connection with a shareholder meeting where proxies, consents, or authorizations are not solicited by or on behalf of the registrant; and (2) brokers and banks that hold shares for beneficial owners of securities in nominee name to forward to the beneficial owners the proxy statements of investment companies registered under the Investment Company Act ("Investment Company Act registrants"), as well as the information statements of both Investment Company Act registrants and companies with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 ("Exchange Act").

DATES: The amendments are effective January 10, 1992. They apply to shareholder meetings held, or corporate actions taken by consent or authorization, on or after March 31, 1992, that have a record date on or after February 10, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Murphy, Office of Disclosure Policy, Division of Corporation Finance, at (202) 272-2589; with regard to investment company issues, Kathleen K. Clarke, Office of Disclosure and Adviser Regulation, Division of Investment Management, at (202) 272-2107, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to the proxy and information statement rules under the Exchange Act.[1] Specifically, the revisions affect Rules 14a-13,[2] 14b-1,[3] and 14b-2[4] of Exchange Act Regulation 14A [5] and Rules 14c-1,[6] 14c-2,[7] and 14c-7 [8] of Exchange Act Regulation 14C.[9] In addition, a corresponding amendment to Rule 20a-1 [10] under the Investment Company Act [11] is adopted.

I. Executive Summary and Background

The Commission is adopting revisions to the proxy and information statement rules to implement amendments to Exchange Act sections 14(b)(1) [12] and 14(c) [13] enacted by the SCIA.[14] Prior to revision, there were several regulatory gaps in the rules. First, the rules required Investment Company Act registrants to distribute proxy materials [15] to shareholders, [16] but did not require them to distribute information statements to shareholders in connection with shareholder meetings not involving the solicitation of proxies [17] by the registrant.[18] Second, the rules did not require brokers and banks to forward either the proxy materials or information statements of Investment Company Act registrants to beneficial owners.[19] Third, while the rules required section 12 registrants to distribute both proxy materials and information statements to shareholders, brokers and banks were required to forward only the proxy materials to beneficial owners.[20]

The legislation eliminated these gaps in regulation of shareholder communications by authorizing the Commission to require: (1) Investment Company Act registrants to distribute information statements to shareholders in connection with shareholder meetings not involving the solicitation of proxies by the registrant; and (2) brokers and dealers ("brokers") and banks [21] to transmit to beneficial owners of securities the proxy materials and information statements of Investment Company Act registrants and the information statements of section 12 registrants.

Brokers and banks may obtain reimbursement of their reasonable costs incurred in performing the obligations imposed by the revised proxy and information statement delivery requirements.[22] The commission is not, however, adopting the proposed surcharge provision permitting banks and brokers to recoup any costs associated with implementation of the amendments, since commenters on the proposal indicated that such a provision is unnecessary. Finally, in response to commenters' remarks, the revised rules clarify that the new provision requiring Investment Company Act registrants to distribute information statements to their shareholders applies only to companies that have made a public securities offering.[23]

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[1] 15 U.S.C. 78a *et seq.*
[2] 17 CFR 240.14a-13.
[3] 17 CFR 240.14b-1.
[4] 17 CFR 240.14b-2.
[5] 17 CFR 240.14a-1 *et seq.*
[6] 17 CFR 240.14c-1.
[7] 17 CFR 240.14c-2.
[8] 17 CFR 240.14c-7.
[9] 17 CFR 240.14c-1 *et seq.*
[10] 17 CFR 270.20a-1.
[11] 15 U.S.C. 80a-1 *et seq.*
[12] 15 U.S.C. 78n(b)(1).
[13] 15 U.S.C. 78n(c).
[14] Pub. L. 101-550, 104 Stat. 2713. The SCIA amendments were enacted on November 15, 1990. The proposed rule amendments were published in Release No. 34-29582 (August 15, 1991) [56 FR 41635] ("Proposing Release"). The comments on the proposal and a summary of comments are available for inspection and copying through the Commission's Public Reference Room (File No. S7-23-91).
[15] The term "proxy materials" as used in this release refers collectively to proxy cards, consents, authorizations or requests for voting instructions, proxy or other soliciting material, and annual reports to security holders.
[16] Investment Company Act section 20(a) [15 U.S.C. 80a-20(a)] and related Rule 20a-1 cause the proxy solicitation rules adopted pursuant to Exchange Act Section 14(a) to apply to Investment Company Act registrants.
[17] The term "proxies" as used in this release refers to proxies, consents, or authorizations.
[18] Prior to the SCIA amendments, Exchange Act Section 14(c), which requires issuers to distribute information statements to shareholders in connection with a shareholder meeting where proxies, consents, or authorizations are not solicited by or on behalf of management of the issuer, pertained only to companies with a class of securities registered under Section 12 of the Exchange Act [15 U.S.C. 78*l*] ("Section 12 registrants"). Only a small proportion of investment companies are required to register under Section 12 of the Exchange Act (*i.e.*, closed-end investment companies whose shares are traded on an exchange, and business development companies).
[19] Prior to the SCIA amendments, brokers and banks were required to forward only the proxy materials of Section 12 registrants to beneficial owners pursuant to Exchange Act section 14(b)(1) and related Rules 14b-1 and 14b-2.
[20] *Id.*
[21] The term "banks" includes other institutions that may hold securities in nominee name for their customers including, without limitation, savings and loan associations and savings banks that maintain trust and customer accounts and similar entities that perform comparable fiduciary functions on behalf of customers. See Rules 14a-1(c) [17 CFR 240.14a-1(c)] and 14b-2; Release No. 34-23276 (June 5, 1986) [51 FR 20504].
[22] Rules 14a-13(b)(5) [17 CFR 240.14a-13(b)(5)], 14b-1(c)(2)(i) [17 CFR 240.14b-1(c)(2)(i)], 14b-2(c)(2)(i) [17 CFR 240.14b-2(c)(2)(i)], and 14c-7(a)(5) [17 CFR 240.14c-7(a)(5)].
[23] This limited exception has been adopted to address concerns raised by commenters on the proposed amendments that the information statement requirement should not extend to

Continued

The Commission currently is conducting a comprehensive review of its proxy rules;[24] broader issues concerning the shareholder communications and related rules will be considered in connection with the review. This release, however, is intended solely to implement the SCIA amendments. In addition, minor technical revisions have been adopted to make language throughout the shareholder communications rules consistent with the substantive amendments.

II. Discussion of Amendments

A. Information Statement Requirements for Investment Companies

The rule governing registrants' obligations to send an information statement to shareholders in connection with a shareholder meeting where proxies are not solicited by or on behalf of the registrant[25] has been amended to include Investment Company Act registrants. In this regard, the term "registrant" has been defined in the information statement rules to include Investment Company Act registrants that have made a public offering of their securities.[26] In addition, an instruction that directs Investment Company Act registrants to Exchange Act Section 14 (c) and related rules requiring information statements to be furnished to security holders in connection with shareholder meetings not involving the solicitation of proxies by the registrant has been added to the Investment Company Act rules.[27]

B. Transmission of Shareholder Communications

1. Broker/Bank Obligations

The Commission is adopting amendments to the shareholder communications rules to require brokers and banks to transmit to beneficial owners the proxy materials of Investment Company Act registrants and the information statements both of Investment Company Act registrants and section 12 registrants. The requirements are substantially similar to those that exist with respect to the forwarding of proxy materials prepared by Section 12 registrants. In order to implement the changes, the rules have been revised and reorganized in several respects. First, a definitional paragraph has been added to each of two rules that set forth the obligations of brokers and banks to forward shareholder communications to beneficial owners.[28] The paragraph defines the term "registrant" to mean either an investment company registered under the Investment Company Act or a section 12 registrant.[29] Second, references to information statements have been added throughout the shareholder communications rules where there previously existed references only to proxies, proxy soliciting materials and annual reports to security holders.[30] Third, the rules have been reorganized to: (a) consolidate requirements concerning brokers' and banks' obligations to disseminate proxy and information statement materials and provide registrants with beneficial owner information;[31] and (b) list exceptions to the dissemination and beneficial owner information requirements.[32] Fourth, the rules have been amended to cross-reference corresponding rules setting forth the registrants' obligations to furnish their information statements to brokers or banks.[33]

2. Registrant Obligations

Pursuant to the rules, both section 12 registrants and Investment Company Act registrants must transmit information statements to their shareholders at least 20 calendar days prior to the shareholder meeting date or, in the case of action by consent or authorization, 20 calendar days prior to the earliest date on which corporate action can be taken.[34] An amendment to the information statement rules requires registrants to make inquiries of brokers and banks as to the number of beneficial owners at least 20 business days prior to the earlier of: (a) The record date for the shareholder meeting or action by written consent; or (b) the mailing date of the information statement.[35] This inquiry requirement is

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investment companies that are still in the organizational stage but have registered under the Investment Company Act because they propose to make a public offering of securities. See section 3 (c)(1) of the Investment Company Act [15 U.S.C. 80a–3(c)(1)]. Because the obligation of Investment Company Act registrants to deliver proxies to shareholders extends under Investment Company Act Rule 20a–1 to all investment companies registered under the Investment Company Act, brokers and banks would be required to forward proxy materials provided by investment companies registered under the Investment Company Act regardless of whether they had made a public offering of their securities.

[24] The first rulemaking initiative in connection with this review was issued by the Commission on June 25, 1991. See Release No. 34–29315 (June 25, 1991) [56 FR 28987].

[25] Rule 14c–2(a) [17 CFR 240.14c–2(a)].

[26] Rule 14c–1(j) [17 CFR 240.14c–1(j)].

[27] Rule 20a–1. Pursuant to the amendments, Investment Company Act registrants must refer to Schedule 14C under the Exchange Act [17 CFR 240.14c–101] to determine the information required to be included in an information statement. Among other things, Schedule 14C requires an information statement to include applicable information responsive to certain proxy statement items of Schedule 14A under the Exchange Act [17 CFR 240.14a–101]. Investment Company Act registrants also should include in an information statement all of the applicable information required to be included in a proxy statement by Rules 20a–2 and 20a–3 under the Investment Company Act [17 CFR 270.20a–2 and 270.20a–3].

[28] Rules 14b-1(a) [17 CFR 240.14b-1(a)] and 14b-2(a) [17 CFR 240.14b-2(a)].

[29] The new definitional paragraph also states that, unless the context otherwise requires, all terms used in Rules 14b-1 and 14b-2 shall have the same meaning as in the Exchange Act and, with respect to proxy materials and information statements, as in Rules 14a-1 and 14c-1, respectively, thereunder. In addition, Rule 14b-2(a) states that the term "bank" means a bank, association, or other entity that exercises fiduciary powers. It further states that the term "beneficial owner" includes any person who has or shares, pursuant to an instrument, agreement, or otherwise the power to vote, or to direct the voting, of a security. The statement explaining use of the term "bank" tracks the previously existing lead-in language to Rule 14b-2. The beneficial owner definition previously was included in paragraph (j) of the rule [17 CFR 240.14-2(j)].

[30] Rules 14b–1(b)(2) [17 CFR 240.14b–1(b)(2)], 14b–1(c)(1)(i) [17 CFR 240.14b–1(c)(1)(i)], 14b–2(b)(3) [17 CFR 240.14b–2(b)(3)], and 14b–2(c)(1)(i) [17 CFR 240.14b–2(c)(1)(i)].

[31] The consolidated dissemination and beneficial owner information requirements, as applicable to brokers, are reflected in Rule 14b–1(b) [17 CFR 240.14b–1(b)]. Similar requirements applicable to banks are reflected in Rule 14b–2(b) [17 CFR 240.14b–2(b)].

[32] The exceptions to banks' and brokers' forwarding requirements are set forth in new paragraph (c) to Rules 14b–1 and 14b–2. These exceptions applied under the rules prior to revision and relate to: (i) beneficial owners of exempt employee benefit plan securities (with respect to brokers, Rule 14b–1(d) [17 CFR 240.14b–1(d)], and with respect to banks, Rule 14b–2(g) [17 CFR 240.14b–2(g)]); (ii) provision of assurance of reimbursement of reasonable expenses (with respect to brokers, Rule 14b–1(e)(1) [17 CFR 240.14b–1(e)(1)], and with respect to banks, Rule 14b–2(f)(1) [17 CFR 240.14b–2(f)(1)]); and (iii) mailing of annual reports where the registrant assumes this obligation for non-objecting or consenting beneficial owners (with respect to brokers, Rule 14b–1(e)(2) [17 CFR 240.14b–1(e)(2)], and with respect to banks, Rule 14b–2(f)(2) [17 CFR 240.14b–2(f)(2)]). Corresponding changes have been made where these redesignated provisions are cross-referenced in Rules 14a–13 and 14c–7.

[33] Specifically, cross-references have been added to Rules 14b–1(b)(1) [17 CFR 240.14b–1(b)(1)], 14b–1(c)(2)(ii) [17 CFR 240.14b–1(c)(2)(ii)], 14b–2(b)(1)(i) [17 CFR 240.14b–2(b)(1)(i)], 14b–2(b)(1)(ii) [17 CFR 240.14b–2(b)(1)(ii)], and 14b–2(b)(1)(ii)(B) [17 CFR 240.14b–2(b)(1)(ii)(B)].

[34] Rule 14c–2.

[35] This requirement has been incorporated in Rule 14c–7(a) [17 CFR 240.14c–7(a)] by the addition of a new paragraph (3) (old paragraphs (3) and (4) have been redesignated as paragraphs (4) and (5)). In addition, Note 3 to renumbered paragraph (4) has been revised to reference the obligations or brokers and banks to transmit information statements to beneficial owners, as required under the amended rules. Rule 14c–7 also has been modified to require that registrants inquire of brokers and banks whether an agent has been designated to act on their behalf for purposes of conforming the rule to a similar requirement in Rule 14a–13(a)(1)(C) [17 CFR 240.14a–13(a)(1)(C)] under the proxy rules. Rule 14c–7(a)(1)(i)(C) [17 CFR 240.14c–7(a)(1)(i)(C)].

comparable to the requirement already included in the proxy rules,[36] and is equally important to the information statement dissemination process.

C. Reimbursement of Costs for Delivery of Registrant Proxy Materials and Information Statements

As under the former rules, registrants must reimburse brokers and banks for reasonable expenses associated with the transmittal of proxy materials and information statements to beneficial owners.[37] The rules of the self-regulatory organizations provide for specific reimbursement rates with respect to brokers.[38] Although banks are not subject to comparable self-regulatory organization rules, they may rely on a non-exclusive safe-harbor provision providing that amounts charged registrants by banks for forwarding shareholder communications to beneficial owners are reasonable if they do not exceed amounts permitted to be charged by brokers.[39]

Based on commenters' remarks, the revised rules do not authorize brokers and banks to seek reimbursement of a proposed surcharge amount in connection with implementation of procedures facilitating compliance with the new requirements. The commenters indicated that, as a result of self-regulatory organization requirements and common practice, brokers and banks currently transmit information statements to the beneficial owners of securities of Investment Company Act registrants and have developed processing systems that include the beneficial owner information. The commenters indicated that it is unlikely that brokers and banks will have to modify their systems to a significant extent in order to transmit proxy materials and information statements to the beneficial owners of Investment Company Act registrants or to determine whether such beneficial owners object or consent to disclosure of their identity. Although a specific surcharge provision has not been adopted, the reasonable expenses provision in the proxy and information statement rules [40] will permit reimbursement of the costs incurred by brokers and banks in the uncommon instances where they must modify their procedures to facilitate compliance with the revised rules.[41]

The Commission also has not adopted a waiver procedure that, under limited circumstances, would have enabled brokers and banks to seek permission to defer compliance with the new requirements. Commenters indicated that such a deferral procedure is unnecessary.

III. Cost-Benefit Analysis

In the Proposing Release, commenters were asked to provide information that would assist the Commission in evaluating the costs and benefits that may result from the proposed changes to the shareholder communications, information statement, and related rules. Two commenters expressed general remarks concerning the anticipated costs of the proposed amendments. One suggested that the additional costs of transmitting shareholder communications to beneficial owners who refuse to disclose their names and addresses to registrants should be borne by the beneficial owners themselves. The other stated that the expense of mailing investment company material to beneficial owners would be substantial.

Four commenters expressed specific remarks on the proposed surcharge that has not been adopted by the Commission. All four of the commenters opposed the surcharge on grounds that most brokers and banks have established shareholder communication distribution procedures that can be readily and inexpensively adapted to accommodate the distribution of investment company materials.

The majority of the commenters expressed general support for the proposed amendments and indicated that they were an appropriate means to implement the changes made by the SCIA. The Commission believes that the benefits to be derived from enhanced shareholder communications outweigh the additional costs that will be incurred by the registrants as a result of the new requirements.

IV. Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis has been prepared regarding the amendments in accordance with 5 U.S.C. 604. A copy of the analysis may be obtained by contacting Elizabeth M. Murphy, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. The corresponding Initial Regulatory Flexibility Analysis appears at 56 FR 41635 (Rel. No. 34–29562).

V. Effective Date

These amendments are effective January 10, 1992. They apply to shareholder meetings held, or corporate action taken by consent or authorization, on or after March 31, 1992, that have a record date on or after February 10, 1992. The early effective date is necessary since the shareholder communication rules require registrants to make inquiries of brokers and banks 20 business days prior to the record date for a shareholder meeting or corporate action. The Administrative Procedure Act permits effectiveness in fewer than 30 days after publication, *inter alia*, "as provided by the agency for good cause found and published with the rule." [42]

To assure that all shareholders receive the proxy and other material in a prompt and orderly manner to

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[36] Rule 14a–13(a)(3) [17 CFR 240.14a–13(a)(3)]. The new notice requirement is different from that in Rule 14a–13(a)(3) for proxy materials to the extent necessary to conform to the timing requirements for the mailing of information statements. With respect to timing requirements, the Commission's recently adopted rules with respect to limited partnership roll-up transactions that include a minimum proxy solicitation and information statement transmittal period of 60 calendar days prior to a meeting for the earliest date of partnership action by consent, or, if shorter, the maximum period permitted under applicable state law. Release No. 34–29883 (Oct. 30, 1991) [56 FR 57237].

[37] Rules 14a–13(a)(5) [17 CFR 240.14a–13(a)(5)], 14a–13(b)(5), [17 CFR 240.14a–13(b)(5)], 14c–7(a)(5) [17 CFR 240.14c–7(a)(5)], and 14c–7(b)(5) [17 CFR 240.14c–7(b)(5)]. Corresponding reimbursement provisions appear in the rules applicable to brokers and banks and provide that there is no obligation to transmit such materials or to provide beneficial owner information if the broker or bank does not receive assurance of reimbursement of reasonable expenses. Rules 14b–1(c)(2)(i) and 14b–2(c)(2)(i).

[38] The rules of the self-regulatory organizations, approved by the Commission pursuant to Section 19(b) of the Exchange Act [15 U.S.C. 78s(b)], provide for approved rates of reimbursement of member organizations for all out-of-pocket expenses incurred in connection with proxy solicitations; for example, in connection with a routine annual meeting, the rates are $.60 for each set of proxy material plus postage. Am. Stock Ex. Guide (CCH) ¶ 9528.80 at 2716 through 2718 (Rule 576); 2 N.Y.S.E. Guide (CCH) ¶ 2451.90 at 3808 (Rule 451); NASD Manual (CCH) ¶ 2151 at 2039 (Section 1 of Rules of Fair Practice). These rules included a surcharge, adopted in 1985 and effective for the first two annual meetings after March 28, 1985 ($.20 for each set of proxy materials distributed the first year and $.165 for each set distributed the second year) that enabled brokers to recoup the start-up costs associated with the implementation of the rules requiring brokers to identify non-objecting beneficial owners.

[39] Rule 14b–2(c)(2). The safe-harbor was adopted in 1986 in conjunction with adoption of the shareholder communications rules applicable to banks. In the release establishing the safe-harbor, the Commission also stated that the surcharge approved for brokers would be included in the reasonable reimbursable expenses of banks. Release No. 34–23847 (December 9, 1986) [51 FR 44627].

[40] Rules 14b–1(c)(2) and 14b–2(c)(3) [17 CFR 240.14b–1(c)(2) and 240.14b–2(c)(3)]. Reasonable expenses include both direct and indirect costs incurred in performing the obligations imposed by Rule 14b–1(b)(2) and (b)(3) [17 CFR 240.14b–1(b)(3)] and by Rule 14b–2(b)(2), (b)(3) and (b)(4) [17 CFR 240.14b–2(b)(2), 240.14b–(b)(3), and 240.14b–2(b)(4)].

[41] The surcharge amounts referred to in n.38, *supra*, may serve as a useful reference in establishing the "reasonableness" of any requested cost reimbursement.

[42] 5 U.S.C. 553(d)(3).

facilitate an informed shareholder vote, it is essential that the revised rules be effective for as great as possible a portion of shareholder meetings or actions taken by consent or authorization in the 1992 proxy season. In addition, the Commission's experience and commenters' remarks indicate that a distribution structure exists to permit compliance with the rules without undue burden or cost on issuers or others.

VI. Statutory Basis for Rules

The amendments to the proxy and information statement rules are being adopted pursuant to Exchange Act Sections 14 and 23(a). The amendment to the investment company rules is being adopted pursuant to Investment Company Act Sections 20(a) and 38(a).

List of Subjects in 17 CFR Parts 240 and 270

Reporting and recordkeeping requirements, Securities, Investment companies.

VII. Text of the Rules

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

2. By amending § 240.14a–13 to revise Note 2 to paragraph (a) to read as follows:

§ 240.14a–13 Obligation of registrants in communicating with beneficial owners.

(a) * * *

Note 2: The attention of registrants is called to the fact that each broker, dealer, bank, association, and other entity that exercises fiduciary powers has an obligation pursuant to § 240.14b–1 and § 240.14b–2 (except as provided therein with respect to exempt employee benefit plan securities held in nominee name) and, with respect to brokers and dealers, applicable self-regulatory organization requirements to obtain and forward, within the time periods prescribed therein, (a) proxies (or in lieu thereof requests for voting instructions) and proxy soliciting materials to beneficial owners on whose behalf it holds securities, and (b) annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the registrant has notified the record holder or respondent bank that it has assumed responsibility to mail such material to beneficial owners whose names, addresses, and securities positions are disclosed pursuant to § 240.14b–1(b)(3) and § 240.14b–2(b)(4)(ii) and (iii).

* * * * *

§ 240.14a–13 [Amended]

3. By further amending § 240.14a–13 as follows:

(A) In paragraph (a)(1)(i)(C) remove the reference to "§ 240.14b–1(c) or § 240.14b–2(e)(2) and (3)" and add in its place "§ 240.14b–1(b)(3) or § 240.14b–2(b)(4)(ii) and (iii)";

(B) In paragraphs (a)(1)(ii)(A), the introductory text of (b), and (c) remove the reference to "§ 240.14b–1(c) and § 240.14b–2(e)(2) and (3)" and add in its place "§ 240.14b–1(b)(3) and § 240.14b–2(b)(4)(ii) and (iii)";

(C) In paragraph (a)(2) remove the reference to "§ 240.14b–2(a)(1)" and add in its place "§ 240.14b–2(b)(1)(i)"; and

(D) In paragraph (b)(1) remove the reference to "§ 240.14b–2(e)(1)" and add in its place "§ 240.14b–2(b)(4)(i)".

4. By revising § 240.14b–1 to read as follows:

§ 240.14b–1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.

(a) *Definitions.* Unless the context otherwise requires, all terms used in this section shall have the same meanings as in the Act and, with respect to proxy soliciting material, as in § 240.14a–1 thereunder and, with respect to information statements, as in § 240.14c–1 thereunder. In addition, as used in this section, the term "registrant" means:

(1) The issuer of a class of securities registered pursuant to section 12 of the Act; or

(2) An investment company registered under the Investment Company Act of 1940.

(b) *Dissemination and beneficial owner information requirements.* A broker or dealer registered under Section 15 of the Act shall comply with the following requirements for disseminating certain communications to beneficial owners and providing beneficial owner information to registrants.

(1) The broker or dealer shall respond, by first class mail or other equally prompt means, directly to the registrant no later than seven business days after the date it receives an inquiry made in accordance with § 240.14a–13(a) or § 240.14c–7(a) by indicting, by means of a search card or otherwise:

(i) The approximate number of customers of the broker or dealer who are beneficial owners of the registrant's securities that are held of record by the broker, dealer, or its nominee;

(ii) The number of customers of the broker or dealer who are beneficial owners of the registrant's securities who have objected to disclosure of their names, addresses,and securities positions if the registrant has indicated, pursuant to § 240.14a–13(a)(1)(ii)(A) or § 240.14c–7(a)(1)(ii)(A), that it will distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to paragraph (b)(3) of this section; and

(iii) The identity of the designated agent of the broker or dealer, if any, acting on its behalf in fulfilling its obligations under paragraph (b)(3) of this section; *Provided, however,* that if the broker or dealer has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, receipt for purposes of paragraph (b)(1) of this section shall mean receipt by such designated office(s) or department(s).

(2) The broker or dealer shall, upon receipt of the proxy, other proxy soliciting material, information statement, and/or annual reports to security holders, forward such materials to its customers who are beneficial owners of the registrant's securities no later than five business days after receipt of the proxy material, information statement or annual reports.

(3) The broker or dealer shall, through its agent or directly:

(i) Provide the registrant, upon the registrant's request, with the names, addresses, and securities positions, compiled as of a date specified in the registrant's request which is no earlier than five business days after the date the registrant's request is received, of its customers who are beneficial owners of the registrant's securities and who have not objected to disclosure of such information; *Provided , however,* that if the broker or dealer has informed the registrant that a designated office(s) or department(s) is to receive such requests, receipt shall mean receipt by such designated office(s) or department(s); and

(ii) Transmit the data specified in paragraph (b)(3)(i) of this section to the registrant no later than five business days after the record date or other date specified by the registrant.

Note 1: Where a broker or dealer employs a designated agent to act on its behalf in performing the obligations imposed on the broker or dealer by paragraph (b)(3) of this section, the five business day time period for determining the date as of which the beneficial owner information is to be compiled is calculated from the date the

designated agent receives the registrant's request. In complying with the registrant's request for beneficial owner information under paragraph (b)(3) of this section, a broker or dealer need only supply the registrant with the names, addresses, and securities positions of non-objecting beneficial owners.

Note 2: If a broker or dealer receives a registrant's request less than five business days before the requested compilation date, it must provide a list compiled as of a date that is no more than five business days after receipt and transmit the list within five business days after the compilation date.

(c) *Exceptions to dissemination and beneficial owner information requirements.* A broker or dealer registered under section 15 of the Act shall be subject to the following with respect to its dissemination and beneficial owner information requirements.

(1) With regard to beneficial owners of exempt employee benefit plan securities, the broker or dealer shall:

(i) Not include information in its response pursuant to paragraph (b)(1) of this section or forward proxies (or in lieu thereof requests for voting instructions), proxy soliciting material, information statements, or annual reports to security holders pursuant to paragraph (b)(2) of this section to such beneficial owners; and

(ii) Not include in its response, pursuant to paragraph (b)(3) of this section, data concerning such beneficial owners.

(2) A broker or dealer need not satisfy:

(i) Its obligations under paragraphs (b)(2) and (b)(3) of this section if a registrant does not provide assurance of reimbursement of the broker's or dealer's reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2) and (b)(3) of this section; or

(ii) Its obligation under paragraph (b)(2) of this section to forward annual reports to non-objecting beneficial owners identified by the broker or dealer, through its agent or directly, pursuant to paragraph (b)(3) of this section if the registrant notifies the broker or dealer pursuant to § 240.14a–13(c) or § 240.14c–7(c) that the registrant will mail the annual report to such non-objecting beneficial owners identified by the broker or dealer and delivered in a list to the registrant pursuant to paragraph (b)(3) of this section.

5. By revising § 240.14b–2 to read as follows:

§ 240.14b–2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.

(a) *Definitions.* Unless the context otherwise requires, all terms used in this section shall have the same meanings as in the Act and, with respect to proxy soliciting material, as in § 240.14a–1 thereunder and, with respect to information statements, as in § 240.14c–1 thereunder. In addition, as used in this section, the following terms shall apply:

(1) The term "bank" means a bank, association, or other entity that exercises fiduciary powers.

(2) The term "beneficial owner" includes any person who has or shares, pursuant to an instrument, agreement, or otherwise, the power to vote, or to direct the voting of a security.

Note 1: If more than one person shares voting power, the provisions of the instrument creating that voting power shall govern with respect to whether consent to disclosure of beneficial owner information has been given.

Note 2: If more than one person shares voting power or if the instrument creating that voting power provides that such power shall be exercised by different persons depending on the nature of the corporate action involved, all persons entitled to exercise such power shall be deemed beneficial owners; *Provided, however,* that only one such beneficial owner need be designated among the beneficial owners to receive proxies or requests for voting instructions, other proxy soliciting material, information statements, and/or annual reports to security holders, if the person so designated assumes the obligation to disseminate, in a timely manner, such materials to the other beneficial owners.

(3) The term "registrant" means:

(i) The issuer of a class of securities registered pursuant to section 12 of the Act; or

(ii) An investment company registered under the Investment Company Act of 1940.

(b) *Dissemination and beneficial owner information requirements.* A bank shall comply with the following requirements for disseminating certain communications to beneficial owners and providing beneficial owner information to registrants.

(1) The bank shall: (i) Respond, by first class mail or other equally prompt means, directly to the registrant, no later than one business day after the date it receives an inquiry made in accordance with § 240.14a–13(a) or § 240.14c–7(a) by indicating the name and address of each of its respondent banks that holds the registrant's securities on behalf of beneficial owners, if any; and

(ii) Respond, by first class mail or other equally prompt means, directly to the registrant no later than seven business days after the date it receives an inquiry made in accordance with § 240.14a–13(a) or § 240.14c–7(a) by indicating, by means of a search card or otherwise:

(A) The approximate number of customers of the bank who are beneficial owners of the registrant's securities that are held of record by the bank or its nominee;

(B) If the registrant has indicated, pursuant to § 240.14a–13(a)(1)(ii)(A) or § 240.14c–7(a)(1)(ii)(A), that it will distribute the annual report to security holders to beneficial owners of its securities whose names, addresses, and securities positions are disclosed pursuant to paragraphs (b)(4) (ii) and (iii) of this section:

(*1*) With respect to customer accounts opened on or before December 28, 1986, the number of beneficial owners of the registrant's securities who have affirmatively consented to disclosure of their names, addresses, and securities positions; and

(*2*) With respect to customer accounts opened after December 28, 1986, the number of beneficial owners of the registrant's securities who have not objected to disclosure of their names, addresses, and securities positions; and

(C) The identity of its designated agent, if any, acting on its behalf in fulfilling its obligations under paragraphs (b)(4) (ii) and (iii) of this section;

Provided, however, that, if the bank or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, receipt for purposes of paragraphs (b)(1) (i) and (ii) of this section shall mean receipt by such designated office(s) or department(s).

(2) Where proxies are solicited, the bank shall, within five business days after the record date:

(i) Execute an omnibus proxy, including a power of substitution, in favor of its respondent banks and forward such proxy to the registrant; and

(ii) Furnish a notice to each respondent bank in whose favor an omnibus proxy has been executed that it has executed such a proxy, including a power of substitution, in its favor pursuant to paragraph (b)(2)(i) of this section.

(3) Upon receipt of the proxy, other proxy soliciting material, information statement, and/or annual reports to security holders, the bank shall forward such materials to each beneficial owner

on whose behalf it holds securities, no later than five business days after the date it receives such material and, where a proxy is solicited, the bank shall forward, with the other proxy soliciting material and/or the annual report, either:

(i) A properly executed proxy:

(A) Indicating the number of securities held for such beneficial owner;

(B) Bearing the beneficial owner's account number or other form of identification, together with instructions as to the procedures to vote the securities;

(C) Briefly stating which other proxies, if any, are required to permit securities to be voted under the terms of the instrument creating that voting power or applicable state law; and

(D) Being accompanied by an envelope addressed to the registrant or its agent, if not provided by the registrant; or

(ii) A request for voting instructions (for which registrant's form of proxy may be used and which shall be voted by the record holder bank or respondent bank in accordance with the instructions received), together with an envelope addressed to the record holder bank or respondent bank.

(4) The bank shall:

(i) Respond, by first class mail or other equally prompt means, directly to the registrant no later than one business day after the date it receives an inquiry made in accordance with § 240.14a–13(b)(1) or § 240.14c–7(b)(1) by indicating the name and address of each of its respondent banks that holds the registrant's securities on behalf of beneficial owners, if any;

(ii) Through its agent or directly, provide the registrant, upon the registrant's request, and within the time specified in paragraph (b)(4)(iii) of this section, with the names, addresses, and securities position, compiled as of a date specified in the registrant's request which is no earlier than five business days after the date the registrant's request is received, of:

(A) With respect to customer accounts opened on or before December 28, 1986, beneficial owners of the registrant's securities on whose behalf it holds securities who have consented affirmatively to disclosure of such information, subject to paragraph (b)(5) of this section; and

(B) With respect to customer accounts opened after December 28, 1986, beneficial owners of the registrant's securities on whose behalf it holds securities who have not objected to disclosure of such information;

Provided, however, that if the record holder bank or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such requests, receipt for purposes of paragraphs (b)(4) (i) and (ii) of this section shall mean receipt by such designated office(s) or department(s); and

(iii) Through its agent or directly, transmit the data specified in paragraph (b)(4)(ii) of this section to the registrant no later than five business days after the date specified by the registrant.

Note 1: Where a record holder bank or respondent bank employs a designated agent to act on its behalf in performing the obligations imposed on it by paragraphs (b)(4) (ii) and (iii) of this section, the five business day time period for determining the date as of which the beneficial owner information is to be compiled is calculated from the date the designated agent receives the registrant's request. In complying with the registrant's request for beneficial owner information under paragraphs (b)(4) (ii) and (iii) of this section, a record holder bank or respondent bank need only supply the registrant with the names, addresses and securities positions of affirmatively consenting and non-objecting beneficial owners.

Note 2: If a record holder bank or respondent bank receives a registrant's request less than five business days before the requested compilation date, it must provide a list compiled as of a date that is no more than five business days after receipt and transmit the list within five business days after the compilation date.

(5) For customer accounts opened on or before December 28, 1986, unless the bank has made a good faith effort to obtain affirmative consent to disclosure of beneficial owner information pursuant to paragraph (b)(4)(ii) of this section, the bank shall provide such information as to beneficial owners who do not object to disclosure of such information. A good faith effort to obtain affirmative consent to disclosure of beneficial owner information shall include, but shall not be limited to, making an inquiry:

(i) Phrased in neutral language, explaining the purpose of the disclosure and the limitations on the registrant's use thereof;

(ii) Either in at least one mailing separate from other account mailings or in repeated mailings; and

(iii) In a mailing that includes a return card, postage paid enclosure.

(c) *Exceptions to dissemination and beneficial owner information requirements.* The bank shall be subject to the following respect to its dissemination and beneficial owner requirements.

(1) With regard to beneficial owners of exempt employee benefit plan securities, the bank shall not:

(i) Include information in its response pursuant to paragraph (b)(1) of this section; or forward proxies (or in lieu thereof requests for voting instructions), proxy soliciting material, information statements, or annual reports to security holders pursuant to paragraph (b)(3) of this section to such beneficial owners; or

(ii) Include in its response pursuant to paragraphs (b)(4) and (b)(5) of this section data concerning such beneficial owners.

(2) The bank need not satisfy:

(i) Its obligations under paragraphs (b)(2), (b)(3), and (b)(4) of this section if a registrant does not provide assurance of reimbursement of its reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2), (b)(3), and (b)(4) of this section; or

(ii) Its obligation under paragraph (b)(3) of this section to forward annual reports to consenting and non-objecting beneficial owners identified pursuant to paragraphs (b)(4) (ii) and (iii) of this section if the registrant notifies the record holder bank or respondent bank, pursuant to § 240.14a–13(c) or § 240.14c–7(c), that the registrant will mail the annual report to beneficial owners whose names addresses and securities positions are disclosed pursuant to paragraphs (b)(4) (ii) and (iii) of this section.

(3) For the purposes of determining the fees which may be charged to registrants pursuant to § 240.14a–13(b)(5), § 240.14c–7(a)(5), and paragraph (c)(2) of this section for performing obligations under paragraphs (b)(2), (b)(3), and (b)(4) of this section, an amount no greater than that permitted to be charged by brokers or dealers for reimbursement of their reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2) and (b)(3) of § 240.14b–1, shall be deemed to be reasonable.

6. By amending § 240.14c–1 to revise paragraph (j) to read as follows:

§ 240.14c–1 Definitions.

* * * * *

(j) *Registrant.* The term "registrant" means:

(1) The issuer of a class of securities registered pursuant to section 12 of the Act; or

(2) An investment company registered under the Investment Company Act of 1940 that has made a public offering of its securities.

* * * * *

7. By amending § 240.14c–2 to revise the introductory text of paragraph (a) to read as follows:

§ 240.14c–2 Distribution of information statement.

(a) In connection with every annual or other meeting of security holders, including the taking of corporate action by the written authorization or consent of security holders, the registrant shall transmit a written information statement containing the information specified in Schedule 14C (§ 240.14c–101) or written information statements included in registration statements filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or § 239.34 of this chapter) or Form N–14 (§ 239.23 of this chapter), and containing the information specified in such form, to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the registrant pursuant to section 14(a) of the Act, *Provided, however,* That:

* * * * *

8. By amending § 240.14c–7 to remove the "and" after paragraph (a)(1)(i)(B); to redesignate paragraph (a)(1)(i)(C) as paragraph (a)(1)(i)(D) and to add a new paragraph (a)(1)(i)(C); to redesignate paragraphs (a)(3) and (a)(4) as (a)(4) and (a)(5) and to add a new paragraph (a)(3); and to revise Note 3 to paragraph (a) to read as follows:

§ 240.14c–7 Providing copies of material for certain beneficial owners.

(a) * * *
(1) * * *
(i) * * *

(C) If the record holder or respondent bank has an obligation under § 240.14b–1(b)(3) or § 240.14b–2(b)(4) (ii) and (iii), whether an agent has been designated to act on its behalf in fulfilling such obligation, and, if so, the name and address of such agent; and

* * * * *

(3) Make the inquiry required by paragraph (a)(1) of this section on the earlier of:

(i) At least 20 business days prior to the record date of the meeting of security holders or the record date of written consents in lieu of a meeting; or

(ii) At least 20 business days prior to the date the information statement is required to be sent or given pursuant to § 240.14c–2(b):

Provided, however, That, if a record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, the inquiry shall be made to such designated office(s) or department(s);

* * * * *

Note 3: The attention of registrants is called to the fact that each broker, dealer, bank, association, and other entity that exercises fiduciary powers has an obligation pursuant to § 240.14b–1 and § 240.14b–2 (except as provided therein with respect to exempt employee benefit plan securities held in nominee name) and, with respect to brokers and dealers, applicable self-regulatory organization requirements to obtain and forward, within the time periods prescribed therein, (a) information statements to beneficial owners on whose behalf it holds securities, and (b) annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the registrant has notified the record holder or respondent bank that it has assumed responsibility to mail such material to beneficial owners whose names, addresses, and securities positions are disclosed pursuant to § 240.14b–1(b)(3) and § 240.14b–2(b)(4) (ii) and (iii).

* * * * *

9. By further amending § 240.14c–7 as follows:

(A) In paragraphs (a)(1)(ii)(A), the introductory text of (b), and (c) remove the reference to "§ 240.14b–1(c) and § 240.14b–2(e) (2) and (3)" and add in its place "§ 240.14b–1(b)(3) and § 240.14b–2(b)(4) (ii) and (iii)";

(B) In paragraph (a)(2) remove the reference to "§ 240.14b–2(a)(1)" and add in its place "§ 240.14b–2(b)(1)(i)"; and

(C) In paragraph (b)(1) remove the reference to "§ 240.14b–2(e)(1)" and add in its place "§ 240.14b–2(b)(4)(i)".

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

10. The authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

11. By amending § 270.20a–1 to add an instruction at the end of paragraph (c) to read as follows:

§ 270.20a–1 Solicitation of proxies, consents and authorizations.

* * * * *

Instruction. Registrants that have made a public offering of securities and that hold security holder votes for which proxies, consents, or authorizations are not being solicited pursuant to the requirements of this section should refer to section 14(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(c)) and the information statement requirements set forth in the rules thereunder.

Dated: January 6, 1992.

By the Commission.
Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92–533 Filed 1–9–92; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 510

Implementation of the Minimum Wage Provisions of the Fair Labor Standards Amendments of 1989 in Puerto Rico

AGENCY: Wage and Hour Division, Labor.

ACTION: Amendment to interim final rule.

SUMMARY: On March 30, 1990, an interim final rule was published in the **Federal Register** that, among other things, implemented the minimum wage provisions of the 1989 Amendments to the Fair Labor Standards Act (FLSA) in the Commonwealth of Puerto Rico. These provisions of the Amendments allow, under certain conditions, extended phase-in perionds in Puerto Rico for the minimum wage increases otherwise called for in the Amendments. The interim final rule listed industries in Puerto Rico according to appropriate Standard Industrial Classification Manual codes and specified, where appropriate, the applicable phase-in period or tier for each industry.

Tiers for certain industries were not listed to conform to existing policies and practices of the U.S. Bureau of Labor Statistics and the Commonwealth of Puerto Rico that publish industry data for other purposes. Such data are not ordinarily published in order to protect the confidentiality of the data provided by employers in industries with fewer than three reporting employers. However, for purposes of implementing the provisions of the 1989 Amendments in Puerto Rico, special efforts were undertaken to obtain waivers of confidentiality from employers in those industries for which data are not ordinarily published.

This amendment to the final rule reflects those industries in which all employers have provided waivers of confidentiality. The Department of Labor has elected to publish applicable tiers for these industries as an amendment to the interim final rule rather than wait for publication of the final rule in order to make the relief provided for employers in Puerto Rico as a part of the 1989 FLSA Amendments

available as soon as possible. This document also reflects those industries in which one or more employers has specifically refused to waive confidentiality. Such industries are noted by a "b." A similar supplemental list was published on September 27, 1990.

In publishing the September 27, 1990, amendment, the Department incorrectly identified SIC Code 3821 as Laboratory apparatus and analytical, optical, measuring, and controlling instruments. The correct title is Laboratory apparatus and furniture. The Department takes this opportunity to make that correction.

EFFECTIVE DATE: This amendment is effective on January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Howard B. Ostmann, Chief, Branch of Special Employment, Wage and Hour Division, U.S. Department of Labor, room S–3516, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8727. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

On March 30, 1990, interim final regulations were published in the **Federal Register** (55 FR 12114) that, among other things, implemented the minimum wage provisions of the 1989 Amendments to the Fair Labor Standards Act (FLSA) in Puerto Rico. That document included a listing of industries in Puerto Rico classified according to categories established by the Standard Industrial Classification (SIC) Manual, 1987, indicating the applicable minimum wage level, or tier, for most industries listed. However, in preparing the notice, the Department withheld tier designation for those industry classifications in which there were fewer than three establishments responding to the survey (non-manufacturing) or census (manufacturing) that was used to establish the appropriate minimum wage rate. Tier designations were also withheld, in the case of non-manufacturing, where one responding employer had more than 80 percent of the employment in the category. This was for the purpose of protecting the confidentiality of wage data and conformed to existing policies and practices of the U.S. Bureau of Labor Statistics and the Commonwealth of Puerto Rico that publish data for other purposes.

In order to afford the full measure of relief intended by the Congress, the Commonwealth and the Department decided that applicable tiers should be published wherever possible. The Commonwealth therefore sought to secure a waiver of the confidentiality ordinarily afforded to each of the employers participating in the survey or census that are in industries with fewer than three respondents.

This document revises appendices A and B of the interim final rule to set forth the applicable tier for those industries with less than three respondents in which all respondents have provided waivers. In some cases, the resulting tier is lower than set forth in the applicable major group or industry in the interim final rule, and in other cases it is higher. (Under procedures outlined in the interim final rule, for any industry for which data is unavailable or for which waivers have not been obtained or have been denied, the applicable tier is the one published for the two- or three-digit SIC code under which the four-digit classification falls.) In all cases, the designation and rates required by the interim final rule remain in effect until publication of this document, which takes effect today.

Those SIC categories in which any employer has refused to provide a waiver are noted with a "b". Tier designations will not be published for any category in which one or more of the employers has refused to grant such a waiver.

Information in this document, together with that provided in the interim final rule published on March 30, 1990, and an amendment published on September 27, 1990 (55 FR 39574), provided employers in Puerto Rico with information as to the appropriate minimum wage rate applicable to the various SIC categories.

This document also notes the correction to the title of SIC Code 3821 that should have read Laboratory apparatus and furniture.

II. Procedural Matters

The application of the Paperwork Reduction Act, Executive Order 12291, Regulatory Flexibility Act and Administrative Procedure Act to this rule are discussed in the Preamble to the interim final rule published on March 30, 1990.

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 510

Employment, Investigations, Labor, Law enforcement, Puerto Rico, Incorporation by reference, Minimum wages.

Accordingly, title 29, chapter V, subchapter A, of the Code of Federal Regulations, is amended as set forth below.

Signed at Wasington, DC, on this 27th day of December, 1991.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

PART 510—IMPLEMENTATION OF THE MINIMUM WAGE PROVISIONS OF THE FAIR LABOR STANDARDS AMENDMENTS OF 1989 IN PUERTO RICO

1. The authority citation for part 510 continues to read as follows:

Authority: Sec. 4, Pub. L. 101–157, 103 Stat. 938; 29 U.S.C. 201 *et seq.*

2. "Appendix A—Manufacturing Industries Eligible for Minimum Wage Phase-In" is amended by revising the following entries to the table to read as follows:

Appendix A—Manufacturing Industries Eligible for Minimum Wage Phase-In

* * * * *

MANUFACTURING INDUSTRIES

Major group	Industry group	Industry number	Tier	Industry
•	•	•	•	•
	224	1		Narrow fabric and other smallwares mills: cotton, wool, silk, and manmade fiber.
		2241	1	Narrow fabric and other smallwares mills: cotton, wool, silk, and manmade fiber.
•	•	•	•	•
		2251	1	Women's full-length and knee-length hosiery, except socks.
•	•	•	•	•
		2517	3	Wood television, radio, phonograph, and sewing machine cabinets.
•	•	•	•	•
		2522	2	Office furniture, except wood.
•	•	•	•	•
		2879	1	Pesticides and agricultural chemicals, not elsewhere classified.

MANUFACTURING INDUSTRIES—Continued

Major group	Industry group	Industry number	Tier	Industry
•	•	•	•	•
		3083	1	Laminated plastics plate, sheet, and profile shapes.
•	•	•	•	•
		3646	2	Commercial, industrial, and institutional electric lighting fixtures.
•	•	•	•	•
		3821	1	Laboratory apparatus and furniture.
•	•	•	•	•
		3829	2	Measuring and controlling devices, not elsewhere classified
•	•	•	•	•

3. "Appendix B—Non-manufacturing Industries Eligible for Minimum Wage Phase-In" is amended by revising the following entries to the table to read as follows:

Appendix B—Non-manufacturing Industries Eligible for Minimum Wage Phase-In

• • • • •

NON-MANUFACTURING INDUSTRIES

Major group	Industry group number	Industry number	Tier	Industry
•	•	•	•	•
	413		3	Intercity and rural bus transportation.
		4131	3	Intercity and rural bus transportation.
•	•	•	•	•
		4221	1	Farm product warehousing and storage.
•	•	•	•	•
		4499	1	Water transportation services, not elsewhere classified.

NON-MANUFACTURING INDUSTRIES—Continued

Major group	Industry group number	Industry number	Tier	Industry
•	•	•	•	•
	461		1	Pipelines, except natural gas.
		4613	1	Refined petroleum pipelines.
•	•	•	•	•
		5014	1	Tires and tubes.
•	•	•	•	•
		5082	1	Construction and mining (except petroleum) machinery and equipment.
•	•	•	•	•
	542		1	Meat and fish (seafood) markets, including freezer provisioners.
		5421	1	Meat and fish (seafood) markets, including freezer provisioners.
•	•	•	•	•
		5714	3	Drapery, curtain, and upholstery stores.
•	•	•	•	•
		6153	b	Short-term business credit institutions, except agricultural.
•	•	•	•	•
		6324	b	Hospital and medical service plans.
•	•	•	•	•
	637		1	Pension, health, and welfare funds.
		6371	1	Pension, health, and welfare funds.
•	•	•	•	•
		7374	1	Computer processing and data preparation and processing services.
•	•	•	•	•
		7542	3	Carwashes.
•	•	•	•	•
	809		1	Miscellaneous health and allied services, not elsewhere classified.

NON-MANUFACTURING INDUSTRIES—Continued

Major group	Industry group number	Industry number	Tier	Industry
		8099	1	Health and allied services, not elsewhere classified.
•	•	•	•	•

[FR Doc. 92-326 Filed 1-9-92; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program; Public Notice; Provisions on Adjudicatory Hearings

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval of proposed amendments to the Maryland regulatory program (hereinafter referred to as the Maryland program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments incorporate regulatory changes initiated by the State and change references to certain appeal rights from the Board of Review of the Department of Natural Resources to the Maryland Office of Administrative Hearings.

EFFECTIVE DATE: January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Harrisburg Transportation Center, 4th and Market Streets, suite 3C, Harrisburg, PA 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program.
II. Submission of Amendments.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding the general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 30 CFR 920.15 and 30 CFR 920.16.

II. Submission of Amendments

In the April 26, 1991, **Federal Register** (56 FR 19280), OSM announced the approval of proposed amendments to the Maryland program which revised the appeal procedures for adjudicatory hearing decisions. OSM required, however, that Maryland submit certain revisions to its Code of Maryland Administrative Regulations (COMAR) at sections 08.13.09.43K(7) and 08.13.09.43N(7). By letter dated May 7, 1991 (Administrative Record No. MD–528), Maryland submitted a proposed amendment to comply with these requirements.

By letter dated May 16, 1991 (Administrative Record No. MD–531), Maryland submitted a proposed amendment to revise the review procedures for requests for adjudicatory hearings, give the Director of the Water Resources Administration the final decision making authority to grant or deny a motion for reconsideration, and set a time limit for a decision by the hearing officer reviewing a failure to abate cessation order. The amendment modifies the following sections of COMAR: 08.13.09.43A, 08.13.09.43B(1), 08.13.09.43B(2)(e) now 08.13.09.43B(1)(e), 08.13.09.43B(3), 08.13.09.43B(4), 08.13.09.43B(5), 08.13.09.43B(6), and 08.13.09.43K(8).

OSM announced receipt of the proposed amendments in the July 3, 1991, **Federal Register** (56 FR 30517) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The comment period closed on August 2, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendments submitted on May 7, 1991 and May 16, 1991. Any revisions not specifically addressed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions that are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

Revisions to Maryland's Regulations That Are Not Substantively Identical to the Corresponding Federal Regulations

1. COMAR 08.13.09.43A—General Provisions on Adjudicatory Hearings—General

Maryland is amending COMAR 08.13.09.43A by including non-substantive wording changes to the existing regulation that provides that whenever the right to request an adjudicatory hearing is provided by the State, the conduct of any resulting hearing will be governed by those State regulations authorizing an adjudicatory hearing and by the appropriate provisions of the Maryland Administrative Procedure Act.

The Federal rule at 43 CFR part 4 provides hearing and appeal procedures through the Office of Hearings and Appeals. The Director finds the proposed revision at section A not inconsistent with the Federal regulations.

2. COMAR 08.13.09.43B—General Provisions on Adjudicatory Hearings—Initial Review of Request

Maryland is proposing numerous revisions to COMAR 08.13.09.43B to authorize the Director of the Water Resources Administration (the Director) to make certain decisions relating to adjudicatory hearings and motions for reconsideration.

Specifically, Maryland is amending COMAR 08.13.09.43B(1) to require that the Director review requests for adjudicatory hearings and consider certain criteria in reaching a decision to grant or deny the hearings.

Maryland is amending one of the criteria at COMAR 08.13.09.43B(1)(e) to require that the request for an adjudicatory hearing demonstrate that the requestor has certain interests that may be adversely affected.

Maryland is amending COMAR 08.13.09.43B(3) to require that the Director notify the requestor, in writing and by certified mail, of a decision to grant or deny an adjudicatory hearing.

Maryland is amending COMAR 08.13.09.43B(4) to require that if a request for an adjudicatory hearing is denied, the requestor must be informed by notice that for any hearing request filed after December 28, 1989, the requestor has the right to request a review of the denial by filing a motion for reconsideration with the Director of the Water Resources Administration. The requestor must also be notified that if no motion for reconsideration is filed within 10 days, the denial is the Department's final decision as to the adjudicatory request.

Maryland is amending COMAR 08.13.09.43B(5) to require that a motion for reconsideration be accompanied by a written statement of the grounds in support of the motion, and if oral argument is requested, a written statement to that effect. Within 10 days of receipt of the motion, the Bureau may file a written response with the Director of the Water Resources Administration. After consideration of all relevant data, the Director of the Water Resources Administration or designee may hear oral argument and issue a written final decision.

Maryland is amending COMAR 08.13.09.43B(6) to reference the final decision of the Director of the Water Resources Administration. Correspondingly, Maryland is deleting the portion of the current State rule authorizing the hearing officer with the Department of Natural Resources' Office of Hearings to issue the final decision on a motion for reconsideration.

The Federal rules at 43 CFR part 4 provide hearing and appeal procedures through the Office of Hearings and Appeals. The Director finds the proposed revisions at sections B(1), B(1)(e), B(3), B(4), B(5), and B(6) no less effective than the Federal rules.

3. COMAR 08.13.09.43K(7)—General Provisions on Adjudicatory Hearings—Procedure After Testimony Is Concluded

To satisfy the required amendment codified at 30 CFR 920.16(a) (56 FR 19280, April 26, 1991), Maryland is amending COMAR 08.13.09.43K(7) to provide for the right of appeal in accordance with the State Government Article, sections 10–201 *et seq.*, Annotated Code of Maryland.

Maryland is amending COMAR 08.13.09.43K(8) to specify a 30 day time limit for a decision by the hearing officer reviewing a failure to abate cessation order. The reference to "regulation .40[" is changed to "Natural Resources Article, section 7–507(f), Annotated Code of Maryland."

The Director finds the proposed revisions to sections K(7) and K(8) not inconsistent with the Federal hearings and appeals regulations at 43 CFR part 4.

4. COMAR 08.13.09.43N(7)—General Provisions on Adjudicatory Hearings—Award of Costs

To satisfy the required amendment codified at 30 CFR 920.16(a) (56 FR 19280, April 26, 1991), Maryland is amending COMAR 08.13.09.43N(7) to provide for the right of appeal in accordance with State Government Article, sections 10–201 *et seq.*, Annotated Code of Maryland.

The Director finds the proposed revision at section N(7) not inconsistent with the Federal hearing and appeals regulations at 43 CFR part 4.

Public Comments

The public comment period announced in the July 3, 1991 **Federal Register** (56 FR 30517) ended on August 2, 1991. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Department of Labor, Mine Safety and Health Administration, the Department of the Army, Army Corps of Engineers, and the Department of the Interior, Bureau of Land Management, concurred without comment.

V. Director's Decision

Based on the above findings, the Director is approving the program amendments submitted by Maryland on May 7, 1991, and May 16, 1991.

The Federal regulations at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to an approved program. In his oversight of the Maryland program, the Director will recognize only the statutes, regulations, and other materials approved by him together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Maryland of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a state program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) The Director has determined that this amendment contains no such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1291(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from the preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 30, 1991.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In section 920.15, a new paragraph (p) is added to read as follows:

§ 920.15 Approval of amendments to State regulatory programs.

* * * * *

(p) The following amendments submitted to OSM on May 7, 1991 and May 16, 1991 are approved effective January 10, 1992. The amendments consist of the following modifications to the Maryland program:

(1) Revision of the following rules of the Code of Maryland Administrative Regulations:

08.13.09.43A General Provisions on Adjudicatory Hearings—General.

08.13.09.43B(1), B(1)(e), B(3), B(4), B(5), and B(6) General Provisions on Adjudicatory Hearings—Initial Review of Request.

08.13.09.43K(7) and K(8) General Provisions on Adjudicatory Hearings—Procedure after Testimony is Concluded.

08.13.09.43N(7) General Procedures on Adjudicatory Hearings—Award of Costs.

3. In § 920.16, paragraph (a) is removed and reserved.

[FR Doc. 92–694 Filed 1–9–92; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 91–170]

Safety Zone Regulations: Kill Van Kull, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the waters of Bergen Point West Reach in the Kill Van Kull of New York and New Jersey. This zone will divide a portion of the channel at Bergen Point West Reach

into two sections, a northern half and a southern half. In the northern half, concentrated drilling and blasting will be conducted and no vessel is permitted to transit that section. In the southern half, vessel passage is permitted under the criteria set forth in this regulation. This action is necessary to protect the maritime community from the possible dangers and hazards to navigation associated with the extensive blasting and dredging operations which are being conducted in the northern half of this section of the channel.

EFFECTIVE DATES: This regulation becomes effective at 8 a.m., November 16, 1991 unless sooner terminated by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG C. W. Jennings, Project Officer, Captain of the Port, New York and LCDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards. The request for this zone was not received until November 14, 1991, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

On August 8, 1991 this office submitted for publication a final rule which would impose a regulated navigation area (RNA) over the entire Kill Van Kull for the duration of a three year deepening project which is occurring throughout the Kill. When that rule is published it will appear as § 165.165 of this Title (CGD1 89–065). As that rule has not been made effective yet this action is necessary to safeguard users of this waterway from the hazards involved with this ongoing project. This regulation is necessary, as an interim measure, to adequately ensure vessel safety in the affected area until the RNA is published and becomes effective. When the RNA becomes effective this safety zone will be cancelled.

Background and Purpose

On November 14, 1991 the contractor for the project advised this office that work within the area adjacent to and east of this area has been completed and the depths certified. A safety zone was established for that area and was effective on August 1, 1991, it was published in the **Federal Register** on August 14, 1991 (56 FR 40250). That zone is suspended upon the effective date and time of this regulation. This zone is established for similar work occurring in the vicinity of the Bayonne Bridge and is needed to protect users of the waterway from the dangers and hazards associated with dredging and blasting operations within the zone.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Because it expects the impact of this regulation to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they will have no significant impact and they are categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 33 CFR 160.5.

2. A new 165.T 01–170 is added to read as follows:

§ 165.T 01–170 Safety Zone: Bergen Point West Reach, Kill Van Kull—New York and New Jersey.

(a) *Location.* The following area has been declared a Safety Zone: All waters of Bergen Point West Reach in the Kill Van Kull Channel, east of a line drawn shore to shore along the 074°08′43″ W line of longitude and west of a line drawn shore to shore along the 074°08′25″ W line of longitude. KVK Channel Light Buoy 12 (LLNR 34550) has been relocated in approximate position 40°38′30″ N 074°08′24″ W, and KVK Channel Light Buoy 14 (LLNR 34565) has been relocated in approximate position 40°38′30″ N 074°08′42″ W to indicate the eastern and western boundaries, respectively, of this zone.

(b) *Effective date.* This regulation becomes effective at 8 a.m., November 16, 1991, unless sooner terminated by the Captain of the Port, New York, NY.

(c) *Regulations.* (1) Northern half of channel: No vessel may operate in the northern half of the channel within this zone. In accordance with the general regulations in § 165.23 of this part, entry into or movement within this area of the safety zone is prohibited unless authorized by the Captain of the Port.

(2) Southern half of channel:

(i) Each vessel transiting the southern half of the channel in this zone is required to do so at minimum wake speed.

(ii) No vessel shall enter this zone when they are advised by the drilling barge or Vessel Traffic Service New York (VTSNY) that a misfire or hangfire has occurred. Vessels already underway in the zone shall proceed to clear the area immediately.

(iii) Vessels, 300 gross tons or greater and tugs with tows, are prohibited from meeting or overtaking in this portion of the channel.

(iv) Vessels, 300 gross tons or greater and tugs with tows, transiting with the

prevailing current are regarded as the stand-on vessel.

(v) Prior to entering this safety zone, the master, pilot or operator of each vessel, 300 gross tons or greater and tugs with tows, shall notify VTSNY as to their decision regarding the employment of assist tugs while transiting the safety zone.

(vi) For vessels towing astern, hawser or wire length must not exceed 100 feet for that tow. This length is measured from the towing bit on the towing vessel to the point where the hawser or wire connects with the vessel being towed.

Dated: January 6, 1992.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 92-662 Filed 1-9-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD1 91-168]

Safety Zone Regulations: Kill Van Kull, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is establishing a second safety zone in the waters of Constable Hook Reach in the Kill Van Kull of New York and New Jersey. This zone will also divide a portion of the channel at Constable Hook Reach into two sections, a northern half and a southern half. In the northern half, concentrated drilling and blasting will be conducted and no vessel is permitted to transit that section. In the southern half, vessel passage is permitted under the criteria set forth in this regulation. This action is necessary to protect the maritime community from the possible dangers and hazards to navigation associated with the extensive blasting and dredging operations which are being conducted in the northern half of this section of the channel.

EFFECTIVE DATES: This regulation becomes effective at 10 a.m., November 5, 1991 unless sooner terminated by the Captain of the Port, New York, NY.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668-7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG C. W. Jennings, Project Officer, Captain of the Port, New York and LCDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards. The request for this zone was not received until November 4, 1991, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

On August 8, 1991 this office promulgated a final rule which would impose a regulated navigation area (RNA) over the entire Kill Van Kull for the duration of a three year deepening project which is occuring throughout the Kill. When that rule is published it will appear as § 165.165 of this title (CGD1 89-065). As that rule has not been made effective yet this action is necessary to safeguard users of this waterway from the hazards involved with this ongoing project. This regulation is necessary, as an interim measure, to adequately ensure vessel safety in the affected area until the RNA is published and becomes effective. When the RNA becomes effective this safety zone will be cancelled.

Background and Purpose

On November 4, 1991 the contractor for the project advised this office that work within the western work area at Constable Hook was nearing completion and that there was a need to extend blasting and dredging operations from that area into the eastern work area in Constable Hook. A safety zone was established for the western work area and was effective on September 23, 1991, it was published in the **Federal Register** on October 4, 1991 (56 FR 50274). That zone remains in effect. This zone is established for similar work occurring in the eastern work area and is needed to protect users of the waterway from the dangers and hazards associated with dredging and blasting operations within the zone.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Because it expects the impact of this regulation to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they will have no significant impact and they are categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new 165.T 01-168 is added to read as follows:

§ 165.T. 01-168 Safety Zone: Constable Hook Reach, Kill Van Kull—New York and New Jersey.

(a) *Location.* The following area has been declared a Safety Zone: All waters of Constable Hook Reach, in the Kill Van Kull Channel, within an area described by a line connecting the following four points:

Latitude	*Longitude*
40°39'09.2" N	074°04'29.1" W

40°39'06.0" N	074°04'15.5" W
40°38'50.9" N	074°04'21.1" W
40°38'55.1" N	074°04'34.0" W

thence to the point of the beginning.

KVK Channel Light Buoy 2 (LLNR 34280) has been relocated in approximate position 40°38'57" N 074°04'15" W, and KVK Channel Temporary Light Buoy 2A (no LLN) has been established in approximate position 40°39'02" N 074°04'29" W to indicate the eastern and western boundaries, respectively, of this area.

(b) *Effective dates.* This regulation becomes effective at 10 a.m., November 5, 1991 unless sooner terminated by the Captain of the Port, New York, NY.

(c) *Regulations.* (1) Northern half of channel: No vessel may operate in the northern half of the channel within this zone. In accordance with the general regulations in § 165.23 of this part, entry into or movement within this area of the safety zone is prohibited unless authorized by the Captain of the Port.

(2) Southern half of channel: (i) Each vessel transiting the southern half of the channel in this zone is required to do so at minimum wake speed.

(ii) No vessel shall enter this zone when they are advised by the drilling barge or Vessel Traffic Service New York (VTSNY) that a misfire or hangfire has occurred. Vessels already underway in the zone shall proceed to clear the area immediately.

(iii) Vessels, 300 gross tons or greater and tugs with tows, are prohibited from meeting or overtaking in this portion of the channel.

(iv) Vessels, 300 gross tons or greater and tugs with tows, transiting with the prevailing current are regarded as the stand-on vessel.

(v) Prior to entering this safety zone, the master, pilot or operator of each vessel, 300 gross tons or greater and tugs with tows, shall notify VTSNY as to their decision regarding the employment of assist tugs while transiting the safety zone.

(vi) For vessels towing astern, hawser or wire length must not exceed 100 feet for that tow. This length is measured from the towing bit on the towing vessel to the point where the hawser or wire connects with vessel being towed.

Dated: January 6, 1992.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 92-663 Filed 1-9-92; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[FRL-4091-7]

Underground Injection Control Program; Water-Brine Interface Mechanical Integrity Test for Class III Salt Solution Mining Injection Wells

AGENCY: Environmental Protection Agency.

ACTION: Notice of alternative method; final approval.

SUMMARY: The Director of the Office of Ground Water and Drinking Water, Environmental Protection Agency (EPA), is granting final approval for the use of the Water-Brine Interface mechanical integrity test as an alternative to the tests specified in the Code of Federal Regulations, 40 CFR 146.8(b), for the demonstration of no significant leaks in the casing, tubing, or packer. The Agency intends this approval to apply only to Class III salt solution mining injection wells on a national basis. The test is referred to as the Water-Brine Interface Method.

DATES: The final approval for this alternative mechanical integrity test becomes effective January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Smith, Office of Ground Water and Drinking Water (WH-550G), U.S. EPA, Washington, DC 20460 at: (202) 260-5586.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Drinking Water Act (SDWA) (42 U.S.C. 300h, *et seq.*) is intended to protect underground sources of drinking water (USDWs) from contamination by underground injection. One of the cornerstones of the Underground Injection Control (UIC) Program is the assurance that the mechanical integrity of the wells is maintained. Mechanical integrity (MI) is defined as the absence of significant leaks in the casing, tubing, or packer, and the absence of significant fluid movement into a USDW through vertical channels adjacent to the injection well bore. This movement can occur from either the injection zone, from other salt water formations or aquifers. Acceptable methods of evaluating mechanical integrity are specified in 40 CFR 146.8 for State programs administered by EPA and in the program applications of the States with primary enforcement responsibility for injection wells. Section 146.8(d) states that the Director may allow alternative mechanical integrity tests if the Administrator approves the alternative method. The Administrator has delegated authority to approve alternative test procedures to the Director of the Office of Ground Water and Drinking Water.

Operators of Class III salt solution mining wells need an alternative mechanical integrity test to the standard annular pressure test because of the great difficulty using conventional tubing and packer techniques. Typically, a tubing and packer would have to be installed in the well in order to conduct a standard annular pressure mechanical integrity test. Scale, or hardened mineral deposits, formed on the interior surface of the casing often makes establishment of a seal between the packer element and the inside diameter of the casing very difficult. Thus, wells that actually possess mechanical integrity may not pass the test because the packer cannot be properly seated. In addition, operators that use the standard annular pressure test must shut down production in a cavern and bleed off the pressure to enable the tubing and packer test string to be installed in the well. These physical requirements can interrupt the production of brine from a cavern for several days and cause major logistical problems at the processing facility due to the loss of feedstock.

EPA granted interim approval for a period of two years (from September 18, 1989 to September 18, 1991) for the use of the alternative mechanical integrity test known as the Water-Brine Interface Method. EPA accepted written comments and referenced data on test results through February 19, 1991. The Salt Institute and Ohio Department of Natural Resources submitted results from 54 Class III wells that were tested using the prescribed Water-Brine Interface methodology during the period from September 18, 1989 through February 19, 1991. Only test data was submitted; neither party offered any comments on the test methodology. EPA reviewed and carefully evaluated all submitted test results. As a result of this review, EPA made several modifications to the overall test procedure and incorporated those modifications in this final approval. The modified procedures are identified under *C. Procedures.*

Although the Water-Brine Interface test is not a mandatory technique for demonstrating mechanical integrity, the methodology, subject to the conditions and procedures discussed in this notice, does provide the necessary information to demonstrate reliably whether a well has a leak in the casing or tubing. The ultimate discretion and authority for specifying MIT procedures that will

ensure safeguarding USDWs rests with the appropriate UIC Director. EPA approves the amended Water-Brine Interface Test Method as an alternative MIT for Class III salt solution mining wells only.

II. Application and Description of the Test

A. Application

The field design of a salt solution mining operation is dependent upon the morphology of the salt formation being mined. If the salt formation is an isolated dome or a very thick layer with limited lateral extent, single producing wells are commonly used. In these instances, one well is drilled and equipped to leach out a single cavern. The well employs a string of surface casing to protect underground sources of drinking water (USDWs). A string of production casing is installed inside the surface casing to the salt-bearing formation. Both casings are cemented to the surface. The well is then drilled to the desired depth and a string of tubing is installed inside the production casing.

Water or partially saturated brine is injected through either the tubing or the casing-tubing annulus to dissolve the salt formation. The brine is then produced up the casing-tubing annulus or the tubing, respectively. As salt dissolution proceeds, the tubing string may then be raised or lowered into the cavern to facilitate dissolving and removal of brine. Upon reaching the surface, the brine flows through a dedicated pipeline to a nearby processing plant.

If the salt formation is bedded and geographically extensive, two or more wells are usually drilled and then linked horizontally. In a cavern containing two wells, one well is used for injection and the other for production. Large caverns developed by two or more wells are termed galleries. Once the wells are interconnected, fresh water or partially saturated brine is pumped down one well into the gallery to dissolve the salt formation. The brine is withdrawn from the gallery and transported to the surface by another well (or wells). If there are more than two wells in the gallery, the additional wells may be used for either injection or production.

Wells are constructed almost exactly like those employed in single well caverns; a string of surface casing is set below the base of the USDWs and an inner production casing is set into the top of the salt formation. A tubing string may or may not be run inside the production casing.

Well operators maintain pressure within the cavern that is sufficient to cause the produced brine to flow through the wells, up to the surface and through surface pipelines to the processing facilities. This practice creates a pressure differential between the well bore and any aquifer adjacent to it. This pressure differential would result in loss of fluid out into a formation if there was a failure of the outer casing string. To ensure that USDWs are protected from possible degradation, the wells must periodically undergo testing for mechanical integrity.

None of the variations in geology, well construction, field design or operating pressure requirements affect the proposed alternative test.

B. Testing Method

Fresh water, or a fluid of lower specific gravity (e.g., oil) approved for use by the Director, is loaded into the casing or tubing string between the wellhead assembly and the cavern brine. Pressure must be applied to the fresh water column to displace the denser brine from the casing. In instances where a low specific gravity oil is substituted for fresh water, in order to provide accurate results, special conditions will be required. These conditions are specified in a following section.

Due to the density contrast and buoyancy forces, a relatively distinct interface between the two liquids (fresh water and brine) is established. The contribution of the buoyant force to the pressure at the wellhead can be determined by measurements using a precision pressure gauge before and after the fresh water is introduced into the well. Since the fresh water fluid column is under pressure (i.e., application of pressure is necessary to displace the brine out of the casing and into the cavern), the loss of any fresh water from the casing, through a leak or by intentional release, will cause the interface between the water and the brine to move upward in the casing. This upward movement of the column of brine will cause a drop in wellhead pressure. The Water-Brine Interface Method indicates leakage through changes in the wellhead pressure which result from the upward movement of the water-brine interface. A monitoring methodology, which can accurately detect very small pressure changes using deadweight pressure gauges or electronic pressure transducers, have been developed.

By measuring the change in pressure, the upward movement of the water-brine interface in the casing can be calculated. The extent of movement is obtained by dividing any pressure drop observed during the test by the product of the difference of the specific gravities of the two liquids (above and below the interface) and a conversion constant (based upon the pressure gradient for fresh water) of 0.4331 psi per foot.

$$M = \frac{NPC}{(SG1-SG2) \times k}$$

where:

M = the upward movement of the interface (in ft)
NPC = the net pressure change in pounds per square inch (psi)
SG1 = the specific gravity of the cavern brine
SG2 = the specific gravity of the injected fluid, and
k = 0.4331 psi/ft, a conversion constant (the pressure gradient for fresh water)

The rate of leakage can be determined by multiplying the casing volume per foot of length by the distance which the interface has moved up, and dividing the result by the length of the test period.

$$L = \frac{Cv \times M}{Hrs}$$

where:

L = the rate of leakage (in gals/hr)
Cv = the casing volume per foot of length (in gals/ft)
M = the upward movement of the interface (in ft), and
Hrs = the length of the test period in hours

The sensitivity of the test is a function of two factors—(1) the duration of the test; and, (2) the sensitivity of the pressure gauges.

With proper design, almost any sensitivity can be achieved, particularly by extending the duration of the test.

C. Procedure

The prescribed test procedure is as follows:

1. Preflush the well by pumping a minimum of one casing volume of fresh water through the well to ensure that no salt crystallization remains in the casing string.

2. Withdraw brine from the test well until the specific gravity of the brine remains constant. Measure and record the specific gravity value.

3. Measure and record the test wellhead pressure.

4. Withdraw brine from a reference well until the specific gravity of brine is constant. Shut in the reference well and take a pressure reading. Record the wellhead pressure. Tubing may serve as the reference well and the casing-tubing annulus functions as the test well.

5. Inject fresh water (or oil) into the test well in sufficient quantities to fill all but the bottom 50 ft of the production casing. To achieve this, inject fresh water (or oil) until the wellhead pressure increases by an amount calculated using the following formula:

Pressure increase = (D–50) × (SG1–SG2) × k

where:

D = depth of the well (in ft)
SG1 = the specific gravity of the cavern brine
SG2 = the specific gravity of the injected fluid (water or oil), and
k = 0.4331 psi/ft, a conversion constant (pressure gradient for fresh water)

Determine whether there has been any change in the measured pressure in the reference well during the injection phase. Add the net pressure change to the calculated pressure increase for the test well to obtain the final pressure necessary for proper placement of the interface. (Where the presence of a partially saturated brine could adversely affect the accuracy of test results, an oil with a low specific gravity may be substituted for fresh water in order to provide a sufficient density contrast. The use of oil under these specific circumstances represents a modification to the original interim test procedure).

6. In order to avoid mixing and maintain a sharp interface, inject the fresh water (or oil) at a rate which will not cause the interface to move downward at a rate greater than 20 feet per minute.

7. Wait a minimum of 36 hours for the test and reference wells to come to temperature equilibrium.

8. At the conclusion of the waiting period, compare the pressures of both the test and reference wells against the initial pressures at the start of the waiting period to assure that there has been no significant movement of the interface. If pressure differences can be explained by the wells coming to temperature equilibrium, then the test may proceed. The UIC Director shall determine whether the submitted explanation is accurate and adequate. If pressure differences cannot be explained by changes caused by the wells coming to temperature equilibrium, the operator must withdraw a minimum of one casing volume of fluid from both the test and reference wells and restart the test at step 1.

9. The operator must simultaneously measure the wellhead pressures for both the test and reference wells. The pressure readings must be taken using a deadweight pressure gauge or pressure transducer system having a sensitivity of 0.1 psi or greater. If a deadweight pressure gauge is used, then a minimum of ten readings should be taken, at one minute intervals, over a ten minute period. If an electronic pressure transducer system is used then one reading during the ten minute measurement period is sufficient. (Since electronic pressure transducers continuously calculate an averaged signal response, only one reading is required. This is a modification to the original interim test procedure).

10. Calculate the average pressure at the test well and the reference well and the difference between them. Record all data in a standard format.

11. Repeat Steps 9 & 10, at two hour intervals, for a total test period of eight hours (5 averaged readings).

12. For each two hour intervals, and the eight hour test period, calculate the net pressure change rate at the test well as follows:

$$NPCR = \frac{P(start) - P(end)}{Hrs}$$

where:

NPCR = Net Pressure Change Rate (psi/hr)
P(start) = average pressure of test well at the beginning of the test minus average pressure of reference well at the start of the test (psi)
P(end) = average pressure of the test well at the conclusion of the test minus the average pressure of the reference well at the conclusion of the test (psi)
Hrs = hours in the test period

13. If the calculation for the eight hour test period indicates a net pressure change rate of less than 0.05 psi/hr, the well has demonstrated mechanical integrity. Pressure change rates that are greater than 0.05 psi/hr indicate a lack of mechanical integrity.

III. Basis for Determination

EPA developed the initial requirements and limitations of the testing method to demonstrate mechanical integrity pursuant to 40 CFR 146.8(b) after considering test results for demonstration wells at the Morton Salt Plant at Rittman, Ohio on July 5–13, 1988. Additional confirmation tests were run on June 16–20, 1989. Fifty-four (54) independent well tests using the methodology were conducted during the interim approval period from September 18, 1989 to February 19, 1991. Test results were submitted to the EPA for independent review and analysis by The Salt Institute and the Ohio Department of Natural Resources.

Further consideration was given to the following technical documents:

(1) "*Significance of Regulatory Constraints on the Operation of Packerless Injection Wells.*" K.I. Kamath, et al. SPE #17047.

(2) "*Solar Ponds Collect Sun's Heat.*" R.K. Multer, Chemical Engineering, March, 1982.

(3) "*The Salt Stabilized Solar Pond for Space Heating—A Practical Manual.*" Peter R. Flynn and Ted H. Short, Ohio State University, Department of Agricultural Engineering.

IV. Special Conditions

A. Limitations for Conducting the Water-Brine Interface Method Mechanical Integrity Test

The following are limitations for running the Water-Brine Interface Method mechanical integrity test:

1. The brine in the test well must have a specific gravity >1.1 (be *at least* 50% saturated) for the test to be run using fresh water (S.G.=1.0). If the brine has a specific gravity <1.1, then an oil having a specific gravity <0.9 must be substituted for the fresh water.

2. Adequate precautions should be taken, as necessary, to ensure that there is no salt crystallization inside the casing prior to starting the test procedure.

3. A reference well must be used.

4. All wells must be tested at pressures that are equal to or greater than the normal operating pressures, but be no less than 100 psi. If a facility has a normal operating pressure that is less than 100 psi, the Director has the discretion to permit testing at the lower pressure.

5. The test well must be filled with a lower specific gravity fluid to within fifty feet of the bottom of the casing. However, if the casing or tubing string extends >50 feet below the top of the salt cavern, then the interface may be established up to 50 feet above the estimated *top* of the cavern.

6. The test and reference wells must be shut in for a minimum of 36 hours to ensure that the wells reach temperature equilibrium prior to initiation of the test. Failure of the wells to reach temperature equilibrium will result in "false negative" test results and the wells will fail the mechanical integrity test.

7. Deadweight pressure gauges or electronic pressure transducer systems may be used to record pressure changes. Pressure measuring devices must have a certified minimum sensitivity of 0.1 psi.

8. Wellhead pressures for the reference well and the test well must be read simultaneously. If a deadweight pressure gauge is used then at least 10 readings should be taken every two hours.

9. The maximum test period shall be 8 hours. The average hourly pressure change should be calculated based upon a continuous 8 hour test period. Averaging results from test periods greater than 8- hours may be authorized only by the Director.

B. Determination

The Water-Brine Interface Method, subject to the conditions and procedures discussed in this notice, provides the necessary information to demonstrate reliably whether a well has a leak in the casing or tubing. EPA is approving the test for Class III salt solution mining injection wells in all States.

Dated: January 2, 1992.

James R. Elder,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 92-664 Filed 1-9-92; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302-11

[FTR Amendment 24]

RIN 3090-AE45

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: The Federal and State tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal and State income tax brackets and rates. The Federal and State tax tables contained in this rule are for calculating the 1992 RIT allowances to be paid to relocating Federal employees.

EFFECTIVE DATE: This final rule is effective January 1, 1992, and applies for RIT allowance payments made on or after January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, Transportation Management Division (FBX), Washington, DC 20406, telephone FTS 365-5253 or commercial (703) 305-5253.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 302-11

Government employees, Income Taxes, Relocation allowances and entitlements, Transfers, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 302-11 is amended as follows:

PART 302-11—RELOCATION INCOME TAX (RIT) ALLOWANCE

1. The authority citation for part 302-11 continues to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747); E.O. 12466, February 27, 1984 (49 FR 7349).

2. Appendixes A, B, and C to part 302-11 are amended by adding the following tables at the end of each appendix, respectively:

APPENDIX A TO PART 302-11—FEDERAL TAX TABLES FOR RIT ALLOWANCE

* * * * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1991

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302-11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 1991.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$5,754	$26,242	$10,177	$36,611	$13,093	$46,770	$7,120	$23,977
28	26,242	55,330	36,611	78,894	46,770	94,598	23,977	47,908
31	55,330	.....	78,894	.....	94,598	.....	47,908	.....

APPENDIX B TO PART 302-11—STATE TAX TABLES FOR RIT ALLOWANCE

* * * * * * *

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1991

The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302-11.8(e)(1). This table is to be used for employees who received covered taxable reimbursements during calendar year 1991.

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1] [2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 and over
1. Alabama	5	5	5	5
2. Alaska	0	0	0	0
3. Arizona	3.8	4.4	5.25	7
If single status [3]	4.4	5.25	6.5	7
4. Arkansas	3.5	7	7	7
If single status [3]	6	7	7	7
5. California	2	6	8	11
If single status [3]	6	9.3	9.3	11
6. Colorado	5	5	5	5
7. Connecticut	1.5	1.5	1.5	1.5
8. Delaware	5	7.6	7.7	7.7
9. District of Columbia	6	9.5	9.5	9.5
If single status [3]	8	9.5	9.5	9.5
10. Florida	0	0	0	0
11. Georgia	5	6	6	6
12. Hawaii	7.25	9.5	10	10
If single status [3]	9.5	10	10	10
13. Idaho	6.5	7.8	8.2	8.2
If single status [3]	7.8	8.2	8.2	8.2
14. Illinois	3	3	3	3
15. Indiana	3.4	3.4	3.4	3.4
16. Iowa	5	8.8	9.98	9.98
If single status [3]	7.2	8.8	9.98	9.98
17. Kansas	3.65	3.65	5.15	5.15
If single status [3]	4.5	5.95	5.95	5.95
18. Kentucky	6	6	6	6
19. Louisiana	2	4	4	6
If single status [3]	4	4	6	6
20. Maine	4.725	8.925	8.925	9.89
If single status [3]	8.925	9.89	9.89	9.89
21. Maryland	5	5	5	5
22. Massachusetts	6.25	6.25	6.25	6.25
23. Michigan	4.6	4.6	4.6	4.6
24. Minnesota	6	8	8	8.5
If single status [3]	8	8	8.5	8.5
25. Mississippi	4	5	5	5
26. Missouri	5.5	6	6	6
27. Montana	5	10	10	11
If single status [3]	8	10	11	11
28. Nebraska	3.63	5.62	6.92	6.92
If single status [3]	5.62	6.92	6.92	6.92
29. Nevada	0	0	0	0
30. New Hampshire	0	0	0	0
31. New Jersey	2	2.5	3.5	7
If single status [3]	2	5	6.5	7
32. New Mexico	3.8	5.9	7.7	8.5
If single status [3]	5.8	7.7	8.5	8.5
33. New York	4	7.875	7.875	7.875
If single status [3]	7.875	7.875	7.875	7.875
34. North Carolina	6	7	7	7.75
35. North Dakota	6.67	9.33	12	12
If Single status [3]	8	10.67	12	12
36. Ohio	1.466	4.457	5.201	6.9
If single status [3]	3.715	4.457	5.201	6.9
37. Oklahoma	3	7	7	7
If single status [3]	7	7	7	7
38. Oregon	9	9	9	9
39. Pennsylvania	2.8	2.8	2.8	2.8
40. Rhode Island	[4] 27.5 percent of Federal income tax liability [4]			
41. South Carolina	8	7	7	7
42. South Dakota	0	0	0	0
43. Tennessee	0	0	0	0
44. Texas	0	0	0	0
45. Utah	7.2	7.2	7.2	7.2
46. Vermont	[5] (See footnote 5) [4]			
If single status [3]	[5] 34 percent of Federal income tax liability [4]			
47. Virginia	5	5.75	5.75	5.75
48. Washington	0	0	0	0
49. West Virginia	3	4.5	6	6.5
50. Wisconsin	4.9	6.93	6.93	6.93
If single status [3]	6.93	6.93	6.93	6.93
51. Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–11.8(e)(2)(ii).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302-11.8(e)(2)(iii).
[5] The income tax rate for Vermont (for other than single status) is 31 percent of Federal income tax liability for employees whose earned income amounts are between $20,000-$24,999; for all other employees the rate is 34 percent of Federal income tax liability.

APPENDIX C TO PART 302-11—FEDERAL TAX TABLES FOR RIT ALLOWANCE—YEAR 2

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1992

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302-11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1985, 1986, 1987, 1988, 1989, 1990, or 1991.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$6,190	$27,963	$10,864	$38,611	$14,316	$50,219	$7,819	$25,629
28	27,963	58,786	38,611	83,158	50,219	101,123	25,629	50,939
31	58,786		83,158		101,123		50,939	

Dated: December 27, 1991.
Richard G. Austin,
Administrator of General Services.
[FR Doc. 92-644 Filed 1-9-92; 8:45 am]
BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 400

Refugee Resettlement Program: Refugee Cash Assistance and Refugee Medical Assistance

AGENCY: Administration for Children and Families (ACF), HHS. Office of Refugee Resettlement.

ACTION: Final rule.

SUMMARY: This rule establishes a duration of 8 months for the special programs of refugee cash assistance and refugee medical assistance in Federal FY 1992.

EFFECTIVE DATE: January 10, 1992.

ADDRESSES: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo A. Biddle, (202) 401-9253.

SUPPLEMENTARY INFORMATION:

This final rule codifies instructions previously provided to the States to reduce the duration of the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) from a refugee's first 12 months in the United States to a refugee's first 8 months in the United States in Federal fiscal year 1992. The instructions to States were transmitted by letter of September 11, 1991. This rule is applicable to both current and newly arriving refugees.

The reduction is necessitated by the limited funds appropriated for this purpose for Federal FY 1992 (October 1, 1991—September 30, 1992). Refugee Assistance under Section 412 of the Immigration and Nationality Act is expressly limited by the extent of available appropriations. 8 U.S.C. 1522(a)(1)(A); 45 CFR 400.202.

This regulation is issued in response to an order by the United States District Court, Western District of Washington at Seattle, that this change should have been effected by regulation. The court indicated that emergency procedures under the Administrative Procedure Act may be employed under the good cause exception, 5 U.S.C. 553(b). *Nhan Van Nguyen, et al.* v. *Louis Sullivan, et al.*, No. C91-1587WD, (W.D. Wash., November 27, 1991).

The decision to reduce the period of time-eligibility for RCA and RMA is based on the Department's analysis of the anticipated assistance needs in FY 1992 of refugees who entered the United States during the latter part of FY 1991 and those who will be admitted during FY 1992 under the admissions ceiling of 132,000 publicly funded refugees established by the President. (Memorandum from the President to the United States Coordinator for Refugee Affairs, Determination of FY 1992 Refugee Admissions Numbers and Authorization of In-Country Refugee Status Pursuant to sections 207 and 101(a)(42), respectively, of the Immigration and Nationality Act, Presidential Determination No. 92-2, October 9, 1991.)

This analysis showed that the fixed appropriation of $234,216,000 for FY 1992 would be insufficient to provide funding for a period longer than a refugee's first 8 months in the U.S., beginning December 1, 1991, and still ensure a sustainable level of assistance to all eligible refugees throughout the remainder of FY 1992. The analysis showed that if a time-eligibility period of 12 months were retained, then the available funds would be exhausted before the end of the fiscal year and no RCA or RMA would be available either to newly arriving refugees or to refugees already in the U.S. Refugee admissions in FY 1992 will increase by approximately 18%, while the program must operate at approximately the prior-year appropriations level.

Consistent with the preceding actions, 45 CFR 400.2, 400.60(b), 400.100(b), 400.203(b), 400.204(b), and 400.209(b) are being amended to reduce the duration of RCA and RMA from a refugee's first 12 months in the U.S. to a refugee's first 8 months in the U.S.

Justification for Dispensing With Notice of Proposed Rulemaking

A period for public comment is not being provided because it would be impracticable, unnecessary, or not in the public interest for the following reasons:

Under the current statute and regulations, the duration of benefits is a function of the level of appropriations. The resulting computation is a matter which public comment would not

significantly aid. Congressional funding limitations effectively establish the eligibility period, rendering notice of proposed rulemaking and comment procedures unnecessary. Although consideration of alternatives which would not be mathematically generated may be assisted by public input, there is insufficient time to consider other options without adversely impacting the public interest in avoiding the premature exhaustion of funds and having a finite account equitably distributed throughout the fiscal year.

Because there is a continuing flow of refugees into the United States and because continuing costs for RCA and RMA are being incurred by the States, any delays in applying a reduced period of time-eligibility would result in the need for ever-greater reductions in the RCA and RMA programs in order to avoid their abrupt and complete termination and the absence of such assistance to both current and newly arriving refugees.

Accordingly, the agency finds good cause for issuance of an immediately effective final rule.

Regulatory Procedures

Regulatory Impact Analysis

Under Executive Order 12291, we must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation does not meet the definition of a "major" regulation because it does not have a $100 million annual impact.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not contain collection-of-information requirements.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1522(a)(9), authorizes the Secretary of HHS to issue regulations needed to carry out the program.

[Catalogue of Federal Domestic Programs: 93.026, Refugee and Entrant Assistance—State-Administered Programs]

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

Dated: December 10, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: December 30, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR Chapter IV is amended as follows:

O. The heading for chapter IV of 45 CFR is revised to read as follows:

CHAPTER IV—OFFICE OF REFUGEE RESETTLEMENT, ADMINISTRATION FOR CHILDREN AND FAMILIES DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 400—REFUGEE RESETTLEMENT PROGRAM

1. The authority citation for part 400 continues to read as follows:

Authority: Section 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.2 [Amended]

2. Section 400.2 is amended by revising the definitions of "Refugee cash assistance" and "Refugee medical assistance" by inserting after the words "12-month period" the following phrase: "(except during Federal FY 1992, less than an 8-month period)".

§§ 400.60(b) and 400.100(b) [Amended]

3. Sections 400.60(b) and 400.100(b) are amended by removing the words "18-month period" and by inserting in their place the following phrase: "12-month period (except during Federal FY 1992, 8-month period)".

§§ 400.203(b) and 400.204(b) [Amended]

4. Sections 400.203(b) and 400.204(b) are amended by inserting after the words "12-month period" the following phrase: "(except during Federal FY 1992, 8-month period)".

§ 400.209(b) [Amended]

5. Section 400.209(b) is amended by inserting after the words "12 months" the following phrase: "(except during Federal FY 1992, 8 months)".

[FR Doc. 92-797 Filed 1-9-92; 8:45 am]
BILLING CODE 4153-04-M

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Proposed Rules

Federal Register
Vol. 57, No. 7
Friday, January 10, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 46; Doc. No. 0260S]

General Crop Insurance Regulations; Corn, Grain Sorghum, and Soybean Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1993 and succeeding crop years, by adding Late Planting and Prevented Planting provisions to the Corn Endorsement (§ 401.111), Grain Sorghum Endorsement (§ 401.113) and the Soybean Endorsement (§ 401.117). The intended effect of this rule is to replace the current optional coverages for late and prevented planting with more effective provisions that are an integral part of the basic coverage.

This provision will be made available, as an option, for the 1992 crop year if the process is completed timely. The insured will be notified of the premiums required for this expanded coverage.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than January 27, 1992, to be sure of consideration.

ADDRESSES: Send comments to: Peter Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (703) 235–1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of the Corn, Grain Sorghum, and Soybean Endorsement regulations affected by this rule under those procedures. The sunset review date established for Corn is April 1, 1996; Soybeans, October 1, 1996; and Grain Sorghum, July 1, 1996.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to amend the General Crop Insurance Regulations (7 CFR part 401) by adding Late Planting and Prevented Planting provisions to the Corn Endorsement (§ 401.111), Grain Sorghum Endorsement (§ 401.113), and the Soybean Endorsement (§ 401.117). The intended effect of this rule is to replace the current optional coverages for late and prevented planting with more effective provisions that are an integral part of the basic coverage.

The current optional coverage for late and prevented planting have been found to lack the desired degree of effectiveness due to both coverage deficiencies and the volume of paperwork required. The additional paperwork required includes the prevented planting application and acreage report, and an option form for late planting coverage. Adding to the administrative burden of the current coverages is tracking of the deadline dates for submission of these forms.

Therefore, to improve the coverage provided for late and prevented planting, an analysis of the weaknesses of the current program and concepts on which new policy provisions could be based, was prepared. The concepts developed are as follows:

1. The provisions of late and prevented planting coverage will be incorporated in the applicable crop policies. They will not be a separate option (except for 1992).

2. The late planting period begins the day after the final planting date and extends for 25 days thereafter. A late planting guarantee reduction will apply to the rate of 1% per day for days 1 through 10 and 2% per day for days 11 through 25.

3. Coverage for prevented planting will be for the peril of excess moisture. In cases of drought, the insured and/or company may petition FCIC to permit land to be covered by the prevented planting provisions. FCIC may elect to permit insureds to bypass planting where successful production appears improbable and still remain qualified for a prevented planting payment. Irrigated acreage will not be eligible for a prevented planting payment due to drought.

4. For the 1992 crop year (if the process is completed in a timely manner) and the 1993 and crop years, coverage for late and prevented planting will be added to the provisions of the corn, grain sorghum, and soybean policies. The 1993 crop year will serve as an evaluation period. Other crops may be considered for the 1994 crop year.

5. The liability for prevented planting will be 50% of the guarantee for timely planted acreage and applies to acreage not planted within 25 days after the latest final planting date. The current prevented planting endorsement provides for liability for 35% of the

guarantee. The increase to 50% will provide additional protection to farmers; however, it will also increase premium requirements.

6. If the unit is planted within 25 days after the latest final planting date, with any non-conserving crop maturing in the same calendar year, a prevented planting payment will not be made.

7. When the insured crop is planted more than 25 days after the final planting date for the insured crop, but not later than 55 days after the latest final planting date, the salvage value of any production will be production to count against the prevented planting guarantee. When a substitute crop is planted between 25 and 55 days after the latest final planting date, the salvage value of the substitute crop will be production to count. The amount of production to count will be the result of dividing the dollar amount received for the crop by the highest price election available for the insured crop.

8. If the insured is prevented from planting the insured crop and a substitute crop is not planted within 55 days after the latest final planting date for the current crop year, a prevented planting payment will be made.

9. When the insured is prevented from planting the insured crop by the final planting date, the insured may choose to:

(1) Plant the insured crop after the planting date and have coverage under the late planting or prevented planting provisions;

(2) Plant a substitute crop (no coverage is provided for the substitute crop unless it is insured under a separate crop endorsement to your policy); or

(3) Leave the acreage unplanted and receive a prevented planting payment.

10. For corn and grain sorghum, the maximum acreage eligible for prevented planting coverage will be equal to the greater of the previous years planted acreage or the Agricultural Stabilization and Conservation Service (ASCS) base acreage applicable to the farm less any acreage reduction necessary to comply with the current year ASCS price support program. The maximum eligible acreage for soybeans will be 100 percent of the soybean acreage planted the previous year.

11. To be eligible for a prevented planting indemnity, the acreage that was prevented from being planted must exceed the lesser of 20 acres or 20 percent of the unit.

12. Prevented planting coverage will not be provided for:

(1) High risk land unless we agree in writing;

(2) Land used for acreage conservation (ASCS's Acreage Reduction Program (ARP)); or

(3) Land where any crop has been harvested in the same calendar year.

13. Land entered into any program administered by the United States Department of Agriculture that provides a payment for not planting the acreage, eg. the 0/92 or Conservation Reserve programs, will not be eligible for prevented planting coverage.

14. When the insured is prevented from planting or is prevented from planting timely and plants a crop subject to salvage provisions, the per acre premium for the acreage will be the same as for timely planted acreage. When the farmer paid premium for late or prevented planting exceeds the liability, coverage will not be provided.

15. The insured may decline late and prevented planting coverage if written notification is provided to the agent by the sales closing date.

16. This coverage will require an appropriate premium charge commensurate with the risks assumed. For 1992, a premium charge will be quoted for the option which may be accepted or rejected by the insured. For 1993, the provision would be incorporated in the policy. The insured would have the option of removing the coverage, in writing, with a pre-determined reduction in premium considered appropriate for the reduced risk to the insurer.

FCIC is soliciting written comments on this rule for 15 days following publication in the Federal Register.

Written comments should be sent to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250.

Written comments received pursuant to this rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; Corn, Grain sorghum, and Soybeans.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1993 and succeeding crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR § 401.111 is amended by revising and reissuing paragraph 10 and adding new paragraphs 11 and 12, to read as follows:

§ 401.111 Corn endorsement.

* * * * *

10. Meaning of Terms

a. *Days*—means calendar days.

b. *Drought*—means a lack of precipitation which is general in the county; occurs prior to and during the planting period; and makes production of a crop improbable.

c. *Final planting date*—means the date contained in the actuarial table by which the insured crop must initially be planted in order to be insured for the full production guarantee.

d. *Harvest*—(of corn on the unit) means completion of combining or picking the corn for grain or the chopping of corn for silage as applicable.

e. *High risk land*—means land on which crop damage occurs more frequently than is normal in the county and may be characterized by frequent flooding, excess moisture, or soil types that may be highly drought prone. This land is not classified in an "R" classification on the actuarial table.

f. *Irrigated practice*—means applying adequate water at the proper time to produce at least the yield used to establish the guarantee on the irrigated corn.

g. *Latest final planting date*—means the latest final planting date, as established by the actuarial table, for any insurable crop in the county to be planted for harvest in the same crop year as the prevented planting crop, except tobacco, fresh market sweet corn, fresh market peppers, and fresh market tomatoes.

h. *Non-conserving crop*—means any crop planted for harvest as food, feed, or fiber.

i. *Replanting*—means performing the cultural practice necessary to place the corn seed in the insured acreage with the expectation of growing a normal crop.

j. *Section*—is a unit of measure under the rectangular survey system describing a tract of land generally one mile square, usually containing approximately 640 acres.

k. *Silage*—means corn harvested by severing the stalk from the land and chopping the stalk and the ear for the purpose of livestock feed.

11. Late Planting

a. When you elect to plant corn after the final planting date, your production guarantee will be reduced by:

(1) One percent (1%) for each of the first ten days after the final planting date; and

(2) Two percent (2%) each day for the eleventh through the twenty-fifth day after the final planting date.

Corn planted later than the twenty-fifth day after the final planting date will be subject to section 12 which contains

provisions for coverage for acreage you are prevented from planting.

b. Subsection 2.e.(4) of the General Crop Insurance Policy will not apply to corn.

c. When the farmer paid premium (gross premium less our subsidy) for late planted acreage exceeds our liability on the acreage, coverage will not be provided (no premium will be due and no indemnity will be paid).

d. You are automatically covered under the late and prevented planting provisions of this policy. However, you may decline these coverages if you notify us, in writing, by the sales closing date. If you decline the coverage for any crop year and determine that you wish coverage in subsequent crop years, you must notify us, in writing, by the sales closing date to reinstate these coverages for any succeeding crop year.

12. Prevented Planting

a. Coverage is provided only for acreage which you are unavoidably prevented from planting due to:

(1) Excess moisture; or

(2) Drought, if drought is general in the area and we agree in writing that drought will be an insurable cause of loss. Drought will not be considered an insurable cause of loss for the irrigated practice.

b. The acreage covered will be limited to the greater of the number of acres planted to corn for the previous crop year on the Agricultural Stabilization and Conservation Service (ASCS) farm serial number, or the ASCS base acreage for corn reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture. Acreage insurable for prevented planting must meet all applicable policy requirements for insurability. A minimum of 20 acres or 20 percent of the acres in the unit, whichever is smaller, must be prevented from being planted to be eligible for a prevented planting indemnity. If acreage intended for corn cannot be planted by the final planting date due to an insured prevented planting cause of loss, you may:

(1) Plant the insured crop after the final planting date and have coverage under the late planting or prevented planting provisions, whichever is applicable;

(2) Plant a substitute crop and have coverage under the prevented planting provisions. Coverage is not provided for prevented planting if the substitute crop is planted within 25 days after the latest planting date. (Insurance for any substitute crop is not provided unless insured under a separate endorsement to your policy); or

(3) Leave the acreage unplanted and receive a prevented planting indemnity under the terms of this endorsement.

c. Prevented planting coverage will not be provided for:

(1) High risk land unless we agree to provide prevented planting coverage, in writing, prior to the acreage reporting date for the insured crop;

(2) Land used for acreage conservation under any acreage reduction program administered by the United States Department of Agriculture;

(3) Land that is entered into any program administered by the United States Department of Agriculture that provides a payment for not planting the acreage (such as the Conservation Reserve Program); or

(4) Land where any crop has been harvested in the same calendar year.

d. You must report the number of acres eligible for prevented planting coverage no later than 60 days after the latest final planting date. This report will be your notice of loss for the purpose of prevented planting coverage. No more than 100 percent of the number of acres planted for corn production and irrigated during the previous crop year will be eligible for a prevented planting indemnity using an irrigated practice guarantee. Prevented planting for irrigated coverage will only be approved if the acreage prevented from planting is prepared for irrigation, and if sufficient irrigation equipment is available to carry out an irrigated practice on the acreage claimed prevented from planting.

e. When acreage that may qualify for a prevented planting indemnity is reported, the premium for the acreage will be the same as for timely planted acreage. If the farmer paid premium amount for this acreage exceeds the prevented planting liability, coverage will not be provided (no premium will be due and no indemnity will be paid).

f. The prevented planting indemnity will be calculated as follows:

(1) Multiply the number of acres eligible for a prevented planting indemnity by the production guarantee;

(2) Divide this result by two (2);

(3) Subtract the result obtained by dividing the value of any production from a substitute crop by the highest price election available for corn as contained in the actuarial table;

(4) Multiply this result by your price election; and

(5) Multiply this result by your share. (i.e.)

$$\left(\frac{\text{acres} \times \text{guarantee}}{2} - \left(\frac{\text{salvage}}{\text{high price}}\right)\right) \times \text{your price election} \times \text{share} = \text{indemnity}$$

g. Acreage will be considered for a prevented planting indemnity only if the acreage is not planted:

(1) To corn within 25 days after the final planting date for corn; and

(2) To any crop other than corn, that normally matures in the same crop year, within 25 days after the latest final planting date.

h. When corn is planted 26, or more, days after the corn final planting date and 55, or fewer, days after the latest final planting date, or when any non-conserving crop normally maturing in the same calendar year is planted 26 or more and 55 or less days after the latest final planting date, any production on the acreage will be counted against the prevented planting guarantee as shown in subsection 12.f.(3), above. Such production will count against the prevented planting guarantee on a per acre basis (the production will not count against the guarantee for acreage left unplanted). The value of the substitute crop will be the actual value received if the crop has been marketed, or the value which could be received if the crop has not been marketed. The value for such production will be established on the day we determine the loss.

i. If any crop is planted 56 or more days after the latest final planting date, there will be no value to count against the prevented planting amount of insurance.

3. 7 CFR 401.113 is amended by revising and reissuing paragraph 10 and adding new paragraphs 11 and 12, to read as follows:

§ 401.113 Grain sorghum endorsement.

* * * * *

10. Meaning of Terms

a. *Days*—means calendar days.

b. *Drought*—means a lack of precipitation which is general in the country; occurs prior to and during the planting period; and makes production of a crop improbable.

c. *Final planting date*—means the date contained in the actuarial table by which the insured crop must initially be planted in order to be insured for the full production guarantee.

d. *Harvest*—(of grain sorghum on the unit) means completion of combining or threshing of grain sorghum for grain or the chopping of grain sorghum for silage as applicable.

e. *High risk land*—means land on which crop damage occurs more frequently than is normal in the county and may be characterized by frequent flooding, excess moisture, or soil types that may be highly drought prone. This land is not classified in an "R" classification on the actuarial table.

f. *Irrigated practice*—means applying adequate water at the proper time to produce at least the yield used to establish the guarantee on the irrigated grain sorghum.

g. *Latest final planting date*—means the latest final planting date, as established by the actuarial table, for any insurable crop in the county to be planted for harvest in the same crop year as the prevented planting crop, except tobacco, fresh market sweet corn, fresh market peppers, and fresh market tomatoes.

h. *Non-conserving crop*—means any crop planted for harvest as food, feed, or fiber.

i. *Replanting*—means performing the cultural practice necessary to place the grain sorghum seed in the insured acreage with the expectation of growing a normal crop.

j. *Section*—is a unit of measure under the rectangular survey system describing a tract of land generally one mile square, usually containing approximately 640 acres.

k. *Silage*—means grain sorghum harvested by severing the stalk from the land and chopping the stalk for the purpose of livestock feed.

11. Late Planting

a. When you elect to plant grain sorghum after the final planting date, your production guarantee will be reduced by:

(1) One percent (1%) for each of the first ten days after the final planting date; and

(2) Two percent (2%) each day for the eleventh through the twenty-fifth day after the final planting date.

Grain sorghum planted later than the twenty-fifth day after the final planting date will be subject to section 12 which contains provisions for coverage for acreage you are prevented from planting.

b. Subsection 2.e.(4) of the General Crop Insurance Policy will not apply to grain sorghum.

c. When the farmer paid premium (gross premium less our subsidy) for late planted acreage exceeds our liability on the acreage, coverage will not be provided (no premium will be due and no indemnity will be paid).

d. You are automatically covered under the late and prevented planting provisions of this policy, However, you may decline these coverage if you notify us, in writing, by the sales closing date. If you decline these coverages for any crop year and determine that you wish coverage in subsequent crop years, you must notify us, is writing, by the sales closing date to reinstate these coverages for any succeeding crop year.

12. Prevented Planting

a. Coverage is provided only for acreage which you are unavoidably prevented from planting due to:

(1) Excess moisture; or

(2) Drought, if drought is general in the area and we agree in writing that drought will be a insurable cause of loss. Drought will not be considered an insurable cause of loss for the irrigated practice.

b. The acreage covered will be limited to the greater of the number of acres planted to grain sorghum for the previous crop year on the Agricultural Stabilization and Conservation Service (ASCS) farm serial number, or the ASCS base acreage for grain sorghum reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture.

Acreage insurable for prevented planting must meet all applicable policy requirements for insurability. A minimum of 20 acres or 20 percent of the acres in the unit, whichever is smaller, must be prevented from being planted to be eligible for a prevented planting indemnity. If acreage intended for grain sorghum cannot be planted by the final planting date, due to an insured prevented planting cause of loss, you may:

(1) Plant the insured crop after the final planting date and have coverage under the late planting or prevented planting provisions;

(2) Plant a substitute crop and have coverage under the prevented planting provisions. Coverage is not provided for prevented planting if the substitute crop is planted within 25 days after the latest planting date. (Insurance for any substitute crop is not provided unless insured under a separate endorsement to your policy); or

(3) Leave the acreage unplanted and receive a prevented planting indemnity under the terms of this endorsement.

c. Prevented planting coverage will not be provided for:

(1) High risk land unless we agree to prevented planting coverage, in writing, prior to the acreage reporting date for the insured crop;

(2) Land used for acreage conservation under any acreage reduction program administered by the United State Department of Agriculture;

(3) Land that is entered into any program administered by the United States Department of Agriculture that provides a payment for not planting the acreage (such as the Conservation Reserve Program); or

(4) Land where any crop has been harvested in the same calendar year.

d. You must report the number of acres eligible for prevented planting coverage no later than 60 days after the latest final planting date. This report will be your notice of loss for the purpose of prevented planting coverage. No more than 100 percent of the number of acres planted for grain sorghum production and irrigated during the previous crop year will be eligible for a prevented planting indemnity using an irrigated practice. Prevented planting for irrigated coverage will only be approved if the acreage prevented from planting is prepared for irrigation, and if sufficient irrigation equipment is available to carry out an irrigated practice on the acreage claimed prevented from planting.

e. When acreage that may qualify for a prevented planting indemnity is reported, the premium for the acreage will be the same as for timely planted acreage. If the farmer paid premium amount for this acreage exceeds the prevented planting liability, coverage will not be provided (no premium will be due and no indemnity will be paid).

f. The prevented planting indemnity will be calculated as follows:

(1) Multiply the number of acres eligible for a prevented planting indemnity by the production guarantee;

(2) Divide this result by two (2);

(3) Subtract the result obtained by dividing the value of any production from a substitute crop by the highest price election available for grain sorghum as contained in the actuarial table;

(4) Multiplying this result by your price election; and

(5) Multiplying this result by your share. (i.e.)

$$\left(\frac{\text{acres} \times \text{guarantee}}{2} - \left(\frac{\text{salvage}}{\text{high price}}\right)\right) \times \text{your price election} \times \text{share} = \text{indemnity}$$

g. Acreage will be considered for a prevented planting indemnity only if the acreage is not planted:

(1) To grain sorghum within 25 days after the final planting date for grain sorghum; and

(2) To any crop other than grain sorghum, that normally matures in the same crop year, within 25 days after the latest final planting date.

h. When grain sorghum is planted 26, or more, days after the grain sorghum final planting date and 55, or fewer, days after the latest final planting date, or when any non-conserving crop normally maturing in the same calendar year is planted 26 or more and 55 or less days after the latest final planting date, any production on the acreage will be counted against the prevented planting guarantee as shown in subsection 12.f.(3), above. Such production will count against the prevented planting guarantee on a per acre basis (the production will not count against the guarantee for acreage left unplanted). The value of the substitute crop will be the actual value received if the crop has been marketed, or the value which could be received if the crop has not been marketed. The value for such production will be established on the day we determine the loss.

i. If any crop is planted 56 or more days after the latest final planting date, there will be no value to count against the prevented planting amount of insurance.

4. 7 CFR § 401.117 is amended by revising and reissuing paragraph 10 and adding new paragraphs 11 and 12, to read as follows:

§ 401.117 Soybean endorsement.

* * * * *

10. Meaning of Terms

a. *Days*—means calendar days.

b. *Drought*—means a lack of precipitation which is general in the county; occurs prior to and during the planting period; and makes production of a crop improbable.

c. *Final planting date*—means the date contained in the actuarial table by which the insured crop must initially be planted in order to be insured for the full production guarantee.

d. *Harvest*—(of soybeans on the unit) means completion of combining or threshing of soybeans on the unit.

e. *High risk land*—means land on which crop damage occurs more frequently than is normal in the county and may be characterized by frequent flooding, excess moisture, or soil types that may be highly drought prone. This land is not classified in an "R" classification on the actuarial table.

f. *Irrigated practice.*—means applying adequate water at the proper time to produce at least the yield used to establish the guarantee on the irrigated soybeans.

g. *Latest final planting date*—means the latest final planting date, as established by the actuarial table, for any insurable crop in the county to be planted for harvest in the same crop year as the prevented planting crop, except tobacco, fresh market sweet corn, fresh market peppers, and fresh market tomatoes.

h. *Non-conserving crop*—means any crop planted for harvest as food, feed, or fiber.

i. *Replanting*—means performing the cultural practice necessary to place the soybean seed in the insured acreage with the expectation of growing a normal crop.

j. *Section*—is a unit of measure under the rectangular survey system describing a tract of land generally one mile square, usually containing approximately 640 acres.

11. Late Planting

a. When you elect to plant soybeans after the final planting date, your production guarantee will be reduced by:

(1) One percent (1%) for each of the first ten days after the final planting date; and

(2) Two percent (2%) each day for the eleventh through the twenty-fifth day after the final planting date.

Soybeans planted later than the twenty-fifth day after the final planting date will be subject to section 12 which contains provisions for coverage for acreage you are prevented from planting.

b. Subsection 2.e.(4) of the General Crop Insurance Policy will not apply to soybeans.

c. When the farmer paid premium (gross premium less our subsidy) for late planted acreage exceeds our liability on the acreage, coverage will not be provided (no premium will be due and no indemnity will be paid).

d. You are automatically covered under the late and prevented planting provisions of this policy. However, you may decline these coverages if you notify us, in writing, by the sales closing date. If you decline these coverages for any crop year and determine that you wish coverage in subsequent crop years, you must notify us, in writing, by the sales closing date to reinstate these coverages for any succeeding crop year.

12. Prevented Planting

a. Coverage is provided only for acreage which you are unavoidably prevented from planting due to:

(1) Excess moisture; or

(2) Drought, if drought is general in the area and we agree in writing that drought will be an insurable cause of loss. Drought will not be considered an insurable cause of loss for the irrigated practice.

b. The acreage covered will be limited to 100 percent of the number of acres planted to soybeans for the previous crop year on the Agricultural Stabilization and Conservation Service (ASCS) farm serial number. Acreage insurable for prevented planting must meet all applicable policy requirements for insurability.

A minimum of 20 acres or 20 percent of the acres in the unit, whichever is smaller, must be prevented from being planted to be eligible for a prevented planting indemnity. If acreage intended for soybeans cannot be planted by the final planting date, due to an insured prevented planting cause of loss, you may:

(1) Plant the insured crop after the final planting date and have coverage under the late planting or prevented planting provisions, whichever is applicable;

(2) Plant a substitute crop and have coverage under the prevented planting provisions. Coverage is not provided for prevented planting if the substitute crop is planted within 25 days after the latest planting date. (Insurance for any substitute crop is not provided unless insured under a separate endorsement to your policy); or

(3) Leave the acreage unplanted and receive a prevented planting indemnity under the terms of this endorsement.

c. Prevented planting coverage will not be provided for:

(1) High risk land unless we agree to prevented planting coverage, in writing, prior to the acreage reporting date for the insured crop;

(2) Land used for acreage conservation under any acreage reduction program administered by the United States Department of Agriculture;

(3) Land that is entered into any program administered by the United States Department of Agriculture that provides a payment for not planting the acreage (such as the Conservation Reserve Program); or

(4) Land where any crop has been harvested in the same calendar year.

d. You must report the number of acres eligible for prevented planting coverage no later than 60 days after the latest final planting date. This report will be considered as your notice of loss for the purpose of prevented planting coverage. No more than 100 percent of the number of acres planted for soybean production and irrigated during the previous crop year will be eligible for a prevented planting indemnity using an irrigated practice guarantee. Prevented planting for irrigated coverage will only be approved if the acreage prevented from planting is prepared for irrigation, and if sufficient irrigation equipment is available to carry out an irrigated practice on the acreage claimed prevented from planting.

e. When acreage that may qualify for a prevented planting indemnity is reported, the premium for the acreage will be the same as for timely planted acreage. If the farmer paid premium amount for this acreage exceeds the prevented planting liability, coverage will not be provided (No premium will be due and no indemnity will be paid).

f. The prevented planting indemnity will be calculated as follows:

(1) Multiply the number of acres eligible for a prevented planting indemnity by the production guarantee;

(2) Divide this result by two (2);

(3) Subtract the result obtained by dividing the value of any production from a substitute crop by the highest price election available for soybeans as contained on the actuarial table;

(4) Multiply this result by your price election; and

(5) Multiply this result by your share. (i.e.)

$$\left(\frac{\text{acres} \times \text{guarantee}}{2} - \left(\frac{\text{salvage}}{\text{high price}}\right)\right) \times \text{your price election} \times \text{share} = \text{indemnity}$$

g. Acreage will be considered for a prevented planting indemnity only if the acreage is not planted:

(1) To soybeans within 25 days after the final planting date for soybeans; and

(2) To any crop other than soybeans, that normally matures in the same crop year, within 25 days after the latest final planting date.

h. When soybeans are planted 25, or more, days after the soybean final planting date and 55, or fewer, days after the latest final planting date, or when any non-conserving crop normally maturing in the same calendar year is planted 26 or more and 55 or less days after the latest final planting date, any production on the acreage will be counted against the prevented planting guarantee as shown in subsection 12.f.(3), above. Such production will count against the prevented planting guarantee on a per acre basis (the production will not count against the guarantee for acreage left unplanted). The value of the substitute crop will be the actual value received if the crop has been marketed, or the value which could be received if the crop has not been marketed. The value for such production will be established on the day we determine the loss.

i. If any crop is planted 56 or more days after the latest final planting date, there will be no value to count against the prevented amount of insurance.

Done in Washington DC on December 17, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-678 Filed 1-8-92; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-251-AD]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD), applicable to certain Model A320 series airplanes, which would require inspection to detect chafing of the wire looms in the wing and the horizontal stabilizer and repair or replacement, protection, and realignment, if necessary. This proposal is prompted by an incident in which a wire loom short circuit caused fire extinguishant to discharge and pop the circuit breaker for a brake fan. The actions specified by the proposed AD are intended to prevent electrical short circuiting due to chafing of the wire loom in the wing and the horizontal stabilizer.

DATES: Comments must be received by February 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-251-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier, Daurat 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. Comments

may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Grey Holt, Aerospace Engineer, Standization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–251–AD." The postcard will be date stamped and returned to the commented.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention Rules Docket No. 91–NM–251–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 series airplanes. The French DGAC advises that, on an in-service Model A320 series airplane, a wire loom short circuit caused fire extinguishant to discharge and pop the circuit breaker for a brake fan. Investigation of this incident indicated that the wire loom made contact with the end fittings of the protective conduit. Subsequent inspection of other wire looms, passing through similar conduit assemblies, indicated that the wire looms were incorrectly aligned in the holding clamps; in other instances, the single or double wires were not guided by loop clamps at the end fittings. Subsequent vibration from the airplane caused chafing and the resultant short circuit. Only wire looms and conduits in the wings and horizontal stabilizer are affected by this problem. This condition, if not corrected, could result in an electrical short circuit due to chafing of a wire loom in the wing and the horizontal stabilizer.

Airbus Industrie has issued Service Bulletin A320–24–1044, Revision 1, dated August 23, 1991, which describes procedures for inspection of the wire looms in the wing and the horizontal stabilizer to detect chafing or contact with the end fittings of the protective conduit and repair or replacement. Airbus Industrie has also issued Service Bulletin A320–24–1045, Revision 1, dated August 23, 1991, which describes procedures for protection and realignment of the wire looms in the wing and the horizontal stabilizer. The French DGAC has classified these service bulletins as mandatory and has issued Airworthiness Directive 91–182–020(B) in order to assure the airworthiness of these airplanes in France.

This airplane model is manufactured in France and type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the French DGAC has kept the FAA totally informed of the above situation. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspection to detect chafing of the wire looms in the wing and the horizontal stabilizer and repair or replacement, protection, and realignment, if necessary. The actions would be required to be accomplished in accordance with the service bulletins previously described.

It is estimated that 30 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be nominal in cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $16,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 91–NM–251–AD.
Applicability: Model A320 series airplanes, manufacturer's serial numbers through 169, inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an electrical short circuit due to chafing of the wire loom in the wing and the horizontal stabilizer, accomplish the following:

(a) Prior to the accumulation of 450 hours time-in-service after the effective date of this AD, inspect the wire looms in wing zones 574 and 674 to detect chafing or contact with the end fittings of the protective conduit, in accordance with Airbus Industrie Service Bulletin A320-24-1044, Revision 1, dated August 23, 1991. Repeat this inspection, thereafter, at intervals not to exceed 450 hours time-in-service.

(1) If any wire is found chafed or damaged due to overheating, prior to further flight, repair or replace it in accordance with the Airplane Maintenance Manual.

(2) If any wire loom is found incorrectly guided through the conduit end fitting, prior to further flight, realign and protect the loom in accordance with Airbus Industrie Service Bulletin A320-24-1045, Revision 1, dated August 23, 1991; or in accordance with the temporary repair described in Note 1 of paragraph 2.B.(2)(c) of Airbus Service Bulletin A320-24-1044, Revision 1, dated August 23, 1991.

(b) Prior to the accumulation of 1,500 hours time-in-service after the effective date of this Ad, inspect the wire looms in the wing and horizontal stabilizer, excluding wing zones 574 and 674, to detect chafing or contact with the ending fittings of the protective conduit, in accordance with Airbus Industrie Service Bulletin A320-24-1044, Revision 1, dated August 23, 1991. Repeat this inspection, thereafter, at intervals not to exceed 3,100 hours time-in-service.

(1) If any wire is found chafed or damaged due to overheating, prior to further flight, repair or replace it in accordance with the Airplane Maintenance Manual.

(2) If any wire loom is found incorrectly guided through the end fitting of the conduit, prior to further flight, realign and protect the loom in accordance with Airbus Industrie Service Bulletin A320-24-1045, Revision 1, dated August 23, 1991; or in accordance with the temporary repair described in Note 1 of paragraph 2.B.(2)(c) of Airbus Service Bulletin A320-24-1044, Revision 1, dated August 23, 1991.

(c) Accomplishment of the realignment and protection of the looms in accordance with Airbus Industrie Service Bulletin A320-24-1045, Revision 1, dated August 23, 1991, constitutes terminating action for the repetitive inspections required by paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-598 Filed 1-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-233-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which currently requires that certain landing gear brakes be inspected for wear and replaced if the wear limits prescribed are not met, and that the landing gear brake wear limits be incorporated into the FAA-approved maintenance inspection program. This action would require the inspection of certain additional landing gear brakes, which were not listed in the existing rule, for wear, replacement of the brakes if the wear limits prescribed in this proposal are not met, and the incorporation of new maximum wear limits into the FAA-approved maintenance inspection program. This proposal is prompted by the determination of the allowable wear limits for the additional brakes. The requirements proposed by this action are intended to prevent the loss of braking effectiveness of the landing gear brakes.

DATES: Comments must be received no later than February 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-233-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; Allied-Signal Aerospace Company, Bendix Wheels and Brakes Division, South Bend, Indiana 46628; and BFGoodrich Aerospace, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David M. Herron, Aerospace Engineer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056, telephone (206) 227-2672, fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-233-AD." The postcard will be date stamped and returned to the commerter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, Attention: Rules Docket No. 91-NM-233-AD, 1601 Lind Avenue SW., Renton, Washington 98055.4056.

Discussion

On September 26, 1991, the FAA issued AD 91-18-07, Amendment 39-8010 (56 FR 51162, October 10, 1991), to require that certain landing gear brakes installed on Model 727 series airplanes

be inspected for wear and replaced if the wear limits prescribed are not met, and that maximum wear limits for landing gear brakes be incorporated into the FAA-approved maintenance inspection program. That action was prompted by an accident in which a transport airplane executed a rejected takeoff (RTO) and was unable to stop on the runway. An investigation revealed that 8 out of 10 brakes on the airplane were unable to absorb the required RTO energy, thus contributing to the accident. That condition, if not corrected, could have resulted in loss of brake effectiveness during a high energy RTO and cause further incidents/accidents.

Since issuance of that AD, additional brakes, not included in the original rule, have been evaluated and their maximum allowable brake wear limits have been determined in accordance with the methodology approved by the FAA. The FAA has determined that airplanes equipped with these additional brakes are currently subject to the same unsafe condition addressed in the existing AD and that new maximum brake wear limits must be applied to these brake configurations in order to ensure braking effectiveness.

The FAA has reviewed and approved BFGoodrich Service Bulletins 2-1147-32-13 and 2-1190-32-13, both dated November 26, 1990; and Bendix Service Bulletin 2601182-32-014, dated January 30, 1991; which describe methods for adjusting currently recommended brake wear limits to account for the decreases determined in accordance with the methodology for determining allowable wear accepted by the FAA.

Since the unsafe condition described is likely to exist or develop on other products of this same type design equipped with the addressed brake configurations, the proposed AD would supersede AD 91-18-07 to require that certain additional landing gear brakes be inspected for wear and replaced if the wear limits prescribed are not met, and that maximum landing gear brake wear limits be incorporated into the FAA-approved maintenance inspection program.

This proposal also corrects a typographic error regarding one of the service bulletins referenced in the existing rule.

There are approximately 1,706 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 953 airplanes of U.S. registry and 27 operators would be affected by this proposed AD; 26 airplanes and 13 operators are added by this action; 953 airplanes of U.S. registry would take approximately 15 work hours per airplane to accomplish the required actions, and that the average labor cost would be $55 per work hour. In addition, it is estimated that the cost of parts to accomplish the change in wear limits to 943 of these airplanes (cost resulting from the requirement to change brakes before they are worn to their previously approved limits for a one-time change) is estimated to be an average of $2,500 per airplane. Another 10 airplances would cost an average of $5,580 per airplane. Further, it is estimated that it will require 20 work hours per operator, at an average labor cost of $55 per work hour, to incorporate the requirements into an operator's FAA-approved maintenance inspection program. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,229,225.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Exective Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a signifcant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-8010 and by adding the following new airworthiness directive:

Boeing: Docket No. 91-NM-233-AD. Supersedes AD 91-18-07, Amendment 39-8010.

Applicability: Model 727 series airplanes, equipped with brake part numbers (P/N) identified in Tables 1 and 2 of this AD, certificated in any category.

Compliance required as indicated, unless accomplished previously.

To prevent loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after November 12, 1991 (the effective date of Amendment 39-8010, AD 91-18-07) inspect the brake part numbers shown in Table 1, below, for wear. Any brake worn more than the maximum wear limit specified must be replaced, prior to further flight, with either a brake within that maximum wear limit or one built in accordance with the appropriate service bulletins specified in paragraphs (c), (d), or (e) of this AD, as applicable.

TABLE 1

Brake mfr.	Brake P/N	Boeing P/N	Max. wear limit (inches)
BFGoodrich...	2-1147	10-61287-10	1.6
BFGoodrich...	2-1147-1	10-61287-12	1.6
BFGoodrich...	2-1147-3	10-61287-18	1.6
BFGoodrich...	2-1147-4	10-61287-25	1.6
BFGoodrich...	2-1190	10-61287-13	1.6
Bendix.....	2601182-6	10-61287-23	1.7

(b) Within 180 days after November 12, 1991 (the effective date of Amendment 39-8010, AD 91-18-07), incorporate the maximum brake wear limits specified in paragraph (a) of this AD into the FAA-approved maintenance program.

(c) The allowable wear limits for BFGoodrich (BFG) brake part numbers 2-1147 and 2-1147-1, -3, and -4 may be established in accordance with BFG Service Bulletin No. 2-1147-32-13, dated December 21, 1990, and placed into the operator's FAA-approved maintenance program in lieu of those specified in paragraph (a) of this AD.

(d) The allowable wear limit for BFGoodrich (BFG) brake part number 2-1190 may be established in accordance with BFG Service Bulletin No. 2-190-32-13, dated December 21, 1990, and placed into the operator's FAA-approved maintenance program in lieu of that specified in paragraph (a) of this AD.

(e) The allowable wear limit for Bendix brake part number 2601182-6 may be established in accordance with Bendix Service Bulletin No. 2601182-32-014, dated January 30, 1991, in lieu of that specified in paragraph (a) of this AD. Either this service bulletin or the wear limit specified in paragraph (a) of this AD shall be placed into

the operator's FAA-approved maintenance program, but not both.

(f) Within 180 days after the effective date of this AD, inspect the brake part numbers shown in Table 2, below, for wear. Any brake worn more than the maximum wear limit specified must be replaced, prior to further flight, with a brake within that maximum wear limit:

TABLE 2

Brake mfr.	Brake P/N	Boeing P/N	Max. wear limit (inches)
Bendix	2601182-5	10-61287-22	1.8.
BFGoodrich	2-872-5	10-60465-18	0.50.
BFGoodrich	2-873	10-60485-1	0.43

(g) Within 180 days after the effective date of this AD incorporate the maximum brake wear limits specified in Table 2 of paragraph (f) of this AD into the FAA-approved maintenance program.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-599 Filed 1-9-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-217-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 737 series airplanes, which would require that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this amendment are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway. An investigation revealed that eight out of ten brakes were near the maximum allowable wear limits before the RTO and were unable to absorb the required RTO energy, thus contributing to the accident. This condition, if not corrected, could result in loss of brake effectiveness during a high energy RTO and cause further incidents/accidents.

DATES: Comments must be received no later than February 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-217-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; and BFGoodrich Aerospace, Aircraft Wheels and Brakes Division, P.O. Box 340, Troy, Ohio 45373. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2672. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-217-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-217-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

In 1988, a McDonnel Douglas Model DC-10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed and the airplane ran off the end of the runway. Investigation revealed that there were O-rings damaged by over-extension of the pistons due to extensive brake wear on each of the eight brakes. Fluid leaking from the over-extended pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of the methodology used in the determination of the allowable wear limits for all transport category airplane brakes. Worn brake rejected takeoff (RTO) dynamometer testing and analyses were conducted for the Model DC-10 series brakes and a new set of reduced allowable wear limits were established; the use of these limits for the Model DC-10 is required by AD 90-01-01, Amendment 39-6431 (54 FR 53048, December 27, 1989.

The FAA and the Aerospace Industries Association (AIA) worked together to develop a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. The final test guidelines were sent from the FAA to the AIA on March 2, 1990. It should be noted that this worn-brake accountability determination validates brake wear limits with respect to brake energy capacity only and is not meant to account for any reduction in brake force due solely to the wear state of the brake. Any reduction in brake force (or torque) that may develop over time as a result of brake wear is to be evaluated and accounted for as part of a separate rulemaking project. The guidelines for validating brake wear limits allow credit for use of reverse thrust to determine

energy level absorbed by the brake during the dynamometer test.

The FAA has requested that U.S. airframe manufacturers (1) determine required adjustments in allowable wear limits for all of its brakes in use, (2) schedule dynamometer testing to validate wear limits as necessary, and (3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated. Boeing Commercial Airplane Group has submitted, and the FAA has evaluated, a series of dynamometer test data and analyses concerning brakes installed on the Model 737 series airplanes. Based on this data, the FAA has determined that the brake wear limits currently recommended in the Component Maintenance Manuals for the Model 737 series airplanes are not acceptable as they relate to the effectiveness of the brakes during a high energy RTO. Further, these limits are only recommended values. The FAA has determined that the following criteria for the Model 737 brakes, specifically the new maximum brake wear limits indicated in the last column, are necessary:

Vendor	Vendor P/N	Boeing P/N	Vendor service bulletin	Wear limit (inches)
Bendix	2601042-4	10-61063-18	None	1.36
Bendix	2601042-3	10-61063-14	None	1.36
Bendix	2601042-2	10-61063-13	None	1.36
Bendix	2601042-1	10-61063-12	None	1.36
Bendix	2601042-5	10-61063-21	None	1.63
Bendix	2603442-2	10-61819-5	None	0.50
Bendix	2603442-3	10-61819-6	None	0.50
Bendix	2606672-1	10-61819-14	None	1.38
Bendix	2606672-4	10-61819-28	None	1.60
Bendix	2606672-3	10-61819-21	None	1.60
Bendix	2606672-2	10-61819-17	None	1.60
BFG *	2-1444	10-61819-11	2-1444-32-5	1.50
BFG	2-1474-5	10-61819-31	2-1474-32-13, Revision 1	1.0 to 1.3 **
BFG	2-1474-3	10-61819-27	2-1474-32-13, Revision 1	1.0 to 1.3 **
BFG	2-1474-2	10-61819-26	2-1474-32-13, Revision 1	1.0 to 1.3 **
BFG	2-1474-1	10-61819-22	2-1474-32-13, Revision 1	1.0 to 1.3 **
BFG	2-1474	10-61819-15	2-1474-32-13, Revision 1	1.0 to 1.3 **
BFG	2-1474-5	10-61819-31	2-1474-32-14, Revision 1	1.55 ***
BFG	2-1474-3	10-61819-27	2-1474-32-14, Revision 1	1.55 ***
BFG	2-1474-2	10-61819-26	2-1474-32-14, Revision 1	1.55 ***
BFG	2-1474-1	10-61819-22	2-1474-32-14, Revision 1	1.55 ***
BFG	2-1474	10-61819-15	2-1474-32-14, Revision 1	1.55 ***
BFG	2-1521	10-62174-2	None	1.00

* BFG = BFGoodrich.
** Depending on build (see noted service bulletin).
*** Model 737-200 only.

The FAA has reviewed and approved the following BFGoodrich Service Bulletins:

Number	Date
2-1444-32-5	Jan. 24, 1991.
2-1474-32-13, Revision 1	July 9, 1991.
2-1474-32-14, Revision 1	June 28, 1991.

These service bulletins describe methods for ascertaining brake wear and alternative means for meeting the reduced wear limits. These service bulletins also describe procedures for overhauling the brakes.

Since this condition is likely to exist or develop on airplanes of this type design, an AD is proposed which would require (1) inspection of Model 737 landing gear brakes for wear, and replacement if the new wear limits are not met; and (2) incorporation of specific maximum wear limits into the FAA-approved maintenance inspection program.

There are approximately 1,850 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 882 airplanes of U.S. registry and 13 operators would be affected by this AD.

For 619 airplanes of U.S. registry, it would take approximately 15 manhours per airplane to accomplish the required actions, and the average labor cost would be $55 per work hour. In addition, the cost of parts to accomplish the change in wear limits for these 619 airplanes (the cost resulting from the requirement to change brakes before they are worn to their previously approved limits for a one-time change) is estimated to be an average of $2,270 per airplane.

For the remaining 263 airplanes there is no change to the currently recommended allowable wear limits and, therefore, no additional costs associated with this action.

Further, it is estimated that it will require 20 work hours per operator, at an average labor cost of $55 per work hour, to incorporate the requirements into an operator's FAA-approved maintenance inspection program.

Based on the figures discussed above, the total cost impact of the AD on U.S. operators is estimated to be $1,930,105.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91–NM–217–AD.

Applicability: Model 737 series airplanes, equipped with a brake part numbers (P/N) identified in paragraphs (a) through (d) of this AD, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after the effective date of this AD, accomplish the following:

(1) Inspect brakes having the brake part numbers shown below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within that limit.

Brake mfr.	Brake P/N	Boeing P/N	Max. wear limit (inches)
Bendix	2601042–1	10–61063–12	1.36
Bendix	2601042–2	10–61063–13	1.36
Bendix	2601042–3	10–61063–14	1.36
Bendix	2601042–4	10–61063–18	1.36
Bendix	2601042–5	10–61063–21	1.63
Bendix	2603442–2	10–61819–5	0.50
Bendix	2603442–3	10–61819–8	0.50
Bendix	2606672–1	10–61819–14	1.38
Bendix	2606672–2	10–61819–17	1.60
Bendix	2606672–3	10–61819–21	1.60
Bendix	2606672–4	10–61819–28	1.60
BFGoodrich	2–1521	10–62174–2	1.00

(2) Incorporate the maximum brake wear limits specified in paragraph (a)(1) of this AD into the FAA-approved maintenance inspection program.

(b) For airplanes equipped with BFGoodrich Brake Part Number (P/N) 2–1444 (Boeing P/N 10–61819–11): Within 180 days after the effective date of this AD, accomplish the following:

(1) Accomplish the procedures described in paragraph 2.B.(1) of the Accomplishment Instructions of BFGoodrich Service Bulletin 2–1444–32–5, dated January 24, 1991. If any brake is found to be worn more than the allowable brake wear limit specified in Table 1 of that service bulletin, prior to further flight, remove and replace the brake with a brake built in accordance with paragraph 2.B.(1)b. of that service bulletin, or with a brake having more than the allowable wear remaining as specified in Table 1 of that service bulletin.

(2) Incorporate the allowable wear limits specified in Column B of Table 1 of BFGoodrich Service Bulletin 2–1444–32–5, dated January 24, 1991, into the FAA-approved maintenance inspection program.

(c) For airplanes equipped with BFGoodrich Brake P/N 2–1474; 2–1474–1, –2, –3, and –5 (Boeing P/N 10–61819–15, –22, –26, –27, and –31): Within 180 days after the effective date of this AD, accomplish the following:

(1) Accomplish one of the procedures described in paragraph 2.B.(1)a. of BFGoodrich Service Bulletin 2–1474–32–13, Revision 1, dated July 9, 1991. If any brake is found to be worn more than the allowable brake wear limit specified in Table 1 of that service bulletin, prior to further flight, remove and replace the brake with a brake built in accordance with paragraph 2.B.(1)b. of that service bulletin, or with a brake having more than the allowable wear specified in Table 1 of that service bulletin.

(2) Incorporate the procedures described in paragraph 2.B.(1)b. of BFGoodrich Service Bulletin 2–1474–32–13, Revision 1, dated July 9, 1991, into the FAA-approved maintenance inspection program.

(d) For brakes specified in paragraph (c) of this AD and used on Model 737–200 series airplanes only: As an alternative to the requirements of paragraph (c) of this AD, operators instead may accomplish the procedures specified in paragraph (d)(1) and (d)(2) of this AD within 180 days after the effective date of this AD:

(1) Accomplish the procedures described in paragraph 2.B.(1)b. of the Accomplishment Instructions of BFGoodrich Service Bulletin 2–1474–32–14, Revision 1, dated June 28, 1991. If any brake is found to be worn more than the allowable brake wear limit specified in Figure 1 of that service bulletin, prior to further flight, remove and replace the brake built in accordance with paragraph 2.B.(1)b. of that service bulletin, or with a brake having more than the allowable wear remaining as specified in Figure 1 of that service bulletin.

(2) Incorporate the procedures described in paragraph 2.B.(1)b. of the Accomplishment Instructions of BFGoodrich Service Bulletin 2–1474–32–13, Revision 1, dated July 9, 1991, into the FAA-approved maintenance inspection program.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–596 Filed 1–9–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–ANE–05]

Airworthiness Directives; Pratt & Whitney (PW) JT9D Series; Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to PW JT9D series turbofan engines. This proposed AD would require initial and repetitive borescope inspections of high pressure turbine (HPT) stage 2 vane assemblies. This proposal is prompted by reports of uncontained engine failures. These failures were caused by distressed vanes inducing high vibratory stress on HPT stage 2 blades and the lenticular airseal. This condition, if not corrected, could result in uncontained HPT stage 2 blade fractures or lenticular airseal failures.

DATES: Comments must be received no later than February 10, 1992.

ADDRESSES: Comments on the proposal may be mailed in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91–ANE–05, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, or may be delivered in duplicate to room 311 at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletin may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Engine Certification Branch, ANE–141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington,

Massachusetts 01803–5299; telephone (617) 270–2410.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–ANE–05." The postcard will be date/time stamped and returned to the commenter.

Discussion

The FAA has determined that malfunctioning rule nozzles or poor vane cooling baffle fit can result in distressed HPT stage 2 vanes. Distressed HPT stage 2 vanes generate an airflow disruption and excessive vibratory excitation on adjacent turbine components. This condition, if not corrected, could result in uncontained HPT stage 2 blade fractures or lenticular airseal failures.

The FAA has reviewed and approved the technical contents of PW Service Bulletin (SB) Number 5667, Revision Number 1, dated September 13, 1989, which describes procedures and criteria for initial and repetitive borescope inspections in order to maintain acceptable HPT stage 2 vane condition.

Since this condition is likely to exist or develop on other engines of the same type design, and AD is proposed which would require initial and repetitive on-wing borescope inspections for distress of the HPT stage 2 vanes installed on PW JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines, in accordance with the SB previously described.

There are approximately 602 PW JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines of the affected design in the worldwide fleet. It is estimated that 125 engines on aircraft of U.S. Registry would be affected by this AD, and that the inspection would be performed approximately 6 times annually. It is estimated that the inspections would take approximately 2 manhours per engine to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these findings, the total cost impact of the AD on U.S. operators is estimated to be $82,500 annually.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entitles under the criteria of the Regulatory Flexibility Act. A copy of the evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: (Docket No. 91–ANE–05).

Applicability: Pratt & Whitney (PW) JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines installed on, but not limited to Boeing 747, McDonnell Douglas DC–10, and Airbus A300 aircraft, in which the following high pressure turbine (HPT) stage 2 vane assemblies, identified by cluster and vane assembly part numbers, are installed:

Cluster Assembly Part No.	Vane Assembly Part No.
743772	741992, 800642
774872	774772, 774782, 774792, 800182, 800192, 800582
806272	806372, 805782, 805492, 805392, 805392, 805482, 806872, 806882, 806592, 806482, 806192, 806592
807372	806782, 805892, 806882
807772	807672, 807082, 807092

Compliance: Required as indicated, unless previously accomplished.

To prevent uncontained HPT stage 2 blade fractures or lenticular airseal failures, accomplish the following:

(a) For engines that have not incorporated the requirements of PW Service Bulletin (SB) 5566, Revision 5, dated August 10, 1990, and the requirements of PW SB 5428, Revision 3, dated March 12, 1984, borescope inspect the HPT stage 2 vanes in accordance with the Accomplishment Instructions of PW SB 5667, Revision 1 dated September 13, 1989, and in accordance with the applicable PW Maintenance Manual (MM) listed in paragraph (c) of this AD, prior to accumulating 1,000 hours time in service (TIS) since vane installation, or within the next 125 hours TIS after the effective date of this AD, whichever occurs later, and remove from service, prior to further flight, second stage turbine vanes exhibiting distress beyond serviceable limits.

(b) For engines that have incorporated the requirements of PW SB 5566, Revision 5, dated August 10, 1990, and PW SB 5428, Revision 3, dated March 12, 1984, borescope inspect the HPT stage 2 vanes in accordance with the Accomplishment Instructions of PW SB 5667, Revision 1, dated September 13, 1989, and in accordance with the applicable PW MM listed in paragraph (c) of this AD, prior to accumulating 2,000 hours total part TIS since new on the entire set of vanes, or within 1,000 hours TIS since vane installation, or within the next 125 hours TIS after the effective date of this AD, whichever occurs latest, and remove from service, prior to further flight, second stage turbine vanes exhibiting distress beyond serviceable limits.

(c) Thereafter, reinspect the HPT stage 2 vanes in accordance with the criteria identified in the following Pratt & Whitney MM, and remove from service, prior to further flight, HPT stage 2 vanes exhibiting distress beyond serviceable limits.

Engine models	MM part No./ Revison date	Section/table
JT9D—7Q/7Q3	783777/Dec. 25, 1989.	72–00–00/604A

Engine models	MM part No./ Revision date	Section/table
JT9D—59A/ 70A.	783778/Apr. 25, 1990.	72-00-00/605A
JT9D—59A.....	783779/Sept. 15, 1989.	72-00-00/605

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, operations, as appropriate) an alternative method of compliance Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Pratt & Whitney Publications Department, P.O. Box 611, Middletown, Connecticut 06457. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on December 20, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 92–592 Filed 1–9–92; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–30148; File No. S7–1–92]

RIN 3235–AE20

Notice of Assumption or Termination of Transfer Agent Services

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission is publishing for comment new rule 17Ad–16 which would require a registered transfer agent to provide written notice to at least one registered securities depository when terminating or assuming transfer agent services on behalf of an issuer or when changing its name or address. The proposed rule would address a continuing problem of unannounced transfer agent changes which affect the prompt transfer of securities certificates.

DATES: Comments must be received on or before February 10, 1992.

ADDRESSES: Persons wishing to submit written reviews, data and comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–1–92 and will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth St. NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Anthony Bosch at (202) 272–2775, Attorney, Branch of Transfer Agent Regulation, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing for public comment new rule 17Ad–16 ("Rule") under the Securities Exchange Act of 1934 ("Act") that, if adopted, would amend title 17, chapter II, part 240 of the Code of Federal Regulations. The rule as proposed would require registered transfer agents to notify at least one securities depository of changes in the transfer agent's name, address and securities for which it performs transfer agent functions.[1]

I. Introduction

Section 17A(d)(1) of the Act provides, among other things, that no registered transfer agent shall engage in any activity in contravention of any rules and regulations that the Commission may promulgate "as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of (the Act)."[2] Pursuant to that grant of authority, the Commission has adopted rules that establish minimum performance standards for registered transfer agents in connection with the timely cancellation and issuance of securities certificates.[3] Those standards are designed to assure, among other things, that registered transfer agents expeditiously process items presented for transfer. The standards presuppose that securityholders will know, based on an examination of the certificate they intend to present for cancellation, the name and address of the transfer agent the issuer has assigned to perform transfer agent functions. As discussed in greater detail below, that presumption may not be valid in many cases.

Proposed rule 17Ad–16 would address a current and continuing problem of transfer delays due to unannounced transfer agent changes, including the change of a transfer agent for a particular issue and the change of name or address of a transfer agent. The rule is designed to require transfer agents to send a notice to the appropriate qualified securities depository[4] when assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address. The proposal is supported by various entities in the securities industry, including the Depository Trust Company ("DTC"), Midwest Securities Trust Company ("MSTC"), Philadelphia Depository Trust Company ("Philadep"), Corporate Transfer Agents Association, Inc.[5] ("CTA") and Securities Transfer Association ("STA").[6]

II. Basis, Purpose and Discussion

Timely securities certificate transfer is necessary for the efficiency of the National System for the Clearance and Settlement of Securities Transactions ("National System"). As part of the effort to ensure quick turnaround of certificate transfers, transfer agents must timely cancel and issue securities

[1] In accordance with section 17A(d)(3)(A)(i) of the Act, the Commission consulted with and requested views of the federal bank regulatory agencies at least 15 days prior to this announcement.

[2] Section 17A(c)(1) of the Act requires transfer agents who perform transfer agent functions with respect to any security registered under section 12 of the Act or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section to be registered with the Commission. Section 3(a)(25) of the Act defines transfer agents as any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by book-keeping entry without physical issuance of securities certificates.

[3] See, *e.g.*, 17 CFR 240.17Ad–7.

[4] A "qualified registered securities depository" would be defined as a securities depository registered as a clearing agency under section 17A of the Act that has rules and procedures approved by the Commission under section 19 of the Act concerning its responsibility to maintain, update, and provide adequate access to the information it receives pursuant to this proposed rule.

[5] The CTA is a trade organization consisting of representatives of corporations that are involved with their organization's shareholder services, such as certificate transfer, dividend distribution and proxy statements.

[6] The STA is the largest transfer agent association in the United States. Its membership includes all the large New York bank transfer agents and encompasses the regional transfer agent associations.

certificates presented for transfer.[7] Efficient transfer turnaround, however, cannot occur when transfer requests are directed to the wrong transfer agent or to the wrong address. The transfer request must be returned to the party requesting the transfer, who then must ascertain the correct transfer agent or address. Even worse, in some instances a transfer request may not be returned to the requesting party, resulting in loss of securities certificates. Transfer delays cause acute problems for registered securities depositories—DTC, MSTC and Philadep—which hold a large number of certificates for safekeeping and have a large daily volume of certificate transfers.[8] These delays also affect depository participants (*e.g.*, banks and broker-dealers) and their customers (*i.e.*, shareholders) in the form of increased delays, costs and risks. The depositories hold securities certificates in their nominee name in safekeeping for the benefit of participants and their customers. When a participant deposits securities into a depository, the depository usually credits the participant's account for the deposit and sends the certificates to the issuer's transfer agent with instructions to transfer the certificate into the depository's nominee name. Whenever transfer delays occur, a depository faces an increased risk of lost certificates. A depository also has an increased potential liability because it credits participants' accounts on the day certificates are presented for deposit. If some deposited certificates presented for transfer were counterfeit or reported stolen, the depository would not become aware of these facts and be in a position to take corrective action until after the certificates have been resubmitted to the new transfer agent or delivered to the transfer agent's new address. Similar risks and costs also are present when the depository sends certificates in nominee name to be transferred into the name of a participant or a participant's customer.

The costs of unannounced transfer agent changes can be significant for depositories and broker-dealers. DTC estimates that its annual minimum cost for dealing with unannounced transfer agent changes is approximately $200,000.[9] Much of that cost is attributed to locating the correct transfer agent for the issue or the transfer agent's correct address to send the certificates for transfer. In addition, DTC surveyed thirteen of its largest broker-dealer participants that account for 52% of all DTC processed transfers. During 1990, those firms estimated cumulative costs of $573,000 for processing transfers delayed because of unannounced transfer agency changes.[10] Many of the firms noted that not included in their estimates were other costs not easily quantifiable, such as the increased possibility of certificate losses as well as increased customer dissatisfaction.

Industry participants have taken steps to reduce the number of aging transfers. For example, in recent years DTC has nearly doubled its aging transfer department staff to handle the increased number of delayed transfers. That department attempts to speed transfer in the case of transfer delay by contacting transfer agents repeatedly to determine where to send certificates for transfer. Despite these and other efforts, however, unannounced transfer agent changes still hamper the goal of timely transfer of securities certificates.

Proposed rule 17Ad–16 would require a registered transfer agent to send a notice to the appropriate qualified registered securities depository within two days of: (i) Terminating transfer service performed on behalf of an issuer; (ii) assuming transfer service on behalf of an issuer; or (iii) changing its name or address. The notice should include: (i) whether it is being sent to the appropriate qualified registered securities depository or to all qualified registered securities depositories; (ii) the issuer's name; (iii) the issue or issues handled and their CUSIP number(s); and (iv)(a) if the agent is assuming the transfer service, the full name, address and telephone number of the transfer agent; or (b) if the transfer agent is terminating transfer service, the name, address, and telephone number of the new transfer agent; or (c) if no successor is known, the name and address of a contact person at the issuer. In order for the Commission to determine whether to require a transfer agent to include the issue or issues handled and their CUSIP number(s) in a notice to qualified registered depositories when the transfer agent is only reporting a name change, the Commission invites commentators to address this issue. The Commission also invites commentators to address whether to require a transfer agent to include the issue or issues handled and their CUSIP number(s) in a notice to qualified registered depositories when the transfer agent is only reporting an address change. Commentators supporting the inclusion of issues and CUSIP numbers in notices of name and address changes should state the benefits of including such information.

The registered transfer agent would send the notice to the appropriate qualified registered securities depository.[11] As defined in proposed rule 17Ad–16, the appropriate qualified securities depository is the qualified registered depository that as of the most recent record date, is the largest holder of record of all qualified securities depositories on that date. The transfer agents should be able to determine this easily by examining the master securityholder file and determining which of the three qualified securities depositories is the largest shareholder of record. An alternative way for the transfer agent to comply with rule 17Ad–16 would be for the transfer agent to send the notice to all three registered securities depositories that handle corporate and municipal securities.[12]

Upon receipt of a notice from a transfer agent as required by proposed rule 17Ad–16, proposed rule 17Ad–16 would require the appropriate qualified registered securities depository, within 24 hours of receipt, to transmit the notice through electronic or other means to the other registered depositories, its participants, and any other persons the Commission may designate by order. Proposed subsection (d) of the rule would require the appropriate qualified registered securities depository to make and keep a record of all the notices it receives and make the notices available

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[7] Rule 17Ad–2 (17 CFR 240.17Ad–2) establishes mandatory timeframes within which registered transfer agents must complete the majority of routine transfer requests. Transfer agents that receive more than 500 items in a six month period must turnaround within three days 90% of the routine items received each month. Routine items that are not turned around within three days and non-routine items must be turned around promptly. A registered transfer agent for depository eligible securities that during the previous six consecutive months receives fewer than 500 items for transfer and fewer than 500 items for processing, must turnaround 90% of the routine items received within five days.

[8] DTC, for example, presents an average of 100,000–120,000 certificates for transfer each business day.

[9] Conversation between Carl Urist, Associate Counsel, DTC, and Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission.

[10] *Id.* In 1989, DTC initially surveyed those brokers and estimated that the cumulative cost for delays because of unannounced transfer agent changes for 1989 was $673,000.

[11] Under the proposed rule, notices would be required to be sent by means of "secure communication," which would include telegraph, overnight mail, or facsimile.

[12] Although PTC is a registered securities depository, all of its issues are currently issued by one issuer, the Government National Mortgage Association. Thus, only transfer agents of issuers of securities that are depository eligible at DTC, MSTC, and Philadep would be required to file notice of change of transfer agent service on behalf of an issuer or a name or address change.

to the Commission and other persons as the Commission may, by order, designate.[13]

The Commission anticipates that the costs savings, risk reduction and increase in efficiency to the depositories and others in the securities industry under this rule would be significant and would impose minimal burden on transfer agents. Indeed, in the event the routine trade settlement timeframe is shortened from five to three business days, the need for broker-dealers and other market professionals to know transfer agent changes will be even greater.

The Commission believes that the cost of complying with the proposed rule will not be substantial. A transfer agent changing its name or address or assuming or terminating transfer agent services on behalf of an issuer would be required to send only a single written notice of the change to the appropriate qualified registered securities depository. The cost of such notice, for personnel, preparation and postage, would be minimal. No further action by the transfer agent need be taken.[14] Meanwhile, the depositories and their participants would incur less cost in researching and locating the transfer agent for an issue.

The Commission believes that requiring transfer agents to send the notice of transfer agent changes to the qualified registered securities depository is a logical choice. Because the appropriate qualified registered securities depository will presumably hold the largest number of certificates, and as a result have a large volume of transfers, it also will have the greatest problems with transfer delays and the greatest need for prompt notice. The Commission invites comments regarding the designation of the appropriate qualified registered securities depository or any other entity as the Commission's designee to receive notice of transfer agent changes.

III. Regulatory Flexibility Act Certification

Section 603(a) [15] of the Administrative Procedure Act,[16] as amended by the Regulatory Flexibility Act (the "Flexibility Act"),[17] generally requires the Commission to undertake a Regulatory Flexibility Act Analysis of all proposed rules or proposed rule amendments to determine the impact of such rulemaking on "small entities." [18] Section 605(a) of the Flexibility Act, however, specifically exempts from that requirement any proposed rule or proposed rule amendment for which the Chairman of the Commission certifies that, if adopted, would not have a "significant economic impact on a substantial number of 'small entities.'

Approximately 1000 registered transfer agents qualify as "small entities" for purposes of the Flexibility Act and would be subject to the notice requirement of proposed § 240.17Ad–16. The benefits of proposed rule 17Ad–16 would outweigh any costs to transfer agents. Transfer agents with no name or address changes and with no change in the issues for which they provide services will not be affected by this rule and will not need to send any notice. Most transfer agents that qualify as "small" transfer agents likely will fall into this category.

Compliance cost would be minimal for transfer agents even when the rule applies. A transfer agent that assumes or terminates services on behalf of an issuer or changes its name or address need only send a short notice to one of three registered securities depositories explaining the change. The appropriate qualified registered securities depository will communicate the change to other registered securities depositories. The Commission preliminarily believes that filing such a notice will not impose significant cost on any transfer agent. For these reasons, Chairman Richard C. Breeden has certified, pursuant to section 605(b) of the Flexibility Act, that proposed sections and amendments, if adopted, will not have a significant economic impact on a substantial number of small entities.

IV. Burden on Competition

The Commission believes that the proposed rule will not have a significant impact on transfer agent competition. Transfer agents only have to send a notice when there is a change of an issue or a name or address change. Even when a transfer agent is required to send a notice of a change, the cost of compliance is insignificant. Moreover, the burden to send such notices should fall mainly on larger transfer agents who have more issues because these agents are more likely to have issue changes that would require them to send notices under the proposed rule.

V. Statutory Basis

Pursuant to the Securities Exchange Act of 1934 and particularly sections 3, 17, 17A and 23(a) thereof, 15 U.S.C. 78c, 78q, 78q–1 and 78w(a), the Commission proposes to add § 240.17Ad–16 in chapter II of title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping, Securities.

Text of the Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

2. Section 240.17Ad–16 is added to read as follows:

§ 240.17Ad–16 Notice of assumption of termination of transfer agent services.

(a) A registered transfer agent that ceases to perform transfer agent services on behalf of an issuer of securities shall send written notice of

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[13] In the future, the Commission may direct, by order, that the notices sent to the qualified registered securities depositories be made available to others. For instance, the Commission may determine it is appropriate to have copies of the notice sent to the Commission's designee to operate the Lost and Stolen Securities Program ("Program") to facilitate Program operations.

[14] Under the proposed rule the transfer agent would report the change to the appropriate qualified registered depository, which would communicate the change to the other registered depositories.

[15] 5 U.S.C. 603(a).

[16] 5 U.S.C. 551, *et seq.*

[17] Pub. L. No. 96–354 (September 19, 1980), 94 Stat. 1164, *reprinted in* (1980) U.S. Code Cong. & Ad. News 1169.

[18] Although section 601(b) of the Flexibility Act defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission published final definitions of the term "small business" and "small organization" in Securities Exchange Act Release No. 6380 (February 4, 1982) (47 FR 5215). Section 240.0–10(h) defines a small transfer agent for purposes of the Flexibility Act as follows:

For purposes of the Commission rulemaking in accordance with the provisions of Chapter six of the Administrative Procedure Act [5 U.S.C. 551, et seq.] and unless otherwise defined for purposes of a particular rulemaking proceeding, the term "small business" or "small organization" shall—

* * * * *

(h) When used with reference to a transfer agent, mean a transfer agent that:

(1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter);

(2) Maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and

(3) Is not affiliated with any person (other than a natural person) that is not a small business or small organization under this section.

such to qualified registered securities depositories or the appropriate qualified registered securities depository no later than two business days after the effective date of such termination. Such notice shall include the issuer's name; the issue or issues handled and their CUSIP number(s); and if known, the name, address and telephone number of the transfer agent which thereafter will provide transfer services for the issuer. If no successor transfer agent is known, the notice shall include the name and address of a contact person at the issuer.

(b) A registered transfer agent which changes its name or address or which assumes transfer agent services on behalf of an issuer of securities shall send written notice of such to qualified registered securities depositories or the appropriate qualified registered securities depository no later than two business days after the effective date of assuming these duties or changing its name or address. Such notice shall include the issuer's name; the issue or issues handled and their CUSIP number(s); the full name, address and telephone number of the transfer agent; and the location where certificates are received for transfer.

(c) The notice described in paragraphs (a) and (b) of this section shall:

(1) State whether it is being sent to the appropriate qualified registered securities depository or to all qualified registered securities depositories; and

(2) Be delivered by means of secure communication. For purposes of this section, secure communication shall include telegraph, overnight mail, facsimile or any other form of secure communication.

(d) A qualified registered securities depository which receives notices pursuant to paragraphs (a) and (b) of this section shall deliver, by means of secure communication, a copy of such notices to each registered securities depository, and to its own participants. A qualified registered securities depository which receives notices pursuant to paragraphs (a) and (b) of this section shall maintain such notices for a period of not less than two years, the first six months in an easily accessible place. Such record shall be made available to the Commission or other persons as the Commission may designate by order. A registered transfer agent which provides notice pursuant to paragraphs (a) and (b) of this section shall maintain such notice for a period of not less than two years, the first six months in an easily accessible place.

(e) For purposes of this section, a "qualified registered securities depository" shall mean a clearing agency registered under section 17A of the Act that performs clearing agency functions as described in section 3(a)(23)(A)(i) of the Act and that has rules and procedures approved by the Commission pursuant to section 19 of the Act concerning its responsibility for maintaining, updating and providing appropriate access to the information it receives pursuant to paragraphs (a) and (b) of this section.

(f) For purposes of this section an "appropriate qualified registered securities depository" shall mean a qualified securities registered depository that as of the most recent record date, is the largest holder of record of all qualified securities depositories on that date.

By the Commission.

Dated: January 6, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-653 Filed 1-9-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353 and 355

[Docket No. 910937-1237]

RIN 0625-AA35

Antidumping and Countervailing Duties

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of proposed rulemaking and request for public comments.

SUMMARY: The International Trade Administration ("ITA") proposes to establish regulations which will set forth the circumstances in which the ITA will correct significant ministerial errors made in preliminary antidumping and countervailing duty determinations. The regulations also will establish the procedures to be used by parties to the proceeding in requesting the correction of significant ministerial errors. The regulations are intended to improve the administration of the antidumping and countervailing duty provisions of the Tariff Act of 1930, as amended.

DATES: Written comments will be considered if received not later than March 10, 1992.

ADDRESSES: Address written comments (10 copies) to Alan M. Dunn, Assistant Secretary for Import Administration, room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Comments should be addressed: Attention: Notice of Proposed Rulemaking/Significant Ministerial Errors. Each person submitting a comment should include his or her name and address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Deputy Chief Counsel for Import Administration, Office of the Chief Counsel for Import Administration, (202) 377-1411.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The ITA has determined that the proposed regulations concerning the correction of significant ministerial errors under 19 Code of Federal Regulations ("CFR") parts 353 and 355 are not a major rule as defined in section (1)(b) of Executive Order 12291 (46 FR 13191 (1981)) because they will not: (1) Have a major monetary effect on the economy; (2) result in a major increase in costs or prices; or (3) have a significant adverse effect on competition (domestic or foreign), employment, investment, productivity, or innovation.

Executive Order 12612

These proposed regulations do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612 (52 FR 41685 (1987)).

Paperwork Reduction Act

These proposed regulations will not impose a collection of information requirement for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed regulations will not have a significant economic impact on a substantial number of small business entities because, to the extent it clarifies the procedures for correcting significant ministerial errors made in preliminary antidumping and countervailing duty determinations, the rule simply improves the administration of the antidumping duty and countervailing duty provisions of the Tariff Act of 1930, as amended. As a result, a Regulatory Flexibility Analysis was not prepared.

Background

Section 1333 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418; August 23, 1988) ("1988 Act") required the Department of Commerce to establish procedures for the correction of ministerial errors in final determinations made in antidumping and countervailing duty investigations and reviews. In accordance with section 1333, the Department promulgated 19 CFR 353.28 and 355.28. See Interim-Final Rules, 55 FR 9046 (1990).

Section 1333, however, did not require the Department to establish procedures for the correction of ministerial errors made in preliminary determinations pursuant to 19 CFR 353.15, 353.22, 355.15, and 355.22, and 353.28 and 355.28 did not establish such procedures. Thus, until recently, the policy of the Department has been to deny requests for the correction of ministerial errors made in preliminary determinations.

This policy was based on several factors. First, a preliminary determination, by its very nature, is subject to change and correction in a final determination. Second, the Department believed that the impact of a preliminary determination was always insignificant compared to the impact of a final determination. Finally, because of the tight statutory deadlines under which it operates, the Department has limited time and resources to devote to the correction of ministerial errors made in a preliminary determination. Essentially, the issue involves a balancing of the need for accuracy in a preliminary determination versus the need to issue a timely, complete, and accurate final determination. In the past, the Department concluded that, on balance, the better policy was to reject requests to correct errors made in a preliminary determination and to devote its limited resources to activities relating to the preparation of the final determination. Any ministerial errors in a preliminary determination could be corrected in a final determination.

Recently, however, in the context of two separate investigations, the Department has reexamined its policy against correcting ministerial errors in preliminary determinations. The Department has concluded that it should modify its prior policy, at least with respect to antidumping and countervailing duty investigations.

While it remains true that errors made in a preliminary determination can be corrected in a final determination, a preliminary determination in an investigation does have a significant impact. If a preliminary determination is affirmative, the *status quo* changes for the first time in that the Department orders the suspension of liquidation and the imposition of provisional measures. See 19 CFR 353.15(a)(3), 355.15(a)(3). Conversely, if a preliminary determination is negative solely due to a ministerial error, a petitioner currently must wait until the final determination for the error to be corrected and relief to be provided.

In addition, for entries made between the effective date of a preliminary affirmative determination in an investigation and a final affirmative injury determination by the U.S. International Trade Commission (or, in the case of countervailing duty investigations conducted pursuant to section 303 of the Tariff Act of 1930, as amended, 19 U.S.C. 1303, a final affirmative determination by the Department), the dumping margin or subsidy rate set forth in a preliminary determination serves as the automatic assessment rate unless a party requests an administrative review pursuant to 19 CFR 353.22 or 355.22. Under the Department's prior policy, parties affected by an erroneous preliminary dumping margin or subsidy rate were forced either to request a full-blown administrative review or to accept an erroneous automatic assessment rate. Administrative reviews consume a good deal of the resources of both the Department and private parties, and if some reviews could be avoided altogether by establishing a separate mechanism for correcting errors in the automatic assessment rate, such a result would be in the public interest.

In short, a preliminary determination in an investigation has a unique significance, and a complete prohibition against the correction of ministerial errors appears inappropriate as a matter of policy. On the other hand, the statutory deadlines for completing an investigation remain tight, and the Department's resources are limited. If the Department attempted to correct all ministerial errors made in preliminary determinations, the ability of the Department to issue final determinations in a timely and thorough manner would be compromised. In balancing the competing concerns of accuracy and timeliness, the Department has concluded that it is not appropriate to correct all ministerial errors made in preliminary determinations, but that it is appropriate to correct "significant" ministerial errors made in preliminary determinations. Indeed, in two recent cases, the Department departed from its prior policy, and corrected ministerial errors made in preliminary determinations. See Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong, 55 FR 19289 (1990); and Steel Wire Rope from India, 56 FR 6837 (February 20, 1991).

On the other hand, the Department has concluded that it is not appropriate to establish procedures for correcting ministerial errors made in preliminary results issued during the review phase of an antidumping or countervailing duty proceeding. See 19 CFR 353.22, 355.22. Unlike a preliminary determination made in an investigation, a preliminary results of review has no direct legal consequences. It does not result in the suspension of liquidation and the imposition of provisional measures, nor does it result in a change to any existing cash deposit requirement. The sole purpose of a preliminary results of review is to provide the parties with an opportunity to comment on the Department's initial analysis. At the same time, the deadlines for completing administrative reviews remain tight. Although the Department has not always met these deadlines in the past, it is gradually eliminating its so-called "review backlog," and intends to meet its deadlines for reviews in the future. The ability of the Department accomplish these objectives would be impaired if the Department had to devote limited resources to the correction of preliminary results of reviews. Therefore, in balancing the competing concerns of accuracy and timeliness, the Department has concluded that it is not appropriate to correct ministerial errors in preliminary results of reviews. Such errors can be corrected in the final results of reviews.

Explanation of the Proposed Rules

The purpose of the proposed rules is to set forth the circumstances in which the Department will correct ministerial errors in a preliminary determination and the procedures to be followed by parties seeking corrections. The proposed rules would amend 19 CFR 353.15(g) and 355.15(h). In general, the proposed rules are based on the procedures set forth in §§ 353.28 and 355.28 for correcting ministerial errors in final determinations. The deadline for requesting disclosure is tied to the date on which a preliminary determination is made public, not the date on which the preliminary determination is published in the **Federal Register**.

The most important difference between §§ 353.28 and 355.28 and the proposed rules is that the procedures set forth in the proposed rules are limited to "significant" ministerial errors. Under the proposed rules, a ministerial error would be "significant" if correction of

the error, either singly or in combination with other errors: (1) Would result in a change of at least 5 absolute percentage points, but not less than 25 percent of the original (erroneous) preliminary dumping margin or net subsidy; or (2) would account for the difference between a dumping margin or net subsidy of zero (or *de minimis*) and any dumping margin or net subsidy greater than *de minimis* (*i.e.*, greater than 0.5 percent *ad valorem*). 19 CFR 353.6, 355.7.

In addition, the proposed rules set forth an accelerated procedure for identify and correcting ministerial errors. First, the proposed rule requires that parties desiring disclosure request disclosure by the fifth business day prior to the scheduled (statutory) due date for the preliminary determination. The Department believes this requirement to be reasonable, because active participants in investigations generally request and obtain disclosure, and they know of their need for disclosure well in advance of the preliminary determination.

Second, the Department is imposing strict deadlines on itself, as well as the parties, by requiring (1) that the Department complete disclosure within two business days of publicly announcing a preliminary determination; (2) that the Department give parties to the proceeding until the end of the fifth business day after the announcement of the preliminary determination to identify and quantify alleged significant ministerial errors; and (3) that the Department resolve the allegation of significant ministerial errors by the tenth business day following the public announcement of the original preliminary determination.

This accelerated schedule is dictated by the limited availability of staff analysts during the time between a preliminary determination and a final determination. More specifically, following the issuance of a preliminary determination, the analysts who are most familiar with a case (and, therefore, in the best position to analyze allegations of errors and make appropriate corrections) must prepare for, travel to, and conduct verification—usually in several locations and often in more than one country. Thereafter, the analysts must prepare detailed verification reports, analyze arguments submitted in briefs and at a hearing, and prepare the final determination. Verification usually begins within 15–20 days of the issuance of a preliminary determination. Thus, there is only a very short period of time in which analysts can consider allegations of ministerial errors before they must devote their full time to completion of the final determination. Accordingly, the procedures proposed herein are designed to have allegations of ministerial errors resolved within that short time period.

Finally, unlike the procedures established under §§ 353.28 and 355.28, these proposed rules do not permit parties to comment on another party's allegations of significant ministerial errors. Based on our experience in administering §§ 353.28 and 355.28, the Department has found that there rarely is any genuine issue as to whether an error is or is not ministerial in nature. Moreover, as noted above, allegations of ministerial errors made in a preliminary determination must be resolved within a short time period. If a party believes that the Department has made an inappropriate correction, it may present its arguments in its briefs and at the hearing.

Drafting Information

The principal author of this document is William D. Hunter, Deputy Chief Counsel for Import Administration, U.S. Department of Commerce.

List of Subjects in 19 CFR Parts 353 and 355

Business and industry, Foreign trade, Imports, Trade practices.

Dated: January 7, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

For the reasons stated, it is proposed that 19 CFR parts 353 and 355 be amended as follows:

PART 353—[AMENDED]

1. The authority citation for part 353 continues to read as follows:

Authority: 5 U.S.C. 301, and subtitle IV, parts II, III, and IV of the Tariff Act of 1930, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98–573, 98 Stat. 294, and Title I, subtitle C, part II of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. 1107 (1988).

2. Section 353.15 is amended by revising paragraph (g) to read as follows:

§ 353.15 Preliminary determination.

* * * * *

(g) *Disclosure and correction of significant ministerial errors*—(1) *In general.* No later than two business days after the public announcement of the Secretary's preliminary determination, the Secretary will disclose the calculations performed in connection with a preliminary antidumping duty determination pursuant to paragraph (a) of this section to any party to the proceeding making a request in accordance with this paragraph. A party to the proceeding must file such a request in writing with the Secretary no later than five business days prior to the scheduled date for the Secretary's preliminary determination. A party to whom the Secretary has disclosed preliminary calculations may submit comments alleging that a significant ministerial error has occurred in such calculations.

(2) *Time limits.* Comments must be filed no later than the fifth business day after public announcement of the preliminary determination. Notwithstanding any other provision of this Part, extensions of time for filing comments shall not be granted. Comments shall be submitted in writing to the Secretary and shall be served on all interested parties on the Department's service list.

(3) *Corrections.* Not later than the tenth business day after the public announcement of the Secretary's preliminary determination, the Secretary will analyze any comments received and determine whether a significant ministerial error exists. Where the Secretary determines that a significant ministerial error exists, the Secretary shall publish an amended preliminary determination in the **Federal Register**.

(4) *Definition of "significant ministerial error."* For purposes of this section, "significant ministerial error" means—

(i) An error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial; and

(ii) Correction of the error, either singly or in combination with other errors:

(A) Would result in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the dumping margin calculated in the original (erroneous) preliminary determination; or

(B) Would result in a difference between a dumping margin of zero (or *de minimis*) and a margin of greater than *de minimis*.

PART 355—[AMENDED]

3. The authority citation for part 355 continues to read as follows:

Authority: 5 U.S.C. 301, and subtitle IV, parts II, III, and IV of the Tariff Act of 1930,

as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96-39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98-573, 98 Stat. 294, and Title I, subtitle C, part II of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988).

4. Section 355.15 is amended by revising paragraph (h) to read as follows:

§ 355.15 Preliminary determination.

* * * * *

(h) *Disclosure and correction of significant ministerial errors*—(1) *In general.* No later than two business days after the public announcement of the Secretary's preliminary determination, the Secretary will disclose the calculations performed in connection with a preliminary countervailing duty determination pursuant to paragraph (a) of this section to any party to the proceeding making a request in accordance with this paragraph. A party to the proceeding must file such a request in writing with the Secretary no later than five business days prior to the scheduled date for the Secretary's preliminary determination. A party to whom the Secretary has disclosed preliminary calculations may submit comments alleging that a significant ministerial error has occurred in such calculations.

(2) *Time limits.* Comments must be filed no later than the fifth business day after the public announcement of the preliminary determination. Notwithstanding any other provision of this Part, extensions of time for filing comments shall not be granted. Comments shall be submitted in writing to the Secretary and shall be served on all interested parties on the Department's service list.

(3) *Corrections.* Not later than ten business days after the public announcement of the Secretary's preliminary determination, the Secretary will analyze any comments received and determine whether a significant ministerial error exists. Where the Secretary determines that a significant ministerial error exists, the Secretary shall publish an amended preliminary determination in the **Federal Register**.

(4) *Definition of "significant ministerial error."* For purposes of this section, "significant ministerial error" means—

(i) An error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial; and

(ii) Correction of the error, either singly or in combination with other errors:

(A) Would result in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the net subsidy calculated in the original (erroneous) preliminary determination; or

(B) Would result in a difference between a net subsidy of zero (or *de minimis*) and a net subsidy of greater than *de minimis*.

[FR Doc. 92-685 Filed 1-9-92; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 89-1, Notice No. 5]

RIN 2125-AC 83

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices; Work Zone Traffic Control Standards Revision; Revise Format

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Advance notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR 655, subpart F, and recognized as the national standard for traffic control devices on all roads open to public travel. The FHWA initiated a review of part VI of the MUTCD to improve the application and uniformity of traffic control devices and the safety of workers, pedestrians, and motorists in work zones. The FHWA enlisted the services of an engineering consultant to gather and organize information for review for review by Federal, State, local, and other highway agencies. The FHWA has also published three notices soliciting public comment on part VI. Based on the consultant's findings, the public comments, and FHWA's knowledge of work zone traffic control devices standards and applications. the FHWA has prepared this advanced notice of proposed amendments. This advance notice of proposed amendments discusses reformatting of the MUTCD including part VI.

A portion of the advance notice of proposed amendments would reformat all parts of the MUTCD. The remainder of the advance notice of proposed amendments would affect various sections of part VI of the MUTCD. The notice is intended to expedite traffic, improve safety, and provide a more uniform application of highway signs, signals, and markings.

DATES: Commens must be received on or before July 30, 1992..

ADDRESSES: Submit written, signed comments to FHWA Docket No. 89-1, Notice No. 5, Federal Highway Administration, Room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding this advance notice of proposed amendments or a copy of the proposed test contact Mr. James E. Weaver, Office of Highway Safety, (202) 366-2189, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., room 3419, Washington, DC 20590. For information regarding this advance notice of proposed amendments contact Mr. Wilbert, Baccus, Office of Chief Counsel, (202) 366-0780, Department of Transportation, 400 Seventh Street, SW., room 4223, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The MUTCD is approved by the FHWA as the National Standard for all streets and highways open to public travel. The MUTCD is available for inspection and copying as prescribed in 49 CFR part 7, appendix D. It may be purchased for $22.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 050-001-00308-2.

The FHWA enlisted the Services of an engineering consultant to solicit comments from Federal, State, local, and other highway agencies regarding the design, administration, and operation of highway work zones in anticipation of rewriting Part VI of the MUTCD. The consultant's initial findings were made available for review and comment on December 23, 1988, at 53 FR 518926, through a Public Information Package followed by revised findings in a second Public Information Package on June 5, 1989, at 54 FR 23990. The comment period for the second Public Information Package was reopened on April 26, 1990, at 55 FR 17634, and again reopened from August 15, 1990, to March 31, 1991, at 55 FR 33325.

The FHWA received 100 comments in response to the public docket 89-1, Notice Nos. 1 through 4. The large majority of comments supported the following conclusions: (1) There is a need to retain most of the traffic control device design and application standards that are presently contained in tne current MUTCD, (2) there is a need for few new traffic control devices, and (3) there is a need to provide users with the new guidance information presented in the public information packages.

This notice concerning Part VI "Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Emergency Operations" of the MUTCD sets forth basic principles and prescribes standards for traffic control during work zone operations on streets and highways in the United States. With the current emphasis on repairing the Nation's highways and improving safety in work zone areas, an update of part VI would be better serve the public and the highway community. Coincident with the update of part VI, the FHWA has been considering a recommendation by the National Committee on Uniform Traffic Control Devices (NCUTCD) that the MUTCD be reformatted and structured to achieve a succinct book of Standards. It would be preferable to publish and distribute part VI after a decision on the format for the future MUTCD has been made and the proposed part VI has been appropriately reformated. Because the revised part VI, as currently drafted, is extremely voluminous, this part may contain information which would be more appropriate as guidance rather than standards.

This notice is being issued to: (1) Provide an opportunity for the public to comment on the desirability of the proposed amendments to Part VI of the MUTCD, and (2) address alternative formats for the MUTCD.

Discussion of Format

At the January 1989 meeting of the NCUTCD, a Blue Ribbon Committee was appointed the task of looking at ways to rewrite and administer the MUTCD. In July 1990, the NCUTCD submitted to the FHWA a trial application of the reformatting concept that had been agreed upon by each of its Technical Committees and its Executive Board. The trial applied the reformatting concept to MUTCD Part IV, "Signals." The format proposed by the NCUTCD originally contained five categories as follows: (1) Standard, (2) Guidance, (3) Authorized Options, (4) Supporting Information and (5) Indeterminate. The NCUTCD has subsequently grouped the "indeterminate" information into one of the other four categories. Rather than four categories as suggested by the NCUTCD, the FHWA believes the MUTCD should contain only standards and supplemental information that directly guides the application of the standards. All other information should be considered for inclusion in a separate document such as the Traffic Control Device Handbook (TCDH). Comments on the general reformatting concept are requested. Comments on the substance of items to be included under reformatted categories will be requested in a later rulemaking.

Copies of the NCUTCD's proposal and an FHWA draft rewrite of a section of part IV are available from the Office of Highway Safety, Traffic Control Device Applications Branch (HHS-31), 400 7th Street, SW., Washington, DC.

Discussion of Amendments to Part VI

The following items are the most important of the many revisions to part VI.

Utility and Emergency Traffic Control

The FHWA received many requests to include discussions on the proper application of traffic control devices in utility and emergency situations in the rewrite of part VI. Due to the lack of readily available information on these subjects, only brief sections could be included in the proposed text at this time. The FHWA asked for guidance in this area in the previous Public Information Packages. Very little information was submitted, and there is still a need for more substantive information upon which to develop standards and guides. The FHWA again solicits comments and suggestions in these areas from those who have experience in administration, design, and operation of utility and/or emergency situations.

Pedestrian and Worker Safety

To focus attention on pedestrian and worker safety, new Sections 6D-1 and 6D-2 have been developed. These sections would consolidate the standards, guidance, and information that were previously scattered throughout part VI.

New Symbol Signs

The study, "Motorists' Comprehension of Regulatory, Warning, and Symbol Signs," [1] raised serious doubts about the continuing process of converting word legend signs to symbol signs. The FHWA has adopted very few new symbols since this report was completed. There are no new symbol designs proposed for inclusion in the rewrite of part VI. There are, however, several new combinations of existing symbols to form new symbol messages. As an example, in Figure VI-8a, Sign W1-4c shows a three-lane shift. This sign uses three lane shift symbols from the current standard W1-4 sign (Figure 6-13a of the 1988 MUTCD).

New Word Message Signs

The rewrite of part VI includes some new word message warning signs. These signs, like any word legend warning sign, are currently allowed by section 6C-41. The warning signs that are proposed for inclusion in the rewrite of Part VI are commonly used by many State and local highway agencies.

Portable Changeable Message Signs

Standards, guides, and information regarding changeable message signs would be added to section 6F-2, Portable Changeable Message Signs. This change would be made to improve application uniformity and make the standards, guides and information regarding these signs, found elsewhere in the MUTCD (part II), more readily available to those who administer, design, and operate work zones.

Drums

The minimum diameter of drums and the materials used to make drums have been somewhat controversial over the past several years. As in the current standards, drums would be required to have a minimum diameter of 18 inches. Other shapes of drums would also be required to have at least 18 inches minimum width regardless of orientation. In addition, the top stripe would be required to be orange.

Research studies have repeatedly shown that a steel drum poses severe hazards to pedestrians, workers, and motorists when the drum is struck. Therefore, the use of steel drum as a channelizing or other traffic control device would be specifically prohibited.

Short-Term Traffic Control Marking Standards

The MUTCD short-term pavement marking standards and guides, that are found in section 6F-6, have been somewhat controversial over the past several years. The text that is currently in the 1988 edition of the MUTCD has not been changed in this draft. Under Section 1A-6 of the MUTCD, the FHWA

[1] Motorists' Comprehension of Regulatory, Warning, and Symbol Signs. November 1985. Report Nos. FHWA-RD-86-111, 112, and 113. It is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

has authorized two States to conduct experimentation with abbreviated no-passing zone markings. The results of the experimentation and recent FHWA research will be incorporated into the decision making process for amendments to short-term no-passing zone pavement markings standards.

A conflict has developed regarding the terminology used to describe the temporary pavement markings that are to be installed in work zones. As discussed under a following heading, the term "Short-Term" would be included in section 6G–2 to describe a distinct period of time. Therefore, in section 6F–6, which discusses temporary pavement markings, the words "short-term" would be replaced with "non-permanent."

Additional Guidance for the Use of Various Traffic Control Devices

Additional guidance concerning the use of tubular markers would be added at 6F–5c, drums at 6F–5e, temporary raised islands at 6F–5h, impact attenuators at 6F–8a, rumble strips at 6F–8d, and glare screens at 6F–8e.

Description of Distinct Work Zone Time Durations

To assist users of the MUTCD Part VI in the selection of traffic control devices and typical application of these devices, section 6G–2, Selection of Typical Application, would be added to describe five distinct work zone time durations. These time durations are: Long-Term Stationary, Intermediate-Term Stationary, Short-Term Stationary, Short Duration, and Mobile.

New Typical Application Diagrams

Many engineering practitioners have requested that the part VI standards and guidelines be supplemented with typical application diagrams. The existing part VI includes a small number of such diagrams. In the rewrite of part VI, it is proposed to incorporate a substantially larger number of new or improved typical application figures.

Rulemaking Analyses and Notices—Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this action will be minimal. Therefore, a full regulatory evaluation is not required.

The need to further evaluate economic consequences will be reviewed on the basis of the comments submitted in response to this notice.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 605(b)), the FHWA has evaluated the effects of this proposed action on small entities. Based upon this evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The need to further evaluate economic consequences will be reviewed on the basis of the comments submitted in response to this notice.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The MUTCD is incorporated by reference in 23 CFR part 655, Subpart F which requires that changes to the National Standards issued by the FHWA shall be adopted by the States or other Federal agencies within 2 years of issuance. The proposed actions are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d) and 315 to promulgate uniform guidelines to promote the safe and efficient utilization of the highways.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. Thr RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs-transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

Issued on: January 3, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92–502 Filed 1–9–92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas permanent regulatory program (hereinafter, the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Texas regulations pertaining to revegetation. The amendment is intended to incorporate the additional flexibility afforded by the revised Federal regulations.

This notice sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.s.t. February 10, 1992. If requested, a public hearing on the proposed amendment will be held on February 4, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., c.s.t. on January 27, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this notice will be available for public

review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OMS's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, OK 74135, Telephone: (918) 581–6430.

Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Drawer 12967, Austin, TX 78711, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning Texas's program and program amendments can be found at 30 CFR 943.15 and 943.16.

II. Proposed Amendment

By letter dated December 23, 1991, (Administrative Record No. TX–513), Texas submitted a proposed amendment to its program pursuant to SMCRA and at its own initiative. Texas proposes to delete from its program Texas Coal Mining Regulation 816.394 which states that:

> When the approved postmining land use is range or pasture land, the reclaimed land shall be used for livestock grazing at a grazing capacity approved by the Commission approximately equal to that for similar non-mined lands, for at least the last two full years of liability required under § .395(b).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., c.s.t. on January 27, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 31, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 92–695 Filed 1–9–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is soliciting comments on additional information pertaining to a previously proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional information pertains to Wyoming's 1989 legislative enacted changes to the Environmental Quality Act (EQA). This amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

This notice sets forth the times and locations that the Wyoming amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comment on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.s.t. January 27, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below. Copies of the Wyoming program, the amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776.

Department of Environmental Quality, Land Quality Division, Herschler Building—Third Floor West, 122 West 25th Street, Cheyenne, WY 82002, Telephone: (307) 777–7756.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone (307) 261–5776.

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SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980 Federal Register (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, and 950.16.

II. Proposed Amendment

By letter dated June 24, 1991 (administrative record No. WY–16–1), Wyoming submitted a proposed amendment to its program pursuant to SMCRA. Wyoming submitted a portion of the proposed amendment at its own initiative and the remainder in response to 30 CFR 732 notifications dated December 23, 1985, June 9, 1987, and November 7, 1988.

OSM published a notice in the July 12, 1991 Federal Register (56 FR 31898) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended August 12, 1991. During its review of the amendment, OSM became aware of additional information relating to 1989 enacted changes in the EQA at 35–11–103(d)(ii)(D) concerning Solid Waste Management Program jurisdiction that have a direct relationship to proposed rule changes in this amendment (administrative record No. WY–16–11). As a result, OSM is requiring a program amendment under 30 CFR 732.17(e)(3). In its issue letter of September 13, 1991 (administrative record No. WY–16–7), OSM noted to the State in issue number one that "Wyoming's proposed rule changes are the result of the 1989 legislative changes to the Environmental Quality Act (EQA) at 35–11–103(d)(i)(D) (correction to Wyoming's amendment submission and OSM's issue letter of September 13, 1991 is the cite: (EQA) at 35–11–103(d)(ii)(D)). The changes to the EQA excluded Solid Waste Management Program jurisdiction for all on-site solid waste management facilities subject to the permitting requirements of Articles 2, 3, or 4 (Air Quality, Water Quality, and Land Quality) of the EQA. This change in authority for on-site waste management facilities is a change in the approved State program." Continued in issue number one "Wyoming's modification of the EQA is a significant change to the approved State program and must be submitted as an amendment by the requirements of Federal regulations at 30 CFR 732.17(b)." Comments on the changes to Wyoming's EQA identified above should be limited only to how they affect Wyoming's approved program under SMCRA.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Wyoming program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials that OSM has become aware of. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming's program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 3, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 92–696 Filed 1–9–92; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–91–057]

Drawbridge Operation Regulations; Stoney Creek, Riviera Beach, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice proposed rulemaking.

SUMMARY: At the request of the Maryland Department of Transportation, State Highway Administration, the Coast Guard is considering changing the regulations that govern the operation of the drawbridge across Stoney Creek, mile 0.9, at Riviera Beach, Maryland, by further restricting bridge openings during weekday evening rush hours and by implementing bridge opening restrictions on weekends. The proposed changes to these regulations are, to the extent practicable and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

DATES: Comments must be received on or before February 24, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments received will be available for inspection and copying at room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 804–398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Linda L. Gilliam, Project Officer, and LT Monica L. Lombardi, Project Attorney.

Discussion of Proposed Rule

The Maryland Department of Transportation has requested that openings of the drawbridge across Stoney Creek at mile 0.9 in Riviera Beach, Maryland, be further restricted to help reduce highway traffic congestion. The Coast Guard is proposing to restrict the passage of vessels during evening rush hours by expanding the current restricted hours of 4 p.m. to 6 p.m. (with an optional opening at 5 p.m.) to 3:30 p.m. to 6:30 p.m., with the optional opening remaining at 5 p.m., Monday through Friday, except Federal and State holidays. This proposal also changes the weekend schedule from opening on demand to opening on the hour and half hour from 11 a.m. to 7 p.m. on Saturdays, and from 12 p.m. to 5 p.m. on Sundays, with the bridge opening on demand the remainder of the time. The current weekday morning restrictions are from 6:30 a.m. to 9 a.m. with an optional opening at 7:30 a.m. This will remain the same.

The Maryland Department of Transportation completed a study of traffic volumes at this drawbridge which showed that the weekday evening peak hours are from 3:30 p.m. to 6:30 p.m. Weekend hourly traffic volumes also were collected. The data revealed that the volume of traffic between the hours of 11 a.m. to 7 p.m. on Saturday and 12 p.m. to 5 p.m. on Sunday is at the same level as the weekday evening peak hour

traffic volumes. By extending the evening rush hour restrictions and restricting drawbridge openings on the weekends, vehicular traffic congestion on the S173 highway will be greatly reduced and highway safety will be increased. Recreational and commercial vessels will not be totally restricted during the weekday morning and evening rush hours. One opening will be provided at 7:30 a.m. and again at 5 p.m. during rush hours if any vessels are waiting to pass. The existing provision that the bridge opens on signal for public vessels of the United States and vessels in an emergency involving danger to life or property would remain unchanged. The Coast Guard believes these proposed regulations will not unduly restrict recreational/commercial vessel passage through the bridge since they can plan most of their vessel transits around the restricted hours of operation.

Public comments are requested on the extension of the evening rush hour bridge opening restrictions and the implementation of weekend bridge opening restrictions to ensure that this proposal is reasonable. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the proposed rule. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. This rule may be changed based on comments received.

Regulatory Evaluation

This proposed rule is considered to be non major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposed regulation on commercial navigation or on any industries that depend on waterborne transportation should be minimal. This conclusion is based on the fact that commercial and recreational vessels will not be totally restricted during the proposed hours of restriction since an opening will be provided once in the morning and once in the evening during weekday rush hours. Because the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard will accept comments on the economic impact on small entities, in connection with the proposal for permanent regulations, and consider them at that time.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not raise sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.573 is revised to read as follows:

§ 117.573 Stoney Creek.

The draw of the Stoney Creek (S173) bridge, mile 0.9, in Riveria shall open on signal, except:

(a) From 6:30 a.m. to 9 a.m. and from 3:30 p.m. to 6:30 p.m. Monday through Friday except Federal and State holidays, the draw need be opened only at 7:30 a.m. and 5 p.m. for vessels waiting to pass.

(b) From 11 a.m. to 7 p.m. or Saturday and from 12 p.m. to 5 p.m. on Sunday, the draw need be opened only on the hour and half hour.

(c) Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

Dated: December 27, 1991.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 92–658 Filed 1–9–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 155

[CGD 91–034/90–068]

RIN 2115–AD61 and 66

Vessel Response Plans and Carriage and Inspection of Discharge-Removal Equipment

AGENCY: Coast Guard, DOT.

ACTION: Notice of establishment of advisory committee for regulatory negotiation and notice of meetings.

SUMMARY: The Coast Guard is announcing the establishment of the Oil Spill Response Plan Negotiated Rulemaking Committee (OSRPNRC) to develop a report, including a recommended proposed and final rule, concerning tank vessel oil spill response plans and carriage of removal equipment. The rulemaking will implement certain amendments to the Federal Water Pollution Control Act included in the Oil Pollution Act of 1990. The committee will adopt its recommendation through a negotiation process. The committee is composed of persons who represent the interests substantially affected by the regulations. This notice also provides the times and places of January meetings of the advisory committee, which will be open to the public.

DATES: the first meeting of the advisory committee is 9 a.m. on January 8–10, 1992, the second is scheduled for 9 a.m. on January 21–23, 1992.

ADDRESSES: The scheduled meetings will be held in room 4234 on January 8–10, 1992 and in room 6200 on January 21–23, 1992 at DOT Headquarters, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: LCDR Glenn Wiltshire, Project Manager, OPA 90 Staff (G–MS–1) at (202) 267–6739 between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1991, the Coast Guard published a notice of intent regarding the establishment of an advisory committee to assist in developing regulations for tank vessel oil spill response plans and carriage of discharge-removal equipment (56 FR 58202; supplemental information published on November 29, 1991, at 56 FR 60949). These regulations are required by sections 311(j)(5) and (j)(6)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1321 *et seq.*) as amended by section 4202(b)(4) of the Oil Pollution Act of 1990 (Pub. L. 101–380) (OPA 90). The notice of intent requested comments concerning the decision to use the regulatory negotiation process (reg neg), the membership of the advisory committee, the issues it should consider and the interests substantially affected by the rulemaking. A contingent notice, published on December 24, 1991, (56 FR 66611), explained that the Coast Guard anticipated making a decision on whether to proceed with reg neg soon after the close of the comment period and provided appropriate notice of the time and date for the first meeting.

The Coast Guard received over 60 comments on the notice of intent. Many of the comments contained nominations for membership on the committee. The majority of the comments supported and expressed an interest in contributing to the process. Based on this response, and for the reasons stated in the notice of intent, the Coast Guard has determined that establishing an advisory committee and developing the response plan regulations (including carriage of discharge-removal equipment) through reg neg is appropriate and in the public interest. Accordingly, the Coast Guard has established the Oil Spill Response Plan Negotiated Rulemaking Committee pursuant to the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648) and the Federal Advisory Committee Act (5 U.S.C. App.) (FACA).

Several of the comments requested further information on the issues to be addressed by the committee. The Coast Guard intends to present the following issues to the committee for their consideration:

—Application of Response Plan Requirements to Various Tank Vessel Types.
—Definition of Response to "Maximum Extent Practicable".
—Contractor Prequalification and Certification.
—Carriage of Discharge-Removal Equipment Aboard Tank Vessels.

The Coast Guard has selected the following as members of the committee. They are listed according to the interest which the Coast Guard identifies as being significantly affected by this rulemaking, based on the notice of intent and the comments submitted in response.

Environmental/Public Interest Groups

Natural Resources Defense Council
Prince William Sound Regional Citizens' Advisory Committee

Response Contractors

Marine Spill Response Corporation
National Response Corporation
Spill Control Association of America
Remedial Contractors Institute

State Governments

State of California
State of Louisiana
State of Maryland

Tank Vessel Operators/Cargo Interests

American Institute of Merchant Shipping
Transportation Institute
International Association of Independent Tanker Owners
International Tanker Owners Pollution Federation
American Waterways Operators
National Ocean Industries Association
Offshore Marine Service Association
Arco Marine Inc.
Oil Companies International Marine Forum
American Petroleum Institute

Oil Handling Facilities

American Association of Port Authorities
Independent Liquid Terminals Association
Louisiana Offshore Oil Port Inc.

Shipboard Operating Personnel

Marine Engineers Beneficial Association/National Maritime Union District One

Federal Government

U.S. Coast Guard

Unfortunately, the Coast Guard cannot accommodate all requests for membership on the adivsory committee. In order to keep the committee to a size that can negotiate effectively, it is necessary to limit membership. It is also desirable to have balance among the members of the committee representing different clusters of interests. In addition, it is not essential that every concerned organization be a member of the committee, so long as every significant interest involved is represented by an appropriate organization. The Coast Guard believes that the committee membership identified above provides representation for each significant interest affected by issues to be discussed. There may be additions to the membership of the committee if the Coast Guard determines it is appropriate.

Participation by Non-Members

It is important to keep in mind that participation in the rulemaking process is not limited to members of the advisory committee. Negotiation sessions of the committee are open to the public, and interested persons can observe the negotiations and communicate their views, in an appropriate time and manner, to members of the committee. Organizations that offered to participate in the negotiated rulemaking are encouraged to send representatives to attend the committee meetings. Members of groups or individuals who are not members of the committee itself will have the opportunity to participate with working groups of the committee. The Coast Guard believes that participation of this kind can be very valuable for the rulemaking process. Of course, all interested persons will have the opportunity to comment on the proposed rule resulting from the committee's deliberations.

Meetings of the Committee

The first meeting of the Oil Spill Response Plan Negotiated Rulemaking Committee is being held on January 8, 1992 as indicated above. The agenda for the first meeting includes adopting procedures for the committee to use to consider the issues before it.

All committee meetings will be open to the public, subject to space availability; however, only the listed parties may participate as members. In accordance with the requirements of FACA, the Coast Guard will keep minutes of all committee meetings. These minutes will be placed in the public dockets (CGD 91–034/90–068) for this rulemaking and will be available for public inspection and copying at room 3406, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001

In order to meet the stringent statutory deadlines imposed for the insurance of these regulations by OPA 90, the contingent notice published on December 24, 1991 announced the first meeting of the committee. To maintain this accelerated schedule, notice of the committee meeting on 21–23 January 1992 is published at this time.

Notice of any changes to the meeting schedule, as well as notice of future meetings, will be published as required in the Federal Register.

Dated: January 6, 1992.

A. E. Henn,

Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-660 Filed 1-9-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 91-109]

Safety Zone; Boston Inner Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone around the USS CONSTITUTION, with the size of the zone varying appropriate to prevailing conditions. This zone is needed to safeguard CONSTITUTION as an historic national maritime treasure and to protect other vessels and persons viewing CONSTITUTION waterside from the risk of collision, damage or personal injury due both to its limited maneuverability when underway and to the limited maneuvering room available in the vicinity of its berth. Implementation of this safety zone will enhance safe navigation in Boston Harbor by defining permanent operational parameters for public viewing of CONSTITUTION when it is underway or moored.

DATES: Comments must be received on or before February 24, 1992.

ADDRESSES: Comments may be mailed to the Commanding Officer, USCG Marine Safety Office, 455 Commercial Street, Boston, MA, 02109-1045, or may be delivered to room 234 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223-3000. The Marine Safety Office Boston maintains the public docket for this rulemaking.

Comments will become part of this docket and will be available for inspection or copying at room 234, Marine Safety Office Boston.

FOR FURTHER INFORMATION CONTACT: LCDR S. Garrity, Marine Safety Office Boston, (617)223-3000.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD1 91-109) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office Boston at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LCDR S. Garrity, Project Officer, Marine Safety Office Boston, and LCDR J. Astley, Project Counsel, First Coast Guard District Legal Office.

Background and Purpose

The country's oldest seagoing vessel, the USS CONSTITUTION is a treasured national monument. To protect the vessel, the Captain of the Port (COTP) Boston has routinely established a temporary moving safety zone around CONSTITUTION whenever underway in Boston Harbor.

CONSTITUTION's July Fourth Turnaround Cruise, the focal point of Boston's Harborfest celebration, is an annual event in Boston Harbor. At 10 a.m. on July Fourth, CONSTITUTION departs berth at Pier 1, Charlestown Navy Yard, sometimes joined by other parade vessels, and proceeds outbound in the Boston Main Channel, Boston Inner Harbor. Once beyond Castle Island, CONSTITUTION and accompanying parade vessels turn and proceed inbound. At noon, when abeam Fort Independence, Castle Island, the CONSTITUTION fires a twenty-one gun salute honoring our nation's birthday. Following the salute, the USS CONSTITUTION and accompanying vessels return to their respective berths and moor by 2 p.m.

Experience has demonstrated that this annual event attracts large crowds of spectator vessels and creates significant congestion in Boston Harbor. The limited maneuverability of CONSTITUTION and other participating vessels while underway for this event poses a hazard for spectator vessels in the area, precipitating the need for a safety zone. A moving zone around the USS CONSTITUTION and other associated parade vessels during the event minimizes the chances of collision with other vessels by eliminating crossing or overtaking situations and helps to provide sufficient maneuvering room for participating vessels. It also minimizes disruption to other vessel traffic, as operators can schedule vessel movements before or after CONSTITUTION's transit.

In addition to this annual event, CONSTITUTION occasionally gets underway in Boston Harbor for special events. Like CONSTITUTION's July Fourth Turnaround Cruise, these events are well publicized and attract many spectator vessels, creating the similar need for a safety zone.

Accordingly, the COTP Boston proposes to establish a permanent moving safety zone for three hundred yards in all directions around the USS CONSTITUTION and around each accompanying parade vessel whenever such vessels are underway in Boston Harbor.

Scheduled movements of the USS CONSTITUTION and accompanying parade vessels will be published in the Local Notice to Mariners and in a Safety Marine Information Broadcast. During scheduled events, other marine traffic may not enter the moving safety zone without authorization from the COTP Boston.

While establishment of a moving safety zone around the CONSTITUTION when underway is a familiar practice in Boston Harbor, the COTP Boston, upon request, and after consultation with the Commanding Officer of the CONSTITUTION, agrees that additional action is necessary to protect the USS CONSTITUTION and the viewing public when the ship is moored. Numerous incidents have occurred where small pleasure craft and, on occasion, commercial tour boats have hazarded CONSTITUTION and themselves by almost colliding with the ship or becoming entangled in the rigging. Similarly, incidents involving lobster boats and the deployment of lobster traps have also occurred, threatening the safety of the vessel.

The Navy maintains records of such incidents and has begun recently to report them to the Coast Guard. A rise in the number of these incidents appears to be related to increases in the number of dinner and tour boats, and recreational vessel traffic operating in Boston Harbor. Vessel congestion in the vicinity of the Navy Yard becomes problematic during peak spectator periods. The most illustrative example of such activity occurs when many vessels gather near CONSTITUTION for evening colors. As vessels jockey for

prime viewing locations, sometimes without regard for personal safety, they have closely endangered the USS CONSTITUTION and themselves by becoming fouled in the ship's rigging.

Lobster boats and lobstermen laying traps in the vicinity of CONSTITUTION have also created safety hazards. In November, 1991, an incident involving a lobster boat occurred in the waters near CONSTITUTION. Lobster traps and attending lines fouled the props of the arriving HMS GLOUCESTER as it was maneuvering toward its berth just ahead of CONSTITUTION at Pier 1, Charlestown Navy Yard. The incident resulted in a near collision between CONSTITUTION and GLOUCESTER and demonstrated the vulnerability of CONSTITUTION in its present berthing location.

To address these problems, the COTP Boston seeks to establish a permanent safety zone in the waters between Hoosac Pier and Pier 1, Charlestown Navy Yard. The zone is necessary to ensure the safety of the CONSTITUTION, spectator craft gathering in the vicinity of the Navy Yard, and vessels mooring in proximity to CONSTITUTION. This regulation will help to prevent injury to the many waterside visitors who come to see CONSTITUTION when moored and will help to prevent damage to vessels and land structures in its immediate vicinity.

The provision of a permanent 50 yard safety zone around CONSTITUTION when CONSTITUTION is moored at a location other than Pier 1, Charlestown Navy Yard provides an equivalent level of protection on those rare occasions when the ship is moored at a site other than Pier 1, Charlestown Navy Yard.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The rulemaking provides for public access to waterside viewing of CONSTITUTION for recreational and commercial tour vessels. Denying access to fishermen in the small area of water between Hoosac Pier and Pier 1, Charlestown Navy Yard should not adversely affect their operations since the rest of Boston Harbor is available to them for locating an alternate site. The theory and practice of establishing a safety zone to protect CONSTITUTION and accompanying parade vessels underway in Boston Harbor have been in effect for many years. The proposal to establish a safety zone around CONSTITUTION when moored is consistent with the purpose of promoting safety while at the same time allowing reasonable levels of public waterside access to the vessel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since this proposal only slightly modifies the procedure for public waterside viewing of CONSTITUTION, small tour boat companies operating in Boston Harbor are provided the same business opportunity as before in conducting sightseeing tours of CONSTITUTION. Similarly, lobstermen are provided limitless suitable alternative sites in Boston Harbor to conduct their operations. Regardless of whether CONSTITUTION is underway or moored, no adverse economic impact will result from this proposed rulemaking. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. In fact, implementation of this rulemaking should help to preserve a national historic landmark and to protect the environment, reducing the risk of collision or other marine accidents. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.111 is added to read as follows:

§ 165.111 Safety Zone: Boston Harbor, Boston, Massachusetts.

(a) The following areas are established as safety zones during the conditions specified:

(1) Around the USS CONSTITUTION or any accompanying parade vessels when CONSTITUTION is underway—300 yards in all directions in the waters around the USS CONSTITUTION and each parade vessel accompanying CONSTITUTION whenever the USS CONSTITUTION is underway in Boston Harbor from the time such vessels depart their respective berths until the time they complete their transit and are safely moored.

(2) Whenever CONSTITUTION is moored at Pier 1, Charlestown Navy Yard—the waters between Hoosac Pier and Pier 1, Charlestown Navy Yard, from the imaginary line connecting the outer easternmost point protruding into Boston Harbor from Hoosac Pier to the outer westernmost point protruding into Boston Harbor from Pier 1, Charlestown Navy Yard, extending inbound along the face of both piers to the landside points where both piers end.

(3) Around the USS CONSTITUTION—fifty yards in all directions in the waters around CONSTITUTION when the vessel is moored at any Boston berthing location other than Pier 1, Charlestown Navy Yard.

(b) The general regulations governing safety zones as contained in 33 CFR 165.23 apply.

Dated: December 20, 1991.

W.H. Boland, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 92–861 Filed 1–9–92; 8:45 am]

BILLING CODE 4910–14–M

Notices

Federal Register
Vol. 57, No. 7
Friday, January 10, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 554]

Expansion of Foreign-Trade Zone 43 Battle Creek, Michigan, Area

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the City of Battle Creek, Michigan, Grantee of Foreign-Trade Zone No. 43, has applied to the Board for authority to expand its general-purpose zone to include a site in Texas Township, Kalamazoo County, Michigan, adjacent to the Battle Creek Customs port of entry;

Whereas, the application was accepted for filing on December 3, 1990, and notice inviting public comment was given in the **Federal Register** on December 13, 1990 (Docket 48–90, 55 FR 51306);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Battle Creek area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed on December 3, 1990, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 3rd day of January, 1992.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 92–682 Filed 1–9–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 555]

Expansion of Foreign-Trade Zone 43, Battle Creek, Michigan, Area

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the City of Battle Creek, Michigan, Grantee of Foreign-Trade Zone No. 43, has applied to the Board for authority to expand its general-purpose zone to include a site in Zeeland Township, Ottawa County, Michigan, adjacent to the Grand Rapids Customs port of entry;

Whereas, the application was accepted for filing on May 21, 1991, and notice inviting public comment was given in the **Federal Register** on June 5, 1991 (Docket 29–91, 56 FR 25662);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to expand zone services to the Grand Rapids area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed on May 21, 1991, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 3rd day of January, 1992.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 92–683 Filed 1–9–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 557]

Resolution and Order Approving With Restriction the Application of the City of Battle Creek, MI, for a Subzone at the Infant Formula/Nutritional Products Manufacturing Facilities of Mead Johnson & Company in Zeeland, MI

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Battle Creek, Michigan, grantee of Foreign-Trade Zone 43, filed with the Foreign-Trade Zones Board (the Board) on September 21, 1991, requesting special-purpose subzone status for the infant formula and nutritional products manufacturing facilities of Mead Johnson & Company, in Zeeland, Michigan, adjacent to the Grand Rapids Customs port of entry, the Board, finds that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval were subject to a restriction requiring all foreign-origin dairy products admitted to the subzone to be reexported (sugar is of domestic origin), approves the application, subject to the foregoing restriction.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby

authorized to issue a grant of authority and appropriate Board Order.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the City of Battle Creek, Michigan, Grantee of Foreign-Trade Zone No. 43, has made application (filed 9–21–91, FTZ Docket 55–91, 56 FR 50091, 10–03–91) to the Board for authority to establish a subzone at the infant formula and nutritional products manufacturing facilities of Mead Johnson & Company in Zeeland, Michigan;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restriction in the resolution accompanying this action;

Now, therefore, in accordance with the application filed September 21, 1991, the Board hereby authorizes the establishment of a subzone at the Mead Johnson & Company facilities in Zeeland, Michigan, designated on the records of the Board as Foreign-Trade Subzone 43B, at the location described in the application, subject to the restriction in the resolution accompanying this action, and to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including Section 400.28.

Signed this 3rd day of January, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 92–684 Filed 1–9–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–437–001]

Truck Trailer Axle and Brake Assemblies From Hungary; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminarily results of antidumping duty administrative review; request for termination of the suspended investigation.

SUMMARY: In response to a request by the Hungarian Railway and Carriage and Machine Works (RABA), the Department of Commerce (the Department) has conducted an administrative review of the agreement suspending the antidumping duty investigation of Truck Trailer Axle and Brake Assemblies from Hungary. RABA has also requested that the Department terminate the suspended investigation. The review covers the sole Hungarian exporter of the merchandise, RABA, and the period calendar year 1985. As a result of the review, we determine preliminarily the existence of a *de minimis* margin during the period of review. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph B. Kaesshaefer, Jr. or Robin Gray, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1982, the Department published in the **Federal Register** a notice of suspension of antidumping investigation on Truck Trailer Axle and Brake Assemblies from Hungary (47 FR 66). The basis for this suspension of investigation was an agreement reached between the Department and RABA in which RABA agreed to revise their prices to eliminate sales of this merchandise to the United States at less than fair value. On January 30, 1986, we received a request from RABA that we conduct an administrative review and terminate the suspended investigation. We published a notice of initiation of review in the **Federal Register** on February 18, 1986 (51 FR 5751). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review, as described in the suspension agreement, are truck trailer axle and brake assemblies and parts thereof which were imported in 1985 under item numbers 692.32 and 692.69 of the Tariff Schedules of the United States Annotated (TSUSA). The merchandise is currently classified under item numbers 8708.50.90, 8709.60.90, and 8716.90.50 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The agreement also includes any parts which may be imported to be utilized in trailer axles. These parts include, but are not limited to the beam, spindle, brake spider, camshaft, brake shoes, and separate brake assemblies when imported for use on trailer axles. The agreement does not include separate brake assemblies and other parts which are to be utilized solely in truck components other than trailer axles.

The review covers the sole Hungarian exporter of the merchandise to the United States, RABA, and the period calendar year 1985. Verification was conducted at RABA in Gyor, Hungary, on December 12 and 13, 1986.

Preliminary Results of Review

The suspension agreement on Truck Trailer Axle and Brake Assemblies from Hungary provides that RABA make all necessary price revisions to eliminate completely any amount by which the fair value of the product exceeds the U.S. price. This suspension agreement established a price which "RABA will charge any U.S. importer or customer for sales of the product which are entered into the United States * * *." Further, this agreement provides that RABA make adjustments "as necessary to ensure that future sales of the product will not be made at less than fair value." It also requires that "the Department shall conduct administrative reviews * * * to ensure that there are and will be no sales at less than fair value." (47 FR 68, January 4, 1982). RABA agreed to submit quarterly reports detailing sales of its products to the United States. RABA also agreed to provide any additional information that the Department deems necessary to assure continuation of the agreement and in order for the Department to conduct its administrative reviews under section 751 of the Tariff Act. This additional information includes all data concerning any subsequent price adjustments relative to the subject merchandise

between RABA and its U.S. importer. The purpose of this administrative review is to determine whether RABA is in compliance with the suspension agreement for the review period calendar year 1985.

In the original less than fair value investigation, the Department determined that Hungary is a state-controlled economy within the meaning of § 353.52 of the Department's Regulations, as amended. Italy was selected as the surrogate country for purposes of determining foreign market value (FMV) under section 773(c) of the Tariff Act, as amended (see Preliminary Determination of Sales at Less Than Fair Value, September 17, 1981, 46 FR 46152). FMV was calculated by valuing the Hungarian factors of production using Italian costs. RABA made subsequent price adjustments to this FMV to ensure that future sales of the product would not be made at less than fair value. For purposes of reviewing RABA's compliance with the suspension agreement, we have not departed from this methodology.

In an administrative review of an antidumping duty order, the Department ordinarily reviews and determines the amount of any antidumping duty due on the subject merchandise by calculating the FMV and the U.S. price of each entry of merchandise subject to that order. However, for suspension agreements, the Department reviews whether the signatories are in compliance with the terms of the agreement. No administrative reviews of this suspension agreement have been conducted previously. Therefore, for this review period, the Department adjusted only the original FMV established in the suspension agreement to account for changes in product models and changes in RABA's factors of productions as reported by RABA in accordance with the terms of the suspension agreement. Because the sole purpose of this review is to determine whether RABA is in compliance with the suspension agreement, no further adjustments were made to the original FMV.

As a result of our comparison of the United States price to the FMV, we have preliminarily determined that a *de minimis* dumping margin of 0.37 percent exists for the period calendar year 1985. According to § 353.6 of the Department's Regulations, we will disregard any weighted average dumping margin that is *de minimis* (i.e. less than 0.5 percent *ad valorem*). In addition, we determine that the sale of this merchandise at a *de minimis* margin is an act which is "inconsequential" within the meaning of § 353.19(d) of the Department's Regulations. Therefore, the Department preliminarily determines that RABA is in compliance with the terms of the suspension agreement for the period calendar year 1985.

RABA has filed a request for termination of the suspended investigation. The Department's Regulations specify that the Department may terminate a suspended investigation if the Department concludes that: (1) The producers covered by the agreement have sold the merchandise at not less than FMV for a period of at least three consecutive years; and (2) it is not likely that those persons will in the future sell the merchandise at less than FMV. 19 CFR 353.25(a). Therefore, the Department cannot address RABA's request for termination until it is demonstrated that RABA has complied with the terms of the agreement for three consecutive years. The Department will conduct reviews for the periods 1986 and 1987 in order to determine whether there is a reasonable basis to believe that the requirements for termination are met.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: December 30, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-686 Filed 1-9-92; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination: Certain Large Diameter OCTG

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Determination on Certain Oil Country Tubular Goods ("OCTG").

SHORT-SUPPLY REVIEW NUMBER: 62.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply allowance for 459.787 net tons of certain large diameter OCTG through March 31, 1992 under the U.S.-Japan Steel Arrangement.

EFFECTIVE DATE: January 3, 1992.

FOR FURTHER INFORMATION CONTACT: Marissa Rauch or Kathy McNamara, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-1382 or (202) 377-3793.

SUPPLEMENTARY INFORMATION: On December 4, 1991, the Secretary received an adequate petition from Red Hill Geothermal, Inc. ("Red Hill"), requesting a short-supply allowance for 459.787 net tons of 18⅝ inch diameter × 87.5 lb. per foot electric-resistance-weld ("ERW") steel casing, grade NT80DE (HRC maximum 28) with a A.P.I. buttress threaded and coupled connection, through March 31, 1992, under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America in Certain Steel Products ("the U.S.-Japan Steel Arrangement"). Red Hill requested short supply because it alleged that this material is not produced domestically and regular export licenses are not available for this material.

The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures").

Action

On December 4, 1991, the Secretary established an official record of this short-supply request (Case Number 62) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce. On December 16, 1991, the Secretary published a notice in the **Federal Register** announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than December 23, 1991, and interested parties were invited to file replies to any comments no later than five days after

that date. In order to determine whether this product, or a viable alternative product, could be supplied in the U.S. market for the period of this review, the Secretary sent questionnaires to: North Star Steel, Texas Inc. ("North Star"), Al Tech Specialty Steel Corporation ("Al Tech"), USX Corporation ("USX"), CF&I Steel Corporation ("CF&I"), Koppel Steel Corporation ("Koppel"), and Lone Star Steel Corporation ("Lone Star"). The Secretary received timely questionnaire responses from four of the six companies.

Questionnaire Responses

Four questionnaire respondents (Al Tech, North Star, Lone Star and Koppel) indicated that they were unable to supply the requested OCTG.

Conclusion

Because the domestic industry is unable to supply Red Hill with 459.787 net tons of material meeting its specifications through March 31, 1992, the Secretary determines that short supply does exist with respect to the requested product for this time period. Pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Procedures, the Secretary hereby grants a short-supply allowance for 459.787 net tons of the requested large diameter OCTG through March 31, 1992.

Dated: January 3, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-687 Filed 1-9-92; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of Bangladesh

January 7, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated September 19, 1991, as amended, between the Governments of the United States and the People's Republic of Bangladesh, agreement was reached to extend their current bilateral textile agreement for three consecutive one-year periods, beginning on February 1, 1992 and extending through January 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period February 1, 1992 through January 31, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 7, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Memorandum of Understanding dated September 19, 1991, as amended, between the Governments of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 3, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on February 1, 1992 and extending through January 31, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	304,500 dozen.
331	771,436 dozen pairs.
334	92,896 dozen.
335	166,795 dozen.
336/636	264,271 dozen.
338/339	864,677 dozen.
340/640	1,954,654 dozen.
341	1,619,254 dozen.
342/642	280,156 dozen.
347/348	1,457,327 dozen.
351/651	444,946 dozen.
363	16,586,000 numbers.
369-S [1]	1,111,704 kilograms.
634	325,000 dozen.
635	210,562 dozen.
638/639	1,096,568 dozen.
641	678,027 dozen.
645/646	257,517 dozen.
647/648	916,559 dozen.
847	463,485 dozen.

[1] Category 369-S: only HTS number 6307.10.2005.

Imports charged to these category limits, except Categories 237, 363 and 634, for the period February 1, 1991 through January 31, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-681 Filed 1-9-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 10, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 16, October 8, November 1, 8, 15, 22, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 40872, 52256, 56199, 57323, 58051 and 58882) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping on other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Line, Multi-Loop, 1670–01–107–7651.
Envelope Case, Map and Photograph, 8460–01–113–7575.

Services

Grounds Maintenance, North and South Duplexes, Naval Weapons Center, China Lake, California.
Janitorial/Custodial, 934th Tactical Airlift Group, Minneapolis-St. Paul International Airport, Minneapolis, Minnesota.
Janitorial/Custodial, Air Traffic Control Tower and Flight, Service Station, Youngstown Municipal Airport, Youngstown, Ohio.
Janitorial/Custodial, General J. Sumner Jones USARC, Wheeling, West Virginia.
Janitorial/Grounds Maintenance, U.S. Department of Agriculture, Coshocton, Ohio.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,
Deputy Executive Director.
[FR Doc. 92–676 Filed 1–9–92; 8:45 am]
BILLING CODE 6820–33–M

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 10, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agencies employing persons who are blind or have severe disabilities.

It is proposed to add the following commodity and service to the Procurement List:

Commodity

Tool Box, Portable, 5140–00–226–9019.

Service

Janitorial/Custodial, Fort Shafter and Tripler Army, Medial Center, Oahu, Hawaii.

E.R. Alley, Jr.,
Deputy Executive Director.
[FR Doc. 92–677 Filed 1–9–92; 8:45 am]
BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures option contract.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in options on natural gas futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before February 10, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the natural gas option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 245–6314.

Other materials submitted by the NYMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's

headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contract, or with respect to other materials submitted by the NYMEX in support of the application, should send comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 6, 1992.

Gerald Gay,

Director.

[FR Doc. 92-615 Filed 1-9-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of delayed implementation of professional services payment reforms; notice of CHAMPUS acceptance of evaluation and management codes.

SUMMARY: This notice announces a delay in the implementation of certain changes to CHAMPUS payment mechanisms for professional providers. Instead of being implemented on January 1, 1992, as anticipated, the changes are planned for May 1, 1992. An amendment to 32 CFR part 199 to change the effective date from January 1, 1992 to May 1, 1992 is in preparation. Additionally, the notice describes how CHAMPUS will determine allowable amounts for the new CPT-4 series 99000 "Evaluation and Management" codes being introduced January 1, 1992 by the American Medical Association.

EFFECTIVE DATE: The procedure described for evaluation and management codes is effective for all CHAMPUS claims received on or after January 1, 1992 and before implementation of the new payment approach, planned for May 1, 1992.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

For further information contact: Steve Lillie, Office of the Assistant Secretary of Defense (Health Affairs), (703) 695-3350.

To obtain copies of this document, see the **ADDRESSES** section above. Questions related to specific CHAMPUS claims should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 6, 1991 (56 FR 44001) set forth a revised approach to reimbursement of individual professional providers under CHAMPUS. The rule implemented provisions of the Defense Appropriations Act for Fiscal Year 1991, which limited increases in maximum allowable payments to physicians and other individual professional providers and authorized reductions in such amounts for overpriced procedures. On October 7, 1991, an initial set of revisions to maximum allowable amounts was implemented; we planned to implement on January 1, 1992 additional revisions to allowable amounts, along with a shift to national determination of maximum allowable amounts and adjustments to reflect local economic conditions.

The revisions to maximum allowable amounts and the shift to nationally-determined, locally-adjusted maximum allowable amounts will not take place on January 1, 1992. The planned effective date of these changes is May 1, 1992. The reasons for this delay are (1) the delay in the publication of the Medicare Fee Schedule, which provides certain information necessary for the calculation of CHAMPUS maximum allowable amounts, and (2) the administrative complexity of the changes being implemented. Until the changes are implemented, the present system of statewide prevailing charges will remain in place, and current maximum allowable amounts will remain in effect.

The American Medical Association is implementing, effective January 1, 1992, a new set of codes for evaluation and management services as part of its Physicians' Current Procedural Terminology (CPT-4). The CPT-4 is available from the American Medical Association, P.O. Box 10946, Chicago, IL 60610. CHAMPUS fiscal intermediaries will accept claims using these codes beginning on January 1, 1992, and will determine maximum payment amounts by using the Medicare "crosswalk" from the old 90000 series codes for similar services. The Medicare crosswalk has published in the **Federal Register** on November 25, 1991 (56 FR 59580). To avoid penalizing providers and for administrative simplicity, maximum allowable payment amounts will be determined new codes which are a "blend" of several old codes by applying the highest maximum allowable amount from the old codes used to create the new code, rather than use the blending process adopted by Medicare. In the case of a new series 99000 code which is crosswalked one-to-one from an old series 90000 code, the maximum allowable amount for the old code will be used for the new code.

CHAMPUS fiscal intermediaries will continue to accept claims using the "old" codes after January 1, 1992, until the changes now planned for May 1, 1992 are implemented. At that time, only claims employing the new codes will be accepted; the maximum allowable amounts for the new codes will be determined on a national basis, with adjustments to reflect local economic conditions.

Dated: January 7, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-606 Filed 1-8-92; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Space Exploration Initiative Support

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Space Exploration Initiative Support will meet in closed session on January 20-21, 1992 at Science Applications International Corporation, Falls Church, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the status of DoD activities, consider cooperative areas for DoD involvement, particularly those areas where there may be dual use—civil and military.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. app. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that

accordingly this meeting will be closed to the public.

Dated: January 7, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-607 Filed 1-9-92; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is pubishing Civilian Personnel Per Diem Bulletin Number 159. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 159 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: January 1, 1992.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowances Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discountinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 3810-01-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+ M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:				
ADAK 5/	$ 10	$ 34	$ 44	10-01-91
ANAKTUVUK PASS	83	57	140	12-01-90
ANCHORAGE				
05-15--09-15	129	67	196	05-15-92
09-16--05-14	83	62	145	01-01-92
ANIAK	73	36	109	07-01-91
ATQASUK	129	86	215	12-01-90
BARROW	86	73	159	06-01-91
BETHEL	70	73	143	12-01-90
BETTLES	65	45	110	12-01-90
CANTWELL	62	46	108	06-01-91
COLD BAY	71	54	125	12-01-90
COLDFOOT	75	47	122	12-01-90
CORDOVA	74	89	163	01-01-91
CRAIG	67	35	102	07-01-91
DILLINGHAM	76	38	114	12-01-90
DUTCH HARBOR-UNALASKA	91	54	145	12-01-90
EIELSON AFB				
05-15--09-15	91	65	156	05-15-92
09-16--05-14	63	63	126	01-01-92
ELMENDORF AFB				
05-15--09-15	129	67	196	05-15-92
09-16--05-14	83	62	145	01-01-92
EMMONAK	60	40	100	06-01-91
FAIRBANKS				
05-15--09-15	91	65	156	05-15-92
09-16--05-14	63	63	126	01-01-92
FALSE PASS	80	37	117	06-01-91
FT. RICHARDSON				
05-15--09-15	129	67	196	05-15-92
09-16--05-14	83	62	145	01-01-92
FT. WAINWRIGHT				
05-15--09-15	91	65	156	05-15-92
09-16--05-14	63	63	126	01-01-92
HOMER				
05-01--09-30	71	60	131	05-01-92
10-01--04-30	57	58	115	01-01-92
JUNEAU				
05-01--10-01	88	74	162	05-01-92
10-02--04-30	75	73	148	01-01-92

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MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
KATMAI NATIONAL PARK	$ 89	$ 59	$148	12-01-90
KENAI-SOLDOTNA				
04-02--09-30	94	68	162	04-02-92
10-01--04-01	69	66	135	01-01-92
KETCHIKAN				
05-14--10-14	77	61	138	05-14-92
10-15--05-13	62	59	121	01-01-92
KING SALMON 3/	75	59	134	12-01-90
KLAWOCK	75	36	111	07-01-91
KODIAK	71	61	132	01-01-92
KOTZEBUE	125	72	197	01-01-92
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA	79	44	123	07-01-91
MURPHY DOME				
05-15--09-15	91	65	156	05-15-92
09-16--05-14	63	63	126	01-01-92
NELSON LAGOON	102	39	141	06-01-91
NOATAK	125	72	197	01-01-92
NOME	68	70	138	01-01-92
NOORVIK	125	72	197	01-01-92
PETERSBURG	62	59	121	01-01-92
POINT HOPE	99	61	160	12-01-90
POINT LAY	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	64	57	121	12-01-90
SAND POINT	75	36	111	07-01-91
SEWARD				
05-01--09-30	107	53	160	05-01-92
10-01--04-30	61	48	109	01-01-92
SHUNGNAK	125	72	197	01-01-92
SITKA-MT. EDGECOMBE	72	69	141	01-01-92
SKAGWAY				
05-14--10-14	77	61	138	05-14-92
10-15--05-13	62	59	121	01-01-92
SPRUCE CAPE	71	61	132	01-01-92
ST. GEORGE	100	39	139	06-01-91
ST. MARY'S	60	40	100	12-01-90
ST. PAUL ISLAND	81	34	115	12-01-90
TANANA	68	70	138	01-01-92
TOK	66	55	121	01-01-92
UMIAT	97	63	160	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)						
UNALAKLEET	$ 58		$ 47		$105	12-01-90
VALDEZ						
05-01--09-01	98		53		151	05-01-92
09-02--04-30	84		51		135	01-01-92
WAINWRIGHT	90		75		165	12-01-90
WALKER LAKE	82		54		136	12-01-90
WRANGELL						
05-14--10-14	77		61		138	05-14-92
10-15--05-13	62		59		121	01-01-92
YAKUTAT	70		40		110	12-01-90
OTHER 3, 4/	63		47		110	07-01-91
AMERICAN SAMOA	132		47		179	12-01-91
GUAM	99		59		158	12-01-90
HAWAII:						
ISLAND OF HAWAII: HILO	60		38		98	06-01-91
ISLAND OF HAWAII: OTHER	106		43		149	06-01-91
ISLAND OF KAUAI	112		48		160	06-01-91
ISLAND OF KURE 1/			13		13	12-01-90
ISLAND OF MAUI: KIHEI						
04-01--12-19	85		50		135	12-01-90
12-20--03-31	97		50		147	12-20-90
ISLAND OF MAUI: OTHER	62		50		112	06-01-91
ISLAND OF OAHU	95		42		137	06-01-91
OTHER	59		47		106	12-01-90
JOHNSTON ATOLL 2/	18		18		36	10-01-91
MIDWAY ISLANDS 1/			13		13	12-01-90
NORTHERN MARIANA ISLANDS:						
ROTA	45		31		76	12-01-90
SAIPAN	68		47		115	12-01-90
TINIAN	44		24		68	12-01-90
OTHER	20		13		33	12-01-90
PUERTO RICO:						
BAYAMON						
04-16--12-14	93		90		183	07-01-91
12-15--04-15	116		92		208	12-15-91
CAROLINA						
04-16--12-14	93		90		183	07-01-91
12-15--04-15	116		92		208	12-15-91
FAJARDO (INCLUDING LUQUILLO)						
04-16--12-14	93		90		183	07-01-91
12-15--04-15	116		92		208	12-15-91

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MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO: (CONT'D)						
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)						
04-16--12-14	$ 93		$ 90		$183	07-01-91
12-15--04-15	116		92		208	12-15-91
MAYAGUEZ	84		58		142	07-01-91
PONCE	113		90		203	07-01-91
ROOSEVELT ROADS						
04-16--12-14	66		61		127	07-01-91
12-15--04-15	102		64		166	12-15-91
SABANA SECA						
04-16--12-14	93		90		183	07-01-91
12-15--04-15	116		92		208	12-15-91
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)						
04-16--12-14	93		90		183	07-01-91
12-15--04-15	116		92		208	12-15-91
OTHER	63		63		126	07-01-91
VIRGIN ISLANDS OF THE U.S.						
05-01--11-30	95		63		158	05-01-91
12-01--04-30	128		66		194	12-01-90
WAKE ISLAND 2/	4		17		21	12-01-90
ALL OTHER LOCALITIES	20		13		33	12-01-90

FOOTNOTES

1/ Commercial facilities are nct available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

2/ Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

3/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $16.25 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

4/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

5/ On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. government or contractor quarters.

BILLING CODE 3810-01-C

Dated: January 7, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-605 Filed 1-9-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

To Prepare an Unclassified Environmental Impact Statement for the B-2 Basing at Whiteman AFB, MO

The United States Air Force is issuing this notice to advise the public that an unclassified Environmental Impact Statement (EIS) will be prepared for basing the first wing of B-2 bombers, 24 OA-10 and 18 T-38 aircraft at Whiteman AFB, Missouri.

The National Environmental Policy Act encourages agencies to conduct public scoping meetings to obtain input to assist in determining the nature, extent and scope of the issues and concerns to be addressed in the EIS. The Air Force has tentatively scheduled a public scoping meeting for January 27, 1992. Notice of the exact time and place of the meeting will be published in the news media.

The United States Air Force invites comments and suggestions from all interested parties on the scope of the EIS. If concerned persons are not able to attend this scoping meeting, written suggestions and comments will be accepted. To assure the Air Force will have sufficient time to fully consider public inputs on issues, written comments should be mailed to ensure receipt no later than March 8, 1992. However, the Air Force will accept comments at any time during the environmental impact analysis process. Comments or requests for further information concerning this EIS should be addressed to: Captain Eric Wilbur, Environmental Planning, 351 SPTG/DEV, Whiteman AFB, MO 65305-5000, Phone: 816-687-6347.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-561 Filed 1-9-92; 8:45 am]

BILLING CODE 3910-01-M

Defense Contract Audit Agency

Delivery of Personal Mail at Defense Contract Audit Agency Installations

AGENCY: Defense Contract Audit Agency (DCAA), Department of Defense (DOD).

ACTION: Notice of DCAA policy for delivering mail from private sources to individual members or employees of the Defense Contract Audit Agency.

SUMMARY: This notice serves to advise the private sector of the Defense Contract Audit Agency policy for delivering mail from private sources to individual members or employees of the Defense Contract Audit Agency. It applies to unsolicited mass mailings, received in quantities of five or more on the same day or on consecutive days from the same mailer addressed from private organizations to Agency employees at their place of employment.

DATES: The proposed action will be effective without further notice on February 10, 1992 unless comments are received which would result in a contrary determination.

ADDRESSES: Send any comments to Mrs. Kathy Windsor, ATTN: CMR, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178, Telephone: (703) 274-4400.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency has a general policy that individual members and employees are not to use their office address for the receipt of personal mail. This policy has been difficult to enforce as it is often subjective if mail from private sources is intended for people as individuals or as officials of the Defense Contract Audit Agency. At times however, it is obvious, due to the nature of the mail piece and the quantities received, that the mailing can reasonably be considered to be personal. Regardless, the Defense Contract Audit Agency has attempted to deliver such mail containing a correct name and office address. Since the Defense Contract Audit Agency and not the Postal Service sorts and delivers mail internally at all Defense Contract Audit Agency locations, the receipt of large volumes of personal mail places a burden on Agency available equipment and limited staffing resources. Several Defense Contract Audit Agency locations have recently requested permission to refuse to deliver large volumes of personal mail addressed to individuals at their office. In accordance with Department of Defense policy regarding installation management, the Defense Contract Audit Agency has approved these requests on an individual basis. Unofficial mail (from private sources) addressed to Defense Contract Audit Agency employees by name, received in quantities of five or more on the same day or on consecutive days from the same mailer, may be refused by DCAA mailroom personnel and returned to the Postal Service.

Dated: January 6, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-564 Filed 1-9-92; 8:45 am]

BILLING CODE 3810-01-M

Defense Investigative Service

Privacy Act of 1974; Amend System of Record Notices

AGENCY: Defense Investigative Service, DOD.

ACTION: Amend system of record notices.

SUMMARY: The Defense Investigative Service proposes to amend three record system notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The specific changes to the notices being amended are set forth below followed by the system notices, as amended, published in their entirety.

DATES: The proposed actions will be effective February 10, 1992, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Mr. Dale Hartig, Chief Office of Information and Public Affairs, Defense Investigative Service, 1900 Half Street, SW, Room 6115, Washington, DC 20324-1700. Telephone (202) 475-1062.

SUPPLEMENTARY INFORMATION: The complete Defense Investigative Service systems of records notices inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** at

50 FR 22943, May 29, 1985 (DoD Compilation, changes follow)
55 FR 22390, Jun. 1, 1990
56 FR 12716, Mar. 27, 1991
56 FR 46163, Sep. 10, 1991

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), which requires the submission of altered systems reports.

Dated: January 6, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

V7-01

System name:

Enrollment, Registration and Course Completion Record, (50 FR 22958, May 29, 1985).

Changes:

* * * * *

System location:

Delete entry and replace with "Department of Defense Security Institute, Defense General Supply Center, Building 33, Bay E, Richmond, VA 23297–5091."

* * * * *

Authority for maintenance of the system:

Delete entry and replace with "5 U.S.C. 301; Executive Order 9397; Executive Order 10865; Executive Order 10909; DoD Directive 5105.42, Defense Investigative Service; DoD Directive 5200.32, Department of Defense Security Institute; and DIS Regulation 28–1, DIS Records Management Program."

* * * * *

Storage:

And "machine-printed" after "on" in line 1.

* * * * *

Safeguards:

Add period (.) at the end of line 3 and delete line 4.

Retention and disposal:

Delete entry and replace with "Diskettes are erased or overwritten and reused every two years, or when full, whichever comes first. Machine printed index cards are destroyed by burning or shredding 10 years from the date of the last transaction."

System manager(s) and address(es):

Delete entry and replace with "Director, Department of Defense Security Institute, Defense General Supply Center, Building 33, Bay E, Richmond, VA 23297–5091."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Investigative Service, Office of Information and Public Affairs, 1900 Half Street, SW, Washington, DC 20324–1700."

Record access procedures:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Investigative Service, Privacy Act Office, P.O. Box 1211, Baltimore, MD 21203–1211.

A request for information must contain the full name and Social Security Number of the subject individual. Personal visits will require a valid driver's license or other picture identification and are limited to the Privacy Act Office."

Contesting record procedures:

Delete entry and replace with "The agency's rules for accessing records, contesting contents, and appealing initial determinations by the individual concerned are contained in DIS Regulation 28–4, Access to and Maintenance of DIS Personal Records; 32 CFR part 321; or may be obtained from the Defense Investigative Service, Office of Information and Public Affairs, 1900 Half Street, SW, Washington, DC 20324–1700."

* * * * *

V7–01

SYSTEM NAME:

Enrollment, Registration and Course Completion Record.

SYSTEM LOCATION:

Department of Defense Security Institute, Defense General Supply Center, Building 33, Bay E, Richmond, VA 23297–5091.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are scheduled for or who have attended courses of instruction offered by the Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information may include individual's name and other personal identifying and administrative data pertaining to attendance at the Institute to include employer, course completion, and other similar data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Executive Order 9397; Executive Order 10865; Executive Order 10909; DoD Directive 5105.42, Defense Investigative Service; DoD Directive 5200.32, Department of Defense Security Institute; and DIS Regulation 28–1, DIS Records Management Program.

PURPOSE(S):

Used by Institute personnel to prepare class rosters and provide basic administrative information on attendees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of DIS' compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on machine-printed index cards and computer diskettes.

RETRIEVABILITY:

Records are filed alphabetically by last name.

SAFEGUARDS:

Records are maintained in file cabinets in a locked room in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Diskettes are erased or overwritten and reused every two years, or when full, whichever comes first. Machine printed index cards are destroyed by burning or shredding 10 years from the date of the last transaction.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Director, Department of Defense Security Institute, Defense General Supply Center, Building 33, Bay E, Richmond, VA 23297–5091.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Investigative Service, Office of Information and Public Affairs, 1900 Half Street, SW, Washington, DC 20324–1700.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Investigative Service, Privacy Act Office; P.O. Box 1211, Baltimore, MD 21203–1211.

A request for information must contain the full name and Social Security Number of the subject individual. Personal visits will require a valid driver's license or other picture identification and are limited to the Privacy Act Office.

CONTESTING RECORD PROCEDURES:

The agency's rules for accessing records, contesting contents, and appealing initial determinations by the individual concerned are contained in DIS Regulation 28–4, Access to and Maintenance of DIS Personal Records; 32 CFR part 321; or may be obtained from the Defense Investigative Service, Office of Information and Public Affairs, 1900 Half Street, SW., Washington, DC 20324–1700.

RECORD SOURCE CATEGORIES:

The student, his/her employer, and the Department of Defense Security Institute.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

V7–02

System name:

Guest/Instructor Identification Records, (50 FR 22958, May 29, 1985).

Changes:

* * * * *

System location:

Delete entry and replace with "Director, Department of Defense Security Institute, Defense General Supply Center, Building 33, Bay E, Richmond, VA 23297–5091."

* * * * *

Authority for maintenance of the system:

Delete "20 February 1960" in line 3. Delete "January 17 1961" in line 5. Add "DoD Directive 5200.32, Department of Defense Security Institute (DoDSI)" at the end of the entry.

* * * * *

Storage:

Delete entry and replace with "Index cards and computer diskettes."

Safeguards:

Add a period (.) at the end of line 3 and delete line 4.

Retention and disposal:

Delete entry and replace with "Records are reviewed annually and obsolete data are destroyed. Paper records are shredded or burned, electronic records are erased or overwritten."

System manager(s) and address(es):

Delete entry and replace with "Director, Department of Defense Security Institute, Defense General Supply Center, Building 33, Bay E, Richmond, VA 23297–5091."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Investigative Service, Office of Information and Public Affairs, 1900 Half Street, SW, Washington, DC 20324–1700."

Record access procedures:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Investigative Service, Privacy Act Office, PO Box 1211, Baltimore, MD 21203–1211.

A request for information must contain the full name and Social Security number of the subject individual. Personal visits will require a valid driver's license or other picture identification and are limited to the Privacy Act Office."

Contesting record procedures:

Delete entry and replace with "The agency's rules for accessing records, contesting contents, and appealing initial determination by the individual concerned are contained in DIS Regulation 28–4, Access to and Maintenance of DIS Personal Records: 32 CFR part 321; or may be obtained from the Defense Investigative Service, Office of Information and Public Affairs, 1900 Half Street, SW, Washington, DC 20324–1700."

* * * * *

V7–02

SYSTEM NAME:

Guest/Instructor Identification Records.

SYSTEM LOCATION:

Dirctor, Department of Defense Security Institute, Defense General Supply Center, Building 33, Bay E, Richmond, VA 23297–5091.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Guest speakers and regularly assigned instructors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, position, biographical data, and other background information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10865; Executive Order 10909; DoD Directive 5105.42, Defense Investigative Service (DIS); and DoD Directive 5200.32, Department of Defense Security Institute (DoDSI).

PURPOSE(S):

Used by Institute personnel for the introduction of speakers and instructors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of DIS' compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards and computer diskettes.

RETRIEVABILITY:

Records are filed alphabetically by last name.

SAFEGUARDS:

Records are maintained in file cabinets in a locked room in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are reviewed annually and obsolete data are destroyed. Paper records are shredded or burned, electronic records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Director, Department of Defense Security Institute, Defense General Supply Center, Building 33, Bay E, Richmond VA 23297–5091.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquires to the Defense Investigative Service, Office of Information and Public Affairs, 1900 Half Street, SW., Washington, DC 20324–1700.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquires to the Defense Investigative Service, Privacy Act Office, P.O. Box 1211, Baltimore, MD 21203–1211.

A request for information must contain the full name and Social Security Number of the subject individual. Personal visits will require a valid driver's license or other picture identification and are limited to the Privacy Act Office.

CONTESTING RECORD PROCEDURES:

The agency's rules for accessing records, contesting contents, and appealing initial determinations by the individual concerned are contained in DIS Regulation 28–4, Access to and Maintenance of DIS Personal Records;

32 CFR part 321, or may be obtained from the Defense Investigative Service, Office of Information and Public Affairs, 1900 Half Street, SW, Washington, DC 20324–1700.

RECORD SOURCE CATEGORIES:

The information is provided by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

V8–01

System name:

Industrial Personnel Security Clearance Files (50 FR 22959, May 29, 1985).

Changes:

* * * * *

System location:

Add these addresses to the end of the entry "Defense Investigative Service, Deputy Director (Industrial Security), 1900 Half Street, SW, Washington, DC 20324–1700.

Defense Investigative Service, New England Region, Director of Industrial Security, 495 Summer Street, Boston, MA 02210–2192.

Defense Investigative Service, Mid–Atlantic Region, Director of Industrial Security, 1040 Kings Highway North, Cherry Hill, NJ 08034–1906.

Defense Investigative Service, Capital Region, Director of Industrial Security, 2461 Eisenhower Avenue, Room 752, Alexandria, VA 22331–1000.

Defense Investigative Service, Mid–Western Region, Director of Industrial Security, 610 South Canal Street, Room 908, Chicago, IL 60607–4577.

Defense Investigative Service, Southeastern Region, Director of Industrial Security, 2300 Lake Park Drive, Suite 250, Smyrna, GA 30080–7606.

Defense Investigative Service, Southwestern Region, Director of Industrial Security, 106 Decker Court, Suite 200, Irving, TX 75062–2795.

Defense Investigative Service, Northwestern Region, Director of Industrial Security, Building 35, Room 114, The Presidio, San Francisco, CA 94129–7700.

Defense Investigative Service, Pacific Region, Director of Industrial Security, 3605 Long Beach Boulevard, Suite 405, Long Beach, CA 90807–4013."

* * * * *

Categories of records in the system:

Change "investigor" in line 5 to "investigating".

Authority for maintenance of the system:

Delete the entry and replace with "Executive Order 9397; Executive Order 10865; Executive Order 10909; DoD Directive 5105.42, Defense Investigative Service; and DoD 5200.2, DoD Personnel Security Programs."

* * * * *

Retrievability:

Delete entry and replace with "Records are accessed by Social Security number or name or both."

Safeguards:

Delete everything beginning with "properly" in line four and replace with "authorized personnel."

Retention and disposal:

Delete the entry and replace with "Manual records of favorable results are destroyed upon issuance of the clearance. Automated records are retained for 62 months following the termination of employment.

Exceptions: Records of cases directed by the Defense Industrial Security Clearance Review (DISCR), or cases involving the death of an individual holding a clearance, are retained until the subject attains, or would have attained, the age of 80 years.

Records released in accordance with the Privacy Act or Freedom of Information Act (FOIA) are retained for two years from date of release.

All cases requiring adjudication are retained for five years from the date of the last clearance action.

Paper records are destroyed by burning or shredding; electronic records are erased or overwritten."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Investigative Service, Office of Information and Public Affairs, 1900 Half Street, SW, Washington, DC 20324–1700."

Record access procedures:

Delete entry and replace with "PRIVACY ACT REQUESTS: Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Investigative Service, Privacy Act Office, P.O. Box 1211, Baltimore, MD 21203–1211. Personal visits are limited to the Privacy Act Office.

A request for information must contain the full name and Social Security number of the subject individual. Personal visits will require a valid driver's license or other picture identification.

FOIA Requests: Defense Investigative Service, Office of Information and Public Affairs, 1900 Half Street, SW, Washington, DC 20324–1700. Personal visits are limited to the Office of Information and Public Affairs."

Contesting record procedures:

Delete entry and replace with "The agency's rules for accessing records, contesting contents, and appealing initial determinations by the individual concerned are contained in DIS Regulation 28–4, Access to and Maintenance of DIS Personal Records; 32 CFR part 321; or may be obtained from the Defense Investigative Service, Office of Information and Public Affairs, 1900 Half Street, SW, Washington, DC 20324–1700."

Record source categories:

Delete entry and replace with "Subjects of investigations; records of other DoD activities and components, federal, state, county and municipal records; employment records of private business and industrial firms; educational and disciplinary records of schools, colleges, universities, technical and trade schools; hospital, clinic and other medical records; records of commercial enterprises such as real estate agencies, credit bureaus, loan companies, credit unions, banks and other financial institutions which maintain credit information on individuals; transportation companies (air lines, railroads, etc.). Interviews of individuals who are believed to have knowledge of the subject's background and activities; witnesses, victims and confidential sources; any individuals who may have information deemed necessary to complete the investigation. Miscellaneous directories, rosters and correspondence; any other type of record considered necessary to complete the investigation."

* * * * *

V8–01

SYSTEM NAME:

Industrial Personnel Security Clearance Files.

SYSTEM LOCATION:

Central facility is located at the Defense Investigative Service, Defense Industrial Security Clearance Office, P.O. Box 2499, Columbus, OH 43216–2499.

Remote terminals are located at the NSA DIRNSA OPS, Building 3, Room CIB 51, Fort Meade, MD 20755.

Defense Investigative Service, Deputy Director (Industrial Security), 1900 Half Street, SW, Washington, DC 20324–1700.

Defense Investigative Service, New England Region, Director of Industrial Security, 495 Summer Street, Boston, MA 02210–2192.

Defense Investigative Service, Mid-Atlantic Region, Director of Industrial Security, 1040 Kings Highway North, Cherry Hill, NJ 08034–1906.

Defense Investigative Service, Capital Region, Director of Industrial Security, 2461 Eisenhower Avenue, Room 752, Alexandria, VA 22331–1000.

Defense Investigative Service, Mid-Western Region, Director of Industrial Security, 610 South Canal Street, Room 908, Chicago, IL 60607–4577.

Defense Investigative Service, Southeastern Region, Director of Industrial Security, 2300 Lake Park Drive, Suite 250, Smyrna, GA 30080–7606.

Defense Investigative Service, Southwestern Region, Director of Industrial Security, 106 Decker Court, Suite 200, Irving, TX 75062–2795.

Defense Investigative Service, Northwestern Region, Director of Industrial Security, Building 35, Room 114, The Presidio, San Francisco, CA 94129–7700.

Defense Investigative Service, Pacific Region, Director of Industrial Security, 3605 Long Beach Boulevard, Suite 405, Long Beach, CA 90807–4013.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and major stockholders of government contractors and other DoD affiliated personnel who have been issued, now possess, are, or have been in process for personnel security clearance eligibility determinations, security assurances or NATO clearance documents.

CATEGORIES OF RECORDS IN THE SYSTEM:

The automated portion may include individual's name, Social Security Number and other personal identifying information; date and level of security clearance granted; date and type of investigation and investigating agency or case number and location; sequential record of action; and information necessary to facilitate the security clearance process.

The manual portion may include the clearance application, copy of the investigation, record of clearance, foreign clearance and travel information; clearance processing information, adverse information and other internal and external correspondence and administrative memoranda relative to the clearance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 9397; Executive Order 10865; Executive Order 10909; DoD Directive 5105.42, Defense Investigative Service (DIS); and DoD Directive 5200.2, DoD Personnel Security Program.

PURPOSE(S):

Records serve as a central repository on the eligibility determination of industrial personnel for access to classified information. The file serves as an administrative record, current record and repository for clearance related reports and information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of DIS' compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are maintained in computer disk packs, magnetic tapes and associated data processing files. Manual records are on microfiche, index cards and hard copy paper records maintained in file folders.

RETRIEVABILITY:

Records are accessed by Social Security Number or name or both.

SAFEGUARDS:

Specific codes are required to access the automated records. Manual records are housed in a secured area accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Manual records of favorable results are destroyed upon issuance of the clearance. Automated records are retained for 62 months following the termination of employment.

Exceptions: Records of cases directed by the Defense Industrial Security Clearance Review (DISCR), or cases involving the death of an individual holding a clearance, are retained until the subject attains, or would have attained, the age of 80 years.

Records released in accordance with the Privacy Act or Freedom of Information Act (FOIA) are retained for two years from date of release.

All cases requiring adjudication are retained for five years from the date of the last clearance action.

Paper records are destroyed by burning or shredding; electronic records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Investigative Service, Chief, Office of Security, 1900 Half Street, SW., Washington, DC 20324–1700.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Investigative Service, Office of Information and Public Affairs, 1900 Half Street, SW., Washington, DC 20324–1700.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Investigative Service, Privacy Act Office, P.O. Box 1211, Baltimore, MD 21203–1211

A request for information must contain the full name and Social Security Number of the subject individual. Personal visits will require a valid driver's license or other picture identification and are limited to the Privacy Act Office.

CONTESTING RECORD PROCEDURES:

The agency's rules for accessing records, contesting contents, and appealing initial determinations by the individual concerned are contained in DIS Regulation 28–4, Access to and Maintenance of DIS Personal Records; 32 CFR part 321; or may be obtained from the Defense Investigative Service, Office of Information and Public Affairs, 1900 Half Street, SW., Washington, DC 20324–1700.

RECORD SOURCE CATEGORIES:

Subjects of investigations; records of other DoD activities and components, federal, state, county and municipal records; employment records of private business and industrial firms; educational and disciplinary records of schools, colleges, universities, technical and trade schools; hospital, clinic and other medical records; records of commercial enterprises such as real estate agencies, credit bureaus, loan companies, credit unions, banks and other financial institutions which maintain credit information on individuals; transportation companies (air lines, railroads, etc.). Interviews of individuals who are believed to have

knowledge of the subject's background and activities; witnesses, victims and confidential sources; any individuals who may have information deemed necessary to complete the investigation. Miscellaneous directories, rosters and correspondence; any other type of record considered necessary to complete the investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt under the provisions of 5 U.S.C 552a(k)(5), as applicable, but only if the information would reveal the identity of the source who furnished information to the government under an implied or expressed promise of confidentiality.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 321. For additional information contact the system manager.

[FR Doc. 92-565 Filed 1-9-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 10, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: January 3, 1992.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: 1993 National Postsecondary Student Aid Study.
Frequency: Triennial.
Affected Public: Individuals or households; non-profit institutions; small businesses or organizations.
Reporting Burden
Responses: 8,843.
Burden Hours: 12,271.
Recordkeeping Burden
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study will collect data from a sample of students in postsecondary institutions, their parents and their school financial aid records. It will provide a student-based information system for student financial aid. It will assess the distributions and use of financial aid and address important issues in this area.

Office of Postsecondary Education

Type of Review: New.
Title: Application for Grants under the Construction, Reconstruction and Renovation of Academic Facilities Program.
Frequency: One time.
Affected Public: Non-profit institutions.
Reporting Burden
Responses: 500.
Burden Hours: 4,000.
Recordkeeping Burden
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational Agencies to apply for funding under the Construction, Reconstruction and Renovation of Academic Facilities Program. The Department will use the information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Application and Continuation Application for Grants under the Indian Education Act.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden
Responses: 1,500.
Burden Hours: 45,015.
Recordkeeping Burden
Recordkeepers: 7.
Burden Hours: 70.
Abstract: This form is used for State Educational Agencies to apply for funding under the Indian Education Act. The Department will use the information to make grant awards.

[FR Doc. 92-563 Filed 1-9-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Determination to Establish Environmental Restoration and Waste Management Advisory Committee

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), I hereby certify the Environmental Restoration and Waste Management Advisory Committee (EMAC) is necessary and in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR subpart 101-6.10.

The purpose of the Committee is to provide the Director of Environmental Restoration and Waste Management (EM) with advice and recommendations on both the substance and the process of the Programmatic Environmental Impact Statement (PEIS) and other EM projects from the perspectives of affected groups and State and local

Governments. Consensus recommendations to the Department of Energy (DOE) from the Committee on pragmatic nationwide resolution of numerous difficult issues will help achieve the DOE objective of an integrated environmental restoration program.

Committee members will be chosen to ensure an appropriately balanced membership to bring into account, a diversity of viewpoints, including representatives from citizen groups, non-Federal Government agencies, the private and academic community, and others who may significantly contribute to the deliberations of the committee.

Further information regarding this Advisory Committee may be obtained from Glen Sjoblom, Special Assistant to the Director of Environmental Restoration and Waste Management, EM-1, 1000 Independence Avenue, SW., Washington, DC 20585 (telephone: 202-586-7710).

Issued in Washington, DC on January 7, 1992.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 92-674 Filed 1-9-92; 8:45 am]

BILLING CODE 6450-01-M

Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. No. 95-91)

Section 602(a) of the Department of Energy ("DOE") Organization Act (Pub. L. No. 95-91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. James G. Randolph has been appointed to the position of Consultant to the Secretary of Energy, and has recently been nominated to the position of Assistant Secretary for Fossil Energy. As a result of his past employment with Kerr McGee Corporation, Mr. Randolph has vested interests in the Kerr McGee Retirement Trust for Employees of Kerr McGee Corporation and in the Kerr McGee Corporation Retirement Benefit Supplement.

It has been established to my satisfaction that requiring Mr Randolph to divest of his interests in the above Kerr McGee pension plans would pose an exceptional hardship on him, that his interest in the Kerr Retirement Trust for Employees of Kerr McGee Corporation is a vested pension interest, and that his interest in the Kerr McGee Corporation Retirement Benefit Supplement is a similarly vested interest, within the meaning of section 602(c) of the Act. Accordingly, I have granted Mr. Randolph a waiver of the divestiture requirement of section 602(a) of the Act for the duration of his employment with the Department with respect to his pension interests in Kerr McGee Corporation.

In accordance with section 208, title 18, United States Code, Mr. Randolph has been directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon Kerr McGee Corporation.

Pursuant to section 606(b) of the DOE Organization Act, Mr. Randolph has also been advised that, for a period of one year after commencing service in the Department, he is prohibited from knowingly participating in any Department proceeding for which, within the previous five years, he had direct responsibility, or in which he participated personally and substantially, while in the employment of Kerr McGee Corporation.

Dated: November 22, 1991.

James D. Watkins,

Admiral, U.S. Navy (Retired), Secretary of Energy.

[FR Doc. 92-672 1-9-92; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Proposed Billing Credits Contracts and Availability of Draft Administrative Record

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Intent to sign Billing Credit Contracts for Customer System Efficiency Improvements (CSEI). Notice of availability of the Draft Administrative Record for the CSEI Billing Credits Policy Test Program. BPA File No: BCR-4.

SUMMARY: BPA, pursuant to its Billing Credits Policy, as amended August 30, 1984 (48 FR 20275), and its Billing Credit Solicitation July 1990, has negotiated contracts with 12 public bodies or cooperative utilities for proposed CSEI projects. CSEI projects include voltage modifications, reconductoring, transformer replacements, and other system improvements that reduce electric power consumption or losses by increasing efficiency of electric use, production, transmission or distribution. BPA intends to sign 12 CSEI contracts.

The Draft Administrative Record contains background on BPA's Billing Credits Policy, the need for billing credit resources, a summary of the Billing Credit Solicitation, a summary of the evaluation process for proposals, and environmental considerations. The Draft Administrative Record includes two Appendices: Appendix A—Billing Credit Solicitation, and Appendix B—Issue Resolution Log. Addendum One of the Draft Administrative Record—Customer System Efficiency Improvements Contract Development, provides specific information about the CSEI projects and how billing credits are determined.

Responsible Official: Paul Norman, Billing Credits Project Manager, is the official responsible for BPA's CSEI Billing Credits contracts and the Draft Administrative Record.

DATES: BPA will receive comments on the Billing Credit CSEI Contracts for 30 days. Payment or credits will not be made or granted until 90 days after the date of a **Federal Register** notice announcing that a contract has been signed.

FOR FURTHER INFORMATION CONTACT: For a copy of a specific CSEI Billing Credits Contract(s) and the Draft Administrative Record, Appendix A—Billing Credit Solicitation, and Appendix B—Issue Resolution Log, and Addendum One—Customer System Efficiency Improvements Contract Development, please contact the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. If a particular contract is not specified, a sample contract will be sent.

Telephone numbers, voice/TTY, for the Public Involvement Office are 503-230-3478 in Portland, or toll-free 800-622-4519.

Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, room 243, Portland, Oregon 97208, 503-230-4551

Mr. Robert Laffel, Eugene District Manager, Federal Building, room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-465-6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509-353-2518

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Ms. Carol S. Fleishman, Spokane District Manager, room 561 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509–353–2518

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, room 307, Wenatchee, Washington 98807, 509–662–4377

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Avenue North, suite 2400 Seattle, Washington 98109, 206–553–4130

Mr. Thomas Wagenhoffer, Snake River Area, West 101 Poplar, Walla Walla, Washington, 99362, 509–522–6226

Mr. Thomas Blankenship, Boise District Manager, Federal Building, 304 North Eighth Street, room 450, Boise, Idaho 83702, 208–334–9137

Mr. Richard J. Itami, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706

SUPPLEMENTARY INFORMATION:

I. Relevant Statutory Provisions

BPA is a self-financing power marketing agency within the United States Department of Energy. BPA was established by the Bonneville Project Act of 1937, 16 U.S.C. 832 *et seq.*, to market wholesale power from Bonneville Dam and to construct power lines for the transmission of this power to load centers in the Northwest. BPA sells wholesale electric power and energy to 126 utilities, 13 direct service industrial customers (DSIs) and several government agencies.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) directs BPA to serve the net power requirements of any regional electric utility requesting service, and to serve existing DSIs in the Pacific Northwest. 16 U.S.C. 839 c and d. Although BPA cannot own or construct electric generating facilities, the Northwest Power Act directs BPA to acquire rights to the output or capability of electric power resources to serve increased customer requirements. See 16 U.S.C. 839b(1). The Northwest Power Act requires BPA to grant credits to BPA's customers on their power bills for electric power resources that reduce the Administrator's obligation to acquire resources to meet BPA's electric power requirements. 16 U.S.C. 839d(h). Billing credits may be adjustments to customers' power bills or equivalent cash payments. Resources eligible for billing credits include conservation and generation.

II. Background

BPA's Billing Credits Policy interprets the billing credits provisions in the Northwest Power Act, prescribes criteria for customer and resource eligibility, and establishes procedures for granting billing credits.

BPA's 1990 Resource Program focused on choosing near-term resource actions for Fiscal Years 1992 and 1993. After receiving comments from customers on the draft 1990 Resource Program that suggested BPA use billing credits, BPA chose a resource strategy that included billing credits. BPA then developed a Solicitation requesting proposals for billing credits resources. Billing credits provide a way to shift some of the risk for resource development to utilities and others, which was an objective of the chosen strategy in the 1990 Resource Program. In July 1990, BPA released the Solicitation. It proposed to test the billing credit approach for acquiring energy resources by granting 50 average megawatts of billing credits to eligible resources. BPA's objective in the test was to ensure that the billing credit mechanism is workable for BPA customers.

III. Customer System Efficiency Improvements (CSEI)

The proposals submitted in response to the Billing Credit Solicitation were divided into two groups, conservation and generation resources. Because CSEI projects reduce electric power consumption or losses by increasing efficiency of electric use, production, transmission or distribution, they were considered a subset of conservation measures, but covered in separate contracts.

IV. Description of the Proposals

Twenty-four CSEI proposals representing thirty public bodies or cooperative utilities were submitted pursuant to the July 1990 Billing Credit Solicitation. CSEI projects include voltage modifications, reconductoring, transformer replacements, and other system improvements undertaken to reduce electric power consumption or losses as a result of an increase in the efficiency of electric use, production, transmission or distribution. Of these seventeen utilities have proposed installing amorphous core transformers, state-of-the-art low loss transformers. Six utilities have proposed installing low loss silicon transformers.

The proposed projects as a group call for the installation of 33,000 transformers over a four-year period. These involve future installations of 18,000 transformers and replacing 15,000 inefficient transformers. Of these proposed installations, 1,600 would be low loss silicon transformers and the remaining amorphous core transformers. Instead of rejecting the low loss silicon transformers based on no savings, BPA proposed changing their projects to amorphous core transformers to meet the standard under Question 19(c) of Appendix B.

Three utilities proposed voltage upgrades and reconductoring projects. These projects would reduce energy losses on the utility's distribution circuits by replacing the existing conductor with a larger conductor. Three utilities proposed voltage upgrade and replacement transformer projects to reduce energy losses by increasing the operating voltage of feeders, and replacing existing standard distribution transformers with amorphous core distribution transformers. BPA proposes to sign contracts with the following utilities for amorphous core transformer upgrade projects:

1. Coos-Curry Electric Cooperative, Inc.
2. Elmhurst Mutual Power and Light Company
3. Kootenai Electric Cooperative, Inc.
4. Lower Valley Power and Light, Inc.
5. Public Utility District No. 1 of Clallam County, Washington
6. Public Utility District No. 1 of Grays Harbor County, Washington
7. Public Utility District No. 3 of Mason County, Washington
8. Public Utility District No. 2 of Pacific County, Washington
9. Public Utility District No. 1 of Snohomish County, Washington
10. The City of Richland, Washington
11. Umatilla Electric Cooperative Association

BPA proposes to sign contracts with the following utility for voltage upgrades and reconductoring and voltage upgrade replacement transformer projects:

The City of Springfield

The projects listed above meet the qualifications for billing credits. These actions are categorically excluded from the procedural requirements of the National Environmental Policy Act (52 FR 47669) under categorical exclusion determinations dated April 18, 1991, and July 3, 1991. BPA therefore granted conditional approval to the above-listed proposals and proposes to enter into contracts with those same customers.

V. Methodology for Determining Billing Credits

The payment or billing credit (BC) will be calculated by using the following formula. $BC = (AC–PF) \times Savings \times C_e$. As shown in Exhibit F of the proposed contracts, alternative cost

(AC), minus the Priority Firm (PF) rate, times the savings from the measures, times the cost share percentage (C_s), equals the billing credit (BC).

Issued in Portland, Oregon, on December 31, 1991.

Randall W. Hardy,

Administrator.

[FR Doc. 92-673 Filed 1-9-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

Financial Assistance Award; Intent to Award Grant to the Commonwealth of Massachusetts for an Alternative Fuels Demonstration

AGENCY: Department of Energy Office of Conservation and Renewable Energy (CE).

ACTION: Notice of intent to award noncompetitive financial assistance.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.6(a)(5), the DOE CE-Support Office, Boston, intends to make a noncompetitive financial assistance award to the Massachusetts Division of Energy Resources, which will expand its Alternative Fuels Demonstration Program to include a demonstration of school buses designed for use with compressed natural gas (CNG).

The planned grant amendment will provide $50,607 additional funding for an existing State Energy Conservation Plan (SECP) grant (DE-FG41-88R130311). The DOE funds will be used to pay the incremental cost, that is, the difference between the purchase cost of traditional diesel-fueled school buses and the cost of dedicated original equipment manufacturer (OEM) compressed natural gas (CNG) school buses, for three new school buses at the Town of Weston, MA.

DATES: The term of this grant shall be one (1) year from the effective date of award.

FOR FURTHER INFORMATION CONTACT: Hugh Saussy, Jr., CE-Support Office, Boston, U.S. Department of Energy, One Congress Street, Boston, MA 02114-2021, (617) 565-9700.

Issued in Chicago, Illinois on December 24, 1991.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92-670 Filed 1-9-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP91-790-000 and -002 and CP91-2322-000 and -002]

Northwest Pipeline Corp., Paiute Pipeline Co.; Intent To Conduct Informal Public Meetings Inviting Comments on the Northwest Pipeline Expansion Project Draft Environmental Impact Statement

January 6, 1992.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) intends to conduct informal public meetings the week of January 20, 1992 for the purpose of soliciting comments on the draft environmental impact statement (EIS) which was circulated to the public and noticed in the **Federal Register** on January 3, 1992. The attachment lists the locations, dates, and times of the meetings.

The purpose of these meetings is to allow state and local government agencies and interested individuals in the general public the opportunity to provide oral comments on the draft EIS. Written comments may also be submitted in lieu of oral comments at these meetings. The offer of comments at the meetings in no way precludes submittal of further written comments before the close of the comment period on February 18, 1992.

Following brief opening remarks and introductions, preregistered speakers will be allowed to present their comments. Following the preregistered speakers, those who have not preregistered will present their comments. All commenters will be requested to limit their presentations to 5 minutes in length. This will afford time for others to participate. Additional time may be granted to anyone making comments as time permits.

Because these are informal meetings and not formal administrative hearings, commenters will not be cross-examined, but their remarks will be stenographically recorded to assist in the preparation of responses. Responses to comments will appear in the final EIS after due consideration. Copies of the written transcript of each public meeting may be purchased by arrangement with the official reporter at each meeting.

As previously stated, informal public meetings are intended as an opportunity for state and local governments and the general public to provide comments directly to the FERC staff. Cooperating agencies have formal channels for input into the EIS and are expected to coordinate their comments through the lead Federal agency outside the public meeting mechanism.

To obtain further information concerning the public comment meetings or to preregister to present comments, please contact Lauren O'Donnell, FERC environmental project manager, at (202) 208-0674 prior to January 16, 1992.

Lois D. Cashell,

Secretary

Schedule for Public Meetings on the Northwest Pipeline Expansion Project Draft EIS

All Meetings Will Begin Promptly at 7 p.m.

Monday, January 20, 1992—Linn-Benton Community College, 6500 SW. Pacific, Albany, Oregon 97321, telephone (503) 967-6552

Tuesday, January 21, 1992—Red Lion at the Key, 100 Columbia Avenue, Vancouver, Washington 98660, telephone (206) 694-8341

Wednesday, January 22, 1992—Holiday Inn, 1000 East Sixth Street, Reno, Nevada 89512, telephone (702) 825-2940

Thursday, January 23, 1992—Westin Plaza, 1350 Blue Lake Boulevard North, Twin Falls, Idaho 83303, telephone (208) 733-0650.

[FR Doc. 92-618 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-10-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 6, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on December 31, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised revised tariff sheets:

Proposed To Be Effective February 1, 1992

3 Rev Sheet No. 63

Algonquin states that it is filing Sheet No. 63 to concurrently track the change made by Texas Eastern Transmission Corporation ("Texas Eastern") in the rates underlying Algonquin's Rate Schedule ATAP. Pursuant to § 4.2 of Rate Schedule ATAP, the proposed effective date of Sheet No. 63 is February 1, 1992 to coincide with the effective date of Texas Eastern's filing. The effect of the revision in rates in Rate Schedule ATAP is to decrease the Commodity (Maximum, Minimum and Interruptible) rates by 0.06¢ per MMBtu.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests should be filed on or before January 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-619 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 6, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on December 31, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed To Be Effective March 1, 1992

Primary Tariff Sheets
11 Rev Sheet No. 21
11 Rev Sheet No. 22
7 Rev Sheet No. 25
11 Rev Sheet No. 26
11 Rev Sheet No. 27
11 Rev Sheet No. 28
11 Rev Sheet No. 29
Alternate Tariff Sheets
Alt 11 Rev Sheet No. 21
Alt 11 Rev Sheet No. 22
Alt 7 Rev Sheet No. 25
Alt 11 Rev Sheet No. 26
Alt 11 Rev Sheet No. 27
Alt 11 Rev Sheet No. 28
Alt 11 Rev Sheet No. 29
First Revised Sheet No. 636
First Revised Sheet No. 637
First Revised Sheet No. 638
First Revised Sheet No. 639
First Revised Sheet No. 640

Algonquin states that the revised tariff Sheet Nos. 21 through 29, listed above, are being filed as part of Algonquin's regularly scheduled Annual Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") to reflect the standby service costs to be charged by Texas Eastern Transmission Corporation ("Texas Eastern"), Transportation and Compression by Other Costs ("T&C Costs") from Texas Eastern and Transcontinental Gas Pipe Line Corporation and purchased gas costs to be charged by various suppliers.

Algonquin states that the effect of the change in rates in the primary sheets listed above is to increase the demand charges by $0.0320 per MMBtu and to decrease the commodity charges by $0.1274 per MMBtu under all of Algonquin's firm sales rate schedules from those rates contained in Algonquin's last quarterly PGA and TCA filing, made November 1, 1991 in Docket Nos. TQ92-2-20-000 and TM92-6-20-000 and revised per Commission Letter Order of October 31, 1991 in Docket Nos. TQ92-1-20-001 and TM92-3-20-001.

Algonquin further states that the alternate sheets listed above are being filed to incorporate its request for the annualization of projected GSIR Charges to be paid to Texas Eastern during the contract year ending October 31, 1992. The effect is to increase the demand rate by $2.8830 over the rate found in the primary tariff sheets.

Algonquin states that the proposed effective date for the listed tariff sheets is March 1, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests should be filed on or before January 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-620 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-48-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 6, 1992.

Take notice that ANR Pipeline Company (ANR), on December 31, 1991, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to be effective February 1, 1992:

Fifty-Fourth Revised Sheet No. 18

ANR states that the purpose of the instant filing is to implement ANR's quarterly PGA rate adjustment pursuant to section 15 of the General Terms and Conditions of ANR's Tariff.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary

[FR Doc. 92-621 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-3-48-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 3, 1992.

Take notice that ANR Pipeline Company ("ANR"), on December 31, 1991 tendered for filing as part of its Original Volume Nos. 1, 1-A, 2 and 3 of its FERC Gas Tariff, six copies the tariff sheets as listed in Appendix A attached to the filing.

ANR states that the referenced tariff sheets are being submitted as part of ANR's Third Annual Reconciliation of buyout buydown costs being recovered by means of Volumetric Buyout Buydown Surcharges and Fixed Monthly Charges contained in Docket Nos. RP91-33 et al., RP91-192 and RP92-4. ANR has requested that the Commission accept the tendered tariff sheets to become effective February 1, 1992.

ANR states that a copy of this filing, of such applicable parts, has been mailed to all of its Volume Nos. 1, 1-A, 2

and 3 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 N Capitol Street, NE., Washington, DC 20426 by January 10, 1992, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-622 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-72-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 3, 1992.

Take notice that Carnegie Natural Gas Company ("Carnegie") on December 30, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Twenty-Fourth Revised Sheet No. 8
Twenty-Fourth Revised Sheet No. 9

The tariff sheets have been filed to reflect a voluntary reduction of $0.1476 per Dth in the commodity rates under Carnegie's Rate Schedules CDS, LVWS, and LVIS. By reducing the commodity rates under these sales rate schedules, Carnegie anticipates that its jurisdictional gas customers will have the opportunity to purchase gas from Carnegie at rates competitive with other suppliers.

Carnegie has requested waiver of the notice requirements so as to permit the tariff sheets to become effective on January 1, 1992. Carnegie also requests, to the extent necessary, a one-day suspension of the proposed rates.

Carnegie states that copies of its filing were served on all jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before January 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-623 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2527-002 Maine]

Central Maine Power Co.; Filing of Application

January 3, 1992.

Take notice that on December 17, 1991, the Central Maine Power Company filed an application to relicense the Skelton Hydroelectric Project No. 2527-002.

The Skelton Project is located on the Saco River, in York County, Maine. The project consists of a 100-foot-long dam, a 488-acre reservoir, and a powerhouse with an installed capacity of 16.8 MW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires December 31, 1993.

If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with § 4.32 of the Commission's regulations, must be filed no later than 60 days after the date of filing.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 92-624 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-95-002]

Colorado Interstate Gas Co.

January 3, 1992.

Take notice that Colorado Interstate Gas Company ("CIG"), on December 20, 1991, tendered for filing a semiannual compliance filing consisting of work papers detailing accrued interest payments made by CIG to its affected customers related to the unused portion of transportation credits in the instant docket.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

ANy person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 92-625 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-6-000]

Connecticut Light & Power Co.; Filing

January 6, 1992.

Take notice that Connecticut Light & Power Company (CP&L) tendered for filing an amendment to its October 1, 1991 filing in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-576 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-188-006]

El Paso Natural Gas Co.; Motion To Place Tariff Sheets Into Effect

January 3, 1992.

Take notice that on December 30, 1991, El Paso Natural Gas Company ("El Paso"), tendered for filing pursuant to section 4(e) of the Natural Gas Act and

section 154.67(a) of the Federal Energy Regulatory Commission's ("Commission") Regulations under the Natural Gas Act, a motion to place into effect on January 1, 1992 certain tariff sheets to its First Revised Volume No. 1-A, Second Revised Volume No. 1 and Third Revised Volume No. 2 FERC Gas Tariffs.

El Paso states that on July 1, 1991 at Docket No. RP91-188-000, it filed with the Commission a notice of change in rates and certain tariff provisions for natural gas service rendered to its transportation and sales customers to become effective August 1, 1991. By order issued July 31, 1991 at Docket No. RP91-188-000 ("Suspension Order"), the Commission conditionally accepted the tariff sheets, suspended their effectiveness for five (5) months to become effective January 1, 1992, subject to refund, and established hearing proceedings. Such acceptance of the tariff sheets was conditioned upon El Paso filing modifications to certain rates filing statements and revised tariffs sheets within thirty (30) days. El Paso states that on August 30, 1991, it filed certain data in compliance with the Suspension Order.

El Paso also states that on August 30, 1991, it filed a Request for Rehearing and Clarification on three issues contained in the Commission's July 31, 1991 order.

El Paso states that on November 27, 1991 it tendered for filing in compliance with the Commission's November 6, 1991 order at Docket No. RP91-188-002 and November 21, 1991 order at Docket No. RP91-188-001, tariff sheets which reflect the same rates as originally filed with the Commission in this proceeding.

El Paso moved to place into effect on January 1, 1992, certain tariff sheets tendered in its compliance filing made on November 27, 1991, and certain tariff sheets attached to its motion.

El Paso states that ordering paragraph (D) of the Suspension Order required El Paso to file, no later than December 31, 1991, rates and related workpapers to reflect the actual plant in service at December 31, 1991. El Paso states that it submitted a schedule reflecting the actual gas plant in service as of December 31, 1991 which exceeds the actual plant projected to be in service at December 31, 1991. Thus, since actual plant in service is in excess of the plant projected to be in service no rate adjustment has been made.

El Paso states that copies of the filing were served upon each person designated on the official service list compiled by the Secretary in Docket No. RP91-188-000, and, otherwise, upon all interstate pipeline system transportation and sales customers of El Paso and all interested state regulatory commissions.

Any person desiring to protest said filing should file protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before January 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-626 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-187-004]

Florida Gas Transmission Co.; Notice To Place Suspended Rates in Effect

January 6, 1992.

Take notice that on December 31, 1991, Florida Gas Transmission Company (FGT) tendered for filing A Motion to Place Suspended Rates Into Effect. FGT moves that the tariff sheets listed in appendix A attached to the filing be allowed to become effective January 1, 1992.

FGT states that the Commission Order issued July 31, 1991 in the captioned dockets suspended FGT's filed rates to be effective January 1, 1992. FGT states that it is moving the Commission, pursuant to § 154.67 of the Commission's regulations, to place the suspended rates into effect as of January 1, 1992. FGT further states that the rates shown on the tariff sheets shown on appendix A (1) eliminate the cost of facilities not in service by December 31, 1991, and (2) include the cost of gas from FGT's last quarterly PGA in Docket No. TQ92-1-34-000.

FGT also states that concurrently with the filing, FGT is filing an interim PGA effective January 1, 1992 to decrease the purchased gas cost from the level reflected in FGT's last quarterly PGA filing in Docket No. TQ92-1-34-000 and underlying the base tariff rates filed herein. FGT states that in addition to the reduction in the level of purchased gas cost, the interim PGA incorporates the base tariff rates in RP91-187-000 set forth in this filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 92-627 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-2-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 3, 1992.

Take notice that on December 31, 1991 Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets, to become effective February 1, 1992:

Twenty-Third Revised Sheet No. 8
Third Revised Sheet No. 222
Fourth Revised Sheet No. 223
Third Revised Sheet No. 224
Fourth Revised Sheet No. 225
Fourth Revised Sheet No. 226
Fifth Revised Sheet No. 227
Fourth Revised Sheet No. 228
Fourth Revised Sheet No. 229
Fourth Revised Sheet No. 230
Third Revised Sheet No. 231
Fifth Revised Sheet No. 232
First Revised Sheet No. 525
First Revised Sheet No. 526
Second Revised Sheet No. 527
First Revised Sheet No. 528
First Revised Sheet No. 528
Second Revised Sheet No. 530
Second Revised Sheet No. 531
Second Revised Sheet No. 532
Second Revised Sheet No. 533
Second Revised Sheet No. 534
Second Revised Sheet No. 535
Second Revised Sheet No. 536
Second Revised Sheet No. 537

FGT states that Twenty-Third Revised Sheet No. 8 is being filed in accordance with § 154.308 of the Commission's Regulations and pursuant to section 15 of FGT's FERC Gas Tariff, Second Revised Volume No. 1 to reflect a decrease in FGT's jurisdictional rates due to a decrease in its average cost of gas purchased from that reflected in its Quarterly PGA filing, Docket No. TQ92-1-34-000, effective November 1, 1991 and in FGT's Motion to Make Suspended Rates Effective in Docket Nos. RP91-187-000 and CP91-2448-000

filed on December 31, 1991 to be effective January 1, 1992.

FGT further states that on July 1, 1991 FGT filed in Docket Nos. RP91-187-000 and CP91-2448-000 pursuant to section 4(e) of the Natural Gas Act to effectuate changes in rates and terms applicable to FGT's jurisdictional services. By Order dated July 31, 1991 the Commission accepted and suspended the tariff sheets to be effective January 1, 1992. In the Motion to Make Suspended Rates Effective, FGT filed tariff sheets to remove the cost of facilities not in service pursuant to the Commission's July 31 Order. The Motion filing also incorporated the cost of gas included in FGT's last quarterly filing in Docket No. TQ92-1-34-000 effective November 1, 1991.

FGT's projected purchase cost of gas for the period February 1, 1992 through April 30, 1992, shown in detail on Schedule Q1 herein, represents a decrease from $2.6465/MMBtu saturated, as reflected in FGT's Quarterly PGA filing in TQ92-1-34-000 as incorporated into the Motion filing to $2.1452/MMBtu saturated in the instant filing.

FGT further states that FGT is required to update its Index of Entitlements concurrently with its Quarterly PGA filing pursuant to Section 9 of the General Terms and Conditions of its Tariff and has included such changes. Additionally, FGT states that it is filing to update its Index of Requirements contained in the General Terms and Conditions of its Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-628 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

January 3, 1992.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on December 31, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Quarterly PGA filing, which includes Thirty-third Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective February 1, 1992. The revised tariff sheet reflects a current decrease of $.0018 per Dth in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $1.9482 per Dth.

Kentucky West states that, effective February 1, 1992, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $1.9531 per Dth, inclusive of all taxes and any other production-related costs add-ons, that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it is or becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-629 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-248-010]

Mississippi River Transmission Corp.; Report of Refunds

January 6, 1992.

Take notice that on December 8, 1991, Mississippi River Transmission Corporation tendered for filing with the Federal Energy Regulatory Commission its refund report.

MRT states that on October 7, 1991 it made refunds, including interest, to its jurisdictional customers for the period April 1, 1990 through July 31, 1991 in compliance the Article X of the Stipulation and Agreement dated May 20, 1991 and the Commission's order dated August 7, 1991 in Docket No. RP89-248 *et al.*

MRT states that copies of the filing have been provided for each of MRT's affected customers at the time the refund was made.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-630 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-73-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

January 3, 1992.

Take notice that on December 31, 1991, National Fuel Gas Supply Corporation ("National") tendered for filing proposed changes in its FERC Gas Tariffs, Second Revised Volume No. 1 and First Revised Volume No. 2.

National states that the revised tariff sheets reflect changes in the level of National's rates to provide an annual increase in revenue from jurisdictional sales and services of approximately $111,100,000 when compared to the base rates established by the settlement at Docket Nos. RP88-136-000 *et al.*, the certificate filings at Docket Nos. CP88-194-000 and RP91-219-000, and the PGA which was effective October 1, 1991.

National further states that the proposed rates are based on a test year cost-of-service for the 12 months ended September 30, 1991, as adjusted for known and measurable changes through June 30, 1992.

These revised tariff sheets, which are listed at Appendix A attached to the filing, are proposed to become effective on February 1, 1992.

National states that a copy of this filing was posted to § 154.16 of the Commission's Regulations and that copies of this filing were served upon the company's jurisdictional customers and upon the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before January 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Parties already granted an intervenor status in this proceeding need not file motions to intervene in order to be considered parties herein. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 92-631 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-27-000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

January 6, 1992.

Take notice that North Penn Gas Company (North Penn) on December 31, 1991, tendered for filing Tenth Revised Sheet No. 3A to its FERC Gas Tariff, First Revised Volume No. 1.

This filing is North Penn's Annual PGA rate filing proposed to become effective March 1, 1992 and is designed to reflect changes in the cost of gas for the period March 1, 1992 through May 31, 1992. The changes in the cost of gas for this period result in a decrease of $0.84140 per Mcf to the G-1 Rate Schedule.

North Penn has also computed a surcharge credit of $0.06397 per Mcf to amortize over twelve months the overrecovered purchased gas costs accumulated in Account 191 during the period November 1, 1990 through October 31, 1991.

North Penn requests waiver of any of the Commission's Rules and Regulations as may be deemed necessary in order to permit the proposed tariff sheet to become effective March 1, 1992.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and state commissions shown on the attached service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 92-632 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-75-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 6, 1992.

Take notice that Northern Natural Gas Company (Northern) on January 2, 1992, tendered for filing to become part of Northern's FERC Gas Tariff Third Revised Volume 1, the following tariff sheet, proposed to be effective February 2, 1992:

Second Revised Sheet No. 52F.12a

Northern states that such tariff sheet is being submitted in compliance with the Commission's Final Rule in Order No. 537, issued September 20, 1991, in Docket No. RM90-7-000. Northern is clarifying its currently effective Rate Schedule FT-1 by requiring a Certification for transportation services under NGPA section 311(a)(1) executed by the Shipper and by the "on behalf of" party.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 18 CFR 385.211). All such petitions or protests should be filed on or before January 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-633 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-1-017]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

January 6, 1992.

Take notice that on December 26, 1991, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance First Revised Sheet No. 14 to be part of its FERC Gas Tariff, Second Revised Volume No. 1. Northwest has requested an effective date of December 21, 1991 for the tendered tariff sheet.

Northwest states that the purpose of the filing is to revise Sheet No. 14, to comply with the Commission's letter order issued on November 21, 1991 in the above docket. In its letter order, the Commission approved Northwest's Docket No. RP89-1 Joint Offer of Settlement which was filed on August 2, 1991. Northwest states that Sheet No. 14 reflects revised direct bill amounts as contained in the Joint Offer of Settlement.

Northwest states that a copy of the filing is being served upon Northwest's jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed

on or before January 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 92-634 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. MT92-3-000 and MG92-3-000]

Pacific Gas Transmission Co.; Change in Tariff

January 6, 1992.

Take notice that on December 20, 1991, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance certain tariff revisions to its FERC Gas Tariff, Original Volume No. 1-A to implement the marketing affiliate reporting requirements of § 250.16 of the Commission's regulations. Also filed was PGT's procedures to implement the marketing affiliate standards of conduct in accordance with the requirements of § 161.3 of the Commission's regulations.

PGT seeks a waiver of the 30-day notice requirement of § 154.51 to permit these proposed tariff changes to become effective January 1, 1992, consistent with the request of Pacific Gas and Electric Company (PG&E), PGT's sales customer, to convert a portion of its firm sales entitlement to firm transportation, as of January 1, 1992.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary

[FR Doc. 92-575 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-2-86-000]

Pacific Gas Transmission Co.; Change in Sales Rates Pursuant to Purchased Gas Adjustment

January 6, 1992.

Take notice that on December 24, 1991, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) regulations a proposed change in rates applicable to service rendered under Rate Schedule PL-1, affected by and subject to paragraph 21, "Purchased Gas Cost Adjustment" (PGA), of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Such rates are proposed to become effective February 1, 1992.

PGT states that copies of the filing has been served on PGT's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 285.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary

[FR Doc. 92-635 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-28-000, TM92-3-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

January 6, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on December 31, 1991, tendered for filing the following revised tariff sheets listed to its FERC Gas Tariff, Original Volume No. 1:

4th/Eighty-Eighth Rev Sheet No. 3-A
4th/Second Revised Sheet No. 3-A.1
4th/Sixty-Fifth Revised No. 3-B
4th/Twelfth Revised Sheet No. 3-B.1

The proposed effective date of these tariff sheets is March 1, 1992.

Panhandle states that these revised tariff sheets filed herewith reflect a net commodity rate increase of 24.36¢ per Dt. This increase reflects:

(1) A (15.31¢) per Dt. decrease in the projected purchased gas cost component computed in accordance with § 18.2 of the General Terms and Conditions of Panhandle's tariff; and

(2) A 34.55¢ Dt. increase in the surcharge to recover the Current Deferred Account Balance at October 31, 1991 and related carrying charges pursuant to § 18.3 of the General Terms and Conditions of Panhandle's tariff; and

(3) A 5.12¢ per Dt. increase pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism).

Panhandle further states that these revised tariff sheets filed herewith also reflect the following changes to Panhandle's D1 and D2 demand rates:

(1) A decrease of ($0.80) for D1 pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) An increase of $1.48 for D1 and an increase of 0.04¢ for D2 pursuant to § 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle states these changes are being made in accordance with § 154.305 (Annual PGA Filing) of the Commission's Regulations and pursuant to section 18 (Purchased Gas Cost Rate Adjustment) and section 22 (ANGTS tracking mechanism) of Panhandle's FERC Gas Tariff, Original Volume No. 1. Panhandle has included in this filing projected gas purchase volumes from its suppliers for the three (3) month period commencing March 1, 1992, as detailed in Schedule A1.

Panhandle states that copies of its filing have been served on all jurisdictional sales customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with such motions 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-636 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-225-015]

South Georgia Natural Gas Co.; Report of Refunds

January 6, 1992.

Take notice that on December 13, 1991 South Georgia Natural Gas Company (South Georgia) tendered for filing with the Federal Energy Regulatory Commission a refund report showing that on December 2, 1991 it made refunds to its customers in compliance with the Commission's order dated October 31, 1991 in Docket No. RP89-225 *et al.*

South Georgia states that copies of the filing are being made available in South Georgia's offices in Birmingham, Alabama, and are being mailed to all of South Georgia's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-637 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-74-000]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 3, 1992.

Take notice that on December 31, 1991, South Georgia Natural Gas Company ("South Georgia") tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. The proposed changes are based on the twelve-month period ending September 30, 1991, as adjusted, and would increase revenues from transportation services by approximately $1.5 million annually.

South Georgia states that one of the principal reasons for the rate increase is to reflect the redesign of rates that occurs as a result of South Georgia's transition to a 100% transportation system effective March 1, 1992. South Georgia submits that this conversion of 100% of its jurisdictional sales service to firm transportation results in significant undercollections under presently effective rates. South Georgia states that its rate filing is also necessitated by an increase in cost of service that is primarily the result of recent plant additions, increased operation and maintenance expenses and a requested increase in allowed return on equity designed to compensate for increased business risk being experienced by South Georgia.

South Georgia requested that the Commission grant such waivers of its regulations as may be necessary to allow the proposed tariff sheets to become effective March 1, 1992. South Georgia explained that this shortened suspension period is necessary in order to mitigate the severe economic result South Georgia would otherwise experience and in order to synchronize the termination of its merchant function with the implementation of its new transportation rates.

South Georgia states that copies of South Georgia's filing were served upon all of South Georgia's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 92-638 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-391-006]

Transcontinental Gas Pipe Line Corp.; Supplemental Compliance Filing

January 6, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on September 6, 1991 certain revised tariff sheets to Third Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are enumerated in Appendix A attached to the filing and are proposed to be effective August 1, 1991 and September 1, 1991 respectively.

Transco states that the purpose of the instant filing is to supplement Transco's compliance filing of July 22, 1991 in Docket No. CP88-391-006. Transco states that such filing provided for, *inter alia*, a new Third Revised Volume No. 1 tariff which implements Transco's GIC Settlement and Rate Settlement, which settlements were approved with modifications by the Commission order issued June 19, 1991 in Docket Nos. CP88-391-004, *et al.*

Transco states that in response to comments received from interested parties, Transco submitted in the instant filing certain substitute tariff sheets which reflect minor modifications and corrections to the tariff sheets submitted in Transco's July 22 compliance filing.

Transco states that copies of the instant filing were served to its customers, state commissions and interested parties to Docket Nos. CP88-391-004, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-639 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-391-007]

Transcontinental Gas Pipe Line Corp.; Supplement to Compliance Filing

January 6, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on July 31, 1991 as a supplement to its July 22, 1991 compliance filing in the referenced docket the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 2:

Substitute Sixth Revised Sheet No. 41
Thirteenth Revised Sheet No. 41-A
First Revised Sheet No. 41-B
First Revised Sheet No. 59-E
First Revised sheet No. 59-F

Transco states that the purpose of the instant filing is to withdraw the proposed termination, as of August 1, 1991, of Rate Schedule X-11 and to continue the effectiveness of said rate schedule beyond August 1, 1991. In that regard, in its order issued June 19, 1991 in Docket No.'s CP88-391-004, et al. (June 19 Order), the Federal Energy Regulatory Commission (Commission) authorized, *inter alia*, the abandonment of firm transportation service provided by Transco to Sun Refining and Marketing Company (Sun) under Rate Schedule X-11. Transco, in its July 22 compliance filing made pursuant to the June 19 Order, submitted Sixth Revised Sheet No. 41 to its FERC Gas Tariff, Original Volume No. 2, which revised tariff sheet provided for the termination of Rate Schedule X-11 effective August 1, 1991. On July 2, 1991, Sun filed a request for rehearing or stay of the Commission's June 19 Order. On July 26, 1991 the Commission granted Sun's request for stay of abandonment of service under Rate Schedule X-11 pending Commission action on requests for rehearing. Therefore, in order to continue to provide service to Sun under Rate Schedule X-11, pending further developments, Transco is withdrawing its proposed termination of service and submitting certain additional revised tariff sheets regarding the rates and terms of service applicable to Sun.

Transco is serving copies of the instant filing upon all parties served with the July 22, 1991 compliance filing in Docket No. CP88-391-006. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-640 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-1-82-000, TM92-3-82-000]

Viking Gas Transmission Co.; Tariff Filing Pursuant to Tariff Rate Adjustment Provisions

January 3, 1992.

Take notice that on December 31, 1991, Viking Gas Transmission Company ("Viking") filed the following tariff sheets to Volume No. 1 of its FERC Gas Tariff:

First Revised Sixteenth Revised Sheet No. 6.
Second Revised Sixteenth Revised Sheet No. 6

Viking states that the purpose of First Revised Sixteenth Revised Sheet No. 6, which Viking proposes become effective on January 1, 1992, it to reflect an increase of $.0005 in the Gas Research Institute surcharge from $.0142 to $.0147.

Viking further states that the purpose of Second Revised Sheet No. 6 is to reflect quarterly purchased gas cost rate adjustments to Viking's rates for the period of February through April, 1992. The purchased gas cost rate adjustments consist of a $.0637 per dekatherm adjustment to the gas component of Viking's sales rates and a $1.52 per dekatherm adjustment to the demand component of those rates.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest will the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before January 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 92-641 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-2-52-000 and 001]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

January 3, 1992.

Take notice that on December 31, 1991, Western Gas Interstate Company ("Western"), pursuant to section 4 of the Natural Gas Act, the Commission's regulations thereunder and Western's FERC Gas Tariff, tendered for filing proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective date for the tariff sheets is February 1, 1992.

Western states that, its filing proposes changes to its rates in accordance with the terms of the Purchased Gas Adjustment Clause of its FERC Gas Tariff.

Western further states that the proposed changes provide for: (1) A decrease in purchased gas cost under Western's Rate Schedule CD-N of $.2871 per MMBTU; and (2) a decrease in purchased gas cost under Western's Rate Schedule CD-S of $1.0439 per MMBTU.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 92-642 Filed 1-9-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-2-49-000, TM92-3-49-000]

Williston Basin Interstate Pipeline Co.; Purchased Gas Adjustment Filing

January 3, 1992.

Take notice that on December 31, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, suite 300, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets:

First Revised Volume No. 1

Thirty-ninth Revised Sheet No. 10

Original Volume No. 1-A

Thirty-second Revised Sheet No. 11
Thirty-eighth Revised Sheet No. 12
Nineteenth Revised Sheet No. 97A
Ninth Revised Sheet No. 275
Eighth Revised Sheet No. 275A
Eighth Revised Sheet No. 276
Eighth Revised Sheet No. 277

Original Volume No. 1-B

Twenty-seventh Revised Sheet No. 10
Twenty-seventh Revised Sheet No. 11

Original Volume No. 2

Thirty-ninth Revised Sheet No. 10
Thirty-third Revised Sheet No. 11B

The proposed effective date of the tariff sheets is February 1, 1992.

Williston Basin states that Thirty-ninth Revised Sheet No. 10 (First Revised Volume No. 1) reflects a decrease in the Current Gas Cost Adjustment applicable to Rate Schedules G-1, SGS-1 and E-1 of 1.939 cents per dkt as compared to that contained in the Company's September 30, 1991 PGA filing in Docket No. TQ92-1-49-000, which became effective November 1, 1991.

Williston Basin further states that Thirty-second Revised Sheet No. 11, Thirty-eighth Revised Sheet No. 12 and Nineteenth Revised Sheet No. 97A (Original Volume No. 1-A), Twenty-seventy Revised Sheet Nos. 10 and 11 (Original Volume No. 1-B), Thirty-ninth Revised Sheet No. 10 and Thirty-third Revised Sheet No. 11B (Original Volume No. 2) reflect an increase of .191 cents per dkt in the fuel reimbursement charge component of the Company's relevant transportation rates as compared to that contained in the Company's September 30, 1991 filing in Docket No. TQ92-1-49-000. Such increase in the fuel reimbursement charge is a result of the changes in Williston Basin's average cost of purchased gas.

Williston Basin also states that Thirty-second Revised Sheet No. 11 and Thirty-eighth Revised Sheet No. 12 (Original Volume No. 1-A) and Thirty-ninth Revised Sheet No. 10 and Thirty-third Revised Sheet No. 11B (Original Volume No. 2) reflect a revised Company-Use and Lost-and-Unaccounted-For gas percentage of 3.134% applicable to certain transportation rate schedules.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before January 19, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary
[FR Doc. 92-643 Filed 1-9-92; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of November 29 Through December 6, 1991

During the Week of November 29 through December 6, 1991, the appeal and the applications for other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 3, 1992.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY OFFICE OF HEARINGS AND APPEALS

[Week of November 29 through December 6, 1991]

Date	Name and location of applicant	Case No.	Type of submission
12/03/91	Gulf/Pleasant Gulf, Woodbridge, VA	RR300-120	Request for Modification/Rescission in the Gulf Refund Proceeding.
If granted: The October 25, 1991 Dismissal Letter (Case No. RF300-11792 & RF300-11793) issued to Pleasant Gulf would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.			
12/03/91	Texaco/Lund's Texaco, Hardin, KY	RR321-101	Request for Modification/Rescission in the Texaco Refund Proceeding.
If granted: The August 16, 1991 Decision and Order (Case No. RF321-3893 & RF321-5975) issued to Lund's Texaco would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.			
12/06/91	Government Accountability Project, Washington, DC	LFA-0169	Appeal of an Information Request Denial.
If granted: Government Accountability Project would receive access to the transcripts of deposition testimony of four individuals taken in connection with allegations of workplace discrimination and harassment brought by a DOE contract employee.			

Refund Applications Received

[Week of November 29 to December 6, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/01/91	Fomentos Armadora, S.A.	RC272-141
12/01/91	Hydroussa Shipping Co., S.A.	RC272-142
12/01/91	Kronos Maritime Agency, S.A.	RC272-143
12/01/91	Ocean Freighters Ltd.	RC272-144
12/01/91	The Epirotiki Steamship Co.	RC272-145
12/01/91	Prometheus Martime Corp.	RC272-146
12/01/91	Eastern Mediterranean Martime	RC272-147
12/01/91	Thenamaris Inc.	RC272-148
12/01/91	Union Commercial Steamship Co.	RC272-149
12/02/91	Otis' Spur	RF300-1422
12/03/91	Roger W Purk	RF342-64
12/03/91	Loupe's Shell Service	RF315-10177
12/03/91	John J. Meiler, Jr.	RF307-10201
12/04/91	Quality Oil Company I	RF315-10178
12/04/91	A. Kanmanderian Clark Super	RF342-65
12/04/91	Darwin Petchell	RF342-66
12/02/91	Brock Oil Company, Inc.	RF330-61
12/02/91	A. J. Oil Company	RF330-62
12/02/91	Don Johnson Oil Co.	RF330-63
12/02/91	Butricks Clark Super 100	RF342-60
12/02/91	Phil's Clark	RF342-61
12/02/91	Milton Poole Clark Super 100	RF342-62
12/02/91	Scotts' Clark Super 100	RF342-63
12/02/91	De Reu LP-Gas Co.	RF34-034
12/02/91	Monitor Fuel Co.	RF329-10
12/02/91	Simmons Oil Corporation	RF326-323
11/25/91	Aratex Services, Inc.	RA272-45
12/02/91	Don's Shell Service	RF315-10176
12/02/91	John J. Meiler, Jr.	RF307-10200
12/04/91	Evanite Fiber Corporation	RC272-150
12/05/91	Lou's Automotive, Inc.	RF341-16
12/05/91	Great Notch Exxon Service	RF307-10202
12/05/91	Milltown Service Center	RF307-10203
12/05/91	Kelm's Clark Station	RF342-67
10/24/91	Denver F. Stockham	RF335-53
12/06/91	Deen's Clark Station	RF342-68
12/06/91	"Al's Super 100" Inc.	RF342-69
12/06/91	Dixie Oil Company of Alabama	RF324-53
11/29/91 thru 12/06/91	Texaco Refund—Applications Received	RF321-18076 thru RF321-18098
11/29/91 thru 12/06/91	Crude Oil Refund—Applications Received	RF272-90820 thru RF272-90847
11/29/91 thru 12/06/91	Gulf Oil Refund—Applications Received	RF300-18705 thru RF300-18781
11/29/91 thru 12/06/91	Atlantic Richfield—Applications Received	RF304-12827 thru RF304-12850

[FR Doc. 92-671 Filed 1-9-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of October 7 Through October 11, 1991

During the week of October 7 through October 11, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Hutchinson Carter Co., 10/8/91, LFA-0146

Hutchinson Carter Company (HCC) filed an Appeal from a determination issued by the Albuquerque Operations Office (AOO) in which AAO withheld certain financial documents that HCC requested in its Freedom of Information Act request. In considering the Appeal, the DOE found that the justification for withholding the requested information was adequate under Exemption 4, but that further analysis was required for this withholding under Exemption 6. The Appeal was, therefore, denied in part and remanded in part.

Olin Pantex, Inc., 10/9/91, LFA-0157

On September 11, 1991, Olin Pantex, Inc. (OPI) filed an Appeal from a determination issued by the Albuquerque Operations Office (AOO) in response to a letter from OPI which contained seventeen Freedom of Information Act (FOIA) requests. In that determination AOO withheld information found to be responsive to some of OPI's requests. In addition, AOO informed OPI that there were no documents responsive to other of its requests. OPI appealed both the adequacy of the search regarding five of the requests for which responsive documents could not be found, and the application of the Exemptions to the

documents found to be responsive to its other requests. When the OHA contacted AOO to determine the adequacy of AOO's search for responsive documents, documents responsive to three of the requests were located. Accordingly, the OHA ordered that in regard to these three requests the appeal be remanded to AOO for a determination regarding those documents. Secondly, the OHA determined that the search for documents responsive to the other two requests was adequate. In addition, the OHA determined that Exemption 5 was properly relied upon to withhold the names of the Source Evaluation Board members. Further the OHA concluded that AOO properly relied upon Exemptions 3 and 4 to withhold the initial and best and final offers of Mason & Hanger—Silas Mason Co., Inc. However, the OHA determined that AOO could not rely upon Exemptions 3 or 4 to withhold the blank algorithm or formula used to evaluate the offers. The OHA also concluded that AOO did not provide a sufficient description of the portions of the documents withheld under Exemptions 3, 4, 5. Finally, the OHA determined that AOO must conduct a segregability determination for those documents remanded in accordance with the decision. Therefore, OPI's appeal was granted in part and denied in part.

Remedial Order

Southwestern Refining Company, Inc., The Crude Company, 10/7/91, KRO–0490

The Southwestern Refining Company, Inc. (SRCI) and The Crude Company (TCC) objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration issued to them on December 15, 1986. The PRO alleged that during the period January through May, 1977 (the audit period), SRCI erroneously claimed small refiner bias (SRB) entitlements for 613,260 barrels of crude oil pursuant to a processing agreement with the Champlin Petroleum Company. As a result of this action, the PRO found that SRCI and TCC received SRB entitlements benefits in excess of those authorized by the Entitlements Program in the total amount of $1,202,143.07. The DOE determined that SRCI's and TCC's objections to the PRO should be denied. Specifically, the DOE found that TCC, not SRCI, was the owner of the crude oil for regulatory purposes, due to SRCI's failure to exercise any valid functions of ownership with respect to the crude oil and refined products. The DOE also found that both SRCI and TCC circumvented the entitlements regulations in violation of 10 CFR 205.202, and that TCC was fully liable, along with SRCI, as a central figure and animating force in the violations. Finally, the DOE rejected challenges to the PRO based on state statutes of limitations, laches, and the termination of the Entitlements Program, and upheld the assessment of interest on the violation amount at the levels specified in the PRO,

Refund Applications

American Electric Power Service Corp., 10/9/91, RF272–27812

The DOE issued a Decision and Order concerning an Application for Refund filed by American Electric Power Service Corp. (AEP) in the subpart V crude oil special refund proceeding. A group of state governments filed a statement of objections to AEP's claim. The DOE found that four companies affiliated with AEP—Appalachian Power Co., Ohio Power Co., Kentucky Power Co., and Indiana & Michigan Electric Co.—had applied for refunds from the Utilities Escrow in the "Stripper Well" refund proceeding. In order to apply for a refund from the Utilities Escrow, a claimant was to waive its right and that of its parents, subsidiaries and affiliates to file any other claim for funds received as the result of alleged crude oil price or allocation violations. Thus, any claimant that filed an application for a refund from the Utilities Escrow, as well as any company affiliated with it, is barred from receiving a crude oil refund under subpart V. The DOE therefore, found that as a result of the waivers executed by it affiliates, AEP was ineligible to receive a subpart V crude oil refund, and denied its Application.

Atlantic Richfield Company/Odessa L.P.G. Transport, 10/9/91, RF304–4683

The DOE issued a Decision and Order granting a full volumetric refund of $17,015 plus $8,433 in accrued interest to Odessa L.P.G. Transport. The firm provided evidence of banks of unrecouped increased product costs sufficiently large to merit a full volumetric refund. In addition, a competitive disadvantage analysis revealed that the prices paid by the firm to ARCO throughout the consent order period were higher than the regional average, demonstrating that the firm suffered significant injury as a result of its purchases to ARCO products. In applying this competitive disadvantage analysis, the DOE used the historical pricing data for propane from the Weekly BPN Propane Newsletter (BPN), in lieu of Platt's Oil Price Handbook and Oilmanac (Platt's). Odessa has submitted a detailed evidentiary demonstration establishing that BPN offered more representative propane pricing information for its specific market region than did Platt's.

Enron Corp./John Deere Des Moines Works, 10/8/91, RF340–5

The Department of Energy (DOE) issued a Decision and Order concerning an Application for Refund filed by John Deere Des Moines Works (John Deere) in the Enron Corp. special refund proceeding. In that decision the DOE denied John Deere's claim for a refund based on 512,107 gallons of LNG (liquified natural gas) purchased indirectly from Northern Natural Gas Company, a division of Enron's predecessor internorth. The DOE determined that Northern Natural Gas Company was not a covered entity under the order implementing refund procedures for the Enron Corp. proceeding.

Federal Employee's Distributing Company, 10/10/91, RR272–12

The Department of Energy (DOE) issued a Decision and Order concerning the Motion for Reconsideration submitted on behalf of the Federal Employee's Distributing Company (FEDCO), a reseller of refined petroleum products. FEDCO requested reconsideration of the denial of its Application for Refund from crude oil overcharge monies available for disbursement by the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) pursuant to the provisions of 10 CFR part 205, subpart V (subpart V). FEDCO's original application was denied because the company did not demonstrate that it was injured by crude oil overcharges, a requirement for all refined petroleum product resellers in the subpart V crude oil refund proceeding. In its Motion for Reconsideration, FEDCO argued that it should be eligible for a refund because it acts in the nature of a cooperative enterprise in that it is in fact owned by its members. FEDCO asserted that it purchased products for ultimate resale to its member/owners and was thus in fact the end-user of the products. FEDCO requested that its claim be accorded the end-user presumption of injury. The DOE found that FEDCO was unable to certify direct dollar-for-dollar pass through to its member/owners for any refund granted and that any distribution of the refund would therefore be discretionary. Accordingly, it was not accorded the end-user

presumption, and the Motion for Reconsideration was denied.

Firestone Tire and Rubber Company, et al., 10/7/91, *RF272–13927 et al.*

The DOE issued a Decision and Order concerning six Applications for Refund filed in the subpart V crude oil refund proceeding. Three of the applicants sought refunds based on their purchases of various grades of residual fuel used in the manufacture of carbon black. The other three applicants were firms engaged in the manufacture of tires and other rubber products, that requested refunds for scores of products, including their purchases of carbon black. A group of States and Territories (States) objected to all six applications, principally on the basis that the applicants were able to pass through to their customers increased petroleum costs during the crude oil price control period.

The DOE rejected the States' Objections to all six applications as well as the Motions for Discovery which the States had filed in connection with each of the six claims. The DOE held that industry-wide data, with no specific references to the applicants, is insufficient to rebut the presumption of injury for end-users outside the petroleum industry. The DOE also found no merit to the States' contention that four of the applicants had passed on to their customers overcharges associated with 60 refined petroleum products.

As for the competing claims for a refund based on purchases of carbon black and the feedstock used to manufacture carbon black, DOE first held that since carbon black was not regulated under the EPAA, it is not a product which is eligible for a crude oil refund. DOE next determined that the carbon black manufacturers were the end-users of the residual fuel used to make carbon black and therefore are afforded the end-user presumption of injury. DOE then evaluated the evidence tendered by the tire and rubber manufacturers and determined that it was not sufficient to demonstrate that the carbon black manufacturers had passed on to the tire and rubber companies overcharges associated with the carbon black feedstock. Finally, DOE rejected a proposed agreement entered into by all six applicants which purported to settle the issue of who is eligible for a crude oil refund for the carbon black and the feedstock used to make carbon black, determining that the acceptance of the proposed settlement agreement would undermine DOE's statutory mandate to assure that restitution is achieved. DOE concluded that the following carbon black manufacturers were entitled to receive refunds for their residual fuel purchases in the following amounts: Cabot Corporation: $1,479,109; J.M. Huber: $319,333; and Sid Richardson: $245,154.

With respect to the other 60 refined petroleum products for which four of the applicants had claimed a refund, DOE determined that the following companies were entitled to crude oil refunds in the following amounts: GenCorp Inc.: $56,471; Goodyear Tire & Rubber Company: $878,556; Firestone Tire and Rubber Company: $725,038 and J.M. Huber: $38,385. Of particular significance was a finding by DOE that Goodyear Tire and Rubber Company had presented reliable, probative evidence that the end-users of styrene and C5 streams had passed through to Goodyear the overcharges associated with the benzene component of styrene and the naphtha and gas-oil components of the C5 streams. DOE therefore decided that Goodyear was entitled to a crude oil refund based on the benzene component of styrene and the naphtha and gas-oil components of the C5 streams.

Superior Tube company, 10/8/91, RF272–8129, RD272–8219

Superior Tube Company, a manufacturer of small diameter metal tubing, filed an Application for Refund from the subpart V crude oil overcharge monies based upon its purchases of refined petroleum products (gasoline, fuel oil and motor oil) consumed in its business operations. A group of thirty States and Two Territories of the United States ("the States") filed an objection opposing the receipt of a refund by Superior on the ground that Superior had failed to expressly claim or submit evidence that the firm was injured by crude oil overcharges. In connection with their objection, the States also filed a Motion for Discovery. In considering the States' Objection, the DOE determined that Superior was presumptively injured by crude oil overcharges under the presumption of injury established by DOE with respect to end-users outside the petroleum industry, and that the State's general assertions were insufficient to rebut this presumption. On this basis, the DOE further determined that the State's Motion for Discovery was without basis. Accordingly, Superior's Application for Refund was approved and the State's Motion for Discovery was denied. The refund granted in this decision was $4,536.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

AGCO, Inc.	RR272–83	10/11/91
Atlantic Richfield Company/James Dorsey.	RF304–3594	10/09/91
Atlantic Richfield Company/North Plains ARCO *et al.*	RF304–3594	10/09/91
Atlantic Richfield Company/ Radkowski ARCO #1, Radkowski ARCO #2.	RF304–9208 RF304–9530	10/09/91
Atlantic Richfield Company/ Reupen's ARCO #1, *et al.*	RF304–12464	10/09/91
Atlantic Richfield Company/Union Carbide Corporation.	RF304–3296	10/11/91
Citronelle-Mobile Gathering/Shell Oil Company.	RF336–7	10/11/91
Fletcher Oil & Refining Co./Thrifty Oil Company.	RF329–8	10/09/91
Gulf Oil Corporation/ Garrity Oil Company, Inc. *et al.*	RF300–13522	10/08/91
Gulf Oil Corporation/ Lancia Oil Company, Inc., Lancia Oil Co., Inc.	RF300–12645 RF300–12646	10/08/91
Gulf Oil Corporation/ Platolene "500", Inc. *et al.*	RF300–14008	10/09/91
Gulfstream Aerospace Corp.	RF272–75857	10/10/91
Murphy Oil Corp./ Midwest Industrial Fuel, Inc.	RF309–141	10/08/91
Texaco Inc./ Canadian American Oil Co. *et al*, Canadian American Oil Co.	RF321–9012 RF321–12262	10/11/91
Texaco Inc./Cirelli's Texaco.	RF321–10605	10/08/91
Texaco Inc./Harley's Texaco *et al.*	RF321–340	10/08/91
Texaco Inc./Texas Utilities Generating Co. *et al.*	RF321–11107	10/07/91
Thomas P. Reidy, Inc./Marathon Oil Company.	RF322–9	10/11/91
Yosemite Park and Curry Co.	RF272–8339	10/08/91

Dismissal

The following submissions were dismissed:

Name	Case No.
A.J.'s Texaco #2	RF321–723
Beaverhead County, MT	RF272–85325
Bob's Texaco	RF321–7188
Buchanan County, IA	RF272–85242
Calvert County Public Schools	RF272–79453
D.D. Hartman	RF321–5903
Discount Texaco Service	RF321–17086

Name	Case No.
Don's AM/PM Arco	RF304-4005
Don's AM/PM Arco	RF304-4004
Englewnnd Hospital	RF272-88711
Farmington Mall Texaco	RF321-216
G.D. Spears Texaco	RF321-17089
Harjers Texaco	RF321-17093
J.A. Ingrum Consignee	RF321-16327
Jimmie's Texaco	RF321-2462
Lyndale Texaco	RF321-17091
Negaunee Spur	RF309-1414
Normandale Texaco	RF321-17088
Oasis Service, Inc	RF315-0288
Oswego Oil Service Corp	LEE-0027
Pilot Freight Carriers, Inc	RF272-78049
Pilot Freight Carriers, Inc	RF272-78051
Plantation Texaco	RF321-17087
Richardson County, NE	RF272-85779
Southport Texaco	RF321-17090
St. George Oil Company	RF304-62
T&Y Texaco Service	RF321-17092
Theo John Shell	RF315-0276
Wenatchee School District	RF321-16889
Wilson Oil Company	RF309-1261

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 3, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-675 Filed 1-9-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4091-9]

Public Water Supply Supervision Program; Program Revision for the State of Arkansas, Oklahoma and Texas

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the States of Arkansas, Oklahoma and Texas are revising their approved State Public Water Supply Supervision Primacy Program. Arkansas, Oklahoma and Texas have adopted drinking water regulations for (1) filtration, disinfection, turbidity, giardia lamblia, viruses, legionella, and heterotrophic bacteria that correspond to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, giardia lamblia, viruses, legionella, and heterotrophic bacteria promulgated by EPA on June 29, 1989 (54 FR 27486); and (2) total coliforms (including fecal coliforms and E. Coli) that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and E. Coli) promulgated by EPA on June 29, 1989 (54 FR 27544). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by February 10, 1992, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by February 10, 1992, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on February 10, 1992.

A request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Division of Engineering, Arkansas Department of Health, 4815 West Markham, Little Rock, Arkansas 72201

Water Quality Service-0207, Oklahoma State Department of Health, 1000 NE. 10th Street, Oklahoma City, Oklahoma 73117-1299

Water Hygiene Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756

Regional Administrator, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733

FOR FURTHER INFORMATION CONTACT: O. Thomas Love, Jr., EPA, Region 6, Water Supply Branch, at the Dallas address given above; telephone (214) 655-7150, FTS 255-7150.

(Sec. 1413 of the Safe Drinking Water Act, as amended, (1986) and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: December 31, 1991.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 92-666 Filed 1-9-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4091-6]

Underground Injection Control Program; Approval of Oxygen Activation Method for Mechanical Integrity Testing of Injection Well Classes I-V

AGENCY: Environmental Protection Agency.

ACTION: Notice of alternative method; final approval.

SUMMARY: Based upon the comments reviewed by EPA technical staff, the Agency finds that the oxygen activation methodology is at least as effective as currently approved mechanical integrity test procedures and is acceptable as a viable alternative test. Therefore, the Agency is granting approval for the use of the Oxygen Activation method to test fluid movement into underground sources of drinking water (USDWs) through channels adjacent to the injection well bore as an alternative to those tests specified in the Code of Federal Regulations under 40 CFR 146.8(b).

DATES: This approval is effective as of January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Smith; Office of Ground Water and Drinking Water (WH-550G), U.S. EPA, Washington, DC 20460; (202) 260-5586.

SUPPLEMENTARY INFORMATION:

I. Background

The State Drinking Water Act (SDWA) (42 U.S.C. 300h, *et seq.*) is intended to protect underground sources of drinking water (USDWs) from contamination by underground injection. One of the cornerstones of the Underground Injection Control (UIC) program is verification of the mechanical integrity of wells. Mechanical integrity (MI) is defined as the absence of significant leaks in the casing, tubing or packer, and the absence of significant fluid movement into USDWs through vertical channels adjacent to the injection well bore. This movement can occur from either the injection zone or from other zones or aquifers. Acceptable methods for

evaluating mechanical integrity are specified in 40 CFR 146.8 for State programs administered by EPA and in the program applications of the States with primary enforcement responsibility for injection wells. Section 146.8(d) states that the Director of the UIC program in a State may allow alternative mechanical integrity tests if approved by the Administrator of the EPA. The Administrator has delegated authority to approve alternative test procedures to the Director of the Office of Ground Water and Drinking Water.

The Oxygen Activation Method, using a downhole wireline well logging instrument, employs a measurement technique in which the stable isotope of oxygen, associated in any form of water located behind the casing, is temporarily converted to an unstable isotape of nitrogen with a very short half-life (7.13 seconds). In effect, the unstable nitrogen isotope acts as a tracer to enable a multiple detector system on the instrument to measure any flow of water-bearing fluid past the logging instrument.

On September 19, 1991 (56 FR 47474), EPA published a notice indicating its intent to reissue approval of the oxygen activation (OA) test as an acceptable alternative mechanical integrity test procedure. The purpose of the notice was to solicit additional public comments on the use of the OA test because of concerns raised by the American Petroleum Institute (API) regarding the technical basis for EPA's original approval of the test on February 1, 1991 (56 FR 4063).

The EPA provided an updated docket of information for public inspection supporting the OA test and the Agency's rationale for approval of the methodology. Written comments and referenced data were to be submitted on or before October 21, 1991, for consideration in this final decision.

EPA received comments from 8 concerned parties. The commenters expressed general concerns as to the technical reliability of this new technology and the issue of cost effectiveness. EPA's responses to these comments are detailed below.

II. Response to Comments

A. Oxygen Activation Method Performance Characteristics

The API stated that based upon results from Paap et al. of Texaco, ". . . there are flow situations and wellborne configurations in which the OA method can not detect flow. . .", which would indicate to OA log is not a reliable indicator of a loss of mechanical integrity. In response, EPA believes that its independent testing of both the Atlas Wireline "Hydrolog" and Schlumberger "Water Flow Log" logging instruments (the two commercially available OA logging services) verify the accuracy and versatility of the OA technology and that EPA experimental data are consistent with the results provided in the Paap report.

The Paap report is based on tests that were run on an early model of the "Hydrolog" in May, 1988. The tests were conducted at a Texaco laboratory facility. The fluid flow was confined to a 1.25" diameter string of tubing located at a distance of 5.64 inches from the logging instrument. Water was pumped through the tubing at flow rates ranging from 0.1754 to 2.27 gallons/minute (gpm). Paap et. al. stated that "Flow channels of 1.25 inch diameters can be detected with at least 95% confidence behind either a single 7 inch, 23#/ft casing string or behind a dual 7 in., 23#/ft + 4.4 in., 11.6#/ft casing string at volume flow rates as low as 8 barrels/day when data accumulation times are 20 minutes or longer". The fact that the tubing was located inside a string or multiple strings of casing is not specifically mentioned in the report. Assuming that the OA instrument was used to test water flow under the described physical conditions, the results indicate that water flowing in the 1.25" tubing that was located inside a single piece of steel casing (the 7" casing) or two, concentric steel casings (a 4.4" casing located inside a 7" casing) could be detected at flow rates of 0.178 gpm (equivalent to 8 barrels/day) at least 95% of the time.

As noted above, a series of tests at the EPA Mechanical Integrity Testing and Training Facility (MITTF) were conducted to evaluate the Atlas Wireline "Hydrolog" and Schlumberger "Water Flow Log" under simulated field operating conditions. The tests were set up so that the instrument was suspended in a string of 2⅜" tubing located within a 5½" steel casing string. Water was then flowed through a separate string of 2⅜" tubing that was located on the outside of the 5½" casing (i.e., in the annular space between the casing string and the borehole wall). In all cases the "Hydrolog" and "Water Flow Log" were capable of detecting flow rates of 0.22 and 0.25 gals/min, respectively. These flow rates are very close to the minimum flow rate (0.177 gpm) used in the less sophisticated Texaco experiment. Both OA instruments (Atlas Wireline "Hydrolog" and Schlumberger "Water Flow Log") have consistently been able to detect a variety of flow rates (including exceedingly low flow rates described above) under wellbore conditions that more closely simulate actual field injection wells than the Texaco "bench-scale" experiment. Thus, EPA believes that the OA method has reliably demonstrated the ability of this technology to consistently identify very low flow rates behind one or more strings of casing.

API also cited the possibility of misinterpretation of the test results due to a lack of knowledge of downhole conditions on the part of the test evaluators. EPA agrees that this is a possibility; EPA notes that there are no production logs that should be interpreted without an understanding of the downhole environment. Randomly picking up any geophysical log and making an interpretation, regarding the mechanical integrity of the well, based solely upon the presented data can lead to misleading results. All geophysical logs are at best semi-quantitative. EPA believes that no knowledgeable professional—either company or regulatory personnel—would try to evaluate an OA (or any other similar log) response without using all available data on geology, well configurations, and production characteristics. Thus, EPA believes that the relatively small potential for misinterpretation is not significant enough concern to disapprove the OA method.

Dupont stated its concern that ". . . the EPA Ada test well in Oklahoma is a specially constructed monitor/test well, [where] these simple well conditions do not necessarily reflect the majority of normal well construction techniques used in the industry." EPA agrees that its MITTF is indeed unique. The test facility has been designed especially to enable researchers to accurately simulate downhole flow conditions and cement "channels" to enable testing of various logging instruments and methodologies under known, controlled conditions. Both Class I and Class II wells operated by the chemical and petroleum industries, respectively, are constructed with concentric strings of tubing, long string casing and surface casing. The difference between industry injection wells and the MITTF is the fact that there is no foolproof or guaranteed method of ascertaining exactly what conditions (e.g., cement quality and quantity and/or fluid flow) are present in the annular space between the outermost casing string and the borehole wall in the industry wells. Therefore, any attempt to run a series of carefully controlled experiments in an operating industry well would be difficult or impossible since there is no way of proving a priori what conditions actually

exist below the surface of the ground. Similarly, running a number of different logs in an operating well may not give clear cut results; especially if the log responses contradict one another. Without accurate, empirical data on the physical conditions in the annular space there is no way to guarantee that one log response is correct and another is incorrect. The MITTF allows researchers to control flow volumes, rates, and pressures to enable them to calibrate instrument response against known values; this capability can not be duplicated in an operating field well. Therefore, the EPA test facility is the most precise means of measuring the response and accuracy of the logging instruments used in the OA alternative mechanical integrity test.

Chemical Manufacturers Association (CMA) stated that the experience with the OA method, to date, is limited to two service companies [Atlas Wireline and Schlumberger]. Monsanto believes that the "widespread use" of the OA log ". . . may not in fact reflect a 'widely used' method, but rather reflect aggressive salesmanship by the firms." EPA stands by its original statements as to the use of the OA log by the industry. Over 300 wells have been logged during the past 3 years. All of these logs were run at company request. Logging service companies billed the companies for each log. To EPA's knowledge, none of the wells were logged for free as a means of demonstrating the technology to an uncertain or unwilling client. EPA records indicate that between March 1989 and April 1991 seventeen chemical producing and/or waste management companies operating Class I wells ran 36 oxygen activation logs. In some cases duplicate logs were run in the same well; however, these figures do corroborate the fact that companies, other than petroleum producing companies, have run the OA log and that there is some level of experience available to allow evaluation of the use of this logging technique. Furthermore, even if CMA's and Monsanto's contentions were correct and the field application of the OA method were the result of aggressive marketing, this activity would not affect EPA's conclusion that the accuracy and performance of the OA methodology has been adequately demonstrated.

CMA also commented that ". . . it has proven difficult to distinguish between flow inside the casing and outside the casing . . . [and that] this inability to distinguish flows will undercut the results of the test, especially as it is applied to more complex well configurations with testing [sic? (probably should read "tubing")] and multiple casings." EPA contends that certain flows can be readily identified as being either inside or outside the casing by analyzing the gamma ray count rates and/or timing spectrum while running the log. In some cases the location of the flow can be determined by reconfiguring the instrument to read flow in the opposite direction and thereby eliminate the flow signal from the flow occurring in the known direction. For example, oscillating flows caused by pressure changes in a well under static conditions with open perforations can be easily identified by the wireline operating engineer. Flows that may present a significant identification problem are very low flow rates that can be related to density currents or temperature induced diffusion. These cases would require access to other logging data to help determine the exact location of the flow. EPA would further note that two of the other approved alternative testing procedures (temperature and acoustic logs) are prone to providing results that are subject to a great deal of interpretation and often require running of additional tests to verify the "most probable" interpretation. In short, EPA believes that no log can always provide totally accurate and unambiguous results. The OA log does represent the latest state-of-the-art technology and has proven itself to be at least as reliable as some of the older technologies that can produce considerably more subjective results.

Another commenter stated that borehole irregularities (i.e., holes that are not perfectly to gauge) and geometric configuration of channels in the cement make the interpretation of fluid flow using nuclear techniques very difficult. EPA agrees that, on an overall basis, this observation is basically correct. However, the use of pulsed neutron technology to detect and differentiate between salt water and hydrocarbons has been proven (and accepted) for over 25 years. Modification of this technology to show fluid flow is a more recent development, but is based upon demonstrated research results. The geometric cross-section of a flow channel located behind the casing would make the determination of the volume of water questionable, but would not rule out determining the velocity of the fluid movement. In essence, a stream of "activated" water molecules passing by the gamma ray detectors will give off a characteristic signal. Interpreting what volume of water is flowing through the channel is not a prerequisite to establishing that fluid flow is occurring. In using the OA method, EPA is only concerned with establishing that fluid movement is occurring between formations and USDWs. The OA instrument has proven that it can repeatedly and accurately measure very low flow velocities.

One commenter (Envirocorp) challenged the documentation on the physical performance of the Atlas Wireline "Hydrolog". Envirocorp provided its analysis of documented test results from the Atlas Wireline technical manual on OA logging and posed several questions relating to repeatability of the measurements. EPA reviewed the submitted attachments and consulted with the Atlas Wireline about the actual instrument performance data and the interpretation of those data that were provided by Envirocorp. Based upon information submitted by both parties, EPA believes that Envirocorp's concerns about the reduction in background count rates reflected in the test results is unwarranted. The phenomenon of a reduced count rate during logging and the possible need to recalibrate the instrument were anticipated prior to running the test. The overriding aspect of the test results is the fact that the controlled, measured water flow rates were consistently and accurately detected by the instrument.

Envirocorp also asserted that test data presented on page III.36 of the *Atlas Wireline Services Oxygen Activation Logging: Hydrolog Service Technical Manual (March 1988)* showed that the absolute values of the recorded counts/second are too close to the calculated statistical standard deviation to be meaningful and that the readings tend to exhibit non-statistical drift over time. EPA notes, however, that an explanation of instrument response and the implications of the calculated standard deviation and "drift" is provided by Atlas Wireline on page III.26 of the same manual. EPA's independent report on this particular test stated that "* * * fluid movement was detected for the 0.105 gpm flow rate, but it [the detected fluid movement] was probably the column of water in the tubing moving toward static equilibrium conditions since at this extremely low flow [rate] the fluid level in the tubing could not be maintained." This scenario would be classified as a "no flow" situation. Thus, the possible anomaly identified by Envirocorp did not lead EPA to misinterpret the results of this test.

EPA also wishes to state that it is not aware of any data showing a correlation between water velocity and formation

capture cross-section. As stated above, for the purpose of establishing mechanical integrity, EPA is concerned only with flow/no flow determinations. Velocity calculations do not have any bearing upon the significance of a flow or whether a USDW is in danger; the fact that any fluid is moving toward or into a USDW is the major concern.

Finally, Envirocorp's contention that EPA has contradictory OA log information about a well that exhibited simultaneous upward and downward flow in the casing—borehole annulus (suggesting that the OA did not perform properly in each documented test, as EPA claims) is incorrect. The data on the well in question did *indicate* flow in both directions; however, analysis of well bore conditions clearly showed that seemingly contradictory signal response was due to poorly mixed brine/gel that was left in the casing/tubing annulus. There was no misrepresentation of OA instrument capabilities. This example merely reinforces EPA's previously stated contention that the person analyzing the OA log data must know all of the geological and operating conditions of the well to accurately assess the data. This is true for the use of *any* test methodology that employs indirect measurement techniques.

B. Health & Safety Concerns

One commenter raised a safety issue that had never been discussed during the evaluation of the instrument performance. This commenter contends that the pulsed neutron (radioactive) source in the instrument could activate the iron in the steel tubing string to create manganese 56 (Mn^{56}), a radioactive isotope that gives off gamma rays. The isotope has a half-life of 2.6 hours. If a workover crew were to pull the tubing string during the 2.6 hour period after "activation", the commenter believes that the personnel could be exposed to a radiation hazard. To address this concern, EPA consulted with the manufacturers of the two commercial OA logging instruments (Atlas Wireline and Schlumberger). Both companies stated that the danger of exposure to excessive radioactivity for logging or workover personnel is virtually non-existent. All instruments are routinely checked in the service company shop by turning on the pulsed neutron generator in a shielded test pit and running the generator for at least 20 minutes. Immediately after the neutron source is turned off scintillometer readings are taken on the surface of the metal instrument housing and at a distance of 1 foot from the neutron generator. The maximum radiation readings ever measured were 0.65 millirems on the instrument's surface and 0.03 millirems in the air at a distance of 1 foot from the source. Nuclear Regulatory Commission regulations governing the use of radioactive sources for geophysical logging instruments permit the use of unshielded sources that produce continuous radiation that is ≤ 2.0 millirems above naturally-occurring background radiation levels. See 10 CFR Part 39. The OA neutron generators comply with all Nuclear Regulatory Commission specifications and are completely safe for the use intended. The source is not strong enough to "activate" the iron in a string of steel tubing and change any appreciable mass of iron into the radioactive isotope of manganese. EPA believes that the oxygen activation method represents no significant health hazard to either the logging service company personnel or well operating personnel.

C. Economic and Policy Issues

A majority of the commenters were concerned that the EPA had not taken into account the increased costs (beyond those costs associated with the current alternative methodologies) of the OA log and the danger that this log would become a "* * * preferred testing method that will be required by Underground Injection Control (UIC) program directors." EPA is sensitive to cost considerations and for that reason wishes to again state, unequivocally, that the OA log is only one of several alternative testing procedures that are all equally capable of providing proof of mechanical integrity.

EPA believes that many commenters have misinterpreted EPA's intent in stating in the proposed approval that the cost of the test has no bearing on approval of the OA log. EPA merely clarified its position that approval of the OA log as an authorized test procedure is based upon the physical performance and accuracy of the methodology as specified in 40 CFR 146.8 (d). Cost, by itself, is no reason for either accepting or rejecting the method as an alternative mechanical integrity testing method.

EPA believes that the operators and UIC Directors should discuss the requirements for running MITs for specific wells and determine what are the most cost-effective means by which both parties can meet their obligations. The OA log is neither a unique nor mandatory methodology for demonstrating mechanical integrity of underground injection wells and EPA is not advocating its exclusive use, but simply accepting its validity. Nevertheless, the ultimate discretion and authority for specifying MIT procedures that will ensure safeguarding USDWs remains with the appropriate UIC Director.

D. Regulatory Conflicts

One commenter (CMA) observed that "* * * by stating that on OA test should be run 'at some point between' the base of each USDW and the confining zone, the preamble [to the proposed approval] suggests that a flow indication in formations that have no regulatory significance would indicate a lack of mechanical integrity." EPA believes the commenter misunderstood EPA's intent. EPA's purpose in requiring this operational procedure is to provide a statistical check on instrument accuracy by taking a reading that is essentially opposite a portion of the borehole that should be totally uninfluenced by physical conditions adjacent to the confining zone or the USDW. Any indication of flow would only require that additional readings opposite the confining and/or USDWs (depending upon the direction of the flow) be taken. Repeat readings indicating a "no flow" situation would be regarded as proof that the well exhibits mechanical integrity.

E. Test Procedures

API contends that "* * * flow velocities are meaningless in the determination of the presence or absence of significant flows" and that the conditions stipulating that the measured velocities must be ≥ 3 ft/minute are irrelevant. EPA agrees, in part, with this statement. As stated above, EPA believes the OA method need only detect the presence of flow, not its velocity. Nonetheless, EPA believes that OA logging instruments do not all provide accurate measurements at the lowest detectable flow velocities, and the EPA should allow only the use of those instruments demonstrated to work at relatively low velocities. EPA recognizes that the early models of the OA instruments were only proven to be able to accurately resolve flow velocities in excess of 3 ft/minute. Current models can accurately and repeatedly measure water flow velocities of $\geq$ 2.5 ft/minute. The procedural requirements under the section on Special Conditions are amended accordingly.

III. Special Conditions

Limitations for Conducting the Oxygen Activation Method Mechanical Integrity Test

As previously mentioned, extensive testing and evaluation of this logging technique has been conducted by the

EPA. Based upon this analysis, the following are prescribed limitations for conducting the Oxygen Activation Method mechanical integrity test:

(1) The Oxygen Activation Method has only been perfected by a limited number of commercial geophysical logging companies. Only those companies providing logging instrument capable of detecting flow velocities of at least two and one-half (2.5) feet per minute shall be employed in demonstrating mechanical integrity pursuant to 40 CFR 146.8 (a)(2). Individual UIC Directors can supply interested parties with a list of companies that provide acceptable OA logging services.

(2) Determination of injection zone isolation and/or fluid flow behind the pipe (i.e., flow that is not directly related to injection) will require that readings be taken at a minimum of three stations. Three readings lasting at least 5 minutes or a single reading taken over a 15 minute period must be taken at each stationary position. This procedure allows enough information to be gathered so that more precise results will be obtained. In some cases where results are inconclusive, additional readings over longer time periods may be required by the UIC Director. If the repeat measurements are identical or within the normal range of statistical error for the instrument then the measurement shall be accepted as accurate and valid.

(3) Demonstration of injection zone isolation also will require that the three stations be located far enough above the top of the injection zone (at least 10 feet) that turbulence does not affect the readings. All readings should be taken with the well injecting fluid at the normal rate. The injection should be continuous with minimum rate and pressure fluctuations.

(4) Determination of flow behind the pipe will require that the stations be located at the base of each USDW, adjacent to the confining layer which isolates injection fluids from the injection zone, and at some point between the two locations.

(5) If any flow indication is observed and is proved to be behind the casing string, the well shall fail the test [i.e., it does not establish mechanical integrity pursuant to requirements stated in 40 CFR 146.8 (a)(2)].

(6) The Oxygen Activation Method shall not be used in wells with pipe diameters less than 1 11/16 inches (inside diameter).

(7) The Oxygen Activation Method shall be used only for pipe diameters up to 13⅜ inches (inside diameter).

IV. Determination

The Oxygen Activation Method, subject to the conditions and procedures discussed in this notice, provides the necessary information to demonstrate reliably whether a well has significant fluid movement through vertical channels adjacent to the well bore.

EPA approves this test as an effective alternative mechanical integrity test in all States. Since the test has already been approved by EPA, there is good cause to make today's determination immediately effective.

Dated: January 2, 1992.

James R. Elder,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 92-665 Filed 1-9-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4091-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 23, 1991 through December 27, 1991 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities AT (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-BOP-E81031-NC Rating EC2, Butner Federal Correctional Institution Complex, Construction and Operation, Durham-Granville County Line, NC.

Summary: EPA expressed concern regarding loss of forested upland habitat, wetlands and noise impact and recommended that these issues be addressed in the Final EIS.

ERP No. D-BPA-L08047-WA Rating EC2, Puget Sound Area Electric Reliability Plan, Power System Problems Resolution, Implementation, section 10 and 404 Permits, Columbia River Basin, Several Counties, WA.

Summary: EPA has rated the Draft Environmental Impact Statement (DEIS) for the Puget Sound Area Electric Reliability Plan in Washington State EC2 (Environmental Concerns—Insufficient Information). The concerns are based on the fact that the contingency actions in the preferred alternative will cause the greatest environmental consequences.

ERP No. D-COE-C36068-PR Rating EC2, Rio Grande de Arecibo Basin, Flood Control Plan, Implementation, Arecibo River, City of Arecibo, PR.

Summary: EPA has concerns that the proposed project has the potential for cumulative impacts to occur as a result of project implementation. Additional information about cumulative impacts and mitigation values has been requested for inclusion in the final EIS.

ERP No. D-NPS-K61185-NV Rating EC2, Lake Mead National Recreation Area, Lakeshore Road/NV-166 Reconstruction, Funding, Clark County, NV.

Summary: EPA expressed environmental concerns regarding potential impacts to water quality, sensitive species and biodiversity. EPA requested additional information in the FEIS on air and water quality, sensitive species and project characterization.

ERP No. D-VAD-C99006-NY Rating EC2, Albany New York Area National Cemetery Development, Construction and Operation, Sites Selection, Town of Florida, Montgomery Co., Town of Saratoga and Town of Waterford, Saratoga County, NY.

Summary: EPA has concerns about the proposed project because of its potential impacts to wetlands. Additional information is requested in the Final EIS to address this issue.

Final EISs

ERP No. F-AFS-K65112-CA, Modoc National Forest, Land and Resource Management Plan, Implementation, Modoc, Lassen and Siskiyou Counties, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-FHW-K40179-CA, Hollister Bypass Construction, CA-156/Hollister from Union/Mitchell Road to San Felipe Road, Funding, Possible COE Permit, San Benito County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-USN-E84000-00, EMPRESS II (Electromagnetic Pulse Radiation Environment Simulator for Ships) Operation, Gulf of Mexico and Berthing Site Selection, Mobile, AL; Gulfport, MS or Pascagoula, MS.

Summary: EPA feels while the record of EMP Simulator operation has not demonstrated any significant problems to date, it is not known whether voltage pulses are compatible with human or electronic systems. EPA recommends that the Navy continue to examine more

remote locations to use this simulation device.

Dated: January 7, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-680 Filed 1-9-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4091-4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5073 or (202) 260-5075.

Availability of Environmental Impact Statements Filed December 30, 1991 Through January 3, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 910455, DRAFT EIS, COE, ND, Lake Oahe Bridge Construction, midway between Bismarck, ND and Mobridge, SD, Funding, Emmons and Sioux Counties, ND, Due: February 24, 1992, Contact: Candace Thomas (402) 221-4885.

EIS No. 910456, DRAFT EIS, AFS, UT, Roundy Reservoir Area Timber Sale and Road Construction, Implementation, Dixie National Forest, Aquarius Plateau, Escalante Ranger District, Garfield County, UT, Due: February 24, 1992, Contact: Kevin R. Schulkoski (801) 826-4221.

EIS No. 920000, LEGISLATIVE DRAFT EIS, UAF, Strategic Arms Reduction Treaty (START), Agreement between the United States (US) and Union of Soviet Socialist Republics (USSR), Reduction and Limitation of Deployed Strategic Offensive Arms, Ratification/Nonratification, Due: February 24, 1992, Contact: Kenneth L. Reinertson (703) 695-8942.

EIS No. 920001, DRAFT EIS, BLM, MT, SD, Billings/Power River/South Dakota Resource Areas, Oil and Gas Resource Management Plan Amendment, Leasing and Development, Mile City District, MT and SD, Due: April 10, 1992, Contact: Lloyd F. Emmon (406) 657-626.

Amended Notices

EIS No. 910403, DRAFT EIS, FHW, AR, US 67 Construction, US 67/167 to I-40 West/I-430 Interchange around the North Little Rock Metropolitan Area, Funding, Pulaski County, AR, Due: January 17, 1992, Contact: Carl G. Kraehmer (501) 324-5625. Published FR 11-15-91—Review period extended.

EIS No. 910451, DRAFT EIS, FRC, WA, ID, NV, OR, WY, CA, Northwest Natural Gas Pipeline Expansion Project, Construction and Operation, Licensing, from points in Canada and the United States to Washington, Oregon, Idaho, Wyoming, Nevada and California, WA, OR, ID, WY, NV and CA, Due: February 18, 1992, Contact: Lauren O'Donnell (202) 208-0874. Published FR 01-03-92—Title Correction.

Dated: January 7, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-679 Filed 1-9-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4091-8]

Government-Owned Inventions: Available for Licensing

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for licensing in the United States in accordance with 35 U.S.C. 207 and 37 CFR part 404 (1990). Pursuant to 37 CFR 404.7, the Government may grant exclusive or partially exclusive licenses on any of the inventions listed below three months after the date of this notice.

Copies of the patents and listed patent applications are available from the person indicated below. Requests for copies of patents must include the patent number and requests for copies of patent applications must include the patent application serial number. An application for a license should include the information set forth in 37 CFR 404.8, including applicant's plan for development or marketing the invention.

DATES: January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas German, Patent Counsel, Office of General Counsel (LE-132G), U.S. Environmental Protection Agency, Washington, DC 20460, Telephone (202) 260-7510.

Patents

Patent 4,600,559: Vacuum Extractor With Cryogenic Concentration and Capillary Interface; issued July 15, 1986.

Patent 4,657,464: Chemical Destruction of Halogenated Aliphatic Hydrocarbons; issued June 23, 1986.

Patent 4,902,318: Inlet Apparatus for Gas-Aerosol Sampling; issued February 20, 1990.

Patent 5,007,404: Woodstove for Heated Air Forced Into a Secondary Combustion Chamber and Method of Operating Same; issued April 16, 1991.

Patent 5,021,229: Reduction of Chlorinated Organics In the Incineration of Wastes; June 4, 1991.

Patent 5,018,175: Method for the Destruction of Halogenated Organic Compounds in a Contaminated Medium, May 28, 1991.

Patent 5,039,350: Method for the Decomposition of Halogenated Organic Compounds in a Contaminated Medium, issued August 13, 1991.

Patent 5,059,219: Electroprecipitator With Alternating Charging and Short Collector Sections; issued October 22, 1991.

Patent 5,064,526: Method for the Base-Catalyzed Decomposition of Halogenated and Non-Halogenated Organic Compounds in a Contaminated Medium; issued November 12, 1991

Patent Application

Patent Application 07/788899: Single Chamber Woodstove With Description of Products of Incomplete Combustion Enhanced By a Gaseous-fueled Pilot Burner; filed November 7, 1991.

Raymond B. Ludwiszewski,

Acting Assistance Administrator and General Counsel.

[FR Doc. 92-667 Filed 1-9-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4092-1]

Open Meeting on January 27 & 28, 1992 of the Chemical Accident Prevention Subcommittee of the Environmental Measurements and Chemical Accident Prevention Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT)

Under Public Law 92463 (The Federal Advisory Committee Act), EPA gives notice of the meeting of the Chemical Accident Prevention Subcommittee of the Environmental Measurements and Chemical Accident Prevention (EM/CAP) Committee. The EM/CAP Committee is a standing committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The meeting will convene January 27, from 12 noon to 5 p.m. and January 28 from 9 a.m. to 5 p.m. at Delta Research Corp., 1501 Wilson Boulevard, suite 1200, Arlington, Virginia.

The subjects for discussion will be a draft report on methods of measuring success in chemical accident prevention, and draft principles for chemical accident prevention. Copies of both will be available at the meeting. The subcommittee's two working groups, the Problem Definition/Measurements Working Group and the Management Practices/Communication Working

Group, will meet in a short break-out session.

The meeting will be open to the public. Additional information may be obtained from David Graham at (202) 260-9743, or by written request sent by fax (202) 260-3882.

Dated: December 20, 1991.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 92-668 Filed 1-9-92; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY (EPA)

[FRL-4092-2]

Privacy Act of 1974; Systems of Records

ACTION: Notice of deletion of systems of records and proposed new system of records.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to establish a new system of records, "EPA Travel, Other Accounts Payable and Accounts Receivable Files." EPA is also deleting two existing EPA systems of records: "Travel Voucher, Advance Cards and Payee File System (EPA-7)," and "Accounts Receivable Module (EPA-25)." Records from the deleted systems will become part of the new system of records. Additionally, this new system will contain accounts payable files.

EFFECTIVE DATE: The proposed new system of records will be effective, without further notice, 60 days from the date of **Federal Register** publication, (March 10, 1992), unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be addressed to: Director, Financial Management Division, (PM-226F), EPA, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Sallyanne Harper, Director, Financial Management Division (PM-226F), EPA, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260-5097.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), EPA previously published in the **Federal Register** notices of two systems of records: "EPA-7, Travel Voucher Folders, Advance Cards and Payee Files," which was last published in the **Federal Register** on January 25, 1978 (43 FR 3502), and "EPA-25, Accounts Receivable Module," which was last published in the **Federal Register** on July 26, 1989 (54 FR 3108). These systems are being deleted because records included in the systems will be consolidated in a new Privacy Act system of records also being published this date. Accordingly, this notice formally deletes systems of records EPA-7 and EPA-25.

EPA is also proposing to establish a new system of records, "EPA Travel, Other Accounts Payable and Accounts Receivable Files." This new system of records is primarily an automated information system which includes all records related to the Agency's financial and budgetary responsibilities. It consists of an accounts receivable module containing all records in the deleted EPA-25 system notice, a travel module containing all records from the deleted EPA-7 system notice, and a new accounts payable module. This new system of records is being established to provide a more efficient and accurate method of recording and tracking all monies owed to EPA and all monies owed by EPA for authorized travel and other services performed for the Agency. Records in this system will also be used to assist EPA in collecting debts owed the Agency pursuant to the Debt Collection Act of 1982 (Pub. L. 97-365).

Proposed routine uses for this system of records include disclosures of names, addresses, and Social Security Numbers of individuals and information related to their debts for debt collection purposes. These disclosures are compatible with the purpose for which the records are collected because they are either specifically authorized by the Debt Collection Act or are consistent with and directly related to the purposes of the Act. Other proposed routine uses for this system of records are compatible with the purposes for which the information in this system is collected because they are appropriate and necessary to carry out EPA's financial management responsibilities.

In accordance with 5 U.S.C. 552a(r), EPA has provided a report on this system of records to the Office of Management and Budget and the Congress.

Dated: November 29, 1991.

Edward Hanley,

Acting Assistant Administrator for Administration and Resources Management.

EPA-29

SYSTEM NAME:

EPA Travel, Other Accounts Payable and Accounts Receivable Files EPA/FMD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

All EPA Servicing Finance Offices. These are:

Headquarters—401 M Street, SW, Washington, D.C. 20460
Region 1—John F. Kennedy Bldg. R2203, Boston, MA 02203
Region 2—26 Federal Plaza, New York, NY 10278
Region 3—841 Chestnut Street, Philadelphia, PA 19107
Region 4—345 Courtland Street, NE, Atlanta, GA 30365
Region 5—230 South Dearborn Street, Chicago, IL 60604
Region 6—1445 Ross Avenue, Suite 1200, Dallas, TX 75202-2733
Region 7—726 Minnesota Avenue, Kansas City, KS 66101
Region 8—999 18th Street, Suite 500, Denver, CO 80202-2405
Region 9—75 Hawthorne Street, San Francisco, CA 94105
Region 10—1200 6th Avenue, Seattle, WA 98101
Cincinnati Financial Office—26 West Martin Luther King Dr., Cincinnati, OH 45268
Las Vegas Financial Office—P.O. Box 98515, Las Vegas, NV 89193-8515
Research Triangle Park, North Carolina (MD-20), 27711

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who owe monies to and individuals who are owed monies from the Environmental Protection Agency (EPA) are covered by the system. This includes, but is not limited to, monies owed to EPA for refunds, penalties, travel advances, Interagency Agreements, or Freedom of Information Requests. This system also contains information on corporations and other entities who are in debt to EPA. Records on the corporations and other entities are not subject to the Privacy Act. This system also includes monies owed by EPA to Agency employees, consultants, private citizens and others who travel or perform other services for EPA.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records is composed of an accounts receivable module and travel and other accounts payable modules. The system contains personal identifying information such as names, addresses, and Social Security numbers of persons indebted to or owed money by EPA. The accounts receivable module contains information about the nature of the debt or claim, the amount owed, the history status of the debt, and information which relates to and documents efforts to collect debts owed the Agency. The travel and other

accounts payable modules contain information about the travel authorization; travel vouchers, which support the claim for reimbursement to the traveler; travel advance authorizations, which provide fund advances to pay travel expenses incurred in the performance of official government business; and, finally, itemized invoices for other services performed for EPA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3511–3513; 5 U.S.C. 5514; 31 U.S.C. 3702; 31 U.S.C. 3711 et seq; 44 U.S.C. 3101; Executive Order 9397.

PURPOSE:

Records in the accounts receivable module will be used primarily to create a record of, and to track, all accounts receivable and to assist EPA in collecting debts owed the Agency. Records in the travel and other accounts payable modules will be used primarily to create a record of and to track all monies owed by EPA for authorized travel and for other services performed for EPA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be disclosed for routine uses as follows:

1. To a Member of Congress or a congressional office in response to an inquiry from that Member or office made at the request of the individual to whom the record pertains.

2. To EPA contractors, grantees or volunteers who have been engaged to assist EPA in the performance of a contract, service, grant, cooperative agreement or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients are required to maintain records in the system in accordance with the requirements of the Privacy Act.

3. To union representatives when relevant and necessary to their duties as exclusive bargaining agents under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

4. To a Federal agency which has requested information relevant to its decision in connection with the hiring or retention of an employee; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit.

5. To a Federal, State or local agency where necessary to enable EPA to obtain information relevant to an EPA decision concerning the hiring or retention of an employee; the letting of a contract, or the issuance of a security clearance, license, grant, or other benefit.

6. To an appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

7. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

8. In a proceeding before a court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the records were collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency. Such disclosures include, but are not limited to, those made in the course of presenting evidence, conducting settlement negotiations, and responding to subpoenas and requests for discovery.

9. To representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

10. To the General Accounting Office, Office of Management and Budget, and Department of Treasury for the purposes of carrying out EPA's financial management responsibilities.

11. To provide information as necessary to other Federal, State, local and foreign agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals (in that event, EPA will comply with the Computer Matching and Privacy Protection Act of 1988 and appropriate Office of Management and Budget guidelines).

12. The following disclosures of information in this system may be made in order to help collect debts owed the EPA.

a. To provide information to the Internal Revenue Service in order to obtain taxpayer mailing addresses to locate such taxpayers for the purposes of collecting debts owed the EPA.

b. To provide taxpayer mailing addresses obtained from the IRS to agents of EPA in order to locate the taxpayer for debt collection purposes. The Debt Collection Act of 1982 prohibits the disclosure of such mailing addresses to consumer reporting agencies except for the purpose of having such agencies prepare reports on the taxpayer for use by Federal agencies. Accordingly, EPA will disclose this information to consumer reporting agencies only to obtain credit reports to help collect debts owed the EPA.

c. To provide debtor information to consumer reporting agencies in order to obtain credit reports for use by EPA for debt collection purposes.

d. To provide debtor information to other Federal agencies to effect salary and administrative offsets.

e. To provide debtor information to debt collection agencies under contract to EPA to help collect debts owed EPA. Such agencies will be required to comply with the Privacy Act and their agents will be made subject to the criminal penalty provisions of the Act.

f. To provide debtor information to the Justice Department for litigation or further administrative action in connection with debt collection.

g. To provide debtor information to the Internal Revenue Service for the purpose of reporting discharged debts declared uncollectible as a result of defaulted obligations.

Note: The term "debtor information" as used in the routine uses above is limited to the individual's name, address, social security number, and other information necessary to identify the individual; the amount, status and history of the claim; and the agency or program under which the claim arose.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosure may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Tapes, disks, printouts, and other hard copies: Paper and disk records maintained by each Servicing Finance Office (located in 14 offices nationwide). Computer tapes and disks maintained in Research Triangle Park—National Computer Center, NC.

RETRIEVABILITY:

Accounts receivable module records are indexed by account receivable control number (a number assigned to each "incoming" account receivable). Individual records can be accessed by using a cross reference table which links accounts receivable control numbers with debtors names and associated debtor information. Travel and other accounts payable modules records are retrievable by name and social security number.

SAFEGUARDS:

Records are accessible only to authorized EPA or contractor personnel. For automated records, only authorized personnel with proper passwords may access records. Manual records and computer terminals are maintained in offices which are locked during nonduty hours.

RETENTION AND DISPOSAL:

Manual records are maintained until the indebtness is paid to EPA, or payment is made by EPA, at which time they are disposed of in a manner which ensures confidentiality of the information. Automated records are purged annually for completed activity. Ultimately, all records are disposed of in a manner consistent with EPA Records Control Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Management Division, (PM–226F), EPA, 401 M Street, SW., Washington, DC 20460.

NOTIFICATION PROCEDURES:

Current EPA employees who wish to determine whether this system of records contains information on them may do so by contacting the appropriate Agency Servicing Finance Office in person. Employees must present their photo identification passes to verify identity. EPA employees may, and all other individuals must, submit their inquiries in writing to the System Manager at the address listed above. Written requests should be notarized and should contain the requester's full name, current address, telephone number, and Social Security Number (SSN). The SSN will be used only for identification purposes. The System Manager may require additional information.

RECORD ACCESS PROCEDURES:

Current EPA employees and others who wish to obtain a copy of a record pertaining to them should follow the Notification Procedure described above. In addition, the records being sought must be specified.

CONTESTING RECORD PROCEDURES:

Persons wishing to request a correction or amendment of a record pertaining to them should follow the Notification Procedure described above. In addition, they should identify the record which they wish corrected and the corrective action sought, and provide supporting justification for the correction.

RECORD SOURCE CATEGORIES:

Individuals covered by the system, supervisors, consumer reporting agencies, debt collection agencies, the Department of the Treasury and other Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92–669 Filed 1–9–92; 8:45 am]

BILLING CODE 6560–50

FEDERAL MARITIME COMMISSION

Port of New Orleans et. al., Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–000015–001.

Title: Port of New Orleans/ Continental Grain Company Lease Agreement.

Parties: Port of New Orleans ("Port"), Continental Grain Company ("CGC").

Synopsis: This Agreement, filed December 31, 1991, provides that, upon stated conditions, The Port consents to CGC mortgaging or assigning its right, title and interest under the agreement as security for performance of its obligations in connection with the sale and lease of gram elevator facilities associated with the terminal facilities at Westwego, Louisiana.

Agreement No.: 224–200245–001.

Title: Port of Seattle/British Columbia Stena Line, Ltd. Lease Agreement.

Parties: Port of Seattle, British Columbia Stena Line, Ltd.

Synopsis: The Agreement, filed December 30, 1991, provides for termination of the Basic Lease. Termination to become effective February 5, 1992.

Dated: January 6, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–577 Filed 1–9–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Associated Banc-Corp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 3, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Associated Banc-Corp, Green Bay, Wisconsin; to merge with Northeast Wisconsin Financial Services, Inc., Sturgeon Bay, Wisconsin, and thereby indirectly acquire First National Bank of Sturgeon Bay, Sturgeon Bay, Wisconsin.

2. Dixon Bancshares, Inc., Rolfe, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Rolfe State Bank, Rolfe, Iowa, and 63.85 percent of the voting shares of Citizens State Bank, Sheldon, Iowa.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Minnesota-Wisconsin Bancshares, Inc., Newport, Minnesota; to merge with MidAmerica Bancorporation, Inc., Newport, Minnesota, and thereby indirectly acquire MidAmerica Bank Newport, Newport, Minnesota, and MidAmerica Bank, N.A., Roseville, Minnesota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. C.S. Bancshares, Inc., Chillicothe, Missouri; to acquire 100 percent of the voting shares of Alma Bancshares Corporation, Concordia, Missouri, and thereby indirectly acquire Alma Bank of Concordia, Concordia, Missouri.

2. Great Western Securities, Inc., Omaha, Nebraska; to acquire 100 percent of the voting shares of The Bank of Bellevue, Bellevue, Nebraska.

3. North Platte Corporation, Torrington, Wyoming; to acquire 100 percent of the voting shares of Worland Holding Company, Worland, Wyoming, and thereby indirectly acquire First National Bank of Worland, Worland, Wyoming.

Board of Governors of the Federal Reserve System, January 6, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-581 Filed 1-9-92; 8:45 am]

BILLING CODE 6210-01-F

Lee R. (Sr.) and Katherine M. Anderson, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 31, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Lee R. (Sr.) and Katherine M. Anderson, Minneapolis, Minnesota; to acquire an additional 8.5 percent of the voting shares of Rocky Mountain Bankshares, Inc., Aspen, Colorado, for a total of 33 percent, and thereby indirectly acquire The Bank of Aspen, Aspen, Colorado.

2. Kim M. and Linda S. Ricketts, JTWROS, Salisbury, Missouri; to acquire an additional 8.75 percent of the voting shares of RMB Bancshares, Inc., Marceline, Missouri, for a total of 28.75 percent, and thereby indirectly acquire Regional Missouri Bank, Marceline, Missouri.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. L. Michael Ashbrook, Monroe, Louisiana, to acquire 20.37 percent of the voting shares of LBO Bancorp, Inc., West Monroe, Louisiana, and thereby indirectly acquire Louisiana Bank of Ouachita Parish, West Monroe, Louisiana.

Board of Governors of the Federal Reserve System, January 6, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-580 Filed 1-9-92; 8:45 am]

BILLING CODE 6210-01-F

National Westminster Bank, PLC, London, England; Application to Engage De Novo in Providing Investment Advice, Execution and Clearance of Futures Contracts and Options on Futures Contracts on Stock Indexes, and Providing Investment Advice on These Instruments

National Westminster Bank, PLC, London, England ("Applicant"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), to acquire all of the outstanding shares of Burns Fry Futures, Inc., Chicago, Illinois ("Company"), and through Company, to engage *de novo* in the execution and clearance on major commodity exchanges of various futures contracts and options thereon as a futures commission merchant ("FCM"), and providing investment advice on these instruments. These activities would be conducted in the United States and abroad.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, "closely related to banking." Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

Based on the guidelines established in *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229, 1237 (D.C. Cir. 1975), a particular activity may be found to meet the "closely related to banking" test if it is demonstrated that: (1) Banks generally have in fact provided the proposed activity; (2) banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or (3) banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. The *National Courier* guidelines are not, however, the exclusive basis for finding a proposed activity closely related to banking, and the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking.

Applicant believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto." With one exception, the Board has previously approved the execution and clearance of the stock index futures contracts and options thereon for which Applicant seeks authority, as well as the provision of related investment advice. *See* 12 CFR

225.25(b)(18), (19). *See also, e.g., The Sanwa Bank, Limited*, 77 Federal Reserve Bulletin 64 (1991); *The Hongkong and Shanghai Banking Corporation*, 76 Federal Reserve Bulletin 770 (1990); *Chemical Banking Corporation*, 76 Federal Reserve Bulletin 660 (1990); *The Long-Term Credit Bank of Japan, Limited*, 74 Federal Reserve Bulletin 573 (1988). In conducting these activities, Applicant states that Company would comply with the conditions set forth in sections 225.25(b)(18) and (19) of Regulation Y, as well as the prudential limitations established by the Board in previous orders.

Applicant also proposes that Company provide investment advice and engage in the execution and clearance on the Chicago Mercantile Exchange ("CME") of the Nikkei Stock Average futures contract and options thereon. Applicant takes the position that the proposed activities with respect to the Nikkei Stock Average futures contract and options thereon are "closely related to banking" under the *National Courier* standard. According to Applicant, the contract terms, specifications and risk management applications of futures contracts and options on futures contracts on the Nikkei Stock Average traded on the CME are functionally identical to those of other index products specifically approved by prior Board Order, including the Nikkei Stock Average futures contract traded on the Singapore International Monetary Exchange ("SIMEX").

Although Applicant acknowledges that certain differences do exist in the contracts traded on each exchange, Applicant believes that these differences merely result from the nature of trading conducted on the CME and the SIMEX, and have no impact on the nature of the products traded nor on the risk management applications of the product. For instance, the contract value of the Nikkei traded on the CME is stated in U.S. dollars, while the contract value of the Nikkei traded on the SIMEX is stated in Japanese Yen. Accordingly, Applicant contends that the proposed activities are functionally similar to those currently being conducted by banks and bank holding companies and are therefore closely related to banking.

Applicant takes the position that the proposed activities will benefit the public. Applicant believes that it will promote competition and provide added convenience to customers of Company and gains in efficiency. Moreover, Applicant believes that these benefits will outweigh any possible adverse effects of the proposed activities and that, indeed, no adverse effects are currently foreseen.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 5, 1992. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, January 6, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-582 Filed 1-9-92; 8:45 am]

BILLING CODE 6210-01-F

Southern National Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 31, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Southern National Corporation, Lumberton, North Carolina; to acquire Workman's Bancorp, Inc., Mount Airy, North Carolina, and thereby engage in owning and operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 6, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-583 Filed 1-9-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Forms Submitted to the Office of Management and Budget for Clearance

The Administration for Children and Families will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). This collection package is being submitted for expedited review in compliance with 5 CFR 1320.18.

The information collection request submitted to OMB is a Child Support and Alimony Supplement to the U.S. Census Bureau's April 1992 Current Population Survey. Respondents: Individuals responding to the Census Bureau survey; Number of Respondents: a sample of approximately 71,000 households is included in the survey and an estimated 28,000 individuals will be asked to respond to the Child Support

and Alimony Supplement; Frequency of Response: one time only; Average Burden per Response: 2.5 minutes; Estimated Annual Burden: 1,167 hours.

OMB Desk Clearance Officer: Kristina Emmanuels.

Consideration will be given to comments and suggestions received within 10 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: January 7, 1992.

Stephen R. Smith,

AFC Reports Clearance Officer.

The following is a verbatim copy of the questions to be asked in the Child Support and Alimony Supplement:

April CPS Supplement (8/91)

1. Interview check item. Is this person 15+ years old with own or adopted children in HH? Yes (Ask 2); No (Go to 29)

2. Does * * * have any children under 21 years of age who have a parent living elsewhere? Yes (Ask 3); No (Go to 29)

REMINDER: Ask items 3 through 39 of the parent—if not present make telephone call-back(s)

3a. Which of your children have a (father/mother) who lives somewhere else? (I: Record only children born before 1/1/92)

Person No.

3b. Interview check item. This person is currently Never Married (Go to 4); All Others

3c. Is this child from your most recent divorce/separation? Yes; No

Interviewer: Ask 4–21 About Youngest Child Listed in

4. In what state does * * *'s (father/mother) live?

Same state as you
Different state, *specify*

Other, *specify*

Don't know

5. Does * * *'s (father/mother) have (*Read categories and mark all that apply*) Joint legal custody?; Visitation privileges?; Neither?

6. The next question is about the amount of time or visits between * * * and (his/her) other parent. How many days did * * * spend time with (his/her) (father/mother) during 1991? [I'er: Include Days Child Lived With Other Parent]

None
_____ per day, week, month, year

7. How were child support payments for XXX first agreed to or awarded? No child support order/agreement (Skip to 10); Voluntary written agreement; Court award (Ask 8); Other.

8. Interviewer check point. Number of children listed in Q.3 is: One (Skip to 11); More than one (Ask 9)

9. Other than * * *, which children living here are covered by that child support agreement? All other children are covered by this award; or
Person # _____
Person # _____
(Skip to 11)
Person # _____
Person # _____

10. Why is * * * not covered by a child support order? Final agreement pending; Other financial agreement made; Father lives in Household; Wanted child support but: Did not pursue an award (Skip to 21); Parent unable to pay; Unable to establish paternity; Other, specify:

Did not want child support

11. In what year were these payments first agreed to or awarded?

12. Has the amount ever been officially changed (by the court or other agency)? Yes (ask 13); No (Skip to 14)

13. What was the year of the most recent change?

14. Is health insurance now included as part of the child support agreement? Yes; No

15. During calendar year 1991, were you or (child(ren) covered by this award) Supposed to receive any child support? Yes (Ask 16); No (Skip to 17)

16. Were these payments to be received * * * (read categories) Directly from * * *'s (father/mother) in the form of cash or a check? Through a court or public agency? (Skip to 18); By some other method? (specify in notes)

17. Why were you or * * * not suppose to receive payments in 1991? Child(ren) too old; Payments not awarded or agreed to until calendar year 1992 (Skip to 21); Child(ren)'s other parent died before 1991, Other, specify:

18. Did you receive these payments (read categories): Regularly; Occasionally; Seldom; Never

19. In total, how much in child support payments were you *supposed* to receive in 1991 from child support agreement for (child(ren) covered by this award)? [Currently due includes additional payments for arrerages that have been added by the courts to the current support order]
$ _____

20. How much in child support payments did you Actually receive in 1991 for (child(ren) covered by this award)?
$ _____

21. Did * * * (father/mother) provide health insurance in 1991 for * * *—[that is, was health insurance available from (him/her) regardless of whether you used it]? Yes; No

22. Interviewer check item. Are all children listed in Q.3 covered by this agreement? Yes (Skip to 25); No (Ask 23)

23. [Other than the support order which covers (youngest child and those listed in item 9)] Are any of your other children covered by a child support order? Yes (Ask 24); No (Skip to 25)

24. How many are covered by other child support awards? 1; 2; 3; 4+

25. Have you ever contacted a child support enforcement office, a department of social services, or any other state or local government agency for aid in obtaining child support? Yes (Ask 26); No (Skip to 28)

26. Did that office provide help in (read categories and mark all that apply) Locating other parents; Establishing paternity; Establishing support obligation; Obtaining collection; Obtaining health insurance; Other, (specify in notes); Or was no help provided

27. In what year did you last contact such an agency?

28. In 1991, did you (read categories/mark all that apply) have Medicaid coverage?; receive food stamps?; receive public housing assistance?; receive welfare or general assistance payments?; receive AFDC or ADC payments?

29. Interviewer checkpoint. This person is currently Married (Ask 30); Widowed (Ask 30); Divorced (Skip to 31); Separated (Skip to 31); Never been married (NP).

30. Have you ever been divorced or separated? Yes (Ask 31); No (NP)

31. In what year did your (most recent) divorce/separation take place?

32. What was the year of that marriage?

33. Concerning your (last) divorce/separation, were alimony or maintenance payments agreed to or awarded? Yes (Ask 34); No (Skip to 35)

34. During 1991 were you SUPPOSED to receive alimony or maintenance payments? Yes; No

35. Interviewer check item. This person is currently: Separated (Skip to 37); All others (Ask 36)

36. After your (last) divorce, did you receive a property settlement such as: (Read categories and mark all that apply): A one time cash settlement; Some other type of settlement; Or was there no settlement reached

37. At the time of your (last) separation/divorce, were you working? Yes (Ask 38); No (Skip 39)

38. Were you working 35 hours or more per week or less than 35+ hours per week: 35+; Less than 35; (End Questions)

39. Did you work at any time during the 5 years before your (last) separation? Yes; No

[FR Doc. 92–888 Filed 1–9–92; 8:45 am]

BILLING CODE 4160–04–M

Public Health Service

National Toxicology Program; Chemicals (5) Nominated for Toxicological Studies; Request for Comments

SUMMARY: The National Toxicology Program (NTP) is soliciting public comments on five chemicals nominated for toxicological studies. These comments will assist the NTP in making informed decisions about whether to

perform toxicological testing of these chemicals.

FOR FURTHER INFORMATION CONTACT: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–3511.

SUPPLEMENTARY INFORMATION: The NTP Chemical Evaluation Committee (CEC) is composed of representatives from the agencies participating in the NTP. AS part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the CEC are published in the **Federal Register** with request for comment. The Purpose is to encourage active participation in the NTP Chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this announcement will be reviewed by NTP technical staff for use in the further evaluation of the nominated chemicals. The NTP chemical nomination and selection process is summarized in the **Federal Register** April 1981 (46 FR 21828) and also in the NTP FY 1990 Annual Plan, pages 13–15.

On October 18, 1991, the CEC met to evaluate five chemicals nominated to the NTP for toxicological studies. The following table lists the chemicals, their Chemical Abstract Service (CAS) registry numbers, and the types of toxicological studies recommended by the CEC.

Chemical	CAS registry No.	Committee recommendations
1. Fumonisin B_1.	116355–83–0	Carcinogenicity.
2. Bis(tri-n-butyltin) oxide.	56–35–0	Defer.
3. Dichloroacetic acid.	79–43–6	Defer.
4. Trichloroacetic acid.	76–03–9	Defer.
5. Sulfuryl fluoride.	2699–79–8	No testing.

Two of the five nominated chemicals were previously tested in Salmonella by the NTP. Bis(tri-n-butyltin) oxide was found to be nonmutagenic, and dichloroacetic acid was mutagenic in this assay. A third chemical, sulfuryl fluoride, has been selected for testing in Salmonella.

The CEC deferred three chemicals: Bis(tri-n-butyltin) oxide, dichloroacetic acid (DCA) and trichloroacetic acid (TCA). Bis(tri-n-butyltin) oxide was deferred in order to retrieve information on chronic carcinogenicity studies in mice which were reported to be in progress. After the nomination of DCA and TCA for NTP carcinogenicity studies by the EPA, carcinogenicity studies of these chemicals were published. The CEC deferred DCA and TCA in order to provide the EPA with these new data and to ascertain whether the EPA requires additional toxicological studies.

Interested parties are requested to submit pertinent information on all of the nominated chemicals. The following types of data are of particular relevance:

(1) Modes of production, present production levels, and occupational exposure potential;

(2) Uses and resulting exposure levels, where known;

(3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and results, in the case of completed studies;

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing (by 30 days after date of publication) to Dr. Fung. Any submission received after the above date will be accepted and utilized if possible.

Dated: January 7, 1992.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 92–724 Filed 1–9–92; 8:45 am]

BILLING CODE 4140–01–M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, December 27, 1991.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. The Youth Survey for the Community Intervention Trial for Smoking Cessation (COMMIT)—0925–0354—The National Cancer Institute is conducting the Community Intervention Trial for Smoking Cessation (COMMIT), which will test whether community-based strategies can produce long-term cessation among smokers. Modification to clearance is herein requested to include the fielding of the follow-up survey to assess the impact of youth-based interventions on the attitudes, beliefs and behaviors of ninth-grade students in the study communities. Respondents: Individuals or households. Number of Respondents: 15,913; Number of Responses per Respondent: 1; Average Burden per Response: 0.67 hours; Estimated Annual burden: 10,662 hours.

2. Small Business Innovation Research Grant Applications Phase I and Phase II—0925–0195—The purpose of the Small Business Innovation Research (SBIR) Phase I and Phase II applications is to provide a vehicle by which small businesses can apply for available research funds. This information is used by PHS to determine those applicants scientifically and administratively qualified to receive public funds and those projects relevant to PHS programs. Respondents: Small businesses or organizations.

	Number of respondents	Number of responses per respondent	Average burden per response
SBIR Phase I	2,000	1	15 hr.
SBIR Phase II	450	1	23 hr.

Estimated Annual Burden 40,350 hours.

3. Grants for Nurse Anesthetist Traineeships (42 CFR part 57)—0915–0124—Trainees statements of financial need are used by grantee institutions to determine eligibility for traineeships. Grantees must maintain a record of each traineeship appointment and are required to notify a terminated trainee of the refund to the grant account of the Federal portion of any tuition owing. Respondents: Individuals or households; Non-profit institutions.

	Number of respondents	Number of responses per respondent	Average burden per response
Reporting (57.509 (c) and 57.510 (a)).	700	1	1 hr.
Notification (517.512 (b)).	5	1	.25 hr.
Recordkeeping (57.510 (a)).	65	11	5 min.

Estimated Annual Burden 760 hours.

4. Mandatory Guidelines for Federal Workplace Drug Testing Programs—New—These guidelines promulgate

standards for certification of laboratories to conduct urine drug testing and establish scientific and technical guidelines for drug testing programs to assure compliance with the intent of Executive Order 12564. Approval is sought for a laboratory application form, a laboratory inspection form, a drug testing and control form, and the associated recordkeeping requirements. Respondents: Businesses or other for-profit; Individuals or households; Small businesses or organizations.

	Number of respond-ents	Number of re-sponses per respond-ent	Average burden per response
Laborato-ries.	176	9,273	8.904 hrs.
Individuals..	12,000	1	0.08 hrs.
Record-keeping.	76	1	250 hrs.

Estimated Annual Burden..... 34,533.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: January 6, 1992.

Sandra K. Mahkorn,

Deputy Assistant Secretary for Public Health Policy

[FR Doc. 92-645 Filed 1-9-92; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on December 27, 1991.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package).

1. Certificate of Support—0960-0001. The information collected on the form SSA-760 is used to determine if a parent received one-half of his/her support from the wage earner. The respondents are parents applying for benefits and claiming that they received one-half of their support from the deceased wage earner.

Number of Respondents: 18,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 4,500 hours.

2. Reconsideration Report For Disability Cessation—0960-0350. The information collected on the form SSA-782 is used to document an individual's request for reconsideration. The respondents are individuals who have been removed from the Social Security benefit rolls.

Number of Respondents: 11,500.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 5,775 hours.

3. Pre-1957 Military Service-Federal Benefit Questionnaire—0960-0120. The information collected on the form SSA-2512 is used to determine whether pre-1957 military service can be used to grant gratuitous military wage credits for Social Security purposes. The respondents are individuals applying for benefits on the record of a wage earner who had pre-1957 military service.

Number of Respondents: 56,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 9,333 hours.

4. Social Security Request For Employment Information—0960-0472. The information collected on the form SSA-L4112 is used to determine if wages reported to the Social Security Administration are correct. The respondents are employers who reported wages for employees who, according to SSA's records, were deceased at the time the wages were paid.

Number of Respondents: 50,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 8,333 hours.

5. Quarterly Statistical Report On Recipients and Payments Under State Administered Assistance Programs or Aged, Blind and Disabled (Individuals and Couples) Recipients—0960-0130. The information collected on form SSA-9741 is used to provide statistical data on recipients and payments under the Supplemental Security Income State administered programs. The respondents are the State agencies administering supplemental payment programs.

Number of Respondents: 23.
Frequency of Response: 4.
Average Burden Per Response: 1 hour.
Estimated Annual Burden: 92 hours.
OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: January 2, 1992.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 92-281 Filed 1-9-92; 8:45 am]

BILLING CODE 4190-11-M

Agreement on Social Security Between the United States and Austria; Entry into Force

The Commissioner of Social Security gives notice that an agreement coordinating the United States (U.S.) and the Austrian social security programs entered into force on November 1, 1991. The agreement with Austria, which was signed on July 13, 1990, is similar to U.S. social security agreements already in force with twelve other countries—Belgium, Canada, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Agreements of this type are authorized by section 233 of the Social Security Act.

Like the other agreements, the U.S.-Austrian agreement eliminates dual social security coverage—the situation that exists when a worker from one country works in the other country and is covered under the social security systems of both countries for the same work. When dual coverage occurs, the worker or the worker's employer or both may be required to pay social security contributions to the two countries simultaneously. Under the U.S.-Austrian agreement, a worker who is sent by an employer in the U.S. to work in Austria for 5 years or less remains covered only by the U.S. system. The agreement includes additional rules that eliminate dual U.S. and Austrian coverage in other work situations.

The agreement also helps eliminate situations where workers suffer a loss of

benefit rights because they have divided their careers between the two countries. Under the agreement, workers may qualify for partial U.S. or partial Austrian benefits based on combined (totalized) work credits from both countries.

Individuals who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Policy, Post Office Box 17741, Baltimore, MD 21235.

Dated: December 19, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 92-610 Filed 1-9-92; 8:45 am]

BILLING CODE 4190-29-M

Social Security Acquiescence Ruling 91-X(3)—Mazza v. Secretary of Health and Human Services, 903 F.2d 953 (3d Cir. 1990—Order of Effectuation in Concurrent Application Cases (Title II/ Title XVI Offset)

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2) published January 11, 1990 (55 FR 1012, the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 91-X(3).

EFFECTIVE DATE: January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Ethel Hill, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966-5044.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2):

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Third Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after January 10, 1992 in the **Federal Register**. If we made a determination or decision on your application for benefits between May 17, 1990, the date of the Court of Appeals' decision and January 10, 1992, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if your first demonstrate, pursuant to 20 CFR 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income)

Dated: November 19, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Acquiescence Ruling 91-X(3)

Mazza v. *Secretary of Health and Human Services*, 903 F.2d 953 (3d Cir. 1990)—Order of Effectuation in Concurrent Application Cases (title II/ title XVI).

Issue

Whether the Secretary's processing of concurrently filed claims for title II benefits and Supplemental Security Income (SSI) payments under title XVI which resulted in the title II benefits being calculated first and the potential title XVI payments being offset was permissible under section 1127 of the Social Security Act. Section 1127 (the windfall statute) provides that when a person is entitled to both SSI and retroactive Social Security benefits for one or more months, either the SSI or the retroactive Social Security benefits will be reduced by the amount of SSI payments that would not have been paid if the retroactive Social Security benefits had been paid in the months in which they were regularly due.

Statute/Regulation/Ruling Citation

Section 1127 of the Social Security Act (42 U.S.C. 1320a-6), 20 CFR 404.408b, 416.1100, 416.1123(d).

Circuit

Third (Delaware, New Jersey, Pennsylvania, and the Virgin Islands)

Mazza v. *Secretary of Health and Human Services*, 903 F.2d 953 (3d Cir. 1990).

Applicability of Ruling

This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge hearing and Appeals Council review).

Description of Case

In June 1984, Mr. Mazza filed concurrent applications for disability insurance benefits (title II benefits) and SSI payments. In February 1985, Mr. Mazza began receiving a veterans pension which caused his income to exceed the limits for SSI eligibility. Accordingly, Mr. Mazza's claim for SSI payments covered the period between June 1984 and February 1985. In a letter dated June 5, 1985, he was notified that he met the medical requirements for title II benefits. Shortly thereafter, Mr. Mazza's eligibility for title II benefits and SSI payments was determined. The Social Security Administration (SSA) calculated title II benefits first and applied an offset against potential SSI payments pursuant to the windfall statute since SSI would not have been paid if the title II benefits had been paid when due. Thus, Mr. Mazza was precluded from establishing SSI eligibility.

On July 15, 1985, SSA informed Mr. Mazza that his application for SSI was denied because of his income, including title II benefits for the period beginning June 1984. SSA notified him on August 6, 1985, that he would receive a check for title II benefits covering the months from June 1984 to July 1985.

Mr. Mazza requested reconsideration of his SSI denial. On September 20, 1985, SSA affirmed the initial determination because of his receipt of retroactive title II benefits covering the period beginning June 1984. Mr. Mazza appealed this determination. At his hearing, he pointed out that SSA's denial of SSI payments also resulted in a denial of Medicaid coverage for medical expenses incurred during his initial illness. The Administrative Law Judge found that the retroactive title II benefits raised Mr. Mazza's income above the SSI eligibility ceiling for the months in question.

Because of transcription difficulty, Mr. Mazza received a second hearing before a different Administrative Law Judge. His SSI claim was denied at both the Administrative Law Judge and Appeals

Council levels. Mr. Mazza appealed to the district court. The district court granted summary judgment in favor of the Secretary.

Mr. Mazza then appealed to the United States Court of Appeals for the Third Circuit. He conceded that he was not entitled to duplicative payments for the June 1984 to February 1985 period at issue. He also disclaimed any attempt to evade the windfall statute or to collect any additional sums. He contended that the Secretary should have first calculated the SSI payments and then deducted them from the title II payments. Had this procedure been followed, he would have received the Medicaid assistance that had been denied him.

Holding

The United States Court of Appeals for the Third Circuit analyzed the history of the windfall statute, its amendment in 1984, and the Secretary's position in litigation concerning the 1980 statute. The court then stated:

> The [windfall] amendment was not designed to change the consistent policy of offsetting title II by SSI benefits in concurrent claims by substituting a random result dependent on which clerk was more efficient in processing claims for the respective benefits. Congress designed the amendment to close a loophole, not to alter a procedure that was working well. The legislation was to complement, not compromise, the existing practice in concurrent claims.

Because the court found that SSA's process was "not in accordance with statutory intent," the court reversed the district court and directed the district court to remand the case to SSA with directions that Mr. Mazza be found eligible for SSI, thereby protecting his eligibility for Medicaid.

Statement as to How Mazza Differs From SSA Policy

SSA has interpreted the 1984 amendments to the windfall statute to allow the offset of either SSI or title II retroactive benefits to prevent a windfall payment. Specifically, the offset is applied to whichever benefit is paid second. The Third Circuit found this procedure to be arbitrary and held that in cases involving concurrent claims, SSI should be effectuated first.

Explanation of How SSA Will Apply This Decision Within the Circuit

This Ruling applies only to concurrent cases involving claimants who reside in Delaware, New Jersey, Pennsylvania, or the Virgin Islands at the time of the determination or decision of any administrative level, i.e., initial, reconsideration, Administrative Law Judge hearing or Appeals Council review.

When an adjudicator has determined that an individual is eligible for a retroactive period based on concurrent applications, the SSI determination or decision shall be effectuated first. The individual's title II benefits shall be offset by the amount of SSI payments due or paid for the retroactive period.

[FR Doc. 92-612 Filed 1-9-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-60]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: January 10, 1992.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: January 3, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 92-464 Filed 1-9-92; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 764463

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import one male and two female captive born Bawean deer [*Axis* (*Cervus*) *porcinus kuhli*] from the Singapore Zoological Gardens, Singapore, for captive breeding purposes.

PRT 764231

Applicant: William House, Danville, CA.

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. E.V. Pringle, Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT 763828

Applicant: Claude Casey, Ocala, FL.

The applicant requests a permit to purchase one male and one female captive-hatched Hawaiian (=nene) goose [*Nesochen* (=*Branta*) *sandvicensis*] in interstate commerce from Mr. F.L. Wilson, Pine, Alabama, for breeding purposes.

PRT 763430

Applicant: James Brooks, Boring, OR.

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. P. Van der Merwe, Victoria West, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT 761891

Applicant: Arnold Marshall, Monroe, CT.

The applicant requests a permit to purchase a pair of captive-hatched Hawaiian (=nene) geese [*Nesochen* (=*Branta*) *sandvicensis*] from Charles Nugent, Kimbolton, Ohio, for the purpose of breeding.

PRT 761872

Applicant: Metro Washington Park Zoo, Portland, OR.

The applicant requests a permit to import one male captive-born L'Hoest's monkey (*Cercopithecus lhoesti*) from the Mulhouse Zoo, Mulhouse, France, for the purpose of adding an unrelated male

to an existing breeding group and for display.

PRT 763867

Applicant: Minnesota Zoological Garden, Apple Valley, MN.

The applicant requests a permit to import one female Siberian tiger (*Pathera tigris altaica*) from the Calgary Zoo, Alberta, Canada, for enhancement of propagation and survival of the species through captive-breeding. The tiger was born April-May 1989 in Russia and taken from the wild in December 1989.

PRT 698648

Applicant: Ferdinand & Anton Fercos Hantig, Manimal Magic Act, Inc., Las Vegas, NV.

The applicants request a permit to export to Bugok Myun, Changnyun-kun, Kyungnam, Korea, and reimport one male and two female tigers (*Panthera tigris*) and one spotted female and one black female leopard (*Panthera pardus*), captive-bred in the United States, for purposes of exhibition at which conservation educational material will be provided. The applicant anticipates future exports and reimports of these animals for the same purpose.

PRT 764046

Applicant: Joseph Diorio, Hot Springs, AR.

The applicant requests a permit to purchase one male and two female captive-born eastern indigo snakes (*Drymarchon corais, couperi*) in interstate commerce from Mr. Donald Hamper, Columbus, Ohio, for breeding purposes.

PRT 676811

Applicant: Regional Director—Region 2, USFWS, Albuquerque, NM.

The applicant requests renewal and amendment of their current permit to include take of various mammals, birds, amphibians, reptiles, fish, crustaceans, insects, arachnids, clams, and plants for the purpose of scientific research and enhancement of propagation or survival of the species as prescribed by Service recovery documents.

PRT 704930

Applicant: Regional Director—Region 6, USFWS, Denver, CO.

The applicant requests amendment of their current permit to include take of the razorback sucker (*Xyrauchen texanus*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT 762817

Applicant: Gary Johnson, Perris, CA.

The applicant requests a permit to purchase in interstate commerce one female Asian elephant (*Elephas maximus*) of wild origin from the Forest Zoo, Ashville, PA for the purpose of enhancement of propagation and survival of the species.

PRT 763823

Applicant: Lubee Foundation, Inc., Gainesville, FL.

The applicant requests a permit to import three male and one female captive-born Goeldi monkeys (*Callimico goeldii*); one male, three female, and two juvenile cotton-top tamarins (*Saquinus oedipus oedipus*); one make and one female golden lion tamarims (*Leontopithecus rosalia rosalia*); and four male and three female Geoffroy's tamarins (*Saquinus oedipus geoffroyii*) from Kilverstone Wildlife Park, Thetford, Norfolk, England, for breeding and research purposes to enhance the propagation and survival of the species.

PRT 764815

Applicant: Ringling Bros.—Barnum & Bailey, Combined Shows, Inc., Vienna, VA.

The applicant requests a permit to export three pairs of tigers (*Panthera tigris*) and one male leopard (*P. pardus*) captive-born in the U.S. to animals owned by Clubb-Chipperfield Circus, Oxfordshire, United Kingdom. Animals were born while the circus was on tour in the U.S. and are returning home with the circus where they will be used for breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: January 7, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92–579 Filed 1–9–92; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 399X)]

CSX Transportation, Inc.—Abandonment Exemption—In Letcher County, KY

CSX Transportation, Inc. (CSX) has filed a notice of exemption under 49 CFR Part 1152 subpart F—Exempt abandonments to abandon its 2.03–mile line of railroad between milepost V.H.–270.20, V.S. 8733+92 near Duo, and milepost V.H.–272.23, V.S. 8841+18 at Carbon Glow, in Letcher County, KY

CSX has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal compliant filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 9, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines.* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

banking statements under 49 CFR 1152.29 must be filed by January 21, 1992.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by January 30, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 15, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE, at (202)–927–6248. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 6, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–606 Filed 1–9–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) Change of Address Form/Central Address File.

(2) None, Executive Office for Immigration Review.

(3) On occasion

(4) Individuals or households. This change of address form is needed to provide a uniform way for all individuals in deportation proceedings to advise the Office of the Immigration Judge of their change of address. It is mandatory under section 545 of IMMACT 1990, 8 U.S.C. 1252b.

(5) 13,000 annual responses at .04 hours per response.

(6) 520 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: January 6, 1992.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 92–578 Filed 1–9–92; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Mississippi:
MS91-11 (Feb. 22, 1991).... All.
MS91-12 (Feb. 22, 1991).... All.
MS91-13 (Feb. 22, 1991).... All.
MS91-14 (Feb. 22, 1991).... All.
New York
NY91-17: (Feb. 22, 1991)... p. 921, p. 924
Virginia:
VA91-30 (Feb. 22, 1991).... All.
VA91-58 (Feb. 22, 1991).... All.

Volume II

Iowa:
IA91-1 (Feb. 22, 1991)..... All.

Michigan:
MI91-2 (Feb. 22, 1991)..... p. 461, pp. 468-470b.
MI91-12 (Feb. 22, 1991).... p. 562.
MI91-17 (Feb. 22, 1991).... p. 559, pp. 560-561.

Texas:
TX91-32 (Feb. 22, 1991).... All.
TX91-34 (Feb. 22, 1991).... All.
TX91-37 (Feb. 22, 1991).... All.
TX91-64 (Feb. 22, 1991).... All.
TX91-79 (Feb. 22, 1991).... All.

Volume III

None.....

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this third day of January 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-428 Filed 1-9-92; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG-8009 (which should be mentioned in all correspondence concerning this draft guide), is a proposed Revision 1 to Regulatory Guide 8.9. DG-8009 is entitled "Interpretation of Bioassay Measurements." This revision is being developed to describe a practical and consistent method acceptable to the NRC staff for estimating intake of radionuclides from bioassay measurements.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by March 6, 1992.

Although a time limit is given for comments on this draft, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to

the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 3rd day of January 1992.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 92-616 Filed 1-9-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Co.; Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Portland General Electric Company (the licensee) to withdraw its March 21, 1990 application for a proposed amendment to Facility Operating License No. NPF-1, for the Trojan Nuclear Plant, located in Columbia County, Oregon.

The proposed amendment would have revised the Trojan Technical Specification 6.5.1.2, Plant Review Board (PRB) Composition, to remove billet-specific listing of PRB membership and to replace it with discipline-specific representation.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 20, 1991, (56 FR 11785). However, by letter dated December 12, 1991, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 21, 1990, and the licensee's letter dated December 12, 1991, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Branford Price Miller Library, Portland State University, 934 SW. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 3rd day of January 1992.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-617 Filed 1-9-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30157; File No. SR-MSE-91-16]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Inc. Relating to an Increase in Annual Maintenance Fee Charges for Listed Companies

January 6, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1991, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to amend its listing fees, as set out in item (1) of the Exchange's Fees and Assessments Schedule, by increasing the annual maintenance fee charges for listed companies. The following is the text of the proposed changes (additions are italicized; deletions are bracketed): [1]

Midwest Stock Exchange Fees and Assessments Schedule

(1) Listing Fees

Original Listing: No change.

Annual Maintenance: Five (5) cents per thousand shares to maintain listing [$1/25,000 shares listed per year]; applicable in the year following original listing. The minimum annual maintenance fee shall be $1,000 per issue [$250]; the maximum annual maintenance fee shall be $2,2750 [$2,500].

Supplemental Listing: No change.

Miscellaneous: No change.

[1] The complete text of the Exchange's Fees and Assessments Schedule is available from the MSE's Membership and Listings Department.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The MSE's purpose for increasing its maintenance fee charges for listed companies is to reflect the costs involved in providing listing services. The Exchange believes this proposed increase is necessary to meet rising costs associated with maintaining listing services.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among issuers using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-91-10 and should be submitted by January 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-650 Filed 1-8-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30158; File No. SR-NYSE-91-44]

Self-Regulatory Organizations; Filing of Proposed Rule Change By New York Stock Exchange, Inc. Relating to Amendments to Rule 308—Acceptability Proceedings

January 8, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to NYSE Rule 308 (Acceptability Proceedings) concerning a revision of the required composition of Acceptability Committees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise the required composition of Acceptability Committees in order to provide that the acceptability of all applicants involved in such proceedings is determined by a committee of their peers.

NYSE Rule 308 was adopted in 1976 in order to establish fair procedures for considering applications (1) of prospective members or member organizations; (2) for employment or association with a member or member organization, of any member, allied member, approved person or registered representative or other person required by the Exchange Constitution or Rules thereunder to be approved by the Exchange; (3) of any prospective non-member broker-dealer accessee; and (4) for any change in status of any person that requires Exchange approval.[1]

NYSE Rule 308 serves as a vehicle for establishing the structure and function of the Acceptability Committee. Rule 308 has not been amended since its adoption in 1976.

Currently, rule 308 requires an Acceptability Committee to be comprised of three Exchange officers appointed from time to time by the Chairman of the Board of Directors of the Exchange.

The proposed rule would require that an Acceptability Committee consist of at least three persons who are members of an Acceptability Board and who are selected to serve on a committee by the Exchange's Chief Hearing Officer.[2] Acceptability Board members would be appointed annually and serve at the pleasure of the Board of Directors.

The proposed rule provides that, if the applicant is a proposed member, member organization, allied member, approved person or non-member broker-dealer accessee, the members of the Acceptability Committee must be members or allied members of the Exchange who, to the extent reasonably possible, are engaged in similar activities as the applicant proposes to engage in, or have knowledge of those activities. If the applicant is a proposed registered or non-registered employee of a member or member organization and not a member or allied member, the members of the Acceptability Committee must be registered or non-registered employees of members or member organizations who are not members or allied members and who, to the extent reasonably possible, are engaged in similar activities as the applicant proposes to engage in, or have knowledge of those activities.

If any acceptability application is related to proposed floor activities, then all persons on the Acceptability Committee must be active on the floor. Similarly, acceptability applications relating to proposed non-floor activities would require all members of the Committee to be "upstairs" persons.[3]

The proposed rule change will provide a framework for insuring fair and impartial acceptability proceedings before persons familiar with the relevant job functions of the applicant and who have the objectivity, experience and ability necessary to comprehend and evaluate the acceptability issues presented.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement of section 6(b)(7) that the rules of the exchange establish fair procedures to be used in all proceedings brought to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the Exchange. In addition, the proposed rule change is consistent with the due process requirements of section 6(d)(2) of the Act.

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[1] See Securities Exchange Act Release No. 12623 (July 14, 1976), 41 FR 30407 (approving File No. SR-NYSE-76-21).

[2] See NYSE Rule 476(a).

[3] Specifically, NYSE Rule 308 would require that, with respect to an applicant to be involved in "upstairs" activities, the members of the Acceptability Committee work in the offices of a member or member organization that engages in a business involving substantial direct contact with securities customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–91–44 and should be submitted by January 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–652 Filed 1–9–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-30156; File No. SR-PSE-91-41]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Equity Fees

January 6, 1992.

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b) (1), notice is hereby given that on December 10, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b–4 of the Act, submits this rule filing to amend certain fees for equity operations.[2] The proposed fees are as follows: (italicized text denotes additions; bracketed text denotes deletions)

P/COAST Fees	$500 per month per specialist post
Floor Broker Booth Fees:	
Small booth	$125 [$75] per month.
Large Booth	250 [$150] per month.
Area Booth	375 [$300] per month.
Market Data Services [Quotron]	Pass-through charges.[3]

[2] The PSE anticipates that the feature of the P/COAST trading system that would replace Quotron services will become operational by July, 1992. At that time, the market data services pass-through charge will replace the current Quotron pass-through charge. Presently, Quotron pass-through charges are either $275 per month or $425 per month, depending on the type of terminal and features selected by the subscriber.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The P/COAST trading system, which will be phased in during 1992, will replace the Securities Communication Order Routing and Execution System ("SCOREX") and various other services provided by outside vendors. The P/COAST system will provide major functional enhancements over SCOREX. Thus, the PSE believes that the P/COAST system will enhance the Exchange and benefit the membership. At this time, a charge of $500 per month is proposed for each specialist post to help defray the initial costs of the new system. Subsequent fee adjustments will be filed separately as the system becomes operative.

The increased charges proposed for floor broker booths reflect the increased operating costs for floor broker facilities and services. In addition, a pass-through charge for market data services will replace the current pass-through charge for Quotron.[3]

The proposed rule filing is consistent with section 6(b)(4) of the Act in that it provides an equitable allocation of reasonable dues, fees, and other charges among the members using the facilities of the PSE. In addition, the proposed rule filing is consistent with section 6(b)(5) of the Act in that it will enable the PSE to enhance its ability to facilitate transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received Form Members, Participants or Others

The equity fee changes were proposed by the Equities Revenue Committee, which is composed of five equity members, three of whom are members of the Board of Governors ("Board") of the PSE. The Equities Revenue Committee was established in July 1991, and met every two weeks to review and discuss fee changes. In addition, a special Board Committee composed of four Board members: One options member, one

[1] The complete text of the PSE's equity fees is available from the Exchange's Member Services Department.

[3] *See supra*, note 2.

equity member, one options/equity member and one public member, was established to discuss the fee recommendations.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–91–41 and should be submitted by January 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–651 Filed 1–9–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

January 6, 1992.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

CII Financial, Inc.
Common Stock, No Par Value (File No. 7–7770)
Duty Free International, Inc.
Common Stock, $.01 Par Value (File No. 7–7771)
North American Vaccine, Inc.
Common Stock, No Par Value (File No. 7–7772)
Office Depot, Inc.
Common Stock, $.01 Par Value (File No. 7–7773)
Vitro, Sociedad Anonima
American Depositary Shares, No Par Value (File No. 7–7774)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 28, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–571 Filed 1–9–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organization; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 6, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Blackstone North American Government Income Trust
Common Stock, $.01 Par Value (File No. 7–7755)
Duty Free International, Inc.
Common Stock, $.01 Par Value (File No. 7–7756)
Fisher Scientific International, Inc.
Common Stock, $.01 Par Value (File No. 7–7757)
Nuveen Premier Insured Municipal Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–7758)
Nuveen Premier Municipal Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–7759)
Nuveen Texas Quality Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–7760)
Nuveen Florida Quality Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–7761)
Nuveen New Jersey Quality Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–7762)
Nuveen Michigan Quality Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–7763)
Nuveen Ohio Quality Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–7764)
Nuveen Pennsylvania Quality Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–7765)
Semiconductor Packaging Materials Co., Inc.
Common Stock, $.10 Par Value (File No. 7–7766)
Autozone, Inc.
Common Stock, $.01 Par Value (File No. 7–7767)
Unisys Corporation
Common Stock, $.01 Par Value (File No. 7–7768)
US West, Inc.
Common Stock, $1.00 Par Value (File No. 7–7769)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 28, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair

and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-572 Filed 1-9-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

January 6, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Employee Benefit Plans, Inc.
Common Stock, $.01 Par Value (File No. 7-7746)
Michael Baker Corporation
Common Stock, $1 Par Value (File No. 7-7747)
H&Q Healthcare Investor
Shares of Beneficial Interest, $0.01 Par Value (File No. 7-7748)
Nuveen Premier Municipal Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7749)
Nuveen Premier Insured Municipal Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7750)
Blackstone North American Government Income Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-7751)
Lakehead Pipeline Partner L.P.
Limited Partner Interest (File No. 7-7752)
American Strategic Income Portfolio, Inc.
Common Stock, $.01 Par Value (File No. 7-7753)
American Healthcare Management, Inc.
Common Stock, $0.01 Par Value (File No. 7-7754)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 28, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-573 Filed 1-9-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25449]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 3, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 27, 1992, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

NIPSCO Industries, Inc. (70-7886)

NIPSCO Industries, Inc. ("NIPSCO"), 5265 Hohman Ave., Hammond, Indiana 46325, an Indiana public-utility holding company exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, has filed an application pursuant to sections 9(a)(2) and 10 of the Act. NIPSCO proposes to acquire all of the issued and outstanding shares of common stock of Kokomo Gas and Fuel Company ("Kokomo"), an Indiana gas utility company.

Northern Indiana Public Service Company ("Northern Indiana"), NIPSCO's wholly-owned gas and electric utility subsidiary company, provides natural gas and transportation services to approximately 593,000 customers and electric service to approximately 395,000 customers in 30 counties in northern Indiana.

Kokomo provides natural gas and transportation services to approximately 30,000 customers in five Indiana counties contiguous to counties served by Northern Indiana. As of September 30, 1991, Kokomo reported total assets of $36,103,748 and total liabilities of $11,606,066. At that date, Kokomo had issued and outstanding 475,048 shares of common stock, no par value ("Kokomo Common Stock"), which were held by 100 shareholders.

The acquisition will be accomplished pursuant to an Agreement and Plan of Reorganization ("Merger Agreement") dated November 27, 1991 among NIPSCO, Kokomo and NIPSCO Acquisition Corporation, a wholly-owned subsidiary corporation of NIPSCO created for the purpose of the merger ("Merging Subsidiary"). Pursuant to the Merger Agreement, NIPSCO will acquire all of the shares of Kokomo Common Stock for $46,690,000 in NIPSCO Common Stock and/or cash. The Merging Subsidiary will be merged with and into Kokomo, and each share of common stock, no par value, of the Merging Subsidiary which is issued and outstanding immediately prior to the Effective Date will be cancelled. Kokomo subsequently will become a wholly-owned subsidiary of NIPSCO.

Pennsylvania Electric Company (70-7923)

Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, an electric public-utility subsidiary company of General Public Utilities Corp., a registered holding company, has filed a declaration under section 12(d) of the Act and Rule 44 thereunder.

Penelec proposes to sell certain utility assets to Advanced Cast Products, Inc. ("Advanced"), a nonassociate company, for $140,000 in cash. Penelec expects to apply the proceeds of the proposed sale to general corporate purposes. The assets consist of certain electric substation facilities and equipment located in Vernon Township, Crawford County, Pennsylvania ("Meadville Substation"). The Meadville Substation is situated on lands owned by Advanced and is operated solely to

serve the electric service needs of Advanced. The sale will enable Advanced to qualify for a more favorable electric service rate.

Penelec will sell the Meadville Substation pursuant to an October 1989 agreement ("Agreement") between Penelec and Advanced's predecessor in interest, Amcast Industrial Corporation ("Amcast"), also a nonassociate company. Amcast assigned the Agreement to Advanced on July 3, 1990.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

[FR Doc. 92-574 Filed 1-9-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 92-001]

Merchant Marine Personnel Advisory Committee; Establishment

AGENCY: Coast Guard, DOT.

ACTION: Notice of Establishment.

SUMMARY: The Secretary of Transportation has approved the establishment of the Merchant Marine Personnel Advisory Committee. The purpose of the Committee is to provide expertise on matters concerning personnel in the U.S. merchant marine, including but not limited to: Training, qualifications, certification, documentation, and fitness standards as required by the Coast Guard.

FOR FURTHER INFORMATION CONTACT: LCDR Scott J. Glover, Merchant Vessel Personnel Division, (202) 267-0221. This notice is issued under the authority of the Federal Advisory Committee Act, Public Law 92-463, 5 U.S.C. App. 1.

Dated: December 5, 1991.

A. Cattalini,

Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92-659 Filed 1-9-92; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Erie International Airport, Erie, PA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Erie Municipal Airport Authority (EMAA) for the Erie International Airport (ERI), Erie, PA, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for ERI under Federal Aviation Regulations (FAR) part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before July 1, 1992.

DATES: The effective date of FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is January 3, 1992. The public comment period ends February 17, 1992.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA—Eastern Regional Office, Airports Division, AEA-610, Fitzgerald Federal Building, JFK International Airport, Jamaica, NY 11430, (718) 553-0902.

Comments on the proposed noise compatibility program should be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the ERI Airport are in compliance with applicable requirements of Part 150, effective January 3, 1992. Further, the FAA is reviewing a proposed noise compatibility program for the airport which will be approved or disapproved on or before July 1, 1992. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the way in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of FAR part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

EMAA submitted to the FAA on January 18, 1990, noise exposure maps, descriptions and other documentation which were produced during an airport noise compatibility planning study from February 1989 to October 1990. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the EMAA. The specific maps under consideration are the "Current (1989) Aircraft Noise Exposure Pattern (Exhibit 3G)" and the "Five-Year (1994) Aircraft Noise Exposure Pattern (Exhibit 3H)". These exhibits are included in the FAR part 150 Noise Compatibility Study Noise Exposure Map Documentation for ERI as addended by the September 30, 1991, insert.

The FAA has determined that these maps for ERI are in compliance with applicable requirements. This determination is effective on January 3, 1992. FAA's determination on an airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying

of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA formally received the noise compatibility program for ERI on January 24, 1991. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 1, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land-use authorities will be considered by the FAA to the extent practicable. The public comment period ends (3). Copies of the noise exposure maps, the FAA's evaluation of the maps and the proposed noise compatibility program as addended by the December 10, 1991, Response to Comments insert, are available for examination at the following locations:

Federal Aviation Administration, Office of Airport Planning & Programming, Community & Environmental Needs Division room 615B, 800 Independence Avenue, SW., Washington, DC 20591

Eastern Regional Office, FAA—Fitzgerald Federal Building, Airports Division, room 337, JFK International Airport, Jamaica, NY 11430

Harrisburg Airports District Office, FAA—3911 Hartzdale Drive, Suite 1, Camp Hill, PA 17011

Airport Director, Erie Municipal Airport Authority, Erie International Airport, PA

Questions and comments may be directed to the individual named above under the heading "FOR FURTHER INFORMATION CONTACT".

Issued in Jamaica, NY on January 3, 1992.

Louis P. DeRosa,

Manager, Airports Division Eastern Region.

[FR Doc. 92-597 Filed 1-9-92; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-91-42]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions; correction.

SUMMARY: This action corrects an error with reference to the comments close date to a notice published on Monday, December 23, 1991, page 66472 and in the second column. The FAA inadvertently inserted December 12, 1992. Please change the comment close date to read January 12, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

Denise Castaldo,

Manager, Program Management Staff, AGC-10.

[FR Doc. 92-593 Filed 1-9-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Company Application and Renewal Fees: Increase in Fees Imposed

The Department of the Treasury, Financial Management Service, will be increasing the fees imposed and collected as referred to in 31 CFR 223.22. This increase is to cover the costs incurred by the Government for services performed relative to qualifying corporate sureties to write Federal business.

The new fees are effective December 31, 1991, and are determined in accordance with the Office of Management and Budget Circular A-25, as amended. The increase in fees is the result of a thorough analysis of costs associated with the Surety Bond Branch.

The new rate schedule is as follows:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or as an acceptable reinsuring company on Federal bonds—$3,200.

(2) Determination of a company's continued qualification for annual renewal of its Certificate of Authority—$1,850.

(3) Examination of a company's application for recognition as an Admitted Reinsurer (except on excess risks running to the United States)—$1,100.

(4) Determination of a company's continued qualification for annual renewal of its authority as an Admitted Reinsurer—$800.

Questions concerning this notice should be directed to the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, Telephone (202) 874-6850.

Dated: December 31, 1991.

Charles F. Schwan, III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 92-566 Filed 1-9-92; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 7
Friday, January 10, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Advisory Council Meeting

TIME: 10:00 a.m.–3:30 p.m.

PLACE: African Development Foundation.

DATE: Tuesday, 11 February 1992.

STATUS: Open.

Agenda

10:00–10:30 Welcome/Introductions Advisory Council Chairman, Richard M. Oster
- ADF Chairman, F. Edward Johnson, Esq.
- ADF President, Gregory Robeson Smith
- ADF Board Member, C. Payne Lucas

10:30–11:45 ADF Division Presentations
- OPFO
- OLD
- OBFA
- Public Affairs

11:45–12:00 Break

12:00–1:30 Lunch, Africare House Speaker, The Honorable Paul Simon, Senator

1:30–2:45 Discussion Groups

2:45–3:30 Closing Session

Gregory Robeson Smith,

President.

[FR Doc. 92–824 Filed 1–8–92; 3:31 pm]

BILLING CODE 6116-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, January 7, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of a certain insured bank.

Recommendations concerning administrative enforcement proceedings.

Reports with respect to the Corporation's supervisory activities.

Matter relating to the Corporation's corporate activities.

Matter relating to a certain financial institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 — 17th Street, NW., Washington, DC.

Dated: January 7, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–728 Filed 1–7–92; 4:42 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 15, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda:

Because of its routine nature, no discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendments to Regulation CC (Availability of Funds and Collection of Checks) to implement amendments to the Expedited Funds Availability Act that were contained in the Federal Deposit Insurance Corporation Improvement Act of 1991.

2. Any items carried forward from a previously announced meeting.

Discussion Agenda:

Please note that no discussion items are scheduled for this meeting.

Note.—If the item is moved from the Summary Agenda of the Discussion Agenda, discussion of the item will be recorded. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: January 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–731 Filed 1–8–92; 9:29 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:15 a.m., Wednesday, January 15, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–732 Filed 1–8–92; 9:29 am]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS ANNUAL MEETING

Notice

TIME AND DATE: The annual meeting of the Board of Directors will be held on January 13, 1992, The meeting will commence at 10:00 a.m.[3]

[3] It is anticipated that the Legal Services Corporation Board of Directors will be recess appointed by the President of the United States this week. However, should this not occur, this meeting will be canceled.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, NW., The Ballroom Center, Washington, DC. 20001, (202) 628–2100.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a majority vote of the Board of Directors, to be taken at the earliest practicable time. At the very least, the vote will be taken at the January 13, 1992 meeting. If a closed session is held subject to the aforementioned majority vote, the Board of Directors will hear and consider the report of the General Counsel on litigation to which the Corporation is a party, and will consider, in consultation with its special counsel, pending personnel actions and personnel-related rules and practices, including matters related to current investigations being undertaken by the Corporation's Office of the Inspector General. The Board of Directors will also receive and consider a report on current investigations from the Inspector General. In addition, the Board of Directors will consult with its counsel, the General Counsel and the Inspector General regarding written follow-up to a December 19, 1991 meeting with the Senate Committee on Governmental Affairs. Finally, the Board of Directors will hear and consider a report from a representative of the Corporation's insurance company related to an insurance project. The closing will be authorized by the relevant sections of the Government in the Sunshine Act (5 U.S.C. Sections 552b (c)(2), (4), (6), and (10)), and the corresponding regulation of the Legal Services Corporation (45 C.F.R. Sections 1622.5(a), (c), (e), and (h)). The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 400 Virginia Avenue, SW., Washington, DC., 20024, in its three reception areas, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Election of Chairperson and Vice Chairperson of the Board of Directors.
3. Presentation by the Honorable John Bayly and the Honorable Frank Nebeker.
4. Approval of Minutes of December 10, 1991 Meeting.
5. Chairman's and Members' Reports.
6. President's Report.
7. Inspector General's Report.

Closed Session [4]

8. Consideration of Report by Inspector General on Current Investigations and Other Matters.
9. Consultation with Board's Counsel, the General Counsel and the Inspector General Regarding Written Follow-up to Meeting with Senate Committee on Governmental Affairs.
10. Consideration of Pending Personnel Actions and Personnel-Related Rules and Practices and Consultation with Board's Special Counsel.
11. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is a Party.
12. Consideration of Report on Issuance by Gary Hurst, Vice President, Corporate Insurance Management, Inc.

Open Session (Resumed)

13. Consideration of Provision for the Delivery of Legal Services Committee Report.
14. Consideration of Audit and Appropriations Committee Report.
15. Consideration of Office of the Inspector General Oversight Committee Report.
16. CConsideration of Operations and Regulations Committee Report.
17. Consideration of Other Business.

CONTRACT PERSON FOR INFORMATION: Patrica D. Batie, Executive Office, (202) 863–1839.

Dated issued: January 8, 1992.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 92–829 Filed 1–8–92; 3:16 pm]

BILLING CODE 7050–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Meeting

The previously announced open Board meeting of the National Credit Union Administration (To be published in the **Federal Register**, Thursday, January 9, 1992) scheduled for 9:30 a.m. on Wednesday, January 15, 1992, will include the following additional item:

5. Agency Office Space.

The previously announced items are:

1. Approval of Minutes of Previous Open Meeting.
2. Central Liquidity Facility Report and Review of CLF Lending Rate.
3. Proposed Amendment: Part 705, NCUA's Rules and Regulations, Community Development Revolving Loan Program.
4. Proposed Amendment: Part 722, NCUA's Rules and Regulations, Appraisals.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 92–831 Filed 1–8–92; 3:19 pm]

BILLING CODE 7535–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Tuesday, January 7, 1992, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the resolution of a failed thrift institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Chairman William Taylor, Director Robert L. Clarke, (Comptroller of the Currency), and Mr. Jonathan L. Fiechter, acting in the place and stead of Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, NW., Washington, DC.

Dated: January 7, 1992.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 92–800 Filed 1–8–92; 1:52 pm]

BILLING CODE 6714–01–M

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[4] It is anticipated that the executive session will conclude at approximately 1:45 p.m. The open session will reconvene immediately thereafter.

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Corrections

Federal Register
Vol. 57, No. 7
Friday, January 10, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity to Request Administrative Review

Correction

In notice document 91-30848, appearing on page 66846, in the issue of Thursday, December 26, 1991, make the following corrections:

1. On page 66846, in the table, in the left column, under *Suspension Agreements:*, in the second line, "(A-122-504)" should read "(C-122-504)".

2. In the same table, under the same heading, in the third, fourth and fifth lines, "A" should read "C" as in the above correction.

3. In the same table, under *Countervailing Duty Proceedings:*, in all seven lines, "A" should read "C".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Fossil Energy

Enron Gas Marketing Inc.; Application for Blanket Authorization to Import and Export Natural Gas

Correction

In notice document 91-26152 beginning on page 55917 in the issue of Wednesday, October 30, 1991, make the following correction:

On page 55918, in the second column, in the file line at the end of the document, "FR Doc. 91-26512" should read "FR Doc. 91-26152".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 235

RIN 0970-AA75

Aid to Families With Dependent Children

Correction

In rule document 91-29363 beginning on page 64195 in the issue of Monday, December 9, 1991, make the following correction:

§ 235.112 [Corrected]

On page 64204, in the third column, in § 235.112(b)(2), in the first line, "interned" should read "intended".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0430]

Ciba-Geigy Corp.; Filing of Food Additive Petition

Correction

In notice document 91-28753 appearing on page 61253 in the issue of Monday, December 2, 1991, make the following corrections:

1. On page 61253, in the third column, under **FOR FURTHER INFORMATION CONTACT**, in the third line, "(HFF-355)" should read "(HFF-335)".

2. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the sixth line from the bottom, "addition" should read "additional".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0474]

Chelsea Laboratories, Inc.; Withdrawal of Approval of 10 Abbreviated New Drug Applications

Correction

In notice document 91-28984 beginning on page 61431 in the issue of Tuesday, December 3, 1991, make the following corrections:

On page 61432, in the first column, under **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the sixth line from the bottom, "ANDA 70-764" should read "ANDA 71-764"; and in the fourth line from the bottom, "ANDA 70-911" should read "ANDA 71-911".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 91-29679 beginning on page 64792 in the issue of Thursday, December 12, 1991, make the following correction:

On page 64793, in the second column, in the first full paragraph, in the third line, "separate" should read "separable".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Systems of Records

Correction

In notice document 91-30922 beginning on page 67078, in the issue of Friday, December 27, 1991, make the following correction:

On page 67078, in the first column, under **DATES:**, in the second paragraph, in the fifth line, "January 27, 1992" should read "February 25, 1992".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-4214-10; GP2-049; OR-45401]

Partial Termination of Proposed Withdrawal and Reservation of Lands; OR

Correction

In notice document 91-29168 appearing on page 63745 in the issue of Thursday, December 5, 1991, in the 3rd column, the 13th line should read "Sec. 28, lots 2 and 3, and SE¼NE¼;".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mely Salanga, M.D., Revocation of Registration

Correction

In notice document 91- 29689 beginning on page 64806 in the issue of Thursday, December 12, 1991, make the following correction:

On page 64809, in the 1st column, in the 14th line, "1990" should read '1992".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF-313]

Commerce in Firearms and Ammunition

Correction

In rule document 91-16947, beginning on page 32507, in the issue of Wednesday, July 17, 1991, make the following correction:

§ 178.30 [Corrected]

On page 32508, in the 2nd column, in § 178.30, in the 14th line, "interstate" should read "intestate".

BILLING CODE 1505-01-D

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Part II

Department of Education

34 CFR Part 298

Federal, State, and Local Partnership for Educational Improvement; Final rule

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DEPARTMENT OF EDUCATION

34 CFR Part 298

RIN 1810-AA60

Federal, State, and Local Partnership for Educational Improvement

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing chapter 2 of title I of the Elementary and Secondary Education Act of 1965, as amended. These regulations implement an amendment to chapter 2 (contained in the National Literacy Act of 1991) that authorizes training programs for teachers and school counselors to identify, particularly in the early grades, students who may be at risk of illiteracy in the adult years.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Lee E. Wickline, Director, School Effectiveness Division, School Improvement Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (room 2040), Washington, DC 20202-6140. Telephone: (202) 401-1062. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: In the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, P.L. 100-297, Congress enacted chapter 2 of title I of the Elementary and Secondary Education Act of 1965, entitled "Federal, State, and Local Partnership for Educational Improvement." To make chapter 2 a vehicle for school improvement, with an "identifiable theme of improving quality and promoting innovation" (see H.R. Rep. No. 95, 100th Cong., 1st Sess. 50 (1987)), Congress identified six broad purposes for which Chapter 2 funds may be targeted: Programs for at-risk students; acquisition and use of instructional materials; schoolwide improvement and effective schools programs; training and professional development for educational personnel; programs to enhance the personal excellence of students and student achievement; and innovative projects to enhance the educational program and climate of the school.

In section 302 of the National Literacy Act of 1991, Public Law 102-73, Congress amended section 1531(b) of chapter 2 (20 U.S.C. 2941) to add a seventh purpose for which chapter 2 funds may now be targeted: Training programs to enhance the ability of teachers and school counselors to identify, particularly in the early grades, students who may be at risk of illiteracy in their adult years. Subject to the requirement to target funds on one or more of the seven areas, State and local educational agencies retain the flexibility to decide how to use their chapter 2 funds. The final regulations in this document amend § 298.12(a) of the chapter 2 regulations to incorporate this statutory change.

This statutory and regulatory change authorizes activities that can help foster the aims of AMERICA 2000, the President's strategy to help America move itself toward the six National Education Goals.

Specifically, local educational agencies that choose to use their funds for this newly authorized purpose will be working toward fulfillment of:

- Goal 2, by identifying students with reading difficulties early, thus reducing the risk that they will drop out before completing high school;
- Goal 3, by ensuring that all children are equipped with the reading skills they need to help them leave grades four, eight, and twelve having demonstrated competency in challenging subject matter; and
- Goal 5, by helping all children grow up to be literate adults who possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Because these regulations merely incorporate a statutory change, however, public comment could have no effect. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are small local educational agencies (LEAs) receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations merely incorporate a statutory change and do not impose excessive burdens or require unnecessary Federal supervision.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in this order.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

List of Subjects in 34 CFR Part 298

Administrative practice and procedure, Education, Elementary and Secondary Education, Grant programs-education, Private schools, Reporting and recordkeeping requirements, State administered programs.

(Catalog of Federal Domestic Assistance Number 84.151, Federal, State, and Local Partnership for Educational Improvement)

Dated: December 23, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 298 of title 34 of the Code of Federal Regulations as follows:

PART 298—FEDERAL, STATE, AND LOCAL PARTNERSHIP FOR EDUCATIONAL IMPROVEMENT

1. The authority citation for part 298 continues to read as follows:

Authority: 20 U.S.C. 2911-2952, 2971-2976, unless otherwise noted.

2. Section 298.12 is amended by redesignating paragraphs (a) (5) and (6) as paragraphs (a) (6) and (7), respectively, and adding a new paragraph (a)(5) to read as follows:

§ 298.12 Targeted assistance programs.

(a) * * *

(5) Programs of training to enhance the ability of teachers and school counselors to identify, particularly in the

early grades, students with reading and reading-related problems that place those students at risk for illiteracy in their adult years.

* * * * *

[FR Doc. 92-849 Filed 1-9-92; 8:45 am]
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ISS
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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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WASHINGTON, DC

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WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202-523-5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-89-210]

Green Corn; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Green Corn by establishing a new title and two new grades to accommodate small, consumer size packages, as well as revising and updating the amount of mechanical damage, and revising and adding definitions and changing the format in order to bring the standard into conformity with current harvesting and marketing practices. The Florida Sweet Corn Exchange and the Zellwood Sweet Corn Exchange, which represent the majority of sweet corn growers in Florida, has requested the United States Department of Agriculture (USDA) make the changes to bring them into conformity with current cultural, harvesting and marketing practices. The Agricultural Marketing Service (AMS) develops and improves standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

EFFECTIVE DATE: February 12, 1992.

FOR FURTHER INFORMATION CONTACT: Marlene M. Betts, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-2188.

SUPPLEMENTARY INFORMATION: This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The revision of the U.S. Standards for Grades of Green Corn will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the application of these standards is voluntary.

The proposed rule, United States Standards for Grades of Green Corn, was published in the **Federal Register** on April 5, 1991, (56 FR 14027-14030). USDA received a request, from a grower/packer organization of sweet corn, to extend the comment period to provide more time for interested persons to analyze the proposed rule and prepare comments. The reopening and extension of the comment period on the proposed rule was published in the **Federal Register** on May 28, 1991, (56 FR 24033).

The Florida Sweet Corn Exchange and the Zellwood Sweet Corn Exchange, (the Exchanges), which represent the majority of sweet corn growers in Florida, formally requested USDA to revise the United States Standards for Grades of Green Corn that were last revised in May 1954. The Exchanges requested that the standards be revised in order to bring them into conformity with current cultural, harvesting, and marketing practices. They contend that due to changes in harvesting practices (more growers using mechanical harvesters versus hand picking) and new improved varieties, that changes are necessary. In addition, new marketing and packaging techniques have resulted in small, consumer size packages of corn. Under the present grade requirements the consumer packaged corn cannot meet any U.S. grade due to requirements as to covering, clipping and trimming. Also, packages of this type will not meet Canadian import requirements, which requires a minimum of a U.S. No. 1 grade for corn entering Canada.

The comment period ended June 27, 1991, and a total of thirty-three comments were received.

Thirteen comments were in favor of the proposal in its entirety. Eleven of these were from the U.S. sweet corn industry, one was from a State Department of Agriculture, and one from an Agricultural Marketing Service (AMS) Federal Supervisor. These comments agreed that due to changes in current cultural, harvesting, and marketing practices of sweet corn, it was necessary to change the standards as proposed.

Twenty comments were in favor of the proposed revisions with some changes. These comments were from growers, shippers, brokers, repackers, wholesalers, researchers, and AMS Federal Supervisors.

Six comments were opposed to the proposal to score the presence of worms as a defect in the U.S. No. 1 grade. The current standard does not specifically score the presence of worms in the U.S. No. 1 grade, but does limit the amount of damage that may be caused by worms. These comments expressed concern that the proposed requirement would lead to increased use of pesticides, and recommended that this requirement remain as it is in the current standard. The thrust of these comments was reflected in University studies that were referred to the Agency by the Agricultural Research Service. The studies stated that "the primary effect of pesticide use in connection with cosmetic appearance would be to control various insect pests such as fall armyworm and corn earworm." Based on these comments and all other available information, the Agency has concluded that the requirement as to worms in the U.S. No. 1 grade should remain as it is in the current standard.

Several comments included recommendations to either increase the cob length in the U.S. No. 1 Husked grade from the proposed 4 inches to 5 inches, or increase the cob length in the U.S. No. 2 grade from the proposed 4 inches. However, they did not specify a recommended length for the U.S. No. 2 grade. The contention was that the market would be better served if 4 inch ears were not included in the standard. Also, since the U.S. No. 1 grade has a minimum cob length of not less than 5 inches, unless otherwise specified, they thought the U.S. No. 1 Husked should

have the same requirements. AMS believes that the "unless otherwise specified" clause in the proposed standard will satisfy the needs of those who wish to specify a longer cob length, but still have the shorter minimum (4 inch cob length) for the majority who like the cob lengths as proposed.

Five comments opposed the proposed definitions of "well trimmed" and "fairly well trimmed," most notably the definition pertaining to shank length. They contend that reducing the shank length from 6 inches to 3 inches as proposed would have no positive impact on consumers; the cob would be the same regardless of the shank length. Also, they note that some varieties and growing areas naturally produce corn with shanks longer than 3 inches. AMS agrees that the definitions of "well trimmed" and "fairly well trimmed" should remain as they are defined in the current standard with a shank length of not more than 6 inches.

Two of the twenty comments addressed the "Reqirement as to count" section. One of these recommended that packages which contain from 1 to 10 ears be allowed a variation in the number of ears permitted in individual packages. As the Agency proposed, when packed 1 to 10 ears per package no variations in the number of ears in an individual package would be permitted. However, the second comments suggested there should be no variation in the number or ears permitted in individual packages that contain from 1 to 25 ears per package. AMS decided to leave the "Requirement as to count" section as proposed since these comments were contradictory and no other comments were received on the subject. If variations in the number of ears in packages which contain from 1 to 10 ears were allowed, everyone in the marketing chain would be subject to contract disputes when ordering small consumer packages with a specific number of ears only to find a variation in that number. Additionally, allowing this variation may be misleading to consumers.

One of the twenty comments suggested increasing the requirement of filling in the U.S. Fancy grade from "fairly well filled" to "well filled." Stating that with advances in breeding, growers and consumers expect that the U.S. Fancy grade, the "top" grade, would provide for the cobs to be filled to the tip. AMS believes, however, based on the Agency's experience with sweet corn production in various areas, that this requirement may be too difficult to meet. For this reason we decided to leave the filling requirement as it is currently, fairly well filled.

Three of the twenty comments were in favor of the proposal, but suggested clarifications were needed in several definitions. Specifically, there was uncertainty about whether both "well clipped" and "properly clipped" allowed one or both ends of the cob to be clipped, and if "husked" meant that the entire length of the cob had to have approximately 3 to 4 rows of kernels visible. It was also suggested that the standards define "specimen," "individual package," and "package." AMS agrees that the definitions of "well clipped" and "properly clipped" needed some clarification; this final rule defines "well clipped" as having one or both ends removed and "properly clipped" as having only the tip end removed. The definition for husked has also been revised. The new definition takes into account that kernels do not grow in perfectly straight rows, but may grow slightly curved around the cob. The definition was revised to read "Husked means that on the full length of the cob the equivalent of a least 3 rows of kernels are exposed up to the entire cob." "Specimen," "individual package," and "package" were, however, not added to the definitions as suggested. AMS feels that the term specimen is self explanatory and, since packaging periodically changes, it would be more appropriate to include such information in the inspection instruction handbooks.

One of the twenty comments suggested several changes to the proposed rule including: not allowing clipping in the U.S. No. 1 grade; requiring the U.S. No. 1 Husked grade have a minimum cob length of 5 inches rather than 4 inches; eliminating the container tolerance for serious defects in packages of 5 specimens or less; and changing portions of the classification of defects chart which provides for the number of defective kernels allowed on a specific cob length. AMS did not incorporate these changes because they would not further the purposes of the grade standard and because, other than the minimum cob length, no other commentor suggested these changes.

Six of the twenty comments "would like to see the grade standards for 'Husked Corn' approved. However, they were opposed to the other changes in the Green Corn standards." AMS concluded that since most of the changes to the standard are due to incorporating the "husked corn" grades, this final rule will enhance the marketing of sweet corn.

AMS develops and improves standards of quality, condition, grade, and packaging in order to encourage uniformity and consistency in commercial practices. The provisions of this final rule are the same as those in the proposed rule, except for the changes noted above in response to the comments received and except for several minor changes made for clarity. In addition, a metric conversion table and metric equivalents are added to this final rule as appropriate.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087 as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. Subpart—United States Standards for Green Corn (currently consisting of §§ 51.835 through 51.857) is revised to read as follows:

Subpart—United States Standards for Grades of Sweet Corn

Grades

Sec.
51.835 U.S. Fancy.
51.836 U.S. Fancy, Husked.
51.837 U.S. No. 1.
51.838 U.S. No. 1, Husked.
51.839 U.S. No. 2.

Tolerances

51.840 Tolerances.

Count

51.841 Requirement as to count.

Application of Tollerances

51.842 Application of tolerances.

Definitions

51.843 Definitions.

Classification of Defects

51.844 Classification of defects.

Metric Conversion Table

51.845 Metric conversion table.

Subpart—United States Standards for Grades of Sweet Corn

Grades

§ 51.835 U.S. Fancy.

"U.S. Fancy" consists of ears of sweet corn which meet the following requirements:

(a) Basic Requirements:

(1) Similar varietal characteristics;

(2) Well trimmed; and,
(3) Well developed.
(b) Free From:
(1) Smut;
(2) Worms;
(3) Insect or worm injury; and,
(4) Decay.
(c) Free From Injury Caused By:
(1) Rust;
(2) Discoloration;
(3) Birds;
(4) Mechanical;
(5) Disease; and,
(6) Other means. (See § 51.843)
(d) Cobs shall be fairly well filled with plump and milky kernels and well covered with fresh husks.
(e) Ears shall not be clipped.
(f) The length of each cob shall be not less than 6 inches (152.4 mm).
(g) For tolerances see § 51.840.

§ 51.836 U.S. Fancy, Husked.

"U.S. Fancy, Husked" consists of husked ears of sweet corn which meet the requirements of the U.S. Fancy grade except those pertaining to amount of covering, trimming, clipping and length of cob. Sweet corn of this grade shall be:
(a) Husked (any remaining husk must be fresh).
(b) Properly trimmed.
(c) Each ear may be clipped but each clipped ear must be well clipped.
(d) The length of each cob clipped or unclipped, shall be not less than 5 inches (127.0 mm), unless otherwise specified.
(e) For tolerances see § 51.840.

§ 51.837 U.S. No. 1.

"U.S. No. 1" consists of ears of sweet corn which meet the following requirements:
(a) Basic Requirements:
(1) Similar varietal characteristics;
(2) Well trimmed; and,
(3) Well developed.
(b) Free From:
(1) Smut; and,
(2) Decay.
(c) Free From Injury Caused By:
(1) Rust.
(d) Free From Damage Caused By:
(1) Discoloration;
(2) Birds;
(3) Worms;
(4) Other insects;
(5) Disease;
(6) Mechanical; and,
(7) Other means. (See § 51.843)
(e) Cobs shall be fairly well filled with plump and milky kernels and fairly well covered with fresh husks.
(f) Each ear may be clipped, but each clipped ear shall be properly clipped.
(g) The length of each cob, clipped or unclipped, shall be not less than 5 inches (127.0 mm), unless otherwise specified.
(h) For tolerances see § 51.840.

§ 51.838 U.S. No. 1, Husked.

"U.S. No. 1, Husked" consists of husked ears of sweet corn which meet the requirements of the U.S. No. 1 grade except those pertaining to amount of covering, trimming, clipping and length of cob. Sweet Corn of this grade shall be:
(a) Husked (any remaining husk must be fresh).
(b) Properly trimmed.
(c) Each ear may be clipped but each clipped ear must be well clipped.
(d) The length of each cob clipped or unclipped, shall be not less than 4 inches (101.6 mm), unless otherwise specified.
(e) For tolerances see § 51.840.

§ 51.839 U.S. No. 2.

"U.S. No. 2" consists of ears of sweet corn which meet the following requirements:
(a) Basic Requirements:
(1) Similar varietal characteristics;
(2) Fairly well trimmed; and,
(3) Fairly well developed.
(b) Free From:
(1) Smut; and,
(2) Decay.
(c) Free From Serious Damage Caused By:
(1) Birds;
(2) Worms;
(3) Other insects;
(4) Disease;
(5) Mechanical; and,
(6) Other means. (See § 51.843)
(d) Cobs shall be at least moderately filled with plump and milky kernels and fairly well covered with fresh husks.
(e) Each ear may be clipped, but each clipped ear shall be properly clipped.
(f) The length of each cob, clipped or unclipped, shall be not less than 4 inches (101.6 mm), unless otherwise specified.
(g) For tolerances see § 51.840.

Tolerances

§ 51.840 Tolerances.

In order to allow for variations incident to proper grading and handling, the following tolerances, by count, are provided as specified:
(a) *For defects.* 10 percent in any lot for ears of corn which fail to met the requirements of the grade, including therein not more than 2 percent for decay.
(b) *For off-size.* 5 percent in any lot for ears of corn which fail to meet the requirements as to length of cob.

Count

§ 51.841 Requirement as to count.

The number of ears of corn in any package may be specified by count or in terms of dozens or half dozens. Variation from the number specified shall be permitted as follows: *Provided,* That the average for the lot is not less than the number specified nor more than two ears greater than the number specified:

Specified number per package:	Variation permited in inaviouai packages:
1-10 ears	0.
11-25 ears	2 ears under count, 2 ears over count.
26-60 ears	3 ears under count, 5 ears over count.
More than 60 ears	4 ears under count, 6 ears over count.

Application of Tolerances

§ 51.842 Application of tolerances.

The contents of individuals packages in the lot, based on sample inspection, are subject to the following limitations: *Provided,* That the averages for the entire lot are within the tolerance specified:
(a) For packages which contain 10 specimens or more and a tolerance of 10 percent or more is provided, individual packages in any lot may contain not more than one and one-half times the tolerance specified. For packages which contain 10 specimens or more and a tolerance of less than 10 percent is provided, individual packages may contain not more than double the tolerance specified except that at least one defective and one off-size specimen may be permitted in any package; and,
(b) For packages which contain less than 10 specimens, individual packages in any lot may contain not more than double the tolerance specified, except that at least one defective and one off-size specimen may be permitted in any package: *Provided,* That for packages which contain 5 specimens or less, individual packages in any lot are not restricted as to the percentage of defects: And *Provided Further,* That not more than one specimen which is affected by decay or otherwise seriously damaged and one off-size specimen may be permitted in any package.

Definitions

§ 51.843 Definitions.

(a) *Similar varietal characteristics* means that the ears in any package have similar kernel color and character of growth. Ears of field corn and sweet corn, or ears having white color kernels, yellow color kernels and mixed color kernels of corn, shall not be mixed.
(b) *Well trimmed* means that the ears are practically free from loose husks and

that the shank shall be not more than 6 inches (152.4 mm) in length and not extend more than one inch (25.4 mm) beyond the point of attachment of the outside husk.

(c) *Well developed* means that the ears are fairly straight and are not stunted. Nubbins are not well developed ears.

(d) *Insect or worm injury* means that insect or worm frass is present, or there is visible evidence of insect or worm injury.

(e) *Injury* means any defect listed in § 51.844 or any defect which more than slightly affects the appearance, or the edible or shipping quality of the ear. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as injury:

(1) Rust when the aggregate area on the husk exceeds one square inch (64.5 mm^2), or when the rust extends deeper than 2 layers of husks; and

(2) Discoloration caused by frost or sprayburn, or similar types of discoloration when affecting an aggregate area of more than 3 square inches (193.5 mm^2) on the husk, or when exceeding an aggregate area of 25 percent of the surface of all blades.

(f) *Fairly well filled* means that the rows of kernels show fairly uniform development, and that the appearance and quality of the edible portion of the ear are not materially affected by poorly developed rows. When the ear has not been clipped, not more than one-fourth of the length of the cob may have poorly developed or missing kernels at the tip. When the ear has been clipped, it shall have practically no poorly developed kernels at the tip of the cob. Missing or poorly developed kernels on other parts of the ear shall not aggregate more than one square inch (64.5 mm^2) on a cob 6 inches (152.4 mm) in length, and a proportionally greater area shall be permitted on a longer cob and a proportionally lesser area on a shorter cob.

(g) *Plump and milky* means that the kernels are well developed and the contents have a milky, creamy, or clear jelly-like consistency.

(h) *Well covered* means that the husk enclosing the ear is tight and undisturbed, except that a slight opening may have been made at the tip: *Provided,* That the disturbed part has been properly replaced so that the appearance of the ear is not more than slightly affected.

(i) *Fresh* means that the husks have fairly good green color and are not badly wilted.

(j) *Husked* means that on the full length of the cob the equivalent of at least 3 rows of kernels are exposed up to the entire cob.

(k) *Well clipped* means that one or both ends of the cob, or one or both ends of the cob and husk have been neatly removed approximately at a right angle to the longitudinal axis.

(l) *Properly trimmed* means that the ear is not damged by loose husks and silks and that the shank shall not extend more than 1 inch (25.4 mm) from the cob, when present.

(m) *Damage* means any defect listed in § 51.844 or any defect which materially affects the appearance, or the edible or shipping quality of the ear. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(1) Discoloration caused by frost or sprayburn, or similar types of discoloration when affecting an aggregate area of more than 5 square inches (322.5 mm^2) on the husk, or when exceeding an aggregate area of 50 percent of the surface of all blades; and,

(2) Worm injury on unclipped ears when extending more than 1½ inches (38.1 mm) from the tip on an ear 6 inches (152.4 mm) in length (proportionately greater or lesser amounts permitted on longer or shorter ears, respectively, or when affecting the kernels on other parts of the ear or any worm injury on clipped ears.

(n) *Fairly well covered* means that the husk enclosing the ear is fairly tight and undisturbed except that an opening may have been made at the tip: *Provided,* That the disturbed part has been properly replaced so that the appearance of the ear is not materially affected.

(o) *Properly clipped* means that the tip end of the cob, or the tip end of the cob and husk have been neatly removed approximately at a right angle to the longitudinal axis.

(p) *Fairly well trimmed* means that the appearance of the individual ear of corn is not seriously affected by loose husks and that the shank shall not be more than 6 inches (152.4 mm) in length and not extend more than 2 inches (50.8 mm) beyond the point of attachment of the outside husk.

(q) *Fairly well developed* means that the ears are not stunted to the extent that the appearance is seriously affected.

(r) *Serious damage* means any defect listed in § 51.844 or any defect which seriously affects the appearance, or the edible or shipping quality of the ear. The following defects or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

(1) Worm injury on unclipped ears when extending more than 2 inches (50.8 mm) from the tip on an ear 6 inches (152.4 mm) in length (proportionately greater or lesser amounts permitted on longer or shorter ears, respectively), or when affecting more than 4 kernels on other parts of the cob, or any worm injury on clipped ears extending more than one-fourth inch (3.2 mm) from the tip.

(s) *Moderately filled* means that the rows of kernels show fairly uniform development, and that the appearance and quality of the edible portion of the ear are not seriously affected by poorly developed rows. When the ear has not been clipped, more than one-fourth but less than one-third of the length of the cob has poorly developed or missing kernels at the tip. When the ear has been clipped it shall have not more than a slight amount of poorly developed kernels at the tip of the cob. Missing or poorly developed kernels on other parts of the ear shall not aggregate more than one and one-fourth square inches (80.6 mm^2) on a cob 6 inches (152.4 mm) in length, and proportionally greater area shall be permitted on a longer cob and a proportionally lesser area on a shorter cob.

(t) *Poorly filled* means, on unclipped ears, that the edible quality or appearance is affected to a greater extent than that of an ear 6 inches (152.4 mm) in length which has one-third of the cob at the tip end and aggregate area 1½ inches square (96.8 mm^2) on other portions of the ear with undeveloped kernels or open spaces; and means, on clipped ears, that the edible quality or appearance is affected to a greater extent than that of an ear 6 inches (152.4 mm) in length which has one inch (25.4 mm) at the tip end and an aggregate area 1½ inches square (96.8 mm^2) on other portions of the ear with undeveloped kernels or open spaces.

Classification of Defects

§ 51.844 Classification of defects.

Number of affected kernels allowed for the following defects:

MECHANICAL, BIRD,[1] DISEASE, AND INDENTED KERNELS

Length of cob	Injury	Damage	Serious damage
3 inches (76.2 mm) to 6 inches (152.4 mm)	4	6	8

MECHANICAL, BIRD,[1] DISEASE, AND INDENTED KERNELS—Continued

Length of cob	Injury	Damage	Serious damage
more than 6 inches (152.4 mm) to 10 inches (254.0 mm)	8	12	16
more than 10 inches (254.0 mm) to 13 inches (330.2 mm)	12	18	24

[1] In scoring *injury*, if more than the number of kernels allowed above are discolored or punctured or if the husks have been penetrated in more than 1 place; *damage*, if more than the number of kernels allowed above are discolored or punctured or if the husks have been penetrated in more than 2 places; *serious damage*, if more than the number of kernels allowed above are discolored or punctured or if the husks have been penetrated in more than 3 places.

Metric Conversion Table

§ 51.845 Metric conversion table.

Inches	Millimeters (mm)
¼	3.2
1	25.4
1½	38.1
2	50.8
3	76.2
4	101.6
5	127.0
6	152.4
7	177.8
8	203.2
9	228.6
10	254.0
11	279.4
12	304.8
13	330.2

Square inches	Square millimeters (mm^2)
1	64.5
1¼	80.6
1½	96.8
3	193.5
5	322.5

Dated: January 6, 1992.

Daniel D. Haley,

Administrator.

[FR Doc. 92-647 Filed 1-10-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Regulation 728]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from January 10 through January 16, 1992. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 728 (7 CFR part 907) is effective for the period from January 10 through January 16, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 [7 CFR part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as large ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 79 percent of the total production in 1990-91. District 2 is located in the southern coastal area of California and represented almost 18 percent of 1990-91 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 3 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's revised estimate of 1991-92 production is 64,600 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 32,895 cars during the 1990-91 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee has estimated that about 68 percent of the 1991-92 crop of 64,600 cars will be utilized in fresh domestic channels (43,650 cars), with the remainder being exported fresh (14 percent), processed (16 percent), or designated for other uses (2 percent). This compares with the 1990-91 total of 16,675 cars shipped to fresh domestic markets, about 51 percent of that year's crop. In comparison to other seasons, 1990-91 production was low because of a devastating freeze that occurred during December 1990.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing

the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1991–92 season on June 25, 1991. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 24, 1991, in Visalia, California; and District 2 and 3 on October 1, 1991, in Ontario, California. The Committee subsequently revised its marketing policy at a meeting on October 15, 1991. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Mr. Nissen. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on January 7, 1992, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommend the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The Committee recommended in a vote of 7 members voting in favor, 3 opposing, and 1 abstaining, the issuance of 1,100,000 cartons of general maturity allotment for Districts 1 and 3. In a vote of 9 members voting in favor, 1 opposing, and 1 abstaining, the Committee also recommended the issuance of 53,522 cartons of early maturity allotment for Districts 2 and 4. The marketing information and data provided to the Committee and use in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1991–92 marketing policy. The total recommended amount of 1,153,522 cartons compares to the 1,300,000 cartons specified in the Committee's shipping schedule. Of the 1,153,522 cartons, 1,100,000 cartons are allotted to Districts 1 and 3 under general maturity. However, the Department, based on its independent analysis, and information provided by the Committee, has revised the recommendation and established volume regulation in the amount of 1,300,000 cartons for Districts 1 and 3. Of the 1,300,000 cartons, 94.82 percent or 1,232,660 cartons are allotted to District 1 and 5.18 percent or 67,340 cartons are allotted to District 3. The additional 53,522 cartons are allotted to Districts 2 and 4 under early maturity, with 37,260 cartons allotted to District 2, and 16,262 cartons allotted to District 4.

During the week ending on January 2, 1992, shipments of navel oranges to fresh domestic markets, including Canada, totaled 638,000 cartons compared with 485,000 cartons shipped during the week ending on January 3, 1991. Export shipments totaled 285,000 cartons compared with 144,000 cartons shipped during the week ending on January 3, 1991. Processing and other uses accounted for 217,000 cartons compared with 531,000 cartons shipped during the week ending on January 3, 1991.

Fresh domestic shipments to date this season total 9,741,000 cartons compared with 13,098,000 cartons shipped by this time last season. Export shipments total 1,464,000 cartons compared with 1,569,000 cartons shipped by this time last season. Processing and other use shipments total 2,069,000 cartons compared with 3,338,000 cartons shipped by this time last season.

For the week ending January 2, 1992, regulated shipments of navel oranges to the fresh domestic market were 797,000 cartons on an adjusted allotment of 1,016,000 cartons which resulted in net undershipments of 219,000 cartons. Regulated shipments for the current week (January 3 through January 9, 1992) are estimated at 940,000 cartons on an adjusted allotment of 955,000 cartons. Thus, undershipments of 15,000 cartons could be carried forward into the week ending on January 16, 1992.

The average f.o.b. shipping point price for the week ending on January 2, 1992, was $9.53 per carton based on a reported sales volume of 800,000 cartons. The season average f.o.b. shipping point price to date is $10.28 per carton. The average f.o.b. shipping point prices for the week ending on January 3, 1991, was $16.30 per carton; the season average f.o.b. shipping point price at this time last year was $9.62.

The Department's Market News Service reported that, as of January 8, demand for first grade sizes 72–88 is fairly light. Demand for first grade 113–163 and choice 72–138 sizes is light, with other sizes moderate. The market is about steady, with choice 32–113 sizes lower, and other sizes about steady. It was also reported that harvesting has been curtailed by rain.

Committee members discussed implementing volume regulation at this time, and different levels of allotment. Committe member comments included statements that inventories remain high and that prices are dropping. Several members expressed concern about the negative impact a larger allotment could have on prices. A member commented that the weak overall economy is having a negative affect on the market. Three Committee members favored open movement at this time, while the majority of Committee members favored the issuance of general maturity allotment for Districts 1 and 3. Only one member opposed the issuance of early maturity allotment for Districts 2 and 4.

According to the National Agricultural Statistics Service, the 1990–91 season average fresh equivalent on-tree price for California-Arizona navel oranges was $7.75 per carton, 119 percent of the season average parity equivalent price of $6.52 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1991–92 season average fresh on-tree price is estimated at $6.33 per carton, about 85 percent of the estimated fresh on-tree parity equivalent price of $7.44 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from January 10 through January 16, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of

this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1991–92 season was published in the September 30, 1991, issue of the **Federal Register** (56 FR 49432). The Department is currently in the process of analyzing comments received in response to this proposal and, if warranted, may finalize that action this season. However, issuance of this final rule implementing volume regulation for the regulatory week ending on January 16, 1992, does not constitute a final decision on that proposal.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until January 8, 1992, and this action needs to be effective for the regulatory week which begins on January 10, 1992. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1028 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1028 Navel orange regulation 728.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from January 10 through January 16, 1992, is established as follows:

(a) District 1: 1,232,660 cartons;
(b) District 2: 37,260 cartons;
(c) District 3: 67,340 cartons;
(d) District 4: 16,262 cartons.

Dated: January 9, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–881 Filed 1–10–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 920

[Docket No. A0–89–A1; FV–90–100]

California Kiwifruit Marketing Order; Order Amending the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing order for kiwifruit grown in California. The amendments clarify the way in which grower membership on the Kiwifruit Administrative Committee (committee) is allocated, revise committee tenure requirements, authorize a change in the terms of office which now being August 1, authorize committee nominations to be conducted by mail, and authorize a late payment charge on delinquent handler assessments. These changes were favored by California kiwifruit growers in a referendum held from March 15 to April 5, 1991. The amendments will improve the administration, operation and functioning of the marketing order program.

EFFECTIVE DATE: February 12, 1992.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. telephone (202) 720–8139; or Gary D. Olson, California Marketing Field Office, USDA, AMS, 2202 Monterey Street, suite 102–B, Fresno, California 93721, telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding: Notice of Hearing—Issued December 6, 1989, and published in the **Federal Register** on December 11, 1989 [54 FR 50765]; Recommended Decision and Opportunity to File Written Exceptions—Issued November 23, 1990, and published in the **Federal Register** on November 29, 1990 (55 FR 49532); Secretary's Decision and Referendum Order—Issued February 26, 1991, and published in the **Federal Register** on March 6, 1991 (56 FR 9302).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512–1.

Preliminary Statement

This final rule was formulated on the record of a public hearing held at Fresno, California, on January 19, 1990, to consider the proposed amendment of Marketing Agreement and Order No. 920, regulating the handling of kiwifruit grown in California. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Kiwifruit Administrative Committee (committee) established under the order to assist in local administration of the program.

The proposals pertained to clarifying the way in which grower membership is allocated, reducing the terms of office from 2 years to 1 year for certain committee members, revising committee tenure requirements, authorizing a change in the terms of office which now begin August 1, authorizing committee nominations to be conducted by mail, and authorizing a late payment charge on delinquent handler assessments. The Department of Agriculture proposed that it be authorized to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on November 23, 1990, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by December 31, 1990. No exceptions were received.

A Secretary's Decision and Referendum Order was issued February 26, 1991, directing that a referendum be conducted during the period March 18–April 5, 1991, among kiwifruit growers in California to determine whether they favored the proposed amendments to

the order. In that referendum, growers voted in favor of five of the six amendment proposals listed on the referendum ballot. The proposal that did not receive the requisite two-thirds vote would have changed from 2 years to 1 year the terms of office for the three additional grower members and alternates to the committee selected from the three districts shipping the greatest volumes of kiwifruit. Accordingly, that proposed amendment is not included in this order amending the order.

The amended marketing agreement was subsequently mailed to all kiwifruit handlers in California for their approval. The marketing agreement was not approved by kiwifruit handlers representing 50 percent or more of the volume of kiwifruit handled by all handlers during the representative period of August 1, 1989, to July 31, 1990.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Small agricultural growers have been defined by the Small Business Administration (SBA) [13 CFR 121.2] as those having annual receipts of less than $500,000. Small agricultural service firms, which include kiwifruit handlers, are defined as those with annual receipts of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules and regulations issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

The record indicates that there are approximately 100 handlers and 1,200 growers of California kiwifruit. While there is a variance in the size of individual growing and handling operations, the record indicates that the majority of the kiwifruit growers and 30 to 40 percent of kiwifruit handlers would be classified as small businesses under the SBA's definitions.

This final rule amends certain order provisions pertaining to committee member appointments and nominations. Also, authority is added to establish late payment charge on delinquent handler assessments. The record indicates that these changes will improve the administration and operation of the program to the benefit of all kiwifruit growers and handlers.

This final rule clarifies the way in which grower membership on the committee is allocated among the eight established geographic districts. The record indicates that the districts with the highest levels of shipments in the previous fiscal year should be allocated a second grower member position to reflect current procedures, rather than those with the greatest production during that year. The record indicates that the committee currently collects and compiles shipment data by district, which accurately reflect the relative volumes of kiwifruit grown in the various districts. This change will impose no additional costs on growers or handlers, but will merely clarify the way in which the committee currently determines grower member allocation among the districts.

This final rule also revises tenure requirements so that a committee member who has served for six consecutive years on the committee could then serve as an alternate member. The record indicates that this amendment will enable growers who have become knowledgeable of the marketing order and committee operations to continue participating in committee deliberations. Tenure requirements will still apply to voting member positions to promote participation by a larger number of California kiwifruit growers in administering the order. Similarly, the tenure requirement will also apply to alternate positions. No additional costs will be imposed as a result of this change.

Currently, the order provides that nominations for grower members be conducted at grower meetings held in each of the order's eight geographic districts. The record indicates that adding authority to conduct nominations by mail will increase grower participation in the nomination process. This change will also reduce the administrative costs associated with conducting nomination meetings, as well as the costs incurred by individual growers in travelling to and attending the meetings. This change will therefore have a positive impact on both large and small kiwifruit growers and handlers.

Currently, committee members serve terms of office which begin August 1. The record indicates that since complete shipment data may not be available until July or August in some years, the mail nomination process may not be completed prior to August 1. Therefore, the record supports adding authority to change the term of office. To the extent that this change will facilitate the nomination process, it will have a positive impact on growers and handlers. No additional costs will be imposed as a result of this change.

Finally, authority is added to the order to provide for the establishment of a late charge on delinquent handler assessments. This will provide handlers with an incentive to make assessment payments in a timely manner. This change will not impose additional costs on those handlers who remit their assessments on time.

Each of the changes set forth in this document is designed to enhance the administration, operation and functioning of the order, and will not have a significant economic impact on the affected small entities.

Further, the changes will have no significant impact on the reporting and recordkeeping requirements imposed on small businesses. The amendment that authorizes mail nominations may result in additional reporting by growers. However, participation will be voluntary, and the record indicates that the cost of completing a ballot will be substantially less than that to attend a nomination meeting. The amendments include authority for mail nominations. There are approximately 1,200 growers who would be affected by mail nominations, if implemented. In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), any reporting and recordkeeping requirements that may result from these amendments will be submitted to the OMB for approval.

The Recommended Decision included the finding that it was necessary to change § 920.20 of the marketing order to clarify the way in which it is determined which three districts are entitled to two grower members on the committee. The revision, which would state that such determinations be made on the basis of shipment rather than production data, would more accurately describe the basis upon which grower membership of the committee is now determined. This finding was reaffirmed and adopted in the Secretary's Decision. Further, growers voting in the referendum approved this change in the marketing order. However, the Recommended Decision and the Secretary's Decision inadvertently omitted this change in the regulatory text of § 920.20. Given the fact that this

is a clarifying change, that it was supported by previous findings in this proceeding, and that it was approved in the grower referendum, § 920.20 is amended accordingly in this Order Amending the Marketing Order.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

Order Amending the Order Regulating the Handling of Kiwifruit Grown in California

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendment to the Marketing Agreement and Order No. 920 (7 CFR Part 920), regulating the handling of kiwifruit grown in California.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as hereby amended, regulates the handling of kiwifruit grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The order, as hereby amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as hereby amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of kiwifruit grown in the production area; and

(5) All handling of kiwifruit grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Determinations.

It is hereby determined that:

Handlers (excluding cooperative associations of growers who are not engaged in processing, distributing, or shipping kiwifruit covered by the said order, as hereby amended) who, during the period August 1, 1989, through July 31, 1990, handled 50 percent or more of the volume of such kiwifruit covered by the said order as hereby amended have not signed an amended marketing agreement;

(2) The issuance of this amendatory order, amending the aforesaid order, is favored or approved by at least two-thirds of the growers who participated in a referendum on the question of its approval or produced for market at least two-thirds of the volume of such commodity represented in the referendum, all of such growers during the period August 1, 1989, through July 31, 1990 (which has been deemed to be a representative period), having been engaged within the production area in the production of kiwifruit for fresh market; and

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of kiwifruit in the production area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of kiwifruit grown in California shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended as follows:

Except for the previously noted modifications, the provisions of the proposed marketing order amending the order contained in the Recommended Decision issued by the Administrator on November 23, 1990, and published in the **Federal Register** on November 29, 1990 (55 FR 49532), and in the Secretary's Decision issued on February 28, 1991, and published in the **Federal Register** on March 6, 1991 (56 FR 9302), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 920.20 is revised to read as follows:

§ 920.20 Establishment and membership.

There is hereby established a Kiwifruit Administrative Committee consisting of 12 members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. The 12-member committee shall be made up of the following: One public member (and alternate); one member (and alternate) from each of the eight California districts; three additional committee members and their alternates to be selected from the three districts with the three highest volumes of fresh shipments in the prior fiscal period; *Provided*, That no more than a total of two members and their alternates shall represent any one district. With the exception of the public member and alternate, all members and their respective alternates shall be growers or employees of growers.

3. Section 920.21 is revised to read as follows:

§ 920.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years from the date of their selection and until their successors are selected. The term of office of the three additional grower members and their alternates selected from the three districts shipping the highest volumes of kiwifruit in the prior fiscal period shall be for two years. The terms of office shall begin on August 1 and end on the last day of July, or such other dates as the committee may recommend and the Secretary approve. Members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as members. Alternate members may serve up to three consecutive 2-year terms not to exceed 6 consecutive years as alternate members.

4. Section 920.22 is revised to read as follows:

§ 920.22 Nomination.

(a) Except as provided in paragraph (b) of this section, the committee shall hold, or cause to be held, not later than July 15 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers in each district for the purpose of designating

nominees to serve as grower members and alternates on the committee. Any such meetings shall be supervised by the committee, which shall prescribe such procedures as shall be reasonable and fair to all persons concerned.

(b) Nominations in any or all districts may be conducted by mail in a manner recommended by the committee and approved by the Secretary.

(c) Only growers may participate in the nomination of grower members and their alternates. Each grower shall be entitled to cast only one vote for each position to be filled in the district in which such grower produces kiwifruit. No grower shall participate in the election of nominees in more than one district in any one fiscal year.

(d) A particular grower shall be eligible for membership as member or alternate member to fill only one position on the committee.

(e) The public member and alternate shall be nominated by the grower members of the committee.

5. Section 920.41 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 920.41 Assessments.

(a) * * * If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both, as may be established by the Secretary upon recommendation of the committee.

* * * * *

Dated: January 6, 1992.

Jo Ann R. Smith,

Assistant Secretary Marketing and Inspection Services.

[FR Doc. 92-648 Filed 1-10-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 101CE, Special Condition 23-ACE-68]

Special Conditions; Beech Model 200, A200 and B200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are being issued to Stevens Aviation for a Supplemental Type Certification (STC) on the Beech Model 200 Series airplane. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of lightning and high intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is February 12, 1992. Comments must be received on or before February 12, 1992.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 101CE, room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 101CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Service, Central Region, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective 30 days after issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 101CE." The postcard will be date stamped and returned to the commenter.

Background

On November 6, 1991, Stevens Aviation, Post Office Box 399, Dayton International Airport, Vandalia, Ohio 45377, made an application to the FAA for a supplemental type certificate (STC) for the Beech Model 200 airplane. The proposed modification incorporates a novel or unusual design feature such as digital avionics consisting of an electronic flight instrument system (EFIS) that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Beech Model 200, A200, and B200 Series airplane is as follows: Part 23 of the FAR, effective February 1, 1965, including amendments 23-1 through 23-9; amendment 11; §§ 23.175, 23.143(a), 23.145(d), 23.153, 23.161(c)(3), and 23.173(a) as amended by amendment 23-14; § 23.951(c) and § 23.997(d) as amended by amendment 23-15 (A200CT, B200 Series only); § 23.1545(a) as amended by amendment 23-23; § 23.1325(e) as amended by amendment 23-20 (B200 Series only); § 23.1305(n) as amended by amendment 23-26; special conditions 23-47-CE-5, including amendments 1 and 2, dated January 12, 1979; Part 25 of the FAR, §§ 25.929 and 25.1419 as amended by amendments 25-34, § 25.831(d) as amended by amendment 25-41. SFAR 27, effective February 1, 1974, as amended by amendments 27-2 through 27-4; Part 36, effective December 1, 1969, as amended by amendments 36-1 through amendment 36-10; exemptions, if any; and the special conditions adopted herein.

Discussion

Stevens Aviation plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of lightning and HIRF. These features include electronic systems, which are susceptible to the HIRF environment and that were not envisaged by the existing regulations, for this type of airplane.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual

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design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis, as provided by § 21.17(a)(2).

Protection of System From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF incident on the external surface of aircraft. These induced transient current and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisaged when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment, defined below:

TABLE I.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–500 KHz	60	60
500–2000	60	60
2–30 MHz	200	200
30–100	33	33
100–200	150	33
200–400	56	33
400–1000	4020	935
1–2 GHz	7850	1750
2–4	6000	1150
4–6	6800	310
6–8	3600	666
8–12	5100	1270
12–18	3500	551
18–40	2400	750

Note: Since 1988, a concerted effort has been under way to review, verify, and validate the HIRF environment. This table represents the current estimate of the HIRF environment. The current values overall are lower than the previous values for the HIRF environment. Additional requirements will continue to be required for the certification of installed critical systems in aircraft approved for operation below 500 feet.

or:

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions can withstand a peak of electromagnetic field strength of 100 volts per meter (v/m) or the external HIRF environment, whichever is less, in a frequency range of 10KHz to 18GHz. When using a laboratory test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Beech Model 200, A200, and B200 Series airplane, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances. For example, the Piper PA–42 (51 FR 37711, October 24, 1986), the Dornier 228–200 (53 FR 14782, April 26, 1988), and the Cessna Model 525 (56 FR 49398, September 30, 1991). For this reason, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions without notice; therefore, special conditions are being issued without substantive changes for this airplane and made effective 30 days after issuance.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Beech Model 200, A200, and B200 Series airplane:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be

designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definitions apply: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on January 3, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-753 Filed 1-10-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26740; Amdt. No. 1474]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on January 3, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard

Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/MDE, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective March 5, 1992*

Cresco, IA—Ellen Church Field, NDB RWY 33, Amdt. 2
Marysville, KS—Marysville Muni, NDB RWY 33, Amdt. 3
Ottawa, KS—Ottawa Muni, NDB RWY 35, Amdt. 2
Covington/Cincinnati, OH, KY—Cincinnati/Northern Kentucky Intl, RADAR–1, Amdt. 22, CANCELLED
Westminster, MD—Carroll CNY RG/Jack B Poage FL, VOR RWY 34, Amdt. 3
Rocky Mount, NC—Rocky Mount-Wilson, VOR/DME RWY 22, Orig.
Medina, OH—Medina Muni, NDB RWY 27, Amdt. 7, CANCELLED
Lufkin, TX—Angelina County, VOR/DME RWY 15, Amdt. 2
Lufkin, TX—Angelina County, VOR RWY 33, Amdt. 12
Lufkin, TX—Angelina County, LOC RWY 7, Amdt. 1
Lufkin, TX—Angelina County, NDB RWY 7, Amdt. 1
Lufkin, TX—Angelina County, VOR/DME RNAV RWY 7, Amdt. 2
Lufkin, TX—Angelina County, VOR/DME RNAV RWY 15, Amdt. 3

** * * Effective February 6, 1992*

Covington/Cincinnati, OH, KY—Cincinnati/Northern Kentucky Intl, ILS RWY 36R, Amdt. 1
New Orleans, LA—New Orleans Intl (Moisant Field), VOR or TACAN A, Amdt. 11, CANCELLED
New Orleans, LA—New Orleans Intl (Moisant Field), LOC RWY 10, Orig., CANCELLED
New Orleans, LA—New Orleans Intl (Moisant Field), LOC BC RWY 19, Amdt. 12
New Orleans, LA—New Orleans Intl (Moisant Field), NDB RWY 10, Amdt. 24
New Orleans, LA—New Orleans Intl (Moisant Field), ILS RWY 1, Amdt. 14
New Orleans, LA—New Orleans Intl (Moisant Field), ILS RWY 10, Orig.
New Orleans, LA—New Orleans Intl (Moisant Field), RADAR–1, Amdt. 14

** * * Effective December 30, 1991*

Waco, TX—Waco Regional, NDB RWY 19, Amdt. 17
Waco, TX—Waco Regional, ILS RWY 19, Amdt. 14

** * * Effective December 27, 1991*

Camarillo, CA—Camarillo, VOR RWY 26, Amdt. 2

** * * Effective December 26, 1991*

Bishop, CA—Bishop, VOR–A, Amdt. 6
Bishop, CA—Bishop, VOR/DME–B, Amdt. 3

[FR Doc. 92–748 Filed 1–10–92; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 26739; Amdt. No. 1473]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR

part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendent to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on January 3, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME; ISMLS, MLS, MLS/DME; MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
12/18/91	MI	Benton Harbor	Ross Field-Twin Cities	FDC 1/6341	NDB Rwy 27 Amdt 9
12/18/91	MI	Benton Harbor	Ross Field-Twin Cities	FDC 1/6342	ILS Rwy 27 Amdt 6
12/18/91	MI	Escanaba	Delta County	FDC 1/6331	VOR Rwy 27 Amdt 10
12/18/91	MI	Escanaba	Delta County	FDC 1/6332	VOR Rwy 9 Amdt 12
12/18/91	MI	Escanaba	Delta County	FDC 1/6333	LOC /DME BC Rwy 27 Amdt 2
12/18/91	MI	Escanaba	Delta County	FDC 1/6335	VOR Rwy 18 Amdt 6
12/18/91	MI	Manistee	Manistee County-Blacker	FDC 1/6336	VOR Rwy 27 Amdt 9
12/18/91	MI	Manistee	Manistee County-Blacker	FDC 1/6337	VOR Rwy 9 Amdt 9
12/19/91	MI	Escanaba	Delta County	FDC 1/6354	IL/DME Rwy 9 Amdt 3
12/19/91	SC	Laurens	Laurens County	FDC 1/6347	NDB Rwy 7 Amdt 1
12/24/91	AR	Jonesboro	Jonesboro Muni	FDC 1/6412	VOR Rwy 23 Amdt 7
12/24/91	TN	Lawrenceburg	Lawrenceburg Muni	FDC 1/6426	NDB Rwy 16 Amdt 3
12/27/91	AR	Paragould	Kirk Field	FDC 1/6441	VOR Rwy 4 Amdt 2
12/27/91	LA	Alexandria	Esler Regional	FDC 1/6442	NDB Rwy 26 Amdt 7
12/27/91	LA	Alexandria	Esler Regional	FDC 1/6443	VOR Rwy 32 Amdt 13
12/27/91	LA	Alexandria	Esler Regional	FDC 1/6445	LOC BC Rwy 8 Amdt 8
12/27/91	LA	Alexandria	Esler Regional	FDC 1/6446	ILS Rwy 26 Amdt 11
12/30/91	NE	Norfolk	Norfolk/Karl Stefan Memorial	FDC 1/6466	ILS Rwy 1 Amdt 3

NFDC Transmittal Letter Attachment

Jonesboro

Jonesboro Muni
Arkansas
VOR RWY 23 AMDT 7...
Effective: 12/24/91

FDC 1/6412/JBR/ FI/P Jonesboro Muni, Jonesboro, AR. VOR RWY 23 AMDT 7...CHG feeder RTE from ARG to JBR. CRS/DSTC 124/22.7, ALT 2500FT. S–23 MDA/HAT 680/419 ALL CATS. When control zone not in effect, the following applies... "Except for operators with approved weather reporting service, use Eaker AFB, AR ALSTG and increase all MDAS 180FT". This becomes VOR RWY 23 AMDT 7A.

Paragould

Kirk Field

Arkansas
VOR RWY 4 AMDT 2...
Effective: 12/27/91
FDC 1/6441/PGR/ FI/P Kirk Field, Paragould, AR. VOR RWY 4 AMDT 2...CHG feeder RTES ARG/LBR VORTACS to PZX NDB...ALT 2500. This becomes VOR RWY 4 AMDT 2A.

Alexandria

Esler Regional
Louisiana
NDB RWY 26 ADMT 7...
Effective: 12/27/91
FDC 1/6442/ESF/ FI/P Esler Regional, Alexandria, LA. NDB RWY 26 AMDT 7...DLT note...activate MALSR RWY 26–CTAF. This becomes NDB RWY 26 AMDT 7A.

Alexandria

Esler Regional
Louisiana
VOR RWY 32 AMDT 13...
Effective: 12/27/91
FDC 1/6443/ESF/ FI/P Esler Regional, Alexandria, LA. VOR RWY 32 AMDT 13...DLT note...activate MALSR RWY 26–CTAF. This becomes VOR RWY 32 AMDT 13A.

Alexandria

Esler Regional
Louisiana
LOC BC RWY 8 AMDT 8...
Effective: 12/27/91
FDC 1/6445/ESF/ FI/P Esler Regional, Alexandria, LA. LOC BC RWY 8 AMDT 8...ALT MINS NA when CTRL TWR closed. DLT note...activate MALSR RWY 26–CTAF. This becomes LOC BC RWY 8 AMDT 8A.

Alexandria

Esler Regional
Louisiana
ILS RWY 26 AMDT 11...
Effective: 12/27/91
FDC 1/6446/ESF/ FI/P Esler Regional, Alexandria, LA. ILS RWY 26 AMDT 11...ALT MINS NA when CTRL TWR closed. DLT note...activate MALSR RWY 26–CTAF. This becomes ILS RWY 26 AMDT 11A.

Escanaba

Delta County
Michigan
VOR RWY 27 AMDT 10...
Effective: 12/18/91
FDC 1/6331/ESC/ FI/P Delta County, Escanaba, MI. VOR RWY 27 AMDT 10...delete notes, "When control zone...thru...increase MDA's 240 feet.", "Air carrier...thru...for local conditions NA.", "alternate minimums NA...thru...weather reporting service." Add note, "If local altimeter not received, use Marquette altimeter setting and increase all MDA's 240 feet." Alternate minimums standard. This is VOR RWY 27 AMDT 10A.

Escanaba

Delta County
Michigan
VOR RWY 9 AMDT 12...
Effective: 12/18/91
FDC 1/6332/ESC/ FI/P Delta County, Escanaba, MI. VOR RWY 9 AMDT 12...Delete notes, "When control zone...thru...increase MDA's 240 feet.", "alternate minimums NA...thru...approved weather reporting service." Add note, "If local altimeter not received, use Marquette altimeter setting and increase all MDA's 240 feet." Alternate minimums standard. This is VOR RWY 9 AMDT 12A.

Escanaba

Delta County
Michigan
LOC/DME BC RWY 27 AMDT 2...
Effective: 12/18/91
FDC 1/6333/ESC/ FI/P Delta County, Escanaba, MI. LOC/DME BC RWY 27 AMDT 2...delete notes, "when control zone...thru...increase MDA's 240 feet.", "activate MALSR...thru...VASI RWYS 18–36 CTAF.", "alternate minimums NA...thru...approved weather reporting service.", "air carrier landing...thru...for local conditions NA.", "activate MALSR, HIRL...thru...VASI RWYS 18–36 CTAF." Add note, "If local altimeter not received, use Marquette altimeter setting and increase all MDA's 240 feet." Alternate minimums standard. This is LOC/DME BC RWY 27 AMDT 2A.

Escanaba

Delta County
Michigan
VOR RWY 18 AMDT 6...
Effective: 12/18/91
FDC 1/6335/BSC/ FI/P Delta County, Escanaba, MI. VOR RWY 18 AMDT 6...delete notes, "when control zone...thru...increase all MDA's 240 feet.", "air carrier...thru...local conditions NA.", "alternate minimums NA...thru...weather reporting service." Add note, "If local altimeter not received use Marquette altimeter setting and increase all MDA's 240 feet." Alternate minimums standard. This becomes VOR RWY 18 AMDT 6A.

Manistee

Manistee County-Blacker
Michigan
VOR RWY 27 AMDT 9...
Effective: 12/18/91
FDC 1/6336/MBL/ FI/P Manistee County-Blacker, Manistee, MI. VOR RWY 27 AMDT 9...delete notes, "obtain local altimeter...thru...visibilities ¾ mile.", "alternate minimums NA...thru...reporting service, CAT D 800 2¼." Add note, "If local altimeter not received use traverse city altimeter setting and increase all MDA's 180 feet." Alternate minimums standard, CAT D 800 2¼. This is VOR RWY 27 AMDT 9A.14.

Manistee

Manistee County-Blacker
Michigan
VOR RWY 9 AMDT 9...
Effective: 12/18/91
FDC 1/6337/MBL/ FI/P Manistee County-Blacker, Manistee, MI. VOR RWY 9 AMDT 9...delete notes, "obtain local altimeter on CTAF...thru...and all visibilities ¾ mile.", "alternate minimums NA...thru...reporting service, CAT D 800 2¼." Add note, "if local altimeter not received use traverse city altimeter setting and increase all MDA's 180 feet." Alternate minimums standard, CAT D 800 2¼. This is VOR RWY 9 AMDT 9A.

Benton Harbor

Ross Field-Twin Cities
Michigan
NDB RWY 27 AMDT 9...
Effective: 12/18/91
FDC 1/6341/BEH/ FI/P Ross Field-Twin Cities, Benton Harbor, MI. NDB RWY 27 AMDT 9...missed approach... climb to 2400 then right turn direct BE LOM and hold. Hold east, right turns, 274 inbound. This is NDB RWY 27 AMDT 9A.

Benton Harbor

Ross Field-Twin Cities
Michigan
ILS RWY 27 AMDT 6...
Effective: 12/18/91
FDC 1/6342/BEH/ FI/P Ross Field-Twin Cities, Benton Harbor, MI. ILS RWY 27 AMDT 6...missed approach... climb to 2400 then right turn direct MALLY LOM and hold. Hold east, right turns, 273 inbound. This is ILS RWY 27 AMDT 6A.

Escanaba

Delta County
Michigan
ILS/DME RWY 9 AMDT 3...
Effective: 12/19/91
FDC 1/6354/ESC/ FI/P Delta County, Escanaba, MI. ILS/DME RWY 9 AMDT 3...delete notes, "when control zone...thru...increase MDA's 240 feet.", "activate MALSR...thru...VASI RWYS 18–36 CTAF.", "alternate minimums NA...thru...weather reporting service." Add note, "If local altimeter not received, use Marquette altimeter setting and increase all MDA's 240 feet."

Alternate minimums standard, CAT D 700–2. This is ILS/DME BC RWY 9 AMDT 3A.

Norfolk

Norfolk/Karl Stefan Memorial
Nebraska
ILS RWY 1 AMDT 3...
Effective: 12/30/91
FDC 1/6466/OFK/ FI/P Norfolk/Karl Stefan Memorial, Norfolk, NE. ILS RWY 1 AMDT 3...MA INST...climb to 4000 then RT direct OFK VOR/DME and hold. TRML RTES OFK and OLU to SLAYS INT... MIM ALT 4000. This becomes ILS RWY 1 AMDT 3A.

Laurens

Laurens County
South Carolina
NDB RWY 7 AMDT 1...
Effective: 12/19/91
FDC 1/6347/34A/ FI/P Laurens County, Laurens, SC. NDB RWY 7 AMDT 1...change all references RWY 7–25 to 8–26. This becomes NDB RWY 8 AMDT 1A.

Lawerenceburg

Lawerenceburg Muni
Tennessee
NDB RWY 16 AMDT 3...
Effective: 12/24/91
FDC 1/6426/2M2/ FI/P Lawerenceburg Muni, Lawerenceburg, TN. NDB RWY 16 AMDT 3...CHG all REF RWY 16/34 to 17/35. This becomes NDB RWY 17 AMDT 3A.

[FR Doc. 92–749 Filed 1–10–92; 8:45 am]
BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60 and 61

[A–1–FRL–40923]

Delegation of New Source Performance Standings (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP); States of Connecticut, Maine, New Hampshire, Rhode Island and Vermont, and Commonwealth of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule amendment.

SUMMARY: This notice amends the Code of Federal Regulations by changing the mailing addresses of the Air Agencies for the States of Connecticut, Maine, New, Hampshire, Rhode Island and Vermont, and the Commonwealth of Massachusetts in 40 CFR part 60, Standards of Performance for New Stationary Sources (NSPS), and 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

EFFECTIVE DATE: January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia C. Kelling of the EPA's Region I State Air Programs Branch, APS, JFK Federal Building, Boston, MA, (617) 565–3249; FTS 835–3249.

SUPPLEMENTARY INFORMATION:

List of Subjects

40 CFR Part 60

Administrative practice and procedure, Air pollution control, Intergovernmental relations.

40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Equipment leaks, Intergovernmental relations, Mercury, Radionuclide, Radon and vinyl chloride.

Dated: December 6, 1991.

Paul G. Keough,

Acting Regional Administrator, Region I.

Parts 60 and 61 of chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601.

Subpart A—General Provisions

2. Section 60.4 is amended by revising paragraph (b)(H), (b)(U), (b)(W), (b)(EE), (b)(OO), and (b)(UU) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(H) State of Connecticut, Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

* * * * *

(U) State of Maine, Bureau of Air Quality Control, Department of Environmental Protection, State House, Station No. 17, Augusta, ME 04333.

* * * * *

(W) Commonwealth of Massachusetts, Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th floor, Boston, MA 02108.

* * * * *

(EE) State of New Hampshire, Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

* * * * *

(OO) State of Rhode Island, Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908.

* * * * *

(UU) State of Vermont, Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

* * * * *

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

Subpart A—General Provisions

2. Section 61.04 is amended by revising paragraphs (b)(H), (b)(U), (b)(W), (b)(EE), (b)(OO) and (b)(UU) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(H) State of Connecticut, Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

* * * * *

(U) State of Maine, Bureau of Air Quality Control, Department of Environmental Protection, State House, Station No. 17, Augusta, ME 04333.

* * * * *

(W) Commonwealth of Massachusetts, Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th floor, Boston, MA 02108.

* * * * *

(EE) State of New Hampshire, Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

* * * * *

(OO) State of Rhode Island, Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908.

* * * * *

(UU) State of Vermont, Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

* * * * *

[FR Doc. 92–783 Filed 1–10–92; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[General Docket No. 84–1234, FCC 91–427]

Mobile Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; final decision on remand.

SUMMARY: The Commission has issued a Final Decision on Remand which reinstates the requirement that mobile satellite service (MSS) in the 1545–1559 MHz and 1646.5–1660.5 MHz frequency bands (the upper L-band) shall be provided by a consortium of all willing and qualified applicants. The Commission also modifies the financial requirements for participation in the consortium to permit three entities whose applications previously were dismissed an opportunity to join the consortium at this time. Finally, the Commission affirms the American Mobile Satellite Corporation (AMSC) consortium as the authorized licensee to construct, launch and operate an MSS system in the upper L-band. This action is prompted by the decision of the U.S. Court of Appeals for the District of Columbia Circuit, which remanded to the Commission two aspects of its MSS decisions for further consideration. This action is intended to ensure that new mobile satellite services are made available in the upper L-band spectrum, through a domestic provider, to United States consumers.

EFFECTIVE DATE: January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Fern Jarmulnek, Satellite Radio Branch, Common Carrier Bureau (202) 634–1624, or Richard Welch, Office of General Counsel (202) 632–6990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Final Decision on Remand regarding the Court of Appeals remand in the mobile satellite service proceeding, FCC 91–427, adopted December 27, 1991, and released January 6, 1992.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washington, DC and in the Domestic Facilities Public Reference Room, room 6220, 2025 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Final Decision on Remand

The Commission has issued a Final Decision on Remand reconsidering several decisions related to the licensing of a domestic mobile satellite service (MSS) provider in the 1545–1559 MHz and 1646.5–1660.5 MHz frequency bands (the upper L-band). This action is prompted by the decision of the U.S. Court of Appeals for the District of Columbia Circuit, which remanded to the Commission for further consideration two aspects of its MSS decisions. See *Aeronautical Radio, Inc.* v. *FCC*, 928 F.2d 428 (D.C. Cir. 1991). First, the court faulted the manner in which the Commission imposed the requirement that applicants demonstrate their financial qualifications through a cash contribution. Second, the court vacated the Commission's consortium rule, holding that the Commission had not provided adequate justification for its decision to forego comparative hearings on the competing applications. The court also reversed the dismissal of the applications submitted by Global Land Mobile Satellite, Inc., Globesat Express and Mobile Satellite Service, Inc. (MSSI).

In response to the court's decision, the Commission issued a Tentative Decision on August 2, 1991, which outlined its tentative conclusions concerning the remand issues and invited comment by interested persons. See Tentative Decision, 56 FR 38404 (August 13, 1991), 6 FCC Rcd 4900 (1991). Eight persons commented on the Tentative Decision, and five persons filed reply comments. After considering those comments and the instructions of the Court of Appeals, the Commission issued its Final Decision on Remand generally affirming the tentative conclusions set forth in the Tentative Decision. The Final Decision on Remand: (1) Concludes that the Commission has statutory authority to adopt a consortium licensing rule in appropriate circumstances pursuant to its broad rulemaking authority under the public interest standard embodied in the Communications Act; (2) finds that adoption of the consortium licensing rule is reasonably and fully justified by compelling circumstances involving the international frequency coordination process that are unique to the MSS licensing proceeding; (3) modifies the criteria for participation in the consortium to allow the three applicants reinstated by the court to join the consortium without making any mandatory financial contribution; and (4) affirm the American Mobile Satellite Corporation (AMSC) consortium as the authorized domestic MSS licensee.

Legal Authority to Adopt the Consortium Requirement

The Final Decision on Remand concludes that the Commission has statutory authority to adopt in appropriate circumstances a licensing rule which requires that service be provided by a consortium comprised of all willing and eligible applicants in lieu of holding comparative hearings. Specifically, the Commission concludes that it may adopt the consortium requirement in this proceeding pursuant to its broad authority under the Communications Act to prescribe reasonable rules in the public interest. The Commission observes that 47 U.S.C. 309(e), as interpreted by *Ashbacker Radio Corp.* v. *FCC*, 326 U.S. 327 (1945), does not mandate comparative hearings in all circumstances nor prohibit the Commission from employing a mandatory consortium licensing rule in this instance. Rather, the Commission finds that its adoption of the consortium rule as a fundamental licensing eligibility criterion is consistent with *U.S.* v. *Storer Broadcasting Co.*, 351 U.S. 192 (1956). The Commission also finds that adoption of the consortium requirements is consistent with its longstanding practice of avoiding administrative hearings in common carrier and satellite licensing proceedings.

Considerations Justifying the Consortium Requirement

The Commission concludes that compelling factors unique to the MSS licensing proceeding indicate that the mandatory consortium approach, rather than comparative hearings, will best serve the public interest in these circumstances. International considerations render it highly unlikely that a domestic mobile satellite service would be implemented in the upper L-band unless the Commission authorizes an MSS licensee promptly. In order to ensure sufficient spectrum for a domestic MSS system in the upper L-bank frequencies, the United States must successfully complete the ongoing international frequency assignments and coordination process. The international negotiations are at a critical juncture, with several countries vying with the United States for limited spectrum in the upper L-band frequencies for MSS systems. The Commission finds that active and immediate participation by an authorized MSS licensee is critical to the success of ongoing U.S. efforts in the international frequency coordination process to secure needed spectrum for a domestic MSS system. The Commission concludes that the delay caused by conducting further time-consuming administrative proceedings (*ie.*, comparative hearings or a lottery) would severely weaken the U.S. negotiating position and threaten the ability of the United States to secure needed spectrum in the upper L-band for a domestic MSS system.

Reimposition of the Consortium Requirement

Accordingly, the Commission reinstates the requirement that MSS service in the upper L-band frequencies shall be provided by a consortium of all willing and qualified applicants. The Commission finds good cause for mailing the consortium requirement effective immediately upon publication in the **Federal Register**. The exigent circumstances involving the international frequency coordination process make immediate implementation of the consortium rule necessary to enable the Commission to grant final authorization to a domestic MSS licensee.

Criteria for Participation in the Consortium

The Commission modifies the financial requirements previously imposed for participation in the consortium to permit the three entities whose applications were reinstated by the court an opportunity to join the existing AMSC consortium absent any mandatory financial contribution. The Commission finds that the original financial contribution requirement is no longer necessary, since AMSC has become a fully operational enterprise with sufficient financial resources to construct, launch and operate the MSS system. Accordingly, Global, Globesat and MSSI thus may now join consortium in accordance with their willingness and ability to invest in AMSC. In addition, the Commission adopts the suggestion of MSSI to revise the timetable governing participation in the consortium to allow for an appeal of this Final Decision on Remand. Accordingly, the reinstated applicants will have 180 days in which to join the consortium, beginning on the date this Final Decision on Remand is no longer subject to judicial review.

Affirmation of AMSC as Authorized Licensee

In light of the conclusions described above, the Commission reaffirms the grant of the domestic MSS license to the AMSC consortium. AMSC is hereby authorized to construct, launch and operate an MSS system in the upper L-band frequencies subject to the terms, condition and specifications of the applications on file with the Commission, as amended, and as modified by prior Commission orders in this proceeding and by this Final Decision on Remand.

Conclusion

By this Final Decision on Remand, the Commission seeks to resolve the licensing issues that have been remanded to it in a manner that will best ensure the implementation of a U.S. domestic MSS system in the upper L-band spectrum. The Commission concludes that the exigencies of the international frequency coordination process require that it proceed immediately with a domestic licensee, and thus reinstates the requirement that MSS service shall be provided by a consortium of all willing and qualified applicants. If any other course is pursued, such as holding time—consuming comparative hearings, the United States likely will be unable to secure sufficient spectrum in the upper L-band to support a viable domestic MSS system.

Ordering Clauses

Accordingly, *It is ordered,* That the tentative conclusions set forth in the Tentative Decision in this proceeding concerning the issues remanded by the court of appeals are affirmed as indicated above.

It is further ordered, Pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), That the consortium requirement vacated by the court of appeals is reinstated as indicated above. The consortium requirement shall be effective immediately upon publication in the **Federal Register.**[1]

It is further ordered, Pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), That American Mobile Satellite Corporation is affirmed as the authorized licensee to construct, launch and operate an MSS system in the upper L-band frequencies, subject to the terms, conditions and specifications set forth in the applications, as amended, and as modified by prior Commission orders in this proceeding and by this Final Decision. This authorization shall be effective immediately upon publication in the **Federal Register.**

It is further ordered, That Global Land Mobile Satellite, Inc., Globesat Express, and Mobile Satellite Service, Inc., MAY PARTICIPATE in the licensed consortium subject to the terms and conditions specified in the Tentative Decision and this Final Decision. Failure by the above-referenced applicants to satisfy the specified terms and conditions for participation in the consortium will result in the dismissal of their applications for noncompliance with the Commission's rules and policies.

List of Subjects in 47 CFR Part 25

Communications common carriers, Satellites.

Federal Communications Commission.

Donna R. Searcy,

Secretary

[FR Doc. 92-604 Filed 1-10-92; 8:45 am]

BILLING CODE 6712-01-M

[1] Due to the exigent circumstances noted above concerning the international frequency coordination process, we find good cause for making the consortium requirement effective immediately upon publication in the **Federal Register.** 5 U.S.C. 553(d)(3). Immediate implementation of the consortium rule is necessary to grant final authorization to a domestic MSS licensee. As described above, the presence and participation of an authorized domestic MSS licensee during the ongoing international negotiations is critical to U.S. efforts to secure needed spectrum for a domestic MSS system. Unless the consortium requirement takes effect immediately there will no final, authorized MSS licensee to assist the Commission in the international frequency coordination process.

Proposed Rules

Federal Register
Vol. 57, No. 8
Monday, January 13, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-154-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening the comment period.

SUMMARY: This notice proposes to revise an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would have required adjustment of the escape system girt bar locks. That proposal was prompted by a report of an escape slide that failed to deploy and fell to the ground. This condition, if not corrected, could result in the emergency escape system not being available during an emergency evacuation. This action revises the proposed rule by including a requirement to inspect and adjust, if necessary, certain additional Type I emergency exit escape system girt bar locks.

DATES: Comments must be received no later than February 12, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-154-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2784. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-154-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-154-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations applicable to certain Boeing Model 767 series airplanes which would have required adjustment of the escape system ball plunger for the girt bar locks was published in the Federal Register on August 30, 1991 (56 FR 42961). In effect, these adjustment requirements affected Type A exits and certain Type I exits. That action was prompted by a report of an escape slide that failed to deploy and fell to the ground. This condition, if not corrected, could result in the escape system not being available during an emergency evacuation.

Since the issuance of that proposal, the airplane manufacturer has advised the FAA that this condition could also affect certain Type I emergency exists that were omitted from the original service bulletin. The manufacturer has developed procedures for inspection and adjustment of the additional Type I emergency exit escape system ball plunger for the girt bar locks.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-52A0061, Revision 1, dated September 26, 1991, which describes procedures for inspection and adjustment of the ball plunger for the girt bar locks for Type A and Type I exists to ensure the proper retention of the girt bar to the girt bar carrier.

Since the unsafe condition described could also exist with regard to these additional emergency exit escape system configurations, the FAA has determined that it is necessary to revise the exiting proposal to add inspections and necessary adjustments of them. Since these new proposed requirements go beyond the scope of those originally proposed, the comment period has been reopened to provide additional time for public comment.

The paragraph designations of this Supplemental NPRM have been revised to be consistent with the standard Federal Register style.

Paragraph (b) of the Supplemental NPRM has been revised to specify the current procedures for submitting requests for alternative methods of compliance.

There are approximately 354 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 134 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor cost would be $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $147,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91–NM–154–AD.

Applicability: Model 767 series airplanes, as listed in Boeing Alert Service Bulletin 767–52A0061, Revision 1, dated September 26, 1991, certificated in any category.

Compliance: Required within the next 60 days after the effective date of this AD, unless previously accomplished.

To ensure proper retention of the girt bar to the girt bar carrier, accomplish the following:

(a) Adjust the ball plunger for the girt bar locks in accordance with Boeing Alert Service Bulletin 767–52A0061, Revision 1, dated September 26, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may occur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–752 Filed 1–10–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–147–AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which would have superseded an existing AD to require a one-time inspection of the landing gear normal selector mechanism to ensure that certain bolts are installed, and installation of these bolts, if necessary; repetitive operational tests of the hydraulic landing gear change-over valve mechanism; and modification of the undercarriage emergency release mechanism which, when installed, would terminate the need for the currently required operational tests. That proposal was prompted by the development of a modification which improves the existing design of the hydraulic landing gear change-over valve mechanism. This action revises the proposed rule by deleting the requirement to perform a one-time inspection of the normal selector mechanism for installation of correct bolts, and by adding new requirements for inspection and modification of the landing gear normal selector mechanism. The actions specified by this proposed AD are intended to prevent a gear-up landing.

DATES: Comments must be received by February 12, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–147–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–147–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–147–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90–21–11, Amendment 39–6806 (55 FR 47847, November 16, 1990), which is applicable to British Aerospace Model ATP series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 14, 1991 (56 FR 40281). That NPRM would have required a one-time inspection of the normal selector mechanism to ensure that certain bolts are installed, and installation of these bolts, if necessary; repetitive operational tests of the hydraulic landing gear change-over valve mechanism; and modification of the undercarriage emergency release mechanism which, when installed, would terminate the need for the currently required operational tests. That NPRM was prompted by the development of modifications which improve the existing design of the landing gear normal selector mechanism and the hydraulic landing gear change-over valve mechanism. The proposed actions were intended to prevent a gear-up landing.

Since the issuance of that NPRM, the FAA has received reports of additional difficulties experienced with the landing gear normal selector mechanism due to a missing connector and binding in the selector mechanism. These conditions, if not corrected, could result in improper functioning and binding of the landing gear normal selector system and the landing gear emergency release mechanism.

Subsequently, British Aerospace has issued Service Bulletin ATP 32–30, Revision 2, dated April 22, 1991, which describes procedures to perform a one-time visual inspection of the swivel assembly in the teleflex cable to ensure installation of a teleflex cable connector and, if the connector is not installed, installation of a connector and replacement teleflex cable; and installation of clevis pins in lieu of bolts. The United Kingdom Civil Aviation Authority (CAA) has classified this service bulletin as mandatory. The FAA has examined this service information, and has determined that it is necessary to include the actions described in the service bulletin in this proposal.

Paragraph (a) of the original Notice proposed to require an inspection of the normal operating linkage to determine if certain part-numbered bolts were installed; if any other part-numbered bolts were found, those bolts were to be removed and replaced with bolts of the appropriate part number. The CAA has recently completed a review of the undercarriage normal selection mechanism and, as a result of their findings, has submitted documentation supporting the use of clevis pins in lieu of these bolts. The CAA advises that clevis pins are installed on the undercarriage selection mechanism of another British Aerospace airplane model that has a mechanism similar to that of the Model ATP, and no defects related to the use of these pins have been reported in 6 million flying hours. The CAA presented the manufacturer's view that the installation of clevis pins in lieu of bolts provides improved protection against maintenance errors (i.e., over-tightening of bolts), and does not degrade the reliability of the landing gear normal selector mechanism. After further review, the FAA concurs with the findings of the CAA. A requirement to install clevis pins in lieu of bolts in the normal selector mechanism has been added to this proposal.

The economic analysis, below, has been revised to reflect the current number of Model ATP series airplanes on the U.S. Registry, and to include additional work hours needed to accomplish further actions proposed by this proposed rule.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional time for public comment.

It is estimated that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 113 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $821 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $63,324.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6806 and by adding the following new airworthiness directive:

British Aerospace: Docket 91–NM–147–AD. Supersedes AD 90–21–11, Amendment 39–6806.

Applicability: Model ATP series airplanes, serial numbers 2001 through 2037, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a gear-up landing, accomplish the following:

(a) Within 24 hours after November 29, 1990 (the effective date of AD 90–21–11, Amendment 39–6806), and thereafter at intervals not to exceed 30 hours time-in-service, perform an operational test of the hydraulic landing gear change-over valve mechanism, in accordance with British Aerospace Alert Service Bulletin A–ATP–32–26, Revision 1, dated September 25, 1990. Any binding or stiffness must be corrected prior to further flight, in accordance with instructions in the manufacturer's maintenance manual.

(b) Within 60 days after the effective date of this AD, modify the undercarriage emergency release mechanism and perform the associated functional test on the up lock release mechanism, in accordance with the accomplishment instructions in British Aerospace Service Bulletin ATP–32–29, Revision 1, dated June 6, 1991.

(c) Modification of the undercarriage emergency release mechanism, in accordance with British Aerospace Service Bulletin ATP–32–29, Revision 1, dated June 6, 1991, constitutes terminating action for the repetitive operational tests required by paragraph (a) of this AD.

(d) Within 60 days after the effective date of this AD, accomplish the following in accordance with British Aerospace Service

Bulletin ATP-32-36, Revision 2, dated April 22, 1991

(1) Perform a one-time visual inspection of the swivel assembly in the landing gear normal selector mechanism teleflex cable to ensure that the correct connector is fitted. If the correct connector is not fitted, prior to further flight, install a connector and replacement teleflex cable.

(2) Install clevis pins, at specified locations, in lieu of bolts in the normal selector mechanism.

(3) Perform functional tests of the landing gear normal selector mechanism.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-751 Filed 1-10-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-42-90]

RIN 1545-A069

Bad Debt Reserves of Thrift Institutions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed income tax regulations for thrift institutions that become ineligible to use the reserve method of accounting for bad debts allowed by section 593 of the Internal Revenue Code. The proposed regulations provide guidance on changing from and returning to this method of accounting. This guidance is needed because thrifts are becoming ineligible, in increasing numbers, to maintain bad debt reserves under Code section 593. The proposed regulations are intended to facilitate changes from and returns to the reserve method of Code section 593.

DATES: Written comments must be received by April 13, 1992. Requests to speak at the public hearing that is scheduled for June 5, 1992, with outlines of oral comments, must be received by May 18, 1992. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to speak at the public hearing, and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI-42-90), room 5228, Washington, DC 20044. In the alternative, comments and requests (with outlines) may be hand delivered to: Internal Revenue Service, 1111 Constitution Ave., NW., CC:CORP:T:R (FI-42-90), room 5228, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Bernita L. Thigpen, telephone 202-566-3297 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collections of information in these regulations are in §§ 1.593-12(c)(2), 1.593-13(b) and 1.593-14(b)(1). This information is required by the Internal Revenue Service in connection with changes in accounting method. This information will be used to monitor and approve changes in accounting method that occur under these regulations. The likely respondents are thrift institutions that become ineligible to use the reserve method of Code section 593.

The time burden estimate for the collections of information in these regulations is reflected in the burden of Form 3115 (Application for Change in Accounting Method).

Background

The proposed regulations contained in this document provide guidance for thrift institutions that become ineligible to use the reserve method of accounting for bad debts allowed by Code section 593. The regulations set forth rules on changing from and returning to this method of accounting, and the regulations provide procedures for complying with these rules. These regulations are issued under the authority of code sections 446 and 481.

Need for the Regulations

Increasingly, thrift institutions are becoming ineligible to maintain bad debt reserves under section 593. Often a voluntary change from a thrift charter to a commercial bank charter is the cause of the ineligibility, because institutions chartered as commercial banks are not eligible to use the reserve method of section 593.

Ineligibility has also increased because of legislative changes. The Tax Reform Act of 1986 (the 1986 Act), Public Law No. 99-514, enacted section 953(a)(2), which requires all thrifts to meet the 60-percent asset test of section 7701(a)(19)(C) in order to maintain reserves under section 593. In addition, the 1986 Act amended section 593(b)(2) to reduce from 40 to 8 percent the percentage of taxable income allowable as an addition to a reserve under section 593, thereby making the reserve method of section 593 less attractive.

For these and other reasons, thrifts are increasingly unwilling or unable to remain eligible to use the reserve method of section 593. These regulations are proposed in order to provide guidance on the consequences of becoming ineligible.

Methods of Accounting for Bad Debts

The Code requires most taxpayers to use the specific charge-off method of accounting for bad debts. Under this method, deductions are allowed for bad debts at the time the debts actually become worthless. In contrast, under a reserve method, deductions are allowed currently for debts that may become worthless in the future.

Both sections 593 and 585(b) of the Code provide reserve methods of accounting for bad debts. The reserve methods of sections 593 and 595(b) differ with respect to the rules they provide, including the rules for computing deductible additions to a reserve. The reserve method of section 593 provides more liberal rules for computing these additions.

The reserve methods of sections 593 and 585(b) also differ with respect to the institutions to which they apply. The reserve method of section 593 is available only to thrift institutions that meet the requirements of sections 593(a)(1) and 593(a)(2). The reserve method of section 585(b) is available only to banks that are not "large" within the meaning of section 585(c)(2) (*i.e.*, banks with assets of $500 million or less). Large banks must use the specific

charge-off method of accounting for bad debts. Thrifts that are not eligible to use the reserve method of section 593 are eligible to use the reserve method of section 585(b) if they satisfy the eligibility requirements otherwise applicable to banks, such as owning assets of $500 million or less.

Thus, a thrift with assets of over $500 million (a "large thrift") that becomes ineligible to use the reserve method of section 593 must change to the specific charge-off method because it is ineligible for the reserve method of section 585(b). A thrift with assets of $500 million or less (a "small thrift") that becomes ineligible to use the reserve method of section 593 must change to either the reserve method of section 585(b) or the specific charge-off method.

Sections 446 and 481

Code section 446 and the regulations thereunder provide general rules concerning methods of accounting. Section 1.446–1(e)(2)(ii)(*a*) of the Income Tax Regulations states that a change in the treatment of any material item used in the taxpayer's overall plan of accounting is a change in accounting method. A change from, or return to, the reserve method of section 593 is a change in accounting method under section 446. See Rev. Rul. 85–171, 1985–2 C.B. 148.

Code section 446(e) provides that the Commissioner's consent must be obtained to change an accounting method. This requirement applies even when the taxpayer is using an impermissible method of accounting. Thus, the Commissioner's consent is needed for a change from, or return to, the reserve method of section 593.

Code section 481(a) provides that upon a change in accounting method, adjustments must be made as necessary to prevent amounts from being duplicated or omitted in computing taxable income. An institution's treatment of bad debts affects the timing of its computation of taxable income, and a change from or return to the reserve method of section 593 is a change in accounting method that requires an adjustment under section 481(a). See Rev. Rul. 85–171.

The Service has broad discretion to determine the proper manner of effecting a change in accounting method. Section 1.446–1(e)(3)(ii) of the regulations authorizes the Commissioner to prescribe administrative procedures setting forth limitations, terms, and conditions deemed necessary for a taxpayer to obtain consent to a change in accounting method, including limitations, terms, and conditions for determining and including an adjustment under section 481(a).

Sections 585(c)(3) and 585(c)(4)

Section 585(c), enacted by the 1986 Act, makes large banks ineligible for the reserve method of section 585(b). In effect, section 585(c) requires all large banks that maintain reserves under section 585 to change to the specific charge-off method. Sections 585(c)(3) and 585(c)(4) provide special rules for large banks to follow in making this change, including rules that affect the section 481(a) adjustment. Section 585(c)(3) provides a recapture procedure with a special period over which to take the section 481(a) adjustment into account, and section 585(c)(4) provides a cut-off procedure that replaces the section 481(a) adjustment. For institutions to which they apply, these special rules modify the generally applicable rules promulgated under sections 446 and 481.

The Service historically has administered changes from the reserve method of section 593 by applying the terms and conditions ordinarily imposed under section 481(a). See Rev. Rule. 85–71. In the General Explanation of the Tax Reform Act of 1986 (Blue Book) at page 556, the staff of the Joint Committee on Taxation indicates that large thrifts that become ineligible to use the reserve method of section 593 may use the special procedures provided in sections 585 (c)(3) and (c)(4) for large banks required to change to the specific charge-off method. However, no such suggestion is contained in the House, Senate or Conference Committee Report on the 1986 Act. The statutory language itself does not clearly provide that former thrifts may use the special rules of sections 585 (c)(3) and (c)(4). Rather, the language of section 585(c) evinces a Congressional intent that these rules apply only to financial institutions that have maintained reserves under section 585(b).

Under the statute, a financial institution is eligible to use the special rules of sections 585 (c)(3) and (c)(4) only if it has assets that exceed $500 million. Thus, when a thrift with assets of $500 million or less becomes ineligible to use the reserve method of section 593, it must recapture some or all of its reserve under the generally applicable rules of section 481(a). Applying the special rules without limitation to large former thrifts would create inequity between large and small former thrifts that change from the reserve method of section 593 for the same reason. In the absence of express language in the statute or the committee reports, it does not seem reasonable to infer that Congress intended this inequity.

There are also longstanding differences between the tax treatment of bad debt reserves of thrifts and banks that make it unlikely Congress intended the special rules of sections 585 (c)(3) and (c)(4) to apply to thrifts. Since 1952, when thrifts first became subject to federal income tax, the Code has provided special rules for the reserves of thrifts that did not apply to reserves maintained by banks. Applying sections 585 (c)(3) and (c)(4) to changes from the reserve method of section 593 would be inconsistent with the differences in composition and treatment of thrift and bank reserves. For example, application of section 585(c)(4) could permit circumvention of the recapture requirement of section 593(e).

For the foregoing reasons, the Service has determined that, notwithstanding the statement in the Blue Book, the special rules of sections 585 (c)(3) and (c)(4) apply only to institutions that have maintained reserves under section 585(b) before being required to change to the specific charge-off method. Accordingly, the proposed regulations do not apply sections 585 (c)(3) and (c)(4) to changes from the reserve method of section 593.

Instead, consistent with its historical practice, the Service will administer changes from the reserve method of section 593 by making adjustments pursuant to its general regulatory authority under section 481(c). Pursuant to this authority, the proposed regulations permit a large thrift that becomes ineligible to use the reserve method of section 593 to elect to apply section 585 (c)(3) or (c)(4) to the portion of its reserve that is comparable to that of a bank (*i.e.*, the portion equivalent to a reserve maintained under section 585(b)).

In effect, this approach treats a large thrift like a large bank to the extent that its reserve is comparable to that of a bank. This approach is consistent with the Congressional intent underlying sections 585 (c)(3) and (c)(4), and it provides equity between large thrifts and large banks. This approach does not create inequity between large thrifts and small thrifts, because a small thrift that becomes ineligible to use the reserve method of section 593 may maintain a reserve under section 585(b). Moreover, this approach does not allow circumvention of the recapture requirement of section 593(e), because the recapture requirement generally does not apply to the portion of a thrift's reserve that is equivalent to a reserve maintained under section 585(b).

Because sections 585 (c)(3) and (c)(4) apply to a large bank's reserve maintained under section 585(b), it is appropriate to apply these sections to the comparable portion of a large thrift's reserve.

Explanation of Provisions

The regulations contained in this document propose to add new §§ 1.593–12 through 1.593–14. Proposed § 1.593–12 provides basic rules for thrift institutions that become ineligible to use the reserve method of section 593 and provides effective dates and transitional rules. Proposed § 1.593–13 provides an automatic procedure for changing from the reserve method of section 593. Proposed § 1.593–14 provides guidance for institutions that regain their eligibility to use this method.

Section 1.593–12: Thrifts Ineligible for Section 593 Reserve

The proposed regulations apply generally to thrift institutions that become ineligible to use the reserve method of section 593 ("former thrifts"). Proposed § 1.593–12(a)(1) states the basic requirement that a former thrift must change from the reserve method of section 593.

The reserve method of section 585(b) is available to former thrifts, but is not available to former thrifts that are "large" within the meaning of section 585(c)(2). Therefore, proposed § 1.593–12(a)(1) provides that whether a former thrift must change to the specific charge-off method of accounting for bad debts, or has the option of changing to the reserve method of section 585(b), depends on whether the institution is large. Proposed § 1.593–12(b)(3) defines the term "large institution" for this purpose.

Proposed § 1.593–12(a)(2) provides that the principles of § 1.593–13 apply to method changes that are required by section 381(c)(4), which is generally triggered by corporate mergers and other similar tax-free reorganizations. Rules may be prescribed for applying these principles to changes required by section 381(c)(4). Under these rules, any tax consequences of the change generally will be taken into account ratably over 6 taxable years (rather than in one taxable year, as generally required under section 381(c)(4)).

The regulations are proposed to be effective generally only for taxable years ending after the date that is 30 days after the regulations are finalized (§ 1.593–12(c)(1)). Thus, the regulations will apply to institutions that become ineligible to use the reserve method of section 593 in any taxable year ending after the date that is 30 days after the regulations are finalized.

Existing law governs changes from (and to) the reserve method of section 593 for taxable years before the regulations apply. As discussed above, under existing law such a change is a change in accounting method under section 446, requiring the Commissioner's consent and a section 481(a) adjustment. Under existing law, a large former thrift may not use the reserve method of section 585(b) for taxable years beginning after 1986, and sections 585 (c)(3) and (c)(4) do not apply to its change from the reserve method of section 593.

The proposed regulations allow certain former thrifts an opportunity to request the Commissioner's consent to apply the regulations for the first taxable year beginning after 1986 in which the thrift becomes ineligible to use the reserve method of section 593 and for all succeeding taxable years ("retroactive application"). Retroactive application would permit institutions to use the provisions of the regulations applying sections 585 (c)(3) and (c)(4) to the portion of a large former thrift's reserve that is comparable to that of a bank (proposed § 1.593–13(c) (3) and (4)); the safe harbor method for restating a reserve on a return to the reserve method of section 593 (proposed § 1.593–14(d)(2)(i)(C)); and the one-year "footfault" election (proposed § 1.593–14(d)(2)(ii)).

Prior to finalization of the regulations, the Service intends to issue an administrative pronouncement setting forth procedures for requesting consent to retroactive application and requirements for obtaining this consent. It is expected that the request for consent will be made by filing Form 3115 (Application for Change in Accounting Method) in the manner provided in proposed § 1.593–12(c)(2)(ii). It is also expected that this form will be required to be filed no later than 6 months after the regulations are finalized.

However, if the Service contacts a former thrift for an examination of any federal income tax return (or has so contacted a former thrift and the examination has not been concluded), and the former thrift has not yet properly filed a Form 3115 to request the Commissioner's consent to change from the reserve method of section 593, the former thrift will not be eligible to request consent to retroactive application. In such a case, the change in accounting method will be imposed in accordance with the procedures that apply to a change in a Category A method of accounting pursuant to an examination of a taxpayer's return. These procedures generally require the full amount of a section 481(a) adjustment resulting from the change to be taken into account in the taxable year of the change.

Notwithstanding the preceding paragraph and proposed § 1.593–13(a)(2), special rules apply to certain former thrifts that have not been contacted for examination or, if they have been contacted for examination, no issue relating to the former thrift's treatment of its required change from the reserve method of section 593 in its first ineligibility year beginning after 1986 has yet been raised. Such former thrifts may file Form 3115 by April 13, 1992, in order to request either (1) consent to retroactive application, or (2) consent to change their method of accounting for bad debts in the current taxable year in accordance with § 1.446–1(e)(3) (including any applicable administrative procedure prescribed thereunder).

The applicable requirements for obtaining the Commissioner's consent to retroactive application will depend on whether the statute of limitations for a former thrift's first ineligibility year beginning after 1986 remains open when the regulations are finalized. If the statute remains open, the former thrift will be required to file amended returns as provided in proposed § 1.593–12(c)(2)(iii). It is expected that if the statute does not remain open, to obtain consent the former thrift will be required to reach agreement with the Commissioner regarding the terms, conditions, and adjustments relating to an accounting method change that is implemented under the retroactive application.

Section 1.593–13: Changes From Reserve Method of Section 593

Proposed § 1.593–13(a)(1) provides that a change from the reserve method of section 593 is a change in accounting method under section 446, and an adjustment under section 481(a) is required. Proposed § 1.593–13 provides an automatic procedure for former thrifts to follow in changing from the reserve method of section 593. If a former thrift complies with this procedure, its change will be treated as made with the consent of the Commissioner. Even if a former thrift is under audit, in appeals, or in court, the automatic procedure ordinarily is available if its use does not affect, and is not affected by, resolution of the audit, appeal, or court proceeding (proposed § 1.593–13(a)(2)).

Proposed § 1.593–13(c) provides rules for changing from the reserve method of

section 593 to the specific charge-off method of accounting for bad debts. Paragraph (2) of this section provides the standard method for determining and including the section 481(a) adjustment attributable to a former thrift's bad debt reserve. Under this method, a former thrift must restate its reserve to zero as of the first day of the year of change. The amount of the former thrift's section 481(a) adjustment is the amount of its reserve immediately before the restatement, and this amount must generally be included in the former thrift's income ratably over 6 taxable years.

Paragraph (3) of proposed § 1.593–13(c) provides an alternative "recapture" method for determining and including the section 481(a) adjustment. This method may be elected only by a large former thrift. Under this method, as under the standard method, a former thrift must first restate its reserve to zero as of the first day of the year of change, and the amount of its section 481(a) adjustment is the amount of its reserve immediately before the restatement. Under the recapture method, this adjustment is divided into two parts. The "section 585 portion" of the adjustment is generally the amount the reserve would have been on the first day of the year of change if the former thrift had, since its formation, maintained a reserve under the provisions of section 585 that are in effect on that first day. The proposed regulations explain how to determine this amount. (This amount is also referred to as the "section 585 level" of the reserve.) The remainder, if any, of the former thrift's section 481(a) adjustment is the "section 593 portion" of the adjustment. Pursuant to proposed § 1.593–13(c)(3), the recapture method provided under section 585(c)(3) and § 1.585–6 applies to the section 585 portion of the adjustment. The section 593 portion of the adjustment must generally be included in the former thrift's income ratably over 6 taxable years.

Paragraph (4) of proposed § 1.593–13(c), which is another alternative that may be elected only by large former thrifts, provides a partial cut-off method for making the change in accounting method. Under this method, a former thrift must restate its reserve to the section 585 level as of the first day of the year of change. Pursuant to proposed § 1.593–13(c)(4), the cut-off method provided under section 585(c)(4) and § 1.585–7 applies to the former thrift's restated reserve. The amount of the former thrift's section 481(a) adjustment is the amount by which the reserve balance, immediately before the restatement, exceeds the amount to which the reserve is restated. The amount of this adjustment must generally be included in the former thrift's income ratably over 6 taxable years.

Proposed § 1.593–13(d) provides rules for changing from the reserve method of section 593 to the reserve method of section 585(b). These rules apply only to former thrifts that are not large, because large former thrifts are ineligible to use the reserve method of section 585(b). The rules for determining the former thrift's restated reserve are essentially the same as those under proposed § 1.593–13(c)(4). However, the former thrift's restated reserve will be maintained under the reserve method of section 585(b), rather than discontinued under a cut-off procedure. Proposed § 1.593–13(d)(4) explains how to determine a former thrift's base year amount after it changes to the reserve method of section 585(b).

Proposed § 1.593–13(e) permits a former thrift to elect to net section 481(a) adjustments on a change from the reserve method of section 593. If this election is made, a former thrift must net a positive (or negative) section 481(a) adjustment against any remaining negative (or positive) section 481(a) adjustment resulting from a prior change in the former thrift's method of accounting for bad debts.

Section 1.593–14: Requalification for Section 593

Proposed § 1.593–14 provides guidance for former thrifts that regain their eligibility to use the reserve method of section 593 ("requalified thrifts"). A requalified thrift may use the specific charge-off method of accounting for bad debts or the reserve method of section 593. To change to either of these methods, a requalified thrift must follow the rules of proposed § 1.593–14.

Proposed § 1.593–14(b) requires a requalified thrift to obtain the Commissioner's consent to the change. This section also explains how a requalified thrift requests consent, and when the requalified thrift may assume that consent has been granted.

Proposed § 1.593–14(c) provides rules for a requalified thrift changing from the reserve method of section 585 to the specific charge-off method. These rules are essentially the same as those of proposed § 1.593–13(c)(2), which provides the standard method for determining and including a section 481(a) adjustment for a former thrift changing from the reserve method of section 593 to the specific charge-off method.

Proposed § 1.593–14(d) provides rules for a requalified thrift that returns to the reserve method of section 593. Under these rules, the requalified thrift must establish or restate its bad debt reserve to the "section 593 level" as of the first day of the year change. This level generally represents the amount that the reserve would have been on that first day if the requalified thrift had, since its formation, maintained a reserve under the provisions of section 593 that are in effect on that first day. Pursuant to proposed § 1.593–14(d)(2)(i), this amount may be determined under an experience method, a percentage of taxable income method, or a safe harbor method. The safe harbor method takes into account such factors as the creation of a thrift's supplemental reserve in 1962.

Proposed § 1.593–14(d)(2)(ii) provides an election for requalified thrifts that obtain the Commissioner's consent to return to the reserve method of section 593 in the year following the year in which they changed from this method. This election allows the requalified thrift to restate its reserve (and make the necessary correlative adjustments) as if it had not been required to change, and had not changed, from the reserve method of section 593 in the preceding year.

Proposed § 1.593–14(d)(3) provides rules for determining a section 481(a) adjustment for a requalified thrift that returns to the reserve method of section 593 and that is not eligible for, or does not make the election under, § 1.593–14(d)(2)(ii). The amount of this adjustment generally is the amount by which the requalified thrift's new reserve balance exceeds its reserve balance, if any, as of the close of the year preceding the year of change. The amount of this section 481(a) adjustment must generally be deducted ratably over 6 taxable years.

Proposed § 1.593–14(d)(4) provides an election to net the section 481(a) adjustment resulting from a return to the reserve method of section 593 with any outstanding section 481(a) adjustment resulting from a prior change in the institution's method of accounting for bad debts. Proposed § 1.593–14(d)(4) also explains how to net section 481(a) adjustments and take a net section 481(a) adjustment into account.

Revenue Procedure 85–8, 1985–1 C.B. 495, provides a procedure for changing from the specific charge-off method of accounting for bad debts to a reserve method. When finalized, the proposed regulations will supersede Rev. Proc. 85–8 for requalified thrifts returning to the reserve method of section 593 and for

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former thrifts changing to the reserve method of section 585.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing on these proposed regulations will be held on June 5, 1992. See the notice of public hearing published elsewhere in this issue of the Federal Register.

List of Subjects in 26 CFR 1.581 Through 1.601–1

Banks, Income taxes.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter 1, part 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * * §§ 1.593–12 through 1.593–14 also issued under 26 U.S.C. 446 and 481.

Par. 2. New §§ 1.593–12, 1.593–13 and 1.593–14 are added to read as follows:

§ 1.593–12 Thrift institutions that become ineligible to use the reserve method of section 593.

(a) *Requirement of change*—(1) *In general.* Except as otherwise provided in paragraph (a)(2) of this section, this section applies to any former thrift institution (as defined in paragraph (b)(1) of this section) that maintains a reserve for bad debts under section 593 at the time it becomes a former thrift institution. A former thrift institution to which this section applies must change, in any ineligibility year (as defined in paragraph (b)(2) of this section), from the reserve method of accounting for bad debts allowed by section 593. If the institution is a large institution (as defined in paragraph (b)(3) of this section), it must change to the specific charge-off method of accounting for bad debts in accordance with § 1.593–13. If the institution is not a large institution, it must change either to the specific charge-off method or to the reserve method allowed by section 585, in accordance with § 1.593–13. Section 1.593–14 provides rules for former thrift institutions that regain their eligibility to use the reserve method of section 593; these rules include procedures for returning to the reserve method of section 593 and for changing from the reserve method of section 585 to the specific charge-off method.

(2) *Certain section 381(a) transactions.* This paragraph (a)(2) applies if a former thrift institution becomes ineligible to maintain a reserve under section 593 in a transaction to which section 381(a) applies, and section 381(c)(4) and § 1.381(4)–1 require the institution to change from the reserve method of section 593 because parties to the section 381(a) transaction use different methods of accounting for bad debts. If this paragraph (a)(2) applies, section 381(c)(4) and § 1.381(c)(4)–1 determine the method of accounting for bad debts to which the institution must change. However, the principles of § 1.593–13 determine the manner of effecting the change. The Secretary may prescribe rules for applying the principles of § 1.593–13 in these section 381(a) transactions.

(3) *Noncompliance with requirement of change.* If a former thrift institution fails to comply with this section and § 1.593–13 for an ineligibility year, the institution will be considered to have an impermissible method of accounting for bad debts in the ineligibility year and subsequent years. Such an institution must comply with the requirement of § 1.446–1(e)(3) (including any applicable administrative procedure prescribed thereunder) to obtain the Commissioner's consent to change to a permissible method of accounting for bad debts. The procedure for change provided by § 1.593–13 is available only for an ineligibility year.

(4) *Automatic procedure for change limited to former thrift institutions.* An institution that is eligible to maintain a reserve for bad debts under section 593 for a taxable year is not a former thrift institution within the meaning of paragraph (b)(1) of this section for that taxable year. Therefore, such an institution may not, for that taxable year, use the procedure for change provided by § 1.593–13. However, such an institution may request the Commissioner's consent to change in that taxable year to the specific charge-off method of accounting for bad debts, in accordance with § 1.446–1(e)(3) (including any applicable administrative procedure prescribed thereunder).

(5) *Changes by former thrift institutions not required by this section.* If a former thrift institution that maintains a reserve under section 585 becomes a large institution (as defined in paragraph (b)(3) of this section), the institution must change to the specific charge-off method of accounting for bad debts as required by section 585(c) and the regulations thereunder. A former thrift institution that is not a large institution may request the Commissioner's consent to change from the reserve method of section 585 to the specific charge-off method, or from the specific charge-off method to the reserve method of section 585, in accordance with § 1.446–1(e)(3) (including any applicable administrative procedure prescribed thereunder).

(b) *Definitions.* The following definitions apply for purposes of this section and §§ 1.593–13 and 1.593–14:

(1) *Former thrift institution.* An organization is a former thrift institution for any taxable year in which the organization is ineligible for any reason to maintain a reserve for bad debts under section 593, if for any preceding taxable year it was eligible to maintain a reserve under section 593. (For this purpose, an organization is considered eligible to maintain a reserve under section 593 for a taxable year if the organization satisfies the requirements of sections 593(a)(1) and 593(a)(2) for that taxable year.) In addition, any organization that establishes a reserve under section 593 pursuant to a transfer described in section 351 or section 381 and, in the same taxable year, becomes ineligible to maintain the reserve, is a former thrift institution for that taxable year and for any succeeding taxable year in which the organization is ineligible to maintain a reserve under section 593.

(2) *Ineligibility year.* An ineligibility year is any taxable year in which an institution is ineligible to maintain a reserve for bad debts under section 593 after being eligible to maintain, and maintaining, a reserve under section 593 for the immediately preceding taxable year. For an institution described in the last sentence of paragraph (b)(1) of this

section, the taxable year of the transfer referred to in that sentence also is an ineligibility year.

(3) *Large institution.* An institution is a large institution if, for the taxable year (or for any preceding taxable year in which this section applies to the institution), the institution is both—

(i) A former thrift institution (as defined in paragraph (b)(1) of this section), and

(ii) An institution described in paragraph (i) or (ii) of § 1.585–5(b)(1).

(c) *Effective date*—(1) *In general.* This section and § § 1.593–13 and 1.593–14 are effective for taxable years ending after (*Insert date that is 30 days after this document is published as a final regulation in the* Federal Register).

(2) *Retroactive application of regulations with consent of Commissioner*—(i) *In general.* An institution generally may request the Commissioner's consent to apply this section and § § 1.593–13 and 1.593–14 for its first ineligibility year that begins after December 31, 1986, and for all succeeding taxable years. However, an institution may not request this consent if, as of January 13, 1992, the Internal Revenue Service has raised on audit an issue relating to the institution's treatment of its required change from the reserve method of section 593 in its first ineligibility year that begins after December 31, 1986. An administrative procedure will be prescribed to set forth rules on requesting and obtaining the Commissioner's consent under this paragraph (c)(2) (including, in certain circumstances, the non-applicability of § 1.593–13(a)(2)).

(ii) *Manner of making request.* An institution must make any request under this paragraph (c)(2) by filing a completed Form 3115 (Application for Change in Accounting Method) for the change from the reserve method of section 593 required in its first ineligibility year beginning after December 31, 1986. See § 1.446–1(e)(3)(i) and any applicable administrative procedure prescribed thereunder. The form must state that the institution is requesting retroactive application of § § 1.593–12, 1.593–13 and 1.593–14 under § 1.593–12(c)(2). The form must be filed with the Commissioner of Internal Revenue (CC:IT&A:9), 1111 Constitution Avenue, NW., Washington, DC 20224.

(iii) *Amended returns.* If an institution's original federal income tax return for the ineligibility year or any other year for which retroactive application is requested is filed before the request is made, the institution can obtain the Commissioner's consent only if it agrees to file amended federal income tax returns for all such taxable years (for which the statute of limitations under section 6501 has not expired) no later than (*Insert date that is 6 months after this document is published as a final regulation in the* Federal Register). Any such amended federal income tax return will be treated as the institution's original return for purposes of § § 1.593–13 and 1.593–14. The Commissioner may condition its consent on the institution's agreement to extend the statute of limitations for taxable years affected by the retroactive application.

(d) *Examples.* For purposes of the examples in this section, the thrift institution is a calendar year taxpayer and is not a member of a parent-subsidiary controlled group. The following examples illustrate the principles of this section:

Example 1. Thrift institution T is eligible to maintain, and does maintain, a reserve for bad debts under section 593 for all of its taxable years before 1992. T's average total assets for 1992 (determined under § 1.585–5(c)) do not exceed $500 million. During 1992, T changes its charter to a commercial bank charter in a transaction to which section 381(a) applies. This charter change causes T to become ineligible to maintain a reserve under section 593. Therefore, in 1992 T becomes a former thrift institution within the meaning of § 1.593–12(b)(1). For T, 1992 is an ineligibility year within the meaning of § 1.593–12(b)(2). The section 381(a) transaction is a transfer in connection with a reorganization described in section 368(a)(1)(F), and the parties to the transaction do not use different methods of accounting for bad debts on the date of the transaction; accordingly, T is not required to change its method of accounting for bad debts pursuant to section 381(c)(4) and § 1.381(c)(4)–1. Therefore, § 1.593–12(a)(2) does not apply. Because T's average total assets for 1992 do not exceed $500 million, T is not an institution described in § 1.585–5(b)(1)(i). Nor is T a large institution within the meaning of § 1.593–12(b)(3). Pursuant to § 1.593–12, in 1992 T must change either to the specific charge-off method of accounting for bad debts or to the reserve method of section 585, in accordance with § 1.593–13.

Example 2. Thrift institution T is eligible to maintain, and does maintain, a reserve for bad debts under section 593 for all of its taxable years before 1992. T's average total assets for 1992 (determined under § 1.585–5(c) are $550 million. In 1992 T does not meet the 60-percent asset test of section 7701(a)(19)(C) and thus is ineligible to maintain a bad debt reserve under section 593. As a result, in 1992 T is a former thrift institution within the meaning of § 1.593–12(b)(1), and 1992 is an ineligibility year. Because T's average total assets for 1992 exceeds $500 million, T is an institution described in § 1.585–5(b)(1)(i). T is also a large institution within the meaning of § 1.593–12(b)(3). Pursuant to § 1.593–12, in 1992 T must change to the specific charge-off method of accounting for bad debts in accordance with § 1.593–13.

Example 3. The facts are the same as in Example 2. In 1994, T satisfies the 60-percent asset test of section 7701(a)(19)(C) and becomes eligible to return, and returns, to the reserve method of section 593 in accordance with § 1.593–14. In 1995, T once again does not meet the 60-percent assets test of section 7701(a)(19)(C). Therefore, 1995 is also an ineligibility year. T's average total assets for 1995 are $480 million. Although T's average total assets in 1995 do not exceed $300 million, T is a large institution because its average total assets exceeded $500 million in 1992, a year in which T was a former thrift institution. As a result, in 1995 T must change to the specific charge-off method of accounting for bad debts in accordance with § 1.593–13.

§ 1.593–13 Changes by former thrift institutions from the reserve method of section 593.

(a) *Procedure for change—(1) In general.* This section sets forth the procedure that a former thrift institution must follow in changing, in an ineligibility year, from the reserve method of section 593. Such a change is a change in accounting method under section 446, and an adjustment is required pursuant to section 481(a). Except in the case of a request for retroactive application under § 1.593–12(c)(2), if a former thrift institution complies with this section in changing from the reserve method of section 593, the change will be treated as made with the consent of the Commissioner. Paragraph (b) of this section contains rules for filing the required application for a change in accounting method; paragraph (c) of this section contains rules for changing to the specific charge-off method of accounting for bad debts; paragraph (d) of this section contains rules for changing to the reserve method of section 585; and paragraph (e) of this section contains rules for making an election to net section 481(a) adjustments.

(2) *Former thrift institutions under audit.* This paragraph (a)(2) applies to a former thrift institution that meets the following two conditions: At the time it files the application form required by paragraph (b) of this section, the institution is before an examining agent, an appeals office, or any federal court regarding its federal income tax return for any taxable year; and, second, the institution's current ineligibility year is not the first taxable year in which the institution has become ineligible to maintain a reserve under section 593. In order to use the procedures for change provided by this section, an institution to which this paragraph (a)(2) applies must obtain a statement from the examining agent, appeals officer, or counsel for the government that there is

no objection to the use of this procedure. Ordinarily there will be no such objection unless the change in accounting method under this section affects, or is affected by, resolution of the audit, appeal, or court proceeding. The institution must attach the statement to its application form filed in accordance with paragraph (b) of this section. If an institution to which this paragraph (a)(2) applies does not obtain the required statement, the institution must comply with the requirements of § 1.446–1(e)(3) (including any applicable administrative procedure prescribed thereunder) to obtain the Commissioner's consent to change from the reserve method of section 593 in the ineligibility year. For purposes of this paragraph (a)(2), an institution is considered before an examining agent regarding a return from the time a representative of the Internal Revenue Service contacts the institution in any manner to schedule an examination of the return, until the expiration of the period during which the institution must respond to the thirty-day letter that accompanies the examination report.

(b) *Requirement to file Form 3115.* In order to change its method of accounting for bad debts under this section, an institution must file a completed Form 3115 (Application for Change in Accounting Method). See § 1.446–1(e)(3)(i). The form must explain the computation of the institution's new reserve balance (if any), the computation of the institution's section 481(a) adjustment (if any), and the expected time and manner of taking the adjustment into account. The following words must be typed or legibly printed at the top of page 1 of the form: "Automatic Change from Section 593 Reserve Method under § 1.593–13." The original of the completed form must be filed by attaching it to the institution's timely filed (taking extensions into account) original federal income tax return for the ineligibility year.

(c) *Change to the specific charge-off method*—(1) *In general.* A former thrift institution that changes to the specific charge-off method of accounting for bad debts may not deduct, for the ineligibility year or any subsequent taxable year in which it remains on the specific charge-off method, any amount for an addition to a reserve for bad debts. However, for these years, an institution (other than an institution that elects the cut-off method of change under paragraph (c)(4) of this section) may deduct amounts allowed under section 166(a) for specific debts that become worthless in whole or in part. An institution that elects the cut-off method of change under paragraph (c)(4) of this section may deduct amounts under section 166(a) only as allowed by § 1.585–7. An institution that is a large institution (within the meaning of § 1.593–12(b)(3)), must apply the rules of paragraph (c)(2), (c)(3) or (c)(4) of this section. An institution that is not a large institution must apply the rules of paragraph (c)(2) of this section on a change to the specific charge-off method.

(2) *Standard method of change*—(i) *Restatement of reserve to zero.* A former thrift institution that changes to the specific charge-off method must restate the amount of its reserve for bad debts to zero as of the first day of the ineligibility year.

(ii) *Amount of section 481(a) adjustment.* The amount of the former thrift institution's section 481(a) adjustment is the amount of the institution's reserve for bad debts, determined under section 593, as of the close of the taxable year that immediately precedes the ineligibility year. For this purpose, an institution's bad debt reserve includes its reserve for losses on qualifying real property loans, its reserve for losses on nonqualifying loans, and its supplemental reserve for losses on loans. Since the change from the reserve method of section 593 is treated as initiated by the institution, the amount of its section 481(a) adjustment is not reduced by amounts attributable to taxable years beginning in 1952 or 1953.

(iii) *Inclusion in income*—(A) *In general.* The former thrift institution must include the amount of its section 481(a) adjustment in income ratably over 6 taxable years, beginning in the ineligibility year. However, if the institution has been in existence for less than 6 taxable years (as of the first day of the ineligibility year), the amount of its section 481(a) adjustment must be included in income ratably over the number of taxable years it has been in existence. For this purpose, an institution's taxable years of existence include those of any corporation from which the institution acquired loan assets in a transaction to which section 381(a) applies.

(B) *Cessation of business.* If the former thrift institution ceases to engage in the business of investing in loans, the institution must include in income any remaining amount of its section 481(a) adjustment in the taxable year in which this cessation occurs. For this purpose, a transaction to which section 381(a) applies does not, by itself, cause an institution to be treated as having ceased to engage in the business of investing in loans. The successor corporation in a section 381(a) transaction generally takes into account any remaining section 481(a) adjustment as though it were the acquired corporation. If the successor corporation ceases to engage in the business of investing in loans, it must include in income any remaining adjustment in the taxable year in which this cessation occurs.

(3) *Alternative recapture method of change*—(i) *In general.* In lieu of applying the rules of paragraph (c)(2) or (c)(4) of this section, a large former thrift institution may elect to apply the rules of this paragraph (c)(3). This election must be made by clearly stating on the institution's Form 3115, completed and filed in accordance with the requirements of paragraph (b) of this section, that the institution is electing the recapture method of change under § 1.593–13(c)(3).

(ii) *Restatement of reserve to zero.* A former thrift institution that elects to apply the rules of this paragraph (c)(3) must restate the amount of its reserve for bad debts to zero as of the first day of the ineligibility year.

(iii) *Amount and portions of section 481(a) adjustment.* The amount of the former thrift institution's section 481(a) adjustment is the amount of the institution's reserve for bad debts as of the close of the taxable year immediately preceding the ineligibility year (determined as described in paragraph (c)(2)(ii) of this section). The "section 585 portion" of this adjustment equals the amount to which the institution's reserve would be restated if it were restated under paragraph (c)(4)(ii) of this section as of the first day of the ineligibility year. The remainder, if any, of the institution's section 481(a) adjustment is the "section 593 portion" of the adjustment.

(iv) *Inclusion in income.* The former thrift institution must take the section 593 portion, if any, of its section 481(a) adjustment into account in the manner provided by paragraph (c)(2)(iii) of this section. Notwithstanding the last sentence of § 1.585–5(a), the rules of section 585(c)(3) and § 1.585–6 (which provide a recapture method of change) apply with respect to the section 585 portion of the institution's section 481(a) adjustment. The institution must comply with all relevant rules of § 1.585–8 regarding the making and revoking of elections under § 1.585–6. For purposes of applying §§ 1.585–6 and 1.585–8, an institution's ineligibility year is treated as its disqualification year.

(4) *Alternative cut-off method of change*—(i) *In general.* In lieu of applying the rules of paragraph (c)(2) or

(c)(3) of this section, a large former thrift institution may elect to apply the rules of this paragraph (c)(4). This election must be made by clearly stating on the institution's Form 3115, completed and filed in accordance with the requirements of paragraph (b) of this section, that the institution is electing the cut-off method of change under § 1.593–13(c)(4).

(ii) *Restatement of reserve to section 585 level.* A former thrift institution that elects to apply the rules of this paragraph (c)(4) must restate the amount of its reserve for bad debts as of the first day of the ineligibility year. The restated balance of the reserve is the institution's 6-year moving average amount (determined by applying § 1.585–2(c)(1)(ii) for the taxable year immediately preceding the ineligibility year) or, if less, the amount of the institution's reserve for bad debts as of the close of the taxable year immediately preceding the ineligibility year (determined as described in paragraph (c)(2)(ii) of this section).

(iii) *Section 481(a) adjustment.* The amount of the institution's section 481(a) adjustment, if any, is the amount by which the amount of the institution's reserve for bad debts as of the close of the taxable year immediately preceding the ineligibility year (determined as described in paragraph (c)(2)(ii) of this section), exceeds the amount to which the institution's reserve is restated under paragraph (c)(4)(ii) of this section. The institution must take the amount of the section 481(a) adjustment into account in the manner provided by paragraph (c)(2)(iii) of this section.

(iv) *Treatment of restated reserve.* Notwithstanding the last sentence of § 1.585–5(a), the rules of section 585(c)(4) and § 1.585–7 (which provide a cut-off method of change) apply with respect to the former thrift institution's restated reserve. For purposes of applying § 1.585–7, an institution's ineligibility year is treated as its disqualification year, and any loan that the institution held on the last day of the taxable year immediately preceding its ineligibility year is treated as a pre-disqualification loan.

(5) *Example.* The following example illustrates the principles of this paragraph (c):

Example 1. Thrift institution T, a calendar year taxpayer, is an institution to which § 1.593–12 applies. T is a large institution within the meaning of § 1593–12(b)(3), and its ineligibility year is 1992. T has been in existence for more than 6 years as of the beginning of 1992, and no portion of a section 481(a) adjustment relating to T's method of accounting for bad debts remains outstanding at the beginning of 1992. Because T is a large institution in its ineligibility year, T must change to the specific charge-off method of accounting for bad debts in 1992. The balance of T's reserve at the end of 1991 is $600,000. T's 6-year moving average amount, determined in accordance with § 1.593–13(c)(4)(ii) for 1991, is $240,000.

(i) T does not elect an alternative treatment of its reserve under § 1.593–13(c)(3) or § 1.593–13(c)(4). Thus, pursuant to § 1.593–13(c)(2)(i), T must restate its bad debt reserve to zero as of January 1, 1992. Pursuant to § 1.593–13(c)(2) (ii) and (iii), the amount of T's section 481(a) adjustment is $600,000, and T must include this amount in income ratably over 6 taxable years, beginning in 1992. Thus, T includes $100,000 in income in each of years 1992 through 1997. In 1992 and later years, T deducts amounts allowed under section 166(a) for specific debts that become worthless in whole or in part.

(ii) Instead of the standard method, T elects the recapture method under § 1.593–13(c)(3). Pursuant to § 1.593–13(c)(3)(ii), T must restate its bad debt reserve to zero as of January 1, 1992. Pursuant to § 1.593–13(c)(3)(iii), the amount of T's section 481(a) adjustment is $600,000; the section 585 portion of this adjustment is $240,000, and the section 593 portion is $360,000 ($600,000–$240,000). Pursuant to § 1.593–13(c)(3)(iv), T must include $360,000 in income ratably over 6 taxable years, beginning in 1992. In addition, pursuant to § 1.593–13(c)(3)(iv), T must comply with the recapture method of section 585(c)(3) and § 1.585–6 with respect to the section 585 portion of its section 481(a) adjustment ($240,000). T is not financially troubled within the meaning of § 1.585–6(d)(3), and it does not make the election provided in § 1.585–6(b)(2). Therefore, T must include $240,000 in income over 4 years, beginning in 1992, in the portions prescribed by § 1.585–6(b)(1).

(iii) Instead of the standard or recapture method, T elects the cut-off method under § 1.593–13(c)(4). Pursuant to § 1.593–13(c)(4)(ii), T must restate its bad debt reserve to $240,000 as of January 1, 1992. (See § 1.593–13(d)(5) for an example illustrating the principles of restating the reserve.) Pursuant to § 1.593–13(c)(4)(iii), the amount of T's section 481(a) adjustment is $360,000 ($600,000–$240,000), and T must include this amount in income ratably over 6 taxable years, beginning in 1992. Pursuant to § 1.593–13(c)(4)(iv), T must follow the cut-off method of section 585(c)(4) and § 1.585–7 with respect to its restated reserve.

(d) *Change to the reserve method of section 585*—(1) *In general.* This paragraph (d) sets forth rules for changing under this section from the reserve method of section 593 to the reserve method of section 585. A former thrift institution may make this change only if it is not a large institution within the meaning of § 1.593–12(b)(3). An institution that makes this change must restate its reserve for bad debts as provided in paragraph (d)(2) of this section, and it must take into account the amount of its section 481(a) adjustment, if any, as provided in paragraph (d)(3) of this section. An institution that changes to the reserve method of section 585 may, for the ineligibility year and any succeeding taxable year, deduct only amounts allowed under section 585 for additions to the reserve. For purposes of computing these amounts, the institution must determine its base year amount under paragraph (d)(4) of this section. Paragraph (e) of this section provides an election to net section 481(a) adjustments.

(2) *Restatement of reserve to section 585 level.* The former thrift institution must restate the amount of this reserve for bad debts, as of the first day of the ineligibility year, to the amount described in paragraph (c)(4)(ii) of this section (the section 585 level).

(3) *Section 481(a) adjustment.* The amount of the former thrift institution's section 481(a) adjustment, if any, is the amount by which the amount of the institution's reserve for bad debts as of the close of the taxable year immediately preceding the ineligibility year (determined as described in paragraph (c)(2)(ii) of this section), is greater or less than the amount to which the institution's reserve is restated under paragraph (c)(4)(ii) of this section. The institution must take the amount of the section 481(a) adjustment into account in the manner provided by paragraph (c)(2)(iii) of this section for including amounts of income.

(4) *Base year amount.* For purposes of applying § 1.585–2(c)(1)(iii) to compute additions to the reserve for the ineligibility year and any succeeding taxable year, the balance of the institution's reserve for bad debts as of the close of the base year is the institution's 6-year moving average amount, determined by applying § 1.585–2(c)(1)(ii) for the institution's last taxable year, if any, beginning before 1988. If the institution has no taxable year beginning before 1988, its base year amount is zero.

(5) *Example.* The following example illustrates the principles of this paragraph (d):

Example. Thrift institution T, a calendar year taxpayer, seeks to change under § 1.593–13 to the reserve method of section 585. T's ineligibility year is 1992. T has been in existence for more than 6 years as of the beginning of 1992, and no portion of a section 481(a) adjustment relating to T's method of accounting for bad debts remains outstanding at the beginning of 1992. The balance of T's bad debt reserve at the end of 1991 is $800,000. Pursuant to § 1.593–13(d)(2), T must restate its reserve as of January 1, 1992, to its 6-year moving average amount, determined by applying § 1.585–2(c)(1)(ii) for 1991. T's

bad debts (adjusted for recoveries) and loans outstanding are as follows:

Year	Bad debts	Loans at year-end
1991	$480,000	$50,000,000
1990	420,320	46,000,000
1989	360,000	30,500,000
1988	399,450	32,500,000
1987	270,000	20,000,000
1986	260,230	21,000,000
Total	2,000,000	200,000,000

The ratio of T's total bad debts from 1986 through 1991, to its total loans outstanding during the same period, is 1/100. T had $50 million of loans outstanding at the end of 1991, and 1/100 of this amount is $500,000. Thus, T's 6-year moving average amount as of the end of 1991 is $500,000, and T must restate its reserve to this amount as of January 1, 1992. Pursuant to § 1.593–13(d)(3), the amount of T's section 481(a) adjustment is $300,000 ($800,000–$500,000). Pursuant to § 1.593–13(d)(3), T must include this amount in income ratably over 6 taxable years, beginning in 1992. For 1992 and later years, T may deduct amounts allowed under section 585 for additions to the reserve. For purposes of computing these amounts, pursuant to § 1.593–13(d)(4) T's base year amount is its 6-year moving average amount, determined by applying § 1.585–2(c)(1)(iii) for 1987.

(e) *Election to net section 481(a) adjustments.* If any portion of a section 481(a) adjustment resulting from any prior change in an institution's method of accounting for bad debts remains outstanding at the beginning of the taxable year in which the institution changes under this section from the reserve method of section 593, the institution may elect to net section 481(a) adjustments under the principles of § 1.593–14(d)(4). See *Example 3* in § 1.593–14(d)(6) for an illustration of this provision.

§ 1.593–14 Former thrift institutions that regain eligibility to use the reserve method of section 593.

(a) *Requirement of change*—(1) *In general.* Except as otherwise provided in paragraph (a)(2) of this section, this section applies to any institution to which § 1.593–12 applies for an ineligibility year and which becomes eligible, in a later year, to maintain a reserve for bad debts under section 593. An institution may not maintain a reserve under section 585 for any year in which it is eligible to maintain a reserve under section 593. Therefore, if an institution to which this section applies maintains a reserve under section 585, the institution must obtain the Commissioner's consent to change either to the specific charge-off method of accounting for bad debts under section 166, or to the reserve method of section 593, in the year that it regains its eligibility to maintain a reserve under section 593. If an institution to which this section applies uses the specific charge-off method, it may seek the Commissioner's consent to change back to the reserve method of section 593 in any year that it is eligible to use this method. Any such change from the reserve method of section 585 or the specific charge-off method must be made in accordance with this section. Paragraph (b) of this section contains rules for obtaining the Commissioner's consent to the change; paragraph (c) contains rules for changing to the specific charge-off method; and paragraph (d) contains rules for returning to the reserve method of section 593.

(2) *Certain section 381(a) transactions.* This paragraph (a)(2) applies to an institution described in the first sentence of paragraph (a)(1) of this section if the institution regains its eligibility to maintain a reserve under section 593 in a transaction to which section 381(a) applies, and section 381(c)(4) and § 1.381(c)(4)–1 require the institution to change its method of accounting for bad debts because parties to the section 381(a) transaction use different methods of accounting for bad debts. If this paragraph (a)(2) applies, section 381(c)(4) and § 1.381(c)(4)–1 determine the method of accounting for bad debts to which the institution must change. However, the principles of this § 1.593–14 determine the manner of effecting the change. The Secretary may prescribe rules for applying the principles of § 1.593–14 in these section 381(a) transactions.

(b) *Consent of Commissioner*—(1) *In general.* An institution must obtain the consent of the Commissioner in order to change its method of accounting for bad debts under this section. To request the Commissioner's consent to a change under this section, an institution must file a completed Form 3115 (Application for Change in Accounting Method). See § 1.446–1(e)(3)(i). The form must explain the computation of the institution's new reserve balance (if any), the computation of the institution's section 481(a) adjustment (if any), and the expected time and manner of taking the adjustment into account. The following words must be typed or legibly printed at the top of page 1 of the form: "Change to Specific Charge-off Method under § 1.593–14" or "Return to Section 593 Reserve Method under § 1.593–14." The original of the completed form must be filed by attaching it to the institution's timely filed (taking extensions into account) original federal income tax return for the taxable year in which the institution seeks to change its method of accounting for bad debts ("year of change"). A copy of the completed form must be filed with the Commissioner of Internal Revenue (CC:IT&A:9), 1111 Constitution Avenue, NW., Washington, DC 20224, by the due date (including extensions) of the institution's original federal income tax return for the year of change.

(2) *Presumption of consent.* An institution may assume that consent to a change under this section has been granted if—

(i) The institution has complied with §§ 1.593–12 and 1.593–13 and this section;

(ii) The Internal Revenue Service does not notify the institution, within 90 days after the due date (including extensions) of the institution's original federal income tax return for the year of change, that consent to the change is denied; and

(iii) The change is either—(A) A change to the reserve method of section 593 and the institution has not changed from this method more than once in the 6 taxable years immediately before the year of change, or

(B) A change from the reserve method of section 585 to the specific charge-off method.

(c) *Change to the specific charge-off method*—(1) *In general.* An institution that changes to the specific charge-off method may not deduct, for the year of change or any succeeding taxable year in which it remains on this method, any amount for an addition to a reserve for bad debts. However, for these years, the institution may deduct amounts allowed under section 166(a) for specific debts that become worthless in whole or in part.

(2) *Treatment of reserve.* In order to change from the reserve method of section 585 to the specific charge-off method, an institution must restate the amount of its reserve for bad debts to zero as of the first day of the year of change. The amount of the institution's section 481(a) adjustment is the amount of the institution's reserve for bad debts as of the close of the taxable year immediately preceding the year of change. The institution must take its section 481(a) adjustment into account as provided in § 1.593–13(c)(2)(iii). In applying § 1.593–13(c)(2)(iii) for this purpose, the year of change is treated as the ineligibility year. If any portion of a section 481(a) adjustment resulting from any prior change in the institution's method of accounting for bad debts remains outstanding at the beginning of the year of change, the institution may elect to net section 481(a) adjustments under the principles of § 1.593–14(d)(4).

(d) *Return to the reserve method of section 593*—(1) *In general.* An institution that changes back to the reserve method of section 593 must establish or restate the amount of its reserve for bad debts as provided in paragraph (d)(2) of this section, and it must take into account the amount of its section 481(a) adjustment, if any, as provided in paragraphs (d)(3) and (d)(4) of this section. The institution may deduct additions to its reserve for bad debts, to the extent allowed by section 593, for the year of change and for succeeding taxable years in which it remains eligible to use the reserve method of section 593. For purposes of computing these additions, an institution that does not make the election allowed by paragraph (d)(2)(ii) of this section must determine its base year amount under § 1.593–13(d)(4).

(2) *Establishing or restating reserve to section 593 level*—(i) *In general.* In order to change back to the reserve method of section 593, an institution must establish or restate the amount of its reserve for bad debts as of the first day of the year of change. The initial or restated balance of the reserve is the amount determined under paragraph (d)(2)(i)(A), (B) or (C) of this section (but not less than the amount determined under paragraph (d)(2)(i)(A) of this section). For rules on allocating a reserve balance determined under paragraph (d)(2)(i) (A) or (B) of this section, see paragraph (d)(2)(iii) of this section.

(A) *Experience method balance.* The amount determined under this paragraph (d)(2)(i)(A) is the institution's 6-year moving average amount, determined by applying § 1.585–2(c)(1)(ii) for the taxable year immediately preceding the year of change.

(B) *Percentage of taxable income method balance.* The amount determined under this paragraph (d)(2)(i)(B) is the amount that the institution's reserve would have been on the first day of the year of change if the institution had maintained a reserve consistently under the percentage of taxable income method of section 593(b)(2), applying section 593(b)(2) as it is in effect on that first day. For this purpose, section 593(b)(2) is applied without regard to the reduction described in section 593(b)(2)(B) and without regard to the limits of sections 593(b)(1)(B)(ii) and 593(b)(2)(C). In determining the amount under this paragraph (d)(2)(i)(B), an institution may take into account all of its taxable years of existence or any number of its most recent consecutive taxable years. For this purpose, an institution's taxable years of existence include those of any corporation from which the institution acquired loan assets in a transaction to which section 381(a) applies.

(C) *Safe harbor balance.* The amount determined under this paragraph (d)(2)(i)(C) is—

(*1*) With regard to the institution's reserve for losses on nonqualifying loans, the institution's 6-year moving average amount for nonqualifying loans (determined by applying § 1.585–2(c)(1)(ii) with respect to nonqualifying loans for the taxable year immediately preceding the year of change), and

(*2*) With regard to the institution's reserve for losses on qualifying real property loans, the sum of—

(*i*) The amount that equals 25 percent of the balance of the institution's reserve under section 593 for losses on qualifying real property loans at the end of the institution's last taxable year beginning before January 1, 1987, and

(*ii*) The amount determined under paragraph (d)(2)(i)(B) of this section with respect to all succeeding taxable years (taking into account the reduction described in section 593(b)(2)(B)).

(ii) *One-year election*—(A) *In general.* This paragraph (d)(2)(ii) applies to any institution that changes from the reserve method of section 593 in an ineligibility year, in accordance with §§ 1.593–12 and 1.593–13, and obtains the Commissioner's consent to change back to this method in the taxable year immediately succeeding the ineligibility year. Except as otherwise provided in paragraph (d)(2)(ii)(B) of this section, an institution to which this paragraph (d)(2)(ii) applies may elect to treat itself in the ineligibility year and the taxable year immediately succeeding the ineligibility year as if it had not been required to change, and had not changed, from the reserve method of section 593 (*i.e.*, as if it had not become ineligible to maintain a reserve under section 593 and had continued to maintain its reserve under section 593). Any election under this paragraph (d)(2)(ii) must be made by the due date (including extensions) of the institution's original federal income tax return for the taxable year immediately succeeding the ineligibility year. To make the election, an institution must—

(*1*) File an amended federal income tax return for the ineligibility year, treating itself as remaining on the reserve method of section 593 in that year;

(*2*) File its original federal income tax return for the taxable year immediately succeeding the ineligibility year, treating itself as having remained on the reserve method of section 593 in the ineligibility year and remaining on that method in the immediately succeeding taxable year; and

(*3*) Clearly state, on its Form 3115 completed and filed in accordance with the requirements of paragraph (b) of this section, that the institution is making the one-year election under § 1.593–14(d)(2)(ii).

(B) *Six-year limitation.* If an institution makes the election allowed by paragraph (d)(2)(ii)(A) of this section for an ineligibility year, the institution may not make the same election for any succeeding ineligibility year that is less than 6 taxable years after the ineligibility year for which the election is made.

(iii) *Allocation of reserve.* If an institution determines the initial or restated balance of its reserve under paragraph (d)(2)(i) (A) or (B) of this section, the institution must allocate this balance between a reserve for losses on qualifying real property loans and a reserve for losses on nonqualifying loans. The amount of the reserve balance to be allocated to the reserve for losses on nonqualifying loans is the institution's 6-year moving average amount for nonqualifying loans, determined by applying § 1.585–2(c)(1)(ii) with respect to nonqualifying loans for the taxable year immediately preceding the year of change. The remainder of the reserve balance is allocated to the reserve for losses on qualifying real property loans.

(3) *Section 481(a) adjustment.* The amount of an institution's section 481(a) adjustment, if any, upon changing back to the reserve method of section 593 is the amount by which the institution's initial or restated reserve balance (as determined under paragraph (d)(2)(i) of this section), is greater or less than the institution's reserve balance (if any) as of the close of the taxable year immediately preceding the year of change. The institution must take the amount of the section 481(a) adjustment into account in the manner provided by § 1.593–13(c)(2)(iii) for including amounts in income. For purposes of applying § 1.593–13(c)(2)(iii), the year of change is treated as the ineligibility year.

(4) *Election to net section 481(a) adjustments.*—(i) *In general.* If a portion of a section 481(a) adjustment resulting from a prior change in the institution's method of accounting for bad debts remains outstanding at the beginning of the taxable year in which the institution changes under § 1.593–13 from the reserve method of section 593 or changes under this section to either the specific charge-off method or the reserve

method of section 593, the institution may elect to net section 481(a) adjustments under the rules of this paragraph (d)(4) for the taxable year of the change to or from the reserve method of section 593. Any election to net section 481(a) adjustments under this paragraph (d)(4) must be made by clearly stating, on the institution's Form 3115, completed and filed in accordance with the requirements of paragraph (b) of this section, that the institution is electing to net section 481(a) adjustments under § 1.593–14(d)(4). See paragraph (d)(5) of this section for rules that apply in some cases if an election to net section 481(a) adjustments is not made.

(ii) *Consistency is netting.* This paragraph (d)(4)(ii) applies if an institution nets section 481(a) adjustments under this paragraph (d)(4) for a taxable year and any portion of the resulting net section 481(a) adjustment remains outstanding at the beginning of any succeeding taxable year in which the institution changes its method of accounting for bad debts. If the change in the succeeding taxable year is a change under this section of § 1.593–13, the institution must net section 481(a) adjustments under this paragraph (d)(4) for the succeeding taxable year. If the change in the succeeding taxable year is not a change under this section or § 1.593–13, the Commissioner may require the institution to net section 481(a) adjustments under the principles of this paragraph (d)(4) for the succeeding taxable year.

(iii) *Amount of net section 481(a) adjustment.* To determine the amount of a net section 481(a) adjustment, an institution must combine the amount of its current section 481(a) adjustment with any outstanding portion of a section 481(a) adjustment resulting from any prior change in the institution's method of accounting for bad debts. To combine these amounts, the institution must add the outstanding amounts of any section 481(a) adjustments that are to be included in income ("positive" adjustments) and subtract the outstanding amounts of any adjustments that are to be deducted from income ("negative" adjustments). The remainder (whether positive or negative) is the amount of the institution's net section 481(a) adjustment.

(iv) *Deducting a negative net section 481(a) adjustment.* If the institution is returning to the reserve method of section 593 in accordance with § 1.593–14 and the institution's net section 481(a) adjustment is negative, the institution must deduct this amount in the manner provided by § 1.593–13(c)(2)(iii) for including amounts in income. For purposes of applying § 1.593–13(c)(2)(iii), the year of change is treated as the ineligibility year. If the institution is changing from the reserve method of section 593 in accordance with § 1.593–13 and the institution's net section 481(a) adjustment is negative, the institution must deduct this amount ratably over the remainder of the period originally prescribed for deducting the amount of the most recent negative section 481(a) adjustment resulting from a change in the institution's method of accounting for bad debts.

(v) *Including in income a positive net section 481(a) adjustment.* If the institution is returning to the reserve method of section 593 in accordance with § 1.593–14 and the amount of the institution's net section 481(a) adjustment is positive, the institution must include this amount in income ratably over the remainder of the period originally prescribed for including the amount of the most recent positive section 481(a) adjustment resulting from a change in the institution's method of accounting for bad debts. If this most recent positive adjustment resulted from the institution's use of the recapture method of § 1.585–6 (either pursuant to § 1.593–13(c)(3)(iv) or otherwise), the period originally prescribed for including the amount of this adjustment is considered to be the longer of: the period originally prescribed by § 1.593–13(c)(3)(iv) for including the section 593 portion of this adjustment; or the 4-year period originally prescribed by § 1.585–6(b) for including this adjustment (determined without regard to section 585(c)(3)(B) and § 1.585–6(d) for the taxable year in which the institution changes back to the reserve method of section 593 and subsequent taxable years). If the institution is changing from the reserve method of section 593 in accordance with § 1.593–13 and the institution's net section 481(a) adjustment is positive, the institution must include this amount in income in the manner provided by § 1.593–13(c)(2)(iii). For purposes of applying § 1.593–13(c)(2)(iii), the year of change is treated as the ineligibility year.

(5) *Treatment of prior section 481(a) adjustment without netting.* This paragraph (d)(5) applies to an institution that does not elect to net section 481(a) adjustments under paragraph (d)(4) of this section if some portion of a section 481(a) adjustment resulting from a prior change in the institution's method of accounting for bad debts remains outstanding at the beginning of the taxable year in which the institution changes back under this section to the reserve method of section 593. An institution to which this paragraph (d)(5) applies must take the outstanding portion of any such prior section 481(a) adjustment into account as originally prescribed. However, if a prior adjustment resulted from the institution's use of the recapture method of § 1.585–6 (either pursuant to § 1.593–13(c)(3)(iv) or otherwise), the institution must include the outstanding portion of the adjustment in income ratably over the remainder of the period provided in the second sentence of paragraph (d)(4)(v) of this section.

6. *Examples.* For purposes of the examples in this section, the thrift institution is a calendar year taxpayer, has been in existence for more than 6 years, and no portion of a section 481(a) adjustment relating to the thrift's method of accounting for bad debts remains outstanding at the end of 1991. The following examples illustrate the principles of this paragraph (d):

Example 1. (i) In 1992 T changes under § 1.593–13 from the reserve method of section 593 to the specific charge-off method. Pursuant to § 1.593–13(c)(2), in 1992 R restates its bad debt reserve to zero, determines the amount of a section 481(a) adjustment, and begins to include this amount in income ratably over 6 taxable years. In 1994 T becomes eligible to return to the reserve method of section 593 and, in accordance with § 1.593–14(b), obtains the Commissioner's consent to change. Because T restated its reserve to zero when it changed to the specific charge-off method, T must establish a new reserve for bad debts as of January 1, 1994. Pursuant to § 1.593–14(d)(2)(i)(B), T chooses to establish its reserve on the basis of the percentage of taxable income method of section 593(b)(2), as that section applies on January 1, 1994. For each of its taxable years from 1952 through 1993 (or for any number of its most recent consecutive taxable years), T determines, on the basis of its permanent records, the amount that is 8 percent of its taxable income (as defined in § 1.593–6A(b)(5)) for the year and reduces this amount by the amount of loans (adjusted for recoveries) charged off as worthless during the year. The sum of the remaining amounts is the initial balance of T's reserve under § 1.593–14(d)(2)(i).

(ii) The initial balance of T's reserve under § 1.591–14(d)(2)(i) is $560,000 and is not lower than T's 6-year moving average amount for 1993. When T changed to the specific charge-off method in 1992, the amount of its section 481(a) adjustment under § 1.593–13(c)(2)(ii) was $900,000. Thus, T included $150,000 (⅙ × $900,000) in income in 1992 and $150,000 in 1993, and the unamortized balance of the adjustment at the beginning of 1994 was $600,000 ($900,000 − $300,000). When T returns to the reserve method of section 593 in 1994, the amount of its section 481(a) adjustment under § 1.593–14(d)(3) is the initial balance of its reserve as determined under § 1.593–14(d)(2)(i) ($560,000). T elects to net section

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481(a) adjustments under § 1.593–14(d)(4). Pursuant to § 1.593–14(d)(4)(iii), T's net section 481(a) adjustment is $40,000 ($600,000−$560,000). Pursuant to § 1.593–14(d)(4)(v), this amount must be included in income ratably over the remaining portion of the 6-year period originally prescribed for the first section 481(a) adjustment. Thus, T includes in income $10,000 a year in each of years 1994 through 1997.

Example 2. (i) In 1992 T changes from the reserve method of section 593 to the reserve method of section 585 under § 1.593–13(d). In 1995 T becomes eligible to maintain a reserve under section 593; because T is an institution to which section 593 applies, T may no longer maintain a reserve under section 585. Pursuant to § 1.593–14(b), T obtains the Commissioner's consent to return to the reserve method of section 593 in 1995.

(ii) At the end of 1994 the amount of T's bad debt reserve is $200,000, and the unamortized balance of T's section 481(a) adjustment under § 1.593–13(d)(3) is $70,000. T restates its reserve to $300,000 under § 1.593–14(d)(2)(i) as of January 1, 1995. The amount of T's section 481(a) adjustment under § 1.593–14(d)(3) is $100,000 ($300,000−$200,000). T elects to net section 481(a) adjustment under § 1.593–14(d)(4). Pursuant to § 1.593–14(d)(4)(iii), T's net section 481(a) adjustment is minus $30,000 ($70,000−$100,000). Pursuant to § 1.593–14(d)(4)(iv), T deducts $30,000 ratably over 6 years, beginning in 1995.

Example 3. (i) In 1992 T changes under § 1.593–13 from the reserve method of section 593 to the specific charge-off method. Pursuant to § 1.593–13(c)(2), in 1992 T restates its bad debt reserve to zero, determines the amount of a section 481(a) adjustment, and begins to include this amount in income ratably over 6 taxable years. In 1994 T returns to the reserve method of section 593 under § 1.593–14. In connection with this change, T establishes a new bad debt reserve under § 1.593–14(d)(2)(i), determines the amount of a new section 481(a) adjustments under § 1.593–14(d)(4). The amount of T's net section 481(a) adjustment is $40,000 and under § 1.593–14(b)(4)(v) is to be included in income ratably over the 4 taxable years remaining in the period prescribed for including T's first section 481(a) adjustment. Thus, in 1994 T includes $10,000 of this amount in income, and at the beginning of 1995 the unamortized balance of T's net section 481(a) adjustment is $30,000 ($40,000−$10,000).

(ii) In 1995 T again changes under § 1.593–13 to the specific charge-off method. In connection with this change, in 1995 T restates its reserve to zero under § 1.593–13(c)(2)(i) and determines the amount of a section 481(a) adjustment under § 1.593–14(d)(4)(ii), because T elected to net section 481(a) adjustments for its 1994 return to section 593, T also must net section 481(a) adjustments for its 1995 change from section 593. Under the principles of § 1.593–14(d)(4)(iii), the amount of T's new net adjustment is $530,000 ($500,000+$30,000). Under the principles of § 1.593–14(d)(4)(iv), $530,000 must be included in income ratably over 6 taxable years, beginning in 1995.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 92–697 Filed 1–10–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[FI–42–90]

RIN 1545–AO69

Bad Debt Reserves of Thrift Institutions; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations for thrift institutions that become ineligible to use the reserve method of accounting for bad debts allowed by section 593 of the Internal Revenue Code.

DATES: The public hearing will be held on Friday, June 5, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, May 18, 1992.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI–42–90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is a notice of proposed rulemaking that provides guidance for thrift institutions that become ineligible to use the reserve method of accounting for bad debts allowed by Code section 593. The regulations set forth rules on changing from and returning to this method of accounting, and the regulations provide procedures for complying with these rules. These regulations are issued under the authority of Code sections 446 and 481. These regulations appear in the proposed rules section of this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, May 18, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–698 Filed 1–10–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

46 CFR Parts 31, 32, 35

[CGD 91–045]

RIN 2115–AE01

Structural and Operational Measures to Reduce Oil Spills From Existing Tank Vessels Without Double Hulls

AGENCY: Coast Guard, DOT.

ACTION: Advane notice of proposed rulemaking, extension of comment period.

SUMMARY: On November 1, 1991, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (56 FR 56284) soliciting comments on which structural and operational measures should be required for existing tank vessels without double hulls to provide as substantial protection to the environment as is economically and technologically feasible.

DATES: The comment period on the advance notice of proposed rulemaking is extended to January 30, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council, (G–LRA–2/3406) (CGD 91–045), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments will become part of the public docket for this rulemaking and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Neyhart, Project Manager, Oil Pollution Act (OPA 90) Staff, (G–MS–1), (202) 267–6743, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Pursuant to the Oil Pollution Act of 1990 (OPA 90), the Coast Guard published an ANPRM in the **Federal Register** (56 FR 26517) on November 1, 1991. The Coast Guard is extending the comment period on this ANPRM which solicits comments on which structural and operational measures should be required for existing tank vessels without double hulls to provide as substantial protection to the environment as is economically and technologically feasible. The Coast Guard has received one formal request, out of 14 comments received as of December 20, 1991, for an extension to the comment period. Several other comments have suggested that an extension would be to the interest of both the public and the Coast Guard. Since few substantive comments have been received to date, the Coast Guard considers an extension to the comment period advantageous to this rulemaking to provide additional time for developing the necessary supporting economic data. The Coast Guard strongly encourages comments on all aspects of this rulemaking, especially supporting economic data regarding the different structural and operational measures on both ships and barges over 5,000 gross tons. The Coast Guard can not emphasize enough the importance of comments on both the negative and positive impact of this rulemaking.

Dated: December 23, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard; Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–738 Filed 1–10–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300242; FRL 4000–3]

Sodium Arsenite; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke all tolerances for sodium arsenite (expressed as arsenic trioxide (As_2O_3)). Sodium arsenite, an inorganic arsenical, is classified by EPA as a known human carcinogen. EPA is proposing to revoke tolerances set for residues of sodium arsenite in liver, kidney, fat, meat, and meat by-products of cattle and horses (40 CFR 180.335), resulting from the insecticidal use of sodium arsenite, upon publication of the final rule. EPA is proposing to revoke the interim tolerance for sodium arsenite on grapes (40 CFR 180.319), resulting from the fungicidal use of sodium arsenite, also expressed as As_2O_3, as of June 30, 1994. This proposed action is being taken because EPA canceled the insecticidal use of sodium arsenite in 1988, and Agtrol Chemical Products, the sole registrant of the fungicidal use, has requested voluntary cancellation of its two registrations of products containing sodium arsenite (EPA registration numbers 55146–35 and 55146–25). Elsewhere in this issue of the **Federal Register**, EPA has published a final order canceling these two registrations of sodium arsenite.

DATES: Written comments, identified by the document control number OPP–300242, must be received on or before March 13, 1992.

ADDRESSES: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Lisa Engstrom, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 2800 Jefferson Davis Highway, Arlington, VA, (703)–308–8031.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA is proposing to revoke all tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq, for the insecticide and fungicide, sodium arsenite, also expressed as As_2O_3. The insecticidal use of sodium arsenite was canceled in 1988 due to acute toxicity concerns for the general public and chronic concerns for workers who handle the pesticide. No further sale, distribution, or use was allowed after the date of cancellation. The sole registrant of pesticide products containing sodium arsenite as a fungicide, Agtrol Chemical Products, requested voluntary cancellation of the last two sodium arsenite registrations in November 1990. A final order canceling these registrations is published elsewhere in this **Federal Register**.

II. Legal Background

Section 408 of FFDCA authorizes the establishment of tolerances and exemptions from tolerances for residues of pesticide chemicals in or on raw agricultural commodities. Under the Reorganization Plan No.3 of 1970, 4 Stat. 3086, which established EPA, the authority to set tolerances for pesticide chemicals in raw agricultural commodities and processed food under sections 408 and 409 of the FFDCA was transferred from the Food and Drug Administration (FDA) to the EPA. The FDA retains the authority to enforce the tolerance and food additive provisions under this Plan. Without such tolerances, a food containing pesticide residues is "adulterated" under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce and is subject to seizure (21 U.S.C. 346a(a), 348(a)).

III. Regulatory Background

EPA issued a Notice of Rebuttable Presumption Against Registration (hereafter referred to as Special Review)

for the wood preservative and non-wood preservative uses of inorganic arsenicals in the **Federal Register** of October 18, 1978 (43 FR 48267). That Notice was based on a determination that use of the inorganic arsenicals met or exceeded the risk criteria for carcinogenicity, teratogenicity and mutagenicity under 40 CFR 162.11 (these criteria are now found at 40 CFR 154.7).

A Preliminary Determination (PD 2/3) for certain non-wood preservative uses of these inorganic arsenicals was issued on January 2, 1987 (52 FR 132) proposing to cancel most registrations based on carcinogenicity risks to workers and acute toxicity to the general public. On June 30, 1988, EPA issued a Notice of Intent to Cancel (53 FR 24787) the registrations of the insecticidal use of sodium arsenite. The cancellation of the insecticidal use of sodium arsenite became effective August 1, 1988.

Agtrol Chemical Products, the sole registrant of the last two remaining fungicidal products containing sodium arsenite, requested voluntary cancellation November 13, 1990. A Notice announcing the receipt of the request was published June 19, 1991 (56 FR 28154). There was a comment period of 90 days to allow parties other than the registrant to have the registrations transferred to them or to allow Agtrol to withdraw its request. No responses were received within the comment period and Agtrol did not withdraw its request for voluntary cancellation. Thus, EPA has issued a cancellation order which is published elsewhere in this **Federal Register**.

IV. Current Proposal

EPA is proposing to revoke tolerances for the insecticidal use of sodium arsenite resulting from dermal application to animals found at 40 CFR 180.335. The tolerances are: 2.7 parts per million (ppm) in the kidney and liver of cattle and horses and 0.7 ppm in the meat, fat, and meat by-products (except kidney and liver) of cattle and horses. The insecticidal use of sodium arsenite use was canceled in 1988. Consequently, ample time has passed to allow legally-treated commodities (i.e., before the 1988 cancellation) to pass through the channels of trade. EPA is proposing to revoke the tolerances for sodium arsenite found at 40 CFR 180.335 immediately upon publication of the final tolerance revocation. Although sodium arsenite insecticide use in the United States is now illegal, sodium arsenite is currently used in other countries. Once the tolerances for sodium arsenite are revoked, it will be unlawful to import into the United States any commodities treated with sodium arsenite.

EPA is also proposing to revoke the interim tolerance of 0.05 ppm for the fungicidal use of sodium arsenite in or on the raw agricultural commodity grapes found at 40 CFR 180.319. Sodium arsenite is applied to dormant grape vines during December and January to control two types of fungal diseases in California only. As outlined in the Cancellation Order accompanying this proposed tolerance revocation, EPA has granted the registrants a 1 year period after the date of cancellation to distribute and sell existing stocks of canceled sodium arsenite fungicide products. Anyone other than the registrant may sell products containing sodium arsenite until stocks have been exhausted. In their letter requesting voluntary cancellation, Agtrol reported that they had approximately 30,000 gallons of stocks ready for the next growing season. Based on average use of approximately 23,000 gallons per year over the past decade, EPA estimates stock depletion could occur over the next two growing seasons. It should be noted that the annual usage given above is an average figure. The amount of sodium arsenite used depends on the extent of disease outbreak: some years require no treatment. Thus, allowing a year for the registrant to sell the remainder of their existing stocks, plus the 2 years assumed for stock depletion, EPA is assuming that the existing sodium arsenite stocks will have been exhausted by January 1994. EPA is proposing to revoke the interim tolerance for sodium arsenite on grapes (40 CFR 180.319) 6 months after the approximate date of last use, or June 1994. This 6 months after last use is intended to allow grapes which were legally treated to pass through the channels of trade. Since inorganic arsenicals have been classified by EPA as known human carcinogens, and there are no longer registrations for products containing sodium arsenite, EPA believes that it is appropriate to propose revocation of the interim tolerance at this time.

Arsenic can occur in foods naturally in the form of organic arsenic. Organic forms of arsenic are not believed to be of concern, as they occur in a form that is readily excreted by humans. Because current analytical methods do not distinguish between organic and inorganic arsenic (sodium arsenite is an inorganic arsenical), testing of untreated commodities may yield low levels of arsenic residues, expressed as As_2O_3. As mentioned above, since sodium arsenite use is expected to cease after January 1994, EPA believes it is appropriate to revoke the tolerances which are set for residues of the pesticide sodium arsenite.

V. Public Comment Procedures

A comment period of 60 days has been provided to allow registrants, affected parties and the public an opportunity to comment on this proposal. EPA will consider pertinent data and information regarding assumptions used in determining the proposed date of revocation (June 30, 1994) when developing the final tolerance revocation.

Any person who has registered or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains sodium arsenite may request, within 60 days after publication of this document in the **Federal Register**, that this proposal to revoke the sodium arsenite tolerances listed at 40 CFR 180.335 and the interim tolerance at 40 CFR 180.319 be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA).

Interested persons are invited to submit written comments on this proposal to EPA. Comments must be submitted by March 13, 1992. Comments must bear a notation indicating the document control number, (OPP–300242). Three copies of the comments should be submitted to facilitate the work of the Agency in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in room 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, EPA has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in room 1128 at the address given above.

VI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed rule is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major

increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

EPA believes there will be little or no economic impact from revocation of these tolerances, primarily because the registrations have been canceled and time has been or will be allowed for treated commodities to pass through the channels of trade.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

(Section 408(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346(m))).

Dated: December 31, 1991.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I, part 180 be amended as follows:

PART 180 [AMENDED]

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.319 the table is amended by revising the entry for "sodium arsenite" to read as follows:

§ 180.319 Interim tolerances.

* * * * *

Substance	Use	Tolerance in parts per million	Raw agricultural commodity
Sodium arsenite	Fungicide	0.05 [1] (Expires 6/30/94)	Grapes

§ 180.335 [Removed]

c. Section 180.335 is removed.

[FR Doc. 92-784 Filed 1-10-92; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on a Petition to Delist the Red Wolf (Canis rufus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding on petition.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the Lists of Endangered and Threatened Wildlife and Plants. A finding has been made for the red wolf (*Canis rufus*) that substantial information has not been presented to indicate that delisting the species is warranted.

DATES: The finding announced in this notice was made on December 19, 1991. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions regarding this petition may be submitted to the Red Wolf Coordinator, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: V. Gary Henry (704/665-1195) at the above address.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982 (Act) (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the petition is found to present the required information, the Service is also required to promptly commence a review of the status of the involved species.

The Service has received and made a finding on a petition to delist the red wolf (*Canis rufus*). The petition, dated August 30, 1991, was submitted by the American Sheep Industry Association and was received by the Service on September 4, 1991.

The petition presents the contention that the red wolf is a wolf/coyote hybrid. The petition references two literature citations to support the discussion of wolf/coyote hybridization.

The petition makes the following three requests:

1. Remove the red wolf from the U.S. Endangered Species List pursuant to Fish and Wildlife regulations 50 CFR 424.11 and section 4 of the Endangered Species Act.

2. Suspend all release programs for the red wolf into the wilds of Alabama, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee until a decision is made on delisting the red wolf.

3. Suspend all Endangered Species Act funding to the red wolf program until a decision is made on delisting the red wolf.

The Service has reviewed the petition, the literature cited in the petition, other available literature and data, and consulted with wolf experts and molecular genetic analysis researchers. After evaluating all the available information, the Service finds that the petition does not present substantial information indicating that the requested actions may be warranted. The following points summarize the reasons for this finding:

1. Neither the submitted data nor other available data provide substantial support for the contention that the red wolf is a wolf/coyote hybrid.

The petition included an attached literature reference (Wayne and Jenks 1991), and the petition text included information from an additional publication that was not attached. The Service has reviewed the references,

along with other data, to determine their content, significance, and relevance to the petitioned action. The Service views the data presented in the petition as a selective presentation of the information contained in the cited references. The petition stated that Nowak (1979) raised serious questions as to whether the red wolf was a species, a subspecies, or a hybrid and concluded that:

> In nearly all measurements and other features in which *C. rufus* differs from *C. lupus* the former approaches *C. latrans*. Indeed, available specimens of the red wolf almost bridge the morphological gap between the proximal extremes of the other two species. Hybrid origin for *C. rufus* thus seems to be one possibility, * * *

This was not a conclusion of Nowak but is found in the Systematic Description of the red wolf under "Remarks." The remainder of the quoted paragraph states:

> * * * but there are other solutions to the problem. The most reasonable explanation is that *C. rufus* represents a primitive line of wolves that has undergone less change than *C. lupus*, and has thus retained more characters found in the ancestral stock from which both wolves and coyotes arose.

Indeed, the fossil evidence reported by Nowak indicates the red wolf is a separate species. Red wolf fossils up to 750,000 years old pre-date gray wolf fossils in North America and also pre-date coyote presence in the Southeastern United States. Fossils and historical museum specimens of North American *Canis* can be sorted into three distinct groups corresponding to the three species (gray wolf, red wolf, coyote) with no gradations between the groups that would be expected if the red wolf were a hybrid form.

Nowak (Service, personal communication, 1991) elaborates as follows:

> * * * the earliest large series of museum specimens from southeastern North America, taken about 1890–1930, do not show the overall blending of gray wolf, red wolf, and coyote that would be expected if the red wolf had originated a hybrid. Complete blending is restricted to central Texas and even there is limited to red wolf and coyote; the gray wolf is present in the same area but is easily distinguishable and not part of the hybridization process (see pages 41–43 of my paper). Elsewhere, the red wolf and coyote are sympatric or in close proximity, with hybrid individuals having appeared at but a few localities.
>
> It has been said that since the red wolf is in most respects morphologically intermediate to the gray wolf and coyote, it must have resulted from hybridization between the two. This point is meaningless. In the family Canidae, as in many groups of animals, there is a morphological progression of species, there being numerous cases in which one species or population may seem to fall between two others. Rather than hybridization, such a situation probably indicates evolutionary stages. In this regard, I think the red wolf represents a stage that developed after the coyote but before the gray wolf; it thus would be expected to be intermediate to the other two. There are other small wolves in southern Eurasia, and they also are in some respects morphometrically intermediate to North American gray wolves and coyotes, but of course there are no coyotes in that region.

Parker (1989) summarized red wolf taxonomy beginning with the first description of the red wolf in Florida by Bartram (1791), based on observations made in 1774. By contrast, the coyote, whose distinctiveness is unquestioned, was not named until 1823, based on observations made in 1819 (Young and Jackson 1951). The first publication of a valid scientific name was by Audubon and Bachman (1851); they described two varieties of wolves in the Southeast that were structurally different from other wolves and described the coyote as a full species uniquely different from wolves. Bangs (1898) stated that the Florida wolf should be elevated to full species level; Miller (1912) named it *Canis floridanus*. Bailey (1905), in the meantime, had elevated the red Texan wolf described by Audubon and Bachman to a full species with the name *Canis rufus*. Goldman (1937, 1944) consigned all wolves of the Southeast to one species—*C. rufus*—and recognized three subspecies—*C. r. rufus* for the small Texas subspecies, *C. r. floridanus* for the eastern subspecies, and *C. r. gregoryi* for the lower Mississippi valley subspecies. Most authors, including Atkins and Dillon (1971), Kurten and Anderson (1980), Elder and Hayden (1977), Ferrell *el al.* (1980), Nowak (1970, 1972, 1979), Paradiso (1968), and Paradiso and Nowak (1971, 1972), accepted species status for the red wolf.

A minority view that the red wolf was a subspecies of the gray wolf was presented by Lawrence and Bossert (1967) based on results from a multiple character analysis of North American *Canis*. The sample included 20 gray wolves, 20 coyotes, 20 domestic dogs (*C. familiaris*) and a small number of red wolves collected before 1920. Paradiso (1968) and Nowak (1979) suggested that the sample size was too small and did not truly represent the great geographic and individual variation of the canids. By contrast, a large sampling of canid skulls by Paradiso and Nowak (1971) and Nowak (1979) concluded that the red wolf is a distinct species.

Until this year there was only one published suggestion of hybrid origin (Mech 1970), and this provided no supporting data. Wayne and Jenks (1991) provide the only data suggesting a hybrid origin, while O'Brien and Mayr (1991) and Gittleman and Pimm (1991) accept the hybrid origin hypothesis of Wayne and Jenks but present no data regarding the issue.

In contrast to Wayne and Jenks' data, several studies and unpublished data contain substantial data as evidence in support of the red wolf as a distinct species. Nowak's (1979) monograph, entitled "North American Quaternary Canis," has already been referenced. Mechanisms that would have produced hybrids throughout the red wolf's historical range are not supported by any published accounts reinterpreting either the fossil evidence or the historical distributions of either the coyote or gray wolf. Ferrell *et al.* (1980) found a unique electrophoretically determined allele (not present in other *Canis*) with a distribution congruent with the geographical distribution of the red wolf, thus suggesting the survival of a gene originating in the red wolf. D.C. Morizot (University of Texas System Cancer Center, personal communication, 1981), one of the coauthors of Ferrell *et al.*, concludes that the red wolf is a separate form which should be recognized as a small wolf that evolved in North America, thus supporting Nowak's (1979) work. Another study, covering the brain of canids, confirmed the distinctiveness of the red wolf in its cerebeller features and concluded that the red wolf is more primitive in several aspects than the other *Canis* species considered (Atkins and Dillon 1971).

The red wolf populations currently existing are descendants of animals carefully selected based on the best morphological and taxonomic information available at that time. Subsequently, preliminary nuclear DNA findings (Ferrell *et al.* 1980) were considered in the selection of breeding pairs. From the fall of 1973 to July 1980, over 400 wild canids from the last remaining range of the species in southeastern Texas and southwestern Louisiana were examined through the recovery program. Of that number, only 43 were admitted to the breeding/certification program as probable red wolves. Final proof of the genetic integrity of the animals was determined through the captive-breeding process and resulted in only 14 animals becoming the founding stock of the red wolves existing today (Service 1990). Nowak (personal communication, 1991) recently carried out a canonical discriminant analysis of measurements of relevant skulls, including coyotes, gray wolves, pre-1940 red wolves, and founders of the existing red wolf

population and their descendants utilized in the recovery program. Results show the three species—coyote, red wolf, and gray wolf—to be distant from one another. The founders of the existing red wolf population and their descendants are statistically near the original red wolf; i.e., they are breeding true, with no detectable hybridization. Visual observations of phenotype also confirm this conclusion.

Behaviorally and ecologically the red wolf differs from Southeastern coyotes. McCarley (1977) found consistent differences between the vocalization of red wolves and coyotes. Riley and McBride (1972) and Shaw (1975) noted behavioral and ecological differences between red wolves and coyotes after studying free-ranging populations in Texas and Louisiana and concluded that *Canis rufus* is a valid taxon.

Preliminary results from the Alligator River National Wildlife Refuge reintroduction shed additional light on red wolf behavior and ecology (Service, unpublished data). Reintroduced red wolves are very social, with most of the animals belonging to packs which occupy territories. It is not unusual for yearling and 2-year-old red wolves to associate with their parents, assist with pup rearing, and restrict movements to their natal home range. Reintroduced red wolves are relatively intolerant of strange conspecifics; intraspecific aggression is an important source of mortality that led to the death of seven wolves. Thus, in terms of sociality, red wolves are similar to gray wolves (Mech 1970). In contrast, coyotes are often more asocial, with animals belonging to breeding pairs or small family groups. Pups often disperse before their second summer. Home ranges of the groups sometimes evince overlap, and intraspecific aggression is not believed to be an important source of mortality (Gier 1975, Andrews and Boggess 1978, Bekoff and Wells 1982, Danner and Smith 1980, Althoff and Gipson 1981, Roy and Dorrance 1985, Windberg *et al.* 1985, Harrison 1986, Gese *et al.* 1989, Person and Hirth 1991).

The ecological role of the red wolf is largely defined by its food habits. Analysis of 1,300 scats indicates that white-tailed deer (*Odocoileus virginianus*) and raccoons (*Procyon lotor*) are the primary year-round food items for reintroduced red wolves (Service, unpublished data). Although some of the deer are probably eaten as carrion, wolf predation of apparently healthy adult deer has been documented. Most raccoons are probably taken as live prey.

In contrast, deer and raccoons are of tertiary or lesser importance to coyotes in the Southern States, use of deer tends to be seasonal (greatest during fawning period and hunting season), and adult deer are often eaten as carrion (Korschgen 1957, Fooks 1961, Wilson 1967, Gipson 1974, Meinzer *et al.* 1975, Michaelson and Goertz 1977, Smith and Kennedy 1983, Wooding *et al.* 1984, Lee 1986, Leopold and Krausman 1986, Blanton and Hill 1989, Windberg and Mitchell 1991).

By comparison, gray wolves are essentially large ungulate predators, including very large species (such as elk, moose, and bison), although they will concentrate on smaller ungulates, where available, and will take other medium-sized mammals (such as beaver and Arctic hare) (Mech 1970). Red wolves do not have these very large ungulates available within their current range and may not be capable of predation on such large animals. Therefore, based on food habits, red wolves are most similar to gray wolves in their ecological role but do differ somewhat in the significance of medium-sized mammal prey, such as raccoons.

2. The petition misinterprets recent mitochondrial DNA (mtDNA) data by considering mtDNA to be equivalent to nuclear DNA.

The petition contains a single reference (Wayne and Jenks 1991) that bears directly on hybridization in the red wolf. That reference reported no identifiably unique red wolf mtDNA in present or historical specimens of the red wolf. Their results show only coyote mtDNA in existing red wolves and coyote and gray wolf mtDNA in historical specimens. Based on these results, one hypothesis offered is that the red wolf is a hybrid form resulting from coyote/gray wolf interbreedings. The authors also present the following alternative situations that could account for their results: (a) The red wolf could have been a distinct species with unique mtDNA genotypes that were missed in their survey or had become extinct through genetic drift or (b) the red wolf could have been a Southeastern subspecies of the gray wolf that was morphologically, but not genetically, distinct from other gray wolves.

Wayne (University of California at Los Angeles, *in litt.*, 1991), has provided the following additional statements regarding the petition:

> This summation of our results is misleading and incorrect. We show only that red wolves at some time in their past have bred with coyotes and gray wolves in the wild, such interspecific hybridization is common among closely related vertebrate species and hundreds of 'hybrid zones' have been defined (Barton & Hewitt, 1985, 1989). Our results do not show that all sampled red wolves were a cross between coyotes and gray wolves as implied by the letter. In the text we provide three possible explanations of our data * * * [see previous page]. Our data, however, cannot resolve among the three hypotheses.
>
> Our conclusion in the Nature paper is that the red wolf has hybridized with coyotes and gray wolves. We cannot estimate the frequency or number of interbreeding events from our data and our conclusion does not bear directly on the species status of the red wolf. The interbreeding between red wolves and other canids likely reflected the absence of potential same-species mates due to predator control programs employed by the U.S. government and livestock industry.
>
> I regard statements in this letter as a serious misrepresentation of our results * * *

Refsnider (1990) provided a very thorough discussion of DNA significance in a finding on a previous petition to delist the gray wolf, and that discussion is repeated herein:

> The petition clearly, but erroneously, equates mtDNA with nuclear DNA (the DNA found in the nucleus of cells) and bases its conclusions upon that error. Mitochondrial DNA differs substantially from nuclear DNA in both its function and in its method of inheritance.
>
> Mitochondrial DNA does not occur in the cell nucleus and does not function in the production of observable traits. It codes only for proteins made and used within the mitochondria of individual cells. It does not code for the inherited physical and behavioral characteristics of the organism upon which natural selection can act. It is solely (mostly) nuclear DNA that carries the genetic codes for the physical and behavioral traits of the offspring.
>
> Mitochondrial and nuclear DNA are inherited differently because mtDNA is not located in the cell nucleus. Male sperm are essentially mobile nuclei carrying half of the male's genetic code in the nuclear DNA; sperm carrying no mtDNA. Female eggs are complete female cells, including mtDNA outside the nucleus, and with nuclei containing half of the female's genetic code in the nuclear DNA. At fertilization the hybridization of mtDNA cannot occur because the sperm lacks mtDNA to join with the mtDNA of the egg.
>
> These differences between mtDNA and nuclear DNA have several very significant implications. First, a developing embryo (typically) contains only its mother's mtDNA, none is inherited from its father. In contrast, nuclear DNA is passed on by both parents, and the nuclear DNA carried by an embryo originates equally from both parents. Second, once new mtDNA is introduced into a population, it (or possibly a mutated version of it) will persist indefinitely (or until altered by mutation) as long as that matriline (i.e., an unbroken series of female descendants) exists. The action of natural selection will modify the frequency of organisms having particular physical and behavioral traits; that also will change the frequency of the causative nuclear DNA in a population by

changing the frequency of carriers of the nuclear DNA. However, mtDNA is not phenotypically expressed and is largely unaffected [probably less affected] by natural selection. It can persist in a population despite the total elimination of nuclear DNA that originally came from the same source.

Nuclear and mitochondrial DNA differences mean that mtDNA data cannot be treated like nuclear DNA data when one is studying hybridization. For example, over a number of generations the frequencies of particular types of mtDNA in a population have no reliable correlation with the number of hybridization events, their frequency, or their timing. Further, the existence of a type of mtDNA in a population cannot be used to predict the presence or frequency of nuclear DNA that may have come from the same source.

The cited mtDNA study used recently developed techniques and is the first to look at mtDNA in red wolves, so the results of the study may be subject to further reinterpretation. Thus, the findings should not be viewed as conclusive at this point in time. The data need to be expanded, replicated, and evaluated in additional studies. However, a reasonable interpretation of all the existing DNA data relating to this petition and that is compatible with other lines of existing evidence is as follows:

(1) Interbreeding among all three species of North American *Canis* (gray wolf, red wolf, coyote) has occurred in the past, leading to the exchange of nuclear and mtDNA. The number of hybridization events, their frequency, and their timing is unknown. The Ferrell *et al.* study indicates that the red wolf is a unique species or subspecies separate from the coyote or other gray wolf subspecies.

(2) Due to the maternal inheritance of mtDNA, any coyote-type mtDNA passed on in red wolves from hybridization events is not recombined, or diluted, over time in the recipient red wolf population. Mitochondrial DNA is passed on from a mother to her offspring in its entirety (subject to normal mutation), and its frequency depends solely upon the survival and spread of the matriline in the population. In contrast, any nuclear DNA that is subject to selection and is received from coyotes can be "bred out" by natural or artificial selective pressures over succeeding generations, and this may have happened with the individuals used in the red wolf captive-breeding program. There are no data showing phenotypic, morphological, or behavioral expression of coyote traits in the current red wolf populations. This suggest that female offspring from any past hybridizations were successfully backcrossed with male red wolves, and their offspring did the same. These backcrossings may have produced decreasing proportions of any coyote nuclear DNA in individual wolves, while maintaining the entire mtDNA complement. Thus, any coyote traits coded by nuclear DNA have disappeared from the red wolf population, even though the mtDNA persisted.

(3) The locations and dates of collections for all wild canids examined by Wayne and Jenks were in previously known areas of species overlap and indicate widespread pockets of hybridization among the three *Canis* species in the early twentieth century (about 20 years earlier than indicated by widespread appearance of morphologically intermediate specimens). However, this information has no bearing on the historic genetic makeup of red wolves away from areas of known contact with coyotes and gray wolves prior to 1930. Over half of the red wolf's historic geographical distribution remains unsampled, mostly east of the Mississippi River, where red wolves were largely extirpated by 1900 and where coyotes were absent until the 1970s.

In summary, the mtDNA study (Wayne and Jenks 1991) referenced in the petition supports the hypothesis of past hybridizations between the three *Canis* species. However, mtDNA data do not show the extent of hybridization between wolves and coyotes. Also, the data do not provide evidence of any current coyote influence from nuclear DNA in red wolves, and selective captive breeding provides a likely scenario for the elimination of such coyote nuclear DNA from existing red wolves. The study does not provide any evidence of coyote phenotypic, morphological, or behavioral traits persisting in red wolves.

3. The best scientific and commercial data available support continued listing for the red wolf.

The Service is required to use the best scientific and commercial data available when making a listing/delisting decision. As discussed above, the scientific data supporting hybridization in red wolves currently came from a single study. That study suggests past hybridizations, but provides no support for current hybridization in the existing red wolf populations. The remainder of the relevant scientific data show that historic and current red wolves lack coyote, gray wolf, or hybrid phenotypic and morphological traits.

Reasonable caution, an understanding of the classic scientific method, and the Endangered Species Act itself all argue for a conservative approach in applying new data and methodologies to the delising of endangered and threatened species. The Wayne and Jenks study raises important questions that should stimulate further investigation but should not be considered strongly supportive of a significant change in listing and protection for an endangered and threatened species. The red wolf recovery program funded the Wayne and Jenks study and is currently funding additional work by them on nuclear DNA.

It is incumbent upon the Service to avoid a possible premature and unwarranted removal or relaxation of protection for a listed species. Given the current "state of the art" of DNA analysis and interpretation in wild canids, the Service must adopt a conservative approach in the absence of other substantial data supporting delisting of the red wolf.

It must also be pointed out that possible changes in the taxonomy of the red wolf are unlikely to result in delisting. The Act defines species to include any subspecies and any distinct population segment that interbreeds when mature. Therefore, if the red wolf were determined to be a subspecies of the gray wolf, its endangered status would continue. If the red wolf were determined to be entirely a hybrid, delisting may or may not result, depending on the results of current Service reviews of the species concept and its application to canids. It is significant that Wayne and Jenks (1991) and O'Brien and Mayr (1991), while favoring a hybrid origin for the red wolf, favor continued protection under the Act because of the red wolf's uniqueness as a population.

On the basis of the best scientific information available, the Service finds that this petition does not present substantial information indicating that the action requested may be warranted. The Service recognizes the possibility of past and present hybridization among canids in certain geographic localities and will continue to encourage scientific research in the area. In addition, the Service recognizes that recent advances in molecular genetics have made it difficult to interpret such data in light of the classic biological species concept. However, several different species concepts, including a revised biological species concept, are now dominating taxonomic thinking. These alternative concepts incorporate the idea of limited genetic interchange with other recognized species if there are clear selective pressures working against the persistence of intermediate types. The Service is currently reviewing and

evaluating possible alternate species concepts, with possible ramifications for the Service's approach to the protection of endangered and threatened species when infrequent interbreeding occurs with other taxa.

Wayne and Jenks (1991) support the continued protection of red wolves. They state:

> Even if the red wolf is entirely a hybrid, it filled the role as top predator throughout its former geographic range and was thus an integral part of the ecosystem. The captive population of red wolves seems to be morphologically and genetically representative of the canid that existed in the southeastern United States, and so its reintroduction there would restore an essential component of the fauna.

O'Brien and Mayr (1991) also support continued protection of the red wolf as the only available descendants of the historically occurring canid in the Southeast.

The debate over the origin and current taxonomic status of the red wolf is not likely to be resolved soon, if ever. One major obstacle to resolving this issue is that there are very few pelts from red wolves east of the Mississippi River prior to 1930, where hybridization with coyotes would have been unlikely based on known distribution at that time. However, the red wolves of today are representative of the canids that roamed the Southeast historically and are morphologically and behaviorally distinct from coyotes and gray wolves. Therefore, there will be no change in emphasis or commitment for recovery of the red wolf as a top predator, whether or not this species' taxonomic position is resolved. The recovery of the red wolf is most important for reestablishing this canid's unique ecological and evolutionary role that has been vacant for some time in ecosystems of the Southeast. This position is supported by Wayne (personal communication, 1991), who states that even if partially a hybrid form, the red wolf's genetic makeup would be difficult to reconstruct by interbreeding gray wolves and coyotes, and, if the captive-breeding program were discontinued, a living representative of the canid that historically occupied the Southeast could not be regenerated.

References Cited

A complete list of all references cited herein is available upon request from the author of this notice at the below address.

Author

This notice was prepared by V. Gary Henry, Red Wolf Coordinator, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–1195).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: January 6, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–786 Filed 1–10–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 678

Shark Fishery of the Atlantic Ocean

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NMFS announces that, acting on behalf of the Secretary of Commerce (Secretary), it has prepared a Fishery Management Plan for Sharks of the Atlantic Ocean (FMP) and is making it available for public review and comment. Written comments are requested from the public.

DATE: Written comments must be received on or before March 9, 1992.

ADDRESSES: *FMP copies:* Copies of the FMP may be obtained from the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, (Telephone 813–893–3161). *Comments:* Comments should be sent to Mr. Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, NOAA, 1335 East-West Highway, Silver Spring, Maryland 20910; please mark envelope "Shark FMP Comments", (Telephone 301–713–2334).

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3161.

SUPPLEMENTARY INFORMATION: The FMP was prepared by NMFS under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Preparation began under section 304(c) of the Magnuson Act, which provides for Secretarial preparation of FMPs under certain circumstances. Final FMP approval and implementation is expected to be under section 304(f) of the Magnuson Act, which requires the Secretary to prepare fishery management plans for highly migratory species of the Atlantic Ocean, including "oceanic sharks."

NMFS prepared a first draft FMP in 1989 and conducted 22 public hearings on it in coastal states bordering the Atlantic Ocean, Gulf of Mexico and Caribbean Sea during November and December 1989. In response to public hearing comments and the comments of the New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils, NMFS significantly revised the FMP in preparing a second draft FMP. NMFS held eight coastwide public hearings on the second draft FMP in May 1991. Subsequently, changes were made in the FMP and related documents (Draft Environmental Impact Statement (DEIS), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), etc.) to address the comments received from the public, states, Councils, and others.

NMFS is interested in comments on the FMP, DEIS, RIR, and IRFA and will consider all public comments received in determining the need for additional changes. Proposed regulations to implement the FMP will be published in the **Federal Register** shortly for additional public review and comment.

The FMP proposes management measures to: (1) Establish a fishing year of July 1 through June 30; (2) divide the 39 shark species managed by the FMP into three distinct groups for management and assessment purposes—large coastal, small coastal, and pelagic species; (3) require annual permits for commercial shark fishing vessels; (4) establish annual quotas for commercial landings of large coastal and pelagic species with closures of the commercial fisheries when those quotas are reached; (5) close the commercial fishery for the overfished large coastal species immediately upon FMP implementation through June 1992, at which time the fishery will be reopened; (6) prohibit "finning" (the practice of harvesting sharks for fins alone and discarding the carcass at sea); (7) limit the exvessel sale of sharks harvested from the exclusive economic zone of the Atlantic, Gulf of Mexico, and Caribbean Sea to those caught by federally permitted vessels; (8) establish a minimum size limit for mako sharks; (9) establish recreational bag limits for sharks; (10) require sharks that are not harvested as part of the commercial quota or under the bag limits to be released in a manner ensuring maximum probability of survival; (11) require data

reports from owners/operators of permitted vessels and persons conducting shark fishing tournaments; (12) require permitted vessels to accommodate NMFS-approved observers upon request; (13) authorize the Assistant Administrator for Fisheries, NOAA, to implement or adjust certain management measures in accordance with a specified regulatory procedure and based on recommendations of an "Operation Team" established under the FMP; and (14) reduce the total allowable level of foreign fishing for sharks to zero.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 7, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-759 Filed 1-8-92; 11:53 am]

BILLING CODE 3510-22-M

VOL 57 ISS 8 JA 13 1992 UMI

Notices

Federal Register
Vol. 57, No. 8
Monday, January 13, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Annual Capital Expenditures Survey.
Form Number(s): ACE–1, ACE–2.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 24,000 hours.
Number of Respondents: 5,000.
Avg Hours Per Response: 1 hour and 48 minutes.
Needs and Uses: A major concern of economic policymakers is the adequacy of investment in productive plant and equipment. Much of the current data on investment are estimates for broad categories of capital expenditures with very little or no detail about the investing industries. We are proposing a new annual data collection for capital expenditures to provide detail on capital expenditures needed for estimating the national income and product accounts, estimating productivity of U.S. industries, evaluating fiscal and monetary policy, and conducting research using capital expenditures data. We plan first to collect 1991 data in a pilot survey to examine the basic survey design, forms and content, and survey processing system. We will also conduct response analysis designed to detect major errors in the forms and obtain respondents reactions to individual survey items. We will then collect 1992 data in a preliminary survey with an expanded panel in order to further test the processing system and survey design. We will implement a full–scale survey for 1993. This request is for clearance of the pilot survey, the response analysis, and the preliminary survey. We will later submit a request for clearance of the full–scale survey including refinements from the previous efforts.
Affected Public: Businesses or other for–profit organizations.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, 395–7313.

Agency: Bureau of the Census.
Title: 1992 Census of Mineral Industries.
Form Number(s): MC1001 through MC1471.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 80,060 hours.
Number of Respondents: 20,000.
Avg Hours Per Response: 2 hours 6 minutes—short form; 4 hours 20 minutes—long form.
Needs and Uses: The Census Bureau will conduct the census of mineral industries as part of the 1992 Economic Censuses. The economic censuses are the primary source of facts about the structure and functioning of the Nation's economy. They provide essential information for government, business, and the public. In particular, census results serve as part of the framework for the national accounts, input–output measures, and key economic indexes; furnish sampling frames and benchmarks for economic surveys; and provide detailed, comprehensive information for use in policy making, planning, and program administration. The 1992 Census of Mineral Industries will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of approximately 32,500 business establishments classified in Standard Industrial Classification Division B. This sector is comprised mainly of establishments engaged in metal, nonmetalic and coal mining, and oil and gas extraction.
Affected Public: Businesses or other for–profit organizations; small businesses or organizations.
Frequency: Once every 5 years.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, 395–7313.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 7, 1992.
Edward Michals,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 92–739 Filed 1–10–92; 8:45 am]
BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Docket 72–91]

Foreign-Trade Zone 76—Bridgeport, CT; Request for Subzone; Normag, Inc., Plant; Bridgeport, CT

The comment period for the above case, involving a request for subzone status at the steel electric transformer parts plant of Normag, Inc. (56 FR 58354, 11/19/91), is extended to February 21, 1992, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: January 7, 1992.
John J. DaPonte, Jr.,
Executive Secretary.
[FR Doc. 92–792 Filed 1–10–92; 8:45 am]
BILLING CODE 3510–05–M

[Docket 2–88]

Foreign-Trade Zone 99—Wilmington, DE; Withdrawal of Application for Subzone Status for General Foods Corporation

Notice is hereby given of the withdrawal of the application submitted by the State of Delaware, grantee of FTZ 99, through the Delaware Development Office, requesting authority for subzone status for the food products/sugar processing plant of General Foods Corporation in Dover, Delaware. The

application was filed on January 11, 1988 [53 FR 1809, 1/22/88].

The withdrawal is requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: January 7, 1992.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 92-793 Filed 1-10-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-549-807; A-570-814]

Postponement of Financial Antidumping Duty Determinations and Rescheduling of Public Hearings: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China and Thailand

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Alley or Lori Way, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 377-3773 or (202) 377-0656, respectively.

POSTPONEMENT OF FINAL DETERMINATION: China North Industries Corporation, Jilin Provincial Machinery & Equipment Import & Export Corporation, Liaoning Machinery & Equipment Import & Export Corporation, Lioning Metals & Minerals Import & Export Corporation, Shandong Metals & Minerals Import & Export Corporation, and Shenyang Machinery & Equipment Import & Export Corporation, six of the seven participating respondents in the People's Republic of China 9PRC) proceeding, represent a significant proportion of exports of certain carbon steel buttweld pipe fittings from the PRC to the United States. On December 20, 1991, these responsdents requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act). On December 23, 1991, the U.S. Fittings Group, the petitioner, opposed respondents' request for postponement on the basis that respondents failed to allege that they account for a significant proportion of exports.

TTU Industrial Corporation Ltd. (TTU), one of two participating respondents in the Thailand proceeding, represents a significant proportion of exports of certain carbon steel buttweld pipe fittings from Thailand to the United States. On December 23, 1991, TTU requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with the Act. On December 31, 1991, Awaji Sangyo Co., Ltd. (Awaji), the second of the two paticipating respondents in this proceeding, requested that the Department postpone the final determination for a period not greater than 30 days from the originally scheduled final determination date.

Pursuant to 19 CFR 353.20(b), if exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Such is the case with respondents in the PRC proceeding. Regarding the request for a partial postponement in the Thailand proceeding, 19 CFR 353.20(b) allows the Department to issue its final determination at any time prior to 135 days after the date of publication of the preliminary determination. Therefore, we do not need to limit the postponement of the final determination to 30 days from the originally scheduled determination date. Accordingly, we are postponing our final determinations as to whether sales of certain carbon steel butt-weld pipe fittings from the People's Republic of China and Thailand, respectively, have been made at less than fair value until not later than May 11, 1992.

Public Comment

In accordance with 19 CFR 353.38(b), we will hold public hearings to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. We are rescheduling the public hearings announced in the Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 56 FR 66831 (December 26, 1991), and in the Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand, 56 FR 66835 (December 26, 1991). The PRC hearing will be held on April 15, 1992, at 9:30 a.m. at the U.S. Department of Commerce in Room 3708, and the Thailand hearing will be held on April 14, 1992, at 1:30 p.m. at the U.S. Department of Commerce in room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must now be submitted to the Assistant Secretary no later than April 6, 1992, and rebuttal briefs no later than April 10, 1992. Oral presentations will be limited to issues raised in the briefs in accordance with 19 CFR 353.38(b). This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated January 6, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-794 Filed 1-10-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-017]

Clear Plate and Float Glass From Japan; Court Decision and Suspension of Liquidation

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of court decision and suspension of liquidation.

SUMMARY: On December 13, 1991, the United States Court of International Trade affirmed the International Trade Administration's amended determination upon remand that the Department of Commerce could no longer find that resumption of dumping was unlikely. Based upon this finding, the Department of Commerce should not have revoked the order in 1981. *PPG Industries, Inc.* v. *United States*, No. 81-07-00986, Slip Op. 91-112 (CIT December 13, 1991). If the Court's opinion in this case is not appealed, or is affirmed on appeal, then an antidumping duty order on clear plate and float glass from Japan will be reissued.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Timken Co.* v. *United States*, 893 F. 2d. 337 (Fed. Cir. 1990), Commerce will order the suspension of liquidation of the subject merchandise.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Philip C. Marchal or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 1981, the Department of Commerce (the Department) published its final revocation determination involving clear plate and float glass from Japan. Final Results of Administrative Review and Revocation of the Antidumping Finding on Clear Plate and Float Glass From Japan, 46 FR 32926 (June 25, 1981). This determination was based upon Department of Treasury (Treasury) findings that no sales at less than fair value had occurred for several years prior to February 17, 1977, the date of Treasury's tentative determination to revoke. The petitioners instituted an action challenging the Department's final determination. On December 29, 1988, the Court of International Trade (CIT) issued *PPG Industries* v. *United States*, 12 CIT ____, 702 F. Supp. 914, Slip Op. 88–174 (December 29, 1990), which remanded the determination to the Department, to conduct a review of entries from February 17, 1977 through February 5, 1981, the date of the Department's tentative determination to revoke. Upon remand, the Department concluded that its 1981 revocation was justified because during the period mentioned above there had been no sales at less than fair value. In an unpublished decision, dated January 1, 1991, the CIT remanded the determination to the Department a second time to "determine if more recent data (data from 1988–89) confirm the historical administrative view that resumption of dumping was unlikely and that revocation therefore is in order." *PPG Industries, Inc.* v. *United States*, "Memorandum and Order" at 3, Court No. 81–07–00986 (CIT, January 14, 1991). Upon second remand, the Department examined, pursuant to the CIT's order, the recent information submitted by petitioners and determined that the data do not "confirm the historical administrative view that resumption of dumping was unlikely and that revocation therefore is in order." Final Results of the Second Remand, Court No. 81–07–00986, p. 2 (June 28, 1991), quoting, Memorandum and Order, p.3 (January 14, 1991). This remand was affirmed by the CIT on December 13, 1991, *PPG Industries, Inc.* v. *United States*, No. 81–07–00986, Slip Op. 91–112 (CIT December 13, 1991) (PPG Industries).

Accordingly, absent an appeal, or, if appealed, upon a "conclusive" decision by the Court of Appeals for the Federal Circuit (CAFC), affirming the CIT, an antidumping duty order on clear plate and float glass from Japan will be published effective December 23, 1991.

SUSPENSION OF LIQUIDATION: In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the CAFC held that the Department must publish notice of a decision of the CIT or the CAFC which is not in harmony with the Department's or the International Trade Commission's respective determinations. Publication of this notice fulfills that obligation. The CAFC also held that in such a case, the Department must suspend liquidation until there is a "conclusive" decision in the action. Therefore, effective December 23, 1991, the Department is suspending liquidation pending the expiration of the period to appeal or pending a final decision of the CAFC if PPG Industries, Slip Op. 91–112, is appealed.

Date: January 6, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–795 Filed 1–10–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–101]

Greige Polyester/Cotton Printcloth From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and determination not to revoke.

SUMMARY: On April 25, 1989, the Department of Commerce published the preliminary results of its antidumping duty administrative review and tentative determination to revoke the antidumping duty order on greige polyester/cotton printcloth from the People's Republic of China. The review covers one manufacturer/exporter of this merchandise to the United States and the period September 1, 1987, through August 31, 1988.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. On May 31, 1989, we held a hearing. Subsequently, despite the respondent's claim that no shipments to the United States were made during the period from September 1, 1984, through August 31, 1988, we discovered that the respondent exported two shipments of printcloth to the United States during the period of review. We provided the respondent the opportunity to comment on our findings. We did not receive a timely response concerning these shipments from the respondent. Therefore, we have decided not to revoke the antidumping duty order on printcloth from the People's Republic of China on the basis of two shipments of printcloth imported into the United States from the People's Republic of China during the period of review.

EFFECTIVE DATE: January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Martha J. Butwin or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–4852.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 17,802) the preliminary results of its antidumping duty administrative and tentative determination to revoke the antidumping duty order or greige polyester/cotton printcloth from the People's Republic of China (PRC) (48 FR 41,614, September 16, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act)

Scope of the Review

Imports covered by this review are shipments of greige polyester/cotton printcloth, other than 80×80 type. Greige polyester/cotton printcloth is unbleached and uncolored printcloth. The term "printcloth" refers to plain woven fabric, not napped, not fancy or figured, of single yarn, not combed, of average yarn number 26 to 40, weighing not more than 6 ounces per square yard, of a total count of more than 85 yarns per square inch, of which the total count of the warp yarns per inch and the total count of the filling yarns per inch are each less than 62 percent of the total count of the warp and filling yarns per square inch.

During the review period such merchandise was classifiable under items 326.26 through 326.40 of the Tariff Schedules of the United States of America (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item 5210.11.60. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of greige polyester/cotton printcloth from the PRC and the period

September 1, 1987 through August 31, 1988.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results and tentative determination to revoke. At the request of the respondent, China National Textiles Import and Export Corporation (Chinatex), and the petitioner, the American Textile Manufacturers Institute, Inc. (ATMI), we held a hearing on May 31, 1989.

Comment 1: The petitioner argues that the tentative determination to revoke violates the Department's policy against issuing revocations on the basis of no shipments.

Department's Position: The Department published its tentative determination to revoke on April 25, 1989. Greige Polyester/Cotton Printcloth from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination to Revoke, 54 FR 17,802. This determination was published two days prior to the effective date of the revised 1989 regulations of the International Trade Administration. Therefore, the former version of these regulations governed this tentative determination. Departmental practice under the former regulations had been to grant a revocation of an antidumping order on the basis of four years of no shipments of the stated goods. See Final Results of Antidumping Duty; Administrative Review and Revocation in Part; Pressure Sensitive Tape from Italy, 55 FR 6,031–6,032 (February 21, 1990). As a result, the Department was correct to base its tentative revocation upon the belief that Chinatex had not shipped printcloth to the United States for four years. However, we have subsequently discovered evidence that Chinatex did indeed ship two orders of printcloth to the United States during the period of review. Thus, we have determined not to revoke the antidumping duty order on greige printcloth from the PRC.

Comment 2: The petitioner contends that the mere absence of shipments does not support a conclusion that there is no likelihood that sales at less-than-fair-value (LTFV) will be resumed by Chinatex.

Department's Position: We agree that the mere absence of shipments gives no indication whether or not LTFV sales will resume. However, due to the fact that we have determined not to revoke the order on the basis of the two shipments which Chinatex exported to the United States, the question of likelihood of resumption of dumping is moot.

Comment 3: The petitioner argues that Chinatex is likely to resume LTFV sales in the United States based upon the petitioner's LTFV calculations and because the petitioner claims that the PRC has gone from a minor exporter to the largest single exporter of textile products to the United States over the past ten years.

The respondent asserts that there is no likelihood that it will resume sales of printcloth at LTFV in the United States. This assertion is based upon the respondent's assurances to the Department that it will not resume LTFV sales, the respondent's calculations which allegedly demonstrate that Chinatex is able to "comfortably" compete in the United States market without dumping, and the existence of U.S. import quotas on PRC printcloth.

In addition, the respondent argues that the petitioner's calculations predicting the respondent's foreign market value (FMV) and U.S. price if the respondent were to ship printcloth to the U.S. are clearly erroneous.

Department's Position: According to 19 CFR 353.54(a) (1989), before revoking an antidumping duty order the Department must be satisfied that (1) "there is no likelihood of resumption of sales at less than fair value" and must demonstrate that (2) the sales of merchandise subject to an antidumping duty order "are no longer being made at less than fair value."

Both the petitioner and the respondent submitted comments on the Department's tentative determination to revoke the antidumping order. In addition, they each provided cost and factors information to demonstrate that there is or is not a likelihood that the respondent will resume LTFV sales of printcloth in the United States. However, since we have determined not to revoke the order (see Comment 1), these points are moot.

Final Results of the Review

Based on our analysis of these comments, and based on the fact that Chinatex has shipped two orders of greige polyester/cotton printcloth from the PRC during the period of review, we have determined not to revoke the antidumping duty order covering such printcloth from the PRC.

Chinatex did not submit a completed response to the Department's questionnaire because Chinatex claimed that it made no shipments of printcloth during the period of review. The Department subsequently determined that Chinatex made two shipments of printcloth to the United States from the PRC during this review period. The Department gave Chinatex the opportunity to comment on these shipments. Because Chinatex's response was untimely, the Department used as best information available the highest margin from a review during which data concerning the shipment of greige polyester/cotton printcloth from the PRC was provided by Chinatex to the Department.

We have determined that the following margin exists for the period September 1, 1987 through August 31, 1988:

Manufacturer/exporter	Margin/percent
Chinatex	22.4

As provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 22.4 percent shall be required on all shipments of this merchandise. These deposit requirements are effective for all shipments of greige polyester/cotton printcloth from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1), and 19 CFR 353.22(1990)).

Dated: December 31, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–796 Filed 1–10–92; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 911187–1287]

RIN 0693–AA96

A Proposed Federal Information Processing Standard for Integrated Services Digital Network (ISDN)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: A Federal Information Processing Standard (FIPS) for Integrated Services Digital Network (ISDN) is being proposed. This proposed standard defines the generic protocols necessary to establish transparent Integrated Services Digital Network (ISDN) connections among government networks and between government and conformant common carrier networks. This proposed FIPS provides a minimal set of bearer services, and is based on

national standards, international standards, and implementation agreements developed by the North American ISDN Users' Forum (NIU–Forum). Future versions of this proposed FIPS will provide protocols for additional services, teleservices and applications

The purpose of this notice is to solicit views from the public, manufacturers, and Federal, State, and local government users so that their needs can be considered prior to submission of this proposed standard to the Secretary of Commerce for review and approval.

The proposed standard contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical aspects of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications section from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, room B–64, Gaithersburg, MD 20899, telephone (301) 975–2816.

DATES: Comments on this proposed standard must be received on or before April 13, 1992.

ADDRESSES: Written comments concerning the proposed standard should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for ISDN, Technology Building, room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. David Su, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–6194.

Dated: January 7, 1992.

John W. Lyons,

Director

Federal Information Processing Standards Publication _____ Date Announcing the Standard for Integrated Services Digital Network (ISDN)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. *Name of Standard.* Integrated Services Digital Network (ISDN) (FIPS PUB _____).

2. *Category of Standard.* Computer-Related Telecommunications Standards.

3. *Explanation.* This publication defines the generic protocols necessary to establish transparent Integrated Services Digital Network (ISDN) connections among government networks and between government and conformant common carrier networks. This FISP provides a minimal set of bearer services, and is based on national standards, international standards, and implementation agreements developed by the North American ISDN Users' Forum (NIU-Forum). Future versions of this FIPS will provide protocols for additional services, teleservices and applications.

This standard supports a range of integrated services including voice, data, image, and video services. This standard is consistent with Federal Information Processing Standard 146–1, Government Open Systems Interconnection Profile (GOSIP), which provides protocols for computer to computer data communications using ISDN as a lower layer network technology.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory.

6. *Cross Index.* NIST Special Publication 500–195, North American ISDN Users' Forum Agreements on Integrated Services Digital Network (ISDN), September 1991.

7. *Related Documents.* Related documents are listed in the Reference Section of the ISDN document.

8. *Objectives.* The primary objectives of this standard are:

—To achieve interconnection and interoperability of user and network equipment that are acquired from different manufacturers in an open systems environment;

—To reduce the costs of acquiring user equipment for ISDN services;

—To facilitate the use of advanced technology by the Federal Government;

—To stimulate the development of commercial products compatible with ISDN standards.

9. *Specifications.* Integrated Services Digital Network (ISDN) (affixed).

10. *Applicability.* This standard is for use by Federal agencies for the acquisition of ISDN Customer Premise Equipment (CPE), ISDN adaptors, switches, and Private Branch Exchanges (PBX). It is also for use by the Federal Telecommunications System (FTS 2000) in the acquisition of telecommunications services for Federal agencies. This standard can also be used by any organization acquiring ISDN services.

11. *Implementation.* This standard is effective six (6) months after date of publication of final document in the **Federal Register** of its approval by the Secretary of Commerce. This standard shall be cited in solicitations and contracts initiated after the effective date, when the services or products to be acquired provide the specified functionality. Agencies are permitted and encouraged to cite this standard in procurement requests initiated any time after the date of promulgation.

For the indefinite future, agencies will be permitted to buy additional services that are beyond the scope of this standard.

The ISDN Conformance Test working group in the NIU-Forum has developed a set of abstract test suites for selected standards and implementation agreements. Test systems implementing these abstract conformance test suites have been developed, or are being developed by testing organizations. As these test systems are complete, NIST will specify the test systems and testing organizations which are accredited to perform conformance testing for this standard.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the

required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Special Information.* This FIPS encompasses the protocols and implementation agreements for the D channel procedures for the underlying (Layers 1, 2, and 3) ISDN protocols as well as a limited set of other protocols, such as ISDN bearer services, X.25 Packet Services, and Terminal Adaption. Common Channel Signalling—Signalling System #7 protocols are not included.

[FR Doc. 92–798 Filed 1–10–92; 8:45 am]

BILLING CODE 3510-CN-M

[Docket No. 911218–1318]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; Publication of 1991 NVLAP directory (NIST SP 810) Supplement #2.

SUMMARY: The National Institute of Standards and Technology (NIST) announces the publication of the second supplement to the 1991 Directory of Accredited Laboratories of the National Voluntary Laboratory Accreditation Program. The supplement lists laboratories accredited as of October 1, 1991. Single copies of the supplement may be obtained by sending a self-addressed mailing label to NVLAP, NIST, Building 411, room A146, Gaithersburg, MD 20899.

Note: One (1) copy of the supplement will automatically be sent to each laboratory enrolled in the NVLAP program.

FOR FURTHER INFORMATION CONTACT: Albert D. Tholen, Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Bldg. 411, room A146, Gaithersburg, MD 20899, (301) 975–4016.

SUPPLEMENTARY INFORMATION: The NVLAP Directory of Accredited Laboratories is published annual pursuant to 7.6(a) of the National Voluntary laboratory Accreditation Program (NVLAP) Procedures (title 15, part 7 of the Code of Federal Regulations). The supplements to the Directory are published quarterly. Previous supplements are superseded with this notice.

Dated: January 7, 1992.

John W. Lyons,

Director.

[FR Doc. 92–799 Filed 1–10–92; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by The Niantic Dockominium Association from an Objection by the State of Connecticut

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

SUMMARY: On January 10, 1991, the Secretary of Commerce (Secretary) received a notice of appeal from The Niantic Dockominium Association (Appellant). The Appellant is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended and the Department of Commerce's implementing regulations at 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of Connecticut Department of Environmental Protection (State) to the Appellant's consistency certification that its proposal for a U.S. Army Corps of Engineers permit is consistent with Connecticut's coastal zone management program. Specifically, the Appellant proposes a dredge and fill operation to relocate a section of the presently authorized federal channel in the Niantic River in the Town of East Lyme, County of New London, Connecticut. The Appellant proposed the operation, involving 2,000 cubic yards of fill material, in order to maintain its existing marina structures in their present location, parts of which are said to encroach upon the federal channel.

The CZMA provides that a timely objection by a state to a consistency certification precludes any federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). (Section 307(c)(3)(A)). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Brett R. Joseph, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235. Copies of comments should also be sent to Mr. Arthur J. Rocque, Jr., Director, Coastal Resources Management Division, State of Connecticut, Department of Environmental Protection, 165 Capitol Avenue, Hartford, Connecticut 06106.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the State of Connecticut, Department of Environmental Protection and the Office of the Assistant General Counsel for Ocean Services, NOAA.

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FOR FURTHER INFORMATION CONTACT: Brett R. Joseph, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606–4200.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

Dated: December 31, 1991.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92–725 Filed 1–10–92; 8:45 am]

BILLING CODE 3510-08-M

Pacific Fishery Management Council; Rescheduled Teleconference

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Budget Committee has canceled a public teleconference originally scheduled to be held January 7, 1992, at 1:30 p.m., and rescheduled that teleconference for January 14, 1992, at 2 p.m. An agenda was published previously on December 27, 1991, at 56 FR 67065 and remains unchanged.

Members of the public that wish to participate in the teleconference or need more information should contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, room 420, Portland, Oregon 97201, telephone: (503) 326–6352.

Dated: January 7, 1992.

David S. Crestin,

Deputy Director Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–730 Filed 1–10–92; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures and Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in futures and futures options on the FT–SE 100 share index. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before January 14, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME FT–SE 100 share index contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the CME in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 7, 1992.

Gerald Gay,

Director

[FR Doc. 92–700 Filed 1–10–92; 8:45 am]

BILLING CODE 6351-01-M

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Notice of Funding Deadlines

AGENCY: Commission on National and Community Service.

ACTION: Notice.

SUMMARY: The Commission on National and Community Service, established by the National and Community Service Act of 1990, (Pub. L. 101–610, as amended by Pub. L. 102–10) hereby notifies States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau, until such time as the Compact of Free Association is ratified) that they are eligible to apply for funds under the following National and Community Service Act programs:

Serve-America: For programs sponsored by schools or community-based agencies to involve school-aged youth in service to the community or to involve adult volunteers in schools. Funding is allocated to States according to a formula. $16.9 million is available for this program in fiscal year 1992.

Higher Education Innovative Projects for Community Service: For student community service projects or teacher training in service-learning concepts and skills sponsored by higher education institutions or public agencies working in partnership with those institutions. $5.6 million is available for this program in fiscal year 1992.

American Conservation and Youth Service Corps: For full-time, year-round, or summer conservation corps and youth service corps programs for teenagers and young adults, who may receive education, training, living allowances and scholarships. $22.5 million is available for this program in fiscal year 1992.

National and Community Service: For national service programs that will engage individuals ages 17 and older in full-time or part-time service. Participants receive education or housing benefits upon completion of their term of service.

DATES: This is the schedule for deadlines. In the case of Serve-America and the American Conservation and Youth Service Corps, local applicants

are eligible to apply for funds directly from the Commission only if the State does not apply. Therefore, in order to give local applicants adequate notice of their eligibility to apply directly to the Commission, States are required to notify the Commission of their intent to apply for these two programs by Monday, February 3, 1992 (note: this is a revised and final deadline).

Notice must be made in writing and include:

- Name of the State
- Designated State Lead Agency
- Staff contact person
- Address, phone and fax number of State Lead Agency and contact person
- The specific programs for which the State intends to apply

If the State notifies the Commission that it does not intend to apply for funds under Serve-America or American Conservation and Youth Service Corps, or if the Commission has not received notification from a State by February 3, 1992, the State will be barred from applying for funds under Serve-America or American Conservation and Youth Service Corps. Note also that if a State notifies the Commission that it intends to apply for one or both of these programs and then fails to apply, local applicants in that state will nonetheless be barred from applying to the Commission.

Final grant applications will be due to the Commission on or before 4:30 p.m., Monday, March 23, 1992.

FOR FURTHER INFORMATION CONTACT: The Commission on National and Community Service, National Press Club Building, 529 14th Street, NW., 4th floor, Washington, DC 20045, Phone: (202) 724-0600, Fax: (202) 724-0608.

SUPPLEMENTARY INFORMATION: Proposed regulations to administer this grant-making program were published previously in the Federal Register (56 FR 57404, November 8, 1991).

Catherine Milton,

Executive Director, Commission on National and Community Service.

[FR Doc. 92-850 Filed 1-9-92; 1:38 pm]

BILLING CODE 6820-SA-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management; Defense Transportation Tracking System

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice only.

SUMMARY: The Department of Defense (DOD) is expanding its Defense Transportation Tracking System (DTTS) to track Security Risk Category (SRC) 2 munitions effective 16 December 1991. In conjunction with this expansion, Armed Guard Service is eliminated as a Transportation Protective Service (TPS).

ADDRESSES: Military Traffic Management Command, ATTN: MT-SS, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Jones or CPT Irene Rosen, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041-5050, (703) 756-1090.

SUPPLEMENTARY INFORMATION: The purpose of this article is to provide information on the expansion of the Defense Transportation Tracking System (DTTS).

The military services and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence have approved expansion of the DTTS. The expansion implements a phased plan that will eventually result in the tracking of all DOD Categorized and Uncategorized munitions under Satellite Motor Surveillance (SM).

Accordingly, beginning on 16 December 1991, the DTTS entered the first step of the 3-step expansion plan. On that date, the tracking of SRC-2 Arms, Ammunition and Explosives (AA&E) commenced, adding approximately 5,200 shipments annually to the SM tracking volume.

Immediately upon implementation of the first step (16 December), Armed Guard Surveillance (AG) has ceased to exist as a Transportation Protective Service (TPS). Any armed protection required on motor movements will be provided by DOD.

Formats and data element requirements for SM are spelled out in a DOD standard rules publication. A copy of the SM rule may be obtained from HQs, Military Traffic Management Command, Directorate of Inland Traffic, ATTN: MT-INNG, 5611 Columbia Pike, Falls Church, VA 22041-5050.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-734 Filed 1-10-92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Amendment to notice.

SUMMARY: Notice is hereby given of an amendment to the notice of the teleconference meeting of the Achievement Levels Committee of the National Assessment Governing Board scheduled for January 9, 1992, at 1100 L Street, NW., suite 7322, Washington, DC, as published in the Federal Register on Friday, December 13, 1991, Vol. 56, No. 240, page 65047. The teleconference meeting has been rescheduled for January 16, 1992 at 11 a.m.

Dated: January 7, 1992.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 92-780 Filed 1-10-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DEPARTMENT OF JUSTICE

Agreement Between the Department of Housing and Urban Development and the Department of Education to Delegate Certain Civil Rights Compliance Responsibilities for Educational Institutions

AGENCY: Department of Education.

A. Purpose

Section 1-207 of Executive Order 12250 authorizes the Attorney General to initiate cooperative programs among Federal agencies responsible for enforcing title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, as amended, section 504 of the Rehabilitation Act of 1973, as amended, and similar provisions of Federal law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs or activities receiving Federal financial assistance.

This agreement will promote consistent and coordinated enforcement of covered nondiscrimination provisions, as required in the Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs (28 CFR 42.401-42.415), increase the efficiency of compliance activity, and reduce burdens on recipients, beneficiaries, and Federal agencies by consolidating compliance responsibilities, by eliminating duplication in civil rights reviews and data requirements, and by promoting consistent application of enforcement standards.

B. Delegation

By this agreement the Department of Housing and Urban Development designates the Department of Education

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as the agency responsible for specific civil rights compliance duties, as enumerated below, with respect to educational institutions. Responsibility for the following covered nondiscrimination provisions is delegated:

1. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d to 2000d–4); and

2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

This agreement specifies the duties to be performed by each agency. It does not alter the requirements of the joint Department of Justice/Equal Employment Opportunity Commission (EEOC) regulation concerning procedures for handling complaints of employment discrimination filed against recipients of Federal financial assistance. 28 CFR 42.601–42.613, 29 CFR 1691.1–1697.13, 48 FR 3570 (January 25, 1983). Complaints covered by that regulation filed with a delegating agency against a recipient of Federal financial assistance solely alleging employment discrimination against an individual are to be referred directly to the EEOC by the delegating agency.

C. Duties of the Department of Education

The Department of Housing and Urban Development assigns the following compliance duties to the Department of Education with respect to educational institutions. Specifically, the Department of Education shall:

1. Maintain current files on all activities undertaken pursuant to this agreement and on the compliance status of applicants and recipients with respect to their programs or activities receiving Federal financial assistance resulting from preapproval and postapproval reviews, complaint investigations, and actions to resolve noncompliance. A summary of these activities and the compliance status of applicants and recipients shall be reported at least at the end of every fiscal year to the Department of Housing and Urban Development.

2. Develop and use information for the routine, periodic monitoring of compliance by educational institutions with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

3. Perform, upon request by the Department of Housing and Urban Development, preapproval reviews for which supplemental information or field reviews are necessary to determine compliance.

4. Conduct an effective program of postapproval reviews of recipients with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

5. Receive complaints alleging that recipients subject to this agreement have discriminated in violation of covered nondiscrimination provisions in their programs or activities receiving Federal financial assistance, attempt to obtain information necessary to make complaints complete, and investigate complete complaints.

6. Issue written letters of findings of compliance or of noncompliance that (a) advise the recipient and, where appropriate, the complainant of the results of the postapproval review or complaint investigation; (b) provide recommendations, where appropriate, for achieving voluntary compliance; and (c) offer the opportunity to engage in negotiations for achieving voluntary compliance. The governor of the state or chief executive of the local governmental unit in which the applicant or recipient is located will be notified, if the letter of findings of noncompliance is made pursuant to a statute requiring that the governor or chief executive be given an opportunity to secure compliance by voluntary means. The Department of Education shall promptly provide copies of its letters of findings to the Department of Housing and Urban Development and to the Assistant Attorney General for Civil Rights.

7. Conduct, after a letter of findings of noncompliance, negotiations seeking voluntary compliance with the requirements of covered nondiscrimination provisions.

8. If compliance cannot be voluntarily achieved and the Department of Education does not fund the applicant or recipient, refer the matter to the Department of Housing and Urban Development for its own independent action and notify the Assistant Attorney General for Civil Rights of the referral. If compliance cannot be achieved and both the Department of Education and the Department of Housing and Urban Development fund the applicant or recipient, initiate formal enforcement action. When the Department of Education initiates formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, provide the Department of Housing and Urban Development with an opportunity to participate as a party in a joint administrative hearing. When the Department of Education initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Department of Housing and Urban Development of the referral.

9. Notify the Department of Housing and Urban Development and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and of any action taken against the applicant or recipient.

D. Duties of the Department of Housing and Urban Development

The Department of Housing and Urban Development shall:

1. Issue and provide to the Department of Education all regulations, guidelines, reports, orders, policies, and other documents that are needed for recipients to comply with covered nondiscrimination provisions and for the Department of Education to administer its responsibilities under this agreement.

2. Provide the Department of Education with information, technical assistance and training necessary for it to perform the duties delegated under this agreement. This information shall include, but is not limited to, a list of recipients receiving Federal financial assistance from the Department of Housing and Urban Development, the types of assistance provided, compliance information solely in the Department of Housing and Urban Development's possession or control, and data on program eligibility and/or actual participants in assisted programs or activities.

3. Perform preapproval reviews of applicants for assistance, as required by 28 CFR 42.407(b), that do not require supplemental information or field reviews. The reviews may require information to be supplied by the Department of Education. If the Department of Housing and Urban Development requests the Department of Education to undertake an on-site review because it has shown it has reason to believe discrimination is occurring in a program or activity that is either receiving Federal financial assistance or that is the subject of an application, the Department of Housing and Urban Development shall supply information necessary for the Department of Education to undertake such a review.

4. Refer all complaints alleging discrimination under covered nondiscrimination provisions filed with the Department of Housing and Urban Development against a recipient subject to this delegation and determine, if possible, whether the program involved receives Federal financial assistance from the delegating agency.

5. Where the Department of Education has notified the applicant or recipient in

writing that compliance cannot be achieved by voluntary means and the Department of Education has referred the matter to the Department of Housing and Urban Development, make the final compliance determination and:

(a) If the Department of Housing and Urban Development wishes to initiate formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, notify the Department of Education whether the Department of Housing and Urban Development will join as a party in the administrative hearing conducted by the Department of Education or will conduct its own administrative hearing.

(b) When the Department of Housing and Urban Development initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Department of Education of the referral.

(c) If the Department of Housing and Urban Development conducts its own hearing, notify the Department of Education and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and of any action taken against the applicant or recipient. The Department of Housing and Urban Development may request the Department of Education to act as counsel in its administrative hearing.

(d) If the Department of Housing and Urban Development neither initiates steps to deny or terminate Federal financial assistance nor refers the matter to the Department of Justice, notify the Department of Education and the Assistant Attorney General for Civil Rights in writing, within 15 days after notification from the Department of Education, that voluntary compliance cannot be achieved.

E. Redelegation

Duties delegated herein to the Department of Education may be redelegated. The Department of Education shall notify the Department of Housing and Urban Development of any such redelegation prior to its effective date.

F. Effect on Prior Delegation

This agreement supersedes and replaces the title VI delegation agreements effective May 26 and June 22, 1966, between the U.S. Department of Health, Education, and Welfare and the Department of Housing and Urban Development. In addition, this agreement delegates to the Department of Education, the Department of Housing and Urban Development's enforcement authority under section 504 of the Rehabilitation Act of 1973 with respect to educational institutions.

G. Approval

This agreement shall be signed by the Assistant Attorney General for Civil Rights. It shall be signed by both parties and become effective 30 days from publication in the **Federal Register**.

H. Termination

This agreement may be terminated by either agency 60 days after notice to the other agency and to the Assistant Attorney General for Civil Rights.

Dated: March 22, 1991.

Alfred A. DelliBovi,

Deputy Secretary, Department of Housing and Urban Development.

Dated: April 25, 1991.

Lamar Alexander,

Secretary, Department of Education.

Dated: December 19, 1991.

John R. Dunne,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 92-726 Filed 1-10-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL91-23-000]

Oklahoma Municipal Power Authority; Oklahoma Gas and Electric Co.; Filing

January 7, 1992.

Take notice that on December 30, 1991, Oklahoma Gas and Electric Company (OG&E) tendered for filing supplementary information related to five Amendatory Agreements dated September 30, 1991, between OG&E and the Oklahoma Municipal Power Authority (OMPA) as part of a Settlement Agreement between OG&E and OMPA.

Copies of the supplementary material have been served on OMPA, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-728 Filed 1-10-92; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Program Opportunity Notice for Biomass Energy Projects Proposed for Development Within the Western Regional Biomass Energy Program Region

AGENCY: Western Area Power Administration, DOE.

ACTION: Program opportunity notice.

SUMMARY: The Department of Energy (DOE), Western Area Power Administration (Western), as part of its role in managing the Western Regional Biomass Energy Program (WRBEP), plans to solicit cost-shared proposals for the development, demonstration, and/or commercialization of biomass energy projects that utilize low- or negative-value biomass feedstocks. Proposals may include projects focused on collection, transportation, upgrading, conversion, utilization, and/or marketing of low-value biomass feedstocks for energy use, and may involve efforts related to existing biomass-to-energy projects. Only projects that have progressed beyond the basic research stage will be considered.

Proposals will be solicited by a Program Opportunity Notice (PON) issued by Western. Awards will be made to applicants that propose projects within the WRBEP region and on a cost-shared basis. The WRBEP region consists of the States of Arizona, California, Colorado, Kansas, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming. The selected participants must share at least 20 percent of the cost of the proposed project, and preferably 50 percent or more.

It is anticipated that up to 10 awards will result from the PON solicitation. The maximum DOE contribution is limited to $65,000 per project, except that projects involving cost-sharing by organizations in more than one State may be funded by WRBEP for a larger

amount. Project periods of 1 to 5 years will be considered. Projects involving regional biomass feedstocks or biomass-to-energy projects (i.e., directly involving multi-State feedstocks or projects) are particularly encouraged. Awards will be made based on the results of an evaluation of the technical merits, beneficial effects, business and management, and cost merits of proposals received in response to the PON, as well as program policy factors. Evaluation criteria will be defined as part of the PON. DOE will select the type of award relationship (contract, grant, or cooperative agreement) following the evaluation process. If the selected relationship is a contract, the regulations defined in the Federal Acquisition Regulation and the DOE Acquisition Regulation will be followed. If the selected relationship is expected to be a financial assistance instrument, the DOE Assistance Regulation will be followed. Specifically, 10 CFR part 600 will apply if the intended relationship is expected to be a cooperative agreement or grant.

DATES: Parties who would like to receive a copy of the PON should submit a written request to the contact listed below. All requests for a PON should be submitted by February 12, 1992. All requests should reference solicitation number DE–PN65–92WA09522.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Adams, Contract Specialist, Western Area Power Administration, P.O. Box 3402, Mail Code A1521, Golden, CO 80401, (303) 231–7709.

Issued at Golden, Colorado, December 30, 1991.

William H. Clagett,

Administrator.

[FR Doc. 92–791 Filed 1–10–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4092–7]

Notice of Location Change for Meeting on January 27 & 28, 1992 of the Chemical Accident Prevention Subcommittee of the Environmental Measurements and Chemical Accident Prevention Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT)

Under Public Law 92–463 (The Federal Advisory Committee Act), EPA gives notice of a change of location for the meeting of the Chemical Accident Prevention Subcommittee of the Environmental Measurements and Chemical Accident Prevention (EM/CAP) Committee. The meeting will convene January 27, from 12 noon to 5 p.m. and January 28 from 9 a.m. to 5 p.m. The location of the meeting has been changed to: Holiday Inn Crowne Plaza National Airport, 300 Army Navy Drive, Arlington, Virginia 22202.

Additional information may be obtained from David Graham at (202) 260–9743, or by written request sent by fax (202) 260–6882.

Dated: January 8, 1992.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 92–944 Filed 1–13–92; 8:45 am]

BILLING CODE 6560–50–M

[OPP–66146A; FRL 4000–2]

Sodium Arsenite; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Cancellation Order.

SUMMARY: This Notice, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces the cancellation of the two registrations of products containing sodium arsenite. EPA received a request for voluntary cancellation from the sole registrant of products containing sodium arsenite on November 13, 1990. On June 19, 1991 (56 FR 28154), EPA published receipt of the request and announced a comment period of 90 days to allow any interested party(s) the opportunity to have the registrations transferred to them during that time or to allow the registrant an opportunity to withdraw the request. No parties requested transferral of the registrations and the registrant did not withdraw its request for voluntary cancellation. Thus, EPA is issuing the cancellation order at this time. Elsewhere in this issue of the **Federal Register**, EPA is proposing to revoke the interim tolerance for residues of sodium arsenite in or on grapes.

DATES: The cancellation shall be effective January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–7830.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 13, 1990, Agtrol Chemical Products (hereafter referred to as Agtrol) submitted a letter to EPA requesting voluntary cancellation, pursuant to FIFRA section 6(f), of its two products containing sodium arsenite, Sodium Arsenite Solution #4 (EPA # 55146–35) and Sodium Arsenite Solution #6 (EPA # 55146–25). As the basis for requesting voluntary cancellation, the company concluded that the cost of generating studies required for continued registration, some of which were overdue at the time of the request, did not justify continued registration of their products. In addition, sodium arsenite is currently undergoing a Special Review for carcinogenicity concerns for workers. Sodium arsenite, an inorganic arsenical, is classified as a Group A, or known human carcinogen.

Sodium arsenite is used to control Black Measles and *Phomopsis* cane and leaf spots (*Phomopsis viticola*) on grapes. These diseases, and thus the use of sodium arsenite, occur only in California. The degree of disease outbreak is variable and may not occur every year. Black Measles is caused by infection through pruning wounds. Although there are no alternatives to sodium arsenite for Black Measles control, the disease is not expected to spread significantly in the absence of chemical controls. While grapes affected by Black Measles are worthless for fresh use, some may be crushed for wine. Properly timed applications of captan can adequately control *Phomopsis* cane and leaf spots.

II. Existing Stocks Determination

Included in its voluntary cancellation request, Agtrol requested that it be allowed to sell all stocks until depletion. The company noted it has 30,000 gallons of stock ready for the next growing season, which is on average enough stock to treat crops over two growing seasons. As noted in the June 19, 1991 **Federal Register** Notice, EPA set forth its rationale for not allowing unlimited sale, distribution and use of sodium arsenite by Agtrol. In that same Notice, EPA proposed to allow the registrant to sell and distribute its products containing sodium arsenite for 1 year after the date of cancellation and persons other than the registrant to sell and use products containing sodium arsenite until supplies were exhausted. The Agency concluded that the benefits of sodium arsenite use until stocks have been depleted outweigh the risks. EPA believes exposure, and therefore risk, are not high since California requires several protective measures and since sodium arsenite is applied to dormant grapes vines. EPA received no comments on this proposal. Therefore,

the registrant may sell and distribute stocks until January 13, 1993, and all others may sell, distribute, and use stocks until supplies are exhausted.

III. Conclusion

EPA received a request for voluntary cancellation from Agtrol. Pursuant to FIFRA section 6(f) as amended, a comment period was established to allow any interested party(s) to have the registrations transferred to them. In addition, EPA proposed an existing stocks provision for the registrant of 1 year, and sale and use until stock depletion by all others. No requests for transfer were received and no comments were submitted regarding the voluntary cancellation or the proposed existing stocks provision. Therefore, EPA is issuing a cancellation order for all registrations of products containing sodium arsenite, allowing Agtrol to sell and distribute remaining stock until January 13, 1993, while allowing sale, distribution, and use by all others until all stocks are depleted. Note that while there is no expiration date for sodium arsenite sale, distribution, and use (except by Agtrol), expiration of sodium arsenite tolerances has been proposed for June 1994 in a notice published elsewhere in this issue of the **Federal Register**. Thus, after June 1994 no residues of sodium arsenite may legally be found on grapes.

IV. Cancellation Order

On November 13, 1990, Agtrol Chemical Products, the sole registrant of products containing sodium arsenite in the United States, requested voluntary cancellation of their two products containing sodium arsenite (EPA registration numbers 55146–35 and 55146–25) pursuant to FIFRA section 6(f). I approve the cancellation of these two products and of the existing stocks provision allowing sale and distribution of sodium arsenite products by Agtrol for 1 year, and sale, distribution, and use by all others until all stocks have been depleted. EPA has concluded that the benefits as existing sodium arsenite stocks are being depleted outweigh risks associated with use. For the purposes of this Order, "existing stocks" are defined as any quantity of any of the sodium arsenite products listed above that has been formulated, packaged, and labeled for use and is being held for shipment or release or has been shipped or released into commerce prior to the effective date of this Order. The sale and distribution of existing stocks of the sodium arsenite products listed above by the registrant, Agtrol Chemical Products, is permitted for 1 year from the effective date of this Order. Therefore, all sale and distribution of these products by the registrant is prohibited after January 13, 1993. The sale, distribution, and use of existing stocks of the sodium arsenite products listed above by any person other than the registrant, Agtrol Chemical Products, is permitted until all stocks, other than any stocks remaining in the possession of Agtrol Chemical Products after January 13, 1993 have been depleted. Accordingly, this cancellation order shall become effective January 13, 1992.

Dated: December 31, 1991.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 92–785 Filed 1–10–92; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–51782; FRL 4043–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 39 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92–201, February 9, 1992.

P 92–202, February 3, 1992.

P 92–203, 92–204, 92–206, 92–207, 92–208, February 9, 1992.

P 92–209, 92–210, 92–211, 92–212, 92–213, 92–214, February 11, 1992.

P 92–316, 92–317, 92–318, March 17, 1992.

P 92–319, 92–320, 92–321, March 18, 1992.

P 92–322, 92–323, 92–324, 92–325, 92–326, 92–327, 92–328, 92–329, March 21, 1992.

P 92–330, 92–331, 92–332, 92–333, 92–334, 92–335, 92–336, March 22, 1992.

P 92–337, 92–338, 92–339, 92–340, 92–341, March 24, 1992.

Written comments by:

P 92–201, January 10, 1992.

P 92–202, January 4, 1992.

P 92–203, 92–204, 92–206, 92–207, 92–208, January 10, 1992.

P 92–209, 92–210, 92–211, 92–212, 92–213, 92–214, January 12, 1992.

P 92–316, 92–317, 92–318, February 16, 1992.

P 92–319, 92–320, 92–321, February 17, 1992.

P 92–322, 92–323, 92–324, 92–325, 92–326, 92–327, 92–328, 92–329, February 20, 1992.

P 92–330, 92–331, 92–332, 92–333, 92–334, 92–335, 92–336, February 21, 1992.

P 92–337, 92–338, 92–339, 92–340, 92–341, February 23, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS–51782)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. L–100, Washington, DC, 20460, (202) 260–3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92–201

Manufacturer. R.T.Vanderbilt Company,Inc.

Chemical. (G) Calcium alkylarysulfonate.

Use/Production. (S) Corrosion inhibitor for lubricants. Prod. range: Confidential.

Toxicity Data Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Skin irritation: moderate species (rabbit).

P 92–202

Manufacturer. Confidential.

Chemical. (G) Alkylaluminoxane compound.

Use/Production. (S) Corrosion inhibitor for lubricants. Prod. range: Confidential.

Toxicity Data Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg

species (rabbit). Skin irritation: moderate species (rabbit).

P 92-203

Manufacturer. R.T. Vanderbilt Company, Inc.

Chemical. (G) Lithium alkylarysulfonate.

Use/Production. (S) Corrosion inhibitor for lubricants. Prod. range: Confidential.

Toxicity Data Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Skin irritation: moderate species (rabbit).

P 92-204

Manufacturer. R.T.Vanderbilt Company, Inc.

Chemical. (G) Zinc alkylarylsulfonate.

Use/Production. (S) Corrosion inhibitor for lubricants. Prod. range: Confidential.

Toxicity Data Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Skin irritation: moderate species (rabbit).

P 92-206

Manufacturer. Confidential.

Chemical. (G) Deionized acidic.

Use/Production. (G) Intermediate in preparation of surface coating. Prod. range: Confidential.

P 92-207

Manufacturer. Confidential.

Chemical. (G) Dimethylaminoethanol salt of a copolyester of sulfoisophthalic acid.

Use/Production. (G) Surface coating for film. Prod. range: Confidential.

P 92-208

Manufacturer. Confidential.

Chemical. (G) Aqueous aliphatic polyurethane.

Use/Production. (S) Coating. Prod. range: Confidential.

P 92-209

Manufacturer. Confidential.

Chemical. (G) Polydimethyl siloxane resin.

Use/Production. (G) Paint additive. Prod. range: Confidential.

P 92-210

Importer. Confidential.

Chemical. (G) Derivative of bis-triazinylamino-stilbene disulfonic acid.

Use/Import. (G) Floroscent brightner. Import range: Confidential.

P 92-211

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Azo-substituted naphthalene trisulfonic acid.

Use/Production. (S) Fiber reactive dye for textile. Prod. range: 2,500–10,000 kg/yr.

P 92-212

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Azo-substituted naphthalene trisulfonic acid.

Use/Production. (S) Fiber reactive dye for textile. Prod. range: 2,500–10,000 kg/yr.

P 92-213

Importer. Reichhold Chemicials, Inc.

Chemical. (G) Polyester polyurethane.

Use/Import. (S) Polyurethane for glass fiber sizing. Import range: Confidential.

P 92-214

Importer. Reichhold Chemicals, Inc.

Chemical. (G) Polyester polyurethane.

Use/Import. (S) Polyurethane for glass fiber sizing. Import range: Confidential.

P 92-216

Importer. BASF Corporation, Fibers Division.

Chemical. (G) Acrylate-acrylonitrile copolymer salt.

Use/Import. (S) Polymer dispersion. Import range: Confidential.

P 92-217

Manufacturer. Confidential.

Chemical. (G) Amine functional epoxy resin.

Use/Production. (S) Coatings. Prod. range: 480,000–2,400,000 kg/yr.

P 92-218

Manufacturer. Confidential.

Chemical. (G) Styrene-acrylic copolymer.

Use/Production. (G) Clear caulk. Prod. range: Confidential.

P 92-219

Manufacturer. Texaco Lubricants Co.

Chemical. (G) Tetraurea grease thickener prepared by the reaction of a diisocyanate with aliphatic amines.

Use/Production. (S) Automotive constant velocity joints. Prod. range: 7,140 kg/yr.

P 92-220

Manufacturer. Confidential.

Chemical. (G) Aromatic imine.

Use/Production. (G) Catalyst for polyurethanes. Prod. range: Confidential.

P 92-221

Importer. Confidential.

Chemical. (G) Aliphatic amine, epoxy adduct.

Use/Import. (S) Internal coating for storage tanks, transport tanks, pipe interiors, and processing equipment. Import range: Confidential.

P 92-222

Manufacturer. E.I. Du Pont de Nemours & Co., Inc.

Chemical. (G) Acrylic polymer.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 92-223

Manufacturer. Dow Chemical Co.

Chemical. (G) Salt of ethylene acrylic acid terpolymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 92-224

Manufacturer. Dow Chemical Co.

Chemical. (G) Salt of ethylene acrylic acid terpolymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 92-225

Manufacturer. Dow Chemical Co.

Chemical. (G) Salt of ethylene acrylic acid terpolymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 92-226

Manufacturer. Dow Chemical Co.

Chemical. (G) Salt of ethylene acrylic acid terpolymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 92-227

Manufacturer. Dow Chemical Co.

Chemical. (G) Salt of ethylene acrylic acid terpolymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 92-228

Manufacturer. Confidential.

Chemical. (G) Trisubstituted hydroquinone.

Use/Production. (S) Organic synthesis intermediate. Prod. range: 1,100–2,200 kg/yr.

P 92-229

Manufacturer. Confidential.

Chemical. (G) Trisubstituted hydroquinone diester.

Use/Production. (G) Contained use-component. Prod. range: 1,500–3,000 kg/yr.

P 92-230

Manufacturer. Confidential.

Chemical. (G) Alkoxyphenol, 4-dihydroalkylpyran, isomer mix.

Use/Production. (G) Fine fragrance component; functional products fragrance component. Prod. range: Confidential.

P 92-331
Manufacturer. Confidential.
Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 500–1,500 kg/yr.

P 92-332
Manufacturer. Confidential.
Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 500–1,500 kg/yr.

P 92-333
Manufacturer. Confidential.
Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 500–1,500 kg/yr.

P 92-334
Manufacturer. Confidential.
Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 500–1,500 kg/yr.

P 92-335
Manufacturer. Confidential.
Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 500–1,500 kg/yr.

P 92-336
Manufacturer. Confidential.
Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 500–1,500 kg/yr.

P 92-337
Manufacturer. Confidential.
Chemical. (G) Polyamine formaldehyde condensate.
Use/Production. (G) Scavenger. Prod. range: Confidential.

P 92-338
Importer. Confidential.
Chemical. (G) Substituted pyrogallol.
Use/Import. (G) A component of the material for IC fabrication. Import range: Confidential.

P 92-339
Importer. Confidential.
Chemical. (G) Substituted phenol.
Use/Import. (G) A component of the material for IC fabrication. Import range: Confidential.

P 92-340
Importer. Confidential.
Chemical. (G) Substituted resorcinol.
Use/Import. (G) A component of the material for IC fabrication. Import range: Confidential.

P 92-341
Manufacturer. E.I. Du Pont de Nemours & Co., Inc.
Chemical. (S) Ethane,-1,1,1-trifluoro.
Use/Production. (S) Refrigerant. Prod. range: Confidential.

Dated: January 7, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-786 Filed 1-10-92; 8:45 am]
BILLING CODE 6560-50-F

[OPPTS-59929; FRL 4043-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 2 such PMN(s) and provides a summary of each.

DATES: Close of review periods:
Y 92-80, January 16, 1992.
Y 92-81, January 22, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St:, SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-80
Manufacturer. C. J. Osborn, Div. of Suvar Corp.
Chemical. (G) Long oil alkyd.
Use/Production. (S) Pigmented coatings. Prod. range: Confidential.

Y 92-81
Manufacturer. Confidential.
Chemical. (G) Modified phthalate polyester resin.
Use/Production. (S) Binder in two component primer. Prod. range: Confidential.

Dated: January 7, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-787 Filed 1-10-92; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

January 7, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW; Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3253 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None.
Title: Section 74.991, Wireless cable application procedures.
Action: New collection.
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 20 responses; 3.33 hours average burden per response; 67 hours total annual burden.
Needs and Uses: On 9/26/91, the Commission adopted a Second Report and Order, MM Doc. No. 80-54, Amendment of parts 21, 43, 74, 78 and 94 of the Commission's Rules

Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, which further amended rules to facilitate the development of wireless cable service by conforming the rules applicable to the three microwave radio services used in the provision of wireless cable. Section 74.991 requires that a wireless cable application be filed on FCC Form 330 (3060–0062), sections I and V, with a complete FCC Form 494 (3060–0402) appended. The application must include a cover letter clearly indicating that the application is for a wireless cable entity to operate on ITFS channels. The applicant must also, within 30 days of filing its application, give local public notice in a newspaper. The specific data that must be included in the newspaper publication is contained in § 74.991(c). The data is used by FCC staff to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use. The data is also used to insure that applicants are qualified to become Commission licensees and that proposals do not cause interference.

OMB Number: None.
Title: Section 74.986, Involuntary ITFS station modifications.
Action. New collection.
Respondents: State or local governments, businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 60 responses; 5.83 hours average burden per response; 350 hours total annual burden.
Needs and Uses: On 9/26/91, the FCC adopted a Second Report and Order, Gen. Doc. No. 90–54, Amendment of parts 21, 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, which further amended rules to facilitate the development of wireless cable service by conforming the rules applicable to the three microwave radio services used in the provision of wireless cable. Among other things, this Second R&O added § 74.986. Section 74.986 requires that an application for involuntary modification of an ITFS station be filed on FCC Form 330 (3060–0062) but need not fill out section II (legal qualifications). The application must include a cover letter clearly indicating that the modification is involuntary and identifying the parties involved. The data is used by FCC staff to insure that proposals to modify facilities of ITFS licensees/permittees would provide comparable ITFS service and would otherwise serve the public interest in promoting the MMDS service.

OMB Number: None.
Title: Section 74.990, Use of available instructional television fixed service frequencies by wireless cable entities.
Action: New collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 20 responses; 2 hours average burden per response; 40 hours total annual burden.
Needs and Uses: On 9/26/91, the FCC adopted a Second Report and Order, Gen. Doc. No. 90–54, Amendment of parts 21 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, which further amended rules to facilitate the development of wireless cable service by conforming the rules applicable to the three microwave radio services used in the provision of wireless cable. Section 74.990 requires a wireless cable applicant to show that there are no multipoint distribution service (MDS) or multichannel multipoint distribution service (MMDS) channels available for application, purchase or lease that could be used in lieu of the instructional television fixed service frequencies applied for The data provided in the showing will be used by FCC staff to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonable foreseeable ITFS use.

OMB Number: None.
Title: Section 74.992, Access to channels licensed to wireless cable entities.
Action: New collection.
Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 10 responses; 3.83 hours average burden per response; 38 hours total annual burden.
Needs and Uses: On 9/26/91, the FCC adopted a Second Report and Order, Gen. Doc. No. 90–54, Amendment of parts 21, 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, which further amended rules to facilitate the development of wireless cable service by conforming the rules applicable to the three microwave radio services used in the provision of wireless cable. Section 74.992 requires that requests by ITFS entities for access to wireless cable facilities licensed on ITFS frequencies be made by filing FCC Form 330 (3060–0062), sections I, II, III and IV. The application must include a cover letter clearly indicating that the application is for ITSF access to a wireless cable entity's facilities on ITFS channels. The data is used by FCC staff to determine eligibility of an educational institution or entity demanding access for ITFS use on a wireless cable facility.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92–745 Filed 1-10-92; 8:45 am]
BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submited the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For furhter information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.
Title: Section 73.37, Applications for Broadcast Facilities, Showing Required.
Action: New collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 850 responses; 7 hours average burden per response; 5,950 hours total annual burden.
Needs and Uses: On 9/26/91, the Commission adopted a Report and Order, MM Doc. No. 87–267, Review of the Technical Assignment Criteria for the AM Broadcast Service. Among other things this R&O revised §73.37. Section 73.37(d) requires applicants of a new AM broadcast station, or for a major change in an authorized AM

broadcast station as a condition for its acceptance, shall make a satisfactory showing, if new or modified nighttime operation by a Class B station is proposed, that objectionable interference will not result to an authorized station. Section 73.37(f) requires modifications that would result in a spacing or spacings that fail to meet any of the separations must include a showing that an adjustment has been made to the radiated signal which effectively results in a site-to-site radiation that is equivalent to the radiation of a station with standard Model I facilities operating in compliance with all of the above separation distances. The data is used by FCC staff to ensure that objectionable interference will not be caused to other authorized AM stations.

OMB Number: None.
Title: Section 74.902, Frequency Assignments,
Form Number: FCC Forms 327 and 330.
Action: New collection.
Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 40 responses; 3.63 hours average burden per response; 145 hours total annual burden.
Needs and Uses: On 9/26/91, the FCC adopted a Second Report and Order, Gen. Doc. No. 90–54, Amendment of parts 21 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, which further amended rules to facilitate the development of wireless cable service by conforming the rules applicable to the three microwave radio services used in the provision of wireless cable. Among other things, this Second R&O amended §74.902. Section 74.902 dictates that when a point-to-point ITFS station on the E and F MDS channels is involuntarily displaced by an MDS applicant, that the MDS applicant files the appropriate application for suitable alternative spectrum. The affected applications that would be used are the FCC 327 (3060–0050) and the FCC 330 (3060–0062). The data is used by FCC staff to insure that proposals to displace point-to-point facilities of ITFS licensees/permittees would provide comparable ITFS serivce and would otherwise serve the public interest in promoting the MMDS service.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92–746 Filed 1–10–92; 8:45 am]
BILLING CODE 6712–01–M

Comments Invited on Lubbock Area Public Safety Plan

January 3, 1992.

The Commission has received the public safety radio communications plan for the Lubbock area (Region 52).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, interested parties may file comments on or before February 14, 1992 and reply comments on or before March 2, 1992. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987) at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 92–1 Lubbock-Public Safety Region 52.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92–747 Filed 1–10–92; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of Seattle, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–011033–033.
Title: Port of Seattle/Nippon Yusen Kaisha, Ltd.
Parties:
Port of Seattle
Nippon Yusen Kaisha, Ltd.
Synopsis: This Agreement, filed December 31, 1991, adjusts the term, the premises and the rental amount pursuant to the renegotiation provisions of the basic lease. The new term will be to January 31, 1995.

Agreement No.: 224–200501–001.
Title: Port Authority of New York & New Jersey/Hapag-Lloyd (America) Inc. Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Hapag-Lloyd (America) Inc.
Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224–200507–001.
Title: Port Authority of New York & New Jersey/Bermuda Agencies, Ltd. Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Bermuda Agencies, Ltd.
Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224–200516–001.
Title: Port Authority of New York & New Jersey/Evergreen International (USA) Co. Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Evergreen International (USA) Co.
Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224–200523–001.
Title: Port Authority of New York & New Jersey/Atlantic Container Line Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Atlantic Container Line
Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224–200524–001.
Title: Port Authority of New York & New Jersey/Sea-Land Services, Inc., Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Sea-Land Services, Inc.

Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224–200525–001.
Title: Port Authority of New York & New Jersey/Maersk, Inc., Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Maersk, Inc.

Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224–200538–001.
Title: Port Authority of New York & New Jersey/Orient Overseas Container Line Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Orient Overseas Container Line

Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224–200539–001.
Title: Port Authority of New York & New Jersey/Gdynia America Lines Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Gdynia America Lines

Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224–200547–001.
Title: Port Authority of New York & New Jersey/Empresa Naviera Santa S.A. Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Empresa Naviera Santa S.A.

Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

Agreement No.: 224–200549–001.
Title: Port Authority of New York & New Jersey/Zim America Israeli Shipping Co., Inc., Incentive Agreement.
Parties:
Port Authority of New York & New Jersey
Zim America Israeli Shipping Co., Inc.

Synopsis: This Agreement, filed on December 31, 1991, extends the original agreement until March 31, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 92–727 Filed 1–10–92; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration on Developmental Disabilities, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) for approval of an existing information collection for the Administration on Developing Disabilities' Basic State Grant Program Performance Report.

ADDRESSES: Copies of the Information Collection request may be obtained from Steve Smith, Reports Clearance Officer, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Christina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Developmental Disabilities Basic State Grant Program Performance Report.
OMB No.: 0980–0172.
Description: The Developmental Disabilities' Basic State Grant Program Performance Report will be used by each State and territories to prepare and transmit to the Secretary, Department of Health and Human Services, an annual report for the preceding fiscal year of activities and accomplishments under the Basic State Grant program. The information provided in the program performance report will first be used in the preparation of the Secretary's Annual Report to the President, the Congress, and the National Council on Disabilities. Additionally, the information will be used to provide a national perspective on program accomplishments and continuing challenges.
Annual Number of Respondents: 55.
Annual Frequency: 1.
Average Burden Hours Per Response: 88.
Total Burden Hours: 4,840.

Dated: January 6, 1992.
Naomi B. Marr,
Director, Office of Information and Management Systems.

[FR Doc. 92–690 Filed 1–10–92; 8:45 am]
BILLING CODE 4130–01–M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice. Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) for approval of an existing information collection for the Family and Youth Services Bureau within the Administration on Children, Youth and Families (ACYF) of the Administration for Children and Families.

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, ACF Report Clearance Officer, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Christina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Program Performance Standards-Runaway and Homeless Youth Centers Self-Assessment Instrument.
OMB No.: 0980–0037.
Description: The Program Performance Standards Self-Assessment Instrument is necessary for the Family and Youth Services Bureau Center grantees to assess progress and conformance with program performance standards that have been established by FYSB for these grantees. The Instrument provides useful information related to the internal staff actions and/or external technical assistance required to bring a basic center's service and administrative components into conformance with the Runaway and Homeless Youth Basic Center Program.
Annual Number of Respondents: 369.
Annual Frequency: 1.
Average Burden Hours Per Response: 3.
Total Burden Hours: 1,107.

Dated: January 6, 1992.

Naomi B. Marr,

Director, Office of Information Systems Management.

[FR Doc. 92-691 Filed 1-10-92; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families Administration on Children, Youth, and Families, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) for approval of an existing information collection for the Administration for Children, Youth, and Families' (ACYF) Evaluation of Efforts To Recruit Families And Achieve Adoptive Placement For Waiting Minority Children.

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Reports Clearance Officer, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Christina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503.

Information on Document

Title: Evaluation of Efforts to Recruit Families and Achieve Adoptive Placement for Waiting Minority Children.

OMB No..

Description. The Adoption Opportunities Program in the Children's Bureau of the Administration on Children, Youth and Families has invested over $50 million in demonstration projects, many of which focused on recruiting adoptive homes for minority children. Nevertheless, minority children continue to constitute a disproportionate number of children waiting for adoptive homes.

The purpose of this study is to collect information from the adoptive parent applicants through a telephone survey. Information from the survey will be supplemented by descriptive information from the grant files and informal discussions with the grantees. This information from minority adoptive parent applicants will provide ACF with statistical and descriptive information on successful models for the adoption of minority children.

Annual Number of Respondents: 605.

Annual Frequency: 1.

Average Burden Hours Per Response: .33.

Total Burden Hours: 202.

Dated: January 6, 1992.

Naomi B. Marr,

ACF Reports Clearance Officer.

[FR Doc. 92-692 Filed 1-10-92; 8:45 am]

BILLING CODE 4130-01-M

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Alcohol Abuse and Alcoholism; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the advisory committees of the National Institute on Alcohol Abuse and Alcoholism for February 1992.

The initial review groups and the National Advisory Council will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 16C-20, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301-443-4375).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee.

Meeting Dates: February 5-7, 1992.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center Bethesda, MD 20814.

Open: February 5, 9 a.m.-11 a.m.

Closed: Otherwise.

Contact: Antonio Noronha, Ph.D., rm. 16C-20, Parklawn Bldg., phone (301) 443-4375.

Committee Name: National Advisory Council on Alcohol Abuse and Alcoholism.

Meeting Date: February 6, 1992.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: February 6, 10:15 a.m.-3 p.m.

Closed: Otherwise.

Contact: James F. Vaughan, rm. 16C-20, Parklawn Bldg., phone (301) 443-4375.

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee.

Meeting Dates: February 10-11, 1992.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: February 10, 9 a.m.-10:15 a.m.

Closed: Otherwise.

Contact: Ronald F. Suddendorf, Ph.D., rm. 16C-26, Parklawn Bldg., phone (301) 443-6106.

Committee Name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee.

Meeting Dates: February 12-14, 1992.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Open: February 12, 9 a.m.-10 a.m.

Closed: Otherwise.

Contact: Thomas D. Sevy, M.S.W., rm. 16C-26, Parklawn Bldg., phone (301) 443-6106.

Committee Name: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.

Meeting Dates: February 19-21, 1992.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Open: February 19, 9 a.m.-10 a.m.

Closed: Otherwise.

Contact: Lenore S. Radloff, rm. 16C-26, Parklawn Bldg., phone (301) 443-6106.

Dated: January 7, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-802 Filed 1-10-92; 8:45 am]

BILLING CODE 4160-20-M

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the advisory committees of the National Institute on Drug Abuse for February 1992.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552 (c)(6) and 5 U.S.C. app. 2 10(d).

The Extramural Science Advisory Board will include discussions of NIDA's planning process and future program. This meeting will be open; however, attendance by the public will be limited to space available.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 10-42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443-2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Drug Abuse Epidemiology and Prevention Research Review Committee.
Meeting Date: February 4–7, 1992.
Place: Doubletree Hotel of San Diego, 901 Camino Del Rio South, San Diego, CA 92108.
Open: February 4, 9 a.m. to 9:30 a.m.
Closed: Otherwise.
Contact: Raquel Crider, Ph.D., room 10–22, Parklawn Building, telephone (301) 443–9042.

Committee Name: Pharmacology II Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: February 11–13, 1992.
Place: Hyatt Regency Bethesda, Embassy Room, One Bethesda Metro Center, Bethesda, Maryland 20814.
Open: February 11, 8:30 a.m. to 9 a.m.
Closed: Otherwise.
Contact: Gamil Debbas, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

Committee Name: Pharmacology I Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: February 11–14, 1992.
Place: Hyatt Regency Bethesda, Potomac/Patuxent Suite, One Bethesda Metro Center, Bethesda, Maryland 20814.
Open: February 11, 8:30 a.m. to 9 a.m.
Closed: Otherwise.
Contact: Syed Husain, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

Committee Name: Drug Abuse Clinical and Behavioral Research Review Committee.
Meeting Date: February 11–14, 1992.
Place: Hyatt Regency Bethesda, Diplomat/Ambassador Room, One Bethesda Metro Center, Bethesda, Maryland 20814.
Open: February 11, 9 a.m. to 9:30 a.m.
Closed: Otherwise.
Contact: Daniel L. Mintz, room 10–22, Parklawn Building, telephone (301) 443–9042.

Committee Name: Extramural Science Advisory Board, NIDA.
Meeting Date: February 18–19, 1992.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Open: February 18–19, 9 a.m. to 5 a.m.
Contact: Jacqueline P. Downing, room 10A–55, Parklawn Building, telephone (301) 443–1056.

Committee Name: Biochemistry Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: February 18–20, 1992.
Place: Marriott Suites Alexandria, Salon #3, 801 St. Asaph Street, Alexandria, Virginia 22314.
Open: February 18, 8:30 a.m. to 9 a.m.
Closed: Otherwise.
Contact: Rita Liu, Ph.D., room 10–42, Parklawn Building, telephone (301) 443–2620.

Dated: January 7, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–303 Filed 1–10–92; 8:45 am]

BILLING CODE 4160–20–M

National Institute of Mental Health; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute of Mental Health for February 1992.

The initial review groups and the National Advisory Mental Health Council will be performing a review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

The Extramural Science Advisory Board will be discussing Knowledge Exchange.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Joanna L. Kieffer, NIMH Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301–443–4333).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Mental Disorders of Aging Review Committee.
Meeting Date: February 5–7, 1992.
Place: Canterberry Hotel, 1733 N Street, NW., Washington, DC 20036.
Open: February 5, 9–10 a.m.
Closed: Otherwise.
Contact: Phyllis L. Zusman, room 9C–18, Parklawn Building, telephone (301) 443–3857.

Committee Name: Social and Group Processes Review Committee.
Meeting Date: February 6–8, 1992.
Place: River Inn, 924 25th Street, NW., Washington, DC 20037.
Open: February 6, 9–9:30 a.m.
Closed: Otherwise.
Contact: Bernice Cherry room 9C–18, Parklawn Building, telephone (301) 443–3936.

Committee Name: National Advisory Mental Health Council.
Meeting Date: February 10–11, 1992.
Place:
February 10—Conference Rooms D and E, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.
February 11—Wilson Hall, Building 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: February 11, 9 a.m.—Ajournment.
Closed: Otherwise.
Contact: Carolyn Strete, Ph.D., room 9–105, Parklawn Building, telephone (301) 443–3367.

Committee Name: Violence and Traumatic Stress Review Committee.
Meeting Date: February 12–14, 1992.
Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Open. February 12, 9–10 a.m.
Closed: Otherwise.
Contact: Gwendolyn C. Artis, room 9C–18, Parklawn Building, telephone (301) 443–3944.

Committee Name: Behavioral Neuroscience Review Committee.
Meeting Date: February 12–14, 1992.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Open: February 12, 8:30–9:30 a.m.
Closed: Otherwise.
Contact: William H. Radcliffe, room 9C–18, Parklawn Building, telephone (301) 443–3857.

Committee Name: Neuropharmacology and Neurochemistry Review Committee.
Meeting Date: February 13–14, 1992.
Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.
Open: February 13, 8:30–9:30 a.m.
Closed: Otherwise.
Contact: Camille Sookram, room 9C–18, Parklawn Building, telephone (301) 443–3936.

Committee Name: Molecular Cellular, and Developmental Neurobiology Review Committee.
Meeting Date: February 18–20, 1992.
Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.
Open: February 18, 9–10 a.m.
Closed: Otherwise.
Contact: Shirley Maltz, room 9C–18, Parklawn Building, telephone (301) 443–3936.

Committee Name: Health Behavior and Prevention Review Committee.
Meeting Date: February 18–20, 1992.
Place: Days Inn Congressional Park, 1775 Rockville Pike, Rockville, MD 20852.
Open: February 18, 9–11 a.m.
Closed: Otherwise.
Contact: Monica F. Woodfork, room 9C–05, Parklawn Building, telephone (301) 443–4843.

Committee Name: Clinical Neuroscience Review Committee.
Meeting Date: February 19–21, 1992.
Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036.
Open: February 19, 9–10 a.m.
Closed: Otherwise.
Contact: Maureen Eister, room 9C–08, Parklawn Building, telephone (301) 443–1340.

Committee Name: Clinical Psychopathogy Review Committee.
Meeting Date: February 19–21, 1992.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Open: February 19, 9–10 a.m.
Closed: Otherwise.
Contact: Tammye Cross, room 9C–08, Parklawn Building, telephone (301) 443–1340.

Committee Name: Services Research Review Committee.
Meeting Date: February 19–21, 1992.
Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.
Open: February 19, 9–10 a.m.
Closed: Otherwise.
Contact: Gloria Yockelson, room 9C–05, Parklawn Building, telephone (301) 443–0948.

Committee Name: Extramural Science Advisory Board.
Meeting Date: February 20–21, 1992.
Place: Conference Room L, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Open: February 20–21, 9 a.m.–Adjournment.
Contact: Anthony Pollitt, room 17C–26, Parklawn Building, telephone (301) 443–3175.

Committee Name: Psychobiology and Behavior Review Committee.
Meeting Date: February 20–21, 1992.
Place: The Inn at Foggy Bottom, 824 New Hampshire Avenue, NW., Washington, DC 20037.
Open: February 20, 6–10 a.m.
Closed: Otherwise.
Contact: Linda Keperling, room 9C–18, Parklawn Building, telephone (301) 443–3944.

Committee Name: Perception and Cognition Review Committee.
Meeting Date: February 20–22, 1992.
Place: Holiday Inn—Governors House, 17th Street & Rhode Island Avenue, NW., Washington, DC 20036.
Open: February 20, 9–10 a.m.
Closed: Otherwise.
Contact: Debra D. Woods, room 9C–18, Parklawn Building, telephone (301) 443–3936.

Committee Name: Child/Adolescent Risk and Prevention Review Committee.
Meeting Date: February 20–22, 1992.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: February 20, 9–11 a.m.
Closed: Otherwise.
Contact: Dorothy L. Sanders, room 9C–18, Parklawn Building, telephone (301) 443–3857.

Committee Name: Cognitive Functional Neuroscience Review Committee.
Meeting Date: February 20–22, 1992.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20814.
Open: February 20, 8:30–9 a.m.
Closed: Otherwise.
Contact: Rodney A. Berry room 9C–23, Parklawn Building, telephone (301) 443–1177.

Committee Name: Biological Psychopathology Review Committee.
Meeting Date: February 24–25, 1992.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: February 24, 9–10 a.m.
Closed: Otherwise.
Contact: Helen Craig, room 9C–14, Parklawn Building, telephone (301) 443–1367.

Committee Name: Epidemiology Review Committee.
Meeting Date: February 24–26, 1992.
Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.
Open: February 24, 9–10 a.m.
Closed: Otherwise.
Contact: Doris Lee-Robb, room 9C–15, Parklawn Building, telephone (301) 443–6470.

Committee Name: Emotion and Personality Review Committee.
Meeting Date: February 27–29, 1992.
Place: Guest Quarters Suite Hotel, 2500 Pennsylvania Avenue, NW., Washington, DC 20037.
Open. February 27, 8–8:30 a.m.
Closed: Otherwise.
Contact: Sheri L. Schwartzbeck, room 9C–05 Parklawn Building, telephone (301) 443–4843.

Dated: January 7, 1992.
Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.
[FR Doc. 92–804 Filed 1–10–92; 8:45 am]
BILLING CODE 4160–20–M

Alcohol, Drug Abuse, and Mental Health Administration Advisory Committee Meeting in January

AGENCY: Alcohol, Drug Abuse, and Mental Administration, HHS.
ACTION: Cancellation of meeting notice.

SUMMARY: The January 15, 1992, meeting of the Advisory Committee of the Task Force on Homelessness and Severe Mental Illness, announced in the Tuesday, December 10, 1991, **Federal Register**, Volume 56, No. 237, on page 64522, has been canceled. The date for the next meeting has not been set.

Dated: January 7, 1992.
Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.
[FR Doc. 92–801 Filed 1–10–92; 8:45 am]
BILLING CODE 4160–20–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS. The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Revision; *Title of Information Collection.* Information Collection Requirements in the Hospice Care Regulation, 42 CFR 418; *Form Number:* HCFA–R–30; *Use:* These information requirements are needed to implement the Medicare hospice benefit—information is needed from individuals electing hospice care and from hospices participating in the program to assure that statutory and regulatory requirements are met; *Frequency:* On occasion; *Respondents:* Individuals/households, businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 4,666,368; *Average Hours per Response:* .25; *Total Estimated Burden Hours.* 1,166,592.

2. *Type of Request:* Revision; *Title of Information Collection:* Information Collection Requirements in 42 CFR 405, Conditions of Participation for Rehabilitation Agencies and Conditions of Coverage for Physical Therapists in Independent Practice; *Form Number:* HCFA–R–44; *Use:* This information is needed to determine if an outpatient clinic, rehabilitation agency, public health agency, or physical therapist is in compliance with published health and safety requirements; *Frequency:* On occasion; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 6,359; *Average Hours per Response:* 1.6; *Total Estimated Burden Hours:* 10,174.

3. *Type of Request:* New; *Title of Information Collection.* Medicare Credit Balance Reporting Requirements; *Form Number:* HCFA–838; *Use:* The collection of credit balance information is needed to ensure that millions of dollars in improper payments are collected; *Frequency:* Quarterly; *Respondents.* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 107,708; *Average Hours Per Response:* 6; *Total Estimated Burden Hours:* 646,248.

4. *Type of Request:* Revision; *Title of Information Collection:* Transmittal and Notice of Approval of State Plan Material; *Form Number:* HCFA–179; *Use:* Form HCFA–179 is used by Medicaid State agencies to transmit State plan material to HCFA for approval prior to amending their State plans; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,254; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 1,254.

5. *Type of Request:* New; *Title of Information Collection:* Preclearance for Information Collection for Community Nursing Organizations Demonstration; *Form Number:* HCFA–P–17; *Use:* This information collection requirement will result from two contracts to develop, implement, and evaluate a demonstration of Community Nursing Organizations mandated by the Omnibus Budget Reconciliation Act of 1987; the first contract would involve data collection by demonstration sites on their enrollees and the second contract would collect information from both the sites and their enrollees; *Frequency:* One-time; *Respondents.* Individual/households, Businesses/other for profit and non-profit institutions; *Estimated Number of Responses.* Not applicable; *Average*

Hours Per Response: Not applicable; *Total Estimated Burden Hours:* Not applicable. *Additional Information or Comments:* Call the Reports Clearance Officer on 410–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: January 6, 1992.

J. Michael Hudson,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92–701 Filed 1–10–92; 8:45 am]

BILLING CODE 4120–03–M

Public Health Service

Indian Health Service; Correction Notice; Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service, Chapter HG, (Indian Health Service), of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (51 FR 47053–46, December 11, 1987, as most recently amended at 56 FR 56233, November 1, 1991) is further amended to correct the Order of Succession published in FR 56 43794, September 4, 1991.

Indian Health Service

Under Section HG.30. Order of Succession, Aberdeen Area Office, change item (1) to Deputy Director, change item (2) to Health System Administrator, Office of Administrative Support, change item (3) to Medical Officer (Administration), Office of Patient Care and Health Evaluation, change item (4) to Supervisory Environmental Engineer, Office of Environmental Health and Engineering, change item (5) to Program Analysis Officer, Office of Planning and Legislation, and change item (6) to Public Health Advisor, Office of Tribal Health Management.

Dated: December 18, 1991.

Everett R. Rhoades,

Director, Indian Health Service.

[FR Doc. 92–805 Filed 1–10–92; 8:45 am]

BILLING CODE 4160–16–M

Social Security Administration

Rescission of Social Security Rulings on the Standards SSA Uses for Consultative Examinations, the Termination Standard for Disability Cases, and the Medical Evidence Necessary To Make a Determination of Disability in Social Security and Supplemental Security Income Cases

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Rescission of Social Security Rulings SSR 82–14, SSR 82–30, SSR 82–48c, SSR 82–65, and SSR 83–6c.

SUMMARY: The Commissioner of Social Security gives notice of the rescission of SSR 82–14, SSR 82–30, SSR 82–48c, SSR 82–65, and SSR 83–6c.

EFFECTIVE DATE: January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

SSR 82–14, SSR 82–30, SSR 82–48c, SSR 82–65, and SSR 83–6c were published in the 1981–1985 Cumulative Edition of the Rulings. These Rulings concern the standards SSA uses for consultative examinations, the termination standard for disability cases, and the medical evidence necessary to make a determination of disability in Social Security (title II) and supplemental security income (title XVI) cases.

On August 1, 1991, we published final regulations in the **Federal Register** at 56 FR 36932, which comply with section 9 of Public Law 98–460. The Public Law states that SSA's standards for consultative examinations, which are purchased at Government expense, should appear in regulations.

These regulations include (a) the standards for determining when to obtain a consultative examination; (b) the type of consultative examination to be purchased; and (c) the monitoring procedures for both the purchase process and the consultative examination reports. Section 9 of Public Law 98–460 also requires that SSA give consideration to all evidence available in a claimant's case record and develop a complete medical history covering at least the preceding 12 months in any case where a decision is made that the individual is not under a disability. Because these regulations have been published, the above-mentioned Rulings became obsolete as of August 1, 1991, the effective date of these regulations. Consequently, we are rescinding them. To the extent that SSR 83–6c also concerns the applicability of the Medical-Vocational Guidelines, the Supreme Court's subsequent decision in *Heckler* v. *Campbell* (SSR 83–46c), upholding our use of the Guidelines, governs this issue. Accordingly, SSR 83–6c is revoked in its entirety.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.807 Supplemental Security Income.)

Dated: January 3, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 92–611 Filed 1–10–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–92–3038; FR–2736–N–5]

Regulatory Waiver Requests Granted by the Department of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Public Notice of the Granting of Regulatory Waiver Requests: September 1, 1991 through November 30, 1991.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This Notice is the third of a series, to be published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this Notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this Notice, contact Grady J. Norris, Assistant General Counsel for Regulations, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC

20410. (Telephone (202) 708–3055. This is not a toll-free number.) For information concerning a particular waiver action about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (section 7(q)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q)(3)), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers a Notice in the **Federal Register.** These Notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purposes of today's document.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the third Notice of its kind to be published under section 106. The first Notice, published on August 26, 1991, updated waiver-grant activity by the Department from the period immediately following passage of the Reform Act through the end of May 1991. The second notice, published on October 28, 1991, covered the period from June through August 1991.

Today's document updates HUD's waiver-grant activity through November 30, 1991. In approximately three months, the Department will publish a similar notice, providing information about waiver-grant activity for the period from December 1, 1991 through the end of February 1992.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver section. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 811.105(b) and § 811.107(a) would appear sequentially in this listing only under § 811.105(b).)

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between December 1, 1991 and February 29, 1992.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the Appendix that follows this Notice.

Dated: January 7, 1992.

Jack Kemp,

Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development September 1 through November 30, 1991

Note to reader: The person to be contacted for additional information about the waiver-grant items numbered 1 through 4 in this listing is: Mr. Jan C. Opper, Field Coordination Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 541 Seventh Street, SW., room 7270, Phone: (202) 708–2565.

1. *Regulation:* 24 CFR 511.11(c)(2)(i)(B).

Project/Activity: New York, New York. Extension of the 90-day deadline for submission of the Project Completion Report under the Rental Rehabilitation program (RRP).

Nature of Requirement: 24 CFR 511.11 (c)(2)(i)(B) requires that a Project Completion Report identifying the private entity to which ownership has been transferred be submitted to HUD within 90 days on the final draw.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Dated Granted: October 17, 1991.

Reasons Waived: A waiver of the regulation was conditionally granted with respect to five RRP projects which had not been transferred to private ownership, even though all rehabilitation had been completed and all RRP grant funds committed to those five project expended, because of pending resolution of a lawsuit. The conditions were as follows:

1. The City would periodically provide HUD with a written report on the status of litigation preventing the transfer of the projects to private ownership;

2. Within 90 days of resolution of the lawsuit in favor of the City, the City shall submit the required Project Completion Report for each project; or

3. Within 30 days of resolution of the lawsuit in favor of the plaintiffs, the City shall cancel the five projects and reimburse the Department a sum equal to the RRP grant amounts.

2. *Regulations:* 24 CFR 570.200(a)(5) and 24 CFR 570.200(h).

Project/Activity: Augusta, Georgia. Under the Community Development Block Grant program, reimbursement of pre-agreement costs for development of a neighborhood shopping center to serve low and moderate income residents.

Nature of Requirement: 24 CFR 570.200(h) permits reimbursement of certain eligible costs incurred prior to the date of the grant agreement, but not the acquisition cost of real property. 24 CFR 570.200(a)(5) limits preagreement costs to those described in subparagraph 570.200(a)(5).

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Dated Granted: September 10, 1991.

Reasons Waived: In addition to $465,000 programmed from the City's FY 1991 Community Development Block Grant, the City requested approval to use $300,000 from the FY 1992 grant, $213,000 from the FY 1993 grant, and $100,000 from the FY 1994 grant for rehabilitation of historic commercial structures, new commercial construction and a landscaped parking lot. All construction would occur during the first year. Completion during the first year would provide the low and moderate income residents of the neighborhood, who lack transportation, with a shopping center without otherwise having to wait three or four years for construction funding to come available. Failure to grant a waiver of pre-agreement costs would cause undue

hardship on the residents and adversely affect the purposes of the Act.

3. *Regulation:* 24 CFR 57.200(a)(5) and 24 CFR 570.200(h).

Project Activity: Cobb County, Georgia. Under the Community Development Block Grant program, reimbursement of pre-agreement costs for the renovation of an existing county-owned building for use as an adult day care facility for the elderly.

Nature of Requirement: 24 CFR 570.200(h) permits reimbursement of certain eligible costs incurred prior to the date of the grant agreement, but not the acquisition cost of real property. 24 CFR 570.200(a)(5) limits pre-agreement costs to those described in subparagraph 570.200(a)(5).

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: November 4, 1991.

Reasons Waived: Because of substandard and inadequate conditions, the County's current facility had been cited in violation of the State's Adult Day Care Standards. The County is required to vacate the current facility as quickly as possible or face State closure of the facility. Without authority to reimburse costs with FY 1992 funding, the County would not be able to provide services to this special population group for a 12–18 month period, or until such time as the County receives its FY 1992 grant. In addition, the County would avoid increased project costs totalling $50,000–$75,000. The $500,000 project includes $100,000 from FY 1990 funds, $200,000 from FY 1991, and $200,000 from FY 1992. Failure to grant the waiver of pre-agreement cost limitations would, therefore, cause undue hardship and adversely affect the purposes of the Act.

4. *Regulation:* 24 CFR 576.55(b)(1).

Project/Activity: Houston, Texas. Extension of the deadline for obligating Emergency Shelter Grant (ESG) funds for 30 days.

Nature of Requirement: 24 CFR 576.55(b)(1) requires each formula city and county, and each territory, to obligate all Emergency Shelter Grant funds within 180 days of the date of the grant award.

Granted By: Anna Kondratas, Assistant Secretary for Community Planning and Development.

Date Granted: September 19, 1991.

Reasons Waived: The City of Houston indicated that, in order to use Community Development Block Grant (CDBG) funds to match ESG funds without additional administrative burdens, obligation of FY 1991 ESG fund could not occur before the CDBG funds became available in late October 1991. The City requested an extension of the ESG obligation deadline from September 19, 1991 to October 19, 1991. In approving the waiver of the deadline, the Department noted that, though not granting the waiver would cause undue hardship, a waiver for a longer period of time would not have been granted.

Note to reader: The person to be contacted for additional information about the waiver-grant items numbered 5 through 6 in this listing is: Gerald Benoit, Director, Rental Assistance Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Phone: (202) 708–0477.

5. *Regulation:* 24 CFR 882.101(b)(2).

Project/Activity: King County Housing Authority.

Nature of Requirement: Regulation prohibits a PHA from administering housing assistance under the section 8 rental certificate program for units owned by the PHA.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: September 19, 1991.

Reason Waived: In order to prevent undue hardship for five families participating in the section 8 Rental Certificate program who resided in Cottonwood Apartments prior to acquisition of this FNMA-repossession project by the King County Housing Authority, and because all section 8 Administrative responsibilities for these five families will subcontracted to another PHA.

6. *Regulation:* 24 CFR 882.602.

Project Activity: Fairfield Housing Authority.

Nature of Requirement: Manufactured Home Space. Regulation requires that the space shall include all maintenance and management services necessary for decent, safe, and sanitary housing, such as maintenance of utility lines, garbage and trash collection, and maintenance of roads, walkways and other common areas and facilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: November 22, 1991.

Reason Waived: To allow sixteen section 8 rental certificate program families living in the Casa Nova Mobile Home Park to assume responsibility for the garbage collection costs.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 7 through 11 in this listing is: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, Department of Housing and Urban Development; 451 Seventh Street, SW., Washington, DC 20410, Phone: 708-2730.

7. *Regulation:* 24 CFR 885.5—Loans for Housing for the Elderly or Handicapped. Definitions, Housing and Related Facilities.

Project Activity:

Project name	Project No.	Regional office
Sandwood Apartments.	054–HH004	Atlanta.
Bridgewood Apts.	054–HH005	Atlanta.
Pres Woodrow Wilson.	136–EH111	San Francisco.
Vista Lane	122–EH367	San Francisco.

Nature of Requirement: The Regulations cited above prohibit section 202 assistance for intermediate care facilities due to the traditional medical nature of such facilities.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between July 1, 1991 and August 31, 1991.

Reason Waived: Often borrowers have access to service funding that would not otherwise be available if a project is designed as an intermediate care facility. Therefore, under existing Departmental procedures, a Borrower may receive a waiver if the facility is for the developmentally disabled and it provides evidence that the housing and services will not be medically oriented.

8. *Regulation:* 24 CFR 885.5—Loans for Housing for the Elderly or Handicapped. Definitions, Housing and Related Facilities.

Project Activity:

Project name	Project No.	Regional office
Miami Manor Group Home.	046–EH175	Chicago.

Nature of Requirement: The Regulations cited above prohibit Section 202 assistance for intermediate care facilities due to the traditional medical nature of such facilities.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between September 1, 1991 and November 30, 1991.

Reason Waived: Often borrowers have access to service funding that would not otherwise be available if a project is designed as an intermediate care facility. Therefore, under existing Departmental procedures, a Borrower may receive a waiver if the facility is for the developmentally disabled and it

provides evidence that the housing and services will not be medically oriented.

9. *Regulation:* 24 CFR 885.230—Loans for Housing for the Elderly or Handicapped. Duration of section 202 Fund Reservation.

Project/Activity:

Project name	Project No.	Regional office
Riese St. Gerard Hsg.	031–EH221	New York.
HOPE Senior Housing.	012–EH633	New York.
Gateway Apts	051–EH169	Philadelphia.
Overlook Community Hsg.	087–EH166	Atlanta.
Egida Padre Jose D Boyd.	056–EH316	Atlanta.
Ginger Thomas	056–EH324	Atlanta.
SJK, Inc.	063–EH204	Atlanta.
Georgetown 202	054–EH137	Atlanta.
Teamstger Retiree Hsg.	087–EH157	Atlanta.
Northwest Homes, Inc.	081–EH137	Atlanta.
Project Independence.	086–EH133	Atlanta.
West Town Senior	072–EH465	Chicago.
Raphael Manor	064–EH224	Fort Worth.
Philip Street Elderly.	140–EH054	San Francisco.
Ridgeview Manor	122–EH480	San Francisco.

Nature of Requirement: The Regulations cited above require the Department of Housing and Urban Development to cancel any Section 202 fund reservation for which construction, rehabilitation or acquisition has not begun within 24 months after the Notice of section 202 Fund Reservation is issued, unless a 12-month extension is granted by the Regional Administrator, for a total maximum 36-month period.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between September 1, 1991 and November 30, 1991.

Reason Waived: Circumstances beyond the control of the section 202 Borrowers delayed project development within the maximum period of 36 months. Further, sponsors had expended substantial funds to bring the projects to construction starts and development of these units furthered the Secretary's goal of expanding affordable housing opportunities. Waivers of this section granted authority to extend these fund reservations beyond 24 months to allow additional time to reach construction starts.

10. *Regulations:* 24 CFR 885.41(g)—Loans for Housing for the Elderly or Handicapped. Loan Interest Rate.

Project/Activity

Project name	Project No.	Regional office
HOPE Senior Housing.	012–EH633	New York.
Overlook Community Hsg.	087–EH166	Atlanta.
Egida Padre Jose D Boyd.	056–EH316	Atlanta.
Ginger Thomas	056–EH324	Atlanta.
Project Independence.	086–EH133	Atlanta.
West Town Senior	072–EH465	Chicago.
New Salem Manor	043–EH311	Chicago.
Ridgeview Manor	122–EH480	San Francisco.

Nature of Requirement: The Regulations cited above require the use of the interest rate in effect for the year in which the Section 202 project goes to initial loan closing or the optional interest rate for those projects which are eligible when an acceptable conditional or firm commitment application is received.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioiner.

Date Granted: Waivers approved between September 1, 1991 and November 30, 1991.

Reason Waived: These projects required a waiver to use the Fiscal Year 1992 interest rate of 8¾ percent because, while the rate had already been determined, it had not yet been published in the Federal Register at the time the waiver was granted. Without approval of this waiver, additional delays would have occurred, which would have made these projects more costly to the Government.

11. *Regulation:* 24 CFR 885.415(k)—Loans for Housing for the Elderly or Handicapped.

Project/Activity:

Project name	Project No.	Regional office
Al Gomer	031–EH190	New York.
Project Live II	031–EH220	New York.
Apartment II	031–EH226	New York.
Safe Harbor	082–HH001	Fort Worth.
Eagle Watch Estates.	093–HH001	Denver.

Nature of Requirement: The Regulations cited above have historically been interpreted by the Department to prohibit any encumbrances on the title that may subsequently limit HUD's ability to sell the property should the property be acquired by HUD through foreclosure.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between September 1, 1991 and November 30, 1991.

Reason Waived: This is a precedent for such waivers when the restrictioin is for low-rent housing use. Requirements for initial loan closings of section 202 projects set forth in 24 CFR 885.415(k) that the Borrower shall furnish such executed documents on HUD-approved forms as the field office may require, including a title policy insuring that the mortgage constitutes a first lien on the project. To refuse to waive this regulation would cause a hardship to the borrowers, who have expended substantial funds to reach this stage of procesing. Therefore, the granting of this waiver is in the public interest and is consistent with both programmatic objectives and the Secretary's goal.

Note to Reader: The person to be contacted for additioinal information about waiver grant item number 12 in this listing is: Ed Winiarski, Technical Support Division, Office of Insured Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: 708–0624.

12. *Regulation:* 24 CFR 885.610(c)(3)(i).

Project/Activity:

Project name	Project No.	Field office
Bridge Street Senior Housing.	012–EH713	New York.
Senior Housing for the Clinton Comm.	012–EH555	New York.
John Walter Edwards Apartments.	012–EH655	New York.
Project H.O.P.E	012–EH633	New York.

Nature of Requirement: The Regulation cited above requires the Department of Housing and Urban Development to limit direct loan financing to the development cost limits set forth in paragraphs (c)(1) and (c)(2) of this section. Paragraph (c)(3)(i) authorizes the Assistant Secretary to increase the cost limits by up to 110 percent in any geographic area where the cost levels require, and to increase the cost limits by up to 140 percent on a project-by-project basis. Waivers of this section grant authority to increase the cost limits by up to 160 percent on a project-by-project basis for specific HUD Offices where development costs are consistently higher than anywhere else in the nation.

Granted By: Arthur J. Hill, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: Waivers approved between September 1, 1991 and November 30, 1991.

Reason Waived: Not to approve the above HCP waiver would cause hardship to the Borrower, who has

expended substantial funds to reach this stage of processing. Further, if the project is cancelled, this much-needed housing would not be built. Granting the waiver is, therefore, in the public interest and consistent with both programmatic objectives and the Secretary's goal of increasing affordable housing opportunities for low income families.

Note to Reader: The person to be contacted for additional information about waiver-grant item number 13 in this listing is: Dom Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–1015.

13. *Regulation:*
24 CFR 905.404 (a).
24 CFR 905.905.407 (b)(1)(3).
24 CFR 905.407 (c).
24 CFR 905.410.
24 CFR 905.413 (a), (b) and (d).
24 CFR 905.416 (c) and (d).
24 CFR 905.419 (b) and (c).
24 CFR 905.422.
24 CFR 905.440 (b)(1) and (2).
24 CFR 905.503 (c)(i).

Project/Activity: Conversion of 5 Turnkey III units to the Mutual Help Homownership Opportunity Program by the Ft. Peck Indian Housing Authority in Poplar, MT.

Nature of Requirement: The Regulations cited above apply to the construction, development, funding and occupancy of new construction developments. Therefore, waivers are required to convert existing units funded and built under one program to operation under a different program.

Granted By: Joseph Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: September 30, 1991.

Reason Waived: This action was requested, and granted, because many of these homebuyers have been in their Turnkey III units since they were built and through the years have increased their income. Converting the participants to the Mutual Help Program will enable them to become homeowners sooner because their payments will be applied to the purchase price of their homes instead of going to the project reserve.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 14 through 15 in this listing is: John Comerford, Director, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, Phone: (202) 708–1872.

14. *Regulation:* 24 CFR 913.107(a).

Project/Activity: Public housing projects owned and operated by the Housing Authority of Gilbert, Minnesota.

Nature of Requirement: 24 CFR 913.107(a) requires that the Total Tenant Payment required to be paid by public housing tenants be the greater of 30 percent of Monthly Adjusted Income, 10 percent of Monthly Income or, where welfare benefits are determined on the basis of the family's actual housing costs, an amount equal to the portion of the grant designated for shelter and utilities.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Date Granted: September 9, 1991.

Reason Waived: To allow the Gilbert, Minnesota Housing Authority to establish ceiling rents on one-bedroom units at Broadview Manor on the basis of the 1987 amendments to the United States Housing Act of 1937 which permits public housing agencies (PHAs), with the approval of the Secretary, to establish ceiling rents.

15. *Regulation:* 24 CFR 967.304(c).

Project/Activity: Public Housing Manager Certification Waiver Request.

Nature of Requirement: The requlation requires all public housing managers and assistant managers to be certified if they manage 75 or more units. Probationary certification, not to exceed two years, is acceptable for purposes of salary eligibility in the PHA's operating budget.

Granted By: Joseph G. Schiff, Assistant Secretary.

Date Granted: September 19, 1991.

Reason Waived: The Altoona Housing Authority (AHA) requested a waiver of 24 CFR 967.304(c) on behalf of Mr. Richard Mauer, Acting Project Manager, based on the fact that the AHA acted reasonably and responsibly in relying on NAHRO to extend Mr. Mauer's probationary certification. NAHRO inadvertently provided Mr. Mauer with a probationary certification designation over 2½ years, which is contrary to the provisions of the above cited regulation. Since Mr. Mauer is now fully certified and based on NAHRO's error, a waiver was granted.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 16 through 19 in this listing is: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–1800.

16. *Regulation:* 24 CFR 968.210(g)(2).

Project/Activity: Public Housing Modernization, Project Number MO 76–7; MO 24–1 and MO 24–2 for East Prairie, Bernie and Poplar Bluff Housing Authorities.

Nature of Requirement: Limits the number of times a development may be funded for comprehensive modernization to five stages for each development.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Dated Granted: September 9, 1991.

Reason Waived: These additional funds are needed to fund rehabilitation necessary for the public housing agencies to meet the section 504 requirements on accessibility for the handicapped. The waivers provide a sixth and final funding stage of comprehensive modernization.

17. *Regulation:* 24 CFR 968.210(g)(2).

Project/Activity: Public Housing Modernization, Project Number NY 3–1; 3–2 and 3–5, Yonkers Housing (YHA).

Nature of Requirement: Limits the number of times a development may be funded for comprehensive modernization to five stages for each development.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Dated Granted: September 19, 1991.

Reason Waived: Although all three developments have previously been funded for five stages of comprehensive modernization, additional funding is needed because not all the necessary work items were funded and because previously funded work has been destroyed, leaving and developments in deplorable condition. The waivers provide a new one-stage of funding at the three developments limited to item not previously funded and conditioned on the YHA hiring expertise in both maintenance and modernization.

18. *Regulation:* 24 CFR 968.210(g)(2).

Project/Activity: Public Housing Modernization, Project Number PA 2–30, Philadelphia Housing Authority.

Nature of Requirement: Limits the number of times a development may be funded for comprehensive modernization to five stages for each development.

Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.

Dated Granted: September 24, 1991.

Reason Waived: A CIAP funded architectural and engineering study identified additional modernization needs. The waiver allows a one-time funding of a new comprehensive modernization for the development. This increment of funding will satisfy all remaining modernization needs.

19. *Regulation:* 24 CFR 968.210(g)(2).
Project/Activity: Public Housing Modernization, Project Number PA 1–7, Housing Authority of the City of Pittsburgh.
Nature of Requirement: Limits the number of times a development may be funded for comprehensive modernization to five stages for each development.
Granted By: Joseph G. Schiff, Assistant Secretary for Public and Indian Housing.
Dated Granted: September 26, 1991.
Reason Waived: There was a misunderstanding in the earlier funding stages of the concept of comprehensive modernization. The waiver allows a one-time funding of a new comprehensive modernization for the development. This increment of funding will satisfy all remaining modernization needs.

Note to Reader: The person to be contacted for additional information about the waiver-grant items numbered 20 through 22 in this listing is: John Comerford, Director, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Phone: (202) 708–1872.

20. *Regulation:* 24 CFR 990.109(b)(3)(iv).
Project/Activity: Brekenridge, Minnesota Housing and Redevelopment Authority.
Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: November 14, 1991.
Reason Waived: The PHA is a small agency with 87 units of elderly housing. It has been experiencing a vacancy problem for the past several years during which it has pursued many vacancy reduction strategies without success. PHA was allowed to use 73% as its projected occupancy percentage in calculating its operating subsidy eligibility for FY 1991 and 74% for FY 1992. The Minneapolis/St. Paul Office is directed to assist the PHA in developing a plan to resolve the problem.

21. *Regulation:* 24 CFR 990.109(b)(3)(iv).
Project/Activity: Jetmore, Kansas Public Housing Authority.
Nature of Requirement: The regulation requires a Low Occupancy PHA without an approved Comprehensive Occupancy Plan (COP) to use a projected occupancy percentage of 97%.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: November 14, 1991.
Reason Waived: The PHA is a very small Authority consisting of one elderly project with 20 units. Vacancies have been reduced from 12 to 7 with further progress possible. The goal of 5 units for an authority of this size would translate to the approved 75% occupancy percentage. An occupancy percentage of 85% was not approved in order to provide an incentive to the authority to continue its vacancy-reduction efforts.

22. *Regulation:* 24 CFR 990.118(h).
Project/Activity: Housing Authority of the City of Houston.
Nature of Requirement: The regulation cites limited conditions under which Comprehensive Occupancy Plan goals can be adjusted.
Granted By: Joseph G. Schiff, Assistant Secretary.
Date Granted: September 30, 1991.
Reason Waived: The PHA is part of a modernization program that is not completed as far as was initially planned. The delays in the work were approved by HUD and resulted in revised project implementation schedules. The PHA was allowed to reduce its 1990 and 1991 HUD-approved occupancy goals by 4,320 units in 1990 and 3,518 units in 1991.

[FR Doc. 92–742 Filed 1–10–92; 8:45 am]
BILLING CODE 4210–33–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–91–3365; FR–3176–N–01]

Certification of Substantially Equivalent Agencies; and Interim Referral Agencies; Annual Notice

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: As required by 24 CFR 115.6(f), this Notice announces (1) an updated consolidated list of all certified agencies; (2) a list of all agencies whose certification has been withdrawn since publication of the previous notice; (3) a list of agencies with respect to which notice of denial of certification has been published under § 115.7(c) since the issuance of the previous notice; (4) a list of agencies with respect to which a notice of comment has been published under § 115.6(b) and whose status remains pending; (5) a list of agencies for which notice of proposed withdrawal of certification has been published under § 115.8(c) and whose withdrawal remains pending; and (6) a list of agencies with which on agreement for interim referrals or other utilization services has been entered into under § 115.11 and remains in effect. These announcements are applicable for calendar year 1991.

FOR FURTHER INFORMATION CONTACT: Marcella Brown, Director, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, room 5218, SW., Washington, DC 20410–2000.

SUPPLEMENTARY INFORMATION:

Background

Under the Fair Housing Act (42 U.S.C. 3600–3620), the Department is authorized to investigate complaints alleging discrimination in housing. Section 810(f) of the Fair Housing Act requires the Department to refer complaints to agencies that have "substantially equivalent" fair housing standards, as determined and certified by the Department. The certification standards are codified at 24 CFR part 115. This Notice announces, among other things, the 1991 list of certified agencies under § 115.6(f), and the agencies with which the Department has entered into an agreement for interim referral of complaints in accordance with § 115.11.

This Notice

In accordance with the requirements of 24 CFR 115.6(f), the Department makes the announcements set forth below. These announcements are applicable for the year 1991.

Updated Consolidated List of Certified Agencies

The Department announces that the agencies administering the fair housing laws of the following States and Localities are certified under section 810(f) of the Fair Housing Act and 24 CFR 115.6(d):

States (36)

Alaska
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Montana
Nebraska

Nevada
New Hampshire
New jersey
New Mexico
New York
North Carolina
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Dakota
Tennessee
Virginia
Washington
West Virginia
Wisconsin

Localities (79)

Alaska
Anchorage

Arizona
Phoenix

Connecticut
New Haven

District of Columbia
Washington

Florida
Brown County
Clearwater
Dade County (Metropolitan)
Escambia County
Gainesville
Hillsborough County
Jacksonville
Orlando
Pensacola
Pinellas County
St. Petersburg
Tallahassee
Tampa

Illinois
Bloomington
Danville
Elgin
Evanston
Hazel Crest
Park Forest
Springfield
Urbana

Indiana
Columbus
East Chicago
Fort Wayne
Gary
Hammond
Marion
South Bend

Iowa
Des Moines
Dubuque
Iowa City

Kansas
Kansas City
Lawrence
Olathe
Salina

Kentucky
Jefferson County
Lexington-Fayette

Maryland
Howard County
Montgomery County
Prince Georges County

Massachusetts
Boston
Cambridge

Minnesota
Minneapolis
St. Paul

Missouri
Kansas City
St. Louis

Nebraska
Lincoln
Omaha

New York
New York City
Rockland County

North Carolina
Asheville
Charlotte
Mecklenburg County
New Hanover County
Raleigh
Winston-Salem

Ohio
Dayton

Pennsylvania
Allentown
Harrisburg
Philadelphia
Pittsburgh
Reading
York

South Dakota
Sioux Falls

Tennessee
Knoxville

Texas
Fort Worth

Virginia
Arlington County

Washington
King County
Seattle
Tacoma

West Virginia
Beckley
Charleston
Huntington

Wisconsin
Beloit
Madison

Withdrawal of Certification; Denial of Certification; and Pending Requests for Certification

The Department announces that no certification has been withdrawn since publication of the previous notice; no notice of denial of certification has been published since the previous notice; and no agencies with respect to which a notice of comment has been published under § 115.6(b) have pending requests for certification.

Interim Certification

The Department announces that agencies administering the fair housing laws of the following States and Localities entered into an agreement for interim referrals on September 12, 1988. These agencies are therefore considered to have interim certification in accordance with section 810(f)(4) of the Act.

States (2)
Georgia
Ohio

Localities (5)
Lee County, Florida
Durham, North Carolina
Greensboro, North Carolina
St. Joseph, Missouri
Albany, New York

In addition, the Department announces that agencies administering the fair housing laws of the following States and Localities have entered into an agreement for interim referrals subsequent to September 12, 1988. These agencies are also considered to have interim certification in accordance with section 810(f)(4) of the Fair Housing Amendments Act of 1988. The agencies and the dates of their agreements are as follows:

States (6)
Arizona
Florida
Indiana
North Carolina
South Carolina
Texas

Localities (2)
Asheville-Buncombe County, NC
Dallas, TX

Dated: January 6, 1992.

Leonora L. Guarraia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 92-806- Filed 1-10-92; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, Public Meeting

AGENCY: Department of the Interior.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Public Law 101-512, the Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES: January 27, 28, and 29, 1992; 9 a.m. to 5:30 p.m. daily; the Washington Dulles International Airport Ramada Renaissance Hotel, 13869–71 Park Center Road, Herndon, Virginia. The meeting of the Task Force is open to the public .

FOR FURTHER INFORMATION CONTACT: Veronica L. Murdock, Designated Federal Officer, Office of the Assistant Secretary—Indian Affairs, MS 4140, 1849 C Street NW., Washington, DC, 20240, Telephone number (202) 208–4173.

SUPPLEMENTARY INFORMATION: The Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization will continue its work to recommend restructuring of the Bureau of Indian Affairs.

A primary objective of the Task Force for this meeting is the completion of the progress report to the Appropriations Committees of the Congress and the Secretary of the Interior. Time for comments from the public on Task Force issues will be available during the meeting.

Dated: January 8, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–761 Filed 1–10–92; 8:45 am]

BILLING CODE 4310–02–M

Office of the Secretary

Privacy Act of 1974—Deletion of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting from its inventory of Privacy Act systems of records a notice describing records maintained by the Geological Survey. The system of records notice being abolished is entitled "Authorized Cashier, Alternate Cashier, Certifying Officer and Cashier and Collection Officers—Interior, EGS–2," and was previously published in the **Federal Register** on April 11, 1977 (42 FR 19054). The records described in the existing system of records notice continue to be maintained, but the records are not retrieved by the name of the individual or any other personal identifier. The records are retrieved by the name of the city and state in which the imprest fund is located. The records are therefore not subject to the Privacy Act.

This change shall be effective on publication in the **Federal Register** (January 13, 1992). Additional information regarding this action may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, 1849 C Street NW., Mail Stop 2242, (PMI), Washington, DC 20240, telephone 202–208–5339.

Dated: January 7, 1992.

Janet L. Bishop,

Acting Director, Office of Management Improvement.

[FR Doc. 92–733 Filed 1–10–92; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[CA–060–02–4410–04–ADVB]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Law 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, is scheduled to meet in formal session Thursday, February 20, 1992, from 8 a.m. to 5 p.m., and Saturday, February 22, 1992, from 8 a.m. to 5 p.m., in the meeting room of the Vacation Inn, 2000 Cottonwood Circle, El Centro, California. The meeting will be held subject to the appointment of new members for the 1992–1994 term by the Secretary of the Interior. Individuals wishing to participate in the meeting should call BLM's California Desert District Public Affairs staff at (714) 697–5215 in February to verify that the meeting will be held.

Agenda items for the meetings will include:

—A question and answer session regarding updates on the Bureau of Reclamation withdrawal review in BLM's El Centro Resource Area, oil and gas leasing on BLM-administered lands in the California Desert District, and the interagency planning effort for the Salton Sea region;
—An overview of the California Desert District's budget for Fiscal Year 1992;
—A review of public comments on the 1989/1990 California Desert Conservation Area Plan amendments and Council discussion of proposed decision;
—A review of the public comments on the South Coast Draft Resource Management Plan and Council discussion of the proposed decision;
—An update on route designation in the California Desert;
—Council discussion and decisions regarding proposed resolutions from the California Desert District's futuring committee;
—Presentation of a BLM/National Park Service wild horse and burro operating plan for the California Desert Conservation Area/Death Valley National Monument boundary region, with an opportunity for public comments and Council discussion and recommendations; and
—Discussion of the 1991 California Desert Conservation Area Plan Recreation Element Amendment, with recommendations from the Council on the preferred alternative.

All formal meetings are open to the public. Time is allocated for public comments, and time also may be made available by the Council Chair during the presentation of various agenda items.

On Friday, February 21, from 7:30 a.m. to 5 p.m., Council members will participate in a field tour in the Imperial Sand Dunes Recreation Area, including stops at the Plank Road, Buttercup dune area, American Girl Mine, the Gold Field Mine interpretive hiking trail, the Osborne overlook, Cahuilla Ranger Station, and Roadrunner and Gecko campgrounds.

The public is welcome to participate in the field tour, but should plan on providing their own transportation and drinks, as well as lunch on Friday. Anyone interested in participating should contact BLM at (714) 697–5215 for more information. The tour will assemble at the Vacation Inn at 7:15 a.m.

Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, Mr. David Fisher, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments are also accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507; (714) 697–5215.

Dated: December 31, 1991.

Gerald E. Hiller,

District Manager

[FR Doc. 92–712 Filed 1–10–92; 8:45 am]

BILLING CODE 4310–40–M

[NV-940-02-4212-24; Nev-064866]

Order Providing for Opening of Lands, Correction; Nevada

January 7, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action retracts a portion of the order providing for opening of lands that was published in the Federal Register on page 66075, December 20, 1991, as Document 91-30387.

EFFECTIVE DATE: Date of publication of this document.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702-785-6526.

SUPPLEMENTARY INFORMATION: Delete paragraph No. 3 of Document 91-30387 published on December 20, 1991, which affects the following described lands:

Mount Diablo Meridian, Nevada

T. 31 N., R. 50 E.,
Secs. 13, 23, 25;
Sec. 27, NE¼, N½SE¼, SE¼SE¼;
Sec. 35.

The area described contains 2,923.35 acres in Eureka County.

The opening order as it pertains to the above-described land is retracted because of a pending appeal regarding location of certain mining claims.

Billy R. Templeton,
State Director, Nevada.

[FR Doc. 92-735 Filed 1-10-92; 8:45 am]
BILLING CODE 4310-HC-M

Minerals Management Service

Assessments for AFS Late Reports

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of AFS late-reporting assessment rate.

SUMMARY: The Minerals Management Service (MMS) regulation at 30 CFR 218.40(a) provides for assessments in the nature of liquidated damages for late reports submitted by payors, operators, or lessees on Federal and Indian leases. The regulation at 30 CFR 218.40(e) requires that the assessment amount (rate) for each violation will be established periodically, based on MMS experience with costs, and that a Notice of the established assessment rate will be published in the **Federal Register**. This Notice establishes the assessment rate for late reporting submitted on Forms MMS-2014 and MMS-4014 to the MMS Auditing and Financial System (AFS), in accordance with the regulation.

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Betty Middle, Chief, Automated Exception Processing Section, MS 3212, Minerals Management Service, P.O. Box 25165, Denver, Colorado 80225-0165, at (303) 231-3582 or (FTS) 326-3582.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public of the assessment rate for all late reports submitted on Forms MMS-2014 and MMS-4014 by payors, operators, or lessees to the AFS on Federal and Indian leases pursuant to established regulations.

The rate established by MMS for all late reports submitted on Forms MMS-2014 and MMS-4014 to the AFS is $10 per report. This rate will be assessed for each report that is received late. A report is defined at 30 CFR 218.40(c) as each line item on a Form MMS-2014 or Form MMS-4014, consisting of the various information, such as Product Code or Selling Arrangement Code, relating to each Accounting Identification Number. The total AFS late-reporting assessments shall not exceed $10,000 per payor code per monthly AFS late-reporting billing cycle.

The AFS late-reporting assessment rate established in this Notice will apply to reports received late after the effective date. This rate will remain in effect until a subsequent Notice is published in the **Federal Register** which changes the assessment rate.

Dated: January 6, 1992.

Donald T. Sant,
Acting Associate Director for Royalty Management.

[FR Doc. 92-584 Filed 1-10-92; 8:45 am]
BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 4, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, Written comments should be submitted by January 28, 1992.

Carol D. Shull,
Chief of Registration, National Register.

COLORADO

Fremont County

Florence Oil Field, Address Restricted, Florence vicinity, 92000005

Pueblo County

McClelland Orphanage, 415 E. Abriendo Ave., Pueblo, 91002043

IOWA

Polk County

Stoner, Thomas I., House, 1030 56th St., Des Moines, 92000006

SOUTH DAKOTA

Beadle County

Drake, Hattie O. and Henry, Octagon House, 605 Third St., SW., Huron, 91002045

FAULK COUNTY

Byrne, Gov. Frank M., House, 1017 St. John St., Faulkton, 91002044

VIRGINIA

Giles County

Pearisburg Historic District, Roughly, Wenonah Ave. from Tazewell St. to Main St. and adjacent parts of N. and S. Main, Pearisburg, 92000004

Bedford Independent City

Avenel, 413 Avenel Ave., Bedford (Independent City), 92000003

[FR Doc. 92-740 Filed 1-10-92; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 362)]

CSX Transportation, Inc.—Abandonment Between Speedway and Mitchellville—in Marion County, IN; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. (CSXT) to abandon 3.25 miles of rail line between Milepost 129.2 at Speedway and Milepost 132.45 at Mitchellville, in Marion County, IN. The abandonment certificate will become effective February 10, 1992, unless the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and CSXT no later than 10 days from the date of

publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Decided: January 6, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary

[FR Doc. 92–760 Filed 1–10–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Tonka Corp.; TA–W–26,130, St. Louis Park, MN et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) The Department of Labor issued a Certification of Eligibility to apply for worker adjustment assistance on October 23, 1991, applicable to all workers of Tonka Corporation, St. Louis Park, Minnesota (TA–W–26,130); Tonka Products Division, St. Louis Park, Minnesota (TA–W–26,133) and El Paso, Texas (TA–W–26,134; Parker Brothers Division, Beverly, Massachusetts (TA–W–26,143) and Salem, Massachusetts (TA–W–26,144); and the Kenner Products Division, Cincinnati, Ohio (TA–W–26,145). The notice was published in the Federal Register on November 5, 1991 (56 FR 56530).

The certifications were amended on November 22, 1991 to include several sales workers of the Tonka Products Division and on December 6, 1991 to include sales workers for the Parker Brothers and Kenner Products Division who were not included under the earlier certifications. The amended certifications were published in the Federal Register on December 2, 1991 (56 FR 61262) and on December 20, 1991 (56 FR 66087).

Additional information was received by the Department showing worker separations prior to January 1, 1991 at the Kenner Products Division. Accordingly, the Notice is amended by deleting the previous impact date of January 1, 1991 and inserting a new impact date of December 1, 1990 for the Kenner Products workers.

The amended notice applicable to TA–W–26,130; TA–W–26,133; TA–W–26,134; TA–W–26,143; TA–W–26,144 and TA–W–26,145 is hereby issued as follows:

"All workers of the following firms of Tonka Corporation: (1) Tonka Corporation, St. Louis Park, Minnesota (TA–W–26,130); (2) Tonka Products Division, St. Louis Park, Minnesota (TA–W–26,133) and (3) El Paso, Texas (TA–W–26,134); (4) Parker Brothers Division, Beverly, Massachusetts (TA–W–26,143) and (5) Salem, Massachusetts (TA–W–26,144); and (6) Kenner Products Division, Cincinnati, Ohio (TA–W–26,145) who became totally or partially separated from employment on or after July 17, 1990, and all Tonka Products Division's sales personnel operating in the following States: Ohio, Illinois, California, Washington, New Jersey, New York and Texas (TA–W–26,133A–G); and all Parker Brothers Division's sales personnel operating in the following States: Maine, New Hampshire, Nevada, and Florida (TA–W–26,143A–D) who became totally or partially separated from employment on or after January 1, 1991; and all Kenner Products Division's sales personnel operating in the following States: Texas, Missouri, and Michigan (TA–W–26,145A–C) who became totally or partially separated from employment on or after December 1, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed in Washington, DC., this January 6, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–777 Filed 1–10–92; 8:45 am]

BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 91–1]

Public Hearings: Artists' Resale Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public hearings.

SUMMARY: The Copyright Office issues this notice to inform the public that it will hold hearings in connection with a report to Congress on artists' resale royalties. The Office invites comment or participation in the public hearings from individuals or groups involved in the creation, exhibition, dissemination, and preservation of works of arts, including artists, artists' organizations, art dealers, auction houses, art galleries, art museums, collectors of fine art, and investment advisors.

DATES AND ADDRESSES: The public hearings will be held on January 23, 1992 in San Francisco, California at the Fort Mason Center, Building F ("The Firehouse"), and on March 6, 1992 in New York City, New York at the United States Courthouse, Foley Square, on both dates from 9:30 a.m. to 6 p.m., depending on requests for participation. Anyone desiring to testify should contact William Patry, Policy Planning Advisor to the Register of Copyrights, Copyright Office, by telephone (202) 707–8350 or fax transmission (202) 707–8366. For the January 23, 1992 San Francisco hearing, such requests should be received no later than January 16, 1992. For the March 6, 1992 New York City hearing, such requests should be received no later than February 21, 1992. All requests to testify should clearly identify the individual or group desiring to testify.

FOR FURTHER INFORMATION CONTACT: William Patry, Policy Planning Advisor to the Register of Copyrights, Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 707–8350.

SUPPLEMENTARY INFORMATION: On February 1, 1991 (56 FR 4110), the Copyright Office published in the Federal Register a Notice of Inquiry and Request for Information, seeking information in connection with a report to Congress on the question of artists' resale royalties that the Copyright Office is statutorily required to submit on June 1, 1992. The Copyright Office received a number of responses to this Request for Information. However, in order to afford artists, galleries, art dealers, museums, and others involved in the art market who might not otherwise have an opportunity to present their views, the Copyright Office has scheduled the above-referenced hearings. Those testifying should respond, as relevant to their particular situation, to the questions posed in the February 1, 1991 Request for Information.

Dated: January 3, 1992.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 92–774 Filed 1–10–92; 8:45 am]

BILLING CODE 1410–07–M

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Acts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Multidisciplinary Arts Section) to the National Council on the Arts will be held on February 4, 1992 from 9:15 a.m.– p.m., February 5–6 from a.m.– p.m., and February 7 from 9:00 a.m.– p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on February 4 from 9:15 a.m.– p.m., and February 7 from p.m.– 5:30 p.m. The topics will be introductory remarks, general program overview, and policy discussion.

The remaining portions of this meeting on February 4 from 10:30 a.m.–p.m., February 5–6 from 9 a.m.–p.m., and February 7 from 9 a.m.–p.m. are for the purpose of application review on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and many be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 7, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92–764 Filed 1–10–92; 8:45 am]

BILLING CODE 7537–01–M

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Advancement Visual Arts Section) to the National Council on the Arts will be held on February 6, 1992 from 9:30 a.m.–5:30 p.m. and February 7 from 9:30 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 7 from 9:30 a.m.–5 p.m. The topics will be policy discussion and guidelines recommendations regarding the Advancement program and visual artists organizations.

The remaining portion of this meeting on February 6 from 9:30 a.m.–5:30 p.m. is for the purpose of application review on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 7, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–765 Filed 1–10–91; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974; Revision to a System of Records

AGENCY: National Science Foundation.

ACTION: Notice of revised system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation (NSF) is providing notice of a revision to NSF–12, "Fellowship and Traineeship Filing System." This system is being revised to better describe the system and to announce additional routine uses. The title is also being changed to "Fellowship and Other Awards" to reflect that change. The System is being printed in its entirety.

In accordance with Privacy Act requirements, NSF has provided a report on the proposed systems to the Director of OMB, the President of the Senate, and the Speaker of the House of Representatives.

EFFECTIVE DATE: Title 5 U.S.C. 552a(e)(4) and (11) require that the public be provided a 30-day period in which to comment on the routine uses of a system. This new routine use shall take effect without further notice on February 10, 1992, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESS: Written comments should be submitted to the NSF Privacy Act Officer, Division Human Resource Management, National Science Foundation, room 208, 1800 G Street, NW., Washington, DC 20550. All comments will be available for public inspection in Rm. 208, at the above address between the hours of 9 a.m. and 4 p.m.

Dated: January 7, 1992.

Herman G. Fleming,

NSF Privacy Act Officer.

NSF–12

SYSTEM NAME:

Fellowships and other Awards.

SYSTEM LOCATION:

Decentralized. Numerous separate files are maintained by individual

offices and programs at the National Science Foundation, 1800 G Street, NW., Washington, DC. Others are maintained by NSF contractors such as the National Academy of Sciences (NAS), 2101 Constitution Avenue, NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons applying or nominated for and/or receiving NSF support, either individually or through an academic institution, including fellowships or awards of various types.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on type of fellowship or award. Normally the information includes personal information supplied with the application or nomination; reference reports; transcripts and Graduate Record Examination scores to the extent required during the application process; evaluations and recommendations, review records and selection process results; administrative data and correspondence accumulating during fellows' tenure; and other related materials. There is a cumulative index of all persons applying for or receiving NSF and NATO fellowships.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A list of applicants for certain fellowships is sent to the Educational Testing Service, Princeton, NJ, for annotation of GRE scores and returned to NSF or its contractors for use in application review and processing.

2. Information from the system may be merged with other computer files in order to carry out statistical studies. Disclosure may be made for this purpose to NSF contractors and collaborating researchers, other Government agencies, and qualified research institutions and their staff. The results of such studies are statistical in nature and do not identify individuals.

3. Disclosure of information from the system may be made to qualified reviewers for their opinion and evaluation of applicants or nominees as part of the application review process; to other Government agencies needing data regarding the names of applicants or nominees in order to coordinate programs; and to individuals assisting NSF staff, either through grant or contract, in the performance of their duties.

4. Certain information is given to the institution the applicant or fellow is attending or planning to attend for purposes of administration of fellowships or awards.

5. In the case of Fellows or awardees receiving stipends directly from the Government, information is transmitted to the Department of Treasury for preparation of checks or electronic fund transfer authorizations.

6. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

7. Disclosure may be made to the Executive Office of the President to coordinate certain fellowships or awards.

8. Disclosures may be made to other Government agencies for the purpose of background checks for certain fellowships or awards.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records kept by the NSF contractor are on computer tapes. All original application materials are kept at NSF. However, microfilms of application materials received prior to 1963 are kept at NAS.

RETRIEVABILITY:

Alphabetically by applicant's name.

SAFEGUARDS:

Building is locked during non-business hours. Records at NSF are kept in rooms that are locked during non-business hours. Records maintained by NSF contractors are kept in similar rooms and some records are locked in cabinets.

RETENTION AND DISPOSAL:

NAS tapes are kept indefinitely. Records at NSF are transferred to the Federal Records Center and destroyed 10 years after completion of Fellowship.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures found at 45 CFR part 613. It would expedite your request if the fellowship or award program about which you are interested is identified in your request. For example, indicate you applied for or received a "Graduate Fellowship" or a "Faculty Fellowship in Science" as opposed to merely saying you want a copy of your fellowship.

RECORD ACCESS PROCEDURE:

See "Notification" above.

CONTESTING RECORD PROCEDURE:

See "Notification" above.

RECORD SOURCE CATEGORIES:

Information supplied by individuals applying for or receiving support, references, the Education Testing Service, educational institutions supplying transcripts, review records and administrative data developed during selection process and award tenure.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

NSF at 45 CFR 613.6 has claimed an exemption from disclosure for the identity of references and reviewers in accordance with 5 U.S.C. 552a(k)(5).

[FR Doc. 92-699 Filed 1-10-92; 8:45 am]

BILLING CODE 7555-01

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Third Quarter CY 1991; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). The AOs are described below, together with the remedial actions taken. The events are also being included in NUREG-0090, Vol. 14, No. 3 ("Report to Congress on Abnormal Occurrences: July-September 1991"). This report will be available in the NRC's Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC about three weeks after the publication date of this **Federal Register** Notice.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

91-8 Radiation Exposures of Members of the Public From a Lost Radioactive Source

One of the AO examples notes that any loss of licensed material, in such quantities and under such circumstances that substantial hazard may result to persons in unrestricted areas, can be considered an abnormal occurrence.

Date and Place—September 5, 1991. The exposure occurred along an access road of Interstate 45 near Huntsville, Texas, from a source shipped by Western Atlas International from its Yukon, Oklahoma, facility.

Nature and Probable Consequences—On September 5, 1991, Western Atlas International (the licensee) notified the State of Texas that a 2-curie cesium-137 sealed well logging source had been lost that morning from the licensee's vehicle enroute from the licensee's Yukon, Oklahoma, facility to its Houston, Texas, facility.

The licensee initiated a search for the source using radiation detectors and retracted the route of the vehicle. Meanwhile, at approximately 5:30 p.m. on the same day, a citizen spotted the shipping container lying on the gravel shoulder about 30 feet from the southeast corner of the intersection of the Interstate 45 Exit 118 road and underpass road, and notified the Huntsville Police Department. A police officer was dispatched to the scene. The underpass road passes under Interstate 45 to a service road and truck stop. The shipping container evidently had fallen out of the truck as it was turning.

The radioactive source was found approximately 7 feet from its shipping container. The police officer picked up the source and is believed to have held it for about 5 seconds before dropping it approximately 6 to 12 inches from the container. The area was closed to the public until a member of the city's emergency management services retrieved the source using 2 knives as handling tools; at approximately 6:15 p.m., the source was placed back into the shipping container, which was missing its shield plug. Licensee personnel placed the source in a complete shipping container at approximately 7:30 p.m.

A large pin that is supposed to be attached to the safety bar securing the shipping container shield plug was determined to be missing. Without this pin, the safety bar could slide out of position, and the plug and source could come out of the shipping container.

In addition, the bed of the truck, from which the shipping container fell, was a flat steel deck with no obstructions at the rear of the truck except for a canvas cover held in place with four elastic straps. During transportation, several shipping containers were fastened on the truck bed by locks attached to the containers and to the 3/8-inch diameter links of a slack steel chain, which was attached to structural members of the truck. The chain did not surround the shipping containers, freeing them to move on the truck bed. Apparently, the slack allowed the shipping containers to accelerate when the vehicle turned corners, breaking a lock and allowing the subject shipping container to fall off the back of the truck.

The police officer who held the source received an estimated exposure of approximately 5 rem to his fingers. The individual who retrieved the source received an estimated exposure of approximately 150 millirem to his fingers.

Cause or Causes—The event was attributed to human error. Licensee personnel did not follow the licensee's procedures or management instructions in correcting shipping container deficiencies and in properly securing the shipping containers to the transporting vehicle.

Actions Taken To Prevent Recurrence

Licensee—On September 6, 1991, the day after the incident, the licensee issued a memorandum to all its North American facilities. This memorandum concerned corrective measures that were effective immediately. Subsequently, the licensee took additional corrective actions to prevent such losses.

NRC—On September 6, 7, and 11, 1991, NRC Region IV inspectors conducted a special, announced radiation safety inspection of the licensee's byproduct material program. The inspection included the review of organization, management, training, radiation protection, independent measurements, notification, and transportation activities. Seven apparent violations of NRC regulations were identified. Escalated enforcement action is under consideration.

* * * * *

91–9 Medical Diagnostic Misadministration at St. John's Mercy Medical Center in St. Louis, Missouri

The overall AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—September 9, 1991; St. John's Mercy Medical Center in St. Louis, Missouri.

Nature and Probable Consequences—A bone scan diagnostic study was scheduled for September 9, 1991, for a 15-month-old male child with possible osteomyelitis (bone inflammation) of the ankle. The child was given an adult dose of technetium-99m MDP, the radioactive pharmaceutical used for a bone scan. The normal dose for a child of his weight would be 1.91 millicuries. The standard adult dosage used for the diagnostic study was about 21.96 millicuries, more than 10 times the intended dosage to the child.

The licensee uses a computer system as an aid to determine the appropriate amounts of the radiopharmaceutical to use in the bone scan. For adult patients, there are standardized dosages; for patients under 18 years old, the dosages are calculated on the basis of body weight. The pediatric patients are identified on the licensee's treatment list with an asterisk, accompanied by a handwritten notation of the patient s body weight.

The radiopharmacist who prepared the technetium-99m MDP for the bone scan failed to note the asterisk and handwritten body weight on the computer printout of scheduled diagnostic studies. As a result, he prepared the standard adult dosage.

The nuclear medicine technician did not detect the error prior to administering the radiopharmaceutical to the patient. The technician checked the patient's name on the dose ticket accompanying the syringe, but did not verify the radiopharmaceutical and dosage, as required by hospital policy. After the administration, the technician noted the volume of the technetium-99m MDP was greater than expected, rechecked the dose ticket, and discovered the error.

The error did not negate the results of the diagnostic study and the bone scan was completed. Although the amount of radiation the child received was greater than intended, the licensee determined the increased risk of biologic effects was not significant. The calculated radiation dose for the study was about 4.4 rads to the bone and 1.3 rads to the total body. This compares to about 0.38 rads to the bone and 0.11 rads to the whole body had the correct dosage been administered.

Cause or Causes—The cause is attributed to human error on the part of the radiopharmacist and the nuclear medicine technician.

Actions Taken To Prevent Recurrence

Licensee—The hospital has counseled the two employees involved in the error. Hospital management met with the nuclear medicine department staff on September 17, 1991, to review the impact of the errors in this incident, to stress the importance of checking one's own work as well as the work of others, and to point out the need to follow department policies.

NRC—The NRC staff has reviewed the circumstance of the misadministration and will evaluate the licensee's corrective actions in a routine

inspection to be conducted in the next several months.

* * * * *

Dated at Rockville, MD this 6th day of January 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-771 Filed 1-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

GPU Nuclear Corp.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-50, issued to the GPU Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI-1) located in Dauphin County, Pennsylvania.

Identification of Proposed Action

The amendment would consist of changes to the Technical Specifications (TS) and would authorize an increase of the storage capacity of the spent fuel pool from 749 fuel assemblies to 1494 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated November 14, 1990, as supplemented June 6, June 14 and September 18, 1991. The NRC staff has prepared an Environmental Assessment of the Proposed Action.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG-0575), Volumes 1-3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For TMI-1, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or nonradiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary and the estimated dose to the population within an 80 kilometer radius is believed to be too small to have any significance when compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than one percent of the total annual occupational radiation exposure for this facility.

The only nonradiological impact affected by the spent fuel pool expansion is the waste heat rejected. The total increase in heat load rejected to the environment will be small in comparison to the amount of total heat currently being released. There is no significant environmental impact attributed to the waste heat from the plant due to this very small increase.

Finding of No Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or nonradiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated November 14, 1990, as supplemented June 6, June 14, and September 18, 1991, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575), (3) the Final Environmental Statement for the Three Mile Island Nuclear Station, Units 1 and 2 dated December 1972, and (4) the Environmental Assessment dated January 6, 1992.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 6th day of January 1992.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Acting Director, Project Directorate I-4, Division Of Reactor Projects—I/II, Office of the Nuclear Reactor Regulation.

[FR Doc. 92-770 Filed 1-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-3070-ML ASLBP No. 91-641-02-ML (Special Nuclear Materials License)]

Atomic Safety and Licensing Board; Before Administrative Judges: Morton B. Margulies, Chairman, Richard F. Cole, Frederick J. Shon Prehearing Conference

January 7, 1992.

In the Matter of Louisiana Energy Services, L.P. (Claiborne Enrichment Center).

Please take notice that a prehearing conference will be held in the captioned proceeding at 10 a.m. on January 21, 1992, in the Nuclear Regulatory Commission Hearing Room, Fifth Floor, 4350 East West Highway, Bethesda, Maryland.

The purpose of the prehearing conference is to discuss the setting of a schedule for further actions in the proceeding, including discovery, the narrowing of issues and taking similarly appropriate measures for moving the proceeding forward. Louisiana Energy Services, L.P. NRC Staff and Citizens Against Nuclear Trash are directed to appear at the conference.

It is so ordered.

Bethesda, Maryland January 7, 1992.

The Atomic Safety and Licensing Board.

Frederick J. Shon,

Administrative Judge.

Richard F. Cole,

Administrative Judge.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 92-773 Filed 1-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-31758-EA; ASLBP No. 92-656-01-EA]

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

In the Matter of Randall C. Orem, D.O., Byproduct Material License No. 34-28201-01, EA 91-154.

This Board is being established pursuant to the request of Dr. Randall C. Orem for a hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, dated November 29, 1991, entitled

"Order Revoking License (Effective Immediately)" (56 FR 63986, December 6, 1991).

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Administrative Law Judge Ivan W. Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.
Administrative Judge Harry Foreman, 1564 Burton Avenue, St. Paul, Minnesota 55108.
Administrative Judge Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 6th day of January 1992.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92-772 Filed 1-10-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 72-11, 50-312]

Sacramento Municipal Utility District; Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Notice of Opportunity for a Hearing

The Nuclear Regulatory Commission (the Commission) is considering an application dated October 4, 1991, for a materials license, under the provisions of 10 CFR part 72, from Sacramento Municipal Utility District (the applicant or SMUD) to possess spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) located in Sacramento County, California. If granted, the license will authorize the applicant to store spent fuel in a dry storage system at the applicant's Rancho Seco Nuclear Generating Station (RSNGS) site (Operating License DPR-54). Pursuant to the provisions of 10 CFR part 72, the term of the license for the ISFSI would be twenty (20) years.

Prior to issuance of the requested license, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), the Commission's rules and regulations. The issuance of the materials license will not be approved until the Commission has reviewed the proposal and has concluded that approval of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public. The NRC will complete an environmental evaluation, in accordance with 10 CFR part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and Finding of No Significant Impact are appropriate. This action will be the subject of a subsequent notice in the **Federal Register**.

Pursuant to 10 CFR 2.105 and 2.1107, by February 12, 1992, the licensee may file a request for a hearing; and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the subject materials license in accordance with the provisions of 10 CFR 2.714. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, the Commission may, upon satisfactory completion of all evaluations, issue the materials license without further prior notice.

A petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without requesting leave of the Board up to 15 days prior to the holding of the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfied these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate in the conduct of the hearing.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard E. Cunningham, Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards: Petitioner's name and telephone number; date petition was mailed; plant

name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jan Schori, Esq., Sacramento Municipal Utility District, P.O. Box 15830, Sacramento, California 95825–1830, General Counsel for the applicant.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a))1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this proceeding concerns an application for a license falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of NWPA, the Commission, at the request of any petitioner or any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provides for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors," (published at 50 FR 41662, October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, see the application dated October 4, 1991, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822. The Commission's license and Safety Evaluation Report, when issued may be inspected at the above locations.

Dated at Rockville, Maryland, this 6th day of January, 1992.

For the Nuclear Regulatory Commission.

Charles J. Haughney,

Chief, Source Containment and Devices Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[Docket No. 030–13584, License No. 52–01946–07, EA 91–089]

University of Puerto Rico, San Juan, PR; Order Imposing Civil Monetary Penalty

I

University of Puerto Rico (Licensee) is the holder of Broad Medical, Teletheraphy and Research and Development License Nos. 52–01946–07, 52–01946–09, 52–01984–04, 52–01986–01, 52–10510–04, 52–19434–02 issued by the Nuclear Regulatory Commission (NRC or Commission) on January 3, 1978, March 8, 1990, March 18, 1969, February 13, 1957, August 15, 1978, and March 9, 1982, respectively. The licenses authorize the Licensee to use byproduct material in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on June 17–21, 1991. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated August 28, 1991. Section I of the Notice (Violations Assessed a Civil Penalty) states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations associated with License Number 52–01946–07. The Licensee responded to the Notice by letter dated September 27, 1991. In its response to the violations in Section I of the Notice, the Licensee admitted nine violations, partially admitted five violations (Violations I.E., I.G, I.I.3, I.I.4, and I.L), and denied one violation (Violation I.D). In addition, the Licensee requested that the amount of the civil penalty be reduced.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violations, with the exception of Violation I.D., occurred as stated. With respect to Violation I.D., the NRC staff has determined that the violation should be withdrawn.

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $5,830 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street NW., Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission requirements as set forth in Violations I.E., I.G., I.I.3., I.I.4, and I.L. of the Notice, and

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice of Violation that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 30th day of December 1991.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix: Evaluations and Conclusion

On August 28, 1991, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. The University of Puerto Rico responded to the Notice in a letter dated September 27, 1991. In its response to Section I (Violations Assessed a Civil Penalty), the licensee denied one violation (Violation I. D.) and admitted in part five violations (Violations I.E., I.G., I.I.3, I.I.4, and I.L.). In addition, the licensee requested a reduction of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

Restatement of Violation I.D.

Condition 12.C. of License No. 52–01946–07 requires that licensed material for other than human use be used by, or under the supervision of, individuals designated by the Radiation Safety Committee.

Contrary to the above, on June 18, 1991, a researcher located in room 617A of the Medical Sciences Building was using sulfur 35 for other than human use and was not designated by the Radiation Safety Committee to do so, nor was he using the licensed material under the supervision of an individual designated by the Radiation Safety Committee. The researcher ordered and received licensed material under his own name and was not, at the time, conducting his research under the supervision of an individual designated by the Radiation Safety Committee.

Summary of Licensee's Response to Violation I.D.

The licensee denied that a researcher who was not designated by the Radiation Safety Committee had ordered, received and used licensed material. The licensee stated that during the NRC inspection the Radiation Safety Officer confused an unauthorized individual with an authorized individual having the same name, and thus, it appeared that an unauthorized individual had ordered and received licensed material when in fact it was ordered and received by an authorized individual. (The unauthorized individual was in fact working under the supervision of an authorized user.)

NRC Evaluation of Licensee's Response

The inspectors acknowledge that during the inspection, they were aware that there were two researchers with the same last name, and there was a possibility for confusion.

Therefore, the NRC is withdrawing this violation. Since the civil penalty was assessed equally among 15 violations, NRC is reducing the civil penalty by 1/15, or $420, based on the withdrawal of Violation I.D.

Restatement of Violation I.E.

10 CFR 35.70(b) requires the licensee to survey with a radiation detection survey instrument at least once each week all areas where radiopharmaceutical waste is stored. 10 CFR 35.70(h) requires the licensee to retain a record of this survey with specific information for three years.

Contrary to the above, between April 3, 1990, and June 19, 1991, the licensee did not survey with a radiation detection survey instrument at least once each week in areas where radiopharmaceutical waste is stored.

Summary of Licensee's Response to Violation I.E.

The licensee denied that radiation surveys were not being made at least once each week in areas where radiopharmaceutical waste is stored but admitted that the Radiation Safety Officer failed to keep records of the results.

NRC Evaluation of Licensee's Response

During the inspection, the Radiation Safety Officer stated that he or someone from his office visited the radiopharmaceutical waste storage area weekly and carried a survey instrument. However, he indicated no measurements of radiation levels were performed in or around the radiopharmaceutical waste storage facility (restricted and unrestricted areas).

Therefore, NRC concludes that the violation did occur as stated in the Notice.

Restatement of Violation I.G.

10 CFR 35.22(a)(2) requires the Radiation Safety Committee to meet at least quarterly.

Contrary to the above, the Radiation Safety Committee failed to meet from December 20, 1989 through April 4, 1990, and from December 19, 1990 through April 3, 1991, periods in excess of one calendar quarter.

Summary of Licensee's Response to Violation I.G.

The licensee stated that the Radiation Safety Committee met four times each year during 1989 and 1990, but failed to meet during each calendar quarter which constituted only a deviation of 15 days.

NRC Evaluation of the Licensee's Response

10 CFR 35.22(a)(2) requires the Radiation Safety Committee meetings be held at least quarterly. The periods of the time between meetings (from December 20, 1989 through April 4, 1990, and December 19, 1990 through April 3, 1991) are in excess of one calendar quarter.

Therefore, the NRC concludes that the violation did occur as stated in the Notice.

Restatement of Violation I.I.3

Condition 20 of License No. 52–01946–07 requires that the licensee conduct its program in accordance with the statements, representations, and procedures described in the licensee's application dated August 29, 1988.

Attachment 8.2 of the licensee's application states that candidates for use of radioactive materials in research should submit evidence of training and experience equivalent to 40 hours of academic radiation disciplines including specific subjects.

Contrary to the above, on September 19, 1990, November 8, 1990 and November 30, 1990, candidates for use of licensed materials in research were approved without submitting evidence of training and experience equivalent to 40 hours of academic radiation disciplines.

Summary of Licensee's Response to Violation I.I.3

The licensee stated that most of the radioisotope users have been on-campus

for more than 10 years and have taken courses and on-the-job training in radioisotope handling at the Medical Sciences Campus, but no certificates have been issued, and that in the past it was not required to submit evidence of training.

NRC Evaluation of Licensee's Response

The licensee's procedures as written in Attachment 8.2 of the licensee's application dated August 29, 1988, require research candidates for use of radioactive material to submit evidence of training and experience equivalent to 40 hours of academic radiation disciplines including specific subjects. The researchers who were approved on September 19, 1990, November 8, 1990 and November 30, 1990, were new candidates for use of materials, and no evidence of training and experience equivalent to 40 hours of academic radiation disciplines, including specific subjects, was submitted prior to their approvals.

Therefore, NRC concludes that the violation did occur as stated in the Notice.

Restatement of Violation I.I.4

Condition 20 of License No. 52–01946–07 requires that the licensee conduct its program in accordance with the statements, representations, and procedures described in the licensee's application dated August 29, 1988.

Attachment 10.12 of the licensee's application states that the licensee will establish and implement the model procedure for area surveys that was published in appendix N to Regulatory Guide 10.8, Revision 2 (August 1987). Item 1.e (Records) of appendix N specifies that the licensee will keep records which include actions taken in the case of excessive dose rates or contamination and follow up survey information.

Contrary to the above, as of June 18, 1991, records of surveys performed in the research laboratories did not indicate the actions taken and followup survey information for cases involving excessive dose rates or contamination.

Summary of Licensee's Response to Violation I.I.4

The licensee partially admitted the violation and stated that when high dose rates or contamination were detected, areas were initially surveyed and decontaminated until dose rates reached approved levels; however, the licensee failed to keep records of the action taken.

NRC Evaluation of Licensee's Response

This citation was not for failing to survey or decontaminate areas, but rather for not retaining records of actions taken and follow up survey information for cases involving excessive does rates or contamination. The licensee admitted that it had not kept these records.

Therefore, NRC concludes that the violation did occur as stated in the Notice.

Restatement of Violation I.I.

10 CFR 35.59(d) requires the licensee to retain leak test records for five years which contain specified information for all sources tested.

Contrary to the above, as of June 17, 1991, records of leak tests were not maintained for sixteen cesium 137 sources received in August 1990.

Summary of Licensee's Response to Violation I.I.

The licensee stated that the sealed sources were leak tested as required, but the new cesium 137 sources were not clearly identified in the form used as a permanent record.

NRC Evaluation of Licensee's Response.

This citation was not for failing to leak test sealed sources, but rather for not maintaining leak test records as required. The licensee's leak test records did not identify the sources tested and did not contain the specified information on the sixteen cesium 137 sources received in August 1990.

Therefore, NRC concludes that the violation did occur as stated in the Notice.

Summary of Licensee's Request for Mitigation.

The licensee stated that, as of September 27, 1991, more than 75 percent of the violations had already been corrected, and that in order to develop a stronger Radiation Safety Program, the University of Puerto Rico has initiated the acquisition of personnel, equipment and materials. The licensee requested that, for those reasons, the NRC consider reducing the amount of the proposed civil penalty.

NRC Evaluation of Licensee's Request for Mitigation.

Corrective actions are always required for identified violations. As stated in the NRC letter dated August 28, 1991, neither escalation nor mitigation was warranted for corrective action to prevent recurrence because, at the time of the enforcement conference, even though immediate corrective actions had been taken for some of the violations, adequate long-term corrective action to address the root cause issues had not been formulated and implemented. Therefore, NRC concludes that the licensee has not provided a sufficient basis for mitigation of the proposed civil penalty.

NRC Conclusion

The NRC has concluded that, with the exception of Violation I.D., the violations occurred as stated, and that the licensee has not provided a sufficient basis for any mitigation of the civil penalty. However, based on the withdrawal of Violation I.D., a reduction of the civil penalty in the amount of $420 is warranted.

Consequently, a civil penalty in the amount of $5,630 should be imposed.

Enclosure 2: Evaluation of Violations Not Assessed a Civil Penalty

Of the violations not assessed a civil penalty, the licensee admitted nine of the 13 violations (Violations II.3.(a), II.3.(b), II.4., II.A, III.B., IV.A.1., IV.A.2., IV.A.3., and IV.B), denied one violation in its entirety (Violation III.C), and admitted in part three violations (Violations II.1., II.2., and IV.A.4.).

Restatement of Violation III.C.

10 CFR 20.203(e) requires that rooms or areas in which specified amounts of licensed material are used or stored by conspicuously posted "Caution—Radioactive Material."

Contrary to the above, on June 20, 1991, a refrigerator which contained eleven vials of carbon 14 ranging from 50 to 386 microcuries per vial and which was located in an open hallway was not posted as required.

Summary of Licensee's Response to Violation III.C.

The licensee denied that posting was required for this refrigerator. The licensee stated that the activities of carbon 14 stored in a refrigerator at the Agricultural Experiment Station and recorded by the inspector were misread on the container labels during the NRC inspection. By checking old papers on the containers, the licensee found that the total activity stored in the refrigerator was less than 0.8 millicuries of carbon 14; therefore, the refrigerator did not require a sign warning "Caution—Radioactive Material" in accordance with 10 CFR 20.203(e), which requires posting for more than one millicurie of carbon-14.

NRC Evaluation of Licensee's Response

The inspector agrees that the labels on the containers were difficult to read.

Since the licensee was able to check old papers after the inspection and determined that the total activity in the refrigerator was less than 0.8 millicuries, then the refrigerator would not require posting in accordance with 10 CFR 20.203(e).

Accordingly, Violation III.C is withdrawn.

Restatement of Violation II.1.

Condition 15 of License No. 52–01986–04 requires that the licensee conduct its program in accordance with the statements, representations, and procedures described in the licensee's application received November 9, 1989, and letter dated July 24, 1990.

Procedure 5.c. of Item 10 of the licensee's application states that the surface of the source container will be checked for contamination using a cotton swab when initially opening packages containing radioactive material.

Contrary to the above, as of June 20, 1991, the surface of source containers received in Room JGD 217 were not being checked for contamination when initially opening packages containing material.

Summary of Licensee's Response to Violation II.1.

The licensee stated that the incoming packages were checked for contamination but negative results were not recorded.

NRC Evaluation of Licensee's Response

Based on a telephone conversation between the Radiation Safety Office and an inspector on November 4, 1991, it is our understanding that there was a misunderstanding as to what constituted the required surveys on incoming packages. The researcher in Room JGD 217 indicated to the Radiation Safety Officer that he was performing the required surveys and not recording negative results. However, the Radiation Safety Officer indicated that the researcher had been surveying the exterior surface of the incoming packages for radiation levels but had not performed the required checks for contamination on the surface of the source containers when initially opening the packages.

Therefore, NRC concludes that the violation did occur as stated in the Notice.

Restatement of Violation II.2.

Condition 15 of License No. 52–01986–04 requires that the licensee conduct its program in accordance with the statements, representations, and procedures described in the licensee's application received November 9, 1989, and letter dated July 24, 1990.

Procedure 5.d. of Item 10 of the licensee's application states that the Radiation Safety Technician is to be notified upon receipt of material.

Contrary to the above, as of June 20, 1991, the Radiation Safety Technician had not been notified of all receipt of material in Rooms JGD 107 and JGD 216.

Summary of Licensee's Response to Violation II.2.

The licensee stated that the violation was due to a misunderstanding of the use of the form employed to notify the RSO. The licensee stated that the personnel in Room JGD 107 always notified the Radiation Safety Technician (RST) by telephone of receipt of material and the personnel in Room JGD 216 always notified the RST in writing and not by telephone. The licensee also stated that the notification forms are available in the RST's files.

NRC Evaluation of Licensee's Response

The information provided to the NRC inspectors concerning not notifying the RST was obtained through interviews with personnel in the laboratories during the inspection. There is a possibility that other personnel in the laboratory who were not present during the inspection may have notified the RST of receipt of these materials, and since the RST has forms in his files which demonstrate that he was notified, we agree with the licensee's conclusion that Item II.2. did not constitute a violation.

Accordingly, Violation II.2 is withdrawn.

Restatement of Violation IV.A.4.

Condition 20 of License No. 52–10510–04 requires that the licensee conduct its program in accordance with the statements, representations, and procedures described in the licensee's application dated August 9, 1983, which includes the licensee's Radiation Safety Regulations Manual, and letter dated April 11, 1986.

The licensee's letter dated April 11, 1986, states that the Radiation Safety Committee will meet no less than once each fiscal year.

Contrary to the above, the Radiation Safety Committee failed to meet during the fiscal year 1989.

Summary of Licensee's Response to Violation IV.A.4.

The licensee stated that the Radiation Safety Committee met at least once each year, including 1989; however, no record of the meeting held in 1989 had been kept.

NRC Evaluation of Licensee's Response

At the time of the inspection, there were minutes for other Radiation Safety Committee meetings, but no minutes for a meeting held during fiscal year 1989. Also, through interviews with the Radiation Safety Officer, it was determined that no Radiation Safety Committee meeting was held during fiscal year 1989.

Therefore, NRC concludes that the violation did occur as stated in the Notice.

NRC Conclusion

The NRC concludes that the licensee provided an adequate basis for withdrawal of Violations II.2. and III.C. of the Notice of Violation dated August 28, 1991. Consequently, Violations II.2 and III.C are withdrawn. However, the NRC concludes that the licensee did not provide an adequate basis for withdrawal of any additional violations. Therefore, the NRC concludes that Violations II.1. and IV.A.4. occurred as stated in the Notice.

[FR Doc. 92–768 Filed 1–10–92; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–602]

University of Texas; Order Extending Construction Completion Date

The University of Texas is the current holder of Construction Permit No. CPRR–123, issued by the U.S. Nuclear Regulatory Commission on June 4, 1985, for construction of the University of Texas TRIGA Mark II research reactor. The reactor facility is presently under construction at the Balcones Research Center in Austin, Texas.

On September 24, 1991, the University of Texas (UT or the applicant) filed a request for an extension of the construction completion date from October 31, 1991, to December 31, 1991. The extension has been requested to allow the NRC staff to review documentation to support issuance of the Facility Operating License. To allow the staff sufficient time to complete the license issuance review, the staff has extended the construction completion date to March 31, 1992.

Good cause has been shown for the delay; the cause is beyond the control of the applicant; and the requested extension is for a reasonable period, the bases for which are set forth in the staff's evaluation of the request for extension.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion

date will have no significant impact on the environment (57 FR 71, dated January 2, 1992).

The NRC staff' safety evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20055.

It is hereby ordered That the latest completion date for Construction Permit No. CPRR–123 is extended from October 31, 1991, to March 31, 1992.

Date of Issuance: January 6, 1992.

For the Nuclear Regulatory Commission.

William D. Travers,

Acting Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 92–769 Filed 1–10–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30154; File No. SR–MSE–91–17]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Inc., Relating to the Waiver of Certain Exchange Transaction Fees for Transactions in Tape B Eligible Issues

January 6, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1991, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to extend the waiver of transaction fees, set out in section (c) of the Transaction Fee Schedule of its Membership Dues and Fees, to transactions in Tape B eligible issues.[1] This waiver applies only to firms sending orders in Tape B eligible securities to the Exchange floor. The Exchange waived these fees through December 31, 1991.[2] The MSE now proposes to extend this waiver through December 31, 1992.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basic for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to continue the Exchange's efforts to attract additional order flow in Tape B eligible securities in order to enhance the Exchange's competitive position in these issues.

The proposed rule change is consistent with section 6(b)(4) of the Act in that the waiver of these fees does not affect the existing equitable allocation of dues, fees, and other charges among Exchange members using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR–MSE–91–17 and should be submitted by February 3, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–778 Filed 1–10–92; 8:45 am]

BILLING CODE 8010–01–M

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[1] The Consolidated Tape, operated by the Consolidated Tape Association ("CTA"), complies current last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. The CTA is comprised of the New York, American ("Amex"), Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges, as well as the Chicago Board Options Exchange and the National Association of Securities Dealers, Inc. Transactions in Amex-listed stocks and qualifying regional listed stocks are reported on CTA Tape B. Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730 (January 7, 1985).

[2] See Securities Exchange Act Release No. 28910 (February 25, 1991), 56 FR 9028 (March 4, 1991) (File No. SR–MSE–91–7). Previously, the MSE waived these fees for the time period August 31 through December 31, 1990. See Securities Exchange Act Release No. 28402 (August 31, 1990), 55 FR 37369 (September 11, 1990) (File No. SR–MSE–90–14). The Commission did not receive any comments on either of these filings.

[3] The exact text of the proposed rule change was attached to the rule filing as exhibit A and is available at the MSE and the Commission at the address noted in Item IV below.

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[Release No. 34-30153; File No. SR-NYSE-91-37]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Arbitration Procedures.

January 6, 1992.

I. Introduction

On October 24, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change designed to amend certain of the Exchange's series of rules that govern the administration of its arbitration forum. The NYSE states that the proposed rule change is based for the most part on proposals developed by the Securities Industry Conference on Arbitration.

The proposed rule change was noticed in Securities Exchange Act Release No. 29975 (November 21, 1991), 56 FR 60142 (November 27, 1991). No comments were received on the proposal.

II. Description of the Proposal

1. Rule 600: General Provisions Governing Arbitration

The NYSE proposes to adopt rule 600(c) to provide that arbitration claims which arise out of a readily identifiable market may, with the consent of the claimant, be referred to the arbitration forum for that market by the NYSE. The NYSE states that the purpose of this amendment is to provide for a more efficient allocation of claims among the various self-regulatory organizations ("SROs").

2. Rule 601: Simplified Arbitration

The NYSE proposes several amendments to its rules governing simplified arbitration proceedings. First, the NYSE proposes to amend rule 601(a) to codify the practice of the Exchange in applying simplified arbitration procedures to claims under $10,000 without the demand or written request of the customer. In addition, the proposed amendment to rule 601(d) would clarify the respondent's responsibilities for the service of documents in simplified arbitration proceedings. The current rule provides that if a respondent raises a third party claim, the respondent shall serve the third party claim and a copy of the original claim filed by the claimant. As amended, rule 601(d) would require that if a respondent has raised a third party claim, the respondent shall serve the third party respondent with an executed Submission Agreement and a copy of respondent's answer containing the third party claim as well as a copy of the original claim filed by the claimant.

The NYSE also proposes to amend its rule 601(h) to adopt two provisions governing discovery in simplified arbitration proceedings. New rule 601(h)(ii) would codify the applicability of the Exchange's current discovery procedures, as set forth in NYSE Rule 619, to simplified arbitrations when a public customer demands a hearing. New rule 601(h)(iii) would establish a procedure by which an arbitrator may resolve discovery disputes over the production of documents in simplified arbitrations where no hearing has been demanded. Specifically, proposed rule 601(h)(iii) would provide that all requests for document production be submitted to the Director of Arbitration within ten business days of notification of the identity of the arbitrator selected to decide the case. The requesting party also would serve simultaneously its requests for document production on all parties. The rule would require that any response or objection to the request for document production be served on all parties and with the Director of Arbitration within five business days of receipt of the request for production. Finally, the rule would require that the selected arbitrator resolve all requests for document production on the papers submitted.

3. Rule 609: Peremptory Challenge

The NYSE proposes to amend rule 609, governing peremptory challenges in an arbitration proceeding, to specify when a party may exercise a peremptory challenge. The current rule requires that a party who wishes to exercise a peremptory challenge must notify the Director of Arbitration in writing within five business days of notification of the identity of persons named to the panel, unless this time period is extended by the Director of Arbitration. Amended rule 609 would provide that, unless this time period is extended by the Director of Arbitration, a party who wishes to exercise a peremptory challenge must follow the above procedures within five business days of notification of the identity of the persons named under rule 619(d), Pre-hearing Conference, rule 619(e), Decisions by Selected Arbitrator, or rule 606, Notice of Selection of Arbitrators, whichever occurs first.

4. Rule 616: Failure To Appear

The NYSE proposes to amend rule 616 to clarify the authority of arbitrators to proceed with an arbitration when a party fails to appear at a hearing. The current rule permits arbitrators, in their discretion, to proceed with an arbitration if any of the parties, after due notice, fails to appear at a hearing, or any adjourned hearing session. Amended rule 616 would delete the reference to any adjourned hearing session and clarify that the arbitrators also may proceed with an arbitration under this rule when a party fails to appear at the continuation of a hearing session.

5. Rule 625: Amendments

The NYSE proposes to amend rule 625(a) to require that parties submitting amended pleadings provide the Director of Arbitration with sufficient additional copies of the amended pleadings for each arbitrator. Current rule 625(a) requires that the Director of Arbitration serve all parties with amended pleadings. The NYSE proposes to require parties filing a new or different pleading to serve directly all other parties with the amended pleading in accordance with rule 612(b), Service and Filing with the Director of Arbitration. In addition, amended rule 625(a) would require the parties answering amended pleadings to serve directly all other parties and the Director of Arbitration with their responsive pleadings in accordance with rule 612(b). The NYSE states that the proposed amendments to rule 625 would conserve arbitral resources and shorten the time required by the pleadings stage by requiring the parties to serve amended pleadings.

6. Rule 627: Awards

The NYSE proposes to amend rule 627(e) to require that an arbitration award include, in addition to the information required by the current rule, the names of counsel representing the parties and the type of product or security involved in the arbitration. The NYSE also proposes to amend rule 627(g) to consolidate current rules 627(g) and (h) and to clarify when interest is payable on an award. The current rule provides that arbitrators may award interest as they deem appropriate. The rule also provides that all awards shall bear interest from the date of the award until payment. Amended rule 627(g) would continue to require payment of awards within thirty days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. The proposed rule change, however, would revise the rule's current

[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b-4 (1990).

requirement for payment of interest on awards from the date of the award if: (1) The award shall bear interest from the date of the award. The rule would provide that an award is not paid within thirty days of receipt; (2) the award is the subject of a motion to vacate which is denied; or (3) the arbitrators otherwise so specify in the award.

III. Discussion and Conclusion

The Commission has considered carefully the NYSE's proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, with the requirements of section 6(b)(5) of the Act.[3] Section 6(b)(5) of the Act requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Commission believes that because these rules will aid in the just resolution of disputes between investors and broker-dealers, the proposal should further the objectives of section 6(b)(5) of the Act. The Commission also believes, for the reasons set forth below, that the proposed rule change significantly advances the public interest in Exchange arbitrations and should improve the speed and efficiency of the arbitration process, while at the same time maintaining the traditional qualities of arbitration.

More specifically, the Commission believes that the proposed amendment to rule 600, which will permit the NYSE to refer, with the claimant's consent, arbitration claims which arise in a readily identifiable market to the arbitration forum for that market should provide for a more efficient allocation of claims among the various SROs. This, in turn, should result in a more efficient allocation of the Exchange's arbitration resources and a more timely resolution of the parties' disputes.

The Commission believes that the proposed amendments to rule 601, Simplified Arbitration, should improve the procedures for administering arbitration cases involving small claims. The proposed amendment to rule 601(a) simply codifies the NYSE's practice of applying simplified arbitration procedures to claims under $10,000 without the demand or written request of the customer. The NYSE's formal adoption of this practice as a rule of the Exchange should clarify application of the rule and provide notice to the parties of the automatic application of the simplified arbitration procedures to cases involving small claims. Similarly, the proposed amendment to rule 601(d) would clarify the respondent's responsibilities for the service of documents in the event that the respondent raises a third party claim and would require that the respondent, rather than the Exchange, serve the third party respondent with the executed Submission Agreement and other documents required by the rule. The proposal, therefore, should save administrative time and costs while continuing to ensure that third party respondents receive adequate notice of the institution of the arbitration proceedings. Finally, the proposed adoption of rule 601(h)(ii), governing discovery when a public customer demands a hearing, and rule 601(h)(iii), governing discovery where no hearing has been demanded, should assist in the early resolution of discovery disputes and encourage the efficient resolution of cases on their merits.

The Commission also believes that the proposed amendment to rule 609, Peremptory Challenge, should clarify the time requirements for the exercise of peremptory challenges in arbitration proceedings. Because amended rule 609 would provide that parties who wish to exercise peremptory challenges must follow the procedures set forth in the rule following the notification of persons named under NYSE Rule 619(d), Pre-hearing Conference, rule 619(e), Decisions by Selected Arbitrator, or rule 608, Notice of Selection of Arbitrator, whichever occurs first, the proposal should provide parties with clear guidelines regarding the time limitations applicable to peremptory challenges. As a result, the proposed rule change should contribute to the prompt resolution of the parties' disputes.

Moreover, the Commission believes that the proposed amendments to rule 616, Failure to Appear, and rule 625(a), Amendments, should improve the efficiency and speed of arbitration. Because the amendment to rule 616 would clarify the authority of arbitrators to proceed with an arbitration if a party, after due notice, fails to appear at the continuation of a hearing session, the proposal should eliminate unnecessary delays in the arbitration proceedings and should assist in the prompt resolution of arbitration claims. The Commission believes that the proposed amendments to rule 625(a), which would revise the procedures for the submission and service of amended pleadings, should save administrative time and costs and continue to ensure that all parties to an arbitration receive prompt notice of the amended pleadings.

The Commission believes that the proposed amendment to rule 627(e), Awards, should enhance investor participation in the arbitration system by increasing public access to information regarding prior arbitration decisions. Proposed rule 627(e) would expand the content of arbitration awards to include the names of counsel representing the parties and the type of product or security involved in the arbitration. As a result, the Commission believes that rule 627(e) should afford more public access to information regarding the arbitration process and advance the utility of arbitration awards for public investors.

The Commission also believes the proposed amendments to rule 627(g), which governs the payment of interest on awards, should improve the procedures for administering arbitration proceedings. Because the proposal generally would require the payment of awards within thirty days of receipt of the award, the proposal is designed to allow a reasonable period of time for administrative processing of award payments without the payment of interest. At the same time, the proposal should provide an incentive for the paying party to comply with the payment of the award within thirty days. As a result, the Commission believes that the proposal should encourage prompt payment of arbitration awards and increase investor confidence in the arbitration process.

The Commission also believes that it is appropriate for the rule to continue to require that all monetary awards be paid within thirty days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. This provision should preserve the paying party's ability to seek review of the award in court while postponing temporarily the payment of that award under the requirements of the NYSE's rule. Conversely, because the proposal provides that an award shall bear interest from the date of the arbitration award if the award was the subject of a motion to vacate that is denied by a court, the proposal should help to protect the payee s interest in the receipt of an arbitration award without unreasonable or unjustifiable delay.

Finally, the Commission believes that it is appropriate to allow arbitrators discretion in awarding interest on the payment of awards from the date of the award. This provision should help the arbitrators to design an award that fully,

[3] 15 U.S.C. 78f(b)(5) (1988).

fairly and promptly compensates a party for economic damages incurred.

For these reasons, the Commission finds that the NYSE's proposed amendments to its arbitration rules appropriately balance the need to strengthen investor confidence in the NYSE's arbitration system with the need to maintain arbitration as a form of dispute resolution that provides for the equitable and efficient administration of justice in a manner consistent with section 6(b)(5) of the Act.

It therefore is ordered, Pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 92-723 Filed 1-10-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30155; File No. SR-NYSE-91-45]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Adoption of Rule 410B Concerning Reporting to the Exchange of Transactions Effected in Exchange-Listed Securities

January 6, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to adopt rule 410B which will require Exchange members and member organizations ("members") to report to the Exchange transactions effected for their accounts or accounts of their customers in Exchange-listed stocks that are not otherwise reported to the Consolidated Tape.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Currently, transactions in NYSE-listed stocks effected on the Exchange, another U.S. securities exchange, or over-the-counter during the hours of operation of the Consolidated Tape [2] are reported to an SRO either immediately or within a short time frame (*e.g.*, 90 seconds after the transaction) for dissemination to the Consolidated Tape. Transactions effected at other times are not reported to the Consolidated Tape, and, with the exception of program trading information, are not reported to the Exchange.

The Exchange believes that all transactions in NYSE-listed stocks not reported to the Consolidated Tape should be reported to the Exchange in order to provide an accurate record of overall trading activity in NYSE-listed stocks. The Exchange believes that the proposed rule will augment and enhance its ability to surveil for and investigate, among other matters, insider trading, frontrunning, and manipulative activities, such as marking the close of the NYSE prior to the effecting of trades in another market. In addition, the information obtained by means of proposed rule 410B can be expected to provide a clearer picture than currently exists as to the extent of off-hours trading in NYSE-listed stocks, and will thus facilitate the Exchange's planning of appropriate initiatives to meet the needs of its members in this area.

Proposed rule 410B requires that members report the following information:

(1) Time and date of the transaction;

(2) Stock symbol of the listed security;

(3) Number of shares;

(4) Price of the transaction;

(5) Marketplace where the transaction was executed;

(6) An indication whether the transaction was a buy (B), sell (S), or cross (C);

(7) An indication whether the transaction was executed as principal or agent; and

(8) The name of the contra-side broker-dealer to the trade.

Proposed rule 410B contains the following exceptions:

(1) Program trading information that is otherwise reported to the Exchange;

(2) Odd-lot transactions;

(3) Transactions which are part of a primary distribution by an issuer or of a registered secondary distribution (other than "self distributions") or an unregistered secondary distribution effected off the floor of an exchange;

(4) Transactions made in reliance on section 4(2) of the Securities Act of 1933; [3]

(5) Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, (*e.g.*, to enable the seller to make a gift);

(6) The acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;

(7) Purchases of securities off the floor of an exchange pursuant to a tender offer.

Reporting will be required on a next business day basis via electronic systems designated by the Exchange.

The Exchange is obtaining information pursuant to rule 410B for regulatory purposes, and will therefore keep this information confidential, and will not make it publicly available as to any specific transaction. The Exchange may, however, determine to disseminate aggregate data as to the extent of off-hours trading.

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[4] 15 U.S.C. 78s(b)(2) (1988).

[5] 17 CFR 200.30-3(a)(12) (1990).

[1] The exact text of the proposal was attached to the rule filing as exhibit A and is available at the NYSE and the Commission at the address noted in Item IV below.

[2] The Consolidated Tape, operated by the Consolidated Tape Association ("CTA"), compiles current last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. The CTA is comprised of the New York, American, Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges, as well as the Chicago Board Options Exchange and the National Association of Securities Dealers, Inc.

[3] Section 4(2) exempts transactions by an issuer not involving any public offering from the prohibitions relating to interstate commerce and the mails contained in section 5 of the Securities Act of 1933. 15 U.S.C. 77d(2) (1988).

(2) Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act which, among other things, requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the proposed rule change will enhance the Exchange's surveillance capabilities with respect to trading activity in listed securities and is thus consistent with protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-91-45 and should be submitted by February 3, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 92-779 Filed 1-10-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2545]

Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 26, 1991, I find that Bastrop, Bosque, Brown, Dallas, and Travis Counties in the State of Texas constitute a disaster area as a result of damages caused by severe thunderstorms and flooding beginning on December 20, 1991 and continuing. Applications for loans for physical damage may be filed until the close of business on February 24, 1992, and for loans for economic injury until the close of business on September 28, 1992 at the address listed below:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Blanco, Burnet, Caldwell, Callahan, Coleman, Collin, Comanche, Coryell, Denton, Eastland, Ellis, Erath, Fayette, Gonzales, Hamilton, Hays, Hill, Johnson, Kaufman, Lee, McCulloch, McLennan, Mills, Rockwall, San Saba, Somervell, Tarrant, and Williamson in the State of Texas may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	7.500
Businesses and non-profit organizations without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	8.500
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 254506 and for economic injury the number is 750600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59006).

Dated: January 2, 1992.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 92-705 Filed 1-10-92; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0294]

Revelation Resources, Ltd.; Surrender of License

Notice is hereby given that Revelation Resources, Ltd., 910 Travis Street, suite 2411, Houston, TX 77002 has surrendered its License to operate as a small business investment company under the Small Business Act of 1958, as amended (Act). Revelation Resources, Ltd. was licensed by the Small Business Administration on January 12, 1988.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on December 16, 1991, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 20, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-704 Filed 1-10-92; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5385]

Sowa Capital Corp.; License Surrender

Notice is hereby given that Sowa Capital Corporation, 429 S. Euclid Street,

suite A, Anaheim, California, has surrendered its license to operate as a small business investment company under section 301(d) of the Small Business Investment Act of 1958, as amended (the Act). Sowa Capital Corporation was licensed by the Small Business Administration on April 7, 1990.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the licensee was accepted on December 20, 1991 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 31, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-703 Filed 1-10-92; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Honolulu, will hold a public meeting at 9:30 a.m. on Tuesday, January 21, 1992, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 4113A, Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or other present.

For further information, write or call Mr. Andrew Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, room 2213, Honolulu, Hawaii 96850, (808) 541-2990.

Dated: January 3, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-707 Filed 1-10-91 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Raleigh, will hold a public meeting from 10 a.m. to 3 p.m., on Wednesday, January 29, 1992, at the Marriott Research Triangle Park Hotel, Durham, North Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Gary A. Keel, District Director, U.S. Small Business Administration, 200 N. College Street, suite A-2015, Charlotte, North Carolina 28202-2173, (704) 344-6563.

Dated: January 3, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-706 Filed 1-10-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1554]

Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of which persons have been statutorily debarred pursuant to § 127.6(c) of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130).

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Department of State (703-875-6650).

SUPPLEMENTARY INFORMATION: Section 38 (g)(4)(A) of the Arms Expert Control Act (AECA) prohibits the issuance of export licenses to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA. The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities. The term "party to the export" means the president, the chief executive officer, and other senior officers of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end user of any item to be exported. The statute permits certain limited exceptions to this prohibition to be made on a case-by-case basis.

Section 127.6 of the ITAR authorizes the Assistant Secretary of State for Politico-Military Affairs to prohibit certain persons convicted of violating or conspiracy to violate the AECA from participating directly or indirectly in the export of defense articles or in the furnishing of defense services.

Such a prohibition is referred to as a statutory debarment, which may be imposed on the basis of judicial proceedings that resulted in a conviction for violating, or of conspiring to violate, the AECA. See 22 CFR 127.6(c). The period for debarment will normally be three years. The ITAR provides the Assistant secretary with discretion to determine an alternative period of time for debarment. At the end of the debarment period, licensing privileges may be reinstated at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by section 38(g)(4).

Statutory debarment is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. Thus, those procedures of part 128 of the ITAR that apply to administrative debarment are not applicable in such cases.

During the period of debarment the Department of State will not consider applications for licenses or requests for approvals that involve any person or any party to the export who has been convicted of violating the AECA, or of conspiracy to violate the AECA. Persons who have been statutorily debarred may appeal to the Under secretary for International Security Affairs for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision.

The Department of state policy permits debarred persons to apply for an exception from the debarment under section 38 (g)(4)(A) of the AECA, one year after the date of the debarment. Debarred persons may seek such an exception from the Director of the Office of Defense Trade Controls, in accordance with section 38 (g)(4)(A) and under 22 CFR 127.6. If the exception is granted, the debarment will be suspended. Any decision to grant an exception can be made only after the statutory requirements under section 38(g)(4) have been satisfied.

Pursuant to section 38 (g)(4)(A) of the AECA and § 127.6 of the ITAR, the Assistant Secretary for Politico-Military Affairs has debarred eight persons who have been convicted of violating the AECA, or of conspiracy to violate the AECA.

These persons have been debarred for a three year period following their conviction, and have been so notified by a letter from the Office of Defense Trade Controls. Pursuant to section 127.6(c) of the ITAR, the names of these persons (and their offense, date of conviction(s) and court of conviction(s)) are being published in the **Federal Register**. Anyone who requires additional information to determine whether a person has been debarred should contact the Office of Defense Trade Controls.

This notice involves a foreign affairs function of the United States and is thus excluded from the procedures of 5 U.S.C. 553 and 554 and Executive Order 12291 (44 FR 13193). It implements statutory and regulatory requirements that entered into force on December 22, 1987 and April 4, 1988, respectively.

In accordance with these authorities the following persons are debarred for a period of three years following their conviction for violating, or conspiring to violate, the AECA (name/offense/ date/ court):

1. H. Leonard Berg, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), and 22 U.S.C. 2778, June 23, 1989, Eastern District of New York.

2. Ernesto Botifoll, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), July 14, 1989, Southern District of Florida.

3. Bernhard Bowitz, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), March 17, 1989, District of Nevada.

4. Grimm Depanicis, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), and 22 U.S.C. 2778, September 15, 1989, Eastern District of New York.

5. Leon Albert Lisbona, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), and 22 U.S.C. 2778, June 23, 1989, Eastern District of New York.

6. Solomon Schwartz, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), and 22 U.S.C. 2778, June 23, 1989, Eastern District of New York.

7. Ali Reza Foyuzi Yousefi, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), and 22 U.S.C. 2778, July 26, 1989, District of South Carolina, Rock Hill Division.

8. Juwhan Yun, 18 U.S.C. 371, (conspiracy to violate 22 U.S.C. 2778), September 18, 1989, District of New Jersey.

Dated: January 7, 1992.

William B. Robinson,

Director Office of Defense Trade Controls, Bureau of Politico Military Affairs, Department of State.

[FR Doc. 92-782 Filed 1-10-92; 8:45 am]

BILLING CODE 4710-25-M

[Public Notice 1548]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 4, 1992 at 9:30 a.m. in room 1105 at the Department of State, 2201 C Street NW., Washington, DC 20520.

The agenda for the meeting will include items necessary to begin the preparatory activities for the upcoming Xth CCITT Plenary Assembly (Standardization Conference) scheduled for Espoo, Helsinki, Finland, March 1-12, 1993, general issues concerning organization, study program, and the final meetings of all Study Groups.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the Office of Earl Barbely, Department of State, (202) 647-2592, FAX (202) 647-7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Please bring 60 copies of documents to be considered at this meeting. If the document has been mailed, bring only 10 copies.

Dated: December 26, 1992.

Earl Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT, National Committee.

[FR Doc. 92-720 Filed 1-10-92; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1547]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group D Meeting; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on January 31, 1992 at 10 a.m. in room 1912 and on March 24, 1992 at 10 a.m. in room 1205 at the Department of State, 2201 C Street NW., Washington, DC 20520.

The purpose of the meetings will be to review U.S. contributions for the April meetings of Study Groups VII and VIII, the June meeting of Study Group XVII, and to consider any other business within the scope of Study Group D. The Meetings will also consider proposals for the work program questions to be studied during the next four year plenary period.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the Office of Gary Fereno, Department of State, (202) 647-0201, FAX (202) 647-7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Dated: December 26, 1991.

Earl Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT, National Committee.

[FR Doc. 92-721 Filed 1-10-92; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Subcommittee; Transport Airplane and Engine Subcommittee; Flight Test Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Flight Test Working Group.

SUMMARY: Notice is given of the establishment of a Flight Test Working Group by the Transport Airplane and Engine Subcommittee. This notice informs the public of the activities of the Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

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FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Transport Airplane and Engine Subcommittee, Aircraft Certification Service (AIR-3) 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-9554; FAC: (202) 267-9562.

SUPPLEMENTARY INFORMATION:

The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Transport Airplane and Engine Subcommittee was established at the meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for transport category airplanes and engines in parts 25, 33 and 35 of the Federal Aviation Regulations (14 CFR parts 25, 33, 35). At its meeting on September 26, 1991 (56 FR 43055, August 30, 1991), the subcommittee agreed to establish the Flight Test Working Group. Specifically, the working group's task is the following:

Task

The Flight Test Working Group is charged with making a recommendation to the Transport Airplane and Engine Subcommittee concerning disposition of the joint Aerospace Industries Association of America, Inc. (AIA) and Association Europenne des Constructeurs de Material Aerospatial (AECMA) petition for rulemaking dated May 22, 1990, requesting amendments to §§ 25.143(c) and (f), 25.149, and 25.201 of the Federal Aviation Regulations (Docket No. 26250). In completing this task, the working group should review comments received in response to this petition.

Reports

The working group will develop any combination of the following as it deems appropriate:

1. A draft Notice of Proposed Rulemaking proposing the requested or modified new standards, supporting economic and other required analysis, and any other collateral documents the working group determines are needed; or

2. A Denial of Petition stating the rationale for not adopting the new standards proposed in the petition.

The working group chair or an alternate should: (a) Recommend organizational structure(s) and time line(s) for completion of this effort, including rationale, for subcommittee consideration at the meeting scheduled for February 4, 1992; (b) give a status report on this task at each meeting of the subcommittee; and (c) give a detailed conceptual presentation to the subcommittee before proceeding with the drafting of documents described in paragraphs 1 and 2 above.

The Flight Test Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not be a representative of one of the organizations of the parent Transport Airplane and Engine Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader; and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Flight Test Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on January 3, 1992.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-755 Filed 1-10-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; General Aviation and Business Airplane Subcommittee; Fuel Indicators Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Fuel Indicators Working Group.

SUMMARY: Notice is given of the establishment of a Fuel Indicators Working Group by the General Aviation and Business Airplane Subcommittee. This notice informs the public of the activities of the General Aviation and Business Airplane Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, General Aviation and Business Airplane Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-9554; FAX: (202) 267-9562.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The General Aviation and Business Airplane Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for standard and commuter category airplanes and engines in part 23 of the Federal Aviation Regulations, and parallel provisions of parts 91 and 135 of the Federal Aviation Regulations. At its first meeting on November 5, 1991 (56 FR 54605; October 22, 1991) the subcommittee established the Fuel Indicators Working Group. Specifically, the working group's task is the following:

Task

The Fuel Indicators Working Group is charged with making a recommendation to the General Aviation and Business Airplane Subcommittee concerning disposition of the Aircraft Owners and Pilots Association (AOPA) petition for rulemaking dated July 16, 1990, requesting amendments to § 23.1305(g) of the Federal Aviation Regulations (Docket No. 26281) to allow use of differential fuel pressure transducer flow-indicating devices. In completing this task, the working group should review comments received in response to this petition.

Reports

The working group will develop any combination of the following as it deems appropriate:

1. A draft Notice of Proposed Rulemaking proposing the requested or modified new standards, supporting economic and other required analysis, and any other collateral documents the working group determines are needed; or

2. A Denial of Petition stating the rationale for not adopting the new standards proposed in the petition.

The working group chair or an alternate should: (a) Recommend organizational structure(s) and time line(s) for completion of this effort, including rationale, for subcommittee consideration at the meeting scheduled for January 29, 1992; (b) give a status report on this task at each meeting of the subcommittee; and (c) give a detailed conceptual presentation to the subcommittee before proceeding with the drafting of documents described in paragraphs 1 and 2 above.

The Fuel Indicators Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not be a representative of one of the organizations of the parent General Aviation and Business Airplane Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader; and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Fuel Indicators Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on January 3, 1992.

William J. Sullivan,

Executive Director, General Aviation and Business Airplane Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-756 Filed 1-10-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; General Aviation and Business Airplane Subcommittee; Accelerated Stalls Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Accelerated Stalls Working Group.

SUMMARY: Notice is given of the establishment of an Accelerated Stalls Working Group by the General Aviation and Business Airplane Subcommittee. This notice informs the public of the activities of the General Aviation and Business Airplane Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, General Aviation and Business Airplane Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-9554; FAX: (202) 267-9582.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The General Aviation and Business Airplane Subcommittee was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards for standard and commuter category airplanes and engines in part 23 of the Federal Aviation Regulations, and parallel provisions of parts 91 and 135 of the Federal Aviation Regulations. At its first meeting on November 5, 1991 (56 FR 54605; October 22, 1991), the subcommittee established the Accelerated Stalls Working Group.

Specifically, the working group's task is the following:

Task

The Accelerated Stalls Working Group is charged with making a recommendation to the General Aviation and Business Airplane Subcommittee concerning disposition of the Fairchild Aircraft Corporation petition for rulemaking dated July 16, 1990, requesting amendments to § 23.203(a)(2) of the Federal Aviation Regulations (Docket No. 26143) concerning accelerated stalls. In completing this task, the working group should review comments received in response to this petition.

Reports

The working group will develop any combination of the following as it deems appropriate:

1. A draft Notice of Proposed Rulemaking proposing the requested or modified new standards, supporting economic and other required analysis, and any other collateral documents the working group determines are needed; or

2. A Denial of Petition stating the rationale for not adopting the new standards proposed in the petition.

The working group chair or an alternate should: (a) Recommend organizational structure(s) and time line(s) for completion of this effort, including rationale, for subcommittee consideration at the meeting scheduled for January 29, 1992; (b) give a status report on this task at each meeting of the subcommittee; and (c) give a detailed conceptual presentation to the subcommittee before proceeding with the drafting of documents described in paragraphs 1 and 2 above.

The Accelerated Stalls Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not be a representative of one of the organizations of the parent General Aviation and Business Airplane Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader; and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Accelerated Stalls Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No

public announcement of working group meetings will be made.

Issued in Washington, DC, on January 3, 1992.

William J. Sullivan,

Executive Director, General Aviation and Business Airplane Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-757 Filed 1-10-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Emergency Evacuation Subcommittee; Performance Standards Working Group—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Performance Standards Working Group.

SUMMARY: Notice is given of a new task assignment for the Performance Standards Working Group from the Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Emergency Evacuation Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Emergency Evacuation Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-9554; FAX: (202) 267-9562.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991) which held its first meeting on May 23, 1991 (56 FR 20492, May 3, 1991). The Emergency Evacuation Subcommittee was established at that meeting to provide advice and recommendations to the Directors, FAA Aircraft Certification and Flight Standards Services, on regulatory standards for the purpose of enhancing the ability of passengers to quickly and safely evacuate an aircraft in an emergency. At its first meeting on May 24, 1991 (56 FR 20492, May 3, 1991), the subcommittee established the Performance Standards Working Group, and assigned it a task (56 FR 31993; July 12, 1991). At the subcommittee meeting held on November 21, 1991 (56 FR 58113; November 11, 1991), at Oklahoma City, OK, the subcommittee assigned an additional task to the Performance Standards Working Group:

Task

The Performance Standards Working Group is charged with making a recommendation to the Emergency Evacuation Subcommittee concerning new or revised emergency evacuation requirements and compliance methods that would eliminate or minimize the potential for injury to full scale demonstration participants.

Reports

The working group will develop and present to the Emergency Evacuation Subcommittee for consideration any combination of the following as it deems appropriate:

1. A draft Notice of Proposed Rulemaking proposing new emergency evacuation requirements with supporting economic and other required analysis, and any other collateral documents the working group determines appropriate; or

2. If new or revised requirements standards or compliance methods are not recommended, a draft report stating the rationale for those recommendations.

The working group chair (or his designee) should: (a) Recommend organizational structure(s) and time line(s) for completion of this effort, including rationale, for subcommittee consideration at the meeting scheduled for January 24, 1992; (b) give a status report on this task at each meeting of the subcommittee; and (c) give a detailed conceptual presentation to the subcommittee of the group's recommendations before proceeding with drafting of documents described in paragraphs 1 and 2 above.

The Performance Standards Working Group will be comprised of experts from those organizations having an interest in the task assigned to it. A working group member need not be a representative of one of the organizations of the parent Emergency Evacuation Subcommittee or of the full Aviation Rulemaking Advisory Committee. An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. The request will be reviewed with the subcommittee chair and working group leader, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the full committee and any subcommittees will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Performance Standards Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on January 3, 1992.

William J. Sullivan,

Executive Director, Emergency Evacuation Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-758 Filed 1-10-92; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-91-1]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 3, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation

Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A) 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on January 7, 1992.

Denise Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 26668.
Petitioner: Metro Air Charter, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow Metro Air Charter, Inc. pilots to perform such preventive maintenance as necessary to remove and reinstall seats in its aircraft.

Docket No.: 26681.
Petitioner: Airlift International, Inc.
Sections of the FAR Affected: 14 CFR 121.356.
Description of Relief Sought: To permit Airlift International's F27 and FH227 aircraft to be exempt from meeting the Federal Aviation Administration (FAA) deadlines for installation of TCAS-II equipment by December 30, 1991.

Dispositions of Petitions

Docket No.: 23858.
Petitioner:
Allison Gas Turbine Division. General Motors Corporation.
Sections of the FAR Affected: 40 CFR 87.7(b).
Description of Relief Sought/ Disposition: To exempt Allison Gas Turbine Division of General Motors Corporation from the exhaust emissions requirements of 40 CFR 87.21. Affected are those engines manufactured on or after January 1, 1984. The engines for which the exemption is requested are the Model 501-D22 series commercial version of the ZT56 turboprop engines covered by amended type certificate No. 282.
Grant, December 30, 1991, Exemption No. 5383

Docket No.: 25940.
Petitioner: Air Transportation.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To extend Exemption No. 5149 which allows Air Transportation to remove and reinstall aircraft cabin seats in the company's Cessna 182-C aircraft. Exemption No. 5149 expires February 28, 1992.
Grant, December 20, 1991, Exemption No. 5149A

Docket No.: 26303.
Petitioner: Florida Aircraft Leasing Corporation.
Sections of the FAR Affected: 14 CFR 91.9(a).
Description of Relief Sought/ Disposition: To permit Florida Aircraft Leasing Corporation to operate its McDonnell Douglas DC-6A and DC-6B aircraft at a 5 percent increased zero fuel and landing weight for the purpose of operating all-cargo aircraft under the terms of part 125 of the FAR.
Grant, December 31, 1991, Exemption No. 5388

Docket No.: 26346.
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.417(c)(1)(i).
Description of Relief Sought/ Disposition: To permit the one-time firefighting drill required by § 121.417(c)(1)(i) to be accomplished by using simulation rather than by extinguishing an actual fire.
Denial, December 24, 1991, Exemption No. 5387

Docket No.: 26512.
Petitioner: Reeve Aleutian Airways, Inc.
Sections of the FAR Affected: 14 CFR 121.356(a).
Description of Relief Sought/ Disposition: To permit Reeve Aleutian Airways, Inc. to equip only 25 percent of its fleet of aircraft, rather than the 50 percent figure required in § 121.356(a), with a Traffic Alert and Collision Avoidance System (TCAS) II by December 30, 1991.
Denial, December 23, 1991, Exemption No. 5382

Docket No.: 26532.
Petitioner: McCall Air Taxi, Inc.
Sections of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought/ Disposition: To allow properly trained pilots employed by MATCO to covert the cabins of its aircraft operated under FAR part 135 from passenger to cargo configurations, and the reverse, by removing and replacing passenger seats when such aircraft are specifically designed for that purpose.
Grant, December 20, 1991, Exemption No. 5381

Docket No.: 26547.
Petitioner: Florida West Airlines, Inc.
Sections of the FAR Affected: 14 CFR 145.35 and 145.37(b).
Description of Relief Sought/ Disposition: To permit Florida West Airlines, Inc. to add a McDonnell Douglas DC-6 rating to its repair station certificate.
Grant, December 30, 1991, Exemption No. 5386

Docket No.: 26725.
Petitioner: Air Berlin, Inc.
Sections of the FAR Affected: 14 CFR 121.356 (a) and (c).
Description of Relief Sought/ Disposition: To permit Air Berlin, Inc. to operate two Boeing 737 (B-737) airplanes that are not equipped with an approved Traffic Alert and Collision Avoidance System (TCAS) II and the appropriate class of Mode S transponder for up to 6 months after the December 30, 1991, compliance date.
Grant, December 30, 1991, Exemption No. 5384

[FR Doc. 92-750 Filed 1-10-92; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: SR 20, Deception Pass State Park to Gibraltar Road, Skagit County, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Skagit County, Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Federal Highway Administration, Evergreen Plaza Building, suite 501, 711 South Capitol Way, Olympia, Washington 98501, Telephone: (206) 753-2120; E.R. Burch, State Design Engineer, Department of Transportation, Highway Administration Building, Olympia, Washington 98504, Telephone: (206) 753-6141; or Ronald Q. Anderson, District Administrator, Washington State Department of Transportation, District One, 15325 SE., 30th Place, Bellevue,

Washington 98007–6538, Telephone (206) 764–4020.

SUPPLEMENTARY INFORMATION: The FWHA, in cooperation with the Washington State Department of Transportation (WSDOT) will prepare an EIS on a proposal to address safety issues within this four mile segment of SR 20.

Alternatives to be considered include the improvement of the existing alignment, construction on a new alignment, construction on a combination of existing and new alignment and a no action alternative. Letters describing the proposed action and soliciting comments will be sent to the appropriate federal, state, and local agencies as well as citizens and organizations that have expressed interest in this project. A series of meetings with the public, interested community groups and governmental agencies will be held beginning in the Winter of 1992. In addition, advertisements offering interested persons the opportunity to attend and offer comments at a public hearing will be published prior to publication of the draft environmental impact statement. Public notice of actions related to the proposal which identify the date, time, place and meetings and note the length of review periods will be published when appropriate.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction.)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program.

Issued on December 20, 1991.

Sharon R. Price,

Area Engineer, Olympia, Washington.

[FR Doc. 92–714 Filed 1–10–92; 8:45 am]

BILLING CODE 4910-22-M

National Motor Carrier Advisory Committee Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee (NMCAC) will hold its next meeting on January 22, 1992, 400 7th Street, SW., room 4200, Washington, DC. The meeting will be from 9 a.m. to 3 p.m. The focus of the meeting is on the new reauthorization legislation, the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240). The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas J. McKelvey, Federal Highway Administration, HIA–20, room 3104, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1861. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal holidays.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: January 7, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92–744 Filed 1–10–92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Federal Highway Administration

[Docket No. 90–07, Notice No. 2]

Critical Automated Data Reporting Elements

AGENCY: National Highway Traffic Safety Administration (NHTSA), and Federal Highway Administration (FHWA), DOT.

ACTION: Notice announcing the Critical Automated Data Reporting Elements for Highway Safety Analysis (CADRE).

SUMMARY: This notice is being issued to announce a final list of Critical Automated Data Reporting Elements for Highway Safety Analysis (CADRE). CADRE was initiated by NHTSA to improve the quality and analytic utility of automated state traffic records files by identifying a small set of accident data all states should incorporate in their accident reports and automated files. NHTSA and FHWA believe if states would collect these data elements and include them in automated databases, the usefulness of these files as a source of information for highway safety analysis would increase dramatically. This action reflects both NHTSA's and FHWA's interest in improving the analytic utility of state highway safety data.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Venturi, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; phone (202) 366–4709.

SUPPLEMENTARY INFORMATION:

Section 1—Background

Highway safety program professionals are dependent on accurate and complete data to:

—Identify problems, and evaluate the effectiveness of highway safety efforts and program activities.

—Assess the relationship between the vehicle and roadway characteristics, crash propensity, and injury severity to support the development or evaluation of highway safety programs.

The purpose of CADRE is threefold:

—Improve the analytic utility of states' police reported accident and related data files.

—Provide consistent and uniform data definitions/terminology.

—Facilitate the exchange of information about highway safety technology among states.

Government agencies, whether Federal, state, or local, need reliable and accurate information to perform the necessary functions of identifying problems, formulating solutions to these problems, defining policy, and evaluating programs. One of the critical areas for which all levels of government have responsibility is highway safety. Motor vehicle crashes are responsible for half of all accidental deaths. In recent years, more than 45,000 lives are lost and hundreds of thousands of persons injured as a result of motor vehicle crashes. The societal costs of these crashes exceed $74 billion annually.

Use of complete and accurate data maintained in computerized data files is required to develop and support the highway safety programs intended to reduce this toll. The data to support these programs come from a myriad of sources, e.g., police crash reports, driver licensing files, vehicle registration records, highway records, EMS/hospital injury records, etc.

Among these data sources, the police crash report is the most important. The crash report provides the basic information about traffic crashes which, when aggregated with data from other sources, forms the basis for all highway safety analyses.

Many improvements in the quality, quantity, and timeliness of police reported crash data have been realized since the passage of the Highway Safety Act of 1966. Despite these improvements, however, problems remain. Data are not uniform, making it difficult to evaluate program effectiveness. In many cases, important data are missing, greatly limiting the types of programs that can be evaluated.

Further, errors in data coding and entry greatly reduce the usefulness of some states' data as a source of information for supporting their highway safety program efforts.

The National Highway Traffic Safety Administration and the Federal Highway Administration believe the analytic utility of state automated accident files, can be greatly improved if states would emphasize the uniform collection and automation of a small number of critical data elements. These data, when combined with other information, form the basis for an analytic tool of great utility to highway safety.

CADRE is composed of selected data elements that describe the characteristics of the crash, the vehicles, the roadway and persons involved. All states are encouraged to collect these elements on their automated traffic records files. CADRE data elements need not be obtained from the police crash report. Some of the data could be obtained using advanced technology such as Bar Code Readers, Clipboard Computers, Global Positioning, Photogrammetry, etc. Some of the data could also be obtained from other sources through file linking, e.g. Vehicle Identification Numbers obtained from vehicle registration files.

The data elements in CADRE have been selected for emphasis because they are essential for conducting analyses of highway safety issues and because they are the data elements where the most serious deficiencies in collection and automation exist. CADRE elements need not appear on the police crash report form as long as they are readily available in another data base and can be merged with automated data from police reports.

Benefits

NHTSA and FHWA believe that the CADRE for Highway Safety Analysis, if collected and automated, would lead to improved crash data analysis at all governmental levels:

Public Benefits

The motoring public will benefit directly from improved vehicle and highway safety. By identifying problems and maximizing use of scarce resources, a reduction in injuries and fatalities could be achieved and vast amounts of dollars could be saved through the lowering of property damage crashes and costs associated with treatment for crash induced injuries.

State and Local Benefits

The states would have an improved data source which could be used to support their highway safety programs. Resources could be more appropriately applied to the most important programs. Many of these elements are essential for examining the benefit of safety belt use laws, alcohol laws, and especially for local jurisdictions, various law enforcement issues. Other elements will help support file linkages to look at public safety issues and the question of how much traffic crashes are costing the state and, ultimately, who pays. States could also compare themselves with their neighbors to determine the relative extent of their highway safety problem, and to help set program priorities.

Federal Benefits

NHTSA and FHWA conduct considerable numbers of analyses using state crash data. Data are used to support basic research, identify the need for demonstration projects, and evaluate countermeasures. Including the CADRE in state computerized files would have a direct impact on the validity of analyses done with these data. In addition, it would materially help with the identification of vehicle design characteristics which are related to increased crash and injury propensity, or the evaluation of countermeasures which are intended to reduce vehicle crash and injury occurrence.

Implementing the improvements and uniformity for these data elements will require a commitment by all parties. Local, state and Federal entities must work together to improve the quality of these data bases thus ensuring the availability of useful data for highway safety purposes. If we are to manage our highway safety program effectively, at all levels of government, we need complete and accurate data. Adoption of CADRE would help meet that goal.

Proposed CADRE

In May 1990, NHTSA published the proposed CADRE in the **Federal Register** (55 FR 18220).

Proposed CADRE Elements of May 1990

Accident Level Elements

1. First Harmful Event.
2. Speed Limit.

Vehicle Level Elements

3. Vehicle Identification Number (VIN).
4. Location and Extent of Vehicle Damage.

Person Level Elements

5. Age.
6. Seating Position.
7. Occupant Protection System Type and Use.
8. Ejection/Entrapment/Extrication.
9. Body Region Injured.
10. Treatment/Disposition of Injured.
11. BAC Test Results.

Discussion of Comments

More than 100 comments were received from many segments of the highway safety community. Those who responded included the following: 41 States, 25 Police Agencies, 6 Universities, 2 Public Health Services, 3 Auto Companies, 9 Highway Safety Organizations, and 15 Others.

The respondents identified a number of specific issues related to CADRE and its implementation, including:

1. CADRE comments should be examined by a task force of technical experts to provide a broader highway safety perspective.
2. The need for a voluntary (not mandatory) program of compliance with CADRE.
3. Use of National data standards when creating data element code structures.
4. Vehicle Identification Number (VIN) data should be part of the final CADRE.
5. Ability to link multiple data files in the state traffic records system will provide for improved reporting for analysis.
6. Police are not trained to collect accurate injury data, therefore such data should be deleted from CADRE.
7. The Alcohol element should be expanded to include Drug data.
8. The National Governors' Association Heavy Truck data elements should be associated with the CADRE activity.

1. Task Force

In response to suggestions that a task force of national experts review comments to the docket, a task force of safety professionals was created, through the National Safety Council, representing a broad spectrum of constituencies including groups representing state and local officials, police, academia, manufacturers, etc. (see Appendix #1 Task Force). The Task Force members reviewed the docket and provided NHTSA with their individual viewpoints. The Task Force met twice to develop its comments, and provided NHTSA with a final report which was helpful to the Agency in developing the final CADRE. A copy of the final report has been placed in the public docket 90-07, and can be requested by the public by writing to NHTSA Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Please refer to Docket #90-07, Notice. 02.

2. Not Mandatory

Many respondents felt states should not be required to implement CADRE. Members of the Task Force agreed that a mandatory requirement would not lead to improvements in effective use of crash data, but would simply alienate the departments doing the work. CADRE should not be mandatory. While the commenters advised against making the CADRE mandatory, a vast majority of respondents felt the time for a CADRE-like program was long overdue.

NHTSA and FHWA are publishing CADRE in the **Federal Register** because it is the most efficient and direct way of informing the highway safety community. This notice does not impose regulatory requirements. The states are encouraged but are not required to adopt the CADRE.

3. Standards

Many respondents suggested that whatever data were finally selected as CADRE elements be coordinated with national data standards documents such as the Data Element Dictionary (D20.1) and the Manual on Classification of Motor Vehicle Traffic Accidents (D16.1). There was no disagreement on the Task Force that each element should be as close to national data standards as possible.

Both NHTSA and FHWA have always felt national data standards should be applied when building data systems whether they are used locally or on a nationwide basis.

Every attempt was made to encourage and foster data standardization, when possible.

The latest version of the draft ANSI D20.1, Data Element Dictionary, and ANSI D16.1, Manual On Classification Of Motor Vehicle Traffic Accidents, have been used as the source for particular data elements. In certain elements, some of the values within elements have been shortened, but they still retain the basic D20 and D16 code structure.

CADRE does not intend to supersede the D20 and D16 update process. As D20.1 is now being reviewed for ballot and for eventual adoption by the ANSI organization, the CADRE activity is being coordinated with the D20 update to make sure CADRE, D20, and D16 will be using the same definitions and code structures. If the final D20 differs from CADRE, CADRE will be modified to reflect the D20 values.

4. Vehicle Identification Number

Respondents from academia and the automotive industry were adamant that the element Vehicle Identification Number (VIN) remain a CADRE element as they believed VIN is the most efficient means to provide a vast array of vehicle-related data. The Task Force also felt that VIN could be used as an accurate means of identifying stolen vehicles, for verifying the crash involvement of specific vehicles, and for examining the crash experience of particular vehicle designs. However, there are considerable collection problems which will have to be surmounted. Future VIN data collection will probably be handled by stripe and bar code readers found in the police vehicle (Clipboard Computer will eventually have a bar code reader as part of the basic system).

The problem for the present could be handled by linking vehicle tag number to the registration file which contains the VIN, although effort would have to be expended to identify the VIN for out of state vehicles such as use of stripe and bar code readers etc.

5. Data Linkage

Each member of the Task Force, as well as some respondents felt states should include data in their traffic records system to link multiple data files to provide needed data for analysts. The element, Date of Birth, evolved from the original CADRE element Age. The Task Force report recommended that the Age element be changed to Date of Birth so it can be used as a critical data linkage element from the accident file to the emergency medical services and hospital files. Reports generated with input from these files can provide the analyst with injury data lacking in the accident data, but essential for effective analysis. NHTSA and FHWA believe the future development of accident/EMS data linkage will depend on such non-personal data elements as Date of Birth. The Task Force recommended that the Roadway Linkage elements be added to permit linkage to other highway safety files such as traffic volumes and roadway inventory files to obtain data for better analysis. Linkage of state police accident reports with these files through common site location elements permits states to conduct such analyses.

6. Injury Data

Many respondents expressed concern that original element, Body Region Injured, could not be accurately coded by police at the scene of the accident as the police are not trained to make medical diagnoses. Members of the Task Force agreed that the element Body Region Injured should be deleted from CADRE. The Agencies agree with that position and have removed it from the final CADRE.

7. Drug Data

Some Task Force members and respondents felt the Alcohol element should be expanded to include data on drugs. The agencies agree and have expanded the element to include drug data. It was also recommended that this element need not necessarily appear on the accident report form as long as it was available on the automated traffic records system.

8. NGA Heavy Truck Data

As part of a separate report, the Federal Highway Administration, working with the National Governors' Association (NGA), has identified a critical set of data elements for heavy truck analysis. This effort is complementary to the CADRE effort as both are concerned with improving the analytic utility of police reported crash data. The truck data elements have been addressed in the NGA publication entitled "Supplemental Truck and Bus Accident Report." There is no conflict between the NGA and CADRE data elements. When states implement both sets of elements it is important to assure that modifications will accommodate both NGA and CADRE data elements.

The NGA activity is designed to provide reliable, uniform and comprehensive data on truck and bus accidents that involve injury and property damage. Uniform truck data collection by the states would permit a comprehensive look at the truck safety problem and make interstate aggregation of data possible.

The CADRE elements have been grouped in three general categories: Accident, Vehicle and Person. CADRE data elements, values and definitions conform with the ANSI D16.1, Manual on Classification of Motor Vehicle Traffic Accidents. Crash data are needed to provide general characteristics about the circumstances of the accident and to properly classify the crash into categories necessary for highway safety analysis.

Data to identify and classify each vehicle involved in the crash is also essential. This information permits analysis of differences in numbers of crashes and frequency of injuries associated with different types of vehicles and countermeasures. Data about each person in the crash permit association of crash outcomes with vehicle characteristics and evaluation of occupant protection issues. The data file must be structured so that each person in the crash, including uninjured occupants, can be identified as an

occupant of one of the involved vehicles or as a nonoccupant.

This notice announces the completion of the final version of CADRE.

Section 2—Detailed CADRE Description

The following data elements represent the agencies' final list of elements that comprise the CADRE.

The agencies developed this final version after careful review of the written comments to the May 1990 notice and considerable discussion with states, safety professionals, traffic records specialists, manufacturers and other interested parties at the two task force meetings.

Final CADRE Elements

Accident Level Elements

1. Manner of Collision.
2. First Harmful Event.
3. Relation To Roadway.
4. Maximum Speed Limit.
5. Roadway Linkage.

Vehicle Level Elements (Each vehicle involved in Crash)

6. Most Harmful Event.
7. Vehicle Identification Number (VIN).
8. Towed Due To Damage.
9. Damaged Areas.
10. Extent of Deformity.

Person Level Elements (Each person, occupant or driver, involved in Crash)

11. Seating Position—Occupant level.
12. Occupant Protection System Use—Occupant level.
13. Air Bag Deployed—Occupant level.
14. Date of Birth—Person level.
15. Ejection—Occupant level.
16. Trapped/Extrication—Occupant level.
17. Transported to Medical Facility—Person level.
18. Alcohol/Drug Involvement—Driver level.

There are differences in data elements and code structures between the Proposed CADRE and the Final CADRE data Elements. At the Accident level, the elements First Harmful Event and Speed Limit code structures were adjusted slightly to reduce the number of values within each element. However, it was determined that good evaluation would require the addition of three more elements including Manner of Collision, Relation to Roadway and Roadway Linkage. Roadway Linkage is a composite of other data elements needed to link state police accident reports with traffic and roadway inventory files. Roadway Linkage will be used instead of the individual elements such as (Trafficway Identifier, Route Signing, Milepoint, State, City and County).

At the Vehicle Level, both VIN and Extent of Deformity were retained. Location of Damage was merged with the new element Damaged Areas. There are two new elements in this section, Most Harmful Event and Towed Due to Damage. The code structure for Most Harmful Event is identical to the Accident Level element First Harmful Event. Towed Due to Damage was added because of the wide disparity in threshold damage dollar amounts among the states. Collection of this element will permit better comparison of data between states.

Person Level elements were increased from seven to eight elements, with one element being dropped (Body Region Injured). This element was dropped because it was felt that police are not qualified to make injury diagnoses.

The element Age was renamed Date of Birth, and a slight change made in the code structure. The old element Ejection/Entrapment/Extrication was separated into two elements named Ejection and Trapped/Extrication. Treatment/Disposition of Injured element was changed to Transported to Medical Facility for simplicity and because the degree of difficulty in collecting and coding medical treatment information. Seating Position, Occupant Protection System Use and BAC-Alcohol/Drug Use were retained with some code structure modifications.

A more detailed rationale and expanded code structure for each data element appearing in the final CADRE can be found in this section describing each element.

1. Manner of Collision

Rationale

It is necessary in analysis of crash data to describe the basic configuration of the crash. This element provides analysts with basic information as to how the vehicles came together, so that they may distinguish between different types of crashes and include only the types of crashes in which they are interested.

Definition

The identification in a crash of how the vehicles initially came together.

Element Values

Code and Value

0 Not Collision with Motor Vehicle in Transport
1 Rear-End
2 Head-On
3 Rear-to-Rear
4 Angle
5 Sideswipe, Same Direction
6 Sideswipe, Opposite Direction
9 Unknown

2. First Harmful Event

Rationale

This element helps provide the major clues as to how the crash occurred and when combined with other information it can provide an accurate picture of the crash. Applications include use of the data issued to identify traffic safety problems and evaluate countermeasures such as identifying the size or magnitude of rollovers for utility vehicles, and collisions with a bicyclist.

The CADRE listing of First Harmful Event codes is intended to standardize variables of broad national and state interest. This listing is not meant to discourage continued collection of other specific elements of interest such as boulders in mountain states or snow banks in northern states.

Definition

The injury or damage producing event which characterizes the crash type and identifies the nature of the first harmful event, such as explosion in the vehicle.

Element Values

Code and Value

Noncollision
01 Overturn
02 Fire/Explosion
03 Immersion
04 Jackknife
07 Other Noncollision
Collision With object not fixed
08 Pedestrian
09 Pedalcycle
10 Railway Train
11 Animal
12 Motor Vehicle in Transport
13 Motor Vehicle in Transport in Other Roadway
14 Parked Motor Vehicle
18 Other Object (not fixed)
Collision With fixed object
20 Impact Attenuator
21 Bridge/Pier/Abutment
22 Bridge Parapet End
23 Bridge Rail
24 Guardrail Face
25 Guardrail End
26 Median Barrier
27 Highway Traffic Sign Post
28 Overhead Sign Support
29 Luminaire/Light Support
30 Utility Pole
31 Other Post
32 Culvert
33 Curb
34 Ditch
35 Embankment
36 Fence
40 Mail Box
42 Tree
43 Other Fixed Object
99 Unknown

3. Relation to Roadway

Rationale

This element is useful in the identification of highway design safety problems and countermeasures. For example, in fatalities caused by rollovers (rollover as the Most Harmful Event), the First Harmful Event is an impact outside the shoulder (as identified by using Relation to Roadway), in most cases.

Definition

This element describes the location of the First Harmful Event as it relates to its position within or outside the Trafficway.

Element Values

Code and Value

1 On Roadway
2 Shoulder (other than Shoulder within Median or Gore)
3 Median (other than Median within Gore)
4 Outside Shoulder—Left
5 Outside Shoulder—Right
6 Off Roadway—Location Unknown
7 Gore
9 Unknown

4. Maximum Speed Limit

Rationale

Speed limit is a surrogate for a number of roadway related elements that are not readily obtainable but which are useful in highway safety analysis. For example, speed limits imply a certain level of commercial development, the character of roadside safety appurtenance, the general speeds of traffic, roadway design characteristics, the likelihood of certain crash severities, etc. This information is helpful when attempting to account for the effect of these various factors without direct knowledge of their presence.

Definition

The posted or statutory speed limit for a particular section of roadway, whether posted or not. In those instances where crashes occur at the intersection of two roadways, the higher speed limit should be coded.

Element Values

Code and Value

Actual/Posted Miles Per Hour
99 Unknown

5. Roadway Linkage

Rationale

Roadway Linkage elements will serve to identify the proper political jurisdiction in which the crash took place, and provide linkage potential from the crash file to other databases including emergency medical services (EMS) and hospital data.

Key data for highway safety analyses are contained on other state maintained data files. Traffic volumes are essential for determining hazardous sites and many other highway safety analyses. State roadway data files contain key information on roadway type, land use, access control, number of lanes, and useful safety data elements such as lane width and shoulder width. Linkage of state police accident reports with state traffic and roadway inventory files through common site location elements permits states to conduct such analyses. The exact combination of elements required to make these links vary from state to state, but may include Trafficway Identifier, Route Signing, Milepoint, State, City and County.

6. Most Harmful Event

Rationale

Safety countermeasures such as occupant restraint systems, vehicle crashworthiness improvements, and roadside safety hardware are directed at reducing collision severity. This requires reduction in the severity of the Most Harmful Event of the crash element. Thus, Most Harmful Event is the appropriate element to use in studies aimed at reducing crash severity. When combined with the First Harmful Event element, information to identify safety problems and suggested countermeasures can be obtained. For example, in rollover crashes, rollover is typically the Most Harmful Event, but often not the First Harmful Event. In rollover crashes, the cause of the tripping is often a First Harmful Event such as running into ditches, curbs or embankments.

The CADRE listing of Most Harmful Event codes is intended to standardize variables of broad national and state interest. This listing is not meant to discourage continued collection of other specific elements of interest such as boulders the mountain states or snow banks in northern states.

Definition

The event producing the greatest injury or damage for each involved vehicle which identifies the nature of the Most Harmful Event such as Fire/Explosion.

Element Values

Code and Value

Noncollision
01 Overturn
02 Fire/Explosion
03 Immersion
04 Jackknife
07 Other Noncollision

Collision With Object Not Fixed
08 Pedestrian
09 Pedalcycle
10 Railway Train
11 Animal
12 Motor Vehicle in Transport
13 Motor Vehicle in Transport in Other Roadway
14 Parked Motor Vehicle
18 Other Object (not fixed)

Collision With Fixed Object
20 Impact Attenuator
21 Bridge/Pier/Abutment
22 Bridge Parapet End
23 Bridge Rail
24 Guardrail Face
25 Guardrail End
26 Median Barrier
27 Highway Traffic Sign Post
28 Overhead Sign Support
29 Luminaire/Light Support
30 Utility Pole
31 Other Post
32 Culvert
33 Curb
34 Ditch
35 Embankment
38 Fence
40 Mail Box
42 Tree
43 Other Fixed Object
99 Unknown

7. Vehicle Identification Number (VIN)

Rationale

The collection and coding of the VIN provide vehicle design characteristics in a crash and can also provide the capacity for obtaining other information, i.e., occupant protection system availability and anti-lock brake equipment, in addition to Make, Model data. VIN is useful to the States in a number of ways as it provides for the identification of each individual vehicle. Thus, for example, it possibly can be used to identify stolen vehicles. Because it provides a more accurate means of identifying vehicles, States can use VIN to examine the crash experience of particular vehicle design characteristics which they may want to regulate. For example, VIN can be sued to accurately distinguish between motorcycles of different engine classes, providing the data needed to determine if younger riders are more involved in crashes while riding bikes of particular sizes.

VIN data can also be used to provide specific vehicle identification with a minimum of data collection. Also, it can be used to understand the presence of specific characteristics, such as identifying convertibles when doing studies on ejection.

Definition

A unique 17 digit combination of alphanumeric characters affixed to the vehicle in specific locations and

formulated by the manufacturer which accurately describes the vehicle and its components.

8. Towed Due to Damage

Rationale

States have different thresholds for determining when a crash report must be completed. In some states the threshold is a dollar amount of damage which varies from $100 to $1000. In other states the threshold is an injury in the crash, while others require reports for crashes when a vehicle is towed from the scene. Collecting this element will permit better comparison of results between states through use of the threshold Towed Due to Damage.

Definition

Determination as to whether or not an involved vehicle was towed from the crash scene due to damage incurred in the crash.

Element Values

Code and Value

1 Yes
2 No
9 Unknown

9. Damaged Areas

10. Extent of Deformity

Rationale

These elements are a measurement of severity in terms of crash forces, to provide a uniform threshold for analyses. It is necessary and important for relating crash severity to injury severity, and controlling for differences which effect analysis. States will use these elements to provide an objective means of separating more severe crashes from less severe in order to evaluate effectiveness of injury reducing countermeasures. They can be of great importance in evaluating the effectiveness of occupant protection systems. The Traffic Accident Data (TAD) Project manual for measuring extent of deformity has been successfully used by some states. The structure below is almost identical to the TAD system.

The TAC scale (The Traffic Accident Data Project Scale), which is being successfully used by several states, is clearly superior for analysis purposes. However, some representatives of the Task Force feel it will be difficult to persuade their police agencies to implement TAD, especially considering the training that will be required to implement the TAD. Consequently, for states in which implementing TAD is not a realistic option, the coding of the two elements, Damaged Areas and Extent of Deformity is suggested. In this alternative, however, coding of the Extent of Deformity element lacks definition or a photographic frame of reference (the strength of TAD) for the coded elements. The resulting lack of consistency in coding this element will clearly limit the utility of this alternative.

Definition

The location and extent of vehicle damage sustained in the crash.

Element Values

Damaged Areas

Code and Value

00 None
01 Center front
02 Right front
03 Right side
04 Right rear
05 Center rear
06 Left rear
07 Left side
08 Left front
09 Top and Windows
10 Undercarriage
11 Total (All Areas)
12 Other
99 Unknown

Extent of Deformity

Code and Value

0 None
1 Very Minor
2 Minor
3 Minor/Moderate
4 Moderate
5 Moderate/Severe
6 Severe
7 Very Severe
9 Unknown

11. Seating Position

Rationale

Without known seating position for each person in the vehicle, it is not possible to fully evaluate the effect of occupant protection programs. Analysis would be limited to the effect on the driver, since the driver is always reported in crash files. States need the information to satisfy the insurance industry, to assess the effectiveness of restraint use by all occupants, and to provide a basis for future occupant restraint legislation. Federal entities need the information to assess effectiveness and prevent injuries to rear seat occupants and to analyze the types of injuries received by occupants in all seating positions.

Definition

The location for each occupant in, on, or outside of a motor vehicle prior to the impact of a crash.

Element Values

Code and Element

11 Front Seat—Left Side (Motorcycle Driver)
12 Front Seat—Middle
13 Front Seat—Right Side
21 Second Seat—Left Side (Motorcycle Passenger)
22 Second Seat—Middle
23 Second Seat—Right Side
31 Third row—Left Side (Motorcycle Passenger)
32 Third row—Middle
33 Third row—Right Side
50 Sleeper Section Of Cab (Truck)
51 Passenger in other enclosed passenger or cargo area (non-trailing unit)
52 Passenger in unenclosed passenger or cargo area (non-trailing unit)
54 Trailing Unit
55 Riding On Vehicle Exterior (non-trailing unit)
88 Pedestrian (Nonoccupant)
99 Unknown

12. Occupant Protection System Use

13. Air Bag Deployed

Rationale

Proper classification of the use of available occupant protection systems would be used to evaluate the effectiveness of such equipment, especially at a time when air bags are rapidly increasing in the vehicle population. The data must be collected for all persons whether injured or not.

Definition

The restraint equipment in use by *each* occupant at the time of the crash, or the helmet use by a motorcycle or bicycle rider.

Element Values

Occupant Protection System Use

Code and Value

0 None Used—Vehicle Occupant
1 Shoulder belt only used
2 Lap belt only used
3 Shoulder and lap belt used
4 Child Safety seat used
5 Helmets used
8 Not applicable—Nonmotorist
9 Restraint use unknown

Air Bag Deployed

Code and Value

3 Deployed
4 Nondeployed
8 Not applicable
9 Unknown

14. Date of Birth

Rationale

Uses of accurate reporting of age include assessing effectiveness of occupant protection systems for specific

age groups, and identifying the need for safety programs directed toward them.

Without this element, analysts could not identify specific groups of the general population, nor could they direct countermeasures which would assist in reducing the problem.

This element is also critical in providing linkage from the crash file to EMS and hospital records, especially when it is becoming more apparent that most jurisdictions restrict the use of name and other personal identifiers when attempting file linkage.

Definition

The year, month, and day of birth of *each* involved person in an accident.

Element Values

Code and Value

0000–9999 Year of Birth
01–12 Month of Birth
01–31 Day of Birth
99999999 Unknown

15./16. Ejection and Trapped/Extrication

Rationale (for Ejection and Trapped/Extrication)

Occupant protection systems prevent or mitigate ejections to different extents. This element, on whether occupants were trapped or extricated, would be used by State and federal analysts to evaluate these issues and to evaluate the effect entrapment has on the injury outcome of crashes. Crash injury outcome may depend on information from this element. The location of *each occupant* as a result of a crash can be compared to occupant protection systems and seating position to determine crashworthiness.

Ejection

Definition

The location of the occupant's body as being completely or partially thrown from the vehicle as a result of a crash.

Element Values

Code and Value

0 Not Applicable
1 Not Ejected
2 Totally Ejected
3 Partially Ejected
9 Unknown

Trapped/Extrication

Definition

Persons who are mechanically restrained in the vehicle by damaged vehicle components as a result of a crash, and/or freed/removed from the vehicle.

Element Values

Code and Value

0 Not Applicable
1 Not Trapped
2 Trapped/Extricated
3 Trapped/Not Extricated
9 Unknown

17. Transported to Medical Facility

Rationale

The reporting of injury severity by police officers is largely subjective. Studies of the National Accident Sampling System (NASS) data have revealed that 40% of AIS 3+ injured persons are coded as minor by police, and, 60% of serious injuries are AIS 2 or 1. Reporting the disposition of the injured persons would provide a more objective evaluation of the severity of the crash since its determination would not be subject to interpretation by police. Such objectivity would be useful for cost effective countermeasure analysis, and identifying the effectiveness of occupant protection use laws, motorcycle helmet use laws, etc. Rural states in particular have to know instances of "demand" for ambulance services. Good data is necessary to reduce societal costs by determining optimal emergency medical services locations.

Definition

Status for each person involved in a crash as to whether that person was transported from a traffic crash site to a medical facility for treatment of injuries sustained in crash. Transportation does not need to have been by ambulance or other emergency medical services vehicle.

Element Values

Codes and Values

0 No
1 Yes
9 Unknown

18. Alcohol/Drug Involvement

Rationale

It is clear that alcohol remains the single most important drug involved in motor vehicle crashes. While Blood Alcohol Concentration (BAC) will not be obtained for all crashes, whenever a driver is tested, the test results should be included in CADRE. If BAC is not included in the police report, it should still be included on the automated file if possible. When there has been no test for BAC, there should be some indication of the investigating officer's judgment of driver impairment or non-impairment.

Because of the concern and evidence that drugs other than alcohol are increasingly a factor in motor vehicle crashes, whatever evidence is available of other drug use also should be included in CADRE.

Alcohol/Drug related traffic crashes are a serious safety problem. Many State programs are in place to decrease the incidence of drunk driving and driving while under the influence of drugs. Blood Alcohol Concentration (BAC) and other Drug use measurement would be used to provide an accurate measure of alcohol/drug related crashes in order to evaluate effectiveness of these programs and to identify high problem areas. Inclusion of the Alcohol/Drug data element on the accident report form is encouraged. The Alcohol Drug data does not necessarily have to appear on the accident report, but it should be available in the State's automated traffic records file.

Police Reported Alcohol/Drug Presence

Definition

Investigating police officer's assessment of whether alcohol or drugs were used by the vehicle driver, and whether the driver was impaired or whether alcohol/drugs contributed to the crash.

Element Values

Codes and Values

0 Neither Alcohol or Drugs present
1Yes (Alcohol Present)
2 Yes (Drugs Present)
3 Yes (Alcohol and Drugs Present)
7 Not Reported
9 Unknown

Alcohol

Definition

The percent of BAC (or its equivalent for Other Drugs).

Variables

Codes and Element

XYZ Code actual value BAC of 0.15 g/ml is coded 015
95 Test Refused
96 None Given
97 Test Given, Results Unknown
99 Unknown

Drugs

Variables

Codes and Element

0 Not given
1 No drugs reported
2 Drugs reported (if so specify, **)
7 Not reported
9 Unknown

**Identify results for the five substances regulated for commercial motor vehicle drivers: Marijuana, Cocaine, Opiates, Amphetamines, PCP.

Section 3—CADRE Development and Implementation

The Agencies plan that implementation of CADRE will include

contact with the states to determine how closely the traffic records files and crash reports mirror the CADRE elements, codes and values, and to identify legal and institutional barriers to implementation. The process will be accomplished with assistance from the NHTSA Regional Offices. This effort is not part of NHTSA's State Traffic Records Assessment activity.

As another step, NHTSA will hold Regional and State workshops on CADRE for those interested in making changes to their crash report forms and automated traffic records systems. NHTSA plans to develop guidelines for use of its highway safety and demonstration funds (402 & 403) to implement CADRE.

Any CADRE changes made by the states can, of course, be done on the state's schedule. Most states have a time table for review and update of the crash report. It is during that time CADRE changes can be made with minimal difficulty, and yet provide the benefit to the state such a revision generates. CADRE is a voluntary effort and will not be mandated by the NHTSA.

Those interested in implementing CADRE should contact Mr. Charles J. Venturi at 202/366–4709.

Issued On:

Jerry Ralph Curry,

Administrator, National Highway Traffic Safety Administration.

Thomas D. Larson,

Administrator, Federal Highway Administration.

Appendix No. 1

The following individuals served as members of the CADRE Task Force or as Technical Support:

Members

Noel Bufe, Northwestern University
Thomas W. Brahams, Institute of Transportation Engineers
Barbara H. DeLucia, Texas Transportation Institute
Steven Flint, New Mexico Transportation Department
Ernest S. Grush, Ford Motor Company
Don D. Hinton, California Highway Patrol
Coy H. Johnston, Arizona Highway Patrol Bureau
Philip P. Madonia, Illinois Department of Transportation
Clark Martin, American Association of Motor Vehicle Administrators
David L. Mosley, Virginia Department of Motor Vehicles
James O'Day, consultant
Myron E. Scafe, Overland Park, Kansas, Police Department
James G. Templeton, Texas Department of Public Safety
Patricia F. Waller, University of Michigan
William H. Walsh, National Highway Traffic Safety Administration
Phyllis E. Young, Federal Highway Administration

Technical Support

Thomas A. Boerner, Minnesota Department of Public Safety
Benjamin V. Chatfield, Chatfied Associates, Inc.
Ralph Craft, National Governors' Association
Ted E. Dudzik, National Safety Council
Mark L. Edwards, National Highway Traffic Safety Administration
Clayton E. Hatch, National Highway Traffic Safety Administration
Richard F. Pain, Transportation Research Board
Carlton C. Robinson, Highway Users Federation for Safety and Mobility
Richard Tippie, National Safety Council
John G. Viner, Federal Highway Administration
Cecil W. Colson, Alabama Highway Department
Nancy Greene, National Association of Governors' Highway Safety Representatives
Barbara Harsha, National Association of Governors' Highway Safety Representatives
Sam Luebbert, National Highway Traffic Safety Administration
Stephanie Olson, Colorado Division of Highway Safety
Bonnie Powell, Michigan Office of Highway Safety Planning
Dennis E. Utter, National Highway Traffic Safety Administration
Charles J. Venturi, National Highway Traffic Safety Administration
Nate Walker, Missouri Department of Public Safety

[FR Doc. 92–781 Filed 1–10–92; 8:45 am]
BILLING CODE 4910-22-M 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 6, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0025.
Form Number: ATF F 2 (5320.2).
Type of Review: Extension.
Title: Notice of Firearms Manufactured or Imported.
Description: The National Firearms Act requires licensed importers and manufacturers to notify ATF when firearms are imported or manufactured. This action registers the firearms in the National Firearms Registration and Transfer Record and makes their possession of the firearms lawful. Tax otherwise due under 26 U.S.C. 5821 does not apply.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Respondent: 1,200 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 4,000 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–762 Filed 1–10–92; 8:45 am]
BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

January 6, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0081.
Form Number: FFIEC 031, 032, 033 and 034.
Type of Review: Revision.
Title: (MA)—Reports of Condition and Income (Interagency Call Report).
Description: Reports are filed pursuant to 12 U.S.C. 161, 164 and

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1823(j). Data are used to monitor the financial condition, and earnings performance of individual banks as well as the entire banking industry. Data are also used for research, program planning, and OCC publications.

Respondents: Businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 3,900.

Estimated Burden Hours Per Response: 34 hours, 36 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 538,605 hours.

Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–763 Filed 1–10–92; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 57, No. 8
Monday, January 13, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, 10:00 a.m., Wednesday, January 15, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Pride in Public Service Award

The Commission will present the Pride in Public Service Award to January's recipient.

2. Choking Hazards Associated with Balloons

The staff will brief the Commission on options for action with regard to a rulemaking proceeding to address choking hazards associated with balloons.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504-0800.

Date January 8, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92-946 Filed 1-9-92; 1:22 pm]

BILLING CODE 6355-01-M

FEDERAL COMMUNICATIONS COMMISSION

January 9, 1992.

FCC To Hold Open Commission Meeting Thursday, January 16, 1992

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 16, 1992, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—COMMON CARRIER—Title: Petition for Emergency Relief and Declaratory Ruling filed by BellSouth Corporation. Summary: The Commission will consider adoption of a *Memorandum Opinion and Order* regarding an order of the Georgia Public Service Commission on provision by BellSouth of voice mail service in Georgia..

2—PRIVATE RADIO—Title: Amendment of Parts 13 and 80 of the Commission's Rules to Implement the Global Maritime Distress and Safety System (GMDSS) to Improve the Safety of Life at Sea (PR Docket No. 90-480). Summary: The Commission will consider adoption of a *Report and Order* to amend the maritime mobile service rules to incorporate the provisions of the GMDSS for U.S. vessels. The changes would affect cargo ships of 300 gross tons and over and passenger ships carrying 12 or more passengers regardless of size.

3—OFFICE OF ENGINEERING AND TECHNOLOGY—Title: Amendment of Section 2.106 of the Commission's Rules to Allocate Emerging Technology Bands for Future Requirements. Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* concerning allocation of spectrum for emerging technologies.

4—OFFICE OF ENGINEERING AND TECHNOLOGY—Title: Request for Pioneer's Preference by ORBCOMM, STARSYS, and VITA in Conjunction With Their Petitions to Allocate Spectrum for Low-Earth Orbit Satellites (ET Docket No. 91-280, RM-7334, RM-7399 and RM-7612). Summary: The Commission will consider pioneer's preference requests filed by ORBCOMM, STARSYS, and VITA regarding proposed fixed or mobile staellite services below 1 GHz using low-earth orbit satellites.

5—OFFICE OF ENGINEERING AND TECHNOLOGY—Title: Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules to Interactive Video and Data Services (GEN Docket No. 91-2). Summary: The Commission will consider adoption of a *Report and Order* concerning allocation of spectrum for Interactive Video and Data Services and associated service rules.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: January 9, 1992.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-962 Filed 1-9-92; 1:49 pm]

BILLING CODE 6712-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS OFFICE OF THE INSPECTOR GENERAL OVERSIGHT COMMITTEE CHANGES

"FEDERAL REGISTER" CITATION, OF PREVIOUS ANNOUNCEMENT: FR Doc. 92-654, 57 FR 953.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 12, 1992; commencing at 6:00 p.m.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, NW., The Ballroom Center, Washington, DC 20001, (202) 628-21000.

CHANGES IN THE MEETING:

Open Session:

As announced previously, all agenda items were to be discussed in open session. However, a portion of the meeting may now be closed pursuant to a majority vote of the Board of Directors to be taken prior to the Committee meeting. If a closed session is held subject to the aforementioned vote, the Committee will hear and consider a report on a December 19, 1991 meeting with the Senate Committee on Governmental Affairs, and will also consider a draft letter to Senator John Glenn, Chairman, Committee on Governmental Affairs, which is written follow-up to the above-referenced December meeting. The closing will be authorized by the relevant section of the Government in the Sunshine Act [5 U.S.C. Section 552 (b)(10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(h)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 400 Virginia Avenue, S.W., Washington, D.C. 20024, in its three reception areas, and will otherwise be available upon request.

Agenda:

Previously announced agenda item number 3 has been changed to agenda item number 4 and will now be discussed in closed session pursuant to a majority vote of the Board of Directors. In addition, former agenda item number 3 (now agenda item number 4) has been expanded to include consideration of a draft letter to Senator John Glenn. The amended agenda is as follows.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of Agenda.

2. Approval of Minutes of July 9, 1991 Meeting.
3. Consideration of Draft Management Report on the Inspector General's 1990 and 1991 Semiannual Reports.

Closed Session:

4. Consideration of Committee Chairman's Report on December 19, 1991 Meeting with Senate Committee on Governmental Affairs and Draft Letter to Senator John Glenn, Chairman, Senate Committee on Governmental Affairs.

CONTACT PERSON FOR INFORMATION:
Patrica D. Batie, Executive Office, (202) 863–1839.

Date issued: January 9, 1992.

Patrica D. Batie,

Corporate Secretary.

[FR Doc. 92–947 Filed 1–9–92; 1:23 pm]

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Corrections

Federal Register
Vol. 57, No. 8
Monday, January 13, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1951

Implementation of Sections 206, 207 and 401 of the Housing and Urban Development Reform Act of 1989 as Amended by the Cranston-Gonzalez National Affordable Housing Act of 1990

Correction

In rule document 91-30588 beginning on page 66956 in the issue of Friday, December 27, 1991, make the following correction:

Exhibit B of Subpart K—[Corrected]

On page 66962, in the second column, in part 1951, in Exhibit B of subpart K, under *II. Eligible Projects*, in paragraph B., in the first line, insert "not" after "will".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Cattle Report Date Changes

Correction

In notice document 91-23138 appearing on page 48516 in the issue of Wednesday, September 25, 1991, in the second column, in the file line at the end of the document, "FR Doc. 91-23130" should read "FR Doc. 91-23138".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0406]

Drug Export: Blood Grouping Reagents: Anti-jk^a (Monoclonal) Biclone for Tube and Microplate Test; Anti-jk^b (Monoclonal) Bioclone for Tube and Microplate Test

Correction

In notice document 91-24846 beginning on page 51907 in the issue of Wednesday, October 16, 1991, make the following correction:

On page 51907, in the third column, under **SUMMARY**, in the fourth line "failed" should read "filed".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0450]

Public Workshop; Request for Comments

Correction

In notice document 91-29818 beginning on page 65094 in the issue of Friday, December 13, 1991 make the following corrections:

1. On page 65094, in the third column, under **ADDRESSES**, in the seventh line "600" should read "660".

2. On page 65095, in the first column:

(a) In the third line, "in" should read "is".

(b) In the second full paragraph, in the fifth line "or" should read "of".

(c) In the third paragraph, in the sixth line "by" should read "at".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-4735; OR 030-01-4212-13; GP1-348]

Realty Action; Exchange of Public Lands; Baker County, Oregon

Correction

In notice document 91-23280 beginning on page 49197, in the issue of September 27, 1991, make the following corrections:

1. On the same page, in the third column, in the first land description, after the fifth line, the following material was omitted: "T. 9S., R. 42E., Section 35, SW¼NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼."

2. On the same page, in the same column, in the same land desription, in the seventh line, "NE½" should read "NE¼".

BILLING CODE 1505-01-D

VOL
57

ISS
8

JA
13

1992

UMI

federal register

Monday
January 13, 1992

Part II

Department of Labor

Employment and Training Administration
20 CFR Part 655
Wage and Hour Division
29 CFR Part 507

Labor Conditions Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations and as Fashion Models; Interim Final Rule

VOL 57 ISS 8 JA 13 1992 UMI

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AA89

Wage and Hour Division

29 CFR Part 507

RIN 1215-AA69

Labor Condition Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations and as Fashion Models

AGENCIES: Employment and Training Administration, Labor and Wage and Hour Division, Labor.

ACTION: Interim final rule; request for comments; extension of comment period.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are revising their regulations governing the filing and enforcement of labor condition applications filed by employers seeking to employ aliens in specialty occupations and as fashion models of distinguished merit and ability on H-1B visas. Under the Immigration and Nationality Act (INA), as amended by the Immigration Act of 1990 (IMMACT), an employer seeking to employ an alien in a specialty occupation or as a fashion model of distinguished merit and ability on an H-1B visa is required to file a labor condition application with DOL before the Immigration and Naturalization Service (INS) may approve an H-1B visa petition. The labor condition application process is administered by ETA; complaints and investigations regarding labor condition applications are the responsibility of ESA.

The Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA) amended the INA and the IMMACT to substantially change the H-1B labor condition application program, retroactive to October 1, 1991. This interim final rule revises the H-1B regulations to implement the MTINA amendments.

DATES: *Effective Date:* October 1, 1991.

Comments: Written comments on this interim final rule are invited from interested parties. Comments must be received on or before February 12, 1992. The comment period on the interim final rule published at 56 FR 54720 (October 22, 1991) (FR Doc. 91-25281) is extended through February 12, 1992.

ADDRESSES: Submit comments to: Roberts T. Jones, Assistant Secretary, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Immigration Task Force, room N-4470.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart H, and 29 CFR part 507, subpart H, contact David O. Williams, Chair, Immigration Task Force, Employment and Training Administration, Department of Labor, room N-4470, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535-0174 (this is not a toll-free number).

On 20 CFR part 655, subpart I, and 29 CFR part 507, subpart I, contact Solomon Sugarman, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in the interim final rule have been submitted to the Office of Management and Budget for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control No. 1205-0310.

The Employment and Training Administration estimates that up to 50,000 employers per year will submit labor condition applications. The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and preparing the application.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

II. Background

On November 29, 1990, the Immigration Act of 1990 (IMMACT), Public Law 101-649, 104 Stat. 4978, was enacted into law. The law amended the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (INA) and assigned responsibility to the Department of Labor for the implementation of several provisions of IMMACT relating to the entry of certain categories of employment-based immigrants, and to the temporary employment of certain categories of nonimmigrants. One of the major provisions of IMMACT the Department of Labor (DOL or Department) is charged with implementing governs the entry of H-1B aliens in specialty occupations or as fashion models of distinguished merit and ability to work temporarily in the United States (U.S.) for a period of up to six years. 8 U.S.C. 1101(a)(15)(H)(i)(b); 8 U.S.C. 1182(n); and 8 U.S.C. 1184(c). The Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Public Law 102-232, 105 Stat. 1733 (December 12, 1991), amended INA and IMMACT, substantially changing portions of the H-1B labor condition application program, retroactive to October 1, 1991.

IMMACT redefined and narrowed the occupational scope of the prior H-1B visa category. Aliens of distinguished merit and ability who had been previously admitted under the H-1B visa category may now be eligible for entry under one of two new visa classifications (O and P) which have been established for aliens with extraordinary ability, persons accompanying aliens, and athletes and entertainers. 8 U.S.C. 1101(a)(15)(O) and 1101(a)(15)(P); see also 8 U.S.C. 1184(g)(1)(C). DOL has no operational responsibilities under the O and P visa provisions of IMMACT. Under INA as amended by IMMACT and MTINA, the H-1B visa category is designated for aliens who are coming temporarily to the U.S. to perform services in a "specialty occupation," as defined in section 214(i)(1) of the INA, or as fashion models of distinguished merit and ability. See 8 U.S.C. 1101(a)(15)(H)(i)(b) and 1184(i)(1). The Immigration and Naturalization Service (INS) makes determinations on whether a job opportunity is in a specialty occupation or as a fashion model of distinguished merit and ability.

The H-1B category of specialty occupations consists of those occupations which require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. In addition, an alien in a specialty occupation must possess full state licensure to practice in the occupation (if required), completion of the required degree, or experience in the

specialty equivalent to the degree and recognition of expertise in the specialty. 8 U.S.C. 1184(i)(2).

The H–1B category of "fashion model" requires that the alien be of distinguished merit and ability. 8 U.S.C. 1101(a)(15)(H)(i)(b).

INS makes determinations on an alien's qualifications for a job opportunity, specialty occupation, and distinguished merit and ability as a fashion model. The INA, as amended by IMMACT and MTINA, establishes a cap of 65,000 on the number of aliens who may be issued H–1B visas annually, and provides a process for protecting the wages and working conditions of workers. 8 U.S.C. 1182(n) and 1184(g)(1)(A).

The H–1B process begins with the requirement that a prospective H–1B employer file a labor condition application on Form ETA 9035 with the regional office of the Employment and Training Administration having jurisdiction over the State in which the position is located. 8 U.S.C. 1182(n). In this application, the employer is required to attest that: (1) It will pay H–1B nonimmigrants no less than the greater of the prevailing wage or actual wage for the occupation; (2) it will provide working conditions that will not adversely affect the working conditions of U.S. workers similarly employed; (3) there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment; (4) it has publicly notified the bargaining representative of its employees in the occupational classification at the place of employment of its intent to employ an H–1B nonimmigrant, or, if there is no bargaining representative, that it has posted such notice at the place of employment. Further, the employer must provide the information required in the application about the number of aliens sought, occupational classification, job duties, wage rate and conditions under which the aliens will be employed, date of need, and period of employment.

Finally, an important part of the process consists of a complaint and enforcement provision. DOL will accept complaints from any aggrieved party about an employer's failure to meet a specified condition or misrepresentation of a material fact in the application. If DOL determines that a reasonable basis for the complaint exists, DOL will investigate, provide the employer and other interested parties an opportunity for a hearing, and may assess sanctions including civil money penalties. 8 U.S.C. 1182(n)(2).

III. The Process of Developing Interim Final Regulations

In developing the interim final regulations, the Department considered a number of issues pertaining to the filing of labor condition applications by employers seeking to employ H–1B nonimmigrants including: (1) Which employers may file a labor condition application for H–1B nonimmigrants; (2) whether a labor condition application must be filed before or after an H–1B visa is issued; (3) whether DOL should determine that an H–1B occupation is a specialty occupation, including the extent to which the Department will review a labor condition application; and (4) whether documentation should be submitted with the labor condition application and/or maintained at the place of employment. These issues were addressed in an Advance Notice of Proposed Rulemaking (ANPRM), a proposed rule, and an interim final rule inviting comments from all interested parties. 56 FR 11705 (March 20, 1991); 56 FR 37175 (August 5, 1991); and 56 FR 54720 (October 22, 1991).

Comments and recommendations were received from a variety of persons and organizations with respect to the Department's approach to the development and implementation of these regulations. The Department carefully considered the views of these commenters in developing the interim final regulations. Comments on the ANPRM and the proposed rule were discussed in the interim final rule. Such discussion, to the extent still applicable given the revisions mandated by MTINA, is reprinted in this revised interim final rule. 56 FR at 54721–54726.

This revised interim final rule also makes those amendments to the H–1B program necessitated by the enactment of MTINA. The Department has also included clarification regarding employer attestation requirements for "working conditions" and has invited comments regarding possible changes regarding "in-kind" wages. In addition, the comment period on the interim final rule is extended, so that comments may be made on these amendments.

A. Labor Condition Application Process and Requirements

The Department believes that Congress, in enacting IMMACT and MTINA, intended to provide greater protection than under prior law for workers, without interfering with an employer's ability to obtain the H–1B nonimmigrants it needs on a timely basis. Accordingly, the regulations provide that DOL review be limited to determining whether a labor condition application is complete and contains no obvious inaccuracies (including whether the Wage and Hour Division (Administrator) has previously disqualified the employer from employing H–1B nonimmigrants). Congress, in section 303 (a)(7)(A) and (a)(7)(B)(iii) of MTINA, has confirmed this streamlined approach. 8 U.S.C. 1101(a)(15)(H)(i)(b) and 1182(n)(1). In addition, Congress mandated in MTINA that the "certification described in section 101(a)(15)(H)(i)(b)" be provided within 7 days of the date of the filing of the application, unless the application is incomplete or obviously inaccurate. 8 U.S.C. 1182(n)(1); Pub. L. 102–232 sec. 303(a)(7)(B)(iii).

In implementing the protection for workers that IMMACT intends, however, the procedures and documentation requirements are sufficiently specific to enable investigations of complaints against employers and enforcement of sanctions where necessary. Under IMMACT, protection of workers is provided through the complaint process. The interim final regulations set forth a process which: (1) Requires labor condition applications that are specific with respect to employer statements and promises; (2) limits DOL's review of a labor condition application to a simple check to assure that it is completed, signed, and contains no obvious inaccuracies (which includes whether the Wage and Hour Division (Administrator) has disqualified the employer from employing H–1B nonimmigrants); (3) describes the information that employers must retain to document the validity of their statements; and (4) establishes a system for the receipt of complaints, and their investigation and disposition, including the imposition of penalties where warranted. The interim final rule assigns to the Employment and Training Administration (ETA) DOL's role in certifying and processing applications; and to the Wage and Hour Division of the Employment Standards Administration (ESA) DOL's role in investigating complaints and assessing penalties.

1. Who May File a Labor Condition Application?

In developing the interim final regulations, the Department considered a number of issues relating to the eligibility of an employer to file a labor condition application, including: Whether an H–1B employer must have a physical location in the U.S. or otherwise be able to prove it is doing business in the U.S. at the time a labor

condition application is filed; and whether the alien must be paid in U.S. currency. The Department received comments on these and several related issues. Several commenters indicated that current practice did not require a U.S. employer, or even the presence of an employer in the U.S., and that payment to the H–1B nonimmigrants was often not made in U.S. currency. One commenter stated that H–1B nonimmigrants were not always paid while in the U.S. Instead, their salaries were credited to accounts in their home countries, and, while in the U.S., the workers were provided living expenses only and those expenses were paid in U.S. dollars.

The Department believes that, in order to implement the complaint and enforcement provisions of IMMACT, H–1B employers must maintain a legal presence in the United States. In the interim final regulations, the Department interprets this to mean that an H–1B employer must have an Internal Revenue Service (IRS) employer identification number and make a filed labor condition application and supporting documentation available for public examination at the employer's principal place of business in the U.S. or at the place of employment. In addition, the interim final regulations do not require the payment to the H–1B nonimmigrant in U.S. currency.

Consideration was also given to whether a job contractor should be treated as an employer for H–1B purposes. The term job contractor refers to an employer whose employees perform work at job sites of other employers but who are paid by the job contractor and are its employees. In the interim final regulations, job contractors are treated like any other employer and are bound by the regulations applicable to all H–1B employers. The Department notes that the law requires the payment of wages which are at least equal to the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater. Use of a job contractor will not permit circumvention of this requirement; the interim final regulations require that an H–1B nonimmigrant receive wages which are at least the higher of the actual wage at the worksite or the local area prevailing wage for the occupation.

Many questions have been received by the Department regarding whether attorneys may file applications on behalf of employers. In general, attorneys may file applications on behalf of employers, but the application must be signed by the employer or its agent. However, if an attorney wishes to act in a representational capacity or to receive from ETA the certified application or a notice that the application has not been certified, the attorney must submit to the ETA Regional Office an INS Form G–28, Notice of Appearance as Attorney, which names the employer as his or her client.

2. Filing Sequence

The INA requires that before the alien can be granted H–1B status, the Department shall determine and certify to the Attorney General that the employer has filed with DOL a labor condition application. MTINA also specifies that the Department shall certify the application, provided it is complete and contains no obvious inaccuracies, within 7 days of the date of filing. The interim final regulations therefore require that the employer must file a labor condition application and receive certification from DOL before an H–1B petition can be submitted to INS.

DOL considered whether the amendments enable applications to be filed at ETA simultaneously with, or subsequent to, the filing of the H–1B visa petition with INS. However, the INA, as amended by MTINA, states that the Secretary of Labor "determines and certifies to the Attorney General that the intending employer *has filed with* the Secretary an application (emphasis added) * * *" The law further states that the Secretary "shall review such application for completeness and obvious inaccuracies * * *" and unless the application is incomplete or contains obvious inaccuracies "the Secretary shall provide the certification * * * within 7 days of the date of filing the application." The Department interprets this language to mean that DOL must review and certify the application before the employer may file H–1B visa petitions with the INS. INS, however, is the entity to decide and determine what documents will constitute an acceptable petition for an H–1B visa.

3. Effect of MTINA on Previously Filed Applications

MTINA amended the wage requirement that an employer pay H–1B nonimmigrants and "other individuals employed in the occupational classification" the higher of the actual wage or the prevailing wage. Such wage requirement now applies only to H–1B nonimmigrants and no longer extends to U.S. workers. Because the MTINA amendments to the H–1B program are retroactive to October 1, 1991, they take precedence over IMMACT and the Department's October 22, 1991, interim final rule. MTINA's provisions therefore apply to applications filed pursuant to the original interim final rule.

The Department considered whether employers who filed applications pursuant to the original interim final rule should refile a new application that reflected the modification in the wage requirement mandated by MTINA and concluded that since the new requirement is a lesser one which is completely subsumed within the previous requirement, requiring employers to refile would be not only burdensome but unnecessary. The Department has decided, instead, that all attestations filed prior to MTINA will be considered to be in full compliance with the new regulations and that all attestation elements of previously filed applications will be fully enforceable except Item 8(a) on the ETA Form 9035. In its place, a lesser attestation will be enforced. On the original Form ETA 9035, under Item 8(a), employers attested that:

> H–1B nonimmigrants and other similarly employed workers will be paid the actual wage for the occupation at the place of employment or the prevailing wage level for the occupation in the area of employment, whichever is higher.

Employers will be held to the following attestation, which has been substituted for item 8(a) on the revised Form ETA 9035:

> H–1B nonimmigrants will be paid the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of intended employment, whichever is higher.

The new attestation element for Item 8(a) reflects MTINA's provision that only H–1B nonimmigrants be paid the higher of the actual wage or the prevailing wage. (This change is discussed fully under the heading "Labor Condition Statements.")

4. Part-time Employment

The Department is continuing the long-standing practice of approving part-time employment for temporary professional workers in the H–1B program. The great majority of commenters opposed the imposition of any limitation on parttime employment. These commenters argued that there is no statutory basis for excluding part-time work under the H-1B program and suggested that the economy would be harmed if H–1B nonimmigrants were no longer permitted to enter for parttime

jobs. Commenters also indicated that it is not unusual for an alien to be needed on a one-time project basis where a 40-hour work week is not typical. A few commenters favored eliminating or limiting part-time employment because the new ceiling on the annual number of H–1B visas could be quickly exhausted by numerous H–1B nonimmigrants working only a few hours per week. The Department agrees with the views of the majority of commenters and the interim final regulations do not prohibit part-time employment. Complaints alleging that working conditions of U.S. workers have been adversely affected by the employment of H–1B nonimmigrants, including part-time H–1B nonimmigrants, by, for example, eliminating or otherwise curtailing permanent jobs and/or fringe benefits for U.S. workers, would be investigated by the Department.

5. Multiple Employers

Under the current practice, H–1B nonimmigrants may work for more than one employer. The Department believes that there is no statutory basis for changing this practice. In addition, there appear to be situations where highly specialized skills and knowledge are needed by more than one employer simultaneously. Therefore, the interim final regulations continue to permit H–1B nonimmigrants to work for more than one employer, provided that each employer has filed a labor condition application.

6. Occupational Scope

Under the interim final regulations, an employer may file a single labor condition application for more than one alien in more than one occupational classification, as long as the application clearly names each occupational classification by Dictionary of Occupational Titles (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job. A listing of the three-digit occupational groups for professional, technical, and managerial occupations and fashion models is included at appendix 2 to this document (Appendix 2 is not to be cofidied in the CFR but will be provided as an attachment to the Form ETA 9035). For each occupational classification the employer must indicate the number of aliens to be employed, the rate of pay, the starting and ending dates of the H–1B aliens' employment, and the location of each intended place of employment.

It must be emphasized that the Department will not utilize the three-digit occupational groups code for prevailing wage purposes, but rather, for keeping track of and reporting what occupations are employed under the H–1B visa category. Employers are cautioned that, in fact, occupational classifications at the three-digit level are too broad to meet the requirements needed in order to determine a prevailing wage.

7. Labor Condition Application Validity Period

The period of authorized admission for an alien nonimmigrant on an H–1B visa normally may not exceed six years. The interim final regulations provide that the acceptance of a labor condition application be valid for a period of up to six years, depending upon the period of intended employment stated in the labor condition application. The interim final regulations place no specific time limit on when a labor condition application, once certified by DOL, must be used. However, since IMMACT requires the employer to specify the period of intended employment, there will be a practical limitation on the extent to which a certified labor condition application can be held without being used.

B. Labor Condition Statements

1. Required Wages

The INA, as amended by IMMACT and MTINA, requires that the wages paid to H–1B nonimmigrants be at least the higher of the actual wage rate paid to all other workers with similar experience and qualifications for the specific employment in question or the prevailing wage rate for the occupational classification in the area of employment. The amended INA does not preclude an employer from paying H–1B nonimmigrants more than the higher of the actual wage or the prevailing wage. The amended INA places the responsibility on the employer to establish the required wage rate that it must pay an H–1B nonimmigrant based on the best information available at the time the application is filed with the Department.

Much concern was raised by the employer community—particularly institutions of higher education—regarding the wage requirements of IMMACT and the implementation of those requirements by DOL. Under IMMACT, the employer was required to pay the higher of the actual or the prevailing wage for an occupation to both H–1B nonimmigrants and "to other individuals employed in the occupational classification and in the area of employment."

MTINA amended the INA/IMMACT wage requirements in three major ways: (1) the wage obligation now applies only to the H–1B nonimmigrant and no longer extends to "other individuals employed in the occupational classification * * *"; (2) the actual wage now must be determined on the basis of what the employer pays "to all other individuals with similar experience and qualifications for the specific employment in question"; and (3) the wage the employer is required to pay must be "based on the best information available as of the time of filing the application" with the Department.

a. *Actual wage.* The actual wage level is that paid by the employer to all other individuals with similar experience and qualifications as the H–1B nonimmigrant for the specific employment in question at the place of employment. In determining the actual wage level paid to other individuals employed in the specific occupation in which an H–1B nonimmigrant is to be employed, Congress intended that the following factors be considered:

i. Experience. Is the work experience of other individuals employed by the employer in the specific occupation at issue substantially the same as that possessed by the H–1B nonimmigrant—e.g., length of experience; type of experience, such as supervisory; or depth or breadth of experience in the relevant field(s)?

ii. Qualifications. Are the job qualifications of the employer's other employees in the specific occupation at issue substantially the same as the H–1B nonimmigrant's qualifications—e.g., advanced degree(s), particular skills or abilities required? If not, are the dissimilar qualifications bona fide and relevant for the job? Are these differences formally reflected in the employer's pay system as a basis for compensation distinctions among employees?

iii. Education. Are the educational attainments or achievements of the H–1B nonimmigrant and other individuals employed in the specific employment similar—e.g., advanced degree(s) required; educational achievements such as grade point average or class rank; strong positive reputation of the University attended?

iv. Job responsibility and function. Are the H–1B nonimmigrant's actual set of job duties, responsibilities and functions substantially similar to those of other workers employed in the specific occupation at issue?—e.g., are they similar with respect to their major or significant tasks? (Note: the job title alone is not dispositive of this issue. While like job titles presume like jobs with similar job duties, responsibilities and functions, this presumption may be rebutted with information regarding

actual duties, responsibilities and functions. Further, different job titles alone are meaningless if the job duties, responsibilities and functions are substantially the same.)

v. Specialized knowledge. Is there any specialized knowledge possessed by the H–1B nonimmigrant or other individuals—e.g., specialized research field—that warrants a difference in pay?

vi. Other legitimate business factors. Are there other legitimate business factors which can be shown to provide a bona fide basis for justifying different compensation levels for H–1B nonimmigrants and other workers employed in the specific occupation? "Legitimate business factors" are those that it is reasonable to conclude are necessary because they are related to the job in question, conform to recognized principles, or can be demonstrated by accepted rules and standards. Examples might include: Professional distinctions such as publications; development of a particular patent; recipient of an international prize; or other distinguishable; meritorious performance rewarded by an existing pay system. Some examples of "illegitimate" factors to account for pay differentials are: (a) Sex; (b) race; (c) national origin; (d) age; (e) religion; (f) alien willing to work for less; (g) alien salary parity with peers in their country of origin; or (h) alien abilities/qualifications irrelevant to the position.

In determining the actual wage level for the H–1B nonimmigrant, the employer shall consider the wage level paid to all other individuals with similar experience and qualifications who are in the same specific position—i.e., perform the actual set of duties and responsibilities to be performed by the H–1B nonimmigrant. The Department acknowledges that in rare circumstances the H–1B nonimmigrant may be sought for employment in a truly unique position, i.e., one which is unlike any other position at the workplace in regard to the factors described above. However, the Department cautions employers that every few positions would be considered by DOL to be truly unique, since this distinction cannot be established through differing job titles or minor variations in day-to-day work assignments where other individuals with similar experience and qualifications perform substantially the same duties and responsibilities as the H–1B nonimmigrant. When a truly unique job does exist for the H–1B nonimmigrant at the place of employment, the "actual wage" required by the INA shall equal the wage paid by the employer to the H–1B nonimmigrant. Employers must keep in mind that the "truly unique job" concept applies *only* to the employer's obligation regarding the payment of "actual wage" and does not extend to its obligation regarding "prevailing wage."

The following examples (all of which are premised on the assumption that the actual wage is no less than the prevailing wage) are intended to illustrate the factors discussed above:

Example #1

• Worker A is paid $10.00 per hour and supervises two employees. Worker B, who is equally qualified and performs substantially the same job duties except for supervising other employees, is paid $8.00 per hour because he/she has no supervisory responsibility.

The compensation differential is acceptable because it is based upon a relevant distinction in job duties, responsibilities, and functions: the difference in the level of supervision provided by the two employees. The actual wage for workers in this occupation at the worksite with supervisory responsibility is $10.00 per hour; the actual wage for workers in this occupation at the worksite without supervisory responsibility is $8.00 per hour.

Example #2

• Systems Analyst A has experience with a particular software which the employer is interested in purchasing, of which none of the employer's current employees have knowledge. The employer buys the software and hires Systems Analyst A on an H–1B visa to train the other employees in its application. The employer pays Systems Analyst A more than its other Systems Analysts who are otherwise equally qualified and otherwise perform substantially the same job duties.

The compensation differential is acceptable because of the distinction in the specialized knowledge and the job duties of the employees. Systems Analyst A, in addition to the qualifications and duties normally associated with this occupation at the employer's worksite, is also specially knowledgeable and responsible for training the employer's other Systems Analysts in a new software package. As a result, Systems Analyst A commands a higher actual wage.

Example #3

• An employer seeks a scientist to conduct AIDS research in the employer's laboratory. Research Assistants A (a U.S. worker) and B (an alien) both hold Ph.D's in the requisite field(s) of study and have the same number of years of experience in AIDS research. However, Research Assistant A's experience is on the cutting edge of a breakthrough in the field and his/her work history is distinguished by frequent praise and recognition demonstrated in writing and through awards. Research Assistant B (the alien) has a respectable work history but has not conducted research which has been internationally recognized. Employer pays Research Assistant A $10,000 per year more than Research Assistant B in recognition of his/her unparalleled expertise. The employer now wants to hire a third Research Assistant on an H–1B visa to help with the work.

The differential between the salary paid Research Assistant A (the U.S. worker) and Research Assistant B (the alien) is acceptable because it is based upon the specialized knowledge of Research Assistant A, demonstrated in writing. The employer is not required to pay Research Assistant B the same wage rate as that paid Research Assistant A, even though they may have the same job titles and substantially the same duties and responsibilities. The actual wage required for the third Research Assistant, to be hired on an H–1B visa, would be the wage paid to Research Assistant B unless he/she has internationally recognized expertise similar to that of Research Assistant A.

Example #4

• Employer located in City X seeks experienced mechanical engineers. In City X, the prevailing wage for such engineers is $49,500 annually. Employer pays its mechanical engineers with 5 to 10 years of experience between $50,000 and $75,000 per year. Applicants A, B, and C have virtually identical experience and qualifications and will perform substantially the same job duties. Applicant A is from Japan, where he/she earns the equivalent of $80,000 per year. Applicant B is from France and had been earning the equivalent of $40,000 per year. Applicant C is from India and had been earning the equivalent of $20,000 per year. Employer pays Applicant A $80,000 per year, Applicant B $50,000, and Applicant C $20,000. Employer has had a long-established system of maintaining the home-country pay levels of foreign temporary workers.

The INA requires that the employer pay the H–1B nonimmigrant at least the actual wage or the prevailing wage, whichever is greater, but there is no prohibition against paying the H–1B nonimmigrant a greater wage. Therefore, Applicant A may lawfully be paid the

$80,000 per year. Applicant C's salary, however, at a rate of $20,000 per year, is unacceptable under the law, even given the employer's "long-established system," since it would be below both the actual wage and the prevailing wage. The latter situation is an example of an illegitimate business factor—i.e., an established system to maintain salary parity with peers in the country of origin—which yields a wage below the required wage levels.

b. *Prevailing wage.* Under the INA, as amended by IMMACT and MTINA, the employer is required to pay wages to the H–1B nonimmigrant that are no less than the actual wage or "the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application * * *." In enacting this provision, Congress recognized that employers use a variety of legitimate methods for determining appropriate wages; Congress did not mandate changes to these legitimate practices, nor require the use of any specific methodology to obtain the prevailing wage. These interim final regulations effectuate the Congressional directive by providing a prospective H–1B employer with a choice of alternative ways to obtain the prevailing wage: (1) Use a Davis-Bacon Act or the McNamara-O'Hara Service Contract Act; (2) use a collective bargaining agreement; (3) request it from a State Employment Security Agency (SESA); (4) obtain it from an independent authoritative source; or (5) rely on another legitimate source. Regardless of the source used, the figure obtained as the "prevailing wage" must equal the average of the rate of wages paid to workers similarly employed in the area of intended employment. "Similarly employed" means having substantially comparable jobs in the occupational classification in the area of intended employment.

These regulations specify that employers have an affirmative obligation to obtain the prevailing wage rate for the occupation(s) within which the H–1B nonimmigrant(s) will be employed. This prevailing wage determination must be based on the "best information" available, which the Department has identified in these regulations. Where the employer uses the SESA, union contracts, or federal statutes as a source as described by the Department, the employer will be protected against complaints alleging an inaccurate prevailing wage. A description of "independent authoritative source" surveys which employers may use is also contained in the regulations, which explain limited circumstances in which the Department will go behind the survey to determine the prevailing wage in the event of a complaint. Where the employer uses another legitimate source, the employer must be prepared to show, in the event of a complaint, that the source for the wage determination meets the standards set in the regulations. If this is shown, the Department may accept this determination of prevailing wage. If the employer cannot sufficiently demonstrate the legitimacy of its prevailing wage and the Department is required to make a post-attestation prevailing wage determination through the SESA, no wage violation will be found where the employer is, in fact, paying at least the higher of the actual or prevailing wage. However, if the employer cannot sufficiently demonstrate the legitimacy of its prevailing wage and the employer is paying beneath the required wage rate, back pay will be assessed and, depending upon the facts and circumstances, the employer may be found to have willfully violated the wage requirement, which will result in debarment and may result in civil money penalties. If the employer ignores its affirmative obligation to obtain a prevailing wage rate and is found to have paid wages beneath the required wage rate, back pay will be assessed and the employer will be found to have willfully violated the wage requirements, which will result in debarment and may result in civil money penalties.

i. Sources. The Department believes the following sources to be the "best information" for determining the prevailing wage. These sources are listed in their order of priority and are premised on their accurate application to the occupation which encompasses the specific employment in question. Employers are not mandated to use any specific source.

1. A wage rate established by DOL under the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act.

2. A collectively bargained wage rate contained in a union contract to which the employer is a party.

3. A prevailing wage determination provided in writing by the State Employment Security Agency. See 20 CFR 656.40.

4. A prevailing wage obtained from an independent authoritative source, as defined in § ___.715 of the regulations.

5. A prevailing wage obtained from another legitimate source of wage information, as described in § ___.730(e)(1)(ii)(C)(*3*) of the regulations.

ii. SESA. The employer should submit a request for a prevailing wage determination, in writing, to the SESA, which will determine whether the occupation is covered by a Davis-Bacon Act or Service Contract Act wage survey, and, if not, whether the SESA has on file current prevailing wage information for the occupation. This information shall be provided by the SESA to the employer in writing in a timely manner. Where the prevailing wage is not immediately available through one of these sources, the SESA will conduct a prevailing wage survey using the methods outlined at 20 CFR 656.40. Employers may challenge a SESA prevailing wage determination through the Employment Service complaint system. See 20 CFR part 658, subpart E. Any such challenge, however, shall not require the SESA to divulge any employer wage data which was collected under the promise of confidentiality.

If the employer is unable to wait for the SESA to produce a prevailing wage for the requested occupation, the employer may rely on other legitimate sources of available wage information. If the employer later discovers, upon receipt of the prevailing wage determination from the SESA, that the information relied upon produced a wage that was below the SESA-determined prevailing wage for the occupation for the area of intended employment and the employer was paying below the required wage, no violation will be found if the employer retroactively compensates the H–1B nonimmigrant(s), within thirty days of obtaining the SESA determination, for the difference between the wage paid and the prevailing wage.

In all situations where the employer obtains the prevailing wage determination from the SESA and maintains a copy of the SESA document, the Department will accept that prevailing wage determination as correct and in an investigation will not question the determination's validity. A complaint alleging the inaccuracy of a SESA prevailing wage determination, in these cases, will not be investigated.

iii. Independent authoritative source. These regulations also permit the employer to use an independent authoritative wage source, as defined in § ___.715 of subpart H, in lieu of a SESA prevailing wage determination. Where all criteria for independent authoritative

source surveys are met, and where the survey has been applied correctly to the occupation and to the geographic area, the Department will not investigate a complaint which merely alleges that the attested prevailing wage is incorrect, unless the Department has significant evidence regarding the prevailing wage for that occupation in the area which shows that the prevailing wage varies substantially from the attested wage. The employer may arrange for the conduct of a prevailing wage survey by an independent authoritative source; such a procedure must be free of fraud or misrepresentation, must comply with all the criteria regarding the independent authoritative source, and must apply sound survey methodology (20 CFR 656.40 and TAG No. 656) to current wage data.

iv. Other legitimate source. If the employer chooses to rely on other legitimate sources of wage data to obtain the prevailing wage pursuant to § __.730(e)(1)(ii)(C)(*3*) of the regulations, the employer will be required to demonstrate the legitimacy of the prevailing wage in the event a complaint is filed. If the employer is unable to demonstrate the legitimacy of the wage to the satisfaction of the Department in the event of an investigation, the Department will make its own prevailing wage determination through the SESA and will assess back wages based on that determination. For example, a legitimate wage would be based on a survey that is reasonable and consistent with recognized standards and principles used in the field; and would be fully documented and supportable. The Department will not, in any case, undertake to "validate" the methodology used in the employer's "other" source, nor conduct research to determine the source's legitimacy or accuracy in calculating the prevailing wage; this burden remains with the employer.

In summary, regardless of the source of data which a prospective H–1B employer chooses to use, the employer shall have the burden of proving the validity of any prevailing wage obtained from a non-SESA source in the event a complaint is filed. The employer must therefore develop and retain documentation regarding the method and data it used to obtain the prevailing wage. The employer also is required to update the documentation supporting the prevailing wage rate every 24 months from the date the application is certified, and to pay the H–1B nonimmigrant at least the greater of the actual or the updated prevailing wage for the specific employment in question for the entire period of the H–1B nonimmigrant's employment. Furthermore, if the employer's failure to pay the required wage is found to have been willful, the employer will be assessed civil money penalties and be debarred from the employment of aliens.

c. *In-kind wages.* Employers are required to determine the applicable "actual wage" and "prevailing wage" based only on cash wages paid (excluding fringe benefits). However some employers have represented that, in the past, foreign workers who earned less than U.S.-level wages in their home country have been paid a cash wage lower than U.S. workers during temporary employment in the U.S., but have received "in-kind" perquisites or payments other than cash, so that their total compensation package is equivalent to that of U.S. workers and so that their re-entry into their home-country wage scale is not a difficult adjustment. Although the final policy decision has not yet been made, the Department is considering whether to permit the H–1B employer to claim wage credit for the actual cost or fair market value (whichever is less) of such perquisites or payments (excluding fringe benefits) in determining whether the employer is meeting its wage payment obligations. The Department contemplates that such payments or perquisites would be considered as creditable H–1B wages only if: (1) They are for the benefit of the H–1B nonimmigrant(s) and do not, in any way, accrue to the benefit of the employer; and (2) they are provided only to the H–1B nonimmigrant(s) and are not provided to the employer's other (non-H–1B) employees. Comments are invited as to whether such payments should be credited, and as to the types of payments or perquisites that, under these limitations, would be appropriate for consideration in this regard.

Since the "in-kind" wage credit is in recognition, in part, of the nonimmigrant's future return home, it is inappropriate for use in the permanent alien labor certification program and is not being considered for that program. See 20 CFR part 656. A further distinction is the continuing enforcement role DOL has under the H–1B program, which does not exist for the resident alien worker. See 8 U.S.C. 1182 (a)(5)(A) and (n)(2).

On policy grounds, "in-kind" wage credit is also not being considered for the H–2A farmworker, H–2B nonprofessional worker, H–1A registered nurse, and F–1 student programs. In each of those programs the occupation is low-paid (e.g., H–2A farmworkers) or Congress has expressed an intent to raise the wages and working conditions of the workers (e.g., H–1A nurses).

2. Prevailing Working Conditions

The INA requires employers to state that the employment of H–1B nonimmigrants will not adversely affect the working conditions of U.S. workers similarly employed. 8 U.S.C. 1182(n)(1)(A)(ii). MTINA made no changes to this statutory requirement regarding the working conditions statement. The Department's interpretation is that the INA intends that prevailing working conditions be treated according to the current regulations for the permanent alien labor certification program. See 20 CFR part 656. These regulations therefore require that prevailing working conditions be determined on a post-complaint basis as is currently done in the permanent program. See 20 CFR 656.24(b)(3). Thus, in the event of a complaint under the H–1B program, the employer must present credible proof of prevailing working conditions for the occupations at issue. Such proof may include surveys conducted by employers, published independent studies or articles which discuss the conditions in the industry and locale, and other relevant information. The regulations have been clarified to correct any misperception employers may have that they must conduct a "prevailing working conditions survey" prior to filing an application.

3. Supporting Documentation

The Department considered whether employers should be required to submit supporting documentation with the labor condition application or whether such documentation should be maintained by the employer at the place of employment. The amended INA requires that a copy of each application and such accompanying documents as are necessary be available for public examination at the employer's principal place of business or place of employment.

The Department has concluded, and the regulations provide, that the employer need not submit supporting documentation to DOL with the labor condition application, because the Department will not examine the application in detail prior to certification. Instead, the employer is required to develop documentation to support certain labor condition application elements and maintain it at the place of employment or the

employer's principal place of business in the U.S., so that the employer can carry its burden of proof in the event of an investigation.

The employer is required to develop and maintain supporting documentation regarding the actual wage, the prevailing wage, and the required notice to employees. There are no specific documentation requirements regarding the "no strike or lockout" and "working conditions" attestations, but the employer has the burden of proving the validity of its statements in the event a complaint is filed. The Department suggests that employers keep any pertinent information they may have regarding prevailing working conditions; such information could, for instance, document the fringe benefit plan at the employer's facility.

The application and the required supporting documentation for the application must be maintained by the employer for a period of one year beyond the end of the period of employment specified on the labor condition application or one year from the date the labor condition application was withdrawn, except that, in the event a timely complaint is filed, the documentation must be retained until the complaint is resolved through the enforcement process set out in the regulations. Payroll records, documenting the payment of the required wages, must be retained for three years from the date(s) of the creation of the record(s), except that in the event a timely complaint is filed, all payroll records must be retained until the complaint is resolved through the enforcement process.

The documentation requirements of the INA were amended by MTINA in one particular section, having to do with public access and notice. This does not affect the overall documentation to be maintained by the employer in support of its application in the event a complaint is filed which is not available to the public. One sentence in INA Section 212(n)(1)(D) (8 U.S.C. 1182(n)(1)(D)) was changed from:

> The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer's principal place of business or worksite, a copy of each such application *(and accompanying documentation)*.

to:

> The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer's principal place of business or worksite, a copy of each such application *(and such accompanying documents as are necessary)*. [Emphases added.]

To implement this modification, and to achieve the statutory purpose of assuring that the public has sufficient information to be aware of and understand the bases for an employer's application, and the representations and commitments therein, the Department has revised the regulations to specify the minimum requirements for documents that must be made available to the public. Employers are required to make available for public examination a copy of each labor condition application filed, accompanied by:

(1) Documentation which provides the wage rate to be paid the H–1B nonimmigrant and a description of the system that the employer used to set the "actual wage"—*e.g.*, memorandum to the file summarizing the system or a copy of the employer's pay system (payroll records are not required, although they must be made available to the Department in an enforcement action).

(2) A copy of the documentation the employer used to establish the "prevailing wage" for the occupation(s) for which the H–1B nonimmigrant(s) is/are sought—*e.g.*, copy of SESA prevailing wage determination, memorandum documenting "other legitimate source" relied upon as to the prevailing wage, the "independent authoritative source" document, or documentation showing the wage finding for the "other legitimate source" (a general description of the source and methodology is all that is required to be made available for "public" examination; the underlying individual wage data relied upon to determine the prevailing wage is not a "public" record, although it must be made available to the Department in an enforcement action); and,

(3) A copy of the document(s) with which the employer has satisfied the union/employee notification requirement of § ___.730(h).

C. DOL Review of Labor Condition Applications

1. Level of Review

MTINA amends the INA to require the Department to review the labor condition application only "for completeness and obvious inaccuracies." 8 U.S.C. 1182(n)(1). Unless it is found that the application is incomplete or contains obvious inaccuracies (which includes whether the Wage and Hour Division (Administrator) has disqualified the employer from employing H–1B nonimmigrants), certification shall be provided within 7 working days of the date the application is received and date-stamped by the Department. *Id.*

2. Specialty Occupation

The INA defines a "specialty occupation" as one which requires the theoretical and practical application of a body of highly specialized knowledge, and which requires the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent). 8 U.S.C. 1184(i)(1). In addition, the INA requires the prospective H–1B alien to possess the following qualifications: Full state licensure to practice in the occupation, if required; and either (i) completion of a bachelor's or higher degree in the specific specialty (or its equivalent), or (ii) experience in the specialty equivalent to the completion of such a degree and expertise in the specialty through progressively responsible positions relating to the specialty. 8 U.S.C. 1184(i)(2).

It has been the responsibility of INS to determine whether an alien and the occupation met the requirements for an H–1B visa. The interim final regulations reflect a continuation of this approach. INS will continue to have, under the H–1B program, the responsibility for determining whether the occupation and alien meet the requirements for an H–1B visa, after receiving the employer's petition with the DOL-approved labor condition application attached. A determination by INS that the occupation or alien does not qualify for an H–1B visa is appealed only through relevant INS and Department of Justice procedures.

This approach is in keeping with the infent of the INA—that DOL review be simple and streamlined, and that worker safeguards be provided by a complaint-driven enforcement system.

3. Fashion Models

It is the responsibility of INS to determine whether an alien and the occupation meet the requirements for an H–1B visa. This interim final rule reflects this approach with respect to aliens in specialty occupations, and this revised interim final rule reflects that INS also will make determinations on whether an H–1B fashion model is of "distinguished merit and ability". 8 U.S.C. 1101(a)(15)(H)(i)(b); Public Law 102–232 sec. 207(b).

D. Confidentiality of Employer Information

Many commenters raised the issue of the confidentiality of employer-provided information. These commenters strongly recommended that the Department make

every effort to protect confidential employer information provided to the Department as part of the labor condition application. While the Department recognizes these concerns, the INA, as amended by IMMACT and MTINA, requires that the employer make available for public examination a copy of the labor condition application and such accompanying documents as are necessary, within one working day after the date on which an application is filed with DOL. 8 U.S.C. 1182(n)(1); see also 8 U.S.C. 1182(n)(1)(C); and Public Law 102-232 section 303(a)(7)(B)(iii). Although the Department does not require any documentation to be submitted to it along with the labor condition application, the regulations require that certain documentation must be available for public examination at the place of employment. In addition, employers should note that if a complaint is filed, an investigation conducted, and a hearing held, any employer information submitted as evidence at the hearing will become a matter of public record; such information may well be more extensive than that which the employer must make available for public examination. See 8 U.S.C. 1182(n)(2).

E. Discouraging Frivolous Complaints

Many commenters urged the Department to take steps to discourage frivolous complaints. The Department notes that IMMACT itself addresses this concern by permitting only "any aggrieved person or organization (including bargaining representatives)" to file a complaint. 8 U.S.C. 1182(n)(2)(A). In addition, under the Department's interim final regulations an investigation will be initiated only after DOL determines that there is reasonable cause to believe a violation has occurred.

F. Complaint, Investigation and Hearing

Section 212(n)(2) of INA requires that the Department establish a system to conduct investigations to determine whether an employer failed to meet a condition specified in the labor condition application or misrepresented a material fact on its application. 8 U.S.C. 1182(n)(2). The regulations provide tht the Wage and Hour Administrator may conduct investigations of potential violations of the law only pursuant to a complaint.

G. Administrative Law Judge Hearing and Discretionary Review by the Secretary

Section 212(n)(2)(B) requires that the Secretary provide interested parties an opportunity for a hearing within 60 days of the date of the investigative determination, and issue findings within 60 days of the date of the hearing.

Because of this compressed time frame, the regulations require that a request for hearing be filed directly with the Chief Administrative Law Judge no later than 15 days from the date of the Administrator's determination. Further, because of the problems of proof to be anticipated in an administrative hearing on factual issues of prevailing wages and working conditions which may be virtually impossible to address except through hearsay reports of surveys, or for which crucial witnesses and other evidence may be unavailable except through hearsay since, for example, the witnesses are located outside the U.S., the interim final regulations specify that the Department's rules of evidence shall not apply.

An opportunity for discretionary review by the Secretary is afforded by the interim final regulations, with short deadlines in accordance with the statutory intent for expedited dispositions. Any interested party may request such review, and the Secretary shall determine what matters, if any, will be reviewed.

H. Penalties

If the employer does not meet the applicable standard regarding wages, working conditions, and strikes or lockouts, notification of bargaining representatives or employees, or misrepresentation of a material fact in the application, it may result in the imposition of administrative remedies: (1) Civil money penalties in an amount not to exceed $1,000 per violation; (2) employers being barred from filing applications or attestations with the Department to employ aliens on either a permanent or temporary basis for at least one year; and (3) employers being ordered to provide for payment of back wages. 8 U.S.C. 1182(n)(2) (C) and (D).

In the MTINA amendments to the INA, Congress created a new standard for the imposition of civil money penalties (CMPs) and the debarment sanction for an H-1B employer's violation of its wage or working conditions obligations. 8 U.S.C. 1182(n)(2)(C); see Public Law 102-232 section 303(a)(7)(B)(iv). Where the Secretary finds that an employer has failed to pay the required wages, the amended statute requires the Department to collect back wages (only for H-1B nonimmigrant employees, not for U.S. workers) "whether or not a [civil money penalty or debarment] penalty * * * has been imposed." 8 U.S.C. 1182(n)(2)(D); see Public Law 102-232 section 303(a)(7)(B) (v) and (vi). The amended statute also specifies that the Department may impose CMPs and shall report the employer to the INS for debarment from the employment of aliens only where the Department finds "a willful failure to meet [the required wage and working conditions] paragraph [of the H-1B provision]". 8 U.S.C. 1182(n)(2)(C). Thus, the statute imposes a "willful" standard for imposition of penalties (CMPs and debarment), but imposes no standard for the severity of wage violations for the collection of back wages. In commenting on this amendment, sponsor Senator Simpson stated that "by [willful failure] we mean a knowing disregard for the requirements of these [wage and working conditions] paragraphs. If an employer establishes a good faith basis for its determinations, that will be a complete defense to a charge of willful failure to meet its obligations." 137 Cong. Rec. S18243 (daily ed. Nov. 26, 1991). Sponsor Senator Kennedy similarly described the intended meaning of "willful failure." 137 Cong. Rec. S18245 (daily ed. Nov. 26, 1991).

The "willful" standard is well established in federal labor standards law, and the Department has concluded (based on settled principles of statutory construction) that Congress knew of this standard and intended for it to be applied in the similar context of the H-1B wage and working conditions requirements. The "willful" standard in question is found in Supreme Court's decision in *Brock* v. *Richland Shoe Co.*, 486 U.S. 128, 133 (1988) applying a provision of the Fair Labor Standards Act (FLSA), where a third year of wages may be recovered only for willful violations. The Court held that an employer is to be found in "willful" violation where the employer "knew or showed reckless disregard for the matter of whether its conduct was prohibited by the (FLSA)." See also *Trans World Airlines* v. *Thurston*, 469 U.S. 111, 127 (1985). The Supreme Court's standard would preclude a finding of "willfulness" where an employer had acted in good faith. In revising the regulations for the assessment of civil money penalties and notification to the Attorney General for debarment of an employer who is found to have willfully failed to pay the required wages or provide the required working conditions, the Department has adopted the Court's standard.

IV. Summary

The Department welcomes comments on any issues addressed in the October 22, 1991, interim final regulations or this revised interim final rule, and on any

issues not addressed that commenters believe need to be addressed.

Regulatory Impact and Administrative Procedure

E.O. 12291

The rule does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12291, 3 CFR, 1981 Comp., Page 127, 5 U.S.C. 601 note.

Regulatory Flexibility Act

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Nevertheless, interested parties are requested to submit, as part of their comments on this rule, information on the potential economic impact of the rule.

Effective Date

The interim final rule was effective on October 1, 1991. IMMACT provided that the H–1B program for nonimmigrant aliens in specialty occupations began on that date, and MTINA is retroactively effective as of that date. Public Law 102–232 section 310(a); Public Law 101–649 sec. 231. Absent immediate changes to the standards for this program, employers would not be fully aware of their responsibilities. Further, MTINA requires DOL to issue, by January 2, 1992, interim final or final rules to implement that law's changes to the H–1B program. Public Law 102–232 section 303(b)(8). For those reasons, the Department of Labor has found good cause to exist to make the amendments in this document effective on the statutory effective date of October 1, 1991, without prior notice and comment. 5 U.S.C. 553(d)(3). Nevertheless, the Department invites interested members of the public to comment on the October 22, 1991 interim final rule and on this revised interim final rule, for the period set forth in the "**DATES**" section above.

Catalog of Federal Domestic Assistance Number

This program is not yet listed in the Catalog of Federal Domestic Assistance.

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Fashion models, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

29 CFR Part 507

Administrative practice and procedures, Aliens, Employment, Enforcement, Fashion models, Immigration, Labor, Penalties, Reporting and recordkeeping requirements, Specialty occupation, Wages.

Text of the Joint Rule

The text of the interim final joint rule as adopted by ETA and the Wage-Hour Division, ESA, in this document appears below:

Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H–1B Visas in Specialty Occupations and as Fashion Models

Sec.

____.700 Purpose, procedure and applicability of subparts H and I of this part.
____.705 Overview of responsibilities.
____.710 Complaints.
____.715 Definitions.
____.720 Addresses of Department of Labor regional offices.
____.730 Labor condition application.
____.740 Labor condition application determinations.
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Subpart I—Enforcement of H–1B Labor Condition Applications

Sec.

____.800 Enforcement authority of Administrator, Wage and Hour Division.
____.805 Complaints and investigative procedures.
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____.815 Written notice and service of Administrator's determination.
____.820 Request for hearing.
____.825 Rules of practice for administrative law judge proceedings.
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Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H–1B Visas in Specialty Occupations and as Fashion Models

§ ____.700 Purpose, procedure and applicability of subparts H and I.

(a) *Purpose.* The Immigration and Nationality Act (INA), with respect to nonimmigrant workers entering the United States (U.S.) on H–1B visas:

(1) Establishes an annual ceiling of 65,000 (exclusive of spouses and children) on the number of aliens who may be issued H–1B visas;

(2) Defines the scope of eligible occupations for which nonimmigrants may be issued H–1B visas and specifies the qualifications that are required for entry as an H–1B nonimmigrant;

(3) Requires an employer seeking to employ H–1B nonimmigrants to file a labor condition application with and have it certified by the Department of Labor (DOL) before an alien may be provided H–1B status by the Immigration and Naturalization Service (INS); and

(4) Establishes a system for the receipt and investigation of complaints, as well as for the imposition of fines and penalties for misrepresentation or for failure to fulfill a condition of the labor condition application. 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), 1184(g)(1)(A), and 1184(i).

(b) *Procedure for obtaining an H–1B visa.* Before a nonimmigrant alien may work in a "specialty occupation" or as a fashion model of distinguished merit and ability in the United States under an H–1B visa, the alien must receive that H–1B visa from the Department of State (DOS). There are certain steps in the process which leads to the issuance of an H–1B visa. These steps shall be followed in sequence and are as follows:

(1) First, an employer shall submit to DOL, and obtain DOL certification of, a labor condition application. The requirements for obtaining a certified labor condition application are provided in this subpart. The labor condition application (Form ETA 9035) and instructions may be obtained from DOL Regional Offices listed in § ____.720 of this part.

(2) After obtaining DOL certification of a labor condition application, the employer may submit a petition (INS Form I–129), together with the certified labor condition application, to INS, requesting H–1B classification for the alien. The requirements concerning the submission of a petition to, and its processing by, INS are set forth in INS regulations. The INS petition (Form I–

129) may be obtained from an INS district or area office.

(c) *Applicability.* Subparts H and I of this part apply to all employers seeking to employ aliens on H–1B visas in specialty occupations or as fashion models of distinguished merit and ability.

§ ____.705 Overview of responsibilities.

Three federal agencies are involved in the process which leads to the issuance of an H–1B visa, and the responsibilities which continue after the visa is issued. The employer also has continuing responsibilities under the process. This section briefly describes the responsibilities of each of these entities.

(a) *Department of Labor responsibilities.* DOL administers the labor condition application process and enforcement provisions.

(1) The Employment and Training Administration (ETA), DOL, is responsible for receiving and making determinations on labor condition applications in accordance with subpart H of this part. ETA is also responsible for compiling and maintaining a list of labor condition applications and shall make such list available for public examination at the Department of Labor, 200 Constitution Avenue, NW., room N4456, Washington, DC 20210.

(2) The Employment Standards Administration (ESA), DOL, is responsible, in accordance with subpart I of this part, for investigating and resolving any complaints filed with DOL concerning labor condition applications or the employment of H–1B nonimmigrants.

(b) *Immigration and Naturalization Service (INS) and Department of State (DOS) responsibilities.* The Immigration and Naturalization Service (INS) shall receive the employer's petition (INS Form I–129) with the DOL-certified labor condition application attached. INS is responsible for approving the alien's H–1B visa classification. In doing so, the INS determines whether the occupation named in the labor condition application is a specialty occupation or whether the alien is a fashion model of distinguished merit and ability and whether the qualifications of the alien meet the statutory requirements for H–1B visa classification. If the petition is approved, INS will notify the U.S. Consulate where the alien intends to apply for the visa unless the alien is in the U.S. and eligible to adjust status without leaving this country. See 8 U.S.C. 1184(i). The Department of State, through U.S. Embassies and Consulates, is responsible for issuing H–1B visas.

(c) *Employer's responsibilities.* Each employer seeking an H–1B nonimmigrant in a specialty occupation or as a fashion model of distinguished merit and ability has several responsibilities.

(1) The employer shall submit a completed labor condition application on Form ETA 9035 and one copy to the regional office of ETA serving the area where the alien will be employed. If the labor condition application is certified by ETA, a copy will be returned to the employer.

(2) The employer shall make a filed labor condition application and necessary supporting documentation (as identified under this subpart) available for public examination at the employer's principal place of business in the U.S. or at the place of employment within one working day after the date on which the labor condition application is filed with ETA.

(3) The employer then may submit a copy of the certified labor condition application to INS with a completed petition (INS Form I–129) requesting H–1B classification.

(4) The employer should not allow the alien to begin work, even though a labor condition application has been certified by DOL, until INS grants the alien authorization to work in the United States for that employer.

(5) The employer shall develop sufficient documentation to meet its burden of proof with respect to the validity of the statements made in its labor condition application and the accuracy of information provided in the event that such statement or information is challenged. The employer shall also maintain such documentation at its place of business in the U.S. and shall make such documentation available to DOL for inspection and copying upon request.

§ ____.710 Complaints.

Complaints concerning misrepresentation in the labor condition application or failure (including a substantial or willful failure) of the employer to meet a condition specified in the application shall be filed with the Administrator, Wage and Hour Division (Administrator), ESA, according to the procedures set forth in subpart I of this part. The Administrator shall then investigate if reasonable cause is found, and, where appropriate, after an opportunity for a hearing, assess sanctions and penalties.

§ ____.715 Definitions.

For the purposes of subparts H and I of this part:

Actual wage means the wage rate paid by the employer to all individuals with experience and qualifications similar to the H–1B nonimmigrant's experience and qualifications for the specific employment in question at the place of employment.

Administrative Law Judge means an official appointed pursuant to 5 U.S.C. 3105.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, and such authorized representatives as may be designated to perform any of the functions of the Administrator under subpart H or I of this part.

Area of intended employment means the area within normal commuting distance of the place (address) of employment where the H–1B alien is or will be employed. If the place of employment is within a Metropolitan Statistical Area (MSA), any place within the MSA is deemed to be within normal commuting distance of the place of employment. If there is no MSA then the area of intended employment is the area within normal commuting distance of the place of employment.

Attorney General means the chief official of the U.S. Department of Justice or the Attorney General's designee.

Authorized agent and *authorized representative* mean an official of the employer who has the legal authority to commit the employer to the statements in the labor condition application.

Certification means the determination by a certifying officer that a labor condition application is not incomplete and does not contain obvious inaccuracies.

Certify means the act of making a certification.

Certifying Officer and *Regional Certifying Officer* mean a Department of Labor official, or such official's designee, who makes determinations about whether or not to certify labor condition applications.

Chief Administrative Law Judge means the chief official of the Office of the Administrative Law Judges of the Department of Labor or the Chief Administrative Law Judge's designee.

Department and *DOL* mean the United States Department of Labor.

Division means the Wage and Hour Division of the Employment Standards Administration, DOL.

Employer means:

(1) A person, firm, corporation, contractor, or other association or organization in the United States which suffers or permits a person to work within the United States;

(2) Which has an employer-employee relationship with respect to employees under this part, as indicated by the fact

that it may hire, pay, fire, supervise or otherwise control the work of any such employee; and

(3) Which has an Internal Revenue Service tax identification number

Employment and Training Administration (ETA) means the agency within the Department which includes the United States Employment Service (USES).

Employment Standards Administration (ESA) means the agency within the Department which includes the Wage and Hour Division.

Immigration and Naturalization Service (INS) means the component of the Department of Justice which makes the determination under the INA on whether to grant visa petitions of employers seeking the admission of nonimmigrant aliens under H–1B visas for the purpose of employment.

INA means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq*

Independent authoritative source means a professional, business, trade, educational or governmental association, organization, or other similar entity, not owned or controlled by the employer which has a recognized expertise in an occupational field.

Independent authoritative source survey means a survey of wages conducted by an independent authoritative source and published in a book, newspaper, periodical, loose-leaf service, newsletter, or other similar medium, within the 24-month period immediately preceding the filing of the employer's application and each succeeding 24-month prevailing wage update. Such survey shall:

(1) Reflect the average wage paid to workers similarly employed in the area of intended employment;

(2) Be based upon recently collected data—*e.g.*, within the 24-month period immediately preceding the date of publication of the survey; and

(3) Represent the latest published prevailing wage finding by the authoritative source for the occupation in the area of intended employment.

Lockout means a labor dispute involving a work stoppage, wherein an employer withholds work from its employees in order to gain a concession from them.

Occupation means the occupational or job classification in which the H–1B alien is to be employed.

Period of intended employment means the time period between the starting and ending dates inclusive of the H–1B alien s intended period of employment in the occupational classification at the place of employment as set forth in the labor condition application.

Place of employment means the worksite or physical location where the work is performed.

Required wage rate means the rate of pay which is the higher of:

(1) The actual wage for the specific employment in question; or

(2) The prevailing wage rate (adjusted every 24 months) for the occupation in which the H–1B alien is to be employed in the geographic area of intended employment. The prevailing wage rate must be no less than the minimum wage required by Federal, State, or local law.

Secretary means the Secretary of Labor or the Secretary's designee.

Speciality occupation means an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree (or its equivalent) in the specific specialty as a minimum for entry into the occupation in the United States. The alien in a specialty occupation shall possess the following qualifications:

(1) Full state licensure to practice in the occupation, if licensure is required for the occupation;

(2) Completion of the required degree; or

(3) Experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty. 8 U.S.C. 1184(i).

Determinations of specialty occupation and of alien qualifications are made by INS.

Specific employment in question means the set of duties and responsibilities performed or to be performed by the H–1B nonimmigrant at the place of employment.

State means one of the 50 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

State employment security agency (SESA) means the State agency designated under section 4 of the Wagner-Peyser Act to cooperate with USES in the operation of the national system of public employment offices.

Strike means a labor dispute wherein employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operation.

United States Employment Service (USES) means the agency of the Department of Labor, established under the Wagner-Peyser Act, which is charged with administering the national system of public employment offices.

Wage rate means the remuneration (exclusive of fringe benefits) to be paid in terms of amount per hour, day, month or year

§ ____.720 Addressees of Department of Labor regional offices.

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont): One Congress Street 10th Floor, Boston, Massachusetts 02114–2021. Telephone: 617–565–4446.

Region II (New York, New Jersey Puerto Rico, and the Virgin Islands): 201 Varick Street, room 755, New York, New York 10014. Telephone: 212–337–2186.

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia): Post Office Box 8796, Philadelphia, Pennsylvania 19101. Telephone: 215–596–6363.

Region IV (Alabama, Florida, Georgia, Kentucky Mississippi, North Carolina, South Carolina, and Tennessee): 1371 Peachtree Street, NE., Atlanta, Georgia 30309. Telephone: 404–347–3936.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin): 230 South Dearborn Street, Room 605, Chicago, Illinois 60604. Telephone: 312–353–1550.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas): 525 Griffin Street, room 314, Dallas, Texas 75202. Telephone: 214–767–4989.

Region VII (Iowa, Kansas, Missouri, and Nebraska): 911 Walnut Street, Kansas City Missouri 64106. Telephone: 816–426–3796.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming): 1961 Stout Street, 16th Floor Denver, Colorado 80294. Telephone: 303–844–4613.

Region IX (Arizona, California, Guam, Hawaii, and Nevada): 71 Stevenson Street, Room 830, San Francisco, California 94119. Telephone: 415–744–6647.

Region X (Alaska, Idaho, Oregon, and Washington): 1111 Third Avenue, Suite 900, Seattle, Washington 98101. Telephone: 206–553–5297.

§ ____.730 Labor condition application.

(a) *Who must submit labor condition applications?* An employer, or the employer's authorized agent or representative, which meets the definition of employer set forth in § ____.715 of this part and intends to employ an H–1B alien in a specialty occupation or as a fashion model of distinguished merit and ability shall submit a labor condition application to DOL. Attorneys and agents submitting applications on an employer's behalf shall submit, also, a completed INS Form G–28.

(b) *Where should a labor condition application be submitted?* A labor condition application shall be submitted, by U.S. mail, private carrier, or facsimile transmission, to the ETA regional office shown in § ____.720 of this part in whose geographic area of jurisdiction the H–1B nonimmigrant will be employed. It is the employer's

responsibility to ensure that a complete and accurate application is received by the appropriate regional office of ETA. Incomplete or obviously inaccurate applications will not be certified. The regional office shall process all applications sequentially upon receipt regardless of the method used by the employer to submit the application and shall make a determination to certify or not certify the labor condition application within 7 working days of the date the application is received and date-stamped by the Department. If the application is submitted by facsimile transmission, the application containing the original signature shall be maintained by the employer as set forth at § ____.760(a)(1) of this part.

(c) *What should be submitted? Form ETA 9035.*

(1) *General.* One completed and dated original Form ETA 9035, or facsimile transmission thereof, containing the labor condition statements referenced in paragraphs (e) through (h) of this section, bearing the employer's original signature (or that of the employer's authorized agent or representative) (see paragraph (b) of this section and § ____.760(a)(1) of this part with respect to applications filed by facsimile transmission) and one copy of Form ETA 9035 shall be submitted to ETA. Copies of Form ETA 9035 are available at the addresses listed in § ____.720 of this part; photocopies of the form also are permitted. Each application shall identify the occupational classification(s) for which a labor condition application is being submitted and shall state for each occupational classification:

(i) The occupation(s), by Dictionary of Occupational Titles (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job;

(ii) The number of H–1B nonimmigrants sought;

(iii) The gross wage rate(s) to be paid to each H–1B nonimmigrant, expressed on an hourly, weekly, biweekly, monthly or annual basis;

(iv) The starting and ending dates of the H–1B nonimmigrants' employment;

(v) The place(s) of intended employment.

(2) *Multiple positions, occupations, and/or places of employment.* The employer may file a labor condition application for a single occupation or for multiple occupations. An employer may file a single labor condition application for more than one occupational classification, and/or for more than one place of employment only if:

(i) Each occupation is a specialty occupation or the alien is a fashion model of distinguished merit and ability;

(ii) All places of employment covered by the application are located within the jurisdiction of a single ETA regional office, or, if the alien(s) is/are to be employed sequentially in various places of employment, the application is to be submitted to the regional office having jurisdiction over the initial place of employment; and

(iii) The information required in this paragraph (c) is provided for each occupational classification for each place of employment.

(3) *Full-time and part-time jobs.* The position(s) covered by the labor condition application may be full-time or part-time or a mix of both.

(d) *Content of the labor condition application.* An employer's labor condition application shall contain the labor condition statements referenced in paragraphs (e) through (h) of this section, which provide that no alien may be admitted or provided status as an H–1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary an application stating that:

(1) The employer is offering and will offer during the period of authorized employment to H–1B nonimmigrants no less than the greater of the following:

(i) The actual wage level paid to all other individuals at the worksite with similar experience and qualifications for the specific employment in question; or

(ii) The prevailing wage level for the occupational classification in the area of intended employment;

(2) The employer will provide working conditions for such aliens that will not adversely affect the working conditions of workers similarly employed;

(3) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment;

(4) The employer, at the time of filing the labor condition application:

(i) Has provided notice of the filing of the labor condition application to the bargaining representative of the employer's employees in the occupational classification in the area of intended employment for which the aliens are sought; or

(ii) If there is no such bargaining representative, has posted notice of the filing of the labor condition application in conspicuous locations in the employer's establishment(s) in the area of intended employment, in the manner described in paragraph (h) of this section; and

(5) The employer has provided the information about the occupation required in paragraph (c) of this section.

(e) *The first labor condition statement: wages.* An employer seeking to employ H–1B aliens in a specialty occupation or as a fashion model of distinguished merit and ability shall state on Form ETA 9035 that it will pay the H–1B aliens the required wage rate.

(1) *Establishing the wage requirement.* The first labor condition application requirement shall be satisfied when the employer signs Form ETA 9035, attesting that, for the entire period of authorized employment, the required wage rate will be paid to the H–1B alien(s); that is, that the wage shall be the greater of:

(i) The actual wage rate paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question. In determining such wage level, the following factors should be considered: Experience, qualifications, education, job responsibility and function, specialized knowledge, and other legitimate business factors. "Legitimate business factors," for purposes of this paragraph (e)(1), means those that it is reasonable to conclude are necessary because they conform to recognized principles or can be demonstrated by accepted rules and standards. Where there are other employees with substantially similar experience and qualifications in the specific employment in question—*i.e.*, they have substantially the same duties and responsibilities as the H–1B nonimmigrant—the actual wage shall be the amount paid to these other employees. Where no such other employees exist at the place of employment, the actual wage shall be the wage paid to the H–1B nonimmigrant by the employer; or

(ii) The prevailing wage level for the occupational classification in the area of intended employment determined as of the time of filing the application and every 24 months thereafter. The employer shall base the prevailing wage on the best information available as of the time of filing the application. The employer is not required to use any specific methodology to determine the prevailing wage and may utilize a SESA, an independent authoritative source, or other legitimate sources of wage data. The Department prefers the following sources to establish the prevailing wage:

(A) A wage determination for the occupation and area issued under the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* (see also 29 CFR part 1), or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* (see also 29 CFR part 4) (which shall be available through the SESA);

(B) A union contract which was negotiated at arms-length between a union and the employer, which contains

a wage rate applicable to the occupation;

(C) If the job opportunity is in an occupation which is not covered by paragraph (e)(1)(ii) (A) or (B) of this section, the prevailing wage shall be the average rate of wages, that is, the rate of wages paid to workers similarly employed in the area of intended employment. Since it is not always feasible to determine such an average rate of wages with exact precision, the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages. The prevailing wage rate under this paragraph (e)(1)(ii)(C) of this section shall be based on the best information available. The Department believes that the following prevailing wage sources are, in the order of priority, the most accurate and reliable:

(*1*) *A SESA Determination.* Upon receipt of a written request for a prevailing wage determination, the SESA will determine whether the occupation is covered by a Davis-Bacon or Service Contract Act wage survey, and, if not, whether it has on file current prevailing wage information for the occupation. This information will be provided by the SESA to the employer in writing in a timely manner. Where the prevailing wage is not immediately available, the SESA will conduct a prevailing wage survey using the methods outlined at 20 CFR 656.40. Employers may challenge a SESA prevailing wage determination through the Employment Service complaint system. See 20 CFR part 658, subpart E. Any challenge shall not require the SESA to divulge any employer wage data which was collected under the promise of confidentiality.

If the employer is unable to wait for the SESA to produce the requested prevailing wage determination for the occupation in question, the employer may rely on other legitimate sources of available wage information. If the employer later discovers, upon receipt of the prevailing wage determination from the SESA, that the information relied upon produced a wage that was below the prevailing wage for the occupation for the area of intended employment and the employer was paying below the SESA-determined wage, no wage violation will be found if the employer retroactively compensates the H–1B alien(s) for the difference between the wage paid and the prevailing wage, within 30 days of the employer's receipt of the SESA determination. In all situations where the employer obtains the prevailing wage determination from the SESA, the Department will accept that prevailing wage determination as correct and will not question its validity where the employer has maintained a copy of the SESA prevailing wage determination. A complaint alleging the inaccuracy of a SESA prevailing wage determination, in these cases, will not be investigated.

(*2*) *An independent authoritative source.* See paragraph (e)(2)(iii)(C)(*2*) of this section. The employer may use an independent authoritative wage source in lieu of a SESA prevailing wage determination. The independent authoritative source survey must meet all the criteria set forth in paragraph (e)(2)(iii)(C)(*2*) of this section.

(*3*) *Another legitimate source of wage information.* See paragraph (e)(2)(iii)(C)(*3*) of this section. The employer may rely on other legitimate sources of wage data to obtain the prevailing wage. The employer will be required to demonstrate the legitimacy of the wage in the event a complaint is filed.

(D) For purposes of this paragraph (e), "similarly employed" means "having substantially comparable jobs in the occupational classification in the area of intended employment," except that if no such workers are employed by employers other than the employer applicant in the area of intended employment, "similarly employed" means:

(*1*) Having jobs requiring a substantially similar level of skills within the area of intended employment; or

(*2*) If there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

(E) A prevailing wage determination for labor condition application purposes made pursuant to this paragraph (e) shall not permit an employer to pay a wage lower than that required under any other Federal, State or local law.

(F) Where a range of wages is paid by the employer to individuals in an occupational classification or among individuals with similar experience and qualifications for the specific employment in question, a range is considered to meet the prevailing wage requirement so long as the bottom of the wage range is at least the prevailing wage rate.

(iii) Once the prevailing wage rate is established, the H–1B employer then shall compare this wage with the actual wage rate for the specific employment in question at the place of employment and must pay the H–1B nonimmigrant at least the higher of the two wages.

(iv) Every 24 months throughout the period of employment of the H–1B alien, starting from the date the labor condition application is certified, the employer shall obtain current prevailing wage information as set forth in paragraph (e)(2)(iii) of this section for the occupation(s) named in the labor condition application and shall adjust the rate of pay upwards where the prevailing wage has increased, unless the actual pay rate exceeds the prevailing wage.

(2) *Documentation of the wage statement.* (i) The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the wage statement required in paragraph (e)(1) of this section and attested to on Form ETA 9035. The employer shall also document that the wage rate(s) paid to H–1B alien(s) is/are no less than the required wage rate(s). The documentation shall include information about the employer's wage rate to all other individuals with experience and qualifications similar to the H–1B nonimmigrant for the specific employment in question at the place of employment, beginning with the date the labor condition application was submitted and continuing throughout the period of employment. The records shall be retained for the period of time specified in § ____.760 of this part. The payroll records for each such employee shall include:

(A) Employee's full name;

(B) Employee's home address;

(C) Employee's occupation;

(D) Employee's rate of pay;

(E) Hours worked each day and each week by the employee if paid on other than a salary basis, or the prevailing or actual wage is expressed as an hourly wage;

(F) Total additions to or deductions from pay each pay period by employee; and

(G) Total wages paid each pay period, date of pay and pay period covered by the payment by employee.

(ii) *Actual Wage.* In addition to payroll data required by paragraph (e)(2)(i) of this section (and also by the FLSA), the employer shall retain documentation regarding the basis it used to establish the actual wage. The employer must show how the wage set for the H–1B nonimmigrant relates to the wages paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question at the place of employment.

(iii) *Prevailing Wage.* The employer also shall retain documentation regarding the determination of the prevailing wage. This source documentation shall not be submitted to ETA with the labor condition application, but shall be retained at the employer's place of business for the length of time required in § ____.760(c) of this part. The documentation shall be made available to DOL upon request. Such documentation shall consist of the documentation described in paragraph (e)(2)(iii) (A), (B), or (C) of this section and the documentation described in paragraph (e)(2)(iii)(D) of this section. Documentation shall also be made available for public examination to the extent required by ____.760(a) of this part.

(A) If the employer used a wage determination in the area under the provisions of the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* (see 29 CFR part 1), or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* (see 29 CFR part 4), the documentation shall include an excerpt from the statutory or regulatory determination showing the wage rate for the occupation in the area of intended employment.

(B) If the employer used an applicable wage rate from a union contract which was negotiated at arms-length between a union and the employer, the documentation shall include an excerpt from the union contract showing the wage rate(s) for the occupation(s).

(C) If the employer did not use a wage covered by the provisions of paragraph (e)(2)(iii) (A) or (B) of this section, the employer's documentation shall consist of:

(*1*) A copy of the prevailing wage finding from the SESA for the occupation within the area of employment; or

(*2*) A copy of the prevailing wage survey for the occupation in the area of intended employment published by an independent authoritative source. For purposes of this paragraph (e)(2)(iii)(C)(*2*), a prevailing wage survey for the occupation in the area of intended employment published by an independent source shall mean a survey of wages published in a book, newspaper, periodical, loose-leaf service, newsletter, or other similar medium, within the 24-month period immediately proceding the filing of the employer's application and each succeeding 24-month prevailing wage update. Such survey shall:

(*i*) Reflect the average wage paid to workers similarly employed in the area of intended employment;

(*ii*) Be based upon recently collected data—*e.g.*, within the 24-month period immediately preceding the date of publication of the survey; and

(*iii*) Represent the latest published prevailing wage finding by the independent authoritative source for the occupation in the area of intended employment.

(*3*) A copy of the prevailing wage survey or other source data acquired from a legitimate source of wage information that was used to make the prevailing wage determination. For purposes of paragraph (e)(2)(iii)(C)(*3*) of this section, a prevailing wage provided by another legitimate source of such wage information shall be one which:

(*i*) Reflects the average wage paid to workers similarly employed in the area of intended employment;

(*ii*) Is based on the most recent and accurate information available; and

(*iii*) Is reasonable and consistent with recognized standards and principles to produce a prevailing wage.

(iv) Every 24 months throughout the period of employment of the H–1B alien, starting from the date the labor condition application was certified, the employer shall obtain current prevailing wage information as set forth in paragraph (e)(2)(iii) of this section for the occupation(s) named in the labor condition application and shall adjust the rate of pay upwards where the prevailing wage has increased, unless the actual pay rate exceeds the prevailing wage.

(3) *Complaints.* In the event that a complaint is filed pursuant to subpart I of this part, alleging a failure to meet the "prevailing wage" condition or a material misrepresentation by the employer regarding the payment of the required wage, the Administrator shall determine whether the employer has the documentation required in paragraph (e)(2)(iii) of this section, and whether the documentation supports the employer's wage attestation. Where the documentation is either nonexistent or is insufficient to determine the prevailing wage (*e.g.*, does not meet the criteria specified in this section, in which case the Administrator may find a violation of paragraph (e)(2) (i), (ii), (iii), or (iv) of this section); where, based on significant evidence regarding wages paid for the occupation in the area of intended employment, the Administrator has reason to believe that the prevailing wage finding obtained from the independent authoritative source varies substantially from the wage prevailing for the occupation in the area of intended employment; or where the employer has been unable to demonstrate the legitimacy of the prevailing wage determined by another legitimate source, the Administrator may contact ETA, which shall provide the Administrator with a prevailing wage determination, which the Administrator shall use as the basis for the determination as to violations and for the computation of back wages, if such wages are found to be owed. For purposes of this paragraph (e)(3), ETA may consult with the appropriate SESA to ascertain the prevailing wage applicable under the circumstances of the particular complaint.

(f) *The second labor condition statement: working conditions.* An employer seeking to employ H–1B aliens in specialty occupations or as fashion models of distinguished merit and ability shall state on Form ETA 9035 that the employment of H–1B aliens will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

(1) For purposes of this paragraph (f), "similarly employed" shall mean "having substantially comparable jobs in the occupational classification at the worksite and in the area of intended employment." If no such workers are employed at the worksite or by employers other than the employer applicant in the area of intended employment "similarly employed" shall mean:

(i) Having jobs requiring a substantially similar level of skills at the worksite or within the area of intended employment; or

(ii) If there are no substantially comparable jobs at the worksite or in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

(2) *Establishing the working conditions requirement.* The second labor condition statement is satisfied when the employer signs the labor condition application attesting that for the period of intended employment its employment of H–1B nonimmigrants will not adversely affect the working conditions of workers similarly employed. Working conditions commonly refer to matters including hours, shifts, vacation periods, and fringe benefits. The employer's obligation regarding working conditions shall continue for the period of employment stated on the labor condition application.

(3) *Documentation of the working condition statement.*

(i) In the event a complaint is filed pursuant to subpart I of this part, the employer shall document the validity of the prevailing working conditions statement referenced in paragraph (f)(1)

of this section and attested to on Form ETA 9035. The employer must be able to show that the working conditions of similarly employed workers were not adversely affected by the employment of an H–1B nonimmigrant—*e.g.*, that the working conditions are similar to working conditions which preceded the employment of the H–1B nonimmigrant, or, if there are no similarly employed workers working for the employer, are similar to those existing in like business establishments to the employer's, in the area of intended employment.

(ii) In the event that an investigation is conducted pursuant to subpart I of this part, concerning whether the employer failed to satisfy the prevailing working conditions statement referenced in paragraph (f)(1) of this section and attested to on Form ETA 9035, the Administrator shall determine whether the employer has produced the documentation required in §____.730(f)(3)(i) of this part, and whether the documentation is sufficient to support the employer's prevailing working conditions statement. If the employer fails to produce any documentation to prove that there is no adverse effect on the working conditions of workers similarly employed, the Administrator shall find a violation of paragraph (f)(3)(i) of this section. Examples of documentation which employers should either maintain or produce include any relevant information which discusses the working conditions for the industry, occupation and locale, such as published studies, surveys, or articles and documentation regarding working conditions at the worksite, such as fringe benefit packages, which pre-existed the employment of the H–1B nonimmigrant. If the documentation is insufficient to determine whether the employment of H–1B aliens has or has not adversely affected the working conditions of workers similarly employed in the area of intended employment, the Administrator may contact ETA which shall provide the Administrator with advice regarding the working conditions of similarly employed workers in the area of intended employment.

(g) *The third labor condition statement: no strike or lockout.* An employer seeking to employ H–1B nonimmigrants shall state on Form ETA 9035 that there is not at that time a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment. A strike or lockout which occurs after the labor condition application is filed by the employer with DOL is covered by INS regulations at 8 CFR 214.2(h)(17).

(1) *Establishing the no strike or lockout requirement.* The third labor condition statement is satisfied when the employer signs the labor condition application attesting that, as of the date the application is filed, it is not involved in a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification in the area of intended employment. Labor disputes for the purpose of this paragraph (g) relate only to those disputes involving employees of the employer working at the place of employment in the occupational classification named in the labor condition application. See also INS regulations at 8 CFR 214.2(h)(17) for effects of strikes or lockouts in general of the H–1B alien's employment.

(2) *Documentation of the third labor condition statement.* (i) The employer need not develop nor maintain documentation to substantiate the statement referenced in paragraph (g)(1) of this section. In the case of an investigation, however, the employer has the burden of proof to show that there was no strike or lockout in the course of a labor dispute for the occupational classification in which an H–1B alien is employed at the time the application was filed.

(h) *The fourth labor condition statement: notice.* An employer seeking to employ H–1B nonimmigrants shall state on Form ETA 9035 that the employer has provided notice of the filing of the labor condition application to the bargaining representative of the employer's employees in the occupational classification in which the H–1B nonimmigrants will be employed or are intended to be employed in the area of intended employment for which the aliens are sought, or, if there is no such bargaining representative, has posted notice of filing in conspicuous locations in the employer's establishment(s) in the area of intended employment, in the manner described in this paragraph (h).

(1) *Establishing the notice requirement.* The fourth labor condition statement is established when one of the following has occurred:

(i) Where there is a collective bargaining representative in the occupational classification in which the H–1B nonimmigrants will be employed, no later than on or before the date the labor condition application is filed with ETA, the employer of H–1B nonimmigrants shall provide notice to the bargaining representative that a labor condition application has been filed with ETA. The notice shall identify the number of H–1B nonimmigrants the employer is seeking to employ; the occupational classification(s) in which the H–1B nonimmigrants will be employed; the wages offered; the period of employment; and the location(s) at which the H–1B nonimmigrants will be employed. Notice under this paragraph (h)(1)(i) shall include the following statement: "Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(ii) Where there is no collective bargaining representative, the employer shall, no later than on or before the date the labor condition application is filed with ETA, provide a notice of the labor condition application to its employees by posting a notice in at least two conspicuous locations at the place of employment. The notice shall indicate the H–1B nonimmigrants are sought; the number of such nonimmigrants the employer is seeking; the occupational classification(s); the wages offered; the period of employment; the location(s) at which the H–1B nonimmigrants will be employed in the occupation(s); and that the labor condition application is available for public inspection at the employer's principal place of business in the U.S. or at the worksite. The notice shall also include the statement: "Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor." The posting of exact copies of the labor condition application, together with the statement regarding the filing of complaints, shall be sufficient to meet the requirements of paragraph (h)(1)(ii) of this section.

(A) The notice shall be of sufficient size and visibility, and shall be posted in two or more conspicuous places so that the employer's workers at the place(s) of employment can easily see and read the posted notice(s).

(B) Appropriate locations for posting the notices include, but are not limited to, locations in the immediate proximity of wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 29 CFR 1903.2(a).

(C) The notices shall be posted before the labor condition application is filed and shall remain posted for a total of 10 days.

(2) *Documentation of the fourth labor condition statement.* The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the statement referenced in paragraph (h)(1) of this section and attested to on Form ETA 9035. Such documentation shall include a copy of the dated notice and the name and address of the collective bargaining representative to whom the notice was provided. Where there is no collective bargaining representative, the employer shall note and retain the dates when, and locations where, the notice was posted and shall retain a copy of the posted notice.

(3) *Records retention; records availability.* The employer's documentation shall not be submitted to ETA with the labor condition application, but shall be retained for the period of time specified in § ____.760(c) of this part. The documentation shall be made available for public examination as required in § ____.760(a) of this part, and shall be made available to DOL upon request.

§ ____.740 Labor condition application determinations.

(a) *Actions on labor condition applications submitted for filing.* Once a labor condition application has been received from an employer, a determination shall be made by the ETA regional Certifying Officer whether to certify the labor condition application or return it to the employer not certified.

(1) *Certification of labor condition application.* Where all items on Form ETA 9035 have been completed, the form is not obviously inaccurate, and it contains the signature of the employer or its authorized agent or representative, the regional Certifying Office shall certify the labor condition application unless it falls within one of the categories set forth in paragraph (a)(2) of this section. The Certifying Officer shall make a determination to certify or not certify the labor condition application within 7 working days of the date the application is received and date-stamped by the Department. If the labor condition application is certified, the regional Certifying Officer shall return a certified copy of the labor condition application to the employer or the employer's authorized agent or representative. The employer shall file the certified labor condition application with the appropriate INS office in the manner prescribed by INS. The INS shall determine whether each occupational classification named in the certified labor condition application is a specialty occupation or as a fashion model of distinguished merit and ability.

(2) *Determinations not to certify labor condition applications.* ETA shall not certify a labor condition application and shall return such application to the employer or the employer's authorized agent or representative, when either or both of the following two conditions exists:

(i) When the Form ETA 9035 is not properly completed. Examples of a Form ETA 9035 which is not properly completed include instances where the employer has failed to check all the necessary boxes; or where the employer has failed to identify the occupational classification(s) or state the number of nonimmigrants sought, the wage rate, period of intended employment or date of need; or where the application does not contain the signature of the employer or the employer's authorized agent or representative.

(ii) When the Form ETA 9035 contains obvious inaccuracies. An obvious inaccuracy will be found if the employer files an application in error—*i.e.*, where the Administrator, Wage and Hour Division, after notice and opportunity for a hearing pursuant to subpart I of this part, has notified ETA in writing that the employer has been disqualified from employing H–1B nonimmigrants under section 212(n)(2) of the INA. Examples of other obvious inaccuracies include stating a wage rate of $1.00 per hour (which would be below the FLSA minimum wage), or identifying the occupation as "ditch digger," (which would not be a "specialty occupation" under the INA definition).

(3) *Correction and resubmission of labor condition application.* If the labor condition application is not certified pursuant to paragraph (a)(2) (i) or (ii) of this section, ETA shall return it to the employer, or the employer's authorized agent or representative, explaining the reasons for such return without certification. The employer may immediately submit a corrected application to ETA. A "resubmitted" or "corrected" labor condition application shall be treated as a new application by the regional office (*i.e.*, on a "first come, first served" basis) except that if the labor condition application is not certified pursuant to paragraph (a)(2)(ii) of this section because of notification by the Administrator of the employer's disqualification, such action shall be the final decision of the Secretary and no application shall be resubmitted by the employer.

(b) *Challenges to labor condition applications.* ETA shall not consider information contesting a labor condition application received by ETA prior to the determination on the application. Such information shall not be made part of ETA's administrative record on the application, but shall be referred to ESA to be processed as a complaint pursuant to subpart I of this part, and, if such application is certified by ETA, the complaint will be handled by ESA under subpart I of this part.

(c) *Truthfulness and adequacy of information.* DOL is not the guarantor of the accuracy, truthfulness or adequacy of a certified labor condition application. The burden of proof is on the employer to establish the truthfulness of the information contained on the labor condition application.

§ ____.750 Validity period of the labor condition application.

(a) *Validity of certified labor condition applications.* A labor condition application which has been certified pursuant to the provisions of § ____.740 of this part shall be valid for the period of employment indicated on Form ETA 9035; however, in no event shall the validity period of a labor condition application exceed six years. Where the labor condition application contains multiple periods of intended employment, the validity period shall extend to the latest date indicated or six years, whichever comes first.

(b) *Withdrawal of certified labor condition applications.* (1) An employer who has filed a labor condition application which has been certified pursuant to § ____.740 of this part may withdraw such labor condition application at any time before the expiration of the validity period of the application, provided that:

(i) H–1B nonimmigrants are not employed at the place of employment pursuant to the labor condition application; and

(ii) The Administrator has not found reasonable cause under subpart I to commence an investigation of the particular application. Any such request for withdrawal shall be null and void; and the employer shall remain bound by the labor condition application until the enforcement proceeding is completed, at which time the application may be withdrawn.

(2) Requests for withdrawals shall be in writing and shall be directed to the regional ETA Certifying Officer.

(3) Upon receipt of an employer's written request to withdraw a labor condition application, ETA shall promptly notify the Attorney General that the application has been withdrawn, unless ESA has found reasonable cause to commence an investigation.

(4) An employer shall comply with the "required wage rate" and "prevailing working conditions" statements of its labor condition application required under § ____.730 (e) and (f) of this part, respectively, even if such application is withdrawn, as long as H–1B aliens are employed pursuant to the application, unless the application is superseded by a subsequent application which is certified by ETA.

(5) An employer's obligation to comply with the "no strike or lockout" and "notice" statements of its labor condition application (required under § ____.730 (g) and (h) of this part, respectively), shall remain in effect and the employer shall remain subject to investigation and sanctions for misrepresentation on these statements even if such application is withdrawn, regardless of whether H–1B aliens are actually employed, unless the application is superseded by a subsequent application which is certified by ETA.

(c) *Invalidation or suspension of a labor condition application.* (1) Invalidation of a labor condition application shall result from enforcement action(s) by the Administrator, Wage and Hour Division, under subpart I of this part—*i.e.*, final determinations finding the employer's failure to meet the application's condition regarding strike or lockout; or the employer's willful failure to meet the wage and working conditions provisions of the application; or the employer's substantial failure to meet the notice and public access conditions of the application; see §§ ____.730(h) and 760 of this part; or the misrepresentation of a material fact in an application. Upon notice by the Administrator of the employer's disqualification, ETA shall invalidate the application and notify the Attorney General and the employer, or the employer's authorized agent or representative. ETA shall notify the Attorney General and the employer in writing of the reason(s) that the application is invalidated. When a labor condition application is invalidated such action shall be the final decision of the Secretary.

(2) Suspension of a labor condition application may result from a discovery by ETA that it made an error in certifying the application because such application is incomplete, contains one or more obvious inaccuracies, or has not been signed. In such event, ETA shall immediately notify INS and the employer. When an application is suspended, the employer may immediately submit to the certifying officer a corrected or completed application. If ETA does not receive the corrected application within 30 days of the suspension, or if the employer was previously disqualified by the Administrator and its application was certified in error, the application shall be immediately invalidated as described in paragraph (c) of this section.

(d) *Employers subject to disqualification.* No labor condition application shall be certified for an employer which has been found to be disqualified from participation in the H–1B program as determined in a final agency action following an investigation by the Wage and Hour Division pursuant to subpart I of this part.

§ ____.760 Public access; retention of records.

(a) *Public examination.* The employer shall make a filed labor condition application and necessary supporting documentation available for public examination at the employer's principal place of business in the U.S. or at the place of employment within one working day after the date on which the labor condition application is filed with DOL. The following documentation shall be necessary:

(1) A copy of the completed labor condition application, Form ETA 9035. If the application is submitted by facsimile transmission, the application containing the original signature shall be maintained by the employer;

(2) Documentation which provides the wage rate to be paid the H–1B nonimmigrant;

(3) A full, clear explanation of the system that the employer used to set the "actual wage" the employer has paid or will pay for the occupation(s) for which the H–1B nonimmigrant is sought—e.g., memorandum to the file summarizing the system or a copy of the employer's pay system (payroll records are not required, although they shall be made available to the Department in an enforcement action);

(4) A copy of the documentation the employer used to establish the "prevailing wage" for the occupation(s) for which the H–1B nonimmigrant is sought (a general description of the source and methodology is all that is required to be made available for public examination; the underlying individual wage data relied upon to determine the prevailing wage is not a public record, although it shall be made available to the Department in an enforcement action); and

(5) A copy of the document(s) with which the employer has satisfied the union/employee notification requirement of § ____.730(h) of this part.

(b) *National list of applications.* ETA shall compile and maintain on a current basis a list of the labor condition applications. Such list shall be by employer, showing the occupational classification, wage rate(s), number of aliens sought, period(s) of intended employment, and date(s) of need for each employer's application. The list shall be available for public examination at the Department of Labor, 200 Constitution Avenue, NW., room N–4456, Washington, DC 20210.

(c) *Retention of records.* The employer shall retain copies of the labor condition application, required wage information, and documentation showing provision of notice to bargaining representatives or employees at the place of employment for a period of one year beyond the end of the period of employment specified on the labor condition application or one year from the date the labor condition application was withdrawn, except that if a timely complaint is filed, the documentation shall be retained until the complaint is resolved through the procedures set forth in subpart I of this part. Required payroll records for the H–1B employees and other employees in the occupational classification shall be retained at the employer's principal place of business in the U.S. or at the place of employment for a period of three years from the date(s) of the creation of the record(s), except that if a timely complaint is filed, all payroll records shall be retained until the complaint is resolved through the procedures set forth in subpart I of this part.

Subpart I—Enforcement of H–1B Labor Condition Applications

§ ____.800 Enforcement authority of Administrator, Wage and Hour Division.

(a) *Authority of Administrator.* The Administrator shall perform all the Secretary's investigative and enforcement functions under section 212(n) of the INA (8 U.S.C. 1182(n)) and subparts H and I of this part.

(b) *Conduct of Investigations.* The Administrator, pursuant to a complaint, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of the investigation.

(c) *Availability of Records.* An employer being investigated shall make available to the Administrator such

records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No employer subject to the provisions of section 212(n) of the INA (8 U.S.C. 1182(n)) or and subpart H or I of this part shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1182(n) or subpart H or I of this part. Any such interference shall be a violation of the labor condition application and these regulations, and the Administrator may take such further actions as the Administrator consider appropriate.

Note: Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.

(d) *Employer Cooperation.* An employer subject to subpart H or I of this part shall at all times cooperate in administrative and enforcement proceedings. No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person because such person has:

(1) Filed a complaint or appeal under or related to section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part;

(2) Testified or is about to testify in any proceeding under or related to section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part;

(3) Exercised or asserted on behalf of himself or herself or others any right or protection afforded by section 212(n) of the INA (8 U.S.C. 1182(n)) subpart H or I of this part.

(4) Consulted with an employee of a legal assistance program or any attorney on matters related to section 212(n) of the INA (8 U.S.C. 1182(n)) or to subpart H or I of this part or any other DOL regulation promulgated pursuant to 8 U.S.C. 1182(n).

In the event of such intimidation or restraint as are described in this paragraph (d), the conduct shall be a violation of the labor condition application and subparts H and I of this part, and the Administrator may take such further actions as the Administrator considers appropriate.

(e) *Confidentiality.* The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under subpart H or I of this part.

§ ____.805 Complaints and investigative procedures.

(a) The Administrator, through an investigation pursuant to a complaint, shall determine whether an H–1B employer has:

(1) Filed a labor condition application with ETA which misrepresents a material fact.

Note: Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546.

(2) Failed to meet a condition in the labor condition application—

(i) Failed to pay wages as required under § ____.730(e) of this part, for purposes of the assessment of back wages (pursuant to § ____.810(a) of this part); or willfully failed to pay such wages, for purposes of the assessment of civil money penalties (pursuant to § ____.810(b) of this part) and notification to the Attorney General for debarment from the employment of aliens (pursuant to § ____.815 of this part);

(ii) Willfully failed to provide the working conditions required under § ____.730(f) of this part;

(3) Filed a labor condition application for H–1B nonimmigrants during a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment (see § ____.730(g) of this part); or

(4) Substantially failed to provide notice of the filing of the labor condition application as required in § ____.730(h) of this part;

(5) Substantially failed to make available for public examination the application and necessary document(s) at the employer's principal place of business or worksite as required in § ____.760(a);

(6) Failed to retain documentation as required by § ____.760(c) of this part; or

(7) Failed otherwise to comply in any other manner with the provisions of subpart H or I of this part.

(b) Pursuant to §§ ____.740(a)(1) and ____.750 of this part, the provisions of this part become effective upon the date of ETA's notification that the employer's labor condition application is certified, whether or not the employer hires any H–1B nonimmigrants in the occupation(s) for the period of employment covered in the labor condition application. Should the period of employment specified in the labor condition application expire or should the employer withdraw the application in accordance with § ____.750(b) of this part, the provisions of this part will no longer be in effect with respect to such application, except as provided in § ____.750(b)(4) of this part.

(c) Any aggrieved person or organization (including bargaining representatives) may file a complaint of a violation described in paragraph (a) of this section.

(1) No particular form of complaint is required, except that the complaint shall be written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint.

(2) The complaint shall set forth sufficient facts for the Administrator to determine whether an investigation is warranted, in that there is reasonable cause to believe that a violation as described in paragraph (a) of this section has been committed. This determination shall be made within 10 days of the date that the complaint is received by a Wage and Hour Division official. If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary. No hearing pursuant to this subpart shall be available where the Administrator determines that an investigation on a complaint is not warranted.

(3) If the Administrator determines that an investigation on the complaint is warranted, the complaint shall be accepted for filing; an investigation shall be conducted and a determination issued within 30 calendar days of the date of filing.

(4) In the event that the Administrator seeks a prevailing wage determination from ETA pursuant to § ____.730(e)(3) of this part, or advice as to prevailing working conditions from ETA pursuant to § ____.730(f)(3)(ii) of this part, the 30-day investigation period shall be suspended, from the date of the Administrator's request to the date of the Administrator's receipt of the wage determination or advice as to prevailing working conditions.

(5) The complaint must be filed not later than 12 months after the date of the alleged violation(s).

(6) The complaint may be submitted to any local Wage and Hour Division office. The addresses of such offices are found in local telephone directories. The office or person receiving such a complaint shall refer it to the office of the Wage and Hour Division administering the area in which the reported violation is alleged to have occurred.

(d) When an investigation has been conducted, the Administrator shall, pursuant to § ____.815 of this part, issue a written determination as to whether or not any violation(s) as described in paragraph (a) of this section has been committed.

§ ____.810 Remedies.

(a) Upon determining that the employer has failed to pay wages as required by § ____.730(e) of this part, the Administrator shall assess and oversee the payment of back wages to any H–1B nonimmigrant employed by the employer in the specific employment in question. The back wages shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such nonimmigrant(s);

(b) Upon determining that the employer has willfully failed to pay the wages required by § ____.730(e) of this part or willfully failed to meet the working conditions required by § ____.730(f) of this part, the Administrator may assess a civil money penalty (pursuant to paragraph (c) of this section) and shall notify the Attorney General for the debarment of the employer from the employment of aliens (pursuant to § ____.815 of this part.) For purposes of this part, "willful failure" means a knowing failure or a reckless disregard for the matter of whether the conduct was contrary to section 212(n)(1)(A) (i) or (ii) of the INA, or § ____.730 (e) or (f) of this part. *Brock* v. *Richland Shoe Co.*, 486 U.S. 128 (1988); see also *Trans World Airlines* v. *Thurston*, 469 U.S. 111 (1985).

(c) Upon determining that the employer has committed any violation(s) described in § ____.805(a) of this part, the Administrator may assess a civil money penalty not to exceed $1,000 per violation. In determining the amount of civil money penalty to be assessed, the Administrator shall consider the type of violation committed and other relevant factors. The factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the employer under the INA and subpart H or I of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the provisions of 8 U.S.C. 1182(n) and subparts H and I of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss, potential injury or adverse effect with respect to other parties.

(d) In addition to back wages and civil money penalties, the Administrator may impose such other administrative remedy(ies) under this subpart as the Administrator deems appropriate.

(e) The civil money penalties, back wages, and/or any other remedy(ies) determined by the Administrator to be appropriate are immediately due for payment or performance upon the assessment by the Administrator, or upon the decision by an administrative law judge where a hearing is timely requested, or the decision by the Secretary where review is granted. The employer shall remit the amount of the back wages and/or civil money penalties by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division office in the manner directed in the Administrator's notice of determination. The performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator.

§ ____.815 Written notice and service of Administrator's determination.

(a) The Administrator's determination, issued pursuant to § ____.805 of this part, shall be served on the complainant, the employer, and other known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(b) The Administrator shall file with the Chief Administrator Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(c) The Administrator's written determination required by § ____.805 of this part shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor, and in the case of a finding of violation(s) by an employer, prescribe any remedies, including the amount of any back wages assessed, the amount of any civil money penalties assessed and the reason therefor, and/or any other remedies assessed.

(2) Inform the interested parties that they may request a hearing pursuant to § ____.820 of this part.

(3) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, give the addresses of the Chief Administrative Law Judge (with whom the request must be filed) and the representative(s) of the Solicitor of labor (upon whom copies of the request must be served).

(5) Inform the parties that, pursuant to § ____.855 of the this part, the Administrator shall notify ETA and the Attorney General of the occurrence of a violation by the employer.

§ ____.820 Request for hearing.

(a) Any interested party desiring to request an administrative hearing in accordance with section 556 of title 5, United States Code, on a determination issued pursuant to §§ ____.805 and ____.815 of this part shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination.

(b) Interested parties may request a hearing in the following circumstances:

(1) The complainant or any other interested party may request a hearing where the Administrator determines, after investigation, that there is no basis for a finding that an employer has committed violation(s). In such a proceeding, the party requesting the hearing shall be the prosecuting party and the employer shall be the respondent; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(2) The employer or any other interested party may request a hearing where the Administrator determines, after investigation, that the employer has committed violation(s). In such a proceeding, the Administrator shall be the prosecuting party and the employer shall be the respondent.

(c) No particular form is prescribed for any request for hearing permitted by this section. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing shall be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 15 calendar days after the date of the determination.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is by mail, it should be by certified mail. If the request is by facsimile transmission, the original of the request, signed by the requestor or authorized representative, shall be filed within ten days.

(f) Copies of the request for a hearing shall be sent by the requestor to the Wage and Hour Division official who issued the Administrator's notice of determination, to the representative(s) of the Solicitor of Labor identified in the notice of determination, and to all known interested parties.

§ ____.825 Rules of practice for administrative law judge proceedings.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ ____.830 Service and computation of time.

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., room N–2716, Washington, DC 20210, and one copy shall be served on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally observed holiday, in which case the time period includes the next business day.

§ ____.835 Administrative law judge proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § ____.820 of this part, the Chief Administrative Law Judge shall promptly appoint an administrative law judge to hear the case.

(b) Within 7 calendar days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least fourteen calendar days notice of such hearing.

(c) The date of the hearing shall be not more than 60 calendar days from the date of the Administrator's determination. Because of the time constraints imposed by the INA, no requests for postponement shall be granted except for compelling reasons. Even where such reasons are shown, no request for postponement of the hearing beyond the 60-day deadline shall be granted except by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § ____.830 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § ____.830 of this part.

§ ____.840 Decision and order of administrative law judge.

(a) Within 60 calendar days after the date of the hearing, the administrative law judge shall issue a decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision.

(c) In the event that the Administrator's determination(s) of wage violation(s) and computation of back wages are based upon a wage determination obtained by the Administrator from ETA during the investigation (pursuant to § ____.730(e)(3) of this part), the administrative law judge shall not determine the prevailing wage de novo, but shall, based on the evidence (including the ETA administrative record), either accept the wage determination or vacate the wage determination. If the wage determination is vacated, the administrative law judge shall remand the case to the Administrator, who may then refer the matter to ETA and, upon the issuance of a new wage determination by ETA, resubmit the case to the administrative law judge. Under no circumstances shall source data obtained in confidence by ETA, or the names of establishments contacted by ETA, be submitted into evidence or otherwise disclosed.

(d) The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(e) The decision shall be served on all parties in person or by certified or regular mail.

§ ____.845 Secretary's review of administrative law judge's decision.

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 calendar days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for Secretary's review

permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(c) Whenever the Secretary determines to review the decision and order of an administrative law judge, a notice of the Secretary's determination shall be served upon the administrative law judge and upon all parties to the proceeding within 30 calendar days after the Secretary's receipt of the petition for review.

(d) Upon receipt of the Secretary's notice, the Office of Administrative Law Judges shall within fifteen calendar days forward the complete hearing record to the Secretary.

(e) The Secretary's notice shall specify

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (*i.e.*, briefs);

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, room S–4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(g) Copies of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service upon the Administrator shall be in accordance with § ____.830(b) of this part.

(h) The Secretary's final decision shall be issued within 180 calendar days from the date of the notice of intent to review. The Secretary's decision shall be served upon all parties and the administrative law judge.

(i) Upon issuance of the Secretary's decision, the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § ____.850 of this part.

§ ____.850 Administrative record.

The official record of every completed administrative hearing procedure provided by subparts H and I of this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge. Upon receipt of a complaint seeking review of the final agency action in a United States District Court, the Chief Administrative Law Judge shall certify the official record and shall transmit such record to the clerk of the court.

§ ____.855 Notice to the Employment and Training Administration and the Attorney General.

(a) The Administrator shall notify the Attorney General and ETA of the final determination of a violation by an employer upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an employer, and no timely request for hearing is made pursuant to § ____.820 of this part; or

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an employer; or

(3) Where the administrative law judge finds that there was no violation by an employer, and the Secretary, upon review, issues a decision pursuant to § ____.845 of this part, holding that a violation was committed by an employer

(b) The Attorney General, upon receipt of notification from the Administrator pursuant to paragraph (a), shall not approve petitions filed with respect to that employer under sections 204 or 214(c) of the INA (8 U.S.C. 1154 and 1184(c)) during a period of at least one year for aliens to be employed by the employer.

(c) ETA, upon receipt of the Administrator's notice pursuant to paragraph (a) of this section, shall suspend the employer's labor condition application(s) under subparts H and I of this part, and shall not accept for filing any application or attestation submitted by the employer under 20 CFR Part 656 or subparts A, B, C, D, E, H or I of this part, for a period of 12 months or for a longer period if such is specified by the Attorney General for visa petitions filed by that employer under sections 204 and 214(c) of the INA.

Adoption of the Joint Rule

The agency-specific adoption of the joint rule, which appears at the end of the common preamble, appears below:

TITLE 20—EMPLOYERS' BENEFITS

Accordingly, Part 655 of chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1 The authority citation for part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H) (i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*, sec. 3(c)(1), Public Law 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Public Law 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 665.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*, and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*, and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*, and sec. 3(c)(1), Public Law 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*, and sec. 303(a)(8), Public Law 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*, and sec. 221(a), Public Law 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

§ 655.0 [Amended]

2. Section 655.0 is amended by removing from paragraph (d) the phrase "specialty occupations," and by adding in lieu thereof the phrase "specialty occupations or as fashion models of distinguished merit and ability,".

Subparts H and I—[Amended]

3. Part 655 is amended by revising subparts H and I to read as set forth at the end of the common preamble.

Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H–1B Visas in Specialty Occupations and as Fashion Models

Sec.

655.700 Purpose, procedure and applicability of subparts H and I of this part.
655.705 Overview of responsibilities.
655.710 Complaints.
655.715 Definitions.

Sec.
655.720 Addresses of Department of Labor regional offices.
655.730 Labor condition application.
655.740 Labor condition application determinations.
655.750 Validity period of the labor condition application.
655.760 Public access; retention of records.

Subpart I—Enforcement of H-1B Labor Condition Applications

655.800 Enforcement authority of Administrator, Wage and Hour Division.
655.805 Complaints and investigative procedures.
655.810 Remedies.
655.815 Written notice and service of Administrator's determination.
655.820 Request for hearing.
655.825 Rules of practice for administrative law judge proceedings.
655.830 Service and computation of time.
655.835 Administrative law judge proceedings.
655.840 Decision and order of administrative law judge.
655.845 Secretary's review of administrative law judge's decision.
655.850 Administrative record.
655.855 Notice to the Employment and Training Administration and the Attorney General.

Signed at Washington, DC, this 7th day of January 1992.

Roberts T. Jones,

Assistant Secretary of Employment and Training.

Carl M. Dominguez,

Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

TITLE 29—LABOR.

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Accordingly, title 29, Code of Federal Regulations is amended by revising subparts H and I of part 507 to read as set forth at the end of the common preamble.

PART 507—ENFORCEMENT OF H-1B LABOR CONDITION APPLICATIONS

Subparts A, B, C, D, E, F, and G—[Reserved]

Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations and as Fashion Models

Sec.
507.700 Purpose, procedure and applicability of subparts H and I of this part.
507.705 Overview of responsibilities.
507.710 Complaints.
507.715 Definitions.
507.720 Addresses of Department of Labor regional offices.
507.730 Labor condition application.
507.740 Labor condition application determinations.
507.750 Validity period of the labor condition application.
507.760 Public access; retention of records.

Subpart I—Enforcement of H-1B Labor Condition Applications

Sec.
507.800 Enforcement authority of Administrator, Wage and Hour Division.
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507.810 Remedies.
507.815 Written notice and service of Administrator's determination.
507.820 Request for hearing.
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507.840 Decision and order of administrative law judge.
507.845 Secretary's review of administrative law judge's decision.
507.850 Administrative record.
507.855 Notice to the Employment and Training Administration and the Attorney General.

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184, and 29 U.S.C. 49 *et seq.*; and Pub. L. 102-232, 105 stat. 1733, 1748 (8 U.S.C. 1182 note).

Signed at Washington, DC, this 7th day of January, 1992.

Roberts T. Jones,

Assistant Secretary of Employment and Training.

Carl M. Dominguez,

Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

Appendix 1 (Not to Be Codified in the CFR): Form ETA 9035. Printed below is a copy of Form ETA 9035.

BILLING CODE 4510-30-M; 4510-27-M

Labor Condition Application for H-1B Nonimmigrants

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

1. Full Legal Name of Employer

2. Federal Employer I.D. Number

3. Telephone No.
( )

4. FAX No.
( )

5. Employer's Address (No., Street, City, State, and ZIP Code)

OMB Approval No.: 1205-0310
Expiration Date: 06/30/92

6. Address Where Documentation is Kept (If different than item 5)

7. OCCUPATIONAL INFORMATION (Use attachment if additional space is needed)

(a) Three -Digit Occupational Groups Code	(b) Job Title (Check box if position is part-time)	(c) No. of H-1B Nonimmigrants	(d) Rate of Pay	(e) Period of Employment From	To	(f) Location(s) Where H-1B Nonimmigrants Will Work (see instructions)
	☐					
	☐					
	☐					
	☐					

8. EMPLOYER LABOR CONDITION STATEMENTS (Employers are required to develop and maintain documentation supporting labor condition statements 8(a) and 8(d). Employers are further required to make available for public examination a copy of the labor condition application and necessary supporting documentation within one (1) working day after the date on which the application is filed with DOL. Check each box to indicate that the employer will comply with each statement.)

☐ (a) H-1B nonimmigrants will be paid at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher.

☐ (b) The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

☐ (c) On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment.

☐ (d) As of this date, notice of this application has been provided to workers employed in the occupations in which H-1B nonimmigrants will be employed: (check appropriate box)

☐ (i) Notice of this filing has been provided to the bargaining representative of workers in the occupations in which H-1B nonimmigrants will be employed; or

☐ (ii) There is no such bargaining representative; therefore, a notice of this filing has been posted and was, or will remain, posted for 10 days in a conspicuous place where H-1B nonimmigrants will be employed.

9. DECLARATION OF EMPLOYER. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this application, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official's request, during any investigation under this application or the Immigration and Nationality Act.

Name and Title of Hiring or Other Designated Official

Signature

Date

AN APPLICATION CERTIFIED BY DOL MUST BE FILED IN SUPPORT OF AN H-1B VISA PETITION WITH THE INS.

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this application is hereby certified and will be valid from _____ through _____.

Signature and Title of Authorized DOL Official

ETA Case No.

Subsequent DOL Action: Suspended _____ (date) Invalidated _____ (date) Withdrawn _____ (date)

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of a certified labor condition application.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of IRM Policy, Department of Labor, Room N-1301, 200 Constitution Avenue, N.W., Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-0310), Washington, DC 20503.

DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES

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INSTRUCTIONS FOR COMPLETING FORM ETA 9035 LABOR CONDITION APPLICATION FOR H-1B NONIMMIGRANTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to identical provisions at 20 CFR 655, Subparts H and I, and to 29 CFR 507, Subparts H and I.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of this immigration document (U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Employers seeking to hire H-1B nonimmigrants in specialty occupations or as fashion models of distinguished merit and ability must submit the completed and dated original Form ETA 9035 (or a facsimile) and one copy of the completed original Form ETA 9035 to the Regional Certifying Officer in the Department of Labor (DOL), Employment and Training Administration (ETA) Regional Office having jurisdiction over the State in which the position is located. See 20 CFR 655.720 for ETA Regional Office addresses. An application which is complete and has no obvious inaccuracies will be certified by DOL and returned to the employer, who may then file it in support of its petition with the INS.

Item 1. Full Legal Name of Employer. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Federal Employer I.D. Number. Enter employer's Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service.

Item 3. Telephone. Self-explanatory.

Item 4. FAX No. Self-explanatory.

Item 5. Employer's Address. Self-explanatory.

Item 6. Address Where Documentation is Kept. (If different than item 5). Self-explanatory.

Item 7. Occupational Information. Enter the information requested under the appropriate subheading. If necessary, continue on an attachment.

Item 7(a). Three Digit Occupational Groups Code. Enter the three-digit code which most closely describes the job(s) to be performed. (DOL purposes only.)

Item 7(b). Job Title. Enter the common name(s) or payroll title(s) of the job(s) being offered. Check box to the right of the blank if position is part-time.

Item 7(c). Number of Nonimmigrants. Enter the number of H-1B nonimmigrants that will be hired in the three-digit occupational code stated in item 7(a).

Item 7(d). Rate of Pay. Enter the salary to be paid in terms of the amount per hour, week, year, etc. If a wage range is listed for this item, the salary for each H-1B nonimmigrant shall be maintained in support of the application.

Item 7(e). Period of Employment. Enter the starting and ending dates during which the H-1B nonimmigrants will be employed.

Item 7(f). Location(s) Where H-1B Nonimmigrants Will Work. Enter the city and state of site or location where the work will actually be performed.

Item 8. Employer Labor Condition Statements. The employer must attest by checking off the conditions listed in (a) through (d) and by signing the application form. Employers must develop and maintain documentation to support labor condition statements 8(a) and 8(d). Documentation in support of a labor condition application shall be retained at the employer's place of business or worksite and made available to DOL upon such official's request. See 20 CFR 655.730 for guidance on the documentation that must support each labor condition statement.

Item 8(a). The employer must attest that H-1B nonimmigrants will be paid wages which are at least the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupational classification in the area of employment.

Item 8(b). The employer must attest that the employment of H-1B nonimmigrants in the occupations named will not adversely affect the working conditions of workers similarly employed in the occupational classification.

Item 8(c). The employer must attest that on the date the application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the named occupations at the worksite.

Item 8(d). The employer must attest that as of the date of filing, notice of the labor condition application has been provided to workers employed in the named occupations. The application may be provided to the workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing must be posted in a conspicuous place where H-1B nonimmigrants will be employed.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the employer. By signing this form, the employer is attesting to the accuracy of the labor condition statements listed in items 8(a) through (d) and to compliance with these conditions. False statements are subject to Federal criminal penalties, as stated above. Failure to meet a condition of the application regarding strikes or lockouts, substantial failure to meet a condition of the application regarding notification of the bargaining unit representative or employees, willful failure to meet a condition of the application regarding wages or working conditions, or misrepresentation of a material fact may result in additional penalties.

BILLING CODE 4510-30-C; 4510-27-C

Appendix 2 (Not to be Codified in the CFR): DOT Three-Digit Occupational Groups Codes for Professional, Technical and Managerial Occupations and Fashion Models. Printed below is a copy of DOT Three-Digit Occupational Groups Codes for Professional, Technical and Managerial Occupations and Fashion Models.

BILLING CODE 4510-30-M; 4510-27-M

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THREE-DIGIT OCCUPATIONAL GROUPS

PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS AND FASHION MODELS

OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING

001 ARCHITECTURAL OCCUPATIONS
002 AERONAUTICAL ENGINEERING OCCUPATIONS
003 ELECTRICAL/ELECTRONIC ENGINEERING OCCUPATIONS
005 CIVIL ENGINEERING OCCUPATIONS
006 CERAMIC ENGINEERING OCCUPATIONS
007 MECHANICAL ENGINEERING OCCUPATIONS
008 CHEMICAL ENGINEERING OCCUPATIONS
010 MINING AND PETROLEUM ENGINEERING OCCUPATIONS
011 METALLURGY AND METALLURGICAL ENGINEERING OCCUPATIONS
012 INDUSTRIAL ENGINEERING OCCUPATIONS
013 AGRICULTURAL ENGINEERING OCCUPATIONS
014 MARINE ENGINEERING OCCUPATIONS
015 NUCLEAR ENGINEERING OCCUPATIONS
019 OTHER OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING

OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

020 OCCUPATIONS IN MATHEMATICS
021 OCCUPATIONS IN ASTRONOMY
022 OCCUPATIONS IN CHEMISTRY
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030 OCCUPATIONS IN SYSTEMS ANALYSIS AND PROGRAMMING
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032 OCCUPATIONS IN COMPUTER SYSTEM USER SUPPORT
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039 OTHER COMPUTER-RELATED OCCUPATIONS

OCCUPATIONS IN LIFE SCIENCES

040 OCCUPATIONS IN AGRICULTURAL SCIENCES
041 OCCUPATIONS IN BIOLOGICAL SCIENCES
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OCCUPATIONS IN SOCIAL SCIENCES

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051 OCCUPATIONS IN POLITICAL SCIENCE
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094 OCCUPATIONS IN EDUCATION OF PERSONS WITH DISABILITIES
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097 OCCUPATIONS IN VOCATIONAL EDUCATION
099 OTHER OCCUPATIONS IN EDUCATION

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183 MANUFACTURING INDUSTRY MANAGERS AND OFFICIALS
184 TRANSPORTATION, COMMUNICATION, AND UTILITIES INDUSTRY MANAGERS AND OFFICIALS
185 WHOLESALE AND RETAIL TRADE MANAGERS AND OFFICIALS
186 FINANCE, INSURANCE AND REAL ESTATE MANAGERS AND OFFICIALS
187 SERVICE INDUSTRY MANAGERS AND OFFICIALS
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189 MISCELLANEOUS MANAGERS AND OFFICIALS

MISCELLANEOUS PROFESSIONAL, TECHNICAL, AND MANAGERIAL OCCUPATIONS

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[FR Doc. 92-583 Filed 1-10-92; 8:45 am]

BILLING CODE 4510-30-C; 4510-27-C

federal register

Monday
January 13, 1992

Part III

Department of the Interior

Office of the Secretary

43 CFR Part 37
Cave Management; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 37

[WO-340-4333-02-24 1A]

RIN 1004-AB59

Cave Management

AGENCY: Department of the Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Federal Cave Resources Protection Act of 1988, which requires identification, protection, and maintenance, to the extent practical, of significant caves on Department of the Interior administered lands. The proposed rule would establish criteria to be considered in the identification of significant caves. It would also integrate cave management into existing planning and management processes and protect cave resource information to prevent vandalism and disturbance of significant caves.

DATES: Comments must be received in writing by April 13, 1992. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rulemaking.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240.

Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Delmar Price, Division of Recreation, Cultural, and Wilderness Resources, (202) 208-3353.

SUPPLEMENTARY INFORMATION: The Federal Cave Resources Protection Act of 1988 (the Act) (16 U.S.C. 4301-4309, 102 Stat. 4546), became law on November 18, 1988. The purpose of the Act is to secure, protect, and preserve significant caves on Federal lands for the perpetual use, enjoyment, and benefit of all, and to foster increased cooperation and exchange of information between governmental authorities and those who utilize caves located on Federal lands for scientific, educational, or recreational purposes.

The Act states that it is the policy of the United States that Federal lands be managed in a manner that protects and maintains, to the extent practical, significant caves. The Act also requires the Secretary of the Interior to issue such regulations as he deems necessary to achieve the purposes of the Act on Department of the Interior-administered Federal lands. The regulations are required to include, but need not be limited to, criteria for the identification of significant caves.

This proposed rulemaking would establish criteria to be considered in the identification of significant caves located on Federal lands administered by the Department of the Interior and procedures for carrying out other provisions of the Act relating to protecting significant caves and fostering cooperation and exchange of information between governmental authorities and those who utilize caves.

An advance notice of proposed rulemaking was published in the **Federal Register** on March 3, 1989 (54 FR 9066), inviting comments on what should be included in a proposed rule, and particularly requesting suggestions as to criteria for determining what constitutes a significant cave. A total of 9 comments were received in response to that notice: 4 from agencies of State government, 2 from business entities, 2 from individuals, and 1 from a Federal agency.

Respondents recommended that particular resource values be considered in determining the significance of caves. These included the presence and type of water; archaeological, cultural, and historic resources; biological resources, including bat guano; recreational values; and the amount and degree of past use or evidence of vandalism. Other comments urged that the concept of "significance" be carefully circumscribed, that care should be taken to make sure that not all caves are labeled significant, that surface uses and particularly mineral exploration and development not be unduly restricted by cave regulations, and that access to significant caves not be limited to just special interest groups. Some respondents addressed the need for sufficient funding to maintain caves that are used for recreation, others suggested the establishment of a permit system for regulating access to significant caves, while others urged that access not be regulated at all.

All these comments were carefully considered during the preparation of this proposed rule, except those that addressed matters beyond its scope, such as funding, permit systems, and the effect of significant caves on other land uses.

During consideration of rules that might be needed to implement the Federal Cave Resources Protection Act, the Department of the Interior has carefully examined the provisions of the Act in the context of existing agency and Departmental regulations. None of the agencies has regulations governing the identification of significant caves and confidentiality of information concerning the nature and location of significant caves. On the other hand, some of the agencies have regulations that cover other regulatory aspects of the Act. In the interest of minimizing duplication of regulations, the decision was made to develop one Departmentwide regulation to deal with provisions in the Act not covered by existing regulations. Each agency with responsibility for cave management in the Department of the Interior may amend its existing regulations or separately develop new regulations to address other regulatory provisions in the Act, such as permits, occupancy, use, prohibited acts, and civil and criminal penalties.

Prior to enactment of the Act, the Department of the Interior managed caves in accordance with the general authorities that established the agencies, as well as the Antiquities Act of 1906 (16 U.S.C. 431, *et seq.*); the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa); the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251, *et seq.*); and the Endangered Species Act of 1973 (16 U.S.C. 1531).

The Department of the Interior cave management policy, except for those caves under the authority of the National Park Service, focuses on managing caves as nonrenewable resources to maintain their values; balancing surface resource management and cave use with protection of cave values; and incorporating cave management activities, considerations, and management prescriptions into the agency resource management plans. The Department and agency policies are generally consistent with the Federal Cave Resources Protection Act and will be revised and strengthened in accordance with the Act.

The policy of the National Park Service, pursuant to its Organic Act of 1916 (16 U.S.C. 1, *et seq.*) and its Management Policies (chapter 4:20, December 1988), is that all caves on lands that it administers are afforded protection and all will be managed in compliance with approved resource management plans. Under the laws and policies identified above, all caves in national park land are considered significant, regardless of any other criteria under the Act.

The Secretary of the Interior will cooperate and consult with the Secretary of Agriculture to devise similar procedures for the listing of

significant caves. The procedures for submitting and evaluating nominations for the initial listing of significant caves will be published in a **Federal Register** notice announcing the call for nominations. Subsequent listings will be done separately by each agency through their resource management planning processes.

This proposed rule was developed cooperatively by representatives of the various Department of the Interior agencies that have cave management responsibilities. The Department also consulted with the Forest Service, Department of Agriculture, which is developing similar regulations, and with representatives of interested cave organizations.

The principal author of this proposed rule is Delmar Price, Division of Recreation, Cultural and Wilderness, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, Department of the Interior.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, item 1.10, and that the proposal would not significantly affect the ten criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required. The proposed rule would merely establish criteria to be considered in the identification of significant caves; it would not itself protect any land from or release land to development.

For the same reasons, the Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

List of Subjects in 43 CFR Part 37

Cave resources management, Fish and Wildlife Service, Indian Affairs Bureau, Land Management Bureau, National Park Service, Public lands, Reclamation Bureau, Recreation and recreation areas.

Under the authorities stated below, it is proposed to amend Subtitle A of Title 43 of the Code of Federal Regulations as set forth below:

1. Part 37 is added to read as follows:

PART 37—CAVE MANAGEMENT

Subpart A—Cave Management—General

Sec.
37.1 Purpose.
37.2 Policy.
37.3 Authority.
37.4 Definitions.

Subpart B—Cave Designation

37.11 Identification and designation of significant caves.
37.12 Confidentiality of cave information.

Authority: 16 U.S.C. 4301–4309; 43 U.S.C. 1740.

Subpart A—Cave Management—General

§ 37.1 Purpose.

The purpose of this regulation is to provide the basis for identifying and protecting significant caves on Federal lands administered by the Secretary of the Interior.

§ 37.2 Policy.

It is the policy of the Secretary that Federal lands be managed in a manner which, to the extent practical, protects and maintains significant caves and cave resources.

§ 37.3 Authority.

Section 4 of the Federal Cave Resources Protection Act of 1988 (102 Stat. 4546; 16 U.S.C. 4301) authorizes the Secretary to issue regulations providing for the identification of significant caves. Section 5 authorizes the Secretary to withhold information concerning the nature and location of significant caves under certain circumstances.

§ 37.4 Definitions.

(a) *Authorized officer* means any agency employee delegated the authority to perform the duties described in this part.

(b) *Cave* means any naturally occurring void, cavity, recess, or system of interconnected passages beneath the surface of the earth or within a cliff or ledge (including any cave resource therein, but not including any vug, or any mine, tunnel, aqueduct, or other man-made excavation), and which is large enough to permit an individual to enter, whether or not the entrance is naturally formed or man-made. Such term shall include any natural pit, sinkhole, or other feature that is an extension of a cave entrance.

(c) *Cave resources* means any material or substance occurring naturally in caves on Federal lands, such as animal life, plant life, paleontological resources, cultural resources, sediments, minerals, speleogens, and speleothems.

(d) *Caver* means a person who explores, maps, studies, and/or investigates cave areas for recreational reasons or to promote general knowledge of the resources present.

(e) *Federal lands*, as defined in the Federal Cave Resources Protection Act, means lands the fee title to which is owned by the United States and administered by the Secretary of the Interior.

(f) *Secretary* means the Secretary of the Interior.

(g) *Significant cave* means a cave located on Federal lands that has been evaluated by the authorized officer and determined to have biotic, cultural, mineralogic, paleontologic, geologic, hydrologic, or other resources that have

important value for scientific, educational, or recreational purposes.

(h) *Vug* means a small cavity in a vein or in rock, usually lined with crystals.

Subpart B—Cave Designation

§ 37.11 Identification and designation of significant caves.

(a) Nominations for initial and subsequent listings: The authorized officer will give the public the opportunity to nominate potential significant caves. The authorized officer will publish in the **Federal Register** a call for nominations for the initial listing, including procedures for preparing and submitting the nominations. Nominations for subsequent listings will be accepted from the public by the agency that manages the land where the cave is located as new cave discoveries are made or as new information that could influence significance determinations becomes available.

(b) Evaluation for initial and subsequent listings: All known and nominated caves on Federal lands will be evaluated during the initial listing process. The evaluation of the nominations for significant caves will be carried out in consultation with individuals and organizations interested in the management and use of cave resources, and other affected resources, within the limits imposed by the confidentiality provisions of § 37.2 of this part.

(c) Criteria for the Identification of Significant Caves: A significant cave on Federal lands shall possess one or more of the following features, characteristics, or values, which are deemed by the authorized officer to be unusual, significant, or otherwise meriting special management.

(1) Biota: The cave provides habitat for cave-dependent organisms or animals. The cave contains species or subspecies of flora or fauna that are native to caves, occur in large numbers or variety, are sensitive to disturbance, or are found on State or Federal sensitive, threatened, or endangered species lists.

(2) Cultural: The cave contains historic properties or archaeological resources (as described in 36 CFR 60.4 and 43 CFR 7.3) that are eligible for or listed on the National Register of Historic Places.

(3) Geologic/Mineralogic/Paleontologic: The cave possesses one or more of the following features:

(i) Geologic or mineralogic features that are fragile or outstanding, or that are useful for study.

(ii) Deposits of sediments or features useful for evaluating past events.

(iii) Paleontologic resources with potential to contribute important scientific information.

(4) Hydrologic: The cave is a part of a hydrologic system or contains water that is important to humans, biota, or development of cave features.

(5) Recreational: The cave provides or could provide recreational opportunities by virtue of challenge or scenic values.

(6) Educational or Scientific: The cave offers opportunities for educational or scientific use; or, the cave is virtually in a pristine state, lacking evidence of human disturbance or impact; or, the length, volume, total depth, pit depth, height, or similar measurements are worthy of note.

(d) Records and Documentation: Appropriate records and maps will be retained by the authorized officer for each significant cave. At a minimum, the documentation shall include a signed certification that the cave has been found to be significant and the information used to make that determination. This information will be protected under the confidentiality requirement of this regulation.

(e) The policy of the National Park Service, pursuant to its Organic Act of 1916 (16 U.S.C. 1 *et seq.*) and Management Policies (chapter 4:20, Dec. 1988) is that all caves are afforded protection and will be managed in compliance with approved resource management plans. Accordingly, all caves on National Park Service-administered lands are deemed to fall within the definition of "significant cave."

(f) Based on the criteria stated in paragraph (c) of this section, the authorized officer will determine whether caves nominated under paragraph (a) of this section are significant.

§ 37.12 Confidentiality of cave information.

(a) No Department of the Interior employee shall disclose information concerning the location of any significant cave or cave that has been nominated as significant as to which final determination is pending, unless an authorized officer has determined, based on information received under paragraph (b) of this section that disclosure would contribute to the protection and responsible use of the cave and cave resources, and will not create a substantial risk of harm, theft, or destruction of cave resources.

(b) A written request to view information about a significant cave by a Federal or State governmental agency, bona fide educational or research institute, or individual or organization assisting with cave management activities, will be considered when the following information is submitted to the authorized officer:

(1) A signed letter specifying the cave information requested.

(2) Name, address, and telephone number of the individual responsible for the security of the information received.

(3) A legal description of the area for which the information is sought.

(4) The purpose for which the information is sought, and

(5) Written assurances and evidence that the requesting party will adequately protect the confidentiality of the information and ensure the protection of the significant cave(s) from vandalism or unauthorized use.

Dated: October 21, 1991.

Richard Roldan,

Assistant Secretary of the Interior.

[FR Doc. 92–775 Filed 1–10–92; 8:45 am]

BILLING CODE 4310-84-M

VOL 57 ISS 8 JA 13 1992 UMI

federal register

Monday
January 13, 1992

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Formula Allocations for the HOME Investment Partnerships Program for FY 1992 and Deadlines for Submission of Notices of Intent, Comprehensive Housing Affordability Strategies, and Program Descriptions; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3356; FR-3179-N-01]

Formula Allocations for the HOME Investment Partnerships Program for FY 1992 and Deadlines for Submission of Notices of Intent, Comprehensive Housing Affordability Strategies, and Program Descriptions

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of HOME Program formula allocations for FY 1992 and deadlines for submitting Notices of Intent to Participate, Comprehensive Housing Affordability Strategies, and Program Descriptions.

SUMMARY: This notice announces formula allocations of HOME Program funds for metropolitan cities, urban counties, consortia of units of general local government and for States for FY 1992. It also identifies those jurisdictions that may use their HOME formula allocations for new construction without prior HUD approval and specifies the portion of their HOME formula allocations that those jurisdictions must use only for new construction or substantial rehabilitation of rental housing for a period of 24 months. Further, this notice identifies all other areas where HUD has determined that HOME funds may be used for new construction, without prior HUD approval.

Finally, this notice advises jurisdictions of the deadlines for submitting (1) their written notification of intent to participate in the HOME Program, (2) their comprehensive housing affordability strategy (housing strategy) and (3) their program descriptions.

DATES: Notification of intent to participate. Not later than February 12, 1992, a jurisdiction must notify the Community Planning and Development (CPD) Division Director in the appropriate HUD Field Office in writing, of its intention to become a particpating jurisdiction, and, if applicable, must submit evidence that it has met the threshold allocation requirements.

Submission of housing strategy. Not later than 90 days after providing notification of its intention to become a participating jurisdiction, a jurisdiction that has not submitted a housing strategy to HUD or has submitted only an abbreviated housing strategy (as provided for in 24 CFR 91.25) must submit a housing strategy to the CPD Division Director in the appropriate HUD Field Office.

Submission of program description and certifications. Not later than 45 days after its designation as a participating jurisdiction, a participating jurisdiction must submit a program description to the CPD Division Director in the appropriate HUD Field Office.

FOR FURTHER INFORMATION CONTACT: David Cohen, Director, Office of Affordable Housing Programs, room 7168, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410-7000; telephone (202) 708-2685. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement:

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2501-0013.

I. Purpose and Substantive Description

(A) Authority

The HOME Investment Partnerships Program is authorized by the HOME Investment Partnerships Act (Pub. L. 101-625, title II, approved November 28, 1990). The program regulations are codified at 24 CFR part 92. (All references in this notice to 24 CFR part 92 are to the interim rule published at 56 FR 65312 on (December 16, 1991).) Section 92.50 of 24 CFR contains the basic formula for allocating HOME funds and 24 CFR 92.51 contains the formula for determining which jurisdictions may use their HOME funds for new construction and the amount of HOME funds a jurisdiction must use for new construction or substantial rehabilitation of rental housing (the rental housing production set-aside).

Regulations concerning the housing strategy are codified at 24 CFR part 91, which was promulgated as an interim rule, published at 56 FR 4480, on February 4, 1991.

(B) Formula Allocation Amounts

A total of $1.5 billion has been appropriated for the HOME Program for FY 1992. The Department has set aside $15 million (one percent of the total HOME Program appropriation) for grants to Indian tribes and $25 million for technical assistance. These funds will be made available through separate notices in the **Federal Register**. This notice allocates by formula the remaining $1,460,000,000. Sixty percent or $876,000,000 is being allocated to metropolitan cities, urban counties and consortia of units of local government and 40 percent or $584,000,000 is being allocated to States.

Appendix A to this notice contains the formula allocations for metropolitan cities, urban counties, and consortia that receive allocations of $750,000 or more. Appendix B contains the formula allocations for metropolitan cities, urban counties, and consortia that receive allocations of $500,000 or more, but less than $750,000. Appendix C contains the formula allocations for States.

(C) Rental Production Set-Aside and New Construction List

Rental production set-aside. In accordance with 24 CFR 92.51(e), appendices A, B, and C specify, for certain jurisdictions, the portion of their respective formula allocations that each of these jurisdictions must use, for a period ending 24 months after the allocation amounts are deposited in the jurisdiction's HOME Investment Trust Fund, only to produce affordable rental housing through new construction or substantial rehabilitation (rental housing production set-aside).

New construction list. In accordance with 24 CFR 92.51(a), each jurisdiction receiving a rental production set-aside is also authorized by HUD to use any of its formula allocation for new construction, without having to qualify under either 24 CFR 92.209, New construction: Neighborhood revitalization, or 24 CFR 92.210, New construction: Special needs.

In accordance with 24 CFR 92.51(a), appendix D lists areas, not receiving a formula allocation, in which HOME funds may be used for new construction. Appendix D does not include areas with populations under 25,000.

Requests for review. A unit of general local government that receives a formula allocation under this notice but that is not on the list of jurisdictions in which new construction is authorized may request HUD to reconsider its new construction eligibility. A State may request HUD to consider its eligibility to use HOME funds for new construction with respect to a jurisdiction that does not receive a formula allocation and has a population of 25,000 or more. A State also may request HUD to consider its eligibility to use HOME funds for new construction in an area with a population less than 25,000.

Requests for review must be submitted to the CPD Division Director in the appropriate HUD Field Office and

must comply with the requirements of 24 CFR 92.51(d).

(D) Eligibility

In the HOME Program, funds are allocated by formula to units of general local government that, as of the end of the previous fiscal year, are metropolitan cities, urban counties, or consortia approved under 24 CFR 92.101 and to States. The minimum formula allocation for a unit of general local government is $500,000 and is $3,000,000 for a State. To be eligible to receive its formula allocation from HUD, a jurisdiction must be designated by HUD as a participating jurisdiction.

To be designated a participating jurisdiction, a jurisdiction must:

(1) Have an allocation under the formula. A unit of general local government listed in Appendix B of this notice (i.e., its formula allocation is between $500,000 and $750,000), must provide the difference between its formula allocation and $750,000 or the State may provide the shortfall from its allocation or from other sources (24 CFR 92.102);

(2) Submit its notice of intent to participate (24 CFR 92.103); and

(3) Have a HUD-approved housing strategy (24 CFR 92.104).

When a jurisdiction has complied with the requirements of 24 CFR 92.102 through 92.104 and the HUD Field Office has approved the jurisdiction's housing strategy in accordance with 24 CFR 91, the HUD Field Office will designate the jurisdiction as a participating jurisdiction.

II. Program Description Submission Requirements

Under 24 CFR 92.150(a), a participating jurisdiction must submit a program description each fiscal year within 45 days of the date of publication of the formula allocations, and a jurisdiction that has not yet been designated as a participating jurisdiction must submit a program description within 45 days of designation. Thus, in this initial fiscal year for the HOME Program, all program descriptions are due within 45 days of designation as a participating jurisdiction.

III. Checklist of Allocation Threshold Submission Requirements and of Program Description Submission Requirements

(A) Evidence of Meeting Threshold Allocation Requirement

A unit of general local government listed in appendix B (i.e., that has a formula allocation of $500,000 or more, but less than $750,000) must submit, with its notice of intent to participate, one or more of the following, as appropriate, as evidence that it has met the threshold allocation requirements in 24 CFR 92.102(b):

(1) Authorization from the State to transfer a portion of its allocation to the unit of general local government;

(2) A letter from the governor or designee indicating that the required funds have been approved and budgeted for the unit of general local government;

(3) A letter from the chief executive officer of the unit of general local government indicating that the required funds have been approved and budgeted.

(B) Content of Program Description

In accordance with 24 CFR 92.150(b), the program description must provide the following information:

(1) An executed Standard Form 424;

(2) For a local jurisdiction, the estimated use of HOME funds (consistent with needs identified in its approved housing strategy) for each of the following categories of eligible activities: new construction, substantial rehabilitation, other rehabilitation, acquisition (not involving new construction or rehabilitation), tenant-based rental assistance and an estimate of whether units assisted will be rental or owner-occupied;

(3) For a State, a description of how the State will distribute funds (consistent with needs identified in its approved housing strategy), i.e., transferring funds to other jurisdictions that do not meet the participation threshold allocation level in 24 CFR 92.102, administering a competitive process, or directly administering HOME funds. To the extent known, States shoud identify the areas in which HOME funds will be used;

(4) The amount of HOME funds that the jurisdiction is reserving for community housing development organizations. An explanation of how the jurisdiction will work with community housing development organizations and a description of the activities (type of activity and level of funds) that community housing development organizations will be undertaking for the jurisdiction;

(5) If the jurisdiction intends to use HOME funds for first-time homebuyers, the guidelines for resale should be described as required in 24 CFR 92.254(a)(4);

(6) If the jurisdiction intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consistent with the minimum guidelines described in 24 CFR 92.211;

(7) If a jurisdiction intends to use other forms of investment not described in 24 CFR 92.205(b), a description of the other forms of investment; and

(8) A statement of the policy and procedures to be followed by the jurisdiction to meet the requirements for affirmative marketing, and establishing and overseeing a minority and women business outreach program under 24 CFR 92.350 and 92.351, respectively.

(C) The Following Certification Must Accompany the Program Description

(1) A certification that, before committing funds to a project, the jurisdiction will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance than is necessary to provide affordable housing;

(2) If applicable, the certifications required by 24 CFR 92.209 to do new construction to facilitate a neighborhood revitalization program for a jurisdiction that is not identified in appendix A or B as authorized to do new construction;

(3) If applicable, the certifications required by 24 CFR 92.210 to do new construction on the basis of special needs for a jurisdiction that is not identified in appendix A or B as authorized to do new construction;

(4) If the jurisdiction intends to provide tenant-based assistance, the certification required by 24 CFR 92.211;

(5) A certification that the submission of the program description is authorized under state and local law (as applicable), and the jurisdiction possesses the legal authority to carry out the HOME Investment Partnerships Program, in accordance with the HOME regulations;

(6) A certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of 24 CFR 92.353;

(7) A certification that the jurisdiction and, if applicable, state recipients, will use HOME funds pursuant to the jurisdiction's approved housing strategy and in compliance with all requirements of 24 CFR part 92;

(8) The certification with regard to the drug-free workplace required by 26 CFR part 24, subpart F; and

(9) The certification required with regard to lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

If a jurisdiction needs a copy of the regulations, the Standard Form 424, or

language for any required certification, it may obtain them from the Community Planning and Development Division of any HUD Field Office.

IV. Corrections to Deficient Program Descriptions

If the program description is not consistent with a participating jurisdiction's approved housing strategy or if the participating jurisdiction has failed to submit information sufficient to allow HUD to make the necessary determinations required by 24 CFR 92.150(b)(5), (b)(7) and (b)(8), if applicable, HUD may require the participating jurisdiction to furnish such further information or assurances as HUD considers necessary to find the program description and certifications satisfactory. HUD will notify the participating jurisdiction in writing of any technical deficiencies in the program description. The participating jurisdiction must submit corrections or additional information within 20 calendar days from the date of HUD's letter notifying the participating jurisdiction of any such deficiency.

As stated at 24 CFR 92.151(c), if the participating jurisdiction does not submit the supporting information under 24 CFR 92.150(b)(5) or (b)(7) sufficient to show consistency with its approved housing strategy or to allow the required HUD determinations or HUD disapproves the guidelines under 24 CFR 92.150(b)(5) or the form of investment under 24 CFR 92.150(b)(7), the Field Office may approve the program description conditionally, excepting those activities covered by those sections until such time as the necessary information is submitted.

V. Suspension of Match Requirement for FY 1992 HOME Funds

The HUD Appropriations Act for FY 1992 (Pub. L. 102–139, 105 Stat. 736, approved October 28, 1991) states that the Secretary shall not, as a condition of assisting a participating jurisdiction under the HOME Investment Partnerships Act, using amounts provided for FY 1992 only, require any contributions by or on behalf of a participating jurisdiction, notwithstanding section 220 of the HOME Investment Partnerships Act. Section 220 contains the matching requirements for the HOME Program. Thus, 24 CFR 92.218 through 92.222 of the program regulations, which relate to the matching requirements of the program, do not apply to FY 1992 HOME funds and participating jurisdictions do not have to provide matching contributions for FY 1992 HOME funds, regardless of the fiscal year in which the FY 1992 HOME funds are drawn down (see 56 FR 65312, 65351, fn 1, (December 16, 1991).

VI. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this notice does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12602, the Family. The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this notice does not have potential significant impact on family, formation, maintenance, and general well-being.

Dated: January 7, 1992.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

BILLING CODE 4210-29-M

APPENDIX A - FY 1992 HOME BASIC FORMULA ALLOCATION AND RENTAL HOUSING PRODUCTION SET-ASIDE FOR UNITS OF GENERAL LOCAL GOVERNMENT WITH A BASIC FORMULA ALLOCATION OF $750,000 OR MORE

ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)
AL	BIRMINGHAM	2965	0
AL	MOBILE	1595	0
AL	MONTGOMERY	1367	0
AL	JEFFERSON COUNTY	1286	0
AK	ANCHORAGE	864	0
AZ	PHOENIX	4465	0
AZ	MARICOPA CO. CONSORTIUM	3239	0
AZ	TUCSON CONSORTIUM	3002	0
AR	LITTLE ROCK	1135	0
CA	ANAHEIM	1437	483
CA	BAKERSFIELD	810	0
CA	BERKELEY	1416	882
CA	COMPTON	1012	466
CA	EL MONTE	955	416
CA	FRESNO	2157	0
CA	GLENDALE	1408	772
CA	HUNTINGTON BEACH	881	274
CA	HUNTINGTON PARK	838	512
CA	INGLEWOOD	1186	635
CA	LONG BEACH	3929	1175
CA	LOS ANGELES	35621	17308
CA	OAKLAND	4282	1387
CA	OXNARD	819	275
CA	PASADENA	1198	507
CA	POMONA	779	213
CA	RIVERSIDE	1176	176
CA	SACRAMENTO	2222	0
CA	SAN BERNARDINO	1095	0
CA	SAN DIEGO	7157	1694
CA	SAN FRANCISCO	8206	3680
CA	SAN JOSE	3569	1423
CA	SANTA ANA	1620	625
CA	SANTA BARBARA	764	381
CA	SANTA MONICA	1091	734
CA	SOUTH GATE	769	508
CA	STOCKTON	1331	0
CA	CONTRA COSTA COUNTY	1599	379
CA	FRESNO COUNTY	1549	0
CA	KERN COUNTY	1786	0
CA	LOS ANGELES COUNTY	13149	5407
CA	MARIN COUNTY	1257	642
CA	ORANGE COUNTY	2555	700
CA	RIVERSIDE COUNTY	2331	0
CA	SACRAMENTO COUNTY	2663	0
CA	SAN BERNARDINO COUNTY	2506	0
CA	SAN DIEGO COUNTY	1910	262
CA	SAN JOAQUIN COUNTY	1181	0
CA	SANTA CLARA COUNTY	1386	518
CA	SONOMA COUNTY	1253	452
CA	VENTURA COUNTY	922	218
CA	ALAMEDA CO. CONSORTIUM	3176	1306
CA	SAN MATEO CO. CONSORTIUM	3105	1316
CO	COLORADO SPRINGS	1215	0
CO	DENVER	4198	0
CO	ADAMS COUNTY	761	0
CO	PUEBLO CONSORTIUM	812	0
CT	BRIDGEPORT	2164	647
CT	HARTFORD	2499	716
CT	NEW HAVEN	1994	547
CT	WATERBURY	1020	0
DE	WILMINGTON	819	0
DE	NEW CASTLE COUNTY	1228	0
FL	FT LAUDERDALE	1132	0
FL	GAINESVILLE	784	0
FL	HIALEAH	1282	559
FL	JACKSONVILLE	3876	0
FL	MIAMI	5314	1390
FL	MIAMI BEACH	1846	437
FL	ORLANDO	1113	0
FL	ST PETERSBURG	1640	0
FL	TALLAHASSEE	829	0
FL	TAMPA	2326	0
FL	BROWARD COUNTY	2324	0
FL	DADE COUNTY	5399	875
FL	ESCAMBIA COUNTY	1015	0
FL	HILLSBOROUGH COUNTY	1655	0
FL	ORANGE COUNTY	1728	0
FL	PALM BEACH COUNTY	1850	0
FL	PASCO COUNTY	783	0
FL	POLK COUNTY	1238	0
FL	BREVARD CO. CONSORTIUM	1043	0
FL	PINELLAS CO. CONSORTIUM	1953	0
FL	VOLUSIA CO. CONSORTIUM	1685	0
GA	ALBANY	828	0
GA	ATLANTA	5030	0
GA	COLUMBUS	1361	0
GA	MACON	1161	0
GA	SAVANNAH	1560	0
GA	DE KALB COUNTY	1909	0
GA	GRTR NO. ATLANTA CONSORTIUM	2649	0
HI	HONOLULU	4746	0
IL	CHICAGO	40364	9053
IL	EAST ST LOUIS	984	0
IL	PEORIA	896	0

APPENDIX A - FY 1992 HOME BASIC FORMULA ALLOCATION AND RENTAL HOUSING PRODUCTION SET-ASIDE FOR UNITS OF GENERAL LOCAL GOVERNMENT WITH A BASIC FORMULA ALLOCATION OF $750,000 OR MORE

ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)
IL	ROCKFORD	907	0
IL	COOK COUNTY	4679	0
IL	DU PAGE COUNTY	1443	0
IL	MADISON COUNTY	1272	0
IL	ST CLAIR COUNTY	986	0
IL	LAKE COUNTY CONSORTIUM	1283	0
IN	EVANSVILLE	939	0
IN	FORT WAYNE	1074	0
IN	GARY	1456	0
IN	INDIANAPOLIS	4315	0
IN	SOUTH BEND CONSORTIUM	1068	0
IA	DES MOINES	1207	0
KS	KANSAS CITY	1105	0
KS	WICHITA	1680	0
KY	LEXINGTON-FAYETTE COUNTY	1414	0
KY	LOUISVILLE	2996	0
KY	JEFFERSON COUNTY	1172	0
LA	BATON ROUGE	2219	0
LA	NEW ORLEANS	7901	0
LA	SHREVEPORT	1529	0
LA	JEFFERSON PARISH	1849	0
MD	BALTIMORE	10333	2317
MD	ANNE ARUNDEL COUNTY	946	0
MD	BALTIMORE COUNTY	2463	767
MD	MONTGOMERY COUNTY	1842	436
MD	PRINCE GEORGES COUNTY	2767	379
MA	BOSTON	7838	2148
MA	BROCKTON	902	179
MA	CAMBRIDGE	1137	552
MA	FALL RIVER	1174	278
MA	LAWRENCE	952	237
MA	LOWELL	970	229
MA	LYNN	940	258
MA	NEW BEDFORD	1298	292
MA	SOMERVILLE	924	415
MA	SPRINGFIELD	1861	394
MA	WORCESTER	1627	730
MA	HOLYOKE CONSORTIUM	1035	219
MA	MALDEN CONSORTIUM	2027	1060
MA	NEWTON CONSORTIUM	1490	984
MA	QUINCY CONSORTIUM	993	594
MI	ANN ARBOR	870	358
MI	DETROIT	14658	0
MI	FLINT	1378	0
MI	GRAND RAPIDS	1367	0
MI	KALAMAZOO	751	0
MI	LANSING	1011	0
MI	SAGINAW	843	0
MI	GENESEE COUNTY	968	0
MI	OAKLAND COUNTY	1410	0
MI	WAYNE COUNTY	1487	0
MN	MINNEAPOLIS	3441	557
MN	ST PAUL	1878	280
MN	DAKOTA CO. CONSORTIUM	1927	0
MN	HENNEPIN CO. CONSORTIUM	1689	315
MS	JACKSON	1567	0
MO	KANSAS CITY	2986	0
MO	SPRINGFIELD	864	0
MO	ST LOUIS	5532	0
MO	ST LOUIS COUNTY	2574	0
NE	LINCOLN	901	0
NE	OMAHA	1987	0
NV	LAS VEGAS	1107	0
NV	RENO	761	0
NV	CLARK COUNTY CONSORTIUM	1499	0
NH	MANCHESTER	755	226
NJ	CAMDEN	1495	0
NJ	EAST ORANGE	1209	316
NJ	ELIZABETH	1409	703
NJ	IRVINGTON	897	581
NJ	JERSEY CITY	3688	919
NJ	NEWARK	7150	2048
NJ	PASSAIC	1110	760
NJ	PATERSON	2691	1475
NJ	TRENTON	1228	229
NJ	BERGEN COUNTY	3541	2250
NJ	BURLINGTON COUNTY	1039	0
NJ	CAMDEN COUNTY	1067	0
NJ	ESSEX COUNTY	1543	942
NJ	GLOUCESTER COUNTY	826	0
NJ	MIDDLESEX COUNTY	915	319
NJ	MONMOUTH COUNTY	1411	334
NJ	HUDSON CO. CONSORTIUM	4453	2108
NJ	OCEAN CO. CONSORTIUM	1356	237
NJ	UNION CO. CONSORTIUM	1669	998
NM	ALBUQUERQUE	2030	0
NY	ALBANY	1055	0
NY	BABYLON TOWN	806	361
NY	BUFFALO	5084	0
NY	ISLIP TOWN	1138	453

APPENDIX A - FY 1992 HOME BASIC FORMULA ALLOCATION AND RENTAL HOUSING PRODUCTION SET-ASIDE FOR UNITS OF GENERAL LOCAL GOVERNMENT WITH A BASIC FORMULA ALLOCATION OF $750,000 OR MORE

ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)
NY	MOUNT VERNON	1017	672
NY	NEW YORK	127981	66967
NY	ROCHESTER	2913	0
NY	SYRACUSE	1909	0
NY	UTICA	803	0
NY	YONKERS	2074	1292
NY	NASSAU COUNTY	4232	2530
NY	ORANGE COUNTY	796	0
NY	ROCKLAND COUNTY	945	270
NY	SUFFOLK COUNTY	2084	415
NY	WESTCHESTER COUNTY	1746	1088
NY	ERIE COUNTY CONSORTIUM	1021	0
NY	MONROE COUNTY CONSORTIUM	1348	487
NY	ONONDAGA CO. CONSORTIUM	833	0
NY	SCHENECTADY CONSORTIUM	1467	0
NC	CHARLOTTE	2124	0
NC	DURHAM	1047	274
NC	GREENSBORO	987	0
NC	RALEIGH	965	0
NC	WINSTON-SALEM	1052	0
OH	AKRON	1937	0
OH	CANTON	778	0
OH	CINCINNATI	4743	0
OH	CLEVELAND	7921	0
OH	COLUMBUS	4843	0
OH	DAYTON	2178	0
OH	SPRINGFIELD	775	0
OH	TOLEDO	2792	0
OH	YOUNGSTOWN	1112	0
OH	CUYAHOGA COUNTY	1612	0
OH	FRANKLIN COUNTY	913	0
OH	HAMILTON COUNTY	1443	0
OH	MONTGOMERY CO. CONSORTIUM	1293	0
OH	SUMMIT CO. CONSORTIUM	789	0
OH	TRUMBULL CO. CONSORTIUM	1045	0
OK	OKLAHOMA CITY	2504	0
OK	TULSA	2007	0
OR	CLACKAMAS COUNTY	860	0
OR	WASHINGTON COUNTY	1026	0
OR	EUGENE CONSORTIUM	1206	0
OR	PORTLAND CONSORTIUM	4297	0
PA	ALLENTOWN	784	0
PA	ERIE	1011	0
PA	PHILADELPHIA	18195	2946
PA	PITTSBURGH	4375	0
PA	READING	871	0
PA	ALLEGHENY COUNTY	3942	0
PA	BEAVER COUNTY	929	0
PA	CHESTER COUNTY	1144	0
PA	LANCASTER COUNTY	1071	0
PA	LUZERNE COUNTY	1107	0
PA	MONTGOMERY COUNTY	1489	0
PA	WASHINGTON COUNTY	1074	0
PA	WESTMORELAND COUNTY	1192	0
PA	BUCKS COUNTY CONSORTIUM	1542	0
PA	DELAWARE CO. CONSORTIUM	2502	0
PA	YORK COUNTY CONSORTIUM	1348	0
RI	PROVIDENCE	2151	0
SC	CHARLESTON	852	117
SC	COLUMBIA	827	0
SC	GREENVILLE COUNTY	1043	0
TN	CHATTANOOGA	1409	0
TN	KNOXVILLE	1560	0
TN	MEMPHIS	5800	0
TN	NASHVILLE-DAVIDSON COUNTY	2997	0
TX	AUSTIN	2868	0
TX	BEAUMONT	840	0
TX	BROWNSVILLE	1067	199
TX	CORPUS CHRISTI	1788	0
TX	DALLAS	6611	0
TX	EL PASO	3798	0
TX	FORT WORTH	2507	0
TX	HOUSTON	10757	0
TX	LAREDO	1245	264
TX	LUBBOCK	1066	0
TX	SAN ANTONIO	6711	0
TX	WACO	896	0
TX	HARRIS COUNTY	1779	0
TX	HIDALGO COUNTY	1926	0
TX	TARRANT COUNTY	934	0
UT	SALT LAKE CITY	1410	0
UT	SALT LAKE CO. CONSORTIUM	1553	0
UT	UTAH VALLEY CONSORTIUM	1190	0
VA	ALEXANDRIA	771	135
VA	NEWPORT NEWS	1089	0
VA	NORFOLK	2671	0
VA	PORTSMOUTH	1017	0
VA	RICHMOND	2146	0
VA	ROANOKE	756	0
VA	VIRGINIA BEACH	1160	0

APPENDIX A - FY 1992 HOME BASIC FORMULA ALLOCATION AND RENTAL HOUSING PRODUCTION SET-ASIDE FOR UNITS OF GENERAL LOCAL GOVERNMENT WITH A BASIC FORMULA ALLOCATION OF $750,000 OR MORE

ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)	ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)
VA	ARLINGTON COUNTY	1092	368	WI	MADISON	1266	284
VA	FAIRFAX COUNTY	1771	375	WI	MILWAUKEE	6261	0
WA	SEATTLE	3928	782	PR	BAYAMON MUNICIPIO	1124	0
WA	SPOKANE	1411	0	PR	CAGUAS MUNICIPIO	803	0
WA	TACOMA	1365	0	PR	CAROLINA MUNICIPIO	1057	0
WA	CLARK COUNTY	977	0	PR	MAYAGUEZ MUNICIPIO	1147	0
WA	KING COUNTY	2117	0	PR	PONCE MUNICIPIO	1481	0
WA	PIERCE COUNTY	1592	0	PR	SAN JUAN MUNICIPIO	6195	0
WA	SNOHOMISH COUNTY	1023	0				
					Total	813810	168652

APPENDIX B - FY 1992 HOME BASIC FORMULA ALLOCATION AND RENTAL HOUSING PRODUCTION SET-ASIDE FOR UNITS OF GENERAL LOCAL GOVERNMENT WITH A BASIC FORMULA ALLOCATION FROM $500,000 TO $750,000

ST	UNIT OF GENERAL LOCAL GOVERNMENT	HOME BASIC FORMULA ALLOCATION (in $1,000s)	AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)
AL	HUNTSVILLE	745	0
AL	TUSCALOOSA	690	0
AR	PINE BLUFF	533	0
CA	ALHAMBRA	601	194
CA	BURBANK	669	325
CA	CHULA VISTA	748	224
CA	COSTA MESA	647	306
CA	EL CAJON	649	105
CA	FULLERTON	611	198
CA	GARDEN GROVE	691	240
CA	HAWTHORNE	534	253
CA	LYNWOOD	569	369
CA	MODESTO	712	0
CA	NATIONAL CITY	576	280
CA	OCEANSIDE	616	0
CA	ONTARIO	561	91
CA	RICHMOND	734	421
CA	SALINAS	663	157
CA	SANTA CLARA	536	274
CA	SANTA ROSA	632	363
CA	SUNNYVALE	586	292
CA	TORRANCE	652	235
CA	VALLEJO	550	82
CO	AURORA	620	0
CO	BOULDER	587	0
CT	NEW BRITAIN	653	187
CT	STAMFORD	654	244
FL	DAYTONA BEACH	600	0
FL	HOLLYWOOD	612	0
FL	WEST PALM BEACH	573	0
FL	LEE COUNTY	529	0
FL	SARASOTA CO. CONSORTIUM	737	0
GA	ATHENS	533	0
GA	AUGUSTA	725	0
ID	BOISE	538	0
IL	DECATUR	642	0
IL	SPRINGFIELD	659	0
IL	WILL COUNTY	591	0
IN	BLOOMINGTON	539	121
IN	HAMMOND	546	0
IN	MUNCIE	636	0
IN	LAKE COUNTY	625	0
IA	DAVENPORT	642	0
KS	TOPEKA	607	0
KY	COVINGTON	572	0
LA	ALEXANDRIA	564	0
LA	LAFAYETTE	578	0
LA	MONROE	617	0
ME	PORTLAND	661	0
MI	PONTIAC	641	0
MI	MACOMB COUNTY	640	0
MN	DULUTH	617	0
MN	ST LOUIS CO. CONSORTIUM	697	0
NJ	ATLANTIC CITY	633	95
NJ	PERTH AMBOY	604	429
NJ	MORRIS COUNTY	709	238
NJ	SOMERSET COUNTY	568	184
NY	BINGHAMTON	576	0
NY	NEW ROCHELLE	701	446
NY	NIAGARA FALLS	707	0
NY	DUTCHESS COUNTY	678	93
NC	FAYETTEVILLE	681	0
NC	HIGH POINT	527	0
NC	WILMINGTON	558	0
OH	EAST CLEVELAND	604	0
OH	HAMILTON CITY	566	0
OH	LAKE COUNTY	549	0
OH	STARK COUNTY	561	0
OK	LAWTON	563	0
OR	SALEM	598	0
PA	HARRISBURG	658	0
PA	LANCASTER	576	0
PA	SCRANTON	668	0
PA	BERKS COUNTY	644	0
RI	PAWTUCKET	686	102
SC	GREENVILLE	561	0
SC	NORTH CHARLESTON	561	0
TX	ABILENE	563	0
TX	AMARILLO	728	0
TX	ARLINGTON	718	0
TX	GALVESTON	553	0
TX	MC ALLEN	593	0
TX	ODESSA	524	0
TX	WICHITA FALLS	560	0
TX	BEXAR COUNTY	595	0
VA	CHESAPEAKE	606	0
VA	HAMPTON	705	0
VA	HENRICO COUNTY	683	0
WA	SPOKANE COUNTY	704	0
WV	HUNTINGTON	527	0
WI	GREEN BAY	591	0
WI	RACINE	558	0
WI	MILWAUKEE COUNTY	639	0
PR	AGUADILLA	559	0
PR	ARECIBO	566	0
PR	GUAYNABO MUNICIPIO	541	0
	Totals	59190	6548

APPENDIX - C - FY 1992 HOME BASIC FORMULA ALLOCATION AND RENTAL HOUSING PRODUCTION SET-ASIDE FOR STATES

STATE	HOME BASIC FORMULA ALLOCATION		AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)	STATE	HOME BASIC FORMULA ALLOCATION		AMOUNT OF BASIC ALLOCATION SET ASIDE FOR RENTAL HOUSING PRODUCTION (in $1,000s)
ALABAMA	14751		0	NEBRASKA	3592		0
ALASKA	3000		34	NEVADA	3000		0
ARIZONA	4157		43	NEW HAMPSHIRE	3358		642
ARKANSAS	11164		0	NEW JERSEY	11052		4732
CALIFORNIA	42694		12621	NEW MEXICO	5022		102
COLORADO	6738		0	NEW YORK	31992		4667
CONNECTICUT	8952		4979	NORTH CAROLINA	22348		213
DELAWARE	3000		0	NORTH DAKOTA	3500	***	0
D.C.	7013	***	1224	OHIO	23899		46
FLORIDA	15214		321	OKLAHOMA	9970		0
GEORGIA	18398		388	OREGON	6928		0
HAWAII	3000		203	PENNSYLVANIA	22738		588
IDAHO	3479		0	RHODE ISLAND	3812		302
ILLINOIS	21805		1077	SOUTH CAROLINA	12356		59
INDIANA	12767		89	SOUTH DAKOTA	3559	***	0
IOWA	9645		92	TENNESSEE	14664		0
KANSAS	6561		0	TEXAS	33638		146
KENTUCKY	15390		0	UTAH	3000		0
LOUISIANA	13501		0	VERMONT	3500	***	234
MAINE	5153		0	VIRGINIA	13448		536
MARYLAND	6149		729	WASHINGTON	9318		39
MASSACHUSETTS	16237		8978	WEST VIRGINIA	9651		0
MICHIGAN	21325		141	WISCONSIN	12137		145
MINNESOTA	6909		87	WYOMING	3500	***	0
MISSISSIPPI	13863		153	PUERTO RICO	9634		0
MISSOURI	12538		190				
MONTANA	3981	***	0	Totals	587000		43800

*** $500,000 ADDED TO A STATE'S HOME BASIC FORMULA ALLOCATION BECAUSE THERE WAS NO UNIT OF GENERAL LOCAL GOVERNMENT ELIGIBLE FOR A HOME ALLOCATION WITHIN THE STATE

APPENDIX D - FY 1992 AREAS AND UNITS OF GENERAL LOCAL GOVERNMENT WHERE STATES MAY USE HOME FUNDS FOR NEW CONSTRUCTION [1]

ST	NAME		ST	NAME		ST	NAME		ST	NAME	
AK	JUNEAU BOROUGH		CA	SIMI VALLEY		IN	WEST LAFAYETTE		NJ	BLOOMFIELD	
AZ	SANTA CRUZ COUNTY		CA	THOUSAND OAKS		IA	IOWA CITY		NJ	CHERRY HILL	
CA	LOS ANGELES COUNTY	**	CA	TULARE		MD	FREDERICK COUNTY	**	NJ	CLIFTON	
CA	MONTEREY COUNTY	**	CA	UPLAND		MD	CALVERT COUNTY		NJ	EDISON	
CA	SANTA BARBARA COUNTY	**	CA	VENTURA		MD	CHARLES COUNTY		NJ	HAMILTON	
CA	SANTA CRUZ COUNTY	**	CA	VISTA		MD	TALBOT COUNTY		NJ	LONG BRANCH	
CA	SOLANO COUNTY	**	CA	WEST COVINA		MD	FREDERICK		NJ	MILLVILLE	
CA	SAN BENITO COUNTY		CA	WESTMINSTER		MA	BERKSHIRE COUNTY	**	NJ	NEW BRUNSWICK	
CA	SAN LUIS OBISPO COUNTY		CA	WHITTIER		MA	BRISTOL COUNTY	**	NJ	OLD BRIDGE TOWNSHIP	
CA	ANTIOCH		CA	WOODLAND		MA	ESSEX COUNTY	**	NJ	PARSIPPANY-TROYHILLS	
CA	BALDWIN PARK		CT	HARTFORD COUNTY	**	MA	HAMPDEN COUNTY	**	NJ	SAYREVILLE	
CA	BELLFLOWER		CT	MIDDLESEX COUNTY	**	MA	HAMPSHIRE COUNTY	**	NJ	VINELAND	
CA	BUENA PARK		CT	NEW HAVEN COUNTY	**	MA	MIDDLESEX COUNTY	**	NJ	WAYNE TOWNSHIP	
CA	CARSON		CT	LITCHFIELD COUNTY		MA	NORFOLK COUNTY	**	NJ	WOODBRIDGE	
CA	CHICO		CT	TOLLAND COUNTY		MA	PLYMOUTH COUNTY	**	NM	SANTA FE	
CA	CORONA		CT	WINDHAM COUNTY		MA	SUFFOLK COUNTY	**	NY	NASSAU COUNTY	**
CA	DAVIS		CT	BRISTOL		MA	WORCESTER COUNTY	**	NY	ROCKLAND COUNTY	**
CA	DOWNEY		CT	DANBURY		MA	BARNSTABLE COUNTY		NY	WESTCHESTER COUNTY	**
CA	ENCINITAS		CT	EAST HARTFORD		MA	FITCHBURG		NY	PUTNAM COUNTY	
CA	ESCONDIDO CITY		CT	FAIRFIELD		MA	FRAMINGHAM		NY	HUNTINGTON TOWN	
CA	FAIRFIELD		CT	GREENWICH		MA	GLOUCESTER		NY	NEWBURGH	
CA	GARDENA		CT	HAMDEN TOWN		MA	HAVERHILL		NY	POUGHKEEPSIE	
CA	IRVINE		CT	MANCHESTER		MA	LEOMINSTER		NY	WHITE PLAINS	
CA	LA MESA CITY		CT	MIDDLETOWN		MA	NORTHAMPTON		NC	FRANKLIN COUNTY	
CA	LAKEWOOD		CT	MILFORD		MA	PITTSFIELD		NC	GRANVILLE COUNTY	
CA	LANCASTER		CT	NORWALK		MA	SALEM		NC	CHAPEL HILL	
CA	LIVERMORE		CT	STRATFORD		MA	WESTFIELD		OH	BOWLING GREEN	
CA	LOMPOC		CT	WEST HARTFORD		MI	CLINTON TWP		PA	ABINGTON	
CA	MONTEBELLO		CT	WEST HAVEN		MS	ADAMS COUNTY		PA	LOWER MERION	
CA	MONTEREY PARK		DC	DISTRICT OF COLUMBIA		MS	LEFLORE COUNTY		PA	STATE COLLEGE	
CA	MOUNTAIN VIEW		FL	SUNRISE		MS	YAZOO COUNTY		RI	BRISTOL COUNTY	
CA	NAPA CITY		GA	CHEROKEE COUNTY		MO	ST LOUIS COUNTY	**	RI	CRANSTON	
CA	NEWPORT BEACH		GA	COWETA COUNTY		NH	HILLSBOROUGH COUNTY	**	RI	EAST PROVIDENCE	
CA	NORWALK		GA	TROUP COUNTY		NH	STRAFFORD COUNTY	**	RI	WOONSOCKET	
CA	ORANGE		GA	WALTON COUNTY		NH	CHESHIRE COUNTY		SC	CLARENDON COUNTY	
CA	PALO ALTO		HI	KAUAI COUNTY		NH	DOVER		TX	MAVERICK COUNTY	
CA	PICO RIVERA		HI	MAUI COUNTY		NH	NASHUA		TX	PHARR	
CA	RANCHO CUCAMONGA		IL	BERWYN		NH	ROCHESTER		VT	CHITTENDEN COUNTY	**
CA	REDONDO BEACH		IL	CHICAGO HEIGHTS		NJ	CUMBERLAND COUNTY	**	VT	BURLINGTON	
CA	ROSEVILLE		IL	DES PLAINES		NJ	MERCER COUNTY	**	VA	LOUDOUN COUNTY	
CA	SANTA CLARITA		IL	EVANSTON		NJ	MORRIS COUNTY	**	VA	CHARLOTTESVILLE	
CA	SANTA CRUZ		IL	OAK LAWN		NJ	PASSAIC COUNTY	**	VA	SUFFOLK	
CA	SANTA MARIA		IL	OAK PARK		NJ	HUNTERDON COUNTY		WI	WASHINGTON COUNTY	
CA	SANTEE		IL	SKOKIE		NJ	SUSSEX COUNTY				

** INCLUDES AS ELIGIBLE FOR NEW CONSTRUCTION ONLY THE PART OF THE COUNTY REMAINING AFTER TAKING OUT METROPOLITAN CITIES, URBAN COUNTIES, AND CONSORTIA.

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[1] STATES MAY ALSO USE THIER HOME FUNDS FOR NEW CONSTRUCTION IN JURISDICTIONS RECEIVING RENTAL HOUSING PRODUCTION SET-ASIDES IN APPDENDICES A AND B

[FR Doc. 92-743 Filed 1-10-92; 8:45 am]
BILLING CODE 4210-29-C

VOL
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federal register

Monday
January 13, 1992

Part V

Department of Transportation

Federal Transit Administration

Recommended Fire Safety Practices for Transit Bus and Van Materials; Notice

VOL 57 ISS 8 JA 13 1992 UMI

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket 90-A]

Recommended Fire Safety Practices for Transit Bus and Van Materials Selection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice, request for comments.

SUMMARY: The Federal Transit Administration (FTA) after receiving public comments from a published notice, is recommending practices for testing flammability and smoke emission characteristics of materials used in the construction of transit buses and vans. These recommendations are based on the Volpe National Transportation Systems Center's "Proposed Guidelines for Flammability and Smoke Emission Specifications", a version of which the rapid rail transit and light rail transit industry uses on a voluntary basis. The guidelines have been prepared to enable the transit industry to select materials for buses and vans that minimize the effect of fires. In addition, FTA is requesting additional comment on testing for fire retardants in foam materials under certain conditions since established tests are intended for textile materials.

DATES: Effective date: January 13, 1992. Comments relating to the suitability of test methods for evaluating retention of fire retardant chemicals in foam materials must be submitted on or before March 13, 1992.

ADDRESSES: Comments should be sent to Docket 90-A, Room 9316, Office of Chief Counsel, Federal Transit Administration, 400 7th St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Franz K. Gimmler, Deputy Associate Administrator for Safety, or Roy Field, Office of Safety, (202) 366-2896.

SUPPLEMENTARY INFORMATION:

A. Overview

This notice provides recommendations for testing flammability and smoke emission characteristics of materials used in the construction of transit buses and vans. The recommendations are set forth in a table, printed below. Before that table, however, is a "Background" section explaining the genesis of this notice and discussing the comments to the docket; a "Scope" section indicating that the recommendations are designed to affect the selection practices for materials procured; and an "Application" section indicating the types of vehicles covered by the notice. The next section deals with the recommended procedures, and is followed by the table. Following the table is a list of notes referenced in the table, and following that are the sources of test procedures listed in the table. The final section includes definitions of terms used in the notes and the table.

B. Background

On July 2, 1990 the Federal Transit Administration (FTA) published a notice and request for public comment on "Recommended Fire Safety Practices for Transit Bus and Van Materials Selection," (55 FR 27402). That notice proposed recommendations for testing the flammability and smoke emission characteristics of materials used in the construction of transit buses and vans. Like the "Recommended Fire Safety Practices for Heavy Rail and Light Rail Transit Materials Selection," on which they are based, these Recommended Practices are not regulatory in nature. Rather, these are voluntary Recommended Practices that are intended to be used to assess the fire risk of materials used in transit buses and vans. They are small scale laboratory tests intended for use in screening materials and, as such, do not duplicate actual fire conditions. However, their use will result in the selection of more fire resistant materials, which will minimize the fire threat in transit buses and vans and thereby reduce the injuries and property damage resulting from transit vehicle fires. Moreover, issuance of the notice at this time is consistent with the Department of Transportation's position on promoting safety in transportation.

Similar guidelines have been published by the Federal Railroad Administration for railroad passenger cars and in the National Fire Protection Association NFPA 130 Standard for Fixed Guideway Transit Systems. FTA plans in the future, if necessary, to update these Recommended Fire Safety Practices to respond to the National Highway Traffic Safety Administration research and rulemaking relative to Federal Motor Vehicle Safety Standard No. 302. In response to comments, FTA has made three major substantive changes to the Recommended Practices. These changes delete the requirement for vehicle windows to be included in the Recommended Practices; revise the floor covering requirement to meet only one test, namely, the E-648; and incorporate an aging test for seat cushions. These changes, and two minor editorial changes, are discussed more fully below.

Twelve organizations responded to the July 2, 1990 Notice. Responding organizations included seven materials suppliers, two transit authorities, one seating manufacturer, a state Department of Transportation and a consulting firm. All but one of the commenting organizations fully supported the adoption of the Recommended Practices. After careful review of the responses, FTA has chosen not to adopt some comments. For the most part, the comments that were not adopted concerned the following: Inclusion of toxicity requirements for vehicle materials, expanding the scope of the Recommended Practices and modifying certain aspects of the performance criteria. FTA's goal in issuing the Recommended Practices is to suggest a means for providing the traveling public and transit employees with the highest practical degree of safety. It is FTA's opinion that the comments not adopted would not further this goal.

The only response which did not fully support the adoption of the Recommended Practices was provided by a seating manufacturer. The comments provided by this responder were concerned with the availability of suitable materials. This included product performance, reliability, and cost. Similar concerns were also raised and addressed in the development of the Recommended Practices for rail vehicles. As evidenced by their adoption into rail transit authorities, there are suitable materials available at no major increase in cost.

Two commentors suggested the inclusion of toxicity requirements. FTA recognizes the need to address this issue, but because of its complexity, is not able to do so in the Recommended Practices. Instead, in an effort to respond to transit industry needs FTA initiated a program to develop guidelines for assessing the combustion toxicity of materials. Recognizing the scope and extreme complexity of this issue, FTA has requested the National Research Council's (NRC) Transportation Research Board and Materials Advisory Board of the Commission on Engineering and Technical Systems to assist in addressing this issue. In response to this request, the NRC has established a Committee on Toxicity Hazards of Materials Used in Rail Transit Vehicles. This committee, consisting of representatives of industry and academia, is reviewing the present state of knowledge of combustion toxicity, identifying specific toxicity hazards related to the use of polymeric materials

in transit vehicles, and recommending a plan of action for developing guidelines for testing materials.

In regard to expanding the scope of the Recommended Practices, a transit system recommended that the Recommended Practices include buses and vans that are remanufactured or rehabilitated. FTA stated in the July 2, 1990 **Federal Register** notice that the Recommended Practices will apply to the retrofit of existing vehicles. This terms is meant to include remanufactured or rehabilitated vehicles.

Several commenters (3) suggested changes to the performance criteria. In one instance, the proposed change would make the seat cushion smoke emission criteria more restrictive. This change is not significant from a safety perspective but could possibly limit the availability of seat cushion materials. A second suggestion concerned providing more restrictive standards for wall panels. The flammability and smoke emission characteristics of phenolic resins for fiberglass reinforced plastics were cited as results that are achievable. However, specifying the use of one particular family of materials, such as a phenolic, will result in a requirement that is too restrictive. Finally, a third commenter suggested that the specific optical smoke density criteria cited for use with the ASTM E–662 test for tile floor covering is too restrictive and tile floor covering should meet the same criteria as carpet. This is reasonable, and the Recommended Practices have been modified accordingly.

Two commenters addressed the issue of the retention of fire retardant characteristics of foam materials after the materials have been in service for some time. One commenter suggested that an endurance test be required to evaluate the retention of the fire safety characteristics after the seat cushion has been subjected to 100,000 compression-release cycles. In response to this comment, the Recommended Practices have been modified to incorporate testing according to the ASTM D–3574 Dynamic Fatigue Test, I_5, for cellular foams. Upon completion of this test, the foam materials will then be tested for surface flammability and smoke emission. A new Footnote 2 has been created for this purpose, and the other Footnotes renumbered. Another commenter suggested that to address the issue of the retention of fire retardant chemicals after the exposure of the seating materials to moisture, Footnote 3 be modified to delete the words "if appropriate". For upholstery materials this is reasonable, and the words "if appropriate" have been deleted. The test specified in Footnote 3, FED–STD–191A Textile Test Methods 5830, is intended for textile materials and not foams, therefore the existing footnote is not applicable to foams.

We are not aware of tests in this area and are therefore requesting comments on the existence and availability of suitable test methods for evaluating the retention of fire retardant chemicals in foams after exposure to moisture. Any such comments should be sent to Docket 90–A, room 9316, UCC–10, 400 7th Street, SW., Washington, DC 20590.

Another commenter suggested that covering a seat cushion with its fire block fabric "is the more effective combination from both a cost and safety standpoint." A major concern and cost to transit systems is the vandalism/slashing of vehicle seats. The slashing of seats and the exposure of the seat cushion to fire, totally negates the value of a fire blocking fabric and makes it necessary to test each component of the seat.

In regard to the flammability and smoke emission requirements for windows, three commenters requested that windows not be included in the Recommended Practices. They noted that not only were windows addressed previously in the FTA document "Baseline Advanced Design Transit Coach Specifications" (White Book), but windows in buses are not a major fire contributor. Plastic vehicle windows have not been reported to be the initiating or first vehicle material ignited. Furthermore, plastic windows melt and fall out of the vehicle during the fire. This melt and fall out characteristic has been noted in the FTA Fire Life Safety Exercises. Finally, the environment in which buses operate require that the windows be durable in that they be resistant to both weather, vandalism, etc. In light of the above, the requirement for windows has been deleted.

Recommended Practices

A. Scope

The recommended Fire Safety Practices for Transit Bus and Van Materials Selection are directed at improving the selection practices for interior materials procured for new vehicles and the retrofit of existing vehicles. Adoption of these recommended fire safety practices will help to minimize the fire threat in these vehicles and, thereby, reduce the injuries and damage resulting from fires.

B. Application

This document provides recommended fire safety practices for testing the flammability and smoke emission characteristics of materials used in the construction of transit buses and vans. Vehicles considered as transit buses and vans are those used for urban, suburban, rural and specialized transit services. Types covered by these recommended practices are revenue (passenger carrying) vehicles that are placed in mass transit service by a recipient of Federal funds from the Federal Transit Administration. Some of the functions in the recommendations may not apply to all vehicles (*e.g.*, not all vehicles have windscreens).

C. Recommended Test Procedures and Performance Criteria

(a) The materials used in transit buses and vans should be tested according to the procedures and performance criteria set forth in Table 1.

(b) Transit agencies should require certification that combustible materials to be used in the construction of vehicles have been tested by a recognized testing laboratory, and that the results are within the recommended limits.

TABLE 1.—RECOMMENDATIONS FOR TESTING THE FLAMMABILITY AND SMOKE EMISSION CHARACTERISTICS OF TRANSIT BUS AND VAN MATERIALS

Category and function of material	Test procedure	Performance criteria
Seating:		
Cushion [1,2,3,4,5]	ASTM D–3675	$I_5 < 25$.
	ASTM E–662	D_s (1.5) < 100; D_s (4.0) < 200.
Frame [1,3,5]	ASTM E–162	$I_5 < 35$.
	ASTM E–662	D_s (1.5) < 100; D_s (4.0) < 200.
Shroud [1,5]	ASTM E–162	$I_5 < 35$.
	ASTM E–662	D_s (1.5) < 100; D_s (4.0) < 200.

TABLE 1.—RECOMMENDATIONS FOR TESTING THE FLAMMABILITY AND SMOKE EMISSION CHARACTERISTICS OF TRANSIT BUS AND VAN MATERIALS—Continued

Category and function of material	Test procedure	Performance criteria
Upholstery [1,2,4,5]	FAR 25.853 (Vertical)	Flame Time ≤ 10 sec; burn length ≤6 inch.
	ASTME-662	D_s (4.0) < 250 coated.
		D_s (4.0) < 100 uncoated.
Panels:		
Wall [1,5]	ASTM E-162	I_s < 35.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.
Ceiling [1,5]	ASTM E-162	I_s < 35.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.
Partition [1,5]	ASTM E-162	I_s < 35.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.
Windscreen [1,5]	ASTM E-162	I_s < 35.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.
HVAC Ducting [1,5]	ASTM E-162	I_s < 35.
	ASTM E-662	D_s (4.0) < 100.
Light Diffuser [3]	ASTM E-162	I_s < 100.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.
Flooring:		
Wheel Well and Structural [6]	ASTM E-119	Pass.
Carpeting [7]	ASTM E-648	C.R.F. ≤ 0.5w/cm².
Insulation:		
Thermal [1,2,5]	ASTM E-162	I_s < 25.
	ASTM E-662	D_s (4.0) < 100.
Acoustic [1,2,5]	ASTM E-162	I_s < 25.
	ASTM E-662	D_s (4.0) < 100.
Miscellaneous:		
Fire Wall [6]	ASTM E-119	Pass.
Exterior Shell [1,5]	ASTM E-162	I_s < 35.
	ASTM E-662	D_s (1.5) < 100; D_s (4.0) < 200.

[*] Refers to Notes on Table 1.

Notes

1. Materials tested for surface flammability should not exhibit any flaming running or flaming dripping.

2. The surface flammability and smoke emission characteristics of seat cushion materials, should be demonstrated to be permanent after testing according to ASTM D–3574 Dynamic Fatigue Tests I_s (Procedure B).

3. The surface flammability and smoke emission characteristics of a material should be demonstrated to be permanent by washing according to FED–STD–191A Textile Test Method 5830.

4. The surface flammability and smoke emission characteristics of a material should be demonstrated to be permanent by dry-cleaning, if appropriate, according to ASTM D–2724. Materials that cannot be washed or dry cleaned should be so labeled and should meet the applicable performance criteria after being cleaned as recommended by the manufacturer.

5. ASTM E–662 maximum test limits for smoke emission (specific optical density) should be measured in either the flaming or non-flaming mode, depending on which mode generates the most smoke.

6. Flooring and fire wall assemblies should meet the performance criteria during a nominal test period determined by the transit property. The nominal test period should be twice the maximum expected period of time, under normal circumstances, for a vehicle to come to a complete, safe stop from maximum speed, plus the time necessary to evacuate all passengers from a vehicle to safe area. The nominal test period should not be less than 15 minutes. Only one specimen need be tested. A proportional reduction may be made in dimensions of the specimen provided that it represents a true test of its ability to perform as a barrier against vehicle fires. Penetrations (ducts, piping, etc.) should be designed against acting as conduits for fire and smoke.

7. Carpeting should be tested in accordance with ASTM E–648 with its padding, if the padding is used in actual installation.

8. Arm rests, if foamed plastic, are tested as cushions.

9. Testing is performed without upholstery.

D. Referenced Fire Standards

The source of test procedures listed in Table 1 are as follows:

(1) Leaching Resistance of Cloth, FED–STD–191A Textile Test Method 5830.

Available from: General Services Administration Specifications Division, Building 197, Washington Navy Yard, Washington, DC 20407.

(2) Federal Aviation Administration Vertical Burn Test, FAR–25–853.

Available from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(3) American Society for Testing Materials (ASTM)

(a) Surface Flammability of Materials Using a Radiant Heat Energy Source, ASTM E–162;

(b) Surface Flammability for Flexible Cellular Materials Using a Radiant Heat Energy Source, ASTM D–3675;

(c) Fire Tests of Building Construction and Materials, ASTM E–119;

(d) Specific Optical Density of Smoke Generated by Solid Materials, ASTM E–662;

(e) Bonded and Laminated Apparel Fabrics, ASTM D–2724;

(f) Flexible Cellular Materials-Slab, Bonded, and Molded Urethane Foams, ASTM D–3574.

Available from: American Society for Testing and Materials; 1916 Race Street, Philadelphia, PA 19103.

In all instances, the most recent issue of the document or the revision in effect at the time of request should be used in the evaluation of the material specified herein.

Definition of Terms

1. Flame spread index (I_s) as defined in ASTM E–162 is a factor derived from the rate of progress of the flame front (F_s) and the rate of heat liberation by the material under test (Q), such that $I_s = F_s \times Q$.

2. Specific optical density (D_s) is the optical density measured over unit path length within a chamber of unit volume produced from a specimen of unit surface area, that is irradiated by a heat flux of 2.5 watts/cm^2 for a specified period of time.

3. Surface flammability denotes the rate at which flames will travel along surfaces.

4. Flaming running denotes continuous flaming material leaving the site of the burning material as its installed location.

5. Flaming dripping denotes periodic dripping of flaming material from the site of burning material at its installed location.

Issued on: January 7, 1992.

Brian W. Clymer,

Administrator.

[FR Doc. 92-729 Filed 1-10-92; 8:45 am]

BILLING CODE 4910-57-M

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Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. A cumulative list of Public Laws for the first session was published in Part II of the **Federal Register** on January 2, 1992.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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1, 2 (2 Reserved)	(869-013-00001-3)	$12.00	Jan. 1, 1991
3 (1990 Compilation and Parts 100 and 101)	(869-013-00002-1)	14.00	[1] Jan. 1, 1991
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1200-End, 6 (6 Reserved)	(869-013-00006-4)	18.00	Jan. 1, 1991
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27-45	(869-013-00008-1)	12.00	Jan. 1, 1991
46-51	(869-013-00009-9)	17.00	Jan. 1, 1991
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

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federal register

Tuesday
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VOL 57 ISS 9 JA 14 1992 UMI

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Title 3—

The President

Proclamation 6399 of January 10, 1992

Year of the Gulf of Mexico, 1992

By the President of the United States of America

A Proclamation

More than a vast repository of marine and wildlife and other natural wonders, the Gulf of Mexico is also a major factor in the economic life of the United States. This year, we reaffirm our commitment to protecting and preserving this magnificent body of water.

The Gulf of Mexico enchants because it is full of life and beauty. A vital habitat for shorebirds and for much of the Nation's migratory waterfowl, the Gulf region is replete with colors and sounds that are as rich and varied as each evening's sunset. Indeed, few sights can compare to that of majestic whooping cranes winging over Gulf waters to wintering grounds on the Texas coast. Many a visitor has been delighted to watch fishing boats dock at the bustling ports of Florida, Louisiana, Mississippi, and Alabama—only to unload the day's catch and to prepare for another turn at sea. Even amateur anglers know the thrill of casting into Gulf waters, and millions of vacationing Americans have enjoyed the region's warm, sandy beaches.

While we celebrate the natural splendor and the unique cultural heritage of the Gulf coast and barrier islands, we also acknowledge their vital role in our Nation's economy. The fishing, naval defense, and other maritime industries that employ millions of people from Brownsville, Texas, to Key West, Florida, also help to promote the economic prosperity and security of our entire country. Natural gas and oil extracted from the Gulf floor are vital sources of energy for our homes, farms, factories, and automobiles. A significant percentage of all U.S. shipping passes through ports on the Gulf of Mexico, and each year the region generates billions of dollars in revenue through travel and tourism. To ensure that the Gulf remains a viable natural resource for future generations, the United States is determined to reconcile legitimate needs for economic development with our responsibility to protect its beaches, estuaries, fisheries, and wildlife.

The Congress, by Public Law 102–178, has designated 1992 as the "Year of the Gulf of Mexico" and has authorized and requested the President to issue a proclamation in observance of this year.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim 1992 as the Year of the Gulf of Mexico. I invite all Americans to observe this year with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of January, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

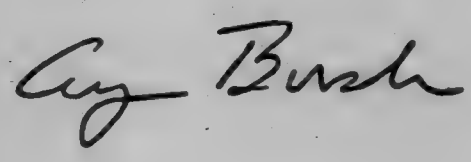

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5 CFR P

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FR 6208

Rules and Regulations

Federal Register
Vol. 57, No. 9
Tuesday, January 14, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 591 and 930

RIN 3206-AE37

Programs for Specific Positions and Examinations (Miscellaneous); Appointment, Pay, and Removal of Administrative Law Judges

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing the appointment, pay, and removal of administrative law judges (ALJ's), as required by section 104 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Public Law 101-509, enacted November 5, 1990. These regulations update and adopt interim regulations, published February 14, 1991, prescribing in which of three levels—AL-3, AL-2, or AL-1—each administrative law judge position shall be placed. These regulations also outline generally the qualifications required for appointment to each level of the new administrative law judge pay system. The regulations continue the basic thrust of previous regulations—to make administrative law judges largely independent in matters of tenure and compensation as required by the Administrative Procedure Act (APA) of 1946.

EFFECTIVE DATE: February 13, 1992.

FOR FURTHER INFORMATION CONTACT: C. Lee Willis, Assistant Director for Administrative Law Judges, (202) 606-0810 or (FTS) 266-0810.

SUPPLEMENTARY INFORMATION: On February 14, 1991, OPM published interim regulations establishing the new administrative law judge pay system (56 FR 6208). Interested parties were given until April 15, 1991, to submit written comments on the interim regulations.

Written comments were reviewed by OPM from 18 individual administrative law judges, one chief administrative law judge, two Members of Congress, and representatives of four administrative law judge associations, to wit, the Federal Administrative Law Judges Conference (FALJC), The Forum of U.S. Administrative Law Judges (Forum), the Association of Administrative Law Judges in the Department of Health and Human Services (Association of ALJ's), and the National Conference of Administrative Law Judges (NCALJ).

The comments generally supported the overall change in the administrative law judge pay system and regarded it as a long-awaited and needed change. The comments of the four groups are summarized below and are followed by a brief discussion on points and issues raised. All comments were reviewed and considered in preparing the final regulations.

1. **Comments by Individual Administrative Law Judges**

Most of the individual judges objected to the conversion provisions being made effective for all judges on the same date, with no credit being given for total time as an ALJ or time served in a certain step of the former General Schedule grade. There was, however, very little agreement as to how the individual judges should have been converted from the General Schedule pay system to the new administrative law pay system.

Several judges objected to OPM implementing the new pay system absent the usual comment and rule implementation step. The overriding concern among this small group of judges is that OPM elected to waive the general notice period of proposed rule-making and made the regulations effective at once rather than 30 days hence. This deprived one commenter of AL-3, rate B, upon conversion. He contended APA requires an effective date of not less than 30 days after publication of regulations.

Another judge contended that OPM erred in not observing the usual 30-day "waiting period" after publication of the interim regulations to implement the new ALJ pay system, contending that OPM did not show sufficient good cause in waiving the usual 30-day delay.

One judge contended she "lost" money because of the ALJ pay conversion. She stated that the final regulations should include the following language at § 930.210(k): "time already served in Step X as of date of conversion, February 10, by an incumbent GS-16 ALJ and converted under paragraph (k) of this section over and above the 104-week waiting period of General Schedule shall be creditable in the computation of the new AL-3 waiting period."

Two judges advocated an extra rate for hearing office chief judges above that allowed by a straight-line table conversion. This would be in recognition of additional hearing office chief administrative and managerial duties and responsibilities.

One judge suggested that § 930.210(e) be revised to delete the requirement that judges can "advance only one level at a time." As the regulations stand now, only AL-2 candidates, now numbering only about 15 to 17, can qualify for AL-1 positions.

Another judge suggested that all ALJ's be exempt from the dual compensation restrictions of the current law because a valuable resource is denied the ALJ corps in the form of retired military judges.

2. **Comments by a Chief Administrative Law Judge**

A chief administrative law judge objected to § 930.210(e). His concern was that the requirement to serve at least 1 year at AL-2 or equivalent level prior to promotion to AL-1 would result in an extremely small pool of candidates for AL-1 positions. He suggested that the statement, "unless OPM approves a waiver to this requirement," be added. He also believes the language of § 930.210(g)(1) is confusing as it might apply to reinstated judges because this language might allow reinstated judges to advance too quickly.

3. **Comments by Administrative Law Judge Associations**

FALJC offered several suggested additions and modifications to the interim pay regulations that it feels are necessary to ensure that the interim regulations fully comport with FEPCA. Some suggested changes pertain only to language requirements due to the change from GS to AL pay plans. Other suggested changes pertain directly to pay administration and include the following: (1) Delete § 930.210(e), which provides that "judges must serve at least 1 year in each AL level, in an equivalent

or higher level in positions in the Federal service, before advancing to the next higher level and may advance only one level at a time." (2) Modify § 930.210(g)(1) and (2) to provide agencies with Senior Executive Service-type flexibility in hiring ALJ's.

Comments submitted by the Forum mirror almost to the word the comments submitted by FALJC, as synopsized just above and not reiterated here.

NCALJ contends that Congress, by passing FEPCA, intended to put an end to the pay disparity between GS–15 and GS–16 ALJ's and says that OPM has perpetuated this disparity by giving preferential treatment to those judges who achieved GS–16 status before conversion. NCALJ recommends that OPM change the interim regulations to provide for conversion of all judges from the former GS schedule to the new AL schedule on the basis of years of service as an ALJ rather than on the basis of grade/step as of February 10.

The Association of ALJ's advocates that the waiting period for all rates of AL–3 be uniform, i.e., the waiting period of 104 weeks from rate D to E and from rate E to F should be 52 weeks.

4. Comments by Two Members of Congress

One Member endorsed the comments by the Association of ALJ's, as synopsized just above, and forwarded those comments to OPM.

The other Member endorsed comments furnished by two Social Security Administration ALJ's. He further commented that the judges' suggestions would be more in line with the intent of Congress and fairer to all judges affected.

Response to Comments

In making a preliminary decision on the pay conversion plan for administrative law judges incorporated in the interim regulations published in the **Federal Register** on February 14, 1991, OPM carefully considered various issues, problems, and views, as described above. Comments received prior to the publication of the interim regulations were solicited on an informal level. These comments, as well as the comments summarized just above, were reviewed and given due consideration. With one exception, the final regulations do not deviate from the interim regulations. The aim was to follow congressional intent as much as possible by establishing a new pay system for administrative law judges that would be fair and equitable to the largest number of judges at the earliest practicable date and still be consistent with FEPCA provisions and long-standing personnel management practices regarding advancement. It is important to note that comments were received from only 18 of the more than 1,110 administrative law judges. It is also important to note that the primary concern expressed was the single date for conversion and that there was little agreement as to how we should have done the conversion. We believe we took the most even-handed approach that benefitted the most judges.

As previously published and duly noted, OPM found good cause existed for waiving the general notice of proposed rulemaking and for making the interim regulations effective in less than 30 days. To establish other than a single effective date for all administrative law judges would have created serious administrative problems. No one best-fit date could be reasonably determined. No one lost money under the conversion plan. Therefore, under the pay plan conversion schedule, administrative law judges were converted to the new pay system on the basis of their grade and step under the General Schedule on the effective date of conversion, the first day of the first pay period beginning on or after February 10, 1991—the earliest date allowed under Executive Order 12748. Applicable waiting periods for AL–3 advancement to higher rates were to begin upon appointment (assignment) to a position in AL–3 (Congressional Record—House, H–10701, October 20, 1990).

The new schedule ensured that each administrative law judge received a minimum increase of at least 8 percent above the scheduled rate in effect in 1990. As an earlier version of the pay plan considered by OPM was based on an anticipated General Schedule increase of 3.5 percent, the final conversion plan was revised upward to reflect the 4.1 percent increase ultimately approved. The final plan converted judges at certain steps of GS–15 and GS–16 to one rate higher than previously allowed. It was not possible to provide equal pay increases to all administrative law judges converted from 25 different pay rates under the General Schedule to 8 pay rates at 3 levels under the new AL pay system for administrative law judges. Some judges of necessity fared better than others as a result of the pay conversion being made effective on the earliest possible date benefitting, overall, the most judges.

As to the comments that hearing office chief judges should receive an extra rate of pay within the AL–3 level for additional managerial and administrative responsibilities performed, the final regulations provide that an agency may on a one-time basis, advance an AL–3 administrative law judge with added administrative and managerial responsibilities one rate beyond that allowed under current pay rates for AL–3, up to the maximum rate F.

We see no compelling reason to change the provision in § 930.210(e) that judges may advance only one level at a time. Such a requirement is consistent with the fact that three levels of work were established, and each level reflects more progressive managerial responsibility. Exemption of judges from the dual compensation restrictions of the current law is unnecessary because an amendment made by FEPCA now permits exceptions under appropriate circumstances.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act these regulations will not have a significant economic impact on a substantial number of small entities because they affect only the personnel provisions under which Federal administrative law judges are appointed, paid, and employed.

List of Subjects

5 CFR Part 591

Government employees, travel and transportation expenses, wages.

5 CFR Part 930

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM's interim regulations under 5 CFR parts 591 and 930 published on February 14, 1991, at 56 FR 6208, are adopted as final with the following changes:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

1. The authority citation for subpart B of part 930 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5372, 7521

2. In § 930.210, paragraphs (h) through (l) are redesignated as (i) through (m), respectively; a new paragraph (h) is added to read as follows; and in the newly redesignated paragraph (k), the reference to "paragraph (k) of this section" is removed and replaced with a reference to "paragraph (l) of this section."

§ 930.210 Pay.

* * * * *

(h) Subject to the approval of OPM, and on the appropriate recommendation of the employing agency, an agency may on a one-time basis, advance an administrative law judge in a position at AL–3 with added administrative and managerial duties and responsibilities one rate beyond that allowed under current pay rates for AL–3, up to the maximum Rate F.

* * * * *

[FR Doc. 92–876 Filed 1–13–92; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1425

Cooperative Marketing Associations; Eligibility Requirements for Price Support

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The proposed rule published in the **Federal Register** on October 31, 1991 (56 FR 56031), to amend the regulations at 7 CFR part 1425 is adopted as a final rule. The adopted rule changes the regulations governing cooperative marketing associations to provide minimum financial requirements for cooperatives to be approved to participate in the price support program on behalf of their members with respect to canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed. The adopted requirements are similar to those financial requirements for cooperative marketing associations marketing other commodities as specified in 7 CFR 1425.10.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Richard M. Ackley, Chief, Cooperative and Analysis Branch; Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, 202–720–6689.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under U.S. Department of Agriculture (USDA) procedures in accordance with provisions of the Secretary's Memorandum No. 1512–1 and Executive Order 12291, and has been determined to be "not major" because these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, no Environmental Assessment or Environmental Impact Statement is needed.

The title and number of the Federal assistance program to which this proposed rule applies are: Title—Commodity Loans and Purchases—10.051; as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Regulations governing the eligibility of cooperative marketing associations to receive price support loans and purchases from CCC are set forth in 7 CFR part 1425. Those regulations, at 1425.10, provide minimum net worth requirements for cooperative marketing associations approved to participate in the price support program on behalf of their members. These net worth requirements previously did not include provisions for qualifying cooperatives for the marketing of canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed. So that cooperative marketings of those crops would not be excluded from price support, a proposed rule was published on October 31, 1991 to add net worth provisions for those crops. The comment period ended on December 2, 1991; no comments were received. There appears no reason to modify the proposed rule as it applies to the matter of net worth. Accordingly the net worth provisions have been adopted as proposed with one grammatical change. In addition, the authority citation has been amended to more accurately reflect the statutory basis for these regulations.

Information collection requirements contained in this regulation (7 CFR part 1425) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control No. 0560–0040. Public reporting burden for the collection of information contained in this regulation is estimated to range from 30 minutes to 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0040), Washington, DC 20503.

List of Subjects in 7 CFR Part 1425

Cooperatives, Price support programs, Reporting and recordkeeping requirements, Financial requirements.

Final Rule

Accordingly, 7 CFR part 1425 is amended as follows:

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

1. The authority citation for 7 CFR part 1425 is revised to read as follows:

Authority: 7 U.S.C. 1421 *et seq.*; 15 U.S.C. 714b, 714c, and 714j.

2. 7 CFR 1425.10(b)(3) is revised to read as follows:

§ 1425.10 Financial condition.

* * * * *

(b) * * *

(3)(i) *The net worth of the cooperative.* The cooperative shall be considered to have a sufficient net worth if such net worth is equal to the product of an amount per unit for a commodity (as set forth in table 1) multiplied by the total number of units of such commodity handled by the cooperative during the preceding marketing year, or, if the cooperative is in its first full marketing year of

operations, the estimated quantity of such commodity that it will handle during such year. If a cooperative has not been approved to participate in a price support program for each of three crop years immediately preceding the crop year for which approval is being considered, CCC may establish the unit total of a commodity to be used in determining the sufficiency of the cooperative's net worth.

(ii) If the amount of the net worth of the cooperative is between 34 and 99 percent of the amount computed in accordance with paragraph (b)(3)(i) of this section and the cooperative is determined by CCC to be otherwise financially sound, CCC may determine that the operation of the cooperative is being carried out in a financially sound basis. Such a determination by CCC may be made if (A) the board of directors of the cooperative agrees to make a capital retain in the amount set forth in Table 2 with respect to each unit of the commodity delivered to the cooperative until the net worth of the cooperative is at least equal to the amount computed in accordance with paragraph (b)(3)(i) of this section and (B) the cooperative agrees to deduct from pool proceeds the full amount of the estimated expenses of handling the commodities received by the cooperative. The failure to carry out such agreements shall be grounds for terminating a cooperative's approval.

TABLE 1

Commodity	Unit	Amount per unit
Barley	Bushel	.13
Canola	Hundredweight	.62
Corn	Bushel	.13
Cotton	Bale	6.40
Flaxseed	Hundredweight	.62
Honey	Hundredweight	1.90
Mustard Seed	Hundredweight	.62
Oats	Bushel	.13
Rapeseed	Hundredweight	.62
Rice	Hundredweight	.52
Rye	Bushel	.13
Safflower	Hundredweight	.62
Seed Cotton (lint basis).	Pounds	.006
Sorghum	Hundredweight	.19
Soybeans	Bushel	.43
Sunflower Seed	Hundredweight	.62
Wheat	Bushel	.15

TABLE 2

Commodity	Unit	Amount per unit
Barley	Bushel	.07
Canola	Hundredweight	.32
Corn	Bushel	.07
Cotton	Bale	3.20
Flaxseed	Hundredweight	.32
Honey	Hundredweight	.95

TABLE 2—Continued

Commodity	Unit	Amount per unit
Mustard Seed	Hundredweight	.32
Oats	Bushel	.07
Rapeseed	Hundredweight	.32
Rice	Hundredweight	.26
Rye	Bushel	.07
Safflower	Hundredweight	.32
Seed Cotton (lint basis).	Pounds	.004
Sorghum	Hundredweight	.10
Soybeans	Bushel	.22
Sunflower Seed	Hundredweight	.32
Wheat	Bushel	.06

* * * * *

Signed this 8th day of January 1992, in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92-918 Filed 1-13-92; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Part 1955

Conveyance of Single Family Housing Security Property by Deed in Lieu of Foreclosure

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: Farmers Home Administration (FmHA) amends its regulations on the conveyance of Single Family Housing (SFH) security property. FmHA will consider a borrower's offer to convey security property to the Government by deed in lieu of foreclosure only after the account is accelerated. When an offer is made, the borrower will be advised of the assistance FmHA can provide with sale of the property, and of the consequences of a conveyance by deed in lieu of foreclosure. FmHA will accept the offer only when it is in the government's interest, will credit the account with the market value of the property less any prior liens and, if the debt is not satisfied, will not automatically release the borrower of liability. Any unpaid balance will be handled according to formal debt settlement procedures. If the value of the property does not appear adequate to retire the debt, FmHA will require a budget and/or financial statement and, if necessary to confirm the existence of other assets, a search of public records to facilitate the debt settlement process. This action is taken to encourage voluntary liquidation of problem loans, maximizing potential equity realization and minimizing negative credit implications for the borrower, while assuring the maximum recovery to the Government and reducing the incidence of Government acquisition of security property and the resulting costs of holding and disposition.

EFFECTIVE DATE: February 13, 1992.

FOR FURTHER INFORMATION CONTACT: Joyce M. Halasz, Senior Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, U.S. Department of Agriculture, room 5307, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, telephone (202) 720-1452.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one agency or to be controversial. The net result is to provide better service to rural communities.

Background/Discussion

The Office of Inspector General (OIG) in Audit No. 04663-02-CH, Cash and Debt Management Activities, made recommendations to minimize FmHA's losses from SFH borrowers who liquidate their loans by conveyance of security property to the Government when the market value is less than the debt and to clarify policy on consideration and acceptance of conveyances to reduce Government acquisition of security property. A proposed rule was published in the Federal Register, 56 FR 19622, on Monday, April 29, 1991. The comment period ended June 28, 1991. Eleven (11) comments were received; eight (8) from FmHA employees, two (2) from legal services organizations and one (1) from

a low-income housing advocacy group. The comments were on the following issues:

I. Consideration of a Borrower's Offer to Convey SFH Security Property by Deed in Lieu of Foreclosure Only After Acceleration of the Debt

In the past, FmHA regulations have given a borrower a limited right to offer to convey security property to the government at any time the borrower no longer wanted the security property or was unable to make the payments. The prior regulation lacked a means to give a borrower an incentive to pursue voluntary liquidation. The prior regulation provided no objective basis for FmHA to determine when it is appropriate to consider a borrower's offer to convey by deed in lieu of foreclosure. This has resulted in a lack of emphasis on voluntary liquidation of problem loans. In addition, the ease with which FmHA has accepted deeds in lieu of foreclosure has contributed to a large inventory of unsold houses with the consequent high cost of maintaining and selling this inventory. In order to ensure that every effort is made to encourage voluntary liquidation and to establish an objective criterion, FmHA will not consider a borrower's offer to convey security property by a deed in lieu of foreclosure until the debt is accelerated.

Ten of the eleven comments received were opposed to strict adherence to the acceleration requirement. Most suggested exceptions, alternative criteria, or some degree of approving official discretion. Others suggested a specific sale requirement, such as a minimum 90-day listing with a licensed real estate broker at market value. Exceptions to the requirement, such as when a borrower is moving out of the area or experiencing a problem with the house or lot beyond the borrower's control, are not appropriate when voluntary liquidation remains an alternative.

Although a deed to the Government may appear expedient when compared to the alternative of a lengthy and costly foreclosure, the borrower's sale of the property is preferable to Government acquisition when the costs of property management and disposition are taken into consideration. FmHA considered requiring the borrower to attempt to sell the property before considering a deed in lieu; however, FmHA has no means of enforcing such a requirement. Under 7 CFR, part 1965, subpart C, FmHA encourages voluntary liquidation through sale of the property, allowing the borrower a minimum of 120 days to sell the property or otherwise pay the account in full. In some cases, FmHA consents to sale (at market value) for less than the debt, paying for authorized selling expenses and settling the remaining debt under 7 CFR part 1956, subpart B, if the borrower is unable to pay. In a sale for less than the debt, the borrower receives no equity. When the borrower has nothing to gain in making the effort to sell a house in which he or she is no longer interested and in which he or she has no equity, it becomes necessary to emphasize the negative aspects of forced liquidation, in order to encourage the borrower's sale of the property. The acceleration requirement will stress the negative impact of forced liquidation and assure that all voluntary liquidation efforts, including refinancing with another lender or sale of the security property, have been diligently pursued, short of foreclosure action. This action wil make it clear that both the borrower and FmHA must exhaust all servicing options and efforts at voluntary liquidation before it is appropriate to consider a conveyance by deed in lieu of foreclosure. The terminology alone is a clear indicator of when the action is appropriate.

One commenter expressed consern that FmHA was encouraging borrowers to sell property that may not meet DSS standards and thereby was not meeting the intent of section 510(g) of the Housing Act of 1949, as amended. The commenter correctly noted that the cited section does not apply to a borrower's sale of security property. FmHA is not a party to such a sale of the security property and therefore has no authority to place conditions or restrictions on the sale. It should be noted however, that, if FmHA finances a transfer to an eligible buyer, necessary repairs are required and may be financed with a subsequent loan.

II. Satisfaction of the Debt and Release of Liability When FmHA Accepts a Conveyance

Three comments suggested that FmHA had misinterpreted the intent of an amendment to § 510(c) of the Housing Act of 1949. To clarify, the Housing and Community Development Act of 1987, Public Law 100–242 (Feb. 5, 1988), cured certain defects in § 510 of the Housing Act of 1949, providing the Secretary of Agriculture with broad authority to set the terms by which a rural housing borrower is released from liability *at the time of debt settlement* (emphasis added). The amendment eliminated anachronistic language from the original Housing Act of 1949, which required a borrower to have "farmed in a workmanlike manner" before a release of liability for an undersecured debt was authorized. It also expanded the debt settlement provisions to include all housing programs, since authority to settle certain Housing Act programs had been limited by the Food Security Act of 1985. The amendment allowed a more prudent approach to the handling of a deed in lieu of foreclosure, whereby a release of liability is not automatic, but must take place in a debt settlement context. While this is a change from current policy, it is consistent with the language of section 510(c). There is nothing in section 510(c) which indicates that FmHA must cancel the debt of a borrower who can pay an unpaid balance after a deed in lieu has been accepted by FmHA, only that FmHA is authorized to cancel the unpaid balance through the debt settlement process. If a borrower does not have the resources or prospects of having resources in the future to satisfy any unpaid balance, then the borrower's debt will be cancelled pursuant to FmHA's debt settlement process, 7 CFR part 1956, subpart B. On the other hand, if a borrower has some assets from which all or part of the unpaid balance could be satisfied, then the borrower will be expected to pay the remainder of the debt, but will still be eligible for compromise or adjustment under the debt settlement regulation. A statement will be added to § 1955.10(f)(1) which will clarify the handling of any unpaid balances.

The same three comments also indicated a concern that the policy of pursuing unpaid balances was contrary to section 505(a) of the Housing Act of 1949, which precludes FmHA from seeking a deficiency judgment in a foreclosure of a borrower who has been granted a moratorium if the borrower has faithfully tried to meet his or her obligations. We agree that this protection afforded such a borrower should extend to other forms of liquidation, including that of a conveyance by deed in lieu of foreclosure; therefore, a statement will be added to clarify this intent.

III. Budget and/or Financial Statement Requirement

Any release of liability after a conveyance resulting in a deficiency would be based on an approved debt settlement. Therefore, when the market value of a property appears to be less than the debt, a deficiency is likely, and FmHA will need to obtain and fully consider information about the borrower's financial condition to determine appropriate debt settlement action. FmHA may also need a search of public records if it is determined

necessary to discover suspected undisclosed assets. No comments were received regarding the requirement of a financial statement for a borrower and, if necessary to discover suspected undisclosed assets, a search of public records, when an offer to convey involves security property valued at less than the debt.

Programs Affected

The SFH program is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans and No. 10.417—Very Low Income Housing Repair Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015, subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not directly involve small entities nor does it add or remove any authorities which would affect small entities.

List of Subjects in 7 CFR Part 1955

Foreclosure, Government acquired property.

Therefore, chapter XVIII of title 7, Code of Federal Regulations, is amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

2. § 1955.10 is amended by revising paragraph (d)(3) and the introductory text of paragraph (f)(1) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * * *

(d) * * *

(3) A current financial statement containing information similar to that required to complete Forms FmHA 410–1, "Application for FmHA Services" or FmHA 442–3, "Balance Sheet," and information on present income and potential earning ability. Exception for SFH loans: FmHA requires a budget and/or financial statement and, if necessary to discover suspected undisclosed assets, a search of public records, only when the value of the security property may be less than the debt.

* * * * *

(f) * * *

(1) *SFH loans.* FmHA does not solicit or encourage conveyance of SFH security property to the Government and will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt is accelerated and when it is in the Government's interest. Upon receipt of an offer to convey, the servicing official will remind the borrower of provisions for voluntary liquidation under § 1965.125(a) of subpart C of part 1965 of this chapter, and the consequences of a conveyance by deed in lieu of foreclosure as follows: All costs related to the conveyance which FmHA pays will be added to the debt; a credit equal to the market value of the property, as determined by FmHA, less prior liens, will be applied to the debt; and if the credit does not satisfy the debt, the borrower will not automatically be released of liability. The unsatisfied debt, after acceleration under § 1955.10(h)(5) of this subpart, may be settled according to subpart B of part 1956 of this chapter; however, a deficiency judgment will not be pursued when the borrower was granted a moratorium if the borrower faithfully tried to meet loan obligations. The conveyance is processed as follows:

* * * * *

3. Section 1955.50 is revised to read as follows:

§ 1955.50 OMB control number.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0109. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 5 hours per response, with an average of .56 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0109), Washington, DC 20503.

Dated: December 18, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–920 Filed 1–13–92; 8:45 am]

BILLING CODE 3410–07–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5 and 31

Fees for Applications for Contract Market Designation, Leverage Commodity Registration and Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission periodically adjusts fees charged for certain program services to assure that they accurately reflect current Commission costs. In this regard, the staff recently reviewed the Commission's actual costs of processing applications for contract market designation (17 CFR part 5, appendix B), registration of leverage commodities (17 CFR part 31, appendix A) and registered futures association and exchange rule enforcement and financial reviews (17 CFR part 1). The following fee schedule for FY 1992 reflects the costs to the Commission of providing those services during fiscal years 1989, 1990 and 1991. The fee for applications for contract market designation for futures would be maintained at $15,000, a reduced fee for contract market designation for options at $7,000 would be established, the

Commission will create an incentive for contract markets to simultaneously submit designation applications for futures and options on that future by charging a combined fee of $17,000 for both, and the fee for leverage commodity registration will remain at $4,500. The Commission also is publishing its schedule of annual fees for rule enforcement, sales practice and financial reviews of exchanges and registered futures association.

EFFECTIVE DATES: Contract Market Designation and Leverage Commodity Registration: January 14, 1992. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews: March 16, 1992.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Special Assistant to the Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone number 202–254–6090.

SUPPLEMENTARY INFORMATION: The Commission periodically reviews the actual costs of providing services for which fees are charged and adjusts its fees accordingly. In connection with its most recent review, the Commission has determined that fees for contract market designations should be adjusted. Also, this release announces the FY 1992 schedule of fees for registered futures association and exchange rule enforcement and financial reviews and maintains leverage commodity registration fees.

I. Computation of Fees

In accordance with the Futures Trading Act of 1982 (7 U.S.C. 16a) the Commission has established fees for certain activities and functions performed by the Commission.[1] In calculating the actual cost of processing applications for contract market designation, registering leverage commodities, and performing registered futures association and exchange rule enforcement and financial reviews, the Commission takes into account personnel costs, benefits and administrative costs.

The Commission first determines personnel costs by extracting data from the agency's Budget Account Code (BAC) system. Employees of the Commission record the time spent on each project under the BAC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A–76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and in the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for the preceding fiscal years is as follows: FY 1989—100%; FY 1990—98%; FY 1991—94%.

Once the total personnel costs and overhead for each project have been determined, the costs for FY 1989, FY 1990 and FY 1991 are averaged. This results in a calculation of the average annual cost for each project over the three-year period, which is the basis for the fee.

II. Applications for Contract Market Designation

On August 23, 1983 the Commission established a fee for Contract Market Designation. 48 FR 38214. This fee was based upon a three year moving average of the actual costs expended and the number of contracts reviewed in that period of time. The fee charged was reviewed again in FY 1985 and every year after that to determine the fee for the current year. At that time the overwhelming majority of designation applications was for futures contracts as opposed to options contracts. Therefore, the proposed fee covered both futures and options applications. The Commission has now reviewed its data on the actual costs for reviewing applications for both futures and options and has determined that the cost of reviewing a futures contract is much higher than the cost of reviewing an options contract. It has also determined that, when both a futures contract and an option on that futures contract are submitted simultaneously, the cost for review of that options contract is even lower. A review of actual costs of processing applications for contract market designation as a future for FY 1989, FY 1990 and FY 1991 revealed that the average cost over the three year period was $15,636. A review of actual costs of processing applications for contract market designation as an option for FY 1989, FY 1990 and FY 1991 revealed that the average costs over the three year period was $7,367. Therefore, the fee for applications for contract market designation as a future will be maintained at $15,000. The fee for applications for contract market designation as an option will be lowered to $7,000 in accordance with the Commission's regulations (17 CFR part 5, appendix B). In addition, the combined fee for contract markets submitting designation applications for futures and options on that future simultaneously will be set at $17,000. The Commission has determined that in order to provide an incentive for simultaneous submission of a future and an option on that future, this significant reduction from the $22,000 fee ($30,000 for both in FY 1991) that would otherwise be required for such submissions is appropriate.

III. Leverage Commodity Registration

No new applications for leverage commodity registration were received by the Commission in FY 1991. Accordingly, the Commission will maintain the present fee of $4,500 for leverage commodity registration.

IV. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

Exchange	Actual average costs FY 1989–FY 1991	FY 1992 fee
Chicago Board of Trade	$214,718	$214,718
Chicago Mercantile Exchange	171,422	171,422
Commodity Exchange, Inc.	120,366	120,366
Coffee, Sugar & Cocoa Exchange	98,417	98,417
New York Mercantile Exchange	96,247	96,247
New York Cotton Exchange	64,757	64,757
Kansas City Board of Trade	55,161	55,161
New York Futures Exchange	105,999	105,999
Minneapolis Grain Exchange	69,004	69,004
Philadelphia Board of Trade	6,280	6,280
Amex Commodities Corp.	333	333
National Futures Association	353,049	353,049
Total	1,355,753	1,355,753

As in the calculation of the FY 1990 and FY 1991 fees, the FY 1992 fee for the Chicago Board of Trade includes the fees for the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange. (The Chicago Rice and Cotton Exchange merged with the MidAmerica Commodity Exchange in early November, 1991).

[1] For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et. seq.*, requires that agencies consider the impact of those rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and registered futures associations. The Commission has previously determined that contract markets and registered futures associations are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on January 8, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-809 Filed 1-13-92; 8:45 am]

BILLING CODE 6351-01-M

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17 CFR Part 30

Option on the Italian Government Bond Futures Contract Traded on the London International Financial Futures Exchange

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing option contracts on the Italian Government Bond ("BTP") Futures Contract traded on the London International Financial Futures Exchange ("LIFFE") to be offered or sold to persons located in the United States. This Order is issued pursuant to: (1) Commission rule 30.3(a), 17 CFR 30.3(a) (1991), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and (2) the Commission's Order issued on September 5, 1989, 54 FR 37636 (September 12, 1989), authorizing certain option products traded on LIFFE to be offered or sold in the United States.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Barney L. Charlon, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under Commission Rule 30.3(a) Authorizing Option Contracts on the Italian Government Bond Futures Contract Traded on the London International Financial Futures Exchange to be Offered or Sold in the United States Immediately upon Publication of this Notice in the Federal Register

By Order issued on September 5, 1989 ("Initial Order"), the Commission authorized, pursuant to Commission rule 30.3(a),[1] certain option products traded on the London International Financial Futures Exchange ("LIFFE") to be offered or sold in the United States. 54 FR 37636 (September 12, 1989). Among other conditions, the Initial Order specified that:

> Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, * * * no offer or sale of any LIFFE option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order * * *.

By letter dated October 22, 1991, LIFFE represented that it would commence trading an option contract based on the Italian Government Bond ("BTP") futures contract on October 24, 1991. LIFFE has requested that the Commission supplement its Initial Order authorizing Options on the Long Gilt futures contract, Options on the U.S. Treasury Bond futures contract, Options on the German Government Bond futures contract, Options on the 3-Month Sterling Interest Rate futures contract, Options on the 3-Month Eurodollar Interest Rate futures contract, Options on the 3-Month Euro-Deutschemark Interest Rate futures contract, and Options, on Sterling and Dollar-Mark currencies by also authorizing LIFFE's Option Contract on the BTP futures contract to be offered or sold to persons in the United States. Upon due consideration, and for the reasons previously discussed in the Initial Order, the Commission believes that such authorization should be granted.[2]

Accordingly, pursuant to Commission rule 30.3(a) and the Commission's Initial Order issued on September 5, 1989, and subject to the terms and conditions specified therein, the Commission hereby authorizes LIFFE's Option Contract on the BTP futures contract to be offered or sold to persons located in the United States immediately upon publication of this Order in the **Federal Register.**[3]

Option on Italian Government Bond ("BTP") Future

Unit of trading—1 BTP futures contract.

Delivery/expiry months—March, June, September, December.

Exercise day/delivery day/expiry day—Exercise by 17.00 on any business day extended to 18.30 on Last Trading Day. Delivery on the first business day after the exercise day. Expiry at 18.30 on the Last Trading Day.

Last trading day—Seven business days prior to first day of the delivery month.

Quotation—Multiples of ITL 0.01.

Minimum price movement (tick size & value)—ITL 0.01 (ITL 20,000).

Trading hours—08.02–16.05 London time.

Contract standard—Assignment of 1 BTP futures contract for the delivery month at the exercise price.

Exercise price intervals—ITL 0.50 e.g. 95.00, 95.50 etc.

Introduction of new exercise prices—Nine exercise prices will be listed for new series. Additional exercise prices will be introduced on the business day after the BTP futures contract settlement price is within ITL 0.25 of the fourth highest or lowest existing exercise price.

Option price—The contract price is payable by the buyer to the seller on exercise or expiry of the option, not at the time of purchase. Positions are marked to market daily.

Initial listing—As of 24th October 1991, options will be listed on the

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[1] Commission rule 30.3(a), 17 CFR 30.3(a) (1991), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

[2] *See* section 2a(1) of the Commodity Exchange Act, section 3(a)(12) of the Securities Exchange Act of 1934 ("34 Act") and rule 3a12-8 promulgated thereunder. On January 8, 1992, the Securities and Exchange Commission designated the government debt securities of the Government of Italy as exempted securities for purposes of the 34 Act's application to the marketing in the United States of futures contracts on those securities.

[3] On November 14, 1991, the Commission issued a Notification of Proposed Order under Rule 30.3(a) permitting option contracts on the BTP futures contract traded on LIFFE to be offered or sold in the United States. 56 FR 58527. The Notification of Proposed Order was published in the **Federal Register** consistent with the Initial Order's 30-day notice requirement.

December 1991 and March 1992 delivery months.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign commodity options.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by adding the following entry alphabetically after the existing entry for "London International Financial Futures Exchange" to read as follows:

Appendix B—Option Contracts Permitted to be Offered or Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
• • • • •		
London International Financial Futures Exchange.	Option contract on Italian Government bond futures contract.	92; FR
• • • • •		

Issued in Washington, DC on January 9, 1992.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-806 Filed 1-13-92; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Docket No. 34-30166, International Series Release No. 357, File No. S7-32-91]

RIN 3235AEZZ

Designation of the Securities of Certain Foreign Governments as Exempted Securities Under the Securities Exchange Act of 1934 Solely for Purposes of Trading Futures Contracts on Those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts three amendments to Rule 3a12-8 (17 CFR 240.3a12-8) ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act"). The first amendment designates debt obligations issued by the Republics of Ireland and Italy as "exempted securities." The purpose of this amendment is to permit the marketing and trading of futures contracts on those securities in the United States or to U.S. persons. The second amendment replaces the reference to "West Germany" in the Rule with a reference to the "Federal Republic of Germany" to reflect the re-unificaion of East Germany and West Germany. The third amendment replaces all references to the informal names of the countries listed in the Rule with references to their official names to clarify the references made to countries in the Rule. The changes made by the second and third amendments will not result in a substantive change in the operation of the Rule.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Monica C. Michelizzi, Esq., Branch of Options Regulation, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 5-1), 450 Fifth Street, NW., Washington, DC 20549, at 202/272-2411.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), it is unlawful to trade a futures contract on any individual security, unless the security in question is an exempted security (other than a municipal security) for the purposes of the Securities Act of 1933 ("Securities Act") for the Exchange Act.[1] Debt obligations of foreign governments are not exempted securities under either of these statutes. The Securities and Exchange Commission ("SEC" or "Commission"), however, has authority to designate securities as exempted securities for purposes of the Exchange Act.

In order to facilitate the trading of futures contracts on debt securities of certain foreign governments by United States persons, the Commission has adopted rule 3a12-8 (17 CFR 240.3a12-8) under the Exchange Act to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States or to U.S. persons.[2] Currently, the foreign governments listed in the Rules are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany (the "twelve designated countries"). As a result, futures contracts on the debt obligations of these countries may be sold to U.S. persons, as long as the other terms of the Rule are satisfied.[3]

On November 12, 1991, the Commission issued a release proposing to amend rule 3a12-8 to designate the debt obligations of the Republics of Ireland and Italy as exempt securities, solely for the purpose of futures trading, to change the country designation of "West Germany" to the "Federal Republic of Germany," and to change the names of the other countries designated in the rule to their formal names. The Commission received no comments in response to this proposal.[4]

The Commission today adopts these three amendments to the Rule. First, the amendments add the debt obligations of the Republics of Ireland and Italy (the "two newly-designated countries") to the list of countries whose debt obligations are exempted by rule 3a12-8. In order to qualify for the exemption, futures contracts on debt obligations of the two newly-designated countries would have to meet all the other existing requirements of the Rule. Second, the amendments change the country designation of "West Germany" to the "Federal Republic of Germany" to reflect the re-unification of Germany and the subsequent adoption of the name the "Federal Republic of Germany" as the official name of the unified country.[5] Third, the amendments replace all references to the informal names of the countries listed in the Rule with references to their official names.

II. Background

Section 2(a)(1)(B)(v) of the CEA,[6] which was adopted as part of the

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[1] The term "exempted security" is defined in section 3 of the Securities Act, 15 U.S.C. 77c, and section 3(a)(12) of the Exchange Act, 15 U.S.C. 78c(a)(12).

[2] Under the Rule, the grading of futures on government securities exempted by the Rule is permitted only on or through a board of trade.

[3] *See infra* note 14 and accompanying text for a discussion of the other terms of the Rule that must be satisfied in order for these contracts to be marketed or traded in the United States.

[4] *See* Securities Exchange Act Release No. 29829 (Nov. 12, 1991), 56 FR 58194 (November 19, 1991) ("Proposal Release").

[5] In an interpretive letter to the Chicago Board of Trade ("CBOT") regarding a proposed futures contract on German government bonds, the Commission's Division of Market Regulation has stated that it interprets the reference to "West Germany" in the Rule to mean the "Federal Republic of Germany" for purposes of the Rule. *See* letter from Brandon Becker, Deputy Director, Division of Market Regulation, SEC, to William Cullen, Senior Attorney, CBOT, dated July 23, 1991.

[6] 7 U.S.C. 2(a).

Futures Trading Act of 1982,[7] provides that it is unlawful to trade a futures contract on an individual security unless that security is an exempted security under Sections 3 of the Securities Act or section 3(a)(12) of the Exchange Act.[8] These sections of the Securities Act and the Exchange Act explicitly designate certain securities, including government securities and municipal securities, as exempted securities. Securities issued by foreign governments, however, are not "government securities" within the meaning of the federal securities statutes.[9] Therefore, securities issued by foreign governments are not deemed to be exempted securities under the statutory language.

Section 3(a)(12) of the Exchange Act, however, provides the Commission with the authority to designate other securities as exempted securities, either unconditionally or for specified purposes.[10] Rule 3a12–8 was adopted in 1984 [11] pursuant to this exemptive authority in order to facilitate the trading of futures contracts on securities of foreign governments by United States person.[12] As originally adopted, the Rule provided that debt obligations of Canada and of the United Kingdom of Great Britain and Northern Ireland would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of "qualifying foreign futures contracts" on such securities, so long as the securities in question were neither registered under the Securities Act nor the subject of any American Depositary Receipt so registered. A futures contract on such a debt obligation is deemed under the Rule to be a "qualifying foreign futures contract" if delivery under the contract is settled outside the United States and is traded on a board of trade.[13]

The conditions imposed by the rule were intended to facilitate the trading of futures contracts on foreign government securities without sacrificing the longstanding policy under the federal securities laws of requiring foreign government securities to comply with the basic requirements of the federal securities laws in order to be marketed and traded in the United States. Accordingly, the conditions set forth in the rule were designed to ensure that, absent registration, a domestic market in foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the registration requirements and other provisions of the federal securities laws.

At the time the Commission originally proposed rule 3a12–8, it recognized that the rule might need to be amended at some later date in order to extend its provision to debt obligations of other foreign governments.[14] Subsequently, the Commission amended the rule to include debt obligations issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany within its coverage.[15]

Rule 3a12–8 has not been amended since 1988. Since that time, an Irish Government futures contract has been developed and has begun trading on the Irish Futures and Options Exchange ("IFOX").[16] The London International Financial Futures Exchange ("LIFFE") also has begun trading a futures contract on Italian government bonds.[17] In addition, the CBOT and the LIFFE have applied to the CFTC for designation as a contract market for trading in futures contracts on European Currency Unit-denominated debt securities ("ECU bonds") issued by, among others, certain foreign governments, including the government of Italy.[18] The Commission has been informed that U.S. citizens, especially institutional investors, may be interested in trading these new products, and has received requests that rule 3a12–8 be amended to facilitate such trading.[19]

The Commission today amends rule 3a12–8 to add the Republics of Italy and Ireland to the list of countries whose debt obligations already are deemed to be "exempted securities" under the terms of the rule. Under this amendment, the existing conditions set forth in the rule (*i.e.*, that the underlying securities not be registered in the United States, that the futures contracts require delivery outside the United States, and

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[7] Pub. L. No. 97–444, 96 Stat. 2294, 7 U.S.C. 1 *et seq.*

[8] Section 2(a)(1)(B)(v) of the CEA, 7 U.S.C. 2a(v), provides that "[n]o person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act * * * or section 3(a)(12) of the (Exchange Act) * * *"

[9] *See* Section 3(a)(42) of the Exchange Act, 15 U.S.C. 78c(a)(42) (defining the term "government security" for purposes of the Exchange Act).

[10] Section 3(a)(12) of the Exchange Act provides that the term "exempted security" includes "such other securities * * * as the Commission may by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an 'exempted security' or to exempted securities.'" 15 U.S.C. 78c(a)(12).

[11] *See* Securities Exchange Act Release Nos. 20708 ("Adopting Release") (March 2, 1984), 49 FR 8595 (March 8, 1984) and 19611 ("Proposing Release") (May 25, 1983), 48 FR 24725 (June 2, 1983).

[12] The marketing and trading of foreign futures contracts to United States persons is subject to regulation by the CFTC. In particular, Section 4b of the CEA authorizes the CFTC to regulate the offer and sale of foreign futures contracts to United States persons, and rule 9 (17 CFR 30.9), promulgated under section 2(a)(1)(A) of the CEA, is intended to prohibit fraud in connection with the offer and sale to United States persons of futures contracts executed on foreign exchanges. Additional rules promulgated under 2(a)(1)(A) of the CEA govern the domestic offer and sale of futures and options contracts traded on foreign boards of trade. These rules require, among other things, that the domestic offer and sale of foreign futures be effected through CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. *See* 17 CFR 30.3, 30.4, and 30.5 (1991). In enacting the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission ("CFTC") had intended to bar the sale of futures contracts on debt obligations of the United Kingdom of Great Britain and Northern Ireland to United States persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Proposing Release, *supra* note 11, 48 FR at 24725 (citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)).

[13] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. *See* Securities Exchange Act Release No. 24209 (March 12, 1987), 52 FR 8875 (March 20, 1987).

[14] *See* Proposing Release, *supra* note 11, 48 FR at 24726–27

[15] As noted above, the rule as originally adopted applied only to debt obligations of Canada and of the United Kingdom of Great Britain and Northern Ireland. *See* Adopting Release, *supra* note 11. In 1986, the rule was amended to include debt obligations of Japan. *See* Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 29598 (July 18, 1986). In 1987, the rule was amended to include debt obligations of Australia, France, and New Zealand. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987). In 1988, the rule was again amended to include debt obligations of Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. *See* Securities Exchange Act Release No. 26217 (October 28, 1988), 53 FR 43860 (October 31, 1988).

[16] Reuters, Money Report (April 28, 1989).

[17] Reuters, Money Report (June 11, 1991).

[18] The CBOT ECU bonds futures contract also would include debt obligations of certain supranational organizations in the basket of securities underlying the proposed futures contract. The Commission has under consideration a petition by the CBOT requesting that these securities be deemed exempted securities under section 3(a)(12) of the Exchange Act for the purpose of trading futures contracts on these securities. *See* letter from Thomas R. Donovan, President and Chief Executive Officer CBOT, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated May 29, 1991 ("CBOT ECU Bond Letter").

[19] *See, e.g.*, letter from Raymond Guan, Vice President, The First Boston Corporation, to Jonathan G. Katz, Secretary, SEC, and Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated June 29, 1989, and CBOT ECU Bond Letter, *supra* note 18.

that the contracts be traded on a board of trade) would continue to apply. This should ensure that a domestic market in the unregistered foreign sovereign debt of the Republics of Ireland or Italy does not develop. Therefore, the amendment should pose no risk for investors in the U.S. securities market.

The Commission also amends rule 3a12–8 to replace the reference to "West Germany" in the rule with a reference to the "Federal Republic of Germany," and to replace all references to the informal names of the countries listed in the rule with references to their official names. Both of these amendments clarify the terms of the rule, but do not result in a substantive change in the operation of the rule.

III. Discussion

In the Proposal Release, the Commission solicited comments on whether there are any legal or policy reasons for determining that debt obligations issued by Ireland or Italy should not be accorded the same treatment under the rule for the purpose of trading futures contracts on these securities in the U.S. or to U.S. persons as debt obligations issued by the twelve designated countries.[20] The Commission received no comment in response to its request for comment.

For the reasons discussed below, the Commission has determined that rule 3a12–8 should be amended to include the debt obligations of Ireland and Italy. The Commission also has decided to replace the reference to "West Germany" in the rule with a reference to the "Federal Republic of Germany," and to replace all references to the informal names of the countries listed in the Rule with references to their official names.

First, the Commission believes that the debt obligations of the two newly-designated countries should be subject to the same regulatory treatment under the rule as the debt obligations of the twelve designated countries for purposes of trading futures contracts on such debt obligations by United States persons. Like the debt obligations of the twelve designated countries,[21] the long-term debt obligations of each of the two newly-designated countries are rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations.[22] For purposes of the Rule, the Commission is aware of no material differences between the debt obligations of the two newly-designated countries and the debt obligations of the twelve designated countries.

Additionally, the Commission believes that there are no valid legal or policy reasons for denying U.S. investors the ability to trade futures on debt obligations of the two newly-designated sovereign issuers. Moreover, the availability to United States investors of these hedging vehicles will allow such investors to take advantage of the growing globalization of the securities markets.

Second, the Commission believes that amending the rule to replace the reference to "West Germany" in the rule with a reference to the "Federal Republic of Germany," and to replace all references to the informal names of the countries listed in the Rule with references to their official names is appropriate to clarify the terms of the rule. The first amendment reflects the fact that West Germany no longer exists as a separate country as a result of the re-unification of East Germany and West Germany, and codifies the Commission's Division of Market Regulation's interpretation that the reference to "West Germany" in the rule should be understood to mean the "Federal Republic of Germany."

In the same manner, the second amendment further clarifies the provisions of the rule by replacing all references to the informal names of the countries listed in the rule with references to their official names. Both of these amendments clarify the terms of the rule, but do not result in a substantive change in the operation of the rule.

IV. Regulatory Flexibility Act Consideration

The Chairman of the Commission certified in connection with the Release proposing the amendments to the rule [23] that these amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this certification.

V. Effects on Competition and Other Findings

Section 23(a)(2) of the Act [24] requires the Commission, in adopting rules under the Act, to consider the competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the amendments to the rule in light of the standards cited in section 23(a)(2) and believes that adoption of the amendments will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As stated above, the amendment is designed to assure the lawful availability in this country of Irish and Italian government bond futures that otherwise would not be permitted to be marketed under the terms of the CEA. The amendment thus serves to expand the range of financial products available in the United States and enhances competition in financial markets. Insofar as the rule contains limitations, they are designed to promote the purposes of the Act by ensuring that futures trading on Irish and Italian government securities is

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[20] In addition, the Commission solicited comments on whether the information available in English regarding the newly-eligible futures contracts and the underlying sovereign debt obligations would be adequate to permit U.S. investors to make informed investment decisions. In adopting rule 3a12–8, the Commission decided not to require, as a condition to the exemption, that such information be available. *See* Adopting Release, *supra* note 11, 49 FR at 8597–98. At the time rule 3a12–8 was adopted, both the United Kingdom and Canada had government debt issues registered in the United States. As a result, although those particular issues were not the subject of futures trading, U.S. investors had relevant disclosure material concerning the issuers, *i.e.*, the governments of Canada and the United Kingdom. In addition, Australia, New Zealand, Austria, and Denmark had government debt issues registered in the United States when they were added to the rule. Japan, France, Finland, the Netherlands, Switzerland, and West Germany did not have government debt issues registered in the United States when they were added to the rule. Thus, to a large measure the availability of information in English has not been a determinative factor when expanding the list of countries designated in rule 3a12–8. Currently, Ireland has government debt issues registered in the United States. (These issues are not the subject of futures trading on the IFOX.) Italy does not have government debt issues registered in the United States.

[21] In amending the Rule to exempt the debt securities of Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany, the Commission noted that the long-term sovereign debt of those countries was rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations. *See* Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988).

[22] Ireland's long-term sovereign debt is rated Aa3 by Moody's Investors Service ("Moody's") and AA- by Standard and Poor's ("S&P"). Italy's long-term sovereign debt is rated Aa3 by Moody's and AA+ by S&P. Under Moody's rating criteria, debt which is rated Aaa is judged to be of the highest quality and debt which is rated Aa is judged to be of high quality by all standards. Aa-rated debt is judged to be of lower quality than Aaa-rated debt because: (1) The margins of protection for debt rated Aa may not be as large as in the highest rated debt (Aaa); (2) the fluctuation of protective elements may be of greater amplitude for Aa-rated instruments; or (3) other elements may be present which make the long-term risk appear somewhat larger than the Aaa securities. Under S&P's criteria, an issuer of debt which is rated AAA has an extremely strong capacity to pay interest and repay principal and an issuer of debt which is rated AA has a very strong capacity to pay interest and repay principal. A debt issue that is rated AA differs from the highest rated issues (AAA) only to a small degree.

[23] *See* Proposal Release *supra* note 4.

[24] 15 U.S.C. 78w(a)(2) (1988).

consistent with the goals and purposes of the federal securities laws by minimizing the impact of the rule on securities trading and distribution in the United States.

The Commission finds, in accordance with the Administrative Procedure Act,[25] that the amendments to the rule are exemptive in nature. Accordingly, the commission has determined to make the foregoing action effective immediately upon publication in the **Federal Register**.

VI. Statutory Basis

The amendments to rule 3a12–8 are being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(12) and 23(a), 15 U.S.C. 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Text of the Adopted Amendments

For the reasons set forth above, the Commission is amending part 240 of chapter II, title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c 77d, 77s, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

2. § 240.3a12–8 is amended by revising paragraphs (a)(1)(iv) through (a)(1)(xii), and by adding paragraphs (a)(1)(xiii) through (xiv) as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(iv) the Commonwealth of Australia;

(v) the Republic of France;

(vi) New Zealand;

(vii) the Republic of Austria;

(viii) the Kingdom of Denmark;

(ix) the Republic of Finland;

(x) the Kingdom of the Netherlands;

(xi) Switzerland;

(xii) the Federal Republic of Germany;

(xiii) the Republic of Ireland; or

(xiv) the Republic of Italy.

* * * * *

By the Commission.

[25] 15 U.S.C. 553(d) (1988).

Dated: January 8, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–848 Filed 1–13–92; 8:45 am]

BILLING CODE 8010–01–M

RAILROAD RETIREMENT BOARD

20 CFR Part 340

RIN 3220–AA77

Recovery of Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations by adding three instances in which recoveries of overpayments of benefits under the Railroad Unemployment Insurance Act will not be subject to waiver, and to clarify certain procedures relating to the recovery of overpayments under that statute.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513), TDD (312) 751–4701, TDD (FTS 386–4701).

SUPPLEMENTARY INFORMATION: Section 2(d) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 352(d)) provides that the Board may waive recovery of an overpayment of benefits under that Act if the overpaid individual was not at fault in causing the overpayment and if recovery of the overpayment would be contrary to the purpose of the RUIA (financial hardship test) or would be against equity or good conscience.

On January 28, 1988, the Board published regulations explaining how an overpaid individual may request waiver and how the Board applies waiver under the RUIA (20 CFR parts 320 and 340, appearing at 53 FR 2485). Section 340.10(e) provided that an overpayment will not be waived when the recovery of the overpayment is sought from an individual other than the overpaid employee. The Board now amends § 340.10(e) by adding three situations in which waiver also will not be available. Section 340.10(e)(1) merely restates the previous rule as subsection (1). Section 340.10(e)(2) provides that where the overpayment is equal to or less than 10 times the current maximum daily benefit rate under the RUIA (presently $31) such an overpayment will not be waived. In such cases it is the judgment of the Board that recovery of this large overpayment would not be contrary to the purpose of the RUIA nor would recovery be against equity or good conscience. The Board notes that the individual will have had the use of the overpayment, interest free, for a period of time and that he or she will be able to ease financial difficulty by repaying in installments. The rule thus provides that where the overpayment is equal to or less than 10 times the daily benefit rate that there be a conclusive presumption that it is not contrary to the purpose of the RUIA or against equity or good conscience to recover such payments. Consequently, in such an instance there will be no right to request waiver of the overpayment.

Section 340.10(e)(3) provides that there shall be no waiver where the overpayment of RUIA benefits may be recovered from an accrual of a retroactive award of annuities under the Railroad Retirement Act (RRA). A sick or disabled railroad employee who is receiving benefits under the RUIA may eventually become entitled to a disability annuity under the RRA for the same period that he or she received the RUIA benefits. In such an instance an overpayment of benefits under the RUIA is created since section 4(a–1)(ii) of the RUIA (45 U.S.C. 354(a–1)(ii)) prohibits the payment of benefits under that statute for any period in which the employee is also receiving benefits under the RRA. In such an instance the Board usually recovers the overpaid benefits under the RUIA from the accrual of benefits under the RRA. The rule provides that where the overpayment of benefits under the RUIA may be recovered in such a manner there shall be no right to waiver by the overpaid employee. In such a case the employee cannot show that recovery of the overpayment will cause financial hardship since no future benefits are being taken away nor is he or she being asked to pay anything out-of-pocket. His or her accrual of benefits under the RRA is simply being reduced to recover the overpayment.

Section 340.10(e)(4) provides that waiver will not be granted to the extent that the overpaid individual is due a retroactive accrual payment from any Federal government agency. The Board considers recovery in such cases to be neither contrary to the purpose of the RUIA nor against equity and good conscience. Accordingly, waiver of recovery would not be appropriate. Of course, in instances in which the overpayment exceeds the accrual, the employee would be able to request waiver of the remaining overpayment

subject to the provisions of § 320.11 of title 20. In addition, any accrual of benefits payable by the United States is considered in determining whether the employee is financially able to repay the overpayment (see § 340.10(c)(3)).

In addition, the Board amends § 340.7 to make it clear that all overpayments, even those waived under this part, are still deducted from any residual lump sum death payment under the Railroad Retirement Act. Section 340.8 is amended to clarify when recovery by actuarial adjustment is effective to recover an overpayment. Finally, § 340.10(d) is amended by changing the word "and" in the phrase "equity and good conscience" to "or" to conform to the language in the RUIA.

This rule was published in proposed form on June 20, 1989 (54 FR 25877), and again as a proposed rule on July 17, 1991 (56 FR 32523). In neither case were any comments received within the respective comment periods.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. In addition, no requirements for the collection of information within the meaning of the Paperwork Reduction Act of 1980 are imposed.

List of Subjects in 20 CFR Part 340

Railroad employees, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is amended as follows:

PART 340—RECOVERY OF BENEFITS.

1. The authority for part 340 continues to read as follows:

Authority: 45 U.S.C. 362(1).

2. Section 340.7 is revised to read as follows:

§ 340.7 Deduction in computation of death benefit.

In computing the residual lump sum provided for in part 234, subpart D, of this chapter, the Board shall include in the benefits to be deducted from the gross residual all amounts recoverable under this part, but not recovered, including amounts where recovery was waived, that were paid to the individual or paid to others as benefits accrued to the individual but not paid at death.

3. Section 340.8 is revised to read as follows:

§ 340.8 Recovery by adjustment in connection with subsequent payments under the Railroad Retirement Act.

Recovery under this part may be made by permanently reducing the amount of any annuity payable to the overpaid individual (or an individual receiving an annuity based upon the same compensation record as that of the overpaid individual) under the Railroad Retirement Act. This method of recovery is called an actuarial adjustment of the annuity. The Board cannot require any individual to take an actuarial adjustment in order to recover an overpayment nor is an actuarial adjustment available as a matter of right. An actuarial adjustment does not become effective until the overpaid individual negotiates the first annuity check which reflects the annuity rate after actuarial adjustment.

Example. An individual agrees to recovery of a $5,000 overpayment made to him by actuarial adjustment to an annuity awarded him under the Railroad Retirement Act. However, he dies before negotiating the first annuity check reflecting his actuarially reduced rate. The $5,000 is not considered recovered.

4. Section 340.10 is amended by revising paragraphs (c)(3), (d), and (e), to read as follows:

§ 340.10 Waiver of recovery of erroneous payments.

* * * * *

(c) * * *

(3) For purposes of this section, resources include, but are not limited to, liquid assets such as cash on hand, the value of stocks, bonds, savings accounts, mutual funds, any accrual benefit payable by the United States of America or any other source.

* * * * *

(d) *When recovery is against equity or good conscience.* Recovery is considered to be against equity or good conscience when a person, in reliance on such payments or on notice that such payment would be made, relinquished a valuable right or changed his or her position for the worse.

(e) *Recoveries not subject to waiver.* (1) Where an amount is recoverable pursuant to section 2(f) of the Act from remuneration payable to an employee by a person or company, or where a lien for reimbursement of sickness benefits has arisen pursuant to section 12(o) of the Act, and in either case recovery is sought from a person other than the employee, no right to waiver of recovery exists.

(2) Where the amount recoverable is equal to or less than 10 times the current maximum daily benefit rate under the Railroad Unemployment Insurance Act it shall not be considered contrary to the purpose of the Act or against equity or good conscience to recover such payment. Consequently, the amount recoverable is not subject to waiver under this part.

(3) Where the amount recoverable is the result of an overpayment of benefits payable under the Railroad Unemployment Insurance Act due to entitlement to annuities under the Railroad Retirement Act for the same days for which benefits were payable, and recovery of such overpayment may be made by offset against an accrual of the annuities, it shall not be considered contrary to the purpose of the Act or against equity or good conscience to recover the erroneous payment by offset against such accrual. Consequently, the amount recoverable is not subject to waiver under this part.

(4) Where there exists accumulated Federal benefits payable by any executive agency of the United States, any amount recoverable which is equal to or less than the accumulated Federal benefits is not subject to waiver. Any amount recoverable which is greater than the identified accumulated Federal benefits may be considered for waiver in accordance with the provisions of this part and part 320 of this chapter.

Dated: January 6, 1992.

By authority of the Board.

Beatrice Eseroki,

Secretary to the Board.

[FR Doc. 92-612 Filed 1-13-92; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960-AD04

Federal Old-Age, Survivors, and Disability Insurance Benefits; Inclusion of Certain Deferred Compensation in Determination of Wage-Based Adjustments

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations reflect changes made as a result of section 10208 of Public Law (Pub. L.) 101-239, the Omnibus Budget Reconciliation Act of 1989. That statute provides for inclusion of contributions to certain deferred compensation plans in the determination of the national average wage indexing series, beginning with average wages for 1991.

The legislative change to the calculation of the average wage index

(AWI), reflects increases in deferred compensation contributed after 1989. The revised AWI, through indexation of earnings, may increase benefits to individuals who become eligible for benefits in 1993 and later. The change in the indexing series for 1991 and later may also affect wage-indexed program amounts for 1993 and later.

EFFECTIVE DATE: These rules are effective on January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Phyllis E. Green, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, 301-966-9822.

SUPPLEMENTARY INFORMATION:

Background

Public Law 101-239, the "Omnibus Budget Reconciliation Act of 1989" was enacted December 19, 1989. Under section 10208 of this statute ("Inclusion of Certain Deferred Compensation in Determination of Wage-Based Adjustments"), contributions to certain deferred compensation plans will be included in the computation of the AWI, beginning with 1991. The term "deferred compensation contribution amount" means:

a. An amount excluded from gross income under chapter 1 of the Internal Revenue Code of 1986 (IRC), by reason of sections 402(a)(8) (Cash or Deferred Arrangements), 402(h)(1)(B) (Special Rules For Simplified Employee Pensions), or 457(a) (Year of Inclusion in Gross Income) of such Code or by reason of a salary reduction agreement under section 403(b) (Taxability of Beneficiary under Annuity Purchased by section 501(c)(3) Organization or Public School) of such Code;

b. any amount with respect to which a deduction is allowable under chapter 1 of such Code by reason of a contribution to a plan described in section 501(c)(18) (a trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan meeting certain criteria and funded only by contributions of employees) of such Code; and,

c. to the extent provided in regulations of the Secretary of Health and Human Services, deferred compensation provided under any arrangement, agreement, or plan referred to in subsection (i) or (j) of section 209 of the Social Security Act (the Act), as amended by sections 10208(d)(1) (S) and (T) of Public Law 101-239.

The current regulations (§ 404.211(c)) defining the term "average of the total wages" for years after 1977 include only wages reported on Internal Revenue Service Form W-2 for Federal income tax purposes. In these final regulations, the definition is broadened for wages earned after 1990 to also include contributions to certain deferred compensation plans (described above), as required by section 209(k) of the Act, added by section 10208 of Public Law 101-239.

The contributions to deferred compensation plans, as described above, are excluded from gross income for income tax purposes in the year that they are earned and are reported separately from other earned income on Form W-2. Distributions from most such plans are reported for income tax purposes on forms other than Form W-2. However, distributions from plans covered by section 457(a) of the IRC are reported on Form W-2. The regulations will include in the calculation of the average of the total wages only those deferred compensation amounts identified on the Forms W-2 as contributed to the plans during a particular year. In order to avoid counting deferred compensation amounts relating to section 457(a) plans twice (once when contributed to the plans and again when distributed to individuals from the plans), we will exclude from the calculation of the average of the total wages any deferred compensation amounts identified on Forms W-2 as distributed to individuals during that particular year.

The revised AWI may increase benefits to individuals who become eligible for benefits in 1993 and later. The change in the indexing series for 1991 and later may also affect, subject to rounding, wage-indexed program amounts for 1993 and later. These wage-indexed program amounts are (1) the contributions and benefit base, (2) the Hospital Insurance contribution base, (3) the "old-law" contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments), (4) the retirement test exempt amounts, (5) the amount of earnings required for a worker to be credited with a quarter of coverage, and (6) the formulas for calculating an individual's primary insurance amount and the family maximum benefit amount.

The statute provides a transitional rule for computing the average of the total wages used in the formula for determining the contribution and benefit base and the "old-law" contribution and benefit base for 1990-1992. Under the transitional rule, determination of these bases for 1990-1992 is based on special "deemed" average wages for 1988-1990. (Similarly, the Hospital Insurance contribution base for 1992 is based on deemed average wages for 1989 and 1990.) The deemed average wage is a temporary deviation from the regular AWI, and is used soley for the purpose of determining the contribution and benefit base, the "old-law" contribution and benefit base for 1990-1992 and the Hospital Insurance contribution base for 1992.

Computation of 1990-1992 Bases (Transitional Rule)

Computations of the contribution and benefit base and the "old-law" contribution and benefit base amounts for 1990 and 1991 were published as notices in the **Federal Register** on December 29, 1989, (54 FR 53751) and on October 31, 1990, (55 FR 45856) respectively, together with the deemed average wages for 1988 and 1989 on which such computations were based. For the years 1988 and 1989, the deemed average wage under the transitional rule is the AWI for a year plus 2 percent of the prior year's AWI.

The deemed average wage for 1990 reflects the actual data on deferred compensation contributions. The 1990 deemed average wage is defined as:

$$(\text{1989 AWI}) \times \frac{\text{1990 average wages including deferred compensation}}{\text{1989 average wages excluding deferred compensation}}$$

The average wages used in the above ratio are those calculated directly from Form W-2. The 1992 base is equal to the 1991 base multiplied by the ratio of the 1990 deemed average wage to the 1989 deemed average wage.

Two percent of a prior year's AWI, as used to determine a deemed average wage for 1988 or 1989, is an estimate of the deferred compensation contributions that have been paid to date, relative to regular wages. Thus, the transitional rule raises the contribution and benefit base for 1990 and 1991 to about the same level it would have been if deferred compensation had always been included in the average wage indexing series. Further, the rule adjusts that level for actual deferred compensation data for 1990 (the first year for which such data will be available to the Social Security Administration (SSA) from Form W-2 reports filed by employers). The change in the average wage indexing series, beginning with 1991, then maintains the base at levels which reflect the increase in wages, including deferred compensation, for 1993 and later.

Computation of Wage-Indexed Program Amounts for 1993 and Later

The AWI for years before 1991 is the same as under prior law. For 1991, the AWI is defined as:

$$(1990\ \text{AWI}) \times \frac{\text{1991 average wages including deferred compensation}}{\text{1990 average wages including deferred compensation}}$$

The average wages used in the above ratio are those calculated directly from SSA's annual wage data. AWI's for years after 1991 are similarly defined.

For years 1993 and later, all wage-indexed program amounts, previously mentioned, are potentially affected by the new definition of AWI. The amounts which are rounded to the nearest multiple of $10 (e.g., the monthly retirement test exempt amounts) are less likely to be affected in the near term than amounts which are rounded to the nearest dollar (the wage-indexed amounts in the formulas for computing an individual's primary insurance amount and the family maximum benefit). The methods used to compute the wage-indexed amounts are not changed by the new statute.

Regulations

Existing regulations do not provide for the inclusion of contributions to certain deferred compensation plans in the determination of the average of the total wages. These final regulations expand § 404.211, which sets out the method used in indexing and averaging earnings, to include deferred compensation amounts provided by the statute.

In addition, we are updating § 404.1048 to reflect the rules for determining the contribution and benefit based for years after 1992.

Regulatory Procedures

Even when not required by statute, as a matter of policy, the Department of Health and Human Services generally follows the notice of proposed rulemaking and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553, in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures in these regulations because we are only reflecting statutory changes which are not discretionary and do not involve the setting of policy. Therefore, opportunity for prior public comment is unnecessary and these amendments are being issued as final rules.

Executive Order No. 12291

The Secretary has determined that this is not a major rule under the terms of Executive Order 12291 because no additional program or administrative costs are contemplated and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations do not impose reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities. Any significant economic impact which would result from the inclusion of deferred compensation in the calculation of the amount of wages on which small entities will be required to pay taxes under the Federal Insurance Contribution Act would be caused by the statutory amendment imposed by section 10206 of Public Law 101-239. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802, Social Security—Disability Insurance; 93.803, Social Security—Retirement Insurance; 93.805, Social Security—Survivor's Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors, and Disability Insurance.

Dated: October 7, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: November 5, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, title 20, chapter III, part 404 of the Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

1. The authority citation for subpart C of part 404 continues to read as follows:

Authority: Secs. 202(a), 205(a), 215, and 1102 of the Social Security Act; 42 U.S.C. 402(a), 405(a), 415, and 1302.

2. Section 404.211 is amended by revising paragraph (c) to read as follows:

§ 404.211 Computing your average indexed monthly earnings.

* * * * *

(c) *Average of the total wages.* Before we compute your average indexed monthly earnings, we must first know the "average of the total wages" of all workers for each year from 1951 until the second year before you become eligible. The average of the total wages for years after 1950 are shown in appendix I. Corresponding figures for more recent years which have not yet been incorporated into this appendix are published in the **Federal Register** on or before November 1 of the succeeding year. "Average of the total wages" (or "average wage") means:

(1) For the years 1951 through 1977, four times the amount of average taxable wages that were reported to the Social Security Administration for the first calendar quarter of each year for social security tax purposes. For years prior to 1973, these average wages were determined from a sampling of these reports.

(2) For the years 1978 through 1990, all remuneration reported as wages on Form W-2 to the Internal Revenue Service for all employees for income tax purposes, divided by the number of wage earners. We adjusted those averages to make them comparable to the averages for 1951-1977. For years after 1977, the term includes remuneration for services not covered by social security and remuneration for covered employment in excess of that which is subject to FICA contributions.

(3) For years after 1990, all remuneration reported as wages on Form W-2 to the Internal Revenue Service for all employees for income tax purposes, including remuneration described in paragraph (c)(2) of this section, plus contributions to certain deferred compensation plans described in section 209(k) of the Social Security Act (also reported on Form W-2), divided by the number of wage earners. If both distributions from and

contributions to any such deferred compensation plan are reported on Form W–2, we will include only the contributions in the calculation of the average of the total wages. We will adjust those averages to make them comparable to the averages for 1951–1990.

* * * * *

3. The authority citation for subpart K of part 404 continues to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 429(a), 430, 431, and 1302.

4. Section 404.1048 is amended by revising the title and paragraphs (a) and (c) to read as follows:

§ 404.1048 Contribution and benefit base after 1992.

(a) General. The contribution and benefit base after 1992 is figured under the formula described in paragraph (b) of this section in any calendar year in which there is an automatic cost-of-living increase in old-age, survivors, and disability insurance benefits. For purposes of this section, the calendar year in which the contribution and benefit base is figured is called the determination year. The base figured in the determination year applies to wages paid after (and taxable years beginning after) the determination year.

* * * * *

(c) *Average of the total wages.* The average of the total wages means the amount equal to all remuneration reported as wages on Form W–2 to the Internal Revenue Service for all employees for income tax purposes plus contributions to certain deferred compensation plans described in section 209(k) of the Social Security Act (also reported on Form W–2), divided by the number of wage earners. If both distributions from and contributions to any such deferred compensation plan are reported on Form W–2, we will include only the contributions in the calculation of the average of the total wages. The reported remuneration and deferred compensation contributions include earnings from work not covered under social security and earnings from work covered under social security that are more than the annual wage limitation described in § 404.1047.

[FR Doc. 92–937 Filed 1–13–92; 8:45 am]

BILLING CODE 4190–29–M

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AD19

Federal Old-Age, Survivors, and Disability Insurance Benefits; Continued Payment of Benefits During Appeal

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations reflect section 5102 of Public Law (Pub. L.) 101–508, the Omnibus Budget Reconciliation Act of 1990. Section 5102 amended section 223(g) of the Social Security Act (the Act) and made permanent statutory provisions which previously were applicable on a temporary basis. Under these statutory provisions, a disabled beneficiary may elect to have his or her disability insurance benefits under title II of the Act, and/or Medicare benefits under title XVIII of the Act, continued pending a reconsideration determination or an administrative law judge hearing decision issued after we have made an initial determination that the individual's impairments have ceased, did not exist, or are no longer disabling. Such an individual may also elect to have benefits continued for his or her spouse and children who are receiving benefits on his or her earnings record, if they also elect to have their benefits continued. The statutory provision allowing for the continuation of benefits pending appeal also applies to persons receiving child's insurance benefits based on disability; persons receiving widow's or widower's benefits based on disability; and persons receiving mother's or father's benefits on the basis of having in their care a person receiving child's insurance benefits based on disability.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1795.

SUPPLEMENTARY INFORMATION: These final regulations reflect section 5102 of Public Law 101–508. Prior to this statutory amendment, the statutory provisions concerning the continuation of benefits pending appeal were available if, prior to January 1, 1991, we made an initial determination that an individual's impairments, on which we had based our disability determination or decision, had ceased, did not exist, or were no longer disabling. Also under the prior law, continued benefit payments could not be paid for months after June 1991. Section 5102 of Public Law 101–508 removed these time limitations and made permanent the continuation of benefit provisions. We are amending § 404.1597a of our regulations to reflect these two statutory changes.

Regulatory Procedures

The Department generally follows the notice of proposed rulemaking and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553(b), in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures in these regulations because we are only reflecting statutory changes which are not discretionary and do not involve the setting of any policy. Therefore, we have determined that opportunity for prior public comment is unnecessary. Consequently, these amendments are being issued as a final rule.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations will not result in any significant costs or otherwise meet the criteria for a major rule. We estimate the program costs for implementing the legislation on which these rules are based to be $10 million for fiscal year (FY) 1991, $35 million for FY 1992, $50 million for FY 1993, $65 million for FY 1994, $85 million for FY 1995, and $95 million for FY 1996 with estimated administrative costs of $2 million for FY 1991, and $3 million each for FY 1992, FY 1993, FY 1994, FY 1995, and FY 1996. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no recordkeeping or reporting requirements requiring the Office of Management and Budget clearance.

Regulatory Flexibility Act

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as

provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs: No. 93.802 Social Security Disability Insurance; No. 93.803 Social Security Retirement Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors and Disability Insurance.

Dated: October 10, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: November 18, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services

Subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

PART 404—[AMENDED]

1. The authority citation for subpart P is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302.

2. Section 404.1597a is amended by removing paragraphs (b)(3)(iii) and (h)(2)(iii) and by revising paragraphs (b)(1), (b)(3)(ii) and (h)(2)(ii) to read as follows:

§ 404.1597a Continued benefits pending appeal of a medical cessation determination.

* * * * *

(b) *When the provisions of this section are available.* (1) Benefits may be continued under this section only if the determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling is made on or after January 12, 1983 (or before January 12, 1983, and a timely request for reconsideration or a hearing before an administrative law judge is pending on that date).

* * * * *

(3) * * *

(ii) The month before the month no timely request for a reconsideration or a hearing before an administrative law judge is pending. These continued benefits may be stopped or adjusted because of certain events (such as work and earnings or receipt of worker's compensation) which occur while you are receiving these continued benefits and affect your right to receive continued benefits.

* * * * *

(h) * * *

(2) * * *

(ii) The month before the month no timely request for a reconsideration or a hearing before an administrative law judge is pending. These continued benefits may be stopped or adjusted because of certain events (such as work and earnings or payment of worker's compensation) which occur while an eligible individual is receiving continued benefits and affect his or her right to receive continued benefits.

* * * * *

[FR Doc. 92-939 Filed 1-13-92; 8:45 am]

BILLING CODE 4190-29-M

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20 CFR Part 416

RIN 0960-AC93

Supplemental Security Income for the Aged, Blind, and Disabled; Subpart K—Income and Subpart L—Resources and Exclusions; Exclusion of Interest on Burial Spaces

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations reflect amendments to the Social Security Act (the Act) made by section 8013 of Public Law (Pub. L.) 101-239 (the Omnibus Budget Reconciliation Act of 1989, enacted December 19, 1989). The Act, as amended by that section, provides, for supplemental security income (SSI) purposes, an exclusion from income of the interest accrued on, and left to accumulate as part of, the value of an excluded burial space purchase agreement entered into by an individual or the individual's spouse; and provides an exclusion from resources of the value of a burial space purchase agreement including any interest accrued thereon. These amendments were effective April 1, 1990. In addition, we are making several technical changes to § 416.1231 to clarify and improve the organization of the rules set forth in that section.

EFFECTIVE DATE: These rules are effective April 1, 1990.

FOR FURTHER INFORMATION CONTACT: Phyllis E. Green, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-8922.

SUPPLEMENTARY INFORMATION:

Background

Public Law 101-239, the "Omnibus Budget Reconciliation Act of 1989" was enacted December 19, 1989. Section 8013 of this law amended sections 1612(b) and 1613(a)(2)(B) of the Act to provide an exclusion from income of the interest accrued and left to accumulate on the value of a burial space purchase agreement entered into by an individual or spouse (section 8013(a)); and to provide an exclusion from resources of the value of an agreement, including any interest accumulated thereon, representing the purchase of a burial space (section 8013(b)).

Prior to enactment of this law, there were no statutory provisions for the exclusion from income and resources of interest accrued on the value of an agreement representing the purchase of a burial space for an individual, the individual's spouse, or a member of the individual's immediate family. If the individual could access the interest and use it for his or her support and maintenance, the accrued interest was countable income upon receipt and, if retained into the following month, became a resource for SSI purposes.

Burial agreements often contain items that are excludable under the burial fund exclusion and other items excluded under the burial space exclusion, as set forth in § 416.1231. Prior to enactment of Public Law 101-239, interest earned on and left to accumulate as part of excluded burial funds, could be excluded from income and resources under section 1613(d)(4) of the Act. No statutory authority specifically provided for the exclusion from income and resources of interest earned on excluded burial spaces.

Proposed Changes

We are amending the regulations to reflect sections 1612(b) and 1613(a)(2)(B) as amended, as follows.

Section 416.1124 is amended to provide that effective April 1, 1990, interest accrued on and left to accumulate as part of the value of an excluded burial space purchase agreement entered into by an individual or his or her spouse will be excluded from income.

Section 416.1231 is amended to provide that effective April 1, 1990, the value of a burial space purchase agreement, including any interest accumulated thereon, will be excluded from resources

Technical Changes

On July 11, 1990 (55 FR 28373), we published regulations amending § 416.1231(a)(2). In these final rules, we are also making technical changes to § 416.1231(a)(2) to clarify and improve the organization of the rules set forth in

that section. We are making changes as follows:

• Deleting the third sentence of paragraph (a)(2) because it is redundant.

• Moving the fourth and fifth sentences of paragraph (a)(2) to new paragraph (a)(3) so that these sentences will be combined with other text in the new paragraph on agreements representing the purchase of a burial space.

• Deleting the word "contract" from these two sentences and substituting the word "agreement" so that the regulations use wording that is consistent with the statute.

Regulatory Procedures

Justification for Final Rules

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures. Section 553(b)(B) of the APA exempts application of notice and comment rulemaking procedures "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." We are dispensing with notice and comment rulemaking in the case of these rules because such rulemaking is unnecessary. These rules merely reflect, without exercise of discretion, the provisions of sections 1612(b) and 1613(a)(2)(B) of the Act as amended by section 8013 of Public Law 101–239. Further, these statutory amendments were made effective by Congress as of April 1, 1990. In addition, notice and comment rulemaking is unnecessary for the technical changes to § 416.1231(a)(2). The technical changes do not affect the substance of that rule which was published pursuant to notice and comment rulemaking. The technical changes merely make clarifying and organizational changes made necessary by the rules to implement sections 1612(b) and 1613(a)(2)(B) as amended.

Executive Order No. 12291

The Secretary has determined that this is not a major rule under the terms of Executive Order 12291 because the program costs are estimated to be negligible, the administrative savings are estimated to be less than $1 million, and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These regulations do not impose reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: September 23, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: November 5, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, title 20, chapter III, part 416 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for subpart K of part 416 is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. Section 416.1124 is amended by adding a new paragraph (c)(15) to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) * * *

(15) Any interest accrued on and left to accumulate as part of the value of an excluded burial space purchase agreement. This exclusion from income applies to interest accrued on or after April 1, 1990.

3. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

4. Section 416.1231 is amended by revising paragraph (a)(2), redesignating existing paragraph (a)(3) as (a)(4) and adding a new paragraph (a)(3) to read as follows:

§ 416.1231 Burial spaces and certain funds set aside for burial expenses.

(a) * * *

(2) *Burial spaces defined.* For purposes of this section "burial spaces" include burial plots, gravesites, crypts, mausoleums, urns, niches and other customary and traditional repositories for the deceased's bodily remains provided such spaces are owned by the individual or are held for his or her use. Additionally, the term includes necessary and reasonable improvements or additions to or upon such burial spaces including, but not limited to, vaults, headstones, markers, plaques, or burial containers and arrangements for opening and closing the gravesite for burial of the deceased.

(3) *An agreement representing the purchase of a burial space.* The value of an agreement representing the purchase of a burial space, including any accumulated interest, will be excluded from resources. We do not consider a burial space "held for" an individual under an agreement unless the individual currently owns and is currently entitled to the use of the space under that agreement. For example, we will not consider a burial space "held for" an individual under an installment sales agreement or other similar device under which the individual does not currently own nor currently have the right to use the space, nor is the seller currently obligated to provide the space, until the purchase amount is paid in full.

* * * * *

[FR Doc. 92–938 Filed 1–13–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

Foreign Prohibitions on Longshore Work by U.S. Nationals

[Public Notice 1550]

22 CFR Part 89

AGENCY: Department of State.

ACTION: Final rule; correction.

SUMMARY: This correction is being issued to include Japan in the list in the final rule published on December 27, 1991 (56 FR 66970) of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States

vessels is prohibited by law, regulation or in practice in the country concerned.

DATES: Effective date: January 14, 1992.

ADDRESSES: For mailing public comments: Office of Maritime and Land Transport (EB/TRA/MA), room 5828, Department of State, Washington DC 20520–5816.

FOR FURTHER INFORMATION CONTACT: Stephen Miller, Office of Maritime and Land Transport, Department of State, Washington DC 20520–5816. (202) 647–6961.

SUPPLEMENTARY INFORMATION: Section 258(d)(2) of the Immigration and Nationality Act of 1952, as amended, directs the Secretary of State to "compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such work by crewmembers aboard United States vessels is prohibited by law, regulation or in practice in the country." On December 27, 1991, the Department issued a list in the form of a final rule (56 FR 66970). Due to clerical error, the listing for Japan was omitted from the list. (The explanation for Japan's inclusion is found at 56 FR 66973.) This notice places Japan in the list. The following correction is made in 22 CFR part 89, published in the **Federal Register** on December 27, 1991 (56 FR 66970): At the bottom of the third column on page 66974, insert after the entry for Jamaica the following entry:

"Japan
(a) All longshore activities."

Dated: December 3, 1991.

Eugene J. McAllister,

Assistant Secretary, Economic and Business Affairs, Department of State.

[FR Doc. 92–822 Filed 1–13–92; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 50

[Docket No. R–92–1586; FR–3214–I–01]

RIN 2501–AB36

Environmental Policy for the HOPE Grant Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the Department's environmental regulations, part 50 of title 24 of the Code of Federal Regulations, in support of the new HOPE Grant Programs:

HOPE for Public and Indian Housing Homeownership (HOPE 1);

HOPE for Homeownership of Multifamily Units (HOPE 2); and

HOPE for Homeownership of Single Family Homes (HOPE 3).

Amended Notices of Program Guidelines and related Notices of Fund Availability for these programs are published elsewhere in today's edition of the **Federal Register.**

This interim rule amends part 50 to add a categorical exclusion and exemption for any approval by HUD of planning grants under all three HOPE Grant programs. The categorical exclusion applies to environmental assessment and compliance requirements of the National Environmental Policy Act (NEPA), while the exemption applies to the environmental review and compliance requirements of the other Federal environmental laws and authorities listed in 24 CFR 50.4. The rule also adds a categorical exclusion from the environmental assessment requirements of NEPA for any approval by HUD of implementation grants under the HOPE for Homeownership of Single Family Homes program (HOPE 3). However, compliance with applicable Federal environmental laws and authorities other than NEPA, listed in 24 CFR 50.4, is required for proposed acquisition and rehabilitation of existing single-family (1- to 4-unit) homes.

The changes that this rule makes to part 50 are referred to in the amended HOPE Notices of Program Guidelines.

DATES: Effective date: February 13, 1992. Comments must be received by April 15, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Environment and Energy, room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. For telephone communications, contact Walter Prybyla, Deputy Director for Policy, Environmental Review Division, at (202) 708–2810, TDD (202) 708–2565. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Amendments Made by Interim Rule

This interim rule amends HUD environmental regulations at 24 CFR part 50 (Protection and Enhancement of Environmental Quality) to add the following:

(1) A categorical exclusion and exemption for any approval by HUD of planning grants under all HOPE Grant Programs. The categorical exclusion applies to environmental review and compliance requirements of the National Environmental Policy Act of 1969 (NEPA). In addition, compliance with other Federal environmental laws and authorities listed in 24 CFR 50.4 is not required, and exemption from these laws and authorities has therefore also been added.

(2) A categorical exclusion from NEPA review for any approval by HUD of implementation grants under the HOPE 3 program (HOPE for Homeownership of Single Family Homes). A categorical exclusion applies only to the environmental assessment requirements of NEPA. Compliance with applicable Federal environmental laws and authorities listed in 24 CFR 50.4 is required for proposed acquisition and rehabilitation of existing single-family (1 to 4 unit) homes.

Planning Grants: HOPE 1, 2, and 3

Eligible planning grant activities funded under the three HOPE programs are explained in the three sets of amended HOPE Notices of Program Guidelines. The exemption is being added to part 50 as a new § 50.19, Exemptions from environmental laws and authorities other than NEPA. The categorical exclusion from NEPA is being added to part 50 as a new § 50.20(q)(1). The exclusion and exemption apply to all financial assistance for undertaking planning activities authorized by section 302 of the United States Housing Act of 1937 (as added by section 411 of NAHA), section 422 of NAHA, and section 442 of NAHA, for the HOPE 1, 2, and 3 programs, respectively. The planning to be assisted is for developing capacity and strategies for marketing available existing housing held by a Federal, State, or local agency to low-income persons for homeownership.

The reason for HUD's approval of this exclusion and exemption is that, since the grants are for developing strategies for increasing homeownership and housing affordability, activities funded by the grants lack the potential for significant environmental impact that would require assessment under NEPA and would not alter any conditions that

would require review or compliance under the other Federal laws and authorities cited in part 50. However, HUD approval of HOPE implementation grants to carry out these strategies may involve physical development or physical change to specific buildings and sites and, therefore, is not exempt from the related laws or (except under HOPE 3, discussed below) categorically excluded from NEPA. Compliance with part 50 is required for approvals of HOPE Implementation grants.

Implementation Grants: HOPE 3

Implementation grants under the HOPE 3 program are authorized by section 443 of NAHA. Eligible activities funded by HOPE 3 implementation grants include activities related to the acquisition, rehabilitation, and sale of existing one- to four-family properties to eligible low-income families (including job training and day care). (See section 405 of the amended HOPE 3 program guidelines.)

In sections 415(b)(20) and 745 of the amended HOPE 3 guidelines, the Department is revising its environmental policy from that published as section 425(b) on February 4, 1991 at 56 FR 4468–4469. In conjunction with sections 415(b)(20) and 745 of the amended HOPE 3 guidelines, this interim rule authorizes a categorical exclusion from the requirement for an environmental assessment under NEPA for HUD approval of HOPE 3 implementation grants, because of the lack of potential for significant environmental impact from activities funded by HOPE 3 implementation grants. The interim rule amends 24 CFR part 50 by adding this categorical exclusion as a new § 50.20(q)(2).

HUD also has determined that the decision point for environmental review of the HOPE 3 implementation grants for compliance with other applicable environmental laws and authorities is not the approval of the award of grants to successful applicants, but rather the approval of *specific* properties for use in a grant receipent's homeowner program. The reason for this change is that applications are not likely to identify specific properties to be used in the HOPE 3 homeownership programs, whereas certain of the environmental authorities require review of specific properties. Before a HOPE 3 recipient may carry out implementing actions on specific properties it proposes to use, HUD will comply with applicable environmental procedures and standards with respect to the proposed properties under 24 CFR part 50, particularly the related Federal environmental laws and authorities at 24 CFR 50.4.

II. Justification for Interim Rule Making

The National Affordable Housing Act (NAHA) authorizes implementation of the HOPE Grant programs by Federal Register notice. This rule contains amendments to HUD's environmental regulations that will support the operation of these programs. The amended Notice of Program Guidelines refer to the establishment of the exemption and the categorical exclusions set out in this rule, and structure the HUD review and approval procedure for HOPE 1, 2, and 3 planning grants and HOPE 3 implementation grants accordingly. This rule merely amends part 50 to codify the exemption and exclusions in consonance with the guidelines. Issuance of this rule for immediate effect ensures that part 50 requirements will be consistent with the guidelines when applications are prepared and reviewed under the NOFA for the first round funding of the HOPE programs.

Because Congress authorized use of notices published for immediate effect to implement the HOPE programs, the Department finds that there is good cause to publish these supporting regulatory amendments for immediate effect as well. Public comment is being solicited on the three amended HOPE Notices of Program Guidelines. Final rules will be published codifying these programs within eight months from today. Public comments received in response to the publication of this interim rule will also be taken into account in the related final rule expected to be published at the same time.

Findings and Certifications

The finding and certifications set out in the notices being published today for the HOPE Grant programs cover the amendments being made by this rule.

List of Subjects in 24 CFR Part 50

Environmental impact statements,
Environmental assessments,
Categorical exclusions,
Exempt activities.

Accordingly, 24 CFR part 50 is amended as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for 24 CFR part 50 continues to read as follows:

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

2. In subpart D, a new § 50.19 is added to read as follows:

§ 50.19 Exemptions from environmental laws and authorities other than NEPA.

The Department exempts certain activities from the requirements of this part relating to review under the compliance with the environmental laws and authorities listed in § 50.4 of this part. The laws and authorities listed in § 50.4 of this part are not applicable to exempt activities. Exempt activities include the approval of planning grants under the Homeownership and Opportunity for People Everywhere (HOPE) Programs.

3. In subpart D, a new paragraph (q) is added to § 50.20 to read as follows:

§ 50.20 Categorical exclusions.

* * * * *

(q) Approval of:

(1) Planning grants under the Homeownership and Opportunity for People Everywhere (HOPE 1, 2, and 3) Programs; and

(2) Implementation grants under the HOPE for Homeownership of Single Family Homes (HOPE 3) Program.

Dated: December 20, 1991.

Jack Kemp,

Secretary.

[FR Doc. 92–585 Filed 1–13–92; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 500, 515, 520, 530, 535, 550, 560, and 575

Foreign Assets Control, Cuban Assets Control, Foreign Funds Control, Rhodesian Sanctions, Iranian Assets Control, Libyan Sanctions, Iranian Transactions, and Iraqi Sanctions; Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule, amendments.

SUMMARY: This rule amends the Foreign Assets Control Regulations, 31 CFR part 500, the Cuban Assets Control Regulations, 31 CFR part 515, the Foreign Funds Control Regulations, 31 CFR part 520, the Iranian Assets Control Regulations, 31 CFR part 535, the Libyan Sanctions Regulations, 31 CFR part 550, the Iranian Transactions Regulations, 31 CFR part 560, and the Iraqi Sanctions Regulations, 31 CFR part 575 (collectively, the "Regulations") to remove all requirements in the Regulations for use of specific forms for use in the filing of license applications,

and to delete all references in the Regulations to the activities of the Federal Reserve Bank of New York's Foreign Assets Control Division, which is being closed. The proposed amendments reflect procedural changes regarding the operations of the Office of Foreign Assets Control ("FAC"). This rule also removes 31 CFR part 530, the former Rhodesian Sanctions Regulations, and makes minor corrections to citations.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel (tel.: 202/535–6020), or Steven I. Pinter, Chief of Licensing (tel.: 202/535–9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The Regulations currently require applications for specific licenses to engage in transactions prohibited by the Regulations to be filed in duplicate on designated Treasury forms. The FAC Licensing Division has eliminated the requirement that Treasury forms be used to apply for specific licenses. This rule provides instead that specific license applications be made by letter. This rule also deletes all references to the specific licensing activities of FAC performed by the Federal Reserve Bank of New York. The Foreign Assets Control Division of the Federal Reserve Bank of New York will be closed on December 31, 1991. This rule removes Part 530, the Rhodesian Sanctions Regulations, which is no longer in force, and amplifies and corrects certain citations to information disclosure provisions in the Regulations.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Parts 500, 515, 520, 535, 550, 560, 575

Administrative practice and procedure.

For the reasons set forth in the preamble, 31 CFR chapter V is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

Subpart H—Procedures

§ 500.801 [Amended]

2. In § 500.801(b)(1), remove the sentence "The specific licensing activities of the Office of Foreign Assets Control are performed by the central organization and the Federal Reserve Bank of New York."

3. Section 500.801(b)(2) is revised to read as follows:

(b) * * *

* * * * *

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

4. Section 500.801(b)(3) is revised to read as follows:

(b) * * *

* * * * *

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information concerning the application may do so at any time. Arrangements for oral presentation may be made with the Office of Foreign Assets Control.

5. In § 500.801(b)(6), remove the words, "or by the Federal Reserve Bank of New York"

6. In § 500.801, paragraph (c) is added to read as follows:

* * * * *

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

7. In § 500.803, remove the words, "or the Federal Reserve Bank of New York"

8. In § 500.808(a)(6)(ii), remove the words, "either directly or through the Federal Reserve Bank of New York,".

9. In § 500.808(c), remove the words, "Federal Reserve Bank of New York" and add, in their place, the words, "Office of Foreign Assets Control".

10. Section 500.809 is revised to read as follows:

§ 500.809 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of Treasury issued under 5 U.S.C. 552 and published in part 1 of this title.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on Disclosure of Records of the Departmental Offices and of other bureaus and Offices of the Department of the Treasury issued under 5 U.S.C. 552a and published in part 1 of this title.

(c) Any form used in connection with the Foreign Assets Control Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp.; E.O. 9193, 7 FR 5205, 3 CFR

1938–1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

Subpart H—Procedures

§ 515.801 [Amended]

2. In § 515.801(b)(1), remove the sentence "The specific licensing activities of the Office of Foreign Assets Control are performed by the central organization and the Federal Reserve Bank of New York."

3. Section 515.801(b)(2) is revised to read as follows:

(b) * * *

* * * * *

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

4. Section 515.801(b)(3) is revised to read as follows:

(b) * * *

* * * * *

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information concerning the application may do so at any time. Arrangements for oral presentation may be made with the Office of Foreign Assets Control.

5. In § 515.801(b)(6), remove the words "or by the Federal Reserve Bank of New York".

6. In § 515.801, paragraph (c) is added to read as follows:

* * * * *

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. In § 515.803, remove the words "of the Federal Reserve Bank of New York".

8. In § 515.808(a)(6)(iii), remove the words "either directly or through the Federal Reserve Bank of New York,".

9. In § 515.808(d), remove the words, "Federal Reserve Bank of New York" and add, in their place, the words, "Office of Foreign Assets Control".

10. Section 515.809 is revised to read as follows:

§ 515.809 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of Treasury issued under 5 U.S.C. 552 and published in part 1 of this title.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published in part 1 of this title.

(c) Any form used in connection with the Cuban Assets Control Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

PART 520—FOREIGN FUNDS CONTROL REGULATIONS

1. The authority citation for part 520 is revised to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 8389, 5 FR 1400, as amended by E.O 8785, 6 FR 2897, E.O. 8832, 6 FR 3715, E.O. 8963, 6 FR 2897, E.O. 8832, 6 FR 3715, E.O. 8963, 6 FR 6348, E.O. 8998, 6 FR 6785, E.O. 9193, 7 FR 5205; 3 CFR, 1938–1943 Cum. Supp., p. 1174; E.O. 10348, 17 FR 3769, 3 CFR, 1949–1953 Comp., p. 871; E.O. 11281, 31 FR 7215, 3 CFR, 1966–1970 Comp., p. 546.

Subpart H—Procedures

§ 520.801 [Amended]

2. In § 520.801(b)(1), remove the sentence "The specific licensing activities of the Office of Foreign Assets Control are performed by the central organization and the Federal Reserve Bank of New York".

3. Section 520.801(b)(2) is revised to read as follows:

(b) * * *

* * * * *

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

4. Section 520.801(b)(3) is revised to read as follows:

(b) * * *

* * * * *

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information concerning the application may do so at any time. Arrangements for oral presentation may be made with the Office of Foreign Assets Control.

5. In § 520.801(b)(6), remove the words "or by the Federal Reserve Bank of New York".

6. In § 520.801 paragraph (c) is added to read as follows:

* * * * *

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. In § 520.803, remove the words "of the Federal Reserve Bank of New York".

8. Section 520.809 is revised to read as follows:

§ 520.809 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552 and published in part 1 of this title.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published in part 1 of this title.

(c) Any form used in connection with the Foreign Funds Control Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

PART 530—[REMOVED]

Part 530 is removed.

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 535 continues to read as follows:

Authority: Secs. 201–207, 91 Stat. 1626; 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685.

Subpart H—Procedures

§ 535.801 [Amended]

2. In § 535.801(b)(1), remove the sentence "The specific licensing activities of the Office of Foreign Assets Control are performed by its Washington Office and by the Federal Reserve Bank of New York".

3. Section 535.801(b)(2) is revised to read as follows:

(b) * * *

* * * * *

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

4. Section 535.801(b)(3) is revised to read as follows:

(b) * * *

* * * * *

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information concerning the application may do so at any time. Arrangements for oral presentation may be made with the Office of Foreign Assets Control.

5. In § 535.801(b)(6), remove the words, "or by the Federal Reserve Bank of New York".

6. In § 535.801, paragraph (c) is added to read as follows:

* * * * *

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. In § 535.803, remove the words, "or the Federal Reserve Bank of New York".

8. Section 535.807 is added to subpart H to read as follows:

§ 535.807 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552 and published in part 1 of this title.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published in part 1 of this title.

(c) Any form used in connection with the Iranian Assets Control Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 continues to read as follows:

Authority: 50 U.S.C. 1701 et seq.; E.O. 12543, 51 FR 875, Jan. 9, 1986; E.O. 12544, 51 FR 1235, Jan. 10, 1986.

Subpart H—Procedures

§ 550.801 [Amended]

2. In § 550.801(b)(1), remove the sentence "The specific licensing activities of the Office of Foreign Assets Control are performed by its Washington office and by the Foreign Assets Control Division of the Federal Reserve Bank of New York".

3. Section 550.801(b)(2) is revised to read as follows:

(b) * * *

* * * * *

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

4. Section 550.801(b)(3) is revised to read as follows:

(b) * * *

* * * * *

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information concerning the application may do so at any time. Arrangements for oral presentation may be made with the Office of Foreign Assets Control.

5. In § 550.801(b)(6), remove the words "or by the Federal Reserve Bank of New York".

6. In § 550.801, paragraph (c) is added to read as follows:

* * * * *

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. In § 550.802, remove the words "or the Federal Reserve Bank of New York".

8. Section 550.806 is revised to read as follows:

§ 550.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of Treasury issued under 5 U.S.C. 552 and published in part 1 of this title.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published in part 1 of this title.

(c) Any form used in connection with the Libyan Sanctions Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

9. In § 550.807(a)(7)(iii), remove the words "either directly or through the Federal Reserve Bank of New York,".

10. In § 550.807(c), remove the words, "Federal Reserve Bank of New York, Foreign Assets Control Division, 33 Liberty Street, New York, New York 10045" and add, in their place, the words, "Office of Foreign Assets Control".

PART 560—IRANIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 560 continues to read as follows:

Authority: 22 U.S.C. 2349aa–9; E.O. 12613, 52 FR 41940, Oct. 30, 1987.

Subpart H—Procedures

§ 560.801 [Amended]

2. In § 560.801(b)(1), remove the sentence "The specific licensing activities of the Office of Foreign Assets Control are performed by its Washington Office and by the Foreign Assets Control Division of the Federal Reserve Bank of New York".

3. Section 560.801(b)(2) is revised to read as follows:

(b) * * *

* * * * *

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

4. Section 560.801(b)(3) is revised to read as follows:

(b) * * *

* * * * *

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information concerning the application may do so at any time. Arrangements for oral presentation may be made with the Office of Foreign Assets Control.

5. In § 560.801(b)(6), remove the words "or by the Federal Reserve Bank of New York".

6. In § 560.801, paragraph (c) is added to read as follows:

* * * * *

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. In § 560.802, remove the words "or the Federal Reserve Bank of New York"

8. In § 560.806(b)(3), remove the words "either directly or through the Federal Reserve Bank of New York,"

9. In § 560.806(d), remove the words "Federal Reserve Bank of New York, Foreign Assets Control Division, 33 Liberty Street, New York, New York 10045" and add, in their place, the words, "Office of Foreign Assets Control".

10. Section 560.807 is revised to read as follows:

§ 560.807 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of Treasury issued under 5 U.S.C. 552 and published in part 1 of this title.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of Treasury issued under 5 U.S.C. 552a and published in part 1 of this title.

(c) Any form used in connection with the Iranian Transaction Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

PART 575—IRAQI SANCTIONS REGULATIONS

1. The authority citation for part 575 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; Pub. L. 101–513, 104 Stat. 2047–55 (Nov. 5, 1990); 3 U.S.C. 301; E.O. 12772, 55 FR 31803 (Aug. 3, 1990); E.O. 12724, 55 FR 33089 (Aug. 13, 1990).

Subpart H—Procedures

2. Section 575. 806 is revised to read as follows:

§ 575.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of Treasury issued under 5 U.S.C. 552 and published in part 1 of this title.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published in part 1 of this title.

(c) Any form used in connection with the Iraqi Sanctions Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Dated: December 19, 1991

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: December 23, 1991

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 92–871 Filed 1–9–92; 11:50 am]

BILLING CODE 4810–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD2–91–03]

Drawbridge Operation Regulations; Arkansas River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This action amends the drawbridge operating regulations on the Arkansas River to accurately describe the method to request opening of the lift spans for the Baring Cross Bridge at Mile 119.6, the Junction Bridge at Mile 118.7, and the Rock Island Railroad Bridge at Mile 118.2 when necessary for transit. These changes reflect the creation of a Regulated Navigation Area (RNA) encompassing mile 118.2 to mile 125.4 at Little Rock, Arkansas.

EFFECTIVE DATE: This rule is effective on February 13, 1992.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri, 63103–2832, (314) 539–3724.

SUPPLEMENTARY INFORMATION: On September 26, 1991, the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** at 56 FR 48770. Interested persons were invited to participate in this rulemaking by submitting written views, comments, data, or arguments no later than November 12, 1991. Five comments were received.

Drafting Information

The drafters of this regulation are Wanda G. Renshaw, Project Officer, Commander(ob), Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri, 63103–2832, and Lieutenant M.A. Suire, Project Attorney, Commander(dl), 1222 Spruce Street, St. Louis, Missouri, 63103–2832.

Discussion of Regulation

Three vertical lift drawbridges span the Arkansas River in the Little Rock, Arkansas harbor. The Rock Island Railroad Bridge at mile 118.2 is currently maintained in the open position. The Baring Cross Bridge at mile 119.6 and the Junction Bridge at mile 118.7 are maintained in the closed position and are remotely operated by a dispatcher in North Little Rock, Arkansas. The regulations must correctly describe the method used for requesting opening of the draws in light of the RNA established by 3 CFR 165.203.

Discussion of Comments

Of the comments received, two expressed no objection to the proposed changes. The remaining three consist of four separate comments on the proposal. Each is addressed below:

Comment: "For vessels with lower horsepower ratings or unusual situations I think it could be made clearer that they have the right to wait at the lock or cells until the bridges are opened."

This comment appears to pertain to transit during periods of high velocity flow. Once the flow rate reaches 70,000 cubic feet per second at Murray Lock & Dam, all vessels must then comply with the provisions of the RNA established at 33 CFR 165.203, which requires the vessels to transit from mile 125.4 to mile 118.2 unimpeded. This regulation complements 33 CFR 165.203 during high velocity flow by requiring the downbound vessel to coordinate its passage with the remote drawbridge operator and contemplates that this coordination will take place either before the vessel departs Murray Lock & Dam or before departing the mooring cells at mile 121.5. The Coast Guard

acknowledges that the proposal was unclear in this regard and has attempted to clarify the final regulation in paragraph (2).

Comment: "[T]he Rock Island Bridge at Mile 118.2 is maintained in the open position. This bridge is no longer used and does not even have any tracks approaching it any longer."

This comment was received from two separate sources. The Coast Guard has confirmed with the bridge owner that the Rock Island Railroad bridge is presently maintained in the open position, but that the machinery to raise or lower the span is in place although the owner reports it would require mechanical and electrical overhaul to make the machinery fully functional. The Coast Guard recognizes that the likelihood that this bridge will ever be placed in the closed position is low, but believes that the possibility that it may be lowered for some purpose, such as during maintenance or overhaul, requires that appropriate regulations be in place for vessels desiring passage through the bridge to have a means to request that it be opened. The Coast Guard has amended the Discussion of Regulation paragraph above and part 117.123(b) of the proposed regulation to reflect the actual status of the bridge but does not believe any change to the procedures to be used to request opening is warranted.

Comment: "I feel that the wording in part 117.123(b)(1) is adequate and in fact is the way in which this reach is run on a daily basis."

No additional changes to the proposed rule were deemed necessary as a result of this comment and none were made.

Comment: "[T]he regulations you propose should not apply [to retractable pilot house towboats] and we would like this clarified."

The Coast Guard does not believe that the proposed regulation contemplated opening a drawbridge where it was not necessary. If a vessel can operate in, around or through the drawbridges during periods of normal flow or in accordance with the RNA at 33 CFR 165.203 during periods of high velocity flow without requiring the drawbridges to be opened, then the drawbridges need not be opened. The Coast Guard has clarified this common-sense approach in the final rule. No additional changes to the proposed rule were deemed necessary as a result of this comment and none were made.

Economic Assessment and Certification

This regulation has been reviewed under the provisions of Executive Order 12291 and determined not to be a major rule. In addition, this rulemaking is considered to be nonsignificant under the guidelines of DOT Order 2100.5 dated May 22, 1980, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An economic evaluation has not been conducted and is deemed unnecessary as the impact of the proposed action is expected to be minimal. Revising the drawbridge regulations to accurately reflect the method used to request the opening of drawbridges in an RNA is justified. Pursuant to 5 U.S.C. 601, et seq., Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment and Certification

This action has been reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Document is available for review on the docket.

Federalism Assessment and Certification

This action has been analyzed in accordance with the principles and criteria outlined in Executive Order 12612. It has been determined that this action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment. As noted above, this action amends the method used to request opening of drawbridges located in an RNA.

Collection of Information

This rule contains no collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*).

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulation

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05(g).

2. Section 117.123 is amended by revising paragraph (a) introductory text, redesignating paragraph (b) as paragraph (c) and revising the introductory text, and adding a new paragraph (b) to read as follows:

§ 117.123 Arkansas and White Rivers—Automated Railroad Bridges.

(a) Across the Arkansas River, the draw of the Cotton Belt Railroad (Rob Roy) Bridge, Mile 67.4, is maintained in the closed position and is remotely operated. The following signals shall be used:

* * * * *

(b) The draws of the Junction Railroad Bridge at mile 118.7 and the Baring Cross Railroad Bridge at mile 119.6, Arkansas River, at Little Rock, are maintained in the closed position and are remotely operated. The draw of the Rock Island Railroad Bridge at mile 118.2, Arkansas River, at Little Rock, is maintained in the open position. Use the following procedures to request opening of these bridges when necessary for transit;

(1) Normal Flow Procedures. Any upbound or downbound vessel which requires opening the draw of any of these bridges shall establish contact by radiotelephone with the remote drawbridge operator on VHF–FM Channel 13 in North Little Rock, Arkansas. The remote drawbridge operator will advise the vessel whether the requested span can be immediately opened and maintain constant contact with the vessel until the requested span has opened and the vessel passage has been completed. If any or all of the drawbridges cannot be opened immediately, the remote drawbridge operator will notify the calling vessel and provide an estimated time for individual drawbridge openings.

(2) High Velocity Flow Procedures. The area from mile 118.2 to mile 125.4 is a regulated navigation area (RNA) as described in 33 CFR 165.203. During periods of high velocity flow, which is defined as a flow rate of 70,000 cubic feet per second or greater at the Murray Lock and Dam, mile 125.4, downbound vessels which require that the draw of these three bridges be opened for unimpeded passage shall contact the remote drawbridge operator on VHF–FM Channel 13 either before departing Murray Lock and Dam, or before departing the mooring cells at Mile 121.5 to ensure that the Rock Island, Junction,

and Baring Cross Railroad drawbridges are opened. The remote drawbridge operator shall immediately respond to the vessel's call, ensure that all three drawbridges are open for pasage, and ensure that they remain in the open positon until the downbound vessel has passed through each drawbridge. If a closed drawbridge cannot be opened immediately for unimpeded passage in accordance with 33 CFR 163.203, the remote drawbridge operator will immediately notify the downbound vessel and provide an estimated time for drawbridge openings. Upbound vessels shall request openings in accordance with the normal flow procedures as set forth above. The remote drawbridge operator shall keep all approaching vessels informed of the position of the drawbridge spans.

(c) The draw of the Burlington Northern Railroad Bridge, Mile 300.8 Arkansas River at Van Buren, and the Missouri Pacific Railroad Bridge, Mile 7.5 White River at Benzal, are maintained in the open position with a minimum vertical clearance of 52 feet except as follows:

* * * * *

Dated: December 13, 1991.

N.T. Saunders,

Rear Admiral (Lower Half) U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 92-532 Filed 1-13-92; 8:45 am]

BILLING CODE 4910-14-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket Nos. 90-2, 90-4]

RIN 3014-AA09

Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Correction

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Correction to final guidelines.

SUMMARY: This document contains corrections to the Americans with Disabilities Act (ADA) Accessibility Guildelines for Buildings and Facilities. The guidelines were published to assist the Department of Justice to establish accessibility standards for new construction and alterations in places of public accommodation and commercial facilities covered by title III of the ADA and the Department of Transportation to establish accessibility standards for transportation facilities covered by title II of the ADA.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: James Raggio, Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1111-18th Street, NW., suite 501, Washington, DC 20036. Telephone (202) 653-7834 (Voice/TDD). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On July 26, 1991, the Architectural and Transportation Barriers Compliance Board published the Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities in the **Federal Register**. See 56 FR 35408, as corrected at 56 FR 38174 (August 12, 1991). The guidelines appear as an appendix to 36 CFR part 1191. The guidelines were amended on September 6, 1991 to include additional requirements for transportation facilities. See 56 FR 45500 (September 6, 1991). As published, the guidelines contained errors which are corrected by this notice.

Allen B. Clark, Jr.,

Chairman, Architectural and Transportation Barriers Compliance Board.

The following corrections are made in the Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities published in the **Federal Register** on July 26, 1991 (56 FR 35408), as corrected on August 12, 1991 (56 FR 38174).

1. On page 35511, page 53 of the appendix to part 1191 is corrected by adding in the first sentence of section 4.30.4 the words "(0.8mm) minimum" after "1/32 in".

2. On page 35520, page 62 of the appendix to part 1191 is corrected by changing the third line in the first column of the table in paragraph (1) of section 7.3 from "8-15" to "9-15".

Pages 53 and 62 of the appendix to part 1191 are republished with the corrections included to read as follows:

BILLING CODE 8150-01-M

4.29 Detectable Warnings.

4.29.1 General. Detectable warnings required by 4.1 and 4.7 shall comply with 4.29.

4.29.2* Detectable Warnings on Walking Surfaces. Detectable warnings shall consist of raised truncated domes with a diameter of nominal 0.9 in (23 mm), a height of nominal 0.2 in (5 mm) and a center-to-center spacing of nominal 2.35 in (60 mm) and shall contrast visually with adjoining surfaces, either light-on-dark, or dark-on-light.

The material used to provide contrast shall be an integral part of the walking surface. Detectable warnings used on interior surfaces shall differ from adjoining walking surfaces in resiliency or sound-on-cane contact.

4.29.3 Detectable Warnings on Doors To Hazardous Areas. (Reserved).

4.29.4 Detectable Warnings at Stairs. (Reserved).

4.29.5 Detectable Warnings at Hazardous Vehicular Areas. If a walk crosses or adjoins a vehicular way, and the walking surfaces are not separated by curbs, railings, or other elements between the pedestrian areas and vehicular areas, the boundary between the areas shall be defined by a continuous detectable warning which is 36 in (915 mm) wide, complying with 4.29.2.

4.29.6 Detectable Warnings at Reflecting Pools. The edges of reflecting pools shall be protected by railings, walls, curbs, or detectable warnings complying with 4.29.2.

4.29.7 Standardization. (Reserved).

4.30 Signage.

4.30.1* General. Signage required to be accessible by 4.1 shall comply with the applicable provisions of 4.30.

4.30.2* Character Proportion. Letters and numbers on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke-width-to-height ratio between 1:5 and 1:10.

4.30.3 Character Height. Characters and numbers on signs shall be sized according to the viewing distance from which they are to be read. The minimum height is measured using an upper case X. Lower case characters are permitted.

Height Above Finished Floor	Minimum Character Height
Suspended or Projected Overhead in compliance with 4.4.2	3 in. (75 mm) minimum

4.30.4* Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms). Letters and numerals shall be raised 1/32 in (0.8 mm) minimum, upper case, sans serif or simple serif type and shall be accompanied with Grade 2 Braille. Raised characters shall be at least 5/8 in (16 mm) high, but no higher than 2 in (50 mm). Pictograms shall be accompanied by the equivalent verbal description placed directly below the pictogram. The border dimension of the pictogram shall be 6 in (152 mm) minimum in height.

4.30.5* Finish and Contrast. The characters and background of signs shall be eggshell, matte, or other non-glare finish. Characters and symbols shall contrast with their background — either light characters on a dark background or dark characters on a light background.

4.30.6 Mounting Location and Height. Where permanent identification is provided for rooms and spaces, signs shall be installed on the wall adjacent to the latch side of the door. Where there is no wall space to the latch side of the door, including at double leaf doors, signs shall be placed on the nearest adjacent wall. Mounting height shall be 60 in (1525 mm) above the finish floor to the centerline of the sign. Mounting location for such signage shall be so that a person may approach within 3 in (76 mm) of signage without encountering protruding objects or standing within the swing of a door.

4.30.7* Symbols of Accessibility.

(1) Facilities and elements required to be identified as accessible by 4.1 shall use the international symbol of accessibility. The

8.0 Libraries

7.3* Check-out Aisles.

(1) In new construction, accessible check-out aisles shall be provided in conformance with the table below:

Total Check-out Aisles of Each Design	Minimum Number of Accessible Check-out Aisles (of each design)
1 – 4	1
5 – 8	2
9 – 15	3
over 15	3, plus 20% of additional aisles

EXCEPTION: In new construction, where the selling space is under 5000 square feet, only one check-out aisle is required to be accessible.

EXCEPTION: In alterations, at least one check-out aisle shall be accessible in facilities under 5000 square feet of selling space. In facilities of 5000 or more square feet of selling space, at least one of each design of check-out aisle shall be made accessible when altered until the number of accessible check-out aisles of each design equals the number required in new construction.

Examples of check-out aisles of different "design" include those which are specifically designed to serve different functions. Different "design" includes but is not limited to the following features - length of belt or no belt; or permanent signage designating the aisle as an express lane.

(2) Clear aisle width for accessible check-out aisles shall comply with 4.2.1 and maximum adjoining counter height shall not exceed 38 in (965 mm) above the finish floor. The top of the lip shall not exceed 40 in (1015 mm) above the finish floor.

(3) Signage identifying accessible check-out aisles shall comply with 4.30.7 and shall be mounted above the check-out aisle in the same location where the check-out number or type of check-out is displayed.

7.4 Security Bollards. Any device used to prevent the removal of shopping carts from store premises shall not prevent access or egress to people in wheelchairs. An alternate entry that is equally convenient to that provided for the ambulatory population is acceptable.

8. LIBRARIES.

8.1 General. In addition to the requirements of 4.1 to 4.35, the design of all public areas of a library shall comply with 8, including reading and study areas, stacks, reference rooms, reserve areas, and special facilities or collections.

8.2 Reading and Study Areas. At least 5 percent or a minimum of one of each element of fixed seating, tables, or study carrels shall comply with 4.2 and 4.32. Clearances between fixed accessible tables and between study carrels shall comply with 4.3.

8.3 Check-Out Areas. At least one lane at each check-out area shall comply with 7 2(1). Any traffic control or book security gates or turnstiles shall comply with 4.13.

8.4 Card Catalogs and Magazine Displays. Minimum clear aisle space at card catalogs and magazine displays shall comply with Fig. 55. Maximum reach height shall comply with 4.2, with a height of 48 in (1220 mm) preferred irrespective of approach allowed.

8.5 Stacks. Minimum clear aisle width between stacks shall comply with 4.3, with a minimum clear aisle width of 42 in (1065 mm) preferred where possible. Shelf height in stack areas is unrestricted (see Fig. 56).

BILLING CODE 8150-01-C

The following corrections are made in the amendment to the Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities pertaining to transportation facilities published in the **Federal Register** on September 6, 1991 (56 FR 45500).

1. On page 45524, page 70 of the appendix to part 1191 is corrected by adding in the fifth line of paragraph (4) of section 10.3.2 the word "is" before "within".

2. On page 45524, page 70 of the appendix to part 1191 in the seventh line of Exception 2 to paragraph (4) of section 10.3.2 the words "36 CFR Part 1192" are corrected to read "36 CFR part 1192, or 49 CFR part 38,".

Page 70 of the appendix to part 1191 is republished with the corrections included to read as follows:

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10.3.2 Existing Facilities: Key Stations.

(15) Where clocks are provided for use by the general public, the clock face shall be uncluttered so that its elements are clearly visible. Hands, numerals, and/or digits shall contrast with the background either light-on-dark or dark-on-light. Where clocks are mounted overhead, numerals and/or digits shall comply with 4.30.3. Clocks shall be placed in uniform locations throughout the facility and system to the maximum extent practicable.

(16) Where provided in below grade stations, escalators shall have a minimum clear width of 32 inches. At the top and bottom of each escalator run, at least two contiguous treads shall be level beyond the comb plate before the risers begin to form. All escalator treads shall be marked by a strip of clearly contrasting color, 2 inches in width, placed parallel to and on the nose of each step. The strip shall be of a material that is at least as slip resistant as the remainder of the tread. The edge of the tread shall be apparent from both ascending and descending directions.

(17) Where provided, elevators shall be glazed or have transparent panels to allow an unobstructed view both in to and out of the car. Elevators shall comply with 4.10.

EXCEPTION: Elevator cars with a clear floor area in which a 60 inch diameter circle can be inscribed may be substituted for the minimum car dimensions of 4.10, Fig. 22.

(18) Where provided, ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage and shall comply with 7.2.

(19) Where provided, baggage check-in and retrieval systems shall be on an accessible route complying with 4.3, and shall have space immediately adjacent complying with 4.2. If unattended security barriers are provided, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

10.3.2 Existing Facilities: Key Stations.

(1) Rapid, light and commuter rail key stations, as defined under criteria established by the Department of Transportation in subpart C of 49 CFR part 37 and existing intercity rail stations shall provide at least one accessible route from an accessible entrance to those areas necessary for use of the transportation system.

(2) The accessible route required by 10.3.2(1) shall include the features specified in 10.3.1 (1), (4)-(9), (11)-(15), and (17)-(19).

(3) Where technical infeasibility in existing stations requires the accessible route to lead from the public way to a paid area of the transit system, an accessible fare collection system, complying with 10.3.1(7), shall be provided along such accessible route.

(4) In light rail, rapid rail and commuter rail key stations, the platform or a portion thereof and the vehicle floor shall be coordinated so that the vertical difference, measured when the vehicle is at rest, is within plus or minus 1-1/2 inches under all normal passenger load conditions, and the horizontal gap, measured when the vehicle is at rest, is no greater than 3 inches for at least one door of each vehicle or car required to be accessible by 49 CFR part 37.

EXCEPTION 1: Existing vehicles retrofitted to meet the requirements of 49 CFR 37.93 (one-car-per-train rule) shall be coordinated with the platform such that, for at least one door, the vertical difference between the vehicle floor and the platform, measured when the vehicle is at rest with 50% normal passenger capacity, is within plus or minus 2 inches and the horizontal gap is no greater than 4 inches.

EXCEPTION 2: Where it is not structurally or operationally feasible to meet the horizontal gap or vertical difference requirements, mini-high platforms, car-borne or platform mounted lifts, ramps or bridge plates, or similar manually deployed devices, meeting the applicable requirements of 36 CFR part 1192, or 49 CFR part 38, shall suffice.

[FR Doc. 92-889 Filed 1-13-92; 8:45 am]
BILLING CODE 8150-01-C

VOL 57 ISS 9 JA 14 1992 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Final Rule to Determine the Plant Schoenocrambe Argillacea (Clay Reed-Mustard) To Be a Threatened Species, and the Plant Schoenocrambe Barnebyi (Barneby Reed-Mustard) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the plant *Schoenocrambe argillacea* (clay reed-mustard) to be a threatened species, and the plant Schoenocrambe barnebyi (Barneby reed-mustard) to be an endangered species. These two species are endemic to soils derived from specific geologic substrates in the lower elevations of the Unita Basin in northeastern Utah and in the lower elevations of the Fremont River and Muddy Creek drainages in central Utah.

The two know propulation clusters of *S. argillacea* are vulnerable to habitat disturbance from oil and gas development and potential oil shale development. Significant portions of the two known *S. barnebyi* propulations are vulnerable to potential uranium development or trampling by park visitors. This determination that *S. argillacea* is a threatened species and *S. barnebyi* is an endangered species provides these rare plants protection under the Endangered Species Act, as amended.

EFFECTIVE DATE: February 13, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Fish and Wildlife Enhancement Office, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address, telephone: 801/524-4430 or FTS 588-4430.

SUPPLEMENTARY INFORMATION:

Background

Schoenocrambe argillacea was discovered by Duane Atwood in 1976 from a site in the southern portion of the Unita Basin in Uintah County, Utah. Welsh and Atwood (1977) described the species as *Thelypodiopsis argillacea*. *Schoenocrambe barnebyi* was discovered by James Harris in 1980 from a site in the southern portion of the San Rafael Swell in Emery County, Utah. Welsh and Atwood described the species as *Thelypodiopsis barnebyi* (Welsh 1981). Rollings (1982) in reevaluating the cruciferous genera of *Schoenocrambe* and *Thelypodiopsis* move *T. argillacea* and *T. barnebyi* from *Thelypodiopsis* to *Schoenocrambe* as *S. argillacea* and *S. barnebyi*

The genus *Schoenocrambe* includes five currently known species: two are abundant, wide-ranging species, one from the higher dry portions of the Great Plains and the other from the lower elevations of the Colorado Plateau; the remaining three are rare endemic species (*S. argillacea, S. barnebyi*, and *S. suffrutescens*) from low elevations of the northern and western portions of the Colorado Plateau in the State of Utah (Rollins 1982, Welsh and Chatterley 1985, Welsh et al. 1987). (Note: *Schoenocrambe suffretescens* (Rollins) Welsh and Chatterly was listed as an endangered species under the scientific name *Glaucocarpum suffretescens* (Rollins). The Service will begin use of the currently accepted scientific name *Schoenocrambe suffretescens* and assign to it the common name shrubby reed-mustard, in order to be in general agreement with current plant classification usage (see Welsh et al. 1987)).

Schoenocrambe argillacea is a perennial herbaceous plant, with sparsely leafed stems 15 to 30 centimeters (cm) (6 to 12 inches) tall arising from a woody root crown. The leaves are very narrow with a smooth margin, 10 to 35 millimeters (mm) (0.4 to 1.4 inches) long and, usually, less than 2 mm (0.1 inch) wide. The leaf blades are alternately arranged on the stem and, for the most part, are attached directly to the stem without a petiole. The flowers of *S. argillacea* have petals that are pale lavender to whitish with prominent purple veins and measure 8 to 11 mm (0.3 to 0.4 inch) long and 3.5 to 4.5 mm (0.14 to 0.18 inch) wide. The entire flowers are about 1 cm (0.4 inch) across in full anthesis and are displayed in a raceme of 3 to 20 flowers at the end of the plant's leafy stems.

Schoenocrambe barnebyi is a perennial herbaceous plant, with sparsely leafed stems 22 to 35 cm (9 to 15 inches) tall arising from a woody root crown. The leaves are entire with a smooth margin, 1.5 to 5 cm (0.6 to 3 inches) long and 0.5 to 2.5 cm (0.2 to 1 inch) wide. The leaf blades are alternately arranged on the stem and are attached to the stem by a petiole. The flowers of *S. barnebyi* have petals that are light purple with prominent darker purple veins and measure about 12 mm (0.4 inch) long and 2.5 mm (0.1 inch) wide. The entire flowers are about 1 cm (0.4 inch) across in full anthesis and are displayed in a raceme of, commonly, 2 to 8 flowers at the end of the plant's leafy stems.

Schoenocrambe argillacea grows on clay soils rich in gypsum, overlain with sandstone talus, derived from a mixture of shales and sandstones from the zone of contact between the Uinta and Green River geologic formation. Plant species commonly associated with *S. argillacea* include *Eriogonum corymbosum, Ephedra torreyana, Atriplex* spp., and *Artemisia* spp. Two population clusters of *S. argillacea* are known, all within a limited range about 21 kilometers (13 miles) across, from the Green River to Willow Creek in southwestern Uintah County, Utah. The species' total known population is over 5,000 plants (M.A. Franklin, Utah Natural Heritage Program, pers. comm., 1991; U.S. Fish and Wildlife Service 1991). The entire species' population is on land having Federal leases for oil and gas and/or withdrawn for mineral mining claim entry for its oil shale values. Because of this, energy development poses a threat to this species. In addtion, *Schoenocrambe argillacea s* small species population size and restricted distribution make this species inherently vulnerable to man-caused and natural environmental disturbances (U.S. Fish and Wildlife Service 1990).

Schoenocrambe barnebyi grows on red clay soils rich in selenium and gypsum, overlain with sandstone talus, derived from the Moenkopi and Chinle geologic formations. Plant species normally associated with *S. barnebyi* include *Ephedra torreyana, Atriplex confertifolia, Eriogonum corymbosum,* and *Stanleya pinnata.* Two populations of *S. barnebyi* are known, one near Sy's Butte in the southern portion of the San Rafael Sweel, and one in Capitol Reef National Park in the Sulphur Creek drainage west of Fruita. The species' entire known population is less than 1,000 plants (N. Henderson, Capitol Reef National Park, pers. comm. 1991; Welsh and Neese 1984). Assessment work in connection with mining claims for uranium poses a significant ongoing threat to one population of *S. barnebyi* located on lands managed by the Bureau of Land Management. In addition, at least one site in Capitol Reef National Park containing *S. barnebyi* is vulnerable to trampling by park visitors.

Schoenocrambe barnebyi's extremely small species population size and restricted habital make the species inherently vulnerable to man-caused and natural environmental disturbances (Welsh and Neese 1984).

In the **Federal Register** of December 15, 1980 (45 FR 82480), the Service published a notice of review of candidate plants for listing as endangered or threatened species. The 1980 notice included *S. argillacea* as a category 1 species. Category 1 species comprise those taxa for which the Service has information on the biological vulnerability and threats to support the appropriateness of proposing to list them as endangered or threatened species.

In the **Federal Register** of November 28, 1983 (48 FR 53640), the Service published a supplement to the 1980 notice of review in which *S. barnebyi* was added as a category 2 species. Category 2 comprises taxa for which the Service has information indicating the appropriateness of a proposal to list the taxa as endangered or threatened but for which more substantial data are needed on biological vulnerability and threats. In addition, *S. argillacea* was reclassified as a category 2 species in the 1983 supplemental notice.

On September 27, 1985, the Service published a notice of review (50 FR 39526) replacing the 1980 notice and its 1983 supplement. The 1985 notice of review reclassified *S. barnebyi* as a category 1 species because recent status surveys for *S. barnebyi* (Welsh and Neese 1984) provided additional status information which sufficiently demonstrated the vulnerability of this species. *Schoenocrambe argillacea* remained a category 2 species.

The Service published a notice of review on February 21, 1990 (55 FR 6184), replacing the 1985 notice. This notice maintained *S. argillacea* and *S. barnebyi* in the same categories as in the 1985 notice. Since then, more recent status surveys and reports for *S. argillacea* (Bureau of Land Management 1989a, U.S. Fish and Wildlife Service 1990) provided sufficient additional information for the Service to consider *S. argillacea* to be a category1 species. These and earlier (Welsh 1978, Shultz and Mutz 1979) status surveys and reports for *S. argillacea* and the status surveys for *S. barnebyi* (Heil 1988, Neese 1987, Kass 1990, Welsh and Neese 1984) demonstrated the appropriateness of proposing listing for these two species.

Section 4(b)(3)(B) of the Endangered Species Act (Act) amendments of 1982 requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) of the Act's amendments of 1982 further requires that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species in the Service's 1980 notice of review with its 1983 supplement were treated as being petitioned. On October 13, 1983, and each successive year, the Service made successive 1-year findings that the petition to list *S. argillacea* and *S. barnebyi* was warranted but precluded by other listing actions of higher priority. The Service published a proposed rule in the **Federal Register** on April 12, 1991, proposing endangered status for these two species. That proposal constituted the final 1-year finding for these species in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Comments and Recommendations

In the April 12, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal Agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices concerning this proposed action were published in The Salt Lake Tribune, the Deseret News, the Uintah Basin Standard, and the Emery County Progress during the period May 4 to May 8, 1991, which invited general public comment. During the comment period, three commenters responded—one commenter provided written comments and two commenters provided verbal comments. The commenter providing written comments supported listing *S. barnebyi* as endangered. The two commenters providing verbal comments (which were followed by more extensive written comments) questioned the listing of *S. barnebyi* and opposed the listing of *S. argillacea* at this time. Comments received are discussed below.

Comment 1: The initial results of a 1991 inventory for *S. argillacea* sponsored by the Bureau of Land Management revealed significant additional populations of the species, and the species may have a population of least twice that mentioned in the proposed rule.

Service response: Upon completion, the aforementioned inventory of *S. argillacea* estimated over 5,000 plants, as compared to the earlier estimate of 2,000 plants reported in the proposed rule, which was obtained from the Schultz and Mutz (1979) report. A significant population was discovered in the Kings Canyon drainage on the west side of Wild Horse Bench, which is a minor range extension of 1 to 3 miles to the north of previously identified suitable habitat. Nine additional stands were discovered within the known population between the Green River and Wild Horse Beach. The populations in the Willow Creek drainage remained much the same as previously known, with minor extensions of some stands. The historic stand in the southern portion of section 26, T. 11 S. R. 20 E. has apparently been extirpated. These data indicate that the known occurrences of *S. argillacea* constitute two population clusters: one near the Green River between Wild Horse Bench and the Green River, the other in the Willow Creek Drainage on the northern slopes of Big Mountain and in Broome Canyon. These additions to the *S. argillacea* species population are significant.

Through the intensive inventor conducted in 1991 has discovered more plants, it also has confirmed that *S. argillacea* is restricted to two small areas. All occurrences of *S. argillacea* are on Federal oil and gas lease areas and/or oil shale withdrawal areas.

The 1991 inventory has provided a better database upon which to base a listing decision. While the recent inventory has demonstrated that *S. argillacea* is more abundant than previously reported, it also has demonstrated that despite intensive inventory efforts, the species is still rare.

The most significant additional stands discovered in 1991 were located in an area that the author of this rule had previously identified to the biologist conducting the 1991 inventory as an area with reasonably high potential to be *S. argillacea* habitat. After the initial success obtained by searching this area, no additional significant stands of *S. argillacea* were discovered elsewhere. This strongly suggests that the criteria used by the Service to identify potential *S. argillacea* habitat are highly correlated with *S. argillacea* distribution. Based on the limited occurrence of these specific geologic substrate and topographic exposure parameters, the 1991 inventory is suspected to have located the great majority of existing *S. argillacea* sites.

Taking the above into account, in addition to the information in Comments 2 and 3, the Service has decided that it would be more appropriate to list *S. argillacea* as threatened, rather than as endangered as originally proposed. Because the species' known populations are found only on Bureau of Land Management lands with oil, gas, and oil shale potential, this rare plant will

always be vulnerable to the threat of habitat loss or disturbance due to energy development. Though candidate species status carries some weight within the Bureau of Land Management in terms of conserving the species, it cannot legally ensure that Federal actions are not likely to jeopardize *S. argillacea*.

Listing this species as threatened does not preclude future energy development in its habitat. Listing ensures that proposed energy extraction operations that may affect *S. argillacea* on Federal lands are reviewed, and where necessary, actions are implemented so as to avoid jeopardy to this rare plant.

Comment 2: The habitat of *S. argillacea* is over lower grade oil shale deposits that are considered marginal for future oil shale development. There are currently no plans for development of these oil shale reserves.

Service response: The Service takes note of the fact that habitat disturbance threats from oil shale development are not imminent and has revised the rule accordingly. However, much of the species' habitat is over lands with good potential for oil and gas development. There is increasing oil and gas activity in this area, and care should be taken to avoid harming *S. argillacea* populations.

Comment 3: The location of *S. argillacea* populations on steep slopes makes the species unlikely to be disturbed by oil and gas development activities.

Service response: The location of the species on steep slopes provides some protection from direct impacts of oil and gas development activity but does not necessarily provide protection from indirect impacts. Construction of access roads and possible disposal of construction spoils into the species' occupied areas are potential threats to some populations of this species. In fact, the Service received word that a proposed well pad development was recently visited where, unknowingly, plans had been made to dispose of construction spoils onto a site containing *S. argillacea*.

Comment 4: The range and population of *S. barnebyi* may be greater than currently known, and listing should be delayed until more surveys are completed.

Service response: Several recent studies and inventories which have surveyed known populations of *S. barnebyi* as either the sole or a principle study objective (See "Background" and "References Cited") have shown the species to be very rare and restricted in distribution, with a high degree of inherent vulnerability. In the proposed rule, the species' population was estimated to be 2,000 plants. However, information received during the comment period indicates that a more accurate estimate would be less than 1,000 plants. The scientific data available at this time indicates that it is appropriate to list this species as endangered.

Comment 5: Populations of *S. barnebyi* in Capitol Reef National Park are secure from any human-caused adverse action.

Service response: The occurrence of populations of a rare, unlisted species within a national park does not necessarily ensure complete protection of those populations from adverse impacts. The populations of *S. barnebyi* within the park are much smaller than reported in the proposed rule and at least one site is susceptible to trampling by park visitors. The National Park Service is concerned about the status of *S. barnebyi* within Capitol Reef National Park and strongly supports listing the species as endangered. Listing will focus additional attention and resources on the species to ensure its survival into the future.

Comment 6: There is no active uranium development activity in the habitat of *S. barnebyi*.

Service response: The small population of *S. barnebyi* on land managed by the Bureau of Land Management is on a current mining claim. The Mining Act of 1872 requires on-the-ground mining assessment work on all current claims. Given the extremely small size of the know species' population, such assessment work, even if of a minor nature, could result in major impacts to this population.

Comment 7: The policy of the bureau of Land Management is to conserve candidate species, such as these plants, consistent with the principles of multiple-use management. This policy protects candidate species.

Service response: The Service acknowledges the positive efforts of the Bureau of Land Management in the conservation of these and other candidate plants. However, the Bureau of Land Management's written comment acknowledges that this policy does not provide candidate species the (same) protection afforded listed species. The identification of a species as a candidate species is a temporary measure until the Service is prepared to propose the species for listing as either threatened or endangered or to remove the species from further active consideration for listing. After reviewing the best available data, the Service has decided that these species require the protection of the Act in order to avoid extinction or endangerment throughout all or a significant portion of their range, and, therefore, has listed *S. barnebyi* as endangered and *S. argillacea* as threatened.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Schoenocrambe argillacea* should be classified as threatened and *Schoenocrambe barnebyi* should be classified as endangered. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *S. argillacea* (Welsh and Atwood) Rollins and *S. barnebyi* (Welsh and Atwood) Rollins are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

All known populations *S. argillacea* are on Federal lands leased for their oil and gas energy reserves. The species is vulnerable to surface disturbing activity associated with energy development within its habitat (Welsh 1978, U.S. Fish and Wildlife Service 1990). There has been an increase in oil and gas exploratory activity in the species' habitat, which could lead to development in the foreseeable future. In addition, the entire range of *S. argillacea* is underlain by oil shale, which may be mined when economic conditions favor it. Recent inventories for rare plants in the range of *S. argillacea* have demonstrated a small population and restricted range for this species. The species has an estimated population of over 5,000 individuals in two small areas about 12 km apart. One stand has apparently become extirpated since its discovery in 1979 (U.S. Fish and Wildlife Service 1991).

The primary threat to *S. barnebyi* is habitat destruction associated with potential uranium mining activity. The single hillside where the species occurs in its San Rafael Swell population has an access road bulldozed across it with mining prospects near the species' limited distribution. Portions of the species' habitat lie within six mining claims at Sy's Butte, which require annual assessment work which could further degrade the species' habitat. The

workings of one of the largest uranium mines in the San Rafael Swell are only a mile away on the same exposure of geologic strata as *S. barnebyi* (U.S. Fish and Wildlife Service 1985). The species' highly restricted distribution and very small population make the species highly vulnerable to any activity which would disturb its habitat (Welsh and Neese 1984).

Capitol Reef National Park provides some protection to the small *S. barnebyi* population within its borders, though one site is currently being impacted by visitor trampling. The species also is vulnerable to any activity, including road and recreational developments, which may occur on its national park habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for these purposes is not presently known. However, take or vandalism could have a serious impact on these species, given their small population numbers. Because of this, the Service recommends against publicizing these species' location, other than to land managers.

C. Disease or Predation

Sheep and cattle grazing may have had an impact on *S. argillacea* and *S. barnebyi* historically, but with current levels of grazing intensity and grazing management by the Bureau of Land Management, domestic livestock grazing is not expected to significantly impact these species.

D. The Inadequacy of Existing Regulatory Mechanisms

There are no Federal, State, or local laws or regulations that address these species specifically or directly provide for the protection of their habitat. The Bureau of Land Management and the National Park Service are aware of both *S. argillacea* and *S. barnebyi* and have considered them in environmental planning of their habitat areas (Bureau of Land Management 1984, Bureau of Land Management 1989b, National Park Service 1982). All plants within Capitol Reef National Park are protected by regulation from taking; this, however, has not been identified as e threat to *S. barnebyi*, provided the species' location is not publicized. *Schoenocrambe barnebyi* would still be vulnerable to other activities within Capitol Reef National Park, such as road and recreational development. Any conservation activity undertaken by Federal Agencies would be voluntary. Federal Agencies are not legally obligated to conserve *S. argillacea* and *S. barnebyi* unless these species are listed.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Most sites of *S. argillacea* contain less than 200 individuals and the species has been extirpated from one of these sites (U.S. Fish and Wildlife Service 1991). The San Rafael Swell population of *S. barnebyi* has fewer than 100 individuals and the four sites in Capitol Reef National Park have 200 or fewer plants each. Some sites may hold so few plants that they may not be demographically stable in the medium to long term. Some of the smaller site populations of both *S. argillacea* and *S. barnebyi* may be lost as a result of natural variation in population numbers in the short term. The effects of past habitat degradation on the species' ability to respond to environmental stress is not known but may be critical to the species' future existence. Only the larger sites of *S. argillacea* may have sufficient genetic variability to provide for long-term adaptation to natural changes in their environmental conditions.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *S. argillacea* and *S. barnebyi* in determining to make this rule final. Based on this evaluation, the preferred action is to list *S. argillacea* as a threatened species and *S. barnebyi* as an endangered species. Both species are rare endemics restricted to specific areas having potential for being exploited for energy resources or subject to other disturbances. These species' rarity and their limited distribution also make them inherently vulnerable to environmental perturbations.

Schoenocrambe barnebyi is extremely rare, and known threats place it in danger of extinction throughout a significant portion of its range. Therefore, *S. barnebyi* qualifies as endangered as defined by the Act. The status of threatened does not reflect the biological vulnerability of *S. barnebyi* populations.

Schoenocrambe argillacea is not currently in danger of extinction throughout all or a significant portion of its range. However, its small population size, limited distribution, and location on Federal lands subject to oil, gas, and oil shale development make it likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Therefore, it qualifies as threatened as defined by the Act. For the reasons given below, it is not considered prudent to designate critical habitat.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species at this time because the benefits of publicizing critical habitat are outweighed by added dangers. Publication of critical habitat is not in the best interest of these species. The rarity of these species and their restricted range make these plants particularly vulnerable to taking. With respect to endangered plants on Federal lands, taking is only regulated by the Act in cases of removal and reduction to possession or their malicious damge or destruction on such lands. Such provisions are difficult to enforce.

Adding these plants to the List of Endangered and Threatened Plants publicizes their rarity and thus can make them attractive to curiosity seekers or expose them to potential vandalism. Though prohibited by the Act, taking and vandalism are difficult to control on the ground. At least one of the sites containing *S. barnebyi* located in Capitol Reef National Park is vulnerable to trampling by park visitors. Because *S. argillacea* is located on steep slopes, visitation for purposes of viewing could increase slope erosion, which could be detrimental. Publication of critical habitat descriptions and maps would make it easier for various parties to locate and/or take the plants.

The principal land managers have been notified of the location of these species and are aware of the importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and the section 7 jeopardy standard. Any Federal action that would impact these plants' habitat would necessarily affect the plants themselves (being immobile, rooted organisms) and would be reviewed during section 7 consultation. The Service finds that designation of critical habitat is not presently prudent for these two plant species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in

conservation actions by Federal, State, Indian, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal Agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal Agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

The known populations of *S. argillacea* and *S. barnebyi* are on Federal lands under either the jurisdiction of the Bureau of Land Management or the National Park Service. The Bureau of Land Management, in addition, is responsible for the leasing of minerals under Federal jurisdiction. Both of the Federal Agencies would be responsible for ensuring that Federal land uses and actions are not likely to jeopardize the continued existence of *S. argillacea* and *S. barnebyi*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, 17.63, 17.71, and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all endangered and threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issue for *S. argillacea* and *S. barnebyi* because these species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203-3507, telephone (703) 358-2093 or FTS 921-2093.

National Environmental Policy Act

The U.S. Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Bureau of Land Management. 1984. Final Book Cliffs resource management plan/ environmental impact statement. Vernal, Utah. 519 pp.

Bureau of Land Management. 1989a. Report on the special status plant inventory conducted on the Diamond Mountain Resource Area, 1989. Vernal, Utah. 13 pp.

Bureau of Land Management. 1989b. San Rafael proposed resource management plan and final environmental impact statement. Price, Utah. 511 pp.

Heil, K.D. 1988. Endangered, threatened, rare and other plants of concern at Capitol Reef National Park, Utah. Report prepared for National Park Service, Torrey, Utah. 57 pp.

Kass, R.J. 1990. Final report of habitat inventory of threatened and endangered and candidate plan species in the San Rafael Swell, Utah. Report prepared for Bureau of Land Management, Salt Lake City, Utah. 87 pp.

National Park Service. 1982. General management plan, final environmental impact statement, statement of findings. Capitol Reef National Park, Utah. 139 pp.

Neese, E. 1987. Final report—Habitat inventory of *Sclerocactus wrightiae* and other associated sensitive species. Vol. I—Text and Photographs. Report prepared for Bureau of Land Management, Richfield, Utah. 119 pp.

Rollins, R.C. 1982. *Thelypodiopsis* and *Schoenocrambe* (Cruciferae). Contrib. Gray Herb. 212:71-102.

Shultz, L.M. and K.M. Mutz. 1979. Threatened and endangered plants of the Willow Creek drainage. Report prepared for Bureau of Land Management, Vernal, Utah. 74 pp.

U.S. Fish and Wildlife Service. 1985. *Schoenocrambe barnebyi:* supplemental status report. Salt Lake City, Utah. 3 pp.

U.S. Fish and Wildlife Service. 1990. *Schoenocrambe argillacea:* supplemental status report. Salt Lake City, Utah. 3 pp.

U.S. Fish and Wildlife Service. 1991. *Schoenocrambe argillacea:* supplemental status report, including revised range maps from BLM/UNHP inventory. Salt Lake City, Utah. 4 pp. plus maps.

Welsh, S.L. 1978. Status report: *Thelypodiopsis argillacea*. Report prepared for U.S. Fish and Wildlife Service, Denver, Colorado. 5 pp.

Welsh, S.L. 1981. New taxa of western plants—In tribute. Brittonia 33:294-303.

Welsh, S.L. and N.D. Atwood. 1977. An undescribed species of *Thelypodiopsis* (Brassicaceae) from the Uinta Basin, Utah. Great Basin Nat. 37:95-96.

Welsh, S.L. and L.M. Chatterley. 1985. Utah's rare plants revisited. Great Basin Nat. 45:173-230.

Welsh, S.L. and E. Neese. 1984. Status report for *Thelypodiopsis barnebyi* Welsh and Atwood, (Barneby thelypody) Brassicaceae (Cruciferae), Utah endemic. Report prepared for U.S. Fish and Wildlife Service, Denver, Colorado. 8 pp.

Welsh, S.L., N.D. Atwood., L.C. Higgins, and S. Goodrich. 1987. A Utah flora. Great Basin Nat. Mem. 9:1-894.

Author

The primary author of this rule is John L. England, botanist, U.S. Fish and Wildlife Service, Salt Lake City, Utah (801/524-4430 or FTS 588-4430, see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brassicaceae—Mustard Family:						
Schoenocrambe argillacea	Clay reed-mustard	U.S.A. (UT)	T	457	NA	NA
Schoenocrambe barnebyi	Barneby reed-mustard	U.S.A. (UT)	E	457	NA	NA

Dated: December 30, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-896 Filed 1-13-92; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 57, No. 9
Tuesday, January 14, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 208, 209, and 274a

[INS No. 1374-91; AG Order No. 1554-92]

RIN 1115-AC93

Fees for Processing Certain Asylee-Related and Refugee-Related Applications

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend parts 103, 208, and 209 of title 8, Code of Federal Regulations, to provide that the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR) will charge fees for the processing of certain asylee-related and refugee-related applications. These charges are necessary to ensure that applicants for asylum or refugee status who receive special services and benefits that do not accrue to the public at large will bear the Government's cost of providing these special services. These charges are being proposed after taking into account the cost to the Government of providing these services, the value of the services to the recipients, the public policy served by these programs, and other pertinent facts.

This proposed rule will also amend 8 CFR 274a.13(a) to clarify where initial and renewal applications for employment authorization on behalf of asylum applicants should be filed.

DATES: Written comments must be submitted on or before February 14, 1992.

ADDRESSES: Please submit written comments in triplicate to the Record System Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper and timely handling, please reference the INS No. 1347-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Charles S. Thomason, Systems Accountant, Financial Policy and Special Projects Section, Immigration and Naturalization Service, 425 I Street, NW., room 6321, Washington, DC 20536, telephone (202) 376-2804.

SUPPLEMENTARY INFORMATION: On an ongoing basis, the INS and EOIR review the fee structure of immigration programs so as to be in compliance with 31 U.S.C. 9701 and with Office of Management and Budget (OMB) Circular A-25. Section 9701 authorizes the Attorney General to establish a fee for services provided to individuals by INS and EOIR so that the services will be "self-sustaining to the extent possible." The amount of each fee must be fair, and based upon the direct and indirect costs to the Government of providing the service, the value of the service to the recipient, the public policy served by these programs, and other pertinent facts.

The identified costs incurred by the INS and EOIR to render special asylee-related and refugee-related services and benefits include, but are not limited to, costs associated with processing: Form I-730, Refugee/Asylee Relative Petition; Form I-485, Application for Permanent Residence; and, Form I-765, Application for Employment Authorization. At the present time, the INS and EOIR do not charge fees in connection with processing these forms. Under this rule, INS and EOIR propose to:

1. Amend 8 CFR 103.7(b)(1) to establish a fee for Form I-730, Refugee/Asylee Relative Petition;
2. Amend 8 CFR 208.7(c) to provide for the collection of a fee with the filing of an application for renewed employment authorization on Form I-765;
3. Amend 8 CFR 208.21 to provide for the collection of a fee with the filing of Form I-730; and,
4. Amend 8 CFR 209.2 to provide for the collection of a fee with the filing of Form I-485.

No fee will be charged in connections with the initial application for employment authorization on Form I-765.

These proposed charges are based upon the INS's application of the principles for user charges prescribed in 31 U.S.C. 9701 and the guidelines prescribed in OMB Circular A-25. These proposed charges also reflect a review by the INS's of its policies and practices for user charges, and a review of its costs and fees. Further details regarding the review are available upon request from INS Headquarters, or by contacting Mr. Thomason at the address listed in the **"FOR FURTHER INFORMATION CONTACT"** Section of this proposed rule.

This proposed rule will also amend 8 CFR 274a.13(a) to clarify that initial applications for employment authorization on behalf of asylum applicants should be filed with the appropriate asylum office, while renewal or extension applications should be filed with the district director.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 Executive Order 12612.

The information collection requirements contained in this rule have been forwarded to the Office of Management and Budget, under the provisions of the Paperwork Reduction Act, for review and clearance.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 209

Aliens, Immigration, Refugees.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, chapter I, title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2. 2. In § 103.7, paragraph (b)(1) is amended by adding, in proper numerical sequence, Form I–730 to the list of forms, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–730. For filing application to classify a relative as a derivative asylee/refugee—$75.00

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

3. The authority citation for part 208 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 31 U.S.C. 9701; 8 CFR part 2.

§ 208.7 [Amended].

4. In § 208.7, paragraph (c) is amended, in the first sentence, by revising the phrase "Form I–765" to read "Form I–765, with fee,".

§ 208.21 [Amended].

5. Section 208.21 is amended:

a. In paragraph (c), by revising the phrase "Form I–730" to read "Form I–730, with fee,"; and,

b. In the first sentence of paragraph (d), by revising the phrase "form I–730" to read "Form I–730, with fee,".

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

6. The authority citation for part 209 is revised to read as follows:

Authority: 8 CFR 1101, 1103, 1157, 1158, and 1159; 31 U.S.C. 9701.

7. In § 209.2, the first sentence of paragraph (c) is revised to read as follows:

§ 209.2 Adjustment of status of alien granted asylum.

* * * * *

(c) *Application.* An application for the benefits of section 209(b) of the Act may be filed on Form I–485 (Application for Status as Permanent Resident), with fee, with the district director having jurisdiction over the applicant's place of residence. * * *

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

8. The authority citation for part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

9. In § 274a.13, paragraph (a) is revised to read as follows:

§ 274a.13 Application for employment authorization.

(a) *General.* An application for employment authorization (Form I–765) by an alien under § 274a.12(a)(3)–(8) and (10)–(11), and under § 274a.12(c), including an application for renewal or extension of employment authorization under § 174.12(c)(8), of this part shall be filed in accordance with the instructions on Form I–765 with the district director having jurisdiction over the applicant's residence or the district director having jurisdiction over the port of entry at which the alien applies. The approval of such an application for employment authorization shall be within the discretion of the district director. Where economic necessity had been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses in accordance with the instructions on Form I–765. An initial application for employment authorization (Form I–765) for asylum applicants under 8 CFR 274a.12(c)(8) shall be filed, without fee, with the asylum office having jurisdiction over the asylum application.

* * * * *

Dated: January 4, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–814 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; EC–1]

Equal Credit Opportunity; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and is a substitute for individual staff interpretations of the regulation. The revisions clarify an issue involving the relationship between Regulation B and Regulation C (which implements the Home Mortgage Disclosure Act) with regard to data collection on loan applications received by creditors through brokers or other persons. While data collection on such applications is not required for purposes of Regulation B, it may be called for under Regulation C.

DATES: Comments must be received on or before February 14, 1992.

ADDRESSES: Comments should refer to Docket No. EC–1 and be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments may also be delivered to the guard station in the Eccles Building courtyard entrance on 20th Street NW. (between Constitution Avenue and C Street, NW) between 8:45 and 5:15 weekdays. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, room B–1122 of the Eccles Building, between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: In the Division of Consumer and Community Affairs, Adrienne D. Hurt, Senior Attorney, at (202) 452–2412; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of gender, marital status, race, color, religion, national origin, age, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. This statute is implemented by the Board's Regulation B (12 CFR part 202). The Board also has an official staff commentary (12 CFR part 202) (Supp. I)) that interprets the regulation. The commentary provides general guidance to creditors in apply the regulation to various credit transactions, and is updated periodically to address significant questions that arise. The Board requests that, if possible, comments be submitted using a standard type face with a type

size of 10 or 12 pitch in double-spaced text. This will enable the Board to more efficiently convert comments into an automated format.

(2) Proposed Revisions

Section 202.5—Rules Concerning Taking of Applications

5(b) General Rules Concerning Requests for Information

Comment 5(b)(2)–3 would be added primarily to indicate that loan brokers, correspondents, or other persons do not violate the ECOA or Regulation B if they collect information that they would otherwise be prohibited from collecting under the regulation for the purpose of providing the information to a creditor subject to the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801–2810.

Section 202.13—Information for Monitoring Purposes

13(b) Obtaining of Information

Comment 13(b)–4 would be revised to indicate that even though creditors need not obtain the monitoring information for purposes of § 202.13 of Regulation B, when accepting an application through an unaffiliated loan shopping service, data collection may nonetheless be required for creditors subject to HMDA.

List of Subjects in 12 CFR Part 202

Banks, Banking; Civil rights; Consumer protection; Credit; Federal Reserve System; Marital status discrimination; Minority groups; Penalties, Religious discrimination; Sex discrimination; Women.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with brackets.

Pursuant to authority granted in section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b), the Board is amending the official staff commentary to Regulation B (12 CFR part 202, Supp. I) as follows:

PART 202—[AMENDED]

1. The authority citation for Part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

Supplement I of Part 202 [Amended]

2. In Supp. I of part 202, under section 202.5(b)(2), comment 3 would be added to read as follows:

Section 202.5—Rules Concerning Taking of Applications

* * * * *

5(b) *General rules concerning requests for information.*

* * * * *

Paragraph 5(b)(2))

* * * * *

►3. *Collecting information on behalf of creditors.* Loan brokers, correspondents, or other persons do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home Mortgage Disclosure Act, or another federal or state statute or regulation requiring data collection.◄

* * * * *

3. In Supp. I of part 202, under section 202.13(b), comment 4 would be revised to read as follows:

Section 202.13—Information for Monitoring Purposes

* * * * *

13(b) *Obtaining of information.*

* * * * *

4. *Applications through loan-shopping services.* When a creditor accepts an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information [.] ►for purposes of the ECOA or Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C which requires creditors to report, among other things, the sex, and race or national origin of an applicant on brokered applications or applications received through a correspondent.◄

* * * * *

Board of Governors of the Federal Reserve System, January 8, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–817 Filed 1–13–92; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Exempted Prescription Products

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend § 1308.32 of title 21 of the Code of Federal Regualtions such that those products listed in § 1308.32 containing butalbital shall not be exempt from sections 952–954 of the Controlled Substances Import and Export Act. This action is in response to a decision of the United Nations Commission on Narcotic Drugs taken at the Commission's thirty-fourth session.

DATES: Comments must be submitted on or before February 13, 1992.

ADDRESSES: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537. Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington DC 20537. Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: 21 U.S.C 956(b) of the Controlled Substances Import and Export Act authorizes the Attorney General to except any compound, mixture, or preparation containing any depressant or stimulant substances listed in paragraph (a) or (b) of Schedule III or Schedule IV or V from the application of all or any part of this subchapter. This is applicable if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system; and (2) such ingredients are included, therein, in such combination, quantity, proportion, or concentration as to viviate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

The United States is a Party to the United Nations Convention on Psychotropic Substances, 1971. Congress intended that the United States fulfill the requirements of this treaty and made provisions under section 21 U.S.C. 801(a) of the CSA to incorporate the Convention's provisions within the CSA.

Under the provisions of the 1971 Convention, Article 3 provides that if certain conditions are met, a Party may exempt preparations containing psychotropic substances from certain measures of control provided for in the Convention, except for specific obligatory requirements. A Party must then notify the Secretary-General of the identity of these exempt products. The Secretary-General, in turn, notifies all pertinent entities.

Article 3, paragraph 4 of the Convention, stipulates that after notification of the exemption of a product or products by a Party, another Party or the World Health Organization (WHO) may decide to recommend to the Secretary-General the termination in whole or in part of the exemption of this Party. The Secretary-General, in turn, transmits such notification to all Parties and the Commission on Narcotic Drugs (CND).

The CND was established by the Economic and Social Council of the United Nations. It is responsible for the implemention and monitoring of treaty functions. Under Article 3, paragraph 4 of the Convention, the Commission, upon review of all pertinent documentation, may decide to terminate the exemption of a preparation from any or all control measures.

Any decision of the Commission taken pursuant to Article 3, paragraph 4, shall be communicated by the Secretary-General to all Parties. All Parties shall then take measures to terminate the exemption from the control measures in question.

On May 16, 1989, the United States notified the United Nations of the exemption of 55 products containing butalbital. On October 22, 1990, the WHO notified the Secretary-General of the recommendation to terminate the exemption of these preparations containing butalbital so that the requirements of Article 12, paragraph 2, import/export documentation of the 1971 Convention, should apply.

On April 29, 1991, the 34th Commission on Narcotic Drugs by decision 4 (XXXIV) decided to terminate the exemption by the Government of the United States of America of the preparations containing butalbital as found in § 1308.32 of title 21 of the Code of Federal Regulations from certain control measures provided in the 1971 Convention on Psychotropic Substances so that the requirements of Article 12, paragraph 2, import/export documentation of the Convention, should apply to these preparations.

To comply with the decision of the Commission, the DEA proposes to amend Section 1308.32 of the Code of Federal Regulations so that those exempt prescription products listed in § 1308.32 containing butalbital shall be subject to the import/export requirements of Sections 952–954 of the Controlled Substances Import and Export Act.

The Administrator of the DEA hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq. This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed rule has been submitted for review to the Office of Management and Budget and approval from that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. et. seq.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in Title 21 CFR Part 1308

Administrative practice and procedure, DEA, Drug traffic control, Narcotics, and Prescription drugs.

Under the authority vested in the Attorney General by section 202(d) of the Act (21 U.S.C. 811 (g)(3)(A)) and delegated to the Administrator of the DEA by regulations of the Department of Justice (28 CFR part 0.100) and redelegated to the Deputy Assistant Administrator, Office of Diversion Control of the DEA, pursuant to 47 FR 43370, the Deputy Assistant Administrator of the Office of Diversion Control hereby proposes to amend title 21 CFR part 1308 by revising the introductory text of § 1308.32 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 801a, 811, 812, 956(b), 871(b).

2. Section 1308.32 is proposed to be amended by revising the introductory text to read as follows:

1308.32 Exempted prescription products.

The following compounds, mixtures, or preparations which contain a non-narcotic controlled substance listed in § 1308.12(e) or in § 1308.13(b) or (c) or in § 1308.14 or in § 1308.15, listed in the Table of Exempted Prescription Products, have been exempted by the Administrator from the application of sections 302 through 305, 307 through 309, 1002 through 1004 of the Act (21 U.S.C. 822–825, 827–829, and 952–954) and §§ 1301.24, 1301.31, 1301.32, and 1301.71 through 1301.76 of this chapter for administrative purposes only; except that those products containing butalbital shall not be exempt from the requirements of 21 U.S.C. 952–954 concerning importation, exportation, transshipment and in-transit shipment of controlled substances. Any deviation from the quantitative composition of any of the listed drugs shall require a petition for exemption in order for the product to be exempted.

* * * * *

Dated: January 3, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-841 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1240

[Docket No. 91N-0272]

Control of Communicable Diseases; Definition of Milk and Milk Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to make a technical amendment to the regulations established for the control of communicable diseases by defining "milk" and "milk products" in § 1240.3 (21 CFR 1240.3) and by revising § 1240.61 (21 CFR 1240.61) to clarify that this regulation applies to the dairy ingredients of certain dairy products such as nonfat dry milk, cottage cheese, or butter, and that it was never intended to require that these finished products be subjected to the pasteurization process after their manufacture. The purpose of this proposed technical amendment is to make explicit that which was implicit in the original rule.

DATES: Written comments by March 16, 1992. The agency proposes that any final rule that may issue based upon this proposal shall become effective on the date of publication of the final rule in the **Federal Register.**

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nichols, Center for Food Safety and Applied Nutrition (HFF–346), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0175.

SUPPLEMENTARY INFORMATION: FDA is proposing to amend the regulations that it promulgated under the Public Health Service Act (42 U.S.C. 264) for the control of communicable diseases by including definitions for "milk" and "milk products" among the general definitions in § 1240.3 and by clarifying

when dairy ingredients must be pasteurized in accordance with § 1240.61. The purpose of these proposed technical amendments is, first, to set out those dairy products that are covered under § 1240.61. Therefore, in § 1240.3, FDA is defining "milk" and "milk products." FDA is proposing to adopt as its definition for "milk" the standard of identity for this food in 21 CFR 131.110. FDA is proposing to use the standard as its definition because the agency believes that it should use consistent definitions in its regulations. The definition for "milk products" includes all foods other than "milk" normally regulated by State and Federal regulatory agencies as dairy products under Federal or State law or under State model ordinances such as the Grade "A" Pasteurized Milk Ordinance.

Secondly, FDA is proposing to amend § 1240.61 to clarify that the requirement for pasteurization applies to the dairy ingredients of certain milk products, such as nonfat dry milk, cottage cheese, or butter, and not to the finished products. It was never FDA's intention to require that these finished products be subjected to the pasteurization process subsequent to their manufacture. Pasteurization of the dairy ingredients eliminates the pathogens of concern and accomplishes the purposes for which FDA adopted this regulation.

I. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

II. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354) and Executive Order 12291, the agency has analyzed the economic effects of this proposal. Because this technical amendment causes no substantive change, it will have no economic impact. Further, in accordance with Executive Order 12291, FDA has detemined that the economic effects of the final rule, if promulgated, will not constitute a major rule as defined by that Order.

III. Comments

Interested persons may, on or before March 16, 1992, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 1240

Communicable diseases, Public health, Travel restrictions, Water supply.

Therefore, under the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1240 be amended as follows:

PART 1240—CONTROL OF COMMUNICABLE DISEASES

1. The authority citation for 21 CFR part 1240 continues to read as follows:

Authority: Secs. 215, 311, 361, 368 of the Public Health Service Act (42 U.S.C. 216, 243, 264, 271).

2. Section 1240.3 is amended by redesignating paragraphs (i), (j), (k), (l), (m), (n), (o), and (p) as paragraphs (k), (l), (m), (n), (o), (p), (q), and (r) respectively, and by adding new paragraphs (i) and (j) to read as follows:

§ 1240.3 General definitions.

* * * * *

(i) *Milk.* Milk is the product defined in § 131.110 of this chapter.

(j) *Milk products.* Food products made exclusively or principally from the lacteal secretion obtained from one or more healthy milk-producing animals, e.g., cows, goats, sheep, and water buffalo, including, but not limited to, the following: lowfat milk, skim milk, cream, half and half, dry milk, nonfat dry milk, dry cream, condensed or concentrated milk products, cultured or acidified milk or milk products, kefir, eggnog, yogurt, butter, cheese (where not specifically exempted by regulation), whey, condensed or dry whey or whey products, ice cream, ice milk, other frozen dairy desserts and products obtained by modifying the chemical or physical characteristics of milk, cream, or whey by using enzymes, solvents, heat, pressure, cooling, vacuum, genetic engineering, fractionation, or other similar processes, and any such product made by the addition or subtraction of milkfat or the addition of safe and suitable optional ingredients for the protein, vitamin, or mineral fortification of the product.

* * * * *

3. Section 1240.61 is amended by revising paragraph (a) to read as follows:

§ 1240.61 Mandatory pasteurization for all milk and milk products in final package form intended for direct human consumption.

(a) No person shall cause to be delivered into interstate commerce or shall sell, otherwise distribute, or hold for sale or other distribution after shipment in interstate commerce any milk or milk product in final package form for direct human consumption unless the product has been pasteurized or is made from dairy ingredients (milk or milk products) that have all been pasteurized, except where alternative procedures to pasteurization are provided for by regulation, such as in part 133 of this chapter for curing of certain cheese varieties.

* * * * *

Dated: November 22, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–894 Filed 1–13–92; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–111–90]

RIN 1545–AQ05

Revision of Section 338 Consistency Rules; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations that replace the stock and asset consistency rules of §§ 1.338–4T and 1.338–5T of the temporary Income Tax Regulations.

DATES: The public hearing will be held on Thursday, March 26, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, March 12, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (CO–111–90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9236 or (202) 566–3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 304 and 338 of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, March 12, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaision Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–717 Filed 1–13–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[CO–111–90]

RIN 1545–AQ05

Revision of Section 338 Consistency Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that replace the stock and asset consistency rules of §§ 1.338–4T and 1.338–5T of the temporary Income Tax Regulations. The proposed regulations substantially revise and simplify the stock and asset consistency rules. The proposed regulations also restate, simplify, and substantially shorten most of the other regulations under section 338.

DATES: Written comments and requests to appear, and outlines of oral comments to be presented, at a public hearing scheduled for March 26,1992, at 10 a.m. must be received by March 12, 1992. See the notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines of oral comments for the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention CC:CORP:T:R (CO–111–90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Michael B. Fulton at telephone (202) 566–2454 (not a toll-free number) for domestic issues and Kenneth D. Allison at telephone (202) 566–6442 (not a toll-free number) for international issues.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collections of information in these proposed regulations are in §§ 1.338–1(d), (e)(3), (f)(4), (e)(5), (f)(1), and (g)(4), 1.338–3(d)(4), 1.338(b)–1(e)(3), and 1.338(h)(10)–1(d). This information is required by the Internal Revenue Service to assure compliance with the regulations under section 338. The respondents will be corporations making elections under section 338.

The following estimates are an approximation of the average time expected to be necessary for the collections of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or lesser time, depending on their particular circumstances. The following estimates do not include the time to complete and file Form 8023 (Statement of section 338 election).

Estimate total annual reporting burden: 25 hours.

Estimated burden per respondent varies from 0.25 hours to 0.75 hours, depending on individual circumstances, with an estimated average of 0.56 hours.

Estimated number of respondents: 45.

Estimated frequency of responses: One.

B. Background

This document contains proposed regulations that replace the asset and stock consistency rules of §§ 1.338–4T and 1.338–5T of the temporary regulations. The proposed regulations also revise the rules regarding the international aspects of section 338, which are primarily in § 1.338–5T of the temporary regulations. Finally, the proposed regulations restate the remainder of the temporary regulations under section 338, except that only minor conforming changes are made to §§ 1.338 (b)–2T and 1.338 (b)–3T.

C. The consistency rules

1. *The Current Consistency Rules*

The consistency rules of sections 338 (e) and (f), as implemented by the current temporary regulations, apply whenever a purchasing corporation ("P") makes a qualified stock purchase ("QSP") of a target corporation ("T") from a selling group ("S group"). The current consistency rules prevent P from selectively acquiring a stepped-up basis in particular T assets and preserving T's corporate attributes (including a carryover basis in other T assets) by acquiring T's stock. These rules apply broadly to transactions involving P or any member of P's affiliated group and T or any member of T's affiliated group ("T affiliates").

Under the asset consistency rules of § 1.338–4T (f) of the temporary regulations, if P does not make a section 338 election for T and, during T's consistency period, any member of the P group acquires an asset of T or a T affiliate (a "tainted asset"), the District Director generally deem P to have made a section 338 election for T. If the District Director imposes a deemed election for T, the P group is, in effect, treated as having acquired all of T's assets and the tainted asset in a taxable asset acquisition.

If a deemed election is not made, the P group is treated as having made an "affirmative action carryover election." Under an affirmative action carryover election, the P group's basis in the tainted asset equals the S group's basis in the asset (a carryover basis). In such a case, a mitigation rule applies to so-

called "intercompany consolidated asset acquitisions."

P may avoid a deemed election for T by making a "protective carryover basis election" and, as under an affirmative action carryover election, taking a carryover basis in the tainted asset. If P makes a protective carryover basis election, a second mitigation rule applies to so-called "unincluded company asset acquisitions." Finally, if P makes an "offset prohibition election" in connection with the protective carryover basis election, a third mitigation rule applies to so-called "intercompany non-consolidated asset acquisitions" and a fourth mitigation rule applies to intercompany consolidated asset acquisitions.

The stock consistency rules of § 1.338–4T(e), require the P group to treat consistently the QSP of T and any QSP of a T affilitate made during T's consistency period. If P makes a section 338 election for T, the P group is deemed to make a section 338 election for any T affiliate purchased during T's consistency period and after T's acquisition date. Conversely, if P does not make (or is not deemed to make) a section 338 election for T, the P group cannot make a section 338 election for any T affiliate purchased during T's consistency period.

Under § 1.338–4T(g), the Commissioner may extend T's consistency period (before or after T's acquisition date) in certain cases. The 12-month acquisition period may also be extended by the Commissioner in certain cases. The Commissioner is also granted discretion to apply the consistency rules to certain "indirect" acquisitions of stock or assets.

A number of special consistency rules are provided under § 1.338–5T for foreign corporations ("FTs"). In particular, these rules permit P to make a "regular exclusion election" for all "excludible foreign target affiliates." Under a regular exclusion election, if P makes a section 338 election for T, the stock consistency rules do not apply to deem a section 338 election for FT. A number of special rules apply if a regular exclusion election is made. A regular exclusion election may not be made in a number of situations and may be overridden by the occurrence of any one of several "invalidation events."

2. *The Proposed Consistency Rules*

a. In General

The proposed regulations adopt a narrower set of consistency rules than those contained in the temporary regulations. Under the proposed regulations, the consistency rules generally apply only if T is a subsidiary in a consolidated group. The consistency rules also apply in certain limited cases where T pays dividends eligible for a 100 percent dividends received deduction.

The proposed regulations also simplify the consistency and mitigation rules. For example, the proposed regulations eliminate the District Director's and Commissioner's discretion in applying the rules. They also eliminate the affirmative action carryover, protective carryover, offset prohibition, and regular exclusion elections.

Unlike the temporary regulations, the proposed regulations allow P to make an election under section 338 for T without being deemed to have made a section 338 election for any T affiliate.

b. Asset Consistency

(i) *In general.* The proposed regulations apply the consistency rules in the context of consolidated groups to prevent acquisitions from being structured to take advantage of the investment adjustment rules. If the consistency rules did not apply in such a case, P could acquire assets from T with a stepped-up basis in the assets, and then acquire the T stock at no additional tax cost to the S group.

Example. S and T file a consolidated return. S has a $100x basis in the T stock, which has a fair market value of $200x. On January 1, 1993, T sells an asset to P and recognizes $100x of gain. Under § 1.1502–32, S's basis in the T stock is increased from $100x to $200x. On March 1, 1993, S sells the T stock to P for $200x and recognizes no gain or loss.

The consistency rules of the proposed regulations apply to the transaction because T's gain on the asset sale is reflected under § 1.1502–32 in S's basis in the T stock. However, under the proposed regulations, the District Director no longer has the discretion to impose a deemed section 338 election for T. Instead, under proposed § 1.338–4(d), P takes a carryover basis in any asset acquired from T. (This is referred to as the carryover basis rule.) Thus, P is no longer forced to make protective carryover basis elections in connection with every stock acquisition in order to assure the tax treatment it anticipated.

(ii) *Direct acquisitions.* The carryover basis rule generally applies to direct acquisitions of assets from T by P during T's consistency period. A direct acquisition is one in which the asset is owned by P both immediately after the asset is sold by T and on T's acquisition date.

The carryover basis rule also applies to assets acquired directly from lower-tier T affiliates or certain conduits if gain from the sale is reflected under § 1.1502–32 in the basis of the T stock. In addition, the carryover basis rules applies to assets acquired by an affiliate of P, rather than by P.

(iii) *Exceptions and mitigation rule.* The carryover basis rule does not apply if a section 338 election is made for T (and any lower-tier T affiliate the basis of whose stock reflects gain from the asset disposition). It also does not apply to certain assets if the aggregate amount realized by T (and lower-tier T affiliates or conduits) for assets otherwise subject to the carryover basis rule does not exceed $250,000.

Exceptions to the carryover basis rule are also provided for (1) any asset sold in the ordinary course of business, (2) any asset the basis of which to the P group is determined solely by reference to its basis to T or the lower-tier T affiliate, (3) any asset the basis of which immediately after the acquisition does not exceed its basis to T (or the lower-tier T affiliate or conduit), and (4) any debt or equity instrument issued by an S group member. Finally, the proposed regulations provide the Internal Revenue Service authority to identify additional exceptions.

A single mitigation rule is also provided under the proposed regulations. Under this rule, if P transfers the asset to a domestic corporation in a transaction to which section 351 applies or as a contribution to capital and no gain is recognized, P's basis in the transferee corporation's stock is increased to reflect P's cost for the asset. The transferee corporation's basis in the asset, however, is still a carryover basis.

(iv) *Indirect acquisitions.* If an arrangement exists, the consistency rules also apply to certain cases in which P indirectly acquires an asset from T. Generally, in an indirect acquisition, the ownership requirements for a direct acquisition are not satisfied but the asset is owned during the portion of the consistency period following T's acquisition date by T or a corporation that is affiliated with T at the time it owns the asset. For example, the rule applies, if, pursuant to an arrangement, T sells an asset to an unrelated person who then sells the asset to P. An indirect acquisition also includes certain cases in which P acquires the T stock indirectly from the S group.

In the case of an indirect acquisition, the carryover basis rule is modified so that P's basis in the asset is reduced to reflect any basis reductions occurring after the asset is disposed of by T (or

the lower-tier T affiliate) and before it is acquired by the P group. The other rules for direct acquisitions listed above also generally apply to indirect acquisitions.

Under the proposed regulations, the existence of an arrangement is determined under all the facts and circumstances, including the participation of certain related parties.

(v) *Affiliated groups* The consistency rules also apply in certain cases where dividends are paid to a corporation that is not a member of the same consolidated group as the distributing corporation. Generally, the consistency rules apply where a 100 percent dividends received deduction is used in conjunction with asset dispositions to achieve a result similar to that available under the investment adjustment rules.

Example. S and T are affiliates that do not file a consolidated return. S has a $100x basis in the T stock, which has a fair market value of $200x. On January 1, 1993, T sells an asset to P and recognizes $100x of gain. On February 1, 1993, T pays S a $100x dividend. On March 1, 1993, S sells the T stock to P for $100x and recognizes no gain or loss.

The consistency rules apply not only where T is a subsidiary in an affiliated group that does not file a consolidated return, but also where T is not eligible to join in the consolidated return filed by members of its affiliated group (*e.g.* an insurance company). In addition, the rules apply where a lower-tier T affiliate that is not a member of the T consolidated group pays dividends to T.

The consistency rules apply only if the dividends paid during T's consistency period exceed a threshold amount. For this purpose, only dividends eligible for a 100 percent dividends received deduction are taken into account. The threshold amount is the greater of (i) $250,000 or (ii) 125 percent of the yearly average amount of dividends paid during the three calendar years immediately preceding the year in which T's consistency period begins (or such shorter period as the corporation was in existence).

(vi) *Controlled foreign corporations.* The consistency rules of the proposed regulations apply in certain cases involving T affiliates that are controlled foreign corporations ("CFCs") where T is a domestic corporation.

First, the consistency rules apply to an asset disposed of by a T affiliate that is a CFC if the gain from the disposition of the asset is subpart F income that results in an inclusion, under section 951(a)(1)(A), in the gross income of a member of the S consolidated group. In addition, the basis in the stock of the T affiliate is not increased under section 961(a) by the amount of the inclusion that is attributable to the gain from the disposition of the asset. These principles also apply to an asset disposition that results in an inclusion under section 1293.

Second, the consistency rules apply to stock in a T affiliate acquired by P from T if the T affiliate is a CFC. After applying the general carryover basis rule to the stock of the T affiliate, the stock's basis is increased by the amount treated as a dividend under section 1248 on the disposition of the stock. Because the stock has a carryover basis, it is not considered purchased for purposes of section 338(h)(3); thus, a section 338 election may not be made for the T affiliate.

Finally, in the case of a T affiliate that is a CFC, the special rule for affiliated groups applies by reference to any dividend, amount treated as a dividend under section 1248, or amount included in income under section 951(a)(1)(B) (rather than dividends eligible for a 100 percent dividends received deduction). The basis of the stock of the T affiliate is reduced by the sum of the amounts that are described in the previous sentence solely by reason of the disposition of the asset.

c. Stock Consistency

In the proposed regulations, the stock consistency rules apply to prevent avoidance of the asset consistency rules. Thus, following the general treatment of a section 338(h)(10) election, a sale of a corporation's stock is treated as a sale of the corporation's assets if a section 338(h)(10) election is made. Because gain from this asset sale may be reflected in the basis of the stock of a higher-tier T, the carryover basis rule may apply to the assets.

d. Anti-Avoidance Rules

The proposed regulations contain several anti-avoidance rules designed to prevent circumvention of the consistency rules. These rules apply solely for purposes of the consistency rules. For example, although these rules may treat P as making a QSP of T for purposes of the consistency rules, this treatment does not apply for purposes of the other rules under section 338 (*e.g.*, P may not make an election under section 338 for T).

Under the proposed regulations, the consistency period is extended in certain cases where P (or a related person) has an arrangement to acquire T stock or assets. For purposes of applying the consistency rules, the proposed regulations also treat P as making a QSP of T where, pursuant to an arrangement, P, over a period of more than 12 months, acquires by purchase T stock meeting the requirements of section 1504(a)(2).

In addition, the proposed regulations prevent avoidance of the consistency rules through the use of conduits to acquire or dispose of assets, including stock of T or an S group member. For example, if an asset is sold by a partnership that is a conduit as to T, gain from the disposition is reflected in the basis of the T stock. Moreover, if the asset is acquired by a partnership that is a conduit as to P, P is treated as owning the asset for purposes of determining whether the transaction is a direct or indirect acquisition (and the partnership may be required to take a carryover basis in the entire asset). Finally, if P purchases an interest in a conduit, P is treated as having purchased any stock owned by the conduit on that date and attributed to P with respect to the interest in the conduit that was purchased. P is also treated as purchasing any other stock attributed to P from the conduit on the day the conduit purchased the stock (provided the conduit purchased the stock not more than two years before the stock is first attributed to P).

In general, a person is a conduit as to a corporation that would be treated under section 318(a)(2) (A) and (B) as owning any stock owned by the conduit. However, a person is not a conduit unless the corporation (and its affiliates) would be treated as owning at least 50 percent of any stock owned by the person. Thus, a partnership or trust, but not a corporation, may be a conduit. Although a corporation may not be a conduit, the rules generally treat affiliates as a single person and a corporation may be treated as an affiliate even where its stock is owned through one or more conduits.

The proposed regulations also contain successor rules for both persons and assets.

D. International Aspects

1. In General

The proposed regulations in § 1.338–(g) revise the filing and notice requirements of § 1.338–1T(k). In addition, the proposed regulations, in § 1.338–5, revise and simplify the rules of § 1.338–5T concerning the effect of a section 338 election on certain domestic and foreign corporations and the shareholders of such corporations.

Special asset and stock consistency rules with respect to controlled foreign corporations are now found in § 1.338–4(h) of the proposed regulations. The foreign aspects of the regulations found in § 1.338–6T(d) remain unchanged in §§ 1.338–3(c) (3)–(6) and (8).

2. Filing and Notice Requirements

a. Delay of Election if No U.S. Tax Consequences

Section 1.338–1T(k)(2) of the current temporary regulations allows a postponement of the section 338 election where both P and T, as well as their respective affiliated groups, are foreign corporations, but not controlled foreign corporations ("CFCs"), foreign investment companies or foreign personal holding companies, and are not required to file U.S. income tax returns. The postponement continues until a member of the affiliated group becomes one of the specified foreign entities or is required to file a U.S. income tax return. Proposed § 1.338–1(g)(1)(i) provides that the postponement may not exceed three years after the acquisition date, and proposed § 1.338–1(g)(1)(v)(B) adds passive foreign investment companies to the list of specified entities.

b. Notice by Purchaser to U.S. Persons Affected by Election for FT

The temporary regulations, in § 1.338–1T(k)(7), require that certain U.S. persons that own or sell stock of FT be given notice by P that a section 338 election has been made for FT. The Service has determined that the notice requirement is too broad and applies to U.S. persons that are not affected by the deemed sale of assets for U.S. tax purposes. The proposed regulations, in § 1.338–1(g)(4), limit the notice requirements to U.S. persons who could be affected by a section 338 election for FT, but broaden the notice requirement to include affected shareholders of a passive foreign investment company or a foreign personal holding company.

Section § 1.338–1(g)(4)(v) of the proposed regulations adds a good faith exception to the general rule, at the discretion of the Commissioner, in order to alleviate P's difficulty in identifying and proving notice to covered U.S. persons.

3. Application of Section 338 to FTs

a. Elective Exclusion of Foreign Corporations Eliminated

The proposed regulations retain the general rule that a foreign corporation is not excluded from T affiliate status (see § 1.338–1(c)(14)). However, the regular exclusion election, which allowed P to elect to exclude foreign T affiliates from the operation of the stock consistency rules, has been deleted because it is no longer necessary under the new consistency rules.

b. Exceptions to Asset Consistency

The current temporary regulations in § 1.338–5T(e)(1) provide that an acquisition of property is not subject to the asset consistency rules if solely by reason of the transferor's recognition of gain under section 367(a), the transferee's basis exceeds the transferor's basis in the asset immediately before the exchange. Because a section 367(a) transfer may result in a selective basis step-up in assets, the proposed regulations eliminate the exception.

The exception from the consistency rules for the acquisition of foreign currency in § 1.338–5T(e)(2) is retained in the proposed regulations under the ordinary course of trade or business exception in § 1.338–4(d)(2)(i).

4. Operation of Provisions of Subtitle A if Section 338 Election Made for FT

a. In General

The provisions of §§ 1.338–5T(g) (1)–(4) are modified by the proposed regulations in § 1.338–5(b) to simplify the rules and reflect amendments to the Code made by the Tax Reform Act of 1986.

b. Staggered Stock Sale Rule

The temporary regulations provide, in §§ 1.338–5T(g) (2)(i) and (4), a special staggered stock sale rule for sales of blocks of CFC stock to P during the 12-month acquisition period but prior to the CFC's acquisition date. The staggered stock sale rule attributes to the seller the same share of the deemed sale earnings and profits that would have been attributed to the seller had the block of CFC stock been sold on the acquisition date (*i.e.*, the last day of the CFC's taxable year).

The proposed regulations retain the position that a U.S. seller of CFC stock should be affected by the deemed sale gain, but only with respect to blocks of stock sold on the acquisition date or within the same taxable year as the acquisition date, and only in proportion to the number of days during that year that the stock was actually held by the seller.

The proposed regulations eliminate the rule found in § 1.338–5T(g)(2)(iv) that preserves CFC status for purposes of the deemed sale of assets, if sales of CFC stock included in a QSP prior to the acquisition date cause the CFC not to be a CFC on the acquisition date.

These changes simplify the regulations and allow the provisions of subtitle A to operate without modification.

c. Subpart F and Other Consequences of the Deemed Sale

Section 1.338–5(b)(1) of the proposed regulations provides that all foreign provisions operate with respect to the deemed sale of assets as though an actual sale of the assets had occurred. Section 1.338–5(b)(2) provides that a person selling stock on the acquisition date is treated as owning stock for the entire acquisition date and takes into account, for example, the subpart F income (including deemed sale subpart F income) with respect to that stock for the taxable year ending on the acquisition date.

d. Carryover Stock Rules Modified

Sections 1.338–5T (g)(2)(iii) and (g)(6) of the temporary regulations provide that the earnings and profits and associated foreign taxes of T that is a CFC attributable to stock not purchased in the qualified stock purchase are carried over to new FT (which may or may not be a CFC). Section 1.338–5(b)(3) of the proposed regulations retains the carryover rules and adds sections 951, 956 and 960 to the list of provisions for which the CFC's earnings and profits carry over to the new FT. Carryover of earnings and profits for foreign tax credit purposes is limited by the operation of section 338(h)(16). Section 1.338–5(b)(3)(iv) states that if the non-selling shareholder is a CFC, earnings and profits still carry over to the new FT even though section 1248 does not apply to the sale of a CFC by another CFC. Section 1.338–5(b)(3)(v) adds a post-acquisition date distribution ordering rule between carryover earnings and profits and post-acquisition earnings, to coordinate the carryover earnings with the pooling rules under section 902. Comments are solicited on whether there are simpler methods for addressing the concerns that underlie the carryover rules.

e. Reference to Section 1246

The reference to section 1246 in § 1.338–5T(g)(7) is eliminated because it is covered by the reference to subtitle A in § 1.338–5(b)(1).

f. Effectively Connected Income Provision

Section 1.338–5T(h) of the temporary regulations treats gain on the deemed sale of certain assets as effectively connected if more than 50 percent of the income from the asset is effectively connected. A similar rule is applied for sourcing purposes. These rules are eliminated because of Congress' revision in 1986 of the sourcing rules and

the rules for taxing dispositions of effectively connected assets.

5. Allocation of Foreign Income Taxes

The temporary regulations are silent on how to allocate foreign taxes paid by T or a T affiliate between old T and new T for purposes of computing the foreign tax credit.

The proposed regulations, in § 1.338–5(d), recognize that a portion of those foreign taxes are paid with respect to income earned by T before T's acquisition date. The foreign taxes are allocated between old T and new T under the allocation method provided in § 1.1502–76(b)(4).

6. Effect of Section 338 Election on Section 936 Corporations

Example 5 of § 1.338–5(f) of the proposed regulations states that the deemed sale under section 338 is treated as an actual sale for purposes of determining the credit under section 936. Section 338(h)(16) does not change the source of the deemed sale income for purposes of this credit. In addition, new T is considered a new corporation for purposes of the fresh start provision of section 936(a)(2)(A).

7. Comments Requested Concerning Section 338(h)(16)

Section 338(h)(16) states that section 338 does not apply for purposes of determining the source and character of the deemed sale earnings under sections 901–908. The primary abuse that section 338(h)(16) prevents is the increase of general limitation foreign source income for purposes of sourcing and the foreign tax credit rules through the deemed sale of foreign assets, when the only actual sale is of the stock of a domestic or foreign corporation, which ordinarily generates passive foreign or U.S. sourced income. Because no foreign taxes are paid on the deemed sale of the foreign assets, the general limitation deemed sale earnings and profits can be used to "soak up" excess foreign taxes in the same basket.

The Service is seeking comments on the proper application of section 338(h)(16), including its application where the deemed sale of assets results in subpart F income under section 952.

E. Other Changes to the Regulations

The proposed regulations restate §§ 1.338–1T through –6T, 1.338(b)–1T, and 1.338(h)(10)–1T. In restating the temporary regulations, numerous editorial changes have been made to simplify and shorten the regulations. The requirements for making an election under section 338 have been removed from the regulations and will be contained in a revised Form 8023. The regulations have also been reorganized to appear in a more logical order and to place related rules together. For example, the rules in § 1.338–4T(c)(5) regarding the application of the control test of section 304 have been moved to § 1.304–5 of the proposed regulations. Question and answer format is no longer used. Finally, transition rules that no longer apply have been deleted.

Several substantive changes have been made in the proposed regulations. For example, the proposed regulations reflect the repeal of old sections 336 and 337. The proposed regulations also (1) provide that T does not recognize gain or loss on the deemed sale of stock of a T affiliate for which a section 338 election is made if T and the T affiliate file a "combined return," (2) incorporate the holdings of Rev. Rul. 90–95, 1990–2 C.B. 67 (relating to whether a QSP of T has been made), (3) provide that the section 338 election for T is invalidated if the section 338(h)(10) election for T is invalid, and (4) incorporate Announcement 86–107, 1986–44 I.R.B. 32 (relating to mandatory use of the MADSP formula when a section 338(h)(10) election is made). Finally, the proposed regulations make clear that if a section 338(h)(10) election is made, new T is liable under § 1.1502–6 for tax liabilities of the selling consolidated group.

F. Effective Dates

The proposed regulations under section 338 are generally proposed to be effective for Ts with acquisition dates on or after the date final regulations are filed with the **Federal Register**. Section 1.338(h)(10)–1(f) (relating to mandatory use of the MADSP formula) is generally proposed to be effective for targets with acquisition dates on or after November 10, 1986. Proposed § 1.304–5 is proposed to be effective the date final regulations are filed with the **Federal Register**. The existing temporary regulations remain in effect until the proposed regulations become effective.

G. Comments

The Internal Revenue Service solicits comments on the substantive changes made to the regulations and on any other ways to simplify the regulations. The Service also solicits comments on other changes that should be made to the regulations under section 338, for example to MADSP, the section 338(b) allocation rules, or the rules regarding contingent liabilities. Finally, the Service solicits comments on transition issues raised by the effective date of the proposed regulations.

H. Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the rules on small business.

I. Comments and Public Hearing

Before adopting these proposed regulations as final regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for March 26, 1992, at 10 a.m. must be received by March 12, 1992. See the notice of hearing published elsewhere in this issue of the **Federal Register**.

J. Drafting Information

The principal authors of the international aspects of these regulations are Kenneth D. Allison and Karen S. Holden of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the international aspects of these regulations.

List of Subjects in 26 CFR

26 CFR 1.301–1 through 1.338(h)(10)–1T

Income taxes, Reporting and recordkeeping requirements, Securities.

26 CFR 1.361–1 through 1.367(e)–2T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.921–1T

Exports, Income taxes, Reporting and recordkeeping requirements, United States investments abroad.

Proposed Amendments to the Regulations

The proposed amendments to part 1 of title 26 of the Code of Federal Regulations are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding the following citations:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * * Section 1.304–5 also issued under 26 U.S.C. 304 * * * Sections 1.338–0 through 1.338–5, 1.338(b)–1, 1.338(h)(10)–1, and 1.338(i)–1 also issued under 26 U.S.C. 337(d), 338, and 1502.

Par. 2. Section 1.304–5 is added to read as follows:

§ 1.304–5 Control.

(a) *Control requirement in general.* Section 304(c)(1) provides that, for purposes of section 304, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock. Section 304(c)(3) makes section 318(a) (relating to constructive ownership of stock), as modified by section 304(c)(3)(B), applicable to section 304 for purposes of determining control under section 304(c)(1).

(b) *Effect of section 304(c)(2)(B)*—(1) *In general.* In determining whether the control test with respect to both the issuing and acquiring corporations is satisfied, section 304(a)(1) considers only the person or persons that—

(i) Control the issuing corporation before the transaction,

(ii) Transfer issuing corporation stock to the acquiring corporation for property, and

(iii) Control the acquiring corporation thereafter.

Section 317 defines property to include money, securities, and any other property except stock (or stock rights) in the distributing corporation. However, section 304(c)(2)(B) provides a special rule to extend the relevant group of persons to be tested for control of both the issuing and acquiring corporations to include the person or persons that do not acquire property, but rather solely stock from the acquiring corporation in the transaction. Section 304(c)(2)(B) provides that if two or more persons in control of the issuing corporation transfer stock of such corporation to the acquiring corporation, and if the transferors are in control of the acquiring corporation after the transfer, the person or persons in control of each corporation include each of those transferors. Because the purpose of section 304(c)(2)(B) is to include in the relevant control group the person or persons that retain or acquire acquiring corporation stock in the transaction, only the person or persons transferring stock of the issuing corporation that retain or acquire and proprietary interest in the acquiring corporation are taken into account for purposes of applying section 304(c)(2)(B).

(2) *Example.* This section may be illustrated by the following example.

Example. (a) A, the owner of 20 percent of T's only class of stock, transfers that stock to P solely in exchange for all of the P stock. Pursuant to the same transaction, P, solely in exchange for cash, acquires the remaining 80 percent of the T stock from T's other shareholder, B, who is unrelated to A.

(b) Although A and B together were in control of T (the issuing corporation) before the transaction and A and B each transferred T Stock to P (the acquiring corporation), sections 304(c)(2)(B) and (a)(1) do not apply to B because B did not retain or acquire any proprietary interest in P in the transaction. Section 304(a)(1) also does not apply to A because A (or a control group of P and T of which A was a member) did not control T before the transaction.

(c) *Effective date.* This section is effective [Insert date that final regulations are filed with the **Federal Register**].

Par. 3. The following sections or paragraphs are amended as follows:

(a) Sections 1.338–1T through 1.338–6T are removed.

(b) Section 1.338(b)–1T is removed.

(c) Section 1.338(b)–2T(a)(3) is removed.

(d) Section 1.338(b)–4T is removed.

(e) Section 1.338(h)(10)–1T is removed.

(f) Section 1.367(a)–4T(b)(4) is removed and reserved.

Par. 4. Sections 1.338–0 through 1.338–5 and section 1.338(b)–1 are added to read as follows:

§ 1.338–0 Outline of topics.

This section lists the captions contained in the regulations under section 338.

§ 1.338–1 Elections under section 338.

(a) Scope.
(b) Nomenclature.
(c) Definitions.
(1) Acquisition date.
(2) Affiliated group.
(3) Common parent.
4) Consistency period.
5) Domestic corporation.
6) Old target's final return.
(7) Purchasing corporation.
(8) Qualified stock purchase.
(9) Related persons.
(10) Section 338 election.
(11) Section 338(h)(10) election.
(12) Selling group.
(13) Target; old target; new target.
(14) Target affiliate.
(15) 12-month acquisition period.
(d) Time and manner of making election.
(e) Returns including tax liability from deemed sale.
(1) In general.
(2) Old target's final taxable year otherwise included in consolidated return of selling group.
(i) General rule.
(ii) Separate taxable year.
(iii) Carryover and carryback of tax attributes.
(iv) Old target is a component member of purchasing corporation's controlled group.
(3) Combined deemed sale return.
(i) General rule.
(ii) Gain and loss offsets.
(iii) Procedure for filing a combined return.
(4) Deemed sale excluded from purchasing corporation's consolidated return.
(5) Due date for old target's final return.
(i) General rule.
(ii) Application of § 1.1502–76(c).
(A) In general.
(B) Erroneous filing of deemed sale return.
(C) Erroneous filing of return for regular tax year.
(D) Last date for payment of tax.
(6) Examples.
(f) Waiver.
(1) Certain additions to tax.
(2) Elections or other actions required to be specified on a timely filed return.
(i) In general.
(ii) New target in purchasing corporation's consolidated return.
(3) Moot return not required.
(4) Examples.
(g) Special rules for foreign corporations of DISCs.
(1) Elections by certain foreign purchasing corporations.
(i) General rule.
(ii) Qualifying foreign purchasing corporation.
(iii) Qualifying foreign target.
(iv) Triggering event.
(v) Subject to United States tax.
(2) Acquisition period.
(3) Statement of section 338 election may be filed by United States shareholders in certain cases.
(4) Notice requirement for U.S. persons holding stock in foreign target.
(i) General rule.
(ii) Form of notice.
(iii) Timing of notice.
(iv) Consequence of failure to comply.

(v) Good faith effort to comply.

§ 1.338–2 Miscellaneous issues under section 338.

(a) Scope.
(b) Rules relating to qualified stock purchases.
(1) Purchasing corporation requirement.
(2) Purchase.
(i) Definition.
(ii) Examples.
(3) Date of purchase from related corporations.
(i) In general.
(ii) Examples.
(4) Acquisition date for tiered targets.
(i) Stock sold in deemed asset sale.
(ii) Examples.
(5) Effect of redemptions.
(i) General rule.
(ii) Redemptions from persons unrelated to the purchasing corporation.
(iii) Redemptions from the purchasing corporation or related persons during 12-month acquisition period.
(A) General rule.
(B) Exception for certain redemptions from related corporations.
(iv) Examples.
(c) Effect of post-acquisition events on eligibility for section 338 election.
(1) Post-acquisition elimination of target.
(2) Post-acquisition elimination of the purchasing corporation.
(d) Miscellaneous matters affecting new target.
(1) Effect of old target tax liabilities.
(2) Availability of recovery deductions.
(3) Effect of acquisition of partnership interest in deemed purchase.
(4) Employment taxes.
(5) Employee plans.
(6) Application of mitigation provisions.
(7) EIN not affected.
(8) New target's taxable year and method of accounting.
(i) Selection.
(ii) First return due on or before certain time.

§ 1.338–3 Deemed sale and aggregate deemed sale price.

(a) Scope.
(b) Definitions.
(1) ADSP.
(2) Elective ADSP formula.
(3) Allocable ADSP amount.
(4) Deemed sale gain.
(5) Classes of assets.
(c) Deemed sale of target affiliate stock.
(1) In general.
(2) General rule.
(3) Deemed sale of foreign target affiliate by a domestic target.
(4) Deemed sale producing effectively connected income.
(5) Deemed sale of insurance company target affiliate electing under section 953(d).
(6) Deemed sale of DISC target affiliate.
(7) Anti-stuffing rule.
(8) Examples.
(d) Determination of ADSP.
(1) General rule.
(2) Determination of ADSP under the elective ADSP formula.
(i) Introduction.
(ii) Grossed-up basis of the purchasing corporation's recently purchased target stock.
(iii) Tax liability resulting from deemed sale.
(iv) Calculation of deemed sale gain and loss.
(v) Other rules apply in elective ADSP formula.
(3) Sample elective ADSP formula.
(4) Procedure for electing elective ADSP formula and for revoking election.
(5) Examples.

§ 1.338–4 Asset and stock consistency.

(a) Introduction.
(1) Overview.
(2) General application.
(3) Extensions of the general rules.
(4) Application where certain dividends are paid.
(5) Application to foreign target affiliates.
(6) Stock consistency.
(b) Consistency for direct acquisitions.
(1) General rule.
(2) Section 338(h)(10) elections.
(c) Gain from disposition reflected in basis of target stock.
(1) General rule.
(2) Gain not reflected if section 338 election made for target.
(3) Gain reflected by reason of distributions.
(4) Controlled foreign corporations.
(5) Gain recognized outside the consolidated group.
(d) Basis of acquired assets.
(1) Carryover basis rule.
(2) Exceptions to carryover basis rule for certain assets.
(3) Exception to carryover basis rule for de minimis assets.
(4) Mitigation rule.
(i) General rule.
(ii) Time for transfer.
(e) Examples.
(1) In general.
(2) Direct acquisitions.
(f) Extension of consistency to indirect acquisitions.
(1) Introduction.
(2) General rule.
(3) Basis of acquired assets.
(4) Examples.
(g) Extension of consistency if dividends qualifying for 100 percent dividends received deduction are paid.
(1) General rule for direct acquisitions from target.
(2) Other direct acquisitions having same effect.
(3) Indirect acquisitions.
(4) Examples.
(h) Consistency for target affiliates that are controlled foreign corporations.
(1) In general.
(2) Income inclusion resulting from asset dispositions.
(i) Gain reflected by reason of income inclusion.
(ii) Basis of controlled foreign corporation stock.
(iii) Operating rule.
(3) Stock issued by target affiliate that is a controlled foreign corporation.
(4) Certain distributions.
(i) General rule.
(ii) Basis of controlled foreign corporation stock.
(5) Examples.
(i) [Reserved.]
(j) Anti-avoidance rules.
(1) Extension of consistency period.
(2) Qualified stock purchase and 12-month acquisition period.
(3) Acquisitions by conduits.
(i) Asset ownership.
(ii) Stock acquisitions.
(A) Purchase by conduit.
(B) Purchase of conduit.
(4) Conduit.
(5) Existence of arrangement.
(6) Predecessor and successor.
(i) Persons.
(ii) Assets.
(7) Examples.

§ 1.338–5 International aspects of section 338.

(a) Scope.
(b) Application of section 338 to foreign targets.
(1) In general.
(2) Ownership of FT stock on the acquisition date.
(3) Carryover FT stock.
(i) Definition.
(ii) Carryover of earnings and profits.
(iii) Cap on carryover of earnings and profits.
(iv) Post-acquisition date distribution of old FT earnings and profits.
(v) Old FT earnings and profits unaffected by post-acquisition date deficits.
(vi) Character of FT stock as carryover FT stock eliminated upon disposition.
(4) Passive foreign investment company stock.
(c) Dividend treatment under section 1248(e).

(d) Allocation of foreign taxes.
(e) Operation of section 338(h)(16).
(f) Examples.

§ 1.338(b)–1 Adjusted grossed-up basis.

(a) Scope.
(b) Adjustment events.
(c) AGUB.
(1) In general.
(2) Time when AGUB determined.
(3) Sample AGUB Formula.
(d) Grossed-up basis of recently purchased stock.
(1) In general.
(2) Target subsidiary.
(e) Basis of nonrecently purchased stock.
(1) In general.
(2) Effect of gain recognition election.
(i) In general.
(ii) Basis amount.
(iii) Losses not recognized.
(iv) Stock subject to election.
(3) Procedure for making gain recognition election.
(i) In general.
(ii) Section 338(h)(10) election.
(4) Comparison with elective ADSP formula.
(f) Liabilities of new target.
(1) In general.
(2) Excluded obligations.
(i) In general.
(ii) Time when excluded obligations taken into account.
(3) Liabilities taken into account in determining amount realized on subsequent disposition.
(g) Other relevant items.
(1) In general.
(2) Flow-through of relevant item adjustment to target subsidiary.
(3) Adjustments by the Internal Revenue Service.
(h) Examples.

§ 1.338(b)–2T Allocation of adjusted grossed-up basis among target assets (Temporary).

(a) Introduction.
(1) In general.
(2) Fair market value.
(b) General rule for allocating adjusted grossed-up basis.
(1) Cash and other items designated by the Internal Revenue Service.
(2) Other assets.
(i) In general.
(ii) Class II assets.
(iii) Class III assets.
(iv) Class IV assets.
(c) Certain limitations and special rules for basis allocable to an asset.
(1) Basis not to exceed fair market value.
(2) Assets subject to other limitations.
(3) Special rule for allocating adjusted grossed-up basis when purchasing corporation has nonrecently purchased stock.
(i) Scope.
(ii) Determination of hypothetical purchase price.
(iii) Allocation of adjusted grossed-up basis.
(d) Examples.

§ 1.338(b)–3 Subsequent adjustments to adjusted grossed-up basis (Temporary).

(a) Scope.
(1) In general.
(2) Exceptions to applicability of section.
(3) Adjustment of aggregate deemed sale price.
(b) Definitions.
(1) Contingent liability.
(2) Contingent amount.
(3) Reduction amount.
(4) Acquisition date asset.
(c) General rule.
(1) Time when increases in adjusted grossed-up basis taken into account.
(2) Time when decreases in adjusted grossed-up basis taken into account.
(3) Amount of increases and decreases in adjusted grossed-up basis.
(d) Allocation of increases in adjusted grossed-up basis.
(1) In general.
(2) Effect of disposition or depreciation of acquisition date assets.
(e) Allocation of decreases in adjusted grossed-up basis.
(1) In general.
(2) Effect of disposition of assets or reduction of basis below zero.
(3) Section 338 property.
(f) Special rule for allocation of increases (or decreases) in adjusted grossed-up basis when hypothetical purchase price was used in allocating adjusted grossed-up basis.
(1) Scope.
(2) Allocation of increases (decreases) in adjusted grossed-up basis.
(3) Allocation to contingent income assets.
(g) Special rule for allocation of increases (decreases) in adjusted grossed-up basis to specific assets.
(1) Patents and similar property.
(i) Scope.
(ii) Specific allocation.
(2) Internal Revenue Service authority.
(h) Changes in old target's aggregate deemed sale price of assets.
(1) General rule.
(i) In general.
(ii) Redetermination of aggregate deemed sale price if the elective formula under section 338(h)(11) is used.
(iii) Redetermination of aggregate deemed sale price if the elective formula under section 338(h)(11) is not used.
(2) Procedure for transactions in which section 338(h)(10) is not elected.
(i) Income or loss included in new target's return.
(ii) Carryovers and carrybacks.
(A) Loss carryovers to new target taxable years.
(B) Loss carrybacks to taxable years of old target.
(C) Credit carryovers and carrybacks.
(3) Procedure for transactions in which section 338(h)(10) is elected.
(i) [Reserved.]
(j) Examples.

§ 1.338(h)(10)–1 Elective recognition by selling consolidated group of deemed sale gain or loss on target's assets.

(a) Scope.
(b) Nomenclature.
(c) Definitions.
(1) Section 338(h)(10) target.
(2) Section 338(h)(10) target affiliate.
(3) Selling consolidated group.
(d) Section 338(h)(10) election.
(1) In general.
(2) Simultaneous joint election requirement.
(3) Delayed elections.
(i) In general.
(ii) Time for filing.
(e) Consequences of section 338(h)(10) election.
(1) Taxable sale of all T assets.
(2) Nonrecognition treatment for T stock.
(i) General rule.
(ii) Example.
(3) Deemed section 332 liquidation for T.
(4) Treatment of unacquired T stock.
(i) Nonrecognition treatment.
(ii) Basis to K.
(iii) Basis to S group.
(iv) Net fair market value.
(5) Cross-references.
(f) Deemed sale price.
(1) General rule.
(2) Formula.
(3) Cross-reference.
(g) Examples.
(h) Inapplicability of provisions.

§ 1.338(i)–1 Effective dates.

(a) In general.
(b) MADSP.

§ 1.338–1 Elections under section 338.

(a) *Scope.* This section prescribes rules relating to elections under section 338. Paragraphs (c)(6), (e), and (g) of this section do not apply to a target for which a section 338(h)(10) election is made.

(b) *Nomenclature.* For purposes of the regulations under section 338 (except as otherwise provided):

(1) T is a domestic corporation that has only one class of stock outstanding.

(2) P is a domestic corporation that purchases stock of T in a qualified stock purchase.

(3) The P group is an affiliated group of which P is a member.

(4) P1, P2, etc., are domestic corporations that are members of the P group.

(5) T1,T2, etc., are domestic corporations that are target affiliates of T. These corporations (T1, T2, etc.) have only one class of stock outstanding and may also be targets.

(6) S is a domestic corporation (unrelated to P and B) that owns T prior to the purchase of T by P. (S is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by a domestic corporation.)

(7) A, a U.S. resident or citizen, is an individual (unrelated to P and B) who owns T prior to the purchase of T by P. (A is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by an individual who is a U.S. resident or citizen. Ownership of T by A and ownership of T by S are mutually exclusive circumstances.)

(8) B, a U.S. resident or citizen, is an individual (unrelated to T, S, and A) who owns the stock of P.

(9) F, used as a prefix with the other terms in this paragraph (b), connotes foreign, rather than domestic, status. For example, FT is a foreign corporation (as defined in section 7701(a)(5)) and FA is an individual other than a U.S. citizen or resident.

(10) CFC, used as a prefix with the other terms in this paragraph (b) referring to a corporation, connotes a controlled foreign corporation (as defined in section 957, taking into account section 953(c)). A corporation identified with the prefix F may be a controlled foreign corporation. The prefix CFC is used when the corporation's status as a controlled foreign corporation is significant.

(c) *Definitions.* For purposes of the regulations under section 338 (except as otherwise provided):

(1) *Acquisition date.* The term "acquisition date" has the same meaning as in section 338(h)(2).

(2) *Affiliated group.* The term "affiliated group" has the same meaning as in section 338(h)(5). Corporations are affiliated on any day they are members of an affiliated group.

(3) *Common parent.* The term "common parent" has the same meaning as in section 1504.

(4) *Consistency period.* The "consistency period" is the period described in section 338(h)(4)(A) unless extended pursuant to § 1.338–4(j)(1).

(5) *Domestic corporation.* A "domestic corporation" is a corporation—

(i) That is domestic within the meaning of section 7701(a)(4) or that is treated as domestic for purposes of subtitle A of the Code (*e.g.*, to which an election under section 953(d) or 1504(d) applies), and

(ii) That is not a DISC, a corporation described in section 1248(e), or a corporation to which an election under section 936 applies.

(6) *Old target's final return.* "Old target's final return" is the income tax return of old target for the taxable year ending at the close of the acquisition date that includes the deemed sale of assets under section 338. If the disaffiliation rule of paragraph (e)(2)(i) of this section applies, target's "deemed sale return" is considered old target's final return.

(7) *Purchasing corporation.* The term "purchasing corporation" has the same meaning as in section 338(d)(1). Unless otherwise provided, any reference to the purchasing corporation is a reference to all members of the affiliated group of which the purchasing corporation is a member. *See* section 338(h) (5) and (8).

(8) *Qualified stock purchase.* The "qualified stock purchase" has the same meaning as in section 338(d)(3).

(9) *Related persons.* Two persons are related if stock in a corporation owned by one of the persons would be attributed under section 318(a) (other than section 318 (a)(4)) to the other.

(10) *Section 338 election.* A "section 338 election" is an election to apply section 338(a) to target. A section 338 election may be made by filing a statement of section 338 election (Form 8023) pursuant to § 1.338–1(d).

(11) *Section 338(h)(10) election.* A "section 338(h)(10) election" is an election to apply section 338(h)(10) to target. A section 338(h)(10) election may be made by making a joint election for target under § 1.338(h)(10)–1.

(12) *Selling group.* The "selling group" is the affiliated group (as defined in section 1504) that is eligible to file a consolidated return that includes target for the acquisition date and that does not have a target as common parent for the taxable year including the acquisition date.

(13) *Target; old target; new target.* "Target" is the target corporation as defined in section 338(d)(2). "Old target" refers to target for periods ending as of the close of the date of target's deemed sale of assets. "New target" refers to target for subsequent periods.

(14) *Target affiliate.* The term "target affiliate" has the same meaning as in section 338(h)(6) (applied without section 338(h)(6)(B)(i)). Thus, a corporation described in section 338(h)(6)(B)(i) is considered a target affiliate for all purposes of section 338. If a target affiliate is acquired in a qualified stock purchase, it is also a target.

(15) *12-month acquisition period.* The "12-month acquisition period" is the period described in section 338(h)(1), unless extended pursuant to § 1.338–4(j)(2).

(d) *Time and manner of making election.* The purchasing corporation makes a section 338 election for target by filing a statement of section 338 election on Form 8023 not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs. The statement must contain such information and be filed in the manner specified in the form and its instructions. A single Form 8023 may be filed for any targets acquired by the purchasing corporation from a single affiliated group, provided a separate Form 8023 could be filed timely for each target.

(e) *Returns including tax liability from deemed sale*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, any tax liability resulting from the deemed sale of assets under section 338 is included in the final return of old target filed for old target's taxable year that ends on the acquisition date. If old target is the common parent of an affiliated group, the final return may be a consolidated return (any such consolidated return must also include any tax liability from any deemed sales under section 338 of subsidiaries in the consolidated group that have the same acquisition date as old target and that are acquired by the purchasing corporation).

(2) *Old target's final taxable year otherwise included in consolidated return of selling group*—(i) *General rule.* If target is includable in a consolidated return filed by the selling group for a period that includes the acquisition date, old target is disaffiliated from that group immediately before its deemed sale of assets under section 338 and must file a final return including only the items resulting from the deemed sale and the carryover items specified in paragraph (e)(2)(iii) of this section ("deemed sale return"). The deemed sale occurs at the close of the acquisition date and is the last transaction of old target. Any transactions of old target occurring on the acquisition date other than the deemed sale are reported in the selling group's consolidated return. A deemed sale return includes a "combined return" as defined in paragraph (e)(3) of this section.

(ii) *Separate taxable year.* The deemed sale of old target reported in the

deemed sale return under this paragraph (e)(2) occurs in a separate taxable year, except that the sale is treated as occurring in the same taxable year of target as is represented by the selling group's consolidated return (for the period including the acquisition date) for purposes of determining the number of years in a carryover or carryback period.

(iii) *Carryover and carryback of tax attributes.* Target's attributes may be carried over to, and carried back from, the deemed sale return under the rules applicable to a corporation that ceases to be a member of a consolidated group.

(iv) *Old target is a component member of purchasing corporation's controlled group.* For purposes of its deemed sale return, target is a component member of the controlled group of corporations including the purchasing corporation unless target is treated as an excluded member under section 1563(b)(2).

(3) *Combined deemed sale return*—(i) *General rule.* Under section 338(h)(15), a combined deemed sale return ("combined return") may be filed for all targets from a single selling consolidated group (as defined in § 1.338(h)(10)–1(c)(3)) that are acquired by the purchasing corporation on the same acquisition date and that otherwise would be required to file separate deemed sale returns. The combined return must include all such targets. For example, T and T1 may be included in a combined return if—

(A) T and T1 are directly owned subsidiaries of S,

(B) S is the common parent of a consolidated group, and

(C) P makes qualified stock purchases of T and T1 on the same acquisition date.

(ii) *Gain and loss offsets.* Gains and losses recognized on the deemed sale of assets by targets included in a combined return are treated as the gains and losses of a single target. In addition, loss carryovers of a target that were not subject to the separate return limitation year restrictions ("SRLY restrictions") of the consolidated return regulations while that target was a member of the selling consolidated group may be applied without limitation to the gains of other targets included in the combined return. If, however, a target has loss carryovers that were subject to the SRLY restrictions while that target was a member of the selling consolidated group, the use of those losses in the combined return continues to be subject to those restrictions, applied in the same manner as if the combined return were a consolidated return. A similar rule applies to tax credits.

(iii) *Procedure for filing a combined return.* A combined return is made by filing a single corporation income tax return in lieu of separate deemed sale returns for all targets required to be included in the combined return. The combined return reflects the deemed sales of all targets required to be included in the combined return. If the targets included in the combined return constitute a single affiliated group within the meaning of section 1504(a), the income tax return is signed by an officer of the common parent of that group. Otherwise, the return must be signed by an officer of each target included in the combined return. Rules similar to the rules in § 1.1502–75(j) apply for purposes of preparing the combined return. The combined return must include an attachment prominently identified as an "ELECTION TO FILE A COMBINED RETURN UNDER SECTION 338(h)(15)." The attachment must—

(A) Contain the name, address, and employer identification number of each target required to be included in the combined return,

(B) Contain the following declaration (or a substantially similar declaration): "EACH TARGET IDENTIFIED IN THIS ELECTION TO FILE A COMBINED RETURN CONSENTS TO THE FILING OF A COMBINED RETURN," and

(C) For each target, be signed by a person who states under penalties of perjury that he or she is authorized to act on behalf of such target.

(4) *Deemed sale excluded from purchasing corporation's consolidated return.* Any tax liability resulting from the deemed sale of target assets under section 338 may not be included in any consolidated return of any affiliated group that includes the purchasing corporation.

(5) *Due date for old target's final return*—(i) *General rule.* Old target's final return is generally due on the 15th day of the third calendar month following the month in which the acquisition date occurs. See section 6072 (time for filing income tax returns).

(ii) *Application of § 1.1502–76 (c)*—(A) *In general.* Section 1.1502–76(c) applies to old target's final return if old target was a member of a selling group that did not file consolidated returns for the taxable year of the common parent that precedes the year that includes old target's acquisition date. If the selling group has not filed a consolidated return that includes old target's taxable period that ends on the acquisition date, target may, on or before the final return due date (including extensions), either—

(*1*) File a deemed sale return on the assumption that the selling group will file the consolidated return, or

(*2*) File a return for so much of old target's taxable period as ends at the close of the acquisition date on the assumption that the consolidated return will not be filed.

See § 1.1502–76(c)(2). For purposes of applying § 1.1502–76(c)(2), an extension of time to file old target's final return is considered to be in effect until the last date for making the election under section 338.

(B) *Erroneous filing of deemed sale return.* If, pursuant to this paragraph (e)(5)(ii), target files a deemed sale return but the selling group does not file a consolidated return, target must file a substituted return for old target not later than the due date (including extensions) for the return of the common parent with which old target would have been included in the consolidated return. The substituted return is for so much of old target's taxable year as ends at the close of the acquisition date. Under § 1.1502–76(c)(2), the deemed sale return is not considered a return for purposes of section 6011 (relating to the general requirement of filing a return) if a substituted return must be filed.

(C) *Erroneous filing of return for regular tax year.* If, pursuant to this paragraph (e)(5)(ii), target files a return for so much of old target's regular taxable year as ends at the close of the acquisition date but the selling group files a consolidated return, target must file an amended return for old target not later than the due date (including extensions) for the selling group's consolidated return. (The amended return is a deemed sale return.)

(D) *Last date for payment of tax.* If either a substituted or amended final return of old target is filed pursuant to this paragraph (e)(5)(ii), the last date prescribed for payment of tax is the final return due date (as defined in paragraph (e)(5)(i) of this section).

(6) *Examples.* This paragraph (e) may be illustrated by the following examples:

Example 1. (a) S is the common parent of a consolidated group that includes T. The S group files calendar year consolidated returns. At the close of June 30, 1993, P makes a qualified stock purchase of T from S, P makes a section 338 election for T, and the deemed sale of T's assets occurs as of the close of T's acquisition date (June 30).

(b) T is considered disaffiliated for purposes of reporting the deemed sale. Accordingly, T is included in the S group's consolidated return through T's acquisition date except that the tax liability resulting from the deemed sale of assets is reported in a separate deemed sale return of T. Provided that T is not treated as an excluded member under section 1563(b)(2), T is a component member of P's controlled group for the taxable year represented by the deemed sale.

and the taxable income bracket amounts available in calculating tax on the deemed sale return must be limited accordingly.

(c) If P purchased the stock of T at 10 a.m. on June 30, 1993, the results would be the same. See paragraph (e)(2)(i) of this section.

Example 2. The facts are the same as in *Example 1*, except that the S group does not file consolidated returns. T must file a separate return for its taxable year ending on June 30, 1993, which includes the deemed sale.

(f) *Waiver*—(1) *Certain additions to tax.* An addition to tax or additional amount (addition) under Subchapter A of Chapter 68 arising on or before the last day for making the election under section 338, by reason of circumstances that would not exist but for an election under section 338, is waived if—

(i) Under the particular statute the addition is excusable upon a showing of reasonable cause, and

(ii) Corrective action is taken on or before the last day.

The Service should be notified at the time of correction (*e.g.*, by attaching a statement to a return that constitutes corrective action) that the waiver rule of this paragraph (f) is being asserted.

(2) *Elections or other actions required to be specified on a timely filed return*—(i) *In general.* If paragraph (f)(1) of this section applies or would apply if there was an underpayment, any election or other action that must be specified on a timely filed return for the taxable period covered by the late filed return described in paragraph (f)(1) of this section is considered timely if specified on a late-filed return filed on or before the last day for making the election under section 338.

(ii) *New target in purchasing corporation's consolidated return.* If new target is includible for its first taxable year in a consolidated return filed by the affiliated group of which the purchasing cooperation is a member on or before the last day for making the election under section 338, any election or other action that must be specified in a timely filed return for new target's first taxable year (but which is not specified in the consolidated return) is considered timely if specified in an amended return filed on or before such last day, with the Internal Revenue Service Center with which the consolidated return was filed.

(3) *Moot return not required.* If a timely election under section 338 is made, an income tax return need not be filed for the taxable year of old target which, had an election not been made, would have included any day after the acquisition date.

(4) *Examples.* This paragraph (f) may be illustrated by the following examples:

Example 1. T is an unaffiliated corporation with a tax year ending March 31. At the close of September 20, 1992, P makes a qualified stock purchase of T. P does not file consolidated returns. P makes a section 338 election for T on or before June 15, 1993, which causes T's taxable year to end as of the close of September 20, 1992. An income tax return for T's taxable period ending on September 20, 1992, was due on December 15, 1992. Additions to tax for failure to file a return and to pay tax shown on a return will not be imposed if T's return is filed and the tax paid on or before June 15, 1993. (This waiver applies even if the acquisition date coincides with the last day of T's former taxable year, *i.e.*, March 31, 1993.) Interest on any underpayment of tax for old T's short taxable year ending September 20, 1992, runs from December 15, 1992. A statement indicating that the waiver rule of § 1.338–1(f) is being asserted should be attached to T's return.

Example 2. Assume the same facts as in *Example 1.* Assume further that new T adopts the calendar year by filing, on or before June 15, 1993, its first return (for the period beginning on September 21, 1992, and ending on December 31, 1992) indicating that a calendar year is chosen. See § 1.338–2(d)(6). Any additions to tax or amounts described in this paragraph (f) which arise by reason of the late filing of a return for the period ending on December 31, 1992, are waived, because they are based on circumstances that would not exist but for the section 338 election. Notwithstanding this waiver, however, the return is still considered due March 15, 1993, and interest on any underpayment runs from that date.

Example 3. Assume the same facts as in *Example 2*, except that T's former taxable year ends on October 31. Although prior to the election of T had a return due on January 15, 1993, that return need not be filed because a timely election under section 338 was made. See paragraph (f)(3) of this section.

(g) *Special rules for foreign corporations or DISCs*—(1) *Elections by certain foreign purchasing corporations.*—(i) *General rule.* A qualifying foreign purchasing corporation is not required to file a statement of section 338 election for a qualifying foreign target before the earlier of 3 years after the acquisition date and the 180th day after the close of the purchasing corporation's taxable year within which a triggering event occurs.

(ii) *Qualifying foreign purchasing corporation.* A purchasing corporation is a "qualifying foreign purchasing corporation" only if, during the acquisition period of a qualifying foreign target, all the corporations in the purchasing corporation's affiliated group are foreign corporations that are not subject to United States tax.

(iii) *Qualifying foreign target.* A target is a "qualifying foreign target" only if target and its target affiliates are foreign corporations that, during target's acquisition period, are not subject to United States tax (and will not become subject to United States tax during such period by reason of a section 338 election). A target affiliate is taken into account for purposes of the preceding sentence only if, during target's 12-month acquisition period, it is or becomes a member of the affiliated group that includes the purchasing corporation.

(iv) *Triggering event.* A triggering event occurs in the taxable year of the qualifying foreign purchasing corporation in which either that corporation or any corporation in its affiliated group becomes subject to United States tax.

(v) *Subject to United States tax.* For purposes of this paragraph (g)(1), a foreign corporation is considered "subject to United States tax"—

(A) For the taxable year for which that corporation is required under § 1.6012–2(g) (other than § 1.6012–2(g)(2)(i)(*b*)(*2*)) to file a United States income tax return, or

(B) For the period during which that corporation is a controlled foreign corporation, a passive foreign investment company for which an election under section 1295 is in effect, a foreign investment company, or a foreign corporation the stock ownership of which is described in section 552(a)(2).

(2) *Acquisition period.* For purposes of this paragraph (g), the term "acquisition period" means the period beginning on the first day of the 12-month acquisition period and ending on the acquisition date.

(3) *Statement of section 338 election may be filed by United States shareholders in certain cases.* The United States shareholders (as defined in section 951(b)) of a foreign purchasing corporation that is a controlled foreign corporation (as defined in section 957 (taking into account section 953(c))) may file a statement of section 338 election on behalf of the purchasing corporation if the purchasing corporation is not required under § 1.6012–2(g) (other than § 1.6012–2(g)(2)(i)(*b*)(*2*)) to file a United States income tax return for its taxable year that includes the acquisition date. Form 8023 must be filed as described in the form and its instructions and also must be attached to the Form 5471 (information return with respect to a foreign corporation) filed with respect to the purchasing corporation by each United States shareholder for the purchasing corporation's taxable year that includes the acquisition date (or, if paragraph (g)(1)(i) of this section applies to the election, for the purchasing

corporation's taxable year within which it becomes a controlled foreign corporation). The provisions of § 1.964–1(c) (including § 1.964–1(c)(7)) do not apply to an election made by the United States shareholders.

(4) *Notice requirement for U.S. persons holding stock in foreign target*—(i) *General rule.* If a target subject to a section 338 election was a controlled foreign corporation, a passive foreign investment company, or a foreign personal holding company at any time during the portion of its taxable year that ends on its acquisition date, the purchasing corporation must deliver written notice of the election (and a copy of Form 8023, its attachments and instructions) to—

(A) Each U.S. person (other than a member of the affiliated group of which the purchasing corporation is a member ("the purchasing group menmber")) that, on the acquisition date of the foreign target, holds stock in the foreign target, and

(B) Each U.S. person (other than a purchasing group member) that sells stock in the foreign target to a group member during the foreign target's 12-month acquisition period.

The notice requirement of this paragraph (g)(4) applies only where the section 338 election for the foreign target affects income, gain, loss, deduction, or credit of the U.S. person described in this paragraph (g)(4)(i) under section 551, 951, 1248, or 1293.

(ii) *Form of notice.* The notice to U.S. persons must be identified prominently as a notice of section 338 election and must—

(A) Contain the name, address, and employer identification number (if any) of, and the country (and, if relevant, the lesser political subdivision) under the laws of which is organized, the purchasing corporation and the relevant target (*i.e.*, target the stock of which the particular U.S. person held or sold under the circumstances described in paragraph (g)(4)(i) of this section),

(B) Identify those corporations as the purchasing corporation and the foreign target, respectively, and

(C) Contain the following declaration (or a substantially similar declaration): "THIS DOCUMENT SERVES AS NOTICE OF AN ELECTION UNDER SECTION 338 FOR THE ABOVE CITED FOREIGN TARGET THE STOCK OF WHICH YOU EITHER HELD OR SOLD UNDER THE CIRCUMSTANCES DESCRIBED IN TREASURY REGULATIONS § 1.338–1(g)(4)(i). FOR POSSIBLE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES UNDER SECTION 551, 951, 1248, OR 1293 OF THE INTERNAL REVENUE CODE OF 1986 THAT MAY APPLY TO YOU, SEE TREASURY REGULATIONS § 1.338–5(b). YOU MAY BE REQUIRED TO ATTACH THE INFORMATION ATTACHED TO THIS NOTICE TO CERTAIN RETURNS."

(iii) *Timing of notice.* The notice required by this paragraph (g)(4) must be delivered to the U.S. person on or before the later of—

(A) The 120th day after the acquisition date of the particular target, or

(B) The day on which Form 8023 is filed.

If notice is delivered by United States mail, the date of the United States postmark is deemed to be the date of delivery.

(iv) *Consequence of failure to comply.* A statement of section 338 election is not valid if timely notice is not given to one or more U.S. persons described in paragraph (g)(4)(i) of this section. If the form of notice fails to comply with all requirements of this paragraph (g)(4), the section 338 election is valid, but the waiver rule of paragraph (f)(1) of this section does not apply.

(v) *Good faith effort to comply.* The purchasing corporation will be considered to have complied with this paragraph (g)(4), even though it failied to provide notice or provide timely notice to each person described in paragraph (g)(4)(i) of this section, if the Commissioner determines that the purchasing corporation made a good faith effort to identify and provide timely notice to those U.S. persons.

§ 1.338–2 Miscellaneous issues under section 338.

(a) *Scope.* This section provides guidance on miscellaneous issues under section 338.

(b) *Rules relating to qualified stock purchases*—(1) *Purchasing corporation requirement.* An individual cannot make a qualified stock purchase of target. Section 338(d)(3) requires, as a condition of a qualified stock purchase, that a corporation purchase the stock of target. If an individual forms a corporation ("new P") to acquire target stock, new P can make a qualified stock purchase of target if new P is considered for tax purposes to purchase the target stock. Facts that may indicate that new P does not purchase the target stock include that new P merges downstream into target, liquidates, or otherwise disposes of the target stock following the purported qualified stock purchase.

(2) *Purchase*—(i) *Definition.* The term "purchase" has the same meaning as in section 338(h)(3).

(ii) *Examples.* This paragraph (b)(2) may be illustrated by the following examples:

Example 1. A, who owns all of the stock of P and T, sells the T stock to P for cash. A is treated under section 304(a)(1) as receiving a distribution in redemption of the P stock. P is treated as receiving the T stock as a contribution to its capital. Under section 362(a) and § 1.304–2(a), P's basis in the T stock is determined by reference to A's adjusted basis in the stock. Thus, under section 338(h)(3)(A)(i), P is not considered to have acquired the T stock by purchase.

Example 2. P exchanges cash for all of the stock of N, a newly formed corporation. N was formed for the sole purpose of acquiring all of the T stock by means of a reverse subsidiary cash merger. Prior to the merger, N conducted no activities other than those required for the merger. Pursuant to the plan, N merges into T, and the T shareholders receive cash for their T stock. No T shareholder is related to P, and no group of T shareholders controls P within the meaning of section 304(c). The existence of N is disregarded, and P is considered to acquire the T stock directly from the T shareholders for cash. Thus, P is considered to have acquired the T stock by purchase.

(3) *Date of purchase from related corporation*—(i) *In general.* Stock acquired by a purchasing corporation from a related corporation ("R") is generally not considered acquired by purchase. *See* section 338(h)(3)(A)(iii). However, if section 338(h)(3)(C) applies and the purchasing corporation is treated as acquiring stock by purchase from R, solely for purposes of determining when the stock is considered acquired—

(A) Target stock acquired from R is considered to have been acquired by the purchasing corporation on the day on which the purchasing corporation is first considered to own that stock under section 318(a) (other than section 318(a)(4)), and

(B) If such stock first may be considered owned by the purchasing corporation on more than one date, such stock is deemed acquired on the earliest date first to the extent thereof, then on the next earliest date, and so on.

(ii) *Examples.* This paragraph (b)(3) may be illustrated by the following examples:

Example 1. (a) On January 1, 1994, P purchases 75 percent in value of the R stock. On that date, R owns 4 of the 100 shares of T stock. On June 1, 1994, R acquires an additional 16 shares of T stock. On December 1, 1994, P purchases 70 shares of T stock from an unrelated person and 12 of the 20 shares of T stock held by R.

(b) Of the 12 shares of T stock purchased by P from R on December 1, 1994, 3 of those shares are deemed to have been acquired by P on January 1, 1994, the date on which 3 of the 4 shares of T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (*i.e.*, 4 x .75). The remaining 9 shares of T stock purchased by P

from R on December 1, 1994; are deemed to have been acquired by P on June 1, 1994, the date on which an additional 12 of the 20 shares of T stock owned by R on that date were first considered owned by P under section 318(a)(2)(C) (*i.e.*, (20 x .75) −3). Because stock acquisitions by P sufficient for a qualified stock purchase of T occur within a 12-month period (*i.e.*, 3 shares constructively on January 1, 1994, 9 shares constructively on June 1, 1994, and 70 shares actually on December 1, 1994), a qualified stock purchases is made on December 1, 1994.

Example 2. (a) On February 1, 1993, P acquires 25 percent in value of the R stock from B (the sole shareholder of P). That R stock is not acquired by purchase. *See* section 338(h)(3)(A)(iii). On that date, R owns 4 of the 100 shares of T stock. On June 1, 1993, P purchases an additional 25 percent in value of the R stock, and on January 1, 1994, P purchases another 25 percent in value of the R stock. On June 1, 1994, R acquires an additional 16 shares of the T shock. On December 1, 1994, P purchases 68 shares of the T stock from an unrelated person and 12 of the 20 shares of the T stock held by R.

(b) Of the 12 shares of the T stock purchased by P from R on December 1, 1994, 2 of those shares are deemed to have been acquired by P on June 1, 1993, the date on which 2 of the 4 shares of the T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (*i.e.*, 4 x .5). For purposes of this attribution, the R stock need not be acquired by P by purchase. *See* section 338(h)(1). (By contrast, the acquisition of the T stock by P from R does not qualify as a purchase unless P has acquired at least 50 percent in value of the R stock by purchase. Section 338(h)(3)(C)(i).) Of the remaining 10 shares of the T stock purchased by P from R on December 1, 1994, 1 of those shares is deemed to have been acquired by P on January 1, 1994, the date on which an additional 1 share of the 4 shares of the T stock held by R on that date was first considered owned by P under section 318(a)(2)(C) (*i.e.*, (4 x .75) −2). The remaining 9 shares of the T stock purchased by P from R on December 1, 1994, are deemed to have been acquired by P on June 1, 1994, the date on which an additional 12 shares of the T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (*i.e.*, (20 x .75) −3). Because a qualified stock purchase of T by P is made on December 1, 1994, only if all 12 shares of the T stock purchased by P from R on that date are considered acquired during a 12-month period ending on that date (so that, in conjunction with the 68 shares of the T stock P purchased on that date from the unrelated person, 80 of T's 100 shares are acquired by P during a 12-month period) and because 2 of those 12 shares are considered to have been acquired by P more than 12 months before December 1, 1994 (*i.e.*, on June 1, 1993), a qualified stock purchase is not made. (Under § 1.338-4(j)(2), for purposes of applying the consistency rules, P is treated as making a qualified stock purchase of T if, pursuant to an arrangement, P purchases T stock satisfying the requirements of section 1504(a)(2) over a period of more than 12 months.)

Example 3. Assume the same facts as in *Example 2*, except that on February 1, 1993, P acquires 25 percent in value of the R stock by purchase. The result is the same as in *Example 2*.

(4) *Acquisition date for tiered targets*—(i) *Stock sold in deemed asset sale.* If an election under section 338 is made for target, old target is deemed to sell target's assets and new target is deemed to acquire those assets. Under section 338(h)(3)(B), new target's deemed purchase of stock of another corporation is a purchase for purposes of section 338(d)(3) on the acquisition date of target. If new target's deemed purchase causes a qualified stock purchase of the other corporation and if a section 338 election is made for the other corporation, the acquisition date for the other corporation is the same as the acquisition date of target. However, the deemed sale and purchase of the other corporation's assets is considered to take place instantaneously after the deemed sale and purchase of target's assets.

(ii) *Examples.* This paragraph (b)(4) may be illustrated by the following examples:

Example 1. A owns all of the T stock. T owns 50 of the 100 shares of X stock. The other 50 shares of X stock are owned by corporation Y, which is unrelated to A, T, or P. On January 1, 1995, P makes a qualified stock purchase of T from A and makes a section 338 election for T. On December 1, 1995, P purchases the 50 shares of X stock held by Y. A qualified stock purchase of X is made on December 1, 1995, because the deemed purchase of 50 shares of X stock by new T by reason of the section 338 election for T and the actual purchase of 50 shares of X stock by P are treated as purchases made by one corporation. Section 338(h)(8). For purposes of determining whether those purchases occur within a 12-month acquisition period as required by section 338(d)(3), T is deemed to purchase its stock on T's acquisition date, *i.e.*, January 1, 1995.

Example 2. On January 1, 1994, P makes a qualified stock purchase of T and makes a section 338 election for T. On that day, T sells all of the stock of T1 to A. Although T held all of the T1 stock on T's acquisition date, T is not considered to have purchased the T1 stock by reason of the section 338 election for T. In order for T to be treated as purchasing the T1 stock, T must hold the T1 stock when T's deemed sale of assets occurs pursuant to section 338(a). The deemed sale of assets is considered the last transaction of old T at the close of T's acquisition date. Accordingly, the T1 stock actually disposed of by T on the acquisition date is not included in the deemed sale of assets. Thus, T does not make a qualified stock purchase of T1.

(5) *Effect of redemptions*—(i) *General rule.* Except as provided in this paragraph (b)(5), a qualified stock purchase is made on the first day on which the percentage ownership requirements of section 338(d)(3) are satisfied by reference to target stock that is both (A) held on that day by the purchasing corporation and (B) purchased by the purchasing corporation during the 12-month period ending on that day.

(ii) *Redemptions from persons unrelated to the purchasing corporation.* Target stock redemptions from persons unrelated to the purchasing corporation that occur at any time before the close of the 12-month acquisition period are taken into account as reductions in target's outstanding stock for purposes of determining whether target stock purchased by the purchasing corporation in the 12-month acquisition period satisfies the percentage ownership requirements of section 338(d)(3).

(iii) *Redemptions from the purchasing corporation or related persons during 12-month acquisition period*—(A) *General rule.* For purposes of the percentage ownership requirements of section 338(d)(3), a redemption of target stock during the 12-month acquisition period from the purchasing corporation or from any person related to the purchasing corporation is not taken into account as a reduction in target's outstanding stock.

(B) *Exception for certain redemptions from related corporations.* A redemption of target stock during the 12-month acquisition period from a corporation related to the purchasing corporation is taken into account as a reduction in target's outstanding stock to the extent that the redeemed stock would have been considered purchased by the purchasing corporation (by reason of section 338(h)(3)(C)) during the 12-month acquisition period if the redeemed stock had been acquired by the purchasing corporation from the related corporation on the day of the redemption. *See* paragraph (b)(3) of this section.

(iv) *Examples.* This paragraph (b)(5) may be illustrated by the following examples:

Example 1. OSP on stock purchase date; redemption from unrelated person during 12-month period. A owns all 100 shares of T stock. On January 1, 1994, P purchases 40 shares of the T stock from A. On July 1, 1994, T redeems 25 shares from A. On December 1, 1994, P purchases 20 shares of the T stock from A. P makes a qualified stock purchase of T on December 1, 1994, because the 60 shares of T stock purchased by P within the 12-month period ending on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (*i.e.*, 60/75 shares), determined by taking into account the redemption of 25 shares.

Example 2. OSP on stock redemption date; redemption from unrelated person during 12-

month period. The facts are the same as in *Example 1*, except that P purchases 60 shares of T stock on January 1, 1994, and none on December 1, 1994. P makes a qualified stock purchase of T on July 1, 1994, because that is the first day on which the T stock purchased by P within the preceding 12-month period satisfies the 80-percent ownership requirements of section 338(d)(3) (*i.e.*, 60/75 shares), determined by taking into account the redemption of 25 shares.

Example 3. Redemption from unrelated person more than 12 months before stock purchase. A owns all 100 shares of T stock. On January 1, 1994, T redeems 25 of its shares. On January 15, 1995, P purchases 60 shares of T stock from A. P makes a qualified stock purchase of T on January 15, 1995. The 60 shares of T stock purchased by P within the 12-month period ending on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (*i.e.*, 60/75 shares), determined by taking into account the redemption of 25 shares. It is irrelevant that the redemption occurred before the 12-month acquisition period.

Example 4. Redemption from unrelated person more than 12 months after stock purchase. The facts are the same as in *Example 3*, except that the redemption occurs on April 1, 1996. P does not make a qualified stock purchase of T on April 1, 1996. The 80-percent ownership requirements of section 338(d)(3) are not satisfied on that date by reference to T stock that was purchased during the preceding 12 months, because such stock represents only 60 percent of the T stock (*i.e.*, 60/100 shares), determined without taking into account the redemption of 25 shares. (Under § 1.338–4(j)(2), for purposes of applying the consistency rules, P is treated as making a qualified stock purchase of T if, pursuant to an arrangement, P purchases T stock satisfying the requirements of section 1504(a)(2) over a period of more than 12 months.)

Example 5. Redemption from purchasing corporation not taken into account. On December 15, 1993, T redeems 30 percent of its stock from P. The redeemed stock was held by P for several years and constituted P's total interest in T. On December 1, 1994, P purchases the remaining T stock from A. P does not make a qualified stock purchase of T on December 1, 1994. For purposes of the 80-percent ownership requirements of section 338(d)(3), the redemption of P's T stock on December 15, 1993, is not taken into account as a reduction in T's outstanding stock.

Example 6. Redemption from related person taken into account. On January 1, 1995, P purchases 60 of the 100 shares of X stock. On that date, X owns 40 of the 100 shares of T stock. On April 1, 1995, T redeems X's T stock and P purchases the remaining 60 shares of T stock from an unrelated person. For purposes of the 80-percent ownership requirements of section 338 (d) (3), the redemption of the T stock from X (a person related to P) is taken into account as a reduction in T's outstanding stock. If P had purchased the 40 redeemed shares from X on April 1, 1995, all 40 of the shares would have been considered purchased (by reason of section 338(h)(3)(C)(i)) during the 12-month period ending on April 1, 1995 (24 of the 40 shares would have been considered purchased by P on January 1, 1995, and the remaining 16 shares would have been considered purchased by P on April 1, 1995). *See* paragraph (b)(3) of this section. Accordingly, P makes a qualified stock purchase of T on April 1, 1995, because the 60 shares of T stock purchased by P on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (*i.e.*, 60/60 shares), determined by taking into account the redemption of 40 shares.

(c) *Effect of post-acquisition events on eligibility for section 338 election—(1) Post-acquisition elimination of target.* (i) The purchasing corporation may make an election under section 338 for target after target is liquidated on or after the acquisition date. If target liquidates on the acquisition date, the liquidation is considered to occur on the following day and immediately after new target's deemed purchase of assets. The purchasing corporation may also make an election under section 338 for target after target is merged into another corporation, or otherwise disposed of by the purchasing corporation provided that, under the facts and circumstances, the purchasing corporation is considered for tax purposes as the purchaser of the target stock.

(ii) This paragraph (c)(1) may be illustrated by the following examples:

Example 1. On January 1, 1995, P makes a qualified stock purchase of T. On June 1, 1995, P sells the T stock to an unrelated person. Assuming that P is considered for tax purposes as the purchaser of the T stock, P remains eligible, after June 1, 1995, to make a section 338 election for T.

Example 2. On January 1, 1995, P makes a qualified stock purchase of T. On that date, T owns the stock of T1. On March 1, 1995, T sells the T1 stock to an unrelated person. On April 1, 1995, P makes a section 338 election for T. Notwithstanding that the T1 stock was sold on March 1, 1995, the section 338 election for T on April 1, 1995, results in a qualified stock purchase by T of T1 on January 1, 1995. *See* paragraph (b)(4)(i) of this section.

(2) *Post-acquisition elimination of the purchasing corporation.* An election under section 338 may be made for target after the purchasing corporation is liquidated or merged into another corporation in a transaction described in section 381(a) provided that the purchasing corporation is considered for tax purposes as the purchaser of the target stock. The acquiring corporation in the section 381(a) transaction may make an election under section 338 for target.

(d) *Miscellaneous matters affecting new target—(1) Effect of old target tax liabilities.* For purposes of subtitle F of the Code, new target is treated as a continuation of old target. Thus, new target is liable for old target's federal income tax liabilities, including tax liabilities resulting from the deemed asset sale and those tax liabilities of the other members of the selling group of old target that are attributable to taxable years in which those corporations and old target joined in a consolidated return. *See* § 1.1502–6(a).

(2) *Availability of recovery deductions.* New target generally is permitted to take recovery deductions on recovery property acquired in the deemed purchase of assets, and may make new elections under section 168 without regard to the elections made by old target. For purposes of section 168, old target is not a related person with respect to new target.

(3) *Effect of acquisition of partnership interest in deemed purchase.* The provisions of subchapter K of the Code (relating to partners and partnerships), including sections 743 and 754, apply as if the deemed sale and purchase under section 338(a) were an actual sale and purchase.

(4) *Employment taxes.* Wages earned by the employees of old target are considered wages earned by such employees from new target for purposes of sections 3101 and 3111 (Federal Insurance Contributions Act) and section 3301 (Federal Unemployment Tax Act).

(5) *Employee plans.* Old target and new target are treated as a single employer for purposes of the rules applicable to employee benefit plans (including those plans described in sections 79, 104, 105, 120, 125, 127, and 129), qualified pension, profit-sharing, stock bonus and annuity plans (sections 401(a) and 403(a)), simplified employee pensions (section 408(k)), and tax qualified stock option plans (sections 422 and 423).

(6) *Application of mitigation provisions.* If a section 338(h)(10) election is not made for target, old target and new target are treated as the same taxpayer for purposes of sections 1311–1314 (relating to the mitigation of the effect of limitations).

(7) *EIN not affected.* New target must use the same employer identification number old target used.

(8) *New target's taxable year and method of accounting—(i) Selection.* Except as otherwise provided in the Code and the Income Tax Regulations, new target may adopt, without obtaining prior approval from the Commissioner, any taxable year that meets the requirements of section 441 and any method of accounting that meets the requirements of section 446.

(ii) *First return due on or before certain time.* Notwithstanding § 1.411–1T(b)(2), a new target may adopt a taxable year for which the first return is due (not including extensions of time) on or before the last day for making the election under section 338 by filing its first return as new target for the desired taxable year on or before that date.

§ 1.338–3 Deemed sale and aggregate deemed sale price.

(a) *Scope.* This section provides guidance regarding the recognition of gain or loss on the deemed sale of target affiliate stock. This section also provides guidance regarding the determination of the price (the "aggregate deemed sale price") at which old target is treated as selling its assets in the section 338(a)(1) deemed sale for purposes of determining the gain or loss recognized by target in the deemed sale. Notwithstanding section 338(h)(6)(B)(ii), stock held by a target affiliate in a foreign corporation or in a corporation that is a DISC or that is described in section 1248(e) is not excluded from the operation of section 338.

(b) *Definitions.* For purposes of the regulations under section 338:

(1) *ADSP.* The "ADSP" is the aggregate deemed sale price, *i.e.*, the price at which target is deemed to have sold all of its assets in the deemed sale under section 338(a)(1). In the absence of a subscript, "ADSP" refers to ADSP for Class III assets only.

(2) *Elective ADSP formula.* The "elective ADSP formula" is an elective formula prescribed under section 338(h)(11) for determining the ADSP, which takes into account liabilities and other relevant items.

(3) *Allocable ADSP amount.* The "allocable ADSP amount" is the portion of the ADSP as calculated under the elective ADSP formula that is allocable to a particular target asset. Except as provided in section 7701(g) (relating to fair market value in the case of nonrecourse indebtedness), the ADSP is allocated among target assets for this purpose in accordance with the rules in § 1.338(b)–2T (without regard to § 1.338(b)–2T(c)(2)). Deemed sale gain on a target asset under the elective ADSP formula is computed by reference to the allocable ADSP amount for that asset.

(4) *Deemed sale gain.* "Deemed sale gain" is gain (or loss) that is recognized in the section 338(a)(1) deemed sale.

(5) *Classes of assets.* The four classes of assets are defined in § 1.338(b)–2T(b).

(c) *Deemed sale of target affiliate stock*—(1) *In general.* This paragraph (c) prescribes rules relating to the treatment of gain or loss realized on the deemed sale of stock of a target affiliate where a section 338 election (but not a section 338(h)(10) election) is made for the target affiliate. For purposes of this paragraph (c), the definition of domestic corporation in § 1.338–1(c)(5) is applied without the exclusion therein for DISCs, corporations described in section 1248(e), and corporations to which an election under section 936 applies.

(2) *General rule.* Except as otherwise provided in this paragraph (c), if a section 338 election is made for target, no gain or loss is recognized by target on the deemed sale of stock of a target affiliate having the same acquisition date and for which a section 338 election is made if—

(i) Target directly owns stock in the target affiliate satisfying the requirements of section 1504(a)(2),

(ii) Target and the target affiliate are members of a consolidated group filing a final consolidated return described in § 1.338–1(e)(1), or

(iii) Target and the target affiliate file a combined return under § 1.338–1(e)(3).

(3) *Deemed sale of foreign target affiliate by a domestic target.* Gain or loss is recognized by a domestic target on the deemed sale of stock of a foreign target affiliate. For the proper treatment of such gain or loss, see, *e.g.*, sections 1246, 1248, 1291 *et seq.*, and 338(h)(16) and § 1.338–5.

(4) *Deemed sale producing effectively connected income.* Gain or loss is recognized by a foreign target on the deemed sale of stock of a foreign target affiliate to the extent that such gain or loss is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(5) *Deemed sale of insurance company target affiliate electing under section 953(d).* Gain (but not loss) is recognized by a domestic target on the deemed sale of stock of a target affiliate that has in effect an election under section 953(d) in an amount equal to the lesser of the gain realized or the earnings and profits described in section 953(d)(4)(B).

(6) *Deemed sale of DISC target affiliate.* Gain (but not less) is recognized by a foreign or domestic target on the deemed sale of stock of a target affiliate that is DISC or a former DISC (as defined in section 992(a)) in an amount equal to the lesser of the gain realized or the amount of accumulated DISC income determined with respect to such stock under section 995(c). Such gain is included in gross income as a dividend as provided in sections 995(c)(2) and 996(g).

(7) *Anti-stuffing rule.* If an asset the adjusted basis of which exceeds its fair market value is contributed or transferred to a target affiliate as transferred basis property (within the meaning of section 7701(a)(43)) and a purpose of such transaction is to reduce the gain (or increase the loss) recognized on the deemed sale of such target affiliate's stock, the gain or loss recognized under this paragraph (c) is determined as if such asset had not been contributed or transferred.

(8) *Examples.* This paragraph (c) may be illustrated by the following examples:

Example 1. (a) P makes a qualified stock purchase of T and makes a section 338 election for T. T's sole asset, all of the T1 stock, has a basis of $50 and a fair market value of $150. T's deemed purchase of the T1 stock results in a qualified stock purchase of T1 and a section 338 election is made for T1. T1's assets have a basis of $50 and a fair market value of $150.

(b) T realizes $100 of gain on the deemed sale of the T1 stock, but the gain is not recognized because T directly owns stock in T1 satisfying the requirements of section 1504(a)(2) and a section 338 election is made for T1.

(c) T1 recognizes gain of $100 on the deemed sale of its assets.

Example 2. The facts are the same as in *Example 1*, except that P does not make a section 338 election for T1. Because a section 338 election is not made for T1, the $100 gain realized by T on the deemed sale of the T1 stock is recognized.

Example 3. (a) P makes a qualified stock purchase of T and makes a section 338 election for T. T owns all of the stock of T1 and T2. T's deemed purchase of the T1 and T2 stock results in a qualified stock purchase of T1 and T2 and a section 338 election is made for T1 and T2. T1 and T2 each own 50 percent of the vote and value of T3 stock. The deemed purchases by T1 and T2 of the T3 stock result in a qualified stock purchase of T3 and a section 338 election is made for T3. T is the common parent of a consolidated group and all of the deemed sales are reported on the T group's final consolidated return. *See* § 1.338–1(e)(1).

(b) Because T, T1, T2 and T3 are members of a consolidated group filing a final consolidated return, no gain or loss is recognized by T, T1 or T2 on their respective deemed sales of target affiliate stock.

Example 4. (a) T's sole asset, all of the FT1 stock, has a basis of $25 and a fair market value of $150. FT1's sole asset, all of the FT2 stock, has a basis of $75 and a fair market value of $150. FT1 and FT2 each have $50 of accumulated earnings and profits for purposes of section 1248 (c) and (d). FT2's assets have a basis of $125 and a fair market value of $150, and their sale would not generate subpart F income under section 951. The sale of the FT2 stock or assets would not generate income effectively connected with the conduct of a trade or business within the United States. FT1 does not have an election in effect under section 953(d) and neither FT1 nor FT2 is a passive foreign investment company.

(b) P makes a qualified stock purcahse of T and makes a section 338 eledction for T. T's deemed purchase of the FT1 stock results in a qualified stock purchase of FT1 and a section 338 election is made for FT1. Similarly, FT!'s deemed purcahse of the FT2 stock results in a qualified stock purchase of FT and a section 338 election is made for FT2.

(c) T recognizes $125 of gain on the deemed sale of the FT1 stock under paragraph (c)(3) of this section. FT1's $75 of gain on the deemed sale of the FT2 stock is not recognized under paragraph (c)(2) of this section. FT2 recognizes $25 of gain on the deemed sale of its assets. The $125 gain T recognizes on the deemed sale of the FT1 stock is included in T's income as a dividend under section 1248, because FT1 and FT2 have sufficient earnings and profits for full recharacterization ($50 of accumulated earnings and profits in FT1, $50 of accumulated earnings and profits in FT2, and $25 of deemed sale earnings and profits in FT2). § 1.338–5(b). For purposes of sections 901 through 908, the source anf foreign tax credit limitation basket of $25 of the recharacterized gain on the deemed sale of the FT1 stock is determined under section 338(h)(16).

(d) *Determination of ADSP*—(1) *General rule.* The ADSP is the aggregate of the fair market values of all of old target's assets at the close of the acquisition date. Section 338(a)(1). Except as provided in section 7701(g) (relating to fair market value in the case of nonrecourse indebtedness), for assets other than Class IV assets (*i.e.*, goodwill and going concern value), the same fair market values are used for purposes of this paragraph (d) and for purposes of §§ 1.338(b)–2T (b) and (c)(1) or (c)(3) (allocating new target's adjusted grossed-up basis to its assets). If the elective ADSP formula is not used, a proper appraisal of Class IV assets is considered evidence of their fair market value. See § 1.338(b)–3T(h) for adjustments to ADSP because of events occurring after the acquisition date and § 1.338(h)(10)–1(f) for the determination of modified ADSP.

(2) *Determination of ADSP under the elective ADSP formula*—(i) *Introduction.* The ADSP under the elective ADSP formula is the sum of—

(A) The grossed-up basis of the purchasing corporation's recently purchased target stock (as defined in section 338(b)(6)(A)),

(B) The liabilities of target (including any tax liability resulting from the deemed sale), and

(C) Other relevant items.

If target is acquired in a true bargain purchase (*i.e.*, if the cost of the stock acquisition to the purchasing corporation is less than the aggregate net fair market value of the assets of target), the ADSP as determined under the elective ADSP formula, which takes into account the actual price paid by the purchasing corporation for target stock, reflects that bargain element.

(ii) *Grossed-up basis of the purchasing corporation's recently purchased target stock.* The grossed-up basis of the purchasing corporation's recently purchased target stock is an amount equal to be purchasing corporation's basis in recently purchased target stock, divided by the percentage of target stock (by value) attributable to that recently purchased target stock. If target has a single class of outstanding stock, the grossed-up basis of the purchasing corporation's recently purchased target stock reflects the total price the purchasing corporation would have paid for all outstanding target stock had it purchased all stock stock for a price per share equal to the average price per share that it paid for the recently purchased target stock.

(iii) *Tax liability resulting from deemed sale.* The elective ADSP formula takes into account both tax credit recapture liability arising by reason of the deemed sale and the tax liability of deemed sale gain. The elective ADSP formula reflects the fact that deemed sale gain (loss) both increase (decreases) the ADSP by creating (reducing) a tax liability and is computed by reference to the ADSP.

(iv) *Calculation of deemed sale gain and loss.* Deemed sale gain and loss on each asset is computed by reference to the ADSP. Thus, the determination of the tax liability resulting from the deemed sale and therefore the determination of the ADSP may require a large number of trial and error computations.

(v) *Other rules apply in elective ADSP formula.* The elective ADSP formula may not be applied in such a way as to contravene other applicable rules. Thus, for example, a capital loss cannot be applied in the elective ADSP formula to reduce ordinary income.

(3) *Sample elective ADSP formula.* (i) The sample formula is as follows:

$$ADSP = G + L + t_R \times [(ADSP \times F) - B]$$

(ii) For purposes of this sample formula—

(A) "G" is the grossed-up basis of the purchasing corporation's recently purchased target stock.

(B) "L" is the sum of target's liabilities other than target's tax liability for deemed sale gain amounts determined by reference to the ADSP. (Tax credit recapture that results from the deemed sale of target's assets is included in L, for example, because that liability is not determined by reference to the ADSP.)

(C) "t_R" is the tax rate applicable to the deemed sale gain item.

(D) "F" is a fraction the numerator of which is the fair market value of a target asset on target's acquisition date and the denominator of which is the aggregate fair market value of all target assets on target's acquisition date. This fraction is multiplied by the ADSP to arrive at the allocable ADSP amount for a target asset.

(E) "B" is the adjusted basis of a target asset on the acquisition date.

(4) *Procedure for electing elective ADSP formula and for revoking election.* The election to apply the elective ADSP formula ("formula election") is made by attaching to the final return of old target (including an amended final return) a statement containing the following declaration (or a substantially similar declaration): "THIS RETURN REFLECTS A FORMULA ELECTION FOR TARGET UNDER SECTION 338 AND § 1.338–3 (d)." The formula election is revoked by attaching to an amended final return of old target a statement containing the following declaration (or a substantially similar declaration): "THIS RETURN DOES NOT REFLECT A FORMULA ELECTION FOR TARGET UNDER SECTION 338 AND § 1.338–3 (d)." In addition, a formula election may be made or revoked in connection with the examination of the final return of old target. A formula election made for target also applies to all target affiliates acquired by the purchasing corporation with the same acquisition date as target, as does the revocation of a formula election for target. A formula election may not be made or revoked if the period within which to make an assessment of tax has expired for any return that would be affected by the election or the revocation. For this purpose, a return would be affected by the election (or revocation) if the election (or revocation) would have the effect, directly or indirectly, of increasing the tax liability reported in that return.

(5) *Examples.* (i) For purposes of the examples in this paragraph (d) (5), unless otherwise stated, T is a calendar year taxpayer that files separate returns and that has no loss or tax credit carryovers to 1992. Depreciation for 1992 is not taken into account. T has no liabilities other than a tax liability resulting from the deemed sale of assets. T's marginal tax rate for any ordinary income or net capital gain resulting from the deemed sale of assets is 34 percent. On July 1, 1992, P purchases all of the stock of T and makes a section 338 election for T.

(ii) *Examples 1* through *3* assume that T has only Class III assets (*e.g.*, property other than certain cash items, certain securities, and goodwill, etc.). *Examples 4* through *8* illustrate the effect on the elective ADSP formula of Class I, II, or IV assets. *Example 9* illustrates the elective ADSP formula when T owns all of the T1 stock. In the absence of a subscript, "ADSP" refers to ADSP for Class III assets only.

(iii) This paragraph (d) may be illustrated by the following examples:

Example 1. (a) As of July 1, 1992, T's only asset is an item of section 1245 property with an adjusted basis to T of $50,400, a recomputed basis of $80,000, and a fair market value of $100,000. P purchases all of the T stock for $75,000.

(b) The elective ADSP formula as applied to these facts is as follows:

$ADSP = G + L + t_R \times (ADSP - B)$
$ADSP = (\$75,000/1) + \$0 + .34 \times (ADSP - \$50,400)$
$ADSP = \$75,000 \times .34ADSP - \$17,136$
$ADSP = \$57,864 + .34ADSP$
$ADSP - .34ADSP = \$57,864$
$.66ADSP = \$57,864$
$.66ADSP/.66 = \$57,864/.66$
$ADSP = \$87,672.72$

(c) Because the ADSP for T ($87,672.72) does not exceed the fair market value of T's one asset ($100,000), a Class III asset, T's entire ADSP is allocated to that asset. See § 1.338 (b)–2T (c)(1) (relating to fair market value limitation).

(d) Thus, T has deemed sale gain of $37,272.72 (consisting of $29,600 of ordinary income and $7,672.72 of capital gain) and a resulting tax liability of $12,672.72.

Example 2. (a) Assume the same facts as in *Example 1*, except that on July 1, 1992, P purchases only 80 of the 100 shares of T stock for $60,000.

(b) The elective ADSP formula as applied to these facts is as follows:

$ASDP = G + L + t_R \times (ADSP - B)$
$ADSP = (\$60,000/.8) + \$0 + .34 - (ADSP - 50,400)$
$ADSP = \$75,000 + .34ADSP - \$17,136$

The remainder of the calculation and the result are the same as in *Example 1*.

Example 3. (a) On July 1, 1992, P purchases 80 of the 100 shares of T stock for $100,000. T's assets are as follows:

Assets	Basis	FMV	"F"
1. Land	$5,000	$35,000	14
2. Inventory (FIFO)	10,000	50,000	.20
3 Equipment A (recomputed basis $80,000)	5,000	90,000	.36
4. Equipment B (recomputed basis $20,000)	10,000	75,000	.30
Totals	30,000	250,000	1.00

T has liabilities (not including the tax liability for deemed sale gain on its assets) of $50,000.

(b) The elective ADSP formula as applied to these facts is as follows (the subscript numerals in the formula correspond to the number assigned each asset in the above table):

$ADSP = G + L + t_R X [(ADSP X (F_1 + (F_2 + F_3 + F_4)) - (B_1 + B_2 + B_3 + B_4)]$
$ADSP = \$100,000/.8 + \$50,000 + .34 X [(ADSP X (.14 + .20 + .36 + .30)) - (\$5,000 + \$10,000 + \$5,000 + \$10,000)]$
$ADSP = \$125,000 + \$50,000 + .34 X (ADSP - \$30,000)$
$ADSP = \$175,000 + .34ADSP - \$10,200$
$ADSP = \$164,800 + .34ADSP$
$ADSP - .34ADSP = \$164,800$
$.66ADSP = \$164,800$
$.66ADSP/.66 = \$164,800/.66$
$ADSP = \$249,696.97$

(c) Because the ADSP for T ($249,696.97) does not exceed the sum of the fair market values of all of T's assets ($250,000), and those assets are all Class III assets, T's entire ADSP is allocated to those assets. *See* § 1.338 (b)–2T (c) (1) (relating to fair market value limitation).

(d) The following table breaks the ADSP of $249,696.97 down to the deemed sale price, ordinary income, capital gain, and resulting tax allocable to each asset:

Asset	ADSP	Gain	Tax
1 Land	$34,957.58	$29,957.58 (capital gain).	$10,185.58
2. Inventory.	49,939.39	39,939.39 (ordinary income)	13,579.39
3. Equipment A.	89,890.91	84,890.91 (75,000 ordinary income 9,890.91 capital gain)	28,862.91
4. Equipment B.	74,909.09	64,909.09 (10,000 ordinary income 54,909.09 capital gain)	22,069.09
Totals	249,696.97	219,696.97	74,696.97

SUMMARY OF CALCULATION

1. Grossed-up basis of P's recently purchased T stock	$125,000.00
2. Liabilities (except taxes measured by reference to ADSP)	50,000.00
3. Tax on deemed sale gain	74,696.97
4. ADSP	249,696.97

Example 4. (a) Assume the same facts as in *Example 1*, except that P purchases all of the T stock for $85,000 and that T has $10,000 of cash, a Class I asset.

(b) The sample elective ADSP formula as applied to these facts is modified by referring to the amount of the Class I assets as "I". This modified formula is as follows:

$ADSP = G - I + L + t_R X (ADSP - B)$
$ADSP = (\$85,000/1) - \$10,000 + \$0 + .34 X (ADSP - \$50,400)$
$ADSP = \$75,000 + .34ADSP - \$17,136$

The remainder of the calculation and result are the same as in *Example 1*.

Example 5. (a) Assume the same facts as in *Example 2*, except that P purchases the 80 shares of T stock for $68,000 and T holds marketable securities, a Class II asset, it acquired 10 years ago having a fair market value of $10,000 and a basis of $4,000.

(b) The sample elective ADSP formula as applied to these facts is modified by referring to the fair market value of the Class II asset as "II" and the basis of that asset as "B_{II}." This modified formula for calculating the ADSP for the item of section 1245 property is as follows:

$ADSP = G - II + L + t_R X [(ADSP - B) + (II - B_{II})]$
$ADSP = (\$68,000/.8) - \$10,000 + 0 + .34 X [(ADSP - \$50,400) + (\$10,000 - \$4,000)]$
$ADSP = \$85,000 - \$10,000 + .34 X (ADSP - \$50,400) + .34 X (\$6,000)$
$ADSP = \$75,000 + .34ADSP - \$17,136 + \$2,040$
$ADSP - .34ADSP = \$59,904$
$.66ADSP/.66 = \$59,904/.66$
$ADSP = \$90,763.64$

(c) Because the ADSP for T's Class III asset ($90,763.64) does not exceed its fair market value, T's entire ADSP for its Class III assets is allocated to its one asset in the class. See §§ 1.338 (b)–2T (b) and (c) (1). The deemed selling price for the marketable securities (Class II assets) is their fair market value ($10,000).

(d) Thus, T has deemed sale gain of $46,363.64 (consisting of $29,600 of ordinary income and $16,763.64 of capital gain).

SUMMARY OF CALCULATION

1. Grossed-up basis of P's recently purchased T stock	$85,000.00
2. Less: Deemed selling price of Class II assets	10,000.00
3. Tax on deemed sale gain	15,763.64
4. ADSP for Class III property	90,763.64

Example 6. Assume the same facts as in *Example 1*, except that T has goodwill with an appraised value of $10,000. The result is the same as in *Example 1* when the elective ADSP formula is used. The appraised value of goodwill is not taken into account under the ADSP formula, and, so long as the ADSP for T's Class II asset does not exceed its fair market value, goodwill does not arise under the formula.

Example 7. (a) Assume the same facts as in *Example 1*, except that T has goodwill with an appraised value of $10,000 and that P purchases all of the T stock for $100,000.

(b) The elective ADSP formula as applied to these facts is as follows:

$ADSP = G + L + t_R X (ADSP - B)$
$ADSP = (\$100,000/1) + \$0 + .34 X (ADSP - \$50,400)$
$ADSP = \$100,000 + .34ADSP - \$17,136$
$ADSP = \$82,864 + .34ADSP$
$ADSP - .34ADSP = \$82,864$
$.66ADSP/.66 = \$82,864/.66$
$ADSP = \$125,551.52$

(c) Under the initial application of the elective ADSP formula, the ADSP of T would be $125,551.52. Because this ADSP exceeds

the fair market value of T's Class III asset ($100,000) and ADSP allocated to that asset is limited to the asset's fair market value under § 1.338 (b)–2T (c) (1), the elective ADSP formula must be applied to compute the ADSP for T's Class IV property (*e.g.*, goodwill).

(d) For T's Class IV assets, the sample ADSP formula is modified by using III to refer to the fair market value of T's Class III asset (*i.e.*, the section 1245 property) and $ADSP_{IV}$ to refer to the ADSP for Class IV property. This modified formula is as follows:

$ADSP_{IV} = G - III + L + t_R \times [(III - B_{III}) + (ADSP_{IV} - B_{IV})]$
$ADSP_{IV} = \$100,000 - \$100,000 + \$0 + .34 \times [(\$100,000 - \$50,400) + (ADSP_{IV} - \$0)]$
$ADSP_{IV} = .34 \times (\$49,600 + ADSP_{IV})$
$ADSP_{IV} = \$16,864 + .34ADSP_{IV}$
$ADSP_{IV} = .34ADSP_{IV} = \$16,864$
$.66ADSP_{IV}/.66 = \$16,864/.66$
$ADSP_{IV} = \$25,551.52$

(e) The ADSP for the Class IV property is $25,551.52. Note that the appraised value of the goodwill is irrelevant.

(f) Thus, T has deemed sale gain of $75,151.52 (consisting of $29,600 of ordinary income and $45,551.52 of capital gain).

SUMMARY OF CALCULATION

1. Grossed-up basis of P's recently purchased stock	$100,000
2. Less: Deemed selling price of Class III property	100,000
3. Tax on deemed sale gain	25,551.52
4. ADSP for Class IV property	25,551.52

Example 8. (a) On July 1, 1992, P purchases 80 of the 100 shares of T stock for $96,000. As of July 1, 1992, T's assets, all of which have been held for more than one year, are as follows:

	Class	Basis	FM
1. Cash	I	$10,000	
2. Marketable security	II	4,000	$10,000
3. Section 1245 property (recomputed basis $210,000).	III	50,400	100,000
4. Goodwill	IV	3,000	15,000

(b) The elective ADSP formula as applied to these facts is modified by referring to items for a class of property by using Roman subscripts. (Since there is only one asset in each class, subscripts as used in *Example 3* are not necessary. (The modified formula is as follows:

$ADSP = G - I - II + L + t_R \times [(ADSP - B_{III}) + (II - B_{II})]$
$ADSP = (\$96,000/.8) - \$10,000 - \$10,000 + 0 + .34 \times [(ADSP - \$50,400) + (\$10,000 - \$4,000)]$
$ADSP = \$120,000 - \$20,000 + .34 \times (ADSP - \$50,400) + .34 \times (\$6,000)$
$ADSP = \$100,000 + .34ADSP + \$17,136 + \$2,040$
$ADSP = \$84,904 + .34ADSP$
$ADSP - .34ADSP = \$84,904$
$.66ADSP/.66 = \$84,904/.66$
$ADSP = \$128,642.42$

(c) Under the initial application of the modified elective ADSP formula, the ADSP of T would be $128,642.42. Because this ADSP exceeds the fair market value of T's one Class III asset ($100,000) and ADSP allocated to that asset cannot exceed $100,000 under § 1.338 (b) –2T (c) (1), the elective ADSP formula must be applied to compute the ADSP for T's Class IV property (*e.g.*, goodwill).

(d) For T's Class IV assets, the modified ADSP formula is further modified in the manner shown in *Example 7*. This further modified formula is as follows:

$ADSP_{IV} = G - I - II - III + L + t_R \times [(III - B_{III}) + (II - B_{II} + (ASDP_{IV} - B_{IV})]$
$ADSP_{IV} = \$120,000 - \$10,000 - \$10,000 - \$100,000 + 0 + .34 \times [(\$100,000 - \$50,400) + (\$10,000 - \$4,000) + (ADSP_{IV} - \$3,000)]$
$ADSP_{IV} = 34 \times \$49,600 + .34 \times \$6,000 + .34ADSP_{IV} - .34 \times \$3,000$
$ADSP_{IV} = \$16,864 + \$2,040 + .34ADSP_{IV} - \$1,020$
$ADSP_{IV} - .34ADSP_{IV} = \$17,884$
$.66ADSP_{IV}/.66 = \$17,884/.66$
$ADSP_{IV} = \$26,642.42$

(e) Thus, the ADSP for the Class IV property is $26,642.42. Note that the appraised value for the goodwill is irrelevant.

(f) Thus, T has deemed sale gain of $81,242.42 (consisting of $49,600 of ordinary income and $31,642.42 of capital gain).

SUMMARY OF CALCULATION

1. Grossed-up basis of P's recently purchased stock	$120,000.00
2. Less: deemed selling price of:	
a. Class I property	10,000.00
b. Class II property	10,000.00
c. Class III property	100,000.00
d. Total	120,000.00
3. Tax on deemed sale gain	28,642.42
4. ADSP for Class IV property	28,642.42

Example 9. (a) Assume the same facts as in *Example 3*, except that Asset No. 2 is all of the T1 stock rather than inventory. As of July 1, 1992, T1's only asset, which T1 has held for more than one year, is an item of property with an adjusted basis to T1 of $18,000 and a fair market value of $75,000. Assume a section 338 election is made for T1. Assume that T1 has no liabilities other than a tax liability resulting from the deemed sale gain.

(b) Under paragraph (c)(2) of this section, T does not recognize any gain on the deemed sale of the T1 stock. The elective ADSP formula of T under these facts is as follows:

$ADSP = G + L + t_R \times [(ADSP \times (F_1 - F_3F_4)) - (B_1 + B_3 + B_4)]$
$ADSP = \$100,000/.8 + \$50,000 + .34 \times [(ADSP \times (.14 + .36 + .30)] - (\$5,000 + \$5,000 + \$10,000)]$
$ADSP = \$125,000 + \$50,000 + .34 \times (.80ADSP - \$20,000)$
$ADSP = \$175,000 + .272ADSP - \$6,800$
$ADSP = \$168,200 + .272ADSP$
$ADSP = .272ADSP = \$168,200$
$.728ADSP = \$168,200$
$.728ADSP/.728 = \$168,200/.728$
$ADSP = \$231,043.96$

(c) Because the ADSP for T ($231,043.96) does not exceed the sum of the fair market values of all of T's assets ($250,000), and those assets are all Class III assets, T's entire ADSP is allocated to those assets. *See* § 1.338(b)–2T(c)(1) (relating to fair market value limitation). The following table breaks the ADSP of $231,043.96 down to the deemed sale price, ordinary income, capital gain, and resulting tax allocable to each asset:

Asset	ADSP	Gain	Tax
1. Land	$32,346.15	$27,346.15 (capital gain).	$9,297.69
2. T1 stock	46,206.79	36,206.79	0
3. Equipment A.	83,175.82	78,175.82 (75,000 ordinary income 3,175.78 capital gain)	26,579.78
4. Equipment B.	69,313.19	59,313.19 (10,000 ordinary income 49,313.19 capital gain)	20,166.48
Totals	231,043.96	201,043.96	56,043.95

SUMMARY OF CALCULATION

1. Grossed-up basis of P's recently purchased T stock	$125,000.00
2. Liabilities (except taxes measured by reference to ADSP)	50,000.00
3. Tax on deemed sale gain	56,043.95
4. ADSP	231,043.96

(d) For purposes of applying the elective ADSP formula to T1, T's basis in recently purchased T1 stock is equal to the allocable ADSP amount for the T1 stock ($46,206.79). Thus, the elective ADSP formula as applied to T1 is as follows:

$ADSP = G + L + t_R \times (ADSP - B)$
$ADSP = \$46,206.79/1 + \$0 + .34 \times (ADSP - \$18,000)$
$ADSP = \$46,206.79 + .34ADSP - \$6,120$
$ADSP = \$40,088.79 + .34ADSP$
$ADSP - .34ADSP = \$40,088.79$
$.66ADSP/.66 = \$40,088.79/.66$
$ADSP = \$60,740.59$

(e) Because the ADSP for T1 ($60,740.59) does not exceed the fair market value of T1's only asset ($75,000), T1's entire ADSP is allocated to that asset.

(f) Thus, T1 has deemed sale gain of $42,740.59 (which is all capital gain) and a resulting tax liability of $14,531.80.

§ 1.338–4 Asset and stock consistency.

(a) *Introduction*—(1) *Overview.* This section implements the consistency rules of sections 338 (e) and (f). Under this section, no election under section 338 is deemed made or required with respect to target or any target affiliate

Instead, the person acquiring an asset may have a carryover basis in the asset.

(2) *General application.* The consistency rules generally apply if the purchasing corporation acquires an asset directly from target during the target consistency period and target is a subsidiary in a consolidated group. In such a case, gain from the sale of the asset is reflected under the investment adjustment provisions of the consolidated return regulations in the basis of target stock and may reduce gain from the sale of the stock. Under the consistency rules, the purchasing corporation generally takes a carryover basis in the asset, unless a section 338 election is made for target. Similar rules apply if the purchasing corporation acquires an asset directly from a lower-tier target affiliate if gain from the sale is reflected under the investment adjustment provisions in the basis of target stock.

(3) *Extensions of the general rules.* If an arrangement exists, paragraph (f) of this section generally extends the carryover basis rule to certain cases in which the purchasing corporation acquires assets indirectly from target (or a lower-tier target affiliate). To prevent avoidance of the consistency rules, paragraph (j) of this section also may extend the consistency period or the 12-month acquisition period and may disregard the presence of conduits.

(4) *Application where certain dividends are paid.* Paragraph (g) of this section extends the carryover basis rule to certain cases in which dividends are paid to a corporation that is not a member of the same consolidated group as the distributing corporation. Generally, this rule applies where a 100 percent dividends received deduction is used in conjunction with asset dispositions to achieve an effect similar to that available under the investment adjustment provisions of the consolidated return regulations.

(5) *Application to foreign target affiliates.* Paragraph (h) of this section extends the carryover basis rule to certain cases involving target affiliates that are controlled foreign corporations.

(6) *Stock consistency.* This section limits the application of the stock consistency rules to cases in which the rules are necessary to prevent avoidance of the asset consistency rules. Following the general treatment of a section 338(h)(10) election, a sale of a corporation's stock is treated as a sale of the corporation's assets if a section 338 (h)(10) election is made. Because gain from this asset sale may be reflected in the basis of the stock of a higher-tier target, the carryover basis rule may apply to the assets.

(b) *Consistency for direct acquisitions*—(1) *General rule.* The basis rules of paragraph (d) of this section apply to an asset if—

(i) The asset is disposed of during the target consistency period,

(ii) The basis of target stock, as of the target acquisition date, reflects gain from the disposition of the asset (see paragraph (c) of this section), and

(iii) The asset is owned, immediately after its acquisition and on the target acquisition date, by a corporation that acquires stock of target in the qualified stock purchase (or by an affiliate of an acquiring corporation).

(2) *Section 338 (h) (10) elections.* For purposes of this section, if a section 338 (h)(10) election is made for a corporation acquired in a qualified stock purchase—

(i) The acquisition is treated as an acquisition of the corporation's assets (see § 1.338(h)(10–1), and

(ii) The corporation is not treated as target.

(c) *Gain from disposition reflected in basis of target stock.* For purposes of this section:

(1) *General rule.* Gain from the disposition of an asset is reflected in the basis of target stock if the gain is taken into account under § 1.1502–32, directly or indirectly, in determining the basis of the stock, after applying section 1503(e) and other provisions of the Code and regulations.

(2) *Gain not reflected if section 338 election made for target.* Gain from the disposition of an asset that is otherwise reflected in the basis of target stock as of the target acquisition date is not considered reflected in the basis of target stock if a section 338 election is made for target.

(e) *Gain reflected by reason of distributions.* Gain from the disposition of an asset is not considered reflected in the basis of target stock merely by reason of the receipt of a distribution from a target affiliate that is not a member of the same consolidated group as the distributee. See paragraph (g) of this section for the treatment of dividends to which section 243(a)(3) applies.

(4) *Controlled foreign corporations.* For a limitation applicable to gain of a target affiliate that is a controlled foreign corporation, see paragraph (h)(2) of this section.

(5) *Gain recognized outside the consolidated group.* Gain from the disposition of an asset by a person other than target or a target affiliate is not reflected in the basis of target stock unless the person is a conduit, as defined in paragraph (j)(4) of this section.

(d) *Basis of acquired assets*—(1) *Carryover basis rule.* If this paragraph (d) applies to an asset, the asset's basis immediately after its acquisition is, for all purposes of the Code, its adjusted basis immediately before its disposition.

(2) *Exceptions to carryover basis rule for certain assets.* The carryover basis rule of paragraph (d)(1) of this section does not apply to the following assets—

(i) Any asset disposed of in the ordinary course of a trade or business (see section 338(e)(2)(A)),

(ii) Any asset the basis of which is determined wholly by reference to the adjusted basis of the asset in the hands of the person that disposed of the asset (see section 338(e)(2)(B)),

(iii) Any debt or equity instrument issued by target or a target affiliate (see paragraph (h)(3) of this section for an exception relating to stock of a target affiliate that is a controlled foreign corporation),

(iv) Any asset the basis of which immediately after its acquisition would otherwise be less than its adjusted basis immediately before its disposition, and

(v) Any asset identified by the Internal Revenue Service in a revenue ruling or revenue procedure.

(3) *Exception to carryover basis rule for de minimis assets.* The carryover basis rules of this section do not apply to an asset if the asset is not disposed of as part of the same arrangement as the acquisition of target and the aggregate amount realized for all assets otherwise subject to the carryover basis rules of this section does not exceed $250,000.

(4) *Mitigation rule*—(i) *General rule.* If the carryover basis rules of this section apply to an asset and the asset is transferred to a domestic corporation in a transaction to which section 351 applies or as a contribution to capital and no gain is recognized, the transferor's basis in the stock of the transferee (but not the transferee's basis in the asset) is determined without taking into account the carryover basis rules of this section.

(ii) *Time for transfer.* This paragraph (d)(4) applies only if the asset is transferred before the due date (including extensions) for the transferor's income tax return for the year that includes the last date for which a section 338 election may be made for target.

(e) *Examples*—(1) *In general.* For purposes of the examples in this section, unless otherwise stated, the basis of each asset is the same for determining earnings and profits and taxable income, the exceptions to paragraph (d)(1) of this section do not apply, the taxable year of all persons is the

calendar year, and the following facts apply: S is the common parent of a consolidated group that includes T, T1, T2, and T3; S owns all of the stock of T and T3; and T owns all of the stock of T1, which owns all of the stock of T2. B is unrelated to the S group and owns all of the stock of P, which owns all of the stock of P1. Y and Y1 are partnerships that are unrelated to the S group but may be related to the P group. Z is a corporation that is not related to any of the other parties.

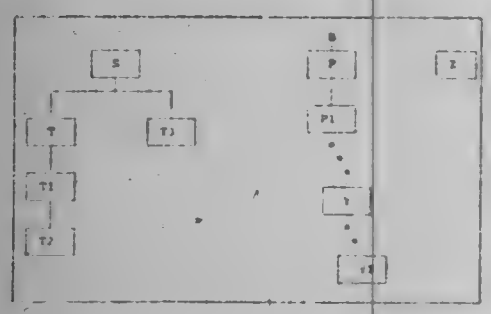

(2) *Direct acquisitions.* Paragraphs (b), (c), and (d) of this section may be illustrated by the following examples:

Example 1. Asset acquired from target by purchasing corporation. (a) On February 1, 1992, T sells an asset to P1 and recognizes gain. T's gain from the disposition of the asset is taken into account under § 1.1502–32 in determining S's basis in the T stock. On January 1, 1993, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) T disposed of the asset during its consistency period, gain from the asset disposition is reflected in the basis of the T stock as of T's acquisition date (January 1 1993), and the asset is owned both immediately after the asset disposition (February 1, 1992) and on T's acquisition date by P1, the corporation that acquired T stock in the qualified stock purchase. Consequently, under paragraph (b) of this section, paragraph (d)(1) of this section applies to the asset and P1's basis in the asset is T's adjusted basis in the asset immediately before the sale to P1.

Example 2. Gain from section 338(h)(10) election reflected in stock basis. (a) On February 1, 1992, P1 makes a qualified stock purchase of T2 and T1. A section 338(h)(10) election is made for T2 and T2 recognizes gain on each of its assets. T2's gain is taken into account under § 1.502–32 in determining S's basis in the T stock. On January 1, 1993, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under paragraph (b)(2) of this section, the acquisition of the T2 stock is treated as an acquisition of T2's assets on February 1, 1992, because a section 338(h)(10) election is made for T2. The gain recognized by T2 under section 338(h)(10) is reflected in S's basis in the T stock as of T's acquisition date. Because the other requirements of paragraph (b) of this section are satisfied, paragraph (d)(1) of this section applies to the assets and new T2's basis in its assets is old T2's adjusted basis in the assets immediately before the disposition.

Example 3. Corporation owning asset ceases affiliation with corporation purchasing target before target acquisition date. (a) On February 1, 1992, T sells an asset to P1 and recognizes gain. On December 1, 1992, P disposes of all of the P1 stock while P1 still owns the asset. On January 1, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Immediately after T's disposition of the asset, the asset is owned by P1 which is affiliated on that date with P, the corporation that acorporation (P1) that is no longer affiliated with P on T's acquisition date. Although the other requirements of paragraph (b) of this section are satisfied, the requirements of paragraph (b)(1)(iii) of this section are not satisfied. Consequently, the basis rules of paragraph (d) of this section do not apply to the asset by reason of P1's acquisition.

(c) If P acquires all of the Z stock and P1 transfers the asset to Z on or before T's acquisition date (January 1, 1993), the asset is owned by an affilitate of P both on February 1, 1992 (P1) and on January 1, 1993 (Z). Consequently, all of the requirements of paragraph (b) of this section are satisfied and paragraph (d)(1) of this section applies to the asset and P1's basis in the asset is T's adjusted basis in the asset immediately before the sale to P1.

Example 4. Gain reflected in stock basis notwithstanding offsetting loss or distribution. (a) On April 1, 1992, T sells an asset to P1 and recognizes gain. In 1992, T distributes an amount equal to the gain. On March 1, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Although, as a result of the distribution, there is no adjustment with respect to the T stock under § 1.1502–32 for 1992, T's gain from the disposition of the asset is considered reflected in S's basis in the T stock. The gain is considered to have been taken into account under § 1.1502–32 in determining the adjustments to S's basis in the T stock because S's basis in the T stock is different from what it would have been had there been no pain.

(c) If T distributes an amount equal to the gain on February 1, 1993, rather than in 1992, the results would be the same because S's basis in the T stock is different from what it would have been had there been no gain. If the distribution in 1993 is by reason of an election under § 1.1502–32(f)(2), the results would be the same.

(d) If, in 1992, T does not make a distribution and the S group does not file a consolidated return, but, in 1993, the S group does file a consolidated return and makes an election under § 1.1502–32(f)(2) for T, the results would be the same. S's basis in the T stock is different from what it would have been had there been no gain. Paragraph (c)(3) of this section (gain reflected by reason of distributions) does not apply to the deemed distribution under the election because S and T are members of the same consolidated group. If T distributes an amount equal to the gain in 1993 and no election is made under § 1.1502–32(f)(2), the results would be the same.

(e) If, in 1992, T incurs an unrelated loss in an amount equal to the gain, rather than distributing an amount equal to the gain, the results would be the same because S's basis in the T stock is different from what it would have been had there been no gain.

Example 5. Gain of a target affiliate reflected in stock basis after corporate reorganization. (a) On February 1, 1992, T3 sells an asset to P1 and recognizes gain. On March 1, 1992, S contributes the T3 stock to T in a transaction qualifying under section 351. On January 15, 1993, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) T3's gain from the asset sale is taken into account under § 1.1502–32 in determining S's basis in the T3 stock. Under section 358, the gain that is taken into account under § 1.1502–32 in determining S's basis in the T3 stock is also taken into account in determining S's basis in the T stock following S's contribution of the T3 stock to T. Consequently, under paragraph (b) of this section, paragraph (d)(1) of this section applies to the asset and P1's basis in the asset is T3's adjusted basis in the asset immediately before the sale to P1.

(c) If on March 1, 1992, rather than S contributing the T3 stock to T, S causes T3 to merge into T in a transaction qualifying under section 368(a)(1)(D), the results would be the same.

Example 6. Gain not reflected if election under section 338 made. (a) On February 1, 1992, T1 sells an asset to P1 and recognizes gain. On January 1, 1993, P1 makes a qualified stock purchase of T1 from T. A section 338 election is made for T1.

(b) Under paragraph (c)(2) of this section, because a section 338 election is made for T1, T's basis in the T1 stock is considered not to reflect gain from the disposition. Consequently, the requirement of paragraph (b)(1)(ii) of this section is not satisfied. Thus, P1's basis in the asset is not determined under paragraph (d) of this section. Although the section 338 election for T1 results in a qualified stock purchase of T2, the requirement of paragraph (b)(1)(ii) of this section is not satisfied with respect to T2, whether or not a section 338 election is made for T2.

(c) If, on January 1, 1993, P1 makes a qualified stock purchase of T and S and a section 338 election for T, rather than T1, S's basis in the T stock is considered not to reflect gain from T1's disposition of the asset. However, the section 338 election for T results in a qualified stock purchase of T1 Because the gain is reflected in T's basis in the T1 stock, the requirements of paragraph (b) of this section are satisfied. Consequently, P1's basis in the asset is determined under paragraph (d)(1) of this section unless a section 338 election is also made for T1.

(f) *Extension of consistency to indirect acquisitions*—(1) *Introduction.* If an arrangement exists (*see* paragraph (j)(5) of this section), this paragraph (f)

generally extends the consistency rules to indirect acquisitions that have the same effect as direct acquisitions. For example, this paragraph (f) applies if, pursuant to an arrangement, target sells an asset to an unrelated person who then sells the asset to the purchasing corporation.

(2) *General rule.* This paragraph (f) applies to an asset if, pursuant to an arrangement—

(i) The asset is disposed of during the target consistency period,

(ii) The basis of target stock as of, or at any time before, the target acquisition date reflects gain from the disposition of the asset, and

(iii) The asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied, but the asset is owned, at any time during the portion of the target consistency period following the target acquisition date, by—

(A) A corporation—(*1*) The basis of whose stock, as of, or at any time before, the target acquisition date, reflects gain from the disposition of the asset, and

(*2*) That is affiliated, at any time during the target consistency period, with a corporation that acquires stock of target in the qualified stock purchase, or

(B) A corporation that at the time it owns the asset is affiliated with a corporation described in paragraph (f)(2)(iii)(A) of this section.

(3) *Basis of acquired assets.* If this paragraph (f) applies to an asset, the principles of the basis rules of paragraph (d) of this section apply to the asset as of the date, following the disposition with respect to which gain is reflected in the basis of target's stock, that the asset is first owned by a corporation described in paragraph (f)(2)(iii) of this section. If the principles of the carryover basis rule of paragraph (d)(1) of this section apply to an asset, the asset's basis also is reduced (but not below zero) by the amount of any reduction in its basis occurring after the disposition with respect to which gain is reflected in the basis of target's stock.

(4) *Examples.* This paragraph (f) may be illustrated by the following examples:

Example 1. Acquisition of asset from unrelated party by purchasing corporation. (a) On February 1, 1992, T sells an asset to Z and recognizes gain. On February 15, 1992, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T. P1 buys the asset from Z on March 1, 1992, before Z has reduced the basis of the asset through depreciation or otherwise.

(b) Paragraph (b) of this section does not apply to the asset because the asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied. However, the asset ownership requirements of paragraph (f)(2)(iii) of this section are satisfied because, during the portion of T's consistency period following T's acquisition date, the asset is owned by P1 while it is affiliated with T. Consequently, paragraph (f) of this section applies to the asset if there is an arrangement for T to dispose of the asset during T's consistency period, for the gain to be reflected in S's basis in the T stock as of T's acquisition date, and for P1 to own the asset during the portion of T's consistency period following T's acquisition date. If the arrangement exists, under paragraph (f)(3) of this section, P1's basis in the asset is determined as of March 1, 1992, under the principles of paragraph (d) of this section. Consequently, P1's basis in the asset is T's adjusted basis in the asset immediately before the sale to Z.

(c) If P1 acquires the asset from Z on January 15, 1993 (rather than on March 1, 1992), and Z's basis in the asset has been reduced through depreciation at the time of the acquisition, P1's basis in the asset as of January 15, 1993, would be T's adjusted basis in the asset immediately before the sale to Z, reduced (but not below zero) by the amount of the depreciation. Z's basis and depreciation are determined without regard to the basis rules of paragraph (d) of this section.

(d) If P, rather than P1, acquires the asset from Z, the results would be the same.

(e) If, on March 1, 1992, P1 acquires the Z stock, rather than acquiring the asset from Z, paragraph (f) of this section would apply to the asset if an arrangement exists. However, under paragraph (f)(3) of this section, Z's basis in the asset would be determined as of February 1, 1992, the date the asset is first owned by a corporation (Z) described in paragraph (f)(2)(iii) of this section. Consequently, Z's basis in the asset as of February 1, 1992, determined under the principles of paragraph (d) of this section, would be T's adjusted basis in the asset immediately before the sale to Z.

Example 2. Acquisition of asset from target by target affiliate. (a) On February 1, 1992, T contributes an asset to T1 in a transaction qualifying under section 351 and in which T recognizes gain under section 351 (b) that is deferred under § 1.1502–13. On March 1, 1992, P1 makes a qualified stock purchase of T from S and, pursuant to § 1.1502–13 (f), the deferred gain is taken into account by T immediately before T ceases to be a member of the S group. No section 338 election is made for T.

(b) Paragraph (b) of this section does not apply to the asset because the asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied.

(c) T1 is not described in paragraph (f)(2)(iii)(A) of this section because the basis of the T1 stock does not reflect gain from the disposition of the asset. Although, under section 358(a)(1)(B)(ii), T's basis in the T1 stock is increased by the amount of the gain, the gain is not taken into account directly or indirectly under § 1.1502–32 in determining T's basis in the T1 stock.

(d) T1 is described in paragraph (f)(2)(iii)(B) of this section because, during the portion of T's consistency period following T's acquisition date, T1 owns the asset while it is affiliated with T, a corporation described in paragraph (f)(2)(iii)(A) of this section. Consequently, paragraph (f) of this section applies to the asset if there is an arrangement. Under paragraph (j)(5) of this section, the fact that, at the time T1 acquires the asset from T, T1 is related (within the meaning of section 267(b)) to T indicates that an arrangement exists.

Example 3. Acquisition of asset from target and indirect acquisition of target stock. (a) On February 1, 1992, T sells an asset to P1 and recognizes gain. On March 1, 1992, Z makes a qualified stock purchase of T from S. No section 338 election is made for T. On January 1, 1993, P1 acquires the T stock from Z other than in a qualified stock purchase.

(b) The asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied because the asset was never owned by Z, the corporation that acquired T stock in the qualified stock purchase (or by a corporation that was affiliated with Z at the time it owned the asset). However, because the asset is owned by P1 while it is affiliated with T during the portion of T's consistency period following T's acquisition date, paragraph (f) of this section applies to the asset of there is an arrangement. If there is an arrangement, the principles of the carryover basis rule of paragraph (d)(1) of this section apply to determine P1's basis in the asset unless Z makes a section 338 election for T. See paragraph (c)(2) of this section.

(c) If P1 also makes a qualified stock purchase of T from Z, the results would be the same. If there is an arrangement, the principles of the carryover basis rule of paragraph (d)(1) of this section apply to determine P1's basis in the asset unless Z makes a section 338 election for T. However, these principles apply to determine P1's basis in the asset if P1, but not Z, makes a section 338 election for T. The basis of the T stock no longer reflects, as of T's acquisition date by P1, the gain from the disposition of the asset.

(d) Assume Z purchases the T stock other than in a qualified stock purchase and P1 makes a qualified stock purchase of T from Z. Paragraph (b) of this section does not apply to the asset because gain from the disposition of the asset is not reflected in the basis of T's stock as of T's acquisition date (January 1, 1993). However, because the gain is reflected in S's basis in the T stock before T's acquisition date and the asset is owned by P1 while it is affiliated with T during the portion of T's consistency period following T's acquisition date, paragraph (f) of this section applies to the asset if there is an arrangement. If there is an arrangement, the principles of the carryover basis rule of paragraph (d)(1) of this section apply to determine P1's basis in the asset even if P1 makes a section 338 election for T. The basis of the T stock no longer reflects, as of T's acquisition date, the gain from the disposition of the asset.

Example 4. Asset acquired from target affiliate by corporation that becomes its affiliate. (a) On February 1, 1992, T1 sells an asset to P1 and recognizes gain. On February 15, 1992, Z makes a qualified stock purchase of T from S. No section 338 election is made for T. On March 1, 1992, P1 acquires the T1

stock from T, other than in a qualified stock purchase.

(b) The asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied because the asset was never owned by Z, the corporation that acquired T stock in the qualified stock purchase (or by a corporation that was affiliated with Z at the time it owned the asset).

(c) P1 is not described in paragraph (f)(2)(iii)(A) of this section because gain from the disposition of the asset is not reflected in the basis of the P1 stock.

(d) P1 is described in paragraph (f)(2)(iii)(B) of this section because the asset is owned by P1 while P1 is affiliated with T1 during the portion of T's consistency period following T's acquisition date. T1 becomes affiliated with Z, the corporation that acquired T stock in the qualified stock purchase, during T's consistency period, and, as of T's acquisition date, the basis of T1's stock reflects gain from the disposition of the asset. Consequently, paragraph (f) of this section applies to the asset if there is an arrangement.

Example 5. De minimis rules. (a) On February 1, 1992, T sells an asset to P and recognizes gain. On February 15, 1992, T1 sells an asset to Z and recognizes gain. The aggregate amount realized by T and T1 on their respective sales of assets is not more than $250,000. On March 1, 1992, T3 sells an asset to P and recognizes gain. On April 1, 1992, P makes a qualified stock purchase of T from S. No section 338 election is made for T. On June 1, 1992, P1 buys from Z the asset sold by T1.

(b) Under paragraph (b) of this section, the basis rules of paragraph (d) of this section apply to the asset sold by T. Under paragraph (f) of this section, the principles of the basis rules of paragraph (d) of this section apply to the asset sold by T1 if there is an arrangement. Because T3's gain is not reflected in the basis of the T stock, the basis rules of this section do not apply to the asset sold by T3.

(c) The de minimis rule of paragraph (d)(3) of this section applies to an asset if the asset is not disposed of as part of the same arrangement as the acquisition of T and the aggregate amount realized for all assets otherwise subject to the carryover basis rules does not exceed $250,000. The aggregate amount realized by T and T1 does not exceed $250,000. (The asset sold by T3 is not taken into account for purposes of the de minimis rule.) Thus, the de minimis rule applies to the asset sold by T if the asset is not disposed of as part of the same arrangement as the acquisition of T.

(d) If, under paragraph (f) of this section, the principles of the carryover basis rules of paragraph (d)(1) of this section otherwise apply to the asset sold by T1 because of an arrangement, the de minimis rules of this section does not apply to the asset because of the arrangement.

(e) Assume on June 1, 1992, Z acquires the T1 stock from T, other than in a qualified stock purchase, rather than P buying the T1 asset, and paragraph (f) of this section applies because there is an arrangement. Because the asset was disposed of and the T1 stock was acquired as part of the arrangement, the de minimis rules of this section does not apply to the asset.

(g) *Extension of consistency if dividends qualifying for 100 percent dividends received deduction are paid*—(1) *General rule for direct acquisitions from target.* Unless a section 338 election is made for target, the basis rules of paragraph (d) of this section apply to an asset if—

(i) Target recognizes gain (whether or not deferred) on disposition of the asset during the portion of the target consistency period that ends on the target acquisition date,

(ii) The asset is owned, immediately after the asset disposition and on the target acquisition date, by a corporation that acquires stock of target in the qualified stock purchase (or by an affiliate of an acquiring corporation), and

(iii) During the portion of the target consistency period that ends on the target acquisition date, the aggregate amount of dividends paid by target, to which section 243(a)(3) applies, exceeds the greater of—

(A) $250,000, or

(B) 125 percent of the yearly average amount of dividends paid by target, to which section 243(a)(3) applies, during the three calendar years immediately preceding the year in which the target consistency period begins (or, if shorter, the period target was in existence).

(2) *Other direct acquisitions having same effect.* The basis rules of paragraph (d) of this section also apply to an asset if the effect of a transaction described in paragraph (g)(1) of this section is achieved through any combination of disposition of assets and payment of dividends to which section 243(a)(3) applies (or any other dividends eligible for a 100 percent dividends received deduction). *See* pragraph (h)(4) of this section for additional rules relating to target affiliates that are controlled foreign corporations.

(3) *Indirect acquisitions.* The principles of paragraph (f) of this section also apply for purposes of this paragraph (g).

(4) *Examples.* This paragraph (g) may be illustrated by the following examples:

Example 1. Asset acquired from target paying dividends to which section 243 (a)(3) applies. (a) The S group does not file a consolidated return. In 1989, 1990, and 1991, T pays dividends to S to which section (a)(3) applies of $200,000, $250,000, and $300,000, respectively. On December 1, 1992, T sells an asset to P and recognizes gain. On January 2, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T. During the portion of T's consistency period that ends on T's acquisition date, T pays S dividends to which section 243(a)(3) applies of $1,000,000.

(b) Under paragraph (g)(1) of this section, paragraph (d) of this section applies to the asset. T recognizes gain on disposition of the asset during the portion of T's consistency period that ends on T's acquisition date, the asset is owned by P immediately after the disposition and on T's acquisition date, and T pays dividends described in paragraph (g)(1)(iii) of this section. Consequently, under paragraph (d)(1) of this section, P's basis in the asset is T's adjusted basis in the asset immediately before the sale to P.

(c) If T is a controlled foreign corporation, the results would be the same if T pays dividends in the amount described in paragraph (g)(1)(iii) of this section that qualify for a 100 percent dividends received deduction. *See* sections 243(e) and 245.

(d) If S and T3 file a consolidated return in which T, T1, and T2 do not join, the results would be the same because the dividends paid by T are still described in paragraph (g)(1)(iii) of this section.

(e) If T, T1, and T2 file a consolidated return in which S and T3 do not join, the results would be the same because the dividends paid by T are still described in paragraph (g)(1)(iii) of this section.

Example 2. Asset disposition by target affiliate achieving same effect. (a) The S group does not file a consolidated return. On December 1, 1992, T2 sells an asset to P and recognizes gain. T pays dividends to S described in paragraph (g)(1)(iii) of this section. On January 2, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Paragraph (g)(1) of this section does not apply to the asset because T did not recognize gain on the disposition of the asset. However, under paragraph (g)(2) of this section, because the asset disposition by T2 and the dividends paid by T achieve the effect of a transaction described in paragraph (g)(1) of this section, the carryover basis rule of paragraph (d)(1) of this section applies to the asset. The effect was achieved because T2 is a lower-tier affiliate of T and the dividends paid by T to S reduce the value to S of T and its lower-tier affiliates.

(c) If T2 is a controlled foreign corporation, the results would be the same because T2 is a lower-tier affiliate of T and the dividends paid by T to S reduce the value to S of T and its lower-tier affiliates.

(d) If P buys an asset from T3, rather than T2, the asset disposition and the dividends do not achieve the effect of a transaction described in paragraph (g)(1) of this section because T3 is not a lower-tier affiliate of T. Thus, the basis rules of paragraph (d) of this section do not apply to the asset. The results would be the same whether or not P also acquires the T3 stock (whether or not in a qualified stock purchase).

Example 3. Dividends by target affiliate achieving same effect. (a) The S group does not file a consolidated return. On December 1, 1992, T1 sells an asset to P and recognizes gain. On January 2, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T. T does not pay dividends to S described in paragraph (g)(1)(iii) of this section. However, T1 pays dividends to T that would be described in paragraph (g)(1)(iii) of this section if T1 were a target.

(b) Paragraph (g)(1) of this section does not apply to the asset because T did not recognize gain on the disposition of the asset and did not pay dividends described in paragraph (g)(1)(iii) of this section. Further, paragraph (g)(2) of this section does not apply because the dividends paid by T1 to T do not reduce the valve to S of T and its lower-tier affiliates.

(c) If both S and T own T1 stock and T1 pays dividends to S that would be described in paragraph (g)(1)(iii) of this section if T1 were a target, paragraph (g)(2) of this section would apply because the dividends paid by T1 to S reduce the value to S of T and its lower-tier affiliates. If T, rather than T1, sold the asset to P, the results would be the same. Further, if T and T1 pay dividends to S that, only when aggregated, would be described in paragraph (g)(1)(iii) of this section (if they were all paid by T), the results would be the same.

Example 4. Gain reflected by reason of dividends. (a) S and T file a consolidated return in which T1 and T2 do not join. On December 1, 1992, T1 sells an asset to P and recognizes gain. On January 2, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T. T1 pays dividends to T that would be described in paragraph (g)(1)(iii) of this section if T1 were a target.

(b) The requirements of paragraph (b) of this section are not satisfied because, under paragraph (c)(3) of this section, gain from T1's sale is not reflected in S's basis in the T stock by reason of the dividends paid by T1 to T.

(c) Although the dividends paid by T1 to T do not reduce the value to S of T and its lower-tier affiliates, paragraph (g)(2) of this section applies because the dividends paid by T1 to T are taken into account under § 1.1502–32 in determining S's basis in the T stock. Consequently, the carryover basis rule of paragraph (d)(1) of this section applies to the asset.

(h) *Consistency for target affiliates that are controlled foreign corporations*—(1) *In general.* This paragraph (h) applies only if a target is a domestic corporation. See paragraph (g) of this section for additional rules that may apply with respect to controlled foreign corporations.

(2) *Income inclusion resulting from asset dispositions*—(i) *Gain reflected by reason of income inclusion.* Gain of a target affiliate that is a controlled foreign corporation from the disposition of an asset is not reflected in the basis of target stock under paragraph (c) of this section unless the gain results in subpart F income or income to which section 1293 applies.

(ii) *Basis of controlled foreign corporation stock.* If, by reason of paragraph (h)((2)(i) of this section, the carryover basis rules of this section apply to an asset, no increase in basis in the stock of a controlled foreign corporation under section 961(a) or 1293(d)(1) is allowed to target or a target affiliate to the extent the increase is attributable to gain described in paragraph (h)(2)(i) of this section. A similar rule applies to the basis of any property by reason of which the stock of the controlled foreign corporation is considered owned under section 958(a)(2) or 1297(a).

(iii) *Operating rule.* For purposes of this paragraph (h)(2)—

(A) If there is an inclusion under section 951(a)(1)(A) and there is subpart F income for a category (as described in sections 953 and 954) that includes gain from the disposition of the asset, the inclusion is first attributed to the gain to the extent of the pro rata share of income for the category, and

(B) Any inclusion under section 1293 is first attributed to the gain to the extent of the pro rata share of the gain.

(3) *Stock issued by target affiliate that is a controlled foreign corporation.* The exception to the carryover basis rules of this section provided in paragraph (d)(2)(iii) of this section does not apply to stock issued by a target affiliate that is a controlled foreign corporation. After applying the carryover basis rules of this section to the stock, the basis in the stock is increased by the amount treated as a dividend under section 1248 on the disposition of the stock.

(4) *Certain distributions*—(i) *General rule.* In the case of a target affiliate that is a controlled foreign corporation, paragraph (g) of this section applies with respect to the target affiliate by treating any reference to a dividend to which section 243(a)(3) applies as a reference to any—

(A) Dividend,

(B) Amount treated as a dividend under section 1248, or

(C) Amount included in income under section 951(a)(1)(B)

if the amount is taken into account under § 1.1502–32 in determining the basis of target stock.

(ii) *Basis of controlled foreign corporation stock.* If the carryover basis rules of this section apply to an asset, the basis in the stock of the controlled foreign corporation (or any property by reason of which the stock is considered owned under section 958(a)(2)) is reduced by the sum of any amounts that are treated, solely by reason of the disposition of the asset, as a dividend, amount treated as a dividend under section 1248, or amount included in income under section 951(a)(1)(B).

(5) *Examples.* This paragraph (h) may be illustrated by the following examples:

Example 1. Stock of target affiliate that is a CFC. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. On December 1, 1992, T1 sells the T2 stock to P and recognizes gain. On January 2, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under paragraph (b)(1) of this section, paragraph (d) of this section applies to the T2 stock. Under paragraph (h)(3) of this section, paragraph (d)(2)(iii) of this section does not apply to the T2 stock. Consequently, paragraph (d)(1) of this section applies to the T2 stock. However, after applying paragraph (d)(1) of this section, P's basis in the T2 stock is increased by the amount of T1's gain on the sale of the T2 stock that is treated as a dividend under section 1248. Because P has a carryover basis in the T2 stock, the T2 stock is not considered purchased within the meaning of section 338(h)(3) and no section 338 election may be made for T2.

Example 2. Stock of target affiliate CFC; inclusion under subpart F. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. On December 1, 1992, T2 sells an asset to P and recognizes subpart F income that results in an inclusion in T1's gross income under section 951(a)(1)(A). On January 2, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Because gain from the disposition of the asset results in an inclusion under section 951(a)(1)(A), the gain is reflected in the basis of the T stock as of T's acquisition date. *See* paragraph (h)(2)(i) of this section. Consequently, under paragraph (b)(1) of this section, paragraph (d)(1) of this section applies to the asset. In addition, under paragraph (h)(2)(ii) of this section, T1's basis in the T2 stock is not increased under section 961(a) by the amount of the inclusion that is attributable to the sale of the asset.

(c) If, in addition to making a qualified stock purchase of T, P acquires the T2 stock from T1 on January 1, 1993, the results are the same for the asset sold by T2. In addition, under paragraph (h)(2)(ii) of this section, T1's basis in the T2 stock is not increased by the amount of the inclusion that is attributable to the gain on the sale of the asset. Further, under paragraph (h)(3) of this section, paragraph (d)(1) of this section applies to the T2 stock. However, after applying pargraph (d)(1) of this section, P's basis in the T2 stock is increased by the amount of T1's gain on the sale of the T2 stock that is treated as a dividend under section 1248. Finally, because P has a carryover basis in the T2 stock, the T2 stock is not considered purchased within the meaning of section 338 (h)(3) and no section 338 election may be made for T2.

(d) If P makes a qualified stock purchase of T2 from T1, rather than of T from S, and T1's gain on the sale of T2 is treated as a dividend under section 1248, under paragraph (h)(1) of this section, paragraphs (h)(2) and (3) of this section do not apply because there is no target that is a domestic corporation. Consequently, the carryover basis rules of this section do not apply to the asset sold by T2 or the T2 stock.

Example 3. Gain reflected by reason of section 1248 dividend; gain from non-subpart F asset. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. In 1989, 1990, 1991 and 1992, T2

does not pay any dividends to T1 and no amount is included in T1's income under section 951(a)(1)(B). On December 1, 1992, T2 sells an asset with a basis of $400,000 to P for $900,000. T2's gain of $500,000 is not subpart F income. On December 15, 1992, T1 sells T2, in which it has a basis of $800,000, to P for $1,600,000. Under section 1248, $800,000 of T1's gain of $1,000,000 is treated as a dividend. However, in the absence of the sale of the asset by T2 to P, only $300,000 would have been treated as a dividend under section 1248. On December 30, 1992, P makes a qualified stock purchase of T1 from T. No section 338 election is made for T1.

(b) Under paragraph (h)(4) of this section, paragraph (g)(2) of this section applies by reference to the amount treated as a dividend under section 1248 on the disposition of the T2 stock. Because the amount treated as a dividend is taken into account in determining T's basis in the T1 stock under § 1.1502–32, the sale of the T2 stock and the deemed dividend have the effect of a transaction described in paragraph (g)(1) of this section. Consequently, paragraph (d)(1) of this section applies to the asset sold by T2 to P and P's basis in the asset is $400,000 as of December 1, 1992.

(c) Under paragraph (h)(3) of this section, paragraph (d)(1) of this section applies to the T2 stock and P's basis in the T2 stock is $800,000 as of December 15, 1992. Under paragraphs (h)(3) and (4)(ii) of this section, however, P's basis in the T2 stock is increased by $300,000 (the amount of T1's gain treated as a dividend under section 1248 ($800,00), other than the amount treated as a dividend solely as a result of the sale of the asset by T2 to P ($500,000)) to $900,000.

(i) [Reserved.]

(j) *Anti-avoidance rules.* For purposes of this section—

(1) *Extension of consistency period.* The target consistency period is extended to include any continuous period that ends on, or begins on, any day of the consistency period during which a purchasing corporation, or any person related, within the meaning of section 267(b) or 707(b)(1), to a purchasing corporation, has an arrangement—

(i) To purchase stock of target, or

(ii) To own an asset to which the carryover basis rules of this section apply, taking into account the extension.

(2) *Qualified stock purchase and 12-month acquisition period.* The 12-month acquisition period is extended if, pursuant to an arrangement, a corporation acquires by purchase stock of another corporation satisfying the requirements of section 1504(a)(2) over a period of more than 12 months.

(3) *Acquisitions by conduits*—(i) *Asset ownership.* A corporation is treated as owning any portion of an asset attributed to the corporation from a conduit under section 318(a) (treating any asset as stock for this purpose), for purposes of—

(A) The asset ownership requirements of this section, and

(B) Determining whether a controlled foreign corporation is a target affiliate for purposes of paragraph (h) of this section.

If the basis rules of this section apply to the asset, the basis rules of this section apply to the entire asset (not just the portion for which ownership is attributed).

(ii) *Stock acquisition*—(A) *Purchase by conduit.* A corporation is treated as purchasing stock of another corporation attributed to the corporation from a conduit under section 318(a) on the day the stock is purchased by the conduit. The corporation is not treated as purchasing the stock, however, if the conduit purchased the stock more than two years before the date the stock is first attributed to the corporation.

(B) *Purchase of conduit.* If a corporation purchases an interest in a conduit (treating the interest as stock for this purpose), the corporation is treated as purchasing on that date any stock owned by a conduit on that date and attributed to the corporation under section 318(a) with respect to the interest in the conduit that was purchased.

(4) *Conduit.* A person (other than a corporation) is a conduit as to a corporation if—

(i) The corporation would be treated under section 318(a)(2) (A) and (B) (attribution from partnerships, estates, and trusts) as owning any stock owned by the person, and

(ii) The corporation, together with its affiliates, would be treated as owning an aggregate of at least 50 percent of the stock owned by the person.

(5) *Existence of arrangement.* The existence of an arrangement is determined under all the facts and circumstances. For an arrangement to exist, there need not be an enforceable, written, or unconditional agreement, and all the parties to the transaction need not have participated in each step of the transaction. One factor indicating the existence of arrangement is the participation of a related party. For this purpose, persons are related if they are related within the meaning of section 267(b) or 707(b)(1).

(6) *Predecessor and successor*—(i) *Persons.* A reference to a person (including target, target affiliate, and purchasing corporation) includes, as the context may require, a reference to a predecessor or successor. For this purpose, a predecessor is a transferor or distributor of assets to a person (the successor) in a transaction—

(A) To which section 381(a) applies, or

(B) In which the successor's basis for the assets is determined, directly or indirectly, in whole or in part, by reference to the basis of the transferor or distributor.

(ii) *Assets.* A reference to an asset (the first asset) includes, as the context may require, a reference to any asset the basis of which is determined, directly or indirectly, in whole or in part, by reference to the first asset.

(7) *Examples.* This paragraph (j) may be illustrated by the following examples:

Example 1. Asset owned by conduit treated as owned by purchaser of target stock. (a) P owns a 60-percent interest in Y. On March 1, 1992, T sells an asset to Y and recognizes gain. On January 1, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under paragraph (j)(4) of this section, Y is a conduit with respect to P. Consequently, under paragraph (j)(3)(i)(A) of this section, P is treated as owning 60 percent of the asset on March 1, 1992 and January 1, 1993. Because P is treated as owning part or all of the asset both immediately after the asset disposition and on T's acquisition date, paragraph (b) of this section applies to the asset. Consequently, paragraph (d)(1) of this section applies to the asset and Y's basis in the asset is T's adjusted basis in the asset immediately before the sale to Y.

Example 2. Corporation whose stock is owned by conduit treated as affiliate. (a) P owns an 80-percent interest in Y. Y owns all of the stock of Z. On March 1, 1992, T sells an asset to Z and recognizes gain. On January 1, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under paragraph (j)(4) of this section, Y is a conduit with respect to P. Consequently, under paragraph (j)(3)(i)(A) of this section, P is treated as owning 80 percent of the Z stock and Z is therefore treated as an affiliate of P for purposes of applying the asset ownership requirements of paragraph (b)(1)(iii) of this section. Because Z, an affiliate of P, owns the assets both immediately after the asset disposition and on T's acquisition date, paragraph (b) of this section applies to the asset, and the asset's basis is determined under paragraph (d) of this section.

(c) If, instead of owning an 80-percent interest in Y, P owned a 79-percent interest in Y, Z would not be treated as an affiliate of P and paragraph (b) of this section would not apply to their asset.

Example 3. Qualified stock purchase by reason of stock purchase by conduit. (a) P owns a 90-percent interest in Y. Y owns a 60-percent interest in Y1. On December 31, 1992, T sells an asset to P and recognizes gain. On January 2, 1993, P purchases 70 percent of the T stock from S and Y1 purchases the remaining 30 percent of the T stock from S.

(b) Under paragraph (j)(3)(ii)(A) of this section, P is treated as purchasing on January 2, 1993, the 16.2 percent of the T stock that is attributed to P from Y and Y1 under section 318(a). Thus, for purposes of this section, P is treated as making a qualified stock purchase of T on January 2, 1993, paragraph (b) of this

section applies to the asset, and the asset's basis is determined under paragraph (d) of this section. However, because P is not treated as having made a qualified stock purchase of T for purposes of making an election under section 338, no election can be made for T.

(c) If Y1 purchases the 30 percent of the T stock from S on December 2, 1991, rather than on January 2, 1993, P would be treated as purchasing the 16.2 percent of the T stock on December 2, 1991. Thus, if paragraph (j)(2) of this section (relating to extension of the 12-month acquisition period) does not apply, P would not be treated as making a qualified stock purchase of T, because P is not treated as purchasing T stock satisfying the requirements of section 1504(a)(2) within a 12-month period.

Example 4. Successor asset. (a) On February 12, 1992, T sells stock of X to P1 and recognizes gain. On December 1, 1992, P1 exchanges its X stock for stock in new X in a reorganization qualifying under section 368(a)(1)(F). On January 1, 1993, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) The asset ownership requirements of paragraph (b)(1)(iii) of the section are satisfied because, under paragraph (j)(6)(ii) of this section, P1 is treated as owning the X stock on T's acquisition date. P1 is treated as owning the X stock on that date because P1 owns the new X stock and P1's basis in the new X stock is determined by reference to P1's basis in the X stock. Consequently, under paragraph (d)(1) of this section, P1's basis in the X stock on February 1, 1992 is T's adjusted basis in the X stock immediately before the sale of P1.

§ 1.338–5 International aspects of section 338.

(a) *Scope.* This section provides guidance regarding the international aspects of section 338. As provided in § 1.338–1(c)(14), a foreign corporation, a DISC, or a corporation for which a section 936 election has been made is considered a target affiliate for all purposes of section 338. In addition, stock described in section 338(h)(6)(B)(ii) held by a target affiliate is not excluded from the operation of section 338.

(b) *Application of section 338 to foreign targets*—(1) *In general.* For purposes of subtitle A, the deemed sale gain, as defined in § 1.338–3(b)(4), of a foreign target for which a section 338 election is made (FT), and the corresponding earning and profits, are taken into account in determining the taxation of FT and FT's direct and indirect shareholders. See, however, section 338(h)(16). For example, the income and earnings and profits of FT are determined, for purposes of sections 551, 951, 1248, and 1293, by taking into account the deemed sale gain.

(2) *Ownership of FT stock on the acquisition date.* A person who transfers FT stock to the purchasing corporation on FT's acquisition date is considered to own the transferred stock at the close of FT's acquisition date See, e.g., § 1.951-1(f) (relating to determination of holding period for purposes of sections 951 through 964). If on the acquisition date the purchasing corporation owns a block of FT stock that was acquired before FT's acquisition date, the purchasing corporation is considered to own such block at the close of the acquisition date.

(3) *Carryover FT stock*—(i) *Definition.* FT stock is carryover FT stock if—

(A) FT was a controlled foreign corporation within the meaning of section 957 (taking into account section 953(c)) at any time during the portion of the 12-month acquisition period that ends on the acquisition date, and

(B) Such stock is owned as of the beginning of the day after FT's acquisition date by a person other than a purchasing corporation, or by a purchasing corporation if the stock is nonrecently purchased and is not subject to a gain recognition election under § 1.338(b)–1(e)(2).

(ii) *Carryover of earnings and profits.* The earnings and profits of old FT (and associated foreign taxes) attributable to the carryover FT stock (adjusted to reflect deemed sale gain) carry over to new FT solely for purposes of—

(A) Characterizing an actual distribution with respect to a share of carryover FT stock as a dividend,

(B) Characterizing gain on a post-acquisition date transfer of a share of carryover FT stock as a dividend under section 1248 (if such section is otherwise applicable),

(C) Characterizing an investment of earnings in United States property as income under sections 951(a)(1)(B) and 956 (if such sections are otherwise applicable), and

(D) Determining foreign taxes deemed paid under sections 902 and 960 with respect to the amount treated as a dividend or income by virtue of this paragraph (b)(3)(ii) (subject to the operation of section 338(h)(16)).

(iii) *Cap on carryover of earnings and profits.* The amount of earnings and profits of old FT taken into account with respect to a share of carryover FT stock is limited to the amount that would have been included in gross income of the owner of such stock as a dividend under section 1248 if—

(A) The shareholder transferred that share to the purchasing corporation on FT's acquisition date for a consideration equal to the fair market value of that share on that date, or

(B) In the case of nonrecently purchased FT stock treated as carryover FT stock, a gain recognition election under section 338(b)(3)(A) applied to that share. For purposes of the preceding sentence, a shareholder that is a controlled foreign corporation is considered to be a United States person, and the principle of section 1248(c)(2)(D)(ii) (concerning a United States person's indirect ownership of stock in a foreign corporation) applies in determining the correct holding period.

(iv) *Post-acquisition date distribution of old FT earnings and profits.* A post-acquisition date distribution with respect to a share of carryover FT stock is considered to be derived first from earnings and profits derived after FT's acquisition date and then from earnings and profits derived on or before FT's acquisition date.

(v) *Old FT earnings and profits unaffected by post-acquisition date deficits.* The carryover amount for a share of carryover FT stock is not reduced by deficits in earnings and profits incurred by new FT. This rule applies for purposes of determining the amount of foreign taxes deemed paid regardless of the fact that there are no accumulated earnings and profits. For example, a distribution by new FT with respect to a share of carryover FT stock is treated as a dividend by the distribution to the extent of the carryover amount for that share notwithstanding that new FT has no earnings and profits.

(v) *Character of FT stock as carryover FT stock eliminated upon disposition.* A share of FT stock is not considered carryover FT stock after it is disposed of provided that all gain realized on the transfer is recognized at the time of the transfer, or that, if less than all of the realized gain is recognized, the recognized amount equals or exceeds the remaining carryover amount for that share.

(4) *Passive foreign investment company stock.* Stock that is owned as of the beginning of the day after FT's acquisition date by a person other than a purchasing corporation, or by a purchasing corporation if the FT stock is nonrecently purchased stock not subject to a gain recognition election under § 1.338(b)–1(e)(2), is treated as passive foreign investment company stock to the extent provided in section 1297(b)(1).

(c) *Dividend treatment under section 1248(e).* The principles of this paragraph (b) apply to shareholders of a domestic corporation subject to section 1248(e).

(d) *Allocation of foreign taxes.* If a section 338 election is made for target (whether foreign or domestic), and target's taxable year under foreign law (if any) does not close at the end of the acquisition date, foreign income taxes attributable to the income earned by

target during such foreign taxable year are allocated to old target and new target. Such allocation is made under the principles of § 1.1502–78(b)(4).

(e) *Operation of section 338(h)(16).* [Reserved.]

(f) *Examples.* (1) Except as otherwise provided, all corporations use the calendar year as the taxable year, have no earnings and profits (or deficits) accumulated for any taxable year, and have only one class of outstanding stock.

(2) This section may be illustrated by the following examples:

Example 1. Gain recognition election for carryover FT stock. (a) A has owned 90 of the 100 shares of CFCT stock since CFCT was organized on March 13, 1989. P has owned the remaining 10 shares of CFCT stock since CFCT was organized. Those 10 shares constitute nonrecently purchased stock in P's hands within the meaning of section 338(b)(6)(B). On November 1, 1992, P purchases A's 90 shares of CFCT stock for $90,000,000 and makes a section 338 election for CFCT. P also makes a gain recognition election under section 338(b)(3)(A) and § 1.338(b)–1(e)(2).

(b) CFCT's earnings and profits for its short 1992 taxable year ending on November 1, 1992, are $50,000, determined without regard to the deemed asset sale. Assume A recognizes gain of $81,000 on the sale of the CFCT stock. Further, assume that CFCT recognizes gain of $40,000 by reason of its deemed sale of assets under section 338(a)(1).

(c) A's sale of CFCT stock to P is a transfer to which section 1248 and paragraphs (b) (1) and (2) of this section apply. For purposes of applying section 1248 (a) to A, the earnings and profits of CFCT for its short taxable year ending on November 1, 1992, are $90,000 (the earnings and profits for that taxable year as determined under § 1.1248–2(e) ($50,000) plus earnings from the deemed sale ($40,000)). Thus, A's entire gain is characterized as a dividend under section 1248 (but see section 338(h)(16)).

(d) Assume that P recognizes a gain of $9,000 with respect to the 10 shares of nonrecently purchased CFCT stock by reason of the gain recognition election. Because P is treated as selling the nonrecently purchased stock for all purposes of the Code, section 1248 applies. Thus, under § 1.1248–2(e), $9,000 of the $90,000 of earnings and profits for 1992 are attributable to the block of 10 shares of CFCT stock deemed sold by P at the close of November 1, 1992 ($90,000 × 10/100). Accordingly, P's entire gain on the deemed sale of 10 shares of CFCT stock is included under section 1248(a) in P's gross income as a dividend (but see section 338(h)(16)).

Example 2. No gain recognition election for carryover FT stock. (a) Assume the same facts as in *Example 1*, except that P does not make a gain recognition election.

(b) The 10 shares of nonrecently purchased CFCT stock held by P is carryover FT stock under paragraph (b)(3) of this section. Accordingly, the earnings and profits (and attributable foreign taxes) of old CFCT carry over to new CFCT solely for purposes of that block of 10 shares. The amount of old CFCT's earnings and profits taken into account with respect to that block in the event, for example, of a distribution by new CFCT with respect to that block is the amount of the section 1248 dividend that P would have recognized with respect to that block had it made a gain recognition election under section 338(b)(3)(A). Under the facts of *Example 1*, P would have recognized a gain of $9,000 with respect to that block, all of which would have been a section 1248 dividend ($90,000 × 10/100). Accordingly, the carryover amount for the block of 10 shares of nonrecently purchased CFCT stock is $9,000.

Example 3. Sale of controlled foreign corporation stock prior to and on the acquisition date. (a) X and Y, both U.S. corporations, have each owned 50% of the CFCT stock since 1986. Among CFCT's assets are assets the sale of which would generate subpart F income. On December 31, 1992, X sells its CFCT stock to P. On June 30, 1993, Y sells its CFCT stock to P. P makes a section 338 election for CFCT. In both 1992 and 1993, CFCT has subpart F income resulting from operations.

(b) For taxable year 1992, X and Y are United States shareholders on the last day of CFCT's taxable year, so pursuant to section 951(a)(1)(A) each must include in income its pro rata share of CFCT's subpart F income for 1992. Because P's holding period in the CFCT stock acquired from X does not begin until January 1, 1993, P is not a United States shareholder on the last day of 1992 for purposes of section 951(a)(1)(A) (See § 1.951–1(f)). X must then determine the extent to which section 1248 characterizes its gain on the sale of CFCT stock as a dividend.

(c) For the short taxable year ending June 30, 1993, Y is considered to own the CFCT stock sold to P at the close of CFCT's acquisition date. Because the acquisition date is the last day of CFCT's taxable year, Y and P are United States shareholders on the last day of CFCT's taxable year. Pursuant to section 951(a)(1)(A), each must include its pro rata share of CFCT's subpart F income for the short taxable year ending June 30, 1993. This includes any income generated on the deemed sale of CFCT's assets. Y must then determine the extent to which section 1248 recharacterizes its gain on the sale of the CFCT stock as a dividend, taking into account any increase in CFCT's earning and profits due to the deemed sale of assets.

Example. 4. Acquisition of control for purposes of section 951 prior to the acquisition date. FS owns 100 percent of the FT stock. On July 1, 1993, P buys 60% of the FT stock. On December 31, 1993, P buys the remaining 40% of the FT stock and makes a section 338 election for FT. For tax year 1993, FT has earnings and profits of $1,000 (including earnings resulting from the deemed sale). The section 338 election results in $500 of subpart F income. As a result of the section 338 election, P must include in gross income the following amount under section 951(a)(1)(A) (*see* § 1.951–(b)(2)):

FT's subpart F income for 1993	$500.00
Less: reduction under section 951(a)(2)(A) for period (1–1–93 through 7–1–93) during which FT is not a controlled foreign corporation ($500 × 182/365)	249.32
Subpart F income as limited by section 951(a)(2)(A)	$250.68
P's pro rata share of subpart F income as determined under section 951(a)(2)(A) (60% × 250.68)	$150.41

Example 5. Coordination with section 936. (a) T is a corporation for which a section 936 election has been made. P makes a qualified stock purchase of T and makes a section 338 election for T.

(b) T's deemed sale of assets under section 338 constitutes a sale for purposes of subtitle A of the Code, including section 936(a)(1)(A)(ii). To the extent that the assets deemed sold are used in the conduct of an active trade or business in a possession for purposes of section 936(a)(1)(A)(i), and assuming all the other conditions of section 936 are satisfied, the income from the deemed sale qualifies for the credit granted by section 936(a). The source of income from the deemed sale is determined as if the assets had actually been sold and is not affected for purposes of section 936 by section 338(h)(16).

(c) Because new T is treated as a new corporation for purposes of subtitle A of the Code, the three year testing period in section 936(a)(2)(A) begins again for new T on the day following T's acquisition date. Thus, if the character or source of old T's gross income disqualified it for the credit under section 936, a fresh start is allowed by section 338 election.

§ 1.338 (b)–1 Adjusted grossed-up basis.

(a) *Scope.* This section provides rules under section 338(b) to determine the adjusted grossed-up basis ("AGUB") for target. The AGUB is the amount for which new target is deemed to have purchased all of its assets in the deemed purchase under section 338(a)(2). The AGUB is allocated among target's assets in accordance with § 1.338(b)–2T to determine the price at which the assets are deemed to have been purchased. Subsequent adjustments to AGUB and the allocation of such adjustments to target's assets may be made under § 1.338(b)–3T.

(b) *Adjustment events.* "Adjustment events" are increases (or decreases) in the consideration paid for recently or nonrecently purchased stock, reductions in target's liabilities included in AGUB as of the beginning of the day after the acquisition date, and old target liabilities that become fixed and determinable.

(c) *AGUB*—(1) *In general.* AGUB is the sum of—

(i) The purchasing corporation's grossed-up basis in recently purchased target stock,

(ii) The purchasing corporation's basis in nonrecently purchased target stock,

(iii) The liabilities of target, and

(iv) Other relevant items.

(2) *Time when AGUB determined.* AGUB is initially determined at the beginning of the day after the acquisition date of target. However, adjustment events that occur during new target's first taxable year are taken into account for purposes of determining AGUB and the basis of target's assets as if they had occurred at the beginning of the day after the acquisition date.

(3) *Sample AGUB Formula.* (i) The sample formula is as follows:

AGUB = GRP + L + X

(ii) For purposes of this formula—

(A) "GRP" is the purchasing corporation's grossed-up basis in recently purchased target stock.

(B) "BNP" is the purchasing corporation's basis in nonrecently purchased target stock.

(C) "L" is the sum of new target's liabilities.

(D) "X" is other relevant items.

(d) *Grossed-up basis of recently purchased stock*—(1) *In general.* The purchasing corporation's grossed-up basis of recently purchased target stock is the product of—

(i) The purchasing corporation's basis in recently purchased target stock (as defined in section 338(b)(6)(A)) at the beginning of the day after the acquisition date, multiplied by

(ii) A fraction the numerator of which is 100 percent minus the percentage of target stock (by value) attributable to the purchasing corporation's nonrecently purchased target stock and the denominator of which is the percentage of target stock (by value) attributable to the purchasing corporation's recently purchased target stock. *See* section 338(b)(4).

If target has a single class of outstanding stock, the purchasing corporation's grossed-up basis in recently purchased target stock reflects the total price the purchasing corporation would have paid for all outstanding target stock (other than the purchasing corporation's nonrecently purchased target stock, as defined in section 338(b)(6)(B)) had the purchasing corporation purchased all such stock (other than the nonrecently purchased target stock) for a price per share equal to the average price per share that the purchasing corporation paid for the recently purchased target stock.

(2) *Target subsidiary.* If target (T) owns stock in a target affiliate (T1), the grossed-up basis of the recently purchased T1 stock is the product of—

(i) The basis of the T1 stock in the hands of T as of the beginning of the day after T's acquisition date, multiplied by

(ii) A fraction the numerator of which is 100 percent minus the percentage of T1 stock (by value) attributable to the nonrecently purchased T1 stock and the denominator of which is the percentage of T1 stock (by value) attributable to the recently purchased T1 stock. See section 338(b)(4).

For example, if T is deemed to purchase 80 percent (by value) of T1's stock by reason of section 338(h)(3)(B), the grossed-up basis of recently purchased T1 stock is determined by multiplying 100/80 times the amount of T's AGUB allocated to T1's stock under § 1.338(b)–2T.

(e) *Basis of nonrecently purchased stock*—(1) *In general.* In the absence of an election under section 338(b)(3) ("gain recognition election"), the purchasing corporation's basis in nonrecently purchased stock is the purchasing corporation's historic basis in that stock.

(2) *Effect of gain recognition election*—(i) *In general.* If the purchasing corporation makes a gain recognition election, for all purposes of the Code and regulations—

(A) The purchasing corporation is treated as if it sold on the acquisition date the nonrecently purchased target stock for the basis amount determined under paragraph (e)(2)(ii) of this section, and

(B) The purchasing corporation's basis on the acquisition date in nonrecently purchased target stock is the basis amount.

If target has a single class of outstanding stock, the purchasing corporation's basis in each share of nonrecently purchased target stock after the gain recognition election is equal to the average price per share of the purchasing corporation's recently purchased target stock.

(ii) *Basis amount.* The basis amount is equal to the purchasing corporation's grossed-up basis in recently purchased target stock multiplied by a fraction the numerator of which is the percentage of target stock (by value) attributable to the purchasing corporation's nonrecently purchased target stock and the denominator of which is 100 percent minus the numerator amount.

(iii) *Losses not recognized.* Only gains (unreduced by losses) on the nonrecently purchased target stock are recognized.

(iv) *Stock subject to election.* The gain recognition election applies to—

(A) All nonrecently purchased target stock, and

(B) Any nonrecently purchased stock in a target affiliate having the same acquisition date as target if such target affiliate stock is held by the purchasing corporation on such date.

(3) *Procedure for making gain recognition election*—(i) *In general.* The gain recognition election is made by attaching a gain recognition statement to a timely filed Form 8023 for target. The gain recognition statement must contain the information specified in the form and its instructions. The gain recognition election is irrevocable.

(ii) *Section 338(h)(10) election.* If a section 338(h)(10) election is made for target, the purchasing corporation is deemed to have made a gain recognition election.

(4) *Comparison with elective ADSP formula.* Whenever the purchasing corporation holds nonrecently purchased target stock at a basis that differs from the purchasing corporation's basis in recently purchased target stock, the purchasing corporation's grossed-up basis in recently purchased target stock as calculated for purposes of the AGUB differs from the "grossed-up basis of the purchasing corporation's recently purchased target stock" as calculated in the elective ADSP formula. The elective ADSP formula treats the purchasing corporation's nonrecently purchased target stock in the same manner as target stock not held by the purchasing corporation. If a gain recognition election is made, the sum of the purchasing corporation's grossed-up basis in recently purchased target stock and the purchasing corporation's basis in nonrecently purchased target stock equals the "grossed-up basis of the purchasing corporation's recently purchased target stock" as calculated in the elective ADSP formula.

(f) *Liabilities of new target*—(1) *In general.* The liabilities of new target include its liabilities (and the liabilities to which target's assets are subject) as of the beginning of the day after the acquisition date (other than liabilities that were neither liabilities of old target nor liabilities to which old target's assets were subject).

(2) *Excluded obligations*—(i) *In general.* In order to be included in AGUB at the beginning of the day after the acquisition date, an obligation must be a bona fide liability of target as of that date which is properly includible in basis under principles of tax law that would apply if new target had acquired old target's assets from an unrelated person and, as part of the transaction, had assumed or taken property subject

to the obligation. For example, if, as of the beginning of the day after the acquisition date, the amount of a contingent or speculative obligation of target is not properly includible in basis under the preceding sentence, the obligation is not initially included in AGUB.

(ii) *Time when excluded obligations taken into account.* Obligations that, under this paragraph (f)(2), are initially excluded from AGUB are taken into account in redetermining AGUB and the basis of target's assets under principles of tax law that would apply if new target had acquired old target's assets directly from an unrelated person and, as part of the transaction, had assumed or taken property subject to those obligations. For the application of these principles of tax law to certain contingent liabilities that are initially excluded from AGUB under this paragraph (f)(2), see § 1.338(b)–3T.

(3) *Liabilities taken into account in determining amount realized on subsequent disposition.* In determining the amount realized on a subsequent sale or other disposition of property deemed purchased by new target, the entire amount of any liability included in AGUB is considered to be an amount taken into account in determining new target's basis in property which secures the liability for purposes of applying § 1.1001–2(a). Thus, if a liability is included in AGUB, § 1.1001–2(a)(3) does not prevent the amount of such liability from being treated as discharged within the meaning of § 1.1001–2(a)(4) as a result of new target's sale or disposition of the property which secures such liability.

(g) *Other relevant items.*—(1) *In general.* AGUB may be increased (or decreased) for "other relevant items." For this purpose, other relevant items may only arise from adjustment events that occur after the close of new target's first taxable year and adjustments under paragraph (g)(3) of this section. See § 1.338(b)–3T (relating to the treatment of certain subsequent adjustments to AGUB).

(2) *Flow-through of relevant item adjustment to target subsidiary.* If the amount of AGUB of target (T) allocated to the stock of a target affiliate (T1) is subsequently increased (or decreased) by reason of an other relevant item under this paragraph (g), the grossed-up basis of the T1 stock (and, if a section 338 election is made for T1, T1's AGUB) is also increased (or decreased) as if the increase (or decrease) in the basis of the stock was an adjustment to the purchase price deemed paid by T for such stock. The resulting increase (or decrease) in AGUB of T1 is allocated among T1's assets in accordance with §§ 1.338(b)–2T and 1.338 (b)–3T.

(3) *Adjustments by the Internal Revenue Service.* In connection with the examination of a return, the District Director may increase (or decrease) AGUB for items other than those described in paragraphs (g) (1) and (2) of this section under the authority of section 338(b)(2) and allocate such amounts to target's assets under the authority of section 338(b)(5) so that AGUB and the basis of target's assets properly reflect the cost to the purchasing corporation of its interest in target's assets. Such items may include distributions from target to the purchasing corporation, capital contributions from the purchasing corporation to target during the 12-month acquisition period, or acquisitions of target stock by purchasing corporation after the acquisition date from minority shareholders.

(h) *Examples.* (1) For purposes of the examples in this paragraph (h), T has no liabilities other than a tax liability resulting from the deemed sale of assets.

(2) This section may be illustrated by the following examples:

Example 1. (a) Before July 1, 1992, P purchases 10 of the 100 shares of T stock for $5,000. On July 1, 1993, P purchases 80 shares of T stock for $60,000 and makes a section 338 election for T. As of July 1, 1993, T's only asset is raw land with an adjusted basis to T of $50,400 and a fair market value of $100,000. T has no loss or tax credit carryovers to 1993. T's marginal tax rate for any ordinary income or net capital gain resulting from the deemed sale of assets is 34 percent. The 10 shares purchased before July 1, 1992, constitute nonrecently purchased T stock with respect to P's qualified stock purchase of T stock on July 1, 1993.

(b) The elective ADSP formula as applied to these facts is the same as in *Example 2* of § 1.338–3(d)(5). Accordingly, the ADSP of T is $87,672.72. The existence of nonrecently purchased T stock is irrelevant for purposes of the elective ADSP formula, because that formula treats P's nonrecently purchased T stock in the same manner as T stock not held by P.

(c) The total tax liability resulting from T's deemed sale of assets, as calculated under the ADSP formula, is $12,672.72.

(d) If P does not make a gain recognition election, the AGUB of new T's assets is $85,172.72, determined as follows:

AGUB=GRP+BNP+L+X
AGUB=$60,000×[(1–.1)/.8]+$5,000+
$12,672.72 +0
AGUB=$85,172.72

(e) If P makes a gain recognition election, the AGUB of new T's assets is $87,672.72, determined as follows:
AGUB=$60,000×[(1–.1)/.8]+$60,000× [(1–
.1)/.8]×[1/(1–.1)]+$12,672.72
AGUB=$87,672.72

(f) The calculation of AGUB if P makes a gain recognition election may be simplified as follows:
AGUB = $60,000/.8 + $12,672.72
AGUB = $87,672.72

(g) As a result of the gain recognition election, P's basis in its nonrecently purchased T stock is increased from $5,000 to $7,500 (*i.e.*, $60,000 × [(1 −.1)/.8] × [1/(1 −.1)]). Thus, P recognizes a gain in 1993 with respect to its nonrecently purchased T stock of $2,500 (*i.e.*, $7,500 −$5,000).

Example 2. (a) On January 1, 1993, P purchases one-third of the T stock for $300,000. On March 1, 1993, T distributes a dividend to all its shareholders consisting of property with a fair market value of $210,000 of which P receives $70,000. On April 15, 1993, P purchases the remaining T stock for $480,000 and makes a section 338 election for T.

(b) In appropriate circumstances, the District Director may decrease the AGUB of T by $49,000 (the nontaxed portion of the dividend, as defined in section 1059 (b)) in order to properly reflect the cost to P of its interest in T's assets which P is deemed to have purchased.

Example 3. (a) T's sole asset is a building worth $100,000. On August 1, 1993, P purchases 10 of the 100 shares of T stock for $8,000. On June 1, 1994, P purchases 50 shares of T stock for $50,000. On June 14, 1994, P contributes a tract of land to the capital of T and receives 10 additional shares of T stock as a result of the contribution. Both the basis and fair market value of the land at that time are $10,800. On June 30, 1994, P purchases the remaining 40 shares of T stock for $40,000 and makes a section 338 election for T.

(b) In order to prevent the shifting of basis from the contributed property to other assets of T, the District Director may specifically allocate part of T's AGUB to the contributed property as shown in subdivisions (c) and (d) of this example.

(c) The AGUB of T is $108,800.

(d) $10,800 of the AGUB is allocated to the land, leaving $98,000 to be allocated among T's other assets, here, only the building.

Par. 5. Sections 1.338 (b)–2T (a) (2) and (d) *Example (1)* (i), and 1.338 (b)–3T (b) are revised to read as follows:

§ 1.338(b)–2T Allocation of adjusted grossed-up basis among target assets (temporary).

(a) * * *

(2) *Fair market value.* The "fair market value" of an asset is the gross fair market value of that asset (*i.e.*, fair market value determined without regard to mortgages, liens, pledges, or other liabilities).

* * * * *

(d) * * *

Example (1). (i) T owns 90% of the outstanding T1 stock. P purchases 100% of the outstanding T stock for $2,000. A section 338 election is made for T and, as a result, T1 is considered acquired in a qualified stock purchase. A section 338 election is made for

T1. The grossed-up basis of the T stock is $2,000 (*i.e.*, $2,000 × 1/1).

* * * * *

§ 1.338(b)-3T Subsequent adjustments to adjusted grossed-up basis (temporary).

* * * * *

(b) *Definitions*—(1) *Contingent liability.* A contingent liability is a liability of target at the beginning of the day after the acquisition date that is not fixed and determinable by the close of new target's first taxable year.

(2) *Contingent amount.* The term "contingent amount" means the amount of the consideration to be paid for recently or nonrecently purchased stock that is not fixed or determinable by the close of new target's first taxable year, plus contingent liabilities of target.

(3) *Reduction amount.* The term "reduction amount" means a reduction after the close of new target's first taxable year in either (i) the consideration paid for recently or nonrecently purchased stock, or (ii) a liability of target (or a liability to which one or more of its assets are subject) that has been taken into account in determining AGUB.

(4) *Acquisition date asset.* The term "acquisition date asset" means any asset held by new target at the beginning of the day after the acquisition date (other than Class I assets).

* * * * *

Par. 6. Section 1.338 (h) (10)–1 and section 1.338 (i)–1 are added to read as follows:

§ 1.338(h)(10)–1 Elective recognition by selling consolidated group of deemed sale gain or loss on target's assets.

(a) *Scope.* This section prescribes rules relating to elections under section 338(h)(10). The primary effect of a section 338(h)(10) election is a deemed taxable sale by target of all its assets followed by a deemed complete liquidation under section 332. In addition, gain or loss on the sale of target stock by a member of the selling consolidated group to a purchasing corporation included in the qualified stock purchase is ignored.

(b) *Nomenclature*—(1) The nomenclature in § 1.338–1 (b) does not apply.

(2) For purposes of this section:

(i) The S group is a selling consolidated group.

(ii) T is a section 338 (h) (10) target. Old T refers to T for periods ending as of the close of T's acquisition date; new T refers to T for subsequent periods.

(iii) T1, T2, etc. are section 338 (h) (10) target affiliates.

(iv) S1, S2, etc. are target affiliates (*i.e.*, members of the S group) other than T, T1, T2, etc.

(v) P, P1, P2, etc. are purchasing corporations and members of a single affiliated group. Unless the context otherwise requires, a reference to P refers to the purchasing corporation or corporations. *See* sections 338 (h) (5) and (8).

(vi) K is a shareholder of T other than a member of the S group or P.

(c) *Definitions*—(1) *Section 338(h)(10) target.* A "section 338(h)(10) target" is a target for which a section 338(h)(10) election is made.

(2) *Section 338(h)(10) target affiliate.* A "section 338(h)(10) target affiliate" is a target affiliate for which a section 338(h)(10) election is made by P.

(3) *Selling consolidated group.* The "selling consolidated group" is the consolidated group that for the taxable period that includes the acquisition date—

(i) Includes the section 338 (h)(10) target, and

(ii) Has as its common parent a corporation for which a section 338 election by P does not apply.

(d) *Section 338 (h) (10) election*—(1) *In general.* A section 338 (h) (10) election may be made for T if P acquires T from the S group in a qualified stock purchase. A section 338 (h)(10) election is irrevocable. If a section 338 (h)(10) election is made for T, a section 338 election is deemed made for T. If a section 338 (h)(10) election for T is not valid, the section 338 election for T is also not valid.

(2) *Simultaneous joint election requirement.* Except as provided in paragraph (d) (3) of this section, a section 338 (h)(10) election is made jointly by P and the S group on Form 8023 in accordance with the instructions to the form. The section 338 (h)(10) election must be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs.

(3) *Delayed elections*—(i) *In general.* A delayed section 338 (h)(10) election ("delayed election") may be made when a section 338 election for target was made before the date target became a section 338 (h) (10) target, *i.e.*, before the date that the affiliated group of which target was a member filed or was required to file a consolidated return. A delay election is made by filing an amended Form 8023 in the manner specified in the form and its instructions.

(ii) *Time for filing.* A delayed election must be filed on or before the date that is the earlier of—

(A) The 30th day after the day the affiliated group of which target was a member files a consolidated return for the period that includes target's acquisition date, or

(B) The 15th day of the 4th month following the close of the S group's taxable year in which the acquisition date occurs.

(e) *Consequences of section 338 (h)(10) election*—(1) *Taxable sale of all T assets.* Old T recognizes gain or loss as if, while a member of the S group, it sold all of its assets in a single transaction as of the close of the acquisition date.

(2) *Nonrecognition treatment for T stock*—(i) *General rule.* For purposes of subtitle A of the Code, gain or loss on the actual sale or exchange by the S group to P of stock of T or of a section 338 (h)(10) target affiliate included in a qualified stock purchase is ignored. Likewise, gain or loss on the deemed sale of stock of a section 338 (h)(10) target affiliate by T or another section 338 (h)(10) target affiliate is ignored.

(ii) *Example.* This paragraph (e)(2) may be illustrated by the following example.

Example. S1 owns all of the T stock and T owns all of the stock of T1 and T2. On March 1, 1992, P makes a qualified stock purchase of T from S1. A section 338 (h) (10) election is made for T. Also, a section 338 (h) (10) election is made for the deemed purchase of T1. A section 338 election is not made for T2. Gain or loss realized by S1 on the actual sale of the T stock is ignored as is T's gain or loss on the deemed sale of the T1 stock. Thus, for example, gain or loss realized on the sale of the T and T1 stock is not taken into account in S1's earnings and profits. However, because a section 338 election is not made for T2, T must recognize any gain realized on the deemed sale of the T2 stock. See § 1.338–3 (c).

(3) *Deemed section 332 liquidation for T.* for purposes of subtitle A of the Code, T is treated as if (at the close of the acquisition date but after the deemed sale of its assets) it distributed all its assets in a complete liquidation to which section 332 applies. Notwithstanding the preceding sentence, new T remains liable for those tax liabilities (including tax liabilities resulting from the deemed sale of its assets) of the other members of the S group that are attributable to taxable years in which those corporations and old T joined in a consolidated return. See § 1.1502–6(a).

(4) *Treatment of unacquired T stock*—(i) *Nonrecognition treatment.* No gain or loss is recognized by K or the members of the S group with respect to their shares of T stock that are not acquired by P as part of the qualified stock purchase ("unacquired stock").

(ii) *Basis to K.* K's basis for its new T stock is the same as K's basis for its unacquired old T stock.

(iii) *Basis to S group.* The basis of the unacquired T stock held by members of the S group equals the net fair market value of the portion of the new T assets that such members would receive were new T to completely liquidate at the beginning of the day after the acquisition date.

(iv) *Net fair market value.* For purposes of this paragraph (e)(4), the net fair market value of new T's assets is the excess of the MADSP amount determined under paragraph (f) of this section for old T assets over new T's liabilities as of the beginning of the day after the acquisition date.

(5) *Cross-references.* (i) P's adjusted grossed-up basis for T is determined in accordance with § 1.338 (b)–1 (c) and is allocated among the T assets in accordance with § § 1.338 (b)–2T and 1.338 (b)–3T.

(iii) The S group may not withdraw, or elect to discontinue filing, a consolidated return on or after the day that a section 338 (h)(10) election is made for a former member of the group. See § 1.1502–75T.

(f) *Deemed sale price*—(1) *General rule.* The price at which each asset of old T is deemed to have been sold is calculated by—

(i) Determining the modified ADSP ("MADSP"), and

(ii) Then allocating MADSP among the assets of old T in accordance with § 1.338 (b)–2T (without regard to § 1.338 (b)–2T(c) (2)).

(2) *Formula.* (i) The MADSP formula is:

MADSP = G + L + X

(ii) For purposes of this formula—

(A) "G" is the grossed-up basis of P's recently purchased T stock determined under § 1.338(b)–1(d).

(B) "L" is the sum of new T's liabilities. See § 1.338 (b)–1 (f).

(C) "X" is other relevant items.

(3) *Cross-reference. See* § 1.338(b)–3T (h) for adjustments to MADSP because of events occurring after the acquisition date.

(g) *Examples.* For purposes of the examples in this paragraph (g), unless otherwise provided, assume T is a member of the S group. T has only one class of stock, all of which is owned by S1. On March 1, 1991, S1 sells its T stock to P for $80,000 and a section 338(h)(10) election is made for T. Paragraphs (e) and (f) of this section may be illustrated by the following examples:

Example 1. (a) On March 1, 1992, assume the following:

Assets	Basis	FMV	Liability
Land	$50,000	$75,000	
Equipment (recomputed basis $70,000)	$30,000	60,000	
Liability			$40,000

(b) The MADSP is as follows:

MADSP = G + L + X
MADSP = $80,000 + $40,000 + 0
MADSP = $120,000

(c) The portion of MADSP allocated to each asset as follows:

MADSP	Basis	FMV	Fraction	Allocable
Land	$50,000	$75,000	5/9	$66,667
Equipment	30,000	60,000	4/9	53,333
Total	80,000	135,000	1	120,000

(d) Because T's assets are all class III assets and the MADSP allocable to each does not exceed its fair market value, T's MADSP is allocated as shown. See § 1.338(b)–2T(c)(1) (relating to fair market value limitation).

(e) Thus, old T has gain on the deemed sale of $40,000 (consisting of $16,667 of capital gain and $23,333 of ordinary income).

(Example 2. (a) The facts are the same as in *Example 1,* except that, as of the close of the acquisition date, old T's current earnings and profits, other than those generated from the deemed sale of its assets, are $21,950. As of the close of 1991, old T had neither accumulated earnings and profits nor a deficit. In addition, old T has no items described in section 381(c).

(b) The consequences to P, T, and S1 include the following:

(i) As determined in *Example 1,* old T recognizes $40,000 of gain on the deemed sale which produces $40,000 of earnings and profits.

(ii) P's basis in new T stock is P's cost for the stock, $80,000.

(iii) The adjusted grossed-up basis of new T is $120,000, *i.e.,* P's cost for the old T stock ($80,000) plus T's liability ($40,000). (Assume there are no other relevant items.) This adjusted grossed-up basis is allocated as basis among the new T assets under § § 1.338(b)–2T and 1.338(b)–3T.

(iv) Assume that, under § 1.1502–33(d), old T's allocable share of the S group's consolidated tax liability for 1992 (all of which is attributable to the deemed sale of T's assets) is $13,600.

(v) As of the close of the acquisition date but after the deemed sale of its assets, old T's earnings and profits are $48,350, *i.e.,* $21,950 + $40,000 – $13,600.

(vi) S1 takes into account old T's earnings and profits of $48,350, determined as of the close of the acquisition date but after the deemed sale.

(vii) S1 does not recognize gain or loss upon its sale of the old T stock to P.

Example 3. (a) Assume the same facts as in *Example 2,* except that S1 sells 80 percent of the old T stock to P for $64,000.

(b) The consequences to P, T, and S1 are the same as in *Example 2,* except that:

(i) P's basis for the new T stock is P's cost for the stock, $64,000.

(ii) The adjusted grossed-up basis of new T is $120,000 (*i.e.,* $64,000/.8 + $40,000).

(iii) S1 does not recognize gain or loss with respect to the retained stock in T.

(iv) The basis of the T stock retained by S1 is $16,000 (*i.e.,* $120,000 – $40,000 (the net fair market value of T assets as of the beginning of the day after the acquisition date) × .20 (the proportion of T stock retained by S1)).

Example 4. (a) Assume the same facts as in *Example 3,* except that K owns 20 percent of the T stock and these shares are not purchased by P. K's basis in its T stock is $5,000.

(b) The consequences to P, T, and S1 are the same as in *Example 3,* except that:

(i) S1 takes into account 80 percent of T's earnings and profits of $48,350, or $38,680.

(ii) K recognizes no gain or loss and K's basis in its T stock remains at $5,000.

Example 5. (a) Assume that S1 sells all of its T stock to P and that all of the other facts are the same as in *Example 2,* except that the equipment is held by T1, a wholly-owned subsidiary of T. The T1 stock has a fair market value of $60,000. T1 has no other assets and no liabilities other than its share of the S group's consolidated tax liability generated by the deemed sale of the equipment. As of the close of the acquisition date, but before the deemed sale of the equipment, T1 has none of the attributes listed in section 381(c). A section 338(h)(10) election is made for the deemed purchase of T1 stock.

(b) The consequences to T1 include the following:

(i) The MADSP is $53,333 (*i.e.,* $53,333 + $0 + $0).

(ii) T1 recognizes ordinary income of $23,333.

(iii) Assume that, under § 1.1502–33(d), T1's allocable share of the S group's consolidated tax liability for 1992 is $7,933.

(iv) As of the close of the acquisition date, but after the deemed sale of the equipment, T1's earnings and profits are $15,400 (*i.e., $0 + $23,333 – $7,933)*

(c) The consequences to T include the following:

(i) As in *Example 1,* the MADSP for T is $120,000.

(ii) Old T does not recognize gain or loss upon its deemed sale of the T1 stock.

(iii) The MADSP allocable to the land is $66,667 and T recognizes capital gain of $16,667.

(iv) Assume that, under § 1.1502–33(d), old T's allocable share of the S group's consolidated tax liability for 1992 is $5,667.

(v) Old T takes into account old T1's earnings and profits of $15,400, determined as of the close of the acquisition date but after the deemed sale by T1 of its asset.

(vi) As of the close of the acquisition date, but after the deemed sale of its assets, old T's earnings and profits are $48,350, *i.e.,* $21,950 + $15,400 + ($16,667 – $5,667).

(d) The consequences to S1 include the following:

(i) S1 does not recognize gain or loss upon its sale of the old T stock to P.

(ii) S1 takes into account old T's earnings and profits of $48,350, determined as of the close of the acquisition date but after the deemed sale of old T's assets.

(e) P's basis in the new T stock is P's cost for the old T stock, $80,000.

Example 6. (a) The facts are the same as in *Example 5*, except that P already owns 20 percent of the T stock which constitutes nonrecently purchased stock. Assume further that P's basis in the shares of nonrecently purchased T stock is $6,000 and that P paid $64,000 for the 80 percent of old T stock purchased from S1.

(b) The results are the same as in *Example 5*, except that:

(i) S1 takes into account 80 percent of old T's earnings and profits of $48,350, or $38,680, determined as of the close of the acquisition date but after the deemed sale of the T and T1 assets.

(ii) P is deemed to have made a gain recognition election for the nonrecently purchased T stock. As a result, it recognizes gain of $10,000 and P's basis in the nonrecently purchased T stock is increased from $6,000 to $16,000. P's basis in all the T stock is $80,000 (*i.e.*, $64,000+$16,000). The computations are as follows:

(A) P's grossed-up basis for the recently purchased T stock is $64,000 (*i.e.*, $64,000 (the basis of the recently purchased T stock)×(1−.2)/(.8) (the fraction in section 338(b)(4)).

(B) P's basis amount for the nonrecently purchased T stock is $16,000 (*i.e.*, $64,000 (the grossed-up basis in the recently purchased T stock)×(.2)/(1.0−.2) (the fraction in section 338(b)(3)(B)).

(C) The gain recognized on the nonrecently purchased stock is $10,000 (*i.e.*, $16,000 − $6,000).

(h) *Inapplicability of provisions.* The provisions of section 6043 and § 1.332–6 (relating to information returns and record keeping requirements for corporate liquidations) do not apply to the constructive section 332 liquidation of T as provided by paragraph (e) (3) of this section.

§ 1.338 (l)–1 Effective dates.

(a) *In general.* Sections 1.338–1 through 1.338–5, 1.338 (b)–1, and 1.338 (h) (10)–1 are effective for targets with acquisition dates on or after [Insert date final regulations are filed with the **Federal Register**]. For targets with acquisition dates before [Insert date final regulations are filed with the **Federal Register**], *see* §§ 1.338–1T through 1.338–6T, 1.338 (b)–1T, and 1.338 (h) (10)–1T as in effect before [Insert date final regulations are filed with the **Federal Register**].

(b) *MADSP.* Section 1.338 (h) (10)–1 (f), which requires use of the MADSP formula to determine deemed sale price, is effective for qualified stock purchases for which the acquisition date is on or after November 10, 1986, unless the acquisition occurs pursuant to a binding contract entered into before that date.

Par. 7. In the list below, for each section indicated in the left column, remove the wording indicated in the middle column from wherever it appears in that section, and add the wording indicated in the right column.

Affected section	Remove	Add
§ 1.338 (b)–2T (c) (2).	§ 1.338 (b)–1T (f) (2).	§ 1.338 (b)–1 (f) (2)
§ 1.338 (b)–2T (c) (3) (i).	§ 1.338–4T (j) (2).	§ 1.338 (b)–1 (e) (2)
§ 1.338 (b)–2T (c) (3) (ii).	§ 1.338 (b)–1T (c) (1).	§ 1.338 (b)–1 (c) (1)
§ 1.338 (b)–2T (c) (3) (ii).	§ 1.338–4T (h) (3) *Answer 2* (ii).	§ 1.338–3 (d) (2) (ii)
§ 1.338 (b)–2T (d).	§ 1.338 (b)–1T.....	§ 1.338 (b)–1
§ 1.338 (b)–2T (d) *Example (2)* (iii).	paragraph (d) of § 1.338 (b)–1T.	§ 1.338 (b)–1 (d)
§ 1.338 (b)–2T (d) *Example (2)* (iv).	§ 1.338–4T (h)	§ 1.338–3 (d) (2) (ii)
§ 1.338 (b)–3T (e) (1).	§ 1.338 (b)–1T	§ 1.338 (b)–1
§ 1.338 (b)–3T (g) (1) (i).	§ 1.338 (b)–1T.....	§ 1.338 (b)–1
§ 1.338 (b)–3T (h) (1) (ii).	§ 1.338–4T (h) or § 1.338 (h) (10)–1T (f) (2).	§ 1.338–3 (d) (or § 1.338 (h) (10)–1 (f)
§ 1.338 (b)–3T (j) *Example (4)* (ii).	§ 1.338–4T (h) (3) *Answer 2* (ii) (B).	§ 1.338–3 (d) (4)
§ 1.338 (b)–3T (j) *Example (6)* (vii).	§ 1.338–4T (h) (3).	§ 1.338–3 (d)
§ 1.338 (b)–3T (j) *Example (7)* (v).	§ 1.338–4T (h) (3).	§ 1.338–3 (d)
§ 1.921–1T (b) (1) A–1	§ 1.338–1T (c).....	§ 1.338–1 (d)

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 92–718 Filed 1–13–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

28 CFR Part 65

[INS No. 1449–91; AG Order No. 1553–92]

Emergency Federal Law Enforcement Assistance

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend part 65 of title 28 of the Code of Federal Regulations by adding a new subpart I entitled "Immigration Emergency Fund." This new subpart will establish procedures for State and local governments to obtain reimbursement from the Attorney General, up to a maximum of $20,000,000, from the immigration emergency fund for services provided at the Attorney General's request to aid in the enforcement of United States immigration laws.

DATES: Written comments must be submitted on or before February 13, 1992.

ADDRESSES: Please submit written comments, in triplicate, to Records System Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. The envelope and the comments should bear the legend, "Comments on Proposed Amendment to 28 CFR, part 65."

FOR FURTHER INFORMATION CONTACT: Michael J. Coster, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW., room 7048, Washington, DC 20536, telephone (202) 514–1260.

SUPPLEMENTARY INFORMATION: This proposed rule implements section 404(b) of the Immigration and Nationality Act (Act) (8 U.S.C. 1101 note), as amended by section 705 of the Immigration Act of 1990, Pub. L. No. 101–649, 104 Stat. 5067 ("IMMACT"), relating to the immigration emergency fund. Previously, section 404(b) authorized an annual appropriation to maintain a balance of $35,000,000 in an immigration emergency fund to provide for an increase in border patrol or other enforcement activities of the Service and to reimburse States and localities for providing immigration assistance as requested by the Attorney General in meeting an immigration emergency. Before the Attorney General could reimburse States and localities, however, section 404(b) required the President to determine that an immigration emergency existed and to certify such fact to the Judiciary Committee of the House of Representatives and of the Senate.

While leaving these authorities unchanged, IMMACT adds a new section 404(b)(2), which authorizes the Attorney General to expend up to $20,000,000 of the immigration emergency fund "for the reimbursement of States and localities providing assistance as required by the Attorney General" in three additional circumstances: whenever an INS district director certifies to the Commissioner that the number of asylum applications filed in the respective district during a calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter; whenever the lives,

property, safety, or welfare of the residents of a State or locality are endangered; or in any other circumstances as determined by the Attorney General. In these circumstances, section 404(b)(2) eliminates the requirement that the President certify an immigration emergency and requires that the Attorney General make a decision with respect to an application for reimbursement within 15 days after the date of receipt of the application.

This proposed rule establishes the procedures under which States and localities may obtain reimbursement under amended section 404(b)(2) of the Act (8 U.S.C. 1101 note).

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, and it does not have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 28 CFR Part 65

Grant programs-law, Law enforcement, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, it is proposed to amend part 65 of title 28 of the Code of Federal Regulations as follows:

1. The authority citation for part 65 is revised to read as follows:

Authority: 8 U.S.C. 1101 note; 42 U.S.C. 10501–10513.

2. Part 65 is amended by adding a new subpart I to read as follows:

Subpart I—Immigration Emergency Fund

65.80 General.
65.81 Assistance requested by the Attorney General.
65.82 Procedures for seeking Assistance.
65.83 Procedures for applying for reimbursement.

Subpart I—Immigration Emergency Fund

§ 65.80 General.

These regulations set forth the procedures by which States and localities may seek reimbursement for law enforcement assistance requesting by the Attorney General pursuant to section 404(b)(2) of the Immigration and Nationality Act ("Act"), (8 U.S.C. 1101 note), as amended by section 705 of the Immigration Act of 1990, Public Law 101–649.

§ 65.81 Assistance requested by the Attorney General.

In accordance with the procedures established in § 65.82 of this subpart, the Attorney General may request assistance from a State or local government in enforcing the immigration laws of the United States, and may reimburse those governments for this assistance from the immigration emergency fund, to the extent allowed by law, whenever:

(a) A district director of the Immigration and Naturalization Service ("Service") certifies to the Commissioner of the Service, who shall, in turn, certify to the Attorney General, that the number of asylum applications filed in that director's district during the relevant calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter;

(b) The Attorney General determines that circumstances involving the administration of the immigration laws of the United States exist which endanger the lives, property, safety, or welfare of the residents of a State or locality; or

(c) The Attorney General determines that other circumstances exist in which it would be appropriate to seek assistance from a State or local government in administering the immigration laws of the United States.

§ 65.82 Procedure for seeking assistance.

(a) When the Attorney General determines to seek assistance from a State or local government under § 65.81 of this subpart, the Attorney General shall negotiate the terms and conditions of that assistance with that government and shall set forth those terms and conditions in a reimbursement agreement.

(b) All such reimbursement agreements shall contain the procedures under which the State or local government is to obtain reimbursement for its assistance. All agreements shall include the title of the official to whom claims are to be submitted, the frequency with which such claims are to be submitted, a description of the supporting documentation to be submitted, and any limitations on the total amount of reimbursement that will be provided.

(c) In exigent circumstances, the Attorney General may agree to reimburse a State or local government without a formal written reimbursement agreement. A reimbursement agreement conforming to the specifications in this section shall be reduced to writing as soon as practicable.

§ 65.83 Procedures for applying for reimbursement.

(a) In the event that the chief executive of a State or local government believes that any of the conditions set forth in § 65.81 of this subpart exists, he or she may apply to the Attorney General on behalf of the State or local government for entry into a reimbursement agreement as described in § 65.82 of this subpart. Each application shall be submitted in writing, and shall set forth all relevant details supporting the application, the nature of the assistance for which the State or local government wishes to be reimbursed, and a jurisdiction for the amount of reimbursement being sought.

(b) If the Attorney General determines that reimbursement under paragraph (a) is appropriate, the Attorney General may enter into a reimbursement agreement with the State or local government in the same manner as if he or she had determined to seek assistance under § 65.81 of this subpart.

(c) The Attorney General shall consider all applications for reimbursement under paragraph (a) of this section in order of receipt until the Attorney General has expended the maximum allowable statutory amount under section 404(b)(2)(B) of the Act. In accordance with section 404(b)(2)(D) of the Act, the Attorney General shall make a decision with respect to an application for reimbursement within 15 calendar days after the date of receipt of the application.

(d) In exigent circumstances, the requirements in this section respecting the form, contents and order of consideration of applications, including the requirement in paragraph (a) that applications be submitted in writing, may be waived by the Attorney General.

Dated: January 3, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–813 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AE13

Group Memorial Monuments

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its

regulations to provide group memorial monuments. VA currently provides memorial monuments for individual deceased veterans and eligible dependents but not for groups of two or more individuals whose remains have not been recovered or identified. The effect of this amendment is to provide memorial monuments for such groups when members of the group have perished in a common military event, if requested by next of kin. Documentary evidence must be forwarded from the respective branch of service (Departments of Air Force, Army, and Navy, the Coast Guard, and the Marine Corps) historical center to support the request for group memorial monuments.

DATES: Comments must be received on or before February 13, 1992. Comments will be available for public inspection until February 24, 1992. It is proposed to make these regulations effective 30 days after publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposed regulation to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, of the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. George Vogel, Chief, Program Analysis and Planning Service (403C), Office of Memorial Programs, National Cemetery System, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 275–1206.

SUPPLEMENTARY INFORMATION: VA provides monuments for veterans and eligible dependents and operates under the authority of 38 U.S.C. 2306 and 2400–2407. Under the authority of 38 U.S.C. 2403(b), VA may erect memorial monuments in national cemeteries to individuals or groups of individuals whose remains have never been recovered or identified. Regulations have been published regarding provision of monuments for individuals, but not for groups of individuals whose remains have not been recovered or identified. Under this proposal, VA would be authorized to provide memorial monuments at national cemeteries for such groups when members of the group have perished in a common military event, when requested by next of kin. These group memorial monuments will be in accordance with the policies outlined in 38 U.S.C. 2403 and 38 CFR 1.630.

Executive Order 12291

This proposed regulation is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions; will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Secretary certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed regulation will concern only a small group of veterans who will be honored by the placement of group memorial monuments in selected national cemeteries. This proposed regulation imposes no regulatory, administrative, or paperwork burdens on any type of small entity.

Catalog of Federal Domestic Assistance Numbers for programs affected by this regulation are 64.200, 64.201 and 64.202.

List of Subjects in 38 CFR Part 1

Administrative practice and procedures, Cemeteries, Claims, Privacy, Security measures.

Approved: November 18, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is proposed to be amended as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for chapter 1, §§ 1.600 to 1.632 is revised to read as follows:

Authority: 38 U.S.C. 501, unless otherwise noted.

2. In § 1.630, paragraph (c) is revised and an authority citation is added to read as follows:

§ 1.630 Headstones and markers.

* * * * *

(c) A memorial monument furnished for a deceased veteran by the Government may be erected in a private cemetery or in a national cemetery section established for this purpose. The monuments for national cemeteries will be of the standard design authorized for the cemetery in which they are to be erected. In addition to the authorized inscription, the words "In Memory Of" are mandatory.

(Authority: 38 U.S.C. 501)

3. In § 1.631, an authority citation is added at the end of the section to read as follows:

§ 1.631 Eligibility for headstone or marker.

* * * * *

(Authority: 38 U.S.C. 2306)

4. Section 1.633 and its authority citation are added to read as follows:

§ 1.633 Group memorial monuments.

(a) *Definitions of terms.* For the purpose of this regulation, the following definitions apply:

(1) *Group*—all the known and unknown dead who perished in a common military event.

(2) *Memorial Monument*—a monument commemorating veterans, whose remains have not been recovered or identified. Monuments will be selected in accordance with policies established under 38 CFR 1.630.

(3) *Next of kin*—recognized in order: Surviving spouse; children, according to age; parents, including adoptive, stepparents, and foster parents; brothers or sisters, including half or stepbrothers and stepsisters; grandparents; grandchildren; uncles or aunts; nephews or nieces; cousins; and/or other lineal descendent.

(4) *Documentary evidence*—Official documents, records, or correspondence signed by an Armed Services branch historical center representative attesting to the accuracy of the evidence.

(b) The Secretary may furnish at government expense a group memorial monument upon request of next of kin. The group memorial monument will commemorate two or more identified members of the Armed Forces, including their reserve components, who died in a sanctioned common military event, (e.g., battle or other hostile action, bombing or other explosion, disappearance of aircraft, vessel or other vehicle) while in active military, naval or air service, and whose remains were not recovered or identified, were buried at sea, or are otherwise unavailable for interment.

(c) A group memorial monument furnished by VA may be placed only in a national cemetery in an area reserved for such purpose. If a group memorial monument has already been provided under this regulation or by any governmental body, e.g., The American Battle Monuments Commission, to

commemorate the dead from a common military event, an additional group memorial monument will not be provided by VA for the same purpose.

(d) Application for a group memorial monument shall be submitted in a manner specified by the Secretary. Evidence used to establish and determine eligibility for a group memorial monument will conform to paragraph (a)(4) of this section.

(Authority: 38 U.S.C. 501, 2403)

[FR Doc. 92-931 Filed 1-13-92; 8:45 am]
BILLING CODE 8320-01-M

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38 CFR Part 3

RIN 2900-AF60

Burial of Unclaimed Bodies of Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its rules concerning burial of the unclaimed bodies of certain veterans. The intended effect of the proposal is to allow VA regional office Directors greater flexibility in making burial arrangements when the body of a veteran has not been claimed by friends or relatives.

DATES: Comments must be received on or before February 13, 1992. This amendment is proposed to be effective on the date of publication of the final rule. Comments will be available for public inspection until February 24, 1992.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 170, at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, N.W., Washington, DC 20420, telephone (202) 233-3005.

SUPPLEMENTARY INFORMATION: It has been VA's longstanding policy to ensure that the unclaimed bodies of veterans receive a proper, dignified burial. VA regional office Directors currently are authorized to arrange for their burial in national cemeteries. Several states, however, do not have national cemeteries or have national cemeteries that are inconvenient to some locations. In these situations, the regional office Directors often incur high costs for transportation of the bodies.

Many states operate cemeteries or cemetery sections used solely for the interment of persons eligible for burial in national cemeteries. Where these cemeteries meet the high standards of operation currently required of national cemeteries, we believe that they would proye to be acceptable alternatives to national cemeteries for burial of unclaimed bodies of veterans. In some cases, burial in state-owned cemeteries could also result in reduced costs to the government by involving lower expenses for transportation of the body.

We, therefore, are proposing to revise 38 CFR 3.1610 to allow regional office Directors greater latitude in arranging for burial of the unclaimed bodies of veterans. The proposed change would allow a regional office Director to pay the cost of transporting unclaimed bodies to certain state-owned cemeteries as well as to national cemeteries, provided that the total amount paid by VA for transportation to and burial in a state-owned facility not exceed the total amount payable if burial had been in a national cemetery. The nonservice-connected plot allowance would be included as part of the total amount payable by VA, but only if entitlement is otherwise established. Under 38 CFR 3.1604(d), payment of this allowance may be made to the states if certain conditions are met.

The rule as proposed would not obligate a state to allow burial, nor would it require that VA regional office Directors arrange for burial in state-owned cemeteries under specific circumstances. The proposal offers an option that may be exercised if an acceptable alternative is available which would not result in greater expense to the government. A regional office Director should exercise discretion in selecting the place of interment and may always arrange for burial in a national cemetery.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), the amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not cause a major increase in costs or prices;

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.101.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: December 2, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended to read as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart B is amended to read as follows:

Authority: 105 Stat. 386, 38 U.S.C. 501(a), 2302-2308, unless otherwise noted.

2. Section 3.1610 and the section heading are revised, and a new authority citation is added to read as follows:

§ 3.1610 Burial in national cemeteries; burial of unclaimed bodies.

The statutory burial allowance and permissible transportation charges as provided in § 3.1600 through 3.1611 are also payable under the following conditions:

(a) Where burial of a deceased veteran is in a national cemetery, provided that burial in a national cemetery is desired by the person or persons entitled to the custody of the remains for interment and permission for burial has been received from the officers having jurisdiction over burials in national cemeteries; or

(b) where the body of a deceased veteran is unclaimed by relatives or friends (see § 3.1603), the Director of the regional office in the area in which the veteran died will immediately complete arrangements for burial in a national

cemetery or, at his or her option, in a cemetery or cemetery section meeting the requirements of § 3.1604(d)(1)(ii)-(iv), provided that the total amount payable for burial and transportation expenses (including the plot allowance, if entitlement is established) does not exceed the total amount payable had burial been in a national cemetery.
(Authority: 38 U.S.C. 501(a))

* * * * *

[FR Doc. 92-885 Filed 1-13-92; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-4092-9]

Open Meeting on How To Develop a National Rule on Architectural and Industrial (AIM) Maintenance Coatings

AGENCY: Environmental Protection Agency.

ACTION: Open Meeting—part of convening effort to determine feasibility/desirability of developing a National AIM Coatings Rule by Regulatory Negotiation or some other Consensus-Building process.

SUMMARY: As part of its ongoing convening effort to determine the most effective way to reduce emissions of volatile organic compounds (VOC) from the use of paints and coatings, EPA is announcing a meeting of those affected by the Agency's current plans to develop a Federal rule for coatings that are applied outdoors—AIM Coatings.

The purpose of the meeting is to discuss: data collection needs and how to meet them; the scope, timing, participants, and ground-rules for a negotiation or consensus-building effort; and other issues of concern to affected parties.

DATES: The meeting will start at 9 a.m. and end by 5 p.m. on February 4.

ADDRESSES: The meeting will be held at the Guest Quarters Suites Hotel, 2515 Meridian Parkway, Durham, North Carolina, 27713. (919) 361-4660.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should call Ellen Ducey of EPA's Office of Air Quality Planning and Standards, (919) 541-5408, or FTS: 8-629-5408. For further information on administrative matters such as meeting arrangements, please contact Barbara Stinson of the Keystone Center, the AIM co-convenor at 303-468-5822.

Dated: January 9, 1922.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 92-941 Filed 1-13-92; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Pacific Coast Population of the Western Snowy Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the Pacific coast population of the western snowy plover (*Charadrius alexandrinus nivosus*) as threatened pursuant to the Endangered Species Act of 1973, as amended (Act). The Pacific coast breeding population of the western snowy plover extends from the State of Washington to Baja California, Mexico, with the majority of breeding birds found in California. These plovers winter primarily in coastal California and Mexico. The Pacific coast population of the western snowy plover is threatened throughout its range in the United States by loss and disturbance of nesting sites. This proposed rule, if made final, would extend the Act's protection to the Pacific coast population of the western snowy plover in the United States and Mexico. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by March 16, 1992. Public hearing requests must be received by February 28, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Field Supervisor, at the above address or telephone (916) 978-4613; FTS 460-4613.

SUPPLEMENTARY INFORMATION:

Background

Taxonomy

The snowy plover is a small, pale colored shorebird with dark patches on either side of the upper breast. The species was first described in 1758 by Linnaeus (American Ornithologists' Union 1957). Twelve subspecies of the snowy plover occur worldwide (Rittinghaus 1961 *in* Jacobs 1986).

Two subspecies of the snowy plover are recognized in North America (American Ornithologists' Union 1957). These are the western snowy plover (*Charadrius alexandrinus nivosus*) and the Cuban snowy plover (*C. a. tenuirostris*). According to the American Ornithologists' Union (1957), the western snowy plover breeds on the Pacific coast from southern Washington to southern Baja California, Mexico, and in interior areas of Oregon, California, Nevada, Utah, New Mexico, Colorado, Kansas, Oklahoma, and north-central Texas, as well as coastal areas of extreme southern Texas, and possibly extreme northeastern Mexico. Although previously observed only as a migrant in Arizona, small numbers have bred there in recent years (Monson and Phillips 1981 and Davis and Russell 1984 *in* Page *et al.* 1991). The Cuban snowy plover breeds along the Gulf coast from Louisiana to western Florida and south through the Caribbean. The subspecific status of populations breeding east of the Rocky Mountains has been questioned (Johnsgard 1981, Jacobs 1986). These populations are considered to belong more appropriately to the subspecies *tenuirostris*.

The Pacific coast population of the western snowy plover is defined as those individuals that nest adjacent to or near tidal waters, and includes all nesting colonies on the mainland coast, peninsulas, offshore islands, adjacent bays, and estuaries.

The Pacific coast population of the western snowy plover is considered to be distinct from western snowy plovers breeding in the interior (Gary Page, Point Reyes Bird Observatory, pers. comm., 1990). Evidence of intermixing between coastal and interior populations is limited to one documented instance—one banded female hatched at Monterey Bay was observed nesting the following year at Mono Lake, California (Gary Page, *in litt.*, 1989). Three snowy plovers banded as chicks on the California coast were observed at interior Oregon breeding sites during the breeding season in 1990 (Stern *et al.* (1991). No nesting, however, was documented. No breeding plovers banded at Abert Lake, an interior

breeding site in Oregon, were observed breeding at any coastal site (Stern *et al.* 1990).

Life History

The Pacific coast population of the western snowy plover breeds primarily on coastal beaches from southern Washington to southern Baja California, Mexico. Nesting habitat is unstable and ephemeral as a result of unconsolidated soil characteristics influenced by high winds, storms, wave action, and colonization by plants. Other less common nesting habitat includes salt pans, coastal dredged spoil disposal sites, dry salt ponds, and salt pond levees (Widrig 1980, Wilson 1980, Page and Stenzel 1981). Sand spits, dune-backed beaches, unvegetated beach strands, open areas around estuaries, and beaches at river mouths are the preferred coastal habitats for nesting (Stenzel *et al.* 1981, Wilson 1980).

Based on the most recent surveys, a total of 28 snowy plover breeding sites or areas currently occur on the Pacific coast of the United States. Two sites occur in southern Washington—one at Ledbetter Point, in Willapa Bay (Widrig 1980), and the other at Damon Point, in Grays Harbor (Anthony 1985). In Oregon, nesting birds were recorded in six locations in 1990 with three sites (Bayocean Spit, North Spit Coos Bay and spoils, and Bandon State Park-Floras Lake) supporting 81 percent of the total number of nesting birds in coastal Oregon (Oregon Department of Fish and Wildlife, unpubl. data, 1991). A total of 20 plover breeding areas currently occur in coastal California (Page *et. al.* 1991). Eight areas support 78 percent of the California coastal breeding population: San Francisco Bay, Monterey Bay, Morro Bay, the Callendar-Mussel Rock Dunes area, the Point Sal to Point Conception area, the Oxnard lowland, Santa Rosa Island, and San Nicolas Island (Page *et al.* 1991).

Snowy plovers breed in loose colonies with the number of adults at coastal breeding sites ranging from 2 to 381 (Page and Stenzel 1981; Oregon Department of Fish and Wildlife 1990; Eric Cummins, Washington Department of Wildlife, pers. comm., 1991; James Atkinson, U.S. Fish and Wildlife Service, pers. comm., 1991). On the Pacific coast, larger concentrations of breeding birds occur in the south than in the north, suggesting that the center of the plovers' coastal distribution lies closer to the southern boundary of California (Page and Stenzel 1981). If coastal southern California lies in the center of the species distribution, then Baja California may also support substantial breeding populations (Page and Stenzel 1981). Although Wilbur (1987) describes the snowy plover as a common resident of both coasts of the Baja California, only five nesting sites have been verified on the Pacific coast side of the northern province of Baja California (Gary Page, pers. comm., 1991). No quantitative information on nesting colonies has been collected.

Nest sites typically occur in flat, open areas with sandy or saline substrates; vegetation and driftwood are usually sparse or absent (Widrig 1980, Wilson 1980, Stenzel *et al.* 1981). The majority of snowy plovers are site-faithful, returning to the same breeding site in subsequent breeding seasons. Birds often nest in the exact locations as the previous year (Warriner *et al.* 1986).

The breeding season of the coastal population of the western snowy plover extends from mid-March through mid-September. Nest initiation and egg laying occurs from mid-March through mid-July (Wilson 1980, Warriner *et al.* 1986). The usual clutch size is three eggs. Incubation averages 27 days (Warriner *et al.* 1986). Both sexes incubate the eggs.

Plover chicks are precocial, leaving the nest within hours after hatching to search for food. Fleging (reaching flying age) requires an average of 31 days (Warriner *et al.* 1986). Broods rarely remain in the nesting territory until fledging (Warriner *et al.* 1986).

Snowy plovers will renest after loss of a clutch or brood (Wilson 1980, Warriner *et al.* 1986). Double brooding and polygamy (i.e., the female successfully hatches more than one brood in a nesting season with different mates) have been observed in coastal California (Warriner *et al.* 1986) and may also occur in Oregon (Jacobs 1986) After loss of a clutch or brood or successful hatching of a nest, plovers may renest in the same colony site or move, sometimes up to several hundred miles, to other colony sites to nest (Gary Page, pers. comm., 1991; Warriner *et al* 1986).

Widely varying nest success (percentage of nests hatching at least one egg) and reproductive success (number of fledged per female, pair, or nest) are reported in the literature. Nest success ranges from 0 to 80 percent for coastal snowy plovers (Widrig 1980, Wilson 1980, Saul 1982, Wilson-Jacobs and Dorsey 1985, Wickham unpub. data *in* Jacobs 1986, Warriner *et al.* 1986). Instances of low nest success have been attributed to a variety of factors, including predation, human disturbance, and inclement weather conditions. Reproductive success ranges from 0.05 to 2.40 young fledged per female, pair or nest (Page *et al.* 1977, Widrig 1980, Wilson 1980, Saul 1982, Warriner *et al.* 1986, Page 1988). Page *et al.* (1977) estimated that snowy plovers must fledge 0.8 young per female to maintain a stable population. Reproductive success falls far short of this threshold at many nesting sites (Widrig 1980, Wilson 1980, Warriner *et al.* 1986, Page 1988, Page 1990).

The coastal population of the western snowy plover consists of both resident and migratory birds. Some birds winter in the same areas used for breeding (Warriner *et al.* 1986, Wilson-Jacobs, pers. comm. *in* Page *et al.* (1986). Other birds migrate either north or south to wintering areas (Warriner *et al.* 1986). Plovers occasionally winter in southern coastal Washington (Brittell *et al.* 1976). Up to 100 plovers may winter in Oregon, primarily on 3 beach segments (Page *et al.* 1986, Oregon Department of Fish and Wildlife 1990). The majority of birds, however, winter from Bodega Bay, California, south (Page *et al.* 1986). Wintering plovers occur in widely scattered locations on both coasts of Baja California and significant numbers have been observed on the mainland coast of Mexico at least as far south as San Blas, Nayarit (Page *et al.* 1986). Many interior birds west of the Rocky Mountains winter on the Pacific coast (Page *et al.* 1986). Birds winter in habitats similar to those used during the nesting season.

Snowy plovers forage on invertebrates in the wet sand and amongst surf cast kelp within the intertidal zone; in dry, sandy areas above the high tide; on salt pans; and along the edges of salt marshes and salt ponds. Little quantitative information is available on food habits (Reader 1951).

Poor reproductive success, resulting from human disturbance, predation, and inclement weather, combined with permanent or long-term loss of nesting habitat to urban development and encroachment of introduced European beachgrass (*Ammophila arenaria*) has led to a decline in active nesting colonies as well as an overall decline in the breeding and wintering population of the western snowy plover along the Pacific coast of the United States.

Petition Background

On March 24, 1988, the Service received a petition from Dr. J.P. Myers of the National Audubon Society to list the Pacific coast population of the western snowy plover as a threatened species under the Act. On November 14, 1988, the Service published a 90-day petition finding (53 FR 45788) that substantial information had been presented

indicating the requested action may be warranted. At that time, the Service acknowledged that questions pertaining to the demarcation of the subspecies and significance of interchange between coastal and interior stocks of the subspecies remained to be answered. Public comments were requested on the status of the coastal population of the western snowy plover. A status review of the entire subspecies has been in progress since the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454). In that notice, as in subsequent notices of review (September 18, 1985 (50 FR 37958); January 6, 1989 (54 FR 554)), the western snowy plover was included as a category 2 candidate. Category 2 candidates are species for which information now in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. The public comments period on the petition was closed on July 11, 1989 (54 FR 26811, June 26, 1989). The Service completed a status report on the western snowy plover in September 1989. Based on the best scientific and commercial data available and other comments submitted during the status review, the Service made a 12-month petition finding on June 25, 1990, that the petitioned action was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Publication of this proposed rule constitutes the final finding on the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 49(a)(1). These factors and their application to the Pacific coast population of the western snowy plover (*Charadrius alexandrinus nivosus)* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Historic records indicate that nesting western snowy plovers were once more widely distributed in coastal California, Oregon, and Washington than they are currently. In coastal California, snowy plovers bred at 53 locations prior to 1970 (Page and Stenzel 1981). Since that time, no evidence of breeding birds has been found at 33 of these 53 sites, representing a 62 percent decline in breeding sites (Page and Stenzel 1981). The greatest losses of breeding habitat were in southern California, within the central portion of the snowy plover's coastal breeding range. In Oregon, snowy plovers historically nested at 29 locations on the coast (Charles Bruce, Oregon Department of Fish and Wildlife, pers. comm., 1991). In 1990 only six nesting colonies remained, representing a 79 percent decline in active breeding sites. In Washington, snowy plovers formerly nested in at least five sites on the coast (Eric Cummins, pers. comm., 1991). Today only two colony sites remain active, representing, at minimum, a 60 percent decline in breeding sites.

In addition to loss of nesting sites, declines in the overall breeding population also have been documented in Oregon and California. Breeding season surveys of the Oregon coast from 1978 to 1990 show that the number of adult snowy plovers has declined significantly at an average annual rate of about 6 percent (calculated from Oregon Department of Fish and Wildlife data). The average number of adults has declined from 90 to 57 over this time period (Oregon Department of Fish and Wildlife 1990). If the current trend continues, breeding snowy plovers could disappear from coastal Oregon within the next 10 years. In 1981, the coastal California breeding population of snowy plovers was estimated to be 1,565 adults (Page and Stenzel 1981). In 1989, surveys revealed 1,386 plovers (Page *et al.* 1991), an 11 percent decline in the breeding population. The population decline in California may be greater than indicated. The 1989 survey results are considered more reliable than the earlier estimates which may have underestimated the overall population size (Gary Page, pers. comm., 1991).

Although there are no historic data for Washington, it is doubtful that the snowy plover breeding population in Washington was ever very large (Brittell *et al.* 1976). However, loss of nesting sites in this State probably has resulted in a reduction in their overall population size. In recent years, less than 30 birds have nested on the southern coast of Washington (James Atkinson, pers. comm. 1990; Eric Cummins, pers. comm., 1991).

Survey data also indicate a decline in wintering snowy plovers particularly in southern California. The number of snowy plovers observed during Christmas Bird Counts from 1962 to 1984 significantly decreased in southern California despite an increase in observer participation in the counts (Page *et al.* 1986). This observed decline was not accompanied by a significant loss of wintering habitat over the same time period (Page *et al.* 1986).

Human activity (e.g., walking, jogging, running pets, horseback riding, off-road vehicle use, and beach raking) is believed to be a primary factor in these observed declines in snowy plover coastal breeding sites and breeding populations in California, Oregon, and Washington. Snowy plovers also are subjected to similar high levels of human disturbance at nesting sites in Baja California, Mexico (Barbara Massey, Proesteros, pers. comm., 1990; Daniel Anderson, University of California, Davis, pers. comm., 1990). With 81 percent of the Oregon snowy plover population supported at three of six remaining nesting sites and 78 percent of the California population breeding in eight areas, loss of just a few of these sites could dramatically reduce the coastal plover population.

The nesting season of the western snowy plover (mid March to mid September) coincides with the season of greatest human use of beaches of the west coast (Memorial Day through Labor Day). Human activities of particular detriment to nesting snowy plovers include unintentional disturbance and trampling of eggs and chicks by people (Stenzel *et al.* 1981, Warriner *et al.* 1986), off-road vehicle use (Widrig 1980, Stenzel *et al.* 1981, Anthony 1985, Warriner *et al.* 1986, Page 1988), horseback riding (Woolington 1985, Page 1988), and beach raking (Stenzel *et al.* 1981). Page *et al.* (1977) found that snowy plovers were disturbed more than twice as often by such human activities than all other natural causes combined.

Intensive beach use by humans results in abandonment of nesting sites or reductions in nesting density or nesting success. In southern California where human activity on beaches is extensive, plover nesting is restricted to managed preserves. The disappearance of nesting plovers at South Beach on the Oregon coast coincided with opening of a new State park adjacent to the beach (Wilson 1980). Nipomo Dunes beach in southern California, which receives high human use, including significant off-road vehicle activity, supported one-fifth the density of plover nests as occurred at Point Purisima beach, within Vandenberg Air Force Base (closed to public use) (Sentzel *et al.* 1981). This relationship held true even though nesting habitat at Nipomo Dunes was of higher quality than that of Point

Purisima. Hatching success was found to be much lower on Zmudowski State Beach in Monterey County, California, than on an undisturbed salt pan just 1 kilometer (km) away (Warriners, unpubl. data *in* Page and Stenzel 1981).

In the few instances where human intrusion into snowy plover nesting areas has been precluded either through area closures or by natural events, nesting success has improved. The average number of young fledged per nesting pair increased from 0.75 to 2.00 after the nesting site at Leadbetter Point, Washington, was closed to human activities (Saul 1982). Similarly, vehicle closure on a portion of Pismo Beach, California, led to an eight-fold increase in the nesting plover population (W. David Shuford, Point Reyes Bird Observatory, *in litt.*, 1989). Fledging success increased 16 percent at Moss Landing Beach, California, after beach access was virtually eliminated by the 1989 earthquake (Page 1990).

When beach visitors travel through plover nesting areas, plovers flush repeatedly. Incubating plovers at Point Reyes left their nests in response to human activity 65 to 78 percent of the time when disturbances occurred within 100 meters (m) or less or nests (Page *et al.* 1977). Dogs intimidated plovers even more, with plovers flushing more frequently and remaining off their nests significantly longer when disturbed by people with dogs versus people without dogs (Page *et al.*, 1977).

Prolonged absences from the nest and the subsequent longer incubation period increase the likelihood of nest failures by prolonging exposure of eggs and nesting birds to predators (Page *et al.* 1983) and other detrimental factors. High levels of human disturbance also may increase check mortality by altering chick behavior. Frequently disturbed piping plover chicks fed less often and at a reduced rate (Flemming *et al.* 1988). Fewer chicks survived to 17 days in areas heavily disturbed by humans. Human disturbance also may increase exposure of eggs or chicks to inclement weather. In an attempt to avoid intruders, adult snowy plovers have been observed leaving chicks wet and unattended in the rain (Wilson 1980) and allowing wind blown sand to bury their eggs (Charles Bruce, pers. comm., 1991). Prolonged absences from the nest on sunny days may result in overheating of the eggs.

In addition to indirect effects, direct losses of chicks and adults also result from human activities. In the Monterey Bay area, two males were found run over on their nests (J.P. Myers, National Audubon Society, *in litt.*, 1988). Chicks and adults are particularly vulnerable because of their habit of crouching in depressions, such as tire tracks or footprints. Vehicle tracks have been noted in nesting areas at a number of beaches, including Damon Point (Anthony 1985) and Leadbetter Point (Widrig 1980) in Washington; New River (Wickham 1981) and Coos Bay (Oregon Department of Fish and Wildlife 1990) in Oregon; and Point Reyes (Page 1988) and the Pajaro River mouth (Warriner *et al.* 1986) in California. On military bases, such as Camp Pendleton in California, plovers are directly and indirectly affected by military training exercises on the beach (Loren Hays, U.S. Fish and Wildlife Service, pers. comm., 1991).

In all of Los Angeles County and parts of Orange County, California, entire beaches are raked on a daily to weekly basis to remove trash and tidal debris. Even if human activity was low on these beaches, grooming activities completely preclude the possibility of successful nesting attempts (Stenzel *et al.* 1981). Plover food availability on raked beaches also may be depressed for both breeding and wintering birds, because surf cast kelp and associated invertebrates are removed and the upper centimeter of the sand substrate is disturbed (J.P. Myers, *in litt.*, 1988).

Habitat destruction is also an important factor contributing to the loss of snowy plover breeding sites. The construction of residential and industrial developments, and recreational facilities, including placement of access roads, parking lots, summer homes, and supportive services, have permanently eliminated valuable nesting habitat on southern Washington (Brittell *et al.* 1976), Oregon (Oregon Department of Fish and Wildlife 1990), and California beaches (Page and Stenzel 1981). Snowy plover use of man-made habitat, such as salt evaporators and dredged spoil sites, apparently has not compensated for loss or degradation of habitat in other areas (Page and Stenzel 1981).

Another important factor contributing to habitat loss for coastal breeding snowy plovers is encroachment of European beachgrass (*Ammophila arenaria*). This non-native plant was introduced to the west coast around 1989 to stabilize dunes (Wiedemann 1987). Since then it has spread up and down the coast and now is found from British Columbia to southern California (Ventura County). Stabilizing sand dunes with European beachgrass has reduced the amount of unvegetated area above the tideline, decreased the width of the beach, and increased its slope. These changes have reduced the amount of potential snowy plover nesting habitat on many beaches. It is currently a major dune plant at about 50 percent of California breeding sites and all of those in Oregon and Washington (J.P. Myers, *in litt.*, 1988). The presence of beachgrass may also adversely affect plover food supplies. The abundance and diversity of sand dune arthropods are markedly depressed in areas dominated by European beachgrass (Slobodchikoff and Doyen 1977).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Egg collecting has been observed at several California nesting colonies (Stenzel *el al.* 1981, Warriner *et al.* 1986). The significance of this factor on nesting success is unknown.

C. Disease or Predation

Western snowy plover eggs, chicks, and adults are taken by a variety of avian and mammalian predators. These losses, particularly to avian predators, are exacerbated by human disturbances. Of the many predators, American crows (*Corvus brachyrhynchos*), ravens (*C. corax*), and red fox (*Vulpes vulpes*) have had a significantly adverse affect on reproductive success at several colony sites. Because crows and ravens, in particular, thrive in urban/agricultural areas, present-day coastal populations of these species are probably greater than historic populations. At nesting sites on the Oregon coast, nest losses of up to 68 percent have been attributed to crows and ravens (Wilson-Jacobs and Meslow 1984). Ravens were also significant predators at a Point Reyes breeding site, destroying 67–69 percent of the clutches in 1988–1989 (Page 1988, Page 1990). In recent years, concern has increased regarding loss of snowy plover nests to the introduced eastern red fox. The fox apparently now occurs throughout the Monterey Bay area (John and Jane Warriner, Point Reyes Bird Observatory, *in litt.*, 1989), in San Francisco Bay (Leora Feeney, Biological Field Services, pers. comm., 1991), and in Orange County, California (Gary Page, *in litt.*, 1988). At the Marina breeding site in Monterey Bay, red fox destroyed 45 percent of the nests in 1988 (Page 1988). This predator was also the likely cause of nest failures at least at three other breeding sites in Monterey Bay in 1989–1990 (Page 1990). In the Salinas River area, the number of chicks fledged between 1984 and 1989 was reduced by 75 percent as red fox expanded into the area (John and Jane Warriner, *in litt.*, 1989).

Although predation represents an important mortality factor at several colony sites, the significance of

predation on the overall coastal population of the snowy plover is unknown. Nevertheless, this factor remains an issue of concern.

D. The Inadequacy of Existing Regulatory Mechanisms

The western snowy plover is protected by the Federal Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) and by State law as a nongame species. The plover's breeding habitat, however, is not protected by these laws. In the State of Washington, the western snowy plover was listed as an endangered species in 1981 by the Wildlife Commission. This designation, however, does not provide for consultation between the Department of Wildlife and other State agencies regarding impacts of proposed projects on the snowy plover. Preparation of a management plan for the snowy plover is not required under State law. There are also no penalties imposed under Washington law for take of endangered species' habitat. In Oregon, the plover was listed as a threatened species in 1975. The Oregon Threatened and Endangered Species Act of 1987 requires other State agencies to consult with the Department of Fish and Wildlife. The State Act, however, does not provide adequate protection for either the birds or their habitat. A management plan for the snowy plover in Oregon is currently being developed (Oregon Department of Fish and Wildlife 1990). Although protective measures are being implemented on an experimental basis at some nesting sites (Charles Bruce, pers. comm., 1990) and many beaches have been closed to vehicles, a comprehensive conservation program has yet to be implemented in this State. In California, where the majority of nesting occurs, the snowy plover is classified as a "Species of Special Concern" (Remsen 1978). This designation provides no special, legally mandated protection. Snowy plovers have no protective status in Mexico.

The Clean Water Act (section 404) and the Rivers and Harbors Act (section 10) are the primary Federal laws that could provide some protection of nesting and wintering habitat of the western snowy plover that is determined by the U.S. Army Corps of Engineers (Corps) to be wetlands or navigable waters of the United States. These laws, however, do not afford any special protection for candidate species, and would apply to only a small fraction of the nesting and wintering areas of the western snowy plover on the Pacific coast.

In 1985, the Nongames Program of the Service prepared management guidelines for the western snowy plover (Fish and Wildlife Service 1985), which included strategies to reduce human disturbance at nesting sites and prevent structural alteration of breeding habitat. Some management actions have been carried out since publication of the guidelines, but major strategies have yet to be implemented.

E. Other Natural or Man-Made Factors Affecting its Continued Existence

Because the majority of snowy plover nesting sites occur in unstable sandy substrates, nest losses caused by weather-related natural phenomena commonly occur. Events such as extreme high tides (Wilson 1980, Stenzel *et al.* 1981, Warriner *et al.* 1986, Page 1988), river flooding (Stenzel *et al.* 1981), and heavy rain (Wilson 1980, Warriner *et al.* 1986, Page 1988) have been reported to destroy or wash away individual nests as well as entire colony sites. Winddriven sand contributes to nest failure by burying eggs (Wilson 1980, Stenzel *et al.* 1981, Warriner *et al.* 1986). The percentage of total nest losses attributed to weather-related phenomena has varied from 15 to 38 percent (Wilson 1980, Warriner *et al.* 1986, Page 1988). Although natural phenomena contribute significantly to nest failures at some plover breeding sites, the significance of this factor on the overall coastal breeding population is unknown.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Pacific coast population of the western snowy plover in determining to issue this proposed rule. Based on this evaluation, the preferred action is to list the Pacific coast population of the western snowy plover (*Charadrius alexandrinus nivosus*) as threatened. This population of the western snowy plover is threatened by loss and modification of nesting habitat resulting from human development of the coast, encroachment of European beachgrass, and extensive human recreational use of nesting areas. Predation, which is often exacerbated by human disturbance, poses a significant threat to a number of nesting colonies. The Act's definition of an endangered species is a species which is in danger of extinction throughout all or a significant portion of its range. A threatened species is a species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Because the center of the breeding range of the coastal population is in California where the numbers of breeding birds are greater and have not declined as dramatically as in Washington and Oregon, the Service believes the snowy plover is not currently in danger of extinction. However, the population is likely to become in danger of extinction in the foreseeable future if the impacts analyzed in this proposed rule continue. Thus the Pacific coast population of the western snowy plover fits the Act's definition of threatened. Critical habitat is not determinable at this time for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not presently determinable for the Pacific coast population of the western snowy plover. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently known to permit identification of an area of critical habitat. Critical habitat is defined as "specific areas within the geographical area currently occupied by a species * * * on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection * * *" (50 CFR 424.02(d)).

The breeding and wintering range of the coastal population of the western snowy plover is extensive, discontinuously covering over 1,930 km (1,200 miles) of coastline in the United States. Designation of critical breeding habitat is complicated by the ephemeral nature of the substrate at many of the colony sites, movements of breeding birds among colony sites, and lack of information on the value of adjacent tide flats, salt marshes, lagoons, rivers, and salt ponds in maintaining breeding birds. Although nesting sites of the western snowy plover have been carefully documented, very few of the 28 coastal nesting areas have been studied sufficiently to determine exactly where broods move to feed during the fledgling stage. In the absence of this information, the conservative approach would be to designate entire stretches of beach as critical habitat. Accurate information on brood movements, however, would allow for refinement of critical habitat boundaries and a better understanding of how human activities can be

successfully integrated during the breeding season. The relative importance of specific wintering habitat sites to maintenance of the coastal population of the subspecies also has not been determined at this time. The Service will work with plover experts to collect and refine information on the physical and biological features of plover habitat that are essential to conservation of the species and which may require special management considerations or protection. Analyses have not been conducted on the impacts of designating critical breeding or wintering habitat.

During the proposed comment period, the Service will seek additional agency and public input on critical habitat, along with information on the biological status of and threats to the snowy plover. The Service intends to use this and other information in order to make a determination on a proposed designation of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and all the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies that may be involved as a result of this proposed rule are the Service, Bureau of Land Management, National Park Service, U.S. Forest Service, and the Departments of the Army (including the Corps of Engineers (Corps)), Navy, and Air Force. In California, approximately 34 percent of the breeding plover population occurs on Federal lands (J.P. Myers, *in litt.*, 1988). At least 50 percent of breeding habitat is under Federal agency jurisdiction in Oregon (J.P. Myers, *in litt.*, 1988). In Washington, the breeding site at Leadbetter Point is within a National Wildlife Refuge.

On most Federal land containing active breeding sites, few measures have been implemented specifically to protect snowy plovers. In a few areas in California, plovers have benefitted somewhat from protective measures taken for the endangered California least tern (*Sterna antillarum browni*). At Vandenberg Air Force Base in southern California, beaches are closed to all foot and vehicular traffic during the least tern nesting season (Donna Brewer, U.S. Fish and Wildlife Service, pers. comm., 1991). Dogs and cattle have been restricted from some beaches at Point Reyes National Seashore (Gary Page, pers. comm., 1991), and some beaches on Federal land in Oregon have been closed to vehicles to protect plovers and other wildlife (Charles Bruce, pers. comm., 1991). Leadbetter Point in Washington (Fish and Wildlife Service) and a 10-acre spoil disposal site in Coos Bay in Oregon (Bureau of Land Management) are the only nesting sites where human access is restricted specifically for plover nesting. Most other nesting areas on Federal land, with the exception of military bass, have unrestricted human access all year. Access improvements for recreational purposes are ongoing at several beaches. At Coos Bay, Oregon, where the largest coastal Oregon plover colony occurs, several recreational facilities, including off-road vehicle access and campgrounds are proposed on Bureau of Land Management land (Bureau of Land Management 1989).

Because human disturbance is a primary factor affecting snowy plover reproductive success, any of the above mentioned Federal agencies would be required to consult with the Service if any action they fund, authorize, or carry out may affect the coastal population of the western snowy plover.

As discussed above, some western snowy plover nesting and wintering habitat may be regulated by the Corps under section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act. If a proposed project may affect the western snowy plover, the Corps would be required to consult with the Service under section 7 of the Act.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife not covered by a special rule. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any such species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits for threatened species not covered by a special rule are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. There are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

If the western snowy plover is listed under the Act, the Service will review it to determine whether it should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8(A)(e) of the Act, and whether it should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited.

Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this subspecies;

(2) The location of any additional populations of this subspecies;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this subspecies;

(5) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(6) Constituent habitat elements critical for the conservation of the coastal population of the western snowy plover;

(7) The location of additional nesting or wintering areas, including areas in Baja California, Mexico;

(8) The location of areas important for other life history stages, especially feeding areas, and the relative value of such areas in maintaining breeding birds;

(9) Any foreseeable economic and other impacts resulting from a proposed critical habitat designation; and

(10) Economic values associated with benefits of designating critical habitat for this subspecies. Such benefits include those derived from non-consumptive uses (birdwatching, beachwalking, photography, etc.).

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Karen J. Miller, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, Sacramento Field Office, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846 (916/978–4613) or FTS 460–4613).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1554; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 1711(h) by adding the following, in alphabetical order under Birds, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
Plover, western snowy.	*Charadrius alexandrinus nivosus.*	U.S.A. (CA, OR, WA, NV, AZ, UT, CO, NM, TX, OK, KS); Mexico.	U.S.A. (CA, OR, WA); Mexico (Baja CA) (Pacific coast population only).	T		NA	NA

Dated: January 6, 1992

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–897 Filed 1–14–92; 8:45 am]

BILLING CODE 4310–55–M

VOL 57 ISS 9 JA 14 1992 UMI

Notices

Federal Register
Vol. 57, No. 9
Tuesday, January 14, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Lakeside Elementary Critical Area Treatment RC&D Measure Plan, West Virginia; Finding of No Significant Impact

AGENCY: U.S. Department of Agriculture, Soil Conservation Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lakeside Elementary Critical Area Treatment RC&D Measure Plan, Putnam County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, Telephone (304) 291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Notice of a Finding of No Significant Impact

The purpose of the measure is critical area treatment for erosion control. The measure is designed to stabilize by regrading, shaping, and revegetating approximately 1 acre of land that has an average erosion rate of 75 tons per acre per year. Conservation practices include vegetated diversion, land smoothing, seeding, and mulching.

Lakeside Elementary Critical Area Treatment RC&D Measure Plan, Putnam County, West Virginia

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

"This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials."

Dated: December 19, 1991.

Rollin N. Swank,

State Conservationist.

[FR Doc. 92–905 Filed 1–13–92; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 549]

Resolution and Order Approving the Application of the City of Fort Wayne, IN for a Foreign-Trade Zone in Fort Wayne, IN; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Fort Wayne, Indiana, filed with the Foreign-Trade Zones Board on September 4, 1990, and amended on February 22, 1991, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Fort Wayne, Indiana, adjacent to the Fort Wayne Customs user fee airport, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the City of Fort Wayne, Indiana, has made application (filed September 4, 1990, FTZ Docket 38–90, 55 FR 38373; and amended on February 22, 1991, 56 FR 8740) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in the Fort Wayne, Indiana, area, adjacent to the Fort Wayne Customs user fee port facility;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 182, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 23 day of December 1991, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 92-951 Filed 1-13-92; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 83-91]

Proposed Foreign-Trade Zone—Fort Worth, Texas, Area Application

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Alliance Corridor, Inc. (a Texas non-profit corporation), requesting authority to establish a general-purpose foreign-trade zone in the Alliance Corridor area between Fort Worth and Denton, Texas, adjacent to the Dallas-Fort Worth Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 6, 1991. The applicant is authorized to make the proposal under Article 1446.01, Vernon's Annotated Texas Statutes.

The proposed Alliance Corridor zone project would become the fourth general-purpose zone project in the Dallas-Fort Worth Customs port of entry area. The existing zones in th area are: FTZ 39 at the DFW International Airport (Grantee: Dallas-Fort Worth Regional Airport Board, FTZ Board Order 133, 43 FR 37478, 8/23/78); FTZ 113 at the Mid-Texas International Center in Midlothain (Grantee: Midlothian Trade Zoned Corporation, Board Order 283, 50 FR 300, 1/3/85); and, FTZ 168 at three industrial parks in the Dallas-Fort Worth area (Grantee: Dallas-Fort Worth Maquila Trade Development Corporation, FTZ Board Order 491, 55 FR 46974, 11/8/90).

The proposed new general-purpose zone would consist of 4 sites (9,700 acres) within the Alliance Corridor project (17,000 acres), a master-planned development located along a 20-mile stretch of I–25W between the Cities of Fort Worth and Denton, Texas. Site 1 (Alliance Center, 4,470 acres) is a business and industrial development located at the Alliance Airport on Interstate 35W in the Cities of Fort Worth and Haslet, Texas, some 17 miles north of downtown Fort Worth. Site 2 (Alliance Gateway, 1,900 acres) is within a 2,600-acre commercial, industrial and distribution development located along State Highway 170 between Interstate 35W and State Highway 114 in Fort Worth and Roanoke, Texas, 15 miles north of downtown Fort Worth. Site 3 (Northlake, 1,600 acres) is located at Interstate 35W and State Highway 114 in the City of Northlake, Texas. Site 4 (Hunter Ranch, 1,600 acres) is within a 3,350-acre mixed-use development located in Denton, Texas, on Interstate 35W, approximately 5 miles south of downtown Denton, and 10 miles north of the Alliance Airport.

The development of the Alliance Corridor project involves a partnership of state/local/federal officials and private industry, including the Perot Group. Its central point is the new Alliance Airport which was completed and opened in 1989 as a general aviation airport and international air cargo facility. The four sites involved in the zone project are owned by affiliates of Hillwood Development Corporation, except for a few parcels owned by private users. Alliance Trade Authority, Inc., has been designated as zone operator.

The application indicates a need for additional zone services in the Dallas-Fort Worth area to serve the development needs of the Alliance Corridor. Several firms have indicated an interest in using zones procedures for processing, sorting, assembly, display and warehousing such items as aircraft, welding machines and special alloy welding supplies. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Donna De La Torre, Director, Office of Inspection and Control, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Suite 500, Houston, Texas 77057–3012; and Colonel John A. Mills, District Engineer, U.S. Army Engineer District, Fort Worth, P.O. Box 17300, Fort Worth, Texas 76102–0300.

Comments concerning the proposed zone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before March 16, 1992. While no local public hearing has been scheduled for the FTZ Board, consideration will be given to such a hearing during the review.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 1100 Commerce Street, room 7A5, Dallas, Texas 75242.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: January 8, 1992.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 92-952 Filed 1-13-92; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[A-122-047]

Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On September 26, 1991, the Department of Commerce published the preliminary results of its antidumping duty administrative review and intent to revoke in part the antidumping finding on elemental sulphur from Canada. The review covers one exporter, Sulco Chemicals, Ltd. (Sulco), and the period December 1, 1989 through November 30, 1990.

We gave interested parties an opportunity to comment on our preliminary results and intent to revoke in part. We received no comments. Our final results are unchanged from the preliminary results, and we revoke the antidumping finding in part with respect to Sulco.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 48777) the preliminary results of antidumping duty administrative review and intent to revoke in part the antidumping finding on elemental sulphur from Canada (38 FR 35655, December 17, 1973). On July 13, 1991, the Department verified Sulco's questionnaire response. The Department received no comments concerning this administrative review. We have now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of elemental sulphur from Canada. During the review period such merchandise was classifiable under Harmonized Tariff System (HTS) item 2501.01.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of Canadian elemental sulphur to the United States, Sulco, and the period December 1, 1989 through November 30, 1990.

United States Price

We based United States price (USP) on purchase price (PP), in accordance with section 772(b) of the Tariff Act, because all sales were made directly to unrelated parties prior to importation into the United States. We calculated PP based on unpacked f.o.b. refinery or delivered prices to unrelated customers in the United States. We made adjustments, were appropriate, for foreign inland freight, demurrage, brokerage and handling expenses, and credit costs. No other adjustments were claimed or allowed.

Foreign Market Value

We based foreign market value (FMV) on home market prices to unrelated parties, in accordance with section 773 of the Tariff Act. We calculated FMV based on unpacked f.o.b. refinery or delivered prices to unrelated customers in the home market. We made adjustments, were appropriate for inland freight, demurrage, and credit costs. No other adjustments were claimed or allowed.

Final Results of the Review

We invited interested parties to comment on our preliminary results and intent to revoke in part. We received no comments. As a result, our final results of review are unchanged from those presented in the preliminary results of review, and we determine that a zero margin exists for the period December 1, 1989 through November 30, 1990.

Revocation in Part

For the reasons set forth in the preliminary results, because we are satisfied that there is no likelihood of resumption of sales at less than fair value and because petitioner has not objected to our tentative revocation, we revoke in part the antidumping finding on elemental sulphur from Canada with respect to Sulco. See, 19 CFR 352.25(b). This partial revocation applies to all unliquidated entries of this merchandise exported by Sulco and entered, or withdrawn from warehouse, for consumption on or after December 1, 1990.

Cash Deposit Requirements

Because Sulco's margin is zero the Department will instruct the Customs Service to collect no cash deposits for Sulco. The following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) For the subject merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews, the cash deposit rate will continue to be the rate published in the most recent final results for which the manufacturer or exporter received a company specific rate; (2) if the exporter is no a firm covered in this review or prior reviews, but the manufacturer is, the cash deposit rate will be that established in the most recent review of that manufacturer; (3) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firm or any previously reviewed firm, will be zero percent. This is the most current non-best-information-available rate for any reviewed firm in this proceeding.

This administrative review, revocation in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)), 19 CFR 353.22, and 19 CFR 353.25.

Dated: December 31, 1991.

Alan M. Dunn,
Assistant Secretary for Import Administration.

[FR Doc. 92-953 Filed 1-13-92; 8:45 am]
BILLING CODE 3510-DS-M

[C-401-401]

Certain Carbon Steel Products From Sweden; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 25, 1991, the Department of Commerce (the Department) published the preliminary results of its administrative review of the countervailing duty order on certain carbon steel products from Sweden for the period January 1, 1989 through December 31, 1989 (56 FR 48517). We have now completed that review and determine the total subsidy to be 2.56 per cent *ad valorem*. This rate differs from the preliminary results because of minor calculation adjustments.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 25, 1991, the Department published in the **Federal Register** (56 FR 48517) the preliminary results of its administrative review of the countervailing duty order on certain carbon steel products from Sweden (50 FR 41547; October 4, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments from Sweden of cold-rolled carbon steel flat-rolled products, whether or not corrugated or crimped; whether or not pickled, not cut, not pressed and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width and of any thickness; whether or not in coils. During the review period, such merchandise was classifiable under item numbers 7209.11.00, 7209.12.00, 7209.13.00, 7209.21.00, 7209.22.00, 7209.23.00, 7209.24.50, 7209.31.00, 7209.32.00, 7209.33.00, 7209.34.00, 7209.41.00, 7209.43.00, 7209.44.00, 7209.90.00, 7211.30.50, 7211.41.70, and 7211.49.50 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 30, 1989 and the following programs: (1) Regional development incentives; (2) reconstruction loans; (3) structural loans; (4) government equity infusions; (5) government acquisition of assets for Svenskt Staal AB (SSAB); (6) research and development grants; (7) employment promotion grants; (8) government export credits; (9) municipal and county subsidies; and (10) government restructuring program for the specialty steel industry.

SSAB was the only Swedish exporter of the subject merchandise to the United States during the review period.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the respondent, SSAB.

Comment 1: The respondent states that the Department's preliminary results note that SSAB received no benefit from past equity infusions in 1989. The respondent also states that SSAB did not receive any significant new government funds for several years prior to 1989. Therefore, SSAB argues that the increase in the total subsidy in 1989 from the amount in 1987 can only be characterized as a computational anomaly.

Department's Positon: We agree with the respondent that there was no benefit from the government equity infusion during the review period, and that SSAB has not received any new preferential government loans. The total subsidy did not decline in 1989 over the 1987 figure due to the additional reconstruction loans which were written-off between 1987 and 1989, and the marginal increase in the interest rate differential on four structural loans.

Comment 2: The respondent claims that it is unable to reconcile reconstruction loans for certain investments and reconstruction loans for loss coverage in the Department's calculation with the information submitted in the Government of Sweden's questionnaire response.

Department's Position: We used the outstanding loan balance as reported in SSAB's 1989 financial statements to calculate the reconstruction loans as of January 1, 1989. Specifically, note 18 of SSAB's 1989 financial statements, "conditional reconstruction loans", reported long-term liabilities of 167,000,000 SEK and a contingent liability of 508,000,000 SEK. Some of the reconstruction loans are classified as a contingent liability because, according to the terms of the reconstruction loans, interest is paid only when a dividend is paid to the stockholders in an amount equal to the dividend. We include both long-term liabilities and contingent liabilities to calculate the outstanding loan balance. See Certain Carbon Steel Products from Sweden; Preliminary Results of Countervailing Duty Administrative Review (56 FR 19091, 19092, April 25, 1991). Therefore, we used the aggregate figure of 675,000,000 SEK for all reconstruction loans, which represents the outstanding balance for certain investments and loss coverage.

Comment 3: The respondent argues that the amount written off for reconstruction loans includes more than 375 million Swedish kronor (MSEK) capitalized interest, but the Department only deducted 39 MSEK.

Department's Position: The 375 MSEK capitalized interest claimed by the respondent represents capitalized interest on the outstanding balances for amounts written off in 1987 through 1989. We do not accumulate capitalized interest written off in prior review periods. However, we agree with the respondent that the 39 MSEK figure for capitalized interest was incorrect.

In the preliminary results, we deducted the interest payment and capitalized interest of 39 MSEK. After further examination, we recalculated capitalized interest on the remaining outstanding balance on the reconstruction loan that was written off during 1989, which is higher than 39 MSEK. We have now adjusted our calculation to reflect this amount of capitalized interest. As a result, the benefit from reconstruction loans is 1.14 percent compared to 1.54 percent in the preliminary calculations.

Comment 4: The respondent argues that the Department incorrectly included a loan in the amount of 15 MSEK in its calculation, which is the balance on a 30 MSEK reconstruction loan that was transferred to the Government of Sweden in 1987.

Department's Position: We used an aggregate figure from SSAB's financial statements and notes to the financial statements to calculate the outstanding reconstruction loan balance. The financial statements did not indicate that the outstanding balance should be reduced as a result of the transfer of the 15 MSEK loan to the Government of Sweden; and, therfore, we have not taken this claimed transfer into account in our calculations.

Comment 5: The respondent states that most of the reconstruction loans were approved in 1978, when the weighted cost of capital (WCC) was 9.9 percent. Therefore, the respondent argues that the Department should apply the "grant cap" rule to these reconstruction loans using the WCC applicable in the year of the loan agreement, which would result in a lower benefit.

Department's Position: We disagree with the respondent. Because the

interest rate changes every year on the reconstruction loans, we treated them as short-term variable interest rate loans. We do not calculate the grant equivalent of short-term loans. See Certain Carbon Steel Products from Sweden; Preliminary Results of Countervailing Duty Administrative Review (53 FR 85883, 85884, September 15, 1988). Moreover, since these loans are not totally drawn down in the year of the loan agreement, it is inappropriate to apply the grant cap to these loans using the WCC in the year of the loan agreement.

Comment 6: The respondent argues that the Department recalculated the variable rate structural loans using the second-period interest rates and applying them retroactively to the first five-year interest period of each loan, rather than to the second-period.

Department's Position: We disagree with the respondent. We did not apply the second-period interest rates retroactively to the loans in the first five-year interest period. The interest rate on the variable rate structural loans is fixed for successive five-year periods, the first beginning at the end of the three-year interest-free period. In 1989, the interest rate changed on four loans, entering those loans into the second five-year interest period. We applied SSAB's new interest rates to those loans only. We calculated discrete grant equivalents for each five-year period. The grant equivalent of each five-year period is the sum of the present values (calculated back to the year of receipt of the loan) of the annual interest differentials for that period. We calculated a separate grant equivalent for the interest benefits accuring during the three-year interest-free grace period and allocated that amount over the 25-year life of the loan.

In the preliminary results, we did not adjust the benchmark interest rate on those variable rate loans that entered into the second five-year interest period to coincide with the new preferential interest rate. We have now recalculated the interest rate differentials using the prevailing benchmark interest rate in 1989 and the preferential interest rate beginning in the first year of the second five-year period.

Comment 7: The respondent argues that some loans were incorrectly amortized over a 25-year period rather than the actual 20-year period.

Department's Position: We agree with the respondent. We have now amortized all structural loans over a 20-year period. Due to this adjustment and the minor calculation adjustments described in *Comments 3 and 6*, we determine the benefit from the structural loans to be 0.51 percent *ad vvalorem*.

Final Results of Review

As a result of our review, we determine the total subsidy during the period January 1, 1989 through December 31, 1989 to be 2.56 percent *ad valorem*. After reviewing all of the comments received, we have changed the rate from the preliminary results of review because of minor calculation adjustments.

The Department will instruct the Customs Service to assess countervailing duties of 2.56 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties as provided by section 751(a)(1) of the Tariff Act of 2.56 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22 (1991).

Dated: January 7, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-954 Filed 1-13-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-037]

Cotton Yarn From Brazil; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 19, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Brazil (56 FR 47456; September 19, 1991). We have now completed that review and determine the net subsidy to be zero for one firm, 0.20 percent *ad valorem* for one firm, 7.75 percent *ad valorem* for one firm and 1.29 percent *ad valorem* for all other firms for the period January 1, 1990 through December 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth Levy or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 47456) the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Brazil (42 FR 14089; March 15, 1977). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Brazilian cotton yarn, carded but not combed, wholly of cotton. During the review period, such merchandise was classifiable under item numbers 5205.11.10, 5205.11.20, 5205.12.10, 5205.12.20, 5205.13.10, 5205.13.20, 5205.14.10, 5205.14.20, 5205.15.10, 5205.15.20, 5205.31.00, 5205.32.00, 5205.33.00, 5205.34.00, and 5205.35.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through december 31, 1990, nine companies and six programs: (1) Income Tax Reduction for Export Earnings; (2) Reductions of Taxes and Import Duties through BEFIEX; (3) SUDENE Regional Tax Exemption; (4) CACEX Preferential Working Capital Financing for Exports; (5) Preferential Export Financing under CIC-OPCRE of the Banco do Brasil; and (6) Preferential Financing for Industrial Enterprises by the Banco do Brasil (FTS and EGF loans).

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52325; December 27, 1988). First, we calculated a country-wide rate, weight-

averaging the benefits received by the nine companies subject to review to determine the overall subsidy from all countervailable programs benefitting exports of the subject merchandise to the United States. Because the country-wide rate was above *de minimis*, as defined by 19 CFR 355.7, we proceeded to the next step in our analysis and examined the *ad valorem* rate we had calculated for each company for all countervailable programs combined, to determine whether individual company rates differed significantly from the weighted-average country-wide rate. Two companies received aggregate benefits which were zero or *de minimis* (significantly different within the meaning of 19 CFR 355.22(d)(3)(ii)); one company, Fiacao Nordeste do Brasil S.A.—Finobrasa, received aggregate benefits which were otherwise significantly different in accordance with 19 CFR 355.22(d)(3)(i). These three companies must be treated separately for assessment and cash deposit purposes.

The remaining six companies received aggregate benefits from all countervailable programs combined which were not significantly different from the weighted-average country-wide rate; their rates were used in the calculation to establish the "all other" rate for the review period. See, *e.g.*, Final Results of Countervailing Duty Administrative Review; Certain Apparel from Argentina (56 FR 41823; August 23, 1991) and Final Results of Countervailing Duty Administrative Review; Ceramic Tile from Mexico (56 FR 27496; June 14, 1991).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a written comment from the Government of Brazil. The comment was timely within the meaning of 19 CFR 355.38(c)(1)(ii).

Comment: The Government of Brazil claims that the "Imposto sobre Produtos Industrializados" (IPI), a tax exemption, on four of the nineteen pieces of equipment imported under BEFIEX contracts should not be included in the calculation of the BEFIEX benefit for Fiacao Nordeste do Brasil S.A.—Finobrasa. In support of its claim, the Government of Brazil cites Article 17 of Brazilian Decree-Law 2.433, of May 19, 1988, as amended by Decree-Law 2451 of July 29, 1988, which states that the IPI tax exemption is available to all imports of machinery.

Department's Position: We disagree. We requested detailed information on BEFIEX from the Government of Brazil and Finobrasa in the original questionnaire of April 17, 1991. In Finobrasa's response of July 11, 1991, it reported one aggregate amount for the total import duty and tax exemptions received under BEFIEX. In a supplemental questionnaire issued July 19, 1991, we requested more detailed information on the imports and benefits received under BEFIEX. Finobrasa responded on August 7, 1991, with a table entitled "BEFIEX Exemptions." This table listed the import duty and tax exemptions received during the review period on each piece of equipment imported under BEFIEX. The table contained four asterisks in the "IPI tax payable" labelled column indicating that these four pieces of equipment received and IPI exemption. The asterisks referred to a footnote which stated "IPI exemption on imports of machinery [that] was given pursuant to Decree-Law 2.433 of May 19, 1988, article 17, as amended by Decree-Law 2.451 of July 19, 1988 . . . this is a generally available benefits."

The IPI tax portion of BEFIEX copntracts has been found countervailable in all Brazilian countervailing duty cases where BEFIEX was used. The Department has never made a determination in any Brazilian countervailing duty investigation or review that Decree-Law 2.433, as amended, rendered the IPI tax exemption non-countervailable. While the decree indicates that the IPI tax exemption is now available to companies other than those with BEFIEX contracts, the Government of Brazil has not submitted any information demonstrating that the IPI tax exemption is, in fact, used by more than a specific group of enterprises, industries or groups thereof. Therefore, we do not have sufficient information in this administrative review upon which to base a redetermination of the IPI tax exemption.

Accordingly, we have included both the import duty exemption and the IPI tax exemption in our calculations of Finobrasa's BEFIEX benefit.

Firms Not Receiving Benefits

We determine that the following firms received zero or *de minimis* benefits during the period January 1, 1990 through December 31, 1990:

(1) Unitika do Brasil Industria Textil Ltda.
(2) Fiacao e Tecelagam Kanebo do Brasil S.A.

Final Results of Review

After considering the comments received, we recommend that the net subsidy remain unchanged from the preliminary determination at zero for one firm *de minimis* for one firm, 7.75 percent *ad valorem* for one firm, and 1.29 percent *ad valorem* for all other firms.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of Brazilian cotton yarn from the two firms with zero benefits listed above, and to assess countervailing duties of 7.75 percent of the f.o.b. invoice price on shipments of this merchandise from Fiacao Nordeste do Brasil S.A.—Finobrasa, and 1.29 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after January 1, 1990 and exported on or before December 31, 1991.

The Department also will instruct the Customs Service to waive the collection of cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on any shipments of merchandise from the two firms with zero or *de minimis* benefits listed above, and to collect a cash deposit of estimated countervailing duties of 7.75 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Fiacao Nordeste do Brasil S.A.—Finobrasa. The elimination of the Income Tax Reduction for Export Earnings program on April 12, 1990 decreases the total estimated duty deposit rate for all other firms from 1.29 percent to 0.93 percent of the f.o.b. invoice price on shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. The deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: December 31, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-855 Filed 1-13-92; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review: Certain Aluminum-Killed Cold-Rolled Steel Sheet

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments: Certain aluminum-killed cold-rolled steel sheet.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 350 metric tons of certain aluminum-killed cold-rolled steel sheet for the first quarter of 1992 under Article 8 of the U.S.-E.C. steel arrangement.

SHORT SUPPLY REVIEW NUMBER: 63.

SUPPLEMENTARY INFORMATION: Pursuant to section 4 (b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357 104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain aluminum-killed ("AK") cold-rolled steel sheet used in the manufacture of aperture masks, a fundamental component of color television picture and data display tubes. On January 8, 1992, the Secretary received an adequate petition from Buckbee Mears Cortland, Inc. ("BMC") requesting a short-supply allowance for 350 metric tons of certain AK cold-rolled steel sheet for the first quarter of 1992 under Article 8 of the Arrangement Between the European Coal and Steel Community and the Government of the United States of America Concerning Trade in Certain Steel Products. BMC requests the following quantities of four different sizes of AK cold-rolled steel sheet: 45 metric tons that are 18.62 inches in width and 0.0060 inch in thickness, 70 metric tons that are 19 inches in width and 0.0068 inch in thickness, 190 metric tons that are 24 inches in width and 0.0068 inch in thickness, and 45 metric tons that are 27 inches in width and 0.0060 inch in thickness. BMC states that the requested product is not produced domestically and that its potential European supplier does not have sufficient export licenses available during this period.

The requested product meets the following specifications:

*Chemistry (*in maximum values): Carbon (0.004 percent, aim 0.002 percent); Silicon (0.040 percent); Sulfur (0.030 percent); Aluminum (0.070 percent); Nitrogen (0.008 percent); Manganese (0.450 percent); Copper (0.080 percent); Phosphorus (0.035 percent); and Iron (remainder); the total of these elements excluding iron not to exceed one percent;

Width Tolerance: +/− 0.04 inch;

Thickness Tolerance: +0.00028 inch, −0.00020 inch;

Coil Weight: 1.5 to 3.0 metric tons, with a maximum of 20 percent in 0.5 to 1.5 metric ton weights per single shipment.

Section 4(b)(4)(B)(i) of the Act and § 357 106(b)(1) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds, on the basis of available information, that this product is not produced in the United States at this time. Therefore, in accordance with section 4(b)(4)(B)(i)(III) of the Act and § 357 106(b)(1)(iii) of Commerce's Short-Supply Procedures, the Secretary will apply a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice proving that they can and will produce the requested quantity of this product within the desired period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than January 23, 1992.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than January 21, 1992 to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply number.

FOR FURTHER INFORMATION CONTACT: Mark Brechtl or Kathy McNamara, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377–1386 or (202) 377–1390.

Dated: January 10, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–1026 Filed 1–13–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Virginia Electric and Power Co. From an Objection by the State of North Carolina

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On October 3, 1991, the Secretary of Commerce (Secretary) received a notice of appeal from the Virginia Electric and Power Company (Appellant). The Appellant is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of North Carolina Department of Environment, Health and Natural Resources (State) to the Appellant's consistency certification that its proposal for a Federal Energy Regulatory Commission license amendment involving the permanent, consumptive withdrawal of approximately 60,000,000 gallons of water each day from Lake Gaston (located just north of the Virginia-North Carolina border), is consistent with the State s coastal zone management program.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal

agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). (Section 307(c)(3)(A).) To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I and Ground II. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives or purposes contained in section 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonably alternative is available that would permit the activity to be conducted in a manner consistent with North Carolina's coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Mary Gray Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235. Copies of comments should also be sent to Roger N. Schecter, Director, Division of Coastal Management, State of North Carolina, Department of Environment, Health and Natural Resources, 225 North McDowell Street, Raleigh, North Carolina 27602.

All nonconfidential documents submitted in this appeal are available for pubic inspection during business hours at the offices of the State of North Carolina, Department of Environment, Health and Natural Resources and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Mary Gray Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606–4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: January 8, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92–678 Filed 1–13–92; 8:45 am]

BILLING CODE 3510-08-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Pacific Northwest Crab Industry Advisory Committee (PNCIAC) will meet on January 29, 1992, in room 20939, in building 4 of the Alaska Fisheries Science Center, Seattle, WA. The meeting will begin at 8:30 a.m.

The PNCIAC will consider the following agenda items:

(1) Review the status of Tanner crab hybird management in the Bering Sea, (2) review crab issues before the March 1992 Board of Fisheries meeting; (3) review industry proposals for the March 1993 Board of Fisheries shellfish meeting (deadline for submission of proposals is April 10, 1992); and (4) discuss other business.

For more information contact Brent Paine, North Pacific Fishery Mangement Council, P.O. Box 103136, Anchorage, AK 99510; telephone (907) 271–2809; or contact Richard White, PNCIAC Chairman, P.O. Box 97019, Redmond, WA 98073; telephone (206) 881–8181.

Dated: January 8, 1992.,

David S. Crestin,

Deputy Director Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–845 Filed 1–13–92; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Correction of Notice of Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The date of a public meeting of the North Pacific Fishery Management Council, originally published as January 17, 1992, at 56 FR 67599 on December 31, 1991, was incorrect. The correct date, and beginning time, for this meeting is January 15, 1992, at 8 a.m. The agenda as published in December 31 is unchanged.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: January 9, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–963 Filed 1–13–92; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) will hold a public meeting on January 27–31, 1992 at the Council's office (address below).

The STT will begin its meeting on January 27 at 1 p.m., to draft the "Review of 1991 Ocean Salmon Fisheries" and begin assessment of the impacts of ocean fisheries on salmon stocks listed or proposed for listing under the Endangered Species Act.

Public comment pertaining to the assessment of the 1991 ocean salmon fisheries may be provided at appropriate times as determined by the STT chairman.

For more information contact John Coon, Staff Officer (salmon), Pacific Fishery Management Council, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone (503) 326–6352.

Dated: January 8, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–846 Filed 1–13–92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Application for Permit; Sea World, Inc. (P2W).

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. Applicant: Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821.

2. Type of Permit Requested: Public display.

3. Name and Number of Marine Mammals: Killer whale (*Orcinus orca*) 5. One (1) adult male, two (2) adult females, and possibly two calves. One calf was born on December 24, 1991, and the other adult female is believed to be pregnant. If the births are successful, the females would be imported with their calves some time after at least twelve months of age.

4. Requested Activity: Import from Sealand of the Pacific, Ltd., 1327 Beach Drive, Victoria, B.C. V8S 2N4.

5. Duration of Activity: The animal will be imported within two years after issuance of a permit.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Silver Spring, Maryland, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinion contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/713–2289); and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141).

Dated: January 6, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–737 Filed 1–13–92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Application for Permit; Sea World, Inc. (P2X).

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. Applicant: Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821.

2. Type of Permit Requested: Public display.

3. Name and Number of Marine Mammals: Killer whale (*Orcinus orca*), 1.

4. Requested Activity: Import from Marineland of Canada, Inc., 7657 Portage Road, Niagara Falls, Ontario, Canada L2E 6X8.

5. Duration of Activity: The animal will be imported within one year after issuance of a permit.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Silver Spring, Maryland, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196).

Dated: January 6, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–736 Filed 1–13–92; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151 or by telephoning (703) 487–4732. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487–4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology.

Department of Health and Human Services

7–204,163 (U.S. 5,066,490) Protein Crosslinking Reagents Cleavable Within Acidified Intercellular Vesicles.

7–283,849 (U.S. 5,066,716) Synthesis of Chloracetyl and Bromoacetyl Modified Peptides for Preparation of Synthetic Peptide Polymers, Conjugated Peptides, and Cyclic Peptides.

7–350,908 (U.S. 5,040,539) Pulse Oximeter for Diagnosis of Dental Pulp Pathology.

7–451,669 (U.S. 5,058,441) Safety Pipette and Adaptor Tip.

7–528,080 (U.S. 5,044,363) Waste Gas Released During Surgical Activity (Adsorption System for Scavenging Anesthetic Agents).

7–551,521 (U.S. 5,066,253) Treatment of a Microbial infection with Drugs Containing Para-Acetamidobenzoic Acid (Treatment of Pneumocystis Carinii in AIDS and their Immunosuppressed Patients).

7–707,543 Use of Visible Light for Treatment of Immunodeficiency.

7–743,518 Papua New Guinea Human T-Lymphotropic Virus.
7–755,959 Vacuum Filtration Apparatus.
7–769,626 Astrocyte-Specific Transcription of Human Genes.

Department of Interior

7–265,109 (U.S. 5,067,272) Apparatus for Water Resalination and Drip Irrigatrion of Row Crops.
7–367,646 (U.S. 5,043,119) High Strength Particulate Ceramics.
7–477,395 (U.S. 5,039,312) Gas Separation With Rotating Plasma Arc Reactor.
6–594,824 (U.S. 3,998,426) Clamshell-Type Hydraulic Flow Control Gate.

Department of Agriculture

7–393,010 (U.S. 5,047,239) Biological Control Fruit Rot.
7–436,154 (U.S. 5,045,314) Control of Parasitic Nematode of Ova/Larvae with Bacillus Laterosporus.
7–629,903 (U.S. 5,064,673) Method and Composition of Cooked Tomato Flavor.
7–691,873 Synthetic Bait for Delivery of Chemicals and Biologics.
7–764,732 System for Separating Particles in a Rotary Separator.
7–764,924 Constructed Wetlands to Control Nonpoint Source Pollution.

[FR Doc. 92–810 Filed 1–13–92; 8:45 am]
BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Armed Forces Epidemiological Board, DoD; Open Meeting

1. In accordance with section 10(a)(2) to the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.
Date of Meeting: 20–21 Feb 1992.
Time: 0800–1600.
Place: Walter Reed Army Institute of Research, Washington, DC.
Proposed Agenda: 20 Feb 1992—Service preventive medicine reports, hepatitis B vaccine, Rift Valley Fever vaccine, acellular pertussis vaccine, Japanese encephalitis vaccine, influenza vaccine for 1992–1993 influenza season, viscerotropic leishmaniasis, malaria vaccine, pediculosis in children. *21 Feb 1992*—Tuberculosis update, HIV look back, DOD Civilian Evaluation Peer Review Program.

2. This meeting will be be open to the public but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested person wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041–3258.

W. M. Parsons,
Captain, Medical Service Corps, United States Navy, Executive Secretary.
[FR Doc. 92–811 Filed 1–13–92; 8:45 am]
BILLING CODE 3710–08–M

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the West Pearl River Navigation Project in Louisiana and Mississippi

AGENCY: U.S. Army Corps of Engineers, Vicksburg District, DoD.
ACTION: Notice of intent.

SUMMARY: The proposed action is to evaluate the environmental desirability of additional maintenance dredging on the Pearl and West Pearl Rivers in the vicinities of Bogalusa and Slidell, Louisiana.

FOR FURTHER INFORMATION CONTACT: Marvin Cannon, CELMK–PD–Q, 3515 I–20 Frontage Road, Vicksburg, Mississippi 39180–5191, (601) 631–5436.

SUPPLEMENTARY INFORMATION:

1. Proposed Action: The proposed action would restore a navigable channel from the mouth of the West Pearl River to the vicinity of Bogalusa, Louisiana.

2. Alternatives: Alternatives to be evaluated include no action, dredging shallow portions of the streams, mining sediments from shallow portions of the streams, ocean disposal of dredged material, improving wildlife habitat with dredged material, utilizing natural sandbars to receive dredged material, and utilizing sand and gravel pits to receive dredged material.

3. a. A scoping meeting will be held in Bogalusa, Louisiana, during 1992. Public notices to be published later will inform the general public on location, time, and date.

b. Significant issues include bottomland hardwoods, wetlands, endangered species, waterfowl, fish, water quality, cultural resources, socioeconomic conditions, etc. Additional environmental review and consultation requirements could be identified during the scoping process.

c. The following will be invited to participate as cooperating agencies: The Environmental Protection Agency; U.S. Fish and Wildlife Service; National Marine Fisheries Service; Mississippi Department of Wildlife, Fisheries, and Parks; and the Louisiana Department of Wildlife and Fisheries.

4. The DEIS will be available for review by the general public in November 1992.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 92–826 Filed 1–13–92; 8:45 am]
BILLING CODE 3710–PU–M

Notice of Open Meeting; Army Advisory Panel on ROTC Affairs

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following panel meeting:

Name of Panel: Army Advisory Panel on ROTC Affairs.
Date of Meeting: February 3–4, 1992.
Place: Key Bridge Marriott.
Time: 9 a.m.–5 p.m., Feb 3, 1992, 9 a.m.–12 p.m., Feb 4, 1992.
Proposed Agenda: The meeting will consist of briefings and discussions. The meeting is open to the public. Any interested person may appear before or file a statement with the Panel at the time, and in the manner, permitted by the Panel. It is projected that the following events will take place during the meeting. After opening remarks by Major General Wallace C. Arnold and the chairman of the Panel, Dr. Anthony F. Ceddia, any administrative matters requiring attention will be resolved. The meeting will then proceed with a variety of recent ROTC Cadet Command initiatives. Major General Arnold will provide an overview of the significant changes since the June 1991 meeting at Fort Knox, KY. Briefings on February 3 will include: Scholarship Update, Missioning Update, Advertising Strategy, Marketing Operation Citizen Soldier, Spring Gold and Green to Gold Updates, Camps Update, Cadet Professional Development Training, the Hight School Program Update, Nursing Update and the Governmental Agency Program (GAP) Update. On February 4 the Army Advisory Panel on ROTC Affairs will meet in general session to formulate recommendations, consider progress made on previous Panel recommendations, and to select a date for the next Panel meeting.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 92–825 Filed 1–13–92; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management,

invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 13, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: January 8, 1992.

Mary H. Liggett,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: 1993 National Study of Postsecondary Faculty—Institution and Faculty Questionnaires

Frequency: Quadrennial.

Affected Public: Individuals or households, State or Local government.

Reporting Burden: Responses: 386. *Burden Hours: 386.*

Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

Abstract: This field test will evaluate the suitability of postsecondary faculty and institution questionnaires and determine the best operational procedures for the full-scale study. The Department will use this information to respond adequately to the changing environment of postsecondary education.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Annual Report on Independent Living Rehabilitation Services, Title VII, Part A.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Responses: 80. *Burden Hours:* 800.

Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

Abstract: This information will be used to analyze and evaluate the Independent Living Rehabilitation services provided by State agencies funded under title VII, part A of the Rehabilitation Act, as amended.

Office of Postsecondary Education

Type of Review: Extension.

Title: Performance Report for the Student Support Services Program.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden: Responses: 704. *Burden Hours:* 3,168.

Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

Abstract: Grantees who participate in the Student Support Services Program submit this report to the Department. The Department uses the information to assess the accomplishment of project goals and objectives, and to aid in effective program management.

[FR Doc. 92–872 Filed 1–13–92; 8:45 am]

BILLING CODE 4000–10–M

DEPARTMENT OF ENERGY

Community College of Southern Nevada; Award of Grant Agreement, Noncompetitive Financial Assistance

AGENCY: DOE, Yucca Mountain Site Characterization Project Office.

ACTION: Notice of intent to award on a noncompetitive basis.

SUMMARY: DOE announces its intent to award a renewal, pursuant to 10 CFR 600.7(b)(2)(i)(A), of Grant Agreement DE–FG08–91NV11007 with the Community College of Southern Nevada, North Las Vegas, Nevada, to support the continued provision of training in the use of Geographic Information Systems (GIS). This training continues to be essential for the development of GIS in the monitoring of effects associated with the DOE Yucca Mountain Site Characterization Project and the possible development of the Yucca Mountain candidate site for a high-level nuclear waste repository. The Nuclear Waste Policy Act of 1982, as amended by the Nuclear Waste Policy Amendments Act of 1987, provides for the development of a program for the permanent, safe disposal of spent fuel and high-level nuclear waste, and for the characterization of the Yucca Mountain site. The GIS is a fundamental tool that will be used during site characterization. The continuation of the work effort by the awardee will provide a locally-available source of training in GIS and provide the community and area with individuals trained in the development and use of this technology.

The project period under the above grant agreement will continue through December 31, 1995. The anticipated award date of the amendment is January 1, 1992. The revised total estimated cost of the project is $475,146.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Yucca Mountain Site Characterization Project Office, Attention: Birdie Hamilton-Ray, P.O. Box 98608, Las Vegas, Nevada 89192–8608.

Issued in Las Vegas, Nevada on December 27, 1991.

Nick C. Aquilina,

Manager, DOE Nevada Field Office.

[FR Doc. 92–856 Filed 1–13–92; 8:45 am]

BILLING CODE 6450–01–M

Office of the Deputy Secretary

U.S. Alternative Fuels Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public

Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: United States Alternative Fuels Council.

Date and Time: Thursday January 23, 1992, 9 a.m.–5 p.m.; Friday January 24, 1992, 9 a.m.–11:30 a.m.

Location: AAA Headquarters, 1000 AAA Drive, Heathrow Florida.

Contact: Mark Bower Office of Policy Planning and Analysis, U.S. Department of Energy Mail Stop AC–26, Washington, DC 20585, Phone: (202) 586–3891

Purpose of the Council: To provide advice to the Interagency Committee on Alternative Motor Fuels to help:

1. "* * * coordinate Federal agency efforts to develop and implement a national alternative motor fuels policy."

2. "* * * ensure the development of a long-term plan for the commercialization of alcohols, natural gas, and other potential alternative motor fuels."

3. "* * * ensure communication among representatives of all Federal agencies that are involved in alternative motor fuels projects or that have an interest in such projects."

4. "* * * provide for the exchange of information among persons working with, or interested in working with, the commercialization of alternative motor fuels."

Agenda, U.S. Alternative Fuels Council, 1000 AAA Drive, Heathrow, FL, January 23–24, 1992

January 23, 1992

9 a.m.–9:30 a.m.

Update on the Council's Correspondence to the Deputy Secretary of Energy

- Robert W. Hahn and Charles R. Imbrecht, Co-Chairmen of the Council.

9:30 a.m.–10:30 a.m.

Update on Pending Energy Legislation.
Chair: Charles R. Imbrecht.

- Sam Fowler Senate Energy Committee.

10:30 a.m.–12 p.m.

Report on the Activities Tasked to the Congressional Research Service by the Council.
Chair: Robert W. Hahn.

- David E. Gushee, Congressional Research Service.

12 p.m. 1 p.m.

Lunch.

1 p.m.–5 p.m.

Alternative Fuels Policy Session—Part I.
Facilitator: Herb Lapp.

5 p.m.

Adjourn.

Agenda, U.S. Alternative Fuels Council, 1000 AAA Drive, Heathrow FL, January 23–24, 1992

January 24, 1992

9 a.m. 11 a.m.

Alternative Fuels Policy Session—Part II.
Facilitator: Herb Lapp

11 a.m.–11:30 a.m.

Discussion of Future Meetings and Agendas and Public Comment Period.
Chair: Charles R. Imbrecht.

11:30 a.m.

Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Council either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Mark Bower at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairpersons of the Council are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes. Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, room 1E190, Forrestal Building, 1000 Independence Ave. SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on January 9, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92–957 Filed 1–13–92; 8:45 am]
BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Notice of Unit Costs of Energy.

SUMMARY: In this notice, the Department of Energy is forecasting the representative average unit costs of five residential energy sources for the year 1992. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene. The representative unit costs of these energy sources are used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, by the National Appliance Energy Conservation Act of 1987, and by the National Appliance Energy Conservation Amendments of 1988.

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective February 14, 1992, and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:
Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE–43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–41, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619), by the National Appliance Energy Conservation Act of 1987 (Pub. L. 100–12), and the National Appliance Energy Conservation Amendments of 1988 (Pub L. 100–357) (Act)[1] requires that the Department of Energy (DOE) prescribe test procedures for the determination of the estimated annual operating cost and other measures of energy consumption for certain consumer products specified in the Act. These test procedures are found in 10 CFR part 430, subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission appliance labeling program established by section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by section 323(c) of the Act.

DOE last published representative average unit costs of residential energy for use in the Conservation Program for Consumer Products on January 30, 1991 (56 FR 3455). Effective February 14, 1992, the cost figures published on January 30, 1991 will be superseded by the cost figures set forth in this notice.

DOE's Energy Information Administration (EIA) has developed the 1992 representative average unit costs of

[1] References to the "Act" refer to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, by the National Appliance Energy Conservation Act of 1987, and by the National Appliance Energy Conservation Amendments of 1988.

electricity, natural gas, and No. 2 heating oil found in this notice. These costs were taken from EIA's fourth quarter 1991 Short-Term Energy Outlook (Outlook), DOE/EIA-0202 (91/4Q), which forecasts the retail cost of selected energy products based on changes in world oil prices, wellhead natural gas prices, seasonal patterns in retail prices, and established trends in margins and operating expenses. The development of these costs is discussed in detail in the fourth quarter 1991 issue of this report, which is EIA's quarterly publication of historical and forecasted energy consumption and prices. The costs appear in Table 6 of EIA's Outlook. In the case of residential natural gas, taxes are included in the cost. Copies of this report are available at the National Energy Information Center, Forrestal Building, Room 1F-048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8800.

In the cases of kerosene and propane, the 1992 representative average unit costs found in this notice were developed by other means since EIA's Outlook does not provide a forecast of the retail costs of these fuels. However, historical refiner prices for kerosene and propane are available from another EIA publication, Petroleum Marketing Monthly (PMM), DOE/EIA-0380. Referring to Table 2 of the October 1991 issue of the PMM, DOE obtained refiner average sales prices to end users for kerosene and propane for 1990. To forecast 1992 representative average unit costs for kerosene and propane, DOE made the assumption that the percentage change in 1992 from the 1990 annual average (last complete year of available data) for No. 2 heating oil prices to residential customers (which can be calculated from Table 6 of the Outlook) could be applied to kerosene and propane. Refiner prices to end users for kerosene and propane were used since, of the comparable recent data available, these are believed to be most representative of prices to residential consumers.

The 1992 representative average unit costs stated in Table 1 are provided pursuant to section 323(b)(4) of the Act and will become effective February 14, 1992, of publication. They will remain in effect until further notice.

Issued in Washington, DC, January 8, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES

[1992]

Type of energy	In common terms	As required by test procedure	Dollars per million Btu[1]
Electricity	8.25¢/Kwh [2,3]	$0.0825/Kwh	$24.18
Natural gas	58.00¢/therm [4] or $5.98/MCF [5,6]	0.00000580/Btu	5.80
No. 2 Heating Oil	$1.03/gallon [7]	0.00000743/Btu	7.43
Propane	.74/gallon [8]	0.00000810/Btu	8.10
Kerosene	.89/gallon [9]	0.00000659/Btu	6.59

[1] Btu stands for British thermal units.
[2] Kwh stands for kilowatt hour.
[3] 1 Kwh=3,412 Btu.
[4] 1 therm=100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,031 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 92-959 Filed 1-13-92; 8:45 am]
BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice 92-4: Advanced Externally-Fired Combined Cycles for Coal Utilization Research Needs Assessment

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications, correction.

SUMMARY: The following notice, previously published in the **Federal Register** of December 6, 1991 (56 FR 63948), is being republished to correct typographical errors. On page 63949, column one, second paragraph, and on the same page, column two, fourth sentence of the "Supplementary Information" section, the words "facilities" are being corrected to read "facilitate." In addition, the date for applications to be submitted in response to this notice is being extended to March 3, 1992.

The Office of Program Analysis, Office of Energy Research of the Department of Energy, hereby announces its interest in receiving applications for a Special Research Grant that seek support for conducting a research needs assessment in the area of advanced externally-fired combined cycles for coal utilization as it relates to electric power generation. The purpose of this activity is to identify and disseminate priority research needs for achieving high efficiency (greater than 50%) externally-fired combined cycles with economic, environmental, and performance potential superior to other alternatives. This project should not focus on topics such as the integrated gasification combined cycle, pressurized fluid bed combustion systems, integrated gasification fuel cell systems, and magnetohydrodynamic systems.

Applicants must include a description of the planned methodology that will be used in assessing long term (up to 20 years) research directions, opportunities, priorities, and degrees of difficulty in accomplishing identified research opportunities.

Applicants must enlist the aid of experts from academia and industry to identify, describe, and assess on a worldwide basis, the most promising new (i.e., beyond state of the art) developments, applications, and opportunities in critically enabling science and technologies to facilitate the future utilization of coal for power generation with externally-fired combined cycles.

APPLICATION INFORMATION: Information about submission of applications, eligibility, limitations, evaluation, selection processes, and other policies and procedures may be found in the Application and Guide for the Special Research Grant Program. The application kit and guide and copies of 10 CFR part 605 are available from Paul Maupin, Office of Program Analysis, Office of Energy Research, U.S. Department of Energy, ER-33,

Washington, DC 20585. Instructions for preparation of an application are included in the application kit. Telephone requests may be made by calling (301) 903–4355 or FTS 233–4355. The Catalog of Federal Domestic Assistance number for this program is 81.049.

DATES: Formal applications submitted in response to this notice should be received by March 3, 1992.

ADDRESSES: Formal applications sent by U.S. Mail should be addressed to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER–64, Washington, DC 20585, ATTN: Program Notice 92–4. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER–64/GTN, 19901 Germantown Road, Germantown, MD 20874.

SUPPLEMENTARY INFORMATION: A substantial effort in coal utilization technology has led to the technical feasibility of utilizing coal in cleaner and more efficient ways than in the past. However, the projected rate of coal utilization in the next millennium will challenge the technology ceilings in dealing with areas such as greenhouse gas emissions and waste management. The more efficiently we utilize this resource, the less impact we have on global warming and other environmental issues. To facilitate the future utilization of coal in a more efficient and benign manner will require more than stretching the limits of current technology. It will require innovation in the ways we approach the problems encountered in coal utilization.

The current technological objectives for coal utilization are exemplified by the goals of the High Performance Power System (HIPPS) program. The objectives of the HIPPS program are to obtain a cycle efficiency of 47% or higher while reducing acid rain precursors and particulate emissions. Meeting these objectives would result in the emission of carbon dioxide being reduced by at least 25% over current pulverized coal plants due to the increased cycle efficiency.

Development of economical, very high efficiency, very low emission coal-based power generation systems is widely recognized by scientists and engineers as an important research and development goal. Several generic types of advanced coal-based power generation systems are currently the subject of significant research and development by both the private and public sector. Some of these generic types have been the subject of substantial analysis and research, including: The Integrated Gasification Combined Cycle (IGCC), Pressurized Fluid Bed Combustion Systems, Integrated Gasification Fuel Cell Systems, and Magnetohydrodynamics (MHD) Systems.

Recently, increased attention is being given to the externally-fired cycle generic category as one which may offer substantial promise for development of economically attractive "first generation" systems and for longer range versions (second and third generations) with economic and performance potential superior to other alternatives. The term externally-fired (or indirectly-fired) combined cycle systems refers to the set of alternative coal-based system concepts which can be characterized as follows:

—A gas turbine topping cycle in which the high temperature coal combustion products are an indirect source of hot gases through some form of heat exchange subsystem, rather than passing directly through the gas turbine.

—A bottoming cycle, which may be a conventional Rankine cycle consisting of heat recovery and power extraction.

—Integrated environmental control systems including combustion product cleanup for achieving very low solid waste, liquid effluent, and air emission.

To date, little of the fundamental applied and exploratory research underway has been focusing on developing the scientific and technology base to enable development of this type of system.

To support future goals in coal utilization for super-clean performance with high efficiency requires advances in many diverse technology areas. For the development of externally-fired (or indirectly-fired) combined cycles, this will require advances in coal cleaning, combustion technology, improved that transfer components, efficient emissions control, improved high temperature materials, as well as the integration of component cycles into the combined cycle.

To address the objectives discussed above, the Office of Program Analysis of the Office of Energy Research has coordinated with the DOE Office of Fossil Energy and is planning to award a grant for a research needs assessment for advanced externally-fired combined cycles for coal utiiization. The Office of Program Analysis plans to publicly disseminate the results and findings of this research needs assessment in a report. Specific information concerning requirements for the application follow.

The principal investigator of the assessment must be an individual who is competent and accomplished in appropriate scientific and technical areas. Competence and accomplishments shall be described in the application and include industrial or academic experience, research publications, contributions while serving as an expert, consultant services, honors and awards, and education including advanced degrees and other academic qualifications. The principal investigator also shall be an individual with demonstrated ability to conduct research needs assessments for fossil fuel fired processes and manage individual experts and groups of experts in the timely and successful identification, analysis, distillation and documentation of scientific and technical information. These demonstrated abilities shall be documented in the application.

The applicant, in order to address adequately and competently the full scope of this endeavor and at sufficient technical depths in all major topical areas, must enlist the aid of other scientific/technical experts. The application shall provide tentative identification of all proposed experts and their present affiliation. All experts, both foreign and domestic, are to be individuals who are competent and accomplished in a scientific or technical discipline directly related to the research assessment. Technical competence and accomplishments of each expert shall be described in the application and should include the individual's experience, research publications, consultant services, contributions while serving as an expert with other groups, honors and awards, professional experience, and education including advanced degrees and other academic qualifications. The expected contributions of each expert to the assessment's objectives should be identified. The overall technical expertise of the group of experts, when combined with the technical expertise of the principal investigator should be shown to be adequate to cover the various scientific and technical disciplines involved in the assessment.

These experts will assist the principal investigator in accomplishment of the assessment's objectives, especially in writing major sections of the required final report They are also expected to conduct technical discussions with other

experts, specialists, researchers, and research program managers in the scientific and technical areas; conduct site visits to laboratories and other facilities where research and development directly related to the subject area is conducted and managed; and review and evaluate recent and relevant research including scientific and technical literature.

The initial composition of a group of experts, other consultants, and any subsequent changes must be approved by the Program Manager and Contracting Officer.

Applications also should include the following: A schedule of the assessment's major activities including the tentative content of meetings of various teams of the experts, a description of anticipated site visits to publicly and privately funded facilities, a description of all conferences to be attended as a part of assessment activities, and a description of the methodology for obtaining a peer review of the assessment results.

The applicant is expected to supply the personnel, facilities, and materials necessary to accomplish the objectives of the assessment as described in this notice.

APPLICATION REVIEW AND AWARD INFORMATION: Applications will be reviewed in accordance with the Energy Research Merit Review System, published in the **Federal Register**, March 11, 1991 (56 FR 10244). Subject to the availability of appropriated FY 1992 funds, one grant award at approximately $300,000 is planned. The grant award will be for a 1-year period.

Issued in Washington, DC, on January 6, 1992.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 92-790 Filed 1-13-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket No. PP-94]

Application for a Presidential Permit; Central Power and Light Company

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of receipt of application for a Presidential Permit in Docket No. PP-94; Central Power and Light Company.

SUMMARY: Central Power and Light Company has applied for a Presidential permit to construct two new electric transmission lines at the U.S./Mexican border.

DATES: Comments, protests or requests to intervene must be submitted on or before February 13, 1992.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE-52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Number PP-94 should appear clearly on the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202-586-9624 or Lise Howe (Program Attorney) 202-586-2900.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 12038. Exports of electricity from the United States to a foreign country also are regulated and require authorization under section 202(e) of the Federal Power Act.

On December 23, 1991, Central Power and Light Company (CPL) applied to the Department of Energy (DOE) for a Presidential permit to construct, connect, operate, and maintain one 138-kilovolt (kV) and one 69-kV transmission line on the same double-circuit structure. The 69-kV line would originate at CPL's "Brownsville Switch Station". The proposed 138-kV line would originate at the Military Highway substation which is owned jointly by CPL and the Public Utilities Board of the City of Brownsville, Texas, (PUB), and located approximately 0.4 miles south of the Brownsville Switch Station. From the Military Highway substation, the two lines would extend south approximately 1.3 miles on the same double-circuit structure to a proposed crossing of the international boundary with Mexico. The proposed lines would interconnect at the international boundary with 69-kV and 138-kV transmission lines owned and operated by the Comision Federal de Electricidad (CFE), the Mexican national electric utility.

In its application for a Presidential permit, CPL stated that it is currently negotiating an agreement with CFE for the firm purchase of power and energy by CFE from CPL. The agreement is expressly contingent on the construction of these proposed new facilities to accommodate the requested sales.

In related matters, CPL stated in its application that it expects CFE to request rescission of the Presidential permit issued to CFE on April 14, 1961, in Docket No. PP-15A, for the existing 69-kV electric transmission line extending from CPL's Brownsville substation to CFE's Matamoros substation. The rescission would be contingent upon authorization of the facilities for which CPL has now applied and it would be effective upon electrification of those facilities. Upon rescission of Presidential Permit PP-15A, the existing 69-kV facilities would be removed. Prior to the operation of these proposed facilities, CPL also must amend its current electricity export authorizations. In its application, CPL stated that it intends to make such a filing in the very near future.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedures (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with:

C.E. Orsak, Coordinator, Inter-Utility Affairs, Central Power and Light Company, P.O. Box 2121, Corpus Christi, Texas 78403.

Carolyn Y. Thompson, Esq., Donna J. Bobbish, Esq., Jones, Day, Reavis & Pogue, Metropolitan Square, 1450 G Street, NW., Washington, DC 20005-2088.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the

petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed action will not impair the reliability of the U.S. electric power supply system.

Before a Presidential permit may be issued, the environmental impacts of the proposed DOE action (i.e., granting the Presidential permit, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, state governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy, room 3F-070, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, from 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 8, 1992.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-958 Filed 1-13-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF92-14, et al.]

Hunterdon Cogeneration Limited Partnership, et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Hunterdon Cogeneration Limited Partnership

January 2, 1992.

[Docket No. QF92-14-000]

On December 23, 1991, Hunterdon Cogeneration Limited Partnership, tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to ownership structure of the facility.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Second Imperial Geothermal Company

January 2, 1992.

[Docket No. QF92-53-000]

On December 23, 1991, Second Imperial Geothermal Company, of 610 East Glendale Avenue, Sparks, Nevada 89431, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Imperial County, California. The facility will include an isopentane evaporator and a turbine generator. The maximum net electric power production capacity of the facility will be approximately 37 MW. The primary source of energy will be geothermal resources.

Comment date: February 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power & Light Company

January 3, 1992.

[Docket No. ER91-518-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered for filing an amendment to its rate filing the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Power & Light Company

January 3, 1992.

[Docket No. ER91-519-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered for filing an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Delmarva Power & Light Company

January 3, 1992.

[Docket No. ER92-232-000]

Take notice that Delmarva Power & Light Company (Delmarva) on December 19, 1991, tendered for filing proposed Supplement No. 6 to its FERC Rate Schedule No. 38. This Supplement, filed with the approval and concurrence of the City of Dover, Delaware (Dover), is being made to coordinate with similar internal accounting changes with respect to Peak Season Maintenance Obligations between members of the Pennsylvania-New Jersey-Maryland Interconnection (PJM).

Copies of the filing were served upon The City of Dover, the Mayor of the City of Dover and the Delaware Public Service Commission.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Central Power and Light Company

January 3, 1992.

[Docket No. ER92-235-000]

Take notice that Central Power and Light Company (CPL) on December 18, 1991, tendered for filing a Notice of Cancellation in the above-referenced docket. The filing cancels Rate Schedule FERC No. 86 effective January 1, 1990. Pursuant to that Rate Schedule, CPL provided certain transmission service for Texas Utilities Electric Company.

Copies of the filing were posted in accordance with the Commission's regulations.

Comment date: January 17, 1992, in accordance with Standard Paragraph E end of this notice.

7. The United Illuminating Company

January 3, 1992.

[Docket No. ER92-231-000]

Take notice that on December 19, 1991, The United Illuminating Company (UI) tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to Connecticut Municipal Electric Energy Cooperative (CMMEC). The rate schedule corresponds to a letter agreement, dated December 3, 1991 between UI and CMEEC. The commencement date for service under the agreement is January 1, 1992. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity

entitlements and associated energy from UI's Bridgeport Harbor Station Unit #2.

Copies of the filing were mailed to CMEEC.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp Electric Operations

January 3, 1992.

[Docket No. ER91-874-000]

Take notice that PacifiCorp Electric Operations (PacifiCorp), on December 19, 1991, tendered for filing, in accordance with the Commission Order dated November 26, 1991, an amended filing of the Transmission Service and Operating Agreement (Agreement) between PacifiCorp and Utah Municipal Power Agency (UMPA).

PacifiCorp respectfully re-news its request for a waiver of prior notice and that an effective of August 1, 1991 be assigned by the Commission.

Copies of the filing have been supplied to UMPA and the Utah Public Service Commission.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Tampa Electric Company

January 3, 1992.

[Docket No. ER92-234-000]

Take notice that on December 19, 1991, Tampa Electric Company (Tampa Electric) tendered for filing Service Schedule D, providing for Long-Term Interchange Service Tampa Electric and Seminole Electric Cooperative, Inc. (Seminole). The Service Schedule D was tendered as a supplement to the existing Agreement for Interchange Service between Tampa Electric and Seminole.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule D, a Letter of Commitment providing for the sale by Tampa Electric to Seminole of capacity and energy at an initial maximum hourly delivery rate of 50 megawatts.

Tampa Electric proposes an effective date of February 21, 1992, for the Service Schedule D, and no sooner than that date for the Letter of Commitment.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company

January 3, 1992.

[Docket No. ER92-581-000]

Take notice that on December 20, 1991, Northern States Power Company (NSP) tendered for filing an Amendment (Amendment) to the above-captioned filing. The original filing, submitted September 3, 1991, requested acceptance for filing of a Transmission Service letter Agreement dated September 13, 1990 and a Supplemental Agreement dated November 9, 1990, between NSP and Citizens Power & Light Corporation, Massachusetts (Citizens).

The Transmission Service Letter Agreement essentially provides that NSP shall deliver on an interruptible basis up to 50 MW per hour of energy from United Power Association (UPA), at the NSP–UPA points of interconnection, to Wisconsin Power & Light Company (WPL) at the NSP–WPL points of interconnection, subject to NSP's right to curtail and/or interrupt such delivery at NSP's sole discretion, at any time, for any reason. The Amendment provides additional cost support for the transmission rate and loss factors charged Citizens for the transmission services provided.

NSP again requests the Transmission Services Letter Agreements be accepted for filing effective September 13, 1990 and November 9, 1990, respectively, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on those dates.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. The Kansas Power and Light Company

January 3, 1992.

[Docket No. ER92-245-000]

Take notice that on December 27, 1991, The Kansas Power and Light Company (KPL) tendered for filing Revised Service Schedules B—Emergency Services, and C—System Energy Service, and Service Schedules D—Economy Energy Service and F—Term Energy Service to KPL's Electric Interconnection Contract with Omaha Public Power District. KPL states that these Service Schedules will more closely align the services available under its Electric Interconnection Contract with Omaha Public Power District with short-term nonfirm energy services provided under its other interconnection agreements.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Iowa Public Service Company

January 3, 1992.

[Docket No. ER91-884-000]

Take notice that December 27, 1991, Iowa Public Service Company (IPS) tendered for filing a second amendment to the filing of an executed Transmission Interconnection and Interchange Agreement between IPS and Nebraska Public Power District (NPPD).

IPS indicates that the Interconnection and Interchange Agreement reflects the establishments of a transmission interconnection between the two systems. NPPD will pay IPS a facilities charge based on transmission line investment. This second amendment provides additional cost support for the transmission facilities.

IPS respectfully requests a waiver of the Commission's rules so that the Interconnection and Interchange Agreement may be approved retroactive to December 29, 1986.

IPS states that copies of this filing were served on NPPD and the Iowa Utilities Board.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Delmarva Power & Light Company

January 2, 1992.

[Docket No. ER92-233-000]

Take notice that Delmarva Power & Light Company (Delmarva) December 19, 1991, tendered for filing proposed Supplement No. 13 to its FERC Rate Schedule No. 71. This Supplement, filed with the approval and concurrence of the Easton Utilities Commission and The Town of Easton (Easton), is being made to coordinate with similar internal accounting changes with respect to Peak Season Maintenance Obligations between members of the Pennsylvania-New Jersey-Maryland Interconnection (PJM).

Copies of this filing were served upon Easton Utilities Commission, the mayor of the Town of Easton and the Maryland Public Service Commission.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Long Island Lighting Company

January 3, 1992.

[Docket Nos. ER92-25-000, ER92-26-000, and ER92-31-000]

Take notice that on December 30, 1991, Long Island Lighting Company (LILCO) tendered for filing an amendment to its earlier filing of October 3, 1991 in the above-referenced dockets.

LILCO requests the Commission to waive its notice of filing requirements to permit the rates to become effective June 1, 1991.

Copies of this filing have been served upon the New York State Public Service Commission, the Power Authority of the

State of New York, the counties of Nassau and Suffolk, the villages of Freeport, Greenport and Rockville Centre, the Municipal Electric Utilities Association of New York State, Brookhaven National Laboratory, and Grumman Corporation.

Comment date: January 17, 1992, in accordance with Standard Paragraph E end of this notice.

15. Cogentrix Eastern Carolina Corporation

January 3, 1992.

[Docket No. QF83-263-005]

On December 26, 1991, Cogentrix Eastern Carolina Corporation (Applicant) of 9405 Arrowpoint Boulevard, Charlotte, North Carolina 28273-8110, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is presently certified for approximately 30 MW (33 FERC ¶ 62,349 (1985)). The instant recertification is requested to reflect the termination of the sale/leaseback arrangement and a change in the ownership structure of the facility.

Comment date: February 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Citizens Utilities Company

January 3, 1992.

[Docket No. ES92-25-000]

Take notice that on December 26, 1991, Citizens Utilities Company (Citizens) filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authority to issue common stock dividends on shares of Citizens outstanding common stock over a two-year period ending December 31, 1993 and for exemption from the Commission's competitive bidding regulations.

Comment date: January 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Power & Light Company

January 3, 1992.

[Docket No. ER92-16-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 24, 1991, tendered an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon City of Seattle and City of Tacoma.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. The Cincinnati Gas & Electric Company

January 3, 1992.

[Docket No. ER92-174-000]

Take notice that on December 23, 1991, The Cincinnati Gas & Electric Company (CG&E) tendered for filing with the Commission an Amendment to its original filing in this proceeding.

Copies of this filing were served upon Cleveland Public Power, The City of Piqua, Ohio, The Dayton Power & Light Company, American Electric Power Service Corporation and the Ohio Public Utilities Commission.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. The Kansas Power and Light Company

January 3, 1992.

[Docket No. ER92-239-000]

Take notice that on December 23, 1991, The Kansas Power and Light Company (KPL) tendered for filing revised Exhibits 4A to Transmission Agreements with the Kansas Gas and Electric Company, WestPlains Energy, and Missouri Public Service Division, Utilicorp United, Inc. KPL states that these revised exhibits reflect updated loss amounts associated with transmission services rendered to each party under various load conditions.

Copies of the filing were served upon Kansas Gas and Electric Company, Centel Corporation-Western Power Division, Missouri Public Service Division, Utilicorp United, Inc., and the Utilities Division of the Kansas Corporation Commission.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Power & Light Company

January 3, 1992.

[Docket No. ER91-619-000]

Take notice that on December 27, 1991, Wisconsin Power and Light Company (WP&L) tendered for filing with the Federal Energy Regulatory Commission supplemental materials relating to the above docket.

WP&L requests expedited consideration of the filing and an effective date of September 1, 1991. Accordingly, WP&L requests waiver of the Commission's notice requirements.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Delmarva Power & Light Company

January 3, 1992.

[Docket No. ER92-236-000]

Take notice that Delmarva Power & Light Company (Delmarva) on December 20, 1991, tendered for filing revised tariff sheets to increase its firm power rates to its ten requirements customers and to decrease its transmission rates that affect six of those customers. Those customers and their FERC rate schedules are as follows:

Customer	FERC rate schedule No.
Old Dominion Electric Cooperative	51, 52, 53
Lewes, Delaware	61
Seaford, Delaware	62
Berlin, Maryland	63
Clayton, Delaware	64
Middletown, Delaware	65
New Castle, Delaware	66
Milford, Delaware	67
Smyrna, Delaware	68
Newark, Delaware	69

Delaware requests that the proposed firm power increase be granted a February 19, 1992 effective date. The aggregate increase in the firm power rate is approximately $5.0 million or about 5.3% to the affected customers. The transmission rates constitute a slight decrease.

According to Delmarva, it has filed the rate increase in order to recover its increased cost of providing electric service and to earn a fair return on its investment dedicated to the public serve.

Delmarva further states that a copy of the filing has been posted as required by the Commission's regulations, and a copy has been mailed to each of the customers affected by the proposed changes and to the public service commissions of the States of Delaware, Maryland and Virginia in which the affected customers are located.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Central and South West Services, Inc.

January 6, 1992.

[Docket No. ER92-241-000]

Take notice that on December 24, 1991, Central and South West Services, Inc. (CSWS), on behalf of the four Central and South West Corporation operating companies, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company, tendered for filing a Fixed Transaction Cost Compensation

Procedure for the Central and South West System. The Fixed Transaction Cost Compensation Procedure establishes a method for allocating among the four Operating Companies certain transmission service charges assessed by non-CSW entities. CSWS requests that the Procedure be made effective as of January 1, 1992. Accordingly, CSWS requests waiver of the notice requirements under the Federal Power Act.

Copies of the filing have been served on the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas. Copies of the filing are also available for inspection in the main offices of each of the CSW operating subsidiaries.

Comments date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Louisiana Power & Light Company

January 6, 1992.

[Docket Nos. EL89-7-000 and FA86-63-003]

Take notice that on December 13, 1991, Louisiana Power & Light Company (LP&L) tendered for filing its compliance refund report pursuant to the Commission's Opinion No. 366 issued on October 24, 1991 in the above-referenced dockets.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Iowa Public Service Company

January 6, 1992.

[Docket No. ER91-566-000]

Take notice that on December 27, 1991, Iowa Public Service Company (IPS) tendered for filing a second amendment to the filing an executed Transmission Service Agreement whereby Iowa Public Service Company (IPS) will provide Cedar Falls Utilities (CFU) with transmission service, commencing January 1, 1985, for CFU's share of power and energy from George Neal Generating Station Unit No. 4. This second amendment provides additional cost support for the transmission service fee.

Section 2 of the Transmission Service Agreement provides that the transmission service fee shall be reviewed and adjusted annually, if necessary. It is IPS' intent to annually filed with FERC any changes to the service fee accompanied by appropriate cost support.

IPS respectfully requests a waiver of the Commission's rules so that the Transmission Service Agreement may be approved retroactive to January 1, 1985.

IPS states that copies of this filing were served on Cedar Falls Utilities and the Iowa Utilities Board.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. Central Vermont Public Service Corporation

January 6, 1992.

[Docket No. ER92-237-000]

Take notice that on December 13, 1991, Central Vermont Public Service Corporation tendered for filing a Notice of Termination of Rate Schedule FERC No. 156.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Southwestern Power Administration

January 6, 1992.

[Docket No. ER92-227-000]

Take notice that on December 16, 1991, Southwestern Power Administration (SWEPCO) tendered for filing a Notice of Cancellation of its Western Systems Power Pool Experimental Sales Benefits Credit Rider pursuant to 35.15 (18 CFR 35.15) of the Commission's regulations.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. Florida Power Corporation

January 6, 1992.

[Docket No. ER92-183-000]

Take notice that on December 18, 1991, Florida Power Corporation (Florida Power) filed a letter in which it amended its filing in this docket made November 12, 1991 as amended December 4, 1991. In that letter Florida Power (1) answered questions by the Staff regarding two agreements filed in this docket on November 12, 1991, (2) requested that an amendment to an earlier agreement already on file with the Commission be allowed to become effective as of the effective date of the earlier agreement and (3) corrected an error in the November 12, 1991 filing.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. PacifiCorp Electric Operations

January 6, 1992.

[Docket No. ER92-228-000]

Take notice that PacifiCorp Electric Operations (PacifiCorp), on December 18, 1991, tendered for filing, Revision 9 to Exhibit B (effective October 1, 1991) to the May 29, 1981 Transmission Agreement (PacifiCorp Rate Schedule FERC No. 213), between PacifiCorp, Deseret Generation & Transmission Cooperative (Deseret) and Bridger Valley Electric Association, Inc. (Bridger Valley).

Exhibit B to the Transmission Agreement is revised annually in accordance with article 12 (ii) of the Transmission Agreement, and specifies the projected maximum integrated demand with Deseret desires to have transmitted to Bridger Valley for a four year rolling period.

PacifiCorp respectfully requests, the Commission's Rules and Regulations, that a waiver of prior notice be granted that an effective date of October 1, 1991 be assigned, this date being consistent with provisions of article 12 (ii) of the Transmission Agreement.

Copies of this filing were supplied to Deseret, Bridger Valley and the Wyoming Public Service Commission.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. Pacific Gas and Electric Company

January 6, 1992.

[Docket No. ER92-229-000]

Take notice that on December 18, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing (1) an agreement entitled "Special Facilities Agreement for Protective Equipment On Lines Leading To Donner Summit" (Special Facilities Agreement), between Sierra Pacific Power Company (Sierra) and PG&E and (2) Amendment No. 1 to the aforementioned Special Facilities.

The Special Facilities Agreement pertains to the rate, terms, and conditions under which PG&E will own, operate, and maintain the facilities specially installed in order to maintain transfer capability to Sierra. Under the Special Facilities Agreement, PG&E charges Sierra a customer advance and a monthly Cost of Ownership Rate, equal to the Cost of Ownership Rate for Transmission-level, Customer-financed facilities filed with the California Public Utilities Commission (CPUC) pursuant to Electric Rule 2. The Cost of Ownership Rate is expressed as a monthly percentage of the installed cost of the facilities.

PG&E has also requested to be allowed automatic rate adjustments whenever the CPUC authorizes a new Electric Rule 2 Cost of Ownership Rate.

Copies of this filing have been served upon Sierra and the CPUC.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

30. The Washington Water Power Company

January 6, 1992.

[Docket No. ER92-86-000]

Take notice that on December 20, 1991, The Washington Water Power Company (WWP) tendered for filing an Amendment to its FERC Electric Tariff Volume No. 4. WWP states that the purpose of the amendment is to make changes requested by Commission staff. In addition, WWP renewed its request for a waiver of the sixty (60) day notice requirement so that the Tariff may become effective on November 1, 1991.

A copy of the filing was mailed to Portland General Electric.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

31. Puget Sound Power & Light Company

January 6, 1992.

[Docket No. ER91-514-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

32. Puget Sound Power & Light Company

January 6, 1992.

[Docket No. ER91-512-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

33. Puget Sound Power & Light Company

January 6, 1992.

[Docket No. ER91-517-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

34. Puget Sound Power & Light Company

January 6, 1992.

[Docket No. ER91-520-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered an amendment to its rate filing in the above proceeding.

The amendment to filing, among other things, corrects the revenue impact of the rate filing. The proposed change in rates would increase revenue from jurisdictional service under this schedule from $3,547 for the twelve months prior to July 31, 1988 to $52,893 for the twelve months immediately thereafter.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

35. Puget Sound Power & Light Company

January 6, 1992.

[Docket No. ER91-513-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

36. Puget Sound Power & Light Company

January 6, 1992.

[Docket No. ER91-515-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

37. Puget Sound Power & Light Company

January 6, 1992.

[Docket No. ER91-516-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 21, 1992, in accordance with Standard Paragraph E end of this notice.

38. Canal Electric Company

January 6, 1992.

[Docket No. ER90-245-004]

Take notice that on December 20, 1991, Canal Electric (Canal) submitted for filing its compliance report pursuant to the Commission's letter order dated November 13, 1991.

Copies of the tendered for filing have been served by Canal upon the Commission's staff, the Massachusetts Attorney General the Town of Belmont and the Department of Public Utilities.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

39. Allegheny Generating Company

January 6, 1992.

[Docket No. ER92-242-000]

Take notice that on December 24, 1991, Allegheny Generating Company (AGC) tendered for filing a proposed change in its FERC Rate Schedule No. 1. The proposed change neither increases nor decreases AGC's rates. The proposed effective date for the rate change is March 1, 1992.

The proposed change is to continue the return on common equity as last established in a rate settlement agreement which requires AGC to file its cost-of-service formula rate on or before December 31, 1991.

Copies of the filing have been served upon the jurisdictional customers, the Maryland Service Commission, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the State Corporation Commission of Virginia, and the West Virginia Public Service Commission, and upon all other parties that participated in settlement agreement at Docket Nos. ER88-553-000 and EL88-8-000.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

40. Montaup Electric Company, Newport Electric Corporation

January 6, 1992.

[Docket No. ER91-301-000]

Take notice that on December 20, 1991, Montaup Electric Company (Montaup) filed an amendment to the rate schedule and fuel clause revision filed in this docket. The amendment to the rate schedule allocates energy affiliation savings evenly between Montaup and Newport Electric Corporation (Newport) based on the Staff's method for service since May 1,

1990, and the fuel clause revision flows Montaup's 50% share through to M-rate customers

Montaup and Newport request waiver of the notice requirement in order to place the rate schedule and fuel revision in effect on May 1, 1990. The waiver is necessary as to the rate schedule in order to provide for a method of allocation to cover the period since the savings commenced and as to the fuel clause revision so that there will be a rate schedule on file to permit Montaup's M-rate customers to share in the affiliation savings realized over that period. Montaup's request for waiver reflects the Staff's position that the Staff method of allocation must be made effective as of May 1, 1990. Billing adjustments to Newport and M-rate customers will be made in the billing month following the Commission's acceptance of the filing in order to conform past billings to that filing as effective from that date.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-861 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-02508T Texas-47]

State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

January 8, 1992.

Take notice that on December 23, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wilcox Formation underlying a portion of McMullen County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The area of application is located in the southeast corner of McMullen County, within Railroad Commission District 1 and includes the following surveys:

All of the L.E.H. Spaulding A-911 Survey, Section 80
The south half of the Seale & Morris A-438 Survey, Section 15
The north half of the Alfred Spaulding A-917 Survey, Section 54

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-863 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-02505T Texas-15 Addition 3]

State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

January 8, 1992.

Take notice that on December 23, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Vicksburg Formation underlying a portion of Hidalgo County qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area includes approximately 15,100 acres in portions of "San Ramon" Juan Farias Grant A-62 and "Santa Anita" Manuel Gomez Grant A-63. The area is within Railroad Commission District 4 and includes the Vicksburg J through Y sandstones.

The notice of determination also contains Texas' findings that the referenced portion of the Vicksburg Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-862 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-02506T Texas-48]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 8, 1992.

Take notice that on December 23, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wilcox Formation underlying certain portions of Duval County, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area includes approximately 8,100 acres in the Rosita, N.W. Field in massive Upper Wilcox W, X and Y sands in Duval County and consists of the acreage listed in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204; within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Wilcox W, X and Y sands in the Rosita, N.W. Field, Wilcox Formation in Duval County Texas, Railroad Commission District 4

Survey name	Abstract
B.S. & F.	A-89
B.S. & F.	A-90
B.S. & F.	A-91
B.S. & F.	A-108
B.S. & F.	A-109
B.S. & F.	A-110
Miguel Ruiz	A-1882
Ford Dix	A-991
S.A. & M.G.R.R.	A-531
Geo. M.C. Atkinson	A-1215
A. Garza	A-1847
Chas. W. Petrie	A-1992

[FR Doc. 92-864 Filed 1-13-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-80-000]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

January 7, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 3, 1992, filed proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed To Be Effective February 5, 1992

Second Revised Sheet No. 408
Second Revised Sheet No. 437
Second Revised Sheet No. 438
First Revised Sheet No. 439
Second Revised Sheet No. 667
Second Revised Sheet No. 668
First Revised Sheet No. 669

Algonquin states that it is making the instant filing to comply with the "on behalf of" definition established in the Commission's Order No. 537, Final Rule on Transportation Under section 311 of the Natural Gas Policy Act of 1978 in Docket No. RM90-7-000, issued September 20, 1991.

Under the revised § 284.102 of the Commission's Regulations, interstate pipelines may provide transportation on behalf of a local distribution company or intrastate pipeline, if the local distribution company or intrastate pipeline (1) has physical custody of and transport the natural gas at some point during the transaction; (2) holds title to the natural gas at some point for the purpose related to its status and function as an intrastate pipeline or local distribution company; (3) the gas is delivered to a customer that is located within the local distribution company's service area and the transportation is being provided on its behalf; or (4) the gas is delivered to a customer that is physically able to receive direct deliveries of gas from the intrastate pipeline and the transportation is being provided on its behalf.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-856 Filed 1-13-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-78-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 7, 1992.

Take notice that ANR Pipeline Company ("ANR"), on January 3, 1992, tendered for filing as part of Original Volume No. 1-A of its FERC Gas Tariff, six copies the following tariff sheets:

Fifth Revised Sheet No. 135
Second Revised Sheet No. 136
Second Revised Sheet No. 136A
Third Revised Sheet No. 136B
First Revised Sheet No. 136C

ANR states that the referenced tariff sheets are being submitted in compliance with Order No. 537, which requires certification that transportation of natural gas on behalf of an intrastate pipeline or local distribution company meets the requirements of § 284.102(d) of the Commission's regulations, as revised in the Final Order. ANR has requested that the Commission accept the tendered tariff sheets to become effective February 2, 1992.

ANR states that all of its Volume No. 1-A customers and interested State Commissions have been apprised of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 N. Capitol Street, NE., Washington, DC 20426 by January 14, 1992, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211, 385.214. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-858 Filed 1-13-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM92-3-23-001]

CNG Transmission Corporation; Proposed Changes in FERC Gas Tariff

January 8, 1992.

Take notice that on December 31, 1991, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, with a proposed effective date of January 1, 1992:

Fifth Revised Sheet No. 38

CNG states that the purpose of the filing is to submit a tariff sheet that CNG inadvertently omitted from its filing of November 27, 1991 in the above referenced docket, as directed by the Secretary's letter dated December 26, 1991. CNG states that the tariff sheet reflects the reduction of CNG's take-or-pay surcharge, as supported by workpapers originally filed as Exhibit A to the November 27, 1991 filing.

CNG states that copies of the filing were served upon CNG's customers as well as interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-870 Filed 1-13-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA91-1-24-004]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

January 7, 1992.

Take notice that Equitrans, Inc. ("Equitrans") on October 22, 1991, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheet to its FERC Gas Tariff, Original Volume No. 1, effective September 1, 1991:

Alternate 2nd Substitute 19 Revised Sheet No. 34

Equitrans states that the foregoing is being filed in compliance with the Commission's June 25, 1991 Order in Docket No. RP90-70-000, 57 FERC ¶ 61,134. The Order directed Equitrans to exclude the winter requirement quantity charge from the maximum winter rate for its interruptible sales service.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Parties that have already intervened in this proceeding need not file another motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-853 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-76-000]

National Fuel Gas Supply Corporation; Petition To Waive Tariff Provision

January 7, 1992.

Take notice that on January 3, 1992 National Fuel Gas Supply Corporation ("National") filed a Petition For Waiver of a provision of Rate Schedule IT.

The proposed effective date of the waiver is January 31, 1992.

National requests a waiver of subsection 4.5 of National's IT Rate Schedule as necessary to prevent automatic reductions of IT Shippers' Maximum Daily Transportation Quantities ("MDTQ"), until December 31, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20428, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-855 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-79-000]

Northern Border Pipeline Company; Compliance Filing Pursuant to Order No. 537

January 7, 1992.

Take notice that on January 3, 1992, Northern Border Pipeline Company (Northern Border) tendered for filing the following tariff sheets as part of its FERC Gas Tariff, Original Volume No. 1:

Original Sheet Number 255A
First Revised Sheet No. 259

Northern Border requests that these tariff sheets be made effective on February 3, 1992.

Northern Border states that the purpose of this filing is to revise the Transportation Service Request portion of the General Terms and Conditions section to show that Northern Border requires, prior to initiation of service, certification from its shippers as to the validity of its section 311 transportation, requires certification from any non-transporting, non-title holding LDC involved in § 284.102(d)(3) transportation, and requires a Shipper requesting transportation pursuant to § 284.223 to indicate if the transaction requires Northern Border to notify a local distribution company and related regulatory agency.

Northern Border states that it is filing the tariff change in compliance with the Commission Order dated September 20, 1991 in Docket No. RM90-7-000; Order No. 537.

Northern Border states that it has served a copy of the filing upon all of its contracted shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Regulations. All such motions or protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-857 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TF92-1-59-000 and TA92-1-59-002]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 7, 1992.

Take notice that Northern Natural Gas Company (Northern), on December 31, 1991, tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2.

Northern states that it is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. Northern states that the instant filing reflects a Base Average Gas Purchase Cost of $2.1859 per MMBtu be effective January 1, through January 31, 1992.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-860 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI92-19-000, et al.]

PanCanadian Petroleum Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. PanCanadian Petroleum Company

[Docket No. CI92-19-000]

January 3, 1992.

Take notice that on December 27, 1991, PanCanadian Petroleum Company (PanCanadian) of P.O. Box 2850, Calgary, Alberta, Canada T2P 2S5,filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction, including imported gas and liquefied natural gas, and gas purchased under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales for resale of surplus system supply (ISS gas), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: January 24, 1992, in accordance with Standard Paragraph J at the end of this notice.

2. Tenaska Marketing Ventures

[Docket No. CI92-18-000]

January 3, 1992.

Take notice that on December 26, 1991, Tenaska Marketing Ventures (Tenaska Marketing) of 11235 Davenport Street, Omaha, Nebraska 68154, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce without rate restriction of natural gas subject to the Commission's NGA jurisdiction, including imported gas and liquefied natural gas, gas purchased under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales for resale of surplus system supply (ISS gas), and gas purchased from non-first sellers including intrastate pipelines and local distribution companies, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: January 24, 1992, in accordance with Standard Paragraph J at the end of this notice.

3. Panda Resources, Inc.

[Docket No. CP92-271-000]

January 6, 1992.

Take notice that on December 27, 1991, Panda Resources, Inc. (Panda), 4200 East Skelly Drive, Tulsa, Oklahoma 74135, filed in Docket No. CP92-271-000 a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order that the facilities of, and services performed by the Baca County Gathering System would be exempt from the jurisdiction of the Commission under Section 1(b) of the Natural Gas Act.

Panda states that the facilities that make up the Baca County Gathering system and the services provided thereby constitute the gathering of natural gas. Panda states further that Panda's petition is the companion to the application filed by Panhandle Eastern Pipe Line Company on December 11, 1991, and now pending in Docket No. CP92-229-000, to abandon the system and the services performed therewith.

It is stated that the system is located in Baca County, Colorado and Morton County, Kansas.

Comment date: January 27, 1992, in accordance with first subparagraph of Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP92-256-000]

January 6, 1992.

Take notice that on December 18, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92-256-000 an application pursuant to section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving abandonment of certain firm gas transportation services to United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In such application, Transco states that it entered into several service agreements with United, providing for the transportation of natural gas for United. The application lists the Rate Schedules proposed to be abandoned and states that the primary term of each service agreement has expired. Transco states that pursuant to the service agreements, United is no longer obligated to receive service from Transco under these Rate Schedules. Furthermore, Transco has not provided service to United under such Rate Schedules since the proposed abandonment date of each Rate Schedule. Transco and United have reached an agreement with respect to all the Rate Schedules proposed to be abandoned wherein United supports the instant filing. Transco now seeks authorization to abandon each Rate Schedule as stated below and, set forth in Exhibit A of the application effective on the expiration date of each representative agreement.

Rate schedule	Certification	Expiration date
X-226	CP80-217	07/24/90
X-242	CP83-81	03/11/90
X-200	CP79-178	07/06/89
X-179	CP78-466	01/26/90

No facilities are proposed to be abandoned by the instant application, and no service to any of Transco's other customers will be terminated because of the abandonment requested in the application.

Transco requests that the intermediate decision procedure be omitted and waives oral hearing and opportunity for filing exceptions to the decision of the Commission.

Comment date: January 27, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Colorado Interstate Gas Company

[Docket No. CP92-265-000]

January 6, 1992.

Take notice that on December 26, 1991, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP92-265-000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a sale of natural gas to Northwest Pipeline Corporation (Northwest), all as more fully set forth in the request which is open to public inspection.

It is stated that Northwest was authorized in Docket No. CP79-294 to transport up to 4,000 Mcf per day of natural gas for CIG and that CIG was authorized in Docket No. CP79-270 to

sell up to 25 percent of the gas to Northwest. It is asserted that the sale and transportation services were carried out under the terms of a Gas Gathering and Transportation Agreement signed by CIG and Northwest and dated February 28, 1979 and on file as CIG's Rate Schedule X–34 and Northwest's Rate Schedule X–64. It is further asserted that CIG and Northwest have signed a letter agreement dated June 30, 1991, agreeing to terminate the Gas Gathering and Transportation Agreement. It is explained that no facilities would be abandoned in conjunction with the proposed abandonment of service.

Comment date: January 27, 1992, in accordance with Standard Paragraph F at the end of this notice.

6. Kern River Gas Transmission Company

[Docket No. CP92–267–000]

January 6, 1992.

Take notice that on December 24, 1991, Kern River Gas Transmission Company (Kern River), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92–267–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and related facilities under Kern River's blanket certificate issued in Docket No. CP89–2048–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Kern River states that proposed tap and related facilities would enable it to deliver natural gas to Mobil Natural Gas, Inc. (Mobil), Nevada Cogeneration Associates #1 (NCA1), Nevada Cogeneration Associates #2 (NCA2), Bonneville-Yuma Corporation (B–Y) and Chevron USA, Inc. (Chevron). Kern River further states that pursuant to separate transportation service agreements between Kern River and Chevron, NCA1, NCA2, B–Y and Mobil, Kern River would deliver natural gas for such parties' individual accounts to a point on the transmission facilities of Pacific Gas & Electric Company (PG&E) at PG&E's Hinkley Compressor Station in San Bernardino County, California. It is indicated that the delivery facilities would consist of a tap and approximately 6,000 feet of pipeline extending from the tap to a new measurement station to be located adjacent to the Hinkley Compressor Station. Kern River states that the facilities would have a design delivery volume of 95,000 Mcf per day.

Comment date: February 20, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92–850 Filed 1–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–84–000]

Panhandle Eastern Pipe Line Company; Proposed Changes in FERC Gas Tariff

January 8, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on January 6, 1992, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Third Revised Sheet No. 32–AN
Second Revised Sheet No. 32–BR

Panhandle states that the proposed changes herein which are being filed in compliance with the Commission's Final Rule in Order No. 537, issued September 20, 1991 in Docket No. RM90–7–000, *et al.*, reflect a new provision to section 6.9 of Rate Schedules PT-Interruptible and PT-Firm to require that shippers requesting transportation service to provide information to verify that the requested service complies with subpart B of part 284 of the Regulations.

Panhandle respectfully requests any waiver of the Commission's Regulations necessary to allow these proposed tariff sheets to become effective January 6, 1992.

Panhandle states that copies of its filing have been sent to its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-868 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-85-000]

Riverside Pipeline Company, L.P.; Proposed Changes in FERC Gas Tariff

January 8, 1992.

Take notice that on January 6, 1992 Riverside Pipeline Company, L.P. (Riverside) tendered for filing First Revised Sheet No. 89 and Original Sheet No. 89A to its FERC Gas Tariff, Original Volume No. 1.

Riverside states that the tariff filing is being made in compliance with the Commission's Final Rule in Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, FERC Statutes and Regulations ¶ 30,927 (1991) ("Order No. 537"). Specifically, Riverside states that its filing is in compliance with revised 18 CFR 284.12(e), reflecting the Commission's interpretation of the "on behalf of" standard of Section 311 of the Natural Gas Policy Act of 1978.

Riverside states that a copy of this filing has been mailed to each of Riverside's jurisdictional customers, and to the state commissions of Kansas and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before January 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-869 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-210-004]

Tennessee Gas Pipe Company; Filing

January 7, 1992.

Take notice on January 2, 1992, Tennessee Gas Pipe Company (Tennessee) tendered for filing the following revised tariff sheets in Third Revised Volume No. 1 of its FERC Gas Tariff to be effective on October 1, 1991:

Second Substitute First Revised Sheet No. 228
Substitute Original Sheet No. 228A

Tennessee states that this filing is being made to comply with the Commission's letter order dated December 17, 1991, which directed Tennessee to file various modifications.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before January 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-854 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-81-000]

Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

January 8, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 3, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Third Revised Sheet No. 305
Fourth Revised Sheet No. 330
Sixth Revised Sheet No. 494
Fifth Revised Sheet No. 500
Fifth Revised Sheet No. 501
Fifth Revised Sheet No. 507
Fifth Revised Sheet No. 512
Fifth Revised Sheet No. 513

Texas Eastern states that the tariff sheets listed above are being filed in compliance with the Final Rule, issued on September 20, 1991, in Docket Nos. RM90-7-000, *et al.*, (Order No. 537). The Final Rule adds, effective November 4, 1991, a new paragraph (e) to § 284.102 of the Commission's regulations, which paragraph (e) directs each interstate pipeline to file, within 60 days of the effective date of the final rule, any new or revised tariff provisions as may be necessary to clarify that the pipeline may require such certifications as are specified in the Final Rule.

The proposed effective date of the above tariff sheets is February 3, 1992.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions, and all Rate Schedule FT-1 and IT-1 Shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protesants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-865 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-77-000]

Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 2, 1992, tendered for filing as part of its FERC Gas Tariff,

Fifth Revised Volume No. 1, the following tariff sheet, with a proposed effective date of March 1, 1992:

Third Revised Sheet No. 442

Texas Eastern states that by this filing, Texas Eastern proposes to revise §§ 13.3 and 13.4 of the General Terms and Conditions of its FERC Gas Tariff. The revised Section 13.3 will provide that Texas Eastern will accept one business day prior to the first of any month a predetermined allocation methodology submitted by the operator of the facilities immediately upstream of the Point(s) of Receipt on Texas Eastern's pipeline system for the purpose of allocating the gas received at such Point(s) of Receipt among Texas Eastern's rate schedules and contracts. In the event the operator of the upstream facilities fails to submit a predetermined allocation method, Texas Eastern will allocate receipts into its system based on the ratio of each scheduled nominated quantity to the total scheduled nominated quantities at such point applied to the actual quantities received. In a similar vein, Texas Eastern proposes to conform §§ 13.4 to 13.3 by permitting Texas Eastern and its customers to agree on an allocation methodology among rate schedules for points of delivery different from the existing required methodology.

Texas Eastern submits that similar provisions were approved in Tennessee Gas Transmission Corporation, 56 FERC ¶ 61,463 (1991) and accepted subject to a technical conference in Panhandle Eastern Pipeline Company, 57 FERC ¶ 61,134 (1991).

Texas Eastern states that under Texas Eastern's existing allocation procedure for receipt points (Section 13.3 of the General Terms and Conditions), Texas Eastern either receives no allocation at all or an initial allocation which is subject to multiple reallocations, Texas Eastern states that the lack of predetermined allocation methodologies also makes it extremely difficult for Texas Eastern to identify, on a current basis, shippers on its system who are not balancing their receipts and deliveries on Texas Eastern.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions, and all Rate Schedule FT-1 and IT-1 shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-852 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-82-000]

Transcontinental Gas Pipe Line Corporation; Tariff Filing

January 8, 1992.

Take notice that on January 6, 1992, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1:

First Revised Sheet No. 166
First Revised Sheet No. 167
First Revised Sheet No. 178
First Revised Sheet No. 179

The proposed effective date of the revised tariff sheets is February 5, 1992.

Transco states that the purpose of this filing is to revise section 7.2 of Rate Schedule IT and section 8.2 of Rate Schedule FT of Transco's FERC Gas Tariff to require that shippers provide certification and sufficient information to Transco to verify that, for transportation provided pursuant to section 311 of the Natural Gas Policy Act (NGPA) and § 284.102 of the Commission's Regulations, such services qualify as section 311 transportation.

Transco states that on September 20, 1991, the Commission issued a final rule in Order No. 537 regarding revisions to the Commission's regulations governing transportation pursuant to section 311 of the NGPA and blanket transportation certificates. Transco states such order, among other things, requires interstate pipelines to (a) obtain from its shippers certification, including sufficient information, to verify that services provided to them under section 311 of the NGPA and § 284.102 of the Commission's regulations qualify as section 311 transportation, and (b) file by January 6, 1991 any tariff revisions or additions necessary to clarify that an interstate pipeline may require such certifications.

Transco states that copies of the filing have been served upon its customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 823 North Capitol Street, NE., Washington, DC 20428, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.124. All such motions or protests should be filed on or before January 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-866 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-83-000]

Trunkline Gas Company; Proposed Changes in FERC Gas Tariff

January 8, 1992.

Take notice that Trunkline Gas Company (Trunkline) on January 6, 1992, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 9-BY.1
First Revised Sheet No. 9-DC.1

Trunkline states that the proposed changes herein which are being filed in compliance with the Commission's Final Rule in Order No. 537, issued September 20, 1991 in Docket No. RM90-7-000, *et al.*, reflect a new provision to section 6.9 of Rate Schedules PT-Interruptible and PT-Firm to require that shippers requesting transportation service to provide information to verify that the requested service complies with subpart B of part 284 of the Regulations.

Trunkline respectfully requests any waiver of the Commission's Regulations necessary to allow these proposed tariff sheets to become effective January 6, 1992.

Trunkline states that copies of its filing have been sent to its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules

and Regulations. All such motions or protests should be filed on or before January 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-867 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-272-000]

Trunkline Gas Company; Application

January 7, 1992.

Take notice that on December 27, 1991, Trunkline Gas Company (Trunkline), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-272-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange of natural gas service between Trunkline, Columbia Gulf Transmission Company (Columbia Gulf) and Columbia Gas Transmission Corporation (Columbia Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline proposes to abandon the transportation service provided under the exchange agreement (agreement) between Trunkline, Columbia Gulf and Columbia Gas dated March 28, 1978, as amended May 16, 1979, under Trunkline's Rate Schedule E-22 to be effective June 20, 1992. Trunkline states that Columbia Gas delivers, pursuant to Trunkline's Rate Schedule E-22, up to 35,000 Mcf of natural gas per day to Stingray Pipeline Company in West Cameron 565 for the account of Trunkline. Trunkline states that it redelivers equivalent quantities to: (1) Exxon Company, U.S.A.'s (Exxon) existing "A" platform located in Eugene Island Block 314; (2) the jointly owned C-N-T line of Columbia Gulf, Tennessee Gas Pipeline Company (Tennessee) and Natural Gas Pipeline Company located in the Eugene Island area; (3) Texaco, Inc., *et al.*,'s existing "A" platform located in Eugene Island Block 313; (4) Shell Oil Company's existing "A" platform located in Eugene Island Block 331; and, (5) Columbia Gulf and Tennessee's jointly owned 30-inch pipeline located in West Cameron Block 601. Balancing points are located at Exxon's existing platforms located in West Cameron Block 616 and 630 at which points either party has the capability of causing gas to be delivered to the other, it is indicated.

Trunkline states that pursuant to article IV of the agreement, Columbia Gulf has requested, by written request dated June 21, 1991, termination of the agreement effective June 20, 1992.

No facilities are proposed to be abandoned herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 28, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-851 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-487-000]

Williston Basin Interstate Pipeline Co.; Compliance Filing

January 7, 1992.

Take notice that on December 18, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, ND. 58501, filed a proposed schedule for the disposal of stored, excess, company-owned gas which surpasses the maximum authorized inventory of 180,000 MMcf, in compliance with ordering paragraph (E) of the Commission's December 3, 1991 Order.

Williston Basin proposes to accomplish this reduction over a five year time period beginning January 1, 1992. Williston would achieve the Commission's required annual average maximum authorized inventory of 180,000 MMcf by March 31, 1997. Williston Basin also states that the effect of the estimated storage withdrawals would be to reduce their WACOG by roughly $.025 in 1992, $.235 in 1993, $.335 in 1994, $.28 in 1995, and $.165 in 1996. The details of the proposal are set forth more fully in the compliance filing which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make a protest with reference to Williston Basin's filing should, on or before January 18, 1992, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, DC 20426) a motion to protest in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-859 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4093-8]

Open Meeting of the Committee on National Accreditation of Environmental Laboratories

Under the Federal Advisory Committee Act (Public Law 92-463),

notice is hereby given that the Committee on National Accreditation of Environmental Laboratories will hold an open meeting on February 4 and 5, 1992 at the Sheraton Premiere, 8661 Leesburg Pike, Tysons Corner, VA 22180. The meeting will begin each day at 9 a.m. and will end at 5 p.m.

The purpose of this meeting will be to finalize the reports submitted in the previous meeting and to complete the evaluation of the solutions proposed at the previous meeting. Preliminary recommendations may also be advanced.

Members of the public are invited to provide written comments in advance of the meeting. Please provide a minimum of 50 copies at your earliest convenience and no later than 5 p.m. Tuesday, January 21, 1992 to Ms. Jeanne Hankins, WH–550G, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. Comments received by January 21 will be distributed to committee members for their review in advance of the meeting. Comments not provided in advance should be made available for distribution (minimum of 50 copies) at the time of the meeting.

The meeting agenda will include a brief period for oral comment by the public. Those who would like to make an oral presentation should contact Ms. Hankins, no later than 5 p.m. Tuesday January 28, 1992, at 202/260–8454, and provide the subject of their comments and an estimate of the time required.

Dated: January 7, 1992.

E. Ramona Trovato,

Executive Secretary, Environmental Monitoring Management Council.

[FR Doc. 92–943 Filed 1–13–92; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 91–404]

Lowest Unit Charge of Section 315(b)

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: By this ruling the Federal Communications Commission declares that any state cause of action dependent on any determination of the lowest unit charges under section 315(b) of the Communications Act, or of some other arising under that subsection, is preempted by Federal law. The sole forum for adjudicating such matters shall be this Commission. In view of the inconsistencies among federal and state court decisions and the likely proliferation of similar suits in a number of jurisdictions, the Commission has issued a declaratory ruling to clarify its role in resolving these political broadcasting controversies. This action will assert that the Commission has exclusive primary jurisdiction to determine questions of liability for violations of section 315(b) of the Communications Act, and exclusive jurisdiction to resolve all controversies arising under section 315(b). The intended effect of this action is to provide certainty to candidates that they are indeed receiving the lowest unit charge; and to broadcasters, the certainty that they are fully complying with the law.

FOR FURTHER INFORMATION CONTACT: Diane Hofbauer, Office of General Counsel, Federal Communications Commission (202) 632–7020.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Declaratory Ruling in re Exclusive Jurisdiction With Respect to Potential Violations of the Lowest Unit Charge Requirements of section 315(b) of the Communications Act of 1934, as amended. The item was adopted December 12, 1991 and released December 13, 1991 with Commissioner Quello dissenting in part and issuing a statement and Commissioner Marshall issuing a statement. The full text of this ruling is available for inspection and copying during normal business hours in Administrative Law Division, Office of General Counsel, Room 616, 1919 M Street, NW., Washington, DC. The full text of this item may also be purchased from the Commission's copy contractor, Downtown Copy Center, 114 21st Street, NW., Washington, DC 20036 (202) 452–1422.

Summary of Declaratory Ruling

Background

1. In a Public Notice released on October 10, 1991, 56 FR 51895, October 16, 1991, the Commission stated that it was considering issuing, on its own motion, a declaratory ruling conforming its earlier conclusion that it has exclusive jurisdiction to determine questions of liability for violations of section 315(b). In response to the public notice, the Commission received twenty-six sets of comments and two informal comments in this proceeding.

Procedures

2. The Commission finds that it will further our ability to promptly and fairly dispose of section 315(b) complaints brought to us as a consequence of this ruling (and all other Section 315(b) claims) by setting out the procedural framework for resolution of such complaints.

3. In order to invoke the Commission's enforcement procedures, complainants alleging a violation of section 315(b) will be required to make a *prima facie* case. This must, at minimum, consist of a short, plain statement of the claim sufficient to show that the complainant is entitled to the relief requested. This requirement could be met by a simple recitation of a sequence of events showing that, if all allegations are accepted as true and all inferences are drawn in the complainant's favor, the complaint would reasonably lie. The complainant will be required to serve the complaint upon the station, and the station will be given ten days to answer the complaint if it so desires. If, after reviewing the complaint and answer (if filed), the Mass Media Bureau ("Bureau") finds that a *prima facie* case has been made, it will issue an Order that will give the parties the opportunity to elect one of two alternative procedures to resolve the complaint: mediation (Alternative Dispute Resolution); or evaluation and disposition by the Bureau subject, of course, to review by the full Commission.

4. Under either process, one a *prima facie* showing has been made, the complainant will be entitled to limited discovery subject to specific conditions. The Bureau's Order will establish the limitations on and timetable for discovery. Documents subject to discovery will consist of the station's records related to rates, terms and conditions for any advertising, commercial or political, broadcast during the 45- or 60-day period pertinent to the complaint. The station will be permitted to redact its records prior to production by deleting the identities of commercial advertisers and other proprietary information not relevant to the resolution of the complaint. Document production will be subject to a protective order limiting its examination to parties designated in the order (as well as the Commission), and prohibiting further dissemination of the information revealed thereby.

5. Within 30 days after the completion of discovery, the complainant will be required to file an amended complaint alleging specific facts based on the information discovered, stating the nature of the section 315(b) violation and the amounts said to be owed. The station complained against will be given a 15-day opportunity to respond. If the parties have not elected to pursue mediation, the Bureau will either impose an appropriate sanction where it finds

the rules have been violated, or issue an appropriate order dismissing the complaint where it finds no violation. In appropriate circumstances, the dispute may be referred to the Administrative Law Judges (ALJs) for resolution.

6. The sanctions available to the Commission for section 315(b) violations (in addition to the rebate of any amounts found to have been charged in violation of section 315(b)) include forfeitures, letter of admonition, short-term renewal, and designation of the station's license for revocation. Any decision rendered by the Bureau or an ALJ may be appealed directly to the full Commission.

7. Accordingly, pursuant to Sections 1, 4(i), 303(r), and 315 (b) and (d) of the Communications Act, 47 U.S.C. 151, 154(i), 303(r), and 315 (b) and (d); Section 5(e) of the Administrative Procedure Act, 5 U.S.C. 556(e); and Section 1.2 of the Commission's rules, 47 CFR 1.2, *It Is Declared* that state causes of action involving alleged violations of the lowest unit charge requirement or of some other duty arising under Section 315(b) are preempted to the extent indicated in the item.

Federal Communications Commission.

Dona R. Searcy,

Secretary

Separate Statement of Commissioner Sherrie P. Marshall

Re: Declarstory Ruling on FCC Preemption of Claims Dependent on Section 315(b).

Today's declaratory ruling should not be interpreted as the generous act of a Federal agency intent on providing shelter to broadcasters charged with price gouging. To the contrary, I write separately to emphasize that the Commission is asserting its jurisdiction over all claims sounding in 47 USC § 315(b) so as to vigorously prosecute such claims, not bury them.

I joined in calling for this full extension of the Commission s preemptive authority only after I was confident that the Commission possessed the legal authority, the administrative wherewithal, and the institutional resolve to adjudicate Section 315 claims fairly and competently. Our declaratory ruling itself recounts in detail the weighty record compiled in support of Commission preemption of all claims arising from the statutory duty of broadcasters to provide candidates with the lowest unit charge for political advertisements.

That ruling also details the efficient, yet fair administrative processes the Commission has established for prompt resolution of bona fide overcharge grievances. Moreover, the fines and rebates we are separately ordering today for past violations of § 315(b) clearly demonstrate this Commission s commitment to enforcing the legal obligations our licensees owe candidates for public office.

While we stand prepared to provide for a timely and thorough resolution of all candidate overcharge claims, I would not deny that the recent surge of such allegations could create a substantial burden on the Commission s ever scarce resources. Thus, I strongly endorse the Commission s offer of an alternative dispute resolution process to both candidates and respondent broadcast stations.

I also wish to underscore the sincerity of the Commission s suggestion that stations and candidates should attempt to reach a mutually satisfactory settlement of their overcharge disputes. As our declaratory ruling explains, the Commission will look favorably upon the private settlement of these disputes in reviewing any overcharge claims brought to its attention. Indeed, in light of the flood of claims that might immediately follow our issuance of this preemption ruling, that Commissioner, for one, will be disinclined to impose any additional sanctions on licensees who act promptly to rebate funds or otherwise redress the bona fide claims of aggrieved candidates pursuant to such a settlement.

Let us move with dispatch to dispose of these past grievances and ensure--through our newly revised political broadcast rules--clear regulatory guidance to broadcasters and candidates alike for the upcoming and future political campaign seasons.

Separate Statement of Commissioner James H. Quello, Dissenting in part.

In re: Exclusive Jurisdiction With Respect to Potential Violations of the Lowest Unit Charge Requirements of Section 315(b) of the Communications Act of 1934, as amended.

By this Declaratory Ruling ("Ruling"), the Commission is taking the important step of reaffirming our exclusive jurisdiction to enforce violations of section 315 of the Communications Act. To the extent it does so, the Ruling is fully supported by law and represents sound policy I can support this aspect of the Ruling without reservation.

I think it is important to emphasize that this action does not represent a new assertion of FCC authority. Section 315 never has been considered to have created a private right of action separate from our administrative processes. *See, e.g. Belluso* v. *Turner Communications Corp.*, 633 F.2d 393, 397 (5th Cir. 1980). Until recently, no one had ever sought a judicial remedy for purported lowest unit charge violations. In the two decades since section 315(b) was enacted, the Commission has provided the sole remedy.

So in many ways this Ruling merely recognizes the obvious. It certainly is no departure from the Commission's historic view of its jurisdiction and statutory responsibilities. This necessarily means that the Commission is not "taking away" any existing remedy.

Conspicuously absent from the Ruling is any discussion of the Commission s existing complaint procedures or any suggestion that they have been in some way inadequate. Perhaps the reasons for this omission is the fact that the Commission did not request comment on the question of procedures, nor did it engage in much internal analysis on this point.[1]

It has been suggested that the FCC is not obligated to provide parties an opportunity to comment on procedural issues. Whether or not this claim is true in this context, the Commission has been rather erratic in this proceeding in deciding when to solicit and when to forego public input. For example, there is no requirement that the Commission receive comments in order to promulgate a declaratory ruling, yet we choose to do so here.

Also, in our Notice of Proposed Rulemaking, the Commission solicited advice on procedures for implementing sponsorship ID and other requirements. In all of our current proceedings, the question of complaint procedures is the only significant subject on which we did not request comment. If, as some have suggested, our current proceedings "may be the most important determinations made since the enactment of the lowest unit charge standard," this omission is exceedingly strange.

At this point, the new procedural guidelines raise more questions than they answer. For example, the Ruling encourages the use of Alternative Dispute Resolution at a time when the Commission's policy on such procedures is essentially conceptual. There is no discussion of how discovery will be limited to relevant documents or how the Commission will enforce such limits. Moreover, although the Ruling expresses concern with the potential administrative burden created by complaints, it establishes a new multi-stage procedure that includes a complaint, discovery, an amended complaint and several levels of Commission decisions including the possibility of hearings.

I dissent from the hastily made decision to adopt procedures because we do not yet know whether the new guidelines will help or make matters worse. Will the new procedures allow candidates to make a prima facie case and obtain quick relief or will they delay matters? Will they encourage the filing of speculative complaints, thus requiring the extension of our abuse of process rules? Will the number of complaints diminish now that the Commission is clarifying the political rules or will the volume of complaints under the new procedures create an administrative nightmare? We simply do not know. And, unfortunately, there was insufficient interest at the Commission in taking the time to find out.

I would have preferred to adopt the Declaratory Ruling on preemption and at the same time, issue a Further Notice to explore these issues. I believe that candidates, broadcasters and other interested parties would have welcomed the opportunity to comment on the issue of procedures.

Ironically, the internal pressure to adopt procedures intensified at the very time that the Commission is clearing up the confusion

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[1] To put the issue into some perspective, the Commission adopted the Notice of Proposed Rulemaking on our political broadcasting policies last June. The Commission began examining the issue of jurisdiction in July and released the Notice of Intent to Issue a Declaratory Ruling in October By sharp contrast, a draft order proposing new procedures was circulated less than a week ago at a time when other pressing matters were under consideration.

that prompted this Declaratory Ruling. Along with this Ruling and the Report and Order, the Commission is releasing a number of enforcement actions arising from the 1990 political broadcasting audit. Contrary to the exaggerated claims that 80 percent of television and 50 percent of radio stations overcharged candidates, the Bureau is assessing fines for overcharging in only two cases—about 7 percent of the stations audited. All together, the Bureau is issuing Notices of Apparent Liability to five of the thirty stations we examined, two for lowest unit charge violations and three for political file violations. In short, the level of rule violations by broadcasters is far below what some suggested in the wake of the audit. For this reason I wonder whether the rush to adopt new procedures may be premature.

We are doing the right thing by making clear that the Commission has exclusive jurisdiction to determine both liability and damages in complaints that implicate section 315(b). Although I would not have taken the additional step of adopting procedures just yet, I am hopeful that they can be administered efficiently, and in a way that is fair to all concerned.

[FR Doc. 92-550 Filed 1-13-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-928-DR]

Iowa; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA-928-DR), dated December 26, 1991, and related determinations.

DATED: January 3, 1992.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is hereby amended to be October 31, 1991, through and including November 29, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92-934 Filed 1-13-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-930-DR]

Texas; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-930-DR), dated December 26, 1991, and related determinations.

DATED: January 4, 1992.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472; (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated December 26, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 26, 1991:

The counties of Brazoria, Burleson, Coryell, Madison, and San Jacinto for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92-933 Filed 1-13-92; 8:45 am]

BILLING CODE 6718-02-M

State and Local Programs and Support Board of Visitors for the Emergency Management Institute Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).

Dates of Meeting: January 23-24, 1992.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, Maryland 21727.

Time:

January 23—8:30 a.m. to 5 p.m.
January 24—8:30 a.m. to 12 noon.

Proposed Agenda: The primary focus of the meeting will be the preparation of the Board's 1991 Annual Report.

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301-447-1251) on or before January 10, 1992.

Minutes of the meeting will be prepared and will be available for public veiwing in the Superintendent's Office, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: December 2, 1991.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-936 Filed 1-13-92; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOUSING FINANCE BOARD

[No. FHFB 92-3]

Affordable Housing Program

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is giving notice of the 1992 closing dates for applications for funding under the Affordable Housing Program ("AHP") during 1992. This notice is given to supplement notices provided by the Federal Home Loan Banks ("FHLBanks") pursuant to 12 CFR 960.4(a). The Finance Board will announce AHP funding levels for 1992 in early 1992.

DATES: See AHP application deadlines in **SUPPLEMENTARY INFORMATION.**

ADDRESSES: See FHLBank addresses in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sylvia Martinez, Director, Housing Finance Directorate, (202) 408-2825, or Richard Tucker, Deputy Director, Housing Finance Directorate, (202) 408-2848, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: In accordance with regulations set forth in 12 CFR part 960, AHP funding is awarded based on FHLBank District-wide competitions held twice each year. Each FHLBank is allowed to choose two quarters of the year (January, April, July, and October) in which to conduct the competitions. Applications must be received by the 15th day of the quarter or by the next business day if the 15th day falls on a weekend or holiday. The respective deadlines for AHP

applications, selected by the individual FHLBanks for 1992, are listed below along with the individual FHLBank addresses and Community Investment Officers ("CIOs").

For additional specific information concerning the AHP, Community Investment Program, and other FHLBank programs to promote affordable housing and community development, members and the public may contact the individual FHLBank CIOs.

1992 AHP Application Deadlines

FHLBank	Deadlines	
	1st AHP round	2nd AHP round
FHLBank of Boston, Post Office Box 9106, Boston, MA 02111, CIO: David Parish, Telephone: (617) 330–9872.	April 15	October 15.
FHLBank of New York, One World Trade Center, 103rd Floor, New York, NY 10048, CIO: Donald Wolff, Telephone: (212) 912–4600.	April 15	October 15.
FHLBank of Pittsburgh, 625 West Ridge Pike, Suite B–107, Conshohocken, PA 19428, CIO: Calvin Baker, Telephone: (215) 941–7116.	January 15	July 15.
FHLBank of Atlanta, Post Office Box 105565, Atlanta, GA 30348, CIO: Robert Warwick, Telephone: (404) 888–8435.	January 15	July 15.
FHLBank of Cincinnati, Post Office Box 598, Cincinnati, OH 45201, CIO: Carol Peterson, Telephone: (513) 852–7615.	January 15	July 15.
FHLBank of Indianapolis, Post Office Box 60, Indianapolis, IN 46205–0060, CIO: Michael Thomas, Telephone: (317) 465–0430.	January 15	July 15.
FHL Bank of Chicago, 111 East Wacker Drive, Suite 800, Chicago, IL 60601, CIO: Charles Hill, Telephone: (312) 565–5705.	April 15	October 15.
FHL Bank of Des Moines, 907 Walnut Street, Des Moines, IA 50309, CIO: Nancy Grandquist, Telephone: (515) 281–1109.	April 15	October 15.
FHL Bank of Dallas, 5605 N. MacArthur Boulevard, 9th Floor, Irving, TX 75038, CIO: Clifford Giles, Telephone: (214) 714–8645.	April 15	October 15.
FHL Bank of Topeka, Post Office Box 176, Topeka, KS 66601, CIO: Chris Imming, Telephone: (913) 233–0507 ext. 565.	April 15	October 15.
FHL Bank of San Francisco, 307 East Chapman Avenue, Orange, CA 92666, CIO: James Yacenda, Telephone: (714) 633–1271.	April 15	October 15.
FHL Bank of Seattle, 1501 Fourth Avenue, Seattle, WA 98101–1693, CIO: Judy Chaney, Telephone: (206) 340–8737.	April 15	October 15.

Dated: January 8, 1992.

By the Federal Housing Finance Board.

J. Stephen Britt,

Executive Director.

[FR Doc. 92–880 Filed 1–13–92; 8:45 am]

BILLING CODE 6725–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Costa Cruise Lines N.V., Costa Crociere S.P.A. and Italian Cruise Lines S.R.L., World Trade Center, 80 S.W. 8th Street, Miami, FL 33130–3097

Vessel: Costa Classica

Dated: January 9, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–922 Filed 1–13–92; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 92–01]

American President Lines, Ltd. v. Cyprus Copper Co. and Cyprus Minerals Co.; Filing of Complaint and Assignment

Notice is given that a complaint filed by American President Lines, Inc. ("Complainant") against Cyprus Copper Company and Cyprus Minerals Company ("Respondents") was served January 8, 1992. Complainant alleges that Respondents engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by obtaining ocean transportation at less than the applicable rates and charges as a result of misdescribing cargo.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by January 8, 1993, and the final decision of the Commission shall be issued by May 10, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 92–842 Filed 1–13–92; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 92-02]

Gulf Atlantic Transport Corp. Possible Violations of Section 16, Second, of the Shipping Act, 1916; Order of Investigation and Hearing

Between April 1987 and July 1991, Gulf Atlantic Transport Corporation ("Gulf Atlantic") was a vessel operating common carrier in the United States' domestic offshore trade and had a tariff, FMC-F No. 3, on file with the Commission. The company currently is located in Jacksonville, Florida.[1]

It appears that on at least 10 occasions between May 1987 and June 1988, as set forth in more detail in appendix A attached hereto and made a part hereof, Gulf Atlantic violated section 16, Second, Shipping Act, 1916, 46 U.S.C. app. 815, by allowing a person to obtain transportation for property from Mobile, Alabama, Port Arthur, Texas, or Houston, Texas, to Puerto Rico at less than the regular rates then established in Gulf Atlantic's Tariff, FMC-F No. 3.

Now therefore it is ordered, That pursuant to sections 1, 16, 18, 22, 27 and 32 of the Shipping Act, 1916, 46 U.S.C. app. 801, 815, 817, 821, 826 and 831, an investigation is hereby instituted to determine:

(1) Whether Gulf Atlantic Transport Corporation ("Gulf Atlantic") violated section 16, Second, of the shipping Act, 1916;

(2) Whether, in the event Gulf Atlantic is found to have violated section 16, Second, of the Shipping Act, 1916, civil penalties should be assessed and, if so, the amount of such penalties;

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Gulf Atlantic is designated Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with rule 188 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record;

It is further ordered, That in accordance with rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by January 8, 1993, and the final decision of the Commission shall be issued by May 10, 1993.

By the Commission.[2]

Joseph C. Polking,

Secretary.

[1] It appears that Gulf Atlantic is engaged in a towing operation at the location.

[2] Commissioner Quartel's dissent is attached.

APPENDIX A

Vessel/voyage	Bill of lading	Date	Person (shipper/consignee)	Commodity
Gatco Antilles V. 1	No. 5	5/21/87	United States Gypsum Company	Plaster
Gatco Antilles V. 2	No. 8	6/19/87	First International Timber Sales, Inc	Lumber
Gatco Antilles V. 2	No. 13	6/19/87	First International Timber Sales, Inc	Lumber
Gatco Antilles V. 2	No. 5	6/24/87	First International Timber Sales, Inc	Lumber
Gatco Antilles V. 3	No. 20	7/23/87	Transcontinental Steel Company	Steel Material
Gatco Antilles V. 6	No. 40	11/18/87	Transcontinental Steel Company	Steel Beams
Gatco Antilles V. 7	No. 24	12/23/87	Transcontinental Steel Company	Steel Beams
Caribe V/208-0	No. 2	6/20/88	Transcontinental Steel Company	Pine Posts
Caribe V/208-0	No. 3	6/20/88	Transcontinental Steel Company	Crossarms
Caribe V/208-0	No. 4	6/20/88	Transcontinental Steel Company	Pine Poles

Commissioner Quartel Dissenting:

The party this Commission today chooses to investigate is one over whom we no longer even have regulatory authority. Gulf Atlantic Transport Corporation ceased filing tariffs with this Commission in July of 1990 and ceased doing business as a carrier altogether in 1991. We have nevertheless been urged, and the majority has decided, to reach back with our regulatory arm and initiate an investigation to determine if we can sometime in the future impose penalties on this former carrier for no other reason, as far as I can discern, except procedural pique and pettiness.

Gulf Atlantic in fact attempted settlement negotiations with us through two different law firms based on their arguable contention that the transportation of goods in question was premised on a separate and bona fide charter agreement. Rather than agree to settle and be done with this matter, we have instead upped the ante and commenced yet another formal investigation which costs not only the public, for the unnecessary use of scarce staff resources, but also the carrier.

Furthermore while case law may be consistent in disallowing an apparent common carrier to contract independently under circumstances similar to these, I believe we should have had a full Commission meeting on this case to at least debate the premises of the past decisions which are arguably based on now disputed regulatory theories. I consider the outcome in this case as another example of a Commission weakened by excessive

delegation of authority to its staff, the latter which evidences a continuing attitude of regulatory zealotry and indifference to the needs of the public at large.

[FR Doc. 92-877 Filed 1-13-92; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review: Extension of Comment Period

SUMMARY: On December 10, 1991, the Board of Governors of the Federal Reserve System published for comment the proposed addition of a supplement to the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100-0032). The report is collected and processed by the Federal Reserve on behalf of all three federal bank regulatory agencies. The new supplement (FFIEC 002S; OMB No. 7100-0032) would collect information on assets and liabilities of non-U.S. branch that is managed or controlled by a U.S. branch or agency of a foreign bank. The notice provided that the comment period regarding this proposed supplement would expire on January 10, 1992. The Board has received a request from the public to extend the public comment period to enable the public to prepare adequate comments on the proposed supplement in writing. In response to these requests, the Secretary of the Board, acting pursuant to delegated authority, has decided to extend the public comment period on this supplement to January 31, 1992.

DATES: The comment period has been extended, and now expires January 31, 1992.

ADDRESSES: Comments, which should refer to OMB Docket No. 7100-0032, should be sent both to the agency clearance officer and to the OMB desk officer, as follows:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics. Board of Governors of the Federal Reserve System. Washington, DC 20551 (202-452-3829).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208. Washington DC 20503 (202-395-7340).

FOR FURTHER INFORMATION CONTACT: Henry S. Terrell, Senior Economist (202-452-3785), Division of International Finance, and Martha C. Bethea, Deputy Associate Director (202-452-3181). Division of Research and Statistics.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, January 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-912 Filed 1-13-92; 8:45 am]
BILLING CODE 6210-01-M

Sylvan J. Diesk, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Sylvan J. Dlesk, Wheeling, West Virginia; to acquire an additional 0.20 percent of the voting shares of First West Virginia Bancorp, Inc., Wheeling, West Virginia, for a total of 10.07 percent.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. David Ray and Elizabeth Ann Tritten, Waynesville, Missouri; to acquire an additional 29.66 percent of the voting shares of Tritten Bancshares, Inc., St. Robert, Missouri, for a total of 34.75 percent, and thereby indirectly acquire First State Bank of St. Robert, St. Robert, Missouri.

2. Frank E. and Beverly Ann Wiles, Pleasant Hope, Missouri; to acquire 34.75 percent of the voting shares of Tritten Bancshares, Inc., St. Robert, Missouri, and thereby indirectly acquire First State Bank of St. Robert, St. Robert, Missouri.

Board of Governors of the Federal Reserve System, January 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-913 Filed 1-13-92; 8:45 am]
BILLING CODE 6210-01-F

FBOP Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. FBOP Corporation, Oak Park, Illinois; to acquire Sterling Federal Savings and Loan Association of

Chicago, Chicago, Illinois, and thereby engage in owning, controlling or operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-914 Filed 1-13-92; 8:45 am]

BILLING CODE 6210-01-F

Grupo Financiero Banamex Accival, S.A. de C.V.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that the Board has determined to be closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 1992.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Grupo Financiero Banamex Accival, S.A. de C.V., Mexico, D.F., Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Banco Nacional de Mexico, S.A., Mexico, D.F., Mexico; Banamex Holding Company, Los Angeles, California; and Banamex USA Bancorp, Los Angeles, California; and thereby indirectly acquire California Commerce Bank, Los Angeles, California.

In connection with this application, Applicant also proposes to acquire ACCI Securities, Inc., Boulder, Colorado, and thereby engage in full services securities brokerage, in which securities brokerage services and investment advice incidental thereto are provided on a combined basis, pursuant to §§ 225.25(b)(4) and (b)(15) of the Board's Regulation Y; and private placement services, soliciting purchasers in the private placement of all types of securities pursuant to the conditions imposed in *NCNB Corporation*, 76 Federal Reserve Bulletin 864 (1990).

Board of Governors of the Federal Reserve System, January 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-915 Filed 1-13-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0479]

BASF Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyamide-ethyleneimine-epichlorohydrin resin prepared by reacting adipic acid and *N*-(2-aminoethyl)-1,2-ethanediamine, to form a basic polyamidoamine which is modified by reaction with ethyleneimine, and further reacted with formic acid and (chloromethyl)oxirane-α-hydro-ω-hydroxypoly(oxy-1,2-ethanediyl). The resin is intended for use as a retention aid in the manufacture of paper and paperboard intended to contact dry food.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP OB4193) has been filed by BASF Corp., Eight Campus Dr., Parsippany, NJ 07054. The petition proposes to amend the food additive regulations to provide for the safe use of a polyamide-ethyleneimine-epichlorohydrin resin prepared by reacting adipic acid and *N*-(2-aminoethyl)-1,2-ethanediamine, to form a basic polyamidoamine which is modified by reaction with ethyleneimine, and further reacted with formic acid and (chloromethyl)oxirane-α-hydro-ω-hydroxypoly(oxy-1,2-ethanediyl). The resin is intended for use as a retention aid in the manufacture of paper and paperboard intended to contact dry food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 2, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-893 Filed 1-13-92; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: ORLANDO DISTRICT OFFICE, chaired by Lynne C. Isaacs, Public

Affairs Specialist. The topic to be discussed is food labeling.

DATES: Wednesday, January 22, 1992, 10 a.m. to 12 m.

ADDRESSES: University of North Florida, College of Health, Bldg. 14, rm. 1542, 4567 St. Johns Bluff Rd., South Jacksonville, FL 32216.

FOR FURTHER INFORMATION CONTACT: Lynne C. Isaacs, Public Affairs Specialist, Food and Drug Administration, 7200 Lake Ellenor Dr., suite 120, Orlando, FL 32809, 407–648–6922.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 92–890 Filed 1–13–92; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: NASHVILLE DISTRICT OFFICE, chaired by Raymond K. Hedblad, District Director. The topic to be discussed is food labeling.

DATES: Friday, January 17, 1992, 9:30 a.m. to 12 m.

ADDRESSES: John Sevier Bldg., Conference Rm. A, Ground Floor, 500 Charlotte Ave., Nashville, TN 37243.

FOR FURTHER INFORMATION CONTACT: Sandra S. Baxter, Public Affairs Specialist, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615–781–5372.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 92–891 Filed 1–13–92; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: ORLANDO DISTRICT OFFICE, chaired by Lynne C. Isaacs, Public Affairs Specialist. The topic to be discussed is food labeling.

DATES: Friday, January 31, 1992, 10 a.m. to 12 m.

ADDRESSES: Manatee County Central Library, 1301 Barcarrota Blvd., Bradenton, FL 34205.

FOR FURTHER INFORMATION CONTACT: Lynne C. Isaacs, Public Affairs Specialist, Food and Drug Administration, 7200 Lake Ellenor Dr., suite 120, Orlando, FL 32809, 407–648–6922.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–892 Filed 1–13–92; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Biomedical Research Symposium; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a symposium being sponsored jointly by the National Institutes of Health (NIH), the Department of Health and Human Services, and the Southwest Foundation for Biomedical Research, on February 3–4, 1992, at the Henry B. Gonzalez Convention Center, San Antonio, Texas 78205. The symposium, "Today's Opportunities, Tomorrow's Health: The Future of Biomedical Research in America," will be devoted to a discussion of (1) the future of biomedical and behavioral research, and (2) the draft NIH Strategic Plan. Symposium sessions on February 3 will be held from 9 a.m. to 12:15 p.m. and from 1:30 p.m. to 5:30 p.m., and on February 4 from 8:30 a.m. to 12 p.m. and 1 p.m. to 3 p.m.

The symposium will be open to members of the public who pay the registration fee of $250 which will defray the cost of printing and mailing of documents and the provision of meals to attendees. Arrangements may be made for free attendance at a limited number of sessions if space permits and if meals are not involved and printing and mailing of documents is not necessary. The registration fee is being waived for members of the media who wish to cover the meeting.

Further information may be obtained by contacting Duncan Wimpress, Ph.D., President, Southwest Foundation for Biomedical Research, Post Office Box 28147, San Antonio, Texas 78228, (512) 674–1410.

Dated: January 7, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92–847 Filed 1–13–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–92–3366; FR–3184–N–01]

Section 202 Loans for Housing for the Elderly or Handicapped; Fiscal Year 1992 Loan Interest Rate

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of section 202 loan interest rate.

SUMMARY: Under 24 CFR 885.410(g), the interest rate for a loan for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 is set at one of two rates: (1) A fixed annual interest rate announced by HUD; or (2) the optional interest rate elected by the Borrower and computed by HUD at the time of the Borrower's request for conditional or firm commitment. This document establishes 8.375 percent as the fixed annual interest rate for Fiscal Year 1992. (Information concerning the calculation of the optional interest rate will be provided to Borrowers upon request. See § 885.410(h).)

FOR FURTHER INFORMATION CONTACT: Robert W. Wilden, Director, Housing for

the Elderly and Handicapped People Division, Office of Elderly and Assisted Housing, 451 Seventh Street, SW., Washington, DC 20410–8000. Telephone (202) 708–2730, or (202) 708–4594 (voice/TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Under 24 CFR 885.410(g), the interest rate for a loan for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 is set at one of two rates: (1) A fixed annual interest rate announced by HUD; or (2) the optional interest rate elected by the Borrower and computed by HUD at the time of the Borrower's request for conditional or firm commitment. This document announces HUD's determination of the annual interest rate. (Information concerning the calculation of the optional interest rate will be provided to Borrowers upon request. See § 885.410(h).)

The annual interest rate fixed under § 885.410(g)(1) may not exceed: (1) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceding the fiscal year in which the loan is made (adjusted to the nearest one-eighth of one percent) plus an allowance to cover administrative costs and probable losses under the program. (This allowance has been determined by the Secretary of Housing and Urban Development to be one-fourth of one percent (0.25 percent) per annum for both the construction and permanent loan periods); and

(2) Any applicable statutory ceiling on the loan interest rate including the allowance to cover administrative costs and probable losses (see § 885.410(g)(1)(ii)). The current statutory ceiling is 9.25 percent per annum.

The average yield on the interest-bearing obligations of the United States described in paragraph (1) was 8.125 percent during the last three months of Fiscal Year 1991. This rate, plus the 0.25 percent allowance for administrative costs and probable losses, yields an interest rate of 8.375 percent. Accordingly, this Notice establishes the annual interest rate for section 202 loans made during Fiscal Year 1992 at 8.375 percent per annum.

Under 24 CFR 50.20(1), an environmental finding is not necessary because the statutorily required establishment of interest rates is among matters that are categorically excluded from the environmental requirements of 24 CFR part 50.

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: January 7, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner

[FR Doc. 92–741 Filed 1–13–92; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of the Draft Oil and Gas Resource Management Plan/Environmental Impact Statement Amendment; Miles City District; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with section 202 of the Federal Land Policy and Management Act of 1976 and section 102(c) of the National Environmental Policy Act of 1969, the Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) Amendment has been prepared for the Billings, Powder River, and South Dakota Resource Areas. The RMP/EIS Amendment describes and analyzes future options for managing the leasing of oil and gas on approximately 1.7 million acres of BLM surface and 4.6 million acres of federal minerals in south-central and southeastern Montana and the State of South Dakota. The RMP/EIS Amendment provides a comprehensive plan for managing the federal oil and gas resources administered by BLM.

PUBLIC PARTICIPATION: Copies are available from the Billings Resource Area Office, 810 East Main Street, Billings, MT 59105–3395, telephone (406) 657–6262. Public reading copies are available for review at the following BLM locations:

Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC 20240–9998.

External Affairs Office, Montana State Office, P.O. Box 36800, 222 North 32nd Street, Billings, MT 59107–6800.

Miles City District Office, Garryowen Road, P.O. Box 940, Miles City, MT 59301–0940.

South Dakota Resource Area, 310 Roundup Street, Belle Fourche, South Dakota 57717–1698.

Powder River Resource Area, Miles City Plaza, Miles City, Montana 59301–2844.

Billings Resource Area, 810 East Main Street, Billings, Montana 59105–3395.

Public reading copies are available for review at each county library located in Big Horn, Carbon, Carter, Custer, Fallon, Golden Valley, Musselshell, Powder River, Rosebud, Prairie, Stillwater, Sweet Grass, Treasure, Yellowstone, and Wheatland Counties in Montana; and all 66 counties of South Dakota.

Written comments on the Draft RMP/EIS Amendment will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice of Filing of the Draft Amendment in the **Federal Register.** Comments can also be presented at three public meetings to be held:

Date	Time	Location
March 10, 1992	7 p.m.	BLM Resource Area Office, 310 Roundup Street, Belle Fourche, South Dakota.
March 11, 1992	7 p.m.	BLM District Office, Garryowen Road, Miles City, Montana.
March 12, 1992	7 p.m.	Quality Inn, 2036 Overland Avenue, Billings, Montana.

ADDRESSES: Written comments on the document should be addressed to: Lloyd F. Emmons, Project Manager, Bureau of Land Management, Billings Resource Area Office, 810 East Main, Billings, Montana 59105–3395.

FOR FURTHER INFORMATION CONTACT: Lloyd F. Emmons, Project Manager, Bureau of Land Management, Billings Resource Area Office, 810 East Main, Billings, Montana 59105–3395, (406) 657–6262.

SUPPLEMENTARY INFORMATION: The Draft RMP/EIS Amendment analyzes four alternatives to resolve nine issues. The alternatives can be summarized as: (A) (No Action) is the continuation of present management decisions; (B) emphasizes the protection of natural and cultural resources while allowing the development of oil and gas; (C) emphasizes the availability of the public land for oil and gas exploration and development with minimum restrictions;

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(D) the preferred alternative proposes a balance between the demands of oil and gas resource development and the protection of sensitive area and other resources. Each alternative represents a complete management plan for the planning area. The nine issues are as follows: Other resource values to be considered in leasing oil and gas, what impacts will be permitted to resource values, what areas should be opened or closed to oil and gas activity, resolution of conflicts between oil and gas and other resource values, landowner involvement in decisions affecting split-estate lands, determination of Reasonably Foreseeable Development of oil and gas resources and the impacts associated with development, identification of mitigating measures to minimize impacts from oil and gas resource development, how the management of oil and gas resources relates to other multiple-use management decisions, and handling of hazardous materials related to the exploration and development of oil and gas resources.

The RMP/EIS Amendment evaluates two proposed Areas of Critical Environmental Concern (ACEC). Nominations of both met the relevance and importance criteria and were studied for special management.

The Meeteetse Spires Outstanding Natural Area would be designated an ACEC to protect the scenic quality of the Meeteetse Spires pinnacles and the habitat of two species of rare plants, *Shoshonea pulvinata* and *Townsendia spathulata*. No new oil and gas leases will be issued within the boundaries of the proposed ACEC. Current leases will expire in 1995 and 1996. The proposed ACEC would be withdrawn from mineral entry. Other resource uses would be permitted, providing there are no threats to the populations of rare plants or safety hazards to the users.

The Weatherman Draw Rock Art Complex would be designated an ACEC to protect the petroglyphic and pictographic cultural sites and the significant historic, cultural, and scenic values of the complex. Six hundred acres of the proposed ACEC have been withdrawn from mineral entry. The BLM would pursue an additional withdrawal from mineral entry on the remaining portion of the proposed ACEC. Oil and gas leasing would occur with a No Surface Occupancy stipulation for the proposed ACEC. Other resource uses would be permitted unless they conflict with the protection or management of the complex.

Management prescriptions for these potential ACECs vary by alternative and are described in the RMP/EIS Amendment.

Public participation has occurred throughout the RMP/EIS Amendment process. A Notice of Intent was filed in the **Federal Register** in November 1988. Since that time public meetings, mailings, and briefings have been conducted to solicit comments and ideas. All comments presented throughout the process have been considered.

This Notice meets the requirements of 43 CFR 1610.7–2 for designation of proposed ACECS.

Dated: December 16, 1991.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 92–908 Filed 1–13–92; 8:45 am]

BILLING CODE 4310-DN-M

[UT–020–02–4320–02]

Salt Lake District, Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92–463 that the Salt Lake District Grazing Advisory Board will be meeting on February 12, 1992. The meeting will begin at 9:30 a.m. at the Salt Lake District, Bureau of Land Management office, at 2370 South 2300 West, Salt Lake City, Utah.

The purpose of the meeting will be to review range improvement project proposals for funding consideration by the Salt Lake District Grazing Advisory Board.

The meeting is open to the public. Interested persons may make oral statements at the meeting between 10 a.m. and 10:30 a.m., or file a written statement for the Board's consideration. Those wishing to make statements to the Board, are requested to contact Glade Anderson at (801) 977–4300 by February 7th so adequate time can be included on the agenda.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 92–886 Filed 1–13–92; 8:45 am]

BILLING CODE 4310-DQ-M

Bureau of Reclamation

Withdrawal of Notices of Intent

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of withdrawal of notices of intent.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as ameded, the Bureau of Reclamation is withdrawing the following list of notices of intent. Environmental impact statement's will not be prepared on these projects which have become inactive or for which a finding of no significant impact has been prepared.

FEDERAL REGISTER NOTICE OF INTENT

Dated	Citation	Project
04/30/79	44 FR 256275	Allen Camp Unit, Central Valley Project, California (EIS Canceled).
10/24/79	44 FR 61264	Apple Creek Unit, Pick-Sloan Missouri Basic Program, North Dakota (EIS Canceled.
01/23/84	49 FR 2834	Texas Big Sandy Project, Texas (EIS Canceled).
10/18/84	49 FR 40979	Parker Division Channel Modification Project, Colorado Front Work and Levee System, Arizona-California (1990 FONSI).
03/13/84	49 FR 9486	New Melones Unit Supplement, Central Valley Project, California (EIS Canceled).
05/28/85	50 FR 21669	Milk River Project, Pick-Sloan Missouri Basis Program, Montana (EIS Canceled).
08/08/85	50 FR 32121	Bedia Project, Texas (EIS Canceled).
08/08/85	50 FR 32121	Fallon Indian Reservation Irrigation and Drainage System, Newlands Project, Nevada (EIS Canceled).
4/22/86	51 FR 15073	Little John's Creek (Central San Joaquin Loan) (also known as Farmington Canal Project), Small Reclamation Projects, Act, California (EIS Canceled).
09/16/86	51 FR 32855	Spring Canyon Pumped Storage Project, Arizona (EIS Canceled).
09/10/87	52 FR 34322	Los Banos Grandes, Central Valley Project, California (EIS Canceled).

FOR FURTHER INFORMATION CONTACT: Dr. Wayne O. Deason (Manager of Environmental Services, U.S. Bureau of Reclamation, P.O. Box 25007, Denver CO 80225), (303) 236–9336.

Dated: December 27, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92–948 Filed 1–13–92; 8:45 am]

BILLING CODE 4310–09–M

Milltown Hill Project, Douglas County, OR

AGENCY: Bureau of Reclamation (Interior) in cooperation with Bureau of Land Management (Interior).

ACTION: Notice of correction on draft environmental impact statement (DEIS): INT–DES 91–33.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (as amended), the Bureau of Reclamation (Reclamation), in cooperation with the Bureau of Land Management, prepared a draft environmental impact statement (DEIS) for the Milltown Hill Project, Douglas County, Oregon. The DEIS was filed with the Environmental Protection Agency on December 11, 1991. The Notice of Availability appeared in the **Federal Register** (volume 56, page 65275) on December 16, 1991. The number assigned to the DEIS by the Department of the Interior was inadvertently omitted from that notice. As indicated above, that number is: INT–DES 91–33.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas James (Regional Environmental Officer, Pacific Northwest Region, Boise, Idaho); telephone: (208) 334–1207.

Dated: December 27, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92–713 Filed 1–13–92; 8:45 am]

BILLING CODE 4310–09–M

Withdrawal of Draft Environmental Impact Statements

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of cancellation of draft environmental impact statements.

SUMMARY: Pursuant to section 102(2)(C) of the Ntaional Environmental Policy Act of 1969, as amended, the Bureau of Reclamation is canceling the following list of draft environmental impact statements. Final environmental impact statements will not be prepared since the projects have become inactive.

FEDERAL REGISTER NOTICE OF AVAILABILITY

Date	Citation	Project
09/30/76	41 FR 43205	Savery-Pot Hook Project, Colorado River Storage Project, Colorado and Wyoming (DES 76–37, filed 09/27/76) (EIS Canceled).
07/24/78	43 FR 31993	Unintah Unit, Central Utah Project, Utah (DES 78–27, filed 07/19/78) (EIS Canceled).
04/10/84	49 FR 14206	Santa Margarita Project, California, Supplement (DES 84–19, filed 04/05/84) (EIS Canceled).
03/11/86	51 FR 8373	Garrison Diversion Unit, Pick-Sloan Missouri Basin Program, Commission Plan, North Dakota, (DES 86–09, filed 03/06/86) (EIS Canceled).
10/07/86	51 FR 35703	Central South Dakota Water Supply System (CENDAK) Unit, Pick-Sloan Missouri Basin Program, South Dakota (DES 86–39, filed 10/02/86) (EIS Canceled).
12/02/86	51 FR 43475	North Side Pumping Division Extension, Minidoka Project, Idaho (DES 86–46, filed 11/25/86) (EIS Canceled).
01/02/87	52 FR 178	Garrison Diversion Unit, Pick-Sloan Missouri Basin Program, North Dakota, Draft Supplement to DES 86–09 (DES 86–51, filed 12/30/86) (EIS Canceled).

FOR FURTHER INFORMATION CONTACT: Dr. Wayne O. Deason (Manager of Environmental Services, U.S. Bureau of Reclamation, P.O. Box 80225, Denver CO 80225), (303) 236–9336.

Dated: December 27, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92–949 Filed 1–13–92; 8:45 am]

BILLING CODE 4310–09–M

DEPARTMENT OF INTERIOR

Minerals Management Service

Alaska OCS Region; Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group Meeting

AGENCY: Minerals Management Service, Alaska OCS Region, Interior.

ACTION: Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group Committee; notice for meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463.

The Alaska Regional Technical Working Group (RTWG) Committee of the Outer Continental Shelf (OCS) Advisory Board is scheduled to meet from 1:30 p.m. to 4:30 p.m., January 29, 1992, in room 311 of the Sheraton Anchorage Hotel, 401 E. 6th Avenue, Anchorage, Alaska. The Alaska RTWG is one of six such committees of the OCS Advisory Board that provides advice to the Director of MMS about technical matters of regional concern regarding OCS prelease and postlease sale activities.

Topics which may be addressed at the meeting are:

(a) Alaska OCS Region issues and activities.

(b) Oil Pollution Act of 1990.

(c) Minerals Management Service Rulemaking.

The Alaska RTWG meeting will be open to the public, although seating may be limited. Interested persons may make oral or written presentations to the committee. A request to make a presentation should be made no later than January 22, 1992, to Alan D. Powers, Regional Director, Alaska OCS Region, 949 East 36th Avenue, room 110, Anchorage, Alaska 99508–4302, and should be accompanied by a written summary of the presentation.

Minutes of the meeting will be available 70 days after the meeting for public inspection and copying at the Alaska OCS Region Library, 949 East 36th Avenue, Anchorage, Alaska, and at the office of OCS Advisory Board Support, MMS, Department of the Interior, 18th and C Streets, NW., Washington, DC.

Dated: December 24, 1991.

Alan D. Powers,

Regional Director, Alaska OCS Region.

[FR Doc. 92–909 Filed 1–13–92; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC–5 (Sub No. 11)]

Reminder of Requirements Governing Insurance and Surety Companies Making ICC Filings

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The ICC reminds the public that certificates of insurance filed by insurance/surety companies that fail to meet the ICC's regulations at 49 CFR 1043.8 and 1084.5, governing financial responsibility requirements for insurance/surety companies, as modified and clarified in the ICC's decision at 7 I.C.C. 2d 589, served June 7, 1991, will be revoked on February 24, 1992.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: E. C. Fernandez (202) 927–5642 (TDD for hearing imparied: (202) 927–5721).

SUPPLEMENTARY INFORMATION: The ICC, in its decision at 7 I.C.C. 2d 589, revised its regulations at 49 CFR 1043.8 and 1084.5, governing financial responsibility requirements for insurance/surety companies. The decision interpreted the term "authorized" as used in those regulations to mean an insurance/surety company that is licensed or admitted in at least one state to issue insurance policies or bonds, and clarified that the ICC will accept certificates of insurance and surety bonds issued only by licensed or admitted companies. The decision ordered that certificates of insurance filed by companies that fail to meet the new regulations would be revoked after the dissolution by the United States Court of Appeals for the District of Columbia Circuit of its injunction, issued in *Owner-Operator Services, Inc., et al.* v. *ICC,* No. 90–1274, that prevented the implementation of those regulations, and that all motor carriers would be given specific notice of revocation of their certificates of insurance at least 30 days prior to the date of expiration. The D.C. Circuit, by order of November 6, 1991, certified copy servced by the Clerk of that Court of December 24, 1991, has dissolved that injunction. Thus, in accordance with the deadlines adopted by the ICC in its decision, the public is reminded that all noncomplying certificates of insurance/surety bond will be revoked at 11:59 p.m. on February 24, 1992, and that operating authorities of ICC licensed motor carriers remain in effect only while appropriate insurance is in effect and on file with the ICC.

By the Commission, Sidney L. Strickland, Jr.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–960 Filed 1–13–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31991]

CSX Corp., CSX Transportation, Inc. and The Carrollton Railroad—Control—Transkentucky Transportation Railroad, Inc., Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission accepts for consideration the application filed December 13, 1991, by CSX Corporation (CSX) CSX Transportation, Inc. (CSXT), The Carrollton Railroad (Carrollton), and Transkentucky Transportation Railroad, Inc. (TTR) (collectively applicants). Carrollton, a subsidiary of CSXT, which in turn is a subsidiary of CSX seeks to acquire all of the stock of TTR, a Class III railroad which owns and operates a 49.6-mile rail line between Paris and Maysville, KY. The Commission finds this a minor transaction under 49 CFR part 1180.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than February 13, 1992, and concurrently served on applicants' representatives, the United States Secretary of Transportation, and the Attorney General of the United States. Comments from the Secretary of Transportation and the Attorney General must be filed by February 28, 1992. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of a service list and confirmed by certificate of service filed with the Commission indicating that all designated individuals and organizations on the service list have been properly served. Applicant's reply is due by March 16, 1992.

ADDRESSES: Send original and 10 copies of all documents to:

Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31991, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and to applicant's representatives:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 8201, 400 Seventh St., SW., Washington, DC 20590.

Attorney General of the United States, United States Department of Justice, 10th & Constitution Ave., NW., Washington, DC 20530.

G. Paul Moates, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

Charles C. Rettberg, Jr., CSX Transportation, Inc. 500 Water Street, Jacksonville, FL 32202.

Fred R. Birkholz, CSX Transportation, Inc., 100 N. Charles St., Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Applicants seek Commission approval under 49 U.S.C. 11343, *et seq.*, for Carrollton to purchase all of TTR's issued and outstanding stock for $3 million. Applicants have submitted an application in accordance with the railroad consolidation procedures, 49 CFR Part 1180, and they contend that this is a minor transaction under section 1180.2(c).

TTR, a Class III carrier, owns and operates a 49.6-mile short haul railroad originating at the CSXT point of interchange in Paris, KY, and terminating at Maysville, KY. Virtually all of TTR's traffic consists of eastern Kentucky coal originating on the CSXT system and moving via the Paris interchange for delivery by TTR to the Maysville coal barge transloading facility operated by Transcontinental Terminals Inc. (TCT), a former affiliate of TTR. The coal travels by barge and is ultimately used by utilities and industrial end-users along the Ohio River. TTR is a wholly-owned subsidiary of TTI Systems Inc. (TTI) which is a wholly-owned subsidiary of Transco Coal Company (TTC) which is a wholly-owned subsidiary of Transco Energy Company (Transco).

CSX is a non-carrier holding company that owns and controls several carriers subject to Commission regulation: CSXT, American Commercial Barge Line Company (an inland barge carrier), CSX Intermodal, Inc. (a motor carrier), and various wholly-owned carrier affiliates. CSXT is a Class I common carrier conducting operations over 19,000 miles in 20 states, the District of Columbia, and the Province of Ontario, Canada. Carrollton, a subsidiary of CSXT, owns and operates an 18-mile line of railroad between Worthville and Carrollton, KY. It connects the CSXT main line in northeastern Kentucky with a barge terminal on the Ohio River.

Applicants contend that the proposed purchase of TTR will strengthen the already close relationship between the two carriers, enable joint marketing of services, and assure shippers continued and uninterupted service, an especially important objective in view of Transco's decision to sell TTR. TTR s entry into the CSXT corporate family assertedly will result in enhanced service and lead to greater operational efficiency and cost savings with respect to certain administrative services and possibly equipment maintenance and repair facilities.

Applicants contend that numerous transportation alternatives exist in the Appalachian coal-producing region. They assert that the transaction will not substantially reduce competition for the transportation of Appalachian coal to the inland river system because CSXT and TTR are already partners in handling all of the involved Maysville coal traffic. Similarly, because CSXT is the originating carrier for every ton of coal carried by TTR, the proposed transaction allegedly will not increase CSXT's share of coal traffic or enable a combined CSXT–TTR to abuse market power by raising rates above competitive levels or reducing services to shippers and receivers of river coal. Additionally, they note that intensive source and transportation competition will continue to restrain rates, and that shippers in any event, are protected in many instances by long-term rail transportation contracts.

Upon consummation of the proposed transaction,[1] TTR will be operated as a separate Carrollton subsidiary under the common control of CSXT. CSXT intends to operate TTR in essentially the same manner as it currently functions, with no significant change in operations or service levels.

TTR and CSXT employees will retain their existing positions and responsibilities; no workforce reductions or job consolidation are expected to result from consummation of the proposed transaction. Any authority granted will be subject to the conditions set forth in *New York Dock Ry — Control—Brooklyn Eastern Dist.* 360 I.C.C. 60 (1979), as clarified in *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.* 6 I.C.C.2d 799 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n v. ICC*, 930 F.2d 511 (6th Cir. 1991).

[1] Pursuant to an agreement dated December 1, 1991, TTR's stock is being held in a voting trust. Following final Commission approval, the voting trust will be dissolved, and TTR stock will be transferred to Carrollton.

Under our consolidation regulations, we must determine initially whether a proposed transaction is major, significant, or minor. The proposed transaction, involving a Class I and a Class III railroad, has no regional or national significance and will not result in a major market extension. Accordingly, we find the proposal to be a minor transaction under section 1180.2(c). Because the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Office of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested person or government entity, may participate in this proceeding by submitting written comments. Any person or entity who files timely written comments shall be considered a party of record if the comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.* whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment on the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing minor transactions are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective January 14, 1992.

Decided: January 6, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-661 Filed 1-13-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice s Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Law Enforcement Officers Killed or Assaulted.
(2) DO–71, Federal Bureau of Investigation.
(3) Annually.
(4) State or local governments. Instant Form DO–71 is used to facilitate the collection of data in compliance with a Presidential Directive, issued on 6–3–71, mandating the collection and publication of data relating to law enforcement officers killed or assaulted.
(5) 71,794 annual responses at .15 hours per response.
(6) 10,769 annual burden hours.
(7) Not applicable under 3504(h).

Revision of a Currently Approved Collection

(1) Analysis of Law Enforcement Officers Assaulted or Killed.
(2) DO–76, Federal Bureau of Investigation.
(3) Annually.
(4) State or local governments. Revised instant Form DO–76 is used to facilitate the collection of data in compliance with a Presidential Directive, issued 6–3–71, mandating the collection and publication of data relating to analysis of law enforcement officers assaulted or killed.
(5) 132 annual responses at .5 hours per response.
(6) 66 annual burden hours.
(7) Not applicable under 3504(h).
Public comment on these items is encouraged.

Dated: January 8, 1992.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 92–679 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–02–M

Lodging of Consent Decree Pursuant to Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 6, 1992, a proposed Consent Decree in *United States* v. *Com-Pak Engineering, Inc. and Eugene Evans*, Civil Action No. 86–3251, was lodged with the United States District Court for the Central District of Illinois. The United States' First Amended Complaint in this case alleged violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.*, from defendants' operation of the Brighton Landfill, in Brighton, Illinois. The complaint alleged violations of an EPA Consent Agreement and Final Order entered into on September 10, 1985, relating to groundwater monitoring at the Brighton Landfill, and also of RCRA regulations relating to groundwater monitoring, closure/post-closure plans, and financial responsibility requirements.

The proposed Consent Decree requires that defendants take specified actions regarding groundwater monitoring, closure/post-closure plans, and financial responsibility requirements. The proposed Decree also provides that defendants will pay the United States a civil penalty of $60,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Com-Pak Engineering, Inc., et al.*, DOJ Ref. No. 90–7–1–341.

The proposed Consent Decree may be examined at the Offices of the United States Attorney for the Central District of Illinois, room 312, 600 East Monroe Street, Springfield, Ill. 62701, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $9.00 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Roger B. Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–620 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 18, 1991 a proposed Consent Decree in *United States* v. *Dana Corporation*, was lodged in the United States District Court for the Southern District of Indiana. The Complaint filed by the United States alleged violations of the Clean Water Act, and the terms and conditions of Defendant's National Pollution Discharge Elimination System ("NPDES") permit. The Consent Decree requires the defendant to pay a civil penalty of $750,000 in full settlement of the claims set forth in a complaint filed by the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Dana Corporation*, D.J. Ref. No. 90–5–1–1–3667.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Southern District of Indiana, U.S. Courthouse, Fifth Floor, 46 East Ohio Street, Indianapolis, Indiana 46204 (contact Assistant United States Attorney Thomas Kieper); (2) the U.S. Environmental Protection Agency, Region 5, 230 South Dearborn Street, Chicago, Illinois 60604 (contact Assistant Regional Counsel Andre Daugavietis); and (3) the Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, room 1541, 10th and Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, Box 1097, 601 Pennsylvania Avenue, NW., Washington, DC 20004, telephone (202) 347–7829. For a copy of the Consent Decree please enclose a check in the amount of $2.00 (25 cents per page reproduction charge) payable to Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92–621 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122 (d) and (i) of CERCLA , 42 U.S.C. 9622 (d) and (i), notice is hereby given that on January 3, 1992 a consent decree in *United States* v. *Kowinsky Farms, Inc. et al.*, Civil Action No. 92–4, was lodged with the United States District Court for the District of Delaware.

The complaint filed by the United States at the time of lodging the consent decree alleges, under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, that the defendants Kowinsky Farms, Inc. and Alberta F. Schmidt (the "Owner Settlors"), and McCrory Parent Corporation, Nabisco Brands, Inc., Rapid-American Corporation, and Reichhold Chemicals, Inc. (the "Non-Owner Settlors"), are liable for an injunction and response costs incurred by the United States in response to the release or threat of release of hazardous substances at the Coker's Sanitation Service Landfills Superfund Site, in Kent County, Delaware (the "Site"). The complaint further states that defendant Kowinsky Farms, Inc. is a past and present owner of the Site; defendant Alberta F. Schmidt is a present owner of the Site; and defendants McCrory Parent Corporation, Nabisco Brands, Inc., Rapid-American Corporation, and Reichhold Chemicals, Inc. all arranged for disposal of hazardous substances at the Site.

In the complaint, the United States, on behalf of the Environmental Protection Agency, requests a judgment against the defendants jointly and severally for implementation of the remedy selected in EPA's Record of Decision ("ROD") dated September 28, 1990, which provides for the placement of deed restrictions on each landfill property to limit the future use of the property; enclosing the disposal area of the landfills with fencing; placement of warning signs on the fencing; placement of cover material along the northern slope of Landfill #1 to eliminate exposure to leachate seeps; backfilling to grade and seeding areas of Landfill #2 which have subsided due to uneven settling of waste; sealing leachate collection wells at Landfill #2; semi-annual sampling of groundwater at both landfills; semi-annual inspection of both landfills; semi-annual surface water monitoring at the Willis Branch of the Leipsic River for a period of no less than five years; review of the remedial action, including site inspection reports and groundwater and surface water data, no less than every five years after initiation of the remedial action; reimbursement of approximately $1,240,000 in past response costs under section 107(a) of CERCLA, 42 U.S.C. 9607(a); and a determination under section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2), that any finding of liability would be binding in any subsequent action for further response costs or damages.

In the consent decree, the Non-Owner Settlors have agreed, *inter alia*, to implemement the remedy selected in the ROD; to undertake monitoring work for surface water and sediments at the Site; to pay $80,000 to the Department of the Interior and the Department of Commerce National Oceanic and Atmospheric Administration, as the federal trustees, in lieu of restoring approximately 2–3 acres of wetlands that will be damaged by the implementation of the ROD; to pay $1,240,000 in past costs to the Hazardous Substances Trust Fund; and to reimburse the United States for any future costs related to the Site. The Owner Settlors have agreed to put restrictive notices on the property deeds and to grant access to the Site. The Non–Owner Settlors have also agreed to review, periodically, the remedial action to ensure that human health and the environment are being protected by the remedial action being implemented. The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Kowinsky Farms, Inc. et al.*, DOJ Ref. No. 90–11–2–658. The proposed consent decree may be examined at the office of the United States Attorney, 5110 J. Caleb Boggs Federal Building, 844 King Street, Wilmington, Delaware 19801. Copies of the consent decree may also be examined and obtained by mail at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004 (202–347–2072). When requesting a copy of the consent decree by mail, please enclose a check in the amount of $46.50 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–819 Filed 1–13–92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Automotive Emissions Cooperative Research Program

Notice is hereby given that, on November 27, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Automotive Emissions Cooperative Research Venture (known as the Auto/Oil Air Quality Improvement Research Program ("the Program")) filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing in additional detail the activities planned for the second phase of the Program ("Phase II"). The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Phase II will continue to have as its objectives the generation of data, *inter alia*, through vehicle testing and air quality and other modeling, designed to evaluate the postential improvements in air quality acheiveable through the use of reformulated gasolines, of methanol and other alternative fuels, and of developments in advanced automotive technology including emissions control systems. Although the specifics of some of the work involved in Phase II have not yet been determined and will continue to evolve as more is learned from Phase I and early Phase II work, it is expected that Phase II of the Program will: (1) Apply knowledge gained from Phase I of the Program to generate additional data regarding improvements in air quality attributable to reformulated gasolines (including oxygenated fuels) and gasoline/methanol blends, possibly including advanced blends using reformulated gasolines; (2) generate data regarding improvements in air quality attributable to reformulated gasolines in future vehicles equipped with more advanced automotive technology and emission control systems; (3) using improved techniques for measuring speciated engine-out emissions, perform research and testing to develop data on the effects of reformulated gasolines and other fuels on emissions, and on the generic effects of emission control catalysts on emissions and air quality; (4) generate data regarding improvements in air quality attributable to methanol, compressed natural gas,

liquid propane gas, and possibly other alternative fuels, used in vehicles dedicated to those fuels; (5) generate data regarding possible "real-world" factors contributing to vehicle emissions that might not be adequately accounted for in traditional research and testing; (6) use improved measurement techniques to generate data regarding the effects of reformulated gasolines and other alternative fuels on air toxic emissions; and (7) generate data regarding emissions from individual vehicles having unusually high levels of emissions, known as "high-emitters." Phase II may also, possibly, generate data regarding the durability of emissions effects of reformulated gasolines and gasoline/methanol blends over the life of automobiles driven on those fuels. In addition to the above experimental activities, the Program envisages the use of air modeling and, possibly, cost-benefit studies to help establish the relative effectiveness of various alternatives for improving air quality.

The Program continues to expect the research and testing performed in Phase II to provide data with which the federal government, as well as various state governments, can compare the costs and benefits of the various alternatives for reducing emissions in order to improve air quality. The Program anticipates that the data from Phase II research and testing will be made available to Congress, the Environmental Protection Agency, other federal agencies, various state regulators, and the public.

No other changes have been made in either the membership or planned activities of the Auto/Oil Air Quality Improvement Research Program.

On October 16, 1989, the Auto/Oil Air Quality Improvement Research Program filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 29, 1989, 54 FR 49122. On June 28, 1990, and May 17, 1991, the Auto/Oil Air Quality Improvement Research Program filed additional notifications. The Department published notices in the **Federal Register** in response to these additional notifications on August 8, 1990 (55 FR 32321), and June 14, 1991 (56 FR 27539).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-816 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Halon Alternatives Research Corporation, Inc. (HARC)

Notice is hereby given that, on December 3, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Halon Alternatives Research Corporation, Inc. ("HARC") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of new members to HARC. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The new members to HARC are: AT&T, Basking Ridge, NJ; Dresser Industries, Berea, KY; Edison Electric Institute, Washington, DC; Hughes Aircraft, Goleta, CA, Jeng Dah Extinguisher Company, Ltd., Taipei, Taiwan, ROC; Northern Telecom, Ltd., Mississauga, Ontario, Canada; Pacific Scientific, Duarte, CA; Phillips Petroleum, Bartlesville, OK; Shell Internationale Petroleum Mij. B.V., The Netherlands; and 3M Company, St. Paul, MN.

No other changes have been made in either the membership or the purpose of HARC.

On February 7, 1990, HARC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 7, 1990, 55 FR 8204. On January 22, 1991, HARC filed a notice of additional members to the project. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 14, 1991, 56 FR 6035.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of HARC.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-816 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Chemical Injection Distribution Systems for Sub-Sea Production Systems

Notice is herby given that, on December 3, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Chemical Injection Distribution Systems for Sub-Sea Production Systems". The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below.

The parties to the project are:

Amoco Production Company, Houston, Texas 77253

BP Exploration, Houston, Texas 77056

Shell Offshore, Inc., New Orleans, Louisiana 70160

The purpose of the project is to define more cost-effective approaches for distributing treatment chemicals to clusters of sub-sea wells from a Surface Support Facility located up to 20 miles from the production location. The major tasks for the project are (1) identify a broad range of approaches and qualitatively evaluate each; (2) perform a quantitative analysis of preliminary concepts; (3) define criteria and jointly select the best choice; and (4) perform the final analysis of the conceptual design to accomplish the overall purpose of the project.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project. Information regarding participation in this project may be obtained from the Southwest Research Institute, 6220 Culebra Road, San Antonio, Texas 78206.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-815 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—"Feasibility Study on Using Molecular Sieves for Diesel NOx Control"

Notice is hereby given that, on November 25, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Southwest Research Institute ("SwRI") filed a written

notification simultaneously with the Attorney General and the Federal Trade Commission dislosing the addition of a party to its project entitled "Feasibility Study on Using Molecular Sieves for Diesel NOx Control." The notification was filed for the purpose of invoking the Act's provision limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that AC Rochester Division, General Motors Corporation, Flint, MI, has (effective September 27, 1991) become a party to the project.

No other changes have been made in either the membership or planned activity of the group research project.

On July 1, 1991 SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("The Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1991, 56 FR 35877. On September 19, 1991, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on November 5, 1991, 56 FR 56528.

Additionally, a correction notice to the November 5, 1991 notice was published on December 17, 1991, 56 FR 65541.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-817 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated September 30, 1991, and published in the **Federal Register** on October 11, 1991, (56 FR 51403), Abbott Laboratories, 14th Street and Sheridan Road, Attn: Customer Service D-345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drugs	Schedule
Dextrapropoxyphene, bulk (non-dosage forms) (9273).	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-834 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated October 8, 1991, and published in the **Federal Register** on October 17, 1991, (56 FR 52075), CIBA-GEIGY Corporation, Pharmaceuticals Division, Regulatory Compliance SEF 1030, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of a basic class of controlled substance listed above is granted.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-832 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated October 31, 1991, and published in the **Federal Register** on November 12, 1991, (56 FR 57533), Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaguez, Puerto Rico 00708, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of dextropropoxyphene, bulk (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of a basic class of controlled substance listed above is granted.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-830 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedules I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with §1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on September 11, 1991, Lab, Inc., 700 Grand Avenue, Ridgefield, New Jersey 07657, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

Any manufacturers holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United

States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 14, 1992.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedules I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–838 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 19, 1991, Norac Company Inc., 405 S. Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–840 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Registration

By Notice Dated November 4, 1991, and published in the **Federal Register** on November 12, 1991, (56 FR 57533), North Pacific Trading Company, 1505 S.E. Gideon Street, Portland, Oregon 97202, made application to the Drug Enforcement Administration to be registered as an importer of marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–836 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated October 31,1991, and published in the **Federal Register** on November 6, 1991, (56 FR 56665), Sanofi Winthrop L.P., DBA Sterling Organics, 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of meperidine (9230), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of a basic class of controlled substance listed above is granted.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–833 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Registration

By Notice Dated October 30, 1991, and published in the **Federal Register** on November 6, 1991 (56 FR 56665), Stanford Seed Company, 340 South Muddy Creek Road, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of marijuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–835 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on October 24, 1991, Toxi-Lab, Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Benzoylecgonine (9180)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21

CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 13, 1992.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-839 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Registration

By Notice dated October 8, 1991, and published in the **Federal Register** on October 17, 1991 (56 FR 52075), Wildlife Laboratories, Inc., 1401 Duff Drive, suite 600, Fort Collins, Coloardo 80524, made application to the Drug Enforcement Administration to be registered as an importer of carfentanil (9743), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-837 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meetings/Public Hearings Announcement

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In according with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: January 31, 1992, 10 a.m.-4 p.m.

ADDRESSES: Grand Hyatt Washington, 1000 H Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street, NW., #7121, Washington, DC 20005, (202) 275-6933.

TYPE OF MEETING: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 92-911 Filed 1-13-92; 8:45 am]

BILLING CODE 6820-07-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Process for Reconsideration of Declined General Applications for Federal Assistance

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: Process for reconsideration of declined general applications for federal assistance.

FOR FURTHER INFORMATION CONTACT: Jane Smith, Assistant General Counsel ((202) 682-5762), National Endowment for the Arts, 1100 Pennsylvania Ave., NW., room 522, Washington, DC 20506.

1. Purpose

The National Endowment for the Arts relies on peer panel review of grant applications as the first step in assuring informed funding. Panel recommendations are subsequently reviewed by the National Council on the Arts, which provides advice to the Chairperson. The Chairperson then decides whether to fund the applications recommended by the Council.

The Circular establishes a procedure for reconsideration of applications for financial and technical assistance, which have been declined by the National Endowment for the Arts based on negative recommendations of the peer review panel. The Endowment will not reconsider the amount of any grant awarded. This Process does not apply to applications recommended by the peer review panel but rejected by the Council or Chairperson. Reconsideration of such applications is had at the discretion of the Chairperson only. The provisions of this Circular, which updates and amends the earlier (1983) Circular on this subject, do not apply to procurement governed by the Federal Acquisition Regulations.

2. Policy

(a) *Statement.* Award of financial and technical assistance is discretionary. Panel determinations are made using criteria described in the program guidelines; several criteria involve subjective, qualitative judgments which are not subject to reconsideration. Notwithstanding this fact, a Project Director, Authorizing Official, or individual whose application has been declined may obtain an explanation of the declination from the appropriate Program Director. Following receipt of the explanation, if the Project Director, Authorizing Official, or individual applicant (hereafter referred to as "applicant") believes that the declination was based on one or more of the following Grounds for Reconsideration, reconsideration may be obtained under the procedure outlined in Section 3, below.

(b) *Ground(s) for Reconsideration.* Reconsideration of grant declinations is available solely for one of the following three reasons relating to procedural impropriety or error:

(i) Application declined based on Review Criteria other than those appearing in the relevant guidelines;

(ii) application declined based on influence of individual(s) with conflict of interest on peer review panel;

(iii) application declined based on information provided by staff, panelists, or others, but not including the applicant, that was materially inaccurate or incomplete at the time of review *despite* the fact that the applicant had provided the Endowment staff with accurate and complete information as part of the regular application process.

3. Procedures to be Followed for Reconsideration

(a) *Explanation by Program Director.* Within 30 days following written notification from the Endowment of its decision on any application, the applicant may request an explanation for a declined application from the appropriate Program Director. This initial request may be by telephone, in person, or in writing. The Program Director will explain within 30 days the basis for declination. Upon request from the applicant, the Program Director shall provide the substance of the peer review panel comments, the names of all panel and staff members, and the name of the appropriate Deputy Chairperson (hereafter "Deputy") who will review the applicant's Request for Reconsideration.

(b) *Request for Reconsideration.* If the Program Director's explanation, or other reliable information, appears to the applicant to indicate the presence of one or more of the "Grounds for Reconsideration" listed in Paragraph 2(b) above, the applicant may submit to the Deputy a written Request for Reconsideration. This written request must reference a particular ground(s) for reconsideration and specify the facts supporting his or her claim, with enough particularity to enable the Deputy to determine whether the claim is meritorious. A request of this nature will be considered only if (a) the Request for Reconsideration is based on one or more of the grounds listed in Paragraph 2(b); (b) the applicant has obtained an explanation from the appropriate Program Director; (c) the applicant has specified with sufficient particularity the facts supporting his or her claim; (d) the Request for Reconsideration is received by the Deputy within 45 days after the applicant received the Program Director's explanation.

(c) *Action by the Appropriate Deputy.*

(i) The appropriate Deputy will review the applicant's Request for Reconsideration, records of the panel discussions, the applicant's application file, and any other relevant materials to determine if the panel's recommendation was influenced by one or more of the grounds listed in Paragraph 2(b). In conducting this review, the Deputy may request additional information from the applicant and may obtain additional peer review. In addition, the Deputy may request an audit, financial survey, or site visit of the applicant, but no revisions or additions to the grant application materials will be accepted in connection with the Request for Reconsideration.

(ii) The Deputy may conduct the reconsideration personally or may designate another Endowment official who had no part in the initial evaluation to do so. The term "Deputy," as used here, applies to such designees.

(iii) The Deputy will provide written notification of the results of the reconsideration within 45 days. If the Deputy cannot provide such notice within 45 days, the applicant will receive a written explanation of the need for more time and an estimate of when the results can be expected.

(iv) If the Deputy determines that none of the grounds listed in Paragraph 2(b) existed, the declination will be affirmed.

(vi) If the Deputy determines that one or more of the grounds listed in Paragraph 2(b) existed, but the recommendation of the peer review panel was not affected, the declination will be affirmed.

(vii) If the Deputy determines that one or more of the grounds listed in Paragraph 2(b) existed, and he or she can determine, based on the materials reviewed, that but for the infirmity in the peer review process, the application would have been recommended, the application will be considered by the National Council on the Arts at its next regularly scheduled meeting.

(viii) If the Deputy determines that one or more of the grounds listed in Paragraph 2(b) occurred, but he or she cannot determine whether but for the infirmity, the peer review panel would have recommended the application, the application will be reviewed by a new panel. If the new panel recommends the application, the National Council on the Arts will review it at the next regularly scheduled meeting.

(ix) The Deputy's determination shall be final.

4. Reporting Requirements

Each appropriate Deputy will maintain a record of Requests for Reconsideration. The record will include the date of receipt, the name of the applicant, including name of organization or institution where applicable, the application number, and once the Deputy's review is complete, the date on which each applicant was notified of the results of the reconsideration, and what those results were.

Dated: January 8, 1992.

Amy Sabrin,

General Counsel, National Endowment for the Arts.

[FR Doc. 92-807 Filed 1-13-92; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Instructional Materials Development; Notice of Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Instructional Materials Development.

Date and Time: January 24-25, 1992, from 8:30 a.m. to 5:30 p.m.

Place: ANA Hotel, 2401 M Street, NW., Washington, DC 20037.

Type of Meeting: Closed Meeting.

Contact Person: Alice J. Moses, Gerhard Salinger, Frank Sutman, Margaret Cozzens, and Donald Humphreys, National Science Foundation, 1800 G St., NW., Washington, DC 20550, Instructional Materials Development, room 635-A, Phone (202) 357-7066.

Purpose of Meeting: To attend Instructional Materials Development Panel and provide advice and recommendations concerning K-12 Mathematics, Science and Technology Education, and Assessment of Student Learning.

Agenda: To review and evaluate Instructional Materials Development proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: January 8, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-808 Filed 1-13-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Document Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act, 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR part 26, Fitness-for-Duty Programs.

3. The form number, if applicable: Not applicable.

4. How often the collection is required: Biannual.

5. Who will be required to report: All nuclear power plant licensees. Additional information, such as the number of actions taken, would be required to be reported by those licensees who choose to implement the option provided by this amendment.

6. An estimate of the number of responses anticipated annually: 198 responses.

7. Annual burden per response: 11.2 additional hours per semiannual report; 0.1 per notification to individual.

8. An estimate of the total number of hours needed annually by the industry to complete the requirement: 3717 hours plus a one-time development burden of 128 hours.

9. An indication of whether section 3504(h), Public Law 96–511 applies: Applicable.

10. Abstract: 10 CFR part 26 of NRC's regulations, "Fitness-for-Duty Programs" requires operators of nuclear power plants to implement fitness-for-duty programs to assure that personnel are not under the influence of any substance or mentally or physically impaired, to retain certain records associated with the management of these programs, and to provide reports concerning the performance of the programs and certain significant events. The final revision to the rule permits individuals to be temporarily suspended as a result of a preliminary positive test result for cocaine or marijuana not confirmed by the Medical Review Officer and requires the deletion of specified records when tests results are not confirmed. The revision requires additional data elements to be included in a biannual report to assure that data on the number of occasions that this rule provision is exercised, and that the management actions, including appeals, are reported to the Commission as well as information which will allow the Commission to monitor confirmation rates from onsite and U.S. Department of Health and Human Services-certified laboratory screening processes and to evaluate the accuracy and reliability achievable through initial screening tests.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0146), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 31st day of December 1991.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–927 Filed 1–13–92; 8:45 am]

BILLING CODE 7590–01–M

Air Sampling in the Workplace; Availability

The Nuclear Regulatory Commission has published for comment a report on "Air Sampling in the Workplace," (NUREG–1400). This report contains technical information on air sampling in the workplace that might be useful to licensees. The report was written in support of a Regulatory Guide on air sampling that is being developed; the availability of a draft of the Regulatory Guide, "Air Sampling in the Workplace," DG–8003, was announced in the **Federal Register** on October 17, 1991 (56 FR 52087).

The comment period on NUREG–1400 expires March 16, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure comments consideration for comments received on or before this date. Comments should be sent to: Chief, Regulatory Publications Branch, P–223, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

A free single copy of draft NUREG–1400 may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, Attn: Distribution and Mail Services Section, Mail Stop P–370, Washington, DC 20555. A copy is also available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Dated at Rockville, Maryland, this 7th day of January, 1992.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 92–929 Filed 1–13–92; 8:45 am]

BILLING CODE 7590–01–M

Deposition: Software To Calculate Particle Penetration Through Aerosol Transport Lines; Availability

The Nuclear Regulatory Commission has published for comment a report on "Deposition: Software to Calculate Particle Penetration through Aerosol Transport Lines," (NUREG/GR–0006). This report describes software developed for NRC under the direction of Dr. N.K. Anand and Dr. Andrew R. McFarland at Texas A&M University. The NRC is considering an endorsement of the software in a Regulatory Guide on air sampling that is being developed; the availability of a draft of the Regulatory Guide, "Air Sampling in the Workplace," DG–8003, was announced in the **Federal Register** on October 17, 1991 (56FR52087).

The comment period on NUREG/GR–0006 expires March 16, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure comments consideration for comments received on or before this date. Comments should be sent to: Chief, Regulatory Publications Branch, P–223, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

A free single copy of draft NUREG/GR–0006 may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, Attn: Distribution and Mail Services Section, Mail Stop P–370, Washington, DC 20555. A copy is also available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Dated at Rockville, Maryland, this 7th day of January, 1992.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 92–928 Filed 1–13–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Connecticut Yankee Atomic Power Company (the licensee) to withdraw a portion of its April 8, 1991 application for proposed amendment to Facility Operating License DPR–61 for the Haddam Neck Plant, located in Middlesex County, Connecticut.

The portion of the amendment being withdrawn would have revised the facility Technical Specifications sections 3/4.9.4, Containment Building Penetrations and 3/4.9.8, Residual Heat Removal and Coolant Recirculation, which will be resubmitted at a later date.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 24, 1991 (56 FR 33952). However, by letter dated December 12, 1991, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 8, 1991, and the licensee's letter dated December 12, which withdrew a portion of the application for license amendment. The above documents are available for

public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 7th day of January 1992.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–830 Filed 1–13–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–18469; 812–7785]

Capstead Securities Corporation IV; Notice of Application

January 7, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANT: Capstead Securities Corporation IV.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant seeks a conditional order exempting it from all provisions of the Act in connection with applicant's proposed issuance and sale of one or more series of collateralized mortgage obligations and residual interests relating thereto, and applicant's proposed election to treat any such series as a real estate mortgage investment conduit ("REMIC") under the Internal Revenue Code of 1986.

FILING DATES: The application was filed on September 9, 1991, and amended on October 29, 1991, and on December 23, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 3, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2001 Bryan Tower, suite 3600, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Osterman, Staff Attorney, at (202) 504–2524 or Barry D. Miller, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Delaware corporation, is a direct, wholly owned limited purpose financing subsidiary of Capstead Mortgage Corporation ("CMC"), formerly Lomas Mortgage Corporation. Applicant was formed for the purpose of engaging in mortgage-backed financing, including issuing and selling one or more series of collateralized mortgage obligations (as defined below, "Bonds"). Applicant will not engage in any business or investment activities unrelated to such purpose.

2. Applicant will issue one or more series of Bonds under the terms of an indenture ("Indenture") between an independent trustee ("Indenture Trustee") and applicant as supplemented by one or more series supplements. The Indentures with respect to each series of Bonds which are publicly offered will be qualified under the Trust Indenture Act of 1939, as amended, unless an appropriate exemption is available.

3. With respect to any series of Bonds, applicant may sell its right (the "Residual Rights") under the Indenture to receive (a) the excess cash flow from the collateral after the payment of principal and interest on such series of Bonds and of expenses from the administration of the Bonds, plus (b) any remaining value in the collateral after the payment in full of the principal and interest on such series of Bonds. If a REMIC election is made with respect to a series of Bonds, applicant may issue certain certificates ("REMIC Certificates") representing the right to receive cash flow from the collateral included in such REMIC in excess of the amounts required to be paid on the Bonds issued by such REMIC in accordance with their terms and in excess of expenses of the REMIC, or may issue a single class of residual bonds (the "Residual Bonds") representing the residual interest in such REMIC. (The Residual Rights, REMIC Certificates, and Residual Bonds are referred to herein as the "Residual Interests"). All other classes of Bonds (other than Residual Bonds) with respect to such REMIC will represent the "regular interests" in the REMIC. Regular interests, together with all classes of Bonds of a series for which no REMIC election is made are referred to as "Regular Bonds." (Unless otherwise referred to below, all references to "Bonds" shall mean only the Regular Bonds.)

4. Applicant may sell the Residual Interests through a private placement exempt from registration under the Securities Act of 1933 (the "1933 Act") or through a public offering subject to registration under the 1933 Act; provided that in either case applicant satisfies the conditions set forth below under the "Conditions to Relief—C. Conditions Relating to Sale of Residual Interests."

5. The term "Bond" means: (a) A debt instrument which entitles the holder or owner only to (1) a specified principal amount, provided that interest (determined as provided below) that is not paid currently may be accrued and added to the principal of a Bond, and (2) either (A) interest based on such principal amount calculated by reference to (i) a fixed rate, (ii) a floating rate determined periodically by reference to an index that is generally recognized in financial markets as a reference rate of interest, or (iii) a rate or rates determined through periodic auctions among holders and prospective holders or through periodic remarketing of the instrument, or (B) an amount equal to specified portions of the interest received on the Mortgage Collateral (as defined below) held by the issuer, provided that the portion of the interest payable to the Bondholder or owner must be expected to provide a rate of return on the specified principal amount which bears a reasonable relationship to a market rate of interest; or (b) a zero coupon debt instrument which does not have a stated interest rate but on which interest effectively accrues from its issuance at a discount and which entitles the holder or owner only to a stated principal amount payable on or before a stated maturity date.

6. The Bonds of each series shall consist of one or more classes of Bonds, which may include one or more classes of (a) Bonds paying interest on a current basis, (b) compound interest Bonds or zero coupon Bonds, (c) reduced

volatility Bonds which may be planned amortization class Bonds or targeted amortization class Bonds, and (d) increased volatility Bonds which are also known as support bonds. Each class of Bonds may have a separate interest rate and stated maturity date as indicated in the related prospectus for such series of Bonds. Principal payments may be allocated to more than one class of Bonds, but such allocation will be consistent with the retirement of each class not later than its stated maturity date. A compound interest Bond is one on which interest is not paid currently but instead is accrued and added to the principal balance of the Bond on each payment date until certain Bonds with an earlier stated maturity date have been paid in full. A zero coupon Bond does not have a stated interest rate but interest effectively accrues from the issuance of such Bond at a discount with the stated principal amount being payable on or before the stated maturity date.

7. The "Mortgage Collateral" securing each series of Bonds which is owned by applicant will consist of Agency Certificates [1] or Non-Agency Certificates [2] (together, "Mortgage Certificates"). (The Mortgage Collateral and all other collateral securing the Bonds are collectively referred to as the "Collateral".) Applicant will neither issue nor own stripped mortgage-backed securities (as defined in the application).

8. In the case of each series of Bonds: (a) Applicant will own or hold no substantial assets other than the Mortgage Collateral and a limited amount of other collateral securing such Bonds; (b) the Mortgage Collateral will have a collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) scheduled distributions of principal and interest received on the Mortgage Collateral securing the Bonds (together with cash available to be withdrawn from any reserve funds, debt service funds, over-collateralization funds or other funds), plus reinvestment income thereon, will be sufficient to make timely payments of principal of and interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Collateral will be assigned to the Indenture Trustee and will be subject to the lien of the related Indenture.

9. Neither applicant, the Residual Interest holders nor the Indenture Trustee will be able to impair the security afforded by the Mortgage Collateral to the holders of the Bonds. Without the consent of each Bondholder to be affected, neither applicant, the Residual Interest holders nor the Indenture Trustee will be able to (a) change the stated maturity on any Bonds; (b) reduce the principal amount or the rate of interest (or the formula by which such rate is computed) on any Bonds; (c) change the priority of payment on any class of any series of bonds; (d) impair or adversely affect the Mortgage Collateral securing a series of Bonds; (e) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Collateral; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

10. The interests of the Bondholders will not be compromised or impaired by the sale of Residual Interests. The sale of Residual Interests will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created under the Indenture to support the payment of principal and interest on the Bonds.

11. Except to the extent permitted by the limited right to substitute Collateral, it will not be possible for the Residual Interest holders to alter the Collateral initially pledged to the Indenture Trustee, and in no event will such right to substitute Collateral result in a diminution in the value or quality of such Collateral. Although it is possible that any Mortgage Collateral substituted for Mortgage Collateral initially pledged to the Indenture Trustee may have a different prepayment experience than the original Collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any Mortgage Collateral will be determined by market conditions beyond the control of the Residual Interest holders, which market conditions are likely to affect all Mortgage Collateral of similar payments terms and maturities in a similar fashion; and (b) the interests of the Residual Interest holders are not likely to be greatly different from those of the Bondholders with respect to Mortgage Collateral prepayment experience.

Applicant's Legal Conclusion

The requested order is necessary and appropriate in the public interest because: (a) Applicant should not be deemed to be an entity to which the provisions of the Act were intended to be applied; (b) applicant may be unable to proceed with its proposed activities if the uncertainties concerning the applicability of the Act are not removed; (c) the activities of applicant are intended to serve a recognized and critical public need; (d) granting the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act, and thereafter by the Indenture Trustee representing their interests under the Indenture; and (e) the Residual Interests will be held entirely by applicant or offered only to a limited number of sophisticated institutional or "accredited" non-institutional investors.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following (unless otherwise indicated all references to "Bonds" shall mean only the Regular Bonds):

A. Conditions Relative to Regular Bonds

1. Each series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the Mortgage Collateral securing the Bonds will be limited to Agency Certificates and Non-Agency Certificates.

3. If new Mortgage Collateral is substituted for Mortgage Collateral initially pledged as security for a series of Bonds, the substitute Mortgage Collateral must: (a) Be of equal or better quality than the Mortgage Collateral replaced; (b) have similar payment terms and cash flow as the Mortgage Collateral replaced; (c) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (d)

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[1] Agency Certificates are defined as (a) fully-modified pass-through mortgage-backed certificates ("GNMA Certificates") guaranteed as to timely payment of principal and interest by the Government National Mortgage Association ("GNMA"), (b) mortgage pass-through certificates ("FNMA Certificates") guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association ("FNMA"), or (c) mortgage participation certificates ("FNMA Certificates") guaranteed as to timely payment of interest and under some programs timely payment of principal or under other programs ultimate collection of principal by the Federal Home Loan Mortgage Corporation ("FHLMC"). All or a portion of the Agency Certificates securing a series of Bonds may be "partial pool" Agency Certificates.

[2] Non-Agency Certificates are defined as pass-through certificates and participation certificates which are neither issued nor guaranteed by an agency or instrumentality of the United States and which evidence the entire undivided interest in pools of whole mortgage loans secured by first liens on single family (one to four unit) residential properties ("Mortgage Loans").

meet the conditions set forth in paragraphs 2. and 4. of this section A. New Non-Agency Certificates may be substituted for Non-Agency Certificates initially pledged only in the event of default, late payments, or defect in such Non-Agency Certificates being replaced. In addition, new Mortgage Collateral will not be substituted for more than 40% of the aggregate face amount of the Mortgage Collateral initially pledged as Mortgage Collateral. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

4. All Mortgage Collateral, funds, accounts or other collateral securing a series of Bonds will be held by the Indenture Trustee or on behalf of the Indenture Trustee by an independent custodian (a "Custodian"). Neither the Custodian nor the Indenture Trustee will be an "affiliate" (as the term "affiliate" is defined in rule 405 under the 1933 Act, 17 CFR 230.405) of applicant or the master servicer or originating lender of any Mortgage Loans underlying Non-Agency Certificates securing a series of Bonds. If there is no master servicer, no servicer of those Mortgage Loans may be an affiliate of the Indenture Trustee or Custodian. The Indenture Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

5. Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the Act.

6. No less often than annually, an independent public accountant will audit the books and records of applicant and, in addition, with respect to each series of Bonds, will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Indenture Trustee.

7. The master servicer of any Mortgage Loans underlying Non-Agency Certificates securing a series of Bonds may not be an affiliate of the Indenture Trustee or Custodian. If there is no master servicer for such Mortgage Loans, no servicer of those Mortgage Loans may be an affiliate of the Indenture Trustee or Custodian. In addition, any master servicer and any other servicer of the Mortgage Loans will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential Mortgage Loans. Each agreement governing the servicing of Mortgage Loans shall obligate the servicer to provide substantially the same services with respect to such Mortgage Loans as it is then currently required to provide in connection with the servicing of Mortgage Loans insured by the Federal Housing Administration, guaranteed by the Veterans Administration, or eligible for purchase by FNMA or FHLMC.

8. Beneficial and legal ownership of all Mortgage Collateral deposited with the Indenture Trustee will not be transferred until such time as the Indenture Trustee releases such Mortgage Collateral from the Indenture.

B. Additional Conditions Relating to Variable Rate Regular Bonds

1. The interest rate for each class of variable-rate Bonds will be subject to maximum interest rates ("interest rate caps") which may vary from period to period, and will always be specified in the related prospectus supplement for a series of Bonds.

2. The Collateral deposited with the Indenture Trustee to secure a series of Bonds will at all times be sufficient to provide for the full and timely payment of all principal and interest on the Bonds of such series under the assumption that the interest rate on all Bonds of such series (including any class thereof) is the maximum rate for each specific period.[3]

3. No Mortgage Collateral may be released from the lien of the Indenture prior to retirement in full of all Bonds of such series, except to the extent permitted by the limited right to substitute Collateral as described in the application.

C. Conditions Relating to the Sale of Residual Interests

1. Residual Interests will be sold or assigned only to a limited number, in no event more than one hundred, of institutional investors or non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Residual Interests will be sold or assigned only with respect to a series of Bonds in which the Mortgage Collateral is limited to Agency Certificates. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Residual Interests and to understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors, which may include individuals, will be limited to not more than fifteen, will be required to purchase at least $200,000 (measured by market value at the time of purchase) of such Residual Interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing Residual Interests and will have direct, personal and significant experience in making investments in mortgage-related securities. Holders of Residual Interests will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other institutions or non-institutional investors as described above that customarily engage in the purchase or origination of mortgages and other types of mortgage-related securities.

2. Each purchaser of a Residual Interest will be required to represent that it is purchasing such Residual Interest for investment purposes and not for distribution and that it will hold such Residual Interest in its own name and not as nominee for undisclosed investors. Each purchaser of a Residual Interest will be required to agree that it will not resell such interest unless (a) the subsequent purchaser would have been eligible to purchase the Residual Interest directly from applicant under the terms of Condition C.1, (b) after the sale there would be no more than one hundred Residual Interest holders, and (c) the subsequent purchaser agrees to be subject to the same representations and undertakings as are applicable to the reselling purchaser. Transfers of Residual Interests will be prohibited in any case where, as a result of the proposed transfer, there would be more than one hundred Residual Interest holders with respect to the series of Bonds at any time.

3. No holder of a controlling interest in applicant (as the term "control" is

[3] In addition to those mechanisms referred to in the application, applicant may utilize additional mechanisms to ensure the adequacy of the Collateral notwithstanding the issuance of Bonds bearing interest at variable rates. Applicant will give the staff of the SEC notice by letter of any such additional mechanisms before they are utilized to give the staff an opportunity to raise any questions as to their appropriateness. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories.

defined in rule 405 under the 1933 Act) will be affiliated with either the Custodian or any Rating Agency rating the Bonds.

4. No holder of a Residual Interest will be affiliated with the Indenture Trustee, the Custodian or any Rating Agency rating the Bonds.

5. If the sale of Residual Interests were to result in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of applicant, the relief afforded by any order granted on the application would not apply to subsequent Bond offerings by applicant.

D. Conditions Relating to REMICs

1. The election by applicant to treat the arrangement by which any series of Bonds is issued as a REMIC will have no effect on the level of the expenses that would be incurred relating to such series. If such REMIC election is made with respect to a series of Bonds, applicant will provide that all administrative fees and expenses in connection with the administration of the trust estate will be paid or provided for in a manner satisfactory to each Rating Agency rating the Bonds.

2. In addition, applicant will ensure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which method or combination of methods described in the application is selected to provide for the payment of such fees and expenses.

E. Special Condition

If any of the equity interests in applicant are sold and such sale results in the transfer of control (as the term "control" is defined in rule 405 under the 1933 Act) of applicant (except with respect to a transfer of control to an affiliate of CMC), the relief afforded by any order granted on the application would not apply to subsequent Bond offerings by applicant.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-925 Filed 1-13-92; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-6965]

Issuer Delisting; Application To Withdraw From Listing and Registration; Newcor, Inc., Common Stock, $1.00 Par Value

January 8, 1992.

Newcor, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, on December 10, 1991, its Board of Directors unanimously approved to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/ National Market System ("NASDAQ/ NMS"). The Company's decision followed a lengthy study of the matter, and was based upon the Company's belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its shareholders than the present listing on the Amex. The Company's belief is based on the following:

(1) The Company believes that the NASDAQ/NMS system of competing market makers will result in increased visibility and sponsorship for its Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's shareholders more liquidity than is presently available on the Amex and less volatility in quoted price per share when trading volume is slight;

(3) The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market makers and, in so doing, expand the capital base available for trading in the Common Stock; and

(4) The Company believes that the firms making a market in the Company's Common Stock on the NASDAQ/NMS system will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before January 29, 1992, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-849 Filed 1-13-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30161; File No. SR-Amex-90-29]

Self-Regulatory Organizations; Notice of Amendment No. 1 to Proposed Rule Change by American Stock Exchange, Inc. Relating to Restrictions on Competing Dealers

January 7, 1992.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 30, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the amendment to a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex hereby amends its filing, File No. SR-Amex-90-29, to clarify the definition of competing dealer, to provide for an exception to the proposed restriction in Amex rule 126, to eliminate the proposed restriction in Amex rule 155, to request the Commission defer action on the proposed policy prohibiting the use of the Amex's Post Execution Reporting ("PER") System to route orders for the accounts of competing dealers, and to clarify the applicability of section 11(a)(1)(G) of the Act [1] to orders placed on the Exchange for the account of a non-member competing dealer. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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[1] 15 U.S.C. 78k(a)(1)(G) (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments its received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

In December 1990, the Exchange filed a proposal to amend Amex rules 126 and 155, to add a Definition to its General and Floor Rules, and amend its policy regarding its automated routing system.[3] The proposal specifies that limit orders for the account of a competing dealer must yield priority and parity to all public customer orders, are on parity with bids and offers for the account of the Amex specialist, and are prohibited from the Amex's automatic order routing system. (For purpose of its rules governing precedence, priority and parity, the Exchange treats all orders originating from off the floor as public customer orders, except orders of competing dealers, as proposed, and orders of member firms executed by their own brokers.) In view of the discussions which have been generated by this proposal, the Exchange has determined to make the following amendments to its original proposal in order to focus the proposal more closely on the protection of public customer orders entered on the Amex.

First, the Exchange believes that orders for the account of a competing dealer that better the existing market by increasing the price of the existing bid or decreasing the price of the existing offer make a positive contribution to the primary market and should be encouraged. Therefore, the Exchange proposes to amend its proposal to exempt from the requirement that orders for the account of a competing dealer yield priority and parity to other off-floor orders any order for the account of a competing dealer that betters the existing market by improving the price of the existing bid or the existing offer. The Exchange's proposal will continue to require that orders for the account of a competing dealer that do not better the existing market yield priority and parity to all other off-floor orders.

Second, while the Exchange continues to be of the view that all market makers (its own specialists and registered traders as well as competing dealers) should be treated equally when buying or selling for their own accounts and, therefore, should be on parity, it is prepared to withdraw, for the time being, this portion of its proposal. Thus, specialists will continue to be required to accord precedence to limit orders for the account of a competing dealer placed on a specialist's book; but, only as between the specialist and the competing dealer. A competing dealer's order would never be eligible to retain priority over or gain parity with a public order unless, at the time it was placed on the book, the competing dealer's order bettered the existing market. The Exchange believes strongly that it should be permitted to accord priority to customer orders coming into its marketplace and that such a position is entirely consistent with the statutory framework under which it is regulated.

To further enhance the effectiveness of Amex's market in handling public customer orders, the original proposal prohibited the use of the Amex's PER system to automatically route orders for the account of a competing dealer to the Amex specialist's post. The Amex's PER system was designed and developed to service public customer orders, not those of competing dealers and not as an alternative to or to comptete with the Intermarket Trading System ("ITS"). Commentators on the Exchange's original proposal asserted that the prohibition on competing dealers' access to the PER system was a denial of equal access to an exchange system. These commentators ignored or attempted to distinguish the bars or limitations that apply to their own systems which are utilized to furnish orders to their markets. Although the Exchange continues to believe that use of the PER system should be limited to orders for the accounts of public customers, it is prepared to defer consideration of that aspect of the proposal until such time as the Commission has the opportunity to study and resolve the issues arising from statutory mandates to both provide protection to public customer orders and require equal access to exchange systems. It is assumed that the Commission will study the limitations on access to all marketplace systems—not just those employed by the primary markets.

In addition, the Exchange proposes to amend the filing to assure that section 11(a)(1)(G) of the Act is observed in its marketplace and that Amex rule 126 is applied accordingly. Section 11(a)(1) of the Act prohibits any member of an exchange from effecting any transaction on such exchange for its own account. Sub-paragraphs 11(a)(1)(A)–(H) provide exceptions to this prohibition; in particular, sub-paragraph (A) exempts a member acting in the capacity of a specialist and sub-paragraph (G) allows a member to effect a transaction for its own account provided the member is primarily engaged in a public securities business and the member yields priority, parity and precedence to all orders for the account of a non-member. Thus, a "G" order for the account of a member must yield priority, parity and precedence to an order for the account of a non-member competing dealer. Of course, the proposed requirement in Amex rule 126, that a competing dealer yield priority and parity to customer orders, would continue to apply.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

[3] The proposed rule change was noticed in Securities Exchange Act Release No. 28761 (January 3, 1991), 56 FR 1036 (January 10, 1991).

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-90-29 and should be submitted by February 4, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-824 Filed 1-13-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30167; File No. SR-NYSE-91-43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing Company Manual Requirements for Processing Subsequent Listing Applications

January 8, 1992.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend paragraphs 703.01–703.14, 903.02–903.12, 904.03–904.04, and 907.00 of its Listed Company Manual in order to streamline the Exchange's subsequent listing application procedure. This procedure is the Exchange's formal review of increases in the amount of securities listed or changes in a listed security and issuer requests to list another class or series of securities. The review process alerts the Exchange with respect to potential rule or policy violations arising from company actions involving a listed security and ensures that additional classes or series of securities to be admitted to dealings meet Exchange listing standards.

The proposed modifications are also part of the Exchange's overall effort to establish an electronic interface with listed companies. The revised form of application and other modifications are more compatible with electronic transmission of information relevant to the listing process.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Since codification of the procedures in 1953, dramatic changes within the regulatory and business environment have prompted the Exchange to evaluate the relevance of its subsequent listing application process. The proposed changes will preserve the Exchange's qualitative review while responding to the increased demand from listed companies and their legal/financial advisors for the Exchange to act upon subsequent listing applications in a more expeditious manner.

Changes with respect to SEC filing requirements, particularly shelf filing procedures, expedite registration under the Securities Act of 1933. The SEC's electronic filing system, commonly called EDGAR, will provide access to corporate disclosure documents on home and business computer screens and eliminate the lengthy paper documents listing companies now file with the SEC. The Exchange's proposal to streamline the subsequent listing process is consistent with SEC initiatives.

The business environment also has dramatically changed in recent years. The proliferation of derivative products, the growth of multiple class capital structures, and the sharp rise in the number of mergers and acquisitions have prompted a dramatic increase in the volume of subsequent listing applications that must be processed by the Exchange.

Accordingly, the Exchange proposes to modify its subsequent listing application process to keep pace with the demands and needs of the rapidly changing securities industry. While the proposed modifications provide for a more efficient procedure, they preserve the Exchange's regulatory function. The modifications will in no way diminish the Exchange's qualitative review process. The revised procedure will continue to alert the Exchange to potential rule or policy violations arising from company actions involving a listed security. It will continue to ensure that additional classes or series of securities to be admitted to dealings on the Exchange meet established listing standards.

The Exchange seeks specifically to revise the NYSE's Listed Company Manual, paragraphs 703.01–703.14, 903.02–903.12, 904.03–904.04, and 907.00. The proposed changes: (a) Simplify the subsequent listing application format; (b) reduce the number of required copies of the listing application and other supporting documents consistent with current NYSE needs; (c) delete certain supporting documents which are repetitive of information found in other required documents; (d) delete certain documents which are not pertinent to the Exchange's review process; (e) revise certain paragraphs in a manner consistent with prior rule changes approved by the SEC; and (f) expand the "Opinion of Counsel" with respect to the validity of the securities being listed. The expanded opinion also will verify that appropriate corporate action has been taken with respect to the issuance

[1] The exact text of the proposal was attached to the rule filing as Exhibit 2 and is available at the NYSE and the Commission at the address noted in Item IV below.

and listing of such securities. Such corporate action is currently set forth in lengthy documentation that is being eliminated.

a. *Revision with respect to the format of the subsequent listing application.* The Exchange proposes to consolidate all types of subsequent listing applications into a single universal format that may be used for any listings other than an original listing. The Exchange also seeks to condense the application by eliminating information that is required in other documents. The revised application, when countersigned by the Exchange, will serve as format notice of authorization to list the securities.

b. *Decreasing the number of required copies of the subsequent listing application and certain supporting documents.* Since codification of the subsequent listing process in 1953, the Exchange has consolidated certain functions that pertain to the procedures within a single division of the Exchange. As a result, fewer copies satisfy the Exchange's needs today. Accordingly, the Exchange is proposing to reduce the required number of listing applications and of certain supporting documents consistent with the present structure of the organization.

c. *Deleting certain documentation which is repetitive of information found in other supporting documents.* (i) A Custodian Letter (para. 703.01(C), 703.08(H), and 904.03) is issued when the transfer agent and registrar must relinquish control of fully executed and countersigned securities into the custody of a representative of the company, prior to receipt of the consideration for said shares by the company, so that they may be available for delivery upon the closing of the transaction at a distant location. The proposal to delete this document is based on Exchange policy (paragraph 703.01(A)) of the NYSE Listed Company Manual) which states that "(t)he listing authorization (*e.g.*, to issue additional securities) is granted only if the securities are issued for the purpose, and under the terms and conditions authorized by the company's Board of Directors and as specified in the listing application * * *. Where listing is authorized upon 'official notice of issuance,' the listing becomes effective upon the Exchange's receipt of notice from the transfer agency (or other issuing agent) that the securities have been issued for the specified purpose." Given these other safeguards with respect to valid issuance of such securities for the stated purpose, the Custodian Letter is no longer required.

(ii) The Public Authority Certificate ("Certificate") requirement (para. 703.01(C), 703.02(F), 703.03(P), 703.04(D), 703.05(G), 703.06(G), 703.07(C), 703.09(E), 703.10(B), 703.11(B), and 703.13(C)) is being deleted in reliance upon the expanded opinion of counsel, as proposed in (f) below, that all appropriate public authority clearances have been obtained. The Certificate is required, in rare instances, to be submitted in connection with transactions subject to special regulatory review (*e.g.*, Federal Trade Commission or state public utility commission review). The rarity with which the Exchange has encountered such instances has led the Exchange to consider reliance upon the proposed expanded opinion of counsel that said approvals have been obtained.

(iii) Requirements for Board of Directors and shareholder approval resolutions (para. 703.01(C), 703.02(F), 703.3(P), 703.04(D), 703.05(G), 703.06(G), 703.07(C), 703.08(H), 703.09(E), 703.10(B), 703.11(B), 703.12(C), 703.13(C), and 703.14(D)) are being deleted in reliance upon the proposed expanded opinion of counsel that the directors and/or shareholders, as required by Exchange policy or corporate law, have approved the issuance and listing of the securities.

(iv) A Certificate of Transfer Agent (Para. 703.01(C), 703.05(G), and 703.10(B)) serves to advise the Exchange as to the number of issued and outstanding shares of the class or series which is the subject of the listing application. It is being eliminated since the Exchange authorizes securities for listing "* * * upon official notice of issuance * * *." (See Para. 703.01(A)). Such notice of issuance is received from the transfer agent in accordance with 703.01(A). Also, in situations involving the listing of a new security, the Exchange may request a distribution schedule which sets forth information regarding the size of holdings of the shares and the geographic distribution of the shares (Para. 904.01). Accordingly, the Certificate of Transfer Agent is deemed redundant and should no longer be required as a separate supporting document.

(v) A Trustee's Certificate (para. 703.01(C) and 703.06(G)) serves to confirm to the Exchange certain information with regard to the debt securities which are the subject of the listing application. The appointment of the trustee is confirmed in the revised Opinion of Counsel. The other items are contained in the indenture, which continues to be a supporting document. Therefore, the Trustee's Certificate is redundant and should no longer be required with respect to the subsequent listing review process. It will, however, remain as a required document for an original listing application.

(vi) A Certificate of Registrar (para. 703.01(C), 703.05(G), 703.10(B), and 703.13(C)) confirms the number of shares registered as of or about the date of the listing application. It is being deleted since securities are authorized for listing "* * * upon official notice of issuance * * *." (See Para. 703.01(A)). Such notice of issuance is received from the transfer agent in accordance with procedures set forth in the NYSE Listed Company Manual.

d. *Deleting certain documentation and procedures which are unnecessary to the exchange's qualitative review process.* (i) Pooling of Interest Opinion Letters (para. 703.01(C), 703.08(H), and 907.00) are being eliminated since information contained therein is no longer deemed necessary to the Exchange's qualitative review. The requirement to provide these letters is mandated by the accounting profession and is not a necessary condition to any Exchange action.

(ii) As long as a company remains at or above the Exchange's continued listing standards, the Exchange has determined that it is no longer necessary to scrutinize a stock split of a security which may result in an abnormally low price range, or of a security already selling in a low price range (Para. 703.02(A)).

(iii) The Exchange no longer considers relevant whether or not a finder's fee is paid in connection with a merger, acquisition or other business combination by a listed company (Para. 703.08(E)). The Exchange's shareholder approval policy, modified in July 1989, considers dilution only in terms of shares or voting power; therefore, any other consideration paid in such a transaction is not a factor in determining whether or not shareholder approval of such transaction is required.

e. *Revise certain paragraphs in a manner consistent with prior rule changes approved by the SEC.* Certain paragraphs of the Listed Company Manual reiterate practically verbatim policies of the Exchange. When these policies are modified it becomes necessary to make the appropriate edits wherever the policy is stated. The Exchange proposes, where these policies are reiterated, to furnish a simple cross-reference to the paragraph or section of the Listed Company Manual which contains the current policy. For example, the threshold requirement for obtaining shareholder approval, under certain conditions, was raised to 20% from 18.5%. In as much as this requirement is discussed at various

points, it is easier to refer to Paragraph 312.00, rather than to repeat the policy as modified.

f. *Expanded legal opinion.* The Opinion of Counsel, which is part of the Exchange's qualitative review, is being expanded to verify that necessary approvals, traditionally embodied on other documents, have been obtained. The opinion will be expanded to include: (a) The authorization of "listing" of securities by the Board of Directors; (b) the authorization by stockholders (in the manner prescribed by Exchange policy or corporate procedure) of the issuance of the securities; and (c) the authorization by the Board of Directors of the appointment of transfer agent, registrar, or trustee.

(2) *Statutory Basis*

The statutory bases for the proposed rule change is section 6(b)(5) of the Act which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither formally solicited nor does it intend to solicit comments regarding these proposed rule changes. The Exchange has not received any unsolicited written comments from members or other interested parties regarding these rule changes. Nevertheless, listing companies have informally observed from time to time that the subsequent listing application process should be simplified.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-91-43 and should be submitted by February 4, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-923 Filed 1-13-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30159; File No. SR-NYSE-91-32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Listing of Long-Term Index Options

January 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 14, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE seeks authorization (i) to list, with respect to any class of index options, series of options expiring up to 36 months after they are listed ("long-term series") and (ii) to list long-term options on reduced value indexes. Pursuant to this proposed authority, the Exchange specifically intends to list long-term options on the NYSE Composite Index ("NYA") and on a new reduced value index that will be computed at one-tenth the value of the NYA Index ("NYA Reduced Value Index"). To accommodate the trading of long-term index options, the NYSE proposes to amend its strike price interval, bid/ask differential and price continuity rules to provide that they will not apply to long-term Index options until their time to expiration is less than twelve months. The proposed long-term index options will expire within one, two or three years of their initial listing, and the NYSE will retain the right to list options with intervening expirations at six-month intervals (*e.g.*, 1½ years and 2½ years). To accommodate the trading of reduced value index options, the NYSE proposes to amend its rules to allow strike price interrvals of $2.50, rather than $5.00, for the reduced value index options, and to provide that positions in full value index options will be aggregated with positions in corresponding reduced value index options to determine compliance with position and exercise limits. The text of the proposed rule change is available at the office of the Secretary, NYSE and at the Commission.[1]

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[1] On December 11, 1991, the NYSE amended its proposal to provide that (i) the Exchange will list only six additional expiration months in long-term index options; (ii) the strike price interval rules set forth in Exchange Rule 703, Supplementary Material .30(b) Will not apply to long-term index options until their time to expiration is less than 12 months; (iii) the position and exercise limits for reduced value broad index group options will be 450,000 contracts on the same side of the market covering the same underlying stock index group,no more than 250,000 of which may be in the series having the nearest expiration date; and (iv) reduced value options on broad index stock groupus will be considerdd ⅒ of a ful value contract for position and exercise limit purposes. *See* File No. SR-NYSE-91-32. Amendment No. 1.

(I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) *Purpose.* The NYSE seeks authorization (i) to list, with respect to any class of index options, series of options expiring up to 36 months after they are listed ("long-term series") and (ii) to list long-term options on reduced value indexes. Pursuant to this proposed authority, the Exchange specifically intends initially to list long-term options on the NYA Index and the NYA Reduced Value Index.[2]

The proposed long-term index options will expire within one, two or three years of their initial listing, and the NYSE will retain the right to list options with intervening expirations at six-month intervals (*e.g.*, 1½ years and 2½ years).

The Exchange proposes to add Supplementary Material .20(a)(ii) to Exchange Rule 703, which will provide that the strike price interval, bid/ask differential and price continuity rules set forth, respectively, in Exchange Rule 703, Supplementary Material .30(b), entitled "Series of Options Open for Trading, Exchange Rule 758(b)(i)(C), entitled "Competitive Options Traders" ("COTs"), and Exchange Rule 750(e)(i), entitled "Rules of General Applicability," will not apply to long-term index options until their time to expiration is less than twelve months.[3] However, the Exchange's general rules obligating options specialists and COTs to maintain fair and orderly markets (Exchange Rules 750(b) and 758(b)(i)(B)) will continue to apply. Accordingly, the NYSE believes that the waiver of the bid/ask differential and price continuity rules will not impede the Exchange's ability to make a finding of inadequate market-maker performance should a specialist and/or a COT enter into transactions or make bids or offers in long-term stock index option series that are inconsistent with the maintenance of a fair and orderly market. In addition, the NYSE will closely monitor the trading in long-term index options to gain experience with them and, after one year, will reexamine the applicability of the strike price interval, price continuity, and bid/ask differential rules to long-term index options.[4]

Long-term options on reduced value indexes will trade independent of and in addition to options on the corresponding full value index traded on the NYSE. Long-term options on reduced value indexes will be subject to the same rules that govern the trading of NYSE-listed options on stock index groups, including sales practice rules, margin requirements, and floor trading procedures, except that the Exchange proposes to amend Exchange Rule 703, Supplementary Material .30(d) to allow strike price intervals of $2.50, rather than $5.00, for reduced value index options. Other than the reduced value and strike price intervals, all other specifications and calculations for a reduced value index remain the same as for the corresponding full value index. In addition, under the proposal, positions in full value index options must be aggregated with positions in corresponding reduced value index options for purposes of determining adherence to position and exercise limits.[5] Finally, as in the case of all other indexes, the NYSE will continuously calculate and disseminate the underlying value of a reduced value index in addition to the value of the corresponding full value index.

The NYSE proposes to retain flexibility in the listing of new strike prices for long-term options on reduced value indexes. Initially, the NYSE intends to list such strike prices near or bracketing the then current reduced index value. The NYSE proposes to add additional strike prices for long-term reduced value stock index options only when the relevant index (and thus the overall market) makes significant moves of approximately 10 to 15 percent, but a new expiration month will not be added more than every six months. The Exchange believes that this procedure should result in the listing of only a limited number of series for any expiration, thereby eliminating the confusion that might otherwise result from a myriad of strike prices and expirations. The NYSE also expects to act conservatively in adding new strike prices for long-term options on its full value indexes.

The NYSE believes that reduced value indexes, coupled with the Exchange's strike price policy for reduced value index options, will serve the needs of retail investors by providing them with the opportunity to use long-term options to protect their portfolios from long-term market moves at a reduced cost and by providing them with a medium-term investment in a security that tracks market-wide price movements. The NYSE notes that such a result could not be achieved by using full value index options without the listing of strike prices so deeply out-of-the money and away from the current value of the index as to offer investors limited ability to participate in the market or protect their portfolios.

In addition, the NYSE believes that the proposal responds to the needs of portfolio managers and institutional customers by providing them with a means to protect their positions from long-term market moves. Currently, institutional investors can insure their portfolios with either futures positions or off-exchange customized options. The proposed rule change will provide institutional investors with the additional alternative of hedging portfolio risks through the use of standardized options that have the benefit of being issued and cleared by the Options Clearing Corporation and traded in a centralized, regulated secondary market on the NYSE. The NYSE also believes that the proposed rule change will add liquidity to the market by allowing institutional investors to hedge the risks of their stock portfolios over a longer period of time and with a known and limited cost.

(ii) *Basis.* The NYSE believes that the proposed rule change is consistent with the requirements of the Act and, in particular, furthers the objectives of section 6(b)(5) because the proposal promotes just and equitable principles of trade, facilitates transactions in

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[2] The NYSE will use the following procedure in rounding the reduced value index: the Exchange will divide the calculated value of the full value NYA Index by 10 and round the resulting quotient to the nearest one-hundredth. The digits one through four will be rounded down to the nearest number and the digits five through nine will be rounded up to the next number.

[3] Specialists will be relieved of their obligations with respect to minimum bid/ask differentials by virtue of NYSE Rule 750(e)(i)'s incorporation of the minimum bid/ask differentials specified in NYSE Rule 758(b)(i)(C)(1), as amended by the proposal.

[4] *See* Amendment No. 1, *supra* note 1.

[5] For example, because one full value NYA Index contract is equivalent to ten NYA Reduced Value Index contracts, each NYA Reduced Value Index contract will be considered 1/10th of a NYA contract when NYA and NYA Reduced Value Index contracts are aggregated for position and exercise limit purposes.

securities, and protects investors and the public interest

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The NYSE has not solicited, and does not intend to solicit, comments on the proposed rule change. The NYSE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act because the proposal is based in substance on the existing rules of other options exchanges.[6]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[7] First, the Commission believes that the proposal to list long-term index options that expire up to 36 months from the date of issuance is designed to provide investors with additional means to hedge equity portfolios from long-term market risk, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets.

Currently, investors use index options to, among other things, hedge the risks associated with holding diversified equity portfolios. The Commission believes that the Exchange's proposal to provide long-term index options, which will allow investors to lock in their hedges for up to three years, will permit investors to better protect their portfolios from adverse market moves. Further, the Commission believes that long-term options will allow this protection to be provided at a known and limited cost. Finally, the proposal will provide investors with an alternative to hedging portfolios with off-exchange customized derivative instruments, or short-term, non-extended exchange-traded index options. Accordingly, the Commission believes that the proposal to list long-term index options will better serve the long-term hedging needs of investors.

The Commission notes that the Exchange's strike price interval, bid/ask differential, and price continuity rules will not apply to such long-term option series until their time to expiration is less than 12 months. This approach is consistent with the approach taken by the Amex, CBOE, and PSE [8] because of the lack of historical pricing data for long-term options. Strike price interval requirements and bid/ask differential and price continuity rules currently applicable to index options are based on options that expire 12 months from the time they begin trading. Therefore, there currently is no basis for establishing reasonable prices for long-term index options that will expire more than 12 months from the time they begin trading.

The Commission notes that although specific strike price interval, bid/ask differential and price continuity rules will not apply to long-term index options that have over 12 months to expiration, the NYSE's general rules obligating COTs and options specialists to maintain fair and orderly markets (Exchange Rules 750(b) and 758(b)(i)(B)) will continue to apply. The Commission believes that the requirements of these rules are broad enough, even in the absence of bid/ask differential and continuity requirements, to provide the Exchange with the authority to make a finding of inadequate specialist or COT performance should these specialists or COTs enter into transactions or make bids or offers (or fail to do so) in long-term options that are inconsistent with their obligations as market makers. Finally, the Commission notes that the strike price interval, bid/ask differential and continuity rules will apply to long-term stock index options series that expire in less than 12 months. In addition, the NYSE has stated that it will monitor the trading in long-term index options closely to gain experience with regard to these options, and that it will reexamine the applicability of these rules to the long-term options in one year's time.[9]

Second, the Commission believes that the NYSE's proposal to list reduced value NYA Index options, computed at one-tenth of the value of the NYA, will facilitate transactions in options by providing investors with additional means to hedge their equity portfolios against long-term market risk.[10] Specifically, the reduced value of the NYA Index likely will result in options premiums that are more affordable to retail investors.[11] Thus, the options on reduced value indexes will serve the needs of retail investors by providing them with long-term options to protect their portfolios from long-term market moves at a reduced cost.

The Commission also believes that trading in Reduced Value NYA options will not have an adverse market impact or be susceptible to manipulation. Previously, the Commission has determined that the NYA Index is a broad-based index.[12] The Commission does not believe that merely changing the Index by dividing its value by 10 will change this determination. The NYA Reduced Value Index will contain the same stocks with the same weightings as the full value NYA Index and will be calculated in the same manner as that index (with the exception of being 1/10th its value). In addition, the Commission believes that any potential

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[6] *See e.g.*, Securities Exchange Act Release Nos. 25041 (October 16, 1987), 52 FR 40008 (October 20, 1987) (order approving SR–Amex–87–22, providing for the trading of long-term index options on the American Stock Exchange ("Amex")); 24653 (August 27, 1987), 52 FR 33468 (September 3, 1987) (order approving SR–CBOE–87–24, providing for the trading of long-term index and equity options on the Chicago Board Options Exchange ("CBOE")); and 28589 (October 31, 1990), 55 FR 46882 (order approving SR–PSE–90–35, providing for the listing of long-term index and equity options on the Pacific Stock Exchange ("PSE")) (collectively termed "Long-Term Stock Index Options Approval Orders"). *See also* Securities Exchange Act Release Nos. 28613 (November 14, 1990), 55 FR 48307 (order approving SR–Amex–90–14, providing for trading of reduced value Major Market Index ("XMI") options); 28686 (December 10, 1990), 55 FR 51317 (order approving SR–CBOE–90–30, providing for listing of long-term options on reduced value Standard & Poor's 100 and 500 Stock Indexes ("OEX" and "SPX", respectively)); and 29346 (June 19, 1991), 56 FR 29609 (order approving SR–PHLX–91–02, providing for listing of reduced value long-term options on the Value Line Index) (together, the "Reduced Value Stock Index Options Approval Orders").

[7] 15 U.S.C. 78f(b)(5) (1982).

[8] *See* Long-Term Options Approval Orders, *supra* note 6.

[9] *See* 2Amendment No. 1, *supra* note 1.

[10] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such a product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[11] The Commission notes that the NYSE must submit proposals to list reduced value stock index options on indexes other than the NYA to the Commission as proposed rule changes pursuant to section 19(b)(1) of the Act.

[12] *See* Securities Exchange Act Release No. 19264 (November 22, 1982), 47 FR 53081 (order approving File No. SR–NYSE–82–2).

manipulation concerns raised by options on reduced value indexes are minimized by the fact that positions in these options will be aggregated with positions in options on the corresponding full value indexes for position and exercise limit purposes.[13] Moreover, the Commission notes that the Exchange will use the same surveillance procedures for both full value and Reduced Value NYA Index options. Finally, the Commission believes that reducing the strike price interval for reduced value index options is reasonable given the level of these reduced value indexes and the fact that any changes in value of the reduced value indexes will occur at a rate which is 1/10th of the rate at which the indexes on which they are based will change.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because the NYSE's proposal is identical to proposals by the Amex, CBOE, PHLX and PSE to trade long-term index options, which the Commission has already approved.[14] In addition, the NYSE's proposal to list long-term index options on reduced value indexes is identical to the Amex's proposal to trade options on a reduced value XMI, the CBOE's proposal to trade reduced value SPX and OEX options, and the PHLX's proposal to list options on a reduced value Value Line Index.[15] These proposals were subject to the full notice and comment period and the Commission did not receive any comments on them. Accordingly, since the Commission does not find any different regulatory issues arising out of the NYSE's proposal, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis in order to facilitate competition among the exchanges for product services, which, in turn, should benefit public investors. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 4, 1992.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSE–91–32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–926 Filed 1–13–92; 8:45 am]

BILLING CODE 8010-01-M

[13] *See supra* note 8.

[14] *See* Long-Term Options Approval Orders and Reduced Value Stock Index Options Approval Orders, *supra* note 6.

[15] *See* Reduced Value Stock Index Options Approval Orders, *supra* note 6

[16] 15 U.S.C. 78s(b)(2) (1982).

[17] 17 CFR 200.30–3(a)(12) (1990).

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1541]

Delegation of Authority No. 192 Under Secretary for Management

By virtue of the authority vested in me as Secretary of State, including the authority of section 4 of the Act of May 16, 1949 (22 USC 2658), I hereby delegate the waiver and certification function vested in the Secretary of State by section 502 of the Departments of Commerce, Justice, and State, and the Judiciary, and Related Agencies Appropriations Act for Fiscal Year 1992 (Pub. L. 102–140) to the Under Secretary for Management.

Notwithstanding this delegation of authority, the Secretary of State or the Deputy Secretary of State may exercise the function herein delegated.

Dated: December 10, 1991

James A. Baker, III,

Secretary of State.

[FR Doc. 92–910 Filed 1–13–92; 8:45 am]

BILLING CODE 4710-10-M

[Public Notice 1549]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 44 U.S.C. chapter 35.

SUMMARY: Section 101(a)(27)(D) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(27)(d), provides for the granting of special immigrant status for a person (and accompanying spouse and children) who is an employee or an honorably retired former employee of the United States Government abroad, and who has performed faithful service for a total of fifteen years or more, contingent upon a recommendation by the principal officer of the Foreign Service establishment and approval by the Secretary of State after finding that it is in the national interest to grant such status. The following summarizes the information collection proposal submited to OMB:

Type of request—New.
Originating office—Bureau of Consular Affairs.
Title of information collection—Petition to Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad.
Frequency—One-time filing.
Form No.—DS–1884.
Respondents—Alien Employees and Former Employees of the U.S. Government Abroad.
Estimated number of respondents—500.
Average hours per response—30 minutes.
Total estimated burden hours—250.

Section 3504(h) of Public Law 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook, (202) 647–3538. Comments and questions should be directed to (OMB) Lin Liu, (202) 395–7340.

Dated: December 20, 1991.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 92–823 Filed 1–3–92; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Applications of International Cargo Xpress, Inc., for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 92–1–9) Dockets 47749 and 47750.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding International Cargo Xpress, Inc., fit and awarding it certificates of public convenience and necessity to engage in interstate, overseas, and foreign charter air transportation of persons and property.

DATES: Persons wishing to file objections should do so no later than January 16, 1992.

ADDRESSES: Objections and answers to objections should be filed in Dockets 47749 and 47750 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: January 6, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–900 Filed 1–13–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement, Brown County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to adviser that an environmental impact statement will be prepared for a proposed highway improvement project in Brown County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulveard, Wisconsin, Wisconsin 53705–4905; Telephone (608) 264–5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation (WISDOT), is currently preparing an environmental impact statement for the construction of a four-lane facility for Highway 57. The project begins at the interestion with Highway 54 easterly of Green Bay and extends of Highway "A" northerly of Dyckesville. The project is located in the northeasterly section of Brown County. The proposed project would consist of adding two lanes to the existing facility, four lanes on new location or a combination of add lanes and new location. The project would serve to reduce heavy congestion and the accident potential along the existing route. Planning, environmental and engineering studies are underway to develop transportation alternatives. The EIS will assess the need, location, and environmental impacts of alternatives including: (1) *No Build*—This alternative assumes the continued use of existing facilities with the maintenance necessary to ensure their use; (2) *Upgrade the Existing Facility*—This alternative would improve the safety and traffic handling capability of the existing route; and (3) *Construction of Add Lanes and/or on New Alignment*—This alternative would involve construction of two new lanes adjacent to the existing facility, constructing four lanes on new location, or a combination of add lanes and new location.

Coordination & Scoping Process

Coordination activities have begun. Scoping meetings have been and will be held on an individual and/or group meeting basis. Agency coordination will be accompolished during these meetings. Questions and comments from individuals and agencies concerning this proposed action and the environmental impact statement should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Coordination. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 31, 1991.

Robert W. Cooper,

District Engineer, Madison, Wisconsin.

[FR Doc. 92–716 Filed 1–13–92; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement, Oconto County, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise that an environmental impact statement will be prepared for a proposed highway improvement project in Oconto County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn Lawton, Environmental Coordinator, Federal Highway Administration 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905; telephone (608) 264–5967.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Wisconsin Department of Transportation (WisDOT), is currently preparing an environmental impact statement for the construction of a four-lane facility for Highway 141. The project begins at the intersection with County Highway "E" near Abrams and extends north to McCarthy Road north of Stiles. The project is located in the central section of Oconto County. The proposed project would consist of adding two lanes to the existing facility, four lanes on new location, or a combination of add lanes and new location. The project would serve to reduce heavy congestion and the accident potential along the existing route.

Planning, environmental, and engineering studies are underway to develop transportation alternatives. The EIS will assess the need, location, and enviornmental impacts of alternatives inluding: (1) No Build—This alternative, assumes the continued use of existing facilities with the maintenance necessary to ensure their use; (2) Upgrade the Existing Facility—This alternative would improve the safety and traffic-handling capability of the existing route; and (3) Construction of Add Lanes and/or New Alignment—This alternative would involve construction of two new lanes adjacent to the existing facility, constructing four lanes on new location, or a combination of add lanes and new location.

Coordination and Scoping Process

Coordination activities have begun. Scoping meetings have been and will be held on an individual and/or group meeting basis. Agency coordination will be accomplished during these meetings. Questions and comments from individuals and agencies concerning this proposed action and the environmental impact statement should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Coordination. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 31, 1991.

Robert W. Cooper,

District Engineer, Madison, Wisconsin.

[FR Doc. 92-715 Filed 1-13-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 91-58; No. 2]

General Motors Corp.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by General Motors Corporation to be exempted from the notification and remedy requirements of the National Highway Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that its noncompliance with Motor Vehicle Safety Standard No. 106 is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on November 29, 1991, and an opportunity afforded for comment (56 FR 61060).

Based on information provided by the Weatherhead Division of Dana Corporation, GM determined that certain air brake hoses installed in approximately 1,699 model year 1988 through 1990 GM school bus chassis and medium duty trucks failed to meet the adhesion requirements of S7.3.7 of Federal Motor Vehicle Safety Standard No. 106, "Brake Hoses." Section S7.3.7 requires that, except for hose reinforced by wire, an air brake hose shall withstand a tensile force of 8 pounds per inch of length before separation of adjacent layers. GM supported its petition with the following information:

1. Each of the applications of the subject hoses in GM vehicles is a pressure application, not a vacuum application. Thus, the inner hose layer would not collapse even if the layers were to delaminate such that air could enter between the layers of the hoses.

2. The hose material was assembled into hose assemblies for all applications in GM vehicles. Thus, each end of the hose has an end fitting assembled to the hose by a crimping process. There are two important aspects of the assembly. First, the end fittings have the effect of capturing the hose material, such that the hose is not subject to shearing forces that would act to delaminate the layers of the hose. Second, even if the layers could delaminate, there should be no path for air pressure to enter between the layers because of the end crimping of the hose layers.

3. All of the subject hose material is of a spiral design with pin-pricked covers to allow any air which enters between the layers of the hose to escape. This further diminishes any likelihood that positive air pressure could build on the outside of the inner layer and cause it to collapse.

4. The affected GM vehicles are all equipped with split service brake systems. Therefore, any service failure of the subject air brake hoses would leave the driver with partial brake system performance and stopping capability.

GM stated that, in summary, a sequence of events, each of which is virtually precluded by the application in GM vehicles, would have to occur for this noncompliance to have an adverse effect on safety.

First, the layers would have to delaminate, which is prevented by the end fittings which 'capture' the hose material. Next, air pressure would need to enter between the layers of the hose, which is prevented by the crimping of the end fittings to the hose. And finally, positive differential air pressure would need to build up on the outside of the inner layer, which is prevented by both the spiral and pin-pricked hose design, and also by virtue of the pressure, rather than vacuum, applications of the subject hoses in GM vehicles. . . .

GM also stated that the data which have previously been submitted to the agency are similar to those of petitions for exemption submitted by Navistar and Mack Trucks. Also, the comments of Dana Corporation in support of the Navistar and Mack petitions, are applicable to the subject air brake hoses installed in GM vehicles.

No comments were received on the petition.

At the time the petitioner filed its petition, the petitions by two other users of the Dana Weatherhead hose, Navistar International and Mack Trucks, Inc., were still under consideration. These petitions were granted on October 11, 1991 (56 FR 51440) on the basis of the following arguments:

1. The end use of the hoses was such that they were subject to pressure, not vacuum applications.

2. If the hoses were used in vacuum applications, their crimped end fittings make it unlikely that air would become trapped between the layers of the hose.

3. If there is any permeation of air from the inner tube, the hoses are designed to release it through the pin-pricked outer layer.

These arguments are similar to those raised by GM in support of its petition. The petitioner uses the Weatherhead hoses in pressure applications. The outer layer of the hoses is pin-pricked. The hoses are equipped with the same crimped end fittings as the Weatherhead hoses.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(15 U.S.C. 1417 delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on January 7, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-901 Filed 1-13-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 91-52; No. 2]

Volvo GM Heavy Truck Corp., Grant of Petition for Determination of Inconsequential Noncompliance

Volvo GM Heavy Truck Corporation (Volvo GM) of Greensboro, North Carolina, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that its noncompliance with Motor Vehicle Safety Standard No. 106 is inconsequential as it relates to motor vehicle safety.

Notice of receipt of a petition was published on October 24, 1991, and an opportunity afforded for comment (56 FR 55151).

Paragraph S7.3.7 of Standard No. 106 requires that, except for hose reinforced by wire, an air brake hose shall withstand a tensile force of 8 pounds per inch of length before adjacent layers separate. As a result of a routine compliance test by the National Highway Traffic Safety Administration, it was discovered that certain air brake hoses (Weatherhead H33800 and H33808) manufactured by the Dana Corporation failed to comply with the adhesion requirement of Standard No. 106. Upon finding the above mentioned test failure, NHTSA opened a noncompliance investigation numbered NCI 3166. As a result, the Dana Corporation agreed to conduct a notification and remedy campaign. The recall campaign number is 90E-046. Volvo GM trucks are equipped with the noncompliant hoses, and it petitioned the agency in response to the notification issued by the Dana Corporation.

Volvo GM reported that it manufactured 3,299 truck tractors between February 9, 1988 and December 12, 1988, that are equipped with the

noncompliant hoses. It supported its petition with the following:

1. Volvo GM installed the suspect hose assemblies in non-vacuum applications, specifically as tractor to trailer connecting hoses. In support of this statement, Volvo GM presented the following arguments taken from a Dana Weatherhead letter to Volvo GM dated August 12, 1991:

Proponents of the FMVSS adhesion factor contend that air could be trapped in the reinforcement of the hose an low adhesion could result in the inner tube . be(ing) imploded (and) restricting the flow of air which may increase the response time. However air would not be trapped as the cover of all air brake hose produced by the supplier. Boston Industrial Products Division of Dana, is pin-pricked along the length of the hose.

Furthermore, the imploding or ballooning effect of the inner tube as noted above can only occur if there is a pressure differential across the inner tube. There would need to be a negative pressure or vacuum on the inside of the tube for this to occur. It is Dana's understanding (that) current air brake systems where this hose is used are subjected to internal pressures in the 0 to 120 psi pressure range.

2. Volvo GM is not aware of any accidents, complaints or warranty (claims) related to the use of these hoses.

3. It is Volvo GM's belief that the installation of the Weatherhead hoses on its vehicles is consistent with industry standards and the installation (practices described) * * * in the petition filed by Navistar International Transportation Corporation and Mack Trucks, Inc. Therefore, Volvo GM believes it should be granted any such relief from recall as will be granted the other petitioners.

No comments were received on the petition.

At the time the petitioner filed its petition, the petitions by two other users of the Dana Weatherhead hose, Navistar International and Mack Trucks, Inc., were still under consideration. These petitions were granted on October 11, 1991 (56 FR 51440), on the basis of the following arguments:

1. The end use of the hoses was such that they were subject to pressure, not vacuum applications.

2. If the hoses were used in vacuum applications, their crimped end fittings make it unlikely that air would become trapped between the layers of the hose.

3. If there is any permeation of air from the inner tube, the hoses are designed to release it through the pin-pricked outer layer.

The petitioner uses the Weatherhead hoses in pressure applications. The outer layer of the hoses is pin-pricked. The hoses are equipped with the same crimped end fittings as the Weatherhead hoses. Thus, the same factors exist in this case as in the previous petitions which were granted.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: January 7, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-903 Filed 1-13-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 7, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1145.
Form Number: IRS Form 706GS(T).
Type of Review: Revision.
Title: Generation-Skipping Transfer Tax Return for Terminations.
Description: Form 706GS(T) is used by trustees to compute and report the Federal Generation-Skipping Transfer (GST) tax imposed by Internal Revenue Code (IRC) section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 150,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	706GS(T)	Schedule A	Schedule B
Record-keeping.	40 min.	13 min.	13 min.
Learning about the law or the form.	28 min.	17 min.	4 min.
Preparing the form.	32 min.	37 min.	20 min.
Copying, assembling, and sending the form to IRS.	20 min.	20 min.	20 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 205,500 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-993 Filed 1-13-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 8, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0950.
Form Number: IRS Form 23.
Type of Review: Extension.
Title: Application for Enrollment to Practice Before the Internal Revenue Service.
Description: The information relates to the granting of enrollment status to individuals admitted (licensed) by the

Internal Revenue Service to practice before the Internal Revenue Service.
Respondents: Individuals or households.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 2,000 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–994 Filed 1–13–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 6, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Investor Survey.
Description: This survey is to determine investor's utilization of and satisfaction with Treasury Direct book-entry securities system.
Respondents: Individuals or households, Small businesses or organizations.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Response: 5 minutes.
Frequency of Response: Other (One-time survey).
Estimated Total Reporting Burden: 140 hours.
Clearance Officer: Rita DeNagy (202) 447–1315, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239–0001.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–916 Filed 1–13–92; 8:45 am]

BILLING CODE 4810–40–M

Fiscal Service

[Dept. Circ. 570, 1991 Rev., Supp. No. 9]

Surety Companies Acceptable on Federal Bonds; Sorema North America Reinsurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1991 Revision, on page 30162 to reflect this addition:

Sorema North America Reinsurance Company. Business Address: 199 Water Street, New York, NY 10038–3526. Underwriting Limitation *b/*: $9,611,000. Surety Licenses *c/*: AK, AZ, CT, DC, ID, IL, MI, MS, MT, NE, NM, NY, OR, TN, TX, UT, WA, WI, WY. Incorporated in: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6850.

Dated: January 7, 1992.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 92–828 Filed 1–13–92; 8:45am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1991 Rev., Supp. No. 10]

Surety Companies Acceptable on Federal Bonds; Winterthur Reinsurance Corp. of America

The above mentioned company was listed in 56 FR 30171, July 1, 1991, as an acceptable reinsuring company on Federal Bonds. Federal bond-approving officers are hereby notified that Winterthur Reinsurance Corporation of America is now an acceptable surety on Federal bonds. The officers should annotate their reference copies of the Treasury Circular 570, 1991 revision, on page 30169 to reflect the following information:

Winterthur Reinsurance Corporation of America. Business Address: Two World Financial Center, 225 Liberty Street, 42nd Floor, New York, NY 10281. Underwriting Limitation [b]: $15,631,000. Surety Licenses [c]: AL, AZ, CA, DC, FL, IL, IN, IA, KY, LA, MA, MI, MN, MT, NE, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA, WV, WI. Incorporated in: New York.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington DC 20227, telephone (202) 874–6850.

Dated: January 7, 1992.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 92–827 Filed 1–13–92; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans Advisory Committee on Rehabilitation; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C., 1521, will be held on January 27 and 28, 1992, from 9 a.m. to 4 p.m. in the Omar Bradley Conference Room, room 1105, of the Department of Veterans Affairs at 801 I St., NW. Washington, DC. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and to provide recommendations to the Secretary. The meeting will be open to the public up to the seating capacity of the conference room. Due to limited seating capacity of the conference room, it will be necessary for those wishing to attend to contact Theresa Boyd at (202) 233–6493 prior to January 20, 1992. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days of the meeting. Oral statements will be heard at 3:30 p.m. on January 27, 1992.

Dated: January 6, 1992.

By Direction of the Secretary.
Diane H. Landis,
Committee Management Officer.
[FR Doc. 92-882 Filed 1-13-92; 8:45 am]
BILLING CODE 8320-01-M

Secretary's Educational Assistance Advisory Committee; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Secretary's Educational Assistance Advisory Committee, authorized by 38 U.S.C. 3692, will be held on February 3, 1992, from 8:30 a.m. to 4 p.m. and on February 4, 1992, from 8:30 a.m. to 12 noon. The meeting will take place in the Cascades Conference Center of the Colonial Williamsburg Woodlands Hotel on Information Drive, Williamsburg, Virginia 23187. The purpose of the meeting will be to discuss VA and military education issues with representatives of the various services of Department of Defense.

The meeting will be open to the public up to the seating capacity of the conference room. Due to the limited seating capacity, it will be necessary for those wishing to attend to contact Mrs. Celia Dollarhide, Executive Secretary, Veterans' Advisory Committee on Education (phone 202-233-2152) prior to January 20, 1992.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 3 p.m. on February 3, 1992.

Dated: January 2, 1992.
By direction of the Secretary.
Diane H. Landis,
Committee Management Officer.
[FR Doc. 92-883 Filed 1-13-92; 8:45 am]
BILLING CODE 8320-01-M

Availability of Report of 38 U.S.C. 219 Program Evaluation

Notice is hereby given that the evaluation of the Department of Veterans Affairs Post Traumatic Stress Disorder (PTSD) Program has been completed.

Single copies of the Post Traumatic Stress Disorder Program Evaluation report are available.

Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries to Sid Shaw (009), Office of Assistant Secretary for Congressional Affairs, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: January 7, 1992.
By direction of the Secretary.
Sylvia Chavez Long,
Assistant Secretary for Congressional Affairs.
[FR Doc. 92-884 Filed 1-13-92; 8:45 am]
BILLING CODE 8320-01-M

VOL 57 ISS 9 JA 14 1992 UMI

Sunshine Act Meetings

Federal Register
Vol. 57, No. 9
Tuesday, January 14, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Board Consideration of Resumption of Operations at the Rocky Flats Plant: Extension of Time to Submit Material for the Record.

ACTION: Time Extension for Public Comments.

SUMMARY: In a notice of public hearing published in the **Federal Register** on January 8, 1992 (57 FR 747), the Board announced that it would hold open the written record of the hearing (to be held in Boulder, Colorado on January 16, 1992) until January 21, 1992. In a companion notice published today, the Board announces that it is holding a public meeting in Washington, DC., on February 3, 1992, on public health and safety issues relating to Building 559 at the Rocky Flats Plant. To allow members of the public additional time to submit information to the Board, the Board will hold open the record of the January 16 hearing until close of business Friday, January 31, 1992.

Dated: January 10, 1992.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 92-1027 Filed 1-10-92; 1:02 pm]

BILLING CODE 6820-KM-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 9:00 a.m., Monday, February 3, 1992.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue, NW., Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Public health and safety issues pertaining to Building 559 at the Rocky Flats Plant near Boulder, Colorado.
2. DOE's responses to Board recommendations and whether or not those responses adequately protect public health and safety relative to Building 559.

CONTACT PERSONS FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, or Carole J. Council, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (202) 208-6400 (FTS 268-6400).

SUPPLEMENTARY INFORMATION: The Board will discuss and deliberate upon public health and safety issues related to Building 559 at the Rocky Flats Plant, near Boulder, Colorado. The meeting will include consideration of testimony and documents received at or after the public meeting and hearing conducted in Boulder, Colorado, on January 16, 1992, regarding DOE's operational readiness review for Building 559.

The Board will also discuss, pursuant to the requirements of section 3133 of the National Defense Authorization Act for Fiscal Years 1992 and 1993, whether or not DOE's responses to Board recommendations adequately protect public health and safety relative to Building 559.

The Board reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone, or adjourn the meeting, and otherwise exercise its powers as provided by law.

Dated: January 10, 1992.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 92-1028 Filed 1-10-92; 1:02 pm]

BILLING CODE 6820-KD-M

DEPARTMENT OF ENERGY, FEDERAL ENERGY REGULATORY COMMISSION

Notice

(January 6, 1992)

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: January 15, 1992, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 950th Meeting—January 15, 1992 Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 10981-001, Bangor Hydro-Electric Company
CAH-2.
Project No. 3188-007, Joseph M. Keating.
CAH-3.
Project No. 3194-011, Joseph M. Keating.
CAH-4.
Project No. 7980-002, Wyoming Valley Hydro Partners
CAH-5.
Project No. 10551-005, City of Oswego, New York
CAH-6.
Docket No. 7270-008, Northern Wasco County People's Utility District
CAH-7.
Project No. 4632-012, Clifton Power Corporation
CAH-8.
Project No. 9556-003, Kamargo Corporation
Project No. 9552-003, Deferiet Corporation
Project No. 9554-003, Colton Hydro Corporation
Project No. 9555-003, Higley Corporation
Project No. 9567-003, Hannawa Corporation
CAH-9.
Project No. 9711-002, Inghams Corporation
CAH-10.
Project No. 9712-003, Beardslee Corporation
CAH-11.
Omitted
CAH-12.
Docket Nos. EL85-42-001, 002 and 003, Guy. M. Carlson
CAH-13.
Docket No. EL88-25-001, Iliamna-Newhalen-Nondalton Electric Cooperative, Inc.
CAH-14.
Project No. 8654-016, Noah Corporation
CAH-15.
Project No. 6901-014, City of New Martinsville, West Virginia
CAH-16.
Omitted
CAH-17.
Project No. 11161-001, Hanalei Hydropower, Inc.

Consent Agenda—Electric

CAE-1.
Docket Nos. ER92-199-000 and ER89-106-000, Duke Power Company
CAE-2.

Docket No. ER91-616-000, Empire District Electric Company

CAE-3.
Docket No. ER91-471-000, PacifiCorp Electric Operations

CAE-4.
Docket No. AI92-1-001, Accounting Release No. AR-14

CAE-5.
Docket No. ER91-478-001, Philadelphia Electric Company

CAE-6.
Docket No. ER90-39-002, Central Louisiana Electric Company, Inc.
Docket No. EL91-3-000, Louisiana Energy and Power Authority v. Central Louisiana Electric Company, Inc.

CAE-7.
Docket Nos. ER90-245-003 (Phase I) and EL91-39-001, Canal Electric Company

CAE-8.
Docket No. AC92-26-000, Eastern Edison Company

CAE-9.
Docket No. ER89-475-000, Pacific Gas and Electric Company

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP92-65-000, CNG Transmission Corporation

CAG-2.
Docket No. RP92-61-000, Stingray Pipeline Company

CAG-3.
Docket No. RP92-62-000, Trailblazer Pipeline Company

CAG-4.
Docket No. Omitted

CAG-5.
Docket No. TM92-2-2-000, East Tennessee Natural Gas Company

CAG-6.
Docket No. TM92-4-22-000, CNG Transmission Corporation

CAG-7.
Docket No. TM92-2-37-000, Northwest Pipeline Corporation

CAG-8.
Docket Nos. TA91-1-31-004 AND 005, Arkla Energy Resources, a division of Arkla, Inc.

CAG-9.
Docket Nos. TA90-1-29-002, 004, 005 and TA91-1-29-000, Transcontinental Gas Pipe Line Corporation

CAG-10.
Docket No. CP89-1281-016, Natural Gas Pipeline Company of America

CAG-11.
Docket Nos. TA91-1-41-002 and RP88-227-028, Paiute Pipeline Company

CAG-12.
Docket No. TA91-1-30-000, Trunkline Gas Company

CAG-13.
Docket Nos. RP89-186-009, RP90-20-007, and RP91-143-008, Great Lakes Gas Transmission Limited Partnership

CAG-14.
Docket No. RP91-212-002, Stingray Pipeline Company

CAG-15.
Omitted

CAG-16.
Docket Nos. RP92-3-001, and RP90-106-000, *et al.* Columbia Gas Transmission Corporation Docket Nos. RP92-2-001, RP90-107-000, *et al.* and RP91-161-003, Columbia Gulf Transmission Company

CAG-17.
Docket No. RP91-210-003, Tennessee Gas Pipeline Company

CAG-18.
Docket No. RP90-209-001, Texas Eastern Transmission Corporation

CAG-19.
Docket No. TQ91-7-24-002, Equitrans, Inc.

CAG-20.
Docket No. TQ92-3-59-002, Northern Natural Gas Company

CAG-21.
Docket Nos. TA91-1-29-001, and TA90-1-29-003, Transcontinental Gas Pipe Line Corporation

CAG-22.
Docket Nos. TA90-1-22-011, and RP90-141-002, CNG Transmission Corporation
Docket No. CP92-62-001, CNG Transmission Corporation and Texas Eastern Transmission Corporation

CAG-23.
Docket No. FA91-50-002, Natural Gas Pipeline Company of America

CAG-24.
Docket Nos. RP91-107-000, TM91-6-43-000, and RP91-185-000, Williams Natural Gas Company

CAG-25.
Docket No. RP92-54-000, North Penn Gas Company

CAG-26.
Omitted

CAG-27.
Omitted

CAG-28.
Docket No. PR91-6-000, KansOK Partnership

CAG-29.
Docket Nos. RP90-8-006 and 007, Transcontinental Gas Pipe Line Corporation

CAG-30.
Docket No. GP92-3-000, The Utah Department of Natural Gas Resources, Utah-5 Amendment—Dakota Formation, Grand County, Utah, FERC No. JD91-08284T

CAG-31.
Docket No. CI91-85-001, Commonwealth Gas Company
Docket No. CI91-94-001, New York State Electric & Gas Corporation
Docket No. CI91-97-001, Niagara Mohawk Power Corporation
Docket No. CI91-104-001, New Jersey Natural Gas Company
Docket No. CI92-1-001, Washington Natural Gas Company
Docket No. CI89-461-001, Quantum Chemical Corporation
Docket No. CI91-88-001, Doswell Limited Partnership
Docket No. CI91-93-001, Lockport Energy Associates
Docket No. CI91-101-001, North Jersey Energy Associates
Docket No. CI91-102-001, Northeast Energy Associates
Docket No. CI91-103-001, Ocean State Power II
Docket No. CI91-106-001, Honda of America Mfg., Inc.
Docket No. CI91-126-001, Manville Corporation, *et al.*
Docket No. CI91-128-001, Cogen Energy Technology, L.P.

CAG-32.
Docket No. CP90-14-002, Transwestern Pipeline Company

CAG-33.
Omitted

CAG-34.
Omitted

CAG-35.
Docket No. CP91-1314-001, Amerada Hess Corporation
Docket No. CP91-1117-001, Tom Brown, Inc.

CAG-36.
Docket No. CP92-187-000, Northwest Pipeline Corporation

CAG-37.
Docket No. CP92-178-000, Northern Natural Gas Company

CAG-38.
Omitted

CAG-39.
Docket No. CP91-501-000, Sabine Pipeline Company

CAG-40.
Docket No. CP89-1-008, Mojave Pipeline Company

CAG-41.
Docket No. CP89-2048-006, Kern River Gas Transmission Company

CAG-42.
Docket No. CP91-1616-000, ANR Pipeline Company
Docket No. CP91-1634-000, Great Lakes Gas Transmission Limited Partnership

CAG-43.
Docket Nos. CP91-967-000 and 002, Natural Gas Company
Docket No. CP91-1071-000, Natural Gas Pipeline Company of America

CAG-44.
Docket Nos. CP91-2322-000, 002, and CP90-767-000, Paiute Pipeline Company

CAG-45.
Docket No. CP91-780-002, Northwest Pipeline Corporation

CAG-46.
Docket No. CP92-217-000, Texas-Ohio Pipeline, Inc.

CAG-47.
Docket No. CP87-536-001, High Plains Natural Gas Company

CAG-48.
Docket No. CP91-2277-000, Arkla Energy Resources, a division of Arkla, Inc.

CAG-49.
Docket No. CP90-1603-000, Northern Natural Gas Company

CAG-50.
Docket No. CP91-2950-000, Northwest Pipeline Corporation

CAG-51.
Docket Nos. CP91-1580-000 and 001, Algonquin Gas Transmission Company and Texas Eastern Transmission Corporation

CAG-52.
Docket No. CP91-2366-000, Mississippi River Transmission Corporation

CAG-53.
Docket No. CP90-1478-000, Northwestern Border Pipeline Company

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CAG–54.
Docket No. RP92–64–000, Natural Gas Pipeline Company of America
CAG–55.
Docket No. CP84–252–005, Trans-Appalachian Pipeline, Inc.

Hydro Agenda

H–1.
Project No. 2709–012, Monogahela Power Company, The Potomac Edison Company and West Penn Power Company Order on annual charges.

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
(A) Docket No. MG88–02–004, Algonquin Gas Transmission Company
Docket No. MG88–44–003, ANR Pipeline Company
Docket Nos. MG88–20–003 and 004, Arkla Energy Resources, a Division of Arkla, Inc.
Docket No. MG90–06–002, Canyon Creek Compression Company
Docket No. MG89–04–004 and 005, Carnegie Natural Gas Company
Docket No. MG88–53–003, CNG Transmission Corporation
Docket No. MG88–45–003, Colorado Interstate Gas Company
Docket No. MG88–03–004, Florida Gas Transmission
Docket No. MG90–04–002, Midwestern Gas Transmission
Docket Nos. MG88–12–003 and 005, Mississippi River Transmission Corporation
Docket No. MG89–14–002, Moraine Pipeline Company
Docket No. MG88–31–003, Natural Gas Pipeline Company of America
Docket No. MG88–35–004, Northern Border Pipeline Company
Docket No. MG88–07–004, Northern Natural Gas Company
Docket No. MG88–55–004, Panhandle Eastern Pipeline Company
Docket No. MG88–15–003, Southern Natural Gas Company
Docket No. MG91–02–002, Southwest Gas Storage Company
Docket No. MG90–08–002, Stingray Pipeline Company
Docket No. MG88–19–004, Tennessee Gas Pipeline Company
Docket No. MG88–26–004, Texas Eastern Transmission Corporation
Docket No. MG88–47–003, Texas Gas Transmission Corporation
Docket No. MG90–07–002, Trailblazer Pipeline Company
Docket No. MG88–09–004, Transwestern Pipeline Company
Docket No. MG88–54–003, Trunkline Gas Company
Docket No. MG90–03–002, Trunkline LNG Company
Docket No. MG88–05–004, United Gas Pipe Line Company
Docket No. MG88–50–003, Williams Natural Gas Company. Order on rehearing and clarification concerning Order No. 497 filings.
(B) Docket No. MG88–02–003, Algonquin Gas Transmission Company
Docket No. MG90–06–001, Canyon Creek Compression Company
Docket No. MG88–53–002, CNG Transmission Corporation
Docket No. MG89–11–002, Columbia Gas Transmission Company
Docket No. MG89–10–001, Columbia Gulf Transmission Company
Docket No. MG91–04–000, East Tennessee Natural Gas Company
Docket No. MG89–13–002, Green Canyon Pipe Line Company
Docket No. MG91–01–001, National Fuel Gas Supply Corporation
Docket No. MG90–02–001, Ohio River Pipeline Company
Docket No. MG88–55–003, Panhandle Eastern Pipeline Company
Docket No. MG88–11–001, Questar Pipeline Company
Docket No. MG88–06–002, Sea Robin Pipeline Company
Docket No. MG91–02–001, Southwest Gas Storage Company
Docket No. MG90–08–001, Stingray Pipeline Company
Docket No. MG88–19–003, Tennessee Gas Pipeline Company
Docket No. MG88–26–003, Texas Eastern Transmission Corporation
Docket No. MG90–07–001, Trailblazer Pipeline Company
Docket Nos. MG88–51–001 and 002, Transcontinental Gas Pipe Line Corporation
Docket No. MG88–54–002, Trunkline Gas Company
Docket No. MG90–03–001, Trunkline LNG Company
Docket No. MG88–05–003, United Gas Pipeline Company
Docket No. MG88–13–004, Valero Interstate Transmission Company
Docket No. MG90–11–002, Viking Gas Transmission Company. Order concerning Order No. 497 filings
(C) Docket No. MG88–18–003, Blue Dolphin Pipeline Company
Docket No. MG89–16–001, Caprock Pipeline Company
Docket No. MG88–04–003, Mid Louisiana Gas Company
Docket No. MG88–08–003, MIGC, Inc.
Docket No. MG88–23–001, Superior Offshore Pipeline Company
Docket No. MG88–24–002, Texas Sea Rim Pipeline, Inc.
Docket No. MG88–33–003, Valley Gas Transmission Company. Order concerning Order No. 497 filings
(D) Docket No. MG92–1–000, Iroquois Gas Transmission System, L.P. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(E) Docket No. MG92–2–000, Michigan Gas Storage Company Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(F) Docket No. MG90–4–001, Midwestern Gas Transmission. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(G) Docket No. MG91–5–000, Overthrust Pipeline Company. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(H) Docket No. MG88–56–001, Ringwood Gathering Company. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(I) Docket No. MG89–18–003, Seagull Interstate Corporation. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(J) Docket No. MG88–47–002, Texas Gas Transmission Company. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(K) Docket No. MG91–06–000, Wyoming Interstate Company, Ltd. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.

PR–2.
Docket Nos. RP91–41–001, 002, RP91–90–000 and 001, Columbia Gas Transmission Corporation. Order on rehearing.

PR–3.
Docket Nos. TQ89–1–46–033, RP86–165–013, 017 and CP90–1984–000, Kentucky West Virginia Gas Company
Docket No. CP90–1985–000, Columbia Gas Transmission Corporation. Order on rehearing

II. Producer Matters

PF–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Reserved

Lois D. Cashell,
Secretary.

[FR Doc. 92–890 Filed 1–9–92; 4:46 pm]
BILLING CODE 6717–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Amendment to Sunshine Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on January 7, 1992 (57 FR 582) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for January 9, 1992. This notice is to amend the agenda for that meeting to remove an item from the open session.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for January 9, 1992, is amended to remove the following item from the open session:

Open Session

B. Regulations:

1 Expansion of Privacy Act Exemptions to Inspector General Investigatory Files—Amendment of 12 CFR 603.355 (Proposed).

Dated: January 9, 1992.

Curtis M. Anderson,

Secretary Farm Credit Administration Board.

[FR Doc. 92-1047 Filed 1-10-92; 1:03 pm]

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10 CFR

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Corrections

Federal Register
Vol. 57, No. 9
Tuesday, January 14, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

10 CFR Part 820

[Docket No. NS-RM-91-820]

Procedural Rules for DOE Nuclear Activities

Correction

In proposed rule document 91-28832 beginning on page 64290, in the issue of Monday, December 9, 1991, make the following corrections:

1. On page 64290, in the first column, under **DATES**, in the third line "February 3" should read "February 7".

2. On page 64300, in the first column, the heading **V. Public Comments Procedures** should read **VI. Public Comments Procedures.**

3. On the same page, in the same column, in the first full paragraph, 11 lines from the bottom "February 3" should read "February 7".

BILLING CODE 1505-01-D

POSTAL SERVICE

39 CFR Part 111

ZIP + 4 and ZIP + 4 Barcoded Rate Presort Requirements

Correction

In rule document 91-27093 beginning on page 57724 in the issue of Wednesday, November 13, 1991, insert on page 57771 the file line at the end of the document to read "FR Doc. 91-27093".

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federal register

Tuesday
January 14, 1992

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Subtitle A

HOPE for Public and Indian Housing Homeownership Program; Final Rule and Notice

VOL 57 ISS 9 JA 14 1992 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Subtitle A

[Docket No. N-92-3199; FR-2966-N-03]

HOPE for Public and Indian Housing Homeownership Program; Program Guidelines

AGENCY: Office of the Secretary, HUD.

ACTION: Program guidelines.

SUMMARY: This document revises HUD's guidelines published on February 4, 1991 (56 FR 4412) that govern the operation of the HOPE for Public and Indian Housing Homeownership program (HOPE 1) that provide for homeownership by low-income families. The amendments take effect immediately. Elsewhere in today's issue of the **Federal Register**, HUD is publishing a Notice of Fund Availability for the HOPE 1 grant program, and NOFAS for, and notices to amend, the other two HOPE grant programs:

HOPE for Homeownership of Multifamily Units (HOPE 2); and

HOPE for Homeownership of Single Family Homes (HOPE 3). The HOPE Grant programs are authorized by title IV of the National Affordable Housing Act (NAHA) (Pub. L. 101-625, enacted November 28, 1990). HOPE is an acronym for Homeownership and Opportunity for People Everywhere.

The purpose of the HOPE Grant program is to provide homeownership opportunities for low-income families and individuals. Important to the success of the HOPE 1 program will be the development of resident-based organizations that will have central responsibilities for the program.

The authorizing legislation provides for implementation by publication of a notice for immediate effect. Comments on the notice published on February 4, 1991 were due September 30. HUD invites further public comment on these program guidelines, including the amendments to the guidelines, and will consider the comments, together with comments received by September 30, in developing the final rule for the program. As required by the statute, HUD will publish the final rule within eight months from today.

DATES: Effective date: January 14, 1992.

Comment due date: April 15, 1992.

The amendments to these Guidelines contain no additional information collection requirements.

ADDRESSES: Interested persons are invited to submit comments regarding these guidelines to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gary Van Buskirk, Homeownership Division for Public and Indian Housing, 202-708-4233. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. Department of Housing and Urban Development, room 4112, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in these amended guidelines have been approached through April 30, 1992, by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2577-0132. Information on the estimated public reporting burden is provided in this document under the heading "Other Matters." Comments regarding burden estimates or any other aspects of the collection requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3001, Washington, DC 20503, Attention: Jenny Main, Desk Officer for HUD.

Summary of Amendments to HOPE 1 Guidelines

In addition to various classifications, technical corrections, and a few reorganizations, HUD has made the following significant changes to the guidelines published on February 4, 1991. Potential applicants should read the entire document thoroughly.

Part I. Purpose; Summary; and Relationship to Other Programs

In section 110(a), Waiver of section 8 Regulations, the paragraph describing anticipated amendments to 24 CFR part 791 has been deleted, since the amendments to part 791 were published at 56 FR 9828 on March 7, 1991. Part 791 governs the allocation of housing assistance and, as amended, permits HUD to set aside section 8 authority for use in connection with the HOPE programs.

Part II. Definitions

The definition of Applicant has been clarified by noting that a cooperative association may be an eligible applicant only for property it proposes to acquire and transfer to eligible families.

The definition of Eligible Property has been clarified to give townhouses and adjacent detached houses as examples of contiguous single family public and Indian housing properties that are eligible under HOPE 1. Scattered-site single family properties are eligible under HOPE 3.

The definition of Census Region has been deleted since the term is no longer used. HUD has decided to assure compliance with the requirement for geographic diversity by assuring a certain level of funding in each of the 10 HUD Regions, rather than in each of the four Census Regions.

The definition of Ownership Interest has been amended by noting that mutual housing is eligible only to the extent it provides for the transfer of ownership interests to eligible families. Some forms of mutual housing do not give occupants ownerships rights, such as an equity stake in the property or the right to sell the property (or shares representing the property, as in cooperatives).

The definition of Private Nonprofit Organization has been amended to require that it be a tax exempt entity under section 501(c) of the Internal Revenue Code of 1986. RMCs and RCs must be nonprofit organizations, but need not meet the definition of private nonprofit organizations, and, therefore, need not be tax exempt under section 501(c). This will avoid imposing an undue administrative burden on resident entities.

III. Planning Grants

Under section 301(a), General Authority, HUD will comply with the requirement for national geographical diversity by selecting at least two mini and two full planning grants for each of the 10 HUD Regions (assuming sufficient approval applications), rather than the four Census regions. HUD has determined that sufficient funding has been appropriated to permit wider geographic diversity than provided in the earlier notice. See, also, section 315(b), Ranking and Selection To Assure National Geographic Diversity, which has been conformed. Section 301(a) has also been amended to provide that, where both an RMC and an RC submit applications for the same eligible property, HUD shall consider only the application from the RMC.

Under section 301(b)(2), HUD is providing a "safe harbor" where an applicant requests a planning grant of more than $200,000 ($100,000 for a mini planning grant). No additional demonstration of good cause is required for applications representing more than 250 units which request more than the dollar cap, if the additional amount requested is not more than $800 for each unit over 250 for a planning grant or not more than $400 for each unit over 250 for a mini planning grant. If the applicant submits an application exceeding these unit caps, the application must contain a justification demonstrating that the costs are reasonable.

Section 305, Eligible Planning Grant Activities, has been clarified to provide that only costs incurred on or after the effective date of the grant agreement for the planning grant qualify for funding under the program.

Section 305(a) has been modified to correct an oversight. Funding for the development of RMCs or RCs may not duplicate funding under section 20(f) of the 1937 Act. This was policy was previously included for implementation grants, and intended for planning grants.

Section 305(g) Security Plans, has been amended to give examples of activities that are eligible under the heading "Security Plans." This activity may cover assessing the need for the hiring of security personnel and creating tenant patrols, for negotiating agreements with local law enforcement agencies, and for providing security systems.

Section 310(a), NOFA, has been amended by moving the provision that states that applicants may request information and guidance from HUD about program requirements and preparation of the application to the appropriate place in the guidelines. This sentence was mistakenly placed under "Screening" in the February 4 guidelines. The same correction has also been made to section 415(a).

Under section 310(b)(1)(iii), applicants are required to propose establishment of a resident entity promptly after the effective date of the grant agreement, if no such entity already exists. Resident-involvement is crucial to the success of a HOPE homeownership program. This important improvement will assure that applicants will actively enlist participation by the residents in the development and execution of homeownership program under the HOPE program.

Section 310(b)(2)(i) has been amended to permit an application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application to be considered, so long as it receives approval before the effective date of the grant agreement. This will give applicants additional time to obtain tax exempt status.

Section 310(b)(4)(i) has been clarified to state that an authorized representative of the public official who submits the CHAS may make the certification that the application is consistent with the CHAS.

Section 310(b)(4)(ii) has been amended to delete the requirement that an IHA demonstrate in its application that its proposed homeownership program is consistent with the tribal plan. (Indian tribes and IHAs are not subject to the requirement that the application contain a certification of consistency with the CHAS.) This amendment will simplify the program for entities that lack the capacity to carry out detailed planning.

Section 310(b)(6), Resident Interest, has been amended to add a requirement that the application contain a board resolution from the RMC or RC supporting an application from an RMC or RC, to ensure the organization as a whole supports the application.

It has also been amended to provide that where an RMC or RC exists for the eligible property, the application contain a board resolution from the RMC, or (if there is no RMC) the RC for the eligible property, that it is interested and that the applicant is submitting the application on behalf of that RMC or RC. This requirement applies regardless of whether the applicant is an RMC or RC for the area (but not the particular property) or is an entity that is not an RMC or RC. The previous guidelines did not cover the situation where, for example, a city-wide RMC or RC applied for a project that has its own RMC or RC.

Finally, this section has been amended to require that where an RMC or RC does not exist for the eligible property, the application include a survey showing that (a) if the development is less than 50 percent vacant, at least 50 percent of the households of the eligible property are interested in exploring the possibility of homeownership; or (b) if the development is 50 percent or more vacant, there are at least 1.2 interested eligible families for each unit in the property that is not occupied by a family interest in homeownership (either because it is vacant or the resident is not interested).

A new section 310(b)(7), Nonduplication of Funding, has been added to require the application to contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

Section 310(c), Screening, has been clarified. In addition, the scope of the screening has been modified to specify that applications that fail to comply with any program requirements will receive no further processing. See, also, section 415(c), for conforming changes for implementation grants.

The rating points in section 305(a) have been modified to give more weight to the important categories of "capability" and "efficiency."

Section 315(a)(1), the rating factor entitled Capability, has been amended. A new subcriterion (iii) gives up to 5 points to applicants based on their direct experience in representing residents of public or Indian housing developments. Clauses (A) and (C) under subcriterion (iv) have been deleted and the maximum points reduced to 5. Subcriterion (v), a demonstration by the applicant or a joint applicant that it is an RMC or RC, has been moved from criterion (2)(iii). The total points for criterion 1 have been increased to 35.

Section 315(a)(2), the rating factor entitled Resident and Homebuyer Interest and Marketability, has been revised in several ways. This factor now consists of three alternate subcriteria. The first two now apply where the applicant is not an RMC or RC. Subcriterion (ii) has been amended to assign points based on the number of interested families interested in participating, not just families in other developments of the PHA/IHA. HUD has determined that assigning points based only on the interest of families in other PHA/IHA developments is too limited, given the pool of potentially eligible families. A new subcriterion (iii) has been added covering situations where the applicant is an RMC. If a majority of the governing board favors homeownership, the applicant receives 5 points. If two-thirds of the board is in favor, the applicant receives 10 points. The maximum points for criterion (2) have been reduced from 20 to 10.

Section 315(a)(3), the rating criterion entitled Suitability of the Property, has been amended to assign maximum points to each of the subcriteria to assure each one approximately equal weight. In the case of neighborhoods with undesirable conditions, the applicant may receive maximum points if the conditions "can be" mitigated. The earlier guidelines required that

mitigation already be underway. This requirement was unrealistic and could have resulted in disapproval of otherwise excellent homeownership opportunities.

Section 315(a)(5), the rating criterion entitled Efficiency, has been clarified to note that points will be awarded to an applicant based on its cost in relation to other applications in the competition.

Section 315(b)(1) has been amended to assure funding of at least one mini planning grant and one full planning grant involving an Indian housing development.

A new section 315(b)(5) has been added governing what happens if HUD discovers procedural errors at various stages of review and selection. See, also, section 425(c)(5) for implementation grants.

Section 315(d), Reduction in Requested Grant Amounts, has been amended to clarify that HUD may not only approve an application for an amount lower than requested but may also adjust line items in the proposed budget within the amount requested.

Part IV. Implementation Grants

Section 401(a) has been amended to provide that, where both an RMC and an RC submit applications for the same eligible property, HUD shall consider only the application from the RMC.

Section 401(b), National Competition, has been amended to require that HUD select at least one application from each of the 10 HUD Regions, instead of from each of the four Census regions. HUD has determined that sufficient funds were appropriated to fund at least one application in each HUD Region to achieve national geographic diversity and still permit selection based on a national competition for the remaining funds. In addition, if none of the 10 involves an Indian housing development and sufficient funds remain, the highest ranking application anywhere in the country involving Indian housing shall also be approved. See, also, a related conforming change to section 425(c).

Consistent with the planning grant amendment, section 405(a), Limitations, has been amended to provide that only costs incurred on or after the effective date of the grant agreement qualify for funding under the program.

Section 410(b)(1)(i) has been clarified to provide that cash contributions must be contributed permanently for uses under the program to count towards the match.

Section 410(b)(1) (iv) and (vi) have been added to clarify computation of the match. Clause (iv) provides that cash contributions may be made by the applicant, non-Federal public entities, private entities, and individuals, including program income from a Federal grant earned after the end of the award period if no Federal requirements govern their disposition (including UDAG and HoDAG repayments). Clause (vi) provides that the grant equivalent of a below-market interest rate loan to the homebuyer, where all repayments, interest, and other return will not be permanently contributed to the HOPE program, may be counted as a cash contribution, in accordance with specified standards. These provisions were taken from the HOME rule governing match requirements for that program.

Section 410(b)(1)(v) provides that cash contributions may also be made towards the match from sale proceeds from the Turnkey III Homeownership and Mutual Help programs obtained pursuant to PIH Notice 91–28 and approved homeownership programs under section 5(h) of the 1937 Act. Section 410(b)(1)(vii) clarifies that a down payment by an eligible family may not count towards the match (since it is counted towards a family's equity and, therefore, cannot be considered a permanent contribution to the program). Finally, section 410(b)(1)(viii) permits amounts that an applicant has requested in an application submitted to the Federal Housing Finance Board for assistance under its Affordable Housing Program to count towards the match, so long as FHFB approves the application before the date HUD approves the HOPE application.

Section 410(b)(5), Infrastructure, has been amended to provide that an infrastructure investment may be counted towards the match only if it was completed on or after the date that is 12 months before the date of the HUD notification to the applicant of implementation grant approval and completed no later than five years from the effective date of the grant agreement. This makes the HOPE program substantially consistent with the HOME program. The February 4 guidelines permitted counting infrastructure expenditure only if they were made after the date of HUD approval of the application and set no deadline for completion.

Section 410(b)(7)(ii), under Other In-Kind Contributions, has been amended to increase the valuation of donated labor, including sweat equity, from $5 an hour to $10 an hour, consistent with recent changes to HUD's Shelter Plus Care program. In addition section 410(b)(7)(ii) has been clarified to provide that sweat equity may be counted towards the match only if it is not also counted towards a family's equity.

Section 410(b)(7)(iii) has been added to provide guidance in the case of donated materials and supplies.

Section 415(b)(3)(ii) has been clarified. The February 4 guidelines permitted an RMC or RC to arrange for management by a qualified management entity, but did not explain what was meant. The amended guidelines specified that an RMC or RC may arrange for the management of the program by a qualified entity which has effectively and efficiently managed housing for at least three years.

Section 415(b)(3)(iii) is new. It permits an application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application to be considered, so long as it receives approval before the effective date of the grant agreement.

Under section 415(b)(4), Description of Proposed Homeownership Program, applicants are required to propose establishment of a resident entity promptly after the effective date of the grant agreement, if no such entity already exists. Resident involvement is crucial to the success of a HOPE homeownership program. This important improvement will assure that applicants will actively enlist participation by the residents in the development and execution of homeownership programs under the HOPE program.

Section 415(b)(8)(i)(C) contains an amendment to the replacement plan requirements. HUD has reconsidered its earlier view that, since one-for-one replacement is required for each public or Indian housing unit converted to homeownership under the HOPE 1 program, each application containing a feasible replacement housing plan could be presumed to comply with the requirement that the program not appreciably reduce the number of public and Indian housing rental units available in the locality. In accordance with section 303(e)(8) of the 1937 Act, a new selection criterion has been added to section 425(b)(9). Under the new criterion, points will be deducted from an applicant's score, depending on the extent, if any, it would result in the appreciable reduction of public or Indian Housing in the locality. The provision related to this subject in the threshold review has been deleted (see former section 420(b)).

Section 415(b)(9)(ii) has been added to provide that, where the match does not apply to an IHA in accordance with section 410(d), the application shall contain a certification that the IHA has not received, and will not receive,

amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates the HOPE grant funds.

Section 415(b)(10), Economic Development, has been amended to require an application to contain a plan for economic development activities if the applicant also requests assistance for operating expenses. Where post-sale operating assistance is needed, HUD has determined that economic development activities should always be required to assure successful phasing out of operating assistance.

Section 415(b)(12)(i)(B) has been amended to require the application to demonstrate that the monthly expenditure for principal, interest, taxes, insurance, estimated utilities, and other monthly housing costs by an eligible family, that is necessary to complete the sale for the initial acquisition of a unit be no less than 25 percent of adjusted family income. The initial guidelines only included the 35 percent ceiling, and HUD has determined that families should be required to pay a certain minimum amount to avoid possible abuse.

Section 415(b)(16), Management Entity, has been amended to require that the application contain a copy of the proposed management contract only if the PHA or IHA will transfer the property within six months from the effective date of the grant agreement. Where transfer will be delayed longer than six months, it is not reasonable to require a copy of a contract.

Section 415(b)(17)(i) has been clarified to state that an authorized representative of the public official who submits the CHAS may make the certification that the application is consistent with the CHAS.

Section 415(b)(17)(ii) has been amended to delete the requirement that an IHA demonstrate that its proposed homeownership program is consistent with the tribal plan. This amendment will simplify the program for entities that lack the administrative resources to carry out detailed planning.

Section 415(b)(19), Resident Interest, has been expanded. If an RMC or RC is an applicant, the application must contain a board resolution from the RMC or RC, to ensure the organization as a whole supports the application.

It has also been amended to provide that where an RMC or RC exists for the eligible property, the application contain a board resolution from the RMC, or (if there is no RMC) the RC, for the eligible property that it is interested and that the applicant is submitting the application on behalf of that RMC or RC. This requirement applies regardless of whether the applicant is an RMC or RC for the area (but not the particular property) or is an entity that is not an RMC or RC. The previous guidelines did not cover the situation where, for example, a city-wide RMC or RC applied for a project that has its own RMC or RC.

Finally, if the development is less than 50 percent vacant, at least 50 percent of the households of the eligible property must indicate that they are interested in exploring the possibility of homeownership. If the development is 50 percent or more vacant, the survey must indicate that there are at least 1.2 interested eligible families for each unit in the proposed property that is not occupied by a family interested in homeownership.

A new section 415(b)(23), Nonduplication of Funding, has been added to require the application to contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

Section 415(c), Screening, has been clarified. In addition, the scope of the screening has been modified to specify that applications that fail to comply with any program requirements will receive no further processing.

The rating points in section 425(a) have been modified to give more weight to the important categories of "capability" and "quality and feasibility of program."

Section 425(a)(1), the rating criterion entitled Capability, has been amended by moving subcriterion (v) (a demonstration that the applicant or joint applicant is an RMC or RC) from criterion (3), and adjusting the points accordingly.

Section 425(a)(3), the rating criterion entitled Resident and Homebuyer Interest and Marketability, has been amended to require more interest in the program under subcriteria (i) and (ii) in order to receive points. In addition, subcriterion (ii) has been amended to base points on the number of interested families interested in participating based on a survey. HUD has determined that assigning points based only on the interest of families in other PHA/IHA developments is too limited, given the pool of potentially eligible families.

Section 425(a)(5), the rating criterion entitled Relationship to CHAS, has been amended to adjust the score for applications submitted by an Indian tribe or IHA, since consistency with neither a CHAS nor a tribal plan is required.

Section 425(a)(7), the rating criterion entitled Suitability of the Property, has been amended to specify maximum points that may be assigned for each of the subcriteria, to give each one approximately equal weight.

Section 425(a)(8), the rating criterion entitled MBE/WBE Goals, has been modified to provide that, in determining the extent to which an applicant demonstrates a firm commitment to promoting the use of minority business enterprises or women-owned businesses, HUD will especially consider resident-owned businesses.

Section 425(a)(9), the rating criterion entitled Appreciable Reduction of Public or Indian Housing in the Locality, has been added, as discussed above.

Section 425(b), Environmental Review, has been amended to permit HUD to adjust rating scores based on its environmental review when it determines environmental impact mitigation would result in excessive costs. The previous guidelines permitted adjustment only in cases of time delays.

Section 425(d), Reduction in Requested Grant Amounts, has been amended to clarify that HUD may not only approve an application for an amount lower than requested but may also adjust line items in the proposed budget within the amounts requested. The references to section 102(d) of the HUD Reform Act have been deleted since implementing regulations under 24 CFR part 12, subpart D, have not yet become effective.

Part V. Other Requirements

Section 505(c)(2) as published on February 4 stated that only Indian tribes and IHAs that exercise their powers of self-government were subject to the requirements of the Indian Self-Determination and Education Assistance Act. This is incorrect; the section has been corrected by deleting the incorrect modifier ("as described in section 505(a)(2)").

Section 505(d), Minority and Women's Business Enterprises, has been amended to clarify that, in the case of applications submitted by Indian tribes or IHAs, compliance with various requirements concerning minority and women's business enterprises must be consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Section 530, Conflict of Interest, has been modified to provide that a resident of an eligible property may acquire a homeownership interest even if he or she would otherwise be excluded by paragraph (a). This will avoid the need

for processing applications for exceptions to paragraph (a).

Section 545 is new. Where the applicant is, or proposes to contract with, a primarily religious organization or a wholly secular organization established by a primarily religious organization, the organization shall undertake its responsibilities with respect to the homeownership program in accordance with three specified principles.

Part VI. Grant Agreement—Planning and Implementation Grants

Section 601(c) has been clarified to state that HUD may take any appropriate action authorized under the grant agreement if HUD determines the recipient is failing to carry out the program as required. The authority for HUD to take action where it determines a recipient "is likely to fail" has been deleted. On reconsideration, HUD has determined sanctions should be imposed only where a recipient is actually failing to comply with program requirements, not where HUD believes it probably will fail.

Part VII. Implementation of Planning and Implementation Grants

Section 701(d) has been deleted, since it is not appropriate for HUD to provide tax advice to program recipients.

Section 720, Restrictions on Resale by Initial Homeowners, has been reorganized. The provisions limiting the equity interest that an initial homeowner may retain from sale during the first six years of homeownership has been moved to subsection (c) from paragraph (b)(1)(ii)(B). The guidelines published February 4, 1991 were structured in a way that suggested that the resale restrictions during the first six years applied only where the family acquired the property for less than fair market value. HUD does not believe this was the intent of Congress and has reorganized the section accordingly to remove the ambiguity.

Paragraph (a)(2), Right to Purchase, has been amended to set deadlines for RMCs, RCs, and cooperatives that decide to purchase units from homeowners. Such entities would have 10 days after receiving notice of a firm contract between a homeowner and a prospective buyer to decide whether to exercise its prior right to purchase and 60 additional days to complete closing of the purchase. Where a PHA/IHA or the recipient has a prior right, it would be subject to the same deadlines.

Paragraph (b)(1)(i) has been clarified regarding how the amount of a promissory note, where required, is determined.

In addition, paragraph (c) has been amended. HUD has determined that the inflation adjustment made to the equity a homeowner has in the property should apply to equity that is the result of sweat equity. Accordingly, the guidelines have been amended to provide that the contribution to equity paid by a family may be provided in the form of cash or the value of sweat equity. In addition, the guidelines now provide that the value of any improvements made by the family during the time it owns the home includes improvements made through sweat equity. Sweat equity was previously excluded for purposes of computing inflation adjustments to a family's equity. Finally, a new paragraph (c)(3) has been added to clarify that amounts that count towards a family's equity may not also count towards the match.

Part IX. Waiver Authority

Section 901 has been amended to delete the provision that HUD will not waive deadlines for receipt of applications. The policy has not changed, but the guidelines are not the appropriate place for the limit on HUD's waiver authority since the deadline is in the NOFA. The NOFA states this policy.

X. Other Matters

Information Collections

The information collection requirements contained in these amended guidelines have been approved through April 30, 1992 by the Office of Management and Budget and assigned OMB control number 2577–0132. Information on these requirements is provided as follows:

Description	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total
Applications:					
§ 310	100	1	100	40	4,000
§ 415	100	1	100	80	8,000
Record-Keeping:					
§§ 801 & 805	100	1	100	44	4,400
					16,400

Impact on the Economy

The amendments to these guidelines would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of these guidelines indicates that it would, as defined by that order, not have (a) an annual effect on the economy of $100 million or more; or (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. At the time of publication of the final rule for the program, HUD will update its regulatory impact analysis, based on any comments received.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 7th St., SW, Washington, DC 20410.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that the amendments to the guidelines do not have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program under the guidelines, as amended, can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the skills and means to live

independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

Federalism Impact

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the amendments to these guidelines are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. The notice does not affect the relationship between the Federal government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Semiannual Agenda

These Guidelines were listed as item number 1332 in the Department's Semiannual Agenda of Regulations published at 56 FR 53380, 53392 on October 21, 1991 under Executive Order 12291 and the Regulatory Flexibility Act.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that the amendments to the guidelines would not have a significant economic impact on a substantial number of small entities. The guidelines, as amended, govern the procedures under which HUD would make assistance available to applicants under a program designed to provide homeownership opportunities to low-income families and individuals.

Editorial Note: These revised program guidelines will appear in an appendix to subtitle A of title 24 of the Code of Federal Regulations.

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I. Purpose; Summary; and Relationship to Other Programs

Section 101. Purpose.

The purpose of the HOPE 1 program is to provide homeownership opportunities for eligible families to purchase multifamily and non-scattered site, single family public and Indian housing.

Section 105. Summary.

Under the HOPE 1 program, HUD makes planning grants and implementation grants to selected eligible applicants to assist them in developing and carrying out homeownership programs for eligible families. A recipient may use its implementation grant to fund rehabilitation, and cover other eligible program costs. An eligible applicant may (but is not required to) apply for a planning grant to assist it in developing a homeownership program, including the development of resident organizations, feasibility studies, counseling and training of residents and homebuyers, activities necessary for the development of a homeownership program, and preparation of an application for an implementation grant.

An eligible applicant may apply for an implementation grant to fund activities necessary to carry out an approved howeownership program. Applicants may not submit an application for a planning grant and an implementation grant for the same property in response to any one NOFA. Each recipient is required to assure that a specified portion of the HOPE implementation grant is matched from non-Federal sources. (Certain IHAs may be exempt; see section 410(d).) Units must meet specified housing quality standards, and eligible families may not be required to pay more than 30 percent of adjusted income per month for principal, interest, taxes, and insurance to complete a sale under the program.

Section 110. Relationship to other programs.

(a) *Waiver of section 8 regulations.*, HUD may make section 8 authority available for use in support of the HOPE 1 program, and intends to approve requests for waivers of the certificate and housing voucher regulations to facilitate its use. Under the section 8 program, HUD makes rental assistance available to assist eligible families. Owners of units under the section 8 program receive a housing assistance payment equal to the difference between the rent for the unit and the amount payable by the eligible family, which is, in most cases, 30 percent of the family's adjusted income. See 24 CFR parts 882 and 887 for the rules governing the Section 8 Certificate and Housing Voucher programs.

To permit issuance of certificates and vouchers to otherwise eligible nonpurchasing residents who qualify as low-income families, HUD will determine that good cause exists and approve requests to waive—

(1) The provisions prohibiting issuance of certificates and vouchers based on the identity or location of the housing occupied by the family, since one purpose of providing section 8 assistance under the HOPE program is to aid nonpurchasing residents in eligible properties and section 8 assistance will be reserved for this purpose;

(2) The provisions establishing Federal preferences when the assistance is used for nonpurchasing residents, since the section 8 assistance is being made available for these families and it makes no sense to apply the preferences in this context; and

(3) The provisions limiting use of certificates and vouchers by very low-income families. (Section 413(a) of NAHA amended the 1937 Act to permit this waiver under the Voucher program.) HUD has determined that, under the law, nonpurchasing residents should be given section 8 assistance if permitted by law and, therefore, will provide for issuance of certificates and vouchers to low-income families, not only very low-income families.

Additional waivers may be necessary to make section 8 assistance readily available in support of the HOPE program. HUD will also consider requests for such other waivers.

HUD intends to issue final regulations amending the section 8 regulations to achieve these purposes when it publishes the final HOPE regulation.

(b) *Right to purchase.* Where HUD approves an application providing for the transfer of title to a public or Indian housing development from the PHA/IHA to another applicant or entity, the PHA/IHA shall transfer the development to the other applicant or entity, in accordance with the approved homeownership program

(c) *Relationship to other homeownership program.* Homeownership opportunities under the HOPE 1 program are in addition to any other public and Indian housing homeownership and management opportunities, including opportunities under section 5(h) and title II of the 1937 Act.

(d) *Inapplicability of section 18.* The requirements of section 18 of the 1937 Act, governing demolition and disposition of public or Indian housing, do not apply to the HOPE 1 program. See section 18(e) of the 1937 Act, which was added by section 412(b) of NAHA.

(e) *Section 8 ACCs.* Section 413(b) of NAHA authorizes HUD to enter into annual contributions contracts with PHAs/IHAs for the purpose of replacing public or Indian housing transferred under the HOPE 1 program with section 8 certificate and voucher assistance. The section 8 annual contributions contract shall be for a term of up to five years.

(f) *Modernization.* HUD may not make available modernization assistance under section 14 of the 1937 Act with respect to a public or Indian housing development after the date the PHA/IHA transfers title in accordance with a homeownership program under this notice. See section 14(n) of the 1937 Act, which was added by section 414 of NAHA.

(g) *Section 20(f) assistance for RMCs and RCs.* HUD may not provide additional assistance under section 20(f) of the 1937 Act to any RMC or RC if assistance for its development or formation is provided under the HOPE 1 program. See section 20(f) of the 1937 Act, which was added by section 415 of NAHA.

(h) *Continuation of annual contributions.* Notwithstanding sale of a public or Indian housing development by a PHA/IHA under this program, or the purchase of a unit in a public or Indian housing development by an eligible family, HUD shall continue to pay any annual contributions still payable with respect to the development, subject to the maximum cap applicable to such contributions under section 5(a) of the 1937 Act.

(i) *Operating subsidies.* HUD may not provide operating subsidies under section 9 of the 1937 Act with respect to a public or Indian housing development after the date the PHA/IHA transfers title in accordance with a homeownership program under this notice. The implementation grant may be used to cover the estimated amount of any shortfall in operating income after transfer by the PHA/IHA.

(j) *Reservation of section 8 authority.* HUD may reserve authority to provide section 8 certificate and housing voucher assistance to the extent necessary to provide replacement housing and rental assistance for a nonpurchasing resident who resides in an eligible property on the date HUD notifies the applicant of approval of an implementation grant application, for use by the resident in another property. HUD encourages PHAs/IHAs to make other section 8 assistance available for use in connection with the HOPE 1 program. See paragraph (a) of this section for a discussion of waivers of section 8 regulations to facilitate use of section 8 assistance.

(k) *Variations to FHA single family mortgage insurance programs.* (1) All regulatory requirements and underwriting procedures established for the FHA single family mortgage insurance programs shall apply, except for the changes described in paragraph (k) of this section.

(2) In the single family FHA mortgage insurance programs there is a requirement for a down payment by the mortgagor in cash or the equivalent. Since a recipient under the HOPE program may provide the down payment for the eligible family/mortgagor, section 429 of NAHA amended section 203(b)(9) of the National Housing Act to provide that the required down payment may be paid by a corporation or person other the mortgagor if the mortgage covers a unit under the HOPE program. Therefore, the regulations at 24 CFR 203.19(b), 203.32(b), 234.28(c) and 234.55(b) were amended by an interim rule published on February 4, 1991, 56 FR 4476. These amendments provide that a mortgagor being assisted in the purchase of a housing unit in connection with the HOPE program may obtain a loan for the down payment from a corporation or another person under conditions satisfactory to HUD. In addition, a second mortgage may be placed against the property even though the entity holding a second mortgage is not a Federal, State, or local government agency, if the entity is designated in the homeownership plan of an applicant for an implementation grant under the HOPE programs.

II. Definitions

1937 Act. The United States Housing Act of 1937, 42 U.S.C. 1437 *et seq.*

Administrative costs. Administrative costs that are reasonable and necessary, as described in and valued in accordance with OMB Circular A–87 or A–122,[1] as applicable, incurred by a recipient in carrying out a homeownership program under this notice. For purposes of complying with the 15 percent limitation in section 405(b)(4), administrative costs do not include the costs of activities which are separately eligible under section 405 or section 410.

Applicant. The following entities that represent the residents of the eligible property:

(a) An RMC (resident management corporation).

(b) An RC (resident council).

(c) A cooperative association.

(d) A public or private nonprofit organization.

(e) A public body, including an agency or instrumentality thereof.

(f) A PHA (public housing agency).

(g) An IHA (Indian housing authority).

A cooperative association may be an eligible applicant only for eligible property it proposes to acquire and transfer ownership interests in to eligible families under a homeownership program.

CHAS. A comprehensive housing affordability strategy under section 105 of NAHA. See 24 CFR part 91.

Cooperative association. An association organized and existing under applicable State and local, or tribal, law primarily for the purpose of acquiring, owning, and operating housing for its members or shareholders, as applicable.

Eligible family. (a) A low-income family; or

(b) A family or individual who is a resident in the public or Indian housing development on the date HUD approves an implementation grant; or

(c) A family or individual who is assisted under a housing program administered by HUD or the Department of Agriculture (not including any non-low-income families assisted under any mortgage insurance program administered by either Department).

Eligible property. A public or Indian housing development, other than a PHA's or IHA's scattered-site single family properties. Properties with up to four units qualify as single family properties. Single family public or Indian housing properties that are contiguous to other single family public or Indian housing properties, such as townhouses and adjacent detached houses, are eligible under HOPE 1.

Homeowership program. A program for homeownership meeting the requirements under this notice. The program shall provide for acquisition by eligible families of ownership interests in the units in an eligible property under an ownership arrangement approved by HUD under this notice, for occupancy by the eligible families. At least 66 percent of the units must be acquired by eligible families (or such higher percentage as may be required under State, local, or tribal law governing cooperative associations or other form of homeownership used under the program).

HUD. The United States Department of Housing and Urban Development.

IHA. An Indian housing authority, which means any entity that—

(a) Is authorized to engage in or assist in the development or operation of low-income housing for Indians; and

(b) Is established (1) by exercise of the power of self-government of an Indian tribe independent of State law; or (2) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in Alaska.

Indian housing development. An Indian public housing project under the 1937 Act.

Low-income family. A family or individual that qualifies as a low-income family under 24 CFR part 913 or, for Indian housing developments, part 905. NAHA changed the term lower income family to low-income family; these terms have the same meaning. In general, 24 CFR part 913 defines the term lower income family as a family whose annual

[1] See section 510(b) concerning the availability of OMB Circulars.

income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

NAHA. The Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625.

NOFA. Notice of Fund Availability.

Nonprofit organization. Any nonprofit organization that—

(a) Is organized and existing pursuant to Federal, State, local, or tribal law;

(b) Has no part of its net earnings inuring to the benefit of any individual, corporation, or other entity;

(c) Has a voluntary board;

(d) Has an accounting system or has designated a fiscal agent in accordance with requirements established by HUD; and

(e) practices nondiscrimination in the provision of assistance.

Ownership interest. Ownership by an eligible family by fee simple title to a unit in an eligible property (including a condominium unit), ownership of shares of or membership in a cooperative, or another form of ownership proposed and justified by the applicant and approved by HUD. The ownership interest may be subject only to (a) the restrictions on resale required or approved under section 720; (b) mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by HUD; or (c) any other restrictions or encumbrances which do not impair the good and marketable nature of title to the ownership interest. Mutual housing is eligible only to the extent it provides for the transfer of ownership interests to eligible families.

PHA. A public housing agency, which means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

Private nonprofit organization. A nonprofit organization that is privately controlled and that is a tax exempt entity under section 501(c) of the Internal Revenue Code of 1986. For purposes of this requirement, private nonprofit organizations shall have governing bodies which are controlled 51 percent or more by private individuals who are acting in a private capacity. For purposes of this provision, an individual is considered to be acting in a private capacity if the individual is not legally bound to act on behalf of a public body (including the applicant or recipient), and is not being paid by a public body (including the applicant or recipient) while performing functions in connection with the nonprofit organization.

Public body. Any State of the United States; any city, county, town, township, parish, village, or other general purpose political subdivision of a State; the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; any Indian tribe, as defined in title I of the Housing and Community Development Act of 1974; any public agency or instrumentality of any of the foregoing jurisdictions which is created by or pursuant to State or local, or tribal, law and for which the applicable jurisdiction has agreed to accept financial responsibility in the event of any noncompliance or liability under the HOPE 1 program; and any PHA or IHA. For purposes of this definition, an organization which meets the requirements of paragraphs (a) and (b) of the definition of nonprofit organization, but is controlled 51 percent or more by public officials acting in their official capacities, may qualify as a public body.

Public housing development. A public housing project under the 1937 Act.

RC. A resident council, which means any incorporated non-profit organization or association that—

(a) Is representative of the residents of the eligible property;

(b) Adopts written procedures providing for the election of specific officers on a regular basis (but at least once every three years); and

(c) Has a democratically elected governing board, elected by the residents of the eligible property, the voting membership of which consists of residents of the property.

Recipient. An applicant approved to receive a grant under this notice or such other entity specified in the HUD-approved application that will assume the obligations of the recipient under this notice.

RMC. A resident management corporation that proposes to enter into, or enters into, a management contract with a PHA or IHA for an eligible property and that—

(a) Is a nonprofit organization that is incorporated under the laws of the State or tribe in which it is located;

(b) May be established by more than one resident organization or RC, so long as each such organization or RC (1) approves the establishment of the RMC and (2) has representation on the board of directors of the RMC;

(c) Has an elected board of directors;

(d) Has by-laws that require the board of directors to include representatives of each resident organization or RC involved in establishing the corporation;

(e) Provides that its voting members are residents of the eligible property it manages or will manage under a homeownership program and of any other property or public or Indian housing developments;

(f) Is approved by the RC; if there is no RC, a majority of the households of the eligible property shall approve the establishment of an RC to determine the feasibility of establishing a corporation to manage the property; and

(g) May serve as both the RMC and the RC, so long as the RMC qualifies as an RC.

III. Planning Grants

Section 301. Planning grants.

(a) *General authority* HUD will make HOPE 1 planning grants to applicants for the purpose of developing homeownership programs under this notice. HUD shall select applications based on a national competition. HUD will assure compliance with the requirement for national geographic diversity by selecting at least two mini and two full planning grants in each of the 10 HUD Regions, to the extent sufficient funds are available. Where both an RMC and an RC submit applications for the same eligible property, HUD shall consider only the application from the RMC.

(b) *Planning grants.* (1) Applicants may request a full planning grant covering all necessary planning activities specified in section 305 or a mini planning grant. Mini planning grants, generally for establishing or increasing the capacity of the applicant to apply for and carry out a specific homeownership program, may cover some or all of the activities specified in sections 305 (a), (b), (c), and (f). An applicant may request a mini planning grant and, pursuant to a subsequent NOFA, a full planning grant, but in no case may a full planning grant duplicate previously funded activities.

(2) The amount of a planning grant (or the total amount of a mini planning grant and a full planning grant) under this section may not exceed $200,000, except that the Secretary may for good cause approve a grant in a higher

amount, based on a justification submitted by the applicant demonstrating that the costs are reasonable. The maximum amount for a mini planning grant shall be $100,000, except that HUD may for good cause approve a grant in a higher amount, based on a justification submitted by the applicant demonstrating that the costs are reasonable. Where the proposed program provides for homeownership opportunities using more than 250 units, no additional demonstration of good cause for approving a planning grant of more than $200,000 (or of more than $100,000 in the case of mini planning grants) is required if the additional amount requested is not more than $800 for each unit over 250 for a planning grant (or not more than $400 for each unit over 250 for a mini planning grant).

(3) Activities funded under a mini planning grant shall be carried out within 18 months of the effective date of the mini planning grant agreement. Full planning grants shall be carried out within three years of the effective date of the full planning grant agreement (or within 18 months of such effective date if HUD has previously approved a mini planning grant for the proposed program).

(c) *Set-aside.* HUD shall allocate up to 15 percent of the total amount appropriated for grants under the HOPE 1 program for planning grants, but not less than $10 million. Of the amount set aside for planning grants, 25 percent shall be set aside for mini planning grants.

Section 305. Eligible planning grant activities.

Planning grants may be used for the reasonable costs of eligible activities necessary to develop homeownership programs. Only costs incurred on or after the effective date of the grant agreement qualify for funding under the program. Eligible planning grant activities include—

(a) *Development of RMCs and RCs.* Development of RMCs and RCs in connection with a specific homeownership program, including activities such as—

(1) Consulting and legal assistance to incorporate the entity;

(2) Preparing by-laws and drafting a corporate charter;

(3) Designing and implementing personnel policies; performance standards for measuring staff productivity; policies and procedures covering organizational structure, recordkeeping, maintenance, insurance, occupancy, and management information systems; and any other recognized functional responsibilities relating to property management;

(4) Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing; and

(5) Administrative costs necessary to the implementation of the activities specified in paragraphs (a)(1)–(4) of this section.

Funding for this activity may not be provided for an RMC or RC that has received funding under section 20(f) of the 1937 Act, unless the applicant submits work plans used in connection with previous grants demonstrating to HUD's satisfaction that the planning grant will not be duplicative.

(b) *Training and technical assistance.* Training and technical assistance for applicants related to development of a specific homeownership program. This category may cover such activities as establishing community organization, outreach, and support systems; legal requirements for establishing cooperative, condominium, and other homeownership entities; and the role of the board of directors in an RMC.

(c) *Feasibility studies.* Studies of the feasibility of a specific homeownership program, including whether the program can be designed to meet the affordability standards under the notice and achieve financial feasibility.

(d) *Preliminary architectural and engineering work.* Preliminary architectural and engineering work, including work necessary to support cost estimates included in an implementation grant application.

(e) *Counseling and training.* Resident and homebuyer counseling and training. This category may cover such activities as the various ways to become a homeowner (such as cooperative and fee simple ownership) and financing alternatives.

(f) *Economic development.* (1) Planning for economic development, job training, and self-sufficiency activities that promote economic self-sufficiency of eligible families who will become homeowners under the homeownership program.

(2) The application shall demonstrate that the proposed activities are directly related to implementation of the proposed homeownership program, and describe how these activities promote self-sufficiency.

(3) The aggregate amount of planning and implementation grants that may be used for economic development activities may not exceed $250,000 for any single homeownership program.

(g) *Security plans.* Development of security plans. This activity may cover assessing the need for the hiring of security personnel and creating tenant patrols, for negotiating agreements with local law enforcement agencies, and for providing security systems.

(h) *Application for implementation grant.* Preparation of an application for an implementation grant under this notice.

(i) *Other activities.* Other activities proposed and justified as necessary for the development of a homeownership program by the applicant and approved by HUD.

Section 310. Applications for planning grants.

(a) *NOFA.* An application for a planning grant shall be submitted by an applicant in accordance with this notice and the NOFA. The NOFA advises potential applicants how to obtain an application package and establishes deadlines and other requirements for submission of applications. The NOFA also informs each applicant that it may request information and guidance from HUD about program requirements and preparation of the application.

(b) *Application contents.* Each application shall contain the information required by the application package, which shall include at least the following items.

(1) *Request for planning grant.* (i)(A) The application shall contain a summary description of the proposed homeownership program and a request for a planning grant (specifying whether the application is for a mini planning grant or a full planning grant), (B) the schedule for completing the activities, (C) the personnel necessary to complete the activities, and (D) the amount of the grant requested (including justification for a grant request exceeding $200,000 if the development has 250 or fewer units or exceeding the applicable per unit limitation if the development has more than 250 units).

(ii) An application for a full planning grant shall contain sufficient detail for HUD to determine whether the proposed homeownership program will cover all eligible activities necessary to make the proposed program feasible, whether or not the application requests HUD funding for each activity.

(iii) Where no resident entity has been established for the property, the application shall propose establishment of such an entity (such as an RMC, RC, or cooperative association) promptly after the effective date of the grant agreement.

(2) *Qualifications and experience of applicant.* (i) The application shall describe the applicant and contain a statement of its qualifications. HUD

encourages two or more entities to submit applications together. For example, an application submitted by a newly established RMC and an experienced nonprofit organization may greatly increase the likelihood of the success of the proposed homeownership program. The application shall specify which entity will be the recipient and execute the grant agreement, and include a certification that the entities have entered into a written agreement between them that delineates their respective roles.

(ii) An application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered so long as the organization is approved before the effective date of the grant agreement.

(3) *Eligible property* The application shall identify and describe the eligible property involved, and describe the composition of the residents, including family size and income, and racial, ethnic, and gender characteristics of the residents, as required by HUD and as described in the application package. In addition, the application shall describe the neighborhood in which the property is located and include a map showing the location of the property and the racial and ethnic characteristics of the neighborhood.

(4) *CHAS certification.* (i) The application shall contain a certification by the public official, or his or her authorized representative, who submits the CHAS that the proposed activities are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located.

(ii) Paragraph (b)(4)(i) of this section shall not apply to an application submitted by an Indian tribe or IHA. Indian tribes and IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that Indian tribes and IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy.

(5) *Equal opportunity certifications.* (i) The application shall contain—

(A) A certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHAs, under the circumstances described in Section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) A statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(6) *Resident interest.* (i) *RMC or RC is an applicant.* Where the applicant (or one of the applicants) is an RMC or RC, the application shall contain a board resolution from the RMC or RC supporting the application.

(ii) *RMC or RC exists for the eligible property* Where the applicant (or one of the applicants) is not an RMC or RC for the eligible property and there is an RMC or RC for the eligible property, the application shall contain a board resolution from the RMC, or (if there is no RMC) the RC, for the eligible property that it is interested in a homeownership program and that the applicant is submitting the application on behalf of the RMC or RC for the eligible property.

(iii) *RMC or RC does not exist for the eligible property.* In all cases where there is no RMC or RC for the eligible property, the application shall include a survey conducted by the applicant of resident interest in homeownership and marketability of the units, which shall be conducted in accordance with procedures set forth in the application package. If the development is less than 50 percent vacant, at least 50 percent of the households of the eligible property must indicate that they are interested in exploring the possibility of homeownership. If the development is 50 percent or more vacant, the survey must indicate that there are at least 1.2 interested eligible families for each unit in the proposed property that is not occupied by a family interested in homeownership.

(7) *Nonduplication of funding.* The application shall contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

(8) *Disclosures required by Reform Act.* Section 102(b) of the HUD Reform Act of 1989, Public Law 101–235 (December 15, 1989) requires disclosure of other information concerning other government assistance to be made available with respect to the program and parties with a pecuniary interest in the homeownership program, and submission of a report on expected sources and uses of funds to be made available for the program. Each application shall include the information required by 24 CFR part 12, subpart C, the regulation that implements section 102(b) of the Reform Act. An implementing notice for 24 CFR part 12, subpart C, is being published in the **Federal Register**. Applicants shall use the form and guidance contained in that notice to make the required disclosures.

(9) *Other requirements.* The application shall contain certifications and other information required by the application package.

(c) *Screening by HUD.* (1) HUD shall screen each application submitted on or before the deadline set forth in the NOFA to determine whether it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the program, because that would not be fair to other applicants. The notification shall also require applicants to submit additional or correct material so it is received in the appropriate HUD office no later than close-of business on the 14th calendar day after the date of the written notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that do not meet one of the tests in the first sentence of paragraph (c)(1) of this section, after the opportunity, if any, to submit additional or corrected material, or that fail to comply with other program requirements.

(2) The purpose of this procedure is to increase the number of approvable applications so viable homeownership opportunities may be developed at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies. HUD anticipates that many applicants will be relatively new and

may need this additional opportunity to perfect their applications.

(Approved by the Office of Management and Budget under control number 2577–0132.)

Section 315. Rating, ranking, and selection of planning grant applications.

(a) *Rating.* HUD shall review each application that qualifies for additional consideration under the screening procedures in section 310(c) and assign points in accordance with the following selection criteria—

(1) *Capability.* The qualifications or potential capabilities of the applicant for developing a successful and affordable homeownership program. In assigning points for this criterion, HUD shall consider evidence in the application demonstrating—

(i) The capability of the applicant to handle financial resources, demonstrated through such evidence as previous experience and existing financial control procedures, or an explanation of how such capability will be obtained—15 points;

(ii) The applicant has direct experience in working with residents of public or Indian housing developments—10 points.

(iii) The applicant has direct experience in representing residents of public or Indian housing developments—5 points.

(iv) The extent to which the proposal represents a sound approach to the planning process—5 points.

(v) A demonstration by the applicant or a joint applicant that it is an RMC or RC—5 points.

Maximum points for this criterion (1): 40 points.

(2) *Resident and homebuyer interest and marketability.* The extent of resident and homebuyer interest in, and marketability of, the development of a homeownership program for the eligible property.

(i) Where the applicant is not an RMC or RC and the development is less than 50 percent vacant, HUD shall assign points based on the percentage of current residents of the property interested in participating in the proposed homeownership program, based on a survey conducted by the applicant and submitted to HUD as part of the application.

(A) If 75 percent or more of the residents are interested: 15 points; or

(B) If 50–74.99 percent of the residents are interested: 10 points.

(ii) Where the applicant is not an RMC or RC and the development is 50 percent or more vacant, HUD shall assign points based on the number of interested eligible families interested in participating in the proposed homeownership program based on a survey conducted by the applicant and submitted to HUD as part of the application. The purpose of the survey is to determine if there is a sufficient pool of eligible families interested in purchasing units in the proposed eligible property.

(A) If there are 1.5 or more interested eligible families for each unit in the proposed property not occupied by a family interested in homeownership: 15 points; or

(B) If there are 1.2–1.49 interested eligible families for each unit in the proposed property not occupied by a family interested in homeownership: 10 points.

(iii) Where the applicant is an RMC or RC and—

—A simple majority of the governing board favors homeownership—10 points; or

—Two-thirds of the governing board favors homeownership—15 points.

Maximum points for this criterion (2): 15 points

(3) *Suitability of the property.* The suitability of the eligible property for homeownership. Suitability for homeownership shall be determined based on—

(i) Proximity or accessibility of the property to places of employment, shopping, schools, medical facilities, transportation, places of worship, recreational facilities, and other necessary services for the families under the program—5 points;

(ii) Whether the surrounding neighborhood is free from conditions which are seriously detrimental to the quality of life; substandard dwellings or other undesirable elements must not predominate, unless the undesirable conditions affecting the eligible property can be mitigated—5 points; and

(iii) Whether the structure type and bedroom configuration are (or have the potential, through rehabilitation, to become) appropriate for the proposed homeownership program—5 points.

The review will be made in the context of where public or Indian housing is typically located.

Maximum points for this criterion (3): 15 points.

(4) *Local support.* The extent of cooperation or support, or both, from the unit of general local government, neighborhood organizations, and providers of services and resources appropriate to assist eligible families to achieve economic independence. In assigning points for this criterion, HUD shall consider—

(i) Evidence of support for the homeownership program, demonstrated through letters, resolutions, or other expressions of support from State or local governments and PHAs/IHAs—5 points;

(ii) Evidence of support for the homeownership program, demonstrated through letters, resolutions, or other expressions of support from community, civic, religious, or other entities—5 points; and

(iii) Evidence from entities other than the applicant that funds, services, or other resources will be made available in support of the homeownership program, demonstrated through letters, resolutions, or other expressions of support from providers of services and other resources—5 points. The highest number of points shall be assigned based on the quality, expected duration, and amount of support to the homeownership program.

Maximum points for this criterion (4): 15 points.

(5) *Efficiency.* The extent to which the applicant maximizes efficiency in its plan for use of a planning grant. The lower the cost of the planning grant per unit in relation to other applications, the greater the efficiency.

Maximum points for this criterion (5): 15 points.

Total number of points: 100 points.

(b) *Ranking and selection to assure national geographic diversity.*

(1) After assigning points to each application under paragraph (a) of this section, HUD shall separately rank mini planning grant applications together and full planning grants together. HUD shall then select the two highest ranking applications on each list (one containing only mini planning grant applications and the other containing full planning grant applications) from each of the 10 HUD Regions. For both mini planning grants and full planning grants, if none of the 20 applications involves an Indian housing development and sufficient funds are available, the highest ranking application involving an Indian housing development shall also be approved.

(2) HUD shall then select from each list the highest ranking applications without regard to their location.

(3) If two or more applications have the same number of points, the application submitted by an RMC or RC shall be selected. If there is still a tie, the application with the most points for capability shall be selected. If there is still a tie, the application with the most points for efficiency shall be selected.

(4) When the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD shall determine if it is feasible to

fund part of the application, with the remainder to be funded "off the top" from possible future funding rounds. If so, that application shall be funded. If not, HUD shall make the same determination for the next highest application or applications. Any remaining amounts shall be used in accordance with paragraph (g) of this section.

(5) Procedural errors discovered after initial ratings but before notification of applicants shall be corrected and rankings revised. Procedural errors discovered after notification of approved applicants which, if corrected, would result in approval of an application which was not approved will be corrected by funding the application from any unused amounts or "off the top" from amounts available for planning grants in the next funding round.

(c) *Use of set-asides to fund other planning grants.* Any amounts set aside to fund applications for mini planning grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded applications for full planning grants. Any amounts set aside to fund applications for full planning grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded applications for mini planning grants.

(d) *Reduction in requested grant amounts.* HUD shall approve a planning grant application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines the amount requested for one or more eligible activities is unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program.

(e) *Notification of approval or disapproval.* After completion of the ranking and selection of proposals under paragraph (b) of this section, HUD shall notify the selected applicants and the applicants that have not been selected, in writing.

(f) *Use of remaining amounts to fund HOPE 1 implementation grants.* Any amounts available to fund planning grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded implementation grant applications.

(g) *Insufficient approvable applications.* If funds remain after HUD approves all approvable applications, including implementation grant applications, as provided in this notice, HUD may publish a NOFA inviting applications for planning or implementation grants, or both, in accordance with this notice; or invite applicants who submitted applications that could not be funded to submit amended planning grant or implementation grant applications in accordance with this notice within a deadline specified in the invitation. Any remaining amounts shall be added to amounts available for subsequent funding rounds.

(h) *Environmental review.* HUD has determined that its approval of applications for planning grants is categorically excluded from environmental review and compliance requirements of the National Environmental Policy Act of 1969 (NEPA) and that other Federal environmental laws and authorities listed in 24 CFR 50.4 are not applicable. The reason is that planning grants involve no rehabilitation and little or no physical change and that, generally, not enough information is available about the proposed homeownership program at this point to make the review. HUD has excluded planning grant applications from environmental assessment under NEPA and exempted planning grant applications from environmental review under the laws and authorities listed in 24 CFR 50.4. See the interim rule amending 24 CFR part 50 that is published elsewhere in today's edition of the **Federal Register**. Applicants are reminded, however, that environmental review at the implementation grant stage may nevertheless result in disapproval.

IV. Implementation Grants

Section 401. Implementation grants.

(a) *Implementation grants.* HUD shall make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this title. Where an RMC and an RC each submit an application for the same eligible property, HUD shall consider only the application from the RMC.

(b) *National competition.* HUD shall select applications based on a national competition. HUD will assure compliance with the requirement for national geographic diversity by selecting at least one implementation grant application for a program in each of the 10 HUD Regions, to the extent sufficient funds are available. If none of the 10 applications involves an Indian housing development and sufficient funds are available, the highest ranking application involving an Indian housing development shall also be approved.

Section 405. Eligible implementation grant activities.

(a) *Limitations.* Implementation grants may be used for the reasonable costs of eligible activities necessary to carry out homeownership programs. Only costs incurred on or after the effective date of the grant agreement qualify for funding under the program.

(b) *Eligible activities.* Eligible activities include—

(1) *Architectural and engineering work.* Architectural and engineering work, and related professional services required to prepare architectural plans or drawings, write-ups, specifications, or inspections.

(2) *Implementation of homeownership program.* (i) *General.* Implementation of the homeownership program, including the provision of assistance to families to make acquisition by them affordable (including interest rate reductions ("interest rate buy-downs") and down payment assistance).

(ii) *Maximum acquisition costs.* The cost of acquisition is not an eligible cost, but closing and other costs related to acquisition of the development are eligible costs. Where a public or Indian housing development contains improvements provided through local tax revenues that increased the value of the development, an applicant may request HUD to waive this limitation to permit use of program funds to pay the PHA/IHA for the depreciated value of the amount of local tax revenues spent on such improvements. The request for the waiver shall document the original contribution, state the basis for computing the amount of the depreciated value, and otherwise justify the request.

(3) *Rehabilitation.* (i) Rehabilitation of the eligible property covered by the homeownership program, in accordance with housing quality standards established by HUD. See also section 505(b) for applicable requirements for accessibility for people with disabilities. The property shall be rehabilitated (including the provision of suitable amenities) to a level that makes it marketable for homeownership in the market area to families with incomes at or below the median for the area. HUD encourages applicants to undertake high quality rehabilitation, even if it goes beyond applicable minimum standards. Luxury items (fixtures, equipment, and landscaping of a type or quality which substantially exceeds that customarily used in the locality for properties of the same general type as the property to be rehabilitated) do not qualify as eligible expenses. The construction of swimming pools is not eligible. The cost to fill in or

eliminate a pool from the property and the cost to repair an existing pool are eligible.

(ii) The application shall describe all improvements to be made to, or amenities to be provided for, the property, whether or not they may be funded by use of grant amounts, contributions towards the match required under the program, or other funds. HUD may disapprove improvements or amenities specified in the application it determines are unsuitable for the HOPE program, even if they will be paid for from non-program funds.

(iii) If an applicant proposes to make improvements to an eligible property beyond those that qualify as eligible costs, it shall assure that their entire cost will be covered by funds other than the HOPE grant and any amounts contributed towards the match and that the affordability of the property will not be impaired. No such local funds may count towards the match.

(iv) The prototype cost cap on rehabilitation shall be based on the cost guidelines applicable to the CIAP program.

(4) *Administrative costs.* Administrative costs of the program. The total amount that may be spent on administrative activities from the amount of the grant and any contribution towards the match may not exceed 15 percent of the amount of the grant HUD provides under this notice.

(5) *Development of RMCs and RCs.* (i) Development of RMCs and RCs, but only if the applicant has not received a HOPE planning grant for such activities. See § 305(a) for examples of eligible activities.

(ii) Funding for this activity may not be provided for an RMC or RC that has received funding under section 20(f) of the 1937 Act, unless the applicant submits work plans used in connection with previous grants demonstrating to HUD's satisfaction that the implementation grant will not be duplicative.

(6) *Counseling and training.* Counseling and training of homebuyers and homeowners under the homeownership program. This may include such subjects as counseling and training related to personal financial management, home maintenance, home repair, construction skills (to the extent appropriate, especially where the eligible family will do some of the rehabilitation), and the general rights and responsibilities of a homeowner.

(7) *Relocation.* Relocation of residents who elect to move, in accordance with section 735.

(8) *Temporary relocation.* Any necessary temporary relocation of residents during rehabilitation, in accordance with section 735.

(9) *Assistance for operating expenses.* (i) Funding of operating expenses for the property, up to the amount necessary to achieve long-term affordability, as provided in section 415(b)(12). Assistance for operating expenses may cover the period beginning after acquisition of the property from the PHA/IHA by the applicant or, if the PHA will transfer the property to eligible families, beginning after transfer to the families. Operating assistance may be used for (A) assistance for potential homeowners during the rental phase (before acquisition of ownership interests by the families), if any, (B) assistance for nonpurchasing residents who remain in the property, (C) assistance for homeowners after transfer of ownership interests to the families during the term of the grant agreement, and (D) the funding of operating reserves.

(ii) In addition, assistance for operating expenses may be drawn down under the grant agreement to fund an operating expenses reserve established in accordance with HUD guidelines, and the interest earned on the reserve shall be credited to it for use for operating expenses under the program.

(iii) The amount of assistance for operating expenses shall not exceed the amount the development would have received if it had continued to receive operating subsidies under 24 CFR part 990, with adjustments comparable to those that would have been made under part 990, as determined by HUD based on actual or estimated cost experience of the development in the year before the proposed sale by the PHA/IHA. Where the actual or estimated costs for that year are unavailable or atypical, the application shall propose an adjustment factor and justify it.

(iv) An implementation grant under this program may provide assistance for operating expenses for up to five years from the date that the PHA/IHA transfers the property. If HUD determines that extraordinary circumstances exist, as described in the application or at the end of the five-year term, that justify extension of the five-year term, it may, at the end of the five-year term, agree to extend the original grant agreement for additional one-year periods, subject to the availability of appropriations for this purpose. However, the total term of the grant agreement, including all extensions, may not exceed 10 years. HUD reminds applicants that the selection criterion measuring efficiency will favor applications proposing lower per unit costs; thus, those applications which propose operating assistance for five years or less will be at a competitive advantage.

(v) The entity with fiduciary responsibility for any operating reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(10) *Replacement reserves.* (i) Replacement reserves for the property, up to the amount necessary to achieve long-term affordability, as provided in section 415(b)(12). Assistance for replacement reserves may be drawn down under the grant agreement to fund the reserve established in accordance with HUD guidelines, and the interest earned on the reserve shall be credited to the reserve for use for replacement expenses under the program.

(ii) The entity with fiduciary responsibility for any replacement reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(11) *Replacement housing plan.* Implementation of replacement housing plan activities under section 415(b)(8)(i)(E).

(12) *Legal fees.* Customary and reasonable costs of professional legal services.

(13) *Ongoing training needs.* Defraying costs for the ongoing training needs of the recipient for courses of instruction that are directly related to developing and carrying out the homeownership program.

(14) *Economic development.* (i) Economic development activities that promote economic self-sufficiency of homebuyers, residents, and homeowners under the homeownership program, such as job training or retraining and the development, in or near the eligible property, of child care centers that offer work and make it possible for parents to work. The recipient shall enter into written agreements with the providers of economic development services specifying the services to be provided, including estimates of the numbers of homebuyers, residents, and homeowners to be assisted.

(ii) In addition, planning for the establishment of for- or not-for-profit small businesses by or on behalf of residents, job training, and other activities that promote economic self-sufficiency of homebuyers and homeowners of the eligible property covered by the homeownership program and economic development of the neighborhood are eligible.

(iii) The aggregate amount of planning and implementation grants that may be

used for economic development activities may not exceed $250,000.

(15) *Other activities.* Other activities proposed by the applicant, to the extent the applicant justifies them as necessary for the proposed homeownership program and HUD approves them. For example, the applicant may propose activities related to security needs of the property that are not otherwise covered under other eligible activities, such as under architectural and engineering work and rehabilitation activities.

Section 410. Matching requirements for implementation grants.

(a) *Requirement for each recipient to match the HUD grant.* Each recipient shall assure that matching contributions equal to not less than 25 percent of the amount of the implementation grant shall be provided from non-Federal sources to carry out the homeownership program. Amounts contributed to the match shall be used for eligible activities or in accordance with this section. Any grant amounts proposed for operating assistance shall be excluded for purposes of computing the amount to be matched.

(b) *Form.* Contributions may only be in the form of—

(1) *Cash contributions.* (i) Cash contributions from non-Federal resources. To be a cash contribution, funds must be contributed permanently for uses under the HOPE 1 program. Funds will be considered permanently contributed if all repayment, interest, and other return on the contribution will only be used for eligible activities in accordance with program requirements.

(ii) Non-Federal resources may not include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d), respectively, of the Housing and Community Development Act of 1974, except to the extent permitted for administrative expenses under paragraph (a)(2) of this section. Non-Federal resources may not include Federal tax expenditures, comprehensive grants under section 14 of the 1937 Act, or amounts provided to the development from syndication of the low income housing tax credit. (Financing involving the use of the low income housing tax credit is prohibited by section 415(b)(11)(iii).)

(iii) Non-Federal resources may include contribution of trust funds held by Federal agencies for Indian tribes.

(iv) A cash contribution may be made by the applicant, non-Federal public entities, private entities, or individuals. A cash contribution may be made from program income from a Federal grant earned after the end of the award period if no Federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G), and the Housing Development Grant Program (24 CFR part 850).

(v) Cash contributions may also be made from sales proceeds from the Turnkey III Homeownership and Mutual Help programs obtained pursuant to PIH Notice 91–28 or an approved homeownership program under section 5(h) of the 1937 Act.

(vi) The grant equivalent of a below-market interest rate loan to the homebuyer, where all repayments, interest, and other return will not be permanently contributed to the HOPE program, may be counted as a cash contribution.

(A) If the loan is made from proceeds of obligations issued by or on behalf of a public body that are exempt from taxation by the United States, the contribution is the present discounted cash value of the difference between payments to be made on the borrowed funds and payments to be received from the loan to the homebuyer, based on a discount rate equal to the interest rate on the borrowed funds.

(B) If the loan is made from funds other than under paragraph (b)(1)(vi)(A) of this section, the contribution is the present discounted cash value of the yield forgone, calculated based on a discount rate approved or prescribed by HUD. In determining the yield forgone, the recipient must use as a measure of a market rate yield one of the following, as appropriate:

(*1*) With respect to one- to four-unit housing financed with a fixed interest rate mortgage, a rate equal to the 10-year Treasury note rate plus 200 basis points;

(*2*) With respect to one- to four-unit housing financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points; or

(*3*) With respect to a multifamily project, a rate equal to the 10-year Treasury note rate plus 300 basis points.

(vii) A down payment by an eligible family may not count towards the match.

(viii) Non-Federal resources may include amounts, determined in accordance with paragraph (b)(1)(vi)(B) of this section, that have been requested by the applicant in an application submitted to the Federal Housing Finance Board for assistance under its Affordable Housing program, so long as that application is approved before the date HUD approves the HOPE application.

(2) *Administrative costs.* (i) Payment of eligible administrative costs approved by HUD from non-Federal resources. Contributions for administrative costs that exceed 7 percent of the grant (excluding any assistance for operating expenses) may not count towards the match. (This limitation is in addition to the limitation that the total amount that may be spent on administrative activities from the amount of the grant and any contributions towards the match may not exceed 15 percent of the grant amount (section 405(b)(4).) Non-Federal resources, for the purposes of counting contributions for administrative costs, may include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d) of the 1974 Act and are subject to the recordkeeping and documentation requirements of that program. (ii) For example, if the grant amount is $500,000 (excluding any operating assistance), the recipient must assure the provision of at least $125,000 (25 percent of the grant) from non-Federal sources. Contributions for administrative costs that may be counted towards the match may not exceed $35,000 (7 percent of the grant amount of $500,000). Although an applicant can spend more than this on administrative costs, it may not be counted towards the match. The applicant shall provide contributions covering the remaining $90,000 ($125,000 −$35,000) required for the match from non-Federal sources.

(3) *Taxes, fees, and other charges.* The present value of taxes, fees, or other charges that are normally and customarily imposed but are waived, forgone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this notice. Only amounts for the period after the date a property is acquired by a recipient or other entity for transfer to eligible families (or the effective date of the implementation grant agreement if the PHA will transfer to eligible families) may be counted towards the match. For example, if a city agrees to forgo real property taxes for 20 years, the application shall compute the estimated tax that would be otherwise payable over the 20 year period, and discount it to present value based on a discount rate approved or prescribed by HUD. Amounts that would be waived, forgone, or deferred for longer than 20 years from the date a family acquires homeownership interests in the unit may not be counted towards the match because enforcement would be

impracticable. Where the match includes amounts under paragraph (b)(3) of this section, the documents transferring the homeownership interest to the family shall evidence the contribution, to the extent the contribution has not already been received.

(4) *Land or other real property.* Real property, not acquired with Federal resources, contributed for use under an approved homeownership program.

(i) For HOPE 1, the value of eligible property may not be counted as a contribution towards the match.

(ii) The as-is fair market value of land or other real property may be counted as a contribution towards the match, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD.

(5) *Infrastructure.* The fair market value of investment, not made with Federal resources, in on-site and off-site infrastructure required for homeownership program. The infrastructure investment may be counted towards the match only if it was completed no earlier than 12 months before the date of notification by HUD of implementation grant approval and no later than five years from the effective date of the grant agreement. Investment in infrastructure may include such activities as new or repaired utility laterals connecting eligible property to the main line and new or rebuilt walkways, sidewalks, or curbs on or contiguous to the eligible property. If the investment in infrastructure also benefits other properties, only the share of the costs directly benefiting the eligible property under the homeownership program may be counted towards the match.

(6) *Debt forgiveness.* Where debt on real property to be acquired under the program (other than a public or Indian housing development) is forgiven, permitting the property to be acquired for less than fair market value, the savings may count as a match. However, the forgiveness of the amount of any debt exceeding fair market value of a property under the program, determined under paragraph (b)(4) of this section, may not be counted towards the match.

(7) *Other in-kind contributions.* (i) The reasonable value of in-kind contributions proposed by the applicant in the application and approved by HUD. In reviewing proposed in-kind contributions, HUD shall review to ensure (A) the proposed contribution is to be used for an eligible activity under the proposed homeownership program, (B) the application demonstrates that the proposed in-kind contribution will actually be provided; and (C) the proposed value of the contribution is reasonable. In determining whether the value is reasonable, HUD shall generally consider the amount such work would otherwise cost the program, but may adjust the value, based on special circumstances.

(ii) All donated labor, including sweat equity provided by a homebuyer or homeowner, shall be valued at $10 an hour, except for donated professional labor, as approved by HUD, including work by homebuyers and homeowners. The donated professional labor shall be valued at the fair market value of the work completed. Professional labor is work ordinarily performed by the donor for payment, such as work by laborers, electricians, and architects that is equivalent to work they do in their occupations. Sweat equity may be counted towards the match only if it is not also counted towards a family's equity.

(iii) Donated materials and supplies may be counted towards the match contribution. Materials and supplies need not have been purchased specifically for the program to be included as a match contribution, if the cost to the grantee of the materials and supplies (or, in the case of materials and supplies donated by a different entity than the recipient for use in the program, the fair market value of the materials and supplies) and if the fact that they were used in the program can be documented. The recipient shall maintain a written enumeration of what donated materials and supplies will be used in the program, as well as documentation of their cost or value.

(c) *Other restrictions.* Contributions towards eligible activities that are not directly related to acquisition or rehabilitation of the property may be counted towards the match only to the extent the expenses are incurred before the date the family acquires the homeownership interest, except that contributions for counseling and training of homeowners may be counted if provided within one year of the transfer of ownership interest to the family. For example, contributions for child care services provided after the date of the transfer of ownership interests to the families may not be counted towards the match.

(d) *Exception for Indian housing authorities.* Where the recipient is an IHA and the IHA (acting in that capacity) has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds, the match requirements under this section shall not apply.

Section 415. Applications for implementation grants.

(a) *NOFA.* An application for an implementation grant shall be submitted by an applicant in accordance with this notice and the NOFA. The NOFA advises potential applicants how to obtain an application package and establishes deadlines and other requirements for submission of applications. The NOFA also informs each applicant that it may request information and guidance from HUD about program requirements and preparation of the application.

(b) *Application contents.* Each application shall contain the information required by the application package, which shall include at least the following items.

(1) *Request for HOPE implementation grant.* The application shall contain (i) a summary description of the proposed homeownership program; (ii) a description of the personnel necessary to complete the activities; (iii) the amount of the grant requested for each activity. The amount requested, together with any non-Federal contributions, shall be sufficient to carry out all proposed activities.

(2) *Section 8 application.* (i) The application shall contain an application from a PHA/IHA whose jurisdiction includes the proposed eligible property for assistance under section 8 of the 1937 Act, specifying the period during which the assistance will be needed, or a statement by the applicant that no section 8 assistance will be needed.

(ii) The application shall specify whether the assistance is proposed to comply with the replacement housing plan requirement or for nonpurchasing residents for use in another property, or both.

(3) *Qualifications and experience of applicant.* (i) The application shall describe the applicant and contain a statement of its qualifications and experience, including qualifications and experience in providing housing for low-income families. It is particularly important for an applicant that has not received and successfully carried out a planning grant to demonstrate its capacity to carry out the proposed homeownership program. HUD encourages two or more entities to submit an application together. For example, an application submitted by a newly established RMC and an experienced nonprofit organization may greatly increase the likelihood of the success of the proposed homeownership

program. The application shall specify which entity will be the recipient and execute the grant agreement, and include a certification that the entities have entered into a written agreement that delineates their respective roles.

(ii) Where the applicant is an RMC or RC, the application shall demonstrate its ability to manage a public or Indian housing development by having done so effectively and efficiently for a period of not less than three years. Alternatively, the RMC or RC shall demonstrate that it has arranged for the management of the homeownership program by a qualified management entity which has effectively and efficiently managed housing for a period of not less than three years.

(iii) An application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered so long as the organization is approved before the effective date of the grant agreement.

(4) *Description of proposed homeownership program.* The application shall describe the proposed homeownership program, demonstrating consistency with all requirements specified in this notice and the application package (see, especially, section 405, Eligible Implementation Grant Activities and Part V, Other Requirements). The application shall specify the activities to be carried out, their estimated costs, and a reasonable schedule for carrying out the activities. See section 715 for requirements for the timely transfer of ownership interests to eligible families. Where no resident entity has been established for the property, the application shall propose establishment of a resident entity (such as an RMC, RC, or cooperative association) promptly after the effective date of the grant agreement.

(5) *Plan.* (i) *Identifying and selecting families.* The application shall contain a plan for identifying and selecting eligible families to participate in the homeownership program. The plan shall—

(A) Establish equitable procedures for selection of eligible families. Except for Indian tribes and IHAs as described in section 505(a)(2), the plan shall also describe activities planned to carry out the applicant's affirmative fair housing marketing responsibilities that apply whenever homeownership opportunities are made available to other than current residents of the property. The plan shall describe the applicant's affirmative fair housing marketing strategy, including specific steps to inform potential applicants and solicit applications from eligible families in the housing market area who are least likely to apply for the program without special outreach. The plan shall require any family determined not to have paid the appropriate amount of tenant contribution under a HUD housing assistance program to resolve any deficiency before being selected for homeownership.

(B) Give a first preference to otherwise qualified current residents and a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program. The following self-sufficiency programs (and any other Federal, State, or local program proposed by the applicant and approved by HUD as equivalent) qualify: Project Self-Sufficiency, Operation Bootstrap, Family Self-Sufficiency, and JOBS.

(C) Require the recipient to promptly notify in writing any rejected applicant family of the grounds for any rejection, or to require the recipient to require another appropriate entity to do so.

(D) Require each eligible family selected for homeownership to certify at the time it acquires an ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family) that it intends to occupy the unit as its principal residence.

(E) Require each eligible family to agree to occupy the property as its principal residence during the 15-year period from the date it acquires ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family), unless the recipient determines that family is required to move outside the market area due to a change in employment or an emergency situation or the family sells its ownership interest.

(F) Require any eligible family that violates the agreement made under paragraph (b)(5)(i)(E) of this section to pay the amount then due under the promissory note.

(G) Describe the composition of the residents and potential eligible families, including family size and income, and racial, ethnic, and gender characteristics, as required by HUD.

(ii) *Providing relocation.* The application shall describe the proposed relocation activities, in accordance with the requirements of section 735. The plan shall specify the approximate number of families and individuals who are expected to choose to move and the number who will be temporarily relocated during rehabilitation, the estimated costs, the source of funding, the organization that will carry out the relocation if different than the applicant, and other available resources (including, for example, section 8 assistance).

(iii) *Managing sweat equity.* Where applicable, the application shall contain a plan for managing the provision of sweat equity by homebuyers and homeowners, including a description of the anticipated scope of the work, schedule of completion, training of homebuyers and homeowners (and training of others donating labor in connection with sweat equity activity), supervision of the work by a licensed general contractor, and a contingency plan if the sweat equity is not fully provided or the schedule is not met.

(iv) *Providing ongoing training and counseling.* The application shall contain a plan for providing ongoing training and counseling for homebuyers and homeowners.

(6) *Eligible property.* (i) The application shall include a description of the eligible property, including the number of units by size (square footage), bedroom count, bathroom count, preliminary drawings and outline specifications for the proposed rehabilitation, unit plans, and a listing of amenities and services. The application shall also describe the neighborhood and include a map showing the location of the property and the racial and ethnic characteristics of the neighborhood.

(ii) The acquisition or rehabilitation of a public or Indian housing development shall involve acquisition and rehabilitation of all of the units in the development. HUD may permit acquisition or rehabilitation of less than the whole development if the applicant demonstrates to HUD's satisfaction that the acquisition or rehabilitation (or both) of less than all of the development is feasible and will not result in a hardship to the residents of the development who are not included in the homeownership program.

(7) *Housing quality standards plan.* The application shall include a housing quality standards plan describing how the applicant will ensure that—

(i) The unit will be free from any defects that pose a danger to life, health, or safety before transfer of an ownership interest in a unit to an eligible family or execution of a lease with an option to purchase. The recipient shall inspect, or ensure inspection of, each unit to determine it does not pose an imminent threat to the life, health, or safety or current or future residents and that the property has passed recent fire and other applicable safety inspections conducted by appropriate local officials.

(ii) The unit will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards. The recipient shall inspect, or ensure inspection of, each unit to determine it meets the local housing code or, if no local code exists, the housing quality standards established by HUD for the Section 8 Certificate program.

Higher standards may be proposed by the applicant or required by lenders.

(8) *Replacement housing plan.* The application shall contain a replacement housing plan.

(i) Public or Indian housing developments may not be transferred by the PHA/IHA under the HOPE 1 program unless HUD has entered into a binding agreement with the local PHA/IHA to make available to the PHA/IHA Federal funding assistance under paragraphs (b)(8)(i) (A)–(C) and (E) of this section, or another appropriate entity has entered into a binding agreement to make available to the PHA/IHA or other applicant, as appropriate, assistance under paragraphs (b)(8)(i) (D) and (E) of this section, to provide an additional decent, safe, sanitary, and affordable dwelling unit as a replacement for each unit in a public or Indian housing development to be transferred by the PHA/IHA.

Replacement housing may consist of one or more of the following methods—

(A) The development of additional public or Indian housing units by the PHA/IHA in accordance with section 5 of the 1937 Act. The PHA/IHA shall execute an annual contributions contract (ACC) for the additional units before the date of transfer by the PHA/IHA of housing for use under the HOPE 1 program. The additional units under the ACC must have been identified as replacement housing in the development application.

(B) The rehabilitation of vacant public or Indian housing units by the PHA/IHA in accordance with section 14(n)(1) of the 1937 Act. The PHA/IHA shall execute an ACC for the modernization assistance before the date of transfer by the PHA/IHA of housing for use under the HOPE 1 program. The modernization assistance under the ACC to be used to rehabilitate vacant units must have been identified as replacement housing in the application under the Comprehensive Improvement Assistance program or in the comprehensive plan under the Comprehensive Grant program.

(C) The use of 5-year, tenant-based rental assistance under the section 8 Certificate and Housing Voucher programs. The PHA/IHA shall execute an ACC for the additional section 8 certificate or voucher assistance before the date of transfer by the PHA/IHA of housing for use under the HOPE 1 program. The units under the ACC must have been identified as replacement housing in the section 8 application.

(D) The use of a State or local program that is comparable to any of the Federal programs referred to in (A)–(C) as to housing standards, eligibility, and contribution to rent, and provides a term of assistance of not less than five years.

(E) Where the applicant is an RMC, RC, or cooperative association, the acquisition of nonpublicly-owned housing units before the date of transfer by the PHA/IHA of housing units for use under the HOPE 1 program, which the applicant shall operate as rental housing comparable to public or Indian housing as to term of assistance, housing standards, eligibility, and contribution to rent. Funding for such replacement units may be provided from the implementation grant or another source for which the applicant has a firm commitment.

(ii) Assistance that has already been counted as meeting replacement housing requirements under the HOPE 1 program or under sections 5(h), 18, or 21 of the 1937 Act may not be counted again as replacement housing.

(iii) The plan shall include a certification from the PHA/IHA that it concurs with the proposed replacement housing plan and will take all necessary steps to carry it out.

(9) *Match requirements.* (i) The application shall describe, and contain commitments for, the resources that are expected to be contributed towards the match required under section 410, and of any other resources that are expected to be made available in support of the homeownership program. Acceptable evidence that the contribution will be provided shall be included. For example, if 20 years of tax abatement will be counted towards the match, the chief executive officer or appropriate legislative body of the government should submit a copy of the law or other official action documenting this commitment. Cash or other property contributed shall be supported by evidence of a binding commitment by the donor to donate the cash or other property, subject only to approval of the implementation grant and any other necessary conditions approved by HUD.

(ii) If the match requirement does not apply to an IHA in accordance with section 410(d), the application shall contain a certification that the IHA has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds.

(10) *Economic development.* The application may contain a plan for economic development activities under the program and shall contain such a plan if the applicant requests a program involving assistance for operating expenses. The application shall demonstrate that the proposed economic development activities under section 405(b)(14) are directly related to the proposed homeownership program, and describe how these activities will promote the self-sufficiency of homebuyers, residents, and homeowners.

(11) *Financing.* (i) The application shall identify and describe the financing proposed for any (A) rehabilitation and (B) acquisition by eligible families of ownership interests in units in the eligible property.

(ii) Financing may include use of the implementation grant to permit transfer of an ownership interest in a unit to an eligible family for less than fair market value or with assisted financing; sale for cash; or other sources of financing (subject to requirements that apply to such other sources), including conventional mortgage loans, mortgage loans insured under title II of the National Housing Act, and mortgage loans under other available programs, such as VA, FmHA, and RTC seller-assisted financing.

(iii) Financing may not involve use of the low income housing tax credit.

(iv) If the applicant proposes that property transferred under this notice be pledged as collateral for debt or otherwise encumbered, the application shall contain sufficient information for HUD to determine that—

(A) The encumbrance will not threaten the long-term availability of the property for occupancy for low-income families, where the program provides for such long-term availability.

(B) Neither the Federal government nor the PHA/IHA will be exposed to undue risks related to action that may have to be taken pursuant to paragraph (b)(11)(iv) of this section (opportunity to cure).

(C) Any debt obligation can be serviced from project income, including operating assistance.

(D) The proceeds of the encumbrance will be used only to meet the housing quality standards (see paragraph (b)(7) of this section) or to make such additional capital improvements as HUD determines to be consistent with the purposes of the HOPE program.

Indian housing development trust land may not be used as collateral.

(v) Recipients and homeowners continue to be subject to paragraphs

(b)(11)(iv) (A)–(D) of this section during the term of the grant agreement.

(vi) The proposed financing shall require that any lender that provides financing in connection with the program shall give the PHA/IHA, RMC, individual owner, or other appropriate entity a reasonable opportunity to cure a financial default before foreclosing on the property, or taking other action as a result of the default (and the financing and conveyance documents shall include such restrictions).

(12) *Affordability.* (i) *Initial affordability*—(A) The application shall demonstrate that the monthly expenditure for principal, interest, taxes, and insurance by an eligible family that is necessary to complete the sale for the initial acquisition of a unit does not exceed 30 percent of the adjusted income of the family, determined in accordance with 24 CFR part 913 or, for Indian housing developments, part 905. As required by the statute, closing costs are included in this cap to the extent they are included in the costs of principal and interest, or are otherwise required to be paid by the homeowner over time after acquisition. It does not make sense to count closing costs paid as a lump sum at closing for purposes of computing a monthly maximum family expenditure. In setting the sales price for acquisition, the applicant shall take into account the need to comply with this affordability standard.

(B) The items subject to the limitations in paragraph (b)(12)(i)(A) of this section, plus estimated utility costs and other monthly housing costs (such as condominium and cooperative monthly fees) shall be at least 25 percent but not more than 35 percent of the adjusted income of the family, determined in accordance with 24 CFR part 913 or 905, as appropriate. The applicant may request HUD to approve a higher percentage cap, where the application demonstrates that a higher cap than 35 percent is necessary to make the project feasible and that the families will be able to afford the higher monthly cost.

(C) In the case of cooperative or condominium ownership, if the monthly charge to the homeowner includes amounts for principal, interest, taxes, insurance, or utilities, the portion of the charge covering these amounts shall be considered for purposes of making the affordability determinations under paragraph (b)(12) of this section.

(ii) *Continued affordability.* The application shall contain a feasible plan for ensuring continued affordability by residents, homebuyers, and homeowners in the eligible property. The plan shall be based on a "proforma" prepared in accordance with paragraph (b)(12)(iii) of this section; however, a proforma is not required under HOPE 1 for single family property that does not involve significant common ownership. The plan shall avoid using financing, such as a mortgage that is not fully amortizing (such as a "balloon" mortgage) or that involves negative amortization, that would impair the continued affordability of the property for eligible families.

(iii) *Proforma.* The plan shall include a "proforma" that sets forth estimated project costs and income over a 20–year period from the date the applicant or other entity acquires the property for transfer to eligible families (or from the effective date of the implementation grant agreement, where the PHA/IHA will transfer to eligible families). The proforma shall be prepared in accordance with the following requirements and guidelines:

(A) The proforma shall demonstrate that the requirements of paragraph (b)(12)(i) of this section are met and that, for the 20-year period, on an aggregate basis, eligible families shall not be required to pay more than the amounts provided in paragraph (b)(12)(i) (A) and (B) of this section.

(B) The proforma shall include an estimate of the income expected, by each unit size, for the 20-year period, including any homeownership payments, carrying charges, homeowner association payments, and HOPE grant funds for operating assistance (including funding of reserves) and for replacement reserves.

(C) The aggregate income estimated for the property shall equal or exceed the aggregate costs of operating and maintaining the property, including any debt service, property management costs, insurance costs, taxes, funding of operating or replacement reserves, and any other anticipated costs.

(D) Reasonable assumptions shall be used as to all material factors having an impact on the estimates contained in the proforma, including projected vacancy rates, collection rates, income of homebuyers, homeowners, and other residents; changes in such incomes; changes in utilities costs; and income earned on operating and replacement reserves. The applicant shall justify all assumptions used to prepare the proforma. The applicant shall estimate increases in income and operating costs in accordance with guidelines provided by HUD in the application package.

(E) The proposed use of an operating reserve funded from the HOPE grant shall comply with the requirements of § 405(b)(9).

(F) The proforma shall demonstrate that the aggregate income for the property (including amounts provided by HUD for operating assistance or replacement reserves) exceeds aggregate expenses and demonstrates a positive trend in the difference between income and expenses during the 20-year period.

(iv) *Replacement reserves.* The application shall demonstrate that the amount proposed for replacement reserves is adequate, taking into account (A) the estimates covered by the proforma, (B) the size of the grant and the amount of matching contributions, (C) the condition and age of the property and each of its major systems and components (including at least the heating, plumbing and electrical systems and the roof, foundation, windows, exterior walls, and common areas (including the need to repaint)), and (D) other possible replacement needs. The requirement for replacement reserves shall not apply, in the case of single family property, where the applicant demonstrates that the financial status of eligible families is sufficient (taking into account insurance requirements and home maintenance repair capability of the family) so there is not a need for such reserves.

(13) *Sales prices to applicant or other entity.* The application shall specify the terms of the proposed transfer to the entity, if any, that will acquire the property for sale to eligible families. If the applicant is a PHA/IHA that proposes to sell directly to eligible families, paragraph (b)(13) of this section shall not apply. The necessary information is covered by paragraph (b)(14) of this section.

(14) *Sales prices and terms of sale to eligible families; form of ownership.*

(i) The application shall contain estimated sales prices and terms of sale to eligible families. The application shall also specify the type or types of homeownership to be used, including cooperative ownership (including limited equity cooperative ownership), fee simple ownership (including condominium ownership), or another form of ownership proposed and justified by the applicant and approved by HUD. The application shall contain a certification that the proposed type of homeownership is consistent with any applicable State and local, or tribal, law. For example, if the applicant is a cooperative that proposes to own the property, it must have the legal ability to own the particular property.

(ii) The proposed program shall require each eligible family to make a down payment towards the cost of acquisition at closing. An applicant may permit a family to meet its down

payment obligation through "sweat equity."

(iii) An eligible family may transfer amounts credited to it under other HUD homeownership programs (including Turnkey III and Mutual Help) to meet down payment obligations under the HOPE program, if it is purchasing the same unit it has occupied under the other HUD homeownership program.

(iv) See section 110(k) for provisions governing the use of single family FHA mortgage insurance.

(15) *Resale restrictions, if any.* The application shall contain any proposed restrictions on the resale of units by initial or subsequent homeowners under the homeownership program (see section 720(a)(1)(ii)). The required restrictions set forth in section 720 need not be restated.

(16) *Management entity.* The application shall identify and describe the entity that will operate and manage the property, and, if the PHA or IHA will transfer the property within six months from the effective date of the grant agreement, contain a copy of the proposed contract. Where homeowners will have full responsibility (as is expected in scattered site, fee simple ownership arrangements), this requirement will only cover the period, if any, until the homeowners become fully responsible.

(17) *CHAS certification.* (i) The application shall contain a certification by the public official, or his or her authorized representative, who submits the CHAS that the proposed activities (including activities related to the replacement housing plan) are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located.

(ii) Paragraph (b)(17)(i) of this section shall not apply to an application submitted by an Indian tribe or IHA. Indian tribes and IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that Indian tribes and IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy.

(18) *Equal opportunity certifications.* (i) The application shall contain—

(A) A certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHA, under the circumstances described in section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) The application shall contain a statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(19) *Resident interest.* (i) *RMC or RC is an applicant.* Where the applicant (or one of the applicants) is an RMC or RC, the application shall contain a board resolution from the RMC or RC supporting the application.

(ii) *RMC or RC exists for the eligible property.* Where the applicant (or one of the applicants) is not an RMC or RC for the eligible property and there is an RMC or RC for the eligible property, the application shall contain a board resolution from the RMC or (if there is no RMC) the RC for the eligible property if any, that it is interested in a homeownership program and that the applicant is submitting the application on behalf of the RMC or RC for the eligible property.

(iii) *Survey of resident interest and marketability.* In all cases, the application shall also contain a survey conducted by the applicant of resident interest in homeownership and marketability of the units, which shall be conducted in accordance with procedures set forth in the application package. If the development is less than 50 percent vacant, at least 50 percent of the households of the eligible property must indicate that they are interested in exploring the possibility of homeownership. If the development is 50 percent or more vacant, the survey must indicate that there are at least 1.2 interested eligible families for each unit in the proposed property that is not occupied by a family interested in homeownership.

(20) *Public hearing.* The application shall contain documentary evidence that the applicant held at least one public hearing regarding the sale of the eligible property proposed for use under the program, with a summary of the views expressed by residents and other members of the public and the response by the applicant.

(21) *Plan for use of certain program income.* The application shall contain a plan for use of proceeds from sales to eligible families and amounts families may not retain upon resale. The plan shall provide for uncommitted program income to be spent before additional grant amounts are drawn down by the recipient.

(22) *Nondisplacement; participation by residents.* The application shall contain a certification by the applicant that no person has been or will be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude termination of tenancy for violation of the terms of occupancy of a unit. Each resident of an eligible property shall be given an opportunity to become a homeowner under this program if the resident qualifies as an eligible family and meets other program requirements.

(23) *Nonduplication of funding.* The application shall contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

(24) *Disclosures required by reform act.* Section 102(b) of the HUD Reform Act, Public Law 101–235 (December 15, 1989) requires disclosure of other information concerning other government assistance to be made available with respect to the program and parties with a pecuniary interest in the homeownership program, and submission of a report on expected sources and uses of funds to be made available for the program. Each application shall include the information required by 24 CFR part 12, subpart C, the regulation that implements section 102(b) of the Reform Act. An implementing notice for 24 CFR part 12, subpart C, is being published in the **Federal Register**. Applicants shall use the form and guidance contained in that notice to make the required disclosures.

(c) *Screening by HUD.* (1) HUD shall screen each application submitted on or before the deadline set forth in the NOFA to determine whether it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property or

applicant or changing other fundamental features of the program, because that would not be fair to other applicants. The notification shall require applicants to submit additional or correct material so it is received in the appropriate HUD office no later than close-of business on the 14th calendar day after the date of the notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason, HUD shall not consider further any applications that do not meet one of the tests in the first sentence of paragraph (c)(1) of this section, after the opportunity, if any, to submit additional or corrected material, or fail to comply with other program requirements.

(2) The purpose of this procedure is to increase the number of approvable applications so viable homeownership opportunities may be developed at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies. HUD anticipates that many applicants will be relatively new and may need this additional opportunity to perfect their applications.

(Approved by the Office of Management and Budget under control number 2577–0132.)

Section 420. Threshold review.

HUD shall review each application that qualifies for additional consideration under the screening procedures in section 415(c). HUD shall not consider further any application that fails to meet one or more of the following additional threshold criteria—

(a) The application shall demonstrate that the affordability standards in section 415(b)(12)(i) can be met and the plan for continued affordability in section 415(b)(12)(ii) is feasible. HUD shall take into account the proposed cost of operating the property after eligible families become homeowners; the adequacy of counseling and training of homebuyers, residents, and homeowners; and the extent to which the proposed self-sufficiency activities assure continued affordability by homeowners.

(b) The proposed costs of eligible activities are within applicable cost limitations.

(c) The applicant's certification of compliance with equal opportunity and related requirements and the statement concerning desegregation orders, compliance agreements, and voluntary agreements are consistent with facts known to HUD, and the performance of the applicant is satisfactory or any problems are being satisfactorily resolved.

(d) The application shall be submitted by an eligible applicant for eligible property.

(e) The eligible property specified in the application shall be located within the boundaries of a jurisdiction—

(1) Which is participating jurisdiction under the HOME program established under title II of NAHA; or

(2) On behalf of which the agency responsible for affordable housing has submitted a housing strategy or plan.

(f) The proposed program provides that at least 66 percent of units will be acquired by eligible families (or such higher percentage as may be required under State, local, or tribal law governing cooperative associations or other form of homeownership used under the program).

Section 425. Rating, ranking, and selection of applications.

(a) *Rating.* HUD shall review each application that it determines to meet threshold requirements and assign it points in accordance with the following selection criteria—

(1) *Capability.* The ability of the applicant to develop and carry out the proposed homeownership program, taking into account the quality of any related ongoing program of the applicant. In assigning points for this criterion, HUD shall consider evidence in the application demonstrating—

(i) The capability of the applicant to handle financial resources, demonstrated through such evidence as previous experience and existing financial control procedures, or by an explanation of how such capability will be obtained—10 points.

(ii) The applicant has direct experience in working with or representing residents of public or Indian housing developments—5 points.

(iii) If rehabilitation is proposed, the capability of the applicant to manage the proposed rehabilitation, demonstrated through previous experience in managing rehabilitation or construction, or by an explanation of how such capability will be obtained—5 points.

(iv) If rehabilitation is proposed, the extent to which an established resident-based organization will undertake substantial program management responsibilities in implementing the proposed homeownership program—5 points.

If rehabilitation is not being proposed, no points shall be assigned for subcriteria (iii) and (iv) and the points for subcriteria (i) and (ii) shall be increased to 15 and 10, respectively.

(v) A demonstration that the applicant or joint applicant is an RMC or RC—5 points.

Maximum points for this criterion (1): 30 points.

(2) *Local support.* HUD shall assign points for this criterion based on the extent to which funds for activities that do not qualify as eligible activities will be provided in support of the homeownership program, considering the extent to which the additional improvements, amenities, and services enhance the homeownership program.

Maximum points for this criterion (2): 5 points.

(3) *Resident and homebuyer interest and marketability.* The extent of resident and homebuyer interest in, and marketability of, the development of a homeownership program for the eligible property.

(i) Where the development is less than 50 percent vacant, HUD shall assign points based on the percentage of current residents of the property interested in participating in the proposed homeownership program, based on a survey conducted by the applicant and submitted to HUD as part of the application.

(A) If 85 percent or more of the residents are interested: 10 points;

(B) If 66–84.99 percent of the residents are interested: 5 points; or

(C) If 50–65.99 percent of the residents are interested: 0 points.

(ii) Where the development is 50 percent or more vacant, HUD shall assign points based on the number of eligible families interested in participating in the proposed homeownership program, based on a survey conducted by the applicant and submitted to HUD as part of the application. The purpose of the survey is to determine if there is a sufficient pool of families eligible to purchase units in the proposed eligible property.

(A) If there are 2.0 or more interested eligible families for each unit in the proposed property not occupied by a family interested in homeownership: 10 points;

(B) If there are 1.5–1.99 interested eligible families for each unit in the proposed property not occupied by a family interested in homeownership: 5 points.

(C) If there are 1.2–1.49 eligible families: 0 points. Maximum points for this criterion (3): 10 points.

(4) *Quality and feasibility of program.* The quality and feasibility of the proposed homeownership program, including the viability of the economic self-sufficiency plan. In assigning points for this criterion, HUD shall consider

evidence in the application demonstrating—

(i) The overall soundness and comprehensiveness of the homeownership program—5 points.

(ii) The extent to which the applicant (or other appropriate entity identified in the application) is currently implementing effective homebuyer screening procedures, homebuyer supportive services, and other management practices intended to reduce the number of delinquencies in rent payments or foreclosures, or the extent to which the plan covering these activities contained in the application will be successful—10 points.

(iii) The extent to which proposed economic development activities will result in continued affordability of the property after assistance for operating expenses is no longer available—10 points.

If no assistance for operating assistance is being required and if the application demonstrates that no economic development assistance is needed, no points shall be assigned under subcriterion (iii), and the points for subcriteria (i) and (ii) shall be increased to 10 and 15, respectively.

Maximum points for this criterion (4): 25 points

(5) *Relationship to CHAS.* Whether the approved CHAS for the jurisdiction within which the eligible property is located includes homeownership as one of the general priorities identified pursuant to section 105(b)(7) of NAHA. This criterion shall not be used to rate an application submitted by an Indian tribe or IHA. The maximum score for such an application will be 95. The percentage of points earned by an applicant, based on its maximum point total of 95, will be multiplied by 100 (the maximum number of points for other applicants) to determine the points for purposes of ranking.

Points for this criterion (5): 5 points.

(6) *Efficient use of grant.* The extent to which the proposed program will result in the lowest total cost per unit in comparison to other applications. Factors that will affect the cost will include the number of non-purchasing residents in the property and the need to use the implementation grant to fund the replacement housing plan.

Maximum points for this criterion (6): 10 points.

(7) *Suitability of the property.* The suitability of the eligible property for homeownership. Suitability for homeownership shall be determined based on—

(i) Proximity or accessibility of the property to places of employment, shopping, schools, medical facilities, transportation, places of worship, recreational facilities, and other necessary services for the families under the program—3 points;

(ii) Whether the surrounding neighborhood is free from conditions which are seriously detrimental to the quality of life; substandard dwellings or other undesirable elements must not predominate, unless the undesirable conditions affecting the property are being actively mitigated—3 points; and

(iii) Whether the structure type and bedroom configuration are (or will be after any proposed rehabilitation) appropriate for the proposed homeownership program, taking into account that no residents in occupancy on the date HUD approves an implementation grant may be evicted by reason of a homeownership program—4 points.

The review will be made in the context of where public or Indian housing is typically located.

Maximum points for this criterion (7): 10 points.

(8) *MBE/WBE goals.*

(i) The extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, especially resident-owned businesses. For example, the applicant has used such businesses in the past, has set forth specific affirmative steps it will take to ensure that such businesses have an equal opportunity to obtain and compete for contracts, or both. These steps may include the steps outlined at 24 CFR 85.36(e) and 570.506(g)(6), but may not include awarding contracts solely or in part on the basis of race or gender. See section 505(d) for the legal basis for this criterion.

(ii) In the case of applications submitted by Indian tribes or IHAs, the requirements of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b), apply. Accordingly, for such applicants, points for this factor shall be assigned based on the extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Maximum points for this criterion 8(i) or (ii), as applicable: 5 points.

(9) *Appreciable reduction of public or Indian housing in the locality.* HUD shall deduct points for an application that would appreciably reduce the public or Indian housing stock in a locality under the jurisdiction of the PHA for the eligible property. In determining the number of public or Indian housing units for this purpose, the number of units proposed for homeownership under the application shall be adjusted by subtracting the number to be replaced through the development of additional public or Indian housing or the rehabilitation of vacant public or Indian housing units, since, in those cases, the public and Indian housing stock is not being reduced. Points shall be deducted in accordance with the following standards:

(i) An application shall have no points deducted from its score if the sale proposed by the application reduces the availability of public or Indian housing by less than 15%.

(ii) An application shall have 5 points deducted from its score if the sale proposed by the application reduces the availability of public or Indian housing by 15% or more but less than 33%.

(iii) An application shall have 10 points deducted from its score if the sale proposed by the application reduces the availability of public or Indian housing by 33% or more but less than 50%.

(iv) An application shall have 12 points deducted from its score if the sale proposed by the application reduces the availability of public or Indian housing by 50% or more but less than 66%.

(v) An application shall have 15 points deducted from its score if the sale proposed by the application reduces the availability of public or Indian housing by 66% or more. Total number of points—100 points.

HUD intends to amend the rating system in the final rule by providing for 5 bonus points if an applicant has been a successful planning grant recipient. This will reward applicants who have already been developing HOPE 1 homeownership programs. Comments are particularly invited on whether HUD should include this change in the final rule.

(b) *Environmental review.* (1) HUD shall conduct an environmental review of the applications.

(2) In conducting the environmental review, HUD shall assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR part 50. Any application that requires an environmental impact statement (generally, those that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment

procedures at 24 CFR part 50, subpart E) shall not be eligible for funding.

(3) As a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures to mitigate environmental impacts are taken. (See, for example, 24 CFR part 51.) Accordingly, HUD may adjust the rating scores of such applications, based on the anticipated time delays or excessive costs in adopting appropriate impact mitigation. For example, the feasibility of the program or the availability of an eligible property may be harmed by any significant delay.

(4) The environmental review often will reveal information not contained in the application that may have relevance to the selection process. HUD shall make further adjustments to the ratings, where appropriate, based on the information revealed during the environmental review.

(c) *Ranking and selection to assure national geographic diversity.* (1) After assigning points to each application under paragraph (a) of this section, HUD shall rank the applications in order. HUD shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership under the program, it may establish a minimum number of points for an application to be selected. HUD shall then select the highest ranking application from each of the 10 HUD Regions. If none of the 10 applications involves an Indian housing development and sufficient funds are available, the highest ranking application involving an Indian housing development shall also be approved.

(2) HUD shall then select the highest ranking remaining applications, without regard to their location.

(3) If two or more applications have the same number of points, the application submitted by an RMC or RC shall be selected. If there is still a tie, the application with the most points for capability shall be selected. If there is still a tie, the application with the most points for efficiency shall be selected.

(4) When the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD shall determine if it is feasible to fund part of the application, with the remainder to be funded "off the top" from possible future funding rounds. If so, that application shall be funded. If not, HUD shall make the same determination for the next highest application or applications. Any remaining amounts shall be used in accordance with paragraphs (f) and (g) of this section.

(5) Procedural errors discovered after initial ratings but before notification of applicants shall be corrected and rankings revised. Procedural errors discovered after notification of approved applicants which, if corrected, would result in approval of an application which was not approved will be corrected by funding the application from any unused amounts or "off the top" from amounts available for implementation grants in the next funding round.

(d) *Reduction in requested grant amounts.* HUD shall approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines the amount requested for one or more eligible activities is unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program.

(e) *Notification of approval or disapproval.* (1) *Notification of applicants.* After completion of the ranking and selection of applications, but no later than six months after the date of submission of the application, HUD shall notify the selected applicants and the applicants that have not been selected, in writing. The amount of the required match may be adjusted when HUD approves an application, to reflect the approved grant amount.

(2) *Conditional approval of section 8 applications.* HUD may approve the HOPE grant application with a statement that the application for the section 8 certificate or housing voucher assistance (or both) is conditionally approved, subject to the availability of appropriations in subsequent fiscal years. This will permit HUD to use section 8 authority for other purposes until it is needed for the HOPE 1 program for nonpurchasing residents or for replacement housing.

(f) *Use of remaining amounts to fund HOPE 1 planning grants.* Any amounts available to fund implementation grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded planning grant applications.

(g) *Insufficient approvable applications.*

If funds remain after HUD approves all approvable applications, including planning grant applications, as provided in this notice, HUD may publish a NOFA inviting planning grant or implementation grant applications, or both, in accordance with this notice, or invite applicants who submitted applications that could not be funded to submit amended planning grant or implementation grant applications in accordance with this notice within a deadline specified in the invitation. Any remaining amounts shall be added to amounts available for subsequent funding rounds.

V. Other Requirements

Section 501. Flood insurance and coastal barriers resources act.

(a) *Flood insurance.* Pursuant to the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) HUD will not approve applications for implementation grants providing financial assistance for acquisition or rehabilitation of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless—

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR Parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) *Coastal barriers resources act.* Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve applications for planning or implementation grants for properties in the Coastal Barrier Resources System.

Section 505. Nondiscrimination and equal opportunity.

(a) *Fair housing requirements.* (1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100, part 109, and part 110; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1 shall apply.

(2) The Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*) applies to tribes when they exercise their powers of self-government. Thus, it is applicable in all cases when an IHA has been established by exercise of such powers. In the case of an IHA established pursuant to State law, the applicability of the Indian Civil Rights Act shall be determined on a case-by-case basis. Developments subject to the Indian Civil Rights Act shall be developed and operated in compliance with its

provisions and all implementing HUD requirements, instead of title VI and the Fair Housing Act and their implementing regulations.

(b) *Discrimination on the basis of age or handicap.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 shall apply.

(c) *Employment opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) shall apply. In addition, Executive Order 11246 (3 CFR 1964–1965 Comp., p. 339) (Equal Employment Opportunity) and implementing regulations at 41 CFR part 60 shall apply.

(2) In the case of Indian tribes and IHAs, the requirements of the Indian Self-Determination and Education Assistance Act shall also apply (see 25 U.S.C. 450e(b); 24 CFR 905.165 (a) and (b) and 905.360); compliance with Executive Order 11246 and 41 CFR part 60 shall be to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act (see 24 CFR 905.170(b) and 905.360).

(d) *Minority and women's business enterprises.* The requirements of Executive Orders 11625, 12432, and 12138 shall apply. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities. In the case of applications submitted by Indian tribes or IHAs, recipients' efforts must be consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b).

(e) *Affirmative fair housing marketing.* The recipient shall adopt a plan for informing and soliciting applications from people who are least likely to apply for the program without special outreach, consistent with the affirmative fair housing marketing requirements. See 24 CFR part 108. This paragraph shall not apply to Indian tribes and IHAs, as described in paragraph (a)(2) of this section.

(f) *Authority for collection of racial, ethnic, and gender data.* HUD requires submission of racial, ethnic, and gender data under this notice pursuant to section 562 of the Housing and Community Development Act of 1987, section 309 of the United States Housing Act of 1937, and section 808(e)(6) of the Fair Housing Act.

Section 510. OMB circulars.

(a) The policies, guidelines, and requirements of OMB Circular Nos. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) apply to the award, acceptance, and use of assistance under the program by governmental entities, and to the remedies for non-compliance, except where inconsistent with the provisions of NAHA, other Federal statutes, or this notice. Circular Nos. A–110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) and A–122 (Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Institutions) apply to the acceptance and use of assistance by private nonprofit organizations, except where inconsistent with the provisions of NAHA, other Federal statutes, or this notice. Recipients are also subject to the audit requirements of OMB Circular A–128 implemented at 24 CFR part 44, and OMB Circular A–133 (Audits of Institutions of Higher Learning and Other Nonprofit Institutions).

(b) Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332 (this is not a toll-free number). There is a limit of two free copies.

Section 515. Drug-free workplace.

Applicants shall certify that they will provide a drug-free workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

Section 520. Anti-lobbying certification.

(a) Section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A government-wide common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) and supplemented by a notice published June 15, 1990 (55 FR 24540). For HUD, this rule is found at 24 CFR part 87. The rule requires applicants for and recipients of assistance exceeding $100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants and recipients if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(b) This section shall not apply to Indian tribes or IHAs. Indian tribes, tribal organizations, or any other Indian organization with respect to expenditures specifically permitted by other Federal law are not covered by the definition of "person" in 24 CFR part 87.

Section 525. Debarred or suspended contractors.

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

Section 530. Conflict of interest.

(a) In addition to the conflict of interest requirements in OMB Circular A–110 [2] and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter, except that a resident of an eligible property may acquire a homeownership interest.

(b) HUD may grant an exception to the exclusion in paragraph (a) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the HOPE program and the effective and efficient administration of the local homeownership program. An exception may be considered only after the applicant or recipient has provided a disclosure of the nature of the conflict,

[2] See section 510(b) concerning the availability of OMB Circulars

accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the local homeownership program that would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(6) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant consideration.

Section 535. Labor standards.

Pursuant to section 12 of the 1937 Act, Davis-Bacon or HUD-determining prevailing wage rates (or both) shall apply to activities under the HOPE 1 program. The wage rate requirements do not apply to individuals who perform services for which they volunteered; do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and are not otherwise employed in the work involved. In addition, if other Federal programs are used in connection with the HOPE 1 homeownership program, labor standards requirements apply to the extent required by such other Federal programs. For example, if the Public and Indian Housing Modernization or CDBG program is used in connection with the program, the labor standards requirements of those programs would apply to the extent required by them.

Section 540. Lead-based paint testing and abatement.

Any residential property assisted under the HOPE program established under this notice constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, recipients shall be responsible for testing and abatement activities.

Section 545. Requirements applicable to religious organizations.

Where the applicant is, or proposes to contract with, a primarily religious organization, or a wholly secular organization established by a primarily religious organization, to provide, manage, or operate housing under the program, the organization shall undertake its responsibilities under the homeownership program in accordance with the following principles:

(a) It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(b) It will not discriminate against any person applying for housing on the basis of religion and will not limit such housing or give preference to persons on the basis of religion;

(c) It will provide no religious instruction or counseling, conduct no religious services or worship (which term does not include voluntary, non-denominational prayer before meetings), engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the homeownership program.

VI. Grant Agreement—Planning and Implementation Grants

Section 601. Grant agreement.

After HUD approves an application for a planning grant or an implementation grant, it shall enter into a grant agreement with the recipient setting forth the amount of the grant and applicable terms and conditions, including sanctions for violation of the agreement. Among other things, the grant agreement shall provide that the recipient agrees:

(a) To carry out the program in accordance with the provisions of this notice, applicable law, the approved application, and all other applicable requirements;

(b) To comply with such other terms and conditions, including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring, and evaluating the program in an affective and efficient manner;

(c) That HUD may withhold, withdraw, or recapture any portion of a grant, terminate the grant agreement, or take other appropriate action authorized under the grant agreement, if HUD determines that the recipient is failing to carry out the approved homeownership program in accordance with the terms of the approved application and this notice, including failure to provide the contribution towards the match.

VII. Implementation of Planning and Implementation Grants

Section 701. Implementation; family contribution; performance standards.

(a) After execution of its planning or implementation grant agreement, the recipient shall carry out the planning grant or implementation grant activities in accordance with its approved application. HUD shall establish procedures governing the drawdown of funds under grant agreements.

(b) The total monthly amount payable by a family may not be less than the amount determined in accordance with 24 CFR part 905 or 913, as appropriate, if operating assistance under the program is being provided for the family. The amount payable by a family shall be adjusted at least annually in accordance with the requirements of those regulations so long as operating assistance is being provided under the program for the family.

(c) HUD intends to establish performance criteria in the final rule for the program and invites comments on what the standards should be.

Section 705. Resident selection procedures during rental phase (if any).

During the interim period, if any, when the property continues to be operated and managed as rental housing, the recipient shall utilize written resident selection policies and criteria that are consistent with the public or Indian housing program and approved by HUD as consistent with the purpose of improving housing opportunities for low-income families. The policies shall provide that the recipient (or another appropriate entity) (a) notify any rejected applicant in writing of the grounds for rejection; (b) comply with applicable affirmative fair housing marketing requirements; (c) specify the basis for resident selection, which shall give a preference to applicants interested in becoming homeowners who have completed participation in an economic self-sufficiency program (see section

415(b)(5)(i)(B)) and other applicants interested in becoming homeowners and shall provide for a waiting list; and (d) verify family income of applicants and check the credit and rental history of applicants. The resident selection policies and criteria may not provide for the recipient (or other entity) to take into account whether an applicant receives public assistance or receives Federal, State, or local housing assistance, but may take into account such assistance, and all other income and other resources, in determining the amount a family will pay under the program. The recipient may adopt the public housing or Indian housing occupancy handbook, with any appropriate modifications (including, at least, establishing a priority for applicants interested in homeownership).

Section 710. Social security numbers.

As a condition of eligibility for homeownership under this notice—

(a) At the time a family applies for homeownership, the recipient (or other appropriate entity) shall require the family to meet the requirements for the disclosure and verification of social security numbers, as provided by 24 CFR part 750; and

(b) The recipient (or other appropriate entity) shall require the family to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760.

Section 715. Timely homeownership.

(a) *Deadline for transfer.* Recipients shall transfer ownership interests in the property to eligible families within a reasonable period of time.

(b) *Definition of reasonable period of time.* (1) Where applicable, the PHA/IHA shall transfer the property to the recipient (or other entity) within one year of the effective date the implementation grant agreement. Where the development contains 50 units or fewer, transfer of ownership interests to eligible families within two years of the date the entity that acquires the development (or the effective date of the implementation grant agreement where the PHA/IHA is that entity) shall be considered reasonable. Where the development contains more than 50 units, transfer of ownership interests to eligible families within five years shall be considered reasonable.

(2) An applicant may propose in its application a longer period for transferring ownership interests to eligible families, and submit a justification. After application approval, HUD may approve a request for a longer deadline for transfer to eligible families, where it determines that unanticipated, extraordinary circumstances exist. Subject to the availability of funding, HUD may consider making additional section 8 assistance available to residents in the property where necessary to maintain its feasibility during the time the causes for the delay are being corrected. This could become necessary if residents who intended to purchase change their minds and need assistance to afford the rents in the property.

Section 720. Restrictions on resale by initial homeowners.

(a) *In general.* (1) *Transfer Permitted*—(i) A homeowner may transfer the homeowner's ownership interest in the unit, subject only to the right to purchase under paragraph (a)(2) of this section, the requirement for the purchaser to execute a promissory note, if required under paragraph (b) of this section, and the limitation on the amount of sales proceeds a family may retain upon sale within the first six years, as required under paragraph (c) of this section. See paragraphs (b) and (c) of this section for the rules for determining the amount homeowners may retain from the sales proceeds.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, an applicant may propose in its application, and HUD may approve based on a review of the individual circumstances, additional reasonable restrictions on the resale of units under the program.

(2) *Right to purchase.*

(i) Where an RMC, RC, or cooperative has jurisdiction over the unit, it shall have the prior right to purchase the ownership interest in the unit from the initial homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. The RMC, RC, or cooperative association shall have 10 days after receiving notice of the firm contract to decide whether to exercise its right and 60 additional days to complete closing of the purchase.

(ii) If no RMC, RC, or cooperative has jurisdiction over the unit or no such entity elects to purchase from the initial homeowner and if the prospective buyer is not a low-income family, a PHA/IHA with jurisdiction for the area in which the unit is located or the recipient, as specified in writing at the time the family acquires ownership interest in the unit, shall have the prior right to purchase the ownership interest in the unit for the amount specified in the firm contract. The PHA/IHA or recipient shall have 10 days after receiving notice of the firm contract to decide whether to exercise its right and 60 additional days to complete closing of the purchase.

(iii) Where an RMC, RC, cooperative, PHA/IHA, or recipient exercises a right to purchase, it shall resell the unit to an eligible family promptly. If the PHA/IHA exercises a right to purchase shares representing a unit in a cooperative, because the cooperative did not have sufficient money to do so, the PHA/IHA shall give the cooperative another chance to purchase the shares before selling it to an eligible family.

(b) *Promissory note.* (1)(i) At closing, the initial homeowner shall execute a nonamortizing, nonrecourse, non-interest-bearing promissory note, in a form acceptable to HUD, equal to the difference, if any, between the fair market value of the unit and the purchase price, payable to the PHA/IHA, recipient, or other entity designated in the approved homeownership plan, together with a mortgage securing the obligation of the note. In determining the amount of the promissory note and for that purpose only, the purchase price shall be adjusted by deducting all substantial amounts of assistance that would result in an undue profit to the family if it were to sell the property at the beginning of the 7th year of homeownership. (See paragraph (c) of this section for restrictions during the first six years.) For example, if the family received down payment assistance equal to 10 percent or more of the fair market value of the unit, a promissory note shall be required.

(ii)(A) With respect to a sale by an initial homeowner, the note shall require payment upon sale by the initial homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, paying any other amounts due in connection with the sale (such as closing costs and transfer taxes), and paying the family the amount of its equity in the property, computed in accordance with paragraph (c) of this section.

(B) With respect to a sale by an initial homeowner after the first six years after acquisition, through the 20th year, the amount payable under the note shall be reduced by 1/15 of the original principal amount of the note for each full month of ownership by the family after the end of the sixth year. The homeowner may retain all other proceeds of the sale.

(C) For example, if the family sells at the end of the 13th year of homeownership (at the half-way point

between the end of the sixth year and the end of the 20th year of ownership), 6/10ths (or one-half) of the note would be forgiven, and only half of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the initial homeowner retains ownership for 20 or more years, the entire amount of the note would be forgiven.

(2)(i) Where a subsequent purchaser during the 20-year period, measured by the term of the initial promissory note, purchases the property for less than the current fair market value, the purchaser shall also execute at closing such a promissory note and mortgage, for the amount of the discount (but no more than the amount payable at the time of the sale on the promissory note by the seller). The term of the promissory note shall be the period remaining of the original 20-year period. The note shall require payment upon sale by the subsequent homeowner, to the extent proceeds of the sale remain after covering costs of the sale, paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, and paying any other amounts due in connection with the sale. The amount payable on the note shall be reduced by a percentage of the original principal amount of the note for each full month of ownership by the subsequent homeowner. The percentage shall be computed by determining the percentage of the term of the promissory note the homeowner has owned the property. The remainder may be retained by the subsequent homeowner selling the property.

(ii) For example, if the subsequent homeowner acquires the property from an initial homeowner at the end of year 4, there are 192 months (16 years × 12) remaining in the 20-year period. The term of the promissory note is 16 years. If the subsequent homeowner sells at the end of year 10, having owned the property for 72 months (6 years × 12), 72/192 (37.5 percent) of the note would be forgiven, and 62.5 percent of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the subsequent homeowner retains ownership to the end of the initial 20-year period (for 16 years, in the example), the entire amount of the note would be forgiven.

(c) *Limitation on equity interest an initial homeowner may retain from sale during first six years.* (1) The HOPE program is designed to assure that an initial or subsequent homeowner does not receive any undue profit from acquiring a unit under the program and that, to the extent the sales price is sufficient, an initial homeowner recovers the equity interest in the property. With respect to any sale by an initial homeowner during the first six years after acquisition, the family may retain only the amount computed under paragraph (c) of this section. Any excess shall be distributed as provided in paragraph (d) of this section. The amount of equity an initial homeowner has in the property is determined by computing the sum of the following—

(i) The contribution to equity paid by the family (such as any down payment (in the form of cash or the value of sweat equity) and any amount paid towards principal on a mortgage loan during the period of ownership);

(ii) The value of any improvements installed at the expense of the family during the family's tensure as owner (including improvements made through sweat equity), as determined by the recipient or other entity specified in the approved application based on evidence of amounts spent on the improvements, including the cost of material and labor; and

(iii) The appreciated value, determined by applying the Consumer Price Index (Urban Consumers) against the contribution to equity under paragraphs (c)(1) (i) and (ii) of this section.

(2) The recipient (or other entity) may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) Amounts that count towards a family's equity may not also count towards the match.

(d) *Use of amounts a family may not retain.* Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under paragraphs (a)(1)(ii), (b), and (c) of this section shall be paid to the entity that transferred ownership interests in units to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities (including assistance for additional homeowners who are otherwise unable to cover the costs of homeownership), and other activities approved by HUD in the approved homeownership program or later. The remaining 50 percent shall be collected by the recipient and returned to HUD within 15 days of the sale for use under the HOPE 1 program, subject to any limitations contained in appropriations Acts.

Section 725. Use of proceeds from sales to eligible families.

The entity that transfers ownership interests in units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by HUD, either as part of the approved application or later on request.

Section 730. Third party rights.

The requirements under this notice regarding housing quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the recipient with respect to actions involving rehabilitation, and against purchasers of eligible property under the HOPE program or their successors in interest (to the extent such requirements apply to purchasers and their successors in interest) with respect to other actions by affected low-income families, RMCs, RCs, PHAs/IHAs, and any agency, corporation, or authority of the United States government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

Section 735. Displacement prohibited; protection of nonpurchasing residents.

(a) *Displacement prohibited.* No person may be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude terminations of tenancy for violation of the terms of occupancy of the unit. In addition to any applicable sanctions under the grant agreement, a violation of paragraph (a) of this section may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24.

(b) *Temporary relocation.* The recipient shall provide each resident of an eligible property who is required to relocate temporarily to permit work to be carried out, with suitable, decent,

safe, and sanitary housing for the temporary period and shall reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the costs of moving to and from the temporarily occupied housing and any increase in monthly costs of rent and utilities.

(c) *Relocation assistance for residents who elect to move.* The recipient shall provide each nonpurchasing resident who elects to move with relocation assistance in accordance with the approved homeownership program.

(1) The program shall provide, at least, the following assistance:

(i) Advisory services including timely information, counseling (including the provision of information on a resident's rights under the Fair Housing Act), and referrals to suitable, affordable, decent, safe, and sanitary alternative housing;

(ii) Payment for actual, reasonable moving expenses; and

(iii) Relocation housing assistance sufficient to permit relocation to suitable, affordable, decent, safe, and sanitary housing. This requirement is met if a family receives assistance as provided in paragraph (c)(3) of this section. For other families, this requirement is met if the cost of the housing to the family does not exceed the higher of 30 percent of adjusted family income or the amount paid by the family for the unit being vacated, and the housing is otherwise suitable and decent, safe, and sanitary.

(2) If a resident residing in an eligible property on the date HUD approved an application for an implementation grant decides not to purchase a unit, or is not qualified to do so under the terms of the approved homeownership program, the recipient shall, during the term of any operating assistance under the implementation grant, permit each otherwise qualified resident to elect to continue to reside in the project at rents that do not exceed levels determined under 24 CFR part 913 or, for Indian housing developments, part 905.

(3) If an otherwise qualified resident chooses to move (at any time during the term of the operating assistance contract), the PHA/IHA shall, if possible, offer the resident (i) a unit in another public or Indian housing development, or (ii) a section 8 certificate or voucher for use in other housing, without regard to otherwise applicable Federal or PHA/IHA preferences.

(d) *Other rights.* Tenants residing in a unit in a public or Indian housing development transferred under this notice shall have all rights provided to tenants of public or Indian housing under the 1937 Act.

(e) *Notice of relocation assistance.* As soon as feasible, each recipient shall give each resident of an eligible property a written description of the applicable provisions of this section.

VIII. Records, Reports, and Audit of Recipients

Section 801. Recordkeeping

(a) *General records.* Each recipient shall keep records that will facilitate an effective audit to determine compliance with program requirements and that fully disclose—

(1) The amount and disposition by the recipient of the planning and implementation grants received under this notice, including sufficient records that document the reasonableness and necessity of each expenditure;

(2) The amount and disposition of proceeds from financing obtained in connection with the program, sales to eligible families, and any funds recaptured upon sale by the homeowner;

(3) The total cost of the homeownership program;

(4) The amount and nature of any other assistance, including cash, property, services, or other items contributed as a condition of receiving an implementation grant;

(5) The cost or other value of all in-kind contributions towards the match required by section 410; and

(6) Any other proceeds received for, or otherwise used in connection with, the homeownership program.

(b) *Family size and income and racial, ethnic, and gender data.* The recipient shall maintain records on the family size and income, and racial, ethnic, and gender characteristics, of families who apply for homeownership and families who become homeowners.

(c) *Cooperative and condominium agreements.* The recipient shall maintain a copy of any condominium and cooperative association agreements for properties under the approved homeownership program.

(d) *Amounts available for reuse.* The recipient shall keep and make available to HUD all records necessary to calculate accurately payments due to HUD under section 720(d) and section 725.

(Approved by the Office of Management and Budget under control number 2577–0132.)

Section 805. Reports

The recipient shall submit reports required by HUD.

(Approved by the Office of Management and Budget under control number 2577–0132.)

Section 810. Access by HUD and the Comptroller General.

For the purpose of audit, examination, monitoring, and evaluation each recipient shall give HUD (including any duly authorized representatives and the Inspector General) and the Comptroller General of the United States (and any duly authorized representatives) access to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this notice, including all records required to be kept by section 801.

IX. Waiver Authority

Section 901. Waiver authority.

Upon determination of good cause, the Secretary of Housing and Urban Development may waive any provision of this notice, not otherwise required by law, except provisions that establish deadlines for receipt of any modifications to applications. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds. This waiver authority may be exercised by the Secretary or the Assistant Secretary for Public and Indian Housing. Where another HUD program regulation is involved, the Secretary or the appropriate Assistant Secretary may waive the regulation. The Secretary periodically will publish notice of granted waivers in the **Federal Register**. HUD may change submission deadlines established by this notice by subsequent notice published in the **Federal Register**.

Dated: December 20, 1991.

Jack Kemp,

Secretary.

[FR Doc. 92–590 Filed 1–13–92; 8:45 am]

BILLING CODE 4210-33-M

VOL 57 ISS 9 JA 14 1992 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-92-3362; FR-3190-N-01]

Fund Availability for HOPE for Public and Indian Housing Homeownership Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of fund availability for FY 1992.

SUMMARY: This NOFA announces the availability of $161 million in funding for mini planning grants, full planning grants and implementation grants for the HOPE for Public and Indian Housing Homeownership Program (HOPE 1). (HOPE is an acronym for Homeownership and Opportunity for People Everywhere.) In the body of this document is information concerning eligible applicants, the funding available for mini planning grants, full planning grants, and implementation grants, the application packages, and their processing. Elsewhere in this issue of the **Federal Register** are the Notices of Fund Availability for HOPE 2, the HOPE for Homeownership of Multifamily Units Program, and HOPE 3, the Hope for Homeownership of Single Family Homes Program. Also elsewhere in this issue of the **Federal Register** is the Program Guidelines which revises the HOPE 1 Notice of Program Guidelines published in the **Federal Register** on February 4, 1991. These revised guidelines contain detailed programmatic information and the requirements governing the FY 1992 HOPE 1 Program. Similar revised Guidelines for HOPE 2 and 3 also appear in this issue. It is critical that applicants for HOPE 1 planning or implementation grants read and comply with the requirements of the revised Program Guidelines. Many of the requirements of the HOPE 1 program are not listed in this NOFA, and failure to follow the guidelines will result in applications being rejected by HUD. A copy of the program guidelines will be included in the application packages.

DATES: Applications for mini planning grants and planning grants for the HOPE 1 Program must be received in the appropriate HUD Field Office by close of business for that office on April 17 1992. Applications for implementation grants for the HOPE 1 Program must be received in the appropriate HUD Field Office by close of business for that office on May 15, 1992. Applications may also be hand delivered to the appropriate HUD Field Office by the close of business for that office on or before the deadline date Applications sent by facsimile will not be accepted. HUD will not waive these deadlines for any reason. No applications may be submitted prior to 30 calendar days before the applicable deadline. Applications submitted more than 30 calendar days before the deadline will be returned to applicants.

ADDRESSES: An original and one copy of the completed application must be submitted to the HUD Field Office having jurisdiction over the locality in which the proposed project is located. The applications should be addressed to the Attention of: Public Housing Division Director or Office of Indian Programs Director A list of HUD's Field Offices appears at the end of this NOFA. In States with more than one Field Office, applicants must submit their applications to the correct Field Office. Applicants are advised to contact their local office to confirm the appropriate place and time of close of business for submission. Failure to submit an application to the correct Field Office by the due date will result in disqualification of the application. In addition, one copy of the application should be submitted to the following address: Department of Housing and Urban Development, Office of Public and Indian Housing, Office of Resident Initiatives, room 4112, 451 Seventh Street, SW., Washington, DC 20410, Attention: Gary Van Buskirk. While copies must be submitted both to the HUD Field and Central Offices, the date and time of receipt in the Field Office will be used to determine whether the application has been submitted on time.

FOR FURTHER INFORMATION CONTACT: Gary Van Buskirk, Office of Resident Initiatives, Department of Housing and Urban Development, room 4112, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-4233. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned on OMB control number 2577—0132.

I. Purpose and Substantive Description

A. Authority

The funding made available under this NOFA is authorized by title III of the U.S. Housing Act of 1937, which was added by section 411 of the National Affordable Housing Act (Pub. L. 101-625 November 28, 1990), which created the HOPE 1 Program.

B. Allocation Amounts

The purpose of this NOFA is to announce the availability of a total of $161 million in funds, appropriated by the Department's appropriations Act for fiscal year 1992 (Pub. L. 102-139. October 28, 1991), for grants as follows:

- $6 million for mini planning grants
- $18 million for full planning grants
- $137 million for implementation grants

C. Mini Planning Grant Cap

The amount of a mini planning grant may not exceed $100,000, except that HUD may, for good cause, approve a grant for a higher amount, based on justification submitted by the applicant demonstrating that the costs are reasonable. Applications for more than $100,000 for projects of more than 250 units do not need to demonstrate good cause if the additional amount requested is not more than $400 for each unit over 250.

D. Planning Grant Cap

The amount of a planning grant may not exceed $200,000, except that HUD may, for good cause, approve a grant in a higher amount, based on justification submitted by the applicant demonstrating that the costs are reasonable Applications for more than $200,000 for projects of more than 250 units do not need to demonstrate good cause if the additional amount requested is not more than $800 for each unit over 250.

E. Implementation Grant Cap

The overall amount of an implementation grant is not capped. There are specific cost caps on eligible activities that are contained in the Program Guidelines and application package.

F. Matching Requirements

Implementation grants require a local match from non-Federal sources. Planning grants do not require a match.

G Eligible Applicants

For mini planning grants, full planning grants, and implementation grants, an eligible applicant is one of the followmg

entities that represents the residents of the eligible property: An RMC (resident management corporation; an RC (resident council); a cooperative association; a public or private nonprofit organization; a public body, including an agency or instrumentality thereof; a PHA (public housing agency); or an IHA (Indian housing authority). An applicant may not submit an application for a planning grant and an implementation grant for the same property in response to any one NOFA.

H. Certification of Consistency with the Comprehensive Housing Affordability Strategy

Applications for HOPE grants must be accompanied by a certification of consistency with an approved Comprehensive Housing Affordability Strategy (CHAS) or abbreviated housing strategy from the public official responsible for submitting the CHAS, or his or her authorized representative. State and local government applicants must have submitted a full CHAS or an abbreviated strategy, and must provide a certification of consistency at the time of application. All other applicants (including private nonprofit organizations and public housing agencies) must obtain the certification from the lowest level of government having either a full CHAS or an abbreviated strategy covering the jurisdiction in which the program (project) is to be located. Where the program will be carried out in more than one unit of general local government with a CHAS, a certification for each shall be included. Indian Tribes and Indian Housing Authorities are not subject to the requirements for preparation of a CHAS or submission of a certification of consistency with the CHAS.

For an application for a HOPE grant to be consistent with a CHAS: (1) Homeownership for low-income families must be identified as a priority in the narrative and (for local jurisdictions only) Table 3 (Priorities for Assistance) of Section II (Strategy) of the CHAS; (2) the HOPE program for which funding is sought should be mentioned (whether by name or by program type) in the narrative of section III (Annual Plan) of the CHAS as among the Federal resources to be used in FY 1992; and (3) a specific dollar amount for the HOPE program applied for must be entered in Column A of Table 4/5A (Anticipated Resources and Plan for Investment) of Section III.

Note: Since Table 4/5A for States does not include information on applications by entities other than the State itself, a State may certify consistency for a HOPE application from a private nonprofit or a PHA even if there is no dollar amount entered in Column A of the State's Table 4/5A.

If a jurisdiction's strategy identifies low-income homeownership as a priority in the section II narrative, but does not mention the HOPE program in the section III narrative or include a specific dollar amount for the program in Column A of table 4/5A, the jurisdiction may amend its strategy by correcting its section III narrative and table 4/5A to be consistent with its strategy without doing a substantial amendment, which requires citizen participation. However, if there is no dollar amount entered in Column A of table 4/5A and there is also no priority for low-income homeownership identified in the section II narrative, a substantial amendment, requiring citizens participation, would be needed to modify the CHAS to allow the jurisdiction to provide a certification of consistency.

All CHASs or abbreviated strategies, revised tables and narratives for nonsubstantial amendments, or substantial amendments, as well as the required certifications of consistency, must be submitted to HUD no later than at the time the application for HOPE funding is submitted.

To assist applicants in meeting the certification requirement where a CHAS, abbreviated strategy, or amendment has not yet been approved, HUD will accept applications that are accompanied by a certification that the application is consistent with the housing strategy submitted with, or as amended by a submission with, the application, and that the applicant will follow the strategy so submitted or amended when it is approved by HUD.

I. Use of Set-Asides to Fund Other Grants

Any amounts set-aside to fund applications for mini planning grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded applications for full planning grants. Any amounts set aside to fund applications for full planning grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded applications for mini planning grants. Any amounts available to fund planning grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded implementation grant applications. Any amounts available to fund implementation grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded planning grant applications.

II. Mini Planning Grant and Planning Grant Applications

A. Application Process

Application packages for mini planning grants and full planning grants, including instructions for preparing applications, are available from the appropriate HUD Field Office or Office of Indian Programs (see the list of HUD Offices at the end of this NOFA) or by calling HUD's Resident Initiatives Clearinghouse, telephone 1-800-955-2232. Additional information regarding the submission of applications is included in the package.

Only timely applications submitted to the correct Field Office will be considered for funding. Applications (original and one copy) must be physically received by the deadline at the appropriate HUD Field Office or in the case of IHAs, in the appropriate HUD Office of Indian Programs, with jurisdiction over the applicant, Attention: Public Housing Division Director or Office of Indian Programs Director. In addition, one copy of the application must be submitted to Headquarters, as described in the paragraph above entitled "ADDRESSES." It is not sufficient for an application to bear a postmark date within the deadline. Applications submitted by facsimile will not be accepted.

B. Application Submission Requirements

Complete application submission requirements are contained in the application package. Applicants are advised that they must consult the amended Notice of Program Guidelines published elsewhere in today's **Federal Register** in order to prepare an application. Many of the requirements of the HOPE 1 program are not repeated in this NOFA, such as certifications, eligible activities, and cost limitations. Failure to follow the guidelines will result in applications being rejected by HUD. All potential applicants are urged to contact their HUD Field Office for information and guidance about program requirements and preparation of an application and for the time and place of any workshops and/or training sessions to be held within the Field Office's jurisdiction.

C. Selection Process

The selection process for mini planning grants and full planning grants under the HOPE 1 Program consists of a

screening and then, for those applications meeting all screening requirements, rating and ranking under five substantive selection criteria. Field Offices and Regional offices will review and rate the applications. HUD Headquarters will rank and select applications.

D Screening Process/Corrections to Deficient Applications

1 HUD shall screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the program, because that would not be fair to other applicants.

2. The notification shall require an applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close-of business on the 14th calendar day after the date of the written notification to the applicant to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that are not complete, are internally inconsistent, or do not contain correct computations, after the opportunity, if any, to submit additional or corrected material, or that fail to comply with other program requirements.

E. Selection Criteria

Rating and ranking will be done using the following five substantive selection criteria:

1. Capability of the applicant—up to 40 points.
2. Resident and homebuyer interest and marketability—up to 15 points.
3. Suitability of the property—up to 15 points.
4. Local support—up to 15 points.
5. Efficiency—up to 15 points.

A complete description of the procedure for rating applications and of the factors considered under each selection criterion may be found in section 315 of the amended Notice of Program Guidelines.

F Ranking and Selection

A complete description of the procedures for selection may be found in section 315 of the amended Notice of Program Guidelines.

III. Implementation Grant Applications

A. Application Process

Application packages for implementation grants, including instructions for preparing applications, are available from the appropriate HUD Field Office or the Office of Indian Programs (see the list of HUD Offices at the end of this NOFA) or by calling HUD's Resident Initiatives Clearinghouse, telephone 1–800–955–2232. Additional information regarding the submission of applications is included in the package.

Only timely applications received in the appropriate Field Office will be considered for funding. Applications (original and one copy) must be physically received by the deadline at the appropriate HUD Field Office or, in the case of IHAs, in the appropriate HUD Office of Indian Programs, with jurisdiction over the applicant, Attention: Public Housing Division Director. In addition, one copy of the application must be submitted to Headquarters, as described in the paragraph above entitled "ADDRESSES." It is not sufficient for an application to bear a postmark date within the deadline. Applications submitted by facsimile will not be accepted.

B. Application Submission Requirements

Complete application submission requirements are contained in the application package. Applicants are advised that they must consult the amended Notice of Program Guidelines in order to prepare an application. Many of the requirements of the HOPE 1 program are not repeated in this NOFA, such as certifications, eligible activities, and cost limitations. Failure to follow the guidelines will result in applications being rejected by HUD All potential applicants are urged to contact their HUD Field Office for information and guidance about program requirements and preparation of an application and for the time and place of any workshops and/or training sessions to be held within the Field Office s jurisdiction.

C. Selection Process

The selection process for implementation grants under the HOPE 1 Program consists of a screening, a threshold review, and then, for those applications meeting all threshold requirements, rating and ranking under nine substantive selection criteria. HUD Headquarters, with assistance from Field Office and Regional Office staff, will rate and rank the applications and make the selections.

D Screening Process/Corrections to Deficient Applications

1. HUD shall screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the program, because that would not be fair to other applicants.

2. The notification shall require an applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close-of-business on the 14th calendar day after the date of the written notification to the applicant to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that are not complete, are internally inconsistent, or do not contain correct computations, after the opportunity, if any, to submit additional or corrected material, or that fail to comply with other program requirements.

E. Threshold Review

HUD shall review each application that qualifies for additional consideration because it passed the screening process to determine if it meets certain threshold criteria. These threshold criteria are contained in section 420 of the amended Notice of Program Guidelines.

F Selection Criteria

All applications which pass the threshold review will be rated and ranked, using the following nine substantive selection criteria:

1. Capability of the applicant—up to 30 points.
2. Local support—up to 5 points.
3. Resident and homebuyer interest and marketability—up to 10 points.
4. Quality and feasibility of the program—up to 25 points.
5. Relationship to the Comprehensive Housing Affordability Strategy—up to 5 points.
6. Efficient use of the grant—up to 10 points.
7 Suitability of the property—up to 10 points.
8. Minority Business Enterprise/ Women-owned business enterprise—up to 5 points.

9. Appreciable reduction of public or Indian housing in the locality—deduction of up to 15 points.

A complete description of the rating of applications and of the factors considered under each selection criterion may be found in section 425 of the amended Notice of Program Guidelines.

G. Ranking and Selection

After assigning points under the selection criteria, HUD shall rank the implementation grant applications. HUD shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership, it may establish a minimum number of points for applications to qualify to be selected for funding. A complete description of the procedure for selection is contained in section 425 of the amended Notice of Program Guidelines.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Federalism Executive Order

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the provisions in this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This NOFA does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

C. Family Executive Order

The General Counsel, as the designated official under Executive Order 12606, The Family, has also determined that some of the policies in this NOFA will have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

D. Section 102 of the HUD Reform Act

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Since HUD makes assistance under this program available on a competitive basis, 24 CFR part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14 (b)) HUD will provide further guidance on how this material may be accessed in a later notice published in the **Federal Register**.

—Publish a notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

Subpart C of 24 CFR part 12 requires that applicants seeking assistance from HUD for a specific project or activity make the disclosures required under § 12.32. An implementing notice for part 12, subpart C, is being published in the **Federal Register**. Applicants shall use the form and guidance contained in that notice to make the required disclosures.

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published May 13, 1991 (56 FR 22088) and became effective June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. the requirements of the rule continue to apply until the announcement of selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.)

F. Section 112 of the HUD Reform Act

Section 112 of the HUD Reform Act amended the Department of Housing and Development Act by adding section 13, which contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second prohibits the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of the assistance.

Section 13 was implemented by final rule (24 CFR part 86) published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of 24 CFR part 86.

Any questions concerning the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 24410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for application for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients

of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

HUD Field Offices

Alabama

Birmingham Office, Beacon Ridge Tower, 600 Beacon Pkwy. West, suite 300, Birmingham, Al 35209; (205) 731–1617, (TDD) (205) 731–1617.

Alaska

Anchorage Office, Federal Bldg., 222 W. 8th Ave., No. 64, Anchorage, AK 99513; (907) 271–4170.

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Florida

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Illinois

Chicago Regional Office, 77 W. Jackson Blvd., 26th floor, Chicago, IL 60604–3507; (312) 353–5680.

Indiana

Indianapolis Office, 151 N. Delaware St., Indianapolis, IN 46204; (317) 226–6303.

Iowa

Des Moines Office, Fed. Bldg., 210 Walnut St., room 239, Des Moines, IA 50309; (515) 284–4512, (TDD) (515) 284–4706.

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Kansas City Regional Office, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101; (913) 236–2162, (TDD) (913) 236–3972.

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Grand Rapids Office, 2922 Fuller Ave., NE, Grand Rapids, MI 49505; (616) 456–2100.

Minnesota

Minneapolis-St. Paul Office, 220 2nd St., South, Minneapolis, MN 55401; (612) 370–3000.

Mississippi

Jackson Office, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., room 910, Jackson, MS 39269; (601) 965–4702, (TDD) (601) 965–4171.

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(Western)

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(Las Vegas, Clark.Cnty.) Phoenix Office, 400 N. 5th St., suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4434, (TDD) (602) 379–4461.

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Newark Office, Military Park Bldg., 60 Park Pl., Newark, NJ 07102; (201) 877–1662, (TDD) (201) 877–0649.

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Columbus Office, 200 N. High St., Columbus, OH 43215; (614) 469–5737.

Oklahoma

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South Dakota

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Arizona

Office of Indian Programs, Phoenix Office, 400 N. 5th St., suite 1650, 2 Arizona Center, Phoenix, AZ 85004; (602) 261–4150.

Colorado

Office of Indian Programs, Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver CO 80202; (303) 844–2963.

Illinois

Office of Indian Programs, Chicago Regional Office, 77 W. Jackson Blvd., Chicago, IL 60604–3507; (312) 886–4532, or (800) 735–3239.

Oklahoma

Indian Programs Division, Oklahoma City Office, Murrah Fed. Bldg., 200 NW. 5th St., Oklahoma City, OK 73102; (405) 736–4101.

Washington

Office of Indian Programs, Seattle Regional Office, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101; (206) 553–4633.

Dated: December 20, 1991.

Jack Kemp,

Secretary.

[FR Doc. 92–591 Filed 1–13–92; 8:45 am]

BILLING CODE 4210–33–M

VOL
57

ISS
9

JA
14

1992

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federal register

Tuesday
January 14, 1992

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Subtitle A

HOPE for Homeownership of Multifamily Units Program; Program Guidelines and Notice of Fund Availability

VOL 57 ISS 9 JA 14 1992 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Subtitle A

[Docket No. N-92-3198; FR-2967-N-03]

HOPE for Homeownership of Multifamily Units Program; Program Guidelines

AGENCY: Office of the Secretary, HUD.

ACTION: Program guidelines.

SUMMARY: This document revises HUD's guidelines published on February 4, 1991 (56 FR 4436), that govern the operation of the HOPE for Homeownership of Multifamily Units program (HOPE 2) that provide for homeownership by low-income families. The amendments take effect immediately. Elsewhere in today's issue of the **Federal Register**, HUD is publishing A Notice of Fund Availability for the HOPE 2 program and NOFAs for, and notices amending, the other two HOPE Grant programs:

HOPE for Public and Indian Housing Homeownership (HOPE 1); and

HOPE for Homeownership of Single Family Homes (HOPE 3).

The HOPE Grant programs are authorized by title IV of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101-625, enacted November 28, 1990). HOPE is an acronym for Homeownership and Opportunity for People Everywhere.

The purpose of the HOPE Grant programs is to provide homeownership opportunities for low-income families and individuals. Important to the success of the HOPE 2 program will be the development of resident-based organizations that will have central responsibilities for the programs.

The authorizing legislation provides for implementation by publication of a notice for immediate effect. Comments on the notice published on February 4, 1991 were due September 30. HUD invites further public comment on this notice of program guidelines, including the amendments, and will consider the comments, together with the comments received by September 30, in developing the final rule for the program. As required by the statute, HUD will publish the final rule within eight months from today.

DATES: Effective date: January 14, 1992.

Comment due date: April 15, 1992.

The amendments to these Guidelines contain no additional information collection requirements.

ADDRESSES: Interested persons are invited to submit comments regarding these guidelines to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Housing, 202-708-4542. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. Department of Housing and Urban Development, room 6130, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in these amended guidelines have been approved through April 30, 1992, by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2502-0451. Information on the estimated public reporting burden is provided in this document under the heading "Other Matters." Comments regarding burden estimates or any other aspects of the collection requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3001, Washington, DC 20503, Attention: Jenny Main, Desk Officer for HUD.

Summary of Amendments to HOPE 2 Guidelines

In addition to various clarifications, technical corrections, and a few reorganizations, HUD has made the following significant changes to the guidelines published on February 4, 1991. Potential applicants should read the entire document thoroughly.

Part I. Purpose; Summary; and Relationship to Other Programs

In section 110(a), Waiver of Section 8 Regulations, the paragraph describing anticipated amendments to 24 CFR part 791 has been deleted, since the amendments to part 791 were published at 56 FR 9828 on March 7, 1991. Part 791 governs the allocation of housing assistance and, as amended, permits HUD to set aside section 8 authority for use in connection with the HOPE programs.

Part II. Definitions

The definition of Applicant has been amended to add mutual housing associations as eligible applicants. Congress added this category of applicants for HOPE 2 in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102-139, October 28, 1991). The definition of applicant has also been clarified by noting that a cooperative association may be an eligible applicant only for property it proposes to acquire and transfer to eligible families.

The definition of Census Region has been deleted since the term is no longer used. HUD has decided to assure compliance with the requirement for geographic diversity by assuring a certain level of funding in each of the 10 HUD Regions, rather than in each of the four Census Regions.

The definition of Homeownership Program has been amended to require that at least 80 percent of the units being purchased be purchased by low-income families and that no purchasing family have an income above 95 percent of the area median. This change will avoid the possibility that a property predominantly occupied by non-low-income families will be selected under the program. The practical effect of this revision is that developments that have families above 95 percent of the area median income would not be eligible under the program unless these families were willing to move or remain in the development as renters.

A definition of Mutual Housing Association has been added, in light of the addition of these associations as eligible applicants.

The definition of Ownership Interest has been amended by noting that mutual housing is eligible only to the extent it provides for the transfer of ownership interests to eligible families. Some forms of mutual housing do not give occupants ownerships rights, such as an equity stake in the property or the right to sell the property (or shares representing the property, as in cooperatives).

The definition of Private Nonprofit Organization has been amended to require that it be a tax exempt entity under section 501(c) of the Internal Revenue Code of 1986. RMCs and RCs must be nonprofit organizations, but need not meet the definition of private nonprofit organizations, and, therefore, need not be tax exempt under section 501(c). This will avoid imposing an undue administrative burden on resident entities.

Part III. Planning Grants

Under Section 301(a), Planning Grants, HUD will comply with the requirement for national geographic diversity by selecting at least three planning grants for each of the 10 HUD Regions (assuming sufficient approvable applications), rather than the four Census regions. HUD has determined that sufficient funding has been appropriated to permit wider geographic diversity than provided in the earlier notice.

Under Section 301(c), Grants Cap, HUD is providing a "safe harbor" where an applicant requests a planning grant of more than $200,000 ($100,000 for a mini planning grant). No additional demonstration of good cause is required for applications representing more than 250 units which request more than the dollar cap, if the additional amount requested is not more than $800 for each unit over 250 for a planning grant or not more than $400 for each unit over 250 for a mini planning grant. If the applicant submits an application exceeding these unit caps, the application must contain a justification demonstrating that the costs are reasonable.

Section 305, Eligible Planning Grant Activities, has been clarified to provide that only costs incurred on or after the effective date of the grant agreement for the planning grant qualify for funding under the program.

Section 305(g), Security Plans, has been amended to give examples of activities that are eligible under the heading "Security Plans." This activity may cover assessing the need for the hiring of security personnel and creating tenant patrols, for negotiating agreements with local law enforcement agencies, and for providing security systems.

Section 310(a), NOFA, has been amended to provide that an applicant may submit an application for either a planning grant or an implementation grant, but not both, for any one eligible property. Applicants are in the best position to elect which type of grant is appropriate for it and in the best interests of the residents of the property. It has also been amended by moving the provision that states that applicants may request information and guidance from HUD about program requirements and preparation of the application to the appropriate place in the guidelines. This sentence was mistakenly placed under "Screening" in the February 4 guidelines. The same correction has also been made to Section 415(a).

Under a new Section 310(b)(1)(iii), applicants are required to propose establishment of a resident entity promptly after the effective date of the grant agreement, if no such entity already exists. Resident involvement is critical to the success of a HOPE homeownership program. This important improvement will assure that applicants will actively enlist participation by the residents in the development and execution of homeownership programs under the HOPE program.

Section 310(b)(2)(i) has been amended in several ways. The guidelines now encourage unincorporated resident organizations to work with an eligible applicant to develop a planning grant application under which the resident organization could work toward applicant status for an implementation grant request. HUD believes that resident organizations should take the lead in carrying out the program wherever possible. In addition, the guidelines permit an application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application to be considered, so long as it receives approval before the effective date of the grant agreement. This will give applicants additional time to meet the new requirement for tax exempt status (see the revision to the definition of private nonprofit organization).

Section 310(b)(4)(i) has been clarified to state that an authorized representative of the public official who submits the CHAS may make the certification that an application is consistent with the CHAS.

Section 310(b)(4)(ii) has been amended to delete the requirement that an IHA demonstrate in its application that its proposed homeownership program is consistent with the tribal plan. (Indian tribes and IHAs are not subject to the requirement that the application contains a certification of consistency with the CHAS.) This amendment will simplify the program for entities that lack the administrative resources to carry out detailed planning.

Section 310(b)(7), Resident Interest, has been amended to provide that where there is more than one resident organization, the application must so indicate and state the result of a resident election, conducted by a disinterested third party, designating one resident organization to submit a board resolution supporting the application.

A new section 310(b)(8), Nonduplication of Funding, has been added to require the application to contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

Section 310(c), Screening, has been clarified. See, also, Section 415(c), for conforming changes for implementation grants.

Section 315(a)(1), the rating factor entitled Capability, has been amended to permit HUD to assign points based on an explanation of how applicant capability for developing a successful and affordable homeownership program will be obtained.

Section 315(b), Ranking and Selection to Assure National Geographic Diversity, formerly cross referenced to the ranking and selection procedures under the implementation grant provisions of the guidelines. The February 4 guidelines provided for ranking of planning grant and implementation grant applications together. HUD now believes this approach was ill-considered, and the revised guidelines provide for separate ranking. The distinctive nature of the two types of grants makes it more appropriate that they compete separately. Section 315(b) sets forth separate procedures for ranking and selecting planning grant applications.

Section 315(c), Reduction in Requested Grant Amounts, has been amended to clarify that HUD may not only approve an application for an amount lower than requested but may also adjust line items in the proposed budget within the amount requested.

Part IV. Implementation Grants

Section 401(b), National Competition, has been amended to require that HUD select at least one application from each of the 10 HUD Regions, instead of from each of the four Census regions. HUD has determined that sufficient funds were appropriated to fund at least one application in each HUD Region to achieve national geographic diversity and still permit selection based on a national competition for the remaining funds. See, also, a related conforming change to Section 425(c).

Section 401(c), Overall Limitation on Grant Amount, has been amended. The February 4 guidelines limited the amount of an implementation grant for each unit to the present value of 10 years' worth of section 8 existing housing fair market rents (FMRs), projected for a 10-year period. This would require a relatively complicated procedure of estimating amended FMR over the next 10 years and then discounting those amounts to present value. As revised, the cap is simply 10

years' worth of the present published FMR.

Consistent with the planning grant amendment, Section 405(a), Limitations, has been amended to provide that only costs incurred on or after the effective date of the grant amendment qualify for funding under the program.

Section 410(b)(1)(i) has been clarified to provide that cash contributions must be contributed permanently for uses under the program to count towards the match.

Section 410(b)(1) (iv) and (v) have been added to clarify computation of the match. Clause (iv) provides that cash contributions may be made by the applicant, non-Federal public entities, private entities, and individuals, including program income from a Federal grant earned after the end of the award period if no Federal requirements govern their disposition (including UDAG and HoDAG repayments). Clause (v) provides that the grant equivalent of a below-market interest rate loan to the homebuyer, where all repayments, interest, and other return will not be permanently contributed to the HOPE program, may be counted as a cash contribution, in accordance with specified standards. These provisions were taken from the HOME rule governing match requirements for that program.

Section 410(b)(1)(vi) clarifies that a down payment by an eligible family may not count towards the match (since it is counted towards a family's equity and, therefore, cannot be considered a permanent contribution to the program). Finally, Section 410(b)(1)(vii) permits amounts that an applicant has requested in an application submitted to the Federal Housing Finance Board for assistance under its Affordable Housing Program to count towards the match, so long as FHFB approves the application before the date HUD approves the HOPE application.

Section 410(b)(5), Infrastructure, has been amended to provide that an infrastructure investment may be counted towards the match only if it was completed after the date that is 12 months before the date of the HUD notification to the applicant of implementation grant approval and no later than five years from the effective date of the grant agreement. This makes the HOPE program substantially consistent with the HOME program. The February 4 guidelines permitted counting infrastructure expenditures only if they were made after the date of HUD approval of the application and set no deadline for completion.

Section 410(b)(7)(ii), under Other In-Kind Contributions, has been amended to increase the valuation of donated labor, including sweat equity, from $5 an hour to $10 an hour, consistent with recent changes to HUD's Shelter Plus Care program. It has also been clarified to provide that sweat equity may be counted towards the match only if it is not also counted towards a family's equity.

Section 410(b)(7)(iii) has been added to provide guidance in the case of donated materials and supplies.

Section 415(a), NOFA, has been amended to provide that an applicant may submit an application for a planning grant or an implementation grant for any one eligible property, but not both, consistent with the amendment to the planning grant portion of the guidelines.

Section 415(b)(3)(iii) is new. It permits an application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application to be considered, so long as it receives approval before the effective date of the grant agreement.

Under Section 415(b)(4), Description of Proposed Homeownership Program, applicants are required to propose establishment of a resident entity promptly after the effective date of the grant agreement, if no such entity already exists. Resident involvement is crucial to the success of a HOPE homeownership program. This important improvement will assure that applicants will actively enlist participation by the residents in the development and execution of homeownership programs under the HOPE program.

Section 415(b)(8), Economic Development, has been amended to require an application to contain a plan for economic development activities if the applicant also requests assistance for operating expenses. Where post-sale operating assistance is needed, HUD has determined that economic development activities should always be required to assure successful phasing out of operating assistance.

Section 415(b)(9)(ii) has been added to provide that, where the match does not apply to an IHA in accordance with Section 410(d), the application shall contain a certification that the IHA has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates the HOPE grant funds.

Section 415(b)(12)(i)(B) has been amended to require the application to demonstrate that the monthly expenditure for principal, interest, taxes, insurance, estimated utilities, and other housing costs by an eligible family, that is necessary to complete the sale for the initial acquisition of a unit be no less than 25 percent of adjusted family income. The initial guidelines only included the 35 percent ceiling, and HUD has determined that families should be required to pay a certain minimum amount to avoid possible abuse.

Section 415(b)(17)(i) has been clarified to state that an authorized representative of the public official who submits the CHAS may make the certification that the application is consistent with the CHAS.

Section 415(b)(17)(ii) has been amended to delete the requirement that an IHA demonstrate that its proposed homeownership program is consistent with the tribal plan. This amendment will simplify the program for entities that lack the administrative resources to carry out detailed planning.

Section 415(b)(19), Resident Interest, has been amended to provide that, where there is more than one resident organization, the application must so indicate and state the result of a resident vote, conducted by a disinterested third party, designating one resident organization to submit a board resolution supporting the application.

A new section 415(b)(21), Nonduplication of Funding, has been added to require the application to contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

Section 415(c), Screening, has been clarified.

Section 420(a) has been clarified to indicate that in determining whether the proposed program would result in appreciably reducing in the locality the number of affordable rental housing units, the appropriate universe is the multifamily stock. The ambiguous "of the type to be assisted" description of the universe of units has been deleted.

A new item has been added to the threshold criteria as § 420(i): The application meets all other program requirements. This will assure only approvable applications receive further processing.

Section 425(a)(1), the rating criterion entitled Capability, has been amended to permit HUD to assign points based on an explanation of how applicant capability for developing a successful and affordable homeownership program will be obtained.

Section 425(a)(2), the rating criterion entitled Quality of the Program, has been amended by increasing the maximum points for subcriterion (i) from 5 to 15 and increasing the points for subcriterion (ii) from 5 to 10. In addition, instead of assigning no points under subcriterion (ii) where no economic development activities are being proposed, the maximum points for subcriterion (i) will be increased to 25 if no assistance for operating assistance is being requested and if the application demonstrates that no economic development assistance is needed.

Section 425(a)(6), the rating criterion entitled MBE/WBE Goals, has been modified to provide that, in determining the extent to which an applicant demonstrates a firm commitment to promoting the use of minority business enterprises or women-owned businesses, HUD will especially consider resident-owned businesses.

Section 425(a)(7)(ii), the rating subcriterion entitled Efficiency, has been amended to retain only factors (A) and (C) (redesignated as factor (B)). Some of the factors would have necessitated submission of additional detailed information by the applicant to evaluate items that would have resulted in small point differences on the overall criterion rating. Some of the factors could have resulted in giving more points to an application that had higher acquisition and rehabilitation costs but did not propose a full range of other activities that would be important to success, such as counseling and training for homebuyers, economic development activities, and technical assistance for resident organizations. Conversely, a project that required little or no rehabilitation would have received a lower score even when its per-unit costs were low.

While recognizing the importance of cost efficiency, HUD has determined that the significant elements are the cost per unit of the overall grant amount, the degree to which matching contributions are pledged in cash and other firm commitments, and the amount of matching funds in excess of the 33 percent requirement that will be provided.

Section 425(b), Environmental Review, has been amended to permit HUD to adjust rating scores based on its environmental review when it determines environmental impact mitigation would result in excessive costs. The previous guidelines permitted adjustment only in cases of time delays.

A new section 425(c)(5) has been added governing what happens if HUD discovers procedural errors at various stages of review and selection.

Section 425(d), Reduction in Requested Grant Amounts, has been amended to clarify that HUD may not only approve an application for an amount lower than requested but may also adjust line items in the proposed budget within the amounts requested. The references to section 102(d) of the HUD Reform Act have been deleted since implementing regulations under 24 CFR part 12, subpart D, have not yet become effective.

Part V. Other Requirements

Section 505(c)(2) as published on February 4 stated that only Indian tribes and IHAs that exercise their powers of self-government were subject to the requirements of the Indian Self-Determination and Education Assistance Act. This is incorrect; the section has been corrected by deleting the incorrect modifier ("as described in section 505(a)(2)").

Section 505(d), Minority and Women's Business Enterprises, has been amended to clarify that, in the case of applications submitted by Indian tribes or IHAs, compliance with various requirements concerning minority and women's business enterprises must be consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Section 530, Conflict of Interest, has been modified to provide that a resident of an eligible property may acquire a homeownership interest even if he or she would otherwise be excluded by paragraph (a). This will avoid the need for processing applications for exceptions to paragraph (a).

Section 545 is new. Where the applicant is, or proposes to contract with, a primarily religious organization or a wholly secular organization established by a primarily religious organization, the organization shall undertake its responsibilities with respect to the homeownership program in accordance with three specified principles.

Part VI. Grant Agreement—Planning and Implementation Grants

Section 601(c) has been clarified to state that HUD may take any appropriate action authorized under the grant agreement if HUD determines the recipient is failing to carry out the program as required. The authority for HUD to take action where it determines a recipient "is likely to fail" has been deleted. On reconsideration, HUD has determined sanctions should be imposed only where a recipient is actually failing to comply with program requirements, not where HUD believes it probably will fail.

Part VII. Implementation of Planning and Implementation Grants

Section 701(d) has been deleted, since it is not appropriate for HUD to provide tax advice to program recipients.

Section 720, Restrictions on Resale by Initial Homeowners, has been reorganized. The provisions limiting the equity interest that an initial homeowner may retain from sale during the first six years of homeownership has been moved to subsection (c) from paragraph (b)(1)(ii)(B). The guidelines published February 4, 1991 were structured in a way that suggested that the resale restrictions during the first six years applied only where the family acquired the property for less than fair market value. HUD does not believe this was the intent of Congress and has reorganized the section accordingly to remove the ambiguity.

Paragraph (a)(2), Right to Purchase, has been amended to set deadlines for RMCs, RCs, and cooperatives that decide to purchase units from homeowners. Such entities would have 10 days after receiving notice of a firm contract between a homeowner and a prospective buyer to decide whether to exercise its prior right to purchase and 60 additional days to complete closing of the purchase. Where a PHA/IHA or the recipient has a prior right, it would be subject to the same deadlines.

Paragraph (b)(1)(i) has been clarified regarding how the amount of a promissory note, where required, is determined.

In addition, paragraph (c) has been amended. HUD has determined that the inflation adjustment made to the equity a homeowner has in the property should apply to equity that is the result of sweat equity. Accordingly, the guidelines have been amended to provide that the contribution to equity paid by a family may be provided in the form of cash or the value of sweat equity. In addition, the guidelines now provide that the value of any improvements made by the family during the time it owns the home includes improvements made through sweat equity. Sweat equity was previously excluded for purposes of computing inflation adjustments to a family's equity. Finally, a new paragraph (c)(3) has been added to clarify that amounts that count towards a family's equity may not also count towards the match.

Part IX. Waiver Authority

Section 901 has been amended to delete the provision that HUD will not waive deadlines for receipt of

applications. The policy has not changed, but the guidelines are not the appropriate place for the limit on HUD's waiver authority since the deadline is in the NOFA. The NOFA states this policy.

Part X. Other Matters

Information Collections

The information collection requirements contained in these amended guidelines have been approved through April 30, 1992 by the Office of Management and Budget and assigned OMB control number 2502-0451. Information on these requirements is provided as follows:

Description	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total
Applications:					
§ 310	100	1	100	40	4,000
§ 315	100	1	100	80	8,000
Recordkeeping:					
§§ 801 & 805	60	1	60	44	2,640
					14,640

Impact on the Economy

The amendments to these guidelines would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would, as defined by that order, not have (a) an annual effect on the economy of $100 million or more; or (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. At the time of publication of the final rule for the program, HUD will update its regulatory impact analysis, based on any comments received.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 7th Street, SW., Washington, DC 20410.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that the amendments to the guidelines do not have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program under the guidelines, as amended, can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the skills and means to live independently in mainstream American society.

Federalism Impact

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the amendments to these guidelines are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. The notice does not affect the relationship between the Federal government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Semiannual Agenda

These Guidelines were listed as item number 1330 in the Department's Semiannual Agenda of Regulations published at 56 FR 53380, 53392 on October 21, 1991 under Executive Order 12291 and the Regulatory Flexibility Act.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that the amendments to the guidelines would not have a significant economic impact on a substantial number of small entities. The guidelines, as amended govern the procedures under which HUD would make assistance available to applicants under a program designed to provide homeownership opportunities to low-income families and individuals.

Editorial Note: These revised program guidelines will appear as an appendix to subtitle A of title 24 of the Code of Federal Regulations

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I. Purpose; Summary; and Relationship to Other Programs

Section 101. Purpose

The purpose of the HOPE 2 program is to provide homeownership opportunities for eligible families in certain multifamily developments.

Section 105. Summary

Under the HOPE 2 program, HUD makes planning grants and implementation grants to selected eligible applicants to assist them in developing and carrying out homeownership programs for eligible families. A recipient may use its implementation grant to acquire eligible property (unless it already owns the property), fund rehabilitation, and cover other eligible program costs. An eligible applicant may (but is not required to) apply for a planning grant to assist it in developing a homeownership program, including the development of resident organizations, feasibility studies, counseling and training of residents and homebuyers, activities necessary for the development of a homeownership program, and preparation of an application for an implementation grant.

An eligible applicant may apply for an implementation grant to fund activities necessary to carry out an approved homeownership program. Applicants may not submit an application for a planning grant and an implementation grant for the same property in response to any one notification of funding availability. Each recipient is required to assure that a specified portion of the HOPE implementation grant is matched for non-Federal sources. (Certain IHAs may be exempt; see section 410(d).) Units must meet specified housing quality standards, and eligible families may not be required to pay more than 30 percent of adjusted income per month for principal, interest, taxes, and insurance to complete a sale under the program.

Section 110. Relationship to other programs

(a) *Waiver of section 8 Regulations.* HUD may make section 8 authority available for use in support of the HOPE 2 program, and intends to approve requests for waivers of the certificate and housing voucher regulations to facilitate its use. Under the section 8 program, HUD makes rental assistance available to assist eligible families.

Owners of units under the section 8 program receive a housing assistance payment equal to the difference between the rent for the unit and the amount payable by the eligible family, which is, in most cases, 30 percent of the family's adjusted income. See 24 CFR parts 882 and 887 for the rules governing the section 8 Certificate and Housing Voucher programs.

To permit issuance of certificates and vouchers to otherwise eligible nonpurchasing residents who qualify as low-income families, HUD will determine that good cause exists and approve requests to waive—

(1) The provisions prohibiting issuance of certificates and vouchers based on the identity or location of the housing occupied by the family, since one purpose of providing section 8 assistance under the HOPE program is to aid nonpurchasing residents in eligible properties and section 8 assistance will be reserved for this purpose;

(2) The provisions establishing Federal preferences when the assistance is used for nonpurchasing residents, since the section 8 assistance is being made available for these families and it makes no sense to apply the preferences in this context; and

(3) The provisions limiting use of certificates and vouchers to very low-income families. (Section 413(a) of NAHA amended the 1937 Act to permit this waiver under the Voucher program.) HUD has determined that, under the law, nonpurchasing residents should be given section 8 assistance if permitted by law and, therefore, will provide for issuance of certificates and vouchers to low-income families, not only very low-income families.

Additional waivers may be necessary to make section 8 assistance readily available in support of the HOPE program. HUD will also consider requests for such other waivers.

HUD intends to issue final regulations amending the section 8 regulations to achieve these purposes when it publishes the final HOPE regulation.

(b) *Inapplicability of Other Acts.* Eligible property approved under HOPE 2 is not subject to (1) the Low-Income Housing Preservation and Resident Homeownership Act of 1990, or (2) the requirements of section 203 of the Housing and Community Development Amendments of 1978 applicable to the sale of developments either at foreclosure or after acquisition by HUD.

(c) *Reservation of Section 8 authority.* HUD may reserve authority to provide section 8 certificate and housing voucher assistance, to the extent necessary to provide rental assistance for a nonpurchasing resident who resides in an eligible property on the date HUD approves an implementation grant, for use by the resident elsewhere. In addition, subject to the availability of appropriations, HUD shall ensure that section 8 rental assistance is made available to nonpurchasing residents for use in the eligible property or elsewhere. HUD encourages PHAs/IHAs to make other section 8 assistance available for use in connection with the HOPE 2 program. See paragraph (a) of this section for a discussion of waivers of section 8 regulations to facilitate use of section 8 assistance.

(d) *Termination of Section 8 and Other Rental Assistance.* Project-based section 8 and other rental assistance shall be terminated (1) on the date an eligible property is transferred under the HOPE 2 program to an entity for transfer to eligible families or (2) if no transfer is proposed because the applicant or other entity already owns the property, on the effective date of an implementation grant agreement. The implementation grant may be used to cover any shortfall in operating income during the rental phase and after acquisition by eligible families.

(e) *Variations to FHA Single Family Mortgage Insurance Programs.* (1) All regulatory requirements and underwriting procedures established for the FHA single family mortgage insurance programs shall apply, except for the changes described in paragraph (e) of this section.

(2) In the single family FHA mortgage insurance programs there is a requirement for a down payment by the mortgagor in cash or the equivalent. Since a recipient under the HOPE 2 program may provide the down payment for the eligible family/mortgagor, section 429 of NAHA amended section 203(b)(9) of the National Housing Act to provide that the required down payment may be paid by a corporation or person other than the mortgagor if the mortgage covers a unit under the HOPE program. Therefore, the regulations at 24 CFR 203.19(b), 203.32(b), 234.28(c) and 234.55(b) were amended by an interim rule published on February 4, 1991, 56 FR 4476. These amendments provide that a mortgagor being assisted in the purchase of a housing unit in connection with the HOPE program may obtain a loan for the down payment from a corporation of another person under conditions satisfactory to HUD. In addition, a second mortgage may be placed against the property even though the entity holding a second mortgage is not a Federal, State, or local government agency, if the entity is designated in the homeownership plan of an applicant for an implementation grant under the HOPE programs.

II. Definitions

1937 Act. The United States Housing Act of 1937.

Administrative costs. Administrative costs that are reasonable and necessary, as described in and valued in accordance with OMB Circular A–87 or A–122 [1], as applicable, incurred by a recipient in carrying out a homeownership program under this notice. For purposes of complying with the 15 percent limitation in Section 405(b)(4), administrative costs do not include the costs of activities which are separately eligible under sections 405 or 410.

Applicant. For HOPE 2, the following entities that may represent the residents of the eligible property:

(a) An RMC (resident management corporation).

(b) An RC (resident council).

(c) A cooperative association.

(d) A public or private nonprofit organization.

(e) A pubilc body, including an agency or instrumentality thereof.

(f) A PHA (public housing agency).

(g) An IHA (Indian housing authority).

(h) A mutual housing association.

A cooperative association may be an eligible applicant only for eligible property it proposes to acquire and transfer ownership interests in to eligible families under a homeownership program.

CHAS. A comprehensive housing affordability strategy under section 105 of NAHA. See 24 CFR part 91.

Cooperative association. An association organized and existing under applicable State and local, or tribal, law primarily for the purpose of acquiring, owning, and operating housing for its members or shareholders, as applicable.

Eligible family. (a) A low-income family; or

(b) A family or individual who is a resident of the eligible property on the date HUD approves an implementation grant.

Eligible property. A multifamily rental property, containing five or more units, that is—

(a) Owned by HUD;

(b) Financed by a loan or mortgage held by HUD or insured by HUD, including loans under the Section 312 Rehabilitation Loan program, the Section 202 program, and the FHA

[1] See Section 510(b) concerning the availability of OMB Circulars.

Multifamily Mortgage Insurance programs;

(c) Determined by HUD to have serious physical or financial problems under the terms of an insurance or loan program administered by HUD (in most cases, such properties will also be eligible under (b)); or

(d) Owned or held by the Secretary of Agriculture, the Resolution Trust Corporation, or a State or local government.

Homeownership program. A program for homeownership that meets the requirements under this notice. The program shall provide for acquisition by eligible families of ownership interests in the units in an eligible property under an ownership arrangement approved by HUD under this notice, for occupancy by the eligible families. At least 66 percent of the units must be acquired by eligible families (or such higher percentage as may be required under State, local, or tribal law governing cooperative associations or other forms of homeownership used under the program). No more than 34 percent of the units may be occupied by renters. At least 80 percent of units acquired for homeownership must be acquired by low-income families (or such higher percentage as may be required under such State, local, or tribal law). In addition, no unit may be acquired by a family whose annual income exceeds 95 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 95 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

HUD. The United States Department of Housing and Urban Development.

IHA. An Indian housing authority, which means any entity that—

(a) Is authorized to engage in or assist in the development or operation of low-income housing for Indians; and

(b) Is established (1) by exercise of the power of self-government of an Indian tribe independent of State law; or (2) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in Alaska.

Low-income family. A family or individual that qualifies as a low-income family under 24 CFR part 813. NAHA changed the term lower income family to low-income family; these terms have the same meaning. In general, this regulation defines the term lower income family as a family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Mutual Housing Association. A private entity organized under State law that has been determined to be a tax-exempt entity under section 501(c) of the Internal Revenue Code of 1986 and that owns, manages, and continuously develops affordable housing by providing long-term housing for low- and moderate-income families. The residents of mutual housing participate in the ongoing management of the housing, and through the purchase of membership interests in the associations, have the right to continue residing in the housing as long as they own memberships in the associations.

NAHA. The Cranston-Gonzalez National Afforable Housing Act, Public Law 101–625.

NOFA. Notice of Fund Availability.

Nonprofit organization. Any nonprofit organization that—

(a) Is organized and existing pursuant to Federal, State, local, or tribal law;

(b) Has no part of its net earnings inuring to the benefit of any individual, corporation, or other entity;

(c) Has a voluntary board;

(d) Has an accounting system or has designated a fiscal agent in accordance with requirements established by HUD; and

(e) Practices nondiscrimination in the provision of assistance.

Ownership interest. Ownership by an eligible family by fee simple title to a unit in an eligible property (including a condominium unit), ownership of shares of or membership in a cooperative, or another form of ownership proposed and justified by the applicant and approved by HUD. The ownership interest may be subject only to (a) the restrictions on resale required or approved under Section 720; (b) mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by HUD; or (c) any other restrictions or encumbrances which do not impair the good and marketable nature of title to the ownership interest. Mutual housing is eligible only to the extent it provides for the transfer of ownership interests to eligible families.

PHA. A public housing agency, which means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

Private nonprofit organization. A nonprofit organization that is privately controlled and that is a tax exempt entity under section 501(c) of the Internal Revenue Code of 1986. For purposes of this requirement, private nonprofit organizations shall have governing bodies which are controlled 51 percent or more by private individuals who are acting in a private capacity. For purposes of this provision, an individual is considered to be acting in a private capacity if the individual is not legally bound to act on behalf of a public body (including the applicant or recipient), and is not being paid by a public body (including the applicant or recipient) while performing functions in connection with the nonprofit organization.

Public body. Any State of the United States; any city, county, town, township, parish, village, or other general purpose political subdivision of a State; the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; any Indian tribe, as defined in title I of the Housing and Community Development Act of 1974; any public agency or instrumentality of any of the foregoing jurisdictions which is created by or pursuant to State or local, or tribal, law and for which the applicable jurisdiction has agreed to accept financial responsibility in the event of any noncompliance or liability under the HOPE 2 program; and any PHA or IHA. For purposes of this definition, an organization which meets the requirements of paragraphs (a) and (b) of the definition of nonprofit organization, but is controlled 51 percent or more by public officials acting in their official capacities, may qualify as a public body.

RC. A resident council, which means any incorporated nonprofit organization or association that—

(a) Is representative of the residents of the eligible property;

(b) Adopts written procedures providing for the election of specific officers on a regular basis (but at least once every three years); and

(c) Has a democratically elected governing board, elected by the residents of the eligible property, the voting membership of which consists of residents of the property.

Recipient. An applicant approved to receive a grant under this notice or such other entity specified in the HUD-approved application that will assume the obligations of the recipient under this notice.

RMC. A resident management corporation that proposes to enter into, or enters into, a management contract with the owner for an eligible property and that—

(a) Is a nonprofit organization that is incorporated under the laws of the State or tribe in which it is located;

(b) May be established by more than one resident organization or RC, so long as each such organization or RC (1) approves the establishment of the RMC and (2) has representation on the board of directors of the RMC;

(c) Has an elected board of directors;

(d) Has by-laws that require the board of directors to include representatives of each resident organization or RC involved in establishing the corporation;

(e) Provides that its voting members are residents of the eligible property it manages or will manage under a homeownership program and of any other property or public or Indian housing developments;

(f) Is approved by the RC; if there is no RC, a majority of the households of the eligible property shall approve the establishment of an RC to determine the feasibility of establishing a corporation to manage the property; and

(g) May serve as both the RMC and the RC, so long as the RMC qualifies as an RC.

III. Planning Grants

Section 301. Planning grants.

(a) *General Authority.* HUD will make HOPE 2 planning grants to applicants for the purpose of developing homeownership programs under this notice. HUD shall select applications based on a national competition. HUD will assure compliance with the requirement for national geographic diversity by selecting at least three planning grants in each of the 10 HUD Regions, to the extent sufficient funds are available.

(b) *Mini or Full Planning Grants.* Applicants may request a full planning grant covering all necessary planning activities specified in Section 305 or a mini planning grant. Mini planning grants, generally for establishing or increasing the capacity of the applicant to apply for and carry out a specific homeownership program, may cover some or all of the activities specified in Section 305 (a), (b), and (c). An applicant may request a mini planning grant and, pursuant to a subsequent NOFA, a full planning grant, but in no case may a full planning grant duplicate previously funded activities.

(c) *Grant Cap.* The amount of a planning grant (or the total amount of a mini planning grant and a full planning grant) under this section may not exceed $200,000, except that the Secretary may for good cause approve a grant in a higher amount, based on a justification submitted by the applicant demonstrating that the costs are reasonable. The maximum amount for a mini planning grant shall be $100,000, except that HUD may for good cause approve a grant in a higher amount, based on a justification submitted by the applicant demonstrating that the costs are reasonable. Where the proposed program provides for homeownership opportunities using more than 250 units, no additional demonstration of good cause for approving a planning grant of more than $200,000 (or of more than $100,000 in the case of mini planning grants) is required if the additional amount requested is not more than $800 for each unit over 250 for a planning grant (or not more than $400 for each unit over 250 for a mini planning grant).

(d) *Deadline for Completion of Activities.* Activities funded under a mini planning grant shall be carried out within 18 months of the effective date of the mini planning grant agreement. Full planning grants shall be carried out within three years of the effective date of the full planning grant agreement (or within 18 months of such effective date if HUD has approved a mini planning grant for the proposed program).

Section 305. Eligible planning grant activities.

Planning grants may be used for the reasonable costs of eligible activities necessary to develop homeownership programs. Only costs incurred on or after the effective date of the grant agreement qualify for funding under the program. Eligible activities include—

(a) *Development of RMCs and RCs.* Development of RMCs and RCs in connection with a specific homeownership program, including activities such as—

(1) Consulting and legal assistance to incorporate the entity;

(2) Preparing by-laws and drafting a corporate charter;

(3) Designing and implementing personnel policies; performance standards for measuring staff productivity; policies and procedures covering organizational structure, recordkeeping, maintenance, insurance, occupancy, and management information systems; and any other recognized functional responsibilities relating to property management;

(4) Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing; and

(5) Administrative costs necessary to the implementation of the activities specified in paragraphs (a)(1)–(4) of this section.

(b) *Training and Technical Assistance.* Training and technical assistance for applicants related to development of a specific homeownership program. This activity may cover such topics as establishing community organization, outreach, and support systems; legal requirements for establishing cooperative, condominium, and other homeownership entities; and the role of the board of directors in an RMC.

(c) *Feasibility Studies.* Studies of the feasibility of a specific homeownership program, including whether the program can be designed to meet the affordability standards under the notice and achieve financial feasibility.

(d) *Preliminary Architectural and Engineering Work.* Preliminary architectural and engineering work, including work necessary to support cost estimates included in an implementation grant application.

(e) *Counseling and Training.* Resident and homebuyer counseling and training. This activity may cover such topics as the various ways to become a homeowner (such as cooperative and fee simple ownership) and financing alternatives.

(f) *Economic Development.* (1) Planning for economic development, job training, and self-sufficiency activities that promote economic self-sufficiency of eligible families who will become homeowners under the homeownership program.

(2) The application shall demonstrate that the proposed activities are directly related to implementation of the proposed homeownership program, and describe how these activities promote self-sufficiency.

(3) The aggregate amount of planning and implementation grants that may be used for economic development activities may not exceed $250,000 for any single homeownership program.

(g) *Security Plans.* Development of security plans. This activity may cover assessing the need for the hiring of security personnel and creating tenant patrols, for negotiating agreements with local law enforcement agencies, and for providing security systems.

(h) *Appraisal.* Cost of appraisals related to the program.

(i) *Application for Implementation Grant.* Preparation of an application for an implementation grant under this notice.

(j) *Other Activities.* Other activities proposed and justified as necessary for the development of a homeownership program by the applicant and approved by HUD.

Section 310. Applications for planning grants.

(a) *NOFA.* An application for a planning grant shall be submitted by an applicant in accordance with this notice and the NOFA. An applicant may submit an application for either a planning grant or an implementation grant, but not both, for any one eligible property. The NOFA advises potential applicants how to obtain an application package and establishes deadlines and other requirements for submission of applications. The NOFA also informs each applicant that it may request information and guidance from HUD about program requirements and preparation of the application.

(b) *Application Contents.* Each application shall contain the information required by the application package, which shall include at least the following items.

(1) *Request for Planning Grant.* (i)(A) The application shall contain a summary description of the proposed homeownership program and a request for a planning grant (specifying whether the application is for a mini planning grant or a full planning grant), (B) the schedule for completing the activities, (C) the personnel necessary to complete the activities, and (D) the amount of the grant requested (including justification for a grant request exceeding $200,000 if the development has 250 or fewer units or exceeding the per unit limitations if the development has more than 250 units).

(ii) An application for a full planning grant shall contain sufficient detail for HUD to determine whether the proposed homeownership program will cover all eligible activities necessary to make the proposed program feasible, whether or not the application requests HUD funding for each activity.

(iii) Where no resident entity has been established for the property, the application shall propose establishment of such an entity (such as an RMC, RC, or cooperative association) promptly after the effective date of the grant agreement.

(2) *Qualifications and Experience of Applicant.* (i) The application shall describe the applicant and contain a statement of its qualifications. HUD encourages unincorporated resident organizations to work with an eligible applicant to develop a planning grant application under which the resident organization could work toward applicant status for an implementation grant request. HUD also encourages two or more entities to submit applications together. For example, an application submitted by a newly established RC and an experienced nonprofit organization may greatly increase the likelihood of the success of the proposed homeownership program. The application shall specify which entity will be the recipient and execute the grant agreement and include a certification that the entities have entered into a written agreement between them that delineates their respective roles.

(ii) An application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered so long as the organization is approved before the effective date of the grant agreement.

(3) *Eligible Property.* The application shall identify and describe the eligible property involved, and describe the composition of the residents, including family size and income, and racial, ethnic, and gender characteristics of the residents, as required by HUD and as described in the application package. In addition, the application shall describe the neighborhood in which the property is located and include a map showing the location of the property and the racial and ethnic characteristics of the neighborhood.

(4) *CHAS Certification.* (i) The application shall contain a certification by the public official, or his or her authorized representative, who submits the CHAS that the proposed activities are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located.

(ii) Paragraph (b)(4)(i) of this section shall not apply to an application submitted by an Indian tribe or IHA. Indian tribes and IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that Indian tribes and IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy.

(5) *Equal Opportunity Certifications.* (i)(A) The application shall contain a certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHAs, under the circumstances described in section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) The application shall contain a statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of an existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(6) *Statement of Interest in Making Property Available.* The application shall contain a signed statement from the owner of the eligible property (including a statement from the appropriate HUD or other government official where the property is owned or held by a governmental entity) that it is interested in selling the property for homeownership under the HOPE 2 program and it will not sell to anyone else for a reasonable period of time to give a reasonable opportunity to the applicant to apply for an implementation grant and to HUD to review and approve or disapprove it and, if approved, execute the grant agreement.

(7) *Resident Interest.* Where the applicant (or one of the applicants) is not an RMC or RC, the application shall contain a board resolution from the resident organization, if any, that it is interested in a homeownership program and that the applicant is submitting the application on behalf of the resident organization. Where there is more than one resident organization, the application shall so indicate and state the results of a vote by the residents, conducted by a disinterested third party, designating one resident organization for this purpose. In all cases, the application shall include a survey conducted by the applicant of resident interest in homeownership and marketability of the units, which shall be conducted in accordance with procedures set forth in the application package.

(8) *Nonduplication of Funding.* The application shall contain a certification

that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

(9) *Disclosures Required by the Reform Act.* Section 102(b) of the HUD Reform Act of 1989, Public Law 101–235 (December 15, 1989) requires disclosure of other information concerning other government assistance to be made available with respect to the program and parties with a pecuniary interest in the homeownership program, and submission of a report on expected sources and uses of funds to be made available for the program. Each application shall include the information required by 24 CFR part 12, subpart C, the regulation that implements section 102 of the Reform Act. An implementing notice for 24 CFR part 12, subpart C, is being published in the **Federal Register**. Applicants shall use the form and guidance contained in that notice to make the required disclosures.

(10) *Other Requirements.* The application shall contain certifications and other information required by the application package.

(c) *Screening by HUD.* (1) HUD shall screen each application submitted on or before the deadline set forth in the NOFA to determine whether it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants. The notification shall require applicants to submit additional or corrected material so it is received in the appropriate HUD office no later than close-of-business on the 14th calendar day after the date of the notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that do not meet one of the tests in the first sentence of paragraph (c)(1) of this section, after the opportunity, if any, to submit additional or corrected material.

(2) The purpose of the procedure is to increase the number of approvable applications so viable homeownership opportunities may be developed at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies. HUD anticipates that many applicants will be relatively new and may need this additional opportunity to perfect their applications.

(Approved by the Office of Management and Budget under control number 2502–0451)

Section 315. Rating, ranking, and selection of planning grant applications.

(a) *Rating.* HUD shall review each application that qualifies for additional consideration under the screening procedures in section 310(c) and, for applications that meet all program requirements, assign points in accordance with the following selection criteria—

(1) *Capability.* The qualifications or potential capabilities of the applicant for developing a successful and affordable homeownership program. HUD shall assign points based on the past experience of the applicant, or an explanation of how such capability will be obtained, in the following categories:

(i) Developing or managing multifamily housing, or both—10 points.

(ii) Providing multifamily homeownership programs (for example, conversion of rental property to cooperative or condominium low-income homeownership, or developing financing programs for low-income homeownership)—10 points.

(iii) Organizing, developing, and training low-income neighborhood or low-income resident groups—10 points.

Maximum points for this criterion (1): 30 points.

(2) *Resident and Homebuyer Interest and Marketability.* The extent of resident and homebuyer interest in the development of a homeownership program for the eligible property. HUD shall assign points based on the percentage of current and potential residents interested in participating in the proposed homeownership program, based on a survey conducted by the applicant and submitted to HUD as part of the application. Only occupied units in the property shall be used to calculate the percentage of residents interested.

(i)(A) If 75 percent or more of the residents are interested: 10 points; or

(B) If 50–74.99 percent of the residents are interested: 5 points;

(C) If less than 50 percent of the residents are interested: 0 points.

and

(ii)(A) If 75 percent or more of the units occupied by nonpurchasers are occupied by residents willing to move and the application demonstrates all of the units in the property are marketable: 10 points;

(B) If 50–74.99 percent of the units occupied by nonpurchasers are occupied by residents willing to move and the application demonstrates all of the units in the property are marketable: 5 points; or

(C) If less than 50 percent of the units occupied by nonpurchasers are occupied by residents willing to move: 0 points.

If the vacancy rate for the property is 50 percent or more, the points for categories (ii) (A) and (B) shall be doubled and no points shall be assigned for categories (i) (A) and (B).

Maximum points for this criterion (2): 20 points.

(3) *Suitability of the Property.* The suitability of the eligible property for homeownership shall be determined based on—

(i) Proximity or accessibility of the property to places of employment, shopping, schools, medical facilities, transportation, places of worship, recreational facilities, and other necessary services for the families under the program—4 points;

(ii) Whether the surrounding neighborhood is free from conditions which are seriously detrimental to the quality of life; substandard dwellings or other undesirable elements affecting the eligible property must not predominate, unless the undesirable conditions are being actively mitigated—12 points; and

(iii) Whether the structure type and bedroom configuration are (or have the potential, through rehabilitation, to become) appropriate for the proposed homeownership program—4 points.

The purpose of this criterion is to assure that properties in neighborhoods completely unsuitable for homeownership are not selected. The review will be made in the context of where the eligible properties are typically located.

Maximum points for this criterion (3): 20 points.

(4) *Local Support.* The extent of cooperation or support, or both, from the unit of general local government, neighborhood organizations, and providers of services and resources appropriate to assist eligible families to achieve economic independence. In assigning points for this criterion, HUD shall consider—

(i) Evidence of support for the homeownership program, demonstrated through letters, resolutions, or other expressions of support from State or local governments, PHAs/IHAs, and community, civic, religious, or other entities—10 points; and

(ii) Evidence from entities other than the applicant that funds, services, or other resources will be made available

in support of the homeownership program, demonstrated through letters, resolutions, or other expressions of support from providers of services and other resources—10 points.

The highest number of points shall be assigned based on the quality, expected duration, and amount of support to the homeownership program.

Maximum points for this criterion (4): 20 points.

(5) *Efficiency.* The extent to which the applicant maximizes efficiency in its plan for use of a planning grant. The lower the cost of the planning grant per unit, the greater the efficiency.

Maximum points for this criterion (5): 10 points. Total number of points: 100 points.

(b) *Ranking and Selection to Assure National Geographic Diversity* (1) After assigning points to each application under paragraph (a) of this section, HUD shall rank the planning grant applications. HUD shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership under the program, it may establish a minimum number of points for an application to be selected. HUD shall then select the three highest ranking applications from each of the 10 HUD Regions.

(2) HUD shall then select the highest ranking remaining applications, without regard to their location.

(3) If two or more applications have the same number of points, the application with the most points for capability shall be selected. If there is still a tie, the application with the most points for suitability of property shall be selected.

(4) When the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD may determine whether funding a lower grant amount is feasible. Alternatively, HUD may skip to the next highest ranking application or applications that can be funded with the remaining amount.

(5) Procedural errors discovered after initial ratings but before notification of applicants shall be corrected and rankings revised. Procedural errors discovered after notification of approved applicants which, if corrected, would result in approval of an application which was not approved will be corrected by funding the application from any unused amounts or "off the top" from amounts available for planning grants in the next funding round.

(c) *Reduction in Requested Grant Amounts.* HUD shall approve a planning grant application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines the amount requested for one or more eligible activities is unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program.

(d) *Notification of Approval or Disapproval.* After completion of the ranking and selection of applications, but no later than six months after the date of submission of the application, HUD shall notify the selected applicants and the applicants that have not been selected, in writing. HUD's notification to the applicant of the amount of the grant award, based on the approved application, shall constitute a grant obligation by HUD, subject to acceptance by the applicant by the deadline specified in the notification.

(e) *Use of Remaining Amounts to Fund HOPE 2 Implementation Grants.* Any amounts available to fund planning grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded implementation grant applications.

(f) *Insufficient Approvable Applications.* If funds remain after HUD approves all approvable applications, including implementation grant applications, as provided in this notice, HUD may publish a NOFA inviting applications for planning or implementation grants, or both, in accordance with this notice, or invite applicants who submitted applications that could not be funded to submit amended planning grant or implementation grant applications in accordance with this notice within a deadline specified in the invitation.

(g) *Environmental Review* HUD has determined that its approval of applications for planning grants is categorically excluded from environmental review and compliance requirements of the National Environmental Policy Act of 1969 (NEPA) and that other Federal environmental laws and authorities listed in 24 CFR 50.4 are not applicable. The reason is that planning grants involve no rehabilitation and little or no physical change and that, generally, not enough information is available about the proposed homeownership program at this point to make the review. HUD has excluded planning grant applications from environmental assessment under NEPA and exempted planning grant applications from environmental review under the laws and authorities listed in 24 CFR 50.4. See the interim rule amending 24 CFR part 50 that is published elsewhere in today's edition of the **Federal Register.** Applicants are reminded, however, that environmental review at the implementation grant stage may nevertheless result in disapproval.

IV. Implementation Grants

Section 401. Implementation grants.

(a) *Implementation Grants.* HUD shall make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this title.

(b) *National Competition.* HUD shall select applications based on a national competition. HUD will assure compliance with the requirement for national geographic diversity by selecting at least one implementation grant application for a program in each of the 10 HUD Regions, to the extent sufficient funds are available.

(c) *Overall Limitation on Grant Amount.* The amount requested for an implementation grant for each unit may not exceed 120 times the current published fair market rent for existing housing for that unit size established by HUD under section 8(c) of the 1937 Act. (The fair market rent is multiplied by 120 to convert it to an amount representing 10 years' worth of rents (12 (the number of months in a year) times 10 (the number of years).)

Section 405. Eligible implementation grant activities.

(a) *Limitations.* Implementation grants may be used for the reasonable costs of eligible activities necessary to carry out homeownership programs. Only costs incurred on or after the effective date of the grant agreement qualify for funding under the program.

(b) *Eligible Activities.* Eligible activities include—

(1) *Architectural and Engineering Work.* Architectural and engineering work, and related professional services required to prepare architectural plans or drawings, write-ups, specifications, or inspections.

(2) *Implementation of Homeownership Program*—(i) *General.* Implementation of the homeownership program, including—

(A) Acquisition of the eligibility property for the purpose of transferring ownership to eligible families in accordance with a homeownership program that meets the requirements under this notice (where the applicant owns the eligible property or where HUD otherwise determines that an "arms length" relationship for acquisition does not exist, program

funds may not be used for acquisition of the property for the program).

(B) The provision of assistance to families to make acquisition by them affordable (including interest rate reductions ("interest rate buy-downs") and down payment assistance).

(ii) *Maximum Acquisition Costs.* (A) The cost of acquiring an eligible property (by an applicant or other entity for transfer to eligible families or by eligible families), which may not exceed the as-is fair market value of a property for residential use, taking into account any applicable low-income use restrictions, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD, plus reasonable and customary closing costs charged for comparable transactions in the market area.

(B) The applicant may acquire an eligible property where the debt exceeds the fair market value only if the excess will not be the responsibility of the recipient or homeowners. The excess debt may not be counted towards the match.

(C) For example—

(*i*) If the proposed acquisition cost (including debt) is $2 million and the appraised value is $2 million, up to $2 million of program funds (the HUD grant and the contributions towards the match) may be used for acquisition.

(*ii*) If the proposed acquisition cost (including debt) is $2 million and the appraised value is $2.25 million, up to $2 million of program funds (the HUD grant and the contributions towards the match) may be used for acquisition, and HUD will count $250,000 of excess value towards the match.

(*iii*) If the proposed acquisition cost (including debt) is $2.25 million and the appraised value is $2 million, up to $2 million of program funds (the HUD grant and the contributions towards the match) may be used for acquisition. The application would have to demonstrate how the excess cost of $250,000 will be supported by the program (other than by the recipient or the homeowners). The $250,000 could not be counted towards the match.

(iii) *Maximum Cost of Acquisition and Rehabilitation.* The maximum cost of acquisition and rehabilitation shall be the lower of (A) the as-is fair market value of the property (see paragraph (b)(2)(ii)) of this section, plus the actual cost of rehabilitation or (B) the applicable maximum dollar limitation (including any high-cost area adjustments) that applies to property refinanced and repaired pursuant to section 223(f) of the National Housing Act, which shall be included in the application package or otherwise provided by HUD.

(3) *Rehabilitation.* (i) Rehabilitation of the eligible property covered by the homeownership program, in accordance with standards established by HUD (see paragraph (b)(2) of this section for applicable cost limitations covering both acquisition and rehabilitation and section 505(b) for applicable requirements for accessibility for people with disabilities). The property shall be rehabilitated (including the provision of suitable amenities) to a level that makes it marketable for homeownership if the market area to families with incomes at or below the median for the area. HUD encourages applicants to undertake high quality rehabilitation, even if it goes beyond applicable minimum standards. Luxury items (fixtures, equipment, and landscaping of a type or quality which substantially exceeds that customarily used in the locality for properties of the same general type as the property to be rehabilitated) do not qualify as eligible expenses. The construction of swimming pools is not eligible. The cost to fill in or eliminate a pool from the property and the cost to repair an existing pool are eligible.

(ii) The application shall describe all improvements to be made to, or amenities to be provided for, the property, whether or not they may be funded by use of grant amounts, contributions towards the match required under the program, or other funds. HUD may disapprove improvements or amenities specified in the application it determines are unsuitable for the HOPE program, even if they will be paid for from non-program funds.

(iii) If an applicant proposes to make improvements to an eligible property beyond those that qualify as eligible costs, it shall assure that their entire cost will be covered by funds other than the HOPE grant and any amounts contributed towards the match and that the affordability of the property will not be impaired. No such local funds may count towards the match.

(iv) The cost of the rehabilitation shall be reasonable and in accordance with the requirements of paragraph (b)(2)(iii) of this section and other applicable requirements under this notice.

(4) *Administrative Costs.* Administrative costs of the program. The total amount that may be spent on administrative activities from the amount of the grant and any contribution towards the match may not exceed 15 percent of the amount of the grant HUD provides under this notice.

(5) *Development of RMCs and RCs.* Development of RMCs and RCs, but only if the applicant has not received a HOPE planning grant for such activities. See § 305(a) for examples of eligible activities.

(6) *Counseling and Training.* Counseling and training of homebuyers and homeowners under the homeownership program. This may include such subjects as counseling and training related to personal financial management, home maintenance, home repair, construction skills (to the extent appropriate, especially where the eligible family will do some of the rehabilitation), and the general rights and responsibilities of a homeowner.

(7) *Relocation.* Relocation of residents who elect to move, in accordance with section 735.

(8) *Temporary Relocation.* Any necessary temporary relocation of residents during rehabilitation, in accordance with section 735.

(9) *Assistance for Operating Expenses.* (i) Funding of operating expenses for the property, to the extent necessary to achieve long-term affordability, as provided in section 415(b)(12). Assistance for operating expenses may cover the period beginning after acquisition of the property by the applicant (or after the effective date of the implementation grant if the recipient of other entity that will transfer the property to eligible families already owns the property). Operating assistance may be used for (A) assistance for potential homeowners during the rental phase (before acquisition of ownership interests by the families), if any, (B) assistance for nonpurchasing residents who remain in the property but for whom section 8 assistance is not available, (C) assistance for homeowners after transfer of ownership interests to the families during the term of the grant agreement, and (D) the funding of operating reserves.

(ii) In addition, assistance for operating expenses may be drawn down under the grant agreement to fund an operating expenses reserve established in accordance with HUD guidelines, and the interest earned on the reserve shall be credited to it for use for operating expenses under the program.

(iii) An implementation grant under this program may provide assistance for operating expenses for up to five years from the date that the applicant or other entity acquires the eligible property (or, if the applicant or other entity already owns the property, from the effective date of the implementation grant agreement). If HUD determines that extraordinary circumstances exist, as demonstrated in the application or at

the end of the five-year term, that justify extension of the five-year term, it may, at the end of the five-year term, agree to extend the original grant agreement for additional one-year terms, subject to the availability of appropriations for this purpose. However, the total term of the grant agreement, including all extensions, may not exceed 10 years. HUD reminds applicants that the selection criterion measuring efficiency will favor applications proposing lower per unit costs; thus, those applications which propose operating assistance for five years or less will be at a competitive advantage.

(iv) The entity with fiduciary responsibility for any operating reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(10) *Replacement Reserves.* (i) Replacement reserves for the property, up to the amount necessary to achieve long-term affordability, as provided in Section 415(b)(12). Assistance for replacement reserves may be drawn down under the grant agreement to fund the reserve established in accordance with HUD guidelines, and the interest earned on the reserve shall be credited to the reserve for use for replacement expenses under the program.

(ii) The entity with fiduciary responsibility for any replacement reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(11) *Legal Fees.* Customary and reasonable costs of professional legal services.

(12) *Ongoing Training Needs.* Defraying costs for the ongoing training needs of the recipient for courses of instruction that are directly related to developing and carrying out the homeownership program.

(13) *Economic Development.* (i) Economic development activities that promote economic self-sufficiency of homebuyers, residents, and homeowners under the homeownership program, such as job training or retraining and the development, in or near the eligible property, of child care centers that offer work and make it possible for parents to work. The recipient shall enter into written agreements with the providers of economic development services specifying the services to be provided, including estimates of the numbers of homebuyers, residents, and homeowners to be assisted.

(ii) In addition, planning for the establishment of for- or not-for-profit small businesses by or on behalf of residents, job training, and other activities that promote economic self-sufficiency of homebuyers and homeowners of the eligible property covered by the homeownership program and economic development of the neighborhood are eligible.

(iii) The aggregate amount of planning and implementation grants that may be used for economic development activities may not exceed $250,000.

(14) *Other Activities.* Other activities proposed by the applicant, to the extent the applicant justifies them as necessary for the proposed homeownership program and HUD approves them. For example, the applicant may propose activities related to security needs of the property that are not otherwise covered under other eligible activities, such as under architectural and engineering work and rehabilitation activities.

Section 410. Matching requirements for implementation grants.

(a) *Requirement for Each Recipient to Match the HUD Grant.* Each recipient shall assure that matching contributions equal to not less than 33 percent of the amount of the implementation grant shall be provided from non-Federal sources to carry out the homeownership program. Amounts contributed to the match shall be used for eligible activities or in accordance with this section. Any grant amounts proposed for operating assistance shall be excluded for purposes of computing the amount of the match.

(b) *Form.* Contributions may only be in the form of—

(1) *Cash Contributions.* (i) Cash contributions from non-Federal resources. To be a cash contribution, funds must be contributed permanently for uses under the HOPE 2 program. Funds will be considered permanently contributed if all repayment, interest, and other return on the contribution will only be used for eligible activities in accordance with program requirements.

(ii) Non-Federal resources may not include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d), respectively, of the Housing and Community Development Act of 1974, except to the extent permitted for administrative expenses under paragraph (a)(2) of this section. Non-Federal resources may not include Federal tax expenditures, comprehensive grants under section 14 of the 1937 Act, or amounts provided to the development from syndication of the low income housing tax credit. (Financing involving the use of the low income housing tax credit is prohibited by Section 415(b)(11)(iii).)

(iii) Non-Federal resources may include contribution of trust funds held by Federal agencies for Indian tribes.

(iv) A cash contribution may be made by the applicant, non-Federal public entities, private entities, or individuals. A cash contribution may be made from program income from a Federal grant earned after the end of the award period if no Federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G), and the Housing Development Grant Program (24 CFR part 850).

(v) The grant equivalent of a below-market interest rate loan to the homebuyer, where all repayments, interest, and other return will not be permanently contributed to the HOPE program, may be counted as a cash contribution.

(A) If the loan is made from proceeds of obligations issued by or on behalf of a public body that are exempt from taxation by the United States, the contribution is the present discounted cash value of the difference between payments to be made on the borrowed funds and payments to be received from the loan to the homebuyer, based on a discount rate equal to the interest rate on the borrowed funds.

(B) If the loan is made from funds other than under paragraph (b)(1)(v)(A), the contribution is the present discounted cash value of the yield forgone, calculated based on a discount rate approved or prescribed by HUD. In determining the yield forgone, the recipient must use as a measure of a market rate yield on of the following, as appropriate:

(*1*) With respect to an individual unit financed with a fixed interest rate mortgage, a rate equal to the 10-year Treasury note rate plus 200 basis points;

(*2*) With respect to an individual unit financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points; or

(*3*) With respect to a multifamily project, a rate equal to the 10-year Treasury note rate plus 300 basis points.

(vi) A down payment by an eligible family may not count towards the match.

(vii) Non-Federal resources may include amounts, determined in accordance with paragraph (b)(1)(v)(B) of this section, that have been requested by the applicant in an application submitted to the Federal Housing Finance Board for assistance under its affordable housing program, so long as

that application is approved before the date HUD approves the HOPE application.

(2) *Administrative Costs.* (i) Paymant of eligible administrative costs approved by HUD from non-Federal resources. Contributions for administrative costs that exceed 7 percent of the grant (excluding any assistance for operating expenses) may not count towards the match. (This limitation is in addition to the limitation that the total amount that may be spent on administrative activities from the amount of the grant and any contributions towards the match may not exceed 15 percent of the grant amount (section 405(b)(4).) Non-Federal resources, for the purposes of counting contributions for administrative costs, may include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d) of the 1974 Act and are subject to the recordkeeping and documentation requirements of that program.

(ii) For example, if the grant amount is $600,000 (excluding any grant amounts proposed for operating assistance), the receipient must assure the provision of at least $198,000 (33 percent of the grant) from non-Federal sources.

Contributions for administrative costs that may be counted towards the match may not exceed $42,000 (7 percent of the grant amount of $600,000). Although an applicant can spend more than this on administrative costs, it may not be counted towards the match. In addition, assuming contributions of $42,000 for administrative costs, the applicant must provide contributions covering the remaining $156,000 ($198,000 - $42,000) required for the match from non-Federal sources.

(3) *Taxes, Fees, and Other Charges.* The present value of taxes, fees, or other charges that are normally and customarily imposed but are waived, forgone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this notice. Only amounts for the period after the date a property is acquired by a recipient or other entity for transfer to eligible families (or the effective date of the implementation grant agreement if no acquisition is necessary) may be counted towards the match. For example, if a city agrees to forego real property taxes for 20 years, the application shall compute the estimated tax that would be otherwise payable over the 20 year period, and discount it to present value based on a discount rate approved or prescribed by HUD. Amounts that would be waived, foregone, or deferred for longer than 20 years from the date a family acquires homeownership interests in the unit may not be counted towards the match because enforcement would be impracticable. Where the match includes amounts under paragraph (b)(3) of this section, the documents transferring the homeownership interest to the family shall evidence the contribution, to the extent the contribution has not already been received.

(4) *Land or Other Real Property.* Real property, not acquired with Federal resources, contributed for use under an approved homeownership program. The as-is fair market value of land or other real property may be counted as a contribution towards the match, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD. For eligible property, the fair market value shall be determined in accordance with section 405(b)(2)(ii).

(5) *Infrastructure.* The fair market value of investment, not made with Federal resources, in on-site and off-site infrastructure required for a homeownership program. The infrastructure investment may be counted towards the match only if it was completed no earlier than 12 months before the date of notification by HUD of implementation grant approval and no later than five years from the effective date of the grant agreement. Investment in infrastructure may include such activities as new or repaired utility laterals connecting eligible property to the main line and new or rebuilt walkways, sidewalks, or curbs on or contiguous to the eligible property. If the investment in infrastructure also benefits other properties, only the share of the costs directly benefiting the eligible property under the homeownership program may be counted towards the match.

(6) *Debt Forgiveness.* Where debt on real property to be acquired under the program is forgiven, permitting the property to be acquired for less than fair market value, the savings may count as a match. However, the forgiveness of the amount of any debt exceeding the fair market value of a property under the program, determined under § 405(b)(2)(ii) or paragraph (b)(4) of this section, may not be counted towards the match.

(7) *Other In-Kind Contributions.* (i) The reasonable value of in-kind contributions proposed by the applicant in the application and approved by HUD. In reviewing proposed in-kind contributions, HUD shall review to ensure (A) the proposed contribution is to be used for an eligible activity under the proposed homeownership program, (B) the application demonstrates that the proposed in-kind contribution will actually be provided; and (C) the proposed value of the contribution is reasonable. In determining whether the value is reasonable, HUD shall generally consider the amount such work would otherwise cost the program, but may adjust the value, based on special circumstances.

(ii) All donated labor, including sweat equity provided by a homebuyer or homeowner, shall be valued at $10 an hour, except for donated professional labor, as approved by HUD, including work by homebuyers and homeowners. The donated professional labor shall be valued at the fair market value of the work completed. Professional labor is work ordinarily performed by the donor for payment, such as work by laborers, electricians, and architects that is equivalent to work they do in their occupations. Sweat equity may be counted towards the match only if it is not also counted towards a family's equity.

(iii) Donated materials and supplies may be counted towards the match contribution. Materials and supplies need not have been purchased specifically for the program to be included as a match contribution, if the cost to the grantee of the materials and supplies (or, in the case of materials and supplies donated by a different entity than the recipient for use in the program, the fair market value of the materials and supplies) and if the fact that they were used in the program can be documented. The recipient shall maintain a written enumeration of what donated materials and supplies will be used in the program, as well as documentation of their cost or value.

(c) *Other Restrictions.* Contributions towards eligible activities that are not directly related to acquisition or rehabilitation of the property may be counted towards the match only to the extent the expenses are incurred before the date the family acquires the homeownership interest, except that contributions for counseling and training of homeowners may be counted if provided within one year of the transfer of ownership interest to the family. For example, contributions for child care services provided after the date of the transfer of ownership interests to the families may not be counted towards the match.

(d) *Exception for Indian Housing Authorities.* Where the recipient is an IHA and the IHA (acting in that capacity) has not received, and will not

receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds, the match requirements under this section shall not apply.

Section 415. Applications for implementation grants.

(a) *NOFA.* An application for an implementation grant shall be submitted by an applicant in accordance with this notice and the NOFA. The NOFA advises potential applicants how to obtain an application package and establishes deadlines and other requirements for submission of applications. An applicant may submit an application for either a planning grant or an implementation grant, but not both, for any one eligible property. The NOFA also informs each applicant that it may request information and guidance from HUD about program requirements and preparation of the application.

(b) *Application Contents.* Each application shall contain the information required by the application package, which shall include at least the following items.

(1) *Request for HOPE Implementation Grant.* The application shall contain (i) a summary description of the proposed homeownership program; (ii) a description of the personnel necessary to complete the activities; and (iii) the amount of the grant requested for each activity. The amount requested, together with any non-Federal contributions, shall be sufficient to carry out all proposed activities.

(2) *Section 8 Application.* (i) The application shall contain an application from a PHA/IHA whose jurisdiction includes the proposed eligible property for assistance under section 8 of the 1937 Act, specifying the period during which the assistance will be needed, or a statement by the applicant that no section 8 assistance will be needed.

(ii) The application shall specify whether the assistance is proposed for nonpurchasing residents for use in the eligible or another property, or both.

(3) *Qualifications and Experience of Applicant.* (i) The application shall describe the applicant and contain a statement of its qualifications and experience, including qualifications and experience in providing housing for low-income families. It is particularly important for an applicant that has not received and successfully carried out a planning grant to demonstrate its capacity to carry out the proposed homeownership program. HUD encourages two or more entities to submit an application together. For example, an application submitted by a newly established RC and an experienced nonprofit organization may greatly increase the likelihood of the success of the proposed homeownership program.

(ii) The application shall specify which entity will be the recipient and execute the grant agreement and include a certification that the entities have entered into a written agreement that delineates their respective roles.

(iii) An application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered so long as the organization is approved before the effective date of the grant agreement.

(4) *Description of Proposed Homeownership Program.* The application shall describe the proposed homeownership program, demonstrating consistency with all requirements specified in this notice and the application package (see, especially, section 405, Eligible Implementation Grant Activities and Part V, Other Requirements). The application shall specify the activities to be carried out, their estimated costs, and a reasonable schedule for carrying out the activities. See section 715 for requirements for the timely transfer of ownership interests to eligible families. Where no resident entity has been established for the property, the application shall propose establishment of such an entity (such as an RMC, RC, or cooperative association) promptly after the effective date of the grant agreement.

(5) *Plan*—(i) *Identifying and Selecting Families.* The application shall contain a plan for identifying and selecting eligible families to participate in the homeownership program. The plan shall—

(A) Establish equitable procedures for selection of eligible families. Except for Indian tribes and IHAs as described in section 505(a)(2), the plan shall also describe activities planned to carry out the applicant's affirmative fair housing marketing responsibilities that apply whenever homeownership opportunities are made available to other than current residents of the property. The plan shall describe the applicant's affirmative fair housing marketing strategy, including specific steps to inform potential applicants and solicit applications from eligible families in the housing market area who are least likely to apply for the program without special outreach. The plan shall require any family determined not to have paid the appropriate amount of tenant contribution under a HUD housing assistance program to resolve any deficiency before being selected for homeownership.

(B) Give a first preference to otherwise qualified current residents and a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program. The following self-sufficiency programs (and any other Federal, State, or local program proposed by the applicant and approved by HUD as equivalent) qualify: Project Self-Sufficiency, Operation Bootstrap, Family Self-Sufficiency and JOBS.

(C) Require the recipient to promptly notify in writing any rejected applicant family of the grounds for any rejection, or to require the recipient to require another appropriate entity to do so.

(D) Require each eligible family selected for homeownership to certify at the time it acquires an ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family) that it intends to occupy the unit as its principal residence.

(E) Require each eligible family to agree to occupy the property as its principal residence during the 15-year period from the date it acquires ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family), unless the recipient determines that family is required to move outside the market area due to a change in employment or an emergency situation or the family sells its ownership interest.

(F) Require any eligible family that violates the agreement made under paragraph (b)(5)(i)(E) of this section to pay the amount then due under the promissory note.

(G) Describe the composition of the residents and potential eligible families, including family size and income, and racial, ethnic, and gender characteristics, as required by HUD.

(ii) *Providing Relocation.* The application shall describe the proposed relocation activities, in accordance with the requirements of section 735. The plan shall specify the approximate number of families and individuals who are expected to choose to move and the number who will be temporarily relocated during rehabilitation, the estimated costs, the source of funding, the organization that will carry out the relocation if different than the applicant, and other available resources (including, for example, section 8 assistance).

(iii) *Managing Sweat Equity.* Where applicable, the application shall contain

a plan for managing the provision of sweat equity by homebuyers and homeowners, including a description of the anticipated scope of the work, schedule of completion, training of homebuyers and homeowners (and training of others donating labor in connection with sweat equity activity), supervision of the work by a licensed general contractor, and a contingency plan if the sweat equity is not fully provided or the schedule is not met.

(iv) *Providing Ongoing Training and Counseling.* The application shall contain a plan for providing ongoing training and counseling for homebuyers and homeowners.

(6) *Eligible Property.* (i) The application shall include a description of the eligible property, including the number of units by size (square footage), bedroom count, bathroom count, preliminary drawings and outline specifications for the proposed rehabilitation, unit plans, and a listing of amenities and services. The application shall also describe the neighborhood and include a map showing the location of the property and the racial and ethnic characteristics of the neighborhood.

(ii) The acquisition or rehabilitation of an eligible property shall involve acquisition and rehabilitation of all of the units in the property. HUD may permit acquisition or rehabilitation of less than the whole property if the applicant demonstrates to HUD's satisfaction that the acquisition or rehabilitation (or both) of less than all of the property is feasible and will not result in a hardship to the residents of the property who are not included in the homeownership program.

(iii) The application shall include evidence that the applicant has control of the property. Acceptable evidence includes a copy of the executed contract of sale, option agreement, or deed, or other proof of ownership. In the case of applications for property owned by a Federal, State, or local government, acceptable evidence includes a commitment to convey the property and a demonstration that any official action which is necessary to convey the property to the applicant has been taken, or will be taken, before the date estimated in the NOFA for notification of selection. Options or other commitments may be contingent upon award of funding under the program. Options or other commitments shall extend for at least a 12-month period from the deadline for submission of applications specified in the NOFA (to provide time necessary to review and select applications and execute grant agreements).

(7) *Housing Quality Standards Plan.* The application shall include a housing quality standards plan describing how the applicant will ensure that—

(i) The unit will be free from any defects that pose a danger to life, health, or safety before transfer of an ownership interest in a unit to an eligible family or execution of a lease with an option to purchase. The recipient shall inspect, or ensure inspection of, each unit to determine it does not pose an imminent threat to the life, health, or safety of current or future residents and that the property has passed recent fire and other applicable safety inspections conducted by appropriate local officials.

(ii) The unit will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards. The recipient shall inspect, or ensure inspection of, each unit to determine it meets the standards applicable to projects refinanced pursuant to section 223(f) of the National Housing Act.

(8) *Economic Development.* The application may contain a plan for economic development activities under the program and shall contain such a plan if the applicant requests a homeownership program involving assistance for operating expenses. The application shall demonstrate that the proposed economic development activities under section 405(b)(13) are directly related to the proposed homeownership program, and describe how these activities will promote the self-sufficiency of homebuyers, residents, and homeowners.

(9) *Match Requirements.* (i) The application shall describe, and include commitments for, the resources that are expected to be contributed towards the match required under section 410, and of any other resources that are expected to be made available in support of the homeownership program. Acceptable evidence that the contribution will be provided shall be included. For example, if 20 years of tax abatement will be counted towards the match, the chief executive officer or appropriate legislative body of the government should submit a copy of the law or other official action documenting this commitment. Cash or other property contributions shall be supported by evidence of a binding commitment by the donor to donate the cash or other property, subject only to approval of the implementation grant and any other necessary conditions approved by HUD.

(ii) If the match requirement does not apply to an IHA in accordance with section 410(d), the application shall contain a certification that the IHA has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds.

(10) *Nondisplacement; Participation by Residents.* The application shall contain a certification by the applicant that no person has been or will be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not precluded termination of tenancy for violation of the terms of occupancy of a unit. Each resident of an eligible property shall be given an opportunity to become a homeowner under this program if the resident qualifies as an eligible family and meets other program requirements.

(11) *Financing.* (i) The application shall identify and describe the financing proposed for any (A) rehabilitation and (B) acquisition (*1*) of the property, where applicable, by the applicant or other entity, including an RC, for transfer to eligible families, and (*2*) by eligible families of ownership interests in units in the eligible property.

(ii) Financing may include use of the implementation grant to permit transfer of an ownership interest in a unit to an eligible family for less than fair market value or with assisted financing; sale for cash; or other sources of financing (subject to requirements that apply to such other sources), including conventional mortgage loans, mortgage loans insured under title II of the National Housing Act, and mortgage loans under other available programs, such as VA, FmHA, and RTC seller-assisted financing.

(iii) Financing may not involve use of the low-income housing tax credit. Financing may not include assumption of a mortgage where low-income use restrictions would continue to apply.

(iv) If the applicant proposes that property transferred under this notice be pledged as collateral for debt or otherwise encumbered, the application shall contain sufficient information for HUD to determine that—

(A) The encumbrance will not threaten the long-term availability of the property for occupancy by low-income families, where the program provides for such long-term availability.

(B) Neither the Federal government nor the PHA/IHA will be exposed to undue risks related to action that may have to be taken pursuant to paragraph (b)(11)(vi) of this section (opportunity to cure).

(C) Any debt obligation can be serviced from project income, including operating assistance.

(D) The proceeds of the encumbrance will be used only to meet the housing quality standards (see paragraph (b)(7)) of this section or to make such additional capital improvements as HUD determines to be consistent with the purposes of the HOPE program.

(v) Recipients and homeowners continue to be subject to paragraphs (b)(11)(iv) (A)–(D) of this section during the term of the grant agreement.

(vi) The proposed financing shall require that any lender that provides financing in connection with the program shall give the PHA/IHA, RMC, individual owner, or other appropriate entity a reasonable opportunity to cure a financial default before foreclosing on the property, or taking other action as a result of the default (and the financing and conveyance documents shall include such restrictions).

(12) *Affordability*—(i) *Initial Affordability.* (A) The application shall demonstrate that the monthly expenditure for principal, interest, taxes, and insurance by an eligible family that is necessary to complete the sale for the initial acquisition of a unit does not exceed 30 percent of the adjusted income of the family, determined in accordance with 24 CFR part 813. As required by the statute, closing costs are included in this cap to the extent they are included in the costs of principal and interest, or are otherwise required to be paid by the homeowner over time after acquisition. It does not make sense to count closing costs paid as a lump sum at closing for purposes of computing a monthly maximum family expenditure. In setting the sales price for acquisition, the applicant shall take into account the need to comply with this affordability standard.

(B) The items subject to the limitations in paragraph (b)(12)(i)(A) of this section, plus estimated utility costs and other monthly housing costs (such as condominium and cooperative monthly fees) shall be at least 25 percent but not more than 35 percent of the adjusted income of the family, determined in accordance with 24 CFR part 813. The applicant may request HUD to approve a higher percentage cap, where the application demonstrates that a higher cap than 35 percent is necessary to make the project feasible and that the families will be able to afford the higher monthly cost.

(C) In the case of cooperative or condominium ownership, if the monthly charge to the homeowner includes amounts for principal, interest, taxes, insurance, or utilities, the portion of the charge covering these amounts shall be considered for purposes of making the affordability determinations under paragraph (b)(12) of this section.

(ii) *Continued Affordability.* The application shall contain a feasible plan for ensuring continued affordability by residents, homebuyers, and homeowners in the eligible property. The plan shall be based on a "proforma" prepared in accordance with paragraph (b)(12)(iii) of this section. The plan shall avoid using financing, such as a mortgage that is not fully amortizing (such as a "balloon" mortgage) or that involves negative amortization, that would impair the continued affordability of the property for eligible families.

(iii) *Proforma.* The plan shall include a "proforma" that sets forth estimated project costs and income over a 20-year period from the date the applicant or other entity acquires the property for transfer to eligible families (or from the effective date of the implementation grant agreement, where the applicant or other entity already owns the property). The proforma shall be prepared in accordance with the following requirements and guidelines.

(A) The proforma shall demonstrate that the requirements of paragraph (b)(12)(i) of this section are met and that, for the 20-year period, on an aggregate basis, eligible families shall not be required to pay more than the amounts provided in paragraph (b)(12)(i) (A) and (B) of this section.

(B) The proforma shall include an estimate of the income expected, by each unit size, for the 20-year period, including any homeownership payments, carrying charges, homeowner association payments, and HOPE grant funds for operating assistance (including funding of reserves) and for replacement reserves.

(C) The aggregate income estimated for the property shall equal or exceed the aggregate costs of operating and maintaining the property, including any debt service, property management costs, insurance costs, taxes, funding of operating or replacement reserves, and any other anticipated costs.

(D) Reasonable assumptions shall be used as to all material factors having an impact on the estimates contained in the proforma, including projected vacancy rates, collection rates, income of homebuyers, homeowners, and other residents; changes in such incomes; changes in utilities costs; and income earned on operating and replacement reserves. The applicant shall justify all assumptions used to prepare the proforma. The applicant shall estimate increases in income and operating costs in accordance with guidelines provided by HUD in the application package.

(E) The proposed use of an operating reserve funded from the HOPE grant shall comply with the requirements of section 405(b)(9).

(F) The proforma shall demonstrate that the aggregate income for the property (including amounts provided by HUD for operating assistance or replacement reserves) exceeds aggregate expenses and demonstrates a positive trend in the difference between income and expenses during the 20-year period.

(iv) *Replacement Reserves.* The application shall demonstrate that the amount proposed for replacement reserves is adequate, taking into account (A) the estimates covered by the proforma, (B) the size of the grant and the amount of matching contributions, (C) the condition and age of the property and each of its major systems and components (including at least the heating, plumbing and electrical systems and the roof, foundation, windows, exterior walls, and common areas (including need to repaint)), and (D) other possible replacement needs. The amount of the reserve shall be $1,000 per unit or such higher amount proposed by the applicant and approved by HUD.

(13) *Sales Price to Applicant or Other Entity.* The application shall specify the proposed sales price, the basis for the price determination, and terms of the proposed sale to the entity, if any, that will purchase the property for resale to eligible families.

(14) *Sales Prices and Terms of Sale to Eligible Families; Form of Ownership.* (i) The application shall include an estimate of the sales prices and terms of sale to eligible families. The application shall also specify the type or types of homeownership to be used, including cooperative ownership (including limited equity cooperative ownership), fee simple ownership (including condominium ownership), or another form of ownership proposed and justified by the applicant and approved by HUD. The application shall contain a certification that the proposed type of homeownership is consistent with any applicable State and local, or tribal, law. For example, if the applicant is a cooperative that proposes to own the property, it must have the legal ability to own the particular property.

(ii) The proposed program shall require each eligible family to make a down payment towards the cost of acquisition at closing.

(iii) An applicant may permit a family to meet its down payment obligation through "sweat equity."

(iv) See section 110(e) for provisions governing the use of single family FHA mortgage insurance.

(15) *Resale Restrictions, If Any.* The application shall contain any proposed restrictions on the resale of units by initial or subsequent homeowners under the homeownership program (see section 720(a)(1)(ii)). The required restrictions set forth in section 720 need not be restated.

(16) *Management Entity.* The application shall identify and describe the entity that will operate and manage the property, and contain a copy of the proposed contract.

(17) *CHAS Certification.* (i) The application shall contain a certification by the public official, or his or her authorized representative, who submits the CHAS that the proposed activities are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located.

(ii) Paragraph (b)(17)(i) of this section shall not apply to an application submitted by an Indian tribe or IHA. Indian tribes and IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that Indian tribes and IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy.

(18) *Equal Opportunity Certifications.* (i) The application shall contain—

(A) A certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHA, under the circumstances described in section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) The application shall contain a statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(19) *Resident Interest.* Where the applicant (or one of the applicants) is not an RMC or RC, the application shall contain a certification from the resident organization, if any, that it is interested in a homeownership program and that the applicant is submitting the application on behalf of the resident organization. Where there is more than one resident organization, the application shall so indicate and state the results of a vote by the residents, conducted by a disinterested third party, designating one resident organization for this purpose. In all cases, the application shall also contain a survey conducted by the applicant of resident interest in homeownership and marketability of the units, which shall be conducted in accordance with procedures set forth in the application package.

(20) *Plan for Use of Certain Program Income.* The application shall contain a plan for use of proceeds from sales to eligible families and amounts families may not retain upon resale. The plan shall provide for uncommitted program income to be spent before additional grant amounts are drawn down by the recipient.

(21) *Nonduplication of Funding.* The application shall contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

(22) *Disclosures Required by the Reform Act.*

Section 102(b) of the HUD Reform Act, Public Law 101–235 (December 15, 1989) requires disclosure of other information concerning other government assistance to be made available with respect to the program and parties with a pecuniary interest in the homeownership program, and submission of a report on expected sources and uses of funds to be made available for the program. Each application shall include the information required by 24 CFR part 12, subpart C, the regulation that implements section 102 of the Reform Act. An implementing notice for 24 CFR part 12, subpart C, is being published in the **Federal Register**. Applicants shall use the form and guidance contained in that notice to make the required disclosures.

(c) *Screening by HUD.* (1) HUD shall screen each application submitted on or before the deadline for submission set forth in the NOFA to determine whether it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants. The notification shall require applicants to submit additional or correct material so it is received in the appropriate HUD office no later than close-of-business on the 14th calendar day after the date of the notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that do not meet one of the tests in the first sentence of paragraph (c)(1) of this section, after the opportunity, if any, to submit additional or corrected material.

(2) The purpose of this procedure is to increase the number of approvable applications so viable homeownership opportunities may be developed at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies. HUD anticipates that many applicants will be relatively new and may need this additional opportunity to perfect their applications.

(Approved by the Office of Management and Budget under control number 2502–0451)

Section 420. Threshold review:

HUD shall review each application that qualifies for additional consideration under the screening procedures in Section 415(c). HUD shall not consider further any application that fails to meet one or more of the following additional threshold criteria—

(a) The application shall demonstrate that the affordability standards in Section 415(b)(12)(i) can be met and the plan for continued affordability in Section 415(b)(12)(ii) is feasible. HUD shall take into account the proposed cost of operating the property after eligible families become homeowners; the adequacy of counseling and training of homebuyers, residents, and homeowners; and the extent to which the proposed self-sufficiency activities assure continued affordability by homeowners.

(b)(1) The proposed program may not result in appreciably reducing in the locality the number of affordable multifamily rental housing units that would be available to residents currently residing in the property or to

families who would be eligible to reside in the property.

(2) HUD shall determine whether the application complies with this criterion, based on a determination that no more than 5 percent of the affordable multifamily rental housing units in the locality would be converted to homeownership. If the proposed eligible property is in a market area that contains such a small number of affordable rental housing units that the applicant believes the number of units in the eligible property may exceed the 5 percent threshold, the applicant shall submit whatever documentation it believes appropriate to assist HUD in making this determination.

(c) The applicant's certification of compliance with equal opportunity and related requirements and the statement concerning desegregation orders, compliance agreements, and voluntary agreements are consistent with facts known to HUD, and the performance of the applicant is satisfactory or any problems are being satisfactorily resolved.

(d) The application shall be submitted by an eligible applicant for eligible property.

(e) The proposed program provides that at least 66 percent of the units will be acquired by eligible families (or such higher percentage as may be required under State, local, or tribal law governing cooperative associations or other form of homeownership used under the program). In addition, the proposed program provides that at least 80 percent of units acquired for homeownership will be acquired by low-income families (or such higher percentage as may be required under such State, local, or tribal law), and that no units will be acquired by families with incomes above 95 percent of the area median.

(f) Where the vacancy rate for the eligible property is less than 50 percent, at least 50 percent of the residents are interested in becoming homeowners.

(g) The proposed costs of eligible activities are within applicable cost limitations.

(h) An assessment of the proposed eligible property, based on the criterion for rating the suitability of property, indicates that the property is suitable.

(i) The application meets all other program requirements.

Section 425. Rating, ranking, and selection of applications.

(a) *Rating.* HUD shall review each application that it determines to meet the threshold requirements and assign it points in accordance with the following selection criteria—

(1) *Capability.* The qualifications or potential capabilities of the applicant for developing a successful and affordable homeownership program. HUD shall assign points based on the past experience of the applicant, or an explanation of how such capability will be obtained, in the following categories—

(i) Developing or managing multifamily housing, or both—5 points.

(ii) Providing multifamily homeownership programs (for example, conversion of rental property to cooperative or condominium low-income homeownership, or developing financing programs for low-income homeownership)—5 points.

(iii) Organizing, developing, and training effective low-income neighborhood or low-income resident groups, or both—5 points.

Maximum points for this criterion (1): 15 points.

(2) *Quality of the Program.* In assigning points for this criterion, HUD shall consider evidence in the application demonstrating—

(i) The overall soundness and comprehensiveness of the homeownership program—15 points.

(ii) The extent to which proposed economic development activities will result in continued affordability of the property after assistance for operating expenses is no longer available—10 points.

If no assistance for operating assistance is being requested and if the application demonstrates that no economic development assistance is needed, no points shall be assigned under subcriterion (ii), and the points for subcriterion (i) shall be 25.

Maximum points for this criterion (2): 25 points

(3) *Local Support.* The extent of cooperation or support, or both, from the unit of general local government, neighborhood organizations, and providers of services and resources appropriate to assist eligible families to achieve economic independence. In assigning points for this criterion, HUD shall consider—

(i) Evidence of support for the homeownership program, demonstrated through letters, resolutions, or other expressions of support from State or local governments, PHAs/IHAs, and community, civic, religious, or other entities—5 points; and

(ii) Evidence from entities other than the applicant that funds, services, or other resources will be made available in support of the homeownership program, demonstrated through letters, resolutions, or other expressions of support from providers of services and other resources.—5 points.

The highest number of points shall be assigned based on the quality, expected duration, and size of support to the homeownership program.

Maximum points for this criterion (3): 10 points.

(4) *Resident and Homebuyer Interest.* The extent of resident and homebuyer interest in the development of a homeownership program for the eligible property. HUD shall assign points based on the percentage of current and potential residents interested in participating in the proposed homeownership program, based on a survey conducted by the applicant and submitted to HUD as part of the application. Only occupied units in the property shall be used to calculate the percentage of residents interested.

(i)(A) If 75 percent or more of the residents are interested: 5 points; or

(B) If 50–74.99 percent of the residents are interested: 3 points; and

(ii)(A) If 75 percent or more of the units occupied by nonpurchasers are occupied by residents willing to move and the application demonstrates that all the units in the property are marketable: 5 points;

(B) If 50–74.99 percent of the units occupied by nonpurchasers are occupied by residents willing to move and the application demonstrates that all the units in the property are marketable: 3 points; or

(C) If less than 50 percent of the units occupied by nonpurchasers are occupied by residents willing to move: 0 points.

If the vacancy rate for the property is 50 percent or more, the points for categories (ii) (A) and (B) shall be doubled and no points shall be assigned for categories (i) (A) and (B).

Maximum points for this criterion (4): 10 points

(5) *Suitability of the Property.* The suitability of the eligible property for homeownership shall be determined based on—

(i) Proximity or accessibility of the property to places of employment, shopping, schools, medical facilities, transportation, places of worship, recreational facilities, and other necessary services for the families under the program—4 points;

(ii) Whether the surrounding neighborhood is free from conditions which are seriously detrimental to the quality of life; substandard dwellings or other undesirable elements must not predominate, unless the undesirable conditions affecting the property are being actively mitigated—12 points; and

(iii) Whether the structure type and bedroom configuration are (or will be after any proposed rehabilitation) appropriate for the proposed homeownership program—4 points.

The purpose of this criterion is to assure that property in neighborhoods completely unsuitable for homeownership are not selected. The review will be made in the context of where the eligible properties are typically located.

Maximum points for this criterion (5): 20 points.

(6) *MBE/WBE Goals.* (i) The extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, especially resident-owned businesses. For example, the applicant has used such businesses in the past, has set forth specific affirmative steps it will take to ensure that such businesses have an equal opportunity to obtain and compete for contracts, or both. These steps may include the steps outlined at 24 CFR 85.36(e) and 570.506(g)(6), but may not include awarding contracts solely or in part on the basis of race or gender. See Section 505(d) for the legal basis for this criterion.

(ii) In the case of applications submitted by Indian tribes or IHAs, the requirements of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b), apply. Accordingly, for such applicants, points for this factor shall be assigned based on the extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Maximum points for this criterion (6) (i) or (ii), as applicable: 5 points.

(7) *Feasibility and Efficiency*—(i) *Feasibility.* The extent of readiness of the applicant to proceed with rehabilitation and the homeownership program, based on the level of completeness of the architectural exhibits and the cost estimates of the proposed rehabilitation. Applicants submitting final working drawings and specifications that are sufficient to permit the applicant to obtain bids for the work will receive maximum points.

Maximum points for this subcriterion: 10 points.

(ii) *Efficiency.* The efficiency of the applicant's use of HOPE grant funds, based on such factors as—

(A) The amount of the HOPE grant per unit, adjusted for high-cost areas;

(B) The availability of contributions beyond those required by the match, and the availability of the contributions proposed in cash and for relatively firmer commitments of cash and other contributions.

Maximum points for this subcriterion (ii): 5 points.

Maximum points for this criterion (7): 15 points.

(8) *Extent of Low-Income Homeownership.* HUD shall deduct points for an application that proposes relatively fewer low-income purchasers, as follows:—

(i) An application shall have 15 points deducted from its score if 80.01–90 percent of the units will be purchased by low-income families.

(ii) An application shall have 10 points deducted from its score if 90.01–99.99 percent of the units will be purchased by low-income families.

(iii) An application shall have no points deducted from its score if 100 percent of the units will be purchased by low-income families.

Total points—100 points.

(b) *Environmental Review.* (1) HUD shall conduct an environmental review of the implementation grant applications.

(2) In conducting the environmental review, HUD shall assess the environmental effects of each implementation grant application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR part 50. Any application that requires an environmental impact statement (generally, those that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR part 50, subpart F) shall not be eligible for funding.

(3) As a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures to mitigate environmental impacts are taken. (See, for example, 24 CFR part 51.) Accordingly, HUD may adjust the rating scores of such applications, based on the anticipated time delays or excessive costs in adopting appropriate impact mitigation. For example, the feasibility of the program or the availability of an eligible property may be harmed by any significant delay.

(4) The environmental review often will reveal information not contained in the application that may have relevance to the selection process. HUD shall make further adjustments to the ratings, where appropriate, based on the information revealed during the environmental review.

(c) *Ranking and Selection to Assure National Geographic Diversity.* (1) After assigning points to each application under paragraph (a) of this section, HUD shall rank the implementation grant applications rated under paragraph (a) of this section. HUD shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership under the program, it may establish a minimum number of points for an application to be selected. HUD shall then select the highest ranking application from each of the 10 HUD Regions.

(2) HUD shall then select the highest ranking remaining applications, without regard to their location.

(3) If two or more applications have the same number of points, the application with the most points for feasibility and efficiency shall be selected. If there is still a tie, the application with the most points for suitability of property shall be selected.

(4) When the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD may determine whether funding a lower grant amount is feasible. Alternatively, HUD may skip to the next highest ranking application or applications that can be funded with the remaining amount.

(5) Procedural errors discovered after initial ratings but before notification of applicants shall be corrected and rankings revised. Procedural errors discovered after notification of approved applicants which, if corrected, would result in approval of an application which was not approved will be corrected by funding the application from any unused amounts or "off the top" from amounts available for implementation grants in the next funding round.

(d) *Reduction in Requested Grant Amounts.* HUD shall approve an implementation grant application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines the amount requested for one or more eligible activities is unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program.

(e) *Notification of Approval or Disapproval*—(1) *Notification of Applicants.* After completion of the ranking and selection of applications, but no later than six months after the

date of submission of the application, HUD shall notify the selected applicants and the applicants that have not been selected, in writing. The amount of the required match may be adjusted when HUD approves an application, to reflect the approved grant amount.

(2) *Conditional Approval of Section 8 Applications.* HUD may approve the HOPE implementation grant application with a statement that the application for the section 8 certificate or housing voucher assistance (or both) is conditionally approved, subject to the availability of appropriations in subsequent fiscal years. This will permit HUD to use section 8 authority for other purposes until it is needed for the HOPE 2 program for nonpurchasing residents.

(f) *Use of Remaining Amounts to Fund HOPE 2 Planning Grants.* Any amounts available to fund implementation grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded planning grant applications.

(g) *Insufficient Approvable Applications.* If funds remain after HUD approves all approvable applications, including planning grant applications, as provided in this notice, HUD may publish a NOFA inviting applications for planning or implementation grants, or both, in accordance with this notice, or invite applicants who submitted applications that could not be funded to submit amended planning grant or implementation grant applications in accordance with this notice within a deadline specified in the invitation.

V. Other Requirements

Section 501. Flood insurance and Coastal Barriers Resources Act.

(a) *Flood Insurance.* Pursuant to the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) HUD will not approve applications for implementation grants providing financial assistance for acquisition or rehabilitation of properties located in an area identified by the Federal Emergency Management Agency (FFMA) as having special flood hazards, unless—

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) *Coastal Barriers Resources Act.* Pursuant to the Coastal Barriers Resources Act (16 U.S.C. 3601), HUD will not approve applications for planning or implementation grants for properties in the Coastal Barriers Resources System.

Section 505. Nondiscrimination and equal opportunity.

(a) *Fair Housing Requirements.* (1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100, part 109, and part 110; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1 shall apply.

(2) The Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*) applies to tribes when they exercise their powers of self-government. Thus, it is applicable in all cases when an IHA has been established by exercise of such powers. In the case of an IHA established pursuant to State law, the applicability of the Indian Civil Rights Act shall be determined on a case-by-case basis. Developments subject to the Indian Civil Rights Act shall be developed and operated in compliance with its provisions and all implementing HUD requirements, instead of title VI and the Fair Housing Act and their implementing regulations.

(b) *Discrimination on the Basis of Age or Handicap.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 shall apply.

(c) *Employment Opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) shall apply. In addition, Executive Order 11246 (3 CFR 1964–1965 Comp., p. 339) (Equal Employment Opportunity) and implementing regulations at 41 CFR part 60 shall apply

(2) In the case of Indian tribes in IHAs, the requirements of the Indian Self-Determination and Education Assistance Act shall also apply (see 25 U.S.C. 450e(b); 24 CFR 905.165 (a) and (b) and 905.360); compliance with Executive Order 11246 and 41 CFR part 60 shall be to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act (see 24 CFR 905.170(b) and 905.360).

(d) *Minority and Women's Business Enterprises.* The requirements of Executive Orders 11625, 12432, and 12138 shall apply. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities. In the case of applications submitted by Indian tribes or IHAs, recipients' efforts must be consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b).

(e) *Affirmative Fair Housing Marketing.* The recipient shall adopt a plan for informing and soliciting applications from people who are least likely to apply for the program without special outreach, consistent with the affirmative fair housing marketing requirements. See 24 CFR part 108. Paragraph (e) of this section shall not apply to Indian tribes and IHAs, as described in paragraph (a)(2) of this section.

(f) *Authority for Collection of Racial, Ethnic and Gender Data.* HUD requires submission of racial, ethnic, and gender data under this notice pursuant to section 562 of the Housing and Community Development Act of 1987, section 431 of NAHA, and section 808(e)(6) of the Fair Housing Act.

Section 510. OMB circulars.

(a) The policies, guidelines, and requirements of OMB Circular Nos. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) apply to the award, acceptance, and use of assistance under the program by governmental entities, and to the remedies for non-compliance, except where inconsistent with the provisions of NAHA, other Federal statutes, or this notice. Circular Nos A–110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) and A–122 (Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Institutions) apply to the acceptance and use of assistance by private nonprofit organizations, except where inconsistent with the provisions of NAHA, other Federal statutes, or this notice. Recipients are also subject to the

audit requirements of OMB Circular A–128 implemented at 24 CFR part 44, and OMB Circular A–133 (Audits of Institutions of Higher Learning and Other Nonprofit Institutions).

(b) Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332 (this is not a toll-free number). There is a limit of two free copies.

Section 515. Drug-free workplace.

Applicants shall certify that they will provide a drug-free workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

Section 520. Anti-lobbying certification.

(a) Section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A government-wide common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) and supplemented by a notice published June 15, 1990 (55 FR 24540). For HUD, this rule is found at 24 CFR part 87. The rule requires applicants for and recipients of assistance exceeding $100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants and recipients if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(b) This section shall not apply to Indian tribes or IHAs. Indian tribes, tribal organizations, or any other Indian organization with respect to expenditures specifically permitted by other Federal law are not covered by the definition of "person" in 24 CFR part 87.

Section 525. Debarred or suspended contractors.

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

Section 530. Conflict of interest.

(a) In addition to the conflict of interest requirements in OMB Circular A–110 [2] and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter, except that a resident of an eligible property may acquire a homeownership interest.

(b) HUD may grant an exception to the exclusion in paragraph (a) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the HOPE program and the effective and efficient administration of the local homeownership program. An exception may be considered only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the local homeownership program that would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(6) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.

Section 535. Labor standards.

If other Federal programs are used in connection with the HOPE 2 homeownership program, labor standards requirements apply to the extent required by such other Federal programs. For example, If CDBG assistance is used for the HOPE program, any labor standards requirements of that program would apply to the extent required by it.

Section 540. Lead-based paint testing and abatement.

Any residential property assisted under the HOPE program established under this notice constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, recipients shall be responsible for testing and abatement activities.

Section 545. Requirements applicable to religious organizations.

Where the applicant is, or proposes to contract with, a primarily religious organization, or a wholly secular organization established by a primarily religious organization, to provide, manage, or operate housing under the program, the organization shall undertake its responsibilities under the homeownership program in accordance with the following principles:

(a) It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(b) It will not discriminate against any person applying for housing on the basis of religion and will not limit such housing or give preference to persons on the basis of religion;

(c) It will provide no religious instruction or counseling, conduct no religious services or worship (which term does not include voluntary, non-denominational prayer before meetings), engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the homeownership program.

[2] See section 510(b) concerning the availability of OMB Circulars.

VI. Grant Agreement—Planning and Implementation Grants

Section 601. Grant agreement.

After HUD approves an application for a planning grant or an implementation grant, it shall enter into a grant agreement with the recipient setting forth the amount of the grant and applicable terms and conditions, including sanctions for violation of the agreement. Among other things, the grant agreement shall provide that the recipient agrees:

(a) To carry out the program in accordance with the provisions of this notice, applicable law, the approved application, and all other applicable requirements;

(b) To comply with such other terms and conditions, including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring, and evaluating the program in an effective and efficient manner;

(c) That HUD may withhold, withdraw, or recapture any portion of a grant, terminate the grant agreement, or take other appropriate action authorized under the grant agreement, if HUD determines that the recipient is failing to carry out the approved homeownership program in accordance with the terms of the approved application and this notice, including failure to provide the contributions towards the match.

VII. Implementation of Planning and Implementation Grants

Section 701. Implementation; Family contribution; Performance standards.

(a) After execution of its planning or implementation grant agreement, the recipient shall carry out the planning grant or implementation grant activities in accordance with its approved application. HUD shall establish procedures governing the drawdown of funds under grant agreements.

(b) The total monthly amount payable by a family may not be less than the amount determined in accordance with the regulations specified in section 415(b)(12)(i) if operating assistance under the program is being provided for the family. The amount payable by a family shall be adjusted at least annually in accordance with the requirements of those regulations so long as operating assistance is being provided under the program for the family.

(c) HUD intends to establish performance criteria in the final rule for the program and invites comments on what the standards should be.

Section 705. Resident selection procedures during rental phase (If Any).

During the interim period, if any, when the property continues to be operated and managed as rental housing, the recipient shall utilize written resident selection policies and criteria that are approved by HUD as consistent with the purpose of improving housing opportunities for low-income families. The policies shall provide that the recipient (or another appropriate entity) (a) notify any rejected applicant in writing of the grounds for rejection; (b) comply with applicable affirmative fair housing marketing requirements; (c) specify the basis for resident selection, which shall give a preference to applicants interested in becoming homeowners who have completed participation in an economic self-sufficiency program (see section 415(b)(5)(i)(B)) and other applicants interested in becoming homeowners and shall provide for a waiting list; and (d) verify family income of applicants and check the credit and rental history of applicants. The resident selection policies and criteria may not provide for the recipient (or other entity) to take into account whether an applicant receives public assistance or receives Federal, State, or local housing assistance, but may take into account such assistance, and all other income and other resources, in determining the amount a family will pay under the program. The recipient may adopt the assisted housing occupancy handbook, with any appropriate modifications (including, at least, establishing a priority for applicants interested in homeownership).

Section 710. Social security numbers.

As a condition of eligibility for homeownership under this notice—

(a) At the time a family applies for homeownership, the recipient (or other appropriate entity) shall require the family to meet the requirements for the disclosure and verification of social security numbers, as provided by 24 CFR part 750; and

(b) The recipient (or other appropriate entity) shall require the family to sign and submit consent forms for the obtaining of wage and claims information from State Wage Information Collection Agencies, as provided by 24 CFR part 760.

Section 715. Timely homeownership.

(a) *Deadline for Transfer.* Recipients shall transfer ownership interests in the property to eligible families within a reasonable period of time.

(b) *Definition of Reasonable Period of Time.* (1) Except for eligible property already owned by the entity that will transfer to eligible families, the eligible property shall be acquired within one year of the effective date of the implementation grant agreement. Ownership interests in the units shall be transferred to eligible families within four years of the effective date.

(2) An applicant may propose in its application a longer period for transferring ownership interests to eligible families, and submit a justification. After application approval, HUD may approve a request for a longer deadline for transfer to eligible families, where it determines that unanticipated, extraordinary circumstances exist. Subject to the availability of funding, HUD may consider making additional section 8 assistance available to residents in the property where necessary to maintain its feasibility during the time the causes for the delay are being corrected. This could become necessary if residents who intended to purchase change their minds and need assistance to afford the rents in the property.

Section 720. Restrictions on resale by initial homeowners.

(a) *In general*—(1) *Tranfer Permitted.* (i) A homeowner may transfer the homeowner's ownership interest in the unit, subject only to the right to purchase under paragraph (a)(2) of this section, the requirement for the purchaser to execute a promissory note, if required under paragraph (b) of this section, and the limitation on the amount of sales proceeds a family may retain upon sale within the first six years, as required under paragraph (c) of this section. See paragraphs (b) and (c) of this section for the rules for determining the amount homeowners may retain from the sales proceeds.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, an applicant may propose in its application, and HUD may approve based on a review of the individual circumstances, additional reasonable restrictions on the resale of units under the program.

(2) *Right to purchase.* (i) Where an RMC, RC, or cooperative has jurisdiction over the unit, it shall have the prior right to purchase the ownership interest in the unit from the initial homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. The RMC, RC, or cooperative association shall have 10 days after receiving notice of the firm contract to decide whether to exercise

its right and 60 additional days to complete closing of the purchase.

(ii) If no RMC, RC, or cooperative has jurisdiction over the unit or no such entity elects to purchase from the initial homeowner and if the prospective buyer is not a low-income family, a PHA/IHA with jurisdiction for the area in which the unit is located or the recipient, as specified in writing at the time the family acquires ownership interest in the unit, shall have the prior right to purchase the ownership interest in the unit for the amount specified in the firm contract. The PHA/IHA, or recipient shall have 10 days after receiving notice of the firm contract to decide whether to exercise its right and 60 additional days to complete closing of the purchase.

(iii) Where an RMC, RC, cooperative, PHA/IHA, or recipient exercises a right to purchase, it shall resell the unit to an eligible family promptly. If the PHA/IHA exercises a right to purchase shares representing a unit in a cooperative, because the cooperative did not have sufficient money to do so, the PHA/IHA shall give the cooperative another chance to purchase the shares before selling it to an eligible family.

(b) *Promissory Note.* (1)(i) At closing the initial homeowner shall execute a nonamortizing, nonrecourse, non-interest-bearing promissory note, in a form acceptable to HUD, equal to the difference, if any, between the fair market value of the unit and the purchase price, payable to the PHA/IHA, recipient, or other entity designated in the approved homeownership plan, together with a mortgage securing the obligation of the note. In determining the amount of the promissory note and for that purpose only, the purchase price shall be adjusted by deducting all substantial amounts of assistance that would result in an undue profit to the family if it were to sell the property at the beginning of the 7th year of homeownership. (See paragraph (c) of this section for restrictions during the first six years.) For example, if the family received down payment assistance equal to 10 percent or more of the fair market value, a promissory note shall be required.

(ii)(A) With respect to a sale by an initial homeowner, the note shall require payment upon sale by the initial homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, paying any other amounts due in connection with the sale (such as closing costs and transfer taxes), and paying the family the amount of its equity in the property, computed in accordance with paragraph (c) of this section.

(B) With respect to a sale by an initial homeowner after the first six years after acquisition through the 20th year the amount payable under the note shall be reduced by 1/180 of the original principal amount of the note for each full month of ownership by the family after the end of the sixth year The homeowner may retain all other proceeds of the sale.

(C) For example, if the family sells at the end of the 13th year of homeownership (at the half-way point between the end of the sixth year and the end of the 20th year of ownership), 84/180 (or one-half) of the note would be forgiven, and only half of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the initial homeowner retains ownership for 20 or more years, the entire amount of the note would be forgiven.

(2)(i) Where a subsequent purchaser during the 20-year period, measured by the term of the initial promissory note, purchases the property for less than the then current fair market value, the purchaser shall also execute at closing such a promissory note and mortgage, for the amount of the discount (but no more than the amount payable at the time of the sale on the promissory note by the seller). The term of the promissory note shall be the period remaining of the original 20-year period. The note shall require payment upon sale by the subsequent homeowner, to the extent proceeds of the sale remain after covering costs of the sale, paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, and paying any other amounts due in connection with the sale. The amount payable on the note shall be reduced by a percentage of the original principal amount of the note for each full month of ownership by the subsequent homeowner. The percentage shall be computed by determining the percentage of the term of the promissory note the homeowner has owned the property. The remainder may be retained by the subsequent homeowner selling the property.

(ii) For example, if the subsequent homeowner acquires the property from an initial homeowner at the end of year 4, there are 192 months (16 years × 12) remaining in the 20-year period. The term of the promissory note is 16 years. If the subsequent homeowner sells at the end of year 10, having owned the property for 72 months (6 years × 12), 72/192 (37.5 percent) of the note would be forgiven, and 62.5 percent of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the subsequent homeowner retains ownership to the end of the initial 20-year period (for 16 years, in the example), the entire amount of the note would be forgiven.

(c) *Limitation on Equity Interest an Initial Homeowner May Retain from Sale During First Six years.* (1) The HOPE program is designed to assure that an initial or subsequent homeowner does not receive any undue profit from acquiring a unit under the program and that, to the extent the sales price is sufficient, an initial homeowner recovers the equity interest in the property. With respect to any sale by an initial homeowner during the first six years after acquisition, the family may retain only the amount computed under paragraph (c) of this section. Any excess shall be distributed as provided in paragraph (d) of this section. The amount of equity an initial homeowner has in the property is determined by computing the sum of the following—

(i) The contribution to equity paid by the family (such as any down payment (in the form of cash or the value of sweat equity) and any amount paid towards principal on a mortgage loan during the period of ownership);

(ii) The value of any improvements installed at the expense of the family during the family's tenure as owner (including improvements made through sweat equity), as determined by the recipient or other entity specified in the approved application based on evidence of amounts spent on the improvements, including the cost of material and labor; and

(iii) The appreciated value, determined by applying the Consumer Price Index (Urban Consumers) against the contribution to equity under paragraphs (c)(l)(i) and (ii) of this section.

(2) The recipient (or other entity) may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) Amounts that count towards a family's equity may not also count towards the match.

(d) *Use of Amounts a Family May Not Retain.* Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under paragraphs (a)(1)(ii), (b), and (c) of this section shall be paid to the entity that transferred ownership interests in units

to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities (including assistance for additional homeowners who are otherwise unable to cover the costs of homeownership), and other activities approved by HUD in the approved homeownership program or later. The remaining 50 percent shall be collected by the recipient and returned to HUD within 15 days of the sale for use under the HOPE 2 program, subject to any limitations contained in appropriations Acts.

Section 725. Use of proceeds from sales to eligible families.

The entity that transfers ownership interests in units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by HUD, either as part of the approved application or later on request.

Section 730. Third party rights.

The requirements under this notice regarding housing quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the recipient with respect to actions involving rehabilitation, and against purchasers of eligible property under the HOPE program or their successors in interest (to the extent such requirements apply to purchasers and their successors in interest) with respect to other actions by affected low-income families, RMCs, RCs, PHAs/IHAs, and any agency, corporation, or authority of the United States government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

Section 735. Displacement prohibited; Protection of nonpurchasing residents.

(a) *Displacement Prohibited.* No person may be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude terminations of tenancy for violation of the terms of occupancy of the unit. In addition to any applicable sanctions under the grant agreement, a violation of paragraph (a) of this section may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24.

(b) *Temporary Relocation.* The recipient shall provide each resident of an eligible property, who is required to relocate temporarily to permit work to be carried out, with suitable, decent, safe, and sanitary housing for the temporary period and shall reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the costs of moving to and from the temporarily occupied housing and any increase in monthly costs of rent and utilities.

(c) *Relocation Assistance for Residents Who Elect to Move.* The recipient shall provide each nonpurchasing resident who elects to move with relocation assistance in accordance with the approved homeownership program.

(1) The program shall provide, at least, the following assistance:

(i) Advisory services including timely information, counseling (including the provision of information on a resident's rights under the Fair Housing Act), and referrals to suitable, affordable, decent, safe, and sanitary alternative housing;

(ii) Payment for actual, reasonable moving expenses; and

(iii) Relocation housing assistance sufficient to permit relocation to suitable, affordable, decent, safe, and sanitary housing. This requirement is met if a family receives assistance as provided in paragraph (c)(2) of this section. For other families, this requirement is met if the cost of the housing to the family does not exceed the higher of 30 percent of adjusted family income or the amount paid by the family for the unit being vacated, and the housing is otherwise suitable and decent, safe, and sanitary.

(2) If a resident living in an eligible property on the date HUD approves an application for an implementation grant is a low-income resident and decides not to purchase a unit, or is not qualified to do so under the terms of the approved homeownership program, HUD shall, subject to the availability of appropriations, ensure that the resident receives a section 8 certificate or voucher for use in that or another property.

(d) *Notice of Relocation Assistance.* As soon as feasible, each recipient shall give each resident of an eligible property a written description of the applicable provisions of this section.

VIII. Records, Reports, and Audit of Recipients

Section 801. Recordkeeping.

(a) *General Records.* Each recipient shall keep records that will facilitate an effective audit to determine compliance with program requirements and that fully disclose—

(1) The amount and disposition by the recipient of the planning and implementation grants received under this notice, including sufficient records that document the reasonableness and necessity of each expenditure;

(2) The amount and disposition of proceeds from financing obtained in connection with the program, sales to eligible families, and any funds recaptured upon sale by the homeowner;

(3) The total cost of the homeownership program;

(4) The amount and nature of any other assistance, including cash, property, services, or other items contributed as a condition of receiving an implementation grant;

(5) The cost or other value of all in-kind contributions towards the match required by section 410; and

(6) Any other proceeds received for, or otherwise used in connection with, the homeownership program.

(b) *Family Size and Income and Racial, Ethnic, and Gender Data.* The recipient shall maintain records on the family size and income, and racial, ethnic, and gender characteristics, of families who apply for homeownership and families who become homeowners.

(c) *Cooperative and Condominium Agreements.* The recipient shall maintain a copy of any condominium and cooperative association agreements for properties under the approved homeownership program.

(d) *Amounts Available for Reuse.* The recipient shall keep and make available to HUD all records necessary to calculate accurately payments due to HUD under Section 720(d) and Section 725.

(Approved by the Office of Management and Budget under control number 2502–0451)

Section 805. Reports.

The recipient shall submit reports required by HUD.

(Approved by the Office of Management and Budget under control number 2502–0451)

Section 810. Access by HUD and the Comptroller General.

For the purpose of audit, examination, monitoring, and evaluation each

recipient shall give HUD (including any duly authorized representatives and the Inspector General) and the Comptroller General of the United States (and any duly authorized representatives) access to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this notice, including all records required to be kept by Section 801.

IX. Waiver Authority

Section 901. Waiver Authority.

Upon determination of good cause, the Secretary of Housing and Urban Development may waive any provision of this notice, not otherwise required by law, except provisions that establish deadlines for receipt of any modifications to applications. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds. This waiver authority may be exercised by the Secretary or the Assistant Secretary for Housing—Federal Housing Commissioner. Where another HUD program regulation is involved, the Secretary or the appropriate Assistant Secretary may waive the regulation. For example, where a waiver to a CDBG regulation is requested for the HOPE 2 program, it may be waived by the Assistant Secretary for Community Planning and Development. The Secretary periodically will publish notice of granted waivers in the **Federal Register**. HUD may change submission deadlines established by this notice by subsequent notice published in the **Federal Register**.

Dated: December 20, 1991.

Jack Kemp,

Secretary.

[FR Doc. 92–586 Filed 1–13–92; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-92-3361; FR-3193-N-01]

HOPE for Homeownership of Multifamily Units Program; Notice of Fund Availability

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of fund availability for FY 1992.

SUMMARY: This NOFA announces the availability of $95 million in funding for mini planning grants, full planning grants, and implementation grants for the HOPE for Homeownership of Multifamily Units Program (HOPE 2). (HOPE is an acronym for Homeownership and Opportunity for People Everywhere.) In the body of this document is information concerning eligible applicants, the funding available for mini planning grants, full planning grants, and implementation grants, the application packages, and their processing. Elsewhere in this issue of the **Federal Register** are the Notices of Fund Availability for HOPE 1, the HOPE for Public and Indian Housing Homeownership Program, and HOPE 3, the HOPE for Homeownership of Single Family Homes Program. Also elsewhere in this issue of the **Federal Register** is the Program Guidelines which revises the HOPE 2 Notice of Program Guidelines published in the **Federal Register** on February 4, 1991. These revised guidelines contain detailed programmatic information and requirements governing the FY 1992 HOPE 2 Program. Similar revised Guidelines for HOPE 1 and 3 also appear in this issue. It is critical that applicants for HOPE 2 planning or implementation grants read and comply with the requirements of the revised Program Guidelines. Many of the requirements of the HOPE 2 program are not repeated in this NOFA, and failure to follow the guidelines will result in applications being rejected by HUD.

DATES: Applications for mini planning grants, full planning grants, or implementation grants for the HOPE 2 Program must be received in the appropriate HUD Field Office Housing Development Division by close of business for that office on April 17, 1992. Applications may also be hand delivered to the appropriate HUD Field Office by close of business for that office on or before the deadline date. Applications sent by facsimile will not be accepted. HUD will not waive this deadline for any reason. No applications may be accepted prior to 30 calendar days before the deadline. Applications submitted more than 30 calendar days before the deadline will be returned to applicants.

ADDRESSES: An original and two copies of the completed application must be submitted to the HUD Field Office having jurisdiction over the locality in which the proposed project is located. The applications should be addressed to the Attention of: Director, Housing Development Division. A list of HUD's Field Offices appears at the end of this NOFA. In States with more than one Field Office, applicants must submit their applications to the correct Field Office. Applicants are advised to contact their local office to confirm the appropriate place and time of close of business for submission. Failure to submit an application to the correct Field Office by the due date will result in disqualification of the application. In addition, one copy of the application should be submitted to the following address: Department of Housing and Urban Development, Office of Resident Initiatives, room 6130, 451 Seventh Street, SW., Washington, DC 20410, Attention: Margaret Milner. While copies must be submitted both to the appropriate HUD Field Office and Headquarters, the date and time of receipt in the Field Office will be used to determine whether the application has been submitted on time.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Resident Initiatives, Department of Housing and Urban Development, room 6130, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-4542. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned OMB control number 2502-0451.

I. Purpose and Substantive Description

A. Authority

The funding made available under this NOFA is authorized by section 421 of the National Affordable Housing Act (Pub. L. 101-625, November 28, 1990), which created the HOPE 2 Program.

B. Allocation Amounts

The purpose of this NOFA is to announce the availability of a total of $95 million in funds, appropriated by the Department's Appropriations Act for fiscal year 1992 (Pub. L. 102-139, October 28, 1991), for grants as follows:

- Up to $15 million for mini planning grants and full planning grants
- $80 million for implementation grants

C. Fungibility of Set-Asides

Any amounts available to fund planning grants that are not needed because of insufficient approvable applications shall be used to fund the highest ranked, unfunded implementation grant applications. Any amounts available to fund implementation grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded planning grant applications.

D. Mini Planning Grant Cap

The amount of a mini planning grant may not exceed $100,000, except that HUD may, for good cause, approve a grant in a higher amount, based on justification submitted by the applicant demonstrating that the costs are reasonable. Applications for more than $100,000 for projects of more than 250 units do not need to demonstrate good cause if the additional amount requested is not more than $400 for each unit over 250.

E. Planning Grant Cap

The amount of a planning grant may not exceed $200,000, except that HUD may, for good cause, approve a grant in a higher amount, based on justification submitted by the applicant demonstrating that the costs are reasonable. Applications for more than $200,000 for projects of more than 250 units do not need to demonstrate good cause if the additional amount requested is not more than $800 for each unit over 250.

F. Implementation Grant Cap

The amount requested for an implementation grant for each unit may not exceed 120 times the current published fair market rent for existing housing for that unit size, established by HUD under section 8(c) of the 1937 Act. The current fair market rents were published in the **Federal Register** on September 26, 1991 at 56 FR 49024.

G. Eligible Applicants

For mini planning grants, full planning grants, and implementation grants, an

eligible applicant is one of the following entities that represents the residents of the eligible property: an RC (resident council); an RMC (resident management corporation); a cooperative association; a public or private nonprofit organization; a public body, including an agency or instrumentality thereof; a PHA (public housing agency); an IHA (Indian housing authority); or a mutual housing association. Two or more eligible applicants may submit a joint application for a single program.

An applicant may submit an application for either a planning grant or an implementation grant, but not both, for any one eligible property.

H. Certification for Consistency with the Comprehensive Housing Affordability Strategy

Applications for HOPE grants must be accompanied by a certification of consistency with an approved Comprehensive Housing Affordability Strategy (CHAS) or abbreviated housing strategy from the public official responsible for submitting the CHAS, or his or her authorized representative. State and local government applicants must have submitted a full CHAS or an abbreviated strategy, and must provide a certification of consistency at the time of application. All other applicants (including private nonprofit organizations and public housing agencies) must obtain the certification from the lowest level of government having either a full CHAS or an abbreviated strategy covering the jurisdiction in which the program (project) is to be located. Where the program will be carried out in more than one unit of general local government with a CHAS, a certification for each shall be included. Indian Tribes and Indian Housing Authorities are not subject to the requirements for preparation of a CHAS or submission of a certification of consistency with the CHAS.

For an application for a HOPE grant to be consistent with a CHAS: (1) Homeownership for low-income families must be identified as a priority in the narrative and (for local jurisdictions only) Table 3 (Priorities for Assistance) of Section II (Strategy) of the CHAS; (2) the HOPE program for which funding is sought should be mentioned (whether by name or by program type) in the narrative of Section III (Annual Plan) of the CHAS as among the Federal resources to be used in FY 1992; and (3) a specific dollar amount for the HOPE program applied for must be entered in Column A of Table 4/5A (Anticipated Resources and Plan for Investment) of Section III. (**Note:** Since Table 4/5A for States does not include information on applications by entities other than the State itself, a State may certify consistency for a HOPE application from a private nonprofit or a PHA even if there is no dollar amount entered in Column A of the State's Table 4/5A).

If a jurisdiction's strategy identifies low-income homeownership as a priority in the Section II narrative, but does not mention the HOPE program in the Section III narrative or include a specific dollar amount for the program in Column A of Table 4/5A, the jurisdiction may amend its strategy by correcting its Section III narrative and Table 4/5A to be consistent with its strategy without doing a substantial amendment, which requires citizen participation. However, if there is no dollar amount entered in Column A of Table 4/5A and there is also no priority for low-income homeownership identified in the Section II narrative, a substantial amendment, requiring citizen participation, would be needed to modify the CHAS to allow the jurisdiction to provide a certification of consistency.

All CHASs or abbreviated strategies, revised tables and narratives for nonsubstantial amendments, or substantial amendments, as well as the required certifications of consistency, must be submitted to HUD no later than at the time the application for HOPE funding is submitted.

To assist applicants in meeting the certification requirement where a CHAS, abbreviated strategy, or amendment has not yet been approved, HUD will accept applications that are accompanied by a certification that the application is consistent with the housing strategy submitted with, or as amended by a submission with, the application, and that the applicant will follow the strategy so submitted or amended when it is approved by HUD.

II. Planning Grant Applications

A. Application Process

Application packages for mini planning grants and full planning grants, including instructions for preparing applications, are available from the appropriate HUD Field Office (see the list of HUD Field Offices at the end of this NOFA). Additional information regarding the submission of applications is included in the package.

Only timely applications submitted to the correct Field Office will be considered for funding. Applications (original and two copies) must be physically received by the deadline at the appropriate HUD Field Office, Attention: Director, Housing Development Division. In addition, one copy of the application must be submitted to Headquarters, as described in the paragraph above entitled "**ADDRESSES.**" It is not sufficient for an application to bear a postmark date within the deadline. Applications submitted by facsimile will not be accepted.

B. Application Submission Requirements

Complete application submission requirements are contained in the application package. All potential applicants are urged to contact the Resident Initiative Specialist in the Housing Management Division of their HUD Field Office for information and guidance about program requirements and preparation of an application and for the time and place of any workshops and/or training sessions to be held within the Field Office's jurisdiction.

C. Selection Process

The selection process for mini planning grants and full planning grants under the HOPE 2 Program consists of a screening and then, for those applications meeting all screening requirements, review by Field Offices. For applications that meet all program requirements, HUD Headquarters will use these reviews to rate all applications. Rating and ranking of applications will be made under five substantive selection criteria.

D. Screening Process/Corrections to Deficient Applications

1. HUD shall screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants.

2. The notification shall require an applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close-of-business on the 14th calendar day after the date of the written notification to the applicant to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall

not consider further any applications that are not complete, are internally inconsistent, or do not contain correct computations, after the opportunity, if any, to submit additional or corrected material.

E. Selection Criteria

Rating and ranking will be done using the following five substantive selection criteria:

1. Capability of the applicant—up to 30 points.
2. Resident and homebuyer interest and marketability—up to 20 points.
3. Suitability of the property—up to 20 points.
4. Local support—up to 20 points.
5. Efficiency—up to 10 points.

A complete description of the procedure for rating applications and of the factors considered under each selection criterion may be found in section 315 of the amended Notice of Program Guidelines.

F. Ranking and Selection

After assigning points under the selection criteria, HUD Headquarters shall rank the planning grant applications. HUD Headquarters shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership, it may establish a minimum number of points for applications to qualify to be selected for funding. A complete description of the procedures for selection may be found in section 315 of the amended Notice of Program Guidelines.

III. Implementation Grant Applications

A. Application Process

Application packages for implementation grants, including instructions for preparing applications, are available from the appropriate HUD Field Office (see the list of HUD Field Offices at the end of this NOFA). Additional information regarding the submission of applications is included in the package.

Only timely applications received in the appropriate Field Office will be considered for funding. Applications (original and two copies) must be physically received by the deadline at the appropriate HUD Field Office, Attention: Director, Housing Development Division. In addition, one copy of the application must be submitted to Headquarters, as described in the paragraph above entitled "**ADDRESSES.**" It is not sufficient for an application to bear a postmark date within the deadline. Applications submitted by facsimile will not be accepted.

B. Application Submission Requirements

Complete application submission requirements are contained in the application package. All potential applicants are urged to contact the Resident Initiatives Specialist in the Housing Management Division of their HUD Field Office for information and guidance about program requirements and preparation of an application and for the time and place of any workshops and/or training sessions to be held within the Field Office's jurisdiction.

C. Selection Process

The selection process for implementation grants under the HOPE 2 Program consists of a screening, a threshold review, and, for those applications passing threshold review, rating and ranking under eight substantive selection criteria. Field Offices will evaluate the quality of applications, and HUD Headquarters will use these Field Office reviews to rate and rank the applications that meet all program requirements and will make the selections.

D. Screening Process/Corrections to Deficient Applications

1. HUD shall screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants.

2. The notification shall require an applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close-of business on the 14th calendar day after the date of the written notification to the applicant to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that are not complete, are internally inconsistent, or do not contain correct computations, after the opportunity, if any, to submit additional or corrected material.

E. Threshold Review

HUD shall review each application that qualifies for additional consideration because it passed the screening process to determine if it meets certain threshold criteria. These threshold criteria are contained in section 420 of the amended Notice of Program Guidelines.

F. Selection criteria

HUD Headquarters will rate and rank all applications which pass the threshold review and meet all program requirements, using the following eight substantive selection criteria:

1. Capability of the applicant—up to 15 points.
2. Quality of the program—up to 25 points.
3. Local support—up to 10 points.
4. Resident and homebuyer interest—up to 10 points.
5. Suitability of the property—up to 20 points.
6. Minority Business Enterprise/Women-owned Business Enterprise—up to 5 points.
7. Feasibility and efficiency—up to 15 points.
8. Extent of low-income homeownership—deduction of up to 10 points.

A complete description of the rating of applications and of the factors considered under each selection criterion may be found in section 425 of the amended Notice of Program Guidelines.

G. Ranking and Selection

After assigning points under the rating criteria, HUD Headquarters shall rank the implementation grant applications. HUD Headquarters shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership, it may establish a minimum number of points for applications to qualify to be selected for funding. HUD Headquarters will rate and rank the applications and make the selections. A complete description of the procedure for selection is contained in section 425 of the amended Notice of Program Guidelines.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public

inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Federalism Executive Order

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12812, Federalism, that the provisions in this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This NOFA does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has also determined that some of the policies in this NOFA will have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

D. Section 102 of the HUD Reform Act

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Since HUD makes assistance under this program available on a competitive basis, 24 CFR part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14 (b)) HUD will provide further guidance on how this material may be accessed in a later notice published in the **Federal Register**.

—Publish a notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

Subpart C of 24 CFR part 12 requires that applicants seeking assistance from HUD for a specific project or activity make the disclosures required under § 12.32. An implementing notice for part 12, subpart C, is being published in the **Federal Register**. Applicants shall use the form and guidance contained in that notice to make the required disclosures.

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.)

F. Section 112 of the HUD Reform Act

Section 112 of the HUD Reform Act amended the Department of Housing and Development Act by adding section 13, which contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second prohibits the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of the assistance.

Section 13 was implemented by final rule (24 CFR part 86) published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of 24 CFR part 86.

Any questions concerning the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 24410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance

HUD Field Offices

Region I

Massachusetts

Boston, Massachusetts Regional Office
HUD—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Bldg., 10 Causeway St., Room 375, Boston, MA 02222–1092; (617) 565–5234, (TDD) (617) 565–5453

Connecticut

Hartford, Connecticut Office
HUD—Hartford Office, 330 Main St., Hartford, CT 06106–1860; (203) 240–4523 (TDD) (203) 240–4522.

New Hampshire

Manchester, New Hampshire Office

HUD—Manchester Office, Norris Cotton Federal Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7681, (TDD) (603) 666–7518.

Rhode Island

Providence, Rhode Island Office
HUD—Providence Office, 330 John O. Pastore Federal Bldg. & U.S. Post Office—Kennedy Plaza, Providence, RI 02903–1745; (401) 528–5351, (TDD) (401) 528–5364.

Region II

New York

New York Regional Office
HUD—New York Regional Office, 26 Fed. Plaza, New York, NY 10278–0068; (212) 264–6500, (TDD) (212) 264–0927.

Buffalo, New York Office
HUD—Buffalo Office, Lafayette Ct., 5th Floor, 465 Main St., Buffalo, NY 14203–1780; (716) 846–5755, (TDD) (716) 846–5787.

New Jersey

Newark, New Jersey Office
HUD—Newark Office, Military Park Bldg., 60 Park Pl., Newark, NJ 07102–5504; (201) 877–1662, (TDD) (201) 877–6649.

Region III

Pennsylvania

Philadelphia, Pennsylvania Regional Office
HUD—Philadelphia Regional Office, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2560, (TDD) (215) 597–5564.

Pittsburgh, Pennsylvania Office
HUD—Pittsburgh Office, 412 Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–6428, (TDD) (412) 644–5747.

District of Columbia

Washington, DC Office—(Category A)
HUD—Washington, DC Office, Union Center Plaza, Phase II, 820 First St., NE., suite 300, Washington, DC 20002–4205; (202) 275–9206, (TDD) (202) 275–0967.

Maryland

Baltimore, Maryland Office
HUD—Baltimore Office, 10 N. Calvert St., 3rd Floor, Baltimore, MD 21202–1865; (301) 962–3047, (TDD) (301) 962–0106.

Virginia

Richmond, Virginia Office
HUD—Richmond Office, 400 N. 8th St., Richmond, VA 23240; (804) 771–2721, (TDD) (804) 771–2820.

West Virginia

Charleston, West Virginia Office
HUD—Charleston Office, 405 Capitol St., suite 708, Charleston, WV 25301–1795; (304) 347–7000 (TDD) (304) 347–7044.

Region IV

Georgia

Atlanta, Georgia Regional Office
HUD—Atlanta Regional Office, Richard B. Russell Fed. Bldg., 75 Spring St., SW., Atlanta, GA 30303–3388; (404) 331–5136, (TDD) (404) 730–2654.

Alabama

Birmingham, Alabama Office
HUD—Birmingham Office, 600 Beacon Pkwy West, suite 300, Birmingham, AL 35209–3144; (205) 731–1617, (TDD) (205) 731–1617.

Kentucky

Louisville, Kentucky Office
HUD—Louisville Office, 601 W. Broadway, P.O. Box 1044, Louisville, KY 40201–1044; (502) 582–5251, (TDD) (502) 582–5139.

Mississippi

Jackson, Mississippi Office
HUD—Jackson Office, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., room 910, Jackson, MS 39269–1096; (601) 965–4702, (TDD) (601) 965–4171.

North Carolina

Greensboro, North Carolina Office
HUD—Greensboro Office, 415 N. Edgeworth St., Greensboro, NC 27401–2107; (919) 333–5361, (TDD) (919) 333–5518.

Puerto Rico

Caribbean Office
HUD—Caribbean Office, San Juan Center, 159 Carlos E. Chardon Ave., San Juan, PR 00918–1804; (809) 766–6121.

South Carolina

Columbia, South Carolina Office
HUD—Columbia Office, Storm Thurmond Fed. Bldg., 1835 Assembly St., Columbia, SC 29201–2480; (803) 765–5592.

Tennessee

Knoxville, Tennessee Office
HUD—Knoxville Office, John J. Duncan Fed. Bldg., 710 Locust St., Knoxville, TN 37902–2526; (615) 549–9384, (TDD) (615) 549–9372.

Nashville, Tennessee Office
HUD—Nashville Office, 251 Cumberland Bend Dr., suite 200, Nashville, TN 37228–1803; (615) 736–5213.

Florida

Jacksonville, Florida Office
HUD—Jacksonville Office, 325 W. Adams St., Jacksonville, FL 32202–4303; (904) 791–2626, (TDD) (904) 791–1241.

Region V

Illinois

Chicago, Illinois Regional Office
HUD—Chicago Regional Office, 77 W. Jackson Blvd., 26th Floor, Chicago, IL 60604–3507; (312) 353–5680.

Michigan

Detroit, Michigan Office
HUD—Detroit Office, Patrick V. McNamara Fed. Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–7900.

Grand Rapids, Michigan Office
HUD—Grand Rapids Office, 2922 Fuller Ave., NE, Grand Rapids, MI 49505–3409; (616) 456–2100.

Indiana

Indianapolis, Indiana Office
HUD—Indianapolis Office, 151 N. Delaware St., Indianapolis, IN 46204–2526; (317) 226–6303.

Minnesota

Minneapolis-St. Paul, Minnesota Office
HUD—Minneapolis-St. Paul Office, 220 2nd St. South, Bridge Place Bldg., Minneapolis, MN 55401–2195; (612) 370–3000.

Ohio

Cincinnati, Ohio Office
HUD—Cincinnati Office, Fed. Office Bldg., room 9002, 550 Main St., Cincinnati, OH 45202–3253; (513) 684–2884.

Cleveland, Ohio Office
HUD—Cleveland Office, One Playhouse Sq., 1375 Euclid Ave., room 420, Cleveland, OH 44114–1832; (216) 522–4065.

Columbus, Office Office
HUD—Columbus Office, 200 N. High St., Columbus, OH 43215–2499; (614) 469–5737.

Wisconsin

Milwaukee, Wisconsin Office
HUD—Milwaukee Office, Henry S. Reuss Fed. Plaza, 310 W. Wisconsin Ave., suite 1380, Milwaukee, WI 53203–2289; (414) 297–3214.

Region VI

Texas

Fort Worth, Texas Regional Office
HUD—Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5401 (TDD) (817) 885–5447.

Houston, Texas Office
HUD—Houston Office, Nat. Bank of Texas Bldg., 221 Norfolk, suite 200, Houston, TX 77098–4096, (713) 653–3274.

San Antonio, Texas Office
HUD—San Antonio Office, Washington Sq. Bldg., 800 Dolorosa St., San Antonio, TX 78207–4563; (512) 229–6800, (TDD) (512) 229–6885.

Arkansas

Little Rock, Arkansas Office
HUD—Little Rock Office, Lafayette Bldg., 523 Louisiana, suite 200, Little Rock, AR 72201–3523; (501) 378–5931, (TDD) (501) 378–5405.

Louisiana

New Orleans, Louisiana Office
HUD—New Orleans Office, Fisk Fed. Bldg., 1661 Canal St., P.O. Box 70288, New Orleans, LA 70112–2887; (504) 589–7200.

Oklahoma

Oklahoma City, Oklahoma Office
HUD—Oklahoma City Office, Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102–3202; (405) 231–4181, (TDD) (405) 231–4181.

Region VII

Missouri

Kansas City, Missouri Regional Office
HUD—Kansas City Regional Office, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 236–2162, (TDD) (913) 236–3972.

St. Louis, Missouri Office
HUD—St. Louis Office, 1222 Spruce St., St. Louis, MO 63103; (314) 965–4702, (TDD) (314) 539–6331.

Nebraska

Omaha, Nebraska Office
HUD—Omaha Office, Braiker/Brandeis Bldg., 210 S. 16th St., Omaha, NE 68102–1622; (402) 221–3703, (TTD) (402) 221–3703.

Iowa

Des Moines, Iowa Office
HUD—Des Moines Office, Fed. Bldg., 210 Walnut St., room 239, Des Moines, IA 50309–2155; (515) 284–4512, (TDD) (515) 284–4706.

Region VIII

Colorado

Denver, Colorado Regional Office
HUD—Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–4513.

Region IX

California

San Francisco, California Regional Office
HUD—San Francisco Regional Office, Philip Burton Fed. Bldg. & U.S. Courthouse, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–4752, (TDD) (415) 556–8357.

Los Angeles, California Office
HUD—Los Angeles Office, 1615 Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7122, (TDD) (213) 251–7038.

Sacramento, California Office
HUD—Sacramento Office, 777 12th St., suite 200, P.O. Box 1978, Sacramento, CA 95814–1977; (916) 551–1351, (TDD) (916) 551–5971.

Hawaii

Honolulu, Hawaii Office (Category A)
HUD—Honolulu Office, 7 Waterfront Plaza, suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813–4918; (808) 541–1327, (TDD) (808) 551–1356.

Arizona

Phoenix, Arizona Office
HUD—Phoenix Office, 400 N. 5th St., suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4434, (TDD) (602) 379–4461.

Region X

Washington

Seattle, Washington Office
HUD—Seattle Regional Office, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101–2504; (206) 553–5414.

Oregon

Portland, Oregon Office
HUD—Portland Office, Cascade Bldg., 520 SW 6th Ave., Portland, OR 97204–1596; (503) 326–2561.

Alaska

Anchorage, Alaska Office
HUD—Anchorage Office, 222 W. 8th Ave., #64, Anchorage, AK 99513–7537; (907) 271–4170.

Dated: December 20, 1991.

Jack Kemp,

Secretary.

[FR Doc. 92–587 Filed 1–13–92; 8:45 am]

BILLING CODE 4210–32–M

VOL 57 ISS 9 JA 14 1992 UMI

federal register

Tuesday
January 14, 1992

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Subtitle A

HOPE for Homeownership of Single Family Homes Program; Program Guidelines and Notice of Fund Availability

VOL 57 ISS 9 JA 14 1992 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Subtitle A

[Docket No. N-92-3200; FR-2968-N-03]

HOPE for Homeownership of Single Family Homes Program; Program Guidelines

AGENCY: Office of the Secretary, HUD.

ACTION: Program guidelines.

SUMMARY: This document revises HUD's guidelines, published on February 4, 1991 (56 FR 4458), that govern the operation of the HOPE for Homeownership of Single Family Homes program (HOPE 3) that provide for homeownership by low-income families. Included in the amendments is a new Part III, governing planning grants under the HOPE 3 program. This Part was reserved in the February 4, 1991 publication. The amendments take effect immediately. Elsewhere in today's issue of the **Federal Register**, HUD is publishing a Notice of Fund Availability for the HOPE 3 grant program and NOFAs for, and notices amending, the other two HOPE Grant programs:

HOPE for Public and Indian Housing Homeownership (HOPE 1); and

HOPE for Homeownership of Multifamily Units (HOPE 2).

The HOPE Grant programs are authorized by title IV of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101-625, enacted November 28, 1990). HOPE is an acronym for Homeownership and Opportunity for People Everywhere.

The purpose of the HOPE Grant programs is to provide homeownership opportunities for low-income families and individuals.

The authorizing legislation provides for implementation by publication of a notice for immediate effect. Comments on the notice published on February 4, 1991 were due September 30, 1991. HUD invites public comment on this notice of program guidelines, especially on the new Part III for planning grants and on the amendments and will consider the comments, together with comments received by September 30, in developing the final rule for the program. As required by the statute, HUD will publish the final rule within eight months from today.

DATES: Effective date: January 14, 1992.

Comment due date: April 15, 1992.

Those sections of these Guidelines that contain information collection requirements with respect to planning grants (Sections 310, 801, and 805), the new Cash and Management Information System (Section 740), and the Environmental Procedures and Standards requirements (Section 745) will not become effective until the Office of Management and Budget has approved the information collection requirements and a separate notice of that fact has been published by HUD in the **Federal Register**.

ADDRESSES: Interested persons are invited to submit comments regarding these guidelines to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address. Note that comments on the information collection requirements contained in sections 310, 801, and 805 that relate to planning grants, section 740 that relate to the new Cash and Management Information System, and section 745 that relate to the Environmental Procedures and Standards requirements, should also be forwarded to the Office of Management and Budget's Office of Information and Regulatory Affairs, New Executive Office Building, room 3001, Washington, DC, 20303, Attention: Jenny Main, Desk Officer for HUD.

FOR FURTHER INFORMATION CONTACT: John Garrity, Office of Affordable Housing Programs, 202-708-0324. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. Department of Housing and Urban Development, room 7158, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in sections 415, 801, and 805 of these amended guidelines that relate to implementation grants have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2506-0119. These guidelines add three new collection of information requirements that relate to planning grants at sections 310, 801, and 805 and also add new requirements related to the Cash and Management Information System and Environmental Procedures and Standards at sections 740 and 745. These have been submitted to OMB for expedited review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. Upon approval by OMB, a notice containing the OMB approval number will be published in the **Federal Register**. Information on these new requirements is provided as follows:

The annual public reporting burden for the information collection requirements contained in this notice that relate to planning grants, the Cash and Management Information System, and Environmental Procedures and Standards are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this document under the heading, Other Matters. Comments regarding burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, should be sent by February 13, 1992; to the Department of Housing and Urban Development, Rules Docket Clerk, at the address stated above; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3001, Washington, DC 20503, Attention: Jenny Main, Desk Officer for HUD. At the end of the public comment period on this notice, the Department may amend the information collection requirements set out in this notice to reflect public comments or OMB comments received concerning the information collections.

Summary of Amendments to HOPE 3 Guidelines

In addition to the addition of Part III for planning grants (and miscellaneous conforming amendments throughout the guidelines), various clarifications, technical corrections, and a few reorganizations, HUD has made the following significant changes to the guidelines published on February 4, 1991. Potential applicants should read the entire document thoroughly.

Part I. Purpose; Summary; and Relationship to Other Programs

Section 110(a) has been amended to give guidance on the applicability of section 18 of the 1937 Act, with respect

to the disposition of public and Indian housing.

Section 110(b), Termination of Section 8 and Other Rental Assistance, has been corrected to require termination of all section 8 assistance, not just project-based section 8 assistance, before an eligible family acquires an ownership interest in an eligible property. The HOPE 3 program does not provide for the provision of any rental assistance for homeowners.

Part II. Definition

The definition of Applicant has been clarified by noting that a cooperative association may be an eligible applicant only for property it proposes to acquire and transfer to eligible families.

The definition of Eligible Property has been modified to permit use of condominium units in developments containing more than four units to qualify.

The definition of Eligible Property has also been modified to specify that the term "State or local government" means any entity included in the first sentence of the definition of "public body." Under section 446(4) of NAHA, properties eligible for use in the HOPE–3 program are one- to four-unit single family properties owned or held by HUD and certain other designated entities, including "a State or local government." Since the quoted phrase is not limited by its terms to general purpose governments (unlike a number of other HUD program statutes, e.g., CDBG, HOME, and Steward B. McKinney Homeless Assistance, which use the terms "unit of general local government" and "general purpose political subdivision") and since the Department desires to broaden the reach of the HOPE 3 program to the most suitable properties available, the definition has been amended.

This construction is compatible with a listing of governmental designations in the Government Organization report for the 1987 Census of Governments published by the Bureau of Census, U.S. Department of Commerce, which includes special purpose governments and subordinate agencies of the State or local governments. (Although not counted as a separate government such agencies are classified as governmental designations having certain characteristics of governmental units.) The amendment to the definition of "eligible property" in the Guidelines makes clear that properties held by State housing finance agencies and other public bodies are part of the available inventory to ensure a wide choice in selecting the most suitable properties for the program.

The definition of First-Time Homebuyer has been clarified to state that a participant in a homeownership program, such as the Mutual Help and Turnkey III programs, who has not yet acquired title qualifies as a first-time homebuyer.

The definition of Ownership Interest has been amended by noting that mutual housing is eligible only to the extent it provides for the transfer of ownership interests to eligible families. Some forms of mutual housing do not give occupants ownerships rights, such as an equity stake in the property or the right to sell the property (or shares representing the property, as in cooperatives).

The definition of Private Nonprofit Organization has been amended to require that it be a tax exempt entity under section 501(c) of the Internal Revenue Code of 1986.

Part III. Planning Grants

This entire part is new. The February 4 guidelines reserved Part III for planning grants.

Part IV. Implementation Grants

Section 401(c), Overall Limitations, has been amended to limit the total amount of all an applicant's implementation grants in response to any one NOFA to 5 percent of the total available amount for implementation grants under the NOFA, instead of $1 million in any year in any one region.

Section 401(c)(2) permits an applicant to apply for both a planning grant and an implementation grant in response to any one NOFA. If an applicant submits applications for both planning and implementation grants, HUD will review the application for an implementation grant first to determine if it passes all screening and threshold requirements. If the application does, the application for a planning grant will not be processed. If it does not pass all screening and threshold requirements, the applicant's planning grant application will be processed.

A new section 401(d), Scope of Program, has been added to provide that applications which identify a public body (or agency or instrumentality) as the entity to execute the grant agreement may only propose a program to be carried out within the jurisdiction of that entity. Applications which identify a private nonprofit as the entity to execute the agreement may propose a program to be carried out within two or more jurisdictions. No application may propose a program to be carried out in more than one State. These changes are designed to simplify program administration and avoid questions about the legal authority of applicants to carry out their programs.

Section 405(a), Limitations, has been amended to provide that only costs incurred on or after the effective date of the grant agreement qualify for funding under the program.

Section 405, Eligible Implementation Grant Activities, has been reorganized to make paragraph (b)(3), Financial Assistance to Homebuyers, a separate paragraph. This material was formerly under paragraph (b)(2). The new paragraph (b)(3) has also been expanded to clarify the scope of eligible activities.

Section 405(b)(2)(iii)(A) has been amended to provide that the cost of acquisition and rehabilitation paid for from grant funds or from matching funds being contributed may not exceed the cost cap. This corrects an error in the February 4 guidelines.

Section 405(b)(4), Rehabilitation, has been amended to provide that the property shall be rehabilitated to a level that makes it marketable for homeownership to low-income families (those with incomes at or below 80 percent of the median area income). HUD has determined that assistance should not be used to make the units marketable to families with income within 100 percent of the median area income, as was permitted in the February 4 guidelines, in order to assist more families achieve homeownership. HUD has dropped the provision encouraging applicants to undertake rehabilitation that goes beyond applicable minimum standards. While this is still permitted, HUD believes that modest rehabilitation will reduce program costs and make homeownership possible for more low-income families.

Section 405(b)(9), Replacement Reserves, has been extensively revised. A single replacement reserve for all properties under a recipient's program may be established. The rules governing such replacement reserves have been revised extensively and should be reviewed carefully by applicants.

Section 405(b)(12), Economic Development, has been amended to permit only those activities that involve job training or retraining and day care costs of those participating in HOPE 3-approved job training and retraining activities. This will conserve HOPE 3 resources and make assistance for more families possible. In addition, this section has been amended to cap the total amount of planning and implementation grants related to any one homeownership program for economic development activities to

$250,000, consistent with the policies under the HOPE 1 and 2 programs.

Section 410(b)(1)(i), under Matching Requirements for Implementation Grants, has been certified to provide that cash contributions must be contributed permanently for uses under the program to count towards the match.

Section 410(b)(1) (iv) and (vi) have been added to clarify computation of the match. Clause (iv) provides that cash contributions may be made by the applicant, non-Federal public entities, private entities, and individuals, including program income from a Federal grant earned after the end of the award period if no Federal requirements govern their disposition (including UDAG and HoDAG repayments). Clause (vi) provides that the grant equivalent of a below-market interest rate loan to the homebuyer, where all repayments, interest, and other return will not be permanently contributed to the HOPE program, may be counted as a cash contribution, in accordance with specified standards. These provisions were taken from the HOME rule governing match requirements for that program.

Section 410(b)(1)(v) provides that cash contributions may also be made towards the match from sale proceeds from the Turnkey III Homeownership and Mutual Help programs and approved homeownership programs under section 5(h) of the 1937 Act. Section 410(b)(1)(vii) clarifies that a down payment by an eligible family may not count towards the match (since it is counted towards a family's equity and, therefore, cannot be considered a permanent contribution to the program). Finally, section 410(b)(1)(viii) permits amounts that an applicant has requested in an application submitted to the Federal Housing Finance Board for assistance under its Affordable Housing Program to count towards the match, so long as FHFB approves the application before the date HUD approves the HOPE application.

Section 410(b)(2), Administrative Costs, has been amended to state that HUD will credit a contribution for administrative costs from non-Federal sources in an amount up to 7 percent of the amount of the implementation grant for purposes of the match. This will simplify program administration for recipients and HUD. Since no more than 15 of the grant amount plus any match amounts may be used for administrative costs, if a recipient requests funding for more than 8 percent of the grant for administrative costs, if a recipient requests funding for more than 8 percent of the grant for administrative costs, the amount credited towards the match will be reduced to less than 7 percent to stay within the 15 percent limitation. In addition, material from section 410(a) regarding administrative costs has been moved to this section.

Section 410(b)(4), Land or Other Real Property, has been amended in several respects to clarify which cost caps apply in various circumstances. In addition, vacant lots (onto which homes will be moved) may be contributed and count towards the match only if they are on existing streets served with utilities, to avoid excessive costs of making contributed lots usable under the program.

Section 410(b)(5), Infrastructure, has been amended to provide that an infrastructure investment may be counted towards the match only if it was completed after the date that is 12 months before the date of the HUD notification to the applicant of implementation grant approval. This makes the HOPE program substantially consistent with the HOME program. The February 4 guidelines permitted counting infrastructure expenditures only if they were made after the date of HUD approval of the application. In accordance with section 410(c), contributions for eligible activities must generally be provided within four years from the effective date of the grant agreement.

Section 410(b)(6), Debt Forgiveness, has been amended to clarify the applicability of the limitation on the amount that may be counted towards the match.

Section 410(b)(7)(ii), under Other In-Kind Contributions, has been amended to increase the valuation of donated labor, including sweat equity, from $5 an hour to $10 an hour, consistent with recent changes to HUD's Shelter Plus Care program. This section has also been clarified to provide that sweat equity may be counted towards the match only if it is not also counted towards a family's equity.

Section 410(b)(7)(iii) has been added to provide guidance in the case of donated materials and supplies.

Section 410(c), Other Restrictions, has been amended to require that contributions towards the match shall be provided no later than the deadline for completion of program activities except that contributions of taxes, fees, and other charges, may be made after the deadline. The February 4 guidelines set the deadline at the date the family acquired the homeownership interest, except for counseling and training, which HUD has determined was too rigid a rule to be practical.

Section 415(b)(2)(ii), under Applications for Implementation Grants, has been added to provide that, where the match does not apply to an IHA in accordance with Section 410(d), the application shall contain a certification that the IHA has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates the HOPE grant funds.

Section 415(b)(3)(iii) is new. It permits an application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application to be considered, so long as it receives approval before the effective date of the grant agreement.

Section 415(b)(4), Description of Proposed Homeownership Program, has been amended to permit completion of program activities within four years (instead of three), to give recipients additional time to complete program activities. See, also, the conforming change in Section 705.

Section 415(b)(5), Plan, has been amended to require the procedures described in the application established under paragraph (A) for the selection of eligible families to provide for selection of families that are creditworthy and have the financial capacity to handle the anticipated costs of homeownership.

Paragraph (D) has been corrected. The statute requires that families that legally occupy units on the date the implementation grant application was submitted to HUD be given a preference The guidelines also give a first preference to current residents, consistent with the law's prohibition of displacement. If the unit occupied by a former resident on the date the implementation grant application was submitted to HUD is occupied by a current resident, a vacant unit under the program shall be offered to the former resident at the earliest possible time.

In addition, as required by a recent amendment made by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102–139, October 28, 1991), paragraph (D) has been amended to give a first preference, in the case of vacant properties, to otherwise qualified eligible families who reside in public or Indian housing under the 1937 Act. The plan will also include such measures as may be necessary to inform residents of public and Indian housing developments of this preference, such as informing RMCs, RCs, PHAs, and IHAs or taking other appropriate measures.

Paragraph (G) has been amended to clarify that a family may permit others

to rent space (such as a basement area or a spare bedroom) in the property occupied by the family as its principal residence. Finally, paragraph (5)(ii) has been amended to require the application to identify the organization that will carry out any relocation.

Section 415(b)(6), Eligible Property, has been amended to require that the application anticipate selection of at least five properties under the program. Smaller programs would require excessive and wasteful administrative costs. See, also, Section 420(b)(2)(i)).

Section 415(b)(7), Housing Quality Standards Plan, has been amended to require applicants to establish written rehabilitation standards, consistent with their plans, but not to require submission to HUD.

Section 415(b)(8), Replacement Housing, has been amended to provide that, where section 18 of the 1937 Act applies, the HOPE 3 application shall contain an application under section 18 for the disposition of units in public or Indian housing developments (see, also, Sections 110(a) and 601(d)). Applicants that intend to utilize their HOPE 3 grant in conjunction with a section 5(h) or 21 HUD homeownership development shall be required either to submit as part of the HOPE 3 application package a certification of compliance with an existing section 5(h) or 21 replacement housing plan, or a replacement housing plan under section 5(h) or 21. Applicants should consult the HOPE 3 application package to determine whether the proposed homeownership program is subject to, or exempt from, the requirements of section 18 (including the requirement for a replacement housing plan), or whether alternative requirements (including alternative replacement housing plan provisions) are applicable. HOPE assistance may not be used to fund replacement housing.

Section 415(b)(10), Management Entity, has been clarified. The February 4 guidelines required the application to identify and describe the entity that will manage the property. The amended guidelines permit the applicant to state that it intends to operate and manage the property.

Section 415(b)(12)(i)(A) has been amended to require the application to demonstrate that the monthly expenditure for principal, interest, taxes, and insurance (PITI) by an eligible family that is necessary to complete the sale for the initial acquisition of a unit be no less than 20 percent of adjusted family income. The initial guidelines only included the 30 percent ceiling, and HUD has determined that families should be required to pay a certain minimum amount to avoid possible abuse. HUD may approve a justified request in the application for a floor lower than 20 percent to avoid undue hardship to families, such as where the cost of utilities is high.

Section 415(b)(12)(C) has been added to require applicants to adopt written standards for determining monthly expenditures under the affordability requirements, but not to require submission to HUD.

Section 415(b)(16)(i) has been clarified to state that an authorized representative of the public official who submits the CHAS may make the certification that the application is consistent with the CHAS.

Section 415(b)(16)(ii) has been amended to delete the requirement that an IHA demonstrate that its proposed homeownership program is consistent with the tribal plan. This amendment will simplify the program for entities that lack the administrative resources to carry out detailed planning.

A new section 415(b)(20), Environmental Certification, has been added. The application must contain a certification that the applicant agrees to comply with the applicable environmental laws and authorities at 24 CFR 50.4 and that it will comply with other specified requirements. HUD has determined that an environmental review should be required at the time that each property is being considered for use under the program, rather than being performed before HUD approval of the implementation grant, when only neighborhoods, rather than specific properties, are likely to have been identified. This new requirement is a part of that larger policy change.

A new section 415(b)(21), Nonduplication of Funding, has been added to require the application to contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

Section 415(c), Screening, has been clarified. In addition, the scope of the screening has been modified to specify that applications that fail to comply with program requirements will receive no further processing.

Section 420, Threshold Review, has been changed so HUD reviews only the experience and capacity of the applicant and the feasibility of the homeownership program. The threshold criteria for eligibility, completeness, and cost limitations have been deleted, since they will be screened for under section 420(c). At least five potentially suitable properties must be available. The earlier guidelines just required a "sufficient number."

Section 425(a)(4), the rating criterion entitled Relationship to CHAS, has been amended to adjust the score for applications submitted by an Indian tribe or IHA, since consistency with neither a CHAS nor a tribal plan is required.

Section 425(a)(6), the rating criterion entitled MBE/WBE Goals, has been modified to provide that, in determining the extent to which an applicant demonstrates a firm commitment to promoting the use of minority business enterprises or women-owned businesses, HUD will especially consider resident-owned businesses.

Section 425(a)(9), the rating criterion entitled Fair Housing Choice, has been amended to adjust the score for applications submitted by an Indian tribe or IHA when those entities are covered by the Indian Civil Rights Act (see, also, section 505(a)(2)).

Section 425(b), Environmental Review, has been deleted, and discussion of environmental procedures has been moved to a new section 745, since HUD will carry out the environmental review when recipients consider properties for use under the program, not at the application stage. HUD has determined that, since some environmental laws and authorities require approval of specific properties, the guidelines should be revised to delay the review until the time properties are identified for possible use under the program.

Elsewhere in today's edition of the **Federal Register**, HUD has categorically excluded the approval by HUD of HOPE 3 implementation grant applications from environmental assessment under the National Environmental Policy Act (NEPA), because of the lack of potential for significant environmental impact (see the interim rule amending 24 CFR part 50). However, section 745 provides for a threshold determination as to whether review will be required under other environmental laws and authorities. Recipients must obtain HUD approval under section 745 before acquiring or otherwise carrying out any program activities with respect to a specific property.

Section 425(b)(1) has been clarified by making explicit that HUD will review, and may adjust, the ratings initially assigned to applications, in order to ensure consistency among Field and Regional Office scores. The scoring system in section 425(b)(2) has been refined.

Section 425(c), Reduction in Requested Grant Amounts, has been

amended to clarify that HUD may not only approve an application for an amount lower than requested but may also adjust line items in the proposed budget within the amounts requested.

Section 425(d) has been amended to provide that HUD will cancel approval of the application if commitments for replacement housing are not provided in a reasonable period of time.

Section 425(e)(1), under Insufficient Approvable Applications; Reallocation, has been refined.

Section 425(e)(2) has been added to provide, as an alternative reallocation procedure, that amounts not needed to fund implementation grants may be made available to fund planning grants or under a NOFA inviting applications.

Part V. Other Requirements

Section 501, Flood Insurance and Coastal Barriers Resources Act, has been amended to conform to the revised procedure for complying with applicable environmental requirements.

Section 505(c)(2), under Employment Opportunities, as published on February 4 stated that only Indian tribes and IHAs that exercise their powers of self-government were subject to the requirements of the Indian Self-Determination and Education Assistance Act. This is incorrect; the section has been corrected by deleting the incorrect modifier ("as described in section 505(a)(2)").

Section 505(d), Minority and Women's Business Enterprises, has been amended to clarify that, in the case of applications submitted by Indian tribes or IHAs, compliance with various requirements concerning minority and women's business enterprises must be consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Section 530, Conflict of Interest, has been modified to provide that a resident of an eligible property may acquire an ownership interest even if he or she would otherwise be excluded by paragraph (a). This will avoid the need for processing applications for exceptions to paragraph (a).

Section 545 is new. Where the applicant is, or proposes to contract with, a primarily religious organization or a wholly secular organization established by a primarily religious organization, the organization shall undertake its responsibilities with respect to the homeownership program in accordance with three specified principles.

Part VI. Grant Agreement—Planning and Implementation Grants

Section 601(c) has been amended to conform with the revised procedure for determining compliance with applicable environmental requirements.

Section 601(d) has been modified to provide that no amounts may be drawn down with respect to public or Indian housing until HUD approves an application under section 18 of the 1937 Act and implementing regulations, approves a homeownership application for conversion to the Turnkey III or Mutual Help program, or approves a homeownership application for, or request for conversion to, section 5(h) or section 21 of the 1937 Act.

A new Section 601(e) has been added stating that the grant agreement will provide that HUD will terminate the grant agreement if commitments for replacement housing are not provided in a reasonable period of time.

Section 601(f) has been clarified to state that HUD may take any appropriate action authorized under the grant agreement if HUD determines the recipient is failing to carry out the program as required. The authority for HUD to take action where it determines a recipient "is likely to fail" has been deleted. On reconsideration, HUD has determined sanctions should be imposed only where a recipient is actually failing to comply with program requirements, not where HUD believes it probably will fail. In addition, a new provision has been added stating that failure to provide at least 70 percent of the number of homeownership opportunities proposed in the application may result in HUD taking remedial action, including requiring repayment of all or part of the grant. This will help assure that the approved programs result in homeownership opportunities for eligible families.

Part VII. Implementation of Planning and Implementation Grants

Section 701(c) has been deleted, since it is not appropriate for HUD to provide tax advice to program recipients.

Section 715, Timely Homeownership, has been revised to require properties to be transferred to eligible families within two years from the effective date of the implementation grant agreement, instead of one year from the date of acquisition of the property. This will give recipients more flexibility and make determination of compliance easier since all properties will be subject to the same deadline.

Section 720, Restrictions on Resale by Initial Homeowners, has been reorganized. The provisions limiting the equity interest that an initial homeowner may retain from sale during the first six years of homeownership has been moved to subsection (c) from paragraph (b)(1)(ii)(B). The guidelines published February 4, 1991 were structured in a way that suggested that the resale restrictions during the first six years applied only where the family acquired the property for less than fair market value. HUD does not believe this was the intent of Congress and has reorganized the section accordingly to remove the ambiguity.

Paragraph (a)(2), Right to Purchase, has been amended to set deadlines for RMCs, RCs, and cooperatives that decide to purchase units from homeowners. Such an entity would have 10 days after receiving notice of a firm contract between a homeowner and a prospective buyer to decide whether to exercise its prior right to purchase and 60 additional days to complete closing of the purchase. Where a PHA/IHA or the recipient has a prior right, it would be subject to the same deadlines.

Paragraph (b)(1)(i) has been clarified regarding how the amount of a promissory note, where required, is determined.

In addition, paragraph (c) has been amended. HUD has determined that the inflation adjustment made to the equity a homeowner has in the property should apply to equity that is the result of sweat equity. Accordingly, the guidelines have been amended to provide that the contribution to equity paid by a family may be provided in the form of cash or the value of sweat equity. In addition, the guidelines now provide that the value of any improvements made by the family during the time it owns the home includes improvements made through sweat equity. Sweat equity was previously excluded for purposes of computing inflation adjustments to a family's equity. Finally, a new paragraph (c)(3) has been added to clarify that amounts that count towards a family's equity may not also count towards the match.

A new Section 740 has been added which describes the cash and management information system for the HOPE 3 program.

A new Section 745 has been added establishing the environmental procedures and standards that apply to each property being considered for use under the program, as described in connection with the deletion of Section 425(b).

Part IX. Waiver Authority

Section 901 has been amended to delete the provision that HUD will not waive deadlines for receipt of applications. The policy has not changed, but the guidelines are not the appropriate place for the limit on HUD's waiver authority since the deadline is in the NOFA. The NOFA states this policy.

Part X. Other Matters

Information Collections

HUD has submitted the collection of information requirements for the new planning grant authority under this program, for the new Cash and Management Information System, and for the Environmental Procedures and Standards requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements, and the implementation grant requirements approved under OMB control number 2506–0119, is provided as follows:

Description	No. of respondents	No. of responses per respondent	Total annual responses	Hours response	Total
Application—Planning Grants § 310	400	1	400	20	8,000
Application—Implementation Grants § 415	600	1	600	42	25,200
Record Keeping—Planning Grants §§ 801 & 805	200	1	200	8	1,600
Record Keeping—Implementation Grants [1] §§ 801 & 805	400	1	400	40	16,000
Cash & Management Information System—Planning Grants § 740	200	4	800	0.166	133
Cash & Management Information System—Implementation Grants § 740	100	62	6,200	0.2	1,240
Environmental Procedures & Standards § 745	100	23	2,300	3	6,900
					59,073

[1] HUD now anticipates 100 respondents for the first round of funding.

Impact on the Economy

The amendments to these guidelines would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the guidelines indicates that it would, as defined by that order, not have (a) an annual effect on the economy of $100 million or more; or (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. At the time of publication of the final rule for the program, HUD will update its regulatory impact analysis, based on any comments received.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 7th St., SW., Washington, DC 20410.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that the amendments to the guidelines do not have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program under the guidelines, as amended, can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

Federalism Impact

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the amendments to these guidelines are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. The notice does not affect the relationship between the Federal government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Semiannual Agenda

These Guidelines were listed as item number 1332 in the Department's Semiannual Agenda of Regulations published at 56 FR 53380, 53392 on October 21, 1991 under Executive Order 12291 and the Regulatory Flexibility Act.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that the amendments to the guidelines would not have a significant economic impact on a substantial number of small entities. The guidelines, as amended govern the procedures under which HUD would make assistance available to applicants under a program designed to provide homeownership opportunities to low-income families and individuals.

Editorial Note: These revised program guidelines will appear in an appendix to subtitle A of title 24 of the Code of Federal Regulations.

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I. Purpose; Summary; and Relationship to Other Programs

Section 101. Purpose

The purpose of the HOPE 3 program is to provide homeownership opportunities for eligible families to purchase certain Federal, State, and local government-owned single family properties and units in scattered site, single family public and Indian housing developments.

Section 105. Summary.

HUD will make a planning or implementation grant to selected eligible applicants to assist them in developing and carrying out homeownership programs for eligible families. Planning grants are for the purpose of developing the capacity of recipients and to assist them in preparing implementation grant applications. A recipient will use its implementation grant to acquire eligible property (unless it already owns the property), fund rehabilitation, facilitate the sale of eligible properties to homebuyers, and cover other eligible program costs.

Each recipient is required to assure that the HOPE implementation grant is matched from non-Federal sources. (Certain IHAs may be exempt; see 410(d).) Units must meet specified housing quality standards, and eligible families may not be required to pay more than 30 percent of adjusted income per month for principal, interest, taxes,

and insurance to complete a sale under the program.

Section 110. Relationship to other programs.

(a) *Applicability of Section 18 of 1937 Act.* To the extent eligible property under the HOPE 3 program is a scattered site, single family public or Indian housing development, the requirements of section 18 of the 1937 Act (including the requirement for a replacement housing plan) shall generally govern the disposition of public or Indian housing. However, under certain circumstances, an applicant that wants or utilize its HOPE 3 grant in conjunction with other HUD homeownership programs (e.g., Turnkey III, Mutual Help, or sections 5(h) or 21 of the 1937 Act) may be exempt from the requirements of section 18 altogether, or may be permitted to document compliance with requirements under other HUD homeownership programs (including, in some instances, replacement housing plans). Applicants should consult the HOPE 3 application package to determine whether the proposed homeownership program is subject to, or exempt from, the requirements of section 18, or whether alternative requirements (including alternative replacement housing plan provisions) are applicable.

(b) *Termination of Section 8 and Other Rental Assistance.* Section 8 and other rental assistance shall be terminated before an eligible family acquires an ownership interest in an eligible property.

(c) *Modernization.* HUD may not make available modernization assistance under section 14 of the 1937 Act with respect to a public or Indian housing unit after the date the PHA/IHA transfers title in accordance with a HOPE 3 homeownership program.

(d) *Continuation of Annual Contributions.* Notwithstanding sale of a public or Indian housing development by a PHA/IHA under the HOPE 3 program, HUD shall continue to pay any annual contributions still payable, subject to section 5(a) of the 1937 Act.

(e) *Operating Subsidies.* HUD may not provide operating subsidies under section 9 of the 1937 Act with respect to a public or Indian housing unit after the date the PHA/IHA transfers title in accordance with a HOPE 3 homeownership program.

(f) *Variations to FHA Single Family Mortgage Insurance Programs.* (1) All regulatory requirements and underwriting procedures established for the FHA single family mortgage insurance programs shall apply, except for the changes described in paragraph (f) of this section.

(2) In the single family FHA mortgage insurance programs there is a requirement for a down payment by the mortgagor in cash or the equivalent. Since a recipient under the HOPE 3 program may provide the down payment for the eligible family/mortgagor, section 429 of NAHA amended section 203(b)(9) of the National Housing Act to provide that the required down payment may be paid by a corporation or person other than the mortgagor if the mortgage covers a unit under the HOPE program. Therefore, the regulations at 24 CFR 203.19(b), 203.32(b), 234.28(c) and 234.55(b) were amended by an interim rule published on February 4, 1991, 56 FR 4476. These amendments provide that a mortgagor being assisted in the purchase of a housing unit in connection with the HOPE program may obtain a loan for the down payment from a corporation or another person under conditions satisfactory to HUD. In addition, a second mortgage may be placed against the property even though the entity holding a second mortgage is not a Federal, State, or local government agency, if the entity is designated in the homeownership plan of an applicant for an implementation grant under the HOPE programs.

II. Definitions

1937 Act. The United States Housing Act of 1937.

Administrative costs. Administrative costs that are reasonable and necessary, as described in and valued in accordance with OMB Circular A–87 or A–122,[1] as applicable, incurred by a recipient in carrying out a homeownership program under this notice. For purposes of complying with the 15 percent limitation in Section 405(b)(5), administrative costs do not include the costs of activities which are separately eligible under Section 405 or Section 410.

Applicant. A private nonprofit organization; a cooperative association; or a public body (including a PHA, an IHA, and an agency or instrumentality of a public body) in cooperation with a private nonprofit organization. A cooperative association may be an eligible applicant only for eligible property it proposes to acquire and transfer ownership interests in to eligible families under a homeownership program.

CHAS. A comprehensive housing affordability strategy under section 105 of NAHA. See 24 CFR part 91.

[1] See Section 510(b) concerning the availability of OMB Circulars.

Cooperative association. An association organized and existing under applicable State and local, or tribal, law primarily for the purpose of acquiring, owning, and operating housing for its members or shareholders, as applicable.

Displaced homemaker. An individual who—

(a) is an adult;

(b) has not worked full-time full-year in the labor force for a number of years (at least two) but has, during such years, worked primarily without remuneration to care for the home and family; and

(c) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Eligible family. A low-income family who is a first-time homebuyer.

Eligible property. A single family property, containing no more than four units, that is owned or held by HUD, the Secretary of Veterans Affairs, the Secretary of Agriculture, the Resolution Trust Corporation, a State or local government (including any in rem property), or a PHA/IHA. This definition includes a condominium unit and scattered site single family public housing and properties held by institutions within the jurisdiction of the Resolution Trust Corporation. A cooperative unit shall be located in a cooperative development containing no more than four units to qualify as eligible property under the HOPE 3 program. In the case of two- to four-unit property, only property that may be divided so each unit may be acquired by an eligible family is eligible. Only property that is debt free and has an otherwise clear title on the date it is acquired by the recipient or other entity for transfer to eligible families is eligible. For purposes of this definition, the term *State or local government* means any entity included in the first sentence of the definition of public body.

First-time homebuyer. An individual and his or her spouse (if any) who have not owned a home during the 3-year period before purchase of a home with assistance under the HOPE 3 program, except that—

(a) Any individual who is a displaced homemaker may not be excluded from consideration on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse;

(b) A participant in a program such as the Mutual Help or Turnkey III program under the 1937 Act who has not yet acquired title qualifies as a first-time homebuyer; and

(c) Any individual who is a single parent may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

Homeownership program. A program for homeownership meeting the requirements under this notice. The program shall provide for acquisition by eligible families of ownership interests in the units in an eligible property under an ownership arrangement approved by HUD under this notice, for occupancy by the eligible families. All eligible properties shall be acquired by eligible families.

HUD. The United States Department of Housing and Urban Development.

IHA. An Indian housing authority, which means any entity that—

(a) Is authorized to engage in or assist in the development or operation of low-income housing for Indians; and

(b) Is established (1) by exercise of the power of self-government of an Indian tribe independent of State law; or (2) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in Alaska.

Indian housing development. An Indian public housing project under the 1937 Act.

Low-income family A family or individual that qualifies as a low-income family under 24 CFR part 913 (where the recipient is a PHA/IHA, RMC), part 813 (unless the recipient is a PHA/IHA, RMC, or RC), or part 905 (for Indian housing), as appropriate. NAHA changed the term lower income family to low-income family; these terms have the same meaning. In general, 24 CFR parts 813, 913, and 905 define the term lower income family as a family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

NAHA. The Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625.

NOFA. Notice of Fund Availability.

Nonprofit organization. Any nonprofit organization that—

(a) Is organized and existing pursuant to Federal, State, local, or tribal law;

(b) Has no part of its net earnings inuring to the benefit of any individual, corporation, or other entity;

(c) Has a voluntary board;

(d) Has an accounting system or has designated a fiscal agent in accordance with requirements established by HUD; and

(e) Practices nondiscrimination in the provision of assistance.

Ownership interest. Ownership by an eligible family by fee simple title to a unit in an eligible property (including a condominium unit), ownership of shares of or membership in a cooperative, or another form of ownership proposed and justified by the applicant and approved by HUD. The ownership interest may be subject only to (a) the restrictions on resale required or approved under section 720; (b) mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by HUD; or (c) any other restrictions or encumbrances which do not impair the good and marketable nature of title to the ownership interest. Mutual housing is eligible only to the extent it provides for the transfer of ownership interests to eligible families.

PHA. A public housing agency, which means any State, county, municipality, or other governmental entity or public body (or agency or instrmentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

Private nonprofit organization. A nonprofit organization that is privately controlled and that is a tax exempt entity under section 501(c) of the Internal Revenue Code of 1986. For purposes of this requirement, private nonprofit organizations shall have governing bodies which are controlled 51 percent or more by private individuals who are acting in a private capacity. For purposes of this provision, an individual is considered to be acting in a private capacity if the individual is not legally bound to act on behalf of a public body (including the applicant or recipient), and is not being paid by a public body (including the applicant or recipient) while performing functions in connection with the nonprofit organization.

Public body. Any State of the United States; any city, county, town, township, parish, village, or other general purpose political subdivision of a State; the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; any Indian tribe, as defined in title I of the Housing and Community Development Act of 1974; any public agency or instrumentality of any of the foregoing jurisdictions which is created by or pursuant to State or local, or tribal, law and for which the applicable jurisdiction has agreed to accept financial responsibility in the event of any noncompliance or liability under the HOPE 3 program; and any PHA or IHA. For purposes of this definition, an organization which meets the requirements of paragraphs (a) and (b) of the definition of nonprofit organization, but is controlled 51 percent or more by public officials acting in their official capacities, may qualify as a public body.

Public housing development. A public housing project under the 1937 Act.

RC. A resident council, which means any incorporated non-profit organization or association that—

(a) Is representative of the residents of the eligible property;

(b) Adopts written procedures providing for the election of specific officers on a regular basis (but at least once every three years); and

(c) Has a democratically elected governing board, elected by the residents of the eligible property, the voting membership of which consists of residents of the property.

Recipient. An applicant approved to receive a grant under this notice or such other entity specified in the HUD-approved application that will assume the obligations of the recipient under this notice.

RMC. A resident management corporation that proposes to enter into, or enters into, a management contract for eligible property and that—

(a) Is a nonprofit organization that is incorporated under the laws of the State or tribe in which it is located;

(b) May be established by more than one resident organization or RC, so long as each such organization or RC (1) approves the establishment of the RMC and (2) has representation on the board of directors of the RMC;

(c) Has an elected board of directors;

(d) Has by-laws that require the board of directors to include representatives of each resident organization or RC involved in establishing the corporation;

(e) Provides that its voting members are residents of the eligible property it manages or will manage under a homeownership program and of any other property or public or Indian housing developments;

(f) Is approved by the RC; if there is no RC, a majority of the households of the eligible property shall approve the establishment of an RC to determine the feasibility of establishing a corporation to manage the property; and

(g) May serve as both the RMC and the RC, so long as the RMC qualifies as an RC.

Single parent. An individual who—

(a) Is unmarried or legally separated from a spouse; and

(b)(1) Has one or more minor children for whom the individual has custody or joint custody; or (2) is pregnant.

III. Planning Grants

Section 301. Planning grants.

(a) *General authority.* (1) HUD will make HOPE 3 planning grants to applicants for the purpose of developing HOPE 3 homeownership programs.

(2) Planning grants will assist an applicant to establish or increase its capacity to apply for and carry out a HOPE 3 homeownership program.

(3) HUD shall select applications based on a national competition.

(b) *Overall limitations.* (1) An applicant may apply for a planning grant and an implementation grant in response to any one NOFA. An applicant that has previously received a HOPE 3 impiementation grant is not eligible for a HOPE 3 planning grant. If an applicant submits applications for both planning and implementation grants, HUD will review the application for an implementation grant first to determine if it passes all screening and threshold requirements. If the application does, it will be processed (and the application for a planning grant will not be processed). If it does not pass all screening and threshold requirements, the applicant's planning grant application will be processed instead.

(2) The amount of a planning grant under this section may not exceed $100,000.

(3) Activities under a planning grant shall be carried out within 12 months of the effective date of the planning grant agreement.

Section 305. Eligible planning grant activities.

Planning grants may be used for the reasonable costs of only the following eligible activities necessary to develop homeownership programs. No additional activities may be approved. Only costs incurred on or after the effective date of the grant agreement qualify for funding under the program. HUD invites comments on whether the final rule should permit HUD to approve other activities than those in the following list. Specific examples of activities that the commenter believes are appropriate for funding from a HOPE 3 planning grant but would not qualify under this section should be included in the comment.

(a) *Assessing stock of eligible properties.* Assessing the availability on an ongoing basis of eligible properties of the appropriate condition, type, and price in specific neighborhoods or areas to implement a homeownership program. For example, planning grants may be used to fund the costs of obtaining and analyzing lists of potentially eligible properties from appropriate Federal, State, and local agencies and inspecting representative properties. Technical studies to evaluate environmental problems and to determine whether mitigation is feasible are eligible.

(b) *Training of and technical assistance to applicants.* Training of and technical assistance to applicants related to development of a specific homeownership program. This may cover, for example, such activities as providing guidance to the applicant in establishing cooperative, condominium, and other homeownership entities, and examining alternative approaches for carrying out a homeownership program. Training and technical assistance may only be provided by qualified entities other than the applicant.

(c) *Feasibility studies.* Studies of the feasibility of a specific homeownership program, including whether the program can be designed to meet the affordability standards under section 415(b)(12) and achieve financial feasibility.

(d) *Preliminary architectural and engineering work.* Preliminary architectural and engineering work, including developing estimates of the amount of work necessary to support rehabilitation of a typical unit that may be acquired by an eligible family under the program and other cost estimates to be included in a HOPE 3 implementation grant application.

(e) *Identification of counseling and training curricula and sources.* (1) Identification of course curricula and sources that can provide homebuyer and homeowner counseling and training, including such subjects as personal financial management, home maintenance, home repair, construction skills (to the extent appropriate, especially where eligible families will do some of the rehabilitation ("sweet equity")), and general rights and responsibilities of a homeowner.

(2) Where the application indicates that the applicant intends to identify particular occupied units in eligible, scattered site public or Indian housing developments to be used for cooperative or condominium homeownership under the HOPE 3 program, counseling and training of potential homebuyers.

(f) *Economic development planning.* (1) Planning for economic development activities that are eligible implementation grant activities under section 405(b)(12).

(2) The application shall demonstrate that the proposed activities are directly related to implementation of the homeownership program, and describe how these activities promote self-sufficiency.

(g) *Security plans.* Development of security plans. This activity may cover, where applicable, assessing the need for the hiring of security personnel and creating tenant patrols, for negotiating agreements with local law enforcement agencies, and for providing security systems.

(h) *Application for an implementation grant.* Preparation of an application for an implementation grant under section 415 of this notice.

(i) *Administrative costs.* Administrative costs necessary to carry out the eligible activities specified in the approved application.

Section 310. Applications for planning grants.

(a) *NOFA.* An application for a planning grant shall be submitted by an applicant in accordance with this notice and the NOFA. The NOFA advises potential applicants how to obtain an application package and establishes deadlines and other requirements for submission of applications. The NOFA also informs each applicant that it may request information and guidance from HUD about program requirements and preparation of the application.

(b) *Application contents.* Each application shall contain the information required by the application package, including at least the following items.

(1) *Request for planning grant.* The application shall contain (i) the amount of the grant requested; (ii) a reasonable schedule for completing the activities, but in no case may activities extend beyond 12 months; and (iii) a description of the type and number of personnel necessary to complete the activities.

(2) *Proposed activities.* The application shall specify the proposed activities in sufficient detail to permit HUD to determine if the planning grant activities are eligible and feasible.

(3) *Qualifications and experience of applicant.* (i) The application shall describe the applicant and contain a statement of its qualifications, including qualifications and experience in providing housing for low-income families.

(ii) If two or more entities join in submitting an application, such as a

public body in cooperation with a private nonprofit organization or two private nonprofit organizations, the application shall specify which entity will assume legal responsibility as the recipient and execute the grant agreement. The application shall include a copy of the written agreement between the entities that delineates their respective roles.

(iii) An application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered so long as the organization is approved before the effective date of the grant agreement.

(4) *Eligible properties and families.* (i) The application shall identify the governmental entity that currently owns or holds eligible properties likely to be involved in a homeownership program in the general locations proposed in the applications.

(ii) The application shall describe the composition of the potential homebuyers and residents likely to participate, including family size and income, and racial, ethnic, and gender characteristics as required by HUD.

(iii) The application shall describe the general locations from which the applicant expects to identify neighborhoods containing properties to be acquired under the program and describe the racial and ethnic characteristics of residents of the general locations or, if the application identifies specific neighborhoods, of the neighborhoods. The application shall propose to identify at least 10 properties in each general location which would be eligible for use under the program.

(iv) The application shall demonstrate that at least 10 eligible properties would be available for use under the program.

(5) *CHAS certification.* (i) The application shall contain a certification by the public official, or his or her authorized representative, who submits the Comprehensive Housing Affordability Strategy (CHAS) that the proposed activities are consistent with the approved CHAS of the State or unit of general local government within which the homeownership program would be located. Where the program will be carried out in more than one unit of general local government with a CHAS, a certification from each shall be included.

(ii) Paragraph (b)(5)(i) of this section shall not apply to an application submitted by an Indian tribe or IHA. Indian tribes and IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that Indian tribes and IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy.

(6) *Equal opportunity certifications.* (i)(A) The application shall contain a certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHA, under the circumstances described in section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) The application shall contain a statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(7) *Nonduplication of Funding.* The application shall contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

(8) *Other requirements.* The application shall contain other certifications and information required by the application package.

(c) *Screening.* (1) HUD shall screen each application submitted on or before the deadline set forth in the NOFA to determine whether it is complete, is internally consistent, and contains correct computations. In addition, HUD shall determine whether there appears to be a sufficient number of suitable, available eligible properties in the general locations identified in the application for the proposed activities. For this purpose, at least 10 suitable eligible properties must be determined to be available.

(2) Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants. The notification shall require applicants to submit additional or corrected material so that it is received in the appropriate HUD office no later than close-of-business on the 14th calendar day after the date of the written notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that do not meet one of the tests in paragraph (c)(1) of this section, after the opportunity, if any, to submit additional or corrected material, or that fail to comply with other program requirements.

(3) The purpose of this procedure is to increase the number of approvable applications so viable homeownership opportunities may be developed at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies. HUD anticipates that many applicants will be relatively new and might need this additional opportunity to revise their applications. HUD invites comments on this policy, including recommendations on whether it should be adopted or modified in the final regulations.

Section 315. Rating, ranking, and selection of planning grant applications.

(a) *Rating.* HUD shall review each application that qualifies for additional consideration under the screening procedures in section 310(c) and assign points in accordance with the following selection criteria—

(1) *Capability.* The ability of the applicant to develop a HOPE 3 homeownership program in a reasonable time and in a successful manner In assigning points for this criterion, HUD shall consider evidence in the application demonstrating—

(i) the capability of the applicant to develop a HOPE 3 homeownership program, demonstrated through previous experience of the applicant or key staff in managing acquisition, rehabilitation, construction, real estate financing, counseling and training, or other relevant activities, or by an explanation of how such capability will be obtained—20 points.

(ii) the ability of the applicant to handle financial resources, demonstrated through such evidence as previous experience of the applicant or

key staff and existing financial control procedures, or an explanation of how such capability will be obtained—20 points.

Maximum points for this criterion (1): 40 points.

(2) *Local support.* In assigning points for this criterion, HUD shall consider—

(i) The extent of interest of the unit of general local government or Indian tribe, where applicable (and the PHA/IHA where it is not part of the unit of general local government or Indian tribe and where public or Indian housing is expected to be used under the program) in support of a homeownership program, demonstrated through evidence of intent to provide assistance, such as social services (including counseling and training), rehabilitation loans or grants, interest rate subsidies, water and sewer improvements, street and sidewalk improvements, and tax abatements—10 points.

(ii) The extent of interest of the local community (including places of worship, banks, neighborhood or community organizations, the business community, or other community groups) in support of a homeownership program, demonstrated through evidence of intent to provide assistance such as the donation of labor or materials, interest rate reductions or other financing subsidies, and volunteer assistance in some aspect of the program (activities of the applicant shall not be considered under this subcriterion (ii))—10 points.

Maximum points for this criterion (2): 20 points.

(3) *Need for homeownership program.* In assigning points for this criterion, HUD shall consider the relative percentage of the total number of rental households consisting of persons with incomes at or below the poverty level, as determined by the Bureau of Census, in the applicable jurisdiction or jurisdictions.

Maximum points for this criterion (3): 20 points.

(4) *Planning approach.* The extent to which the proposal represents a sound approach to planning, demonstrates an understanding of the nature and scope of activities required to successfully implement a homeownership program, and is likely to result in a successful homeownership program.

Maximum points for this criterion (4): 20 points.

Maximum total points: 100 points.

(b) *Ranking and selection.* (1) After assigning points to each application under paragraph (a) of this section, HUD shall review and may adjust the ratings to ensure consistency among Field and Regional Office scores. HUD shall then rank the planning grant applications. Where HUD determines that applications falling below a certain point total are not suitable or not feasible for developing a homeownership program, it may establish a minimum number of points for an application to be selected.

(2) The purpose of planning grants is to build the capacity of applicants to submit approvable implementation grant applications. Accordingly, for applications which qualify for selection under paragraph (b)(1) of this section, HUD shall award bonus points to planning grant applications in HUD Regions where funds from the initial allocation to the Region under the NOFA remain after selection of all approvable implementation grant applications. The points shall be assigned as follows:

Percentage of initial allocation unused	Points
10% through 25%	10
More than 25% through 50%	15
More than 50%	20

(3) HUD shall then select the three highest ranking applications in each HUD Region.

(4) HUD shall then select the highest ranking remaining applications without regard to their location. However, no more than a total of 20 applications may be approved in any one Region unless they would otherwise be selected without receiving bonus points.

(5) If two or more applications receive the same number of points and sufficient funds are not available to fund all such applications, the application or applications requesting the smallest grants shall be selected if a sufficient amount remains to fund them. If two or more tied applications request the same amount and sufficient funds are not available to fund all such applications, the following system will be used to break the ties:

(i) If the tied applications are for programs to be carried out in different jurisdictions, the one(s) with the highest number of points for Need for Homeownership Program (criterion (3)) shall be selected, if sufficient funds remain.

(ii) If the tied applications are to be carried out in the same jurisdiction, the one(s) with the highest number of points for planning Approach (criterion (4)) shall be selected, if sufficient funds remain.

If any amounts remain after applying these procedures, they shall be reallocated in accordance with paragraph (e) of this section.

(6) Procedural errors discovered after initial ratings but before notification of applicants shall be corrected and rankings revised. Procedural errors discovered after notification of approved applicants which, if corrected, would result in approval of an application which was not approved will be corrected by funding the application from any unused amounts or "off the top" from amounts available for planning grants in the next funding round.

(7) If two or more applications propose substantially the same general locations, only the highest ranking application will be selected.

(c) *Reduction in requested grant amounts.* HUD shall approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines that (1) the amount requested for one or more eligible activities is unreasonable or unnecessary, (2) an activity proposed for funding does not qualify as an eligible activity, or (3) the amount requested exceeds the $100,000 cost limitation established for the program. In addition, HUD may approve an application for a lower amount if it determines the applicant is not able to carry out all of the activities requested, or insufficient amounts remain in that funding round to fund the full amount requested in the application.

(d) *Notification of approval or disapproval.* After completion of the ranking and selection of applications, but no later than six months after the date of submission of the application, HUD shall notify the selected applicants and the applicants that have not been selected, in writing. HUD's notification to the applicant or the amount of the grant award, based on the approved application, shall constitute a grant obligation by HUD, subject to acceptance by the applicant through execution of the grant agreement by the deadline specified in the notification.

(e) *Insufficient approvable applications; reallocation.* (1) If funds remain after HUD approves all approvable planning grant applications in accordance with this section, HUD shall combine them with amounts being reallocated to Regions having more implementation grant applications meeting threshold requirements than could be funded, in accordance with § 425(e); publish a NOFA inviting additional applications for planning or implementation grants, or both, in accordance with this notice; or invite applicants who submitted applications

that could not be funded to submit amended planning grant or implementation grant applications in accordance with this notice within a deadline specified in the invitation.

(2) Amounts that become available due to deobligation of grant amounts shall be available for reallocation in accordance with paragraph (e)(1) of this section.

(f) *Environmental Review.* HUD has determined that its approval of applications for planning grants is categorically excluded from environmental review and compliance requirements of the National Environmental Policy Act of 1969 (NEPA) and that other Federal environmental laws and authorities listed in 24 CFR 50.4 are not applicable. The reason is that planning grants involve no rehabilitation and little or no physical change and that, generally, not enough information is available about the proposed homeownership program at this point to make the review. HUD has excluded planning grant applications from environmental assessment under NEPA and exempted planning grant applications from environmental review under the laws and authorities listed in 24 CFR 50.4. See the interim rule amending 24 CFR part 50 that is published elsewhere in today's edition of the **Federal Register**. Applicants are reminded, however, that environmental review at the implementation grant stage may nevertheless result in disapproval.

Section 320. Post-approval requirements.

(a) *Timely completion of activities.* A recipient shall complete all activities approved under a planning grant application within 12 months from the effective date of the grant agreement. Recipients may draw down amounts under the Cash and Management Information System, in accordance with Section 740, for one additional month, to allow them to pay outstanding obligations for work performed during the 12-month grant period, and for one more additional month, to allow them to pay costs of preparing the report required under paragraph (b) of this section. HUD may deobligate amounts not drawn down by this deadline.

(b) *Performance report.* Each recipient shall submit a report on activities undertaken under the grant agreement, including the recipient's determination whether it is feasible for it to undertake a homeownership program and an assessment of the factors used to make the determination. Each recipient shall submit its performance report to HUD no later than 13 months from the effective date of the grant agreement.

IV. Implementation Grants

Section 401. Implementation grants.

(a) *Implementation Grants.* HUD shall make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this title.

(b) *Regional Fund Allocations.* HUD shall allocate funding authority for each of the 10 HUD Regions by formula, based on three equally weighted factors—

(1) the number of rental units in the Region, as determined by the Bureau of the Census, occupied by persons with incomes at or below the poverty level (half of the weight for this factor), and the total number of occupied rental units in the Region (for the other half);

(2) The number of rental units in the Region that are unsuitable because they (i) lack or have incomplete plumbing; (ii) are occupied by residents who are paying more than 30 percent of adjusted income towards rent (including utilities); (iii) are occupied by an average of more than one person in the household per room; or (iv) lack or have incomplete kitchens; and

(3) The number of single family properties (with up to four units, including condominium units) in the Region owned by HUD, the Resolution Trust Corporation in its affordable housing inventory, or the Department of Veterans Affairs.

Paragraphs (b) (1) and (2) of this section measure the need for the program and paragraph (b)(3) of this section measures the supply of eligible property available for the program.

(c) *Overall Limitations.* (1) HUD may approve more than one grant for a program to be carried out in a jurisdiction, so long as different applicants are the grantees and the programs will be carried out in different neighborhoods. A single applicant may apply for more than one implementation grant, but HUD will not approve grants for any one applicant that total more than 5 percent of the amount available under any one NOFA for HOPE 3 implementation grants.

For purposes of this limitation, the applicant identified in the application as the legally responsible lead entity which will execute the grant agreement will be considered the applicant. The purpose of this limitation is to give as many applicants as possible an opportunity to develop homeownership programs and to fund applicants in various areas of the country.

(2) An applicant may apply for a planning grant and an implementation grant in response to any one NOFA. If an applicant submits applications for both planning and implementation grants, HUD will review the application for an implementation grant first to determine if it passes all screening and threshold requirements. If the application does, it will be processed (and the application for a planning grant will not be processed). If it does not pass all screening and threshold requirements, the applicant's planning grant application will be processed instead.

(3) No amendments to increase previously approved grant amounts are allowed.

(d) *Scope of Program.* Applications which identify a public body (or agency or instrumentality thereof) as the entity to execute the grant agreement may only propose a program to be carried out within the jurisdiction of that entity. Applications which identify a private nonprofit organization as the entity to execute the grant agreement may propose a program to be carried out within two or more jurisdictions. No application may propose a program to be carried out in more than one State.

Section 405. Eligible implementation grant activities.

(a) *Limitations.* Implementation grants may be used for the reasonable costs of eligible activities necessary to carry out homeownership programs. Only costs incurred on or after the effective date of the grant agreement qualify for funding under the program.

(b) *Eligible Activities.* Eligible activities include—

(1) *Architectural and Engineering Work.* Architectural and engineering work, and related professional services required to prepare architectural plans or drawings, write-ups, specifications, or inspections.

(2) *Acquisition of Eligible Properties*—(i) *General.* Acquisition of eligible properties for the purpose of transferring ownership interests to eligible families in accordance with a homeownership program that meets the requirements under this notice. (Where the applicant owns the eligible property or where HUD otherwise determines that an "arms length" relationship for acquisition does not exist, program funds may not be used for acquisition of the property for the program.)

(ii) *Maximum Acquisition Costs.* (A) The cost of acquiring an eligible property (by an applicant or other entity for transfer to eligible families or by eligible families), which may not exceed

the as-is fair market value of a property for residential use, taking into account any applicable low-income use restrictions, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD, plus reasonable and customary closing costs charged for comparable transactions in the market area.

(B) Where the eligible property is a public or Indian housing development, the cost of acquisition is not an eligible cost, but closing and other costs related to acquisition of the development are eligible costs. Where a public or Indian housing development contains improvements provided through local tax revenues that increased the value of the development, an applicant may request HUD to approve the use of program funds to pay the PHA/IHA for the depreciated value of the improvements paid for from local tax revenues. The request for the approval shall document the original contribution, state the basis for computing the amount of the depreciated value, and otherwise justify the request.

(iii) *Maximum Cost of Acquisition and Rehabilitation.* (A) The cost of acquisition and rehabilitation paid for from grant funds or from matching funds being contributed may not exceed 80 percent of the maximum amount that may be insured under section 203(b) of the National Housing Act (including any high-cost area adjustments), plus reasonable and customary closing costs charged for comparable transactions in the market area. (The cost of acquisition of a unit in a public or Indian housing development is not an eligible cost.) The maximum cost of rehabilitation that may be paid for from grant funds and matching funds may not exceed $33,500 for any unit (which shall not be adjusted for high-cost areas).

(B) For example, in Columbus, Ohio, a recipient could pay no more than $71,200 from grant funds and matching funds provided by HUD for the cost of acquisition and rehabilitation of a one-unit single family property. This limitation was determined by multiplying the FHA single family mortgage insurance limit for a one-unit property in Columbus by 80 percent ($89,000 × 80% = $71,200). Within this overall limitation, the recipient could spend up to $33,500 from grant funds and matching funds for rehabilitation.

(3) *Financial assistance to homebuyers.* The provision of assistance to families to make acquisition and rehabilitation of eligible properties affordable. This may include interest rate reductions ("interest rate buy-downs"), other financing assistance that reduce monthly homebuyer payments, and payment of all or a portion of closing costs, down payments, and other expenses. Acquisition of a property by an eligible family is subject to the limitations under paragraph (b)(2) of this section. Financial assistance may be provided directly to, or on behalf of, an eligible homebuyer.

(4) *Rehabilitation.* (i) Rehabilitation of the eligible property covered by the homeownership program, in accordance with standards established by HUD (see paragraph (b)(2) of this section for applicable cost limitations covering both acquisition and rehabilitation) and section 505(b) for applicable requirements for accessibility for people with disabilities. The property shall be rehabilitated (including the provision of suitable amenities) to a level that makes it marketable for homeownership in the market area to families with incomes at or below 80 percent of the median for the area. HUD encourages applicants to undertake high quality rehabilitation. Luxury items (fixtures, equipment, and landscaping of a type or quality which substantially exceeds that customarily used in the locality for properties of the same general type as the property to be rehabilitated) do not qualify as eligible expenses. The construction of swimming pools is not eligible. The cost to fill in or eliminate a pool from the property and the cost to repair an existing pool are eligible.

(ii) The application shall describe all improvements to be made to, or amenities to be provided for, the property, whether or not they may be funded by use of grant amounts, contributions towards the match required under the program, or other funds. HUD may disapprove improvements or amenities specified in the application it determines are unsuitable for the HOPE program, even if they will be paid for from non-program funds.

(iii) If an applicant proposes to make improvements to an eligible property beyond those that qualify as eligible costs, it shall assure that their entire cost will be covered by funds other than the HOPE grant and any amounts contributed towards the match and that the affordability of the property will not be impaired. No such local funds may count towards the match.

(iv) The rehabilitation shall meet local codes applicable to rehabilitation work in the jurisdiction (but not less than the housing quality standards established under the Section 8 Certificate program), and shall include improvements necessary to meet applicable Federal requirements, and may include energy conservation-related repairs and improvements and the repair or replacement of major systems in danger of failure.

(5) *Administrative Costs.* Administrative costs of the program. The total amount that may be spent on administrative activities from the amount of the grant and any contribution towards the match may not exceed 15 percent of the amount of the grant HUD provides under this notice.

(6) *Counseling and Training.* Counseling and training of homebuyers and homeowners under the homeownership program. This may include such subjects as personal financial management, home maintenance, home repair, construction skills (to the extent appropriate, especially where the eligible family will do some of the rehabilitation), and the general rights and responsibilities of homeownership.

(7) *Relocation.* Relocation of residents who elect to move, in accordance with section 735.

(8) *Temporary Relocation.* Any necessary temporary relocation of residents during rehabilitation, in accordance with section 735.

(9) *Replacement Reserves.* (i) A single replacement reserve for the properties under the program, if necessary to achieve long-term affordability, as provided in section 415(b)(12).

(ii) Assistance for replacement reserves may be drawn down under the grant agreement when needed to assist a homeowner and to fund a reserve account at the time of program close out.

(iii) Where a HOPE 3 application proposes funding of a replacement reserve, it shall describe the escrow or other arrangement that will be used to safeguard the funds (including who will administer the reserve) and the proposed life of the reserve. The application shall demonstrate that the amount proposed for the replacement reserve is reasonable, taking into account (A) the analysis related to determining the affordability of the program, (B) the size of the grant and the amount of matching contributions, (C) the condition and age of the properties and each of their major systems and components (including at least the heating, plumbing and electrical systems and the roof, foundation, windows, exterior walls, and common area, if any (including the need to repaint), and (D) other possible replacement needs. Where the application proposes a replacement reserve, it shall also demonstrate that the financial status of eligible families is insufficient (taking into account insurance requirements and home maintenance repair capability of the family) so there is a need for a

reserve. The replacement reserve may be used only to prevent severe financial hardship to families caused by the failure of a major system or component of the property that renders the unit substandard.

(iv) The entity with fiduciary responsibility for any replacement reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(v) Although funding of replacement reserves is an eligible expense under the notice, HUD invites comments on whether a replacement reserve is needed for a single family homeownership program, especially with respect to public and Indian housing transferred for homeownership under the program.

(10) *Legal Fees.* Customary and reasonable costs of professional legal services.

(11) *Ongoing Training Needs.* Defraying costs for the ongoing training needs of the recipient for courses of instruction that are directly related to developing and carrying out the homeownership program.

(12) *Economic Development.* (i) Economic development activities that promote economic self-sufficiency of homebuyers and homeowners under the homeownership program involving only job training or retraining and day care costs of those participating in job training and retraining activities approved under the HOPE 3 program. The recipient shall enter into written agreements with the providers of economic development services specifying the services to be provided, including estimates of the numbers of homebuyers and homeowners to be assisted.

(ii) The aggregate amount of planning and implementation grants that may be used for economic development activities related to any one program may not exceed $250,000.

(13) *Other Activities.* Other activities proposed by the applicant, to the extent the applicant justifies them as necessary for the proposed homeownership program and HUD approves them. For example, the applicant may propose activities related to security needs of the property that are not otherwise covered under other eligible activities, such as under architectural and engineering work and rehabilitation activities.

Section 410. Matching requirements for implementation grants.

(a) *Requirement for Each Recipient to Match the HUD Grant.* Each recipient shall assure that matching contributions equal to not less than 33 percent of the amount of the implementation grant shall be provided from non-Federal sources to carry out the homeownership program. Amounts contributed to the match shall be used for eligible activities or in accordance with this section.

(b) *Form.* Contributions may only be in the form of—

(1) *Cash Contributions.* (i) Cash contributions from non-Federal resources. To be a cash contribution, funds must be contributed permanently for uses under the HOPE 3 program. Funds will be considered permanently contributed if all repayment, interest, and other return on the contribution will only be used for eligible activities in accordance with program requirements.

(ii) Non-Federal resources may not include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d), respectively, of the Housing and Community Development Act of 1974, except to the extent permitted for administrative expenses under paragraph (a)(2) of this section. Non-Federal resources may not include Federal tax expenditures, comprehensive grants under section 14 of the 1937 Act, or amounts provided to the development from syndication of the low income housing tax credit. (Financing involving the use of the low income housing tax credit is prohibited by section 415(b)(11)(iii).)

(iii) Non-Federal resources may include contribution of trust funds held by Federal agencies for Indian tribes.

(iv) A cash contribution may be made by the applicant, non-Federal public entities, private entities, or individuals. A cash contribution may be made from program income from a Federal grant earned after the end of the award period if no Federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G), and the Housing Development Grant Program (24 CFR part 850).

(v) Cash contributions may also be made from sales proceeds from the Turnkey III Homeownership and Mutual Help programs obtained pursuant to PIH Notice 91–28 or an approved homeownership program under section 5(h) of the 1937 Act.

(vi) The grant equivalent of a below-market interest rate loan to the homebuyer, where all repayments, interest, and other return will not be permanently contributed to the HOPE program, may be counted as a cash contribution.

(A) If the loan is made from proceeds of obligations issued by or on behalf of a public body that are exempt from taxation by the United States, the contribution is the present discounted cash value of the difference between payments to be made on the borrowed funds and payments to be received on the loan to the homebuyer, based on a discount rate equal to the interest rate on the borrowed funds.

(B) If the loan is made from funds other than under paragraph (b)(1)(vi)(A) of this section, the contribution is the present discounted cash value of the yield forgone, calculated based on a discount rate approved or prescribed by HUD. In determining the yield forgone, the recipient must use as a measure of a market rate yield one of the following, as appropriate:

(*1*) With respect to housing financed with a fixed interest rate mortgage, a rate equal to the 10-year Treasury note rate plus 200 basis points; or

(*2*) With respect to housing financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points.

(vii) A down payment by an eligible family may not count towards the match.

(viii) Non-Federal resources may include amounts, determined in accordance with paragraph (b)(1)(vi)(B) of this section, that have been requested by the applicant in an application submitted to the Federal Housing Finance Board for assistance under its affordable housing program, so long as that application is approved before the date HUD approves the HOPE application.

(2) *Administrative Costs.* (i) Contributions for eligible administrative costs may be recognized for matching purposes only up to an amount equal to 7 percent of the amount of the implementation grant. This limitation is in addition to the limitation that the total amount that may be spent on administrative activities from the amount of the grant and any contributions towards the match may not exceed 15 percent of the grant amount (Section 405(b)(4)). If an applicant proposes to contribute administrative costs, HUD will automatically approve an applicant's assurances for matching purposes that it will pay eligible administrative costs from non-Federal sources in an amount up to 7 percent of the implementation grant, and will not require further documentation of those expenditures. If a recipient uses more than 8 percent of its implementation grant to pay for the costs of administration, the amount

credited towards the match will be reduced to less than 7 percent to stay within the 15 percent limitation.

(ii) For example, if the grant amount is $600,000, the recipient must assure the provision of at least $198,000 (33 percent of the grant) from non-Federal sources. Contributions for administrative costs that may be counted towards the match may not exceed $42,000 (7 percent of the grant amount of $600,000). Although an applicant can spend more than this on administrative costs, it may not be counted towards the match. In addition, the applicant must provide contributions covering the remaining $156,000 ($198,000—$42,000) required for the match from non-Federal sources.

(iii) Non-Federal resources, for the purposes of counting contributions for administrative costs, may include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d) of the 1974 Act and are subject to the recordkeeping and documentation requirements of that program.

(3) *Taxes, Fees, and Other Charges.* The present value of taxes, fees, or other charges that are normally and customarily imposed but are waived, forgone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this notice. Only amounts of the period after the date a property is acquired by a recipient or other entity for transfer to eligible families; the effective date of the implementation grant agreement if the recipient already owns the property; or the date after an eligible property is acquired directly by an eligible property, as applicable, may be counted towards the match. For example, if a city agrees to forgo real property taxes for 20 years, the application shall compute the estimated tax that would be otherwise payable over the 20 year period, and discount it to present value based on a discount rate approved or prescribed by HUD. Amounts that would be waived, forgone, or deferred for longer than 20 years from the date a family acquires homeownership interests in the unit may not be counted towards the match because enforcement would be impracticable. Where the match includes amounts under paragraph (b)(3) of this section, the documents transferring the homeownership interest to the family shall evidence the contribution, to the extent the contribution has not already been received.

(4) *Land or Other Real Property.* Real property, not acquired with Federal resources, contributed for use under an approved homeownership program.

(i) Where the eligible property is a public or Indian housing development, the value of such a development may not be counted as a contribution towards the match.

(ii) The as-is fair market value of eligible property may be counted as a contribution towards the match, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD. The maximum value contributed shall be limited as provided in §§ 405(b)(2)(ii) and (iii).

(iii) Vacant lots on existing streets with available utilities (which need not include laterals) may be contributed for use under the program, but only if a structure will be moved onto it, the resulting property qualifies as eligible property under the program, and the total amount of the contribution and any amount paid from HOPE 3 funds for the structure and moving costs are within the limits provided in §§ 405(b)(2)(ii) and (iii).

(5) *Infrastructure.* The fair market value of investment, not made with Federal resources, in on-site and off-site infrastructure required for a homeownership program. The infrastructure investment may be counted towards the match only if it was completed no earlier than 12 months before the date of notification by HUD of implementation grant approval. Investment in infrastructure may include such activities as new or repaired utility laterals connecting eligible property to the main line and new or rebuilt walkways, sidewalks, or curbs on or contiguous to the eligible property. If the investment in infrastructure also benefits other properties, only the share of the costs directly benefiting the eligible property under the homeownership program may be counted towards the match.

(6) *Debt Forgiveness.* Where debt on real property to be acquired under the program is forgiven, permitting the property to be acquired for less than fair market value, the savings may count as a match. However, the amount of forgiven debt counted toward the match may not exceed the fair market value of the property and any other applicable limitations determined under §§ 405(b)(2) (ii) and (iii) or paragraph (b)(4) of this section.

(7) *Other In-Kind Contributions.* (i) The reasonable value of in-kind contributions proposed by the applicant in the application and approved by HUD. In reviewing proposed in-kind contributions, HUD shall review to ensure (A) the proposed contribution is to be used for an eligible activity under the proposed homeownership program; (B) the application demonstrates that the proposed in-kind contribution will actually be provided; and (C) the proposed value of the contribution is reasonable. In determining whether the value is reasonable, HUD shall generally consider the amount such work would otherwise cost the program, but may adjust the value, based on special circumstances.

(ii) All donated labor, including sweat equity provided by a homebuyer or homeowner, shall be valued at $10 an hour, except for donated professional labor, as approved by HUD, including work by homebuyers and homeowners. The donated professional labor shall be valued at the fair market value of the work completed. Professional labor is work ordinarily performed by the donor for payment, such as work by laborers, electricians, and architects that is equivalent to work they do in their occupations. Sweat equity may be counted towards the match only if it is not also counted towards a family's equity.

(iii) Donated materials and supplies may be counted towards the match contribution. Materials and supplies need not have been purchased specifically for the program to be included as a match contribution, if the cost of the grantee of the materials and supplies (or, in the case of materials and supplies donated by a different entity than the recipient for use in the program, the fair market value of the materials and supplies) and if the fact that they were used in the program can be documented. The recipient shall maintain a written enumeration of what donated materials and supplies will be used in the program, as well as documentation of their cost or value.

(c) *Other Restrictions.* All contributions towards eligible activities to be counted towards the match shall be provided no later than the deadline for completion of program activities established in accordance with section 705, except that contributions under section 410(b)(3), taxes, fees, and other charges, may be made after the deadline pursuant to a legally binding obligation by the donor.

(d) *Exception for Indian Housing Authorities.* Where the recipient is an IHA and the IHA (acting in that capacity) has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds, the match requirements under this section shall not apply.

Section 415. Applications for implementation grants.

(a) *NOFA.* An application for an implementation grant shall be submitted by an applicant in accordance with this notice and the NOFA. The NOFA advises potential applicants how to obtain an application package and establishes deadlines and other requirements for submission of applications. The NOFA also informs each applicant that it may request information and guidance from HUD about program requirements and preparation of the application.

(b) *Application Contents.* Each application shall contain the information required by the application package, which shall include at least the following items.

(1) *Request for HOPE Implementation Grant.* The application shall contain (i) a summary description of the proposed homeownership program; (ii) a description of the personnel necessary to complete the activities; and (iii) the amount of the grant requested for each activity. The amount requested, together with any non-Federal contributions, shall be sufficient to carry out all proposed activities.

(2) *Match Requirements.* (i) The application shall describe and, except with respect to administrative costs, contain commitments for, the resources that are expected to be contributed towards the match required under section 410, and of any other resources that are expected to be made available in support of the homeownership program. Except for administrative costs, acceptable evidence that the contribution will be provided shall be included. For example, if 20 years of tax abatement will be counted towards the match, the chief executive officer or appropriate legislative body of the government should submit a copy of the law or other official action documenting this commitment. Cash or other property contributions (except those related to administrative costs) shall be supported by evidence of a binding commitment by the donor to donate the cash or other property, subject only to approval of the implementation grant and any other necessary conditions approved by HUD.

(ii) If the match requirement does not apply to an IHA in accordance with section 410(d), the application shall contain a certification that the IHA has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds.

(3) *Qualifications and Experience of Applicant.* (i) The application shall describe the applicant and contain a statement of its qualifications and experience, including qualifications and experience in providing housing for low-income families.

(ii) Where a public body submits an application in cooperation with a private nonprofit organization, the application shall include a written agreement that delineates their respective roles and responsibilities and identifies the entity that will execute the grant agreement.

(iii) An application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered so long as the organization is approved before the effective date of the grant agreement.

(4) *Description of Proposed Homeownership Program.* The application shall describe the proposed homeownership program, demonstrating consistency with all requirements specified in this notice and the application package (see, especially, section 405, Eligible Implementation Grant Activities and part V, Other Requirements). The application shall specify the activities to be carried out, their estimated costs, and a reasonable schedule for carrying out the activities. The schedule shall require completion of program activities under the grant agreement no later than four years from the effective date of the grant agreement. See section 705 for related requirements and provisions permitting HUD to permit a longer deadline for completion of program activities. See section 715 for requirements for the timely transfer of ownership interests to eligible families.

(5) *Plan.*—(i) *Identifying and Selecting Families.* The application shall contain a plan for identifying and selecting eligible families to participate in the homeownership program. The plan shall—

(A) Establish equitable procedures for selection of eligible families. The procedures shall provide for selection only of families that are creditworthy and have the financial capacity to handle the anticipated costs of homeownership.

(B) Except for Indian tribes and IHAs as described in section 505(a)(2), describe activities planned to carry out the applicant's affirmative fair housing marketing responsibilities that apply whenever homeownership opportunities are made available to other than current residents of the property. The plan shall describe the applicant's affirmative fair housing marketing strategy, including specific steps to inform potential applicants and solicit applications from eligible families in the housing market area who are least likely to apply for the program without special outreach.

(C) Require any family determined not to have paid the appropriate amount of tenant contribution under a HUD housing assistance program to resolve any deficiency before being selected for homeownership.

(D) Give a first preference to otherwise qualified residents that legally occupied units on the date the implementation grant application was submitted to HUD and to current residents at the time homeowners are selected. If the unit occupied by a former resident on the date the implementation grant application was submitted to HUD is occupied by a current resident, a vacant unit under the program shall be offered to the former resident at the earliest possible time.

The plan shall also give a first preference, in the case of vacant properties, to otherwise qualified eligible families who reside in public or Indian housing under the 1937 Act. If a unit occupied by a resident on the date the implementation grant application is submitted to HUD is vacant but its resident on the date of application wishes to exercise the preference, the unit shall not be considered vacant for purposes of the preference for families who reside in public or Indian housing. The plan shall also include such measures as may be necessary to inform residents of public and Indian housing developments of their preference, such as informing RMCs, RCs, PHAs, and IHAs or taking other appropriate measures.

The plan shall give a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program. The following self-sufficiency programs (and any other Federal, State, or local program proposed by the applicant and approved by HUD as equivalent) qualify: Project Self-Sufficiency, Operation Bootstrap, Family Self-Sufficiency, and JOBS.

(E) Require the recipient to promptly notify in writing any rejected applicant family of the grounds for any rejection, or to require the recipient to require another appropriate entity to do so.

(F) Require each eligible family selected for homeownership to certify at the time it acquires an ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family) that it intends to occupy the unit as its principal residence.

(G) Require each eligible family to agree to occupy the property as its principal residence during the 15-year period from the date it acquires ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family), unless the recipient determines that family is required to move outside the market area due to a change in employment or an emergency situation or the family sells its ownership interest. The family may permit others to rent space (such as a basement area or a spare bedroom) in the property occupied by the family as its principal residence.

(H) Require any eligible family that violates the agreement made under paragraph (b)(5)(i)(G) of this section to pay the amount then due under the promissory note.

(I) Describe the composition of the residents and potential eligible families, including family size and income, and racial, ethnic, and gender characteristics, as required by HUD.

(ii) *Providing Relocation.* The application shall describe the proposed relocation activities, in accordance with the requirements of section 735. The plan shall specify the approximate number of families and individuals who are expected to choose to move and the number who will be temporarily relocated during rehabilitation, the estimated costs, the source of funding, the organization that will carry out the relocation if different than the applicant, and other available resources (including, for example, section 8 assistance).

(iii) *Managing Sweat Equity.* Where applicable, the application shall contain a plan for managing the provision of sweat equity by homebuyers and homeowners, including a description of the anticipated scope of the work, schedule of completion, training of homebuyers and homeowners (and training of others donating labor in connection with sweat equity activity), supervision of the work by a licensed general contractor, and a contingency plan if the sweat equity is not fully provided or the schedule is not met.

(iv) *Providing Training and Counseling.* The application shall contain a plan for providing training and counseling for homebuyers and homeowners.

(6) *Eligible Property.* The application shall anticipate selection of at least five properties and contain the following information about the properties expected to be included in the program:

(i) The anticipated types and sizes of properties;

(ii) Whether the applicant expects the properties to be vacant;

(iii) Whether the properties will be owned by the Federal government, PHAs/IHAs, or State or local governments; and

(iv) The anticipated locations of the properties, by specifying particular neighborhoods where activities will be carried out and describing racial and ethnic characteristics of residents of the neighborhoods.

(7) *Housing Quality Standards Plan.* The application shall include a housing quality standards plan describing how the applicant will ensure that—

(i) The unit will be free from any defects that pose a danger of life, health, or safety before transfer of an ownership interest in a unit to an eligible family or execution of a lease with an option to purchase. The recipient shall inspect, or ensure inspection of, each unit to determine it does not pose an imminent threat to the life, health, or safety of residents and that the property has passed recent fire and other applicable safety inspections conducted by appropriate local officials; and

(ii) The unit will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards. The recipient shall inspect, or ensure inspection of, each unit to determine it meets the local housing code or the housing quality standards established by HUD for the Section 8 Certificate program, whichever is higher.

Higher standards may be proposed by the applicant or required by lenders. The applicant shall adopt written rehabilitation standards, which shall be consistent with the housing quality standards plan, but shall not submit them to HUD.

(8) *Replacement Housing.* Where section 18 of the 1937 Act applies, the application shall contain an application under section 18 for the disposition of units in public or Indian housing developments (see sections 110(a) and 601(d)). Applicants that intend to utilize their HOPE 3 grant in conjunction with a section 5(h) or 21 HUD homeownership development shall be required either to submit as part of the HOPE 3 application package a certification of compliance with an existing section 5(h) or 21 replacement housing plan, or a replacement housing plan under section 5(h) or 21. Applicants should consult the HOPE 3 application package to determine whether the proposed homeownership program is subject to, or exempt from, the requirements of section 18 (including the requirement for a replacement housing plan), or whether alternative requirements (including alternative replacement housing plan provisions) are applicable. HOPE assistance may not be used to fund replacement housing.

(9) *Nondisplacement; Participation by Residents.* The application shall contain a certification by the applicant that no person has been or will be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude termination of tenancy for violation of the terms of occupancy of a unit. Each resident of an eligible property on the date the application was submitted to HUD and each resident at the time homeowners are selected shall be given an opportunity to become a homeowner under this program if the resident qualifies as an eligible family and meets other program requirements. The use of eligible properties occupied by residents who are not interested in, or do not qualify for, homeownership and who do not elect to move is not permitted.

(10) *Management Entity.* The application shall identify and describe the entity that will operate and manage the property, and contain a copy of the proposed contract, or states that the applicant intends to operate and manage the property. Where homeowners will have full responsibility upon acquiring a homeownership interest in a property (as is expected in scattered site, fee simple ownership arrangements), this requirement will only cover the period, if any, until the homeowners become fully responsible.

(11) *Financing.* (i) The application shall identify and describe the financing proposed for any (A) rehabilitation and (B) acquisition (*1*) of the property, where applicable, by the applicant or other entity, including an RC, for transfer to eligible families, and (*2*) by eligible families of ownership interests in eligible properties.

(ii) Financing may include use of the implementation grant to permit transfer of an ownership interest in a unit to an eligible family for less than fair market value or with assisted financing; sale for cash; or other sources of financing (subject to requirements that apply to such other sources), including conventional mortgage loans, mortgage loans insured under title II of the National Housing Act, and mortgage loans under other available programs, such as VA, FmHA, and RTC seller-assisted financing.

(iii) Financing may not involve use of the low income housing tax credit. No assumptions are permitted. HUD invites comments on whether assumptions should be permitted.

(12) *Affordability*—(i) *Initial Affordability.* (A) The application shall demonstrate that the monthly expenditure for principal, interest, taxes, and insurance by an eligible family that is necessary to complete the sale for the initial acquisition of a unit is not less than 20 percent but not more than 30 percent of the adjusted income of the family, determined in accordance with 24 CFR part 913 (where the recipient is a PHA, RMC, or RC), part 813 (unless the recipient is a PHA, RMC, or RC), or part 905 (for Indian housing developments), as appropriate. HUD may approve a justified request in the application for a floor lower than 20 percent to avoid undue hardship to families, such as where the cost of utilities is high. As required by the statute, closing costs are included in this 30 percent cap to the extent they are included in the costs of principal and interest, or are otherwise required to be paid by the homeowner over time after acquisition. It does not make sense to count closing costs paid as a lump sum at closing for purposes of computing a monthly maximum family expenditure. In setting the sales price for acquisition, the applicant shall take into account the need to comply with this affordability standard.

(B) Applicants are encouraged to consider the additional monthly costs of utilities and other monthly housing costs in determining whether the family can afford to purchase a unit.

(C) Applicants shall adopt written standards for determining monthly expenditures under paragraph (b)(12) of this section, but shall not submit them to HUD.

(ii) *Continued Affordability.* The application shall contain a feasible plan for ensuring continued affordability by homebuyers and homeowners in the eligible property. The plan shall avoid using financing, such as a mortgage that is not fully amortizing (such as a "balloon" mortgage) or that involves negative amortization, that would impair the continued affordability of the property for eligible families.

(13) *Sales Price to Applicant or Other Entity* The application shall specify the estimated average sales price to the recipient for the properties expected to be acquired for homeownership under the program, the basis for the estimate, and terms (if known) to the entity that will purchase properties for resale to eligible families.

(14) *Sales Prices and Terms of Sale to Eligible Families; Form of Ownership.* (i) The application shall contain estimated sales prices and terms of sale to eligible families. The application shall also specify the type or types of homeownership to be used, including cooperative ownership (including limited equity cooperative ownership), fee simple ownership (including condominium ownership), or another form of ownership proposed and justified by the applicant and approved by HUD.

(ii) In order for the homeowner to have a continuing equity interest in the property, the proposed program shall require each eligible family to make an investment in the property, which shall either be in the form of a downpayment paid at closing from family resources or from the proceeds of a loan to the family secured by a mortgage on the property.

(iii) An eligible family may transfer amounts credited to it under other HUD homeownership programs (including Turnkey III and Mutual Help) to meet down payment obligations under the HOPE program, if it is purchasing the same unit it has occupied under the other HUD homeownership program. An applicant may permit a family to meet its down payment obligation, if any, through "sweat equity."

(iv) See 110(f) for provisions governing the use of single family FHA mortgage insurance.

(15) *Resale Restrictions, If Any.* The application shall contain any proposed restrictions on the resale of units by initial or subsequent homeowners under the homeownership program (Section 720(a)(1)(ii)). The required restrictions set forth in 720 need not be restated.

(16) *CHAS Certification.* (i) The application shall contain certification by the public official, or his or her authorized representative, who submits the CHAS that the proposed activities are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located. Where the program will be carried out in more than one unit of general local government with a CHAS, a certification from each shall be included.

(ii) Paragraph (b)(16)(i) of this section shall not apply to an application submitted by an Indian tribe or IHA. Indian tribes and IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that Indian tribes and IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy.

(17) *Equal Opportunity Certifications.* (i) The application shall contain—

(A) A certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHA, under the circumstances described in Section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) The application shall contain a statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(18) *Plan for Use of Certain Sales Proceeds.* The application shall contain a plan for use of proceeds from sales to eligible families and amounts families may not retain upon resale. The plan shall provide for uncommitted sales proceeds and resale proceeds that may not be retained by a homebuyer to be spent before additional grant amounts are drawn down by the recipient.

(19) *Economic Development.* The application may contain a plan for economic development activities under the program. The application shall demonstrate that the proposed activities under § 405(b)(12)(i) are directly related to the proposed homeownership program, and describe how these activities will promote the self-sufficiency of homebuyers and homeowners.

(20) *Environmental Certification.* The application shall contain a certification that the applicant agrees to comply with the environmental laws and authorities at 24 CFR 50.4 and that it will (i) supply HUD with information necessary for it to perform any necessary environmental review of each property; (ii) carry out mitigating measures required by HUD or select alternate eligible property; and (iii) not acquire or otherwise carry out any program activities with respect to any eligible property until HUD approval is received. See Section 745.

(21) *Nonduplication of Funding.* The application shall contain a certification that the applicant is not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

(c) *Screening.* (1) HUD shall screen each application submitted on or before the deadline set forth in the NOFA to determine whether it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another neighborhood or applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants. The notification shall inform each applicant that it may request information and guidance from HUD about program requirements and preparation of the application. The notification shall also require applicants to submit additional or corrected material so it is received in the appropriate HUD office no later than close-of-business on the 14th calendar day after the date of notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that do not meet one of the tests in the first sentence of paragraph (c)(1) of this section, after the opportunity, if any, to submit additional or corrected material, or fail to comply with other program requirements.

(2) The purpose of this procedure is to increase the number of approvable applications so viable homeownership opportunities may be developed at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies. HUD anticipates that many applicants will be relatively new and may need this additional opportunity to perfect their applications.

(Approved by the Office of Management and Budget under control number 2506–0119)

Section 420. Threshold Review

HUD shall review each application that qualifies for additional consideration under the screening procedures in section 415(c). HUD shall not consider further any application that fails to meet any one of the following additional threshold criteria—

(a) *Experience and Capacity of Applicant.* (1) The applicant or other specified entity has the administrative capacity, or proposes to obtain administrative capacity, that is adequate to carry out the proposed program.

(2) The application demonstrates that the applicant or other specified entity has adequate internal management controls, including strong systems for financial management and cost controls, as evidenced by submission of a summary of the last certified independent audit report or a certification from a certified public accountant who has examined the current internal management controls or is establishing those systems for a new entity.

(3) If the applicant or its key staff and other specified entity and its key staff have previous experience in housing acquisition, rehabilitation, or a homeownership program, their efforts have been free of serious problems and major audit findings or problems and findings have been satisfactorily resolved.

(b) *Feasibility of the Homeownership Program.* (1) The application sets forth a realistic schedule for implementing the proposed program, including timely acquisition and, where applicable, timely rehabilitation of properties, as well as timely property transfer to homebuyers. The schedule shall provide for completion of implementation within four years from the effective date of the grant agreement, except where a longer period is approved in accordance with § 705.

(2)(i) At least five potentially suitable eligible properties are available in the areas in which the applicant proposes to carry out the program.

(ii) The proposed program does not result in appreciably reducing in the locality the number of affordable rental housing units of the type to be assisted that would be available to residents currently residing in the types of properties proposed for use under the program or to families who would be eligible to reside in the properties. In the case of scattered site, single family public or Indian housing, where section 18 of the 1937 Act applies (see section 110(a)), this requirements is met automatically since section 18 of the 1937 Act requires replacement of each unit transferred to homeownership. HUD shall determine that the application complies with this criterion if it determines that no more than 10 percent of the affordable single family (one- to four units) rental housing units in the market area would be converted to homeownership as a result of approval of the application. If the proposed homeownership program is in a market area that contains such a small number of affordable rental housing units that the applicant believes the number of units included in its application may exceed the 10 percent threshold, the applicant shall submit whatever documentation it believes appropriate to assist HUD in making this determination.

(3) The proposed financing from all sources is sufficient to accomplish the program's objectives.

(4) The application demonstrates that the affordability standards in section 415(b)(12) can be met and the plan for ensuring continued affordability in section 415(b)(12)(ii) is feasible. The plan shall take into account the proposed cost of operating and maintaining the property after eligible families become homeowners and the adequacy of counseling and training of homebuyers, residents, and homeowners.

(5) Adequate supportive homeownership counseling services will be provided.

(6) If applicable, the application provides for necessary relocation assistance.

(7) The plan in section 415(b)(5)(i) for identifying and selecting eligible families to participate is acceptable.

(8) The housing quality standards plan in section 415(b)(7) is acceptable.

(9) The proposed program provides that all units in properties assisted under the program will be acquired by eligible families.

(10) The application complies with all other applicable requirements and proposes a homeownership program that is feasible, given the scope and location of the program and the administrative capacity of the applicant.

(c) *Equal Opportunity and Related Requirements.* The applicant's certification of compliance with equal opportunity and related requirements and its statement concerning desegregation orders, compliance agreements, and voluntary agreements are consistent with facts known to HUD, and the performance of the applicant is satisfactory or any problems are being satisfactorily resolved.

Section 425. Rating, ranking, and selection of applications

(a) *Rating.* If the regional allocation is not sufficient to fund each application that HUD determines meets the threshold requirements, HUD shall review each such application and assign it points in accordance with the following selection criteria—

(1) *Capability.* The ability of the applicant to develop and carry out the proposed homeownership program in a reasonable time and in a successful manner. In assigning points for this

criterion, HUD shall consider evidence in the application demonstrating—

(i) The capability of the applicant to handle financial resources, demonstrated through such evidence as previous experience of the applicant or key staff and existing financial control procedures, or by an explanation of how such capability will be obtained—10 points;

(ii) The capability of the applicant to manage the proposed homeownership program as a whole, demonstrated through previous experience of the applicant or key staff in managing acquisition, rehabilitation, construction, real estate financing, counseling and training, or other relevant activities or by an explanation of how such capability will be obtained—10 points.

Maximum points for this criterion (1): 20 points.

(2) *Local Support.* In assigning points for this criterion, HUD shall consider—

(i) The extent of commitment of the unit of general local government (or Indian tribe, where applicable) and the PHA/IHA (where it is not part of the unit of general local government or Indian tribe and where units in public or Indian housing developments are expected to be used under the program) in support of the program, such as the provision of social services (including counseling and training), rehabilitation loans or grants, interest rate subsidies, water and sewer improvements, street and sidewalk improvements, and tax abatements—7 points.

(ii) The extent of commitment of the local community (including places of worship, banks, neighborhood or community organizations or other community groups) in support of the program, such as the donation of labor or materials, interest rate reductions or other financing subsidies, and commitment of volunteer assistance in some aspect of the program (activities of the applicant shall not be considered under this subcriterion (ii))—7 points.

Maximum points for this criterion (2): 14 points.

(3) *Quality* In assigning points for this criterion, HUD shall consider—

(i) The quality of the applicant's efforts to maintain long-term affordability, taking into account such program features as long-term financing at reasonable terms, energy conservation, and improvements that will require low-cost maintenance—5 points; and

(ii) The extent to which the plan provides for high quality supportive services to homebuyers and homeowners, such as pre- and post-homeownership counseling—5 points.

Maximum points for this criterion (3): 10 points.

(4) *Relationship to CHAS.* Whether the approved CHAS for the jurisdiction or jurisdictions within which the homeownership program is to be carried out includes homeownership as one of the general priorities identified pursuant to section 105(b)(7) of NAHA.

This criterion shall not be used to rate an application submitted by an Indian tribe or IHA. The maximum score for such an application will be 95. The percentage of points earned by an applicant, based on its maximum points local of 95, will be multiplied by the maximum number of points for other applicants (100) to determine the points for purposes of ranking.

Points for this criterion (4): 5 points.

(5) *Efficiency* In assigning points for this criterion, HUD shall consider the cost-effectiveness in using Federal grant funds, determined by dividing the requested amount of the grant (adjusted by the R.S. Means Cost Construction Index, where appropriate) by the total number of units expected to be assisted.

Maximum points for this criterion (5): 15 points.

(6) *MBE/WBE Goals.* (i) The extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, especially resident-owned businesses. For example, the applicant has used such businesses in the past, has set forth specific affirmative steps it will take to ensure that such businesses have an equal opportunity to obtain and compete for contracts, or both. These steps may include the steps outlined at 24 CFR 85.36(e) and 570.506(g)(6), but may not include awarding contracts solely or in part on the basis of race or gender. See section 505(d) for the legal basis for this criterion.

(ii) In the case of applications submitted by Indian tribes or IHAs, the requirements of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b), apply. Accordingly, for such applicants, points for this factor shall be assigned based on the extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Maximum points for this criterion (6)(i) or (ii), as applicable: 5 points.

(7) *Inventory* In assigning points for this criterion, HUD shall consider—

(i) The extent to which the proposal will emphasize the use of eligible Federal properties, public or Indian housing, or both—3 points; and

(ii) The extent of the applicant's commitment to use vacant units, as described in the applicant's homeownership program plan—8 points. This subcriterion shall not be used to rate an application where use of scattered site single family public or Indian housing is proposed for more than half of the units under the program. The maximum score for such an application will be 92. The percentage of points earned by an applicant, based on its maximum point total of 92, will be multiplied by the maximum number of points for other applicants (100) to determine the points for purposes of ranking. For example, if an application receives 46 out of 92 points, or 50 percent, it will be ranked as if it had earned 50 points (50 percent of 100 points), not 46 points.

Maximum points for this criterion (7): 11 points.

(8) *Need.* In assigning points for this criterion, HUD shall consider the percentage of the number of rental households in the jurisdiction or jurisdictions in which the program will be carried out that are living in poverty as defined by the Bureau of the Census.

Maximum points for this criterion (8): 15 points.

(9) *Fair Housing Choice.* The degree to which the applicant's proposal furthers fair housing choice through its affirmative marketing strategy, the proposed areas in which eligible properties are located, or a combination of these factors.

This criterion shall not be used to rate an application submitted by an Indian tribe or IHA, when those entities are covered by the Indian Civil Rights Act. Section 505(a)(2) explains the circumstances under which the Indian Civil Rights Act applies. The maximum score for such an application will be 95. The percentage of points earned by an applicant, based on its maximum point total of 95, will be multiplied by the maximum number of points for other applicants (100) to determine the points for purposes of ranking.

Maximum points for this criterion (9): 5 points. Maximum total points: 100 points.

(b) *Ranking and Selection.* (1) After assigning points to each application under paragraph (a) of this section, HUD shall review and may adjust the ratings to ensure consistency among Field and Regional Office scores. HUD shall then rank the applications in order, by HUD Region. HUD shall select the highest ranking applications within each Region.

(2) If two or more applications in a Region receive the same number of points and sufficient amounts are not available to fund all such applications, the application or applications requesting the smallest grants shall be selected if a sufficient amount remains to fund them. If two or more tied applications request the same amount and sufficient funds are not available to fund all such applications, the following system will be used:

(i) If the tied applications are for programs to be carried out in different jurisdictions, the one(s) with the highest number of points for Need (criterion (8)) shall be selected, using whatever remaining funds are available.

(ii) If the tied applications are to be carried out in the same jurisdiction, the one(s) with the highest number of points for Efficiency (criterion (5)) shall be selected, using whatever remaining funds are available. If any amounts remain after applying these procedures, they shall be reallocated in accordance with paragraph (e) of this section.

(3) Procedural errors discovered after initial ratings but before notification of applicants shall be corrected and rankings revised. Procedural errors discovered after notification of approved applicants which, if corrected, would result in approval of an application which was not approved will be corrected by funding that application from any unused amounts or "off the top" from amounts available for implementation grants in the next funding round.

(c) *Reduction in Requested Grant Amounts.* HUD shall approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines the amount requested for one or more eligible activities is unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program. In addition, HUD may approve an application for a lower amount if it determines (1) there is an insufficient inventory of potential eligible properties; (2) the application sets unrealistic program goals; (3) the applicant lacks adequate past experience or otherwise is not able to carry out as large a program as requested; (4) the applicant has requested an ineligible activity; (5) the applicant has proposed an inadequate match; or (6) insufficient amounts remain in that funding round to fund the full amount requested in the application.

(d) *Notification of Approval or Disapproval* After completion of the ranking and selection of applications, but no later than six months after the date of submission of the application, HUD shall notify the selected applicants and the applicants that have not been selected, in writing. The amount of the required match may be adjusted when HUD approves an application, to reflect the approved grant amount. HUD will cancel approval of the application if commitments for replacement housing are not provided in a reasonable period of time.

(e) *Insufficient Approvable Applications; Reallocation.* (1) If funds remain after HUD approves all approvable applications in a Region, the remaining amounts from each Region may be combined and HUD may reallocate to Regions having more applications meeting threshold requirements than can be funded from the initial allocation for that Region. Amounts that become available due to deobligation of grant amounts may also be reallocated. Where HUD reallocates funds under paragraph (e)(1) of this section, HUD shall reallocate funds using the same factors as used for the original allocation. If amounts remain after applying these procedures, they may be made available to fund the highest ranked, unfunded planning grant applications or made available under a NOFA inviting additional applications.

(2) As an alternative to the procedures in paragraph (e)(1) of this section, if funds remain after HUD approves all approvable applications in a Region, the remaining amounts from each Region may be made available to fund the highest ranked, unfunded planning grant applications or made available under a NOFA inviting additional applications.

V. Other Requirements

Section 501 Flood Insurance and Coastal Barriers Resources Act

(a) *Flood Insurance.* Pursuant to the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), the recipient may not provide financial assistance for acquisition or rehabilitation of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless—.

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of the acquisition or rehabilitation of the property.

(b) *Coastal Barriers Resources Act.* Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve use of properties in the Coastal Barrier Resources System.

Section 505. Nondiscrimination and Equal Opportunity

(a) *Fair Housing Requirements.* (1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100, part 109, and part 110; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1 shall apply.

(2) The Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*) applies to tribes when they exercise their powers of self-government. Thus, it is applicable in all cases when an IHA has been established by exercise of such powers. In the case of an IHA established pursuant to State law, the applicability of the Indian Civil Rights Act shall be determined on a case-by-case basis. Developments subject to the Indian Civil Rights Act shall be developed and operated in compliance with its provisions and all implementing HUD requirements, instead of title VI and the Fair Housing Act and their implementing regulations.

(b) *Discrimination on the Basis of Age or Handicap.*

The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 shall apply.

(c) *Employment Opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) shall apply. In addition, Executive Order 11246 (3 CFR 1964–1965 Comp., p. 339) (Equal Employment Opportunity) and implementing regulations at 41 CFR part 60 shall apply.

(2) In the case of Indian tribes and IHAs, the requirements of the Indian Self-Determination and Education Assistance Act shall also apply (see 25 U.S.C. 450e(b); 24 CFR 905.165 (a) and (b) and 905.360); compliance with Executive Order 11246 and 41 CFR part

60 shall be to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act (see 24 CFR 905.170(b) and 905.360).

(d) *Minority and Women's Business Enterprises.* The requirements of Executive Orders 11625, 12432, and 12138 shall apply. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities. In the case of applications submitted by Indian tribes or IHAs, recipients' efforts must be consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b).

(e) *Affirmative Fair Housing Marketing.* The recipient shall adopt a plan for informing and soliciting applications from people who are least likely to apply for the program without special outreach, consistent with the affirmative fair housing marketing requirements. See 24 CFR part 108. This paragraph shall not apply to Indian tribes and IHAs, as described in paragraph (a)(2) of this section.

(f) *Authority for Collection of Racial, Ethnic, and Gender Data.* HUD requires submission of racial, ethnic, and gender data under this notice pursuant to section 562 of the Housing and Community Development Act of 1987 and section 808(e)(6) of the Fair Housing Act.

Section 510. OMB Circulars

(a) The policies, guidelines, and requirements of OMB Circular Nos. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) apply to the award, acceptance, and use of assistance under the program by governmental entities, and to the remedies for non-compliance, except where inconsistent with the provisions of NAHA, other Federal statutes, or this notice. Circular Nos. A–110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) and A–122 (Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Institutions) apply to the acceptance and use of assistance by private nonprofit organizations, except where inconsistent with the provisions of NAHA, other federal statutes, or this notice. Recipients are also subject to the audit requirements of OMB Circular A–128 implemented at 24 CFR part 44, and OMB Circular A–133 (Audits of Institutions of Higher Learning and Other Nonprofit Institutions).

(b) Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332 (this is not a toll-free number). There is a limit of two free copies.

Section 515. Drug-Free Workplace

Applicants shall certify that they will provide a drug-free workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

Section 520. Anti-Lobbying Certification

(a) Section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A government-wide common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) and supplemented by a notice published June 15, 1990 (55 FR 24540). For HUD, this rule is found at 24 CFR part 87. The rule requires applicants for and recipients of assistance exceeding $100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants and recipients if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(b) This section shall not apply to Indian tribes or IHAs. Indian tribes, tribal organizations, or any other Indian organization with respect to expenditures specifically permitted by other Federal law are not covered by the definition of "person" in 24 CFR part 87.

Section 525. Debarred or Suspended Contractors

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

Section 530. Conflict of Interest

(a) In addition to the conflict of interest requirements in OMB Circular A–110 [2] and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter, except that a resident of an eligible property may acquire an ownership interest.

(b) HUD may grant an exception to the exclusion in paragraph (a) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the HOPE program and the effective and efficient administration of the local homeownership program. An exception may be considered only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the local homeownership program that would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific activity in question;

(5) Whether the interest or benefit was present before the affected person

[2] See 510(b) concerning the availability of OMB Circulars.

was in a position as described in paragraph (b) of this section;

(6) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.

Section 535. Labor Standards

If other Federal programs are used in connection with the HOPE 3 homeownership program, labor standards requirements apply to the extent required by such other Federal programs. For example, if CDBG funds are used for rehabilitation, CDBG labor standards requirements will not apply because HOPE 3 properties may not contain 8 or more units. See 24 CFR 570.603.

Section 540. Lead-Based Paint Testing and Abatement

Any residential property assisted under the HOPE program established under this notice constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, recipients shall be responsible for testing and abatement activities.

Section 545. Requirements Applicable to Religious Organizations

Where the applicant is, or proposes to contract with, a primarily religious organization, or a wholly secular organization established by a primarily religious organization, to provide, manage, or operate housing under the program, the organization shall undertake its responsibilities under the homeownership program in accordance with the following principles:

(a) It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(b) It will not discriminate against any person applying for housing on the basis of religion and will not limit such housing or give preference to persons on the basis of religion;

(c) It will provide no religious instruction or counseling, conduct no religious services or worship (which term does not include voluntary, non-denominational prayer before meetings), engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the homeownership program.

VI. Grant Agreement

Section 601. Grant Agreement

After HUD approves an application for a planning grant or an implementation grant, it shall enter into a grant agreement with the recipient setting forth the amount of the grant and applicable terms and conditions, including sanctions for violation of the agreement. Among other things, the grant agreement shall provide that the recipient agrees:

(a) To carry out the program in accordance with the provisions of this notice, applicable law, the approved application, and all other applicable requirements;

(b) To comply with such other terms and conditions including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring, and evaluating the program in an effective and efficient manner;

(c) To obtain HUD approval under applicable environmental requirements before acquiring any property;

(d) That no amounts may be drawn down under the grant agreement with respect to units in a public or Indian housing development until HUD approves an application under section 18 of the 1937 Act and implementing regulations, or approves a homeownership application for conversion to the Turnkey III or Mutual Help program, or a homeownership application for, or request for conversion to, section 5(h) or section 21 of the 1937 Act;

(e) That HUD will terminate the grant agreement if commitments for replacement housing are not provided in a reasonable period of time; and

(f) That HUD may withhold, withdraw, or recapture any portion of a grant, terminate the grant agreement, or take other appropriate action authorized under the grant agreement, if HUD determines that the recipient is failing to carry out the approved homeownership program in accordance with the terms of the approved application and this notice, including failure to provide the contributions toward the match. Failure to provide at least 70 percent of the number of homeownership opportunities proposed in the application may result in remedial actions being taken by HUD, including requiring repayment of all or part of the grant.

VII. Implementation

Section 701. Implementation; Performance Standards

(a) After execution of its implementation grant agreement, the recipient shall carry out the planning grant or implementation grant activities in accordance with its approved application. HUD shall establish procedures governing the drawdown of funds under grant agreements, pursuant to section 740.

(b) HUD intends to establish performance criteria in the final rule for the program and invites comments on what the standards should be.

Section 705. Deadline for Completion of Program Activities

A recipient shall spend all implementation grant amounts within four years from the effective date of the grant agreement. An applicant may propose in its application a longer period for completion of activities, together with a justification. After application approval, HUD may approve a request to extend the deadline for the completion of eligible activities, where it determines it is necessary.

Section 710. Social Security Numbers

As a condition of eligibility for homeownership under this notice—

(a) At the time a family applies for homeownership, the recipient (or other appropriate entity) shall require the family to meet the requirements for the disclosure and verification of social security numbers, as provided by 24 CFR part 750; and

(b) The recipient (or other appropriate entity) shall require the family to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760.

Section 715. Timely Homeownership

(a) *Deadline for Transfer.* Recipients shall transfer ownership interests in the property to eligible families within a reasonable period of time.

(b) *Definition of Reasonable Period of Time.* (1) Except for eligible property already owned by the entity that will transfer ownership interests to eligible families, all eligible properties, including *in rem* property, shall be acquired within one year of the effective date of the implementation grant agreement. All properties shall be transferred to eligible families within two years of the effective date of the grant agreement. The transfer shall involve (i) acquisition by an eligible family of an ownership interest in the property, or (ii) a lease providing for purchase by the family or other type of conditional ownership agreement providing for transfer of ownership interest to the family within two years of the date of execution of the lease.

(2) An applicant may propose in its application a longer period for transferring ownership interests to eligible families, and submit a justification. After application approval, HUD may approve a request for a longer deadline for transfer to eligible families, where it determines it is necessary.

Section 720. Restrictions on Resale by Initial Homeowners

(a) *In general*—(1) *Transfer Permitted.* (i) A homeowner may transfer the homeowner's ownership interest in the unit, subject only to the right to purchase under paragraph (a)(2) of this section, the requirement for the purchaser to execute a promissory note, if required under paragraph (b) of this section, and the limitation on the amount of sales proceeds a family may retain upon sale within the first six years, as required under paragraph (c) of this section. See paragraphs (b) and (c) of this section for the rules for determining the amount homeowners may retain from the sales proceeds.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, an applicant may propose in its application, and HUD may approve based on a review of the individual circumstances, additional reasonable restrictions on the resale of units under the program.

(2) *Right to purchase.* (i) Where an RMC, RC, or cooperative has jurisdiction over the unit, it shall have the prior right to purchase the ownership interest in the unit from the initial homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. The RMC, RC, or cooperative association shall have 10 days after receiving notice of the firm contract to decide whether to exercise its right and 60 additional days to complete closing of the purchase.

(ii) If no RMC, RC, or cooperative has jurisdiction over the unit or no such entity elects to purchase from the initial homeowner and if the prospective buyer is not a low-income family, a PHA/IHA with jurisdiction for the area in which the unit is located or the recipient, as specified in writing at the time the family acquires ownership interest in the unit, shall have the prior right to purchase the ownership interest in the unit for the amount specified in the firm contract. The PHA/IHA or recipient shall have 10 days after receiving notice of the firm contract to decide whether to exercise its right and 60 additional days to complete closing of the purchase.

(iii) Where an RMC, RC, cooperative, PHA/IHA, or recipient exercises a right to purchase, it shall resell the unit to an eligible family promptly. If the PHA/IHA exercises a right to purchase shares representing a unit in a cooperative, because the cooperative did not have sufficient money to do so, the PHA/IHA shall give the cooperative another chance to purchase the shares before selling them to an eligible family.

(b) *Promissory Note.* (1)(i) At closing, the initial homeowner shall execute a nonamortizing, nonrecourse, non-interest-bearing promissory note, in a form acceptable to HUD, equal to the difference, if any, between the fair market value of the unit and the purchase price, payable to the PHA/IHA, recipient, or other entity designated in the approved homeownership plan, together with a mortgage securing the obligation of the note. In determining the amount of the promissory note and for that purpose only, the purchase price shall be adjusted by deducting all substantial amounts of assistance that would result in an undue profit to the family if it were to sell the property at the beginning of the 7th year of homeownership. (See paragraph (c) of this section for restrictions during the first six years.) For example, if the family received down payment assistance equal to 10 percent or more of the fair market value, a promissory note shall be required.

(ii)(A) With respect to a sale by an initial homeowner, the note shall require payment upon sale by the initial homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, paying any other amounts due in connection with the sale (such as closing costs and transfer taxes), and paying the family the amount of its equity in the property, computed in accordance with paragraph (c) of this section.

(B) With respect to a sale by an initial homeowner after the first six years after acquisition, through the 20th year, the amount payable under the note shall be reduced by 1/168 of the original principal amount of the note for each full month of ownership by the family after the end of the sixth year. The homeowner may retain all other proceeds of the sale.

(C) For example, if the family sells at the end of the 13th year of homeownership (at the half-way point between the end of the sixth year and the end of the 20th year of ownership), 84/168 (or one-half) of the note would be forgiven, and only half of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the initial homeowner retains ownership for 20 or more years, the entire amount of the note would be forgiven.

(2)(i) Where a subsequent purchaser during the 20-year period, measured by the term of the initial promissory note, purchases the property for less than the then current fair market value, the purchaser shall also execute at closing such a promissory note and mortgage, for the amount of the discount (but no more than the amount payable at the time of the sale on the promissory note by the seller). The term of the promissory note shall be the period remaining of the original 20-year period. The note shall require payment upon sale by the subsequent homeowner, to the extent proceeds of the sale remain after covering costs of the sale, paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, and paying any other amounts due in connection with the sale. The amount payable on the note shall be reduced by a percentage of the original principal amount of the note for each full month of ownership by the subsequent homeowner. The percentage shall be computed by determining the percentage of the term of the promissory note the homeowner has owned the property. The remainder may be retained by the subsequent homeowner selling the property.

(ii) For example, if the subsequent homeowner acquires the property from an initial homeowner at the end of year 4, there are 192 months (16 years × 12) remaining in the 20-year period. The term of the promissory note is 16 years. If the subsequent homeowner sells at the end of year 10, having owned the property for 72 months (6 years × 12), 72/192 (37.5 percent) of the note would be forgiven, and 62.5 percent of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the subsequent homeowner retains ownership to the end of the initial 20-year period (for 16 years, in the example), the entire amount of the note would be forgiven.

(c) *Limitation on Equity Interest an Initial Homeowner May Retain from Sale During First Six Years.* (1) The HOPE program is designed to assure that an initial or subsequent homeowner does not receive any undue profit from acquiring a unit under the program and that, to the extent the sales price is sufficient, an initial homeowner recovers the equity interest in the property. With respect to any sale by an

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initial homeowner during the first six years after acquisition, the family may retain only the amount computed under paragraph (c) of this section. Any excess shall be distributed as provided in paragraph (d) of this section. The amount of equity an initial homeowner has in the property is determined by computing the sum of the following—

(i) The contribution to equity paid by the family (such as any down payment (in the form of cash or the value of sweat equity) and any amount paid towards principal on a mortgage loan during the period of ownership);

(ii) The value of any improvements installed at the expense of the family during the family's tenure as owner (including improvements made through sweat equity), as determined by the recipient or other entity specified in the approved application based on evidence of amounts spent on the improvements, including the cost of material and labor; and

(iii) The appreciated value, determined by applying the Consumer Price Index (Urban Consumers) against the contribution to equity under paragraphs (c)(1) (i) and (ii) of this section.

(2) The recipient (or other entity) may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) Amounts that count towards a family's equity may not also count towards the match.

(d) *Use of Amounts a Family May Not Retain.* Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under paragraphs (a)(1)(ii), (b), and (c) of this section shall be paid to the entity that transferred ownership interests in units to eligible families, or another entity specified in the approved application, for use for improvements to properties under the program, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by HUD in the approved homeownership program or later. The remaining 50 percent shall be collected by the recipient and returned to HUD within 15 days of the sale for use under the HOPE 3 program, subject to any limitations contained in appropriations Acts.

Section 725. Use of Proceeds From Sales to Eligible Families

The entity that transfers ownership interests in units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from the initial sale for costs of the homeownership program, including improvements to properties under the program, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by HUD, either as part of the approved application or later on request.

Section 730. Third Party Rights

The requirements under this notice regarding housing quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the recipient with respect to actions involving rehabilitation, and against purchasers of eligible property under the HOPE program or their successors in interest (to the extent such requirements apply to purchasers and their successors in interest) with respect to other actions by affected low-income families, RMCs, RCs, PHAs/IHAs, and any agency, corporation, or authority of the United States government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

Section 735. Displacement Prohibited; Protection of Nonpurchasing Residents.

(a) *Displacement Prohibited.* No person may be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude terminations of tenancy for violation of the terms of occupancy of the unit. In addition to any applicable sanctions under the grant agreement, a violation of this paragraph may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24.

(b) *Temporary Relocation.* The recipient shall provide each resident of an eligible property, who is required to relocate temporarily to permit work to be carried out, with suitable, decent, safe, and sanitary housing for the temporary period and shall reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the costs of moving to and from the temporarily occupied housing and any increase in monthly costs of rent and utilities.

(c) *Relocation Assistance for Residents Who Elect to Move.* The recipient shall provide each nonpurchasing resident who elects to move with relocation assistance in accordance with the approved homeownership program. The program shall provide, at least, the following assistance:

(1) Advisory services including timely information, counseling (including the provision of information on a resident's rights under the Fair Housing Act), and referrals to suitable, affordable, decent, safe, and sanitary alternative housing;

(2) Payment for actual, reasonable moving expenses; and

(3) Relocation housing assistance sufficient to permit relocation to suitable, affordable, decent, safe, and sanitary housing. This requirement is met if the cost of the housing to the family does not exceed the higher of 30 percent of adjusted family income or the amount paid by the family for the unit being vacated, and the housing is otherwise suitable and decent, safe, and sanitary.

(d) *Notice of Relocation Assistance.* As soon as feasible, each recipient shall give each resident of an eligible property a written description of the applicable provisions of this section.

Section 740. Cash and Management Information System

(a) *General.* Disbursement of all approved HOPE 3 planning and implementation grant funds is managed through HUD's Cash and Management Information (C/MI) System for the HOPE 3 program. The C/MI System is a computerized system which manages and disburses HOPE 3 funds, and collects and reports information on their use Funds will be disbursed through the United States Treasury. The United States Treasury account includes funds awarded to the recipient and obligated through the grant agreement executed by HUD and the recipient Recipients will be required to establish a local account for the receipt of HOPE 3 program funds.

(b) *Disbursement of HOPE 3 Funds.* After a recipient executes the HOPE 3 grant agreement and submits the appropriate banking and security documents, HOPE 3 funds may be drawn down for general program activities under a planning or implementation grant, as applicable. HOPE 3 funds are drawn down from a United States Treasury account for the program by the recipient by electronic funds transfer. For implementation grants, all drawdowns related to specific properties will only be allowed if the individual properties have been entered into the C/MI System (see paragraph (c) of this section). All funds drawn down will be deposited in the local account of

the HOPE 3 recipient within 48 to 72 hours of the disbursement request. Any drawdown of HOPE 3 funds from the United States Treasury account is conditioned upon the submission of satisfactory information by the HOPE 3 recipient about the program and compliance with other procedures specified by HUD in HUD's forms and issuances concerning the C/MI System. Copies of these forms and issuances may be obtained from HUD field offices. Funds not disbursed within program deadlines may be automatically deobligated by the C/MI System.

(c) *Property Set-Up (Implementation Grants only).* (1) Before disbursement of any HOPE 3 funds related to specific properties, the recipient must set up each property in the C/MI System. Disbursements that require the set up of properties in the C/MI System are all disbursements related to a specific property including acquisition, rehabilitation, financial assistance to homebuyers (such as down payment assistance, interest rate buy-down, and closing cost assistance), architectural and engineering, permanent and temporary relocation. Within 10 calendar days of property set up, the recipient is required to submit a property set up report to HUD for each property set up in the C/MI System.

(2) If the property set-up report is not received within 20 days of the property set-up call, the property will be canceled automatically by the C/MI System. In addition, a property which has been set up in the C/MI System for 12 months without an initial disbursement of funds may be canceled by the C/MI System.

(d) *Payment Voucher.* As post-documentation of each drawdown of funds from the United States Treasury account, each recipient shall submit a payment voucher to HUD, for each drawdown, in the form and by the deadline required by HUD. For implementation grant program disbursements or planning grant disbursements, the recipient will be suspended from requesting additional program implementation grant disbursements or planning grant disbursements until the payment voucher is received. In addition, for implementation grants, if the payment voucher is not received within 10 calendar days of the drawndown request for a specific property, the recipient will be suspended from setting up new properties until the payment voucher is received by HUD.

(e) *Submission of Property Transfer Report.* A property transfer report for all properties assisted with implementation grants must be submitted to HUD within 15 days of the transfer of the property but no later than 25 months after the effective date of the grant agreement. If a satisfactory property transfer report is not submitted by the due date, HUD will suspend further property set-ups. Property set-ups will remain suspended until a satisfactory property transfer report is received and entered into the C/MI System.

(f) *Submission of Property Completion Report.* A property completion report for properties assisted with implementation grants must be submitted to HUD within 30 days of the final disbursement of funds from all sources for that particular property, but no later than 25 months after the submission of the property transfer report. If a satisfactory property completion report is not submitted by the due date, HUD will suspend further property set-ups for the recipient. Property set-ups will remain suspended until a satisfactory property completion report is received and entered into the C/MI system.

Section 745. Environmental Procedures and Standards

(a) Before any amounts under this program are used to acquire or rehabilitate an eligible property, HUD shall determine whether the proposed activities trigger applicability thresholds for the applicable Federal environmental laws and authorities. These may apply when the property is (1) located within designated coastal barriers; (2) listed on, or eligible for listing on, the National Register of Historic Places; or is located within, or adjacent to, an historic district; (3) located near hazardous operations handling fuels or chemicals of an explosive or flammable nature; (4) contaminated by toxic chemicals or radioactive materials; (5) located within a runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield; (6) located within a special flood hazard area; (7) within a location requiring flood insurance protection; or (8) located within a high noise area.

(b) A recipient may choose to make the threshold reviews itself or with assistance from State or local governments or qualified persons or to refer the property to HUD for threshold review. Where the recipient makes the threshold review itself, it shall submit the result to HUD.

(c) If a recipient chooses not to make the threshold reviews, it shall submit information to HUD to permit HUD to make the review.

(d) If HUD determines on the basis of the recipient's threshold review or, HUD's threshold review that one or more of the thresholds are exceeded, HUD shall conduct an environmental review of that issue and, if appropriate, establish mitigating measures that the recipient shall carry out for the property unless it decides to select an alternate property.

(e) HUD will issue a notice specifying applicable threshold and documentation requirements.

VIII. Records, Reports, and Audit of Recipients

Section 801. Recordkeeping

(a) *General Records.* Each recipient shall keep records that will facilitate an effective audit to determine compliance with program requirements and that fully disclose—

(1) the amount and disposition by the recipient of the planning and implementation grants received under this notice, including sufficient records that document the reasonableness and necessity of each expenditure;

(2) the amount and disposition of proceeds from financing obtained in connection with the program, sales to eligible families, and any funds recaptured upon sale by the homeowner;

(3) the total cost of the homeownership program;

(4) the amount and nature of any other assistance, including cash, property, services, or other items contributed as a condition of receiving an implementation grant;

(5) the cost or other value of all in-kind contributions towards the match required by Section 410; and

(6) any other proceeds received for, or otherwise used in connection with, the homeownership program.

(b) *Family Size and Income and Racial, Ethnic, and Gender Data.* The recipient shall maintain records on the family size and income, and racial, ethnic, and gender characteristics, of families who apply for homeownership and families who become homeowners.

(c) *Coopearative and Condominium Agreements.* The recipient shall maintain a copy of any condominium and cooperative association agreements for properties under the approved homeownership program.

(d) *Amounts Available for Reuse.* The recipient shall keep and make available to HUD all records necessary to calculate accurately payments due to HUD under Section 720(d) and Section 725.

(Approved by the Office of Management and Budget, with respect to implementation grants, under control 2506–0119)

Section 805. Reports

The recipient shall submit reports required by HUD (Approved by the Office of Management and Budget, with respect to implementation grants, under control number 2506–0119)

Section 810. Access by HUD and the Comptroller General

For the purpose of audit, examination, monitoring, and evaluation each recipient shall give HUD (including any duly authorized representatives and the Inspector General) and the Comptroller General of the United States (and any duly authorized representatives) access to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this notice, including all records required to be kept by Section 801

IX. Waiver Authority

Section 901 Waiver Authority

Upon determination of good cause, the Secretary of Housing and Urban Development may waive any provision of this notice, not otherwise required by law, except that the provisions that establish deadlines for receipt of any modifications to applications and the cap on planning grants in Section 301(b)(2) may not be waived. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds. This waiver authority may be exercised by the Secretary or the Assistant Secretary for Community Planning and Development. Where another HUD program regulation is involved, the Secretary or the appropriate Assistant Secretary may waive the regulation. For example, where a waiver to a public and Indian housing regulation is requested for the HOPE 3 program, it may be waived by the Assistant Secretary for Public and Indian Housing. The Secretary periodically will publish notice of granted waivers in the **Federal Register** HUD may change submission deadlines established by this notice by subsequent notice published in the **Federal Register**.

Dated: December 20, 1991

Jack Kemp,

Secretary

[FR Doc. 92–588 Filed 1–13–92; 8:45 am]

BILLING CODE 4210–32–M

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-92-3360; FR-3194-N-01]

HOPE for Homeownership of Single Family Homes Program; Notice of Fund Availability

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of fund availability for FY 1992.

SUMMARY: This NOFA announces the availability of $95 million in funding for planning and implementation grants for the HOPE for Homeownership of Single Family Homes Program (HOPE 3). (HOPE is an acronym for Homeownership and Opportunity for People Everywhere.) In the body of this document is information concerning eligible applicants, the funding available for planning and implementation grants, the application packages, and their processing. Elsewhere in this issue of the **Federal Register** are the Notices of Fund Availability for HOPE 1, the HOPE for Public and Indian Housing Homeownership Program, and HOPE 2, the HOPE for Homeownership of Multifamily Units Program. Also elsewhere in this issue of the **Federal Register** is the Program Guidelines which revises the HOPE 3 Notice of Program guidelines published in the **Federal Register** on February 4, 1991. These revised guidelines contain detailed programmatic information and the requirements governing the FY 1992 HOPE 3 Program. Similar revised Guidelines for HOPE 1 and 2 also appear in this issue. Applicants are advised that they must consult the revised Program Guidelines in order to prepare an application. Many of the requirements of the HOPE 3 program are not listed in this NOFA, and failure to follow the guidelines will result in applications being rejected by HUD.

DATES: Applicants for planning or implementation grants for the HOPE 3 program must be received in the appropriate HUD Field Office by close of business for that office on April 17, 1992. Applications may also be hand delivered to the appropriate HUD Field Office by close of business for that office on or before the deadline date. Applications sent by facsimile will not be accepted. HUD will not waive this deadline for actual submission for any reason. No applications may be submitted prior to 30 calendar days before the deadline. Applications submitted more than 30 calendar days before the deadline will be returned to applicants.

ADDRESSES: An original and two copies of the completed application must be submitted to the HUD Field Office having jurisdiction over the locality in which the proposed program is located. Applications should be addressed to the Attention of: Director, Community Planning and Development Division. A list of HUD Field Offices appears at the end of this NOFA. In States with more than one Field Office, applicants must submit their applications to the correct Field Office. Applicants are advised to contact their local office to confirm the appropriate place and time of close of business for submission. Failure to submit an application to the correct Field Office in accordance with above procedures will result in disqualification of the application.

FOR FURTHER INFORMATION CONTACT: John Garrity, Office of Affordable Housing Programs, Department of Housing and Urban Development, room 7158, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-0324. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION:.

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA with respect to implementation grants contained in §§ 415, 801, and 805 have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned OMB control number 2506-0119. The amended guidelines add three new collection of information requirements that relate to planning grants at sections 310, 801, and 805 and also add new requirements related to the Cash and Management Information System and Environmental Procedures and Standards at sections 740 and 745. These have been submitted to OMB for review under the Paperwork Reduction Act of 1980.

I. Purpose and Substantive Description

a. Authority

The funding made available under this NOFA is authorized by section 441 of the National Affordable Housing Act (Pub. L. 101-625, November 28, 1990), which created the HOPE 3 Program.

B Allocation Amounts

The purpose of this NOFA is to announce the availability of a total of $95 million in funds, appropriated by the Department's appropriations Act for fiscal year 1992 (Pub. L. 102-139, October 28, 1991), for grants as follows:

- $10 million for planning grants.
- $85 million for implementation grants.

The amount made available for implementation grants has been sub-allocated to each of the 10 HUD Regions by a formula described in the amended Notice of Program Guidelines. This formula results in the following sub-allocation by HUD Region for FY 1992:

Region I	$3,400,000
Region II	9,100,000
Region III	7,400,000
Region IV	16,200,000
Region V	12,900,000
Region VI	14,700,000
Region VII	3,300,000
Region VIII	4,250,000
Region IX	11,400,000
Region X	2,350,000

There are no Regional sub-allocations of funds for planning grants.

C. Reallocation of Funds

If funds remain after HUD approves all approvable planning grant applications, HUD shall use them to fund implementation grants, publish another NOFA, or invite prior applicants to submit amended applications. See section 315(e) of the amended guidelines.

If funds remain after HUD has approved all approvable implementation grant applications in a Region, the remaining amounts from each Region (plus any amounts available due to deobligation) may be combined and HUD may reallocate to Regions having more applications meeting threshold requirements than can be funded from the initial allocation to the Region. HUD shall reallocate these funds using the same factors as used for the original allocation.

If amounts remain after applying these procedures, they may be made available to fund the highest ranked, unfunded planning grant applications or made available for additional applications solicited through a NOFA.

As an alternative to the procedure in the proceeding paragraph for dealing with insufficient approvable implementation grant applications, the remaining amounts may be made directly available to fund the highest ranked, unfunded planning grant applications or additional applications solicited through a NOFA.

D. Planning Grant Cap

The amount of a planning grant may not exceed $100,000.

E. Implementation Grant Cap

A single applicant may apply for more than one implementation grant, but HUD will not approve grants for any one applicant that total more than 5 percent of the total amount available under any one NOFA for HOPE 3 implementation grants. For FY 1992, the maximum total grant amount for a single applicant is $4.25 million.

F. Eligible Applicants

For both planning and implementation grants, an eligible applicant is a private nonprofit organization; a cooperative association; or a public body (including a PHA, an IHA, and an agency or instrumentality of a public body) in cooperation with a private nonprofit organization. An applicant may apply for both a planning and implementation grant in response to any one NOFA, but may be selected to receive only one form of grant during that year. (See sections 301(b) and 401(c)(2).)

G. Certification of Consistency with the Comprehensive Housing Affordability Strategy

Applications for HOPE grants must be accompanied by a certification of consistency with an approved Comprehensive Housing Affordability Strategy (CHAD) or abbreviated housing strategy from the public official responsible for submitting the CHAS, or his or her authorized representative. State and local government applicants must have submitted a full CHAS or an abbreviated strategy, and must provide a certification of consistency at the time of application. All other applicants (including private nonprofit organizations and public housing agencies) must obtain the certification from the lowest level of government having either a full CHAS or an abbreviated strategy covering the jurisdiction in which the program (project) is to be located. Where the program will be carried out in more than one unit of general local government with a CHAS, a certification for each shall be included. Indian Tribes and Indian Housing Authorities are not subject to the requirements for preparation of a CHAS or submission of a certification of consistency with the CHAS.

For an application for a HOPE grant to be consistent with a CHAS: (1) Homeownership for low-income families must be identified as a priority in the narrative and (for local jurisdictions only) Table 3 (Priorities for Assistance) of Section II (Strategy) of the CHAS; (2) the HOPE program for which funding is sought should be mentioned (whether by name or by program type) in the narrative of Section III (Annual Plan) of the CHAS as among the Federal resources to be used in FY 1992; and (3) a specific dollar amount for the HOPE program applied for must be entered in Column A of Table 4/5A (Anticipated Resources and Plan for Investment) of Section III. (NOTE: Since Table 4/5A for States does not include information on applications by entities other than the State itself, a State may certify consistency for a HOPE application from a private nonprofit or a PHA even if there is no dollar amount entered in Column A of the State's Table 4/5A).

If a jurisdiction's strategy identifies low-income homeownership as a priority in the Section II narrative, but does not mention the HOPE program in the Section III narrative or include a specific dollar amount for the program in Column A of Table 4/5A, the jurisdiction may amend its strategy by correcting its Section III narrative and Table 4/5A to be consistent with its strategy without doing a substantial amendment, which requires citizen participation. However, if there is no dollar amount entered in Column A of Table 4/5A and there is also no priority for low-income homeownership identified in the Section II narrative, a substantial amendment, requiring citizen participation, would be needed to modify the CHAS to allow the jurisdiction to provide a certification of consistency.

All CHASs or abbreviated strategies, revised tables and narratives for nonsubstantial amendments, or substantial amendments, as well as the required certifications of consistency, must be submitted to HUD no later than at the time the application for HOPE funding is submitted.

To assist applicants in meeting the certification requirement where a CHAS, abbreviated strategy, or amendment has not yet been approved, HUD will accept applications that are accompanied by a certification that the application is consistent with the housing strategy submitted with, or as amended by a submission with, the application, and that the applicant will follow the strategy so submitted or amended when it is approved by HUD.

II. Planning Grant Applications

A. Application Process

Application packages, including instructions on preparing applications, for planning grants are available from the appropriate HUD Field Office (see list of HUD Field Offices at the end of this NOFA). Additional information regarding the submission of applications is included in the packages.

Only timely applications submitted to the correct Field Office will be considered for funding. Applications (original and two copies) must be physically received by the deadline at the local HUD Field Office, Attention: Director, Community Planning and Development Division. It is not sufficient for an application to bear a postmark within the deadline. Applications sent by facsimile will not be accepted.

B. Application Submission Requirements

Complete application submission requirements are contained in the application packages. All potential applicants are urged to contact their HUD Field Office for information and guidance about program requirements and preparation of the application and for the time and place of any workshops and/or training sessions to be held within the Field Office's jurisdiction.

C. Selection Criteria/Ranking Process

The selection process for planning grants under the HOPE for Homeownership of Single Family Homes Program consists of screening and, then, for those applications meeting all screening requirements, rating and ranking under four substantive selection criteria.

D. Screening Process/Corrections to Deficient Applications

1. HUD shall screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, and contains correct computations. In addition, HUD shall determine whether there appears to be a sufficient number of suitable, available properties in the general locations identified in the application for the proposed activities. For this purpose, at least 10 suitable eligible properties must be determined to be available.

2. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants.

3. The notification shall require the applicant to submit additional or

corrected material so that it is received in the appropriate HUD Field Office no later than close-of-business on the 14th calendar day after the date of the written notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that are not complete, are internally inconsistent, or do not contain correct computations after the opportunity, if any, to submit additional or corrected material, or that fail to comply with other program requirements.

E. Selection Criteria

Rating and ranking will be done using the following four substantive selection criteria:

1. Capability of the applicant—up to 40 points.
2. Local support—up to 20 points.
3. Need for the homeownership program—up to 20 points.
4. Planning approach—up to 20 points.

A complete description of the procedure for rating applications, including use of a bonus point system for planning grant applications under certain circumstances, and the factors considered under each selection criterion may be found in section 315 of the amended Notice of Program Guidelines.

F. Ranking and Selection

Field Offices will rate the applications, except for the "Need" factor. Regional Offices will review for consistency of ratings among Field Offices and may adjust scores. HUD Headquarters will assign points for the "Need" factor, because it is a relative factor across applications. HUD Headquarters will use these rating scores to rank all applications together, after adjusting ratings for national consistency, if necessary. HUD shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership, it may establish a minimum number of points for applications to qualify to be selected for funding. A complete description of the procedure for selection, including the award of bonus points to certain applications, may be found in section 315 of the amended Notice of Program Guidelines.

III. Implementation Grant Applications

A. Application Process

Application packages for implementation grants, including instructions for preparing applications, are available from the appropriate HUD Field Office (see the list of HUD Field Offices at the end of this NOFA). Additional information regarding the submission of applications is included in the package.

Only timely applications received in the appropriate Field Office will be considered for funding. Applications (original and two copies) must be physically received by the deadline at the appropriate HUD Field Office, Attention: Director, Community Planning and Development Division. It is not sufficient for an application to bear a postmark within the deadline. Applications sent by facsimile will not be accepted.

B. Application Submission Requirements

Complete application submission requirements are contained in the application package. All potential applicants are urged to contact their HUD Field Office for information and guidance from HUD about program requirements and preparation of an application and for the time and place of any workshops and/or training sessions to be held within the Field Office's jurisdiction.

C. Selection Process

The selection process for implementation grants under the HOPE 3 Program consists of a screening, a threshold review, and then, for those applications meeting all threshold requirements, rating and ranking under nine substantive selection criteria. Rating and ranking will only occur if there are more applications that pass threshold than funds available in that Region. Field Offices will rate applications on selection criteria 1–4, 6, 7, and 9 and then forward their applications to their respective Regional Office. Regional Offices will review Field Office scores for consistency and may adjust scores and will rate on criteria 5 and 8 (which are relative factors across the Region).

D. Screening Process/Corrections to Deficient Applications

1. HUD shall screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another neighborhood or applicant or changing other fundamental features of the homeownership program, because that would be unfair to other applicants.

2. The notification shall require the applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close-of-business on the 14th calendar day after the date of the written notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that are not complete, are internally inconsistent, or do not contain correct computations after the opportunity, if any, to submit additional or corrected material, or that fail to comply with other program requirements.

E. Threshold Review

HUD shall review each application that qualifies for additional consideration because it passed the screening process to determine if it meets certain threshold criteria. These threshold criteria are contained in section 420 of the amended Notice of Program Guidelines.

F. Selection criteria

All applications meeting threshold requirements will be selected for funding if sufficient funds are available within the Regional allocation. If there are more applications that pass threshold review than funds available in that Region, all applications which pass the threshold review will be rated and ranked, using the following nine substantive selection criteria:

1. Capability of the applicant—up to 20 points.
2. Local support—up to 14 points.
3. Quality—up to 10 points.
4. Relationship to the Comprehensive Housing Affordability Strategy (CHAS)—up to 5 points.
5. Efficiency—up to 15 points.
6. Minority Business Enterprise/ Women-owned Business Enterprise—up to 5 points.
7. Inventory—up to 11 points.
8. Need—up to 15 points.
9. Fair Housing Choice—up to 5 points.

A complete description of the rating of applications and of the factors considered under each selection criterion may be found in section 425 of the amended Notice of Program Guidelines.

G. Ranking and Selection

Regional Offices will rank their applications, and make recommendations for selection, based on their sub-allocations, to HUD Headquarters, which will make the selections. If an applicant submits applications for both planning and implementation grants, the Field Office will review the application for an implementation grant first to determine if it passes all screening and threshold requirements. If the application does, it will be processed (and the application for a planning grant will not be processed). If it does not pass all screening and threshold requirements, the applicant's planning grant application will be processed instead. A complete description of the procedure for selection is contained in the amended Notice of Program Guideline in section 425.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Federalism Executive Order

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the provisions in this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This NOFA does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has also determined that some of the policies in this NOFA will have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

D. Section 102 of the HUD Reform Act

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Since HUD makes assistance under this program available on a competitive basis, 24 CFR part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14 (b)) HUD will provide further guidance on how this material may be accessed in a later notice published in the **Federal Register**.

—Publish a notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquires to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815; TDD: 708–1112. (These are not toll-free numbers.)

F. Section 112 of the HUD Reform Act

Section 112 of the HUD Reform Act amended the Department of Housing and Development Act by adding section 13, which contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second prohibits the payment of fees to those who paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of the assistance.

Section 13 was implemented by final rule (24 CFR part 86) published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of 24 CFR part 86.

Any questions concerning the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 24410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable

certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

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(Upstate)

Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203-1780; (716) 846-5768, (TDD) (716) 846-5787.

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Joan Dabelko, 26 Federal Plaza, New York, NY 10278-0068; (212) 264-2885, (TDD) (212) 264-0927.

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Wyoming

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Dated December 20, 1991.

Jack Kemp,

Secretary.

[FR Doc. 92–589 Filed 1–13–92; 8:45 am]

BILLING CODE 4210–32–M

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federal register

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January 14, 1992

Part V

Department of Education

Fund for the Improvement of Postsecondary Education—Special Focus Competition; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.116H]

Fund for the Improvement of Postsecondary Education—Special Focus Competition (Invitational Priority: College-School Partnerships To Improve Learning of Essential Academic Subject, Kindergarten through College)

Notice inviting applications for new awards for fiscal year 1992.

Purpose of Program: To provide grants to improve postsecondary education and educational opportunities.

Eligible Applicants: Institutions of postsecondary education, combinations of institutions of postsecondary education, and other public and private educational institutions and agencies.

Deadline for Transmittal of Applications: March 18, 1992.

Deadline for Intergovernmental Review May 18, 1992.

Applications Available: January 15, 1992.

Available Funds: $300,000.

Estimated Range of Awards: $50,000—$150,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 3–6.

Budget Period: 12 months.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86, with the exceptions noted in 34 CFR 630.4(b); and (b) The Regulations for this program in 34 CFR Part 630.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3) and 34 CFR 630.21(c), and 34 CFR 630.12(b)(5), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority

Projects addressing a particular problem area or improvement approach in postsecondary education.

Invitational Priority

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects for the improvement of teaching and sequencing of curricula across grade levels of disciplines identified in AMERICA 2000 and the National Education Goals, including English, history foreign languages, geography, mathematics, and natural science. Such programs will (1) design courses that build upon prior learning, avoid repetition and arbitrary discontinuities; (2) encourage a content-based pedagogy; (3) develop helpful textbooks and auxiliary materials; and (4) prepare school and college teachers, both preservice and inservice, to work with better-articulated curricula.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving learning in essential academic subjects by determining the extent to which it would—

(1) Address an important problem or need;

(2) Represent an improvement upon, or important departure from, existing practice;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) *Feasibility* The Secretary reviews each proposed project for its feasibility be determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) the applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of availability of other funding sources for the proposed activities.

The Secretary gives equal weight to each of the applicable selection criteria on significance, feasibility, and appropriateness. Within each of these criteria, the Secretary gives equal weight to each of the subcriteria. In applying the criteria, the Secretary first analyzes an application in terms of each individual criterion. The Secretary then bases the final judgment of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

Supplementary Information

By supporting improvements in curriculum in the five core subjects, these priorities complement AMERICA 2000, the President's strategy for moving the nation toward achievement of the National Education Goals. This competition results from the legally mandated collaboration between the Fund for the Improvement of Postsecondary Education (FIPSE) and the Fund for the Improvement and Reform of Schools and Teachers (FIRST), two distinct programs within the U.S. Department of Education. While both are dedicated to educational reform, FIPSE focuses on postsecondary education, and FIRST on elementary and secondary education. The issues being addressed in this competition necessitate cooperation across these educational levels.

Applications that are directed from or that focus primarily on the postsecondary role in the schools should be submitted to FIPSE. Those that are directed from or that focus primarily on the elementary or secondary levels should be submitted to FIRST (which is proposing a competition that shares many features in common with this initiative of FIPSE), mindful of FIRST's Absolute Priority to create linkages with higher education. Applications that

incorporate significant elements of an inclusive K–16 approach could well be submitted to both. Throughout the development of the application, applicants are encouraged to focus on the substantive elements common to both FIPSE and FIRST as described in the competitions priorities and application materials.

This program will provide support to projects in the form of 2— and 3-year grants. Approximately 3-6 awards will be made by FIPSE at an average of $100,000 per year. In addition, approximately 5-8 grants will be made by FIRST under its competition at an average of $100,000 per year These are estimates and do not bind the Department of Education to a specific number of grants or to the amount of any grant.

For Applications or Information Contact

Sherrin Marshall, FIPSE, U.S. Department of Education, room 3100, ROB–3, 7th and D Sts., SW., Washington, DC, 20202–5175. For applications and information on the FIRST competition contact: Carl Jensen, FIRST, U.S. Department of Education, 555 New Jersey Ave., NW., room 522, Washington, DC, 20208–5524. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority

20 U.S.C 1135–1135a–3.

Dated: January 2, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92–873 Filed 1–13–92; 8:45 am]

BILLING CODE 4000–01–M

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federal register

Tuesday
January 14, 1992

Part VI

Department of Education

Fund for the Improvement and Reform of Schools and Teaching: Schools and Teachers Program; Notice

DEPARTMENT OF EDUCATION

[CFDA NO: 84.211C]

Fund for the Improvement and Reform of Schools and Teaching: Schools and Teachers Program

Notice inviting applications for new awards for fiscal year 1992.

Purpose of Program: To support Schools and Teachers projects that improve educational opportunities for and the performance of, elementary and secondary school students and teachers.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, nonprofit organizations, individual public or private schools, consortia of individual schools, and consortia of these schools and institutions.

Deadline for Transmittal of Applications: 3/18/92.

Deadline for Intergovernmental Review: 5/18/92.

Applications Available: 1/24/92.

Available Funds: $700,000 (est.).

Estimated Range of Awards: $50,000–$150,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 7.

Note: The Department is not bound by these estimates.

Budget Period: 12 months.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 757.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3), 34 CFR 757.4(g), and 34 CFR 757.5(a), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that establish closer ties between local schools and an institution of higher education to increase educational achievement.

Competitive Preference Priorities

Within the absolute priority specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 757.5(b), gives preference to applications that meet one or more of the following competitive preference priorities. Under 34 CFR 757.20(d), the Secretary awards up to 25 points to an application that meets one or more of the competitive preference priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for this program.

Competitive Preference Priority 1

Projects that benefit students or schools with below-average academic performance.

Competitive Preference Priority 2

Projects that lead to increased access of all students to a high quality education.

Competitive Preference Priority 3

Projects that develop or implement a system for providing incentives to schools, administrators, teachers, students or others to make measurable progress toward specific goals of improved educational performance.

Invitational Priorities

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets an invitational priority does not receive competitive or absolute preference over other applications.

Invitational Priority 1

Projects that improve the sequencing and articulation of curricula across all educational levels, from the early grades through college, of disciplines identified in AMERICA 2000 and the National Education Goals, including: English, foreign languages, history, geography, mathematics, and sciences.

Invitational Priority 2

Projects that design courses that build upon prior learning and avoid repetition and gaps in terminology and perspective.

Invitational Priority 3

Projects that encourage the use of a content-based pedagogy.

Invitational Priority 4

Projects that develop textbooks and auxiliary materials that assist in the sequencing and articulation of curricula across the elementary, secondary, and postsecondary levels.

Invitational Priority 5

Projects that prepare school teachers, both through preservice and inservice training, to work with articulated curricula.

Invitational Priority 6

Projects that demonstrate the value of collaboration among educators at the elementary, secondary, and postsecondary levels.

Invitational Priority 7

Projects that show the commitment to the project of the applicant and other participating organizations as evidenced by: (1) Contribution of resources by the applicant and any other participating organization; (2) prior work in the areas of concern of the project; and (3) potential for continuation of the project beyond the period of support.

Supplementary Information

In addition to this competition, the Fund for the Improvement of Postsecondary Education (FIPSE) is conducting a separate competition that addresses issues similar to those described in this announcement. Together these competitions support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals by seeking to enhance student achievement and school and teacher performance across all grade levels. The Fund for the Improvement and Reform of Schools and Teaching (FIRST) and FIPSE are two distinct programs within the Department of Education. While both FIRST and FIPSE are dedicated to educational reform, FIRST focuses on elementary and secondary education, and FIPSE on postsecondary education. Therefore, the FIRST and FIPSE competitions establish different priorities and objectives. However, the primary focus of both competitions is the need for linkages and cooperation across the elementary, secondary, and postsecondary educational levels.

Potential applicants should review both the FIRST and the FIPSE materials. A review of the materials for both competitions will provide important information for an applicant to determine which competition is more appropriate to its situation. Applications focused primarily on the elementary and secondary levels should be submitted to FIRST, and applications focused primarily on postsecondary levels should be submitted to FIPSE. Applications that incorporate significant elements of an inclusive K–12 and postsecondary approach could be submitted to both programs.

Applicants are encouraged to focus on the substantive elements common to the FIRST and FIPSE competitions as described in the competitions priorities and application materials. (For more information about the FIPSE competition, refer to its announcement in this issue of the **Federal Register**.)

As additional background, it is important to note that a joint FIRST/FIPSE conference on issues of K–12 and postsecondary collaboration was held on September 17–18, 1990. It was attended by representatives from colleges, schools, and educational associations. Papers in four subject areas (biology, English, foreign language, and history) provided the underlying structure, and addressed curricular, pedagogical, and textbook issues in each subject. Highlights of relevant findings from that conference include the following:

(a) Low achievement in central academic subjects at both the school and postsecondary levels can be attributed, in part, to inadequacies in curricular sequencing and articulation—across elementary and secondary grade levels and between secondary schools and postsecondary initiatives.

(b) The experience of learning must be a coherent one in order to make a permanent impression on a student. Knowledge that comes in bits and pieces falls inevitably through the net of memory, and is lost.

(c) The gaps, arbitary sequencing, constant shifts in terminology and perspective, and repetitions as students move from one grade level to another have a negative effect upon achievement.

(d) Discontinuity between the various grade levels can be ameliorated through increased attention to the problem.

(e) An immediate and important purpose of school is to learn what is being taught—the content of the curriculum. Hence, reforms in teaching, in materials and delivery, indeed in any aspect of schools—from budgets to schedules—all presuppose clear curricular goals and guidelines.

(f) There is an immediate need to prepare K–12 and college teachers, both through preservice and inservice training, to work with improved and articulated curricula, not least by ensuring that the teachers themselves have profited form coherent curricula in their own education, kindergarten through college.

(g) Improved curricula calls for collaboration. Effective collaboration aims at attainable goals, requires the most effective use of resources (i.e., time and money), builds trust across levels and organizations, requires an equal partnership, lasts for a sustained period of time, provides professional rewards, and instigates and nurtures far-reaching and broadly-conceived reforms.

This grant competition responds to the work and findings of the joint conference and to directions recommended for the FIRST and FIPSE programs by their respective Boards.

In addition, the Secretary is interested in projects that have the potential to be disseminated by the National Diffusion Network (NDN). The NDN is a dissemination system through which proven exemplary education programs and processes are made available to interested school systems or other educational institutions around the country. In order to become eligible for dissemination by NDN, a project must be proven to be effective. Evidence of project effectiveness must be collected and presented to the Department's Program Effectiveness Panel (PEP). Projects that are judged effective by PEP become eligible to compete for dissemination funds from the NDN. Therefore, the Secretary encourages applicants who are interested in having their projects disseminated by the NDN to include an evaluation plan that will assess effectiveness and impact of project activities with emphasis upon changes in school practices and student performance.

For Applications or Information Contact

Carl Jensen, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington DC 20208–5524. Telephone: (202) 219–1496. For applications and information on the FIPSE competition contact: Sherrin Marshall, FIPSE, U.S. Department of Education, room 3100, ROB–3, 7th and D Streets, SW., Washington, DC 20202–5175. Telephone: (202) 708–5750. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority

20 U.S.C. 4611–4612.

Dated: January 8, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement and Counselor to the Secretary.

[FR Doc. 92–875 Filed 1–13–92; 8:45 am]

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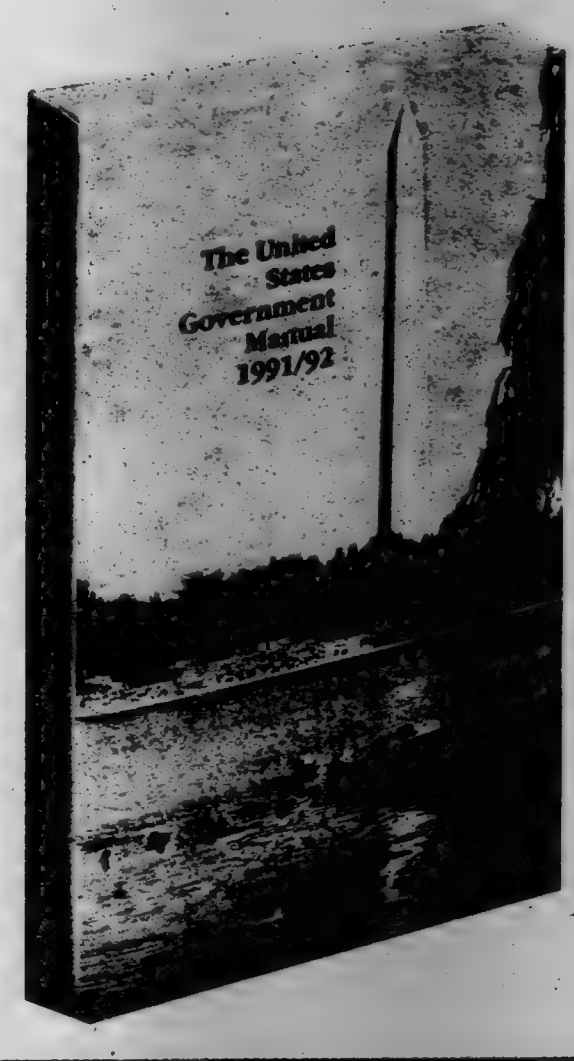

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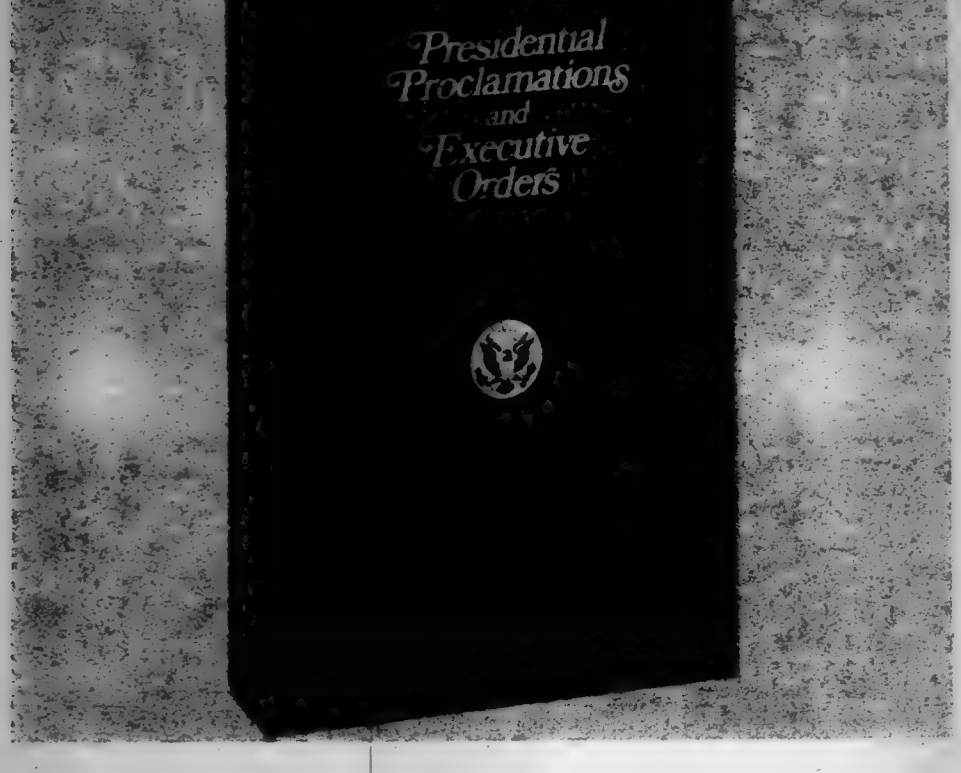

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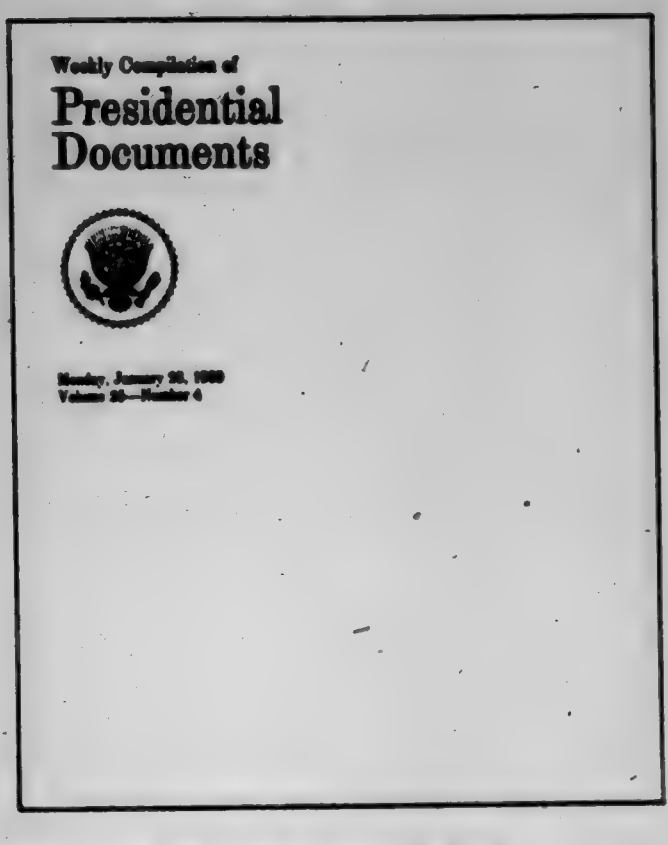

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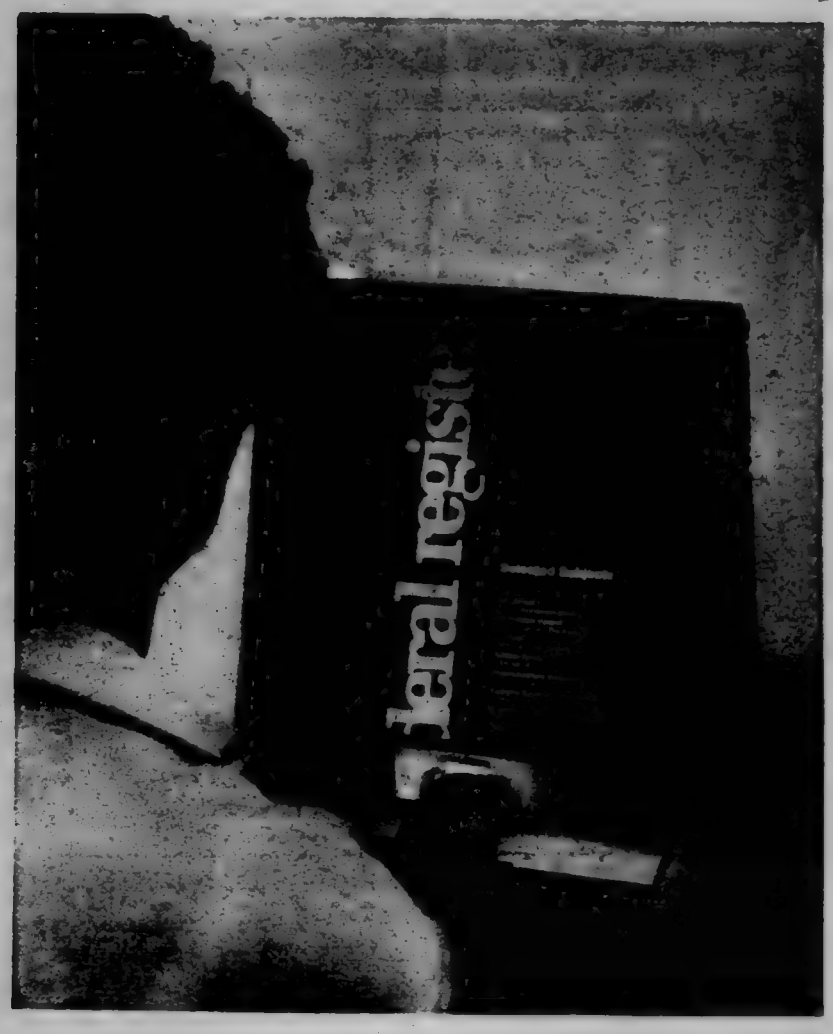

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-91-301]

Pistachio Nuts in the Shell; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Pistachio Nuts in the Shell. The final rule adds a fourth grade, U.S. No. 3, to the present standard. The Western Pistachio Association, a trade association representing a majority of the pistachio nut growers and packers in the United States, has requested the USDA to make these changes to bring the standards in line with current marketing trends. These changes would improve marketing information and communication between shippers and receivers of pistachio nuts in the shell. The Agricultural Marketing Service (AMS) has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

EFFECTIVE DATE: February 14, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas G. Gambill, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-5024.

SUPPLEMENTARY INFORMATION: This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This revision of U.S. Standards for Grades of Pistachio Nuts in the Shell will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the application of these standards is voluntary.

The proposed rule, United States Standards for Grades of Pistachio Nuts in the Shell (7 CFR 51.2540-51.2546), was published in the **Federal Register** on May 3, 1991 (56 FR 20373-20374). A typographical error in Table II under U.S. No. 3 (a) damage was published as "80" percent. A subsequent issue (56 FR 23956 dated May 24, 1991) published the correct tolerance of 8 percent. The proposal was developed at the request of the Western Pistachio Association, a trade association representing the majority of pistachio growers and handlers in the United States.

The growers and shippers represented by the Western Pistachio Association requested this revision because the previous standards did not, in their judgment, reflect current marketing practices. They believe that this final rule would give the industry grade standards that would reflect today's modern marketing and packaging methods.

The standards are issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et* seq.). Industry representatives requested that the standards be revised to add a new grade, U.S. No. 3, to the existing standards. According to the Western Pistachio Association, the addition of a fourth grade will allow the industry to maintain the integrity and quality of the edible kernels and still supply a product to the market having more shell staining present. Freshly harvested pistachio nuts normally have fleshy hull material attached to the shell. If this hull material is not removed promptly following harvest, the shells may become discolored or stained by tannins and oils leaching from the hulls. Although this staining may affect the appearance of the shell, it is not believed to cause or indicate any adverse effect on the kernel.

In addition, two other external defect tolerances will also be increased for the new U.S. No. 3 grade. These are (1) Non-split and not split on suture, and, (2) Damage by other means. All other tolerances in Table I, as well as those listed in Tables II and III will remain the same as those presently designated for the U.S. No. 2 grade. This allows lots which may not be marketed through normal channels only due to external appearances to be marketed with the edible kernel being the focal point of the grade.

The 60-day comment period ended July 2, 1991 and a total of six comments were received concerning the proposal. Three comments from packers/distributors were opposed to the proposal, two were supportive of the proposal, and one was from the USDA, Agricultural Research Service (ARS) which was neither for or against the proposal.

Of the three comments opposed to the proposed U.S. No. 3 grade, it is generally the opinion of these commentors that, "Adding a fourth grade * * * will not benefit the grower or the shipper. In fact this revision would only cause disruption and quality cheating in the market, which in turn would cause less profits for both the grower and shipper." One comment reported, "There have been too many complaints from the retail customers, retailers, and repackers of pistachio in shell nuts, therefore, there is no sound reasoning in adding another grade."

AMS has considered these opposing comments and disagrees. The actual consumed portion of in the shell pistachio nuts is the kernel or nutmeat. No evidence has been shown to indicate that stained shells also indicate or cause any undesirable kernel characteristics. Furthermore, this grade would also be beneficial in marketing pistachios. The primary reason that pistachios were originally dyed with coloring was to cover the stained shell. The standards may be applied to pistachio nuts in a "natural, dyed, raw, roasted, or salted state." Many of the dyed pistachios already possess shell staining which is allowed in the new U.S. No. 3 grade. This new grade would provide a

description of a product which is already being marketed but may be dyed in order to make a U.S. grade.

The U.S. Standards are voluntary. Therefore, those in the industry who are opposed to the U.S. No. 3 grade for pistachios need not accept or use it. However, by incorporating this grade into the present standard those who may wish to use this grade will be able to do so. In addition, the standards are not intended to hinder marketing but rather be used as a descriptive tool to expedite and encourage trading.

AMS develops and improves standards of quality, condition, grade, and packaging to enhance the marketing of agricultural commodities by fostering consistency in commercial practices. The Agency has determined this final rule will enhance the marketing of pistachio nuts in the shell. The provisions of this final rule are the same as those in the proposed rule except that a metric conversion table is added.

Accordingly this revision shall become effective 30 days after the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR part 51 is amended to read as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. In subpart—United States Standards for Grades of Pistachio Nuts in the Shell § 51.2541 is amended by revising the introductory text to read as follows:

§ 51.2541 Grades.

"U.S. Fancy," "U.S. No. 1," "U.S. No. 2," and "U.S. No. 3" consist of pistachio nuts in the shell which meet the following requirements.

* * * * *

3. Section 51.2542 Tolerances is amended by revising Tables I, II, and III in paragraph (a) to read as follows:

§ 51.2542 Tolerances.

(a) * * *

TABLE I

Factor	U.S. fancy	U.S. No. 1	U.S. No. 2	U.S. No. 3
External (shell) defects (tolerances by weight)	Percent	Percent	Percent	Percent
(a) Non-split and not split on suture	2	3	6	10
(1) Non-split included in (a)	1	2	4	4
(b) Adhering hull material	1	1	2	2
(c) Light stained	7	12	20	35
(1) Dark stained, included in (c)	2	3	4	6
(d) Damage by other means	1	1	1	2
(e) Less than 25/64 inch in diameter:				
(1) Small size	5	5	5	5
(2) Medium, Large, Extra Large sizes	1	1	1	1

TABLE II

Factor	U.S. fancy	U.S. No. 1	U.S. No. 2	U.S. No. 3
Internal (kernel) defects (tolerances by weight)	Percent	Percent	Percent	Percent
(a) Damage	3	6	8	8
(b) Serious Damage	3	4	5	5
(1) Insect damage, included in (b)	1	2	3	3
Total internal defects shall not exceed	5	9	10	10

TABLE III

Factor	U.S. fancy	U.S. No. 1	U.S. No. 2	U.S. No. 3
Other defects (tolerances by weight)	Percent	Percent	Percent	Percent
(a) Shell pieces and blanks	1	1	2	2
(b) Foreign material (No glass, metal, or live insects shall be permitted	.25	.25	.50	.50
(c) Particles and dust	.25	.25	.25	.25

* * * * *

4. Section 51.2547 Metric Conversion Table is added to read as follows:

§ 51.2547 Metric Conversion Table.

Inches	Millimeters
5/64	1.98
18/1000	0.46
1/4	6.35
26/64	10.32

Ounces	Grams
1	28.35
2	56.70

Dated: January 10, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-1055 Filed 1-14-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1032

[DA-91-022]

Milk in the Southern Illinois—Eastern Missouri Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain provisions of the Southern Illinois—Eastern Missouri Federal milk marketing order for the months of December 1991 and January 1992. The action reduces the shipping standard for pool supply plants operated by cooperative associations. The action was requested by Prairie Farms Dairy, Inc. (Prairie Farms), a cooperative association that operates supply plants and represents producers who supply the market. This action is necessary to reflect a reduced need for shipments of milk from supply plants to distributing plants.

EFFECTIVE DATE: January 15, 1992.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist,

USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of proposed suspension: Issued December 19, 1991; published December 26, 1991 (56 FR 66798).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Southern Illinois-Eastern Missouri marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on December 26, 1991 (56 FR 66798) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. One comment supporting this action was received.

After consideration of all relevant material, including the proposal in the notice, the comment received and other available information, it is hereby found and determined that for the months of December 1991 and January 1992 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1032.7(b), the words "and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered", and the words "and physically received at".

Statement of Consideration

This action suspends certain provisions of the order for the months of December 1991 and January 1992. The action reduces the shipping standard for pool supply plants operated by cooperative associations.

Currently the order provides that a supply plant must ship at least 40 percent of its receipts of milk to distributing plants during December, and 50 percent in other months, to be a pool plant under the order. A supply plant that meets the pooling standard during each of the months of September through January is a pool plant during each of the months of February through August. Also, the order provides a monthly shipping standard of 25 percent for a supply plant operated by a cooperative association if at least 75 percent of the cooperative's total milk supply during the preceding months of September through August is received at distributing plants. The suspension results in reducing the shipping standard for a cooperative association supply plant to 25 percent of receipts during December 1991 and January 1992.

The action was requested by Prairie Farms Dairy, Inc. (Prairie Farms), a cooperative association that operates supply plants under the order and represents producers who supply the market. Prairie Farms contends that the action is necessary because of a reduced need for shipments of milk from supply plants to furnish the fluid milk requirements of distributing plants. Mid America Dairymen, Inc., a cooperative association that represents producers who supply the market, supported the suspension in comments.

A reduction in the fluid milk requirement of the market is a result of the recent loss of two customers by Prairie Farms to competitors regulated under other Federal orders, and the sluggish sales in the area due to layoffs in major defense, tire, and heavy equipment manufacturing firms. As a result, there is an abatement in the amount of supplemental supply plant milk required of cooperative associations to meet the fluid milk needs of the market.

Due to this structural change in the market, the suspension is necessary to reduce the shipping standard to 25 percent of receipts during December 1991 and January 1992 for cooperative associations. Absent a suspension, costly and inefficient movements of milk would have to be made in order to pool supply plants and the milk of producers who have historically supplied the market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that such action is necessary to permit the continued pooling of supply plants and the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

It is therefore ordered, That the following provisions in § 1032.7(b) of the Southern Illinois-Eastern Missouri order are hereby suspended for the months of December 1991 and January 1992.

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

1. The authority citation for 7 CFR part 1032 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1032.7 [Temporarily suspended in part]

2. In § 1032.7(b), the words "and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered", and the words "and physically received at" are hereby suspended for the months of December 1991 and January 1992.

Signed at Washington, DC, on: January 8, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92–1054 Filed 1–14–92; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1980

Rural Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Guaranteed Rural Housing Loans

regulation. This action is taken to implement the provisions of the "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1992" (Agriculture Appropriations Act, 1992) which revises the Housing Act of 1949 (42 U.S.C. 1472), as amended with regard to the Guaranteed Rural Housing Program. The intended effect of this action is to remove a requirement that dwellings financed with Guaranteed Rural Housing Loans be more than 25 miles from an urban area or densely populated area.

EFFECTIVE DATE: January 15, 1992.

FOR FURTHER INFORMATION CONTACT: Michael S. Feinberg, Senior Loan Officer, Farmers Home Administration, USDA, room 5334–S, South Agriculture Building, 14th and Independence SW., Washington DC 20250, Telephone (202) 720–1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions or significant adverse effects on competition, employment, productivity, innovation or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is the policy of this Department to publish most actions for public comment. This action, however, is clearly defined by a change in the law, therefore it has been determined that this change should be implemented as a final rule.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

For the reason set forth in the final rule related Notice to 7 CFR part 3015. Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Discussion

On October 28, 1991, the President signed the Agriculture Appropriations Act, 1992 which revised the rural area definition for the guaranteed loan program. This revision removes a requirement that dwellings financed with Guaranteed Rural Housing Loans be more than 25 miles from an urban area or densely populated area.

Programs Affected

This program is listed in the catalog of Federal Domestic Assistance under 10.410, Rural Housing Loans.

List of Subjects in 7 CFR Part 1980

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart D—Rural Housing Program Loans

2. Section 1980.311 of subpart D is revised to read as follows:

§ 1980.311 Rural area designation.

The State Director is responsible for establishing rural area boundaries in accordance with the provisions of § 1944.10 of subpart A of part 1944 of this chapter. Lenders should utilize rural area designation maps supplied by FmHA to assure loans are made within eligible rural areas. FmHA will maintain current county maps showing ineligible areas in the District and County Offices. These maps will be made available to the public on request.

Dated: November 18, 1991.

David T. Chen,

Acting Administrator, Farmers Home Administration.

[FR Doc. 92–989 Filed 1–14–92; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 1

RIN 3150–AE10

Reorganization of the Office of Governmental and Public Affairs

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect the Commission's decision to abolish the Office of Governmental and Public Affairs and to reassign its subordinate offices and functions. This final rule is necessary to inform the public of organizational changes within the NRC.

EFFECTIVE DATE: The rule will become effective January 15, 1992.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555, Telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: On October 23, 1991, the Commission announced its decision to abolish the Office of Governmental and Public Affairs and reassign its subordinate offices and functions. In the reorganization, the functions and personnel of the Office of State Programs will be assigned to the Executive Director for Operations and will be aligned as a separate office reporting to the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

The functions and personnel of the Office of International Programs will be aligned as a separate office reporting to the Commission. The Offices of Congressional Affairs and Public Affairs will continue to report to the Chairman of the Commission.

Because these are amendments dealing with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because these amendments are of a minor and administrative nature, dealing with the agency's reorganization.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environment assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

List of Subjects in 10 CFR Part 1

Organization and functions (Government agencies).

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 1.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for part 1 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 1.3 [Amended]

2. In § 1.3, in paragraph (a), remove the words "Governmental and".

3. § 1.11, paragraphs (c) and (d) are revised to read as follows:

§ 1.11 The Commission.

* * * * *

(c) The following staff units and officials report directly to the Commission: Atomic Safety and Licensing Board Panel, Office of the General Counsel, Office of the Secretary, Office of Commission Appellate Adjudication, Office of Licensing Support System Administrator, Office of International Programs, and other committees and boards which are authorized or established specifically by the Act. The Advisory Committee on Reactor Safeguards and the Advisory Committee on Nuclear Waste also report directly to the Commission.

(d) The Offices of Congressional Affairs and Public Affairs report directly to the Chairman.

4. New §§ 1.27 and 1.28 are added to read as follows:

§ 1.27 Office of Congressional Affairs.

The Office of Congressional Affairs—

(a) Advises the Chairman, the Commission, and NRC staff on all NRC relations with Congress and the views of Congress toward NRC policies, plans and activities;

(b) Maintains liaison with Congressional committees and members of Congress on matters of interest to NRC;

(c) Serves as primary contact point for all NRC communications with Congress;

(d) Coordinates NRC internal activities with Congress;

(e) Plans, develops, and manages NRC's legislative programs; and

(f) Monitors legislative proposals, bills, and hearings.

§ 1.28 Office of Public Affairs

The Office of Public Affairs—

(a) Develops policies, programs, and procedures for the Chairman's approval for informing the public of NRC activities;

(b) Prepares, clears, and disseminates information to the public and the news media concerning NRC policies, programs, and activities;

(c) Keeps NRC management informed on media coverage of activities of interest to the agency;

(d) Plans, directs, and coordinates the activities of public information staffs located at Regional Offices;

(e) Conducts a cooperative program with schools; and

(f) Carries out assigned activities in the area of consumer affairs.

5. Section 1.29 is revised to read as follows:

§ 1.29 Office of International Programs.

The Office of International Programs—

(a) Advises the Chairman, the Commission, and NRC staff on international issues;

(b) Recommends policies concerning nuclear exports and imports, international safeguards, international physical security, nonproliferation matters, and international cooperation and assistance in nuclear safety and radiation protection;

(c) Plans, develops, and manages international nuclear safety information exchange programs and coordinates international research agreements;

(d) Obtains, evaluates, and uses pertinent information from other NRC and U.S. Government offices in processing nuclear export and import license applications;

(e) Establishes and maintains working relationships with individual countries and international nuclear organizations, as well as other involved U.S. Government agencies; and

(f) Assures that all international activities carried out by the Commission and staff are well coordinated internally and Government-wide and are consistent with NRC and U.S. policies.

§ 1.31 [Amended]

6. In § 1.31, in paragraph (b), add the words "Office of State Programs," between the words, "Office of Personnel," and "and".

7. Section 1.41 is redesignated as § 1.42 and a new § 1.41 is added to read as follows:

§ 1.41 Office of State Programs.

The Office of State Programs—

(a) Plans and directs NRC's program of cooperation and liaison with States, local governments, interstate and Indian Tribe organizations; and coordinates liaison with other Federal Agencies;

(b) Participates in formulation of policies involving NRC/State cooperation and liaison;

(c) Develops and directs administrative and contractual programs for coordinating and integrating Federal and State regulatory activities;

(d) Maintains liaison between NRC and State, interstate, regional, Indian Tribe, and quasi-governmental organizations on regulatory matters;

(e) Promotes NRC visibility and performs general liaison with other Federal Agencies, and keeps NRC management informed of significant developments at other Federal Agencies which affect the NRC;

(f) Monitors nuclear-related State legislative activities;

(g) Directs regulatory activities of State Liaison and State Agreement Officers located in Regional Offices;

(h) Participate in policy matters on State Public Utility Commissions (PUCs);

(i) Administers the State Agreements program in a partnership arrangement with the States;

(j) Develops staff policy and procedures and implementation of the State Agreements program under the provisions of section 274b of the Atomic Energy Act, as amended;

(k) Provides oversight of program of periodic routine reviews of Agreement State programs to determine their adequacy and compatibility as required by section 274j of the Act and other periodic reviews that may be performed to maintain a current level of knowledge of the status of the Agreement State programs;

(l) Provides training to the States as provided by section 274i of the Act and also to NRC staff and staff of the U.S. Navy and U.S. Air Force;

(m) Provides technical assistance to Agreement States;

(n) Maintains an exchange of information with the States;

(o) Conducts negotiations with States expressing an interest in seeking a section 274b Agreement;

(p) Supports, consistent with Commission directives, State efforts to improve regulatory control for radiation safety over radioactive materials not covered by the Act; and

(q) Serves as the NRC liaison to the Conference of Radiation Control Program Directors, Inc. (CRCPD) and coordinates NRC technical support of CRCPD committees.

8. The center heading "Program Offices" is placed before new § 1.42.

Dated at Rockville, Maryland, this 3rd day of January 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-1045 Filed 1-14-92; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 110, 114

[Notice 1992-1]

Honoraria

AGENCY: Federal Election Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Commission is today publishing technical amendments to its regulations to conform them to the Legislative Branch Appropriations Act, 1992, Public Law No. 102-90, 105 Stat. 447 (1991). Section 6(d) of that Act repealed 2 U.S.C. 441i, which governed the acceptance of honoraria by Senators and officers and employees of the Senate.

EFFECTIVE DATE: January 15, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act of 1971 ("FECA"), as amended, gave the Federal Election Commission jurisdiction over the acceptance of honoraria by all federal officers and employees. Federal Election Campaign Act Amendments of 1979, Public Law No. 96-187, section 105, 93 Stat. 1339, 1354 (redesignating provisions inserted by the Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, section 112, 90 Stat. 475, 486-95) (codified as amended at 2 U.S.C. 441i (1991)).

However, since 1989, the Commission's jurisdiction has been limited to the acceptance of honoraria by Senators and officers and employees of the Senate. Section 601 of the Ethics Reform Act of 1989, Public Law No. 101-194, 103 Stat. 1716, amended 2 U.S.C. 441i to remove the Commission's jurisdiction over honoraria acceptance by other Federal officers and employees, including members of the House of Representatives.

Recently, Congress passed the Legislative Branch Appropriations Act, 1992, Public Law No. 102-90, 105 Stat. 447 (1991). Sections 6(d) and 6(f)(1) of that Act further amend the FECA by repealing 2 U.S.C. 441i as of the effective date of the Act. As a result, the Commission has no jurisdiction over honoraria transactions taking place after August 14, 1991. (The Commission's jurisdiction over honoraria transactions occurring before that date remains intact. *FEC* v. *Wright*, No. 4-91-0542-A, slip op. at 13 (N.D. Tex. Nov. 12, 1991).)

Therefore, the Commission is publishing this Notice to make the necessary technical and conforming amendments to its regulations. The Notice repeals 11 CFR 110.12, the regulatory provision that implements section 441i. It also repeals 11 CFR 100.7(b)(19) and 11 CFR 114.1(a)(2)(iv), two provisions that make reference to 11 CFR 110.12.

Because the amendment is merely technical, it is exempt from the notice and comment requirements of the Administrative Procedure Act. See 5 U.S.C. 553(b)(B). It is also exempt from the legislative review provisions of the FECA. See 2 U.S.C. 438(d). These exemptions allow the amendments to be made effective immediately upon publication in the **Federal Register**. As a result, these amendments are made effective on January 15, 1992.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

I certify that the attached final rule will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that only officers and employees of the Federal Government are affected, and therefore, no small entity is affected under the final rule.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 110

Government Employees.

11 CFR Part 114

Elections.

For the reasons set out in the preamble, subchapter A, chapter I, title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

§ 100.7(b)(19) [Removed and Reserved]

2. Section 100.7(b)(19) is removed and reserved.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 is revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

§ 110.12 [Removed and Reserved]

4. Section 110.12 is removed and reserved.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

5. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

§ 114.1(a)(2)(iv) [Removed and Reserved]

6. Section 114.1(a)(2)(iv) is removed and reserved.

Dated: January 9, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92-1062 Filed 1-14-92; 8:45am]

BILLING CODE 6715-01-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

Rules, Policies, and Procedures for Corporate Activities

CFR Correction

In title 12 of the Code of Federal Regulations, parts 1 to 199, revised as of January 1, 1991, on page 80, in the first column immediately following § 5.50 (h)(1), paragraphs (h)(1)(i), (ii), (2) and (3) were inadvertently removed. The omitted text should read as follows:

§ 5.50 [Corrected]

* * * * *

(h) * * *

(1) * * *

(i) Notices filed in contemplation of a public tender offer subject to the requirements of the Williams Act Amendments to the Securities Exchange Act of 1934 may be excepted from the public announcement requirement for up to 34 days after the technically complete notice is filed if: (A) The filing person requests such confidential treatment and represents that a public announcement of the tender offer and the filing of appropriate forms with either the Securities and Exchange Commission or the appropriate Federal banking agency, as applicable, will occur within 34 days from the filing of the Notice; and (B) the Office determines, in its discretion, that it is in the public interest to grant such confidential treatment. The public announcement described in paragraph (h) of this section is required upon first publication to security holders or on the 34th day after filing the technically complete Notice, whichever occurs first. The filing person shall send proof of the publication of the announcement to the district office before which the Notice is pending within 10 days of the date of the announcement. In other cases of requests for confidential treatment, the Office will be guided by the presumption that the filing of such Notices should be announced immediately, but may, in its discretion, authorize delayed announcement if the announcement would not be in the public interest.

(ii) Notwithstanding any of the other provisions of paragraph (h) of this section, the Office may, in its discretion, waive the requirement that a public announcement be made in connection with a filing if it determines that such announcement is not in the public interest.

(2) *Release of Summary Information.* In order to facilitate the Office's release of summary information, Part E of the Notice format consists of a summary ("Summary Fact Sheet") which the person subject to the statute and regulation is required to complete as part of the Notice filing. The information provided in the Summary Fact Sheet will be released and made available for public inspection and copying, upon the request of any person, in accordance with the specified time sequence described below. In addition, public announcement of the disposition of the Notice and the consummation date of the transaction, if applicable, will be made in the *Weekly Bulletion* published by the Office.

(i) The instructions to the Summary Fact Sheet portion of the Notice indicate that when the person filing the Notice affirmatively indicates no objection to public release of the information contained in the Summary Fact Sheet, public release normally will be made as soon as practicable after acceptance of the Notice for filing.

(ii) When the Office has not disapproved an acquisition of control within the statutory period (and any extensions thereof), the Office normally will release the information contained in the Summary Fact Sheet upon completion of such acquisition of control.

(iii) When the Office has issued a written disapproval of a proposed acquisition of control, it normally will release the information set forth in the Summary Fact Sheet upon the filing of an appeal with the U.S. Court of Appeals for the appropriate circuit, or upon the expiration of time within which any appeal must be taken.

(iv) When a Notice under the Act is filed, but withdrawn prior to agency action or expiration of the statutory waiting period, the Office normally will not release the Summary Fact Sheet. The filing of the Notice, the identity of the person on whose behalf the Notice was filed and the time frames within which the Notice was to be considered by the Office, normally would have been announced previously.

(v) If the information contained in the Summary Fact Sheet becomes known to members of the public, the Office may release the Summary Fact Sheet in its discretion.

(vi) The information contained in the Notice that is not included in the Summary Fact Sheet will continue to be held confidential by the Office subject to the requirements of the FOIA and other applicable law.

(3) *Private Right of Action.* Nothing contained herein shall create a private right of action on behalf of any person, nor shall any person, including the affected institution, have standing to intervene or otherwise contest the Notice or appear before the Comptroller in the deliberations regarding notices filed under the Act.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. 86N-0451]

New Animal Drugs for Use in Animal Feeds; Removal of Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations by removing the interim regulation that provides for certain uses of arsanilic acid and arsanilate sodium in animal feeds. This revision will reflect the current legal status of arsanilic acid and arsanilate sodium for these uses.

DATES: February 14, 1992.

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV-220), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 301-295-8724.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 26, 1991 (56 FR 19332), FDA reproposed a rule previously proposed in the **Federal Register** of December 18, 1986 (51 FR 45348) to remove § 558.20 *Drugs used in medicated feeds in use before January 1, 1958, which are not otherwise listed; interim listing* (21 CFR 558.20). FDA reproposed the rule once it recognized that several of the uses it had proposed to codify as reflecting approval of new animal drug applications (NADA's) for these uses did not appear to be the subject of approved NADA's. No evidence or comments were received on the 1991 reproposed rule, which requested anyone claiming to hold an approved NADA for arsanilate sodium in swine feed or for arsanilic acid at 0.025 to 0.04 percent in swine feed to submit evidence to substantiate the approval. FDA has concluded that the NADA for arsanilate sodium, NADA 8-966, providing for the use of the new animal drug in medicated feeds for swine, was voluntarily withdrawn at the

request of the sponsor (see 56 FR 19332 and RFS. 1 and 2 of the reproposal). FDA has also concluded that NADA 8–019, providing for the use of arsanilic acid in swine feed was never approved for the 0.025- to 0.04-percent use level, because the application failed to include adequate data to establish that the edible products of swine so treated are safe for human consumption (see FR 19332 and Refs. 2, 3, and 4 to the reproposal). For these reasons and the reasons stated in the preamble the reproposed rule, FDA is removing § 558.20. After the effective date, any Type A medicated article that contains arsanilate sodium or arsanilic acid for use at 0.025 to 0.04 percant in swine feed but that is not the subject of an approved NADA will be in violation of the Federal Food, Drug, and Cosmetic Act and subject to regulatory action, unless covered by a statutorily provided exception to the requirement of an approved application.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Economic Impact

The agency has determined that this final rule does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The final rule does not impose new or different requirements on industry; it merely revises the regulations to reflect the current legal status of arsanilate sodium and arsanilic acid for the uses in question.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.4 is amended by revising paragraph (c) to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(c) The use of Type B and Type C medicated feeds shall conform to the conditions of use provided for in subpart B of this part and in §§ 510.515 and 558.15.

* * * * *

§ 558.20 [Removed]

3. Section 558.20 *Drugs used in medicated feeds in use before January 1, 1958, which are not otherwise listed; interim listing* is removed.

Dated: December 23, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1020 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part O

[AG Order No. 1556–92]

Delegation of Attorney General Authority Under 50 U.S.C. 403h and 8 U.S.C. 1427(f)

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order will amend the delegations of authority in § 0.63 of 28 CFR part O to include the Deputy Assistant Attorneys General, Criminal Division, among the individuals who may exercise the Attorney General's authority under 50 U.S.C. 403h to permit the entry of certain aliens into the United States, and under 8 U.S.C. 1427(f) to expedite the naturalization of certain foreign intelligence sources. This delegation is intended to enhance the Criminal Division's ability rapidly and consistently to approve the entry and naturalization of specified qualified aliens.

EFFECTIVE DATE: January 7, 1992.

FOR FURTHER INFORMATION CONTACT: Nicolas D. Mansfield, Trial Attorney, Criminal Division, United States Department of Justice, room 9112, Bond Building, Washington, DC 20530, Telephone: (202) 514–1195.

SUPPLEMENTARY INFORMATION: Section 7 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 403h, confers upon the Attorney General, in conjunction with the Director of Central Intelligence and the Commissioner of Immigration and Naturalization, the authority to permit the entry of certain aliens into the United States for permanent residence, when it is in the interest of the national security of the United States or essential to the furtherance of the national intelligence mission. Section 316(f) of the Immigration and Nationality Act, as amended ("Act"), 8 U.S.C. 1427(f), confers upon the Attorney General, in conjunction with the Director of Central Intelligence and the Commissioner of Immigration, the authority to expedite the naturalization of certain foreign intelligence sources, without regard to the residence and physical presence requirements of section 316 of the Act, if those sources are otherwise eligible for naturalization and have made extraordinary contributions to the national security of the United States or to the conduct of United States intelligence activities.

Section 0.63 of title 28 of the Code of Federal Regulations previously delegated the Attorney General's authority under 50 U.S.C. 403h and 8 U.S.C. 1427(f) to the Assistant Attorney General in charge of the Criminal Division. This order amends § 0.63 by adding the Deputy Assistant Attorneys General, Criminal Division, to the list of individuals empowered to exercise the Attorney General's authority in connection with 50 U.S.C. 403h and 8 U.S.C. 1427(f).

This order is a matter of internal Department management. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. 5 U.S.C. 605(b). This rule is not a major rule within the meaning of section 1(b) of Executive Order No. 12291, nor does it have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of Executive Order No. 12612.

List of Subjects in 28 CFR Part O

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General by 5 U.S.C. 301, 28 U.S.C. 509 and 510, 8 U.S.C. 1427(f), and 50 U.S.C. 403h, subpart K of part O of title 28 of the Code of Federal Regulations is amended as follows:

PART O—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part O continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.63 is revised to read as follows:

§ 0.63 Delegation respecting admission and naturalization of certain aliens.

(a) The Assistant Attorney General in charge of the Criminal Division and the Deputy Assistant Attorney General, Criminal Division, are each authorized to exercise the power and authority vested in the Attorney General by section 7 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. 403h, with respect to entry of certain aliens into the United States for permanent residence.

(b) The Assistant Attorney General in charge of the Criminal Division and the Deputy Assistant Attorneys General, Criminal Division, are each authorized to exercise the power and authority vested in the Attorney General by section 316(f) of the Immigration and Nationality Act, 8 U.S.C. 1427(f), with respect to the naturalization of certain foreign intelligence sources.

Dated: January 7, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–973 Filed 1–14–92; 8:45 am]

BILLING CODE 4410–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning January 1, 1992. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in November 1991 through January 1992. These interest rates are established pursuant to section 4006 of the Employment Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone (202) 778–8850 ((202) 778–8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), The Pension Benefit Guaranty Corporation ("PBGC") collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in appendix A to the premium regulation and appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning January 1, 1992, the interest charged on the underpayment of taxes will be at a rate of 9 percent. Accordingly, the PBGC is amending appendix A to 29 CFR part 2610 and appendix A to 29 CFR part 2622 to set forth this rate for the January 1, 1992, through March 31, 1992, quarter.

Under ERISA section 4006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in appendix B to the regulation.

The PBGC publishes these monthly interest rates in appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in appendix A. (The PBGC publishes the appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the appendix A rate, which is determined prospectively, the appendix B rate is not known until a short time after the first of the month for which it applies. Accordingly, the PBGC is hereby amending Appendix B to Part 2610 to add the vested benefits valuation rates for plan years beginning in November of 1991 through January of 1992.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the Appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in appendix B to part 1610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these amendments is a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance,

Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, appendix A and appendix B to part 2610 and appendix A to part 2622 of chapter XXVI of Title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307 (1988), as amended by sec. 7881(h), Pub. L. 101–239, 103 Stat. 2106, 2242.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning January 1, 1992, to read as follows: The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment Interest Rates Charges

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
•	•	•
January 1, 1992	March 31, 1992	9

3. Appendix B to part 2610 is amended by adding to the table of interest rates therein new entries for premium payment years beginning in November of 1991 through January of 1992, to read as follows: The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
•	•
November 1991	6.34
December 1991	6.34
January 1992	6.16

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68, as amended by secs. 9312, 9313, Pub. L. 100–203, 101 Stat. 1330.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning January 1, 1992, to read as follows: The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2622—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
•	•	•
January 1, 1992	March 31, 1992	9

Issued in Washington, DC, this 7th day of January 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92–1079 Filed 1–14–92; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning February 1, 1992. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after February 1, 1992, which will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since January 1, 1992. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after February 1, 1992, which set reflects a decrease of ¼ percent in the immediate interest rate from 6½ percent to 6¼ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the

public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after February 1, 1992, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 95 of appendix B is revised and Rate Set 96 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, K_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (%)	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
95	1-1-92	2-1-92	6.50	1.0575	1.0450	1.0400	7	8
96	2-1-92		6.25	1.0560	1.0425	1.0400	7	8

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-1080 Filed 1-14-92; 8:45 am]
BILLING CODE 7708-01-M

29 CFR Part 2644

Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from January 1, 1992, to March 31, 1992.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202-778-8850 (202-778-8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 7½ percent, which will be effective from January 1, 1992 through March 31, 1992. This rate represents a decrease of one-half percent from the rate in effect for the fourth quarter of 1991. This rate is based on the prime rate in effect on December 13, 1991.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

2. Appendix A is amended by adding to the end of the table therein a new entry as follows:

From	To	Date of quotation	Rate (percent)
•	•	•	•
01/01/92.....	03/31/92	12/13/91	7½

Issued in Washington, DC, on this 7th day of January 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-1061 Filed 1-14-92; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of February 1992.

EFFECTIVE DATE: February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month	The values for i_t are															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
•		•		•		•		•		•		•		•		
February 1992..	.06625	.065	.06375	.0625	.06125	.06	.06	.06	.06	.06	.05875	.05875	.05875	.05875	.05875	.055

Issued at Washington, DC., on this 7th day of January 1992.

James. B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-1082 Filed 1-14-92; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300234A; FRL-3947-9]

RIN 2070-AB78

Certain Fruits and Vegetables; Definitions and Interpretations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document defines the commodity terms melon, muskmelon, sugar apple, and summer squash for tolerance purposes and amends the crop grouping for cucurbit vegetables to agree with the muskmelon definition. The Interregional Research Project No. 4 (IR-4) requested this action.

EFFECTIVE DATE: This regulation becomes effective on January 15, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 4, 1991 (56 FR 43737), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had requested that the Administrator propose that 40 CFR 180.1(h) be amended to define the commodity terms melon, muskmelon, sugar apple, and summer squash for tolerance purposes and to amend the crop grouping for cucurbit vegetables to agree with the muskmelon definition.

Section 180.1(h) of the CFR (40 CFR 180.1(h)) provides a listing of general commodity terms and EPA's interpretation of the application of those terms as they apply to tolerances and exemptions from the requirement of a tolerance for pesticide chemicals under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a). The general commodities are listed in column A of 40 CFR 180.1(h), and the corresponding specific commodities, for which tolerances and exemptions from the requirement of a tolerance established for the general commodity apply, are listed in column B.

There were no comments received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the general commodities melon, muskmelon, sugar apple, and summer squash should be interpreted to include the corresponding specific commodities listed below.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Although this regulation does not establish or raise a tolerance level or establish an exemption from the requirement of a tolerance, the impact of the regulation would be the same as establishing new tolerances or exemptions from the requirment of a tolerance. Therefore, the Administrator concludes that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 23, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1(h) is amended by revising the commodity definition for melons and adding definitions for muskmelons, sugar apple, and summer squash, to read as follows:

§ 180.1 Definitions and interpretations.

* * * * * * *

(h) * * *

A	B
* * * * *	
Melons	*Muskmelons*, including hybrids and/or varieties of *Cucumis melo* (including true cantaloupe, cantaloupe, casaba, Santa Claus melon, crenshaw melon, honeydew melon, honey balls, Persian melon, golden pershaw melon, mango melon, pineapple melon, snake melon); and watermelons, including hybrids and/or varieties of (*Citrullus* spp.).
Muskmelons	*Cucumis melo* (includes true cantaloupe, cantaloupe, casaba, Santa Claus melon, crenshaw melon, honeydew melon, honey balls, Persian melon, golden pershaw melon, mango melon, pineapple melon, snake melon, and other varieties and/or hybrids of these.
* * * * *	
Sugar apple	*Annona squamosa L.* (sugar apple, sweetsop, anon), and its hybrid *A. squamosa L.* x *A. cherimoya M.* (atemoya). Also *A. reticulata L.* (true custard apple).

A	B
Summer squash	Fruits of the Gourd (Cucurbitaceae) family that are consumed when immature, 100 percent of the fruit is edible either cooked or raw, once picked it cannot be stored, has a soft rind which is easily penetrated, and if seeds were harvested they would not germinate; e.g., *Cucurbita pepo* (i.e., crookneck squash, straightneck squash, scallop squash, and vegetable marrow); *Lagenaria* spp. (i.e., spaghetti squash, hyotan, cucuzza); *Luffa* spp. (i.e., hechima, Chinese okra); *Momordica* spp. (i.e., bitter melon, balsam pear, balsam apple, Chinese cucumber); and other varieties and/or hybrids of these.

* * * * *

3. In § 180.34, by revising paragraph (f)(9)(ix), to read as follows:

§ 180.34 Tests on the amount of residue remaining.

* * * * *

(f) * * *

(9) * * *

(ix) Cucurbit vegetables group.

(A) *Commodities.* Balsam pear (bitter melon) (*Mormordica* spp.); Chinese waxgourd (Chinese preserving melon) (*Bernicasa hispida*); citron melon (*Citrullus lanatus*); cucumber (*Cucumis* spp.); gherkin (*Cucumis anguria*); gourds, edible (*Lagenaria* spp., *Luffa acutangula, L. cylindrica*); muskmelon, including hybrids and/or varieties of (*Cucumis melo*) (including true cantaloupe, cantaloupe, casaba, Santa Claus melon, crenshaw melon, honeydew melon, honey balls, Persian melon, golden pershaw melon, mango melon, pineapple melon, snake melon); pumpkin (*Cucurbita* spp.); squash, summer (*Cucurbita pepo* var. *melopepo*); squash, winter (*Cucurbita maxima, C. moschata*); watermelon, including hybrids and/or varieties of (*Citrullus* spp.).

(B) *Representative commodities.* Cucumber, muskmelon, and summer squash.

* * * * *

[FR Doc. 92-1071 Filed 1-14-92; 8.45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 7F3516/R1138; FRL-4008-7]

RIN 2070-AB78

Pesticide Tolerances for Thiodicarb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the insecticide thiodicarb (dimethyl *N,N'*[thiobis[[(methylimino) carbonyl]oxy]] bis[ethanimidothioate]) and its metabolite methomyl (S-methyl N-[(methylcarbamoyl)oxy]thioacetimidate) in or on the raw agricultural commodity leafy vegetables. This regulation to establish a maximum permissible level for residues of the insecticide was in a petition submitted by the Rhone Poulenc Ag Co.

EFFECTIVE DATE: Effective on January 15, 1992.

ADDRESSES: Written objections, identified by document control number, [PP 7F3516/R1138], must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 13, 1987 (52 FR 18019), which announced that Union Carbide Agricultural Products Co., T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition (PP 7F3516) to EPA proposing to amend 40 CFR part 180 by establishing a permanent tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 346a) for residues of the insecticide thiodicarb (dimethyl *N,N'*-[thiobis[[(methylimino)carbonyl]oxy]] bis[ethanimidothioate]) and its metabolite methomyl (S-methyl N-[(methylcarbamoyl)oxy]thioacetimidate) in or on the raw agricultural commodity leafy vegetables at 30.0 parts per million (ppm). Union Carbide was later acquired by the Rhone Poulenc Ag Co. The petitioner subsequently amended the petition by proposing a tolerance of 35.0 ppm. This revision was announced in the **Federal Register** of October 5, 1989 (54 FR 41160).

There were no comments or requests for a referral to an advisory committee received in response to the notice of filing. A conditional registration is being issued currently requiring some studies described later in this document. The tolerances will expire on July 15, 1994, and the conditional registration will expire on July 15, 1993.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include a 2-year rat feeding/carcinogenic study with a systemic no-observed-effect-level (NOEL) of 3.0 mg/kg/day (60 ppm), a cholinesterase (ChE) NOEL greater than 10 mg/kg/day (200 ppm) and not carcinogenic at 10 mg/kg/day (200 ppm) (highest dose tested (HDT)); a 2-year mouse feeding/carcinogenic study with a systemic NOEL of 3 mg/kg/day (20 ppm) and not carcinogenic at 10 mg/kg/day (70 ppm) (HDT); a 1-year dog feeding study with red blood cells ChE NOEL of 4.5 mg/kg/day (180 ppm) and a systemic NOEL of 12.8 mg/kg/day (512 ppm); a rat teratology study with a maternal NOEL less than 0.5 mg/kg/day and a developmental toxicity NOEL of 3 mg/kg/day; a three-generation rat reproduction study with an NOEL for reproductive effects greater than 10 mg/kg/day (200 ppm) (HDT); and an acute delayed neurotoxicity study in the hen negative at 660 mg/kg. Mutagenicity studies include a structural chromosomal aberration study and other mutagenicity studies that did not demonstrate mutagenicity or genotoxicity.

The metabolism of thiodicarb in plants and animals is adequately understood for the purposes of the proposed tolerance. A ruminant metabolism study shows that thiodicarb is metabolized in steps to methomyl, methomyl oxime, acetonitrile, acetamide, acetic acid, and carbon dioxide. Plant metabolism studies show that thiodicarb is likewise metabolized to methomyl, methomyl oxime, acetonitrile, and carbon dioxide.

The animal metabolism study identified acetamide as a potential metabolite of thiodicarb. Acetamide is not a plant metabolite.

Four studies have been conducted with acetamide that have demonstrated a possible carcinogenic effect. Although none of the four studies meet current standards for carcinogenicity testing, the studies collectively demonstrate that, at

least under certain conditions, long-term dietary administration of acetamide at high doses is associated with the occurrence of liver tumors in rats. In 1988, based on the four acetamide studies, the Agency classified acetamide as a possible human carcinogen (Group C) and conducted a quantitative risk assessment for the cotton and soybean uses proposed for thiodicarb. These studies are described in detail in the **Federal Register** of July 3, 1985 (50 FR 27452 and 27463) in which the Agency proposed to establish tolerances for the use of thiodicarb on cotton and soybeans. In the same notice, it was also tentatively concluded that acetamide naturally occurs in milk and eggs. Additional followup analyses confirmed these findings. In a limited number of untreated samples acetamide levels in milk averaged 170 ppb (0.17 ppm). These untreated background values are far in excess of those maximum expected values of acetamide estimated from thiodicarb, i.e., milk at 0.3 ppb (0.0003 ppm) and eggs at 0.07 ppb (0.0007 ppm), and it was concluded that the ubiquitous nature of acetamide may confound its regulation. A final rule establishing tolerances for cotton and soybeans was published in the **Federal Register** of October 10, 1985 (50 FR 41341 and 41349).

The Agency has since reevaluated the toxicity of acetamide. While the Agency believes that the previous classification of acetamide as a Group C carcinogen is appropriate, it has been determined that the acetamide studies are not suitable for quantitative risk assessment because of the deficiencies in the individual studies. These deficiencies include a small number of test animals, lack of a definitive dose-response relationship, extremely high exposure rates, questionable quality of test animals, and administration of oxytetracycline to test animals in one study which might have adversely influenced the test results. In addition, the toxicology data base for thiodicarb includes two valid oncogenicity studies that were negative for oncogenic effects.

However, because the data base for acetamide is incomplete to fully address its carcinogenic potential and to determine whether there may be a species-related difference in conversion of syn-methomyl to anti-methomyl and resultant excretion as acetonitrile or metabolic hydrolysis to acetamide, the Agency is requiring the following studies/information:

1. Metabolism study (with the parent chemical) in an appropriate species (primate) and information on whether there is a species-specific metabolic conversion of thiodicarb to acetamide.

2. Substantiation of the isomeric form of the registered product.

3. Studies designed to identify and measure (as the glucuronide or other conjugate) the N-hydroxy acetamide metabolite. A conditional registration and a tolerance with expiration date are being issued requiring these studies. Once these studies have been submitted and evaluated, the Agency may require additional toxicity studies.

On the basis of available studies on acetamide and the chronic carcinogenicity studies for thiodicarb, the Agency has concluded that the human risk posed by the use of thiodicarb on leafy vegetables does not raise significant risk concerns.

Based on the 2-year rat feeding study with a NOEL of 3.0 mg/kg/day and using an uncertainty factor of 100, the reference dose (RfD) for humans is 0.03 mg/kg body weight/day. The theoretical maximum residue contribution (TMRC) for this chemical utilizes 1.833 percent of the RfD. The current action will contribute 0.0125 mg/kg/day of residue to the human diet utilizing an additional 39.835 percent of the RfD. This results in a total utilization of 41.667 percent of the RfD.

The nature of the residue in plants is considered to be adequately understood to support this tolerance request. Adequate analytical methods, gas chromatography with a flame photometric detector selective for sulfur-containing compounds and gas chromatography/mass spectrometry, are available for enforcement purposes. The methodology has been published in the Food and Drug Administration's Pesticide Analytical Manual (PAM) II. There are no livestock feed items associated with this petition; there are no problems of secondary residues in meat, milk, poultry, and eggs.

Based on the above information, the Agency has concluded that the proposed tolerance for residues of the pesticide in or on leafy vegetables would protect thepublic health. Therefore, the tolerance is established as set forth below.

EPA is also amending 40 CFR 180.3 by adding new paragraph (d)(14) as a conforming amendment to the thiodicarb revision under 40 CFR 180.48.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: December 23, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.3, by adding new paragraph (d)(14), to read as follows:

§ 180.3 Tolerances for related pesticide chemicals.

* * * * *

(d) * * *

(14) Where tolerances are established for residues of methomyl, resulting from the use of thiodicarb and/or methomyl on the same raw agricultural commodity, the total amount of methomyl shall not yield more residue

than that permitted by the higher of the two tolerances.

* * * * *

3. By revising § 180.407, to read as follows:

§ 180.407 Thiodicarb; tolerances for residue.

(a) A tolerance is established for the combined residues of the insecticide thiodicarb (dimethyl *N, N'*-[thiobis [[(methylimino) carbonyl]oxy]] bis[ethanimidothioate]) and its metabolite methomyl (*S*-methyl *N*-[(methylcarbamoyl)oxy]-thioacetimadate) in or on the following raw agricultural commodity:

Commodity	Parts per million
Corn, sweet grain (K + CWHR)	2.0
Cottonseed	0.4
soybeans	0.2

(b) A tolerance that expires on July 15, 1994 is established for the combined residues of the insecticide thiodicarb (dimethyl *N,N'*-[thiobis [[(methylimino) carbonyloxy]] bis[ethanimidothioate]) and its metabolite methomyl (*S*-methyl *N*-[(methylcarbamoyl)oxy]thioacetimidate) in or on the following raw agricultural commodity crop group:

Commodity	Parts per million
Leafy vegetables	35 ppm

[FR Doc. 92-1072 Filed 1-14-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-594; RM-7142, RM-7318]

Radio Broadcasting Services; Harrisburg and Albemarle, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of York David Anthony, allots Channel 224A to Harrisburg, North Carolina, as the community's first local FM service. See 55 FR 882, published May 12, 1990. Channel 224A can be allotted to Harrisburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) northwest to avoid short-spacings to Station WKRR, Channel 222C, Asheboro, North Carolina, and Station WZNS, Channel 225C, Dillon, South Carolina, at coordinates North Latitude 35-20-28 and West Longitude 80-41-30. The counterproposal of Piedmont Crescent Communications, Inc., requesting the substitution of Channel 264A for Channel 265A at Albermarle, the reallotment of Channel 264A to Harrisburg, and the modification of its license for Station WABZ-FM to specify Harrisburg as its community of license, is denied. With this action, this proceeding is terminated.

DATES: Effective February 24, 1992. The window period for filing applications will open on February 25, 1992, and close on March 26, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-594, adopted December 31, 1991, and released January 9, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Harrisburg, Channel 224A.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-1104 Filed 1-14-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-384; RM-6984, RM-7205]

Radio Broadcasting Services; Epworth and Dyersville, IA, and Dodgeville, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 247C3 to Epworth, Iowa, in response to a request filed by Margaret Keefer. See 54 FR 37669, September 12, 1989. The allotment of Channel 247C3 to Epworth was that community's first local transmission service. Accordingly, that allotment was preferred over a counterproposal that requested an upgrade of allotted Channel 257A at Dodgeville, Wisconsin. Commission priorities require that first local service be favored over an upgrade in a community which already has a first local service. The coordinates for the Epworth allotment are 42-26-42 and 90-55-55. With this action the proceeding is terminated.

EFFECTIVE DATE: February 24, 1992. The window period for filing applications for Channel 247C3 at Epworth will open on February 25, 1992, and close on March 26, 1992.

FOR FURTHER INFORMATION CONTACT: Belford V. Lawson, III, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-384, adopted December 31, 1991, and released January 9, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Channel 247C3, Epworth.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-1105 Filed 1-14-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-563; RM-6078, RM-6710]

Radio Broadcasting Services; Heber Springs and Newport, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes Channel 244C2 for Channel 264A at Newport, Arkansas, and Channel 264C2 for Channel 244A at Heber Springs, Arkansas, and modifies the licenses of Station KOKR(FM), Newport, Arkansas, and Station KAWW-FM, Heber Springs, Arkansas, accordingly, to specify operation on the higher class channels. See 55 FR 17438, April 25, 1990. Channel 244C2 can be allotted at Newport at a restricted site 17.3 kilometers (10.7 miles) southwest at coordinates 35-29-00 and 91-22-30. Channel 264C2 can be allotted at Heber Springs at a restricted site 6.2 kilometers (4.2 miles) south at coordinates 35-25-52 and 92-01-54. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 21, 1992.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Report and Order, MM Docket No. 87-563, adopted December 30, 1991, and released January 7, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 264A and adding Channel 244C2 at Newport, and by removing Channel 244A and adding Channel 264C2 at Heber Springs.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-1101 Filed 1-14-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-406; RM-6745, RM-7255]

Radio Broadcasting Services; Grenada, Artesia and Okolona, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 261C2 for Channel 261A at Grenada, Mississippi, and modifies the license of Station WQXB(FM) to specify operation on the higher class channel in response to a joint petition filed by Chatterbox, Inc. and WYS, Inc. See 54 FR 40138, September 29, 1989. In addition, this action substitutes Channel 260C2 for Channel 261A at Artesia, Mississippi, and modifies the license of Station WZIX(FM) accordingly. Finally, this action allots Channel 289A to Okolona, Mississippi, as that community's first local broadcast service. The coordinates for Channel 261C2 at Grenada are North Latitude 33-43-08 and West Longitude 90-01-56. The coordinates for Channel 260C2 at Artesia are North Latitude 33-41-00 and West Longitude 88-36-48. The coordinates for Channel 289A at Okolona are North Latitude 33-57-51 and West Longitude 88-44-41. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 21, 1992; the window period for filing applications will open on February 24, 1992, and close on March 25, 1992.

FOR FURTHER INFORMATION CONTACT: Arthur Scrutchins, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-406, adopted December 30, 1991, and released January 7, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 261A and adding Channel 261C2 at Grenada, by removing Channel 261A and adding Channel 260C2 at Artesia, and by adding Channel 289A, Okolona.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-1100 Filed 1-14-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-179; RM-7734]

Radio Broadcasting Services; Bixby, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John M. Singer, substitutes Channel 287C3 for Channel 287A at Bixby, Oklahoma, and modifies his construction permit for Station KBXT-FM to specify operation on the higher class channel. See 56 FR 30374, July 2, 1991. Channel 287C3 can be allotted to Bixby in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 35-56-30 and West Longitude 95-52-48. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 21, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-179, adopted December 30, 1991, and released January 8, 1992. The full text of this Commission decision is available for inspection and copying during

normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 287A and adding Channel 287C3 at Bixby.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–1102 Filed 1–14–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–276; RM–7804]

Radio Broadcasting Services; Belton, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sheldon Communications, Inc., licensee of Station KOOC(FM), Channel 292A, Belton, Texas, substitutes Channel 292C3 for Channel 292A at Belton, and modifies KOOC(FM)'s license to specify operation on the higher powered channel. See 56 FR 50550, October 7, 1991. Channel 292C3 can be allotted to Belton in compliance with the Commission's minimum distance separation requirements and can be used at Station KOOC(FM)'s licensed site. The coordinates for Channel 292C3 are 31–03–46 and 97–31–54. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–276, adopted January 3, 1992, and released January 9, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 292A and adding Channel 292C3 at Belton.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–1103 Filed 1–14–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–296; RM–8090]

Radio Broadcasting Services; Christiansted, Virgin Islands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228B in lieu of Channel 228A at Christiansted, Virgin Islands, and modifies the construction permit for Station WAVI, Christiansted, Virgin Islands, to specify operation on Channel 228B. The reference coordinates for the Channel 228B allotment at Christiansted, Virgin Islands, are 17–44–07 and 64–40–12. With this action, the proceeding is terminated.

EFFECTIVE DATE: February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–296, adopted December 30, 1991, and released January 9, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 316.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virgin Islands, is amended by removing Channel 228A and adding Channel 228B at Christiansted.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–1106 Filed 1–14–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89–18; Notice 7]

RIN 2127–AE31

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: On April 23, 1991, NHTSA published a final rule which amended Safety Standard No. 205, *Glazing Materials*, to permit three new items of glass-plastic glazing in motor vehicles. One of these, Item 15A, Annealed glass-plastic glazing, was permitted to be used anywhere in a motor vehicle except the windshield. It was not, however, permitted for convertibles. In response to a petition for reconsideration from General Motors, this notice amends Standard No. 205 to remove the standard's prohibition of Item 15A glazing for convertibles. The notice also makes a technical amendment to the standard to permit the use of Item 14 glass-plastic glazing for side and rear windows in convertibles.

DATES: The amendments in this final rule are effective February 14, 1992.

Petitions for reconsideration of this final rule must be filed by February 14, 1992.

ADDRESSES: Petitions for reconsideration should refer to the above docket and notice numbers and be submitted to the following: Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested that 10 copies must be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Clark Harper, Office of Vehicle Safety Standards, NRM–12, room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–2264).

SUPPLEMENTARY INFORMATION: Safety Standard No. *Glazing Materials*, specifies performance requirements for the types of glazing that may be installed in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be installed. One type of glazing addressed in Standard No. 205 is glass-plastic glazing, a laminate of one or more layers of glass and one or more layers of plastic. It is installed so that a glass layer faces outward and a plastic layer inward.

On April 23, 1991, NHTSA published in the **Federal Register** (56 FR 18526) a final rule permitting three new items of glass-plastic glazing. One of these, Item 15A, Annealed glass-plastic glazing, was permitted to be used anywhere in a motor vehicle except the windshield. It was not, however, permitted for convertibles. The other two items were only permitted to be used in areas not requisite for driving visibility. NHTSA stated that it believed the addition of the three new types of glazing to Standard No. 205 would facilitate the use of glass-plastic glazing in all glazing locations in a motor vehicle, and that it encourages greater use of glass-plastic glazing because of its proven injury-reduction capabilities in crashes.

In prohibiting the use of Item 15A glazing for convertibles, NHTSA followed the same approach it had used earlier for Item 14 glazing, the first type of glass-plastic glazing permitted to be used in areas requisite for driving visibility. The final rule permitting the use of Item 14 glazing was published in the **Federal Register** (48 FR 52061) on November 16, 1983.

NHTSA prohibited the use of Item 14 glazing in convertibles because of concern about possible discoloration of the glazing. In the November 1983 notice, the agency noted that the plastic side of glass-plastic glazing is susceptible to chemical alteration (becoming yellow or cloudy) when exposed to intense and prolonged ultraviolet light. In addressing the use of Item 14 glazing in convertibles, NHTSA stated the following:

> The agency is, however, concerned about the potential exposure of the plastic side of the windshield in convertibles and vehicles that have no or removable tops. While the agency believes that a prolonged test directing ultraviolet radiation against the plastic side of the glazing would be overly stringent, it does believe that it may be appropriate to set some requirement for directing ultraviolet radiation against the plastic-side of glass-plastic glazing for use in convertibles or cars with no or removable tops. At this time, the agency lacks the necessary data to support such requirement. As an interim solution, the agency has decided to prohibit the use of glass-plastic glazing in those vehicles until such data are available. 48 FR 52062.

In following this same approach for Item 15A glazing, NHTSA stated the following in its April 1991 notice:

> The NPRM did not explicitly state that Item 15 is prohibited in convertible-type vehicles, as is Item 14, to prevent excessive deterioration of glazing in areas requisite for driving visibility due to ultraviolet radiation. The final rule [makes] explicit the agency's intent in [this area]. 56 FR 18530.

General Motors (GM) submitted a petition requesting that NHTSA reconsider its prohibition of Item 15A glazing in convertibles. GM stated that it believes Item 15A glazing would not be exposed to significantly greater amounts of ultraviolet light directed against the plastic side in convertibles than in non-convertibles. That company stated that it believes convertibles are typically operated with the side windows in the open (i.e., down) position, and that, similarly, rear windows are typically part of the removed or stowed roof. Therefore, according to GM, side and rear windows in convertibles are not likely to be exposed to significantly more ultraviolet light when the roof is removed or stowed.

GM also argued that the prohibition of Item 15A glazing for convertibles could discourage development of market-feasible glass-plastic glazing. That company noted that, in some cases, the same glazing material is used in both the base and convertible versions of the same model. According to GM, a vehicle manufacturer wanting to use glass-plastic glazing in the base (i.e., non-convertible) version might be discouraged by the added cost of developing different glazing materials for base and convertible versions.

After considering GM's petition, NHTSA has decided to amend Standard No. 205 to remove the standard's prohibition of Item 15A glazing for convertibles. The agency is persuaded that possible discoloration of glazing resulting from direct sunlight on the inside, plastic side of the glazing is not a significant concern for glazing areas other than the windshield. (As indicated above, Item 15A glazing is not permitted to be used for the windshield of any vehicles.) NHTSA agrees that convertibles are typically driven either with the top up or, when the top is down, with the side windows down and the rear window removed. Thus, the inside, plastic side of Item 15A glazing on the side windows or rear window of convertibles is not likely to be exposed to significantly more ultraviolet light than the same glazing on non-convertibles. NHTSA has therefore determined that its rationale for prohibiting the use of glass-plastic glazing for convertibles is not valid for side windows and the rear window.

NHTSA notes that, in the rulemaking concerning Item 14 glazing, it was generally understood that Item 14 glazing was intended to be used for windshields. Therefore, the agency's analysis for convertibles of possible discoloration resulting from direct sunlight on the plastic side of the glazing focused on windshields. While NHTSA is unaware of any manufacturer plans to use Item 14 glazing for side or rear windows, the agency recognizes that its conclusions about the inappropriateness of prohibiting Item 15 glazing for side and rear windows of convertibles is equally applicable to Item 14 glazing. Therefore, the agency is making a technical amendment to Standard No. 205 to permit the use of Item 14 glazing for convertible side and rear windows.

In its petition, GM also requested clarification of certain wording of Standard No. 205. The issue raised by GM concerning this language was subsequently addressed by NHTSA in a correction notice published in the **Federal Register** (56 FR 49148) on September 27, 1991.

This rule relieves restrictions in Standard No. 205 by permitting the use of two items of glass-plastic glazing in convertible side and rear windows. Manufacturers are not required to use these items of glass-plastic glazing. Because the rule relieves restrictions and facilitates the use of glass-plastic glazing in motor vehicles, NHTSA finds for good cause that the rule should become effective 30 days after it is published.

Rulemaking Analyses

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this final rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This final rule does not require the use of glass-plastic glazing but instead removes the prohibition of using two items of glass-plastic glazing for convertible side and rear windows. No additional required costs are imposed on manufacturers or consumers. The agency has determined that the economic effects of this rule are so minimal that a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this final rule would not have a significant economic impact on a substantial number of small entities. As indicated above, this final rule does not require the use of glass-plastic glazing but instead removes the prohibition of using two items of glass-plastic glazing for convertible side and rear windows. No additional required costs are imposed on manufacturers or consumers. Therefore, this rule will not have a significant economic impact on small businesses manufacturing glazing or vehicles, or on small businesses, small organizations and small governmental units purchasing glazing or new vehicles.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the final rule has no Federalism implications that warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this final rule. The agency has determined that this final rule does not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.205 [Amended]

2. In § 571.205, S5.1.2.4 and S5.1.2.5 are revised to read as follows:

* * * * *

S5.1.2.4. Item 14—*Glass Plastics.* Glass-plastic glazing materials that comply with the labeling requirements of S5.1.2.10 and Test Nos. 1, 2, 3, 4, 9, 12, 15, 16, 17, 18, 19, 24, 26, and 28, as those tests are modified in S5.1.2.9, *Test Procedures for Glass-Plastics,* may be used anywhere in a motor vehicle, except that it may not be used in windshields of any of the following vehicles: convertibles, vehicles that have no roof, vehicles whose roofs are completely removable.

S5.1.2.5. *Item 15A—Annealed Glass-Plastic for use in all Positions in a Vehicle Except the Windshield.* Glass-plastic glazing materials that comply with Test Nos. 1, 2, 3, 4, 9, 12, 16, 17, 18, 19, 24, and 28, as those tests are modified in S5.1.2.9, *Test Procedures for Glass-Plastics,* may be used anywhere in a motor vehicle except the windshield.

* * * * *

Issued on January 9, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-1007 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 920109-2009]

Foreign Fishing; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of 1992 groundfish fishery specifications and management measures, and request for comments.

SUMMARY: NOAA announces the 1992 specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California under the Pacific Coast Groundfish Fishery Management Plan (FMP). The specifications include the level of the acceptable biological catch, harvest guidelines and quotas, and their distribution between domestic and foreign fishing operations. The management measures for 1992 are designed to keep landings within the harvest guidelines or quotas, if any, and to achieve the goals and objectives of the FMP and its implementing regulations. These actions are authorized by the regulations implementing the FMP. The intended effect of these actions is to establish allowable harvest levels of Pacific coast goundfish and to implement management measures designed to achieve but not exceed those harvest levels.

EFFECTIVE DATES: January 1, 1992, until modified, superseded, or rescinded. Comments will be accepted until January 30, 1992.

ADDRESSES: Comments on these actions should be sent to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or Mr. E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206-526-6140; or Rodney R. McInnis (Southwest Region, NMFS) 213-514-6199.

SUPPLEMENTARY INFORMATION: The FMP, as amended, requires that management specifications for groundfish be evaluated each calendar year, that harvest guidelines or quotas be specified for species or species groups in need of additional protection, and that management measures designed to achieve the harvest guidelines or quotas be published in the **Federal Register** and implemented by January 1, the beginning of the next fishing year.

This **Federal Register** notice announces the final specifications and management measures recommended by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) for implementation effective January 1, 1992. The specifications and management measures announced herein may be modified during the year

according to the procedures of Amendment 4 to the FMP.

Amendment 4 to the FMP established a process which provides for announcement of the final specifications in the **Federal Register** after full public participation and deliberation at two meetings of the council. The process for adopting acceptable biological catch (ABC) levels, harvest guidelines and quotas for 1992 was initiated early in 1991 so that preliminary specifications could be adopted by the Council at its September 1991 meeting. New stock assessments, the basis for changes to the 1991 ABCs, were distributed to the public prior to the September meeting. The documents were reviewed and commented upon by the Council's scientific and industry advisory committees and by the public. After receiving the comments, the Council adopted the preliminary ABCs and harvest guidelines at the September Council meeting, which were distributed to the public by a Council mailing to interested individuals, including a request for comments before and during the November Council meeting. The final recommendations of harvest specifications, and management measures designed to achieve those specifications, adopted at the November Council meeting were forwarded to the Secretary for implementation by January 1, 1992.

The ABCs and harvest guidelines announced herein are the basis for the management measures recommended for 1992. All of the management measures announced in this notice are considered "routine," and have been so designated at 50 CFR 663.23.

I. Final Specifications of ABC, Harvest Guidelines and Quotas, and Apportionments to DAP, JVP, DAH, and TALFF

The management specifications include the ABC, the designation and amounts of harvest guidelines or quotas for species that need individual management, and the apportionment of the harvest guidelines or quotas between domestic and foreign fisheries. For those species needing individual management that will not be fully utilized by domestic processors or harvesters, or that can be caught without severely impacting species that are fully utilized by domestic processors or harvesters, the harvest guidelines or quotas may be apportioned to domestic annual harvest (DAH, which includes domestic annual processing (DAP) and joint venture processing (JVP)) and the total allowable level of foreign fishing (TALFF).

The final 1992 management specifications are listed in Tables 1 and 2, followed by a discussion of each species with an ABC, harvest guideline, or quota that differs from 1991.

As in the past, these specifications include fish caught in state ocean waters (0–3 nautical miles offshore) as well as fish caught in the exclusive economic zone (EEZ, 3–200 nautical miles offshore).

TABLE 1.—FINAL SPECIFICATIONS OF ABC FOR 1992 FOR THE WASHINGTON, OREGON, AND CALIFORNIA REGION BY INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION AREAS

[In thousands of metric tons]

Species	Area					
	Vancouver [1]	Columbia	Eureka	Monterey	Conception	Total
Roundfish:						
Lingcod	1.0	4.0	0.5	1.1	0.4	7.0
Pacific cod			([2])	([2])	([2])	3.2
Pacific whiting						[3] 232.0
Sablefish						[4] 6.9
Jack mackerel						[5] 52.6
Rockfish:						
Pacific Ocean perch	0.0	0.0	([2])	([2])	([2])	0.0
Shortbelly						[4] 13.0
Widow						[4] 7.0
Thornyheads:						
Shortspine		([6])	([6])	([6])		1.8
Longspine		([6])	([6])	([6])		10.1
Sebastes complex:						
Bocaccio	([2])	([2])	([6])	([6])	([6])	0.8
Canary	0.8	1.5	0.6	([2])	([2])	2.9
Chilipepper						[4] 3.6
Yellowtail	1.3	3.1	0.3	([2])	([2])	4.7
Remaining rockfish	0.8	3.7	1.9	4.3	3.3	14.0
Flatfish:						
Dover sole	2.4	6.1	4.9	5.0	1.0	19.4
English sole						[4] 1.9
Petrale sole	0.6	1.1	0.5	0.6	0.2	3.2
Arrowtooth						([7])
Other flatfish	0.7	3.0	1.7	1.8	0.5	7.7
Other Fish [8]	2.5	7.0	1.2	2.0	2.0	14.7

[1] U.S. portion, except for Pacific whiting.
[2] These species are not common or important in the areas footnoted. Rockfish species with this footnote are included in the "remaining rockfish" category for the areas footnoted only. Other groundfish species with this footnote are included in the "other fish" category for the areas footnoted.
[3] ABC for the U.S. and Canada combined.
[4] Total—all INPFC areas off Washington, Oregon, and California.
[5] Includes area beyond the EEZ (200 nm), and in the EEZ north of 39° N. latitude. The FMP governs only jack mackerel in the EEZ north of 39° N. latitude.
[6] The ABC is for these areas combined. For bocaccio, the Eureka area contribution is small.
[7] Pending.
[8] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, and groundfish species (except rockfish) in those areas designated by footnote 2

TABLE 2.—FINAL HARVEST GUIDELINE (HG) SPECIFICATIONS AND THEIR APPORTIONMENT TO DAP, JVP, DAH, AND TALFF IN 1992

[In thousands of metric tons]

Species	HG	DAP	JVP [1]	DAH	Reserve	TALFF [1]
Pacific whiting	[2] 208.8	208.8	0.0	208.8	0.0	0.0
Shortbelly rockfish	13.0	13.0	0.0	13.0	0.0	0.0
Jack mackerel	[3] 46.5	46.5	0.0	46.5	0.0	0.0
Sablefish	[4] 8.9	8.9	0.0	8.9	0.0	0.0
Pacific ocean perch	[5] 1.55	[5] 1.55	0.0	[5] 1.55	0.0	0.0
Widow rockfish	7.0	7.0	0.0	7.0	0.0	0.0
Bocaccio	[6] 1.0	1.0	0.0	1.0	0.0	0.0
Yellowtail rockfish	[7] 4.0	4.0	0.0	4.0	0.0	0.0
Thornyheads	[8] 7.0	7.0	0.0	7.0	0.0	0.0
Dover sole	[4] 19.4	19.4	0.0	19.4	0.0	0.0
Sebastes complex	[7] 8.0	8.0	0.0	8.0	0.0	0.0

[1] In the event of foreign trawl or joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: Sablefish 0.173 percent; Pacific ocean perch 0.062 percent; rockfish excluding Pacific ocean perch 0.738 percent; flatfish 0.1 percent; jack mackerel 3.0 percent; and other species 0.5 percent. In foreign trawl and joint venture fisheries, "other species" means all species, including nongroundfish species, except Pacific whiting, sablefish, Pacific ocean perch, other rockfish (that is, rockfish excluding Pacific ocean perch), flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See 50 CFR 611.70(c) for application of incidental retention allowance percentages to joint venture fisheries.

[2] U.S. only, based on 90 percent of the 232,000 mt ABC for the U.S. and Canada combined.

[3] The harvest guideline for jack mackerel north of 39° N. latitude is derived by subtracting the potential harvest outside of 200 nm (6,100 mt) from the 52,600 mt ABC that applies both inside and outside of 200 nm.

[4] Sablefish, thornyheads, and Dover sole may be managed together as the "deepwater complex." The sablefish trawl and nontrawl allocations also are harvest guidelines. (See the section on trawl and nontrawl sablefish management for 1992.)

[5] The harvest guideline for Pacific ocean perch applies to the Vancouver and Columbia areas combined.

[6] The harvest guideline for bocaccio applies to the Eureka, Monterey, and Conception areas.

[7] The harvest guidelines for yellowtail rockfish are 4,000 mt for the Vancouver and Columbia areas north of Cape Lookout, and 1,400 mt for the Eureka and Columbia areas south of Cape Lookout. The harvest guideline for the *Sebastes* complex in the Vancouver and Columbia areas north of Cape Lookout is 8,000 mt.

[8] The harvest guideline for thornyheads includes both shortspine and longspine thornyheads in the Columbia, Eureka, and Monterey areas.

ABCs

The 1992 final ABCs are changed from the 1991 levels for the following species: Pacific whiting, thornyheads, yellowtail rockfish, and Dover sole. (Although no ABC is yet available for arrowtooth flounder, it is listed separately in Table 1 to indicate its importance as a flatfish species.) These changes are based on the best available scientific information. The documents considered in making these recommendations are available from the Council (see ADDRESSES), and were distributed to the public in the Council's stock assessment and fishery evaluation (SAFE) document. The SAFE document, required under the Guidelines for Fishery Management Plans at 50 CFR part 602, summarizes the best available scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

Pacific Whiting

Based on a new stock assessment, the Council adopted a 1992 ABC for the United States and Canada combined of 232,000 metric tons (mt), 8 percent lower than the 253,000 mt combined ABC in 1991. This ABC is based on a hybrid fishing strategy that combines the features of a constant fishing mortality (F) strategy and a variable F strategy where fishing mortality for a particular year is proportional to the level of female spawning biomass. Potential yield was estimated at low, moderate, and high harvest rates. The Council selected the moderate harvest rate, resulting in the 232,000 mt ABC.

Thornyheads

For the first time, separate ABCs were developed for shortspine and longspine thornyheads (1,900 mt and 10,100 mt, respectively). Estimates of thornyhead abundance were developed from recent trawl surveys in the Columbia and Eureka areas, and were expanded to include the Monterey area.

Yellowtail Rockfish

A rounding error in the 1991 specification was corrected, resulting in an increase of 100 mt in the ABC for the Vancouver area and for the total in 1992.

Dover Sole

A new stock assessment for the Eureka area was prepared which includes information from the 1990 trawl survey. The 1992 ABC for this area, 4,900 mt, is 3,100 mt lower than the 1991 ABC of 8,000 mt, but greater than the 1990 catch of 3,500 mt. As a result, the 1992 coastwide ABC is adjusted to 19,400 mt.

Harvest Guidelines and Quotas

Those species or species groups with harvest guidelines in 1991 will continue to be managed with harvest guidelines in 1992. In addition, Pacific whiting, shortbelly rockfish, and jack mackerel, which had quotas in 1991 because of the possibility of foreign or joint venture fisheries, will be available only for domestic harvest and processing in 1992, and will be managed with harvest guidelines as contemplated in the FMP. The trawl and nontrawl gear allocations for sablefish, which were quotas in the past, also will be specified as harvest guidelines. This is done so that the Council's goal of providing very small trip limits until the end of the year will not be compromised by premature closure of the fishery due to difficulties in estimating landings, as occurred in the nontrawl sablefish fishery in 1991.

If a harvest guideline is projected to be exceeded, the Council's Groundfish Management Team (GMT) is required to evaluate current data to determine if a resource conservation issue exists, and if so, to provide a recommendation for addressing the issue.

In most cases, harvest guidelines equal the ABCs, or prorated ABCs, for the areas that are included. However, the Council recommended harvest guidelines that exceed the ABCs for Pacific ocean perch (POP), yellowtail rockfish, and bocaccio. It does not, however, exceed the overfishing level for any of these species. The harvest guideline for thornyheads is lower than the aggregate ABCs, but nonetheless may result in landings above the ABC for shortspine thornyheads.

The FMP requires that certain factors be considered when setting a harvest guideline above an ABC. These factors are: Exploitable biomass and spawning biomass relative to maximum sustainable yield (MSY) levels; fishing mortality rate relative to MSY; if part of

a multispecies fishery, the relative contribution of the species to the total catch; the impact, if any, of the increase on other groundfish species groups; the magnitude of incoming recruitment, the impact of harvest higher than ABC on the potential for future harvest to achieve the goals and objectives of the FMP. Except for POP which already is managed according to a rebuilding schedule set forth in the FMP, these criteria were considered at the November 1991 Council meeting in setting the harvest guidelines for 1992, and are available in Council documents and the transcript of the November meeting.

The FMP also defines "overfishing" as a fishing mortality rate that would reduce spawning biomass per recruit below 20 percent of its unfished limit (unless the species is above the level that would produce the maximum sustainable yield (MSY)). If the overfishing level is reached, the Guidelines for Fishery Management Plans at 50 CFR part 602 require the Council to identify actions to be undertaken to alleviate overfishing. In 1991, two species, bocaccio and shortspine thornyhead are projected to exceed their respective levels of overfishing, bocaccio by 15 percent and shortspine thornyheads by 6 percent. The Council has recommended a number of actions, which are referenced below and in the section on management measures, to avoid reaching the overfishing level for these two species in 1992.

POP

The 1992 harvest guideline for POP is adjusted upward to 1,550 mt from 1,000 mt in 1991 even though the ABC remains at zero. As for the last several years, the harvest guideline, in conjunction with a trip limit, is necessary to accommodate only incidental catches of POP. The incidental catch of POP in 1992 is estimated to be approximately 1,550 mt. This harvest guideline also is consistent with the 1,550-mt quota established in the original FMP to achieve the 20-year rebuilding schedule for POP.

Yellowtail Rockfish and the Sebastes Complex

In previous years, the harvest guidelines for yellowtail rockfish and the *Sebastes* complex applied to the Vancouver and Columbia areas. In 1992, the Council recommended two harvest guidelines for yellowtail rockfish, splitting the Columbia area at Cape Lookout, Oregon: 4,000 mt north of Cape Lookout, Oregon (which includes the Vancouver and northern Columbia areas), and 1,400 mt south of Cape Lookout (which includes the southern Columbia and Eureka areas). These harvest guidelines together are 700 mt higher than the 4,700-mt ABC for yellowtail rockfish in the Vancouver, Columbia, and Eureka areas (600 mt north of Cape Lookout, 100 mt south of Cape Lookout).

The Council recommended that the harvest guideline exceed ABC because it felt the ABC recommended by the GMT was extremely conservative. The 1990 stock assessment, which found the stock biomass stable and near the MSY level, noted an absence of older female yellowtail rockfish in trawl landings. This could be due to two scenarios: (1) Those fish are still alive but are not available to fishing gear (the optimistic model); (2) adult female fish die at an earlier age than males (the pessimistic model). The ABC, although based on the best available scientific information, is at the low end of the range generated by the pessimistic model, a very conservative recommendation. The Council feels there is sufficient uncertainty about the older female fish to recommend a slightly less conservative harvest guideline. The recommended harvest guideline is halfway between the lower end and midpoint of the ABC range derived from the pessimistic model.

The *Sebastes* complex, which includes yellowtail rockfish, has been managed to reduce the harvest of yellowtail rockfish. To accomplish this, the harvest guideline for the *Sebastes* complex has been applied to the same area where individual trip limits were applied for yellowtail rockfish. Therefore, since individual trip limits for yellowtail rockfish will be applied only north of Cape Lookout in 1992 (see section II, Management Measures), the harvest guideline for the *Sebastes* complex also will apply to that area. The 1992 harvest guideline of 8,000 mt, which in 1991 was the sum of the ABCs of the species in the complex, includes the 600 mt by which the harvest guideline exceeds the ABC for yellowtail rockfish north of Cape Lookout.

Bocaccio

The harvest guideline for bocaccio (which applies to the Eureka, Monterey, and Conception areas) is reduced from 1,100 mt in 1991 to 1,000 mt in 1992. The harvest guideline, although above the 800-mt ABC, is lower than the annual harvest levels of about 2,000 mt from 1985–1990, and is consistent with the Council's policy of gradually reducing harvest levels to mitigate economic impacts. The overfishing level for bocaccio is 1,300 mt in both 1991 and 1992. The projected catch estimate for 1991 suggests that the bocaccio harvest may reach 1,500 mt in 1991, exceeding the level of overfishing. The 5,000-pound trip limit was not reduced further in 1991 because most bocaccio are landed in small trips that would not have been affected by a reduction in trip limits without resulting in a disproportionately high increase in discards, negating the benefit of the reduced trip limit.

To reduce landings in 1992, the Council has recommended that: (1) The harvest guideline be reduced by 100 mt; (2) a cumulative trip limit for all landings of bocaccio be applied, which is more restrictive than the 1991 trip limit of 5,000 pounds per trip (see Section II, Management Measures); and (3) that the mesh size for roller gear in the Vancouver, Columbia, and Eureka areas be increased (implementation of the final rule is expected in January 1992). Furthermore, the Council is completing development of a license limitation program which is intended to reduce effort and competition in the groundfish fishery, but this program has not yet been submitted to and approved by the Secretary and would not be implemented before 1994.

Thornyheads

The 7,000-mt harvest guideline for thornyheads includes both shortspine and longspine thornyheads combined, and is 42 percent less than the sum of the ABCs for the two species (1,900 mt and 10,100 mt, respectively). Although the ABCs for these two species are quite different, both species are unavoidably caught together and in approximately equal proportions. Therefore, a harvest guideline of 7,000 mt is expected to result in catches of about 3,500 mt for each species. Consequently, longspine thornyhead will be harvested below its ABC and shortspine thornyhead will be harvested above its ABC, but just below its overfishing level of 3,536 mt in 1992.

The projected catch estimate for 1991 suggests that shortspine thornyheads may be fished at 3,760 mt, about 200 mt above the overfishing level. To lower harvest levels of shortspine thornyheads in 1992, the Council has recommended: (1) An aggregate harvest guideline of 7,000 mt that is less than the 12,000-mt sum of the ABCs for the individual species, and 1,900 mt lower than in 1991; (2) a cumulative trip limit (of 25,000 pounds in a 2-week period) that is intended to account for all harvest of this species and discourage discards (see section II, Management Measures); and (3) an increase in the minimum mesh size for roller trawl gear in the Vancouver, Columbia, and Eureka subareas (implementation of the final

rule is expected in January 1992). The GMT advised that even if the actual catch of shortspine thornyheads is 4 percent of stock abundance, (about 3,600 mt) in 1992, "the change in status of the stock in 1992 will be small and unmeasurable," and that exceeding the ABC in 1992 will not stress the stock.

Pacific Whiting

The U.S. and Canadian governments were unable to agree on the appropriate levels of harvest by each country for this transboundary stock. In 1991, as much as 129 percent of the combined ABC may be taken by both countries. The U.S. quota (228,000 mt) was based on 90 percent of the U.S.-Canada ABC of 253,000 mt, whereas Canada based its quota (98,000 mt) on 30 percent of the expected total catch. Whereas the United States offered to lower its harvest from 90 percent of the U.S.-Canada ABC in 1991 to 80 percent in 1992, Canada wanted to maintain its catch at 30 percent or more of the total harvest. Lacking agreement with Canada, the Council recommended that the U.S. share remain at 90 percent of the U.S.-Canada aggregate ABC of 232,000 mt, which results in a harvest guideline of 208,800 mt for the U.S. portion in 1992. The Chairman of the GMT testified to the Council at its November meeting that exceeding the U.S.-Canada ABC by 29 percent in 1992, as in 1991, will not result in overfishing in 1992. It is, however, expected to result in reduced ABCs in the future.

The Secretary concurs with the Council's recommendation. Only part of the stock is available in Canadian waters (the larger fish swim farthest north into Canada, whereas smaller fish remain in U.S. waters), and only for part of the year. The entire ABC potentially could be harvested by U.S. fishermen before the stock reaches Canadian waters at the extreme end of its northward migration. If the U.S.-Canada combined harvest exceeds ABC in 1992, then future yield could be reduced. However, overfishing, as defined in the FMP, should not occur in 1992.

Apportionment to DAP, JVP, DAH, and TALFF

JVP and TALFF estimates are made for amounts of groundfish surplus to domestic processing and harvesting needs, but only if that surplus can be harvested without severely impacting another species that is fully utilized by the U.S. industry. In 1992, there are no surplus groundfish available for joint venture or foreign fishing operations. Consequently, the harvest guidelines in 1992 are designated entirely to DAP (which also equals DAH), and JVP and TALFF are set at zero.

II. 1992 Management Measures

The following management measures for the 1992 groundfish fishery have been designated as "routine." This designation means that the identified management measure has been analyzed previously and may be implemented and adjusted for a specified species or species groups and gear type after consideration at a single Council meeting and after announcement in the **Federal Register**, as long as the purpose of the limit is the same as originally established when these species and gears were designated as routine.

Cumulative Trip Limits

Trip limits will continue in 1992, with some modifications. In 1991, trip frequency limits often were used, which limited the number of landings (above a specified number of pounds) that could be made weekly, biweekly (in two-weeks), or twice-weekly. The Council did not recommend trip frequency limits for the beginning of 1992, except for daily landing limits for sablefish caught with nontrawl gear at certain times of year. Instead, the Council recommended cumulative trip limits which specify the total amount of fish that a vessel may land in a specified period of time (initially either two or four-week periods), without a limit on the number of landings that may be made.

Cumulative trip limits are expected to be more effective than trip frequency limits because they will: (1) Reduce trip-limit induced discards—in the past, as trip limits became smaller for most species, discards, generally are believed to have increased because it was more difficult, if not impossible, for fishermen to limit their harvest to such small amounts. By cumulating the amount of fish that may be landed, fishermen will be able to count catches from several trips, or may choose to make fewer, larger trips, reducing the necessity to discard fish caught in excess of a trip limit. Cumulative trip limits may be reduced later in the year if landings are too high. (2) Increase operating flexibility—cumulative trip limits will give fishermen more discretion in choosing the number and amount of trips as long as the cumulative trip limit is not exceeded. This flexibility will accommodate differences in fishing capacity, bad weather, mechanical breakdowns, and other unforeseen occurrences. (3) Enhance compliance—a cumulative limit is easier to compute and understand, and therefore should encourage compliance and facilitate enforcement. The States are expected to require that vessels keep copies of fish landing receipts on board for inspection by authorized enforcement officials. The use of cumulative trip limits applied to specified periods of time removes the need for any kind of prior declaration by vessel owners or operators. (4) Promote equity—previously, landings under a certain tolerance level (usually 3,000 pounds) were not counted toward trip landing and frequency limits. As trip limits were reduced, vessels making small, incidental landings potentially could take more than a vessel targeting on the same species. Under cumulative trip limits, all landings within a specified 2 or 4-week period are counted toward the cumulative limit for the period.

Cumulative trip limits are a slight variation on trip limits used in the past which are already designated as "routine" at 50 CFR 663.23(c)(1)(ii)(A). Cumulative trip limits achieve the same goals, and they discourage discards which often are unrecorded catch. Cumulative trip limits recommended for 1992 are designed to: keep landings within the harvest levels announced by the Secretary of Commerce, extend the fishing season, minimize disruption of traditional fishing and marketing patterns, reduce discards, discourage target fishing while allowing small incidental catches to be landed, and allow small fisheries to operate outside the normal season.

The Sebastes Complex (Including Yellowtail Rockfish and Bocaccio)

The trip limit for yellowtail rockfish (8,000 pounds in a 2-week period) is changed to apply north of Cape Lookout, Oregon, 118 nautical miles north of the north jetty at Coos Bay, Oregon, where the trip limit has been applied since 1985. The change to Cape Lookout is made because: (1) The distribution of yellowtail rockfish north of Coos Bay is far from uniform—yellowtail rockfish are much more abundant north of Cape Lookout; (2) the harvest of yellowtail rockfish south of Cape Lookout is not excessive, and trip limits south of Cape Lookout may have been unnecessarily restrictive; (3) a line at Cape Lookout would not be very disruptive to fishing patterns since it is an area of low fishing effort for any port; and (4) the change in statistical boundary will not create a recordkeeping problem for the State of Oregon. Accordingly, the 1991 landing frequency restrictions (including the tolerance for landings of yellowtail rockfish less than 3,000 pounds), and the biweekly and twice-weekly trip limit

options north of Coos Bay no longer apply in 1992.

Similarly, the cumulative trip limit for bocaccio (10,000 pounds in a 2-week period) is applied south of Cape Mendocino (the Monterey and Conception INPFC areas) rather than coastwide for much the same reasons: to restrict landings in the area where that species is most prevalent and where the fishery is most likely to occur. However, the data for bocaccio are not as complete as for yellowtail rockfish, and this provision may need to be modified in the future. In 1991, bocaccio was managed by a 5,000-pound trip limit, with no limit on the number of landings.

In the past, trip landing and frequency limits for the *Sebastes* complex (and yellowtail rockfish) were different north and south of Coos Bay. The State of Oregon required notification if a vessel fished both north and south of Coos Bay, or if it fished on one side and landed on the other. The Council recommended that this procedure be simplified, and the State notifications removed, so that the trip limit where the fish are landed is applied. The "lines" separating the different trip limits in 1992 (Cape Lookout, Oregon, for yellowtail rockfish and Cape Mendocino, California, for bocaccio) were selected with the understanding that few fishermen, if any, will have the incentive to fish in an area of restrictive management and land where limits are more liberal. If problems occur, this provision may be modified in the future.

The trip limit for the *Sebastes* complex (50,000 pounds in a 2-week period), which includes yellowtail rockfish and bocaccio as well as most other rockfish species, is changed so that it is cumulative (like yellowtail and bocaccio) and consistent coastwide. In 1991, the *Sebastes* complex was subject to trip frequency limits north of Coos Bay (like yellowtail rockfish), and a trip landing limit in southern waters.

Widow Rockfish

The cumulative trip limit for widow rockfish is 30,000 pounds in a 4-week period. A 4-week rather than 2-week period is used to accommodate the large catches that sometimes occur with midwater trawl gear. Widow rockfish aggregate in large schools, and large catches can occur in a number of minutes. Accordingly, the 1991 landing frequency provisions (including the tolerance for landings less than 3,000 pounds), and biweekly trip limit options no longer apply in 1992.

Pacific Ocean Perch

The trip limit for POP is the same as in 1991: 3,000 pounds or 20 percent of all fish on board, whichever is less, in landings of POP above 1,000 pounds. This is not a cumulative limit because it is intended to accommodate only incidental catches. It therefore applies to each fishing trip.

Deepwater Complex (Thornyheads, Dover Sole, and Trawl-Caught Sablefish)

The cumulative trip limit for the deepwater complex is 55,000 pounds in a 2-week period. Within this, no more than 25,000 pounds cumulative may be thornyheads. However, as in 1991, sablefish cannot exceed 25 percent of any landing of the deepwater complex containing more than 1,000 pounds of sablefish, and, in any landing, no more than 5,000 pounds of sablefish may be smaller than 22 inches. Accordingly, the 1991 landing frequency provisions (including tolerance for landings of the deepwater complex less than 4,000 pounds), and biweekly and twice-weekly trip limit options, do not apply in 1992.

Nontrawl Trip Limits for Sablefish

The level of trip limits in the nontrawl sablefish fishery prior to the relatively unrestricted "regular" season was the subject of considerable debate. These limits are intended to allow small incidental catches to be landed and to allow small fisheries to operate year-round. However, there were fears that too liberal a trip limit would encourage effort at the beginning of the year, which is contrary to the Council's intent. Consequently, the Council recommended a two-tier approach, starting the year with a 500-pound daily trip limit, and increasing the daily trip limit to 1,500 pounds on March 1. (A daily trip limit was recommended to preclude multiple landings from being made in a single day.) If 440 mt (approximately 12 percent of the 3,612 mt designated for nontrawl harvest) is projected to be taken before the regular season begins (April 1, 1992, or later), the 500-pound daily trip limit will be reimposed until the regular season begins. As in the past, a 500-pound daily trip limit will be imposed after the end of the regular season, on the date necessary to extend the nontrawl season as long as possible in 1992.

In 1991, the nontrawl trip limit was 1,500 pounds until the regular season opened on April 1, and was not applied on a daily basis. A 500-pound trip limit was implemented on May 24, and the nontrawl fishery closed on July 1 because its quota was reached. An emergency rule effective September 30 authorized a 300-pound daily trip limit until the end of 1991.

Several additional changes were recommended by the Council that would be implemented by a separate rulemaking, and have not yet been approved or implemented at the time the 1992 trip limits were announced. The Council recommended that the nontrawl fishery be closed for 72 hours before and after the regular season. The idea of such closed periods was proposed by the industry and generally endorsed by public testimony at the November meeting. The closure at the beginning of the season would preclude vessels from taking and retaining sablefish just before the regular season, and therefore would reduce the possibility of unexpectedly high landings in the first week, which can skew catch projections. The first 72-hour closure thus would encourage a "fair start" for the various components of the fleet. The 72-hour closure at the end of the regular season is intended to assist scientists in tabulation of the landings data, and would facilitate enforcement by clearly separating landings for vessels operating in the regular season. The 72-hour closures would not affect the progress of the fishery, would apply to all participants equitably, and would remove the perception of large amounts of fish being taken on board large vessels before the regular season begins. This measure is not routine, but is included in a proposed rule, now under consideration, to change the beginning of the regular season to 3 days prior to the first sablefish opening in Alaska.

Other Management Measures

The commercial trip limits for POP and recreational bag and size limits, which have not changed, are repeated below.

Secretarial Actions

The Secretary concurs with the Council's recommendations, and announces the following management actions:

A. General Definitions and Provisions

The following definitions and provisions apply to the 1992 management measures, unless otherwise specified in a subsequent notice:

(1) *A trip limit* is the total allowable amount of a groundfish species or species complex, by weight, or by percentage of fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(2) *A daily trip limit* is the maximum amount that may be taken and retained, possessed, or landed per vessel from a single fishing trip in 24 consecutive

hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period.

Note.—In recent years, landing frequencies also were limited on a weekly, bi-weekly, and twice-weekly basis (for example, one landing of widow rockfish above 3,000 pounds in a one-week period, not to exceed 10,000 pounds). These landing frequency limits are not used as of January 1, 1992, EXCEPT for small daily trip limits for sablefish caught with nontrawl gear during certain parts of the year, or as otherwise announced later in the year.

(3) *A cumulative trip limit* is the maximum amount that may be taken and retained, possessed or landed per vessel in a specified period of time, without a limit on the number of landings or trips. Cumulative trip limits for 1992 initially apply to 2-week and 4-week periods. The 2-week and 4-week periods in 1992 are as follows, and start at 0001 hours Wednesday and end at 2400 hours Tuesday (local time), except for the last period which includes an extra 2 days to extend to the end of the year:

Two week periods: 1/1–1/14; 1/15–1/28; 1/29–2/11; 2/12–2/25; 2/26–3/10; 3/11–3/24; 3/25–4/7; 4/8–4/21; 4/22–5/5; 5/6–5/19; 5/20–6/2; 6/3–6/16; 6/17–6/30; 7/1–7/14; 7/15–7/28; 7/29–8/11; 8/12–8/25; 8/26–9/8; 9/9–9/22; 9/23–10/6; 10/7–10/20; 10/21–11/3; 11/4–11/17; 11/18–12/1; 12/2–12/15; 12/16–12/31.

Four-week periods: 1/1–1/28; 1/29–2/25; 2/26–3/24; 3/25–4/21; 4/22–5/19; 5/20–6/16; 6/17–7/14; 7/15–7/11; 8/12–9/8; 9/9–10/6; 10/7–11/3; 11/4–12/1; 12/2–12/31.

(4) Unless the fishery is closed, a vessel which has landed its 2-week (or 4-week) limit may continue to fish on the limit for the next 2-week (or 4-week) period so long as the fish are not landed (offloaded) until the next 2-week (or 4-week) period.

(5) All weights are round weights or round weight equivalents.

(6) Percentages are based on round weights, and unless otherwise specified, apply only to legal fish on board.

(7) *Legal fish* means fish taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 663, the Magnuson Act, any notice issued under subpart B of part 663, and any other regulation or permit promulgated under the Magnuson Act.

(8) *Closure*, when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited. (See § 663.2)

(9) The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All groundfish possessed 0–200 nautical miles offshore, or landed in Washington, Oregon, or California are presumed to have been taken and retained from the fishery management area, unless otherwise demonstrated by the person in possession of those fish.

B. Widow Rockfish

No more than 30,000 pounds cumulative of widow rockfish may be taken and retained, possessed, or landed per vessel in a 4-week period. (Widow rockfish also are called brownies.)

A 3,000-pound trip limit may be imposed at such time necessary to extend the fishery to the end of the year.

C. The Sebastes Complex (Including Yellowtail Rockfish and Bocaccio)

(1) *General.* (a) *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and *Sebastolobus* spp. (thornyheads, idiot, or channel rockfish). Yellowtail rockfish (*S. flavidus*) are commonly called greenies. Bacaccio (*S. paucispinis*) are commonly called rock salmon.

(b) Cape Lookout means 45° 20′ 15″ N. latitude.

(c) Cape Mendocino means 40° 30′ 00″ N. latitude.

(2) *Cumulative trip limits.* Coastwide, no more than 50,000 pounds cumulative of the *Sebastes* complex may be taken and retained, possessed, or landed per vessel in a 2-week period. Of this 50,000 pounds, no more than 8,000 pounds cumulative may be yellowtail rockfish landed north of Cape Lookout, and no more than 10,000 pounds cumulative may be bocaccio landed south of Cape Mendocino.

D. Pacific Ocean Perch (POP)

The trip limit for Pacific ocean perch coastwide is 3,000 pounds or 20 percent of all legal groundfish onboard, whichever is less. If less than 1,000 pounds of Pacific ocean perch are landed, the 20 percent limit does not apply.

Note: Twenty percent of all legal groundfish on board including Pacific ocean perch is equivalent to 25 percent of all legal groundfish on board other than Pacific ocean perch.

E. Sablefish and the Deepwater Complex (Sablefish, Dover Sole, and Thornyheads)

(1) *1992 management goal.* The sablefish fishery will be managed to achieve the 8,900-mt harvest guideline in 1992.

(2) *Washington coastal tribal fisheries.* An estimate will be made of the catch to the end of the year for the Washington coastal treaty tribes. It is anticipated that these tribes will regulate their fisheries so as not to exceed their estimated catch. There will be no federally imposed tribal allocation or quota. In 1992 the estimated tribal catch is 300 mt, the same as in 1991.

(3) *Gear allocations.* After subtracting the tribal-imposed catch limit, the remaining harvest guideline will be allocated 58 percent to the trawl fishery and 42 percent to the nontrawl fishery.

Note: The 1992 harvest guideline for sablefish is 8,900 mt. After subtracting the 300-mt tribal-imposed catch limit, the remaining 8,600 mt is allocated 4,988 mt to the trawl fishery and 3,612 mt to the nontrawl fishery. The trawl and nontrawl gear allocations are harvest guidelines in 1992, which means the fishery will be managed so that the harvest guidelines are not exceeded, but will not necessarily be closed if they are reached.

(4) *Trawl trip and size limits.*—(a) *Trawl gear.* Trawl gear includes bottom trawls, roller or bobbin trawls, pelagic trawls, and shrimp trawls.

(b) "Deepwater complex" means sablefish (*Anoplopoma fimbria*), Dover sole (*Microstomus pacificus*), and thornyheads (*Sebastolobus* spp.). Sablefish also are called blackcod. Thornyheads also are called idiots, channel rockfish, or hardheads.

(c) *Trip limits.* Coastwide, no more than 55,000 pounds cumulative of the deepwater complex may be taken and retained, possessed, or landed per vessel in a 2-week period. Within this 55,000 pounds, no more than 25,000 pounds cumulative may be thornyheads. In any landing, no more than 25 percent of the deepwater complex may be sablefish, unless less than 1,000 pounds of sablefish are landed, in which case the percentage does not apply. In any landing, no more than 5,000 pounds of sablefish may be smaller than 22 inches (total length).

Note: Twenty-five percent of the deepwater complex (including sablefish) is equivalent to 33.333 percent of the legal thornyheads and Dover sole.

(5) *Nontrawl trip and size limits.* (a) Nontrawl gear means all legal commercial groundfish gear other than trawl gear (see 50 CFR 663.2), including

set nets (gill and trammel nets), traps or pots, longlines, commercial vertical hook-and-line gear, and troll gear.

(b) From 0001 hours January 1, 1992, through 2400 hours February 29, 1992, the daily trip limit for sablefish caught with nontrawl gear is 500 pounds. This trip limit applies to sablefish of any size.

(c) From 0001 hours March 1, 1992, through 2400 hours March 31, 1992, the daily trip limit is 1,500 pounds. However, if 440 mt is projected to be reached during this period, the daily trip limit may be reduced to 500 pounds through March 31, and will be announced in the **Federal Register**. These trip limits apply to sablefish of any size.

(d) The "regular" sablefish season, specified at 50 CFR 663.23(b)(2), begins on April 1. During the regular season, the only trip limit in effect applies to sablefish smaller than 22 inches (total length) which may comprise no more than 1,500 pounds or 3 percent of all legal sablefish onboard, whichever is greater. (See paragraph (6) regarding length measurement).

(e) Following the regular season, at 0001 hours on a date to be announced in the **Federal Register**, the daily trip limit for sablefish caught with nontrawl gear will be 500 pounds, which applies to sablefish of any size.

Note.—Currently, the regular season begins on April 1, and the 1,500-pound daily trip limit would continue through March 31 (unless 440 mt were harvested first). However, the Council has recommended that the regular season be changed so that it begins 3 days prior to the first sablefish opening in Alaska, with 72-hour closures immediately before and after the regular season. If the Council's recommendation is approved by the Secretary, and Alaska opens its sablefish fishery on May 15, 1992, as currently expected, then the 1,500-pound trip limit would be in effect from 0001 hours, March 1, through 2400 hours, May 8; the first 72-hour closure would occur from 0001 hours, May 9 through 2400 hours, May 11; and the regular season would start at 0001 hours, May 12, 1992. The Secretary is considering a proposed rule to change the starting date for the regular season. If this change is proposed in the **Federal Register** and subsequently approved, it will be implemented by a final rule.

(6) *Length measurement.* (a) Total length is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mulitation of the fish or the use of additional force to extend the length of the fish.

(b) For processed ("headed") sablefish,

(i) the minimum size limit is 15.5 inches measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact; and,

(ii) the product recovery ratio (PRR) established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The PRR currently is 1.6 in Washington, Oregon, and California. However, the state PRRs may differ and fishermen should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official PRR.)

(7) No sablefish may be retained in such condition that its length has been extended or cannot be determined by the methods stated above in paragraph (6).

III. Recreational Fishing

Lingcod and Rockfish

(1) California

The bag limit for each person engaged in recreational fishing seaward of the State of California is 5 lingcod which may be no smaller than 22 inches (total length) and 15 rockfish per day. Multi-day limits are authorized by a valid permit issued by the State of California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(2) Oregon and Washington

The bag limit for each person engaged in recreational fishing seaward of the State of Washington and Oregon is 3 lingcod per day and 15 rockfish per day.

Note: A proposed rule published at 56 FR 47441 (September 19, 1991) would reduce the recreational daily bag limit for all rockfish north of Cape Leadbetter WA, from 15 to 12 fish. If approved by the Secretary, this bag limit would be effective in early 1992. (Adjustment of the bag limits for rockfish already has been designated as "routine.")

IV. Inseason Adjustments

At subsequent meetings, the Council will review the best data available and recommend modifications to these management measures if appropriate. The Council intends to examine the progress of these fisheries during the year in order to avoid overfishing and to achieve the goals and objectives of the FMP and its implementing regulations.

V. Other Fisheries

A. Foreign Vessels

Receipt or retention of groundfish by foreign fishing or foreign processing vessels, if any, is limited by incidental allowances established under 50 CFR 611.70.

B. Experimental Fisheries

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

C. Shrimp and Prawn Fisheries

Landings of groundfish in the pink shrimp, spot and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.24, which state:

Section 663.24(a) Pink shrimp. The trip limit for a vessel engaged in fishing for pink shrimp is 1,500 pounds (multiplied by the number of days of the fishing trip) of groundfish species other than Pacific whiting, shortbelly rockfish, or arrowfish flounder (which are not limited under this paragraph).

Section 663.24(b) Spot and ridgeback prawns. The trip limit for a vessel engaged in fishing for spot or ridgeback prawns is 1,000 pounds of groundfish species per fishing trip.

However, if fishing for groundfish and pink shrimp, spot or ridgeback prawns in the same fishing trip, the groundfish restrictions in this notice apply.

Classification

The final specifications and management measures for 1992 are made under the authority of and in accordance with the regulations implementing the FMP at 50 CFR parts 611 and 663.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 and a Supplemental EIS was prepared for Amendment 4 in accordance with the National Environmental Policy Act (NEPA). The alternatives considered and environmental impacts of the actions proposed in this notice are not significantly different than those considered in either the EIS or Supplemental Environmental Impact Statement (SEIS) for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an environmental assessment in accordance with paragraph 6.02c3(f) of the NOAA Administrative Order 216-6 because the alternatives and their impacts have not changed significantly and this action falls within the scope of the EIS and SEIS.

This action is in compliance with Executive Order 12291, and is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

This action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Much of the data necessary for these specifications and management measures comes out of the current fishing season. Because of the timing of the receipt, development, review, and analysis of the fishery information necessary for setting the initial specifications and management measures, and the need to have these specifications and management measures in effect at the beginning of the fishing year, there is good cause to waive the publication of proposed specifications in the **Federal Register** and a 30-day comment period on the proposed specifications. Amendment 4 to the FMP, implemented on January 1, 1991, recognizes these timeliness considerations, and sets up a system where the interested public is notified, through **Federal Register** notice of meetings and through Council mailings, of the development of these measures, and is provided the opportunity to comment during the Council process. The public participated in GMT, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in August, September, October, and November 1991, which resulted in these recommendations from the Council. Additional public comments will be accepted for 15 days after publication of this notice in the **Federal Register**.

The Administrative Procedure Act requires that publication of an action be made not less than 30 days before its effective date unless the Secretary finds and publishes with the rule good cause for an earlier effective date. Good cause for waiving the delay in effectiveness is found if the delay is impracticable, unnecessary, or contrary to the public interest. These specifications announce the harvest goals and the management measures designed to achieve those harvest goals in 1992. A delay in implementation could compromise the management strategies that are based on the projected landings from these trip limits. Therefore, a delay in effectiveness is impracticable and contrary to the public interest and these actions are effective on January 1, 1992.

List of Subjects in 50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 9, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-080 Filed 1-9-92; 4:20 pm]

BILLING CODE 3510-22-M

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50 CFR Part 642

[Docket No. 910650-1218]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of bag limit reductions.

SUMMARY: NMFS reduces to zero the bag limits in the exclusive economic zone (EEZ) for king mackerel from the Gulf migratory group. NMFS has determined that the recreational allocation for the Gulf migratory group of king mackerel was reached on January 12, 1992. This reduction of the bag limits is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: Reduction of the bag limits is effective on January 13, 1992, through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3161.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic, as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR part 642.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel for the current fishing year (July 1 1991, through June 30, 1992) set the recreational allocation at 3.91 million pounds. Under § 642.22 (b), after consulting with the Councils, NMFS is required to reduce to zero the bag limits for a king mackerel migratory group when the appropriate recreational allocation for that group has been reached, or is projected to be reached, and when that group is overfished, by publishing a notice in the **Federal Register**. NMFS, based on current statistics, has determined that the recreational allocation of 3.91 million pounds for the Gulf migratory group of king mackerel was reached on January 12, 1992. NMFS also finds, based on the most recent stock assessment, that the Gulf migratory group of king mackerel remains overfished. NMFS has consulted with the Councils, and they agree with this finding and concur in this action. Hence, the bag limits for king mackerel from the Gulf migratory group are reduced to zero effective January 13, 1992, through June 30, 1992, the end of the fishing year. During this period, king mackerel from the Gulf migratory group caught in the EEZ in the recreational fishery must be returned immediately to the sea.

NMFS previously determined that the commercial king mackerel quota for the western zone of the Gulf migratory group had been reached and closed the commercial fishery for Gulf migratory group king mackerel in that zone (56 FR 49853, October 2, 1991). Through June 30, 1992, Gulf migratory group king mackerel may not be harvested from or possessed in the western zone of the EEZ and king mackerel from that zone may not be purchased, bartered, traded, or sold. The latter prohibition does not apply to trade in king mackerel from the western zone of the Gulf migratory group that were harvested, landed, and bartered, traded, or sold prior to the commercial fishery closures and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22 (b) and complies with Executive Order 12291.

Authority: 16 U.S.C. 1801 *et. seq.*

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 9, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-1065 Filed 1-10-92; 12:35 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 10
Wednesday, January 15, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV-91-458]

Proposed Expenses and Assessment Rate for Marketing Order Covering Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 932 for the 1992 fiscal year (January through December) established for that order. The proposal is needed for the California Olive Committee (committee) to incur operating expenses during the 1992 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Fund to administer this program are derived from assessments on handlers.

DATES: Comments must be received by January 27, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6450. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–8139.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 932 [7 CFR Part 932] regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 6 handlers of California olives regulated under this marketing order each season and approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Most, but not all, of the olive producers and none of the olive handlers may be classified as small entities.

The California olive marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable olives received by regulated handlers from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are olive producers and handlers. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected olive receipts (in tons). Because that rate is applied to actual receipts, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on December 2, 1991, and unanimously recommended 1992 fiscal year expenditures of $1,832,230 and an assessment rate of $20.68 per ton of assessable olives received by handlers under M.O. 932.

In comparison, 1991 fiscal year budgeted expenditures were $2,115,975 and the assessment rate was $20.23 per ton.

Major expenditure items budgeted for the 1992 fiscal year compared with those budgeted in 1991 (in parentheses) are $348,230 ($354,975) for program administration, $65,000 ($126,000) for production research, $786,000 ($830,000) for consumer advertising, $516,000 ($832,000) for food service advertising, and $117,000 ($173,000) for public relations. The $283,745 decrease in budgeted expenditures from 1991 is attributed to decreases in production research, consumer advertising, mainly foodservice advertising, and public relations, and administrative costs. Expenses will be covered by both assessment income and reserves.

Estimated assessment income is approximately $1,182,730 for the 1992 fiscal period based on handler receipts of 57,192 tons of assessable olives during the 1991–92 crop year (August-July). This amount will be augmented by approximately $650,000 from reserve funds to enable the committee to pay its estimated expenses. The committee's reserves are well within the maximum amount authorized by the order—one fiscal year's expenses. Last year's assessment income was approximately $2,116,058 on receipts of 104,600 assessable tons.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed onto producers. However, these costs would be offset by the benefits

derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approvals for the olive program need to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 932 be amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 932.225 is added to read as follows:

§ 932.225 Expenses and assessment rate.

Expenses of $1,832,230 by the California Olive Committee are authorized, and an assessment rate of $20.68 per ton of assessable olives is established, for the fiscal year ending on December 31, 1992. Unexpended funds from the 1991 fiscal year may be carried over as a reserve.

Dated: January 9, 1992.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–1051 Filed 1–14–92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1065

[DA–92–02]

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rules.

SUMMARY: This action invites written comments on a proposal to revise certain provisions of the Nebraska-Western Iowa Federal milk marketing order for the months of January through August 1992. The proposed revision would reduce the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to maintain pool status by 10 percentage points (from 30 to 20 percent of receipts) for the months of January through March and by 20 percentage points (from 40 to 20 percent of receipts) for the months of April through August. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. Mid-Am contends that the action is necessary to prevent uneconomical and inefficient movements of milk.

DATES: Comments are due no later than January 22, 1992.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 6456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1366.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administration of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1065.7(b) of the order, the revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of January through August 1992.

All persons who want to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include January in the revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the supply plant shipping percentages set forth in § 1065.7(b). The revision would lower the shipping percentages for supply plants to 20 percent of receipts during the months of January through August 1992. The specific revision would reduce the supply plant shipping percent by 10 percentage points during the months of January through March (from 30 percent to 20 percent of receipts) and by 20 percentage points during the months of April through August (from 40 percent to 20 percent of receipts).

Pursuant to the provisions of § 1065.7(b)(3) of the Nebraska-Western Iowa milk order, the Director of the Dairy Division may increase or decrease the supply plant shipping percentage as set forth in § 1065.7(b) by up to 20 percentage points during any month. The adjustment can be made to help encourage additional milk shipments or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order.

Under the Nebraska-Western Iowa order, the supply plant shipping percentage is 40 percent or more of the total receipts of Grade A milk received from dairy framers and cooperative associations. A revision signed October 3, 1989 (54 FR 41240) reduced the supply plant shipping percentage by 10 percentage points (from 40 percent to 30 percent of receipts) indefinitely for the months of September through March.

This action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk to the market. Mid-Am has projected that there will be ample supplies of direct ship producer milk located in the general area of the Nebraska-Western Iowa distributing plants to meet the fluid needs of such plants. Absent a revision, Mid-Am contends that costly and inefficient movements of milk would have to be made in order to maintain pool status of the milk of its members who have historically supplied the fluid needs of the market.

Therefore, it may be appropriate to relax the aforementioned provisions of § 1065.7(b) for the months of January through August 1992 to prevent uneconomic shipments of milk, and to assure that dairy farmers long associated with the fluid milk market will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

List of Subjects in 7 CFR Part 1065

Milk marketing orders.

PART 1065—[AMENDED]

The authority citation for 7 CFR part 1065 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC, on: January 9, 1992.

W. H. Blanchard,

Director, Dairy Division.

[FR Doc. 92–1049 Filed 1–14–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1065

[DA–92–03]

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain provisions of the Nebraska-Western Iowa Federal milk marketing order for the months of January through August 1992. The proposed suspension would reduce the amount of milk that must be transferred from supply plants to pool distributing plants and remove the requirement that a producer's milk be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. Mid-Am contends that the action is necessary to prevent uneconomical and inefficient movements of milk.

DATES: Comments are due no later than January 22, 1992.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 6456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1366.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of January through August 1992:

In § 1065.6, the words "during the month";

In § 1065.7(b)(1), the words "not more than one half of"; and,

In § 1065.13, paragraph (d)(1).

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include January in the suspension period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would suspend certain provisions of the order for the months of January through August 1992. The suspension would reduce the amount of milk that must be transferred from supply plants to pool distributing plants and allow milk to be diverted to a nonpool plant without being physically received at a pool plant during the month.

Currently the order defines a supply plant as a plant from which Grade A milk is shipped to a pool distributing plant. The order provides that to qualify as a pool supply plant, the supply plant must transfer or divert a specified percentage of its receipts of milk to pool distributing plants. The order further provides that a supply plant must ship milk to a distributing plant each month and that not more than one-half of the qualifying shipments may be met through the direct shipment of milk from farms to pool distributing plants. The order also provides that a dairy farmer's milk is not eligible for diversion during a month unless at least one day's production is physically received at a pool plant. The proposed suspension would remove the requirement that milk be transferred from a supply plant to a distributing plant each month, allow all direct-shipped milk to count as a qualifying shipment, and remove the requirement that a dairy farmer's milk be physically received at a pool plant each month.

This action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk to the market. Mid-Am projects that there will be ample supplies of direct ship producer milk located in the proximity of the distributing plants to meet the fluid milk needs of the market. Mid-Am contends that it is impractical to require producer milk located some distance from pool plants to be physically received once during the month, when the milk can more economically be diverted directly to manufacturing plants in the production area. In addition, Mid-Am contends that it would be inefficient to require that milk be transferred from supply plants to distributing plants when the fluid milk needs of the market can be supplied by the direct shipment of milk from farms to distributing plants. Absent a suspension, Mid-Am contends that costly and inefficient movements of milk would have to be made to maintain pool status of producers who have historically supplied the fluid milk needs of the market.

List of Subjects in 7 CFR Part 1065

Milk marketing orders.

PART 1065—[AMENDED]

The authority citation for 7 CFR part 1065 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC, on: January 9, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–1050 Filed 1–14–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1209

[FV–91–276]

RIN 0581–AA49

Mushroom Promotion, Research, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and meeting notice.

SUMMARY: The U.S. Department of Agriculture (Department) proposes to establish a national mushroom promotion, research, consumer information, and industry information program. The program would be funded by assessments collected from producers and importers of fresh mushrooms and administered by a Mushroom Council (Council) consisting of at least four but more than nine producer and importer members. This action is authorized by the Mushroom Promotion, Research, and Consumer Information Act of 1990. In addition to requesting comments on this proposal, this action gives notice of a public meeting on this proposal.

DATES: Comments on the proposal must be received by February 14, 1992. A public meeting to give interested persons an opportunity to express their views or ask questions on the proposed order will convene at 9 a.m., eastern time on February 5, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, USDA P.O. Box 96456, room 2533–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular working hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for the Agricultural Marketing Service, USDA.

The public meeting will be held at the United States Department of Agriculture, room 1079, South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2533–S, Washington, DC 20090–6456, telephone (202) 720–5976.

SUPPLEMENTARY INFORMATION: This proposed order is being published pursuant to the Mushroom Promotion, Research, and Consumer Information Act of 1990 (subtitle B of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, November 28, 1990, 7 U.S.C. 6101–6112) hereinafter referred to as the Act.

This proposal contained herein has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The most recent available census of agricultural producers indicates that there are 460 mushroom producers in the United States, an estimated 200 of whom would be subject to the proposed order. Of these 200 estimated producers, a minority would be classified as small businesses. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms, which include mushroom handlers and importers, have been defined as those having annual receipts of less than $3,500,000. There are approximately 100 handlers, including producers who are also handlers, and not more than 3 importers, out of approximately 30 importers, who would be subject to the provisions of the proposed order, a majority of whom would be classified as small entities. The proposed order would require each mushroom producer and importer who produces or imports 500,000 pounds or more of fresh mushrooms per year to pay an assessment not to exceed one cent per pound. In addition, an estimated 100 first handlers of fresh mushrooms, a majority of whom would be classified as small firms, would be required to collect and remit the assessments.

Although the maximum annual assessment collection could total $4.5 million beyond the fourth year of the order, the economic impact of a one cent or less assessment per pound on each producer or importer subject to the order would not be significant. The proposed order also imposes a reporting and recordkeeping burden on producers, first handlers, and importers. This burden should average approximately seven hours per year, so its economic impact would not be significant. In addition, the promotion, research, consumer information, and industry information program funded by assessments is expected to benefit producers, handlers, and importers by strengthening the mushroom industry's position in the marketplace; maintaining and expanding existing markets and uses for mushrooms; and developing new markets and uses for mushrooms. Such benefits are expected to outweigh the costs of the program. Therefore, the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Public Meeting

Notice is given that a public meeting will be held beginning 9 a.m. eastern time on February 5, 1992, in room 1079 at the United States Department of Agriculture, South Building, 14th and Independence Avenue, SW., Washington, DC.

The meeting will be conducted by a presiding officer chosen by the Department. The proceedings of such meeting will be transcribed and considered in the development of a final rule. The purpose of this meeting is to provide an opportunity for a full discussion on the proposal to facilitate a better understanding of the intent and application of the proposed rule.

Anyone wishing to present data, views, or arguments concerning this proposal should do so through exhibits, written statements, or oral presentations. All those making oral presentations are encouraged to also submit their presentations in writing. One original and three copies of written statements must be provided for the

record. Persons attending the meeting will be allowed to ask questions directed at participants giving oral presentations.

Any interested person will be given an opportunity to appear and be heard with respect to matters relevant and material to the proposed order. However, the presiding officer may limit the number of times and the amount of time that any one person may be heard and exclude views and data which are immaterial, irrelevant, or unduly repetitious. Such action is intended to prevent undue prolongation of the meeting.

Copies of the transcript of the meeting will not be available for distribution through the Department. However, the transcript of the meeting will be available for public inspection at the Office of the Docket Clerk during business hours. Anyone wishing to purchase a copy of the transcript should make arrangements with the court reporter at the meeting.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980, the information collection requirements contained in this action have been approved by the Office of Management and Budget (OMB) and assigned OMB number 0581–0093, except for the Council nominee background statement form which is assigned OMB number 0505–0001. This action sets forth the provisions of a proposed nationwide program for mushroom promotion, research, consumer information and industry information to be funded by mushroom producers and importers. Information collection requirements that are included in the proposed order include:

(1) A requirement that each first handler and importer who handles or imports at least 500,000 pounds of fresh mushrooms annually must file reports at specified intervals. The estimated number of first handlers and importers filing such reports is 103, each submitting a maximum of 12 reports per year, with an estimated average reporting burden of 30 minutes per report. However, these persons may alternatively prepay assessments annually, requiring only an initial report of anticipated assessments and a final annual report of actual handling;

(2) An exemption application for persons who produce less than 500,000 pounds of fresh mushrooms annually concerning exemptions from assessments and recordkeeping requirements. The estimated number of persons filing this application is 290, each submitting one application per year, with an estimated average reporting burden of 15 minutes per application;

(3) A referendum ballot to be submitted in a referendum prior to implementation of the program and periodically thereafter to indicate whether producers and importers favor continuance of the order. The estimated number of voters completing this ballot is 203, each submitting one ballot approximately every five years, with an estimated average reporting burden of 6 minutes per ballot;

(4) A nominee background statement form for Council membership. The estimated number of individuals completing this form is 18 during the first year of the order and approximately 6 per year thereafter. Two eligible individuals will be nominated for each open position on the Council, each of whom will have an estimated average reporting burden of 6 minutes per form; and

(5) A requirement to maintain records sufficient to verify reports submitted under the order. The estimated number of persons required to comply with this requirement is 203, each of whom will have an estimated average recordkeeping burden of 7 minutes per year.

Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC 20503. Attention: Desk Officer for Agricultural Marketing Service, USDA.

Background

The Act authorizes the Secretary of Agriculture (Secretary) to establish a national mushroom promotion, research, consumer information, and industry information program. This program would be funded by an assessment on producers and importers not to exceed one cent per pound of fresh mushrooms.

The Act provides that the Secretary may propose the issuance of an order, or an association of mushroom producers or any other person that will be affected by the provisions of the Act may request the issuance of, and submit a proposal for, such an order. After receipt of a request and proposal for an order, or when the Secretary determines to propose an order, the Act provides that the Secretary shall publish the proposed order and give due notice and opportunity for public comment.

In addition, the Act requires that any order issued thereunder shall contain certain specified terms and conditions. Such terms and conditions include provisions concerning the composition and establishment of a Mushroom Council (Council), and the powers and duties of such Council. Also included under terms and conditions which are required to be in an order are provisions concerning assessments, books and records, and the availability of information.

The Act provides that the Council would be composed of at least four and not more than nine members. There would be four geographic regions established, which would represent the geographic distribution of mushroom production throughout the United States, with one member who is a producer nominated and appointed from each region that produces, on average, at least 35,000,000 pounds of mushrooms annually. There would be a fifth region established, which would represent importers throughout the United States, with one member who is an importer nominated and appointed from such region importing, on average, at least 35,000,000 pounds of mushrooms annually. Subject to the nine-member limit on the number of Council members, the Secretary would appoint an additional member to the Council from a region for each additional 50,000,000 pounds of production or imports per year, on average, within the region. Should, in the aggregate, regions be entitled to levels of representation that would exceed the nine-member limit on the Council, then those regions entitled to representation in excess of the basic quantity used in establishing representation on the Council would have representation allocated among them based on production or importation so that the Council does not exceed its nine-member limit.

In response to an invitation to submit proposals in the January 30, 1991, issue of the **Federal Register** (56 FR 3425), one proposal for a complete promotion, research, and consumer information order was received from the American Mushroom Institute (AMI), a national trade association. In addition, several provisions to be incorporated into a proposed promotion, research, and consumer information order were received from United Foods, Inc. (United), a mushroom producer. The Department reviewed the submissions and issued a proposed rule containing them in the October 4, 1991, issue of the **Federal Register** (56 FR 50283). The Department received seven comments on that proposed rule.

Comments were received from the AMI and the Mushroom Council; United; the Elite Mushroom Co., Inc.; the National Farmers Organization; the National Farmers Union; the American Agricultural Movement Inc.; and the

American Institute of Certified Public Accountants. AMI and United commented in support of their own proposals; one commenter was opposed to a majority of United's proposed order provisions; three commenters specified their organizations' policies toward research and promotion programs; and one commenter suggested technical language to be incorporated into several of AMI's and United's order provisions.

Two comments were directed towards United's definition of producer. Both comments were favorable. The Department has accepted this definition. It is in accordance with section 1925(11) of the Act and has been incorporated into § 1209.14 of the proposed order.

One commenter recommended that United's provision proposing that the Council shall not contract with any person who is a producer or importer for the purpose of mushroom promotion be incorporated into the proposed order. Another commenter opposed the incorporation of this provision. The Department has accepted this provision as reasonable and within the intent of section 1925(e) of the Act. Therefore, this provision has been incorporated with modification into § 1209.38(j) of the proposed order.

One commenter recommended a change in the language found in § 1209.39(f) of AMI's proposed order. This change focused on the requirements for auditing the Council's financial statements, including which accounting principles and auditing standards should be followed. The Department has accepted this language and has incorporated it into § 1209.39(f) of the proposed order.

One commenter recommended that United's provision proposing that no funds collected under the Act, be used to defray, or make payment of costs incurred in developing, drafting, studying, lobbying on or promoting the legislation authorizing the order be incorporated into the proposed order. Another commenter opposed the incorporation of this provision. The Department has accepted this provision as being in accordance with § 1925(h) of the Act. Therefore, this provision has been incorporated into § 1209.50(c) of the proposed order.

Three commenters expressed their concern that imported, canned mushrooms were not included in the Act and that such as omission would give foreign producers a competitive advantage over domestic producers. Section 1923(8) of the Act defines *mushrooms* as "all varieties of cultivated mushrooms grown within the United States for the fresh market, or imported into the United States for the fresh market, that are marketed, except that such term shall not include mushrooms which are commercially marinated, canned, frozen cooked, blanched, dried, packed in brine, or otherwise processed, a determined by the Secretary." Therefore, these comments are denied.

Two commenters went further to express their concern that such a program could eventually decrease the competitiveness of domestic small and medium-sized mushroom producers relative to foreign producers. In response, there has been a dramatic increase of fresh production over processed production since 1970. Department statistics for the period 1970–88 indicate an increase in fresh production from 58 million pounds in 1970 to 484 million pounds in 1988, while processed production increased from 149 million pounds in 1970 to 184 million pounds in 1988. In 1970 fresh production accounted for 28 percent of total production, while in 1988 fresh production accounted for 72 percent of total production. Further, Department statistics for 1990 indicate that total fresh mushroom imports into the United States were approximately 2.3 million pounds compared to total U.S. fresh production of 512 million pounds. These statistics indicate that imported fresh mushrooms are significantly less than 1 percent of total U.S. fresh production. With fresh mushroom imports comprising such a small share of the U.S. fresh mushroom market, there is no evidence that small, medium, or large domestic producers would be exposed to any significant competitive disadvantage should the program go into effect.

One commenter recommended that, in order to test the program, persons subject to the Act should establish a voluntary research and promotion program for a period of at least two years. This comment cannot be adopted because it is not in accordance with the Act. The Act requires the issuance of a proposed order by the Department. Interested persons are being provided an opportunity to comment on the proposed order before the Department issues a final order. The Act also requires that a referendum be conducted among producers and importers before the order can become effective. The outcome of such a referendum will ascertain whether the final order will go into effect.

Five commenters addressed the issue of voting in referenda. All of the commenters were in favor of a referendum prior to the implementation of any program. Such a referendum is required in the Act. Two commenters provided comments on referendum procedures. Section 1926(c) of the Act specifies that "referenda conducted pursuant to this section shall be conducted in such a manner as determined by the Secretary." Referenda procedures are not intended to be part of the proposed order and as such have not been incorporated into the order. At a later date, the Department intends to publish proposed rules and regulations, which will include referenda procedures, for public comment. Therefore the comments on referenda procedures are denied at this time.

One commenter proposed that the Department hold three public meetings in different regions of the United States to discuss the proposed order. This is not feasible because the number of producers and importers in the mushroom industry is relatively small and the cost of holding such meetings would be excessive. Therefore, it has been determined that one public meeting will be held at the United States Department of Agriculture in Washington, DC, and the comment is denied.

One commenter recommended that the program be subject to review in referendum every three years and subject to review at any time on request by 10 percent of the producers and importers. This comment cannot be accepted because it is not consistent with the Act.

One commenter recommended that after a research and promotion program is in effect, all succeeding referenda should be financed and conducted by the federal government. This comment cannot be accepted as it is not in accordance with the Act. As specified in section 1925(g)(3) of the Act, assessments shall be used to cover those administrative costs incurred by the Secretary in implementing and administering the order, except for the salaries of Government employees incurred in conducting referenda.

One commenter recommended that the Department interpret the term "majority" to mean a two-thirds majority of producers and importers voting in a referendum. This comment cannot be accepted since the Act does not provide that majority shall mean anything other than a number greater than half of the total. In regard to the initial referendum, section 1926(a)(2) of the Act specifies that "the order shall become effective, * * *, if the Secretary determines that the order has been approved by a majority of the producers and importers voting in the referendum, which majority, on average, annually

produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum." In regard to succeeding referenda, section 1926(b)(2) of the Act states that "if, * * *, The Secretary determines that the suspension or termination of an order is favored by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum, * * *." Therefore, the comment is denied.

One commenter recommended that the disbursement of funds collected under the program be controlled by a board of producers elected by the producers assessed and that the operations of the program be controlled by such a producer board. This comment is in accordance with section 1925(b)(1)(B) of the Act which specifies that "the members of the Council shall be mushroom producers and importers appointed by the Secretary from nominations submitted by producers and importers in the manner authorized by the Secretary * * *." The commenter went further to recommend that general farm organizations be allowed to appoint a producer representative to the board. This comment is denied because it is inconsistent with the aforementioned section of the Act.

Four commenters favored a prohibition on political and lobbying activities by the Council. Such a prohibition is found in § 1209.53 of the proposed order. This provision is in accordance with section 1925(h) of the Act which concerns the influencing of government action or policy.

Three commenters requested that the Department allow producers and importers the right to demand and receive a refund of assessments collected by the Council. Such a provision is not in accordance with the Act. The Act contains no right of refund provision, authorizing or requiring the refund of assessments. It is not the intent of the Act to allow refunding by producers and importers. Therefore, these comments are denied.

Five commenters recommended the incorporation of United's provision proposing the use of a pre-approval and post-completion or annual cost/benefit analysis of all programs, plans, and projects. United's provision further provides that such an analysis should be conducted by an independent contractor. One commenter opposed the incorporation of the provision. Such a provision would prove burdensome to the Council in terms of time- and cost-effectiveness relative to programs, plans, and projects. Section 1925(c)(4) of the Act specifies that the Council shall "propose, receive, evaluate, approve, and submit to the Secretary for approval * * * budgets, plans, and projects of mushroom promotion, research, consumer information, and industry information as well as to contract and enter into agreements with appropriate persons to implement such plans or project." Section 1925(d)(3) of the Act further specifies that "no plan or project of promotion, research, consumer information, or industry information, or budget, shall be implemented prior to its approval by the Secretary." The Act provides the appropriate safeguards to allow the Council to effectively and efficiently administer the program without requiring a mandatory independent cost/benefit analysis of all programs, plans, and projects. Therefore, the comments recommending the incorporation of United's provision relevant to cost/benefit analysis are denied, and the provision is not included in the proposed order language.

Three commenters requested that the Department reconsider its denial of United's provision concerning the requirement of a producer and importer referendum to increase the assessment rate. United's provision was not incorporated in the proposed rule because the conduct of such a referendum to approve an assessment increase is not required or anticipated in the provisions of the Act. The Act authorizes the rate of assessment to be determined by the Council using a formula of annual increments specified in the Act. The Council, with approval of the Secretary, may change the rate of assessment at any time, except that the effective rate of assessment, as specified in the Act, may increase incrementally, but not exceed an annual rate of one cent per pound of mushrooms over a four year period. There is no provision in the Act requiring reauthorizing a referendum to approve assessment increases already specified in the Act. Therefore, these comments are denied.

One commenter requested that the Department reconsider its denial of two other provisions submitted by United concerning the definition of promotion and the provision concerning creditable promotion and advertising. United's provisions were not incorporated into the proposed rule because they were determined to be beyond the authority, intent, or scope of the Act. Therefore, this comment is denied.

Three commenters recommended that United's two provisions proposing that all persons producing or importing mushrooms into the United States should certify through an independent auditor and report to the Council and the Secretary the amount of mushrooms produced or imported annually be incorporated into the proposed order. Another commenter suggested several technical corrections to be included into these provisions. A fifth commenter was opposed to the inclusion of these provisions into the order. The first three comments are denied because they go beyond the authority and scope of the Act. As a consequence of this denial, the fourth comment is inapplicable. The inclusion of such a reporting requirement would be burdensome to persons who are not subject to the Act in terms of time and financial resources. Sections 1209.52, 1209.60, and 1209.61 of the proposed order should provide the necessary safeguards in the collection of assessments which is the intent of this proposed provisions. These provisions are in accordance with section 1925(i)(1) of the Act which specifies "that the order shall require that each first handler and importer of mushrooms maintain, and make available for inspection, such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order."

Three commenters recommended that the Council disclose its financial statements to persons who are subject to the Act. Section 1209.39(e) of the proposed order provides for such disclosure. One commenter also recommended a change in the language used in § 1209.39(f) of the proposed order. This language, as previously mentioned, has been incorporated into § 1209.39(f).

One commenter recommended that United's provision proposing that the Council ensure that funds are expended by the Council into mushroom market areas in reasonable proportion to the assessments collected from producers in those areas be incorporated into the proposed order. Another commenter opposed the incorporation of this provision into the order. This provision is not consistent with the intent of the Act. The primary purpose of the Act is to establish a national promotion, research, consumer information, and industry information program. According to section 1922(b) of the Act, the program is designed to "strengthen the mushroom industry's position in the marketplace; maintain and expand existing markets and uses for mushrooms; and develop new markets and uses for mushrooms." Therefore, the

comment in favor of this change is denied.

One commenter recommended that United's three provisions prohibiting production controls be incorporated into the proposed order. Another commenter opposed the incorporation of these provisions. These provisions are not included because § 1209.40(a)(2) of the proposed order already specifies that "nothing in this subpart may be construed to authorize mandatory requirements for quality control, grade standards, supply management programs, or other programs that would control production or otherwise limit the right of individual producers to produce mushrooms." It has been determined that it is not necessary to repeat this information in the proposed order. Further, this provision is in accordance with section 1922(c) of the Act which declares that "nothing in this subtitle may be construed to provide for the control of production or otherwise limit the right of individual producers to produce mushrooms." Therefore, the comment in favor of the United proposal in this area is denied.

One commenter recommended that United's definition of *research* be incorporated into the proposed order. Another commenter opposed the incorporation of this provision. United's definition is denied because it goes beyond the scope of the Act. Further, United's definition is redundant in terms of including a prohibition on production controls. The Act and the proposed order specifically prohibit the imposition of production controls.

One commenter recommended that a substantial portion of the program's funds be used to purchase surplus commodities in the market and that such supplies be moved in the most economical manner to starving people in other countries. This comment is denied because it is beyond the authority, intent, and scope of the Act. The purpose of this program is to engage in a national program of promotion, research, consumer information, and industry information, and there is no authority in the Act to purchase surplus commodities.

In addition to the preceding review and consideration of comments, minor editorial changes have been made to several of the proposed order provisions for the purpose of clarity.

The order provisions as proposed by the Department are summarized as follows:

Sections 1209.1–1209.20 of the proposed order define certain terms which are used in the order.

Sections 1209.30–1209.39 of the proposed order concern the establishment, membership, nominations, appointment, term of office, vacancies, procedure, compensation and reimbursement, powers, and duties of a Mushroom Council, which would be the body organized to administer the order subject to the oversight of the Secretary of Agriculture.

Section 1209.40 of the proposed order would authorize the Council to receive, develop, and evaluate programs, plans, and projects for promotion, research, consumer information, and industry information with respect to fresh mushrooms and mushroom products. The Secretary would approve such programs, plans or projects prior to their implementation.

Section 1209.50 of the proposed order would authorize the Council to incur expenses necessary for the performance of its duties and to recommend an annual budget. Section 1209.51 of the proposed order would provide for the collection of assessments. The maximum assessment rate would be one cent per pound of non-exempt fresh mushrooms produced domestically or imported into the United States. The assessment section also contains the procedures to be followed by first handlers and importers when remitting assessments; the procedures to by followed by producers and importers seeking exemption from assessments; the establishment of a late payment charge and interest charges for unpaid or late assessments; the collection of assessments through approved third-party organizations; and the prepayment of assessments. Section 1209.52 of the proposed order would prohibit funds received under this program from influencing governmental action, with specified exceptions.

Sections 1209.60–1209.62 of the proposed order contain reporting and recordkeeping requirements for persons subject to the order, and provide that all information obtained by the Council or the Department from books and reports required by the order would be kept confidential.

Sections 1209.70–1209.77 of the proposed order concern miscellaneous provisions which include the right of the Secretary; procedures of the suspension or termination of the order; proceedings after the termination of the order; effect of termination or amendment of the order; personal liability of Council members; handling of intellectual property arising from funds collected by the Council; amendments to the order; and separability of order provisions.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

It is hereby proposed that title 7 of the Code of Federal Regulations be amended by adding part 1209 to read as follows:

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Mushroom Promotion, Research, and Consumer Information Order

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Authority: The Mushroom Promotion, Research, and Consumer Information Act of 1990, Pub. L. 101–624, 104 Stat. 3854 (7 U.S.C. 6101 et seq.).

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Mushroom Promotion, Research, and Consumer Information Order

Definitions

§ 1209.1 Act.

Act means the Mushroom Promotion, Research, and Consumer Information Act of 1990, Subtitle B of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, 7 U.S.C. 6101–6112, and any amendments thereto.

§ 1209.2 Commerce.

Commerce means interstate, foreign, or intrastate commerce.

§ 1209.3 Consumer information.

Consumer information means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of mushrooms.

§ 1209.4 Council.

Council means the administrative body referred to as the Mushroom Council established under § 1209.30 of this subpart.

§ 1209.5 Department.

Department means the United States Department of Agriculture.

§ 1209.6 First handler.

First handler means any person who receives or otherwise acquires mushrooms from a producer and prepares for marketing or markets such mushrooms, or who prepares for marketing or markets mushrooms of that person's own production.

§ 1209.7 Fiscal year.

Fiscal year means the 12-month period from January 1 to December 31 each year, or such other period as recommended by the Council and approved by the Secretary.

§ 1209.8 Importer.

Importer means any person who imports, on average, over 500,000 pounds of mushrooms annually from outside the United States.

§ 1209.9 Industry information.

Industry information means information and programs that will lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the mushroom industry.

§ 1209.10 Marketing.

(a) *Marketing* means the sale or other disposition of mushrooms in any channel of commerce.

(b) *To market* means to sell or otherwise dispose of mushrooms in any channel of commerce.

§ 1209.11 Mushrooms.

Mushrooms means all varieties of cultivated mushrooms grown within the United States and marketed for the fresh market, or imported into the United States and marketed for the fresh market, except such term shall not include mushrooms that are commercially marinated, canned, frozen, cooked, blanched, dried, packaged in brine, or otherwise processed in such manner as the Council, with the approval of the Secretary, may determine.

§ 1209.12 Part and subpart.

Part means this mushroom promotion and research order and all rules and regulations and supplemental orders issued thereunder, and the term *subpart* means the mushroom promotion and research order.

§ 1209.13 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1209.14 Producer.

Producer means any person engaged in the production of mushrooms who owns or shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year.

§ 1209.15 Program, plans, and projects.

Programs, plans, and projects means promotion, research, consumer information, and industry information plans, studies, projects, or programs conducted pursuant to this part.

§ 1209.16 Promotion.

Promotion means any action determined by the Secretary to enhance the image or desirability of mushrooms, including paid advertising.

§ 1209.17 Region.

Region means one of the described geographic subdivisions of the production area described in § 1209.30(b) or as later realigned or reapportioned pursuant thereto, or the import region described in § 1209.30(c).

§ 1209.18 Research.

Research means any type of study to advance the image, desirability, safety, marketability, production, product development, quality, or nutritional value of mushrooms.

§ 1209.19 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1209.20 United States and State.

(a) *State* means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) *United State* means collectively the several States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Mushroom Council

§ 1209.30 Establishment and membership.

(a) There is hereby established a Mushroom Council of not less than four or more than nine members. The Council shall be composed of producers appointed by the Secretary under § 1209.33, except that, as provided in paragraph (c), importers shall be appointed by the Secretary to the Council under § 1209.33 once average imports for an annual period determined by the Secretary reach 35,000,000 pounds of mushrooms.

(b) For purposes of nominating and appointing producers to the Council, the United States shall be divided into four geographic regions and the number of Council members from each region shall be as follows:

Region 1—including Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Ohio, Kentucky, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Nebraska, Kansas, Minnesota, North Dakota, South Dakota, Montana, Colorado, and Wyoming—*2 Members*

Region 2—including Pennsylvania, Delaware, New Jersey, the District of Columbia, West Virginia, Virginia, and Maryland—*3 Members*

Region 3—including Washington, Oregon, Idaho, Utah, Arizona, California, Nevada, Alaska, and Hawaii—*3 Members*

Region 4—including New Mexico, Texas, Oklahoma, Arkansas, Louisiana, Alabama, Mississippi,

Georgia, Tennessee, North Carolina, South Carolina, Florida, and the Commonwealth of Puerto Rico—1 Member

(c) Importers shall be represented by a single, separate region, referred to as Region 5, consisting of the United States as defined in § 1209.20(b) when average imports for an annual period determined by the Secretary equal or exceed the 35,000,000 pound minimum.

(d) At least every five years, and not more than every three years, the Council shall review changes in the geographic distribution of mushroom production volume throughout the United States and import volume, using the average annual mushroom production and imports over the preceding four years, and, based on such review, shall recommend to the Secretary reapportionment of the regions established in paragraph (b), or modification of the number of members from such regions, as determined under the rules established in paragraph (e), or both, as necessary to best reflect the geographic distribution of mushroom production volume in the United States and representation of imports, if applicable.

(e) Subject to the nine-member maximum limitation, the following procedure will be used to determine the number of members for each region to serve on the Council under paragraph (d):

(1) Each region that has a mushroom production of 35,000,000 pounds or more, on average, for an annual period shall be entitled to one representative on the Council.

(2) As provided in paragraph (c), importers shall be represented by a single, separate region, which shall be entitled to one representative, if such region imports, on average, at least 35,000,000 pounds of mushrooms annually.

(3) Each region shall be entitled to representative by an additional Council member for each 50,000,000 pounds of average annual production or imports in excess of the initial 35,000,000 pounds within the region qualifying the region for representation.

(4) Should, in the aggregate, regions be entitled to levels of representation under paragraphs (e) (1), (2) and (3) that would exceed the nine-member limit on the Council under the Act, the regions shall be entitled to representation on the Council as follows:

(i) Each region first shall be assigned one representative on the Council pursuant to paragraphs (e) (1) and (2).

(ii) Then, each region with 50,000,000 pounds of average annual production or imports in excess of the initial 35,000,000 pounds of production or imports qualifying the region for representation shall be assigned one additional representative on the Council, except that if under such assignments all five regions, counting importers as a region, if applicable, would be entitled to additional representatives, that region with the smallest annual average volume, in terms of production or imports, will not be assigned an additional representative.

(iii) After members are assigned to regions under paragraphs (e)(4) (i) and (ii), if less than the entire nine seats on the Council have been assigned to regions, the remaining seats on the Council shall be assigned to each region for each 50,000,000 pound increment of average annual production or import volume in such region in excess of 85,000,000 pounds until all the seats are filled. If for any such 50,000,000 pound increment, more regions are eligible for seats than there are seats available, the seat or seats assigned for such increment shall be assigned to that region or those regions with greater annual average production or import volume than the other regions otherwise eligible at that increment level.

(f) In determining the volume of mushrooms produced in the United States or imported into the United States for purposes of this section, the Council and the Secretary shall:

(1) only consider mushrooms produced or imported by producers and importers, respectively, as those terms are defined in §§ 1209.8 and 1209.14; and

(2) use the information received by the Council under § 1209.60, and data published by the Department.

(g) For purposes of the provisions of this section relating to the appointment of producers and importers to serve on the Council, the term *producer* or *importer* refers to any individual who is a producer or importer, respectively, or if the producer or importer is an entity other than an individual, an individual who is an officer or employee of such producer or importer.

§ 1209.31 Nominations.

All nominations for appointments to the Council under § 1209.33 shall be made as follows:

(a) As soon as practicable after this subpart becomes effective by the Secretary, nominations for appointment to the initial Council shall be obtained from producers by the Secretary. In any subsequent year in which an appointment to the Council is to be made, nominations for positions whose terms will expire at the end of that year shall be obtained from producers, and as appropriated, importers, and certified by the Council and submitted to the Secretary by August 1 of such year, or such other date as approved by the Secretary.

(b) Nominations shall be made at regional caucuses of producers or importers, or by mail ballot as provided in paragraph (e), in accordance with procedures prescribed in this section.

(c) Except for initial Council members, whose nomination process will be initiated by the Secretary, the Council shall issue a call for nominations by February 1 of each year in which nominations for an appointment to the Council is to be made. The call shall include, at a minimum, the following information:

(1) A list by region of the vacancies for which nominees may be submitted and qualifications as to producers and importers.

(2) The date by which the names of nominees shall be submitted to the Secretary for consideration to be in compliance with paragraph (a) of this section.

(3) A list of those States, by region, entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Council, and national and State producer or importer associations, if known, and of the regional caucuses, if any.

(d)(1) Except as provided in paragraph (e), nominations for each position shall be made by regional caucus in the region entitled to nominate for such position. Notice of such caucus shall be publicized to all producers or importers within the region, and to the Secretary, at least 30 days prior to the caucus. The notice shall have attached to it the call for nominations from the Council and the Department's equal opportunity policy. Except with respect to nominations for the initial appointments to the Council, the responsibility for convening and publicizing the regional caucus shall be that of the Council.

(2) All producers or importers within the region may participate in the caucus. However, if a producer is engaged in the production of mushrooms in more than one region or is also an importer, such person's participation within a region shall be limited to one vote and shall only reflect the volume of such person's production or imports within the applicable region.

(3) The regional caucus shall conduct the selection process for the nominees in accordance with procedures to be adopted at the caucus subject to the following requirements:

(i) There shall be two individuals nominated for each open position.

(ii) Each nominee shall meet the qualifications set forth in the call.

(iii) If a producer nominee is engaged in the production of mushrooms in more than one region or is also an importer, such individual shall participate within the region that such individual so elects in writing to the Council and such election shall remain controlling until revoked in writing to the Council.

(e) After the regional caucuses for the initial Council, the Council may conduct the selection of nominees by mail ballot in lieu of a regional caucus.

(f) When producers or importers are voting for nominees to the Council, whether through a regional caucus or a mail ballot, the following conditions shall apply:

(1) Voting for any open position shall be on the basis of:

(i) One vote per eligible voter; and

(ii) Volume of average annual production or imports of the eligible voter within that region.

(2) Whenever the producers or importers in a region are choosing nominees for one open position on the Council, the proposed nominee with a majority of votes cast and the proposed nominee with a majority of the volume of production or imports voted shall be the nominees submitted to the Secretary. If a proposed nominee receives both a majority of votes cast and a majority of the volume of production or imports voted, then the proposed nominee with the second highest number of votes cast shall be a nominee submitted to the Secretary along with such proposed nominee receiving both a majority of votes cast and a majority of the volume of production or imports voted.

(3) Whenever the producers or importers in a region are choosing nominees for more than one open position on the Council at the same time, the number of the nominations submitted to the Secretary shall equal twice the number of such open positions, and for each open position shall consist of the proposed nominee with a majority number of votes cast and the proposed nominee with a majority of the volume of production or imports voted with respect to that position, subject to the rule set out in paragraph (f)(2). An individual shall only be nominated for one such open position.

(4) Voters shall certify on their ballots as to their average annual production or import volume within the region involved. Such certification may be subject to verification.

(g)(1) The Secretary may reject any nominee submitted. If there are insufficient nominees from which to appoint members of the Council as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary under the procedures set out in this section.

(2) Whenever producers or importers in a region cannot agree on nominees for an open position on the council under the preceding provisions of this section, or whenever they fail to nominate individuals for appointment to the Council, the Secretary may appoint members in such manner as the Secretary, by regulation, determines appropriate.

§ 1209.32 Acceptance.

Each individual nominated for membership on the Council shall qualify by filing a written acceptance with the Secretary at the time of nomination.

§ 1209.33 Appointment.

From the nominations made pursuant to § 1209.31, the Secretary shall appoint the members of the Council on the basis of representation provided for in § 1209.30, except that no more than one member may be appointed to the initial Council from nominations submitted by any one producer or importer. In any subsequent year in which an appointment to the council is to be made, no member shall be appointed to the Council from nominations submitted when such nominee is employed by any one producer or importer if a current member of the Council is also employed by the producer or importer.

§ 1209.34 Term of office.

(a) The members of the Council shall serve for terms of three years, except that the members appointed to the initial Council shall serve, proportionately, for terms of one, two, and three years.

(b) Members of the initial Council shall be designated for, and shall serve, terms as follows: one producer member each from regions 1, 2 and 3 shall be appointed for an initial term of one year; one producer member each from regions 1, 2, and 3 shall be appointed for an initial term of two years; and one producer member each from regions 2, 3, and 4 shall be appointed for an initial term of three years. Because current imports of fresh mushrooms are less than 35,000,000 pounds, the minimum established for representation on the Council, importers will not initially have a member appointed to the Council.

(c)(1) Except with respect to terms of office of the initial Council, the term of office for each member of the Council shall begin on January 1 or such other date that may be approved by the Secretary.

(2) The term of office for the initial Council shall begin immediately following appointment by the Secretary, except that time in the interim period from appointment until the following January 1, or other date that is the generally applicable beginning date for terms under paragraph (c)(1) approved by the Secretary, shall not count toward the initial term of office.

(d) Council members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified.

(e)(1) No member shall serve more than two successive three-year terms, except as provided in paragraph (e)(2)(ii).

(2)(i) Those members serving initial terms of two or three years may serve one successive three-year term.

(ii) Those members serving initial terms of one year may serve two successive three-year terms.

§ 1209.35 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Council, the Secretary may appoint a successor from the most recent nominations submitted for open positions on the Council assigned to the region that the vacant position represents, or the Secretary may obtain nominees to fill such vacancy in such manner as the Secretary, by regulation, deems appropriate. Each such successor appointment shall be for the remainder of the term vacated. A vacancy will not be required to be filled if the unexpired term is less than six months.

(b)(1) No successor appointed to a vacated term of office shall serve more than two successive three-year terms on the Council, except as provided in paragraph (b)(2)(ii).

(2)(i) Any successor serving longer than one year may serve one successive three-year term.

(ii) Any successor serving one year or less may serve two successive three-year terms.

(c) If a member of the Council consistently refuses to perform the duties of a member of the Council, or if a member of the Council is known to be engaged in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Council shows adequate cause, the Secretary shall remove such member from office. Further, without

recommendation of the Council, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

§ 1209.36 Procedure.

(a) At a properly convened meeting of the Council, a majority of the members shall constitute a quorum.

(b) Each member of the Council will be entitled to one vote on any matter put to the Council, and the motion will carry if supported by a simple majority of those voting. At assembled meetings of the Council, all votes will be cast in person.

(c) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Council such action is considered necessary, the Council may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, or any other such means of communication, but any such action shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Council. All votes shall be recorded in Council minutes.

(d) Meetings of the Council may be conducted by electronic communications, provided that each member is given prior notice of the meeting and has an opportunity to be present either physically or by electronic connection.

(e) The organization of the Council and the procedures for conducting meetings of the Council shall be in accordance with its bylaws, which shall be established by the Council and approved by the Secretary.

§ 1209.37 Compensation and reimbursement.

The members of the Council shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, including a reasonable per diem allowance, as approved by the Council and the Secretary, incurred by such members in the performance of their responsibilities under this subpart.

§ 1209.38 Powers.

The Council shall have the following powers:

(a) To receive and evaluate or, on its own initiative, develop and budget for proposed programs, plans, or projects to promote the use of mushrooms, as well as proposed programs, plans, or projects for research, consumer information, or industry information, and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of each;

(d) To recommend to the Secretary rules and regulations to effectuate the terms and provisions of this subpart;

(e) To receive, investigate, and report to the Secretary for action complaints of violations of the provisions of this subpart;

(f) To disseminate information to producers, importers, first handlers, or industry organizations through programs or by direct contact using the public postal system or other systems;

(g) To select committees and subcommittees of Council members, including an executive committee whose powers and membership shall be determined by the Council, subject to the approval of the Secretary, and to adopt such bylaws and other rules for the conduct of its business as it may deem advisable;

(h) To establish committees which may include individuals other than Council members, and pay the necessary and reasonable expenses and fees of the members of such committees;

(i) To recommend to the Secretary amendments to this subpart;

(j) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State mushroom producer organizations, or other organizations or entities, for the development and conduct of programs, plans, or projects authorized under § 1209.40 and with such producer organizations for other services necessary for the implementation of this subpart, and for the payment of the cost thereof with funds collected and received pursuant to this subpart. The Council shall not contract with any producer or importer for the purpose of mushroom promotion or research. The Council may lease physical facilities from a producer or importer for such promotion or research, if such an arrangement is determined to be cost effective by the Council and approved by the Secretary. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Council a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) Any such program, plan, or project shall become effective upon approval of the Secretary;

(3) The contracting or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Council of activities conducted, submit accountings for funds received and expended, and make such other reports as the Secretary or the Council may require; and the Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Council contractor and who receives or otherwise uses funds allocated by the Council shall be subject to the same provisions as the contractor;

(k) With the approval of the Secretary, to invest, pending disbursement pursuant to a program, plan, or project, funds collected through assessments provided for in § 1209.51, and any other funds received by the Council in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States;

(l) Such other powers as may be approved by the Secretary; and

(m) To develop and propose to the Secretary voluntary quality and grade standards for mushrooms, if the Council determines that such quality and grade standards would benefit the promotion of mushrooms.

§ 1209.39 Duties.

The Council shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson and such other officers as may be necessary;

(b) To evaluate or develop, and submit to the Secretary for approval, promotion, research, consumer information, and industry information programs, plans, or projects;

(c) To prepare for each fiscal year, and submit to the Secretary for approval at least 60 days prior to the beginning of each fiscal year, a budget of its anticipated expenses and disbursements in the administration of this subpart, as provided in § 2109.50.

(d) To maintain such books and records, which shall be available to the

Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(e) To prepare and make public, at least annually, a report of its activities carried out, and an accounting for funds received and expended;

(f) To cause its financial statements to be prepared in conformity with generally accepted accounting principles and to be audited by an independent certified public accountant in accordance with generally accepted auditing standards at least once each fiscal year and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(g) To give the Secretary the same notice of meetings of the Council as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(h) To submit to the Secretary such information as may be requested pursuant to this subpart;

(i) To keep minutes, books, and records that clearly reflect all the acts and transactions of the Council. Minutes of each Council meeting shall be promptly reported to the Secretary;

(j) To act as intermediary between the Secretary and any producer or importer;

(k) To follow the Department's equal opportunity/civil rights policies; and

(l) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the mushroom industry's position in the marketplace, maintain and expand existing markets and uses for mushrooms, develop new markets and uses for mushrooms, and to carry out programs, plans, and projects designed to provide maximum benefits to the mushroom industry.

Promotion, Research, Consumer Information, and Industry Information

§ 1209.40 Programs, plans, and projects.

(a) The Council shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, consumer information, and industry information with respect to mushrooms; and

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and use of mushrooms and mushroom products, and the creation of new products thereof, to the end that marketing and use of mushrooms may be encouraged, expanded, improved or made more acceptable. However, as prescribed by the Act, nothing in this subpart may be construed to authorize mandatory requirements for quality control, grade standards, supply management programs, or other programs that would control production or otherwise limit the right of individual producers to produce mushrooms.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Council shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Council to ensure that it contributes to an effective program of promotion, research, consumer information, or industry information. If it is found by the Council that any such program, plan, or project does not contribute to an effective program of promotion, research, consumer information, or industry information, then the Council shall terminate such program, plan, or project.

(d) In carrying out any program, plan, or project, no reference to a brand name, trade name, or State or regional identification of any mushrooms or mushroom product shall be made. In addition, no program, plan, or project shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

Expenses and Assessments

§ 1209.50 Budget and expenses.

(a)(1) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Council shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(i) A statement of objectives and strategy for each program, plan, or project;

(ii) A summary of anticipated revenue, with comparative data for at least one preceding year;

(iii) A summary of proposed expenditures for each program, plan, or project; and

(iv) Staff and administrative expense breakdowns, with comparative data for at least one preceding year.

Each budget shall include a rate of assessment for such fiscal year calculated, subject to § 1209.51(b), to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in paragraph (e). The Council may change such rate at any time, as provided in § 1209.51(b)(5).

(2)(i) Subject to paragraph (a)(2)(ii), any amendment or addition to an approved budget must be approved by the Secretary, including shifting of funds from one program, plan, or project to another.

(ii) Shifts of funds which do not cause an increase in the Council's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(b) The Council is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Council.

(c) The Council shall not use funds collected or received under this subpart to reimburse, defray, or make payment of expenditures incurred in developing, drafting, studying, lobbying on or promoting the legislation authorizing this subpart. Such prohibition includes reimbursement, defrayment, or payment to mushroom industry associations or organizations, producers or importers, lawyers, law firms, or consultants.

(d) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Council shall retain complete control of their use. The donor may recommend that the whole or a portion of the contribution be applied to an ongoing program, plan, or project.

(e) The Council shall reimburse the Secretary, from funds received by the Council, for administrative costs incurred by the Secretary in implementing and administering this subpart, except for the salaries of Department employees incurred in conducting referenda.

(f) The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established, except that the funds in the

reserve shall not exceed approximately one fiscal year's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

(g) With the approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council.

§ 1209.51 Assessments.

(a) Any first handler initially purchasing, or otherwise placing into the current of commerce, mushrooms produced in the United States shall, in the manner as prescribed by the Council and approved by the Secretary, collect an assessment based upon the number of pounds of mushrooms marketed in the United States for the account of the producer, and remit the assessment to the Council.

(b) The rate of assessment effective during any fiscal year shall be the rate specified in the budget for such fiscal year approved by the Secretary, except that:

(1) The rate of assessment during the first year this subpart is in effect shall not exceed one-quarter of one cent per pound of mushrooms marketed, or the equivalent thereof.

(2) The rate of assessment during the second year this subpart is in effect shall not exceed one-third of one cent per pound of mushrooms marketed, or the equivalent thereof.

(3) The rate of assessment during the third year this subpart is in effect shall not exceed one-half of one cent per pound of mushrooms marketed, or the equivalent thereof.

(4) The rate of assessment during each of the fourth and following years this subpart is in effect shall not exceed one cent per pound of mushrooms marketed, or the equivalent thereof.

(5) The Council may change the rate of assessment for a fiscal year at any time with the approval of the Secretary as necessary to reflect changed circumstances, except that any such changed rate may not exceed the level of assessment specified in paragraphs (b) (1), (2), (3), or (4), whichever is applicable.

(c) Any person marketing mushrooms of that person's own production to consumers in the United States, either directly or through retail or wholesale outlets, shall be considered a first handler and shall remit to the Council an assessment on such mushrooms at the rate per-pound then in effect, and in such form and manner prescribed by the Council.

(d) Only one assessment shall be paid on each unit of mushrooms marketed.

(e)(1) Each importer of mushrooms shall pay an assessment to the Council on mushrooms imported for marketing in the United States, through the U.S. Customs Service or in such other manner as may be established by rules and regulations approved by the Secretary.

(2) The per-pound assessment rate for imported mushrooms shall be the same as the rate provided for mushrooms produced in the United States.

(3) The import assessment shall be uniformly applied to all imported mushrooms that are identified by the number, 0709.51.0000, in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh mushrooms.

(4) The assessment due on imported mushrooms shall be paid when the mushrooms are entered or withdrawn for consumption in the United States, or at such other time as may be established by rules and regulations prescribed by the Council and approved by the Secretary and under such procedures as are provided in such rules and regulations.

(5) Only one assessment shall be paid on each unit of mushrooms imported.

(f) The collection of assessments under this section shall commence on all mushrooms marketed or imported in the United States on or after the date established by the Secretary, and shall continue until terminated by the Secretary. If the Council is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Council and may hold such assessments until the Council is constituted, then remit such assessments to the Council.

(g)(1) Each person responible for remitting assessments under paragraphs (a), (c), or (e) shall remit the amounts due from assessments to the Council on a monthly basis no later than the fifteenth day of the month following the month in which the mushrooms were marketed, in such manner as prescribed by the Council.

(2)(i) A late payment charge shall be imposed on any person that fails to remit to the Council the total amount for which the person is liable on or before the payment due date established under this section. The amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(ii) An additional charge shall be imposed on any person subject to a late payment charge, in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in rules and regulations as approved by the Secretary

(3) Any assessment that is determined to be owing at a date later than the payment due date established under this section, due to a person's failure to submit a report to the Council by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (g)(2)(i) and (g)(2)(ii) of this section shall be applicable.

(h) The Council, with the approval of the Secretary, may enter into agreements authorizing other organizations to collect assessments in its behalf. Any such organization shall be required to maintain the confidentiality of such information as is required by the Council for collection purposes. Any reimbursement by the Council for such services shall be based on reasonable charges for services rendered.

(i) The Council is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Council shall not be obligated to pay interest on any advance payment.

§ 1209.52 Exemption from assessment.

(a) Persons that produce or import less than 500,000 pounds of mushrooms annually shall be exempt from the assessment.

(b) To claim such exemption, such persons shall annually submit an application to the Council, on a form provided by the Council, stating that the person's production or importation of mushrooms shall not exceed 500,000 pounds for the year for which the exemption is claimed.

(c) Mushrooms produced in the United States that are exported are exempt from assessment and are subject to such safeguards as prescribed in rules and regulations to prevent improper use of this exemption.

(d) Imported mushrooms used for processing are exempt from assessment and are subject to such safeguards as prescribed in rules and regulations to prevent improper use of this exemption.

(e) Should an exempted person's production or volume of imports exceed 500,000 pounds of mushrooms during any year in which exemption is granted, such person shall be responsible for the payment of assessments on all mushrooms produced or imported during such year.

§ 1209.53 Influencing governmental action.

No funds received by the Council under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or action, except to develop and recommend to the Secretary amendments to this subpart, and to submit to the Secretary proposed voluntary grade and quality standards for mushrooms.

Reports, Books and Records

§ 1209.60 Reports.

(a) Each producer marketing mushrooms of that person's own production directly to consumers, and each first handler responsible for the collection of assessments under § 1209.51(a) shall be required to report monthly to the Council, on a form provided by the Council, such information as may be required under this subpart or any rules and regulations issued thereunder. Such information shall include, but not be limited to, the following:

(1) The first handler's name, address, and telephone number;

(2) Date of report, which is also the date of payment to the Council;

(3) Period covered by the report;

(4) The number of pounds of mushrooms purchased, initially transferred, or that in any other manner are subject to the collection of assessments, and a copy of a certificate of exemption, claiming exemption under § 1209.52 from those who claim such exemptions;

(5) The amount of assessments remitted; and

(6) The basis, if necessary, to show why the remittance is less than the number of pounds of mushrooms determined under paragraph (a)(4) multiplied by the applicable assessment rate.

(b) If determined necessary by the Council and approved by the Secretary, each importer shall file with the Council periodic reports, on a form provided by the Council, containing at least the following information:

(1) The importer's name, address, and telephone number;

(2) The quantity of mushrooms entered or withdrawn for consumption in the United States during the period covered by the report; and

(3) The amount of assessments paid to the U.S. Customs Service at the time of such entry or withdrawal.

(c) The words final report shall be shown on the last report at the end of each fiscal year.

§ 1209.61 Books and records.

Each person who is subject to this subpart shall maintain and make available for inspection by the Council or the Secretary such books and records as are deemed necessary by the Council, with the approval of the Secretary, to carry out the provisions of this subpart and any rules and regulations issued hereunder, including such books and records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal year of their applicability.

§ 1209.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the rules and regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Council, all officers and employees and former officers and employees of the Department, and all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information, and shall not be available to Council members or any other producers or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1209.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Council shall be submitted to the Secretary for approval.

§ 1209.71 Suspension or termination.

(a) Whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this subpart or such provision thereof.

(b)(1) Five years after the date on which this subpart becomes effective, the Secretary shall conduct a referendum among producers and importers to determine whether they favor continuation, termination, or suspension of this subpart.

(2) Effective beginning three years after the date on which this subpart becomes effective, the Secretary, on request of a representative group comprising 30 percent or more of the number of mushroom producers and importers, may conduct a referendum to determine whether producers and importers favor termination or suspension of this subpart.

(3) Whenever the Secretary determines that suspension or termination of this subpart is favored by a majority of the mushroom producers and importers voting in a referendum under paragraphs (b)(1) or (2) who, during a representative period determined by the Secretary, have been engaged in producing and importing mushrooms and who, on average, annually produced and imported more than 50 percent of the volume of mushrooms produced and imported by all those producers and importers voting in the referendum, the Secretary shall:

(i) Suspend or terminate, as appropriate, collection of assessments within six months after making such determination; and

(ii) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

(4) Referenda conducted under this subsection shall be conducted in such manner as the Secretary may prescribe.

§ 1209.72 Proceedings after termination.

(a) Upon the termination of this subpart, the Council shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Council. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of the Council, including any claims unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Council under any contract or agreement entered into by it under this subpart;

(3) From time to time account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the Council and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Council or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information programs, plans, or projects authorized under this subpart.

§ 1209.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule and regulation issued under this subpart, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such rules or regulations;

(b) Release or extinguish any violation of this subpart or any such rules or regulations; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person with respect to any such violation.

§ 1209.74 Personal liability.

No member or employee of the Council shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1209.75 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Council under this subpart shall be the property of the United States Government as represented by the Council and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations inure to the benefit of the Council and be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council. Upon termination of this subpart, § 1209.72 shall apply to determine disposition of all such property.

§ 1209.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Council or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1209.77 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Dated: December 11, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92-921 Filed 1-14-92; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1944

Housing Preservation Grant Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Housing Preservation Grant Regulations. The intended effect is to provide repair and rehabilitation assistance to owner(s) of single or multi-unit rental properties and cooperative housing projects. These revisions will bring the regulations into conformance with existing requirements to authorizing legislation for the Housing Preservation Grant program, section 533 of the Housing Act of 1949, 42 U.S.C. 1490m.

DATES: Comments must be received on or before March 16, 1992.

ADDRESSES: Submit written comments in duplicate to the office of the Chief, Regulations, Analysis and Control Branch, Farmers Home Administration, room 6348, South Agriculture Building, Washington, DC 20250. All comments made pursuant to this notice will be available for public inspection at the above address. The reporting and recordkeeping requirements contained in this regulation have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 12 hours per response, with an average of 1.35 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Pentecost, Branch Chief, Special Authorities Branch, Multiple Housing Processing Division, FmHA, USDA, Washington, DC 20250, Telephone (202) 382-1606 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions, or significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this

action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an environmental impact statement is not required.

Programs Affected

This program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.433, Housing Preservation Grant.

Intergovernmental Consultation

This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983).

Regulatory Flexibility Act

The Administrator has determined that the proposed action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements. The proposed action will only affect a small number of rural communities.

General Information

This proposed rule incorporates the provisions of section 533 of the Housing Act of 1949, 42 U.S.C. 1490m, allowing for Housing Preservation Grant assistance to repair and rehabilitate single and mult-unit rental properties and cooperative housing units, in addition to existing single family housing units.

Significant Changes

In addition to making a major change of expanding the program to include single and multi-unit rental properties and co-ops, FmHA is making the following major changes and seeks comment on same. The addition of § 1944.654 covering Debarment and Suspension regulations, as well as the applicable requirements on the Drug Free Workplace Act.

The addition of the following definitions in § 1944.656: Cooperative (Co-op); Household; Overcrowding; Rental Properties; and Tenant.

A section on applicant eligibility (§ 1944.658(e)) stating that nonprofit entities, where a proposal exists solely on an identity of interest, is not eligible.

Removing references to the program being operated out of the State Office at the discretion of the State Director.

Re-defining income of recipients to include all income from persons residing in the household.

Adding § 1944.662 to define the eligibility of HPG assistance on rental properties or co-ops and § 1944.663 on the ownership agreement requirements between the HPG Grantee and the rental property owner or co-op.

Reducing in § 1944.664(e) the amount of HPG funds to be used for cosmetic purposes from twenty-five percent to twenty percent.

Adding § 1944.667 to define relocation and displacement requirements.

Expanding § 1944.671 to include the Fair Housing Act requirements and define outreach efforts.

Under § 1944.679, Project Selection Criteria, the following changes:

(a) (1) in defining financially feasible;

(b) (4) in changing the awarding of 5 points to an application where the percent of HPG funds used for administration purposes is less than twenty percent to a sliding scale;

(7) in adding the awarding of points for a HPG program involving rental properties or co-ops;

(c) Adding language to eliminate (hopefully) a "lottery" system in case of a tie; and in eliminating the awarding of ten points (also previously referenced in § 1944.686) to existing grantees.

And finally, adding § 1944.689 which covers long-term monitoring requirements by the grantee.

List of Subjects for 7 CFR Part 1944

Grant programs—Housing and community development, Handicapped, Loan programs—Housing and community development, Nonprofit organizations, Rural housing.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart N—Housing Preservation Grants

2. Section 1944.651 is revised to read as follows:

§ 1944.651 General.

(a) This subpart sets forth the policies and procedures for making grants under section 533 of the Housing Act of 1949, 42 U.S.C. 1490(m), to provide funds to eligible applicants (hereafter also referred to as "grantee(s)") to conduct housing preservation programs benefiting very low- and low-income rural residents. Program funds cover part or all of the grantee's cost of providing loans, grants, interest reduction payments or other assistance to eligible homeowners, owners of single or multiple unit rental properties or for the benefit of owners (as occupants) of consumer cooperative housing projects (hereafter also referred to as co-ops). Such assistance will be used to reduce the cost of repair and rehabilitation, to remove or correct health or safety hazards, to comply with applicable development standards or codes, or to make needed repairs to improve the general living conditions of the resident(s), including improved accessibility by handicapped persons.

(b) The Farmers Home Administration (FmHA) will provide Housing Preservation Grant (HPG) assistance to grantees who are responsible for providing assistance to eligible persons without discrimination because of race, color, religion, sex, national origin, age, familial status, or handicap if such person has capacity to contract.

(c) The preapplication must only address a proposal to finance repairs and rehabilitation activities to individual housing or rental properties or co-ops. Any combination proposal will not be accepted.

3. Section 1944.652 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1944.652 Policy.

(a) The policy of FmHA is to provide housing preservation grants to grantees to operate a program which finances repair and rehabilitation activities to individual housing, rental properties, or co-ops for very low- and low-income persons. Grantees are expected to:

(1) Coordinate and leverage funding for repair and rehabilitation activities with housing and community development organizations and/or activities operating in the same geographic area; and (2) focus the program to rural areas and smaller communities so that it serves very low- and low-income persons.

(b) FmHA intends to permit grantees considerable latitude in program design and administration. The forms or types of assistance must provide the greatest long term benefit to the greatest number of persons residing in individual housing, rental properties, or co-ops needing repair and rehabilitation.

* * * * *

4. Section 1944.653 is revised to read as follows:

§ 1944.653 Objective.

The objective of the HPG program is to repair or rehabilitate individual housing, rental properties, or co-ops owned and/or occupied by very low- and low-income rural persons. Grantees will provide eligible homeowners, owners of rental properties, and owners of co-ops with financial assistance through loans, grants, interest reduction payments or other comparable financial assistance for necessary repairs and rehabilitation.

5. Section 1944.654 is added to read as follows:

§ 1944.654 Debarment and suspension—drug-free workplace.

(a) For purposes of this subpart, Exhibit A of subpart M of part 1940 (available in any FmHA office) requires all FmHA applicants for a HPG to sign and submit with their preapplication, Form AD 1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions," which basically states that the applicant has not been debarred or suspended from Government assistance. Further, all grantees after receiving a HPG must obtain a signed certification (Form AD 1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions") from all persons or entities (excluding homeowner recipients) that the grantee does business with as a result of the HPG. Grantees are responsible for informing these persons or entities of the provisions of Exhibit A of subpart M of part 1940 and of maintaining Form AD 1048 in the grantee's office.

(b) Grantees must also be made aware of the Drug-free Workplace Act of 1988 requirements found in Exhibit A of subpart M of part 1940. For this subpart, a grantee is defined as any organization who applies for or receives a direct grant from FmHA. All preapplications must include a signed Form AD 1049, "Certification Regarding Drug-free Workplace Requirements (Grants) Alternative I—Grantees Other Than Individuals."

6. Section 1944.655 is added to read as follows:

§ 1944.655 Applicant accountability requirements.

Applicants should be made aware of the accountability requirements of persons paid to influence the making of an FmHA grant as described in subpart S of part 1940 of this chapter.

7. Section 1944.656 is revised to read as follows:

§ 1944.656 Definitions.

Reference to this subpart to District, State, National and Finance Offices, and to District Director, State Director, and Administrator refer to FmHA offices and officials and should be read as prefaced by FmHA. Terms used in this subpart have the following meanings:

Adjusted annual income. As defined under § 1944.2(k) of subpart A of part 1944 of this chapter.

Applicant or grantee Any eligible organization which applies for or receives HPG funds under a grant agreement.

Cooperative (Co-op). For the purposes of the HPG program, a cooperative (co-op) is one which:

(1) Is a corporation organized as a consumer cooperative; (2) will operate the housing on a nonprofit basis solely for the benefit of the occupants; and (3) is legally precluded from distributing, for a minimum period of five years from the date of HPG assistance from the grantee, any gains or profits from operation of the co-op. For this purpose, any patronage refunds to occupants of the co-op would not be considered gains or profits. A co-op may accept non-members as well as members for occupancy in the project.

Grant agreement. The contract between FmHA and the grantee which sets forth the terms and conditions under which HPG funds will be made available. (See Exhibit A of this subpart.)

Homeowner. For the purposes of the HPG program, a homeowner is one who can meet the conditions of income and ownership under § 1944.661 of this subpart.

Household. For the purposes of the HPG program, a household is defined as all persons living in a unit or dwelling all or part of the next 12 months assisted with HPG funds.

Housing preservation. The repair and rehabilitation activities that contribute to the health, safety and well-being of the occupant, and contribute to the structural integrity or long-term preservation of the unit. As a result of these activities, the overall condition of the unit or dwelling must be raised to meet FmHA Thermal Standards for existing structures and applicable development standards for existing housing recognized by FmHA in subpart A of part 1924 of this chapter or standards contained in any of the voluntary national model codes acceptable upon review by FmHA. Properties included on or eligible for inclusion on the National Register of Historic Places are subject to the standards and conditions of § 1944.673 of this subpart.

Low-income. An adjusted annual income that does not exceed the "lower" income limit according to size of household as established by the United States Department of Housing and Urban Development (HUD) for the county or Metropolitan Statistical Area (MSA) where the property is located. Maximum low-income limits are set forth in Exhibit C of subpart A of this part (available in any FmHA office).

Organization. An organization is defined as one of the following:

(1) A State, commonwealth, trust territory, other political subdivision, or public nonprofit corporation authorized to receive and administer HPG funds;

(2) An Indian tribe, band, group, nation, including Alaskan Indians, Aleuts, Eskimos and any Alaskan Native Village, of the United States which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public L. 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512);

(3) A private nonprofit corporation that is owned and controlled by private persons or interests for purposes other than making gains or profits for the corporation, is legally precluded from distributing any gains or profits to its members, and is authorized to undertake housing development activities; or

(4) A consortium of units of government and/or private nonprofit organizations which is otherwise eligible to receive and administer HPG funds and which meets the following conditions:

(i) Be comprised of units of government and/or private nonprofit corporations that are close together, located in the same state, and serve areas eligible for FmHA housing assistance; and

(ii) Have executed an agreement among its members designating one participating unit of government or private nonprofit corporation as the applicant or designating a legal entity (such as a Council of Governments) to be the applicant.

Overcrowding. Overcrowding is defined as having more than the ideal number of persons residing in a unit, as indicated in the following table:

Number of bedrooms	Ideal number of persons
0	2
1	2
2	4
3	6

Number of bedrooms	Ideal number of persons
4	8
5	10

Rental properties. Rental properties are defined as single-unit or multi-unit dwellings used for occupancy by tenants.

Rural area. The definition is § 1944.10 of subpart A of part 1944 of this chapter applies.

Tenant. Any person who resides in a single or multi-unit rental property and is not an owner of that rental property.

Very low-income. An adjusted annual income that does not exceed the very low-income limit according to size of household as established by HUD for the county or MSA where the property is located. Maximum very low-income limits are set forth in Exhibit C of subpart A of this part (available in any FmHA Office).

8. Section 1944.658 is amended by revising paragraphs (a), (c), and (d); and by adding paragraph (e) to read as follows:

§ 1944.658 Applicant eligibility.

* * * * *

(a) Be an organization as defined in § 1944.656 (i) of this subpart;

* * * * *

(c) Legally obligate itself to administer HPG funds, provide an adequate accounting of the expenditure of such funds in compliance with the terms of this regulation, the grant agreement, and 7 CFR parts 3015 or 3016 (available in any FmHA office), as appropriate, and comply with the grant agreement and FmHA regulations;

(d) If the applicant is engaged in or plans to become engage in any other activities, they must provide sufficient evidence and documentation that they have adequate resources, including financial resources, to carry on any other programs or activities to which they are committed without jeopardizing the success and effectiveness of the HPG project; and

(e) Applicants will not be considered eligible if the applicant is:

(1) A non-profit entity and there exists an identity of interest, as defined in § 1924.4(i) of subpart A of part 1924, between the applicant and the owner(s) of the proposed dwelling or co-op to be rehabilitated or repaired; or

(2) if the applicants' proposal is based solely on an identity of interest program.

9. Section 1944.660 is revised to read as follows:

§ 1944.660 Authorized representative of the HPG applicant and FmHA point of contact.

(a) FmHA will deal only with authorized representatives designated by the HPG applicant.

(b) FmHA has designated the District Office as the point of initial contact for all matters relating to the HPG program and as the office generally responsible for the administration of HPG projects. Exhibit C (available in any FmHA office), provides guidance to FmHA staff on the HPG program.

10. Section 1944.661 is revised to read as follows:

§ 1944.661 Individual Homeowners—eligibility for HPG assistance.

The individual homeowners assisted must have income that meets the low- or very low-income definition, be the owner of an individual dwelling at least one year prior to the time of assistance, and be the intended occupant of the dwelling subsequent to the time of assistance. The dwelling must be located in a rural area and be in need of housing preservation assistance. Each homeowner is required to submit evidence of income and ownership for retention in the grantee's files.

(a) *Income.* Determination of income will be made in accordance with § 1944.8 of subpart A of this part. All members of the household, as defined in § 1944.656 (f) of this subpart, must be included when determining income. Grantees must use certifications, may require additional information from the homeowner, and should seek advice from their attorney.

(b) *Ownership.* Evidence of ownership may be a photostatic copy of the instrument evidencing ownership. Methods for assuring the intention of the homeowner to continue to occupy the unit after assistance will be established by the grantee. Any of the following will satisfy or fulfill this requirement of ownership:

(1) Full marketable title.

(2) An undivided or divided interest in the property to be repaired or rehabilitated when not all of the owners are occupying the property. HPG assistance may be made in such cases when:

(i) The occupant has been living in the house for at least one year prior to the date of requesting assistance;

(ii) The grantee has no reason to believe the occupant's position of owner/occupant will be jeopardized as a result of the improvements to be made with HPG funds; and

(iii) In the case of a loan, and to the extent possible, the co-owner(s) should also sign the security instrument.

(3) A leasehold interest in the property to be repaired. When the potential HPG recipient's "ownership" interest in the property is based on a leasehold interest, the lease must be in writing and a copy must be included in the grantee's file. The unexpired portion of the lease must not be less than five years and must permit the recipient to make modifications to the structure without increasing the recipient's lease cost.

(4) A life estate, with the right of present possession, control, and beneficial use of the property.

(5) Land assignments may be accepted as evidence of ownership only for Indians living on a reservation, when historically the permits have been used by the Tribe and have had the comparable effect of a life estate.

(c) *Other evidence of ownership.* The following items may be accepted as evidence of ownership if a recorded deed cannot be provided:

(1) Any legal instrument, whether or not recorded, which is commonly considered evidence of ownership.

(2) Evidence that the person(s) receiving assistance from the HPG grantee is listed as the owner of the property by the local taxing authority and is responsible for any real estate taxes.

(3) Affidavits by others in the community that the person(s) receiving assistance from the HPG grantee has occupied the property as the apparent owner for a period of not less than 10 years, and is generally believed to be the owner.

11. Sections 1944.663 and 1944.669 are added to read as follows:

§ 1944.663 Eligibility of HPG assistance on rental properties or co-ops.

(a) *Ownership.* The owner(s) of rental properties or co-ops must own the dwelling at the time of receiving assistance from the HPG grantee. The dwelling must be located in a rural area and be in need of housing preservation assistance. Evidence of ownership may be a photostatic copy of the instrument evidencing ownership. Owners of rental properties and co-ops are required to submit evidence of ownership for retention in the grantee's files. Any of the following will satisfy or fulfill this requirement of ownership:

(1) Full marketable title.

(2) An undivided or divided interest in the property to be repaired or rehabilitated.

(3) A leasehold interest in the property to be repaired or rehabilitated. Ownership interest in the property is based on a leasehold interest. The lease

must be in writing and a copy must be included in the grantee's file. The unexpired portion of the lease must not be less than five years and must permit the recipient to make modifications to the structure without increasing the recipient's lease cost.

(4) Land assignments may be accepted as evidence of ownership only for Indians living on a reservation, when historically the permits have been used by the Tribe and have had the comparable effect of a life estate.

(b) *Tenant eligibility.* The following requirements must be met in order for a unit within a rental property or co-op to be assisted with HPG funds:

(1) The tenant must have income that meets the very-low or low-income definition.

(2) The tenant must be the intended occupant of the unit, but is not required to have resided previously in the dwelling.

(3) Any owner(s) who receives assistance from a HPG grantee or a member of the immediate family of the owner(s), who also resides in a unit within the dwelling to be repaired or rehabilitated is not eligible to have their unit repaired or rehabilitated.

(c) *Identity of interest.* When an identity of interest, as defined in § 1924.4(i) of subpart A of part 1924, exists between a non-profit entity and the owner(s) of a dwelling, the property is not eligible for assistance.

§ 1944.669 Ownership agreement between HPG grantee and rental property owner or co-op.

HPG assistance may be provided by a grantee with respect to rental properties or co-ops only if the following conditions are met by the owner(s) or by the co-op during a five year period beginning on the date on which the units in the dwelling are available for occupancy. The HPG grantee is responsible for preparing, executing, and monitoring for compliance, the ownership agreement with the owner(s) of the rental property, or with the co-op. The rental property owner(s) or the co-ops are required to enter into an ownership agreement with the grantee to assure compliance with the requirements of this section.

(a) *Ownership Agreement.* At a minimum, the owership agreement must include the following clauses:

(1) The owner(s) agrees to pass on to the tenants any reduction in the debt service payments resulting from the HPG assistance provided by the HPG grantee to the owner(s)

(2) The owner(s) of rental properties agrees not to convert the units to condominium ownership. In the case of co-ops, the owner(s) agrees not to convert the dwelling(s) to condominum ownership or any form of cooperative ownership not eligible under this section.

(3) The owner(s) agrees not to refuse to rent a unit to any person solely because the person is receiving or is eligible to receive assistance under any Federal, State, or local housing assistance program.

(4) The owner(s) agrees that the units repaired or rehabilitated will be occupied or available for occupancy by persons of very-low or low-income.

(5) The owner(s) agrees to enter into and abide by written leases with the tenants and that such leases shall provide that the tenants may be evicted only for good cause.

(6) The owner(s) agrees that, in the event the owner(s) or the owner's successors in interest fail to carry out the requirements of this section during the applicable period, they shall make a payment to FmHA in an amount that equals the total amount of assistance provided by the grantee plus interest thereon (without compounding) for each year and any fraction thereof that the assistance was outstanding. The interest rate shall be that as determined by FmHA at the time of infraction taking into account the average yield on outstanding marketable long-term obligation of the United States during the month preceding the date on which the assistance was initially made available.

(7) The owner(s) agrees that, notwithstanding any other provisions of law, the HPG assistance provided to the owner(s) shall constitute a debt which is payable in the case of any failure of this section and shall be secured by a security instrument provided by the owner(s) or co-op to the grantee, that provides for FmHA to take such action upon incapacity or dissolution of the grantee.

(8) The owner(s) agrees and certifies that the assistance is being made available in conformity with Public Law 88–352, the "Civil Rights Act of 1964," and Public Law 90–284, the "Civil Rights Act of 1968".

(b) *Responsibilities of the grantee.* The grantee is responsible for insuring through verification and monitoring that the areas listed below are in compliance:

(1) That HPG funds used for loans, grants, or interest reduction payments providing repair or rehabilitation assistance to owners of rental properties or co-ops are not in excess of seventy-five percent (75%) of the total cost of all repairs and rehabilitation activities eligible for HPG assistance.

(2) That the owner(s) is not repairing and/or rehabilitating any unit unless it meets the requirments of § 1944.662(b) of this subpart.

(3) That rental property units occupied by owners or members of the owner's immediate family are not being repaired and or rehabilitated.

(4) That, for multi-units not considered eligible as a result of paragraph (b)(2) or (b)(3) of this section, the grantee and owner(s) shall agree on a method, if any is needed, of determining the prorata share of repairs and rehabilitation activities to the dwelling, based on a percentage of the ineligible units to the total dwelling.

12. Section 1944.664 is amended by redesignating paragraphs (b) through (f) as paragraphs (c) through (g), by adding a new paragraph (b), and by revising paragraph (a), newly designated paragraphs (c)(8), (c)(10) and (c)(11), the introductory text of newly designated paragraph (e), and newly designated paragraphs (f)(3), and (g)(2), to read as follows:

§ 1944.664 Housing preservation assistance.

(a) Grantees are responsible for providing loans, grants or other comparable assistance to homeowners, owners of rental properties, or co-ops for housing preservation as described in § 1944.656(g) of this subpart.

(b) HPG funds used for loans, grants, or interest reduction payments to provide rental repair and/or rehabilitation assistance to owners of rental properties or co-ops shall not exceed the requirements noted in § 1944.663(b)(1) of this subpart.

(c) * * *

(8) Alterations of the unit's interior or exterior to provide greater accessibility for any handicapped person;

* * * * *

(10) Necessary repairs to manufactured housing provided:

(i) For homeowners only, the recipient owns the home and the site on which the home is situated and the homeowner has occupied that home on that site for at least one year prior to receiving HPG assistance; and

(ii) For homeowners, owners of single or multiple unit rental properties, and co-ops, the manufactured housing is on a permanent foundation or will be put on a permanent foundation with HPG funds. Advice on the requirements for a permanent foundation is available from FmHA. Guidance may be found in §1944.205 of subpart E of this part and in Exhibit J of subpart A of part 1924; or

(11) Additions to any dwelling (conventional or manufactured) only

when it is clearly necessary to alleviate overcrowding or to remove health hazards to the occupants.

* * * * *

(e) HPG funds may be used to make improvements that do not contribute to the health, safety and well being of the occupant or do not materially contribute to the structural integrity or long term preservation of the unit. The percentage of the funds to be used for such purposes must not exceed twenty percent (20%) of the total funding for the unit(s) and/or dwelling, and such work must be combined with improvements listed as eligible under paragraph (c) of this section. These improvements may include, but are not limited to the following:

* * * * *

(f) * * *

(3) The grantee has established or makes available a process that provides for consumer protection to the individual homeowner, owner of a rental property, or co-op assisted; and

* * * * *

(g) * * *

(2) Refinance any debt or obligation of the grantee, the individual homeowner, owners of a rental property, or co-ops other than obliations incurred for eligible items covered by this section entered into after the date of agreement with HPG grantee.

* * * * *

13. Section 1944.665 is revised to read as follows:

§ 1944.665 Supervision and inspection of rehabilitation and repair work.

Grantees are responsible for supervising all rehabilitation and repair work financed with HPG assistance. After all HPG work has been completed, a final inspection must be done by a disinterested third party, such as local building and code enforcement officials. If there are no such officials serving the area where HPG activities will be undertaken, or if the grantee would also normally make such inspections, the grantee must use qualified contract or fee inspectors.

14. Section 1944.666 is amended by revising the introductory text and paragraphs (a)(6), (b)(3), (b)(4), (b)(6), (b)(8), and (c); and by adding paragraph (b)(9) to read as follows.

§ 1944.666 Administrative activities and policies.

Grant funds are to be used primarily for housing repair and rehabilitation activities. Use of grant funds for direct and indirect administrative costs is a secondary purpose and must not exceed twenty percent (20%) of the HPG funds awarded to the grantee.

(a) * * *

(6) Other reasonable travel and miscellaneous expenses necessary to accomplish the objectives of the specific HPG grant which were anticipated in the individual HPG grant proposal and which have been approved as eligible expenses at the time of grant approval.

(b) * * *

(3) Reimbursing personnel to perform construction related to housing preservation assistance. (Non-administrative funds may be used if construction is for housing preservation assistance under the provisions of § 1944.664(f) of this subpart.)

(4) Buying property of any kind from persons receiving assistance from the grantee under the terms of the HPG Agreement.

* * * * *

(6) Paying any debts, expenses, or costs which should be the responsibility of the individual homeowner, owner, tenant or household member of a rental property, or owner (member) or non-member of a co-op receiving HPG assistance outside the costs of repair and rehabilitation.

* * * * *

(8) Other costs including contributions and donations, entertainment, fines and penalties, interest and other financial costs unrelated to the HPG assistance to be provided, legislative expenses, and any excess of cost from other grant agreements.

(9) Paying added salaries for employees paid by other sources, i.e., public agencies who pay employees to handle grants.

(c) Advice concerning ineligible costs may be obtained from FmHA as part of the HPG preapplication review or when a proposed cost appears ineligible.

* * * * *

15. Section 1944.667 is added to read as follows:

§ 1944.667 Relocation and displacement.

(a) *Relocation.* In accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, public bodies and agencies must comply with the requirements of this Act. The applicant must provide assistance for relocation of displaced persons for which assistance will be provided. HPG funds may be used to cover costs incurred in the relocation of displaced persons. Department regulations found at 7 CFR part 21 should be followed and FmHA should be consulted for further guidance. The applicant shall include in its statement of activities a statement concerning the temporary relocation of homeowners and/or tenants during the period of repairs and/or rehabilitation to the units or dwellings. Any contract or agreement between the homeowner and the grantee, as well as between the grantee and the owner(s) of rental properties and co-ops shall include a statement covering at a minimum:

(1) The period of relocation (if any); (2) the name(s) of the party (or parties) who shall bear the cost of temporarily relocating; and (3) if paragraph (2) of this section is the grantee, the maximum amount is allowed.

(b) *Displacement.* The applicant shall include in its statement of activities, a statement as to how its proposed HPG financial assistance program shall keep to a minimum the displacement or homeowners and/or tenants.

16. Section 1944.668 is revised to read as follows:

§ 1944.668 Term of grant.

HPG projects may be funded under the terms of a grant agreement for a period of up to two years commencing on the date of execution of the grant agreement by the FmHA approval official. Term of the project will be based upon HPG resources available for the proposed project and the accomplishability of the applicant's proposal within one or two years. Applicants requesting a two year term may be asked to develop a feasible one year program if sufficient funds are not available for a two year program.

17. Section 1944.670 is amended by revising paragraph (a) to read as follows:

§ 1944.670 Project income.

(a) Project income during the grant period from loans made to homeowners, owners of rental properties, and co-ops is governed by 7 CFR parts 3015 and 3016. All income during the grant period, including amounts recovered by the grantee due to breach of agreements between the grantee and the HPG recipient, must be used under (and in accordance with) the requirements of the HPG program.

* * * * *

18. Section 1944.671 is amended by revising the section heading; and by adding paragraphs (a), (b), and (c).

§ 1944.671 Equal opportunity requirements and outreach efforts.

* * * * *

(a) *Fair Housing.* The Fair Housing Act prohibits any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making loans, grants, or other

financial assistance for a unit or dwelling, or which will be secured by a unit or dwelling, because of race, color, religion, sex, national origin, age, familial status, or handicap. Prohibited practices under this section include:

(1) Failing to provide any person in connection with a residential real estate-related transaction, information regarding the availability of loans, grants, or other financial assistance, or providing information that is inaccurate or different from that provided others; and

(2) The term residential real estate-related transaction includes the making or purchasing of loans, grants, or other financial assistance for purchasing, constructing, improving, repairing or rehabilitating a unit or dwelling.

(b) *Outreach.* In addition, the HPG grantee is required to address an outreach effort in their program. The amount of outreach should sufficiently reach the entire service area. As a measure of compliance, the percentages of the individuals served by the HPG grantee should be in proportion to the percentages of the population of the service area by race/national origin. If the percentages are not proportional, then adequate justification is to be made. Exhibit E–1 will be used to monitor these requirements. (Further explanation and guidance of Exhibit E–1 can be found in Exhibit E–2 and are available in any FmHA office.) A separate file will be maintained by the grantee that will include the following outreach activities:

(1) Community contacts to community organizations, community leaders, including minority leaders, by name, race, and date contacted;

(2) Copies of all advertising in local newspapers, and through other media. Any advertising must reach the entire service area. FmHA encourages the use of minority-owned radio stations and other types of media, if available, in the service area. The grantee's file shall also include the name of the media used, and the percentage of its' patronage by race/national origin; and

(3) Copies of any other advertising or other printed material, including the application form used. The application form shall include the nondiscrimination slogan: "This is an equal opportunity program. Discrimination is prohibited by Federal Law."

(c) *Additional requirements.* In order to meet the Fair Housing requirements and the nondiscrimination requirements of title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the HPG grantee will need to adhere to the recommendations of Exhibit H of this subpart (available in any FmHA office).

19. Section 1944.672 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), and (b); and by adding paragraphs (a)(4) and (a)(5) to read as follows:

§ 1944.672 Environmental and administrative requirements.

* * * * *

(a) * * *

(1) The approval of an HPG grant for the repair or rehabilitation of single or multi-unit dwellings, 25 units or less, shall be a Class I action. The approval of an HPG grant for the repair or rehabilitation of multi-unit dwellings (26 units or more) shall be considered a Class II action. As part of their preapplication materials, applicants shall submit Form FmHA 1940–20, "Request for Environmental Information," for the geographical area(s) proposed to be served by the program. The applicant shall refer to Exhibit F when completing this form. Further guidance on completing this form will be available from the FmHA office servicing the program.

(2) The use of HPG funds to repair or rehabilitate specific single or multi-unit dwellings are generally exempt from an FmHA environmental review. However, if such units or dwellings are located in a floodplain or wetland or the proposed work is not concurred in by the Advisory Council on Historic Preservation under the requirements of § 1944.673 of this subpart, an FmHA environmental review is required. Applicants must include in their preapplication a process for identifying dwellings that may receive housing preservation assistance that will require an environmental assessment.

(3) If such units or dwellings are not located in a floodplain or wetland or the proposed work is concurred in by the Advisory Council on Historic Preservation under the requirements of § 1944.673 of this subpart, no environmental review is required by FmHA. The grantee only needs to indicate its review and compliance with this subpart, indicating such in each recipient's file is accordance with paragraph (a)(5) of this section.

(4) However, when such a unit or dwelling requiring an environmental assessment is proposed for HPG assistance, the grantee will immediately contact the FmHA office designated to service the HPG grant. Prior to approval of HPG assistance to the recipient by the grantee, FmHA will prepare the environmental assessment in accordance with subpart G of part 1940 of this chapter with the assistance of the grantee, as necessary. Copies will be provided to the grantee for their files. Paragraph V of Exhibit C of this subpart provides further guidance in this area.

(5) If FmHA is required to make an environmental assessment, the results of the assessment will be made part of the recipient's file. The grantee must also include in each recipient's file:

(i) Documentaton on how the process for historic preservation review under § 1944.673 of this subpart has been complied with, including all relevant reviews and correspondence; and (ii) Determination whether the unit is located in a 100-year floodplain or a wetland.

(b) The policies, guidelines and requirements of 7 CFR parts 3015 and 3016 apply to the acceptance and use of HPG funds.

20. Section 1944.673 is amended by removing paragraph (f); and by revising paragraphs (a), (b), (b)(1), (b)(2), (b)(5), (c), (d), and (e) to read as follows:

§ 1944.673 Historic preservation requirements and procedures.

(a) FmHA has entered into a Programmatic Memorandum of Agreement (PMOA) with the National Conference of State Historic Preservation Officers (SHPO) and the Advisory Council of Historic Preservation in order to implement the specific requirements regarding historic preservation contained in section 533(i) of the enabling legislation. The PMOA, with attachments, can be found in FmHA Instruction 2000–FF (available in any FmHA office).

(b) Accordingly, each applicant for a HPG grant will provide, as part of its preapplication documentation submitted to FmHA, a description of its proposed process for assisting very low- and low-income persons owning historic properties needing rehabilitation or repair. "Historic properties" are defined as properties that are included or eligible for inclusion on the National Register of Historic Place. Each HPG proposal shall:

(1) Be developed in consultation with the SHPO for the state in which the applicant proposes to undertake the HPG program;

(2) Take into account the national historic preservation objectives set forth at 16 U.S.C. 470–1 (1), (4), and (5) (Attachment 1 of the PMOA) and specifically be designed to encourage the rehabilitation of historic properties in a manner that realistically meets the needs of very low- and low-income persons while preserving the historic and architectural character of such buildings;

* * * * *

(5) Establish a system to ensure that the rehabilitation of historic properties is reasonably consistent with the recommended approaches in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (G.P.O. 1983 0-416-688 or available from any FmHA office processing an HPG preapplication), except as provided in paragraph (b)(6) of this section, and that the SHPO is afforded the opportunity to comment on each such rehabilitation; and

* * * * *

(c) For the purposes of paragraph (b)(6) of this section, the Advisory Council on Historic Preservation will consider grantees as though they were Federal agencies in the process prescribed in the Council's regulations implementing section 106 of the National Historic Preservation Act (36 CFR part 800, Protection of Historic and Cultural Properties), except that, should the Council be unable to concur in an applicant's proposal or reach agreement with the grantee on measures to avoid or mitigate effects on an historic property, the Council will notify the SHPO, the applicant or grantee and FmHA that the entity cannot be treated as though it were a Federal agency with respect to the specific property under consideration.

(d) The grantee will also notify the FmHA office servicing its program of notification from the Council immediately. Upon receipt of such notification, FmHA will assume responsibility for completing compliance with 36 CFR part 800, using the procedures for an environmental assessment contained in subpart G of part 1940 of this chapter. The grantee will assist FmHA in preparing this assessment and may be required, if further information is needed, to prepare and submit Form FmHA 1940-20 for the property, with the grantee being the "applicant." FmHA will work with the grantee to develop alternative actions as appropriate.

(e) Such assumption of responsibility by FmHA on a particular property shall not preclude the grantee from carrying out the requirements of 36 CFR part 800 on other properties as though it were a Federal agency, but no work may be commenced on any unit or dwelling in controversy until and unless so advised by FmHA.

21. Section 1944.674 is amended buy revising the section heading and by revising paragraphs (b) and (c) to read as follows:

§ 1944.674 Public participation and intergovernmental review.

* * * * *

(b) The applicant must also make its statement of activities available to the public for comment. The applicant must announce the availability of its statement of activities for review in a newspaper of general circulation in the project area and allow at least 15 days for public comment. The start of this 15-day period must occur no later than 16 days prior to the last day for acceptance of preapplications by FmHA.

(c) The HPG program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Under subpart J of part 1940 of this chapter, "Intergovernmental Review of Farmers Home Administration Programs and Activities," prospective applicants for HPG grants must submit its statement of activities to the State single point of contact prior to submitting their preapplication to FmHA. Evidence of submittal of the statement of activities to the state single point of contact is to be submitted with the preapplication. Comments and recommendations made through the intergovernmental review process are for the purpose of assuring consideration of State and local government views. The name of the state single point of contact is available from any FmHA office. This section does not apply to Indian Tribes, bands, groups, etc., as noted in § 1944.656 (l)(2) of this subpart.

22. Section 1944.675 is revised to read as follows:

§ 1944.675 Allocation of HPG funds to States and unused HPG funds.

The allocation and distribution of HPG funds is found in § 1940.578 of subpart L of part 1940 of this chapter.

23. Section 1944.676 is amended by redesignating paragraphs (b)(1)(ix) through (b)(1)(xiv) as paragraphs (b)(1)(x) through (b)(1)(xv) paragraphs (b)(6) and (b)(7) as paragraphs (b)(7) and (b)(8) respectively; by adding new paragraphs (b)(1)(ix), (b)(1)(xvi), and (b)(6); and by revising paragraph (a), introductory text of paragraph (b)(1), paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(1)(vi), (b)(1)(vii), and (b)(1)(viii), newly designated paragraphs (b)(1)(xi) and (b)(1)(xiii), and paragraphs (b)(3), (b)(5), (d), (e), and (f).

§ 1944.676 Preapplication procedures.

(a) All applicants will file an original and two copies of Standard Form 424.1, "Application For Federal Assistance (Non-construction)," and supporting information subsection with the appropriate FmHA office. A preapplication package, including SF 424.1, is available in any FmHA Office.

(b) * * *

(1) A statement of activities proposed by the applicant for its HPG program as appropriate to the type of assistance the applicant is proposing, including:

(i) A complete discussion of the type of and conditions for financial assistance for housing preservation, including whether the request for assistance is for a homeowner assistance program, a rental property assistance program, or a co-op assistance program;

(ii) The process for selecting recipients for HPG assistance, determining housing preservation needs of the dwelling, identifying potential environmental effects according to § 1944.672 of this subpart, performing the necessary work, and monitoring/inspecting work performed;

(iii) The development standard(s) the applicant will use for the housing preservation work; and, if not the FmHA development standards for existing dwellings, the evidence of its acceptance by the jurisdiction where the grant will be implemented.

* * * * *

(vi) The estimated number of very low- and low-income minority and nonminority persons the grantee will assist with HPG funds; and, if a rental property or co-op assistance program, the number of units and the term of restrictive covenants on their use for very low- and low-income;

(vii) The geographical area(s) to be served by the HPG program;

(viii) The annual estimated budget for the program period based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect administrative costs, such as personnel, fringe benefits, travel, equipment, supplies, contracts, and other cost categories, detailing those costs for which the grantee proposes to use the HPG grant separately from non-HPG resources, if any. The applicant budget should also include a schedule (with amounts) of how the applicant proposes to draw HPG grant funds, i.e., monthly, quarterly, lump sum for program activities, etc.,

(ix) A copy of a indirect cost proposal as required in 7 CFR parts 3015 and 3016, when the applicant has another source of federal funding in additional to the FmHA HPG program;

* * * * *

(xi) The method of evaluation to be used by the applicant to determine the

effectiveness of its program which encompasses the requirements for quarterly reports to FmHA in accordance with § 1944.683(b) of this subpart and the monitoring plan for rental properties and co-ops (when applicable) according to § 1944.689 of this subpart;

* * * * *

(xiii) The use of program income, if any, and the tracking system used for monitoring same;

* * * * *

(xvi) The outreach efforts outlined in § 1944.671 (b) of this subpart.

* * * * *

(3) Evidence of the applicant's legal existence, including, in the case of a private nonprofit organization, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence one year or more; and, the names and addresses of the applicant's members, directors and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, the names, addresses, and principal purpose of the other organizations and, if a consortium, documentation showing compliance with § 1944.656 (i)(4) of this subpart.

* * * * *

(5) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and actual number of both low-income and low-income minority households and substandard housing), the need for the type of housing preservation assistance being proposed, the anticipated use of HPG resources for historic properties, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts (according to paragraph (b)(1)(xi) of this section).

(6) A statement containing the component for alleviating overcrowding according to § 1944.656 (j) of this subpart.

* * * * *

(d) The applicant must submit written statements and related correspondence reflecting compliance with § 1944.674 (a) and (c) of this subpart regarding consultation with local government leaders in the preparation of its program and the consultation with local and state government pursuant to the provisions of Executive Order 12372.

(e) The applicant is to make its statement of activities available to the public for comment prior to submission to FmHA pursuant to § 1944.674 (b) of this subpart. The application must contain a description of how the comments (if any were received) were addressed.

(f) The applicant must submit an original and one copy of Form FmHA 1940–20, as well as a description of the applicant's process for determining whether a dwelling requires an environmental assessment according to § 1944.672 of this subpart.

* * * * *

* * * * *

24. Section 1944.678 is revised to read as follows:

§ 1944.678 Preapplication submission deadline.

Dates governing the invitation and review of HPG preapplications will be published annually in the **Federal Register** and may be obtained from FmHA State or District Offices. Preapplications received after the date specified in the **Federal Register** will not be considered for funding in that fiscal year and will be returned.

25. Section 1944.679 is amended by revising the introductory text of paragraph (a), paragraphs (a)(1) and (a)(4), the introductory text of paragraphs (b), (b)(1), (b)(2), and (b)(3), paragraphs (b)(3)(i), (b)(3)(ii), (b)(5), and (b)(7); and by adding paragraphs (a)(5) and (c) to read as follows:

§ 1944.679 Project selection criteria.

(a) Applicants must meet all of the following threshold criteria:

(1) Provide a financially feasible program of housing preservation assistance. "Financially feasible" is defined as proposed assistance which will be affordable to the intended recipient or result in affordable housing for very-low and low-income persons:

* * * * *

(4) Meet the requirements of consultation and public comment in accordance with § 1944.674 of this subpart; and

(5) Submit a complete preapplication as outlined in § 1944.676 of this subpart.

(b) For applicants meeting all of the requirements listed in paragraph (a) of this section, FmHA will use the weighted criteria in this paragraph in the selection of grant recipients. Each preapplication and its accompanying statement of activities will be evaluated and, based solely on the information contained in the preapplication, the applicant's proposal will be numerically rated on each criteria within the range provided. The highest ranking applicant(s) will be selected, in accordance with § 1944.680 of this subpart and the allocation of funds available to the State. Exhibit D of this subpart will be used for the rating.

(1) Points are awarded based on the percentage of very low-income persons that the applicant proposes to assist, using the following scale:

* * * * *

(2) The applicant's proposal may be expected to result in the following percentage of HPG fund use to total cost of unit preservation. This percentage reflects maximum repair or rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution or other specified approaches. Points are awarded based on the following percentage of HPG funds to total funds:

* * * * *

(3) The applicant has demonstrated its administrative capacity in assisting very low- and low-income persons to obtain adequate housing based on the following:

(i) The organization or a member of its staff has two or more years experience successfully managing and operating a rehabilitation or weatherization type program, including FmHA's HPG program: 10 points.

(ii) The organization or a member of its staff has two or more years experience successfully managing and operating a program assisting very low- and low-income persons obtain housing assistance: 10 points.

* * * * *

(5) The program will use less than twenty percent (20%) of HPG funds for administration purposes:

(i) Twenty-one percent or more: Not eligible.
(ii) Twenty percent (20%): 0 points.
(iii) Nineteen percent (19%): 1 point.
(iv) Eighteen percent (18%): 2 points.
(v) Seventeen percent (17%): 3 points.
(vi) Sixteen percent (16%): 4 points.
(vii) Fifteen percent or less: 5 points.

* * * * *

(7) Points are awarded based on a housing preservation program involving rental units (single and multi-unit) or co-ops (this paragraph specifically excludes the awarding of points for a homeownership proposal). The dwellings will be available for occupancy for persons of very-low or low-income for a specified time period of:

(i) Six thru eight years: 5 points;
(ii) Nine thru ten years: 10 points;
(iii) Eleven or more years: 15 points.

(c) In the event more than one preapplication receives the same amount of points, those preapplications will then be ranked based on the actual percentage figure used for determining the points under paragraph (b)(1) of this section. Further, in the event that preapplications are still tied, then those preapplications still tied will be ranked based on the percentage figures used (low to high) in paragraph (b)(2) of this section. Finally, if there is still a tie, then a "lottery" system will be used.

26. Section 1944.680 is revised to read as follows:

§ 1944.680 Limitation on grantee selection.

After all preapplications have been reviewed under the selection criteria and if more than one preapplication has met the criteria of § 1944.679(a) of this subpart, the State Director or approval official may not approve more than fifty percent (50%) of the State's final allocation to a single applicant.

27. Section 1944.681 is revised to read as follows:

§ 1944.681 Application submission.

Applicants selected by FmHA will be advised to submit a full application in an original and two copies of SF 424.1, and are to include any condition or amendments that must be incorporated into the statement of activities prior to submitting a full application. Instructions on submission and timing will be provided by FmHA.

28. Section 1944.682 is amended by revising the section heading and introductory text and paragraphs (a), (c) and (d) to read as follows:

§ 1944.682 Preapplication/application review, grant approval, and requesting HPG funds.

The FmHA District Office will review the preapplications and applications submitted. Further review and actions will be taken by FmHA personnel in accordance with Exhibit C of this subpart. Exhibit G of this subpart will be used by the State Office to notify the National Office of preapplications received, eligibility, ranking, and amounts recommended. Preapplications determined not eligible and/or not meeting the selection criteria will be notified in the manner prescribed in Exhibit C of this subpart (available in any FmHA office). In addition, FmHA will document its findings and advise the applicant of its review rights or appeal rights (if applicable) under subpart B of part 1900 of this chapter. Applications determined not eligible will be handled in the same manner. The preapplications or applications determined incomplete will be notified in the manner prescribed in Exhibit C of this subpart and will not be given appeal rights. The State Director is authorized to approve a HPG in accordance with this subpart and subpart A of part 1901 of this chapter. The State Director may delegate this authority in writing to designated State Office personnel and District Directors. Further:

(a) Grant approval is the process by which FmHA determines that all applicable administrative and legal conditions for making a grant have been met, the grant agreement is signed, and funds have been obligated for the HPG project. If acceptable, the approval official will inform the applicant of approval, having the applicant sign Form FmHA 1940–1, "Request for Obligation of Funds," and Exhibit A of this subpart. The applicant will be sent a copy of the executed grant agreement and Form FmHA 1940–1. Should any conditions be attached to the grant agreement that must be satisfied prior to the applicant receiving any HPG funds, the grant agreement and the conditions will be returned to the applicant for acceptance and acknowledgement on the grant agreement prior to execution by the approval official.

* * * * *

(c) With the executed Grant Agreement and Form FmHA 1940–1, FmHA will send the approved applicant (now the "grantee") copies of SF–270. The grantee must submit an original and two copies of SF–270 to the FmHA office servicing the project. In addition, the grantee must submit SF–272, "Federal Cash Transactions Report," each time an advance of funds is made. This report shall be used by FmHA to monitor cash advances made to the grantee. Advances or reimbursements must be in accordance with the grantee's budget and statement of activities, including any amendments, prior approved by FmHA. Requests for reimbursement or advances must be at least 30 calendar days apart.

(d) If the grantee fails to submit required reports pursuant to § 1944.683 of this subpart or is in violation of the grant agreement, FmHA may suspend HPG reimbursements and advances or terminate the grant in accordance with § 1944.688 of this subpart and the grant agreement.

29. Section 1944.683 is amended by revising paragraph (a), the introductory text of paragraphs (b) and (b)(2); paragraphs (b)(2)(i), (b)(2)(ii), (b)(3)(i), (b)(3)(ii), (b)(6), (c) and (d); and by adding paragraph (b)(7) to read as follows:

§ 1944.683 Reporting requirements.

(a) SF–269, "Financial Status Report," is required of all grantees on a quarterly basis. Grantees shall submit an original and two copies of the report to the designated FmHA servicing office. When preparing the Financial Status Report, the total program outlays (Item 10, g, of SF–269) should be less any rebates, refunds, or other discounts. Reports must be submitted no later than 15 days after the end of each calendar quarter.

(b) Quarterly performance reports shall be submitted by grantees with SF–269, in an original and two copies (see Exhibit E–1 of this subpart.) The quarterly report should relate the activities during the report period to the project's objectives and analyze the effectiveness of the program. As part of the grantee's preapplication submission, as reported by § 1944.676(b) of this subpart, the grantee establishes its objectives of the HPG program, including its method of evaluation to determine its effectiveness. Accordingly, the report must include, but need not be limited to, the following:

* * * * *

(2) The following specific information for each unit or dwelling assisted:

(i) Name(s), address, and income(s) of each homeowner assisted or the name and address of the owner(s) or co-op for each rental property (single or multi-unit) or co-op assisted;

(ii) Total cost of repair/rehabilitation, a list of major repairs made, amount financed by HPG, and amount financed from which other sources;

* * * * *

(3) * * *

(i) The number of very-low and low-income, minority and nonminority persons assisted in obtaining adequate housing by the HPG program through repair and rehabilitation; and (ii) The average cost of assistance provided to each household.

* * * * *

(6) Objectives established for the next reporting period, sufficiently detailed to identify the type of assistance to be provided, the number and type of households to be assisted, etc.

(7) A certification that the final building inspection reports for each rehabilitation or repair work financed with HPG funds for that quarter is on file.

(c) The grantee should be prepared to meet with the FmHA District Office servicing the project to discuss its quarterly report shortly after submission.

(d) If the reports are not submitted in a timely manner or if the reports indicate that the grantee has made unsatisfactory progress or the grantee is not meeting its established objectives, the District Director will recommend to the State Director appropriate action to resolve the indicated problem(s). If appropriate corrective action is not taken by the grantee, the State Director has the discretion to not authorize further advances by suspending the project in accordance with § 1944.688 of this subpart and the grant agreement.

30. Section 1944.684 is amended by revising paragraph (a), the introductory text of paragraphs (b) and (b)(1), and paragraphs (c) and (d) to read as follows:

§ 1944.684 Extending grant agreement and modifying the statement of activities.

(a) All requests extending the original grant agreement or modifying the HPG program's statement of activities must be in writing. Such requests will be processed through the designated FmHA office serving the project. The approval official will respond to the applicant within 30 days of receipt of the request in the District Office.

(b) A grantee may request an extension of the grant agreement prior to the end of the project term specified in the grant agreement if the grantee anticipates that there will be grant funds remaining and the grantee has demonstrated its ability to conduct its program in a manner satisfactory to FmHA. The approval official may approve an extension when:

(1) The grantee is likely to complete or exceed the goals outlined in the approved statement of activities; and

* * * * *

(c) Modifications to the statement of activities, such as revising the processes the grantee follows in operating the HPG program, may be approved by the approval official when the modifications are for eligible purposes in accordance with §§ 1944.664 and 1944.666 of this subpart, meet any applicable review and process requirements of this subpart, and the program will continue to serve the geographic area originally approved. The grantee will submit its proposed revisions together with the necessary supporting information to FmHA prior to modifying its operation from the approved statement of activities.

(d) Exhibit B of this subpart will be used for all extensions on and modifications to the grant agreement.

31. Section 1944.686 is revised to read as follows:

§ 1944.686 Additional grants.

An additional HPG grant may be made when the grantee has achieved or nearly achieved the goals established for the previous or existing grant. The grantee must file a preapplication for the current fiscal year which will be processed and compared under the project selection criteria to others submitted at that time.

32. Section 1944.688 is amended by removing paragraph (e); by redesignating paragraph (f) as (e); and by revising paragraphs (c) and (d), and newly designated paragraph (e) to read as follows:

§ 1944.688 Grant evaluation, closeout, suspension and termination.

* * * * *

(c) Grantees will have the opportunity to appeal a suspension or termination under FmHA's appeal procedures under subpart b of part 1900 of this chapter.

(d) The grantee will complete the closeout procedures as specified in the grant agreement.

(e) The grantee will have an audit performed upon termination or completion of the project in accordance with 7 CFR parts 3015 and 3016, as applicable. As part of its final report, the grantee will address and resolve all audit findings.

33. Section 1944.689 is added to read as follows:

§ 1944.689 Long-term monitoring by grantee.

(a) The Grantee is required to perform long-term monitoring on any housing preservation program involving rental properties and co-ops. This monitoring shall be at least on an annual basis and shall consist of, at a minimum, the following:

(1) All requirements noted in § 1944.663 of this subpart;

(2) All requirements of the "ownership agreement" executed between the Grantee and the Rental Property Owner or Co-op; and

(3) All requirements noted in 7 CFR part 3015 and 3016 during the effective period of the grant agreement.

(b) The Grantee is required to make available to FmHA any such information as requested by the FmHA concerning the above. The grantee shall submit to the FmHA servicing office an annual report every year while the ownership agreement is in effect. This report shall be submitted within 15 days after the anniversary date of termination of the grant agreement. At a minimum, the report will consist of a statement that the grantee is in compliance with this subpart.

(c) All files pertaining to such rental property owner or co-op shall be kept separate and shall be maintained for a period of three years after the termination date of the ownership agreement.

34. Section 1944.690 is amended by adding the following sentence at the end of the paragraph:

§ 1944.690 Exception authority.

* * * Exception to any requirement may also be initiated by the Assistant Administrator for Housing.

Dated: October 31, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-619 Filed 1-14-92; 8:45 am]

BILLING CODE 3410-07-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies Extension of Annual Report Filing, etc.

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule incorporates administrative experience and clarifies existing rules based on the Agency's experience since the last amendment. If adopted, this rule would: (1) Provide more flexibility in granting a 503 company a temporary expansion of its area of operations; (2) delete members from the list of parties whose names and addresses must be published as part of the certification process; (3) allow a 60 day extension on the deadline for the filing of a 503 company's annual report if they are awaiting the report of their public accountant; (4) amend the 503 Company audit requirement; (5) add a provision that interim financing cannot be derived from funds obtained through other SBA programs; (6) clarify that a small concern (or associate) is not disallowed from paying for goods or services for subsequent reimbursement from an interim lender; (7) delete a redundant requirement that the maximum private sector financing must be obtained; (8) allow SBA flexibility in cases involving 503 Company injections; (9) change the circumstances under which SBA would disburse funds to cover borrower's tax liabilities on 503 loans; and (10) delete the specific amount of the reserve deposit and the funding fee and provide for their publication in the Federal Register in the event they are changed.

DATES: Comments must be received on or before February 14, 1992.

ADDRESSES: Comments should be sent to LeAnn M. Oliver, Deputy Director for Program Development, Office of Rural Affairs and Economic Development, Small Business Administration, 409 3rd Street, SW., Washington DC, 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Deputy Director for Program Development, Office of Rural Affairs and Economic Development, Small Business Administration, Telephone (202) 205–6485.

SUPPLEMENTARY INFORMATION: This rule proposes changes dictated by recent administrative experiences and clarifies existing rules about which questions have arisen.

Section 108.503–1(c)(1)(iii) would be amended to allow SBA's Central Office to extend, for an additional year, a temporary expansion of a development company's service area when the area of expansion is underserved. Such expansions are currently available for up to 1 year. This issue has arisen because contractions in the number of development companies have resulted in more areas of the country having no primary coverage. This rule is proposed in order to assure that the 504 program is available to all businesses, regardless of their geographic location.

Secton 108.503–2(b) would be amended to delete the requirement that the names and addresses of members be published as part of the public notice that a development company has applied to be certified in the 503 program. Many 503 companies have extensive memberships reflecting broad support from the community. The Board of Directors is representative of the membership as a whole and each board member's name and address must be published under the existing and proposed regulations. The Agency has decided that the additional expense of publishing long lists of member names cannot be justified as it does not provide significant information to the public.

Annual report filings would be changed in two ways under this proposal: (1) Section 108.503–3 would allow a 60 day extension for the filing of a 503 company's annual report if the CDC is awaiting the report of its public accountants. (2) The proposal would also clarify the financial statements requirement to accept those prepared using Generally Accepted Accounting Principles (GAAP).

Restrictions on interim financing would be clarified and strengthened. A new § 108.503–7(b)(1) would provide that interim financing cannot be derived from funds obtained through other SBA programs. This clarifies SBA policy that the Agency not be exposed to construction financing risks. Paragraph (b)(3) would clarify that a small concern (or associate) is allowed to pay for goods or services related to a project and receive subsequent reimbursement from an interim lender. A borrower may make expenditures in the normal course of business (e.g., deposits to hold orders, etc.) that are legitimate project costs commonly reimbursed as part of the interim financing.

The regulation governing third party financing would be amended to delete the statement that the maximum private sector financing must be obtained. The statement in § 108.503–8(a)(3) would be removed to decrease the potential for misinterpretation because there are some projects where it is desirable for the small concern to make an injection that is more than the required minimum. This could result in the private sector financing being equal to the injection and SBA's portion. The change proposed here would make it clear that those situations can be accommodated.

Section 108.503–10 would give SBA the flexibility to make sensible arrangements related to 503 Company injections, repayment terms, and requirements for subordination to SBA.

The proposal would also amend the provision related to 503 borrowers' receipt of funds from their Escrow/Reserve Account to meet tax liabilities. This rule would require that borrowers request compensation within 60 days of the date they were required to file their returns. This is a clearer statement of SBA's intent. Lastly, the proposal would delete the specific percentages of the reserve deposit and the funding fee and provide for their publication in the **Federal Register** in the event they are changed. Each borrower signs individual documents that delineate these amounts and given the need to act in a timely manner when responding to changes in program costs, the Agency has determined that a more efficient method of notification of specific percentages is the publication of a notice in the **Federal Register**.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act and the Paperwork Reduction Act

SBA has determined that this proposal, if promulgated as final, would not constitute a major rule for the purposes of Executive Order 12291, because the annual effect of this proposed rule on the national economy would not attain $100 million. In this regard, the amendments to §§ 108.503–3, 108.503–7(b)(1), 108.503–7(b)(3), 108.503–8(a)(3), 108.503–10, 108.503–11 and 108.504(e) are policy or procedural in nature and are therefore revenue neutral. The proposed amendment to 108.503–1(c)(1)(iii) is unlikely to result in more than 10 additional loans being funded. Since the average loan size is $285,000, the maximum effect would be an additional $2.8 million in loan approvals. The proposed amendment to Section 108.503–2(b) will result in lowered publication costs for 503 company applicants. Since there are approximately 15 new applications and 24 applications for expansion of area annually, we estimate that the savings to the industry will be about $44,000 per year.

These proposed rules will not result in a major increase in costs or prices to consumers, individual industries, Federal, state and local government agencies or geographic regions, and will not have adverse effects on competition, employment, investment productivity, or innovation.

SBA certifies that these proposed rules, if promulgated as final, would not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For the purpose of compliance with the Regulatory Flexibility Act, SBA certifies that these proposed rules would not, if promulgated in final form, have a significant economic impact on a substantial number of small entities for the same reasons that this rule does not constitute a major rule under Executive Order 12291 analysis above.

For purposes of the Paperwork Reduction Act, Public Law 96–115, 44 U.S.C. ch. 35, SBA certifies that these proposed rules, if promulgated as final, would impose no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

For the reasons set out in the preamble, part 108 of title 13, Code of Federal Regulations is amended as follows:

PART 108—[AMENDED]

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697a, 697b, 697c, Pub. L. 101–515, Pub. L. 101–574.

2. Section 108.503–1 is amended by revising paragraph (c)(1)(iii) to read as follows:

§ 108.503–1 Eligibility requirements for 502 companies.

* * * * *

(c) Area of Operations. * * *

(1) * * *

(iii) With SBA prior approval of each loan, temporarily expand its area of operations to include an area underserved by the 503 program. Such temporary expansion may be granted for up to one year, provided, however, that the Director, ORA & ED may extend such expansion for a period of up to one additional year. A 503 company granted such temporary expansion shall be exempt from the requirements of paragraphs (b)(2), (c)(4), and (d) of § 108.503–1 of this part.

3. Section 108.503–2 is amended by revising paragraph (b) to read as follows:

§ 108.503–2 Certification.

* * * * *

(b) *Public Notice.* The proposed 503 company shall publish a notice in a newspaper of general circulation in the city, county or counties of the proposed area of operations, and shall furnish a certified copy to SBA within 10 days of the date of publication. Such notice shall include the name and location of the proposed company, its purpose and area of operations, and the names and addresses of its officers and directors. The public shall be afforded reasonable opportunity for the submission of written comments to the local SBA office.

* * * * *

4. Section 108.503–3 is amended by adding a sentence at the end of paragraph (f), introductory text, and by revising paragraph (f)(1) to read as follows:

§ 108.503–3 Operational Requirements for 503 Companies.

* * * * *

(f) *Reporting Requirements.* * * * The SBA may grant an extension of up to 60 days if the 503 company is awaiting the final report of its public accountant as set forth in the following paragaph.

(1) The financial statements contained in the annual report shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP). If opinion audits or reviews are otherwise required by the 503 company, copies of the results shall be submitted.

* * * * *

5. Section 108.503–7 is amended by redesignating paragraphs (b)(1) through (b)(4) as paragraphs (b)(2) through (b)(5), adding a new paragraph (b)(1), and revising the newly redesignated (b)(3) to read as follows:

§ 108.503–7 Interim financing.

* * * * *

(b) *Source of interim financing.*

* * * * *

(1) Such financing is not derived, directly or indirectly, from any SBA program. * * *

(3) The interim lender is not associated with the small concern. (See definition in § 108.2 of this part.) This does not disallow the small concern or associates from paying for goods or services for subsequent reimbursement from an interim lender. See also § 108.503–5(d).

* * * * *

§ 108.503–8 [Amended]

6. Section 108.503–8 is amended by removing the last sentence of paragraph (a)(3).

7. Section 108.503–10 is amended by revising the last sentence of paragraph (a) to read as follows:

108.503–10 503 Company injection.

* * * * *

(a) * * * Without prior written approval from SBA, such injection shall be subordinate to the 503 Debenture and shall not be repaid at a faster rate than the 503 Loan.

* * * * *

8. Section 108.503–11 is amended by revising the fourth sentence of paragraph (b)(2) to read as follows:

§ 108.503–11 Central fiscal agent.

* * * * *

(b) * * *

(2) * * * A small concern may make this request through its 503 company to the appropriate SBA field office within the 60 days of the filing date. * * *

* * * * *

§ 108.504 [Amended]

9. Section 108.504(e) is amended by removing the phrases "of one half of one percent (0.5%)," and "of three eighths of one percent (0.375%) of the net debenture proceeds, see definition in § 108.2 of this part" and adding in place of the latter the phrase "to be published from time to time in the **Federal Register**".

Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans).

Dated: November 27, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 92–702 Filed 1–14–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–96–AD]

Airworthiness Directives; Beech 100 and 200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would supersede AD 91–18–11, which currently requires a one-time inspection and modification of the aft cowling doors of both engine nacelles on Beech 100 and 200 series airplanes. Since issuance of that AD, the Federal Aviation Administration (FAA) has determined that early production Beech 200 series airplanes have different stiffening beads on the inside of the cowling doors, which requires additional work than was specified in the service information. Updated service information has been issued. This action will retain the inspection and modification of AD 91–18–11 and incorporate this new service information. The actions specified by this AD are intended to prevent separation of an aft cowling door that could result in occupant injury if decompression or structural damage occurs.

DATES: Comments must be received on or before April 1, 1992.

ADDRESSES: Beech Mandatory Service Bulletin No. 2416, Revision I, dated December 1991, may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–96–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4145.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–96–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 91–18–11, Amendment 39–8014 (56 FR 41927, August 26, 1991), currently requires a one-time inspection of the aft cowling door stiffeners for cracking on Beech 100 and 200 series airplanes, repair or replacement if found cracked, and a modification to the aft cowling doors of both nacelles. The actions are accomplished in accordance with the instructions in Beech Mandatory Service Bulletin (SB) No. 2416, dated July 1991.

Since issuance of AD 91–18–11, the FAA has determined that the stiffening beads on the inside of the cowling doors on early production Beech 200 series airplanes are different than that of later production series airplanes. Extra work is required on airplanes having this difference stiffening bead configuration.

The manufacturer (Beech) released interim information, Service (SVR) 025, that specifies procedures for performing the extra work required to bring early production Beech 200 series airplanes in compliance with AD 91–18–11. In addition, the FAA has granted alternative methods of compliances that approve SVR 025 as an equivalent method to a portion of AD 91–18–11 to the operators of 23 early production Beech 200 series airplanes having the above referenced stiffening bead configuration.

Beech has since incorporated the procedures of SVR 025 and Beech SB No. 2416 into one service document, Beech SB No. 2416, Revision I, dated December 1991. After reviewing all available information related to AD 91–18–11, including the referenced service information, the FAA has determined that AD action should be taken to incorporate the additional requirements needed to modify the cowling doors of early production Beech 200 series airplanes.

Since the condition described is likely to exist or develop in other Beech 100 and 200 series airplanes of the same type design, the proposed AD would retain the engine cowling door inspection and modification requirements of AD 91–18–11, but would require these requirements to be accomplished in accordance with Beech SB No. 2416, Revision I, dated December 1991. This action would supersede AD 91–18–11.

It is estimated that 1,730 airplanes in the U.S registry would be affected by the proposed AD, that it would take approximately 28 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $150 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,923,700. The cost impact of AD 91–18–11 is $1,781,900 (16 hours times $55 plus $150 for part times 1,730 airplanes). The proposed action would only require an additional cost imapct of $1,141,800 (12 hours times $55 times 1,730 airplanes). However, the additional 12 hours it would take to accomplish the proposed AD is only applicable to early production Beech 200 series airplanes. Because the FAA has no available way of determining how many airplanes this may be, the entire fleet number was used. The FAA anticipates the number of airplanes affected by the additional cost to be much smaller.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended].

2. Section 39.13 is amended by removing AD 91–18–11, Amendment 39–8014 (56 FR 41927, August 26, 1991), and adding the following new AD:

Beech: Docket No. 91–CE–96–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Numbers
200 and B200	BB–2 and BB–6 through BB–1404.
200C and B200C	BL–1 through BL–72 and BL–124 through BL–137.
200CT and B200CT	BN–1 through BN–4.
200T and B200T	BT–1 through BT–38.
A100–1 (U–21J)	BB–3, BB–4, and BB–5.
A200 (C–12A)	BC–1 through BC–75.
A200 (C–12C)	BD–1 through BD–30.
A200C (UC–12B)	BJ–1 through BJ–60.
A200CT (C–12D)	BP–1, BP–22, and BP–34 through BP–51.
A200CT (FWC–12D)	BP–7 through BP–11.
A200CT (RC–12D)	GR–1 through GR–13.
A200CT (C–12F)	BP–52 through BP–71.
A200CT (RC–12G)	FC–1, FC–2, and FC–3.
A200CT (RC–12H)	GR–14 through GR–19.
B200C (C–12F)	BL–73 through BL–112 and BL–116 through BL–123.
B200C (UC–12F)	BU–1 through BU–10.
B200C (RC–12F)	BU–11 through BU–12.
B200C (UC–12M)	FC–1, FC–2, and FC–3.
B200C (RC–12M)	BV–11 and BV–12.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished (AD 91-18-11).

Note: If the operator has complied with AD 91-18-11, which is superseded by this AD action, then no further action is required.

To prevent separation of the aft cowling doors that could result in occupant injury if decompression or structural damage occurs, accomplish the following:

(a) Inspect and modify the aft engine cowling doors of both engine nacelles in accordance with the Accomplishment Instructions of Beech Mandatory Service Bulletin No. 2416, Revision I, dated December 1991.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment supersedes AD 91-18-11, Amendment 39-8014.

Issued in Kansas City, Missouri, on January 8, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-888 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-249-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require the replacement of the tie rods for certain aft galley installations. This proposal is prompted by a determination that certain aft galley installations do not meet the requirements for emergency landing conditions. This condition, if not corrected, could result in the galley coming loose during an emergency landing and causing injury to passengers or cabin crew members.

DATES: Comments must be received no later than February 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-249-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2783. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-249-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-249-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The manufacturer has advised the FAA that the aft galley installation on certain Boeing Model 767 series airplanes is not capable of withstanding the emergency landing conditions requirements. The tie rod assemblies are not strong enough, and could result in the galley coming loose during an emergency landing and subsequently injuring passengers or cabin crew members.

The FAA has reviewed and approved Boeing Service Bulletin 767-25-0160, dated July 18, 1991, which describes procedures for the replacement of the tie rods for certain aft galley installations. The replacement tie rods serve to provide more support to keep the galley complex in place.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require the replacement of the tie rods for certain aft galley installations, in accordance with the service bulletin previously described.

Although airplane VF093 (variable number) is not listed in the effectivity section of the Boeing service bulletin, it is also subject to this proposal, and has been included in the applicability of the proposed rule.

There are approximately 22 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 9 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor cost would be $55 per work hour. Modification parts will be provided by the manufacturer at no charge to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $990.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal

would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91–NM–249–AD.

Applicability: Model 767 series airplanes listed in Boeing Service Bulletin 767–25–0160, dated July 18, 1991; and airplane having variable number VF093; certificated in any category,

Compliance: Required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent the galley from coming loose during an emergency landing, accomplish the following:

(a) Replace the aft galley tie rods in accordance with Boeing Service Bulletin 767–25–0160, dated July 18, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1014 Filed 1–14–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–240–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which currently requires modification of the inboard edges of the rub strip on the inboard spoilers. That action was prompted by reports of overwing escape slides damaged by contacting sharp corners on the inboard spoilers. This condition, if not corrected, could render the overwing escape slides unusable in the event of an emergency evacuation. This action would require modification of additional inboard spoilers that were not previously identified.

DATES: Comments must be received no later than February 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–240–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2784. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–240–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On July 8, 1991, the FAA issued AD 91–15–13, Amendment 39–7077 (56 FR 34019, July 25, 1991), to require modification of the inboard edges of the rub strip on the inboards spoilers of certain Boeing Model 767 series airplanes. That action was prompted by reports indicating that overwing escape slides had been damaged by contacting sharp corners on the inboard spoilers. This conditions, if not corrected, could render the overwing escape slides unusable in the event of an emergency evacuation.

Since the issuance of that AD, additional part-numbered inboard spoilers have been identified which have sharp edges that could damage the overwing escape slide.

The FAA has reviewed and approved Boeing Service Bulletin 767–27–0104, Revision 2, dated September 12, 1991, which describes procedures for modifying the inboard spoiler rub strip. This revised service bulletin identifies and recommends modification of the additional part-numbered inboard spoilers.

Since this condition is likely to exist on other airplanes of this same type design, and AD is proposed which would supersede AD 91–15–13 with a new airworthiness directive that would

continue to require modification of the inboard spoiler rub strip. It would include additional part-numbered inboard spoilers that also would require such modification. The modifications would be required to be accomplished in accordance with the service bulletin previously described.

There are approximately 298 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 111 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor cost would be $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $24,420.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–7077 and by adding the following new airworthiness directive:

Boeing: Docket No. 91–NM–240–AD. Supersedes AD 91–15–13, Amendment 39–7077.

Applicability: Model 737 series airplanes, as listed in Boeing Service Bulletin 767–27–0104, Revision 2, dated September 12, 1991, certificated in any category.

Compliance required as indicated, unless previously accomplished.

To prevent the overwing escape slide from being damaged by sharp edges of the rub strip on the inboard spoilers, accomplish the following:

(a) Except as provided by paragraph (b) of this AD, within the next 9 months after August 29, 1991 (the effective date of Amendment 39–7077), modify the inboard edges of the rub strip on the inboard spoilers in accordance with Boeing Service Bulletin 767–27–0104, dated November 15, 1990, or Revision 1, dated May 30, 1991.

(b) For airplanes equipped with inboard spoiler assemblies, part numbers 113T4100–37, –38, –41, –42, –45, and –46: Within the next 9 months after the effective date of this AD, modify the inboard edges of the rub strip on the inboard spoilers in accordance with Boeing Service Bulletin 767–27–0104, Revision 2, dated September 12, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21. 199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1016 Filed 1–14–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–226–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes operated as freighters. This proposal would require inspection and modification of the life raft mooring line and inflation length. This proposal is prompted by reports of life rafts installed on freighters that do not have long enough mooring and/or inflation lines. This condition, if not corrected, could damage or render the life rafts unusable during deployment for ditching.

DATES: Comments must be received no later than February 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–226–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; or Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719–0180. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2784. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–226–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–226–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

During the original certification of the Boeing Model 747 freighter, the FAA determined that the standard 20-foot long mooring line for the life raft, as required by Technical Standing Order (TSO)–C12, was not acceptable for this installation. For the Model 747 freighter, the life raft must be launched from either the overhead hatch or the crew emergency exit on the upper deck. The ditching height for the Model 747 for the two ditching exits dictates the mooring line length. The line's length is measured from the attachment fitting on the end of the mooring line to the connecting point on the raft. The mooring line must be no less than 39 feet long and no more than 44 feet long. This length permits the life raft to be attached to the airplane and prevents the life raft from drifting out of reach prior to boarding. The inflation length is the distance the life raft must be from its mooring line attachment point for the inflation of the life raft to be initiated. Inflation should begin at not less than 33 feet and not more than 38 feet as defined by the mooring line length.

The FAA has determined that many of the Model 747 freighters were delivered from the manufacturer with incorrect length mooring lines and/or incorrect inflation length. This condition, if not corrected, could damage or render the life rafts unusable during deployment for ditching.

The FAA has reviewed and approved Air Cruisers Service Bulletin 35–25–2, dated October 30, 1990, and Air Cruisers Service Bulletin 35–25–3, dated October 22, 1990, which describe procedures for modifying the life raft mooring line and inflation length on certain life rafts manufactured by Air Cruisers.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require inspection and modification, if necessary, of the mooring line and inflation length of Air Cruisers life rafts installed on Boeing Model 747 freighters. These actions would be required to be accomplished in accordance with the Air Cruisers service bulletins previously described. Life rafts manufactured by companies other than Air Cruisers would be required to accomplish the same action in a manner approved by the FAA.

There are approximately 175 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 75 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor cost would be $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $82,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91–NM–226–AD.

Applicability: Model 747 series airplanes operated as freighters, certificated in any category.

Compliance: Required, as indicated, unless previously accomplished.

To prevent damaged or unusable life rafts due to improper mooring line and inflation length, accomplish the following:

(a) Within the next 6 months after the effective date of this AD, inspect the life raft mooring line and inflation length. The mooring line length is measured from attachment fitting on the end of the mooring line to the connecting point on the raft. The mooring line must be no less than 39 feet long and no more than 44 feet long. The inflation length is the distance the life raft must be from its mooring line attachment point for inflation of the life raft to be initiated. Inflation should begin at not less than 33 feet and not more than 38 feet as defined by the mooring line length.

(1) For life rafts with mooring line length and inflation length that meet the measurements specified in paragraph (a) of this AD no additional action is required.

(2) For life rafts with mooring line length and inflation length that do not meet the measurements specified in paragraph (a) of this AD, accomplish the following prior to further flight:

(i) For life rafts listed in Air Cruisers Service Bulletin 35–25–3, dated October 22, 1990: Modify the life raft in accordance with the service bulletin.

(ii) For life rafts listed in Air Cruisers Service Bulletin 35–25–2, dated October 30, 1990: Modify the lift raft in accordance with the service bulletin.

(iii) For all other life rafts: Modify the life raft in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1017 Filed 1–14–92; 8:45 am]

BILLING CODE 4910–13–M

VOL 57 ISS 10 JA 15 1992 UMI

14 CFR Part 39

[Docket No. 91-NM-267-AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-7 series airplanes. This proposal would require a one-time dye penetrant inspection to detect cracks in flap track No. 1, and replacement of cracked flap tracks; and, if no cracks are found, modification of the lower surface of flap track No. 1. This proposal is prompted by reports of cracks found on in-service airplanes on the lower surface of flap track No. 1 due to high loads imposed by the flap roller bearing assembly. The actions specified by the proposed AD are intended to prevent reduced structural integrity of flap track No. 1.

DATES: Comments must be received by March 5, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-267-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information reference in the proposed rule may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue S.W., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, Aerospace Engineer, Airframe Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11561; telephone (516) 791-6220; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-267-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-267-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority of Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Division Model DHC-7 series airplanes. TCA advises that there have been reports of cracks found on in-service airplanes on the lower surface of flap track No. 1. These cracks were due to high loads imposed by the flap roller bearing assembly. This condition, if not corrected, could result in reduced structural integrity of flap track No. 1.

Boeing of Canada, Ltd., de Havilland Division, has issued Service Bulletin 7-53-15, Revision A, dated November 27, 1981, which describes procedures to perform a one-time dye penetrant inspection to detect cracks in flap track No. 1; replacement of cracked flap tracks; and, if no cracks are found, modification of the lower surface of flap track No. 1. This modification consists of removing the inboard trailing flaps and reworking each flap track roller guide, securing new facing plates to each roller guide, and reworking the roller bearing assembly to strengthen the lower surface of flap track No. 1. TCA has classified this service bulletin as mandatory and has issued Canadian Airworthiness Directive CF-91-06, dated May 10, 1991, in order to assure the airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, TCA has kept the FAA totally informed of the above situation. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time dye penetrant inspection to detect cracks in flap track No. 1, and replacement of cracked flap tracks, if found. If no cracks are found, a modification of the lower surface of flap track No. 1 would be required, which will prevent the possibility of subsequent cracking. The actions would be required to be accomplished in accordance with the service bulletin previously described.

It is estimated that 11 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 38 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $21,790.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, LTD., De Havilland Division: Docket 91–NM–267–AD.

Applicability: Model DHC–7 series airplanes; serial numbers 1 through 23; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of flap track no. 1, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time dye penetrant inspection to detect cracks in flap track no. 1, in accordance with de Havilland Service Bulletin 7–53–15, Revision A, dated November 27, 1981.

(b) If cracks are evident or suspected as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace the flap track, in accordance with de Havilland Service Bulletin 7–53–15, Revision A, dated November 27, 1981.

(c) If no cracks are evident or suspected as a result of the inspection required in paragraph (a) of this AD, within 6 months after the effective date of this AD, modify the lower surface of flap track no. 1, in accordance with de Havilland Service Bulletin 7–53–15, Revision A, dated November 7, 1981.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE–170, FAA, Engine and Propeller Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE–170.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 3, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1018 Filed 1–14–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–220–AD]

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–8 series airplanes, which currently requires structural inspections to detect fatigue cracking, reporting of the inspection results, and repair or replacement, as necessary to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal. Fatigue cracking, if not detected and corrected, could result in a compromise of the structural integrity of these airplanes. This action would modify the existing sampling program to: (a) Require additional visual inspections of all Principal Structural Elements (PSEs) on certain airplanes, (b) include expanded/modified PSEs, (c) revise the reporting requirements, and (d) increase the sample size. This proposal is prompted by new data submitted by the manufacturer indicating that additional inspections and an expanded sample size are necessary to increase the confidence level of the statistical program to ensure timely detection of cracks in PSEs.

DATES: Comments must be received no later than February 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–220–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Attention: Business Unit Manager, Technical Publications and Technical Administrative Support C1–L5B (54–60), Long Beach, California 90801. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John L. Cecil, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5322.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–220–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-220-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On May 19, 1987, the FAA issued AD 87-14-06, Amendment 39-5631 (54 FR 25591, July 8, 1987), applicable to McDonnell Douglas Model DC-8 series airplanes, to require structural inspections and necessary repair or replacement, to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal. That action was prompted by a structural re-evaluation, which identified certain significant structural components to inspect for fatigue cracks. Fatigue cracks in these components, if not detected and corrected in a timely manner, could result in a compromise of the structural integrity of these airplanes.

Since issuance of that AD, the manufacturer has issued McDonnell Douglas Report No. L26-011, DC-8 Supplemental Inspection Document (SID), Volume I, Revision 3, dated March 1991; Volume II, Revision 5, dated March 1991; and Volume III, Revision 5, dated April 1991. This revision revises the sampling program with additional procedures to:

a. Add visual inspections of all Principal Structural Elements (PSEs) on certain airplanes listed in the SID planning data, at least once during the interval between the start date (SDATE) and the end date (EDATE) established for each PSE. (The additional visual inspections, defined in Section 2 of Volume II, are required on airplanes that have not been inspected in accordance with Section 2 of Volume II of the SID.)

b. Include expanded/modified PSEs;

c. Use a revised inspection reporting form;

d. Report the results of the new visual inspections in addition to those required by the existing AD; and

e. Increase the sample size.

The FAA has reviewed and approved the revised SID and has determined that the additional visual inspections, expanded/modified PSEs, revised reporting requirements and increased sample size are necessary in order to provide an acceptable level of confidence that cracks in PSEs do not exist in the fleet.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 87-14-06 with a new airworthiness directive that would require an additional visual inspection of all airplanes listed in the SID planning data at least once during each inspection interval, and would require the reporting of the results, both positive and negative, in accordance with the revised SID documents previously described.

There are approximately 337 Model DC-8 series airplanes of the affected design in the worldwide fleet. It is estimated that 222 airplanes of U.S. registry and 15 U.S. operators would be affected by this AD. Incorporation of the Supplemental Inspection Document program to an operator's maintenance program, as originally required by AD 87-14-06, is estimated to necessitate 500 work hours (per operator), at an average labor cost of $55 per work hour. Based on these figures, the cost to the 15 affected U.S. operators to initially incorporate the SID program is estimated to be $412,500.

The incorporation of the additional procedures proposed in this AD action would require approximately 544 additional work hours per operator to accomplish, at an average labor cost of $55 per work hour. Based on these figures, the cost to the 15 affected U.S. operators to incorporate the proposed revisions of the SID program is estimated to be $448,800.

The recurring inspection cost, as originally required by AD 87-14-06, is estimated to be 245 work hours per airplane per year. The procedures added to the program by this proposed AD action would require approximately 53 additional work hours per airplane per year to accomplish. The average labor charge would be $55 per work hour. Based on these figures, the recurring inspection total cost impact of the AD on U.S. operators is estimated to be $16,390 per airplane, or $3,638,580 for the affected U.S. fleet.

Based on the above figures, the total cost impact of this AD is estimated to be $4,087,380 for the first year, and $3,638,580 for each year thereafter.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(G); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6330 and by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. 91-NM-220-AD. Supersedes AD 87-14-06, Amendment 39-6330.

Applicability: Model DC-8 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

(a) Within one year after August 10, 1987 (the effective date of AD 87-14-06, Amendment 39-5631), incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSEs) defined in Section 2 of Volume I of McDonnell Douglas Report No. L26-011, "DC-8 Supplemental Inspection Document (SID)," dated December 1985, in accordance with Section 2 of Volume III of that document. The non-destructive inspection techniques set forth in Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to McDonnell Douglas, in accordance with the instructions of Section 2 of Volume III of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-

511) and have been assigned OMB Control Number 2120-0056.

(b) Within 6 months after the effective date of this AD incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSEs) defined in Section 2 of Volume I of McDonnell Douglas Report No. L26-011, DC-8 Supplemental Inspection Document (SID), dated March 1991, in accordance with Section 2 of Volume III of that document. The non-destructive inspection techniques set forth in Section 2 of Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to McDonnell Douglas, in accordance with the instructions of Section 2 of Volume III of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

(c) Cracked structure detected during the inspections required by paragraphs (a) and (b) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Directorate.

(d) An alternative method of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1015 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF46

Claims Based on Chronic Effects of Exposure to Mustard Gas

AGENCY: Department of Veterans Affairs.

ACTION: Proposed Rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing a regulation to govern the adjudication of compensation claims for disabilities or deaths resulting from the chronic effects of in-service exposure to mustard gas under certain circumstances. This proposed regulation is necessary because VA believes that additional adjudication provisions are warranted for certain claims involving in-service exposure to mustard gas. The intended effect of this amendment is to expand and extend compensation eligibility.

DATES: Comments must be received on or before February 14, 1992. Comments will be available for public inspection until February 24, 1992. The amendment is proposed to be effective the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until February 24, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Some Naval personnel were experimentally exposed to mustard gas during full-body, field or chamber tests of protective equipment and clothing conducted at the Naval Research Laboratory, located at Edgewood Arsenal, Washington, DC, between 1943 and 1945. Similar testing may have been conducted at other locations during World War II. These World War II tests were classified, participants were instructed not to discuss their involvement, and medical records associated with the tests are generally unavailable. No long-term follow-up examinations were conducted. For these reasons, some participants may not have filed claims with VA for disabilities resulting from mustard gas poisoning, or, if they did file claims, may have experienced difficulty in establishing entitlement to benefits.

VA believes that the special circumstances surrounding these World War II testing programs have placed veterans who participated in them at a disadvantage when attempting to establish entitlement to compensation for disability or death resulting from experimental exposure. The proposed rule specifies that, if exposure occurred under the described circumstances, disabilities or deaths resulting from certain diseases are to be recognized as connected to a veteran's exposure in-service.

A review of the available medical literature by Veterans Health Administration (VHA) personnel indicates that the chronic, long-term effects of acute mustard gas poisoning may include laryngitis, bronchitis, emphysema, asthma, conjunctivitis, keratitis, and corneal opacities. Chronic forms of these conditions which developed subsequent to experimental exposure during World War II will be service-connected. We propose to implement this judgment by adding a new section, § 3.316, to 38 CFR part 3.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: September 20, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

2. Add a new section to read as follows:

§ 3.316 Claims based on chronic effects of exposure to mustard gas.

Exposure to mustard gas while participating in full-body, field or chamber experiments to test protective clothing or equipment during World War II, together with the development of a chronic form of any of the following conditions manifested subsequent thereto, is sufficient to establish service connection for that condition: laryngitis, bronchitis, emphysema, asthma, conjunctivitis, keratitis, and corneal opacities.

[FR Doc. 92–1000 Filed 1–14–92; 8:45 am]
BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MO11–1–5369; FRL–4093–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Ambient air quality data for the period 1989 through 1991 indicate that the Kansas City ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone. Therefore, in accordance with the Clean Air Act Amendments of 1990, the state of Missouri has submitted an ozone maintenance plan which projects continued attainment of the ozone standard in the Kansas City area, and has requested redesignation of the area to attainment. EPA is proposing to approve the Kansas City ozone maintenance plan as a revision to the Air Pollution Control State Implementation Plan (SIP) for the state of Missouri. In conjunction with the maintenance plan, EPA is also proposing to approve Missouri's request to redesignate the Kansas City area to attainment with respect to the ozone NAAQS. In a separate **Federal Register** notice published today, EPA is also proposing to approve an analogous plan and redesignation request submitted by the Kansas Department of Health and Environment to address the Kansas portion of the ozone nonattainment area.

DATES: Comments must be received by February 14, 1992.

ADDRESSES: Comments should be sent to Larry A. Hacker, Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submittal and the EPA-prepared technical support document (TSD) are available for public review at the above address and at the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 551–7020 (FTS 276–7020).

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act as amended in 1977 ("the 1977 Act") required areas failing to meet the ozone NAAQS to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. The Kansas City metropolitan area (KCMA) was designated under section 107 of the 1977 Act as nonattainment with respect to the ozone NAAQS on March 3, 1978. (The designations for Missouri are codified at 40 CFR 81.326.) The Missouri Department of Natural Resources (MDNR) submitted a Part D ozone attainment SIP on July 2, 1979, which EPA fully approved as meeting the requirements of section 110 and Part D of the 1977 Act. The 1979 SIP projected attainment by December 31, 1982, making the KCMA area a "nonextension area" under section 172 of the 1977 Clean Air Act. Although the KCMA appeared to have met the ozone standard by the end of 1982, additional violations occurred in 1983 and 1984. On February 20, 1985, EPA notified the Governor of Missouri that the SIP was substantially inadequate to attain the ozone NAAQS (50 FR 26198).

In response to the SIP call, MDNR submitted a revised ozone control strategy on May 26, 1986, which demonstrated attainment by December 31, 1987. EPA proposed to approved the revised SIP on June 30, 1988 (53 FR 24735). At the time of the proposal, EPA believed that the area had achieved the standard, as the 1985 through 1987 air quality data showed attainment. However, ozone violations occurred in June of 1988. Therefore, EPA fully approved the revised control strategy (54 FR 10322 and 54 FR 46232), but deferred action on the attainment demonstration portion of the SIP.

More recently, however, the 1989 through 1991 air quality data show attainment of the ozone NAAQS. Therefore, in an effort to comply with the Clean Air Act Amendments (CAAA) of 1990 (Pub. L. 101–549), and to ensure continued attainment of the standard with an adequate margin of safety, the state submitted an ozone maintenance SIP for the KCMA on October 9, 1991. Accompanying the maintenance SIP are new and amended rules to control certain categories of sources which emit volatile organic compound (VOC) emissions, and the state's request to redesignate the area to attainment with respect to the ozone NAAQS.

II. Evaluation Criteria

Together the Missouri and Kansas submittals meet all applicable requirements of the 1990 Clean Air Act. The EPA rulemaking docket checklist (included with EPA's TSD) provides a listing of applicable approval criteria. However, some of these criteria merit additional discussion which is contained below.

With its submittal of the additional VOC rule actions, Missouri meets the Clean Air Act requirement that the SIP include all reasonably available control measures (RACM) (section 172(c)(1)). The rules are also consistent with EPA policy as outlined in "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**," dated May 25, 1988 (referred to hereafter as the "Blue Book").

The Missouri submittal also includes a redesignation request, in which the state demonstrates that the area has fulfilled the redesignation requirements of the amended Act. Section 107(d)(3)(E) of the Act provides specific requirements for redesignating a nonattainment area to attainment:

A. The area must have attained the applicable NAAQS (section 107(d)(3)(E)(i));

B. the area has a fully approved SIP under section 110(k) of the Act (section 107(d)(3)(E)(ii));

C. the air quality improvement must be permanent and enforceable (section 107(d)(3)(E)(iii));

D. the area must have a fully approved maintenance plan pursuant to section 175A of the Act (section 107(d)(3)(E)(iv)); and

E. the area has met all relevant requirements under section 110 and part D of the Act (section 107(d)(3)(E)(v)).

Section 175A of the Act sets forth the maintenance plan requirement for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the area is redesignated. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures adequate to assure prompt correction of the air quality problem.

III. Review of State Submittal

A. Maintenance Plan

1. Air Quality Data

The submittal contains an analysis of ozone air quality data which is relevant to the maintenance plan and to the redesignation request. (The redesignation request is discussed in Section III.C of this notice.) Ambient ozone monitoring data for 1989 through 1991 show attainment of the NAAQS in the Kansas City area, i.e., less than one expected exceedance per year. For a complete discussion of the NAAQS, the reader is referred to 40 CFR 50.9 and appendix H to that section. Although the 1991 data are not yet fully quality assured, EPA will review the quality of these data in conjunction with its final action of this SIP submittal. EPA will not take final action approving the redesignation unless it determines that attainment is based on three years of quality assured data.

Prior to the 1991 ozone season, the state had planned to base the redesignation request on the 1987 through 1989 air quality data; however, these data did not indicate attainment in strict accord with EPA's interpretation of the ozone standard. Although, under appendix H, attainment cannot be shown by the 1987 through 1989 data, the state's demonstration justifies the use of 1989 emissions levels as being representative of attainment.

2. Emissions Inventory

MDNR submitted comprehensive inventories of actual VOC emissions from point, area, and mobile sources. Because 1989 emission data were not consistently available for all VOC sources in the KCMA, 1988 was selected as the base year and was used to project emissions to 1990 and future years. The 1989 VOC inventory is considered most representative of attainment conditions because: (1) No ozone exceedances occurred in 1989; and (2) EPA's Phase I gasoline volatility controls (54 FR 11868) were implemented in 1989, resulting in significant VOC emission reductions.

Therefore, the attainment emission inventory for purposes of this SIP is based upon the 1989 emission values. All VOC emission estimates were reported in kilograms per typical summer day. The state submittal contains the detailed inventory data and summaries by county and source category.

The state demonstrated that point source VOC emissions were not artifically low due to local economic downturn. The state examined historical employment data for the Kansas City area for the years 1987 through 1989. No economic downturn was evident; employment in the manufacturing sector remained relatively stable during the period.

The state's inventory methodology was consistent with EPA guidance applicable at the time the plan was being developed (EPA–450/4–88–19, December 1988). Eighty percent rule effectiveness was applied for source categories subject to state regulations. Stationary sources with emissions greater than 10 tons per year were inventoried as point sources.

Mobile source emission estimates were generated using EPA's MOBILE4 model. For the 1988 base year (prior to EPA volatility restrictions), a 10.5 psi RVP gasoline volatility was used. In accordance with the EPA Phase I volatility restrictions, a 9.5 psi RVP gasoline volatility was input for 1989. For 1990 and 1991, a gasoline volatility of 9.0 psi RVP was used in accord with the KCMA's voluntary RVP reduction program (discussed further below). In accord with EPA's original June 11, 1990, Phase II volatility restrictions (56 FR 23658), a gasoline volatility of 7.8 psi RVP was assumed for 1992 and later years.

Due to the marginal, but persistent, history of ozone nonattainment in the KCMA, EPA and the states of Missouri and Kansas believed that an additional areawide VOC control measure was necessary to ensure that the ozone standard could be maintained with an adequate margin of safety. The states of Missouri and Kansas, the Mid-America Regional Council (MARC), and the Chamber of Commerce worked cooperatively to implement a voluntary program to control the volatility of gasoline supplied to the area for 1990 and 1991. Despite its voluntary nature, the program reduced gasoline volatility from 9.5 to 9.0 psi RVP from June 1 through September 1 in both 1990 and 1991. All petroleum refiners and pipeline companies agreed to participate. Also, the EPA Field Operations Support Division performed volatility tests of gasoline samples from the KCMA. The tests confirmed that the program achieved its goal. (As discussed in section III.A.3. below, additional reduction of gasoline volatility will be accomplished, beginning in 1992, as a result of EPA's Phase II volatility standards.)

The voluntary RVP control program resulted in a 8,189 kg/day areawide reduction in the projected 1990 VOC inventory. This equates to a 3.3 percent reduction from the 1988 attainment VOC inventory. Thus, the 8,189 kg/day VOC reduction serves as the attainment margin of safety. The states have committed to maintain future VOC emissions at or below the co-called "action level", i.e., VOC emissions will not be allowed to encroach upon the margin of safety. The action level concept is detailed in the above-mentioned EPA TSD.

3. Demonstration of Continued Attainment

a. *State demonstration.* The state's demonstration of continued attainment relies, in part, on EPA's Phase II gasoline volatility requirements. On June 11, 1990 (55 FR 23658), EPA promulgated state-by-state Phase II RVP gasoline standards in order to continue reductions in VOC emissions. Accordingly, under the Phase II program, a fuel volatility limit of 7.8 psi RVP was scheduled to become effective in 1992 and each year thereafter during the ozone season (May through September) in the state of Missouri.

However, the federal gasoline volatility requirements were modified by the 1990 CAAA, and EPA promulgated revised Phase II gasoline volatility requirements on December 12, 1991 (56 FR 65704). This latest rule revises the maximum allowable RVP from 7.8 to 9.0 psi in those areas which are currently designated as unclassifiable or in attainment with the NAAQS for ozone. However, as applicable to the KCMA, the RVP limit of 7.8 will go into effect as the area is presently designated nonattainment.

The Missouri portion of the KCMA was designated as nonattainment for ozone in the recently published part 81 Federal Register notice, November 6, 1991 (56 FR 56780). Therefore, continuation of the 7.8 psi RVP limit is federally enforceable in the KCMA, even after the area is redesignated to

attainment, because of its nonattainment designation in the November 6, 1991 **Federal Register** notice. Also, the requirement for 7.8 psi RVP volatility is deemed necessary to ensure attainment and maintenance of the ozone standard as demonstrated by the mobile source emissions inventory projections (based on use of 7.8 psi RVP) in Missouri's ozone maintenance plan for the KCMA.

Areawide VOC emission were projected for the ten-year period following maintenance plan development. The projections show that the ozone standard will be maintained, i.e., VOC emissions are not expected to exceed the "action level" during this time period. Areawide VOC emissions are expected to decrease by over 20 percent during the next ten years.

The state's projection of VOC emissions is based on the Federal Motor Vehicle Control Program and EPA's Phase II volatility controls. The projections were developed prior to passage of the 1990 CAAA Amendments; thus, the federal on-board vapor recovery requirement and the new federal tailpipe standards were not considered.

b. *Additional EPA Analysis.* At the time Missouri and Kansas developed their maintenance plans, the current version of EPA's mobile source emissions model was MOBILE4.0. Since that time, MOBILE4.1 has become available. MOBILE4.1 was run to determine that effect, if any, the new model would have on the demonstration of continued attainment of the ozone standard. For any given year, MOBILE4.1 predicted lower VOC emissions than MOBILE4.0; however, the relative year-to-year trends were essentially identical. Thus, the new effect of MOBILE4.1 on the demonstration of continued attainment was not significant.

Using MOBILE4.1, the KCMA attainment level of VOC emissions changed from 245,060 kg/day to 227,007 kg/day. For this analysis, EPA determined the action level of VOC emissions to be 218,009 kg/day. Using MOBILE4.1 for projecting the mobile source component of the emissions inventory, the total KCMA VOC emissions in the year 2000 are projected to be 183,601 kg/day, which is 16 percent below the action level. Given this substantial margin (34,408 kg/day), EPA believes that VOC emissions will remain below the action level through the year 2002. (ten years after the redesignation becomes effective).

EPA also performed an analysis of projected NO_x emissions for the KCMA. Given that VOC emissions will remain below the action level (as discussed above in section III.A.2.) for the next ten years, EPA wished to determine what increases to NO_x emissions, if any, could be anticipated. Even with no growth in VOC emissions, an increase in NO_x emissions (and the associated changes in atmospheric chemistry) could result in violations of the ozone standard in the KCMA. EPA's analysis showed no increase in KCMA NO_x emissions through the year 2005. Therefore, with VOC emissions at, or below, the action level, and with NO_x emissions not increasing, violations of the ozone standard are not anticipated. Pursuant to section 175A(a) of the Act, EPA finds that the maintenance plan demonstrates continued attainment of the ozone standard for the ten-year period following the effective date of the redesignation.

4. Annual Tracking and Inventory Updates

Continued attainment of the ozone NAAQS in the KCMA depends, in part, on the state's efforts toward tracking VOC emissions. The state has committed to completing comprehensive VOC point source inventory updates at least twice in each five-year period following the effective date of the area's redesignation. For years in which no comprehensive update is performed, the state will update the inventory using source permit and shutdown data.

Area and mobile source inventories will be updated at least once every five years to take advantage of new data and estimation procedures, e.g., U.S. Census data, revised EPA mobile source emission models, etc. For years in which no comprehensive area and mobile source inventories are developed, the state will estimate emissions using the most recently available projections from existing area and mobile source inventories

The state will submit annual progress reports to EPA which will summarize available VOC emissions data. Thus, on an annual basis, EPA and the state can ascertain whether actual VOC emissions are within the attainment inventory.

5. Contingency Plan

The level of VOC emissions in the KCMA will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Although further reductions of VOC emissions are projected to occur during the next ten years, the state has provided contingency measures to be implemented in the event of a future ozone air quality problem.

Two potential scenarios could result in the implementation of contingency measures. The first scenario would be an increase in VOC emissions which exceeds the "action line" level (encroaching into the emission margin of safety), but does not result in ozone violations. The second situation, regardless of the actual VOC emissions, would be violations of the NAAQS. As mentioned above, the state will provide annual progress reports which will evaluate the integrity of VOC emissions safety margin. Section 5.3 of the state submittal gives the details of the contingency provisions under both scenarios. Contingency measures include: (1) VOC emission offsets for new and modified stationary sources; (2) transportation control measures; (3) Stage II vapor recovery; (4) a vehicle I/M program; (5) VOC controls on minor new sources; and (6) RACT for sources covered by new EPA Control Technique Guideline (CTG) documents. Contingency controls would require the state's legislative and/or administrative approval before they could be implemented. The contingency measures provided in the state submittal meet the requirements of section 175A(d) of the Act.

6. Commitment to Submit Subsequent Maintenance Plan Revisions

In accord with section 175A of the Act, the state has committed to submit a revised maintenance SIP eight years after the area is redesignated to attainment.

B. Additional Reasonably Available Control Technology (RACT) Regulations

In accord with section 172(b)(2) of the 1977 Act, the KCMA was required to have SIP rules representing RACT for all VOC source categories covered by Group I, II, and III CTG documents. RACT rules were also required for all major non-CTG sources.

At the time EPA approved the SIP control strategy (54 FR 10322 and 54 FR 46232), EPA and the state believed that all the RACM requirements had been met; rules were in place for all applicable CTG and non-CTG source categories. Moreover, the rules had been revised for consistency with EPA's "Blue Book." However, during the maintenance plan development process, EPA learned that the state needed an additional RACT regulation to address an unregulated non-CTG major source category—lithographic printing. The state also made corrections to its cutback asphalt and definitions rules. These rule actions are discussed below. All of the state's existing and new VOC RACT rules will remain in effect after

the KCMA is redesignated to attainment for the ozone NAAQS.

10 CSR 10–2.340 Control of Emissions from Lithographic Printing Facilities

This non-CTG RACT rule applies to nine existing facilities and new facilities that have the potential to emit more than 100 TPY of VOC from lithographic printing operations. VOCs from heat-set inks and the associated dryers are required to be reduced by 90 to 93 percent over pre-RACT levels through the installation of add-on control equipment. Evaporative emissions from cleanup solvents will be reduced by 49 percent, with VOCs from fountain solutions decreasing by 8 percent. VOC emission reductions from fountain solutions are not as large as had been anticipated because many of the subject facilities have already reduced the use of alcohol additives, or have converted to low-VOC alcohol substitutes. The rule was adopted by the Missouri Air Conservation Commission (MACC) after proper notice and public hearing and will become effective ten days after its date of publication in the Code of State Regulations (CSR).

Appendix G of the state submittal contains a demonstration that the rule constitutes RACT. In its RACT determination, the state generally relied upon research conducted by other states that have proposed or adopted similar rules, feedback from local lithographic printers, information provided by printing trade associations and trade publications, and research conducted for EPA's pending publication of a CTG document for lithographic printing (scheduled for release sometime in 1992–93).

10 CSR 10–2.220 Liquefied Cutback Asphalt Paving Restricted

This rule, as amended, now applies during the months of April through October. Previously, the applicable season had been May through September. The rule now includes recordkeeping requirements on the production, sales, and use of cutback asphalt. Such records must be maintained for at least two years and must be made available to the state upon request. The rule amendment was adopted by the MACC after proper notice and public hearing and will become effective ten days after its date of publication in the CSR.

10 CSR 10–6.020 Definitions

In this rule, the state expanded its definition of "person" so it would better apply to the gasoline marketing industry. The term "person" now applies to any legal successor, employees, or agents of the entities previously included in the definition. The definitions of "Reid Vapor Pressure" and "gasoline" were updated, and a definition of "retail outlet" was added. The amendments to the definitions rule were adopted by the MACC after proper notice and public hearing and will become effective ten days after being published in the CSR.

EPA believes that these three rules (as discussed above) constitute RACT for all affected sources. Therefore, EPA proposes approval of these rules.

C. Redesignation Request

The Missouri redesignation request for the KCMA meets the five requirements of section 107(d)(3)(E). Following is a brief description of how the state has fulfilled each of these requirements. EPA's TSD contains a more in-depth analysis of the submittal with respect to certain of these criteria.

1. Attainment of the Ozone NAAQS

The KCMA has provisionally met the first statutory criterion of attainment of the ozone NAAQS. EPA's analysis of the ozone air quality data is discussed above in Section III.A.1. EPA will not take final action approving the redesignation unless it determines that attainment is based on three years of quality assured data.

2. Reductions are Permanent and Enforceable

EPA approved the Missouri SIP control strategy for the KCMA satisfied that the rules, and therefore the emission reductions achieved as a result of those rules, were enforceable. Since that time, the Agency has remained satisfied with those rules and has not issued a SIP call pursuant to section 110(a)(2)(H), finding them to be inadequate. The emissions inventory, discussed in section III.A.2. above, is based on reductions achieved through control measures in the SIP; therefore, EPA finds that the emission reductions are permanent and enforceable.

3. A Fully Approved Maintenance Plan

In today's notice, EPA is proposing approval of the state's maintenance plan for the KCMA. As discussed above in Section III.A., EPA finds that the Missouri submittal meets the requirements of section 175A. If EPA determines after notice and comment that it should give final approval to the maintenance plan, the KCMA will have a fully approved maintenance plan in accordance with section 175A. EPA will not redesignate the area to attainment before it gives final approval to the maintenance plan.

4. Fully Approved SIP Meeting the Requirements of section 110 and Part D

a. *Section 110 Requirements.* In 1980 and 1989, EPA fully approved the state's SIP for the KCMA as meeting the requirements of section 110(a)(2) of the 1977 Act (45 FR 24140, 45 FR 85005, 54 FR 10322, and 54 FR 46232). The amended Act, however, modifies several of these requirements. Moreover, the amended Act requires that for redesignation a nonattainment area must have a fully approved SIP under section 110(k)—a new provision. EPA addresses the modified portions of section 110(a)(2) below. As discussed in Section III.B above, the state has submitted two new rules for SIP approval. By today's action, EPA proposes approval of these two rules, and the maintenance plan. Contingent upon final approval of the SIP, EPA proposes approval of the Missouri SIP for the KCMA under section 110(k) of the amended Act. EPA will not take final action redesignating the KCMA to attainment until it has issued a final approval of the entire SIP for the KCMA.

Although section 110 was amended by the CAAA, the KCMA SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance—section 110(a)(2)(B); (C); (E) (i) and (ii); (F); (G); (H); (J); (L) and (M)—and, therefore, EPA has determined that the presence of a fully approved SIP indicates that these requirements have been met.

A few of the other requirements deserve a more detailed analysis. First, the section 110(a)(2) requirement that all elements of the SIP are enforceable, is essentially the same as the section 172(c)(6) requirement. As discussed below in relation to the section 172(c)(6) requirement, we have found that the existing SIP contains the necessary enforceable measures. Section, as to section 110(a)(2)(D), which also remains essentially unchanged, it is important to note that the state has provisions adequate to ensure that it is not contributing to nonattainment problems across the state border. These provisions are found in the existing SIP. Third, section 110(a)(2)(E)(iii) establishes a new requirement that the state retain the responsibility for ensuring adequate implementation of the SIP elements. Since the state adopted and submitted the rules, it has retained direct responsibility for ensuring adequate implementation. Fourth, new section 110(a)(2)(I) reinforces the requirement that the state comply with all Part D requirements (discussed further below). Finally,

section 110(a)(2)(K) reinforces EPA's authority to require states to do air quality modeling to support SIP demonstrations. Since EPA is approving the demonstration of continued attainment in the maintenance plan, Missouri has met this requirement for purposes of redesignating the Missouri portion of the Kansas City ozone nonattainment area to attainment.

b. *Part D Requirements.* Before the KCMA may be redesignated to attainment, it also must have fulfilled the applicable requirements of Part D. Under Part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of Part D sets forth requirements applicable to all nonattainment areas regardless of classification. Subpart 2 of Part D establishes requirements for areas classified as marginal or above. For ozone nonattainment areas, classification is based on the design value of the area. Areas that violated the ozone standard during the three-year period (1987 through 1989), but had a design value of less than 0.121 ppm, fell below the classification cutpoint of section 181 and were, therefore, deemed "submarginal" as of the date of enactment of the 1990 Amendments to the Act. On November 6, 1991, the KCMA was classified as submarginal (56 FR 56694). Therefore, in order to be redesignated, the state need only meet the requirements of subpart 1 of Part D. Specifically, the state must meet the requirements set forth in section 172(c) and section 176.

1. Section 172(c) Plan Provisions

Since EPA did not issue a SIP call after the state's 1988 approved submittal, the section 172(c)(1) RACM requirement (which is the same as the requirement is preamended section 17(b)(2) and (3)) was met by EPA's approval of the SIP under the preamended Act. The state has actually attained the standard based on the three years of data from 1989 through 1991. Section 172(c)(1) requires the state to adopt and implement RACM as expeditiously as practicable and to provide for the attainment of the NAAQS. At the time EPA approved the KCMA plan, the Agency determined that it was consistent with RACT and RACM requirements of the Act. As discussed previously herein, EPA later determined that additional RACT rules were needed in the KCMA. The additional RACT rules, included in the state submittal, fulfill the RACT and RACM requirements of the Act.

The RACM requirement also provides that the SIP must provide for attainment. EPA never acted on Missouri's attainment demonstration for the KCMA. Under the amended Clean Air Act, the attainment demonstration requirement no longer applies to ozone nonattainment areas that are classified as marginal (section 182(a)(4)). For marginal areas, this specific provision overrides the general attainment demonstration requirement of section 172(c)(1) that is applicable to all ozone nonattainment areas. On November 6, 1991, the KCMA was designated as a submarginal ozone nonattainment area (56 FR 56694). Since submarginal areas, such as Kansas City, have an even less severe ozone problem than marginal areas, EPA is interpreting the section 172(c)(1) attainment demonstration requirement not to apply to submarginal areas. Therefore, it is not necessary for EPA to take final action on the existing attainment demonstration for purposes of redesignating the Missouri portion of the Kansas City ozone nonattainment area.

Several section 172(c) requirements lose their continued force once an area has demonstrated attainment and maintenance of the NAAQS. The requirement for reasonable further progress (RFP) only has relevance during the time it takes an area to attain the NAAQS—each year the area must make RFP toward attainment. EPA originally approved the KCMA RFP demonstration under preamended section 172(c)(2) for the period preceding the statutorily approved attainment date. The preamended section 172(b)(3) requirement is essentially the same as the new section 172(c)(2) RFP requirement. Since the KCMA has attained the NAAQS, its SIP has already achieved RFP toward that goal. In addition, because the KCMA has attained the NAAQS and is no longer subject to an RFP requirement, the section 172(c) contingency measures are not applicable. Such contingency measures must take effect if the area fails to meet an RFP milestone or fails to attain the NAAQS; the KCMA no longer has RFP milestones and has already attained the standard. The area, however, is still subject to the section 175A contingency measures.

Similarly, once an area is redesignated to attainment, nonattainment new source review (NSR) requirements are not applicable. The area is then subject to prevention of significant deterioration (PSD) requirements instead of the NSR program. EPA does not believe it appropriate to require the state to adopt a revised NSR program (meeting the requirements of the amended Act) just to qualify for redesignation, since that program will be replaced by the existing Missouri PSD program upon redesignation and any corresponding amendments to the state rules.

As discussed in Section III.A.2. above, the state submittal includes an emissions inventory. The maintenance plan emissions inventory fulfills the section 172(c) requirement.

2. Conformity

Section 176 of the Act requires states to develop transportation/air quality conformity procedures which are consistent with federal conformity regulations and to submit these procedures as a SIP revision by November 15, 1992. EPA has not promulgated final conformity regulations; however, the state has committed to develop conformity procedures consistent with the final federal regulations and will submit an appropriate SIP revision. Pages 95 and 96 of the state submittal discuss the general principles to which the state will adhere in developing conformity procedures for the Kansas City area.

On June 7, 1991, EPA and the Department of Transportation issued Interim Conformity Guidance for completing conformity determinations until the final conformity regulations are promulgated. MARC (the metropolitan planning organization for the Kansas City area) completed a conformity determination for Kansas City regional transportation plans and programs under the Interim Guidance, which the state has reviewed and approved. The conformity determination is included as appendix L to the state submittal.

EPA believes that the section 176 conformity requirement is sufficiently met because the promulgation date for conformity procedures has not passed and the state has committed to adopt appropriate procedures.

IV. Conclusion

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address above.

Proposed Action

In today's notice, EPA proposes to approve the Kansas City ozone maintenance plan, and the RACT rule submittals, because it meets the requirements of section 175A. In addition, the Agency is proposing approval of the redesignation request for the Kansas City area, subject to final

approval of the maintenance plan, because the state has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), EPA certifies that this SIP revision and redesignation will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, and Ozone.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 3, 1992.

Morris Kay,

Regional Administrator.

[FR Doc. 92–1068 Filed 1–14–92; 8:45 am]

BILLING CODE 6560–60–M

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40 CFR Parts 52 and 81

[K51–1–5370; FRL–4093–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Ambient air quality data for the period 1989 through 1991 indicate that the Kansas City ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone. Therefore, in accordance with the Clean Air Act Amendments (CAAA) of 1990, the state of Kansas has submitted an ozone maintenance plan which projects continued attainment of the ozone standard in the Kansas City area, and has requested redesignation of the area to attainment for the ozone NAAQS. EPA is proposing to approve the Kansas City ozone maintenance plan as a revision to the Air Pollution Control State Implementation Plan (SIP) for the state of Kansas. In conjunction with the maintenance plan, EPA is also proposing to approve Kansas' request to redesignate the Kansas City area to attainment with respect to the ozone NAAQS. In a separate **Federal Register** notice published today, EPA is also proposing to approve an analogous plan and redesignation request submitted by the Missouri Department of Natural Resources to address the Missouri portion of the ozone nonattainment area.

DATES: Comments must be received by February 14, 1992.

ADDRESSES: Comments should be sent to Larry A. Hacker, Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submittal and the EPA-prepared technical support document (TSD) are available for public review at the above address and at the Kansas Department of Health and Environment, Forbes Field, Building 740, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 551–7020 (FTS 276–7020.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act as amended in 1977 ("the 1977 Act") required areas failing to meet the ozone NAAQS to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard (section 172(a)). The Kansas City metropolitan area (KCMA) was designated under section 107 of the 1977 Act as nonattainment with respect to the ozone NAAQS on March 3, 1978. (The designations for Kansas are codified at 40 CFR 81.317.) The Kansas Department of Health and Environment (KDHE) submitted a Part D ozone SIP on September 17, 1979, which EPA fully approved as meeting the requirements of section 110 and Part D of the 1977 Act. The 1979 SIP projected attainment by December 31, 1982, making the KCMA area a "nonextension area" under section 172 of the 1977 Act. Although the KCMA appeared to have met the ozone standard by the end of 1982, additional violations occurred in 1983 and 1984. On February 20, 1985, EPA notified the Governor of Kansas, pursuant to section 110(a)(2)(H), that the SIP was substantially inadequate to attain the ozone NAAQS (50 FR 26196).

In response to the SIP call, KDHE submitted a revised SIP on July 2, 1986, which demonstrated attainment by December 31, 1987. EPA fully approved the revised SIP on May 18, 1988 (53 FR 17700). At that time, EPA believed that the area has achieved the standard as the 1985 through 1987 air quality data showed attainment. However, ozone violations occurred in June of 1988. More recently, however, the 1989 through 1991 air quality data show attainment of the ozone NAAQS. In an effort to comply with the 1990 CAAA (Pub. L. 101–549), and to ensure continued attainment of the standard with an adequate margin of safety, the state submitted an ozone maintenance SIP for the Kansas City area on October 23, 1991. Accompanying the maintenance SIP are new rules to control certain categories of sources which emit volatile organic compound (VOC) emissions, and the state's request to redesignate the area to attainment with respect to the ozone NAAQS.

II. Evaluation Criteria

Together, the Kansas and Missouri submittals meet all the applicable requirements of the 1990 CAA. The EPA rulemaking docket checklist (included with EPA's TSD) provides a listing of applicable approval criteria. However, some of these criteria merit additional discussion which is contained below.

With its submittal of two additional new VOC rules, Kansas meets the CAA requirement that the SIP include all reasonably available control measures (RACM) (section 172(c)(1)). The rules are also consistent with EPA policy as outlined in "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to appendix D of November 24, 1987 **Federal Register**," dated May 25, 1988 (referred to hereafter as the "Blue Book").

The Kansas submittal also includes a redesignation request, in which the state demonstrates that the area has fulfilled the redesignation requirements of the amended Act. Section 107(d)(3)(E) of the Act provides specific requirements for redesignating a nonattainment area to attainment.

A. the area must have attained the applicable NAAQS (section 107(d)(3)(E)(i));

B. the area has a fully approved SIP under section 110(k) of the Act (section 107(d)(3)(E)(ii));

C. the air quality improvement must be permanent and enforceable (section 107(d)(3)(E)(iii));

D. the area must have a fully approved maintenance plan pursuant to section 175A of the Act (section 107(d)(3)(E)(iv)); and

E. the area has met all relevant requirements under section 110 and Part D of the Act (section 107(d)(3)(E)(v)).

Section 175A of the Act sets forth the maintenance plan requirement for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment

of the applicable NAAQS for at least ten years after the area is redesignated. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures adequate to assure prompt correction of the air quality problem.

III. Review of State Submittal

A. Maintenance Plan

1. Air Quality Data

The submittal contains an analysis of ozone air quality data which is relevant to the maintenance plan and to the redesignation request. (The redesignation request is discussed in Section III.C of this notice.) Ambient ozone monitoring data for 1989 through 1991 show attainment of the NAAQS in the Kansas City area, i.e., less than one expected exceedance per year. For a complete discussion of the NAAQS, the reader is referred to 40 CFR 50.9 and appendix H to that section. Although the 1991 data are not yet fully quality assured, EPA will review the quality of these data in conjunction with its final action on this SIP submittal. EPA will not take final action approving the redesignation unless it determines that attainment is based on three years of quality assured data.

Prior to the 1991 ozone season, the state had planned to base the redesignation request on the 1987 through 1989 air quality data; however, these data did not indicate attainment in strict accord with EPA's interpretation of the ozone standard. Although, under appendix H, attainment cannot be shown by the 1987 through 1989 data, the state's demonstration justifies the use of 1989 emissions levels as being representative of attainment.

2. Emissions Inventory

KDHE submitted comprehensive inventories of actual VOC emissions from point, area, and mobile sources. Because 1989 emission data were not consistently available for all VOC sources in the KCMA, 1988 was selected as the base year and was used to project emissions to 1989 and future years. The 1989 VOC inventory is considered most representative of attainment conditions because: (1) No ozone exceedances occurred in 1989; and (2) EPA's Phase I gasoline volatility controls (54 FR 11868) were implemented in 1989, resulting in significant VOC emission reductions.

Therefore, the attainment emission inventory for purposes of this SIP is based upon the 1989 emission values. All VOC emission estimates were reported in kilograms per typical summer day. The state submittal contains the detailed inventory data and summaries by county and source category.

The state demonstrated that point source VOC emissions were not artificially low due to local economic downturn. The state examined historical employment data for the Kansas City area for the years 1987 through 1989. No economic downturn was evident; employment in the manufacturing sector remained relatively stable during the period.

The state's inventory methodology was consistent with EPA guidance applicable at the time the plan was being developed (EPA–450/4–88–19, December 1988). Eighty percent rule effectiveness was applied for source categories subject to state regulations. Stationary sources with emissions greater than 10 tons per year were inventoried as point sources.

Mobile source emission estimates were generated using EPA's MOBILE4 model. For the 1988 base year (prior to EPA volatility restrictions), a 10.5 psi RVP gasoline volatility was used. In accord with the EPA Phase I volatility restrictions, a 9.5 psi RVP gasoline volatility was input for 1989. For 1990 and 1991, a gasoline volatility of 9.0 psi RVP was used in accord with the KCMA's voluntary RVP reduction program (discussed further below). In accord with EPA's original June 11, 1990, Phase II volatility restrictions (56 FR 23658), a gasoline volatility of 7.8 psi RVP was assumed for 1992 and later years.

Due to the marginal, but persistent, history of ozone nonattainment in the KCMA, EPA and the states of Missouri and Kansas believed that an additional areawide VOC control measure was necessary to ensure that the ozone standard could be maintained with an adequate margin of safety. The states of Missouri and Kansas, the Mid-America Regional Council (MARC) and the Chamber of Commerce worked cooperatively to implement a voluntary program to control the volatility of gasoline supplied to the area for 1990 and 1991. Despite its voluntary nature, the program reduced gasoline volatility from 9.5 to 9.0 psi RVP from June 1 through September 1 in both 1990 and 1991. All petroleum refiners and pipeline companies agreed to participate. Also, the Field Operations Support Division of EPA performed volatility tests of gasoline samples from the KCMA. The tests confirmed that the program achieved its goal. (As discussed in Section III.A.3. below, additional reduction of gasoline volatility will be accomplished, beginning in 1992, as a result of EPA's Phase II volatility standards.)

The voluntary RVP control program resulted in a 8,189 kg/day areawide reduction in the projected 1990 VOC inventory. This equates to a 3.3 percent reduction from the 1989 attainment VOC inventory. Thus, the 8,189 kg/day VOC reduction serves as the attainment margin of safety. The states have committed to maintain future VOC emissions at or below the so-called "action level," i.e., VOC emissions will not be allowed to encroach upon the margin of safety. The action level concept is detailed in the above-mentioned EPA TSD.

3. Demonstration of Continued Attainment

a. State demonstration. The state's demonstration of continued attainment relies, in part, on EPA's Phase II gasoline volatility requirements. On June 11, 1990 (55 FR 23658), EPA promulgated state-by-state Phase II RVP gasoline standards in order to continue reductions in VOC emissions. Accordingly, under the Phase II program, a fuel volatility limit of 7.8 psi RVP was scheduled to become effective in 1992 and each year thereafter during the ozone season (May through September) in the state of Kansas.

However, the federal gasoline volatility requirements were modified by the 1990 CAAA, and EPA promulgated revised Phase II gasoline volatility requirements on December 12, 1991 (56 FR 64704). This latest rule revises the maximum allowable RVP from 7.8 to 9.0 psi in those areas which are currently designated as unclassifiable or in attainment with the NAAQS for ozone. However, as applicable to the KCMA, the RVP limit of 7.8 will go into effect as the area is presently designated nonattainment.

The Kansas portion of the KCMA was designated as nonattainment for ozone in the recently published part 81 **Federal Register** notice, November 6, 1991 (56 FR 56788). Therefore, continuation of the 7.8 psi RVP limit is federally enforceable in the KCMA, even after the area is redesignated to attainment, because of its nonattainment designation in the November 6, 1991 **Federal Register** notice. Also, the requirement for 7.8 psi RVP volatility is deemed necessary to ensure attainment and maintenance of the ozone standard as demonstrated by the mobile source emissions inventory projections (based on use of 7.8 psi RVP)

in Kansas' ozone maintenance plan for the KCMA.

Areawide VOC emission were projected for the ten-year period following maintenance plan development. The projections show that the ozone standard will be maintained, i.e., VOC emissions are not expected to exceed the "action level" during this time period. Areawide VOC emissions are expected to decrease by over 20 percent during the next ten years.

The state's projection of VOC emissions is based on the Federal Motor Vehicle Control Program and EPA's Phase II volatility controls. The projections were developed prior to passage of the 1990 CAA Amendments; thus, the federal on-board vapor recovery requirement and the new federal tailpipe standards were not considered.

b. *Additional EPA analysis.* At the time Missouri and Kansas developed their maintenance plans, the current version of EPA's mobile source emissions model was MOBILE4.0. Since that time, MOBILE4.1 has become available. MOBILE4.1 was run to determine what effect, if any, the new model would have on the demonstration of continued attainment of the ozone standard. For any given year, MOBILE4.1 predicted lower VOC emissions than MOBILE4.0; however, the relative year-to-year trends were essentially identical. Thus, the net effect of MOBILE4.1 on the demonstration of continued attainment was not significant.

Using MOBILE4.1, the KCMA attainment level of VOC emissions changed from 245,080 kg/day to 227,007 kg/day. For this analysis, EPA determined the action level of VOC emissions to be 218,009 kg/day. Using MOBILE4.1 for projecting the mobile source component of the emissions inventory, the total KCMA VOC emissions in the year 2000 are projected to be 183,601 kg/day, which is 16 percent below the action level. Given this substantial margin (34,408 kg/day), EPA believes that VOC emissions will remain below the action level through the year 2002 (ten years after the redesignation becomes effective).

EPA also performed an analysis of projected NO_x emissions for the KCMA. Given that VOC emissions will remain below the action level (as discussed above in Section III.A.2.) for the next ten years, EPA wished to determine what increases to NO_x emissions, if any, could be anticipated. Even with no growth in VOC emissions, an increase in NO_x emissions (and the associated changes in atmospheric chemistry) could result in violations of the ozone standard in the KCMA. EPA's analysis showed no increase in KCMA NO_x emissions through the year 2005. Therefore, with VOC emissions at, or below, the action level, and with NO_x emissions not increasing, violations of the ozone standard are not anticipated. Pursuant to section 175A(a) of the Act, EPA finds that the maintenance plan demonstrates continued attainment of the ozone standard for the ten-year period following the effective date of the redesignation.

4. Annual Tracking and Inventory Updates

Continued attainment of the ozone NAAQS in the KCMA depends, in part, on the state's efforts toward tracking VOC emissions. The state has committed to completing comprehensive VOC point source inventory updates at least twice in each five-year period following the effective date of the area's redesignation. For years in which no comprehensive update is performed, the state will update the inventory using source permit and shutdown data.

Area and mobile source inventories will be updated at least once every five years to take advantage of new data and estimation procedures, e.g., U.S. Census data, revised EPA mobile source emission models, etc. For years in which no comprehensive area and mobile source inventories are developed, the state will estimate using the most recently available projections from existing area and mobile source inventories.

The state will submit annual progress reports to EPA which will summarize available VOC emissions data. Thus, on an annual basis, EPA and the state can ascertain whether actual VOC emissions area within the attainment inventory.

5. Contingency Plan

The level of VOC emissions in the KCMA will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Although further reductions of VOC emissions are projected to occur over the next ten years, the state has provided contingency measures to be implemented in the event of a future ozone air quality problem.

Two potential scenarios could result in the implementation of contingency measures. The first scenario would be an increase in VOC emissions which exceeds the "action line" level (encroaching into the emission margin of safety), but does not result in ozone violations. The second situation, regardless of the actual VOC emissions, would be violations of the NAAQS. As mentioned above, the state will provide annual progress reports which will evaluate the integrity of the VOC emissions safety margin. Section 5.3 of the state submittal gives the details of the contingency provisions under both scenarios. Contingency measures include: (1) VOC emission offsets for new and modified stationary sources; (2) transportation control measures; (3) Stage II vapor recovery; (4) a vehicle I/M program; (5) VOC controls on minor new sources; and (6) RACT for sources covered by new EPA CTG documents. Contingency controls would require the state's legislative and/or administrative approval before they could be implemented. The contingency measures provided in the state submittal meet the requirements of Section 175A(d) of the Act.

6. Commitment to Submit Subsequent Maintenance Plan Revisions

In accord with section 175A of the Act, the state has committed to submit a revised maintenance SIP eight years after the area is redesignated to attainment.

B. Additional Reasonably Available Control Technology (RACT) Regulations

In accord with section 172(b)(2) of the 1977 Act, the KCMA was required to have SIP rules representing RACT for all VOC source categories covered by Group I, II, and III Control Techniques Guideline (CTG) Documents. RACT rules were also required for all major non-CTG sources.

At the time EPA approved the SIP (53 FR 17700), EPA and the state believed that all the RACM requirements had been met; rules were in place for all applicable CTG and non-CTG source categories. Moreover, the rules had been revised for consistency with EPA's "Blue Book." However, during the maintenance plan development process, EPA learned that the state needed additional RACT regulations to address two unregulated non-CTG major source categories—lithographic printing sources and chemical processing facilities that operate alcohol plants or liquid detergent plants. After proper notice and public hearing by the state, these rules were adopted and became effective on October 7, 1991. All of the state's existing and new VOC RACT rules will remain in effect after the KCMA is redesignated to attainment for the ozone NAAQS. These rule actions are discussed below.

K.A.R. 28–19–76 Lithography Printing Facilities

This non-CTG RACT rule applies to two existing facilities and new facilities that have the potential to emit more than 100 tons per year (TPY) of VOCs from lithographic printing operations. VOCs from heat-set inks and the associated dryers are required to be reduced by 77 percent over pre-RACT levels through the installation of add-on control equipment. Evaporative emissions from cleanup solvents will be reduced by 50 percent, with VOCs from fountain solutions decreasing by 43 percent. The rule was adopted by the KDHE after proper notice and public hearing and became effective on October 7, 1991.

Appendix M of the state submittal contains a demonstration that the rule constitutes RACT. In its RACT determination, the state generally relied upon research conducted by other states that have proposed or adopted similar rules, feedback from local lithographic printers, information provided by printing trade associations and trade publications, and research conducted for EPA's pending publication of a CTG document for lithographic printing (scheduled for release some time in 1992–93).

K.A.R. 28–19–77 Chemical Processing Facilities That Operate Alcohol Plants or Liquid Detergent Plants

This rule applies to chemical processing facilities that operate alcohol or liquid detergent plants which use, produce, or store ethanol or methanol, and have the potential to emit more than 100 TPY VOCs. This rule currently applies to one existing facility. The rule will require installation of control equipment on point sources, the reduction of VOC concentration in process wastewater streams, and the reduction of fugitive emissions. The state estimates that VOCs from the one existing facility will be reduced by 69 percent, for a total reduction of 455 TPY. This rule was adopted by the KDHE after proper notice and public hearing and became effective on October 7, 1991.

Appendix M of the state submittal contains a demonstration that the rule constitutes RACT. In its RACT demonstration the state relied on research and information developed by EPA, other state and local agencies, and a RACT analysis conducted by the existing facility.

The state also revised two existing rules related to the RACT rules. In rule K.A.R. 28–19–61, Definitions, the definitions of several terms were updated. In rule K.A.R. 28–19–66, Testing Procedures, test methods for the RACT rules were updated to be consistent with EPA reference methods. EPA believes the aforementioned rules constitute RACT for all affected sources. Therefore, EPA proposes approval of these rules.

C. Redesignation Request

The Kansas redesignation request for the KCMA meets the five requirements of section 107(d)(3)(E). Following is a brief description of how the state has fulfilled each of these requirements. EPA's TSD contains a more in-depth analysis of the submittal with respect to certain of these criteria.

1. Attainment of the Ozone NAAQS

The KCMA has provisionally met the first statutory criterion of attainment of the ozone NAAQS. EPA's analysis of the ozone air quality data is discussed above in Section III.A.1. EPA will not take final action approving the redesignation unless it determines that attainment is based on three years of quality assured data.

2. Reductions are Permanent and Enforceable

EPA approved the Kansas SIP for the KCMA satisfied that the rules, and therefore the emission reductions achieved as a result of those rules, were enforceable. Since that time, the Agency has remained satisfied with those rules and has not issued a SIP call pursuant to section 110(a)(2)(H), finding them to be inadequate. The emissions inventory, discussed in Section III.A.2. above, is based on reductions achieved through control measures in the SIP; therefore, EPA finds that the emission reductions are permanent and enforceable.

3. A Fully Approved Maintenance Plan

In today's notice, EPA is proposing approval of the state's maintenance plan for the KCMA. As discussed above in Section III.A., EPA finds that the Kansas submittal meets the requirements of section 175A. If EPA determines after notice and comment that it should give final approval to the maintenance plan, the KCMA will have a fully approved maintenance plan in accordance with section 175A. EPA will not redesignate the area to attainment before it gives final approval to the maintenance plan.

4. Fully Approved SIP Meeting the Requirements of Section 110 and Part D

a. *Section 110 requirements.* On May 18, 1988 (53 FR 17700), EPA fully approved the state's SIP for the KCMA as meeting the requirements of section 110(a)(2) of the 1977 Act. The amended Act, however, modifies several of these requirements. Moreover, the amended Act requires that for redesignation a nonattainment area must have a fully approved SIP under section 110(k)—a new provision. EPA addresses the modified portions of section 110(a)(2) below. As discussed in Section III.B above, the state has submitted two new rules for SIP approval. By today's action, EPA proposes approval of these two rules, and the maintenance plan. Contingent upon final approval of the SIP, EPA proposes approval of the Kansas SIP for the KCMA under section 110(k) of the amended Act. EPA will not take final action redesignating the KCMA to attainment until it has issued a final approval of the entire SIP for the KCMA.

Although section 110 was amended by the CAAA, the KCMA SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance—section 110(a)(2)(B); (C); (E) (i) and (ii); (F); (G); (H); (J); (L) and (M)—and, therefore, EPA has determined that the presence of a fully approved SIP indicates that these requirements have been met.

A few of the other requirements deserve a more detailed analysis. First, the section 110(a)(2) requirement that all elements of the SIP are enforceable, is essentially the same as the section 172(c)(6) requirement. As discussed below in relation to the section 172(c)(6) requirement, we have found that the existing SIP contains the necessary enforceable measures. Second, as to section 110(a)(2)(D), which also remains essentially unchanged, it is important to note that the state has provisions adequate to ensure that it is not contributing to nonattainment problems across the state border. These provisions are found in the existing SIP. Third, section 110(a)(2)(E)(iii) establishes a new requirement that the state retain the responsibility for ensuring adequate implementation of the SIP elements. Since the state adopted and submitted the rules, it has retained direct responsibility for ensuring adequate implementation. Fourth, new section 110(a)(2)(I) reinforces the requirement that the state comply with all Part D requirements (discussed further below). Finally, section 110(a)(2)(K) reinforces EPA's authority to require states to do necessary air quality modeling to support SIP demonstrations. Since EPA is approving the demonstration of continued attainment in the maintenance plan, the KCMA has met this requirement for purposes of redesignation to attainment.

b. *Part D requirements.* Before the KCMA may be redesignated to attainment, it also must have fulfilled the applicable requirements of Part D. Under Part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth requirements applicable to all nonattainment areas regardless of classification. Subpart 2 of Part D establishes requirements for areas classified as marginal or above. For ozone nonattainment areas, classification is based on the design value of the area. Areas that violated the ozone standard during the three-year period (1987 through 1989) but had a design value of less than 0.121 ppm, fell below the classification cutpoint of section 181 and were, therefore, deemed "submarginal" as of the date of enactment of the 1990 Amendments to the Act. On November 6, 1991, the KCMA was classified as submarginal (56 FR 56694). Therefore, in order to be redesignated, the state need only meet the requirements of subpart 1 of Part D. Specifically, the state must meet the requirements set forth in section 172(c) and section 176.

1. Section 172(c) Plan Provisions

Since EPA did not issue a SIP call after the state's 1988 approved submittal, the section 172(c)(1) RACM requirement (which is the same as the requirement in preamended section 172(b) (2) and (3)) was met by EPA's full approval of the SIP under the preamended Act. The SIP provided for attainment by 1987, and the state has actually attained the standard based on the three years of data from 1989 through 1991. Section 172(c)(1) requires the state to adopt and implement RACM as expeditiously as practicable and to provide for the attainment of the NAAQS. At the time EPA approved the KCMA plan, the Agency determined that it was consistent with RACT and RACM requirements of the Act. As discussed previously herein, EPA later determined that additional RACT rules were needed in the KCMA. The additional RACT rules, included in the state submittal, fulfill the RACT and RACM requirements of the Act.

Several section 172(c) requirements lose their continued force once an area has demonstrated attainment and maintenance of the NAAQS. The requirement for reasonable further progress (RFP) only has relevance during the time it takes an area to attain the NAAQS—each year the area must make RFP toward attainment. EPA originally approved the KCMA RFP demonstration under preamended section 172(c)(2) for the period preceding the statutorily approved attainment date. The preamended section 172(b)(3) requirement is essentially the same as the new section 172(c)(2) RFP requirement. Since the KCMA has attained the NAAQS, its SIP has already achieved RFP toward that goal. In addition, because the KCMA has attained the NAAQS and is no longer subject to an RFP requirement, the section 172(c) contingency measures are not applicable. Such contingency measures must take effect if the area fails to meet an RFP milestone or fails to attain the NAAQS; the KCMA no longer has RFP milestones and has already attained the standard. The area, however, is still subject to the section 175A contingency measures.

Similarly, once an area is redesignated to attainment, nonattainment new source review (NSR) requirements are not applicable. The area is then subject to prevention of significant deterioration (PSD) requirements instead of the NSR program. EPA does not believe it appropriate to require the State to adopt a revised NSR program (meeting the requirements of the amended Act) just to qualify for redesignation, since that program will be replaced by the existing Kansas PSD program upon redesignation.

Finally, as discussed in section III.A.2. above, the state submittal includes an emissions inventory. The emissions inventory fulfills the section 172(c) requirement.

2. Conformity

Section 176 of the Act requires states to develop transportation/air quality conformity procedures which are consistent with federal conformity regulations and to submit these procedures as a SIP revision by November 15, 1992. EPA has not promulgated final conformity regulations; however, the state has committed to develop conformity procedures consistent with the final federal regulations and will submit an appropriate SIP revision. Pages 95 and 96 of the state submittal discuss the general principles to which to state will adhere in developing conformity procedures for the Kansas City area.

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EPA believes that the section 176 conformity requirement is sufficiently met because the promulgation date for conformity procedures has not passed and the state has committed to adopt appropriate procedures.

IV. Conclusion

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address above.

Proposed Action

In today's notice, EPA proposes to approve the Kansas City ozone maintenance plan, and the RACT rule submittals, because it meets the requirements of section 175A. In addition, the Agency is proposing approval of the redesignation request for the Kansas City area, subject to final approval of the maintenance plan, because the state has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), EPA certifies that this SIP revision and redesignation will have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects

40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, and Ozone.

40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 3, 1992.

Morris Kay,

Regional Administrator.

[FR Doc. 92–1069 Filed 1–14–92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Chapter 53 Appendix B

Air Force Systems Command Federal Acquisition Regulation Supplement Clause: Total System Performance Responsibility (TSPR)

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Proposed rule; withdrawal.

SUMMARY: On March 22, 1991, the Department of the Air Force published (at 56 FR 12145) a proposed rule to amend chapter 53 of title 48 of the Code of Federal Regulations by adding the Air Force Systems Command (AFSC) Federal Acquisition Regulation as appendix B, to include a new AFSC Federal Acquisition Regulation Supplement Part AFSC 5317 and AFSC 5352. After reviewing public comments and considering the opinions of management and staff, it was decided not to finalize the proposed rule on Total System Performance Responsibility. Therefore the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: David Thomas, HQ AFSC/PKPP, Andrews AFB DC 20332-5000, telephone (301) 981-4022.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-867 Filed 1-14-92; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 73-20; Notice 16]

RIN 2127-AD47

Federal Motor Vehicle Safety Standards; Fuel System Integrity; Alcohol Fuels

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: On October 12, 1990, NHTSA published an Advance Notice of Proposed Rulemaking (ANPRM) concerning possible specialized fuel integrity requirements for vehicles using alcohol fuels. This notice proposes to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 301, Fuel System Integrity, to establish anti-siphoning requirements for alcohol fuel vehicles. This includes dedicated, dual, flexible fuel, and variable fuel vehicles. NHTSA is proposing no further requirements at this time.

DATES: Comment closing date: Comments on this notice must be received on or before March 16, 1992.

Proposed effective date: If adopted, these amendments would be effective September 1, 1993.

ADDRESSES: All comments on this notice should refer to the above docket and notice numbers and be submitted to the following: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested that 10 copies be submitted. The Docket is open from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Gary R. Woodford, NRM-01.01, Special Projects Staff, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4804).

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Standard

Federal Motor Vehicle Safety Standard No. 301 specifies requirements for the integrity of motor vehicle fuel systems. The purpose of the standard is to reduce deaths and injuries from fires that result from fuel spillage during and after motor vehicle crashes. The standard applies to certain passenger cars, multipurpose passenger vehicles (MPV's), trucks, and buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less. The standard also applies to certain school buses with a GVWR over 10,000 pounds. (Thus, the standard does not apply to most transit and intercity buses.) The standard applies to these types of vehicles only if they use fuel with a boiling point above 32 degrees Fahrenheit. Such fuels include gasoline, diesel fuel, and the alcohol fuels methanol and ethanol.

Standard No. 301 specifies requirements for the integrity of the entire fuel system. The system includes the fuel tanks, emission controls, lines, and connections. The standard specifies front, rear moving, and lateral moving barrier crash tests. Under the standard, fuel spillage in a fixed or barrier crash test cannot exceed one ounce, by weight, from impact until motion of the vehicle has ceased. Further, spillage cannot exceed five ounces, by weight, in the five minutes following cessation of motion. In rollover tests, fuel spillage from the onset of rotational motion cannot exceed five ounces, by weight, for the first five minutes of testing. For the remaining testing period, fuel spillage cannot exceed one ounce, per weight, during any one-minute interval. The standard also specifies a moving contoured barrier crash test for school buses with a GVWR over 10,000 pounds.

B. Use of Alcohol Fuels

Increasing attention is being given to use of alcohol fuels in motor vehicles to meet environmental and energy security goals. The Department of Energy (DOE) is sponsoring demonstration programs with vehicles fueled with methanol and ethanol. According to DOE, 446 methanol fuel vehicles were in use in ten states in November 1990. About 77 percent of the vehicles were in California. In the same month, 133 ethanol fuel vehicles were in use in three states. About 85 percent of the vehicles were in Iowa. Most of the methanol and ethanol fuel vehicles were buses.

In addition, the General Services Administration purchased 65 methanol fuel vehicles for the Federal government in fiscal year 1990. Further, General Motors, Ford, and Chrysler have produced passenger cars that use alcohol fuels. The cars will be used mainly for research programs and by State and Federal agencies.

The fuel systems of vehicles being introduced today to operate on alcohol fuels (either methanol or ethanol) are similar to those of vehicles operating on conventional fuels (i.e., gasoline or diesel fuel). The method of on-board vehicle storage of alcohol fuels is the same for conventional fuels. Alcohol fuels, like conventional fuels, are liquids at ambient temperature and pressure conditions. Many vehicles introduced to run on methanol or ethanol are capable of using that fuel, a conventional fuel, or any combination of the two. These vehicles have a composition sensor on-board the vehicle to detect the percentage of alcohol in the fuel. This allows parameters (e.g., spark timing and fuel metering) to be automatically adjusted for optimum engine performance. Such vehicles are referred to as flexible-fueled vehicles (FFV's) or variable-fueled vehicles (VFV's). Dual-fuel vehicles can operate on both alcohol or conventional fuel, but not various combinations of the two. Dedicated vehicles can operate on only one fuel or fuel blend. For example, a dedicated fuel vehicle may operate on only neat methanol (100 percent methanol or M100), 85 percent methanol with 15 percent unleaded gasoline

(M85), pure ethanol, or a particular ethanol and gasoline blend.

C. Alternative Motor Fuels Act

Under the Alternative Motor Fuels Act of 1988, DOE is conducting demonstration programs to encourage the use of alternative motor fuels. The alternative fuels include natural gas, methanol, and ethanol. The Urban Mass Transportation Administration (UMTA) of the DOT is also encouraging the use of alternative fuels by local transit authorities.

Additional encouragement is provided by the provisions in the 1988 Act specifying that any new passenger automobile which meets the applicable range requirements as well as the other criteria in the Alternative Motor Fuels Act qualifies to have its fuel economy calculated according to a special procedure. Under this procedure, a relatively high fuel economy figure is assigned the vehicle. This encourages the production of dual energy passenger automobiles by facilitating a manufacturer's compliance with applicable Corporate Average Fuel Economy requirements.

Pursuant to those provisions, NHTSA published a final rule establishing minimum driving range requirements for dual energy passenger automobiles (April 26, 1990; 55 FR 17611). (Dual energy passenger automobiles are those capable of operating on an alternative fuel as well as gasoline or diesel fuel.) The NHTSA rule establishes a minimum driving range of 200 miles for dual energy passenger automobiles operating on alcohol as well as petroleum fuel. The rule establishes a minimum driving range of 100 miles for dual energy passenger automobiles operating on natural gas as well as petroleum fuel.

D. Advance Notice of Proposed Rulemaking

On October 5, 1990, NHTSA published an Advance Notice of Proposed Rulemaking (ANPRM) concerning the fuel system integrity of vehicles using methanol or ethanol (55 FR 41556). NHTSA requested comments on whether Standard No. 301 should be amended to set specialized requirements for vehicles using methanol or ethanol fuels. While vehicles using such fuels are covered by Standard No. 301, the current standard does not address properties of alcohol fuels which are different from those of gasoline or diesel fuel.

In the ANPRM, NHTSA requested comments on whether specialized requirements should be developed for alcohol fuels based on five differences between those fuels and gasoline or diesel fuel. The areas addressed in the ANPRM were (1) the acute toxicity of alcohol fuels when ingested or absorbed through the skin, (2) the differences in the flammability and explosive characteristics of alcohol fuels, (3) the flame luminosity of alcohol fuels, (4) the energy potential of alcohol fuels, and (5) the corrosiveness of alcohol fuels. NHTSA received 19 comments on the ANPRM from a variety of groups.

II. Brief Summary of Proposed Rule

After considering the comments on the ANPRM, NHTSA has decided to propose a rule to address the acute toxicity of alcohol fuels. NHTSA is proposing to address this potential problem by establishing anti-siphoning requirements for vehicles manufactured to operate on alcohol fuels or alcohol fuel blends. This includes dedicated, dual, flexible fuel, and variable fuel vehicles. The proposed rule would cover both methanol and ethanol fuels or fuel blends.

In this proposed rule, NHTSA would cover only vehicles produced to operate on fuel blends with at least 20 percent alcohol fuel content. Thus, the proposed rule would not cover vehicles produced to operate on gasohol, which may contain about 10 percent ethanol, or oxygenated gasoline, which may contain small amounts of ethanol. NHTSA discusses the proposed rule in more detail below.

NHTSA believes that this proposed rule is consistent with the provisions in the Clean Air Act Amendments of 1990. Section 247(e) of the Clean Air Act states that DOT "shall, if necessary, promulgate rules under applicable motor vehicle laws regarding the safety of vehicles converted from existing and new vehicles to clean-fuel vehicles." In addition, section 250 of the Clean Air Act states that DOT "shall, in accordance with the [National Traffic and Motor Vehicle Safety Act of 1966], promulgate applicable regulations regarding the safety and use of fuel storage cylinders and fuel systems, including appropriate testing and retesting, in conversions of motor vehicles."

III. Discussion of Comments and the Agency Response

Below, NHTSA summarizes the comments on the ANPRM and discusses in more detail the agency response to those comments for each of the five areas addressed in the ANPRM.

A. Acute Toxicity of Alcohol Fuels

The acute toxicity of alcohol fuels when ingested is a concern. The concern is primarily for methanol. Ingestion is the quickest route of methanol poisoning. The usual fatal dose by ingestion of methanol in an adult is between 50 and 100 milliliters (ml) (2 to 4 ounces). As little as 25 to 50 ml (1 to 2 ounces or 5 teaspoonfuls) has been fatal. Less than 12 ml (1 tablespoonful) of M85 in a one-year-old child is a potentially lethal methanol dose. The usual adult fatal dose of ethanol by ingestion ranges from 240 to 300 ml. The usual adult fatal dose of gasoline by ingestion ranges from 115 to 470 ml. Methanol can also cause blindness when ingested.

Methanol has other properties that increase NHTSA's concern about the risk of methanol poisoning. Methanol does not have a taste, color, or odor that would identify it as methanol. Thus, methanol can be mistaken for water or alcoholic beverages. There are recognizable symptoms of methanol poisoning. These include visual disturbances, abdominal pain, nausea, vomiting, weakness, and dizziness. However, the onset of symptoms is generally between 12 to 24 hours, and sometimes up to a few days, after ingestion of the methanol.

There have been no reported cases of M85 or M100 ingestion in connection with use of these fuels as part of the demonstration programs discussed above. Commenters such as General Motors (GM), Ford, Chrysler, Crown Coach, Inc., and the National Truck Equipment Association (NTEA), stated that they knew of no toxicity incidents in demonstration or test vehicles. However, the American Association of Poison Control Centers (AAPCC) has estimated that there might be up to 195 additional fatalities due to ingestion of motor fuels yearly if methanol were to replace gasoline. This includes ingestion during siphoning from a vehicle and ingestion of fuel in containers by children. The AAPCC has also estimated that there would be a corresponding increase in the number of serious injuries. However, NHTSA believes that the AAPCC estimate may be high. The AAPCC data were not adjusted for the fact that methanol used for automobiles and trucks would probably not be left around a house or garage in fuel cans. This is because methanol is likely to be used in fewer devices used in or around residences than gasoline. Thus, it is less likely that children would be exposed to methanol in containers as they are for gasoline in containers. NHTSA believes that it is also less likely that children would siphon methanol from vehicles than it is that they would siphon gasoline. This is because the children would have less use for the methanol since it would have

fewer uses in or around a residence. If the data are adjusted to account for these facts, NHTSA estimates that the replacement of gasoline with methanol could result in an increase of about 23 to 35 fatalities annually due to siphoning methanol fuel from vehicles. A partial replacement of gasoline with methanol would result in a lesser increase in fatalities.

To address the above concerns, a number of commenters, such as the Insurance Institute for Highway Safety (IIHS), Chrysler, Navistar, and Nissan, stated that requirements for anti-siphoning devices might be appropriate. According to Navistar, such a device could be designed as a screen which could also serve as a flame arrester when installed in the fuel tank inlet. Snyder Tank Corporation, a fuel tank manufacturer, also supported anti-siphoning devices. Ford stated that all alcohol fuel systems should be designed to guard against siphoning. Ford stated that it currently plans to design its alcohol fueled vehicles to guard against siphoning, even without regulatory requirements. Ford stated that it may be possible to design a single device that has anti-siphoning and anti-spitback functions and serves as a flame arrester. Ford also stated that manufacturers should be allowed design flexibility. Ford pointed out that anti-siphoning devices could slow the fuel fill rate of a vehicle and make draining of the fuel tank prior to removal more difficult. GM stated that its variable fuel (methanol-gasoline) demonstration cars have an anti-siphoning filler design. The GM vehicles also have methanol handling caution labels on the vehicle and information in the owner's manual supplement.

After considering the comments, NHTSA is proposing an amendment to Standard No. 301 to establish new anti-siphoning requirements to address the acute toxicity of alcohol fuels. The proposed rule would apply to vehicles manufactured to operate on alcohol fuels or alcohol fuel blends. This includes dedicated, dual, flexible fuel, and variable fuel vehicles. The coverage would be limited to the types of vehicles currently covered by Standard No. 301. This includes passenger cars, MPV's trucks, and buses (including school buses) with a GVWR of 10,000 pounds or less and school buses with a GVWR over 10,000 pounds. Most transit and intercity buses, which are predominately centrally fueled, would not be covered by the proposal. The proposed rule would cover both methanol and ethanol fuels or fuel blends.

In this proposed rule, NHTSA would cover only vehicles produced to operate on fuel blends with at least 20 percent alcohol fuel content. Thus, the proposed rule would not cover vehicles produced to operate on gasohol, which may contain about 10 percent ethanol, or oxygenated gasoline, which may contain small amounts of ethanol. NHTSA has tentatively concluded that fuels with less than 20 percent methanol content are unlikely to result in fatalities to persons during siphoning. One mouthful (roughly 3.4 ounces) of 20 percent methanol and 80 percent gasoline content fuel is a potentially fatal dose. NHTSA believes that a person is unlikely to swallow and lingest more than a mouthful of fuel during siphoning. However, NHTSA requests comment on the appropriate level of alcohol content for coverage under the anti-siphoning requirements. Does another level of alcohol content in alcohol/gasoline blends better reflect levels of acute toxicity that present significant concern?

Since methanol is more acutely toxic than ethanol, NHTSA is also requesting comment on whether the requirements should apply only to vehicles fueled by methanol or a fuel blend containing methanol. In addition, NHTSA is requesting comment on whether the proposed requirements should cover other fuels, such as gasoline and diesel fuel.

The proposed rule would require that the fuel tank fill system performance on vehicles be such that a hose with a length of at least 120 centimeters (cm) and an outside diameter of 3.2 millimeters (mm) or more would not contact liquid fuel when the hose is inserted into the fuel tank filled to 90 to 95 percent of capacity. NHTSA believes that a hose with an outside diameter of 3.2 mm (⅛ inch) is the smallest commercially available hose that would likely be used for siphoning. The agency believes that 120 cm (i.e., about 4 feet) is the maximum distance between the filler neck opening and the area where liquid fuel is stored in the vehicles covered by this proposed rule. NHTSA recognizes that the actual distance will vary depending on the size of the vehicle and the configuration of its fuel filler/storage system. NHTSA requests comment on whether another hose diameter or length should be specified.

NHTSA is proposing that the hose used in the test procedure proposed in this notice be made of vinyl plastic or rubber material. NHTSA believes that hoses commonly used in siphoning are often made of such material. In this proposed rule, NHTSA is not specifying a particular degree of rigidity for the hose. The wording of the proposed regulatory text makes clear that the hose must be rigid enough to be inserted into the fuel tank fill system (i.e., the filler neck). However, NHTSA requests comment on whether the agency should specify a particular degree or rigidity for the hose and, if so, what degree of rigidity should be specified. NHTSA is also not specifying that a particular degree of force be used during the proposed test procedure. However, NHTSA requests comment on whether the agency should specify a particular among of force and, if so, what the amount of force that should be specified and how that force should be measured.

If this proposed rule is adopted by the agency, NHTSA expects that manufacturers could install a screen in the fuel tank filler neck to prevent a siphoning hose from being inserted in the fuel tank.

NHTSA recognizes that on January 19, 1990, the Environmental Protection Agency (EPA) published a proposal seeking to reduce evaporative emissions through anti-spitback performance requirements for refueling station pumps dispensing gasoline and methanol (55 FR 1914). This proposal was issued because fuel spitback can be a problem for some fill neck designs when fuel fill rates are too high. EPA held a public hearing in March 1990 in conjunction with this rulemaking, and as a result of comments at that hearing, is also considering anti-spitback performance requirements for the vehicle itself. NHTSA understands that at least one of the types of hardware technology which would provide anti-spitback performance on vehicles may have the potential to also prevent siphoning. Nonetheless, based on conversations with EPA, NHTSA has concluded that its anti-siphoning rulemaking should proceed, since there is no assurance that the EPA final rule would require vehicle changes, or, if it did, cause vehicle manufacturers to select hardware that would not only eliminate spitback, but also have the added benefit of decreasing the likelihood of siphoning. If, however, an EPA final rule concerning vehicle spitback performance is promulgated, and such a rule requires manufacturers to select hardware that would also preclude or reduce siphoning, then NHTSA would consider terminating this rulemaking.

NHTSA also recognizes that an anti-siphoning device could slow the fuel fill rate of a vehicle and make draining of the fuel tank prior to removal more difficult. NHTSA requests comments on possible environmental and other consequences of a slower fill rate.

NHTSA also requests comment on the impact of a more-difficult-to-drain fuel tank on the repair of motor vehicles and the recycling of motor vehicle parts. NHTSA tentatively concludes that these potentially negative impacts are justified in view of the deaths and injuries that would be avoided by an anti-siphoning device. However, NHTSA requests comment on this point.

NHTSA also requests comment on whether the requirements proposed in this notice should apply to all vehicle types currently subject to Standard No. 301 that are produced to operate on fuel blends with at least 20 percent alcohol fuel content. Should some vehicles be excluded from coverage entirely or should some vehicle types be subject to different requirements?

NHTSA believes that manufacturers of vehicles produced to operate on fuel blends with at least 20 percent alcohol fuel content will include that information in their owner's manual and perhaps in a label near the fuel tank filler neck. NHTSA would need such information for compliance testing of vehicles subject to any final rule. NHTSA requests information from manufacturers on their plans to make persons aware of the fuel capabilities of their vehicles. If manufacturers do not plan to include such information in their owner's manuals or in a label on the vehicle, NHTSA may have to include requirements in the final rule sufficient for the agency to conduct compliance testing. NHTSA requests comment on whether such requirements are necessary.

NHTSA also requests comment on any issuea concerning compliance by manufacturers of multi-stage vehicles with the proposed requirements. NHTSA tentatively concludes that the impacts on manufacturers of multi-stage vehicles would not be significantly different from those on manufacturers of other vehicles. NHTSA notes that Standard No. 301 currently applies to multi-stage vehicles and does not believe that the additional requirements proposed in this rule would significantly increase the impact on manufacturers of multi-stage vehicles.

B. Explosive Characteristics of Alcohol Fuels

There are differences in the flammability and ignition characteristics between alcohol fuels and gasoline. In open air situations, methanol (M100) is less likely to ignite than gasoline. This is because methanol's vapor is produced at a slower rate and disperses more rapidly than that of gasoline. M100 also has a lower vapor density than gasoline. High density vapors settle into low areas or follow the ground and may flow to an ignition source. High density gasoline flows are a major reason for ignition of fire following a crash. Unlike gasoline, M100 diffuses rapidly in open air and is less likely to accumulate. This limits the possibility of flammability. NHTSA believes that M85 is likely to act similar to gasoline in open air situations.

In enclosed spaces like a fuel tank, gasoline is virtually incombustible. NHTSA believes that M85 would act much like gasoline in enclosed spaces. However, M100 is more likely to ignite in an enclosed space. This is because methanol's volatility and flammability limits allow a combustible mixture to exist in the fuel tank between approximately 45 and 108 degrees Fahrenheit. Ethanol fuel is flammable inside a fuel tank between approximately 5 and 108 degrees Fahrenheit.

There are also differences in fire severity between alcohol fuels and gasoline and diesel fuels. Once ignition occurs, gasoline and diesel fuel fires are violent and severe. The heat releases rates of gasoline and diesel fuel are also relatively high. By contrast, M100 burns at a slower rate and in a much more controlled manner. Its heat release rate is about one eighth that of gasoline. NHTSA believes that the fire severity of M85 is between that of M100 and gasoline. The volatility of M85 is high enough to cause a fire to develop fully, immediately following ignition. However, its other properties would tend to limit the severity to which it burns.

In the ANPRM, NHTSA requested information concerning the flammability of alcohol fuels from the users of alcohol-fueled vehicles. GM, Ford, Chrysler, and Volvo reported no incidents relating to in-tank methanol fuel flammability. GM also stated that GM do Brazil has reported no significant safety problems with ethanol-fueled vehicles produced in Brazil since 1980.

In the ANPRM, NHTSA also asked whether a specific level of vehicle fuel tank flame arrester performance should be required. Such a requirement would be in response to the increased flammability of alcohol fuels in confined spaces. GM, Ford, and Chrysler stated that a requirement for a flame arrester was not necessary. Ford stated that fuel flame arresters do not appear necessary because of projections that methanol-fueled vehicles will result in proportionally fewer crash-related fires than are experienced with gasoline-fueled vehicles. GM did not believe that the flammability of methanol in fuel tanks was likely. GM stated that several conditions must exist simultaneously to achieve combustion. First, a combustible vapor must exist in the fuel tank. This depends on the interaction between temperature, fuel blend, fuel vapor pressure, and the level of fuel in the tank. Second, a source of sufficient energy to burn the combustible vapor must be present. Third, there must be a vapor path to the source. Fourth, there must be efficient energy transfer to the unburned mixture.

In contrast, Navistar stated that flame arresters should be required on the fuel tank venting system and the fuel tank inlet. IIHS stated that NHTSA should adopt performance requirements to ensure that no ignition occurs at any situation where an external ignition source is near a fuel filler neck, the fuel tank vents, or a partially filled fuel tank. IIHS stated that current technology, such as flame arresters and extended filler necks, would minimize the danger of fuel tank explosion.

In comments on the ANPRM, GM stated that it has incorporated flame arresters in the fuel tank fill tube and vent line of its variable fuel demonstration cars. According to GM, the flame arresters prevent external flame from propagating into the fuel tank and provide a large, cool surface to quench the flame front.

GM also stated that other devices, such as bladder-type fuel tanks and fuel tank foam fillers, are not now feasible for use in production vehicles. Similarly, Ford stated that a bladder in fuel tanks was impractical. Ford stated that this was because of package constraints of filler necks, servicing concerns, and interference with fuel level sensing devices.

After considering the comments on the ANPRM and other information, NHTSA has concluded that flame arrester technology is still in the developmental stage. Flame arresters are generally commercially available only for stationary tanks or large tanks used on locomotives. NHTSA has further concluded that more research is needed before the agency proposes a rule concerning the use of flame arresters in vehicles fueled by alcohol. The necessary research concerns the fuel combustion properties of alcohol fuels and alcohol fuel blends. Specific conditions inside the fuel tank are necessary for flammability. These conditions include temperature, pressure, alcohol content, and energy content of the ignition source.

In addition, M85, rather than M100, is currently being used in demonstration programs. M85 acts much like gasoline. Therefore, NHTSA concludes that more

research, rather than immediate regulatory action, is appropriate.

C. Flame Luminosity

Some alcohol fuels have different flame luminosity than gasoline. M100 burns with a light blue flame, which is invisible in daylight if no combustibles are present. M85, when burning, is more visible in daylight. Ethanol flames are fairly luminous in daylight.

The lack of flame luminosity could be dangerous in a car crash. Vehicle occupants, rescue personnel, or others could be burned by a source, which at least initially, would not be visible. Because of these concerns, Transport Canada conducted tests on the flame visibility of various fuels that spilled on engine and ground surfaces and ignited. The tests showed that gasoline and low level methanol blends had flames that were more visible and visible earlier than the flames of methanol and high level methanol blends. This differing visibility was found with a ground surface spill on gravel, asphalt, and grass. On grass, the flame visibility of both neat methanol and methanol-rich fuels was enhanced somewhat. The visibility was lowest on the gravel surface.

A number of commenters expressed concern about the lack of luminosity of M100 flames. Commenters stated that the nearly invisible flames could be a safety problem and cause an increase in burn injuries and fatalities. However, commenters noted that the involvement of other combustibles in a fire would produce smoke and aid in flame visibility. Commenters also stated that M85 provides sufficient luminosity during daylight fires. However, commenters indicated that an additive is needed in M100 to increase flame luminosity. Some of the commenters stated that NHTSA should require an additive in M100. Commenters also pointed out that committees of the Society of Automotive Engineers (SAE) and the American Society for Testing and Materials (ASTM) are working to address issues concerning the flame luminosity of methanol.

After considering comments, NHTSA agrees that it is advisable for fuels to have flame luminosity. However, NHTSA has determined that rulemaking in this area is premature. NHTSA believes that it is more appropriate to await the results of ongoing research by government and industry and the recommendations of the SAE and ASTM committees. NHTSA does not believe that there is an immediate need for action since manufacturers are using M85 in their demonstration vehicles. As discussed above, the flame luminosity of M85 is more than that of M100.

D. Energy Potential

The energy content of alcohol fuels is less than the energy content of the same volume of gasoline. Methanol's volumetric energy content is roughly one-half that of gasoline. Ethanol's volumetric energy content is about two-thirds that of gasoline. Thus, fuel tank capacity for neat alcohol fuel vehicles would have to be greater than that for gasoline vehicles to give the same driving range. However, in practice, flexible fuel vehicles that use M85 typically have the standard fuel tank capacity.

In the ANPRM, NHTSA requested comment on whether a possible increase in fuel tank capacity for alcohol fuel vehicles would pose a safety problem. NHTSA also asked whether the size of alcohol fuel tanks are likely to increase in size.

On the latter point, some commenters stated that they did not expect fuel tank size to increase significantly, at least through 1995. Other commenters indicated that any size increase would depend on market demand.

Two commenters addressed the safety implications of larger fuel tanks. NTEA stated that end users of commercial trucks made in multiple stages may install aftermarket tanks outside the frame rails. NTEA stated that this would increase tank exposure to the possibility of damage in a collision. Crown Coach stated that the greatest danger of spills in an accident may occur when the fuel crossover line between two tanks is torn away.

After reviewing the comments in this area, NHTSA has decided not to initiate rulemaking at this time. NHTSA believes that the current Standard No. 301 addresses the potential problem by setting maximum allowable fuel leakage requirements in crash tests.

E. Corrosiveness

Alcohol fuels are more corrosive than gasoline. Alcohol fuels cause more wear on fuel system components than gasoline. The ANPRM requested comment on whether alcohol fuel vehicles should be equipped with fuel tanks, fuel lines, and injector nozzles that are resistant to corrosion. The ANPRM also asked whether other vehicle components that are critical to safety and may be affected by leakage of alcohol fuel should receive protection.

Some commenters stated that there is a potential for misapplication of parts in the aftermarket. These commenters also stated that the vehicle conversion industry did not understand the corrosion potential of alcohol fuels. Other commenters stated that vehicle manufacturers already recognize the need for fuel system compatibility. They asserted that no NHTSA requirement is necessary or appropriate.

After reviewing the comments, NHTSA has concluded that no regulatory action is necessary now. NHTSA believes that the possibility of costly repairs under warranty and product liability concerns should provide sufficient incentive for manufacturers to avoid use of vehicle components that could deteriorate when exposed to alcohol fuels. NHTSA believes that such incentives would also apply to the aftermarket parts and vehicle conversion industries.

IV. Benefits of Proposed Rule

As discussed above, NHTSA estimates that, without anti-siphoning requirements, a complete replacement of gasoline with methanol in motor vehicles would result in between 23 and 35 additional fatalities from siphoning each year; partial replacement of gasoline with methanol would result in a proportionately lesser increase in fatalities. NHTSA believes that an anti-siphoning requirement would prevent 90% of these fatalities (21–32).

NHTSA estimates that a complete replacement of gasoline with methanol in motor vehicles would result in between 2,476 and 3,868 non-fatal methanol ingestion injuries. NHTSA estimates that the health care costs for methanol ingestion are significantly higher than those for gasoline ingestion due to the need for more immediate diagnosis and the possibility of more severe injuries. NHTSA believes that an anti-siphoning requirement would prevent 90% of these injuries (2,228–3,481). The costs of the proposed requirement are discussed below.

V. Costs of Proposed Rule

NHTSA estimates that the proposed rule, if adopted as a final rule, would have relatively small costs. NHTSA believes that manufacturers would use a screen in the fuel-filler neck to meet the proposed requirements. NHTSA estimates that the cost of the screen device would be $0.65 per vehicle. If the entire fleet of 15 million vehicles were fueled by methanol or ethanol, the total cost for equipping the fleet with screens would be about $9.75 million.

NHTSA believes that the weight of the screen would be negligible. Therefore, the proposed requirement would not adversely affect fuel economy.

VI. Leadtime

NHTSA is proposing to make the proposed requirement effective on September 1, 1993. This should provide a leadtime of one year or more after a final rule is issued. NHTSA believes that this proposed leadtime is reasonable. NHTSA believes that it would be relatively simple for manufacturers to make any changes necessary to comply with the proposed requirements. Devices currently used to prevent siphoning are not complicated and are already being used by Ford and GM in at least some demonstration vehicles.

VII. Rulemaking Analyses

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this proposed rule and determined that it is not "major" within the meaning of Executive Order 12291. However, NHTSA has determined that the proposed rule is "significant" within the meaning of the Department of Transportation regulatory policies and procedures because of the significant public and Congressional interest in the rulemaking. NHTSA has estimated the costs of the proposed amendments to Standard No. 301 in a Preliminary Regulatory Evaluation which is included in the docket for this rulemaking. As discussed above, NHTSA estimates that the proposed requirements, if adopted in a final rule, would cost approximately $0.65 per vehicle. The maximum total cost, assuming that the entire fleet is made up of alcohol fuel vehicles, would be about $9.75 million per year.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The effect of this proposal, if adopted, on any small manufacturers of vehicles would be minor. As discussed above, NHTSA believes that manufacturers could comply with the proposed requirements by installing a screen device, which NHTSA estimates would cost $0.65 per vehicle. Therefore, the proposed amendments would not have any significant effect on the price of those vehicles. Since the purchase price would be negligibly affected, there would not be any significant effect on small entities which purchase the vehicles. Accordingly, no regulatory flexibility analysis has been prepared.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the proposed rule would have no Federalism implication that warrants the preparation of a Federalism report.

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this proposed rule. The agency has determined that this proposed rule, if adopted as a final rule, would not have a significant impact on the quality of the human environment. As discussed above, NHTSA does not believe that the proposed rule would have any significant impact on fuel economy.

VIII. Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 533.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket at the above address. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and NHTSA recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.301 [Amended]

2. In 571.301, section S2 would be revised to read as follows:

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after motor vehicle crashes, and resulting from ingestion of fuels during siphoning.

3. In 571.301, a new section S5.7 would be added to read as follows:

5.7. *Alcohol fuel vehicles.* Each vehicle manufactured to operate on an alcohol fuel (i.e., methanol or ethanol) or a fuel blend containing at least 20 percent alcohol fuel shall meet the requirements of S6.6.

4. In 571.301, a new section S6.6 would be added to read as follows:

S6.6. *Antisiphoning test for alcohol fuel vehicles.* Each vehicle shall have means that prevents a hose, made of vinyl plastic or rubber, with a length of at least 120 centimeters (cm) and a minimum outside diameter of 3.2 millimeters (mm), from contacting liquid fuel in the vehicle's fuel tank, when the hose is inserted into the fuel tank fill system (i.e., the filler neck), with the fuel tank filled to any level from 90 to 95 percent of capacity.

5. In 571.301, section S7 would be revised to read as follows:

7. *General test conditions.* The requirements of S5.1 through S5.6 and S6.1 and S6.5 shall be met under the following conditions. Where a range of conditions is specified, the vehicle must be capable of meeting the requirements at all points within the range.

Issued on January 9, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-1008 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 88-06, Notice 14]

RIN 2127-AC43

Federal Motor Vehicle Safety Standards; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Federal Motor Vehicle Safety Standard No. 214, Side Door Strength, to clarify how the quasi-static door strength test procedure is to be conducted in the case of several types of vehicles. Recently, NHTSA extended the quasi-static test requirements of Standard No. 214, which formerly applied to cars only, to trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less. During that rulemaking, several issues were raised concerning the application of the current test procedure to certain types of vehicles. This document solicits comments on a proposal to amend Standard No. 214 to resolve these issues. The proposal addresses the positioning of the loading cylinder in testing four different types of doors: (1) A door whose lower edge is not at all points parallel to the sill; (2) a door whose lower or rear edge has molding; (3) double cargo doors; (4) a door which does not have a window.

DATES: Comments must be received on or before March 16, 1992. The amendments to Sections S2.1 and S4 proposed in this document would become effective September 1, 1993.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-2264.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 214, Side Impact Protection, specifies side door strength requirements to minimize occupant injuries that occur as a result of a vehicle's side structure being pushed into the passenger compartment during side impact crashes. Standard No. 214 requires each door to resist crush forces that are applied inward against the door's outside surface in a laboratory test. The forces are applied by means of a piston pressing a vertical steel cylinder (or semi-cylinder) against the middle of the door. The standard specifies aligning the longitudinal axis of the cylinder with the midpoint of a horizontal line drawn across the span of the door, five inches above the lowest point of the door. The bottom of the cylinder must be aligned with the line drawn five inches above the door's lowest point, and the top of the cylinder must extend above the bottom edge of the window opening by at least 0.5 inches. Thus, according to these specifications, the loading cylinder is positioned in the center of the door panel for purposes of the quasi-static test.

Standard No. 214 currently specifies locating the cylinder in the center of the door panel for two reasons. First, the center of the door panel is the weakest region, where the greatest intrusion into the passenger compartment is likely to occur. The standard seeks to specify an adequate level of crush strength and associated low intrusion at the door's midpoint so that, if an impact occurs elsewhere on the door panel, the door's strength will be at least as great in that location. Second, the standard specifies positioning the cylinder in the middle of the door panel to ensure that the test will evaluate only the crush characteristics of the door panel, without any interference from the door frame, or the sill and floor structures of the vehicle.

To meet the door strength requirements of Standard No. 214, manufacturers generally reinforce the vehicle's side doors with horizontal metal beams. The door beams are designed to transmit forces through the door's hinges and lock mechanism to the pillar structures, located fore and aft of each door in most body styles and vehicle types.

Rulemaking History

In 1989, NHTSA published a notice of proposed rulemaking (NPRM) to extend the quasi-static test requirements for side door strength from passenger cars to trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less (hereafter referred to as "LTVs"). (54 FR 52828, December 22, 1989.) After considering the comments on the NPRM and other available information, NHTSA decided to extend the quasi-static test requirements to LTVs with a GVWR of 10,000 pounds or less, except for walk-in vans. (56 FR 27427, June 14, 1991.) The final rule becomes applicable to the covered LTVs on September 1, 1993 and specifies the same test procedure for LTV side door strength that applies to passenger cars.

During the rulemaking process, several commenters raised questions regarding the application of the test procedure to certain types of LTV side doors. Additionally, some manufacturers have recently raised questions about the application of the test procedure to certain types of passenger car side doors.

This notice proposes to address these concerns by amending Standard No. 214 to ensure that the door strength test procedure is appropriate for the side doors on all types of covered LTVs and passenger cars. To clarify the test procedure proposed in this notice, the agency also proposes to replace current Figure 1 of Standard No. 214 with a drawing that would represent the modified test procedure.

Contoured Doors

Mitsubishi asked about the appropriate positioning of the loading cylinder for a door whose lower edge is not at all points parallel to the door sill (i.e., is not at all points essentially horizontal). Specifically, Mitsubishi referred to the application of the quasi-static door strength test to the front side door of a forward control van, the lower edge of which is curved upward to accommodate the front wheel well. Currently, Standard No. 214 specifies aligning the loading cylinder with the mid-point of a horizontal line drawn across the door, five inches above the lowest point of the door. This procedure works well when the door's lower edge is itself essentially horizontal along its entire length, as is the case for the doors of most passenger cars.

However, the results obtained by following the existing version of the quasi-static door strength test procedure in testing doors with contoured lower edges may not be germane for two reasons. First, the portion of the door panel across which the horizontal line is drawn (five inches above the lowest point) may not be a large enough surface against which to apply the loading cylinder without causing the cylinder to

engage with some portion of the door's contoured edge as the cylinder presses inward. This is not desirable since the purpose of the door strength test is to evaluate the crush characteristics of the door panel itself, exclusive of any part of the frame, sill and floor structures, or any reinforcing structures that may be present around a wheel well contour. Thus, if the loading cylinder engages the contoured part of the door's lower edge during the test, that edge structure may distort the actual crush strength of the door.

Additionally, when the portion of the door panel across which the horizontal line is drawn (for purposes of positioning the cylinder) is very short, following the current test procedure results in placing the cylinder far to the side rather than in the center of the door panel. This is inconsistent with the purpose of the quasi-static door strength test. That test is intended to gauge the crush characteristics of the door panel at the middle of the door since that is its weakest region, where the greatest intrusion is likely to occur.

For the reasons, the existing quasi-static test procedure, aligning the loading cylinder with the mid-point of a horizontal line drawn five inches above the lowest point of the door, may not be an appropriate test procedure specification for a door with a lower edge that is not at all points parallel to the sill. Accordingly, NHTSA proposes to amend Standard No. 214 to modify the method of positioning the loading cylinder during the quasi-static door strength test so as to accommodate all types of vehicle doors, including those with contoured lower edges.

Under the new test procedure, the longitudinal axis of the cylinder would be aligned with the midpoint of a horizontal line drawn across the widest portion of the door, with its bottom surface located in the lowest horizontal plane such that the lateral projection of the bottom surface of the cylinder on the door is at least five inches from any edge of the door panel, including any contoured area. This procedure would replace the current procedure under which the cylinder's longitudinal axis is aligned with the midpoint of a horizontal line drawn five inches above the lowest point of the door, with the bottom surface of the cylinder placed in the same horizontal plan that contains the horizontal line.

This proposed new procedure for the quasi-static door strength test would address both of the problems created when the current procedure is followed in testing contoured doors and thus would ensure that the test is appropriate for those vehicles. First, by specifying that the lateral projection of the cylinder's bottom surface be at least five inches from any edge of the door panel, the new procedure would ensure that the cylinder does not engage with any structures other than the door panel during the test. Additionally, by specifying that the horizontal line be drawn across the widest portion of the door (the midpoint of which would be used to align the cylinder's longitudinal axis), the new procedure would ensure that the cylinder would be positioned essentially in the center, instead of toward the side of the door panel.

The proposed amendment is designed to modify the test procedure so that it is appropriate for every previously covered and newly covered vehicle. This amendment, if adopted, would primarily affect the testing of LTVs (which would be subject to Standard No. 214 effective September 1, 1993) and would not affect the placing of the cylinder in testing most passenger car doors since their lower edges are essentially horizontal. Under the new procedure, the cylinder would still be positioned, in the case of a door with a straight lower edge, in the center of the door panel, 5 inches above the bottom edge. The agency is aware that some rear passenger car doors have contoured lower edges, but has not found that any of these doors have high enough contours that following the new procedure instead of the current one would result in placing the loading cylinder in a different location. Although it is nevertheless possible that the proposed amendment would change the positioning of the cylinder for some passenger cars having contoured rear doors, the agency has tentatively concluded that any changes would enhance the benefits of the standard because the cylinder would be positioned closer to the center of the door panel, away from any contoured edges. Additionally, the agency has tentatively concluded that any such change would be minor and would not affect the compliance of those vehicles with Standard No. 214.

Doors With Moldings

Mazda recently raised an issue regarding the application of the quasi-static test procedures to vehicles equipped with decorative or protective side door moldings. Standard No. 214 currently specifies aligning the bottom surface of the loading cylinder with the midpoint of a horizontal line drawn five inches above the lowest point of the door. Mazda questioned whether a door molding that extends below the bottom edge of the metal door panel should be included in the determination of the "lowest point of the door". The agency responded that, under the language of the current standard, the lowest point of any door molding would be considered the lowest point of the door. The agency noted at that time that it was considering proposing an amendment to alter the determination of the lowest point on doors with moldings.

The agency now proposes to amend Standard No. 214 to reflect the tentative conclusion that the lowest point of a vehicle's door should be considered the lowest point on the outer door panel, excluding all decorative or protective moldings that extend below the door panel's lower edge. Standard No. 214 currently specifies that the bottom surface of the loading cylinder be positioned five inches above the door's lowest point to ensure that the test evaluates the crush strength of the vehicle's door structure alone. If the loading device were to be located closer to the lower edge of the door panel, the device would engage with the sill and floor structures of the vehicle and thus, distort the test results. When a vehicle's door has molding that extends below the bottom edge of the door panel, measuring five inches from the bottom of that molding has the effect of lowering the cylinder to such a point that it may engage with the sill and floor structure of the vehicle. This result is contrary to the Standard's intention of evaluating the crush strength of the door structure alone.

If the amendment is adopted, the test procedures would specify positioning the loading cylinder in the lowest position at the midpoint of a horizontal line drawn across the widest portion of the door panel such that every point on the lateral projection of the cylinder's bottom surface on the door would be at least five inches from the bottom edge of the door panel itself, exclusive of any decorative or protective molding. This new formulation of the test procedure would ensure that, for doors with moldings, the loading cylinder is appropriately positioned to evaluate the strength of the actual door structure, without any interference from the sill and floor structures.

Double Cargo Doors

Ford Motor Company asked whether double side cargo doors, a pair of hinged doors with the lock and latch mechanisms located where the two doors meet (i.e., where the door lips overlap), should be considered as two separate doors, and thus each tested separately, or treated as a single system and subjected to a single test. The treatment of the cargo doors not only

affects the number of door strength tests performed, but also the positioning of the loading cylinder during the test. If the cargo doors are treated separately, then each door would be tested with the loading cylinder positioned as specified in the current standard for any other individual door. If the cargo doors are treated together as a system, then the loading cylinder would be positioned so as to evaluate, during a single test, the strength of both doors simultaneously.

This notice proposes to amend Standard No. 214 to treat double cargo doors as a single system and to therefore specify that they be tested simultaneously. When testing double cargo doors, the agency would position the longitudinal axis of the loading cylinder laterally opposite the midpoint of a horizontal line drawn across the span of the two doors at the widest point. The cylinder would be located such that every point on the lateral projection of the bottom surface of the cylinder on the door would be at least five inches from any other edge of the door panels, exclusive of any decorative or protective moldings.

The agency proposes to treat cargo doors as a single system because the agency believes that the door strength test should determine the crush characteristics of a door's weakest region, where the greatest intrusion is likely to occur. Given that manufacturers use horizontal metal beams and pillars as the means of transmitting crash forces into the pillar structures of the doors, the cargo door system is weakest at its mid-point. The agency believes that this approach is appropriate for asymmetrical, as well as symmetrical pairs of doors because the weakest point of the double door span will generally be the midpoint, regardless of whether the two doors are the same size (and meet at the mid-point) or are of different sizes.

Windowless Doors

Finally, the agency has raised the issue of the proper positioning of the loading cylinder on rear side doors without windows. Currently, Standard No. 241 specifies positioning the upper end of the loading cylinder at least 0.5 inches above the bottom edge of the window opening. The current standard does not specify the positioning of the upper end of the cylinder in the case of windowless doors.

Accordingly, this notice proposes to amend the provisions of the side door strength test to accommodate instances in which the side door being tested does not have a window. The agency proposes that in such a case, the upper end of the loading cylinder be positioned at the same height above the ground as the cylinder is positioned when testing the front side door of the same vehicle which has a window.

Effective Dates

NHTSA is proposing an effective date of September 1, 1993 for the amendments to Sections S2.1 and S4. For LTV's, this date reflects the fact the requirements of Standard No. 214 become applicable to those vehicles at that time. Since the proposed amendments would clarify how the standard's test procedures is conducted for vehicles with certain types of doors, NHTSA believes that the amendments should have the same effective date as the primary requirements.

NHTSA notes, however, that it is currently considering a petition, submitted by GM, requesting reconsideration on the final rule extending Standard No. 214 to LTV's. In its petition, GM express concern that the agency had not yet specified the test procedures for LTV's with double opening cargo doors and doors with no windows. In part because of the delay in specifying these procedures, GM requested that the agency phase-in the requirements for LTV's. NHTSA plans to issue a response to GM's petition for reconsideration shortly. At this time, the agency notes that it plans to delay for one year the Standard No. 214 effective date for LTV's with double opening cargo doors and doors with no windows, as part of its response to GM's petition. If the effective date of the primary requirements are delayed for one year for those vehicles, the effective date of the clarifying amendments would also be delayed for one year (to September 1, 1994).

The agency notes that, for cars and LTV's, the proposed amendments would affect the positioning of the loading cylinder for testing doors with moldings, and could also affect the cylinder's position for testing some contoured rear doors. The proposal of a September 1, 1993 effective date is premised on the behalf that, despite the possible impact, a short leadtime is appropriate since any changes in the testing of vehicles caused by adopting the amendment would be minor and should not create any compliance difficulties. Manufacturers rely on side door beams, not the door sill or reinforcements around lower edge contours, to provide the structure necessary to meet Standard No. 214. Since the sill and contour structures are not factors in achieving compliance, a slight change in the positioning of the loading device to ensure that the loading device does not engage the sill or contoured edge during testing should not necessitate any changes in design. NHTSA requests comment, however, on whether the agency is correct in these beliefs, both with respect to passenger cars and LTV's currently being redesigned to meet Standard No. 214.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures.

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291. NHTSA has determined that this rulemaking action is significant within the meaning of the Department of Transportation's regulatory policies and procedures because it is related to an earlier major rule which extended the Standard No. 214 quasi-static test requirements for side door strength to LTV's. The amendments proposed in this notice, however, would not impose any new performance requirements but would instead clarify the application of an existing test procedure to certain newly covered vehicles whose doors have unusual configurations. Consequently, the agency expects to downgrade this action to non-significant in the event that the proposed amendments are adopted as a final rule and thus, the agency has determined that a full regulatory evaluation is not required.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities.

This rulemaking action proposes to amend Standard No. 214 to clarify the side door strength test procedures for vehicles with certain types of doors. The proposed amendments would merely create a new testing procedure for those vehicles for whom the current procedure appears inappropriate. The new test procedure is not expected to have any significant effect on compliance costs as the new procedure should not significantly affect the compliance of passenger cars. Further, it should not significantly affect manufacturers' efforts to develop means of ensuring that LTV's comply with the side impact requirements by September 1, 1993. The proposed amendments should not affect the purchase price of new cars or LTV's and thus should not significantly affect small organizations and governmental units. Accordingly, the agency has not

prepared a preliminary regulatory flexibility analysis.

National Environmental Policy Act.

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, the seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. S2.1 would be revised to read as follows:

§ 571.214 Standard No. 214; Side impact protection.

S2.1 *Definitions.*

Double cargo doors means a pair of hinged doors with the lock and latch mechanisms located where the door lips overlap.

Walk-in van means a van in which a person can enter the occupant compartment in an upright position.

3. S4 would be amended by revising paragraphs (b), (c) (2) and (3) to read as follows:

S4. *Test Procedures.* The following procedures apply to determining compliance with paragraph S3:

* * * * *

(b) Prepare a loading device consisting of a rigid steel cylinder or semicylinder 12 inches in diameter with an edge radius of one-half inch. The length of the loading device shall be such that:

(1) For doors with windows, the top surface of the loading device is at least one-half inch above the bottom edge of the door window opening but not of a length that will cause contact with any structure above the bottom edge of the door window opening during the test.

(2) For rear side doors without windows, the top surface of the loading device is at the same height above the ground as when the loading device is positioned in accordance with paragraph (b)(1) of this section for purposes of testing a door on the same vehicle.

(c) * * *

(1) * * *

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, its longitudinal axis is laterally opposite the midpoint of a horizontal line drawn across the widest portion of the outer surface of the door;

(ii) When testing double cargo doors, its longitudinal axis is laterally opposite the midpoint of a horizontal line drawn across the widest portion of the outer surface of the double door span;

(3) Its bottom surface is located in the lowest horizontal plane such that, every point on the lateral projection of the bottom surface of the device on the door is at least five inches, measured vertically and horizontally, from any edge of the door panel, exclusive of any decorative or protective molding.

* * * * *

4. Figure 1 to Standard 214 would be revised as follows:

BILLING CODE 4910-59-M

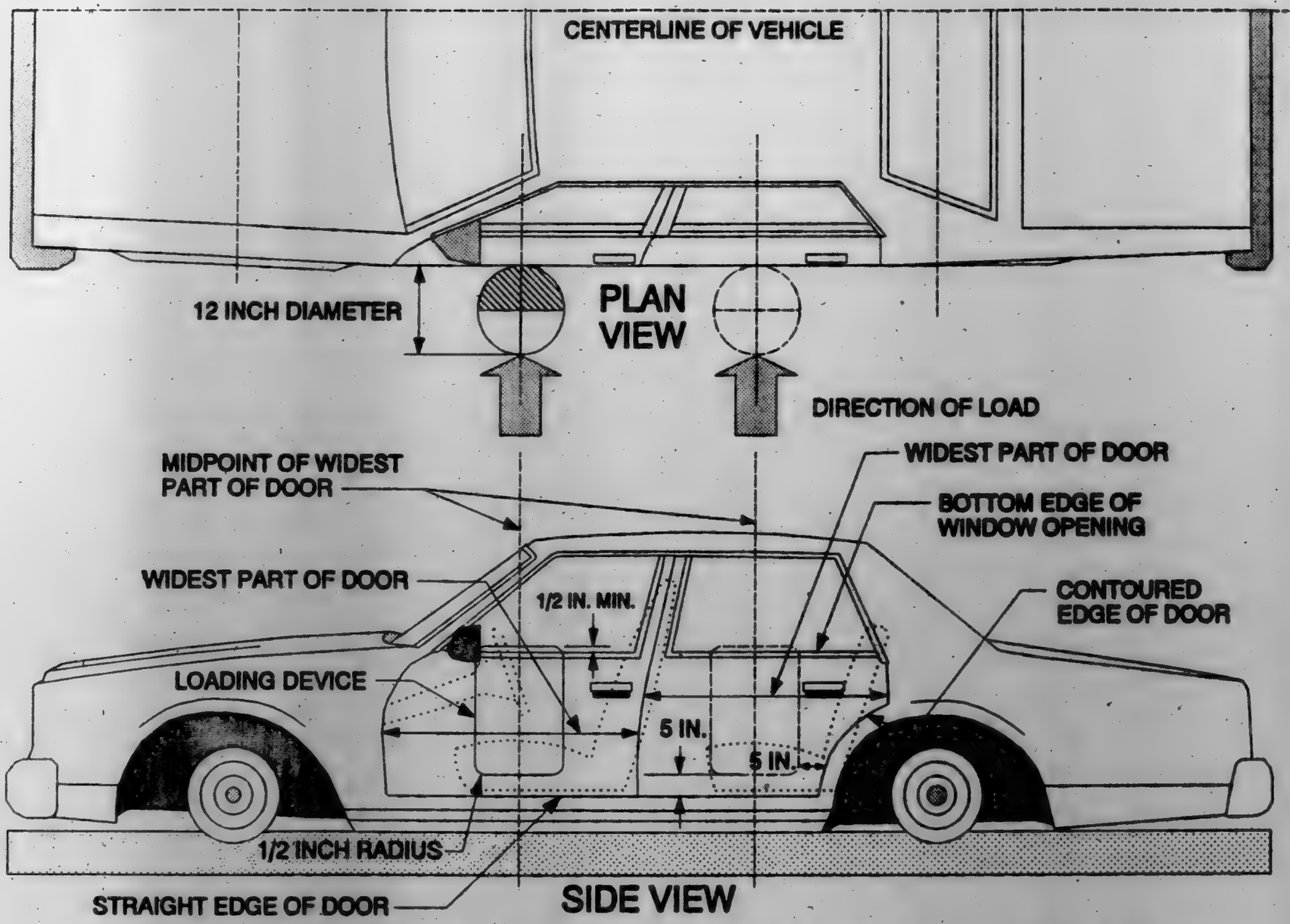

LOADING DEVICE LOCATION AND APPLICATION TO THE DOOR

FIGURE 1

BILLING CODE 4910-59-C

Issued on January 8, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-902 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

Atlantic Sea Scallop Fishery; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Temporary adjustment of standards; notice of public hearings and request for comments.

SUMMARY: NMFS will hold public hearings to solicit public input on a temporary adjustment of the meat count/shell height standards for Atlantic sea scallops.

DATES: The public hearings will be held on January 15, 1992, and on January 21, 1992, beginning at 10 a.m. Written comments will be accepted through January 21, 1992, at the address given below.

ADDRESSES: The January 15, 1992, hearing will be held in conjunction with the New England Fishery Management Council (Council) meeting at the King's Grant Inn, Route 128 at Trask Lane, Danvers, MA. The January 21, 1992, hearing will be held at the Northeast Regional Office of the NMFS, One Blackburn Drive, Gloucester, MA. Written comments should be addressed to Richard Roe, Director, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, Senior Resource Policy Analyst, Fishery Management Operations, NMFS Northeast Region, 508-281-9331.

SUPPLEMENTARY INFORMATION: Section 650.22 of the regulations implementing the Fishery Management Plan for Atlantic Sea Scallops (FMP) (50 CFR part 650) provides authority to the Regional Director to adjust temporarily the meat count/shell height standards upon finding that specific criteria are met. The standards can be adjusted within a range from 25 to 40 meats per pound and may be adjusted no more than 5 meats by any one adjustment. The Regional Director has considered the criteria specified in § 650.22(c) and has decided to recommend an adjustment to the standards from 30 to 33 meats per pound (shell height from 3 1/8 inches to 3 7/16 inches) for the period February 1, 1992, through September 30, 1992.

The regulations require the Regional Director to hold a public hearing on this recommendation and to solicit comments from the Council. The Regional Director may modify this recommendation based on comments from the Council or the public. After consideration of the full record, a final determination will be made by the Regional Director whether or not to adjust the standards. If the Regional Director determines that the standards should be adjusted, notice will be published in the **Federal Register**.

Dated: January 9, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-1066 Filed 1-14-92; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 10
Wednesday, January 15, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the regulations of the Advisory Council on Historic Preservation, "Protection of Historic Properties" (36 CFR part 800), that a panel of three members of the Council will meet on Monday, January 27, 1992, to consider the proposed development master plan for the Southeast Federal Center in Washington, District of Columbia. The proposal as currently planned calls for the preservation and renovation of several historic structures, the demolition of several historic structures, and the construction of more than 5 million square feet of new office space. This undertaking will affect the Washington Navy Yard Annex Historic District, which is eligible for listing in the National Register of Historic Places as well as other properties eligible for, or included in, the National Register.

The panel will meet in Washington, District of Columbia, in room M–07 of the Old Post Office Building, 1100 Pennsylvania Avenue NW, at 1 p.m. The panel welcomes written and oral statements from concerned parties. Written statements should be submitted to the Council by January 24, 1992. Persons wishing to make oral statements at the public hearing should contact the Council by January 24, 1992. While priority will be given to those persons who have indicated prior to the meeting their desire to speak, testimony of all interested parties will be heard.

The Council was established by the National Historic Preservation Act to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties that are listed in or eligible for listing in the National Register of Historic Places.

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Council.

FOR FURTHER INFORMATION: Additional information is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., suite 809, Washington, DC 20004, Attention: Ralston Cox (202–786–0505).

Dated: January 9, 1992.

Robert D. Bush,

Executive Director.

[FR Doc. 92–1088 Filed 1–14–92; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Solvay Animal Health, Inc.; Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Solvay Animal Health, Inc., Mandota Heights, Minnesota, an exclusive license to U.S. Patent Application Serial No. 07/723,037, "Attenuated Reverant Serotype 1 Marek's Disease Vaccine," filed June 28, 1991. Notice of availability was given on December 17, 1991, in the **Federal Register.**

DATES: Comments must be received on or before March 16, 1992.

ADDRESSES: Send comments to: USDA–ARS–Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 403, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/504–6786, (FTS) 964–6786.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention for Solvay Animal Health, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

M.A. Whitehead,

Coordinator, National Patent License Program.

[FR Doc. 92–987 Filed 1–14–92; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–810]

Mechanical Transfer Presses From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by one respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on mechanical transfer presses from Japan. The review covers one manufacturer/exporter of the subject merchandise to the United States during the period August 18, 1989, through January 31, 1991. The review indicates the existence of a dumping margin for the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 15, 1992.

FOR FURTHER INFORMATION CONTACT: Helen M. Kramer or Linda D. Ludwig, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1991, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (56 FR 5385). Four respondents requested an administrative review. We initiated the review on March 15, 1991 (56 FR 11177), covering the period from August 18, 1989, through January 31, 1991. Three respondents subsequently withdrew their requests for review. Accordingly, on May 22, 1991, the Department published a notice of "Termination in Part of Antidumping Duty Administrative Reviews" (56 FR 23548). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review include mechanical transfer presses currently classifiable under HTS item numbers 8462.99.0035 and 8466.94.5040. The HTS numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of product coverage.

For purposes of this review, the term "mechanical transfer press" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. This review covers sales and entries by Ishikawajima-Harima Heavy Industries Co., Ltd. (IHI) during the period from August 18, 1989, through January 31, 1991. This review does not cover spare and replacement parts and accessories, which are the subject of a pending scope inquiry.

United States Price

The Department based United States price on purchase price, in accordance with section 772(b) of the Act, as the sale was made directly to the first unrelated purchaser prior to importation into the United States. We based purchase price on the ex-factory price as reported by IHI, adjusted by U.S. packing costs.

Foreign Market Value

During the period of review, the respondent had one sale in the United States and one sale in the home market of mechanical transfer presses. As there are substantial differences between the two machines, we determined that they could not reasonably be compared. Accordingly, the Department used constructed value (CV), as defined in section 773(e) of the Act, to calculate foreign market value (FMV).

We calculated CV as the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses and profit. We used IHI's CV data, except in the following instances where the costs were not appropriately quantified or valued:

1. We recalculated capitalized interest expense using the short-term interest rates submitted by IHI as part of its credit expense calculation. We applied these rates to the costs accumulated in the cost ledgers, and added the resulting amount to the cost of manufacturing.

2. We revised interest expense by deducting short-term interest income from total interest expense. We then excluded the interest attributable to accounts receivable and inventory to avoid double counting the imputed credit expenses and to account for the capitalized interest expense.

3. We revised IHI's estimated cost of manufacture to reflect the final actual costs incurred as per the submitted cost ledger.

4. We recalculated product-specific Research & Development based on product cost of sales, instead of net sales as submitted.

5. We included non-operating items which appeared to be related to production activities of the company in the General & Administrative expenses.

6. We revised the variance calculation to reflect the submitted cost variances of the division which manufactured the products under review.

7. We revised the calculation of warranty and technical service expenses to include the value of U.S. procurement items.

In accordance with section 773(e)(1)(B)(i) of the Act, since IHI's general expenses exceeded the statutory minimum of ten percent of the cost of manufacturing (COM), we used the company's actual general expenses, as revised. For profit, in accordance with section 773(e)(1)(B)(ii), we used the statutory minimum figure of eight percent of the total of COM plus general expenses, as IHI's home market profit was less than that amount.

We made circumstance of sale adjustments to CV for credit, technical service, and warranty expenses, revising IHI's claimed adjustments to reflect the differences between the home market and U.S. costs. In accordance with 19 CFR 353.56(b)(1), we denied the claimed adjustment for a commission paid in the home market, which was not offset by indirect selling expenses in the U.S. market.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, the Department preliminarily determines that a margin of 1.31 percent exists for IHI for the period August 18, 1989, through January 31, 1991.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication, in accordance with 19 CFR 353.38(b). Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this review for all shipments of mechanical transfer presses from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act, and will remain in effect until the final results of the next administrative review: (1) The cash deposit rate for the reviewed company will be that established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review, but covered in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the final determination for

which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review of the manufacturer; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are unrelated to the reviewed firm and who were not covered in the original less-than-fair-value investigation will be 14.51 percent.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 8, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1067 Filed 1-14-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-502]

Deformed Steel Concrete Reinforcing Bar From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on deformed concrete steel reinforcing bar (rebar) from Peru.

EFFECTIVE DATE: January 15, 1992.

FOR FURTHER INFORMATION CONTACT: Beth Chalecki or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On November 7, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 56983) its intent to revoke the countervailing duty order on rebar from Peru (40 FR 48819; November 27, 1985). In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for the last four consecutive annual anniversary months.

On November 21, 1991, Florida Steel Corporation, a petitioner in the original investigation, objected to revocation of this order. On December 2, 1991, the Government of Peru requested an administrative review of the order for the period January 1, 1990 through December 31, 1990. On December 23, 1991, we initiated that administrative review (56 FR 66429). Therefore, we no longer intend to revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-1066 Filed 1-14-92; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-180. *Applicant:* University of Miami, Rosentiel School of Marine and Atmospheric Science, 4600 Rickenbacker Causeway, Miami, FL 33149. *Instrument:* Mass Spectrometer System, Model 215-50. *Manufacturer:* Mass Analyzer Products Ltd., United Kingdom. *Intended Use:* The instrument will be used in an experiment focused on the measurement of the Xe and Kr isotopic systems in a variety of oceanic basaltic glasses. *Application Received by Commissioner of Customs:* December 3, 1991.

Docket Number: 91-181. *Applicant:* U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Southeast Fisheries Science Center, 3500 Delwood Beach Road, Panama City, FL 32408. *Instrument:* Electronic Measuring Board with Accessories. *Manufacturer:* Limnoterra Atlantic Inc., Canada. *Intended Use:* The instrument will be used to collect bioprofile information of various coastal and reef marine fish species. The objective of the experiments is to restore and manage the identified marine fisheries and to maintain them at the maximum sustainable yield. *Application Received by Commissioner of Customs:* December 6, 1991.

Docket Number: 91-182. *Applicant:* The University of Kansas, Lawrence, KS 66045. *Instrument:* Mass Spectrometer System, Model VG Autospec-Q. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used to perform high (keV) and low (10-500 eV) energy collision experiments on ions from samples ionized by electron, chemical and fast atom bombardment methods. Sample introduction will be by gas chromatography, liquid chromatography, static FAB, flow FAB, direct insertion or direct ionization probe. Important sample types will be peptides and coordination compounds/organometallic for which FAB ionization is the method of choice. Collision data will be used for structural characterization on both classes of compounds. The instrument will also be used for exact mass determinations at 8,000 to 30,000 resolution and 6 ppm, or better, accuracy. *Application Reeeived by Commissioner of Customs:* December 6, 1991.

Docket Number: 91-183. *Applicant:* East Carolina University, Materials Management, Whichard Building, Greenville, NC 27834. *Intrument:* Stopped-Flow Sample Handling Unit—Spectrometer Workstation. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Intended Use:* The instrument will be used for the study of the regulation of muscle contraction and the mechanism by which muscle produces force. Specifically, the instrument will be used to measure the change in binding constant of ATP and ATP&S to myosin-actin-tropomyosin-troporin with changes in calcium concentration. A second line of experimentation involves the smooth muscle regulatory proteins caldesmon and calponin. This includes the measurement of the effect of these proteins on the rate of ADP release and on the rate of dissociation of myosin from actin in the presence of ATP. In addition, the instrument will be used for educational purposes in the courses: "Introduction of Research," "Dissertation Research," and "Physical Biochemistry." *Application Received by*

Commissioner of Customs: December 10, 1991.

Docket Number: 91–184. *Applicant:* The Connecticut Agricultural Experiment Station, 123 Huntington Street, P.O. Box 1106, New Haven, CT 06504. *Instrument:* Volumetric Spore Trap. *Manufacturer:* Burkard Manufacturing Co., Ltd., United Kingdom. *Intended Use:* The instrument will be used to study three important plant diseases in Connecticut: apple scab, chestnut blight and Septoria leaf spot of tomato. *Application Received by Commissioner of Customs:* December 10, 1991.

Docket Number: 91–185. *Applicant:* University of Illinois at Urbana-Champaign, 506 South Wright Street, Urbana, IL 61801. *Instrument:* Mass Spectrometer, Model IMS–5F. *Manufacturer:* Cameca, France. *Intended Use:* The instrument will be used for analysis of the elements present on a microscopic scale in semiconductors, ceramics and metals which will contribute to the understanding of a wide range of materials problems. These will include, for example, diffusion, ion implantation, doping and annealing. *Application Received by Commissioner of Customs:* December 10, 1991.

Docket Number: 91–186. *Applicant:* Hofstra University, 1000 Fulton Street, Hempstead, NY 11550. *Instrument:* Stopped-Flow Kinetics Accessory, Model SFA–12M. *Manufacturer:* Hi Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used for the study of the properties of lipid vesicles. These studies will measure the rate of fusion of lipid vesicles, and the rates of processes involved in ion binding to lipid vesicles. The objective of the experiments is to gain an understanding of the mechanism of vesicle fusion as a model for cellular fusion processes. In addition, the instrument will be used in advanced laboratory courses, specifically Biochemistry Laboratory (173) and Physical Chemistry Laboratory (147–148). *Application Received by Commissioner of Customs:* December 10, 1991.

Docket Number: 91–187. *Applicant:* The Pennsylvania State University, Materials Research Laboratory, University Park, PA 16802–4801. *Instrument:* CCD Microscope System. *Manufacturer:* Japan High Tech Co., Ltd., Japan. *Intended Use:* The instrument will be used for the examination of domain and phase phenomena which contribute to the electrically controlled change of shape and change of piezoelectric response in families of ferroic transducers and actuators which are most relevant to navy needs. *Application Received by Commissioner of Customs:* December 10, 1991.

Docket Number: 91–188. *Applicant:* Washington State University, Division of Purchasing, French Administration Building, Room 220, Pullman, WA 99164–1020. *Instrument:* Rheometer. *Manufacturer:* Physica Messtechnik GmbH U Co., KG, Germany. *Intended Use:* The instrument will be used to investigate the rheological properties of gums and gum mixtures in order to create a general picture of function of typical gums or gum mixtures. *Application Received by Commissioner of Customs:* December 10, 1991.

Docket Number: 91–192. *Applicant:* The Johns Hopkins University, Charles & 34th Streets, Baltimore, MD 21218. *Instrument:* Anemometry System Mainframe, Power Supply, Test Module and Accessories, Model AN–1003. *Manufacturer:* AA Systems Laboratory, Israel. *Intended Use:* The instrument will be used to perform experiments on turbulent motion in the wake behind a cylinder in a large wind tunnel. The properties of the phenomena to be studied are 5% turbulence intensity velocity fluctuations of air. The objective of the research is to study subgrid-scale models that will be used in the near future for turbulence simulations to e.g., study dynamical flow-fields around aircraft, cars, mixers of chemicals, combustion chambers, in brief any flow that displays turbulent motion. *Application Received by Commissioner of Customs:* December 13, 1991.

Docket Number: 91–193. *Applicant:* The Ohio State University, Department of Veterinary Clinical Sciences, 1935 Coffey Road, Columbus, OH 43210–1089. *Instrument:* Grinding (Lapping) Machine, Model ML–521D. *Manufacturer:* Maruto Instrument Co., Ltd., Japan. *Intended Use:* The instrument will be used for the study of methyl methacrylate embedded bone tissues of animals, mainly dogs. The main objectives of the investigations are: (1) Documentation of microradiographic changes in remodeling activities in the spine and long bones in aging beagles and (2) characterization of histologic changes in undecalcified bone sections in the spine and long bones of aging beagles. *Application Received by Commissioner of Customs:* December 13, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–1085 Filed 1–14–92; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

[Docket No. 920104–2004]

Manufacturing Technology Centers

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of the availability of funds; notice of meeting.

SUMMARY: In accordance with the provisions of the Omnibus Trade and Competitiveness Act of 1988, 15 U.S.C. 278k, the National Institute of Standards and Technology is announcing the availability of funds and requesting proposals to establish two additional Manufacturing Technology Centers. In addition, NIST is announcing a public briefing for potential applicants to further discuss the program and answer questions concerning the application and selection process. (Catalog of Federal Domestic Assistance No. 11.611 "Manufacturing Technology Centers Program.")

DATES: 1. Closing Date. Proposals must be received at the address below by April 14, 1992.

2. The applicants' briefing will begin at 9:30 a.m. on February 7, 1992.

ADDRESSES: 1. Applicants must submit one signed original plus fourteen (14) copies of their proposal along with the Standard Form 424 (Rev 4–88), Standard Form 424A (4–88), and Standard Form 424B (4–88) to: Director, NIST Manufacturing Technology Centers Program, Building 222, room B212, National Institute of Standards and Technology, Gaithersburg, MD 20899. Plainly mark on the outside of the package that it contains an "MTC Proposal."

2. The applicants' briefing will be held in the Administration Building (Green Auditorium), National Institute of Standards and Technology, Gaithersburg, MD.

FOR FURTHER INFORMATION CONTACT: Kevin Carr at (301) 975–5020 (voice) or (301) 926–2934 (fax).

SUPPLEMENTARY INFORMATION:

Background

The National Institute of Standards and Technology (NIST) will provide assistance for the creation and support of Manufacturing Technology Centers. Such Centers shall be affiliated with any United States-based nonprofit institution or organization, or group thereof, that applies for and is awarded financial assistance in accordance with the procedures set forth in 15 CFR part

290. Individual awards shall be decided on the basis of merit review.

The objective of the Centers is to enhance productivity and technological performance in United States manufacturing through:

(1) The transfer of manufacturing technology and techniques developed at the Institute to Centers and, through them, to manufacturing companies throughout the United States;

(2) The participation of individuals from industry, universities, State governments, other Federal agencies, and, when appropriate, the Institute in cooperative technology transfer activities;

(3) Efforts to make new manufacturing technology and processes usable by United States-based small- and medium-sized companies;

(4) The active dissemination of scientific, engineering, technical, and management information about manufacturing to industrial firms, including small and medium-sized manufacturing companies; and

(5) The utilization, when appropriate, of the expertise and capability that exists in Federal laboratories other than the Institute.

Manufacturing Technology Centers are established and operated via cooperative agreements between NIST and the award-receiving organizations. To date, NIST has awarded funding for five Centers. These Centers are the Southeast Manufacturing Technology Center (SMTC) in Columbia, South Carolina, the Great Lakes Manufacturing Technology Center (GLMTC) in Cleveland, Ohio, the Northeast Manufacturing Technology Center (NEMTC) in Troy, New York, the Mid-America Manufacturing Technology Center in Overland Park, Kansas, and the Midwest Manufacturing Technology Center in Ann Arbor, Michigan.

Request for Proposals

Contingent upon the availability of FY 92 and future year funding, NIST plans to establish two additional Centers with maximum NIST funding levels of $1.5M, $3.0M, $3.0M, $2.4M, $1.8M, $1.2M for years 1 through 6, respectively, for each Center. Applicants are required to contribute 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share of 60, 70, and 80 percent in years 4, 5, and 6, respectively. The continuation and level of NIST funding from year to year will be at the discretion of NIST based on such factors as satisfactory performance and the availability of funds.

The competition is open to proposals based on any of the major discrete part manufacturing technology disciplines in which NIST has technical expertise (for example, mechanical parts, electronics assembly, composites). Geographical location, physical size, concentration of industry, and economic significance of the service region's manufacturing base will be factors in the evaluation of new proposals. A proposal for a Center located near an existing Center may be considered only if the proposal is unusually strong and the population of manufacturers and the technology to be addressed justify it.

NIST will provide all qualified proposals to a Merit Review Panel organized by the National Research Council (NRC) which will evaluate the proposals in accordance with the evaluation and selection criteria below as extracted directly from 15 CFR part 290. NIST will consider the findings of the NRC Merit Review Panel in its final selection. NIST anticipates making the selection and announcement of the award receiving Centers by [date to be insert by NIST immediately prior to publication].

Applicants' Briefing

NIST will conduct a public meeting to present an overview of the Program and to allow interested parties and potential applicants to discuss program issues with Institute staff. Representatives from existing NIST Centers will be available at the briefing to answer any questions concerning their respective programs. The meeting will be held at the Institute at the location and time shown above. No advanced registration or fee for attendance is required. Organizations are invited to send a one page fax of the names or approximate number of persons planning to attend to the fax number listed above in order to permit NIST to anticipate attendance.

Proposal Requirement Highlights. Applicants should refer directly to 15 CFR 290, which contains the guidelines for the application, qualification, selection and establishment of Centers. Applicants should particularly note:

- There is a 25 page limitation on the basic proposal text;
- Appendices, or other relevant information, in support of the basic proposal, should be submitted as a separate volume;
- The applicant is required to contribute 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share of 60, 70, and 80 percent in years 4, 5, and 6, respectively;
- At least 55% of the applicant's share must consist of cash from various sources or in-kind contributions of full-time personnel;
- The Center must focus its activities on transferring new manufacturing technology rather than on performing research and development;
- Each Center shall be affiliated with a U.S.-based nonprofit institution or organization which has submitted a qualified proposal for a Center Operating Award under these procedures; and,
- Support may be provided by NIST for a period not to exceed six years.

Proposal Evaluation and Selection Criteria

In making a decision whether to provide financial support, NIST shall review and evaluate all qualified proposals in accordance with the following criteria, assigning equal weight to each of the four categories.

(1) *Regional Need.* Does the proposal define an appropriate service region with a large enough target population of small- and medium-sized manufacturers which the applicant understands and can serve, and which is not presently served by an existing Center?

(i) Market Analysis. Demonstrated understanding of the service region's manufacturing base, including business size, industry types, product mix, and technology requirements.

(ii) Geographical Location. Physical size, concentration of industry, and economic significance of the service region's manufacturing base. Geographical diversity of Centers will be a factor in evaluation of proposals; a proposal for a Center located near an existing Center may be considered only if the proposal is unusually strong and the population of manufacturers and the technology to be addressed justify it.

(2) *Technology Resources.* Does the proposal assure strength in technical personnel and programmatic resources, full-time staff, facilities, equipment, and linkages to external sources of technology to develop and transfer technologies related to NIST research results and expertise in the technical areas noted in these procedures?

(3) *Technology Delivery Mechanisms.* Does the proposal clearly and sharply define an effective methodology for delivering advanced manufacturing technology to small- and medium-sized manufacturers?

(i) Linkages. Development of effective partnerships or linkages to third parties who will amplify the Center's technology delivery to reach a large number of clients in its service region.

(ii) Program Leverage. Provision of an effective strategy to amplify the Center's technology delivery approaches to achieve national impact as described in § 290.3(e).

(4) *Management and Financial Plan.* Does the proposal define a management structure and assure management personnel to carry out development and operation of an effective Center?

(i) Organizational Structure. Completeness and appropriateness of the organizational structure, and its focus on the mission of the Center. Assurance of full-time top management of the Center.

(ii) Program Management. Effectiveness of the planned methodology of program management.

(iii) Internal Evaluation. Effectiveness of the planned continuous internal evaluation of program activities.

(iv) Plans for Financial Matching. Demonstrated stability and duration of the applicant's funding commitments as well as the percentage of operating and capital costs guaranteed by the applicant. Identification of matching fund sources and the general terms of the funding commitments. Evidence of the applicant's ability to become self-sustaining in six years.

(v) Budget. Suitability and focus of the applicant's detailed one-year budget and six-year budget outline.

Supporting Information Packet. NIST has prepared a supplementary information packet which contains: a copy of 15 CFR part 290; background information on the existing Centers and the NIST Automated Manufacturing Research Facility, the Manufacturing Engineering Laboratory, the Electronics and Electrical Engineering Laboratory, the Computer Systems Laboratory, and the Materials Science and Engineering Laboratory; Standard Form 424 (Rev 4–88), Standard Form 424 (4–88), and Standard Form 424B (4–88); and OMB Circular A–110. Information packets are available upon request from the information contact above. Requests via a one page fax to the above number are preferred. Please include name, mailing address, and telephone number.

Paperwork Reduction Act: This notice contains a collection of information requirements subject to the Paperwork Reduction Act which have been approved by the Office of Management and Budget under control number 0693–0005 for use through September 30, 1992.

Other Requirements, Requests, and Provisions: Applicants who have outstanding accounts receivable with the Federal Government may not be considered for Manufacturing Technology Centers Program funding until the debts have been paid or arrangements satisfactory to the Department are made to pay the debt. The Manufacturing Technology Centers Program does not involve the mandatory payment of any matching funds from a State or local government, and does not affect directly any State or local government. Accordingly, the Technology Administration has determined that Executive Order 12372 is not applicable to this program.

Section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, cooperative agreement or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" is required to be submitted with any application for funding under the Manufacturing Technology Centers program. Applicants for funding are subject to Government-wide Debarment Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement. A false statement on any application for funding under the Manufacturing Technology Centers program may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment. Awards under the Manufacturing Technology Centers program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Dated: January 8, 1992.

John W. Lyons,

Director, National Institute of Standards and Technology.

[FR Doc. 92–966 Filed 1–14–92; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of a Scientific Research Permit (P171B).

On December 4, 1991, notice was published in the **Federal Register** (56 FR 61232) that an application had been filed by Ms. Deborah Glockner-Ferrari and Mr. Mark J. Ferrari, Covington, LA 70433, for a Permit to harass annually, over a five-year period: Up to 1,500 humpback whales (*Megaptera novaeangliae*) during observational/photo-identification studies and collection of sloughed skin samples; and up to 500 bottlenose dolphins (*Tursiops truncatus*), 500 spotted dolphins (*Stenella attenuata*), 1,000 spinner dolphins (*Stenella longirostris*), 200 false killer whales (*Pseudorca crassidens*), and 100 pilot whales (*Globicephala macrorhynchus*) during opportunistic observational/photo-identification studies. On December 20, 1991, a notice of correction was published in the **Federal Register** revising the earlier notice to include the applicants' request to export from the United States to England sloughed skin samples from humpback whales. Research activities will be limited to Hawaiian waters.

Notice is hereby given that on _____, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit to the above applicant to harass the species/numbers of marine mammals described above, subject to certain conditions set forth therein. To provide a standard, quantifiable measure of approach effort, approaches to humpback whales <100 yards (<300 yards in designated cow/calf waters), approaches to small cetaceans <50 yards, and those animals showing signs of being disturbed no matter the distance are considered "taken" by harassment and counted against the number of animals authorized in the Permit. In light of a planned review by the National Marine Fisheries Service of North Pacific humpback whale research during 1992, the Permit is being issued through December 31, 1992 only.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that the Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit and associated documents are available for review in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, Maryland 20910 (301/713–2289);

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, NOAA, 2570 Dole Street, Honolulu, Hawaii 96822–2398 (808/955–8831); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196).

Dated: January 8, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–1005 Filed 1–14–92; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Committee on Technology Options for Global Reach—Global Power: 1995–2020 (Support panel) will meet on 30–31 January 1992, at HQ AFSOC, Hurlburt AFB, FL, 8 a.m. to 5 p.m.

The purpose of this meeting is to receiving briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–1090 Filed 1–14–92; 8:45 am]

BILLING CODE 3910–01–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, January 22, 1992. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be open for public observation at 9:30 a.m. at the same location and will include status reports on the upper Delaware ice jam project, amendment of Compact section 15.1(b) to fund the F. E. Walter Reservoir project, revised retail water pricing proposal, golf course irrigator compliance and a briefing on the Scenic Rivers water quality protection proposal.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *County of Bucks D–91–36 CP.* An application for approval of an increased allocation of ground water withdrawal to supply the applicant's Neshaminy Manor Complex from Well Nos. 2, 4 and 5. Docket D–85–44 CP, approved on June 27, 1985, limited the withdrawal from Well Nos. 1, 2, 3 and 4 to 4.5 mg/30 days. Docket D–87–99 CP, approved on June 22, 1988, limited the withdrawal from Well No. 5 to 3.0 mg/30 days without an increase in total system withdrawal. Well Nos. 1 and 3 have been abandoned due to low yields. The applicant requests that the total withdrawal from all wells be increased from 4.5 mg/30 days to 6.0 mg/30 days. The project is located in Doylestown Township, Bucks County in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Dairy Center Inc. D–91–39.* An industrial wastewater treatment plant (IWTP) upgrade and expansion project that entails modifications to the applicant's existing 91,384 gallons per day (gpd) activated sludge IWTP to improve effluent quality and increase the average treatment capacity to 150,000 gpd. The IWTP will continue to serve the applicant's dairy products and fruit juice processing plant and the treated effluent will discharge to Pine Run via a new outfall structure in Upper Dublin Township, Montgomery County, Pennsylvania.

3. *Maidencreek Township Water Authority D–91–58 CP.* An application for approval of a ground water withdrawal project to supply up to 13.2 mg/30 days of water to the applicant's distribution system from new Well No. 3 (Faust Well), and to retain the existing withdrawal limit from all wells of 13.2 mg/30 days. The project is located in Maidencreek Township, Berks County, Pennsylvania.

4. *Hazleton City Authority D–91–65 CP.* An application for approval of a ground water withdrawal project to supply up to 3.6 mg/30 days of water to the applicant's distribution system from the new Buck Mountain Well No. 1, without an increase in the previously approved water withdrawal from the Buck Mountain Creek watershed, and without an increase in the previously approved exportation of water from the Delaware River Basin. The Buck Mountain Well is to replace the unfiltered, giardia-contaminated surface water supply. The project is located in Lausanne Township, Carbon County, Pennsylvania.

5. *East Bangor Municipal Authority D–91–85 CP.* The applicant proposes to construct a 0.10 million gallons per day (mgd) sewage treatment plant (STP) with an outfall discharging to Brushy Meadow Creek. The proposed STP project will provide secondary treatment facilities to be located on the eastern bank of Brushy Meadow Creek, approximately 1000 feet upstream of Bangon Borough's corporate boundary, in East Bangor Borough, Northampton County, Pennsylvania.

Proposed Comprehensive Plan Amendment with Respect to Recreational Areas in the State of Delaware. A proposal to revise the Comprehensive Plan by the deletion of the Delaware facilities from the list of non-urban areas included in Phase I of the Plan, July 1962, and the inclusion of the current list of water-related recreational projects located in the Delaware portion of the Delaware River Basin.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: January 7, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92–1040 Filed 1–14–92; 8:45 am]

BILLING CODE 6360–10–M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent to Award a Grant to the American Filtration Society

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i)(B), it is making a noncompetitive financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1). This award will be made under Grant Number DE–FG01–92FE62555 to the American Filtration

Society. The financial assistance will provide partial support to the Fluid/Particle Processing and Separation Conference/Workshop.

SCOPE: The grant will provide $5,000 in funding to the American Filtration Society to host the Fluid/Particle Processing and Separation Conference/Workshop in Gainesville, Florida. The process of separating particles from fluids is basic to both energy production and environmental protection. The Conference/Workshop contributes to this research by increasing societal emphasis on domestic and industrial activities affecting the environment and our natural resources. This workshop also provides a framework conducive to new research and educational initiatives; research and education are essential foundations in fluid/particle separation processing, and are prerequisite for future competitiveness of this nation in the world market.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to the American Filtration Society. DOE support of this activity would enhance the public benefits to be derived. DOE knows of no other entity which is conducting or planning such a program.

The term of the grant shall be until March 30, 1992.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: James F. Thompson, 1000 Independence Avenue, SW., Washington, DC 20585.

Arnold A. Gjerstad,

Acting Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 92-1084 Filed 1-14-92; 8:45 am]

BILLING CODE 6450-01-M

Secretary of Energy Advisory Board; Task Force on Radioactive Waste Management; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meetings:

Name: Secretary of Energy Advisory Board Task Force on Radioactive Waste Management.

Date and Time: February 4 and 5, 1992, 9 a.m.-5 p.m.

Location: Lecture Room, Beckman Center, 100 Academy Drive, Irvine, CA 92715.

Contact: Dr. Daniel S. Metlay, AC-1, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3903.

Purpose: The Secretary of Energy Advisory Board Task Force on Radioactive Waste Management was established in October 1990 to: (1) Identify the factors that affect the level of public trust and confidence in Department of Energy programs; (2) assess the effectiveness of alternative financial, organizational, legal, and regulatory arrangements in promoting public trust and confidence; (3) consider the effects on other programmatic objectives, such as cost and timely acceptance of waste, of those alternative arrangements; and (4) provide the Secretary with recommendations and guidance for implementing those recommendations.

Tentative Agenda

February 4, 1992

9 a.m.-12 Noon—Task Force discussion with participants in the National Academy of Sciences and National Academy of Public Administration workshop.
12 Noon-1:30 p.m.—Lunch break.
1:30 p.m.-4:30 p.m.—Continuation of discussion with workshop participants.
4:30 p.m.-5 p.m.—Public comments.
5 p.m.—Adjournment.

February 5, 1992

9 a.m.-12 Noon—Task Force discussions.
12 Noon-1:30 p.m.—Lunch break.
1:30 p.m.-2 p.m.—Public comments.
2 p.m.-5 p.m.—Continuation of Task Force discussions.
5 p.m.—Adjournment.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Members of the public are welcome to comment at the meetings on any of these presentations or to provide views on other matters that fall within the scope of the Task Force's Work. It is requested that those individuals provide 15 copies of their statements at the time of their presentation. Members of the public may also submit written comments to Dr. Metlay at the address given above.

Minutes: A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E-190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on: January 10, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-1083 Filed 1-14-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER92-5-000]

Connecticut Light & Power Co.; Filing

January 6, 1992.

Take notice that Connecticut Light & Power Company (CP & L) tendered for filing an amendment to its October 1, 1991 filing in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-991 Filed 1-14-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-86-000]

Mojave Pipeline Co.; Tariff Filing

January 8, 1992.

Take notice that Mojave Pipeline Company ("Mojave"), on January 8, 1992, tendered for filing its FERC Gas Tariff Original Volume No. 1, in compliance with part 154 of the Commission's regulations and the Commission's orders of January 24, 1990, August 13, 1991 and December 3, 1991 in Docket Nos. CP89-001 and CP89-002 ("Certificate Orders").

Mojave's filed tariff contains firm and interruptible transportation rate schedules, the general transportation terms and conditions, the form of service agreements for firm, interruptible and initial transportation service, the statement of transportation rates, and the index of shippers. The tariff also incorporates the changes to Mojave's tariff as described by the Certificate Orders, as well as new creditworthiness provisions, Order No. 497 provisions, corrections of typographical errors and conforming changes. Mojave proposes that its tariff become effective on February 1, 1992.

Mojave states that copies of the filing have been served upon all of Mojave's jurisdictional transportation customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-992 Filed 1-14-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4093-2]

National Emission Standards for Coke Oven Batteries Advisory Committee; Establishment and Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Establishment of advisory committee and notice of open meeting.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App., EPA is giving notice of the establishment of an advisory committee to develop specific recommendations with respect to National Emission Standards for Coke Over Batteries pursuant to section 112 of the Clean Air Act, as amended. EPA has determined that the establishment of this committee is in the public interest and will assist the Agency in performing it duties under sections 112, 114, and 301(a) of the Clean Air Act as amended. Copies of the Committee's charter will be filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of FACA.

The Committee solicits anyone who believes their interest would be significantly affected by a National Emission Standard for Coke Over Batteries, who also believes that interest is not adequately represented on the Committee, to apply for membership on it. Applications must be received by the close of business on January 28, 1992.

DATES: The Committee will meet on February 6 and 7, and on February 19 and 20. Both meetings will run from 11 until 6 on the first day and from 8:30 until 3 on the second. The meetings are open to the public without advance registration. Members of the public may attend, make statements during the meeting to the extent time permits, and file reports with the Committee for its consideration.

ADDRESSES: Both meetings will be held at the Quality Hotel Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC, 202-638-1616.

A docket has been established for the advisory committee. Comments concerning the committee and its work should be submitted (in duplicate if possible) to Air Docket Section, Attention Docket #A-79-15, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A copy should also be sent to Amanda Agnew, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27111. This docket contains materials relevant to this advisory committee, and it may be inspected in room 1500M, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC, between 8:30 a.m. and noon, and 1:30 p.m. until 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Anyone wanting further information on the substantive matters related to the National Emission Standard for Coke Oven Batteries should call Amanda Agnew, Office of Air Quality Planning and Standards at 919-541-5268. Anyone wanting further information on administrative matters such as committee arrangements or procedures should contact the committees independent facilitator, Philip J. Harter at 202-887-1033.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 require EPA to issue National Emission Standards for Coke Over Batteries by December 31, 1992. The agency has conducted informal discussions to review emissions data from coke ovens, the cost of various compliance activities, and their economic impact. The discussions have gone well, and the participants have proposed developing specific recommendations to the agency concerning the regulation of coke ovens under the CAAA. EPA now believes that using an advisory committee to make specific recommendations with respect to the coke oven standards would help the agency achieve its statutory mandate. It is therefore establishing the National Emission Standard for Coke Over Batteries Advisory Committee.

Background

EPA first addressed coke ovens in the late 1970s. A standard was proposed in 1987, but it was held in abeyance due to the anticipated requirements of the Clean Air Act Amendments. The new regulations are required by title II of the Act as amended. The purpose of title III is to reduce the adverse effects of hazardous air pollutants from new and existing sources. Section 112 required EPA to set allowable emission limits for coke oven doors, lids, removals (offtakes), and seconds of charging.

Statutory Provisions

The Clean Air Act requires standards for maximum achievable control technology (MACT) for existing sources, lowest achievable emissions rate (LAER) for existing sources, MACT for new sources, and work practices. When considering limits for MACT for existing sources, the CAAA specify that these standards are to require at minimum that coke oven emission not exceed 8 percent leaking doors on each battery, 1 percent leaking lids, 5 percent leaking offtakes, and 16 seconds of visible emissions per charge. In establishing the standards, the use of luting compounds to prevent door leaks and the use of nonrecovery technologies as the basis for standards for new sources must be evaluated. Existing coke oven batteries must comply with the standards by December 31, 1995, and new batteries must comply with MACT for new sources upon start-up. EPA is required to issue the new regulations by December 31, 1992.

Section 112(d)(8) also requires promulgation of work practice regulations for new and existing coke over batteries. Existing batteries must comply with the work practice regulations by November 15, 1993. The CAAA specify that the work practice regulations require—as appropriate—the use of luting compounds, if EPA determines they are an effective means of controlling leaks, as well as door and jam cleaning practices.

Section 112(f) also requires EPA to promulgate residual risk standards in the year 2000. Coke oven batteries would be required to comply with these limits by December 31, 2003. Section 112(f) permits an owner or operator of a coke oven battery to defer meeting the residual risk limit until the year 2020 provided that the following requirements are met:

• By November 15, 1993, batteries must not exceed 8 percent leaking doors, 1 percent leaking lids, 5 percent leaking offtakes, and 16 seconds of visible emissions per charge.

• By January 1, 1998, the batteries must meet the LAER standard that is defined as the lowest achievable emission rate for a coke oven battery that is rebuilt or replacements at a coke oven plant for an existing battery, or any subsequent revision of LAER. The Act requires that these limits may be no less stringent than 3 percent leaking doors for doors less than 6 meters high and 5 percent leaking doors for doors 6 meters or higher; 1 percent leaking lids; 4 percent leaking offtakes; and, 16 seconds of visible emissions per charge. An exclusion may be considered for emissions from doors during the period after the closing of self-sealing oven doors or the total mass emissions equivalent.

• By January 1, 2000, the owner or operator must make available to the surrounding community the results of any risk assessment performed by EPA to determine the appropriate level of residual risk standard.

The Committee and Its Process

During the spring and summer, EPA met with representatives of the industry, unions, and environmental groups to discuss the data EPA had and which it anticipated using as the basis of the new regulations. EPA held discussions over the data with representatives of industry, both the integrated steel manufacturers and independent coke producers, labor unions, environmental organizations, and state and local air pollution control officials. A workshop format was used to explore and clarify the varying viewpoints.

EPA and the workshop participants think the exchange has been mutually beneficial. As a result, EPA now believes it would be appropriate for the workshop to transform itself and make specific regulatory recommendations for implementing the coke oven sections of the Clear Air Act Amendments. EPA is therefore establishing the National Emission Standards for Coke Oven Batteries Advisory Committee to do so.

The recently enacted Negotiated Rulemaking Act of 1990 contemplates a "convening" process during which the potential parties and issues are identified, publishing a notice of intent to form the committee, waiting 30 days for comments to be submitted responding to the notice, and only then proceeding with the establishment of the committee provided it meets the criteria of the Act. The workshop process has served the same function as the convening—parties that would be significantly affected have been identified and the issues in the controversy have been defined. The discussions have also enabled the agency to determine that the criteria for negotiating rules, as spelled out in the Negotiated Rulemaking Act and the ones that have guided EPA in the past, are met for this rule—

• The rule is needed, since it is *required* by the CAAA.

• A limited number of identifiable interests will be significantly affected by the rule. Those parties are coke producers (both integrated steel manufacturers and merchant coke producers), unions, environmental organizations, and state and local air pollution control officials. Since coke and those who use coke are subject to intensive international competition, the producers of coke and the integrated steel producers also represent the end user's interest in keeping prices low and competitive.

• Representatives can be selected to adequately represent these interests, as reflected above.

• The interests are willing to negotiate in good faith to attempt to reach a consensus on a proposed rule. This committee is being established to enable them to do just that.

• There is a reasonable likelihood that the committee will reach consensus on a proposed rule within a reasonable time. This determination has been made following the data discussions, and hence is built on the developments to date.

• The use of the negotiation will not delay the development of the rule if time limits are placed on the negotiation. Indeed, its use will expedite it and the ultimate acceptance of the rule.

EPA is not proposing to issue a separate notice of intent to form a negotiated rulemaking committee for this rule. Given the evolution of this committee, the publication of such a notice would only slow down the rulemaking process, which to comply with CAA is on an expedited basis, and its functions have either already been met or are provided for in this notice. Moreover, the Act specifically provides that its provisions are not mandatory.

The Act does anticipate an outreach to ensure that people who were not contacted during the convening of the committee can come forward to explain why they believe they would be significantly affected and yet not represented on the committee or to argue why they believe the rule should not be negotiated. As discussed below, anyone who believes they meet the criteria are invited to apply for membership on the committee.

Committee Membership

Environmental Protection Agency

Bruce Jordan, Director, Emission Standards Division, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27111
John S. Seitz, Director, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27111
Michael Shapiro, Deputy Assistant Administrator for Air and Radiation, Room 937 West Tower, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental and Citizens Organizations

David Doniger, Natural Resources Defense Council
Larry Davis, Hoosier Environmental Council
Shirley Virostetl, Group Against Fog and Pollution (GAFP)

Industry

David M. Anderson, General Manager, Environmental Affairs, Bethlehem Steel Corporation
Charles T. Drevna, Vice President, Public Affairs, Sun Coal Company
Martin C. Dusel, Vice President, Manufacturing Operations, Citizens Gas & Coke Utility
Philip X. Mascantonio, Vice President, Environmental Affairs, USS, A Division of USX Corporation
David E. Menotti, Perkins Coie
Bruce A. Steiner, Vice President, Environment and Energy, American Iron and Steel Institute
John M. Stinson III, Director, Government Affairs, National Steel Corp.

State and Local Air Pollution Control Officials

William Becker, Executive Director, STAPPA/ALAPCO
Charles Goetz, Allegheny County Health Department, Bureau of Air Pollution Control
Richard Grusnich, Chief, Air Division, Alabama Department of Environmental Management
Ward T. Kelsey, Assistant Counsel, Pennsylvania Department of Environmental Regulation

Note: We expect to have at least one additional State and one additional Local member as well.

Unions

John J. Sheehan, United Steelworkers of America
Michael J. Wright, Director, Health, Safety and Environment Department, United Steelworkers of America

Application for Membership

Anyone who believes they would be significantly affected by a National Emission Standard for Coke Ovens and who believes their interest would not be

adequately represented by the Committee described above is invited to apply for membership on the committee or to nominate someone else for membership on the committee. An application for membership should include:

1. The name of the applicant or nominee and a description of the interest(s) such person will represent.

2. Evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent.

3. A commitment that the applicant or nominee will actively participate in good faith in the development of the standards, and

4. The reason that the members of the Committee who are described above do not adequately represent the interests of the person submitting the application or nomination.

To be considered, the application must be received by the close of business on Monday, February 3, 1992. The application should be sent to Chris Kirtz, Director, Consensus and Dispute Resolution Project, Environmental Protection Agency (PM–223Y), 401 M Street SW., Washington, DC 20460.

EPA will give full consideration to all applications and nominations. The decision to add a person to the Committee will be based on whether an interest of that person will be significantly affected by the proposed rules, whether that interest is already adequately represented on the Committee, and if not, whether the applicant or nominee would adequately represent it.

Schedule

The Committee will meet on February 6 and 7, and on February 19 and 20 at The Quality Hotel Capitol Hill. Both meetings will run from 11 until 6 on the first day and 8:30 until 3 on the second. The meetings are open to the public without advance registration. Members of the public may attend, make statements during the meeting to the extent time permits, and file reports with the Committee for its consideration. At both days of each meeting, the Committee will work to fashion specific recommendations with regard to National Emission Standards for Coke Oven Batteries.

Dated: January 10, 1992.

Chris Kirtz,

Designated Federal Official, Coke Oven Battery Advisory Committee.

[FR Doc. 92–1073 Filed 1–14–92; 8:45 am]

BILLING CODE 6560–50–M

[PF–558; FRL–4009–5]

Rhone Poulenc Ag Co.; Notice of Amended Pesticide Petition for Fosetyl-Al

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Rhone Poulenc Ag Co. the filing of an amendment to pesticide petition (PP) 0F3841 proposing to establish a tolerance of 55 parts per million (ppm) for the residues of the fungicide fosetyl-al in or on the brassica crop grouping.

ADDRESSES: By mail, submit written comments identified by the document control number, [PF-558], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM-22), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-5540.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from the Rhone Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, an amendment to the notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 0F3841 that appeared in the **Federal Register** of June 29, 1990 (55 FR 26752) and proposed to amend 40 CFR 180.415 to establish a tolerance of 45 parts per million (ppm) for residues of the fungicide fosetyl-al (aluminum tris (O-ethyl phosphonate)) in or on the brassica crop grouping (broccoli, brussels sprouts, cabbage, Chinese broccoli, bok choy, napa cabbage, Chinese mustard, cauliflower, collards, kale, kohlrabi, mustard greens, and rape greens). The amended petition proposes a tolerance of 55 ppm. The analytical method used is flame photometric gas chromatography.

Authority: 21 U.S.C. 346a and 348.

Dated: January 6, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–1075 Filed 1–14–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00313; FRL–4007–5]

Disclosure of Names of Pesticide Product Inert Ingredients; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a revised list of pesticide product inert ingredients and their Chemical Abstract Service (CAS) numbers. This list updates the list announced in the **Federal Register** of August 17, 1990 (55 FR 33762).

ADDRESSES: A copy of the list may be obtained in person at rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA., or by calling the EPA Office of Pesticide Programs Public Docket at (703) 305–5805, or by writing to: Freedom of Information Officer (A–101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lawrence, Chief, Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5805.

Dated: January 7, 1992.

Judy K. Heckman,

Acting Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 92–940 Filed 1–14–92; 8:45 am]

BILLING CODE 6560–50–F

[PF-557; FRL-4008-6]

Rhone Poulenc Ag Co.; Notice of Filing of Pesticide Petition for Thiodicarb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Rhone Poulenc Ag Co. a pesticide petition (PP 6F3417) requesting the establishment of tolerances for the combined residues of the insecticide thiodicarb (dimethyl *N,N'*-[thiobis[[(methylimino) carbonyl]oxy]][ethanimidothioate]) and its metabolite methomyl (S-methyl *N*-[(methylcarbamoyl)oxy]thioacetimidate) in or on the raw agricultural commodities (RACs) broccoli, cabbage, and cauliflower. This petition was originally submitted by Union Carbide Agricultural Products Co. to establish a maximum permissible level for residues of the insecticide in or on the RACs almond hulls, broccoli, cabbage, cauliflower, and head lettuce. Union Carbide was later acquired by the Rhone Poulenc Ag Co., and the petitioner subsequently withdrew the requests for almonds and head lettuce.

ADDRESSES: By mail, submit written comments identified by the document control number, [PF-557], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM-19), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6386.

SUPPLEMENTARY INFORMATION: This notice announces that EPA received from the Union Carbide Agricultural Products Co., T.W. Alexander Drive, Research Triangel Park, NC 27709, a pesticide petition (PP 6F3417) proposing to amend 40 CFR part 180 by establishing a permanent tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for residues of the insecticide thiodicarb and its metabolite methomyl (S-methyl N-[(methylcarbamoyl)oxy]thioacetimidate) in or on the raw agricultural commodities almond nutmeat at 2.0 parts per million (ppm), almond hulls at 50.0 ppm; broccoli, cabbage, and cauliflower at 7.0 ppm; and head lettuce at 25.0 ppm. Union Carbide was later acquired by the Rhone Poulenc Ag Co. The petitioner subsequently amended the petition by withdrawing the tolerance request for almonds and head lettuce. The analytical methods used are gas chromatography with a flame photometric detector selective for sulfur containing compounds and gas chromatography/mass spectrometry.

Authority: 21 U.S.C. 346a and 348.

Dated: December 23, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-1076 Filed 1-14-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4093-1]

Labat-Anderson, Inc.; Access to Trade Secret Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Labat-Anderson, Incorporated of Arlington, Virginia, for access to information submitted to EPA pursuant to sections 303, 311, 312, 313, and 322 of the Emergency Planning and Community Right-to-Know Act of 186 (EPCRA), also known as title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Specifically, access concerns trade secrecy claims by industry under sections 303, 311, 312, and 313.

DATES: Access to the trade secret information submitted to EPA will occur on January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Jones, Chemical Emergency Preparedness and Prevention Office (CEPPO), Office of Solid Waste and Emergency Response, OS-120, Environmental Protection Agency, rm. 3101B, 401 M St., SW., Washington DC 20460, Telephone: 202-260-8353.

SUPPLEMENTARY INFORMATION: Under title III, facilities must send trade secrecy claims regarding their section 303, 311, 312, and 313 submittals to EPA.

Under contract number 68-WO-0022, awarded to ICF Incorporated, Labat-Anderson, Incorporated under Subcontract No. EPA-89-03 will continue to assist the Chemical Emergency Preparedness and Prevention Office (Office of Solid Waste and Emergency Response) in receiving and processing the information submitted by industry. EPA has determined that Labat-Anderson, Incorporated will require access to trade secret information, and in so doing, Labat-Anderson, Incorporated will follow all required security procedures.

EPA is issuing this notice to inform all submitters of trade secret information under the aforementioned title III sections that EPA will provide Labat-Anderson, Incorporated access to these trade secret materials. Upon termination of their contract, or prior to termination of their contract at EPA's request, Labat-Anderson, Incorporated will return all material to EPA.

EPA announced clearance to access to EPCRA trade secret information by Labat-Anderson, Incorporated in a notice published in the **Federal Register** of August 8, 1988. (53 FR No. 152). Pursuant to this notice, access to clearance to EPCRA trade secret information under this contract is extended and expected to expire on April 30, 1993.

Dated: January 8, 1992.

James L. Makris,

Director, Chemical Emergency Preparedness and Prevention Office, Office of Solid Waste and Emergency Response.

[FR Doc. 92-1074 Filed 1-14-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-82036; FRL-4010-3]

Health and Safety Data Reporting; Availability of Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of guidance.

SUMMARY: This notice announces the availability of a guidance document

entitled "Questions and Answers: Applicability of the Toxic Substances Control Act (TSCA) Section 8(d) Model Health and Safety Data Reporting Rule (40 CFR part 716) to Modeling Studies." Any person wishing to comment on the guidance document may do so.

DATES: Written comments on the guidance document must be received by March 2, 1992.

ADDRESSES: Three copies of comments identified with the docket control number (OPPTS–62038) must be submitted to: TSCA Public Document Office (TS–793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. NE–G004, Washington, DC 20460.

A public record has been established and is available in the TSCA Public Docket Office at the above address from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. EB–545, Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, FAX: (202) 554–5603 (document requests only).

SUPPLEMENTARY INFORMATION: The TSCA section 8(d) Model Health and Safety Data Reporting Rule (40 CFR part 716) sets forth requirements for the submission of lists and copies of health and safety studies on chemical substances and mixtures (substances) selected for priority consideration testing rules under section 4(a) of TSCA and on other substances for which EPA requires health and safety information. The rule requires manufacturers, importers, and processors to submit to EPA unpublished health and safety studies conducted on the substances listed at 40 CFR 716.120. Generally, any information or data that relates to, or bears on, the effects of a listed substance on health or the environment is considered a health and safety study (§ 716.3 - "health and safety study" definition). The purpose of the guidance document is to clarify the applicability of the TSCA section 8(d) Model Health and Safety Data Reporting Rule to modeling studies in which concentrations or quantities of a substance to which humans or the environment are likely to be exposed are estimated by applying mathematical models of chemical distribution, transport and/or fate to measured or estimated data on chemical releases, conditions of release, and relevant environmental conditions such as wind speed and direction. Copies of the guidance may be obtained at the address listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: January 7, 1992.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92–1077 Filed 1–14–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

January 8, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0284.

Title: Section 94.25 (f), (g) and (i), filing of applications.

Action: Extension of a currently approved collection/no change.

Respondents: State or local governments, businesses or other for-profit (including small businesses), and non-profit institutions.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 25 responses; 0.5 hours average burden per response; 13 hours total annual burden.

Needs and Uses: Section 94.25 requires that applicants proposing new or modified microwave transmitting facilities in the vicinity of the National Radio Astronomy Observatory, Naval Radio Research Observatory, Table Mountain Radio Receiving Zone, or FCC monitoring stations, consult with those parties to avoid interference to those sites. The rule section enumerates threshold conditions which trigger the requirement that applicants notify these respective receiving sites of their proposal. This requirement is needed to preserve interference-free reception conditions necessary at these sites. The data is used by the appropriate agencies to determine if proposed operation would cause harmful interference to their respective radio receiving sites.

OMB Number: 3060–0291.

Title: Section 90.477, Interconnected systems.

Action: Extension of a currently approved collection/no change.

Respondents: State or local governments, businesses or other for-profit (including small businesses), and non-profit institutions.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 1,000 recordkeepers; 1 hour average burden per recordkeeper; 1,000 hours total annual burden.

Needs and Uses: This section allows private land mobile radio licensees to use common point telephone interconnection with telephone service costs distributed on a non-profit cost sharing basis. Records of such arrangements must be placed in the licensee's station records and made available to participants in the sharing arrangement and the Commission upon request. This recordkeeping requirement (when the land stations involved are multiple licensed or shared) is mandated by the requirements set forth in 47 U.S.C. 332(c) regarding permissible interconnection methods in the private radio services. The information is used by the participating licensees to effect the required cost sharing.

OMB Number: 3060–0300.

Title: Section 94.107, Posting of station authorization and transmitter identification cards, plates, or signs.

Action: Extension of a currently approved collection/no change.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 12,140 recordkeepers; .0014 hours average burden per recordkeeper; 17 hours total annual burden.

Needs and Uses: Section 94.107 requires the licensee to keep the original of each transmitter authorization posted or immediately available at the address at which station records are maintained, and to post or have a copy available of the transmitter authorization at the transmitter location. This information is used by field investigations personnel to determine if a transmitter is operating in conformance with its authorization.

Transmissions in the Microwave Radio Service (part 94) do not have to include their station identification. Absent the requirement for station identification, transmitters must have their station authorization posted nearby so that Commission field personnel, while investigating interference complaints, can verify that a particular transmitter is operating in conformance with the terms of its authorization. Absent this requirement, the solution of interference cases would be needlessly delayed.

OMB Number: 3060–0281.

Title: Section 90.651, Supplemental reports required of licensees authorized under this subpart.

Action: Extension of a currently approved collection/no change.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: Annually and on occasion reporting.

Estimated Annual Burden: 16,408 responses; 0.167 hours average burden per response; 2,740 hours total annual burden.

Needs and Uses: The radio facilities addressed in this subpart of the Rules are allocated on and governed by regulations designed to award facilities on a need basis determined by the number of mobile units served by each base station. This is necessary to avoid frequency hoarding by applicants. Other trunked system licensees must report the number of mobile units being served annually, and at the time of filing applications for renewal of licenses. The information is used by FCC personnel to prevent frequency hoarding. This is necessary to fulfill the Commission's responsibility to effectively manage the spectrum.

OMB Number: 3060–0272.

Title: Section 94.31, Supplemental information to be submitted with applications.

Action: Extension of a currently approved collection/no change.

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 4,300 responses; 2 hours average burden per response; 8,600 hours total annual burden.

Needs and Uses: Section 94.31 requires applicants for private operational-fixed microwave facilities to submit supplementary information with their applications for station authorization. Information required includes statements on proposed operational use of the frequencies requested, as well as a system diagram, and if relevant to the applicant's proposed use of the station, statements regarding developmental operation; operation at temporary locations, air navigation hazard information for high towers. This information is used to assure compliance with the Commission's allocation scheme for microwave frequencies. The data collected is used by FCC staff to determine if the grant of a particular application is in conformance with the Commission's rules. Absent this information, efficient use of the spectrum would be degraded as incompatible operations interfered with each other in radio operating environments ill-designed for the applicant's proposed operation. Compliance would be impossible to monitor including rules designed to minimize the hazard to civil aviation from high tower facilities near airports.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–1108 Filed 1–14–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–930–DR]

Texas; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–930–DR), dated December 26, 1991, and related determinations.

DATES: January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

NOTICE: The notice of a major disaster for the State of Texas, dated December 26, 1991, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 26, 1991:

Polk County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92–1063 Filed 1–14–92; 8:45 am]

BILLING CODE 6718–02–M

Advisory Committee of the National Earthquake Hazards Reduction Program (NEHRP); Open Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app. section 10(a)(2)), announcement is made of the following committee meeting:

Name: National Earthquake Hazards Reduction Program (NEHRP) Advisory Committee.

Dates of Meeting: January 27–29, 1992.

Place: Marriott Suites, Alexandria, Virginia.

Time: January 27—9 a.m. to 9 p.m.; January 28—9 a.m. to 5:10 p.m.; January 29—9 a.m. to 12 noon.

Proposed Agenda: The Committee will discuss the topic of earthquake engineering and how it is addressed by NEHRP.

The meeting will be open to the public with approximately ten seats available on a first-come, first-served basis. All members of the public interested in attending the meeting should contact Brian Cowan at 202–646–2821.

Minutes of the meeting will be prepared by the Committee and will be available for public viewing at the Federal Emergency Management Agency, Office of Earthquakes and Natural Hazards, 500 C Street, SW., room 625, Washington, DC. Copies of the minutes will be available upon request 45 days after the meeting.

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92–932 Filed 1–14–92; 8:45 am]

BILLING CODE 6718–01–M

U.S. Fire Administration, Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Date of Meeting: February 2–3, 1992.

Place: National Emergency Training Center, National Fire Academy, G Building, Conference Room, Emmitsburg, Maryland.

Time: February 2 12 noon–5 p.m. (Quarterly Meeting). February 3 a.m.—Agenda Completion.

Proposed Agenda: Old Business, New Business, On-Campus Program Survey.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301-447-1117) on or before January 31, 1992.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Administrator's Office, U.S. Fire Administration, Federal Emergency Management Agency, 16825 South Seton Avenue, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: December 10, 1991.

Olin L. Greene,

U.S. Fire Administrator.

[FR Doc. 92-935 Filed 1-14-92; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Gordon M. Dobberstein; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 5, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Gordon M. Dobberstein, Gary, Minnesota; to acquire an additional 19.02 percent of the voting shares of Oppegard Agency, Inc., Moorhead, Minnesota, for a total of 29.88 percent.

Board of Governors of the Federal Reserve System, January 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1003 Filed 1-14-92; 8:45 am]

BILLING CODE 6210-01-F

Mid-Missouri Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 5, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mid-Missouri Bancshares, Inc., Nevada, Missouri; to acquire 100 percent of the voting shares of Tri-County State Bank, El Dorado Springs, Missouri.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. CBH, Inc., Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Charter National Bank-Colonial, Houston, Texas, and Charter National Bank-Houston, Houston, Texas.

2. Minden Bancshares, Inc., Minden, Louisiana; to merge with Webster Bancshares, Inc., Minden, Louisiana, and thereby indirectly acquire Webster Bank & Trust Company, Minden, Louisiana.

Board of Governors of the Federal Reserve System, January 9, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1004 Filed 1-14-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[FILE No. 891-0048]

Debes Corp., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, six Rockford, Illinois-area nursing homes and two corporations that own and operate nursing homes from entering into agreements to boycott temporary nurse registries or to fix prices charged by such registries. In addition, the order would prohibit, for ten years, any agreement with any other respondent to purchase or use the services of any particular temporary nurse registry.

DATES: Comments must be received on or before March 16, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., suite 1437, Chicago, IL 60603. (312) 353-4423.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of certain acts and practices of Debes

Corporation, a corporation, Alama Nelson Manor, Inc., a corporation, Park Strathmoor Corporation, a corporation, Beverly Enterprises, Inc., a corporation, and its subsidiary, Beverly Enterprises—Illinois, Inc., Fairview Plaza Limited Partnership, a limited partnership, doing business as Fairview Plaza Nursing Home, The Neighbors, Inc., a corporation, and Yorkdale Health Center, Inc., a corporation (hereinafter sometimes referred to as "Debes," "Alma Nelson," "Park Strathmoor," "Beverly," "Beverly-Illinois," "Fairview Plaza," "Neighbors" and "Yorkdale" respectively, or as "proposed respondents," collectively), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from engaging in the acts and practices being investigated,

It is Hereby Agreed by and between proposed respondents and their duly authorized attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondents are corporations or partnerships organized, existing, and doing business under and by virtue of the laws of the States of Illinois, Delaware or California, with their offices and principal places of business located at the addresses listed below.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law:

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the pubic record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For purposes of this order, the following definitions shall apply:

(A) *Person* means any individual, partnership, association, company, or corporation, and includes any trustee, receiver, assignee, lessee, or personal representative of any person herein defined.

(B) *Debes* means the Debes Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 6122 Mulford Village Drive, Rockford, Illinois 61107, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(C) *Park Strathmoor* means Park Strathmoor Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 5668 Strathmoor, Rockford, Illinois 61107, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(D) *Alma Nelson* means Alma Nelson Manor, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 550 S. Mulford Rd., Rockford, Illinois 61107, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(E) *Beverly* means Beverly Enterprises, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at 155 Central Shopping Center, Fort Smith, Arkansas 72903, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(F) *Beverly-Illinois* means Beverly Enterprises—Illinois, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office located at 155 Central Shopping Center, Fort Smith, Arkansas 72903, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(G) *Neighbors* means The Neighbors, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 611 W. Second, P.O. Box 585, Byron, Illinois 61010, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(H) *Fairview Plaza* means the Fairview Plaza Limited Partnership, doing business as the Fairview Plaza Nursing Home, a limited partnership organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 321 Arnold, Rockford, Illinois 61108, and its principal office located at 6600 N. Lincoln Ave., suite 300, Lincolnwood, Illinois 60645, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(I) *Yorkdale* means Yorkdale Health Center, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 2313 N. Rockton Ave., Rockford, Illinois 61103, as well as its officers, directors, employees, agents, subsidiaries, divisions, successors and assigns.

(J) *Temporary nurses registry* means any person that supplies nursing personnel on a temporary basis.

(K) *The Rockford area* means the counties of Winnebago, Boone, and Ogle in the State of Illinois.

II.

It is ordered that each respondent shall forthwith, directly, indirectly, or through any corporate, or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, cease and desist from:

A. Entering into, attempting to enter into, organizing, adhering to or maintaining any agreement, understanding, or program with any other purchaser or user of nursing services to:

1. Refuse, or threaten to refuse, to use the services of any temporary nurses registry; or

2. Fix, stabilize, or otherwise interfere or tamper with the prices charged by any temporary nurses registry;

B. For a period of five (5) years after the date this order becomes final, communicating to any other respondent any information concerning its own or any other nursing home's intention or decision to use, refuse to use, to threaten to refuse to use the services of any temporary nurses registry for any nursing home in the Rockford area.

C. For a period of ten (10) years after the date this order becomes final, agreeing with any other respondent to purchase or use the services of a particular temporary nurses registry or of a particular group of temporary nurses registries.

III.

Provided, however, that this order shall not prohibit any agreement solely between any individual respondent and any entity or entities that control or are controlled by that respondent;

Provided further, that section II (A) and (B) of this order shall not be construed to prohibit respondents from entering any agreement that is reasonably necessary for the formation or operation of a joint venture that is lawful under the antitrust laws, except a joint venture prohibited by Section II(C) of this order; and

Provided further, that as to respondent Beverly Enterprises, Inc., this order shall apply only to conduct or practices in or affecting the sale of temporary nurses' services to nursing home facilities in the State of Illinois.

IV.

It is further ordered that each respondent shall:

A. Within thirty (30) days after the date this order becomes final, distribute a copy of the complaint and order to:

1. Each of its directors and officers or, in the case of Fairview Plaza, general partners, and to each of its nursing home administrators and directors of nursing employed by facilities in the Rockford area;

2. The Illinois Health Care Association, the Rockford Chapter of the Illinois Health Care Association, the Extended Care Nursing Association and every member of the Directors of Nursing Council of the Illinois Health Care Association;

3. Each temporary nurses registry from which it has purchased services for any nursing home facility located in the Rockford area since January 1988.

B. Within sixty (60) days after this order becomes final, and annually thereafter for a period of three (3) years on the anniversary date on which this order becomes final, and at any time the Commission, by written notice, may require, file a verified written report with the Commission setting forth in detail the manner and form in which the respondent has complied and is complying with this order.

C. Notifying the Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent that may affect its compliance obligations arising out of this order.

Analysis of Proposed Consent Orders to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, five identical agreements from eight proposed respondents to proposed consent orders. The agreements are from: (1) Debes Corporation, Alma Nelson Manor, Inc., and the Park Strathmoor Corporation; (2) Beverly Enterprises, Inc., and its subsidiary, Beverly Enterprises—Illinois, Inc.; (3) Fairview Plaza Limited partnership, a limited partnership, doing business as Fairview Plaza Nursing Home; (4) The Neighbors, Inc.; and (5) Yorkdale Health Center, Inc.

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The Complaints

Complaints prepared for issuance along with the proposed orders allege that the proposed respondents have violated Section 5 of the Federal Trade Commission Act by combining or conspiring with each other to conduct a boycott of a nurses registry in the Rockford area. ("The Rockford area" means the counties of Winnebago, Boone, and Ogle in the State of Illinois.) The complaints also allege the proposed respondents threatened to boycott other registries operating in the Rockford area and otherwise attempted to restrain competition among themselves in the hiring of temporary Certified Nursing Assistants, known as CNA's.

All of the proposed respondents are, or have been, engaged in the business of owning or operating nursing homes, also known as long-term health care facilities, within the Rockford area. Except to the extent that competition has been restrained as alleged in the complaints, the respondents have been and, with the exception of Beverly Enterprises—Illinois, Inc. are now in competition among themselves and with other providers of nursing home services in the Rockford area.

Nurses registries, sometimes referred to as "temporary nurses registries" or "nursing pools" supply nursing personnel such as RN's (Registered Nurses), LPN's (Licensed Practical Nurses), and CNA's (Certified Nursing Assistants) on a temporary basis to nursing homes. Absent restraints on competition, nurses registries compete among themselves to provide temporary nursing services at the price and quality nursing homes desire. Competition among nursing homes for temporary nursing services ensures an adequate supply of quality nurses.

The proposed complaints allege that in October 1988, one of the nurses registries serving the Rockford area, the Alpha Christian Registry ("Alpha Christian"), announced a substantial increase in its prices to nursing homes for temporary CNA services. The proposed respondents discussed the new Alpha Christian prices and the prices of the other nurses registries in the Rockford area at meetings

throughout November and December 1988. The proposed respondents agreed to and did send letters to Alpha Christian stating that they would not use Alpha Christian temporary CNA's due to excessive prices. The proposed respondents also did in fact cease using temporary CNA's supplied by Alpha Christian. After boycotting Alpha Christian, the proposed respondents further conspired to threaten to boycott the other registries in the Rockford area, and they communicated this threat by sending copies of the letter they had sent to Alpha Christian to the other registries.

The complaints also allege that the proposed Respondents' conspiracy to eliminate competition among the nursing homes for temporary CNA services has had the following effects, among others:

A. Restricting the supply of quality CNA services by depressing the price of such services;

B. Interfering in the process by which individual providers of temporary CNA services make independent decisions regarding the price of such services; and

C. Limiting consumers' access to the price and quality of nursing services they desire.

The Proposed Consent Order

The proposed order would prohibit each proposed respondent from entering into, attempting to enter into, organizing, adhering to or maintaining any agreement, understanding, or program with any other purchaser or user of nursing personnel services to:

1. Refuse, or threaten to refuse, to use the services of any temporary nurses registry; or

2. Fix, stabilize, or otherwise interfere or tamper with the prices charged by temporary nurses registries.

Except for a joint venture prohibited by the proposed order, the proposed respondents are not prohibited by the order from engaging in any conduct or entering any agreement that is ancillary to and reasonably necessary for the formation or operation of a joint venture that would otherwise be lawful under the antitrust laws.

The proposed order also prohibits, for five (5) years, each proposed respondent from communicating to any other respondent any information concerning its own or any other nursing home's intention or decision to refuse or to threaten to refuse to use the services of any temporary nurses registry at any nursing home in the Rockford area.

Under the proposed order each respondent shall, for a period of ten (10) years, cease and desist from agreeing with any other respondent to purchase or use the services of a particular temporary nurses registry or of a particular group of temporary nurses registries. The order, however, does not prohibit agreements between any individual respondent and any entity or entities that control or are controlled by that respondent. And, with regard to Beverly Enterprises, Inc., the order applies only to its conduct or practices in or affecting the sale of temporary nurses' services to nursing home facilities in the State of Illinois.

The order also requires each respondent to distribute a copy of the complaint and order to each of respondent's directors, officers or general partners and to each of its nursing home administrators and directors of nursing employed by respondents at facilities in the Rockford area. The proposed respondents must also distribute copies of the complaint and order to each temporary nurses registry from which it has purchased services, since January 1988, for any of respondents' facilities located in the Rockford area. In addition, copies of the complaint and order must be distributed to the Illinois Health Care Association, the Rockford Chapter of the Illinois Health Care Association, the Extended Care Nursing Association and each member of the Directors of Nursing Council of the Illinois Health Care Association.

The order also requires each respondent to file a compliance report within sixty (60) days after the order becomes final, and annually thereafter for a period of three (3) years and at any time the Commission, by written notice, may require. Each respondent would also be required to notify the Commission at least thirty (30) days prior to any proposed change in itself such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent that may affect its compliance obligations arising out of this order.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the proposed respondents that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

[FR Doc. 92–1034 Filed 1–14–92; 8:45 am]

BILLING CODE 6750–01–M

[File No. 911–0110]

Mannesmann, A.G.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, a German company to acquire Rapistan Corp., but would require the respondent to divest the Buschman Co. within 12 months to a Commission approved buyer, and to hold separate the assets in the interim. If the divestiture is not completed within 12 months, the Commission would appoint a trustee to complete the divestiture. In addition, respondent would be required for 10 years to obtain Commission approval prior to acquiring any business that manufactures and sells in the United States certain conveyor systems.

DATES: Comments must be received on or before March 16, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St., & Pa. Ave., NW., Wash., DC 20580.

FOR FURTHER INFORMATION CONTACT: Ann Malester or Michael Moiseyev, FTC/S–2308, Washington, DC 20580. (202) 326–2582 or 326–3106.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to divest, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Mannesmann, A.G. of substantially all of the assets of Rapistan Corp. ("Rapistan"), a wholly owned subsidiary of Lear Siegler Holdings Corp. ("LSH"), and it now appearing that Mannesmann,

A.G., hereinafter sometimes referred to as "proposed respondent" or "Mannesmann", is willing to enter into an Agreement Containing Consent Order ("agreement") to divest all, or substantially all, assets and the whole of the share capital of The Buschman Company ("Buschman"), to cease and desist from certain acts, and to provide for certain other relief,

It is hereby agreed by and between Mannesmann, by its duly authorized officer and its attorneys, and counsel for the Commission That:

1. Proposed respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the Federal Republic of Germany, with its office and principal place of business at Mannesmannufer 2, Postfach 55 01, 4000 Dusseldorf, 1, F.R. Germany. Mannesmann's wholly owned subsidiary, Mannesmann Capital Corporation ("MCC"), is a corporation organized, existing, and doing business under and by virtue of the laws of New York, with its office and principal place of business at 450 Park Avenue, 24th, Floor., New York, New York 10022. MCC does business in the United States.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint hereto attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint hereto attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint hereto attached, its decision containing the following order to divest and cease and desist, and for other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the agreement or the order may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

As used in this order, the following definitions shall apply:

a. *Mannesmann* means Mannesmann, A.G., its predecessors, successors and assigns, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates that Mannesmann A.G. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, Mannesmann A.G. controls, directly or indirectly, and their respective successors and assigns.

B. *Acquisition* means the acquisition by MCC, a wholly-owned subsidiary of Mannesmann, and Demag Acquisition Corporation, a wholly owned subsidiary of MCC, of substantially all of the assets of Rapistan Corp., a wholly-owned subsidiary of Lear Siegler Holdings Corp.

C. *The Buschman assets* means all of the share capital and all, or substantially all, of the assets of The Buschman Company, a wholly owned subsidiary of MCC.

D. *Conveyor systems* means high speed, light-to-medium duty unit handling roller and belt conveyors for distribution end uses that transport, convey, divert, scan and sort cartons, each of which generally weighs no more than 75 pounds, at a rate of speed of no less than 80 cartons per minute.

II

It is ordered That:

A. Within twelve (12) months of the date this order becomes final, Mannesmann shall divest, absolutely and in good faith, the Buschman assets.

B. Mannesmann shall divest the Buschman assets only to an acquirer or acquirers that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission which approvals shall not unreasonably be withheld. The purpose of the divestiture of the Buschman assets is to ensure the continuation of the Buschman assets as an ongoing, viable enterprise and to remedy the lessening of competition resulting from the proposed acquisition as alleged in the Commission's complaint.

C. Mannesmann shall comply with all terms of the Hold Separate Agreement ("Hold Separate"), attached hereto and made a part hereof as appendix I. Said Hold Separate shall continue to be in effect until such time as the Hold Separate provides.

D. Mannesmann shall take such action as is necessary and reasonable to maintain the viability and marketability of the Buschman assets and shall not cause or permit destruction, removal, wasting, deterioration, or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear.

III

It is further ordered That

A. If Mannesmann has not divested, absolutely and in good faith and with the Commission's prior approval, the Buschman assets as required by paragraph II of this agreement, Mannesmann shall consent to the appointment by the Commission of a trustee to divest the Buschman assets. In

the event the Commission or the Attorney General brings an action pursuant to section 5 (*l*) of the Federal Trade Commission Act, 15 U.S.C. 45 (*l*), or any other statute enforced by the Commission, Mannesmann shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Mannesmann to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this order, Mannesmann shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Mannesmann, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Buschman assets.

3. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission or by the court (in the case of a court-appointed trustee). Provided, however, the Commission may only extend the trustee's divestiture period one time for such reasonable time as the trustee may request, not to exceed one (1) additional year.

4. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Buschman assets, or any other relevant information as the trustee may reasonably request. Mannesmann shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Mannesmann shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Mannesmann shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to Mannesmann's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II.B of this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each prospective acquirer of the Buschman assets. The divestiture shall be made in the manner set out in paragraph II; provided, however, if the trustee receives bona fide offers from more than one prospective acquirer or acquirers, and if the Commission approves more than one such proposed acquirer, the trustee shall divest to the acquirer selected by Mannesmann from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Mannesmann, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Mannesmann, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission or, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Mannesmann and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Buschman assets.

7. Mannesmann shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trusteeship, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the trustee.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission or, in the case of a court-appointed trustee, of the court, Mannesmann shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture in accordance with this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture in accordance with this order.

11. The trustees shall have no obligation or authority to operate or maintain the Buschman assets.

12. The trustee shall report in writing to Mannesmann and to the Commission every thirty (30) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Mannesmann has fully complied with the provisions of paragraphs II and III of this order, Mannesmann shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. Mannesmann shall include in its compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture, including the identity of all parties contacted. Mannesmann also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

V

It is further ordered That, for a period commencing on the date this order becomes final, and continuing for ten (10) years, Mannesmann shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, any interest in, assets of, or the whole or any part of the stock or share capital of, any person or business that is engaged in the manufacture and sale in the United States of conveyor systems. One year from the date this order becomes final and annually

thereafter for nine years on the anniversary date of this order, Mannesmann shall file with the Secretary of the Federal Trade Commission a verified written report of its compliance with this paragraph.

VI

It is further ordered That, if, in the absence of an acquisition agreement with an entity that neither owns nor operates nor has any interest in assets located in the United States, engaged in the manufacture or sale of conveyor systems (hereinafter "acquired entity"), Mannesmann announces its intention to acquire or commences an acquisition of, any interest in the acquired entity and, before Mannesmann obtains sufficient control of the acquired entity to prevent an acquisition by the acquired entity, such acquired entity acquires any of the outstanding stock or share capital of, or any other interest in assets used for the manufacture and sale of conveyor systems (hereinafter "third entity"), or said acquired entity acquires any assets used in the manufacture and sale of conveyor systems, if approval of such acquisition would be required pursuant to paragraph V, Mannesmann may, in lieu of obtaining prior approval of such acquisition under paragraph V in this order, comply with each of the requirements of this paragraph VI of this agreement. In order to make such an acquisition without obtaining the Commission's prior approval pursuant to paragraph V, Mannesmann shall:

(A) Notify the Commission as soon as practicable, and in any event, within three (3) days of Mannesmann's learning of the acquisition by the acquired entity of any interest in a third entity, as described in paragraph VI of this order. Such notification shall follow the format for filings set forth in the appendix to part 803 of title 16 of the Code of Federal Regulations, as amended. Such notification shall be in addition to any reporting, waiting period, and other requirements applicable to the transaction under section 7A of the Clayton Act, 15 U.S.C. 18a and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR parts 801, 802, 803.

(B) In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, Mannesmann shall comply with all terms of the Hold Separate, attached to this order and made a part hereof. Said Hold Separate shall take effect as soon as Mannesmann has sufficient control over the acquired entity to satisfy the terms of the Hold Separate and shall continue in effect until such time as Mannesmann has divested all the conveyor systems assets acquired by the acquired entity or until such other time as the Hold Separate provides. In the case where the acquired entity acquired stock or share capital of the third entity, as soon as Mannesmann has sufficient control over the acquired entity to do so, Mannesmann shall place all stock and share capital of the third entity in a non-voting trust until said stock or share capital is divested.

(C) Within three (3) months of the date when Mannesmann has sufficient control over the acquired entity to divest assets, stock or share capital of the acquired entity, Mannesmann shall:

1. In the case where the acquired entity acquired stock or share capital of the third entity, divest, absolutely and in good faith, the stock or share capital of the third entity; or

2. In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, divest, absolutely and in good faith, all the conveyor systems assets of the acquired entity and also divest such additional ancillary assets and effect such arrangements that are necessary to assure the viability and competitiveness of the conveyor systems assets of the acquired entity.

(D) Mannesmann shall divest the stock or share capital of the third entity or the conveyor systems assets of the acquired entity only to an acquiring entity or entities that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, Mannesmann shall demonstrate the viability and competitiveness of the conveyor systems assets of the acquired entity in its application for approval of a proposed divestiture. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture and sale of conveyor systems, and to remedy any lessening of competition resulting from the acquisition.

(E) In the case where the acquired entity acquired assets used in the manufacture and sale of conveyor systems, Mannesmann shall take such action as is necessary to maintain the viability, competitiveness and marketability of the conveyor systems assets of the acquired entity and shall not cause or permit the destruction, removal or impairment of any assets or businesses it may have to divest except in the ordinary course of business and except for ordinary wear and tear.

(F) If Mannesmann has not divested, absolutely and in good faith and with the Commission's prior approval, the stock or share capital of the third entity or the conveyor systems assets of the acquired entity within three (3) months of the date when Mannesmann has sufficient control over the acquired entity to divest assets, stock or share capital of the acquired entity, Mannesmann shall consent to the appointment by the Commission of a trustee to divest:

1. The stock or share capital of the third entity; or

2. The conveyor systems assets of the acquired entity and to divest such additional ancillary assets of the acquired entity and effect such arrangements that may be necessary to assure the viability and competitiveness of the conveyor systems assets of the acquired entity.

(G) In the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Mannesmann shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Mannesmann to comply with this order.

(H) If a trustee is appointed by the Commission or a court pursuant to paragraph VI.(F) of this order, Mannesmann shall consent to the terms and conditions regarding the trustee's powers, authorities, duties and responsibilities set out in paragraph III.B. of this order. Provided, however, that each reference to "the Buschman assets" in paragraph III.B. of this order shall, for the purposes of this paragraph VI, mean either the "stock or share capital of the third entity" or the "conveyor systems assets of the acquired entity."

VII

It is further ordered That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Mannesmann made to MCC, Mannesmann shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Mannesmann relating to any matters contained in this consent order; and

B. Upon five (5) days notice to Mannesmann, and without restraint or interference from Mannesmann, to interview officers or employees of Mannesmann, who may have counsel present, regarding such matters.

VIII

It is further ordered That Mannesmann shall notify the Commission at least thirty (30) days prior to any change that may affect compliance obligations arising out of the consent order, including but not limited to, any change in the corporation such as dissolution, assignment, or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, and any other change.

Appendix I

Hold Separate Agreement

This Hold Separate Agreement ("Hold Separate") is by and among Mannesmann, A.G. ("Mannesmann" as defined in paragraph I of the proposed order), a corporation organized, existing, and doing business under and by virtue of the laws of the Federal Republic of Germany, with its office and principal place of business at Mannesmann, 2, Postfach 55 01, 4000 Dusseldorf, 1, F.R. Germany; Mannesmann's wholly owned subsidiary, Mannesmann Capital Corporation ("MCC"), with its offices and principal place of business at 450 Park Avenue, 24th Floor, New York, N.Y. 10022, which does business in the United States; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "parties").

Premises

Whereas, on June 28, 1991, MCC, a wholly-owned subsidiary of Mannesmann, and Demag Acquisition Corporation, a wholly-owned subsidiary of MCC, entered into an agreement of purchase and sale with Lear Siegler Holdings, Corp. ("LSH") to acquire substantially all of the assets of Rapistan Corp. ("Rapistan"), LSH's wholly-owned indirect subsidiary ("acquisition"); and

Whereas, Rapistan, with its principal office and place of business located at 507 Plymouth Avenue, NE., Grand Rapids, Michigan 49505, manufacturers and sells, among other things, conveyor systems, as defined in paragraph I of the proposed order; and

Whereas, The Buschman Company ("Buschman"), with its principal office and place of business located at 10045 International Boulevard, Cincinnati, Ohio 45246, manufacturers and sells, among other things, conveyor systems, as defined in paragraph I of the proposed order, and is a wholly owned subsidiary of MCC; and

Whereas, the Commission is now investigating the acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached agreement containing consent order ("agreement"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of Mannesmann's conveyor systems, as defined in paragraph I of the proposed order, which it operates through Buschman, during the period prior to the final acceptance and issuance of the order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Buschman assets, as defined in paragraph I of the proposed order, and the Commission's right to have Buschman continued as a viable competitor; and

Whereas, the purpose of the Hold Separate and the agreement is to:

1. Preserve Buschman as a viable, ongoing, independent manufacturer and supplier of conveyor systems, as defined in the order, pending divestiture of the Buschman assets as defined in paragraph I of the proposed order,

2. Remedy any anticompetitive effects of the Acquisition,

3. Preserve the Buschman assets as viable, ongoing assets engaged in the same business in which they are presently employed pending divestiture; and

Whereas, Mannesmann's entering into this Hold Separate shall in no way be construed as an admission by Mannesmann that the acquisition is illegal; and

Whereas, Mannesmann understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this agreement.

Now, therefore, the parties agree, upon the understanding that the commission has not yet determined whether the acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the agreement for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the consent agreement, it will not seek further relief from Mannesmann with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this hold separate and the agreement to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of Buschman pursuant to the agreement, as follows:

1. Mannesmann agrees to execute and be bound by the attached agreement.

2. Mannesmann agrees that from the date this Hold Separate is accepted until the earlier of the dates listed below in subparagraphs 2(a) through 2(c), it will comply with the provisions of this Hold Separate:

a. Three (3) business days after the Commission withdraws its acceptance of the consent agreement pursuant to the provisions of § 2.34 of the Commission's Rules;

b. 120 days after publication in the Federal Register of the proposed order, unless by that date the Commission has issued its order in disposition of this proceeding; or

c. The day after the divestiture obligations required by the proposed order have been satisfied.

3. Mannesmann currently operates Buschman as an indirect, wholly-owned subsidiary, and as a direct wholly-owned subsidiary of MCC. Buschman management reports to The Buschman Company Board of Directors ("Buschman Board"). The Buschman Board is a five member body which consists of the following individuals: Michael D. Green, John Slater, Klaus Kirchesch, Dr. Helmut Noack, and Wolfgang Vogl. Dr. Helmut Noack and Wolfgang Vogl are current Mannesmann Demag A.G. officers having direct operational responsibility for Mannesmann's worldwide belt and roller conveyor business, and they will have responsibility for the operation of the Rapistan assets once the acquisition has been completed. Therefore, in order to ensure the complete independence and viability of Buschman and to assure that no competitive information is exchanged between Buschman and any of the other conveyor operations of Mannesmann, Mannesmann will hold Buschman's assets and businesses separate and apart on the following terms and conditions:

a. Buschman, as it is presently constituted, shall be held separate and apart and shall be operated independently of Mannesmann (meaning here and hereinafter, Mannesmann excluding Buschman); provided however that Mannesmann may exercise only such direction and control over Buschman as is necessary to assure compliance with this Hold Separate, agreement, and order.

b. Mannesmann shall not exercise direction or control over, or influence directly or indirectly, Buschman or any of its operations or businesses; provided, however, that Mannesmann may exercise only such direction and control over Buschman as is necessary to assure compliance with this Hold Separate, agreement, and order.

c. Mannesmann shall take such action as is necessary and reasonable to maintain the viability and marketability of the Buschman assets and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or businesses it may have to divest except in the ordinary

course of business and except for ordinary wear and tear.

d. Within five (5) days of the date this Hold Separate is accepted by the Commission, Mannesmann shall remove Dr. Helmut Noack and Wolfgang Vogl from the Buschman Board and appoint Johann Lottner, Director of the accounting department for Mannesmann Demag, and John P. Dunn, a partner with Jones, Day, Reavis & Pogue, neither of whom have any present responsibilities for the management of any of Mannesmann's conveyor systems business in any part of the world. Each Buschman Board member, who is also a director, officer, employee, agent, or representative of Mannesmann, shall enter into a confidentiality agreement with Mannesmann agreeing to be bound by the terms and conditions of appendix A, appended hereto.

e. The Buschman Board shall have exclusive authority for managing Buschman.

f. The individuals on the Buschman Board shall not be involved in any way in the marketing, selling, manufacturing, or management of Rapistan, or any other business of Mannesmann involved in the marketing, selling, manufacturing, or management of conveyor assets. Each of these individuals, the management of Buschman, and Mannesmann's directors, officers, or employees responsible for the operation or management of Rapistan and all other Mannesmann conveyor assets will receive the notification attached as appendix A hereto.

g. If necessary to assure compliance with the terms of this Hold Separate, the agreement, and the order, Mannesmann may, but is not required to, assign an individual to Buschman for the purpose of overseeing such compliance ("on-site person"). The on-site person shall have access to all officers and employees of Buschman and such records of Buschman as he deems necessary and reasonable to assure compliance. Such individual shall enter into a confidentiality agreement with Mannesmann agreeing to be bound by the terms and conditions of appendix A, appended hereto.

h. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the acquisition, defending investigations or litigation, or negotiating agreements to divest assets, Mannesmann shall not receive or have access to, or the use of, any material confidential information about Buschman or the activities of the Buschman Board in managing the business that is not in the public domain. Nor shall the Buschman Board, any individual member of the Buschman Board, or the on-site person receive or have access to, or the use of, any material confidential information about Mannesmann's conveyor assets or related businesses or activities not in the public domain. MCC may receive on a regular basis from Buschman aggregate financial information necessary and essential to allow MCC to prepare United States consolidated financial reports, tax returns, and personnel reports. Such information, when consolidated with data from other United States operations of Mannesmann by MCC, may be made available to Mannesmann. "Material confidential information," as used herein, means competitively sensitive or proprietary information, not independently known to Mannesmann from sources other than the Buschman Board and includes, but is not limited to, customer lists, price lists, bidding lists, marketing methods, marketing plans, sales plans, long range planning documents, patents, technologies, processes, or other trade secrets.

(i) Except as required by subparagraph (d) above, Mannesmann shall not remove or replace any member of the Buschman Board, or the on-site person except as provided below:

(i) Mannesmann may remove and replace anyone for cause, death, disability, or resignation from service with Mannesmann;

(ii) Mannesmann may remove any member of the Buschman Board if a conflict of interest develops in that member's role as a potential purchaser of the Buschman Assets and that role as a manager of Buschman;

(iii) Subject to the requirements of paragraph 3 of the Hold Separate, Mannesmann may replace any member of the Buschman Board or officer of Buschman after providing the Commission with sixty (60) days advance written notice; and

(iv) Mannesmann may remove any individual who interferes in any way with Mannesmann's ability to comply with the terms of this Hold Separate, the agreement, or the order.

Provided, however, that each individual newly appointed to the Buschman Board, pursuant to this subparagraph must conform to all terms and condition of this Hold Separate.

(j) All earnings and profits of Buschman shall be retained separately in Buschman pending divestiture. Mannesmann shall provide Buschman with sufficient working capital to operate at the current rate of operation.

(k) Should the Commission seek in any proceeding to compel Mannesmann to divest itself of the Buschman assets as defined in the proposed order, Mannesmann shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the acquisition. Mannesmann also waives all rights to contest the validity of this Hold Separate.

4. To the extent that this Hold Separate or agreement requires Mannesmann to take, or prohibit Mannesmann from taking, certain actions which otherwise may be required or prohibited by contract, Mannesmann shall abide by the terms of the Hold Separate or order and shall not assert as a defense such contract requirements in a civil penalty action or any other action brought by the Commission to enforce the terms of this Hold Separate or order.

5. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request with reasonable notice to Mannesmann made to MCC, its principal office in the United States, Mannesmann shall permit any duly authorized representative or representatives of the Commission:

(a) Access during the office of hours of Mannesmann and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Mannesmann relating to compliance with this Hold Separate;

(b) Upon five (5) days notice to Mannesmann, and without restraint or interference from Mannesmann, to interview officers or employees of Mannesmann, who may have counsel present, regarding any such matters.

6. This Hold Separate shall not be binding until approved by the Commission.

Appendix A

Notice of Divestiture and Requirement for Confidentiality

Mannesmann, A.G., ("Mannesmann") has entered into a Consent Agreement and Hold Separate Agreement with the Federal Trade Commission relating to the Divestiture of its subsidiary, The Buschman Company ("Buschman"). Until after the Commission's Order becomes final and Buschman is divested, it must be managed and maintained as a separate, ongoing business, independent of all other competing product lines of Mannesmann. All competitive information relating to Buschman must be retained and maintained by the persons responsible for the management of Buschman (including the Buschman Board of Directors) on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any competing Mannesmann business, including the operations of Rapistan Corp. Similarly, all such persons responsible for the management of Mannesmann's competing businesses shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such businesses to or with any person responsible for Buschman.

Any violation of the consent Agreement or the Hold Separate Agreement, incorporated by reference as part of the Consent Order, subjects the violator to civil penalties and other relief as provided by law.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an Agreement containing a proposed Consent Order from Mannesmann, A.G.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

The proposed Complaint alleges that Mannesmann's acquisition of the assets of Rapistan Corp., from Lear Siegler Holdings Corp., would acquire a dominant position that would result in violation of section 7 of the Clayton Act in the market for the manufacture and sale of high speed, light to medium duty, unit handling conveyor systems for use in warehouse distribution. It also alleges that the relevant geographic market is the United States and that this market is highly concentrated and that entry into this market is extremely difficult. It alleges that as a result of the acquisition, competition between Mannesmann and Rapistan would be eliminated and the acquisition would result in a highly-concentrated relevant market, and the likelihood of collusion in that market would be greatly increased.

The proposed Agreement and Order provides that Mannesmann may acquire the Rapistan assets, but it must divest either the voting securities or the assets of its indirect wholly owned subsidiary, The Buschman Company, to a third party approved in advance by the Commission within twelve (12) months. If the divestiture is not completed within twelve (12) months, the Commission will appoint a trustee to complete the divestiture. It also provides that for a period of ten years, Mannesmann may not acquire any interest in any other firm in the relevant market without prior approval from the Commission.

The anticipated competitive effect of the proposed Order will be to assure that competition will continue in the United States market for the manufacture and sale of high speed, light to medium duty, unit handling conveyor systems for use in warehouse distribution.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the Agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Deborah K. Owen in the Matter of Mannesmann AG/Rapistan

[File No. 911-0110]

Based on the evidence available to the Commission in this matter, I have concurred in the decision to accept this consent agreement for public comment. It appears that a combination of the two parties in the market alleged in the complaint could facilitate anticompetitive price discrimination against certain customers.

[FR Doc. 92-1035 Filed 1-14-92; 8:45 am]

BILLING CODE 6750-01-M

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Grant of petition for exemption.

SUMMARY: On March 26, 1991 (56 FR 12533), the Commission published a request for public comment on a petition for exemption from the requirements of its trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" that had been filed by Mercedes-Benz of North America, Inc. The Commission now grants the petition and determines that the provisions of 16 CFR part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of motor vehicle dealerships by Mercedes-Benz.

EFFECTIVE DATE: January 15, 1991.

FOR FURTHER INFORMATION CONTACT: Craig Tregillus, Attorney, PC-H-238, Federal Trade Commission, Washington, DC 20580. (202) 326-2970.

SUPPLEMENTARY INFORMATION:

Order Granting Exemption

In the Matter of a Petition for Exemption from the Trade Regulation Rule Entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" filed by Mercedes-Benz of North America, Inc. (MBNA).

On March 26, 1991, the Commission published a notice in the **Federal Register** soliciting comments on a petition filed by MBNA. MBNA is a wholly owned subsidiary of the Daimler-Benz group, the sole authorized U.S. importer and distributor of vehicles and parts manufactured by Mercedes-Benz Aktiengesellschaft of Stuttgart, Germany. The petition sought an exemption, pursuant to section 18(g) of the Federal Trade Commission Act, from coverage under the Commission's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures."

In accordance with section 18(g), the Commission conducted an exemption proceeding under section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and invited public comment during a 60-day period ending May 28, 1991. After reviewing the petition and the comments received, the Commission has concluded that the Petitioner's request should be granted.

The statutory standard for exemption requires the Commission to determine whether application of the Trade Regulation Rule to the person or class of persons seeking exemption is "necessary to prevent the unfair or deceptive act or practice to which the rule relates." If not, an exemption is warranted.

The abuses that the disclosure remedy of the Franchise Rule is designed to prevent are most likely to occur, as the Statement of Basis and Purpose of the Rule notes, in sales where three factors are present:

(1) A potential investor with a relative lack of business experience and sophistication;

(2) Inadequate time for the investor to review and comprehend the unique and often complex terms of the franchise agreement before making a major financial commitment; and

(3) A significant information imbalance in which the franchisee is unable to obtain essential and relevant facts known to the franchisor about the investment.

The pre-sale disclosures required by the Franchise Rule are designed to negate the effect of any deceptive acts or practices where these conditions are present. The Rule provides investors with the material information they need to make an informed investment decision in circumstances where they might otherwise lack the resources, knowledge, or ability to obtain the information, and thus to protect themselves from deception.

Where the conditions that create a potential for deception in the sale of franchises are not present, however, a regulatory remedy designed to prevent deception is unnecessary. Our review of the record in this proceeding persuades us that an exemption is warranted for that reason. The Petitioner has shown that the conditions that create a potential for abuse are absent, and that there is no likelihood of a pattern or practice of unfair or deceptive acts or practices in the appointment of its automobile dealership franchises for that reason.

The petition and public comment demonstrate that potential Mercedes-Benz dealers are and will continue to be a select group of highly sophisticated and experienced businessmen and women; that they make very significant investments; and that they have more than adequate time to consider the dealership offer and obtain information about it before investing. We note in

particular that Mercedes-Benz maintains only about 400 dealers in the U.S.; that it grants fewer than 25 new dealerships a year, most resulting from the sale by existing dealers of their dealerships; that prospective Mercedes-Benz dealers typically are established dealers for other automobile manufacturers or importers; that total Mercedes-Benz dealership investments range from $1 million to $25 million; and that applicants participate in a two- to three-month approval process that includes extensive information gathering and exchange by the parties.

As a practical matter, investments of this size and scope typically involve knowledgeable investors, the use of independent business and legal advisors, and an extended period of negotiation that generates the exchange of information necessary to ensure that investment decisions are the product of an informed assessment of the potential risks and benefits. The Commission has reviewed the potential for unfair or deceptive acts or practices in connection with the licensing of motor vehicle dealership franchises on four prior occasions since 1980, and found no evidence or likelihood of a significant pattern or practice of abuse by any of the Petitioners. If any such evidence exists, it has not yet been brought to the Commission's attention in this or any of the prior proceedings.

Thus, both the record in this proceeding and all prior experience to date with other Franchise Rule exemptions for automobile dealerships support the conclusion that Petitioner's licensing of new dealers accomplishes what the Rule was intended to ensure. The conditions most likely to lead to abuses are not present in the licensing of dealerships, and the process generates sufficient information to ensure that applicants will be able to make an informed investment decision. For these reasons, the Commission finds that the application of the Franchise Rule to Petitioner's licensing of motor vehicle dealer franchises is not necessary to prevent the unfair or deceptive acts or practices to which the Rule relates.

Accordingly, the Commission has determined that the provisions of 16 CFR part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of motor vehicle dealerships by Mercedes-Benz of North America, Inc.

It is so ordered.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-1033 Filed 1-14-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-42]

Extension of Public Comment Period for Priority Data Needs for 38 Priority Hazardous Substances

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces an extension of the public comment period for the priority data needs for 38 priority hazardous substances. Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604(i)), as amended by the Superfund Amendments and Reauthorization Act (Pub. L. 99-499), requires that ATSDR, in addition to other duties, must assure the initiation of a research program to fill identified data needs for certain hazardous substances.

ATSDR announced the identification of priority data needs for 38 priority hazardous substances in the **Federal Register** on October 17, 1991, (56 FR 52178) with a public comment period through January 15, 1992; a correction notice for this announcement was also published on November 25, 1991 (56 FR 59330). This notice announces an extension of the public comment period through March 2, 1992, in order to allow the public an additional 45 days to review and comment on the identified priority data needs.

DATES: Comments concerning the **Federal Register** notice of October 17, 1991 (56 FR 52178) must be received by March 2, 1992.

ADDRESSES: Comments on this notice should bear the docket control number ATSDR-42 and should be submitted to the Research Implementation Branch, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Research Implementation Branch, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Telephone: 404-639-6015.

SUPPLEMENTARY INFORMATION: Administrative Record: ATSDR has established a public version of this record with materials pertaining to this notice (ATSDR docket control number-42). The public file is available for inspection during the times and at the address given in the **ADDRESSES** section of this notice.

Dated: January 9, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-1029 Filed 1-14-92; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

Diesel Exhaust Exposure and Lung Cancer in Miners; Feasibility Study

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting.

Name: A Feasibility Study of Diesel Exhaust Exposure and Lung Cancer in Miners.

Time and Date: 9 a.m.-12 noon, February 14, 1992.

Place: Hubert H. Humphrey Building, Conference Room 303-305A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an informational meeting to discuss the feasibility study being conducted by NIOSH and the National Cancer Institute, National Institutes of Health. The two primary purposes of the study are to determine:

(1) Whether an adequate number of salt, potash, limestone, and trona miners, who have been exposed to diesel equipment in an underground mine for at least one year, are available to conduct a statistically significant case-control study; and

(2) Whether or not work history data can be linked to possible exposure surrogates in order to develop individual exposure estimates.

The study protocol is available from the contact person. Comments will be accepted by letter until the time of the meeting.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Frank J. Hearl,

NIOSH, CDC, 944 Chestnut Ridge Road, Mailstop 117, Morgantown, West Virginia 26505, telephone 304/291–4423 or FTS 923–4423.

Dated: January 9, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92–1031 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS); Subcommittee on Long-Term Care Statistics; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following meeting:

Name: NCVHS Subcommittee on Long-Term Care Statistics.

Time and Date: 10 a.m.–4:30 p.m., February 4, 1992.

Place: Room 800, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee will discuss the NCHS long-term care data systems with program staff.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050 or FTS 436–7050.

Dated: January 9, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 92–1030 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS); Subcommittee on Mental Health Statistics; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following committee meeting.

Name: NCVHS Subcommittee on Mental Health Statistics.

Time and Date: 9 a.m.–5 p.m., February 14, 1992.

Place: Room 337A–339A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will devote primary attention to the issue of statistical data systems for emotionally disturbed children and adolescents. Particular attention will be given to data availability through health, juvenile justice, social services, and educational systems. The subcommittee will also consider developments in conceptualization of the seriously mentally ill population and proposals for the 1992 statistical publications for the National Institute of Mental Health, National Institutes of Health.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number 301/436–7050 or FTS 436–7070.

Dated: January 9, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92–1032 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 91M–0507]

EDAP International Corp.; Premarket Approval of EDAP LT.01 Lithedap Shock Wave Lithotripter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by EDAP International Corp., Amherst, MA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the EDAP LT.01 Lithedap Shock Wave Lithotripter. After reviewing the recommendation of the Gastroenterology-Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 12, 1991, of the approval of the application.

DATES: Petitions for administrative review by February 14, 1992.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John Baxley, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1194.

SUPPLEMENTARY INFORMATION: On April 18, 1990, EDAP International Corp., Amherst, MA 01002, submitted to CDRH an application for premarket approval of the EDAP LT.01 Lithedap Shock Wave Lithotripter. The device is an extracorporeal shock wave lithotripter and is indicated for use in the fragmentation of urinary stones in the kidney, i.e., renal calyx stones and renal pelvis stones.

On April 4, 1991, the Gastroenterology-Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On December 12, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate

in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 14, 1992, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 8, 1992.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 92-1097 Filed 1-14-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0512]

Diasonics, Inc.; Premarket Approval of Therasonic Lithotripsy Treatment System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Diasonics, Inc., Milpitas, CA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Therasonic Lithotripsy Treatment System. After reviewing the recommendation of the Gastroenterology-Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 20, 1991, of the approval of the application.

DATES: Petitions for administrative review by February 14, 1992.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marsha Melvin, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1194.

SUPPLEMENTARY INFORMATION: On December 19, 1990, Diasonics, Inc., 1565 Barber Lane, Milpitas, CA 95035, submitted to CDRH an application for premarket approval of the Therasonic Lithotripsy Treatment System. The device is an extracorporeal shock wave lithotripter and is indicated for use in the treatment of both singular and multiple renal pelvic and renal calyceal stones where such stones are located within a depth of 12 centimeters from the skin line.

On April 4, 1991, the Gastroenterology-Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On December 20, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 14, 1992, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 9, 1992.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 92-1099 Filed 1-14-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91M-0508]

Advanced Pulmonary Technologies, Inc., Premarket Approval of APT 1010 Ultrahigh Frequency Ventilator

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Advanced Pulmonary Technologies, Inc., Glastonbury, CT, for premarket approval, under section 515 of the Federal, Food, Drug, and Cosmetic Act (the act), of the APT 1010 Ultrahigh Frequency Ventilator. After reviewing the recommendation of the Anesthesiology and Respiratory Therapy Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 13, 1991, of the approval of the application.

DATES: Petitions for administrative review by February 14, 1992.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James E. Dillard, Center for Devices and Radiological Health (HF-454), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1053.

SUPPLEMENTARY INFORMATION: On December 5, 1990, Advanced Pulmonary Technologies, Inc., 50 Nye Rd., Glastonbury, CT, 06033–1280, submitted to CDRH an application for premarket approval of the APT 1010 Ultrahigh Frequency Ventilator (APT 1010). APT 1010 is indicated for use in ventilating critically ill patients where the patients are:

1. In the opinion of their physician failing conventional mechanical ventilation [1] therapy; and

2. Diagnosed as having adult respiratory distress syndrome (ARDS);[2] and

3. Age 14 years or older.

On March 20, 1991, the Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application with conditions. These conditions were met by the applicant following the recommendation of the panel.

On December 13, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 14, 1992, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d , 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 8, 1992.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 92–1098 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–01–M

[1] Failing conventional mechanical ventilation is defined as meeting one of the following criteria: (a) require an FiO_2 greater than 0.70; (b) require and FiO_2 equal to 0.70 and have a PaO_2 less than 65 torr; (c) require a peak inspiratory airway pressure greater than 65 cm H_2O; or (d) require a level of positive end expiratory pressure greater than 15 cm H_2O.

[2] ARDS is defined as meeting all of the following criteria: (a) a shunt fraction (QS/QT) of at least 15 percent; (b) the presence of diffuse infiltrates as seen by x-ray; and (c) pulmonary capillary wedge pressure (PCW) <18 cm H_2O.

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing an amendment to the agenda of a meeting of the Arthritis Advisory Committee which is scheduled for January 23 and 24, 1992. This meeting was announced in the Federal Register of December 20, 1991 (56 FR 66038 at 66039). The change is being made to add an additional item for discussion. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Khairy W. Malek, Center for Drug Evaluation and Research (HFD–8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3741.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 20, 1991, FDA announced that a meeting of the Arthritis Advisory Committee would be held on January 23 and 24, 1992. On page 66039, column 1, the open committee discussion portion of the agenda is amended as follows:

Open committee discussion. On January 23, 1992, the committee will discuss investigational new drug application (IND) IND 31–135/new drug application (NDA) 20–202 for 8-methoxypsoralen/photopheresis for scleroderma (sponsors are Therakos and ICN/Viratek). In addition, the committee will be asked to discuss study design and analysis of treatments for scleroderma.

Dated: January 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1021 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. February 3 and 4, 1992, 8:30 a.m., Wilson Hall, Bldg. 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, February 3, 1992, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, February 4, 1992, 8:30 a.m. to 4:30 p.m.; John L. Gueriguian, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3490, Fax 301–443–8282.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of

marketed and investigational human drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 28, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On February 3, 1992, the meeting will be devoted to the presentation and discussion of state-of-the-art efficacy endpoints to be used for testing drugs for the treatment of benign prostatic hypertrophy (BPH), with the presence and participation of worldwide urological experts. The committee will address the following issues: (1) Changes in urodynamic parameters in patients with BPH, (2) efficacy criteria used in European and North American clinical trials with investigational anti-BPH drugs, (3) use of anti-BPH drugs in current clinical practice, and (4) the potential for masking prostatic cancers during anti-BPH therapy. On February 4, 1992, the committee will discuss the anti-BPH indication of Proscar® (finasteride), of Merck, Sharp & Dohme Research Laboratories.

Peripheral and Central Nervous System Drugs Advisory Committee

Date, time, and place. February 13 and 14, 1992, 9 a.m., Grand Ballroom, Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD.

Type of meeting and contact person. Open public hearing, February 13, 1992, 9 a.m. to 10 a.m., unless public participation does not last that long; open symposium, 10 a.m. to 5 p.m.; open public hearing, February 14, 1992, 9 a.m. to 10 a.m., unless public participation does not last that long; open symposium 10 a.m. to 2:30 p.m.; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4020.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in neurological diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contract person before February 3, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open symposium. A panel comprised to members of the committee, staff from the FDA Division of Neuropharmacological Drug Products, and a number of specially invited agency guests with expertise in the assessment of dementia and the care of demented patients will discuss the merits of comments received concerning the draft guidelines for the clinical evaluation of antidementia drugs that have been in circulation for comment since November 8, 1990. The subject matter for the panel's discussion will include, beyond comments on the guidelines previously submitted in writing, comments offered during the open public session immediately preceding the symposium. The open symposium will consist of two sessions. During the first session, the panel will review the comments received, evaluating their relevance and merits in regard to the section of the draft guidelines to which they apply. At the conclusion of the first session, the panel will be asked to identify those sections of the draft guidelines that in their collective judgment deserve substantive revision and/or modification. During the second session, the panel will discuss and make suggestions for modifying the sections of the guidelines so identified.

The first session of the symposium will follow the open hearing. To facilitate a systematic review of the comments and critiques received, the order of topics addressed by the panel during the first session will follow the organization of the draft guidelines. The duration of the first session is not intended to exceed 7 hours, and would, therefore, conclude by 5 p.m. on February 13, 1992. However, if, in the judgment of the chairperson, additional time is required, the first session may be continued into the evening of February 13, 1992, and/or extended into the morning of February 14, 1992.

Formal deliberative session of the committee. At the conclusion of the symposium, the committee will be asked to make a formal recommendation to the agency regarding the guidelines and their further development.

FDA public advisory committee meetings may have as many as four separable portions: (a) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents

per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1022 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Minneapolis District Office, to be chaired by Donald W. Aird, Public Affairs Specialist. The topic to be discussed is food labeling reform.

DATES: Thursday, January 23, 1992, 7 p.m. to 9 p.m.

ADDRESSES: International Diabetes Center, Naegele Auditorium, Sixth Floor, 5000 West 39th St., St. Louis Park, MN 55416.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Jr., Public Affairs Specialist, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–334–4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1023 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Minneapolis District Office, chaired by John Feldman, District Director. The topic to be discussed is food labeling reform.

DATES: Tuesday, February 4, 1992, 10 a.m. to 12 m.

ADDRESSES: St. Louis County Extension, Washburn Hall, rm. 109, 2305 East Fifth St., Duluth, MN 55812.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Public Affairs Specialist, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–334–4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1024 Filed 1–14–92; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Cosponsorship of the Great American Workout

AGENCY: President's Council on Physical Fitness and Sports, PHS, DHHS.

ACTION: Notice of opportunity for cosponsorship.

SUMMARY: The President's Council on Physical Fitness and Sports ("the Council") announces the opportunity for a non-profit organization to cosponsor with the Council the Great American Workout scheduled for May 1, 1992.

DATES: To receive consideration, requests to participate as a cosponsor must be received by the close of business January 30, 1992 by Matthew Guidry, Deputy Executive Director of the Council at the address below. Requests will meet the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date. Private metered postmarks will not be acceptable as proof of timely mailing. Hand delivered requests must be received by 5 p.m., January 30, 1992. Requests that are received after the deadline date will be returned to the sender.

FOR FURTHER INFORMATION CONTACT: Matthew Guidry, Deputy Executive Director, President's Council on Physical Fitness and Sports, suite 250, 701 Pennsylvania Avenue NW., Washington, DC 20004, (202) 272–3424.

SUPPLEMENTARY INFORMATION:

Background

The President's Council on Physical Fitness and Sports promotes and encourages the development of physical fitness and sports programs for all Americans. In 1990, as part of its agenda, the Council staged the first Great American Workout as a major event to focus on exercise. On May 1, 1990, the south lawn of the White House served as the backdrop of this fitness event for the Nation.

On May 1, 1991, the second Great American Workout took place. The focus of the event was on youth fitness and separate activities were conducted on the south lawn of the White House and at the west steps of the Capitol.

The third Great American Workout is scheduled to take place on May 1, 1992.

Requirements of Cosponsorship

The President's Council is seeking to cosponsor this year's Great American Workout with a nonprofit organization which has demonstrated ability and experience to coordinate this type of national event. This year's event will include workout stations at the south lawn of the White House and at the Capitol. The entity selected as cosponsor will be responsible for coordinating the Great American Workout with representatives of the White House, the Congress, the Architect of the Capitol, the Department of Health and Human Services and the President's Council. The duties of the cosponsor will include:

(1) Development of a publicity campaign for the event, including the printing of official brochures and invitations.

(2) Hotel and transportation arrangements for certain invitees.

(3) Planning and establishment of the workout stations at the White House and Capitol for the activity demonstrations.

(4) Planning, selection and organization of the activities.

(5) Planning, and coordinating the reception and breakfast arrangements.

(6) Providing insurance coverage and first aid stations.

(7) Obtaining corporate sponsors of the event.

Availability of Funds

There are no Federal funds available for the Great American Workout. It will be the function of the cosponsor to provide the necessary funds for the event.

Eligibility for Cosponsorship

To be eligible, a requester must be: (1) A private, nonprofit entity; and (2) an entity that by virtue of its nature and purpose has a legitimate interest in physical fitness and sports.

Content of Request for Cosponsorship

Each request for cosponsorship should contain: (1) A description of the organization and its capabilities; (2) a summary of the manner in which it would conduct the event and carry out its duties; and (3) its plan for arranging for the funding of the event.

Evaluation Criteria

The cosponsor will be selected by the President's Council based on the following evaluation criteria:

(1) Requester's qualifications and capability to conduct events of this nature; and

(2) The ability of the requester to arrange for the funding of the event.

Other Information

Prior to the selection of the cosponsor, the Council staff will meet separately with those requesters whose written submissions best meet the evaluation criteria. Since the Great American Workout involves events held on the grounds of the White House and the U.S. Capitol, certain restrictions apply to the commercial use of a cosponsor's source or sources of funding. The successful cosponsor will be required to enter into a memorandum of understanding with the Department of Health and Human Services setting forth the details of the event. In addition, agreements with other interested parties may be required.

Dated: January 10, 1992.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 92-1067 Filed 1-14-92; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

Family Self-Sufficiency

[Docket No. N-91-3286; FR-3063-C-03]

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability (NOFA) for FY 1991; Technical correction to January 7, 1992 Notice.

SUMMARY: This document makes a technical correction to the notice concerning the Family Self-Sufficiency NOFA published in the **Federal Register** on January 7, 1992 (57 FR 577).

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Rental Assistance Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone number (202) 708-0477, or (202) 708-4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On January 7, 1992 (56 FR 577), the Department published a notice in the **Federal Register** to correct the NOFA for the Public and Indian Housing Family Self-Sufficiency (FSS) Program for Fiscal Year 1991, which was published in the **Federal Register** on September 30, 1991 (56 FR 49604). The correction made by the January 7, 1992 notice only pertained to the Indian Housing portion of the September 30, 1991 NOFA.

In the January 7, 1992 notice, the Department extended the application deadline for all applicants responding to the Public and Indian Housing FSS NOFA published on September 30, 1991 at 56 FR 49604. In the January 7, 1992 notice, the Department also stated as follows:

> With reference to this deadline extension, applicants should note that, in a separate document as yet unpublished, the Department intends to notify applicants for Section 8 Incentive Award Rental Vouchers and Rental Certificates in connection with the Family Self-Sufficiency Program (a NOFA also published on September 30, 1991 (56 FR 49612)) that (1) FY 1991 and 1992 funding will be combined into a single funding round; and (2) the FY 1992 'Incentive Award' NOFA's application due date has been extended from January 10, 1992 to February 10, 1992. (Emphasis added)

Applicants should note that the "separate document" concerning the Section 8 Incentive Award NOFA was published in the **Federal Register** on January 3, 1992 at 57 FR 312-313.

Dated: January 9, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92-1002 Filed 1-14-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

White House Conference on Indian Education Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed schedule of the forthcoming meeting of the White House Conference on Indian Education Advisory Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. The White House Conference on Indian Education Advisory Committee is established by Public Law 100-297, part E. The Committee is established to assist and advise the Task Force in the planning and conducting the conference.

DATE, TIME AND PLACE: The Advisory Committee Meeting will be January 21, 1992, at 9 a.m. to 5 p.m. at the Ramada Renaissance at Techworld, 999—9th Street NW., Washington, DC 20001-9000.

FOR FURTHER INFORMATION CONTACT: Dr. Benjamin Atencio, Deputy Director, White House Conference on Indian Education, U.S. Department of Interior, 1849 C Street NW., MS 7026-MIB, Washington, DC 20240; telephone 202-208-7167; fax 208-4868.

Agenda: The Advisory Committee for the White House Conference on Indian Education will discuss and advise the Task Force on aspects of the Conference and actions which are necessary for the conduct of the Conference. Summary minutes of the meeting will be made available upon request. The meeting of the Advisory Committee will be open to the public.

Items to be discussed: Conference activities; review agenda and program; Post-Conference activities; activities for conference reporting; Conference topics and other matters related to the Conference.

Dated: January 7, 1992.

Mark Stephenson,

Assistant to the Secretary and Director of Communication.

[FR Doc. 92-998 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-RK-M

White House Conference on Indian Education Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of conference.

SUMMARY: This notice announces the White House Conference on Indian Education. The White House Conference on Indian Education was established by Public law 100–297, part E, section 5502 and provides that the purpose shall be (1) to explore the feasibility of establishing an independent Board of Indian Education that would assume responsibilities for all existing federal programs relating to the education of Indians and (2) to develop recommendations for the improvement of educational programs to make the programs more relevant to the needs of Indians.

DATE, TIME AND PLACE: The White House Conference on Indian Education shall be January 22 from 9 a.m. to 10:30 p.m., January 23 from 7 a.m. to 9:30 p.m., and January 24 from 7 a.m. to 5 p.m. The site of the Conference will be the Ramada Renaissance at Techworld, 999—9th Street, NW.; Washington, DC 20001–9000.

FOR FURTHER INFORMATION CONTACT: Dr. Benjamin Atencio, Deputy Director, White House Conference on Indian Education, U.S. Department of Interior, 1849 C Street NW., MS 7026–MIB, Washington, DC 20240; telephone 202–208–7167; fax 208–4868.

Agenda: The Conference delegates and observers will discuss Indian Education topics in eleven work group sessions. Plans of action will be developed and presented to voting delegates for consideration as recommendations. An open forum will allow participants an opportunity to present topics for consideration by the delegates. A delegate Resolution Assembly will be held on the last day of the Conference to make decisions on recommendations. The Conference will be opened to the public with the exception of the delegate orientation. Highlights of the conference will be made available through the Government Printing Office after the staff has complied the material in a document for presentation to the President of the United States.

Dated: January 8, 1992.

Mark Stephenson,

Assistant to the Secretary and Director of Communication.

[FR Doc. 92–999 Filed 1–14–92; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

[WY–060–02–4120–09]

West Rocky Butte Coal Lease Application; Campbell County, WY

AGENCY: Bureau of Land Management, Wyoming, Interior.

ACTION: Notice of Availability of a Draft Environmental Impact Statement (DEIS) pursuant to 40 CFR 1500–1508 for the West Rocky Butte Coal Lease Application (WYW–122586) in the Powder River Basin, Campbell County, Wyoming.

SUMMARY: Northwestern Resources Co. (NWR) has applied for a coal lease for 463.2 acres (with an estimated 59 million tons of recoverable coal) in the area adjacent to the Rocky Butte Lease (WYW–78633) in Campbell County, Wyoming. The BLM has prepared an EIS to evaluate the environmental impacts of (1) issuing a competitive coal lease, and (2) subsequent approval of a logical mining unit (LMU) request from NWR for the Rocky Butte and West Rocky Butte tracts. Currently, there are no mining facilities or operations on the Rocky Butte lease, so a new mine start would be necessary to begin production. The area is located about 10 miles southeast of the city of Gillette, Wyoming.

DATES: The public comment period will begin on January 17, 1992 and will end on March 16, 1992. A public hearing has been scheduled for February 26, 1992, beginning at 7 p.m. m.s.t., at the Holiday Inn Gillette, Wyoming. In order to ensure that comments will be considered in the DEIS, they should be received no later than c.o.b. March 16, 1992 at the address listed below.

ADDRESSES: Comments or concerns should be addressed to Mr. Jim Melton, EIS Team Leader, BLM Casper District Office, 1701 East E Street, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: Jim Melton or Mike Karbs, phone (307) 261–7600, or contact the address listed above.

SUPPLEMENTARY INFORMATION: The coal lease application is being processed under 43 CFR part 3435. In order for the West Rocky Butte tract to be mined, the applicant would need to be the successful high bidder at a public competitive lease sale; then the tract would have to be combined with the existing Rocky Butte lease into a subsequent logical mining unit (LMU), and the entire area be permitted as a new mine. The Office of Surface Mining (OSM) has been identified as a cooperating agency in the preparation of the DEIS. The major issues identified through the scoping process revolved around air quality, hydrology, reclamation, historical and cultural resources, and socioeconomics as they relate to a new mine start in Campbell County, and in the Wyoming portion of the Powder River Basin.

The DEIS analyzes the impacts of developing and operating a surface coal mine on the combined Rocky Butte and West Rocky Butte tracts, a total of about 9,647 acres, containing an estimated 625 million tons of recoverable coal. The DEIS analyzes local, regional, and cumulative impacts from producing 16 million tons of coal by 1996. The DEIS also analyzes the No Action alternative.

For mining to occur in this instance, BLM has two separate, but related decisions. First, based upon the EIS, the BLM will determine if the lease area is suitable for coal leasing and will develop any special stipulations necessary to protect other resources in the area. If BLM determines that the area is suitable for coal leasing, a competitive lease sale would then be scheduled and held. In this case, if NWR is the successful high bidder, and if their bid meets or exceeds the fair market value, they would be awarded the lease for the West Rocky Butte Tract. Since NWR has indicated a desire to combine the two tracts, BLM's next decision would be to approve or deny an application to form an LMU. The Rocky Butte Lease (WYW–78633) was purchased in the 1982 Powder River Coal Sale. This lease will be terminated on February 1, 1993 due to noncompliance with the diligence requirements of section 2(a)(2)(A) of the Mineral Leasing Act unless the company can combine the two tracts into an approved LMU before this date.

F. William Eikenberry,

Acting State Director, Wyoming.

[FR Doc. 92–1025 Filed 1–14–92; 8:45 am]

BILLING CODE 4310–22–M

[UT–050–4410–08–241A]

Correction of Council Meeting Location

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council Meeting.

SUMMARY: The Rickfield District Advisory Council meeting scheduled for January 28, 1992 will start at 10 a.m. at the Resource Area Office, 35 East 500 North, Fillmore, Utah.

Dated: January 7, 1992.

Sam Rowley,

Associate District Manager.

[FR Doc. 92-868 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-DQ-M

Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting; Susanville District Grazing Advisory Board, Susanville, CA.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of Interior's discretionary authority on May 14, 1986, will meet on February 26, 1992.

The February 26 meeting will begin at 10 a.m. at the Surprise Resource Area Office, Bureau of Land Management, 602 Cressler Street, Cedarville, California.

Subjects to be covered during the meeting will include a report of progress on range improvements for FY 1992, proposed range improvements for FY 1993, a report on new and revised Allotment Management Plans (AMPs) for FY 1992, a discussion of cattleguard maintenance, a report on the Wild Horse and Burro Program, a discussion of subleasing, a discussion of progress on the East Lassen Integrated Management Plan, a report on progress of the proposed Black Rock/High Rock National Conservation Area, and a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 p.m. to 4:30 p.m. on February 26, 1992 or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130 by February 20, 1992. Depending upon the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board Meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Associate District Manager.

[FR Doc. 92-1039 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-40-M

[OR-942-00-4730-12; GP2-067]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 20 S., R. 4 W., accepted December 17, 1991
T. 24 S., R. 4 W., accepted December 27, 1991
T. 5 N., R. 7 W., accepted December 20, 1991
T. 12 S., R. 7 W., accepted December 27, 1991
T. 29 S., R. 8 W., accepted December 5, 1991
T. 9 S., R. 10 W., accepted December 17, 1991
T. 1 N., R. 33 E., accepted December 11, 1991

Washington

T. 9 N., R. 14 E., accepted December 31, 1991
T. 10 N., R. 14 E., accepted December 30, 1991
T. 7 N., R. 16 E., accepted December 5, 1991
T. 10 N., R. 21 E., accepted December 5, 1991

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 3, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-974 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-33-M

[AZ-930-4214-10; AZA-26068, AZA-26069]

Proposed Withdrawal and Opportunity for Public Meeting; Arizona, Correction

January 6, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of legal description.

SUMMARY: This notice corrects a legal description in a notice of proposed withdrawal and opportunity for public meeting in Arizona previously published in the Federal Register on December 27, 1991 (56 FR 67095). On page 67095, in column 2, line 3, in section 18, "W½E½, NE¼SW¼" is corrected to read "W½E½NE¼SE¼". In column 2, line 5, "T. 21 S." is corrected to read "T. 23 S."

Beaumont C. McClure,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 92-1038 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

North American Wetlands Conservation Council; Change in Grant Proposal Due Dates

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of schedule change.

SUMMARY: This notice advises the public that due dates for submitting grant proposals are changed to April 1 and August 1.

DATES: Proposals will be accepted throughout the year, however to allow for adequate review time, U.S. proposals will be due April 1, 1992 and August 1, 1992 under the revised schedule.

ADDRESSES: For information concerning the North American Wetlands Conservation Act grants program, contact the North American Wetlands Conservation Council Coordinator, U.S. Fish and Wildlife Service, North American Waterfowl and Wetlands Office, Arlington Square Building, room 340, 4401 N. Fairfax Drive, Arlington, Virginia 22203 during normal business hours (7:45 a.m.–4:15 p.m. e.t.s.) in writing or by phone (703, 358–1784).

FOR FURTHER INFORMATION CONTACT: Dr. Robert Streeter, Coordinator, North

American Wetlands Conservation Council at the above address and phone number.

SUPPLEMENTARY INFORMATION: This notice is issued to inform applicants preparing proposals under the old schedule that a revised schedule is in effect. A notice will be published in the Federal Register when new grant proposal guidelines are available in February 1992.

Dated: January 7, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-895 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Environmental Document Prepared for Pipeline/Power Cable Installation Project on the Pacific Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), U.S. Department of the Interior.

ACTION: Notice of the availability of environmental document prepared for the Santa Ynez Unit Pipeline/Power Cable Installation Project on the Pacific OCS.

SUMMARY: The MMS, in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), prepared by the MMS for the following Santa Ynez Unit Development and Production Plan Modifications.

Parties

Exxon Company, U.S.A.

Activity	Location	Date
Realignment of proposed emulsion and gas pipeline configuration and installation of power cables.	Santa Barbara Channel; Santa Ynez Unit, Leases OCS-P 0182, 0186, 0190, 0191, and 0329.	12/91 thru 3/92.

Persons interested in reviewing the environmental document for the proposal listed above or obtaining information about EA's and FONSI's prepared for activities on the Pacific OCS are encouraged to contact the MMS office in the Pacific OCS Region.

FOR FURTHER INFORMATION CONTACT: Regional Supervisor, Office of Leasing and Environment, Pacific OCS Region, Minerals Management Service, 770 Paseo Camarillo, Mail Stop 7300, Camarillo, California, 93010, Telephone (805) 389-7801.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to research and development of mineral resources on the Pacific OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: January 3, 1992.

J. Lisle Reed,

Regional Director, Pacific OCS Region.

[FR Doc. 92-895 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation 337-TA-330]

Initial Determination Terminating Respondents on the Basis of Settlement Agreement

In the matter of certain computer system state save/restore software and associated backup power supplies for use in power outages.

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: ASTEC (BSR) PLC (ASTEC) and Emerson Electric Company.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on January 6, 1992.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone (202) 205-1802.

Issued: January 6, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-1061 Filed 1-14-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-331]

Commission Determination Not To Review an Initial Determination Designating the Investigation "More Complicated"

In the matter of certain microcomputer memory controllers, components thereof and products containing same.

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) designating the above-captioned investigation "more complicated." The deadline for completion of the investigation has been extended by six months, *i.e.*, from October 19, 1992, to April 19, 1993.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3108.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On November 25, 1991, respondents ETEQ Microsystems, Inc., Sun Electronics Corporation, OPTi Computer, Inc., and Elite Microelectronic, Inc. filed a joint motion to designate the investigation more complicated. The motion was supported by the Commission investigative attorney, but opposed by complainant Chips and Technologies, Inc. The presiding ALJ issued an ID on December 11, 1991, designating the investigation more complicated. The ID stated that the technology which underlies the subject matter of the investigation is complex, involving means for addressing, managing, and accessing various types of semiconductor memories.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 and § 210.53 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53).

Issued: January 8, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–1059 Filed 1–14–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–331]

Commission Determination Not To Review an Initial Determination Granting a Motion To Amend the Complaint and Notice of Investigation

In the matter of certain microcomputer memory controllers, components thereof and products containing same.

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation granting a motion to amend the complaint and notice of investigation to add allegations of infringement of an additional patent and claim.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3108.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On November 26, 1991, complainant Chips and Technologies, Inc. filed a motion to amend the complaint and notice of investigation to add allegations of infringement of claim 1 of U.S. Letters Patent 5,051,889. The motion was opposed by respondents and supported by the Commission investigative attorney. On December 10, 1991, the presiding ALJ issued an ID (Order No. 4) granting the motion. No petitions for review of the ID or agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53).

Issued: January 8, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–1060 Filed 1–14–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–525 (Final)]

Nepheline Syenite From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–525 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of nepheline syenite,[1] provided for in subheading 2529.30.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigaitons, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of nepheline syenite from Canada are being sold in the United States at less than fair value within the meaning of section 733 of the act (19

[1] The product covered by this investigation is nepheline syenite, which is a coarse crystalline rock consisting principally of feldspathic minerals (i.e., sodium-potassium feldspars and nepheline), with little or no free quartz, and ground no finer than 140 mesh.

U.S.C. 1673b). The investigation was requested in a petition filed on July 12, 1991, by The Feldspar Corporation, Asheville, NC.

Participation in the investigation and public service list. Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register.

A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in this investigation will be placed in the nonpublic record on March 6, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 19, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 6, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 10, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by § 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions. Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is March 16, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is March 27, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 27, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: January 9, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-1058 Filed 1-14-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31881 (Sub 1); (Sub 2); (Sub 3)]

Caprail I—Acquisition Exemption—Consolidated Rail Corporation; Ohio Department of Transportation—Lease Exemption—Caprail I Lines in Ohio; Columbus & Ohio River Railroad Company—Lease and Operation Exemption—Ohio Department of Transportation Lines

By notice filed December 11, 1991, Columbus & Ohio River Railroad Company (CUOH) and the Ohio Department of Transportation (ODOT) seek exemptions for the following transactions: (1) The acquisition of about 161.7 miles of Consolidated Rail Corporation (Conrail) line and rail property by Caprail I (Caprail), a non-carrier special purpose subsidiary of Capcorp Financial, Inc. d/b/a First Capitalcorp (First Capitalcorp); (2) Caprail's lease of the line to ODOT; and (3) ODOT's lease of the line to CUOH, which will then operate the line. Under the restructured arrangement, ODOT will neither undertake nor hold itself out to provide rail common carrier service.[1] This notice supersedes the previous notice in the lead docket because of changes in the acquisition process.[2]

The total number of route miles to be acquired by ODOT and operated by CUOH is approximately 161.7, comprised of about 129.1 miles currently owned exclusively by Conrail, and Conrail's undivided one-half interest in 32.6 miles between Columbus and Newark, OH, owned and operated jointly with CSX Transportation, Inc. (CSXT).[3]

[1] By letter filed December 17, 1991, CUOH and ODOT clarified the December 11, 1991, notice. ODOT acknowledges that while it will not operate the line at any time, it will retain a residual common carrier obligation in the event that CUOH ceases operations over the line. Caprail also will retain a residual common carrier obligation.

[2] In the last docket, Finance Docket No. 31881, *Columbus & Ohio River Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation* (not printed), notice of exemption served and published in the Federal Register (56 FR 57663) November 13, 1991. CUOH invoked the Commission's class exemption procedures for acquisition and operation. The exemption became effective 7 days after the October 18, 1991, filing date of the verified notice. By letter filed November 20, 1991, CUOH informed the Commission that financing the transaction would necessitate certain structural changes. CUOH requested that "* * * further Commission processing of the subject Notice be suspended until such time as a revised Notice can be prepared and filed." The current notice was styled as an "amendment to the prior Notice" filed in the lead docket. However, the transactions cannot be characterized as amendments and must be treated separately. Because these transactions supersede those that became effective in the lead docket, no further action need be taken in that docket.

CUOH is a non-carrier subsidiary of Summit View Corporation, a holding company which controls other carriers. Since the transaction in the lead docket has apparently not been consummated, CUOH is currently a noncarrier. Before consummation of the subject transactions, the stock of CUOH will be transferred to Bank One Ohio Trust Company, N.A., Trustee, under an Independent Voting Trust Agreement entered into under 49 CFR 1013.1, *et seq.*

[3] The Ohio property consists of the Weirton Secondary Track, between milepost 157.8±, at Newark, and milepost 49.5±, at the East side of the Gould Tunnel; the Cadiz Running Track, between the point of its connection with the Weirton Secondary at Cadiz Junction (milepost 0.0) and milepost 12.8±; the Hebron Industrial Track, between the point of its connection with the Weirton Secondary Track at Heath (milepost 118.0±) and U.S. Route 40 (Main Street) at milepost 138.5±, in Union; the Trinway Secondary Track, between the point of its connection to the Weirton Secondary Track at Trinway (milepost 8.3) and

Continued

ODOT will acquire the line by entering into a capital lease agreement with Caprail, which is providing the financing for the acquisition and will take legal title to the line from Conrail. After ODOT retires the financing obligations to First Capitalcorp, legal title will vest in ODOT.

CUOH will operate over the entire line as a common carrier railroad. Traffic will be interchanged with Conrail at Columbus and Gould, OH. Additional interchanges may be established with CSXT or Norfolk Southern Corporation at Columbus, Newark, or Urichsville, OH, or both; and with the Ohio Central Railroad at Morgan Run or Trinway, OH, or both.

The parties contemplate that the transaction will be consummated immediately after the effectiveness of the exemption notice.

Any comments must be filed with the Commission and served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transactions.

Decided: January 9, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1042 Filed 1-14-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31992]

Soo Line Railroad Company—Trackage Rights Exemption—Burlington Northern Railroad Co.

Burlington Northern Railroad Company has agreed to grant non-exclusive overhead trackage rights to Soo Line Railroad Company over 61.29 miles of line between milepost 29.45, near Erskine, and milepost 90.74, near Bemidji, in Pennington, Clearwater, and Beltrami Counties, MN. The trackage rights were to become effective on December 30, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Larry D. Starns, 1000 Soo Line Building, 105 South Fifth Street, Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 9, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1043 Filed 1-14-92; 8:45 am]

BILLING CODE 7035-01-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Advisory Committee on Bankruptcy Rules. The meeting will be open to public observation but not participation. The meeting will commence each day at 9 a.m.

DATES: March 26-27, 1992.

ADDRESSES: Administrative Office of the United States Courts, 811 Vermont Avenue, NW., room 638, Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633-6021.

Dated: January 3, 1992.

Joseph F. Spaniol, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 92-978 Filed 1-14-92; 8:45 am]

BILLING CODE 2210-01-M

Meeting of the Judicial Conference Advisory Committee on Civil Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a three-day meeting of the Advisory Committee on Civil Rules. The meeting will be open to public observation but not participation. The meeting will commence each day at 9 a.m.

DATES: April 13-15, 1992.

ADDRESSES: Federal Judicial Center, Dolley Madison House, 1st Floor/Clark Room, 1520 H Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633-6021.

Dated: January 3, 1992.

Joseph F. Spaniol, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 92-976 Filed 1-14-92; 8:45 am]

BILLING CODE 2210-01-M

Hearing and Meeting of the Judicial Conference Advisory Committee on Civil Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open hearing and meeting.

SUMMARY: The Judicial Conference Advisory Committee on the Federal Rules of Civil Procedure has proposed amendments to the Civil Rules and the Rules of Evidence.

Public hearings on these proposed amendments were held in Los Angeles on November 21, 1991. Many individuals and organizations requesting an opportunity to testify could not, however, be reached. Accordingly, a follow-up hearing will be held at the United States Courthouse in Atlanta, Georgia, on February 19-20, 1992, to accommodate those witnesses who could not be heard in Los Angeles. Although additional witnesses cannot now be accommodated, the hearings are open to public observation and will commence at 8:30 a.m. each day.

The Committee does seek the written advice and assistance of anyone who wishes to comment on the proposed amendments to the Civil Rules and Rules on Evidence. We request that all comments and suggestions be placed in the hands of the Secretary as soon as convenient and, in any event, no later than February 15, 1992.

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milepost 1.43± at the Case/Dresden Corporate Line; the East Columbus Industrial Track; the East Columbus Running Track, between mileposts 4.1 and 5.3, in Mifflin; and Conrail's undivided one-half interest in the Weirton Secondary Track between CSXT milepost 138.4±, at Columbus, and CSXT milepost 103.8±, at Newark.

All communications with respect to the proposals should be addressed to the Secretary of the Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544.

DATES: February 19–20, 1992 (Hearing); February 21, 1992 (Meeting).

ADDRESSES: United States Courthouse, 75 Spring Street, SW., Atlanta, Georgia 30326.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633–6021.

Dated: January 3, 1992.

Joseph F. Spaniol, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 92–977 Filed 1–14–92; 8:45 am]

BILLING CODE 2210–01–M

Meeting of the Judicial Conference Advisory Committee on Criminal Rules

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Advisory Committee on Criminal Rules. The meeting will be open to public observation but not participation. The meeting will commence each day at 9 a.m.

DATES: April 23–24, 1992.

ADDRESSES: Administrative Office of the United States Courts, 811 Vermont Avenue, NW., room 638; Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633–6021.

Dated: January 3, 1992.

Joseph F. Spaniol, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 92–979 Filed 1–14–92; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Notice of Consent Judgment Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Endicott Johnson Corporation, The Village of Endicott, New York, the Town of Union, New York, and George Industries, Inc.* (N.D.N.Y.), Civil Action No. 92–CV25, was lodged with the United States District Court for the Northern District of New York on January 7, 1992. The proposed consent decree requires the Defendants to implement interim remedial measures for the Endicott Wellfield Superfund Site, located in the Village of Endicott, Broome County, New York, set forth in the March 29, 1991 Record of Decision, and to pay the future oversight costs incurred by the United States for its oversight of the work performed under the consent decree. The interim remedy consists of installing a supplemental purge well downgradient of the Endicott Landfill, which will increase the efficiency of the existing purge well network and aid in aquifer restoration by reduction of the contaminant plume, monitoring the purge wells, and performing an aquifer pump test. In the Consent Decree, the Defendants agree to implement the 1991 Record of Decision, and to pay all future oversight costs incurred by the United States at the Site in overseeing work performed under the consent decree.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Endicott Johnson Corporation,* The Village of Endicott, New York, the Town of Union, New York, and George Industries, Inc., D.O.J. Ref. No. 90–11–3–299A.

The Consent Decree may be examined at the Office of the United States Attorney, 319 Federal Building, Binghampton, New York 13901; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072). A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $37.00 (for copying costs) payable to Consent Decree Library.

Roger B. Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–972 Filed 1–14–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; Grant Gear Works, Inc.

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. 9622(i), and Department policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Grant Gear Works, Inc.,* et al., Civil Action No. 91–13381Y, was lodged, together with the complaint, in the United States District Court for the District of Massachusetts on December 27, 1991. The proposed Consent Decree, if entered, will resolve the liability of Grant Gear Works, Inc., and of John F. Hurley and Robert J. Hurley, as trustees of the Grant Gear Realty Trust (collectively, "Defendants"), under section 107(a) of CERCLA, 42 U.S.C. 9607(a), in connection with alleged releases of hazardous substances at the Norwood PCBs Superfund Site, a 25-acre parcel located at U.S. Route 1 and Meadow Brook in Norwood, Massachusetts. Under the settlement reflected in the proposed Consent Decree, the Defendants will pay response costs of $100,000 plus interest to the United States, plus a portion of certain additional monies the Defendants may recover as a result of private litigation and insurance relating to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Grant Gear Works, Inc.,* et al., Department of Justice No. 90–11–2–372.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Massachusetts, 1107 John W. McCormack Federal Bldg., U.S. P.O. & Courthouse, Boston, Massachusetts 02109; at the Region I office of the United States Environmental Protection Agency, John F. Kennedy Federal Building, room 2203, Boston,

Massachusetts; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center, Box 1097 at the above address. In requesting a copy, please enclose a check in the amount of $10.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

Roger B. Clegg,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92–969 Filed 1–14–92; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Michigan Materials and Processing Institute

Notice is hereby given that, on December 20, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Michigan Materials and Processing Institute ("MMPI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following company was recently accepted as a Full Member of MMPI: Brunswick Defense Composites Group, Skokie, IL.

The following companies were recently accepted as Associate Members in MMPI: Martec Plastics, Fenton, MI and Quantum Composites, Inc., Midland, MI.

On August 7, 1990, MMPI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990, 55 FR 36710. On June 10, 1991, MMPI filed a notice of additional members to the venture. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 5, 1991, 56 FR 30771.

Membership in this venture remains open, and MMPI intends to file additional written notification disclosing all changes in membership of this venture.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–971 Filed 1–14–92; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Microelectronics and Computer Technology Corporation

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") on November 12, 1991 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain information. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). MCC and its shareholders filed additional notifications on March 29, 1985, July 30, 1986, November 7, 1986, December 23, 1986, February 25, 1987, December 23, 1987, March 4, 1988, August 16, 1988, September 19, 1989, January 18, 1990, March 7, 1990, April 11, 1990, July 11, 1990, October 2, 1990, January 17, 1991, March 1, 1991, and July 30, 1991. The Department published notices in the **Federal Register** in response to these additional notifications on April 23, 1985 (50 FR 15989), September 10, 1986 (51 FR 32263), December 8, 1986 (51 FR 44132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8661), January 22, 1988 (53 FR 1859), March 29, 1988 (53 FR 10159), September 22, 1988 (53 FR 36910), October 26, 1989 (54 FR 43631), March 8, 1990 (55 FR 8612), April 9, 1990 (55 FR 13200), May 8, 1990 (55 FR 19114), October 24, 1990 (55 FR 42918), December 20, 1990 (55 FR 53367), February 11, 1991 (56 FR 5424), July 1, 1991 (56 FR 29976), and August 29, 1991 (56 FR 42757), respectively. On October 21, 1985, MCC filed an additional notification for which a **Federal Register** notice was not required.

MCC disclosed that it is conducting research in the area of Holostore commercialization and that Deltronic Crystal Industries, Inc. of Dover, NJ and Displaytech, Inc. of Boulder, Colorado have agreed to become Associate Members of MCC and to participate in this research.

MCC disclosed that ERIM of Ann Arbor, Michigan and TRW of Redondo Beach, CA have become Associate Members of MCC and participants in its Packaging/Interconnect Technology Program.

For the purposes of the participation of NCR Corporation of Dayton, Ohio in MCC, AT&T of Allentown, PA is to be deemed a subsidiary of NCR Corporation.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–970 Filed 1–14–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

DATE, TIME AND PLACE: February 12, 1992, 10 a.m.–12:00 noon, Rm. S–4215 A&B, Department of Labor Building, 200 Constitution Ave., NW., Washington, DC 20210.

PURPOSE: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION CONTACT: Fernand Lavallee, Director, Trade Advisory Group, Phone (202) 523–2752.

Signed at Washington, DC this 8th day of January 1992.

Shellyn G. McCaffrey,

Deputy Under Secretary, International Affairs.

[FR Doc. 92–1092 Filed 1–14–92; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 27, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 27, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of December 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Apache Corp. (workers)	Denver, CO	12/30/91	12/26/91	26,691	Oil and gas exploration.
Ardmore Industries (workers)	Ardmore, TN	12/30/91	12/05/91	26,692	Men's pants and shorts.
Bethlehem Steel Corp. (USWA)	Sparrows Point, MD	12/30/91	12/19/91	26,693	Coke.
Black Hills Trucking, Inc. (workers)	Watford City, ND	12/30/91	12/16/91	26,694	Transporting oilfield equipment.
Black Hills Trucking, Inc. (workers)	Williston, ND	12/30/91	12/16/91	26,695	Transporting oilfield equipment.
Bohemia, Inc. (workers)	Eugene, OR	12/30/91	12/20/91	26,696	Lumber.
Briggs and Stratton Corp. (AIW)	Wauwatosa, WI	12/30/91	12/13/91	26,697	Small gasoline engines.
Cheyenne Services, Inc. (Co)	Pleasanton, TX	12/30/91	12/17/91	26,698	Oilfield services.
Fashions by Anna, Inc. (ILGWU)	Orange, NJ	12/30/91	12/20/91	26,699	Ladies dresses.
Halliburton Services (workers)	Rankin, TX 79778	12/30/91	12/15/91	26,700	Cement work.
Harris Corp., Semiconductor Prod. Div. (Co)	Mountaintop, PA	12/30/91	12/21/91	26,701	Semiconductors.
Harris Corp., Semiconductor Prod. Div. (Co)	Somerville, NJ	12/30/91	12/21/91	26,702	Semiconductors.
Harris Corp., Semiconductor Prod. Div. (Co)	Findlay, OH	12/30/91	12/21/91	26,703	Semiconductors.
Harris Corp., Semiconductor Prod. Div. (Co)	Melbourne, FL	12/30/91	12/21/91	26,704	Semiconductors.
Harris Corp., Semiconductor Prod. Div. (Co)	Santa Clara, CA	12/30/91	12/21/91	26,705	Semiconductors.
Herman Funke & Sons, Inc. (UTWA)	Ashley, PA	12/30/91	12/18/91	26,706	Schiffli embroidery and lace.
Inter-City Products (USA) (SMW)	Red Bud, IL	12/30/91	12/19/91	26,707	Packaged heating and cooling units.
Owens-Brockway (GMP)	Ada, OK	12/30/91	12/20/91	26,708	Pickle jars.
Rand and Rand, Inc. (ILGWU)	Philadelphia, PA	12/30/91	12/23/91	26,709	Skirts.
Siemens Stromberg-Carlsen (Co)	Phoenix, AZ	12/30/91	12/19/91	26,710	Telecommunications transmission prod.
Tuboscope, Inc. (workers)	Houston, TX	12/30/91	12/17/91	26,711	Oilfield services.
(UNOCAL) Molycorp, Inc. (workers)	Washington, PA	12/30/91	12/20/91	26,712	Molybdenum.

[FR Doc. 92-1095 Filed 1-14-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,464, et al.]

Halliburton Logging Services, Inc., et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 13, 1991, applicable to all workers of Halliburton Logging Services, Inc., Midland, Texas.

The Department is amending the certification to include all locations in the Western Division except Farmington, New Mexico whose workers were approved for certification earlier under petition TA-W-26,432.

New information was received by the Department showing that the Western Division comprising the above listed locations of Halliburton Logging Services has experienced substantial declines in sales and employment in 1991 compared to 1990.

Other information shows that over 25 percent of the revenues are derived from gas. Accordingly, the notice is amended by including the subject locations of the Western Division under certification TA-W-26,464.

The amended notice applicable to TA-W-26,464 is hereby issued as follows:

All workers of Halliburton Logging Services, Inc., Midland, Texas and in Gillette, Wyoming; Rock Springs, Wyoming; Bakersfield, California; Ventura, California; Woodland, California; Brighton, Colorado; Vernal, Utah; Williston, North Dakota; Anchorage, Alaska; North Slope, Alaska; and Sterling, Alaska who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance.

Signed at Washington, DC this January 6, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-1096 Filed 1-14-92; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Announcement of Proposed Noncompetitive Grant Awards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intent to award a noncompetitive grant.

SUMMARY: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to MDC, Inc., to provide technical assistance to Southern Service Delivery Areas (SDAs) through the Learning-Teacher Network Project.

DATES: It is anticipated that this grant award will be executed by February 15, 1992, and will be funded for sixteen months. Submit comments by 4:45 p.m. (Eastern Time), on January 30, 1992.

ADDRESSES: Submit comments regarding this proposed assistance award to: U.S. Department of Labor, Employment and Training Administration, room C–4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Laura Cesario; Reference FR–DAA–006–91.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces its intent to award a noncompetitive grant to MDC, Inc., of Chapel Hill, North Carolina. MDC, Inc. initiated The Learner-Teacher Network Project to increase the number and effectiveness of JTPA programs and practices available to southern Service Delivery Areas (SDAs). MDC, will extend the current project to determine the feasibility of institutionalizing Learner-Teacher technical assistance brokering and facilitation activities at the regional and state levels of the Job Training Partnership Act (JTPA) System. In addition, the grantee will develop an analysis and report on workforce preparedness in the South that will identify and raise awareness in the public and private sectors of the action necessary to correct the mismatches between changing labor market demands and the basic skills of significant segments of the Southern workforce. Funds for this activity are authorized by the Job Training Partnership Act, as amended, title IV—Federally Administered Programs. The proposed funding is approximately $195,000 for sixteen months.

Signed at Washington, DC, on December 17, 1991.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 92–1091 Filed 1–14–92; 8:45 am]

BILLING CODE 4510–30–M

Native American Programs; Proposed Total Allocations and Allocation Formulas for Program Year 1992 Regular Program and Calendar Year 1992 Summer Youth Employment and Training Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor is publishing the proposed Native American allocations, distribution formulas and rationale, and individual grantee planning estimates for Program Year (PY) 1992 (July 1, 1992–June 30, 1993) for regular programs funded under title IV–A of the Job Training Partnership Act, and for Calendar Year 1992 for Summer Youth Employment and Training Programs (SYETP) funded under title II–B of the JTPA.

DATES: Written comments on this proposal are invited and must be received on or before February 14, 1992.

ADDRESSES: Send written comments to: Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, room N-4641, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Carmelo J. Milici, Phone: 202–535–0507 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 162 of the Job Training Partnership Act (JTPA), the Employment and Training Administration of the Department of Labor publishes below for review and comment the proposed allocations and distribution formulas for areas to be served by Native American grantees to be funded under JTPA section 401 and JTPA title II, part B. The amounts to be distributed are $63,000,000 for the JTPA section 401 programs for Program Year (PY) 1992 (July 1, 1992–June 30, 1993); and $12,418,726 for the JTPA title II, part B, Summer Youth Employment and Training Program (SYETP) for the Summer of Calendar Year 1992. The planning estimates reflect the existing grantees and their currently assigned areas, and are subject to change for such reasons as Administrative Law Judge decisions, the possibility that a grantee will want to have its designation withdrawn, legislative changes, et al.

The formula for allocating JTPA section 401 funds provides that 25 percent of the funding will be based on the number of unemployed Native Americans in the grantee's area, and 75 percent will be based on the number of poverty-level Native Americans in the grantee's area.

The formula for allocating SYETP funds divides the funds among eligible recipients based on the proportion that the number of Native American youths in a recipient's area bears to the total number of Native American youths in all eligible recipients' areas.

The rationale for the above formulas is that the number of poverty-level persons, unemployed persons, and youths among the Native American population is indicative of the need for training and employment funds.

Statistics on youths, unemployed persons, and poverty-level persons among Native Americans used in the above programs are derived from the Decennial Census of the Population, 1980.

Signed at Washington, DC this 3rd day of January 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1992 TITLE IV–A AND PY 1991 II–B (SUMMER 1992) PROPOSED ALLOCATIONS FOR NATIVE AMERICANS

[December 11, 1991]

Grantee	PY 1992 Title IV–A			PY 1991 II–B (Summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Inter-Tribal Council of Alabama, 669 South Lawrence Street, Montgomery, Alabama 36104; Grant Number: 99–1–3624–55–255–02	309,229	274,383	61,846	0	0	0
Poarch Band of Creek Indians, Route 3, Box 243A, Atmore, Alabama 36502; Grant Number: 99–1–0648–55–172–02	101,315	81,052	20,263	2,253	1,802	451
Aleutian/Pribil of Islands Assoc. Inc., 401 East Fireweed Lane, Suite 201 Anchorage, Alaska, 99503–211; Grant Number: 99–1–0117–55–139–02	48,965	39,172	9,793	33,255	26,604	6,651
Assoc. of Village Council Presidents, Pouch 219 Bethel, Alaska 99559; Grant Number: 99–1–2713–55–210–02	582,031	565,625	116,406	249,908	199,926	49,982

U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1992 TITLE IV-A AND PY 1991 II-B (SUMMER 1992) PROPOSED ALLOCATIONS FOR NATIVE AMERICANS—Continued

[December 11, 1991]

Grantee	PY 1992 Title IV-A			PY 1991 II-B (Summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Bristol Bay Native Association, P.O. Box 310 Dillingham, Alaska 99576; Grant Number: 99-1-0116-55-138-02	144,280	115,424	28,856	75,883	60,706	15,177
Central Council of Tlingit and Haida Indian Tribes of Alaska, 320 W. Willoughby, Suite 300, Juneau, Alaska 99801; Grant Number: 99-1-0114-55-138-02	180,607	144,486	36,121	124,819	99,855	24,964
Cook Inlet Tribal Council, 670 West Fireweed Lane—Suite 200, Anchorage, Alaska 99503; Grant Number: 99-1-3402-55-243-02	373,887	299,110	74,777	192,230	153,784	38,446
Kawerak Incorporated, P.O. Box 948 Nome, Alaska 99762; Grant Number: 99-1-0123-55-141-02	227,333	181,866	45,467	88,320	70,656	17,664
Kenaitze Indian Tribe, P.O. Box 988 Kenai, Alaska 99611; Grant Number: 99-1-0089-55-135-02	31,015	24,812	6,203	16,763	13,410	3,353
Kodiak Area Native Association, 402 Center Avenue, Kodiak, Alaska 99615; Grant Number: 99-1-0115-55-137-02	65,734	52,587	13,147	32,083	25,666	6,417
Maniiaq Manpower, P.O. Box 725, Kotzebue, Alaska 99752; Grant Number: 99-1-0124-55-142-02	178,390	142,172	35,678	85,075	68,070	17,015
Metlakatla Indian Community, P.O. Box 8, Metlakatla, Alaska 99926; Grant Number: 99-1-0084-55-121-02	16,185	12,948	3,237	17,484	13,987	3,497
North Pacific Rim, 300 C Street, Anchorage, Alaska 99503; Grant Number: 99-1-0118-55-140-02	59,369	47,495	11,874	25,054	20,043	5,011
Sitka Community Association, P.O. Box 1450, Sitka, Alaska 99835; Grant Number: 99-1-1776-55-254-02	44,690	35,752	8,938	36,319	29,055	7,264
Tanana Chiefs Conference, Inc., 122 First Avenue, Fairbanks, Alaska 99701, Grant Number: 99-1-3109-55-227-02	396,628	317,302	79,326	206,740	165,392	41,348
Affiliation of Arizona Ind. Cntrs, Inc., Phoenix, Arizona 85014; Grant Number: 99-1-0268-55-158-02	262,354	209,883	52,471	0	0	0
American Indian Assoc. of Tucson, P.O. Box 2307—131 East Broadway, First Floor, Tucson, Arizona 85705; Grant Number: 99-1-0492-55-164-02	342,343	273,874	68,469	0	0	0
Colorado River Indian Tribes, Route 1, Box 23-B, Parker, Arizona 85344; Grant Number: 99-1-0498-55-165-02	83,845	67,076	16,769	29,921	23,937	5,984
Gila River Indian Community, Box 97, Sacaton, Arizona 85247; Grant Number: 99-1-0054-55-116-02	501,331	401,065	100,266	128,875	103,100	25,775
Hopi Tribal Council, Box 123, Kykotsmovi, Arizona 86039; Grant Number: 99-1-0057-117-02	392,851	314,281	78,570	102,559	82,047	20,512
Indian Dev. Dist. of Arizona, Inc., 4560 North 19th Ave., Suite 200, Phoenix, Arizona 85015; Grant Number: 99-1-0053-55-115-02	114,569	91,655	22,914	41,817	33,454	8,363
Native Americans for Community Action, 2717 North Steves Boulevard, Suite 11, Flagstaff, Arizona 86004; Grant Number: 99-1-1777-55-193-02	116,778	93,422	23,356	0	0	0
Navajo Tribe of Indians, P.O. Box 1689, Window Rock, Arizona 86515; Grant Number: 99-1-0059-55-119-02	6,962,533	5,570,026	1,392,507	2,261,523	1,809,218	152,305
Pasolia Yaqui Tribe, 7474 S. Camino De Oeste, Tucson, Arizona 85746; Grant Number: 99-1-3289-55-237-02	39,364	31,491	7,873	8,922	7,136	1,784
Phoenix Indian Center, Inc., 2601 North Third Street—Suite 100, Phoenix, Arizona 85004; Grant Number: 99-1-0195-55-153-02	720,300	576,240	144,060	0	0	0
Salt River Pima—Maricopa Ind. Commun., Route 1, Box 216, Scottsdale, Arizona 85256; Grant Number: 99-1-0476-55-162-02	98,011	78,409	19,602	44,791	35,833	8,958
San Carlos Apache Tribe, P.O. Box 'O', San Carlos, Arizona 85550; Grant Number: 99-1-0173-55-149-02	319,753	255,802	63,951	112,743	90,194	22,549
Tohono O'Odham Nation, P.O. Box 837, Sells, Arizona 85634; Grant Number: 99-1-0181-55-152-02	436,984	349,587	87,397	121,935	97,548	24,387
White Mountain Apache Tribe, P.O. Box 700, White River, Arizona 85941; Grant Number: 99-1-0174-55-150-02	339,608	271,686	67,922	126,441	101,153	25,288
Am. Indian Center of Arkansas, Inc., 2 Van Circle, Suite 2, Little Rock, Arkansas 72207; Grant Number: 99-1-1778-55-194-02	475,684	380,547	95,137	0	0	0
Amer. Indian Center of Santa Clara Valley, Inc., 919 The Alameda, San Jose, California 95126; Grant Number: 99-1-0499-55-166-02	241,653	193,322	48,331	0	0	0
California Indian Manpower Cert., 4153 Northgate Boulevard, Sacramento, California 95834; Grant Number: 99-1-2058-55-203-02	3,159,081	2,527,265	631,816	168,799	135,039	33,760
Candelaria American Indian Council, 2635 Wagon Wheel Road, Oxnard, California 93030; Grant Number: 99-1-0086-55-133-02	470,784	376,627	94,157	0	0	0
Indian Human Resources Center, 4040 30th Street Suite A, San Diego, California 92104; Grant Number: 99-1-2441-55-209-02	460,886	368,709	92,177	0	0	0
Northern Calif. Ind. Dev. Council, Inc., 241 F Street, Eureka, California 95501; Grant Number: 99-1-0686-55-175-02	331,974	265,579	66,395	14,780	11,824	956

U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1992 TITLE IV–A AND PY 1991 II–B (SUMMER 1992) PROPOSED ALLOCATIONS FOR NATIVE AMERICANS—Continued

[December 11, 1991]

Grantee	PY 1992 Title IV–A			PY 1991 II–B (Summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Southern California Indian Center, Inc., 12755 Brookhurst Street, P.O. Box 2550, Garden Grove, California 92642–2550; Grant Number: 99–1–0170–55–147–02	2,035,251	1,628,201	407,050	0	0	0
Tule River Tribal Council, Dept. of Health, Safety & Welfare, P.O. Box 589, Porterville, California 93258; Grant Number: 99–1–3219–55–230–02	136,547	109,238	27,309	4,055	3,244	811
United Indian Nations, Inc., 1320 Webster Street, Oakland, California 94612; Grant Number: 99–1–2310–55–208–02	656,273	525,018	131,255	0	0	0
YA–KA–AMA Indian Educ. and Dev., Inc., 6215 Eastside Road, Forestville, California 95436; Grant Number: 99–1–0082–55–132–02	135,175	108,140	27,035	0	0	0
Denver Indian Center, Inc., 4407 Morrison Road, Denver, Colorado 80219; Grant Number: 99–1–0076–55–129–02	630,420	504,336	126,084	0	0	0
Southern UTE Indian Tribe, P.O. Box 800, Ignacio, Colorado 81137; Grant Number: 99–1–2714–55–211–02	58,321	46,657	11,664	14,690	11,752	2,938
Ute Mountain Ute Tribe, P.O. Box 30, Towaoc, Colorado 81334; Grant Number: 99–1–1143–55–188–02	70,320	56,256	14,064	17,754	14,203	3,551
American Indians for Development, Inc., P.O. Box 117, Meriden, Connecticut 06450; Grant Number: 99–1–0361–55–160–02	196,339	157,071	39,268	0	0	0
Nanticoke Indian Association, Inc., Rt. 4, Box 107A, Millsboro, Delaware 19966; Grant Number: 99–1–3518–55–251–02	40,551	32,441	8,110	0	0	0
Fla. Governors Council on Ind. Affairs, 1020 Lafayette Street—Suite 102, Tallahassee, Florida 32301; Grant Numbers: 99–1–0692–55–178–02	1,245,565	996,452	249,113	0	0	0
Miccosukee Corporation, P.O. Box 440021, Tamiami Station, Miami, Florida 33144, Grant Number: 99–1–0052–55–114–02	124,899	99,919	24,980	38,212	30,570	7,642
Seminole Tribe of Florida, 6073 Stirling Road, Hollywood, Florida 33024; Grant Number: 99–1–0004–55–076–02	70,343	56,274	14,069	7,480	5,984	1,496
Alu Like, Inc., 1024 Mapunapuna Street, Honolulu, Hawaii 96819–4417; Grant Number: 99–1–1179–55–190–02	2,590,738	2,072,590	518,148	1,983,767	1,587,014	396,753
American Indian Services Corporation, 1405 North King Street, Suite 302, Honolulu, Hawaii 96817; Grant Number: 99–1–3404–55–244–02	91,346	73,077	18,269	0	0	0
Kootenai Tribe of Idaho, P.O. Box 1269, Bonners Ferry, Idaho 83805; Grant Number: 99–1–3334–55–238–02	33,740	26,992	6,748	1,262	1,010	252
Nez Perce Tribe, P.O. Box 365, Lapwai, Idaho 83540–0365; Grant Number: 99–1–0065–55–122–02	84,400	67,520	16,880	11,806	9,445	2,361
Shoshone-Bannock Tribes, Fort Hall Business Council, P.O. Box 306, Fort Hall, Idaho 83203; Grant Number: 99–1–1780–55–195–02	250,611	200,489	50,122	38,302	30,642	7,660
American Indian Business Association, 4753 North Broadway, Suite 700, Chicago, Illinois 60640; Grant Number: 99–1–0809–55–181–02	1,135,804	908,643	227,161	0	0	0
Mid America All Indian Center, Inc., 650 N. Seneca, Wichita, Kansas 67203; Grant Number: 99–1–0168–55–145–02	169,355	135,484	33,871	0	0	0
United Tribes of Kansas and S.E. Neb., P.O. Box 29, Horton, Kansas 66439; Grant Number: 99–1–0178–85–151–02	517,885	414,308	103,577	9,373	7,498	1,875
Inter-Tribal Council of Louisiana, Inc., 5723 Superior Drive—Suite B–1, Baton Rouge, Louisiana 70816; Grant Number: 99–1–0026–55–092–02	469,312	375,450	93,862	5,227	4,182	1,045
Central Maine Indian Association, Inc., 157 Park Street—P.O. Box 2280, Bangor, Maine 04401; Grant Number: 99–1–2719–55–212–02	95,572	76,458	19,114	0	0	0
Tribal Governors, Inc., 93 Main Street, Orono, Maine 04473; Grant Number: 99–1–0001–55–074–02	109,943	87,954	21,989	26,226	20,981	5,245
Baltimore American Indian Center, 113 So. Broadway, Baltimore, Maryland 21231; Grant Number: 99–1–3405–55–245–02	373,336	298,669	74,667	0	0	0
Mashpee-Wampahoag Indian Tribal Council, Inc., P.O. Box 1048, Mashpee, Massachusetts 02649; Grant Number: 99–1–0408–55–161–02	86,766	69,413	17,353	0	0	0
Grand Rapids Inter-Tribal Council, 45 Lexington Ave. N.W., Grand Rapids, Michigan 49504; Grant Number: 99–1–0694–55–179–02	124,172	99,338	24,834	0	0	0
Grand Traverse Band of Ottawa and Chippewa Indians, Route 1 Box 135, Suttons Bay, Michigan 49682; Grant Number: 99–1–2721–55–213–02	57,528	46,022	11,506	2,343	1,874	469
Inter-Tribal Council of Michigan, Inc., 405 East Easterday Avenue, Sault Ste. Marie, Michigan 49783; Grant Number: 99–1–0172–55–148–02	68,915	55,132	13,783	29,109	23,287	5,822
Michigan Indian Employment and Training Services, Inc., 2459 Delphi Commerce Drive, Suite 5, Holt, Michigan 48858; Grant Number: 99–1–1144–55–189–02	830,407	664,326	166,081	0	0	0

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Grantee	PY 1992 Title IV–A			PY 1991 II–B (Summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
North American Indian Assoc. of Detroit, 22720 Plymouth Road, Detroit, Michigan 48239; Grant Number: 99–1–0695–55–180–02	311,585	249,268	62,317	0	0	0
Potawatomi Indian Nation, 185 E. Main, Suite 300 Vincent Place, Benton Harbor, Michigan 49022; Grant Number: 99–1–3339–55–240–02	158,928	127,142	31,786	0	0	0
Sault Ste. Marie Tribe of Chippewa Indians, 2151 Shunk Road, Sault Ste. Marie, Michigan 49783; Grant Number: 99–1–0507–55–168–02	244,421	195,537	48,884	40,825	32,660	8,165
Southeastern Michigan Indians, Inc., 22620 Ryan Road, P.O. Box 861, Warren, Michigan 48090; Grant Number: 99–1–3220–55–231–02	174,152	139,322	34,830	0	0	0
American Indian Opportunities Ctr., 1845 East Franklin Avneue, Minneapolis, Minnesota 55404; Grant Number: 99–1–3221–55–232–02	545,761	436,609	109,152	0	0	0
Bois Forte R.B.C., P.O. Box 16, Nett Lake, Minnesota 55772; Grant Number: 99–1–0010–55–081–02	40,541	32,433	8,108	8,562	6,850	1,712
Fond Du Lac R.B.C., 105 University Road, Cloquet, Minnesota 55720; Grant Number: 99–1–0009–55–080–12	183,399	146,719	36,680	8,111	6,489	1,622
Leech Lake, R.B.C., Route 3, Box 100, Cass Lake, Minnesota 56633; Grant Number: 99–1–0012–55–083–02	187,307	149,846	37,461	46,773	37,418	9,355
Mille Lacs Band of Chippewa Indians, Star Route—Box 194 OIC Bldg., Onamia, Minnesota 56359; Grant Number: 99–1–0006–55–079–02	34,193	27,354	6,839	8,471	6,777	1,694
Minneapolis American Indian Center, 1530 East Franklin Avenue, Minneapolis, Minnesota 55404; Grant Number: 99–1–0204–55–154–02	319,554	255,643	63,911	11,806	9,445	2,361
Red Lake Tribal Council, P.O. Box 310, Red Lake, Minnesota 56671; Grant Number: 99–1–0017–55–086–02	149,981	119,985	29,996	60,292	48,234	12,058
White Earth R.B.C., Box 418, White Earth, Minnesota 56591; Grant Number: 99–1–0011–55–082–02	167,889	134,311	33,578	48,125	38,500	9,625
Mississippi Band of Choctaw Indians, P.O. Box 6010, Choctaw Branch, Philadelphia, Mississippi 39350; Grant Number: 99–1–0005–55–077–02	325,160	260,128	65,032	49,657	39,726	9,931
Region VII American Indian Council, Inc., 310 Armour Road, Suite 205, North Kansas City, Missouri 64116; Grant Number: 99–1–0967–55–182–02	602,457	481,966	120,491	0	0	0
Assiniboine and Sioux Tribes, Fort Peck Indian Reservation, P.O. Box 1027, Poplar, Montana 59255; Grant Number: 99–1–0033–55–096–02	224,343	179,474	44,869	73,359	58,687	14,672
Blackfeet Tribal Business Council, P.O. Box 1090, Browning, Montana 59417; Grant Number: 99–1–0008–55–078–02	260,236	208,189	52,047	88,139	70,511	17,628
Chippewa Cree Tribe, Rocky Boy Route—P.O. Box 578, Box Elder, Montana 59521; Grant Number: 99–1–0035–55–100–02	104,720	83,776	20,944	28,388	22,710	5,678
Confederated Salish & Kootenai Tribes, P.O. Box 278, Pablo, Montana 59855; Grant Number: 99–1–0031–55–093–02	263,295	210,636	52,659	69,214	55,371	13,843
Crow Indian Tribe, P.O. Box 159, Crow Agency, Montana 59022; Grant Number: 99–1–0030–55–095–02	221,136	176,909	44,227	77,415	61,932	15,483
Fort Belknap Indian Community, P.O. Box 249, Harlem, Montana 59526; Grant Number: 99–1–0032–55–097–02	84,424	67,539	16,885	34,787	27,830	6,957
Montana United Indian Association, P.O. Box 6043, Helena, Montana 59604; Grant Number: 99–1–0074–55–127–02	454,033	363,226	90,807	0	0	0
Northern Cheyenne Tribe, P.O. Box 368, Lame Deer, Montana 59043; Grant Number: 99–1–0034–55–099–02	175,233	140,186	35,047	51,910	41,528	10,382
Indian Center, Inc., 1100 Military Road, Lincoln, Nebraska, 68508; Grant Number: 99–1–2722–55–214–02	180,712	144,570	36,142	0	0	0
Nebraska Indian Inter-Tribal Dev. Corp., Route 1—Box 66–A, Winnebago, Nebraska 68071; Grant Number: 99–1–0087–55–134–02	327,760	262,208	65,552	52,361	41,889	10,472
Inter-Tribal Council of Nevada, P.O. Box 7440, Reno, Nevada 89510; Grant Number: 99–1–0058–55–118–02	351,784	281,427	70,357	65,969	52,775	13,194
Las Vegas Indian Center, Inc., 2300 West Bonanza Road; Las Vegas, Nevada 89106; Grant Number: 99–1–0087–55–176–02	98,447	78,758	19,689	0	0	0
Shoshone Paiute Tribes, P.O. Box 219, Owyhee, Nevada 89832; Grant Number: 99–1–2723–55–215–02	173,349	138,679	34,670	18,385	14,708	3,677
Powhatan Renape Nation, Rankokus Reservation—P.O. Box 225, Rankokus, New Jersey 08073 Grant Number: 99–1–3222–55–233–02	311,467	249,174	62,293	0	0	0
Alamo Navajo School Board, P.O. Box 907, Magdalena, New Mexico 87825; Grant Number: 99–1–2724–55–216–02	81,414	65,131	16,283	17,033	13,626	3,407
All Indian Pueblo Council, Inc., 3939 San Pedro, NE—Suite D PO Box 3256, Albuquerque, New Mexico 87190; Grant Number: 99–1–3341–55–241–02	134,467	107,574	26,893	64,618	51,694	12,924

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Grantee	PY 1992 Title IV–A			PY 1991 II–B (Summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Eight Northern Indian Pueblo Council, P.O. Box 969, San Juan Pueblo, New Mexico 87566; Grant Number: 99–1–3223–55–234–02	83,806	67,045	16,761	38,122	30,498	7,624
Five Sandoval Indian Pueblos, Inc., P.O. Box 580, Bernalillo, New Mexico 87004; Grant Number: 99–1–3336–55–239–02	126,215	100,972	25,243	65,248	52,198	13,050
Jicarilla Apache Tribe, P.O. Box 507, Dulce, New Mexico 87528–0507; Grant Number: 99–1–2725–55–217–02	56,784	45,427	11,357	29,830	23,864	5,966
Mescalero Apache Tribe, P.O. Box 176, Mescalero, New Mexico 88340; Grant Number: 99–1–3100–55–226–02	79,294	63,435	15,859	29,019	23,215	5,804
National Indian Youth Council, 318 Elm Street SE., Albuquerque, New Mexico 87102; Grant Number: 99–1–0077–55–130–02	753,522	602,818	150,704	0	0	0
Pueblo of Acoma, P.O. Box 469, Pueblo of Acoma, New Mexico 87034; Grant Number: 99–1–2199–55–204–02	106,442	85,154	21,288	39,564	31,651	7,913
Pueblo of Laguna, P.O. Box 194, Laguna, New Mexico 87026; Grant Number: 99–1–1583–55–191–02	79,890	63,912	15,978	55,425	44,340	11,085
Pueblo of Taos, P.O. Box 1846, Taos, New Mexico 87571; Grant Number: 99–1–2200–55–205–02	34,263	27,410	6,853	12,076	9,661	2,415
Pueblo of Zuni, P.O. Box 339, Zuni, New Mexico 87237; Grant Number: 99–1–0021–55–089–02	305,532	244,426	61,106	122,476	97,981	24,495
Ramah Navajo School Board, Inc., P.O. Box 190, Pine Hill, New Mexico 87357; Grant Number: 99–1–0146–55–143–02	97,558	78,046	19,512	22,350	17,880	4,470
Santa Clara Indian Pueblo, P.O. Box 580, Espanola, New Mexico 87532; Grant Number: 99–1–3224–55–235–02	20,426	16,341	4,085	5,407	4,326	1,081
Santo Domingo Tribe, P.O. Box 99, Santo Domingo, New Mexico 87052; Grant Number: 99–1–1781–55–196–02	133,001	106,401	26,600	39,564	31,651	7,913
American Indian Community House, Inc., 404 lafayette Street, 2nd Floor, New York City, New York 10003; Grant Number: 99–1–0348–55–159–02	815,673	652,538	163,135	2,974	2,379	595
Native American Cultural Center, Inc., 1475 Winton Road North—Suite 12, Rochester, New York 14609; Grant Number: 99–1–3407–55–246–02	299,537	239,630	59,907	6,939	5,551	1,388
Native American Comm. Svcs. of Erie & Niagara Ctys., 1047 Grant Street (rear)—P.O. Box 86, Buffalo, New York 14207–0086; Grant Number: 99–1–0689–55–177–02	242,926	194,341	48,585	9,733	7,786	1,947
St. Regis Mohawk Tribe, Community Building, Hogansburg, New York 13655; Grant Number: 99–1–0522–55–171–02	173,281	138,625	34,656	26,406	21,125	5,281
Seneca Nation of Indians, 1492 Route 438, Irving, New York 14081; Grant Number: 99–1–0169–55–146–02	322,221	257,777	64,444	52,000	41,600	10,400
Cumberland County Assoc. for Ind. People, 102 Indian Drive, Fayetteville, North Carolina 28301; Grant Number: 99–1–1782–55–197–02	131,879	105,503	26,376	0	0	0
Eastern Band of Cherokee Indians, P.O. Box 481, Cherokee, North Carolina 28719; Grant Number: 99–1–0003–55–075–02	248,561	198,849	49,712	82,912	66,330	16,582
Guilford Native American Assoc., P.O. Box 5623, 400 Prescott Street, Greensboro, North Carolina 27435–0623; Grant Number: 99–1–2727–55–219–02	100,242	80,194	20,048	0	0	0
Haliwa-Saponi Tribe, Inc., P.O. Box 99, Hollister, North Carolina 27844; Grant Number: 99–1–3514–55–247–02	69,865	55,892	13,973	0	0	0
Lumbee Reg. Dev. Assoc., P.O. Box 68, Pembroke, North Carolina 28372–0068; Grant Number: 99–1–0067–55–123–02	1,345,805	1,083,844	270,961	0	0	0
Metrolina Native American Assn., 2601–A East Seventh Street, Charlotte, North Carolina 28204; Grant Number: 99–1–2726–55–216–02	102,453	81,962	20,491	0	0	0
North Caroline Comm. of Ind. Affairs, 325 North Salisbury Street—Suite 579, Raleigh, North Carolina 27603–5940; Grant Number: 99–1–0070–55–124–02	333,983	267,186	66,797	0	0	0
Devils Lake Sioux Tribe, P.O. Box 359, Fort Totten, North Dakota 58335; Grant Number: 99–1–0037–55–101–02	124,818	99,854	24,964	38,860	29,488	7,372
Standing Rock Sioux Tribe, Box D, Fort Yates, North Dakota 58538; Grant Number: 99–1–0046–55–109–02	261,211	208,969	52,242	89,581	71,665	17,916
Three Affiliated Tribes—Fort Berthold Reservation, Box 597, New Town, North Dakota 58763; Grant Number: 99–1–0062–55–120–02	176,539	141,231	35,308	53,262	42,610	10,652
Turtle Mountain Band of Chippewa Indians, P.O. Box 900, Belcourt, North Dakota 58316; Grant Number: 99–1–0075–55–128–02	354,964	283,971	70,993	104,091	83,273	20,818
United Tribes Tech. College, 3315 University Drive, Bismarck, North Dakota 58511; Grant Number: 99–1–0208–55–155–02	179,066	143,253	35,813	0	0	0
North American Indian Cultural Centers, 1062 Triplette Boulevard, Akron, Ohio 44306; Grant Number: 99–1–3349–55–242–02	757,425	605,940	151,485	0	0	0

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Grantee	PY 1992 Title IV–A			PY 1991 II–B (Summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Caddo Tribe of Oklahoma, P.O. Box 487, Binger, Oklahoma 73009; Grant Number: 99–1–1783–55–198–02	29,168	23,334	5,834	11,806	9,445	2,361
Central Tribes of the Shawnee Area, Inc., 121 West 45th Street, Shawnee, Oklahoma 74801; Grant Number: 99–1–0038–55–102–02	84,501	67,601	16,900	47,044	37,635	9,409
Cherokee Nation of Oklahoma, P.O. Box 948, Tahlequah, Oklahoma 74465; Grant Number: 99–1–0027–55–093–02	1,476,283	1,181,026	295,257	706,286	565,029	141,257
Cheyenne-Arapaho Tribes, P.O. Box 67, Concho, Oklahoma 73022; Grant Number: 99–1–0048–55–111–02	198,254	158,603	39,651	88,410	70,728	17,682
Chickasaw Nation of Oklahoma, P.O. Box 1548, Ada, Oklahoma 74820; Grant Number: 99–1–0042–55–105–02	395,801	316,641	79,160	180,695	144,556	36,139
Choctaw Nation of Oklahoma, Drawer 1210, Durant, Oklahoma 74702–1210; Grant Number: 99–1–0041–55–104–02	806,071	644,857	161,214	317,410	253,928	63,482
Citizens Band Potawatomi Indians, 1901 South Gordon Cooper Drive, Shawnee, Oklahoma 74801; Grant Number: 99–1–2202–55–206–02	199,760	159,808	39,952	148,341	118,673	29,668
Comanche Indian Tribe of Oklahoma, P.O. Box 908, Lawton, Oklahoma 73502; Grant Number: 99–1–3150–55–228–02	164,396	131,517	32,879	114,275	91,420	22,855
Creek Nation of Oklahoma, P.O. Box 580, Okmulgee, Oklahoma 74447; Grant Number: 99–1–0025–55–091–02	600,669	480,535	120,134	341,382	273,106	68,276
Four Tribes Consortium of Oklahoma, P.O. Box 1193, Anadarko, Oklahoma 73005; Grant Number: 99–1–2728–55–220–02	75,352	60,282	15,070	35,418	28,334	7,084
Inter-Tribal Council of N.E. Oklahoma, P.O. Box 1308, Miami, Oklahoma 74355; Grant Number: 99–1–1135–55–183–02	52,660	42,128	10,532	34,427	27,542	6,885
Kiowa Tribe of Oklahoma, P.O. Box 369, Carnegie, Oklahoma 73015; Grant Number: 99–1–0047–55–110–02	213,451	170,761	42,690	81,741	65,393	16,348
Oklahoma Tribal Assistance Program, Inc., 1606 East 15th Street, P.O. Box 2841, Tulsa, Oklahoma 74101; Grant Number: 99–1–0072–55–125–02	348,476	278,781	69,695	187,544	150,035	37,509
Osage Tribal, Council, P.O. Box 147—Osage Agency Campus, Pawhuska, Oklahoma 74056; Grant Number: 99–1–0022–55–090–02	106,391	85,113	21,278	73,269	58,615	14,654
Otoe-Missouria Indian Tribe of Okla., P.O. Box 62—Route 1, Red Rock, Oklahoma 74651; Grant Number: 99–1–2730–55–221–02	37,760	30,208	7,552	20,007	16,006	4,001
Pawnee Tribe of Oklahoma, P.O. Box 470, Pawnee, Oklahoma 74058; Grant Number: 99–1–1785–55–200–02	24,019	19,215	4,804	15,591	12,473	3,118
Ponca Tribe of Oklahoma, White Eagle—Box 2, Ponca City, Oklahoma. 74601; Grant Number: 99–1–0029–55–094–02	56,632	45,306	11,326	46,052	36,842	9,210
Seminole Nation of Oklahoma, P.O. Box 1498, Wewoka, Oklahoma 74884; Grant Number: 99–1–0051–55–113–02	151,612	121,290	30,322	64,167	51,334	12,833
Tonkawa Tribe of Oklahoma, P.O. Box 70, Tonkawa, Oklahoma 74653; Grant Number: 99–1–1136–55–184–02	44,729	35,783	8,946	45,151	36,121	9,030
United Urban Indian Council, 1501 Classen BLVD., Suite 100, Oklahoma City, Oklahoma 73106–5435; Grant Number: 99–1–2731–55–222–02	313,949	251,159	62,790	210,615	168,492	42,123
Confed. Tribes of Siletz Indians, P.O. Box 549, Siletz, Oregon 97380, Grant Number: 99–3153–55–229–02	625,667	500,534	125,133	13,248	10,598	2,650
Confed. Tribes of the Umatillaind. Res., P.O. Box 638, Pendleton, Oregon 97801; Grant Number: 99–1–3065–55–225–02	46,416	37,133	9,283	15,681	12,545	3,136
Confederate Tribes of Warm Springs, P.O. Box C—Tenino Road, Warm Springs, Oregon 97761; Grant Number: 99–1–0256–55–157–02	97,953	78,362	19,591	40,735	32,588	8,147
Organization of Forgotten Americans, P.O. Box 1257, 4509 South 6th Street, Suite 206, Klamath Falls, Oregon 97601–0276; Grant Number: 99–1–2732–55–223–02	455,577	364,462	91,115	3,965	3,172	793
Council of Three Rivers, 200 Charles Street, Pittsburgh, Pennsylvania 15238; Grant Number: 99–1–0642–55–172–02	723,309	578,647	144,662	0	0	0
United AM, Indians of the Del. Valley, 225 Chestnut Street, Philadelphia, Pennsylvania 19106; Grant Number: 99–1–0477–55–163–02	206,788	165,430	41,358	0	0	0
Rhode Island Indian Council, 444 Friendship St., Providence, Rhode Island 02907; Grant Number: 99–1–0510–55–169–02	399,785	319,828	79,957	0	0	0
Catawba Indian Nation, P.O. Box 957, Rock Hill, South Carolina 29731; Grant Number: 99–1–3516–55–249–02	276,216	220,973	55,243	10,995	8,796	2,199
Cheyenne River Sioux Tribe, P.O. Box 637, Eagle Butte, South Dakota 57625; Grant Number: 99–1–0039–55–103–02	238,326	189,061	47,265	79,217	63,374	15,843
Lower Brule Sioux Tribe, P.O. Box 187, Lower Brule, South Dakota 57548; Grant Number: 99–1–0073–55–126–02	59,891	47,913	11,978	13,879	11,103	2,776
Oglala Sioux Tribe, P.O. Box G, Pine Ridge, South Dakota 57770; Grant Number: 99–1–0043–55–106–02	745,823	596,658	149,165	217,645	174,116	43,529
Rosebud Sioux Tribe, Box 430, Rosebud, South Dakota 57570; Grant Number: 99–1–0044–55–107–02	441,775	353,420	88,355	110,670	88,536	22,134

U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1992 TITLE IV-A AND PY 1991 II-B (SUMMER 1992) PROPOSED ALLOCATIONS FOR NATIVE AMERICANS—Continued

[December 11, 1991]

Grantee	PY 1992 Title IV-A			PY 1991 II-B (Summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Sisseton-Wahpeton Sioux Tribe, P.O. Box 509, Agency Village, South Dakota 57262; Grant Number: 99-1-0045-55-108-02	172,063	137,650	34,413	46,863	37,490	9,373
United Sioux Tribes Dev. Corp., P.O. Box 1193, Pierre, South Dakota 57501; Grant Number: 99-1-0165-55-144-02	730,863	584,690	146,173	61,103	48,882	12,221
Native American Indian Association, 211 Union Street, Suite 932, Stahlman Building, Nashville, Tennessee 37501; Grant Number: 99-1-3515-55-248-02	352,277	281,822	70,455	0	0	0
Alabama-Coushatta, Indian Tribal Council, Route 3—Box 645, Livingston, Texas 77315; Grant Number: 99-1-1784-55-199-02	684,735	547,788	136,947	5,137	4,110	1,027
Dallas Inter-Tribal Center, 209 East Jefferson Blvd., Dallas, Texas 75203-2690; Grant Number: 99-1-0078-55-131-02	281,009	224,807	56,202	0	0	0
Tigua Indian Tribe, 119 South Old Pueblo Road—Ysleta Station, El Paso, Texas 79917; Grant Number: 99-1-2099-55-202-02	467,717	374,174	93,543	11,265	9,012	2,253
Indian Center Employment Services, Inc., 1865 South Main Suite 1, Salt Lake City, Utah 84115; Grant Number: 99-1-3517-55-250-02	429,346	343,477	85,869	0	0	0
Ute Indian Tribe, P.O. Box 190, Fort Duchesne, Utah 84026; Grant Number: 99-1-0049-55-112-02	77,163	61,730	15,433	33,976	27,181	6,795
Abenaki Self-Help Assn/N.H. Ind. Counc., Box 276, Swanton, Vermont 05488; Grant Number: 99-1-3064-55-224-02	114,335	91,468	22,867	0	0	0
Mattaponi Pamunkey Monacan Consortium, Route 2—P.O. Box 360 West Point, Virginia 23181; Grant Number: 99-1-3227-55-236-02	248,137	198,510	49,627	1,532	1,226	306
American Indian Community Center, East 905 Third Avenue, Spokane, Washington 99202; Grant Number: 99-1-1138-55-186-02	737,760	590,208	147,552	113,824	91,059	22,765
Colville Confederated Tribes, P.O. Box 150, Nespelem, Washington 99155; Grant Number: 99-1-1726-55-192-02	209,289	167,431	41,858	48,215	38,572	9,643
Lummi Indian Business Council, 2616 Kwinda Road, Bellingham, Washington 98225; Grant Number: 99-1-2204-55-256-02	45,919	36,735	9,184	19,106	15,285	3,821
N.W. Inter-Tribal Council, P.O. Box 115, Neah Bay, Washington 98357; Grant Number: 99-1-0069-55-174-02	47,649	38,119	9,530	31,543	25,234	6,309
Puyallup Tribe of Indians, 2002 East 28th St., Tacoma, Washington 98404; Grant Number: 99-1-1137-55-185-02	168,970	135,176	33,794	19,196	15,357	3,839
Seattle Indian Center, 611 12th Avenue South—Suite 300, Seattle, Washington 98144; Grant Number: 99-1-0511-55-170-02	442,645	354,116	88,529	0	0	0
Western Wash. Inc. Empl. and Trng. Prog., 4505 Pacific Highway East, Suite C-1, Tacoma, Washington 98424; Grant Number: 99-1-1933-55-201-02	890,444	712,355	178,089	125,901	100,721	25,180
Lac Courte Oreilles Tribal Governing Board, Route 2, Box 2700, Hayward, Wisconsin 54843; Grant Number: 99-1-0018-55-087-02	100,311	80,249	20,062	24,603	19,682	4,921
Lac Du Flambeau of Lake Superior Chippewa, P.O. Box 67, Lac Du Flambeau, Wisconsin 54538; Grant Number: 99-1-1139-55-187-02	48,296	38,637	9,659	18,926	15,141	3,785
Menominee Indian Tribe, P.O. Box 397, Keshena, Wisconsin 54135-0397; Grant Number: 99-1-0013-55-084-02	76,616	61,293	15,323	46,142	36,914	9,228
Milwaukee Area Am. Ind. Manpower Counc., 634 West Mitchell Street, Milwaukee, Wisconsin 53204-3512; Grant Number: 99-1-0227-55-156-02	237,503	190,002	47,501	0	0	0
Oneida Tribe of Indians of Wis., Inc., P.O. Box 365, Oneida, Wisconsin 54115-0365; Grant Number: 99-1-0015-55-085-02	210,547	168,438	42,109	30,551	24,441	6,110
Stockbridge-Munsee Community, Route 1, Bowler, Wisconsin 54416; Grant Number: 99-1-0500-55-167-02	63,993	51,194	12,799	9,102	7,282	1,820
Wisconsin Indian Consortium, P.O. Box 181, Odanah, Wisconsin 54861; Grant Number: 99-1-2207-55-207-02	94,073	75,258	18,815	25,685	20,548	5,137
Wisconsin-Winnebago Business Committee, P.O. Box 667—127 Main Street, Black River Falls, Wisconsin 54615; Grant Number: 99-1-0019-55-088-02	204,249	163,399	40,850	14,600	11,680	2,920
Shoshone/Arapahoe Tribes, P.O. Box 920, Fort Washakie, Wyoming 82514; Grant Number: 99-1-0050-55-252-02	230,123	184,098	46,025	68,853	55,082	13,771
National Total	$63,000,000	$50,399,998	$12,600,002	$12,418,726	$9,934,983	$2,483,743

[FR Doc. 92-1094 Filed 1-14-92; 8:45 am]
BILLING CODE 4510-30-M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

The Employment and Training Administration has established a voice-mail service for the H-1A nurse attestation process. Call Telephone Number: 202-535-0643 (this is not a toll-free number). At that number, a caller can:

(1) Listen to general information on the attestation process for H-1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, subparts D and E) for the attestation process for H-1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form;

(3) Listen to information on H-1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to public examination of H-1A attestations filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to a health care facility's H-1A attestation (however, see the telephone number regarding complaints, set forth below;) and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

Regarding the Complaint Process

Questions regarding the complaint process for the H-1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The listing of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons which to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section to this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 8th day of January 1992.

Robert J. Litman,

Acting Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 12/01/91 TO 12/31/91

CEO-name/facility name/address	State	Approval date
Mr. Richard A. Pierson, The U. Hospital of Arkansas, 4301 West Markham—Slot 526, Little Rock, 72205, 501-686-6096	AR	12/13/91
Joseph J. DeSilva, St. Joseph Hospital & Medical, 350 W. Thomas Road, Phoenix, Arizona, 85013, 602-285-3000	AZ	12/13/91
Mr. Scott Tibbits, Santa Monica Hosp. Med. Ctr., 1250 16th St., Santa Monica, 90404, 310-319-4000	CA	12/13/91
Jerry Gillman, Midway Hospital Medical Ctr., 5925 San Vicente Blvd., Los Angeles, California, 90019, 213-936-3161	CA	12/13/91
Mr. C. David Wilcox, Hillhaven Lawton Conval. Hosp., 1575 7th Avenue, San Francisco, 94122, 415-566-1200	CA	12/18/91
Children's Hosp. of Orange, 455 S. Main Street, Orange, 92668, 714-997-3000	CA	12/20/91
Mr. Charles S. Koch, Sharp Memorial Hospital, 7901 Frost Street, San Diego, CA, 92123, 619-541-3222	CA	12/20/91
Albert C. Mour, Eisenhower Medical Center, 39000 Bob Hope Drive, Rancho Mirage, CA, 92270, 619-340-3911	CA	12/20/91
Mr. Ronald C. Phelps, Brotman Medical Center, 2838 Delmas Terrace, Culver City, 90232, 213-836-7000	CA	12/27/91
Mr. Mark A. Meyers, Garden Grove Hosp. & Med. Ctr., 12601 Garden Grove Blvd., Garden Grove, 92643, 714-537-5160	CA	12/27/91
Mr. Russell Stromberg, Centinela Hosp. Med. Ctr., 555 East Hardy Street, Inglewood, 90307, 213-419-3624	CA	12/27/91
Mr. Mark Chastang, D.C. General Hosp., 1900 Mass. Ave., S.E., Washington, 20003, 202-675-5465	DC	12/20/91
Mr. Bob A. Dodd, Adventist Health System, Sunbelt, Inc., Zephyrhills, 33541, 813-788-0411	FL	12/02/91
Ms. Nettie Dunaway, Sunset Point Nursing Center, 1980 Sunset Point Road, Clearwater, 34625, 813-443-1586	FL	12/06/91
Ms. Liz Kern, Hospice of the Florida Keys, Visting Nurses Association, Key West, 33040, 305-294-5812	FL	12/06/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 12/01/91 TO 12/31/91—Continued

CEO-name/facility name/address	State	Approval date
Danny Powell, Gulf Coast Hospital, 13681 Doctors Way, Ft. Meyers, Florida, 33912, 813-768-8687	FL	12/11/91
Mr. James E. Rogers, Palm Beach Regional Hospital, 2829 10th Avenue North, Lake Worth, 33461, 407-967-7800	FL	12/13/91
Mr. D. Wayne Bracklin, SMH Homestead Hospital, 160 NW 13 St., Homestead, 33030, 305-248-3232	FL	12/13/91
Mr. Richard J. Stull, II, Broward General Med. Ctr., 1600 South Andrews Ave., Ft. Lauderdale, 33316, 305-355-4400	FL	12/27/91
Richard J. Stull, II, North Broward Medical Center, Pompano Beach, 33064, 305-786-6400	FL	12/27/91
Mr. Richard J. Stull, II, Imperial Point Med. Ctr., 6401 North Federal Hwy., Ft. Lauderdale, 33308, 305-776-8500	FL	12/27/91
Richard J. Stull, II, Coral Springs Medical Center, Coral Springs, 33065, 305-344-3000	FL	12/27/91
Sr. M. Jacqueline, St. Patrick's Residence, 1400 Brookdale Road, Naperville, 60563, 708-416-6565	IL	12/05/91
Mr. John N. Weston, Parlane Nursing Centre, 9125 South Pulaski, Evergreen Pk., 60642, 708-425-3400	IL	12/13/91
Ms. Joann Birdzell, St. Elizabeth's Hospital, 1431 N. Claremont Ave., Chicago, 60622, 312-633-5917	IL	12/13/91
Mr. Leonard Koenig, Yorkdale Healthcare Ctr., Ltd., 2313 N. Rockton Ave., Rockford, 61103, 815-964-4611	IL	12/20/91
Mr. Hugh Canady, The Lincoln Home, Inc., 150 N. 27th Street, Belleville, 62223, 618-235-6600	IL	12/20/91
Mr. Herman Froy, Burnham Terrace, Ltd., 14500 S. Manistee, Burnham, 60633, 708-862-1260	IL	12/20/91
Mr. Pat Hikes, Community Care Ctr., Inc., 4314 S. Wabash Ave., Chicago, 60653, 312-538-8300	IL	12/20/91
Ms. Marianne Araujo, Mercy Hosp. and Med. Ctr., Stevenson Expwy. at King Dr., Chicago, 60616, 312-567-2000	IL	12/27/91
G. Rodney Wolford, Norton Hospital, Alliant Health System, Louisville, 40232, 502-629-8400	KY	12/17/91
G. Rodney Wolford, Kosair Children's Hospital, Louisville, 40231, 502-629-8400	KY	12/17/91
Francis P. Kirley, Worcester County Hospital, 60 Paul Ware Drive, Boylston, 01505, 508-852-1533	MA	12/20/91
Mr. Greg J. Bailey, Microsurgery & Brain Research Institute, P.C., St. Louis, 63109, 314-644-7111	MO	12/13/91
Ms. Patricia G. Webb, Wake Medical Center, 3000 New Bern Avenue, Raleigh, 27610, 919-250-8138	NC	12/20/91
Mr. Tom Boerboom, Park Place Nursing Center, 610 N. Darr, Grand Island, 68803, 308-382-2635	NE	12/06/91
Dr. William O. Berndt, U. of Nebraska Med. Ctr., 600 S. 42nd Street, Omaha, Nebraska, 68198, 402-559-4201	NE	12/13/91
Marilyn Pomeroy, Cedar Grove Manor, 398 Pompton Avenue, Cedar Grove, New Jersey, 07009, 201-239-7600	NJ	12/13/91
Mark D. Pilla, Community Medical Center, 99 Highway 37 West, Toms River, New Jersey, 08755, 908-240-6007	NJ	12/23/91
Mr. Lester M. Bornstein, Newark Beth Israel Med. Ctr., 201 Lyons Avenue, Newark, 07112, 201-926-7000	NJ	12/27/91
Mr. Richard Mendoza, Northeastern Reg'l Hospital, 1235 8th Street, Las Vegas, 87701, 505-425-6751	NM	12/27/91
Mr. James M. Toomey, El Jen Convalescent Hospital, 5538 West Duncan Drive, Las Vegas, 89130, 702-645-1900	NV	12/20/91
Gary Gambuti, St. Luke's-Roosevelt Hospital, 428 West 59th Street, New York, New York, 10019, 212-523-2162	NY	12/11/91
Mr. J. David Nilday, Camphaven Manor, 63 Blackstock Road, Inman, 29349, 803-472-8055	SC	12/13/91
Mr. Joseph H. Powell, Baptist Memorial Hospital, Employment Service, Memphis, 38146, 902-227-5090	TN	12/06/91
Mr. Douglas Langley, Memorial Hospital, Hwy. 90-A Bypass, Gonzales, 78629, 512-672-7581	TX	12/05/91
Mr. David Buchmueller, Providence Memorial Hospital, 2001 North Oregon, El Paso, TX, 79902, 915-542-6662	TX	12/13/91
Nelson A. Sin, Int'l Medical Personnel Co., 9894 Bissonnet, Houston, 77036, 713-771-1211	TX	12/20/91
Mr. David B. Dildy, East Texas Med. Ctr.-Tyler, 75701, S. Beckham, Tyler, 75701, 903-531-8016	TX	12/27/91
Mr. A. Jason Geisinger, Wasatch Villa Conval. Center, First Healthcare Corp., d.b.a., Salt Lake City, 84109, 801-486-2096	UT	12/06/91
Mr. Charles V. Rice, Int'l Health Services, Inc., 5723 Centre Square Drive, Centreville, 22020, 703-222-3900	VA	12/19/91
Total Attestations: 51		

[FR Doc. 92-1093 Filed 1-14-92; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biotic Systems and Resources

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for award. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Biotic Systems and Resources.

Dates and Times: February 2 and 3, 1992, 7 a.m.–5 p.m.

Location: Holiday Inn Crowne Plaza Hotel, 775 12th Street, NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate Presidential Faculty Fellows Program Proposals.

Contact Person: Penelope Firth, Program Director, Special Programs, room 215, National Science Foundation, Washington, DC 20550.

Telephone: (202) 357-3978.

Dated: January 7, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-965 Filed 1-14-92; 8:45 am]
BILLING CODE 7555-01-M

Advisory Panel for Systematic Biology; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for award. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of U.S.C. 552b (c), Government in the Sunshine Act.

Name: Advisory Panel for Systematic Biology.

Dates & Times: February 2, 1992, 12 a.m.–6 p.m.; February 3, 1992, 6 a.m.–7 p.m.; February 4, 1992, 8 a.m.–5 p.m.

Location: Holiday Inn, Rhode Island Ave. at 17th Street, NW., Washington, DC 20036.

Type of Meeting: Closed.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Contact Person: Terry Yates, Program Director, Systematic Biology Program, room 215, National Science Foundation, Washington, DC 20550.

Telephone: (202) 357-9588.

Dated: January 7, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-964 Filed 1-14-92; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from various requirements of 10 CFR part 50, appendix J to the Connecticut Yankee Atomic Power Company (CYAPCO or the licensee) for the Haddam Neck Plant, located at the licensee's site in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant exemptions applicable for one cycle of operation, from the periodic retest requirements for performing Type C tests, set forth in 10 CFR part 50, appendix J, section III. Type C tests measure containment isolation valve leakage rates. Type C test requirements are set forth in appendix J, section III.C. The exemptions would apply to four containment penetrations at the Haddam Neck Plant. These penetrations are P-8, Reactor Coolant System Charging; P-33, Refueling Cavity Purification; P-62, Service Air to Containment; and P-78, Relief Tank Drain. For penetrations P-33, P-62, and P-78, the Type C test would be performed but in the reverse-direction specified in III.C.1 of appendix J. For P-8, no Type C test would be performed until the Cycle 17 refueling outage. The proposed action is in accordance with the licensee's request for schedular exemptions dated December 20, 1991.

The Need for the Proposed Action

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR part 50, appendix J. In particular, for P-8, CYAPCO seeks exemption, for one refueling outage, from the requirement of performing the Type C test. For the other three penetrations, the exemptions would allow deviation from the requirements of how the Type C test is performed.

The licensee seeks the requested exemptions because performance of the Type C tests as required by appendix J would require modifications to the penetrations or replacement of the valves.

Environmental Impacts of the Proposed Action

The staff has reviewed the proposed exemptions and has concluded that the schedular exemptions from various requirements of 10 CFR part 50, appendix J, section III.C. Type C tests for penetrations P-8, P-33, P-62 and P-78 will not compromise containment integrity. This conclusion is based, in general, on the periodic containment integrated leak rate test and the design or function of the valves which provide some compensatory measures to assure leak tightness of the valve. In addition, for penetrations P-33, P-62 and P-78, the Type C test is performed but in the reverse direction.

Thus, radiological releases will not differ from those determined previously and the proposed exemptions do not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemptions do not affect plant nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to deny the exemptions requested. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Haddam Neck.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

For further details with respect to this proposed action, see the licensee's letter dated December 20, 1991 which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Rockville, Maryland this 9th day of January 1992.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-1046 Filed 1-14-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 39th meeting on January 15 (1 p.m.-5 p.m.), 16 and 17, 1992, 8:30 a.m.-5 p.m., room P-110, 7920 Norfolk Avenue, Bethesda, MD. The entire meeting will be open to public attendance. This meeting was previously published in the **Federal Register** Friday, December 27, 1991 (56 FR 67106).

The agenda for the subject meeting shall be as follows:

A. Continue deliberations to investigate the feasibility of a systems analysis approach to reviewing the overall high-level waste program with the goal of reporting back to the Commission the ACNW's recommendations as to the scope of such a review and the advisability of the ACNW undertaking it.

B. Review and comment on a revision to NUREG-1200, Standard Review Plan for a Low-Level Waste Facility.

C. Briefed by NRC's Office of Research on planned research in the area of high-level waste.

D. Discuss a paper to be given at the January 29-31, 1992, Low-Level Waste Forum Winter Meeting.

E. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only

by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: January 9, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–1044 Filed 1–14–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Governmentwide Guidance for New Restrictions on Lobbying

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice provides further information about, and proposes changes to, OMB's interim final guidance, published December 20, 1989, as called for by Section 319 of Public Law 101–121, and OMB's clarification notice, published June 15, 1990.

DATES: Comments on this proposal must be in writing and must be received by March 16, 1992. Late comments will be considered to the extent practicable. The effective date of the interim final guidance was December 23, 1989.

ADDRESSES: Office of Management and Budget, 725 17th Street, NW., room 10300, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For contracts, Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB (telephone: 202–395–3254). For grants and loans, contact Barbara F. Kahlow, Office of Federal Financial Management, OMB (telephone: 202–395–3053).

SUPPLEMENTARY INFORMATION: On October 23, 1989, the President signed into law the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 ("the Act"). Section 319 of the Act amended title 31, United States Code, by adding a new Section 1352, entitled, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." Section 1352 took effect with respect to Federal contracts, grants, loans, cooperative agreements, loan insurance commitments, and loan guarantee commitments that were entered into or made more than 60 days after the date of the enactment of the Act, i.e., December 23, 1989.

Section 1352 required the Director of the Office of Management and Budget (OMB) to issue governmentwide guidance for agency implementation of, and compliance with, the requirements of this section. Interim final guidance was published on December 20, 1989 (54 FR 52306), effective December 23, 1989. On June 15, 1990, OMB published a notice (55 FR 24540) to inform the public about certain clarifications which OMB had made since the December 20, 1989 publication. These included replies to two letters addressed to OMB from Members of Congress. In addition, OMB had issued an internal governmentwide memorandum which was reproduced in the notice.

Section 318 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1991 amended the earlier Act by expanding on the $150,000 threshold for the certification and disclosure reporting requirements for loans and loan insurance and guarantee commitments by adding the following language: "or the single family maximum mortgage limit for affected programs, whichever is greater."

To date, as required by the Act, there have been four agency semi-annual compilations of disclosure reports and the first annual agency Inspector General reports submitted to Congress. In addition, on September 25, 1991, the General Accounting Office (GAO) offered several recommendations. Based on OMB's review of these reports, OMB believes that the following additional clarifications are needed at this time. Also, OMB is proposing some changes for public comment. OMB is not finalizing the OMB guidance at this time because of possible changes to this statute and other statues related to lobbying.

Proposed Changes

Based on the limited number of disclosure reports filed to date, the law may not be achieving one of its intended purposes. That is, some influencing activities for covered Federal actions by other than own employees of those doing business with the Federal Government are not now being disclosed. Both the Department of Defense Inspector General and the GAO have recommended that OMB's guidance be clarified to fulfill the Act's intended purpose. In particular, they emphasized that OMB should ensure that all covered Federal actions which result from attempts at influencing Congressional action be fully covered by the Act's prohibition on the use of appropriated funds and its disclosure provisions regarding the use of nonappropriated funds. Therefore, OMB is proposing the following changes, for which public comment is invited:

1. OMB proposes to amend the June 15, 1990 clarification on "program lobbying." The notice stated, at 55 FR 24542:

> "The prohibition on use of Federal appropriated funds does not apply to influencing activities not in connection with a specific covered Federal action. These activities include those related to legislation and regulations for a program versus a specific covered Federal action."

This exemption may have been interpreted too broadly to exclude most disclosure requirements on "program lobbying," even when such activity results in influencing covered Federal actions. Therefore, the guidance is proposed to be revised to revoke the foregoing clarification and to indicate that the following activities are, in fact, covered by the Act, and accordingly require disclosure, and cannot be undertaken with appropriated funds:

> Activities to influence Congressional or Executive Branch action on a provision of a bill or report that would direct the funding of, or indicate an intent to fund, a covered Federal action.

Under the revised guidance, activities to influence the earmarking of funds for a particular program, project or activity in an appropriation, authorization or other bill or in report language would be included within that Act's restrictions. Included in this coverage would be situations in which a person already is the recipient of a covered Federal action and seeks to influence Congress or the Executive Branch to provide, on a non-competitive basis, a follow-on or a

continuation of that covered Federal action.

Example: A manufacturer of aircraft hires a consultant to engage in influencing activities on its behalf. The consultant contacts Congressional staff in an effort to influence action on language in an appropriations bill that would allocate money for a particular program for the procurement of transport aircraft. The contractor later bids on a contract for the transport aircraft funded under that appropriation. The influencing activities of the consultant must be disclosed by the manufacturer when the bid is submitted.

2. OMB also proposes to clarify when covered influencing activities paid for with nonappropriated funds must be disclosed. Disclosure must be made by the party whose submission initiates an agency's consideration of a covered Federal action. Influencing paid for or funded by a third party ("third party lobbying") shall be disclosed. In such cases, disclosure is required only when the influencing relates to covered Federal action for a specifically identifiable party or parties, and not for funds distributed to a broad class of parties.

Example 1: A national membership association of public transit systems has several hundred members and engages in general advocacy for increased funding for public transit. With regard to a particular bill, the association lobbies Congressional Members and staff in support of an increase in the appropriation for public transportation systems. Because the influencing activity does not advocate earmarking awards for particular projects or awards to particular public transit systems which are members of the association, reporting of the influencing activity is not required.

Example 2: The same association is conducting its legislative lobbying program, advocates earmarking of funds for particular public transit systems' projects. This constitutes third party lobbying and is subject to the reporting requirements of the Act.

3. The certification would be amended to add a check mark to indicate whether nonappropriated funds were used for influencing activities, other than allowable professional and technical services, by other than own employees. The check mark would indicate to the Federal Government that a SF–LLL disclosure form is required to be submitted with the certification.

Clarifications

OMB is now making the following additional clarifications to its interim final guidance. These are in addition to the clarifications published in the June 15, 1990 notice:

1. The GAO report stated that "Ambiguity exists in the amendment and the OMB guidance on when disclosure forms are due. * * * If it is intended that submissions without the certification be rejected, the amendment and the guidance need to be clarified." OMB believes that Congressional intent was for certification and disclosure at application, not award. However, OMB concurs in the GAO recommendation that Congressional clarification on this point is desirable.

2. GAO asked OMB to make four clarifications regarding disclosure reporting:

(a) The SF–LLL, "Disclosure of Lobbying Activities," asks for "Amount of Payment" and the accompanying instructions state "Enter the amount of compensation paid or reasonably expected to be paid * * *" The total amount of the payment, not the rate of payment, is to be reported.

(b) The SF–LLL asks for a "Brief Description of Services Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted * * *" and the accompanying instructions state "Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform * * *" A brief, but specific and detailed description of the services performed, using nonappropriated funds, is required.

(c) Agencies should check for completeness of all disclosure forms which are submitttted.

(d) No disclosure reporting is required for activities undertaken by one's own employees.

Allan V. Burman,

Administrator for Federal Procurement Policy.

Edward J. Mazur,

Controller Office of Federal Financial Management.

[FR Doc. 92-926 Filed 1-14-92; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30168; File No. SR-DGOC-91-03]

Self-Regulatory Organizations; Delta Government Options Corp.; Order Approving a Proposed Rule Change Relating to the Definition of Exercise Price

January 8, 1992.

On November 15, 1991, Delta Government Options Corp. ("DGOC") filed a proposed rule change (File No. SR–DGOC–91–03) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the Federal Register on November 27, 1991, to solicit comments from interested persons.[2] DGOC amended the proposal on December 12, 1991 [3] and December 31, 1991.[4] No comments were received. As discussed below, this order approves the proposal.

I. Description of the Proposal

The proposal amends the definition of "exercise price" contained in Article I section 101 of DGOC's Procedures so that exercise prices for option contracts on Treasury bills, notes, and bonds shall be in whole numbers and sixteenths.[5] Currently, the exercise price for an option contract on Treasury bonds or Treasury notes with a remaining term to maturity of three years or more is stated in whole numbers and halves, and the exercise price for an option contract on Treasury bills or Treasury notes with a remaining term to maturity of less than three years is stated in whole numbers and quarters. Thus, the proposal allows option contracts on Treasury bills, notes, and bonds with exercise prices in gradations as small as sixteenths to be cleared and settled at DGOC.[6]

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 29877 (November 21, 1991), 56 FR 60137.

[3] Letter from Robert C. Mendelson, Esq., Morgan, Lewis & Bockius, to Jerry Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (December 12, 1991) ("Amendment No. 1").

[4] Letter from Robert C. Mendelson, Esq., Morgan, Lewis & Bockius, to Scott Wallner, Staff Attorney, Division, Commission (December 31, 1991) ("Amendment No. 2").

[5] As published in the Federal Register, DGOC's initial proposal would have amended DGOC's Procedures so that "exercise price" would be defined as the price stated in whole numbers and quarters for an option contract on a Treasury bond or note with a remaining term to maturity of three years or more or the price stated in whole numbers and sixteenths for an option contract on a Treasury bill or note with a remaining term to maturity of less than three years. In Amendment No. 1, DGOC amended the rule filing by having the gradations for all exercise prices for option contracts on Treasury bills, notes, or bonds be in sixteenths. *Supra* note 2. In Amendment No. 2, DGOC amended the language of the definition of "exercise price" to clarify its meaning. The change did not materially alter the substance of the proposal. *Supra* note 3.

[6] Exercise prices for options on Treasury securities are stated in whole numbers and two digit decimal fractions representing thirty-seconds ("32nds"). Currently, for the purpose of setting an exercise price, such decimal fractions may be stated so that they are capable of being reduced into halves or quarters depending upon the type of treasury security involved. For example, an option on a Treasury bond might have as its exercise price $102.16. Because the decimal fraction represents 32nds, the exercise price would be $102 16/32 or $102½. As proposed, exercise prices for options on Treasury securities will continue to be stated in whole numbers and two digit decimal fractions representing 32nds, but now option contracts on

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According to DGOC, it filed the proposal in order to respond to DGOC participants' ("Participants"] requests for finer gradations in options prices.

II. Discussion

The Commission believes that DGOC's proposal is consistent with the Act and particularly with section 17A(b)(3)(F).[7] That section requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes DGOC's proposal will promote and facilitate the prompt and accurate clearance and settlement of over-the-counter ("OTC") Treasury options within an automated clearing facility subject to Commission oversight.

Market participants trade OTC Treasury options to hedge against or speculate on changes in Treasury security interest rates. In particular, OTC Treasury options enable market participants to tailor option terms, such as the exercise price, to their individual needs.[8] DGOC's proposal to define "exercise price" to include OTC Treasury options with finer gradations of exercise prices will provide a broader range of OTC Treasury options that can be cleared and settled through DGOC. This should afford Participants additional flexibility in the OTC Treasury options traded in relation to their Treasury security portfolios.

III. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[9] that DGOC's proposed rule change (SR–DGOC–91–03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–986 Filed 1–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30170; File No. SR–GSCC–91–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing and Order Granting Temporary Approval, on an Accelerated Basis, of a Proposed Rule Change Relating to Yield Trades Converted to Priced Trades at the Time of Comparison

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on November 15, 1991, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below. This order grants accelerated approval of GSCC's proposal on a temporary basis until January 31, 1993.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would extend the time period for GSCC to implement the conversion service for yield-based trades. The conversion service, which was approved by the Commission on a temporary basis through January 31, 1992,[1] allows GSCC to net, prior to the U.S. Treasury ("Treasury") auction, trades submitted by participating members [2] in Treasury note and bond issues that have been executed on the basis of the current market yield.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified item IV below. GSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On April 24, 1991, pursuant to section 19(b) of the Act, GSCC filed with the Commission a proposed rule change (File No. SR–GSCC–91–01) that provides authority for GSCC to implement a yield-to-price conversion feature and to net trades that have been compared on a yield basis. On September 24, 1991, the Commission approved the proposal on a temporary basis until January 31, 1992.

GSCC has not yet implemented the proposed yield-to-price conversion feature or begun to net yield trades; it expects to do so during the first quarter of 1992. In view of this, GSCC is requesting that the temporary approval period for the proposal be extended. In order that GSCC and its membership be able to gain sufficient experience in converting and netting yield trades prior to making the conversion feature mandatory for all netting members, GSCC is requesting that the period of extended temporary authority be for at least one year.

GSCC's rationale for seeking authority to implement a yield-to-price conversion feature, and to net trades that have been compared on a yield basis, is set forth below.

New Treasury note and bond issues are auctioned on a yield-to-maturity basis, reflecting the rate of return realized if the security is held to maturity and if coupon interest payments are reinvested at such yield. Firms that trade notes and bonds in the secondary market on a when-issued basis during the time period from announcement to auction do so based on the then current market yield without knowledge of what the coupon actually will be.[3] During that period, such firms

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Treasury bills, notes, or bonds that have exercise prices where the decimal fractions may be in gradations as small as sixteenths may be cleared and settled at DGOC. For example, an option on a Treasury bond might have as its exercise price $102.02. Again, because the decimal fraction represents 32nds, the exercise price would be $102 2/32 or $102 1/16.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] A comprehensive description of the OTC treasury options market and of DGOC's Over-the-Counter Options Trading System is in Securities Exchange Act Release No. 26450 (January 12, 1989), 54 FR 2010.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] Securities Exchange Act Release No. 29732 (September 24, 1991), 56 FR 49937.

[2] The initial proposed rule change (File No. SR–GSCC–91–01) was designed to allow GSCC to convert yield-based trades between participating members to priced trades at the time of comparison. After the proposal was filed, the Commission approved GSCC's proposal to compare and net trades executed by non-members if those trades were submitted by members and were otherwise eligible for GSCC's netting system. Securities Exchange Act Release No. 30078 (December 13, 1991), 56 FR 66110. Accordingly, this order reflects the intervening rule change.

[3] GSCC members frequently trade not only before issuance of the securities but also before an

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can use a standard Treasury Department conversion formula and an assumed coupon rate to derive the prices of trades that they have done in a security on a yield basis; this might be done, for example, for internal surveillance purposes in order to monitor the firm's credit exposure.

After the auction is completed and the coupon rate is established, the price charged each successful auction bidder for the securities that it has bid on is calculated so that the yield to maturity on the securities equal the yield that was bid.

Currently, when-issued trades submitted to GSCC are eligible for the net only if they have been compared by GSCC, post-auction, on a final price basis. Data on when-issued trades in notes and bonds submitted prior to auction, even if successfully compared on a yield basis, must be resubmitted after auction for comparison on a final price basis in order to be eligible for GSCC's netting and novation process and the credit protection that it provides.

In order to make available to netting members the protection and efficiency provided by netting as soon as possible after the trading in eligible securities commences, GSCC proposes to automatically convert yield trades into priced trades at the time of their comparison on a yield basis, based on an assumed coupon.[4] This would (1) Allow such yield trades to be netted, novated and marked-to-the-market in the same manner as are final money trades as early as the night after the trade is entered into (assuming that the trade is compared on a yield basis), and (2) eliminate the need for double submission of when-issued trades.

Only Treasury notes and bonds would be eligible for yield-to-price conversion. Yield data would be converted and compared with data submitted on a price basis from auction date until maturity date. Forward net settlement positions comprised in whole or in part of converted trades pre-auction would be included in the calculation of such members' required clearing fund deposits[5] and forward mark allocation amounts[6] in the same manner as if data on the trades had been submitted post-auction on a price basis.

During the temporary approval period, members would be permitted to choose not to participate in the conversion process. Such members would have to continue to resubmit trade data post-auction on a final money basis. Obviously, GSCC would not routinely collect forward mark allocations or clearing fund contributions from non-participating members. Nevertheless, to monitor non-participating member financial condition and credit exposures, GSCC would calculate on each business day a non-participating member's forward mark allocation and clearing fund requirement based on the assumption that the non-participating member's matched trades were included in the net.[7] GSCC would expressly reserve the right to collect clearing fund deposits and forward mark allocation monies from any such member if any time during the pre-auction period GSCC determines that the non-participating clearing member no longer satisfies GSCC's membership criteria for financial responsibility reasons.[8]

GSCC would derive a standard yield-to-price conversion formula using the Treasury Department's formulas.[9] The coupon rate used prior to auction would be an assumed one that would be calculated based on a par-weighted average yield, adjusted down to the nearest ⅛th, derived using compared trade data from the most recent comparison cycle. The assumed coupon rate would be recalculated daily, and would be revised automatically if a movement of ⅛th of a point or more occurred, or otherwise as deemed appropriate by GSCC. Of course, on auction date, the price would be calculated based on the actual coupon.

The system price of a converted trade would be calculated pre-auction for the purpose of calculating a member's forward mark allocation requirement, based on the pre-weighted average of all compared trades in each CUSIP, the assumed coupon and accrued interest (if applicable).

The calculation of the conversion price would take into account commission. Yield trades should be submitted with commission data; however, GSCC understands that certain firms may initially not be able to do so. In general, in order to avoid generating compared trades as the result of either a lack of submission of a commission amount or a mistake in the submission of commission amount, if the data submitted on a yield basis involving a trade submitted by a broker member and a dealer member meet all of the criteria for comparison other than the information submitted regarding commission, and the dealer has submitted a commission amount that does not match the commission amount submitted by the broker, the trade would be compared based on the commission amount submitted by the broker.

In order to facilitate the ability of members subsequently to adjust between themselves commission discrepancies, GSCC would provide members with both daily information on each compared trade with a commission difference and an automated mechanism for correcting commission amount mistakes.

The comparisons by GSCC of a yield trade involving unmatched commission amounts, while evidencing a valid, binding and enforceable contract between the parties to the trade to the same degree as if the commission amounts matched, would not constitute a final, binding determination on those firms as to the correct commission amount. Broker members would have an ongoing obligation to their dealer member counterparties to respond promptly to such dealers' commission difference inquiries and to act in good

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issuance price has been set. GSCC member purchases and sales of securities prior to the auction date (commonly known and "when, as, and if, issued trades" or "when issued trades") which have been successfully compared typically are scheduled for settlement on a later date ("forward settling trades"). (The term "forward trades" encompasses "when-issued trades"). When-issued trading extends from the day the auction is announced until the issue day of the Treasury security traded Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19839 (approving GSCC's comparison service for forward settling trades); and 27902 (April 12, 1990), 55 FR 15055 (extending GSCC's netting system to the settlement of forward settling trades that have been successfully compared on a final price basis).

[4] The "assumed coupon" is an approximation of the actual coupon calculated using data (*i.e.*, type of security, CUSIP and time to maturity) that is common between existing securities and the securities to be issued.

[5] For a discussion of the calculation of the required clearing fund deposit, see Securities Exchange Act Release No. 29701 (April 12, 1990), 55 FR 15055.

[6] The forward mark allocation amount is the amount owed to GSCC based on the securities that GSCC anticipates that a netting member will be obligated, on the scheduled settlement date for the position, to either receive from GSCC or delivery to GSCC. See Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066 for a detailed description of the calculation of the forward mark allocation.

[7] Matched trades between participating and non-participating members, however, will not be included in the net.

[8] GSCC's Rules require registered brokers or dealers to maintain net worth of $50 million and excess net capital of $10 million; Government securities brokers or Government securities dealers are required to maintain $50 million net worth and $10 million excess liquid capital; inter-dealer brokers are required to maintain liquid capital or net capital of at least $4.2 million; and banks are required to maintain minimum equity capital of $250 million. See GSCC Rules and Procedures, R. 15.

[9] See Securities Exchange Act Release No. 29732 (September 24, 1991) 56 FR 49837 for a detailed description of the conversion formula.

faith to resolve all alleged differences. Members' comparison output would contain appropriate indication that a trade has been converted from yield to price status.

(b) The proposed rule change would make available to netting members the protection and efficiencies provided by netting as soon as possible after the trading in eligible securities commences. Thus, the proposal is consistent with the requirements of the Act and in particular section 17A and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not perceive that the proposed rule change impacts on, or imposes a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Notice of the proposed rule change has been published in the **Federal Register** in connection with an essentially identical proposed rule change which the Commission approved on a temporary basis.[10] GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

GSCC requests that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing.[11] GSCC requests accelerated approval to allow GSCC to implement the proposal as soon as possible after making the necessary system changes.

Consistent with the Commission's findings in the initial approval order,[12] the Commission believes that GSCC's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies and, in particular, the requirements of sections 17A(b)(3) (A) and (F).[13] Those sections require that a clearing agency be organized, have the capacity to facilitate, and have rules designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the procedures embodied in GSCC's proposal meet these statutory requirements by allowing GSCC to net, as soon as the night after the trade occurs, yield-based trades submitted to GSCC for comparison and netting.

The Commission believes that good cause exists for approving the proposed rule change prior to the thirtieth day after the publication of notice of filing. The Commission is extending the temporary approval period of the proposal for one year. Accelerated approval would permit GSCC to implement the conversion of yield-based trades as soon as possible, and without interruption, after the initial temporary approval period expires. Temporary approval of the proposal would permit GSCC, its members, and the Commission to determine whether the conversion service meets the expectations of GSCC and its members, and, if not, whether modifications are appropriate.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section at the address above. Copies of such filing will also be available for inspection and copying at the principle office of GSCC. All submissions should refer to File No. SR–GSCC–91–05 and should be submitted by February 5, 1992.

V. Conclusion

On the basis of the foregoing, the Commission preliminarily finds that GSCC's proposed rule change is consistent with the Act and, in particular, with section 17A of the Act, and the Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposal (File No. SR–GSCC–91–05) be, and hereby is, approved on an accelerated basis until January 31, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–1036 Filed 1–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No 34–30169; File No. SR–OCC–91–06]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Assessment of Applications for Clearing Membership and for Business Expansion

January 8, 1992.

On March 29, 1991, The Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR–OCC–91–06) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") concerning membership qualifications and business expansions by members.[1] Notice of the proposed rule change was published in the **Federal Register** on May 13, 1991.[2] No comments were received. This order approves the proposal.

I. Description

OCC's proposed rule change would allow OCC to accomplish two distinct purposes. First, the proposal would establish objective criteria for assessing an applicant clearing member's competency and experience and for ensuring the continuing competency of existing clearing members in clearing securities transactions.[3] Second, the

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[10] Securities Exchange Act Release No. 29732 (September 24, 1991), 56 FR 49937.

[11] Letter from Jeffrey Ingber, Associate General Counsel and Assistant Secretary, GSCC, to Sonia Burnett, Attorney, Division of Market Regulation, Commission (December 6, 1991).

[12] Securities Exchange Act Release No. 29732 (September 24, 1991), 56 FR 49937.

[13] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 28102 (May 3, 1991), 56 FR 22031.

[3] Article V, section 1 of OCC's By-laws requires, among other things, that in order for an applicant to become a clearing member of OCC the applicant must maintain facilities and personnel adequate for the expeditious and orderly transaction of business with OCC and with other clearing members and must meet other standards of experience and competency as prescribed in OGC's rules. In addition, Interpretations and Policies ("I and P") .03c to Article V, section 1 of OCC's By-laws provides that the Membership and Margin Committee ("MMC") will not recommend the approval of an application for clearing membership if the applicant lacks substantial experience in clearing securities transactions and has failed, in

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proposal would establish procedures for OCC to process applications for business expansion on an expedited basis.

A. Criteria for Assessing Competency and Experience

The proposed rule change would establish, in addition to the present subjective standards, objective competency and experience requirements for securities firms applying for clearing membership with OCC. Currently, the competency and experience of and applicant is assessed on a subjective basis by OCC staff in its routine operations orientation.[4]

Under the proposed rule change, a U.S. registered broker-dealer applicant or a person associated with such a broker-dealer applicant would be required to be registered as a Limited Principal—Financial and Operations ("FINOP") [5] with the National Association of Securities Dealers, Inc. ("NASD"). In order to be so registered, an individual must complete successfully the NASD FINOP examination. The FINOP examination is designed to provide an objective measure to competency in, among other things, clearing securities transactions.

OCC proposes to establish similar requirements for a "non-U.S. securities firm" [6] that is applying for clearing membership as an exempt Canadian clearing member.[7] As a condition of such clearing membership, OCC would require that the Canadian applicant or a person associated with the applicant be both a Principal/Director/Officer ("PDO") and a Designated Registered Options Principal ("DROP") with IDAC. In order to be so registered, the applicant will be required to successfully complete the competency examinations administered by IDAC thereby demonstrating the applicant's knowledge of applicable Canadian capital requirements and options transactions.[8]

In the case of other non-U.S. applicants,[9] OCC would require the applicant or a person associated with the applicant to take and successfully complete any applicable OCC financial and operations examination for employees who are responsible for supervising the preparation of the applicant's financial reports.[10]

Consistent with OCC's current procedures, the MMC may exempt an applicant from the above requirements if the applicant has entered into a facilities management agreement.[11] In addition, upon a written request and for good cause, the rule proposal would allow the MMC to waive the above requirements and accept other evidence of the applicant's experience in clearing securities transactions.

The proposal also would help to ensure the continued competency of existing clearing members in clearing securities transactions by requiring existing clearing members to meet similar financial and operations personnel requirements.[12] To facilitate member compliance, existing members would have until June 30, 1993, to comply with the new requirements. Thereafter, if a clearing member's noncompliance results from the separation of the financial and operations person from the clearing member, OCC would allow the clearing member one year from the date of separation to comply with the rule. In the event a clearing member has not complied with the rule by the end of the above specified periods, the MMC would have discretion either to require the clearing member to make additional clearing fund and margin deposits in an amount determined by the MMC or to require the clearing member to execute a facilities management agreement that would remain in effect until the clearing member complies with the requirements of the rule.

B. Applications for Business Expansion

OCC permits existing clearing members to apply for authorization to clear types of options transactions (*e.g.*, customer, firm, and market-maker transactions) and kinds of options transactions (*e.g.*, stock options, Treasury security options, and cross-rate options) in addition to the types and kinds of options transactions that the clearing member has been approved to clear.[13] Such applications for business expansion currently are submitted to the MMC for action. Because the MCC does not meet on a monthly basis, up to eight weeks can pass before action is taken on an application for business expansion. To improve the timeliness of its response to such applications, the rule proposal would authorize OCC's Chairman or President to approve on a temporary basis any application for business expansion for which a clearing

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the MMC's opinion, to employ back office personnel with sufficient experience to compensate for the applicant's lack of background in clearing.

[4] As a part of its applications process, OCC requires each prospective member to submit the resume of each of the prospective member's operations personnel. After the prospective member's application is received and reviewed, OCC Regulation Department conducts an interview and an operations orientation with the prospective clearing member. The purpose of the interview and orientation is to ensure that the prospective clearing member understands OCC By-laws and Rules and the procedures for exercise, assignment, and premium and margin settlement. Based on, among other things, the results of the interview and orientation and the prospective member's experience in clearing securities transactions, the Regulation Department reports its findings and recommendations to the MMC which then makes a subjective determination of whether or not to grant the applicant OCC membership. Telephone conversation between Jean Cawley, Staff Counsel, OCC, and Sonia Burnett, Attorney, Division of Market Regulation ("Division"), Commission (June 4, 1991).

[5] An individual registered as a FINOP may supervise preparation and filing of a broker-dealer's financial reports and may provide overall supervision of back office operations.

[6] Article 1, section 1 (rrr) of OCC By-Laws.

[7] OCC's By-Laws and Rules permit non-U.S. securities firms to apply for clearing membership in OCC. Canadian securities firms may apply to become exempt non-U.S. clearing members. (A "Canadian securities firm" is a securities firm that is formed and operated under the laws of Canada or any of its provinces, and that has its principal place of business in Canada.) OCC By-Laws, Article 1, section 1 (rrr). As exempt non-U.S. members, these clearing members may file financial reports with OCC under the financial and reporting standards of Canada and use the reporting forms established by the Investment Dealers Association of Canada ("IDAC"). OCC Rule 310(b). IDAC is the Canadian self-regulatory organization that oversees the registration of persons actively engaged in the securities business in Canada.

[8] In a prior order, the Commission found that OCC's financial responsibility standards and the financial responsibility standards of the Canadian government were "sufficiently equivalent" to allow Canadian securities firms to become exempt non-U.S. clearing members. Securities Exchange Act Release No. 24725 (July 21, 1987), 52 FR 28400.

[9] Non-U.S. securities firms that are not eligible for exempt status must prepare their financial reports in accordance with U.S. accounting practices and with the Commission's accounting and financial reporting requirements. OCC Rule 310(a).

[10] Proposed new paragraph to OCC By-Laws, Article V, section 1, I and P.03a3. Amendment No. 1 to File No. SR–OCC–91–06.

[11] A "facilities management agreement" is a written agreement between an OCC clearing member ("the managing clearing member") and the applicant clearing member ("the managed clearing member") that sets forth the respective rights and obligations of the parties to the agreement. Pursuant to such an agreement, the managing clearing member agrees to perform certain of the applicant's obligations as a clearing member for transacting business with OCC and with other clearing members and for maintaining required books and records. The facilities management agreement generally provides that the managing clearing member would, among other things, provide back office processing for the managed clearing member. Facilities management agreements are subject to OCC approval. Furthermore, before membership is granted to an applicant using a facilities management agreement to fulfill part of its membership requirements, the applicant clearing member is required to demonstrate that it has the operational capability, experience, and competence to perform the duties and obligations which are not required to be performed by the managing clearing member. OCC By-laws, Article V, section 1, I and P .04.

[12] OCC proposed Rule 214 and I and P thereto.

[13] OCC By-laws, Article V, section 1, I and P .03e.

member has requested expedited treatment.[14]

Consistent with current procedures, the rule proposed would require the MMC to review independently the application at its next scheduled meeting and to determine *de novo* whether to approve or disapprove the application. The proposed rule change provides that if the MMC determines to modify or reverse the Chairman's or President's determination, the modification or reversal will operate prospectively and will not invalidate any action taken by OCC prior to the modification or reversal and will not operate to affect the rights of any person arising from the Chairman's or President's determination.

II. Discussion

As discussed below, the Commission believes that OCC's proposed rule change is consistent with the Act and in particular with the standards enumerated in sections 17A(b)(3)(A) and 17A(b)(3)(F).[15] Those sections require that a clearing agency is organized and that its rules are designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

Further, the Commission believes that OCC's proposed rule change is consistent with section 17A(b)(3)(B).[16] That section allows a registered clearing agency to deny participation to or condition the participation of any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. Section 17A(b)(4)(B) also allows a registered clearing agency to examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.

Section 17A was adopted in response to the "paperwork crisis" of the late 1960s which resulted from, among other things, increased trading volumes coupled with inefficient, duplicitous, and manual broker-to-broker clearance and settlement processes and with the use of untrained personnel.[17] The paperwork crisis caused the failure of many broker dealers. In addition, it highlighted the interdependence of the various market mechanisms and the importance of clearance and settlement to investor protection and a liquid secondary market. Thus, the effective control of securities processing is vital to the smooth functioning of the marketplace as a whole, and the adoption of section 17A was a significant step toward achieving that control.

Since that time, the Commission has encouraged the use of systems and procedures that would carry out the objectives of section 17A. The Commission believes that the NASD's FINOP registration program, IDAC's PDO and DROP registration program, and OCC's orientation and internal examination programs are designed to provide a reliable basis for evaluating a prospective member's experience and competency. Because these programs are used as the standard indicators of the competency of financial and operations personnel within the securities industry, successful completion will provide OCC greater assurance that its clearing membership has the necessary level of training and experience. Moreover, OCC's proposal would add objective criteria to OCC's membership review process and will enhance OCC's ability to ensure that its members have the competency and experience needed to provide prompt and accurate clearance and settlement of securities transactions and to provide for the safeguarding of securities and funds.

OCC's proposal to allow its President or Chairman to approve temporarily a clearing member's application for business expansion will provide greater flexibility in the administration of OCC's affairs. This aspect of the proposal will permit OCC to respond to clearing member business expansion requests in a timely manner consistent with clearing member business requirements and OCC's ability to complete the application review process. Nevertheless, the Commission is concerned that OCC not use the authority granted under the proposal inappropriately or in a manner that circumvents the responsibilities of the MMC. Accordingly, OCC has represented to the Commission staff that: (1) The MMC will be furnished with the same memorandum as was furnished to the Chairman and the President concerning any application for business expansion for which expedited treatment was requested and (2) the MMC usually follows OCC staff recommendations with respect to applications for business expansion. In addition, one year following approval of the proposed rule change, OCC will provide a report concerning any requests for expedited treatment of applications for business expansion.[18]

III. Conclusion

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and in particular section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that OCC's proposed rule change (File No. SR–OCC–91–06) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–983 Filed 1–14–92; 8:45 am]

BILLING CODE 8010–01–M

(Release No. 34–30152; File No. SR–PSE–91–46)

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to an Extension of the Time To Submit an Exercise Advice Form for Index Options

January 6, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 12, 1991, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Exchange Rule 7.15 to extend the time in which exercise advice forms for index options may be submitted to the Exchange from 1:15 pm to 1:20 pm Pacific time ("PT").

The text of the proposed rule change is available at the Compliance Department of the PSE and at the Commission.

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[14] Proposed new paragraph to OCC By-laws, Article V, section 1, I and P .03e.

[15] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[16] 15 U.S.C. 78q–1(b)(3)(B).

[17] Division, Commission, "Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems" (June 14, 1985).

[18] Letter from Jean M. Cawley, Staff Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (October 21, 1991).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange believes that extending the deadline for submitting an exercise advice form for index options to the Exchange will provide market participants with the ability to make investment decisions based upon the evaluation of their final positions after having completed trading for the day. Under the proposal, customers will be given additional time to evaluate the closing prices of the stocks that are used to calculate the indexes. Market professionals will be allowed time to receive information from other markets as to whether certain orders, such as orders intended to hedge their options positions, were executed on those markets. If their hedging orders in other markets were not executed, the market participants will still be able to exercise their options positions and not remain in an unhedged position overnight. Additionally, the extension will allow professional traders to continue to provide quality markets until the close because they will not have to worry about submitting exercise advices prior to the actual close of the market. The extension will also structure the Exchange's rule to coincide with that of the Chicago Board Options Exchange ("CBOE"), which allows its market participants an additional five minutes to submit exercise advice forms after 3:15 p.m. Central time ("CT").[1]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE believes that the proposed rule change will not impose an inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[2] Specifically, the Commission believes that the proposal will give market participants the ability to make investment decisions based upon the evaluation of their final positions after having completed trading for the day.

The Commission also believes the proposal will benefit the market in general by fostering higher quality markets at the close of the trading day. First, market makers will not have to worry about submitting exercise advice forms prior to the actual close of the market and, therefore, can more fully concentrate on providing a quality market at the close. Second, market participants will be able to determine whether or not their orders on other related markets (*i.e.*, the futures markets) were executed, such as orders intended to hedge their options positions. If their hedging transactions in other markets are not executed by 1:15 p.m. (pt), then market participants, under the PSE's proposal, will still be able to exercise their options positions and not remain in an unhedged position overnight. Third, the proposal will give market participants additional time to evaluate the closing prices of the stocks that are used to calculate the indexes and determine whether or not to exercise their positions. Finally, the proposal will structure the Exchange's rules to coincide with those of the CBOE and the Chicago Mercantile Exchange ("CME").[3] As a result, the Commission believes extending the PSE's exercise notice cut-off time for index options will make the Exchange's index options markets more competitive with options markets on the CBOE and futures markets on the CME that are based on the same or similar index.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission finds that the PSE's proposal to extend the deadline for submitting exercise advice forms is identical to a CBOE proposal approved by the Commission on October 25, 1991 and raises no new issues.[4] The Commission notes that no comments were received on the CBOE proposal. The Commission believes that approving the PSE's proposed rule change on an accelerated basis will permit the PSE to compete with the CBOE on an equal basis for index options orders. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with resepct to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 5, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the

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[1] See Securities Exchange Act Release No. 29680 (October 25, 1991), 56 FR 56254 (November 1, 1991) (order approving SR–CBOE–91–38).

[2] 15 U.S.C. 78f(b)(5) (1988).

[3] See CME Rule 580. Under CME rules, market participants have an additional five minutes to settle trades after 3:15 p.m. (CT).

[4] See supra note 1.

[5] 15 U.S.C. 78s(b)(2) (1982).

proposed rule change (File No. SR–PSE–91–46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–985 Filed 1–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30160; File No. SR–PSE–91–36]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Eligibility Criteria of Market Makers Participating in the Automatic Execution Feature of POETS

January 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 12, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend the criteria of market makers to be eligible to participate in the Automatic Execution ("Auto-Ex") feature of the Pacific Option Exchange Trading System. ("POETS").[1] The specific proposed standards are described in detail in section II below. The text of the proposing rule change is available at the Compliance Department of the PSE and at the Commission.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE proposes to amend the POETS Auto-Ex Eligibility criteria by refining the eligibility criteria to reflect the actual trading environment of the Exchange. Specifically, the proposed changes include:

1. Restricting a Market Maker's eligibility for Auto-Ex to one trading post that is part of his/her primary appointment zone;

2. Requiring participants on Auto-Ex to remain on the system for the duration of the trading day. Exemptions to log off the system shall only be granted in the presence of mitigating circumstances; and

3. Requiring a Market Maker who logs onto the system during Expiration week to remain on the system for the entire week.

In addition, under the proposed rule change, any Auto-Ex participant will be held liable for all trades executed through the system during his/her absence from the post or trading floor.

The Exchange believes that the above proposed amendments to the Auto-Ex policy will further the ability of the Exchange to provide the public with immediate executions by guaranteeing that there will always be a contraside to their orders. In addition, the Exchange believes that its proposal will serve to protect the public interest and investors. Accordingly, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trades, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange represents that the Options Floor Trading Committee endorses the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 5, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–1037 Filed 1–14–92; 8:45 am]

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[1] The Commission approved the PSE's POETS system in January 1990. See Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2408.

[Rel. No. IC-18474; 812-7824]

Cash Management Fund, et al.; Notice of Application

January 8, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Cash Management Fund ("TBC Cash"), Managed Income Fund ("TBC Income"), Intermediate Term Government Securities Fund ("TBC Government"), Capital Appreciation Fund ("TBC Appreciation"), and Special Growth Fund ("TBC Growth"), each a series of the Boston Company Fund ("TBC Fund"); The Boston Company Tax-Free Money Fund ("TBC Tax-Free Money Fund ("TBC Tax-Free Money"), and The Boston Company Tax-Free Bond Fund ("TBC Tax-Free Bond"), each a series of The Boston Company Tax-Free Municipal Funds ("TBC Tax-Free Municipal Funds"); Short-Term Bond Fund ("TBC Short-Term") (formerly Cash Management Plus Fund) and International Fund ("TBC International"), each a series of The Boston Company Investment Series ("TBC Investment Series"); Money Market Fund ("AE Money"), Tax Free Money Market Fund ("AE Tax Free Money"), Tax Free Municipal Bond Fund ("AE Tax Free Bond"), Corporate Bond Fund ("AE Corporate Bond"), Intermediate Term Bond Fund ("AE ITBF"), U.S. Government Income Fund ("AE Government"), Equity Value Fund ("AE Value"), Equity Growth Fund ("AE Growth"), and International Equity Fund ("AE International"), each a series of The American Express Funds ("AE Funds"); and American Express Travel Related Services Company, Inc. ("TRS").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 17(b) from the provisions of section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would permit (a) TBC Cash to acquire all or substantially all the assets of AE Money in exchange for shares of TBC Cash; (b) TBC Income to acquire all or substantially all the assets of AE Corporate Bond in exchange for shares of TBC Income; (c) TBC Government to acquire all or substantially all the assets of AE Government in exchange for shares of TBC Government; (d) TBC Appreciation to acquire all or substantially all the assets of AE Value in exchange for shares of TBC Appreciation; (e) TBC Growth to acquire all or substantially all the assets of AE Growth in exchange for shares of TBC Growth; (f) TBC Tax-Free Money to acquire all or substantially all the assets of AE Tax Free Money in exchange for shares of TBC Tax-Free Money; (g) TBC Tax-Free Bond to acquire all or substantially all the assets of AE Tax Free Bond in exchange for shares of TBC Tax-Free Bond; (h) TBC Short-Term to acquire all or substantially all the assets of AE ITBF in exchange for shares of TBC Short-Term; and (i) TBC International to acquire all or substantially all the assets of AE International in exchange for shares of TBC International.

FILING DATE: The application was filed on November 18, 1991 and amended on January 6, 1992. Applicant's counsel has stated that an additional amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 3, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One Boston Place, Boston, Massachusetts 02108. Attention: Mary E. Moran, Esquire.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of TBC Cash, TBC Income, TBC Government, TBC Appreciation, and TBC Growth is one of six series of TBC Fund, a Massachusetts business trust registered under the Act as a diversified, open-end management investment company. Each of TBC Tax-Free Money and TBC Tax-Free Bond is one of eight series of TBC Tax-Free Municipal Bonds, a Massachusetts business trust registered under the Act as a non-diversified, open-end management investment company. Each of TBC Short-Term and TBC International is one of five series of TBC Investment Series, a diversified, open-end management investment company. (Each of the above is an "Acquiring Fund"). The Boston Company Advisors, Inc. ("Boston Advisors") serves as the investment adviser and TBC Funds Distributor, Inc. ("TBC Funds Distributor") serves as the distributor for each of the Acquiring Funds. PanAgora Asset Management, Inc. ("PanAgora") serves as the sub-investment adviser for TBC International.

2. Each of AE Money, AE Tax Free Money, AE Tax Free Bond, AE Corporate Bond, AE ITBF, AE Government, AE Value, AE Growth and AE International (each an "Acquired Fund") is one of nine series of AE Funds, a Massachusetts business trust registered under the Act as a diversified, open-end management investment company. Shearson Lehman Advisors serves as the investment adviser to each of AE Money and AE Tax Free Money. IDS Financial Corporation ("IDS Financial") serves as the investment adviser to each of the other Acquired Funds. IDS International, Inc. ("IDS International") serves as the sub-investment adviser to AE International. American Express Service Corporation ("AESC") serves as the investment manager of AE Funds, with general oversight responsibility for the day-to-day management of AE Funds, and as distributor for each of the Acquired Funds.

3. The investment objective of both AE Money and TBC Cash is to seek a high rate of current income, safety of principal, and daily liquidity by investing in a diversified portfolio of money market instruments.

4. The investment objective of both AE Tax Free Money and TBC Tax-Free Money is to seek maximum current income exempt from Federal income taxes to the extent consistent with the preservation of capital and the maintenance of liquidity.

5. AE Corporate Bond seeks to provide a high level of current income consistent with the protection of capital by investing, under normal circumstances, at least 65% of its total assets in corporate bonds of U.S. issuers rated investment grade by Moody's Investors Service, Inc. ("Moody's") or Standard & Poor's Corporation ("S&P") or, if not rated, are deemed to be of comparable quality by the fund's

advisers, and generally having maturities of 10 years or more from date of purchase. TBC Income seeks to provide high current income consistent with what is believed to be prudent risk of capital. Under normal market conditions, TBC Income invests 65% of its total assets in U.S. Government securities and in investment-grade obligations with the four highest ratings of Moody's or S&P or in unrated obligations of comparable quality having maturities of 10 years or less.

6. Both AE ITBF and TBC Short-Term seek to obtain a high level of current income consistent with the preservation of capital. AE ITBF invests substantially all, and at least 65%, of its assets in corporate bonds of U.S. issuers rated investment grade by Moody's or S&P, or if not rated, believed to be of comparable quality by AE ITBF's investment adviser and in securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities ("U.S. Government Securities"), including government stripped mortgage-backed securities. The portion of assets not so invested may be invested in short-term U.S. Government and corporate obligations, convertible securities and preferred stock that is not convertible into common stock, which in any case may not be rated lower than B by Moody's or S&P. TBC Short-Term invests primarily in investment-grade fixed-income securities having remaining maturities of five years or less, or unrated securities of equivalent quality in the opinion of TBC Short-Term's investment adviser. TBC Short-Term may invest up to 20% of its assets in high risk, lower-quality securities, to the extent that such securities are consistent with its investment objective. Such securities may include bonds rated as low as C by Moody's or S&P.

7. AE Tax Free Bond seeks to provide investors with high current income exempt from Federal income taxes. TBC Tax-Free Bond seeks to maximize current income exempt from Federal income taxes to the extent consistent with the prudent risk of capital. Both may, for temporary defensive purposes, invest in taxable high quality, short-term municipal obligations without limit.

8. AE Government and TBC Government both seek high current income consistent with the preservation of capital by, under normal circumstances, investing in U.S. Government Securities. AE Government invests at least 85% of its total assets in U.S. Government Securities, including mortgage-backed securities issued by the Government National Mortgage Association ("GNMA"), mortgage-backed securities issued by the Federal Home Loan Mortgage Corporation ("FHLMC"), and the Federal National Mortgage Association ("FNMA"). AE Government may invest up to 15% of its total assets in mortgage-backed securities issued by private issuers so long as such securities are rated "A" or better by Moody's or S&P or, if unrated, are believed to be of comparable investment quality within these ratings. TBC Government invests at least 65% of its assets in U.S. Government Securities with remaining maturities of between three to eight years, and may invest up to 35% of its assets in mortgage-backed securities issued by GNMA, FHLMC, and FNMA. TBC Government may not invest in securities of private issuers.

9. The investment objective of AE Growth is to seek capital appreciation. The investment objective of TBC Growth is to seek above-average growth of capital through securities selected solely on the basis of potential for capital appreciation.

10. AE Value seeks capital appreciation and income by investing, under normal market conditions, at least 65% of its total assets in equity securities consisting of common stocks and convertible securities that its investment adviser believes are undervalued. TBC Appreciation seeks long-term growth of capital through investment principally in U.S. companies with current income as a secondary objective.

11. AE International seeks capital appreciation by investing, under normal circumstances, at least 65% of its total assets in equity securities consisting of common stocks and convertible securities of non-U.S. issuers believed by the investment adviser to have a potential for superior growth in sales and earnings. TBC International seeks long-term growth in capital through investments in companies located outside of the U.S. Current income from dividends, interest, and other sources is a secondary objective.

12. Each Acquiring Fund proposes to acquire all or substantially all of the assets of its corresponding Acquired Fund in exchange for its shares. Following is a summary of the proposed transactions: (a) TBC Cash proposes to acquire all or substantially all the assets of AE Money in exchange for shares of TBC Cash; (b) TBC Income proposed to acquire all or substantially all the assets of AE Corporate Bond in exchange for shares of TBC Income; (c) TBC Government proposes to acquire all or substantially all the assets of AE Government in exchange for shares of TBC Government; (d) TBC Appreciation proposes to acquire all or substantially all the assets of AE Value in exchange for shares of TBC Appreciation; (e) TBC Growth proposes to acquire all or substantially all the assets of AE Growth in exchange for shares of TBC Growth; (f) TBC Tax-Free Money proposes to acquire all or substantially all the assets of AE Tax Free Money in exchange for shares of TBC Tax-Free Money; (g) TBC Tax-Free Bond proposes to acquire all or substantially all the assets of AE Tax Free Bond in exchange for shares of TBC Tax-Free Bond; (h) TBC Short-Term proposes to acquire all or substantially all the assets of AE ITBF in exchange for shares of TBC Short-Term; and (i) TBC International proposes to acquire all or substantially all the assets of AE International in exchange for shares of TBC International. Each of these transactions ("Reorganization" or "Reorganizations") is a separate transaction that is unaffected by whether any other Reorganization is consummated.

13. Each Acquiring Fund will assume all liabilities, expenses, costs, charges, and reserves or obligations of the corresponding Acquired Fund as of the close of regular trading on the New York Stock Exchange on the closing date (the "Closing Date"), which currently is expected to be February 10, 1992. The number of full and fractional shares of each of the Acquiring Funds to be issued to shareholders of the Acquired Funds will be determined on the basis of relative net asset values per share and the aggregate net assets of the Acquiring Funds computed as of 4:00 p.m. (eastern time) on the Closing Date. As conveniently as practicable after the Closing Date, each Acquired Fund will liquidate and distribute *pro rata* to its shareholders of record as of 4 p.m. (eastern time) on the Closing Date the shares of the Acquiring Fund received by the Acquired Fund in the Reorganization. Such liquidation and distribution will be accomplished by the establishment of accounts on the share records of the Acquiring Fund in the name of each Acquired Fund shareholder, each account representing the respective *pro rata* number of shares of the Acquiring Fund due the shareholder.

14. At or prior to the Closing Date, each of the Acquired Funds shall have declared a divided or dividends which shall have the effect of distributing to the shareholders of each Acquired Fund all of the fund's investment company taxable income for the taxable year ending on or prior to the Closing Date (computed without regard to any

deduction for dividends paid) and all of its net capital gain realized in the taxable year ending on or prior to the Closing Date (after reduction for any capital loss carry-forward).

15. The board of trustees of TBC Fund, TBC Tax-Free Municipal Funds, TBC Investment Series and AE Funds (the "Companies"), including the trustees who are not "interested persons" as such term is defined by the Act (the "Independent Trustees") have reviewed a form of the plans of reorganization, including the consideration to be paid or received.

16. In determining whether to recommend approval of the Reorganizations to shareholders of the Acquired Funds and in approving the terms of the proposed Reorganizations, the trustees of the Companies, including the Independent Trustees, considered the following factors, among others: (a) The capabilities and resources of each Acquiring Fund's investment adviser; principal underwriter, sub-investment advisers (if applicable), and administrator and transfer agent in the area of marketing, investment and shareholder servicing; (b) expense ratios and published information regarding the fees and expenses of the constituent and similar funds; (c) the comparative investment performance of each Acquired and Acquiring Fund, as well as the performance of similar funds; (d) the terms and conditions of the Reorganizations and whether the Reorganizations would result in dilution of shareholder interests; (e) the compatibility of the funds' investment objectives, policies, and restrictions, as well as service features; (f) the absence of any costs incurred by the funds as result of the Reorganizations; and (g) the tax consequences of the Reorganizations.

17. The proposed Reorganizations are subject to approval by the holders of a majority (as defined in the Act) of the outstanding shares of each Acquired Fund, voting separately by series. Approval will be solicited pursuant to a prospectus/proxy statement [1] which includes a description of the material aspects of the proposed Reorganizations, information about the Acquiring Funds, a comparison of the Acquiring and Acquired Funds involved in the Reorganization, and pertinent financial information. The proposed Reorganizations will not affect the rights of shareholders of the Acquiring Funds.

[1] A definitive prospectus/proxy statement with respect to each Reorganization has filed with the Commission on December 28, 1991. Nos. 33–43846; 33–43845; and 33–43847.

18. The expenses of each Reorganization will be borne by TRS, AESC, and Boston Advisers.

19. None of the Acquired Funds or Acquiring Funds charges a contingent deferred sales load. The shareholders of each Acquired Fund will be entitled to redeem their shares at net asset value until the Closing Date of the respective Reorganization.

20. The consummation of each Reorganization is subject to certain conditions, including that the parties shall have received from the Commission the order requested herein, and the receipt of an opinion of tax counsel to the effect that upon consummation of each Reorganization and the transfer of substantially all the assets of each Acquired Fund, no gain or loss will be recognized by the Acquired or Acquiring Funds or their shareholders as a result of the Reorganization.

Applicants' Legal Analysis

1. American Express Company is primarily engaged, through its subsidiaries, in providing a variety of travel related services, investor diversified financial services, international banking services, information services, and investment services throughout the world. TRS is a wholly-owned subsidiary of the American Express Company. TRS offers mutual funds and other investment products through American Express Service Corporation ("AESC"), a wholly-owned subsidiary of TRS. Financial planning and investment management services are provided by IDS Financial and its subsidiaries. IDS Financial is a wholly-owned subsidiary of the American Express Company. Investment and asset management services are offered through (a) Shearson Lehman Brothers Inc. ("SL Brothers"), a wholly-owned subsidiary of Shearson Lehman Brothers Holdings Inc. ("SL Holdings"), (b) Shearson Lehman Advisors ("SL Advisors"), an unincorporated member of the Asset Management Group, which is a division of SL Brothers; and (c) The Boston Company, Inc. ("TBC") and its subsidiaries, including Boston Advisors and TBC Funds Distributor. TBC is a wholly-owned subsidiary of SL Brothers. All of the oustanding common stock (representing approximately 92% of the issued and outstanding voting stock) of SL Holdings is owned by the American Express Company. Information services are offered through American Express Information Services Corporation and its subsidiaries.

2. The Acquiring and Acquired Funds have investment advisers that may be deemed to be under "common control" within the meaning of section 2 (a)(9) of the Act because of the relationships described above. Thus, the Acquiring and Acquired Funds may be deemed "affiliated person" within the meaning of section 2 (a)(3)(C) of the Act. In addition, each of the Acquired Funds, except AE Money, is an "affiliated persons" of TRS within the meaning of section 2 (a)(3)(B) because TRS and its affiliates beneficially own five percent or more of the shares of each of the Acquired Funds except AE Money. Furthermore, each of the Acquired Funds, except AE Money, may be deemed to be controlled by TRS as a result of TRS's beneficial ownership of twenty-five percent or more of the outstanding voting securities of each Acquired Fund, except for AE Money. Because of these relationships, the proposed reorganizations would be prohibited by section 17(a) of the Act, which generally prohibits the sale of securities or property to a registered investment company by an affiliated person of an affiliated person of each company.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. The proposed Reorganizations would be exempt from the provisions of section 17(a) pursuant to rule 17a–8 but for the fact that the Acquired Funds and the Acquiring Funds are affiliated by reasons other than a common investment adviser, common directors, and/or common officers. Nonetheless, applicants believe that the Reorganizations are consistent with the policies and purposes underlying rule 17a–8 insofar as the transactions would be in the best interests of the respective funds and that the interests of existing shareholders will not be diluted as a result of the transactions. These findings and the basis therefore will be recorded fully in the minute books of the respective board of trustees.

4. Applicants submit that the terms of the proposed Reorganizations are fair and reasonable and do not involve overreaching on the part of any person concerned and that the proposed Reorganizations are consistent with the policies of the respective funds recited in their respective registration statements and reports filed under the Act and with the general purposes of the Act. Applicants note that participation

in funds managed by Boston Advisors through the proposed Reorganizations of the Acquired Funds will provide shareholders of the Acquired Funds a more extensive choice of portfolio investment objectives. Additionally, the larger aggregate net assets of the combined funds should enable the funds to obtain economies of scale that will benefit shareholders.

Applicants' Condition

Applicants have agreed that the requested order may be issued subject to the following condition:

Each of the boards of trustees of TBC Fund, TBC Tax-Free Municipal Funds, TBC Investment Series, and AE Funds, including the trustee who are not "interested persons" of such trusts (as such term is defined in the Act), shall have concluded that the Reorganizations are in the best interests of the shareholders of the respective funds and will not result in the dilution of the interests of any of the existing shareholders of the funds. Such findings, and the basis upon which the findings were made, shall be recorded fully in the minute book of such trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 92-884 Filed 1-14-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18473; File No. 812-7818]

Merrill Lynch Life Insurance Co., et al.

January 8, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Merrill Lynch Life Insurance Company ("Merrill Lynch Life"), Merrill Lynch Life Variable Annuity Separate Account A and Merrill Lynch Life Variable Annuity Separate Account B (together, the "Merrill Accounts"), ML Life Insurance Company of New York ("ML of New York"), ML of New York Variable Annuity Separate Account A and ML of New York Variable Annuity Separate Account B (together, the "ML of New York Accounts") and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a)(2), 27(a)(3) and 27(c)(2) of the 1940 Act and Rule 27a-2 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges from the assets of the Merrill Accounts and ML of New York Accounts and the deduction of contingent deferred sales charges in connection with certain withdrawals and surrenders from the assets of Merrill Lynch Variable Annuity Separate Account A and ML of New York Variable Annuity Separate Account A when no sales charge is imposed upon amounts paid into Merrill Lynch Variable Annuity Separate Account B and ML of New York Variable Annuity Separate Account B.

FILING DATE: November 4, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 3, 1992. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Merrill Lynch Life Insurance Company, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Attorney, at (202) 272-2958, or Heidi Stam, Assistant Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Merrill Lynch Life is a stock life insurance company organized under the laws of the State of Washington in 1985 and redomesticated under the laws of the State of Arkansas in 1991. Merrill Lynch Life is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc., a diversified financial services holding company organized in 1973. Merrill Lynch Life is the depositor of each of the Merrill Lynch Accounts.

2. ML of New York is a stock life insurance company organized under the laws of the State of New York in 1973. Effective September 11, 1991, the corporate name of ML of New York was changed from Royal Tandem Life Insurance Company to ML Life Insurance Company of New York. ML of New York is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc. ML of New York is the depositor of each ML of New York Account.

3. The Contracts to be issued by ML of New York are identical in all relevant respects to the Contracts to be issued by Merrill Lynch Life. ML of New York Variable Annuity Separate Account A is identical in all relevant respects to Merrill Lynch Life Variable Annuity Separate Account A (each referred to as "Account A"). ML of New York Variable Annuity Separate Account B is identical in all relevant respects to Merrill Lynch Life Variable Annuity Separate Account B (each referred to as "Account B") (Merrill Lynch Life and ML of New York each are referred to as the "Company").

4. Each Account has been established as a distinct separate investment account of the Company, for the purpose of funding the Contracts to be issued by the Company. The Merrill Lynch Accounts and the ML of New York Accounts are being registered under the 1940 Act as unit investment trusts. Each of the Accounts constitutes a "separate account" as defined in section 2(a)(37) of the 1940 Act and Rule 0-1(e) thereunder.

5. The Contracts are individual deferred variable annuity contracts designed for use in connection with non-qualified plans as well as Merrill Lynch custodial individual retirement accounts and individual retirement annuities and IRA rollover accounts. The Contracts provide for the accumulation of values on a variable basis and the payment of annuity benefits on a fixed basis.

6. The Contracts are designed to act as a comprehensive and flexible annuity investment vehicle, employing both Account A and Account B as part of a single annuity contract. Account A is designed to be a core investment vehicle that will accommodate a contract owner's long-term investment goals while Account B is designed to accommodate a contract owner's desire to keep a portion of his or her contract value relatively accessible for withdrawals.

7. Assets of Account A and Account B will be invested in shares of Merrill Lynch Variable Series Funds, Inc. (the "Series Fund"), a Maryland corporation registered under the 1940 Act as a diversified open-end management

investment company. Account A initially is subdivided into subaccounts, each of which invests exclusively in a corresponding class of Series Fund shares. However, assets of Account A are not invested in shares of the Reserve Assets portfolio of the Series Fund. Assets of Account B are invested in shares of only one class of the Series Fund, the Reserve Assets portfolio.

8. MLPF&S is a wholly-owned subsidiary of Merrill Lynch & Co., Inc. and the principal underwriter of the Contracts. MLPF&S is a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

9. The minimum initial premium is $5,000 for a non-qualified Contract and $2,000 for an IRA Contract. The minimum payment for subsequent premiums is $300. Account A value may be transferred among subcontracts of Account A up to six times each contract year without charge. Additional transfers may be made at a charge of $25 per transfer. Transfers within Account B are not possible because Account B offers only one investment option. Once each contract year, a contract owner may transfer from Account A to Account B all or part of the gain on premium in Account A and/or premiums that have been invested in Account A that are no longer subject to contingent deferred sales charges. Transfers from Account B to Account A are not permitted. Transfers will be made in reliance on Rule 11a–2 under the 1940 Act. The Contract offers an additional optional transfer feature called dollar cost averaging. This feature provides for automatic monthly transfers from the Account A Domestic Money Market Fund subaccount to any of the remaining Account A subaccounts specified by the contract owner.

10. Partial withdrawals may be made from the Contract up to six times each contract year. The minimum amount that may be withdrawn is $300. If less then $2,000 would remain in the Contract after a withdrawal is made, the withdrawal will not be permitted. A contingent deferred sales charge will apply to any portion of the withdrawal deemed to be a premium paid into Account A within the immediately preceding seven years. Withdrawals made from Account B will not be subject to any contingent deferred sales charges. A contract owner who is at least 59½ years old and who has a MLPF&S brokerage account may request monthly, quarterly, semi-annual or annual automatic withdrawals from Account B into any of the contract owner's MLPF&S brokerage accounts. Automatic withdrawals are not subject to any contingent deferred sales charges and are in addition to other withdrawals permitted under the Contract.

11. The Contract provides a death benefit payment when a contract owner dies prior to the annuity date. The death benefit equals the greater of (a) the sum of all premiums paid into Account A with interest compounded daily to yield 5% annually; less (i) any transfers to Account B and (ii) any withdrawals from Account A and any associated charges; plus the Account B value; or (b) the contract value. For purposes of this calculation, interest shall accrue only during the first twenty years.

12. A $40 contract maintenance charge is deducted from the contract value on each contract anniversary and on surrender of the Contract on any date other than a contract anniversary. The contract maintenance charge reimburses the Company for expenses related to maintenance of the Contracts, including issuing Contracts, maintaining records, and performing accounting, regulatory compliance, and reporting functions. This charge is waived on any contract anniversary or surrender if the contract value is then equal to or greater than $50,000. The contract maintenance charge is not deducted after the annuity date. Even though contract maintenance expenses may increase, the contract maintenance charge will never increase.

13. An administration charge of 0.10% annually will be deducted daily from the net asset value of Account A. The administration expenses covered by the charge include those costs associated with the establishment and administration of Account A, such as processing transfer requests and periodic dollar cost averaging transfers. The amount of the administration charge is guaranteed never to increase. A $25 charge is imposed for any transfer among Account A subaccounts made after the first six transfers in a contract year.

14. The aggregate amount of the contract maintenance, administration and transfer charges is not greater than the Company's average expected cost of the maintenance and administration services to be provided for the life of the Contracts. The contract maintenance, administration and transfer charges are designed only to reimburse the Company for its maintenance and administration expenses on a cumulative basis. Applicants intend to rely on Rules 26a–1 and 6c–8 under the 1940 Act for the necessary exemptive relief to permit imposition of the contract maintenance charge, the administration charge and the transfer charge.

15. A declining contingent deferred sales charge is assessed upon withdrawal or surrender from Account A of all or part of the withdrawn Account A value attributable to a premium paid into Account A within the preceding seven years. The amount of the charge depends upon the length of time the withdrawn premium has remained invested in Account A, in accordance with the following schedule:

No. of complete years elapsed since premium was paid into Account A	Contingent deferred sales charge (as percentage of premiums withdrawn)
0	7
1	6
2	5
3	4
4	3
5	2
6	1
7 and thereafter	0

Except in the case of the first withdrawal from Account A, withdrawals from Account A will be treated as consisting first of premiums paid into Account A on a "first-in, first-out" basis and then of any gain on premiums paid into Account A. For the first withdrawal in a contract year, the amount withdrawn will be treated as consisting first of gain, then of premium on a "first-in, first-out" basis. For this purpose, gain is the difference between (i) contract value in Account A for the valuation period in which the withdrawal request is received and (ii) premiums invested in Account A less any prior withdrawals of premium. No contingent deferred sales charge will be imposed on any payment made due to the death of the contract owner. Applicants intend to rely on Rule 6c–8(b) under the 1940 Act for the necessary exemptive relief to permit the imposition of the contingent deferred sales charge on withdrawals from Account A. No contingent deferred sales charge will be assessed upon withdrawals from Account B.

16. A mortality and expense risk charge equal to 1.25% annually for Account A and 0.65% annually for Account B is deducted daily from the net asset value of the Accounts. Of this amount, 0.75% annually for Account A and 0.35% annually for Account B can be allocated to the mortality risks assumed by the Company in connection with the annuity payment and death benefit guarantees made under the Contract. These guarantees include making annuity payments unaffected by

mortality experience and providing a minimum death benefit under the Contract. Of the total mortality and expense risk charge, 0.50% annually for Account A and 0.30% annually for Account B can be allocated to the expense risks assumed by the Company, specifically that the Company's contract maintenance charge and administration charge will be sufficient to cover all Contract maintenance and administration expenses. The mortality and expense risk charge is greater for Account A than for Account B because a greater death benefit and higher administrative expenses are attributable to Account A. If the mortality and expense risk charge is inadequate to cover the actual expenses of mortality, maintenance, and administration, the Company will bear the loss. If the charge exceeds the actual expenses, the excess will be added to the Company's profit. The mortality and expense risk charge for each Account will never increase.

17. Applicants represent that the mortality and expense risk charge for each Account is within the range of industry practice for comparable variable annuity contracts. This representation is based upon an analysis made by the Company of publicly available information about selected similar industry products, taking into consideration such factors as any contractual right to increase charges above current levels, the existence of other charges, the nature of transfer, dollar cost averaging and automatic withdrawal privileges, provisions relating to annuitization and guaranteed death benefits, and the number and nature of annuity payment options. The Company will maintain at its principal executive offices, available to the SEC or its staff upon request, a memorandum setting forth in detail the variable annuity contracts analyzed in the course of, and the methodology and results of, the comparative survey made.

18. The lower mortality and expense risk charge for Account B takes into account that there is a more limited range of contract features and guarantees associated with Account B than with Account A. While a varied selection of portfolio options and transfer privileges are available in Account A, only a single portfolio option and no transfer privilege are available in Account B. Also, dollar cost averaging is available in Account A but not Account B. Additionally, the death benefit feature in effect guarantees that the death benefit based on Account A will equal the greater of the Account A value or the total amount of premiums paid into Account A with interest added at a rate compounded daily to yield 5% annually during the first twenty contract years, regardless of the investment experience of the Account A subaccounts. The Contract does not provide such a death benefit guarantee with respect to Account B. Accordingly, Account B's mortality and expenses risk charge is lower than Account A's because there is less risk with respect to Account B than with respect to Account A that the applicable charges deducted will be less than the expenses associated with the contract features and guarantees available through the respective Account.

19. If a profit is realized from the mortality and expense risk charges, all or a portion of such profit may be offset by distribution expenses not reimbursed by the collection of contingent deferred sales charges. In such circumstances, a portion of the mortality and expense risk charge for each Account might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, the Company concludes that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit each of the Accounts and all contract owners. The basis for that conclusion is set forth in a memorandum which will be maintained by the Company at its administrative office and will be available to the SEC or its staff upon request. Moreover, the Company represents that each of the Accounts will invest only in underlying mutual funds which undertake, in the event they should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the 1940 Act.

20. Applicants also request exemption from the "stair-step" requirements of section 27(a)(3) of the 1940 Act and Rule 27a–2 thereunder to the extent necessary to permit the imposition of a contingent deferred sales charge on premiums paid into Account A, when no sales charge is imposed on amounts paid into Account B under the Contract.

21. Section 27(a)(3) of the 1940 Act, as applied to variable annuity contracts, makes it unlawful for an issuer of such contracts or for any depositor or underwriter of such an issuer to sell any such contracts if "the amount of sales load deducted from any one of [the] first [12 monthly] payment exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment."

22. Rule 27a–2 exempts any registered separate account and any depositor or underwriter for such separate account, from section 27(a)(3) of the Act if, "with respect to any variable annuity contract participating in such account the proportionate amount of sales load deducted from any payment during the contract period shall not exceed the proportionate amount deducted from any prior payment during the contract period."

23. Because premiums paid into Account A may be subject to a sales charge on a subsequent withdrawal or surrender, while premiums paid into Account B are not, a contract owner could allocate all of one premium to Account B, which would not be subject to any sales charge, and then allocate all of a subsequent premium to Account A, which would be subject to the Contract's contingent sales charge if withdrawn in less than seven years after it was paid. Such a sequence of allocations could result in a higher sales load being assessed against the later payment. As a result, the Contract would not comply with the stair-step provisions of section 27(a)(3) or Rule 27a–2.

24. Applicants submit that the deduction of a contingent deferred sales load with respect to premiums paid into Account A, but not to premiums paid into Account B, does not implicate the policy concerns that underlie the stair-step provisions of section 27(a)(3) and Rule 27a–2. The legislative history of section 27(a)(3) and subsequent SEC interpretations of that section with respect to variable contracts,[1] as well as its promulgation of Rule 27a–2, indicate that the policy and intent of that section and Rule are to prevent excessive front-end sales loads on periodic payment plans that would cause an investor withdrawing or redeeming his investment in the early years of a plan to recoup little or none of his original investment. Applicants represent that the Contract's method for assessing sales load under the Contract complies with the policy underlying section 27(a)(3) and Rule 27a–2. No sales charges will be deducted from premiums at the time they are paid. Therefore, the traditional focus of the stair-step rule—early deductions of high front-end sales

[1] See United Investors Life Ins. Co. (pub. avail. Jul. 8, 1987); Western Reserve Life Ins. Co. (pub. avail. Aug. 28, 1987).

loads—does not exist under the Contracts. Even if initial premiums under a Contract were paid entirely into Account A, the resulting assessment of sales load does not result in a forfeiture of an excessive amount of those premium payments.

25. Applicants represent that the SEC has previously permitted sales loading practices in variable life insurance contracts that raise similar issues under the stair-step provisions of Rule 6e–2 and 6e–3(T) promulgated under the 1940 Act. For example, the SEC has granted exemptive relief from section 27(a)(3) to permit the imposition under a variable life insurance contract of a sales load arrangement that arguably violated the stair-step rules because lower sales loads were imposed on unscheduled premium payments than on scheduled premium payments made during the first contract year. The relief was granted in part based on the reasoning that the scheduled and unscheduled premium payments each served a different purpose for a contract owner, and therefore the sales load schedule should be analyzed separately for each type of payment, and in part based on the reasoning that it was not in the interest of investors to require a sales load on unscheduled premiums in excess of that deemed necessary by the issuer. Each of the Accounts likewise serves a different purpose for contract owners. Account B primarily serves an accessibility function, and Account A acts as a core investment repository. Further, the contingent deferred sales charge schedule applicable to Account A remains the same for each premium paid into Account A and never increases from one premium to the next. Premiums paid into Account B are never subject to a sales charge.

26. The difference in sales load between Account A and Account B corresponds to the difference in sales commission expenses associated with the Account. Sales commissions paid to persons selling the Contracts are higher for premiums paid into Account A than for premiums paid into Account B. Under these circumstances, it is appropriate that premiums paid into Account A be subject to sales charges even though premiums paid into Account B are not. Further, the Company could avoid the potential stair-step issue simply by imposing the contingent deferred sales charge equally on premiums paid into both Accounts. However, such an arrangement would be to the detriment of contract owners.

27. For the reasons and the facts set forth above, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–961 Filed 1–13–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18475; 812–7743]

Quest for Value Fund, Inc., et al.; Application

January 8, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Quest for Value Fund, Inc., Quest for Value Family of Funds, Quest for Value Global Equity Fund, Inc., and Quest for Value Global Funds, Inc. (the "Companies"), Quest for Value Advisors (the "Adviser"), and Quest for Value Distributors (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Exemption requested pursuant to section 6(c) of the 1940 Act from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rules 22c–1 and 22d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order of exemption to permit the Companies and any other open-end investment company which is or may become a member of the Quest "group of investment companies" with the same traditional front-end sales charge structure (collectively, the "Funds"): (1) To impose a contingent deferred sales charge ("CDSC") on certain share redemptions, (2) to waive the CDSC in certain instances and (3) to credit any CDSC paid in connection with a redemption of shares followed by a reinvestment within 90 days in the same or another Fund.

FILING DATES: The application was filed on June 21, 1991 and amendments were filed on September 26 and November 25, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 3, 1992, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Thomas F. Duggan, Esq., Quest for Value Advisors, One World Financial Center, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Companies are each registered under the 1940 Act as open-end diversified management investment companies. Quest for Value Fund, Inc., Quest for Value Global Equity Fund, Inc., and Quest for Value Global Funds, Inc., are Maryland corporations. Quest for Value Family of Funds is a Massachusetts business trust organized in series form. The Adviser provides investment advisory services to the Companies, and the Distributor acts as the Companies' principal underwriter.

2. The Companies currently offer their shares for sale at net asset value plus a front-end sales charge as described in the prospectuses for the Companies. The Distributor receives the sales charges and reallows all or a substantial part of them as commissions to broker-dealers that have Dealer Agreements with the Distributor and that effected the sales of the Company shares. Upon the grant of the requested exemption, Applicants propose to implement the contingent deferred sales charge arrangement described below.

3. Under the proposed CDSC arrangement, for sales of Fund shares of $1 million or more, except (as presently contemplated) three series of Quest for Value Family of Funds, no front-end sales charge will be imposed. If such shares are redeemed within 24 months after the end of the calendar month in which the purchase order was accepted, a contingent deferred sales charge will be imposed equal to 1% if the redemption occurs within the first

twelve months and equal to .5 of 1% if the redemption occurs in the next twelve months of the lesser of (a) the net asset value of the shares at the time of purchase, or (b) the net asset value of the shares at the time of redemption. The sales charge would be deducted from the redemption proceeds otherwise payable to the shareholder and would be retained buy the Distributor.

4. No contingent deferred sales load will be imposed when the shareholder redeems: (a) Shares representing amounts attributable to increases in the value of an account above the net cost of the investment due to increases in the net asset value per share; (b) shares required through reinvestment of income dividends or capital gain distributions; (c) shares acquired by exchange from a Fund (other than a money market fund) where the exchanged shares would not have been subject to a CDSC upon redemption; and (d) shares held for more than 24 months from the end of the calendar month in which the purchase order was accepted. In determining whether a contingent deferred sales charge is payable, it would be assumed that shares, or amounts representing shares, that are not subject to a contingent deferred sales charge are redeemed first and that other shares or amounts are then redeemed in the order purchased, consistent with the Applicants' undertaking below to comply with proposed Rule 6c–10 under the 1940 Act in the form proposed and as it may be reproposed or adopted. No CDSC would be imposed on exchanges to purchase shares of another Fund (although a CDSC will be imposed on shares of the acquired Fund purchased by exchange of shares subject to a CDSC if such acquired shares are redeemed within 24 months of the end of the calendar month in which the exchanged shares were purchased).

5. The CDSC arrangement will not apply with respect to sales for which the selling dealer is not permitted to receive a sales load or redemption fee imposed on a shareholder with whom such dealer has a fiduciary relationship, in accordance with provisions of the Employee Retirement Income Security Act and regulations thereunder. The contingent deferred sales charge also may be waived in the following instances:

(a) Redemptions in connection with (i) distributions to participants or beneficiaries of plans qualified under the Internal Revenue Code as amended from time to time ("IRC") Section 401(a), custodial accounts under IRC Section 403(b)(7), individual retirement accounts under IRC section 408(a), deferred compensation plans under IRC section 457 and other employee benefit plans (collectively, "plans"), (ii) changes in investment choices in these plans among the Funds, and (iii) returns of excess contributions made to these plans; and

(b) Redemptions effected pursuant to the Funds' right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the then effective minimum account size.

6. A shareholder would be credited with any contingent deferred sales charge paid in connection with the redemption of any shares followed by a reinvestment in the same or another Fund within 90 days after such redemption. The credit would be paid by the Distributor into the shareholder's account.

7. The CDSC arrangement will apply only to shares of the Funds that are acquired after the grant of the requested exemptive relief and after the Funds' prospectuses are amended to disclose the CDSC arrangement. The CDSC will be calculated and apply separately for each portfolio or series of an investment company organized in series form.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the 1940 Act exempting them from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and Rules 22c-1 and 22d-1 thereunder to permit the imposition and waiver of the proposed CDSC.

2. Section 6(c) of the 1940 Act authorizes the SEC to conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from any provisions of the 1940 Act if the exemption is in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Applicants submit that the imposition of the proposed contingent deferred sales charge arrangement is fair, is consistent with the policy and provisions of the 1940 Act, is in the best interests of those shareholders upon whom it is imposed and otherwise meets the exemptive standards of Section 6(c).

3. Applicants argue that the imposition of the CDSC in the manner described above would not cause shares of the Funds to fall outside the definition of "redeemable security" in section 2(a)(32) of the 1940 Act. Applicants believe that the imposition of the CDSC will not prevent a redeeming shareholder from receiving his proportionate share of the current net assets of a Fund, but will merely defer the deduction of a sales charge and make it contingent upon an event which may never occur. However, in order to avoid uncertainty in this regard, Applicants request an exemption from the operation of section 2(a)(32) of the 1940 Act to the extent necessary to implement the proposed CDSC arrangement and maintain the Funds' qualification as open-end companies under section 5(a)(1) of the 1940 Act.

4. Applicants believe that the charge is consistent with the definition of "sales load" in section 2(a)(35), except for its timing. The CDSC is paid to the Distributor to reimburse it solely for expenses related to the sale of shares and therefore Applicants submit that this arrangement is within the section 2(a)(35) definition of sales load, but for the timing of the imposition of the charge. Applicants contend that the deferral of the sales charge and its contingency upon the occurrence of an event which may not occur, does not change the basic nature of this charge, which is in every other respect a sales charge. However, Applicants request an exemption from the provisions of section 2(a)(35), to the extent necessary to implement the proposed CDSC arrangement.

5. Section 22(c) of the 1940 Act empowers the SEC to make rules and regulations with respect to the redeemable securities of any registered company. Rule 22c–1 under the 1940 Act, in pertinent part, prohibits a registered investment company issuing a redeemable security from redeeming any such security except at a price based on the current net asset value of such security. In order to avoid any possibility that questions might be raised as to the potential applicability of section 22(c) and Rule 22c–1, Applicants request an exemption from those provisions to the extent necessary to implement the proposed CDSC arrangement.

6. Rule 22d–1, in substance, provides an exemption from Section 22(d) to permit the variation or elimination of sales loads to particular classes of investors or transactions, provided certain conditions are met. To avoid any uncertainty with regard to the applicability of section 22(d) and Rule 22d–1, Applicants request an exemption from those provisions to implement the proposed CDSC arrangement, including its provisions for waivers and credits.

Applicants' Condition

If the requested order for exemption is granted, Applicants expressly agree that they will comply with proposed Rule 6c–10 under the 1940 Act, Investment

Company Act Release No. 16619 (Nov. 2, 1988), as such Rule is currently proposed and as it may be reproposed, adopted, or amended in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-982 Filed 1-14-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare Draft Environmental Impact Statement; Salt Lake City International Airport, Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Northwest Mountain Region of the FAA announces: (1) The FAA, acting as lead agency with the Corps of Engineers acting as a Cooperating Agency, intends to prepare Draft and Final Environmental Impact Statements (EIS) concerning a proposal by the Salt Lake City International Airport Authority to construct a new 12,000 foot air carrier runway, 16R/35L, at Salt Lake City International Airport and (2) that the Federal EIS scoping process will consist of a time period for interested agencies and persons to submit written comments as to their concerns and topics which they believe should be addressed in the Draft EIS.

DATES: In order to be considered, written comments must be received on or before February 14, 1992. Send comments to: Mrs. Barbara Johnson, Federal Aviation Administration, 5440 Roslyn, suite 300, Denver, Colorado 80216-6026.

Questions concerning the draft EIS or the process being applied by the FAA in connection with this project should also be directed by Mrs. Barbara Johnson.

SUPPLEMENTARY INFORMATION: Information, data, views and comments obtained in the course of the scoping process may be used in the preparation of the draft EIS. The purpose of this notice is to inform the public, State, local, and Federal governmental agencies of the fact that a draft EIS will be prepared and to provide those interested in doing so with an opportunity to present their views, comments, information, data, or other relevant observations concerning the environmental impacts related to implementation of this proposal.

The proposed development includes the following items:

(1) Construction of a new runway 16R/34L (12,000' by 150') with a full taxiway system,

(2) Relocation of a drainage canal,

(3) Relocation of powerlines,

(4) Other development as described in the 1988 Salt Lake City International Airport Master Plan Update, and

(5) Development of a wetland mitigation site.

An Environmental Assessment on the proposed actions, prepared by the Salt Lake City Airport Authority, is available for public review at the following locations:

Salt Lake City Airport Authority, 776 North Terminal Drive, Terminal One, 2nd Floor, Salt Lake City International Airport.

Salt Lake City Library, Main Branch, 209 E. 500 S., Salt Lake City, Utah.

Marriott Library, Bldg. 330, Documents Section, University of Utah, Salt Lake City, Utah.

Salt Lake County Library, West Valley Branch, 2880 W. 3650 S., West Valley City, Utah.

Salt Lake County Library, Whitmore Branch, 2197 E. 7000 South, Sandy Utah.

Salt Lake County Library, Kearns Branch, 5350 S. 4220 W., Salt Lake City, Utah.

Davis County Library, South Branch, 725 S. Main, Bountiful, Utah.

Davis County Library Headquarters, 38 S. 100 E., Farmington, Utah.

Issued in Renton, Washington, January 7, 1992.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 92-1019 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-13-M

Portland International Airport, OR; Notice of Intent to Rule

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application to impose and use the Revenue from a Passenger Facility Charge (PFC) at Portland International Airport, Portland, Oregon.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose a PFC at Portland International Airport, and use the revenue from a PFC at Portland International Airport. The PFC and its use is proposed under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and 14 CFR part 158.

On January 3, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Port of Portland, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 9, 1992.

DATES: Comments must be received on or before February 14, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, J. Wade Bryant, Manager, Seattle Airports District Office, 1601 Lind Avenue, NW., suite 250, Renton, WA 98055-4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Mr. Steve Schreiber, Senior Manager—Aviation Finance, of the Port of Portland, at the following addresss: Port of Portland, P.O. Box 3529, Portland, OR 97208.

Comments from air carriers and foreign air carriers may be in the same form as provided to the Port of Portland under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn T. Read, Oregon Engineer, Seattle Airports District Office, 1601 Lind Avenue, NW., Suite 250, Renton, WA 98055-4056, (206) 227-2629. The applications may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1992.

Proposed charge expiration date: May 31, 1994.

Total estimated PFC Revenue: $18,080,000.00.

Brief description of proposed projects:

(a) New Taxiway "C"—construction of new 11,000-foot taxiway parallel to runway 10R-28L;

(b) Terminal Enplaning Roadway Expansion—expands roadway adjacent to terminal;

(c) Central Utility Plant Expansion—expands central utility plant due to terminal expansion demands;

(d) Airport Way Rehabilitation and Modification—rehabilitates public access road to the airport.

AVAILABILITY OF APPLICATION: Any person may inspect the application in person at the FAA office listed above. In

addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port of Portland.

Issued in Renton, Washington on January 3, 1992.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 92-1009 Filed 1-14-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 9, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Savings Bonds Division

OMB Number: New.
Form Number: SBD 2003.
Type of Review: New collection.
Title: Authorization for Purchase and Request for Change United States Series EE Savings Bonds.
Description: This form is needed to authorize employers to allot funds from employees' pay for the purchase of U.S. Savings Bonds. Some 1.6 million employees may use this form during any calendar year.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 1,600,000.
Estimated Burden Hours Per Respondent: 85 seconds.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 33,333 hours.
Clearance Officer: William L. McCarney (202) 377-7796, U.S. Savings Bonds Division, room 8035, 800 K Street, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-1056 Filed 1-14-92; 8:45 am]

BILLING CODE 4810-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 9, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0180.
Form Number: None.
Type of Review: Revision.
Title: (MA)—Minimum Security Devices and Procedures, Reports of Crime and Suspected Crimes, and Bank Secrecy Act Compliance (12 CFR part 21).
Description: These records and reports are needed to promote and monitor bank security to ensure bank safety. The information is used by banks, the OCC and other agencies for bank security and law enforcement purposes. National banks are the affected public.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 4,100.
Estimated Burden Hours Per Response/ Recordkeeper: 36 minutes.
Frequency of Response: On occasion, Annually.
Estimated Total Reporting Burden: 20,330 hours.
Clearance Officer: John Ference (202) 874-4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-1057 Filed 1-14-92; 8:45 am]

BILLING CODE 4810-33-M

Departmental Offices, Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on February 4 and 5, 1992, of the following debt management advisory committee:

Public Securities Association
Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session on February 4 and the preparation of a written report to the Secretary of the Treasury on February 5, 1992.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advise from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advise has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financial plans may

not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: January 7, 1992.

Jerome H. Powell,

Assistant Secretary (Domestic Finance).

[FR Doc. 92-975 Filed 1-14-92; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 2-92]

Treasury Notes of January 15, 1999, Series E-1999

January 2, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,500,000,000 of United States securities, designated Treasury Notes of January 15, 1999, Series E-1999 (CUSIP No. 912827 D7 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated January 15, 1992, and will accrue interest from that date, payable on a semiannual basis on July 15, 1992, and each subsequent 6 months on January 15 and July 15 through the date that the principal becomes payable. They will mature January 15, 1999, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, January 8, 1992, prior to 12:00 noon, Eastern Standard time, for noncompetitive tenders and prior to 1:00 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 7, 1992, and received no later than Wednesday, January 15, 1992.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specific yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $5,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. The following institutions may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished: depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)); and government securities broker/dealers, registered with the Securities and Exchange Commission that are registered or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities and Exchange Act of 1934, as amended by the Government Securities Act of 1986. Others are permitted to submit tenders only for their own account.

3.5. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate

will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in Section 3.5. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Wednesday, January 15, 1992. Payment in full most accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, January 13, 1992. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-1138 Filed 1-10-92; 4:16 pm]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 10
Wednesday, January 15, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 10:30 A.M., January 31, 1992.

PLACE: Park Hyatt, 24th at M Street, NW., Washington, DC 20037.

STATUS: Closed, pursuant to 5 U.S.C. 552b(c) (1) and (9)(B) and 22 CFR 1302.4 (a) and (h).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government as they relate to international shortwave radio broadcasting into Eastern Europe and the Soviet Union.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mark G. Pomar, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

Mark G. Pomar,
Executive Director.
[FR Doc. 92-1166 Filed 1-13-92; 11:26 am]
BILLING CODE 8155-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 3:00 p.m., January 21, 1992.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the last meeting.
2. Thrift Savings Plan activities report by the Executive Director.
3. Review of KPMG Peat Marwick audit report for fiscal year 1991 entitled "Pension and Welfare Benefits Administration Review of the Policies and Procedures of the Federal Retirement Thrift Investment Board Administrative Staff."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: January 13, 1992.
Francis X. Cavanaugh,
Executive Director, Federal Retirement Thrift Investment Board.
[FR Doc. 92-1190 Filed 1-13-92; 1:14 pm]
BILLING CODE 6760-01-M

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Thursday, April 30, 1992, from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee meeting will be held on Thursday, April 30, from 10:00 a.m. to 5:30 p.m., on Friday, May 1, from 9:00 a.m. to 5:30 p.m., and on Saturday, May 2, from 9:00 a.m. to 1:00 p.m.

PLACE: The Sheraton Tallahassee Hotel, 101 South Adams Street, Tallahassee, Florida 32301.

STATUS: The executive session will be closed to the public. At it, matters relating to budget, personnel, internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTER TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. A primary focus of the meeting will be the conservation and recovery of the West Indian manatee. Among other major issues, the Commission also plans to consider high seas driftnet fisheries and the incidental take of marine mammals in commercial fisheries after 1 October 1993.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue, N.W., Room 514, Washington, D.C. 20009, 202/606-5504.

Dated: December 20, 1991.
John R. Twiss, Jr.,
Executive Director.
[FR Doc. 92-1167 Filed 1-13-92; 11:25 am]
BILLING CODE 6820-31-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 13, 20, 27, and February 3, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 13

Thursday, January 16

9:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)
2:30 p.m.
Periodic Briefing on EEO Program (Public Meeting)

Friday, January 17

10:00 a.m.
Briefing on Status of Implementation of Safety Goal Policy Statement (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Motion to Reopen the Record in the Comanche Peak Proceeding (Tentative)
2:00 p.m.
Briefing on Progress of Research in the Area of Organization and Management (Public Meeting)

Week of January 20—Tentative

Tuesday, January 21

12:30 p.m.
Briefing on Enforcement Strategy Related to Contaminated Sites (Closed—Ex. 9 and 10)

Thursday, January 23

2:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 27—Tentative

There are no Commission meetings scheduled for the week of January 27.

Week of February 3—Tentative

Wednesday, February 5

1:30 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

Thursday, February 6

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that

no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meeting Call (Recording)—(301) 504–1292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: January 3, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92–1184 Filed 1–13–92; 11:28 am]

BILLING CODE 7590-01-M

VOL 57 ISS 10 JA 15 1992 UMI

federal register

Wednesday
January 15, 1992

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Northern Spotted Owl; Final Rule

VOL 57 ISS 10 JA 15 1992 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB32

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) designates critical habitat for the northern spotted owl (*Strix occidentalis caurina*), a subspecies federally listed as threatened under the Endangered Species Act of 1973, as amended (Act). The northern spotted owl, referred to herein as spotted owl or owl, is a forest bird that inhabits coniferous and mixed conifer-hardwood forests over a range that extends from southwestern British Columbia through western Washington, western Oregon, and northwestern California south to San Francisco Bay.

This critical habitat designation provides additional protection requirements under section 7 of the Act with regard to activities that are funded, authorized, or carried out by a Federal agency. As required by section 4 of the Act, the Service considered the economic and other relevant impacts prior to making a final decision on the size and scope of critical habitat. The Service excluded some areas from designation as critical habitat due to economic and other relevant information. Final critical habitat units are designated solely on Federal lands.

EFFECTIVE DATE: This rule becomes effective February 14, 1992.

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 911 Northeast 11th Street, Portland, Oregon 97232. The complete file for this rule will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hall, Assistant Regional Director for Fish and Wildlife Enhancement at the above address (503/231-6159 or FTS 429-6159; Mr. Barry S. Mulder, Spotted Owl Coordinator, at the above address (503/231-6730 or FTS 429-6730); and Dr. M.L. Schamberger, Chief, Terrestrial Branch, U.S. Fish and Wildlife Service, National Ecology Research Center, 4512 McMurray Avenue, Fort Collins, Colorado 80525-3400, FTS 323-5409 or (303) 226-9409.

SUPPLEMENTARY INFORMATION:

Introduction

The Endangered Species Act of 1973, as amended (Act) requires the Service to designate critical habitat to the maximum extent prudent and determinable concurrently with listing a species as endangered or threatened. The Service listed the northern spotted owl as a threatened species on June 26, 1990, primarily due to concern over widespread habitat loss and modification, and inadequacy of existing regulatory mechanisms. The Service recognized that critical habitat would be a valuable tool in the conservation of the owl, but lacked sufficient information upon which to base a critical habitat determination at that time. In such cases the Act provides one additional year to determine whether to designate critical habitat.

On August 10, 1990, several environmental organizations filed a motion seeking in *Northern Spotted Owl* v. *Lujan*, No. C88-573Z (W.D. Wash.), to compel the Service to immediately propose critical habitat. On February 26, 1991, the Court ruled that the Service had violated the Act in failing to designate critical habitat concurrently with listing the owl (*Northern Spotted Owl* v. *Lujan*, 758 F.Supp. 621 (W.D. Wash.)). The Court ordered the Service to propose a rule on critical habitat and to publish a final rule at the earliest possible time permitted under the appropriate regulations.

The Service published a proposed rule to designate critical habitat for the northern spotted owl on May 6, 1991 (56 FR 20816). The May 6 proposal announced the Service's intention to publish a revised critical habitat proposal in early August 1991 to allow for the fullest possible consideration of public comment on the economic and other relevant impacts of a designation and the subsequent completion of the Service's economic analysis. On August 13, 1991, the Service published its revised proposal which superseded all aspects of the previous proposal (56 FR 40001). The final rule represents the Service's decision on this issue. The Service may revise critical habitat in the future following development and implementation of a Service-approved recovery plan for the northern spotted owl.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: "(I) The specific areas within the geographic area occupied by a species * * * on which are found those physical and biological features (i) essential to the conservation of the species, and (ii) that may require special management considerations or protection; and (II) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species." The term "conservation," as defined in section 3(3) of the Act, means "* * * to use and the use of all methods and procedures which are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary," i.e., the species is recovered and removed from the list of endangered and threatened species. Section 3 further states that in most cases the entire range of a species should not be encompassed within critical habitat.

Role in Species Conservation

The use of the term "conservation" in the definition of critical habitat indicates that its designation should identify lands that may be needed for a species' eventual recovery and delisting. However, when critical habitat is designated at the time a species is listed, the Service frequently does not know exactly what may be needed for recovery. In this regard, critical habitat serves to preserve options for a species' eventual recovery.

The designation of critical habitat will not, in itself, lead to recovery, but is one of several measures available to contribute to a species' conservation. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) regardless of whether or not they are currently occupied by the listed species, thus alerting the public to the importance of an area in the conservation of a listed species. Critical habitat also identifies areas that may require special management or protection. Critical habitat receives protection under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. The added protection of these areas may shorten the time needed to achieve recovery. Aside from the added protection provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Designating critical habitat does not create a management plan for a listed species. Designation does not establish numerical population goals, proscribe specific management actions (inside or

outside of critical habitat), nor does it have a direct effect on areas not designated as critical habitat. Recovery planning and critical habitat designation are different processes. Specific management recommendations for critical habitat are more appropriately addressed in recovery plans, management plans, and through section 7 consultation.

In addition to considering biological information in designating critical habitat, the Service also considers economic and other relevant impacts of designating critical habitat. The Service may exclude areas from critical habitat when the benefits of such exclusion outweigh the benefits of including the areas within critical habitat, provided that the exclusion will not result in the extinction of a species.

Critical habitat identifies specific areas essential to the conservation of a species. Areas not currently containing all of the essential features, but with the capability to do so in the future, may also be essential for the long-term recovery of the species, particularly in certain portions of its range, and may be designated as critical habitat. However, not all areas containing the features of a listed species' habitat are necessarily essential to species' survival. Areas not included in critical habitat that contain one or more of the essential elements are still important to a species' conservation and may be addressed under other facets of the Act and other conservation laws and regulations. Some areas containing the requisite features may have been excluded for economic reasons. All designated areas may also be of considerable value in maintaining ecosystem integrity and supporting other species, although that is not a consideration in designating critical habitat.

The process of designating critical habitat for the northern spotted owl consisted of three steps that are explained in this document. The first step was to determine the elements and areas essential to the owls' conservation. This step was completed in the proposal process and is summarized in the sections on Primary Constituent Elements, Criteria for Identifying Critical Habitat, and the Results of the Applying the Selection Criteria. The second step was to determine the potential costs of the proposed designation, which was completed in the proposal process and is only briefly noted here in the Economic Summary of the August 13 Proposal. The final step was to decide which areas should be excluded based upon economic and other relevant impacts, and to determine the costs associated with the final designation. This step is discussed in the Summary of the Exclusion Process, the Effects of the Designation, the Economic Impacts of the Final Designation, and Available Conservation Measures sections. A section on biodiversity is included to highlight the importance of that issue and its relationship to the northern spotted owl.

Primary Constituent Elements

In determining which areas to designate as critical habitat, the Service considers those physical and biological attributes that are essential to a species' conservation. In addition the Act stipulates that the areas containing these elements may require special management considerations or protection. Such physical and biological features, as stated in 50 CFR 424.12, include, but are not limited to, the following:

—Space for individual and population growth, and for normal behavior;
—Food, water, or other nutritional or physiological requirements;
—Cover or shelter;
—Sites for breeding, reproduction, rearing of offspring; and
—Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The Service is required to base critical habitat designations upon the best scientific and commercial data available (50 CFR 424.12). In designating critical habitat for the northern spotted owl, the Service has reviewed its overall approach to the conservation of the spotted owl undertaken since the proposed listing of the owl in 1989. This process has resulted in the most thorough study of owl habitat currently available.

The Service has also reviewed all available information that pertains to the habitat requirements of this subspecies, including material received during the public comment period from State and Federal agencies and other entities. The Service has met and discussed various aspects of critical habitat for the owl and related issues with representatives of the Interagency Scientific Committee (ISC), the Northern Spotted Owl Recovery Team (Recovery Team), the Forest Service's Environmental Impact Statement (EIS) planning team, the Scientific Panel on Late-Successional Forest Ecosystems (Scientific Panel), and State and Federal agencies. The purpose was to gather and discuss information useful in the designation. The Service had access to and shared information with these efforts. The Service's cumulative administrative records for the northern spotted owl contain more specific and definitive scientific information than the records for most other listed species.

For a thorough discussion of the ecology and life history of this subspecies, see the ISC's A Conservation Strategy for the Northern Spotted Owl (hereafter referred to as the ISC Plan) (Thomas *et al.* 1990), the Service's three status reviews (USDI 1987, 1989, 1990), and the June 26, 1990, final rule listing the northern spotted owl as a threatened species (55 FR 26114). These documents incorporate the majority of current biological information on the subspecies used to develop this rule. The Service also reviewed biological data from owl studies made available since the summer of 1990 (e.g., Buchanan 1991, Irwin *et al.* 1991, Lehmkuhl 1991, Snetsinger *et al.* 1991, Zabel et al. 1991).

There were very few new references that provided additional information on characteristics of owl habitat. None of the new biological data contradicted previous studies on the ecology of the subspecies summarized in the above-referenced documents. The following information summarizes the key elements of the spotted owl's habitat that are pertinent to the designation of critical habitat.

Habitat Characteristics

The Service has determined that the physical and biological habitat features, referred to as the primary constituent elements, that support nesting, roosting, foraging, and dispersal are essential to the conservation of the northern spotted owl. These elements were determined from studies on owl habitat preferences, including habitat structure and use and prey preferences, throughout the range of the owl.

Spotted owl habitat consists of four components: (1) Nesting, (2) roosting, (3) foraging, and (4) dispersal. Currently, the land managing agencies characterize spotted owl habitat under the term "suitable." However, suitable is a term that generally refers only to the nesting, roosting, and occasionally the foraging portion of the habitat used by northern spotted owls, and has not historically been used to characterize all four types of spotted owl habitat.

Therefore, under that definition most areas where spotted owls are found contain both "suitable" and "unsuitable" habitat. In addition to the "suitable" habitat that supports all facets of the owl's life history, habitat that is currently labeled as "unsuitable"

may also contribute to the habitat base that supports foraging and dispersal needs. This inconsistency has affected the definitions used by the various land managing entities.

Presently, many definitions of "suitable" spotted owl habitat are used throughout the species' range. As a result, existing estimates of the amount of spotted owl habitat may be misleading. Current estimates of suitable habitat (i.e., for nesting, roosting, and foraging) do not contain estimates of the additional amount of forested acres that may meet only the dispersal needs of the owl.

Forests in the northwestern United States exhibit natural variation in terms of species composition, stand age, climatic and soil conditions, slope steepness and aspect, and other factors. Forest structure varies in several measurable ways: Canopy closure varies from closed to relatively open, as a function of tree size, stocking density, and species composition; canopy layering ranges from multi-layered stands composed of two or more tree heights to single-layered stands; average tree diameter varies with tree age, species, and soil and climatic conditions; and the amount of decadence (deformed, broken, and rotting trees, standing and down dead material, etc.) varies with factors such as stand age, and fire, wind, and forest pest influence. Factors such as rainfall, elevation, slope, and aspect influence microclimatic conditions.

Forest characteristics associated with spotted owls usually develop with increasing forest age, but their occurrence may vary by location, past forest practices, and stand type, history, and condition. Although spotted owl habitat is variable over its range, some general attributes are common to the subspecies' life-history requirements throughout its range. The attributes of nesting and roosting habitat typically include a moderate to high canopy closure (60 to 80 percent); a multi-layered, multi-species canopy with large (> 30 inches diameter at breast height (dbh)) overstory trees; a high incidence of large trees with various deformities (e.g., large cavities, broken tops, mistletoe infections, and other evidence of decadence); large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly (Thomas *et al.* 1990).

Spotted owls use a wider array of forest types for foraging and dispersal, including more open and fragmented habitat, although less is known about the characteristics of foraging and dispersal habitat. Habitat that meets the species' needs for nesting and roosting also provides for foraging and dispersal. However, habitat that supports dispersal or foraging does not always support the other constituent elements and is not considered adequate for other purposes.

Although the term "dispersal" frequently refers to post fledgling movements of juveniles, for the purposes of this rule the Service is using the term to include all movement and to encompass important concepts of linkage and connectivity among owl subpopulations. Although habitat that allows for dispersal may currently be marginal or unsuitable for nesting, roosting, or foraging, it provides an important linkage function among blocks of nesting habitat both locally and over the owl's range that is essential to the owl's conservation. Dispersal habitat, at a minimum, consists of stands with adequate tree size and canopy closure to provide protection from avian predators and at least minimal foraging opportunities; there may be variations over the owl's range (e.g., drier sites in the east Cascades or northern California).

Foraging habitat is more difficult to describe, but may exist in a continuum between the dispersal habitat and nesting or roosting habitats described above. Foraging habitat varies across the range of the owl depending upon forest structure and prey availability. It is currently thought to consist mainly of attributes similar to those in nesting and roosting habitat for most of the owl's range, but may not always support successfully nesting pairs.

The age of a forest is not as important in determining habitat suitability for owls as are vegetational and structural elements. Northern interior forests typically require 150 to 200 years to attain the attributes of nesting and roosting habitat; however, characteristics of nesting and roosting habitat are sometimes found in younger forests, usually those with significant old-age remnant trees from earlier stands. These remnant attributes are products of fire, wind storms, or previous logging operations that removed only some of the trees. As one moves to lower elevations or south and toward the coast in the species range, these attributes tend to be attained at younger ages due to changes in site productivity, microclimate, and other factors. However, differences in growth rates exist between wet and dry-site conditions which may affect how quickly these attributes develop.

In the coastal redwoods of California, spotted owls have been observed nesting in stands that had acquired characteristics associated with owl presence in as little as 40 to 60 years (Pious 1989). They develop these habitat characteristics in a shorter time following harvest than other timber-types because of unique characteristics and conditions, such as fast-growth, good soil, high precipitation levels, a long growing season, an understory of other conifers and hardwoods, and an abundant prey base (Thomas *et al.* 1990). Although the forests in this area are younger in age than in other parts of the owl's range, structural habitat characteristics associated with owl presence are similar to those observed elsewhere.

Nearly all nest and roost sites are located in the portions of forest stands containing the oldest trees (Thomas *et al.* 1990). Owl survey data indicate that northern spotted owls are disproportionately found in association with older forests (Thomas *et al.* 1990, USDI 1990a). Although owls are occasionally found in younger forests, densities are significantly higher in older forests or forest stands having the characteristics of older forests, usually due to remnant older trees or other factors. Owls having an array of habitat types within their home ranges select for older forest (> 200 years), use mature forest (100–200 years) in proportion to its availability, and tend to avoid younger forest (< 100 years) or use it in relation to its availability (USDI 1989). Different studies over the owl's range demonstrate that owls select older forests for foraging (USDI 1990a); roost sites are also strongly associated with older forests.

Northern spotted owls have large home ranges and utilize large tracts of land containing significant acreage of older forest to meet their biological needs (USDI 1990a). As the quality and quantity of habitat declines, annual home range sizes increase. Therefore, home range sizes are not uniform across the range of the owl and vary among and within provinces. Thomas *et al.* (1990) indicated median annual pair home range sizes varied from a high of over 9,000 acres for the Olympic Peninsula to a low of about 3,000 acres for the Oregon Cascades. Individual annual pair home range sizes varied from as small as 1,000 acres in the Klamath Province to nearly 30,000 acres in the Washington Cascades (USDI 1990a).

Northern spotted owls have been observed over a wide range of elevations, but avoid high elevation, subalpine forests. The range of elevation in which spotted owls have been observed extends from 70 feet above sea

level in the Olympic Peninsula of Washington to over 6,000 feet above sea level in California. The range of elevations used by owls generally increases with decreasing latitude. Higher quality habitat is usually found at lower elevations.

The northern spotted owl is known from most of the major types of coniferous forests from southwestern British Columbia through western Washington, western Oregon, and northern California south to San Francisco Bay wherever forested habitat still exists. Vegetative composition of spotted owl habitat changes from north to south within the owl's range. The spotted owl inhabits forests dominated by Douglas-fir (*Pseudotsuga menziesii*) and western hemlock (*Tsuga heterophylla*) in coastal forests of Washington and Oregon. At higher elevations on the west slope of the Cascades in Washington and Oregon, stands containing Pacific silver fir (*Abies amabilis*) are commonly used by owls. Owls use mixed conifer stands that may include Douglas-fir, grand fir (*Abies grandis*), and ponderosa pine (*Pinus ponderosa*) on the east slope of the Cascades.

In southern interior Oregon, habitat changes to a drier Douglas-fir/mixed conifer composition with a corresponding shift in primary prey species, from northern flying squirrels (*Glaucomys sabrinus*) to woodrats (*Neotoma* spp.). In California, spotted owls most commonly use Douglas-fir, mixed-conifer, and coastal redwood (*Sequoia sempervirens*) forest types but are also found in mixed conifer-hardwood habitat types and in stands dominated by ponderosa pine in the eastern portion of the range.

Historically, habitat for the northern spotted owl was fairly continuous, particularly in the wetter parts of its range in northern California and most of western Oregon and Washington. Habitat for the owl in the drier portions of its range in parts of southern Oregon and northern California is not continuous, but occurs naturally in a mosaic pattern. This mosaic occurs in the southern interior portions of the bird's range, but also occurs to some extent in the eastern Cascades in Oregon and Washington.

Forest Practices

Forest structure also differs significantly because of varied timber management practices within the range of the spotted owl. Current management practices, such as clearcutting, even-aged management, and short rotations preclude development of suitable habitat. Timber harvest (predominantly clearcutting) along with natural perturbations results in the loss of owl habitat and increases forest fragmentation. In many areas, management practices have left small fragmented patches of older forests, separated by large stretches of younger forests that have yet to develop habitat characteristics used by owls. These practices have had an impact on the current presence and distribution of spotted owls, their survival and reproductive success, and their ability to successfully disperse, and also may have led to increased competition with barred owls (*Strix varia*) and predation by great horned owls (*Bubo virginianus*) and other open-forest predators. As habitat has become more fragmented, the direct effects of increased competition and predation may have become more pronounced.

Often, when forests are clearcut, the area is replanted with a single or few species of the same age. Site-preparation activities, such as prescribed burning, often remove the dead standing and down material. As timber plantations increase in age, timber managers may control competing vegetation, such as hardwoods, through the use of herbicides or mechanical methods. These actions tend to reduce or delay the ability of the site to attain the characteristics normally associated with owl presence.

Timber harvest, employing a pattern of small dispersed clearcuts, eventually leads to a situation where the remaining patches of older forests are so small as to be influenced by edge effects (e.g., windthrow, microclimate changes) which may reduce the ability of the area to support successfully reproducing owls. These types of situations may be most noticeable where past timber harvesting has been heaviest, e.g., in the Oregon Coast Ranges and on Bureau of Land Management (Bureau) lands that are interspersed in a checkerboard pattern with heavily harvested private lands. Because of the extent of past harvest using these patterns, the remaining effective (i.e., to support successful reproduction) suitable nesting and roosting habitat may be considerably less than the total amount of owl habitat remaining over the owls' range.

Historical logging practices in the drier portions of the species range, such as the mixed conifer zone of southern Oregon, along the east side of the Cascades in Oregon and Washington, and in parts of interior northern California, consisted of more selective timber harvesting than in other areas, often leaving remnant patches of stands of varying ages and with some older forest characteristics. The uneven-age management practices usually result in more ecologically diverse stands. Techniques such as individual tree selection, retention of hardwoods, and retention and/or creation of standing and down dead material seem to replicate more natural forest conditions sooner following harvest than do more intensive management practices such as clearcutting. Spotted owls are found more often in stands managed under these prescriptions (which may result in greater diversity) than in those subject to even-age regeneration following clearcutting, although the contribution of uneven-aged managed stands to maintaining a viable owl population is unknown.

Current and historic spotted owl habitat loss is largely attributable to timber harvesting and land conversion practices, although natural disturbances such as forest fires and blowdowns have caused losses as well. Habitat for northern spotted owls has been declining since the arrival of European settlers. Although the extent of nesting and roosting habitat before the 1800s is difficult to quantify, estimates of 17.5 million acres in 1800 and the current estimate of 7.5 million acres (Thomas *et al.* 1990) suggest a reduction of about 60 percent in the past 190 years. Other estimates suggest that the reported decline in historical habitat may have been as high as 83 to 88 percent (USDI 1990, Booth 1991). Historically, habitat reduction has not been uniform throughout the owl's range, but has been concentrated at lower elevations, particularly in the Coast Ranges. Past logging practices may have had the greatest impact on the status of the owl in northwestern Oregon and southwestern Washington.

Although timber harvest in the Pacific Northwest has a long history, spotted owl habitat over its range has decreased most rapidly since the 1960s, thus leading to listing the owl as threatened. Based on information from the Forest Service (USDI 1990a), the amount of suitable spotted owl habitat (i.e., for nesting, roosting, and foraging) on non-reserved Forest Service lands in Washington and Oregon has declined due to harvest by approximately 3.4 million acres (60 percent) over the last 30 years; there are no estimates on the decline of other forest types such as dispersal habitat. Of the nearly 7.2 million acres of nesting and roosting habitat on Federal lands, about 60 percent is currently classified as timber production land, 28 percent is withdrawn (mostly wilderness and parks), and 12 percent unsuitable for

timber production; much of the reserved and land unsuitable for timber production is also unsuitable for owls (USDI 1990a).

Forest-management practices result in a forest age distribution unnaturally skewed toward younger stands with rotation ages reflecting the demand for timber. Harvest currently comes from a broad spectrum of age classes, but in two decades, harvest will almost entirely come from young stands as the older stands are harvested (USDI 1990). Planned harvest in the next 50 years is expected to reduce the average age of trees harvested to 80–90 years or less on Forest Service lands, to 50-year trees on Bureau lands, and to 45–65 years on private lands (Sessions *et al.* 1990).

While future events are difficult to predict, past trends strongly suggest that much of the remaining unprotected spotted owl habitat could disappear within 20 to 30 years. On some Forests and Bureau Districts, the unprotected habitat could disappear within 10 years (USDI 1990a). The Bureau reported in 1987 that at the current rate of harvest older forest on their lands will be harvested within 25 years. These recent trends may have had a large impact on the sustainability of current harvest rates into the future as well as the ability of the ecosystem to withstand continuing rapid change for all species.

These patterns have led to concern over the isolation of local and provincial populations of owls, which in turn could lead to further genetic and especially demographic instability. Without changes in forest management practices, remaining suitable habitat will exist as small islands of varying size, spacing, and suitability, and recruitment of new suitable habitat will not offset the rate of loss and conversion. As a result, local populations will become smaller in number and more isolated from other populations, which increases the risk of extirpation of such populations. Those habitat-driven processes of local colonization and extirpation will lead to further instability of the subspecies.

Provincial Variation

The range of the northern spotted owl encompasses a number of physiographic provinces that depict local climatic and geological conditions in the Northwest (Franklin and Dyrness 1973); the report covered only Oregon and Washington. These conditions are responsible for the development of the respective vegetative landscapes within each province. The Forest Service (USDA 1986) used this information as a method of subdividing owl populations for administrative purposes. From north to south, their subdivisions included the Washington Cascades, Olympic Peninsula, Washington and Oregon Coast Ranges, Oregon Cascades, and Klamath Mountains; California was not originally divided into provinces. The ranges of the northern and California spotted owls (*S. o. occidentalis*) adjoin in the Pit River area of Shasta County, California; the Recovery Team is currently reviewing the location of the line dividing the two subspecies.

Thomas *et al.* (1990) used this information to identify 10 separate areas that reflect differences in spotted owl numbers, distribution, habitat use patterns, and habitat conditions. Their provincial breakdown includes the Olympic Peninsula, Washington Cascades East and West, Southwestern Washington, Oregon Cascades East and West, Oregon Coast Ranges, Klamath Mountains (Oregon/California), Northern California Coast Range, and California Cascades/Modoc. The following provides a summary of problems identified in each area (Thomas *et al.* 1990, USDI 1990a, USFWS 1991c):

—Olympic Peninsula: Isolation of owls due to lack of linkage to other provinces; poor distribution and quality of existing habitat; high level of fragmentation; low population size; and variable to low reproductive success;

—Washington Cascades East and West: Poor distribution and quality of existing habitat; high level of natural and manmade fragmentation (e.g., north Cascades); high susceptibility to catastrophe (east side); low population size; low reproductive success; competition with barred owls; and localized deficiencies in habitat connectivity;

—Southwest Washington: Lack of connectivity; little remaining habitat; poor distribution and quality of existing habitat; very low population size; and lack of Federal ownership;

—Oregon Cascades East and West: Localized deficiency in habitat connectivity; poor distribution and quality of existing habitat in some areas; high level of fragmentation in some areas (e.g., areas of concern); high susceptibility to catastrophe (east side); and low population size in some areas (e.g., east side);

—Oregon Coast Ranges: Low population size; poor distribution and quality of existing habitat; high level of fragmentation; lack of sufficient linkage to other provinces; low reproductive success; high susceptibility to catastrophe; and large areas of land not in Federal ownership;

—Klamath Mountains (Oregon/California): Poor distribution and quality of existing habitat in some areas; high level of natural and manmade fragmentation; high susceptibility to catastrophe; and localized deficiencies in habitat connectivity;

—Northern California Coast Range: High level of human-induced fragmentation; and little land in Federal ownership; and

—California Cascades/Modoc: Low population size; poor distribution and quality of existing habitat; high level of natural and human-induced fragmentation; poor reproductive success; competition with barred owls; insufficient linkage among provinces and with the range of the California spotted owl; high susceptibility to catastrophe; and interspersed landownership.

In its status reviews and biological opinions (USFWS 1991a, b, and c) addressing the spotted owl, the Service further identified areas of concern within these areas where habitat linkage within and among provinces is at greater risk due to past management practices. These areas are frequently associated with interspersed (checkerboard) Federal and non-Federal landownership patterns. The areas of concern are the Interstate 90 area within the Washington Cascades province; the Columbia Gorge, which encompasses an extensive zone between the Oregon and Washington Cascades provinces; Santiam Pass, within the Oregon Cascades province; the Interstate 5 area in southern Oregon; and the Shasta-McCloud area within the Klamath Mountains province of northern California. The Interstate 5 area consists of three distinct sub-areas: South Willamette-North Umpqua, Rogue-Umpqua, and South Ashland, where linkage among the Oregon Cascades East and West, Oregon Coast Ranges, and Klamath Mountains provinces is at risk.

These subdivisions provided more manageable subunits that were used to help conclude the designation process; these subdivisions will also help managers and others in reviewing local impacts to critical habitat. The subdivisions are identified in the Service's administrative record for this issue (USFWS 1991e).

Current Situation

Populations of spotted owls are not evenly distributed throughout its range due to variation in habitat conditions resulting from human-induced disturbances, often exacerbated by

landownership patterns, and to a lesser extent due to natural disturbances. Densities of owls vary over its range with the greatest numbers of spotted owls found in the west-central Cascade region of Oregon and the Coast Range of northwestern California (Thomas *et al.* 1990). The owl is uncommon in certain areas, e.g., in southwestern Washington and northwestern Oregon; thus, its distribution is now somewhat discontinuous over its range. About 90 percent of the known population (estimated over the past 5 years) is on Federal lands; about 19 percent is on Bureau lands in Oregon (USDI 1990a).

Comparatively good information exists on the amount, quality, stand size, distribution, and contiguity of nesting and roosting habitat on Federal lands and its ability to support spotted owls. Most owl habitat (about 7.2 million acres of nesting and roosting habitat, or about 85 percent of remaining habitat) is currently found on Federal lands throughout the owls' range; about 20 percent is reserved (in wilderness and parks). For Federal lands, about 2.4 million acres (34 percent) of this type of habitat occur in Washington, 3.6 million acres (51 percent) in Oregon, and 1.1 million acres (15 percent) in California (Thomas *et al.* 1990, USDI 1990a). There is little information available on the amount and distribution of additional habitat that supports dispersal; many areas especially on Bureau lands in Oregon are already below the standard recommended by the ISC (USFWS 1991a). The distribution of forest habitat that meets the dispersal criteria was not available. As a result of the distribution and abundance of habitat, Federal lands will play the significant role in the current protection and future conservation of the northern spotted owl.

About 400,000 acres of existing suitable habitat are found on State lands in the 3 States; the majority (about 300,000 acres) are found in Washington (G. Gould, Endangered and Threatened Species Coordinator, California Dept. of Fish and Game; D. Hays, Spotted Owl Coordinator, Washington Dept. of Wildlife; V. Johnson, Spotted Owl Coordinator, Oregon Dept. of Fish and Wildlife, pers. comm.). State lands tend to occur in large blocks of ownership; existing suitable habitat on these lands for the most part may be less widely dispersed and found in larger blocks than on private lands. More information exists for State lands in Washington then the other two states; there is less information about the quality of owl habitat on most State lands than on Federal lands. Because of availability and distribution, the quality of remaining habitat on State lands may be less than that on Federal lands.

State lands will be important to the recovery of the owl since most are located in key areas that provide inter- and intra-provincial linkage where little if any Federal lands occur (primarily in southwest Washington, northwest Oregon, and on the western Olympic Peninsula); currently few owls are known to occur on some of these lands. These lands support critical links to the Olympic Peninsula, across the Columbia Gorge between northwest Oregon and southwest Washington, and in the California Coast Range. This linkage function prompted the ISC to recommend designation of Habitat Conservation Areas (HCAs) incorporating key blocks of State lands.

Existing suitable spotted owl habitat on tribal lands (about 350,000 acres) is found mostly on five Indian Nations (Yakima and Quinault in Washington; Warm Springs and Grande Ronde in Oregon; and Hoopa in California) (C. Ogden, Spotted Owl Coordinator, Bureau of Indian Affairs, pers. comm.). The majority of existing suitable habitat (about 250,000 acres) is found on the Yakima Indian Nation; information on the quality, stand size, and distribution of suitable habitat on the other four areas is variable. The Yakima Nation predominantly harvests timber selectively throughout their lands that currently support pairs of spotted owls.

Private lands in Oregon and Washington currently provide less than 500,000 acres of nesting and roosting habitat (< 5 percent of total owl habitat although estimates are incomplete) (Hays and Johnson, pers. comm.). Most stands are remnant patches of older trees that had not previously been harvested or stands resulting from past uneven-aged harvest methods. Incomplete information exists on the quality, stand size, and distribution of habitat on these lands or their present ability to support spotted owls (no habitat maps are available). Most known remaining stands of suitable habitat are highly dispersed in small patches throughout the range of the owl in these two States. Most of these lands may contribute in supporting dispersal and have the potential to support roosting and nesting (if trees are allowed to mature and harvest patterns change).

In California, about 500,000 acres of existing owl habitat occur on private lands; about 450,000 of these acres are found in the coastal redwoods, although estimates are incomplete (Gould, pers. comm.). Lands on the east side of the owls' range in California are similar to those described for private lands in Oregon and Washington. Many of these lands are selectively harvested and support owls. As discussed earlier, the redwoods present a unique situation due to their rapid growth and other factors. As a result, extensive tracts of habitat exist on private lands in the redwood region along with a large number of owl pairs. Although surveys on private lands in the redwoods have not been completed, and knowledge of owl distribution is incomplete, currently about 40 percent of the known pairs are found on non-Federal lands in California.

Previous Management Attempts

The history of the spotted owl issue began before the passage of the Endangered Species Act in 1973. Prior to listing the spotted owl as a threatened species, many different approaches to spotted owl management and research were being implemented by Federal and State resource agencies. Attempts to focus on owl management (primarily through temporary protection of pair sites) began in the mid-1970s, often in an uncoordinated and inconsistent fashion; coordination among involved parties has been a continuing problem.

Attempts to avoid conflicts by managing spotted owls and old growth forest habitat were increasingly unsuccessful in the 1980s and resulted in a series of lawsuits, challenges, or appeals under the National Environmental Policy Act, the Migratory Bird Treaty Act, the National Forest Management Act, and the Federal Lands Policy and Management Act mostly prior to the listing of the northern spotted owl in 1990. These lawsuits have had a significant impact on recent timber harvest levels and on the way that the Forest Service and Bureau have managed for spotted owls (i.e., changes in previous management of Spotted Owl Habitat Area (SOHAs), Spotted Owl Management Areas (SOMAs), or Bureau/Oregon Department of Fish and Wildlife (ODFW) agreement areas) and old growth, and have contributed to the current situation leading to the development of the ISC Plan (discussed below) and the listing of the owl. The challenges have also increased congressional interest in resolving the issue of forest management conflict in the Pacific Northwest (of which the owl is only one part). A complete discussion of the history and chronology of past spotted owl management attempts can be found in the ISC Plan (Thomas *et al.* 1990).

In light of the growing uncertainty surrounding the status of the spotted owl, an Interagency Agreement was signed in 1989 by the Bureau, the Service, the Forest Service, and the National Park Service establishing the ISC, a committee of scientists and management biologists, to reevaluate the current management status of the subspecies. The charter commissioning the ISC, mandated in section 318 of Public Law 101–121 in October of 1989, specifically directed the group to develop a scientifically-based conservation strategy for the northern spotted owl; the Charter did not address the Act. On April 4, 1990, the ISC Plan (Thomas *et al.* 1990) was released. This plan, which focused primarily on Federal and to a lesser extent State lands, used the best available biological information on the subspecies and outlined a strategy to ensure long-term viability for the owl in well-distributed numbers throughout its range.

The ISC developed a scientifically credible conservation strategy, applying principles of ecology and conservation biology and utilizing available spotted owl research data. The ISC recommended implementing a system of HCAs capable of supporting multiple pairs of spotted owls and a management standard, thought to be consistent with sustained yield management, for the remaining forest matrix to provide for dispersal among the HCAs (50–11–40 rule) where 50 percent of the forest habitat would be managed for 11 inch dbh and 40 percent canopy closure. In addition, the ISC recommended an adaptive management strategy to modify the plan as further data on the owl's biology and forest management were obtained.

The ISC concluded that, if fully implemented by the Forest Service and the Bureau beginning in Fiscal Year 1991 and with continuing adaptive management, the plan should provide for the owl's survival for a 100-year period. No individual part of this management plan was designed to stand alone and the future success of the plan was dependent upon full and timely implementation. Recommendations were also made to establish HCAs on key State lands (mostly in important linkage areas where there are few or no Federal lands) and habitat management on private and tribal lands throughout the owls' range was encouraged. Even with the development of the ISC Plan existing information indicates little change in the status or management of owl habitat since the owl was listed. Current forest management continues to reduce the quantity and quality of spotted owl habitat.

The ISC acknowledged a number of population and habitat risk factors associated with the long-term nature of the strategy that may increase over time. Full implementation of the ISC Plan provides protection for a spotted owl population that is smaller than currently known to inhabit Northwest forests, and, in fact, will probably result in a near-term loss of a "significant portion" of the existing spotted owl population (Thomas *et al.* 1990). The ISC Plan, under a worst-case scenario, may result in a protected population that would be about 50 percent of the currently known number of spotted owl pairs. The projected number was based on the loss of all owl pairs outside of HCAs, although some unknown number of pairs would occur in other reserved areas, forested areas unsuitable for timber harvest, and older managed forest stands.

The long-term success of the ISC Plan is based on the expectation that (1) the HCAs would eventually recover sufficiently to support the hypothesized numbers of owls and thus a stable population of owls and, (2) linkage through the surrounding forest matrix would suffice for genetic and demographic exchange among the HCAs and physiographic provinces. The ability of HCAs to contribute to maintaining a viable and recoverable owl population is directly correlated with the quality and quantity of suitable nesting and roosting habitat within these areas; no timber harvest was recommended by the ISC within HCAs.

The ISC Plan was prepared before the owl was listed as threatened and did not explicitly address recovery, critical habitat, or other aspects of the Endangered Species Act. The Service recognizes the importance of the ISC Plan and the essential role of the HCAs in the owls' conservation. The ISC Plan complements this critical habitat determination by stressing the need for protection for all facets of the owls' life history, including dispersal (through 50–11–40) outside of areas identified in this rule as critical habitat. The ISC concept emphasizes the importance of managing large and well-distributed blocks of suitable owl habitat that are sufficiently connected to maintain a stable and well-distributed population throughout the owls' range.

With respect to implementation of the ISC Plan, the Forest Service issued a notice on October 3, 1990, (55 FR 4112) which vacated their previous spotted owl management guidelines and established the agency's intent to conduct future timber operations "* * * in a manner not inconsistent with * * *" the ISC Plan. On August 6, 1990, the Bureau released its management guidelines, referred to as the Jamison Strategy (USDI 1990b), for the northern spotted owl that incorporated parts of the ISC Plan (i.e., HCAs, the 50–11–40 rule only where possible), while emphasizing the Bureau's requirements under the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA) to analyze other alternatives during preparation of new resource management plans. The Bureau's guidelines established interim guidance until Fiscal Year 1993 when resource management plans were to be completed.

Both the Forest Service and the Bureau are currently nearing completion of their resource management planning efforts. On May 23, 1991, the Western District Court in Seattle ruled against the Forest Service for failing to complete the NEPA process in vacating the old SOHA system and implementing the ISC Plan; the ruling affects timber sales in owl habitat. The Forest Service issued a draft EIS, in September 1991, including the ISC Plan as their preferred alternative. The Court requires them to complete their management plan and accompanying EIS by March 1992.

On September 11, 1991, the U.S. District Court in Oregon enjoined the Bureau's Jamison Strategy over the Bureau's failure to consult with the Service pursuant to section 7 of the Act. The injunction did not affect actual timber sales. The Bureau continued to harvest in some areas below the 50–11–40 standard and has proposed timber sales originally planned in 1990 within HCAs; salvage sales are also planned within HCAs. On June 17, 1991, the Service determined that 52 timber sales proposed by the Bureau, located primarily in the Oregon Coast Ranges, would jeopardize the continued existence of the northern spotted owl (USFWS 1991a). The Bureau modified 8 of the sales and requested exemption from the requirements of section 7 of the Act on the remaining 44 sales. The exemption ("God Squad") process is currently underway; some of these sales are in critical habitat.

Recent Developments

In late May 1991, the Agriculture and Merchant Marine and Fisheries Committees of the U.S. House of Representatives established a Scientific Panel to address the needs of all forest species and forest-related ecosystems in the Pacific Northwest so as to determine

a possible course of action for developing a long-term solution to current and expected resource conflicts with emphasis placed on conserving the spotted owl. On October 8, 1991, the Panel provided a report to Congress entitled "Alternatives for Management of Late-Successional Forests of the Pacific Northwest" which outlined 14 alternatives that provided different levels of protection for forest ecosystems along with different timber harvest levels (Johnson *et al.* 1991). The Scientific Panel concluded, among other things, that continued high timber harvest rates are inconsistent with ecosystem protection and both cannot be accomplished. At this time no decision has been made by Congress as to adoption of that report or any of its alternatives.

The Service is currently coordinating with a number of public and private entities to develop management or habitat conservation plans to help offset impacts to owls resulting from current or future actions. Private timber companies and the State of California are actively pursuing completion of habitat conservation plans (HCPs) under Section 10 of the Endangered Species Act on the east side of the Klamath province and in the redwoods. The Bureau of Indian Affairs and the Yakima Indian Nation are developing a harvest management plan for their lands that is intended to be compatible with spotted owls.

In February 1991, the Department of the Interior established a Recovery Team for the northern spotted owl that represents the major Federal and State agencies involved with this issue. The Recovery Team is evaluating critical habitat, the ISC Plan, and all other new and pertinent information; it expected to produce a draft recovery plan in 1992 that outlines the goals and objectives for recovering (i.e., delisting) the northern spotted owl. This plan should help define management prescriptions for critical habitat. The Service will review the scope and extent of this critical habitat rule following completion of the recovery planning process.

Criteria for Identifying Critical Habitat

The maintenance of stable, self-sustaining, and well-distributed populations of northern spotted owls throughout their range is dependent upon habitat quality and its ability to support clusters of successfully reproducing owls that are sufficiently integrated to avoid or reduce demographic and/or genetic problems through time. The biological and physical characteristics of the forest habitat that support nesting, roosting, foraging, and dispersal are essential for this purpose.

The Service's primary objective in designating critical habitat was to identify existing spotted owl habitat and to highlight specific areas where management considerations should be given highest priority to manage habitat. Critical habitat focuses on the nesting and roosting habitat as the most important elements of spotted owl habitat. However, in its designation of critical habitat, the Service has considered all habitat types needed by the owl through its definition of the primary constituent elements.

Using habitat maps, the Service developed criteria to identify which parcels containing these attributes would be included as critical habitat. Because habitat maps available to the Service were generally based on the varying definitions of "suitable habitat" used by the agencies, the major focus was on habitat that provides nesting, roosting, and some foraging attributes. The quality of remaining habitat varies across the owls' range, and so the Service made judgments about the appropriateness of including specific areas. To assist in these determinations, the Service relied upon the following principles (Thomas *et al.* 1990):

—Develop and maintain large contiguous blocks of habitat to support multiple reproducing pairs of owls;
—Minimize fragmentation and edge effect to improve habitat quality;
—Minimize distance to facilitate dispersal among blocks of breeding habitat; and
—Maintain range-wide distribution of habitat to facilitate recovery.

Several qualitative criteria were considered when determining whether to select specific areas as critical habitat. The following discussion describes the criteria and provides an explanation of their use in selecting specific areas. The Service did not establish population goals for individual critical habitat units, provinces, or the range of the owl as part of the selection criteria. It is assumed that these may be identified in the recovery plan, if appropriate.

(1) *Presently suitable habitat emphasized:* The Service concentrated on the existence of presently suitable owl habitat in coniferous and coniferous/mixed-hardwood forests that contained one or more of the primary constituent elements (primarily nesting and roosting, but also foraging and dispersal). The definition of "suitable" habitat was generally equivalent to the structure of Douglas-fir stands 80 or more years of age (with adjustments for local variation or conditions).

(2) *Large contiguous blocks of habitat emphasized:* To respond to the habitat needs of the northern spotted owl, the Service identified large, contiguous blocks of habitat or areas that mostly consisted of owl habitat. To accomplish this the Service began with areas previously designated as Category 1 HCAs (areas with potential to support 20 or more pairs), Category 2 HCAs (areas with potential to support fewer than 20 pairs), and clusters of Category 3 HCAs (single pair HCAs) within its critical habitat designation. Habitat not previously included in HCAs was also was considered for designation where large areas of fairly unfragmented habitat existed outside of an existing HCA. For the most part these areas needed to be of sufficient size to support two or more pairs (based upon the mean home range size for the province) and fall within the spacing recommendations identified in the ISC Plan. In selecting areas for designation as critical habitat the intent was to follow rules similar to those outlined in the ISC Plan on contiguity, shape, habitat quality, spacing, and location within the range. For example, areas were selected so that critical habitat units would be as compact as possible; spider-shaped areas are less valuable for spotted owls because of the large amount of forest edge.

(3) *Quality of existing habitat:* The Service evaluated the quality of existing habitat based on available habitat maps and tried to encompass the best available habitat (i.e., the least fragmented, most contiguous, lower elevation habitat areas) in the critical habitat units. The Service focused on habitat that was within, adjacent to, or in close proximity to an existing HCA; areas with minimal fragmentation were selected over areas with more extensive fragmentation. In carrying out this evaluation, the Service reviewed all available information regarding the habitat quality existing in the HCA's identified by the ISC and made an independent determination regarding the existence of the primary constituent elements essential to the species.

(4) *Dispersal distances minimized:* Designation of critical habitat provides no protection for lands not included in the designation. As a result, the Service made the determination not to violate the spacing guidelines in the ISC Plan. Critical habitat units minimize distance between adjacent units, thereby facilitating dispersal and linkage. In some areas units are nearly contiguous which will help reduce gaps within the

range of the owl, especially in areas of concern (e.g., Bureau lands in the Oregon Coast Range).

(5) *Occupied habitat emphasized:* In selecting critical habitat, the Service gave primary consideration to habitat currently occupied by pairs or resident singles; however, some unoccupied areas were selected if they were important for other reasons (e.g., linkage). All areas selected, however, have potential for supporting owls.

(6) *Maintain rangewide distribution:* The Service designated critical habitat units throughout the existing range of the owl which will help maintain the variation that occurs over its range. In some cases, the only constituent habitat element currently supported by these areas is dispersal habitat. These areas should provide sites where owls moving across the landscape can find shelter and prey and should eventually provide nesting habitat as well. To be truly successful as stepping stones to improve linkage, these areas must in the future provide nesting habitat to support an adequate distribution of owls. For example, relatively few owls remain in the area between the Olympic Peninsula of Washington, east to the Washington Cascades, or south to the Siuslaw National Forest of Oregon; however, linkage within this area is essential to the recovery of the subspecies and to maintain a population in the Olympic Peninsula.

(7) *Need for special management or protection:* The Service evaluated the need for special management because of the existing situation (e.g., current quality of existing habitat), low population density, or connectivity problems (e.g., areas of concern). Although most critical habitat units were designated based upon the presence of existing habitat, some were selected because of their need for special management or protection. Primary emphasis was given to areas of concern (as identified in the ISC Plan and the Service's status reviews) that require special management. Emphasis was also given to the contribution that area would make to the conservation of the owl.

(8) *Adequacy of existing regulatory mechanisms:* The Service considered the existing legal status of areas (i.e., whether areas were already protected for other reasons such as wilderness or parks) and did not formally designate protected areas as critical habitat. Some HCAs or portions of HCAs were not included in this rule because they were already protected in wilderness, State parks, or National Parks and Monuments. The Service also considered the value of other processes (e.g., the HCP process currently underway in California) and the ability of those processes to provide owl habitat.

Results of Applying the Selection Criteria

Application of these criteria resulted in the consideration of a number of items that are explained below. A full discussion of the items that were considered for each individual critical habitat unit is included in the Service's narratives (USFWS 1991d; a copy is contained in the Service's administrative record for this rule).

Habitat Conservation Areas

HCAs are only one part of a plan to manage spotted owls. The areas selected as HCAs were identified by experts familiar with the species and its habitat, were identified through application of accepted ecological principles, and are currently considered essential to the conservation of the species. The ISC Plan was based upon the best information available at that time on spotted owls. The ISC Plan represents the best science on the conservation of the northern spotted owl, is consistent with ecological principles, and has been thoroughly peer-reviewed. The success of the ISC Plan or other acceptable conservation plans in recovery will depend upon the time of implementation and the long-term protection of the recommended network combined with management to maintain dispersal habitat in the remaining forest matrix (e.g., 50–11–40 rule).

The Service thoroughly reviewed the ISC Plan, strongly endorses the science and principles espoused by this plan, and has used the ISC Plan in other conservation efforts (e.g., it has been the focus in Section 7 consultations). The Service believes there is a greater opportunity in the near term for conserving owls on lands identified as HCAs. Therefore, HCAs form the basis for critical habitat and were selected as the starting point for designation of critical habitat.

By using the HCAs as the basis for critical habitat, the Service accepted the fact that critical habitat would primarily apply to those Federal and State lands where HCAs had been recommended by the ISC. This resulted in the initial proposed selection of critical habitat primarily on Federal lands and some State lands in key areas, which would place a greater emphasis on the need for Federal and State land managers to participate in efforts to conserve the northern spotted owl.

The HCAs were accepted by the Service, as recommended by the ISC, except where new information (e.g., updated suitable habitat maps) indicated that areas of poor-quality habitat had been included in an HCA and/or higher quality habitat was located immediately adjacent to an HCA. Because it was constructing a management plan, the ISC did not include all good owl habitat in HCAs. In some cases, better habitat was found outside of an existing HCA that had not been previously identified by the ISC. Portions of HCAs were not included in critical habitat if (1) unsuitable areas were identifiable on available maps, (2) there was suitable habitat adjacent to the HCA that could be included in the critical habitat unit, and (3) exclusion of the unsuitable habitat would not violate the size and spacing recommendations. Where possible these areas were exchanged for areas of better quality habitat currently adjacent to the HCA.

About 5.7 million acres (5.2 million Federal) currently included in the HCA system were proposed as critical habitat because they met the criteria for designation. Over 200,000 acres of non-reserved lands in HCAs were not included in critical habitat since they did not meet the criteria; all reserved lands were also excluded because they were already protected (about 2.1 million acres). Some owl habitat outside HCAs and currently managed under the 50–11–40 Rule was included in critical habitat because it met the designation criteria.

Increase in Size Above Non-Reserved HCA Acreage

Designation of critical habitat does not accomplish the same goals or have as dramatic an effect upon owl conservation as does the ISC Plan, because critical habitat does not apply a management prescription to designated areas, nor does it affect the forest matrix outside of critical habitat (estimated as an additional 12–15 million acres). Since critical habitat designation is not a management plan, there was not a limitation on the size of the area added to any HCA, although emphasis was placed on areas documented to support the pair targets identified in the ISC Plan.

Primary consideration was given to existing suitable habitat and known pairs of spotted owls, particularly where the Service felt that additional protection should be considered and would enhance the existing HCA. For example, suitable nesting habitat, usually supporting known owl pairs, was included along with adjacent HCAs

primarily to provide near-term population stability for the spotted owl to help reduce the near-term risk associated with the ISC Plan. Such adjustments may shorten the recovery period by increasing habitat protection around existing HCAs that are deficient in suitable habitat or numbers of pairs. The inclusion of areas adjacent to HCAs included additional pairs of owls and resident singles that may help meet the pair targets identified in the ISC Plan in the near-term. However, the focus was on habitat quality and not on population numbers.

The Service focused on the existing situation in each of the physiographic provinces. Variations within and among provinces (e.g., existing habitat quality and quantity, distribution of existing suitable habitat, low numbers of pairs) led to differences in application of the criteria. Habitat was included in the designation to help specify areas of importance (e.g., to improve connectivity in areas of concern, to highlight areas for land exchanges, to ensure good distribution over the species' range, etc.). The Service identified areas of concern where habitat linkage within and among physiographic provinces is at risk due to past management practices. These areas are frequently associated with interspersed (checkerboard) Federal and non-Federal landownership patterns.

The Service evaluated different ways to approach critical habitat in these areas of concern. In the initial May 6, 1991, proposed rule, the Service identified the entire areas of concern as critical habitat to provide additional protection for key movement corridors. In response to public comments, the Service reevaluated this approach in the August 13, 1991, revised proposal primarily because owls appear to disperse randomly, not along well-defined corridors, and there are unanswered questions about the biological effectiveness of movement corridors. In the August proposal the Service included both the HCAs and adjacent blocks of existing suitable habitat within critical habitat. This not only focused on the immediate need for suitable habitat blocks in the areas of concern, but also resulted in closer blocks of habitat that facilitate movement of owls among critical habitat units and throughout their range. The need to protect linkage throughout the owl's range will increase if habitat conditions (quality and/or quantity) continue to decline. The size of critical habitat units in these areas is somewhat misleading since in areas under checkerboard ownership (in particular Bureau lands) only about half of the area may actually be included in critical habitat.

Although the designation of critical habitat emphasizes the importance of maintaining suitable habitat for all four constituent habitat elements, nesting and roosting habitat should be emphasized to improve opportunities for successful linkage. For example, in the Oregon Coast Ranges province, additional areas were identified as critical habitat due to the extremely fragmented habitat conditions and low owl pair numbers. New areas were identified within the Shasta/McCloud area of California where the Service determined that existing HCAs, although important to the owl, did not contain the most suitable habitat. In the southern portion of the Washington Cascades, areas of suitable habitat were included within critical habitat because large portions of the habitat within the HCAs are presently unsuitable and were deleted. Regardless of the existing variation, all of these areas play an important role in maintaining a stable owl population over its range.

Adjustments to Legally-Described Boundaries

The Act requires the Service to specifically identify and describe areas designated as critical habitat. This process previously has been accomplished by publishing illustrative maps and detailed written legal descriptions. To facilitate legal definition, in the August proposal all critical habitat unit boundaries were described to adjacent section lines external to the unit (including HCAs), unless other legally definable boundaries were available. In all cases the decision to use a section line was dependent on the existence of known owl habitat within the selected boundary that met the criteria.

In adjusting the ISC's HCA boundaries to the nearest section lines, the Service made the decision to include a section depending upon the amount and quality of habitat within that section; these additions provided a biological buffer to the HCAs. In some cases when a small portion of an HCA (e.g., 100 acres) crossed the corner of a section, but contained little to no existing owl habitat, the section was not included in critical habitat.

Lands Outside of Critical Habitat

Not all suitable nesting and roosting habitat was included in critical habitat. The Service recognizes the importance of all lands, but did not incorporate all habitat, especially all dispersal habitat, within critical habitat units, primarily because most of these lands did not meet the designation criteria. It was impractical to include all dispersal habitat within critical habitat, since relatively little is known about this aspect of the owls' life history. Emphasis was placed on those areas requiring more immediate protection due to habitat conditions within the critical habitat units, provinces, or in relation to the need for range-wide distribution. This does not mean that lands outside of critical habitat do not play an important role in the owls' conservation. These lands are also important to providing nesting, roosting, foraging, and dispersal habitat for owls.

In order to achieve recovery, habitat must be available for owls to move throughout their range to provide genetic and demographic exchange among subpopulations, to recolonize formerly occupied portions of the subspecies' range (linkage), and for juvenile owls to disperse from their natal areas (dispersal). All of these functions require that forested habitat exist between protected areas to provide connectivity. Dispersal habitat must provide protection to owls from avian predators, provide at least minimal foraging opportunities, and allow juvenile and adult owls to move successfully among blocks of nesting habitat. Because owls disperse and move randomly, and given general harvest practices, the ISC suggested that the general forest landscape on Federal lands should be maintained in a condition that would allow successful owl movement between HCAs and other protected areas, through utilization of the 50–11–40 rule (Thomas *et al.* 1990). The 50–11–40 rule also was recommended for non-Federal lands, but on a voluntary basis.

However, the ISC Plan affects a much greater amount of acreage in the forest matrix beyond those lands designated as HCAs through application of the 50–11–40 rule (estimated to apply to an additional 12 to 15 million acres). The 50–11–40 rule applies to significant acreage that is not included in critical habitat. The Service expects that the dispersal needs of the owl will be addressed through Federal compliance with the 50–11–40 rule or other scientifically acceptable approaches. Although the Service assumes that the 50–11–40 rule or an equivalent rule will be followed in this portion of the forest matrix after designation of critical habitat, there is no assurance that this will occur. Even though distances between critical habitat units were often less than between HCAs (which should facilitate linkage), these shorter distances do not replace the need to

manage the forest matrix not included in critical habitat.

Wilderness, Parks, and Other Reserved Areas

The current classification of wilderness areas and parks provides adequate protection against potential habitat-altering activities, because they are primarily managed as natural ecosystems. The Service considered their relative contribution to the owls' conservation but did not include them in critical habitat because of their current classification. These lands are certainly essential to the conservation of the species as they provide important links and contain large areas of contiguous habitat not previously harvested. However, these lands, by themselves, do not provide adequate habitat for supporting a viable spotted owl population.

Reserved areas do not provide a well-distributed network of owl preserves because they are concentrated within only about one-third of the owl's range. They usually have poor soil conditions or are too steep or rocky; such areas generally do not contain suitable habitat for spotted owls. Owl density and reproductive success within these areas is generally less than in other areas (Thomas *et al.* 1990). Although these lands may contain some high-quality, lower-elevation habitat that is important for the species, they generally include a large percentage of high-elevation, alpine habitat that is unsuitable or only marginally suitable for spotted owls. Furthermore these areas are often separated by wide gaps of 30 to 80 miles. Without intervening populations, these protected areas may become demographically isolated.

Congressionally-designated wilderness and national and state park systems contain less than 2.1 million acres of suitable habitat (about 23 percent of the total amount of owl habitat rangewide) and may support fewer than 300 pairs of owls (Thomas *et al.* 1990). There are 55 wilderness areas totaling over 4.7 million acres in the 18 national forests in the owls' range; there is very little wilderness on Bureau lands in these areas (USDI 1990a). It is estimated that less than 25 percent of wilderness lands (about 1.3 million acres of the 4.7 total) provide suitable nesting and roosting habitat; about 15% of the total amount of nesting and roosting habitat estimated for all lands. Most of that habitat is highly fragmented by intervening areas of high elevation. National Parks may provide about 600,000 acres of suitable owl habitat. Most existing owl habitat currently on Park lands is found in the Olympic National Park (about 16 percent of all known suitable habitat within reserved areas).

In addition, there are areas which are reserved administratively at the local level for hydrological, scenic, biological, or other reasons. Total acreage estimates were not available, but these areas are believed to comprise about 20–30 percent of the habitat currently identified as being in the timber base. For the most part these areas are small and of low or poor quality habitat that may only suffice for limited nesting or for dispersal. Since these latter areas could not be readily identified on habitat maps, some were included in critical habitat if they met the selection criteria.

Management Planning

The Service's intent in designating critical habitat for the northern spotted owls is to provide protection for habitat that contains constituent habitat elements in sufficient quantities and quality to maintain a stable population of owls throughout the owl's range. The emphasis for future management will be on maintaining or developing habitat that has the characteristics of suitable nesting and roosting habitat and to avoid or reduce the adverse effects of current management practices.

Although critical habitat is not a management plan, the areas selected for inclusion are interlinked and play a role in maintaining a stable and well-distributed population of owls. Identification of these areas concluded the first step in the designation of critical habitat for the northern spotted owl. This step was primarily the focus of the August 13, 1991, proposal to designate critical habitat. Final modifications to this proposal resulted from the economic analysis and consideration of the exclusion process, and led to the final designation of critical habitat (see following sections for final designation).

Economic Summary of August 13 Proposal

Section 4 of the Act directs the Secretary to designate critical habitat and to consider economic and other relevant impacts in determining whether to exclude any proposed areas from the final designation of critical habitat. The Secretary has delegated these authorities to the Director of the Service. Section 4(b)(2) states:

> The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

The Service analyzed the economic effects of the August 13, 1991, revised proposal to designate critical habitat (USFWS 1991d). A summary of that analysis was provided in the proposed rule (56 FR 40001); the complete analysis can be found in the draft economic analysis report. That analysis examined how designation of critical habitat was expected to affect the use of Federal lands or State or private activities with some Federal involvement, and the economic costs or benefits which would ensue in the Northwest. These were the regional economic effects of the proposed designation that were over and above those expected to result from previous actions (e.g., the ISC Plan), including the listing of the owl as threatened. The economic analysis assumed those values which were in place prior to critical habitat designation (e.g., the ISC Plan and final Forest Service and Bureau plans, section 7 jeopardy standard, and section 9 prohibitions) as the baseline for this analysis. As a result, critical habitat effects were those incremental impacts that would occur solely as a result of the critical habitat proposal above and beyond the effects of these other actions.

The proposed critical habitat covered a broad geographic area in three States and included both Federal and State-owned lands. Because the designation would affect only Federal agency actions under section 7 of the Act and only to those areas currently outside of HCAs, it was assumed that any ensuing economic impacts of the designation would occur only on Federal lands or on non-Federal lands where there was Federal involvement. The Service concluded that the impacts on Federal lands would be largely limited to timber harvest and to a lesser degree non-timber activities that may affect owl habitat. The Service had excluded all private and tribal lands in the August 13 proposal to help reduce the overall impacts (about 3.1 million acres). The Service believed that the benefits from inclusion of these areas in critical habitat did not outweigh the potential costs resulting from their inclusion (see following discussion on the exclusion process) and that there were other

mechanisms underway in some areas (e.g., HCPs) that would provide greater conservation benefits.

As a result of that analysis, the Service concluded that the August 13 proposal would have the potential to reduce timber harvest by about 167 million board feet (mmbf) with the net loss to the U.S. Treasury of about $43 million. The potential reduction in timber-based employment was estimated at 2,458 jobs (1,538 direct jobs; 920 indirect jobs) with an estimated $20 million reduction in payments to counties. These figures represented about a 4–5 percent impact on the timber industry in the Northwest. It was estimated that Oregon would be the most affected by the proposal. The relative importance of the industry also varies by county with some counties much more dependent on the timber industry than others. These counties would be expected to be more affected by the designation than others that are more diversified. The Service expects a number of factors to partially offset employment and other losses over time, such as changes in stumpage prices or improvements in silviculture techniques, but it was difficult to quantify these estimates.

The Service also concluded that the conservation of the spotted owl and its habitat through designation of critical habitat would result in a wide range of benefits, including recreation values, watershed protection, and others, as well as the values that society places on conservation of the owl and its ecosystem. However, it was not possible to place dollar estimates on these values.

As a result of this analysis, the Service concluded that the overall effects on the Northwest timber industry and to some counties in particular, were potentially severe and that further consideration should be given to excluding additional acreage from the final designation to reduce the overall economic impacts that may result from the designation of critical habitat.

Summary of the Exclusion Process

To determine whether or not to exclude areas from the designation of critical habitat pursuant to Section 4(b)(2) of the Act requires determinations of (1) the benefits of excluding an area as critical habitat, (2) the benefits of including an area, and (3) the cumulative effects of exclusions on the probability of species extinction. This process consists of estimating the benefits of retaining or excluding critical habitat units, weighing those benefits, and determining if exclusion of an area or areas will lead to the extinction of the species. If the exclusion of an area or areas from critical habitat will result in eventual species extinction, then the exclusion would be prohibited under the Act. A full discussion of this process and its conclusions can be found in the Service's report on the exclusion process (USDI 1991b).

Extinction

Critical habitat consists of areas with habitat characteristics that are essential to the conservation of a listed species. However, the exclusion process focuses upon a threshold for species extinction. Conservation (recovery) and extinction are separate standards. Recovery and extinction are at opposite ends of a continuum, with the likelihood of a species' continued survival increasing the closer the species is to the recovery end of the continuum. It may be more difficult to predict the point at which extinction would be inevitable than to determine where recovery may occur.

Each such determination may be different for different species and may vary over the range of a species. It may be related to a number of factors, such as the number of individuals, amount of habitat, condition of the habitat, and reproductive success. Extinction of a wide ranging species such as the northern spotted owl would most likely occur as a result of increased fragmentation of its habitat (affecting quality) and range, and isolation of subpopulations (affecting population stability). Portions of its range would no longer support owls before the species would become extinct. Cumulatively, reductions in range would inevitably lead to the species extinction. The focus of the analysis was on those factors that pertain to these issues and included consideration of the condition and location of habitat, area by area.

Criteria and Decision

The Act specifically prohibits consideration of economic effects when listing species as threatened or endangered, but requires an analysis of the economic and other relevant impacts of designating critical habitat. Therefore, economic costs and benefits of critical habitat designation were defined as the economic effects which: (1) Exceed those that resulted from listing the northern spotted owl as a threatened species in June 1990; (2) are above those economic effects resulting from the previous implementation of owl protection measures by the Forest Service and Bureau (e.g., the ISC Plan); and (3) are beyond limitations that may have been imposed by other statutes, regulations, or court actions. Consideration of those acres available for exclusion was, therefore, limited to those areas proposed for critical habitat but currently outside of HCAs as defined in the August 13 proposal.

The Service used the following process to evaluate the designation of critical habitat to determine whether to exclude areas because of concerns over economic effects:

—Areas were identified that are essential to the conservation of the species based upon the criteria described in this document;
—An economic analysis was conducted to ascertain the anticipated economic consequences of designating areas as critical habitat, using the county as the basic level of economic analysis;
—Economic criteria were developed to help identify areas of vulnerability and to identify areas which would be affected by the critical habitat designation. The analysis was done at the county level because the county level is the lowest level for which national economic data are compiled. However, consideration was also given at the agency, national, and province level to help clarify impacts and to provide comparable measurements; and
—Economic thresholds were established and all counties were screened against the criteria to identify their economic vulnerability. Those with the greatest vulnerability or highest overall impacts were identified for additional review and discussion.

The Service determined that criteria based upon the effect on timber and timber-related employment would be used to help determine when a county should be reviewed because of the effects of the designation of critical habitat. Two initial criteria were selected to determine an economic threshold: (1) If the projected number of timber jobs expected to be lost exceeded 3 percent of the total number of timber jobs in that county, and (2) If the effect of the designation resulted in a projected loss to county budget of 5 percent or more. After reviewing these criteria, the Service chose to reduce the criteria for projected employment reductions to 2 percent. The Service believes that impacts of this magnitude present a significant loss to local economies. These percentages are equivalent to the indicators that the Federal government uses to identify economic concerns.

The Service believes that when losses in revenues reach as high as 5 percent or more of previous budget levels, significant reductions may occur in county services. The Service adapted

the criteria for "substantial and persistent unemployment" effects set forth in the "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies" (March 1983). The threshold for a substantial effect (i.e., a current unemployment rate of at least 6 percent and an annual average unemployment rate 50 percent above the national level) was modified to reflect the future effect on currently employed workers in the three State area. The county level unemployment rate was used in place of the national level rate, and the "50 percent above" criteria was defined as future unemployment effects that would be potentially created by critical habitat designation. This process resulted in a 3 percent unemployment threshold for timber related employment. In order to account for uncertainty and to develop a more conservative estimate, the Service reduced the unemployment threshold to 2 percent.

After completing its economic analysis and considering other factors that may be pertinent to any decision to exclude areas from designation as critical habitat, the Service made the following decisions:

(1) A total of 865,000 acres were excluded from designation. These acres were excluded from:

—13 counties where the Service determined that the benefits of exclusion outweighed the benefits of inclusion and that the economic costs needed to be mitigated to reduce the number of timber-related jobs projected to be lost locally, and/or where losses to county revenues exceeded the threshold; and

—Most counties to help reduce the overall economic costs over the owls' range where acres had been included primarily to expand critical habitat units incorporating HCAs to meet section lines for use in legal descriptions.

(2) All presently existing projects and all proposed projects where all Federal, State, and local permitting processes had been completed and final approvals and permits issued as of the date of the final rule were excluded from designation to help reduce any impacts from additional regulatory burden (e.g., existing mines, ski areas, etc.); future project changes are not included in the decision.

(3) All State lands (about 580,000 acres) are excluded because the potential costs resulting from a designation outweighed the minor conservation benefits expected to result from protection under the Act applicable to critical habitat on State lands.

The Service has removed (1) the areas added to HCAs to facilitate legal descriptions, (2) additional areas within specific counties, (3) existing projects, and (4) State lands, on the ground that the benefits of excluding such areas from designation outweigh the benefits of including them within critical habitat. This resulted in an exclusion of nearly 37 percent of the acres proposed for critical habitat that were above the HCA acreage included in critical habitat, plus nearly 600,000 acres of State lands. Those exclusions will reduce the economic and other relevant impacts expected from this designation. The above decisions to exclude areas from critical habitat are in addition to the reductions and exclusions reported in the August 13 proposed rule. In that proposal, the Service excluded private and tribal lands (3.1 million acres estimated); some State and Federal lands that did not meet the designation criteria also were deleted prior to completion of the August 13 proposal (about 200,000 acres net).

Although the Service believes all lands are important to the recovery of the northern spotted owl, it did not include the above lands because it felt that the conservation benefits to be gained from including them in critical habitat did not outweigh the potential costs to the public. The Service believed that the above actions were justified because in comparison there are very few owls or owl habitat currently on non-Federal lands, except in the redwoods in northern California. For the most part the best remaining owl habitat exists on Federal lands throughout the range of the owl. Because of this situation most conservation activities for the owl are expected to be carried out by the Federal agencies (particularly the Forest Service and Bureau). Non-Federal land management actions are not subject to section 7 consultation unless Federal approval or authorization is required. Since there is little direct opportunity to apply additional protection to critical habitat through section 7 on non-Federal lands, the Service made the decision to exclude these areas because of the potential economic concerns and because their designation would provide little additional conservation benefit to the owl. The Service believed that there are other mechanisms on private, State, and tribal lands that would provide a greater conservation benefit for the spotted owl than that provided under designation (e.g. the HCP process underway in California). The areas that were excluded from the designation were those the Service believed would have the least biological impact on the intent of the designation for this species.

In the August 13 proposal, the Service also excluded all sold and awarded timber sales as of the date of that proposal. The potential market value of these sales is over $1 billion (T. Rogan, Head of Engineering, Forest Service, pers. comm.; B. Neitro, Threatened and Endangered Species Coordinator, Bureau of Land Management, pers. comm). The Service believes that the cost of buying back those sales or causing further regulatory burden as a result of designation justified their exclusion.

A comparison of the major effects of designating critical habitat between the August 13 proposal (56 FR 40001, USFWS 1991d) and the final designation (see ECONOMIC IMPACTS OF THE FINAL DESIGNATION in this document and USDI 1991a) shows that the exclusion process resulted in significant reductions in potential economic impacts resulting from the designation. The final rule results in an increase in annual timber volume of 65 mmbf over the August proposal. The increased availability of timber in the final rule, valued at $4 million annually, may result in 1,038 more jobs than the August proposal and may reduce the loss of payments to the States by $1.8 million annually. These reductions in economic effects are due primarily to the reduction in acres of Federal land designated as critical habitat, although some small reductions are also attributed to the use of updated job coeffecients and to the use of slightly different timber yield per acre figures.

The above exclusions increase the importance of the remaining critical habitat and associated consultation processes to the conservation of the owl and place a greater dependence on other processes for recovery. The exclusions may reduce the biological buffer in some areas, thus reducing the Service's flexibility under section 7. Deleting or dropping areas from the designation also changes the value of the remaining units, thereby affecting how these areas should be reviewed under section 7. Additionally, potential population losses in the range of the owl may occur because of linkage problems, particularly on the Olympic Peninsula and in southwest Washington and northwest Oregon. However, the Service has considered the cumulative effect of these decisions, and has concluded that they will not result in the extinction of the northern spotted owl over its range.

Exclusion of these areas or activities from critical habitat applies only to the potential protection provided under

section 7 consultation (adverse modification) for critical habitat. Excluded lands and projects are still subject to the other prohibitions mandated by the Act, such as section 7 consultation (jeopardy) and section 9 (take).

Conclusion

The Service has reviewed the overall proposal to designate critical habitat and the benefits and costs associated with designating critical habitat for the northern spotted owl. The Service has determined that the overall conservation and other benefits to be gained from the designation outweigh the benefits from excluding additional areas and, therefore, has made a final determination to designate critical habitat for the northern spotted owl. A full discussion of the economic analysis (USDI 1991a) and exclusion process (USDI 1991b) are included in the Service's administrative record.

Effects of the Designation

The revised proposed rule for the designation of critical habitat for the northern spotted owl published on August 13, 1991, identified 181 areas encompassing a total of approximately 8.2 million acres. It included 61 critical habitat units totaling 1.8 million acres in California, 77 units totaling about 3.8 million acres in Oregon, and 43 units totaling 2.7 million acres in Washington. This included 6.4 million acres of Forest Service land, 1.2 million acres of Bureau land, 580,000 acres of State land, and approximately 62,000 acres of military lands.

In applying the exclusion process to the areas included in the August proposal, the Service reviewed habitat maps to identify specific areas for deletion. Areas that had been added (to HCAs) solely to facilitate identification of legal descriptions were deleted except where there was a clear conservation benefit to the owl, e.g., areas were retained if they were part of a larger area recommended as critical habitat. In the counties where the Service decided to exclude an additional specific number of acres, the Service used public comments and available habitat information to select which areas to exclude from the designation. As much as possible, the Service selected areas so that the remaining areas included in the final designation did not violate the intent of the designation criteria (e.g., spacing, unit contiguity). To do this the Service chose to remove areas bordering critical habitat units and in areas where spacing between units would not be significantly affected. The final maps reflect these changes. The number of areas and total acreage involved in the final product are discussed below. Table 1 provides a summary of the acreage changes that have occurred from the May 6 proposal through the final designation.

TABLE 1.—SUMMARY OF ACRE REDUCTIONS BETWEEN ORIGINAL MAY 6 PROPOSAL, AUGUST 13 REVISED PROPOSAL, AND FINAL CRITICAL HABITAT DESIGNATION [1]

	May to August	August to December	Total acre reduction
Forest Service	[2] −12,000	−778,000	−790,000
BLM	[2] −146,000	−86,000	−232,000
State	[2] −30,000	−582,000	−612,000
Tribal	−74,000		−74,000
Military	[2] −19,000	−4,000	−23,000
Private	−3,020,000		−3,020,000
Total	−3,301,000	[3] −1,450,000	−4,751,000

[1] See Table 3 for comparison with the total number of acres proposed and designated as critical habitat.

[2] These acres were deleted because they did not meet the designation criteria.

[3] This is about 37 percent of the number of acres proposed (August 13 proposal) for critical habitat that were outside of HCAs, a reduction of 62 percent from the May 6 proposal (when combined with the 3.3 million previously excluded).

Total Acres Included in Critical Habitat

As a result of the exclusion process, the Service is designating approximately 1.4 million acres less than proposed in the August 13, 1991, rule and 4.7 million less than the original May 6, 1991, proposal. The final rule for the designation of critical habitat for the northern spotted owl identifies 190 areas, encompassing a total of nearly 6.9 million acres; this is about 84 percent of the total acres included in the August proposal and 62 percent of the total originally identified in the May 6 proposal. The total number of final designated units is more than the number of units proposed in the August 13 proposal because some were subdivided into separate units as a result of the exclusion process. The Service has designated 61 units totaling 1.4 million acres in California, 76 units totaling 3.2 million acres in Oregon, and 53 units totaling 2.2 million acres in Washington. The final designation encompasses approximately 5.7 million acres of Forest Service land, 1.2 million acres of Bureau land, and 58,000 acres of military land (see Table 2).

TABLE 2.—APPROXIMATE ACREAGE [1] OF FINAL CRITICAL HABITAT UNITS (CHUS) FOR THE NORTHERN SPOTTED OWL (ROUNDED TO THE NEAREST THOUSAND ACRES)

	California	Oregon	Washington	Total
Forest Service	1,301,000	2,211,000	2,163,000	5,675,000
Bureau of Land Management	108,000	1,046,000		1,154,000
Military	0	0	58,000	58,000
Total	1,409,000	3,257,000	2,221,000	6,887,000
Number of CHUs	61	76	53	190

[1] Acreage figures include only Federal lands.

Of the approximately 6.9 million acres, 20 percent is in California, 47 percent in Oregon, and 32 percent in Washington. These percentages are similar to the current distribution of nesting and roosting habitat located on public lands in these three States. Ownership is similarly distributed among Federal agencies with Forest Service lands comprising about 82 percent of critical habitat. The percentages of critical habitat administered by each land managing agency is similar to the percentage of total suitable nesting and roosting habitat currently administered by each agency.

State, private, tribal, and other non-Federal lands are not designated as critical habitat even if they are physically situated within the boundaries of critical habitat units. Acreage totals for any State, private, tribal, or other non-Federal lands that are interspersed within the critical habitat units were not included in the totals if the areas were large enough (e.g., ≥20 acres) to be identified through the geographic information system (GIS). This is particularly important in checkerboarded areas (e.g., Bureau lands) where the visual size of a critical habitat unit is misleading since only about half of the area is actually designated as critical habitat.

Some small areas of naturally-occurring non-habitat (i.e., areas that have never been nor will likely ever be owl habitat, such as lava flows, alpine areas, poor timber sites, airports, roads, parking lots, and water bodies) were included within the physical boundaries of critical habitat. Although they may be located physically within the boundaries of a unit, these areas are not affected by the designation because they will never contain the constituent elements. To the extent possible these areas were either directly deleted from critical habitat or identified as areas that would not be subject to any regulatory mechanisms governing critical habitat. If these areas were found along the periphery of critical habitat units, boundaries were drawn to physically exclude them from the final maps. This was not possible for areas imbedded within individual units. Acreage totals were adjusted where possible to reflect their exclusion. However, in some cases it was not possible using the GIS to physically remove these acres from the total acreage figures; they should not make a significant difference in actual total acres, although the total acreage figures may be slightly overestimated. Projects and timber sales that were excluded as a result of the exclusion process were also not mapped; their exclusion will be handled through the normal consultation process.

Comparison With Previous Actions

Comparison of the maps that have been developed over the past few years underscores the limitations that exist in trying to identify habitat to be protected or conserved for this or other forest species. There is a limited remaining habitat base; all land management planning exercises must focus on this same habitat base. For example, the Scientific Panel focused on HCAs to ensure that owls were adequately protected in any potential late successional forest reserve system that would also address other forest species and processes. The ISC, critical habitat designation, and the Forest Service's recent draft EIS (USDA 1991a) also used the same basic information, as will the Recovery Team. All of these proposals, although created to meet different goals, are based on a habitat base that is diminishing over time. The size of areas included in these different processes reflect differences between the purposes for the respective exercises and are not directly comparable. However, critical habitat is compatible with these planning efforts, since management prescriptions that may be recommended can be applied to critical habitat.

Table 3 provides acreage totals from the ISC, the Service's May 6 and August 13 proposals, and this final determination (the late successional information was not included although critical habitat is similar to alternatives 6 and 8). The Service updated all landownership data for the three States and entered these data into the GIS. The HCA information that was entered into the GIS was the most recent version used by the agencies and provided through the Scientific Panel, although boundaries were not exactly the same as the HCAs originally proposed by the ISC and are different than some maps currently being used by the Forest Service's EIS team.

TABLE 3.—COMPARISON OF TOTAL ACREAGE FOR THE ISC HABITAT CONSERVATION AREAS (HCAS), MAY 6 PROPOSED CRITICAL HABITAT AREAS (CHAS), AUGUST 13 REVISED CRITICAL HABITAT UNITS (CHUS), AND FINAL CRITICAL HABITAT UNITS (FIGURES ARE APPROXIMATE AND ARE ROUNDED TO THE NEAREST THOUSAND)

	ISC HCA [1] acres		May 6 CHA acres	August 13 CHU acres	Final CHU acres
	Categories				
	1&2	3			
Forest Service	5,356,000	427,000	6,465,000	6,453,000	5,675,000
Bureau of Land Management	859,000	106,000	1,386,000	1,241,000	1,154,000
National Park Service	652,000	NA	NA[2]	NA[2]	NA[2]
State	661,000	NA	612,000	582,000	0
Military	72,000	NA	61,000	62,000	58,000
Private	0	NA	3,020,000	0	0
Tribal	0	NA	74,000	0	0
Subtotals	7,600,000	533,000			
Totals	8,133,000[3]		11,638,000	8,337,000	6,887,000
Number of Areas	193	unk.[4]	190	181	190

[1] Category 1 and 2 HCAs from ISC Plan; includes wilderness and National Park acreage (about 2.1 million acres); Category 3 HCAs were mapped independently by agencies and not previously included in HCA totals. All data derived from the GIS.
[2] Acreage for National Park Service lands (and other lands already in protected status) are not included in critical habitat.
[3] About 5.2 million acres of HCAs are included within critical habitat.
[4] Category 3 HCAs were recommended by the ISC only on Bureau and Forest Service lands in areas where the owl situation was most precarious; this included nearly 100 different areas (the actual total number was not available).

HCA and critical habitat acreage totals are not directly comparable. HCAs contain acreage of reserved areas (wilderness and parks) that are not designated as critical habitat because they are already protected and HCAs are only applicable when placed in the context of the total ISC plan (with 50–11–40). HCA estimates include nearly 2.1 million acres (approximately 25 percent of the total acres) of reserved lands (wilderness and parks). Subtracting these 2.1 million acres from the HCA totals leaves about 6.0 million acres of nonreserved acres remaining in the HCA system. The 6.0 figure contains the acreage of Category 3 HCAs; Category 3 HCAs represent 533,000 acres that was

not included in previous estimates of the total amount of acres affected by the ISC Plan.

Final critical habitat designation includes about 6.9 million acres of non-reserved areas, a difference from the HCA network of nearly 900,000 acres when all lands are considered. This is less than a 13 percent difference in total acres between HCAs and critical habitat, thus imposing restrictions on about 13 percent more acreage than those affected by HCAs. HCAs also include acres of State and military lands; military lands are not managed primarily for timber harvest. Comparing only Forest Service and Bureau lands results in a difference between HCAs and critical habitat on these lands of about 1.6 million acres. The apportionment of acres for HCAs and critical habitat is similar for Federal land managers and reflects the differences in total acreage managed by these agencies.

The ISC (Thomas *et al.* 1990) estimated, based on agency data, that about 20–30 percent of the acres outside of wilderness and parks were reserved locally (e.g., streamside or scenic corridors), areas unsuitable for timber harvest (e.g., unstable soils), or set aside for other reasons (e.g., bald eagle nest sites); these designations can also be changed locally and are not expected to always be so designated. The actual data were not available to the Service. However, using these percentages indicates that of the 6.0 million acres (in HCAs outside of wilderness or parks) or the 6.9 million in critical habitat, about 4.2–4.8 million acres (HCAs) or 4.8–5.5 million (critical habitat) of the total acres included in these two different designations respectively may actually be on lands available for timber harvest.

In addition, the above HCA estimate also does not contain acres managed under the 50–11–40 rule. Although no one has fully compiled these figures, it is estimated that they would cover up to 12 to 15 million acres of the existing forest base within the range of the owl that are above the amount in the HCAs. Critical habitat does not include management prescriptions for forested lands not included in the designation.

Owls and Acres of Nesting and Roosting Habitat

To help place the acreage totals (from the above tables) in perspective, the Service updated the estimates previously identified in the ISC Plan and the Service's 1990 status review. The majority of owls and suitable spotted owl habitat (i.e., for nesting, roosting, and some foraging) are found on Federal lands, primarily on Forest Service land (about 70 percent). A large percentage are also located on Bureau lands in Oregon (about 12 percent). In some cases the quality of owl habitat in areas included within critical habitat but outside of existing HCAs is better than the habitat within HCAs, although all designated lands met the criteria for critical habitat.

There are no current estimates of the amount of additional habitat that contributes to dispersal (e.g., that currently would be managed under the 50–11–40 rule on Federal lands); some of these lands are included within critical habitat because they are interspersed with nesting and roosting habitat, but the majority of these lands were not designated as critical habitat.

In the August 13 proposal (56 FR 40001) the Service provided a comparison of the estimated amount of nesting and roosting habitat and owl pairs currently located within the HCAs and critical habitat units to the total known number of pairs and estimates of nesting and roosting habitat throughout the range of the owl; these numbers were updated through the summer of 1991. Additional protection was proposed for about 60 percent (3.2 million acres) of the total estimated amount of suitable nesting and roosting habitat on Federal lands that is outside of existing reserved systems. In comparison the HCA network included about 32 percent of suitable habitat outside of reserved areas on Federal lands; these totals include estimates of suitable habitat for category 3 HCAs.

The Service did not fully reanalyze these data to determine the actual amount of suitable habitat that remains within the designated areas after completion of the exclusion process. However, based on a review of habitat maps, it is believed that the percentage of suitable habitat excluded from the designation is in proportion to the percentage of total acres excluded. Therefore, the total amount of suitable habitat remaining is approximately 83 percent (or 2.6 million acres) of the amount included in the August 13 proposal. This amounts to about 49 percent of the amount on Federal lands outside of reserved areas, a decrease of 11 percent.

Adding the 2.1 million acres of reserved lands to the critical habitat totals results in about 65 percent (4.7 million acres) of remaining owl habitat on Federal lands receiving additional levels of protection (about 50 percent of all lands). However, the actual amount of suitable nesting and roosting habitat within reserved areas is unknown; the 2.1 million reflects total acreage containing expected suitable habitat within reserved areas. Therefore, all totals that include reserved acreage overestimate the total amount of protected owl habitat.

The final designation of critical habitat includes the areas on Federal lands that contain the best remaining spotted owl nesting and roosting habitat. The total amount included in the final designation also reflects the Service's concern over the status of the remaining nesting and roosting habitat on these lands.

Economic Impacts of the Final Designation

The economic analysis (USDI 1991a) provides the Service's conclusions on the potential impacts of the areas selected for final designation as critical habitat. This analysis served as a decision document in evaluating economic consequences of the action leading to the final decision to designate critical habitat. The analysis also provides additional information so that the cumulative effects of this and previous Federal actions on the timber industry can be understood in perspective.

Consistent with the requirements of section 4 of the Act, the economic analysis reviews the final economic impact of designating critical habitat. Only these incremental costs and benefits of designation may be considered in determining whether to exclude lands from designation. The economic analysis examined the costs and benefits of precluding or limiting specific land uses within the portions of critical habitat that are outside of HCAs recommended under the ISC Plan. Incremental analysis was the appropriate method to use, because the designation of critical habitat is the only action for which the Service now has decision authority. The economic costs of listing the species have already been incurred, and the economic effects of actions taken by other Federal or State agencies are outside the purview of the Service. The analysis was cast in a "with" critical habitat versus a "without" critical habitat framework and measures the net change in various categories of benefits and costs when the critical habitat designation was imposed on the existing baseline. The analysis evaluated national economic, or efficiency, costs and benefits that reflect changes in social welfare. The standard measure of those costs and benefits is economic surplus in the form of economic rents and consumer surplus. The Service recognizes, however, that in the case of the spotted owl, one region of the country and one sector of that

region's economy was primarily affected by this action. The analysis included, therefore, an examination of some of the primary regional economic, or distributional, impacts expected to occur, such as employment changes, county revenue impacts, and social costs to the affected communities.

Critical habitat designation for the spotted owl will result in a regional reduction of timber available from Federal lands, at least in the foreseeable future. That reduction will have a number of economic effects, in both the near- and long-term. From a national perspective, economic impacts are expected to be minimal.

The costs of designating an area as critical habitat are the net economic costs of precluding or restricting certain land uses over the period of analysis. Costs are measured as the difference between the resource's value in its economically best use without critical habitat and its next best use (opportunity cost) when that use is precluded by critical habitat. Economic effects include a mixture of efficiency and equity measures.

(1) National economic (efficiency) costs include:

—The change in economic rents and consumer surpluses attributable to the designated areas, with and without critical habitat. The reduction in Federal revenues from foregone timber sales is the primary component. In addition, there is a loss of consumer surplus caused by the rise in stumpage price;

—The change in capital asset values. Decreases in the value of formerly productive but now idle sawmills and processing plants represent a loss of national economic income. The change in asset value is measured as the asset's value before critical habitat designation less its scrap value when it is no longer in use; and

—Wages lost by displaced workers who remain unemployed or are reemployed at lower wages. The loss is measured as the difference between earnings in the timber industry and labor's opportunity cost.

(2) Regional economic (distribution) impacts include:

—Reductions in county revenue sharing from Federal timber sales, partially offset by increased revenue sharing from those Federal sales that remain;

—Social costs to individuals and communities caused by a slowdown in timber dependent economies, including higher welfare, counselling, and other additional costs that counties will be faced with as unemployment increases; and

—Changes in state and county property and severance tax revenue as a result of lower property values for houses and mills, and higher values for private timber holdings.

(3) Effects not considered as national economic costs include:

—Increases in profits (rents) of timber producers, including the Federal government for timber sales that remain, caused by higher stumpage prices, or the increased value of private timber stands. Those increases represent a transfer of surplus value from consumers of timber to producers, hence there is no net effect on national income; and

—The decrease in real estate (housing) values in affected areas. Such losses represent monetary losses to individual owners but are transfers from (potential) sellers to buyers and do not affect national economic income.

The reduction in Northwest Federal timber sales due to spotted owl critical habitat designation may have effects at the national and international levels as well, although they are expected to be minimal. Higher stumpage prices in the Northwest may increase demand for timber and cause higher stumpage prices in other timber producing areas of the U.S. and other timber exporting countries. Those higher prices may increase timber production, employment, and asset values in those regions, but significant national changes are not anticipated. At the national level, once all of the markets have adjusted to the new timber supply, the negative effects on the Pacific Northwest may be at least partially offset by positive effects in other timber producing areas. The economic analysis evaluated gains and losses regionally in the Northwest and did not attempt to quantify effects at the national level.

Critical habitat will result in benefits in terms of gains in spotted owl conservation as well as preserving economic benefits provided directly by the spotted owl and indirectly by its habitat. The spotted owl and its critical habitat currently provide a wide range of benefits. They include: biodiversity, aquatic and water quality, scenic beauty, intrinsic or preservation values, and recreation values.

Baseline

The economic effects of designating critical habitat, as well as the conservation benefits, are in addition to those created by listing the spotted owl as threatened and the effects of earlier actions taken by land management agencies to protect the owl under other statutes and authorities. Thus, critical habitat effects are incremental and represent only a portion of the total effect of owl conservation, both in terms of protection of the owl, other benefits, costs to the national economy, and economic impacts to the regional economy. For that reason, it is the marginal increase in owl protection provided by designation of critical habitat and the marginal change in costs, regional impacts, and benefits that the designation produces that are relevant to the analysis.

The Service proposed critical habitat for the spotted owl in May 1991, at which time the owl and most of its habitat were already provided considerable protection by previous actions by the land management agencies, as well as by the jeopardy/take provisions of the Act. The portions of critical habitat units outside the HCAs are expected to have reduced timber harvest beyond the ISC's 50–11–40 rule, and the areas within the HCAs are not expected to be harvested. The formation of the ISC and the subsequent interim adoption of all or part of the ISC Plan for spotted owl conservation by the Forest Service and Bureau have been prompted by NFMA and other management requirements. Although the Bureau has not formally implemented the ISC Plan, it incorporated important elements of that strategy in its plans and directives before the owl was listed as threatened and before critical habitat was proposed for designation (USDA/USDI 1990).

Timber-related effects of designating critical habitat concern primarily those Forest Service and Bureau timber harvests not already curtailed by earlier decisions. The designation of critical habitat outside of HCAs may reduce timber sales more than would the 50–11–40 rule. Section 7(a)(1) of the Act requires Federal agencies to utilize their authorities to conserve threatened and endangered species. Because the ISC recommendations remain the best available conservation strategy for the owl, the Service assumes that the agencies will follow the ISC recommendations in HCAs. Therefore, potential timber harvest reductions in the areas of critical habitat outside the HCAs that go beyond the 50–11–40 rule, as well as limitations on non-timber activities, will be due in part to listing of the owl (section 7 (jeopardy) and section 9 (take)), which would have occurred without critical habitat, and in part to adverse modification, which only will occur with critical habitat.

Non-timber activities in critical habitat will also be subject to section 7

consultations according to the same scenario described above. For both timber and non-timber activities, it is the incremental effects of avoiding adverse modification of critical habitat, and the marginal changes in ensuing benefits and costs, that are the appropriate measures of the effects of critical habitat designation.

For Forest Service and Bureau timber harvest, this analysis considers four levels of timber sales:

—Final Plans: Actual or Projected Final Plan timber sales, which may include some elements of old growth habitat preservation (e.g., Spotted Owl Habitat Areas);
—With-ISC: The level of timber sale which reflects agency decisions prior to listing of the owl as threatened on June 26, 1990;
—Listing: Timber sales if only the jeopardy and take provisions of the Act are applied to timber sales in the critical habitat outside of HCAs; and
—Critical Habitat: Timber sales if adverse modification provisions are also applied to timber sales in the critical habitat areas outside of HCAs.

The With-ISC timber sale level reflects the Forest Service and Bureau intention not to harvest on HCAs and to implement 50–11–40 in whole or, in the case of the Bureau, in part on areas outside of the HCAs (USDI 1990b, 1991d; USDA/USDI 1990; USDA 1991c). The Listing sale level is the timber sale remaining after the effects of applying the jeopardy/take provisions in the critical habitat outside of HCAs.

Final Plans are used as the starting point in the analysis rather that the 1985–1987 average because the Service believes they best reflect what the land management agencies would have done in the absence of the ISC Plan and other measures taken to protect the owl. The 1983–1987 average harvest level and planned harvests as of 1990 are alternatives that have been used in other analyses of owl protection efforts (see, for example, Lippke *et al.* 1990 and USDA/USDI 1990). Both alternatives have harvest levels that are significantly higher than the Final Plans used here, but those higher harvest levels do not appear to be sustainable over time, given changes in management emphasis. Using either would be misleading and would overestimate job and other losses attributable to spotted owl conservation efforts.

This conclusion is supported by other analyses. For example, Mead *et al.* (1991) in their assessment of the projected impacts of implementing the ISC Plan began their analysis using the planned agency harvest levels. Likewise, Stevens (1991), after a careful review of Olson (1990) and other documents that suggested using the 1983–1987 data, concluded that: "In any case it appears that the baseline should be the 1991–2000 planned average annual harvest for those areas to be affected by the owl protection strategy before that strategy is imposed. Most important, it would seem incorrect to attribute to the ISC Strategy those harvest reductions that had been planned in the absence of that strategy." Thus, the Forest Service and Bureau Final Plans are used as a starting point from which harvest reductions for owl conservation actions were calculated.

Limitations of the Analysis

This analysis does not include, or covers only minimally, several topics that lie outside the scope of analysis, including the effects of critical habitat designation on State and private lands and State legislation. Since State and privately-owned lands are not included in critical habitat, the designation will affect activities on these lands only in instances where some Federal approval or authorization is required for access or other purposes. In addition, some States have enacted legislation that is linked to Federal actions under the Act, such as critical habitat designation. Because such State laws are not mandated by the Act, and may be rescinded or changed at any time, this analysis does not address effects of such State requirements.

Timber Industry Background and Trends

Designation of critical habitat is the latest in a long series of court and regulatory actions concerning the spotted owl and old growth habitat that began in 1987; earlier efforts to protect spotted owls began in the early 1970's. These actions continue to affect planning activities and timber harvest on Forest Service and Bureau lands in the Northwest. The accompanying debate was focused on old growth forest protection and wildlife conservation provisions of NFMA and FLPMA, as well as on spotted owl protection. Industry trend data demonstrate the reduction of Federal harvest of 990 million board feet (mmbf) between 1988 and 1989, particularly from Forest Service lands, prior to listing the owl (June 26, 1990) and prior to the May 6, 1991 proposal to designate critical habitat. Thus, a portion of the impacts being attributed by some observers to the Act resulted from prior legal actions and changes in agency plans related to broader issues, such as old growth protection under the NFMA. The role of the timber industry in regional economies is declining in importance in all regions, including the Northwest. The incremental effect of critical habitat designation on the timber industry can best be understood in the context of the market environment of the timber industry.

The industry is dominated by a cyclical market that has historically been demand-oriented. The previous low cycle occurred in 1981–1982; westside (western Washington, Oregon, and northwestern California) industry employment dropped from a high of 165,000 in 1977 to 125,000 in 1982, a 24 percent reduction, and harvest fell from 16 billion board feet (bbf) in 1977 to 11 bbf, a 31 percent reduction.

In the mid-1980s, the forest products industry of the Northwest was in the middle of a period of reorganization and retrenchment and this process is continuing (Adams 1988). Changes in employment and labor income from the late 1970s to the mid-1980s came about primarily from mechanization and structural changes in the industry, as well as recessionary pressures. The fundamental restructuring of this industry came about for several reasons, but two seem most prominent: The exhaustion of private supplies of old growth and the rising costs of production in the Northwest compared to other regions.

Nationwide, 1988 employment in the wood products sector was 1,644,000 employees, of which 166,000 or about 10 percent were employed in the westside (USDA 1990). Employment in the Northwest dropped by 40,000 workers from 1979 to 1985; this trend has continued since 1985, but at a lower rate. A number of factors are contributing to this decline, including the continuing need for industry to mechanize to remain competitive, the loss of markets to other regions and, more recently, the reduction in timber supply from Federal lands. A significant increase in productivity occurred from 1975 to 1988, from the processing of 109,000 board feet per worker in 1975 to 146,000 board feet per worker in 1988 (Mead et al. 1991), resulting in a considerable reduction in employment. Offsetting these downward pressures on employment is the increasing percentage of recovery of products from logs. However, overall employment is predicted to further drop in all timber regions by the year 2040 (USDA 1990).

Much of the focus on employment losses in the Northwest has been on the limitation of log supplies from Federal lands, assuming that demand for these products would permit essentially unlimited harvest and production if

supplies were not limited. There is some evidence that the demand, at least in the short-term, is weak and that recessionary trends are partially to blame for employment cutbacks in the Northwest. For example, the State of Washington Office of Financial Management and Employment Security Department (1991) noted that, "the recession-induced downturn in housing construction across the nation put downward pressure on the demand for lumber and wood products during the third quarter 1990. A major real estate slump in the previously red-hot Asian (principally Japanese) market additionally cut into the demand for raw, unprocessed logs, a major export commodity in Washington. All of this depressed demand and contributed to both the over-the-quarter and over-the-year declines in statewide lumber and wood products."

The analysis goes on to state that final demand for lumber and wood products will not diminish, but reduced supply will lead to a "shaking out" of operators over the next decade. The volume of unprocessed raw log exports increased steadily from incidental levels in the 1950s. Exports now represent about 5 percent of total U.S. lumber production; in the Northwest, the 1989 log export volume of 3.7 bbf represented 25 percent of log volume but only 17 percent of timber product value (USDA 1990). Over 95 percent of these exports were softwood logs, 60 percent of which were exported to Japan. However, the U.S. is a net importer of wood products. Nationwide, in 1986 about 2.3 billion cubic feet (cu ft) were exported, whereas 4.6 billion cu ft were imported (U.S. Bureau of Census 1989).

The Forest Resources Conservation and Shortage Act of 1990 further restricted log exports. It is estimated that about 600 mmbf of logs that previously entered the export market will be available to local mills in 1991 and after, with 450 mmbf coming from State lands and the remainder from private lands (Backiel and Baldwin 1991). Log exports represent a potential 24,000 direct timber industry jobs in the Northwest, but nationwide a total export ban is expected to depress stumpage prices and result in a loss of 16,000 direct timber industry jobs (O'Toole *et al.* 1991) and negatively impact jobs in the shipping industry. With naturally decreasing availability of large logs, the export market is expected to decline in the mid-1990s with or without further protection of older forests.

Sustainable Harvest

The Forest Service and timber industry were aware in 1969 that the harvest rates planned in the Northwest at that time could not be sustained, given the planned levels of management intensity in place at that time; both harvest rates and employment were predicted to decrease over time (USDA 1969). The report predicted that the 1969 trends in harvest from private lands in western Oregon and southwestern Washington would lead to a 65 percent reduction in harvest over a 30 year period (to 1999). This situation has not improved since 1969 because an additional 22 years of high harvest has occurred in the region.

Inventory on westside forest industry lands in the Northwest has declined at a steady rate during the past 40 years. Inventory on industry lands was estimated at 33.7 billion cu ft in 1950, dropping to 19.5 billion cu ft in 1985 (Adams *et al.* 1988). Inventory on other private lands dropped by almost 2.5 billion cu ft during that same period. Declining inventory occurs as high-inventory, old growth forests are converted to managed stands or when harvest exceeds growth. Harvest from Federal lands in the westside nearly doubled during this period, from 1,800 mmbf in 1950 to almost 3,500 mmbf in 1985 (Adams *et al.* 1988).

The Forest Service (USDA 1990) reported that the removal of softwood growing stock in western states exceeded net annual growth, indicating that inventory continues to be depleted faster than it is replaced. This trend is expected to continue in the Northwest under current management plans. Projections show that total inventory of softwoods is expected to further decline from 33,607 million cu ft in 1986 to 28,993 million cu ft in the year 2000 and declining further to 25,133 million cu ft in the year 2040. Harvest is likewise expected to drop from 659 million cu ft in 1986 to 562 million cu ft in the year 2000. There is expected to be a continued transition in the Northwest that converts old growth forests to young managed stands (e.g., Sessions *et al.* 1990, USDA 1990). Planned harvest in the next 50 years is expected to reduce the average age of trees harvested to 80–90 years on Forest Service lands, to 50 years on Bureau lands, and to 45–65 years on private land (Sessions *et al.* 1990).

A further concern is that even the harvest levels predicted in forest plans may be too high and may overstate the amount of timber actually available for harvest. Johnson *et al.* (1991) in their report to Congress stated that Federal forest plans for the westside may have overestimated potential harvest by as much as 20 percent from some forests. Thus, harvest levels realized from Federal timberland may actually be below planned cuts because planning documents may reflect inventories higher than those that actually exist.

Costs of Critical Habitat Designation

The following sections summarize the results of the Service's analysis of economic data and identify the potential costs associated with the final designation of critical habitat.

Regional Effect on Federal Timber Harvest

The areas designated as critical habitat for the spotted owl include HCAs identified by the ISC Plan (Thomas *et al.* 1990). The Service used the most recent Forest Service and Bureau estimates to evaluate the economic effects of critical habitat designation on Federal timber sales. Some of their timber volume estimates were adjusted by the Service to account for differences between the critical habitat units on the Forest Service and Bureau lands in the August 13 proposal and the critical habitat units as defined in the final rule. The loss of timber-based revenue (economic rent) to the Federal government from Federal timber sales was the primary component of economic cost considered. Effects on timber-based employment and revenue sharing with counties also were examined.

Certain assumptions were necessary to estimate what may occur in the future, with and without designation of critical habitat. In conducting their analysis, the Forest Service and the Bureau considered a number of alternatives about timber supplies, price responses, and other regional and national factors which determine the economic effects of reducing Federal timber sales in the three-state region. Key assumptions used in this analysis include:

—Stumpage prices in the region will rise when Federal timber sales are reduced. Rising prices for timber sales that remain tend to offset reductions in Federal timber-based revenues, result in lower log exports from the region, and stimulate an increase in harvest from private lands, at least in the near-term; and

—The full effect of timber harvest reductions on regional economies will not be evident for several years because there are 4–6 bbf of timber on Forest Service and Bureau lands that have been sold and are available for

harvest. Thus, the Service assumes that 1995 is the first year the full impact of these regulations are likely to occur, as did the Forest Service and Bureau in their analyses. Some impacts may have already occurred as a result of the critical habitat proposal, but the full impact should not occur for several years.

The Forest Service 1995 planned a harvest level of 3,024 mmbf is considerably below the average annual sale in the late 1980s, whereas the Bureau 1995 planned sale of 1,193 mmbf is slightly higher than the 1985–1989 average. Four estimates of Forest Service and Bureau timber volume available for sale in 1995 were considered in the analysis. The sequence began with planned sales (Final Plans) and shows decreasing timber volumes available for sale, first with reductions from planned sale levels made prior to listing (With-ISC), then from the potential effects of listing the owl as threatened (With-Listing), and finally with the potential effects due to adverse modification of critical habitat (With-Critical Habitat).

In deriving their estimates, the Forest Service and Bureau made somewhat different assumptions for their With-ISC timber sales. Both assumed no timber sales in the HCAs. The Forest Service assumed that the 50–11–40 rule would apply to areas outside the HCAs. The Bureau assumed only partial implementation of the 50–11–40 rule, and attributes owl protection measures on their lands to the Act, including listing and critical habitat designation. The number of acres in the critical habitat units in the final rule also differs from the August 13, 1991, proposal. Thus, the estimates provided by the Forest Service and the Bureau from the previous proposals are not used directly in this analysis.

Based upon Service experience in section 7 consultations to date regarding the owl, the Service assumed that of the total reduction in sales, 70 percent would be due to listing impacts (application of the jeopardy standards and take prohibitions) and the remaining 30 percent would be due to critical habitat (application of the adverse modification standard). The Service believes that most restrictions or changes to harvest activities in critical habitat would result from efforts to avoid section 7 jeopardy opinions. The percent harvest assumed allowable in this analysis ranged from 5 percent to 25 percent of planned harvest and varied by physiographic province.

Using the assumptions as outlined in the economic analysis, the designation of critical habitat represents a potential reduction of regional harvest volume by 102 mmbf, which is 2 percent of the planned timber harvest volume (Table 4). This follows a With-ISC reduction of 1,682 mmbf annually, as a result of prior owl protection measures, representing 40 percent of the Final Plan volume. Listing may result in an additional reduction of 236 mmbf, or 6 percent of the Final Plan volume. Impacts on regional timber-based revenue, employment, and revenue sharing for affected counties are derived directly from these changes in timber volume.

TABLE 4.—SUMMARY OF INCREMENTAL EFFECTS OF THE DESIGNATION OF CRITICAL HABITAT

Area of reduction	Reduction caused by			
	Final plans	Implementation of ISC plan	Listing the spotted owl	Critical habitat
Timber volume (mmbf):				
Washington	718	−406	−32	−14
Oregon	2,998	−1,008	−186	−80
California	500	−268	−18	−8
Three-State Total	4,217 mmbf	−1,682 mmbf	−236 mmbf	−102 mmbf
Timber value (million 1990 dollars):				
Washington	174	−89	−11	−5
Oregon	1,111	−207	−96	−42
California	152	−82	−6	−3
Three-State Total	1,437	−378	−113	−50
Timber employment (total jobs):				
Washington	10,342	−5,935	−415	−178
Oregon	46,300	−17,676	−2,739	−1,174
California	7,753	−4,094	−157	−68
Three-State Total	66,395	−27,705	−3,311	−1,420
Payments to counties (million 1990 dollars):				
Washington	39.4	−20	−2.7	−1.1
Oregon	401.1	−89	−37.2	−16.5
California	36.2	−21	−1.8	−0.7
Three-State Total	476.7	−110	−41.5	−18.4

Regional Effects on Timber-based Revenue

The price and revenue estimates in this section are gross measures. Net revenues are discussed in the following section. The estimates of timber-based revenue incorporate the rising price assumption used by the Forest Service in their analysis. The effects of the business cycle on the demand for lumber, and other factors influencing the timber economy both regionally and nationally, are incorporated in the Timber Assessment Market Model (TAMM) developed by the Forest Service and used to estimate the market effects of owl protection measures.

The Forest Service estimates that timber and lumber prices will rise significantly by 1995, a projected "boom" year for the national economy, with corresponding effects on total timber-based revenues (USDA 1991b). For example, softwood stumpage prices in western Oregon and Washington are estimated to increase 14 percent between 1988 and 1995 under the Final Plan sale volumes. When the With-ISC, With-Listing, and With-Critical Habitat effects are added, the price increase is even greater (the With-ISC stumpage price is estimated to be 30 percent higher than the Final Plans price by 1995). The data indicate that carrying out the mandates of the Endangered Species Act would result in an approximately 3 percent increase to the 1995 stumpage price, 2 percent for listing impacts and 1 percent for critical habitat, based on the assumptions used in this analysis. From a national

perspective, stumpage prices should not increase significantly because of the relatively small reduction that will occur in national timber harvest. The approximately 102 mmbf reduction in westside supply from critical habitat compares to a national harvest of 38.5 bbf (USDA 1990), or less than 0.26 percent of the 1986 national harvest. The Forest Service concluded that the designation of critical habitat would have little effect on forest product prices in other regions of the country (USDA 1991b).

The revenue loss estimates incorporate those price changes discussed above. The critical habitat estimate represents $50 million, or 3 percent of the Final Plan total. The difference in total revenues between Final Plans and With-ISC is $378 million, or 26 percent of the Final Plan revenue total, and the listing impact is an additional $113 million.

Reductions in County Revenue

Federal timber-based revenues are shared with the states and counties where the timber is harvested (25 percent of gross revenues for the Forest Service and 50 percent for the Bureau). Those payments are expected to be reduced by $18 million due to critical habitat designation. The With-ISC sale level may reduce payments to counties by $110 million, or 23 percent of the Final Plans total, and listing impacts may represent an additional loss of $41 million.

The revenue sharing payments were calculated for each county to determine the potential differences in county payments between the Final Plans, With-ISC Plan, With-Listing, and With-Critical Habitat after each reduction in available timber harvest volume. The percent reduction for With-Critical Habitat varies substantially between counties with the largest potential decreases generally occurring in Washington. Oregon faces the greatest potential reduction in Federal timber revenue, losing over $16 million dollars annually. However, on a county-by-county basis, more substantial reductions would be evident in Washington. It is estimated that eight counties in Washington may lose in excess of 10 percent of their county timber revenues over and above the payments estimated after listing the owl as threatened. Overall, the three-State area may face a reduction of 5 percent in Federal revenue sharing payments, although the distribution of the losses is not uniform.

Net Economic Loss to the U.S. Treasury

The estimated gross dollar loss to the U.S. Treasury from a harvest reduction of 102 mmbf is approximately $50 million. There are two offsetting balances that are deductible from the gross loss in order to get the net loss of economic efficiency attributable to the designation of critical habitat: The administrative cost of conducting timber sales is a cost that will not have to be borne for the reduced volume, and road credits associated with the reduced volume will not have to be deducted from the sales value of the timber. Both offsetting balances have been estimated for each of the national forests. Only the administrative costs have been estimated for the Bureau districts since road credits are not applicable to their sales. After deducting the appropriate administrative costs and road credits, there is a net loss to the U.S. Treasury attributable to the critical habitat designation of nearly $44 million annually.

The estimated net loss to the U.S. Treasury may be overstated. The Government Accounting Office reported in recent testimony that government costs exceeded revenue for approximately 9 percent of timber sales in Forest Service Regions 5 and 6 (Pacific Coast States) in 1990 (GAO 1991). Three different estimates of the government cost of timber sales were calculated for comparison with revenues: (1) Average sale and administrative costs, (2) average operating cost per thousand board feet multiplied by the board feet of sales, and (3) average total operating cost as in (2) above plus regional office and Washington office overhead and payments to states. Costs calculated under alternative (1) appear closest to counting only marginal economic costs, which are required in this analysis. Thus, the net revenue loss to the U.S. Treasury presented above was estimated with conservative assumptions and is a worst case estimate.

Employment Effects

Projected reductions in the volume of timber offered for sale by the Forest Service and the Bureau as a result of designating critical habitat for the spotted owl are expected to affect levels of employment in the region's timber and related industries. At a national level, employment is not expected to be significantly impacted as a result of the critical habitat designation.

Estimates of timber-based employment effects caused by critical habitat designation were derived using empirical data on the timber industry in the Pacific Northwest and IMPLAN input-output models of the regional economies in the three states. The IMPLAN modeling system was developed by the Forest Service to assess the regional economic effects of changes in the availability of timber.

IMPLAN models were used to estimate job response coefficients (jobs per mmbf) for each of the affected counties. The coefficients were applied to the board foot reductions expected to result from designating as critical habitat a specific number of Forest Service or Bureau acres in each county. The resulting estimates of job loss by county were aggregated to the forest or district level and subtracted from the Final Plans and employment estimates provided by the Forest Service to estimate listing and critical habitat employment effects by forest and district.

The IMPLAN models constructed for this analysis focused on county level timber harvest reductions, based on the location of individual critical habitat units. Special attention was paid to intercounty log flows in order to take into account the processing of timber in counties other than those in which it is cut. Also, to improve county level analyses, the effects of large metropolitan areas on timber-based economies were extracted from five counties in Oregon and five counties in Washington. County level analysis was instrumental in balancing benefits and costs of critical habitat designation as required by the Act.

The Final Plans and With-ISC employment levels for the Forest Service were provided in its most recent comments (USDA 1991c). The employment levels were derived using the job response coefficients derived for this analysis and the estimates of timber volume. They include direct, indirect, and induced employment. The county job response coefficients used in the analysis range from 8.01 to 17.11, with an overall weighted average of 13.9. The coefficients projected direct jobs and indirect/induced jobs separately.

Critical habitat designation potentially represents a regional loss of 1,420 total jobs, 847 direct plus 573 indirect and induced jobs. The With-ISC and Listing timber sales represent a lower number of timber-based jobs in 1995, as compared to employment that would be supported by the Final Plans volume. The With-ISC level may reduce employment by 27,705 compared to Final Plans. The total decrease attributable to the Act may be an additional 4,731 jobs. Of those, an estimated 3,311 would

result from listing impacts on the critical habitat in the areas outside the HCAs.

Critical habitat impacts affect less than one half of one percent of Regional timber industry employment, and total spotted owl protection will affect about 21 percent of regional timber employment. At a national level, the potential loss of 847 direct jobs represents a very small percent of the 607,000 workers in the primary timber processing industries (1986 data). Direct job losses from owl protection measures on Federal lands (18,155 jobs) represents 3 percent of the direct timber processing employment nationwide. It should be noted that some of the regional employment adjustments associated with the spotted owl conservation measures have already occurred as a result of court injunctions, the listing of the species, and the proposals to designate critical habitat. The degree to which this adjustment had been made is difficult to ascertain. Offsetting circumstances could significantly reduce the affect of supply restrictions in the Northwest.

The percent of timber industry jobs that may be lost varies by county; however, most counties will experience a loss less than 1 percent of their direct timber industry jobs. Oregon may be the most heavily impacted state, losing 707 direct jobs of the total 847 for the three states. This could represents as much as 1.4 percent of Oregon's total timber jobs, after adjustment for employment losses due to the ISC Plan and listing of the owl. On a county basis, the potential loss of jobs as a result of projected timber volume reductions on the Forest Service and Bureau lands may be 1 percent or more of total industry jobs in 12 counties, with Douglas County, Oregon, experiencing the largest total job loss, at 267 jobs (7.6 percent).

County economic diversity is one factor that can lessen the impact of the projected loss of timber industry jobs. Not only does it provide more reemployment opportunities for affected industry employees, but it also provides a broader base of employment in those jobs indirectly supported by timber harvest. When job losses occur in isolated areas where there are relatively few employment alternatives, the impacts are usually longer lasting.

Wage Loss

Wage and salary losses associated with job losses are a national economic efficiency loss measured as lost wages for the time of unemployment and the difference in workers earnings after reemployment. The assumptions used in this study are similar to Mead *et al.* (1991) where 92 percent of displaced workers remained unemployed for up to 1 year and the remaining 8 percent became reemployed at the end of the second year. After the second year, the difference between average timber industry wages and average manufacturing wages is used to assess the value of economic loss.

The estimates that Mead *et al.* (1991) used for average timber industry wage rates were adjusted to 1990 dollars to reflect the earnings losses of displaced workers. Similarly, the average of all industry wage rates was adjusted to 1990 dollars. The duration of time for the impacts is 20 years after which most, if not all, currently affected workers will be either out of the workforce or will have achieved a wage rate comparable to the wage rate they would have received in the timber industry. The discount rate used in the calculation of the present value of earnings lost is 10 percent (the Office of Management and Budget approved rate for government projects). The discounted present value of wages lost may be nearly $65 million, with an annualized value of $7.6 million. The national economic efficiency loss attributed to unemployment effects is calculated under the conservative assumption that reduced harvest levels will remain constant for the period of analysis, which is not expected to be the case.

An estimate of the net change in capital asset value that may result from the designation of critical habitat is not possible with existing data. The estimates of mill closures and home asset value losses that were presented in public comment (Lippke *et al.* 1990, Mead *et al.* 1991) considered the total losses attributable to all preservation efforts for the northern spotted owl. The home asset losses are a pecuniary effect and reflect a transfer payment from sellers to buyers of homes. Home asset losses are a regional distribution impact and not a national economic efficiency cost. Similarly, asset value gains to private landowners both in the Northwest and elsewhere are transfer payments and not national economic efficiency costs.

Mill closures potentially attributable to critical habitat designation would be a reduction in national productive capacity and would be valued at the opportunity cost of capital (salvage value if the capital has no other uses). It may be argued that investment in a plant and equipment is a sunk cost of doing business and, therefore, there is no asset value loss.

The analysis of critical habitat designation is far more limited in scope and focuses only on the portion of the total preservation effort that is associated with the critical habitat for the spotted owl. There are insufficient data to isolate the portion of any asset value loss estimates that are attributable solely to critical habitat.

Social Costs

The social implications of protecting the northern spotted owl throughout Washington, Oregon, and northern California are significant and widespread, yet difficult to isolate from changes occurring in the forest products industry that are unrelated to the proposed action. Public comment on the proposed rule received from many timber-dependent communities emphasized the potential severity of social impacts. Historically, timber-dependent communities and the wood products industry have experienced volatility of markets and cycles of prosperity and recession. A major source of change in the timber industry has been the technological advances over time that have caused and continue to cause job losses. Mechanization and computerization has greatly reduced the manual work involved in the industry. A study by Lee *et al.* (1991) examined the social impacts of harvest reductions in Washington. Critical habitat adds an incremental impact to the effects of other owl protection measures and to other market factors depressing the timber industry, which have cumulatively been severe in some locations.

Non-timber Effects

Non-timber harvest activities on Federal lands are subject to the consultation process under section 7 of the Act. When a listed species or its habitat is involved, the impact on projects may come about because projects are modified to minimize the impact on the listed species and/or its habitat. In the case of the northern spotted owl, several projects have been proposed in critical habitat. Determining which of these projects would be modified as a result of a section 7 consultation or any costs associated with modification of project plans is the first step necessary to estimating the impact of these projects. The second step consists of estimating the net consumer surplus lost to society as a result of the restricted supply of an activity caused by critical habitat designation. The fact that a proposed expansion to a ski area, for example, may result in more visitor days does not necessarily result in increased societal welfare. The potential loss of visitor days at competing ski areas would have to be considered before a final

determination is reached about the net change in consumer surplus.

Given the relatively small number of areas and acres of critical habitat involved in the proposed list of projects, it is doubtful that a significant impact would result from non-timber activities. However, the Service cannot prejudge the results of the section 7 consultation process for any of the proposed projects. While the Service is aware of the proposed non-timber activities, they cannot be quantifiable. The Service will assist project sponsors through the section 7 consultation process.

Effect on Private Lands

Although it is expected to be minimal or nonexistent, effects of critical habitat designation may occur for activities on private lands where there is a Federal nexus (e.g., restricted access to areas through critical habitat on Federal lands). Areas in checkerboard ownership may be particularly sensitive since access may be limited to existing roads on Federal land. Activities on private lands that require use of Federal lands or authorization (e.g., constructing new roads in critical habitat on Federal lands) would have to go through the section 7 process which may result in added project costs. The Service is not able to determine actual impacts on lands adjacent to critical habitat at this time, but the impacts are expected to be minimal.

Public comments received during the proposal stages of critical habitat designation did not identify specific examples of private lands affected by proposed critical habitat. However, the Service is aware that such situations may exist and will work with other Federal agencies through the section 7 process to minimize effects on private landowners.

Summary of Potential Impacts

The primary economic cost of the designation is to restrict timber harvest on Federal land. The incremental cost is an estimated annual reduction in timber harvest of 102 mmbf, with secondary effects on regional employment and revenue sharing with county governments. The employment effect is a projected loss of 847 direct plus 573 indirect and induced jobs for a total of 1,420 jobs in the three state area. Lost payments to counties represents an estimated $18.4 million loss annually. Some of these effects have already started to occur, and are expected to be in full effect by 1995. There may be offsetting effects in the timber industry that may partially mitigate some of these effects, at least in the short term, in the form of replacement logs from a private sector response, decreased log exports, and the availability of 4–6 bbf of sold but uncut timber. Benefits include improved watershed protection, decreased stream sedimentation, increased anadromous fish habitat, protection of regional biodiversity, and existence values to the American public.

Offsetting or Mitigating Factors

Increased timber harvest on private lands in response to higher stumpage prices and new restrictions on log exports may both result in additional logs being available to regional sawmills and processing plants to replace, in part, the reduction of timber available from Federal lands as a result of the designation of critical habitat for the spotted owl. The effect of these replacement logs will be to lessen the employment impacts discussed above. Key factors determining the size of both mitigating effects are the size of the response and the location of the newly available timber. Further, there are 4–6 bbf of sold but not harvested logs in the region, and much of this would be expected to enter the market, which may help reduce short-term impacts of log reductions. Increases in stumpage price are expected to induce private timber owners to increase their harvest, at least in the near-term, by harvesting timber sooner than originally planned. Although the amount of the private sector response is uncertain, available data suggest that it may produce a significant source of replacement timber. The Forest Service estimated that implementing the ISC Plan would result in a 30 percent increase in regional stumpage price, and that private timber owners would respond by increasing their annual harvest in the region by 445 mmbf by 1995, a 4.2 percent increase in timber supply (USDA/USDI 1990). (The response indicates a supply elasticity of 0.14. Mead *et al.* (1991) report a similarly small supply elasticity of 0.13.)

The timber harvest reductions attributable to the Endangered Species Act are estimated to result in an additional stumpage price increase of 3 percent (USDA 1991b). Assuming the same supply response for that relatively small additional price rise may result in an additional 47 mmbf of private harvest. The location of the additional private harvest and how available it may be to the logging operations and processors dependent on Federal log supplies cannot be determined. However, using the average job response coefficient of 13.9 jobs/mmbf, the private sector response may produce 6,186 jobs when Federal supplies are reduced from Final Plans to With-ISC sale levels, and an additional 654 jobs With-Listing and With-Critical Habitat effects. The private sector response is expected to be relatively short lived, however, with private harvest falling below the baseline level by the year 2000, with a subsequent reduction of timber-based employment.

The export of unprocessed logs from the Pacific Northwest has represented a significant proportion of total harvest in recent years. In 1988 to 1989, 3.7 bbf of logs were exported from the region, 25 percent of total harvest. Expart of unprocessed logs continues to be controversial. Opponents of exports argue that processing jobs and value added that could benefit the regional economy are exported as well. Proponents of exports claim that exports allow owners of timber to obtain the premium prices foreign markets offer for Pacific Northwest timber, and that restrictions on exports would impose a social welfare loss on the domestic economy.

Exports of logs from Federal lands have been prohibited since the early 1970s. Federal legislation in 1990, aimed in part at offsetting the employment effects of owl protection efforts, restricted log exports from State-owned lands and stiffened restrictions on the use of Federal logs as substitutes for private logs that are exported. Restrictions on exports from State-owned land are expected to make 450 mmbf available for domestic processing, primarily in Washington (Stevens 1991). Tighter monitoring of log substitution is expected to make an additional 150 mmbf available for domestic mills. Using the 2.8 jobs/mmbf involved with logging and export operations reported by Northwest Forest Resource Council (1989) and the average job response coefficient of 13.9 jobs/mmbf developed for this analysis, reducing exports may produce a net increase of 11.1 jobs/mmbf. Thus, the 600 mmbf may result in a net increase of 6,660 timber-based jobs in the region when the new export restrictions are in full effect.

The rise in domestic stumpage price as a result of reduced Federal timber sales is expected to have the further effect of reducing log exports from private lands as log exports from the region become less competitive in international timber markets. The Forest Service estimated a 21 percent decrease in exports from the region as a result of higher prices caused by reducing timber sales from Final Plans to the With-ISC Plan (USDA 1991b). Critical habitat designation may reduce exports somewhat more as prices rise. It cannot be determined what proportion of logs no longer exported from private lands

would become available for local processing.

Benefits of Critical Habitat Designation

Designation of critical habitat for the spotted owl is expected to provide a wide range of economic benefits to society. These economic benefits are whenever possible defined in monetary terms. They include use values as well as intrinsic or preservation values. Benefits provided by preservation of the owl's habitat include the same types of direct and indirect use values of old growth forest ecosystems. Habitat preservation also provides water quality protection, scenic and air quality, biological diversity, and other environmental services.

Benefits of critical habitat designation are in addition to those provided by listing of the owl as threatened or those derived from other actions taken by land management agencies to provide protection to the owl and its habitat. Only the incremental protection provided by critical habitat designation, and the ancillary benefits attributable to that action, are compared with the incremental costs of restricting timber harvest and other economic effects of designating critical habitat. When areas of proposed critical habitat were considered for possible exclusion, the incremental effects of exclusion on both benefits and costs were compared.

A number of non-timber related service flows currently provided by critical habitat would have continued without critical habitat designation, but most would be different. Including an area in the critical habitat designation has allowed the values the area now provides to be maintained or develop over time. In most cases those values would have been changed if the area had been excluded from critical habitat because higher levels of timber harvest or other actions might have been carried out. From a "with" and "without" perspective, the net benefit of critical habitat designation is the difference between total values when an area is part of critical habitat (with) and their value when the area is not included in critical habitat (without).

Many of the benefits provided by protection of the spotted owl and its habitat are not marketed. The lack of market prices makes it difficult to value them in dollar terms, as compared to timber harvest and other commercial activities. No comprehensive dollar estimate of the benefits of designating critical habitat is feasible with available data. Rather, the analysis provided here references data from several sources in order to identify some of the benefits expected to result from the designation of critical habitat, with empirical examples when available.

Recreational Use Benefits

Direct recreational uses of a threatened species often are limited because there may be too few animals to supply observation or other recreational opportunities. However, even though the spotted owl population may be too few in number to provide widespread direct recreation to wildlife watchers, its habitat provides other kinds of enhanced recreational opportunities. Forest land harvested for timber invites certain recreation activities, such as deer hunting and off-road vehicle use. Older forests invite hiking, camping, and primitive and semi-primitive recreation. Without considerable analysis, it cannot be determined whether the net change in older forest recreation values would be positive or negative with timber harvest.

However, data from the Oregon State Parks and Recreation Department (USDI 1991c) and a review of current forest plans for Washington and Oregon indicate that the acreage of roaded recreation areas exceed the demand for recreational opportunities of that type while the demand for recreation on primitive and semi-primitive recreation areas is not satisfied. If annual recreational use of the proposed 1.69 million acres of critical habitat added to the HCAs were to average one person per acre with average consumer surplus of $30 per visitor day, direct use recreation benefits would total $50.7 million per year.

Aesthetic Benefits

Psychological studies of human perceptions toward scenic beauty provide evidence of a strong link between perceived aesthetic quality and objective measures of changes in the appearance of a forest, such as the retention of visual corridors along roads. Scenic beauty ratings of forest quality are often an important determinant of willingness to pay for a forest recreation experience (Brown *et al.* 1989). According to 95 percent of users, scenic quality is important to the recreational experience in national forests (Walsh and Olienyk 1981, Walsh *et al.* 1989). The effects of harvesting older forests in the Pacific Northwest on scenic quality have not been studied, but they can be inferred from work in other regions. Studies have found that harvesting mixed age stands of second growth forest with some older specimen trees would reduce average consumer surplus per visit and total visitation by approximately 70 percent (Walsh and Olienyk 1981, Walsh *et al.* 1989). Reductions are reported for all recreational activities studied except hunting and driving off-road vehicles, for which harvest often increases opportunities. As the available supply of older forests becomes increasingly scarce, the opportunity to use older forest recreation areas will diminish and scenic quality of the remaining areas will become increasingly valued.

Biodiversity Benefits

The designation of critical habitat for the spotted owl contributes to the protection of regional biodiversity in the Northwest. The habitat of the northern spotted owl represents a unique ecosystem of diverse plant and animal species. Most attention has been directed toward protection of the spotted owl, but this is only one of several hundred vertebrate species occurring in the Pacific Northwest (Bruce *et al.* 1985, Ruggerio *et al.* 1991). This species richness and abundance depends to a large extent on the presence of mature and older forests (Ruggerio *et al.* 1991).

Northwest forests accumulate more biomass than tropical forests (Franklin 1988), and also provide protection to the soils, particularly on steeper slopes, and maintain higher water quality with lower sediment yields. Management strategies designed to provide 50 to 90 year old trees for harvest on public lands in the Northwest are not likely to provide the same benefits to regional biodiversity as would stands managed at longer rotation lengths, nor will they provide the same benefits that are found in areas protected from clearcut harvest techniques.

The recent discovery of a cancer-fighting chemical in the Pacific yew further demonstrates the potential economic importance of maintaining biological diversity in Northwest forests. In addition, protection of spotted owl habitat may obviate the listing of other species dependent on that same habitat type, thereby reducing future economic costs of listing species and critical habitat (e.g., the marbled murrelet). Other plant and animal species, including stocks of anadromous fish, are being considered for listing in the Northwest. If their habitat is adequately protected as a result of designating spotted owl critical habitat, the need for future listings may be reduced. Thus, the conservation of the owl promotes the ecosystem level conservation needed to protect other plant and animal species and is a benefit to society.

Aquatic Benefits

Research has demonstrated that many declining fish populations are found in or downstream from areas where logging and road building are the primary causes of stream habitat degradation (Hartman and Scrivener 1990). The designation of critical habitat is expected to reduce the amount of logging and, thereby, provide benefits in the form of reduced soil erosion, decreased sedimentation in streams, and improved habitat for salmon and other stream fauna. Increased productivity of streams and increased numbers of anadromous and other stream fish have direct economic as well as non-market benefits to society.

The watersheds of the Pacific Northwest protect fisheries resources that are valuable to both commercial and recreational use (Frissell 1991). Numerous coastal cities and small communities in the rural areas are dependent on tourists as well as sport and commercial fisheries. Several studies have found a positive relationship between fish populations, the fishing catch rate, and the consumer surplus value of fishing for salmon in the Columbia River Basin, trout in Colorado, and salmon in Idaho. For example, Loomis (1988) predicted that catchable salmon numbers from streams in the Siuslaw National Forest could double if current timber management practices were terminated. Economic losses to salmon and steelhead fisheries from future timber harvest on 86,700 acres in the Siuslaw National Forest were estimated to be $1.7 million over a 30 year period (Loomis 1988).

Intrinsic Values

Estimates of recreation user demand, benefits of scenic beauty, and benefits of water quality represent only a partial estimate of the total value society places on the spotted owl and its habitat. The public also is willing to pay for the increased probability of owl survival that may result from the improved information that becomes available when harvesting old growth forests is delayed, the knowledge that the natural ecosystem exists and is protected, and the satisfaction from its bequest to future generations.

Rubin *et al.* (1991) reported adjusted values of $35 per household for residents of Washington State, with 249 responding to an open-ended question in a mail survey. The authors estimated spotted owl preservation values of $37 per household for Oregon, $21 for California, and $15 for the rest of the U.S., aggregating to about $1.5 billion per year (1987 dollars). Hagen *et al.* (1991) reported a threshold value estimate ranging from a low of approximately $3 to a high of $8 per household in the U.S.

In a study based on a national mail survey of nearly 400 households, Hagen *et al.* (1991) reported that 81 percent favored protection of old growth forests and northern spotted owls. The average willingness to pay higher taxes and wood product prices reported in a referendum contingent valuation format was $190 per year. The lower limit of the 98 percent confidence range around the mean value was $117 per household. A study by Olsen *et al.* (1991) reported the average willingness to pay for increasing runs of salmon and steelhead. Nonusers who reported no probability of future participation in the sport of fishing valued the resource at $27 per year, while nonusers who stated some probability of future participation valued it at $59 per year.

Long Term Effects of Critical Habitat Designation

To determine how the effects of critical habitat designation will change over time requires projections of many parameters that may themselves change in uncertain ways in the future. The dynamic interactions within regional and national economies are hard to predict and, at best, some indication of the direction and order of magnitude of change is the best estimate that can be provided. Many factors are expected to influence the level of impact critical habitat designation will have on national and regional supply of wood and wood products. For example, construction and new housing starts with their derived demand for wood and wood products will interact with the available timber supply to determine future stumpage prices. Changes in stumpage prices will, in turn, affect economic decisions about the timing of timber harvesting. Also, the relative competitive position of the Northwest timber industry sector in the National market will have a substantial affect on the timber communities in the three State area.

The development of a new projection model was not within the scope of the economic analysis of designating critical habitat for the spotted owl. However, existing projection efforts were examined and their findings interpreted within the context of critical habitat designation.

One factor of primary interest is the harvest rate allowed in critical habitat as the forest condition improves in habitat quality for owl populations. Most of the costs delineated in the economic analysis stem from reduced timber harvest levels on the critical habitat acreage above the areas identified by the ISC.

The designation of portions of the three State area as critical habitat does not produce a regimen of permanent, restrictive management practices. That is not the intent of the Act or the section 7 consultation process. In the economic analysis it was assumed that national forests will have some portion (5 to 25 percent) of the sustainable yield within the critical habitat areas, outside of the ISC areas and above 50–11–40, available for timber harvest. It is expected that the percent of allowable timber harvests will increase over time as the condition of the forests improves and the owl population recovers in areas identified for protection through implementation of a final recovery plan and/or agency management plans.

Once owl recovery goals are reached, it is assumed that multiple use management practices also may be employed within the ISC areas. The determination of long-term, sustainable yield within the context of multiple use of the forest resource may result, however, in harvest rates below the 1990 plans level. As more information becomes available about species requirements for survival, and that information is incorporated into future management plans, it is expected that future timber harvest levels can be determined that stabilize the supply of timber from Federal lands at some level compatible with the nation's need for timber as well as survival of forest based species. This new equilibrium level of harvest, although perhaps lower than historic rates, will help avoid the dramatic timber community expansions and contractions typical of past cycles.

The rate at which timber harvests within critical habitat will be allowed to increase over time is difficult to determine and can only be approximated. As the owl population recovers, an increase in the allowable harvest within critical habitat units is expected. The rate at which this would occur is dependent on the type of owl management or conservation plan (e.g., recovery plan) that the agencies develop and implement, and the timing of implementation and its effects on owl recovery.

The rate of increase in allowable harvest is projected at approximately 10 percent per decade beginning in the year 2010. The time required for developing and testing new silvicultural practices on Federal land, as well as the time for the recovery of the existing forests, makes it unlikely that significantly increased harvest levels will be possible

on critical habitat before the year 2010. The implications for the Northwest of renewed availability of federal lands for timber harvesting are a downward effect on timber prices, renewed employment opportunities, and an increase in timber supply for local mills. However, jobs lost during the early 1990s will not be replaced on a one for one basis. Even at modest, annual labor productivity increases, future job creation will be lower per million board feet of timber harvested.

The Forest Service (USDA 1990) discuss simulated effects of several future scenarios of timber demand, supply and prices. The analysis uses trends in key variables that affect the timber industry to formulate baseline projections to the year 2040. Some of these underlying trends have implications for the way that economic effects stemming from the designation of critical habitat will affect the economy of the Northwest in the future. In particular, the share of U.S. softwood production coming from the Northwest is projected to decrease. During the interval from 1986 to 2040, nationwide softwood production is projected to increase from 33.9 bbf to 49.2 bbf, but the Northwest share is expected to only increase from 20.3 bbf to 22.9 bbf, a loss of 13.3 percent of the nationwide share.

A second factor is the projected employment in the softwood industries. While the base scenario projects only modest increases in Northwest softwood lumber production, labor requirements per mmbf continue to decrease. Technological innovations are projected to reduce labor requirements for all timber based industries. The average productivity rate increase is approximately 1.2 percent per year. The comparable rate reported by Anderson and Olson (1991) is 1.4 percent annually. The productivity gain in the timber industry of the Northwest was addressed in Greber (1991) who stated that the large productivity gains of the past decade that came about when mills modernized their equipment will not be sustained into the future because of two factors: First, most of the inefficient timber mills are already out of business or have retooled; and second, that increased use of timber residuals and specialized products will create additional employment, thus compensating in part for some of the productivity gains. A modest productivity gain of 1.2 percent annually was assumed to adequately reflect the changes in labor requirements in the future.

Increasing the volume of timber production on critical habitat will affect timber based employment and the net loss to the Treasury in the future. Using constant dollars (USDA 1990), the timber revenue loss associated with reduced volumes of timber harvested was estimated to the year 2040. The associated employment reductions and dollar loss to the Treasury were also calculated. In constant dollars, the net loss to the Treasury is not significantly different in the year 2040 than it is in 1995. The annual equivalent value for the time period is $49 million. However, the total job loss diminishes from 1,420 in 1995 to 541 total jobs attributable to critical habitat designation.

The Northwest economy will be affected by the implications of both the trend in production shifts to other parts of the U.S., and the capital for labor substitutions. As the demand for wood and wood products increases in the future, more pressure will be put on the Northwest to become more competitive by keeping its costs of production down. The substitution of capital for labor is a basic economic technique for minimizing production costs. The resulting higher labor productivity means that fewer jobs would be in place in the future than were lost when critical habitat was initially designated. As these economic conditions evolve, the timber industry will play a lesser role in the regional economy of the Northwest.

Available Conservation Measures

The purpose of the Act, as stated in section 2(b), is to provide a means to conserve the ecosystems upon which endangered and threatened species depend and to provide a program for the conservation of listed species. Section 2(c)(1) of the Act declares that "* * * all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of this Act."

The Act mandates the conservation of listed species through different mechanisms, such as: Section 7 (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and insuring that Federal actions will not likely jeopardize the continued existence of the listed species or result in the destruction or adverse modification of critical habitat); section 9 (prohibition of taking of listed species); section 10 (wildlife research permits and habitat conservation planning on non-Federal lands); section 6 (cooperative State and Federal grants); land acquisition; and research. Other Federal laws also require conservation of endangered and threatened species, such as the National Forest Management Act, the Federal Land and Policy Management Act, the National Environmental Policy Act, and various other State and Federal laws and regulations.

Critical habitat is not intended as a management or conservation plan. In the case of critical habitat for the northern spotted owl, association with the ISC Plan leaves the perception that the critical habitat is a form of that plan. The ISC Plan, critical habitat, recovery plan, the Scientific Panel report, and other conservation processes are working with the same land base containing specific locations of older forests. Although these are different processes, because of the limited habitat base remaining, it is inevitable that they overlap. Emphasizing large blocks of suitable habitat has been a common theme in all recovery and management processes for the northern spotted owl because it is essential to local population stability (although without connectivity among them, the blocks themselves will probably not maintain long-term ecosystem stability or long-term viability of owl populations).

The ISC analysis clearly identifies the near-term risk associated with the implementation of the ISC Plan, especially if all parts of that plan are not implemented fully or in a timely manner. The HCA strategy is based on long-term habitat development objectives to support projected owl pair targets. The near-term loss of owl habitat and owl pairs outside of HCAs prior to full habitat recovery within HCAs could lead to a significant decline in the owl population which may increase the amount of time it will take to achieve owl recovery. Over the past 2 years, the Service's section 7 analyses have begun to demonstrate the effects of continued timber harvest that, in the near-term, may increase the risk associated with the ISC Plan (USFWS 1991a, b, and c).

The Service has not done a risk analysis for critical habitat because there are no numerical goals upon which to evaluate the effectiveness of the designation. Population goals (in terms both of total numbers of owls and distribution), upon which a risk analysis would depend, were not developed for this rule but are instead part of the recovery plan process. Risk analysis is not the intended purpose of critical habitat designation. Critical habitat is primarily intended to identify the habitat that meets the criteria for the primary constituent elements. However, there are benefits that result from designation. Designation will help retain recovery options and reduce the near-term risk until a long-term conservation plan is implemented. Critical habitat

does not replace the HCA network and management recommendations of the ISC for the intervening forest matrix.

Designation of critical habitat may provide a mechanism for regulatory protection for HCAs, protection in key areas outside of HCAs (e.g., in areas designated where habitat or pair deficiencies exist or areas of high risk as identified by the ISC), linkage throughout the current range, an ecological buffer to HCAs, and/or protection of areas currently in need of special management (e.g., areas of concern or areas where linkage problems occur) through section 7 of the Act.

Designation of critical habitat does not offer specific direction for managing owl habitat. That type of direction, as well as any change in direction, will come through the administration of other facets of the Act (e.g., section 7, section 10 HCP process, and recovery planning) or through the development of land management plans that address management of the owl.

Recovery Planning

Recovery planning under section 4(f) of the Act is the "umbrella" that eventually guides all of the Act's activities and promotes a species' conservation and eventual delisting. Recovery plans provide guidance, which may include population goals and identification of areas in need of protection or special management. Recovery plans usually include management recommendations for areas proposed or designated as critical habitat.

The Northern Spotted Owl Recovery Team is evaluating critical habitat, the ISC Plan, and other current planning efforts to determine the relationship between them and to help clarify their role in conserving the owl. The Recovery Team is expected to produce a recovery plan for the northern spotted owl that will address the steps needed to recover the owl on all landownerships throughout its range and provide an acceptable mechanism for implementation. Although a recovery plan is not a regulatory document, the plan should identify requirements for managing or modifying designated critical habitat on Federal lands, as well as considerations for critical habitat on other landownerships.

Critical habitat should be compatible with the recovery effort. Although the Recovery Team may recommend changes to the ISC network (for management purposes), there should not be any conflict with critical habitat. Valid recommendations or management prescriptions developed by the Recovery Team can be applied to critical habitat regardless of whether there are different management prescriptions prescribed for HCA-type areas or other areas within critical habitat where timber harvest may be more compatible with owl conservation.

The Service has worked closely with the Recovery Team and other efforts to ensure consistency and will reevaluate the need for critical habitat after completion and implementation of the recovery plan or at any time that new information indicates that changes may be warranted. The Service may also reassess critical habitat designation if other land management plans or conservation strategies, which may reduce the need for the additional protection provided by critical habitat designation, are developed and fully implemented.

The Service expects that, consistent with section 7(a)(1) of the Act, Federal and non-Federal agencies will produce biologically sound, long-term land management plans that contribute to the conservation of spotted owls, as well as other listed and nonlisted species. Biologically credible plans such as the ISC Plan offer opportunities for resolving conflicts between timber management and owl conservation and offer a basis for present and future land management decisions. Valid and acceptable management prescriptions contained in such plans can help guide the Service and other agencies in managing critical habitat.

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies ensure that their actions do not jeopardize the continued existence of any listed species.

Jeopardy is defined at 50 CFR 402.02 as any action that would be expected to appreciably reduce the likelihood of both the survival and recovery of a species. Destruction or adverse modification of critical habitat is defined at 50 CFR 402.02 as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. The regulations also clearly state that such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

Survival and recovery, mentioned in both the definition of adverse modification and jeopardy, are directly related. Survival may be viewed as a linear continuum between recovery and extinction of the species. The closer one is to recovery, the greater the certainty in the species continued survival. The terms "survival and recovery" are, thus, related by the degree of certainty that the species will persist over a given period of time. Survival relates to viability. Factors that influence a species' viability include population numbers, distribution throughout the range, stochasticity, expected duration, and reproductive success. A species may be considered recovered when there is a high degree of certainty for the species' continued viability.

The Act's definition of critical habitat indicates that the purpose of critical habitat is to contribute to a species' conservation, which by definition equates to recovery. Section 7 prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of the listed species, thus providing a regulatory means of ensuring that Federal actions within critical habitat are considered in relation to the goals and recommendations of a recovery plan. As a result of the link between critical habitat and recovery, the prohibition against destruction or adverse modification of the critical habitat should provide for the protection of the critical habitat's ability to contribute fully to a species' recovery. Thus, the adverse modification standard may be reached closer to the recovery end of the survival continuum, whereas, the jeopardy standard traditionally has been applied nearer to the extinction end of the continuum.

Basis for Analysis

Designation of critical habitat focuses on the primary constituent elements within the defined units and their contribution to the species' recovery, based on consideration of the species' biological needs and factors that contribute to recovery (e.g., distribution, numbers, reproduction, and viability). The evaluation of actions that may affect critical habitat for the spotted owl should consider the effects of the action on any of the factors that were the basis for determining the habitat to be critical, including the primary constituent elements of nesting, roosting, foraging, and dispersal, as well as the contribution of the local and provincial area to recovery. The desired outcome of section 7 should be to avoid actions

that further reduce the ability of the habitat to support owls (e.g., the type of activities that led to the owls' listing, such as conversion of habitat to younger forest, short rotation rates, fragmentation, and isolation).

The range of the owl is subdivided into a number of provincial areas as previously discussed (Thomas *et al.* 1990, USDI 1990a). These subdivisions are not based upon identification of separate populations of owls, but rather on geographical habitat differences. The provinces and local populations of owls are for the most part interrelated and interconnected. Provinces, subprovinces, and individual critical habitat units are all part of a habitat network important to maintaining a stable and well-distributed population over the range of the owl. Section 7 analysis of activities affecting owl critical habitat should consider provinces, subprovinces, and individual critical habitat units, as well as the entire range of the subspecies. The basis for an adverse modification opinion should be on the provincial areas identified in this rule (see PRIMARY CONSTITUENT ELEMENTS section) and further explained in the narratives that describe the role, values, and relationships of critical habitat units (USFWS 1991e). Should the Recovery Team identify a more appropriate set of areas, they will form the basis for analysis under section 7.

The loss of one or more provinces, or even a major part of a province, could lead to genetic and demographic isolation of parts of the owls' range. Potential isolation could have a greater near-term effect on some areas (e.g., Olympic Peninsula, Washington Cascades, Oregon Coast Ranges, Shasta/McCloud area within the Klamath Mountains) because of the present status of owl numbers and owl habitat within those areas, than on other areas (e.g., north-central Klamath Mountains, westside Oregon Cascades). In the long-term, however, the concern over population stability would be similar in all areas. Population stability for the owl may depend on the relative location of large stable population reserves that act as sources for areas where mortality exceeds recruitment (sinks), that are subject to population fluctuations, or exhibit low reproductive success (Thomas *et al.* 1990).

For a wide-ranging species such as the spotted owl, where multiple critical habitat units are designated, each unit has both a local role and a rangewide role in contributing to the conservation of the species. The loss of a single unit may not jeopardize the continued existence of the species, but may significantly reduce the ability of critical habitat to contribute to recovery. In some cases the loss of a critical habitat unit could result in local instability, affecting dispersal and connectivity and, thus, reducing local population levels. This could have a detrimental effect on the stability of the province or at the least on that portion of the province where the loss occurred. That, in turn, would also have an effect on linkage to other provinces potentially leading to isolation and instability. This could preclude recovery or reduce the likelihood of survival of the species.

Each critical habitat unit is related to and dependent upon each adjacent unit, just as each province is dependent on each adjacent province. In some cases, gradual degradation of one critical habitat unit to the point where it no longer fulfills the overall function for which it was designated could also preclude the survival and recovery of the species. Over time the resulting effect could lead to greater problems at the province level and ultimately at the species level.

Present conditions vary throughout the range of the owl with the result that some areas may be less able to sustain continuing impacts than others at any given time (e.g., the Olympic Peninsula and Oregon Coast Ranges). The level of disturbance a critical habitat unit could withstand and still fulfill its intended purpose is variable throughout the owls' range and will need to be reviewed in the context of its current status, condition, and location. Because of the interrelationships between units, local areas, and provinces, it is difficult to separate out the effects on one area or level of analysis.

Each project will need review as to its impacts at all levels. When determining whether any particular action would appreciably diminish the value of the habitat for the survival and recovery of the owl, the baseline condition and expected roles for both the individual critical habitat unit and the surrounding units must be considered. Among the factors to be considered are: The extent of the proposed action; the present condition of the habitat (e.g., percent of the area suitable for nesting, roosting, foraging, and dispersal; degree of fragmentation); the current number of pairs in the project area; the reproductive success of breeding pairs; the expected time to regenerate sufficient habitat to support an effective population in a particular area; consistency of the action with the intent of the ISC Plan, recovery plan, or other conservation plans; geographic considerations; and local and regional problems. The analysis should also consider the affect of the action on habitat that was not included in critical habitat, as well as the affects on critical habitat from actions planned outside the designated area.

Analysis of impacts to individual units must consider the effects to the local area (both the unit and surrounding units), any definable sub-area (e.g., province), and the overall range of the species. The Service has developed biological narratives describing the role, condition, and value of each individual unit, as well as the conditions and problems associated with provinces and subprovinces (USFWS 1991e). To help in consideration of how actions affect local and provincial stability, these narratives contain an explanation of the interrelationships among units, local areas, and provinces.

Consultation Process

Section 7 consultation for critical habitat will focus on the effects of actions on owl habitat whether or not it is currently occupied. The presence or absence of individual spotted owls or pairs of spotted owls will not factor into the determination of actions that trigger section 7. Any action that may affect critical habitat will trigger section 7 consultation.

The requirement to consider adverse modification of critical habitat is an incremental section 7 consideration above and beyond section 7 review necessary to evaluate jeopardy and incidental take. As required by 50 CFR 402.14, a Federal agency must consult with the Service if it determines an action may affect a listed species or its critical habitat. Federal agencies are responsible for determining whether or not to consult with the Service and should consider a number of factors when determining whether any proposed action may affect critical habitat. The Service will review the action agency's determination on a case-by-case basis and will or will not concur whether the action may adversely affect critical habitat, as appropriate. To the extent possible, agencies should consult on a programmatic basis (especially for multiple actions such as timber sales).

The Service will consider the effect of the proposed action on the primary constituent elements along with the reasons why that particular area was determined to be critical habitat. The trigger to initiate section 7 consultation (under adverse modification) is any action that may affect any of the four primary constituent elements of critical habitat or reduce the potential of critical

habitat to develop these elements; this is independent from any action that would affect known individuals. The evaluation should also take into consideration what happens outside of critical habitat since projects outside of critical habitat may also impact habitat within critical habitat. It should also consider what effects the action may have on other adjacent critical habitat units, the local area as defined by the Service, and the province or subprovince.

A number of Federal agencies or departments fund, authorize, or carry out actions that may affect lands the Service is designating as critical habitat. Among these agencies are the Bureau, Forest Service, Department of Defense, Bureau of Mines, Corps of Engineers, Bureau of Reclamation, Federal Energy Regulatory Commission, and Federal Highway Administration. The Service has identified numerous activities proposed within the range of the northern spotted owl that are currently the subject of formal or informal section 7 consultations. These include the Forest Service's and Bureau's land management plans (e.g., the Forest Service's spotted owl environmental impact statement), annual timber sale operations, and other more localized projects, such as hydroelectric developments; road, trail, and powerline construction; land exchanges; resort development; and a number of smaller actions (e.g., campground construction). A more complete list is contained in the Service's administrative record.

Examples of Proposed Actions

For any final regulation that designates critical habitat, section 4(b)(8) of the Act requires a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Destruction or adverse modification of critical habitat is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

Activities that disturb or remove the primary constituent elements within designated critical habitat units might adversely modify the owl's critical habitat. These activities may include actions that would reduce the canopy closure of a timber stand, reduce the average dbh of the trees in the stand, appreciably modify the multi-layered stand structure, reduce the availability of nesting structures and sites, reduce the suitability of the landscape to provide for safe movement, or reduce the abundance or availability of prey species.

In contrast, activities that would have no effect on the critical habitat's primary constituent elements almost certainly would not adversely modify the critical habitat. However, even though an action may not adversely modify critical habitat, it may still affect spotted owls (e.g., through disturbance) and, therefore, be subject to consultation under the jeopardy standard of Section 7 of the Act, as determined after consideration of the aforementioned factors.

Areas designated as critical habitat for the spotted owl support a number of existing and proposed commercial and noncommercial activities. Some of the commercial activities that may affect spotted owl critical habitat include timber harvest, salvage activities, sand and gravel extraction, mining (e.g., open pit), land disturbance activities associated with oil and gas leases, snag creation/removal, construction of hydroelectric facilities, geothermal development, and construction of alpine ski areas and associated resort facilities.

Commercial activities not likely to destroy or adversely modify critical habitat include limited livestock grazing and various site-specific activities such as scenic tours and cavern exploration. Conducting owl surveys would not be likely to destroy or adversely modify critical habitat.

Non-commercial activities are largely associated with recreation and are not considered likely to adversely affect critical habitat. Such activities include hiking, camping, fishing, hunting, cross-country skiing, off-road vehicle use, and various activities associated with nature appreciation. Additional activities include "personal use" commodity production, such as mushroom and plant gathering, Christmas tree cutting, and rock collecting. These activities are also foreseen as not having any adverse effect on critical habitat.

Expected Impacts of Designation

The Service will use management guidelines when finalized by the Recovery Team during consultation to evaluate proposed actions in critical habitat. Until formal recovery goals and management guidelines are developed by the Recovery Team, the Service anticipates using the ISC Plan and other factors described in this document as a basis for determining the level of allowable timber harvest or other activities that affect owl habitat within critical habitat.

At this time the Service assumes that the Forest Service and Bureau will continue to manage the HCAs as recommended by the ISC. The Service expects that many proposed activities within HCAs that are also designated as critical habitat would be inconsistent with the long-term development of large suitable habitat blocks and would, therefore, likely result in destruction or adverse modification of critical habitat. Proposed actions that are consistent with the ISC recommendations for activities within HCAs would not likely destroy or adversely modify critical habitat. All such determinations will be made on a case-by-case basis during section 7 consultation.

Timber harvest or other actions proposed in critical habitat units, but outside HCAs, may or may not adversely modify critical habitat, depending on the current condition of the area and the degree of impact anticipated from implementation of the project. The potential level of allowable harvest or habitat reduction in the non-HCA portions of critical habitat units will vary over time for each unit, depending on local and provincial owl populations and habitat conditions and will be determined on a case-by-case basis during section 7 consultation, although meeting the intent of the 50–11–40 rule would be insufficient in most cases.

To avoid or reduce conflicts, the Service recommends that timber harvest or other actions be considered for the forest matrix outside critical habitat before consideration is given to placement of sales within the HCA or non-HCA portions of critical habitat. Variations within and among provinces (e.g., existing habitat quality and quantity, distribution of existing habitat, etc.) may lead to differences in near- or long-term protection strategies and may affect the focus of planning and section 7 review. Changes to HCA boundaries as a result of implementation of a recovery plan or other similar plan may affect how actions are treated in section 7.

Under this scenario, the net effect of the designation of critical habitat will be a reduction in harvest that falls somewhere between the effects of no harvest (as recommended for HCAs) and the application of the 50–11–40 rule. This impact will vary over the range of the owl. The potential impact of section 7 may also vary depending on the effect of the results of the exclusion of acres due to high economic costs. In some cases these areas may have been

reduced to the point where further timber harvest or habitat reduction would likely result in destruction or adverse modification of critical habitat.

Given this approach, the Service envisions that, as habitat within critical habitat begins to recover or the need for near-term protection of suitable habitat adjacent to HCAs decreases, increasing levels of harvest will be allowed within critical habitat. Eventually, few if any restrictions above 50–11–40 may be necessary in critical habitat outside of HCAs, once habitat within the HCAs has fully recovered and become occupied by owls. The Service expects that these assumptions may change as the recovery plan is completed and implemented. Restrictions on the levels of activities within HCAs may decrease as well as more is learned about maintaining owls in managed forests.

Reasonable and Prudent Alternatives

In cases where it is concluded that an action would likely result in the destruction or adverse modification of critical habitat, to the extent possible, the Service is required to provide reasonable and prudent alternatives to the proposed action in its biological opinion. By definition, reasonable and prudent alternatives allow the intended purpose of the proposed action to go forward, and remove the conditions that would adversely modify critical habitat; alternatives may vary according to local conditions, project size, or other factors. To reduce the potential for identifying such alternatives, the Service recommends that the agencies initiate discussions early enough in the planning process so that plans are not to the point where current alternatives may not be feasible and a greater number of options to reduce impacts may be available. Reviewing such actions as timber sales on a programmatic basis would facilitate this process.

Under this scenario, if adverse modification was anticipated, examples of possible reasonable and prudent alternatives that may be provided in a biological opinion include:

—Shift the planned action to another agreed-upon location outside or inside of the critical habitat unit;
—Maintain the quality of the habitat by minimizing fragmentation (e.g., through changes in sale layout);
—Leave sufficient habitat to support known (or an identified number of) pairs in a configuration that does not diminish the quality of the habitat for successful reproduction; and/or
—Implement forest management practices that are known to be compatible with spotted owls (e.g., those that retain certain habitat components or characteristics and those known to speed the development of habitat in young, even-age stands).

For actions that result in more moderate impacts, the Service may recommend minor modifications to the project's configuration. In the case of a proposed upgrade of a powerline right-of-way corridor, for example, the Service may recommend modified construction practices or that the corridor be expanded on one side of the existing corridor versus the other side to avoid impacts to habitat where the primary constituent elements are of higher quality. For projects that may result in more severe impacts, more substantial project changes may be necessary. For example, in the case of a multiple-unit timber sale, the Service may recommend that certain units be reduced in size, reconfigured, relocated, or dropped altogether to avoid impacts to primary constituent elements. The Service may recommend alternate timber harvest prescriptions in certain forest types.

No reasonable and prudent alternatives may be feasible for some proposed actions. For example, due to a lack of existing habitat or high levels of fragmentation, no level of harvest may be possible without resulting in the destruction or adverse modification of critical habitat. In this situation, the Service may issue an adverse modification biological opinion with no reasonable and prudent alternatives. The Service recommends that agencies initiate discussions, especially for timber sales, at the earliest opportunity to help avoid this type of situation.

Some activities could be considered a benefit to spotted owl habitat and, therefore, would not be expected to destroy or adversely modify critical habitat. Examples of activities that could benefit critical habitat in some cases include protective measures such as wildfire suppression or forest-pest eradication (e.g., eastside forests), as well as silvicultural treatments that may improve spotted owl habitat. At this time, they should be evaluated on a case-by-case basis.

Research on silviculture or other types of forest management practices may negatively affect critical habitat. However, the information that may result from such research may offset the perceived impacts of the action. Wherever possible, research should be conducted outside of critical habitat units, coordinated throughout the subspecies' range, and based upon an approved long-term strategy. In some cases, existing experimental or research forests are included in critical habitat. Although the effects of timber harvest in these areas would also be of concern, it is expected that the conservation value to be gained from permitted research activities may offer mitigating circumstances.

In general, those activities that do not remove components of habitat for spotted owls or their prey species are not likely to destroy or adversely modify critical habitat. Each proposed action would be examined under section 7 in relation to its site-specific impacts. The involved Federal agencies can assist the Service in its evaluation of proposed actions by providing detailed information on the habitat configuration of a project area, habitat conditions of surrounding areas, and information on known locations of spotted owls.

Lands both inside and outside of critical habitat are still subject to section 7 consultation on the jeopardy standard and to section 9 take prohibitions for their effects on owls. The Service envisions that the role of all landownerships in the conservation of the owl outside of critical habitat units will be addressed through section 7, the HCP process, the recovery planning process, and other appropriate State and Federal laws.

Conservation Measures on Non-Federal Lands

All non-Federal lands have been excluded from the designation of critical habitat. If an action that is committed by a non-Federal entity affects spotted owls, that action would be subject to review under Section 9 of the Act. Section 9 prohibits intentional and non-intentional "take" of listed species and applies regardless of whether or not the lands are within critical habitat.

There may be some instances where activities outside of critical habitat on non-Federal lands may affect critical habitat. For example, a private party may require a right-of-way permit through critical habitat for an action on private lands. In this type of case a section 7 consultation may be required on the right-of-way permit because the action requires Federal involvement. The Service does not expect that there will be many of these type of situations. However, if a biological opinion is required, recommendations will be provided to help avoid impacts to critical habitat consistent with those examples identified in the previous section.

Examples of Forest Practices

Recent data gathered through research on privately-owned industrial

timberlands in California have suggested that, in some cases, certain silvicultural practices may be compatible with maintenance of viable spotted owl populations and may contribute to delisting. Although there may be significant benefits to be gained from changing current forest management practices, several concerns exist that need to be addressed. First, there are no long-term data on reproductive rates. Therefore, it is possible that the rates observed in the past few years may be a result of high points in prey cycles, or other factors that may vary considerably over time. Another concern that urges caution is that, while the selectively-harvested areas may show adequate owl densities, those densities could be a result of owls being displaced by clearcutting and being forced into the best remaining habitat (those areas with residual trees). While those owls may continue to live, and some may reproduce, there are no data to conclude that a spotted owl population can be sustained in such habitats in the long-term. In addition, other factors, such as rates of fledging success, juvenile dispersal success, and longevity of breeding adult pairs, need to be researched to determine the impact of changes in forest management practices on them.

Although scientists familiar with spotted owl ecology cite several reasons that the high densities reported on selectively-harvested timberlands should be viewed with caution, the Service believes that opportunities may exist for forest management that is compatible with maintenance of owl habitat and owl populations. For example, forest management practices could provide forest stands of different ages that exhibit appropriate habitat characteristics for the owl. These practices should ensure that sufficient younger-aged stands mature at an adequate rate to provide replacement habitat for older stands lost due to logging or natural causes and could provide an adequate quantity and distribution of large contiguous blocks of older forest needed for spotted owls.

There are a number of practices associated with selective timber harvests that may maintain suitable habitat conditions while yielding forest products, or at least minimize the time a stand takes after harvest to regain the attributes of suitable spotted owl habitat. Not all of the following practices can be applied in all conditions.

(1) Maintain conditions:

—Attempt to maintain a multi-layered, closed canopy by retaining pockets of scattered dominant and codominant trees in the overstory, and retaining enough hardwoods and smaller conifers to maintain an understory.

(2) Minimize impacts to habitat:

—Retain large snags and standing culls to provide the decadent component important to prey species and to provide nest sites;

—Retain and/or create large dead and down material to provide food and cover for spotted owl prey species;

—When preparing a site for planting, minimize hot burns that destroy soil structure through elimination of organic matter from the upper soil horizons and that remove most or all of the duff layer above the soil; and

—When regenerating a harvested area, plant a mixture of species that most closely approximates the original stand composition; avoid monotypic stands. Minimize control of hardwoods or, if hardwoods must be suppressed to allow seedling establishment, allow hardwoods to continue growing as soon as seedlings are established.

Several long-term demographic studies are underway on agency and managed industrial timberlands. It is hoped that many of the uncertainties described above will be resolved if the studies can continue for 5 to 7 years. At that time, the Service can re-evaluate what, if any, harvest practices are compatible with long-term maintenance of a viable spotted owl population.

Examples of areas where conservation efforts may prove successful include some private lands (primarily in the redwood-dominated forests of the coastal region) in California. In this region owls have been observed nesting in stands that had acquired characteristics associated with owl presence in as little as 40 to 60 years (Pious 1989). Redwood-dominated forests develop habitat characteristics more quickly following harvest because redwoods exhibit fast growth (redwoods are a stump sprouting species); this region of California receives high precipitation levels augmented by coastal fog, during a long growing season; and the habitat often possesses an understory of other conifers and hardwoods.

These forest growing conditions and an abundant prey base in that part of the subspecies' range lead to the development of suitable nesting, roosting, and foraging habitat in a much shorter time following harvest than in the remaining portion of the owl's range. Although the stability and reproductive success of these owls over time is not well understood, the Service believes that an owl population can be maintained throughout the Redwoods region. In this portion of California, several timber companies are working with the Service in the section 10 HCP process. Two efforts have been completed that the Service believes will be successful in avoiding future conflict.

In other parts of the owls' range in California, some selective harvest techniques on non-Federal lands may be compatible with spotted owls. To address these areas, the State of California and a number of private companies have initiated the HCP process to develop timber harvest plans that are more compatible with owl conservation. The Service believes that the plans developed through this process may provide a basis for maintaining owls on private lands.

The Yakima Indian Nation in Washington practices predominately selective harvest methods. Similar to the methods in some parts of northern California, these methods may also be compatible with maintenance of an owl population. The Yakima Nation is in the process of conducting research on the effect of timber harvest practices on spotted owls to refine an owl management plan for their lands. The Service expects the Bureau of Indian Affairs and Indian Nations to continue to work towards the development of forest management plans on tribal lands that are compatible with spotted owls.

However, more data are needed to ascertain the compatibility between types of forest management and long-term spotted owl reproductive success, particularly if timber harvest is to be considered for designated areas such as HCAs (this should be done outside of HCAs until further data are available and supportive). Agencies should work with industry to continue to study the affects of different harvest techniques on owl presence and reproductive success to determine if (1) new harvest methods would shorten the time needed to produce suitable habitat, (2) if there are timber harvest prescriptions that would be more compatible with northern spotted owls, (3) whether the high owl densities reported by researchers on industrial timberlands can be sustained for the long-term, and (4) whether reproductive rates of spotted owls on managed forests are at a level that can be expected to sustain a viable owl population.

Biodiversity and Ecosystem Protection

The habitat of the northern spotted owl represents a unique ecosystem of diverse plant and animal species. Most attention has been directed toward

protection of the spotted owl, but this is only one of several hundred vertebrate species occurring in the Pacific Northwest (Bruce *et al.* 1985, Ruggierio *et al.* 1991). Among ecosystems in North America, the Pacific Northwest has one of the highest number of bird species, the most bird families (Harris 1984), the second highest number of mammal species (Raphael 1990), and many endemic or relic amphibian species (Bury 1988, Welsh 1990). This species richness and abundance depends to a large extent on the presence of mature and older forests (Ruggierio *et al.* 1991).

These forests play a major role in our environment (see Schamberger *et al.* 1991 for summary). Redwood and Douglas-fir forests accumulate more biomass than tropical rainforests (Franklin 1988). Reduced rotation rates and conversion to younger forests will lead to forests with closed single-layered canopies, smaller trees of similar size, less ground litter and snags, and a more simplified ecological system (Hansen *et al.* 1991). Research indicates that managed stands have fewer species and lower abundance of wildlife than older forests (e.g., Bury 1983; Raphael 1984, 1988; Corn and Bury 1989).

The forests provide protection to the soils, particularly on steep slopes, and maintain higher water quality with lower sediment yield. For example, prescribed burning of slash and cull logs reduces available cover by up to 95 percent (Bartles *et al.* 1985, Hartman and Scrivener 1990). The loss of cover exposes the soil to erosion and reduces or eliminates cover for terrestrial and aquatic species.

Rotation length also impacts the amount of soil loss. The more an area is logged, the more frequently the soil is exposed to erosive elements. For example, Frissell (1991) stated that increased erosion occurs for 15 years following logging. Thus a 100-year rotation exposes the soil 15 years out of 100 (15 percent), whereas a 60-year rotation exposes the soil to erosion 15 years out of 60 (25 percent of the time). Construction of logging roads increases the frequency of land mass failures and diminishes ecosystem stability, as evidenced by temporal fluctuations in abundance of aquatic fauna (Lamberti *et al.* 1991). For example, Amaranthus *et al.* (1985) reported that almost 1.5 million cubic yards of debris slide erosion occurred over a 20-year period on only 14 percent of Siskiyou National Forest, with an erosion rate of approximately ½ cubic yard per acre per year across the entire watershed; roads occupied 2 percent of the area inventoried, yet represented 60 percent of the slide volume. They reported that logging on Federal lands was associated with a 6-fold increase in slide volume, whereas adjacent private logging was associated with a 45-fold increase. Increased soil erosion has been reported in other studies as well (Furniss *et al.* 1991, Rice *et al.* 1979).

Huppert *et al.* (1985) note that environmental manipulations that simplify habitat have a direct, negative impact on fish population structure and abundance. Increased erosion rates and sedimentation decreases the productivity of aquatic systems, which in turn reduces fish populations, and results in smaller numbers of fish. Timber harvest also increases water temperature and may reduce dissolved oxygen levels when excessive organic litter enters streams (Hartman and Scrivener 1990, Hicks *et al.* 1991, Sedell and Swanson 1984).

Unlogged forests provide protection to soils, particularly on steeper slopes, and maintain higher water quality with lower sediment yield than logged sites. Anderson and Olson (1991) note that more than 50 percent of the large pool habitat for anadromous fish in the Northwest outside wilderness areas has been lost over the past 50 years. This has resulted in decreased survival in salmon and steelhead trout fry and results cumulatively in decreased populations of these fish (Phillips *et al.* 1975, Hicks *et al.* 1991, Hartman and Scrivener 1990).

Fish stocks have dramatically declined in the Northwest (Nehlsen *et al.* 1991); at least 106 populations of salmon and steelhead have already been extirpated on the West Coast. Many declining fish populations are found in or downstream from areas where logging and road building are evident (Hartman and Scrivener 1990). The river systems draining Northwest watersheds contain an abundance of salmon species as well as other instream fauna and flora. The designation of critical habitat is expected to reduce the amount of logging and thereby provide benefits in the form of reduced soil erosion, decreased sedimentation in streams, and increased habitat for these species.

Critical habitat designation may also help maintain important nesting habitat for migratory birds (e.g., neotropical migrants), many of which are seriously declining in numbers. Current international efforts to maintain tropical forest habitat in Central and South America may be enhanced by complementary efforts to maintain suitable habitat for species that nest in forests of the Northwest.

Designation of critical habitat for the northern spotted owl may benefit these and other forest species, particularly those that depend upon large blocks of older forest and occur within the designated areas. In 1990, the Service identified species that were candidates for listing as endangered or threatened and were found within the HCAs delineated by the ISC. The Service has updated that list to include those species that may benefit from designation of critical habitat for the spotted owl (a list is maintained in the administrative record). About 60 listed, proposed, and candidate species have been observed within areas designated as critical habitat. Although not all of the known locations of these species are found within critical habitat units, review of Federal actions under Section 7 of the Act may be of benefit to these species. Designation may be most beneficial to the marbled murrelet and salmon stocks that inhabit or depend on these areas, thus helping to reduce conflicts associated with these species.

The Scientific Panel has also identified areas that are important to maintaining such an ecosystem network within the range of the owl (Johnson *et al.* 1991). This effort addressed the owl and numerous other forest species and processes, and includes more acreage to accommodate these components of the ecosystem. For example, they concluded that current forest plans were inadequate to protect streams and salmon stocks in the Northwest. The Service has not had the opportunity to thoroughly review the product of this effort to determine its relationship to other potentially listed species; initial comparison would equate this critical habitat rule with alternative 6 to 8 out of the list of 14 alternatives (with number 14 being the most protective for all species).

Designation of critical habitat will contribute to the conservation and management of the Northwest's forests as one component in the management and maintenance of characteristic species and processes. Research is beginning to identify the importance of maintaining ecosystem processes upon which the stability of the system depends. In turn, the species and populations depend on that stability. Such functions as hydrology, bank stability, nutrient cycling, predator/prey cycles, fisheries restoration (e.g., salmon), and local microclimates are all interdependent. They can benefit from conservation approaches that focus on unity of the ecosystem as opposed to a piecemeal approach that does not take

into account the interrelationships of all processes.

Preservation of separate blocks of habitat, however, will not by itself contribute to ecosystem stability. Linkage among the blocks of habitat is a necessary component. Critical habitat designation may contribute to regional biodiversity by protecting natural ecosystems of sufficient size and quality to support native species, as well as protecting listed, proposed, and candidate species. Critical habitat may also help in retaining ecosystem values through a combination of preservation, conservation, and compatible management of forest habitat with emphasis given to older forest values and characteristics.

However, these are dynamic and complex issues that include both spatial and temporal components that are not addressed by the designation of critical habitat alone. Further research and evaluation of data will be necessary to understand the interrelationships of these species to older forests and whether management for the spotted owl will adequately provide for their conservation, perhaps reducing the need for listing of proposed and candidate species.

Summary of Comments and Recommendations

In the August 13, 1991, proposed rule and associated notifications, the Service requested all interested parties to submit factual reports or information that might contribute to the development of this final rule. On October 8, 1991, the Service published a notice (56 FR 50701) to correct errors in the legal descriptions contained in the August 13 proposal; on November 12, 1991, the Service published a notice (56 FR 57503) correcting two editorial errors on references contained in the August 13 proposal.

The public comment period was open from August 13, 1991, through October 15, 1991. During that period the Service conducted four public hearings on this issue at the following locations: Redding, California on September 9, 1991; Medford, Oregon on September 11, 1991; Olympia, Washington on September 17, 1991; and Portland, Oregon on September 19, 1991. The Service accepted testimony from the public from 1 to 4 p.m. and from 6 to 9 p.m. on each of those days. The Service announced the dates, times, and locations of the public hearings in the August 13, 1991 proposed rule (56 FR 40001). Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and asked to comment. In addition, on August 21, 1991, the Service published notices in the Olympia Olympian, the Oregonian, the Medford Mail Tribune, and the Redding Record Searchlight newspapers announcing the publication of the proposed rule, and the dates, times, and locations of the public hearings. All meetings were attended by at least one member of the Regional Directorate.

During the 60-day comment period, the Service received approximately 5,800 written comments. In addition, 286 people testified at the 4 public hearings. The Service received comments from the Forest Service, Bureau of Land Management, National Park Service, other Federal agencies, several elected officials, State agencies, environmental organizations, and representatives of the timber industry. About 56 percent of the comments were supportive of the proposal.

In addition, following the close of the public comment period on the May 6, 1991, proposed rule, the Service received nearly 10,000 letters and postcards. The Service did not consider these comments because the additional comment period began with the publication of the August 13, 1991, proposal, and the comments received between June 5, 1991, and August 13, 1991, pertained to a proposed rule that was out of date. The majority of the comments were from the general public. The Service appreciates the interest and concern expressed in these letters, however, very little biological or commercial data was provided during this or earlier comment periods.

Most of the letters and oral testimony received repeated issues raised in response to the May 6, 1991, proposal. The Service is not repeating those issues here, except where we have received new information that adds to or changes our earlier response. Members of the public interested in those issues previously raised should examine the "Summary of Comments and Recommendations" section, beginning on page 40020 in the August 13, 1991, proposal (56 FR 40001). The new issues raised during the public comment period announced in the August 13, 1991, proposal, whether written or oral are discussed below.

Landownership Issues

Issue 1: Several members of the public objected to the exclusion of the private lands from the August 13, 1991, proposal. They indicated that there was no legal basis for such a decision, that removal of the private lands limited recovery team options, and suggested that these lands be included in the final rule. Some members of the public saw the exclusion of private lands and inclusion of additional Federal lands in some areas as deceitful.

Service response: The Endangered Species Act requires that the designation of critical habitat take into consideration "* * * the economic impact, and any other relevant impact * * *." and make a determination as to whether the benefits of excluding those areas outweigh the benefits of including them so long as the action will not result in the extinction of the listed species. The Service made the decision to exclude non-Federal lands because it felt that the conservation benefits attributable to those lands did not outweigh the costs of their inclusion.

The information that the Service has indicates that many of these lands (primarily private) do not contain owl habitat and have very few spotted owls, although these lands may be important to the long-term recovery of the owl. In other areas, such as northern California where there is a fairly large amount of owl habitat on private lands, the State and private entities are currently involved in regulatory processes that will result in the development of HCPs for owls that will be of greater benefit than could be derived through critical habitat.

It is important to remember that excluding these areas from critical habitat does not exclude them from compliance under other legal requirements of the Act. They are still fully subject to section 7 consultation (jeopardy) and section 9 (take prohibition) requirements regardless of whether an area is critical habitat.

Issue 2: Many individuals still felt that the Service had designated too much habitat and indicated that the removal of 3 million acres indicated that the Service had erred in its first proposal and probably erred in its second.

Service response: The Service proposed designation of critical habitat for those areas that met certain criteria. Since critical habitat is not a plan to manage the owl or any species, the concept of "too much land" does not directly apply. The northern spotted owl has already lost a significant portion of its habitat, such that remaining habitat that meets the criteria should be identified and provided with additional protection to offset threats to extinction. As stated in the response to the above issue on excluding private lands, the Act also requires that consideration be given to economic or other factors that may influence the decision to include areas in critical habitat. The Service made this difficult decision and excluded over 4

million acres of lands from the designation. Although these lands are not part of the critical habitat proposal, they still are important in owl conservation.

Issue 3: The Service should specifically exclude private lands by legal description. Such areas that are subsequently acquired by a Federal agency, would not become automatically designated as critical habitat. Excluding private lands generically is ambiguous, in that such lands when acquired by a Federal agency should not be thought of as designated critical habitat unless the Service follows the appropriate regulations to designate these areas.

Service response: It is mechanically impossible for the Service to specifically exclude all private lands by legal description, particularly since many of these areas are intermingled with Federal lands and are less than 40 acre parcels. To accomplish this the Service has on file in its administrative record the U.S. Geological Survey topographic quadrangle maps. These show the actual boundaries of each critical habitat unit. If land exchanges are initiated, the activity would need to be reviewed under section 7; future decisions on including these areas in critical habitat would have to be weighed at that time.

Issue 4: The Service should withdraw the State-owned lands, particularly in southwest Washington. The commenters generally indicated that there is no biological difference between the habitat on these lands and adjacent private lands, and concluded that the Service's decision to exclude private lands but retain State lands was arbitrary. The State of Washington asked why private lands in these areas were not included. Some individuals also questioned the Service's belief that the States should have more responsibility with respect to carrying out the purposes of the Endangered Species Act than private entities, referring to a lack of any legal basis for such an opinion.

Service response: Although State laws provide for wildlife protection, some State lands were retained in the August 13 revised proposal because they have particularly high value for the conservation of the owl. Most were identified in the ISC Plan as recommended HCAs since these lands provide essential "stepping stones" for maintaining nesting habitat in a well-distributed manner throughout the range of the owl. Other State lands, contiguous with Federal lands, were included because they have some of the only remaining habitat outside of Federal lands in key areas, such as the Olympic Peninsula.

However, the Service, in further reviewing this issue, decided to exclude State lands because the economic and other relevant impacts exceed the benefits of designation. Most regulatory protection for critical habitat is provided through section 7 of the Act, which has little, if any, applicability to State lands. Further, since the majority of owls and owl habitat are found on Federal lands, the Service concluded that exclusion of these lands will not result in the extinction of the owl.

Issue 5: The Service failed to justify the exclusion of the tribal lands.

Service response: The situation on tribal lands is similar to that on other non-Federal lands. The Service used the same logic applied to private and State lands in determining to exclude tribal lands in the designation.

Issue 6: The Service should have recognized the sovereignty of the Indian nations when it excluded tribal lands.

Service response: The Service expects that all landowners, regardless of their status, will comply with the Act and will contribute to the conservation of the northern spotted owl.

Issue 7: The Service should exclude the Oregon and California lands, and should return the management of these lands to the counties.

Service response: The Service does not have the authority to transfer the management of any lands managed or owned by Federal or non-Federal entities to other entities. On the other hand, the Endangered Species Act applies to all landownerships and the Service carefully reviewed the biological situation before making a decision on the areas of habitat that should be included in critical habitat.

The majority of owls and owl habitat (about 85 percent) are currently found on Federal lands. These lands are particularly important in the State of Oregon because very little owl habitat remains on non-Federal lands in that state. The Oregon and California lands, managed by the Bureau, are more crucial to owl conservation than many other lands. The areas selected for inclusion in critical habitat fully met the Service's criteria for inclusion and help form the basis for owl conservation in Oregon. As a result of the exclusion process previously discussed, the Service made the decision to reduce the amount of lands in critical habitat for some Oregon counties that were affected the most by the designation. This was consistent with the mandates of the Act.

Issue 8: The Service received two petitions requesting that the counties of Douglas and Jackson, Oregon, be exempted from the mandates of the Endangered Species Act.

Service response: The Service has considered the portion of these petitions that refer to critical habitat and, as requested in the petitions, has considered the economic costs of designating critical habitat in those areas. As a result of this process and in addition to the earlier decision to remove private lands from the proposal, the Service reduced an additional amount of acres from Forest Service and Bureau lands in these counties. That has reduced the expected economic impacts from designating critical habitat in those two counties (similar decisions were also made in other affected counties).

The Service does not have the authority to exclude anyone from compliance with Federal laws. Further, the exclusion of areas from critical habitat does not exclude these areas from consideration under other legal obligations of the Act, such as sections 7 and 9. The Recovery Team is considering the roles of the different landownerships in its deliberations and will describe these in its draft plan.

Issue 9: The Service should clearly exclude all activities that were approved prior to the designation of critical habitat.

Service response: In carrying out the requirements of the Act to consider the economic and other relevant factors, the Service made the decision to exclude from critical habitat all sold and awarded timber sales (as of the date of the August 13 proposal) and to exclude all existing projects that are either in place or that have thoroughly completed all their Federal and State permitting processes as of the publication date of this final rule. The Service made the decision to exclude these activities because it felt that the conservation benefits gained by regulating these activities did not outweigh the costs. An example of such an exclusion is sold and awarded timber sales where the costs for the Federal government to buy back these sales outweighs the benefits of designating these areas as critical habitat. However, any changes in these activities are not excluded and would require Service review. In addition, excluding these activities from critical habitat does not imply that they are no longer subject to sections 7 or 9 of the Act. They must still undergo review and be in compliance with the Act.

Issue 10: A number of commenters requested either site-specific additions to or deletions from critical habitat. A

number of suggestions for more effectively designating critical habitat in certain areas, such as specific ranger districts, were provided to the Service by persons familiar with site-specific conditions.

Service response: These cases generally involved rather major changes in critical habitat units. The Service has evaluated each of these specific requests and has included, within its administrative record, written explanations of whether or not the recommendation was accepted and recommendations for the future treatment of some of the requested major changes. In order to make such major adjustments, the Service would need to publish another revised proposal to allow for the greatest possible public input. The Service can revise critical habitat at any time in the future, by following the standard procedures used to designate critical habitat. In addition, the Service will reevaluate its designation following the completion of a recovery plan for the owl, and at that time will very likely consider some of these recommendations.

The Service intends to work with land management agencies and the Recovery Team, through section 7 consultation, to refine the management direction for critical habitat. Publication of this final rule does not eliminate flexibility in managing areas for spotted owls.

General Issues

Issue 11: The Service did not consider the comments received on the May 6, 1991, proposal. Many members of the public seemed to be frustrated and questioned the worth or value in providing comments again. Many people pointed out that 88 percent of the commenters on the May 6 proposal opposed the designation and reminded the Service that in a democracy such overwhelming opposition should be sufficient to stop an action, yet the Service has issued a second proposal. Some indicated that they did not want to be told that the Service must adhere to the provisions of the Endangered Species Act and other regulations.

Service response: The Service has considered input from the public and appreciates the effort required to write letters and present oral testimony. All of the information presented was considered in the development of both the August 13, 1991, proposal and this final rule. The Service's intent has been to publish a final rule that is as accurate and effective as possible. The Service is bound by laws and regulations and cannot violate these mandates because some members of the public object. Furthermore, individuals who submit comments on an issue very likely have rather strong feelings on that issue and sometimes submit more than one letter or testify at more than one hearing. The Service does not regard the relative proportions of various comments received as being indicative of the views of the public as a whole, nor is this a relevant factor under either the Endangered Species Act or the Administrative Procedures Act. The comments received on the August 13, 1991, proposal that were in favor of the proposed action slightly outnumbered those against.

Issue 12: The Service should not have used the ISC Plan to designate critical habitat because that plan did not use the best available scientific information. The individuals involved in the ISC Plan merely used their personal judgment when developing the plan. The ISC accepted the plan as valid because they could not disprove it as a hypothesis. Some commenters challenged specific critical habitat units and unit spacing patterns, indicating that the Service had violated the basic rules established by the ISC (e.g. critical habitat units in Douglas County).

Service response: The ISC was comprised of the most knowledgeable owl experts in the Pacific Northwest. Their plan was thoroughly peer reviewed by nationally respected scientists and is considered a scientifically credible and authoritative document that will play a major role in spotted owl conservation. The HCAs were considered to be the cornerstone of the ISC Plan and they are presently being adhered to by the Federal land management agencies. As a result, the Service accepted the HCAs because they represent the best scientific efforts available and are essential to the conservation of the species.

However, the ISC Plan contains a second important component that is an integral part of the ISC strategy, the 50–11–40 rule to govern forest management in the forest matrix outside of the HCAs. Critical habitat is not a plan and does not contain this second component. The Service's intent in not violating ISC rules on spacing was to ensure that to the extent possible critical habitat units would not be spaced further apart than the distances recommended by the ISC. Although the Service assumes that 50–11–40 or some other credible rule will be applied to these lands, reducing distances between critical habitat units would improve short-term linkage.

Issue 13: The Service's approval of Sierra Pacific's management plan suggests that critical habitat is unnecessary.

Service response: Sierra Pacific submitted a forest management plan that was intended to show how their forest practices would not result in "take" (under section 9) of spotted owls. The Service concurred that activities conducted in accordance with that plan will not result in take of owls. This does not imply that this is a plan for managing viable populations of owls. However, critical habitat is not a management plan, and a plan of this nature does not factor into the biological consideration of critical habitat. The Service did, however, take this type of activity into account when it made the decision to exclude private lands from critical habitat due to economic and other considerations.

Issue 14: The Service should consider the Industry's plan for conserving spotted owls in lieu of designating critical habitat.

Service response: The Recovery Team for the Northern Spotted Owl, designated by the Secretary of the Interior, is reviewing that plan (Wildlife Committee 1991) to determine its relevance to the recovery of the owl. The Service believes that this is a more appropriate forum for review of this type of document at this time since it focused on owl management; the plan generally focused on reserved areas which are already protected. The ideas and concepts in the document were brief and had not been peer-reviewed, and the type of information useful to consideration of critical habitat was not provided. Until the recovery planning process is complete and the Recovery Team has had a thorough opportunity to review the Industry's plan, the usefulness of that or other documents in owl conservation is inconclusive.

Issue 15: The Service should more carefully describe the primary constituent elements and should describe the elements contained in each critical habitat unit.

Service response: The Service concurs with this request and the final rule has more clearly stated the criteria and their application. Information on the elements contained in each individual critical habitat unit are included in the individual unit narratives (USFWS 1991e and contained in the Service's administrative record for this decision).

Issue 16: The Service should only designate currently occupied areas as critical habitat.

Service response: The Service focused on existing and currently occupied habitat in developing this rule. However, the Act clearly states that areas in need of special management (inside or outside of the current range of the listed

species) can be included in a designation of critical habitat. In reviewing the situation surrounding the northern spotted owl, the Service made the decision that in some areas (e.g., areas of concern) there was a need to include habitat that was not currently occupied or was not of similar quality to other habitat included. Recovery of the owl is dependent upon improvement in the quantity, quality, and/or arrangement of habitat. Thus, currently unoccupied habitat must be allowed to achieve suitability for owls.

Issue 17: Critical habitat is not legally determinable, because the agencies have not agreed upon a consistent definition of suitable habitat. The expansion of the definitions of what constitutes habitat for the owl calls the decision to list the owl into question, since habitat loss was the basis for that decision.

Service response: Forests naturally vary due to a number of factors, such as site productivity, microclimate, soil condition, rainfall, fire, and disease. They further vary as a result of forest practices. As a result, the use of the term suitable to adequately describe one set of consistent parameters throughout the species range would be impossible and incorrect. However, the term can be used generically to describe owl habitat in terms of general characteristics. Habitat that currently contains known pairs of reproducing owls can be clearly identified on existing maps. This is what the Service concentrated on in developing its proposal to designate critical habitat.

There has always been considerable confusion over what constitutes owl habitat from old growth to second growth. Those terms are probably more misleading and misused than the term suitable. Suitable generally refers to nesting and roosting habitat which is typically older forest stands or mixed age stands with remnant older trees. Regardless of the age of the forest in which owls are found, the problem of habitat loss, habitat modification and fragmentation, and rapid and continual conversion to younger stands to a condition that does not support owls has been determined by the Service, the ISC, and other groups to constitute a threat to the survival of the spotted owl.

Issue 18: Modern road building and logging methods are less environmentally damaging now that they were in past decades, and the Service fails to take this into account in describing effects of logging and roads on regional water quality, fisheries, and biodiversity. You have not considered the beneficial effects of new forestry and alternative means of harvesting timber.

Service response: Frissell (1991) notes that, although it is anticipated that newer techniques will reduce impacts, these techniques are untested. He further states that (1) the newer techniques will still be environmentally damaging, and will be applied over a larger geographic area, resulting in continued degradation of watersheds and receiving streams; and (2) the remaining old growth is often located in steeper terrain so the risk of soil movement from road construction and tree removal is greater. Although newer techniques exist, they may not be applied in a widespread or uniform manner.

Issue 19: There is still an inadequate description in the rule as to what constitutes allowable activities in critical habitat. For example, timber harvest that is consistent with owl habitat protection should be permitted. The public is entitled to a more specific description about restrictions, and exactly what constitutes adverse modification of critical habitat.

Service Response: The Service agrees with this comment and attempted to provide more specific information. However, it is difficult for the Service to identify every type of action and not prejudge the outcome of section 7 consultation. As the land managing agencies work with the Service, together they can identify courses-of-action that will benefit the owl and maintain certainty within the timber communities.

Economic Issues

Issue 20: The Service is underestimating impacts by separating impacts from the listing process and from the designation of critical habitat.

Service response: The Endangered Species Act specifies that the listing of species should occur without consideration of economic costs, whereas the Act specifies that the designation of critical habitat should consider economic and other costs. Listing a species provides protection to that species under the jeopardy standard and incidental take whereas designating critical habitat provides additional protection through the adverse modification standard. These are intended to be separate standards to be addressed through section 7 consultation. The economic analysis clearly identifies the costs and benefits of these independent and incremental actions, and is not an effort to underestimate costs. The total cost of conserving the spotted owl is greater than the cost of designating critical habitat alone, and includes the costs of prior owl protection measures under other laws and costs resulting from listing under the Act, as well as the cost of designating critical habitat.

Issue 21: The Service uses an improper baseline from which to assess economic impacts. The Service should use the 1983–1987 period as the baseline. It is inappropriate for the Service to use the "Actual or Projected Final Plans Plus ISC Plan" as the baseline for analysis. This minimizes the effects of designating critical habitat.

Service response: This issue is further addressed in the Economic Analysis Report (USDI 1991a) and summarized in the final rule. The historically high harvest rates of the 1983–1987 period were not sustainable, and this is recognized in the Final Plans of the agencies. The structure of the economic analysis is to look at the expected effects in the future both "with" and "without" critical habitat designation. In the "without" scenario, timber harvest levels would be reflected in the agencies' final plans adjusted for the ISC which is the basis used by the Service to determine the level of impact when critical habitat is designated. The Federal agencies do not intend to continue harvesting at the higher 1983–1987 rates, and to use this as a baseline would be misleading.

Issue 22: The Service improperly assumes the implementation of all or part of the ISC report as a pre-existing condition.

Service response: The ISC was established primarily in response to existing and ongoing lawsuits that began before the listing of the owl; the ISC was not chartered to respond to the Act. Subsequent to the listing of the owl, the Forest Service stated that it would follow the intent of the ISC recommendations in their management plans, and the Bureau in the Jamison strategy agreed to implement, to the extent possible, recommendations of the ISC. Although the Bureau has recently changed its approach to owl management, it has not completed its planning activities. The ISC is correctly identified as a pre-existing condition that should be identified as a separate impact from the designation of critical habitat.

Issue 23: In reporting the costs of critical habitat designation only the "incremental" costs over and above the Final Plans plus ISC are mentioned as being attributable to critical habitat designation, but in using examples of recreational benefits the report uses all of the acres. If the ISC Plan was "in effect" for determining costs then it should also have been "in effect" for

determining benefits. If the Service uses an incremental analysis to address costs, then the same increment must be used to assign benefits.

Service response: The Service agrees with this comment and has revised the final economic analysis to reflect a discussion of incremental cost and benefit analysis. Costs and benefits should both be on the same basis to provide a correct comparison.

Issue 24: The Service should show the total impacts of not harvesting critical habitat areas. That is the most likely result of designation and it will effect management plans for the next 100 years, not just through 1995. The critical habitat proposal is just another set-aside that locks up land from human use.

Service response: The final economic analysis presents a realistic scenario of the future and assumes that some short-term harvesting will occur in the critical habitat areas outside the HCAs. The designation of critical habitat is intended to be a temporary measure to provide protection to the habitat so it can recover, and anticipates a reduced rate of harvest of older forests in the short-term. The option to harvest timber in these areas is not foregone, but rather is available in the future. Conversely, the option to harvest now is essentially an irreversible commitment of resources (at least a 100-year commitment) which precludes recovery of owl habitat. Effects will continue beyond 1995; this year was used as a point in time when full effects of the action would occur it was not intended to imply that effects would stop at that time.

Issue 25: The economic studies cited by the Service in its discussion of benefits have major flaws. They rely heavily on a controversial economic methodology called the "contingent valuation method," as well as the concept of nonuse values. These methods and concepts use no market data on which to base the estimation of benefits, instead relying on responses by individuals confronted with hypothetical situations who know they will never have to pay in any event.

Service Response: Though empirical applications of the contingent valuation method continue to be controversial, there is a growing body of evidence that supports the practical usefulness of resulting value estimates. In the past decade, an extensive body of literature has developed assessing the accuracy of the contingent valuation method (CVM) of estimating individual willingness to pay for the recreational use of environmental resources. Initial results were challenged on the grounds that what people say they are willing to pay, contingent on the availability of an environmental resource, represent behavioral intentions rather than a directly observable action or historical fact. More recently, the relationship between intentions and actual behavior has been submitted to systematic empirical investigation. Despite some continuing controversies and unsettled points, CVM studies of the recreational benefits of environmental resources have performed reasonably well when compared to the available empirical evidence from travel behavior, actual cash transactions, and controlled laboratory experiments. Levels of accuracy have been reasonable and consistent with levels obtained in other areas of economics and in other disciplines. Contingent valuation can be applied with confidence to estimate use value of nonmarket consumption, and the initial studies of nonuse preservation values held by the general population also are encouraging, i.e. not significantly different from psychological measures of preferences for forest quality. CVM and psychological studies of values and preference patterns yield scientific data that are testable by replication and other methods.

Contingent valuation is particularly appropriate for comparing benefits and costs of a proposed wildlife preservation program. The reason is that the decision is made in the present based on expectations about the future. CVM is *ex ante*, i.e., before the fact, in the sense that willingness to pay (WTP) responses represent behavioral intentions rather than *ex post*, i.e., after the fact, actions, which are less relevant to benefit-cost analysis of proposed programs.

Issue 26: Jobs are being lost because of a lack of a predictable Federal timber supply.

Service response: The unpredictable nature of Federal timber sales in the Northwest is an unfortunate effect of several Federal actions, including historic overharvest and the designation of critical habitat for the owl and recent court decisions. Once the critical habitat designation is complete, a recovery plan for the spotted owl adopted, and the court actions are resolved, Federal land management agencies will be able to determine a more predictable supply of timber from Federal lands.

Issue 27: There was inadequate discussion about social impacts.

Service response: The Service has added a section in the final Economic Analysis Report that reviewed existing studies as well as comments submitted by the public. A summary section was added to the final rule.

Issue 28: The Service is attempting to shift blame from owl conservation to mechanization and log exports; the effect of mechanization is misleading and automation will not continue to be a major cause of job loss in the future.

Service response: The Service recognizes that the economic impacts due to critical habitat designation are in addition to the impacts due to other factors, including mechanization and log exports. Mechanization has and will continue to result in job losses in the industry, but this is necessary if the timber industry of the Northwest is to remain competitive with other industry sectors. In the recent past, jobs have been lost at a rate of 1.8 percent per year, but this rate is expected to decline because many of the recent innovations have now been implemented in local mills. However, industry experts believe that job losses due to mechanization will continue at about 1.2 percent per year over the next several decades. Exporting logs from local communities also exports associated secondary processing opportunities (value added). However, in a free trade economy, there is a welfare gain when exporters receive a higher premium for their logs in the export market, thereby providing higher profit levels for domestic firms.

Issue 29: Reducing log exports will do little to help loggers. In 1990, the US imported into the United States more wood products than it exported, so it is clear that we are a net importer of wood products in this country.

Service response: Reducing exports will not increase logging and hauling jobs, which amount to about 1.1 jobs per million board feet of timber. However, reducing log exports could increase the number of secondary processing jobs in the northwest, which amount to about direct 11–13 jobs per million board feet. Each billion board feet of exported timber represents about 11,000–13,000 timber industry jobs.

Issue 30: The owl will have a significant impact on small businesses.

Service response: The Service has determined that the critical habitat designation will not have a significant impact on small business in an analysis required by the Regulatory Flexibility Act. The total impact of all owl protection measures may have a significant impact on small businesses, but the incremental effect of designating critical habitat will impact only 848 direct industry jobs, and has been determined to not, by itself, be a significant impact to small businesses over the three-State area.

Issue 31: Access corridors to private lands are included in critical habitat, therefore, critical habitat will effect private landowners. Timber values on

private lands requiring access through Federal lands would be reduced if Section 7 consultations restrict access. Impacts to private lands should be addressed in the report.

Service response: The Service anticipates being able to work with other Federal agencies to minimize effects on private landowners. The Service recognizes that consultation may, in some limited cases, result in modified access to private lands, but cannot quantify the economic effects.

Issue 32: A quantitative (but non-dollar) assessment is also necessary to assure that the proposed critical habitat is cost-effective. Cost-effectiveness requires that the desired level of owl protection be achieved at the lowest possible cost in terms of other lost resource values, principally lost timber values.

Service response: Cost-effectiveness as defined by the commenter and the benefit-cost analysis required by the Endangered Species Act are two different things. The Act requires that benefits be compared to costs so long as species extinction is not the result. The designation of critical habitat is economically viable when the benefits are greater than the costs. The designation of critical habitat is not economically viable when the costs are greater than the benefits. In the economic analysis, the Service must weigh the conservation and other benefits of habitat protection against the economic and social costs of reduced timber harvest. The commenter's cost-effectiveness definition is more restrictive than the benefit-cost test; the Service has not measured the appropriateness of critical habitat designation using the commenter's definition of cost-effectiveness.

Issue 33: The exclusion process needs to explicitly take account of the value of timber foregone, which is clearly the largest cost of the designation.

Service response: The value of timber foregone is defined as the value of the economic rent of the timber and has been included in the Service's economic analysis. The economic rent is the amount of Federal revenue that comes from the sale of timber from public lands. This measure of the value of timber foregone is a major component of the total cost estimate.

Issue 34: The Service failed to quantify opportunity costs of timber set-asides.

Service response: The opportunity costs of timber set-asides is the loss of Federal revenue due to the restriction of logging on Federal land. This loss estimate is included in the economic analysis.

Issue 35: The assumption that stumpage prices are expected to rise significantly by 1995 because of the shortage of stumpage volume brought about by the listing and critical habitat designation is at variance with the Forest Service land management planning assumptions that Forest Service timber supplies will exhibit a horizontal demand curve.

Service response: The Forest Service land management planning assumption that the demand curve for timber will be horizontal has no bearing on the assumption that stumpage prices will rise significantly by 1995. The economic factors that determine consumer demand do not influence industry supply, i.e., the factors that propel upward stumpage prices. The assumptions of increased stumpage prices are based on industry and Forest Service data that support this determination.

Issue 36: The American people have the right to know the true costs of these proposals in lost taxes, lost wages, and increased costs in housing and paper products.

Service response: The effect on lost taxes and increased housing costs are not estimated in the Economic Analysis Report because they are transfer costs and not measures of economic efficiency. Many of these effects are regional in nature, and are mitigated by compensating mechanisms in the industry in other production areas. An estimate of lost wages is included in the final economic analysis.

Issue 37: The use of county-based assessments underestimates job losses and associated impacts on adjacent counties.

Service response: The focus of part of the economic analysis at the county level may have appeared to underestimate job losses, but modifications to the IMPLAN model, job response coefficients, and indirect multipliers used by the Service were intended to fully display all job losses in the Region. Expansion of the IMPLAN model to a sub-region level further provided a mechanism to fully address all job losses. However, by focusing at the county level, some jobs may have been assigned to one county that were lost in an adjacent county, but this effect is expected to be minimal, and the total job loss in the region should be estimated properly.

Issue 38: The Service used an indirect multiplier of about 1.6; this seems low, since others use multipliers of up to 2.2 to arrive at both direct and indirect jobs.

Service response: The Service's use of a lower multiplier was counterbalanced by the use of a higher estimate of direct job coefficients. The Service's economic analysis defined the size of the "direct" timber industry to be greater than the definitions used in some of the other analyses. The higher job coefficients, when combined with the lower multiplier, arrived at job impact estimates within the ranges of those reported in other studies.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major rule under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within critical habitat units, it is not clear whether significant economic impacts will result from the critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Takings Implications Assessment

The Service has analyzed the potential takings implications of designating critical habitat for the owl in a Takings Implications Assessment prepared pursuant to requirements of Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights." The Takings Implications Assessment concludes that the designation does not pose significant takings implications.

References Cited

A complete list of all references cited herein is available upon request from the Portland Regional Office (see ADDRESSES above).

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Authors

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The economic summary was prepared by Mel Schamberger, U.S. Fish and Wildlife Service (see ADDRESSES section); John Charbonneau and Michael Hay, U.S. Fish and Wildlife Service, Office of Policy, Budget, and Administration, Washington, DC; and Richard Johnson, U.S. Fish and Wildlife Service, National Ecology Research Center, Fort Collins, Colorado.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is hereby amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. § 17.11(h) is amended by revising the "Critical habitat" entry for "Owl, northern spotted", under BIRDS, to read "17.95(b)".

3. § 17.95(b) is amended by adding critical habitat for the northern spotted owl (*Strix occidentalis courino*) in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) * * *

NORTHERN SPOTTED OWL (*Strix occidentalis courino*)

For the States of California, Oregon, and Washington, critical habitat units under Federal jurisdiction are depicted on maps maintained on file at the U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 911 Northeast 11th Avenue, Portland, Oregon 97232–4181 (503/231–6131). Copies of these maps are available upon request at the requester's expense.

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The general configuration of the California areas are illustrated on the map which follows:

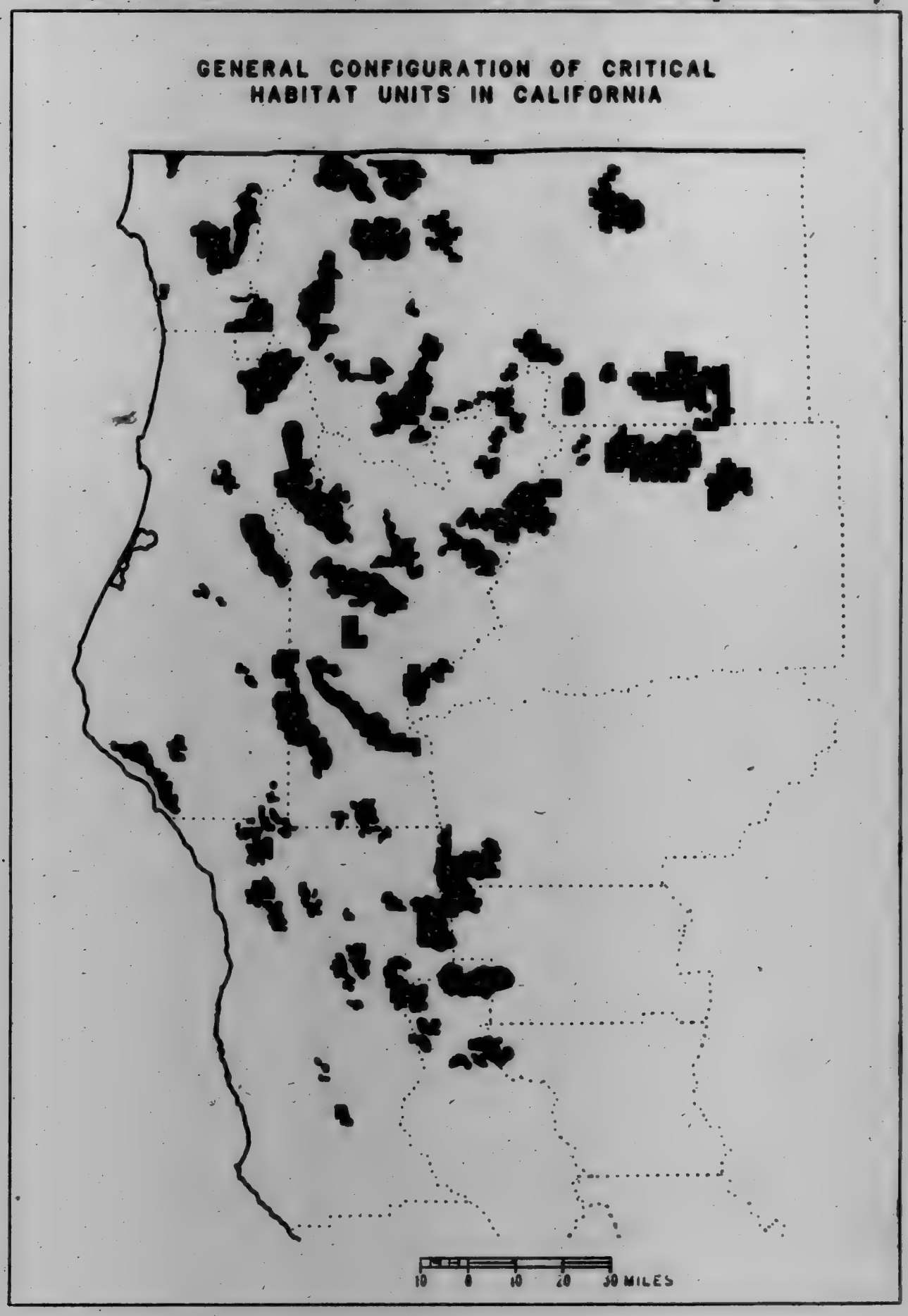

The general configuration of the Oregon areas are illustrated on the map which follows:

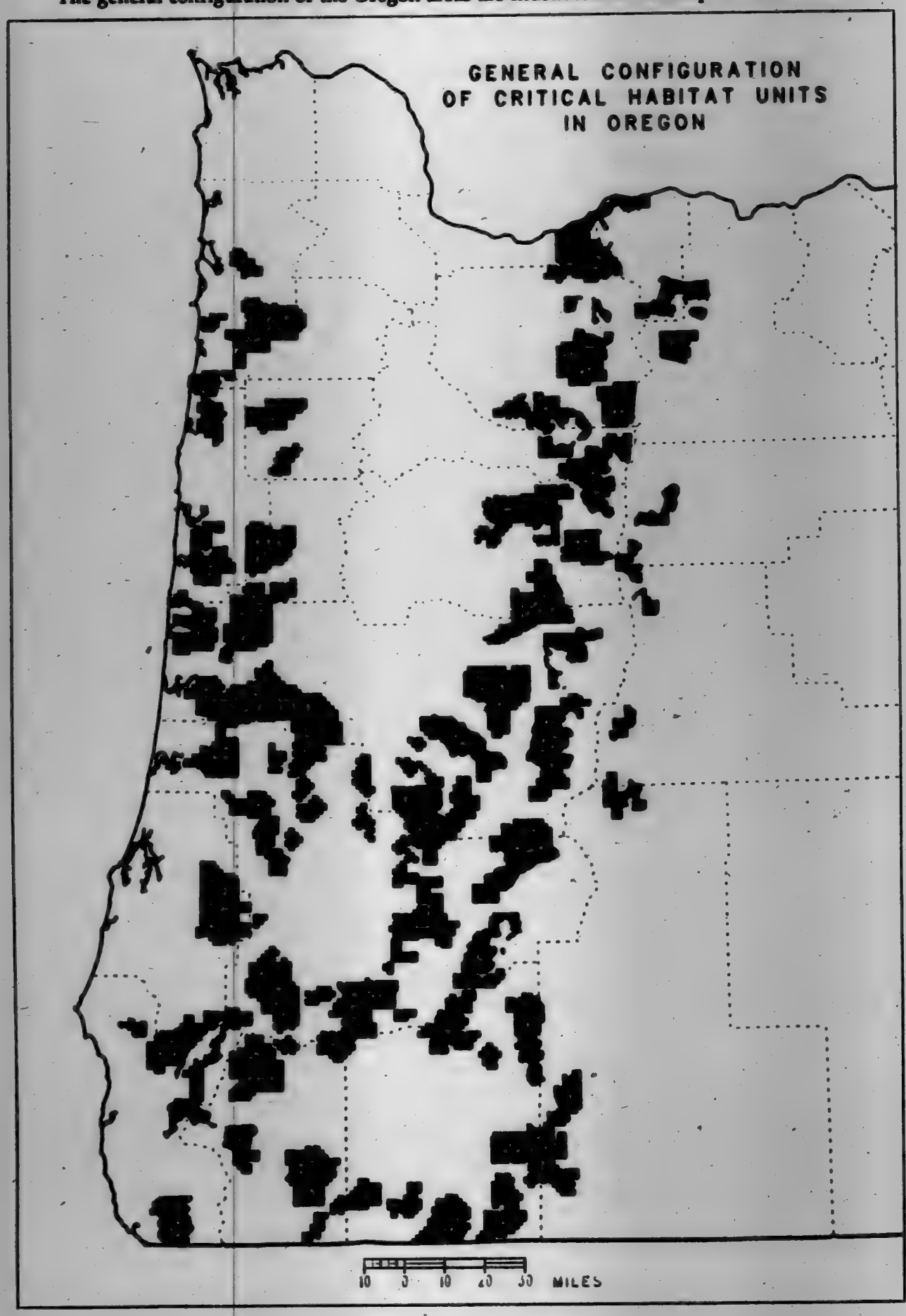

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The general configuration of the Washington areas are illustrated on the map which follows:

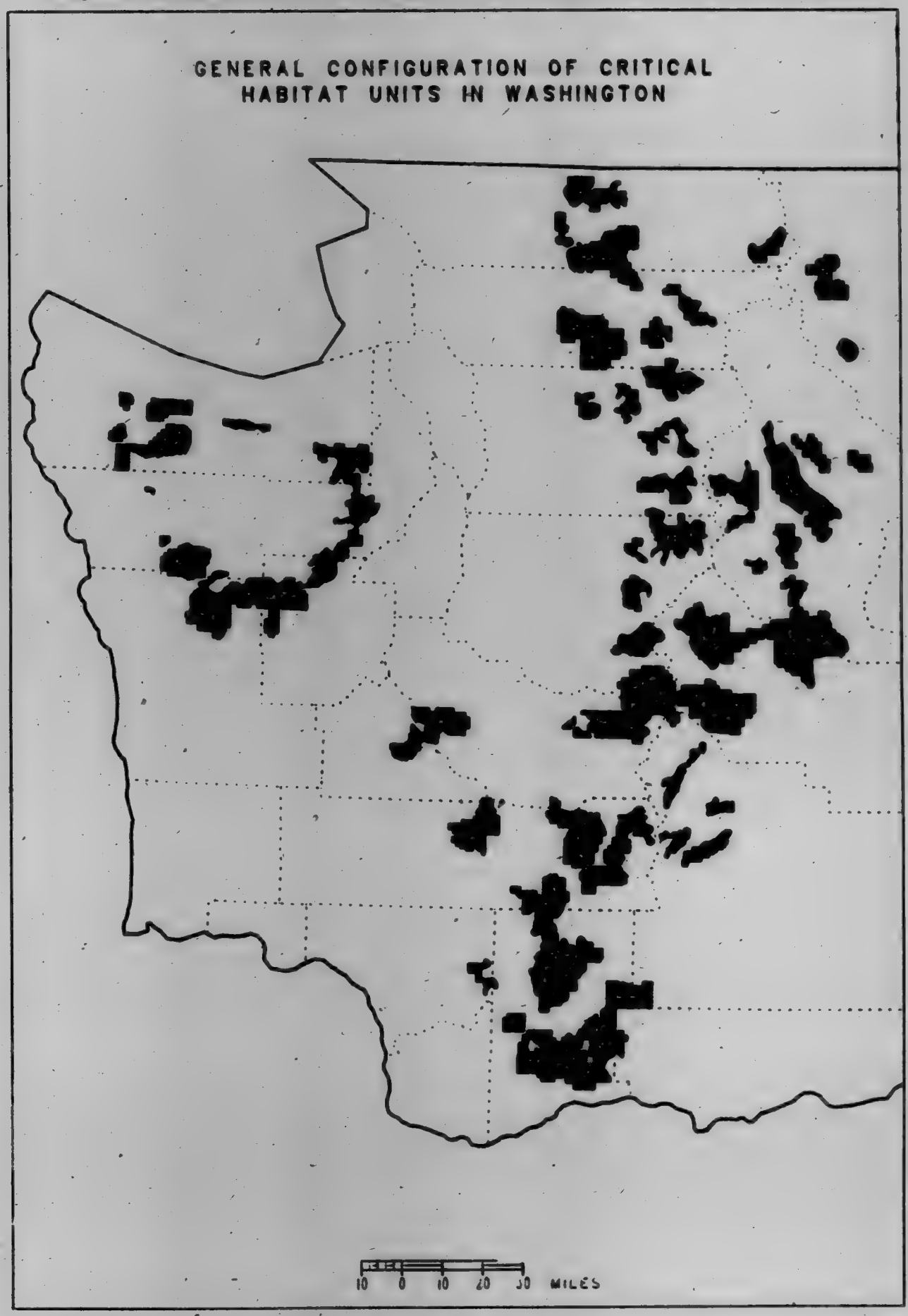

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Primary constituent elements: forested lands that are used or potentially used by the northern spotted owl for nesting, roosting, foraging, or dispersing.

Dated: January 8, 1992.

John F. Turner,

Director, Fish and Wildlife Service.

[FR Doc. 92-874 Filed 1-14-92; 8:45 am]

BILLING CODE 4310-55-M

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federal register

Wednesday
January 15, 1992

Part III

Department of Agriculture

Cooperative State Research Service

Grants and Cooperative Agreements; Availability, etc.: Special Research Program; Aquaculture Research; Notice

VOL 57 ISS 10 JA 15 1992 UMI

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program, Aquaculture Research; Fiscal Year 1992; Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants Program, Aquaculture, Research, for fiscal year 1992.

The authority for this program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Public Law No. 89–106, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101–624 (7 U.S.C. 450i). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the program discussed below. Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals from scientists at non-United States organizations will not be considered for support.

Please note that Section 734 of the Fiscal Year 92 Appropriations Act, Public Law No. 102–142, states: "None of the funds in this Act shall be available to pay indirect costs on research grants awarded competitively by the Cooperative State Research Service that exceed 14 percent of total direct costs under each award."

Applicable Regulations

Regulations applicable to this program include the following: (a) The Administrative Provisions governing the Special Research Grants Program, 7 CFR part 3400 (56 FR 58146, November 15, 1991), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (c) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; (d) the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended; and (e) New Restrictions on Lobbying, 7 CFR part 3018.

Introduction to Program Description

Standard grants will be awarded to support basic studies in selected areas of aquaculture research. Consideration will be given to proposals that address innovative as well as fundamental approaches to the research areas outlined below and that are consistent with the mission of USDA. Program subareas and guidelines are provided below as bases from which proposals may be developed:

Program Area

1.0 Aquaculture Research

CSRS Contact: Dr. Meryl Broussard; Telephone: (202) 401–4061.

Funds will be awarded to support research seeking solutions to health problems of major finfish species. A total of approximately $299,320 will be available for this program area for fiscal year 1992. Up to $80,000 will be awarded for the support of any one project under this program area.

The objective of this program is to fund research to enhance the knowledge and technology base necessary for the continued growth of the domestic aquaculture industry as a form of sustainable agriculture. Emphasis is placed on research leading to improved production efficiency and increased competitiveness of private sector aquaculture in the United States. Because of limited funds for this program, only proposals focused on commercially important finfish species in the specific subareas of Disease and Parasite Control (1.1) and Integrated Aquatic Animal Health Management (1.2) will be considered.

The specific objective of this research is to improve aquatic animal health management practices in aquaculture.

Research should be directed toward:

1.1 Disease and Parasite Control

Studies to clarify high-priority infectious and noninfectious diseases and parasites and their interactive effects on aquatic animal health; development of improved methods of detecting disease agents or antibodies in aquatic animals; clarification of disease pathogenesis; determination of methods of disease transmission; development of improved methods of immunization against disease agents that will provide solid and persistent protection without compromising diagnosis; development of alternative disease eradication methods so as to limit the use and dependence on biotoxic substances; development of other disease prevention, control and eradication technology; and epidemiology and the evaluation of the economics of disease and disease prevention or control.

1.2 Integrated Aquatic Animal Health Management

Interdisciplinary studies aimed at reducing acute and chronic losses related to aquatic animal health in aquacultural production systems through an integrated holistic approach including studies in the following areas; physiological stress related to the quality of the aquatic production system; genetic, environmental and nutritional components of aquatic health management.

Utilizing the recommendations of the peer panels, the Administrator of CSRS will make the final determination on specific grants to be awarded.

How To Obtain Application Materials

Copies of this solicitation, the Grant Application Kit, and the Administrative Provisions governing this program, 7 CFR part 3400, as amended (56 FR 48146, November 15, 1991), may be obtained by writing to the address or calling the telephone number below: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, Washington, DC 20250–2200. Telephone: (202) 401–5048.

What To Submit

An original and nine copies of each proposal submitted are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of each proposal must include a Form CSRS–661, "Grant Application." Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS–661 and the other required forms and certifications are contained in the Grant Application Kit.) It should be noted that the November 1990 version of the Grant Application Kit must be used, as previous versions are obsolete.

Members of review committees and the staff expect each project description to be complete in itself. Grant proposals must be limited to 15 pages (single-spaced) exclusive of required forms, the summary of progress for any prior

Aquaculture Special Research grants, bibliography, and vitae of the principal investigator(s), senior associate(s) and other professional personnel. Reduction by photocopying or other means for the purpose of meeting the 15-page limit is not permitted. Attachment of appendices is discouraged and should be included only if pertinent to understanding the proposal. Reviewers are not required to read beyond the 15-page maximum to evaluate the proposal.

All copies of a proposal must be mailed in one package and each copy must be stapled securely in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the guidelines contained in the Administrative Provisions that govern the Special Research Grants Program, 7 CFR part 3400, as amended.

Where and When To Submit Grant Applications

Each research grant application must be submitted by the date set forth below to: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, Washington, DC 20250–2200. Telephone: (202) 401–5048.

Please Note: Hand delivered proposals or those delivered by overnight express service should be brought to: Room 303, Aerospace Center, 901 D Street, SW., Washington, DC 20024.

To be considered for funding under the Special Research Grants Program, Aquaculture Research, during fiscal year 1992, proposals must be postmarked by March 2, 1992.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Special Requirements

On Form CSRS–661 provided in the Grant Application Kit, the Special Research Grants Program should be indicated in Block 7, and "Aquaculture Research 1.0" should be indicated in Block 8.

Investigators and co-investigators who have received Special Research Grant awards in the Aquaculture area during the past five years must include a brief summary of progress and a list of publications resulting from such grants.

Supplementary Information

The Special Research Grants Program is listed in Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final Rule-related Notice to 7 CFR part 3014, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., this 9th day of January 1992.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 92–988 Filed 1–14–92; 8:45 am]

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federal register

Wednesday
January 15, 1992

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Housing Counseling; Notice of Funding Availability

VOL 57 ISS 10 JA 15 1992 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-92-3335; FR 3090-N-01]

Housing Counseling; Funding Availability

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Funding Availability (NOFA) for FY 1992.

SUMMARY: This Notice announces the availability of funding for Fiscal Year (FY) 1992 for HUD-approved housing counseling agencies to provide housing counseling to homebuyers, homeowners, and renters, as set forth in HUD Handbook No. 7610.1 REV-2, dated September 1990 (the Handbook). An applicant must, as of the date of issuance of the Request for Grant Application (RFGA) based on this NOFA, be a HUD-approved housing counseling agency, and must be able and willing to provide, at a minimum: (1) Delinquency and default counseling to renters and homeowners; and (2) related counseling under HUD's single family mortgage assignment program. Exceptions to these two requirements are applicants approved by HUD to provide ONLY tenant counseling or Home Equity Conversion Mortgage counseling, or prepurchase counseling, including the counseling of tenants to purchase their rental unit. An applicant agency may offer any other aspect(s) of counseling set forth in the Handbook, including Home Equity Conversion Mortgage counseling. Housing counseling services not covered by the Handbook do not qualify for eligibility for funding under this NOFA.

In the body of this document is information concerning: The purpose of this NOFA; eligibility for funding; available funding; selection criteria; and the application process, including how to apply for funding, and how selections will be made.

DATES: The application due date will be specified in the application kit, but it will be no earlier than February 28, 1992. Application kits (Request for Grant Application—RFGA) will be available from the Regional Contracting Officer in the HUD Regional Office that serves the area in which the applicant agency is located. Application kits will be available on and after January 15, 1992. Applications are due in the HUD Regional Office that serves the area in which the applicant agency is located on February 28, 1992. The RFGA will specify the time by which the application must be submitted to the HUD Regional Office. Please see Section II of this NOFA for further information on what constitutes proper submission of an application.

FOR FURTHER INFORMATION CONTACT: Thomas Miles, Program Advisor, Single Family Servicing Division, Department of Housing and Urban Development, room 9178, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-1672, or (202) 708-4594 (TDD number). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2535-0084.

I. Purpose and Substantive Description

A. Authority and Background

1. Authority: Sec. 106, Housing and Urban Development Act of 1968 (12 U.S.C. 1701x); secs. 235, 237 and 255 of the National Housing Act, as amended; and HUD Handbook 7610.1, REV-2, dated September 1990.

2. Background. Section 106 of the Housing and Urban Development Act of 1968 (section 106) authorizes HUD to provide a program of housing counseling services to designated homeowners and tenants. The program authorized by section 106 (Housing Counseling Program) is divided into two distinct components: the housing counseling services and requirements provided under section 106(a), and those services and requirements provided under section 106(c).

Section 106(a) authorizes HUD to provide counseling and advice to tenants and homeowners with respect to property maintenance, financial management and such other matters as may be appropriate to assist tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership. With respect to homeowners, section 106(a) states that the above-described services shall be provided to homeowners with HUD-insured mortgages; first-time homebuyers with guaranteed loans under section 502(h) of the Housing Act of 1949 (home loans guaranteed by the Farmers Home Administration); and homeowners with loans guaranteed or insured under chapter 37 of title 38, United States Code (home loans insured or guaranteed by the Department of Veterans Affairs).

Section 106(c) authorizes homeownership counseling only (no tenant counseling) and defines a homeowner eligible for counseling under this section as a homeowner whose home loan is secured by property that is the principal residence of the homeowner, who is unable to correct a home loan delinquency within a reasonable time. Section 106(c) defines "home loan" as a loan secured by a mortgage or lien on residential property.

Under the Housing Counseling Program, HUD contracts with public or private organizations to provide the housing counseling services authorized by section 106(a) and section 106(c). When the Congress makes funds available to assist the Housing Counseling Program, HUD announces the availability of such funds, and invites applications from eligible agencies, through a notice published in the **Federal Register**. An agency that is approved by HUD as a housing counseling agency does not automatically receive funding. The agency must apply for such funding under a Request for Grant Application (RFGA) issued by HUD through its Regional Offices. The purpose of the housing counseling program is to promote and protect the interests of HUD, HUD-approved and other mortgagees, and housing consumers participating in HUD approved and other housing programs.

B. Allocation Amounts

1. Total Available Funding. A total amount of $6,025,000 was appropriated for housing counseling by the HUD Appropriations Act of 1992. Of that amount, the Act appropriates $350,000 for a prepurchase counseling and foreclosure prevention counseling demonstration. The National Affordable Housing Act of 1990 (the Act) authorizes up to $2,000,000 for the establishment of a toll-free telephone number through which interested parties may obtain lists of HUD-approved housing counseling agencies.

Of the $6,025,000, HUD will use $225,000 to help resolve two litigation matters in Texas and Boston that involve housing counseling; $150,000 to continue the toll-free telephone number in Fiscal Year 1992; $148,510 to provide training for the Home Equity Conversion Mortgage (HECM) Program; and $350,000 for a prepurchase counseling and foreclosure prevention counseling demonstration. HUD will make the

remaining $5,150,490 available for the counseling services specified in the Act. This amount will be allocated for counseling activities as follows:

Activities	Millions
a. Housing counseling services under section 106(a) of the Housing and Urban Development Act of 1968	$3,325,490
b. Emergency Homeownership Counseling under section 106(c) of the Housing and Urban Development Act of 1968	1,825,000
Total Allocation for Counseling Services	5,150,490

2. Allocation of Funds to Regional Offices. HUD Headquarters will allocate the $5,150,490 available for housing counseling services to its ten Regional Offices. The basis for the allocation is the percentage of HUD-insured single family mortgage defaults within each Region, compared to the nationwide total. Under this plan, the Regions are required, in so far as possible, to award grants in relation to the number of defaults within HUD Field Office jurisdictions. The amounts allocated to the Regions for Fiscal Year 1992 (based on the $5,150,490) are as follows:

Region	Defaults	Percentage*	Allocation
I	1,765	1.00	51,537
II	11,801	6.69	344,578
III	16,285	9.23	475,508
IV	44,222	25.07	1,291,243
V	29,956	16.98	874,689
VI	31,632	17.93	923,626
VII	5,105	2.89	149,061
VIII	9,539	5.41	278,504
IX	22,566	12.79	658,907
X	3,522	2.00	102,839
Totals	176,392	100	5,150,490

* Percentages have been rounded.

3. Grant Awards by HUD Regional Offices. Regional Offices will make an equitable awarding of allocated housing counseling funds to eligible HUD-approved housing counseling agencies based upon documented need in relation to:

a. The amount of funds available; and

b. The number of successful applicants. (A determination of a "successful" applicant is based on the applicant's ability to meet the selection criteria, as specified in Section I.D of this NOFA.)

4. Announcement of Awards. In accordance with the requirements of section 103 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and HUD's implementing regulations at 24 CFR part 4, no selection information will be made available to applicants or other persons not authorized to receive this information during the period of HUD review and evaluation of the applications. However, applicants that are declared ineligible or late will be notified. In accordance with section 102(a)(4)(c) of the HUD Reform Act, HUD will notify the public, by notice published in the Federal Register, of award decisions made by HUD under this funding.

5. Grantee Reimbursement by HUD. HUD will reimburse grantees on the basis of not more than $35.00 per "counseling unit" which is defined as a documented face-to-face, written, or telephonic contact between:

a. The grantee's housing counselor and a client; or

b. The grantee's housing counselor and a mortgagee, landlord, service agency, creditor, credit reporting agency, governmental agency, realtor or employer, acting on behalf of a client, which results in an action or decision that:

(1) Identifies, clarifies, or assists in meeting or meets the client's housing need; or

(2) Assists in resolving or resolves the client's housing problem.

(See HUD Handbook 7610.1 REV–2, dated September 1990, paragraph 1–7 on page 1–6 for a definition of "client," "housing need," and "housing problem.")

C. Eligibility

Eligible applicants include public and private nonprofit entities with a current approval by HUD as housing counseling agencies, under the provisions of HUD Handbook No. 7610.1 REV–2, dated September 1990, or its earlier versions. Current approval includes agencies that are on record at the applicable HUD Field Office as having been approved as a HUD counseling agency as of the date of issuance of the RFGA based on this NOFA. Agencies for which HUD has withdrawn this approval or have indicated in writing their withdrawal from the counseling program are NOT eligible. Agencies with "conditional" re-approvals are NOT eligible unless they satisfy HUD's requirements for removal of the "conditional" approval by the due date of applications for funding under this notice.

D. Selection Criteria

1. General Criteria. HUD, through its Regional Contracting Officers, will award housing counseling grants in Fiscal Year 1992 to selected eligible agencies. Within each Region, an eligible agency is a HUD-approved housing counseling agency that is:

a. Located within the Region's geographical jurisdiction; and

b. Provides, or proposes to provide, housing counseling within that Region. (Application eligibility and grant authority do NOT cross regional boundaries.)

2. Specific Criteria. Applications for funding under this notice will be reviewed, and grants will be awarded on the basis of an evaluation of all of the following criteria:

a. Amount requested by the grantee;

b. If the applicant had a HUD housing counseling grant in 1987, 1988, 1989, 1990, or 1991, the applicant's use of those funds;

c. Applicant's documented client workload*

(*"Workload" refers to the number of clients, as defined in HUD Handbook No. 7610.1 REV–2, dated September 1990, reported by the applicant on Form HUD–9902, Housing Counseling Agency Activity Report, for 1991);

d. Client workload total for all applicants within a HUD Regional Office;

e. Amount of housing counseling funds allocated to the HUD Regional Office by Headquarters;

f. Reimbursement of grantees by HUD on the basis of $35.00 per housing counseling unit;

g. Regional Offices' documented need for housing counseling services within the areas served by the applicants;

h. HUD's assessment of the applicant's previous performance as a HUD-approved housing counseling agency (i.e. Biennial Performance Review), including the submission of the required reports.

i. In the case of previous grantees, the applicant's performance under such grants in accordance with the terms of the grant agreement, including the submission of the specific reports required under the grant agreement.

II. Application Process

A. Obtaining and Submitting Applications

Applicants for grants may obtain copies of the Request for Grant Application (RFGA) from the Regional Contracting Officer in the HUD Regional Office that serves the area in which the applicant agency is located. The RFGA contains the application submission address. A list of the Regional Offices and their addresses follows the text of this NOFA.

B. Application Deadline

The application due date will be set out in the application kit, but it will be

no earlier than February 28, 1992. The RFGA contains the time by which the HUD Regional Office must receive a grant application. "Submit" means delivery to the HUD Regional Office specified in the RFGA and by the application due date and time specified in the RFGA. A proper submission in response to the RFGA must conform to the specifications in the RFGA. HUD will not accept changes made by applications to the forms, certifications and assurances, except for those specified in section IV.A of this NOFA.

III. Checklist of Application Submission Requirements

An applicant must submit three different types of written submissions: forms, certifications, and assurances. An applicant must submit three sets of each written submission, as specified below, with supporting documentation only as specified in the RFGA. Applicants must limit the submission of material to that required by the individual form, certification or assurance. HUD will not consider extraneous material and will discard it.

A. Forms

Each applicant will be required to submit the following completed and signed forms:

1. Standard Form 424, Application for Federal Assistance.

2. Standard Form 424B, Assurances—Non-construction Programs.

B. Certifications

Each applicant will be required to submit, at a minimum, the following certifications:

1. Certification of a Drug-Free Workplace, in accordance with the Drug-Free Workplace Act of 1988 and HUD's regulations at 24 CFR part 24, subpart F.

2. Anti-Lobbying certification in accordance with section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), and the regulations at 24 CFR part 87.

C. Assurances

Each applicant will be required to submit, at a minimum, assurances regarding the applicant's housing counseling program to the effect that:

1. The applicant agency received its approval by HUD prior to the date of issuance of the applicable RFGA, and currently has approval from HUD. If a Biennial Performance Review has not been made by the HUD Field Office, then a prior approval constitutes a current approval.

2. The applicant agency provided housing counseling to clients* during 1991 as indicated on the applicant's Form HUD–9902, Housing Counseling Agency Activity Report, for 1991. The applicant must submit with their response to the RFGA a copy of their 1991 Form HUD–9902. An applicant approved by HUD after December 30, 1991, must submit Form HUD–9902 for 1991 as part of its application. (*See HUD Handbook No. 7610.1 REV–2 (September 1990) for a definition of "client.")

3. HUD has or has not conducted a performance review of the applicant agency's housing counseling program; whether, as a result of the review, HUD re-approved the agency unconditionally or conditionally; whether, if HUD granted a conditional approval because of certain agency performance deficiencies, the applicant agency corrected the deficiencies to HUD's satisfaction.

4. If the applicant agency received a counseling grant from HUD during HUD's fiscal year 1987, 1988, 1989, 1990, or 1991, the agency complied with all grant requirements.

5. The applicant agency submitted all reports required during the most recent report year under the Handbook, and the grant document, if any.

6. The number of clients listed as the applicant's documented housing counseling client workload for 1991 is correct.

7. The agency can and will commence counseling services immediately upon receipt of the notice of the award of a counseling grant to the applicant agency.

8. The applicant will provide, at a minimum, the following types of counseling (exceptions are agencies approved by HUD to perform only Home Equity Conversion Mortgage (HECM) counseling or tenant counseling):

a. Delinquency and default counseling to home buyers and homeowners, and delinquency counseling to renters; and

b. Mortgage assignment counseling to mortgagors with HUD-insured mortgages having potential for assignment to HUD under the assignment program.

9. The agency had an independent financial audit during the past twenty-four (24) months.

10. The applicant administers its housing counseling program in accordance with title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

11. The applicant provides its service without any conflict of interest on the part of the applicant, including its staff, that might compromise the agency's ability to represent fully the best interests of the client in accordance with HUD Handbook No. 7610.1 REV–2, dated September 1990.

12. The applicant's clients reside in the U.S. Postal Service ZIP Code areas listed by the applicant.

IV. Corrections to Deficient Applications

Immediately after the deadline for submission of applications, applications will be screened to determine whether all items were submitted. Applicants will be given an opportunity to cure nonsubstantive deficiencies in their applications. The applicant must submit corrections within 14 calendar days from the date of HUD's deficiency notification or the application will not be considered.

A. Curable Deficiencies

The kinds of deficiencies which can be cured after the submission date for applications has passed are limited to the following:

1. Lack of required signature(s) on the following documents or certifications:

a. Standard Form 424B, Assurances—Non-Construction Programs.

b. Certification of Drug-free Workplace.

c. Anti-Lobbying Certification.

2. Failure to submit any of the above documents or certifications.

B. Noncurable Deficiencies

Failure to submit:

1. A completed and signed Standard Form 424, Application for Federal assistance.

2. A signed Housing Counseling Program assurance and all of its required documentation. Failure to submit these items will be considered a non-response to the RFGA.

Note: HUD WILL NOT NOTIFY APPLICANTS WHO FAIL TO SUBMIT ANY OF THE ABOVE TWO REQUIRED DOCUMENTS. FAILURE TO SUBMIT THE DOCUMENTS CONSTITUTES A NON-RESPONSE TO THE RFGA.

V. Other Matters

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative

Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Prohibition Against Lobbying of HUD Personnel

Section 112 of the Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) (HUD Reform Act) added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 contains two provisions concerning efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 29912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 or 708–1112 (TDD). These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquires to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics, (202) 708–3815. (This is not a toll-free number.)

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Federalism, Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. Specifically, the purpose of the funding under this notice is to provide grants to public and private agencies that assist and advise housing consumers about how to develop competence and responsibility in meeting their housing needs.

G. Family, Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this document may have potential for significant beneficial impact on family formation, maintenance, and general well-being to the extent that the activities of grantees will provide families with the counseling and advice they need to avoid rent delinquencies or mortgage defaults, and to develop competence and responsibility in meeting their housing needs. Since the impact on the family is considered beneficial, no further review under the Order is necessary.

H. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program number is 14.169.

Authority: Secs. 100, Housing and Urban Development of 1968; secs 235, 237 and 255 of the National Housing Act, as amended; and HUD Handbook No. 7610.1, REV–2, dated September 1990.

Dated: December 30, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

HUD Regional Offices

Address all inquiries to U.S. Department of Housing and Urban Development, Attention: Regional Contracting Officer, in the Regional Office that serves your State. Telephone numbers are NOT toll-free.

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222–1092, (617) 835–5161.

Region II—New Jersey, New York

26 Federal Plaza, New York, NY 10278–0068, (201) 349–1845.

Region III—Delaware, Maryland, Pennsylvania, Virginia, Washington (D.C.), West Virginia

Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106–3392, (215) 597–8165.

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Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, GA 30303–3388, (404) 841–4084.

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

626 West Jackson Boulevard, Chicago, Illinois 60606–5601, (312) 353–6093.

Region VI—Arkansas, Louisiana, New Mexico, Oklahoma, Texas

1600 Throckmorton, Post Office Box 2905, Fort Worth, TX 76113–2905, (817) 728–5452.

Region VII—Iowa, Kansas, Missouri, Nebraska

Professional Building, 400 State Avenue, Kansas City, KS 66101–2500, (913) 757–2102

Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Executive Tower Building, 1405 Curtis Street, Denver CO 80202–2349, (303) 564–3363.

Region IX—Arizona, California, Hawaii, Nevada

Phillip Burton Federal Building and U.S. Court House, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, CA 94102–3448, (415) 556–7913.

Region X—Alaska, Idaho, Oregon, Washington

Arcade Plaza Building, 1321 Second Avenue, Seattle, WA 98101–2058, (206) 399–7662.

[FR Doc. 92–1001 Filed 1–14–92; 8:45 am]

BILLING CODE 4210–27–M

VOL 57 ISS 10 JA 15 1992 UMI

federal register

Wednesday
January 15, 1992

Part V

Environmental Protection Agency

40 CFR Part 141

National Primary Drinking Water Regulations; Analytical Techniques; Coliform Bacteria; Final Rule

VOL 57 ISS 10 JA 15 1992

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH-FRL-4012-9]

National Primary Drinking Water Regulations; Analytical Techniques; Coliform Bacteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In an earlier notice (54 FR 27544; June 29, 1989), EPA approved the use of the Minimal Medium ONPG–MUG (MMO–MUG) Test for total coliform analysis for compliance with the maximum contaminant level (MCL) for total coliforms under the Safe Drinking Water Act (SMWA). (ONPG is ortho-nitrophenyl-β-D-galactopyranoside; MUG is 4-methylumbelliferyl-β-D-glucuronide.) On January 8, 1991, EPA deferred approval of the MMO–MUG Test for *Escherichia coli (E. coli)* detection. The Agency also restricted transferring cultures (i.e., subculturing) from total coliform-positive MMO–MUG tests. Today's action relieves this restriction.

EFFECTIVE DATE: January 15, 1992.

ADDRESSES: The supporting documents cited in the reference section of this notice and other pertinent information are available for review at EPA's Drinking Water docket, 401 M Street, SW., Washington, DC 20460. For access to the docket materials, call (202) 260–3027 on Monday through Friday, excluding Federal holidays, between 9 a.m. and 3:30 p.m. Eastern Time for an appointment.

FOR FURTHER INFORMATION CONTACT: Paul S. Berger, Ph.D., Office of Ground Water and Drinking Water (WH–550D), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260–3039; or the Safe Drinking Water Hotline, telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 8:30 a.m. to 5 p.m. Eastern Time.

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I. Statutory Authority

The SDWA requires EPA to promulgate National Primary Drinking Water Regulations (NPDWRs) which include MCLs or treatment techniques (section 1412). NPDWRs also contain "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to insure compliance with such levels * * *" (section 1401(1)(D)). In addition, section 1445(a) of the SDWA authorizes the Administrator to require monitoring to assist in determining whether persons are in compliance with the requirements of the SDWA. EPA's promulgation of analytical techniques is authorized under these sections of the SDWA. EPA has promulgated analytical techniques for all currently regulated drinking water contaminants; persons must use one of the approved analytical techniques for determining compliance with the MCLs (see 40 CFR 141.21–30). Today's action removes a constraint in the use of a previously approved method for detecting total coliform bacteria.

II. Regulatory Background

On June 19, 1989, EPA promulgated revised regulations for total coliforms (54 FR 27544, June 29, 1989), with an effective date of December 31, 1990. Paragraph 141.21(f) of those regulations approves four analytical methods for testing for the presence of total coliforms, including the MMO–MUG Test. Paragraph 141.21(e) requires public water systems to test all total coliform-positive cultures for the presence of either fecal coliforms or *E. coli*. EPA proposed three analytical methods for *E. coli* on June 1, 1990, and promulgated two of them on January 8, 1991.

The Agency deferred final action on one of the proposed methods for *E. coli* detection, the MMO–MUG Test (also referred to as the Autoanalysis Colilert System), because public commenters raised questions about its ability to detect low densities of environmentally stressed *E. coli*. This issue, the false-negative rate, is not addressed by today's action. Data provided by one commenter led the Agency to consider whether to allow transfer (subculture) from a total coliform-positive (but *E. coli*-negative) MMO–MUG tube to an EPA-approved *E. coli* medium. In the preamble, the Agency indicated that it would consider additional data to determine if such transfers should be permitted. The Agency's decision to give further consideration to subculturing effectively meant that laboratories could not use the MMO–MUG Test for determining compliance with the total coliform rule. This subculture issue is the subject of today's action.

III. Discussion

Today's action removes the limitation imposed by the Agency's further study on subculturing, and allows a laboratory to transfer a total coliform-positive, MUG-negative (i.e., *E. coli*-negative) culture by the MMO–MUG Test to an EPA-approved *E. coli* test. This is accomplished by minor adjustments to the already approved subculturing procedures specified in the January 8 rule for other tests.

The MMO–MUG Test is designed to identify both total coliforms and *E. coli* in a single container. The *E. coli* portion of the test is based on the ability of *E. coli* to produce the enzyme beta-glucuronidase, which hydrolyzes the 4-methylumbelliferyl-beta-D-glucuronide (MUG) contained in the medium to form 4-methylumbelliferone, which fluoresces when exposed to ultraviolet light (366 nm). The MUG reaction is also the basis for the EC+MUG test and Nutrient Agar+MUG test, both of which were approved by EPA for *E. coli* testing in the January 8, 1991, rule.

As stated above, EPA deferred the use of subculturing from the MMO–MUG Test until data were available to show that an initially low density of stressed *E. coli* would grow in the MMO–MUG Test medium, within the prescribed 28 hour incubation time, to a sufficiently high density. A high density is needed to allow a laboratory to transfer (i.e., subculture) and *E. coli*-positive, but MUG-negative, culture to an approved *E. coli* test, using a pipet, loop, or other standard microbiological transfer technique.

EPA developed a testing protocol to examine the transfer question, and this protocol was reviewed by EPA's Science Advisory Board. The protocol describes an approach for determining if initially low numbers of chlorine-injured *E. coli* in total coliform-positive cultures by the MMO–MUG Test could be transferred to and detected by the EPA-approved EC Medium+MUG. EPA funded a study using the transfer protocol which indicated that initially low levels of *E. coli* do reach sufficiently high levels after 28 hours of incubation to allow for successful transfer. This is true for both MUG-positive and MUG-negative MMO–MUG tests. The protocol used and the final report of the study are in

the EPA's Drinking Water Docket for *E. coli*.

In this study, Dr. Pipes of Drexel University found that all MUG-positive cultures from the MMO–MUG Test (total of 88) were also MUG-positive in EC Medium + MUG. These data support the view that few false-positives are associated with the MMO–MUG Test. Of the 32 MUG-negative cultures from the MMO–MUG Test, 10 and 11 cultures were MUG-positive in EC Medium + MUG using a calibrated loop (0.01 ml) or pipet (0.1 ml), respectively, for transfer. Based on Dr. Pipes' statistical analysis of the data, it is likely that most or all of the remaining MUG-negative MMO–MUG cultures (total of 21) were *E. coli*-negative. These data indicate that MUG-negative, but *E. coli*-positive, cultures from the MMO–MUG medium can be successfully transferred.

Based on this analysis, EPA concludes that stressed *E. coli* in MUG-negative cultures can grow to a density sufficient for successful transfer by a pipet. Of the eleven MUG-negative MMO–MUG cultures that were MUG-positive in EC Medium + MUG, however, only five were MUG-positive in EC Medium + MUG medium when the original MUG-negative MMO–MUG cultures were diluted by a factor of 10 or 100 before transfer. This suggests that, in some cases, the density of initially stressed *E. coli* only barely reached levels that allowed for successful transfer.

Given the data above, EPA believes that *E. coli* usually will either produce a MUG-positive reaction after 28 hours of incubation, or, if MUG-negative, can be successfully subcultured to EC Medium + MUG. For this reason, today's action allows laboratories to transfer a total coliform-positive MMO–MUG Test culture to an EPA-approved *E. coli* medium. The Agency cautions, however, that any such transfer is to be conducted on a 28-hour culture, rather than a 24-hour culture. EPA believes a 28-hour incubation time is sufficient to allow initially low densities of stressed *E. coli* to reach sufficiently high densities to allow transfer by standard microbiological procedures.

As stated above, EPA's primary uncertainty about the MMO–MUG Test is the false-negative rate. As discussed in the preamble to the notices of June 1, 1990, and January 8, 1991, and in the Comment/Response document to the final rule, EPA believes the false-positive rate for the *E. coli* portion of the MMO–MUG Test is low. For this reason, EPA believes that a total coliform-positive culture which fluoresces (i.e., MUG-positive) must be considered *E. coli*-positive. Thus, the Agency does not believe it necessary for a laboratory to subculture a MUG-positive result to an already approved *E. coli* medium.

IV. Notice and Comment

As noted above, comments on the *E. coli* methods focused on the false-negative rate of the MMO–MUG test in certain circumstances. As a result of these concerns, EPA deferred a decision on the use of the MMO–MUG test to detect *E. coli* pending additional analysis of this false-negative issue. Recognizing the continuing interest by the public in this issue, the Agency indicated in the January 8, 1991, notice, that it would present any new data in a notice of availability and seek public comment on whether to approve the MMO–MUG test as proposed earlier. One commenter questioned whether transfer from an MMO–MUG test to an EPA-approved medium should be allowed. While the January notice indicated that additional data on this subculturing issue would be provided for comment, the Agency has since concluded that for the reasons discussed below, public comment is unnecessary.

The comment on subculturing raised a minor technical issue. The Agency developed additional data to address the concerns raised by the commenter. Based on analysis of those data, the Agency has concluded that minor adjustments to the existing transfer methodology permit transfer from the MMO–MUG Test to an EPA-approved medium for *E. coli* detection. These adjustments do not substantially alter the framework of the already-approved transfer methodology. Moreover, these adjustments remove the barrier preventing use of the MMO–MUG Test for total coliform detection, a method already approved by the Agency.

V. Effective Date

This rule is effective on the date of publication, rather than 30 days from publication, as provided by the Administrative Procedure Act. EPA believes there is good cause for this rule to be effective immediately. This amendment relieves a restriction in the revised total coliform rule, and will benefit public water systems by allowing them to use an analytical method for total coliforms that the Agency has already approved. This approved method has the advantage of ease of application and therefore will provide an overall public benefit.

VI. Regulation Assessment Requirements

A. Executive Order 12291

Executive Order 12291 requires EPA to judge whether a regulation is "major" and, if so, to prepare a regulatory impact analysis. A rule is considered major if it has an economic impact of $100 million or more, causes a significant increase in cost or prices, or any of the other adverse effects described in the Executive Order. Since the objective of this rule is merely to allow a previously approved analytical method for total coliforms to be used, EPA has determined that this action is not a major rule within the meaning of the Executive Order. Water systems/laboratories may use the MMO–MUG Test for total coliforms or continue using other previously-approved methods. Therefore, there will not be any adverse economic impacts.

This notice was submitted to the Office of Management and Budget for its review under the Executive Order.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of proposed regulations on small entities. If there is a significant effect on a substantial number of small systems, means should be sought to minimize the effects. The Small Business Administration defines a small water utility as one which serves fewer than 3,300 people. Under this definition, this rule would affect about 200,000 small systems.

This final rule is consistent with the objectives of the Regulatory Flexibility Act because it will not have a significant economic impact on small entities. The rule allows the use of an already approved analytical method for total coliform analysis. Since use of the *E. coli* tests is optional, and EPA is not promulgating any new requirement, the Agency believes that the impact of this notice would not have a significant effect on a substantial number of small entities.

C. Paperwork Reduction Act

This rule contains no information collection requirements and consequently is not covered by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

D. Science Advisory Board, National Drinking Water Advisory Council, and Secretary of Health and Human Services

In accordance with section 1412 (d) and (e) of the Safe Drinking Water Act,

the Agency consulted with the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services and took their comments into account in developing the proposed rule on *E. coli* methods. In addition, the Agency submitted a copy of the transfer protocol to the Science Advisory Board for review, and revised it according to their comments.

List of Subjects in 40 CFR Part 141

Chemicals, Microorganisms, Indians—land, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

VII. References

Pipes, W. 1991. The transferability of *Escherichia coli* from MMO–MUG media for detection in drinking water samples. Report submitted to the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water.

Dated: January 7, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 141 of title 40 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4 and 300j–9.

2. Section 141.21 is amended by redesignating paragraph (f)(7) as paragraph (f)(8), and by adding a new paragraph (f)(7) to read as follows:

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(7) If a system uses the MMO–MUG Test for total coliform detection, it must test all total coliform-positive cultures for fluorescence. To test for fluorescence, use an ultraviolet light (366 nm) in the dark after incubating the tube or container at 35 ± 0.5°C for 24–28 hours. If fluorescence is observed, the sample is *E. coli*-positive. If fluorescence is not observed, transfer a 0.1 ml, 28-hour culture to EC Medium + MUG with a pipet. The formulation and incubation conditions of EC Medium + MUG, and observation of the results are described in paragraph (f)(6)(i) of this section.

* * * * *

[FR Doc. 92–1070 Filed 1–14–92; 8:45 am]

BILLING CODE 6560–50–M

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federal register

Wednesday
January 15, 1992

Part VI

Department of Transportation

Coast Guard

33 CFR Part 157

Draft Regulatory Impact Analysis, Including Regulatory Flexibility Act Analysis, and Finding of No Significant Impact for Double Hull Standards for Tank Vessels Carrying Oil; Notice of Availability

VOL 57 ISS 10 JA 15 1992 UMI

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

[CGD 90-051]

RIN 2115-AD61

Draft Regulatory Impact Analysis, Including Regulatory Flexibility Act Analysis, and Finding of No Significant Impact for Double Hull Standards for Tank Vessels Carrying Oil

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared a draft Regulatory Impact Analysis (RIA), including a Regulatory Flexibility Act Analysis, an Environmental Assessment (EA), and a draft Finding of No Significant Impact (FONSI) on the human environment for double hull standards for tank vessels carrying oil. The draft RIA is part of a programmatic RIA which will address the individual and cumulative impacts from all the regulations issued under titles IV and V of the Oil Pollution Act of 1990 (OPA 90). The Coast Guard will accept comments on both the draft RIA and the draft FONSI.

DATES: Comments must be received on or before February 14, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 90-051), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-6740. Comments may be faxed to the Executive Secretary at (202) 267-4163. The Executive Secretary maintains the public docket. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

Copies of the draft RIA, the EA, and the draft FONSI for double hull standards for tank vessels carrying oil are available for inspection and copying at the above address.

Copies of the draft RIA, the EA, and the draft FONSI may also be obtained by contacting Mr. Bruce Novak, Manager, Clearance and Coordination, OPA 90 Staff, (202) 267-6189. Although there is no fee for the EA and the draft FONSI, high production costs for the draft RIA require a $25.00 per copy fee. Checks should be made payable to the U.S. Treasury.

FOR FURTHER INFORMATION CONTACT: Mr. Albert J. Klingel, Jr., OPA 90 Staff, (202) 267-6818.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. Persons submitting comments should submit their name and address, identify the docket (CGD 90-051) and the specific section of the documents to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Background and Discussion

The Coast Guard intends to conduct a comprehensive, programmatic Regulatory Impact Analysis (RIA) for all the regulations to be issued under Titles IV and V of the Oil Pollution Act of 1990 (Pub. L. 101-380) (OPA 90). Such a comprehensive document is required under Executive Order 12291, "Improving Government Regulations", and the Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034). The programmatic RIA for Titles IV and V will contain sections which deal with the impacts of each individual rulemaking and relate them to an assessment of impacts in total. Interactions among individual elements will be analyzed. For example, operational measures contained in one part of OPA 90 could enhance overall effectiveness while reducing the particular benefits initially attributed to vessel construction standards.

The first draft section of this programmatic RIA addresses the double hull requirement for construction of new tankers, as required by section 4115(a) of OPA 90 (46 U.S.C. 3703a) and the resulting phaseout of existing tankers. As additional rulemakings under the authority of titles IV and V of OPA 90 are developed, supplementary sections of the RIA will be made available to the public for comment. Some of those rulemakings, which are deemed neither significant nor major under DOT policies will be excluded from the RIA. Others will be grouped together for evaluation due to the similarity in the subject areas covered.

A separate file (CGD 91-207) has been established to facilitate review of the programmatic RIA for titles IV and V of OPA 90. A copy of this draft RIA, together with all comments received pertaining to the draft, will be placed in that file. As the regulatory evaluation documents prepared for other rules issued under titles IV and V of OPA 90 become available, they (and any public comments) will be placed in that file, as well as in the relevant rulemaking dockets.

On December 5, 1990, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) (55 FR 50192) to implement the double hull requirement of section 4115 of OPA 90. This proposal included standards to define the double hulls that OPA 90 requires to be fitted on all tank vessels built or converted under contracts awarded on or after June 30, 1990. At the time of the publication of the NPRM, a preliminary regulatory evaluation had been completed; a regulatory flexibility analysis had not been completed.

Since then, the Coast Guard has conducted additional analysis. The resulting draft RIA, including a Regulatory Flexibility Act Analysis, are now available for public review and comment. They may be revised as further data and analysis are developed, either with regard to details of the evaluation itself or with respect to the interactions between the double hull requirement and other licensing, operational, or response requirements under the OPA 90.

The draft RIA examines the double hull requirement for new construction and for retrofitting or retiring existing vessels, as set out in OPA 90; evaluates proven major hull design alternatives; estimates the cost over the next 25 years of implementing the requirement; evaluates the potential benefits of double hulls; presents an evaluation of the benefits and costs; and analyzes the distribution of the impacts of double hulls as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

An Environmental Assessment (EA) has been completed with a draft Finding of No Significant Impact (FONSI) on the quality of the human environment, as defined by the National Environmental Policy Act of 1969 (Pub. L. 91-190) and the Council of Environmental Quality Regulations dated 1 July 1986 (40 CFR 1500-1508). The EA and the draft FONSI have been placed in the docket.

Summary of Draft RIA

Under OPA 90, with certain exceptions, all newly constructed tank ships and barges navigating in U.S. waters must be built with double hulls, and existing vessels which do not comply with the double hull requirement will be phased out over a 25 year period. The phaseout schedule for existing vessels, and the technical specifications for new construction, vary according to the type and size of vessel.

There are three major categories of hull design alternatives: secondary barriers to oil mixing with water, outflow management techniques to mitigate pollution, and increased penetration resistance to reduce oil outflow. Eight alternative hull designs were analyzed in terms of benefits and costs: MARPOL tanker (as the reference vessel), MARPOL tanker with hydrostatic control, double bottom, double sides, double sides with hydrostatic control, double hull, double hull with hydrostatic control, and smaller cargo tanks.

The double hull requirement will increase the average annual cost of transporting oil in U.S. waters by approximately 350 million dollars, the equivalent of approximately 16 cents per barrel. The cost per barrel of oil not spilled is estimated at 24 thousand dollars. The increased transportation cost will result primarily from a higher vessel construction cost, amortized over the service life of the vessel and, to a lesser extent, from an increase in maintenance and repair costs and a decline in cargo carrying capacity. The cost of implementing the double hull requirement is less than the cost of implementing hull design alternatives that include hydrostatic control but is more expensive than double sided, double bottom, or small tank alternatives.

The principal benefit of the double hull requirement will be a reduction in oil spilled from hull damage due to groundings and collisions. A partial quantification of the monetary benefits of the double hull requirement has been performed by analyzing historic spill unit values and estimating the effectiveness of alternative designs in reducing oil outflow. This analysis shows that the quantifiable benefits expected from double hulls are higher than those for double bottoms, double sides, and small tanks, but less than those estimated from MARPOL tankers with hydrostatic control. In addition to the quantifiable benefits, double hulls also will reduce the inconvenience and damage from oil spills to other users of the shared ocean resource—e.g., fishing, boating, swimming, and other competing uses. Nevertheless, all design alternatives impose costs that substantially exceed quantifiable benefits. The benefit/cost analysis indicates that the double hull solution is no less reasonable than other hull design alternatives. Overall, the quantifiable benefit/cost ratios are positive only if very high values for averted spill costs and low benefit discount rates are assumed. A structural solution, such as double hulls, will also result in additional non-quantifiable benefits through the reduction of tankers oils spills.

The impact of the OPA 90 double hull requirement will be distributed differently across different sectors of the U.S. oil waterborne transportation industry. Spread out over the 25 year implementation period for OPA 90, the impact on international tanker operators is expected to be small. Large operators of inland barges are not expected to be significantly affected by the requirement, as the industry had already generally adopted double hull construction prior to OPA 90. Smaller, undercapitalized operators of inland barges and operators on non-Alaska trade coastal tankers and barges, however, may suffer adverse impacts.

Dated: January 10, 1992.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-1195 Filed 1-13-92; 2:45 pm]

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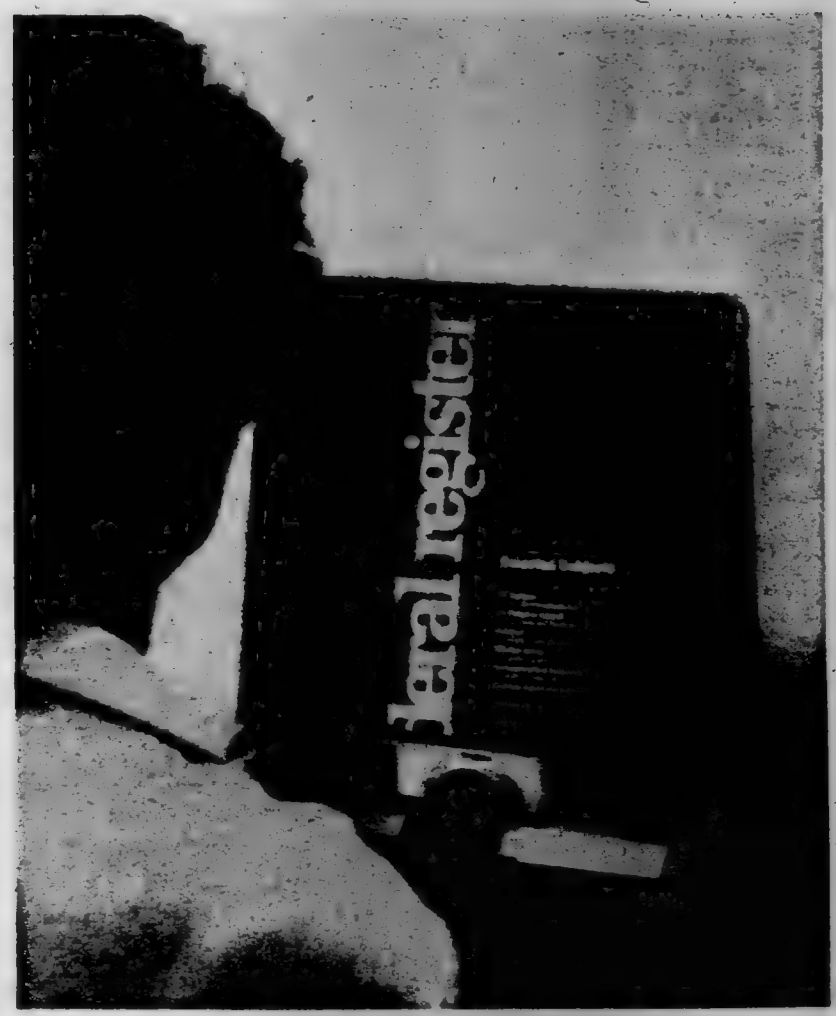

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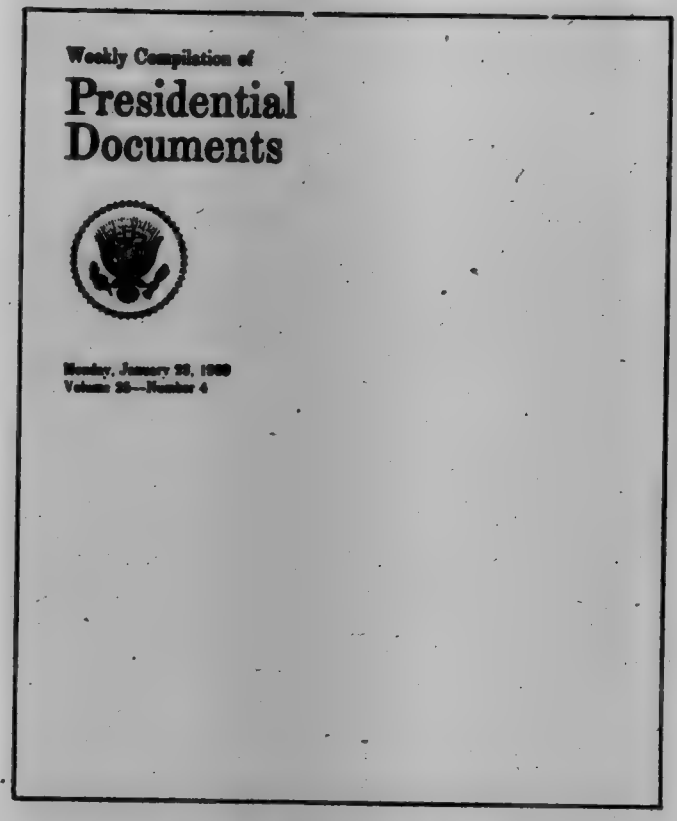

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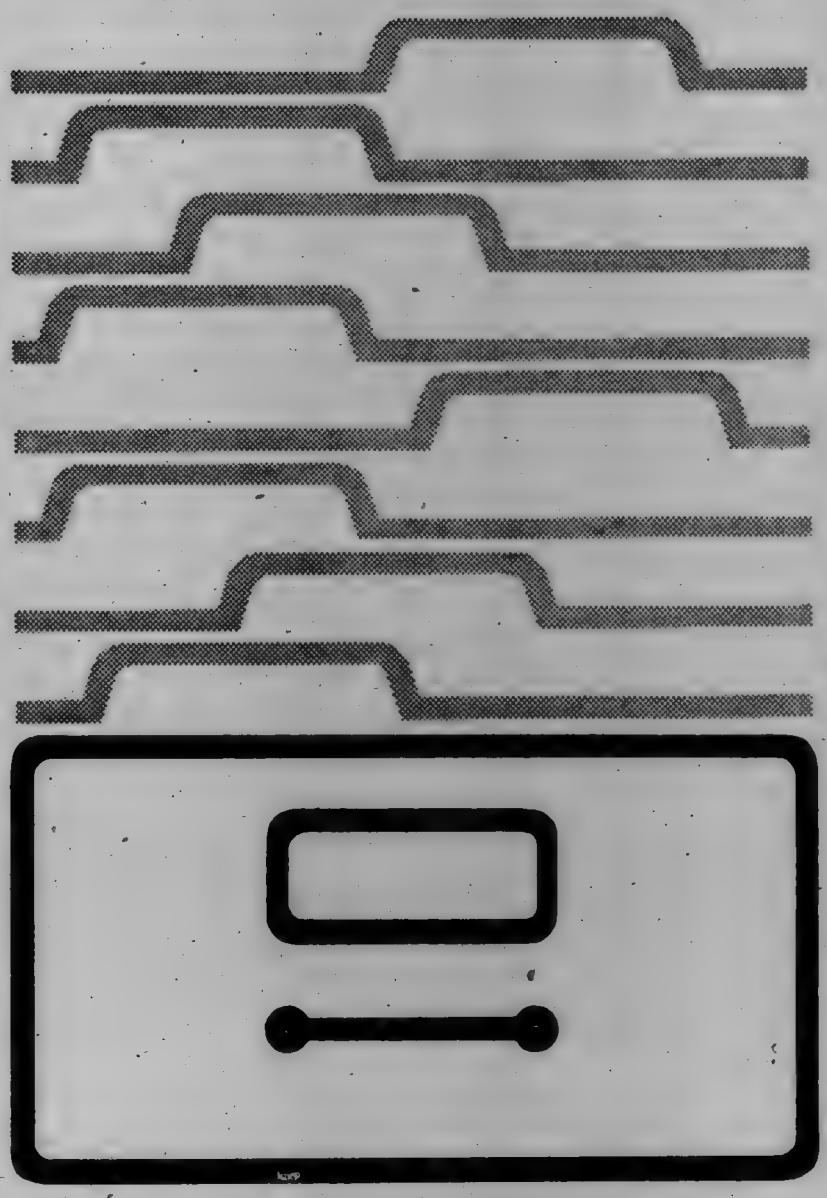

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in the Code of Federal Regulations (CFR)

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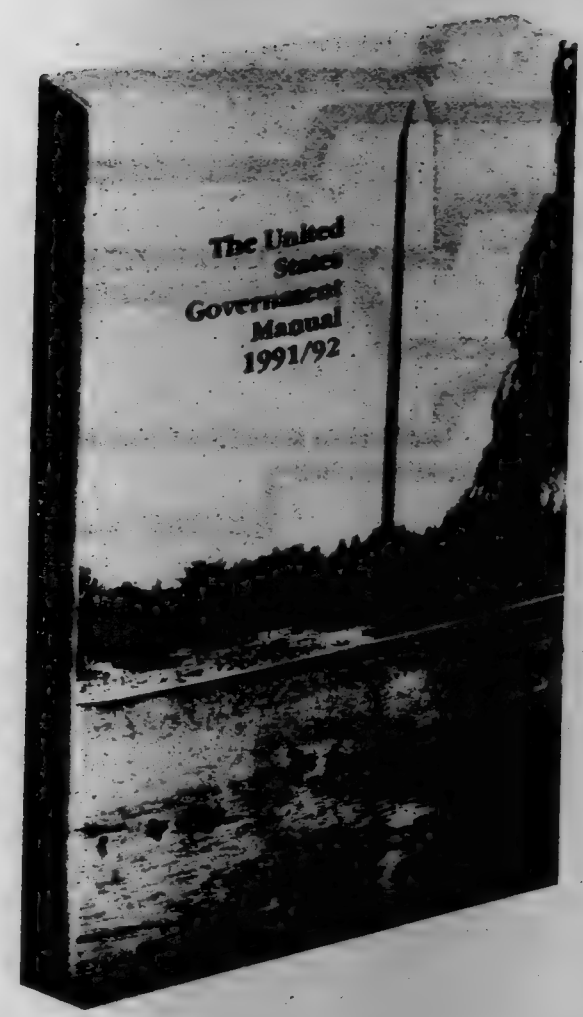

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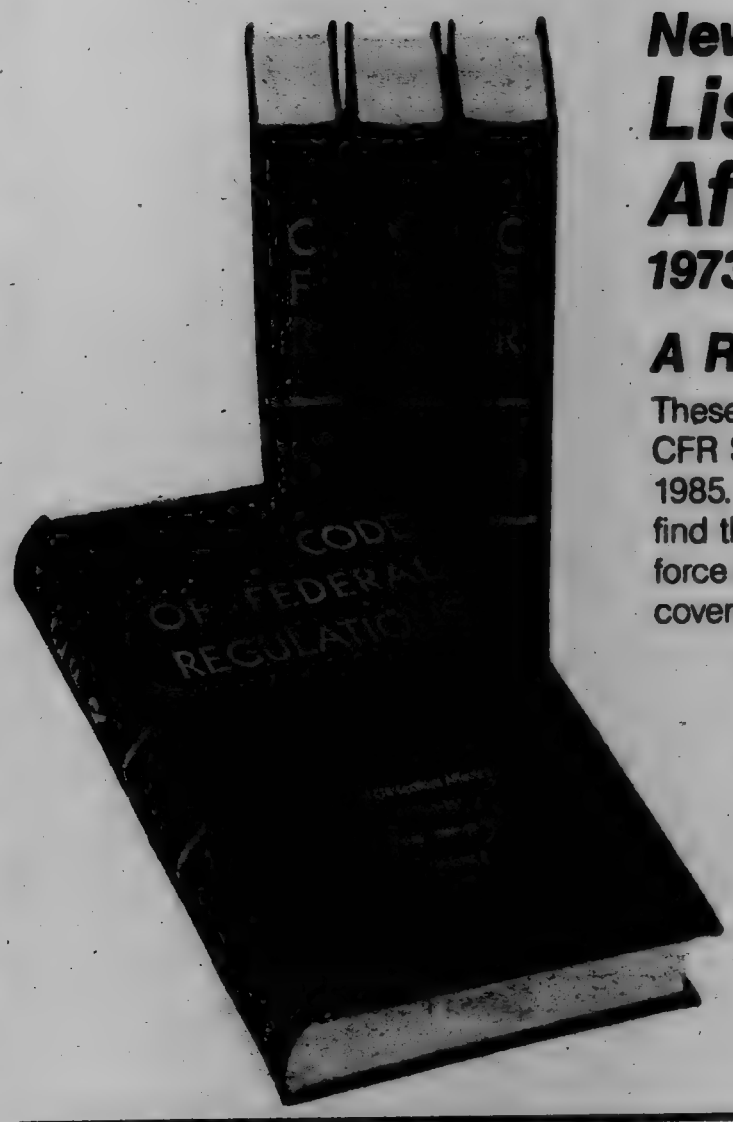

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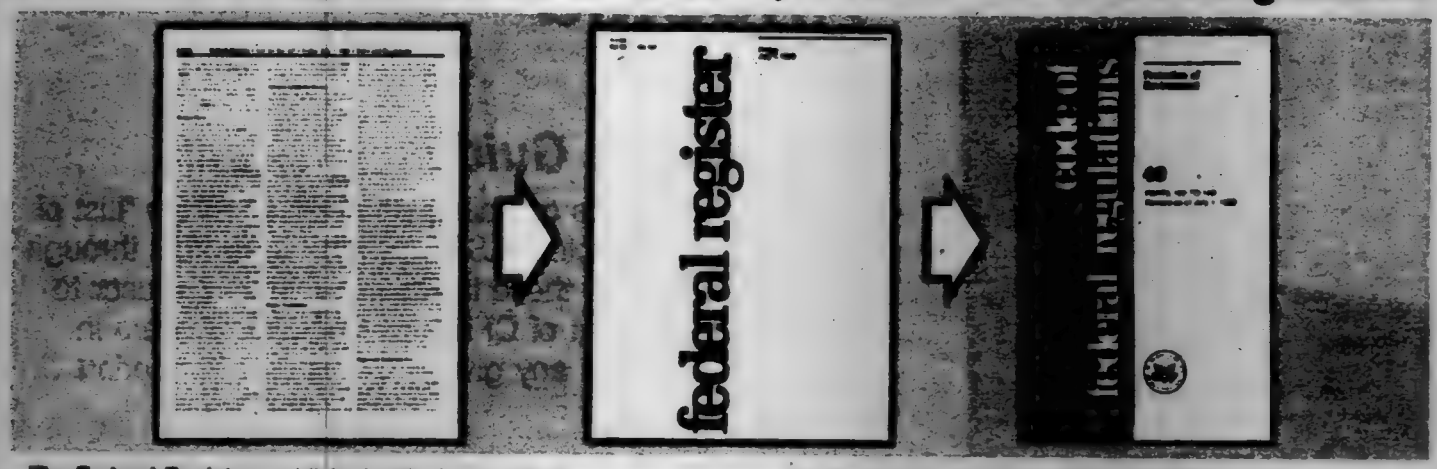

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federal register

Thursday
January 16, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

VOL
57
ISS
11
JA
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1992
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 31, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202-523-5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-91-420FR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Grade, Size, and Container Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule an interim final rule which temporarily relaxed minimum grade and size requirements and suspended container marking requirements for oranges and grapefruit grown in Texas through February 15, 1992, the projected conclusion of the shipping period for this season. The relaxations were unanimously recommended by the Texas Valley Citrus Committee (committee). The relaxations were based on this season's crop and market demand conditions, and are expected to help the Texas citrus industry successfully market its orange and grapefruit crops.

EFFECTIVE DATE: February 18, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–9918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 906, both as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

This agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 10 handlers subject to regulation under the marketing order for oranges and grapefruit grown in Texas, and about 2,000 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The committee meets prior to and during each season to review the handling requirements for Texas oranges and grapefruit, which are in effect on a continuous basis. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information to determine whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

An interim final rule was issued October 24, 1991, and published in the Federal Register (56 FR 55981, October 31, 1991), with an effective date of October 24, 1991, and a 30-day comment period ending December 2, 1991. No comments were received.

The minimum grade and size requirements for fresh shipments of oranges and grapefruit grown in Texas are effective under § 906.365 (7 CFR 906.365).

The interim final rule temporarily relaxed the minimum grade requirement of U.S. No. 2 for Texas oranges permitting fruit to be shipped with very serious damage due to thorn scratches and scale not exceeding the acceptance numbers specified in § 51.689, and permitting any amount of green spots, oil spots, and discoloration. Remaining in effect unchanged by that action was the minimum size requirement of 2⁹⁄₁₆ inches for Texas oranges.

The interim final rule also temporarily relaxed the minimum grade requirement of U.S. No. 2 for Texas grapefruit permitting shipment of misshapen fruit and fruit with very serious damage due to thorn scratches and scale which does not exceed the acceptance numbers specified in § 51.628 for very serious damage, and permitted any amount of green spots. In addition, the rule temporarily lowered the current minimum size requirement for all Texas grapefruit to 3⁹⁄₁₆ inches in diameter from 3⁹⁄₁₆ inches in diameter.

The interim final rule also temporarily suspended the requirement that certain containers of Texas oranges and grapefruit be marked U.S. No. 2, as provided in § 906.340 (7 CFR 906.340). The suspension was necessary because the grade relaxation permitted a grade lower than U.S. No. 2 to be shipped.

The committee reported that the 1991–92 season Texas orange and grapefruit crops would be very small, and that the fruit had more skin blemishes than normal. The grade and size relaxations were designed to permit as much fruit to be shipped to the fresh market this season as crop conditions will allow, while providing consumers with an acceptable product. The relaxations were expected to help the Texas citrus industry successfully market this season's citrus crops and have a positive effect on producer returns.

The minimum grade and size requirements for imported oranges specified in § 944.312 (7 CFR part 944) were amended by a rule issued October

24, 1991, and published in the **Federal Register** (56 FR 55983, October 31, 1991). That rule temporarily suspended the minimum grade requirements for imported oranges. The orange import requirements are effective under section 8e of the Act (7 U.S.C. section 608e–1), and based on the requirements for Texas grown oranges specified in § 906.365. Any reinstatement of orange import grade requirements would be included under a separate rulemaking action.

Texas orange and grapefruit shipments to fresh markets in the United States, Canada, and Mexico are subject to handling requirements effective under this marketing order. Exempt from such handling requirements are shipments made: (1) Within the production area (Cameron, Hidalgo, and Willacy counties in Texas); (2) in individually addressed gift packages aggregating not more than 500 pounds which are not for resale; (3) under the 400 pound minimum quantity exemption provision, and (4) for relief, charity, and home use. In addition, fruit shipped to approved processors for processing may be exempted from the handling requirements.

This action reflects the committee's and the Department's appraisal of the need to maintain the relaxed requirements. The Department believes that relaxed requirements will have a beneficial impact on producers and handlers because it will permit 1991–92 orange and grapefruit shipments consistent with anticipated crop and market conditions. The application of handling requirements to Texas oranges and grapefruit over the years has been beneficial to the Texas citrus industry in marketing its crops.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (56 FR 55981, October 31, 1991), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the **Federal Register** (56 FR 55981, October 31, 1991), is adopted as a final rule without change.

Note: This section will appear in the annual Code of Federal Regulations.

Dated: January 13, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–1210 Filed 1–15–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

[FV–91–463FR]

Handling of Almonds Grown in California; Extension of Date for Satisfying Reserve Disposition Obligation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule extends until January 20, 1992, the date by which handlers of California almonds must satisfy their 1990–91 crop year reserve disposition obligation. This rule is being issued because of a recent court action regarding the current December 31, 1991, disposition date.

EFFECTIVE DATE: December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, MOAB, F&V, AMS, USDA, P.O. Box 96456, Room 2536–S, Washington, DC 20009–6456; telephone: (202) 205–2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981 [7 CFR part 981], as amended, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

There are approximately 115 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action relaxes restrictions on almond handlers and will not impose any additional burden or costs on handlers.

The salable, reserve, and export percentages for the 1990–91 almond crop were first established in a final rule published in the **Federal Register** on September 21, 1990 [55 FR 38793]. The initial salable percentage was 65 percent, the reserve percentage was 35 percent, and the export percentage was 0 percent. The Board based its recommendations on the then current estimates of marketable supply and combined domestic and export trade demand for the 1990–91 crop year.

On December 3, 1990, the Board unanimously recommended revising the salable and reserve percentages. Subsequently, an interim final rule revising the salable percentage from 65 to 70 percent and revising the reserve percentage from 35 to 30 percent was published in the **Federal Register** on February 11, 1991 [56 FR 5307].

At its February 21, 1991, meeting the Board unanimously recommended to further revise the almond salable and reserve percentages for the 1990–91 crop year from 70 to 80 percent and 30 to 20 percent respectively. A final rule was published in the **Federal Register** on May 31, 1991 [56 FR 24678].

The Board made its final review of the 1990–91 crop year salable and reserve percentages at its May 10, 1991, meeting. The Board unanimously recommended to increase the salable percentage from 80 percent to 93 percent and to decrease the reserve percentage from 20 percent to 7 percent. A final rule was published in the Federal Register on September 30, 1991 [56 FR 49392].

Section 981.66(e) of the order provides that all reserve almonds which remain unsold as of September 1 of the next crop year shall be disposed of by the Board as soon as practicable through the most readily available reserve outlets. The date of September 1 may be extended to a later date by the Secretary, upon recommendation of the Board or other information.

In a mail vote completed on October 19, 1990, the Board unanimously recommended to extend the reserve disposition date to December 31, 1991, for the 1990–91 crop year only. This action was an effort on the part of the Board to give handlers additional time to dispose of their reserve almonds. A final rule was published in the Federal Register on March 14, 1991 [56 FR 10793].

This action extends the disposition obligation date until January 20, 1992, and is being taken by the Department because of a recent court action regarding the current December 31, 1991, disposition date. A temporary restraining order was granted in U.S. District Court in California on December 19, 1991, which prevents the Board from disposing of plaintiff handler's remaining 1990–91 reserve almonds. This rule is being issued because a hearing for a preliminary injunction on this issue is scheduled for January 13, 1992.

Based on the above, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant matter presented and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action relaxes restrictions on handlers by extending until January 20, 1992, the date for disposing reserve almonds and (2) this action should be taken as soon as possible so that handlers may plan their operations accordingly.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Section 981.467 is amended by revising a rule that was published in the Federal Register on March 14, 1991 [56 FR 10793]. Paragraph (d) is revised to read as follows:

§ 981.467 Disposition in reserve outlets by handlers.

* * * * *

(d) For the 1990–91 crop year only, the reserve disposition obligation date is extended until January 20, 1992.

Dated: December 31, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–1053 Filed 1–15–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 989

[FV–91–437 FR]

Expenses and Assessment Rate for 1991–92 Crop Year; Raisins Produced From Grapes Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes a total budget of $594,700 and establishes an assessment rate of $1.90 per ton of assessable raisins for the 1991–92 crop year under the federal marketing order for raisins produced from grapes grown in California. Authorization of this budget will allow the Raisin Administrative Committee (Committee), established under the marketing order, to incur reasonable and necessary operating expenses to locally administer the order and to collect funds to pay these expenses during that crop year. Funds for the program are derived from assessments on handlers of California raisins. The 1991–92 crop year began August 1, 1991.

EFFECTIVE DATE: August 1, 1991, through July 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, room 2525–S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2020.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 [7 CFR part 989], both as amended, regulating the handling of raisins produced from grapes grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 23 handlers of California raisins subject to regulation under this marketing order and approximately 5,000 producers of California raisins. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts for the last three years of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The minority of handlers and the majority of producers of raisins may be classified as small entities.

The federal marketing order for California raisins requires that the assessment rate for a particular marketing year shall apply to all assessable raisins acquired from the beginning of such year. An annual budget of expenses is prepared by the

Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of regulated raisins. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings, so that all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected acquisitions of assessable raisins—313,000 tons. That rate is applied to actual acquisitions to produce sufficient income to pay the Committee's expected expenses. The budget of expenses and rate of assessment are usually recommended by the Committee shortly after the season starts. Expenses are incurred on a continuous basis; therefore, the budget of annual expenses and assessment rate approval must be expedited so that the Committee will have funds to meet its obligations.

The Raisin Administrative Committee (Committee) met on October 10, 1991, and unanimously recommended 1991–92 expenditures in the amount of $516,735, together with a reserve for contingencies of $77,965 for a total of $594,700 and a rate of assessment of $1.90 per ton of assessable raisins acquired under the marketing order. In comparison, 1990–91 budgeted expenditures were $540,550, which included a reserve for contingencies of $37,770 and the assessment rate was $1.90. Total income for 1990–91 was $649,687, and actual expenditures were $420,874. Unexpended funds from the 1990–91 season were credited or refunded to the handlers from whom collected. Major expenditure categories for the 1991–92 crop year and actual 1990–91 expenses (in parentheses) are as follows: $212,000, ($203,808) for executive salaries; $95,000, ($75,924) for office personnel salaries; $50,000, ($27,924) for Committee travel; $40,000, ($37,892) for compliance staff salaries; and $40,000, ($32,014) for insurance and bonds.

While this action imposes some additional costs on handlers of California raisins, including small entities, the costs are in the form of uniform assessments on all handlers. Any costs to handlers are expected to be more than offset by benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 989.342 and is based on Committee recommendations and other information. A proposed rule on the authorization of expenses and establishment of an assessment rate for the 1991–92 crop year was published in the December 4, 1991, issue of the **Federal Register** [56 FR 63469]. Comments on the proposed rule were invited from interested persons until December 16, 1991. No comments were received. That proposal, incorrectly stated that the assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of assessable raisins. Pursuant to § 989.80 of the order, assessments are based on acquisitions of assessable raisins. This final rule has been corrected accordingly.

After consideration of the information and recommendation submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This rule should be expedited because the Committee needs to have funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Committee at a public meeting. Therefore, it is found that good cause exists for not postponing the effective date of this action until February 18, 1992 [5 U.S.C. 553].

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.342 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 989.342 Expenses and assessment rate.

Expenses of $594,700 by the Raisin Administrative Committee are authorized and an assessment rate payable by each handler in accordance with section 989.80 of $1.90 per ton of assessable raisins is established for the crop year ending July 31, 1992. Any unexpended funds from that crop year shall be credited or refunded to the handler from whom collected.

Dated: January 9, 1992.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–1052 Filed 1–15–92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 204

[INS No. 1434–91]

RIN 1115–AC59

Employment-Based Immigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Correction to rule document.

SUMMARY: This corrects errors in the final rule published on November 29, 1991, beginning at 56 FR 60897 regarding new employment-based immigrant classifications and requirements under Public Law 101–649.

EFFECTIVE DATE: November 29, 1991.

FOR FURTHER INFORMATION CONTACT: Edward H. Skerrett, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, telephone (202) 514–3946.

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

§ 204.6 [Corrected]

1. On page 60910, in the second column, in § 204.6(a), in the eighth line, remove the term "or by his or her authorized representative".

2. On page 60911, in the second column, in § 204.6(h)(3), in the last line, the reference "204.6(j)(3)(ii)" should read "204.6(j)(4)(ii)".

Dated: January 7, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92–1216 Filed 1–15–92; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch. I

[Docket No. RM91-5-000]

Preferences at Relicensing of Units of Development; Statement of Policy

Issued December 19, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Statement of policy.

SUMMARY: The Federal Energy Regulatory Commission (Commission), on February 20, 1991, issued a Notice of Inquiry (NOI) inviting comment on a series of related questions that involve the licensing of incremental hydroelectric capacity contemporaneous with the relicensing of the unit of development in which the capacity is located. These questions encompassed the matters of whether Congress, in enacting the Electric Consumers Protection Act of 1986 (ECPA), intended to preserve either a municipal preference or a preliminary permittee's preference with respect to the development of previously undeveloped hydroelectric capacity at an existing unit of development when the incumbent licensee also seeks to develop that incremental capacity as a part of its relicensing application. Conversely, did Congress intend that the unit of development (including both developed and undeveloped capacity therein) be considered at relicensing as an indivisible unit with respect to preferences (including the incumbent's licensee's marginal preference)?

Based on the comments received in response to the NOI, the Commission is issuing a statement of policy. The policy statement concludes that the question of whether to defer consideration of applications for incremental capacity at a licensed project whose term is nearing expiration should be decided on a case-by-case basis. The policy statement sets forth a series of principles on how the Commission will resolve such issues when they arise. Briefly summarized, these principles include: (1) Applications for relicense and applications for incremental capacity, if filed within a reasonably contemporaneous time period, will be considered together in a single comprehensive proceeding; (2) the total usable capacity at the site will be determined before any of that capacity is licensed or relicensed; and (3) the applicability of the various preferences will depend on the nature of the capacity that the various applications seek in competition with each other.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1289.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this docket in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308 at the Commission's Headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice of inquiry will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

I. Background

On February 20, 1991, the Federal Energy Regulatory Commission (Commission) issued a Notice of Inquiry (NOI) [1] inviting comment on a series of related questions that involve the licensing of incremental hydroelectric capacity contemporaneous with the relicensing of the unit of development in which the capacity is located. These questions encompassed the matters of whether Congress, in enacting the Electric Consumers Protection Act of 1986 (ECPA),[2] intended to preserve either a municipal preference or a preliminary permittee's preference with respect to the development of previously undeveloped hydroelectric capacity at an existing licensed unit of development when the incumbent licensee also seeks to develop that incremental capacity as a part of its relicensing application. Conversely, did Congress intend that the unit of development (including both developed and undeveloped capacity therein) be considered at relicensing as an indivisible unit with respect to preferences (including the incumbent licensee's marginal preference)?

The NOI discussed the relicensing process established in ECPA, including the provisions of sections 2, 3, and 4 of ECPA with respect to preference and comprehensive consideration. The NOI also discussed the provisions of section 3 of the Federal Power Act (FPA) [3] with respect to the definitions of a "project" and "project works," and sections 5, 7, and 15 of the FPA [4] and § 4.37 and § 16.13 of the Commission's regulations [5] with respect to preliminary permits and licenses. The NOI then discussed the Court of Appeals' decision in *Kamargo Corp.* v. *Federal Energy Regulatory Commission*, 852 F.2d 1392 (D.C. Cir. 1988), and the Commission's orders in that proceeding.

Against this background, the NOI posed 12 questions on which it invited comments. Six of the questions (nos. 1-5 and 11) pertained to the role of municipal preference, incumbent relicensing preference, preliminary permittee preference, competing preferences, and comprehensive development. Generally, these questions invited comment on which preferences, if any, would pertain in particular situations, how competing preferences should be reconciled, and how to encourage comprehensive development in light of these preferences. Several other questions (nos. 6, 7, and 10) inquired about operational and economic considerations, how to define "incremental capacity," and how to allocate environmental responsibility.

Several questions (nos. 8 and 9) focused on the timing of applications to develop unused incremental capacity, whether to impose a moratorium period on such applications as the existing license approaches expiration, whether to require notification by the existing licensee of its intentions with respect to that capacity, and the consequences of such intentions. Finally, the NOI invited commenters to propose new regulations.

II. Summary of Comments

Comments were filed by nineteen commenters. Seventeen filed initial comments and five filed reply comments. The commenters and their filings are listed in appendix A. We

[1] 56 FR 6164 (Feb. 27, 1991), IV FERC Stats. & Regs. ¶ 35,522.

[2] Public Law 99-495, 100 Stat. 1243 (1986).

[3] 16 U.S.C. 796 (1988).

[4] 16 U.S.C. 798, 800, and 808 (1988).

[5] 18 CFR 4.37 and 16.13.

have carefully considered all of the comments we received.[6]

Many commenters note that the capacity at the site of an existing licensed hydropower project may be perceived differently at relicense than it was when the license was issued. Improvements in technology, for instance, may render a site capable of generating a greater amount of electric power from the same amount of water power. On the other hand, increased sensitivity to environmental concerns, or changed environmental circumstances, may reduce the usable hydropower capacity of the site. These factors might partially or wholly offset each other. These matters need to be considered before determining whether the site contains additional capacity available for development.

Most commenters agree (and none disagree) [7] that Congress, in ECPA, intended to eliminate municipal preference as a basis for transferring existing licensed project facilities from one licensee to another if there are no significant differences between the applicants' competing proposals at relicense. Many commenters characterize this as Congress' prime motivation in enacting ECPA. The commenters differ, however, on the conclusions they draw from this premise with respect to undeveloped capacity at a project site at relicense.

Several commenters [8] contend that Congress intended its preclusion of municipal preference at relicensing to apply only to the existing developed capacity of the site. These commenters contend that the development of previously undeveloped capacity at the site should be treated as "original" licensing, for which Congress preserved the municipal preference. As articulated by Public Power, "(i)ncremental development is not a transfer of an existing right. It is development of a previously undeveloped water resource," [9] such that municipal and preliminary permittee preferences would apply. Puerto Rico contends that ECPA preserved municipal preference for undeveloped incremental capacity as a separate unit of development that is not subject to the existing licensee's marginal preference.[10]

Public Systems contends that there is no conflict between municipal and permittee preference, on the one hand, and the existing licensee's marginal preference, on the other hand, because the undeveloped incremental capacity does not fall within the scope of the relicensing process; thus, there is no marginal preference for this capacity. Colorado contends that the undeveloped incremental capacity is subject to both a preliminary permittee preference and an existing licensee's marginal preference, and that if both preferences are invoked the marginal preference prevails over the permittee preference.

Public Systems also suggests a regulatory scheme whereby incremental capacity could be licensed as original licensing during the term of an existing license, but subject to transfer and compensation at relicensing. Public Systems also proposes a window of opportunity to apply for preliminary permits to develop incremental capacity that interferes with existing licenses, the window to be a period near the expiration of the existing license.[11]

Starting from the same premise that Congress, in ECPA, intended to eliminate municipal preference as a tie-breaking factor at relicensing, that could result in the transfer of facilities, many commenters [12] reach quite different conclusions on the role of preferences with respect to previously undeveloped capacity. Citing sections 10(a) and 15 of the FPA as amended by ECPA, these commenters note that Congress intended the relicense process to be a competitive proceeding to determine which proposal is "best adapted to a comprehensive plan for improving or developing a waterway or waterways." [13]

Discussing the legislative history of ECPA, EEI stresses that ECPA added various factors to consider at relicense, but did not alter or eliminate the best adapted/comprehensive standard in section 10(a)(1) of the FPA. Quoting from that legislative history, NHA stresses Congressional concern with "optimal development" of hydropower sites, while Alabama, Idaho, and the Incumbents stress that the relicense applicant and the Commission have an obligation to consider improvements in facilities, efficiency, and capacity that might better utilize the potential of the waterway. These and other commenters argue that "piecemeal" licensing of different projects at a hydropower site would be inconsistent with the intent of Congress in enacting ECPA because it would undermine the Congressional purpose of fostering comprehensive development and coordinated planning.

From this perspective, these commenters argue that the existing licensee's marginal preference applies to the hydropower site as a coherent entity, and not just to the particular facilities that were previously licensed. PG&E, for instance, contends that the best-adapted approach at a particular site might be to reconstruct or replace the existing facilities, and that Congress could not have intended to discourage such modernization by according the marginal preference solely to the relicensing of the existing obsolete facilities. These commenters argue that according a municipal or preliminary permittee preference to portions of the hydropower capacity at a site at relicensing would be inconsistent with the Congressional purpose of ECPA, because it "would diminish the

[6] Several of the initial comments were filed slightly past the comment deadline, but in a manner that did not delay or disrupt the proceeding or prejudice any other commenter. All comments received were accepted and considered.

[7] Question nos. 1, 2, 3, 4, 5, and 11 of the NOI posed closely related issues that most of the commenters addressed in a comprehensive narrative rather than question by question. Accordingly, the comments in response to these six questions are summarized collectively, in the same manner as the comments themselves.

[8] *E.g.*, Public Power, Public Systems, and Puerto Rico.

[9] Comments of Public Power at 3.

[10] We note at the outset several comments over nomenclature. First, NHA and Public Systems point out that the phrase "marginal preference," with reference to existing licensees' seeking relicense, does not appear in ECPA. Instead, section 15(a) of the FPA, as amended by ECPA, provides that "insignificant differences" in applications shall not result in transfer of a project from the existing licensee to a competing applicant. The phrase "marginal incumbent preference" was used by the Court of Appeals in *Kamargo* (852 F.2d at 1394) as a short convenient characterization of the statutory provisions in section 15(a), and we will also use it in that spirit.

Public Systems prefers the phrase "public preference" instead of "municipal preference," because section 7 of the FPA accords the preference to states as well as municipalities, and municipalities are in any event political subdivisions of states. We agree that the commonly used phrase "municipal preference" encompasses both states and municipalities.

[11] NHA and EEI propose that applications for preliminary permits be required to include sufficient information to disclose whether the applicant's contemplated project would interfere with an existing license project within the meaning of section 6 of the FPA, which precludes such interference, absent consent of the licensee, during the term of the license. Public Systems opposes the proposal. We are not inclined to propose such a regulation. Our experience has been that existing licensees have readily recognized such potential for interference and have readily brought it to our attention in intervening pleadings. To the extent that it is possible for a permittee to design its project in such a manner as to avoid interfering with an existing licensed project, the permit affords the permittee an opportunity to conduct appropriate studies along those lines.

[12] *E.g.*, EEI, NHA, Incumbents, Alabama, Duke, Georgia, Idaho, Long Lake, PG&E, and Portland.

[13] Section 10(a)(1). Section 15(a)(2) provides that any new license be issued to the applicant whose proposal is "best adapted to serve the public interest."

Commission's ability to adopt the plan best suited to comprehensive development of the resource," [14] and would allow municipal preference to "slip through the back door." Duke provides another perspective: [15]

> The rationale for the inescapable conclusion that undeveloped capacity should be the subject of relicensing is that if a licensee fails to propose a comprehensive development at its relicensed project, and a competitor does make such a proposal, the competitor can overcome the marginal incumbent preference. The threat of such an outcome ensures that all incumbent licensees will redevelop their projects fully at relicense or will suffer the consequences. Such an approach fosters "equal consideration" under ECPA.

Some commenters suggest that the scope of the various preferences may depend on the factual context presented. Georgia and New York, for instance, would treat the undeveloped incremental capacity at a site as "new" licensing (relicensing), subject to the existing licensee's marginal preference, if the existing licensee proposes to develop that capacity as part of its relicense application, but would treat it as original licensing (with municipal and permittee preference applying) if the licensee does not propose to develop it. Alabama proposes that any third-party license application to develop incremental capacity that is filed within five years of the expiration of the existing license be treated as a competitive application at relicense, without a permittee preference even if the third party had prepared the application pursuant to a preliminary permit.

As discussed below, various commenters propose requirements whereby the existing licensee would have to file notice of its intent to include the incremental capacity in its relicense application in order for the existing licensee marginal preference to extend to that incremental capacity. Some commenters would impose moratoria on either permit or license applications during some specified period near the expiration of the existing license, while other commenters would allow such applications to be filed but would not accord them municipal or permittee preference.

The NOI invited comment on whether there are any operational or economic efficiencies associated with developing incremental capacity. Some commenters [16] express the view that this determination is best made on a case-by-case basis, on the facts presented. Duke and the Incumbents note that multiple operators may well have differing cost constraints at which they can operate their facilities economically.

A number of commenters [17] identify potential problems and inefficiencies associated with multiple management of hydropower facilities located at the same site. The most serious potential problems mentioned are how to allocate available water resources during periods of lessened flows, how to coordinate operating modes (*e.g.*, baseline or peaking) and electric generation, and how to coordinate responsibilities for safety and environmental protection.

EEI and Colorado suggest that multiple projects at the same site could result in uneconomic duplication of operation and maintenance personnel, and of control and relay, transmission, and interconnection facilities. Idaho suggests that common project works and coordinated electric generation could result in greater economic efficiency. New York comments that "(t)he development of incremental capacity may alter the optimum scheduling of facilities at a unit of development." [18]

Idaho suggests that the management of available water power, particularly during periods of low flows, could be a problem unless the incremental project is subordinated to the existing project. Georgia suggests that multiple project operators could appoint a single licensee as their "agent" for the entire site for the purpose of ensuring environmental protection, public access, and dam safety. Georgia also suggests that integrated dispatch by a single project operator at a site would be more efficient and economic, particularly on the hydro storage projects that are common in its region of the country.

Generally, the commenters do not appear to regard any of the problems or inefficiencies to be insurmountable. On the other hand, none of the commenters appears to suggest any advantages to having multiple operators at the same site other than the advantage of fully developing the available capacity.

The NOI invited the commenters to define "incremental capacity." Idaho suggests that capacity can be defined either in terms of "hydraulic capacity" (input) or "electric capacity" (output), and suggests that hydraulic capacity is more appropriate because it is the overriding constraint on the development of a hydropower site. Other commenters offer the following definitions:

> "Any proposal that would utilize all or any part of the head or flow (whether or not currently utilized) on a reach of river on which a licensed project is located." [19]
>
> "New capacity possible from the use of additional water flows not utilized by the existing licensee." [20]
>
> "Any capacity beyond that supported by recorded flows showing the available hydraulic capacity at a given unit." [21]
>
> "If licensed capacity is being reasonably efficiently utilized, only hydraulic capacity in excess of that specified in the incumbent licensee's license." [22]
>
> "All flows that can be met beyond the 'full load' of existing units to the extent those flows do not violate existing license provisions." [23]
>
> "Additional new capacity that can be installed without affecting existing operations or existing use of the streamflow." [24]

The NOI invited comment on whether there should be a deadline by which an existing licensee would be required to notify the Commission of its intent to seek (or not seek) license authority to develop the unused incremental capacity at a unit of development whose license is approaching expiration. The NOI also invited comment on whether the Commission should establish a moratorium period, towards the expiration of an existing license, during which the Commission would decline to consider applications for preliminary permits and original licenses to develop only the incremental capacity of a unit of development. Many commenters responded to these two questions separately, while others discussed the matters of notices and moratoria together, as related facets of a broader issue.

New York proposes a detailed set of deadlines and procedures with respect to notices of intent. Summarized briefly, New York would require an existing licensee to file a notice of its intention to "consider developing" the incremental capacity at a site, the notice to be filed within 90 days of the issuance by the

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[14] Comments of Portland at 4.

[15] Comments of Duke at 18.

[16] *E.g.*, NHA, Incumbents, Duke, and Puerto Rico.

[17] EEI, Incumbents, Public Pool, New York, Colorado, Duke, Georgia, Idaho, and Montana.

[18] Comments of New York at 7.

[19] Comments of EEI at 33. EEI suggests this definition in the context of its proposal for a moratorium period.

[20] Comments of Public Systems at 20.

[21] Comments of Puerto Rico at 2.

[22] Comments of New York at 8. New York suggests this definition in the context of a procedural proposal that would provide deadlines by which an existing licensee would have to announce its intentions to develop the incremental capacity, prepare a proposal, and construct the facilities, or lose its existing licensee marginal preference with respect to that capacity.

[23] Comments of Long Lake at 5.

[24] Comments of Georgia at 8.

Commission of notice of an application by a third party for a preliminary permit to develop that capacity. If the existing licensee files such a notice of intent to consider developing incremental capacity, it would then have to flesh out the details of its proposal within three years, or in its relicense application, whichever first occurred. Absent such notice and development of a proposal, the third party would have a valid preliminary permittee preference (if it had sought and obtained a permit) with respect to the incremental capacity, and the existing licensee would "forfeit" its marginal preference with respect to that capacity.

In its reply comments, Niagara opposes New York's proposal, contending that proposals to develop incremental capacity should be considered at relicensing, in a comprehensive proceeding, unencumbered by permittee preference. Niagara objects to any procedures that would enable third parties to accelerate consideration of the incremental capacity outside the context of the relicense proceeding.

In a related proposal, New York recommends that, five years prior to expiration of the existing license, the existing licensee should be required "to declare its intention to evaluate the possibility of developing additional capacity." [25]

Georgia suggests that the existing licensee could be required to indicate its intent to develop (or not develop) the incremental capacity by filing a notice of that intent in response to a third party's application for a preliminary permit to develop that incremental capacity. Idaho would not require such a notice, but suggests that the existing licensee could protect its rights by filing such a notice voluntarily.

Many commenters [26] oppose imposition of a requirement on existing licensees to file a notice of intent to develop incremental capacity, and regard it as unnecessary. Puerto Rico's conclusion is based on its contention that the incremental capacity constitutes a separate unit of development.

Duke and the Incumbents contend that the same notice requirements should apply equally to all participants in the licensing process, and that there is no requirement on third-party applicants to announce their intentions by a prescribed deadline. EEI makes the same point, observing that the Commission, in its rulemaking proceeding on the relicensing regulations, declined to require competitors to file notices of intent.[27]

EEI argues that there is no need to require licensees to file a notice of intent to develop incremental capacity, because, if the existing licensee does not include such capacity in its application for relicense, and if a competing applicant for the project does not include that capacity, the competing applicant may well prevail in taking over the project. EEI points out that ECPA established a procedure in FPA section 15 whereby applications for new licenses for existing projects must be filed no later than two years prior to the expiration of that project's original license, with the competing applicants having a right to file final amendments thereafter.[28] EEI also points out that the purpose of the elaborate consultation process at relicensing is to enable applicants (including existing licensees) to prepare their best proposal (including proposals to develop incremental capacity). Thus, EEI argues that, if an existing licensee applicant is precluded from filing an application (or amendment thereto) for relicense that includes incremental capacity unless it had given prior notice of such intent, the notice requirement would violate the licensee's right of final amendment under ECPA, and would render the pre-filing consultation process meaningless. If the absence of a notice would not have this effect, then the notice requirement would serve no purpose.

Ten commenters [29] advocate establishment of some form of moratorium on either the filing or processing of preliminary permit or license applications for incremental capacity, while four commenters [30] oppose the concept. The moratoria proposed range from two to ten years prior to the expiration of the existing license, and with varying modes of operation.

EEI proposes a ten-year moratorium [31] during which preliminary permit applications would not be accepted and license applications [32] would be deferred for consideration in conjunction with the related relicense applications.[33] EEI bases its selection of ten years on its estimate that preparation of a relicense application, including initial evaluation, planning, and consultation, takes eight to ten years. If license applications for incremental capacity are filed more than ten years prior to the existing license's expiration, EEI would have the application processed to decision, but would have the term of the incremental capacity license expire on the same date that the term of the existing license expires.

NHA prefers a three-year moratorium on permit applications, with no moratorium on license applications. If a license application is filed less than five years prior to expiration of the existing license (the deadline for the existing licensee to file notice of its intent to seek relicense), then NHA would consider such an application contemporaneously with the relicense applications. If a license application is filed more than five years in advance of expiration, NHA advocates considering and reaching a decision on that application prior to considering the relicense applications.

Georgia proposes a six- or seven-year moratorium. During that period, applications could be filed for both permits and licenses, and the existing licensee could be required to respond to such applications by indicating whether it intended to include the incremental capacity in its relicense application. If the existing licensee filed a notice of such intent, then the third-party application would be deferred for consideration in a comprehensive relicensing proceeding. If the existing licensee did not file such a responsive notice of intent, then the incremental capacity license application would be processed as an original licensing proceeding. License applications filed pursuant to preliminary permits would be accorded a preliminary permittee preference against other third-party license applications for the same incremental capacity, but would not be accorded permittee preference vis-a-vis the existing licensee if the existing

[25] Comments of New York at 10.

[26] EEI, NHA, Public Systems, Incumbents, Puerto Rico, Duke, and Idaho.

[27] *See* Hydroelectric Relicensing Regulations Under the Federal Power Act, Order No. 513, FERC Stats. & Regs. (Regulations Preambles) ¶ 30,854 at pp. 31,413–16.

[28] *See* FPA section 15(c)(1), 16 U.S.C. 808(c)(1) (1988).

[29] EEI, NHA, Incumbents, New York, Alabama, Duke, Georgia, Montana, PG&E, and Public Systems.

[30] Puerto Rico, Idaho, Long Lake, and Public Systems. (Public Systems is included in the lists of both proponents and opponents because it substantially opposes the concept but with one exception.)

[31] As discussed herein, all proposed moratoria are measured in terms of years prior to the expiration of the existing project's license.

[32] For purposes of this discussion of proposed moratoria, all references herein to "preliminary permit applications" and "license applications" mean applications to develop only the incremental capacity at the site of an existing licensed project.

[33] EEI would allow the processing of incremental capacity license applications to the extent of correcting deficiencies, but not to the point of substantive analysis and decision.

licensee had filed, in response to the permit application, a notice of intent to develop that incremental capacity as part of its relicense application.

Alabama recommends that any license application filed within five years prior to expiration be treated as part of the relicense process even if the application was prepared pursuant to a preliminary permit issued more than five years prior to that date. Otherwise, Alabama contends, permittee preference for the incremental capacity might enable the permittee to bootstrap itself into taking over the entire project.

New York proposes a five-year moratorium on license applications if the existing licensee has given notice of "its intention to consider development" of the incremental capacity sought. Applications filed more than five years prior to expiration of the existing license would be permitted, but subject to the existing licensee's ability to challenge the application within 90 days (see discussion above of New York's proposed scheme).

PG&E proposed a moratorium period of ten years, based on its own experience in how long it takes to prepare a relicense application, including preliminary studies. PG&E suggests that the time needed can vary, depending on the age of the facilities and the environmental sensitivity of the site. Montana recommends a seven-year moratorium, based on its own experience in preparing applications. Duke and the incumbents recommend a five-year moratorium.

Public Systems recommends a two-year moratorium, but only if the existing licensee has filed a relicense application that includes development of the incremental capacity. Otherwise, Public Systems generally opposes the concept of imposing any specified moratorium, contending that these decisions are best made on a case-by-case basis.

Puerto Rico and Idaho contend that there is no need for a moratorium. Puerto Rico's position is based on its view that the incremental capacity constitutes a separate unit of development. Idaho's position is premised on its view that preliminary permittee preference would not apply if the existing licensee had filed a notice of intent, in response to a preliminary permit application for incremental capacity, that the existing licensee's relicense application would include development of the incremental capacity sought by the permittee.

Long Lake opposes any imposition of either a notice of intent requirement or a moratorium, contending that any such requirement would constitute a "creeping preference" for existing licensees, in violation of the legislative intent of Congress in enacting ECPA.

The NOI also invited comment on how management responsibilities (and costs) for environmental mitigation measures should be allocated among multiple projects operated at the same hydropower site. NHA, EEI, and Public Systems recommend making the allocation on a case-by-case basis, in light of the facts presented. Colorado, Duke, and the Incumbents contend that the question itself illustrates the complexities inherent in splitting units of development and their operation, and that Congress did not intend to divide these responsibilities. They note the difficulty, for instance, in allocating water to different projects at the same site while maintaining minimum flows for environmental (*e.g.*, fishery resource or recreational) purposes, and contend that it highlights the importance of assessing environmental impact at a site in a comprehensive proceeding.

Other commenters propose formulae and factors to consider. New York, for instance, suggests that the cost of the operation and maintenance of joint facilities, including recreational facilities and fish ladders, etc., should be shared in proportion to electrical output. If the joint facilities are owned by one operator, the other should reimburse it in the same manner as headwater benefits are reimbursed. Long Lake recommends that environmental costs be allocated in proportion to the anticipated output of the respective projects.

Georgia suggests that the allocation of environmental costs be based on the level of mitigation required by the development of the incremental capacity. Idaho proposes a series of factors to consider, including the environmental impacts, mitigation measures, and costs for both the existing project and the incremental capacity project, as well as the effect of each project on the other in meeting their respective requirements. Idaho would then allocate to the incremental capacity project the costs of environmental mitigation caused by the development of the incremental capacity, including any increase in costs incurred by the existing licensee, plus a share of the costs common to both projects.

The NOI invited comment on whether the Commission should propose new regulations. Eight commenters [34] favor issuance of new regulations, while another eight commenters [35] oppose such issuance.

NHA proposes adoption of new regulations to define the contents of preliminary permit applications with respect to facts on interference with existing projects, and to provide a moratorium on preliminary permit applications within three years of the expiration of an existing license.[36] EEI proposes regulations to establish a ten-year moratorium period prior to license expiration during which incremental capacity license applications would be deferred and preliminary permit applications would not be accepted.

New York proposes regulations to specify the detailed requirements it suggests on the filing by existing licensees of declarations of intent to develop unused capacity. Idaho proposes regulations clarifying that a preliminary permit won't be issued to a third party for development of incremental capacity if the existing licensee has filed, in the permit proceeding, a notice of intent to include development of that capacity in its relicense application. Alabama proposes regulations to define incremental capacity, to establish a deadline for existing licensees to give notice of their intent to develop incremental capacity, and to establish a five-year moratorium on processing third-party applications to develop incremental capacity.

Puerto Rico proposes that the regulations be revised to provide a more precise definition of "unit of development," but does not propose a specific definition. Colorado believes that new regulations would expedite the licensing and relicensing processes by clarifying the preference issues, and Portland also favors new regulations, but neither proposes specific provisions.

Commenters opposing new regulations give a variety of reasons. They contend that the requirements of ECPA are clear, that the present regulations are adequate, that new regulations are unnecessary and could disrupt on-going relicense processes, that the Commission's hydropower regulations are already complicated and should not be further expanded, and that the issues posed by the NOI are fact-specific, such that they are better resolved through case-by-case determinations than by generic rules. Public Systems prefers Commission

[34] EEI, NHA, New York, Puerto Rico, Alabama, Colorado, Idaho, and Portland. EEI submitted draft regulatory text.

[35] Public Power, Public Pool, Public Systems, Incumbents, Duke, Georgia, Washington, and Long Lake.

[36] NHA's third proposal, not discussed herein, is beyond the scope of the NOI.

issuance of a policy statement or guidelines rather than new regulations. Public Pool "believes that trying to create a one-size-fits-all rule out of the factual context of these cases would be a serious mistake," and that "(i)t would saddle the Commission with an inflexible, maybe even unworkable, set of requirements for application in very different sets of circumstances."

Finally, several of the commenters suggest that the issues raised in the NOI are, in effect, a tail that should not be permitted to wag the dog. NHA, for instance, comments that "(t)he complexity of the issues is surpassed only by the infrequency with which they arise." [37] Duke and the Incumbents suggest that "(t)he existence of a small class of very troublesome cases, like those presented in the NOI, does not provide the justification for creating new regulations that will unduly complicate not only every licensing and relicensing, but the day-to-day operations of every hydro project as well." [38]

III. Statement of Policy

The comments have been very helpful to us in clarifying the issues, and in putting them into their proper prospective in the broader context of the relicensing process. In light of our own experience to date, we are persuaded by the commenters that the issues that arose in the *Kamargo* proceeding are unlikely to arise in a broad spectrum of relicensing proceedings, and are better addressed on a case-by-case basis when they arise rather than by generic rule. Thus, we have determined not to propose any new regulations at this time.

Despite the diversity of opinion expressed in the comments, we perceive several common central principles upon which most of the commenters seem to agree. We set these forth below as a statement of policy on how we currently intend to proceed in the processing of permit and license applications for incremental capacity. These principles are broadly stated, and are intended as an overall framework. The precise scope and implementation of these principles will be determined on a case-by-case basis in the context of the facts presented by the applications that come before us, and may be refined or modified based on our experience in implementing them.

1. If within a reasonably contemporaneous time period the Commission has (or reasonably expects to have) before it for consideration: (a) An application for relicense of existing facilities; [39] and (b) an application for a license for incremental capacity at the same site; [40] then the Commission will consider the applications in a comparative proceeding.[41] This will enable the Commission to consider the widest range of potential alternative uses for the site, including comprehensive reconstruction or replacement of facilities that would be best adapted to the site as a whole.

We prefer at this juncture not to define "contemporaneous" by a rigid rule. We note, however, that applications for license authority require a number of years to prepare and process, including long lead time for planning and consultation. Thus, in the context of the processing of hydropower applications, contemporaneity is necessarily measured in terms of a period of years and must necessarily include anticipated applications for relicense as well as applications already on file. This does not require a moratorium precluding the filing of applications, but may well entail deferral of consideration of such applications pending comparative and comprehensive review at relicensing. The appropriate length of such a deferral period may well vary, depending on the size, nature, and age of the existing or potential project works at the site, and safety or environmental concerns peculiar to that site. We believe that these factors ought to be considered on a case-by-case basis.

2. In the comparative proceeding, the Commission will determine the total usable capacity of the site in light of modern technology and contemporary environmental considerations. We recognize that this analysis may result in a determination of either greater capacity (due, *e.g.*, to technological improvements) or less capacity (due, *e.g.*, to contemporary environmental considerations) than was previously licensed. We believe that licenses at relicensing should be based on a current comprehensive analysis of the entire site.

3. In the comparative proceeding, the Commission will ascertain whether any applicant (either the existing licensee or a third party competitor, or both) has applied for a license that would develop all of the available capacity at a site,[42] and if the project(s) proposed in such application(s) would be economically viable. Pursuant to the statutory standards of "comprehensive development" and "best adapted," an economically viable proposal by a third party who proposes to develop all of the available capacity at the site [43] may well prevail over the existing licensee's marginal preference for relicensing of the existing facilities; if the third party's full capacity proposal is significantly different from the superior to the existing licensee's proposal, no tie will occur, and there will be no occasion to consider the existing licensee's marginal preference. Municipal preference and permittee preference will not apply in this situation, which would constitute "new" licensing rather than "original" licensing.

4. If the existing licensee has applied for a new license (either to operate the existing project without change or for a project that develops more or all of the available capacity at the site), the existing licensee's marginal preference would pertain, and a third-party competitor would not have either a permittee or municipal preference vis-a-vis the existing licensee. Thus, in the event that there were no significant differences between the existing licensee's proposal and the third-party applicant's proposal, the "tie" would be resolved by the existing licensee's marginal preference. For example, the existing licensee's marginal preference *will* apply, and the third-party's municipal or permittee preference will *not* apply, in: (a) A contest in which the existing licensee and the third party both propose to operate the existing project without change; and (b) A contest in which the existing licensee and the third party both propose to develop all of the available capacity at the site (*i.e.*, the existing capacity plus

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[37] Comments of NHA at 4.

[38] Comments of Duke at 29; comments of Incumbents at 22 (the quote is identical in both comments). In this regard, we note that all of the cases in which the *Kamargo*-type issues have arisen involve hydropower sites in only one state.

[39] The application could also be for expansion, improvement or replacement of existing facilities.

[40] The NOI focused on the "unit of development" concept embedded in section 3 of the FPA. Most of the commenters framed their comments in terms of hydroelectric facilities at a "site" rather than at a unit of development, and we have adopted this terminology for our discussion herein. What constitutes the parameters of a "site" is an inherently fact-bound determination that will be made on a case-by-case basis.

[41] There are also other situations (not relevant to the issues discussed in this NOI proceeding) in which the Commission will consider license applications in a comparative proceeding.

[42] As used in this discussion, the phrase "all of the available capacity at the site" means all of the capacity at the site that can be developed for hydropower purposes consistent with appropriate environmental mitigation and applicable standards of comprehensive development and best adapted use of the water resources at the site.

[43] *Id.*

the incremental capacity) as improved versions of the existing project.[44]

5. If no applicant has applied for a license that would utilize all of the available capacity at the site, and if the existing licensee has applied for relicense of the existing facilities, and if a third party has applied for a license to develop the incremental capacity and the two proposed projects can be operated compatibly with each other,[45] then both licenses could be issued.[46] Under these circumstances, the license for the existing facilities would be a "new" license (relicense), and the license to develop the incremental capacity would be an "original" license. If more than one applicant seeks a license to develop the incremental capacity (and for *only* the incremental capacity), permittee preference and municipal preference would apply. If a third-party applicant seeks to take over the existing facilities, and *only* the existing facilities, the existing licensee would have a marginal preference, and there would be no permittee or municipal preference for these facilities.[47]

Our determinations above are based on our understanding of the fundamental thrust of the FPA as amended by ECPA. Section 15(a)(2) of the FPA [48] provides that "(a)ny new license issued under this section shall be issued to the applicant having the final proposal which the Commission determines is best adapted to serve the public interest * * *." [49] Section 10(a)(1) of the FPA requires that "the project adopted * * * shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways * * *." [50]

Sections 4(e) and 10(a) of the FPA,[51] as amended by section 3 of ECPA, enumerate a broad range of factors that the Commission must consider, including protection, mitigation of damage to, and enhancement of, fish and wildlife resources; energy conservation; protection of recreational opportunities; and irrigation, flood control and water supply; as well as development of water power. The clear thrust and purpose of these statutory provisions is that Congress intended that the Commission, at relicensing, take a close, hard look—a "comprehensive" look—at the hydroelectric project site, and determine which project or projects would be most appropriate for that site in light of all of the relevant considerations.

In section 2 of ECPA, Congress amended section 7(a) of the FPA [52] in such a manner as to make the preference for states and municipalities inapplicable to the issuance of new licenses in the relicensing of existing projects. In section 4 of ECPA, Congress amended section 15 of the FPA to ensure that, in the relicensing process, "insignificant differences" between applications "are not determinative and shall not result in the transfer of a project." As discussed above, this provision has been judicially characterized as establishing a "marginal preference" for the incumbent licensee seeking relicense of an existing project.

To be sure, Congress did not focus explicitly on the appropriate treatment of unused available capacity at an existing site, but the clear thrust of the legislation is that the Commission take its close, hard look at the site as a comprehensive entity. There is no indication that Congress intended the existing licensee's marginal preference to relicensing, or the restriction on municipal preference at relicensing, to apply to anything less than the full site of the project whose relicense is at issue. We do not believe, for instance, that Congress intended the existing licensee's marginal preference to apply solely to the existing facilities, however outmoded or inefficient they might be, but not to apply to proposed improvements or replacements of those facilities, including more modern or efficient project works that would develop unused capacity or better protect the environment. Nor do we believe that Congress intended to accord a municipal or permittee preference to proposals that would improve some isolated portion of the project site at a potential cost of frustrating the comprehensive redevelopment of the site at relicensing.[53]

Accordingly, we conclude that Congress intended the "best adapted" and "comprehensive plan" standards to apply to the site as a comprehensive unit at relicensing, and did not intend to accord municipal or permittee preference to applications to develop any particular portion of the site. It follows from this that all reasonably contemporaneous applications to develop or operate hydroelectric facilities at the site must be considered jointly, in a comprehensive proceeding at relicensing that includes a determination of the actual capacity of the site in light of modern technology and current understanding and sensitivity to environmental values. Within that context we can evaluate the proposals to operate existing facilities or

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[44] We also note the possibility of a contest in which the existing licensee proposes to operate the existing project, and the third party proposes to develop all of the available capacity (existing plus incremental) as an improved version of the existing project, under circumstances in which the choice between the two proposals is very close. For instance, there could be a choice between a proposed project that would generate more power and a proposed project that would better protect the environment. Under those circumstances, there would clearly be significant differences between the two proposals, such that the "marginal preference" described by the Court of Appeals as arising out of ECPA would not pertain. The Commission would reach its determination based on the merits of the facts presented. In any event, third-party municipal or permittee preference would not apply, because the choice would be made in a comparative proceeding at relicensing.

[45] Section 6 of the FPA doesn't apply to this situation because the original license has expired. The test, therefore, is comprehensive development of the available water resources, not physical interference with existing facilities.

[46] In that situation, the Commission's practice has been to issue the two licenses at the site for the same term, to expire simultaneously. In the future the Commission will consider such circumstances on a case-by-case basis.

[47] We also recognize the possibility of a contest in which the existing licensee proposes to operate the existing project, and the third party proposes to develop only the unused capacity, but under circumstances in which the two proposed projects cannot be operated compatibly at the same site. In that event, the Commission would select the existing licensee's proposal for relicensing of its existing project. There would be no municipal or permittee preference because the choice would be made in a comparative proceeding at relicensing.

[48] 16 U.S.C. 808(a)(2) (1988).

[49] 16 U.S.C. 808(a)(2) (1988).

[50] 16 U.S.C. 803(a)(1) (1988). In its entirety, it reads as follows:

(a)(1) That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e). If necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

[51] 16 U.S.C. 797(e) and 803(a) (1988).

[52] 16 U.S.C. 800(a) (1988).

[53] In this regard, we agree with NHA (comments at 13–14) that Montana Power Co. v. Federal Power Commission, 296 F.2d 335 (D.C. Cir. 1962), does not require that proposals to develop unused capacity at a site be treated as original licensing. That case involved a determination of headwater benefits, and predated the enactment of ECPA. The court construed the FPA as authorizing separate licensing (as opposed to amending the extant licensee) of additional project works at a unit of development. The court's reasoning, however, does not preclude the comprehensive analysis at relicensing that is mandated by ECPA, nor does it preclude licensing of the best adapted proposal(s) that emerge in the relicensing process.

to develop new facilities, and select the best adapted proposal(s).[54]

We regard the matter of a moratorium on applications to be a very close question. On balance, we have concluded that our purposes can best be achieved on a case-by-case basis. If a third party files an application (for either a preliminary permit or a license) to develop unused capacity at the site of an existing licensed project, the licensee can file a motion to intervene stating its reasons why the application should be considered in a comprehensive proceeding at relicensing. We can then consider the matter on the facts presented.

If an application for a license is for unused incremental capacity, and if it is filed at a time when an existing license for a project at the same site is approaching expiration, the Commission will determine on a case-by-case basis whether to defer consideration of the application to a comparative proceeding at relicense. If deferring the license application would result in that application becoming stale or obsolete, we may dismiss the application without prejudice to refiling it in the relicense proceeding.

In light of our determinations above on permittee preference, we will not impose a moratorium on preliminary permit applications. The permit would afford the permittee a tie-breaking preference over other third-party applicants for the incremental capacity, but not against any comprehensive proposals (either by the existing licensee or by a third party applicant) at relicensing to develop all of the capacity at the site.[55] If permit applicants are willing to incur the risks inherent in this framework, it does not appear necessary to preclude them from obtaining a permit and developing an application for a license.

As long as related license applications are considered together in comprehensive proceedings at relicense, and as long as preferences are accorded only in situations where such preferences are appropriate, we perceive no harm to existing licensees in allowing third-party incremental capacity applicants to file an application for a license, and to both file for and receive a preliminary permit. These filings put the existing licensee on notice of the third party's intentions, and may thereby assist the existing licensee in preparing its relicense application. These filing would also serve to alert the Commission as to the views of various interested persons as to the potential capacity at the site.

By the Commission.

Lois D. Cashell,

Secretary.

Appendix A

List of Commenters

1. Alabama Power Company (Alabama).
2. American Public Power Association (Public Power).
3. Duke Power Company (Duke).
4. Edison Electric Institute (EEI).
5. Georgia Power Company (Georgia).
6. Idaho Power Company.
7. Incumbent Licensee Group (Incumbents).[56]
8. Long Lake Energy Corporation (Long Lake).
9. Montana Power Company (Montana).
10. National Hydropower Association (NHA).
11. Niagara Mohawk Power Corporation (Niagara).
12. Pacific Gas and Electric Company (PG&E).
13. Portland General Electric Company (Portland).
14. Public Generating Pool (Public Pool).
15. Public Service Company of Colorado (Colorado).
16. Public Systems.[57]
17. Puerto Rico Electric Power Authority (Puerto Rico).
18. State of New York Department of Public Service (New York).
19. Washington Water Power (Washington).

Reply comments were filed by EEI, Niagara, Public Systems, Public Pool, and Georgia. All of the commenters listed above filed initial comments except Niagara Mohawk and Public Pool.

[FR Doc. 92-1141 Filed 1-15-92; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8389]

RIN 1545-AP72

Taxation of Fringe Benefits and Exclusions From Gross Income of Certain Fringe Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final amendments of two provisions of the fringe benefit regulations concerning the taxation and valuation of fringe benefits and exclusion from gross income for certain fringe benefits. The final amendments affect any person providing or receiving these fringe benefits and provide these persons with the guidance necessary to comply with the law.

EFFECTIVE DATE: The final amendments to the fringe benefit regulations are effective July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Marianna Dyson at 202-377-9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 20, 1991, a notice of proposed rulemaking was published in the **Federal Register** (56 FR 23038). The notice contains proposed amendments to the fringe benefit regulations under sections 61 and 132 of the Internal Revenue Code of 1986 (Code). These proposed amendments provide guidance on the tax treatment of certain transportation provided by an employer to or from an employee's workplace due to unsafe conditions surrounding the employee's workplace or residence and increase the dollar amount of the de minimis exclusion for public transit passes provided to employees for commuting on public transit systems.

Comments were received from the public, and on July 1, 1991, the Internal Revenue Service held a public hearing concerning the proposed amendments. In response to the comments received and the statements made at the public hearing, the proposed amendments have been adopted as revised by this Treasury decision.

The amendments to the final regulations contained in this document apply as of July 1, 1991. The amendments to the final regulations under section 61 are contained in § 1.61-21. The amendments to the final regulations under section 132 are contained in § 1.132-6.

Summary of Comments and Explanation of Provisions

1. Interaction of Employer-Provided Transportation Due to Unsafe Conditions Rule and Existing De Minimis Transportation Fare Rules

Numerous commentators requested clarification of the interaction between the new commuting valuation rule and the two employer-provided

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[54] As described herein, there will be a sequence of inquiries in the Commission's analysis of the proposals, but these steps are intended to culminate in a single order.

[55] The preliminary permit, when issued, would contain appropriate conditions defining the scope of the preference accorded therein, and whether that determination is deferred to a subsequent proceeding.

[56] Incumbents is comprised of Georgia Pacific Corporation, Lockhart Power Company, Milliken and Company, Elkem Metals Company, Topoco, Inc., and Yadkin, Inc.

[57] Public Systems is comprised of the Northern California Power Agency; the Electric Department of Burlington, Vermont; the Holyoke, Massachusetts Gas & Electric Department; and the Cities of Azusa, Colton and Riverside, California.

transportation fare rules contained in the de minimis fringe benefit regulations under section 132(e) of the Code. Under the first de minimis fringe rule, § 1.132–6(d)(2)(i), the value of local transportation fare is totally excludable from gross income as a de minimis fringe for any employee (regardless of income), if the benefit is reasonable and is provided on an occasional basis because overtime requires an extension of the employee's normal work schedule.

The second de minimis fringe rule, which is contained in § 1.132–6(d)(2)(iii), provides only a partial de minimis exclusion for local transportation furnished to employees for use in commuting to and from work because of unusual circumstances. This exclusion is available only to "noncontrol" employees who are provided local transportation because it is unsafe to use other available means of transportation. The determination of unusual circumstances is made with respect to the employee receiving the transportation and is based on the facts and circumstances. For example, situations in which an employee is asked to work outside his normal work hours or to make a temporary shift change are considered unusual. Factors indicating unsafe conditions are the history of crime in the geographic area surrounding the employee's workplace or residence and the time of day during which the employee must commute. If unusual circumstances and unsafe conditions exist and the employer transports the employee between work and home, the excess of the value of each one-way commute over $1.50 is excludable from the employee's gross income, provided the employee is not a control employee. For 1991, the definition of control employee under § 1.61–21(f)(5) includes officers, directors, one-percent owners, or any employees earning $121,070 or more. For government employees, the definition of control employee under § 1.61–21(f)(6) covers any elected official or any employee earning $101,300 or more.

Unlike the rules of exclusion set forth in § 1.132–6(d)(2) (i) and (iii), the special valuation rule of § 1.61–21(k) does not have an overtime or unusual circumstances work requirement. The new rule applies to situations in which local transportation fare is provided to qualified employees who, under appropriate circumstances, are receiving the benefit, even though their regular working hours have not been extended or changed. The most typical example is the qualified night shift worker who does not work overtime, but is provided transportation to work each evening because of unsafe conditions. The special valuation rule applies if an employee is a "nonexempt" employee subject to the Fair Labor Standards Act of 1938 (as amended), 29 U.S.C. 210–219 (FLSA), earns less than $30,535 in 1991, and receives local transportation to or from work because of security concerns (i.e., at the time of day the employee would ordinarily walk or use public transportation, these forms of commuting would be considered unsafe by a reasonable person). If the rule applies, the excess of the value of each one-way commute over $1.50 is excludable from the employee's gross income.

The absence of an overtime or unusual circumstances work requirement does not mean that the rule is available only to employees who receive the benefit before or after their regular work shifts. The rule may also be used to value transportation provided to employees who work overtime, provided that they otherwise meet the requirements of the regulation. For example, a day-shift employee may frequently work overtime into the evening hours, at which time the employee's usual means of commuting between work and home (i.e., walking or using public transportation) would be considered unsafe. If transportation home is furnished to the employee on more than an occasional basis, the transportation would not be excludable under § 1.132–6(d)(2)(i) as a de minimis fringe. Similarly, if the transportation is provided under circumstances that do not qualify as unusual, the value of the benefits in excess of $1.50 per one-way commute would not be excludable under § 1.132–6(d)(2)(iii). With the implementation of the new rule, the transportation home may be valued at $1.50 per trip, provided the day-shift employee is qualified within the meaning of § 1.61–21(k) and unsafe conditions exist.

Alternative Transportation: Walking or Using Public Transportation

Commentators suggested that the new commuting valuation rule should be expanded to include transportation or transportation fare provided to employees other than those who would otherwise walk or use public transportation to commute to and from work.

The purpose of the new rule is to assist lower-paid non-professionals who would ordinarily walk or use public transportation when commuting, but are unable to do so because of unsafe conditions at the time of day they must commute. Therefore, the rule in the final regulations has not been expanded to cover employees who have other modes of transportation available to them.

It was also suggested that guidance should be given as to how or whether employers should investigate or substantiate the employee's alternative mode of commuting to and from work. In the interest of avoiding unnecessary complexity, the final regulations do not offer additional guidelines, but rely instead on employers' ability to make proper determinations through existing personnel management procedures. To alleviate employer concerns that absolute certainty is required on a day-by-day basis when determining alternative mode of transportation available to the employee, the final regulations provide that the valuation rule is available to employees who would ordinarily walk or use public transportation.

Definition of Employer-Provided Transportation

Several commentators questioned whether the definition of "employer-provided transportation" includes cash reimbursements for transportation paid directly by employees or whether the definition is limited to transportation provided by the employer pursuant to an agreement with an independent taxi or car service company. The most typical example of a cash reimbursement involves the small employer that does not have an account with a car service company, but reimburses qualified employees for cab rides. To address this concern, the final regulations provide that cash reimbursements made by an employer to an employee to cover the cost of purchasing transportation from an unrelated third party (i.e., hiring a cab) will be treated as employer-provided transportation, provided the reimbursement is made under a bona fide reimbursement arrangement.

In addition, commentators inquired as to whether the definition of "employer-provided transportation" includes transportation in an employer-owned or leased vehicle. The requirement that the transportation be purchased from a party that is not related to the employer has not been expanded in the final regulations because the regulations under section 61 of the Code already provide special valuation rules for commuting in employer-provided vehicles. For example, employers desiring to use employer-owned or leased automobiles may rely on the rules relating to employer-provided van-pools and vehicles covered by written "commuting-only" policies. See § 1.61–21(f).

Hourly, Nonexempt Employees

Many commentators requested clarification of the requirement that employees must be "paid on an hourly basis" in order to be qualified. The final regulations provide that if an employee's compensation is stated on an annual basis, the employee may nonetheless be treated as "paid on an hourly basis," provided the employee is not claimed to be exempt from the minimum wage and maximum hour provisions of the FLSA and is paid overtime wages either equal to or exceeding one-and-a-half times the employee's regular hourly rate of pay.

Definition of Compensation

In the interest of consistency, the final regulations modify the proposed regulations to provide that the definition of "compensation" under the new valuation rule is the same as the definition of "compensation" used for purposes of applying the commuting valuation rule of § 1.61–21(f) and the partial de minimis exclusion of § 1.132–6(d)(2)(iii). Thus, an employer relying on any of these three rules must determine compensation in the same manner for all employees.

2. Public Transit Passes

Dollar Increase From $15 to $21

Numerous comments were received that increasing the de minimis exclusion for public transit passes from $15 to $21 was not sufficient to promote use of public transportation. The $15 de minimis exclusion for public transit passes arises out of the legislative history accompanying the Tax Reform Act of 1984, Public Law No. 98–369, section 531, 98 Stat. 494, which added section 132(e) to the Code. Under section 132(e), property or services not otherwise tax-free are excluded from gross income if (after taking into account the frequency with which they are provided) the value of the benefits is so small that accounting for the property or service would be unreasonable or administratively impracticable. The legislative history to the Act specifically lists monthly transit passes provided at a discount not exceeding $15 as an example of a de minimis fringe benefit. H.R. Rep. No. 861, 98th Cong., 2d Sess. 1168 (1984), 1984–3 (Vol. 2) C.B. 422. Increasing the $15 de minimis exclusion for transit passes to $21 to reflect the cost of living furthers the Congressional purpose underlying the directive in the legislative history concerning public transit passes. Thus, the cost-of-living adjustment for public transit passes should not be read as an expansion of the limits otherwise set forth in § 1.132–6 with respect to value or frequency of de minimis fringes.

Reimbursements for Public Transit Commuting Expenses

The final regulations provide that reimbursements made by an employer to an employee after December 31, 1988, to cover the cost of commuting on a public transit system are excludable as de minimis fringes under section 132(e) provided that the employee does not receive more than $21 ($15 for months ending before July 1, 1991) in such reimbursements with respect to commuting costs paid in any given mouth. Under this provision, the reimbursements must be made under a bona fide reimbursement arrangement. In lieu of requiring substantiation each time an employee incurs an expense for commuting on a public transit system, a reimbursement arrangement will be treated as bona fide if the employer establishes appropriate procedures for periodically verifying that the employee's use of public transportation for commuting is consistent with the value of the benefit provided by the employer for that purpose.

The provision allowing for cash reimbursements comports with the legislative clarification in the Senate Finance Committee Report to the Tax Reform Act of 1986, S. Rep. No. 313, 99th Cong., 2d Sess. 1026 (1986). Specifically, the report indicates that the de minimis fringe exclusion includes tokens, vouchers, and reimbursements to cover the costs of commuting by public transit, as long as the amount provided by the employer does not exceed $15 a month ($180 a year). The report also provides that the value of all such transit benefits (including any discounts on passes) furnished to the same individual are aggregated for purposes of determining whether the $15 limit is exceeded. The clarification applies to reimbursements paid after December 31, 1988.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Marianna Dyson, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.61–1 Through 1.133–1T

Income taxes, Reporting and recordkeeping requirements.

Adoption of the Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended in part by removing the first authority citation for § 1.61–2T et al and by adding the following new citations in numerical order to read as follows:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Sec. 1.61–2T also issued under 26 U.S.C. 61; Sec. 1.61–21 also issued under 26 U.S.C. 61 * * * Sections 1.132–0 through 1.132–6T also issued under 26 U.S.C. 132 * * *

Par. 2. Section 1.61–21(k) is added to read as follows:

§ 1.61–21 Taxation of fringe benefits.

* * * * * *

(k) *Commuting valuation rule for certain employees*—(1) *In general.* Under the rule of this paragraph (k), the value of the commuting use of employer-provided transportation may be determined under paragraph (k)(3) of this section if the following criteria are met by the employer and employee with respect to the transportation:

(i) The transportation is provided, solely because of unsafe conditions, to an employee who would ordinarily walk or use public transportation for commuting to or from work;

(ii) The employer has established a written policy (e.g., in the employer's personnel manual) under which the transportation is not provided for the employee's personal purposes other than for commuting due to unsafe conditions and the employer's practice in fact corresponds with the policy;

(iii) The transportation is not used for personal purposes other than commuting due to unsafe conditions; and

(iv) The employee receiving the employer-provided transportation is a qualified employee of the employer (as

defined in paragraph (k)(6) of this section).

(2) *Trip-by-trip basis.* The special valuation rule of this paragraph (k) applies on a trip-by-trip basis. If an employer and employee fail to meet the criteria of paragraph (k)(1) of this section with respect to any trip, the value of the transportation for that trip is not determined under paragraph (k)(3) of this section and the amount includible in the employee's income is determined by reference to the fair market value of the transportation.

(3) *Commuting value*—(i) *$1.50 per one-way commute.* If the requirements of this paragraph (k) are satisfied, the value of the commuting use of the employer-provided transportation is $1.50 per one-way commute (i.e., from home to work or from work to home).

(ii) *Value per employee.* If transportation is provided to more than one qualified employee at the same time, the amount includible in the income of each employee is $1.50 per one-way commute.

(4) *Definition of employer-provided transportation.* For purposes of this paragraph (k), "employer-provided transportation" means transportation by vehicle (as defined in paragraph (f)(4) of this section) that is purchased by the employer (or that is purchased by the employee and reimbursed by the employer) from a party that is not related to the employer for the purpose of transporting a qualified employee to or from work. Reimbursements made by an employer to an employee to cover the cost of purchasing transportation (e.g., hiring cabs) must be made under a bona fide reimbursement arrangement.

(5) *Unsafe conditions.* Unsafe conditions exist if a reasonable person would, under the facts and circumstances, consider it unsafe for the employee to walk to or from home, or to walk to or use public transportation at the time of day the employee must commute. One of the factors indicating whether it is unsafe is the history of crime in the geographic area surrounding the employee's workplace or residence at the time of day the employee must commute.

(6) *Qualified employee defined*—(i) *In general.* For purposes of this paragraph (k), a qualified employee is one who meets the following requirements with respect to the employer:

(A) The employee performs services during the current year, is paid on an hourly basis, is not claimed under section 213(a)(1) of the Fair Labor Standards Act of 1938 (as amended), 29 U.S.C. 201–219 (FLSA), to be exempt from the minimum wage and maximum hour provisions of the FLSA, and is within a classification with respect to which the employer actually pays, or has specified in writing that it will pay, compensation for overtime equal to or exceeding one and one-half times the regular rate as provided by section 207 of the FLSA; and

(B) The employee does not receive compensation from the employer in excess of the amount permitted by section 414(q)(1)(C) of the Code.

(ii) *"Compensation" and "paid on an hourly basis" defined.* For purposes of this paragraph (k), "compensation" has the same meaning as in section 414(q)(7). Compensation includes all amounts received from all entities treated as a single employer under section 414 (b), (c), (m), or (o). Levels of compensation shall be adjusted at the same time and in the same manner as provided in section 415(d). If an employee's compensation is stated on an annual basis, the employee is treated as "paid on an hourly basis" for purposes of this paragraph (k) as long as the employee is not claimed to be exempt from the minimum wage and maximum hour provisions of the FLSA and is paid overtime wages either equal to or exceeding one and one-half the employee's regular hourly rate of pay.

(iii) *FLSA compliance required.* An employee will not be considered a qualified employee for purposes of this paragraph (k), unless the employer is in compliance with the recordkeeping requirements concerning that employee's wages, hours, and other conditions and practices of employment as provided in section 211(c) of the FLSA and 29 CFR part 516.

(iv) *Issues arising under the FLSA.* If questions arise concerning an employee's classification under the FLSA, the pronouncements and rulings of the Administrator of the Wage and Hour Division, Department of Labor are determinative.

(v) *Non-qualified employees.* If an employee is not a qualified employee within the meaning of this paragraph (k)(6), no portion of the value of the commuting use of employer-provided transportation is excluded under this paragraph (k).

(7) *Examples.* This paragraph (k) is illustrated by the following examples:

Example 1. A and B are word-processing clerks employed by Y, an accounting firm in a large metropolitan area, and both are qualified employees under paragraph (k)(6) of this section. The normal working hours for A and B are from 11:00 p.m. until 7:00 a.m. and public transportation, the only means of transportation available to A or B, would be considered unsafe by a reasonable person at the time they are required to commute from home to work. In response, Y hires a car service to pick up A and B at their homes each evening for purposes of transporting them to work. The amount includible in the income of both A and B is $1.50 for the one-way commute from home to work.

Example 2. Assume the same facts as in *Example 1*, except that Y also hires a car service to return A and B to their homes each morning at the conclusion of their shifts and public transportation would not be considered unsafe by a reasonable person at the time of day A and B commute to their homes. The value of the commute from work to home is includible in the income of both A and B by reference to fair market value since unsafe conditions do not exist for that trip.

Example 3. C is an associate for Z, a law firm in a metropolitan area. The normal working hours for C's law firm are from 9 a.m. until 6 p.m., but C's ordinary office hours are from 10 a.m. until 8 p.m. Public transportation, the only means of transportation available to C at the time C commutes from work to home during the evening, would be considered unsafe by a reasonable person. In response, Z hires a car service to take C home each evening. C does not receive annual compensation from Z in excess of the amount permitted by section 414(q)(1)(C) of the Code. However, C is treated as an employee exempt from the provisions of the FLSA and, accordingly, is not paid overtime wages. Therefore, C is not a qualified employee within the meaning of paragraph (k)(6) of this section. The value of the commute from work to home is includible in C's income by reference to fair market value.

(8) *Effective date.* This paragraph (k) applies to employer-provided transportation provided to a qualified employee on or after July 1, 1991.

Par. 3. Section 1.132–6 is amended as follows:

1. Paragraph (d)(1) is revised.

2. The second sentence of paragraph (d)(3) is revised.

3. The last sentence of paragraph (d)(4) is revised.

4. The revisions read as follows:

§ 1.132–6 De minimis fringes.

* * * * *

(d) * * *

(1) *Transit Passes.* A public transit pass provided at a discount to defray an employee's commuting costs may be excluded from the employee's gross income as a de minimis fringe if such discount does not exceed $21 in any month. The exclusion provided in this paragraph (d)(1) also applies to the provision of tokens or fare cards that enable an individual to travel on the public transit system if the value of such tokens and fare cards in any month does not exceed by more than $21 the amount the employee paid for the tokens and fare cards for such month. Similarly, the exclusion of this paragraph (d)(1) applies to the provision of a voucher or

similar instruments that is exchangeable solely for tokens, fare cards, or other instruments that enable the employee to use the public transit system if the value of such vouchers and other instruments in any month does not exceed $21. The exclusion of this paragraph (d)(1) also applies to reimbursements made by an employer to an employee after December 31, 1988, to cover the cost of commuting on a public transit system, provided the employee does not receive more than $21 in such reimbursements for commuting costs in any given month. The reimbursement must be made under a bona fide reimbursement arrangement. A reimbursement arrangement will be treated as bona fide if the employer establishes appropriate procedures for verifying on a periodic basis that the employee's use of public transportation for commuting is consistent with the value of the benefit provided by the employer for that purpose. The amount of in-kind public transit commuting benefits and reimbursements provided during any month that are excludible under this paragraph (d)(1) is limited to $21. For months ending before July 1, 1991, the amount is $15 per month. The exclusion provided in this paragraph (d)(1) does not apply to the provision of any benefit to defray public transit expenses incurred for personal travel other than commuting.

* * * * *

(3) * * * For example, the fact that $252 (i.e., $21 per month for 12 months) worth of public transit passes can be excluded from gross income as a de minimis fringe in 1992 does not mean that any fringe benefit with a value equal to or less than $252 may be excluded as a de minimis fringe. * * *

(4) * * * For example, if, in 1992, an employer provides a $50 monthly public transit pass, the entire $50 must be included in income, not just the excess value over $21.

* * * * *

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: December 18, 1991.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 92-1116 Filed 1-15-92; 8:45 am]
BILLING CODE 4830-01-M

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; amendments.

SUMMARY: In support of the implementation of the recently-signed Comprehensive Political Settlement of the Cambodia Conflict, the Treasury Department is lifting prospectively the trade embargo against Cambodia and authorizing new financial and other transactions with Cambodian nationals, the Supreme National Council of Cambodia, its agencies, instrumentalities, and controlled entities, and successor Cambodian governments. This final rule does not unblock the assets within U.S. jurisdiction of the Government of Cambodia or Cambodian nationals blocked as of January 2, 1992, nor does it affect enforcement actions with respect to prior violations of the embargo.

EFFECTIVE DATE: 12:01 a.m. Eastern Standard Time, January 3, 1992.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel (tel.: 202/535-6020), or Steven I Pinter, Chief of Licensing (tel.: 202/535-9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION CONTACT: The Office of Foreign Assets Control ("FAC") is amending the Foreign Assets Control Regulations, 31 CFR part 500 (the "FACR"), to add section 500.570, authorizing new transactions involving property in which Cambodia or its nationals have an interest. The effect of this amendment is that transactions involving such property coming within the jurisdiction of the United States or into the possession or control of persons subject to the jurisdiction of the United States after January 2, 1992, or in which an interest of Cambodia or a national thereof arises after that date, are authorized by general license. Newly authorized transactions include, but are not limited to, importations from and exportations to Cambodia (not otherwise restricted), new investment, travel-related transactions and brokering transactions. Property blocked as of January 2, 1992, because of an interest therein of Cambodia or its nationals, remains blocked.

Because the FACR involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943-1948 Comp., p. 748.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

4. Section 500.570 is added to subpart E to read as follows:

§ 500.570 Authorization of new transactions concerning certain Cambodian property.

(a) Transactions involving property in which Cambodia or a national thereof has an interest are authorized where:

(1) The property comes within the jurisdiction of the United States or into the control or possession of a person subject to the jurisdiction of the United States on or after January 3, 1992; or

(2) The interest in the property of Cambodia or a Cambodian national arises on or after January 3, 1992.

(b) Unless otherwise authorized by the Office of Foreign Assets Control, all property and interests in property of Cambodia or its nationals that were blocked pursuant to subpart B of this part as of January 2, 1992, remain blocked and subject to the prohibitions and requirements of this part.

Dated: January 8, 1992.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Dated: January 9, 1992.

Peter K. Nunez,
Assistant Secretary (Enforcement).

[FR Doc. 92-1266 Filed 1-14-92; 10:48 am]
BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-4093-6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of recategorization of sites on the national priorities list.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing the recategorization of 13 Superfund sites on the National Priorities List (NPL) into the Construction Completion category of the NPL. The NPL is appendix B to 40 CFR part 300 of the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. 40 CFR 300.425(e) of the NCP states that "[r]eleases may be deleted from *or recategorized on* the NPL where no further response is appropriate" (emphasis added). The purpose of this recategorization within the NPL is to more clearly communicate to the public the status of cleanup progress at sites.

EFFECTIVE DATE: January 16, 1992.

FOR FURTHER INFORMATION CONTACT: William O. Ross, State Requirements Section (OS–220W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8335.

SUPPLEMENTARY INFORMATION: The preamble to the 1990 revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (55 FR 8666, 8699–8700, March 8, 1990), states that the EPA would recategorize certain "completed" NPL sites in a "Construction Completion" category. The NCP explained that this category would consist of (a) sites awaiting deletion (i.e., those sites for which a Notice of Intent to Delete has been published), (b) sites awaiting first five-year review after completion of the remedial action, and (c) sites undergoing long-term remedial actions at which the construction phase of the action is complete.

On December 24, 1991 (56 FR 66601), EPA announced that it would no longer defer deletion of sites pending completion of the first five-year review. Accordingly, EPA will no longer use the second subcategory referred to in the NCP, and sites previously placed in that subcategory will be recategorized as "awaiting deletion."

EPA's policy is to shift sites into the Construction Completion category following approval of an Interim Close Out Report (for long-term remedial actions) or a final Close Out Report by the appropriate Agency official. EPA approves an interim or final Close Out Report after remedies have been implemented and are operating properly. The sites being added to the Construction Completion Category today satisfy these criteria.

On February 11, 1991 (56 FR 5634) EPA activated the Construction Completion Category by listing 14 sites as Construction Completions. On September 10, 1991 (56 FR 46121) EPA deleted two of these sites from the NPL. EPA is today adding 13 sites to the Construction Completion category, resulting in a total of 25 sites in this category. The information on completion sites will be reflected in the NPL at the time of the next final NPL update. The additional sites are Cannon Engineering Corporation (MA), Westline Site (PA), Mowbray Engineering Company (AL), Triana/Tennessee River (AL), Lee's Lane Landfill (KY), Cemetery Dump (MI), Old Mill (OH), Pagano Salvage (NM), Crystal City Airport (TX), Conservation Chemical Company (MO), Lawrence Todtz Farm (IA), United Chrome Products, Inc. (OR), and Western Processing Co., Inc. (WA). The 25 sites listed are presently included in the Construction Completion category:

Construction Completion Sites

Sites Awaiting Deletion

1. A.L. Taylor, Brooks, Kentucky.
2. Big River Sand, Wichita, Kansas.
3. Celtor Chemical Works, Hoopa, California.
4. Cemetery Dump, Rose Center, Michigan.
5. Crystal City Airport, Crystal City, Texas.
6. Independent Nail, Beaufort, South Carolina.
7. LaBounty, Charles City, Iowa.
8. Lawrence Todtz Farm, Camanche, Iowa.
9. Lee's Lane Landfill, Louisville, Kentucky.
10. Mowbray Engineering Company, Greenville, Alabama.
11. Newport Dump, Newport, Kentucky.
12. Northern Engraving, Sparta, Wisconsin.
13. Pagano Salvage, Los Lunas, New Mexico.
14. Taylor Borough Dump, Taylor Borough, Pennsylvania.
15. Triangle Chemical, Bridge City, Texas.
16. Westline Site, Westline, Pennsylvania.

Long-term Response Actions

1. Alpha Chemical, Galloway, Florida.
2. Cannon Engineering Corporation, Bridgewater, Massachusetts.
3. Chisman Creek, York County, Virginia.
4. Conservation Chemical Company, Kansas City, Missouri.
5. Mid-South Wood Products, Mena, Arkansas.
6. Old Mill, Rock Creek, Ohio.
7. Triana/Tennessee River, Triana, Alabama.
8. United Chrome Products, Corvallis, Oregon.
9. Western Processing Co., Inc., Kent, Washington.

Dated: January 10, 1992.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 92–1186 Filed 1–15–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

45 CFR Part 3

RIN 0905–AD55

Conduct of Persons and Traffic on the National Institutes of Health Federal Enclave

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is amending the current regulations at 45 CFR part 3 governing the conduct of persons and traffic on the NIH Federal enclave in Bethesda, Maryland, by adding a new provision prohibiting the possession of firearms, explosives, or other dangerous or deadly weapons or materials except by an authorized police officer.

EFFECTIVE DATE: Effective February 18, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. O.W. Sweat, Director, Division of Security Operations, National Institutes of Health, Building 31, room B3B12, Bethesda, Maryland, 20892, telephone (301) 496–6893 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The regulations at 45 CFR part 3 governing the conduct of persons and traffic on the NIH Federal enclave in Bethesda, Maryland, were last amended on January 22, 1990 (55 FR 2067). At that time, a provision prohibiting the possession of firearms, explosives, or other dangerous or deadly weapons, or materials was inadvertently omitted from the regulations. NIH believes that such a provision is necessary to enhance the security and safety of persons conducting business or utilizing the NIH Federal enclave. Therefore, on August 26, 1991 (56 FR 42015), NIH published a notice of proposed rule making announcing its intention to amend the current regulations by adding such a

provision, and invited public comment. The public was given 60 days to comment. No comments were received. Thus, the regulations being issued today are the same as the proposed regulations, with the exception of a clarifying change in § 3.5 to the citations to the GSA regulations concerning the sale of abandoned or unclaimed property and in § 3.42. The regulations add a new paragraph (g) to § 3.42 prohibiting any person other than a specifically authorized police officer from possessing firearms, explosives, or other dangerous or deadly weapons or dangerous materials intended to be used as weapons either openly or concealed. The regulations permit the Director, NIH, upon written request, to permit possession of antique firearms held for collection in living quarters, if the Director finds that the collection does not present any risk of harm. The existing penalties for violation of provisions of the regulations set forth in subpart D are not affected.

Executive Order No. 12291, Federal Regulation

The Director, NIH, has determined that the regulations do not constitute a major rule, as defined under the Order, and that a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The Director, NIH, certifies that the regulations will not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), is not required.

Executive Order No. 12606, Family

The Director, NIH, has determined that the regulations would not have a significant potential negative impact on family well-being, as defined under the Order.

Executive Order No. 12612, Federalism

The Director, NIH, has determined that the regulations would not have a significant potential negative impact on States, in the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as defined under the Order.

Paperwork Reduction Act

The regulations do not contain any information collection requirements subject to review and approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

List of Subjects in 45 CFR Part 3

Conduct standards; Federal buildings and facilities-Government buildings; Firearms; Traffic regulations.

For reasons set forth in the preamble, title 45 of the Code of Federal Regulations, part 3, sections 3.5 and 3.42 are amended to read as set forth below.

Dated: December 12, 1991.

Bernadine Healy,

Director, National Institutes of Health.

PART 3—CONDUCT OF PERSONS AND TRAFFIC ON THE NATIONAL INSTITUTES OF HEALTH FEDERAL ENCLAVE

1. The authority citation for part 3 continues to read as follows:

Authority: 40 U.S.C. 318–318d. 486; Delegation of Authority, 33 FR 604.

2. Section 3.5 is revised to read as follows:

§ 3.5 Lost and found, and abandoned property.

Lost articles which are found on the enclave, including money and other personal property, together with any identifying information, must be deposited at the Police Office or with an office (such as the place where found) which may likely have some knowledge of ownership. If the article is deposited with an office other than the Police Office and the owner does not claim it within 30 days, it shall be deposited at the Police Office for further disposition in accordance with General Services Administration regulations (41 CFR part 101–48). Abandoned, or other unclaimed property and, in the absence of specific direction by a court, forfeited property, may be so identified by the Police Office and sold and the proceeds deposited in accordance with 41 CFR 101–45.304 and 101–48.305.

3. Section 3.42 is amended by adding a new paragraph (g) to read as follows:

§ 3.42 Restricted activities.

* * * * *

(g) *Firearms, explosive, and other weapons.* No person other than a specifically authorized police officer shall possess firearms, explosives, or other dangerous or deadly weapons or dangerous materials intended to be used as weapons either openly or concealed. Upon written request, the Director may permit possession in living quarters of antique firearms held for collection purposes, if the Director finds that the collection does not present any risk of harm.

[FR Doc. 92–1143 Filed 1–15–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172 and 173

[Docket No. HM–139H; Amdt. Nos. 172–126, 173–230]

RIN 2137–AB98

Air Bag Inflators and Air Bag Modules for Passive Restraint Systems; Conversion of Individual Exemptions into Regulations of General Applicability

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) governing the transportation of air bag inflators and air bag modules used in certain passive restraint systems. This action provides for transportation of these devices under provisions contained in the HMR rather than under the exemptions program. In addition, it eliminates a requirement for the separate classification and approval of air bag modules containing approved inflators, and provides exceptions from the HMR for air bag modules installed in steering wheel columns and motor vehicles. This action is based, in part, on a petition for rulemaking (P–1054) filed by the Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA). The intended effect of this action is to simplify and incorporate the terms and conditions of exemptions, which have proven to be effective and safe, into rules of general applicability, and to reduce costs, paperwork and time delays to manufacturers and shippers of these devices.

EFFECTIVE DATE: May 6, 1992. However, compliance with the requirements as adopted herein is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Ke, (202) 366–4545, Office of Hazardous Materials Technology, or Hattie L. Mitchell, (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The major components of an air bag inflator are an igniter, a booster material and a gas generant. The booster material and gas generant are typically

class B propellant explosives. The igniter is typically a class C explosive. An air bag module is a complete assembly, consisting of an inflatable air bag and an inflator. This assembly is part of a passive restraint system mounted in the steering wheel or glove compartment area of an automobile and is activated when the vehicle is subjected to a predetermined level of impact. When offered for transportation in commerce, the shipment may consist of the inflator, the module, the module assembly installed in a steering wheel column, or installed in an automobile or other lightweight motor vehicle.

Under the HMR, an air bag inflator or an air bag module is described and classed as an explosive power device, class C or B, depending on its size. Except as specifically provided in § 173.56 (formerly § 173.86), the regulations require that all new explosives be examined and assigned a recommended shipping description and hazard class by the Department of the Interior's Bureau of Mines (BOM) or the Association of American Railroads' Bureau of Explosives (BOE), before being classed and approved for transportation by RSPA's Associate Administrator for Hazardous Materials Safety (OHMS) (previously titled Director, Office of Hazardous Materials Transportation). A "new explosive," as defined in § 173.56(a)(2), means an explosive compound, mixture or device, produced by a person who (1) has not previously produced that explosive; or (2) has previously produced that explosive but has made a change in the formulation, design, or process so as to alter any of the properties of the explosives.

Under the terms of exemptions, air bag inflators and air bag modules have been classed as flammable solids for transportation in the United States when the completed packages have been examined for that hazard class by the BOE or BOM and approved by OHMS. The exemptions providing for the transportation of these devices as flammable solids are based on extensive testing performed on the air bag inflators and modules (i.e., bonfire test, initiation of the devices, etc.) RSPA has issued several exemptions authorizing the transportation of air bag inflators and modules as flammable solids. These exemptions are DOT–E 8214, E 8236, E 8273, E 9066, and E 10086. Another exemption, DOT–E 10103, authorizes the transportation of certain air bag modules installed in automobile assemblies without their being subject to the other requirements of the HMR. No incidents have been reported to RSPA involving transportation of these devices under those exemptions.

Based on a petition for rulemaking from the Motor Vehicle Manufacturers Association (MVMA) (P–1054), RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** under Docket No. HM–139H, Notice No. 90–3 (February 26, 1990; 55 FR 6730) to provide for transportation, within the United States, of air bag inflators and air bag modules as flammable solids, under provisions contained in the HMR rather than under the exemption program. As stated in the NPRM, one reason for MVMA's position that these devices should be transported under regulations of general applicability was the automotive industry's projection for equipment of as many as 3 to 4 million U.S.-manufactured cars with air bags in 1990—a substantial increase from the approximately 400,000 air bags installed in 1989 model cars. Beginning in the 1990 model year, all passenger cars sold in the United States are required under regulations issued by DOT's National Highway Traffic Safety Administration (NHTSA) to be equipped with automatic restraints, consisting of either manual safety belts combined with an air bag or automatic motorized safety belts. NHTSA has extended requirements for front seat automatic crash protection to vans, light trucks, utility vehicles and small buses on a phased-in basis for vehicles manufactured after September 1, 1994. For details of NHTSA regulations, refer to a final rule published in the **Federal Register** (56 FR 12472) on March 26, 1991, under Docket No. 74–14, and to requirements found in 49 CFR 571.208.

On December 21, 1990, RSPA published a final rule in the **Federal Register** (55 FR 52402) under Docket No. HM–181. The final rule, which became effective on October 1, 1991, made significant changes to the HMR with respect to the format of the HMR and the hazard communication, classification and packaging requirements. The discussions and the amendments contained in this final rule are aligned with the changes adopted under HM–181.

II. Discussion of Comments to NPRM

RSPA received 12 comments on the proposals contained in the NPRM. These comments were received from trade associations, manufacturers of air bag modules and inflators, shippers, and State and local agencies. Most commenters expressed support for the proposal contained in the NPRM, but several raised concerns about certain provisions in the proposal.

RSPA proposed to retain the requirement that air bag inflators or air bag modules be examined by the BOE or BOM and be classed and approved for transportation by the OHMS. However, an exemption would no longer be required to transport these devices as flammable solids, provided the complete package has been examined by the BOM or the BOE, and classed and approved for transportation by OHMS. Several commenters stated that other than eliminating the need to renew an exemption every 18 or 24 months, the proposal, if adopted, would not significantly simplify the transportation or applicable paperwork burden. In addition, commenters stated that because the explosive component is contained in the inflator, the EX number and the competent authority letter should apply to the inflator, not the module.

Because of numerous variations in sizes and shapes of modules, RSPA, in its exemption process, has encountered difficulties in readily tracing a particular explosive compound, mixture or device to the detailed description contained in the manufacturer's application. Therefore, for identification purposes, RSPA has assigned different EX numbers to the inflator and the module. Upon further review, however, RSPA agrees with the commenters that if an inflator has been examined and approved for transportation, issuance of a separate approval for a module containing an approved inflator is unnecessary. Therefore, this final rule requires that only the inflator be submitted for examination and approval. However, to maintain the traceability of an approved inflator, RSPA is requiring that the product code used to classify the inflator or the EX number assigned by OHMS to the inflator, be shown on the shipping papers in association with the shipping description.

As provided in this final rule, procedures for obtaining an approval of an inflator are as follows:

1. Under the explosive approval provisions in § 173.56, a manufacturer must have the inflator examined by the BOE or BOM. In the same or a different application, an applicant may request classification of an inflator as Division 4.1 (flammable solid), as outlined in § 173.166(b). To facilitate variations in the design, without the need for a new examination, the application data may be based on the maximum parameters of each particular design type for which approval is sought. These maximum parameters must be considered during

the laboratory examination and must be noted in the laboratory report.

2. The manufacturer must then submit a written application for approval of the device to OHMS. An application for the inflator must contain a detailed description of the device, including size, design, chemical composition (including a list of formulas), a master drawing showing location of all components, BOE or BOM test results, and copies of all other relevant background data for processing the approval request. If the application data is found to be satisfactory, the manufacturer will then be issued an EX number approval for the inflator. The approval will be based on the maximum parameters reviewed by the BOE or BOM for which approval was sought. These provisions will allow a manufacturer to make minor changes in the inflator, for example, changes in the weights of the components within the prescribed parameters or changes in hardware not affecting the safety of the units. Any change in formula or packaging not within the parameters of the approved design is subject to the examination and approval provisions in § 173.56.

The new explosive classification approvals issued by RSPA under § 173.56 combine both an EX approval and a competent authority certificate for explosive classification under the international regulations. Therefore, these new approvals satisfy requirements under the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), the International Maritime Organization's International Maritime Dangerous Goods (IMDG) Code and the HMR. RSPA believes these procedures will significantly reduce processing costs and time delays.

The Air Line Pilots Association (ALPA) expressed several concerns about the proposal. ALPA stated that the safety of an aircraft carrying these devices is less likely to be compromised when the devices are prepared for transportation under the terms of an exemption than when they are prepared in accordance with packaging requirements contained in the HMR. RSPA does not agree. Many air bag inflators and modules are being transported as explosives in international commerce by aircraft under the ICAO Technical Instructions. RSPA believes there is no significant difference in the risk posed by packages containing air bag inflators and modules that are transported under the ICAO Technical Instructions, and those packages transported under exemption. As with other hazardous materials, RSPA will continue to monitor incidents involving the transportation of these devices to ensure that they are being transported in a manner that does not endanger public safety.

Most air bag inflators and modules are described and classed as "Articles, pyrotechnic for technical purposes" (UN0430, 1.3G; UN0431, 1.4G; and UN0432, 1.4S) by competent authorities of other countries, based on the amount of pyrotechnic material contained in the device and the design of the device. RSPA, as the competent authority of the United States, has issued competent authority approvals for air bag inflators and modules as "Cartridges, power device, 1.4S." Several commenters questioned the disparities between domestic and international procedures. RSPA believes that, in spite of the differences in assignment, these devices actually have similar designs and composition and, consequently, pose similar levels of risk in transportation. To reduce these disparities and to harmonize descriptions, RSPA will also use the description "Articles, pyrotechnic." However, all approvals issued as "Cartridges, power device" will remain valid.

ALPA also expressed concern over the absence of a POISON label on packages containing air bag inflators that use sodium azide as a gas generant. In addition, ALPA inquired why RSPA did not list or specifically include in the NPRM the ignition and boostering materials or enhancers contained in these devices, and how RSPA plans to address the intrinsic risks associated with those unnamed substances.

Sodium azide is a solid material that is toxic by ingestion. The sodium azide contained in air bags is in pressed disc form, inside a sealed metal housing. RSPA believes the possibility of the metal housing being opened accidentally is minimal. When an air bag is initiated in a vehicular impact, the sodium azide is converted to nitrogen gas which is non-toxic. These devices do not contain detonating explosives. Tests performed on these devices have demonstrated that, should activation occur during transportation, the likelihood of an injury due to deflagration outside the package is very low. There is, however, a slight possibility of surface burns because of the small amount of pyrotechnic contained in these devices. Therefore, RSPA authorizes these devices to be transported domestically as flammable solids. In the final rule, RSPA has provided for these devices in Packing Group III. Procedures for approval of the devices as Division 4.1, that is, a flammable solid, are contained in § 173.166(b).

The NPRM did not include a listing of authorized packagings for air bag inflators and modules shipped as flammable solids. Several commenters stated that the proposal should be amended to specify in the regulations all authorized packagings. RSPA agrees with the commenters and has included a list of the authorized packagings in the packaging provisions in § 173.166. These prescribed packagings are based on performance-oriented standards consistent with requirements adopted under HM–181.

In the NPRM, the proposed packaging provisions for air bag inflators and modules classed as flammable solids contained a note to alert shippers that air bag inflators and modules are regulated as explosives, and not flammable solids, when transported by aircraft under the ICAO Technical Instructions and by vessel under the IMDG Code. That note has not been adopted in this final rule. Instead, column 1 of the Hazardous Materials Table, in § 172.101 (the § 172.101 Table) shows the letter "D" for the entry "Air bag inflators or Air bag modules," 4.1. The letter "D" identifies this proper shipping name is appropriate for describing these devices in domestic transportation but may not be appropriate for international transportation.

Mercedes-Benz of North America, Inc. (MBNA) stated that RSPA's use of the nomenclature "passive restraints" was in error. The commenter stated that air bags are "supplementary restraints" which must be used with safety belts and that the term "passive restraints" may imply that an air bag is a stand-alone restraint. MBNA submitted copies of excerpts from owner's manuals of other automobile manufacturers to show that the terminology "supplemental restraints" is used industry-wide.

RSPA uses the description "for passive restraint system" in exemptions to describe the purpose of these devices and, therefore, used it in the proposal. Because the description "supplemental restraint system" appears to be accepted industry terminology, RSPA has provided for the shipping description "for supplemental restraint" systems in the § 172.101 Table.

III. Section-by-Section Review

Section 171.6

The table in paragraph (b)(2) is amended by adding, in column 3 of the

entry for OMB control number 2137–0557, the section citation "173.166".

Section 172.101

The § 172.101 table is amended by adding an entry for "Air bag inflators or Air bag modules for supplemental restraint systems" with the hazard class "4.1" and the identification number "NA1325". This shipping name and corresponding hazard class is authorized for domestic shipments as denoted by the letter "D" in column 1.

This entry also references "Articles, pyrotechnic for technical purposes" (UN0430, UN0431, and UN0432). Use of this latter description and the associated explosive hazard classes is authorized for both domestic and international shipments. Inflators and modules being imported into the United States must be approved by OHMS in accordance with § 173.56(g) based on the approval of the competent authority of the country of origin.

The Air Transport Association of America requested a clarification on whether the net weight limitation applies only to the hazardous materials present in devices or to the entire assemblies. When transported by aircraft, the net quantity limitation applies to the weight of all assemblies contained within the package, that is the total weight of the hazardous materials and the hardware, to include the air bag when applicable. When shipped as Division 4.1, packaging group III, a maximum net quantity in one package of 25 kilograms (50 pounds) is authorized for transport by passenger aircraft, and 100 kilograms (220 pounds) is authorized for transport by cargo aircraft.

Section 173.166. (Proposed as § 173.199)

This section contains applicable packaging requirements for air bag inflators when classed as Division 4.1. Paragraph (b) contains procedures for air bag inflators to be classed as Division 4.1 when the device has been examined by the BOE or BOM and approved for that class by OHMS. Paragraph (c) requires that the product code used to classify the inflator or the EX number assigned to the inflator by OHMS must be noted on the shipping paper accompanying the shipment.

IV. Administrative Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This final rule has been reviewed under the criteria specified in § 1(b) of Executive Order 12291 and (1) is determined not to be "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the docket.

B. Executive Order 12612

This final rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effect on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among levels of government. Thus, this final rule contains no policies that have Federalism implications, as defined in Executive Order 12612, and no Federalism Assessment is required.

c. Regulatory Flexibility Act

The provisions of this final rule impact shippers and manufacturers of air bag inflators and modules and will have the net result of reducing costs to persons affected by this final rule. Based on available information, this rule will not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

D. Paperwork Reduction Act

Information collection requirements contained in current § 173.56 pertaining to new explosives have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and assigned control number, OMB No. 2137–0557. The information collection contained in § 173.166(b) pertaining to classification of air bag inflators and modules as flammable solids is also approved under OMB No. 2137–0557 (previously approved under OMB No. 2137–0551).

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR parts 171, 172 and 173, are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1806, 1818; 49 CFR part 1.

§ 171.8 [Amended]

2. In § 171.8, in paragraph (b)(2), the entry in the table for Current OMB control No. "2137–0557" is amended by adding in numerical order, under column 3, the section citation "173.166".

PART 172—HAZARDOUS MATERIALS TABLES, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

2a. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

2b. In § 172.101, the Hazardous Materials Table is amended by adding entries, in alphabetical sequence, to read as follows:

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class of division	Identification numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
.....	*ADD*												
D.....	Air bag inflators *or* Air bag modules *for supplemental restraint systems. See also* Articles, pyrotechnic *for technical purposes* (UN0430, UN0431, UN0432).	4.1	NA1325	III	Flammable solid.		166	166	166	25kg	100kg	A	

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR part 1, unless otherwise noted.

4. A new § 173.166 is added to subpart E to read as follows:

§ 173.166 Air bag inflators and modules (for supplemental restraint systems).

(a) *Definitions.* An air bag inflator (consisting of a casing containing an igniter, a booster material and a gas generant) is a gas generator used to inflate an air bag in a supplemental restraint system in a motor vehicle. An air bag module is the air bag inflator plus an inflatable bag assembly.

(b) *Classification.* An air bag inflator may be classed as Division 4.1 only if—

(1) The manufacturer has submitted, to the Bureau of Explosives (BOE) or the Bureau of Mines (BOM), a complete application containing a detailed description of the inflator (or, if more than a single inflator is involved, the maximum parameters of each particular inflator design type for which approval is sought) and details on the complete package.

(2) The manufacturer submits an application, including the BOE or BOM test results and report recommending the shipping description and classification for each device or design type, to the Associate Administrator for Hazardous Materials Safety, and is notified in writing by the Associate Administrator that the device has been classed as Division 4.1 and approved for transportation.

(c) *EX numbers.* When offered for transportation, the shipping paper must contain the EX number or product code for each approved inflator in association with the basic description required by § 172.202(a) of this subchapter. Product codes must be traceable to the specific EX number assigned to the inflator by the Associate Administrator for Hazardous Materials Safety. A module must be identified as containing the originally approved inflator.

(d) *Exceptions.* (1) An air bag module that has been approved by the Associate Administrator for Hazardous Materials Safety and is installed in a steering column or a motor vehicle is not subject to the requirements of this subchapter.

(2) An air bag module, containing an inflator that has previously been examined and approved for transportation as a Division 4.1 material, is not required to be submitted for examination or approval.

(e) *Packagings.* The following packagings are authorized:

(1) 4C1, 4C2, 4D, or 4F wooden boxes.

(2) 4G fiberboard boxes.

(3) Reusable high strength plastic or metal containers are authorized for shipment of air bag inflators and modules by highway and rail from a manufacturing facility to the assembly facility, subject to the following conditions:

(i) The gross weight of the container may not exceed 908 kg (2,000 pounds). The container structure must provide adequate support to allow containers to be stacked at least three high with no damage to the containers or devices.

(ii) If not completely enclosed by design, the container must be covered with plastic, fiberboard, or metal. The covering must be secured to the container by non-metallic banding or other comparable methods.

(iii) Internal dunnage must be sufficient to prevent movement of the devices within the container.

(f) *Labeling.* Notwithstanding the provisions of § 172.402 of this subchapter, each package must display a FLAMMABLE SOLID label. Additional labeling is not required when the package contains no hazardous materials other than the devices.

Issued in Washington, DC, on January 8, 1992, under authority delegated in 49 CFR 1.53.

Travis P. Dungan,

Administrator.

[FR Doc. 92-696 Filed 1-15-92; 8:45 am]

BILLING CODE 4910-60-M

Proposed Rules

Federal Register
Vol. 57, No. 11
Thursday, January 16, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 729 and 1446

Poundage Quota and Price Support Programs for Peanuts; Request for Comments

AGENCY: Agricultural Stabilization and Conservation Service, and Commodity Credit Corporation, USDA.

ACTION: Request for comments.

SUMMARY: In order to complete the final regulations for the 1991–95 crop years, this notice seeks, with respect to 7 CFR parts 729 and 1446, public comments for the 1992 through 1995 crops of peanuts concerning: (1) The definition in § 729.103 of actual undermarketings of quota peanuts for producers, (2) the method for making required reductions in a farm's poundage quota pursuant to § 729.204, (3) the conditions under which loan additional peanuts may be sold under the "immediate buyback" provisions in § 1446.309, and (4) whether disposition credit should be granted in § 1446.411 for peanut products made from contract additional peanuts and exported to Canada or Mexico. Additionally, this notice seeks comments for the 1991 crop as well as the 1992 through 1995 crops of peanuts with respect to the requirements for granting an extension of time for a handler to export or crush contract additional peanuts. The extent to which changes in the regulations must be proposed or promulgated will be determined following the receipt and consideration of the comments.

DATES: Comments must be received on or before February 6, 1992 to be assured of consideration. The comment period has been limited to 21 days to allow time for proposing changes in parts 729 and 1446 as may appear to be needed following the receipt of comments pursuant to this notice.

ADDRESSES: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013 or deliver to room 5750, South Building, 14th Street and Independence Avenue SW., Washington, DC. All written comments received in response to this request will be made available for public inspection in room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m. on regular workdays.

FOR FURTHER INFORMATION CONTACT: Jack S. Forlines, Deputy Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 720–0156.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and has been classified not major because regulatory changes are not proposed by this notice at this time and proposals for change that may result from this notice would not meet any of the three criteria identified under the Executive Order. With respect to those criteria, it has been determined that proposals made in connection with the subject matter of this notice would not have an annual effect on the economy of $100 million or more, and would not result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions. Furthermore, such action would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this notice applies are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since new rules are not proposed by this notice. Further, the Commodity Credit Corporation and the Agricultural Stabilization and Conservation Service are not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Background

On April 19, 1991, interim rules were published in the **Federal Register** (56 FR 16206 and 56 FR 16227) which set forth, for the 1991 through 1995 crops of peanuts, regulations in 7 CFR parts 729 and 1446 to govern the federal poundage quota and price support programs for peanuts and peanut handler operations for the 1991–95 crop years. On August 13, 1991, a final rule was published in the **Federal Register** (56 FR 38319) that adopted with certain modifications the interim rules that were published on April 19, 1991.

This notice seeks comments on five subjects. Although the final rule generally contained rules for all of the 1991–95 crops, in several cases the rule was restricted to the 1991 crop in order to allow for further comment. In other cases, the final rule preamble specifically indicated that further comment would be sought, generally. One other matter involves a current question about program operation. The five subjects are as follows:

1. In the final rule, the definition for "undermarketings" in § 729.103 defined "actual" undermarketings for only the 1991 crop of peanuts. Accordingly, the term "actual undermarketings" remains to be defined for the 1992 through 1995 crops of peanuts.

2. In § 729.204(d)(2), the regulations provided the method by which a farm's quota would be reduced for the 1991 crop of peanuts if, for any 2 of the 3 preceding years, the produced and considered produced quantity of peanuts was less than such farm's basic quota for the respective years. Since only 1991 was covered, the reduction method remains to be resolved for the 1992 through 1995 crops.

3. In addition, the final rule preamble indicated that, with respect to the 1992 through 1995 crops of peanuts, further public comment would be sought on whether export credit would be granted for peanut products that are made from "additional" peanuts and exported to Canada or Mexico.

4. The final rule also indicated that additional comment would be sought concerning the conditions under which "additional" peanuts may be pledged as collateral for a price support loan and purchased by a handler under "immediate buyback" provisions.

5. Additionally, because of concerns expressed by the public, comments are being requested on the conditions by which an extension of time for exporting or crushing contract additional peanuts may be granted to a handler. Because such extensions will not occur until the late summer or fall of 1992, comments on this issue are sought with respect to the handling of the 1991 crop as well as for the 1992–95 crops.

Considerations involved with these issues, with citations to the particular regulatory provisions involved, are set out below.

1. Actual Undermarketings

With respect to undermarketings of quota peanuts by producers, section 358–1(b)(8) of the Agricultural Adjustment Act of 1938, as amended, (the 1938 Act) (7 U.S.C. § 1358–1(b)(8)) generally provides that the farm poundage quota for a farm for any marketing year shall be increased, within the national limitation on adjustments for undermarketings provided for in section 358–1(b)(9) of the 1938 Act, by the number of pounds by which the "total marketings of quota peanuts from the farm during previous marketing years (excluding any marketing year before the marketing year for the 1989 crop) were less than the total amount of applicable farm poundage quotas for the marketing years." For purposes of implementing the undermarketing provision of the 1938 Act, § 729.103 of the regulations has defined the term "undermarketings." Under the definition, the term "undermarketings" has been divided into 3 categories; namely, "actual" undermarketings, "cumulative actual" undermarketings, and "effective" undermarketings. Effective undermarketings are the amount by which a farm's poundage quota is increased in the current year from cumulative actual undermarketings. Generally, cumulative actual undermarketings for a farm are the sum of the farm's actual undermarketings from the 1990 and subsequent crops of peanuts less the cumulative quantity of such undermarketings that have been allocated to such farm as effective undermarketings. The regulation limited the definition of "actual marketings" to the 1991 quota determination only in order to allow for further comment on the calculation of such undermarketings for the 1992–95 crop years.

Request for Comments

Accordingly, the term "actual undermarketings" must be defined in the regulations for quota allocation determinations for the 1992–95 crops. The definition is necessary to meet the statutory requirement for determining the number of pounds by which the total marketings of quota peanuts from the farm were less than the farm poundage quota. The issue is whether "total marketings of quota peanuts", as used in the statute, should be construed to cover only the actual marketing of peanuts as quota peanuts OR should "total marketings of quota peanuts" include, to the extent the quota is undermarketed, any peanuts that were marketed as additional peanuts that could have been marketed as quota peanuts.

Consider the following examples:

a. Farm A has an effective quota of 100,000 pounds. The producer had a contract for 40,000 pounds of additional peanuts. Farm A produced a total of 110,000 pounds of Segregation 1 peanuts. The producer delivered 40,000 pounds of additional peanuts under the contract. This left only 70,000 pounds of peanuts for marketing as quota peanuts. If "total marketings of quota peanuts" includes *only* actual marketings as quota peanuts the farm would have undermarketings of 30,000 pounds. But, if "total marketings of quota peanuts" includes peanuts that could have been marketed as quota peanuts the farm will not have any undermarketings.

b. Farm B has an effective quota of 200,000 pounds. The producer has a contract for 50,000 pounds of "additional" (non-quota) Spanish peanuts. The producer planted both Spanish and Runner peanuts. The initial outlook for the producer's crop was good, with anticipated production of 65,000 pounds of Spanish peanuts and 200,000 pounds of Runner peanuts. The Spanish peanuts were harvested first. Accordingly, 50,000 pounds of Spanish peanuts were delivered in settlement of the additional peanut contract and the remainder of the Spanish production (3,000 pounds) was marketed as quota peanuts. Adverse weather conditions, developed and the Runner production was 160,000 pounds. Of this amount 13,000 pounds were either Segregation 2 or Segregation 3 peanuts. These were marketed as additional loan peanuts. The remaining quantity (147,000 pounds) was marketed as quota peanuts. In addition, as permitted by the program regulations, the producer made a "disaster transfer" from the additional loan inventory to the quota loan inventory for the 13,000 pounds of Segregation 2 and Segregation 3 peanuts. Thus, the farm had quota marketings of 163,000 pounds. If "total marketings of quota peanuts" include *only* marketings of peanuts as quota peanuts, the farm will thereby have undermarketings of 37,000 pounds. If "total marketings of quota peanuts" include peanuts that could have been marketed as quota peanuts the farm will not have any undermarketings.

c. Farm C has an effective quota of 50,000 pounds and produces 57,000 of Segregation 1 peanuts. The producer marketed 40,000 pounds of the peanuts as quota peanuts and marketed 17,000 pounds of peanuts as additional loan peanuts. If "total marketing of quota peanuts" includes *only* quota marketings the farm will have undermarketings of 10,000 pounds. If "total marketings of quota peanuts" includes peanuts that could have been marketed as quota peanuts the farm will not have any undermarketings.

Producers would have greater marketing flexibility if "total marketings of quota peanuts" include *only* quota marketings because the producer could consider the quality of the peanuts, the type of peanuts if producing more than one type, and any contract for additional peanuts, in making a marketing decision and such decision could be made without fear of loss of undermarketings if subsequent quota marketings do not use the farm's available poundage quota. However, the result would be more undermarketings nationwide than would be the case if "total marketings of quota peanuts" include peanuts that were marketed as additional peanuts when such peanuts could have been marketed as quota peanuts. By statute, in section 358–1 of the 1938 Act, the maximum effective undermarketings that may be included in the next year's poundage quota on all farms, on a nationwide basis, is limited to an amount that does not exceed 10 percent of the national poundage quota for such year. If the available undermarketings exceed that limit on a national basis, a proration of undermarketings is made for eligible individual farms.

Comments are requested on how the "total marketings of quota peanuts" should be determined. Most helpful will be comments that include an explanation to support the conclusion reached by the person submitting the comment.

2. Quota Reductions for Nonproduction

Section 358–1(b)(3) of the 1938 Act provides that "Insofar as practicable and on such fair and equitable basis as the Secretary may by regulations prescribe, the farm poundage quota established for a farm for any of the 1991 through 1995 marketing years shall be reduced to the extent that the Secretary determines that farm poundage quota established for the farm for any 2 of the 3 marketing years preceding the marketing year for which the determination is being made was not

produced, or considered produced, on the farm."

Request for Comments

The final rule in § 729.204, set out the method by which a quota reduction would be calculated for the 1991 crop when the peanuts produced, or considered produced, on a farm in 2 of the 3 preceding years was less than the farm's poundage quota. The rule left open that issue for the determination of farm quotas for the 1992–95 crops. The questions at issue are indicated by the following example:

Year	Poundage quota	Produced and considered produced	Underproduced pounds	Percentage of underproduction
1989 ...	100,000	140,000	0	0
1990 ...	100,000	0	100,000	100
1991 ...	100,000	98,000	2,000	2

In the above case, it appears a reduction would be required for the farm's 1992 crop quota under any reasonable method of making the lack of production calculation. A reduction would not have been required had the farm produced and considered produced peanuts equal to or greater than 100,000 pounds in 1991, rather than 98,000 pounds.

Two methods of making reductions for nonproduction have been used in the past. Prior to the 1991 crop, a "factor method" was used. In 1991, a "poundage method" was used.

Basically, the "factor method" determines the reduction on the basis of the average of the 2 worst years of the 3 year period while the "poundage method" determines the reduction on the sum of the underproduced pounds in the 2 best years of the 3 year period. Under either method if, during any 2 years of a 3 year period, a farm did not produce peanuts and did not receive considered produced credit the farm's quota would be reduced to zero, except that under the "poundage method" if the State's poundage quota increased as a result of an increase in the national poundage quota, the farm may retain part or all of the increase in poundage quota that resulted from such increase in the State's poundage quota during any of the 3 years ending with the year in which the reduction is made.

Using the example set out above, the "factor method" would result in a reduction of 51,000 pounds in the farm's 1992 poundage quota and a further reduction of approximately 25,000 pounds in the farm's 1993 poundage quota. (The 1993 reduction could be greater if the peanuts produced and considered produced on the farm in 1992 should be less than the farm's 1992 poundage quota.)

Using the example set out above, the "poundage method" would result in a reduction of 2,000 pounds in the farm's 1992 poundage quota (an amount equal to the deficiency in production of the 1991 crop that effectively resulted in the required reduction in quota) and a further reduction would not be required in the farm's 1993 poundage quota unless the amount of peanuts produced and considered produced on the farm in 1992 is less than the farm's 1992 poundage quota.

Comments on this issue should consider the "fair and equitable" provision of the statute and provide comments as to whether the "factor method", the "poundage method", or some other method should be used. An explanation of the basis of the commenter's preference will increase the value of the comment. In particular, if a method other than the "factor method" or "poundage method" is recommended, it would be most helpful if it is described in sufficient detail as to make implementation possible if it is considered to be the best available option.

3. Immediate Buybacks

Section 359a(g)(1) of the 1938 Act (7 U.S.C. 1359a(g)(1)) provides that additional peanuts received under loan may be offered, "in accordance with regulations issued by the Secretary", by the Commodity Credit Corporation (CCC) of the Department of Agriculture for sale for domestic edible use at prices not less than those required to cover all costs incurred with respect to the peanuts plus not less than 100 percent of the loan value of quota peanuts if the additional peanuts are sold and paid for during the harvest season upon delivery by, and with the written consent of, the producer. Sales of additional peanuts in this manner commonly are known as "immediate buyback" sales. Sales of loan additional peanuts by CCC, for domestic edible use, after delivery of the peanuts into the loan inventory can also be made at subsequent times, but at higher prices. Those "non-immediate" buybacks do not require producer permission.

Section 359a(f)(1) of the 1938 Act (7 U.S.C. 1359a(f)(1)) provides that handlers may, under such regulations as the Secretary may issue, contract with producers for the purchase of additional peanuts for crushing or export, or both.

Regulations governing "immediate buybacks" are set forth in § 1446.309. The final rule indicated that comment would be sought on whether to set conditions on immediate buybacks in addition to these specified in the statute. For example, possible additional conditions would include preventing an immediate buyback if the producer has an unfulfilled additional peanut contract.

Request for Comments

With respect to the 1992 through 1995 crops of peanuts, comment is sought on whether, if a producer has given the statutorily required written consent for loan additional peanuts to be sold upon delivery, additional restrictions should be required by regulations before such peanuts may be purchased as an "immediate buyback?"

The following considerations may be helpful in making comments on this issue:

a. Contracting parties who wish to restrict "immediate buybacks" may agree to contract provisions to restrict such "immediate buybacks" and can seek private enforcement of these provisions without the need for regulations to impose such restrictions as a program matter on all producers and handlers.

b. In a year of tight supplies of peanuts, if additional restrictions are not applicable, some of the domestic needs for peanuts could be met by the contracting parties mutually agreeing to use the "immediate buyback" provision in lieu of marketing the peanuts in satisfaction of the contract for additional peanuts.

c. Some producers plant more than one type of peanuts but contract only for delivery of one of the types as additional peanuts. Additional restrictions on the purchase of such producer's peanuts under the "immediate buyback" provisions may be restrictive to such a producer, especially when the type of peanuts that has not been contracted is harvested before the contracted type. Also, if such producer had a contract for each type of peanuts produced and the contract limited the quantity to be delivered by type, any additional restrictions that are not by type could be restrictive to the producer when the producer has satisfied the contract for one type of peanuts but has not satisfied the contract for another type of peanuts.

d. Peanut harvesting and marketing may begin 6 or more weeks before the final date for filing contracts to purchase additional peanuts (September 15 of the crop year). Accordingly, even though a contract has been signed by all interested parties, if regulations were to

require that the producer must satisfy any approved contract for additional peanuts before such producer possibly could offer peanuts for "immediate buyback", the producer possible could still offer peanuts for "immediate buyback" until such time as the contract is filed and approved. Thus, the producer might be able to avoid, before September 15, any addition restrictions that may relate to contracts for additional peanuts unless immediate buybacks were prohibited altogether for peanuts delivered before that date.

e. If additional peanuts contracts must be satisfied first, an additional issue would be whether the parties to the contract could mutually agree that an immediate buyback may take place despite the contract.

If restrictions are recommended, commenters should indicate what restrictions they believe should be imposed and the benefits the commenter believes would result from such restrictions.

4. Eligible Country

Section 359a(d)(6) of the 1938 Act (7 U.S.C. 1356a(d)(6)) provides that it any additional peanuts exported by a handler are reentered into the United States the importer shall be subject to a penalty at a rate equal to 140 percent of the loan level for quota peanuts on the quantity of peanuts reentered.

Since the inception of the peanut poundage quota program beginning with the 1978 crop, disposition credit for contract additional peanuts has not been granted for peanut products that are made from contract additional peanuts if such products are exported to Canada or Mexico. That policy appears in the current regulations at § 1446.103 under the definition of "Eligible country." This policy reflects the price differential between quota peanuts and contract additional peanuts and the difficulties that would exist in effectively policing the reimportation of exported contract additional peanuts in competition with domestic quota peanuts.

The issue is whether, with respect to the 1992 through 1995 crops of peanuts, the prohibition against granting disposition credit for peanut products made from contract additional peanuts and exported to Canada or Mexico should be:

a. Continued,
b. Discontinued without restrictions, or
c. Discontinued with restrictions.

Request for Comments

Comments are requested with respect to whether export credit should be granted for peanut products that are made from contract additional peanuts and exported to Canada or Mexico. Most desired are comments that provide justifications, explanation, and/or supporting data. Comments that support "discontinuation with restrictions" should address the issue of the restrictions that should be imposed and the benefits that should result from such restrictions.

5. Extension of Time

Requests have been made that the Department of Agriculture reconsider the requirement in § 1446.410 that, in order to receive an extension of time to dispose of contract additional peanuts, the handler must explain why the handler will be unable to meet the prescribed disposition date.

Section 1446.410 of the regulations provides that the final disposition date shall be October 15 of the calendar year following the calendar year in which the peanuts were grown. However, under the Final rule, a marketing association with the concurrence of the Director, Tobacco and Peanuts Division, may extend the date to November 30 of such following year (i.e., the calendar year following the crop year) if the handler, by September 15, files a written request that specifies the number of pounds for which an extension is requested and fully explains why disposition of the contract additional peanuts cannot be completed by October 15. Since for the 1991 crop these deadlines will not occur until 1992, comment on this issue is sought for the 1991 crop as well as for the 1992–95 crops.

The question, accordingly, is whether an extension of time should be granted for a handler to dispose of contract additional peanuts without requiring an explanation from the handler to show, as under the current rule, that conditions beyond such handler's control will prevent compliance with the prescribed disposition deadline.

If an explanation is not required and an automatic extension of time is granted if a written request is made by the prescribed disposition date, an additional question is whether there should be any circumstances under which an extension of time should be granted if the request is made after the prescribed disposition date.

Also at issue is whether October 15 of the calendar year after the calendar year in which the contract additional peanuts were grown is a reasonable date by which such peanuts should be crushed or exported.

Request for Comments

Comments are requested to address this issue. Suggestions should be as specific as possible. For example, those commenters who believe October 15 of the year following the crop year is not a reasonable disposition date should specify an alternative deadline.

Signed at Washington, DC, on January 10, 1992.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92-1212 Filed 1-15-92; 8:45 am]

BILLING CODE 3410-05-M

FARM CREDIT ADMINISTRATION

12 CFR Part 613

RIN 3052-AB29

Eligibility and Scope of Financing; Nondiscrimination in Lending

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), proposes to amend 12 CFR part 613 governing nondiscrimination in lending by Farm Credit System (System) institutions. The proposed amendments implement changes made in title VIII of the Civil Rights Act of 1968 by the Fair Housing Amendments Act of 1988. The amendments by FCA would conform FCA's regulations to the requirements of the statute and implementing regulations promulgated by the Department of Housing and Urban Development (HUD). The proposed amendments would add two new protected categories, prohibit discrimination in "residential real estate-related transactions," as defined in the law, revise the Equal Housing Lender Poster, conform complaint processing procedures, and make technical amendments referencing HUD's fair housing regulations and the Equal Credit Opportunity Act.

DATES: Comments should be received on or before February 18, 1992.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Jean Noonan, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

John Hays, FCA Examiner, Policy and Risk Analysis Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4256, TDD (703) 883–4444, or

Christine C. Dion, Attorney, Regulatory and Legislative Law Branch, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. General

Prior to 1988, title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 *et seq.*, made it unlawful to discriminate in any aspect of the sale, rental, and financing of a dwelling because of race, color, religion, sex, or national origin. The Fair Housing Amendments Act of 1988, Public Law 100–430; 102 Stat. 1619 (1988 Act), amended title VIII to (1) add prohibitions against discrimination in housing on the basis of handicap and familial status (having one or more children under the age of 18), (2) expand coverage of the prohibitions by substituting the term "residential real estate-related transactions" for "financing" of housing, (3) strengthen administrative enforcement procedures and private civil rights of action, and (4) increase monetary damages that can be awarded when discriminatory housing practices are found. The 1988 Act also designated title VIII as the Fair Housing Act.

The 1988 Act became effective March 12, 1989. HUD published final implementing regulations (1) interpreting the scope of the coverage provided and the nature of activities made unlawful by the 1988 Act; and (2) setting forth procedures applicable to the receipt and processing of complaints and the initiation and conduct of formal enforcement proceedings. See amendments to 24 CFR parts 14, 100, 103–106, 109, 110, 115, and 121 at 54 FR 3232 (January 23, 1989). The regulations became effective March 12, 1989.

Section 808(d) of the Fair Housing Act requires all agencies (including any Federal agency having regulatory or supervisory authority over financial institutions) to administer their programs and activities relating to housing and urban development in a manner to further affirmatively promote the goal of fair housing and to cooperate with the Secretary of HUD to further such purposes. Consistent with the requirements of section 808(d), the FCA is proposing to amend its regulations prohibiting discrimination in lending to conform with changes made in title VIII by the 1988 Act and with HUD's implementing regulations.

The FCA's regulations governing nondiscrimination in lending by System institutions, 12 CFR part 613, affirmatively promote fair housing and lending, as expressly required by section 808 (d) and (e) of the Fair Housing Act, and reflect the prohibitions of the Equal Credit Opportunity Act (ECOA) and Regulation B, 12 CFR part 202, of the Board of Governors of the Federal Reserve System (FRB), which are also applicable to System institutions.

System institutions are subject to the nondiscrimination-in-lending requirements of the Fair Housing Act and HUD's implementing regulations, as well as the requirements of the Equal Credit Opportunity Act and Regulation B. While HUD has primary responsibility to enforce the Fair Housing Act, the FCA's enforcement powers (title V, part C of the Farm Credit Act of 1971) are also available to enforce the statute and HUD's implementing regulations. The FCA has primary enforcement responsibility for ECOA. Application of HUD's interpretations in FCA's regulations does not change the nature or scope of eligible lending authorized for System institutions under the Farm Credit Act of 1971, Public Law 92–181, as amended.

The FCA's proposed regulations, in addition to requiring that lending and advertising be nondiscriminatory, would set forth the required text of the Equal Housing Lender Poster that must be publicly displayed by System institutions. The poster would reflect the prohibitions contained under title VIII, as amended by the 1988 Act, and under the Equal Credit Opportunity Act of 1974, Public Law 93–495, as amended by the Equal Credit Opportunity Act Amendments of 1976, Public Law 94–239, 15 U.S.C. 1601 *et seq.*

The proposed regulations would substitute the word "dwelling" for the words "rural residence" throughout the regulations to conform the FCA's nondiscrimination in lending regulations with the operative language of the Fair Housing Act and HUD's implementing regulations. This change would not change the requirement of the FCA's eligibility regulations, adopted pursuant to the Farm Credit Act of 1971, that restrict System institutions' financing of rural housing to a single-family, moderate-priced dwelling with appropriate appurtenances, which is or will be used as a permanent, year-round home by the applicant and which is located on an appropriate site in a rural area (§ 613.3040(a)(2)). HUD's regulations interpret the statutory definition of "dwelling" to include cooperatives, condominiums, time-sharing properties, and mobile homes. This definition is broader than the definition of dwelling in the FCA's regulation implementing the rural housing lending authority, but does not in any way expand the lending authority of System institutions.

Title VIII of the Civil Rights Act of 1968 delegated the authority and responsibility for administering fair housing policy to the Secretary of HUD. Under the provisions of title VIII, persons who believed that they had been or were about to be subjected to a discriminatory housing practice could file a complaint with the Secretary. HUD was required to investigate and conciliate the issues in the complaint. However, title VIII did not provide the Secretary with any administrative mechanism for redressing acts of discrimination against an individual when informal efforts to conciliate a case were unsuccessful. The Secretary could not take administrative action or sue violators to enforce the law. While complaints could be referred to the Attorney General for litigation if they involved a pattern or practice of discrimination, Federal courts did not award individual relief to the victims of discrimination in such cases. Victims of discrimination who brought their cases into court achieved limited success due to a short statute of limitations and disadvantageous limitation on punitive damages and attorney's fees.

The Fair Housing Act strengthened HUD's administrative enforcement of title VIII by providing an administrative enforcement procedure. HUD continues to investigate complaints and conciliate conflicts between parties, who can also agree to arbitration. However, under title VIII as amended, if conciliation fails and HUD determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary determines whether to proceed with a charge or a civil action. When a charge is filed, and no party elects to have claims decided in a civil action, the Secretary provides for an administrative hearing conducted by an administrative law judge (ALJ). The ALJ makes findings of fact and conclusions of law. If the ALJ finds that a respondent had engaged in or is about to engage in a discriminatory housing practice, the ALJ issues an order which may, to vindicate the public interest, assess a civil penalty against the respondent in the amount of $10,000, $25,000, or $50,000. The decision of the ALJ may be

reviewed by the Secretary. The Secretary may affirm, modify, or set aside, in whole or in part, the initial decision of the ALJ or remand the initial decision for further proceedings. The Secretary must serve the final decision on all parties no later than 30 days from the issuance of the initial decision of the ALJ, otherwise such initial decision will become the final decision of HUD. Any final agency decision by HUD on the issue of discrimination is subject to review on appeal by the appropriate United States Court of Appeals. If the Secretary concludes at any time following the filing of a complaint that prompt judicial action is necessary, the Secretary may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint. When the Secretary authorizes civil action, the Attorney General is required to commence and maintain the action. The Attorney General continues to have authority to initiate civil actions in "pattern or practice" cases and in cases where denial of rights to a group raises an issue of general public importance. The court may assess civil penalties against a defendant up to a maximum of $50,000 for a first violation and $100,000 for any subsequent violations.

The Fair Housing Act also strengthened private enforcement by expanding the statute of limitations, removing the limitation on punitive damages, and bringing attorney's fees language in title VIII closer to the model used in other civil rights laws.

In addition to creating an administrative enforcement mechanism for HUD, the Fair Housing Act provides protection against discrimination in housing to persons with handicaps and families with children, as defined in the statute.

The Fair Housing Act defines the term "handicap" to mean a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. HUD has interpreted the term "being regarded as having an impairment" to mean (1) a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation, (2) a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment, or (3) no physical or mental impairment but treatment by another person as having such an impairment.

The Fair Housing Act exempts from the familial status provisions certain "housing for older persons." The purpose of the exemption is to ensure that prohibitions against discrimination because of familial status do not unfairly limit housing choices for elderly persons.

Prior to 1988, discrimination in financing of housing under title VIII dealt only with the making of loans and in the provision of other financial assistance. The 1988 Act revised title VIII by substituting a prohibition against discrimination in "residential real estate-related transactions" for a prohibition against discrimination in the "financing" of housing. Under the Fair Housing Act, it is unlawful for any person or other entity whose business includes engaging in "residential real estate-related transactions" to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin. By substituting the term "residential real estate-related transactions" for the term "financial," the Fair Housing Act expanded the types of financing transactions that were previously covered by the nondiscrimination requirements of title VIII.

The definition of "residential real estate-related transactions" in the Fair Housing Act includes not only the making of loans or the provision of other financial assistance, but also the purchase of loans secured by residential real estate or made for the purchase, construction, improvement, repair, or maintenance of a dwelling. HUD has interpreted the "purchase of loans" to include the purchase and pooling of mortgage loans as well as the terms and conditions of the sale of securities issued on the basis of such loans (24 CFR 100.125). The definition of the term "residential real estate-related transaction" also includes the appraisal, brokering, and selling of residential real property.

The term "appraisal" is defined in HUD's implementing regulations (24 CFR 100.135) as an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing, or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or is transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value. Unlawful practices under HUD's § 100.135 include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling when the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin.

II. Proposal Amendments

Section 613.3140 of the existing regulations, entitled "Policy," sets forth the policy of nondiscrimination in lending by System institutions as adopted by the Federal Farm Credit Board in 1976. The FAC proposes to delete this section because the substance of this policy would be appropriately implemented through proposed §§ 613.3145, 613.3150, 613.3151, 613.3152, 613.3160, 613.3170 and 613.3175.

A new section 613.3145, entitled "Definitions," would define the major terms used in subpart E of part 613, consistent with the Fair Housing Act and the ECOA.

Section 613.3160 of the proposed regulations, entitled "Nondiscrimination in lending and other services," would be amended in paragraph (a) to prohibit discrimination in making credit or other financial services available in a residential real estate-related transaction on any prohibited basis as defined by the Fair Housing Act (24 CFR part 100). Paragraph (b) would prohibit discrimination in any aspect of a credit or other financial service transaction on any prohibited basis as defined by the ECOA (12 CFR 202.2(z)). Paragraph (c) would list examples of lending practices that would be prohibited under § 613.3150. Paragraph (d) would state that nothing in the proposed subpart would change the eligibility requirements imposed by the Farm Credit Act of 1971 and regulations adopted pursuant thereto.

A new § 613.3151, entitled "Nondiscrimination in applications," would be added prohibiting discrimination against an applicant for an eligible loan or other eligible service on any prohibited basis as defined by the ECOA and the Fair Housing Act, to emphasize the importance of promoting the availability of credit to all creditworthy applicants.

A new § 613.3152, entitled "Nondiscriminatory appraisal," would be added prohibiting discrimination in the appraisal of a residential real property on any prohibited basis as defined by the Fair Housing Act.

Section § 613.3170 of the proposed regulations, entitled "Equal housing lender poster," would be amended to

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conform to changes in title VIII made by the 1988 Act. The new poster directs Fair Housing Act complainants to contact both HUD and the FCA, and ECOA complainants to contact the FCA. The FCA's proposed new Equal Housing Lender Poster has been approved by HUD under 24 CFR 110.25(b) as a permissible substitute for the poster required by HUD in 24 CFR 110.25(a), and is similar to those approved by HUD for the Office of Thrift Supervision and the Federal Deposit Insurance Corporation.

In conformance with its role as an "arm's-length" regulatory, effective as of the date of publication of the final rule, the FCA will discontinue its practice of providing the Equal Housing Lender Poster to System institutions.

A new § 613.3175, entitled "Complaints," would be added directing discrimination complaints to both HUD and the FCA for processing under the Fair Housing Act and to the FCA for processing under the Equal Credit Opportunity Act.

Technical amendments would be made to the proposed regulations to reference the ECOA, the Fair Housing Act, and HUD's fair housing regulations.

List of Subjects in 12 CFR Part 613

Aged, Agriculture, Banks, banking, Civil rights, Credit, Fair housing, Marital status discrimination, Religious discrimination, Rural areas, Sex discrimination, Signs and symbols.

For the reasons stated in the preamble, part 613 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for part 613 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 5.9, 5.17; 12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2243, 2252; 42 U.S.C. 3601 *et seq.*; 15 U.S.C. 1691 *et seq.*; 12 CFR 202, 24 CFR 100, 109 and 110.

2. The table of contents of subpart E is revised to read as follows:

Subpart E—Nondiscrimination in Lending

Sec.
613.3145 Definitions.
613.3150 Nondiscrimination in lending and other services.
613.3151 Nondiscrimination in applications.
613.3152 Nondiscriminatory appraisal.
613.3160 Nondiscriminatory advertising.
613.3170 Equal housing lender poster.
613.3175 Complaints

Subpart E—Nondiscrimination in Lending

§ 613.3140 [Removed]

3. Section 613.3140 is removed

4. A new § 613.3145 is added to read as follows:

§ 613.3145 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) *Applicant* means any person who requests or who has received an extension of credit from a creditor and includes any person who is or may become contractually liable regarding an extension of credit.

(b) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) *Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(d) *Handicap* means, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) A record of having such an impairment, or

(3) Being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(e) *Residential real estate-related transaction* means any of the following:

(1) The making or purchasing of loans or providing other financial assistance:

(i) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(ii) Secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

5. Section 613.3150 is revised to read as follows:

§ 613.3150 Nondiscrimination in lending and other services.

(a) No Farm Credit institution may discriminate in making credit or other financial services available in a real estate-related transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) No Farm Credit institution may discriminate in any aspect of a credit or other financial service transaction because of:

(1) Race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); or

(2) The fact that all or part of the applicant's income derives from any public assistance program; or

(3) The fact that the applicant has in good faith exercised any right under title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act.

(c) Prohibited practices under this section include, but are not limited to, discrimination in fixing the amount, interest rate, duration or other terms or conditions of any loan or other financial service or in the purchase of loans and securities on the basis of race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the applicant has the capacity to enter into a binding contract) or national origin.

(d) Nothing in this subpart shall be deemed to change the eligibility requirements imposed by the Farm Credit Act of 1971 or any Farm Credit Administration regulation adopted pursuant thereto.

6. New §§ 613.3151 and 613.3152 are added to read as follows:

§ 613.3151 Nondiscrimination in applications.

No Farm Credit institution may discourage or refuse to allow, receive, or consider any application, request, or inquiry regarding an eligible loan or other eligible service or discriminate in imposing conditions upon, or in processing, any such application, request, or inquiry on the basis of the race, color, religion, sex, handicap, familial status, marital status, age (provided the applicant has the capacity to contract), national origin, or on any other basis that may from time to time be prohibited by amendments to title VIII of the Civil Rights Act of 1968 (Fair Housing Act), the Equal Credit Opportunity Act (12 CFR 202.2(z)), and the Department of Housing and Urban

Development's implementing regulations (24 CFR part 100), of any person who:

(a) Makes application for any such loan or other service; or

(b) Requests forms or papers to be used to make application for any such loan or other service; or

(c) Inquires about the availability of such loan or other service.

§ 613.3152 Nondiscriminatory appraisal.

No Farm Credit institution may conduct, use, or rely upon an appraisal of a residential real property in connection with the sale, rental, or financing of any dwelling which discriminates against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, handicap, familial status, or national origin.

7. Section 613.3160 is amended by revising paragraph (a) to read as follows:

§ 613.3160 Nondiscriminatory advertising.

(a) A Farm Credit institution that directly or through third parties engages in any form of advertising shall not use words, phrases, symbols, directions, forms, or models in such advertising which express, imply, or suggest a policy of discrimination or exclusion in violation of the provisions of the Fair Housing Act, the Equal Credit Opportunity Act, or this subpart.

* * * * *

8. Section 613.3170 is revised to read as follows:

§ 613.3170 Equal housing lender poster.

(a) Each Farm Credit institution that makes loans for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling shall post and maintain an Equal Housing Lender Poster in the lobby of each of its offices. The poster shall be in a prominent place readily apparent to all persons seeking such loans.

(b) The Equal Housing Lender Poster shall be at least 11 inches by 14 inches in size, and shall bear the logotype and legend set forth in § 613.3160(b) of this subpart and the following text:

WE DO BUSINESS IN ACCORDANCE WITH FEDERAL FAIR LENDING LAWS

(The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988)

UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL STATUS (HAVING CHILDREN UNDER THE AGE OF 18), TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or deny any loan secured by a dwelling; or
- Discriminate in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of such a loan, or in appraising property.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410, 1–800–669–9777 (Toll Free), 1–800–927–9275 (TDD).

For processing under the Federal Fair Housing Act.

AND TO:

Farm Credit Administration, Office of Congressional and Public Affairs, 1501 Farm Credit Drive, McLean, VA 22102–5090, 703–883–4056, 703–883–4444 (TDD).

For processing under Farm Credit Administration Regulations.

UNDER THE EQUAL CREDIT OPPORTUNITY ACT

(The Consumer Credit Protection Act, as amended by the Equal Credit Opportunity Act Amendments of 1976)

IT IS ILLEGAL TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

- On the basis of race, color, national origin, religion, sex, marital status, or age,
- Because income is from public assistance, or
- Because a right was exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Farm Credit Administration, Office of Congressional and Public Affairs, 1501 Farm Credit Drive, McLean, VA 22102–5090, 703–883–4056, 703–883–4444 (TDD).

9. A new § 613.3175 is added to read as follows:

§ 613.3175 Complaints.

(a) Complaints regarding discrimination in lending by a Farm Credit institution under the Fair Housing Act shall be referred to the Assistant Secretary for Fair Housing and Equal Opportunity, United States Department of Housing and Urban Development, Washington, DC 20410, and to the Office of Congressional and Public Affairs, Farm Credit Administration, McLean, Virginia 22102–5090.

(b) Complaints regarding discrimination in lending by a Farm Credit institution under the Equal Credit Opportunity Act shall be referred to the Office of Congressional and Public Affairs, Farm Credit Administration, McLean, Virginia 22102–5090.

Dated: January 13, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–1196 Filed 1–15–92; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

22 CFR Part 121

[Public Notice 1553]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule is the result of an advanced notice of proposed rulemaking published in the **Federal Register**, Vol. 56, No. 172, dated September 5, 1991. This proposed rule is intended to amend the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, it intends to amend the U.S. Munitions List by adding a new category XV covering space-related articles and by moving Global Positioning Systems (GPS) receivers from the coverage of categories VIII and XI and placing them under the coverage of a new category. This proposed rule is intended to reduce the burden on exporters in two ways: first, by clarifying which GPS receivers are covered under the U.S. Munitions List (USML), and second, by moving certain GPS receivers to the export licensing jurisdiction of the Department of Commerce.

DATES: Comments must be submitted on or before February 18, 1992.

ADDRESSES: Written comments should be sent to: Michael J. Van Atta, Office of Defense Trade Controls, SA–6, Room 200, U.S. Department of State, Washington, DC 20522–0602, fax (703) 875–6647. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: Michael J. Van Atta or Kenneth M. Peoples, Office of Defense Trade Controls, Department of State, tel. (703) 875–6644, or Peter Rensema, Office of Advanced Technology, Department of State, tel. (202) 647–2433.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President include removal from the USML of all items contained on the COCOM dual-use list (currently known as the CORE list) unless significant U.S. national security interests would be jeopardized. In implementing this directive, the Department headed an interagency working group which reviewed the coverage of spacecraft and related components and determined that in the time allotted for this exercise, specific items could not be determined for removal. Therefore, in further implementation of the Presidential directive, the Department of State chairs a space technical working group comprised of the Departments of State, Commerce, Defense and other national security agencies to identify COCOM Industrial List (IL) spacecraft and related articles that overlap with the items in category XV of the USML published in the September 5, 1991 notice of advanced rulemaking. This proposed rule on the jurisdiction of GPS receivers is the result of the group's recommendations. It will be followed in the future by other proposed rules as further changes are made to the language published in the **Federal Register** on September 5, 1991. To assist you in understanding this proposed rule, category XV, as published in the September 5 **Federal Register**, is being reprinted as follows:.

[Category XV—Spacecraft Systems and Associated Equipment]

*(a) Spacecraft and associated hardware, including both ground and space elements, which are either specifically designed or modified for military applications. This includes but is not limited to the following:

(1) Remote sensing satellite, earth observation and surveillance satellites, space observation satellites, and their major systems and subsystems that may be used for intelligence and targeting applications, including (but not limited to) cameras and other sensors and their major components (e.g. optics, focal planes, cryocoolers, radars, lasers, imaging radiometers, large aperture antennas, receivers, tuners) specifically designed or modified for use in a spacecraft; space qualified signal processors, and data compression and mass storage devices specifically designed or modified for satellites; and associated equipment for the timely transmission, exploitation and dissemination of data from such satellites.

(2) Communications satellites and their major systems and subsystems specifically designed or modified to provide secure anti-jam capability, include (but not limited to) communications security (COMSEC) and transmission security (TRANSEC) equipment; interference cancellation devices; nulling or steerable spot-beam antennas; spread spectrum or frequency agile signal generation baseband processing equipment; equipment for satellite crosslink; and spaceborne atomic clocks. See also categories XI(b) and XIII(b).

(3) Equipment specifically designed or modified to enhance space system survivability (both ground and space elements), including nuclear, laser, radio-frequency, and kinetic hardening (beyond levels needed for commercial life in the natural environment); microelectronic integrated circuits radiation hardened for space application; decoys; active and passive countermeasures; and warning receivers. See also category XI(a)(8) and category XIII (d) and (e).

(4) Equipment specifically designed or modified for precision navigation capabilities, including receivers incorporating NAVSTAR GPS PPS features or employing encryption/decryption capabilities; differential GPS equipment; null steering antennas, GPS user equipment suitable for use in missiles or remotely piloted vehicles; and GPS satellite simulators.

(5) Equipment specifically designed or modified for space and strategic defense weapons systems (ground-to-space, space-to-space, space-to-ground), including attitude and positive determination, control, and pointing subsystems with precision and stability suitable for weapons direction; high torque attitude control actuators; magnetic suspension devices; spaceborne lasers; high power microwave devices; high power pulsed power supplies; chemical release devices; explosive ordnance other than those suitable only for deployment of stowed appendages or other deployable devices; ECM and ECCM subsystems; and subsystems for command and control of such weapons. See also categories XII(a), XIII(f), and VIII(e).

(b) All other satellites and associated equipment specifically designed or modified for such satellites not enumerated in paragraph (a) of this category, regardless of their missions, unless specifically removed in accordance with the provisions of § 120.5 of this subchapter.

(c) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) and (b) of this category.

(d)(1) Technical data (as defined in § 120.21) and defense services (as defined in § 120.8) directly related to any defense articles enumerated in paragraphs (a) through (c) of this category. (See § 125.4 for exemptions.) Technical data directly related to any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

(2) Technical data as defined in § 120.21 for the design, development, production, or manufacture of spacecraft systems and associated equipment (both military and non-military), regardless of which U.S. Government agency has jurisdiction for the export of the hardware. (See § 125.4 for exemptions.) Technical data directly related to any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

As indicated in our **Federal Register** notice published in September 5, 1991, the line between civil and military spacecraft and related equipment had not been clearly identified. In reviewing specific areas, the Department of State, inconjunction with other concerned agencies has attempted to resolve which articles could be more precisely defined and which coverage overlaps could be eliminated. The first result of this effort is the area of Global Positioning System (GPS) receiving equipment. The interagency technical working group determined, and the Departments of Defense, Commerce and State agreed, that GPS receivers could be more clearly defined by identifying those characteristics of either civil or military GPS receivers. The result of this effort is reflected in the proposed category XV(a)(4) language. The remaining parts of category XV which are reserved will

be the subject of subsequent notices as the working group reaches jurisdictional determinations.

After reviewing the COCOM coverage and the CCL categories 7A05A and 7A25B on GPS receivers, the working group identified a class of GPS receivers which could be distinguished from those GPS receivers which are exclusively military in nature, and which, as the President directed in his order of November 16, 1990, have "significant U.S. national security" concerns. This proposed amendment is intended in subparagraph (4) of category XV(a) to provide guidance and definition in order to distinguish those GPS receivers and associated equipment which are primarily civil in nature and those that are considered primarily military in nature. The Department of State will continue its efforts to identify and resolve overlap of the COCOM dual use items and the USML. Each success will result in publication of a proposed rule clarifying, changing or deleting those paragraphs which are identified in **Federal Register**, Vol. 56, No. 172 dated September 5, 1991 and reserved in this notice of rulemaking.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13191) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, this amendment is being published as a notice of proposed rulemaking in order to provide the public with an opportunity to comment and provide suggestions regarding this proposed rule. The period for submission of comments will close 30 days after publication of this advanced notice of proposed rulemaking. In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1404–0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658).

2. Category XV is added to read as follows:

[Category XV—Spacecraft Systems and Associated Equipment]

*(a) [Reserved]
(1) [Reserved]
(2) [Reserved]
(3) [Reserved]
(4) Global Positioning System (GPS) receiving equipment specifically designed, modified or configured for military use; or GPS receiving equipment with any of the following characteristics:
a. Designed for encryption or decryption (e.g., Y-Code) of GPS precise positioning service (PPS) signals;
b. Designed for producing navigation results above 60,000 feet altitude and at 1,000 knots velocity or greater;
c. Specifically designed or modified for use with a null steering antenna or including a null steering antenna designed to reduce or avoid jamming signals;
d. Designed or modified for use with unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km. [NOTE: GPS receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specifically designed, modified or configured for military use and therefore covered under this subparagraph.)

Any GPS equipment not meeting this definition is subject to the jurisdiction of the Department of Commerce (DOC). Manufacturers or exporters of equipment under DOC jurisdiction are advised that the U.S. Government does not assure the availability of the GPS P–Code for civil navigation. It is the policy of the Department of Defense (DOD) that GPS receivers using P-Code without clarification as to whether or not those receivers were designed or modified to use Y-Code will be presumed to be Y-Code capable and covered under this paragraph. The DOD policy further requires that a notice be attached to all P-Code receivers presented for export. The notice must state the following: "ADVISORY NOTICE: This receiver uses the GPS P-Code signal, which by U.S. policy, may be switched off without notice."

(5) [Reserved]
(b) [Reserved]
(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraph (a)(4) of this category.
(d) [Reserved]
(1) [Reserved]
(2) [Reserved]

Dated: December 19, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

[FR Doc. 92–1181 Filed 1–15–92; 8:45 am]

BILLING CODE 4710-25-M

22 CFR Part 121

[Public Notice 1552]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations implementing section 38 of the Arms Export Control Act which governs the export of defense articles and defense services. This proposed rule is intended to reduce the burden on munitions exporters by eliminating the more stringent restrictions placed upon these vessels, components, and parts when designated as Significant Military Equipment (SME).

DATES: Comments must be submitted on or before February 18, 1992.

ADDRESSES: Written comments should be sent to: LCDR Nelson R. Hines, PM/DTC, SA–6, room 228, Department of State, Washington, DC 20520, or sent by facsimile to (703) 875–6647. Public comments will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT: LCDR Nelson R. Hines, Office of Defense Trade Controls, Department of State, (703) 875–7045.

SUPPLEMENTARY INFORMATION: The proposed rule that follows amends § 121.1, Category VI, which defines vessels of war and special naval equipment. It would establish certain patrol vessels, and special naval equipment, components and parts residing on the United States Munitions List (USML) as non-Significant Military Equipment. After consultation with the Department of Defense the Department believes that certain patrol vessels and special naval equipment, components and parts, described in this proposed rule change, no longer warrant special export controls as they do not meet the guidelines established in § 120.19(a). In addition, a new paragraph (g) is added to move regulated technical data and defense services for articles in this category which are currently covered under Categories XVIII and XIX to this category.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 13193) and the procedures of 5 U.S.C. 553 and 554. Nevertheless, this amendment is being published as a proposed rule in order to provide the public with an opportunity to comment and provide advice and suggestions

regarding the proposal. The period for submission of comments will close thirty days after publication of this proposed rule. In addition, this proposed rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, it is proposed that title 22, chapter I, sub-chapter M (consisting of parts 120 through 130) of the Code of Federal Regulations, be amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 121.1, Category VI, paragraphs (a), (b), and (c) are revised and paragraphs (f) and (g) are added to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category VI—Vessels of War and Special Naval Equipment.

*(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels (except those described in paragraph (c) of this category), auxiliary vessels and service craft, experimental types of naval ships and any vessels specifically designed or modified for military purposes. (See § 121.15.)

*(b) Turrets and gun mounts, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults, mine sweeping equipment (including mine countermeasures equipment deployed by aircraft) and other significant naval systems specifically designed or modified for combatant vessels.

(c) Patrol vessels which do not exceed 1300 tons full load, or 180 feet (55 meters) at the water line, and which are unarmed and without mounting surfaces for weapons systems more significant than .50 caliber machine guns or equivalent.

* * * * *

(f) All specifically designed or modified components, parts, accessories, attachments, and associated equipment for the articles in paragraphs (a) through (c) of this category.

(g) Technical data (as defined in § 120.21) and defense services (as defined in § 120.8) directly related to the defense articles enumerated in paragraphs (a) through (f) of this category. (See § 125.4 for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

* * * * *

Dated: December 13, 1991.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

[FR Doc. 92–1182 Filed 1–15–92; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

North Carolina State Plan; Petition to Withdraw Federal Approval

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of special evaluation report of North Carolina state plan; extension of comment period.

SUMMARY: This notice announces the availability for public inspection of a special evaluation report of the North Carolina State plan by the Occupational Safety and Health Administration. This notice also extends the period for public comment on the petition for withdrawal of federal approval of the North Carolina State plan, previously filed by the AFL–CIO.

DATES: Comments must be postmarked by March 9, 1992.

ADDRESSES: Four copies of written comments must be sent to the Docket Office, Docket No. T–24, U.S. Department of Labor, room N–2626, 200 Constitution Avenue, NW., Washington, DC 20210 (Telephone: 202–523–7894). Comments of 10 or fewer pages in length may also be transmitted by facsimile to 202–523–5046 (FTS 523–5046), provided that the original and three copies of the comment are sent to the Docket Office thereafter.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N–3647, 200 Constitution Avenue, NW., Washington, DC, (202) 523–8148.

SUPPLEMENTARY INFORMATION: The American Federation of Labor and Congress of Industrial Organization (AFL–CIO) in a letter dated September 11, 1991, petitioned the Occupational Safety and Health Administration (OSHA) to withdraw federal approval of the North Carolina State occupational safety and health plan under section 18(f) of the Occupational Safety and Health Act and 29 CFR part 1955. In a previous **Federal Register** notice which appeared on September 30, 1991, 56 FR 49444, OSHA announced the filing of the AFL–CIO plan withdrawal petition and requested public comments on the issues raised in the petition, as well as on the general effectiveness of the North Carolina State plan within 90 days.

The September 30 **Federal Register** document also gave notice of a comprehensive evaluation of the North Carolina State plan, to be conducted by OSHA currently with the 90 day comment period on the AFL–CIO petition. That evaluation has now been completed. A copy of OSHA's report of that evaluation as well as copies of all comments received by OSHA in response to the AFL–CIO petition, may be inspected and copied during normal business hours, at the following locations:

Docket Office, Docket No. T–24, U.S. Department of Labor-OSHA, 200 Constitution Avenue, NW., room N2626, Washington, DC 20210, Telephone: (202) 523–7894.

Regional Office, U.S. Department of Labor-OSHA, 1375 Peachtree Street, NE., suite 587, Atlanta, Georgia 30367, Telephone: (404) 347–3573.

Area Office, U.S. Department of Labor-OSHA, Century Station, 300 Fayetteville Mall, room 104, Raleigh, North Carolina 27601, Telephone: (919) 856–4770.

In separate letters dated December 20, 1991, the United Food and Commercial Workers International Union and the North Carolina State AFL–CIO requested that the comment period on the AFL–CIO plan withdrawal petition be extended, and in a letter dated December 23, the AFL–CIO national office requested a 60 day extension of the comment period to allow interested parties to review federal OSHA's evaluation of the North Carolina plan and other recent state and federal actions which may have a bearing on the issues raised in the petition. In response to those requests, the comment period on the AFL–CIO petition to initiate proceedings to withdraw federal OSHA approval of the North Carolina State plan will remain open for an additional 60 days and will close on March 9, 1992.

Signed at Washington, DC this 10th day of January, 1992.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 92-1162 Filed 1-15-92; 8:45 am]

BILLING CODE 4910-36-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[CGD 91-034/90-068]

RIN 2115-AE81 and 66

Vessel Response Plans and Carriage and Inspection of Discharge-Removal Equipment

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings of negotiated rulemaking committee on oil spill response plans and finalization of committee membership.

SUMMARY: As required by the Federal Advisory Committee Act (FACA), the Coast Guard is giving notice of the schedule of open meetings of the Oil Spill Response Plan Negotiated Rulemaking Committee to negotiate issues related to oil spill response plans. This notice also cancels the meeting previously announced for January 21–23, 1992, and makes two additions to the list of committee participants.

DATES: The schedule of meetings of the negotiated rulemaking committee is as follows: January 30–31, 1992, February 13–14 and 27–28, 1992, and March 12–13, 1992. The meetings will be held between 8:30 a.m. and 5 p.m. EST, unless a notice is published prior to the date canceling the meeting.

ADDRESSES: The meetings will be held at DOT Headquarters, 400 Seventh Street SW., Washington, DC 20590. Meeting rooms have not yet been assigned.

FOR FURTHER INFORMATION CONTACT: Room numbers for the committee meetings will be available at least seven days prior to the meetings on a recorded message at (202) 267-6739. For information concerning the substantive aspects of oil spill response plans and the carriage of removal equipment by tank vessels, contact LCDR Glenn Wiltshire, Project Manager, OPA 90 Staff (G-MS-1), at (202) 267-6740 between 7 a.m. and 3:30 p.m., Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1992, the Coast Guard published a notice of establishment of an advisory committee for regulatory negotiation and notice of meetings (57 FR 1139). The notice announced the establishment of the negotiated rulemaking committee to develop a report, including a recommended proposal and final rule, concerning tank vessel oil spill response plans and carriage of discharge-removal equipment. The notice lists the members selected for the committee and the times and places of the January meetings. The notice also references prior requests by the Coast Guard for public comment on the use of negotiated rulemaking to assist the Coast Guard in developing regulations required by sections 311(j)(5) and (j)(6)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1321 *et seq.*).

Meetings of Committee

The Oil Spill Response Plan Negotiated Rulemaking Committee has cancelled its meeting that was previously scheduled for January 21–23, 1992. The next meeting of the committee is being held on January 30, 1992 as indicated above under DATES.

All committee meetings will be open to the public, subject to space availability; however, only the listed parties may participate as members. In accordance with the requirements of FACA, the Coast Guard will keep minutes of all committee meetings. These minutes will be placed in the public dockets (CGD 91-034/90-068) for this rulemaking and will be available for public inspection and copying at room 3406, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

Working groups of committee members will be meeting on the two days prior to the committee meeting to collect information, analyze relevant issues and facts, and draft position papers for deliberation by the full committee at the scheduled meeting.

In order to meet the stringent statutory deadlines imposed for the issuance of these regulations by OPA 90, the notice of the committee meetings for January, February, and March 1992 are published at this time. Notice of any changes to the meeting schedule, as well as notice of any additional meetings, will be published in the **Federal Register**.

Members of the Committee

The Coast Guard announced the membership of the committee in the notice of establishment of advisory committee for regulatory negotiation and notice of meetings. The membership was finalized at the first meeting with the addition of the State of Michigan and the Cook Inlet Regional Citizens' Advisory Committee as members. The member organizations are listed according to the interests which the Coast Guard identifies as being significantly affected by this rulemaking, based on the notice of intent and the comments submitted in response.

Environmental/Public Interest Groups

Natural Resources Defense Council
Prince William Sound Regional Citizens' Advisory Council
Cook Inlet Regional Citizens' Advisory Council

Response Contractors

Marine Spill Response Corporation
National Response Corporation
Spill Control Association of America
Remedial Contractors Institute

State Governments

State of California
State of Louisiana
State of Maryland
State of Michigan

Tank Vessel Operators/Cargo Interests

American Institute of Merchant Shipping
Transportation Institute
International Association of Independent Tanker Owners
International Tanker Owners Pollution Federation
American Waterways Operators
National Ocean Industries Association
Offshore Marine Service Association
ARCO Marine Inc.
Oil Companies International Marine Forum
American Petroleum Institute

Oil Handling Facilities

American Association of Port Authorities
Independent Liquid Terminals Association
Louisiana Offshore Oil Port Inc.

Shipboard Operating Personnel

Marine Engineers Beneficial Association/National Maritime Union District One

Federal Government

U.S. Coast Guard

Dated: January 13, 1992.

D.F. Sheehan,

Acting Deputy Chief, Office of Marine Safety, Security and Environmental Protection, By Direction of the Commandant.

[FR Doc. 92-1290 Filed 1-14-92; 12:20 pm]

BILLING CODE 4910-14-M

Research and Special Programs Administration

49 CFR Part 175

[Docket No. HM–184F; Notice 92–1]

RIN–2137–AB99

Implementation of the International Civil Aviation Organization's Technica Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice proposes to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) by adding four provisions that are in the current (1991–1992) edition of the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transportation of Dangerous Goods by Air. These provisions were inadvertently omitted in a previous notice published under Docket HM–184F. This amendment is necessary to facilitate the continued transport of hazardous materials in international commerce by aircraft, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation.

DATES: Comments must be received by February 18, 1992.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket and be submitted, if possible, in five copies. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the docket number (i.e., Docket HM–184F). The Dockets Unit is located in room 8419 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001. Telephone (202) 366–5046. The public dockets may be reviewed between the hours of 8:30 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. (202) 366–0656.

SUPPLEMENTARY INFORMATION: On November 7, 1990, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (55 FR 46839). RSPA proposed to authorize, under certain conditions and with certain limitations, hazardous materials to be packaged, marked, labeled, classified, described and certified on shipping papers in accordance with the 1991–1992 edition of the ICAO Technical Instructions, and to be offered, accepted and transported by aircraft within the United States and aboard aircraft of United States registry anywhere in air commerce. It was necessary that this NPRM be published in order to provide consistency between the Hazardous Materials Regulations (HMR) and the ICAO Technical Instructions, which have become the basic standard applied to the transport of hazardous materials by aircraft worldwide. Three changes were proposed in the November 1990 NPRM to reflect amendments incorporated in the 1991–1992 edition of the ICAO Technical Instructions; however, four other changes were inadvertently omitted from the NPRM. The purpose of this rulemaking is to propose that these additional changes be made to the HMR.

Section-by-Section Review

Section 175.10

Two new paragraphs would be added to this section. A new paragraph (a)(24) would be added regarding heat-producing articles (i.e., underwater torches and soldering equipment). With the approval of the aircraft operator, these articles may be carried in carry-on baggage only, provided the heat producing component or energy source has been removed. This provision is intended to eliminate fires in carry-on baggage due to the inadvertent activation of such articles.

A new paragraph (a)(25) would be added regarding small oxygen generators. With the approval of the aircraft operator, a small oxygen generator, one per person, may be carried as checked baggage only, provided it meets certain requirements. This provision is intended to permit the transport of an oxygen generator for personal use.

Section 175.701

Minor editorial changes would be made in paragraph (b)(1). Paragraph (b)(2) would be revised to specify that the prescribed minimum separation distance limits apply to the distances between radioactive materials and the passengers and crew. A new paragraph (b)(3) would be added to specify separation distances between radioactive materials and animals.

Section 175.702

Paragraph (b)(2)(i) would be revised to extend the provisions for separation distances to include overpacks and freight containers containing radioactive materials, and to reduce the prescribed separation distances between animals and radioactive materials.

Administrative Notices

A. Executive Order 12291 and Administrative Notices

The RSPA has determined that this rulemaking: (1) Is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*) The proposals in this document reflect changes introduced in the 1991–1992 edition of the ICAO Technical Instructions. Their anticipated economic impacts are so minimal that preparation of a regulatory evaluation is not considered necessary. An earlier regulatory evaluation on implementation of the ICAO Technical Instructions was prepared for Docket HM–184. A copy of that regulatory evaluation is available for review in Docket HM–184F.

B. Executive Order 12612

This proposed action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. This proposal has no substantial direct impact of the States, on Federal-State relationship, or on the distribution of power and responsibilities among levels of government. Therefore, this proposed rulemaking contains no policies with Federalism implications as defined in Executive Order 12612.

c. Regulatory Flexibility Act

Based on limited information concerning the size and nature of entities likely to be affected by this proposed rule, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials,

Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 175 would be amended as follows:

PART 175—CARRIAGE BY AIRCRAFT

1. The authority citation for part 175 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1807, 1808; 49 CFR part 1.

2. In § 175.10, paragraphs (a)(24) and (a)(25) would be added to read as follows:

§ 175.10 Exceptions.

(a) * * *

(24) With the approval of the operator of the aircraft, heat producing articles (e.g., battery-operated equipment such as underwater torches and soldering equipment which, if accidentally activated, will generate extreme heat and can cause fire) may be carried in carry-on baggage only. The heat producing component, or the energy source, must be removed so as to prevent unintentional functioning during transport.

(25) With the approval of the operator(s) and as checked baggage only, a small oxygen generator for personal use, one per person, that meets the following requirements:

(i) The generator, without its packaging, must be capable of withstanding a 1.8 m (5.9 feet) drop test onto a rigid, nonresilient, flat and horizontal surface, in the position most likely to cause damage, without loss of its contents and without actuation;

(ii) The generator must be equipped with an actuating device with at least two positive means of preventing unintentional actuation;

(iii) When actuated at a temperature of 20 °C (68 °F) and the generator well insulated, the temperature of any external surface of the generator must not exceed 100 °C (212 °F);

(iv) The generator must be in the manufacturer's original packaging and this must include a sealed outer wrapping or other means which can be taken as clear evidence that the generator has not been tampered with; and

(v) The generator packaging must be marked to indicate that the package meets the requirements of this paragraph (e.g., conforms with 49 CFR 175.10(a)(25)).

3. In § 175.701, paragraph (b)(1) would be amended by removing the reference "paragraph (b)(2)" each place it appears, and adding in its place "paragraphs (b)(2) and (b)(3)"; the text preceding the table in paragraph (b)(2) would be revised and a new paragraph (b)(3) would be added to read as follows:

§ 175.701 Separation distance requirements for packages containing Class 7 (radioactive) materials in passenger-carrying aircraft.

* * * * *

(b) * * *

(2) The following table prescribes minimum separation distances that must be maintained in passenger-carrying aircraft between Class 7 (radioactive) materials labeled Radioactive Yellow-II or Radioactive Yellow-III and passengers and crew.

* * * * *

(3) Class 7 (radioactive) materials in packages, overpacks or freight containers labeled Radioactive Yellow-II or Radioactive Yellow-III must be separated from live animals by a distance of at least 0.5 meters (20 inches) for journeys not exceeding 24 hours, and by a distance of at least 1.0 meters (39 inches) for journeys longer than 24 hours.

* * * * *

4. In § 175.702, paragraph (b)(2)(i) would be revised to read as follows:

§ 175.702 Requirements for carriage of packages containing Class 7 (radioactive) materials in a cargo aircraft only.

* * * * *

(b) * * *

(2) * * *

(i) The separation distance between the surfaces of the Class 7 (radioactive) materials packages, overpacks or freight containers and any space occupied by humans is at least 9 meters (30 feet) and between live animals is at least 0.5 meters (20 inches) for journeys not exceeding 24 hours; at least 1.0 meters (39 inches) for journeys longer than 24 hours.

* * * * *

Issued in Washington, DC on January 8, 1992, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety

[FR Doc. 92-899 Filed 1-15-92; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 57, No. 11
Thursday, January 16, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 10, 1992.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information: (1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- *Cooperative State Research Service*

Grant Application Kit—Facilities Projects.

Forms CSRS–850, CSRS–851, CSRS–852, CSRS–853, and CSRS–854.

Annually.

Non-profit institutions; 57 responses; 990 hours.

Evelyn J. O'Connor-Miller (202) 401–6466.

Extension

- *Federal Crop Insurance Corporation*

Texas Citrus Grove Inspection Report.

FCI–19–C.

On occasion.

Individuals or households; Farms; 25,000 responses; 37,500 hours.

Bonnie L. Hart (202) 254–8393.

Reinstatement

- *Farmers Home Administration*

Form FmHA 410–8, Applicant Reference Letter (A Request for Credit Reference).

Form FmHA 410–8.

On occasion.

Business or other for-profit; Small business or organization; 79,500 responses; 26,235 hours.

Jack Holston (202) 720–9736.

7 CFR 1822–G, Housing Site Loan Policies, Procedures, and Authorizations.

Recordkeeping. On occasion.

State or local governments; Small business or organizations; 8 responses; 48 hours.

Jack Holston (202) 720–2736.

- *Animal and Plant Health Inspection Service*

Federal Plant Pest and Noxious Weed Regulations.

PPQ Forms 519, 525, 526 and 526–1.

On occasion.

Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; 9,817 responses; 911 hours.

Philip Lima (301) 436–8677.

New Collection

- *Animal and Plant Health Inspection Service*

Imported Fire Ant.

PPQ 523.

Recordkeeping; Semi-annually.

Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 39,441 responses; 26,695 hours.

Mike Stefan (301) 436–8247.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 92–1135 Filed 1–15–92; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 91–190]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on these findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protections, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write Clayton Givens at this same address. The documents should be requested under the permit numbers listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered

organisms and products that are plant pests or that there is reasons to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit No.	Permittee	Date issued	Organism	Field test location
91-294-02 (renewal of permit #90-311-01, issued on 03-12-91).	Frito-Lay Incorporated	12-04-91	Potato plants genetically engineered to over-express a metabolic enzyme, to reduce cold-sensitive sweetening in potato tubers.	Oneida County, Wisconsin.
91-288-01	Calgene, Incorporated	12-17-91	Tomato plants genetically engineered to express an antisense polygalacturonase (PG) gene, for delayed ripening.	Riverside County, California.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 10th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-1191 Filed 1-15-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket 91-192]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 21 applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of these documents by writing to the person listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application Number	Applicant	Date Received	Organism	Field Test Location
91-326-01	Monsanto Agricultural Company.	11-22-91	Tomato plants genetically engineered to express a coat protein of tomato yellow leaf curl virus (TYLCV) for resistance to TYLCV.	Lee County, Florida.

—Continued

Application Number	Applicant	Date Received	Organism	Field Test Location
91-326-02	Frito-Lay, Incorporated	11-22-91	Potato plants genetically engineered to express a coat protein of potato leaf roll virus (PLRV) for resistance to PLRV.	Oneida County, Wisconsin.
91-326-03	Monsanto Agricultural Company.	11-22-91	Tomato plants genetically engineered to express a gene that modifies the ripening process.	Lee County, Florida.
91-329-01	Calgene, Incorporated	11-25-91	Cotton plants genetically engineered to express a nitrilase enzyme to confer tolerance to the herbicide bromoxynil.	Burleson County, Texas.
91-329-02	Calgene, Incorporated	11-25-91	Cotton plants genetically engineered to express a nitrilase enzyme to confer tolerance to the herbicide bromoxynil.	Desha and Lee Counties, Arkansas; Tensas Parish, Louisiana; Pemiscot County, Missouri; Burleson County, Texas.
91-329-03	Calgene, Incorporated	11-25-91	Cotton plants genetically engineered to express a nitrilase enzyme to confer tolerance to the herbicide bromoxynil.	Limestone County, Alabama; Sumter County, Georgia; Washington County, Mississippi; Pickens County, South Caroline; Gibson County, Tennessee.
91-329-04	Calgene, Incorporated	11-25-91	Cotton plants genetically engineered to express a nitrilase enzyme to confer tolerance to the herbicide bromoxynil.	Wayne County, North Caroline.
91-333-02	Calgene, Incorporated	11-29-91	Cotton plants genetically engineered to express a nitrilase enzyme to confer tolerance to the herbicide bromoxynil.	Washington County, Mississippi.
91-333-03	Calgene, Incorporated	11-29-91	Cotton plants genetically engineered to express a *Bacillus thuringiensis* subsp. *kurstaki* delta-endotoxin protein for resistance to lepidopteran insects.	Washington County, Mississippi.
91-343-01	Crop Genetics International.	12-09-91	Corn plants containing *Clavibacter xyli* subsp. *cynodontis* genetically engineered to express a *Bacillus thuringiensis* subsp. *kurstaki* strain HD-73 delta-endotoxin protein for resistance to European corn borer (*Ostrinia nubilalis*).	Queen Anne's County, Maryland; Clay County, Nebraska.
91-343-02	Pioneer Hi-Bred International, Incorporated.	12-09-91	Alfalfa plants genetically engineered to express coat proteins of the alfalfa mosaic virus (AMV) and the cauliflower mosaic virus (CaMV) for resistance to AMV.	Yolo County, California; Polk County, Iowa; Lancaster County, Pennsylvania; Franklin County, Washington; Columbia County, Wisconsin.
91-346-01	Calgene, Incorporated	12-12-91	Rapeseed plants genetically engineered to express anti-sense desaturase and thioesterase oil modification genes.	Huron, Missaukee, and Presque Isle Counties, Michigan.
91-346-02	Pioneer Hi-Bred International, Incorporated.	12-12-91	Soybean plants genetically engineered to express methionine- and cysteine-rich seed storage proteins from Brazil nut.	Salinas, Puerto Rico.
91-347-01	Monsanto Agricultural Company.	12-13-91	Cotton plants genetically engineered to overproduce the enzyme 5-enolpyruvyl shikimate-3-phosphate symtase (EPSPS) and/or a metabolizing enzyme for tolerance to the herbicide glyphosate.	Baldwin County, Alabama.
91-347-02	Monsanto Agricultural Company.	12-13-91	Cotton plants genetically engineered to express a *Bacillus thuringiensis* subsp. *kurstaki* strains HD-1 and HD-73 delta-endotoxin protein for lepidopteran insect resistance.	Baldwin County, Alabama; Pinal and Yuma Counties, Arizona; Jefferson County, Arkansas; Kern County, California; Tift County, Georgia; Bossier and Tensas Parishes, Louisiana; Oktibbeha, Leflore, Washington, and Bolivar Counties, Mississippi; Darlington County, South Carolina; Hale, Burleson, Refugio, Hidalgo, Nueces, and Floyd Counties, Texas.
91-347-03	Monsanto Agricultural Company.	12-13-91	Cotton plants genetically engineered to express a *Bacillus thuringiensis* subsp. *kurstaki* strains HD-1 and HD-73 delta-endotoxin protein for lepidopteran insect resistance.	Onslow and Chowan Counties, North Caroline.
91-350-01	University of Idaho	12-16-91	Potato plants genetically engineered to express poty-virus- and luteo-virus-derived genes to obtain resistance to potato virus Y (PVY) or potato leaf roll virus (PLRV).	Canyon County, Idaho.
91-352-01	Calgene, Incorporated	12-18-91	Rapeseed plants genetically engineered to express an anti-sense desaturase gene to modify the fatty acid composition of the seeds.	Presque Isle and Kalkaska Counties, Michigan.
91-352-02	Pioneer Hi-Bred International, Incorporated.	12-18-91	Alfalfa plants genetically engineered to express the coat protein gene of the alfalfa mosaic virus (AMV) for resistance to AMV.	Franklin County, Washington.
91-352-03	Frito-Lay, Incorporated	12-18-91	Potato plants genetically engineered to express resistance to potato virus Y (PVY).	Oneida County, Wisconsin.
91-352-04	Frito-Lay, Incorporated	12-18-91	Potato plants genetically engineered to express patho-genesis-related proteins for resistance to late blight of potato.	Oneida County, Wisconsin.

Done in Washington, DC, this 10th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-1192 Filed 1-15-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Grand Island Advisory Commission; Meeting

AGENCY: Forest Service, USDA.

ACTION: Grand Island Advisory Commission Meeting.

SUMMARY: The Grand Island Advisory Commission will meet on February 2 and 3 at the Munising Ranger District Office in Munising, Michigan. The meeting will begin at 1 p.m. on Sunday (February 2). An agenda for the two-day meeting will consist of: The review of alternatives and environmental effects; and an update from the Core Team regarding progress on the Draft EIS.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Art Easterbrook, Staff Officer, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, MI 49829, (906) 786-4062.

Dated: January 10, 1992.

William F. Spinner,

Forest Supervisor.

[FR Doc. 92-1159 Filed 1-15-92; 8:45 am]

BILLING CODE 3410-11-M

Rural Development Administration

Establishment of a New Agency in the Department of Agriculture

AGENCY: Rural Development Administration, USDA.

ACTION: Notice.

SUMMARY: The Department of Agriculture is announcing the establishment of a new agency entitled the Rural Development Administration (RDA). This Agency will assume the responsibility for the Community and Business Programs formerly the responsibility of the Farmers Home Administration (FmHA). Regulations of RDA will be found in 7 CFR chapter XLII, parts 4200-4299.

FOR FURTHER INFORMATION CONTACT: Dallas R. Sweezy, Director of Legislative and Public Affairs, Farmers Home Administration, 202-720-6903.

SUPPLEMENTARY INFORMATION: In accordance with title XXIII of the Food, Agriculture, Conservation and Trade Act of 1990 and technical amendments, the Department of Agriculture is establishing a new Agency to administer its rural development programs. The primary initial impact will be the transfer of responsibility for the Community and Business programs currently in the Farmers Home Administration to the Rural Development Administration.

Borrowers and potential applicants are advised that during the interim period they should continue to contact the FmHA representative that has handled the Community and Business programs in the past. A Memorandum of Understanding has been executed by the Rural Development Administration and the Farmers Home Administration in which FmHA agrees to continue to make and service loans and provide all necessary support services to RDA until further notice.

Dated: January 8, 1992.

Walter E. Hill,

Acting Administrator, Rural Development Administration.

[FR Doc. 92-1136 Filed 1-15-92; 8:45 am]

BILLING CODE 3410-07-M

Soil Conservation Service

Gooseneck Creek Critical Area Treatment RC&D Measure, New York

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Gooseneck Creek Critical Area Treatment RC&D Measure, Cattaraugus County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, room 771, Syracuse, New York 13261-7248, telephone (315) 423-5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

This measure concerns a plan to provide for the installation of heavy rock rip rap on 110 feet of streambank adjacent to a county highway along with the placement of two rock channel stabilization keys, a rock chute, and the establishment of permanent vegetation on all disturbed areas along Gooseneck Creek in Cattaraugus County, New York.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Basic data developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: December 20, 1991.

Paul A. Dodd,

State Conservationist.

[FR Doc. 92-1170 Filed 1-15-92; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Subcommittee on Export Administration of the President's Export Council; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held February 7, 1992, 1:30 p.m., U.S. Department of Commerce, Herbert C. Hoover Building, room 4830, 14th and Constitution Avenue NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session

Status reports by Task Force Chairmen, and update on Export Administration initiatives.

Executive Session

Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 17, 1985, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC, (202) 377–4217. For further information, contact Ms. Betty A. Ferrell (202) 377–2583.

Dated: January 10, 1992.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 92–1202 Filed 1–15–92; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 84–91]

Foreign-Trade Zone 130—Blaine, WA; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Bellingham of Whatcom County, Bellingham, Washington, grantee of FTZ 130, located in Blaine, Washington, requesting authority to extend zone status (removal of time restriction) at the Cambridge Industrial Park zone site in Blaine. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 6, 1991.

FTZ 130 was approved on September 4, 1986 (Board Order 335, 51 FR 32238, 9/10/86), and currently consists of a site (24 acres) adjacent to Blaine Municipal Airport, and a site (3 acres) at the Cambridge Industrial Park, 1122 Fir Avenue, Blaine, Washington, owned by the Cambridge Equipment Company. In 1989, the Cambridge site was granted temporary zone status (to 3/31/93) through a boundary modification (A–34–89, 12/6/89 and A–28–91, 10/28/91).

The grantee now requests authority to extend zone status at the Cambridge site on a permanent basis. The proposal also includes a request to restore zone status to parcel (3 acres) that was deleted from the Airport site as part of the boundary modification action for the Cambridge site.

No manufacturing requests are being made at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Daniel C. Holland, District Director, U.S. Customs Service, Pacific Region, 1000 Second Avenue, suite 2200, Seattle, Washington 98104–1049; and, Colonel Walter J. Cunningham, District Engineer, U.S. Army Engineer District Seattle, P.O. Box 3755, Seattle, Washington 98124–2255.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before March 10, 1992.

A copy of the application is available for inspection at each of the following locations:

U.S. Customs Service, Pacific Region, P.O. Box 280, Pacific Highway Station, Blaine, Washington 98230.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: January 10, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–1203 Filed 1–15–92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–428–804]

Certain Forged Steel Crankshafts From Germany; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, Consideration of Revocation, and Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review, consideration of revocation, and intent to revoke antidumping duty order.

SUMMARY: We preliminarily determine that parties are no longer interested in the antidumping duty order on certain forged steel crankshafts from Germany. We therefore intend to revoke the order. The revocation will apply to all shipments entered, or withdrawn from warehouse, for consumption on or after September 1, 1991. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: January 16, 1992.

FOR FURTHER INFORMATION CONTACT: John R. Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1987, the Department of Commerce (the Department) published in the **Federal Register** (52 FR 35751) an antidumping duty order on certain forged steel crankshafts from Germany. On September 26, 1991, Thyssen Umformtechnik, a German manufacturer, requested revocation of this order based on changed circumstances, because another German crankshaft manufacturer, Krupp Gerlach Crankshaft Company, has acquired the crankshaft manufacturing facilities of the petitioner. On October 1, 1991, the Wyman-Gordon Company, the petitioner, informed the Department that it was no longer interested in the antidumping duty order on certain forged steel crankshafts from Germany.

Scope of the Review

Imports covered by this review are shipments of certain forged steel crankshafts. The term "crankshafts", as used in this review, includes forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined.

These products are currently classifiable under items 8483.10.10.10, 8483.10.10.30, 8483.10.30.10, and 8483.10.30.50 of the Harmonized Tariff Schedule (HTS). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or more than 750 pounds are subject to this review.

HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This "changed circumstances" administrative review covers all producers/exporters of the subject merchandise produced in Germany and all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1991.

Preliminary Results of Review and Intent To Revoke Antidumping Duty Order

Pursuant to sections 751 (b) and (c) of the Tariff Act of 1930 (the Tariff Act) and §§ 353.22(f) and 353.25(d) of the Department's regulations, the Department may revoke an antidumping duty order if it concludes that "changed circumstances" have arisen such that the order is no longer of interest to interested parties.

We preliminarily determine that the petitioner's affirmative statement of no further interest in this antidumping duty order provides the Department with a reasonable basis to believe that changed circumstances sufficient to warrant revocation exist. Therefore, we preliminarily determine to revoke the order covering certain forged steel crankshafts from Germany.

We are hereby notifying the public of our preliminary determination to revoke the antidumping duty order on certain forged steel crankshafts from Germany. If this preliminary determination to revoke the antidumping duty order is made final, it will be effective on September 1, 1991.

This revocation will apply to all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1991. We selected this date as the effective date of the revocation in accordance with section 751(c) of the Tariff Act (19 U.S.C. section 1675(c)), because these entries are the only ones that have not been liquidated and are not subject to final results of an administrative review.

We, therefore, intend to instruct the U.S. Customs Service to liquidate all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1991, without regard to antidumping duties. We will instruct the U.S. Customs Service to refund with interest any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this administrative review.

Interested parties may request a hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held no less than 44 days after the date of publication of this notice. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, and rebuttal to written comments, limited to issues raised in those case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, and its decision on revocation, after the hearing, if any, and after its analysis of any written comments.

This review, intent to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. sections 1675 (b) and (c)) and 19 CFR 353.22(f) and 353.25(d) (1991).

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1204 Filed 1-15-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-602]

Certain Forged Steel Crankshafts From the United Kingdom; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, Consideration of Revocation, Intent To Revoke Antidumping Duty Order, and Preliminary Termination of Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review, consideration of revocation, intent to revoke antidumping duty order, and preliminary termination of administrative review.

SUMMARY: We preliminarily determine that parties are no longer interested in the antidumping duty order on certain forged steel crankshafts from the United Kingdom. We therefore intend to revoke the order. The revocation will apply to all shipments entered, or withdrawn from warehouse, for consumption on or after September 1, 1989. We invite interested parties to comment on these preliminary results, intent to revoke, and preliminary termination of the administrative review.

EFFECTIVE DATE: January 16, 1992.

FOR FURTHER INFORMATION CONTACT: John R. Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 1990, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain forged steel crankshafts from the United Kingdom (52 FR 35467, September 21, 1987).

The review covers one respondent, United Engineering & Forging (UEF), and the period September 1, 1989 through August 31, 1990. On October 1, 1991, the Wyman-Gordon Company, the petitioner, informed the Department that, because it has sold its domestic crankshaft manufacturing facilities to a German crankshaft producer, it is no longer a domestic manufacturer of crankshafts, and, therefore, it is no longer interested in the proceeding.

On October 18, 1991, UEF requested revocation of the order on crankshafts from the United Kingdom based on changed circumstances. UEF asserts the changed circumstances consist of the fact that Wyman-Gordon, the sole petitioner in this proceeding, is no longer an interested party.

Scope of the Review

Imports covered by this review are shipments of certain forged steel crankshafts. The term "crankshafts", as used in this review, includes forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined.

These products are currently classifiable under items 8483.10.10.10, 8483.10.10.30, 8483.10.30.10, and 8483.10.30.50 of the Harmonized Tariff Schedule (HTS). Neither case crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or more than 750 pounds are subject to this review. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This "changed circumstances" administrative review covers all producers/exporters of the subject merchandise and all shipments of this merchandise to the United States entered, or withdrawn from warehouse, for consumption on or after September 1, 1989.

Preliminary Results of Review and Intent To Revoke Antidumping Duty Order

Pursuant to sections 751 (b) and (c) of the Tariff Act of 1930 (the Tariff Act), and §§ 353.22(f) and 353.25(d) of the Department's regulations, the Department may revoke an antidumping duty order if it concludes that "changed circumstances" have arisen such that the order is no longer of interest to interested parties (19 CFR 353.25(d)(1)(i)). We preliminarily determine that the petitioner's affirmative statement of no further interest in this proceeding has satisfied the Department that changed circumstances exist sufficient to warrant revocation of this antidumping duty order. Therefore, we preliminarily determine to revoke the order covering certain forged steel crankshafts from the United Kingdom. Moreover, because this revocation will moot the need for the current administrative review, we have preliminarily determined to terminate the section 751(b) administrative review, pending final revocation of the order.

We are hereby notifying the public of our preliminary determination to revoke the antidumping duty order, and of our intent to terminate the current administrative review on certain forged steel crankshafts from the United Kingdom. If this preliminary determination to revoke the antidumping duty order is made final, it will apply to all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1989. We selected this date as the effective date of the revocation in accordance with section 751(c) of the Tariff Act (19 U.S.C. 1675(c)), because these entries are the only ones that have not been liquidated and are not subject to final results of an administrative review.

Therefore, we intend to instruct the U.S. Customs Service to liquidate all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1989, without regard to antidumping duties. We will instruct the U.S. Customs Service to refund with interest any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this administrative review.

Interested parties may request a hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held no less than 44 days after the date of publication of this notice. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in those case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, and its decision on revocation, after the hearing, if any, and after its analysis of any written comments.

This review, intent to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 353.22 (f) and 353.25 (d) (1991).

Dated: January 9, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1205 Filed 1-15-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[Docket No. 911217-1317]

Fisheries for Coastal Pelagic Resources Off the Pacific Coast

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the fisheries for coastal pelagic resources, definition of current participation, and intent to develop a fishery management plan.

SUMMARY: This notice informs individuals entering commercial fisheries for coastal pelagic resources that they may have to meet eligibility requirements in the future to participate in these fisheries. The Pacific Fishery Management Council (Council) is developing a fishery management plan that may limit effort based in part on present and historical participation. The plan, if adopted and implemented, may establish eligibility requirements, including a possible preference for participants who landed coastal pelagic species between January 1, 1986, and November 13, 1991. The intended effect of this announcement is to notify fishermen that criteria are being developed to identify present participants in these fisheries, and that entrance of new harvesters of these resources based on speculation is discouraged while discussions continue on whether and how access to coastal pelagic resources should be controlled.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, (213) 514-6587, or Rodney R. McInnis, Chief, Fisheries Management Division, (213) 514-6202.

SUPPLEMENTARY INFORMATION: The Council decided to develop a fishery management plan for coastal pelagic resources, which they defined as northern anchovy (*Engraulis mordax*), Pacific mackerel (*Scomber japonicus*), jack mackerel (*Trachurus symmetricus*), and Pacific sardine (*Sardinops sagax*), because managing these stocks will require authority to regulate beyond state waters. A Soviet trawler conducting research during March and April 1991, in cooperation with the Southwest Fisheries Science Center, harvested 248 metric tons (mt) of jack mackerel, 249 mt of Pacific mackerel, and 6 mt of sardine within and outside the exclusive economic zone. The cruise demonstrated that harvesting these resources beyond state jurisdictions may be practical, and U.S. trawlers have shown an interest in them. Since there is a possibility of a greatly expanded fishery, which would take place beyond the jurisdiction of any state, the Council directed its planning team to develop a fishery management plan for coastal pelagic species. Northern anchovy, which is already under Federal management, would be included in the new plan.

One of the management options to be considered in the plan would be some way of managing fishing effort by limiting the number of vessels harvesting the various resources to levels that are economically efficient. If too many vessels enter a fishery, the profit of each fisherman dwindles, management and enforcement costs rise, and the private investment needed by each fisherman to maintain an adequate share of the harvest increases. To keep harvesting capacity in line with the resources available, some kind of limited access system or systems will be analyzed in the plan.

The first step in evaluating a system by which the number of participants can be limited is to define the present participants. Although the decision has not been made on whether vessels, vessel operators, or owners of vessels will be defined as a "current participant", the Council, at its meeting in Millbrae, California, on November 12, 1991, adopted the interval of January 1, 1986, through November 13, 1991, as the period during which a fisherman would have had to land coastal pelagic species to be considered a "current participant" in these fisheries once a fishery management plan is implemented. The fishery management plan also may require that additional criteria be met, such as minimum amounts or numbers

of landings during this period. If a fisherman did not operate during this period, the Council anticipates providing lower priority for future access to coastal pelagic resources if a management regime is adopted that limits the number of participants.

This announcement is provided to notify the public of potential eligibility criteria for access to these fisheries. The Council may select any other date or dates for establishing eligibility, may choose not to make eligibility contingent on participation between certain dates, or may adopt another method of controlling fishing effort. Fishermen are not guaranteed future participation in these fisheries regardless of their date of entry or intensity of participation between certain dates.

Conducting the process in this way, the Council plans to define all current participants that have depended on coastal pelagic resources for their livelihood and, therefore, have an investment in these fisheries. Fishermen are put on notice that fishing activity beginning after November 13, 1991, may be given lower priority when and if a limited access option is adopted for coastal pelagic resources. However, this notice does not commit the Council to any particular eligibility standards for participation in these fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 10, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-1134 Filed 1-15-92; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 911298-1298]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, commerce.

ACTION: Notice of proposed Revised List of Fisheries to be effective in calendar year 1992 and request for comments thereon.

SUMMARY: NMFS proposes changes for calendar year 1992 to the List of Fisheries for 1991 associated with the Interim Exemption for Commercial Fisheries under section 114 of the Marine Mammal Protection Act of 1972 (MMPA) which was published on February 7, 1991 (56 FR 5138), and requests comments thereon.

DATES: Comments must be received on or before February 18, 1992.

ADDRESSES: Send comments to Dr. Nancy Foster, Director, Office of Protected Resources, F/PR2, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Office of Protected Resources, Protected Species Management Division, 301-427-2322.

SUPPLEMENTARY INFORMATION: Section 114 of the MMPA established an interim exemption for the taking of marine mammals incidental to commercial fishing operations and requires NMFS to publish a List of Fisheries, along with the marine mammals and number of vessels or persons involved in each such fishery, in three categories as follows:

(I) A frequent incidental taking of marine mammals;

(II) An occasional incidental taking of marine mammals; or

(III) A remote likelihood, or no known incidental taking, of marine mammals.

Based on Congressional guidance, NMFS' interpretation of the 1988 amendments to the MMPA, public comment and meetings and consultations with state and Federal agencies, Regional Fishery Management Councils, and other interested parties, NMFS published the original List of Fisheries on April 20, 1989 (54 FR 16072). An interim rule governing the taking of marine mammals incidental to commercial fishing operations was published on May 19, 1989 (54 FR 21910), and a final rule governing reporting the take of marine mammals incidental to commercial fishing operations was published on December 15, 1989 (54 FR 51718). All determinations concerning issuing and maintaining the List of Fisheries were made in the process of promulgating the interim rule. The List of Fisheries for 1991 was published on February 7, 1991 (56 FR 5138).

The following criteria were used in classifying fisheries in the list of Fisheries for 1991:

Category I. There is documented information indicating a "frequent" incidental taking of marine mammals in the fishery. "Frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Category II. (1) There is documented information indicating an "occasional" incidental taking of marine mammals in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is a likelihood of at least an "occasional" incidental taking in the fishery. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period, but that there is little likelihood that more than one marine mammal will be incidentally taken.

Category III. (1) There is information indicating no more than a "remote likelihood" of an incidental taking of a marine mammal in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is no more than a remote likelihood of an incidental take in the fishery. "Remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Section 114(b)(1)(C) of the MMPA as implemented by 50 CFR 229.3(a)(1) requires the Assistant Administrator for Fisheries, NOAA, to annually publish and request comments on proposed revisions to the List of Fisheries to be effective for the next calendar year. Accordingly, NMFS proposes for 1992 and requests comments on the following changes to the List of Fisheries for 1991. The tables referred to in the proposed changes are those from the List of Fisheries for 1991 published at 56 FR 5138 (Feb. 7, 1991).

Proposed Changes

1. *Recategorize* the Bering Sea and Aleutian Islands groundfish trawl fishery and the Gulf of Alaska groundfish trawl fishery from Category I (Table 1) to Category III (Table 3).

In the List of Fisheries for 1991, NMFS noted that observers recorded very few incidental takes of marine mammals in the Bering Sea and Aleutian Islands (BSAI) and in the Gulf of Alaska (GOA) groundfish trawl fisheries during late 1989 and early 1990, suggesting that the overall rate of interaction in these fisheries is very low. At that time, however, data were not sufficient to determine if certain areas and times within the BSAI and GOA groundfish trawl fisheries still qualify for Category I designation. Accordingly, NMFS retained these trawl fisheries in Category I for 1991.

Observer data for the entire year 1990 indicate that the frequency of marine mammal incidental take remained low. Natural resource observers, who provided in-season weekly reports on the number and species of marine mammals lethally taken, recorded only 28 marine mammals (harbor seal, walrus, Steller sea lion, Dall's porpoise, bearded seal) lethally taken in approximately 74 percent of the groundfish trawl catch (by weight) in both the Bering Sea and the Gulf of Alaska. Consideration of the large fleet size (200–350 participating vessels), substantial level of fishing effort (trawling for some species was available every day in 1990), the small number of marine mammals observed killed, and the substantial level of observer coverage indicates that this fishery is well below the threshold for either Category I or II. NMFS believes that Category III status is appropriate for the BSAI and GOA trawl fisheries for groundfish.

Natural resource observers are required to monitor fish catch on 100 percent of the fishing vessels greater than 125 feet (38.1 meters) in length and 30 percent of the vessels between 60 and 125 feet (18.3 and 38.1 meters). These observers will continue to monitor the incidental take of marine mammals. Data collected include the date, latitude and longitude, and the fishing statistical area in which marine mammals were taken. If these data indicate a pattern of marine mammal takes the fishery can be considered for recategorization.

2. *Recategorize* the Prince William Sound salmon drift gillnet fishery from Category I (Table 1) to Category II (Table 2).

This fishery is proposed for recategorization based on 1990 and 1991 observer data. The final report for the 1990 observer program indicated the take rate associated with serious injury or death is below the criteria established for Category I, one marine mammal was likely to be taken every 48.4 days (Wynne *et al.*, 1991). During 1990 a total of three marine mammals were observed taken, two harbor porpoise and one harbor seal. The second season of observer coverage (1991) included the first third of the fishing season, which was not observed in 1990, a time when interactions with Steller sea lions was expected to be high. Analysis of 1991 data indicates that one marine mammal was likely to be taken every 34 days (Wynne, pers. comm.). During 1991 a total of seven marine mammals were observed taken, three harbor porpoise, two Steller sea lions, one harbor seal, and one unidentified porpoise. Because interactions in this fishery appear to be oriented spatially, occurring mainly in the Copper River region, an area specific interaction rate was calculated for this area and estimated to be one interaction every 28 days—below the criteria for Category I. Given the potential for variation from the observer take rates, NMFS believes that it would be appropriate to maintain some level of monitoring, which would be accomplished through the vessel owner log requirement for Category II. In addition, lethal interactions in this fishery can be monitored using an alternative monitoring program such as the beachcast carcass survey to qualitatively assess the magnitude of lethal takes relative to current levels. If an increase in lethal takes is documented, NMFS will reevaluate the classification of this fishery.

The original List of Fisheries (54 FR 16072) stated that the level of interactions in this fishery was the same level as that reported for 1978, 1000. The information used in the original List of Fisheries was taken from a preliminary draft report which did not account for the spatial and temporal orientation of the data. The final report (Wynne, 1990) states that the rate of take from 1978 to 1988 was significantly reduced when all factors were examined and taken into consideration.

3. *Add* the Metlakatla/Annette Island salmonids drift gillnet fishery to Category II (Table 2).

The drift gillnet fishery for salmon within the Annette Island Reserve operates independently from the drift gillnet fisheries in other parts of southeastern Alaska. This fishery is managed by the Metlakatla Indian Community and the U.S. Bureau of Indian Affairs for the residents of the reserve. Fishermen and vessels that remain within 3000 feet (914.4 meters) of shore are not required to hold commercial fishing licenses or limited entry permits from the State of Alaska. Because of the uniqueness of this fishery, it should be treated as a separate fishery with a separate fishery code.

Metlakatla fishermen and vessels that fish beyond the 3000-foot (914.4 meters) boundary of the Reserve are included with all other fishermen and vessels in the southeastern Alaska drift gillnet fishery for salmon (Category II, Table 2).

4. *Redefine* the Category II (Table 2), Alaska Long Line/Set Line Fisheries For Sablefish—Southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska (Unimak Pass and westward) as the Category II, Alaska Longline/Set Line Fisheries For Sablefish—Southern Bering Sea, Aleutian Islands (NMFS Statistical Reporting Areas 515, 517, 540), and Western Gulf of Alaska (NMFS Statistical Reporting Area 61 west of 165°W.).

The List of Fisheries for 1991 contained a redefinition of the boundaries for the longline/set line fishery for sablefish (black cod) in the southern Bering Sea, Aleutian Islands, and western Gulf of Alaska. Specifically, this redefined area includes NMFS Statistical Reporting Areas 515, 517, and 540 in the Bering Sea and Aleutian Islands Management Area and Statistical Reporting Area 61 in the Gulf of Alaska Management Area. The description also parenthetically described the area as "Unimak Pass and westward." This resulted in confusion as to whether those waters of Statistical Reporting Area 61 that lie east of Unimak Pass should be included in the Category II fishery or not. NMFS proposes that Unimak Pass should be the eastern boundary of this fishery. Accordingly, the formal description of this fishery should be all waters of NMFS Statistical Reporting Areas 515, 517, and 540 in the Bering Sea and Aleutian Islands Management Area and those waters in NMFS Statistical Reporting Area 61 in the Gulf of Alaska Management Area west of 165°W.

5. *Redefine* the Washington/Oregon Lower Columbia River Region, Willapa Bay, Grays Harbor Salmon Drift Gillnet Fishery (Category I, Table 1) as the Washington/Oregon Lower Columbia River Salmon Drift Gillnet Fishery (Category I, Table 1); and

6. *Add* the Washington Grays Harbor Salmonid Set and Drift Gillnet Fishery to Category I (Table 1); and

7. *Add* the Willapa Bay Salmon Drift Gillnet Fishery to Category I (Table 1).

All three fisheries are managed as independent units by different management authorities with different management goals. These differences are influenced by the migratory movements of the salmon involved and the availability of resident fish in some areas. Migratory movements of marine mammals also influence the marine mammal/fishery interactions during different seasons of the year, thus limiting or eliminating the ability to compare information collected on these fisheries, either through logbooks or by observer programs.

The Committee Report of the House of Representatives, during the reauthorization of the MMPA, specified the Columbia River Drift Gillnet Fishery as a Category I fishery. NMFS expanded the fishery to include Grays Harbor and

Willapa Bay based on results from a previous survey, which indicated similarities in the marine mammal/fishery interactions there. NMFS now recognizes that the present definition of the fishery is too broad when elements of the management of the fisheries are considered.

The Grays Harbor salmonid set and drift gillnet fishery is administered between a treaty tribal government and the State of Washington. This fishery is comprised of two gear elements (set and drift gillnets) and includes effort in lower rivers feeding the Grays Harbor estuary. Set gillnets are not part of the fisheries south of Pt. Chehalis at the southern portion of the entrance to Grays Harbor.

The Willapa Bay salmon drift gillnet fishery is managed by the State of Washington exclusively and is spatially and temporally isolated from the lower Columbia River fishery, which is managed by both Washington and Oregon under the interstate Columbia River Compact.

8. *Redefine* (and *Recategorize* part of) the Washington/Oregon/California (WA/OR/CA) Salmon Troll Fishery (Category II, Table 2) as the South of Cape Falcon, Oregon (45°46'00" N.) Salmon Troll Fishery (Category II, Table 2); and

9. *Add* the North of Cape Falcon, Oregon (45°46'00" N.) Salmon Troll Fishery to Category III (Table 3).

Further evaluation, by area, of the information used to categorize the WA/OR/CA salmon troll fishery indicates that the troll fisheries north of Cape Falcon, Oregon, to the Canadian Border have significantly fewer interactions with marine mammals than the fisheries south of Cape Falcon. In addition, the Pacific Fishery Management Council has managed the area north of Cape Falcon, primarily with quotas, separately from the areas south of Cape Falcon, which are managed primarily through seasons. The timing of the fisheries north of Cape Falcon and achievement of the quotas, which have declined in recent years, have resulted in minimal interactions with marine mammals because California sea lions, the principal species involved in salmon troll interactions, occur in waters north of Cape Falcon primarily during the periods when fisheries are closed. Since California sea lion abundance is low when the fisheries occur north of Cape Falcon, interactions are minimal and therefore, this area should be separated from the areas south of Cape Falcon, and placed in Category III. In addition, the Steller sea lion, which occasionally interacts with salmon troll fisheries, has been listed as threatened under the Endangered Species Act and fishermen may not use firearms to repel this species, thereby eliminating interactions that might result in mortality of this species.

10. *Clarification* of the Category II (Table 2) Washington Coastal River Salmonid Gillnet Fishery as the Category II Washington Coastal River Salmonid Set Gillnet Fishery.

The need for clarification of this fishery is based on evidence that the current definition is easily confused with fisheries in the lower Columbia River, Grays Harbor and Willapa Bay. The Washington outer coastal river fisheries are distinguished from other gillnet fisheries in the region in that these are set gillnet fisheries in rivers whose estuaries empty directly into the Pacific Ocean, rather than into Willapa Bay or Grays Harbor, and are wholly within Washington State, unlike the Columbia River. The fisheries are managed under regulations set by several coastal treaty Indian tribes.

11. *Clarification* of the Category II (Table 2) Washington Puget Sound Region, Hood Canal, Strait of Juan de Fuca (estuaries and lower river areas subject to tidal action) Set and Drift Gillnet salmonid fisheries as the Category II Washington Puget Sound Region and inland waters south of the U.S.-Canada border, including the Strait of Juan de Fuca, Hood Canal and estuaries and lower river areas (subject to tidal action) Set and Drift Gillnet salmonid fisheries.

NMFS has received several questions on the northern limit of this fishery and whether it includes the southern Strait of Georgia near the U.S.-Canada border. To clarify this, NMFS proposes the change for 1992.

12. *Redefine* (and *Recategorize* part of) the California gillnet fishery for white sea bass, yellow tail, soupfin shark, white croaker, bonito/flying fish (Category II, Table 2) as the California set gillnet fishery for white croaker, bonito, and flying fish, (Category II, Table 2); and

13. *Add* the Category I (Table 1) California set gillnet fishery for soupfin shark, yellowtail, and white seabass.

Analysis of available data for the presently designated Category II fishery indicates that marine mammals are taken at a rate that would place the fishery in Category II. However, since reports from fishermen in the set gillnet fishery are grouped together under one fishery code, it is not possible to determine at what rate the individual fisheries are taking marine mammals from vessel owner log data alone. Thus, it is possible that an individual fishery may be taking marine mammals at a frequent rate.

Furthermore, a re-evaluation of California Department of Fish and Game observer data for the period 1984 through 1986, for individual set gillnet fisheries, indicates a disparity in rate of taking among individual set gillnet fisheries. In the soupfin shark fishery, takes of marine mammals were observed in 1984 (141 observed sets) and 1985 (71 observed sets). In 1985, take frequency exceeded one animal/20 days/vessel. In contrast, no marine mammals were observed taken in the white croaker fishery in 1984 (four observed sets), 1985 (30 observed sets), and 1986 (127 observed sets). These differences in take frequency are most likely due to variation in mesh size. Larger mesh sizes are known to entangle marine mammals at a much higher rate than smaller mesh sizes. The white sea bass, yellowtail, and soupfin shark gillnet fisheries commonly use mesh sizes from 6.5 to 9.0 inches (16.5 to 22.9 centimeters), while the gear used for white croaker, bonito, and flying fish has a mesh size of 2.75 inches (7 centimeters).

For these reasons, NMFS is proposing the recategorization of the soupfin shark, yellowtail, and white seabass set gillnet fisheries to Category I and maintaining the white croaker, bonito, and flying fish fisheries in Category II.

14. *Add* to Category II (Table 5) the Atlantic Ocean, Caribbean, Gulf of Mexico pair trawl fishery for swordfish, tuna, shark.

Pair trawls, designed in Europe, are now being used in the swordfish fishery managed under the Fishery Management Plan for Atlantic swordfish. Significant catches of tuna have also been landed using this type of gear.

Presently the only available information on pair trawl interactions with marine mammals is limited to unofficial reports on the striped bass and albacore tuna fisheries in the Bay of Biscay, France. Information from the pair trawl albacore tuna fishery indicates that interactions with marine mammals occur at a rate greater than that documented in the drift gillnet fisheries when the lead rope is 2 meters under water. Little information is available on the pair trawl striped bass fishery. However, unofficial reports indicate a noticeable increase in numbers of stranded dolphins on the northern coast of Brittany since the introduction of pair trawls. No data or interaction rates could be made available because the European Economic Community is currently considering a report on this issue.

Information on the U.S. pair trawl swordfish fishery indicate that this gear is used at night in manner similar to that used in the drift gillnet swordfish fishery, with reported high catches of swordfish. In addition, pair trawls are being used in the same area fished by longline vessels, in which documented takes of marine mammals have occurred. Although this information does not represent a full year of fishing effort in waters under the jurisdiction of the United States, NMFS believes that Category II would be appropriate for this fishery.

The fishery is identified as the Atlantic Ocean, Caribbean, Gulf of Mexico pair trawl fishery for swordfish, tuna, shark, because it is recognized that the same stocks of the three target species occur in these areas.

NMFS will continue to investigate this gear type, its potential for use in various fisheries, and the spatial and temporal relationship between these fisheries and marine mammals.

15. *Add* the South Atlantic (SOA), Gulf of Mexico (GMX) shark bottom longline fishery to Category III.

The bottom longline fishery for shark was not specifically included in the List of Fisheries in 1990 or 1991. This gear is fished on the bottom or very deep in the water column (near bottom) and is unlikely to interact with marine mammals. According to Parrack (1990) there were 124 vessels involved in this directed longline fishery for sharks in 1989.

16. *Combine* the Southern New England (SNE) area with the Mid-Atlantic (MDA) so the MDA extends from Nantucket Island, Massachusetts, to Cape Hatteras, North Carolina. Accordingly, the following fisheries are renamed to accommodate this change. Fisheries marked with an "*" are discussed in greater detail because of other changes associated with the fishery:

Category I
  Trawl fishery
  MDA Foreign mackerel
Category II
  Trawl fisheries
  *MDA squid
  MDA Atlantic mackerel
Category III
  Trawl fisheries
  Gulf of Maine (GME), MDA groundfish
  GME, MDA sea scallops
  MDA mixed species
  Purse seine
  GME, MDA menhaden
  GME, MDA Atlantic bluefin tuna
  Pelagic hook & line/harpoon/gillnet
  GME, MDA tuna, shark, swordfish
  Gillnet fisheries
  *GME, MDA South Atlantic (SOA) coastal shad, sturgeon
  Fixed gear fisheries trap/pot-fish
  GME, MDA mixed species
  Fixed gear fisheries trap/pot-lobster, crab
  GME, MDA inshore lobster
  GME, MDA offshore lobster
  Stop seine, weirs (staked fish traps)
  MDA mixed species
  Dredge fisheries
  GME, MDA sea scallops
  MDA offshore clam

The "sea sampler program" referred to for fisheries in the Northeast is a program administered by NMFS' Northeast Science Center to address the needs of fishery management and the Fishery Management Councils. They employ a systematic method of observing fisheries which have a high priority from a fishery perspective. These observers collect the same marine mammal information as observers under the interim exemption program.

17. *Redefine* the GME groundfish/mackerel gillnet fishery (Category I, Table 4) as the New England Multispecies Sink Gillnet (includes all species as defined in the Multispecies Fishery Management Plan and spiny dogfish) for all waters east of 71°40'W.; and

18. *Add* the GME Small Pelagics (which includes mackerel, herring, menhaden) Surface Gillnet to Category I (Table 4).

The separating of the fishery into two components will allow for better information collection through vessel owner logs and the sea sampler program.

Proposed change 14 will incorporate fishing activity south of the Gulf of Maine and will make the information received in vessel owner logs consistent with NMFS Northeast Science Center statistics data collection zones. There are approximately 250 vessels participating in this fishery.

Proposed change 15 will include the seasonal (spring and fall) mackerel gillnet fishery and any other surface gillnet operations targeting small pelagic species such as herring or menhaden. These operations involve small vessels fishing opportunistically when fish and market conditions are optimal. The potential for marine mammal interactions depends on the seasonal migration and abundance of dolphins or seals at the time when fish and market conditions are optimal. There are approximately 50 vessels participating in this fishery.

19. *Redefine* and *recategorize* the Category II (Table 5) SNE, MDA Squid Trawl as the Category III (Table 6) MDA Squid Trawl.

The Northeast Science Center had voluntary sea samplers on 45 trawler trips (31 vessels) in 1989–90, on which 604 hauls were observed in 154 days fished, and no marine mammal interactions were observed. Vessel owner logbook data entered for 1989 and 1990 show no interactions in 5,374 days fished. No mammals were observed in 75 joint venture transfers from two U.S. vessels during 1990. There is 100-percent observer coverage on foreign joint venture efforts. The chance of a marine mammal interaction occurring in this fishery appears to be remote. This fishery was initially placed in Category II because of takes observed on foreign vessels, which were attributed to the large size (trawling capabilities) of the foreign vessels. NMFS will consider a separate fishery definition for large vessels and/or pair trawlers (large combined length) when and if sufficient data become available to determine the vessel length at which takes are likely to occur. This fishery will continue to carry observers under the sea sampler program.

20. *Redefine* the Category III (Table 6) GME, SNE, MDA, SOA, coastal shad, sturgeon as the Category III GME, SOA coastal shad, sturgeon gillnet fishery;

21. *Recategorize* MDA Coastal Shad, Sturegon Gillnet Fishery to Category II; and

22. *Redefine* as the MDA Coastal Gillnet Fishery (includes, but not limited to Atlantic cod, Atlantic croaker, Atlantic mackerel, Atlantic sturgeon, black drum, bluefish, herring, menhaden, scup, shad, striped bass, sturgeon, weakfish, white perch, and yellow perch).

Coastal gillnet fisheries use both anchored (or sink) and drift gillnets to catch anadromous fish such as shad, herring, Atlantic sturgeon and white perch, as well as coastal species such as bluefish, menhaden, and weakfish.

The fishery tends to be opportunistic, and can be found in some form in the MDA year-around, with a peak in effort in the spring and early summer that coincides with shad and herring runs and weakfish northward migrations.

Harbor porpoise, bottlenose dolphins and harbor seals are known to occur seasonally inshore in the MDA. Documented information regarding incidental takes of these marine mammals in the inshore gillnet fisheries is uncommon. However, there is increasing evidence that incidental takes occur when and where marine mammals and gillnets occur together. Recent specific reports include a harbor

porpoise in a shad gillnet in Chesapeake Bay (March 4, 1989); a bottlenose dolphin with net marks retrieved from Chesapeake Bay (July 1990); a bottlenose dolphin with its body cavity opened and a cement block tied to its tail found in Delaware Bay (June 4, 1990) in the vicinity of gillnet activity; a live humpback seen off Virginia Beach, Virginia (April 3, 1990), entangled in shad gillnet 2 days after a dead humpback stranded in the same area with rope and net scars; 14 harbor porpoise washed up on New Jersey beaches in the vicinity of shad gillnets in the spring of 1991, some of which had net marks and full stomachs, six harbor porpoise stranded on Virginia beaches, including four with net marks; and increased enforcement inquiries in southern New Jersey in late March, which resulted in reports of two lethal takes and two live takes of harbor porpoise in the shad gillnet fisheries in that area.

Since Federal fisheries permits are not required for these fisheries, understanding of and participation in the Marine Mammal Exemption Program (i.e., reporting of lethal takes in a Category III fishery) has been minimal. Over 2,200 licenses have been issued by the states of participation in various coastal gillnet fisheries in the Mid-Atlantic. Fishermen can hold more than one license, and licenses are not required for some coastal gillnet fisheries, so actual effort cannot be ascertained. NMFS is working with the Atlantic States Marine Fisheries Commission to inform fishermen of their responsibilities under the interim exemption for commercial fisheries and the consequences of noncompliance. Additional documented information is needed to determine if Category I is more appropriate for these fisheries.

Discussion on the longline and bottomfish fisheries in the Northwest Hawaiian Islands.

In early 1990, there were indications of Hawaiian monk seals (*Monachus schauinslandi*) being snagged and killed in the longline and bottomfish fisheries in the Northwest Hawaiian Islands (NWHI) in a manner and at a level not considered in earlier versions on the List of Fisheries.

In response to these concerns, the Western Pacific Fishery Management Council (WPFMC) developed emergency regulations, which were published by NMFS on November 27, 1990, under the Pelagics Fishery Management Plan (FMP) (55 FR 49285) and the Bottomfish and Seamount Groundfish FMP (55 FR 49050). These regulations implemented requirements for fishing logbooks, for permits to fish with longline gear within the management area, and to take observers as requested when intending to fish within 50 nautical miles of French Frigate Shoals, Gardner Pinnacles, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island.

Recent information regarding incidental hookings and snaggings of monk seals confirms the occurrence of interactions with the longline swordfish fishery. As of May 28, 1991, nine monk seals with evidence of interaction or injury associated with longline fishing operations have been reported or observed. There are also indications that a number of vessels were fishing illegally within the study zones (as defined in Amendment 3 to the FMP for Pelagic Fisheries of the Western Pacific Region). Some injured seals may have died at sea or were injured and hauled out at other islands where they would not be seen; therefore, observed injuries may represent only a part of the impact of the fishery.

The WPFMC and NMFS determined that conditions in the fishery and the endangered status of the Hawaiian monk seal warranted immediate action under the emergency authority of the Fishery Conservation and Management Act (Magnuson Act). Accordingly, the WPFMC requested the Secretary of Commerce to promulgate emergency regulations under the Pelagics FMP that would prohibit longline fishing governed by the FMP within 50 nautical miles of the NWHI, including 100-mile wide corridors between islands where these 50 nautical mile areas are not contiguous, to prevent the incidental take of Hawaiian monk seals. The emergency rule was published on April 18, 1991 (56 FR 125842). The rule was extended with a modified definition of longline gear on July 19, 1991 (56 FR 33211) which expired on October 13, 1991. A permanent closure through Amendment 3 to the Pelagics FMP became effective on October 14, 1991 (56 FR 52214, October 18, 1991).

These measures were required because existing regulations did not provide a means to eliminate interactions between Hawaiian monk seals and the longline fishery in the NWHI. With the implementation of Amendment 3 to the Pelagics FMP, the risk of incidental take of Hawaiian monk seals appear to have been reduced. Close to 100 percent of the Hawaiian monk seal population can be expected to be found within the closed area. There have been no reports of interactions or sightings of hooked or injured seals since the emergency regulations went into effect. NMFS intends to place observers on longline vessels operating between 50 and 100 miles from the islands on a voluntary basis.

Concurrent with the emergency regulation requiring observers on selected longline vessels, a similar emergency regulation for the NWHI bottomfish fishery was published on November 26, 1990 (56 FR 5159). On May 30, 1991 (56 FR 24351), a final rule was published that implemented Amendment 4 to the Western Pacific Bottomfish and Seamount Groundfish Fisheries FMP and made final the provisions of the November 26, 1990, emergency interim rule. The final rule also expanded the observer requirement to include Nihoa Island, Necker Island, and Maro Reef. That action was taken to ensure adequate collection of data on interactions between the bottomfish fishery and marine mammals or endangered and threatened species in the NWHI. These data are necessary to develop long-term solutions to conservation problems in the bottomfish fishery in the NWHI.

Based on the actions taken by the WPFMC under the Magnuson Act and the available information on marine mammal interactions in the longline and bottomfish fisheries in the NWHI, NMFS believes that recategorization of these fisheries is not warranted at this time. However, if other interactions occur or if regulations are modified, the situation will be re-evaluated and appropriate changes proposed.

Literature Cited

Parrack, M.L. 1990. A study of shark exploitation in U.S. Atlantic Coastal waters during 1986–1988. NOAA NMFS Southeast Fisheries Center Contribution MIA–90/91–03.

Wynne, K. 1990. Marine mammal interactions with the salmon drift gillnet fishery on the Copper River Delta, Alaska 1986–1989. Alaska Sea Grant College Program AK–SG–90–05.

Wynne, K., D. Hicks, and N. Munro. 1991. 1990 salmon gillnet fisheries observer programs in Prince William Sound and South Unimak, Alaska. Final Report. Saltwater Inc., Anchorage, Alaska. 70 pp.

Dated: January 9, 1992.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 92–1006 Filed 1–15–92; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Modification of Permit; Peter Dutton and Donna McDonald, Hubbs Sea World Research Institute (P–697)

On April 10, 1991, notice was published in the **Federal Register** (54 FR

41132) that a modification to permit No. 697 had been filed by Peter Dutton and Donna McDonald, of the Hubbs Sea World Research Institute, 1700 South Shores Road, San Diego, California 92109, to extend the expiration date of the permit, and to include attaching ultrasonic transmitters for up to twenty turtles and performing biopsies on the turtles as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

Notice is hereby given that on January 10, 1992, as authorized by the provisions of the Endangered Species Act of 1973, the National Marine Fisheries Service issued a Modification to Permit No. 697 for the above conditions, subject to certain guidelines set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Act. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, of the National Marine Fisheries Service regulations govening endangered species permits.

The Permit is available for review in the following offices: Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., room 7324, Silver Spring, Maryland 20910; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: January 10, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–1048 Filed 1–15–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

January 13, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and India agreed to extend their Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended, for the period which begins on January 1, 1992 and extends through December 31, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 13, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended and extended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 21, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1992 and extending through December 31, 1992, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
218	8,548,740 square meters.
219	42,223,661 square meters.
313	22,873,265 square meters.
314	5,277,958 square meters.
315	8,884,854 square meters.
335/635	420,000 dozen.
336/636	570,000 dozen.
340/640	1,425,000 dozen.
341	3,225,159 dozen of which not more than 1,935,095 dozen shall be in Category 341-Y [1].
342/642	810,000 dozen.
345	120,000 dozen.
347/348	367,683 dozen.
363	28,051,034 numbers.
369-D [2]	880,000 kilograms.
369-S [3]	480,000 kilograms.
369-O [4]	9,200,000 kilograms.
641	990,200 dozen.
647/648	575,000 dozen.
Group II	
200, 201, 220–229, 237, 239, 300, 301, 317, 326, 330–334, 338, 339, 349–352, 359–362, 600–607, 611–634, 638, 639, 643–646, 649–652, 659, 665–O [5], 666–670 and 831–859, as a group.	110,000,000 square meters equivalent.

[1] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.
[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.
[3] Category 369–S: only HTS number 6307.10.2005.
[4] Category 369–O: all HTS numbers except 5702.10.9020, 5702.49.1010, 5702.99.1010 (rugs exempt from the bilateral agreement); 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); and 6307.10.2005 (Category 369–S).
[5] Category 665–O: all HTS numbers except 5702.10.9030, 5702.42.2010, 5702.92.0010 and 5703.20.1000 (rugs exempt from the bilateral agreement).

Imports charged to these category limits for the period beginning on January 1, 1991 and extending through December 31, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and India.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-1201 Filed 1-15-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management; Defense Transportation Tracking System

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice only.

SUMMARY: The Department of Defense (DOD) is expanding its defense Transportation Tracking System (DTTS) to track Security Risk Category (SRC) 2 munitions effective 18 December 1991. In conjunction with this expansion, Armed Guard Service is eliminated as a Transportation Protective Service (TPS).

ADDRESSES: Military Traffic Management Command, ATTN: MT-SS, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Jones or CPT Irene Rosen, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041-5050, (703) 756-1089.

SUPPLEMENTARY INFORMATION: The purpose of this article is to provide information on the expansion of the Defense Transportation Tracking System (DTTS).

The military services and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence have approved expansion of the DTTS. The expansion implements a phased plan that will eventually result in the tracking of all DOD Categorized and Uncategorized munitions under Satellite Motor Surveillance (SM).

Accordingly, beginning on 18 December 1991, the DTTS entered the first step of the 3-step expansion plan. On that date, the tracking of SRC-2 Arms, Ammunition and Explosives (AA&E) commenced, adding approximately 5,200 shipments annually to the SM tracking volume.

Immediately upon inplementation of the first step (18 December), Armed Guard Surveillance (AG) has ceased to exist as a transportation Protective Service (TPS). Any armed protection required on motor movements will be provided by DOD.

Formats and data element requirements for SM are spelled out in a DOD standard rules publication. A copy of the SM rule may be obtained from HQs, Military Traffic Management Command, Directorate of Inland Traffic, ATTN: MT-INNG, 5611 Columbia Pike, Falls Church, VA 22041-5050.

Cpt. Irene M. Rosen,

Transportation Security Officer.

[FR Doc. 92-1171 Filed 1-15-92; 8:45 am]

BILLING CODE 3710-08-M

Establishment of the Uniformed Services Treatment Facilities (USTF) Managed Care Plan

Notice is hereby given that in compliance with Public Law 101-510, the Uniformed Services Treatment Facilities (USTF) Managed Care Plan (Plan) is established effective October 1, 1992. This notice establishes the USTF Managed Care Plan as a health care delivery system in the Military Health Services System (MHSS) and designates those facilities specified in Public Law 97-99 as the sites for implementation of this Plan. The USTFs are ten former Public Health Service Hospitals which, in accordance with Public Law 97-99, are deemed to be facilities of the uniformed service for the purposes of providing health care to eligible beneficiaries, as set forth in chapter 55 of title 10, United States Code.

Public Law 101-510 directed the Secretary of Defense to complete negotiations with the Uniformed Services Treatment Facilities and begin implementation of a managed care delivery and reimbursement model not later than September 30, 1991, in order to continue to utilize the USTFs in the military health care delivery system in a cost-efficient manner.

The USTF Managed Care Plan established in accordance with this direction consists of five major components: (1) Enrollment; (2) uniform benefit package; (3) comprehensive internal and external utilization management/quality assurance program; (4) extensive reporting and oversight activities; (5) capitated reimbursement; and (6) reinsurance. The benefit package consists of the standard CHAMPUS benefit plus a group of preventive care services. The CHAMPUS regulation (DoD 6010.8-R) defines all benefits and limitations of the standard CHAMPUS benefit package. The U.S. Preventive Services Task Force Guidelines (1989) defines all benefits and limitations of the preventive care services.

Dated: January 9, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc 92-1129 Filed 1-15-92; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Renewal of the Special Operations Policy Advisory Board

ACTION: Notice.

SUMMARY: The Special Operations Policy Advisory Board (SOPAG) was renewed by the Department of Defense for a two-year period, effective January 8, 1992, in accordance with the provisions of Public Law 92-463, the "Federal Advisory Committee Act."

The SOPAG provides timely and expert advice to the Secretary of Defense and other senior Defense Department officials on the formulation of policy and the execution of military activities concerned with special operations and low-intensity conflict capabilities. Membership on the SOPAG is well-balanced in terms of the specialized missions to be accomplished and the diverse interest groups represented. Members are drawn from among current high-level military and civilian government officials, former diplomatic representatives, and private sector individuals.

For further information on the SOPAG, contact: Lieutenant Colonel Dave Lewis, office of the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (703) 695-3206.

Dated: January 9, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-1124 Filed 1-15-92; 8:45 am]

BILLING CODE 3810-01-M

Defense Policy Board Advisory Committee Task Force on Soviet Military

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee Task Force on Soviet Military will meet in closed session on 24 January 1992 from 0900 until 1400 at 1710 Goodridge Drive, TI-7-2, McLean, VA.

The mission of the Defense Policy Board Task Force on Soviet Military is to study developments in the Soviet Union that affect the Soviet Military and

make recommendations on policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended [5 U.S.C. app. II, (1982)], it has been determined that this Defense Policy Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: January 9, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-1126 Filed 1-15-92; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Advisory Committee (SDIAC)

ACTION: Cancellation of meeting.

The closed meeting announced in the **Federal Register** on Monday, December 30, 1991 (56 FR 67289) scheduled for January 9 and 10, 1992 was canceled.

Dated: January 9, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-1128 Filed 1-15-92; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Panel on Streamlining and Codifying Acquisition Laws

AGENCY: Defense Systems Management College.

ACTION: Notice of meeting.

SUMMARY: Open to the public on January 29, 1992, starting at 8:30 a.m. in the Yorktown Room of the Fort Belvoir Officers' Club, Fort Belvoir, Virginia. The panel will begin hearing presentations/recommendations by the task force on its review of the out-of-scope laws, and by the various panel working groups on the statutes they have reviewed to date.

For further information contact Major Jean Kopala at (703) 355-2665.

Dated: January 9, 1992.

Linda M.Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-1125 Filed 1-15-92; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Panel on Streamlining and Codifying Acquisition Laws

AGENCY: Defense Systems Management College.

ACTION: Notice of availability of legislative abstracts.

SUMMARY: In an effort to support the work of the Defense Advisory Panel on Streamlining and Codifying Acquisition Laws, the Acquisition Law Task Force has prepared abstracts on various laws and code sections. Each abstract contains a brief synopsis of the law and its legislative history and presents some of the issues for discussion.

To date abstracts have been prepared on the following acquisition laws and code sections:

10 U.S.C. 2202; 2273; 2301-2304; 2307; 2315; 2320; 2351-2356; 2358; 2360-2363; 2365-2372; 2399; 2403; 2430-2437;
22 U.S.C. 5064;
31 U.S.C. 3729-3733;
35 U.S.C. 202-205;
41 U.S.C. 411; 414; 418b; 421-423;
42 U.S.C. 2457; 5908;

Service Contract Act; Buy American Act; Davis-Bacon Act; Walsh-Healey Act; Miller Act; Truth in Negotiations Act (TINA); Prompt Payment Act; Contract Disputes Act of 1978; Ethics in Government Act of 1978; Invention Secrecy Act of 1951; Cost Accounting System (Pub. L. 91-379); William Langer Jewel Bearing Plant (Pub. L. 90-469); DoD Appropriations Act, 1991 (Pub. L. 101-511).

As new abstracts become available their availability will be announced in the **Federal Register** as well. Anyone interested in obtaining a copy of one or more of these abstracts should contact CPT Karen O'Brien, Acquisition Law Task Force attorney, at 703-355-2665.

Dated: January 9, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-1130 Filed 1-15-92; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, February 4, 1992; Tuesday, February 11, 1992; Tuesday, February 18, 1992; and Tuesday, February 25, 1992, at 10 a.m. in room 800, Hoffman Building #1, Alexandria, VA.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c) (2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c) (4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: January 9, 1992.

L. M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-1127 Filed 1-15-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Privacy Act of 1974; Amend Systems of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Amend systems of records.

VOL 57 ISS 11 JA 16 1992 UMI

SUMMARY: The Department of the Air Force proposes to amend two systems of records in its inventory of records systems notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The amendments will be effective February 18, 1992, unless comments are received which result in a contrary determination.

ADDRESSES: Send any comments to Mrs. Anne Turner, SAF/AAIA, The Pentagon, Washington, DC 20330–1000. Telephone (703) 697–3491 or Autovon 227–3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), have been published in the **Federal Register** as follows:

50 FR 22332 May 29, 1985 (DoD Compilation, changes follow)
50 FR 24672 Jun. 12, 1985
50 FR 25737 Jun. 21, 1985
50 FR 46477 Nov. 8, 1985
50 FR 50337 Dec. 10, 1985
51 FR 4531 Feb. 5, 1986
51 FR 7317 Mar. 5, 1986
51 FR 16735 May 6, 1986
51 FR 18927 May 23, 1986
51 FR 41382 Nov. 14, 1986
51 FR 44332 Dec. 9, 1986
52 FR 11845 Apr. 13, 1987
53 FR 24354 Jun. 28, 1988
53 FR 45800 Nov. 14, 1988
53 FR 50072 Dec. 13, 1988
53 FR 51301 Dec. 21, 1988
54 FR 10034 Mar. 9, 1989
54 FR 43450 Oct. 25, 1989
54 FR 47550 Nov. 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (Air Force Address Directory)
55 FR 27868 Jul. 6, 1990
55 FR 28427 Jul. 11, 1990
55 FR 34310 Aug. 22, 1990
55 FR 38126 Sep. 17, 1990
55 FR 42625 Oct. 22, 1990
55 FR 42629 Oct. 22, 1990
55 FR 52072 Dec. 19, 1990
56 FR 1990 Jan. 18, 1991
56 FR 5804 Feb. 13, 1991
56 FR 12713 Mar. 27, 1991
56 FR 23054 May 20, 1991
56 FR 23876 May 24, 1991
56 FR 26801 Jun. 11, 1991
56 FR 33384 Jul. 22, 1991
56 FR 63718 Dec. 5, 1991

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), which requires the submission of altered systems reports. The specific changes to the system of records being amended are set forth below, followed by the record systems notices, as amended, in their entirety.

Dated: January 13, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F035 AF MP O

System name:

Unit Assigned Personnel Information (51 FR 41396, November 14, 1986).

Changes:

System location:

Delete entry and replace with "Headquarters United States Air Force; major command headquarters; all Air Force installations and Air Force units, and Headquarters, United States Space Command (HQ USSPACECOM). Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

* * * * *

Authority for maintenance of the system:

Change "10 U.S.C. 8012" to "10 U.S.C. 8013" and add "and Executive Order 9397." to the end of the entry.

* * * * *

Retention and disposal:

Delete entry and replace with "Retained in office files until superseded, no longer needed, separation or reassignment of individual on permanent change of assignment (PCA) or permanent change of station (PCS). On intercommand reassignment PCA or PCS the file is given to individual or destroyed. On intracommand reassignment PCA or PCS the file is given to individual, forwarded to gaining commander, or destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning."

Notification procedures:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington, DC 20330–5060 or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

Record access procedures:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington, DC 20330–5060 or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

Contesting record procedures:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F035 AF MP O

SYSTEM NAME:

Unit Assigned Personnel Information.

SYSTEM LOCATION:

Headquarters United States Air Force; major command headquarters; all Air Force installations and Air Force units, and headquarters, United States Space Command (HQ USSPACECOM). Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel, and Air Force Reserve and Air National Guard personnel. Air Force civilian employees may be included when records are created which are identical to those on military members. Army, Navy, Air Force and Marine Corps Active duty military and civilian personnel assigned to HQ USSPACECOM.

CATEGORIES OF RECORDS IN THE SYSTEM:

File copies of separation actions, newcomers briefing letters, line of duty determinations, assignment actions, retirement actions, in and out processing checklists, promotion orders, credit union authorization, disciplinary actions, favorable/unfavorable communications, record of counseling, appointment notification letters, duty status changes, applications for off duty employment, applications and allocations for school training, professional military and civilian education data, private weapons storage records, locator information including names of dependents, home address, phone number, training and experience data, special recognition nominations, other personnel documents, and records of training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by; as implemented by Air Force Manual 30–3, Vol III, Mechanized Personnel Procedures, Air Force Manual 30–130, Vol I, Base Level Military Personnel System; and Executive Order 9397.

PURPOSE(S):

Provides information to unit commanders/supervisors for required actions related to personnel administration and counseling, promotion, training, separation, retirement, reenlistment, medical examination, testing, assignment, sponsor program, duty rosters, and off duty activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USERS:

The "Blanket Routine Uses" published at the beginning of the Air Force's complication of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, and card files.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files until superseded, no longer needed, separation or reassignment of individual on permanent change of assignment (PCA) or permanent change of station (PCS). On intercommand reassignment PCA or PCS the file is given to individual or destroyed. On intracommand reassignment PCA or PCS the file is given to individual, forwarded to gaining commander, or destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief or Staff/Personnel, Headquarters United States Air Force, Washington DC 2033–5060.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address written inquiries to the Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington DC 20330–5060 or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington DC 20330–5050 or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual concerned, financial institutions, educational institution employees, medical institutions, police and investigating officers, bureau of motor vehicles, witnesses, reports prepared on behalf of the agency, standard Air Force forms, personnel management actions, extracts from the Personnel Data System (PDS) and records of personal actions submitted to or originated within the organization.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F120 AF IG B

System name:

Inspector General Records (50 FR 24672, June 12, 1988).

Changes:

System location:

Delete entry and replace with "Office of the Inspector General, Office of the Secretary of the Air Force (SAF/IG) Pentagon, Washington, DC 20330–5000. Headquarters of major commands and at all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

Categories of individuals covered by the system:

Insert the word "allegation" after the word "complaint" in first sentence. Add "All senior officials who are subjects of reviews, inquiries, or investigations." to the end of the entry.

Categories of records in the system:

Delete entry and replace with "Letters/transcriptions of complaints, allegations and queries; letters of appointment; reports of reviews, inquiries and investigations with supporting attachments, exhibits and photographs; record of interviews; witness statements; reports of legal review of case files; congressional responses; memoranda; letters and reports of findings and actions taken; letters to complainants and subjects of investigations; letters of rebuttal from subjects of investigations; finance; personnel; administration; adverse information, and technical reports."

Authority for maintenance of the system:

Change "8012" to "8013", and add "10 U.S.C. 8020, Inspector General, and Executive Order 9397." to the end of the entry.

Purpose(s):

Insert the word "allegations" after "complaints" in first sentence; add "and allegations" after "complaints" in second sentence; and add to end of entry "Used in connection with the recommendation/selection/removal or retirement of officers eligible for promotion to or serving in, general officer ranks."

* * * * *

Storage:

Add to end of entry "in computers and on computer output products."

Retrievability:

Delete entry and replace with "Retrieved by name, Social Security Number and office where complaint, allegation or query was filed."

Safeguards:

Add to end of entry "Those in computer storage devices are protected by computer system software."

Retention and disposal:

Delete entry and replace with "Retained in office files for two years after year in which case is closed. For senior official case files, retained in office files until two years after the year in which case is closed, or two years after the senior official retires.

whichever is later. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

System manager(s) and address:

Delete entry and replace with "The Inspector General, Office of the Secretary of the Air Force (SAF/IG), Pentagon, Washington DC 20330–5000."

Notification procedures:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Inspector General, Office of the Secretary of the Air Force (SAF/IG), Pentagon, Washington DC 20330–5000."

Record access procedures:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the Inspector General, Office of the Secretary of the Air Force (SAF/IG), Pentagon, Washington DC 20330–5000."

Contesting record procedures:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager."

Record source categories:

Delete entry and replace with "Complainants, inspectors, members of Congress, witnesses and subjects of investigations."

Exemptions claimed for the system:

Delete entry and replace with "Portions of this system may be exempt under the provisions of 5 U.S.C. 552a. However, if a person is denied any right, privilege, or benefit, he or she would otherwise be entitled to as a result of keeping this material, it must be released, unless doing so would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager."

F120 AF IG B

SYSTEM NAME:

Inspector General Records.

SYSTEM LOCATION:

Office of the Inspector General, Office of the Secretary of the Air Force (SAF/IG), Pentagon, Washington, DC 20330–5000. Headquarters of major commands and at all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All those who have registered a complaint, allegation or query with the Inspector General or Base Inspector on matters related to the Department of the Air Force. All senior officials who are subjects of reviews, inquiries, or investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters/transcriptions of complaints, allegations and queries; letters of appointment; reports of reviews; inquiries and investigations with supporting attachments, exhibits and photographs; record of interviews; witness statements; reports of legal review of case files, congressional responses; memoranda; letters and reports of findings and actions taken; letters to complainants and subjects of investigations; letters of rebuttal from subjects of investigations; finance; personnel; administration; adverse information, and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, 10 U.S.C. 8020, Inspector General, and Executive Order 9397.

PURPOSE(S):

Used to insure just, thorough, and timely resolution and response to complaints, allegations or queries, and a means of improving morale, welfare, and efficiency of organizations, units, and personnel by providing an outlet for redress. Used by the Inspector General and Base Inspectors in the resolution of complaints and allegations and responding to queries involving matters concerning the Department of the Air Force and in some instances the Department of Defense. Used in connection with the recommendation/selection/removal or retirement of officers eligible for promotion to or serving in, general officer ranks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name, Social Security Number and officer where complaint, allegation or query was filed.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files for two years after year in which case is closed. For senior official case files, retained in office files until two years after the year in which case is closed, or two years after the senior official retires, whichever is later. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

The Inspector General, Office of the Secretary of the Air Force (SAF/IG), Pentagon, Washington, DC 20330–5000.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Inspector General, Office of the Secretary of the Air Force (SAF/IG), Pentagon, Washington, DC 20330–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Inspector General, Office of the Secretary of the Air Force (SAF/IG), Pentagon, Washington, DC 20330–5000.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Complainants, inspectors, members of Congress, witnesses and subjects of investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt under the provisions of 5 U.S.C. 552a. However, if a person is denied any right, privilege, or benefit, he or she would otherwise be entitled to as a result of keeping this material, it must be released, unless doing so would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 92–1164 Filed 1–15–92; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Education.

ACTION: Amendment of meeting notice.

SUMMARY: This document is to notify the general public of an amendment to the Notice of Meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans which was published in the **Federal Register**, Vol. 57, No. 5, page 673 on January 8, 1992.

The location and proposed agenda items remain the same except that on January 17, the closed portion will be from 11 a.m. to 12 p.m. instead of 1 p.m. to 5 p.m. The open portion is from 1 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: John Florez, Executive Director, White House Initiative on Educational Excellence for Hispanic Americans, U.S. Department of Education, Washington, DC 20202. Telephone: (202) 205–2420.

Dated: January 10, 1992.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 92–1149 Filed 1–15–92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC92–8–000]

Public Service Company of Colorado; Filing

January 9, 1992.

Take notice that on January 9, 1992, Public Service Company of Colorado ("Public Service") filed an application for approval under section 203 of the Federal Power Act, 16 U.S.C. 824b (1988), for the consolidation of certain facilities of Colorado-Ute Electric Association with those of Public Service. Public Service requests that the Commission authorize the application on an expedited basis, without an evidentiary hearing.

As part of the application, Public Service has filed a *pro forma* transmission service tariff. Public Service states that the tariff will allow third parties to have access to Public Service's transmission system. Public Service states that within 60 days of the consummation of the consolidation, it will file the tariff in final form, including such revisions as may be required by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–1142 Filed 1–15–92; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearing and Appeals

Cases Filed; Week of December 6 Through December 13, 1991

During the week of December 6 through December 13, 1991, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of energy, Washington, DC 20585.

Dated: January 10, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 6 through Dec. 13, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 9, 1991	International Brotherhood of Electrical Workers, Portsmouth, OH.	LFA-0170	Appeal of an information request denial. If Granted: The November 6, 1991 Freedom of Information request Denial issued by Oak Ridge Operations Office would be rescinded, and International Brotherhood of Electrical Workers would receive access to all certified payroll reports and the apprentice registration certificate of Jess Howard.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Dec. 6 through Dec. 13, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 10, 1991	Marks S. Boggs, Delta, CO	LFA-0171	Appeal of an information request denial. If granted: The November 29, 1991 Freedom of Information request Denial issued by the Oak Ridge Operations Office would be rescinded, and Mark S. Boggs would receive access to an accurate set of records concerning the Environmental Monitoring Reports.
Dec. 12, 1991	ARCO/Kavanaugh & Van Fleet, Inc.	RR304-21	Request for modification/rescission in the ARCO refund proceeding. If Granted: The March 20, 1990 Decision and Order (Case No. RF304-2102) issued to Kavanaugh & Van Fleet, Inc. would be modified regarding the firm's application for refund submitted in the ARCO refund.
Dec. 12, 1991	ARCO/General Equities, Inc. (Hill Oil Inc.) Washington, DC.	RR304-22	Request for modification/rescission in the ARCO refund proceeding. If Granted: The November 30, 1989 Decision and Order (Case No. RF304-6534) issued to General Equities, Inc. would be modified regarding the firm's application for refund submitted in the ARCO refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of Dec. 6 to Dec. 13, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/09/91	Slattery Group, Inc	RF336-28
12/09/91	Petroleum Fuels, Inc	RF340-35
12/09/91	James M. Berger Super 100.	RF342-70
12/09/91	Alfred Dickinson	RF342-71
12/09/91	(Fields) Arco Service Station.	RF304-12651
12/09/91	Chuck's Olympic View Service.	RF304-12652
12/09/91	Hunt Bros	RF304-12653
12/09/91	Harold E. Degelmann	RF304-12654
12/10/91	Farmland Industries, Inc.	RF315-10179
12/10/91	Petroleum Electronics, Inc.	RF333-21
12/10/91	Jobbers Buying Group.	RF333-22
12/10/91	Crago & Cook Enterprises.	RF333-23
12/10/91	Everdyke Oil Co	RF333-24
12/10/91	Chorba's Clark Oil	RF342-72
12/11/91	Eli Lilly and Company	RC272-151
12/11/91	Hebro Service Center	RF307-10204
12/11/91	William E. Sullivan	RF307-10205
12/12/91	Ralph's Clark	RF342-73
12/06/91 thru 12/13/91.	Texaco Refund Applications Received.	RF321-18097 thru RF321-18120
12/06/91 thru 12/13/91.	Crude Oil Refund Applications Received.	RF272-90848 thru RF272-90876
12/06/91 thru 12/13/91.	Gulf Oil Refund Applications Received.	RF300-18782 thru RF272-18801

[FR Doc. 92-1197 Filed 1-15-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of December 23 Through December 27, 1991

During the week of December 23 through December 27, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Harry S. Hardin, III, 12/24/91, LFA-0167

Harry S. Hardin, III (Hardin) filed an Appeal from a denial by the Strategic Petroleum Reserve Project Management Office (SPRO) of the Department of Energy (DOE) of a Request for Information which had submitted under the Freedom of Information Act (FOIA). Hardin had requested award fee appraisal reports of Boeing Petroleum Services, Inc. (Boeing), a DOE contractor. SPRO released several documents pertaining to the Boeing award fee appraisal, but withheld performance evaluation committee reports pursuant to Exemption 5 of the FOIA. In considering the Appeal, DOE found that the performance evaluation committee reports are predecisional and deliberative in nature. Consequently, release of those records might hinder the frank exchange of views in the future and inaccurately reflect the views of the agency. Accordingly, Hardin's Appeal was denied.

Motion for Reconsideration

The 341 Tract Unit of the Citronelle Field; Exxon USA et al., 12/24/91, HER-0050, HER-0106, KEZ-0096

The DOE issued a Decision and Order terminating the exception relief granted in The Three Forty One (341) Tract Unit of the Citronelle Field, 10 DOE ¶ 81,027 (1983) (Citronelle). In Citronelle, the DOE, over the objections of certain refinerparticipants in the Entitlements Program, allowed the Unit to recertify a sufficient amount of its price-controlled crude oil to produce $63.8 million in additional revenues to fund a proposed tertiary project. The monies, which were subject to a repayment requirement, were placed in an escrow account from which the Unit could make withdrawals for tertiary expenses. As a result of the Unit's unwillingness to proceed with the project, the DOE terminated the exception relief. The DOE determined that (i) the Unit should be allowed to retain the approximately $20 million in benefits that it had received thus far and (ii) the funds in the escrow account should be distributed in a refund proceeding.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full tests of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Quantum Chemical Corp./Como Oil Co. et al, RF330-13, 12/24/91

Dismissals

The following submissions were dismissed:

Name	Case No.
AGA Gas, Inc	RF272-75450
Aluminum Industries, Inc	RF272-75534
American Ready Mix	RF272-59707
Broadway Texaco Service	RF321-12098
Fairfield, Farrow, Hunt, Reecer & Strotz.	LFA-173
Farm Stores, Inc	RF272-22920
Galloway Enterprises, Inc	RF272-75449
Lemmon Texaco	RF321-12142
Piper Aircraft Corp	RF272-75471
Pirolli Fuel Oil Co., Inc	RF300-11248
The Alan White Company	RF272-75038

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234,

Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 10, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-1198 Filed 1-15-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-62111; FRL-4005-4]

Model Accreditation Plan; Extension of Asbestos Accreditation Requirements to Public and Commercial Buildings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of effective date.

SUMMARY: Pursuant to section 15(c) of the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), Public Law 101-637, notice is hereby given that the effective date of the requirements in the Asbestos Abatement Training Amendments have been extended from November 28, 1991, until November 28, 1992. These amendments mandate additional training and accreditation requirements for persons who work with asbestos. This extension is based upon a determination by the Agency that accredited asbestos contractors are needed to perform school-site abatement required under the Asbestos Hazard Emergency Response Act (AHERA), (15 U.S.C. 2641), and that the extension allowed under section 15(c) of ASHARA is necessary to ensure effective implementation of section 203 of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: ASHARA requires the Agency to revise the model accreditation plan promulgated under section 206 of TSCA (15 U.S.C. 2646). The revised plan must increase the minimum number of training hours required for asbestos abatement workers, and extend accreditation requirements to include persons who inspect for asbestos-containing material or who design or conduct response actions with respect to friable asbestos-containing material in public and commercial buildings. In addition, ASHARA obligates contractors and other persons to comply with the revised accreditation requirements.

The original model accreditation plan was developed in consultation with affected organizations, and became codified as 40 CFR part 763, appendix C to subpart E. Its purpose was to establish minimum training requirements for those persons seeking accreditation to conduct asbestos-related work in schools. Under TSCA, accreditation is required for all persons inspecting school buildings for the presence of asbestos-containing material, developing school management plans, and designing or conducting response actions in schools. Specifically, persons so accredited are designated and referred to as inspectors, management planners, project designers, contractor/supervisors and workers respectively. ASHARA extends the accreditation requirement to all of these types of persons who work in public and commercial buildings, except management planners.

By November 28, 1991, ASHARA requires that the Agency revise the model accreditation plan, and that persons affected by the revision obtain the additional accreditation. The effective date of these requirements, however, may be extended to November 28, 1992, if the Agency determines that accredited asbestos contractors are needed to perform school-site abatement required under AHERA, and that such an extension is necessary to ensure effective implementation of section 203 of TSCA.

Addressing the first of the extension criteria, the Agency has found that the current supply of accredited project designers is insufficient to meet the current demand for such designers of both schools required to comply with AHERA and public and commercial buildings required to comply with the model accreditation plan as revised under ASHARA. A draft Regulatory Impacts Analysis (RIA) has been completed for the Asbestos Abatement Training Amendments. As a part of this RIA, estimates have been developed regarding both the supply and demand for accredited persons. It has been estimated that the current annual demand for project designers in all types of buildings exceeds the current annual supply. Because the number of accredited project designers is therefore insufficient to supply both schools and public and commercial buildings, the Agency has determined that these accredited persons are presently needed to perform the school-site abatement required under AHERA.

Regarding the second extension criteria, the Agency has also found that a 12-month extension of time is needed to ensure the effective implementation of section 203 of TSCA. TSCA section 203(g)(2) requires periodic inspections of school buildings. The regulation implementing this statutory provision, 40 CFR 763.85(b), stipulates that those reinspections take place on a triennial basis. The first triennial reinspection must occur within 3 years after a management plan is put into effect. The management plans were required to be developed by no later than May 9, 1989, with their implementation to begin by July 9, 1989. Therefore, the first round of reinspections is scheduled for completion by July 9, 1992. In order to ensure the effective implementation of the reinspections, EPA must continue to provide published reinspection guidance, protocols, and technical assistance. For example, an intensive effort was made to publish a document by the spring of 1991 entitled: *Answers to the Most Frequently Asked Questions About Reinspection*. The EPA determined that these activities are necessary to ensure that the reinspection cycle is successfully completed and that section 203 of TSCA is effectively implemented. These efforts on the part of the Agency, however, have resulted in the need to extend the timeframe for ASHARA implementation.

For the above reasons, the Agency has determined that it is necessary to extend the effective date of the ASHARA training amendments until November 28, 1992.

Dated: January 7, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92-1189 Filed 1-15-92; 8:45 am]

BILLING CODE 6560-50-F

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 14]

Agency Forms Submitted for OMB Review

AGENCY: Export-Import Bank of the U.S.

ACTION: In accordance with the provisions of the Paperwork Act of 1980, Eximbank has submitted a proposed collection of information in the form of a survey to the Office of Management and Budget for review.

PURPOSE: The proposed Annual Competitiveness Report Survey of Exporters and Bankers as authorized by 12 U.S.C. 635(b), Export-Import Bank of the United States Act of 1945, as amended, is to be completed by U.S. banks and exporters familiar with Eximbank's programs as a means of evaluating the private sector's view on the extent to which Eximbank has provided export credit programs competitive with the export credit programs offered by the major foreign OECD governments.

The collection of the information will enable Eximbank to assess and report to the U.S. Congress the private sector's view of its programs' competitiveness, as required by law.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

(1) Type of requests: Renewal.

(2) Number of forms submitted: One.

(3) Form number: EIB No. 85–3 (Revised 12/91).

(4) Title of information collection: Annual Competitiveness Report Survey to Exporters and Bankers.

(5) Frequency of Use: Annual.

(6) Respondents: Commercial bankers and exporters in the United States.

(7) Estimated total number of responses: 80.

(8) Estimated total number of hours needed to fill out the form: 46.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed survey may be obtained from Helene Wall, Agency Clearance Officer, (202) 566–8111. Comments and questions should be directed to the case officer, Lin Liu, Office of Management and Budget, Information and Regulatory Affairs, room 3235, Washington, DC 20503, tel: 202–395–7340. All comments should be submitted within two weeks of the date of this notice; if you intend to submit comments but are unable to meet this deadline, please advise by telephone that comments will be submitted late.

Dated: December 19, 1991.

Helene Wall,

Agency Clearance Officer.

[FR Doc. 92–1168 filed 1–15–92; 8:45 am]

BILLING CODE 6820–01–M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Federal Supply Service (FBP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0056, Deposit Bond—Annual Sale of Government Personal Property. This form is used by a bidder participating in sales of Government personal property whenever the sales invitation permits an annual type of Deposit Bond in lieu of cash or other form of bid deposit.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden

Respondents: 1,000; annual responses: 1; average hours per response: 0.25; burden hours: 250.

FOR FURTHER INFORMATION CONTACT: William L. Tesh, Jr., (703) 557–0807.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: January 7, 1992.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 92–1172 Filed 1–15–92; 8:45 am]

BILLING CODE 6820–24–M

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Federal Supply Service (FBP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0057, Deposit Bond Individual—Sale of Government Personal Property. This form is used by a bidder participating in sales of Government personal property whenever the sales invitation permits an individual type of Deposit Bond in lieu of cash or other form of bid deposit.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW, Washington, DC 20405.

Annual Reporting Burden

Respondents: 500; annual responses: 1; average hours per response: 0.25; burden hours: 125.

FOR FURTHER INFORMATION CONTACT: Ed Hochard, (703) 557–0814. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW, Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: January 7, 1992.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 92–1173 Filed 1–15–92; 8:45 am]

BILLING CODE 6820–24–M

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0240, GSAR Subpart 525.2: Buy American Act—Construction Materials. The information required to be submitted with the offer is a description of the type, quantity, and cost of the foreign construction material proposed to be used under the contract.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden

Respondents: 120; annual responses: 1; average hours per response: 1.00; burden hours: 120.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, (202) 501–1224. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: January 7, 1992.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 92–1174 Filed 1–15–92; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Substance Abuse Prevention Conference Review Committee; Establishment

Pursuant to section 501(j) of the Public Health Service Act, 42 U.S.C. 290aa(j), and the Federal Advisory Committee Act, 5 U.S.C. appendix 2, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the establishment, effective January 7, 1992, of the following Office for Substance Abuse Prevention initial review committee: Substance Abuse Prevention Conference Review Committee.

The duration of this committee is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Dated: January 9, 1992.

Frederick K. Goodwin,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-1160 Filed 1-15-92; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Circulatory System Devices Panel of the Medical Devices Advisory Committee

Date, Time, and Place

February 3 and 4, 1992, 8:30 a.m., Rm. 503-529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of Meeting and Contact Person

Open public hearing, February 3, 1992, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; open public hearing, February 4, 1992, 8:30 a.m. to 9:30 a.m. unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; closed committee deliberations, 4 p.m. 4:30 p.m.; Wolf Sapirstein, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1205.

General Function of the Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 20, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

The committee will discuss premarket approval applications for one or more implantable cardioverter defibrillator devices.

Closed Presentation of Data

The committee will discuss trade secret and/or confidential commercial information regarding the devices listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed Committee Deliberations

The committee will discuss trade secret and/or confidential commercial information regarding the devices listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee

Date, Time, and Place

February 21, 1992, 12:30 p.m., Days Inn, Downtown/Convention Center, 1201 K St. NW., Washington, DC 20005.

Type of Meeting and Contact Person

Open public hearing, 12:30 p.m. to 1:30 p.m., unless public participation does not last that long; closed presentation of data, 1:30 p.m. to 1:45 p.m.; open committee discussion, 1:45 p.m. to 2:30 p.m., unless public participation does not last that long; Marie A. Schroeder, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1036.

General Function of the Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open Public Hearing

Interested persons may persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 14, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

The committee will discuss premarket approval applications for a prosthetic knee ligament device.

Closed Presentation of Data

The committee may discuss trade secret or confidential commercial information regarding materials, design, and/or manufacturing information for the premarket approval application for a prosthetic knee ligament device. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's

conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 9, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92–1161 Filed 1–15–92; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Dermatologic Drugs Advisory Committee scheduled for January 23 and 24, 1992. The meeting was announced by notice in the **Federal Register** of December 12, 1991 (56 FR 64792).

FOR FURTHER INFORMATION CONTACT: Elaine Osier, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

Dated: January 13, 1992

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1211 Filed 1–15–92; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Meeting of the National Advisory Council for Human Genome Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, January 27, 1992, in the Old Georgetown Room of the Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland.

This meeting will be open to the public on January 27, 1992 from 8:30 a.m. to 9:30 a.m. to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on January 27, 1992 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published later than the 15 days prior to the meeting due to the difficulty of coordinating schedules.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 605, Bethesda, Maryland 20892, (301) 496–0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1293 Filed 1–15–92; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meetings

Notice of Meetings of the National Cancer Advisory Board and its Subcommittees Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on January 26–28, 1992. The full Board will meet in Conference Room 10, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and

evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, room 10A06, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and roster of the Board members, upon requests.

Name of Committee: National Cancer Advisory Board
Executive Secretary: Mrs. Barbara Bynum, Building 31, room 10A03, Bethesda, MD 20892; (301) 496-5147
Dates of Meeting: January, 26, 27 and 28, 1992
Place of Meeting: Building 31C, Conference Room 10
Open: January 27—8 a.m. to approximately 12 noon
Agenda: Reports on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; and Scientific Presentations; Subcommittee Reports; and New Business.
Closed: January 27—1 p.m. to recess
Agenda: For review and discussion of individual grant applications.
Open: January 28—10 a.m. to adjournment
Agenda: Policy and Scientific Presentations, Subcommittee Reports; and New Business.
Name of Committee: Subcommittee on Cancer Centers
Executive Secretary: Dr. Brian Kimes, Executive Plaza North, room 300, Bethesda, MD 20892; (301) 496-8537
Date of Meeting: January 26, 1992
Place of Meeting: Hyatt Regency Hotel, Room to be Posted in Hotel Lobby, One Metro Center, Bethesda, MD 20814
Open: 8 p.m.—until adjournment
Agenda: To discuss Cancer Centers Guidelines and Budget CAPS for Cancer Centers.
Name of Committee: Subcommittee on Information and Cancer Control for the Year 2000
Executive Secretary: Mr. Paul Van Nevel, Building 31, room 10A31, Bethesda, MD 20892; (301) 496-8631
Date of Meeting: January 26, 1992
Place of Meeting: Building 31C, Conference 8
Open. 7:30 a.m. to adjournment
Agenda: TBA
Name of Committee: Subcommittee on Planning and Budget
Executive Secretary: Ms. Iris Schneider, Building 31, room 11A48, Bethesda, MD 20892; (301) 496-5534.
Date of Meeting: January 28, 1992
Place of Meeting: Building 31C, Conference Room 9
Open: 8 a.m. to adjournment
Agenda: To discuss FY 1992 appropriation, FY 1994 By-Pass, NCAB Biennial Report; and NIH Strategic Plan.
Name of Committee: Subcommittee on Women's Health and Cancer
Executive Secretary: Ms. Iris Schneider, Building 31, room 11A48, Bethesda, MD 20892; (301) 496-5534.
Dates of Meeting: January 28, 1992
Place of Meeting: Building 31C, Conference 8
Open: 9 a.m. to adjournment
Agenda: Future plans for special activities.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: January 6, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1148 Filed 1-15-92; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Research Training Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Research Training Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 1, 2, and 3, 1992, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on March 1, from 7:30 p.m. to approximately 8:30 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92-463, the meeting will be closed to the public on March 1, 1992, from 8:30 p.m. to 10 p.m., on March 2, from approximately 8 a.m. until 6 p.m. and on March 3, from 8 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Scientific Review Administrator, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, (301) 496-7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 6, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1145 Filed 1-15-92; 8:45 am]

BILLING CODE 4140-01-M

Meetings of the National Deafness and Other Communications Disorders Advisory Council and its Research Subcommittee

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the National Deafness and Other Communication Disorders Advisory Council and its Research Subcommittee on January 29-31, 1992, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting of the full Council will be held in Conference Room 6, Building 31C, and that of the subcommittee in Conference Room 7, Building, 31C.

The meeting of the full Council will be open to the public on January 30 from 8:30 a.m. until recess at approximately 4 p.m. for a report from the Institute Director and discussion of extramural policies and procedures at the National Institutes of Health and the National Institute on Deafness and Other Communication Disorders.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sections 10(d) of Public Law 92-463, the entire meeting of the Research Subcommittee on January 29 will be closed to the public. The meeting of the full Council

will be closed to the public on January 31 from 9 a.m. until adjournment. The closed portions of the meetings will be for the review, discussion, and evaluation of individual grant applications. The applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council and Subcommittee meetings may be obtained from Dr. John C. Dalton, Executive Secretary, National Institute on Deafness and Other Communication Disorders, Executive Plaza South, room 400B, National Institutes of Health, Bethesda, Maryland 20892, 301-496-8693. A summary of the meetings and rosters of the members may also be obtained from his office.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders.)

Dated: January 6, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1147 Filed 1-15-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Neurological Disorders and Stroke; Meeting

Pursuant to Public Law 92-463, notice is hereby given of meetings of committees of the National Institute of Neurological Disorders and Stroke.

These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. The first hour of the Council meeting on February 6 will be devoted to the preparation of written comments on the NINDS contribution to the biennial report of the Director, NIH, to Congress. A discussion of the document will follow. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sections 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Acting Executive Secretary or the Scientific Review Administrator indicated.

Name of Committee: The Planning Subcommittee of the National Advisory Neurological Disorders and Stroke Council

Date: February 5, 1992

Place: National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, MD 20892

Open: 1 p.m.—3 p.m.

Closed: 3 p.m.—recess

Name of Committee: National Advisory Neurological Disorders and Stroke Council

Dates: February 6-7, 1992

Place: National Institutes of Health, Shannon Building, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892

Open: February 6, 8 a.m.—1 p.m.

Closed: February 6, 1 p.m.—recess; February 7, 8:30 a.m.—adjournment

Acting Executive Secretary: Edward M. Donohue, Acting Director, Division of Extramural Activities, NINDS, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496-4188

Name of Committee: Neurological Disorders Program Project Review A Committee

Dates: February 1, 2 and 3, 1992

Place: The Pointe-Hilton at Squaw Peak, 7677 N. 16th Street, Phoenix, AZ 85020

Open: February 1, 1992, 7:30 p.m.—8 p.m.

Closed: February 1, 8 p.m.—recess; February 2, 8:30 a.m.—recess; February 3, 8:30 a.m.—adjournment

Scientific Review Adminstrator: Dr. Katherine Woodbury, Federal Building, Room 9C-10, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496-9223

Name of Committee: Training Grant and Career Development Review Committee

Dates: February 20, and 21, 1992

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814

Open: February 20, 8 p.m.—8:30 p.m.

Closed: February 20, 8:30 p.m.—recess; February 21, 8 a.m.—adjournment

Scientific Review Administrator: Dr. Herbert Yellin, Federal Building, Room 9C-10, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496-9223

Name of Committee: Neurological Disorders Program Project Review B Committee

Dates: February 24, 25 and 26, 1992

Place: Hotel Washington, 15th and Pennsylvania Avenue, NW., Washington, DC 20004

Open: February 24, 7: 30 p.m.—8:00 p.m.

Closed: February 24, 8:00 p.m.—recess; February 25, 8:30 a.m.—recess; February 26, 8:30 a.m.—adjournment

Scientific Review Administrator: Dr. Paul Sheehy, Federal Building, Room 9C-10, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496-9223.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences).

Dated: January 6, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1146 Filed 1-15-92; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following study sections for January through February 1992, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-4673, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each scientific review administrator, room number, and telephone number are listed below each study section. Since it is necessary to

schedule study section meetings months in advance, it is suggested that anyone planing to attend a meeting contact the scientific review administrator to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Study section	January-February 1992 meetings	Time	Location
Allergy & Immunology, Mr. Howard M. Berman, Rm. A19, Tel. 301-496-7380	Jan. 22-24	8:30	Doubletree Resort Hotel, at Fisherman's Wharf, Monterrey, CA.
Bacteriology & Mycology-1, Dr. Timothy J. Henry, Rm. 236B, Tel. 301-496-7340	Feb. 19-21	8:30	Hyatt Regency Hotel, Bethesda, MD.
Bacteriology & Mycology-2, Dr. William Branche, Jr., Rm. 236A, Tel. 301-496-7682	Feb. 12-14	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Behavioral Medicine, Ms. Carol Campbell, Rm. 306B, Tel. 301-496-7109	Feb. 4-6	8:00	Holiday Inn, Chevy Chase, MD.
Biochemical Endocrinology, Dr. Michael Knecht, Rm. 204, Tel. 301-496-7430	Feb. 5-7	8:30	Hyatt Regency Hotel, Bethesda, MD.
Biochemistry, Dr. Adolphus P. Toliver, Rm. 318B, Tel. 301-496-7516	Feb. 14-16	8:30	Doubletree Hotel, Houston, TX.
Bio-Organic & Natural Products Chemistry, Dr. Harold Radtke, Rm. 2A07, Tel. 301-496-8823.	Feb. 27-29	8:30	Holiday Inn, Chevy Chase, MD.
Biophysical Chemistry, Dr. John Beisler, Rm. 334, Tel. 301-496-7070	Feb. 6-8	8	Harvey Suites Hotel, Houston, TX.
Bio-Psychology, Dr. A. Keith Murray, Rm. 325, Tel. 301-496-7058	Feb. 4-6	9	Omni Georgetown Hotel, Washington, DC.
Cardiovascular, Dr. Gordon L. Johnson, Rm. 439A, Tel. 301-496-7316	Feb. 19-21	8	Ramada Inn, Bethesda, MD.
Cardiovascular & Renal, Dr. Anthony Chung, Rm. 353, Tel. 301-496-7901	Feb. 10-11	8:30	Holiday Inn, Chevy Chase, MD.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, Rm. 336, Tel. 301-496-7396.	Feb. 5-7	8	American Inn, Bethesda, MD.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, Rm. 1A05, Tel. 301-496-7681.	Feb. 24-26	8:30	Holiday Inn, Bethesda, MD.
Chemical Pathology, Dr. Edmund Copeland, Rm. 322, Tel. 301-496-7078	Feb. 19-21	8	Holiday Inn, Bethesda, MD.
Diagnostic Radiology, Dr. Catharine Wingate, Rm. 357, Tel. 301-496-7650	Feb. 24-26	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Endocrinology, Dr. Harry Brodie, Rm. 218, Tel. 301-496-7346	Feb. 5-7	9	Hyatt Regency Hotel, Bethesda, MD.
Epidemiology & Disease Control-1, Dr. Scott Osborne, Rm. 203C, Tel. 301-496-7246	Feb. 5-7	8:30	Hyatt Regency Hotel, Bethesda, MD.
Epidemiology & Disease Control-2, Dr. H. M. Stiles, Rm. 203B, Tel. 301-496-7246	Feb. 5-7	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Rm. 434, Tel. 301-496-7940.	Feb. 12-14	8:00	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Experimental Immunology, Dr. Calbert Laing, Rm. A27, Tel. 301-496-7236	Feb. 19-21	8:30	Holiday Inn, Georgetown, DC.
Experimental Therapeutics-1, Dr. Philip Perkins, Rm. 221, Tel. 301-496-7839	Feb. 3-5	8:30	Keystone Resort Hotel, Keystone, CO.
Experimental Therapeutics-2, Dr. Marcia Litwack, Rm. 207, Tel. 301-496-6848	Feb. 3-5	8:00	Keystone Resort Hotel, Keystone, CO.
Experimental Virology, Dr. Garrett V. Keefer, Rm. 206, Tel. 301-496-7474	Feb. 24-26	8:30	NIH, Room 8, Bldg. 31C, Bethesda, MD.
General Medicine A-1, Dr. Harold Davidson, Rm. 354A, Tel. 301-496-7797	Feb. 26-28	1 p.m.	Inn of Maples, Maples, FL.
General Medicine A-2, Dr. Mushtaq Khan, Rm. 354B, Tel. 301-496-7140	Feb. 7-9	8	Holiday Inn, Taos, NM.
General Medicine B, Dr. Daniel McDonald, Rm. 220, Tel. 301-496-7730	Feb. 10-12	8	Holiday Inn, Chevy Chase, MD.
Genetics, Dr. David Remondini, Rm. 225, Tel. 301-496-7271	Feb. 13-15	9	Holiday Inn, Bethesda, MD.
Genome, Dr. Cheryl Corsaro, Rm. 2A15, Tel. 301-496-7886	Feb. 19-21	9	Holiday Inn Crowne Plaza, Rockville, MD.
Hearing Research, Dr. Joseph Kimm, Rm. 1A03, Tel. 301-496-7494	Feb. 19-21	8:30	Hyatt Regency Hotel, Bethesda, MD.
Hematology-1, Dr. Clark Lum, Rm. 355A, Tel. 301-496-7506	Feb. 20-22	8	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2, Dr. Jerrold Fried, Rm. 355B, Tel. 301-496-7506	Feb. 19-21	8:30	Ramada Inn, Bethesda, MD.
Human Development & Aging-1, Dr. Teresa Levitin, Rm. 303, Tel. 301-496-7025	Feb. 19-21	9	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development & Aging-2, Dr. Samuel Rawlings, Rm. 305, Tel. 301-496-7640	Feb. 12-14	8	Hilton Hotel, San Juan, PR.
Human Development & Aging-3, Dr. Anita Sostek, Rm. 319C, Tel. 301-496-6614	Feb. 24-26	9	Omni Shoreham Hotel, Washington, DC.
Human Embryology & Development, Dr. Arthur Hoversland, Rm. 219B, Tel. 301-496-7597.	Feb. 18-19	8	Holiday Inn, Chevy Chase, MD.
Immunobiology, Dr. William Stylos, Rm. A27, Tel. 301-496-7780	Feb. 19-21	8:30	Holiday Inn, Chevy Chase, MD.
Immunological Sciences, Dr. Anita Corman Weinblatt, Rm. A25, Tel. 301-496-7179	Feb. 26-28	8:30	Holiday Inn, Georgetown, DC.
Lung Biology and Pathology, Dr. Anne Clark, Rm. A10, Tel. 301-496-4673	Feb. 10-12	8	Holiday Inn, Chevy Chase, MD.
Mammalian Genetics, Dr. Jerry Roberts, Rm. 234, Tel. 301-402-1462	Feb. 20-22	8:30	Holiday Inn, Bethesda, MD.
Medical Biochemistry, Dr. Alexander Liacouras, Rm. 318A, Tel. 301-496-7517	Feb. 6-8	8:30	Doubletree Hotel, Houston, TX.
Medicinal Chemistry, Dr. Ronald Dubois, Rm. 2A06, Tel. 301-496-7107	Feb. 12-14	8:30	Holiday Inn, Chevy Chase, MD.
Metabolic Pathology, Dr. Marcelina Powers, Rm. 435, Tel. 301-496-5251	Feb. 18-20	8	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Metabolism, Dr. Krish Krishnan, Rm. 339A, Tel. 301-496-7091	Feb. 12-14	8	Holiday Inn Crowne Plaza, Arlington, VA.
Metallobiochemistry, Dr. Edward Zapolski, Rm. 335, Tel. 301-496-7733	Feb. 27-29	8:30	Omni Georgetown Hotel, Washington, DC.
Microbial Physiology & Genetics-1, Dr. Martin Slater, Rm. 238, Tel. 301-496-7183	Feb. 26-28	8:30	River Inn, Washington, DC.
Mircobial Physiology & Genetics-2, Dr. Gerald Liddel, Rm. 226, Tel. 301-496-7130	Feb. 12-14	8:30	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, Rm. 326, Tel. 301-496-7060	Feb. 27-29	8	One Washington Circle Hotel, Washington, DC.
Molecular Biology, Dr. Robert Su, Rm. 233, Tel. 301-496-7830	Feb. 13-15	8	Holiday Inn, Georgetown, DC.
Molecular Cytology, Dr. Ramesh Nayak, Rm. 233B, Tel. 301-496-7149	Feb. 6-7	8	Holiday Inn, Chevy Chase, MD.
Neurological Sciences-1, Dr. Andrew Mariani, Rm. 319A, Tel. 301-496-7279	Feb. 19-21	8:30	One Washington Circle Hotel, Washington, DC.
Neurological Sciences-2, Dr. Stephen Gobel, Rm. 304, Tel. 301-496-6806	Feb. 12-14	8	Yosemite Lodge, Yosemite, CA.
Neurology A, Dr. Joe Marwah, Rm. 303A, Tel. 301-496-7095	Feb. 27-29	8:30	The Governor's House, Washington, DC.
Neurology B-1, Dr. Lawrence Sellin, Rm. 306A, Tel. 301-496-7846	Feb. 11-13	8:30	Hotel Washington, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Rm. 321, Tel. 301-496-7422	Feb. 18-20	8:30	Holiday Inn, Chevy Chase, MD.
Neurology C, Dr. Kenneth Newrock, Rm. 232, Tel. 301-496-5591	Feb. 12-14	8:30	Omni Georgetown Hotel, Washington, DC.
Nursing Research, Dr. Gertrude McFarland, Rm. 352, Tel. 301-496-0558	Feb. 24-26	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Nutrition, Dr. Sooja Kim, Rm. 348, Tel. 301-496-7178	Feb. 10-12	8:30	Sheraton Potomac Inn, Rockville, MD.
Oral Biology & Medicine-1, Dr. Larry Pinkus, Rm. 219A, Tel. 301-496-7818	Feb. 10-13	8:30	Holiday Inn, Chevy Chase, MD.
Oral Biology & Medicine-2, Dr. Larry Pinkus, Rm. 219B, Tel. 301-496-7818	Feb. 3-6	8:30	Holiday Inn, Chevy Chase, MD.
Orthopedics & Musculoskeletal, Ms. Ileen Stewart, Rm. 350, Tel. 301-496-7581	Feb. 5-7	8:30	Hyatt Regency Hotel, Rosslyn, VA.
Pathobiochemistry, Dr. Zakir Bengali, Rm. 320, Tel. 301-496-7820	Feb. 12-14	8:30	The Savoy Suites Hotel, Washington, DC, Rockville, MD.

Study section	January-February 1992 meetings	Time	Location
Pathology A, Dr. Jaswant Bhorjee, Rm. 337, Tel. 301-496-7305	Jan. 29-31	7:30 p.m.	Ramada Inn, Taos, NM.
Pathology B, Dr. Martin Padarathsingh, Rm. A26, Tel. 301-496-7244	Jan. 28-31	7:30 p.m.	Ramada Inn, Taos, NM.
Pharmacology, Dr. Joseph Kaiser, Rm. 206, Tel. 301-496-7408	Feb. 19-21	8:30 p.m.	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Rm. 349A, Tel. 301-496-7120	Feb. 23-25	7:30	Holiday Inn Crowne Plaza, Rockville, MD.
Physiological Chemistry, Dr. Jerry Critz, Rm. 339B, Tel. 301-496-7837	Feb. 14-16	8:30	Doubletree Hotel, Houston, TX.
Physiology, Dr. Michael A. Lang, Rm. 209, Tel. 301-496-7878	Feb. 19-21	8:30	Embassey Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Radiation, Dr. Paul Strudler, Rm. 328, Tel. 301-496-7073	Feb. 3-5	8:30	Holiday Inn, Taos, NM.
Reproductive Biology, Dr. Dharam Dhindsa, Rm. 210, Tel. 301-496-7318	Feb. 10-12	8	Holiday Inn, Bethesda, MD.
Reproductive Endocrinology, Dr. Abubekar A. Shaikh, Rm. 325B, Tel. 301-496-6857	Feb. 3-5	8	Holiday Inn Crowne Plaza, Rockville, MD.
Respiratory & Applied Physiology, Dr. Everett Sinnett, Rm. 218A, Tel. 301-496-7320	Feb. 11-13	8	Holiday Inn, Chevy Chase, MD.
Safety & Occupational Health, Dr. Gopal Sharma, Rm. 219C, Tel. 301-496-6723	Feb. 12-14	8	Hyatt Regency Hotel, Bethesda, MD.
Sensory Disorders & Language, Dr. Jane Hu, Rm. 309, Tel. 301-496-7605	Feb. 5-7	8:30	Holiday Inn Capitol Hill, Washington, DC.
Social Sciences & Population, Dr. Samuel Rawlings, Rm. 307, Tel. 301-496-7906	Feb. 6-7	9	Holiday Inn, Chevy Chase, MD.
Surgery & Bioengineering, Dr. Paul F. Parakkal, Rm. 437, Tel. 301-496-7506	Feb. 17-18	8	Holiday Inn, Chevy Chase, MD.
Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, Rm. 439, Tel. 301-496-7771	Feb. 19-21	2 p.m.	Holiday Inn, Bethesda, MD.
Toxicology-1, Dr. Alfred Merozzi, Rm. 205, Tel. 301-496-7570	Feb. 10-12	8	American Inn, Bethesda, MD.
Toxicology-2, Dr. Alfred Merozzi, Rm. 205, Tel. 301-496-7570	Feb. 12-14	8	American Inn, Bethesda, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, Rm. 1A03, Tel. 301-496-1180	Feb. 11-13	8	Holiday Inn, Bethesda, MD.
Virology, Dr. Bruce Maurer, Rm. 2A06, Tel. 301-496-7605	Feb. 13-15	8:30	The Savoy Suites Hotel, Washington, DC.
Visual Sciences A, Dr. Anita Suran, Rm. 325B, Tel. 301-496-7000	Feb. 26-28	8	Holiday Inn, Bethesda, MD.
Visual Sciences B, Dr. Leonard Jakubczak, Rm. 325C, Tel. 301-496-7251	Feb. 19-21	8:30	Omni Georgetown Hotel, Washington, DC.
Visual Sciences C, Dr. Allen Dearry, Rm. 319B, Tel. 301-496-7795	Feb. 23-25	8:30	Tenaya Lodge, Yosemite, CA.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 8, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1144 Filed 1-15-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-92-676]

Office of the Regional Administrator—Regional Housing Commissioner; Acting Manager, Region IV (Atlanta); Designation for Coral Gables Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Coral Gables Office.

EFFECTIVE DATE: November 19, 1991.

FOR FURTHER INFORMATION CONTACT: Charles A. Lipthrott, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303-3388, 404-331-5199.

Designation of Acting Manager for Coral Gables Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager.
2. Chief, Property Disposition Branch.
3. Chief, Loan Management Branch.
4. Chief, Mortgage Credit Branch.
5. Chief, Valuation Branch.

This designation supersedes the designation effective December 31, 1987, (53 FR 646, January 11, 1988). (Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971)).

This designation shall be effective as of November 19, 1991.

Orlando L. Loria,

Manager, Coral Gables Office.

Raymond A. Harris,

Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 92-1113 Filed 1-15-92; 8:45 am]

BILLING CODE 4210-01-M

Office of Administration

[Docket No. N-92-3374]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of

respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 8, 1992.

John T. Murphy,

Director, Information Resources Management Policy and Management Division.

Proposal: HOPE for Homeownership of Single Family Homes (HOPE 3)–FR–2968.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: The information is necessary so that applicants can apply and compete for the grant funding opportunities. The information provided in the application will be accessed by HUD staff to determine the relative merits of each proposal. HUD will review the information provided by the applicants against the selection criteria contained in Section 315 of the notice in order to rate and rank the applications and select individual applications for funding.

Form Number: HUD–40086–A.

Respondents: State or local government and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	400		1.75		23.06		16,140
Recordkeeping	200		1		8		1,600

Total Estimated Burden Hours: 17,740.

Status: New.

Contact: John Garrity, HUD, (202) 708–0324, Jennifer Main, OMB, (202) 395–6880.

Dated: January 8, 1992.

Proposal: Rental Rehabilitation Program-Rent Verification Survey.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: Investor owners participating in the Rental Rehabilitation Program (RRP) will be requested to supply information on rents charged on units rehabilitated with RRP funds. The results of the annual survey will be provided to Congress in the Department's annual report on the program.

Form Number: None.

Respondents: Individuals or households and non-profit institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Rent Verification Survey	1,100		1		.25		275

Total Estimated Burden Hours: 275.

Status: Reinstatement.

Contact: Franklin Price, HUD, (202) 708–1296, Jennifer Main, OMB, (202) 395–6880.

Dated: January 8, 1992.

[FR Doc. 92–1112 Filed 1–15–92; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–3284; FR–3069–N–03]

HUD-Administered State Rental Rehabilitation Programs; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in competitions for funding under the notice of funding availability for the HUD-Administered State Rental Rehabilitation Programs for fiscal year 1991. The announcement contains the names of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: David Cohen, Director, Office of Affordable Housing Programs, room 7168, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–2685. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On July 25, 1991, the Department published a notice (56 FR 34098) announcing funds available by competition to units of local government for rental housing rehabilitation in States that chose not to administer the Rental Rehabilitation Program (RRP) in FY 1991. That notice identified the following States that elected not to administer the Rental Rehabilitation Program and the amount of rental rehabilitation grant funds available in those States:

Arkansas	$342,000
California	1,689,000
Florida	572,000
Hawaii	36,000
Nevada	51,000
North Dakota	76,000
Oregon	279,000
Total	3,045,000

On July 31, 1991, the Department published another notice (56 FR 36164) stating that, in addition to the funds announced in the July 25, 1991 notice, a total of $269,000 in rental rehabilitation grant funds was being made available to localities in Puerto Rico.

The following table announces the results of the competitions. Applications were scored and selected for funding on the basis of the selection criteria contained in the July 25, 1991 notice.

Recipients	Amount
Arkansas	$342,000
Fayetteville	31,000
Springdale	40,000
Texarkana	31,000
West Helena	150,000
West Memphis	90,000
California	[1] 1,836,000
Alameda	70,000
Alameda County	110,000
Corona	80,000
Costa Mesa	70,000
El Centro	80,000
Eureka	150,000
Merced	100,000
Modesto	80,000
Redding	125,000
Redwood City	91,000
Richmond	115,000
Salinas	80,000
San Leandro	60,000
Shasta County	100,000
South San Francisco	60,000
Vacaville	145,000
Vallejo	100,000
Visalia	50,000
Watsonville	100,000
Westminster	70,000
Florida	[2] 632,000
Delray Beach	53,170
Fort Myers	50,000
Indian River County	52,000
Key West	54,500
Largo	51,940
Melbourne	53,530
Monroe County	53,460
Ocala	54,030
Okaloosa County	51,440
Panama City	53,960
Seminole County	51,810
Titusville	52,160
North Dakota	76,000
Grand Forks	76,000
Oregon	[3] 279,000
Albany	64,000
Coos Bay	71,000
Corvallis	12,000
Klamath Falls	68,000
Medford	64,000
Puerto Rico	[4] 193,609
Cayey	151,109
Vega Baja	42,500

[1] The amount published in the July 25, 1991 notice for California was $1,689,000. An additional $147,000 became available when two localities decided not to accept their less-than-$50,000 formula allocations (Costa Mesa—$37,000 and Redwood City—$23,000) and the allocations for Hawaii ($36,000) and for Nevada $51,000) were added to the amount for California. (There was no interest from localities in Hawaii and Nevada to participate in the Program.)

[2] The amount published in the July 25, 1991 notice for Florida ($572,000) was increased by $60,000 when the City of Tallahassee failed to submit an approvable program description.

[3] In addition to the FY 1991 funds of $279,000, $60,000 in FY 1990 RRP funds and $129,210 in FY 1989 RRP funds were available for competition in Oregon. These funds were awarded to:

Coos Bay—$64,605 (FY 1989 funds)

Corvallis—$124,605 ($64,605 in FY 1989 funds and $60,000 in FY 1990 funds)

[4] Only $193,609 was applied for by localities in Puerto Rico.

Dated: January 13, 1992.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92-1215 Filed 1-15-92; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-02-4740-10-CDLE]

Temporary Closure of Public Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Closure of Public Lands in San Bernardino County, CA.

SUMMARY: Notice is hereby given that certain Public Lands in California that were previously used as courses and starting, pitting, and spectator areas for the Barstow to Las Vegas Motorcycle Race, will be closed from November 25, 1992 through November 30, 1992 to all motorized vehicles. This closure begins on Public Lands north of I–15 in the Alvord Road area. From this location the closure covers the various routes and pit areas of previous Barstow to Vegas races, traveling in a generally northeasterly direction to the Nevada State border.

Order: Effective at 0001 hours (12:01 a.m. p.s.t.) Wednesday November 25, 1992 through 2400 hours (Midnight, p.s.t.) Monday November 30, 1992, all Public Lands in California used for course routes, starting, pitting, and spectator areas for the Barstow to Las Vegas motorcycle race will be closed to vehicles. The legal land descriptions for the start, spectator, and pit areas affected by this closure are as follows:

All Public Lands within:

San Bernardino Baseline and Meridian:

T.10 N., R.3 E., secs. 1, 3, 11, 12, 14.
T.10 N., R.4 E., secs. 6, 7.
T.11 N., R.3 E., secs. 1, 2, 10, 11, 12, 14, 15, 22, 23, 24, 26, 27, 34, 35.
T.11 N., R.4 E., secs. 6, 8, 18, 19, 20, 30, 31, 32.
T.12 N., R.3 E., secs. 22, 23, 24, 26, 27, 34.
T.12 N., R.4 E., secs. 19, 20, 30, 32.
T.15 N., R.8 E., secs. 19, 20, 29, 30.
T.12 N., R.7 E., secs. 11, 12, 13, 14.
T.15 N., R.10 E., secs. 2, 3, 10, 11.
T.17 N., R.15 E., sec. 7.

The closure does not affect vehicles traveling on the following roads:

1. California State Highway 127.
2. Basin Road.
3. Rasor Road.
4. Kingston Road (Also known as Excelsior Mine Road).

A map showing vehicle routes of travel affected by this closure is available from any of the offices listed below.

No person may use, drive, move, transport, let stand, park, or have charge or control over any type of motorized vehicle within this closure area or on closed routes.

Exemptions to this order are granted to the following:

Employees of valid right-of-way holders in the course of duties associated with the right-of-way.

Holders of valid lease(s) and/or permit(s) and their employees in the course of duties associated with the lease and/or permit.

Employees of Bond Gold Colosseum in the course of duties associated with the Colosseum mine. This includes suppliers making deliveries to the Colosseum mine with proof of impending delivery.

All other exemptions to this order are by written authorization of the California Desert District Manager. Person(s) seeking an exemption must submit their requests in writing to the California Desert District Manager (6221 Box Springs Blvd., Riverside, CA 92507). The requests must include a detailed description outlining the purpose or need for the exemption, specific areas to be used, and the dates of the exemption. To be considered, exemption requests must be postmarked by Saturday, March 14, 1992. Requests postmarked after that day will not be considered.

BACKGROUND: The purpose of this temporary closure is to protect all Public Land resources on or adjacent to Barstow to Las Vegas race courses and associated areas from the impacts of large scale unmanaged vehicle use. A temporary closure order prohibiting vehicle use on previously used routes and start, pit and spectator areas, was enacted in 1990 and 1991 to prevent unauthorized vehicle use on the B–V corridor and the associated adverse environmental impacts. Four individuals were convicted in Federal Court of violating the 1990 closure order and were fined $850 each. Two others pled guilty before a local magistrate and both were fined $250. Charges are pending against two individuals who were arrested for violating the closure order in 1991.

Resources most critical to the areas affected by this closure are the desert tortoise and its habitat. The desert tortoise is listed as a threatened species under the Federal Endangered Species Act and is afforded increased protection under the terms of the Act. The environmental assessment prepared for this action has shown there will be no significant impacts to recreational use or the natural environment as a result of this closure.

EFFECTIVE DATE: This closure will be in effect from 0001 hours (12:01 a.m., p.s.t.) Wednesday, November 25, 1992 through

2400 hours (Midnight, p.s.t.) Monday, November 30, 1992.

FOR FURTHER INFORMATION CONTACT:
District Manager, California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507-0714, (714) 697-5200.
Area Manager, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, (619) 256-3591.
Area Manager, Needles Resource Area, 101 W. Spikes Rd., Needles, CA 92363, (619) 326-3896.

SUPPLEMENTARY INFORMATION: The environmental assessment and maps showing the areas and routes affected by this closure order are available by contacting the aforementioned offices.

Authority for this temporary closure order is found in 43 CFR 8364.1. Violation of this closure is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

Dated: January 10, 1992.

Gerald E. Hillier,
District Manager, California Desert.

[FR Doc. 92-1156 Filed 1-15-92; 8:45 am]
BILLING CODE 4310-40-M

[UT-020-92-4212-24; U-68279]

Salt Lake District; Application to Purchase Federally Owned Mineral Interests

ACTION: Application to Purchase Federally Owned Mineral Interests.

AGENCY: Bureau of Land Management, Department of the Interior.

SUMMARY: Notice is hereby given that pursuant to section 209 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1719), an application has been filed for the purchase of all Federally owned mineral interests, excluding oil and gas, within the following land description:

Salt Lake Meridian

T. 12 N., R. 4 W.
Section 6, lots 2, 3, 10
Containing 49.50 acres.

It has been determined that there are no known mineral values in the subject lands except that the lands have been classified as prospectively valuable for oil and gas.

Publication of this notice in the **Federal Register** segregates the mineral interests owned by the United States from appropriation under the mining and mineral leasing laws. The segregative effect shall terminate 270 days from the publication of this notice or upon final disposition of this action, whichever occurs first.

FOR FURTHER INFORMATION CONTACT:
Janice MaChipiness, Bear River Resource Area Realty Specialist, 2370 South 2300 West, Salt Lake City, Utah 84119, or call at (801) 977-4300.

Deane H. Zeller,
District Manager.

[FR Doc. 92-1151 Filed 1-15-92; 8:45 am]
BILLING CODE 4310-DQ-M

[WY-920-41-5700; WYW112953]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

January 9, 1992.

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW112953 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW112953 effective October 1, 1991, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,
Supervisory Land Law Examiner.

[FR Doc. 92-1177 Filed 1-15-92; 8:45 am]
BILLING CODE 4310-22-M

[AZ-040-5410-10-A012]

Notice of Receipt of Application Number AZA 25950 for the Conveyance of Federally-Owned Mineral Interests; Safford District, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of receipt of conveyance of mineral interest application AZA 25950 in Cochise County.

SUMMARY: Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Lawrence E. Clark and Ruth D. Clark, husband and wife, have applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 24 S., R. 22 E.,
Sec. 9, NE¼SE¼.
Containing 40.00 acres, more or less.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interest, upon final rejection of the application or two years from the date of filing of the applications, October 1, 1991, whichever occurs first.

SUPPLEMENTARY INFORMATION: Additional information concerning this application may be obtained from the District Realty Specialist, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

Dated: December 20, 1991.

Ray A. Brady,
District Manager.

[FR Doc. 92-1176 Filed 1-15-92; 8:45 am]
BILLING CODE 4310-32-M

[CO-050-4212-13]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, COC51326 exchange of private lands in Park County for public lands in Custer, Fremont and San Miguel Counties, Colorado.

SUMMARY: The following public land has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 USC 1716:

T.20S., R.72W., Sixth P.M.
Section 20: SE¼NE¼, NW¼SE¼, E½SE¼
Section 28: SW¼SW¼
T.21S., R.72W.
Section 3: NE¼SW¼ (less MS 67 & 68)
Section 5: Lot 2, SW¼NE¼, S½NW¼, E½SW¼, W½SE¼
Section 6: Lots 6, 7, S½NE¼
Section 7: Lots 1, 2
Section 8: N½SE¼
Section 9: W½SW¼
Section 22: NW¼NE¼
T.21S., R.73W.
Section 15: S½SW¼
Section 22: N½NE¼
T.22S., R.71W.
Section 4: Lot 3, SW¼SW¼
Section 5: Lots 15, 16, 21 and 23

Section 6: Lot 13
Section 8: NE¼NE¼, NW¼NW¼
Section 9: Lots 4, 5 and 10
T.23S., R.70W.
Section 27: SW¼
Section 28: E½SE¼
Section 33: NE¼NE¼
T.24S., R.72W.
Section 8: S½SE¼
Section 9: SW¼SW¼
Section 17: NE¼, SE¼NW¼, NE¼SE¼
T. 43N., R.11W., N.M.P.M.
Section 23: SE¼NE¼, NW¼SE¼
Containing 2,110.88 acres.

In exchange for these lands, the United States will acquire the following private land from Shepard and Association:

T.15S., R.73., Sixth P.M.
Section 19: All
Section 20: SW¼NE¼, S½NW¼, SW¼
Section 29: N½NW¼
Section 30: Lots 1, 2, and 7
T.15S., R.74W.
Section 24: Lots 1, 2, 3, E½NE¼, NE¼SW¼, S½SW¼, N½SE¼
Section 25: Lots 1 thru 9, SE¼NE, SW¼NW¼, N½SE¼
(Excluding a 20 acre parcel conveyed by metes and bounds)
Containing 1,882.41 acres.

The purpose of the exchange is to obtain private land containing important riparian, wildlife, recreation and other public values, while disposing of scattered parcels of public land which are scattered, difficult to manage tracts without public access. The proposed exchange is consistent with the objectives of the land use plan for the affected lands.

Any differences in the appraised values of the offered and selected lands will be equalized through acreage adjustments or cash payment.

DATES: Interested parties may submit written comments to the Canon City District Manager on or before March 2, 1992.

ADDRESSES: Bureau of Land Management, Canon City District, P.O. Box 2200, Canon City, CO 81215–2200.

FOR FURTHER INFORMATION CONTACT: Stu Parker, (719) 275–0631.

SUPPLEMENTARY INFORMATION: The exchange will involve both the surface and subsurface estates and will be subject to valid existing rights on both the offered and selected lands. This notice segregates the public lands described above from entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, for 2 years from publication or until patent issues. Any adverse comments will be evaluated by the District Manager who may vacate, modify, or continue this realty action and issue a final determination.

Donnie R. Sparks,
District Manager.
[FR Doc. 92–1178 Filed 1–15–92; 8:45 am]
BILLING CODE 4310–JB–M

[WY–930–4214–10; WYW 123105]

Proposed Withdrawal and Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 5,417.43 acres of Federal surface and mineral estate, and 40.00 acres of Federal mineral estate in Big Horn County to protect important paleontological resource values that were recently discovered near Greybull, Wyoming. This notice closes the land for up to 2 years from surface entry and mining.

DATES: Comments on the proposed withdrawal must be received by April 15, 1992.

ADDRESSES: Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307–775–6115.

SUPPLEMENTARY INFORMATION: On January 6, 1992, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principle Meridian

T. 54 N., R. 91 W.,
Sec. 4, lots 1 and 2, S½NE¼, SE¼SW¼, SE¼;
Sec. 5, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 7, lots 9, 10, and 13;
Sec. 8, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 9, lots 1–14;
Sec. 16, NE¼, SW¼;
Sec. 17, W½NE¼, SE¼NE¼, W½, SE¼;
Sec. 18, lots, 5–11;
Sec. 19, E½, NE¼NW¼;
Sec. 20, N½, N½SW¼, SW¼SW¼, E½SE¼;
Sec. 21, N½NW¼, SW¼NW¼, W½SE¼;
Sec. 29, E½NE¼, SW¼NE¼, W½, N½SE¼, SW¼SE¼;
Sec. 30, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 31, lot 5;
Sec. 32, W½NE¼, NW¼, NE¼SW¼, W½SE¼.

The area described contains 5,457.43 acres in Big Horn County, Wyoming.

The land in the SE¼NE¼ of section 17 is private surface estate. Therefore, this withdrawal will only segregate the locatable mineral estate on this parcel of land.

The purpose of the withdrawal is to protect and preserve significant, fragile, world-class paleontological resources. This protection will allow completion of scientific research and recovery and provide information for the development of appropriate, long-term management of the resource.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Wyoming State Director of the Bureau of Land Management.

Notice is hereby given that a public meeting will be held in connection with the proposed withdrawal. A notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, rights-of-way, cooperative agreements, or discretionary land use authorizations of a temporary nature which do not significantly disturb the surface of the land or impair the existing values of area.

Dated: January 9, 1992.

Ray Brubaker,
State Director, Wyoming.
[FR Doc. 92–1158 Filed 1–15–92; 8:45 am]
BILLING CODE 4310–22–M

Fish and Wildlife Service

Notice of Availability of Draft Environmental Impact Statement for the Proposed Construction of a Lake at the Brushy Creek State Recreation Area, Webster County, IA

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (FWS) has prepared a Draft Environmental Impact Statement (DEIS), which is available for public review. The DEIS evaluates a proposal of the Iowa Department of Natural Resources to construct a 690-acre lake at the Brushy Creek State Recreation Area (BCSRA) in Webster County, Iowa, with funding provided through the Federal Aid in Sport Fish Restoration Act. The primary purposes of the proposed lake development are to provide a fishery resource in north-central Iowa and to meet water-oriented recreational needs of the area while maintaining environmental quality. Other alternatives considered in detail in the DEIS include the construction of a complex of three tributary lakes of 16, 17, and 55 acres, and the No Action alternative, which would upgrade existing facilities but would not involve construction of a lake(s). Public comment on the DEIS is solicited pursuant to National Environmental Policy Act regulations (40 CFR 1503.1). Public meetings will be convened as described below.

DATES: Written comments on the DEIS should be received at the address below by March 16, 1992. Public meetings will be held at the Holiday Inn located at 2001 Highway 169 South in Fort Dodge, Iowa, on Wednesday, February 19, 1992. The public meetings will be held at 2 p.m. and 7 p.m.

ADDRESSES: Written comments should be addressed to: Regional Director, North Central Region, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Mr. David Pederson, Fisheries Biologist, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056—Telephone: (612) 725–3596. Individuals wishing copies of this DEIS for review should immediately contact Mr. Pederson. Copies have been sent to all agencies and organizations who participated in the scoping process and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION: Mr. Robert Kriska is the primary author of this document. The FWS, Department of the Interior, has prepared a DEIS on the proposal to provide funding through the Federal Aid in Sport Fish Restoration Act to the Iowa Department of Natural Resources to construct a recreational lake at the BCSRA in north-central Iowa Near Fort Dodge, Iowa. The lake would have a surface area of 690 acres, a maximum depth of 75 feet, a mean depth of 29 feet, and 18 miles of shoreline. The BCSRA is a 4,200-acre state-owned recreation area located along Brushy Creek, which is a small tributary of the Des Moines River.

This action is designed to provide a fishery resource in north-central Iowa and to meet the water-oriented recreational needs of the area in a natural setting while maintaining environmental quality. The proposed lake will serve an 11-county area within a 50-mile driving distance of the BCSRA, with visitation anticipated from locations outside of this area. The need for more public recreational lakes in Iowa has been expressed in various surveys, including surveys conducted in 1968, 1985, and 1990. In addition, the Iowa State Comprehensive Outdoor Recreation Plan prepared in 1986 documented the need for recreational lakes in north-central Iowa compared to other areas of the state.

The DEIS documents a number of impacts associated with construction of a 690-acre lake (preferred alternative). Among the socio-economic impacts include disruptions to adjacent residents associated with increased traffic and influx of visitors; potential flooding of adjacent agricultural properties during maximum storm events, requiring acquisition of ponding easements; and, increased spending in the local area associated with lake construction and visitors. Major impacts to natural and scenic resources include inundation of approximately 6.2 miles of Brushy Creek, eliminating 74 percent of the Brushy Creek stream habitat; elimination of 31 percent of wooded habitat, 15 percent of mature upland forest, 54 percent of wetland habitat, and one acre of prairie habitat in the area; and, creation of 690 acres of lake-type habitat providing associated water-oriented recreational opportunities and scenic diversity in the area.

Impacts associated with the tributary lakes and No Action alternatives, both beneficial and adverse, would generally be less than with the preferred alternative. Impacts associated with the tributary lakes alternative would include a lesser degree of disruption of local residents based on the attraction of fewer visitors to the area; reduced potential for flooding adjacent agricultural lands, requiring fewer ponding easements; and, a reduced level of spending in the local area. It would also eliminate 6 percent of wooded areas, 8 percent of mature upland habitat, and 12 percent of wetland habitat in the area, as well as create a lesser degree of scenic diversity. The No Action alternative would essentially maintain the existing conditions in the area, with the exception of the development of minor recreational facilities over time.

Other governmental agencies and several members of the general public contributed to the planning and evaluation of the proposal and to the preparation of this DEIS. The Notice of Intent to prepare this DEIS was published in the February 13, 1990, **Federal Register**.

All agencies and individuals are urged to provide comments and suggestions for improving this DEIS by the comment deadline noted previously. All comments received by this date will be considered in preparation of the Final EIS for the proposed action.

The FWS has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis under Executive Order 11821 as amended by Executive Order 11949 and OMB Circular A–107.

Dated: January 9, 1992.

James C. Gritman,

Regional Director.

[FR Doc. 92–1154 Filed 1–15–92; 8:45 am]

BILLING CODE 4310–55–M

Availability of the Draft Environmental Assessment for the Proposed Crane Meadows National Wildlife Refuge in Morrison County, MN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) will release a Draft Environmental Assessment (EA) for the proposed Crane Meadows National Wildlife Refuge located in the Rice and Skunk Lakes wetland complex of Morrison County, Minnesota. The EA evaluates four alternatives on the basis of their biological and socioeconomic impacts. The preferred alternative of the Service would establish a 13,540-acre national wildlife refuge composed predominantly of wetland habitat. Comments on the EA are solicited. This notice is being furnished as a supplemental to the National Environmental Policy Act Regulations (40 CFR 1501.7).

DATES: Comments on the EA will be accepted between January 15, 1992 and February 15, 1992. A public meeting will be held February 4, 1992, 7 to 10 p.m., Little Falls High School Commons, 1001

Southeast Fifth Avenue, Little Falls, Minnesota 56551.

ADDRESSES: Copies of the EA can be obtained from: Regional Director; U.S. Fish and Wildlife Service; Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; Attention Don Hultman, Project Manager.

FOR FURTHER INFORMATION CONTACT: Don Hultman, Project Manager, U.S. Fish and Wildlife Service; Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056 (612) 725–3306.

Individuals wishing copies of this Draft EA for review should immediately contact the above individual. Copies have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION: Don Hultman is the primary author of this document.

The Fish and Wildlife Service (Service), Department of the Interior, will release a Draft Environmental Assessment (EA) evaluating the biological and socioeconomic impacts of establishing the Crane Meadows National Wildlife Refuge (Refuge) in Morrison County, Minnesota. The study area encompasses the Rice and Skunk Lakes wetland complex, 5 miles southeast of Little Falls, Minnesota.

The primary purposes for the proposed Refuge are to protect, restore, and manage wetlands in support of the National Wetlands Priority Conservation Plan and the Prairie Pothole Joint Venture of the North American Waterfowl Management Plan; to enhance waterfowl and other migratory bird habitat; to protect habitat for threatened and endangered wildlife; to promote and preserve biodiversity; and to provide wildlife-oriented recreation and education.

The Service formulated a "no action" and three "action" alternatives that offer a variety of options designed to accommodate and respond to public and Service concerns collected during the scoping process. Any acquisition proposed as part of these alternatives would be consistent with the Service's policy of acquiring lands from willing sellers at appraised market value. These alternatives are summarized as follows.

Alternative 1: No Action—the Service would not establish a national wildlife refuge.

Alternative 2: The Service would acquire interest in 10,044 acres to create a refuge encompassing 10,740 acres.

Alternative 3: The Service would acquire interest in 12,845 acres to create a refuge encompassing 13,540 acres. This is the Service's Preferred Alternative.

Alternative 4: The Service would acquire interest in 15,621 acres to create a refuge encompassing 16,473 acres.

The environmental review of this project has been conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4371 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other applicable Federal regulations, and Service procedures for compliance with those regulations.

Copies of the Final Environmental Assessment will be available to the public 30 to 60 days following the conclusion of the comment period.

Dated: January 10, 1992.

James Gritman,

Regional Director.

[FR Doc. 92–1153 Filed 1–15–92; 8:45 am]

BILLING CODE 4310–55–M

[Case Number N–54955]

Notice of Intent (Notice) To Prepare an Environmental Impact Statement on the Proposed Mineral Withdrawal at Desert National Wildlife Range (Range), Lincoln and Clark Counties, Nevada, and To Hold Public Meetings To Receive Comments on the Proposed Mineral Withdrawal

AGENCY: U.S. Fish and Wildlife Service (lead agency), U.S. Bureau of Land Management, and U.S. Air Force (cooperating agencies).

ACTION: Notice of intent.

SUMMARY: This Notice advises the public that the U.S. Fish and Wildlife Service (Service), Bureau of Land Management (Bureau), and U.S. Air Force (Air Force) intend to gather information necessary for the preparation of an Environmental Impact Statement (EIS) on the proposed mineral withdrawal at Desert National Wildlife Range. In addition, a proposed withdrawal of more than 5,000 acres requires a public meeting to receive comments on the proposal. This Notice is being furnished pursuant to the Council on Environmental Quality Regulations for Implementing National Environmental Policy Act's (NEPA) Regulations (40 CFR 1508.22.

SCOPING INFORMATION: Two public meetings will be held by the Service to identify issues and take comments related to the proposed withdrawal. These meetings will be held in Las Vegas and Alamo, Nevada, at the times and locations noted below. The scoping period will begin on February 1, 1992, and end on March 15, 1992. Interested agencies, organizations, and individuals are encouraged to provide written comments to the Service during the scoping period.

SCHEDULE OF PUBLIC SCOPING MEETINGS: February 25, 1992, 7 p.m. to 9 p.m., Clark County Commission Meeting Room, 225 Bridger Avenue, Las Vegas, Nevada and February 27, 1992, 7 p.m. to 9 p.m., Lincoln County Annex, Alamo, Nevada.

FOR FURTHER INFORMATION CONTACT: Mark Strong, EIS Team Leader, Desert National Wildlife Range Mineral Withdrawal, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 Northeast 11th Avenue, Portland, Oregon 97232–4181, (503) 231–2235.

WRITTEN COMMENTS INFORMATION: Written comments must be received by March 15, 1992. Address written comments to Mark Strong, EIS Team Leader, at the above address.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service proposes to withdraw approximately 740,000 acres of the Desert National Wildlife Range from mining entry for a period of 20 years to protect the biological integrity of the Range. The remainder of the Range is overlapped by the Nellis Bombing and Gunnery Range withdrawal, and is closed to mining under Public Law 99–606. A notice of the proposed withdrawal was published in the **Federal Register** (Vol. 56, No. 202, p. 52283) on October 18, 1991. That notice closed the Range from mining for up to 2 years. The Range will remain open to applications under the mineral leasing laws.

The Range was established in 1936 by Executive Order of President Franklin D. Roosevelt. A wilderness proposal for 80 percent of the Range was sent to Congress for consideration in May 1974, but has not been acted upon. The Range was established for the protection, enhancement, and maintenance of wildlife, especially the desert bighorn sheep and its habitat. Other objectives of the Range are to protect the desert tortoise (a Federally listed threatened species) and to protect an outstanding example of a diverse desert ecosystem.

All interested parties are urged to provide written comments regarding the scope of the EIS, alternatives to be developed, and potentially significant environmental impacts which may occur from implementation of the withdrawal or any alternatives. Comments are due by March 15, 1992.

The environmental review of this project will be conducted in accordance with the requirements of NEPA (42 U.S.C. et seq.), Council for Environmental Quality Regulations for

Implementing NEPA (40 CFR 1500, et seq.), other appropriate Federal regulations, and Service, Bureau, and Air Force policies for compliance with those regulations.

Dated: December 26, 1991.

William F. Shake,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 91-1175 Filed 1-15-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Civil War Sites Advisory Commission; Meetings

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on February 1, 1992, and on February 3, 1992, at the Holiday Inn, Crown Plaza in Nashville, TN.

The February 1 meeting (Saturday) will begin at 1 p.m. and conclude not later than 6 p.m. The February 3 meeting (Monday) will begin at 9 a.m. and conclude not later than 2 p.m.

This meeting constitutes the fifth meeting of the Commission. On Saturday, the Commissioners will discuss the progress of the Commission Study and other Commission business and will welcome input from members of the public regarding issues related to the preservation and protection of Civil War sites. The Monday meeting will focus primarily on discussion of specialized subjects as they relate to preserving and protecting Civil War sites.

Space and facilities to accommodate members of the public may be limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Commission a written statement concerning matters to be discussed.

Persons wishing further information concerning the meeting, such as the specific location of the meeting, or who wish to submit written statements, may contact Ms. Jan Townsend, Interagency Resources Division, P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-343-9549) or Mr. Herbert L. Harper, Executive Director, Tennessee Historical Commission, 701 Broadway, Nashville, TN 37243-0442 (telephone 615-742-6716). Draft summary minutes of the meeting will available for public inspection about 8 weeks after the meeting, in room 6111, 1100 L Street, NW., Washington, DC.

Dated: January 10, 1992.

Lawrence E. Aten,

Acting Executive Director and Chief, Interagency Resources Division.

[FR Doc. 92-1206 Filed 1-15-92; 8:45 am]

BILLING CODE 4310-70-M

Delaware Water Gap National Recreation Area

AGENCY: National Park Service; Delaware Water Gap National Recreation Area Citizens Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date for the next meeting of the Delaware Water Gap National Recreation Area Citizens Advisory Commission. Notice of said meeting is required under the Federal Advisory Committee Act.

DATES: February 15, 1992.

TIME: 9 a.m.

LOCATION: Pinchot Institute for Conservation (Grey Towers) Milford, PA.

AGENDA: The agenda will be devoted to committee reports, Superintendent's report, old business, new business, correspondence, identification of topics of concern. Opportunities for public comment to the Commission will be provided.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent; Delaware Water Gap National Recreation Area, Bushkill, PA 18324; 717-588-2435.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizens Advisory Commission was established by Public Law 100-573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the Recreation Area and its surrounding communities.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizens Advisory Commission, P.O. Box 284, Bushkill, PA 18324. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

Charles P. Clapper Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 92-1207 Filed 1-15-92; 8:45 am]

BILLING CODE 4310-70-M

Address for Farmington River Study Committee Meeting To Be Held at Canton Town Hall, Canton, Connecticut: Correction

AGENCY: National Park Service.

ACTION: Notice of correction of meeting site.

SUMMARY: This Notice corrects the address previously published in the Federal Register on December 24, 1991, (56 FR 66641) for the meeting of the Farmington River Study Committee. The correct address for the meeting is the Canton Town Hall, 3rd Floor Meeting Room, Canton, Connecticut. The date and time remain unchanged: Thursday, February 13, 1992, 7:30 p.m.

Dated: January 9, 1992

Robert W. McIntosh,

Acting Regional Director.

[FR Doc. 92-1208 Filed 1-15-92; 8:45 am]

BILLING CODE 4310-70-M

Steering Committee for the "Protecting Our National Parks" Symposium; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Steering Committee Meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Steering Committee for the "Protecting Our National Parks" Symposium (now also commonly entitled, "Our National Parks: Challenges and Strategies for the 21st Century") will be held at 1 p.m. on Tuesday, February 4, 1992 in Cambridge Massachusetts, concluding no later than 5 p.m. The meeting will occur at Harvard University's John F. Kennedy School of Government, Malcolm Weiner Auditorium/The Taubman Center, 79 John F. Kennedy Street, Cambridge, MA 02138. The Kennedy School of Government is located in Harvard Square and easily accessible by public transportation.

By notice in the Federal Register of January 3, 1991, the Symposium Steering

Committee was established as an advisory committee to advise the Director of the National Park Service. Acting under its charter, the Steering Committee has planned and conducted the symposium, which was a cooperative undertaking among the National Park Service and several other entities to focus on National Park System issues and opportunities for improved park stewardship. Further background information may be obtained from notices published in the **Federal Register** of September 19, 1991 and November 20, 1991.

As is indicated in the referenced notices, the Steering Committee established four "Working Groups" to assemble information and preliminary recommendations on specific issues and to preside over discussion of the issues at the symposium, which was held in Vail, Colorado, October 7–10, 1991. The Closing General Session of the Symposium was opened to public participation, to allow public comment on the Working Group recommendations as they existed at that time. Based on the symposium discussion, the four Working Groups then completed final recommendations to the Steering Committee. The final Working Group recommendations were made available for public review by interested parties, during a comment period which ended December 13, 1991. On December 17, 1991 the Steering Committee convened in Washington, DC to review the final Working Group recommendations and the written public comments, and to receive further oral comment from interested parties.

Based on the above inputs and meetings, draft Committee recommendations to the National Park Service Director are being prepared. The purpose of the February 4 meeting is to review the draft recommendations, discuss and modify them as the Committee sees fit, and formally adopt the final recommendations that will comprise the Committee's report to the Director.

The February 4 meeting will be held in conformance with the provisions of the Federal Advisory Committee Act, including an opportunity for public comment as the final recommendations are formulated. The Steering Committee Chairman may, however, restrict the length of public comments as necessary to complete the Committee's agenda no later than 5 p.m. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis.

Persons wishing further information on the meeting may contact the Steering Committee Chairman, Mr. William J. Briggle, Pacific Northwest Regional Office, National Park Service, 83 South King Street, suite 212, Seattle, Washington 98104 (telephone 206–553–4653).

Herbert S. Cables, Jr.,

Deputy Director.

[FR Doc. 92–1209 Filed 1–15–92; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–313]

Tuna: Current Issues Affecting the U.S. Industry

AGENCY: United States International Trade Commission.

ACTION: Time and place on public hearing.

SUMMARY: Notice is hereby given that the public hearing in connection with this investigation will be held at the Sheraton Los Angeles Harbor, 601 South Palos Verdes Street, San Pedro, California 90731–3329, beginning at 9:30 a.m. (Pacific Standard Time) on Tuesday, February 4, 1992. The hearing will be continued on Wednesday, February 5, 1992, if necessary. Notice of the investigation and hearing was published in the **Federal Register** of September 18, 1991 (56 FR 47226). All persons will have the right to appear by counsel or in person, to present testimony, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E St. SW., Washington, DC, 20436, no later than noon (Eastern Standard Time), January 23, 1992. Persons testifying at the hearing are encouraged to file prehearing briefs or statements; the deadline for filing such briefs or statements (a signed original and 14 copies) is January 27, 1992; and the deadline for filing posthearing briefs or statements is April 15, 1992. Any confidential business information included in such briefs or statements or to be submitted at the hearing must be submitted in accordance with the procedures set forth in § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

Hearing-impaired persons are advised that information on this investigation can be obtained by contacting the Commission's TDD terminal on 202–205–2648.

By order of the Commission.

Issued: January 9, 1992.

Kenneth R. Mason,

Secretary

[FR Doc. 92–1110 Filed 1–15–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–347 (Sub-No. 1X)]

Florida West Coast Railroad Co.—Abandonment Exemption—Gilchrist and Levy Counties, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts Florida West Coast Railroad Company from the prior approval requirements of 49 U.S.C. 10903–10904 to abandon its 9.9-mile rail line between milepost 806.5 at Wilcox and milepost 816.4 at Chiefland, in Gilchrist and Levy Counties, FL, subject to environmental, historic preservation, and standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 15, 1992. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 27, 1992, petitions to stay must be filed by January 31, 1992, and petitions for reopening must be filed by February 10, 1992. Requests for a public use condition must be filed by January 10, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB–347 (Sub-No. 1X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky, Suite 1107, 1700 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660 (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the

[1] *See Exempt. of Rail Line Abaondment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

hearing impaired is available through TDD services (202) 927–5721).

Decided: January 6, 1992.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–1150 Filed 1–15–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–361 (Sub–No. 1X)]

Michigan Shore Railroad, Inc.; Abandonment Exemption in Muskegon County, MI

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.12-mile line of railroad between mileposts 94.8 and 95.92, in the City of Muskegon, Muskegon County, MI.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 15, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 27, 1992.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by February 5, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael W. Blaszak, Belnap, Spencer, McFarland and Herman, 225 West Washington Street, Fourth Floor, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 21, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or train use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 7, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–1041 Filed 1–15–92; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on September 12, 1991, Hoffmann-La Roche Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Levorphanol (9220)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–1140 Filed 1–15–92; 8:45 am]

BILLING CODE 4410–09–M

LEGAL SERVICES CORPORATION

Grant Award for Legal Service State Support Centers in the States of Delaware, Iowa, Kansas, Nebraska, and South Dakota

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grants.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a one-time, non-recurring grant to provide substantive and training support to legal service programs in the states of Delaware, Iowa, Kansas, Nebraska, and South Dakota. The Corporation plans to award grants totalling $357,143 to the basic field program with the largest poverty population in each said state. Accordingly, the following grants will be made:

Community Legal Aid Society, Inc.	DE	$71,428.60
Legal Services Corporation of Iowa.	IA	71,428.60
Kansas Legal Services Inc.	KS	71,428.60

Legal Aid Society, Inc.....	NE....	71,428.60
East River Legal Services ..	SD....	71,428.60

These one-time grants will be awarded pursuant to authority conferred by section 1006(a)(3) of the Legal Services Corporation Act of 1974, (Act) as amended. This public notice is issued pursuant to section 1007(f) of this Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATES: All comments and recommendations must be received on or before the close of business on February 13, 1992, at the Office of Field Services, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Manager, Grants and Budgets Division, Office of Field Services, (202) 863–1837.

Dated: January 10, 1992.

Charles T. Moses,

Deputy Director, Office of Field Services.

[FR Doc. 92–1152 Filed 1–15–92; 8:45 am]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–39 and DPR–48 issued to Commonwealth Edison Company (the licensee) for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

The proposed amendment would change the Technical Specifications Definitions section to address the planned upgrade of the Process Protection System from the current Westinghouse 7100 series analog system to the Westinghouse EAGLE–21 digital system.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The EAGLE–21 process protection system is designed to mitigate anticipated operational occurrences and design basis events by actuating reactor trip and engineered safeguards signals credited in safety analyses. EAGLE–21 is designed to monitor and process signals for temperature, pressure, fluid flow and fluid level. EAGLE–21 is a form, fit and functional replacement for the Westinghouse 7100 series process protection system. A failure of the EAGLE–21 system will not produce any results or cause any accidents that would not have been produced by a failure of the existing system. Although there are new failure modes which could result in failure of an EAGLE–21 rack, EAGLE–21 system reliability/availability evaluations have concluded that overall EAGLE–21 system availability is better than the present analog process protection system equipment availability. In addition, the consequences of a failure of an EAGLE–21 rack are bounded by the consequences of a loss of a vital instrument bus (existing Zion licensing basis). Measures have also been taken to ensure EAGLE–21 will perform as required to mitigate consequences of accidents. Therefore, this change, reflecting installation of EAGLE–21, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The EAGLE–21 process protection system is designed to mitigate anticipated operational occurrences and design basis events by actuating reactor trip or engineered safeguards signals credited in the safety analyses. EAGLE–21 is designed to monitor and process signals for temperature, pressure, fluid flow and fluid levels. EAGLE–21 is form, fit and functional replacement for the Westinghouse 7100 process protection system. A failure of the EAGLE–21 system will not produce any results or cause any accidents that would not have been produced by a failure of the existing system. The EAGLE–21 system has been designed and independently verified and validated to be in compliance with the protection system functional requirements. Additionally, it has been determined that the EAGLE–21 system susceptibility to common mode failure mechanisms is reduced based on an evaluation of the performance standards supported by the system reliability study, design, verification and validation, and equipment qualification programs. Thus, this change reflecting installation of EAGLE–21, does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Zion Nuclear Generating Station.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change, reflecting the EAGLE–21 installation, will not reduce a margin of safety. The accuracy of the Zion process protection system is improved with the installation of the EAGLE–21 equipment. Consequently, some additional margin can be made available between the safety analysis limit and the trip setpoint. Setpoints have been selected to ensure the reactor core and reactor coolant system are prevented from exceeding their Safety Limits during normal operation, anticipated operational occurrences, and design basis events, and to ensure that the engineered safeguards systems necessary for accident mitigation are actuated. The various reactor trip and engineered safeguard actuation circuits continue to provide signals to automatically open the reactor trip breakers or actuate engineered safeguards equipment, as applicable, whenever a condition monitored by the RPS or ESAS reaches a preset or calculated level. In addition to redundant channels and trains, the EAGLE–21 protection system will continue to provide an RPS and ESAS which monitors numerous system variables, thereby providing protection system functional diversity. This conclusion is also based on the assumption that the overall response times remain bounding such that the results and conclusions of the accident analyses remain valid. Response time testing will assure the overall response times assumed in the accident analyses are not exceeded.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. The staff has not yet evaluated the licensee's assertion of enhanced overall reliability for the EAGLE–21 system. Nevertheless, based on previous application of the system, the staff concludes that the probability of previously evaluated accidents will not be significantly increased. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be

considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Service, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 18, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitled the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard J. Barrett: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First

National Plaza, Chicago, Illinois 60690, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 26, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 10th day of January, 1992.

For the Nuclear Regulatory Commission.

John B. Hickman,

Project Manager, Project Directorate III–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–1186 Filed 1–15–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30171; File No. SR–NYSE–91–41]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Increase in the New York Stock Exchange's Continuing Listing Fees

January 8, 1992.

On November 20, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase continuing listing fees.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 30017 (December 2, 1991), 56 FR 64282 (December 9, 1991). No comments were received on the proposal.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] A complete list of the NYSE's fees applicable to the listing process is contained in the NYSE Listed Company Manual.

Currently, the Exchange's listing fees include an original listing fee, an initial fee, and continuing annual listing fees.

The NYSE proposes to institute a rate increase with respect to continuing listing fees as follows: [4]

CONTINUING FEES FOR DOMESTIC AND FOREIGN SECURITIES [5]

	Current	Proposed
Per Share/ADR Fee: [6]		
0–2,000,000	$1,500	$1,600
Over 2,000,000	750	805
Minimum Fees:		
1–10,000,000	14,630	15,700
10,000,001–20,000,000.	21,950	23,550
20,000,001–50,000,000.	29,260	31,400
50,000,001–100,000,000.	43,780	47,000
100,000,001–200,000,000.	58,400	62,700
Over 200,000,000.	72,800	78,100
Maximum	500,000	No change.
Continuing Fees for Short-Term Securities [7]		
Securities Issued: [8]		
1–10,000,000	$7,315	$7,850
10,000,001–20,000,000.	10,975	11,775
20,000,001–50,000,000.	14,630	15,700
50,000,001–100,000,000.	21,890	23,500
100,000,001–200,000,000.	29,200	31,350
Over 200,000,000.	36,400	39,050

[4] The Continuing Annual Listing Fee is payable each year on each equity security listed on the Exchange. The applicable fee is the greater of the Per Share/ADR Fee or the minimum fee.

[5] Rate is per million shares or American Depositary Receipts ("ADRs").

[7] Short term securities are defined by the Exchange as those securities having a term of less than five year (*e.g.*, index warrants, foreign currency warrants, contingent value rights).

[8] This fee depends on the number of securities issued, as opposed to outstanding. *See also* letter from Ricki Spinner, Financial Planning and Analysis, NYSE, to Edith Hallahan, Branch of Exchange Regulation, Commission, dated November 25, 1991, amending the title of this fee from "Range Minimums" to "Securities Issued."

The NYSE states that the purpose of the proposed increase to continuing listing fees is to offset in part the increased costs of supplying services provided by the Exchange. These costs include manpower, automation, utilities and other costs associated with providing marketplace facilities and services.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6.[9] In particular, the Commission believes the proposal is consistent with the section 6(b)(4) requirement that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using the Exchange's facilities.[10] The Commission believes that the proposed increases in continuing listing fees are equitable because the increases should not result in an excessive allocation of NYSE fees on its issuers as opposed to members and other persons using its facilities. The Commission further finds that the fees are reasonable because the Exchange is proposing the increases to offset rising costs. Accordingly, the Commission believes that it is appropriate to approve the proposed rule change.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, [11] that the proposed rule change (SR–NYSE–91–41) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–1132 Filed 1–15–92; 8:45 am]

BILLING CODE 8010–01–M

[4] The NYSE submitted the amendments to the schedule of continuing listing fees as Exhibit II to the rule filing. *See also* NYSE Listed Company Manual 902.02.

[9] 15 U.S.C. 78f (1988).

[10] 15 U.S.C. 78f(b)(4) (1988).

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1991).

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1551]

Determination Under Section 212 (f) of the Immigration and Nationality Act of 1952, as Amended

I hereby make the determination provided for in section 3 of Presidential Proclamation No. 5829, that democracy has been restored in Panama, so that the restrictions imposed in said proclamation, pursuant to section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), shall lapse.

This determination shall be reported to the Congress and published in the **Federal Register.**

Dated: December 17, 1991.

Lawrence S. Eagleburger,

Acting Office of the Secretary.

[FR Doc. 92-1180 Filed 1-15-92; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended January 3, 1992

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47933.
Date filed: December 30, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1159 dated November 11, 1991; Middle East-Africa Resolutions; R-1 to R-17.
Proposed Effective Date: April 1, 1992.

Docket Number: 47934.
Date filed: December 30, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1127 dated September 30, 1991; Within Africa Resolutions; R-1 to R-23.
Proposed Effective Date: April 1, 1992.

Docket Number: 47935.
Date filed: December 30, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1168 dated November 29, 1991; Within Middle East Resolutions; R-1 to R-7.
Proposed Effective Date: April 1, 1992.

Docket Number: 47936.
Date filed: December 30, 1991.
Parties: Members of the International Air Transport Association.
Subject: PSC/Reso/062 dated December 13, 1991; Addendum to Finally Adopted Resolutions; R-1 to R-2.
Proposed Effective Date: December 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Divisions.

[FR Doc. 92-1139 Filed 1-15-92; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 91-010]

Oil Pollution Act of 1990; Appointment of Area Committee Members and Designation of Area Committee Responsibilities

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard is providing notice of the development of policy regarding the appointment of members to Area Committees in the coastal zones. It is also providing notice of the responsibilities of the Area Committees to conduct local contingency planning under the Oil Pollution Act of 1990 (OPA 90). This notice solicits comments from the public regarding the establishment of Area Committees under the direction of Coast Guard predesignated Federal On-Scene Coordinators (OSCs), appointment of members, and implementation of pollution response planning responsibilities. The Coast Guard hopes for early participation by the public in order to expedite the creation of these policies.

The Coast Guard and EPA are refining response policies designed to minimize the harm caused by discharges of oil or releases of hazardous substances in the most cost-effective manner. These policies will be published as part of the revised National Contingency Plan (NCP) (40 CFR part 300), currently being developed.

DATES: Comments must be received on or before February 18, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 91-010), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this policy development. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Gauvin, Project Manager, Oil Pollution Act Staff, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-6226.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in the early stages of this policy development by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this specific notice (CGD 91-010) and the specific section of the action being addressed or the issue to which the comment applies, and give a reason for the comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before the final policy is drafted and published. Late submittals will be considered to the extent practicable without delaying the publication of the final policy.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." Requests should indicate why a public hearing is considered necessary. If the Coast Guard determines that the opportunity for oral presentations will aid this policy development, it will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Discussion

The Oil Pollution Act of 1990 (Pub. L. 101-380) (OPA 90) was enacted to reduce oil spills and to improve the nation's preparedness and ability to respond to them. OPA 90 creates a comprehensive prevention, response, liability, and compensation regime for dealing with vessel and facility generated discharges of oil or hazardous substances. The Coast Guard's initial efforts in establishing the policy for Area Committees and Area Contingency Plans are limited to their responsibility to respond to oil discharges, even though the NCP and Area Contingency Plans are to address hazardous substance releases, as well as oil. Area Committees will be designated by the Environmental Protection Agency for the inland zones in a separate notice; however, the Coast Guard and EPA intend that Area Committee responsibilities will be consistent in both coastal and inland zones.

Subtitle (B) of title IV of OPA 90 amends section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) (FWPCA) and contains certain stand alone provisions requiring enhanced response systems to clean up discharges of oil or hazardous substances. In particular, section 4202(a)(6) of OPA 90 amends section 311(j)(4) of the FWPCA, by establishing Area Committees and by authorizing the President to appoint the committees' members from qualified personnel of Federal, State, and local agencies. Section 4202(a)(6) also requires the Area Committees to prepare and submit for approval an Area Contingency Plan for its area. The amended section 311(j)(4)(C) FWPCA states that "the Area Contingency Plan shall—(i) when implemented in conjunction with the National Contingency Plan, be adequate to remove a worst case discharge, and to

mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area." Each Area Committee is to submit an Area Contingency Plan for review and approval, under the OSC's direction, to the President no later than 18 months after the enactment of OPA 90.

Executive Order (E.O.) 12777 of 18 October 1991, delegates the President's many responsibilities under OPA 90 to appropriate executive agencies. Under E.O. 12777, the authority of the President to appoint Area Committee members and to review and approve Area Contingency Plans for the "coastal zone" is delegated to the Secretary of Transportation. The Coast Guard anticipates that the Secretary will delegate these specific authorities to the Commandant of the Coast Guard.

The Commandant of the Coast Guard intends to delegate to each Captain of the Port (COTP), as OSC, the authority to appoint members of the Area Committee. Under the direction and guidance of the OSC, the Area Contingency Plan shall be prepared by the Area Committee. The appropriate Coast Guard District Commander shall review the Area Contingency Plan, and require amending when necessary. The Commandant intends to delegate to the appropriate Coast Guard District Commander the authority to approve Area Contingency Plans for the coastal zone.

The term "coastal zone," is defined in the current NCP (40 CFR 300.5), to mean all United States waters subject to the tide, United States waters of the Great Lakes, specified ports and harbors on inland rivers, and the waters of the Exclusive Economic Zone (EEZ).

The Area Committee will replace the Emergency Task Forces currently required under section 311(c)(2)(C) of the FWPCA and the "Multi-Agency Local Response Teams" (MALRTs) which currently exist in several ports.

The "areas" for the Coast Guard Area Committees are expected to be the COTP zones as defined in 33 CFR part 3, and further limited to the "coastal zone" as defined in the NCP. A Coast Guard Notice of Intent (56 FR 33481), published on 22 July 1991 notified the public of the intended boundaries for the coastal Area Committees and noted the designation of the Coast Guard COTPs as OSCs for the coastal zones pursuant to the NCP.

I. Appointment of Committee Members

Currently, Coast Guard OSCs have an ad hoc "network" of local people who are concerned with and on occasion respond during an oil discharge incident. Congress recognized the value of this current system but further saw the need for committees composed of government representation at all levels, with definitive responsibilities for the area's environmental integrity. OPA 90 formalizes this concept of a "network" of local support within the areas and provides for a more active role for Federal, State, and local government agencies in developing the response contingency plans required for their respective area.

Additionally, local involvement will facilitate the development of a thoroughly comprehensive response contingency plan, allowing the concerns of local agencies and port users to be addressed. The Area Committee will provide a meaningful forum for open discussions, maximizing information exchange and improving area wide response philosophies and priorities. The Area Committee is intended to foster a cooperative professional environment, focused on avoiding duplicate response organizations and minimizing "second guessing" of the OSC's actions by effective communication and commitment to response protocols in advance of an incident.

The COTP, in his role as OSC, will chair the Area Committee, with the cognizant COTP contingency planner serving as vice-chair. The Scientific Support Coordinator (SSC), a National Strike Force (NSF) representative, and members of the District Response Advisory Team (DRAT) will also assist the Area Committee as consultants.

To implement section 311(j)(4) of the FWPCA as amended by OPA 90, the Area Committee membership will be appointed by the OSC from appropriate Federal, State, and local agencies of the coastal area. Federal agency members to the Area Committee will be selected from the 15 agencies which make up the National Response Team (NRT). Not all NRT members need to be represented on each Area Committee. For example, the Nuclear Regulatory Commission, Department of Justice and Department of State have little or no role in oil spill response.

Under the NCP, State Governors are requested to designate a State agency as a single point of contact for pollution preparedness and response. This designated agency will be the primary State representative on the Area Committee. Other State agencies will be considered for membership by the OSC, particularly if nominated by the designated primary State agency. The agencies appointed to the Area Committee from local counties, cities and towns, should be appointed from among those agencies responsible for coordination of environmental issues and emergency response in the coastal zone.

Whenever possible, agencies having similar or related interests will be encouraged to agree on representation by a single agency. For instance, the primary State agency may represent the views of several other State agencies. State agencies may represent corresponding local interests or vice versa, or a Federal agency may have only minimal interest in the coastal area. Input from these non-member agencies, and the public, private and industry sectors is encouraged and should be channeled through any member on various workgroups formed for that express purpose.

Area Committee membership is limited to government officials. The Area Committee is not precluded from soliciting advice, guidance, or expertise from all appropriate sources. The Coast Guard believes these other sources should include a broad spectrum of representatives from the community, facility owners/operators, shipping company representatives, cleanup contractors, emergency response officials, pilots associations, academia, environmental groups/specialists/consultants, response organizations and concerned citizens.

In order to obtain the maximum input from the Area Committee membership, members of the Area Committee should be capable of and responsible for making decisions regarding their agency policies. The Area Committee should act as the focal point to solicit comments and advice on the concerns and responsibilities of the coastal area's public and industry. The Area Committee members can then incorporate this information into the Area Contingency Plan to ensure that local environmental, social, ecological, and economic concerns of the port area are addressed.

Area Committees may establish specific interest or issue related subcommittees, at the OSC's direction. These might include subcommittees for: communication systems, sensitive environmental areas, response strategies (mechanical vs. chemical or biological), recovered waste storage and disposal, exercise participation, navigational safety, fish and wildlife rescue, etc. These subcommittees will be chaired by an Area Committee member and in most cases be staffed by non-members invited to participate in work groups of these subcommittees based on their interest and expertise.

Committee members are advised that the Area Committee does not constitute a formal Federal Advisory Committee and that each agency is responsible for funding its own participation in committee proceedings.

II. Committee Responsibilities

The Area Committee is a preparedness and planning committee although some of its members may be involved in response activities. The Area Committee's main purpose is to plan for response within the geographic boundaries of the designated area. The OSC will direct and assist the Area Committee in the development of a comprehensive Area Contingency Plan that meets, to the maximum extent practicable, the requirements established by OPA 90. The Area Committee should address and satisfy as many concerns raised by the committee members and appropriate outside groups as possible.

The Area Committee will coordinate and cooperate with Federal, State, and local officials to enhance contingency planning with all appropriate non-member agencies and groups inside the designated area. The following are some of the factors which must be considered when planning joint response actions: appropriate procedures for mechanical recovery; use of chemical treating agents; shoreline impact evaluation and cleanup; protection of sensitive environmental areas; and protection, rescue, and rehabilitation of fisheries and wildlife. All of these actions must be addressed in advance of a spill to ensure there is no delay to the response due to poor local coordination.

The Area Committee does not replace the Regional Response Team (RRT) or its responsibilities to make policy decisions regarding the use of dispersants, bioremediation, in-situ burning, or make disposal decisions. Generally, such policy decisions must come from the RRT, and the Area Committee must work the OSC in implementing those RRT policies which impact response preparedness and planning within the area.

The Area Committee has no formal role during an actual response. During response, the OSC and some of the Area Committee members will be involved in coordinating the response. Thus it is envisioned that the Area Committee would not meet as a formal response support group. However, the vice-chair of the Area Committee (COTP contingency planner) will be the Point of Contact for the Area Committee during a response. The Point of Contact will coordinate information flow, advice, and response input from those Area Committee members not specifically involved in the response effort. In this way, information from Area Committee members not involved will be effectively channeled through the Point of Contact to the OSC, thus ensuring prompt consideration of their input. This procedure allows the Area Committee members concerns or advice to reach the OSC during a response, while not overburdening the OSC's capability to coordinate the response.

The Area Committee should develop the Area Contingency Plan to conform to the policies of the NCP, as required by 40 CFR 300.210 and OPA 90. Area Committee strategies should address various types of possible oil discharge incidents, in varying conditions of weather, sea state, and seasonal aspects. To accomplish the above, the Area Contingency Plan should:

*Describe and address a "worst case" discharge, and measures to mitigate or prevent a substantial threat of such a discharge from a vessel, offshore facility, or onshore facility operating in or near the area;

*Describe the area covered by the plan, including the areas of special economic, recreational, political, or environmental importance, that might be damaged by a discharge.

*Describe in detail the responsibilities of the Federal, State, and local agencies in preparedness, planning, and in responding to a discharge, or substantial threat of a discharge;

*Describe in detail the responsibilities of an owner or operator of a facility or vessel in removing a discharge, and in mitigating or preventing a substantial threat of a discharge.

*List the response equipment (including fire fighting equipment), dispersants, or other mitigating substances and devices, and the personnel available to an owner or operator, and Federal, State, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge.

*Describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants or other chemical treating agents.

*Describe in detail how the Area Contingency Plan is integrated into other Area Contingency Plans and vessel, offshore facility, and onshore facility response plans, approved under this subsection, and into procedures of the National Strike Force Coordination Center.

Each Area Contingency Plan must address the topics clearly and concisely so that is no confusion as to who is responsible for what. Aggressive proactive efforts must be made to ensure preplanned response strategies are in place so immediate and effective cleanup of oil discharge take place in the coastal zone.

These are not the only requirements generated by OPA 90 mandates that will effect the development of the Area Contingency Plan. A study of the format and the approval process for Area Contingency Plans is ongoing to ensure that all oil spill response planning is coordinated within the NRS. The Coast Guard intends to publish a separate Notice in the **Federal Register** on Area Contingency Plan formats and the approval process once these studies are complete.

Questions

To adequately address these and other issues, public comments are needed. Responses to the following questions would be particularly useful in developing the Coast Guard's policy concerning the appointment of Area Committee Members and designation of Area Committee responsibilities.

1. Is it a reasonable to assume that a limitation of the number of members on the Area Committee will allow it to be manageable and efficient? If it is not, suggest how this could be accomplished?

2. Will the appointment of members by the OSC from Federal, State, and local agencies be adequate to complete contingency planning responsibilities?

3. Are there sufficient provisions for participation in the Area Committee by members of the port community, both public and private? If not, suggest how this can be accomplished?

4. Are there planning or response actions, not mentioned in this notice, that should be completed by the Area Committee as part of their responsibilities?

Comments are not limited to the above and are invited on any aspect of implementing the Coast Guard policy which will be later published as part of the NCP.

Dated: January 10, 1992.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection

[FR Doc. 92-1193 Filed 1-15-92; 8:45 am]

BILLING CODE 4910-14-M

[CGD 91-003]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. app. I), notice hereby is given of a meeting of the National Offshore Safety Advisory Committee (NOSAC). The meeting will be held on Wednesday, February 19, 1992, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC (202) 267–2307. The meeting is scheduled to run from 9 a.m. to 12 noon. Attendance is open to the public. The agenda follows:

1. Subcommittee Reports

(a) Subchapter N Revisions
(b) Clean Air Act Amendments
(c) User Fees

2. Other Issues To Be Discussed

(a) OPA–90 Implementation
(b) Subchapter W status
(c) Subchapter L status
(d) Subchapter I-A status
(e) Future Inspection Regulations for Crewboats
(f) Ocean Tow of Jackup Drilling Units
(g) Jones Act Considerations

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the NOSAC Executive Director no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written materials should be submitted to the Executive Director no later than February 5, 1992.

FOR FURTHER INFORMATION CONTACT: Commander Michael Ashdown, Executive Director, National Offshore Safety Advisory Committee (NOSAC), room 1405, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–2307.

Dated: January 10, 1992.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–1194 Filed 1–15–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Tuskegee Savings and Loan Association, F.A., Tuskegee, AL; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Tuskegee Savings and Loan Association, F.A., Tuskegee, Alabama ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on October 11, 1991.

Dated: January 9, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–1121 Filed 1–15–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–1; OTS No. 3723]

Bargersville Federal Savings Bank, Bargersville, IN; Final Action; Approval of Conversion Application

Notice is hereby given that on December 27, 1991, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Bargersville Federal Savings Bank, Bargersville, Indiana, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Indianapolis Area Office, Office of Thrift Supervision, 8250 Woodfield Crossing Blvd., suite 305 Indianapolis, Indiana 46240.

Dated: January 2, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–1122 Filed 1–15–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–2; OTS No. 0449]

Calumet Federal Savings and Loan Association of Chicago, Dolton, IL; Final Action; Approval of Conversion Application

Notice is hereby given that on December 24, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Calumet Federal Savings and Loan Association of Chicago, Dolton, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G. Street, NW., Washington, DC 20552, and The Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: January 9, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–1123 Filed 1–15–92; 8:45 am]

BILLING CODE 6720–01–M

Champion Federal Savings and Loan Association Bloomington, IL; Final Action; Approval of Conversion Application

Date: January 8, 1992.

Notice is hereby given that on December 30, 1991, the Director of the Office of Thrift Supervision approved the application of Champion Federal Savings and Loan Association, Bloomington, Illinois, for permission to convert to the federal stock form of organization pursuant to a voluntary supervisory conversion, and the acquisition of the conversion stock by First of American Bank Corporation, Kalamazoo, Michigan.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–1119 Filed 1–15–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–64; OTS No. 0294]

First Federal Savings Bank of Western Maryland, Cumberland, MD; Final Action; Approval of Conversion Application

Notice is hereby given that on December 20, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings Bank of Western Maryland, Cumberland, Maryland for permission to convert to the stock form of organization. Copies of the application

are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30348–5217.

Dated: January 8, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–1120 Filed 1–15–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–61; OTS No. 0494]

Highland Federal Savings Bank, Cincinnati, OH: Final Action; Approval of Conversion Application

Notice is hereby given that on November 12, 1991, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Highland Federal Savings Bank, Cincinnati, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Cincinnati Area Office, Office of Thrift Supervision, 525 Vine Street, 7th Floor, Cincinnati, Ohio 45201–5364.

Dated: January 9, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–1118 Filed 1–15–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–62; OTS No. 1614]

Western Savings and Loan Association, Glenview, IL; Final Action; Denial of Voluntary Supervisory Conversion Application

Western Bancorp Inc., Glenview, Illinois; Final Action; Denial of Holding Company Application

Notice is hereby given that on November 15, 1991, the Director of the Office of Thrift Supervision or his designee denied the application of Western Savings and Loan Association, Glenview, Illinois, for permission to convert to the stock form of organization in a voluntary supervisory conversion. In addition, notice is hereby given that on November 15, 1991, the Director of the Office of Thrift Supervision or his designee denied the application of Western Bancorp Inc., Glenview, Illinois, for permission to acquire Western Savings and Loan Association, in connection with its conversion to stock form. Copies of the applications are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois, 60601–4360.

Dated: January 9, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–1117 Filed 1–15–92; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 11
Thursday, January 16, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Tuesday, January 21, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Issues related to the definition of highly leveraged transactions. (Proposed earlier for public comment; Docket No. R-0734)
2. Issues concerning the treatment of intangible assets for purposes of calculating regulatory capital.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1249 Filed 1-14-92; 9:48 am]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:30 a.m., Tuesday, January 21, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1250 Filed 1-14-92; 9:48 am]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-92-1]

TIME AND DATE: January 23, 1992 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings
2. Minutes
3. Ratification List
4. Petitions and complaints
   Certain manual resuscitators and component parts thereof (Docket Number 1666).
5. Any items left over from previous agenda
6. FY 92 Expenditure Plan and FY 94 Authorization Request

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: January 13, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-1333 Filed 1-14-92; 3:01 pm]

BILLING CODE 7020-02-M

Corrections

Federal Register
Vol. 57, No. 11
Thursday, January 16, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 911192-1292]

Western Pacific Bottomfish and Seamount Groundfish Fisheries

Correction

In notice document 91-31246, beginning on page 67598, in the issue of Tuesday, December 31, 1991, make the following correction:

On page 67598, in the third column, in the second full paragraph, in the ninth line, "Lone" should read "Zone".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0391]

Ciba-Geigy Corp.; Filing of Food Additive Petition

Correction

In notice document 91-30217 appearing on page 65906 in the issue of Thursday, December 19, 1991, make the following correction:

On page 65906, in the second column, in the ninth line, under **SUPPLEMENTARY INFORMATION**, "*Antioxidants and/or Stabilizers for Polymers*" should read as set forth and in the tenth line, "(21 CFR 178.2010)," should read "(21 CFR 178.2010)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0449]

Polysar Rubber Corp.; Filing of Food Additive Petition

Correction

In notice document 91-30216 appearing on page 65907 in the issue of Thursday, December 19, 1991, make the following corrections:

1. On page 65907, in the third column, under **FOR FURTHER INFORMATION CONTACT**, in the third line, "NW." should read "SW.".

2. On the same page, in the same column, in the tenth line, under **SUPPLEMENTARY INFORMATION**, "Rubber Articles Intended for Repeated Use." should read "*Rubber Articles Intended for Repeated Use*".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89P-0329]

Eggnog Deviating From Identity Standard; Amendment of Temporary Permit for Market Testing

Correction

In notice document 91-30215 beginning on page 65906 in the issue of Thursday, December 19, 1991, make the following correction:

1. On page 65906, in the third column, under **SUMMARY**, in the second line, "(FAD)" should read "(FDA)" and in the third line insert "is" after "it".

2. On page 65907, in the 1st column, in the 2d full paragraph, in the 12th line from the bottom, "14321" should read "13421".

BILLING CODE 1505-01-D

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federal register

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January 16, 1992

Part II

Department of Housing and Urban Development

24 CFR Part 12
Accountability in the Provision of HUD Assistance; Final Rule

VOL 57 ISS 11 JA 16 1992 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

24 CFR Part 12

[Docket No. N-92-3347; FR-3064-N-01]

Accountability in the Provision of HUD Assistance

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of effective date of regulations and additional information.

SUMMARY: This notice gives the public (including applicants for, and recipients of, HUD assistance) additional information on the implementation of section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12).

For assistance that HUD makes available to recipients, the notice provides information to the public on:

—How to gain access to the applications and other information upon which the Department bases its decision to provide or deny assistance on a competitive basis (24 CFR 12.14(b));

—How to obtain information on those that receive discretionary or competitive assistance from the Department (24 CFR 12.16(a));

—How to gain access to the material that applicants for HUD assistance for a specific project or activity must disclose under 24 CFR part 12, subpart C; and

—How to gain access to the decisions and other information used in making assistance determinations with respect to specific housing projects under 24 CFR part 12, subpart D.

The notice also provides guidance on the responsibilities of those that receive assistance from the Department and that in turn make the assistance available to subrecipients. These responsibilities include:

—Providing public access to the applications and other information upon which the recipient bases its decision to provide or deny assistance on a competitive basis to a subrecipient (24 CFR 12.14(c));

—Providing information to the public on the subrecipients of assistance they provide on a competitive basis (24 CFR 12.16(b)); and

—Providing public access to the material that subrecipient applicants for assistance for a specific project or activity must disclose to the recipient under 24 CFR part 12, subpart C.

Finally, the notice announces the effective date of 24 CFR 12.14(c) and 12.16(b), and 24 CFR part 12, subpart C.

DATES: Effective dates: The additional information on the implementation of section 102 of the Department of Housing and Urban Development Reform Act (24 CFR part 12) is effective on January 16, 1992.

24 CFR 12.14(c) and 12.16(b), and 24 CFR part 12, subpart C, are effective on January 16, 1992.

Implementation:

—The provisions of section I. 1. of this notice (§§ 12.14(b) and 12.16(a) of the final rule) apply to all decisions to provide or deny assistance made by the Department on or after April 15, 1991.

—The provisions of section III. of this notice (subpart D of the final rule) apply to all determinations made by the Assistant Secretary for Housing-Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing under 24 CFR part 12, subpart D, with respect to housing projects involving the Low Income Housing Tax Credit.

Applicability:

—24 CFR 12.14(c) and 12.16(b), and the related provisions of section I. 2. of this notice, apply with respect to all decisions by a recipient of HUD assistance to provide or deny assistance on or after March 16, 1992.

—For assistance made available to a subrecipient by a state or a unit of general local government, 24 CFR part 12, subpart C, and the related provisions of section II. of this notice, apply to all applications solicited (in the case of a competition) or otherwise received by the state or unit of general local government on or after March 16, 1992.

—For assistance made available to a recipient by HUD, or to a subrecipient by an entity other than a state or unit of general local government, 24 CFR part 12, subpart C, and the related provisions of section II. of this notice, apply to all applications solicited (in the case of a competition) or otherwise received by HUD or the entity on or after January 16, 1992, except that 24 CFR part 12, subpart C, and the related provisions of section II. of this notice, also apply to all applications solicited by HUD pursuant to Notices of Funding Availability for FY 1992 published in the **Federal Register** for the HOPE for Public and Indian Housing Homeownership program (HOPE 1), the HOPE for Homeownership of Multifamily Units program (HOPE 2), and the HOPE for Homeownership of Single Family Homes program (HOPE 3).

—24 CFR part 12, subpart D, and the related provisions of section III. of this notice (other than for determinations made by the Assistant Secretary for Housing-Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing with respect to housing projects involving the Low Income Housing Tax Credit) will be effective only upon the publication of further notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For general questions regarding this notice: Arnold J. Haiman, Director, Office of Ethics, Office of Administration, room 2158, telephone (202) 708–3815, TDD (202) 708–1112.

For specific questions regarding programs administered by the Assistant Secretary for Community Planning and Development: Don I. Patch, Director, Office of Block Grant Assistance, Office of Community Planning and Development, room 7286, telephone (202) 708–3587, TDD (202) 708–2565.

For specific questions regarding programs administered by the Assistant Secretary for Public and Indian Housing: Casimir R. Bonkowski, Director, Office of Management and Policy, Office of Public and Indian Housing, room 4228, telephone (202) 708–0713, TDD (202) 708–0850.

For specific questions regarding cross-cutting program areas administered by the Assistant Secretary for Housing-Federal Housing Commissioner: Michael T. Hernandez, Special Assistant to the Assistant Secretary, Office of Housing, room 6106, telephone (202) 708–2495. For questions regarding specific program areas administered by the Assistant Secretary for Housing-Federal Housing Commissioner:

Program area	Contact person	Phone No.
Mortgage Insurance (Valuation)	Edward Winiarski	(202) 708–0624
Mortgage Insurance (Mortgage Credit)	Kerry Mulholland	(202) 708–0283
Section 202 Projects	Bob Wilden	(202) 708–2730
Incentives to Extend Low-Income Use	Kevin East	(202) 708–2300

Program area.	Contact person	Phone No.
Transfers of Physical Assets (TPAs)	William Hill	(202) 708–0547
Sales of HUD-Owned Projects	Courtland Wilson	(202) 708–1220
Other Actions on Insured or HUD-Held Projects	William Hill	(202) 708–0547

The TDD number for all Office of Housing contacts is (202) 708–4594.

For specific questions regarding programs administered by the Assistant Secretary for Fair Housing and Equal Opportunity: Laurence Pearl, Director, Office of Program Standards and Evaluation, room 5226, telephone (202) 708–0288, TDD (202) 708–0113.

For specific questions regarding programs administered by the Assistant Secretary for Policy Development and Research: Frederick J. Eggers, Associate Deputy Assistant Secretary, Office of Economic Affairs, room 8204, telephone (202) 708–2770, TDD (202) 708–0770.

All addresses are located at the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. None of the telephone numbers listed above is toll-free.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2535–0101.

Background

On March 14, 1991, the Department published in the **Federal Register** a final rule entitled, "Accountability in the Provision of HUD Assistance." [1] The final rule implements section 102 of the Department of Housing and Urban Development Reform Act of 1989.[2] Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the way in which the Department makes assistance available under certain of its programs. This notice gives the public (including applicants for, and recipients of, HUD assistance) additional information on the implementation of the provisions of section 102 of the Reform Act set forth below. For the convenience of the reader, appendix E contains a chart describing the provisions discussed in this notice.

[1] 56 FR 11032. For ease of reference, the rule is referred to as the "final rule" in this notice.

[2] Pub. L. 101–235, approved December 15, 1989. For ease of reference, the law is referred to as the "Reform Act" in this notice.

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I. Documentation and Public Access Requirements: Section 102(a) of the Act

1. Requirements for HUD

a. Section 12.14(b) (Subpart B of the Final Rule)

i. *Summary of provision.* In the case of assistance that it makes available through a competition,[3] HUD must ensure that documentation and other information regarding each application are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letter of support, must be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. In carrying out this requirement, the Department may include in the project file supporting material such as competitive ranking sheets, scores on each of the relevant selection criteria, and other information indicating the basis for the Department's decision.

ii. *Effective date of provision.* The final rule made this provision effective with respect to all decisions to provide or deny assistance made by the Department on or after April 15, 1991. This notice prescribes the procedures the public may use to access the material involved.

iii. *Public access.* All applications and related documentation and other information referred to in § 12.14(b) will be made available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. It should be noted that all the exemptions authorized by § 15.21 apply to the production of material covered by § 12.14(b). This includes the exemption in § 15.21(a)(4) for trade secrets or commercial or financial information that are obtained from a person and are privileged or confidential. It should also be noted that to the extent information in applications for testing under the Fair Housing Initiatives program would identify any of the testers to be used, places to be tested, or otherwise permit someone to deduce that a fair housing test may be occurring, such information will not be disclosed.

[3] The reader should consult appendix A of this notice for the list of programs covered.

All FOIA requests for information must be in writing, and must be submitted in accordance with the FOIA procedures contained in 24 CFR part 15. The requests must include enough information so that the requested files can be identified. This information typically would include one or more of the following: The approximate date or the Federal Register (FR) number (*e.g.*, FR–1234) of the notice of fund availability; the competition involved, the closing date of the competition, or the date of the award; the HUD program office making the award; and the applicant's name and address, if known.

b. Section 12.16(a) (Subpart B of the Final Rule)

i. *Summary of provision.* In the case of assistance that HUD makes available either through a competition or on a discretionary, but non-competitive basis, HUD must publish a notice in the Federal Register at least quarterly indicating the recipients of the assistance. For each item, the notice will contain:

(1) The name and address of each recipient of assistance;

(2) The name or other means of identifying the project, activity, or undertaking for each such recipient;

(3) The dollar amount of the assistance for each project, activity, or undertaking;

(4) The citation to the statutory, regulatory, or other criteria under which the decision to provide assistance was made; and

(5) The location of the HUD office where the material that is required to be maintained can be inspected and copied, as well as the relevant contact person by name, address, and phone number.

See appendix B of this notice for a list of the programs covered by § 12.16(a).

ii. *Effective date of provision.* The final rule made this provision effective with respect to all decisions by HUD to provide assistance made on or after April 15, 1991. This notice prescribes the procedures the public may use to access the material involved.

iii. *Public access.* Although section 102(a) permits quarterly publication of the notice of funding decisions, the Department generally intends to publish separate notices for each funding decision soon after the decision is made. Notices will be published only for funding decisions: If no decisions are made in a quarter, no notice will be published. The Department has been publishing notices of funding decisions since December 15, 1989—the Reform Act's effective date.

Copies of notices of funding decisions that are published in the Federal Register may be obtained free of charge from the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2084, TDD (202) 708–9300. Requests for additional information about recipient applications may be made under the Freedom of Information Act (24 CFR part 15).

2. Requirements for Recipients of HUD Assistance

a. Summary of Provisions

Both of the following provisions apply to assistance that a recipient receives from HUD through a competition, and in turn makes available on a competitive basis to a subrecipient.

i. *Section 12.14(c) (subpart B of the final rule).* Each HUD recipient [4] must ensure that documentation and other information regarding each application submitted to the recipient by a subrecipient applicant are adequate to indicate the basis upon which assistance was provided or denied. The HUD recipient must make this material, including any letters of support, available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance.

ii. *Section 12.16(b) (subpart B of the final rule).* State and unit of general local government recipients must notify the public of the subrecipients of the assistance. The notification must contain:

(1) The name and address of each subrecipient of assistance;

(2) The name or other means of identifying the project, activity, or undertaking for each such subrecipient;

(3) The dollar amount of the assistance for each project, activity, or undertaking; and

(4) The citation to the statutory, regulatory, or other criteria under which the decision to provide assistance was made.

b. Discussion

These requirements essentially call upon HUD recipients to perform functions for their subrecipients that are parallel to those discussed above that HUD is required to perform for its recipients. It should be noted that § 12.14(c) applies to all covered recipients; § 12.16(b) only applies to recipients that are states and units of general local government.

It should also be noted that both of these requirements depend on the existence of a competitive distribution of assistance BOTH at the HUD level [5] AND at the recipient level. For example, if a CDBG Entitlement city receives a CDBG *formula* grant from HUD, and then awards the proceeds of the grant *competitively*, the city is not covered by this aspect of part 12. The result is the same if the HUD assistance is distributed competitively, but the recipient does not use a competition to distribute the assistance to subrecipients.

An example of a situation in which the requisite "dual" competitive process is present involves HUD reallocations of Emergency Shelter Grants to a state or to a unit of general local government, which in turn makes the assistance available to a nonprofit organization pursuant to a competition.

c. Effective Date of Provision

The final rule contained no effective date for these provisions, but stated that their effectiveness would be announced in a subsequent notice published in the Federal Register. To give states and other recipients adequate time to implement this provision for their programs, this notice makes this provision effective on March 16, 1992, with respect to all decisions to provide or deny assistance, as appropriate, made by the recipient on or after that date.

d. Recipient Obligations

i. *Section 12.14(c) (subpart B of the final rule).* Section 12.14(c) imposes two requirements on recipients. First, they must ensure that there is sufficient documentation to indicate the basis for each decision. The Department believes that recipients should have broad latitude in developing procedures for complying with this requirement. Accordingly, this notice does not prescribe any compliance standards.

Second, recipients must make the above material available for public inspection for a five-year period. Here again, the Department believes that recipients should be given discretion to establish procedures to meet the statutory requirement. At a minimum, however, recipients must:

—Have a viable system for retaining the material for the required five-year period;

[4] The term includes persons and entities, such as a state, a unit of general local government, a public housing agency (PHA), an Indian tribe, and a non-profit organization.

[5] See appendix A for a listing of the HUD programs involved.

—Have procedures for handling requests for public inspection that ensure prompt and reasonable access to the material requested;
—Retain the original files themselves, and permit subrecipients to keep only copies of them; and
—In the case of states and units of general local government, notify the public as to how material can be accessed.

It should be noted that section 102 and part 12 only preempt state or local law that conflicts with the collection of covered information. They do not preempt state and local laws governing the disclosure of information to the public. Thus, although recipients must collect the required information, their duty to disclose information submitted to it by subrecipients is subject to state and local law.

ii. *Section 12.16(b) (subpart B of the final rule*). Notification under § 12.16(b) must be done at least every six months, and can be accomplished in any way conducive to provide information to the public. Methods may include: Advertisements or notices in major regional or local papers; notices in publications that are the state equivalent of the **Federal Register**; press releases to newspapers, or to radio and television stations; public posting in court houses or other appropriate public buildings; or any other way that effectively reaches the general public.

e. Monitoring and Enforcement

The Department will review recipient performance under §§ 12.14(c) and 12.16(b) in connection with reviews conducted under the underlying assistance program. Any violation of these requirements will be treated as a violation of the terms under which the underlying assistance was made available to the recipient.

II. Applicant Disclosuret: Sections 102 (b) and (c) of the Reform Act

1. Overview

Subpart C of 24 CFR part 12 requires applicants for assistance for a specific project or activity from HUD, from a state or a unit of general local government, or from certain other entities, to make a number of disclosures if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it is requesting assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to subpart C must disclose the following:
—Assistance from other government sources in connection with the project,
—The financial interests of persons in the project,
—The sources of funds to be made available for the project, and
—The uses to which the funds are to be put.

2. Specific Guidance Regarding Applicability

Applicants for assistance made available for a specific project or activity must make the disclosures described in subsection 3. of the section, if the application meets the test in EITHER paragraph a. or b., below:

a.(1) Nature of Assistance

The applicant submits an application for assistance for a specific project or activity in which:

(A) HUD makes assistance available to a recipient for a specific project or activity; [6]

(B) HUD makes assistance available [7] to a *state or to a unit of general local government*, and the *state or unit of general local government* in turn makes the assistance available for a specific project or activity to a *subrecipient;* or

(C) HUD makes assistance available to *any other entity* (such as a public housing agency (PHA)) for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; and

(2) Dollar Threshold

The applicant—to HUD or to a state or a unit of general local government, as appropriate—has received, or can reasonably be expected to receive, an aggregate amount of all forms of covered assistance from HUD, states, and units of general local government, in excess of $200,000 during the federal fiscal year (October 1 through September 30) in which the application is submitted. (See 24 CFR 12.32(a) (2) and (3) for detailed guidance on how the threshold is calculated.)

b. Housing Projects With Other Government Assistance

The applicant submits an application for assistance from HUD for a specific housing project that involves other government assistance.[8] There is no dollar threshold for this criterion: Any other government assistance triggers the requirement. For further guidance on this criterion, see 24 CFR 12.50.

3. Specific Guidance Regarding Disclosures

At the time of application, the applicant must disclose:
—Other government assistance to be used with respect to the activities to be carried out with the assistance, or if none, a certification to that effect.
—The pecuniary interest [9] of any developer, contractor, or consultant involved in the application for the assistance (or in the planning, development, or implementation of the project or activity involved) and any other person who has a pecuniary interest in the project or activities for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance, whichever is lower.
—The sources of funds to be made available for the activities, and the uses to which the funds are to be put.

In the case of Mortgage Insurance under 24 CFR subtitle B, chapter II, the mortgagor is responsible for making the required disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department.

4. Specific Guidance Regarding Updates

For covered assistance that HUD makes available to a recipient, the recipient must submit updates to the Department to reflect substantial changes in the disclosures required under subpart C.

For assistance that HUD makes available to a state or to a unit of general local government, which in turn makes the assistance available to a subrecipient, the subrecipient must

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[6] See appendix C for a list of assistance programs subject to subpart C.

[7] The assistance that HUD makes available to a state or unit of general local government does not have to come from a covered program referred to in appendix C. For this purpose, assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department.

[8] "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the federal government (other than that requested from HUD in the application), a state, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.

[9] "Pecuniary interest" is defined, at § 12.32 of the final rule, as: "any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activities, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activities, or receives compensation for any goods or services provided in connection with the project or activities."

submit similar updates to the state or unit of general local government.

For assistance that HUD makes available to an entity described in section II.2.a.(1)(C), updates must be submitted to the Department.

The period during which updates are required begins when the application is submitted and ends when the applicant has discharged all its obligations under the terms of the assistance (including the submission of any required reports). The precise period for individual programs will be established in the grant or cooperative agreement for the assistance involved. Updates must be submitted within 30 days of the change requiring the update.

All programs administered by the Assistant Secretary for Community Planning and Development are subject to a "lesser of" dollar/percentage update threshold; *e.g.*, an update is required if a change in other government assistance exceeds the amount of such assistance in connection with the project that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower). The other program areas also use these thresholds, with two exceptions. First, all changes in previously disclosed other government assistance must be reported. Second, for covered programs administered by the Assistant Secretary-Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing, all changes in previously disclosed sources or uses of funds involving tax credits must be reported. The reader is urged to review the detailed guidance on updates contained in the final rule at 56 FR 11047.

5. Effective Date of Provision

The final rule provided that subpart C would only take effect upon announcement by subsequent notice in the **Federal Register**. This notice provides for the following effectiveness for subpart C:

—For assistance made available to a subrecipient by a state or a unit of general local government, 24 CFR part 12, subpart C, and the related provisions of this section, apply to all applications solicited (in the case of a competition) or otherwise received by the state or unit of general local government on or after March 16, 1992.

—For assistance made available to a recipient by HUD, or to a subrecipient by an entity other than a state or unit of general local government, 24 CFR part 12, subpart C, and the related provisions of this section, apply to all applications solicited (in the case of a competition) or otherwise received by HUD or the entity on or after January 16, 1992. The reader should note that these provisions also apply to all applications solicited by HUD pursuant to Notices of Funding Availability for FY 1992 published in the **Federal Register** for the HOPE for Public and Indian Housing Homeownership program (HOPE 1), the HOPE for Homeownership of Multifamily Units program (HOPE 2), and the HOPE for Homeownership of Single Family Homes program (HOPE 3).

6. Method of Implementation

a. Assistance Requested From HUD

i. *Disclosures.* Appendix F contains the form to be used by applicants for, and recipients of, HUD assistance to make the applicant disclosures and updates required by 24 CFR part 12, subpart C.

ii. *Monitoring and enforcement.* For applicant (initial) disclosures, the Department wishes to make clear its firm intent in no case to commit covered assistance to the applicant, unless all subpart C's disclosures have been provided.

For update disclosures, the Department will review recipient performance in providing updates under section 102(c) of the Reform Act in connection with reviews conducted under the underlying assistance program.

Any violation of these requirements will be treated as a violation of the terms under which the underlying assistance was made available to the recipient.

b. Assistance Requested From States and Units of General Local Government

i. *Disclosures.* States and units of general local government are responsible for developing their own mechanisms for collecting the required disclosures and updates. They may—but are not required to—use the procedures that the Department establishes for the program. *In no case* are states and units of general local government, or PHAs or other entities described in section II.2.a.(1)(C), to commit covered assistance, unless all subpart C's disclosures have been provided.

ii. *Monitoring and enforcement.* The Department will review recipient performance with respect to both applicant and update disclosures under section 102 of the Reform Act in connection with reviews conducted under the underlying assistance program. Any violation of these requirements will be treated as a violation of the terms under which the underlying assistance was made available to the recipient.

7. Public Access

a. Assistance Requested From HUD

HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosure and update—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. As above, the exemptions to the production of material under § 15.21 will apply. Although qualification for an exemption will be determined on a case-by-case basis, the reader should note that information such as sources and uses of funds and the percentage of financial interests in a project will generally meet the "trade secrets" exemption contained in § 15.21(a)(4) and, therefore, will generally not be subject to disclosure.

All requests for information must be in writing, and must be submitted in accordance with the FOIA procedures contained in 24 CFR part 15. The requests must include enough information so that the requested files can be identified.

b. Assistance Requested From States and Units of General Local Government

States and units of general local government must make all applicant disclosure reports available to the public for five years in the case of applications for competitive assistance, and for three years in the case of other applications. Update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years.

As noted in connection with the discussion of § 12.14(c) (section I.2.d.i., above), the Department believes that these recipients should be given discretion to establish procedures to provide the required information to the public. At a minimum, however, they must:

—Have a viable system for retaining the material for the required period;

—Have procedures for handling requests for public inspection that ensure prompt and reasonable access to the material requested;

—Notify the public as to how material can be accessed; and
—Retain the original files themselves, and permit subrecipients to keep only copies of them.

As noted above, although states and units of general local government must collect the information required by subpart C, the Reform Act does not override state and local law governing the disclosure of such information. Thus, states and units of general local government must make the information collected pursuant to subpart C available for public inspection, provided that the disclosure is not inconsistent with state or local law.

III. "Subsidy-layering" Determinations: Section 102(d) of the Reform Act

1. Summary of Provision

a. Before Providing the Assistance

Section 12.50 of the final rule requires HUD to certify that assistance made available by HUD for a specific housing project will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources.

This is the so-called "subsidy-layering" rule—the Reform Act authority permitting HUD to reduce the amount of HUD assistance if the HUD assistance and any other government assistance involved in the project are more than is necessary to make the housing project feasible.

It should be noted that this requirement applies to assistance made available by HUD [10] for a *housing project.*[11] It does not cover the secondary allocation of assistance from a recipient to a subrecipient, unless the subrecipient's application is submitted to HUD for action. It should also be noted that the requirement is triggered only when other government assistance is present in the project. It does not apply to requests for HUD assistance, where no other government assistance is involved. See appendix D for a listing of the programs subject to this requirement.

It should also be noted that the "subsidy-layering" provisions apply without regard to whether the applicant is required to make disclosures under subpart C of the final rule.

b. Subsequent Adjustments

Section 12.52 of the final rule authorizes HUD to make adjustments to assistance already provided for a specific housing project on the basis of update disclosures that are required under subpart C.

2. Public Access

a. Record of Decisions

The preamble to the final rule indicated that the Department will not implement section 102(d) by notice and comment rule making under 24 CFR part 10 at this time, but instead will proceed by decision making on a case-by-case basis with regard to all aspects of section 102(d) that are not covered by existing regulations. The preamble also pointed out that the rationale for each decision will be reduced to writing, and will be made available for public inspection. (56 FR 11038) Copies of these decisions will be available, free of charge, for a three-year period, through the following contacts:

—For programs administered by the Assistant Secretary for Community Planning and Development:
—For Community Development Block Grants, Don I. Patch, Director, Office of Block Grant Assistance, Office of Community Planning and Development, room 7286, telephone (202) 708–3587, TDD (202) 708–2565.
—For McKinney Act homeless assistance programs, James Forsberg, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, room 7262, telephone (202) 708–4300, TDD (202) 708–2565.
—For the Neighborhood Demonstration Program, Syl Angel, Director, Office of Technical Assistance, Office of Community Planning and Development, room 7148, telephone (202) 708–2090, TDD (202) 708–2565.

For programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner, see the listing under **FOR FURTHER INFORMATION CONTACT**, above.

For programs administered by the Assistant Secretary for Fair Housing and Equal Opportunity, Lauretta Dixon, Supervisory Equal Opportunity Specialist for Funded Programs, room 5218, telephone (202) 708–0455, TDD (202) 708–0113.

For programs administered by the Assistant Secretary for Public and Indian Housing, Casimir Bonkowski, Director, Office of Management and Policy, room 4228, telephone (202) 708–0713, TDD (202) 708–0850. None of the above telephone numbers is toll-free.

b. Additional Information

Additional information about applications and HUD certifications and assistance adjustments are to be made under the Freedom of Information Act (24 CFR part 15).

Other Matters

Environmental Review

In accordance with 40 CFR 1508.4 of the regulations and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment and, therefore, are exempt from further environmental review.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the states (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. The rule does provide additional reporting and disclosure requirements on states and units of general local government, but the Department does not believe these requirements will have the requisite federalism implications. In any event, they are almost entirely mandated by statute.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. The reporting and disclosure requirements of the rule should have little or no positive or negative effect on the family.

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[10] Section 212 of the Cranston-Gonzalez Affordable Housing Act of 1990 (Pub. L. 101–625) provides an alternative mechanism for complying with section 102(d) of the Reform Act for the HOME program. Therefore, assistance that HUD makes available to participating jurisdictions under the HOME program is not subject to this notice. Of course, HUD would take HOME assistance into account in making section 102(d) certifications with respect to other assistance the HUD may be providing for a project that involves HOME assistance as well.

[11] Section 12.50 of the final rule defines "housing project" as—

(a) Property containing five or more dwelling units that is to be used for primarily residential purposes, including (but not limited to) living arrangements such as independent group residences, board and care facilities, group homes, and transitional housing, but excluding facilities that provide primarily non-residential services, such as intermediate care facilities, nursing homes, and hospitals; and

(b) Residential rental property receiving a tax credit under Federal, State, or local law.

Dated: January 6, 1992.

Jim E. Tarro,

Assistant Secretary for Administration.

Appendix A

Appendix A contains a list of the competitive assistance programs administered by the Department that have elements covered by § 12.14(b) of the final rule (documentation and public access requirements). This is the list that was published as § 12.10 of the final rule. The reader should be aware that the Department will update this list periodically through changes to § 12.10. The list is as follows:

(1) Section 312 Rehabilitation Loans under 24 CFR part 510 (except loan amounts less than $200,000 and loans for single family properties).[13]

(2) Rental Rehabilitation Grants under 24 CFR parts 511 (only HUD-administered grants under subpart F and technical assistance under subpart A).[13]

(3) The following programs under title I of the Housing and Community Development Act of 1974:

(i) Community Development Block Grants under 24 CFR part 570 (only the HUD-administered Small Cities program under subpart F),

(ii) Special Purpose Grants (only technical assistance and assistance for Historically Black Colleges) under section 105 of the Department of Housing and Urban Development Reform Act of 1989,

(iii) The Work Study program under section 107(c) of the Housing and Community Development Act of 1974, and

(iv) Community Development Block Grants to Indian Tribes under title I of the Housing and Community Development Act of 1974.

(4) Emergency Shelter Grants under 24 CFR part 576 (only HUD reallocations under §§ 576.63 through 576.67).

(5) Transitional Housing under 24 CFR part 577.

(6) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(7) Section 8 Housing Assistance Payments—Existing Housing and Moderate Rehabilitation under 24 CFR part 882 (including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(8) Supportive Housing for the Elderly under section 202 of the Housing Act of 1959, and Supportive Housing for Persons with Disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act.

(9) Section 8 Housing Assistance Payments—Loan Management Set-Aside under 24 CFR part 886, subpart A (except when used as an incentive in connection with an approved Plan of Action under the Emergency Low Income Housing Preservation Act of 1987, as amended).

(10) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C (except when used as an incentive in connection with an approved Plan of Action under the Emergency Low Income Housing Preservation Act of 1987, as amended).

(11) Housing Vouchers under 24 CFR part 887.

(12) Low-Rent Housing Opportunities under 24 CFR 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968, subpart B.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.[14]

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978 and section 802 of the Cranston-Gonzalez National Affordable Housing Act.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under section 5129 of the Anti-Drug Abuse Act of 1988.

(24) Fair Housing Assistance under 24 CFR part 111.

(25) Public Housing Early Childhood Development Grants under section 222 of the Housing and Urban-Rural Recovery Act of 1983.

(26) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(27) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(28) Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(29) Planning and Implementation Grants for HOPE Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

(30) Implementation Grants for HOPE for Homeownership of Single Family Homes under title IV, subtitle C, of the Cranston-Gonzalez National Affordable Housing Act.

(31) HOPE for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act.

Appendix B

Appendix B contains a list of the assistance programs administered by the Department that have elements covered by § 12.16(a) of the final rule (publication of assistance "winners"). The list contains the same competitive assistance programs referred to in appendix A. It also contains programs that provide assistance on a discretionary (non-formula, non-demand, non-competitive basis, including Research and Technology Grants under title V of the Housing and Urban Development Act of 1970, Fair Housing Assistance under 24 CFR part 111, technical assistance under section 105 of the Department of Housing and Urban Development Reform Act of 1989, and assistance for Historically Black Colleges under section 105 of the Department of Housing and Urban Development Reform Act of 1989.

The full list was published as § 12.10 of the final rule. The reader should be aware that the Department will update this list periodically through changes to § 12.10.

Appendix C

Appendix C contains a list of the assistance programs administered by the Department that have elements covered by subpart C of part 12 of the final rule (applicant disclosures). This is the same list that was published in § 12.30 of the final rule. The reader should be aware that the Department will update this list periodically through changes to § 12.30. The list is as follows:

(1) Section 312 Rehabilitation Loans under 24 CFR part 510, except loans for single family properties.[15]

(2) Applications for grant amounts for a specific project or activity under the Rental Rehabilitation Grant program under 24 CFR part 511 made to:

(i) A state grantee under subpart F;

(ii) A unit of general local government or a consortium of units of general local government receiving funds from a state or directly from HUD (whether or not by formula) under subparts D, F, and G; and

(iii) HUD, for technical assistance under § 511.3.

(Excludes formula distributions to states, units of general local government, or consortia of units of general local government under subparts D and G, within-year reallocations under subpart D, and the HUD-administered Small Cities program under subpart F.)[16]

(3) Applications for grant amounts for a specific project or activity under title I of the Housing and Community Development Act of 1974 made to:

(i) HUD, for a Special Purpose Grant under section 105 of the Department of Housing and Urban Development Reform Act of 1989 for technical assistance, the Work Study program, or Historically Black colleges,

(ii) HUD, for a loan guarantee under 24 CFR part 570, subpart M;

(iii) HUD, for a grant to an Indian tribe under title I of the Housing and Community Development Act of 1974;

(iv) HUD, for a grant under the HUD-administered Small Cities program under 24 CFR part 570, subpart F; and

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[13] Note that this program was repealed by section 288(a)(2) of the Cranston-Gonzalez National Affordable Housing Act.

[14] Note that this program was repealed by the Cranston-Gonzalez National Affordable Housing Act.

[15] See footnote for appendix A, above.

[16] See footnote for appendix A, above.

(v) A state or unit of general local government under 24 CFR part 570.

(Excludes formula distributions by HUD to states and units of general local government under 24 CFR part 570, and Special Purpose Grants by HUD to Insular Areas or for the correction of formula errors under section 105 of the Department of Housing and Urban Development Reform Act of 1989.)

(4) Applications for grant amounts for a specific project or activity under the Emergency Shelter Grants program under 24 CFR part 576 made to a state or to a unit of general local government, including a Territory.

(Excludes formula distributions to states and units of general local government (including Territories); reallocations to states, units of general local government (including Territories), and non-profit organizations; and applications to an entity other than HUD or a state or unit of general local government.)

(5) Transitional Housing under 24 CFR part 577.

(6) Permanent Housing and Handicapped Homeless Persons under 24 CFR part 578.

(7) Section 8 Housing Assistance Payments (only project-based housing under the Existing Housing and Moderate Rehabilitation programs under 24 CFR part 882, including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(8) Section 8 Housing Assistance Payments for Housing for the Elderly or Handicapped under 24 CFR part 885.

(9) Supportive Housing for the Elderly under section 202 of the Housing Act of 1959, and Supportive Housing for Persons with Disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act.

(10) Section 8 Housing Assistance Payments—Special Allocations—under [redacted] CFR part 886.

(11) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C.

(12) Low-Rent Housing Opportunities under 24 CFR part 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968, subpart B.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.[17]

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under section 5129 of the Anti-Drug Abuse Act of 1988.

(24) Fair Housing Assistance under 24 CFR part 111.

(25) Public Housing Early Childhood Development Grants under section 222 of the Housing and Urban-Rural Recovery Act of 1983.

(26) Mortgage Insurance under 24 CFR subtitle B, chapter II (only multifamily and non-residential).

(27) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(28) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzales National Affordable Housing Act.

(29) Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(30) Planning and Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

(31) Hope for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act.

The Department will add other programs to this list, as appropriate.

Appendix D

Appendix D contains a list of the assistance programs administered by the Department that have elements covered by subpart D of part 12 of the final rule ("subsidy layering"). This is the same list that was published in § 12.50 of the final rule. The reader should be aware that the Department will update this list periodically through changes to § 12.50. The list is as follows:

(1) Section 312 Rehabilitation Loans under 24 CFR part 510, except loans for single family properties.[18]

(2) Community Development Block Grants under 24 CFR part 570 (only loan guarantees under subpart M, grants to Indian tribes under title I of the Housing and Community Development Act of 1974, and grants under the HUD-administered Small Cities program under subpart F).

(3) Transitional Housing under 24 CFR part 577.

(4) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(5) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(6) Section 8 Housing Assistance Payments (only project-based housing under the Existing Housing and Moderate Rehabilitation programs under 24 CFR part 882, including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(7) Supportive Housing for the Elderly under section 202 of the Housing Act of 1959, and Supportive Housing for Persons with Disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act.

(8) Section 8 Housing Assistance Payments for Housing for the Elderly or Handicapped under 24 CFR part 885.

(9) Section 8 Housing Assistance Payments—Special Allocations—under 24 CFR part 886.

(10) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C.

(11) Low-Rent Housing Opportunities under 24 CFR part 904.

(12) Indian Housing under 24 CFR part 905.

(13) Public Housing Development under 24 CFR part 941.

(14) Comprehensive Improvement Assistance under 24 CFR part 968, subpart B.

(15) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(16) Nehemiah Grants under 24 CFR part 280.

(17) Mortgage Insurance under 24 CFR subtitle B, chapter II (only multifamily projects).

(18) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(19) Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(20) Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

Appendix E

To help the reader understand the requirements of the provisions discussed in this notice, the Department is providing the following chart. It contains an overview of the types of assistance covered by each subpart and of the requirements imposed, both in terms of the substantive requirements and the entity that must carry them out:

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[17] Note that this program was repealed by section 289(a)(3) of the Cranston-Gonzalez National Affordable Housing Act.

[18] See footnote for appendix A, above.

Subpart	Assistance covered	Requirements; who must comply
Subpart B—Notice and Documentation of Assistance	Assistance made available by HUD through competition.	*HUD:* Ensure that documentation is sufficient to indicate the basis on which the assistance was provided or denied. Five-year period for public inspection of documentation. (§ 12.14(b))
	Assistance made available by HUD through competition or on a discretionary, non-competitive basis. Assistance made available on a competitive basis by a recipient that received the assistance through a HUD competition.	*HUD:* Publish Notice in **Federal Register** regarding decisions to provide assistance. (§ 12.16(a)) *Recipient:* Ensure that documentation is sufficient to indicate the basis on which assistance was provided or denied. Five-year period for public inspection of documentation. (§ 12.14(c)) *State or unit of general local government recipient:* Notify public regarding decisions to provide assistance. (§ 12.16(b))
Subpart C—Disclosure of Information	Assistance made available for a specific project or activity by: —HUD —A State or unit of general local government; or —Another entity, where the application must be submitted to HUD for any purpose. *But only if* the applicant has received, or can reasonably be expected to receive, assistance in excess of $200,000 in the fiscal year. *Or* Assistance from HUD for a specific housing project that involves other government assistance.	*Applicant:* 1. Disclose other government assistance, interested parties, and sources and uses of funds. (§§ 12.32 (a) and (b)) 2. Make updates to reflect substantial changes in information. (§ 12.32(c))
Subpart D—Limitation on Housing Assistance	Assistance made available by HUD for a specific housing project where other government assistance is present.	*HUD:* Certify that the amount of assistance is not more than is necessary to provide affordable housing. Make post-assistance adjustments based on updates, above. (Subpart D)

Appendix F

Appendix F contains the form to be used by applicants for, and recipients of, HUD assistance to make the applicant disclosures and updates required by 24 CFR part 12, subpart C. The form is as follows:

BILLING CODE 4210-01-M

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development
Office of Ethics

OMB Approval No. 2525-0101 (exp. 12/31/94)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

Part I Applicant/Recipient Information Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code)	Social Security Number or Employer ID Number

2. Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)

3. Assistance Requested/Received	4. HUD Program	5. Amount Requested/Received
		$

Part II. Threshold Determinations -- Applicants Only

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sign the certification below and answer the next question.

   I hereby certify that this information is true. (Signature) _____ Date _____

2. Is this application for a specific housing project that involves other government assistance? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sigh this certification.

   I hereby certify that this information is true. (Signature) _____ Date _____

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

Part III. Other Government Assistance Provided/Requested

Department/State/Local Agency Name and Address	Program	Type of Assistance	Amount Requested/Provided

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V? ☐ Yes ☐ No

If there is no other government assistance, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

form HUD-2880 (1/92)
ref. Sec 102, HRA 1989; PL. 101 - 235

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Part IV. Interested Parties

Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	Social Security Number or Employee ID Number	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Part V.

If there a
I hereby

If there a
I hereby
Certificat
Warning:
Code. In
money pe
I certify th
Signature

Part V. Report on Expected Sources and Uses of Funds

Source

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature)_____ Date_____

Use

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature)_____ Date_____

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature	Date

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Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0101), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §12.34.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions (See Note 1 on last page.)

I. Overview. Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients of HUD assistance. An overview of these requirements follows.

A. Applicant disclosure (initial) reports: General. All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

Assistance from other government sources in connection with the project,

The financial interests of persons in the project,

The sources of funds to be made available for the project, and

The uses to which the funds are to be put.

B. Update reports: General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

C. Applicant disclosure reports: Specific guidance. The applicant must complete all parts of this disclosure form if **either** of the following two circumstances in paragraph 1. or 2., below, applies:

1.a. Nature of Assistance. The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; **and**

b. Dollar Threshold. The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) Note: There is no dollar threshold for this criterion: **any** other government assistance triggers the requirement. (See Note 6)

If the Application meets **neither** of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets **either** of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

D. Update reports: Specific guidance. During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:

a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

II. Line-by-Line Instructions.

A. Part I. Applicant/Recipient Information.

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.

2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

B. Part II. Threshold Determinations — Applicants Only

Part II contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

C. Part III. Other Government Assistance.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1., 2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.

3. State the type of other government assistance (e.g., loan, grant, loan insurance).

4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).

If the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

D. Part IV. Interested Parties.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

Applicants must provide information on:

(1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity; and

(2) Any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures refferred to in Section I.D.1.,2., or 4, above.

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with their last names first.

2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.

3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).

4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

5. Part V. Report on Sources and Uses of Funds. This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds — both from HUD and from any other source — that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

General Instructions — sources of funds

Each reportable source of funds must indicate:

a. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.

c. The type of assistance (e.g., loan, grant, loan insurance).

Specific instructions — sources of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount of approved, and received; and must be listed in descending order according to the amount indicated.

(2) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.

(3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, evevators, exterior masonry, etc.

Specific instructions -- uses of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(ii) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

AMPO
Architect's fee — design
Architect's fee — supervision
Bond premium
Builder's general overhead
Builder's profit
Construction interest
Consultant fee
Contingency Reserve
Cost certification audit fee
FHA examination fee
FHA inspection fee

FHA MIP
Financing fee
FNMA / GNMA fee
General requirements
Insurance
Legal — construction
Legal — organization
Other fees
Purchase price
Supplemental management fund
Taxes
Title and recordingOperating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve
Total land improvement
Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses
Bridge loan interest
Development fee
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve

Footnotes:

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.
2. A list of the covered assistance programs can be found at 24 CFR §12.30, or in the rules or administrative instructions governing the program involved. Note: The list of covered programs will be updated perodically.
3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).
4. See 24 CFR §§12.32 (a)(2) and (3) for detailed guidance on how the threshold is calculated.
5. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
6. For further guidance on this criterion, and for a list of covered programs, see 24 CFR §12.50.
7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

[FR Doc. 92-867 Filed 1-15-92; 8:45 am]
BILLING CODE 4210-01-C

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federal register

Thursday
January 16, 1992

Part III

Department of Health and Human Services

Office of the Secretary

45 CFR Part 96
Block Grant Programs; Interim Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 96

Block Grant Programs

AGENCY: Administration for Children and Families, HHS.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the regulations of the Department of Health and Human Services (HHS) governing the administration of block grant programs; this rule applies specifically to the low-income home energy assistance program (LIHEAP). The rule implements changes to the LIHEAP statute which were made by the Augustus F. Hawkins Human Services Reauthorization Act of 1990 (Pub. L. 101–501) and which affect grantee administration of the LIHEAP program in fiscal years 1991 and 1992. These changes involve the Department's response to formal complaints, reduction in the percent of LIHEAP funds that grantees may carry forward from one fiscal year to the next, waiver authority to increase the percent of LIHEAP funds that grantees may use for weatherization, a requirement for additional outreach and intake services under certain circumstances, and a leveraging incentive program.

DATES: *Effective Date:* This interim final rule is effective beginning January 16, 1992.

Comment Date: Before adopting final regulations, we will consider all comments we receive by March 16, 1992.

ADDRESSES: Send comments to: Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447.

The comments received in response to this interim final rule may be inspected or reviewed at the above address, Monday through Friday, between 9 a.m. and 5 p.m., beginning one week after the publication of this rule.

FOR FURTHER INFORMATION CONTACT: Janet M. Fox, 202–401–9351, or Ann Bowker, 202–401–5308.

SUPPLEMENTARY INFORMATION:

Waiver of Notice and Comment Procedures

The Augustus F. Hawkins Human Services Reauthorization Act of 1990, Public Law 101–501, was enacted on November 3, 1990. Title VII contains amendments to the Low-Income Home Energy Assistance Act of 1981 (title XXVI of Pub. L. 97–35), including several changes affecting LIHEAP grantee program administration for FY 1991 and FY 1992. These changes concern the Department's response to formal complaints, reduction in the maximum amount that grantees may carry forward from one fiscal year to the next, waiver authority to increase the statutory weatherization maximum, a requirement for additional outreach and intake services in certain cases, and a leveraging incentive program.

This amendment to the block grant regulations, which implements these statutory changes, is being published in interim final form. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) provides that, if the Department for good cause finds that a notice of proposed rulemaking (NPRM) is unnecessary, impracticable, or contrary to public interest, it may dispense with the NPRM if it incorporates a brief statement in the interim final rule of the reasons for doing so.

The Department finds that there is good cause to dispense with an NPRM with respect to this amendment. We find that publication of this final rule in proposed form would be unnecessary and impracticable for the following reasons. First, it is important that grantees have timely notice of the rules for operating their LIHEAP programs consistent with these new statutory provisions. They must know as soon as possible the rules under which the changes effective in fiscal years 1991 and 1992 will be implemented, so that they can plan properly and adequately for implementation. Second, LIHEAP grantees and interested parties were notified by information memorandum of the opportunity to comment informally on these statutory changes. Further, during the development of this interim rule, we received 21 written comments and met with persons representing more than 15 entities or organizations who responded to the opportunity to comment. We considered these comments while drafting this interim rule. (These written comments, and summaries of these meetings, are available for public inspection and review along with comments received in response to this interim final rule.)

We also are interested in receiving formal comments on this interim final rule. We will review any comments which we receive by March 16, 1992. We will revise the rule, as appropriate, based on the comments we receive and on our experience in the first year of operation.

In addition to the statutory changes affecting LIHEAP program administration beginning in FY 1991 and FY 1992, Pub. L. 101–501 also includes several changes affecting LIHEAP program administration beginning in FY 1993 and FY 1994. These later changes concern forward funding and the end of authority to transfer LIHEAP funds to other HHS block grants. The Department anticipates publishing regulations to implement these changes later this fiscal year.

Section-by-Section Analysis of Changes in the Regulations

Subpart E—Enforcement

Section 96.50 Complaints

Section 708 of Public Law 101–501 amends section 2608(a)(2) of the LIHEAP statute, beginning in FY 1991. Section 2608(a)(2) concerns formal complaints of a substantial or serious nature that a grantee has failed to use funds in accordance with the LIHEAP statute. The new requirement sets a specific time period of 60 days within which the Department must respond, in writing, to complaints that are submitted to it under this provision.

The HHS block grant regulations currently provide at 45 CFR 96.50(d) that HHS "will provide a written response to complaints within 180 days after receipt." Also, section 96.50(c) provides that HHS will "promptly furnish a copy of any complaint" to the grantee against which the complaint was made and that, in responding to the complaint, HHS will consider any comments received from the grantee within 60 days, or a longer period agreed on by the grantee and HHS. Our experience has shown that, because of the serious—and generally complex—nature of the formal complaints we have received, grantees usually require a full 60 days to respond to complaints made against them.

Therefore, we are amending § 96.50(d) to state that, within 60 days after it receives a complaint concerning the low-income home energy assistance program, the Department will provide a written response to the complainant stating the actions it has taken to date and the timetable for final resolution of the complaint. We will continue to provide final resolution as soon as possible, consistent with our responsibility to provide the affected grantee sufficient opportunity to respond and to provide thorough Federal review of the pertinent facts, and we will continue to advise the complainant of the final action taken.

Subpart H—Low-Income Home Energy Assistance Program

Section 96.81 Reallotment Report

As part of the reallotment procedure established by section 2607(b) of the Low-Income Home Energy Assistance Act (title XXVI of Pub. L. 97–35, as amended), LIHEAP grantees must report information annually on funds they plan to hold available for obligation in the following fiscal year. Section 96.81 of the block regulations lists the requirements for these reports. We are amending section 96.81 to reflect a change made by section 706 of Public Law 101–501. This change reduces the maximum amount of LIHEAP funds that grantees may carry forward for obligation in the succeeding fiscal year, from 15 percent to 10 percent of the funds payable to the grantee and not transferred, pursuant to section 2604(f) of the LIHEAP statute, to another HHS block grant. This change is effective beginning with FY 1991 funds carried over to FY 1992.

Section 96.83 Increase in Maximum Amount That May Be Used for Weatherization and Other Energy-Related Home Repair

Section 705 of Public Law 101–501 amends section 2605(k) of the LIHEAP statute, beginning in FY 1991. It provides that grantees may request after March 31 of each fiscal year that the Department grant a waiver for the fiscal year that increases from 15 percent to up to 25 percent of the LIHEAP funds allotted or available to the grantee, the maximum amount of LIHEAP funds the grantee may use for low-cost residential weatherization or other energy-related home repair. Grantees that choose to apply for a waiver may request authority to use for these purposes any amount between 15 percent and 25 percent of their LIHEAP funds.

We are adding a new section 96.83 to the block grant regulations to implement procedures for requesting waivers of the statutory weatherization maximum.

"Standard" and "Good Cause" Waivers

The statute provides that, after reviewing a grantee's waiver request and any public comments, the Department may grant a waiver if it determines that: (1) The number of households in the grantee's service population that will receive LIHEAP heating, cooling, and crisis assistance (energy crisis intervention) benefits during the fiscal year will not be fewer than the number that received such benefits in the preceding fiscal year; (2) the aggregate amount of LIHEAP benefits that will be received during the fiscal year will not be less than the aggregate amount received in the preceding fiscal year; and (3) the weatherization activities have been demonstrated to produce measurable savings in energy expenditures. The statute also provides that the Department may grant a waiver if, in accordance with regulations to be published by the Department, the grantee's waiver request demonstrates good cause for failing to satisfy the requirements in the preceding sentence.

The waiver criterion requiring that the number of households in the grantee's service population that will receive LIHEAP heating, cooling, and crisis assistance benefits will not be fewer than the number that received such benefits in the preceding fiscal year applies to the total, combined, aggregate number of households receiving these types of benefits in each fiscal year. Grantees are to use their best estimates for each fiscal year of (1) the total or combined number of all households receiving each of these types of assistance (which may involve some duplication, e.g., counting a household twice if it received both regular heating assistance and heating crisis assistance); or (2) the unduplicated number of households receiving heating assistance and heating crisis assistance plus the unduplicated number of households receiving cooling assistance and cooling crisis assistance. Grantees must use the same method of calculation for both fiscal years. Numbers for the earlier fiscal year should be consistent with the numbers included in the grantee's official report of the number and income levels of households it assisted during that year (as required by 45 CFR 96.82) or with a revised report.

The criterion requiring that the aggregate amount of LIHEAP benefits will not be less than the aggregate amount of LIHEAP benefits received in the preceding fiscal year applies to the total, combined, aggregate amount, in dollars, of LIHEAP heating, cooling, and crisis assistance benefits in each fiscal year—not to the separate totals for each type of assistance.

Grantees will need to project figures for any households to be served and funds to be obligated from the date the waiver request is submitted until the end of the fiscal year for which the waiver is requested.

The criterion requiring that the weatherization activities have been shown to produce measurable savings in energy expenditures applies to all LIHEAP weatherization activities to be carried out by the grantee during the fiscal year for which the waiver is requested, not just to activities proposed to be carried out with amounts above 15 percent of the grantee's LIHEAP funds. Grantees will not meet this criterion unless all of their LIHEAP weatherization activities for the fiscal year have been shown to produce measurable savings.

The LIHEAP statute and the HHS block grant regulations do not name specific activities which are allowable as weatherization and other energy-related home repair under the LIHEAP program. However, the statute and Federal regulations for the low-income weatherization assistance program (LIWAP) administered by the Department of Energy (DOE) do name certain weatherization measures that are allowable under that program. The statute authorizing LIWAP is the Energy Conservation in Existing Buildings Act of 1976 (title IV of the Energy Conservation and Production Act, Pub. L. 94–385, as amended; 42 U.S.C. 6851 *et seq.*). The final rule implementing DOE's Weatherization Assistance for Low-Income Persons is found at 10 CFR 440. These Federal regulations include "Standards for Weatherization Materials" at appendix A. In addition, DOE has allowed other activities by correspondence or memorandum.

The DOE weatherization statute and regulations apply specifically to LIWAP, and the LIHEAP statute and regulations apply to LIHEAP. However, to promote consistency in their weatherization programs, LIHEAP grantees may choose to use certain DOE weatherization provisions as guidance in administering their LIHEAP weatherization programs, as long as these provisions are consistent with the LIHEAP statute and regulations.

HHS will accept the following as weatherization activities which have been shown to produce measurable savings in energy expenditures, as long as these activities also are consistent with the requirements of the LIHEAP statute and regulations: Installation of the specific materials meeting the specific standards listed in Appendix A of the DOE weatherization regulations at 10 CFR 440; installation of materials meeting the specific standards incorporated by reference in Appendix A; and weatherization activities specifically allowed by official DOE correspondence and memoranda. LIHEAP grantees requesting a waiver of the LIHEAP statutory weatherization maximum who propose to carry out these weatherization activities may cite these sources as the criteria under which they have determined that these activities have been shown to produce measurable savings.

In addition to listing requirements for a "standard" weatherization waiver for grantees that meet the three statutory criteria discussed above, this rule sets criteria for a "good cause" waiver for grantees that wish to use more than 15 percent of their LIHEAP funds for weatherization, but do not meet one or more of the three criteria for a "standard" waiver.

Requests for both "standard" and "good cause" waivers must include comparison of the grantee's best estimates of service and benefit totals for the year for which the waiver is requested with service and benefit totals for the preceding fiscal year. The criteria for a "good cause" waiver include the requirements that grantees explain the reasons they are not maintaining the prior year's service levels, document good cause for failing to maintain these levels, and justify proposing to use additional funds for weatherization. Reasons for failing to maintain service levels might include reduction in need and/or fewer applications for assistance due to improvement in economic conditions and decline in unemployment, warmer than normal winter weather, and/or lower home energy prices and/or costs or expenditures for low-income households. We also will consider arguments and documentation (e.g., cost benefit analysis) that greater benefits will accrue to recipients from use of funds for weatherization than for cash assistance. Further, we will consider arguments that service or benefit levels were higher in the preceding year because of supplemental appropriations enacted in response to unusual conditions, such as the $195 million contingency fund enacted in FY 1991 to deal with unexpected fuel price increases resulting from the Middle East crisis.

In addition, "good cause" waiver requests must include a comparison of the eligibility standards and benefit levels for the fiscal year of the waiver request and the preceding fiscal year, along with an explanation, if appropriate, of why the eligibility standards were lower or the benefit levels were higher in the preceding year. We will review this information to determine whether a waiver would be consistent with congressional intent to maintain benefit and service levels.

"Good cause" documentation should cite measurable, quantified data, and the sources for these data. For example, grantees documenting reduction in need for cash benefits may provide comparison of unemployment statistics, Aid to Families with Dependent Children (AFDC) and other public assistance recipiency data, and the number of applications for LIHEAP assistance, for the current and the preceding fiscal year. Grantees documenting milder weather may cite National Weather Service data comparing heating or cooling degree days for their service area, as appropriate. Grantees documenting decreased home energy prices or costs may specify prices or costs to low-income households, using data from energy vendors or the Department of Energy, for example.

Public Comment

Consistent with the requirements and legislative history of Public Law 101-501, we are requiring that grantees provide opportunity for timely and meaningful public review of, and comment on, their proposed weatherization waiver requests. (Consistent with the conference report on the enrolled bill, published as House of Representatives Conference Report 101-816, this public comment procedure does not require hearings.) We expect grantees to provide notification of waiver requests with sufficient lead time to allow interested parties a reasonable period in which to comment. We also expect grantees to indicate that a LIHEAP weatherization waiver request is the specific topic of a meeting or request for comments, rather than simply indicating that issues of general social services interest are involved. We are requiring that grantees include with their waiver requests a description of how and when the proposed waiver request was made available for timely and meaningful public review and comment, copies or summaries of public comments received, a statement of the method for reviewing public comments, and a statement of the changes, if any, that were made in response to these comments.

Submission and Review of Waiver Requests

Requests for waiver of the weatherization maximum must be made by the grantee's chief executive officer or designee, in writing. They should be sent to the Director, Office of Community Services, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447.

The Department may require additional clarification or documentation as it determines necessary to decide whether a grantee fully satisfies the appropriate waiver requirements.

The Department will review all requests and make a decision within a maximum of 45 days of receipt of a completed request. We expect that most requests will be handled much more quickly than this, but a need for additional information from the grantee could delay the time period.

The Department will approve all waiver requests that, in its judgment, meet all statutory and regulatory requirements for either a "standard" or "good cause" waiver and that demonstrate adequate solicitation and consideration of public comments.

No waivers will be granted after the end of the fiscal year for which the funds are appropriated. Accordingly, waiver requests must be submitted in sufficient time before the end of the fiscal year to allow for Departmental review and grantee obligation of funds that cannot be carried forward.

As noted, the LIHEAP statute specifies that waiver requests are to be submitted after March 31 each fiscal year. This is clearly an appropriate submission date while LIHEAP is administered on the basis of the Federal fiscal year of October 1 through September 30. Six months remain in the fiscal year after March 31, leaving adequate time for HHS to review requests and for grantees to obligate the funds for approved weatherization activities. However, this date may not be appropriate once forward funding, with a program year of July 1 through June 30, begins. Only three months will remain in the program year after March 31 to allow for Departmental review of waiver requests and grantee obligation of those waiver funds that cannot be carried forward. We are interested in comments about whether this date would create problems for administration of grantee programs under forward funding.

Effective Period

Waivers will be effective from the date of the Department's written approval until the funds are obligated in accordance with the LIHEAP statute and regulations.

A grantee that has received a waiver is not required to use the full approved amount for weatherization. If a grantee decides to use less than the approved amount for weatherization, it should amend its LIHEAP plan to reflect this decision.

Funds for which a weatherization waiver is granted may be carried over to the following year, consistent with standard statutory and regulatory requirements for obligation and carryover of LIHEAP funds, and may

retain their designation as funds to be used for weatherization, if the grantee so chooses. However, any carried-forward "waiver funds" that retain this designation may not be considered "funds available" or "funds allotted" for the purpose of calculating the maximum amount that may be used for weatherization in the succeeding fiscal year.

Section 96.84 Miscellaneous

We are amending § 96.84, which formerly contained only a brief provision relating to rights and responsibilities of territories. The revised section includes this provision, as well as a brief provision (formerly section 96.86) concerning applicability of the LIHEAP statutory assurances, and a brief provision (formerly section 96.87) concerning prevention of waste, fraud, and abuse in grantee LIHEAP programs.

We are not changing the substance of these provisions. However, we are amending the provision dealing with applicability of the assurances to indicate that the new assurance 15, discussed below, which was added to the LIHEAP statute as section 2605(b)(15) by Public Law 101–501, applies to heating, cooling, and energy crisis intervention assistance.

We are consolidating these three regulatory provisions in section 96.84 due to space limitations in the LIHEAP portion of the block grant regulations.

Section 96.86 Exemption From Requirement for Additional Outreach and Intake Services

Section 704(a)(4) of Public Law 101–501 adds an additional LIHEAP statutory assurance—assurance 15—to which States must certify in their applications for LIHEAP funding. Under the new section 2605(b)(15), beginning in FY 1992, States that provide outreach and intake for heating and cooling assistance and crisis situations through State departments of public welfare at the local level also must provide outreach and intake for these types of assistance through additional State and local governmental entities or community-based organizations. Examples of community-based organizations listed in the statute are not-for-profit neighborhood-based organizations, area agencies on aging, and community action agencies. In States where such organizations do not administer these functions as of September 30, 1991, preference in awarding grants or contracts for intake services is to be provided to agencies that administer the low-income weatherization or energy crisis intervention programs.

Exemption of Indian-Tribes, Tribal Organizations, and Some Territories

While the new section 2605(b)(15) clearly applies to the States (including the District of Columbia), we believe that it is not relevant to Indian tribes and tribal organizations. In addition, we believe that it would not be appropriate to apply it to territories that receive relatively small LIHEAP allotments.

We have concluded that the new provision concerning alternate outreach and intake services is not appropriate to tribal grantees because of the nature of American Indian tribal governments and their relationship to their service populations. Assurance 15 refers to outreach and intake services "offered by State Departments of Public Welfare at the local level"—that is, entities that administer public welfare programs. The legislative history for Public Law 101–501 refers specifically to agencies that administer the Aid to Families With Dependent Children (AFDC) program. However, Indian tribes do not administer AFDC for their service populations. In accordance with Federal law and regulations, States provide AFDC assistance to eligible American Indians, including Indian people receiving LIHEAP assistance from tribes that receive direct LIHEAP funding. Indian tribes therefore do not have tribal departments or offices directly comparable to State departments of public welfare.

As we noted in the preamble to the block grant regulations as originally published on July 6, 1982 (47 FR 29480). Indian tribes are close to their service populations. "Tribal" and "local" levels of administration are generally the same. Consistent with the Federal government's policy of Indian self-determination, we are exempting tribal LIHEAP grantees from the provision at section 2605(b)(15) of the statute.

We also have concluded that the new provision concerning alternate outreach and intake services is not appropriate to territories with annual LIHEAP allotments of $200,000 or less. (The $200,000 figure applies to each territory's regular LIHEAP allotment for a fiscal year and excludes any leveraging incentive funds received by the territory.) Experience has shown that each grantee incurs certain basic administrative costs in developing and implementing a LIHEAP program. Most tribes and territories receive relatively small LIHEAP allotments. Therefore, by regulation of October 13, 1987 (52 FR 37957–37968), we modified the LIHEAP statutory limitation on planning and administrative expenditures for tribal and territorial grantees, because the flat 10 percent limitation may not be sufficient to cover the basic costs of developing and implementing their LIHEAP programs. Similarly, we have concluded that, for territorial grantees with annual LIHEAP funding of $200,000 or less, the additional resources that would be required to provide alternative outreach and intake services would increase administrative and other non-benefit costs prohibitively. As we noted in the preamble to the regulation of October 13, 1987, the term "outreach" encompasses some activities that are administrative and others that are not. However, whether an "outreach" activity is properly categorized as administrative or not, the expense of providing such additional activities would significantly reduce the heating, cooling, crisis, and/or weatherization benefits that the territory could provide. We doubt that territories with LIHEAP allotments of $200,000 or less would have the ability to provide meaningful LIHEAP benefit levels if they also were required to provide for additional outreach and intake services. The time, effort, and funds spent providing alternate outreach and intake services would be significantly out of proportion to the direct LIHEAP benefits that could be provided to eligible households.

In addition, the territories with current LIHEAP allotments of $200,000 or less that do not consolidate LIHEAP funds under other programs pursuant to Public Law 95–134, commonly referred to as the Omnibus Territories Act, administer LIHEAP entirely at the central territorial level. Because of their relatively small populations, they do not have separate local administering agencies. A requirement for alternative local agencies is not appropriate under these circumstances.

Pragmatically, this means that at current LIHEAP funding levels, all territories except the Commonwealth of Puerto Rico would be exempt from this provision. The allotments of the territories in FY 1991, under the regular LIHEAP appropriation of $1.415 billion, ranged from $14,965 to $88,038 for all territories except Puerto Rico, whose allotment was $1,711,284.

LIHEAP tribal grantees, and territorial grantees with annual LIHEAP allotments of $200,000 or less, should, on an on-going basis, take appropriate steps to assure that they provide optimum outreach and intake services under their LIHEAP programs. All grantees are subject to the requirements in assurance 3—section 2605(b)(3) of the LIHEAP statute—concerning outreach.

We are adding a new § 96.86 to the block grant regulations to exempt Indian

tribes and tribal organizations, and territories with an annual LIHEAP allotment of $200,000 or less, from the requirement of section 2605(b)(15) of the LIHEAP statute, as amended. This new § 96.86, "Exemption from requirement for additional outreach and intake services," replaces the former § 96.86, "State plans," whose content we are transferring to § 96.84.

Guidance Regarding Additional Services

As the original block grant regulations and preamble explain, consistent with statements of congressional intent, the Department's philosophy on block grants is that grantees are to be given as much flexibility as possible to implement the programs in their own jurisdictions. We will accept a grantee's interpretation of a statutory requirement unless the interpretation is clearly erroneous.

Grantees have requested guidance on interpretations and implementation of the requirement for additional outreach and intake services. Also, Senate Report 101–421 states that HHS is expected to provide guidance on compliance with this requirement. In response, we are providing the guidance in the paragraphs that follow.

We will review the grantees' compliance with the appropriate legislative and regulatory requirements in carrying out our responsibilities to conduct LIHEAP compliance reviews, application reviews, complaint investigations, and resolution of audit findings. However, consistent with the block grant philosophy, we are not publishing Federal rules on how the requirement for additional outreach and intake services must be implemented by grantees, except to specify that it does not apply to Indian tribes and tribal organizations or to territories receiving $200,000 or less in annual LIHEAP allotments. This is also consistent with our regulatory treatment of other application assurances required by the statute.

The requirement for additional outreach and intake services applies to States (including the District of Columbia) and to any territory with a LIHEAP allotment larger than $200,000 for the fiscal year in question, when the only agencies in all or part of the State or territory that provide outreach and intake for heating, cooling, and/or crisis assistance are local offices of the grantee department or agency that administers AFDC or the territorial equivalent basic cash public assistance program(s). The requirement applies in these cases whether or not that department or agency is named "State Department of Public Welfare" or "Department of Public Welfare." Also, when that department or agency is the only agency providing these outreach and intake services, the requirement applies whether or not the department or agency provides some of these services outside its own offices. (Section 2605(b)(15) requires that grantees "provide, in addition to such services as may be offered by State Departments of Public Welfare at the local level, outreach and intake functions for crisis situations and heating and cooling assistance that is administered by additional State and local governmental entities or community-based organizations * * *." The provision does not refer to the locations where the welfare department provides services.)

If grantees are already offering alternative services in some areas, they are not required to modify their system in these areas. Consistent with Conference Report 101–816, grantees are required to offer additional outreach and intake services only in areas where these services currently are provided solely by State or territorial departments of public welfare at the local level. In these areas, consistent with Senate Report 101–421 on H.R. 4151, the predecessor to Public Law 101–501, "a reasonable share" of outreach and intake functions is to be administered through alternative agencies, assuring that, to the extent possible, all eligible households in the grantee's service population will have viable access to alternative service sites. However, consistent with this Senate report, if the grantee finds no alternative in an area or areas after engaging in an open solicitation process, the grantee is not required to create new entities.

Also consistent with the Senate report, if such services previously were provided voluntarily, providers should continue to maintain comparable levels of effort voluntarily. The new requirement should not be used as a basis for reducing voluntary efforts. Consistent with the legislative history, we encourage the voluntary participation of utilities and other home energy vendors, churches, and other community groups and organizations, in outreach activities. Such entities often have excellent knowledge of and access to low-income households who may need LIHEAP assistance.

In order to meet the requirement for alternative outreach and intake services, the statute specifies that the alternate service providers must be State or local governmental entities or community-based organizations. Senate Report 101–421 mentions public or nonprofit agencies including other State or local government agencies, and community-based organizations such as community action agencies and aging organizations.

The Senate report emphasizes the importance of providing sufficient access to the LIHEAP program to the non-welfare poor and the elderly, through additional outreach efforts and appropriate intake locations. Grantees should provide varied outreach efforts targeted to the different populations eligible for LIHEAP assistance. Further, grantees should consult with low-income individuals and other interested parties to determine the best ways to implement the requirement for additional outreach and intake services.

"Intake" generally includes receipt of applications for assistance and the opportunity for applicants to provide any missing information that is needed to complete their applications. Each grantee has the discretion to choose whether to include income determination and verification responsibilities, and preliminary eligibility or benefit determination, as "intake." The conference report states that the "conferees believe that intake or application processing" is "best provided by experienced service providers with approved federal and state grant management systems."

If a system of mail-in applications carried out by a welfare department is used for a grantee's hearing and/or cooling assistance programs, and if it is not necessary to designate local administering agencies to carry out intake for these components, then there is no need under section 2605(b)(15) to designate other State and local governmental entities or community-based organizations to carry out intake for these components. In such a case, the grantee should assure that help is available to households that are unable to prepare and/or mail their applications without such assistance.

Section 2604(c) of the LIHEAP statute requires each entity that administers energy crisis assistance "to accept applications for energy crisis benefits at sites that are geographically accessible to all households in the area to be served" by the entity and to provide to physically-infirm low-income persons the means to submit applications for energy crisis benefits without leaving their residences or to provide the means to travel to the sites at which the entity accepts applications. The statute thus requires that there be energy crisis intake services at the local level. Therefore, intake for crisis assistance provided solely by welfare departments will not satisfy the requirement in section 2605(b)(15) concerning

additional intake services at the local level.

It is our experience that outreach normally is provided through local administering agencies, and therefore additional outreach services would be necessary if outreach currently is provided at the local level only through the welfare department.

In enacting the requirement that additional outreach and intake services be provided in certain cases, Congress has emphasized the importance of adequate and appropriate outreach and intake functions in grantee LIHEAP programs. Congress also has specifically limited the amount of Federal funds that can be used for costs of LIHEAP administration and planning to 10 percent of the funds payable to a State and not transferred to another HHS block grant program (section 2605(b)(9) of the LIHEAP statute). (As noted earlier, the block grant regulations provide for somewhat higher administrative cost limits for Indian tribes, tribal organizations, and territories.) As we stated in the preamble to the block grant regulations of July 6, 1982, "The consistent imposition of limits upon administrative expenditures under the various block grants is indicative of congressional intent that States devote a very high percentage of their block grant funds to direct payments or services" (47 FR 29477). Grantees should make every effort to provide the maximum amount of direct LIHEAP assistance to low-income households, consistent with the provision of adequate support services.

Although grantees subject to the new requirement may categorize some of their additional outreach expenses as non-administrative, many of the additional costs will be administrative. Some grantees may have difficulty providing additional outreach and intake services and remaining within the statutory limitation on use of Federal funds for costs of LIHEAP planning and administration. These grantees, in particular, may need to examine all of their LIHEAP activities and costs to determine ways to increase efficiency, to encourage voluntary efforts, and to use their own funds to supplement Federal LIHEAP funds. HHS does not have authority to waive the statutory limitation on administrative costs. The requirement for additional outreach and intake services does not relieve grantees of the need to comply with this statutory limitation. The conference report indicates that the conferees "recognize the potential for significantly increased administrative expenses for some states to comply with the new alternative site requirements, and intend to monitor possible effects on the program and recipients."

Section 96.87 Leveraging Incentive Program

Section 707 of Public Law 101–501 adds a new section 2607A to the LIHEAP statute, establishing a leveraging incentive program, and amends section 2602 of the LIHEAP statute, authorizing funds for this program. We are adding a new § 96.87 to the block grant regulations to implement this new program. The new § 96.87, "Leveraging incentive program," replaces the former § 96.87, "Prevention of waste, fraud, and abuse," whose content we are transferring to § 96.84.

Under the leveraging incentive program, beginning in FY 1992, HHS may allocate supplementary LIHEAP funds to grantees that have acquired non-Federal leveraged resources for low-income households. These leveraging incentive funds are for those grantees that use their own or other non-Federal resources to expand the effect of the Federal LIHEAP dollars.

Section 2607A defines leveraged resources as benefits made available to the grantee's LIHEAP program or to low-income households that are federally qualified (federally eligible) for LIHEAP that: (1) Represent a net addition to the total energy resources available to State and federally qualified low-income households in excess of the amount of energy resources that these households could acquire by purchasing energy at commonly available household rates; and (2) result from acquisition or development by the grantee's LIHEAP program of quantifiable benefits obtained from energy vendors through negotiation, regulation, or competitive bid; or are appropriated or mandated by the grantee for distribution through its LIHEAP program; or are appropriated or mandated by the grantee for distribution under its LIHEAP plan to federally qualified low-income households and the benefits are determined by the Department to be integrated with the grantee's LIHEAP program.

Senate Report 101–421 on H.R. 4151, the predecessor to Public Law 101–501, notes that, "if the LIHEAP program uses its purchasing power (or 'leverage') to acquire the full economic value of its resources, it can acquire substantial additional energy assistance resources and services for the poor from state energy market sources." This report lists the following examples of leveraged resources: "state-appropriated funds, quantifiable payments, discounts, credits, energy conservation improvements or other measurable benefits to eligible households in excess of the energy that could be purchased by the LIHEAP program at commonly available residential rates."

Under the statutory terms, grantees desiring leveraging incentive funds must submit a report to HHS by July 31 of each year that quantifies the amount of leveraging accomplished by the grantee that year, less any costs incurred by the grantee to leverage such resources and any costs imposed on federally eligible households. Leveraging incentive funds will be awarded for use in the following fiscal year or program year (e.g., leveraging activities in FY 1991 will be the basis for making leveraging incentive grant awards in FY 1992). Section 2607A of the LIHEAP statute requires that grantees use leveraging incentive funds awarded to them only "for increasing or maintaining benefits to households."

Consistent with the requirements of section 2607A, this interim final rule includes requirements for countable leveraged resources and for calculation and documentation of the value of leveraged resources, submission of leveraging reports to HHS, calculation of grantee shares of leveraging incentive funds, and use of leveraging incentive funds.

Entities Eligible for Leveraging Incentive Funds

States (including the District of Columbia), Indian tribes, tribal organizations, and territories may participate in the leveraging incentive program. In order to apply for and receive leveraging incentive funds, grantees must receive regular LIHEAP block grant funding directly from HHS in both the "base" year for which their leveraging activities are reported and the "award" year for which leveraging incentive funds are requested. Grantees are not required to participate in this program. However, whether or not they choose to request leveraging incentive funds, grantees are encouraged to leverage additional resources to supplement their Federal LIHEAP funds.

LIHEAP Funds Used To Develop Leveraging Programs

Section 2607A provides that, each fiscal year, States may spend up to the greater of $35,000 or 0.0006 percent of their funds allocated under the LIHEAP statute to identify, develop, and demonstrate leveraging programs. Since 0.0006 percent of the largest FY 1991 State LIHEAP allotment is approximately $1,700, clearly $35,000 is the larger in all cases, and $35,000 would be the larger under all foreseeable

LIHEAP appropriation levels. Therefore, if the language is carried out as written, the result would appear to be illogical and inconsistent with reason. We therefore conclude that the figure 0.0008 percent results from a typographical error and that 0.0008 was intended to be the actual factor by which the State's allotment is multiplied, rather than the percent (i.e., when calculating 0.08 percent of a State's allotment, one multiplies the allotment by the factor 0.0008). By regulation, we are clarifying that the figure is 0.08 percent. This interpretation provides a meaningful result, since 0.08 percent of the FY 1991 State LIHEAP allotments ranges from approximately $1,200 for the State with the smallest allotment to $170,000 for the State with the largest allotment; $35,000 is the larger in some cases, and 0.08 percent is the larger in other cases.

However, $35,000 would be a disproportionate amount for most tribes, tribal organizations, and territories to spend annually to identify, develop, and demonstrate leveraging programs. (FY 1991 tribal allotments ranged from approximately $1,100 to $1,038,000; the allotments of 84 of the 115 tribal grantees were under $100,000. FY 1991 territorial allotments ranged from approximately $15,000 to $1,711,000; the allotments of five of the six territorial grantees were under $100,000.) Therefore, by regulation, we are limiting to two percent of their annual LIHEAP allotments the amount that these grantees may spend each fiscal year for these purposes. This is approximately the same percent as the territory with the largest allotment would have spent if it had used $35,000 of its FY 1991 allotment for these purposes ($35,000 divided by $1,711,284 equals 0.0204524 or 2.04524 percent).

The 0.08 percent maximum for States, and the two percent maximum for tribes, tribal organizations, and territories, apply to these grantees' funds allocated under the LIHEAP statute. For the purpose of this provision, we define this, by regulation, to mean the grantees' Federal LIHEAP allotments, including any supplemental funds except leveraging incentive funds received by the grantee. (Also, grantees may spend additional monies from their own funds or other non-Federal sources.)

LIHEAP block grant funds that are used to identify, develop, and demonstrate leveraging programs are likely to support both planning and administrative activities and costs, and program (non-planning, non-administrative) activities and costs. Although these funds are regularly appropriated LIHEAP funds, we have decided that they are not subject to the LIHEAP statute's limitation on the maximum percent of Federal funds that grantees may use for costs of planning and administration. We have so stated in this interim rule. We believe that, if these funds were subject to the limitation, it would be a disincentive to grantees to develop leveraging programs. However, Congress established the leveraging incentive program to encourage—to provide an incentive to—grantees to leverage funds. We therefore conclude that LIHEAP funds should be available in addition to the regular LIHEAP planning and administration limits, to identify, develop, and demonstrate leveraging programs.

Basic Requirements for Leveraged Resources

Consistent with the block grant legislation and legislative history, the Department's policy generally is to provide maximum flexibility to grantees to operate their LIHEAP programs; grantees are the primary interpreters of the LIHEAP statute. However, grantees will be applying "competitively" for shares of a limited amount of leveraging incentive funds. Shares will be determined based on reports submitted by grantees to the Department which list and quantify the value of the resources they have leveraged. It is therefore necessary that all grantees applying for leveraging incentive funds use the same assumptions and rules. There must be standard criteria and methods for determining the activities which may be included as leveraging under this program and for quantifying the value of these activities.

In this interim rule, we have tried to make these criteria and methods as clear as possible, while leaving opportunity for grantees to include leveraged resources that we did not anticipate—as long as these resources meet the requirements for leveraged resources specified in the LIHEAP statute and implemented through these regulations. Grantees' experience, and our experience, during the first cycle of the leveraging incentive program, and comments submitted to us on this interim rule, will help us determine any changes which should be made in the final rule.

We believe it is reasonable to define the term "energy," as used in section 2607A, the same as the term "home energy," which is defined in section 2603(3) of the LIHEAP statute as "a source of heating or cooling in residential dwellings." The authorizing language in section 2602(a) of the LIHEAP statute specifies that the purpose of the LIHEAP program is to assist eligible households to meet the costs of home energy. The leveraging incentive program is authorized by the same statute and is to be supported by and coordinated with the LIHEAP program. Consistent with the language authorizing the LIHEAP program, the LIHEAP leveraging incentive program logically should address the same purpose and needs.

As part of the statutory requirements for leveraged resources, section 2607A(b)(1) states that countable leveraged resources or benefits must "represent a net addition to the total energy resources available to State and federally qualified households in excess of the amount of such resources that could be acquired by such households through the purchase of energy at commonly available household rates." This language could be interpreted to limit countable leveraged resources to energy credits and fuels purchased at discounted prices—to mean, for example, that a grantee could not count leveraged donated funds used to pay low-income households' actual fuel costs at normal rates, because there would be no net addition to the resources these households could acquire at "commonly available household rates," or that a grantee could not count tangible non-fuel items purchased at discounted prices. We did not adopt this narrow interpretation. The purpose of this provision is to encourage grantee efforts which result in additional home energy resources for low-income households. Therefore, consistent with this basic purpose, we believe that the best reading of the provision would allow a more expansive interpretation. We therefore have clarified the language to state that countable leveraged resources and benefits must "represent a net addition to the total home energy resources available to low-income households in excess of the amount of such resources that could be acquired by these households through the purchase of home energy, or the purchase of items that help these households meet the cost of home energy, at commonly available household rates or costs, or that could be obtained with regular LIHEAP allotments provided under section 2602(b) of Public Law 97–35 * * *."

Public Law 101–501 and its legislative history set requirements concerning the degree to which leveraging activities must be coordinated or integrated with grantees' LIHEAP programs. Leveraging activities that do not meet these requirements cannot be included in the program authorized under section 2607A

of the LIHEAP statute, as established by Public Law 101–501.

As part of the statutory requirements for leveraged resources, section 2607A(b)(2) mandates that leveraged resources or benefits meet least one of the following three criteria: (1) They "result from the acquisition or development by the State program of quantifiable benefits that are obtained from energy vendors through negotiation, regulation or competitive bid"; or (2) they "are appropriated or mandated by the State for distribution * * * through the State program"; or (3) they "are appropriated or mandated by the State for distribution * * * under the plan referred to in section 2605(c)(1)(A) to federally qualified low-income households and such benefits are determined by the Secretary to be integrated with the State program."

The first criterion refers to the role of the grantee's LIHEAP program in the acquisition or development of benefits obtained from energy vendors. Based on the discretion in the statute, we define the phrase "acquisition or development by the State program" to mean that the grantee's LIHEAP program must have substantial involvement in the acquisition or development of these benefits. The involvement of the grantee's LIHEAP program must be considerable, important, material, and of real value or effect.

We define the second criterion to mean that the leveraged resources and benefits must be provided to low-income households as a part of (through or within) the grantee's LIHEAP program, consistent with the Federal statutes and regulations applicable to the LIHEAP program.

The plan referred to in the third criterion is a part of each grantee's annual application for regular LIHEAP funds; in the plan, the grantee describes how it will carry out statutory assurances to which its chief executive officer has certified and includes other information required by statute. Based on the context in which it appears, we define the phrase, "appropriated or mandated by the State for distribution * * * under the plan * * *", to mean that the leveraged resources and benefits must be identified and described in the plan and distributed as indicated in the plan, but the leveraged benefits are not provided to low-income households as a part of (through or within) the grantee's LIHEAP program. They must be provided to federally eligible low-income households as a supplement or an alternative to the grantee's LIHEAP program. (For example, an alternative would be a fuel fund with maximum income eligibility of 150 percent of the poverty level, to which a grantee's LIHEAP program with maximum income eligibility of 125 percent of the poverty level refers households with incomes between 125 percent and 150 percent of the poverty level.) The leveraged benefits must be provided to eligible households referred by the grantee's LIHEAP program as long as funds are available. The plan's description of these leveraged resources and benefits must be made available for public comment by the grantee, and they must, in effect, be sanctioned in the plan. Grantees may amend their plans to include such resources at any time during the base period—the year in which the resources are provided to low-income households. However, grantees may not amend their plans to include such resources after the end of this period.

The third criterion also requires that the leveraged benefits be "integrated with the State program." We define this to mean that the benefits must be coordinated with the grantee's LIHEAP program, and must be provided in cooperation and in conjunction with the LIHEAP program.

The first and third criteria allow the counting of leveraged benefits that are provided to households with incomes up to the Federal maximum and to categorically eligible households, as described in section 2605(b)(2) of the LIHEAP statute, whether or not the grantee's LIHEAP program has more restrictive eligibility standards. Under the second criterion, leveraged benefits must be provided "through" the grantee's LIHEAP program, to households eligible under the grantee's standards.

Leveraged resources that are provided to households that do not meet the eligibility requirements in section 2605(b)(2) cannot be counted under the leveraging incentive program. If a leveraging program provides benefits to both federally eligible and non-federally eligible households, the grantee should report only the benefits for households that are federally eligible. In accordance with this provision, federally eligible (federally qualified) "low-income households" are:

- Households with incomes that do not exceed the greater of 150 percent of the poverty level for their State, or 60 percent of State median income; and
- Households in which one or more individuals receive Aid to Families with Dependent Children, Supplemental Security Income payments, food stamps, or certain need-tested veterans' and survivors' payments (i.e., payments under sections 415, 521, 541, or 542 of title 38 of the U.S. Code or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978).

The LIHEAP statute allows grantees to set eligibility standards that are more restrictive than the maximums, listed above, that are set by the statute. State eligible (State qualified) households are households that meet the eligibility requirements for a State's LIHEAP program. The LIHEAP statute permits grantees to set their LIHEAP program's income eligibility standard as low as 110 percent of the poverty level. The statute also permits grantees to decide whether to provide categorical eligibility for their LIHEAP program and, if so, to decide which of the programs listed above to include.

We are not requiring that leveraging activities be "new" ones in order to be countable under the leveraging incentive program. We do not want to encourage grantees to stop leveraging activities that are beneficial in order to start new activities that may or may not be beneficial. However, existing leveraging efforts do not automatically qualify as leveraged resources under the leveraging incentive program. We will count leveraging activities that are ongoing, as long as they meet the requirements of the statute and these regulations, and the counted leveraged benefits are provided to low-income households during the base period. For example, as long as the stated requirements for leveraging are met, the amount of reduction in home energy bills resulting from reduced rates for low-income households occurring in the base period may be counted whether or not the initial reduction was made during this period. Similarly, as long as the stated requirements for leveraging are met, benefits provided to low-income households during the base period by fuel funds may be counted whether or not the fund began operation during this period.

Leveraged Resources That Can Be Counted

Resources and benefits that are countable under the leveraging incentive program include certain cash resources, home energy discounts and credits, and third-party in-kind contributions. Countable resources and benefits include but are not limited to the following, as long as they also meet all other applicable requirements. Cash: State, tribal, territorial, and other public and private non-Federal funds, including payments from private fuel funds that meet all applicable statutory and regulatory requirements for leveraged resources, and including certain petroleum violation escrow funds (as

discussed later in this preamble), used for:

- Heating, cooling, and energy crisis assistance benefits, including payments toward recipient households' home energy costs;
- Payments toward recipient households' costs of weatherization and other energy-related home repair (hereafter referred to as weatherization);
- Purchase and delivery of fuels used by recipient households for home energy;
- Purchase, delivery, and installation of weatherization materials;
- Purchase and delivery of blankets, space heating devices and equipment (including furnaces), and space cooling devices and equipment (including fans and air conditioners) that are provided to low-income households to help them meet the cost of home energy;
- Purchase and delivery of other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department as countable leveraged resources; and
- Purchase and rental of supplies and equipment used to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials.

Discounts and credits:

- Discounted utility and bulk fuel prices, obtained, for example, by buying in large volume, using leveraged funds, regular LIHEAP funds, or leveraging incentive funds (only the amount of the reduction or discount is countable);
- Reduction in home energy bills, obtained, for example, when a household participates in a percent-of-income or percent-of-bill payment (only the amount of the reduction or discount is countable, not deferred charges);
- Partial or full waivers of utility and other home energy connection and reconnection fees, application fees, and late payment charges (only the amount of the waiver is countable);
- Partial or full waivers of home energy deposits where security deposits are a general requirement for the vendor's customers and the deposits are retained or kept for six months or longer (only the amount of the waiver is countable);
- Partial or full forgiveness of home energy bill arrearages (only the amount of the forgiveness is countable); and
- Discounts or reductions in the cost of certain tangible non-fuel items that help low-income households meet the costs of home energy—specifically, weatherization materials that are installed in recipient households' homes; blankets, space heating devices and equipment (including furnaces), and space cooling devices and equipment (including fans and air conditioners) that are provided to low-income households; and other tangible items specifically approved by the Department.

Third-party in-kind contributions:

- Donations of fuels used by recipient households for home energy;
- Donations of weatherization materials that are installed in recipient households' homes;
- Donations of blankets, space heating devices and equipment (including furnaces), and space cooling devices and equipment (including fans and air conditioners), that are provided to low-income households to help them meet the costs of home energy;
- Other donations of tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department as countable leveraged resources;
- Donations and loans of supplies and equipment used to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials;
- Unpaid volunteers' services specifically to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials; and
- Services of paid staff donated by their employer to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials.

Items that are delivered and/or installed using leveraged services, supplies, and/or equipment must be approved by HHS, but these items do not have to be leveraged resources. Only the leveraged resource/benefit is countable in such cases.

Petroleum violation escrow (PVE or oil overcharge) funds used under LIHEAP may be counted as leveraged funds under certain limited circumstances. Oil overcharge funds result from settlements of cases of overcharges which violated petroleum price controls in effect from 1973 to 1981, under the Emergency Petroleum Allocation Act of 1973. Since 1981, about $4 billion in oil overcharge funds have been distributed by the Department of Energy to the 50 States, the District of Columbia, and most U.S. territories; additional oil overcharge funds are expected to be distributed in the future. LIHEAP is one of the programs under which most of these funds can be used.

Oil overcharge funds obligated and expended under the LIHEAP program may be counted under the LIHEAP leveraging incentive program only by the 50 States, the District of Columbia, and the territories to which they were distributed directly, and only if they were distributed to the entity after October 1, 1990, and they were not previously required to be allocated to low-income households. These requirements are consistent with the guidance in Senate Report 101–421. In order to be counted under the leveraging incentive program, oil overcharge funds must be used for countable leveraged benefits as described in this interim rule.

Because oil overcharge funds are not distributed directly to Indian tribes or tribal organizations, tribal LIHEAP grantees cannot count them under the LIHEAP leveraging incentive program. If a tribe receives oil overcharge funds under a State LIHEAP program, the tribe would be a subgrantee or contractor of the State's program for the administration of these funds, and the funds would be used by the tribe as part of the State's LIHEAP program. If a tribe and State agree that the tribe's direct Federal LIHEAP allotment is to be increased in lieu of the tribe receiving oil overcharge funds under the State's LIHEAP program, the increased tribal funds would be regularly appropriated LIHEAP funds, not oil overcharge funds; the State would retain the actual oil overcharge funds.

Our listing of countable leveraged resources in this preamble and in the interim rule is not all-inclusive. We are not aware of all possible leveraged resources which would meet the requirements of the leveraging incentive program, and we do not want to discourage innovation. We therefore have left the opportunity for grantees to include and describe in their leveraging reports any other resources that they believe meet these requirements. We will evaluate such resources and determine whether to count them when we review these reports. Alternatively, grantees may wish to ask the Department for a determination about whether a resource is countable before preparing their leveraging reports.

Resources That Cannot Be Counted

Congress also has authorized a leveraging incentive program for the Department of Energy's Low-Income Weatherization Assistance Program. The DOE leveraging program will begin in FY 1992 if funds are appropriated for

it. Leveraging activities cannot be counted for both the HHS LIHEAP and the DOE LIWAP leveraging incentive programs. (If a grantee requests that DOE count a leveraged resource under the DOE LIWAP leveraging program and DOE declines to count the resource, the grantee may request that HHS count the resource under the LIHEAP leveraging program. The due date for submission of LIHEAP leveraging reports still applies in such a case.)

Also, the following resources and benefits cannot be counted under the LIHEAP leveraging incentive program:

- Deferred home energy obligations (a current reduction in a household's home energy bill cannot be counted if the household will be responsible in the future for full payment, as in a deferred payment plan, because there is no net addition to the household's home energy resources; only the portion of a bill that is actually waived or cancelled can be counted);
- Projected future savings from weatherization;
- Tax deductions and tax credits for donations, rate reductions, etc. (a countable donation or rate reduction would already be counted, as an addition to the energy resources of low-income households; including any deductions or credits claimed by the donor would result in double counting the resource; the deductions and credits are not additions to the energy resources of low-income households);
- Borrowed funds, interest paid on borrowed funds, and reductions in interest paid on borrowed funds (because borrowed funds must be repaid, there is no net addition to households' home energy resources; reduced interest rates do not result in direct, net additions to households' home energy resources, and it would be difficult to demonstrate that they do not simply result from searching for a lower interest rate, rather than from leveraging);
- Funds and other resources that have been or will be used as matching or cost sharing for any Federal program;
- Costs of planning and administration, space costs, and intake costs, even if performed by volunteers or with donated or grantee funds;
- Budget counseling, energy conservation education, or any other outreach activities (the LIHEAP statute requires grantees to conduct outreach activities designed to assure that eligible households are made aware of LIHEAP and similar assistance, and we encourage budget counseling and energy conservation education; however, these activities themselves do not provide quantifiable benefits or quantifiable net additions to the household's home energy resources);
- Volunteer services except for those that are specifically allowed;
- Paid services where payment is not made from countable leveraged resources, except for those that are specifically allowed; and
- All other in-kind contributions except for those that are specifically allowed.

This interim final rule does not allow the counting of certain types of donated material (such as office supplies and equipment), the donation of volunteer or paid services for office or administrative activities or costs or for outreach activities or costs, or the donation of any other volunteer or paid services that do not result in a direct, quantifiable addition to low-income households' total energy resources, as required by section 2607A(b)(1) of the LIHEAP statute. We have taken this position because of our concern over whether such donations result in a net increase in benefits to low-income households and over how to value them. Donated fuel, weatherization materials, blankets, and space heating and cooling devices and equipment are tangible items that provide specific, direct benefits to low-income households. The actual market value of these items should not be difficult to determine. We therefore are including these in-kind contributions as countable leveraged resources. However, donated materials such as office supplies and equipment do not result directly in a specific net addition to low-income households' total energy resources, as required by section 2607A(b)(1) of the LIHEAP statute. The same can be said of donations of time by volunteers or staff to perform office or administrative chores. Even though this may result in the grantee being able to free some of its funds for other uses, it would be extremely difficult to assure and to document that any savings are used for direct benefits to low-income households. Intake and outreach activities themselves do not provide direct, quantifiable benefits to households.

Valuation of Leveraged Resources

The benefits of countable leveraging activities must be measurable and quantifiable in dollars. Using the best data available to them, grantees applying for leveraging incentive funds must quantify the actual value in dollars of leveraged resources provided to low-income households during the base period. For example, consistent with the statutory and regulatory requirements, grantees may count the actual market value of weatherization materials installed in low-income households' residences and the actual amount paid for delivery and installation of these materials in weatherization programs provided with leveraged non-Federal funds. Anticipated future benefits to be derived from weatherization—that is, expected savings in home energy bills—cannot be counted.

The statute requires that grantees deduct from the gross value of leveraged resources any costs the grantee incurred in leveraging the resources and any costs imposed on low-income households. See "Valuation of Offsetting Costs" below for a discussion of this issue.

We are clarifying that only the value of leveraged resources that actually are provided to low-income households during the base period can be counted. For example, leveraged resources made available to the grantee's LIHEAP program, but not actually used for benefits to low-income households by the program in the base period, cannot be counted for that base period. Examples of leveraged resources that would not be counted are oil overcharge funds designated for LIHEAP but not used for countable benefits during the base period; such resources would be counted in the year they are used for countable benefits.

Third-party donations of fuel, weatherization materials, and other countable tangible items must be valued at their fair market value at the time of donation, according to the best data available to the grantee. Third-party loans of countable tangible items must be valued at their fair rental rate at the time of loan.

Unpaid volunteer services must be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subrecipient's organization. If the grantee or subrecipient does not have employees doing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market. Fringe benefits and overhead costs cannot be counted. Valuation of volunteers' services for installation of weatherization materials must vary according to the skill of the volunteer at the task. For example, the services of professional weatherization installers working at a volunteer weatherization project would be more highly valued than the services of unskilled weatherization volunteers.

When an employer other than a grantee or subrecipient furnishes free of charge the services of an employee in the employee's normal line of work, the services must be valued at the

employee's regular rate of pay, excluding the employee's fringe benefits and overhead costs. If the services are in a different line of work, the valuation described in the previous paragraph applies.

There are similar requirements for valuation of in-kind contributions in 45 CFR 92, the Department's regulations implementing uniform administrative requirements for Federal discretionary grants and cooperative agreements to State, local, and Indian tribal governments. These administrative rules are not a Federal requirement for grantee administration of the Department's block grants, including LIHEAP. However, LIHEAP grantees applying for leveraging incentive funds need to use consistent, standard methods for quantifying the value of countable in-kind contributions. We therefore are applying to third-party in-kind contributions to be counted as leveraged resources, most of the standards for "fair and reasonable" valuation of donated services, and donated and loaned supplies and equipment found at 45 CFR 92.24 (c), (d), and (e).

The benefits provided by leveraged resources other than in-kind contributions must be valued as explained in the following paragraphs.

Cash benefits for heating, cooling, energy crisis, and weatherization assistance must be valued at their actual amount at the time they were provided to, or on behalf of, the recipient household. Purchased fuel, weatherization materials, and other countable tangible items must be valued at their actual fair market value at the time of purchase, according to the best data available to the grantee. This means the commonly available household rate or cost in the local market area. Rented supplies and equipment must be valued at their actual fair rental rate in the local area at the time of rental. Delivery of fuel and other tangible items and delivery and installation of weatherization materials must be valued at the actual amount paid for these services. Home energy discounts and credits must be valued at their actual value—the actual amount of the discount, reduction, waiver, or forgiveness.

The fair market value of a fuel or tangible non-fuel item is the price or cost normally charged a customer in the same customer class, in the same local area, as the recipient household. For example, fuel purchased with leveraged cash at a reduced rate and provided without charge to low-income households would be valued at the actual fair market value of the fuel—the commonly available household rate or cost—at the time it was purchased. Fuel purchased with leveraged cash at a reduced rate and provided at a discount to low-income households would be valued at the actual fair market value of the fuel—the commonly available household rate or cost—at the time it was purchased, less (minus) the amount paid by the recipients. Only the amount of the net addition to recipient households' home energy resources may be counted.

When low-income households pay reduced rates on their home energy bills (for example, a household purchases fuel oil at reduced or discounted prices or receives reduced electricity rates), only the amount of the reduction or discount is countable, since this is the amount of the net addition to the households' energy resources and represents the amount in excess of the amount the households would acquire through purchase of energy at regular household rates. When low-income households receive home energy at no cost to themselves (for example, a LIHEAP grantee which has purchased fuel oil with leveraged resources or received donated fuel oil provides the oil to a household at no cost to the household), the amount that oil would have cost the household at "commonly available household rates" is countable. When low-income households receive a leveraged benefit that helps them meet all or part of their home energy costs (for example, a LIHEAP grantee pays a portion of a household's propane bill with countable oil overcharge funds, or a fuel fund pays a portion of a household's natural gas bill with countable funds), then the full amount of the benefit is countable, since this amount represents the net addition to the household's energy resources. Such a benefit is countable regardless of whether the energy is purchased at reduced rates or at "commonly available household rates."

Grantees may use leveraged funds, regularly appropriated LIHEAP funds, and leveraging incentive funds awarded to them, to purchase fuel or other approved tangible items at discounted prices. If the grantee uses leveraged funds, the gross value of the resource/benefit is the amount it would have cost the recipient household at the commonly available household rate or cost—the fair market value for an individual household. This means that a grantee may count as leveraged resources both the amount of money donated or otherwise leveraged and savings obtained through buying at discount rates. For example, a grantee may add $1,000 of its own funds to the LIHEAP program and then use the $1,000 to purchase fuel oil at a discount, so that it obtains oil that would be worth $1,200 at commonly available rates. In such a case, the grantee would have leveraged $1,000 in cash and $200 in discounts. If the grantee uses regular LIHEAP funds or leveraging incentive funds—that is, funds that are not countable leveraged resources—to purchase fuel or other approved tangible items at discounted prices, the gross value of the resource/benefit is the amount of the discount—the difference between the amount the item would have cost the recipient household at the commonly available household rate or cost and the reduced amount actually paid. For example, if the grantee had purchased the same fuel as above at the same price with regularly appropriated LIHEAP funds, it could count as leveraging only the $200 in discounts. In either case, any associated costs to the household, and any costs to the grantee to develop the resource, must be offset to determine the net value.

Valuation of Offsetting Costs

Section 2607A(d) requires that, to determine the net dollar value of grantees' leveraged resources, grantees must subtract from the gross dollar value of leveraged resources they received or acquired during the base period any costs they incurred to leverage such resources and any costs imposed on federally eligible low-income households.

Funds from grantees' regular LIHEAP allotments that are used to identify, develop, and demonstrate leveraging programs must be deducted as offsetting costs in the year these funds are obligated, whether or not there are any leveraged benefits resulting from them. Costs incurred from grantees' own funds to identify, develop, and demonstrate leveraging programs must be deducted in the first year that resulting leveraged benefits are provided to low-income households. If there is no resulting leveraged benefit from the expenditure of the grantee's own funds, the grantee's expenditure will not be counted or deducted.

Any costs assessed or charged to low-income households on a continuing or on-going basis, year after year, specifically for their participation in a counted leveraging program or for receipt of counted leveraged resources must be deducted in the base period these costs are charged. Any one-time costs or charges must be deducted in the first base period the leveraging program or leveraged resource is counted. For example, one-time charges paid by

participants to join a discount fuel buying fund must be offset from leveraged benefits received in the first base period the fuel buying fund is counted, even if those charges were made before this base period. Such costs or charges are to be subtracted from the gross value of a counted resource/benefit for low-income households whose benefits are counted, but not for any low-income or other households whose benefits are not counted.

On the other hand, nonspecific costs imposed on low-income households—such as costs resulting from an increase in a utility company's rate base made to pay for or support reduced rates for households in special programs—should not be deducted. In some cases, information on these costs may be available to grantees through utility companies or public utility commissions, etc. However, in most cases, it would be very difficult—if not impossible—to quantify these costs accurately and reliably.

The table below summarizes requirements for valuation of leveraged resources. It describes calculation of the gross and net value of different types of leveraged resources and benefits. Any costs and charges to recipient households whose benefits are counted as leveraged resources, that were paid by these households in order to receive these benefits, and any costs to the grantee to leverage a resource, must be subtracted from the resource's gross value, to calculate the resource's net value.

VALUATION OF LEVERAGED RESOURCES

Resource: Cash.
Benefit: Cash benefits for heating, cooling, energy crisis, and weatherization assistance; payments toward recipient households' home energy costs.
Gross Valuation: Amount of actual benefit (as applied toward actual amount charged recipient).
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: Cash.
Benefit: Purchase of fuel and non-fuel items, and purchase and rental of supplies and equipment used to deliver fuel and non-fuel items and to deliver and install weatherization materials—with no discount in purchase or rental price.
Gross Valuation: Amount recipient would have had to pay for fuel or item at fair market value, fair rental rate, or commonly available household rate or cost in local area, at the time the fuel or item was purchased or rented.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: Cash and home energy discounts/credits.
Benefit: Purchase of fuel and non-fuel items, and purchase and rental of supplies and equipment used to deliver fuel and non-fuel items and to deliver and install weatherization materials—with discount in purchase or rental price.
Gross Valuation: Amount recipient would have had to pay for fuel or item at fair market value, fair rental rate, or commonly available household rate or cost in local area, at the time the fuel or item was purchased or rented.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: Cash.
Benefit: Payments for delivery of fuel and non-fuel items, and for delivery and installation of weatherization materials.
Gross Valuation: Actual amount paid for service. (This is assumed to be what recipient would have had to pay for service.)
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: Home energy discounts/credits.
Benefit: Discounts, reductions, waivers, and forgiveness applying to fuel and non-fuel items.
Gross Valuation: Discounts and reductions: amount of reduction or discount, i.e., difference between amount recipient would have had to pay (at fair market value or commonly available household rate or cost in local area) and actual reduced amount paid. Waivers and forgiveness: amount of waiver or forgiveness.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: In-kind contributions: donated tangible items.
Benefit: Fuel and non-fuel items, and supplies and equipment used to deliver fuel and non-fuel items and to deliver and install weatherization materials.
Gross Valuation: Amount recipient would have had to pay for fuel or item at the time it was donated (fair market value in local area at time of donation).
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: In-kind-contributions: loaned tangible items.
Benefit: Supplies and equipment used to deliver fuel and non-fuel items, and to deliver and install weatherization materials.
Gross Valuation: Fair rental rate in local area at time of loan.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: In-kind contributions: unpaid volunteers' services and donated paid services.
Benefit: Delivery of fuel and non-fuel items, and delivery and installation of weatherization materials.
Gross Valuation: Amount that would ordinarily be paid for similar work, by persons of similar skill in this work, by grantee or subrecipient—or by other employers in local area, if grantee and subrecipient have no employee doing similar work. If donated paid services are in employee's normal line of work, use employee's regular rate of pay. In all cases, exclude fringe benefits and overhead.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Documentation of Resources, Benefits, and Costs

Grantees should have clear, consistent, documented policies and procedures for documenting leveraged resources, benefits, and costs. Grantees are to maintain, or have readily available, records adequate to document leveraged resources and benefits, and offsetting costs and charges, and their valuation. (For example, a grantee—and/or subrecipients—should maintain records to document oil overcharge funds used under LIHEAP. A grantee should maintain and/or have easy access to documentation relating to counted fuel fund benefits.) These records are to consist of written and/or printed papers, etc., furnishing evidence that substantiates the claims made in the grantees' leveraging reports. These records are to be retained for three years after the end of the base period whose leveraged resources they document.

These records should include:

• Documentation of the sources of leveraged resources;

• Documentation of the negotiations, competitive bids, written agreements, legislation, regulations, and mandates through which leveraged resources were acquired or developed and under which they were provided;

• Documentation of recipient households' Federal eligibility, or eligibility for the grantee's LIHEAP program, as appropriate;

• Documentation of the type, amount, and value of leveraged benefits provided, including documentation of commonly available, local market household home energy rates or costs charged;

• Documentation of the type, amount, and value of in-kind contributions;

• Documentation of the costs incurred by the grantee to leverage resources and of the costs imposed on low-income households;

• Documentation of the calculation of the net addition to recipient households' home energy resources; and

• Documentation of the integration of leveraged resources with the grantee's LIHEAP program, as appropriate.

Recipient eligibility documentation, for example, should document each household's income or categorical eligibility. Benefit documentation, for example, should document the delivery and value of each benefit, including the amount or quantity and unit price, as appropriate.

We are requiring submission of some of this documentation with grantees' leveraging reports. We may require submission of additional documentation to clarify or support information submitted in a grantee's leveraging report. Our experience in reviewing reports on FY 1991 leveraging activities, and comments we receive on this interim rule, will enable us to determine whether to include more specific documentation requirements in the final rule.

Leveraging Report

Section 2607A(e) provides that grantees desiring leveraging incentive funds must submit a report to HHS that quantifies the grantee's leveraged resources for the base period. The base period is the fiscal or program year immediately preceding the award period for which the grantee is requesting leveraging incentive funds. These reports are grantees' applications for leveraging incentive funds. This interim final rule lists requirements for these reports. We have included in the list only the information we believe we need to know in order to fulfill our responsibility to evaluate grantee leveraging resources and benefits and to determine appropriate grantee shares of leveraging incentive funds.

LIHEAP grantees may use any format they choose in their annual applications for regular LIHEAP funds. Because of the need to review competitive applications for leveraging incentive funds, however, this interim final rule specifies that leveraging reports must be in a format established by HHS. We will notify grantees as soon as possible of the required format for these reports through an action transmittal.

Grantee leveraging reports must describe the leveraged resources provided to low-income households during the base period, and must indicate the grantee's valuation of these resources and of the costs of leveraging them.

The reports must clearly describe each separate leveraged resource, its benefit(s) to low-income households, and its source, as appropriate. The following are examples of such descriptions:

• Resource—cash: State funds; benefit—payments (cash benefits) for heating and energy crisis assistance; source—State funds;

• Resource—home energy discounts; benefit—reduced prices for fuel oil for low-income customers of ABC Company; source—ABC Company; and

• Resource—cash: XYZ Fuel Fund; benefit—payments (cash benefits) toward recipients' natural gas bills; source—donations by XYZ Gas Company's customers and general public.

It would not be sufficient, for example, to say "pilot project" or "demonstration program" without specifying the benefits the project or program provided, and the source of the funds used.

The reports must indicate the geographical area in which the leveraged benefits were provided to low-income households. For example, a report might indicate the city (or cities), and/or the county (or counties), in which a benefit was provided.

Section 2607A provides that HHS "may request any documentation" that it "determines necessary for the verification" of grantees' applications for leveraging incentive funds. This interim rule therefore establishes requirements for documentation and provides that the Department may require additional documentation and/or clarification as it determines necessary to verify information in a grantee's leveraging report, to decide whether a leveraged resource is countable, and to determine what the net valuation of a resource should be. In this case, we will set a date by which we must receive reported information on the resource that contains sufficient information to document countability and valuation—that is, a cut-off date for receipt of information we need in order to determine countability or valuation of a resource.

Submission Dates

Section 2607A(e) provides that grantees must submit their leveraging reports to HHS by July 31 of each year in order to qualify for leveraging incentive funds. We believe it is reasonable to assume that Congress intended the July 31 date to apply only after "forward funding" begins for the LIHEAP program. The statute provides that, beginning in July 1993, LIHEAP funds will be available for obligation on the basis of a program year of July 1 through June 30. Once forward funding begins, July 31 will be one month after the end of the program year or base period whose leveraging activities are reported; grantees will have adequate time to report leveraging activities for the entire program year. However, LIHEAP funds currently are available for obligation on the basis of the Federal fiscal year of October 1 through September 30. If grantees were required to submit leveraging reports by July 31, they would not be able to include leveraging activities for the last two or three months of the fiscal year.

We therefore are modifying the reporting dates for reports to be submitted before forward funding begins. The deadline for submission of reports while LIHEAP funding is provided to grantees on the basis of the Federal fiscal year of October 1 through September 30 is October 31 of the fiscal year for which leveraging incentive funds are requested. In these cases, October 31 will be one month after the end of the fiscal year or base period for which leveraging activities are reported.

Under forward funding, the deadline for submission of reports will be July 31 of the program year for which funds are requested. The report covering leveraging activities occurring during the nine-month transition period of October 1 to June 30 will be due on July 31, one month after the end of this period.

Reports must be postmarked or hand-delivered by these dates in order for a grantee to be considered for a share of leveraging incentive funds. Reports should be mailed or delivered to the following address: Director, Office of Community Services, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447.

Determination of Grantee Shares

The statute requires the Department to develop a formula for the distribution of leveraging incentive funds that takes into account the amount of leveraging acquired by a grantee in relation to the size of the grantee's allotment (allocation) under the regular LIHEAP program. In response to that direction, we have developed a two-part formula.

We will distribute one-half of the funds based on the amount of funds leveraged by a grantee during the base period relative to its net allotment under the regular LIHEAP program during the base period, as a proportion of the total amount of funds leveraged by all grantees in relation to their regular allotments during the same period. We will distribute the remainder of the funds based on the amount of leveraged resources that a grantee leveraged during the base period as a proportion of the total amount leveraged by all grantees. No grantee could receive a leveraging incentive award that is larger than its regular LIHEAP allotment. If the formula results in a grantee receiving an incentive award larger than its regular allotment, the "excess" funds will be reallocated to the other grantees receiving leveraging incentive funds. The leveraging figures used in making these calculations will be based on the net value of the leveraged resources contained in the leveraging reports filed by the grantees, as approved by HHS. The information on regular allocation figures will be based on HHS grant data. States' allocation figures will be net of any funds set aside for direct funding of Indian tribes and tribal organizations.

We believe this formula carries out Congress' intent to give the largest reward to those grantees that are the most successful in leveraging their LIHEAP dollars. Under this formula, if two grantees leverage the same amount of dollars, but one has a much larger regular allotment than the other, then the smaller one will receive a larger proportionate award of incentive funds. An example of how this formula would work is shown below. (Numbers may be affected by rounding.)

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Part one share F	Grantee percent of lev $ G	Part two share H	Total share of $25M I
1	$2,500,000	$111,880,000	0.0223	5.93	$741,543	17.57	$2,196,219	$2,937,762
2	768,000	45,870,000	0.0166	4.46	558,107	5.40	674,678	1,232,786
3	3,022,000	76,880,000	0.0393	10.44	1,304,404	21.24	2,654,780	3,959,194
4	789,000	56,899,000	0.0139	3.66	460,214	5.55	693,127	1,153,341
5	1,250,000	34,333,000	0.0364	9.67	1,208,331	8.78	1,098,109	2,306,440
6	5,900,000	23,800,000	0.2479	65.62	8,227,401	41.46	5,183,077	13,410,477
	14,229,000	349,462,000	0.3768	100.00	12,500,000	100.00	12,500,000	25,000,000

In this chart, the following information is included in the columns:

Column A is an individual grantee.

Column B is the dollar amount of non-Federal leveraged resources that the grantee provided to low-income households during the base period, after deducting offsetting costs, as approved by HHS.

Column C is the amount of the grantee's regular LIHEAP allotment during the base period, net of any set-asides for direct-grant Indian tribes and tribal organizations in the case of a State.

Column D is the amount of a grantee's leveraged resources as a proportion of its regular allotment (Column B divided by Column C).

Column E is the amount of a grantee's leveraged resources divided by its regular allotment, as a proportion of the resources leveraged by all grantees relative to their regular allotment, with the resulting figure expressed as a percentage (Column D divided by the total for Column D).

Column F is the amount of leveraging incentive funds that a grantee would receive under the first part of the formula (Column E multiplied by one-half of the leveraging funds available, in this case $12,500,000).

Column G is the grantee's leveraged resources as a percentage of the resources leveraged by all grantees (Column B divided by the total for Column B).

Column H is the amount of leveraging incentive funds that a grantee would receive under the second part of the formula (Column G multiplied by one-half of the leveraging funds available, in this case $12,500,000).

Column I is the total amount of leveraging incentive funds a grantee would receive under this two-part formula (Column F plus Column H).

In developing this formula, we considered three different formulas. In addition to considering three different formulas before we made our selection, we considered each of the formulas under three different scenarios to determine what grant awards would be under different situations. Under this process, we determined that the formula outlined above is the most fair for a wide variety of circumstances. Our calculations are shown below.

In the first scenario, we considered six different grantees that acquired varying levels of leveraged resources and had different regular allotments. We intentionally used an example in which a relatively small grantee leveraged a large amount of funds (grantee #6). We then calculated incentive grant awards under all three formulas. In the second scenario, all grantees leveraged the same percentage of their regular allotments, so that the grantees with the largest allotments also have the largest dollar amount of leveraged resources. In the third scenario, all grantees leveraged the same dollar amount, so that the percentage in relation to their regular allotment is different. We calculated each of the formulas under all three scenarios.

For the purposes of this discussion, we will call the formula that we have selected "Formula One." Under "Formula Two" that we considered, the incentive funds would be distributed solely on the basis of the amount of funds leveraged by a grantee relative to its net allotment under the regular LIHEAP program, as a proportion of the total amount of funds leveraged by all grantees in relation to their regular allotments. This is the same as Part One of our preferred Formula One, and the column descriptions noted above are the same.

"Formula Three" that we considered uses a more complex weighting equation. This formula applies several weighting factors to determine each grantee's share of the leveraging appropriation. Columns A, B, C, and D are the same as in the description noted above for Formula One. Column E is the amount of all leveraged dollars for all

grantees divided by their total allotments (i.e., Column E=the total of Column B divided by the total of Column D for each grantee), and is the same for all grantees. We have included this figure in the total line for Column E as well, rather than adding all the line items for Column E. Column F is a grantee's leveraged resources as a percentage of the resources leveraged by all grantees (Column B divided by the total for Column B), and is the same as Column G in Formula One. The weighted factor in Column D is then divided by the weighted factor in Column E, and that number multiplied by Column F to arrive at the factor in Column G. Each grantee's factor in Column G is then divided by the total for Column G to determine that grantee's percentage share of the leveraging fund (Column H). The percentage in Column H is multiplied by the leveraging appropriation ($25 million in this case) to obtain the grantee's grant award (Column I).

Our calculations are shown below. (Numbers may be affected by rounding.)

FIRST SCENARIO--VARYING LEVELS OF LEVERAGED RESOURCES AND ALLOTMENTS

Grantee / Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Part one share F	Grantee percent of lev $ G	Part two share H	Total share of $25M I
Formula one:								
1	$2,500,000	$111,890,000	0.0223	5.93	$741,543	17.57	$2,196,219	$2,937,762
2	766,000	45,670,000	0.0168	4.46	558,107	5.40	674,678	1,232,786
3	13,022,000	76,890,000	0.0393	10.44	1,304,404	21.24	2,654,790	3,959,194
4	789,000	56,899,000	0.0139	3.68	460,214	5.55	693,127	1,153,341
5	1,250,000	34,333,000	0.0364	9.67	1,208,331	8.78	1,098,109	2,306,440
6	5,900,000	23,800,000	0.2479	65.82	8,227,401	41.46	5,183,077	13,410,477
	14,229,000	349,482,000	0.3766	100.00	12,500,000	100.00	12,500,000	25,000,000

Grantee / Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Grantee share of $25M F
Formula two:					
1	$2,500,000	$111,890,000	0.0223	5.93	$1,483,066
2	766,000	45,670,000	0.0168	4.46	1,116,215
3	3,022,000	76,890,000	0.0393	10.44	2,608,808
4	789,000	56,899,000	0.0139	3.68	920,428
5	1,250,000	34,333,000	0.0364	9.67	2,416,662
6	5,900,000	23,800,000	0.2479	65.82	16,454,801
	14,229,000	349,482,000	0.3766	100.00	25,000,000

Grantee / Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Total Lev $ div. by total allot $ E	Grantee percent of lev $ F	D div. by E times F G	Grantee percent H	Grantee share of $25M I
Formula three:								
1	$2,500,000	$111,890,000	0.0223	0.0407	17.57	0.0964	3.27	$818,269
2	766,000	45,670,000	0.0168	0.0407	5.40	0.0223	0.76	189,190
3	3,022,000	76,890,000	0.0393	0.0407	21.24	0.2050	6.96	1,739,909
4	789,000	56,899,000	0.0139	0.0407	5.55	0.0189	0.64	160,272
5	1,250,000	34,333,000	0.0364	0.0407	8.78	0.0786	2.67	666,678
6	5,900,000	23,800,000	0.2479	0.0407	41.46	2.5247	85.70	21,425,681
	14,229,000	349,482,000	0.3766	0.0407	100.00	2.9458	100.00	25,000,000

SECOND SCENARIO—SAME LEVERAGING TO ALLOTMENT RATIO FOR ALL GRANTEES (COLUMN D)

Grantee / Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Part one share F	Grantee percent of lev $ G	Part two share H	Total share of $25 M I
Formula one:								
1	$8,035,100	$111,890,000	0.0450	16.67	$2,083,333	32.02	$4,001,994	$6,085,328
2	2,055,200	45,670,000	0.0450	16.67	2,083,333	13.07	1,633,489	3,716,822
3	3,460,100	76,890,000	0.0450	16.67	2,083,333	22.00	2,750,142	4,833,475
4	2,560,500	56,899,000	0.0450	16.67	2,083,333	16.28	2,035,119	4,118,452
5	1,545,000	34,333,000	0.0450	16.67	2,083,333	9.82	1,227,996	3,311,329
6	1,071,000	23,800,000	0.0450	16.67	2,083,333	6.81	851,260	2,934,593

A	B	C	D	E	F	G	H	I
	15,726,700	349,482,000	0.2700	100.00	12,500,000	100.00	12,500,000	25,000,000

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Grantee share of $25M F
Formula two:					
1	$5,035,100	$111,890,000	0.0450	16.67	$4,166,667
2	2,055,200	45,670,000	0.0450	16.67	4,166,667
3	3,460,100	76,890,000	0.0450	16.67	4,166,667
4	2,560,500	56,899,000	0.0450	16.67	4,166,667
5	1,545,000	34,333,000	0.0450	16.67	4,166,667
6	1,071,000	23,800,000	0.0450	16.67	4,166,667
	15,726,700	349,482,000	0.2700	100.00	25,000,000

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Total lev $ div. by total allot $ E	Grantee percent of lev $ F	D div. by E times F G	Grantee percent H	Grantee share of $25M I
Formula three:								
1	$5,035,100	$111,890,000	0.0450	0.0450	32.02	0.3202	32.02	$8,003,960
2	2,055,200	45,670,000	0.0450	0.0450	13.07	0.1307	13.07	3,266,976
3	3,460,100	76,890,000	0.0450	0.0450	22.00	0.2200	2.00	5,500,283
4	2,560,500	56,899,000	0.0450	0.0450	16.28	0.1628	16.28	4,070,236
5	1,545,000	34,333,000	0.0450	0.0450	9.82	0.0982	9.82	2,455,992
6	1,071,000	23,800,000	0.0450	0.0450	6.81	0.0681	6.81	1,702,520
	15,726,700	349,482,000	0.2700	0.0450	100.00	1.0000	100.00	25,000,000

THIRD SCENARIO—SAME LEVERAGED DOLLAR AMOUNTS FOR ALL GRANTEES (COLUMN B)

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Part one share F	Grantee percent of lev $ G	Part two share H	Total share of $25M I
Formula one:								
1	$5,000,000	$111,890,000	0.0447	6.74	$842,781	16.67	$2,083,333	$2,926,114
2	5,000,000	45,670,000	0.1095	16.52	2,064,785	16.67	2,083,333	4,148,118
3	5,000,000	76,890,000	0.0650	9.81	1,226,411	16.67	2,083,333	3,309,744
4	5,000,000	56,899,000	0.0879	13.26	1,657,300	16.67	2,083,333	3,740,634
5	5,000,000	34,333,000	0.1456	21.97	2,746,592	16.67	2,083,333	4,829,925
6	5,000,000	23,800,000	0.2101	31.70	3,962,132	16.67	2,083,333	6,045,466
	30,000,000	349,482,000	0.8628	100.00	12,500,000	100.00	12,500,000	25,000,000

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Grantee share of $25M F
Formula two:					
1	$5,000,000	$111,890,000	0.0447	6.74	$1,685,561
2	5,000,000	45,670,000	0.1095	16.52	4,129,570
3	5,000,000	76,890,000	0.0650	9.81	2,452,822
4	5,000,000	56,899,000	0.0879	13.26	3,314,601
5	5,000,000	34,333,000	0.1456	21.97	5,493,183
6	5,000,000	23,800,000	0.2101	31.70	7,924,263
	30,000,000	349,482,000	0.8628	100.00	25,000,000

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Total lev $ div. by total allot $ E	Grantee percent of lev $ F	D div. by E times F G	Grantee percent H	Grantee share of $25M I
Formula three:								
1	$5,000,000	$111,890,000	0.0447	0.0858	16.67	0.0868	6.74	$1,685,561
2	5,000,000	45,670,000	0.1095	0.0858	16.67	0.2128	16.52	4,129,570
3	5,000,000	76,890,000	0.0650	0.0858	16.67	0.1263	9.81	2,452,822
4	5,000,000	56,899,000	0.0879	0.0858	16.67	0.1706	13.26	3,314,601

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Total lev $ div. by total allot $ E	Grantee percent of lev $ F	D div. by E times F G	Grantee percent H	Grantee share of $25M I
5	5,000,000	34,333,000	0.1456	0.0858	16.67	0.2828	21.97	5,493,183
6	5,000,000	23,800,000	0.2101	0.0858	16.67	0.4079	31 70	7,924,263
	30,000,000	349,482,000	0.6628	0.0858	100.00	1.2868	100.00	25,000,000

We believe that Formula One provides the fairest distribution of the incentive funds under the wide range of situations outlined in the three scenarios above. The other scenarios would skew the results too heavily in favor of one or another of the grantees. We therefore will distribute the leveraging incentive funds under Formula One.

Uses of Leveraging Incentive Funds

Regular LIHEAP grant funds and LIHEAP leveraging incentive funds are separately authorized in the LIHEAP statute—the former at section 2602(b), and the latter at section 2602(d). Leveraging incentive funds cannot be used for some of the purposes for which regular LIHEAP funds can be used. Section 2607A directs that leveraging incentive funds must be used to increase or maintain benefits to households—that is, they must be used for LIHEAP heating, cooling, crisis, and/or weatherization assistance.

While section 2607A limits the types of activities for which leveraging incentive funds can be used, it does not limit the amount of leveraging incentive funds that can be used for each of the allowable activities. We have determined that the 15 percent limitation on the use of regular LIHEAP funds for weatherization does not apply to leveraging incentive funds. If most of a grantee's leveraged resources come from weatherization activities, the grantee should have the option to use most of the resulting leveraging incentive funds for weatherization. However, leveraging incentive funds cannot be counted in the base for calculation of maximum grantee weatherization obligations and expenditures for regular LIHEAP funds.

In accordance with the requirements of section 2607A, leveraging incentive funds cannot be used for costs of planning and administration. However, if a grantee receives more than a minimal leveraging incentive fund award, it likely will need to use additional monies to administer these funds. We therefore have determined that leveraging incentive funds can be counted in the base for calculating the grantee's maximum planning and administrative costs. This is consistent with the treatment of oil overcharge funds provided under section 155 of Pub. L. 97–377 (the Warner Amendment) and Exxon oil overcharge funds.

Consistent with the statutory emphasis on increasing the amount of LIHEAP heating, cooling, crisis, and weatherization assistance, leveraging incentive funds cannot be used for transfer to other HHS block grants, and they cannot be counted in the base for calculation of maximum grantee transfers to other HHS block grants.

Leveraging incentive funds cannot be counted in the base for calculation of maximum grantee carryover of regular LIHEAP funds. (However, see below for "Peroid of Obligation of Leveraging Incentive Funds.")

Grantees are to include the uses of leveraging incentive funds in their LIHEAP plans. Since leveraging incentive funds will be awarded during a fiscal or program year, rather than at the beginning, grantees probably will wish to cover the uses of these funds in amendments to their plans.

Grantees are to document uses of leveraging incentive funds in the same way they document uses of regular LIHEAP funds. Leveraging incentive funds are subject to the same audit requirements as regular LIHEAP funds.

Period of Obligation for Leveraging Incentive Funds

Leveraging incentive funds will be awarded during the course of each fiscal or program year, rather than at the beginning, since grantees' leveraging reports are to be submitted a month after each new fiscal or program year begins, and since the necessary Federal review and approval of leveraging reports will follow. We therefore have determined that leveraging incentive funds are not subject to the statutory and regulatory carryover and reallotment requirements that apply to regular LIHEAP funds. (Section 2607(b) of the LIHEAP statute provides that grantees may carry forward for use in the succeeding fiscal year no more than 10 percent of their regular LIHEAP funds payable for the prior fiscal year and not transferred to another HHS block grant.) Instead, all leveraging incentive funds will be available for obligation from the date they are awarded to a grantee until the end of the succeeding fiscal or program year. Grantees may use these funds during the remainder of the fiscal or program year in which they were awarded, and throughout the following fiscal or program year. Any leveraging incentive funds not obligated for allowable purposes by the end of this obligation period must be returned to the Department.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more or has certain other specified effects. The Department has determined that these regulations are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more, or otherwise meet the threshold criteria.

Paperwork Reduction Act

Section 96.87 of this interim final rule contains information collection requirements relating to applications for leveraging incentive funds. Section 2607A of the Low-Income Home Energy Assistance Act of 1981 requires grantees to submit these leveraging reports in order to qualify for leveraging incentive funds; these reports are the only source of the information HHS needs in order to allocate leveraging incentive funds among grantees. ACF estimates the reporting burden on applicants for leveraging incentive funds to be 40 hours per applicant. As required by the Paperwork Reduction Act of 1980, the Department will submit these requirements to the Office of Management and Budget (OMB) for its review. Other organizations and individuals desiring to submit comments on this information collection requirement should direct them to (1) Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, and (2) the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, Washington, DC

20503, Attention: Desk Officer for Administration for Children and Families, Department of Health and Human Services. After OMB approval is obtained, we will publish the OMB control number in the **Federal Register**.

Section 96.83 requires grantees to submit a waiver request if they wish to obligate more than 15 percent of their LIHEAP funds allotted or funds available in any fiscal year for weatherization activities. We expect to receive less than 10 waiver requests per year, and thus this provision is not subject to the Paperwork Reduction Act. We received only one waiver request for FY 1991, even though the total FY 1991 LIHEAP appropriation exceeded the FY 1990 appropriation by more than $165,000,000, and thus grantees could be expected to meet the requirements for a standard waiver.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these interim rules is on State, tribal, and territorial governments. Therefore, the Department of Health and Human Services certifies that these rules will not have a significant economic impact on a substantial number of small entities because they affect payments to States, tribes, and territories. Thus, a regulatory flexibility analysis is not required.

Catalog of Federal Domestic Assistance Program Number

The Catalog of Federal Domestic Assistance program number for the low-income home energy assistance program (LIHEAP) is 93.028.

List of Subjects in 45 CFR Part 96

Energy, Grant programs-energy, Grant programs-Indians, Income assistance, Leveraging incentive program, Low and moderate income housing, Reporting and record keeping requirements, Weatherization.

Approved: November 25, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, part 96 of title 45 of the Code of Federal Regulations is amended as set forth below:

PART 96—[AMENDED]

1. The authority for part 96 of title 45 is revised to read as follows:

Authority: 42 U.S.C. 300w et seq.; 42 U.S.C. 300x et seq.; 42 U.S.C. 300y et seq.; 42 U.S.C. 701 et seq.; 42 U.S.C. 8621 et seq.; 42 U.S.C. 9901 et seq.; 42 U.S.C. 1397 et seq.; 31 U.S.C. 1243 note.

Subpart E—Enforcement

2. Section 96.50 is amended by adding a new sentence to the end of paragraph (d) to read as follows:

§ 96.50 Complaints.

* * * * *

(d) * * * Under the low-income home energy assistance program, within 60 days after receipt of complaints, the Department will provide a written response to the complainant, stating the actions that it has taken to date and the timetable for final resolution of the complaint.

* * * * *

Subpart H—Low-Income Home Energy Assistance Program

3. Section 96.81 is revised as follows:

§ 96.81 Reallotment report.

As a part of the reallotment procedure established by section 2607(b) of Public Law 97–35 (42 U.S.C. 8626(b)), beginning with funds to be held available for fiscal year 1992, each recipient of funds must submit a report to the Secretary by August 1 of each year containing the following information:

(a) The amount of funds that the grantee desires remain available for obligation in the succeeding fiscal year, not to exceed 10 percent of the funds payable to the grantee and not transferred pursuant to section 2604(f) of Public Law 97–35 (42 U.S.C. 8623(f));

(b) A statement of the reasons that this amount to remain available will not be used in the fiscal year for which it was allotted;

(c) A description of the types of assistance to be provided with the amount held available; and

(d) The amount of funds, if any, to be subject to reallotment.

4. A new section 96.83 is added to read as follows:

§ 96.83 Increase in maximum amount that may be used for weatherization and other energy-related home repair.

(a) *Scope.* This section concerns requests for waivers increasing from 15 percent to up to 25 percent of LIHEAP funds allotted or available to a grantee for a fiscal year, the maximum amount that grantees may use for low-cost residential weatherization and other energy-related home repair for low-income households (hereafter referred to as "weatherization"), pursuant to section 2605(k) of Public Law 97–35 (42 U.S.C. 8624(k)).

(b) *Public comment.* Before submitting waiver requests to the Secretary, grantees must make proposed waiver requests available for public inspection within their jurisdictions in a manner that will facilitate timely and meaningful review of, and comment upon, such requests.

(c) *Waiver request.* After March 31 of each fiscal year, the chief executive officer (or his or her designee) may request a waiver of the weatherization obligation limit if the grantee meets criteria (i), (ii), and (iii) in paragraph (c)(2) below, or can show "good cause" for obtaining a waiver despite a failure to meet one or more of these criteria. All waiver requests must be in writing and must include the following information:

(1) A statement of the total percent of its LIHEAP funds allotted or available in the fiscal year for which the waiver is requested, that the grantee desires to use for weatherization.

(2) A statement of whether the grantee has met each of the following three criteria:

(i) In the fiscal year for which the waiver is requested, the combined total (aggregate) number of households in the grantee's service population that will receive LIHEAP heating, cooling, and crisis assistance benefits will not be fewer than the combined total (aggregate) number that received such benefits in the preceding fiscal year;

(ii) In the fiscal year for which the waiver is requested, the combined total (aggregate) amount of LIHEAP heating, cooling, and crisis assistance benefits will not be less than the combined total (aggregate) amount received in the preceding fiscal year; and

(iii) All LIHEAP weatherization activities to be carried out by the grantee in the fiscal year for which the waiver is requested have been shown to produce measurable savings in energy expenditures.

(3) With regard to criterion (2)(i) above, a statement of the grantee's best estimate of the appropriate household totals for the fiscal year for which the waiver is requested and for the preceding fiscal year.

(4) With regard to criterion (2)(ii) above, a statement of the grantee's best estimate of the appropriate benefit totals for the fiscal year for which the waiver is requested and for the preceding fiscal year.

(5) With regard to criterion (2)(iii) above, a description of the weatherization activities to be carried out by the grantee in the fiscal year for which the waiver is requested (with all LIHEAP funds proposed to be used for weatherization, not just with the amount over 15 percent), and an explanation of the specific criteria under which the

grantee has determined whether these activities have been shown to produce measurable savings in energy expenditures.

(6) A description of how and when the proposed waiver request was made available for timely and meaningful public review and comment, copies and/or summaries of public comments received on the request, a statement of the method for reviewing public comments, and a statement of the changes, if any, that were made in response to these comments.

(7) If the request is made by the chief executive officer's designee and the Department does not have on file written evidence of the designation, the request must also include evidence of the appropriate delegation of authority.

(d) *"Standard" waiver.* If the Department determines that a grantee has met the three criteria in paragraph (c)(2) above, has provided all information specified in paragraph (c) above, has shown adequate concern for timely and meaningful public review and comment, and has proposed weatherization that meets all relevant requirements of title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) and applicable Federal regulations, the Department will approve a "standard" waiver.

(e) *"Good cause" waiver.* If a grantee does not meet one or more of the three criteria in paragraph (c)(2) above, then the grantee may, in accordance with the provisions in paragraphs (e)(1) and (e)(2) below, submit documentation that demonstrates good cause why a waiver should be granted despite the grantee's failure to meet this criterion or these criteria. "Good cause" waiver requests must include the following information, in addition to the information specified in paragraph (c) above:

(1) For each criterion under paragraph (c)(2) above that the grantee does not meet, an explanation of the specific reasons demonstrating good cause why the grantee does not meet the criterion and yet proposes to use additional funds for weatherization, citing measurable, quantified data, and stating the source(s) of the data used.

(2) A statement of the grantee's LIHEAP heating, cooling, and crisis assistance eligibility standards and benefit levels for the fiscal year for which the waiver is requested and for the preceding fiscal year; and, if eligibility standards were lower and/or benefit levels were higher in the preceding fiscal year, an explanation of the reasons demonstrating good cause why a waiver should be granted.

If the Department determines that a grantee requesting a "good cause" waiver has demonstrated good cause why a waiver should be granted, has provided all information specified in paragraph (c) above and in this paragraph, has shown adequate concern for timely and meaningful public review and comment, and has proposed weatherization that meets all relevant requirements of title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) and applicable Federal regulations, the Department will approve a "good cause" waiver.

(f) *Approvals and disapprovals.* After receiving the grantee's completed waiver request, the Department will respond in writing within 45 days, informing the grantee whether the request is approved on either a "standard" or "good cause" basis. The Department may request additional information and/or clarification from the grantee. If additional information and/or clarification is requested, the 45 day period for the Department's response will start when the additional information and/or clarification is received. No waiver will be granted for a previous fiscal year.

(g) *Effective period.* Waivers will be effective from the date of the Department's written approval until the funds for which the waiver is granted are obligated in accordance with title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) and applicable regulations. Funds for which a weatherization waiver was granted that are carried over to the following fiscal year and used for weatherization shall not be considered "funds allotted" or "funds available" for the purposes of calculating the maximum amount that may be used for weatherization in the succeeding fiscal year.

5. Section 96.84 is revised as follows:

§ 96.84 Miscellaneous.

(a) *Rights and responsibilities of territories.* Except as otherwise provided, a territory eligible for funds shall have the same rights and responsibilities as a State.

(b) *Applicability of assurances.* The assurances in section 2605(b) of Public Law 97–35 (42 U.S.C. 8624(b)), as amended, pertain to all forms of assistance provided by the grantee, with the exception of assurance 15, which applies to heating, cooling, and energy crisis intervention assistance.

(c) *Prevention of waste, fraud, and abuse.* Grantees must establish appropriate systems and procedures to prevent, detect, and correct waste, fraud, and abuse in activities funded under the low-income home energy assistance program. The systems and procedures are to address possible waste, fraud, and abuse by clients, vendors, and administering agencies.

6. Section 96.86 is revised as follows:

§ 96.86 Exemption from requirement for additional outreach and intake services.

The requirement in section 2605(b)(15) of Public Law 97–35 (42 U.S.C. 8624(b)(15)), as amended by section 704(a)(4) of the Augustus F. Hawkins Human Services Reauthorization Act of 1990 (Pub. L. 101–501)—concerning additional outreach and intake services—does not apply to:

(a) Indian tribes and tribal organizations; and

(b) Territories whose annual LIHEAP allotments under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)) are $200,000 or less.

7. Section 96.87 is revised as follows:

§ 96.87 Leveraging incentive program.

(a) *Scope.* This section concerns the leveraging incentive program authorized by section 2607A of Public Law 97–35 (42 U.S.C. 8626a).

(b) *Definitions.* (1) *Base period* means the period for which a grantee's leveraging activities are reported to the Department; grantees' leveraging activities during the base period or base year are the basis for the distribution of leveraging incentive funds during the succeeding fiscal year (the award period or award year). Leveraged resources are counted in the base period during which their benefits are provided to low-income households.

(2) *Countable petroleum violation escrow funds* means petroleum violation escrow (oil overcharge) funds that were distributed to a State or territory after October 1, 1990, were added to and used as a part of the State or territory's LIHEAP program, and were not previously required to be allocated to low-income households.

(3) *Home energy* means a source of heating or cooling in residential dwellings.

(4) *Low-income households* means federally eligible (federally qualified) households meeting the standards for LIHEAP income eligibility and/or LIHEAP categorical eligibility as set by section 2605(b)(2) of Public Law 97–35 (42 U.S.C. 8624(b)(2)).

(5) *Weatherization* means low-cost residential weatherization and other energy-related home repair for low-income households. Weatherization must be directly related to home energy.

(c) *LIHEAP funds used to identify, develop, and demonstrate leveraging programs.* (1) Each fiscal year, States (excluding Indian tribes, tribal organizations, and territories) may

spend up to the greater of $35,000 or 0.06 percent of their Federal LIHEAP allotments allocated under title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) to identify, develop, and demonstrate leveraging programs under section 2607A(c)(2) of Public Law 97–35 (42 U.S.C. 8626a(c)(2)). Each fiscal year, Indian tribes, tribal organizations, and territories may spend up to two (2.0) percent of their Federal LIHEAP allotments allocated under title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) to identify, develop, and demonstrate leveraging programs under section 2607A(c)(2) of Public Law 97–35 (42 U.S.C. 8626a(c)(2)). For the purpose of this paragraph, Federal LIHEAP allotments include funds from regular and supplemental appropriations, with the exception of leveraging incentive funds provided under section 2602(d) of Public Law 97–35 (42 U.S.C. 8621(d)).

(2) LIHEAP funds used under section 2607A(c)(2) of Public Law 97–35 (42 U.S.C. 8626a(c)(2)) to identify, develop, and demonstrate leveraging programs are not subject to the limitation in section 2605(b)(9) of Public Law 97–35 (42 U.S.C. 8624(b)(9)) on maximum percent of Federal funds that may be used for costs of planning and administration.

(d) *Requirements for leveraged resources and benefits.* (1) In order to be counted under the leveraging incentive program, leveraged resources and benefits must meet all of the following four criteria:

(i) They are from non-Federal sources.

(ii) They are provided to the grantee's low-income home energy assistance program, or to federally qualified low-income households as described in section 2605(b)(2) of Public Law 97–35 (42 U.S.C. 8624(b)(2)).

(iii) They are measurable and quantifiable in dollars.

(iv) They represent a net addition to the total home energy resources available to low-income households in excess of the amount of such resources that could be acquired by these households through the purchase of home energy, or the purchase of items that help these households meet the cost of home energy, at commonly available household rates or costs, or that could be obtained with regular LIHEAP allotments provided under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)).

(2) Also, in order to be counted under the leveraging incentive program, leveraged resources and benefits must meet at least one of the following three criteria:

(i) They result from the acquisition or development by the grantee's LIHEAP program of quantifiable benefits for low-income households that are obtained from energy vendors through negotiation, regulation, or competitive bid. The grantee's LIHEAP program has substantial involvement in the acquisition or development of these benefits. The involvement of the grantee's LIHEAP program is considerable, important, material, and of real value or effect.

(ii) They are appropriated or mandated by the grantee for distribution through the grantee's LIHEAP program. They are provided to low-income households eligible under the grantee's standards, as a part of (through or within) the grantee's LIHEAP program, consistent with the Federal statutes and regulations applicable to the LIHEAP program.

(iii) They are appropriated or mandated by the grantee for distribution under the grantee's LIHEAP plan (referred to in section 2605(c)(1)(A) of Public Law 97–35) (42 U.S.C. 8624(c)(1)(A)) to low-income households, and are determined by the Secretary to be integrated with the grantee's LIHEAP program. They are identified and described in the plan and distributed as indicated in the plan; however, they are not provided to low-income households as a part of (through or within) the grantee's LIHEAP program. They are coordinated with the grantee's LIHEAP program and are provided in cooperation and in conjunction with the LIHEAP program.

(e) *Countable leveraged resources and benefits.* Resources and benefits that are countable under the leveraging incentive program include but are not limited to the following, provided that they also meet all other applicable requirements:

(1) Leveraged cash resources: State, tribal, territorial, and other public and private non-Federal funds, including countable petroleum violation escrow funds as defined in paragraph (b)(2) above, that are used in the base period for:

(i) Cash benefits to or on behalf of recipient households, for heating, cooling, energy crisis, and weatherization assistance, including payments toward recipient households' home energy costs;

(ii) Purchase and delivery of fuels used by recipient households for home energy (such as fuel oil, liquefied petroleum gas, and wood);

(iii) Purchase, delivery, and installation of weatherization materials;

(iv) Purchase and delivery of blankets, space heating devices and equipment (such as furnaces), and space cooling devices and equipment (such as fans and air conditioners) that help low-income households meet the costs of home energy;

(v) Purchase and delivery of other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department as countable leveraged resources; and

(vi) Purchase and rental of supplies and equipment used to deliver fuels and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials.

(2) Home energy discounts and credits that are provided in the base period to low-income households and apply to fuels used for home energy by these households, in the amount of the discount, reduction, waiver, or forgiveness, or that apply to certain tangible non-fuel items that are provided in the base period to low-income households and help these households meet the costs of home energy, in the amount of the discount or reduction:

(i) Discounts or reductions in utility and bulk fuel prices, rates, or bills;

(ii) Partial or full waivers of utility and other home energy connection and reconnection fees, application fees, and late payment charges;

(iii) Partial or full waivers of home energy security deposits where security deposits are a general requirement for the vendor's customers and the deposits are kept for six months or longer;

(iv) Partial or full forgiveness of home energy bill arrearages; and

(v) Discounts or reductions in the cost of the following tangible items:

(A) Weatherization materials that are installed in recipients' homes;

(B) Blankets, space heating devices and equipment (such as furnaces), and space cooling devices and equipment (such as fans and air conditioners), that are provided to low-income households; and

(C) Other tangible items that are specifically approved by the Department.

(3) Certain third-party in-kind contributions that are provided in the base period to low-income households:

(i) Donated fuels used by recipient households for home energy (such as fuel oil, liquefied petroleum gas, and wood);

(ii) Donated weatherization materials that are installed in recipients' homes;

(iii) Donated blankets, space heating devices and equipment (such as furnaces), and space cooling devices and equipment (such as fans and air conditioners), that help low-income

households meet the costs of home energy;

(iv) Other donated tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department as countable leveraged resources;

(v) Donated and loaned supplies and equipment used to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials;

(vi) Unpaid volunteers' services specifically to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials; and

(vii) Paid staff whose services are donated by their employer specifically to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials.

(f) *Resources and benefits that cannot be counted.* The following resources and benefits are not countable under the leveraging incentive program:

(1) Leveraged resources counted under the leveraging incentive program(s) for the Low-Income Weatherization Assistance Program administered by the Department of Energy, or for any other Federal leveraging incentive program;

(2) Deferred home energy obligations;

(3) Projected future savings from weatherization;

(4) Tax deductions and tax credits for donations, rate reductions, etc.;

(5) Borrowed funds, interest paid on borrowed funds, and reductions in interest paid on borrowed funds;

(6) Funds and other resources that have been or will be used as matching or cost sharing for any Federal program;

(7) Costs of planning and administration, space costs, and intake costs;

(8) Budget counseling, energy conservation education, and all other outreach activities;

(9) Paid services where payment is not made from countable leveraged resources, unless these services are donated as a countable in-kind contribution by the employer;

(10) All in-kind contributions except those described in paragraph (e)(3) above; and

(11) All other resources that do not meet the requirements of section 2607A of Public Law 97–35 (42 U.S.C. 8626a) and this section.

(g) *Valuation and documentation of leveraged resources and offsetting costs.* (1) Leveraged cash resources will be valued at the fair market value of the benefits they provided to low-income households during the base period, as follows. Payments to or on behalf of low-income households for heating, cooling, energy crisis, and weatherization assistance will be valued at their actual amount or value at the time they were provided. Purchased fuel, weatherization materials, and other countable tangible items will be valued at their fair market value (the commonly available household rate or cost in the local market area) at the time they were purchased. Rented supplies and equipment will be valued at their fair rental rate (in the local area) at the time of rental. Delivery of fuel and other tangible items and delivery and installation of weatherization materials will be valued at the actual amount paid for these services.

(2) Home energy discounts and credits will be valued at their actual amount or value.

(3) Donated fuel, donated weatherization materials, and other countable donated tangible items will be valued at their fair market value (the commonly available household cost in the local market area) at the time of donation. Loaned supplies and equipment will be valued at their fair rental rate (in the local area) at the time of loan.

(4) Donated unpaid services, and donated third-party paid services that are not in the employee's normal line of work, will be valued at rates consistent with those ordinarily paid for similar work, by persons of similar skill in this work, in the grantee's or subrecipient's organization in the local area. If the grantee or subrecipient does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. Fringe benefits and overhead costs will not be counted. Donated third-party paid services of employees in their normal line of work will be valued at the employer's regular rate of pay, excluding the employee's fringe benefits and overhead costs.

(5) Offsetting costs and charges will be valued at their actual amount or value.

(i) Funds from grantees' regular LIHEAP allotments that are used to identify, develop, and demonstrate leveraging programs will be deducted as offsetting costs in the base period in which these funds are obligated, whether or not there are any resulting leveraged benefits. Costs incurred from grantees' own funds to identify, develop, and demonstrate leveraging programs will be deducted in the first base period that resulting leveraged benefits are provided to low-income households. If there is no resulting leveraged benefit from the expenditure of the grantee's own funds, the grantee's expenditure will not be counted or deducted.

(ii) Any costs assessed or charged to low-income households on a continuing or on-going basis, year after year, specifically for their participation in a counted leveraging program or for receipt of counted leveraged resources will be deducted in the base period these costs are charged. Any one-time costs or charges to low-income households will be deducted in the first base period the leveraging program or resource is counted. Such costs or charges, will be subtracted from the gross value of a counted resource or benefit for low-income households whose benefits are counted, but not for any households whose benefits are not counted.

(6) Only the amount of the net addition to recipient low-income households' home energy resources may be counted in the valuation of a leveraged resource.

(7) Leveraged resources and benefits, and offsetting costs and charges, will be valued according to the best data available to the grantee.

(8) Grantees must maintain, or have readily available, records sufficient to document leveraged resources and benefits, and offsetting costs and charges, and their valuation. These records must be retained for three years after the end of the base period whose leveraged resources and benefits they document.

(h) *Leveraging report.* (1) In order to qualify for leveraging incentive funds, each grantee desiring such funds must submit to the Secretary a report on the leveraged resources provided to low-income households during the preceding fiscal year or base period. These reports must contain the following information in a format established by the Secretary.

(i) For each separate leveraged resource, the report must:

(A) Briefly describe the specific leveraged resource and the specific benefit(s) provided to low-income households by this resource, and state the source of the resource;

(B) State whether the resource was acquired in cash, as a discount/credit, or in kind;

(C) Indicate the geographical area in which the benefit(s) were provided to recipients;

(D) State the month(s) and year(s) when the benefit(s) were provided to recipients;

(E) State the total dollar value of the resource or benefit(s) as determined in accordance with paragraph (g) above, indicate the source(s) of the data used, and describe how the grantee quantified the value and calculated the total amount;

(F) State the number of low-income households to whom the benefit(s) were provided, and state the eligibility standard(s) for the low-income households to whom the benefit(s) were provided;

(G) Indicate the agency or agencies that administered the resource or benefit(s); and

(H) Explain how the resource and benefit(s) meet at least one of the criteria for leveraged resources in paragraph (d)(2) above.

(ii) State the total dollar value of the leveraged resources and benefits provided to low-income households during the base period (the sum of the amounts listed pursuant to paragraph (h)(1)(i)(D) above).

(iii) State in dollars any costs incurred by the grantee to leverage resources, and any cost and charges imposed on low-income households to participate in a counted leveraging program or to receive counted leveraged benefits, as determined in accordance with paragraph (g)(5) above. Include the amount of the grantee's LIHEAP allotment under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)) that the grantee used during the base period to identify, develop, and demonstrate leveraging programs.

(iv) State the net amount of leveraged resources and benefits for the base period. (Subtract the amount in paragraph (iii) above from the amount in paragraph (ii) above.)

(2) Leveraging reports must be postmarked or hand-delivered not later than July 31 of each year, with the following exceptions: While LIHEAP funding is provided to grantees for use on the basis of the Federal fiscal year, reports must be postmarked or hand-delivered not later than October 31 of the fiscal year for which leveraging incentive funds are requested.

(3) The Department may require submission of additional documentation and/or clarification as it determines necessary to verify information in a grantee's leveraging report, to determine whether a leveraged resource is countable, and/or to determine the net valuation of a resource. In such cases, the Department will set a date by which it must receive information sufficient to document countability and/or valuation.

(i) *Determination of grantee shares of leveraging incentive funds.* Allocation of leveraging incentive funds to grantees will be computed according to a formula using the following factors and weights:

(1) Fifty (50) percent based on the net amount of countable non-Federal leveraged resources provided to low-income households during the base period by a grantee relative to its net allocation of funds under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)), as a proportion of the non-Federal leveraged resources provided by all grantees relative to their net allocation of funds under that section; and

(2) Fifty (50) percent based on the net amount of countable non-Federal leveraged resources provided to low-income households during the base period by a grantee as a proportion of the total non-Federal leveraged resources provided by all grantees;

except that no grantee may receive an award larger than its current regular allotment under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)). The calculations will be based on data contained in the leveraging reports submitted by grantees under paragraph (h) above as approved by the Department, and allocation data developed by the Department.

(j) *Uses of leveraging incentive funds.* Funds awarded to grantees under the leveraging incentive program must be used to increase or maintain heating, cooling, energy crisis, and/or weatherization benefits as a part of the grantee's LIHEAP program. These funds can be used for weatherization without regard to the weatherization maximum in section 2605(k) of Public Law 97–35 (42 U.S.C. 8624(k)). However, they cannot be counted in the base for calculation of the weatherization maximum for regular LIHEAP funds authorized under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)). Leveraging incentive funds cannot be used for costs of planning and administration, or for transfer to other HHS block grants pursuant to section 2604(f) of Public Law 97–35 (42 U.S.C. 8623(f)). They can be counted in the base for calculation of maximum grantee planning and administrative costs under section 2605(b)(9) of Public Law 97–35 (42 U.S.C. 8624(b)(9)). They cannot be counted in the base for calculation of maximum grantee transfers or carryover of regular LIHEAP funds authorized under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)).

(k) *Period of obligation for leveraging incentive funds.* Leveraging incentive funds are available for obligation from the date they are awarded to a grantee until the end of the fiscal year following the fiscal year in which they were awarded, without regard to limitations on carryover of funds in section 2607(b)(2)(B) of Public Law 97–35 (42 U.S.C. 8626(b)(2)(B)). Any leveraging incentive funds not obligated for allowable purposes by the end of this period must be returned to the Department.

[FR Doc. 92–1078 Filed 1–15–92; 8:45 am]

BILLING CODE 4150–04–M

VOL
57

ISS
11

JA
16

1992

UMI

federal register

Thursday
January 16, 1992

Part IV

Environmental Protection Agency

40 CFR Part 82

Stratospheric Ozone Protection: Significant New Alternatives Policy Program; Proposed Rule

VOL 57 ISS 11 JA 16 1992 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4092-4]

RIN 2060-AD48

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for data and advance notice of proposed rulemaking.

SUMMARY: Today's notice presents the Environmental Protection Agency's (EPA, or the Agency) preliminary strategy for implementing section 612 of the Clean Air Act as amended in 1990 (CAA). Additionally, today's notice requests producers and formulators of substitutes for Class I ozone-depleting substances (i.e., chlorofluorocarbons, halons, methyl chloroform, and carbon tetrachloride) and Class II ozone-depleting substances (i.e., hydrochlorofluorocarbons), as well as substitute equipment manufacturers, to voluntarily provide EPA with information to facilitate the timely completion of risk characterizations on these substitutes. These risk characterizations will be conducted by EPA in early 1992 to implement the Safe Alternatives Policy under section 612. This new program will be entitled the Significant New Alternatives Policy (SNAP) program.

The Agency will use the results of the risk characterization to develop an initial list of prohibited substitutes specific to a use sector; a preliminary list of corresponding acceptable substitutes will also be identified. Any substitute not reviewed by the Agency prior to the promulgation of the rules implementing the SNAP program (required by November 15, 1992) will need to be submitted for review under the SNAP program once it becomes effective. The Agency believes that the conduct of risk characterizations prior to the statutory deadline is essential to meet the November deadline and to minimize any dampening effect that this section of the CAA may have on current industry efforts to phase out ozone-depleting substances.

DATES: Written comments on this notice must be submitted on or before March 2, 1992. Data submitted by the responder can be designated as confidential business information (CBI) under 40 CFR part 2, subpart B (see section VI for more detail).

ADDRESSES: Written comments should be sent to Docket A-91-42, Central Docket Section, South Conference Room 4, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, a second copy of the comments should be sent to Elaine Haemisegger, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M Street SW., Washington, DC 20460. Information designated as confidential business information (CBI) under 40 CFR part 2, subpart B must be sent directly to the contact person for this notice.

FOR FURTHER INFORMATION CONTACT: Elaine Haemisegger at (202) 260-8961 or Nina Bonnelycke at (202) 260-1496, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Overview of Today's Notice

Today's notice is divided into seven sections, including this overview:

II. Background
- A. Regulatory History
- B. Subgroup of the Federal Advisory Committee

III. Section 612 Requirements
- A. Rulemaking
- B. Listing of Unacceptable Substitutes
- C. Petition Process
- D. 90-Day Notification

IV. Section 612 Implementation
- A. Guiding Principles
- B. Risk Characterizations
- C. SNAP/Premanufacture Notice (PMN) Overlap
- D. Schedule for Rulemaking

V. Data Requested
- A. Objective
- B. Responders
- C. Information Needs

VI. Confidential Business Information
VII. Paperwork Reduction Act
References
Appendix A: List of Class I and Class II Substances

II. Background

A. Regulatory History

On September 16, 1987, the United States and 23 other nations signed the Montreal Protocol. The original agreement set forth a timetable for reducing the production and consumption of specific ozone-depleting substances, including CFC-11, CFC-12, CFC-113, CFC-114, CFC-115, Halon-1211, Halon-1301, and Halon-2402. EPA implemented the original Protocol through regulations allocating production and consumption allowances equal to the total amount of production and consumption the United States was allowed under the Protocol (see final rule promulgated on August 12, 1988—53 FR 30566) and subsequent minor revisions and amendments promulgated on February 9 (54 FR 6376), April 3 (54 FR 13502), July 5 (54 FR 28062), and July 12 (54 FR 29337) of 1989, and February 13 (54 FR 5007), June 14 (55 FR 24490), and June 22 (55 FR 25812) of 1990.

The parties to the Montreal Protocol met in London on June 27-29, 1990 to consider amendments to the Protocol. In response to scientific evidence indicating greater than expected stratospheric ozone depletion, the Parties agreed to accelerate the phaseout schedules for the substances already controlled by the Protocol. They also added phaseout requirements for other ozone-depleting chemicals, including methyl chloroform, carbon tetrachloride, and other fully-halogenated chlorofluorocarbons (CFCs).

On November 15, 1990, Congress enacted the Clean Air Act Amendments of 1990. Title VI of the CAA requires a phaseout of CFCs, halons, and carbon tetrachloride by 2000, which is identical to the London Amendments, but with more stringent interim reductions. Title VI differs from the London Amendments by mandating a faster phaseout of methyl chloroform (2002 instead of 2005), a restriction on the use of hydrochlorofluorocarbons (HCFCs) after 2015, and a ban on the production of HCFCs after 2030. In title VI, the CFCs, halons, carbon tetrachloride, and methyl chloroform are defined as Class I substances; HCFCs are referred to as Class II substances. Appendix A lists the Class I and Class II substances.

In addition to the phaseout requirements, title VI includes provisions to reduce emissions of Class I and Class II substances to the "lowest achievable level" in all use sectors. It also requires EPA to: Ban nonessential products; establish standards and requirements for the servicing of motor vehicle air conditioners; mandate warning labels on products made with or containing Class I or Class II substances; and establish a safe alternatives program.

B. Subgroup of the Federal Advisory Committee

EPA has established a subgroup of the standing Stratospheric Ozone Protection Advisory Committee (STOPAC) to provide the Agency with guidance on the development of the safe alternatives program. In 1989, EPA organized the

STOPAC in accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. section 9(c). The STOPAC consists of members selected on the basis of their professional qualifications and diversity of perspectives and provides balanced representation from the following sectors: Industry and business; academic and educational institutions; Federal, state, and local government agencies; non-government and environmental groups; and international organizations. Since its formation, the STOPAC has provided advice and counsel to the Agency on policy and technical issues related to the protection of the stratospheric ozone layer.

In 1991, members were asked to participate in subgroups of the STOPAC to assist the Agency in developing regulations under title VI of the CAA. To date, the subgroup on safe alternatives has met once to review a detailed overview of EPA's ideas on implementation of section 612. At this meeting, there was general agreement on the need to develop a data request to provide the general public with an opportunity to provide the Agency with information on substitutes. The group supported the need to review substitutes as quickly as possible to avoid any slowdown in industry's efforts to phase out of ozone-depleting substances.

III. Section 612 Requirements

Section 612 requires EPA to develop a program for evaluating safe alternatives. EPA is referring to this new program as the Significant New Alternatives Program (SNAP). There are four major provisions of section 612, as summarized below.

A. Rulemaking

Section 612(c) requires EPA to enact rules by November 15, 1992 making it unlawful to replace any Class I or Class II substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where an alternative has been identified that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

B. Listing of Unacceptable Substitutes

Section 612(c) also requires EPA to publish a list of the substitutes prohibited for specific uses. EPA must also publish a list of acceptable alternatives for those prohibited substances.

C. Petition Process

Section 612(d) allows any person to petition EPA to add or delete a substance from the list published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. The petitioner must supply all information needed by the Agency to make a decision.

D. 90-day Notification

Any person who produces a chemical substitute for a Class I substance must notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a Class I substance. The producer must also provide the Agency with all unpublished health and safety studies on such substitutes.

IV. Implementation of Section 612

This section provides EPA's current thoughts regarding the implementation of section 612. This section discusses: Guiding principles for the SNAP program; the role of risk characterization in the SNAP program; the overlap between SNAP and the new chemicals review that is currently performed under section 5 of the Toxic Substances Control Act (TSCA); and the anticipated schedule for completing the proposed and final rulemaking for section 612. The Notice of Proposed Rulemaking for the SNAP program will develop the implementation strategy more fully.

A. Guiding Principles

EPA has identified several guiding principles it will consider in developing the SNAP program, as discussed below.

1. Evaluate Substitutes Within a Comparative Risk Framework

In evaluating each substitute, section 612 requires that the health and environmental risks be assessed comprehensively. This "overall risk" characterization will consider such factors as: Toxicity and exposure—both human health and ecological; chlorine loadings; ozone-depletion potential; global-warming potential; and flammability. To the extent possible, each of these factors will be quantified. The Agency does not believe that a scheme should be developed to numerically weight the risks quantified for each factor, thereby producing one index by which all substitutes can be ranked and evaluated. There are numerous complexities in the design of such a weighting scheme. Furthermore, a quantitative index may not allow for sufficient flexibility in making appropriate risk management decisions that may need to consider other issues, such as the quality of information, the degree of uncertainty in the data, the availability of other substitutes, and economic feasibility.

Economic feasibility must be assessed to ensure that the initial list of acceptable substitutes includes alternatives that are affordable in the near term. Economics must also be considered in evaluating new substitutes against alternatives that were previously identified as acceptable. The Agency believes that such an examination will help to minimize uncertainty in the marketplace and encourage many to substitute sooner rather than later.

2. Evaluate Substitute Risks in Context

Each substitute must be evaluated in the context of (1) the risks the substitute is replacing (i.e., the risks of continued use of the Class I of Class II substance) and (2) the risks from other substitutes.

3. Evaluate Risks by Use

Section 612 requires that substitutes be evaluated by use. Environmental and human health exposures can vary significantly depending on the particular application of a substitute. Thus, the risk characterizations must be designed to provide data on the environmental and human-health impacts associated with different use profiles.

4. Provide the Regulated Community with Information as Soon as Possible

While the SNAP regulation must be issued by November 15, 1992, the Agency recognizes the need to provide the regulated community with information on the acceptability of various substitutes as soon as possible. Given this need, EPA has decided to expedite the review process by conducting risk characterizations up front for those substitutes known to the Agency. The results of the risk characterizations will be used, as discussed in the next section, to make determinations regarding the acceptability of the substitutes. The initial lists of acceptable and prohibited substitutes will be published simultaneously with the proposed rulemaking for the SNAP program.

5. Develop Lists of Unacceptable Substitutes

The goal of the SNAP program is to prohibit substitutes that are "unacceptable." The Agency does not believe it is either feasible or appropriate to certify substitutes as "safe." The Agency also does not want to intercede in the choice of available substitutes, unless an acceptable substitute has been proposed or is being used.

6. Restrict Only Those Substitutes That Are Significantly Worse

EPA does not intend to restrict substitutes that are acceptable, but may be marginally worse on some criteria. Drawing fine distinctions concerning the acceptability of substitutes would be extremely difficult given the likely uncertainties that exist and the broad range of diverse impacts.

B. Risk Characterizations

This section reviews EPA's objectives in conducting the risk characterizations. It also describes the types of substitutes, factors, and use sectors that will be examined in the risk assessments.

1. Objectives

As mentioned earlier in this notice, the objectives in completing the risk characterizations are to: Disseminate information to industry as quickly as possible on acceptable substitutes; meet the statutory requirements and implementation deadline of November 15, 1992 for section 612; and help develop the analytical framework for evaluating substitutes under the SNAP program.

The Agency will use the results of the risk characterizations to prohibit unacceptable substitutes and to identify the corresponding acceptable substitutes. These determinations will be published simultaneously with the proposed and final regulations for the SNAP program. Any substitute not reviewed by the Agency prior to the promulgation of the rules implementing the SNAP program will need to be submitted for review under the SNAP program once it becomes effective. The Agency believes that the near-term risk assessment activities will support industry's ongoing phaseout efforts and will ensure the efficient implementation of the SNAP program. The risk characterizations will also help EPA specify more precisely the types of information that will need to be submitted to complete a substitute review under the SNAP program. EPA's preliminary assessment of data needs for the risk characterizations is included in today's notice (section V) and will be refined for inclusion in the Notice of Proposed Rulemaking for the SNAP program.

2. Substitutes To Be Evaluated

Based on the language included in the statement of policy in section 612 (a), the Agency believes that a substitute refers to any chemical, product substitute, or alternative manufacturing process that serves as a replacement for a Class I or Class II substance. While subsequent sections refer only to "substitute substances" or "substitute chemicals," EPA interprets these provisions in section 612 as incorporating the general definition of substitute presented in section 612 (a). Furthermore, section 612 (e) clearly states that a substitute can be either existing or new. This definition of a substitute should be used in responding to today's request for information on substitutes.

Section 612 (c) is also clear that a substitute may be currently or potentially available. However, the list of acceptable substitutes must include alternatives that are available in the near term to support and accelerate industry's ongoing efforts to phase out ozone-depleting substances.

3. Key Factors

The risk characterizations will address several factors, including: Chlorine loadings; ozone-depletion potential; toxicity to human health and ecosystems; air, water, and solid/hazardous waste impacts; exposure to workers, consumers, the general population, and ecosystems; flammability; and global warming potential. Where possible, these risk characterizations will quantify separately each of these endpoints. The risk assessments will also include information on the incremental costs and benefits associated with use of the substitutes.

4. Key Use Sectors

As discussed above, section 612 requires EPA to identify unacceptable substitutes by use category. To this end, the Agency will be developing risk characterizations for several key use sectors. For the purpose of today's notice, EPA is defining a use sector as an application in which an ozone-depleting substance is utilized. The most important uses of CFCs, HCFCs, halons, and methyl chloroform are found in:

- Automotive air conditioners
- Commercial air conditioning (e.g., reciprocating, screw, and centrifugal chillers)
- Home heat pumps and air conditioners
- Retail food refrigeration
- Cold storage warehouses
- Industrial process refrigeration (e.g., refineries, chemical plants, ice machines, and ice rinks)
- Refrigerated transport (e.g., rail cars and trucks)
- Household refrigerators and freezers
- Other household appliances (e.g., dehumidifiers)
- Solvent cleaning (e.g., any cleaning operation involving conveyorized vapor degreasing, open-top vapor degreasing, cold cleaning, and dry cleaning)
- Sterilization (e.g., hospitals, medical equipment, spice fumigant, pharmaceutical, commercial R&D labs, and libraries)
- Foam blowing (e.g., rigid polyurethane, rigid polyisocyanurate, flexible polyurethane, phenolic, polypropylene, polyethylene, polyolefin, PVC, and extruded polystyrene)
- Pesticide formulations
- Aerosols
- Adhesives
- Coatings and inks
- Fire extinguishing (e.g., portable halon fire-fighting units, total flooding halon extinguishing systems)

The majority of carbon tetrachloride (in excess of 97 percent) is consumed as a chemical feedstock, primarily for the production of CFC-11 and CFC-12. (1) The remaining small uses comprise such applications as: Scrubbing liquid to recover chlorine following liquefaction, a diluent for nitrogen trichloride; processing solvent for waxes, oils, and paraffins; manufacture of some drugs and lubricants; and the processing of uranium salts and metal alloys. EPA also requests information on (1) applications or uses of Class I and Class II substances that have not been identified in either section IV.B.4 or table 1 and (2) substitutes not listed in table 1.

These uses were analyzed in the regulatory impact analysis (RIA) that EPA completed to support the phaseout under the Clean Air Act and will serve as a starting point for the SNAP program. (2) Depending on the substitute and exposure information received in response to today's notice, these use-sector designations may be either aggregated or disaggregated. Furthermore, several use scenarios may be added.

C. SNAP/Premanufacture Notice (PMN) Overlap

For a new chemical, the regulatory requirements under section 5 of the Toxic Substances Control Act (TSCA) remain unchanged. Thus, EPA is considering that any new chemical—defined as any substance not currently on the TSCA inventory—will be subject to review both under section 5 of TSCA and section 612 of the CAA. To expedite review under TSCA and CAA, EPA is developing a joint review process. This process will satisfy the statutory requirements of both laws and will ensure consistency in decisions reached under SNAP and the premanufacture

notice review program for new chemicals. The Notice of Proposed Rulemaking for Section 612 will provide more detail on the interface between SNAP and the new-chemical review under TSCA.

D. Schedule for Rulemaking

EPA is planning to issue a notice of proposed rulemaking for the SNAP program by early 1992. This proposal will also include an initial list of acceptable and unacceptable substitutes based on the results of the risk characterizations. The final rule for the SNAP program will be issued in the fall of 1992. At this time, EPA will also publish its revised list of prohibited and acceptable substitutes. Any substitute not reviewed by the Agency prior to the promulgation of the rules implementing the SNAP program will need to be submitted for review under the SNAP program once it becomes effective.

V. Data Requested

A. Objective

As mentioned above, the purpose of today's notice is to elicit the voluntary submission of information on substitutes for Class I or Class II substances. Listed below are the specific types of data that will be helpful to the Agency in completing the risk characterizations. However, any available data on these factors will be considered by the Agency. Data submitted in response to this voluntary request can be designated as confidential business information (CBI) under 40 CFR, part 2, subpart B (see section VI for more detail).

B. Responders

For the purpose of today's notice, the Agency is inviting all producers and formulators of Class I or Class II substitute products, chemicals, and processes, as well as equipment manufacturers, to submit readily available data on alternatives. If respondents are aware of submissions that are being made by their trade associations in response to today's notice, and this information sufficiently addresses substitutes that they are using, there is no need for additional data to be submitted. Moreover, users of Class I and II substances that believe they have a unique or unusual substitute that is not being supplied to them expressly for use as a Class I or II substitute are requested to report this information.

To minimize the amount of reporting, the Agency has identified, by use sector, those substitutes for which it has already collected data (see table 1). EPA invites respondents to submit information on the substitutes listed in table 1 if the respondent has new information. It also requests information on (1) applications or uses of Class I and Class II substances that have not been identified in either Section IV.B.4 or table 1 and (2) substitutes not listed in table 1. There is no need to resubmit information that has already been sent to EPA's Office of Air and Radiation or Office of Toxic Substances as part of past CFC-related activities or is contained in several reports referenced at the end of today's notice. If there are any questions regarding the submission of information, the respondent is encouraged to telephone the EPA contact for this notice (see "For Further Information Contact" at the beginning of today's notice).

Data received in response to today's advance notice will be considered by EPA in its initial review of substitutes for Class I and Class II substances. The notice of proposed rulemaking on the SNAP program, which is anticipated in early 1992, will provide the public with another opportunity to provide the Agency with information on alternatives.

C. Information Needs

The Agency is requesting submitters to voluntarily provide information on the following topics to assist in examining substitutes under the SNAP program:

- *Name and description of the substitute.* To the extent possible, the substitute should be identified by its (1) commercial name, (2) chemical name, (3) trade name(s), (4) identification numbers (e.g. CAS registry, NIOSH RTECS, EPA hazardous waste, OHM-TADS, DOT/UN/NA/IMCO shipping, HSDB, NCI), (5) chemical formula, and (6) chemical structure.
- *Physical and chemical information.* Key properties that should be included to characterize the substitute are: molecular weight; physical state; melting point; boiling point; density; odor threshold' solubility; partition coefficients (Log K_{ow}, Log K_{oc}); vapor pressure; Henry's Law Constant.
- *Flammability concerns.* Data on the flammability of a substitute chemical or mixture are requested. Specifically, data on flash point and flammability limits are needed, as well as information on the procedures used for determining the flammability limits. Detail on any abatement techniques to minimize the risks associated with the use of flammable substances or mixtures is also helpful.
- *Toxicity data.* Information on the human health and ecological toxicity of substitute chemicals is needed, such as the Material Safety Data Sheet. Any data characterizing both acute and chronic effects are useful.
- *Ozone-depletion potential.* The Agency is interested in obtaining information on the ozone-depletion potential of the substitute chemicals, if readily available.
- *Global-warming potential.* Similarly, the Agency is also interested in readily available data on the total global-warming potential of the substitute chemicals.
- *VOC status.* Information on whether the substitutes would be regulated as volatile organic compounds (VOCs) under title I of the CAA is requested. VOCs are of concern because of their potential to contribute to the formation of ground-level ozone.
- *Substitute applications.* Identification of the applications in which the substitutes are likely to be used is needed. The respondent can utilize the use sector designations found in section IV.B. 4. of today's notice or can provide more detail if appropriate.
- *Anticipated market share.* Data on the anticipated sales of the substitute are useful. In addition, information on the expected quantity of the substitute sold by use sector (e.g., number of units/products or pounds of substitute) over the next five years would be helpful.
- *Availability of substitute.* The Agency needs to understand the extent to which a substitute is already commercially available or the expected date at which it may become commercially available.
- *Cost of substitute.* The cost of the substitute can be expressed, for example, in terms of $/pound (a chemical substitute) or as capital and operating costs, as well as expected equipment lifetime, for an alternative technology. Other critical cost considerations should be identified, as appropriate. For example, relative to current uses of Class I or II substances, it is important to understand the incremental costs associated with losses or gains in energy efficiency associated with use of a substitute.
- *Required changes in technology.* Detail on the changes in technologies needed to use the alternative substance is requested. In particular, the Agency is requesting information on whether the substitute can be used in existing equipment—with or without changes—or in new equipment. Data on the cost (capital and operating) and estimated life of the technology should also be submitted.
- *Relative effectiveness of the substitute.* The Agency is requesting information on the relative effectiveness

of the substitute versus the Class I or II substances being replaced. For example, in the case of a degreasing agent, is relatively more or less of the substitute chemical needed? This will have an impact on the incremental cost and environmental effects associated with use of the substitute.

• *Environmental release data.* Available data on emissions from the substitute application and equipment, as well as pollutant releases or discharge to all environmental media (ambient air, surface water, hazardous/solid waste), are needed to complete the risk characterization. Any information on any pollution controls used or that could be used in association with the substitute (e.g., emissions reduction technologies, wastewater treatment, treatment of hazardous waste) and the costs of such technology is also requested.

• *Exposure data.* Where available, the Agency is requesting extant modeling or monitoring data on exposures associated with the manufacture, formulation, transport, and use of a substitute. Descriptive information on the processing and use of the substitutes would also be helpful, especially where quantitative modeling or monitoring data are not readily available. Depending on the application, exposure profiles will be needed for workers, consumers, and the general population.

Individuals responding to today's notice are requested to provide the Agency with information on any additional factors that the submitter believes EPA should consider in its risk characterization of particular substitutes and use sectors.

VI. Confidential Business Information

Anyone submitting information must assert a claim of confidentiality at the time of submission for any data it wishes to have treated as confidential business information (CBI) under 40 CFR, part 2, subpart B. Failure to assert a claim of confidentiality at the time of submission may result in disclosure of the information by the Agency without further notice.

The Bruce Company, ICF Incorporated, Radian Corporation, and Meridian Incorporated are hereby designated as Authorized Representatives of the Administrator of the United States Environmental Protection Agency (EPA) for the purpose of assisting EPA in the development and the implementation of national regulations for the protection of stratospheric ozone, including the development of the Significant New Alternatives Policy Program under section 612 of the Clean Air Act.

The Authorized Representatives, under EPA Contract 68–D9–0068 may have access to any information received by the Global Change Division within the EPA Office of Atmospheric and Indoor Air Programs for use in reviewing the need for possible control of any substance, practice, process or activity that may reasonably be anticipated to affect stratospheric ozone. In general, this information will pertain to the feasibility, costs, and environmental and health impacts of using substitutes for Class I and Class II substances. Access to such information is necessary to ensure that the Bruce Company, ICF Incorporated, Radian Corporation, and Meridian Incorporated can complete the work required by the contract.

Authorized Representatives of the Administrator are subject to the provisions of 42 U.S.C. 7414(c) respecting confidential business information as implemented by 40 CFR 2.301(h).

VII. Paperwork Reduction Act

The information collection provisions in today's notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and has been assigned OMB control number 2060–0226.

The public-reporting burden for this one-time voluntary collection of information is estimated to average 16 hours per response. This estimate includes the time needed to search existing sources, gather and review the needed information, and prepare the package for submission to EPA. The estimated number of respondents is approximately 170, and the estimated total annual burden on respondents is 2,720 hours.

Dated: January 7, 1992.

William K. Reilly,

Administrator.

References

1. U.S. EPA, *Carbon Tetrachloride,* Working Paper, Office of Atmospheric and Indoor Air Programs.

2. U.S. EPA, *Costs and Benefits of Phasing Out Production of CFCs and Halons in the United States,* Review Draft, Office of Air and Radiation, November 3, 1989.

3. U.S. EPA, *Hydrofluorocarbons and Hydrochlorofluorocarbons: Interim Report,* External Review Draft, Office of Toxic Substances, November 15, 1990.

4. U.S. EPA, *Aqueous and Terpene Cleaning: Interim Report,* External Review Draft, Office of Toxic Substances, November 15, 1990.

5. U.S. EPA, *Analysis of the Environmental Implications of the Future Growth in Demand for Partially Halogenated Chlorinated Compounds,* Office of Air and Radiation, EPA 400/1–90–001, January 1990.

TABLE 1.—POSSIBLE ALTERNATIVES BEING CONSIDERED FOR REVIEW UNDER THE SIGNIFICANT NEW ALTERNATIVES POLICY (SNAP) PROGRAM

- Automotive Air Conditioners:
  - a. Chemical Substitutes:
    - HFC–134a, HCFC–22, HFC–152a, HCFC–22/HFC–152a/HCFC–124, HCFC–22/HFC–152a/CFC–114 (interim), cyclopropane
  - b. Alternative Technologies:
    - Absorption, air cycles, evaporative cooling, stirling cycle
- Commercial Air Conditioning:
  - a. Chemical Substitutes:
    - CFC–11 centrifugal chillers—HCFC–123, E–245
    - CFC–114 centrifugal chillers—HCFC–124, E–134
    - CFC–12 centrifugal chillers—HFC–134a
    - CFC–500 centrifugal chillers—HFC–134a, HFC–152a, HCFC–22/HFC–152a/HCFC–124
    - CFC–12 reciprocating chillers—HFC–134a, HCFC–22, HFC–152a, HCFC–22/HFC–152a/HCFC–124
    - HCFC–22 centrifugal reciprocating, and screw chillers—HFC–134a, HFC–32, HFC–32/HFC–125, ammonia
  - b. Alternative Technologies:
    - HFC–134a screw, HFC–134a centrifugal absorption, lithium bromide absorption, ammonia-water absorption, HCFC–22 screw, HCFC–22 reciprocating, HCFC–22 centrifugal
- Home Heat Pumps and Air Conditioners:
  - a. Chemical Substitutes:
    - HFC–134a, HFC–32, HFC–125, HFC–152a, HCFC–124, HFC–143a, HFC–32/HFC–134a, HFC–32/HFC–152a, HFC–32/HFC–125, HFC–32/HFC–134a/HFC–152a, HFC–32/HFC–143a, HFC–32/HFC–134a/HFC–152a/HFC–125, propane, butane, fluoroethers
  - b. Alternative Technologies:
    - Lithium bromide absorption, ammonia absorption, evaporative cooling
- Retail Food Refrigeration:
  - a. Chemical Substitutes:
    - Low temperature—HCFC–22, HFC–125, HFC–32, HFC–32/HFC–125, HCFC–22/propane/perfluoropropane, HCFC–22/propane/HFC–125 Medium/high temperature—HFC–134a, HFC–152a, HCFC–22, HCFC–22/HFC–152a/HCFC–124, HFC–32/HFC–125/HFC–152a, HFC–32/HFC–134a, fluoroethers, butane
  - b. Alternative Technologies:
    - Ammonia/brine system, stirling cycle
- Cold Storage Warehouses:
  - a. Chemical Substitutes:
    - Low temperature—HCFC–22, HFC–125, HFC–32, HFC–32/HFC–125, HCFC–22/propane/perfluoropropane, HCFC–22/propane/HFC–125, ammonia
    - Medium/high temperature—HFC–134a, HFC–152a, HCFC–22/HFC–152a/HCFC–124, HFC–32/HFC–125/HFC–152a, HFC–32/HFC–134a, fluoroethers, butane
  - b. Alternative Technologies:
    - Ammonia/brine system, stirling cycle
- Industrial Process Refrigeration:
  - a. Chemical Substitutes:

TABLE 1.—POSSIBLE ALTERNATIVES BEING CONSIDERED FOR REVIEW UNDER THE SIGNIFICANT NEW ALTERNATIVES POLICY (SNAP) PROGRAM—Continued

HCFC-22, HFC-134a, HFC-152a, HCFC-123, HCFC-22/HFC-152a/HCFC-124, HCFC-22/HFC-152a/CFC-114 (interim), HFC-32/HFC-125, propane, cyclopropane, ethane, butane, propylene, ammonia, chlorine

b. Alternative Technologies:
Ammonia/brine

Refrigerated Transport:
a. Chemical Substitutes:
HCFC-22, HFC-32, HFC-134a, HCFC-22/HFC-152a/HCFC-124, HCFC-22/HFC-152a/CFC-114 (interim), propane, cyclopropane, fluoroethers
b. Alternative Technologies:
Stirling cycle, liquid carbon dioxide, nitrogen

Household Refrigerators and Freezers:
a. Chemical substitutes:
HFC-134a, HFC-152a, HCFC-22, HCFC-22/HFC-152a/HCFC-124, HCFC-22/HCFC-142b, propane, cyclopropane, sulphur dioxide, dimethyl ether, fluoroethers, ammonia
b. Alternative Technologies:
Stirling cycle, absorption (ammonia-water), Lorenz cycle/near azeotropic refrigerant mixtures (NARMs), e.g., HCFC-22/HCFC-141b, HCFC-22/HCFC-123, dual loop cycle/mixtures (e.g., HFC-152a/HCFC-142b)

Other Household Appliances:
a. Chemical Substitutes:
HFC-134a, HCFC-22, HFC-152a, HCFC-22/HFC-152a/HCFC-124, HCFC-22/HCFC-142b, propane, cyclopropane, sulphur dioxide, ammonia
b. Alternative Technologies:
Stirling cycle, absorption

Solvent Cleaning:
a. Substitutes for the currently used controlled substances (CFC-113, MCF):
HCFC-123, HCFC-141b, HCFC-225ca, HCFC-225cb, HCFC-141b/methanol, aqueous, hydrocarbon-surfactant, alcohols, hydrocarbons, terpenes, N-methyl pyrrolidone, esters, ketones, white spirit, perfluoroalkanes, terpene alcohols, pentafluoropropanol, glycol ethers, petroleum distillates, glycol ether acetates, fluoroethers, 1,1-dichloroethane, perchloroethylene, trichloroethylene, methylene chloride
b. Alternative Technologies:
No-clean fluxes, plasma cleaning, ice particles, thermal vacuum deoiling, supercritical fluids, controlled atmosphere soldering, pressurized gases, ultraviolet light/ozone cleaning, low-solid fluxes, no-clean solder pastes, steam cleaning, solderability preservatives (organic, polymeric, and metallic), reactive gas soldering, conductive adhesives, organic acid fluxes

Sterilization:
a. Substitutes for CFC-12, currently used as a carrier for ethylene oxide:
HCFC-124, HFC-125, HFC-134a, carbon dioxide, nitrogen
b. Alternative Technologies:
Steam, dry heat, pure ethylene oxide, formaldehyde, peracetic acid, gluteraldehyde, chlorine dioxide, gaseous ozone, vapor phase hydrogen peroxide, ionized gas plasma, selective component sterilization, radiation, disposables

Foam Blowing—Polyurethane, Flexible Slabstock:
a. Substitutes for the currently used controlled substance (CFC-11):
HCFC-141b, HCFC-123, methylene chloride, increased water, acetone, methyl chloroform (interim), AB technology, liquid carbon dioxide
b. Alternative Technologies:
New polyol technologies
c. Alternative products:
Fiberfill, natural latex foams, polyester batting

Foam Blowing—Polyurethane, Flexible Molded:
a. Substitutes for the currently used controlled substance (CFC-11):
HCFC-123, HCFC-141b, increased water, methylene chloride, methyl chloroform (interim)
b. Alternative Technologies:
New polyol technologies

Foam Blowing—Polyurethane, Rigid Appliance Insulation:
a. Substitutes for the currently used controlled substances (CFC-11 and CFC-12):
HCFC-123, HCFC-141b, HCFC-22, HFC-152a, HFC-134a, HFC-125, HCFC-123/HCFC-141b, HCFC-22, HCFC-142b, carbon dioxide from increased water, 100% carbon dioxide, perfluoroalkanes, fluorinated ethers, pentane, isopentane, hexane, partially fluorinated alkanes, all-water-blown systems, air
b. Alternative Products:
Fiberglass, vacuum panels

Foam Blowing—Polyurethane/Polyisocyanurate Rigid Laminated Insulation:
a. Substitutes for the currently used controlled substances (CFC-11 and CFC-12):
HCFC-123, HFC-152a, HFC-125, HCFC-141b, HCFC-22, HCFC-123/HCFC-141b, HCFC-22/HCFC-142b, 2-chloropropane, perfluoroalkanes, 100% carbon dioxide, carbon dioxide from increased water, partially fluorinated alkanes, air
b. Alternative Products:
Expanded polystyrene, fiberboard, fiberglass

Foam Blowing—Polyurethane Rigid Spray-Applied, Slabstock, and Poured-in-place:
a. Substitutes for the currently used controlled substances (CFC-11 and CFC-12):
HCFC-123, HCFC-141b, HCFC-22, HFC-152a, HFC-134a, HCFC-123/HCFC-141b, carbon dioxide from increased water, 100% carbon dioxide (all-water-blown), pentane, isopentane, partially fluorinated alkanes, air
b. Alternative Products:
Fiberglass, expanded polystyrene, etc.

Foam Blowing—Polyurethane Integral Skin and Miscellaneous
a. Substitutes for the currently used controlled substance (CFC-11):
HCFC-22, HCFC-123, HCFC-141b, isopentane, pentane, butane, methylene chloride, air, water, acetone, partially fluorinated alkanes, perfluorinated alkanes

Foam Blowing—Phenolics:
a. Substitutes for the currently used controlled substances (CFC-11, CFC-113):
HCFC-141b, HCFC-123, HFC-134a, HFC-152a, HCFC-22/HCFC-142b, pentane
b. Alternative Products:
Fiberglass, expanded polystyrene, etc.

Foam Blowing—Polystyrene Extruded Boardstock
a. Substitutes for currently used controlled substances (CFC-12):
HCFC-22, HCFC-142b, HFC-134a, HCFC-124, HFC-152a, hydrocarbons
b. Alternative Products:
Expandable polystyrene, fiberboard

Foam Blowing—Extruded Sheet:
a. Substitutes for currently used controlled substance (HCFC-22)
HFC-152a, HFC-134a, carbon dioxide, n-pentane, butane, isopentane, isobutane

Foam Blowing, Polyolefin:
a. Substitutes for currently used controlled substances (CFC-11, CFC-12, CFC-114):
HCFC-22, HCFC-142b, HCFC-141b, HCFC-123, HCFC-124, HFC-134a, HFC-152a, butane, aliphatic hydrocarbons, ketones, methylene chloride
b. Alternative Products:
Paper, cardboard, expanded polystyrene

Pesticide Formulations:
a. Substitutes for CFC-113 and MCF, controlled substances currently used as inerts:
HCFCs, water-based with hydrocarbons, methylene chloride, trichloroethylene, perchloroethylene
b. Alternative Technologies:
Alternative application methods

Aerosols/Pressurized Containers:
a. Substitutes for the currently used controlled substances (CFC-11, CFC-12, CFC-113, CFC-114, MCF):
HFC-125, HCFC-124, HFC-134a, HCFC-123, HCFC-22, HCFC-123/HCFC-141b, HCFC-22/HCFC-142b, HCFC-22/HFC-152a, water-based formulations, isopropyl alcohol, methylene chloride, acetone, ethanol, petroleum distillates, isobutane/propane, carbon dioxide, nitrogen, compressed air, perchloroethylene, propane, isobutane, n-butane, alcohols, ketones, esters, chlorinated solvents
b. Alternative Technologies:
Alternative delivery systems (e.g., pumps and pistons)

Adhesives:
a. Substitutes for MCF, currently used as a solvent in the adhesive formulation:
Petroleum distillates, methylene chloride, ketones, esters, terpenes, glycol ethers, glycol esters, perchloroethylene, glycol ether acetates, hydrocarbon solvents, water-based solvents
b. Alternative Technologies:
Hot melt, high-solids, uv-curable

Coatings and Inks:
a. Chemical Substitutes:
Petroleum distillates, methylene chloride, ketones, esters, terpenes, glycol ethers, glycol esters, diluents, terpene alcohols, binders, perchloroethylene, glycol ether acetates, hydrocarbon solvents
b. Alternative technologies for current formulations containing MCF as solvent:
Water-based formulations, high-solids, high transfer efficiency, thermoplastics, powder coatings, radiation curing

Fire Extinguishing:
a. Chemical Substitutes:
Halon 1211—bromodifluoromethane (interim), HCFC-22, HCFC-123, HFC-23, HCFC-124, HFC-125, HCFC-123/HCFC-142b, HCFC-123/HCFC-22, HCFC-123/HFC-23, HCFC-123/HCFC-124, heptafluoropropane, heptafluoropropane/bromodifluoromethane, water, aqueous film-forming foam, CO_2, perfluorinated butane, dry chemical

TABLE 1.—POSSIBLE ALTERNATIVES BEING CONSIDERED FOR REVIEW UNDER THE SIGNIFICANT NEW ALTERNATIVES POLICY (SNAP) PROGRAM—Continued

Halon 1301—bromodifluoromethane (interim), HFC–125, heptafluoropropane, bromodifluoromethane/heptafluoropropane, water, CO_2, CO_2/water hybrid, perfluorinated butane

EPA may evaluate some of the substitutes listed above under its Significant New Alternatives Policy (SNAP) Program. Because this evaluation is not yet complete, no conclusions should be drawn about the acceptability of any of these substitutes.

Appendix A

Section 602: Listing of

Class I and Class II Substances

Clean Air Act Amendments of 1990

Class I Substances

Group I

chlorofluorocarbon-11 (CFC-11)
chlorofluorocarbon-12 (CFC-12)
chlorofluorocarbon-113 (CFC-113)
chlorofluorocarbon-114 (CFC-114)
chlorofluorocarbon-115 (CFC-115)

Group II

halon-1211
halon-1301
halon-2402

Group III

chlorofluorocarbon-13 (CFC-13)
chlorofluorocarbon-111 (CFC-111)
chlorofluorocarbon-112 (CFC-112)
chlorofluorocarbon-211 (CFC-211)
chlorofluorocarbon-212 (CFC-212)
chlorofluorocarbon-213 (CFC-213)
chlorofluorocarbon-214 (CFC-214)
chlorofluorocarbon-215 (CFC-215)
chlorofluorocarbon-216 (CFC-216)
chlorofluorocarbon-217 (CFC-217)

Group IV

carbon tetrachloride

Group V

methyl chloroform

Class II Substances

hydrochlorofluorocarbon-21 (HCFC-21)
hydrochlorofluorocarbon-22 (HCFC-22)
hydrochlorofluorocarbon-31 (HCFC-31)
hydrochlorofluorocarbon-121 (HCFC-121)
hydrochlorofluorocarbon-122 (HCFC-122)
hydrochlorofluorocarbon-123 (HCFC-123)
hydrochlorofluorocarbon-124 (HCFC-124)
hydrochlorofluorocarbon-131 (HCFC-131)
hydrochlorofluorocarbon-132 (HCFC-132)
hydrochlorofluorocarbon-133 (HCFC-133)
hydrochlorofluorocarbon-141 (HCFC-141)
hydrochlorofluorocarbon-142 (HCFC-142)
hydrochlorofluorocarbon-221 (HCFC-221)
hydrochlorofluorocarbon-222 (HCFC-222)
hydrochlorofluorocarbon-223 (HCFC-223)
hydrochlorofluorocarbon-224 (HCFC-224)
hydrochlorofluorocarbon-225 (HCFC-225)
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hydrochlorofluorocarbon-242 (HCFC-242)
hydrochlorofluorocarbon-243 (HCFC-243)
hydrochlorofluorocarbon-244 (HCFC-244)
hydrochlorofluorocarbon-251 (HCFC-251)
hydrochlorofluorocarbon-252 (HCFC-252)
hydrochlorofluorocarbon-253 (HCFC-253)
hydrochlorofluorocarbon-261 (HCFC-261)
hydrochlorofluorocarbon-262 (HCFC-262)
hydrochlorofluorocarbon-271 (HCFC-271)

[FR Doc. 92–942 Filed 1–15–92; 8:45 am]
BILLING CODE 6560–50–M

VOL 57 ISS 11 JA 16 1992 UMI

federal register

Thursday
January 16, 1992

Part V

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Proposed Rule

VOL 57 ISS 11 JA 16 1992

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4092-5]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document EPA proposes regulations to ban nonessential products releasing class I ozone-depleting substances and require the elimination of emissions from products using class I substances under sections 610 and 608 of the Clean Air Act, as amended. The substances affected by this proposed rulemaking include chlorofluorocarbons (CFCs) and halons.

DATES: If requested by January 23, 1992, EPA will hold a public hearing on this notice on January 31, 1992. The contact person listed below may be called regarding a hearing. Written comments on this notice must be submitted on or before February 18, 1992, if the hearing is not held, or March 2, 1992, if the hearing is held.

ADDRESSES: Comments should be submitted in duplicate to the attention of Air Docket No. A–91–39 at: U.S. Environmental Protection Agency (LE–131), 401 M Street, SW., Washington, DC 20460. The Docket is located in room M–1500, first floor, Waterside Mall and materials relevant to this rulemaking may be inspected from 8:30 a.m. to 12 noon and from 1:30 to 3:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Blank at (202) 260–8894, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR–445, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the Problem

The stratospheric ozone layer protects the earth from the penetration of harmful ultraviolet (UV-B) radiation. A national and international consensus has developed that certain industrially produced halocarbons (including chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform) can transport chlorine and bromine to the stratosphere and there contribute to the depletion of the ozone layer. To the extent depletion occurs, penetration of UV-B radiation increases, resulting in potential health and environmental harm including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to crops and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics.

B. Aerosol Ban in 1978

Following initial concerns raised by research scientists Molina and Rowland in 1974 regarding possible ozone depletion from CFCs, EPA and the Food and Drug Administration (FDA) acted on March 17, 1978 (43 FR 11301; 43 FR 11318) to ban the use of CFCs as aerosol propellants in all but "essential applications." During the mid-1970s, use as aerosol propellants constitute over 50 percent of total CFC consumption in the United States. The 1978 ban reduced aerosol use of CFCs in this country by approximately 95 percent, eliminating nearly half of the total U.S. consumption of these chemicals

Some CFC aerosol products were specifically exempted from the ban based on a determination of "essentiality." (See reference Essential Use Determinations-Revised, 1978.) Other pressurized dispensers containing CFCs were excluded from the ban because they did not fit the narrow definition of "aerosol propellant."

In the years following the aerosol ban, CFC use increased significantly in the refrigeration, foam and solvent-using industries. By 1985, CFR use in the United States had surpassed pre-1974 levels and represented 29 percent of total global CFC consumption.

C. Montreal Protocol

EPA evaluated the risks of ozone depletion in Assessing the Risks of Trade Gasses That Can Modify the Stratosphere (1987) and concluded that an international approach was necessary to effectively safeguard the ozone layer. Because releases of CFCs from all areas mix in the atmosphere to affect stratospheric ozone globally, it became clear that efforts to reduce emissions from specific products by only a few nations could quickly be offset by increases in emissions from other nations, leaving the risks to the ozone layer unchanged.

Recognizing the global nature of this issue, EPA participated in negotiations organized by the United Nations Environment Program (UNEP) to develop an international agreement to protect the ozone layer. In September 1987, the United States and 22 other countries signed the Montreal Protocol on Substances that Deplete the Ozone Layer. The 1987 Protocol called for a freeze in the production and consumption (defined as production plus imports minus exports of bulk chemicals) of CFC–11, –12, –113, –114, –115, and halon 1211, 1301 and 2402 at 1986 levels, and a phased reduction of the CFCs to 50 percent of 1986 levels by 1998. Currently, 71 nations representing over 90 percent of the world's consumption are party to the Protocol.

In its August 12, 1988 final rulemaking (53 FR 30566) EPA promulgated regulations implementing their requirements of the 1987 Protocol through a system of tradable allowances. EPA apportioned these allowances to producers and importers of these "controlled substances" based on their 1986 levels. To monitor industry's compliance with the production and consumption limits, EPA required recordkeeping and quarterly reporting and conducted periodic compliance reviews and inspections.

D. Excise Tax

As part of the Omnibus Budget Reconciliation Act of 1989, the United States Congress levied an excise tax on the sale of CFCs and other chemicals which deplete the ozone layer, with specific exemptions for exports and recycling. The tax went into effect on January 1, 1990 and has operated as an extremely useful complement to EPA's regulations limiting production and consumption. By raising the costs of using virgin controlled substances, the tax has created an added incentive for industry to shift out of these substances and increase recycling activities, and provided a market for alternative chemicals and processes. The original excise tax was amended by the Internal Revenue Service (IRS) in 1991 to include methyl chloroform, carbon tetrachloride and the other CFCs regulated by the amended Montreal Protocol and title VI of the Clean Air Act Amendments of 1990.

E. London Amendments to the Montreal Protocol

In response to overwhelming scientific evidence of increased stratospheric ozone depletion, the Parties to the Protocol passed amendments and adjustments at their second meeting held in London on June 29, 1990 which called for a full phase-out of the regulated CFCs and halons by 2000, a phase-out of carbon tetrachloride and "other CFCs" by 2000 and a phase-out of methyl chloroform by 2005. The Parties also passed a non-binding resolution regarding the use of hydrochlorofluorocarbons (HCFCs) as

interim substitutes for CFCs. Partially halogenated HCFCs add much less chlorine to the stratosphere than the fully halogenated CFCs, but still pose some threat to the ozone layer. (See 56 FR 2420; January 22, 1991 for more information on the relative effects of different ozone-depleting substances.

F. Clean Air Act Amendments of 1990, Title VI

On November 15, 1990 the Clean Air Act Amendments of 1990 were signed into law. The requirements in new title VI include phase-out controls similar to those in the London Amendments, although interim targets are more stringent and the phase-out date of methyl chloroform is earlier. Unlike the amended Montreal Protocol, the Clean Air Act also requires regulations restricting the uses of controlled ozone-depleting substances, including provisions to reduce emissions of controlled substances to the "lowest achievable level" in all use sectors, to ban nonessential products, to mandate warning labels, and to establish a safe alternatives program.

G. Subgroup of the Federal Advisory Committee

In the development of this proposed regulation, EPA was assisted by a subgroup of the standing Stratospheric Ozone Protection Advisory Committee (STOPAC). In 1989, EPA established the STOPAC in accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 9(c). The STOPAC consists of members selected on the basis of their professional qualifications and diversity of perspectives and provides balanced representation from the following sectors: Industry and business; academic and educational institutions; Federal, state and local government agencies; non-government and environmental groups; and international organizations. Since its formation, the STOPAC has provided advice and counsel to the Agency on policy and technical issues related to the protection of the stratospheric ozone layer.

In 1990, members were asked to participate in subgroups of the STOPAC to assist the Agency in developing regulations under the new requirement of title VI of the Clean Air Act Amendments of 1990. To date, the Subgroup on Nonessential Products has met twice, reviewing two in-depth briefing packets (contained in Docket A–91–39) and offering comments and technical expertise on the development of today's proposed rule.

II. Requirements Under Section 610

A. Class I Products

Title VI of the Clean Air Act as amended divides the controlled ozone-depleting chemicals into two distinct classes. Class I is comprised of CFCs, halons, carbon tetrachloride and methyl chloroform. Class II is comprised of HCFCs. (See listing notice January 22, 1991; 56 FR 2420.)

Section 610(b) of the Act requires EPA to "identify nonessential products that release class I substances into the environment (including any release during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce."

Section 610(b) (1) and (2) specify products to be prohibited under this requirement, including "chlorofluorocarbon-propelled plastic party streamers and noise horns" and "chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment."

Section 610(b)(3) further requires EPA to include in the prohibition at a minimum "other consumer products" that are determined by EPA to release class I substances and to be nonessential. In determining whether a product is nonessential, EPA is instructed to consider the following criteria: "The purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors."

Final regulations for the class I products are required by section 610 to be promulgated within one year after enactment of the Clean Air Act Amendments of 1990 (November 15, 1991) and to take effect 24 months after enactment (November 15, 1992). While final regulations implementing section 610(b) will be published shortly after the statutory deadline, the effective date required by section 610(c) remains unchanged.

B. Class II Products

Section 610(d)(1) states that after January 1, 1994, "it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce—(A) any aerosol product or other pressurized dispenser which contains a class II substance; or (B) any plastic foam product which contains, or is manufactured with, a class II substance." Section 610(d)(2) authorizes EPA to grant exceptions to the class II ban in certain circumstances.

EPA believes that, unlike the class I ban, the class II ban is self-executing and that consequently EPA is not required to promulgate regulations within one year of enactment under section 610 to implement the class II ban. Section 610(d) bans the sale of the specified class II products by its own terms, without any reference to required regulations. Section 610(c), on the other hand, bans only the sale of nonessential class I products to which the Administrator's regulations issued under section 610(a) implementing section 610(b) apply.[1] EPA believes it has the authority to issue regulations as necessary to implement the class II ban under sections 610 and 301 of the Clean Air Act, as amended, and intends to do so at a later date to establish a procedure for granting exceptions under 610(d)(2). EPA intends to collect more specific information on the use of Class II substances in foams and aerosols in the near future.

C. Medical Products

Section 610(e) states that "nothing in this section shall apply to any medical devices as defined in section 601(8)." Section 601(8) defines "medical device" as "any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—(A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner of the Food and Drug Administration; and (B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator."

No medical products as defined above are included in the provisions of today's proposal, but regulation of medical products may be considered at a later date under the conditions in this subparagraph.

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[1] Although the legislative history of section 610 is unenlightening on this point, the Senate Statement of Managers description of a ban on the venting of refrigerants, which is stated as an outright ban similarly to the phrasing of the class II ban, specifically states that the refrigerant ban is self-executing and will take effect on the stated date even if that date is in advance of EPA regulations implementing the ban. See Cong. Rec. S16946 (daily ed. Oct. 27, 1990) (Chaffee-Baucus Statement of Managers).

D. Relation to Section 608 (Emissions Reduction)

EPA believes that the authority granted under section 608 (National Emission Reduction Program) is relevant to today's proposed rulemaking. Section 608(a)(3) requires EPA to set standards for reducing emissions of controlled substances to their "lowest achievable level," including "requirements to use alternative substances." EPA believes that where products using class I substances have adequate quantities of substitutes readily available, EPA has the authority under section 608 to require reducing emissions of controlled substances to the lowest achievable level of zero. This would amount to an effective ban on the use of controlled substances in those products quite apart from the section 610 ban on nonessential products. EPA believes that the authority under section 608 therefore overlaps with the requirements of section 610 for those use sectors where substitutes are commercially available, and is referencing it here in support of today's proposal to implement section 610.

III. Proposed Rule

EPA today proposes to implement the prohibition required by section 610 on the sale or distribution in interstate commerce of specified class I products and other nonessential products. EPA believes that the term "interstate commerce" in section 610 refers to the product's entire distribution chain up to and including the point of sale to the ultimate consumer. As such, all sale and distribution, including retail sale, would be prohibited as of the effective date of November 15, 1992.

EPA believes that there is sufficient time before the final regulation goes into effect on November 15, 1992 for retailers to liquidate any remaining stocks of prohibited products. EPA requests comment on any barriers that might prevent retailers from liquidating such stocks before the effective date.

A. Specified Class I Products

The prohibition on the sale and distribution of the products specified in section 610(b) (1) and (2) is required at a minimum. EPA believes that the excise tax on CFCs combined with the scarcity created by the limits on production and imports has sufficiently raised the price of CFCs so that it may already be more economical to use substitutes in the products specified by section 610(b) (1) and (2). Furthermore, as the phase-out and tax progress toward the year 2000 the cost of using CFCs will continue to rise, creating an increasing incentive to shift to alternatives. EPA proposes the following definitions of the specified products, both in terms of technical descriptions and commercial examples.

1. CFC-Propelled Plastic Party Streamers

EPA found only one type of product that fits the description "propelled plastic party streamers" in section 601(b)(1). String confetti is a household novelty product comprised of a plastic resin, a solvent, and a propellant mixed together in a pressurized can. When the dispensing nozzle is depressed, blowing action converts the resin into plastic foam streamers and propels them a few feet. Once popular at children's parties, string confetti was commonly known by its commercial name "silly string."

String confetti was originally manufactured using CFC–12 as the blowing agent. However, EPA is unaware of any company that currently uses CFCs in this type of product. The use of CFC–12 in string confetti was not prohibited by EPA's 1978 aerosol ban because technically the CFC also served as an active ingredient in the product and not exclusively as an aerosol propellant. Manufacturers switched initially to hydrocarbon systems but, due to flammability concerns, have since moved to HCFC–22 systems. HCFC–22 is a class II substance with an ozone depletion potential of 0.05 (one twentieth of CFC–12). (See listing notice of ozone depleting substances 56 FR 2420; January 22, 1991.)

Vermont and Minnesota have already passed laws banning the sale of CFC-propelled plastic party streamers. EPA believes that since the tax and the limits on supply will continue to raise the cost of CFCs, it is unlikely that they would again be used to propel string confetti. Nonetheless, as required by the statute, EPA today proposes to prohibit the sale or distribution of any CFC-propelled plastic party streamers.

2. CFC-Propelled Noise Horns

A noise horn is generally regarded as a product from which the high dispensing pressure of a propellant produces a loud piercing sound that can travel long distances. EPA is aware of several products that could fit the description of "noise horns" in section 610(b)(1), including marine safety noise horns, sporting event noise horns, personal safety noise horns, wall-mounted industrial noise horns used as alarms in factories and other work areas, and intruder noise horns as alarms in homes and cars.

Boaters have commonly used noise horns propelled by CFC–12 to meet U.S. Coast Guard Navigation Rules mandating that a signalling device be aboard vessels of all sizes in international and inland waters. One of the largest manufacturers of such "marine safety" noise horns reported that all of its horn products except for the smallest canister (2.1 ounces) had either been reformulated to use HCFC–22 or dropped from the product line. According to this manufacturer, the reason that CFC–12 is still used in its smallest canister is that the Department of Transportation (DOT) has not yet approved a canister of that size to accommodate the different pressure of HCFC–22.

EPA's report Alternative Formulations to Reduce CFC Use in U.S. Exempted and Excluded Aerosol Products (1989) states that as of September 1989, "several manufacturers" of noise horns had switched from CFC–12 to HCFC–22. Noise horns propelled with HCFC–22 meet or exceed all Coast Guard requirements and are available in canisters as small as 4.5 ounces. EPA believes that 4.5 ounce canisters are sufficiently small to satisfy consumer needs for all recreational, boating, automotive and home uses, and should not cost significantly more than the currently available 2.1 ounce size that uses CFC–12. Other alternative propellants for noise horns include HCFC–142b (in a mixture with HCFC–22), hydrocarbons, and hydrofluorocarbon (HFC) –134a. Hydrocarbons have not been commonly used due to flammability concerns. HFC–134a appears promising as a non-chlorinated substitute that unlike HCFC–22 poses no threat to the ozone layer. HFC–134a has recently become available in limited commercial quantities.

Other products propelled with CFCs that appear to fit the description of "noise horns" in section 610(b)(1) include sporting event noise horns, personal safety noise horns, wall-mounted industrial noise horns used as alarms in factories and other work areas, and intruder noise horns used as alarms in homes and cars. The availability of substitutes for these other noise horn products is similar to that of the marine safety noise horns. In fact, the same noise horn product may perform several of the uses listed above.

The use of CFC-12 in noise horns was not prohibited by the 1978 aerosol ban because the CFC served as the sole ingredient in the product and not exclusively as a propellant. However, Vermont and Minnesota have since passed laws banning the sale of CFC-propelled noise horns. As with the party streamers, EPA believes that the tax and the limits on supply have sufficiently

raised the price of CFCs so that it may already be more economical to use substitutes in noise horns.

EPA today proposes to ban all noise horns propelled with CFCs. EPA recognizes that some uses of noise horns are intended for safety. However, EPA believes that the current and potential availability of effective substitutes (including either the use of a different propellant or a slightly larger canister pending DOT approval of the smallest) underscores the statutory intent to prohibit the sale and distribution of *any* CFC-propelled noise horns.

3. *CFC-containing Cleaning Fluids for Noncommercial Electronic and Photographic Equipment*

Cleaning fluids are generally used to remove oxides, contaminants, dust, dirt, oil, airborne chemicals, fingerprints, and fluxes (the waste produced during soldering) from electronic and photographic equipment. These fluids can be comprised of CFCs, HCFCs, methyl chloroform or alcohols either alone or in mixtures.

EPA has identified several products that could be considered CFC-containing cleaning fluids for the uses described in section 610(b)(2). These products fall into four broad categories: solvent wipes containing CFC-113 (pre-moistened cloths), liquid packaging containing CFC-113 (applied with a cloth or other applicator), solvent sprays containing CFC-113 and/or CFC-11 (sprayed from a pressurized container through a nozzle or tube), and gas sprays containing CFC-12 (pressurized fluid released as a gas to physically blow particles from a surface). The specific intended noncommercial uses of these cleaning fluid products include tape and computer disk head cleaners, circuit and contact cleaners, film and negative cleaners, flux removers, and camera lens and computer keyboard dusters.

In identifying products that could be affected by the requirements under section 610(b)(2), EPA recognizes the specification made by Congress that only noncommercial uses of these cleaning fluids are affected by this particular prohibition. This distinction roughly mirrors the exemption to the 1978 aerosol ban granted by EPA for "nonconsumer articles used as cleaner-solvents, lubricants or coatings for electrical or electronic equipment" (See final rule March 17, 1978; 53 FR 11324.) However, as noted above, the 1978 ban applied only to aerosol propellant uses of CFCs. Other noncommercial CFC-containing cleaning fluids affected by section 610(b)(2), including non-aerosol pressurized dispensers, were not prohibited in 1978 because the CFCs were not technically acting as aerosol propellants.

Vermont and Oregon have passed laws banning the sale of non-commercial cleaning fluids containing CFCs. EPA believes that the tax and the limits on supply are providing a continual incentive for users of CFCs in noncommercial cleaning fluids to switch to alternatives.

EPA today proposes several options to implement the specific requirements of section 610(b)(2) to prohibit the sale or distribution of CFC-containing cleaning fluids for noncommercial use without disrupting the sale or distribution of these same cleaning fluids for commercial use. Since commercial and noncommercial photographic and electronic equipment are frequently the same products used in different contexts (e.g., the same computer could be used in either a commercial or a noncommercial setting) noncommercial use of cleaning fluids could be difficult to distinguish from commercial use at the point of sale. EPA's options are intended to address this potential difficulty. These options are discussed below individually, but are not necessarily mutually exclusive to the extent that two or more options could be coordinated.

The first option is to require that all CFC-containing cleaning fluids be sold in bulk (i.e., either in large cans or in cases of small cans). The rationale behind this option is that most commercial users of these cleaning fluids would likely require greater amounts than a noncommercial user, and that most noncommercial users would not likely buy bulk quantities due to the higher cost. A problem with this approach, however, is that some commercial users may only need small amounts of these cleaning fluids. EPA would not want to encourage waste of available CFCs or add unnecessarily to their cost where there may be a legitimate commercial need. Additionally, while the increased cost of bulk sales would be an incentive for noncommercial users not to buy the CFC-containing cleaning fluids, they would not in any way be prevented from doing so.

A second option is to prohibit the sale of CFC-containing cleaning fluids by outlets that are predominantly oriented toward noncommercial users. In this way, typical sources of these cleaning fluids for noncommercial users would no longer have them available. One national retail chain of noncommercial electronic equipment has already pledged to stop carrying CFC-containing cleaning fluids.

The chief problem with this option is developing a definition for "predominantly oriented to noncommercial users." While some retail stores would clearly fit this description, there would inevitably be situations where it is difficult to make a determination (e.g., a distributor that sells wholesale to commercial users but also has a window for retail sales). In addition, some commercial users might be purchasing their supplies from outlets that are generally thought to be for noncommercial users. Finally, as in the first option, there would be no mechanism to actually prevent a noncommercial user from buying the cleaning fluids.

A third option is to require either check-out signs in stores or warnings on the labels of all CFC-containing cleaning fluids indicating that they are intended for commercial use only. EPA believes that labeling will be an important aspect of its Stratospheric Ozone Protection Program and is currently developing a proposal to implement the labeling requirements in section 611 of the Clean Air Act, as amended. However, additional labeling could be costly and anecdotal evidence suggests that when consumers see a product labeled "for commercial use only" they may actually be more likely to purchase the product because they think that it is more effective that a standard consumer product. Once again, even with a label, a noncommercial user would still be able to buy the cleaning fluid.

A fourth option is to require recordkeeping by the distributors of CFC-containing cleaning fluids at the point of sale, documenting the fact that they were sold only to commercial users. EPA believes that this is the best approach to effectuate the required ban on the noncommercial use of these cleaning fluids. A paper trail of this sort already exists in many cases for tax purposes or as part of standard business practices. EPA's additional recordkeeping requirement could be small enough as not to present an unreasonable burden and broad enough to be fulfilled by the tax or business records where they are already kept.

For example, the information needed by EPA to verify that the sale of the cleaning fluid was to a commercial user would be the following: (1) Name of the person or business; (2) business address; (3) commercial identification number; (4) date of transaction; and (5) quantity of product purchased. The commercial identification number requirement could be fulfilled by one of several options, including a federal employer identification number (EIN), a state

sales tax exemption number or local business license number. Under this option, consumers without a commercial identification number would be unable to purchase CFC-containing cleaning fluids.

Nearly all states have sales tax and require recordkeeping for commercial-use and resale exemptions. The additional burden on distributors already keeping these records for tax purposes would be very small. The recordkeeping burden for those distributors operating in states without sales tax would be slightly greater, but EPA believes that it would still be minimal.

The distributor would be required to retain this information for each customer buying CFC-containing cleaning fluids. For the purposes of today's proposed rulemaking, EPA proposes to define the term "distributor" as the seller of a product to its ultimate consumer. This ultimate consumer could generally be considered either a commercial or noncommercial user of the product. Under today's proposed regulation, however, distributors would only be permitted to sell CFC-containing cleaning fluids to commercial users with one of the identification numbers specified above. Included in this definition would be both domestic distribution and distribution for export from the United States.

The information could be kept by the distributor as part of tax exemption paperwork, computer files or other existing business records. The recordkeeping required on a transaction-by-transaction basis would then be tallied and balanced against total purchases of CFC-containing cleaning fluids by the distributor as a compliance check.

Alternatively, the recordkeeping requirement could be limited to just the following: (1) Name of the person or business; (2) business address; (3) commercial identification number; and (4) date of first transaction. Under this approach, new records would not have to be completed at every transaction but commercial use information would have to be renewed every year in order to be considered valid. In other words, one record for each commercial buyer of CFC-containing cleaning fluids would fulfill EPA's proposed requirement for one full year after the information is recorded. Thus the recordkeeping burden on industry would be negligible. After one year, the record for each commercial buyer would have to be renewed in order to insure that the information is still accurate. Under either approach to this fourth option, the distributor would be required to keep the records on file for three years.

While requiring transaction-specific recordkeeping places a greater burden on industry than annual recordkeeping, eliminating transaction specific information could hinder the necessary compliance monitoring of the ban on noncommercial sales. EPA specifically requests comment on the appropriateness of including transaction-specific information in the recordkeeping requirement.

The total volume of CFCs used in the U.S. in 1988 for both commercial and noncommercial cleaning fluids for electronic and photographic equipment was approximately 3000 metric tons, or less than 0.8 percent of the total use of class I substances (weighted for ozone-depletion potential). EPA estimates that noncommercial sales represented a small but not insignificant fraction of this total 1988 use estimate and that total sales have dropped since 1988 due to the tax and the scarcity of CFCs caused by the phase-out regulations. As a result, the current sales of commercial cleaning fluids for electronic and photographic equipment are likely to be substantially lower than the 1988 level.

As with the party streamers and noise horns, EPA believes that the excise tax on CFCs combined with the scarcity created by the limits on production and imports have already raised the price of CFCs sufficiently so that it may no longer be economical to use them as cleaning fluids for noncommercial equipment. EPA is therefore proposing to implement the required ban through option four described above. However, EPA is especially interested in comments regarding the above options, including EPA's proposed recordkeeping requirement, or additional options for distinguishing between commercial and noncommercial use of CFC-containing cleaning fluids.

B. Other Class I Products

Section 610(b) requires EPA to identify and prohibit the sale or distribution of nonessential products releasing class I substances. The statute requires that, at a minimum, the prohibition apply to the above specified products and "other consumer products" releasing class I substances determined by EPA to be nonessential. Criteria for EPA to consider in determining whether a product is nonessential are listed in section 610(b)(3). Below, EPA first reviews the 1978 ban on aerosols using CFCs as propellants and then proposes an explanation of the criteria listed in section 610(b)(3), a definition of the term "product," and specific products EPA believes may fit the criteria.

1. Criteria Under the 1978 Aerosol Ban

EPA previously addressed the issue of nonessential products releasing ozone-depleting substances during the development of its 1978 ban on aerosol propellant uses of CFCs under the Toxic Substances Control Act (TSCA). Since the criteria developed to determine which products were essential and nonessential for that rule have already undergone public debate and discussion, EPA believes that it could be useful to review and make reference to them here.

The criteria used by EPA to determine which products should be exempted from the 1978 ban as "essential uses" were as follows: (1) Nonavailability of alternative products; (2) economic significance of the product, including the economic effects of removing the product from the market; (3) environmental and health significance of the product; and (4) effects on the "quality of life" resulting from no longer having the product available or using an alternative product. (See reference Essential Use Determinations—Revised, 1978.)

The background document supporting the 1978 ban states that when granting "essential use" exceptions, EPA believed that no single factor was sufficient to determine that a product or particular use was essential. The nonavailability of substitutes alone, for example, was not sufficient for EPA to exempt a product. The product also had to provide an important societal benefit to obtain an "essential use" exemption. If an alternative did exist, however, EPA decided that it was not necessary to make any judgements concerning the other criteria.

In other words, if EPA determined that an aerosol product had an available alternative, EPA did not need to make a determination on whether its purpose was or was not important in order to deny any petition for exemption for that product under the 1978 rule.

2. Criteria Under Section 610(b)(3)

Section 610(b)(3) instructs EPA to consider the following criteria in determining whether a product is nonessential: "The purpose or intended use of the product, the technological availability of substitutes for such product and such class I substance, safety, health, and other relevant factors." The statute requires EPA to consider each criterion but does not outline either a ranking or a calculus for comparing their relative importance. Nor does the statute require that any

minimum standard within each criteria be met.

EPA believes that all criteria specified in the Act should be considered together in determining if a product is nonessential. Further discussion of the definition of the term "product" and strategies for identifying nonessential products can be found in part III.B.3 below.

The criteria specified by section 610(b)(3) for the Agency to consider in determining whether a product is nonessential may interrelate and overlap to some degree. These criteria are discussed in turn below.

a. *The purpose or intended use of the product.* EPA proposes that this criterion address whether the product is sufficiently important so that the danger from the continued use of a class I ozone-depleting substance is outweighed, or sufficiently unimportant so that even a lack of available substitutes might not prevent the product from being considered nonessential. For example, Congress seems to consider that the purpose or intended use of medical products is important enough to preclude EPA from banning as nonessential any medical product without an "effective alternative" (see definition in part II.D.) but that party streamers are not important enough to warrant the continued use of CFCs regardless of the availability of substitutes.

However, the other examples of nonessential products cited by Congress for EPA to ban at a minimum do not provide as clear cut an illustration of this criterion. Noise horns, for example, are primarily used for safety reasons. Nor is the use of cleaning fluids on noncommercial photographic and electronic equipment generally considered to be "frivolous." EPA believes that these examples of nonessential products provided by Congress show that while it is critical to consider the purpose or intended use of a product along with the other specified criteria, Congress did not intend to limit EPA's authority solely on the basis of intended use.

A possible corresponding criterion from the 1978 aerosol ban is the effect on the "quality of life" resulting from no longer having the product available or using an alternative. As discussed above, the product had to provide an important societal benefit for EPA to grant an exemption from the 1978 ban even if the product did not have an available alternative. For the ban under section 610(b)(3), EPA could similarly consider impacts on the quality of life by a product using a class I substance, by the product's switch to a substitute chemical or process, or its removal from the market entirely.

EPA believes that the extent to which manufacturers of a product have already switched out of class I substances is a relevant indicator for this criterion. If, for example, the great majority of manufacturers have already shifted to substitutes, the use of a class I substance in that product could be considered by EPA as nonessential.

The distinction between a "nonessential product" and a "nonessential use of class I substances in a product" is also relevant to this criterion. While foam cushioning products for beds and furniture are not "frivolous", for example, the use of a class I substance in the manufacturing process of foam cushioning where substitutes are readily available could be considered nonessential.

b. *The technological availability of substitutes for such products and for such class I substances.* EPA proposes that this criterion addresses the existence and accessibility of alternative products or alternative chemicals for use in products releasing class I substances. EPA believes that the phrase "technological availability" includes both currently available substitutes (i.e., presently produced and sold in commercial quantities) and, in certain cases, potentially available substitutes (i.e., determined to be technologically feasible, environmentally acceptable and economically viable, but not yet produced and sold in commercial quantities). EPA recognizes, however, that the current availability of substitutes would be more compelling than potential availability of substitutes in determining whether a product is nonessential.

The corresponding criterion from the 1978 ban is the "nonavailability of alternative products." In its supporting documentation, EPA stated that this was the primary criterion for determining if a product had an "essential use" under the 1978 rule. EPA emphasized, however, that the absence of an available alternative did not alone disqualify a product from being banned.

With regard to the criteria for prohibiting nonessential products as required by the Clean Air Act, EPA today proposes to consider together each criterion specified in section 610(b)(3) for every product it proposes as nonessential. The availability of substitutes is clearly a critical criterion for determining if a product is nonessential. In certain cases, a substitute that is technologically feasible, environmentally acceptable and economically viable, but not yet produced and sold in commercial quantities, may meet this criterion. EPA believes that, where substitutes are available, the use of controlled substances could be considered nonessential even in a product that is extremely important.

It should not be construed that EPA necessarily advocates all substitutes that are currently being used in place of CFCs in the products EPA identifies as nonessential. Some manufacturers have switched from CFCs to substitutes which may have serious health and safety concerns. EPA will be looking carefully at the relative risks and merits of different substitutes for ozone-depleting substances when it develops regulations to implement section 612 (Safe Alternatives).

c. *Safety and health.* These two criteria could be interpreted as relating to the effects of the products releasing class I substances or their substitutes on humans and the environment. Included in this interpretation could be direct and indirect effects of product use, and the direct and indirect effects of alternatives, such as ozone-depletion potential, flammability, toxicity, corrosivity, global warming potential, energy efficiency, ground level air hazards, et cetera.

EPA does not propose to attempt to develop a formula or ranking factors for comparing these diverse safety and health issues. Such an exercise would be beyond the scope of this rulemaking. EPA proposes instead to consider the above issues relating to safety and health in a qualitative manner without attempting to draw conclusions about their relative importance.

This criterion would highlight, for the purpose of this rulemaking given its tight time frame, any specific safety and health issues relating to the product's use of class I substances and its alternatives of which EPA is currently aware. If any safety or health issues prevented a substitute from being used in a given product, EPA proposes that it would then consider that substitute to be "unavailable" at this time for that specific product or use. As EPA develops expertise in assessing the trade-offs of any potential environmental hazards posed by substitutes for ozone-depleting substances, it may revisit this issue for the purpose of banning other products or, as stated above, take action under section 612.

d. *Other relevant factors.* The one remaining criterion from the 1978 ban not yet addressed in today's proposal is the "economic significance of the product." Section 610(b)(3) does not

specify that EPA must consider the economic impact of banning a product, but the Agency believes that it is not precluded from doing so as an "other relevant factor."

In considering the immediate economic impact of banning the use of a class I substance in a product, EPA proposes to compare the cost of the possible substitutes and the cost of the class I substance, including the effects of the excise tax and the scarcity in the supply of class I substances created by the limits on production and importation under the Clean Air Act and the Montreal Protocol. EPA believes that in many cases the tax and supply limits have already provided a compelling incentive for manufacturers using class I substances to switch to substitutes. EPA also proposes to consider manufacturing costs associated with using substitutes or switching to alternative market lines. Finally, EPA proposes to consider the societal costs of eliminating the product altogether where relevant.

Another relevant factor apart from economic impact that EPA proposes to consider is the effect of state of local laws prohibiting the use of certain substances commonly used as substitutes for ozone-depleting chemicals. For example, Massachusetts, New Jersey, and California all specifically limit the use of methylene chloride which is used as a CFC-substitute for some flexible foam products. Other areas have limits on the general emissions of volatile organic compounds (VOCs). If the only available substitute for the use of a class I substance in a product—including both alternative chemicals and product substitutes—were a chemical whose use was prohibited in certain areas, EPA would consider that substitutes were unavailable for that product in those areas. As stated above, however, the lack of available substitutes does not automatically disqualify a product from being prohibited as nonessential.

3. Definition of the Term "Product"

Section 610(b) requires EPA to "identify nonessential *products* that release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such *product*, or offering any such *product* for sale or distribution, in interstate commerce." (Emphasis added.) Section 610(b)(3) goes on to state that at a minimum the prohibition shall apply to "other [class I] consumer products" determined to be nonessential considering "the purpose or intended use of the product, the technological availability of substitutes for such product and such class I substance, safety, health, and other relevant factors." An understanding of the term "product" is especially important for making the required determinations based on the criteria in section 610(b)(3) and for developing a strategy for identifying which products may be nonessential.

The issue with regard to the definition of the term product is whether only individual items are affected by section 610 or if nonessential uses of class I substances are also affected. Despite the title of this section ("Nonessential products containing chlorofluorocarbons"), the statutory language suggests that any use that might "release class I substances into the environment (including any release occurring during manufacture, use, storage or disposal)" would be relevant to this requirement.

The term "product" could be narrowly defined as only individual items or even brand names as distinct from other brands with potentially different intended uses or available substitutes. For example, a 12-ounce can of CFC–12 could be used either as a noise horn or to recharge a car air-conditioner. Following the requirements of title VI, a noise horn would be a prohibited nonessential product but the commercial use of the same can for car air-conditioning would be permitted. Alternatively, one foam product manufacturer may have pledged to phase-out the use of CFCs from its manufacturing process while another manufacturer of a comparably used foam may not. As such, the scope of the term product could arguably be narrowed to such an extent that significant resources would be required simply to begin to analyze the nonessentiality of all individual types and brands of products releasing class I substances.

However, EPA believes that a broader definition of the term "product" is equally consistent with the statutory language and much more congruous with the purposes of the statute as a whole. First, the word "product" itself has a very broad definition in common dictionary usage. Second, the statutory mandate to consider the technological availability of substitutes "for such product and for such class I substance" clearly indicates congressional intent to focus on uses of class I substances in categories of products as well as individual products. Finally, the overall purposes of title VI to decrease use of ozone-depleting substances generally favors a broad interpretation of the ambiguous term "product."

Despite the potential differences between individual items, a broader definition of the term "product" also seems to make more practical sense. EPA simply does not have adequate resources given the short statutory rulemaking schedule to pursue the strategy of examining each of the hundreds of thousands of individual types and brands of products releasing class I substances. Nor would it make sense to do so even if EPA had infinite resources. Substitutes have already been identified for and are currently being used in entire categories of products which once used class I substances. Therefore, EPA today proposes that both the continued use of class I substances in product categories where alternatives are available and "frivolous" individual products can be considered nonessential. Thus, EPA proposes to ban nonessential uses of controlled substances under this section, allowing for essential use exemption for specific cases within the product categories where alternatives are in fact not available.

The two possible definitions of the term "product" discussed above are rooted in two of the criteria required by section 610(b)(3) for determining what is nonessential and lead to two distinct strategies for identifying products. The first criterion ("purpose or intended use of the product") suggests that narrowly defined individual items should be analyzed and if determined to be frivolous then they would be banned. The second criterion ("technological availability of substitutes") suggests that if substitutes are available for a product—or for the use of a class I substance in a category of products—then the nonessential use ought to be banned, even if the product category itself is not "frivolous" in its intended use.

EPA believes, as stated above, that all criteria specified in the Act should be weighed in determining if a product is nonessential, and today proposes that section 610 gives authority to ban both individual "frivolous" products and nonessential uses of class I substances in products that may or may not be "frivolous."

This interpretation of the definition of the term "product" in section 610(b)(3) to include "use" is consistent with the requirement specified in other parts of the same section. EPA believes that the required ban of CFC-containing cleaning fluids for noncommercial electronic and photographic equipment specified by section 610(b)(2) (see III.A.3. above)

demonstrates the intent of Congress to include specific *uses* in its definition of a nonessential product.

Furthermore, section 610(d) bans "(A) any aerosol product or other pressurized dispenser which contains a class II substance; or (B) any plastic foam product which contains, or is manufactured with, a class II substance," allowing for exemptions in specific cases. All aerosol and foam products are not identified as being nonessential, rather the use of class II substances in these two categories of use, aerosols and foams, is banned.

EPA's 1978 ban of products using CFCs as aerosol propellants under TSCA (see above and March 17, 1978; 43 FR 11318) also followed this same mechanism. This rule prohibited the manufacture, processing and distribution in commerce of all fully halogenated CFCs for "aerosol propellant uses," except for those EPA determined to be essential.

Finally, apart from the ban on nonessential products, section 606(a)(3) gives EPA additional authority to set standards for reducing emissions of controlled substances to their "lowest achievable level," including "requirements to use alternative substances." An alternative to banning the nonessential use of a controlled substance under section 610 would be to require the reduction of emissions for that use under section 606 to zero by mandating the use of substitutes where they are available.

EPA therefore concludes that under the authority of both sections 610 and 606, it is appropriate to ban nonessential uses of class I substances as well as nonessential products releasing class I substances. Both of these strategies are included within the meaning of the term "nonessential products" for the purposes of this rulemaking.

4. Proposed "Other" Products

The Agency today proposes to prohibit the sale and distribution of two broadly defined products where the emissions of certain class I substances can be reduced to zero based upon the availability of alternatives. These proposed product categories are: flexible and packaging foam using CFCs; and aerosols and other pressurized dispensers containing CFCs. In addition, EPA raises for public comment whether it should also prohibit the sale of residential fire extinguishers containing halons. Below, EPA defines each of these products and then presents an overview of how each product meets the criteria specified by section 610(b)(3) and discussed above in part III.B.2. More detailed analyses of the proposed "other" products to be prohibited are provided in the background documents accompanying this rulemaking. (See Docket A–91–39.)

In determining the initial list of which "other" products to prohibit under section 610, the Agency reviewed every major use sector (although not each individual product or brand) of each class I substance (CFCs, halons, carbon tetrachloride and methyl chloroform), including refrigeration and air conditioning, solvent use, fire extinguishing, foam blowing, and aerosol uses.

Refrigeration and air-conditioning, including mobile air-conditioning, represent the largest total use of class I substances in the United States (31.8 percent weighted by ozone-depletion potential (ODP) in 1987). Substitutes are currently being developed for all refrigeration and air-conditioning products. EPA believes that substitutes for some uses, like HFC–134a in mobile-air conditioners, are very close to being available. However, a range of potential substitutes for other refrigeration and air-conditioning uses are still in the process of being evaluated. EPA did not include prohibitions on the use of class I substances in refrigeration or air conditioning in this rulemaking because these uses are generally considered to be very important and conclusions on the appropriate substitutes are not anticipated to be available within the time-frame of this rulemaking. EPA plans to specifically address refrigeration and air-conditioning uses of class I substances under its upcoming regulations to fully implement the requirements of section 606 (Emissions Reduction).

Solvent uses of class I substances, including commercial electronics de-fluxing, precision cleaning, metal cleaning and dry cleaning, also represent a significant use level in the U.S. (21.7 percent weighted by ODP in 1987). Industry has identified potentially available substitutes for nearly all of the hundreds of thousands of products currently manufactured with class I solvents. For some specific products, including printed circuit boards, many companies have already pledged to phase-out CFC use well before 2000. These scheduled phase-out dates range from as early as the end of 1991.

EPA believes that each of the identified substitutes, including such alternative solvents as alcohols and HCFCs, and alternate processes as aqueous and semi-aqueous cleaning, "no clean" assemblies, controlled atmosphere soldering and hydrocarbon/surfactant cleaning, has advantages and disadvantages to consider. EPA also recognizes that the use of these substitute technologies may require capital or manufacturing process changes in order to ensure protection of human health and the environment. EPA is not addressing solvent use in today's proposed regulations because the sheer number of products and range of potential substitutes (each with specific technical and health and safety issues) makes it impossible for EPA to conclude that substitutes are currently available for those uses within the short statutory time-frame of this rulemaking. EPA will address solvent uses of class I substances under sections 606 and 612.

EPA examined the use of class I substances in foam products and is including flexible and packaging foam releasing CFCs in today's proposed rulemaking. EPA is not including insulating foams releasing CFCs. Unlike the other foam types which have currently available substitutes, the 1989 United Nations Environment Programme (UNEP) technology assessment estimated that only 10 to 50 percent of CFC use in insulating foams could be reduced by 1993. (See reference Technical Options Report.) Rigid insulating foams using CFCs were specifically exempted from the excise tax in 1990, and subject only to a reduced tax until 1994. The required ban on the use of class II substances in foam products in section 610(d) also specifically exempts insulating foams. As a result, EPA has focused on the flexible and packaging foams for today's proposed rulemaking and will address insulating foams under upcoming rules implementing sections 606 and 612.

The class I substances released by products identified by EPA in today's notice include both CFCs and halons. EPA did not identify any products releasing the other class I substances, carbon tetrachloride and methyl chloroform, in today's notice. EPA estimates that in the U.S. most carbon tetrachloride is consumed in the production process of CFCs. The production of CFCs and other class I ozone-depleting substances is already restricted by EPA's regulations implementing the requirements of section 604. EPA believes that is has adequate controls under its current regulations to limit the production of CFCs and does not today propose to further restrict the use of carbon tetrachloride in this process.

Methyl chloroform, on the other hand, is widely used as a solvent for metal cleaning, in adhesives and coatings, and in aerosols. Like CFC–113, methyl chloroform is used in hundreds of thousands of different products. EPA

believes that substitutes may be available for many of the current uses of methyl chloroform. Because methyl chloroform was not included in the original 1987 Montreal Protocol only limited information on specific uses and substitutes has been developed to date by industry and the Agency. EPA intends to collect more information on the uses of methyl chloroform, especially in aerosols and foams, in the near future. EPA may identify products releasing methyl chloroform as nonessential as part of its rules promulgated in time to meet the required 1994 ban on class II substances in aerosols and foams. EPA may also address the uses of methyl chloroform under sections 608 or 612.

EPA selected the products identified in today's notice for the following reasons: First, EPA believes that they all clearly fit the criteria specified by section 610(b)(3) based upon information and analysis the Agency already had or could obtain within the tight regulatory time-frame required by the statute. In fact, all the identified products are relatively well defined and have been the subject of prior federal or state level rulemakings or voluntary agreements to limit the use of ozone-depleting substances.

EPA also took into consideration the prohibition required by section 610(d) on certain products releasing class II substances which goes into effect in 1994. EPA is concerned about the potential environmentally adverse incentive of banning the use of class II substances in certain products in 1994 while permitting the use of the more harmful class I substances in the same products. Thus, the statutory prohibition in section 610(d) provided further direction in choosing products on which to focus at this time under section 610.

Today's proposal may not be the only determination that EPA will make regarding products releasing class I or class II substances. Due to the tight statutory time-frame, EPA did not have adequate opportunity to focus on more complex use sectors such as solvent use or on chemicals without a long history of regulation such as methyl chloroform. Should EPA propose further action, a quantitative assessment of costs and benefits as required by Executive Order 12291 would be performed.

EPA intends to revisit the issue of nonessential products in time to meet the required deadline for the ban in 1994 of class II products specified by section 610(d). To this end, as stated above, EPA plans in the near future to collect more information specifically on the uses of methyl chloroform and class II substances in foams and aerosols.

EPA believes that section 610 requires the Agency to include in the regulations, due by November 15, 1991, only those products or the use of class I substances in such products which it can conclude are nonessential. Where EPA can not at this time make such a determination, it is not required to include those products in the regulations. However, EPA believes it has continuing authority under sections 610 and 301 of the Clean Air Act to ban at any time in the future products that it concludes are nonessential.

In addition, EPA will further examine the uses of class I and class II substances in its upcoming rulemakings to implement the requirements of lowest achievable emissions and the use of safe alternatives in sections 608 and 612. Because Title VI provides several tools to regulate the use of ozone-depleting substances and their substitutes, the Agency intends to utilize whichever authority is most appropriate for limiting emissions in each use sector.

a. *Flexible and packaging foam using CFCs.* The foam plastics manufacturing industries, the markets their products serve, and their uses of CFCs are extremely varied. CFCs-11, -12, -113 and -114 have all been used to some extent in the manufacture of foam plastic products, which include building and appliance insulation, cushioning foams, packaging materials, floatation devices and shoe soles. According to UNEP's 1989 Flexible and Rigid Foams Technical Options Report, the foam industry used approximately 267,000 metric tons of CFCs worldwide in 1986, representing 25 to 30 percent of annual global CFC use. EPA believes that the level of CFC use in the U.S. for many foam types has decreased dramatically since 1986. For some foam products, the use of CFCs has already been completely phased out.

CFCs had been commonly used as blowing agents in the manufacturing process of many foam products because they have suitable boiling points and vapor pressures, low toxicity, very low thermal conductivity, they are non-flammable, non-reactive, and they had been cost effective. The excise tax levied by Congress in 1989 significantly raised the price of CFCs (except for use in the manufacture of rigid insulating foam, which was exempt from the tax in 1990 and is subject to a greatly reduced tax of approximately $0.25 per pound until 1994) and as a result foam manufacturers have switched to non-CFC substitutes in many areas.

Even before the tax went into effect several groups of foam manufacturers, including the Foodservice and Packaging Industry and the Polyurethane Foam Association, made significant voluntary strides in cooperation with the Agency and several environmental groups to eliminate or reduce the use of CFCs in their products ahead of the required phase-out timetable. In addition, one group has worked with the Agency to develop and make available an in-depth description of technical options to achieve these reductions. (See references Handbook for Eliminating and Reducing Chlorofluorocarbons in Flexible Foams.) Among the many commonly used substitutes for CFCs in flexible and packaging foam are HCFCs, hydrocarbons and methylene chloride. (See below.)

The 1989 UNEP report provides technical options for the entire foam industry by foam type, since each type has a distinct set of product and process application needs. For example, an important distinction exists between foam plastics where the cells are closed, trapping the blowing agent inside, and those with open cells which release the blowing agent during the manufacturing process.

For the purposes of today's proposed rulemaking, EPA defines "flexible and packaging foam" as the following foam types: polyurethane flexible slabstock and molded foams, rigid polyurethane packaging foam, polyethylene foam, polypropylene foam, and extruded polystyrene sheet foams. The included polyurethane foams are open celled thermosetting foams, where the blowing agent is mixed with chemicals which react to form the plastic. The other identified foams are closed cell thermoplastic foams, where the blowing agent is injected into a molten plastic resin which hardens upon cooling.

Other types of foam that could be interpreted as "flexible and packaging foam" include expanded polystyrene foam and polyvinyl chloride foam. However, the 1989 UNEP report indicates that CFCs were never used in the production of these foam types. As a result, EPA believes that it is unnecessary to formally prohibit the use of CFCs in these products and is not today proposing to include them. However, in the unlikely event that CFCs are used in the manufacturing process of these products in the future, EPA reserves the right to take action under this section to prohibit the use of CFCs in these products as nonessential.

EPA raised the possibility of banning flexible and packaging foams first in its December 14, 1987 Proposed Rule (52 FR 47489) and again in its August 12, 1988 Advanced Notice of Proposed Rulemaking (53 FR 30604). Since that time, several states including Oregon, Connecticut and Missouri have passed

laws banning certain types of flexible and packaging foams using CFCs. Of the foam types defining "flexible and packaging" foams, EPA believes that polyurethane flexible molded foam, rigid polyurethane packaging foam, polyethylene foam, polypropylene foam and extruded polystyrene sheet have already phased out of CFC use completely. EPA also believes that emissions of CFCs from the manufacture of the one remaining flexible foam type can be reduced to zero because manufacturers have largely switched out of CFCs to readily available substitutes and are currently exploring alternative technologies.

EPA is proposing to prohibit the sale and distribution of flexible and packaging foams using CFCs primarily because CFC use has already largely stopped in the proposed foam types following voluntary efforts and as a result of the tax. In addition, if CFCs were not prohibited in flexible and packaging foams, the self-effectuating ban in 1994 of foam products made with or containing class II substances could set up an environmentally harmful incentive for foam manufacturers who have not switched out of CFCs to continue to use them, or for those using HCFCs to switch back to CFCs.

(1) Purpose or intended use. Flexible and packaging foams have several "non-insulating" uses, including furniture and upholstery, transport and protective packaging, cushioning, protective wrap, padding, food containers, and floatation devices. EPA considers that the purposes of flexible and packaging foam as described above are not "frivolous." However, EPA believes that the fact that the great majority of manufacturers of these products have already switched out of CFCs to readily available substitutes indicates that the intended use of CFCs in this product area is nonessential.

(2) Technological availability of substitutes. Substitute options currently being used in flexible and packaging foams include increased foam density and/or water use combined with the following blowing agents: HCFC–22, hydrocarbons, blends of HCFC–22 and hydrocarbons, HCFC–142b, acetone, methyl chloroform and methylene chloride.

Other near-term alternatives available to eliminate CFCs in flexible foam include new polyol technology which increases softness with little or no CFC use and "AB" technology which uses formic acid to double the quantity of gas generated in the reaction of isocyanate with water.

Longer-term options for flexible and packaging foam that has not already switched out of CFCs could include HCFCs–141b, –123, and –124, and HFCs–125 and –134a.

(3) Safety and health. Methylene chloride is classified by EPA as a B2 (probable human) carcinogen with an Occupational Safety and Health Administration Permissible Exposure Limit (OSHA PEL) of 25 parts per million. Appropriate worker health and safety practices must be followed by flexible foam manufacturers in those states that allow the use of this chemical.

Hydrocarbons and acetone are flammable. Manufacturers must take special safety precautions including appropriate ventilation when using these substances. Hydrocarbons and acetone are also volatile organic compounds (VOCs) which can contribute to the formation of ground-level air pollution. States must consider VOC emissions in meeting requirements for State Implementation Plans (SIPs) to attain the ground-level ozone National Ambient Air Quality Standards.

HCFCs (particularly -141b) and methyl chloroform, although they have much less effect on stratospheric ozone than CFCs, do have measurable ozone-depletion potentials. (See listing notice 56 FR 2420; January 22, 1991.) These substances are limited elsewhere in title VI.

The formic acid used in AB technology creates carbon monoxide and has a Ph of 3, so it too requires special care in handling.

EPA believes that none of these health and safety issues described above are persuasive enough to preclude the prohibition of CFC-use in flexible and packaging foams under the requirements of sections 610 and 608. However, EPA does not necessarily advocate all substitutes currently being used by manufacturers in place of CFCs and EPA intends to carefully examine the issue of safe alternatives under section 612.

(4) Other relevant factors. The great majority of flexible and packaging foam manufacturers have already phased-out the use of CFCs. Voluntary agreements and the excise tax provide continuing incentives for those manufacturers still using CFCs to switch to substitutes. As a result, EPA anticipates that the future economic impact from this proposed prohibition will be minimal even for small businesses. (See Docket A–91–39.)

Some states limit the use of methylene chloride. Flexible foam manufacturers still using CFCs in these areas would be unable to use this particular substitute. EPA recognizes, however, that several substitute options apart from methylene chloride (e.g., modified polyols and water blown foam) are currently in use or are near-term substitutes for these foam types. EPA requests comment on the impacts of state limits on the use of methylene chloride.

(5) Proposed action. Based upon consideration of the above criteria, EPA believes that CFC use in the manufacturing process of flexible and packaging foam is nonessential and today propose to ban the use of CFCs in this product.

b. *Aerosols and other pressurized dispensers containing CFCs.* CFCs have been used extensively in aerosol products worldwide, mainly as propellants but also as solvents and as the active ingredient in products. In the mid-1970s the use of CFCs-11 and -12 in aerosols accounted for 60 percent of the total use of these chemicals worldwide. Due to mandatory and voluntary reduction programs in several countries, including the 1978 ban in the U.S., this use has been subsequently reduced. In 1986 aerosol use was still substantial, accounting for 300,000 metric tons, representing 27 percent of the global use of CFCs. In the U.S., 9870 metric tons were used in aerosols exempted or excluded from the 1978 ban, representing 2.5 percent of all class I substances (weighted by ozone-depletion potential (ODP)) in 1986.

For the purposes of today's proposed rulemaking, EPA is defining "aerosols and other pressurized dispensers containing CFCs" to include both propellant and non-propellant uses of CFCs. Propellant uses of CFCs were banned by EPA in 1978 except for essential uses. Non-propellant uses of CFCs, such as solvent use, were excluded from the 1978 ban. EPA has re-examined all of the products excluded from the 1978 ban as well as those specifically exempted from the 1978 ban. As EPA stated in its August 12, 1988 Advanced Notice of Proposed Rulemaking (53 *FR* 30604), several alternative propellants and delivery systems have been developed since the original aerosol exemptions were granted. In addition, many previously exempted or excluded products no longer use CFCs. (See reference Alternative Formulations.)

EPA is today proposing to ban CFCs in aerosols and other pressurized dispensers primarily because a variety of substitutes for CFCs are now widely available and currently in use. In addition, if CFCs were not banned in aerosols and other pressurized dispensers, the self-effectuating ban of aerosols and pressurized dispensers containing class II substances in 1994 could set up an environmentally harmful

incentive for manufacturers who have not switched out of CFCs to continue to use them or for those using HCFCs to switch back to CFCs.

(1) Purpose or intended use. CFCs have been used in exempted aerosol products and other excluded pressurized dispenser products as propellants, solvents and active ingredients. Intended use falls into the following product categories: lubricants and cleaning fluids for electric and electronic equipment, lubricants and cleaning fluids for aircraft maintenance, tire inflators, diamond grit spray, commercial dusters and freeze sprays, pesticides, mercaptan stench warning devices, pressurized drain openers, and whipped topping stabilizers. EPA considers that the purposes of these aerosols and other pressurized dispensers are generally not "frivolous." However, EPA believes that the fact that the great majority of manufacturers of these products have switched out of CFCs (see reference Background Document in Docket A–91–39) indicates that the intended use of CFCs in this product area is nonessential.

EPA is not today proposing to ban the following aerosols or other pressurized dispenser products containing CFCs which were exempted from the 1978 ban and are intended for medical uses: contraceptive vaginal foams, lubricants for pharmaceutical pill and tablet manufacture, metered dose inhalation devices (MDIs), and gauze bandage adhesives and adhesive removers. EPA is requesting comments on the essentiality of continued CFC use in these medical products.

(2) Technological availability of substitutes. Currently available substitutes for aerosols and other pressurized dispensers include: flammable hydrocarbons (predominantly propane and butane); other higher priced/special use flammable gases (dimethyl ether, HCFC-142b, HFC-152a); nonflammable compressed gases (such as carbon dioxide and HCFC-22 alone or in mixtures); solvent substitutes (methylene chloride and dimethyl ether/water mixtures); non-aerosol alternatives (other spray dispensers (finger pumps, trigger pumps, mechanical pressure dispensers) and non-spray dispensers (solid sticks, roll-ons, brushes, pads, shakers, powders, etc.)).

Potentially available substitutes for propellant and solvent uses of CFCs in aerosols and other pressurized dispensers include HCFCs-123, -124, and -141b and HFC-134a.

EPA recognizes that, as of the publication date of EPA's 1989 report on substitutes for aerosol uses of CFCs (see reference Alternative Formulations), a few aerosol products previously exempted from the 1978 ban may still have had problems identifying which substitutes for CFCs would be best for their specific use. EPA believes that since 1989, manufacturers have been working to identify substitutes for CFCs in all of their product areas. However, there are two specific products for which EPA does not currently have adequate substitute information to include them in the proposed ban on aerosols and other pressurized dispensers containing CFCs. These products are lubricants, coatings and cleaners using CFC-11 or CFC-113 for commercial electric and electronic uses and for aircraft maintenance uses, and release agents for molds using CFC-11 or CFC-113 in the production of plastic and elastometric materials.

As a result, EPA is not today proposing to prohibit the sale and distribution of any commercial products using CFC-11 or CFC-113 as lubricants, coatings or cleaning fluids for electrical or electronic equipment or for aircraft maintenance, or as release agents for molds used in the production of plastic and elastometric materials.

In connection with the exemptions from the 1978 ban, EPA previously imposed reporting requirements under 40 CFR 712.4 for those products which used a CFC propellant. These reporting requirements expired in 1982. Since that time the TSCA ban has functioned effectively without specific reporting requirements concerning the commercial uses of these substances. In general, EPA believes that, as a result of the 1978 ban, noncommercial use of CFC-containing lubricants, coatings, aircraft maintenance products and mold release agents is currently negligible. EPA has proposed recordkeeping requirements for commercial uses of CFC-containing cleaning fluids for electronic and photographic equipment but believes that no additional recordkeeping or reporting requirements are necessary to accompany the exemption of lubricants, coatings or aircraft maintenance products. EPA request comment on the need for additional recordkeeping requirements, the availability of substitutes and the essentiality of CFC use in these products.

(3) Safety and health. Hydrocarbons are flammable. Manufacturers must take special safety precautions including appropriate ventilation when using these substances. Hydrocarbons are also volatile organic compounds (VOCs) which can contribute to the formation of ground-level air pollution. States must consider VOC emissions in meeting requirements for State Implementation Plans (SIPs) to attain the ground-level ozone National Ambient Air Quality Standards.

HCFCs (particularly -141b) and methyl chloroform, although they have much less effect on stratospheric ozone than CFCs, do have measurable ozone-depletion potentials. (See listing notice 56 FR 2420; January 22, 1991.) These substances are limited elsewhere in title VI.

Methylene chloride is classified by EPA as a B2 (probable human) carcinogen with an Occupational Safety and Health Administration Permissible Exposure Limit (OSHA PEL) of 25 parts per million. Appropriate worker health and safety practices must be followed by aerosol and pressurized dispenser manufacturers in those states that allow the use of this chemical.

EPA believes that none of these health and safety issues described above are persuasive enough to preclude the identification of CFC-use in aerosols and other pressurized dispensers as a nonessential product under the requirements of section 610. However, EPA does not necessarily advocate all substitutes currently being used by manufacturers in place of CFCs. EPA intends to carefully examine the issue of safe alternatives under regulations to implement section 612.

(4) Other relevant factors. Propellant uses of CFCs have been banned under TSCA since 1978. The excise tax provides a continuing incentive for CFC aerosol and pressurized dispenser products either exempted or excluded from the 1978 ban to switch to substitutes. As a result, EPA anticipates minimal future economic impact from banning aerosols and other pressurized dispensers containing CFCs, with the possible exception of "diamond grit spray." This product was exempted from the 1978 ban for economic reasons. It can use HCFC-22 as a propellant but economic issues may still exist. (See Background Document.) The Agency requests comment on the economic impact of banning the use of CFCs in diamond grit spray.

(5) Proposed action. Based upon consideration of the above criteria, EPA believes that CFC use in aerosols and other pressurized dispensers is nonessential and today proposes to ban the use of CFCs in this product.

c. *Residential fire extinguishers containing halons.* EPA is today seeking comment on whether to include a ban on residential fire extinguishers containing halons in its final action under section 610. Halons are brominated compounds that exhibit exceptional fire fighting

effectiveness, but have ozone-depletion potentials that are significantly higher (3 to 10 times greater) than CFCs. They are electrically nonconductive, dissipate quickly leaving no residue, and have proven to be generally safe for human exposure in most fire situations. This unique combination of properties has led to their selection as the agent of choice for several fire protection situations, including: computer, communications, and electronic facilities; museums; engine spaces on ships and aircraft; and ground protection of aircraft. Portable fire extinguishers using halons had also achieved popularity in some countries for residential use, but according to manufacturers sales have decreased dramatically (70 percent) since 1987. Residential usage was estimated by the 1989 UNEP technical options report as ten percent of halon 1211 worldwide usage. In the U.S., residential use was estimated at seven percent (200 metric tons) of halon 1211 in 1985.

The product category of residential halon fire extinguishers includes two product types: Self-expelling factory sealed fire extinguishers with crimped valves containing halon 1211 alone or in mixture with 1301 (representing 90 percent of the residential market), and "noncommercial" portable refillable fire extinguishers with threaded valves containing halon 1211 (representing ten percent of the residential market). As with the cleaning fluids for electronic and photographic equipment, tax exempt identification numbers could be used to distinguish commercial from noncommercial sales of portable halon fire extinguishers.

EPA first raised the issue of restricting the sale of portable halon fire extinguishers for home use in an Advanced Notice of Proposed Rulemaking published August 12, 1988 (53 FR 30604). EPA raised this issue because at that time small halon extinguishers were relatively inexpensive and EPA believed that, despite their harmful effects on stratospheric ozone, halon units were purchased for applications (e.g., residential protection), where other fire extinguishing agents could have been used. Since 1988 several states, including Vermont, Oregon and New York, have passed laws banning the sale of residential fire extinguishers containing halons. In addition, Germany, Canada and, in the U.S., the South Coast Air Quality Management District, have all published notices proposing, or stated their intention to propose, to ban the sale of residential fire extinguishers containing halons.

EPA believes that halon substitutes will be available for most applications in the near future.

In response to the most recent data of increased ozone depletion released by UNEP and the World Meteorological Organization (WMO), the largest producer of ozone-depleting substances announced on October 22, 1991 that it will phase out its production of halons by year-end 1994. The company stated in its press release that "The data included in this recent assessment underscore the urgency for a more rapid and aggressive response." The company also stated that it is "committed to continue its development of alternatives and to work with customers in achieving a rapid and safe phaseout." EPA believes this announcement indicates that halon substitutes will be available for all applications in the near future.

In 1994 the excise tax on halons is scheduled to rise from $0.25 to $7.95 per pound for halon 1211 and $26.50 per pound for halon 1301 as a result of their extremely high ozone-depletion potentials (ODPs). EPA recognizes that this dramatic increase in the cost of using halons could raise the price of residential halon fire extinguishers such that, depending on the price elasticity of demand for these products, sales could cease on their own at that time.

If this expectation is correct, a prohibition on the sale of this product through rulemaking effective November 15, 1992 would effectively accelerate the phase-out of this product by 14 months. EPA has received information from industry representatives that it would be extremely disadvantageous to the industry to require a total phaseout of halon use in residential fire extinguishers prior to January 1, 1994.

EPA is seeking comment on whether the use of halon in residential fire extinguishers meets the criteria specified by section 610 for identifying a product as "nonessential," i.e., on the basis that effective substitute products are technologically available, considering the issues of safety and human health. EPA is also seeking comment on whether a ban is unnecessary because the expected increase of the excise tax on halons in 1994 may clear the market of this product in advance of the 2000 phase-out of all halon products. As such, EPA reiterates the request for comment on its interpretation of what factors should be considered in the definition of a nonessential product. (See subparts III.B.2 and 3.)

(1) Purpose or intended use. Halon 1211 (alone and in blend with 1301) can be used in portable fire extinguishers for the home or noncommerical vehicle (car, camper, boat, et cetera). EPA considers the purpose of residential fire extinguishers to be very important. However, EPA believes that the substantial downturn in the market for halon residential fire extinguishers, combined with the large imminent tax burden on these substances resulting from their extremely high ozone-depletion potentials, raises questions as to whether the intended use of halons in this product area is nonessential, and whether a ban is necessary.

(2) Technological availability of substitutes. Currently available substitutes include ammonium phosphate-based multipurpose dry chemical, powders and water. These product substitutes are rated for different types of fires. For example, multipurpose dry chemical is rated for all three types: A (wood), B (grease) and C (electrical); while residential halon extinguishers are only rated for B and C type fires. EPA requests comment on the effectiveness of halons and the substitutes on the different types of fires.

Dry chemical and powders differ from halons in their composition and clean up procedures. For example, while halons disperse to the ambient air after use, dry chemical and powder fire extinguishers may require some clean up in order to prevent corrosion of electronic equipment in the area.

EPA believes, however, that these extinguishers require similar routine maintenance. Dry chemical and powder units require routine checks to ensure that the substances have not caked. Similarly, recent EPA research indicates that halon fire extinguishers generally leak through the valve between 1.0 and 1.5 ounces per year. EPA believes that the reliability of all UL inspected residential fire extinguishers is very high, but that these products should be used and maintained according to manufacturers' instructions in order to retain maximum effectiveness.

As discussed above, and in the background document accompanying this proposed rule, EPA recognizes that no extinguisher is perfect for every possible fire situation. EPA is seeking comment on whether multipurpose dry chemical, powders and water are effective available alternatives to the use of residential halon fire extinguishers.

(3) Safety and health. EPA believes that fire protection is itself an important health and safety issue. As such, EPA requests comment on any health or safety impacts of restricting the

availability of residential halon fire extinguishers.

EPA is not aware of any safety or health problems with regard to the use of multipurpose dry chemical, powder or water. However, halon extinguishers can produce toxic gases, especially when used on very hot fires. The National Fire Protection Association (NFPA) suggests no minimum fire temperature for this hazard but EPA believes that the toxic results of halon decomposition will be greater on hotter fires. According to the NFPA, "their decomposition products can be hazardous . . . operators and others should avoid breathing the gases produced by thermal decomposition of the agent." (NFPA 10, Appendix A, Section A-2-1.)

(4) Other relevant factors. The cost of a residential halon extinguisher unit (average size 14 to 80 ounces) is significantly higher than the cost of other fire protection products, including multipurpose dry chemical unit (average size 32 to 80 ounces). For this reason, EPA believes that a ban of residential halon fire extinguishers would have little cost impact on consumers.

(5) Proposed action. EPA is not today proposing to ban the use of halons in residential fire extinguishers. EPA is instead seeking comment on whether halon use in residential fire extinguishers should be banned in EPA's final action implementing the requirements of section 610. EPA specifically requests comment on the extent to which other fire extinguishing agents (such as multipurpose dry chemical) are available substitutes to halon in residential units, in terms of effectiveness, relative health and safety issues and economic impact.

IV. Additional Information

A. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this proposed regulation does not meet the definition of a major rule under E.O. 12291 and has therefore not prepared a formal regulatory impact analysis. EPA has instead prepared a background document (see reference Background Document in Docket A-91-39) which includes a qualitative study of the economic impact of this proposed regulation for each product identified as nonessential and prohibited from sale or distribution.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency believes that the regulation, if promulgated, will not have a significant impact on a substantial number of small entities and has therefore concluded that a formal RFA is unnecessary. A qualitative treatment of potential impacts on small entities is included in EPA's background document accompanying this regulation.

EPA believes that most companies in the industries affected by this proposed regulation have already ceased using class I substances. In addition, EPA believes that the rising excise tax and the scarcity resulting from the required incremental reductions of these substances will provide a continually increasing incentive to switch to substitutes for those companies that have not already done so. The prohibition of sales to noncommercial users in the case of two products identified in today's proposed regulation (CFC-containing cleaning fluids and residential halon fire extinguishers) would still allow manufacturers to continue to market their products to commercial users with little or no impact. Finally, the full phase-out in the year 2000 of the production and import of class I substances provides a *de facto* ban on all products using these substances. This phase-out date may be accelerated by EPA under section 606 of the Clean Air Act, as amended.

For the purposes of this proposed regulation, EPA believes that identifying companies by Standard Industrial Classification (SIC) code is inappropriate because most of the affected products represent only a small fraction of the products within each SIC code. In addition, since most manufacturers have already ceased using class I substances, EPA was identifying only a few companies within each classification. Due to the small number of potentially affected industries, the definition of companies as large or small is based for the most part on the characterization of manufacturing process by industry contacts, rather than on a standardized measure such as number of employees.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1592.01) and is contained in the Docket to this rulemaking. A copy may be obtained by writing to the Information Policy Branch, U.S. Environmental Protection Agency, 401 M Street, SW. PM-223Y; Washington, DC 20460 or by calling (202) 260-2740.

Public recordkeeping burden for this collection of information is estimated to be 1.38 hours per affected distributor of commercial CFC-containing cleaning fluids, including time to maintain the list of commercial buyers and to prepare for and admit inspectors.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, U.S. EPA at the address given above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

V. References

United Nations Environment Programme. Aerosols, Sterilants and Miscellaneous Uses of CFCs: Report by the Technical Options Committee (June 30, 1989).

United Nations Environment Programme. Final Report of the Halons-Technical Options Committee (August 11, 1989).

United Nations Environment Programme. Flexible and Rigid Foams Technical Options Report (June 30, 1989).

United States Environmental Protection Agency. Alternative Formulations to Reduce CFC Use in U.S. Exempted and Excluded Aerosol Products (November 1989).

United States Environmental Protection Agency. Background Document on Identification of Nonessential Products that Release Class I Substances (July 1, 1991).
United States Environmental Protection Agency. Essential Use Determination—Revised: Support Document Fully Halogenated Chlorofluoroalkanes (March 17, 1978).
United States Environmental Protection Agency. Handbook for Reducing and Eliminating Chlorofluorocarbons in Flexible Polyurethane Foams (April 1991).

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: January 7, 1992.

William K. Reilly,

Administrator.

Title 40, Code of Federal Regulations, part 82, is proposed to be amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7671–7671(q).

2. Part 82 is amended by adding subpart C to read as follows:

Subpart C—Ban of Nonessential Products

Sec.
82.60 Purpose.
82.62 Definitions.
82.64 Prohibitions.
82.66 Nonessential products and exceptions.
82.68 Recordkeeping requirements for distributors of certain products intended for commercial use.

Subpart C—Ban of Nonessential Products

§ 82.60 Purpose.

The purpose of these regulations is to implement the requirements of sections 608 and 610 of the Clean Air Act Amendments of 1990 on emission reductions and nonessential products.

§ 82.62 Definitions.

(a) *Chlorofluorocarbon* means any substance listed as class I group I or class I group III in 40 CFR part 82, appendix A to subpart A.[1]

(b) *Commercial,* when used to describe the consumer of a product, means a person that has one of the following identification numbers—

(1) a federal employer identification number
(2) a state sales tax exemption number
(3) a local business license number and that uses the product for commercial purposes.

(c) *Consumer,* when used to describe a person taking action with regard to a product, means the ultimate commercial or noncommercial purchaser, recipient or user of a product.

(d) *Distributor,* when used to describe a person taking action with respect to a product:

(1) Includes distribution in commerce for export from the United States and
(2) Means the seller of a product to a consumer.

(e) *Product* means an item or category of items manufactured from raw or recycled materials which is used to perform a function or task.

(f) *Release* means to emit into the environment during the manufacture, use, storage or disposal of a product.

§ 82.64 Prohibitions.

Effective November 15, 1992, no person may sell or distribute, or offer for sale or distribution, in interstate commerce any product identified as being nonessential in § 82.66.

§ 82.66 Nonessential products and exceptions.

The following products which release a class I substance as defined in 40 CFR part 82, appendix A to subpart A [2] are identified as being nonessential and the sale or distribution of such products is prohibited under section 82.64—

(a) Any plastic party streamer or noise horn which is propelled by a chlorofluorocarbon, including but not limited to—
(1) String confetti
(2) Marine safety horns
(3) Sporting event horns
(4) Personal safety horns
(5) Wall-mounted alarms used in factories or other work areas
(6) Intruder alarms used in homes or cars

(b) Any cleaning fluid for electronic and photographic equipment which contains a chlorofluorocarbon including but not limited to liquid packaging, solvent wipes, solvent sprays, and gas sprays, except for those sold or distributed to a commercial user.

(c) Any plastic flexible or packaging foam product which is manufactured with or contains a chlorofluorocarbon, including but not limited to—
(1) Open cell polyurethane flexible slabstock foam
(2) Open cell polyurethane flexible molded foam
(3) Open cell rigid polyurethane poured foam
(4) Closed cell extruded polystyrene sheet foam
(5) Closed cell polyethylene foam
(6) Closed cell polypropylene foam

(d) Any aerosol product or other pressurized dispenser, other than those specified above, which contains a chlorofluorocarbon, including but not limited to household, industrial, automotive and pesticide uses, except—
(i) Contraceptive vaginal foams
(ii) Lubricants for pharmaceutical and tablet manufacture
(iii) Metered dose inhalation devices
(iv) Gauze bandage adhesives and adhesive removers
(v) Commercial products using CFC–11 or CFC–113 as lubricants, coatings or cleaning fluids for electrical or electronic equipment.
(vi) Commercial products using CFC–11 or CFC–113 as lubricants, coatings or cleaning fluids for aircraft maintenance.
(vii) Release agents for molds using CFC–11 or CFC–113 in the production of plastic and elastomeric materials.

§ 82.68 Recordkeeping requirements for distributors of certain products intended for commercial use.

(a) Every person who after November 15, 1992, sells or distributes the following products must keep records as defined in this section—
(1) Any cleaning fluid for commercial electronic and photographic equipment which contains a chlorofluorocarbon.
(2) [Reserved]

(b) A record is required to be kept on file by the distributor for each affected product purchased by the distributor and must contain the following information:
(1) Name of the person or business who supplied the product
(2) Date of transaction
(3) Quantity of product purchased

(c) A record is required to be kept on file by the distributor for each person who purchases the product from the distributor and must contain the following information:
(1) Name of the person or business
(2) Business address
(3) Commercial identification number
(4) Date of transaction
(5) Quantity of product purchased

(d) Records required under this section must be maintained by the distributor for a period of no less than three years.

[FR Doc. 92–945 Filed 1–15–92; 8:45 am]
BILLING CODE 6560–50–M

[1] 40 CFR part 82, appendix A to subpart A is proposed in the **Federal Register** issue of Monday, September 30, 1991 (56 FR 49580).

[2] See footnote 1 to § 82.62(a).

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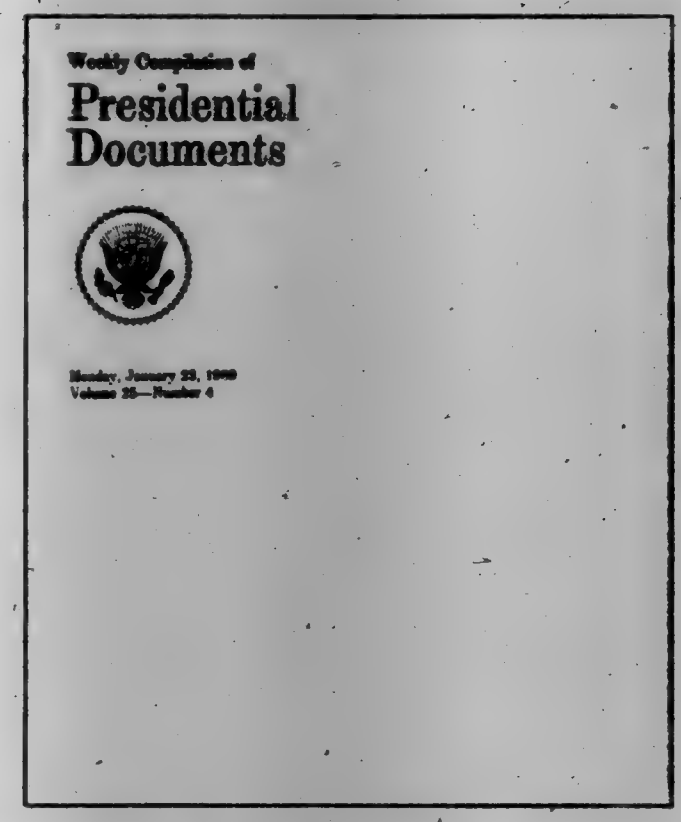

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1-17-92
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federal register

Friday
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Rules and Regulations

Federal Register
Vol. 57, No. 12
Friday, January 17, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Document No. 0359s]

General Crop Insurance Regulations; Flaxseed; Rice; Corn Silage Option; Grain Sorghum; Corn; Texas Citrus; Wheat; Late Planting Option; Malting Barley Options; Texas Citrus Tree; Onion; and Stonefruit Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice to extend sunset review date.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice to extend the sunset review date for the General Crop Insurance Regulations (7 CFR part 401) for twelve crop insurance endorsements. The intended effect of this notice is to establish the sunset review date of these regulations following a review in accordance with the provisions of Departmental Regulation 1512–1 to determine the need, currency, clarity, and effectiveness of these regulations under those procedures.

EFFECTIVE DATE: January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC. 20250, telephone (703) 235–1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under the USDA procedures established by Departmental Regulation 1521–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The regulations affected by this notice are: Flaxseed Endorsement (7 CFR 401.116, which was published in the **Federal Register** of February 1, 1987 (52 FR 479); Rice Endorsement (7 CFR 401.120), which was published in the **Federal Register** of Tuesday, November 21, 1989 (54 FR 48078); Corn Silage Option Endorsement (7 CFR 401.112, which was published in the **Federal Register** of November 25, 1987 (52 FR 45145); Grain Sorghum Endorsement (7 CFR 401.113) which was published in the **Federal Register** of November 25, 1987 (52 FR 45149); Texas Citrus Endorsement (7 CFR 401.115) which was published in the **Federal Register** of September 18, 1987 (52 FR 35267); Wheat Endorsement (7 CFR 401.101) which was published in the **Federal Register** of September 22, 1988 (53 FR 36780); Late Planting Options (7 CFR 401.107) which was published in the **Federal Register** of May 17, 1989 (54 FR 21195); Malting Barley Options Endorsement (7 CFR 401.135) which was published in the **Federal Register** (53 FR 27663); Texas Citrus Tree Endorsement (7 CFR 401.134) which was published in the **Federal Register** March 21, 1988 (53 FR 1900); Onion Endorsement (7 CFR 401.126) which was published in the **Federal Register** May 27, 1988 (53 FR 19217); and Stonefruit Endorsement (7 CFR 401.122) which was published in the **Federal Register** March 2, 1988 (53 FR 6561).

The subject review date established for these regulations are listed as follows: Flaxseed Endorsement—October 1, 1997; Rice Endorsement, August 1, 1997; Corn Silage Option Endorsement—April 1, 1997; Grain Sorghum Endorsement—July 1, 1997; Texas Citrus Endorsement—October 1, 1997; Wheat Endorsement—April 1, 1997; Late Planting Options Endorsement—April 1, 1997; Malting Barley Options Endorsement—April 1, 1997; Texas Citrus Tree Endorsement—November 1, 1997; Onion Endorsement—December 1, 1997; and Stonefruit Endorsement—December 1, 1997.

Done in Washington, DC on December 31, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 92–1169 Filed 1–16–92; 8:45 am]
BILLING CODE 3410–08–M

7 CFR Part 401

[Amendment No. 46; Doc. No. 50986]

General Crop Insurance Regulations; Corn, Grain Sorghum and Soybean Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1992 crop year only, by amending the Corn Endorsement (§ 401.111), Grain Sorghum Endorsement (§ 401.113) and the Soybean Endorsement (§ 401.117) to further extend the contract change date to February 15, 1992 for such endorsements.

The intended effect of this rule is to extend the contract change date, that date by which all contract changes must be on file in the service office, in order to provide sufficient time for FCIC to publish a final rule amending the policies for insuring corn, grain sorghum, and soybeans, to replace the current optional coverages for late and prevented planting with more effective provisions that are an integral part of the basic coverage.

DATES: This interim rule is effective on January 17, 1992. Written comments, data, and opinions on this interim rule must be submitted not later than February 3, 1992 to be sure of consideration.

ADDRESSES: Written comments on this rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (703) 235–1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of the Corn, Grain Sorghum, and Soybean Endorsement regulations affected by this rule under those procedures. The sunset review date established for Corn

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is April 1, 1996; Soybeans, October 1, 1996; and Grain Sorghum, July 1, 1996.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith amends the General Crop Insurance Regulations (7 CFR part 401) by amending the Corn Endorsement (§ 401.111), Grain Sorghum Endorsement (§ 401.113) and the Soybean Endorsement (§ 401.117) to further extend the contract change date to February 15, 1992 for such endorsements. This action is taken in order to provide sufficient time for FCIC to publish a proposed rule for notice and comment amending the policies for insuring corn, grain sorghum, and soybeans.

The contract change date, included in the crop insurance policy, is the date by which all contract changes must be on file in the service office.

On Tuesday, November 19, 1991, FCIC published an Interim Rule in the **Federal Register** at 56 FR 58301, to extend the contract change dates for the Corn Endorsement (§ 401.111), Grain Sorghum Endorsement (§ 401.113) and the Soybean Endorsement (§ 401.117). The contract change date was established at January 31, 1992.

FCIC has under consideration a proposal to replace the current optional coverages for late and prevented planting with more effective provisions that are an integral part of the basic coverage. However, upon further consideration, is appears that additional time must be allowed for development of the provisions. It is felt that there would not be sufficient time for FCIC to publish the forthcoming additional notice of proposed rulemaking addressing the issue of Late Planting and Prevented Planting provisions; solicit public comment, and publish a final rule addressing the complete proposed rule before the January 1, 1992, extended contract change date.

Therefore, James E. Cason, Manager, FCIC, has determined that further extension of the contract change date is necessary to provide sufficient time for FCIC to complete the notice and comment process and publish a final rule amending the corn, grain sorghum, and soybean crop insurance policies for the 1992 crop year.

It is further determined that such extension will not be detrimental to any program recipient, and that publication of the further extended contract change date as a proposed rule for notice and comment is impracticable, unnecessary, and contrary to the public interest. Therefore, good cause is shown for making this rule effective upon publication.

FCIC is soliciting comments on this rule for 15 days following publication in the **Federal Register**. This rule will be scheduled for review so that any amendment made necessary by public comments may be published as soon as possible.

Written comments should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

All written comments received pursuant to this interim rule will be available for public inspection and copying in the Office of the Manager, at the above address during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; Corn, Grain sorghum, Soybeans.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the provisions of the General Crop Insurance Regulations (7 CFR part 401), effective for the 1992 crop year only, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 401.111 is amended by revising subsection 9 of the policy to read as follows:

§ 401.111 Corn endorsement.

* * * * *

9. Contract changes.

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (February 15, 1992, for the 1992 crop year only), and by November 30 preceding the cancellation date (February 15, 1992, for the 1992 crop year only), for all other counties.

* * * * *

3. Section 401.113 is amended by revising subsection 9 of the policy to read as follows:

§ 401.113 Grain sorghum endorsement.

* * * * *

9. Contract changes.

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (February 15, 1992, for the 1992 crop year only), and by November 30 preceding the cancellation date (February 15, 1992, for the 1992 crop year only), for all other counties.

* * * * *

4. Section 401.117 is amended by revising subsection 9 of the policy to read as follows:

§ 401.117 Soybean endorsement.

* * * * *

9. Contract changes.

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (February 15, 1992, for the 1992 crop year only), and by November 30 preceding the cancellation date (February 15, 1992, for the 1992 crop year only), for all other counties.

* * * * *

Done in Washington, D.C. on December 10, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-1199 Filed 1-16-92; 8:45 am]

BILLING CODE 3410-08-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91-167]

Mexican Border Ports; Santa Teresa, New Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the animal importation regulations by adding Santa Teresa, NM, to the list of Mexican border ports of entry for ruminants (animals that chew the cud, for example, cattle, goats, and sheep). Additionally, we are providing that cattle that have been exposed to splenetic, southern, or tick fever or that have been infested with or exposed to fever ticks, may, under certain conditions, be imported from Mexico through the border port of Santa Teresa, NM, for admission into the State of Texas. These actions are necessary because of the opening of a new inspection facility for cattle at Santa Teresa, NM, and the impending disuse of the current inspection facility for cattle at the El Paso, TX, border port. These actions will facilitate the importation of ruminants from Mexico while continuing to help prevent the introduction of communicable animal diseases into the United States.

DATES: Interim rule effective January 17, 1992. Consideration will be given only to comments received on or before March 17, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-167. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Import-Export Animals Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

SUPPLEMENTARY INFORMATION:

Background

The animal importation regulations (contained in 9 CFR part 92 and referred to below as the regulations), among other things, list ports that have inspection or quarantine facilities for animals and animal products offered for entry into the United States. Section 92.403(c) of the regulations designates Mexican land border ports for the entry of ruminants from Mexico. In accordance with § 92.426(b) of the regulations, these are ports that "are equipped with facilities necessary for proper chute inspection, dipping, and testing" of the ruminants, as required by the regulations.

Among the approved Mexican land border ports for ruminants from Mexico is El Paso, TX. We have been advised that the owner of the inspection facility used for cattle at that port will stop using the facility for that purpose in the near future. Further, the owner has built a new inspection facility nearby in Santa Teresa, NM, that will be used for cattle entering the United States from Mexico. This inspection facility is equipped "for proper chute inspection, dipping, and testing," as required by § 92.426(b) of the regulations. Therefore, we are amending § 92.403(c) of the regulations to add Santa Teresa, NM, as a Mexican land border port for ruminants and are removing El Paso, TX, from the list of Mexican land border ports. In accordance with § 92.403(f), the Secretary of the Treasury has approved the designation of the Santa Teresa, NM, port as a quarantine station.

Section 92.426(a) of the regulations provides that if ruminants offered for entry from Mexico are found to be affected with or to have been exposed to a communicable disease, or infested with fever ticks, they shall be refused entry except in accordance with § 92.427(b)(2). Section 92.427(b)(2) provides that, under certain conditions, cattle that have been exposed to splenetic, southern, or tick fever, or that have been infested with or exposed to fever ticks, may be imported from Mexico into the State of Texas.[1] Such cattle are currently being imported into Texas through land border ports on the Mexico-Texas border, including El Paso, TX. When the inspection facility at El Paso is closed for cattle, the nearest inspection facility and port of entry will be at Santa Teresa, NM. The nearest Mexican land border ports on the Texas-Mexico border, Presidio and Del Rio, are both more than 100 miles away. Santa Teresa is located less than 10 miles from El Paso, and only a few miles from the Texas State line. Therefore, we are amending § 92.427(b)(2) to allow these cattle to be imported from Mexico for admission into the State of Texas either at one of the land border ports in Texas listed in § 92.403(c) of this part, or at the port of Santa Teresa, NM. This action is necessary to facilitate the importation of cattle from Mexico while continuing to comply with our statutory authority.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for comment. Immediate action is necessary to accommodate the large number of cattle that are now imported into the United States through El Paso, TX. We have been advised that the inspection facility for cattle at El Paso, TX, will, in the near future, no longer be used for that purpose. However, a new inspection facility for cattle has been completed at Santa Teresa, NM.

Failure to promptly approve Santa Teresa, NM, as a border port for ruminants from Mexico, could adversely affect trade between Mexico and the United States. By approving Santa Teresa, NM, as a Mexican land border port for ruminants, we continue to provide to vital service to importers. Not to provide importers the opportunity to avail themselves of this means of entry could cause a disruption in the flow of ruminants, especially cattle, from Mexico. Annually, the United States imports 1 million head of cattle from Mexico. In 1990, the United States imported 136,000 head of Mexican cattle through El Paso, TX, alone.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 for making it effective upon publication. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include discussion of any comments we receive and any amendments we are making to the rule as result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have

[1] 21 U.S.C. 104, as amended January 12, 1983 (Pub. L. 97-461), provides, in part, that the Secretary of Agriculture is authorized to "permit the admission from Mexico into the State of Texas of cattle which have been infested with or exposed to ticks upon being freed therefrom".

determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This interim rule adds Santa Teresa, NM, to the list of approved Mexican land border ports for ruminants from Mexico, and permits cattle that have been exposed to splenetic, southern, or tick fever, or that have been infested with or exposed to fever ticks, to be imported from Mexico for admission into the State of Texas either across the Mexico-Texas border or through the port of Santa Teresa, NM. Santa Teresa, NM, is located less than 10 miles from El Paso, TX. Consequently, it appears that this action will have little, if any economic impact upon the importers who choose to use the Santa Teresa, NM, border port. Not adding Santa Teresa, NM, to the list of approved Mexican land border ports for ruminants from Mexico could have a significant economic impact upon importers who would have to choose from approved ports located at much greater distances from El Paso, TX. The nearest approved Mexican land border ports are Columbus, NM, and Presidio and Del Rio, TX. Columbus, NM, is 225 miles from El Paso, TX; both Presidio and Del Rio, TX, are more than 100 miles from El Paso, TX.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 92

Animal Diseases, Canada, Imports, Livestock & livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, we are amending 9 CFR part 92 as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c 134d, 134f, and 135; 31 U.S.C. 9701, 7 CFR 2.17, 2.51, and 371.2(d)

2. In § 92.403, paragraph (c) is revised to read as follows:

§ 92.403 Ports designated for the importation of ruminants.

* * * * *

(c) *Mexican border ports.* The following land border ports are designated as having the necessary inspection facilities for the entry of ruminants from Mexico: Brownsville, Hidalgo, Laredo, Eagle Pass, Del Rio, and Presidio, Texas: Douglas, Naco, Nogales, Sasabe, and San Luis, Arizona; Calexico and San Ysidro, California; and Antelope Wells, Columbus, and Santa Teresa, New Mexico.

* * * * *

3. In § 92.403, paragraph (e) is amended by adding the words "El Paso," immediately before "Galveston" and adding a "," immediately after "Galveston".

§ 92.427 [Amended]

4. In § 92.427, paragraph (b)(2) introductory text is revised to read as follows:

§ 92.427 Cattle from Mexico.

* * * * *

(b) * * *

(2) Cattle that have been exposed to splenetic, southern, or tick fever, or that have been infested with or exposed to fever ticks, may be imported from Mexico for admission into the State of Texas, except into areas quarantined because of said disease or tick infestation as specified in § 72.5 of this chapter, either at one of the land border ports in Texas listed in § 92.403(c) of this part, or at the port of Santa Teresa, NM, provided that the following conditions are strictly observed and complied with: * * *

* * * * *

Done in Washington, DC, this 13th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–1291 Filed 1–16–92; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulation H, Regulation Y; Docket No. R–0740]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Revisions to Capital Adequacy Guidelines.

SUMMARY: The Board is amending its risk-based and leverage capital guidelines to remove the limit on the amount of noncumulative perpetual preferred stock bank holding companies may include in Tier 1 capital. Cumulative perpetual preferred stock will continue to be included in Tier 1 capital for bank holding companies, up to a limit of 25 percent of Tier 1 capital. This change to the guidelines will afford banking organizations greater flexibility in raising capital.

EFFECTIVE DATE: The amendments to the capital adequacy guidelines are effective January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Roger T. Cole, Assistant Director (202/452–2618), Rhoger H Pugh, Manager (202/728–5883), Norah M. Barger, Supervisory Financial Analyst (202/452–2402), Robert E. Motyka, Senior Financial Analyst (202/452–3621), Division of Banking Supervision and Regulation; and Michael J. O'Rourke, Senior Attorney (202/452–3288), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Background

The international bank capital standards (Basle Accord) [1] allow banks

[1] The Basle Accord is a risk-based capital framework that was proposed by the Basle Committee on Banking Regulations and Supervisory Practices and endorsed by the central bank governors of the Group of Ten (G–10) countries in July 1988. The Committee is comprised of representatives of the central banks and

Continued

to include noncumulative perpetual preferred stock in Tier 1 capital and place no formal limit on the amount of such instruments that may be included in Tier 1.[2] The Basle framework, which by its terms applies only to internationally active banks, was adopted by the Federal Reserve for state member banks. In addition, the Board chose to apply a risk-based capital framework similar to the Basle Accord to U.S. bank holding companies generally on a consolidated basis.[3] Under the Federal Reserve's bank holding company capital guidelines, holding companies are allowed to include both noncumulative and cumulative perpetual preferred stock in Tier 1 capital, but the total of all perpetual preferred stock includable in Tier 1 capital is limited to 25 percent of Tier 1.[4] Amounts of such stock in excess of the limitation may be included in Tier 2 capital. The limit on preferred stock is consistent with the Board's long-standing view that common equity should remain the dominant form of a banking organization's capital structure.

A principal reason for the Board's decision to limit the amount of perpetual preferred stock in bank holding company Tier 1 capital is the fact that cumulative preferred, the type of perpetual preferred most prevalent in U.S. financial markets, normally involves preset dividends that can only be deferred, not cancelled. An institution that passes dividends on cumulative preferred stock must pay off any accumulated arrearages before it can resume payment of its common stock dividends. Thus, undue reliance on cumulative perpetual preferred stock and the related possibility of large dividend arrearages could complicate an organization's ability to raise new common equity in times of financial difficulty. On the other hand, dividends on noncumulative preferred, like dividends on common stock, may be cancelled. Thus, with respect to dividends, noncumulative preferred stock has characteristics that are consistent with common stock, the principal component of Tier 1 capital.

Conditions in the banking industry underscore the desirability of affording banking organizations greater flexibility in raising capital. This can assist organizations in strengthening their capital positions and expanding their ability to extend credit to sound borrowers. In view of these considerations, on October 31, 1991, the Board proposed removing the limit on the amount of noncumulative preferred stock that bank holding companies may include in Tier 1 capital. This was consistent with other steps initiated by the Federal bank regulatory agencies, in conjunction with the Treasury Department, to address concerns relating to the availability of credit to sound borrowers.

By removing the limit for noncumulative perpetual preferred stock, the Board noted, the proposal would achieve parity with regard to the treatment of noncumulative perpetual preferred stock between the U.S. risk-based capital guidelines for bank holding companies and the Basle framework for banks. Thus, the proposal would place U.S. bank holding companies on a more equal footing with foreign banks subject to the Basle Accord with regard to their ability to augment Tier 1 capital through the issuance of noncumulative perpetual preferred stock. The proposal also would conform the treatment of noncumulative preferred for holding companies to the treatment for state member banks, which, consistent with the Basle Accord, may include noncumulative perpetual preferred stock in Tier 1 without any formal limit. The Board indicated that the additional flexibility provided by this proposal could assist bank holding companies to strengthen their capital positions and expand their lending capacity.

The Board noted that, although it was proposing to remove the limit on noncumulative perpetual preferred stock, it continued to believe that bank holding companies should avoid overreliance on preferred stock within Tier 1 capital. In this regard, the Board noted that the capital structure of a bank holding company is subject to quarterly review (through the analysis of financial reports filed with the Federal Reserve), and the composition of an organization's capital base and its capital plans are subject to in-depth assessment during annual inspections and as part of the Federal Reserve's consideration of applications. The Board further stated that the language of the Federal Reserve's risk-based capital guidelines makes clear the Board's long-standing belief that banking organizations should avoid overreliance on nonvoting equity instruments, including preferred stock, in Tier 1 capital. Capital structures that are inconsistent with this principle may result in supervisory or enforcement actions, including possible denial of applications filed with the Federal Reserve. In addition, rating agencies take the amount of common equity and preferred stock an organization has, as well as the overall composition of the organization's core capital, into account in determining the organization's financial ratings. Thus, the Board concluded in its proposal that there are a number of mechanisms in place to monitor banking organizations' use of preferred stock and to discourage undue reliance on such instruments.

The comment period for this proposal ended on November 22, 1991. The Board received comments from twenty-one public respondents. None of the commenters opposed the proposal and fourteen commenters, or two-thirds of the total, supported it. Two of these commenters, however, questioned the language in the Board's proposal that overreliance by a banking organization on preferred stock and other nonvoting equity elements within Tier 1 could result in supervisory or enforcement actions. These commenters asked for specific guidance on the permissible upper limit within Tier 1 for such nonvoting instruments.

Seven commenters neither supported nor opposed the proposal but expressed the view that removal of the limitation on noncumulative preferred stock includable in Tier 1 capital would provide little or no benefit to bank holding companies' ability to raise capital because they view the market for noncumulative preferred as limited. Three of the commenters that explicitly supported the proposal expressed similar reservations on the benefits provided by the proposal. Five of the commenters that did not explicitly support the proposal put forth alternative proposals to increase this ability. One of these suggestions was the removal of the limit on cumulative perpetual preferred stock bank holding companies may include in Tier 1. Another suggestion was to include in

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supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] Noncumulative perpetual preferred stock is perpetual preferred stock whose dividends, if missed, do not accrue and will never be paid. Cumulative perpetual preferred stock is preferred stock whose dividends, if missed because of insufficient earnings or any other reason, accumulate until all arrearages are paid out. Cumulative preferred dividends have preference over common dividends, which cannot be paid out as long as any cumulative preferred dividends remain unpaid.

[3] For bank holding companies with consolidated assets of less than $150 million in assets, the risk-based capital guidelines generally are applied on a bank-only basis.

[4] Under the risk-based capital guidelines, certain types of perpetual preferred stock do not qualify for inclusion in Tier 1 capital. For example, perpetual preferred stock in which the dividend is reset periodically based, in whole or in part, upon the banking organization's credit standing is excluded from Tier 1 capital, but may be included in Tier 2 capital.

capital some amount of identifiable intangible assets such as purchased credit card intangibles and core deposit intangibles.[5]

Based on the comments received, the Board is now issuing in final form amendments to its risk-based and capital leverage guidelines to remove the limitation on the amount of noncumulative perpetual preferred stock bank holding companies may include in Tier 1 capital. Bank holding companies will continue to be able to include cumulative perpetual preferred stock in Tier 1 capital, up to a limit of 25 percent of Tier 1. The Board believes that a limitation on cumulative perpetual preferred stock is appropriate because dividends on this type of instrument can only be deferred, not cancelled. Since the existence of large dividend arrearages could complicate an organization's ability to raise common equity in times of financial difficulty, the Board believes that the amount of cumulative preferred stock bank holding companies can include as Tier 1 capital should continue to be limited to 25 percent.

Although the Board is removing the limit on noncumulative preferred, it continues to believe that common equity should remain the dominant form of a banking organization's capital structure. Thus, the Board with retain the language in its risk-based capital guidelines stating that banking organizations should avoid overreliance on nonvoting equity instruments, including perpetual preferred stock, in their Tier 1 capital. Any determination of overreliance depends on a number of factors including the overall financial condition of the institution, the existence of multiple classes of common shareholders, the level and quality of minority interests in equity accounts of consolidated subsidiaries, and the level and quality of preferred stock. Since these factors can vary greatly among banking organizations, the Board will continue to make a final determination on overreliance on nonvoting equity elements on a case-by-case basis.

II. Effective Date

The amendments to the risk-based and leverage capital guidelines are effective upon publication. The provisions of 5 U.S.C. 553(d) generally prescribing 30 days' prior notice of the effective date of a rule have not been followed in connection with the adoption of this amendment. Section 553(d) also provides that such prior notice is not necessary whenever a rule reduces regulatory burdens or there is good cause for finding that such notice is contrary to the public interest. As noted above, by removing the limitation on the amount of noncumulative perpetual preferred stock bank holding companies may include in Tier 1 capital, this rule does reduce such a regulatory burden.

[5] The Board is currently reviewing the capital treatment of intangible assets together with the other federal financial institutions regulatory agencies and will address this matter separately at a later date.

II. Regulatory Flexibility Act Analysis

The Federal Reserve Board does not believe that adoption of this proposal would have a significant economic impact on a substantial number of small business entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In that regard, the proposed amendment would reduce certain regulatory burdens on bank holding companies. In addition, because the risk-based and leverage capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies.

List of Subjects

12 CFR Part 208

Accounting, Agricultural loan losses, Applications, Appraisals, Banks, banking, Branches, Capital adequacy, Confidential business information, Currency, Dividend payments, Federal Reserve System Flood insurance, Publication of reports of condition, Reporting and recordkeeping requirements, Securities, State member banks.

12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set forth in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)), and section 910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3909), the Board is amending 12 CFR Parts 208 and 225 by revising them to read as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 208 continues to read as follows:

Authority: Sections 9, 11(a), 11(c), 19, 21, 25, and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321–338, 248(a), 248(c), 461, 481–486, 601, and 611, respectively); sections 4 and 13(j) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814 and 1823(j), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); sections 907–910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906–3909); sections 2, 12(b), 12(g), 12(i), 15B(c) (5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78*l*(b), 78*l*(g), 78*l*(i), 78o–4(c) (5), 78q, 78q–1, and 78w, respectively); section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927; and sections 1101–1122 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331–3351).

Appendix A—[Amended]

2. In Appendix A to part 208 footnote 6 is removed and reserved.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j) (13), 1818, 1831i, 1843(c) (8), 1844(b), 3106, 3108, 3907 3909, 3310, and 3331–3351.

Appendix A—[Amended]

2. Appendix A to part 225 is amended by revising paragraphs (ii) and (iii) and adding paragraph (iv) in II.A.1., by revising the last three sentences of the third paragraph and the entire fourth paragraph in II.A.1.b., by revising the third entry under the heading and by adding a new entry directly after the newly revised third entry in Attachment II, and by revising footnote 1 in Attachment VI, to read as follows:

II. * * *
A. * * *
1. * * *
(i) * * *
(ii) Qualifying noncumulative perpetual preferred stock (including related surplus).
(iii) Qualifying cumulative perpetual preferred stock (including related surplus), subject to certain limitations described below.
(iv) Minority interest in the equity accounts of consolidated subsidiaries.
a. * * *
b. * * *

However, the aggregate amount of cumulative perpetual preferred stock that may be included in a holding company's tier 1 is limited to one-third of the sum of core capital elements, excluding the cumulative perpetual preferred stock (that is, items i, ii, and iv above). Stated differently, the aggregate amount may not exceed 25 percent of the sum of all core capital elements, including cumulative perpetual preferred stock (that is, items, i, ii, iii, and iv above). Any cumulative perpetual preferred stock

outstanding in excess of this limit may be included in tier 2 capital without any sublimits within that tier (see discussion below).

While the guidelines allow for the inclusion of noncumulative perpetual preferred stock and limited amounts of cumulative perpetual preferred stock in tier 1, it is desirable from a supervisory standpoint that voting common equity remain the dominant form of tier 1 capital. Thus, bank holding companies should avoid overreliance on preferred stock or nonvoting equity elements within tier 1.

* * * * *

Attachment II * * *

Components	Minimum requirements after transition period
* * * * *	
Qualifying noncumulative perpetual preferred stock.	No limit.
Qualifying cumulative perpetual preferred stock.	Limited to 25% of the sum of common stock, qualifying perpetual preferred stock, and minority interests.
* * * * *	

Attachment VI. * * *

* * * * *

[1] Cumulative perpetual preferred stock is limited within tier 1 to 25% of the sum of common stockholders' equity, qualifying perpetual preferred stock, and minority interests.

Appendix D—[Amended]

3. Appendix D to part 225 is amended by revising the first two sentences in footnote 3 to read as follows:

* * * * *

[3] At the end of 1992, Tier 1 capital for bank holding companies includes common equity, minority interest in the equity accounts of consolidated subsidiaries, qualifying noncumulative perpetual preferred stock, and qualifying cumulative perpetual preferred stock. (Cumulative perpetual preferred stock is limited to 25 percent of Tier 1 capital.)

* * *

Board of Governors of the Federal Reserve System, January 13, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-1253 Filed 1-16-92; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-01-AD; Amendment 39-8155; AD 92-03-01]

Airworthiness Directives; McDonnell Douglas Model DC-9-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to McDonnell Douglas Model DC-9-10 series airplanes. This action requires a revision to the Airplane Flight Manual (AFM) which specifies that takeoff may not be initiated unless the flight crew verifies that a visual and physical check of the leading edge and upper wing surfaces have been accomplished and that the wing is clear of ice/frost/snow accumulation. This amendment is prompted by several accidents in which airplanes experienced loss of lift when attempting takeoff with ice contamination on their wings. The actions specified in this AD are intended to prevent ice contamination, which could result in the degradation of wing lift, and stall at lower than normal angles-of-attack during takeoff.

DATES: Effective January 17, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-01-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. James Webre, Los Angeles Aircraft Certification Office, ANM-160L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5364; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: The FAA has received reports of five accidents involving McDonnell Douglas Model DC-9-10 series airplanes that were apparently caused by ice contamination on the wing surfaces. Four of the airplanes involved were not de-iced prior to attempting takeoff. In the fifth accident, the airplane was de-iced; however, it was on the ground for 27 minutes in icing conditions prior to an attempted takeoff. Although Federal Aviation Regulations 91.527 and 121.629 prohibit takeoff with ice, frost, or snow on the wings, in each reported accident, it was apparent that ice buildup on the wings was not noticed or detected by the flight crew prior to takeoff. Consequently, the ice build-up on the wing leading edge contributed to degradation of lift of the airplane.

The McDonnell Douglas Model DC-9-10 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or wing upper surfaces can cause degradation of wing lift, and can cause the airplane to stall at lower than normal angles-of-attack during takeoff. Stall speeds can be increased up to 30 knots, which would be well above the stall warning (stick shaker) activation speed.

Since the unsafe condition described is likely to exist or develop on other McDonnell Douglas DC-9-10 series airplanes of the same type design, this AD is being issued to prevent ice contamination which could result in the degradation of wing lift and stall at lower than normal angles-to-attack during takeoff. This AD requires a revision to the Airplane Flight Manual (AFM) which specifies that takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the leading edge and upper wing surfaces have been accomplished, and that the wing is clear of ice/frost/snow accumulation.

This is considered to be an interim action. The manufacturer has advised the FAA that it is developing a modification which will assist in eliminating the wing leading edge icing problem by providing leading edge heating during ground operation. Once this modification is approved and available, the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons

are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–01–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–03–01. McDonnell Douglas: Amendment 39–8155. Docket 92–NM–01–AD.

Applicability: Model DC–9–11, –12, –13, –14, –15, and –15F series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of lift due to ice accumulation on the wing leading edge and upper surface, accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Wing De-icing Prior to Takeoff

CAUTION

The Model DC–9–10 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or wing upper surfaces can cause a significant reduction in the stall angle-of-attack. This can increase the stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed. [END OF CAUTIONARY NOTE]

The leading edge and upper wing surfaces must be physically checked for ice/frost when the airplane has been exposed to conditions conducive to ice/frost formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the leading edge and upper wing surfaces have been accomplished, and that the wing is clear of ice/frost/snow accumulation. Icing/frost/snow conditions exist when the Outside Air Temperature (OAT) is below 6 degrees C (42 degrees F); and either the difference between the dew point temperature and OAT is less than 3 degrees C (5 degrees F), or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present.

NOTE

This limitation does not relieve the requirement that aircraft surfaces are free of ice, frost, and snow accumulation as required by Federal Aviation Regulations §§ 91.527 and 121.629. [END OF NOTE]"

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance or Operations Inspector, as appropriate, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment (39–8155), AD 92–03–01, becomes effective January 17, 1992.

Issued in Renton, Washington, on January 3, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1463 Filed 1–15–92; 4:15 pm]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–02–AD; Amendment 39–8156; AD 92–03–02]

Airworthiness Directives; McDonnell Douglas Models DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes. This action requires a revision to the Airplane Flight Manual (AFM) which specifies that takeoff may not be initiated unless the flight crew verifies that a visual check and a physical check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation. This action also requires installation of tufts and triangular decals on the inboard side of wing upper surfaces. This amendment is prompted by several incidents in which ice build-up on wing upper surfaces may have shed into the engines during takeoff, causing damage to the engine. This

condition, if not corrected, could cause loss of thrust on one or both engines.

DATES: Effective January 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–02–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications, C1–HDR (54–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James Webre, Los Angeles Aircraft Certification Office, ANM–160L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5364; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: There have been reports of ice forming on the wing upper surfaces of McDonnell Douglas Models DC–9–80 series and Model MD–88 series airplanes in icing conditions, and shedding during takeoff. In some cases, the shedding ice has been ingested into the engines, causing damage to one or both engines. Although Federal Aviation Regulations Sections 91.527 and 121.629 prohibit takeoff with ice, frost, or snow on the wings, in each reported case, it was apparent that ice build-up on the wings was not noticed or detected by the flight crew prior to takeoff.

The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wings' upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. The presence of clear ice can be extremely difficult to detect on smooth surfaces even under the best lighting conditions. Ice accumulation on the wind surfaces, if not detected and removed prior to takeoff, could result in ice shedding from the wing and causing damage to one or both engines, possibly leading to surge, vibration, or loss of thrust.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; and Revision 2, dated August 15, 1990; which describe procedures for installing tufts (short lengths of string) and triangular decals on the inboard side of wings' upper surfaces. These items will help in determining the presence of clear ice.

Since the unsafe condition described is likely to exist or develop on other McDonnell Douglas Model DC–9–80 series and Model MD–88 airplanes of the same type design, this AD is being issued to prevent damage to one or both engines, caused by ice shedding from the wings. This AD requires a revision to the Airplane Flight Manual (AFM) which specifies that takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation. The AD also requires installation of tufts and triangular decals on the inboard side of wing upper surfaces, in accordance with the service bulletin previously described. Further, this AD requires a revision to the Configuration Deviation List (CDL) of the AFM relative to criteria for operating when certain numbers of triangular decals and/or tufts are missing.

This is considered to be interim action. The FAA is considering additional rulemaking to require the installation of an ice/foreign object damage (FOD) alert system (reference McDonnell Douglas MD–80 Service Bulletin 30–64), which will assist in determining the presence of ice on the wing; and installation of an inboard refueling system (reference McDonnell Douglas MD–80 Service Bulletin 28–59), which will permit warmer fuel from ground storage facilities to be loaded into the wing tank in the area where ice shedding from the wind could be ingested into the engine.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for pubic comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–02–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory

Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–03–02. McDonnell Douglas: Amendment 39–8156. Docket 92–NM–02–AD.

Applicability: Model DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of engine thrust, accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Ice on Wing Upper Surfaces

CAUTION

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [END OF CAUTIONARY NOTE]

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high-humidity or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When tufts and triangular decals are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

NOTE

This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations §§ 91.527 and 121.629. [END OF NOTE]"

(b) Within 10 days after the effective date of this AD, revise the Configuration Deviation List (CDL) Appendix of the AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"30–80–01 Triangular Decal and Tuft Assemblies

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist;

OR

(b) When the ambient temperature is more than 50 degrees F."

(c) Within 30 days after the effective date of this AD, install tufts and triangular decals on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance or Operations Inspector, as appropriate, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The installation required by this AD shall be done in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications, C1–HDR (54–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, D.C.

(g) This amendment (39–8156), AD 92–03–02, becomes effective January 17, 1992.

Issued in Renton, Washington, on January 3, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1447 Filed 1–15–92; 4:15 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 92–6]

Customs Regulations Amendment Relating to the Generalized System of Preferences Direct Importation Requirement

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulation; solicitation of comments.

SUMMARY: This document expands the "imported directly" definition in the Customs Regulations pertaining to the Generalized System of Preferences (GSP) to allow goods produced in a member of a GSP-designated association of countries to be shipped through, and subjected to limited processing operations in, another member of the same association whose designation as a member of that association for GSP purposes was terminated by the President. The amendment supports the overall goals of the GSP program which include fostering the continued economic development and integration of association members.

DATES: Interim rule effective January 17, 1992. Comments must be received on or before March 17, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Office of Regulations and Rulings (202–566–2938).

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461–2465), authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for articles which (1) are designated by the President as eligible articles for purposes of the GSP, (2) are the growth, product, or manufacture of a country designated by the President as a beneficiary developing country (BDC) for purposes of the GSP, (3) have at least 35 percent of their appraised value attributable to the cost or value of materials produced in the BDC and/or the direct costs of processing operations performed in the BDC, and (4) are imported directly from the BDC into the Customs territory of the United States. The Customs Regulations implementing the GSP are contained in §§ 10.171–10.178 (19 CFR 10.171–10.178).

Section 10.175 of the Customs Regulations (19 CFR 10.175) defines the expression "imported directly" for purposes of the GSP. Paragraph (a) provides the most restrictive definition (that is, direct shipment from the BDC to the United States without passing through the territory of any other country), and paragraphs (b)–(d) set forth certain limited derogations from the strict rule contained in paragraph (a).

Paragraph (b) refers to shipment from the BDC to the United States through the territory of any other country under circumstances in which the merchandise in the shipment does not enter into the commerce of the intermediate country while en route to the United States, and the invoice, bills of lading, and other shipping documents show the United States as the final destination.

Paragraph (c) covers merchandise shipped from the BDC to the United States through a free trade zone in a BDC and sets forth the following principal conditions: (1) The merchandise shall not enter into the commerce of the country maintaining the free trade zone, (2) the merchandise must not undergo any operations other than sorting, grading, testing, packing, unpacking, repacking, decanting, affixing marks or labels or the like if incidental to other operations permitted under the paragraph, and operations necessary to preserve the merchandise in its condition as introduced into the free trade zone, (3) the merchandise may be purchased and resold, other than at retail, for export within the free trade zone, and (4) an additional Certificate of Origin Form A, declaring what operations, if any, were performed on the merchandise in the free trade zone, shall be prepared and submitted to Custom with the original Certificate of Origin.

Paragraph (d) refers to a shipment from a BDC to the United States through the territory of any other country under circumstances in which the invoices and other documents do not show the United States as the final destination and states that the articles in the shipment are imported directly only if: (1) The articles remained under the control of the customs authority in the intermediate country, (2) the articles did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the district director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent, and (3) the articles were not subjected to operations other than loading and unloading and other activities necessary to preserve the articles in good condition.

Each of the above exceptions to the strict "imported directly" rule was designed to address potential or known problems that could otherwise interfere with the goals of the GSP program, such as geographical limitations (for example, a landlocked BDC needing access to a seaport located in a neighboring country) and regional or product-specific marketing or distribution requirements. The documentary requirements and other conditions set forth in each of these transshipment exceptions were specifically designed to ensure that Customs would still be able to trace the imported goods to their true country of origin, in recognition of the fact that the real function of the direct importation requirement is to assist in establishing compliance with the basic GSP origin requirements.

In Proclamation 5805 of April 29, 1988, published at 53 FR 15785 on May 4, 1988, the President pursuant to 19 U.S.C. 2464 terminated the designation of Singapore and Brunei Darussalam as BDCs for purposes of the GSP, thus removing them both from the list of independent countries entitled to GSP benefits and from the list of members of the Association of South East Asian Nations (ASEAN) treated as one BDC for GSP purposes. The action with regard to Singapore was based on a determination that Singapore was sufficiently advanced in economic development and improved in trade competitiveness that continued preferential treatment under the GSP was not warranted. The action as regards Brunei Darussalam was based on a determination that its per capita gross national product had exceeded the applicable limit for GSP designation provided in 19 U.S.C. 2464(f). The principal intended effect of the Presidential action was (1) to exclude from GSP duty-free treatment all articles produced in Singapore or in Brunei Darussalam, and (2) in the case of an article produced in another ASEAN member country, to preclude counting any cost or value of materials or direct costs of processing operations attributable to Singapore or Brunei Darussalam in order to meet the GSP 35 percent value-added requirement under the cumulation of value provision applicable to members of an association of countries treated as one country under the GSP.

However, the Presidential Proclamation also has had the collateral effect of excluding from GSP duty-free treatment articles produced in any remaining GSP-eligible ASEAN member country (Indonesia, Malaysia, the Philippines, or Thailand) and shipped to Singapore or Brunei Darussalam where unpacking, testing, labeling, repacking and other minimal operations are performed on such articles prior to final shipment to the United States. This results from the fact that, by removing Singapore and Brunei Darussalam from the list of ASEAN member countries treated as one country for GSP purposes, such an article can no longer be considered to have been directly shipped to the United States from the ASEAN and thus would not be "imported directly" within the meaning of the GSP statute. Moreover, none of the above-described exceptions to the strict "imported directly" rule set forth in 19 CFR 10.175 would apply in such circumstances, and in this regard the following is noted: (1) Paragraph (b) is inapplicable because testing and other operations performed on the article in Singapore or Brunei Darussalam constitute entry into the commerce of those countries; (2) paragraph (c) does not apply because the free trade zone must be located in a BDC and Singapore and Brunei Darussalam are no longer BDCs; and (3) paragraph (d) does not permit the types of operations performed on the article in Singapore or Brunei Darussalam.

The Office of the United States Trade Representative (USTR) has determined that the situation described above is having a serious negative effect on both the GSP program and the goals of the ASEAN. While the Presidential action has had the desired effect of preventing

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Singapore and Brunei from benefitting from the GSP trade preference, it has also caused difficulties for the remaining GSP-eligible ASEAN member countries which, having in the past found it necessary to transship some of their products through Singapore or Brunei Darussalam for the purpose of performing testing and related minor operations and in order to facilitate marketing and distribution, are now able to do so only at the cost of losing GSP duty-free treatment on those products. Thus, in effect, GSP availability has been somewhat eroded for products of Indonesia, Malaysia, the Philippines, and Thailand, thereby frustrating the intent behind their continued designation as GSP BDCs. Moreover, by precluding Singapore or Brunei Darussalam from having such peripheral involvement with the GSP transactions of the other ASEAN members, the goal of the ASEAN, which is to further the economic integration of its members, will be frustrated. In accordance with commitments made to interested foreign governmental entities to try to find a solution to this problem, USTR therefore requested Customs to consider whether the Customs Regulations could be amended on an expedited basis to correct this situation. Customs has concluded that a regulatory amendment in this case, so long as it does not affect the President's action withdrawing direct GSP benefits from the two countries in question, would be equitable, proper and consistent with the overall objectives of the GSP program.

In order to ensure that the solution to this problem is limited to the narrow "imported directly" context under which it arose, and in keeping with the regulatory approach taken toward similar problems in the past, this document simply sets forth an amendment to 19 CFR 10.175 involving the addition of a new paragraph (e) to cover cases in which goods originating in a member of an association treated as one GSP country are shipped through the territory of a former BDC whose designation as a member of the same association was terminated by the President. The new regulatory text set forth in this document incorporates the limitations or conditions found in present paragraph (c) with respect to the general prohibition against entry into the commerce, the limited types of operations that would be permitted, the allowance of only a non-retail purchase or resale for export, and the submission of an additional Certificate of Origin Form A describing the operations performed; however, the new text is not limited to free trade zone situations as in the case of paragraph (c) because such a limitation would be overly restrictive and is unnecessary in this context. This new paragraph (e) also specifically lists Singapore and Brunei Darussalam so as to clarify the present application of the paragraph, and future amendments to this list would be made as changed circumstances may warrant.

Finally, Customs believes that the pressing need for this regulatory change as explained above, coupled with the fact that the change confers a benefit on the general public by removing a restriction, warrants immediate implementation of the change in the form of an interim rule with provision for public comments thereon.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a) public notice is inapplicable to this regulation because it falls within the foreign affairs function of the United States. The regulation implements commitments made to foreign governmental entities by the Executive Office of the President and accords with the President's statutory authority regarding administration of the GSP program. In addition, because this regulation is necessary to support the objectives of the existing GSP program and since it confers a benefit on the general public, it is determined pursuant to 5 U.S.C. 553(b)(B) that notice and public procedures are impracticable, unnecessary, and contrary to the public interest. Furthermore, for the above reasons, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a delayed effective date.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspections, Imports.

Amendment to the Regulations

For the reasons set forth above, part 10, Customs Regulations (19 CFR part 10) is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC

1. The authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624.

* * * * *

2. Section 10.175 is amended by removing the period at the end of paragraph (d)(3) and adding in its place "; or", and by adding a new paragraph (e) to read as follows:

§ 10.175 Imported directly defined.

* * * * *

(e)(1) Shipment to the U.S. from a beneficiary developing country which is a member of an association of countries treated as one country under section 502(a)(3), Trade Act of 1974, as amended (19 U.S.C. 2462(a)(3)), through the territory of a former beneficiary developing country whose designation as a member of the same association for GSP purposes was terminated by the President pursuant to section 504, Trade Act of 1974, as amended (19 U.S.C. 2464), provided:

(i) The articles in the shipment did not enter into the commerce of the former beneficiary developing country except for purposes of performing one or more of the operations specified in paragraph (c)(1) of this section and except for purposes of purchase or resale, other than at retail, for export; and

(ii) The person responsible for the articles in the former beneficiary developing country, or any person having knowledge of the facts, shall prepare and sign an additional

Certificate of Origin Form A declaring what operations, if any, were performed in the former beneficiary developing country. At the request of the district director, this additional Certificate of Origin shall be presented to Customs along with the Certificate of Origin required by § 10.173(a)(1). The provisions of §§ 10.173 (a)(2), (a)(3), (a)(4) and (a)(5) are applicable to this paragraph.

(2) The designation of the following countries as members of an association of countries for GSP purposes has been terminated by the President pursuant to section 504 of the Trade Act of 1974 (19 U.S.C. 2464):

Brunei Darussalam.
Singapore.

Approved: January 13, 1992.

Michael H. Lane,

Acting Commissioner of Customs.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-1228 Filed 1-16-92, 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 90F-0321]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*, 3*H*, 5*H*)trione as an antioxidant for polymethylpentene homopolymers used in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective January 17, 1992; written objections by February 18, 1992.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of October 30, 1990 (55 FR 45656), FDA announced that a food additive petition (FAP 0B4219) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*, 3*H*, 5*H*)trione as an antioxidant for polymethylpentene homopolymers used in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before February 18, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.2010 is amended in the table in paragraph (b) for the entry 1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*, 3*H*, 5*H*)trione * * * by numerically adding a new entry "6." under the heading "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * *
1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*, 3*H*, 5*H*) trione(CAS Reg. No. 27676-62-6).	For use only: * * * 6. At levels not to exceed 0.2 percent by weight of olefin polymers complying with § 177.1520(c)(4) of this chapter. The finished polymers may be used in contact with food under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter.
* * *	* * *

Dated: January 10, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-1263 Filed 1-16-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

CGD 92-002

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between October 1, 1991 and December 31, 1991 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

ADDRESSES: The complete text of any temporary regulation may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G-LRA-2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Don Harris, Regulatory Paralegal, Marine Safety Council at (202) 267-1477 between the hours of 8 a.m. and 3:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. Non-major safety zones, special local regulations and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period October 1, 1991 through December 31, 1991, unless otherwise indicated.

Docket #	Location	Type	Effective date
CGD1-91-057	Lower East River, New York	Safety	31 Dec 91.
CGD1-91-153	Lower Hudson River, NY/NJ	Safety	11 Oct 91.
CGD1-91-154	Old Rte 156 Niantic River	Safety	08 Oct 91.
CGD1-91-155	Kill Van Kull, NY/NJ	Safety	15 Oct 91.
CGD1-91-163	Shinnecock Inlet, Unexploded	Safety	22 Oct 91.
CGD1-91-164	Old Rte 156 Niantic River Bridge	Safety	29 Oct 91.
CGD1-91-166	Lower East River, NY	Security	12 Nov 91.
CGD1-91-169	Boston Inner Harbor	Safety	31 Dec 91.
CGD2-91-001	Fleur De Lis Regatta	Special	11 Oct 91.
CGD5-91-048	American Diabetes Choptank Swim	Special	19 Oct 91.
CGD7-91-105	Lauderdale Great South Florida	Special	05 Oct 91.
CGD7-91-106	Columbus Day Cruising Regatta	Special	12 Oct 91.
CGD7-91-112	Dick Misener Memorial Marathon	Special	05 Oct 91.
CGD7-91-113	Gold Cup Challenge	Special	06 Oct 91.
CGD7-91-118	1991 Offshore World Championship	Special	19 Nov 91.
CGD7-91-120	29th Annual Christmas Boat Parade	Special	15 Dec 91.
CGD7-91-123	City of Boynton Beach/Delray Beach	Special	13 Dec 91.
CGD7-91-124	Winterfest Boat Parade	Special	14 Dec 91.
CGD7-91-125	Christmas Parade of Boats	Special	07 Dec 91.
CGD8-91-023	Banana Bend Championship Outboard	Special	12 Oct 91.
	Captain of the Port Regulations		
Boston 91-151	Boston Inner Harbor	Safety	12 Oct 91.
Charleston 91-102	Cooper River, SC	Safety	12 Sep 91.
Charleston 91-103	Intracoastal Waterway	Safety	15 Aug 91.
Charleston 91-104	Cooper River, SC	Emergency	17 Sep 91
Charleston 91-119	ICW/Wappoo Cut Bridge	Emergency	20 Nov 91.
Chicago 09-91-17	Merrill C. Meigs Airfield	Security	20 Sep 91.
Chicago 09-91-18	Merrill C. Meigs Airfield	Security	10 Dec 91.
Hampton Rds 91-05-09	James River	Safety	23 Oct 91
Hampton Rds 91-05-11	Alligator River	Safety	27 Nov 91.
Honolulu 91-02	Honolulu & Bellows AFB	Safety	15 Nov 91.
Honolulu 91-03	Honolulu Harbor	Security	06 Dec 91.
Huntington 91-05	Kanawha River Mile 0.01.6	Safety	08 Nov 91.
Jacksonville 91-98	Florida, Fernandina	Safety	08 Sep 91.
Jacksonville 91-99	Jax Pride & Jax Mac	Safety	12 Sep 91.
Jacksonville 91-122	St. Johns River	Safety	29 Nov 91.
Jacksonville 91-126	Jacksonville Landing	Safety	07 Dec 91
Jacksonville 91-130	Hot Winter Jet Ski Race	Safety	15 Dec 91.
LA/LB 91-23	Explosive Anchorage K-5	Safety	16 Dec 91.

Docket #	Location	Type	Effective date
Louisville 91-16	Calhoun, Kentucky	Safety	03 Oct 91.
Louisville 91-16	Louisville, Kentucky	Safety	04 Oct 91.
Paducah 91-13	Lower Mississippi	Safety	31 Aug 91.
Paducah 91-14	Upper Mississippi River	Safety	17 Sep 91.
Paducah 91-15	Tennessee River	Safety	30 Sep 91.
Paducah 91-16	Ohio River	Safety	01 Oct 91.
Paducah 91-17	Cumberland River	Safety	05 Oct 91.
Paducah 91-18	Tennessee River	Safety	03 Oct 91.
Pittsburgh 91-04	Allegheny River	Security	14 Aug 91.
Pittsburgh 91-05	Ohio River	Safety	28 Sep 91.
Pittsburgh 91-07	Monongahela River	Safety	29 Oct 91.
Portland 90-03	Columbia River	Safety	06 Jun 90.
Puget Sound 91-12	Lake Washington Canal	Safety	19 Aug 91.
Puget Sound 91-13	Lake Washington Canal	Safety	19 Aug 91.
Puget Sound 91-14	Elliott Bay, WA	Safety	14 Sep 91.
Puget Sound 91-15	Elliott Bay, WA	Safety	16 Sep 91.
Puget Sound 91-17	Eagle Harbor, Winslow, WA	Safety	08 Dec 91.
San Francisco 91-09	San Francisco Bay	Safety	12 Oct 91.
San Francisco 91-10	San Francisco Bay	Safety	12 Oct 91.
San Francisco 91-11	San Francisco Bay	Safety	16 Oct 91.
San Francisco 91-12	San Francisco Bay	Safety	22 Oct 91.
Savannah 91-108	Sea Island, GA	Security	28 Sep 91.
Savannah 91-109	St. Simons Island	Security	28 Sep 91.
Wilmington 91-011	Cape Fear River	Safety	01 Oct 91.
Wilmington 91-012	Cape Fear River	Safety	01 Oct 91.
Wilmington 91-013	Cape Fear River	Safety	05 Oct 91.

Dated: January 13, 1992.

D.M. Wrye,

Lieutenant Commander, USCG, Acting Executive Secretary, Marine Safety Council.

[FR Doc. 92-1289 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program; Correction

AGENCY: Department of Education.

ACTION: Final regulations—correction.

SUMMARY: This document corrects the final regulations for the Pell Grant Program that were published in the Federal Register on November 6, 1991 at 55 FR 56912.

FOR FURTHER INFORMATION CONTACT: Joyce R. Coates, Program Specialist, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4318, ROB-3), Washington, DC 20202, (202) 708-7888. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On November 6, 1991, the Secretary published final regulations in the Federal Register for the Pell Grant Program, 34 CFR part 690. This document corrects the Preamble of these final regulations as follows:

On page 56912, column 2, the third paragraph from the bottom is removed.

Dated: January 13, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-1311 Filed 1-16-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 10

[Docket No. 910764-1306]

RIN 0651-AA27

Duty of Disclosure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of final rulemaking.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice in patent cases to (1) clarify the duty of disclosure for information required to be submitted to the Office; (2) provide flexible time limits for submitting information disclosure statements including the requirement for a fee in certain cases; (3) eliminate consideration of duty of disclosure issues by the Office except in disciplinary and interference proceedings, and under other limited circumstances; and (4) eliminate the striking of patent applications which are improperly executed. The Office further is amending the Patent and Trademark Office Code of Professional Responsibility to define as misconduct a failure to comply with the rules on duty of disclosure. The rules as adopted strike a balance between the need of the Office to obtain and consider all known relevant information pertaining to patentability before a patent is granted and the desire to avoid or minimize unnecessary complications in the enforcement of patents.

EFFECTIVE DATE: March 16, 1992. These rules will be applicable to all applicants and reexamination proceedings pending or filed after the effective date.

FOR FURTHER INFORMATION CONTACT: By telephone Charles E. Van Horn (703-305-9054) or J. Michael Thesz (703-305-9384) or by mail addressed to Commissioner of Patents and Trademarks, Washington, DC 20231, and marked to the attention of Charles E. Van Horn (Crystal Park 2—room 919).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking on duty of disclosure and practitioner misconduct published in the Federal Register at 54 FR 11334 (March 17, 1989), and in the Patent and Trademark Office Official Gazette at 1101 Off. Gaz. Pat. Off. 12 (April 4, 1989), was withdrawn. On August 6, 1991, the Office published in the Federal Register a notice of proposed rulemaking relating to duty of disclosure. 56 FR 37321. The notice was also published in the Official Gazette. 1129 Off. Gaz. Pat. Off. 52 (August 27, 1991). Sixty written comments were received in response to the notice of proposed rulemaking. A public hearing was held on October 8, 1991. Eleven individuals offered oral comments at the hearing. The sixty written comments and a copy of the transcript of the hearing are available for public inspection in the Office of the Assistant

Commissioner for Patents, room 919, Crystal Park II, 2121 Crystal Drive, Arlington, VA.

Familiarity with the notice of proposed rulemaking is assumed. Changes in the text of the rules published for comment in the notice of proposed rulemaking are discussed. Comments received in writing and at the public hearing in response to the notice of proposed rulemaking are discussed.

The rules as adopted shall take effect as to all applications and reexamination proceedings either pending or filed on or after the effective date of these rules. Thus, any information disclosure statement that is filed on or after that date must comply with the provisions of §§ 1.97 and 1.98 to be entitled to consideration.

Changes in Text

The final rules contain several changes to the text of the rules as proposed for comment. Those changes are discussed below.

Section 1.17(i)(1) has been changed from the proposed text to reflect the recent increase in the amount of the fee for filing a petition from $120.00 to $130.00.

Section 1.56(a) has been clarified to indicate that the duty of an individual to disclose information is based on the knowledge of that individual that the information is material to patentability. A sentence has been added to § 1.56(a) to express the principle that the Office does not condone the granting of a patent on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or international misconduct. In addition, § 1.56(a) as proposed has been changed to indicate that if all information material to patentability of any claim issued in a patent is cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)–(d) and 1.98, the Office will consider as satisfied the duty to disclose to the Office all information known to be material to patentability, as contrasted to the broader duty of candor and good faith. This rule does not attempt to define the spectrum of conduct that would lack the candor and good faith in dealing with the Office which is expected of individuals who are associated with the filing or prosecution of a patent application.

In § 1.56(b), the phrase "or being made of record" has been inserted to make it clear that information is not material to patentability within the meaning of § 1.56 if it is cumulative to either information already of record in the application or contemporaneously being made of record by applicant. For example, there would be no benefit to the Office for applicant to submit to the Office 10 different documents having the same teaching simply because the information was not cumulative to the information already of record.

The term "creates" has been replaced by the term "establishes" in § 1.56(b)(1). In addition, the definition of a prima facie case of unpatentability, as set out in the preamble of the notice of proposed rulemaking, has been incorporated into the rule itself. A prima facie case of unpatentability of a claim is established when the information compels a conclusion that the claim is unpatentable:

(1) Under the preponderance of evidence, burden-of-proof standard,

(2) Giving each term in the claim its broadest reasonable construction consistent with the specification, and

(3) Before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

This prima facie standard conforms to the standard used by an examiner to determine whether a claim is prima facie unpatentable.

Section 1.56(b)(2) has been modified from the text of the proposed rule. The focus on this paragraph has been changed so that it now relates to information which either refutes, or is inconsistent with, a position that applicant takes in either:

(1) Opposing an argument of unpatentability relied on by the Office, or

(2) Asserting an argument of patentability. The change from the proposed rule makes clear that information is material when it either refutes, or is inconsistent with, a position taken by applicant before the Office.

Section 1.97(e) has been changed from the proposed text to make it clear that a certification could contain either of two statements. One statement is that each item of information in an information disclosure statement was cited in a search report from a patent office outside the U.S. not more than three months prior to the filing date of the statement. Under this certification, it would not matter whether any individual with a duty actually knew about any of the information cited before receiving the search report. In the alternative, the certification could state that no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application or, to the knowledge of the person signing the certification after making reasonable inquiry, was known to any individual having a duty to disclose more than three months prior to the filing of the statement.

The changes to the text of § 1.97(e) as proposed place the appropriate priority on getting relevant information to the Office promptly, with minimum burden to applicant. The text of the proposal has also been changed by adding the phrase "after making reasonable inquiry" to make it clear that the individual making the certification has a duty to make reasonable inquiry regarding the facts that are being certified. For example, if an inventor gave a publication to the practitioner prosecuting an application with the intent that it be cited to the Office, the practitioner should inquire as to when that inventor became aware of the publication before submitting a certification under § 1.97(e)(ii) to the Office.

A new paragraph (h) has been added to the text of proposed § 1.97. The purpose of new paragraph (h) is to ensure that no one could construe the mere filing of an information disclosure statement as an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in § 1.56(b). It is in the best interest of the Office and the public to permit and encourage individuals to cite information to the Office without fear of making an admission against interest.

In § 1.98(a)(2)(iii), the wording has been changed to make it clear that the requirement to submit a copy of each item of information listed in an information disclosure statement does not apply to the citation of a U.S. patent application.

The requirement in proposed § 1.98(a)(3) for a concise explanation of the relevance of each item of information has been substantially changed by limiting the requirement in two significant ways. First, as adopted, the requirement is limited to information that is not in the English language. Second, the explanation required is limited to the relevance as understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information at the time the information is submitted to the Office. Where the information listed is not in the English language, but was cited in a search report by a foreign patent office, the requirement for a concise explanation of relevance is satisfied by submitting an English language version of the search report.

In § 1.98(d), the proposed text has been changed by adding the phrase "cited by or" to make it clear that legible copies of information listed in an information disclosure statement need not be submitted in a continuing application provided the information was either cited by or submitted to the Office in a prior application. A distinction between information cited by the Office or supplied by applicant to the Office serves no useful purpose in this situation.

The text of proposed § 1.555 has been modified to limit the definition of information material to patentability in a reexamination proceeding to the types of information that an examiner could use in a reexamination proceeding to determine whether a claim was patentable, and to adopt other changes that parallel changes made in § 1.56. Proposed § 1.555(a) has been divided into two paragraphs. Paragraph (a), as adopted, substantially parallels the text of § 1.56(a) as adopted. It indicates that the duty to disclose information to the Office in a reexamination proceeding is a part of the duty of candor and good faith that is owed to the Office by individuals transacting business with the Office. It further states one way that an individual may discharge the duty to disclose information material to patentability in a reexamination proceeding—i.e., by filing an information disclosure statement with the items listed in § 1.98(a) as applied to individuals associated with the patent owner in a reexamination proceeding. Finally, the text of the rule has been changed to add a sentence that expresses the principle that a patent should not be granted on an application in connection with which fraud was practiced or attempted on the Office or there was any violation of the duty of disclosure through bad faith or intentional misconduct.

New paragraph (b) of § 1.555 has been adopted to define information material to patentability in a reexamination proceeding. Much like the definition in § 1.56(b), information is not material when it is cumulative to information of record or being made of record in the reexamination proceeding. Information is considered material when it satisfies either or both of the definitions in § 1.555(b). Under § 1.555(b)(1), information is material when it is a patent or printed publication that establishes, by itself or in combination with other patents or printed publications, a prima facie case of unpatentability of a claim. This definition is limited to patents or printed publications because a reexamination proceeding must be based on patents or printed publications. 35 U.S.C. 302.

The definition of a prima facie case of unpatentability of a claim pending in a reexamination proceeding has been provided in the rule. A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the same principles that are applicable during ex parte examination of a patent application; namely:

(1) Under the preponderance of evidence, burden-of-proof standard,

(2) Giving each term in the claim its broadest reasonable construction consistent with the specification, and

(3) Before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

Finally, the definition of information material to patentability in § 1555(b)(2) has been added to parallel the provision in § 1.56(b)(2).

After reviewing the Office policy on whether to consider duty of disclosure and other inequitable conduct issues in interference proceedings under 35 U.S.C. 135(a), including comments from the public directed to the statement in the notice of proposed rulemaking that the Office will not consider, evaluate, or decide fraud or other inequitable conduct issues during an interference proceeding, a new Office policy has been adopted. Effective October 24, 1991, fraud and inequitable conduct issues will be considered when properly raised inter partes in patent interference cases. 1132 Off. Gaz. Pat. Off. 33 (November 19, 1991). In addition, the Chairman of the Board of Patent Appeals and Interferences has issued a notice that provides guidance on how an issue of fraud or other inequitable conduct can be raised in an interference proceeding. 1133 Off. Gaz. Pat. Off. 21 (December 10, 1991).

Response to and Analysis of Comments

Sixty (60) written comments were received in response to the notice of proposed rulemaking. These comments, along with those made at the public hearing, have been analyzed. Some suggestions made in the comments have been adopted and others have been rejected. Responses to the comments follow.

Comment 1. Nine comments indicated that the Office should not amend § 1.56 since it is presently in conformance to the materiality standard being applied by the Court of Appeals for the Federal Circuit. One comment questioned what practical value of the proposed rule would justify the burden of the change.

Reply: The amendment to § 1.56 was proposed to address criticism concerning a perceived lack of certainty in the materiality standard. The rule as promulgated will provide greater clarity and hopefully minimize the burden of litigation on the question of inequitable conduct before the Office, while providing the Office with the information necessary for effective and efficient examination of patent applications.

Comment 2. One comment stated that the present rules should be maintained and strengthened since the public interest is hurt more by an unjustly issued patent than by an unjustly denied patent. Another comment disagreed and argued that an unjustly denied patent can do great harm to society.

Reply: The Office strives to issue valid patents. The Office has both an obligation not to unjustly issue patents and an obligation not to unjustly deny patents. Innovation and technological advancement are best served when an inventor is issued a patent with the scope of protection that is deserved. The rules as adopted serve to remind individuals associated with the preparation and prosecution of patent applications of their duty of candor and good faith in their dealings with the Office, and will aid the Office in receiving, in a timely manner, the information it needs to carry out effective and efficient examination of patent applications.

Comment 3. Two comments stated that the rule should not permit applicants to draft claims and a specification to avoid a prima facie case of obviousness over a reference and then to be able to withhold the reference from the examiner.

Reply: The comments reflect a correct reading of the rule in that information is not material unless it comes within the definition of § 1.56(b) (1) or (2). If information is not material, there is no duty to disclose the information to the Office. The Office believes that most applicants will wish to submit the information, however, even though they may not be required to do so, to strengthen the patent and avoid the risks of an incorrect judgment on their part on materiality or that it may be held that there was an intent to deceive the Office.

Comment 4. One comment stated that promulgation of the proposed rule would result in a significant decrease in the quantity of art cited to the Office because there will be no duty to cite art relevant to a pending claim.

Reply: The Office does not anticipate any significant change in the quantity of

information cited to the Office after promulgation of amended § 1.56. Presumably, applicants will continue to submit information for consideration by the Office in applications rather than making and relying on their own determinations of materiality. An incentive remains to submit the information to the Office because it will result in a strengthened patent and will avoid later questions of materiality and intent to deceive. In addition, the new rules will actually facilitate the filing of information since the burden of submitting information to the Office has been reduced by eliminating, in most cases, the requirement for a concise statement of the relevance of each item of information listed in an information disclosure statement.

Comment 5. Several comments stated that an objective "but for" standard would be preferable to the proposed rule. The objective "but for" standard would presumably consider information as a court does in an infringement proceeding with a clear and convincing, burden-of-proof standard, giving the terms in each claim a narrow construction where necessary to uphold validity.

Reply: The Office believes that amended § 1.56 will provide a reasonable balance between the needs of applicants and of the Office. The suggested "but for" standard would not cause the Office to obtain the information it needs to evaluate patentability so that its decisions may be presumed correct by the courts. If the Office does not have needed information, meaningful examination of patent applications will take place for the first time in an infringement case before a district court. Courts will become increasingly less confident of the Office's product if they get the impression that practitioners and inventors can routinely withhold information from the Office, or that practitioners and inventors can make up their own minds about what is patentable. The Office should decide, in the first instance, what is patentable and any decision should be made with the best information available, including that known by the applicant. The Office notes that the House of Delegates of the American Bar Association twice, once in 1990 and again in 1991, refused to adopt a resolution favoring adoption of the "but for" standard.

Comment 6. One comment argued that proposed § 1.56 does not relate to "the conduct of proceedings in the Patent and Trademark Office" (35 U.S.C. 6(a)) since the Office does not intend to reject applications as indicated by the cancellation of paragraphs (c) through (i) of current § 1.56.

Reply: The amendment to § 1.56 comes within the authority of the Commissioner for establishing regulations. *Norton* v. *Curtiss*, 433 F.2d 779, 167 USPQ 532 (CCPA 1970). The Office has reserved its inherent authority to reject an application under appropriate circumstances where fraud or other inequitable conduct has occurred. Also, the Office will consider fraud and inequitable conduct when properly raised in interference proceedings under 35 U.S.C. 135(a). The Office will also consider fraud and inequitable conduct in connection with attorney conduct under § 10.23(c).

Comment 7. One comment stated that § 1.56 should require only anticipatory art to be submitted during examination of an application, with a procedure such as reexamination being used after discovery in any litigation on the patent has revealed all available art.

Reply: An application is examined under all appropriate sections of Title 35, United States Code, and a presumption of validity attaches to a patent with regard to all aspects of patentability, including anticipation. 35 U.S.C. 282. Therefore, § 1.56 should address more than just the submission of anticipatory information, including information relevant to patentability under 35 U.S.C. 103 and 35 U.S.C. 112.

Comment 8. One comment suggested that proposed § 1.56 has some dangerous implications since courts are going to find violations of the duty of disclosure if §§ 1.97 and 1.98 are not complied with completely.

Reply: Section 1.56 provides that the duty of disclosure can be met by submitting information to the Office in the manner prescribed by §§ 1.97 and 1.98. Sections 1.97 and 1.98 are being amended so that information will be submitted to the Office in the manner and at the time which will facilitate consideration by the examiner. Applicants are provided certainty as to when information will be considered, and applicants will be informed when information is not considered. The Office does not believe that courts should, or will, find violations of the duty of disclosure because of unintentional non-compliance with §§ 1.97 and 1.98. If the non-compliance is intentional, however, the applicant will have assumed the risk that the failure to submit the information in a manner that will result in its being considered by the examiner may be held to be a violation.

Comment 9. Two comments stated that the Office should not delete the offense of attempted fraud from the § 1.56. The comments stated that elimination of the reference to "gross negligence" in current § 1.56 would be sufficient to protect the practitioner who delays submission of information with no intent to deceive the Office. One of the comments stated that the disciplinary rules alone are not sufficient to deter attempted fraud or inequitable conduct.

Reply: The language of §§ 1.56(a) and 1.555(a) has been modified to retain the provisions of prior § 1.56(d) to indicate that the Office does not condone fraud, attempted fraud, or violation of the duty of disclosure through bad faith or intentional misconduct.

Comment 10. One comment stated that the appropriate standards for the duty of candor are analogous to fiduciary law which requires the fiduciary to disclose not only known facts, but also facts which it should have known, i.e., a negligence standard. The comment argued that it was undesirable to measure duty of candor or fraud by a reduced measure of "intent" instead of an objective negligence standard since the Office is not bound by the U.S. Court of Appeals for the Federal Circuit decision in *Kingsdown Medical Consultants, Ltd.* v. *Hollister, Inc.*, 863 F.2d 867, 9 USPQ2d 1384 (Fed. Cir. 1988) (*en banc*), *cert. denied*, 490 U.S. 1067 (1989), and since the proposed standard is no more objective than alternative standards but is simply narrower and more certain. Another comment suggested that the Office should indicate that there is no intention to change the Kingsdown ruling.

Reply: Section 1.56 has been amended to present a clearer and more objective definition of what information the Office considers material to patentability. The rules do not define fraud or inequitable conduct which have elements both of materiality and of intent. The Office does not advocate any change to the Kingsdown ruling.

Comment 11. Two comments stated that the proposed modification of § 1.56 would make submission of information to the Office an implied admission of the prima facie unpatentability of a claim. Several comments suggested that a sentence should be added to proposed § 1.56 to specify that submission of information to the Office under this section shall not be deemed to be an admission or representation that the information is material to patentability.

Reply: The suggestions in the comments have been adopted by modifying § 1.97 which deals with submission of information to the Office. Paragraph (h) of § 1.97 now provides

that the filing of an information disclosure statement shall not be considered to be an admission that the information cited in the statement is, or is to be considered to be, material to patentability as defined in § 1.56.

Comment 12. One comment stated that the proposed § 1.56 definition would be difficult to apply in litigation in which a different burden-of-proof standard is applied.

Reply: The definition of information material to patentability includes standards which are familiar to the Federal courts and which are capable of being handled like other issues.

Comment 13. One comment suggested that the last sentence of proposed § 1.56(a), in which the Office encourages applicants to carefully examine prior art cited in foreign search reports and the closest known information, be removed from the rule and be placed in the preamble discussion so as to avoid the interpretation that the sentence creates a duty for applicants.

Reply: The suggestion is not adopted. The sentence does not create any new duty for applicants, but is placed in the text of the rule as helpful guidance to individuals who file and prosecute patent applications.

Comment 14. Three comments stated that the language of proposed § 1.56(a) required revision to remove all statements or suggestions which might allow a court to consider a pending (i.e., unissued) claim for the purpose of determining whether the duty of disclosure requirement was met in view of the fact that the proposed rule was intended to indicate that there is no duty to disclose information which is material to a pending claim unless that claim ultimately issues in a patent. One comment argued that a court might interpret "the duty of candor and good faith" to be broader than the particular duty of disclosure specified in other portions of the proposed rule.

Reply: The language of §§ 1.56 and 1.555 has been modified to emphasize that there is a duty of candor and good faith which is broader than the duty to disclose material information. Section 1.56 further states that "no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct."

Comment 15. One comment suggested that proposed § 1.56(a) be modified to clarify that both information and its materiality must be known before there is a duty to disclose the information.

Reply: The Office considers the language of 1.56(a) to be sufficiently clear in referring to a "duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section." If information is known to be material, it inherently must be known. Likewise, if information is not known to an individual, there is no duty to disclose the information whether it is material or not.

Comment 16. One comment stated that it should be made clear that "known" is limited to contemporaneous knowledge since a practitioner may have known something ten years ago but may not remember it presently.

Reply: Section 1.56 states that each individual associated with the filing and prosecution of a patent application has a duty to disclose all information known to that individual to be material to patentability as defined in the section. Thus, the duty applies to contemporaneously or presently known information. The fact that information was known years ago does not mean that it was recognized that the information is material to the present application.

Comment 17. One comment suggested that proposed § 1.56(a) be modified to state that the duty of disclosure ends when an application becomes abandoned or allowed.

Reply: Paragraph (a) of § 1.56 states that the duty to disclose information exists until the application becomes abandoned. The duty to disclose information, however, does not end when an application becomes allowed but extends until a patent is granted on that application. The rules provide for information being considered after a notice of allowance is mailed and before the issue fee is paid (§ 1.97(d)) and for an application to be withdrawn from issue after the issue fee has been paid. An application may be withdrawn from issue because one or more claims are unpatentable (§ 1.313(b)(3)) or an application may be withdrawn from issue and abandoned so that information may be considered in a continuing application before a patent issues (§ 1.313(b)(5)).

Comment 18. Three comments stated that the first two sentences of proposed § 1.56(a) should be deleted since rules should simply instruct practitioners what to do without discussion of why they should do it or the philosophy involved.

Reply: The suggestion has not been adopted since the sentences aid in the understanding of the rule and will provide those involved in enforcing patents with an indication of the policy on which the rule is based.

Comment 19. One comment stated that §§ 1.56 (a)(2) and (c) should be modified to refer to "individuals substantively associated with" the filing or prosecution of the patent application.

Reply: The suggestion is not adopted since the proposed rule language is clear and the suggested modification would create a redundancy with the language of § 1.56(c)(3). The individuals designated in §§ 1.56(c) (1) and (2) as being associated with the filing or prosecution of a patent application within the meaning of the section are inherently substantively involved in the preparation or prosecution of the application.

Comment 20. One comment stated that proposed § 1.56(b) should be modified to clarify that information is not material if it is cumulative to information already of record in an application or to information concurrently being made of record.

Reply: The suggestion has been adopted by adding a reference to information being made of record with regard to cumulative information in §§ 1.56(b) and 1.555(b).

Comment 21. One comment stated that the preamble discussion (of § 1.56(b)) should indicate that test results in situations such as tests involving biological systems may properly be submitted as averages rather than as individual test runs.

Reply: Whether test results can be submitted as averages rather than as individual test runs depends on whether doing so would provide to the Office the information needed to make a proper determination on patentability. If the actual results are provided, the examiner can make an independent determination on whether some rejection is appropriate. In some cases providing averages might be misleading, but in other cases providing averages might be appropriate.

Comment 22. One comment stated that the definition of materiality in proposed § 1.56(b) imposes substantial new burdens on applicants who would be required to disclose failed experiments, papers published less than one year prior to filing and experimental public uses even if they clearly are refutable and will not affect patentability. One comment stated that the proposed rule would require applicants to incur added expense for affidavits and comparison tests. Five comments stated that the Office should not require applicants to present results from clearly invalid tests since this would be contrary to usual scientific practice. One comment argued that information should not be required to be submitted if there was no doubt that it would not preclude patentability, e.g.,

where common ownership existed so that the exception of 35 U.S.C. 103, second paragraph, would apply.

Reply: The definition of materiality in § 1.56 does not impose substantial new burdens on applicants, but is intended to provide the Office with the information it needs to make a proper and independent determination on patentability. It is the patent examiner who should make the determination after considering all the facts involved in the particular case. The comments reflect that the Office objective of clarifying what information the Office considers to be material has been accomplished by the amendment of the rules.

Comment 23. One comment suggested that § 1.56 should confine the duty of disclosure to references known to applicant or the practitioner representing applicant and not found in prior art materials in the Office.

Reply: This suggestion is not adopted since information may be in the Office but not in the application file. It is not reasonable to assume that an examiner knows of a particular item of information or appreciates its relevance to a particular invention simply because it exists somewhere in the Office.

Comment 24. One comment stated that the language "or in combination with other information" should be removed from proposed § 1.56(b)(1) because it was unworkable to require an applicant to combine references against its own claims, especially since, according to the commentator, examiners and the Board of Patent Appeals and Interferences frequently misapply the law. Another comment stated that the language creates an open field for litigators to claim that an inordinate number of references could be combined.

Reply: The rule does not require an applicant to combine references against its own claims. The applicant can submit information to the Office for the examiner's consideration whether the information is considered material or not. The fact that the teachings of a large number of references must be combined for a prima facie case of obviousness does not by itself weigh against a holding of obviousness. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

Comment 25. Four comments stated that the definition of "prima facie case of unpatentability" (§ 1.56(b)(1)) should be included in the rule itself. One comment said that the definition should not be included in the rule.

Reply: The definition has been included in the rule for clarity.

Comment 26. One comment stated that the proposed § 1.56(b)(1) placed a burden on the practitioner to analyze references that is inappropriate and contradictory to a practitioner's responsibility to his client.

Reply: The rule itself does not place a burden on the practitioner to analyze references. Information can be submitted to the Office in accordance with §§ 1.97 and 1.98, and the examiner will consider the references.

Comment 27. One comment questioned whether an applicant would be charged with withholding material information if the "other information" (§ 1.56(b)(1)) necessary to cause an undisclosed reference to become material is unknown to the applicant. Another comment suggested that the language should be changed to read "other known information" to show that the information must be known to applicant to give rise to a duty of disclosure.

Reply: Paragraph (b) of § 1.56 defines information material to patentability. While information may be material under the definition, there is no duty on an individual to disclose the information if the information is unknown to the individual (§ 1.56(a)).

Comment 28. One comment suggested that defining materiality in § 1.56(b) in terms of prima facie unpatentability would permit a conspiracy of silence in which (1) the applicant knows of information but is incapable of making the legal analysis to determine whether the information is material and (2) the patent practitioner, who is equipped to determine whether information is material, does not know of the information and does not ask. Thus, it is argued there would be no violation of the duty of disclosure which requires knowledge of both information and its materiality.

Reply: The Office has set forth what information should be submitted so that the Office can make a proper determination on patentability. The term "conspiracy" has the connotation of unlawfulness which would not be consistent with the duty of candor and good faith required in dealings with the Office.

Comment 29. One comment suggested that proposed § 1.56(b)(1) should be revised to read "in combination with other information already of record in the application" to avoid the possibility that undisclosed material could be considered material in subsequent litigation when combined with information not known at the time of the prosecution to any person substantively involved in the preparation or prosecution of the application.

Reply: Paragraph (a) of § 1.56 makes it clear that the Office recognizes that the duty to disclose material information is limited to such information which is known by an individual substantively involved in the preparation or prosecution of the application. Thus, while information may be material under the definition of § 1.56(b)(1), there can be no duty to disclose the information if it is material only in combination with unknown information.

Comment 30. One comment stated that proposed § 1.56(b) should be modified so that paragraph (b)(1) refers to information that renders a claim unpatentable ("but for"), paragraph (b)(2) remains as proposed, and a paragraph (b)(3) is added to include the definition of materiality as "the closest information over which any pending claim patentably defines." This comment suggested that this modified definition would have the advantage of not requiring the applicant to submit references which applicant knows are immaterial and to then engage in "straw man" arguments based on such references.

Reply: The suggested modification to § 1.56 has not been adopted. The suggested language would seemingly require information to be filed in each application, whether the information is relevant or not, since the "closest information" would be required. Section 1.56 does not require information which is not relevant to be submitted, but only information which meets the definition of material as set out in the rule.

Comment 31. One comment stated that if proposed § 1.56(b)(1) is promulgated, there would be no need for proposed § 1.56(b)(2) with regard to information which would make a prima facie case of unpatentability and other information required by paragraph (b)(2) might be obscure. Another comment argued that paragraph (b)(2) was unnecessary, confusing and ambiguous and suggested changes in the language to make the requirement clear and less ambiguous.

Reply: The suggestion as to the language change to § 1.56(b)(2) has been adopted. The final rule language avoids the perceived problem of requiring an applicant to submit information supporting a position taken by the examiner. It is not appropriate, however, to eliminate paragraph (b)(2) because it is an essential part of the definition of information material to patentability and will help to ensure that all material facts are brought to the attention of the examiner during the examination process.

Comment 32. One comment questioned the language of proposed § 1.56(b)(2) as to how an applicant could consider a prior art reference as supporting a position of unpatentability taken by the Office while at the same time disputing that interpretation.

Reply: The language of § 1.56(b)(2) has been modified to clarify that information is material to patentability if it refutes, or is inconsistent with, a position the applicant takes in (1) opposing an argument of unpatentability relied on by the Office, or (2) asserting an argument of patentability.

Comment 33. One comment stated that § 1.56(b)(2) was flawed in requiring a duty to conduct a file search to make sure that no information exists which even arguably contradicts a position taken or to be taken in response to the examiner, or which supports the examiner's position which may be improper.

Reply: Section 1.56(b)(2) does not require a search of files. Under § 1.56(a), the duty of disclosure is confined to that information which is known to an individual to be material as defined in paragraph (b).

Comment 34. One comment stated that proposed § 1.56(c) should be modified so that the duty of any individual designated as having a duty of disclosure would terminate when such individual ceases to be substantively involved in the preparation or prosecution of the application. The comment used, as an example, an inventor who would not be aware of art cited by the examiner which would cause information known to the inventor to fall within the definition of materiality for the first time.

Reply: The suggestion in the comment is not adopted. The duty to disclose information material to patentability rests on the individuals designated in § 1.56(c) until the application issues as a patent or becomes abandoned. Paragraph (a) of § 1.56 makes it clear, however, that each individual has a duty to disclose only information which is known to that individual to be material.

Comment 35. One comment stated that proposed § 1.56(c)(3) should not include the assignee, or anyone to whom there is an obligation to assign the application, in the class of those who have a duty to disclose material information since there might be a "witch hunt" during litigation to find one employee with knowledge of, or possession of, information that should have been disclosed.

Reply: No modification to § 1.56(c)(3) is needed since § 1.56 sets forth that only individuals who are associated with the filing and prosecution of a patent application have a duty of candor and good faith, including a duty to disclose to the Office all information known to be material to patentability.

Comment 36. One comment stated that proposed § 1.56(d) should be revised to expressly allow an inventor to satisfy the duty by disclosing information to the practitioner who prepares or prosecutes the application so that redundant information disclosure statements will not be required from both the inventor and the attorney or agent.

Reply: The suggestion in the comment is not adopted since the duty as described in § 1.56 will be met as long as the information in question was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)–(d) and 1.98 before issuance of the patent. Statements from both an inventor and the practitioner are not required to be submitted.

Comment 37. One comment stated that proposed §§ 1.52(c) and 1.67(c) should be modified to either (1) expressly permit alterations to be made in an application subsequent to the signing of the oath or declaration if a supplemental oath or declaration is later submitted, or (2) more properly, prohibit such alterations since if alterations are desirable, they can be made and the application can be filed with an unsigned oath or declaration. Another comment stated that willfully filling out false oaths should never be condoned.

Reply: The Office does not condone willfully filling out false oaths. Further, § 10.23(c)(11) indicates that the Office considers it misconduct for a practitioner to knowingly file or cause to be filed an application containing a material alteration made after the signing of an accompanying oath or declaration without identifying the alteration. The Office will not consider striking an application in which an alteration was made, but a supplemental oath or declaration is required to be filed in an application containing alterations made after the signing of the oath or declaration.

Comment 38. One comment stated that the implementation of proposed §§ 1.63(b)(3) and 1.175(a)(7) allows for a two-month delay in the deadline for requiring declarations complying therewith.

Reply: The averments in oath or declaration forms presently in use that comply with the previous § 1.63 or § 1.175 will also comply with the requirements of the new rules. Therefore, the Office will continue to accept the old oath or declaration forms as complying with the new rules.

Comment 39. Five comments questioned the need for the proposed rules since statistics show that information disclosure statements are submitted early in prosecution and questioned what new service is being provided for the proposed fee in § 1.97.

Reply: The Office desires to continue to encourage information to be submitted promptly so that it can be considered by the examiner when the first Office action is prepared. Some people have expressed a desire to have the option of waiting to submit information until after the first Office action, without concern that they will be subject to a charge of inequitable conduct. Section 1.97(c), as amended, will provide this option to applicants in that information will be considered later than three months after the filing date of the application (§ 1.97(a) prior to amendment) without a showing of promptness (prior § 1.99). The fee will compensate the Office for the added expense caused by the late submission of the information and will serve as a disincentive to the intentional withholding of information even for a short period of time.

Comment 40. Two comments suggested that proposed § 1.97(a) be modified so that the mechanism of proposed § 1.98 would not be the only acceptable technique for submitting information.

Reply: The Office has set forth the minimum requirements for information to be considered in §§ 1.97 and 1.98. These rules will provide certainty for the public of exactly what the requirements are, when the Office will consider information and when the Office will not consider information. Thus, applicants are provided with means for complying with the duty of disclosure by following the rules. If information is submitted in a manner so that it is not considered by the Office, applicant will assume the risk that a court might find a violation of the duty of candor and good faith which includes the duty to disclose material information.

Comment 41. Four comments suggested that information which is recognized by applicant as being material after the period set in proposed § 1.97(b) as the result of prior art cited by the examiner should be permitted to be submitted to the Office without the fee set forth in 1.17(p), the certification or the petition fee required by § 1.97.

Reply: The suggestion in the comments is not adopted since it would require a certification, e.g., why the information was just recognized as being material, and would unduly complicate the rules and the procedures

for considering information submitted by applicant. Applicants can avoid or, at least, minimize the problem by submitting information which is known to be relevant to the application even though it is not yet recognized as being required to be submitted because it is material to patentability. The fees charged are to compensate the Office for the additional work that will be necessary when information is submitted during an advanced stage of the examination process.

Comment 42. Two comments suggested that the period for submitting information set in proposed § 1.97(b) be changed to be two months from the issuance of the Official Filing Receipt to avoid information disclosure statements being misrouted in the Office.

Reply: The suggestion in the comment is not adopted. The date that the Filing Receipt is mailed is not maintained in the application file so there would be administrative difficulty in determining when a fee or certification is required to be filed under the new rule. An application can be filed with a self-addressed return postcard so that applicant can obtain the serial number assigned to the application very soon after filing. Further, information may be filed under § 1.97(b) before the mailing of a first Office action on the merits even if this occurs later than three months after the application filing date.

Comment 43. One comment questions whether § 1.97(b) or § 1.97(d) applies in the event of issuance of a final rejection within three months of the filing of an application. The comment indicated that paragraph (b) should apply in this situation.

Reply: Paragraph (b) would apply in this situation since the paragraph specifies that information may be filed within three months of the filing date of the application or before the mailing date of a first Office action on the merits, whichever event occurs last. Thus, information would be considered pursuant to § 1.97(b) if it was filed within three months of the filing date of the application even if a final rejection was mailed prior to three months from the filing date.

Comment 44. One comment stated that proposed § 1.97(b)(1) should be clarified to indicate that "the filing of a national application" includes "a continuing application which replaces the original application."

Reply: The suggested modification has not been adopted since it is not necessary for clarity. The term "national application" includes continuing applications in this and the other patent rules. It is not desirable to add the suggested language to all occurrences of the term "application" in the rules or to raise the implication that continuing applications are not included in the term in other rules by adding the suggested language to this rule.

Comment 45. One comment stated that proposed § 1.97 should be changed to state that if a responsible party becomes aware of material information less than three months before issuance of an Office action, that information will be considered timely filed if it is submitted together with response to the action. The comment also stated that the Office could go farther and implement a rule which specifies that such information will be considered timely submitted if it reaches the examiner before the response to the Office action is taken up for consideration. Three other comments stated that the Office should accept information disclosure statements with responses to Office actions, with one comment arguing that there is no benefit in submitting two papers where one would suffice.

Reply: The suggestions in the comments are not adopted. The rule as proposed and promulgated has the advantage of being relatively easy to comply with and administer. Information should be submitted promptly so that the examiner will have the option of reviewing the information and withdrawing or revising the Office action. Requiring information to be submitted promptly contributes to the efficiency of the examination process.

Comment 46. One comment stated that there should be no fee in § 1.97 associated with the filing of an information disclosure statement since this might impact negatively on the submission of material information; rather, it would be sufficient to permit material information submitted subsequent to a non-final action to support a final rejection in the next action, in the absence of the certification proposed in the rules. Another comment, however, stated that the proposed fee requirement would not be a disincentive to submission of prior art, but would force examiners to consider certain art which under current practice often is not made of record, but instead, requires the filing of a continuation application.

Reply: The fee required in the rule will serve both to cover additional expense caused the Office by the late submission of information and will also serve as a disincentive to failing to cooperate in submitting information early in the prosecution of an application rather than as a disincentive to submitting information at all.

Comment 47. One comment questioned whether information in an information disclosure statement submitted during the period set forth by proposed § 1.97(c) could be used by an examiner to make the next action final if the statement was submitted with a certification under § 1.97(e).

Reply: Information submitted with a certification during the period set forth in § 1.97(c) will not be used to make the next Office action final on unamended claims since in this situation it is clear that applicant has submitted the information to the Office promptly after it has become known and the information is being submitted prior to a final determination on patentability by the Office.

Comment 48. One comment stated that it was unfair for the Office to require a fee for considering information pursuant to proposed § 1.97(c) and then also be able to use the information in making the Office action final.

Reply: The policy is not considered to be unfair. If information is submitted during the period set forth in § 1.97(c) without the certification, the fee will compensate the Office for extra work that may be caused by the failure to submit information promptly. If the cost for this extra work were not placed upon the applicant in this situation, the cost would have to be borne by all applicants through payment of higher fees. The possibility that the next Office action may be made final will further encourage prompt disclosure of information to the Office.

Comment 49. One comment suggested that information should be considered (§ 1.97(c)) after final rejection, since this is different from after allowance when the Office would have to go back and reconsider its work. Two comments stated that proposed § 1.97(c)(1) should not penalize applicants who receive a foreign search report after a final rejection is made in the application and that the certification under § 1.97(e) should be available until an advisory action after final rejection or a notice of allowability occurs in the application. Another comment stated that final action may not even be on the merits but merely administrative.

Reply: The suggestions in the comments are not adopted. Both a notice of allowance and final rejection represent a final Office decision on patentability. Information considered after either of these actions may require the Office to alter its position. After either of these actions, information will be considered only if it is submitted promptly in accordance with § 1.97(d) or is submitted in a refiled application. It should be noted that information cited in a foreign search report, if cited to the Office within three months of the date

on the search report, will be considered by the Office if filed before payment of the issue fee.

Comment 50. One comment stated that proposed § 1.97(d) would result in unequal treatment of U.S. inventors who file first in the Office as compared to foreign inventors who file first in a foreign country since the latter will have the results of the search made by the foreign examining country earlier in the pendency of the U.S. application. Six comments suggested that a U.S. inventor should have the ability to make the certification of § 1.97(e) and to have the Office consider the information, regardless of the stage of prosecution at which information from a foreign office is submitted.

Reply: It should be noted that the certification of § 1.97(e) can be made and information considered by the Office until the issue fee is paid on the application. After the issue fee has been paid on an application, it is impractical for the Office to attempt to consider newly submitted information. The application may be withdrawn from issue at this point, however, pursuant to § 1.313(b)(5) so that the information can be considered in a continuing application, or pursuant to § 1.313(b)(3) if applicant states that one or more claims are unpatentable over the information that is cited. It is further noted that it is applicants, not the Office, who make decisions on when and in which countries to file an application. U.S. inventors who may desire to seek patent protection in foreign countries have the ability to utilize the provisions of the Patent Cooperation Treaty and to delay the requirement to enter the national stage until after a search report on the invention is made.

Comment 51. One comment questioned whether a certification under § 1.97(e) could properly be made in situations where information known by the applicant but not considered material is cited by a foreign patent office more than three months later than the first knowledge by applicant.

Reply: The language of § 1.97(e) has been modified to permit a certification to be made in the situation described in the comment. If an item of information is submitted within three months of being cited in a communication from a foreign patent office in a counterpart foreign patent application, the certification can be properly made regardless of any individual's previous knowledge of the information.

Comment 52. One comment stated that the three-month time period for submitting information from foreign patent offices under proposed § 1.97(e) might be too short because not all foreign offices provide copies of references and that the Office should provide for a petition in unusual circumstances. Five comments stated that a three-month time limit for filing foreign search reports is not reasonable but rather that six months would be more reasonable.

Reply: The Office has chosen the three month time period as appropriate in view of all the factors involved in obtaining information and in the examination process. It should be noted that Office actions typically set a three-month shortened statutory period for response. A response to an Office action generally requires more time for preparation than is involved in the submitting of a foreign search report and copies of the documents cited.

Comment 53. Five comments suggested that § 1.97(e) should permit a certification to be made if an individual knew of information for more than three months before it was filed but did not recognize its materiality or relevance to the application.

Reply: The suggestion in the comments is not adopted. The Office desires to encourage prompt evaluation of information as to materiality by applicants and the Office so as to contribute to the efficiency and effectiveness of the examination process. It should be noted that an applicant is not required to delay the submission of information while evaluating materiality, but can submit the information pursuant to §§ 1.97 and 1.98.

Comment 54. One comment stated that proposed § 1.97(e) should be clarified to specify that the certificates can be made regardless of the source of the information being submitted, so long as it is disclosed within three months of receipt. One comment stated that the three-month period of proposed § 1.97(e) should be measured from the receipt date of a communication from a foreign patent office.

Reply: A certification under § 1.97(e) can be made if each item of information was cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to filing the statement. A certification can also be made if no item of information was cited in a communication from a foreign patent office in a counterpart foreign application or was known to any individual designated in § 1.56(c) more than three months prior to filing the information disclosure statement. The Office wishes to encourage prompt evaluation of the relevance of information and to have a date certain for determining if a certification can properly be made. Although it is recognized that an individual actually becomes aware of the information in the communication from a foreign patent office sometime after it was mailed, the mailing date of such a communication, if it occurs prior to a first awareness of the same information, would determine the date for filing of an information disclosure statement without a fee. The Office is willing to absorb any additional cost in considering such information relevant to patentability after the time set in proposed paragraph (b) only when it is clear that an applicant is diligent in providing the information to the Office.

Comment 55. One comment stated that the cost of making a certification under § 1.97(e) would be more than the $200.00 fee proposed where no certification is made due to difficulties in obtaining information from foreign clients. The comment suggested that the rule provide for (1) the opportunity to provide documentation (as opposed to certification) illustrating when the information was received, and (2) the opportunity to submit information with increasing fees depending on when in the periods of § 1.97 (c) and (d) the information is submitted.

Reply: The suggestions in the comment are not adopted since they would add undue complexity to the rules and procedures. Further, the suggested provision of documentation, which presumably would be reviewed by someone in the Office, would probably add considerably to the overall expenses of filing an information disclosure statement. No other comments indicated a desire for increasing fees depending on when the information is submitted.

Comment 56. Two comments stated that proposed § 1.97(e) is ambiguous in using the language "to the knowledge of the person signing the certification" in that it could refer to "information and belief," "actual knowledge of the facts" or "no knowledge to the contrary." One comment stated that certifications should be able to be made on information and belief by a U.S. attorney or agent submitting a material reference received from a foreign patent attorney or agent, rather than requiring a certification from the foreign individual. Another comment suggested that the period should be calculated from when the applicant either knew or could have known of the reference because the U.S. attorney should not be penalized for delays from their foreign patent associates.

Reply: The certification under § 1.97(e) should be made by a person who has knowledge of the facts being certified. The certification can be made by a practitioner who represents a foreign client and who relies on statements made by the foreign client as to the date the information first became known. A practitioner who receives information from a client without being informed whether the information was known for more than three months, however, cannot make the certification without making a reasonable inquiry.

Comment 57. One comment stated that the language of proposed § 1.97(e) would preclude the use of the certification in an application by corporations whose practitioners have over the years reviewed thousands of patents and technical publications, even though they are unaware of the relevance of any one thereof to the application.

Reply: The language of § 1.97(e) is not intended to preclude use of the certification by representatives of corporations. The certification can be based on present, good faith knowledge about when information became known without a search of files being made. The Office, however, does desire to have information considered promptly by applicants as to materiality and to have information submitted to the Office early in the prosecution of an application.

Comment 58. One comment suggested that proposed § 1.97(e) should permit certification only as to information submitted within four months of receipt from a foreign patent office, with all other late-submitted information requiring a fee so as to not open a legal quagmire implicit in the proposed certification requirement.

Reply: The suggestion in the comment is not adopted. The certification set forth in § 1.97(e) is preferable since it provides the avoidance of the payment of a fee by a person who is submitting information promptly to the Office. An applicant has the option under the circumstances described in § 1.97(c), however, to not make the certification and to pay the fee instead if so desired.

Comment 59. One comment suggested that proposed § 1.97(f) be modified to specify that not less than one month will be given if a bona fide attempt is made to comply with § 1.98 but part of the required content is omitted. Another comment suggested that § 1.97(f) should state that the Office will give (rather than may give) additional time for compliance with § 1.98.

Reply: The suggestions in the comments are not adopted. The language of § 1.97(f) parallels present § 1.135(c) since the practice and considerations are similar for both rules. The Office intends to provide one month to comply with § 1.98 where a bona fide attempt has been made to do so.

Comment 60. One comment stated that proposed § 1.97(f) should specify that the Office shall inform the applicant if a reference will not be considered due to noncompliance with § 1.98 so as to avoid any argument in litigation that a certain reference was not considered due to clerical noncompliance.

Reply: The Office plans to notify applicants in accordance with §§ 1.97 (f) and (i) is submitted information will not be considered. The examiner will also indicate in the application record what information has been considered. Further details will appear in the Manual of Patent Examining Procedure in due course.

Comment 61. One comment suggested that proposed § 1.97(g) should be modified to state that the filing of an information disclosure statement shall not be construed as a representation that no other material information exists such as is set forth in current § 1.97(b).

Reply: The suggestion in the comment has not been adopted since referring to "no other material information" would imply that the information being submitted was admitted to be material. There is no requirement that information being submitted be material to the application.

Comment 62. One comment suggested that proposed § 1.97(h) be modified to state that information not considered by the Office will be deemed in all respects to have not been submitted by the applicant since this would make a noncompliant submission clearly not a fulfillment of the duty of candor.

Reply: The suggestion in the comment is not adopted. The Office has no need or desire to rule on lack of fulfillment of the duty of candor in such a situation. The rules are drafted such that § 1.56 sets forth what information is material to patentability and §§ 1.97 and 1.98 set forth procedures to assure consideration of information by the Office.

Comment 63. One comment stated the Office has a duty to consider information even if this involves withdrawing an application from issue or publishing a cancellation notice and that proposed § 1.97(h) should be changed to so state. Another comment stated that it would be an abdication of the duty that the Office owes to the public for information in the file to be ignored since issuance of an invalid patent can be used to discourage others in the field. The comment suggested that the Office should leave in doubt whether the information will be considered or not.

Reply: It is necessary for the Office to balance its need and desire to consider all information relevant to an application with its need for an efficient operation and its capability to consider information at various stages in the prosecution of an application. The Office is setting forth when information will and will not be considered to provide certainty for the public.

Comment 64. One comment requested information on how a United States patent application or other information (§ 1.98(a)(1)(iii)) should be listed on a PTO 1449 form.

Reply: The PTO 1449 has been drafted so as to provide spaces for listing documents which are available to the public and which will be printed on the patent at issuance. Other information should be listed separately from the PTO 1449 form.

Comment 65. One comment stated that § 1.98(a)(2)(i) should not require the submission by applicants of United States patents listed in an information disclosure statement since the Office is better equipped to provide examiners with copies of those documents than inventors and their attorneys. Alternatively, the comment suggested that the Office should establish a procedure whereby an order for the Office to provide the copies of the patents at the usual fee can accompany the information disclosure statement.

Reply: At the present time, when the Automated Patent System has not been fully implemented, the overall cost of the Office obtaining copies of patents and associating them with application files would be greater than for applicants to provide copies with information disclosure statements. Presumably, the applicant would be using a copy of the patent in preparing the statement and could easily make a copy for submission to the Office.

Comment 66. One comment suggested that § 1.98(a)(2)(iii), as proposed, be clarified by substituting "except that no copy of a U.S. patent application need be included" for the proposed phrase "except a U.S. patent application."

Reply: The suggested clarification to the language of the rule has been adopted.

Comment 67. A number of comments objected to the requirement in § 1.98(a)(3) for a concise explanation of the relevance of all items of information being submitted.

Reply: In response to the comments, § 1.98(a)(3) has been modified to require a concise explanation only of patents, publications or other information listed

in an information disclosure statement that are not in the English language. Applicants may, if they wish, provide concise explanations of why English-language information is being submitted and how it is understood to be relevant. Concise explanations are helpful to the Office, particularly where documents are lengthy and complex and applicant is aware of a section that is highly relevant to patentability.

Comment 68. Five comments stated that the proposed rules should be modified to state that if information is being submitted from a foreign search report, the requirement for a concise explanation in proposed § 1.98(a)(3) may be satisfied by submitting an English-language version of the search report.

Reply: The language of § 1.98(a)(3) has been modified so that no concise explanation is required for information submitted in the English language. The concise explanation requirement for non-English language information may be met by the submission of an English language version of the search report indicating the degree of relevance found by the foreign office. It is not necessary that this detail be included in the rule.

Comment 69. Five comments questioned whether the requirement in proposed § 1.98(a)(3) would be satisfied by a statement that the references were cited in the prosecution of a parent application.

Reply: The requirement in § 1.98(a)(3) for a concise explanation of non-English language information would not be satisfied by a statement that a reference was cited in the prosecution of a parent application. The concise explanation must explain the relevance as presently understood by the person designated in § 1.56(c) most knowledgeable about the content of the information.

Comment 70. One comment suggested that proposed § 1.98(a)(3) should be modified to require a concise explanation of "what is believed to be" the relevance of information listed to avoid the accusation of violation of duty of disclosure merely because more relevant portions of the information are later found. Another comment suggested that the concise explanation should state what is "reasonably understood by the person submitting the statement." Another comment stated that the applicant should be required to explain (1) only what is understood or believed about the item of information at the time the disclosure is made, or (2) why the item is listed.

Reply: The suggestions in the comments have been substantially adopted in modifying the language of § 1.98(a)(3).

Comment 71. One comment stated that proposed § 1.98(b) should not require the date (unless material) and place of publication of journal articles since such information is not given on search reports from foreign patent offices or on journals published by the American Chemical Society, which just give the year. Another comment indicated that sometimes it is not clear where the place of publication is.

Reply: The suggestions in the comments are not adopted. The date of publication is necessary for the Office to be able to determine if the information may be used in a rejection of the claims in an application. The place of publication refers to the name of the journal, magazine or other publication in which the article was published, which should be available in the vast majority of cases.

Comment 72. One comment suggested that § 1.98(c) should not require a translation of a non-English language document to be filed if a translation is within the possession, custody or control of an individual designated in § 1.56(c) because such person may not recall that there is a translation somewhere in the records of the individual, perhaps having been made for another application years earlier.

Reply: The requirement of the rule for a translation to be submitted under limited conditions is not a change in practice. See prior §§ 1.56(j) and 1.97(b). Since the requirement has caused little, if any, problem in the past, the suggestion of the comment is not adopted.

Comment 73. One comment suggested that § 1.98(c) should be revised to make it clear that a reference that is essentially cumulative to another reference need not be listed in an information disclosure statement.

Reply: The concept that cumulative information is not material is set forth in § 1.56(b). Section 1.98 does not deal with what information must be submitted, but provides an exception for cumulative information to the requirement for a copy to be submitted of each item of information listed in an information disclosure statement.

Comment 74. One comment stated that a sentence in the preamble discussion of proposed § 1.98(c) was burdensome because it would require submission of incomplete or inexact translations which may have been made of an item of information. The sentence in question reads:

> But if the individual has the ability to translate the non-English language into English and has done so for the purposes of reviewing the information relative to the claimed invention, the translation would be considered "readily available."

Another comment stated that proposed § 1.98(c) should be modified to require a translation if the non-English language document is to be considered by the examiner since the attorney would want to prepare an accurate translation of particularly relevant references. One comment suggested that § 1.98(c), or the preamble discussion, should make it clear that an English-language translation of a foreign language material reference need not be submitted where an individual merely reads in the reference in its original language and translates it mentally but does not prepare a written translation. Five other comments requested clarification on this point.

Reply: The Office does not intend to require translations unless they have been reduced to writing and are actually translations of what is contained in the non-English language information. Applicants should note, however, that most examiners do not have the ability to understand information which is not in English and that the Office will not routinely translate information submitted in a non-English language. The examiner will consider the information insofar as it is understood on its face, e.g., drawings, chemical formulas, English-language abstracts, but will not have the information translated unless it appears to be necessary to do so. Applicants are required to aid the examiner by complying with the requirements for a concise explanation in § 1.98(a)(3) for information submitted in a non-English language.

Comment 75. One comment stated that § 1.98(d) should be clarified to state that a copy of an item of information listed in an information disclosure statement need not be submitted if the reference was cited by the Office or previously submitted to the Office in connection with a prior application.

Reply: The suggestion in the comment is adopted. The language of § 1.98(d) has been modified to state that a copy of an item of information is not required if it was previously cited by the Office or previously submitted to the Office in a prior application being relied on for an earlier filing date under 35 U.S.C. 120.

Comment 76. One comment suggested that proposed § 1.98(d) should be revised to not require the submission of a copy of the information listed in an information disclosure statement if a copy of the information has previously been submitted to the Office in a prior application, whether or not the earlier

application is being relied upon for an earlier filing date under 35 U.S.C. 120.

Reply: The suggestion in the comment is not adopted. The exception to the requirement for a copy of each item of information to be submitted has been made with regard to prior applications which will normally be available to, and considered by, the examiner. It would not be efficient for the examiner to be required to seek out unrelated application files to obtain a copy of an item of information when a copy could easily be submitted by applicant.

Comment 77. One comment questioned what would be considered "timely" under § 1.291 so that information would be considered by the examiner without payment of a fee, in contrast to proposed § 1.97 which may require a fee.

Reply: Section 1.291 has not been amended to redefine timeliness. The comment seems to imply that the fee requirements of § 1.97 can be avoided through the use of a protest submitting information, but such a course of action might raise questions regarding compliance with the duty of candor and good faith required in dealings with the Office.

Comment 78. One comment stated that the Office should not drop the acknowledgment of a protest having been filed under § 1.291 in a reissue application because the acknowledgment served as an indication that the protest had been received in the examining group from the mail room.

Reply: The suggestion in the comment is not adopted. Any perceived benefit from retaining the acknowledgment is outweighed by the administrative burden it causes. There is no good reason to treat the filing of protests in reissue applications differently from the filing of protests in original applications or from the filing of other papers in the Office.

Comment 79. One comment questioned whether an application could be withdrawn from issue pursuant to proposed § 1.313(b)(5) without admitting unpatentability.

Reply: There is no requirement that unpatentability must be admitted before an application can be withdrawn from issue pursuant to § 1.313(b)(5). The rule provides for applications to be withdrawn from issue and abandoned for consideration of information in a continuing application. This differs from a petition under § 1.313(b)(3) based on unpatentability of one or more claims.

Comment 80. One comment questioned whether, if an application is withdrawn from issue pursuant to proposed § 1.313(b)(5), an information disclosure statement can be submitted in the continuing application under § 1.97(b) without a certification.

Reply: A continuing application is treated like any other application with regard to the times set forth in § 1.97(b). Thus, for example, an information disclosure statement could be filed without a fee or certification in a continuing application within three months of the filing date of the continuing application.

Comment 81. One comment questioned whether an application withdrawn from issue pursuant to § 1.313(b)(5) could have new art and amendments considered in that application rather than in a continuing application. The comment also questioned the handling of applications withdrawn from issue pursuant to § 1.313(b)(3).

Reply: The language of § 1.313(b)(5) makes it clear that an application withdrawn from issue thereunder is to be abandoned without further prosecution. This differs from an application withdrawn from issue pursuant to § 1.313(b)(3) because applicant had admitted the unpatentability of one or more claims.

Comment 82. One comment questioned whether the continuing application mentioned in proposed § 1.313(b)(5) could be a file wrapper continuing applicants under § 1.62 and how applicants can accomplish the withdrawal from issue under proposed § 1.313(b) late in the prosecution of an application.

Reply: The continuing application mentioned in § 1.313(b)(5) can be a file wrapper continuing application under § 1.62. Even though § 1.62 requires a file wrapper continuing application to be filed before the payment of the issue fee, the Office will consider the filing of a petition to withdraw from issue under § 1.313(b)(5) as sufficient grounds to waive that requirement of § 1.62. Late in the prosecution of an application, the Office has difficulty in matching papers with the application file. Papers requesting that an application be withdrawn from issue after the issue fee is paid should be directed, or preferably hand-carried, to the Office of Petitions in the Office of the Assistant Commissioner for Patents.

Comment 83. Seven comments suggested that § 1.555(a) should not be amended to require the submission of "all information material to patentability" since a reexamination proceeding is limited to consideration of patents and printed publications.

Reply: The suggestion in the comments has been adopted. A paragraph (b), which defines what information is material to patentability in a reexamination proceeding, has been added to the rule.

Comment 84. One comment suggested that proposed § 1.555(a) should be modified to make clear that there is no duty of disclosure on employees of a corporate patent owner if the employees are not substantively involved in the preparation of the reexamination request of the reexamination proceeding.

Reply: The suggestion in the comment to modify the language in § 1.555(a) has not been adopted. The rule refers to individuals who are substantively involved on behalf of the patent owner in a reexamination proceeding.

Comment 85. Two comments stated that the Office should consider fraud or other inequitable conduct issues in interference proceedings.

Reply: The suggestion in the comments has been adopted. The Office will consider inequitable conduct issues in interference proceedings as announced on November 19, 1991, in the Official Gazette of the Patent and Trademark Office at 1132 Off. Gaz. Pat. Off. 33.

Comment 86. One comment requested more examples with regard to proposed § 10.23(c)(10) of what alteration of combination of alterations in a declaration would be considered material.

Reply: It is not the function of the rules or the rulemaking process to provide a detailed listing of what alterations may be considered to be improper. This consideration will necessarily be made in view of the totality of the circumstances involved. Practitioners would be well advised to avoid filing applications which contain alterations which have not been initialed and dated.

Comment 87. Two comments stated that § 10.23(c)(10) should be amended to prohibit knowingly attempting to mislead the Office in the drafting or prosecution of a patent application. One comment stated that attempted fraud or inequitable conduct would not be prohibited by proposed § 10.23(c)(10) because such conduct would not be a violation of proposed §§ 1.56 and 1.555.

Reply: No amendment is necessary to the language of § 10.23(c)(10). It should be noted that the duty of candor and good faith in dealing with the Office is included in §§ 1.56 and 1.555. This duty includes a prohibition against knowingly attempting to mislead the Office.

Comment 88. Five comments stated that it would be unfair to impose the new disclosure requirements and fees on applications that are pending before

the Office on the effective date of the new rule. Another comment stated that the rules should be immediately effective for all pending applications with some grace period for making the initial disclosure without penalty and without fee.

Reply: The Office will apply the new rules to all applications pending on, or filed on or after, the effective date of the rules. While this implementation may cause some burden on some applicants, other applicants will obtain benefits not otherwise available. This decision will also ease the administrative burden on the Office in implementing the new rules.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)) because the rules as adopted do not require individuals to submit information that they are not already aware of and are not already under an obligation to provide to the Office. The rules further promote the efficiency of the examination process by encouraging a timely submission of an information disclosure statement and by substantially eliminating rejections based on inequitable conduct, thereby reducing the costs to all patent applicants.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, state or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity or innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act, which has previously been approved by the Office of Management and Budget under Control No. 0651-0011. Each information disclosure statement is estimated to take approximately 30 minutes, including time for reviewing instructions, gathering and maintaining data needed, and completing and reviewing the collection of information. The time estimate has been reduced from that stated in the proposal since the requirement for a concise explanation of the relevance of each item of information cited in an information disclosure statement has been limited to information submitted in a language other than English. Send comments regarding this burden estimate to the Patent and Trademark Office, Office of Management and Organization, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. (Attention Paper Reduction Project 0651-0011)

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 37 CFR parts 1 and 10 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. In § 1.17, paragraph (i)(1) is revised and paragraph (p) is added to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(i)(1) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—$130.00.

§ 1.12—for access to an assignment record.

§ 1.14—for access to an application.

§ 1.53—to accord a filing date.

§ 1.55—for entry of late priority papers.

§ 1.60—to accord a filing date.

§ 1.62—to accord a filing date.

§ 1.97(d)—to consider an information disclosure statement.

§ 1.103—to suspend action in application.

§ 1.177—for divisional reissues to issue separately.

§ 1.312—for amendment after payment of issue fee.

§ 1.313—to withdraw an application from issue.

§ 1.314—to defer issuance of a patent.

§ 1.334—for patent to issue to assignee, assignment recorded late.

§ 1.666(b)—for access to interference settlement agreement.

* * * * *

(p) For submission of an information disclosure statement under § 1.97(c)—$200.00.

3. Section 1.28, paragraph (d)(2) is revised to read as follows:

§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

* * * * *

(d)(1) * * *

(2) Improperly and with intent to deceive

(i) establishing status as a small entity, or

(ii) paying fees as a small entity

shall be considered as a fraud practiced or attempted on the Office.

4. Section 1.51, paragraph (b) is revised to read as follows:

§ 1.51 General requisites of an application.

* * * * *

(b) Applicants are encouraged to file an information disclosure statement. See §§ 1.97 and 1.98.

* * * * *

5. Section 1.52, paragraph (c) is revised to read as follows:

§ 1.52 Language, paper, writing, margins.

* * * * *

(c) Any interlineation, erasure, cancellation or other alteration of the application papers filed should be made before the signing of any accompanying oath or declaration pursuant to § 1.63 referring to those application papers and should be dated and initialed or signed by the applicant on the same sheet of paper. Application papers containing alterations made after the signing of an oath or declaration referring to those application papers must be supported by a supplemental oath or declaration under § 1.67(c). After the signing of the oath or declaration referring to the application papers, amendments may be made in the manner provided by §§ 1.121 and 1.123 through 1.125.

* * * * *

6. Section 1.56 is revised to read as follows:

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)–(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

7. Section 1.63, paragraphs (b)(3) and (d) are revised to read as follows:

§ 1.63 Oath or declaration.

* * * * *

(b) * * *

(3) Acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

* * * * * *

(d) In any continuation-in-part application filed under the conditions specified in 35 U.S.C. 120 which discloses and claims subject matter in addition to that disclosed in the prior copending application, the oath or declaration must also state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

8. Section 1.67 is amended by adding a new paragraph (c) to read as follows:

§ 1.67 Supplemental oath or declaration.

* * * * *

(c) A supplemental oath or declaration meeting the requirements of § 1.63 must also be filed if the application was altered after the oath or declaration was signed or if the oath or declaration was signed:

(1) In blank;

(2) Without review thereof by the person making the oath or declaration; or

(3) Without review of the specification, including the claims, as required by § 1.63(b)(1).

9. Section 1.97 is revised to read as follows:

§ 1.97 Filing of information disclosure statement.

(a) In order to have information considered by the Office during the pendency of a patent application, an information disclosure statement in compliance with § 1.98 should be filed in accordance with this section.

(b) An information disclosure statement shall be considered by the Office if filed:

(1) Within three months of the filing date of a national application;

(2) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application; or

(3) Before the mailing date of a first Office action on the merits,

whichever event occurs last.

(c) An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, but before the mailing date of either:

(1) A final action under § 1.113 or

(2) A notice of allowance under § 1.311,

whichever occurs first, provided the statement is accompanied by either a certification as specified in paragraph (3) of this section or the fee set forth in § 1.17(p).

(d) An information disclosure statement shall be considered by the Office if filed after the mailing date of either:

(1) A final action under § 1.113 or

(2) A notice of allowance under § 1.311,

whichever occurs first, but before payment of the issue fee, provided the statement is accompanied by:

(i) A certification as specified in paragraph (e) of this section,

(ii) A petition requesting consideration of the information disclosure statement, and

(iii) The petition fee set forth in § 1.17(i)(1).

(e) A certification under this section must state either:

(1) That each item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the statement, or

(2) That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application or, to the knowledge of the person signing the certification after making reasonable inquiry, was known to any individual designated in § 1.56(c) more than three months prior to the filing of the statement.

(f) No extensions of time for filing an information disclosure statement are permitted under § 1.136. If a bona fide attempt is made to comply with § 1.98, but part of the required content is inadvertently omitted, additional time may be given to enable full compliance.

(g) An information disclosure statement filed in accordance with this section shall not be construed as a representation that a search has been made.

(h) The filing of an information disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in § 1.56(b).

(i) Information disclosure statements, filed before the grant of a patent, which do not comply with this section and § 1.98 will be placed in the file, but will not be considered by the Office.

10. Section 1.98 is revised to read as follows:

§ 1.98 Content of information disclosure statement.

(a) Any information disclosure statement filed under § 1.97 shall include:

(1) A list of all patents, publications, or other information submitted for consideration by the Office;

(2) A legible copy of:

(i) Each U.S. and foreign patent;

(ii) Each publication or that portion which caused it to be listed; and

(iii) All other information or that portion which caused it to be listed, except that no copy of a U.S. patent application need be included; and

(3) A concise explanation of the relevance, as it is presently understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information, of each patent, publication, or other information listed that is not in the English language. The concise explanation may be either separate from the specification or incorporated therein.

(b) Each U.S. patent listed in an information disclosure statement shall be identified by patentee, patent number and issue date. Each foreign patent or published foreign patent application shall be identified by the country or patent office which issued the patent or published the application, an appropriate document number, and the publication date indicated on the patent or published application. Each publication shall be identified by author (if any), title, relevant pages of the publication, date and place of publication.

(c) When the disclosures of two or more patents or publications listed in an information disclosure statement are substantively cumulative, a copy of one of the patents or publications may be submitted without copies of the other patents or publications provided that a statement is made that these other patents or publications are cumulative. If a written English-language translation of a non-English language document, or portion thereof, is within the possession, custody or control of, or is readily available to any individual designated in § 1.56(c), a copy of the translation shall accompany the statement.

(d) A copy of any patent, publication or other information listed in an information disclosure statement is not required to be provided if it was previously cited by or submitted to the Office in a prior application, provided that the prior application is properly identified in the statement and relied upon for an earlier filing date under 35 U.S.C. 120.

§ 1.99 [Removed]

11. Section 1.99 is removed and reserved.

12. Section 1.175, paragraph (a)(7), is revised to read as follows:

§ 1.175 Reissue oath or declaration.

(a) * * *

(7) Acknowledging the duty to disclose to the Office all information known to applicants to be material to patentability as defined in § 1.56.

* * * * *

§ 1.193 [Amended]

13. Section 1.193(c) is removed and reserved.

14. Section 1.291, paragraphs (a) and (c), are revised to read as follows:

§ 1.291 Protests by the public against pending applications.

(a) Protests by a member of the public against pending applications will be referred to the examiner having charge of the subject matter involved. A protest specifically identifying the application to which the protest is directed will be entered in the application file if:

(1) The protest is timely submitted; and

(2) The protest is either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible.

Protests raising fraud or other inequitable conduct issues will be entered in the application file, generally without comment on those issues. Protests which do not adequately identify a pending patent application will be disposed of and will not be considered by the Office.

* * * * *

(c) A member of the public filing a protest in an application under paragraph (a) of this section will not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard which the member of the public may include with the protest in order to receive an acknowledgment by the Office that the protest has been received. The Office may communicate with the applicant regarding any protest and may require the applicant to respond to specific questions raised by the protest. In the absence of a request by the Office, an applicant has no duty to, and need not, respond to a protest. The limited involvement of the member of the public filing a protest pursuant to paragraph (a) of this section ends with the filing of the protest, and no further submission on behalf of the protestor will be considered unless such submission raises new issues which could not have been earlier presented.

15. Section 1.313, paragraph (b), is revised to read as follows:

§ 1.313 Withdrawal from issue.

* * * * *

(b) When the issue fee has been paid, the application will not be withdrawn from issue for any reason except:

(1) A mistake on the part of the Office;

(2) A violation of § 1.56 or illegality in the application;

(3) Unpatentability of one or more claims;

(4) For interference; or

(5) For abandonment to permit consideration of an information disclosure statement under § 1.97 in a continuing application.

16. Section 1.555 is revised to read as follows:

§ 1.555 Information material to patentability in reexamination proceedings.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective reexamination occurs when, at the time a reexamination proceeding is being conducted, the Office is aware of and evaluates the teachings of all information material to patentability in a reexamination proceeding. Each individual associated with the patent owner in a reexamination proceeding has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability in a reexamination proceeding. The individuals who have a duty to disclose to the Office all information known to them to be material to patentability in a reexamination proceeding are the patent owner, each attorney or agent who represents the patent owner, and every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. The duty to disclose the information exists with respect to each claim pending in the reexamination proceeding until the claim is cancelled. Information material to the patentability of a cancelled claim need not be submitted if the information is not material to patentability of any claim remaining under consideration in the reexamination proceeding. The duty to disclose all information known to be material to patentability in a reexamination proceeding is deemed to be satisfied if all information known to be material to patentability of any claim in the patent after issuance of the reexamination certificate was cited by the Office or submitted to the Office in an information disclosure statement. However, the duties of candor, good faith, and disclosure have not been complied with if any fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct by, or on behalf of, the patent owner in the reexamination proceeding. Any information disclosure statement must be filed with the items listed in § 1.98(a) as applied to individuals associated with the patent owner in a reexamination proceeding, and should be filed within two months of the date of the order for reexamination, or as soon thereafter as possible.

(b) Under this section, information is material to patentability in a reexamination proceeding when it is not cumulative to information of record or being made of record in the reexamination proceeding, and

(1) It is a patent or printed publication that establishes, by itself or in combination with other patents or printed publications, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the patent owner takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability of a claim pending in a reexamination proceeding is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) The responsibility for compliance with this section rests upon the individuals designated in paragraph (a) of this section and no evaluation will be made by the Office in the reexamination proceeding as to compliance with this section. If questions of compliance with this section are discovered during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.552(c).

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

17. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

18. Section 10.23, paragraphs (c)(10) and (c)(11) are revised to read as follows:

§ 10.23 Misconduct.

* * * * *

(c) * * *

(10) Knowingly violating or causing to be violated the requirements of § 1.56 or § 1.555 of this subchapter.

(11) Knowingly filing or causing to be filed an application containing any material alteration made in the application papers after the signing of the accompanying oath or declaration without identifying the alteration at the time of filing the application papers

Dated: January 9, 1992.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-1064 Filed 1-16-92; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-4094-7]

Ocean Dumping: Designation of Site, Brazos Island Harbor, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates a dredged material disposal site located in the Gulf of Mexico offshore of Port Isabel, Texas for the one time disposal of construction material dredged from the enlargement of the Brazos Island Harbor Entrance Channel. This action is necessary to provide an acceptable ocean dumping site for the disposal of material from the Army Corps of Engineers 42-Foot Project at Brazos Island Harbor. This final site designation is for an indefinite period of time but the site is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

EFFECTIVE DATES: This designation shall become effective February 18, 1992.

ADDRESSES: Norm Thomas, Chief, Federal Activities Branch (6E-F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733.

The file supporting this designation and the letters of comment are available for public inspection at the following locations: EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas, and Corps of Engineers, Galveston District, 444 Baracuda Avenue, Galveston, Texas.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655-2260 or FTS/255-2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of

the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, 228.4) state that ocean dumping sites will be designated by publication in part 228. This site designation is being published as final rulemaking in accordance with § 228.4(e) of the regulations, which permits the designation of ocean disposal sites for dredged material.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA has prepared a Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Brazos Island Harbor 42-Foot Project Ocean Dredged Material Disposal Site Designation." On November 22, 1991, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register.** The public comment period on this Final EIS closed on December 23, 1991. No comments on the Final EIS were received.

The action discussed in the EIS is designation of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS prepared by the Corps of Engineers (COE) and re-evaluated in EPA's EIS. The nearest available land disposal area is 82 acres in size and is located 5 miles away from the seaward end of the project. The volume of this disposal site is needed for construction and future maintenance of the inland portions of the channel and is not available for the disposal of construction material from offshore areas. Also since the surrounding land areas are wetlands or shallow bay habitats, development and use of a suitably sized replacement area would likely result in a significant loss of quality wetlands or bay bottoms. A land-based alternative would offer no environmental benefit to ocean disposal.

Five ocean disposal alternatives—three nearshore sites (including the proposed site), a mid-shelf site and a deepwater site—were evaluated. Both the mid-shelf and deepwater sites were eliminated due to limited feasibility for monitoring, increased transportation costs and safety risks and the lack of any environmental benefits by utilizing sites that far offshore.

Ocean disposal sites were identified by determining a zone of siting feasibility (ZSF) and then screening out those sites which impacted biologically sensitive areas, beaches and recreational areas, the navigation channel, cultural or historical resources, etc.

Evaluation of the historically-used disposal site and the routine maintenance disposal site showed that both these nearshore sites were located within the navigational fairways and contained inappropriate grain-size regimes. Because of these reasons the historically-used and routine maintenance sites were not selected for disposal of the construction material. However, the routine maintenance material site, which was designated by EPA in September 1990, will receive routine maintenance material from the 42-Foot Project.

The selected ocean disposal site for the construction (virgin) material is located in the 60-foot isobath and in the sandy silt regime. The size of the virgin ocean dredged material disposal site (ODMDS) was determined, based on models of the ocean discharge of dredged material, to be 5,300 feet in a direction parallel to the channel (east/west) and 2,895 feet in a direction perpendicular to the channel (south/north).

EPA has determined that its site designation action will not adversely affect any listed endangered or threatened species. EPA is coordinating its determination with the National Marine Fisheries Service in accordance with the requirements of section 7 of the Endangered Species Act. EPA is also coordinating, as a part of the NEPA/EIS process, with the State of Texas regarding any requirement under the Coastal Zone Management Act.

C. Site Designation

On June 10, 1991, EPA proposed designation of this site for the disposal of construction material from the Brazos Island Harbor 42-Foot Project. The public comment period on this proposed action closed on July 24, 1991. No comments on the proposed rule were received.

The disposal site is located about four miles from the coast and occupies an area of 0.42 square nautical miles. Water depths within the area range from 60–67 feet. The coordinates of the rectangular-shaped site are as follows: 26°04'47" N, 97°05'07" W; 26°05'16" N, 97°05'04" W; 26°05'10" N, 97°04'06" W; 26°04'42" N, 97°04'09" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; Section 228.6 lists eleven specific factors used in evaluating a disposal site to assure that the general criteria are met.

The site, as discussed below under the eleven specific factors, is acceptable under the five general criteria. EPA has determined, based on the information presented in the Draft and Final EISs, that a site off the Continental Shelf is not feasible due to monitoring difficulties, increased transportation costs and greater safety risks. No environmental benefit would be obtained by selecting such a site. The characteristics of the selected site are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* [40 CFR 228.6(a)(1).]

Geographical position, water depth, and distance from the coast for the disposal site are given above. Bottom topography is flat with no unique features or relief.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* [40 CFR 228.6(a)(2).]

Living resources' breeding, spawning, nursery and passage areas in the project area were identified as excluded areas during the siting feasibility process and eliminated from consideration. To the west of the site, there is a fish haven which is excluded, as are the jetties, including buffer zones of 630 feet. The

jetties provide a migratory passage for white shrimp, brown shrimp, blue crab, drum, sheepshead and southern flounder. Also excluded are partially submerged shipwrecks which improve fishing.

3. *Location in relation to beaches and other amenity areas.* [40 CFR 228.6(a)(3).]

The site is approximately 4 miles from any beach or other amenity area.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* [40 CFR 228.6(a)(4).]

Approximately 1,325,000 cubic yards of construction material will be discharged into the disposal site. Construction disposal is expected to last for a period of two years or less. This material will be transported by hopper dredges.

5. *Feasibility of surveillance and monitoring.* [40 CFR 228.6(a)(5).]

The site is amenable to surveillance and monitoring. The proposed monitoring and surveillance program consists of (1) a method for recording the location of each discharge; (2) bathymetric surveys; and (3) grain-size analysis, sediment chemistry characterization and benthic infaunal analysis at selected stations.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* [40 CFR 228.6(a)(6).]

Physical oceanographic parameters including dispersal, horizontal transport and vertical mixing characteristics were used: (1) To develop the necessary buffer zones for the siting feasibility analysis; and (2) to determine the minimum size of the site. Predominant longshore currents, and thus predominant longshore transport, are to the north. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, may remove the disposed material from the site.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* [40 CFR 228.6(a)(7).]

Chemical and bioassay testing of past maintenance material and material from the historically-used disposal site plus chemical analyses of water from the area concluded that there are no indications of water or sediment quality problems. Testing of past maintenance material indicated that it was acceptable for ocean disposal under 40 CFR part 227. Based on current direction and modeling of the virgin material, the site was situated to prevent discharged material from re-entering the channel and to ensure that any mounding poses no obstruction to navigation.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* [40 CFR 228.6(a)(8).]

Impacts to shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites have been evaluated for the Brazos Island Harbor 42-Foot Project site designation. The site will not interfere with these or other legitimate uses of the ocean because the siting feasibility process was designed to reduce the possibility of a site which would interfere. Disposal operations in the past have not interfered with other uses.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* [40 CFR 228.6(a)(9).]

Monitoring studies at other locations have shown only short-term water-column perturbations of turbidity, and perhaps increased chemical oxygen demand (COD), resulted from disposal operations. No short-term sediment quality perturbation has been directly related to disposal operations. In general, the water and sediment quality is good throughout the area and there have been no long-term adverse impacts on water and sediment quality from past disposal operations. No long-term impacts on the benthos at the historically-used site were apparent.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* [40 CFR 228.6(a)(10).]

With a disturbance to any benthic community, initial recolonization will be by opportunistic species. However, these species are not nuisance species in the sense that they would interfere with other legitimate uses of the ocean or that they are human pathogens. The disposal of maintenance material in the past has not and the disposal of construction material in the future should not attract nor promote the development or recruitment of nuisance species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* [40 CFR 228.6(a)(11).]

Areas and features of historical importance were evaluated during the siting feasibility process. The nearest site of historical importance is located near the jetties as is well within the buffer zone surrounding the jetties. Use of the site would not impact any known historical or cultural sites.

E. Action

Based on the Draft and Final EISs, EPA concludes that the site may appropriately be designated for use. The site is compatible with the five general criteria and eleven specific factors used for site evaluation. The designation of the Brazos Island Harbor 42-Foot Project site as an EPA approved ocean dumping site is being published as final rulemaking.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: January 9, 1992.

Joe D. Winkle,

Acting Regional Administrator of Region 6.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by adding paragraph (b)(91) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(91) Brazos Island Harbor (42-Foot Project), Texas—Region 6.

Location: 26°04'47" N, 97°05'07" W; 26°05'16" N, 97°05'04" W; 26°05'10" N, 97°04'08" W; 26°04'42" N, 97°04'09" W.

Size: 0.42 square nautical miles.

Depth: Ranges from 60–67 feet.

Primary Use: Dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to construction material dredged from the Brazos Island Harbor Entrance Channel, Texas.

[FR Doc. 92–1412 Filed 1–16–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–610–4111–02 24 1A; Circular No. 2630]

RIN 1004–AA 67

Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations; Correction

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical and editorial errors in the final rule implementing Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations, published in the **Federal Register** on November 23, 1990 (55 FR 48958).

EFFECTIVE DATES: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Hank Symanski.

The following typographical and editorial corrections are made in the final rule implementing Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations, published in the **Federal Register** on November 23, 1990 (55 FR 48958):

1. On page 48968, first column, in the Authority paragraph, the fifth line, the phrase "Act of May 31, 1930" is revised to read "Act of May 21, 1990."

1a. On page 48968, second column, second full paragraph, is revised to read: "The authorized officer may, pursuant to 43 CFR 3164.1 and 3164.2, after notice and comment, issue onshore oil and gas orders when necessary to implement and supplement the regulations contained in 43 CFR 3160, and issue notices to lessees and operators (NTL's) when necessary to implement onshore oil and gas orders and the regulations. Pursuant to Section IV of this Order, the authorized officer may approve a variance from the requirements prescribed herein to accommodate special conditions on a State or area-wide basis".

2. On page 48968, third column, line 11, is revised to read: "Upon release, could constitute a".

3. On page 48969, second column, under the definition of radius of exposure (item 1), change the exponent in the equation from "(0.625)" to "(0.6258)".

4. On page 48969, second column, under the definition of radius of exposure (item 2), delete the term "(percent)".

5. On page 48969, second column, under the definition of radius of exposure (item 3), insert the word "and" between "complex terrain" and "other dispersion".

6. On page 48969, third column, under III. Requirements, line 4, insert the word "typically" between "as" and "major".

7. On page 48970, first column, first paragraph, line 6, insert the word "the" between "stream," and "H_2S".

8. On page 48970, third column, paragraph c., line 6, is revised to read: "under section III.A.2.a.,".

9. On page 48971, first column, paragraph c., lines 3 and 4, are revised to read: "facilities or roads are principally maintained for public use".

10. On page 48971, third column, under paragraph c., change "(i)" to "i".

11. On page 48972, first column, last line, change "API–RP49" to "API RP–49".

12. On page 48972, third column, under section c. H_2S Detection and Monitoring Equipment, line 5, insert the word "of" between "air concentration" and "H_2S".

13. On page 48973, first column, paragraph iv., lines 5 and 6, are revised to read: "feet from the well site and at a location which allows vehicles to turn around at a safe".

14. On page 48973, second column, under section 4.a.i., line 10 revise to read: "water- or oil-based mud and mud shall".

15. On page 48974, first column, paragraph b.i., lines 7 and 8, are revised to read: "conditions or mud types justify to the authorized officer a lesser pH level is necessary".

16. On page 48974, first column, last paragraph, line 11, change "MR–01–75" to "MR 0175–90".

17. On page 48974, third column, first paragraph c., violation section, line 1, is revised to read: "Major, if the authorized officer determines that a health or safety".

18. On page 48975, second column, paragraph c., line 1, is revised to read: "Fencing and gate(s), as specified in section".

19. On page 48975, second column, paragraph g., in line 2 change "a" to "the" and in line 4 change "MR–01–75" to "MR 0175–90".

Dated: December 18, 1991.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92–1336 Filed 1–16–92; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–21; Notice 11]

RIN 2127–AE13

Federal Motor Vehicle Safety Standards; Theft Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In mid-1990, this agency published a final rule amending certain provisions in Standard No. 114, *Theft Protection*, to protect against injuries caused by vehicle rollaway in vehicles with automatic transmissions. In March 1991, in response to petitions for reconsideration, the agency published a final rule amending certain of the requirements to provide manufacturers with greater flexibility in designing key-locking and transmission shift locking systems while ensuring that theft protection is provided and vehicle rollaway is prevented. This notice responds to petitions for reconsideration of the March 1991 final rule submitted by Toyota and Honda. In response to those petitions, the notice further amends the requirements to provide

manufacturers appropriate flexibility while continuing to meet the need for safety. In addition, the notice denies some portions of Toyota's petition, but provides an extra year's leadtime to comply with the requirement for inaccessibility for the emergency release button on the transmission shift override device.

DATES: *Effective Date:* This final rule is effective September 1, 1992, except for S4.2.2(b)(2) which is effective September 1, 1993.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than February 18, 1992.

ADDRESSES: Petitions for reconsideration must refer to the docket and notice numbers set forth at the beginning of this notice and be submitted to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday. It is requested, but not required, that 10 copies of the petition be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, NRM–11, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Medlin's telephone number is (202) 366–5307.

SUPPLEMENTARY INFORMATION:

Background

On May 30, 1990, NHTSA published in the **Federal Register** (55 FR 21868) a final rule amending certain provisions of Standard No. 114, *Theft Protection,* to protect against injuries caused by vehicle rollaway in vehicles with automatic transmissions. The amendments specified that each automatic transmission vehicle with a "park" position must have a key-locking system that prevents removal of the key unless the transmission or transmission shift lever is locked in "park" or becomes locked in "park" as the direct result of removing the key.

In response to petitions for reconsideration, on March 26, 1991, NHTSA published in the **Federal Register** (56 FR 12464) a final rule amending those requirements to provide manufacturers with greater flexibility in designing key-locking and transmission shift locking systems while ensuring that theft protection is provided and vehicle rollaway is prevented.

Among other things, the notice responded to petitioners' arguments that certain exceptions to the May 1990 requirements were necessary in light of electrical designs. First, petitioners stated that certain electrical transmission shift lock systems might have problems complying with the requirement for a transmission shift lock. While these systems include a transmission shift lock, they also include an override device to enable a vehicle to be moved in the case of electrical failure, such as a run-down battery. In the absence of an override device, it would not be possible to shift the transmission of such a vehicle out of park.

The May 1990 final rule permitted only key-based override systems. In response to petitions for reconsideration, NHTSA also decided to permit key-less overrides that are not visible and are "child-proof." The agency rejected requests to permit exposed override devices. NHTSA acknowledged that vehicles with steering locks would protect against theft, even with an exposed transmission shift override device. However, the agency emphasized that such systems would not protect against the safety risks posed by vehicle rollaway, which can occur when children playing in an unattended vehicle shift the transmission lever out of park. Accordingly, the agency decided to permit key-less override devices only if they are covered by a non-transparent surface which, when in place, prevents sight of and activation of the device and which is removable only by use of a screwdriver or other tool.

Petitioners also stated that certain electrical key locking systems might have difficulty complying with the requirements concerning key removal. Some such systems include a solenoid that prevents key removal upon electrical failure, such as that caused by a run-down battery. The petitioners indicated that mechanical emergency key release is needed so that the driver of a disabled vehicle can remove the key and lock the vehicle before leaving it unattended.

In light of this concern, NHTSA decided to permit a device which permits key removal while the transmission is in any position, provided that the following conditions are met. First, steering must be prevented upon key removal to ensure that Standard No. 114's theft protection aspects are not jeopardized. Second, the emergency device permitting key removal while the transmission is in a position other than "park" should not be accessible during normal operation or else rollaway might occur. Third, to limit access to the emergency key release, the device must be covered by a surface that prevents access to it except by use of a tool, such as a screwdriver. The agency determined that limiting access to the emergency key release was necessary to make it likely that such key removal occurs only during unusual situations such as electrical failure. In addition, while NHTSA noted that it is rare to have power failure when the transmission is in a position other than "park," it believed that it would be beneficial for the owner of a disabled vehicle to be able to remove the key and lock the vehicle if he or she must leave the vehicle to seek help. Accordingly, in the final rule of March 26, 1991, an exception to S4.2.1 was created to allow the key release device.

Petitions for Reconsideration of March 1991 Final Rule NHTSA received petitions for reconsideration of the March 1991 final rule from Toyota and Honda. Both companies requested that the agency expand the exception to the requirements concerning key removal by allowing an automatic key release feature upon electrical failure, regardless of transmission position. Toyota also requested that the agency expand the exceptions to the requirements concerning transmission shift lock to permit a visible override device if it requires simultaneous two-handed operation. Toyota also stated that it cannot modify its current design by the September 1, 1992 effective date and stated that an additional year of leadtime would be required.

As discussed below, after considering Toyota's and Honda's petitions, NHTSA has decided to amend the text of Standard No. 114 to make it clear that an automatic key release feature upon electrical failure is permitted, regardless of transmission position. The agency believes that this provides manufacturers appropriate flexibility while continuing to meet the need for safety. NHTSA is denying Toyota's petition with respect to permitting a visible override device to the transmission shift lock, but it providing an extra year's leadtime for the emergency release button inaccessibility requirement.

Key Removal Requirements

Toyota indicated in its petition for reconsideration that its key lock system employs the use of solenoid to prevent removal of the key unless the transmission is locked in "park." Since electrical power is required to activate the solenoid to prevent key removal, if the vehicle's battery should become completely discharged, the solenoid would release, allowing removal of the key regardless of the transmission shift lever position. Similarly, Honda's

system uses an electrical solenoid to activate the key/steering column interlock. The interrelationship between the shift lever and key interlock solenoid is such that if an electrical malfunction occurs or the battery dies, the key can be removed from the ignition regardless of the shift lever position.

Honda stated in its petition that the March 1991 final rule was ambiguous with respect to whether its system was permitted. It requested that the standard be amended to make it clear that key removal is permitted in the unusual circumstance of electrical failure when the vehicle's transmission is not in park. Toyota expressed concern that the March 1991 final rule would result in a system in which the driver would have to leave the key in the ignition of vehicle whose battery had gone dead, or require an additional key lock override to avoid this circumstance. It requested that the standard be amended to indicate that key removal prevention is not required after battery discharge.

NHTSA believes that there is an interpretation issue concerning whether the March 1991 amendments permit key removal after battery discharge. For example, the Honda system ordinarily prevents key removal unless the transmission is locked in park, as required by the amendments. Only under a failure condition, battery failure, is it possible to remove the key when the vehicle's transmission is not in park. It could be argued that a non-failed battery is an assumed test condition for the requirement and that Honda's system therefore, meets the requirement as written.

The agency notes that this is a different situation than that addressed by the March 1991 amendment permitting override devices. That amendment was issued in light of designs that have a solenoid which prevents key removal upon battery failure. As discussed above, the purpose of the override device is to enable the driver to remove the key when a battery failure occurs. However, it is possible for a driver to use the override device in the absence of a failure condition. Therefore, there was no ambiguity concerning whether such a device was permitted, absent the March 1991 amendment. Further, the agency had to consider the safety consequences that might result if the device was used under non-failure conditions, and therefore established requirements to make it likely that key removal occurs only during unusual situations such as electrical failure. See 56 FR 12467.

The agency has decided to resolve the issue raised by Honda and Toyota by making it clear in the text of the standard that key removal is permitted in the circumstance of electrical failure when the vehicle's transmission is not in park. NHTSA is adopting an amendment similar to that suggested by Honda. This decision is consistent with NHTSA's March 1991 final rule which permitted a device which permits key removal while the transmission shift lever is in any position. NHTSA's position in the March 1991 final rule was that while it is rare to have power failure when the transmission is in a position other than "park," it is beneficial for the owner of a disabled vehicle to be able to remove the key and lock the vehicle if he or she must leave the vehicle to seek help. Consistent with NHTSA's March 1991 position, the Honda and Toyota systems facilitate key removal by owners, in the event of electrical failure. Since the exception established by the amendment is specifically limited to the situation of electrical failure, it is unnecessary to adopt additional requirements to ensure that key removal occurs only during such unusual situations. The agency therefore has determined that providing manufacturers this additional design flexibility for their electrical transmission systems is warranted and will not harm Standard No. 114's safety or theft protection concerns.

NHTSA notes that, in a submission dated September 5, 1990, Toyota described an additional feature of its use of a key ignition solenoid. That company stated that since the solenoid would be active were the engine shut off and the transmission shift lever not moved to park, eventually depleting the battery, a timer is employed to release power to the solenoid after 60 minutes under such circumstances. Thus, after 60 minutes, the key would automatically be released regardless of transmission shift lever position. The vehicle would then be in noncompliance with Standard No. 114 because the transmission would not be locked in "PARK". When this condition exists, rollaway of the parked vehicle is possible. A major purpose of this revised rule is to prevent rollaway from occurring.

While automatic key release upon electrical failure would be permitted, the above described timing system utilized by Toyota that allows key removal regardless of transmission shift lever position would not be permitted. The agency does not believe it is necessary to create an additional exception to permit such a timing device. Drivers rarely leave the keys in the ignition when the transmission is not in park, and a buzzer can be used by manufacturers to warn drivers of current draw on the battery. Should a driver leave the keys, then return more than an hour later, after realizing that the keys were missing, the keys could be removed without placing the transmission in "PARK". It would remain this way until the next driver used the vehicle. During that period the vehicle could roll away and as a result small children who may be inside are at risk of being involved in a rollaway accident. Standard No. 114 already requires that a warning to the driver be activated when the key is left in the locking system and the driver's door is opened, and this system could be used to warn the driver about current draw of the key lock solenoid when the engine is turned off.

Transmission Shift Lock Requirements

In its petition for reconsideration of the March 1991 final rule, Toyota asked for the following additional amendment to Standard No. 114.

As indicated above, the March 1991 final rule requires, for automatic transmission vehicles, any manual override of the transmission shift lock to be "covered by a non-transparent surface which, when installed, prevents sight of an activation of the device and which is removable only by use of a screwdriver or other similar tool." Toyota petitioned for an amendment that would, in addition to covered devices, allow noncovered override devices which must be operated while shifting. In its September 5, 1990 submission, Toyota had described its manual override of the transmission shift lever lock as having an override button located on the floor console. In order for the device to be activated, the override button must be released with one hand while the other hand simultaneously depresses the transmission button and moves the lever from the "park" position.

For the following reasons, the agency denies the portion of Toyota's petition that requests allowing the uncovered transmission shift override device that is operated simultaneously with two hands. In the preamble to the March 1991 final rule, the agency reiterated its rationale for not permitting exposed override devices. As indicated above, NHTSA acknowledged that vehicles with steering locks would protect against theft, even with an exposed transmission shift override device. However, the agency emphasized that such systems would not protect against the safety risks posed by vehicle rollaway, which can occur when children playing in an unattended vehicle shift the transmission lever out

of park. In its previous rulemaking notices of May 1990 and March 1991 on Standard No. 114, the agency has discussed the problem of children being injured when they shift the transmission lever out of "park" and the vehicle rolls down an incline.

NHTSA reaffirms its previous position that if a vehicle is equipped with a transmission shift override, it should be designed to ensure that children cannot see or easily gain access to the override, thus limiting the possibility of rollaway. Toyota addressed the rollaway prevention issue by stating that with Toyota's manual override control, two actions would have to be accomplished simultaneously, and with two hands, since the override release must be held down with one hand while releasing the transmission shift lever with the other.

However, Toyota acknowledged that its uncovered override button is on the floor console, immediately next to the transmission shift lever. The agency believes that a cover over the override button is necessary because, without a cover over the button, a child left alone in a vehicle may have time to play with an exposed override button, especially when in such close proximity, and discover that it works in conjunction with the transmission shift lever. The proximity of the override button to the transmission shift lever makes it easier for a child to either unintentionally or intentionally operate them simultaneously, resulting in a shifting of the transmission, and rollaway.

Leadtime

The final rule of May 1990 provided over two years of leadtime to comply with the amendments, until September 1, 1992. In the March 1991 final rule, the agency denied the portion of Nissan's petition for reconsideration that requested an additional year of leadtime before the amendments became effective. NHTSA's rationale for this denial was that the agency believed that manufacturers will not have to undertake extensive revisions to their systems to comply with Standard No. 114, and thus did not anticipate the need for any extensive retoolings or redesigns.

In its petition for reconsideration of the March 1991 final rule, Toyota also requested an additional year of leadtime, until September 1, 1993, before the amendments became effective. This request for additional leadtime by Toyota was in the part of Toyota's petition that requested the agency allow, on automatic transmission vehicles, automatic release of the key upon electrical failure. Toyota stated that the additional time was necessary since Toyota could not modify its lock and solenoid by the amendment's effective date. As was earlier discussed, the agency has decided to allow automatic release of the key upon electrical failure. There should, therefore, be no need for Toyota to modify its lock and solenoid from its existing system. As for the timer connected to the solenoid, Toyota can either remove it or render it inoperative. Neither action should require an additional year before the amendments to Standard No. 114 become effective.

The agency is, however, interested in reasonably accommodating manufacturers' concerns regarding compliance with child-proof emergency override buttons for transmission lock systems voluntarily, to prevent "unintended acceleration" incidents. This is a commendable effort on their part to prevent unexplained incidents of "unintended" acceleration. The agency understands their concern, i.e., that they must again, modify the redesignated transmission lock in such a short time frame, to accommodate rollaway prevention features. After reconsideration of the design changes, needed, NHTS has decided to provide an additional year's lead time. This will lessen the impacts associated with such redesign of the emergency override buttons of these systems on many car lines. A September 1, 1993 effective date will now be required for compliance with the emergency release button inaccessibility requirement.

NHTSA believes this is a reasonable response to Toyota's petition for reconsideration of this override button cover requirement. The agency does not believe it appropriate, in the long run, to permit exposed transmission lock emergency release buttons because children can push exposed buttons located in the vicinity of the transmission shift lever and shift the vehicle's gears. Thus, while the agency believes a "childproof" system is important to reduce "rollaway accidents," it also believes an additional year's leadtime for the transmission lock system override button cover is appropriate.

Consequently, the agency had determined that the effective date of September 1, 1992 continues to be appropriate for this rulemaking, except that a September 1, 1993 effective date is now in effect for the requirement of inaccessibility of the override button pursuant to S4.2.2(b).

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and procedures

NHTSA has analyzed this notice responding to the petitions for reconsideration to the amendments to Standard No. 114 and determined that it is not "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. For the May 30, 1990 final rule, the agency prepared a Final Regulatory Evaluation (FRE) which provides the details of the cost and benefit estimates, and a copy of the FRE was placed in the docket. NHTSA does not believe that this final rule which permits, in automatic transmission vehicles, the release of the key in the unlikely event of an electrical failure, would affect the impacts described in the March 1991 final rule amending Standard No. 114. Accordingly, a separate regulatory evaluation has not been prepared for this final rule.

Regulatory Flexibility Act

NHTSA has considered the effects of this rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a significant number of small entities. Few, if any, vehicle manufacturers are small businesses. Small nonprofit organizations and small governmental entities will not be significantly affected by this rule. Although such groups purchase vehicles with automatic transmissions, the agency anticipates no price changes as a result of the amendment to Standard No. 114.

Executive Order 12612 (Federalism)

NHTSA has considered the federalism implications of this final rule, as required by Executive order 12612. NHTSA is unaware of any existing State requirements that will be preempted by this rule. After considering this rule in accordance with the principles and criteria contained in Executive Order 12612, NHTSA has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, Federal Motor Vehicle Safety Standard No. 114, *Theft Protection* (49 CFR § 571.114), is amended as set forth below:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.114 [Amended]

2. The first sentence of S4.2.2(a) is revised to read as follows:

* * * * *

S4.2.2(a) Notwithstanding S4.2.1, provided that steering is prevented upon the key's removal, each vehicle specified therein may permit key removal when electrical failure of this system (including battery discharge) occurs, or may have a device which, when activated, permits key removal. * * *

* * * * *

3. S4.2.2(b) is revised to read as follows:

* * * * *

(b)(1) Notwithstanding S4.2.1, each vehicle specified therein may have a device which, when activated, permits moving the transmission shift lever from "park" after the removal of the key provided that steering is prevented when the key is removed.

(2) For vehicles manufactured on or after September 1, 1993, the means for activating the device shall either be operable by the key, as defined in S3, or by another means which is covered by a non-transparent surface which, when installed, prevents sight of and activation of the device and which is removable only by use of a screwdriver or other similar tool.

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Issued on: January 14, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-1344 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 591

[Docket No. 89-5; Notice 9]

RIN 2127-AD00

Importation of Motor Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends 49 CFR part 591 to require that persons (other than original motor vehicle manufacturers who certify compliance to all applicable Federal motor vehicle safety standards) who wish to import nonconforming vehicles or equipment items for purposes of research, investigation, studies, demonstrations or training, or competitive racing events, submit, in advance of such importation, information in support of a request for admission, and obtain a letter of permission from NHTSA.

The purpose of the requirement is to ensure that the request to import nonconforming vehicles and equipment for these purposes is, in fact, not a subterfuge. In addition, if the requester intends to use the vehicle on the public roads, (s)he would have to obtain written permission from NHTSA for such use.

DATES: The effective date of the final rule is February 18, 1992.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202-366-5263).

SUPPLEMENTARY INFORMATION: On January 29, 1991, NHTSA published a notice of proposed rulemaking on which this final rule is based (56 FR 3236). As the preamble explained, under 15 U.S.C. 1397(j) NHTSA may allow the importation into the United States of any motor vehicle or item of motor vehicle equipment that does not conform to all applicable Federal motor vehicle safety standards "upon such terms and conditions as [NHTSA] may find necessary solely for the purpose of research, investigation, studies, demonstrations or training, or competitive racing events."

On April 25, 1989, in prospective implementation of section 1397(j), NHTSA proposed 49 CFR 591.5(j), which, in essence, proposed the adoption of the previously existing requirement in 19 CFR 12.80(b)(1)(vii), the joint importation regulations of the U.S. Customs Service and NHTSA, that an appropriate information statement accompany declarations of entry for purposes of test, experiment, repairs or alterations, show, or competition (54 FR 17772). However, in developing the final rule, NHTSA realized that it had no authority of its own to seize motor vehicles entered pursuant to false declarations. It therefore sought a means to ensure the bona fide nature of imports under § 591.5(j) before they entered the United States and passed out of the agency's control. This effort was necessary because there is no requirement that these vehicles enter under a conformance bond. NHTSA was particularly concerned because the volume of imports under § 12.80(b)(1)(vii) during 1989 was approaching the number of nonconforming vehicles for which conformance verification is required. Further, with the restrictions placed upon nonconforming vehicles by amendments (Pub. L. 100-562, The Imported Vehicle Safety Compliance Act) to the National Traffic and Motor Vehicle Safety Act intended to reduce the number of "grey market" cars, the agency envisioned that a greater proportion of people would attempt to enter vehicles under claims that importation was for the purpose of tests, experiments, demonstrations and the like. NHTSA recalled that some importers seeking vehicle entry under § 12.80(b)(2)(vii) had submitted statements of purpose whose truthfulness the agency had questioned. In those instances, the agency could only object to the entry under § 12.80(b)(2)(vii), and request Customs to require reentry of the nonconforming vehicle under § 12.80(b)(2)(iii), the declaration that the nonconforming vehicle would be brought into conformance.

At the conclusion of this review, the agency determined that NHTSA's authority to exempt a nonconforming vehicle from the importation prohibitions for reasons of testing, experimentation, etc., would be better exercised before vehicle entry rather than after, and that it could adopt a pre-approval requirement as one of the "terms and conditions" authorized by the 1988 Act. Accordingly, when the final rule was published on September 29, 1989 (54 FR 40089), § 591.5(j) required that the importer's declaration at the time of entry include a statement that the importer had previously received written permission from NHTSA. Section 591.6(f) set forth the requirement that the prospective importer submit in advance of such importation a written request containing the information previously required to accompany the declaration.

Petitions for reconsideration of this requirement were received, commenters claiming that the requirement was unduly burdensome and objecting to the fact that the requirement had been adopted without a specific proposal for it. In response to these petitions, the agency rescinded the requirement for prior approval, and issued its April 1989 proposal which continued the existing practice of simultaneous submission. This action occurred on February 5, 1990 (55 FR 3742).

In developing the proposal published in January of this year, the agency reviewed the substantive arguments that the petitioners had raised, and tried to accommodate their concerns. NHTSA realized that the inclusiveness of the former requirement for prior approval of importation might indeed create an unnecessary burden upon original manufacturers of motor vehicles who sell their products in the United States, and who, in the course of product development and evaluation, are accustomed to importing prototypes, or completed vehicles manufactured by their foreign subsidiaries, joint venturers, or other unrelated vehicle manufacturers. NHTSA had no wish to encumber petitioners such as Volkswagen, Mazda, GM, and others, who are "original manufacturers" as that term is defined in part 591, and whose purpose in importation is directly related to legitimate business concerns of research, studies, and the other categories listed in section 108(j). Given that such manufacturers have been meeting NHTSA's requirements over the years and given the certain continuity and high public visibility of their activities, NHTSA believed it reasonable to expect that importations by them will be in good faith. Therefore, it appeared that there wasn't any need to require prior approval for their vehicle importations.

However, since adoption of § 591.5(j), NHTSA has noted an increasing number of importations, both accomplished and attempted, of personal vehicles by private importers under test declarations. Once a vehicle has been admitted by Customs under § 591.5(j) (Box 7 on importation Form HS–7), there is no DOT bond or other enforcement mechanism available to the agency (other than a possible civil penalty of up to $1,000) to compel the importer either to conform it or to export it.

Accordingly, NHTSA did not propose that the current requirement be changed for original manufacturers of motor vehicles that are certified as conforming to all applicable Federal motor vehicle safety standards, and who wish to import a motor vehicle of the same type that they manufacture (though such vehicle may be of a type the manufacturer does not sell in the United States). However, it did propose that any other person wishing to import a vehicle pursuant to section 591.5(j) obtain prior approval.

NHTSA also proposed reinstatement of the previous restriction upon importation (§ 591.7(c)) that a vehicle imported pursuant to § 591.5(j) may not be used on the public roads without the written approval of the Administrator, and added to it the proposed requirement that the importer retain title to the vehicle at all times that it is in the United States, and, further, that it not lease it during that time.

Comments on the Proposal

Seven comments were received in response to the proposal, five from major motor vehicle manufacturers, one from a motor vehicle trade organization, and one from a law firm. These were, respectively, Mazda Research & Development of North America, Inc., Volkswagen of America, Inc., Ford Motor Company, Chrysler Corporation, General Motors Corporation, Motor Vehicle Manufacturers Association, and Pillsbury, Madison & Sutro. Under the proposal, modifications would be made in §§ 591.5, 591.6, and 591.7. With respect to each of these sections, a discussion follows on the comments received and their resolution.

Proposed Section 591.5(j)(1)

A. Omission of Reference to Theft Prevention Standard

This declaration begins with the statement that "the vehicle or equipment item does not conform with all applicable Federal motor vehicle safety and bumper standards." Ford called attention to omission of reference to the theft prevention standard in the declaration. This omission of previously existing language was deliberate. Whereas all imported vehicles are required to conform to safety and bumper standards, only those that have been designated by the agency as high theft are required to meet the theft prevention standard. Thus, the standard does not apply *ab initio* to all motor vehicles. It does apply, however, to foreign-manufactured counterparts of vehicles certified by their manufacturers as meeting U.S. safety and bumper standards, and which the agency has designated as a high theft line. For example, the agency has designated the BMW 3 series as a high theft line. This designation also applies to 3 series cars manufactured for markets other than the United States. If a 3 series car is offered for importation under section 108(j), and does not comply with the theft prevention standard at the time it is offered for importation, it cannot be admitted. Under 15 U.S.C. 2027, vehicles and equipment that are subject to the Theft Prevention Standard and that do not conform to it may not be imported under any circumstances. However, NHTSA believes that the type of vehicle most likely to be imported for the purposes of section 108(j) will not be grey market vehicles with U.S. high theft line counterparts, but vehicles of an experimental nature or of types and models which are not substantially similar to U.S.-certified vehicles. Therefore, the omission of a declaration of noncompliance with the Theft Prevention Standard should not create difficulty.

B. No Allowance or Importation for Display

Section 591.5(j) allows importation of nonconforming vehicles and equipment for a temporary period solely for the purpose of research, investigations, studies, demonstrations or training, or competitive racing events. Pillsbury requested that the provision be expanded to allow importation for a further category, display, in order to be consistent with EPA requirements. The law firm argued that the 1988 amendments to the Vehicle Safety Act provide sufficient safeguards against abuse of a display-only exemption, and that NHTSA could provide that the vehicle not be sold until an appropriate certificate of conformity was received.

In promulgating part 591, NHTSA explained that, although the previous importation regulation permitted importation for "show", Congress did not include this category in 15 U.S.C. 1397(j), the authority for importations under § 591.5(j). The agency has previously stated (54 FR at 17776 and 55 FR 40876) that § 591.5(j) does not preclude original vehicle manufacturers who import nonconforming vehicles for display at auto shows to gauge public reaction to new styling or engineering features from declaring that such importation is for "research" or "demonstrations." But in the absence of specific authority from Congress to allow importations for show or display, the agency has adopted a conservative attitude towards entities other than original vehicle or vehicle equipment manufacturers who wish to import nonconforming vehicles for "research" or "demonstrations."

NHTSA is aware that there is an interest in the general public in

importing vehicles for static display that may not have reached the 25-year age mark entitling them under 15 U.S.C. 1397(i) to entry without conformance. According, it has begun to examine the statutory language to see if a sufficient set of safeguards can be devised, with a view towards proposing a regulation sufficient to accommodate importation of vehicles for display purposes, by persons other than original vehicle manufacturers.

Proposed Section 591.5(j)(2)(ii)

A. Breadth of Term "Original Manufacturer"

A declarant under subparagraph (j)(2)(ii) is an "original vehicle manufacturer of motor vehicles that are certified to comply with all applicable Federal motor vehicle safety standards." Mazda and Volkswagen were concerned that "original manufacturer" might be construed so narrowly that subsidiaries, distributors, and marketing arms owned or controlled by them would not be included in the term, and hence, would be subject to the more restrictive importation requirements proposed.

NHTSA wishes to reassure the industry that this requirement was not intended to exclude United States subsidiaries of foreign manufacturers who sell their products in the United States. The agency regards entities that are wholly owned by original motor vehicle manufacturers (including subsidiaries that are distributors or marketing arms) as standing in the shoes of their corporate parent. For example, it regards Mazda Research & Development of North America as having the same right as its corporate parent, Mazda Motor Corporation, to import vehicles under § 591.5(j) as an "original vehicle manufacturer." By the same token, it regards Volkswagen of America as an "original manufacturer of motor vehicles", and entitled to import vehicles made by Volkswagen de Mexico or other companies in which Volkswagen A.G. may have an interest, without the necessity of obtaining prior approval from NHTSA. Therefore, the agency is amending this subsection to add "(or wholly owned subsidiary thereof)" after the words "original vehicle manufacturer." However, if a prospective importer is not 100 percent owned by an original vehicle manufacturer, the agency is not prepared, absent a convincing argument regarding the nexus between the person and the vehicle assembler, to interpret the term, "original vehicle manufacturer," to include such person. NHTSA will be willing to consider each such case on the merits.

Volkswagen has requested the name and telephone number of an individual or office to which inquiries on importations under § 591.5(j) may be addressed. For an interpretation of regulatory language, the reader may call Taylor Vinson, Office of Chief Counsel, 202–366–5263. (NB: Requests for interpretation generally should be in writing. Further, with the exception of routine issues, requests for interpretation are answered in writing only.) For questions regarding implementation of import procedures such as submission of documentation, or for advice on the actual importation of a vehicle, the reader should call Ted Bayler, Office of Enforcement, 202–366–5306.

B. Omission of Manufacturer of "Motor Vehicle Equipment"

Subparagraph (j)(2)(ii) extends only to manufacturers of motor vehicles. Volkswagen and Ford note the omission of original equipment manufacturers, and believe that they should be added for consistency and clarity.

The purpose of this subparagraph is to relieve original manufacturers of motor vehicles from a requirement to obtain prior approval from NHTSA for importation and use on the public roads of nonconforming motor vehicles. As such, the subparagraph does not apply either to original manufacturers of motor vehicle equipment, or motor vehicle equipment. Thus, manufacturers of original motor vehicle equipment who wish to import motor vehicles must obtain prior approval. In the absence of any request from an equipment manufacturer for inclusion, the agency has not made the change suggested by Ford and Volkswagen.

C. Ambiguity of Term "Type of Motor Vehicle"

Under the remainder of the declaration in subparagraph (j)(2)(ii), the motor vehicle manufacturer-importer avers that it is "a manufacturer of the (same) type of motor vehicle as the motor vehicle it seeks to import." Chrysler commented that there is a potential for misinterpretation in the term "type of motor vehicle" because it was not defined, and that delays are likely to result at the time of importation because of ambiguities. In addition, both Chrysler and Mazda argued that original manufacturers should not be restricted in the kinds of nonconforming motor vehicles they import.

The purpose of this proposed language was to foreclose the possibility that, say, a manufacturer of heavy trailers might wish to import a 200 mph passenger car without obtaining prior approval by NHTSA. Importation of such a disparate vehicle on its face appears unrelated to the manufacturer's business needs arising from manufacturing truck trailers. However, balancing the desirability that original vehicle manufacturers not be restricted in the types of vehicles they import for § 591.5(j) purposes against the possibility that they will abuse the privilege, NHTSA finds it in the public interest to adopt subparagraph (j)(2)(ii) without the type similarity declaration proposed. If an abuse appears to exist, NHTSA will demand reentry under an appropriate provision as it has heretofore done.

Proposed Section 591.5(j)(3)

A. Documentary Proof of Export or Destruction

Subparagraph (j)(3) would require all importers under § 591.5(j) to provide NHTSA with documentary proof of export or destruction not later than 30 days following the end of the period for which the vehicle has been admitted into the United States.

This proposed new requirement that would apply to original vehicle manufacturers as well as other importers was objected to by Mazda, Volkswagen, Motor Vehicle Manufacturers Association (and by endorsement, Ford and GM) insofar as it would be a requirement for original manufacturers. VW suggested that manufacturers could retain appropriate documentation for 3 years. Mazda argued that sufficient safeguards exist under Customs regulations because destruction of nonconforming vehicles admitted pursuant to Temporary Importation Bonds is documented on Customs Form 3499. Conversely, copies of shipping documents evidencing export are provided to Customs when an importer requests release of the Temporary Importation Bond under which the vehicle entered.

The documentation referenced by Mazda is not furnished to NHTSA but to another Federal agency, the Customs Service. Further, this documentation does not address the situation in which the vehicle remains in the United States after liquidation of the Temporary Importation Bond through payment of duty, and for such longer period of time as NHTSA may allow. After payment of duty, Customs ceases to have any jurisdiction over the vehicle, and will have no concern over its eventual disposition. Under all these circumstances, NHTSA must insist upon documentary proof of export or

destruction. Therefore, subparagraph (j)(3) is adopted as proposed.

B. Inoperability as a Substitute for Destruction

Subparagraph (j)(3), in effect, requires that a nonconforming vehicle either be destroyed or exported at the end of the period for which it is admitted. Chrysler asked whether the requirement for destruction would be satisfied by rendering a vehicle permanently inoperable before its donation for educational purposes to a bona fide educational institution.

Earlier in this notice, the agency stated its interest in reviewing the statutory provisions relating to the possible allowance of importation for display purposes. As the operability of a vehicle may bear some relation to a decision to allow importation for display purposes, NHTSA will consider Chrysler's question regarding destructability at that time.

Proposed Section 591.6(g)(1): Acceptability of Post-Test Conformity

Under this proposed section, information to be submitted by an importer includes a statement of "the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported." Chrysler interprets the proposed language as contemplating conformity as an option to export or destruction at the end of the importation period. It asks for clarification of this point, believing that it should be an option for original vehicle manufacturers.

This question cannot be answered in a vacuum. By analogy, the Safety Act provides the Administrator with authority to grant temporary exemptions if they will facilitate the development and field evaluation of new motor vehicle safety features providing a level of safety at least equivalent to the standard from which exemption is sought. It is therefore possible that an original vehicle manufacturer would wish to import one of its vehicles that is technically noncompliant with a standard in order to test an innovative feature relating to that standard, and, after testing, to bring the vehicle into compliance with it. Under this circumstance, NHTSA might be amenable to accepting a statement from an original vehicle manufacturer that the intended means of disposition of the vehicle is post-test conformity. On the other hand, if the noncompliant aspects of the vehicle are unrelated to the purpose for which it is imported, and at the time of entry the importer announces an intent to conform it at the end of the importation period, NHTSA believes that the vehicle ought to be manufactured to conform, or be conformed immediately after its importation by a registered importer, in order that full protection may be provided the public during the time the vehicle is operated on the public roads.

Proposed Section 591.6(g)(2): Clarification of Ambiguity

As proposed, this section would require that original manufacturer declarations be accompanied by a written statement containing the information required in (g)(1). One of the items specified in (g)(1) is a letter from the Administrator authorizing importation, i.e., a letter of prior approval. MVMA (and by endorsement, Ford and Chrysler) asked for a clarification that NHTSA does not intend to require original manufacturers to obtain prior approval. NHTSA regrets this inadvertent ambiguity, and is amending subsection (g)(2) to clarify that the information required of original manufacturers does not include a prior approval statement.

Existing Sections 591.7 (a) and (b): Congruity of Importation Periods

Volkswagen and Ford commented that vehicles imported pursuant to Customs Temporary Importation Bonds (TIBs) may not remain in the U.S. longer than three years, while those for which duty has been paid may remain longer. Ford asked for an amendment of subsection (a) that would extend the three-year period upon written approval from NHTSA. It recommended a similar amendment to subsection (e). Volkswagen recommended that NHTSA ask Customs to amend its TIB provisions to be identical with the NHTSA time frame. Ford would also amend subsection (b) to clarify that the permission in writing is that specified in subsection (e).

It is not legally possible for either NHTSA or the U.S. Customs Service to grant these requests, as NHTSA learned when developing the regulation. Under the Tariff Schedules established by Congress, merchandise (including motor vehicles) may be conditionally admitted under TIBs for a period not to exceed 3 years. Thus, only Congress can extend the time period. Neither NHTSA nor Customs has the regulatory authority to do so.

Upon review of Ford's request to amend subsection (b) to reflect subsection (e), NHTSA has found a certain degree of redundancy, and is therefore amending subsection (b) to incorporate the non-redundant portions of subsection (e).

Proposed Section 591.7(c)

A. Restriction Upon Leasing Imported Vehicles

Under the proposal, a motor vehicle imported pursuant to § 591.5(j) could not be leased. Chrysler, Ford, and MVMA opposed this prohibition, and recommended that it not be adopted, or at least that it exclude original vehicle manufacturers from its coverage.

NHTSA proposed the leasing restriction as an effort to ensure that importers retain both title and possession of motor vehicles. However, in some situations the purposes of experimentation may not be fully realized unless a fleet of test vehicles is fielded over an extended period of time, and in these situations, a lease may be desirable. Accordingly, the requirement adopted will allow original vehicle manufacturers to lease vehicles they have imported under § 591.5(j).

B. Administrator's Prior Approval for On-Road Use

As proposed, vehicles imported pursuant to § 591.5(j) may be used on the public roads only if permission has been obtained in writing from NHTSA. Ford requested a clarification as to whether this applied to original vehicle manufacturers. MVMA (and by endorsement, GM) stated that § 591.6(g)(1) already controls the use on the public roads of grey market vehicles, and that such a requirement would be burdensome on original manufacturers of vehicles.

NHTSA has no intention of placing such a requirement on original vehicle manufacturers. Accordingly, it is clarifying in the final rule that the written permission referenced in subsection (c) for on road use is required for vehicles that have entered under the declaration that the importer has received written permission from NHTSA for the importation (subsection (j)(2)(i)). This declaration does not apply to original vehicle manufacturers who are permitted to enter their vehicles without written permission (subsection (j)(2)(ii)).

Proposed Section 591.7(e)

A. Addition of "Equipment Item"

This section begins "If the importer of a vehicle under section 591.5(j) does not intend to export or destroy the vehicle or equipment item", and Ford suggested adding "equipment item" after the initial reference to "vehicle." The agency has done so.

B. Addition and Deletion of Language

As proposed, subsection (e) requires an importer to request permission in writing to allow retention of a vehicle or equipment item in the U.S. beyond the three-year period "subject to the limitations of" subsection (b). Ford suggested adding language that identifies those limitations, and strikes the reference to subsection (b). As NHTSA has noted previously, proposed subsection (e) has been incorporated into subsection (b).

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the economic impacts of this rule and determined that it is not major within the meaning of E.O. 12291 nor significant under Department of Transportation policies and procedures. There is no substantial impact upon a major transportation safety program, and the action does not involve any substantial public interest or controversy. The impact upon the Federal government is that it would be required, in certain instances, to issue written approvals to original manufacturers who are importers of nonconforming vehicles and wish to use them on the public roads, and to other importers who are not original manufacturers. There should be little impact upon those who will have to seek prior approval. These importers need not wait until their vehicles arrive, but any apply to NHTSA is advance of the shipping date, and NHTSA will respond in two to five working days. Therefore, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment.

Regulatory Flexibility Act

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. Since the impact of this rule will be minimal (the writing of a letter and the response to it), I certify that this rule would not have a significant economic impact upon a substantial number of small entities. There would be no substantial effect on state and local governments who purchase new vehicles since the affected vehicles are not imported for resale. Accordingly, no initial regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

The declaration requirements and submittal of written statements to NHTSA are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. However, they were previously approved by OMB for inclusion in § 591.6(f) in the final rule published on September 29, 1989 (OMB Approval Number 2127–0002).

Executive Order 12612 (Federalism)

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, title 49 Code of Federal Regulations part 591 is amended as follows:

1. The authority citation for part 591 continues to read as follows:

Authority: Pub. L. 100–562, 15 U.S.C. 1401, 1407, 1912, 1916, 2022, 2027; delegations of authority at 49 CFR 1.50 and 501.8

2. Section 591.5(j) is revised to read:

§ 591.5 Declarations required for importation.

* * * * *

(j)(1) The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety and bumper standards, but is being imported for a temporary period solely for the purpose of:

(i) research;

(ii) investigations;

(iii) studies;

(iv) demonstrations or training; or

(v) competitive racing events;

(2)(i) The importer has received written permission from NHTSA; or

(ii) The importer is an original manufacturer of motor vehicles (or a wholly owned subsidiary thereof) that are certified to comply with all applicable Federal motor vehicle safety standards; and

(3) The importer will provide the Administrator with documentary proof of export or destruction not later than 30 days following the end of the period for which the vehicle has been admitted into the United States.

* * * * *

3. Section 591.6(g) is revised to read:

§ 591.6 Documents accompanying declarations.

* * * * *

(g) A declaration made pursuant to § 591.5(j) shall be accompanied by the following documentation:

(1) A declaration made pursuant to § 591.5(j)(2)(i) shall be accompanied by a letter from the Administrator authorizing importation pursuant to that section. (Any person seeking to import a motor vehicle or item of motor vehicle equipment pursuant to that section shall submit, in advance of such importation, a written request to the Administrator containing a full and complete statement identifying the vehicle or equipment item, its make, model, model year or date of manufacture, VIN if a motor vehicle, and the specific purpose(s) of importation. The discussion of purpose(s) shall include a description of the use to be made of the vehicle or equipment item. If use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported, the statement shall request permission for use on the public roads, describing the purpose which makes such use necessary, and stating the estimated period of time during which use of the vehicle or equipment item on the public roads is necessary. The request shall also state the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported.)

(2) A declaration made pursuant to § 591.5(j)(2)(ii) shall be accompanied by the written statement of its importer describing the use to be made of the vehicle or equipment item. If use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported, the statement shall describe the purpose which makes such use necessary, state the estimated period of time during which use of the vehicle or equipment item on the public roads is necessary, and state the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported.

4. Section 591.7(b) is revised to read:

* * * * *

§ 591.7 Restrictions on importations.

(b) If the importer of a vehicle or equipment item under § 591.5(j) does not intend to export or destroy the vehicle or equipment item not later than 3 years after the date of entry, and intends to pay duty to the U.S. Customs Service on such vehicle or equipment item, the importer shall request permission in

writing from the Administrator for the vehicle or equipment item to remain in the United States for an additional period of time not to exceed 5 years from the date of entry. Such a request must be received not later than 60 days before the date that is 3 years after the date of entry. Such vehicle or equipment item shall not remain in the United States for a period that exceeds 5 years from the date of entry, unless further written permission has been obtained from the Administrator.

5. Section 591.7(c) and (d) are added to read.

* * * * *

(c) An importer of a vehicle which has entered the United States under a declaration made pursuant to § 591.5(j)(2)(i) shall at all times retain title to and possession of it, shall not lease it, and may use it on the public roads only if written permission has been granted by the Administrator, pursuant to § 591.6(g)(1). An importer of a vehicle which has entered the United States under a declaration made pursuant to § 591.5(j)(2)(ii) shall at all times retain title to it.

(d) Any violation of a term or condition imposed by the Administrator in a letter authorizing importation or on-road use under § 591.5(j) shall be considered a violation of 15 U.S.C. 1397(a)(1)(A) for which a civil penalty may be imposed.

Issued on: January 3, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-537 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Final Rule To List the Plant Spiranthes Diluvialis (Ute Ladies'-Tresses) as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the plant *Spiranthes diluvialis* (Ute ladies'-tresses) to be a threatened Species under the authority of the Endangered Species Act of 1973 (Act), as amended. *S. diluvialis* was historically found in riparian areas in Colorado, Utah, and Nevada. It is presently found in relatively undisturbed riparian areas in the greater Denver metropolitan area, Colorado (two populations); in wetlands near Utah Lake in northern Utah (two populations); and in low elevation riparian areas in the Colorado River drainage in eastern Utah (six populations). This species is threatened primarily by habitat loss and modification, though its small populations and low reproductive rate make it vulnerable to other threats also. This determination that *S. diluvialis* is a threatened species protects it under the authority of the Act.

EFFECTIVE DATE: February 18, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Fish and Wildlife Enhancement Field Office, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address, telephone 801/524-4430 or FTS 588-4430.

SUPPLEMENTARY INFORMATION:

Background

In 1981, live plants belonging to the genus *Spiranthes* were collected in Colorado by W.G. Gambill and W.F. Jennings and sent to C.J. Sheviak for examination. The following year, additional specimens were collected in meadows along Clear Creek in Colorado, and from similar habitat in Utah. After examining these and other specimens from Colorado, Utah, and Nevada (some of which were assigned in the past to other *Spiranthes* species), Sheviak described a new species, *Spiranthes diluvialis* (Sheviak 1984). The type locality is along Clear Creek in Golden, Colorado.

Current and historic populations of *S. diluvialis* in Colorado and Utah were confused with other species of *Spiranthes* with distributions far removed from this region including: *S. cernua* (Arnow et al. 1980, Correll 1950, Holmgren in Cronquist et al. 1977, and Higgins in Welsh et al. 1987), *S. porrifolia* or *S. romanzoffiana* var. *porrifolia* (Rydberg 1906, Correll 1950, Holmgren in Cronquist et al. 1977, Luer 1975, Goodrich and Neese 1986, and Higgins in Welsh et al. 1987), and *S. magnicamporum* (Luer 1975). These species differ significantly, morphologically, and cytologically, from *S. diluvialis*. The confusion of *S. cernua*, *S. magnicamporum*, and *S. porrifolia* with *S. diluvialis* stems from these species differing from the widespread *S. romanzoffiana* (which occurs in Colorado and Utah at high elevations) in their suppression of the pandurate (violin shaped) form of the lip, which is the distinctive feature of *S. romanzoffiana*.

Spiranthes diluvialis is a perennial, terrestrial orchid with stems 20 to 50 centimeters (cm) (8 to 20 in.) tall arising from tuberously thickened roots. Its narrow leaves are about 28 cm (11 in.) long at the base of the stem and become reduced in size going up the stem. The flowers consist of 3 to 15 small white or ivory colored flowers clustered into a spike arrangement at the top of the stem. The species is characterized by whitish, stout, ringent (gaping at the mouth) flowers. The sepals and petals, except for the lip, are rather straight, although the lateral sepals are variably oriented, with these often spreading abruptly from the base of the flower. Sepals are sometimes free to the base. The lip lacks a dense cushion of trichomes on the upper surface near the apex. The rachis is sparsely to densely pubescent with the longest trichomes 0.2 mm (0.008 in.) long or longer, usually much longer. The chromosome number is 2n=74. It typically blooms from late July through August, in some cases through September. Blooms were recorded as early as early July and as late as early October (Sheviak 1984, Coyner 1990, Jennings 1989).

Spiranthes diluvialis is endemic to moist soils in mesic or wet meadows near springs, lakes, or perennial streams. The species occurs primarily in areas where the vegetation is relatively open and not overly dense, overgrown or overgrazed (Coyner 1989, 1990; Jennings 1989, 1990). Populations of *S. diluvialis* occur in relatively low elevation riparian meadows in three general areas of the interior Western United States.

The two eastern populations are located in mesic riparian meadows in relict tall grass prairie areas near Boulder Creek in the City of Boulder, Boulder County, Colorado, and in mesic meadows in the riparian woodland understory along Clear Creek in adjacent Jefferson County, Colorado. The Boulder population is one of the largest known populations. The Clear Creek population has one site in the City of Golden and a second in the City of Wheat Ridge (Jennings 1989). No other populations of the species are currently known from Colorado, though historic collections were made from either Weld or Morgan County in the Platte River valley in 1856, and at Camp Harding in El Paso County in 1896 (Jennings 1989, 1990).

The central populations of *S. diluvialis* are in wet or mesic riparian

meadows or in understory meadows of riparian woodlands in the Colorado River drainage of eastern Utah. Six separate populations are known: (1) Along the Green River in Browns Park in Daggett County; (2) in the Cub Creek drainage in Dinosaur National Monument in Uintah County; (3) along the Uinta and Whiterocks Rivers near Whiterocks in Duchesne and Uintah Counties (one of the largest populations); (4) along the Duchesne River near Duchesne in Duchesne County; (5) along the Fremont River in Capitol Reef National Park in Wayne County; and (6) along Deer Creek in Garfield County. All these populations were discovered since 1977 (Coyner 1989, 1990; Heil 1988; Jennings 1989; U.S. Fish and Wildlife Service 1991).

The western populations of *S. diluvialis* occur in riparian, lake, and spring-side wet or mesic meadows in the eastern Great Basin of western Utah and adjacent Nevada. Two existing populations are known, both in wetlands adjacent to Utah Lake in Utah County, Utah. Five additional populations were known:

(1) "Ogden" in Weber County, Utah—specimens from this population were collected in 1887 but no plants have been observed since then; (2) wetlands in the Jordan River drainage in Salt Lake County, Utah—specimens from this population were last collected in 1953; (3) Red Butte Canyon near Salt Lake City—plants in this population were last observed in 1966; (4) Willow Springs near the town of Callao in Tooele County, Utah—specimens from this population were last collected in 1956; and (5) wet meadow in the drainage of Meadow Valley Wash near the town of Panaca in Lincoln County, Nevada—specimens from this population were last collected in 1936. Recent searches for *S. diluvialis* in the Great Basin failed to rediscover any of the species' historic populations, except for those near Utah Lake, and recent rare plant inventories have not discovered any new Great Basin populations (Coyner 1989, 1990; Jennings 1989; U.S. Fish and Wildlife Service 1991).

Most of the populations in Colorado occur on city park and greenbelt areas owned by the Cities of Boulder and Wheat Ridge. Existing populations in Utah primarily occur on lands managed by the Bureau of Land Management, the National Park Service, and the Forest Service. One Utah population occurs on Ute Indian Tribal land within the boundary of the Uintah and Ouray Reservation. Two Utah populations occur on private land. Though all populations are relict in nature, the largest populations occur in Boulder County, Colorado, and along the Uinta River in Utah.

Federal action on this species began on September 27, 1985, when the Service published a notice of review of candidate plants for listing as endangered or threatened species, which included *S. diluvialis* as a category 2 species (50 FR 39526). Category 2 comprises taxa for which the Service has information indicating the appropriateness of a proposal to list the taxa as endangered or threatened but for which more substantial data are needed on biological vulnerability and threats.

After a review of status information acquired since 1985 (Coyner 1989, Heil 1988, Jennings 1989), the Service upgraded *S. diluvialis* to category 1 in the plant notice of review published in the **Federal Register** on February 21, 1990 (55 FR 6184). Category 1 comprises those taxa for which the Service has on file substantial information on the biological vulnerability and threats to support the appropriateness of proposing to list them as endangered or threatened species.

In the 1990 notice, *S. diluvialis* was given the common name "plateau lady's tresses" to provide the public a convenient reference. However, the Service will henceforth use "Ute ladies'-tresses" as the species' common name in recognition of the fact that the species' historic range coincides with the ancestral home of the Ute Indian Tribe.

On November 13, 1990, the Service published in the **Federal Register** (55 FR 47347) a proposed rule to list *S. diluvialis* as a threatened species. That proposal constituted the final finding for this species.

Summary of Comments and Recommendations

In the November 13, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. A newspaper notice concerning this proposed action was published in the following papers during the period December 1, 1990, to December 6, 1990: The Salt Lake Tribune, the Desert News, the Tooele Transcript-Bulletin, the Uintah Basin Standard, The Daily Herald, The Standard-Examiner, The Vernal Express, The Denver Post, the Las Vegas Review-Journal, The Boulder Daily Camera, the Garfield County News, the Lincoln County Record, and the Richfield Reaper. The original comment period extended from November 13, 1990, to January 14, 1991. A notice published in the **Federal Register** (56 FR 4028) on February 1, 1991, extended the comment period from February 1, 1991, until March 15, 1991. Appropriate State agencies, county governments, Federal Agencies, scientific organizations, and other interested parties were contacted and requested to comment.

During the comment period (between November 13, 1990, and March 15, 1991), a total of 44 comments were received, including 8 responses from 6 Federal Agencies (includes 2 offices each from 2 Federal Agencies); 1 congressman; 3 States; 8 local governments; and 24 private organizations, companies, and individuals. Of those comments, 25 supported the listing, 6 opposed the listing, and 13 were neutral or took no position concerning the proposal.

Written comments received during the extended comment period are covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. These issues, and the Service's response to each, are discussed below:

Issue 1—Whether the species should be listed as endangered or threatened. Twelve commenters (eleven from Colorado), believed that the species should be listed as endangered. One commenter opposed listing as endangered. Seven commenters supported listing the species as threatened.

Response—Based on the best available information, including information obtained during the public comment period and from searches conducted in 1991, the Service believes that threatened is the most appropriate status. The basis for this determination is discussed under "Summary of Factors Affecting the Species."

Issue 2—Whether there are sufficient data and evidence to support listing. Two commenters challenged the adequacy of available data. One commenter indicated that there is no record of population decline in known populations. Four commenters recommended delaying listing until further survey and studies are completed.

Response—The Service is listing this species based on the best scientific and commercial information available, which is the standard required under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). General botanical inventories of riparian habitats during the past 150 years within the species' range discovered a limited number of historic populations, of which a large proportion have been extirpated, and two of the four Colorado populations appear to

Most of the species' historic western populations on the Wasatch Front and in the Great Basin are believed to have been extirpated, and two of the four Colorado populations appear to have extirpated. Most known populations contained less than 1,000 plants, when counted in 1990 or 1991. These smaller populations may not be demographically stable over the long term.

It is difficult to prove population declines when populations can fluctuate dramatically in size from year to year. For example, the primary site for the Boulder population contained 5,435 plants in 1986, 200 plants in 1987, 131 plants in 1988, 1,137 plants in 1989, 1,894 plants in 1990, and at least 80 plants in 1991 (James Crain, Director, Open Space, City of Boulder, in litt. 1991; W.F. Jennings, orchidologist, in litt. 1991; W.F. Jennings, pers. comm. 1991). Information such as this could be interpreted as indicating a downward population trend. However, the decline of the species is better evidenced by the fact that many of the historic populations (i.e., known prior to 1977) are now presumed extirpated.

As with any species that is listed or is being proposed for listing, there is always the possibility that there may be undiscovered populations. The Service welcomes any efforts by others to survey for additional populations. However, the best available information indicates that the species is rare and declining and that its habitat is threatened. Four commenters identified proposed actions in Colorado and Utah that might threaten *S. diluvialis*.

Issue 3—Four commenters expressed the opinion or noted that *S. diluvialis* was not a valid taxon, but is synonymous with *S. porrifolia* or with *S. romanzoffiana* var. *porrifolia*; thus, it is widespread and not deserving of listing. Four other commenters supported it was a valid taxon. One commenter noted that three specimens sent to the Orchid Identification Center were identified as *S. diluvialis*.

Response—The Service believes that there are sufficient morphological, life history, and cytological differences between *S. porrifolia* and *S. diluvialis* to support *S. diluvialis* as a separate species. The confusion of *S. porrifolia* with *S. diluvialis* in the Great Basin stems from both species' differing from the widespread *S. romanzoffiana* in their suppression of the pandurate form of the lip, which is the distinctive feature of *S. romanzoffiana*.

Spiranthes diluvialis is not known west of easternmost Nevada. It typically blooms from late July through August, and in some cases through September. It is characterized by whitish, stout, ringent (gaping at the mouth) flowers. The sepals and petals, except for the lip, are rather straight, although the lateral sepals are variably oriented, often spreading abruptly from the base of the flower. Sepals are sometimes free to the base. The lip lacks a dense cushion of trichomes on the upper surface near the apex. The rachis is sparsely to densely pubescent with the longest trichomes 0.2 mm (0.008 in.) long or longer, usually much longer. The chromosome number is 2n=74 (Sheviak 1984, 1990).

In contrast, *S. porrifolia* is widespread in the Pacific Northwest and is not known east of the eastern base of the Sierra Nevadas. It blooms from May through early July, rarely into early August at high elevations. It bears yellowish, slender tubular, curved flowers open only at the apices and not ringent. The sepals are fused for some length and together with the petals are connivent (joined) for much of their lengths, the apices of all segments spreading, often widely. The lip bears a dense cushion of minute trichomes on the upper surface near the apex. The rachis is glabrous (without hairs) or rarely sparsely pubescent (with hairs), the longest trichomes less than 0.15 mm (0.006 in.), usually much shorter, the glands often sessile (attached directly by the base). The chromosome number is a multiple of 22, e.g., 44, 66, or 88 (Jennings 1990; Sheviak 1989, 1990).

Spiranthes romanzoffiana occurs throughout the range of *S. diluvialis*. As with *S. porrifolia*, *S. diluvialis* is quite distinct morphologically, cytologically, and ecologically from *S. romanzoffiana*: *S. romanzoffiana* bears white to cream, stout tubular, curved flowers with a well-developed hood open only at the apices and not ringent. The sepals are fused for some length and together with the petals are connivent for much of their lengths, forming a prominent hood, the lip is strongly pandurate. The rachis is glabrous or rarely sparsely pubescent, the longest trichomes less than 0.15 mm (0.006 in.), usually much shorter, the glands often sessile. The chromosome number is typically based on 22, e.g., 44 (Sheviak 1984). *S. romanzoffiana* is a high elevation wetland plant rarely occurring below 2,600 m (8,500 ft.) elevation in Utah and Colorado. *S. diluvialis* is a low elevation (relative to the region in which it is endemic) riparian and wet meadow plant rarely occurring above 1,980 m (6,500 ft.) elevation.

Current treatments of *S. diluvialis* may be found in Albee, Shultz, and Goodrich (1988), Weber (1990), and Sheviak (1990).

Issue 4—Two commenters noted that no large-scale habitat disturbance currently is taking place in the species' remaining habitat in Utah. Threats experienced by the species along the Wasatch Front are not likely to occur in eastern Utah.

Response—*Spiranthes diluvialis* populations in eastern Utah may not be subjected to habitat loss from urbanization as occurred to populations along the Wasatch Front. However, they may be vulnerable to changes in their riparian habitat as a result of stream channelization or impoundment projects. Existing and proposed water projects in Utah have the potential to adversely affect the riparian habitat in which *S. diluvialis* is found. The eastern Utah populations are typically small in size, and all are potentially vulnerable to any impact to their riparian ecosystems. The highly disjunct nature of the known populations in eastern Utah gives rise to questions of what is the factor causing this disjunction. It is possible that local extinctions have taken place in currently unoccupied potential habitat similar to extinctions which occurred along the Wasatch Front, the Great Basin, and certain historic populations in Colorado.

Issue 5—Three commenters questioned whether livestock grazing was a threat to the species.

Response—The Service agrees that the effects of grazing are largely not known with respect to this species. The largest populations of the species, along the Uinta River and Deer Creek in Utah and along the Boulder Creek in Colorado, are grazed during the winter, when *S. diluvialis* is dormant, with no noticeable effect on the species. It is plausible that moderate winter grazing may be beneficial to or have no impact on the species. Yet, the most striking feature of the Uinta River ecosystem, which contains one of the largest *S. diluvialis* populations, is the vigor of the riparian vegetative community and its lack of degradation from heavy summer grazing. For populations on National Park Service lands, *S. diluvialis* habitat was or is in the process of being withdrawn from active grazing allotments, at least temporarily (Richard Strait, Acting Regional Director, National Park Service, in litt. 1991). The impact of grazing on the species and its ecosystem will be investigated as part of the research and recovery effort for this species.

Issue 6—One commenter noted that there is no evidence of commercial exploitation.

Response—The species has not been documented to be commercially exploited in the past. Some plants, especially orchids and cacti, are potentially vulnerable to this threat.

Those working on this species' conservation have been approached by various individuals interested in discovering the location of this species so as to acquire plants for orchid specimen wildlife gardens.

Issue 7—One commenter pointed out that the Clean Water Act would protect the species' wetland habitat adequately.

Response—The Clean Water Act offers some, but not complete, protection to the habitat of *S. diluvialis*. For example, section 404 of the Clean Water Act only regulates placement of fill material in wetlands; there are other threats to the species' wetlands habitat. Moreover, even the protection provided to wetlands by section 404 has limitations. For example, in 1990, the Corps of Engineers voluntarily protected a small population of *S. diluvialis* and its habitat during consideration of a section 10/404 (nationwide permit no. 26) permit application under the Clean Water Act, but was not legally required to do so. Had the Corps of Engineers not been alerted to the presence of this rare plant (at that time, a candidate species about to be proposed for listing) on affected wetlands habitat, this small population would be lost.

Issue 8—Two commenters expressed concern that the listing of *S. diluvialis* may impact control of noxious weeds, manipulation of riparian vegetation, and stream rehabilitation efforts.

Response—Species listing will affect only those activities covered under the scope of the interagency consultation provisions of the Endangered Species Act. (See "Available Conservation Measures.")

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Spiranthes diluvialis* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Spiranthes diluvialis* Sheviak (Ute ladies'-tresses) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Spiranthes diluvialis has been adversely affected by modification of its riparian habitat. Most of the species' riparian habitat along the Wasatch Front in Utah has been heavily modified by urbanization, stream channelization, and construction projects in and adjacent to the Jordan and Weber Rivers and their tributaries and in wetlands and meadows adjacent to Utah Lake and the Great Salt Lake. Except for two small populations in wetlands near Utah Lake, all known historic populations of this species along the Wasatch Front in the populated north-central area of Utah are presumed extinct, as are all other known historic populations in the eastern Great Basin and two of the four known populations in Colorado. It is believed that alteration of riparian habitat caused the extinction of these populations. With the exception of the two Utah Lake populations, recent attempts to locate the Wasatch Front and eastern Great Basin populations were unsuccessful (Coyner 1989, 1990). Extant populations in eastern Utah and Colorado are typically very small and potentially vulnerable to habitat changes similar to those that appear to have eliminated the Wasatch Front and eastern Great Basin populations. Fewer than 6,000 individual plants are known to exist in the 10 known populations. Potential projects that may affect the hydrology and vegetation of the species' riparian ecosystem could have a negative impact on the species and are currently under consideration throughout the species' range. Jennings (1990) considered conversion of wild open space to developed parks a significant threat to Colorado populations. Some populations are in areas that are not overly degraded by agricultural activities, including farming and grazing. However, most of the current habitat of *S. diluvialis* is subject to livestock grazing and trampling. The full effects of livestock grazing and trampling are not known (See "C. *Disease or predation*." below).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Spiranthes diluvialis has an attractive multiflowered inflourescence with white- to cream-colored flowers. Orchidists and wildflower enthusiasts have inquired concerning the location of the species' populations and about its horticultural requirements (Coyner 1991). *S. diluvialis* populations located in or near urban areas (including the largest known population) are especially susceptible to overcollection as a convenient source of specimen plants for private orchid collections or wildflower gardens.

C. Disease or Predation

While excessive livestock grazing is thought to be detrimental to the species, mild to moderate livestock grazing may be beneficial. The plant is highly palatable and was preferentially grazed by small herbivores (James Crain, Director, Open Space, City of Boulder, in litt. 1991). All known remaining populations are relict in nature, with most in small areas where livestock grazing was less intense than in other riparian communities within the species' range.

D. The Inadequacy of Existing Regulatory Mechanisms

No Federal or State laws or regulations directly protect *S. diluvialis* or its habitat. A limited degree of habitat protection is offered by the Clean Water Act. Most of the species' Utah populations occur on lands managed by the Bureau of Land Management, the National Park Service, and the Forest Service, which offer varying, but incomplete, levels of protection. Populations located in the greenbelt areas in the City of Boulder are also provided some protection. However, many of these areas are, or were historically, subject to livestock grazing. International trade in all orchids is regulated by the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The species' low population numbers and restricted habitat makes it vulnerable to natural or human-caused disturbances. Localized catastrophic events have the potential to cause the extinction of individual populations. It is not known if any of the species' smaller scattered populations are at levels that would ensure their continued existence over the long term, particularly populations in Dinosaur National Monument and Capitol Reef National Park. Jennings (1990) believed that the planting (either intentionally or unintentionally) of exotic plant species was a threat to *S. diluvialis*. Indiscriminate use of herbicides and other chemicals has the potential to adversely impact *S. diluvialis*. The highly variable demographic structure from year to year of the species' largest known population may make it more vulnerable to extinction during years of low populations numbers. *S. diluvialis* appears to have a very low reproductive rate under natural conditions. Many orchid species take 5 to 10 years to reach reproductive maturity, and this

appears to be true for *S. diluvialis*. Reproductively mature plants do not flower every year.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Spiranthes diluvialis* as a threatened species.

As noted earlier, the species appears to have been extirpated from five of the seven historical sites in Nevada and western Utah, and two of the four historical sites in Colorado. Seven new sites were discovered in eastern Utah since 1977, but nearly all of these are very small populations containing between 20 to 500 plants. The species is rare, with fewer than 6,000 individuals in 10 known populations. Surface disturbances or changes to the water regime which eliminate or degrade the riparian habitat in which the species occurs are likely to continue in the future. Due to the species' low reproductive rate, any loss of individual plants due to collection could have a major effect on the species' survival. It is not known whether existing populations are demographically stable over the long term, due to the small size of most populations and the erratic population fluctuations noted within monitored populations.

Counterbalancing the above are the following: The species' two largest populations are in areas unlikely to be subject to acute threats from development in the near future. Two small populations occur on units of the National Park system; these populations are being managed for the species' long-term survival. There is potential for new populations to be discovered in other riparian areas within the species' range such as wetlands in eastern Nevada and adjacent Utah, but any undiscovered populations would be vulnerable to the habitat loss and modification threats described earlier.

Spiranthes diluvialis does not appear in imminent danger of extinction throughout all or a significant portion of its range, which would warrant a status of endangered. Instead, because it has the potential to become an endangered species throughout all or a significant portion of its range, it warrants threatened status. For the reasons given below, it would not be prudent to propose critical habitat.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *S. diluvialis*.

As discussed under Factor B in the "Summary of Factors Affecting the Species," *S. diluvialis* is an attractive wild orchid. Many individuals, including knowledgeable orchid growers, expressed an interest in obtaining living *S. diluvialis* specimen plants (Coyner 1991). All known populations in Colorado (including the largest known population) are in or near populated areas in the Denver metropolitan area. Many of the populations in Utah are accessible to the public. Publication of critical habitat descriptions and maps would make *S. diluvialis* more vulnerable to collection.

If individual plants or flowers were collected, it could adversely impact the reproductive potential of the affected population significantly. *Spiranthes diluvialis* appears to have a very low reproductive rate under natural conditions (i.e., relatively few individuals are recruited to the reproductively mature population each year) (Coyner 1991). Many orchid species take 5 to 10 years to reach reproductive maturity, and this appears to be true for *S. diluvialis*. Reproductively mature plants do not flower every year, so if flowers did appear and were taken, this would eliminate that plant's reproductive attempt for that year and probably several years thereafter. Any increase in the threat of collection would have a greater impact on *S. diluvialis* than on a more reproductively vigorous species.

The Endangered Species Act provides listed plants with limited protection from take. Specifically, the Act and its implementing regulations prohibit collecting or harm to listed plants on lands under Federal jurisdiction, and removal or harm to endangered plants on other areas in knowing violation of any State law or regulation, including State criminal trespass law. These legal protections would provide very limited protection to *S. diluvialis* after listing, and would be difficult to enforce.

For the above reasons, it would not be prudent to determine critical habitat for *S. diluvialis*. All involved parties and the major landowners were notified of the location and importance of protecting this species and its habitat. Protection of this species' habitat will be addressed through the section 7 consultation process and the recovery process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies; groups; and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal Agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

Much of the population of *S. diluvialis* is on Federal lands, managed by the Bureau of Land Management, the National Park Service, and the Forest Service. These Federal Agencies will be responsible for insuring that all activities and actions on lands they manage are not likely to jeopardize the continued existence of *S. diluvialis*. In addition, the Corps of Engineers, which issues Federal dredge and fill permits which can affect wetlands and riparian areas, will be required to insure permitted actions are not likely to jeopardize the continued existence of *S. diluvialis*. Several potential projects affecting the species, throughout its range, may be affected due to the necessity of securing a Corps of Engineers' permit.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and expectations that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate

or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. These prohibitions may be extended to threatened species through regulation. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

Because of horticultural interest in *S. diluvialis*, trade permits may be sought, but few, if any, trade permits for plants of wild origin would ever be issued since the species is not common in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358–2093; FTS 921–2093).

As a member of the family Orchidaceae, *S. diluvialis* is included on Appendix II of CITES. Species on Appendix II require a permit from the country of origin prior to export. International trade in this species is most probably nonexistent.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Albee, B.J., L.M. Shultz, and S. Goodrich. 1988. Atlas of the vascular plants of Utah. Utah Museum of Natural History, Salt Lake City. 670 pp.

Arnow, L.A., B.J. Albee, and A.M. Wyckoff. 1980. Flora of the central Wasatch Front, Utah. University of Utah Printing Service, Salt Lake City. 663 pp.

Correll, D.S. 1950. Native orchids of North America north of Mexico. Chronica Botanica Company, Waltham, Massachusetts. 400 pp.

Coyner, J. 1989. Status check on reported historic populations of *Spiranthes diluvialis*. Memorandum, U.S. Fish and Wildlife Service, Salt Lake City, Utah. 9 pp.

Coyner, J. 1990. Report for population study *Spiranthes diluvialis*. Unpublished report. Bureau of Land Management and Red Butte Gardens, University of Utah, Salt Lake City. 29 pp.

Coyner, J. 1991. Supplemental status report: *Spiranthes diluvialis*. Unpublished report. U.S. Fish and Wildlife Service, Salt Lake City, Utah. 1 page.

Cronquist, A., A.H. Holmgren, N.H. Holmgren, J.L. Reveal, and P.K. Holmgren. 1977. Intermountain flora, vol. 6. The New York Botanical Garden and Columbia University Press, New York. 584 pp.

Goodrich, S. and E. Neese. 1986. Uinta Basin flora. U.S. Forest Service, Ogden, Utah. 320 pp.

Heil, K.D. 1988. Endangered, threatened, rare and other plants of concern at Capitol Reef National Park, Utah. Unpublished report. National Park Service, Torrey, Utah. 57 pp.

Jennings, W.F. 1989. Final report. Species studied: *Eustoma grandiflorum, Spiranthes diluvialis, Malaxis brachypoda, Hypoxis hirsuta, Physaria bellii, Aletes humilis*. Unpublished report prepared for the Nature Conservancy under the Colorado Natural History Small Grants Program. The Nature Conservancy, Boulder, Colorado. 48 pp.

Jennings, W.F. 1990. Final report. Species studied: *Spiranthes diluvialis, Sisyrinchium pallidum*. Unpublished report prepared for The Nature Conservancy under the Colorado Natural History Small Grants Program. The Nature Conservancy, Boulder, Colorado. 29 pp.

Luer, C.A. 1975. The native orchids of the United States and Canada excluding Florida. The New York Botanical Garden, New York. 363 pp.

Rydberg, P. 1906. Flora of Colorado. Bulletin 100 of the Agricultural Experiment Station, Colorado Agricultural College. Fort Collins. 448 pp.

Sheviak, C.J. 1984. *Spiranthes diluvialis* (Orchidaceae), a new species from the western United States. Brittonia 36(1):8–14.

Sheviak, C.J. 1989. A new *Spiranthes* (Orchidaceae) from Ash Meadows, Nevada. Rhodora 91:225–234.

Sheviak, C.J. 1990. A new *Spiranthes* (Orchidaceae) from the cienegas of southernmost Arizona. Rhodora 92:213–231.

U.S. Fish and Wildlife Service. 1991. *Spiranthes diluvialis:* supplemental status report. Unpublished report. U.S. Fish and Wildlife Service, Salt Lake City, Utah. 3 pp.

Weber, W.A. 1990. Colorado flora: Eastern slope. University Press of Colorado, Niwot, Colorado. 396 pp.

Welsh, S.L., N.D. Atwood, S. Goodrich, and L.C. Higgins. 1987. A Utah flora. Great Basin Naturalist Memoirs, Number 9. 894 pp.

Author

The primary author of this final rule is John L. England, botanist, U.S. Fish and Wildlife Service (see **ADDRESSES** above, telephone 801/524–4430 or FTS 588–4430).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Orchidaceae, to the List of Endangered and threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Orchidaceae—Orchid family:						
Spiranthes diluvialis	Ute ladies'-tresses	U.S.A. (CO, NV, UT)	T	458	NA	NA

Dated: January 8, 1992.
Richard N. Smith,
Director, Fish and Wildlife Service.
[FR Doc. 92-1297 Filed 1-16-92; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

Fraser River Sockeye and Pink Salmon Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of 1991 inseason orders.

SUMMARY: The Secretary of Commerce (Secretary) hereby publishes the inseason orders regulating fisheries in United States waters that were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by the Secretary during the 1991 sockeye and pink salmon fisheries within the Fraser River Panel Area (Fraser River Panel (U.S.)). These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries.

Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1991 orders are therefore being published in this notice to avoid fragmentation.

EFFECTIVE DATE: Each of the following inseason orders of the Secretary was effective upon announcement on telephone hotline as specified at 50 CFR 371.21(b)(1). See also the Supplementary Information section for the specific effective date for each inseason order.

ADDRESSES: Comments on these inseason orders may be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NW., BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, (206) 526-6150.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon (Treaty) was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631-3644.

Under authority of the Act, an emergency interim rule was promulgated at 50 CFR part 371 (51 FR 23421, June 27, 1986) to provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in the Fraser River Panel Area (U.S.). The emergency interim rule was effective from June 22, 1986, and remains in effect until modified, superseded, or rescinded. It applies to fisheries for sockeye and pink salmon in the Fraser River Panel Area (U.S.) during the period each year when the Commission exercises jurisdiction over these fisheries.

The emergency interim rule closes the Fraser River Panel Area (U.S.) to sockeye and pink salmon fishing unless opened by Panel regulations or by inseason orders of the Secretary that give effect to Panel orders, unless such orders are determined not to be consistent with domestic legal obligations. During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Secretary issues inseason orders through his delegate, the Northwest Regional Director of NMFS. Official notice of these inseason actions of the Secretary is provided by two telephone hotlines described at 50 CFR 371.21(b)(1). Inseason orders of the Secretary must be published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1991 orders are therefore being published in this notice to avoid fragmentation.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by the Secretary during the 1991 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at chapter 220-22.

Order No. 1991-1: Issued 3:15 p.m., June 25, 1991.
Referred only to fishing in Canadian area Panel Waters.

Order No. 1991-2: Issued 12:15 p.m., July 8, 1991.
Referred only to fishing in Canadian area Panel Waters.

Order No. 1991-3: Issued 2:15 p.m., July 9, 1991.
Referred only to fishing in Canadian area Panel Waters.

Order No. 1991-4: Issued 10 a.m., July 10, 1991.
Treaty Indian Fishery:
Areas 7 and 7A—Net fishing open 5 a.m. to 9 a.m., July 11.
All-Citizen Fishery:
Areas 7 and 7A—
Gillnets open 1 p.m. to 8 p.m., July 11.
Purse seines open 7 a.m. to 12 noon, July 12.

Order No. 1991-5: Issued 1:40 p.m., July 26, 1991.
Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets open 12 noon, July 28 to 12 noon, August 1.

Order No. 1991-6: Issued 2:15 p.m., July 29, 1991.
Referred only to fishing in Canadian area Panel Waters.

Order No. 1991-7: Issued 12:20 p.m., August 2, 1991.
Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets open 12 noon, August 5 to 12 noon, August 7 and 4 a.m. to 4 p.m., August 8.
Areas 6, 7, and 7A—Net fishing open 4 a.m. to 4 p.m., August 8.
All-Citizen Fishery:
Areas 4B, 5, 6, 6C, 7, and 7A—
Reef nets open 6 a.m. to 9 p.m., August 6.
Purse seines open 6 a.m. to 11 a.m., August 7.
Gillnets open 12 noon to 8 p.m., August 7.

Order No. 1991-8: Issued 3:55 p.m., August 6, 1991.
Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets extended from 12 noon, August 7 to 12 noon, August 9.

Order No. 1991-9: Issued 1:40 p.m., August 9, 1991.
Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets open 12 noon, August 10 to 12 noon, August 14.
Areas 6, 7, and 7A—Net fishing open 5 p.m., August 12 to 12 noon, August 14.
All-Citizen Fishery:
Area 4 and Area 3 north of 48°00'15"N.—Commercial trolling open in waters westerly of 100-fathom contour from 12:01 a.m., August 16 to 11:59 p.m., August 19.
Areas 4B, 5, 6, 6C, 7, and 7A—
Reef nets open 5 a.m. to 9:30 p.m., August 11 and 12.
Gillnets open 6 p.m., August 14 to 9 a.m., August 15 and 6 p.m., August 15 to 9 a.m., August 16.
Purse seines open 6 a.m. to 9 p.m., August 15 and 16.

Order No. 1991-10: Issued 1:45 p.m., August 12, 1991.
Treaty Indian Fishery:
Areas 4B, 5, and 6C—Closed to drift

gillnets at 4 p.m., August 12.
Order No. 1991–11: Issued 2:20 p.m., August 16, 1991.
Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets open 6 p.m., August 19 to 11 a.m., August 20.
Areas 6, 7, and 7A—Net fishing open 5 a.m., August 19 to 11 a.m., August 20.
All-Citizen Fishery:
Areas 7 and 7A—
Gillnets open 12 noon, August 20 to 9 a.m., August 21 and 6 p.m., August 21 to 9 a.m., August 22.
Purse seines open 6 a.m. to 9 p.m., August 21.
Reef nets remain closed.
Order No. 1991–12: Issued 12:20 p.m., August 19, 1991.
All-Citizen Fishery:
Areas 7 and 7A—Cancel gillnet opening scheduled for 6 p.m., August 21 to 9 a.m., August 22.
Order No. 1991–13: Issued 5 p.m., August 19, 1991.
Treaty Indian Fishery:
Areas 4B, 5, 6, 7 and 7A—Net fishing closed effective 12 midnight, August 19.
Order No. 1991–14: Issued 2:10 p.m., August 20, 1991.
All-Citizen Fishery:
Areas 7 and 7A—Purse seines open 9 a.m. to 5 p.m., August 21.
Order No. 1991–15: Issued 3:45 p.m., August 21, 1991.
All-Citizen Fishery:
Area 4 and Area 3 north of 48°00'15"N.—Commercial trolling open in waters westerly of the 100-fathom contour from 12:01 a.m., August 23 to 11:59 p.m., August 26.
Order No. 1991–16: Issued 1:10 p.m., August 23, 1991.
All-Citizen Fishery:
Area 7A—Closed to net fishing northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts in the State of Washington to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.
Areas 7 and 7A—
Reef nets open 5 a.m. to 9:30 p.m., August 25 and 27.
Purse seines open 9 a.m. to 4 p.m., August 26.
Order No. 1991–17: Issued 11:50 a.m., August 25, 1991.
Referred only to fishing in Canadian area Panel Waters.
Order No. 1991–18: Issued 11:50 a.m., August 26, 1991.
All-Citizen Fishery:
Areas 7 and 7A—Cancel August 27 reef net opening.
Order No. 1991–19: Issued 3:55 p.m., August 28, 1991.
All-Citizen Fishery:
Area 4 and Area 3 north of 48°00'15"N.—Commercial trolling in waters westerly of the 100-fathom contour from 12:01 a.m., August 30 to 11:59 p.m., September 2.
Order No. 1991–20: Issued 1:15 p.m., August 30, 1991.
Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets open 5 a.m., September 2 to 5 a.m., September 4.
Areas 6, 7, and 7A—Net fishing open from 5 a.m. to 5 p.m., September 2 southerly and easterly of a straight line drawn from Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Providence of British Columbia and 5 p.m., September 2 to 5 p.m., September 3 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.
All-Citizen Fishery:
Areas 7 and 7A—Reef nets open 5 a.m. to 9 p.m., September 1.
Order No. 1991–21: Issued 12:20 p.m., September 2, 1991.
All-citizen Fishery:
Areas 7 and 7A—Reef nets open 5 a.m. to 9 p.m., September 3 and 4.
Order No. 1991–22: Issued 12:20 p.m., September 3, 1991.
Treaty Indian and All-Citizen Fisheries:
Areas 7A—Closed northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.
Treaty Indian Fishery:
Areas 6 and 7, and 7A—Net fishing extended from 5 p.m., September 3 to 2 p.m., September 4.
All-Citizen Fishery:
Areas 7 and 7A—
Gillnets open 3 p.m., September 4 to 9 a.m., September 5 and 6 p.m., September 5 to 9 a.m., September 6.
Purse seines open 6 a.m. to 9 p.m., September 5 and 6 a.m. to 5 p.m., September 6.
Order No. 1991–23: Issued 3:45 p.m., September 3, 1991.
Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets extended from 5 a.m. to 9 a.m., September 4.
Order No. 1991–24: Issued 4:45 p.m., September 4, 1991.
Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets open 6 p.m., September 4 to 9 a.m., September 6.
All-Citizen Fishery:
Areas 4 and Area 3 north 48°00'15"N.—Commercial trolling open westerly of the 100-fathom contour 12:01 a.m., September 6 to 11:59 p.m., September 9.
Order No. 1991–25: Issued 3:15 p.m., September 5, 1991.
All-Citizen Fishery:
Areas 7 and 7A—Purse seines open 6 a.m. to 5 p.m., September 6 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.
Order No. 1991–26: Issued 1:10 p.m., September 6, 1991.
Treaty Indian Fishery:
Areas 6, 7, and 7A—Net fishing open 6 a.m., September 8 to 6 p.m., September 9 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.
All-Citizen Fishery:
Areas 7 and 7A—Reef nets open 5 a.m. to 9 p.m., September 7, 8, and 9.
Order No. 1991–27: Issued 12:35 p.m., September 9, 1991.
Treaty Indian Fishery:
Areas 6, 7, and 7A—Net fishing extended 6 p.m., September 9 to 9 a.m., September 11 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.
All-Citizen Fishery:
Areas 7 and 7A—
Gillnets open 3 p.m., September 11 to 7 a.m., September 12 southerly and easterly of a straight line drawn from Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.
Purse seines open 7 a.m. to 1 p.m., September 12 southerly and easterly of a straight line drawn from the low water range marker in

Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

Order No. 1991–28: Issued 12:40 p.m., September 11 1991.

Treaty Indian Fishery:

Areas 6, 7, and 7A—Net fishing open 8 a.m., September 13 to 6 p.m., September 15 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

All-Citizen Fishery:

Areas 4 and Area 3 north of 48°00'15"N.—Relinquish control effective immediately.

Areas 7 and 7A—

Gillnets open 6 p.m., September 12 to 7 a.m., September 13 southerly and easterly of a straight line drawn from Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Purse seines open 7 a.m. to 6 p.m., September 12 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

Reef nets open 5 a.m. to 9 p.m., September 14, 15, and 16.

Order No. 1991–29: Issued 2:10 p.m., September 13, 1991.

Treaty Indian Fishery:

Areas 4B, 5, and 6C—Relinquish regulatory control.

Areas 6, 7, and 7A—Net fishing extended from 6 p.m., September 15 to 6 p.m., September 16 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

Order No. 1991–30: Issued 11:15 a.m., September 18, 1991.

Treaty Indian Fishery:

Areas 7 and 7A—Net fishing open 7 a.m. to 3 p.m., September 19 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

All-Citizen Fishery:

Areas 7 and 7A—Reef nets open 5 a.m. to 9 p.m., September 20.

Order No. 1991–31: Issued 1:25 p.m., September 19, 1991.

Treaty Indian and All-Citizen Fisheries:

Areas 7 and 7A—Extend regulatory control until further notice.

Treaty Indian Fishery:

Areas 7 and 7A—Net fishing extended from 3 p.m., September 19 to 6 p.m., September 20 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

Order No. 1991–32: Issued 3:45 p.m., September 23, 1991.

Treaty Indian and All-Citizen Fisheries:

Areas 7 and 7A—Relinquish regulatory control effective September 29 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

Order No. 1991–33: Issued 2:45 p.m., September 30, 1991.

Referred only to fishing in Canadian area Panel Waters.

Order No. 1991–34: Issued 11:45 a.m., October 4, 1991.

Treaty Indian and All-Citizen Fisheries:

Area 7A—Relinquish regulatory control of remaining areas effective, October 6.

Other Matters

This action is taken under authority of 50 CFR 371.21 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 371

Fisheries, Fishing, Pacific Salmon Commission, Treaty Indians.

Authority: 16 U.S.C. 3636(b).

Dated: January 13, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–1292 Filed 1–16–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 12
Friday, January 17, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1316-92]

Availability of Material Under the Freedom of Information Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: Immigration and Naturalization Service (Service) proposes to amend regulations under 8 CFR part 103 to be consistent with the current regulations in 28 CFR as they pertain to the Freedom of Information Act (FOIA). This amendment is necessary to make editorial changes; clarify INS procedures for granting "access" to records; update the offices from which records may be requested; correct references to the 28 CFR paragraph on fees; add a reference to the 28 CFR section on "business information"; correct the reference to the form used to provide a notarized signature; and to correctly identify references to system managers as responsible officials. Also, minor technical changes have been made to help clarify paragraph references. These changes will improve our service to the public in accessing agency records.

DATES: Written comments must be received on or before February 18, 1992.

ADDRESSES: Written comments should be submitted in triplicate to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. Please include INS number 1316-91 on the mailing envelope to ensure proper handling.

FOR FURTHER INFORMATION CONTACT: Russell Powell, Chief, FOIA/PA Section, Immigration and Naturalization Service, 425 I Street, NW., room 5056, Washington, DC 20536, telephone (202) 514-1722 or (FTS) 368-1722.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 dealt with the question of fees to be charged to requesters; and Executive Order 12600, issued on June 23, 1987, established structured procedures for notifying those who submit business information to the government when that information becomes the subject of a FOIA request. To comply with these requirements, the Department of Justice (DOJ) incorporated these changes in their regulations (28 CFR), and in doing so, caused several paragraphs to be altered and renumbered. The Service proposes to also incorporate these requirements into title 8 of the Code of Federal Regulations and, as necessary, correct the paragraph references made to Title 28 of the Code of Federal Regulations.

The Service will at its discretion determine the method of disclosure whenever access to INS records is sought for personal review. Grant of access is fulfilled when a copy is provided or on request, when the original record is made available for in-person review. In-person review will only be granted when specifically requested and when providing such access will not unreasonably disrupt the normal operations of an office. For example, a copy may be provided rather than personal review due to the lack of personnel to accompany a requester during the review process. Another case in point is when an attorney asks for personal review of his or her client's record and the location of the record is not in the same geographical location as the attorney. To prevent misplacing or losing files, the Service has adopted a policy of not transferring records to the location of the request solely to answer FOIA and Privacy Act requests; instead, the request will be transferred to the location of the record. Consequently, when the request is for personal review of the record, the Service may only provide a copy of the file. This rule therefore proposes to amend § 103 by defining the term "access" and to explain the policy of providing a copy of a file in lieu of personal review.

In accordance with 5 U.S.C. 605(b) the Commissioner of Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is 1115-0087.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Freedom of Information/Privacy Acts.

Accordingly, part 103 of chapter 1 of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1304, 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.7 [Amended]

2. In § 103.7, paragraph (b)(2) is amended by changing the reference "28 CFR 16.9." to "28 CFR 16.10.".

3. Section 103.8 is amended by redesignating paragraphs (a), (b) and (c) as (b), (c) and (d) respectively, and by adding a new paragraph (a) to read as follows:

§ 103.8 Definitions pertaining to availability of information under the Freedom of Information Act.

* * * * *

(a) The term *access* means letting an individual see a copy of the record requested or the original record. Grant of access is fulfilled whenever a copy is provided or, at the discretion of the Service, the original record is made available for in-person review. In-person review is discretionary and will only be granted when specifically requested and when providing such access will not unreasonably disrupt the normal operations of an office.

* * * * *

4. Section 103.10 is amended by revising paragraphs (a)(1), (b)(1), (c)(2),

and (d)(1) and (e); and by adding to the end of paragraph (a)(2) the following sentence: "Individuals seeking access to records about themselves by mail shall establish their identity by submitting a notarized signature along with their address, date of birth, place of birth, and alien or employee identification number, if applicable."; by changing in paragraph (c)(1) the reference to "28 CFR 16.5(c)." to "28 CFR 16.1(d)." and in paragraph (d)(2) by changing the phrase "the Associate Commissioner, Information Systems, by a regional commissioner, by a district director, or by one of their designees." to "one of the officials specified in paragraph (b)(1) of this section" and in the fourth sentence by changing the reference to "28 CFR 16.7," to "28 CFR 16.8,"; by removing paragraph (f); and by removing and reserving paragraph (b)(2) to read as follows:

§ 103.10 Requests for records under the Freedom of Information Act.

(a) * * *

(1) *Place.* Records should be requested from the office that maintains the records sought, if known, or from the Central Office of the Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Records are maintained in the Central Office, regional offices, service centers, district offices and the following sub-offices: Agana, Guam; Albany, NY; Charlotte, NC; Cincinnati, OH; Hartford, CT; Indianapolis, IN; Las Vegas, NV; Louisville, KY; Memphis, TN; Milwaukee, WI; Norfolk, VA; Pittsburgh, PA; Providence, RI; Reno, NV; St. Louis, MO; Salt Lake City, UT; Spokane, WA; St. Albans, VT; and St. Paul, MN. In certain cases, a district director may designate another Service office as a file control office. For locations of Service regional offices, service centers, district offices, and sub-offices see 8 CFR 100.4.

* * * * *

(b) * * *

(1) *Grant or deny.* The Associate Commissioner for Information Systems, regional commissioners, district directors, service center directors, and heads of sub-offices specified in paragraph (a)(1) of this section, or their designees, may grant or deny requests under exemptions in 5 U.S.C. 552(b) and (c).

(2) [Reserved]

* * * * *

(c) * * *

(2) *Treatment of delay as a denial.* If no substantive reply is made at the end of the 10-day period, and/or the 10-day extension period, requesters may deem their request to be denied and exercise their right to appeal in accordance with 28 CFR 16.8 and paragraph (d)(3) of this section.

(d) * * *

(1) *Form of grant.* When a requested record is available, the responsible office shall notify the requester when and where the record is available. The notification shall also advise the requester of any applicable fees under 28 CFR 16.10. Grant of access is fulfilled whenever the original record is made available for in-person review or, at the discretion of the Service, a copy is provided. In-person review is discretionary and shall not unreasonably disrupt the normal operations of a Service office.

* * * * *

(e) *Agreement to pay fees.* In accordance with 28 CFR 16.3(c) a requester automatically agrees to pay fees up to $25.00 by filing a Freedom of Information Act request unless a waiver or reduction of fees is sought. Accordingly, all letters of acknowledgement must confirm the requester's obligation to pay.

* * * * *

5. Section 103.11 is added to read as follows:

§ 103.11 Business information.

Business information provided to the Service by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with 28 CFR 16.7.

§ 103.20 [Amended]

6. Section 103.20 is amended in paragraph (a) by changing the phrase "Civil Service Commission regulations." to "regulations of the Office of Personnel Management.", and in paragraph (b) introductory text by changing the reference "16.56," to "16.56,".

7. Section 103.21, is amended by revising paragraphs (a) and (b)(2); by removing paragraph (b)(3); and by adding a new paragraph (f) to read as follows:

§ 103.21 Access by individuals to records maintained about them.

(a) *Access to available records.* An individual who seeks access to records about himself or herself in a system of records must submit a written request in person or by mail to the Freedom of Information/Privacy Act Officer at the location where the records are maintained. If the location is unknown, the request may be submitted to the nearest Service office or to the Central Office FOIA/PA Officer, 425 I Street, NW., Washington, DC 20536. The outside of the envelope should be marked "Privacy Act Request." A Form G-639, Freedom of Information/Privacy Act Request may be used for convenience and to facilitate identification of the record requested. However, a request may be made in any written form and should clearly identify the record sought by the name and any other personal identifiers for the individual (such as the alien file number or Social Security Account Number) date and place of birth, and type of file in which the record is believed to reside.

(b) * * *

(2) Individuals seeking access to records about themselves by mail shall establish their identity by submitting a notarized signature along with their address, date of birth, place of birth, and alien or employee identification number, if applicable. Form DOJ 361, Certification of Identity, may be obtained from any Service office and used to obtain the notarized signature needed to verify identity.

* * * * *

(f) *Agreement to pay fees.* In accordance with 28 CFR 16.3(c) a requester automatically agrees to pay fees up to $25.00 by filing a Privacy Act request unless a waiver or reduction of fees is sought. Accordingly, all letters of acknowledgement must confirm the requester's obligation to pay.

8. In section 103.22, paragraph (a) is revised to read as follows:

§ 103.22 Records exempt in whole or in part.

(a) When individuals request records about themselves which are exempt from access pursuant to the Privacy Act exemptions in 5 U.S.C. 552a(d)(5), (j) or (k), their requests shall also be considered under the Freedom of Information Act, 5 U.S.C. 552, and, unless the records are exempt under both Acts, the request shall be granted. If exemptions under both Acts permit the denial of the records sought and there is good reason to invoke the exemptions, the individual shall be provided a denial of his/her request in writing with the governing exemptions cited. If the mere disclosure of the existence of a criminal law enforcement proceeding record could itself interfere with a pending law enforcement proceeding of which there is reason to believe the subject is unaware, then the individual may be advised that there is no record.

* * * * *

9. Section 103.23, is amended by revising paragraph (a) to read as follows:

§ 103.23 Special access procedures.

(a) *Records of other agencies.* When information sought from a system of records of the Service includes information from other agencies or components of the Department of Justice that has been classified under Executive Order 12356, the request and the requested documents shall be referred to the appropriate agency or other component for classification review and processing. Only after consultation and with the consent of the responsible agency or component, may the requester be informed of the referral as specified in Section 3.4(f) of E.O. 12356.

* * * * *

§§ 103.23, 103.24, 103.28, 103.30 [Amended]

10. Part 103 is amended by changing the phrase "system manager" to "responsible official as specified in § 103.10(a) of this part" whenever it appears in the following sections:

Section 103.23(b)
Section 103.24
Section 103.28(b)
Section 103.28(f)
Section 103.30(a)

§ 103.25 [Amended]

11. In § 103.25, paragraph (a) is amended by removing the following phrase from the first sentence: "The system manager of the system from which information is sought or his delegate" and adding in its place "The responsible official as specified in § 103.10(a) of this chapter" and in paragraph (b) by changing the reference "28 CFR 16.45" to "28 CFR 16.1(d)".

§ 103.26 [Amended]

12. Section 103.26 is amended by changing the reference "28 CFR 16.46." to "28 CFR 16.47."

§ 103.27 [Amended]

13. Section 103.27 is amended by changing the reference to "28 CFR 16.47." to "28 CFR 16.48.".

§ 103.28 [Amended]

14. Section 103.28 is amended by revising paragraph (a); in paragraph (b) by removing the second sentence beginning with "If the record . . ." and by changing the reference "28 CFR 16.46" to "28 CFR 16.47" and "28 CFR 16.48." to "28 CFR 16.50."; and in paragraphs (c), (d), and (e) by changing the reference to "28 CFR 16.48" to "28 CFR 16.50", to read as follows:

§ 103.28 Requests for correction of records.

(a) *How made.* Unless a record is exempted from correction, a request for amendment or correction is made by the individual concerned, either in person or by mail, addressing the written request to the FOIA/PA Officer at the location where the record is maintained. The requester's identity must be established as provided in section 103.21 of this part. The request must indicate the particular record involved, the nature of the correction sought, and the justification. A request made by mail should be addressed to the FOIA/PA Officer at the location where the system of records is maintained and the request and envelope must be clearly marked "Privacy Correction Request." Where the requester cannot determine the precise location of the system of records or believes that the same record appears in more than one system, the request may be addressed to the FOIA/PA Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. That office will assist the requester in identifying the location of the records.

* * * * *

§ 103.33 [Amended]

15. Section 103.33 is amended by changing the reference "28 CFR 16.53." to "28 CFR 16.55.".

§ 103.35 [Amended]

16. Section 103.35 is amended by changing the reference "28 CFR 16.55." to "28 CFR 16.56.".

§ 103.36 [Amended]

17. Section 103.36 is amended by changing the reference "28 CFR 16.56." to "28 CFR 16.57.".

Dated: May 16, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-1310 Filed 1-16-92; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 140

[Docket No. PRM-50-57]

North Carolina Public Staff Utility Commission; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking.

SUMMARY: The Commission is publishing for public comment a notice of receipt of a petition for rulemaking. The petition, dated September 25, 1991, was filed with the Commission by the North Carolina Public Staff Utility Commission and was assigned Docket No. PRM-50-57 on October 2, 1991. The petitioner requests that the Commission substantially reduce or eliminate insurance requirements for nuclear power reactors when all the nuclear reactors on a reactor station site have been shut down and are awaiting decommissioning and all the nuclear fuel has been removed from the reactor site.

DATE: Submit comments by March 17, 1992. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. For a copy of the petition, write: Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

The Commission's regulations require that each nuclear reactor licensee, as a condition of its license, meet certain on-site property damage insurance requirements for each of its nuclear reactor station sites. Utilities licensed by the NRC to operate nuclear power plants are required by the provisions of 10 CFR 50.54(w) to maintain $1.06 billion in property insurance to cover the on-site stabilization and decontamination of the reactor facility in the event of an accident.

Each power reactor licensee also is required by 10 CFR 140.11(a)(4) to maintain primary financial protection in the amount of $200 million to cover public liability claims that may result from a nuclear incident or precautionary evacuation. In addition, § 140.11(a)(4) requires these licensees to have and maintain secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the licensee's pro rata share of the

aggregate public liability claims in excess of $200 million) for each nuclear power reactor the licensee is authorized to operate up to $63 million per nuclear incident.

The petitioner asserts that the insurance requirements of (1) $1.06 billion to stabilize and decontaminate a power reactor site and (2) $200 million per site (with an added potential $63 million per power reactor per incident) to satisfy public liability claims should be substantially reduced or eliminated in instances where all nuclear reactors on a reactor station site have been shut down and all the nuclear fuel has been removed from the site.

Basis for Petition

On-Site Property Damage

The petitioner believes that there are no health or safety reasons that would require extraordinary accident insurance protection when a reactor station is without fuel, in a shutdown or dormant condition, and the licensee holds a possession only license awaiting decommissioning. The petitioner believes that there is no risk of an empty reactor vessel or an empty fuel pool achieving criticality. Therefore, the petitioner recommends that the Commission consider reducing substantially, or eliminating entirely, the requirement that a power reactor licensee maintain "minimum coverage limit for each reactor site of either $1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less." The petitioner further states that Commission regulations do not require accident insurance protection for other types of facilities that may be contaminated to some degree where the risk of criticality is absent. The petitioner also notes that the Commission regulations do not require insurance coverage for an Independent Spent Fuel Storage Installation licensed under 10 CFR part 72.

Public Liability Insurance

The petitioner states that there appears no reasonable risk of criticality which could produce a major nuclear incident, for which the $200 million of primary liability insurance protection is intended, at a shutdown or dormant reactor when no nuclear fuel remains on the reactor site. The petitioner offers that, in the absence of in-reactor or in-pool fuel, it appears to be unreasonable for the owner of a permanently shutdown reactor, during many years of reactor dormancy, to continue to be liable for retrospective premium charges for a pro-rata share of the $7.6 billion of secondary liability financial protection in the event of a nuclear accident at some operating reactor elsewhere in the industry when the occurrence of a nuclear accident is not considered possible at the dormant, unfueled reactor.

Conclusion

Because the Department of Energy does not have a facility that is ready to receive high-level radioactive waste such as commercially generated spent fuel, the petitioner states that amendment of the NRC regulations to revise both on-site property damage insurance and public liability insurance requirements is of immediate importance. The petitioner asserts that the insurance now required by the NRC during an extended period of SAFSTOR dormancy will result in significant collections from utility ratepayers during the reactor's current operating years. The petitioner believes that the cost of this insurance may discourage or preclude altogether the election of the SAFSTOR decommissioning option. The petitioner states that the SAFSTOR option could reduce worker exposure to radioactivity during decommissioning considerably and also reduce low level radioactive waste storage requirements substantially.

Proposed Amendments to 10 CFR Parts 50 and 140

The following language has been suggested by the petitioner to accomplish the desired amendments. The NRC has corrected the petitioner's suggested language by removing the term "Intermediate" and replacing it with the term "Independent." This correction is necessary to reflect the correct designation of the cited facility.

The petitioner proposes that in § 50.54 a new paragraph (w)(5) be added to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(w) * * *

(5) When all nuclear reactors on a reactor station site have been shut down and all nuclear fuel has been removed from the reactor station site except as may be stored in a licensed Independent Spent Fuel Storage Installation, the requirement of paragraph (w) that each reactor site must have insurance or equivalent protection to stabilize and decontaminate the reactor and the site in the event an accident is waived.

* * * * *

The petitioner proposes that in § 140.11, a new paragraph (c) be added to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

* * * * *

(c) In any case when all licensed electric power producing nuclear reactors at the same location have been shut down and all nuclear fuel has been removed from the location except for fuel as may be stored in a licensed Independent Spent Fuel Storage Installation, the requirement the licensees have and maintain financial protection in the amount set forth in paragraph (a)(4) of this section is waived.

Dated at Rockville, MD, this 10th day of January, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-1185 Filed 1-16-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 440

[Docket No. CE-RM-91-110]

Weatherization Assistance Program for Low-Income Persons

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Department of Energy issued a notice of proposed rulemaking for the Weatherization Assistance Program for Low-Income Persons on October 23, 1991, 56 FR 54932. The comment period was scheduled to end on January 7, 1992. The Department has decided to reopen the comment period to February 7, 1992, to accommodate additional comments from the public.

DATES: Written comments (6 copies) must be received on or before February 7, 1992.

ADDRESSES: All written comments (6 copies) should be addressed to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets CE-90, room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012. In the event any person wishing to submit a written comment cannot provide six copies, alternative arrangements can be made in advance with the Hearings and Dockets Office.

FOR FURTHER INFORMATION CONTACT: James Gardner or Greg Reamy, Weatherization Assistance Program

Division, U.S. Department of Energy, Mail Stop CE–532, 5G–023, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2210.

Neal J. Strauss or Vivian Lewis, Office of General Counsel, Conservation and Regulations, Mail Stop GC–41, 6B–256, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92–1307 Filed 1–16–92; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563b

[No. 91–428]

RIN 1550–AA45

Supervisory Conversions

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (the "OTS") proposes to amend its voluntary supervisory conversion regulations to expand the number of capital-deficient, mutual savings associations eligible to undertake voluntary supervisory mutual-to-stock conversions. The proposed amendments generally would revise the current supervisory conversion qualification standards to permit mutual associations to undertake voluntary supervisory conversions to raise additional capital without government assistance if they fail any of their minimum capital requirements and cannot meet those requirements through a standard conversion.

The proposed rule also (1) establishes required post-conversion capitalization standards; (2) revises the approval standards and identifies certain factors that may result in the denial or conditional approval of supervisory conversion applications; (3) reduces the documentary burden and expense imposed by the current regulation's requirement for interim audited balance sheets and certain accounting opinions; (4) requires the submission of appraisals in identified instances as needed to protect associations and purchasers in public offerings; and (5) requires the establishment of liquidation accounts for mutual accountholder in certain circumstances.

DATES: Comments must be received on or before February 18, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Office of Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Mary Jo Johnson, Policy Analyst, (202) 906–5739; Robyn Dennis, Program Manager, (202) 906–5751, Policy; David Sjogren, Program Manager for Corporate Analysis, (202) 906–6739, Corporate Activities Division, Supervision; James H. Underwood, Senior Attorney, (202) 906–7354; Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Statutory Authority To Authorize Conversions

The proposed amendments to the current voluntary supervisory conversion regulations, 12 CFR part 563b, subpart C, are being issued pursuant to the authority of the Director (the "Director") of the Office of Thrift Supervision (the "OTS") under sections 5(i) and 5(p) of the Home Owners' Loan Act ("HOLA"),[1] which gives the Director broad statutory authority to regulate savings associations' conversion from the mutual to the stock form of organization. Section 5(i) of the HOLA, which authorizes the conversion process, specifically provides that "[n]o savings association may convert from the mutual to the stock form * * * except in accordance with the regulations of the Director." [2]

Moreover, under section 5(p) of the HOLA, the Director may authorize the conversion of a state-chartered or Federal mutual association to a Federal stock association "[n]otwithstanding any other provision of law * * *" if he determines that "severe financial conditions exist which threaten the stability of the association and that such authorization is likely to improve the financial condition of the association." [3] Section 5(p) thus authorizes the OTS to preempt state and Federal law to permit the conversion of mutual savings associations to the Federal stock form of organization.[4] Such emergency authority was intended to reduce Federal insurance fund costs by permitting an association, whose stability was threatened, to recapitalize through the conversion process before reaching the stage of financial deterioration at which government intervention or assistance was needed.[5]

Although section 5(p) contains no bright line tests pinpointing the level at which an association's capital is sufficiently low so as to support use of section 5(p) authority, the section was clearly intended to authorize conversions at a point before a conservator or receiver was appointed for an association. Given the flexibility inherent in the standards for such appointments, the Director has very substantial discretion to determine when an association lacks long-term viability and should be permitted to undertake a supervisory conversion pursuant to section 5(p).[6]

B. Current Supervisory Conversion Standards

Under the current supervisory conversion regulations, the Director may authorize the supervisory conversion of a savings association when the association's liabilities exceed its assets, as calculated under generally accepted accounting principles ("GAAP") on a going concern basis, and when the resulting association will be a viable entity.[7] Under the two-pronged viability test: (1) a converting institution must attain a level of capital representing the greater of a ratio of net worth to liabilities of 3 percent GAAP capital or its regulatory capital requirements;[8] and (2) the transaction,

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[1] 12 U.S.C. 1464 (i) and (p) (1989 & Supp. 1991).

[2] See Section 5(i)(2) of the HOLA, 12 U.S.C. 5(i)(2).

[3] 12 U.S.C. 1464(p).

[4] For the Director to use his preemptive authority under section 5(p) in an association's stock conversion, the converted or resulting association must be a Federal stock association.

[5] See S. Rep. No. 536, 97th Cong., 1st Sess. 4, 8, reprinted in U.S. Code Cong. & Ad. News at 3061.

[6] Grounds for the appointment of conservators or receivers for Federal and State savings associations include: (i) Insolvency; (ii) substantial dissipation of assets; (iii) being in an unsafe or unsound condition to transact business due to having "substantially insufficient capital"; and (iv) an unsafe or unsound practice or condition that is likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the condition of the association, or otherwise seriously prejudice the interests of depositors. 12 U.S.C. 1464(d)(2).

[7] See 12 CFR 563b.24 and 563b.26.

[8] The capital component of the viability test also currently includes a second standard under which the association could propose to attain a ratio of 1 percent GAAP capital to total assets and, pursuant to a five-year plan, increase its capital levels to meet regulatory requirements. In light of the higher capital standards that all savings associations must meet by January 1, 1995, this provision is no longer realistic and has been deleted as part of this proposal.

taken as a whole, must be in the best interests of, and not cause the potential for injury to, the converting association, its depositors, and the Federal deposit insurance funds. The use of this GAAP-qualification standard, however, is clearly outdated since it fails to take account of associations that are non-viable on a long-term basis under the FIRREA's more stringent capital standards, contained in section 5(t) of the HOLA. As a result, the Director has on a case-by-case basis waived this standard under the regulation's express waiver authority to permit capital-deficient thrifts, before they are GAAP-insolvent, to raise necessary capital through the supervisory conversion process without being placed into receivership or requiring government assistance.[9]

C. Need for Higher Qualification Threshold

While the current voluntary supervisory conversion regulations expressly make such conversions available for GAAP-insolvent associations, the voluntary supervisory conversion process also may be a valuable capital-raising option for other capital deficient associations that are not insolvent, but whose weakened financial condition make it infeasible to raise capital through public stock offerings in the capital markets. In appropriate circumstances, permitting such associations to undertake voluntary supervisory conversions also would aid them to raise capital and to attain capital compliance by obtaining beneficial capital infusions from parties seeking to acquire outright control of such associations.

An expanded qualification standard also would provide a much more meaningful picture of a mutual thrift's true financial condition and realistic long-term viability and would provide an enhanced opportunity for capital-deficient savings associations to raise new capital without government assistance.

II. Proposed Amendments

A. Qualification Standards

The proposed threshold qualification standard would permit associations to undertake supervisory conversions if they fail to meet any of their current minimum capital standards and demonstrate that it is not feasible for them to attain compliance with their minimum capital requirements by undertaking standard conversions.

The viability portion of the qualification standards would remain a two-part test, requiring a determination that the converting or resulting association will meet its current minimum capital requirements after conversion and that the conversion is in the best interests of the association, its accountholders, the Federal deposit insurance system and the public. The proposed amendments would also provide that the Director may determine that factors particular to an association, its conversion, or its acquirors, require an infusion of capital into the association in excess of that amount.

In this proposal, the OTS also adopts or retains a number of standards and policies that the OTS views as necessary to protect the converted or resulting association's capital position. Acquirors must demonstrate that the amount of capital being infused into associations' value prior to conversion. The OTS reserves the right to require an acceptable appraisal that supports this valuation. Finally, although the proposal does not prohibit the use of non-cash assets in supervisory conversions, associations and acquirors in such transactions bear the burden of justifying their use.

The "best-interests test" of the qualification standards, as amended, would require a transaction to be in the best interests of and not present the potential for injury or detriment to the converting association, its depositors, the Federal deposit insurance funds, and the public. This standard would continue to place the burden on the applicants to demonstrate that, based on a comprehensive assessment of all relevant facts and circumstances, a proposed conversion satisfies this best-interests test. The OTS will continue to scrutinize all aspects of an association's supervisory conversion in order to prevent potential abuse, including the potential for insiders to use their influence for personal gain to the detriment of the association.[10] The proposed rule expressly grants the Director authority to deny, or to impose conditions and restrictions on approval of, an association's supervisory conversion to ensure satisfaction of the best-interests test. The proposed rule delineates a list of factors, which is not exclusive, that may be indicative of the potential for insider overreaching and that would cause the Director to consider denying an association's supervisory conversion or imposing conditions or restrictions on the association, its officers, directors and controlling parties.

Whether conditions and restrictions should be imposed to protect an association's safety and soundness will depend upon a number of factors. It is expected, however, that the conditions and restrictions imposed to promote and preserve an association's safe and sound operation would be generally consistent with existing supervisory policies relating to the issues and problems presented.

B. Liquidation Account

The current supervisory conversion regulation does not require the establishment of a liquidation account for mutual accountholders because, under the present rule (unless exceptions are granted), qualifying associations must be GAAP-insolvent. In light of the raised qualification threshold for voluntary supervisory conversions under this proposal, however, the revised rule protects the pre-conversion status of mutual accountholders by requiring associations to establish liquidation accounts for them. Such accounts would be established in the same manner and aggregate amount, *i.e.* an association's GAAP capital, as in a standard conversion.

The proposed rule, however, will retain the policy of the current supervisory conversion regulation that in view of the absence of long-term viability of such a converting association, mutual accountholders do not automatically have any participatory role or rights in supervisory conversions, either in voting to approve the transaction or in the form of subscription rights to any of the stock sold in the conversion.

c. Application Requirements

By this proposal, the OTS seeks to facilitate associations' ability to use the supervisory conversion process by easing the burden and cross of preparing conversion documentation, and requiring the submission of only such documentary support as is needed to ensure satisfaction of the applicable standards.

The proposed rule would delete a number of documents whose preparation has been required only in connection with the conversion application, such as an audited interim balance sheet and an opinion of an

[9] See, *e.g.*, OTS Order No. 90-553, March 27, 1990 (voluntary supervisory conversion of Shadow Lawn Savings Bank, SLA).

[10] The courts have recognized that the OTS has broad authority to address these issues in the convention process, and where appropriate, to deny a conversion. *See, e.g., Charter Federal Savings and Loan Association* v. *Office of Thrift Supervision*, 912 F. 2d 1509, 1563 (11th Cir. 1990).

independent certified accountant regarding the appropriateness of the accounting treatment for the transaction. Under this proposal, many of the documentary requirements may be satisfied by the submission of documents prepared by all savings associations in the normal course of business and in reports filed with the OTS. For example, although an association must explain its computational assumptions, it need only submit its most recent Thrift Financial Report and audited balance sheet to show compliance with the qualification criteria, instead of being required to develop an interim audited balance sheet.

On the other hand, because under this proposal thrifts qualify for a supervisory conversion while they are at a higher capital level, appraisals are being required unless an association is tangibly insolvent and (i) is not undertaking a public securities offering and (ii) less than 25 percent of its conversion stock is proposed to be acquired by insiders. The OTS believes submission of appraisals is not generally needed for an insolvent association raising capital from third party acquirors in arms-length transactions. Such appraisals are necessary, however, (1) to provide sound financial records to support public securities offerings by associations failing their minimum capital requirements and (2) to ensure that associations receive full value from insiders buying substantial interests in such associations. Furthermore, requiring the submission of an appraisal by an association electing to convert in a supervisory conversion parallels the protection afforded to associations conducting standard conversions and helps to ensure the infusion of capital into such an association equals its value prior to conversion.

III. Request for Comment

The OTS seeks comment on the proposed and alternative qualification standards, as well as on the potential future use of standard, modified, and supervisory conversions.

Commenters are invited to address:

- How should the participatory roles afforded mutual account holders under the OTS proposal vary depending on the type of conversion?
- Should modified conversions be retained as an alternative to supervisory and standard conversions? If so, how should they be structured?
- Are there alternative or additional ways to ease the documentary burden in supervisory conversions while ensuring that the OTS is able to properly evaluate if a proposed conversion satisfies all applicable criteria?
- Is there a preferable appraisal submission standard that would ensure adequate capital infusions and would protect converting associations and the public, but would not impose undue burdens on capital-deficient associations? What are preferable, less-costly alternatives to the submission of full appraisals to demonstrate converting associations' market value? Is there a capital level at which the OTS should presume that associations cannot feasibly attain their minimum capital levels through standard conversions, rather than requiring associations to demonstrate such infeasibility with an appraisal?
- Should liquidation accounts in supervisory conversions be established on a different basis than in standard conversions? If so, why and how?

IV. Pre-filing Conferences

Voluntary supervisory conversions have in the past and will continue to raise novel and complex issues of law and policy. Accordingly, the OTS strongly encourages those involved in structuring a voluntary supervisory conversion to meet with OTS Regional staff before filing an application. The OT's goals for these meetings are to provide "early warning" and "front-end" issue recognition and resolution in order to simplify and expedite processing of voluntary supervisory conversions.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The collections of information in this proposed regulation are in 12 CFR 563b.20 to 563b.32. The collection of information in the voluntary supervisory conversion regulation was previously approved under OMB Control No. 1550-0014 relating to all conversions by savings associations. With this proposed change to the supervisory conversion regulations, it became evident that this supervisory conversions should be separated from standard and modified conversions because their requirements vary and the collection should have its own control number.

The information is required by the OTS to evaluate the merits of supervisory conversion applications under applicable statutory and regulatory criteria and to determine whether to approve, conditionally approve, or deny such applications. If the information was not collected, the OTS would not have a basis for properly evaluating and deciding upon such supervisory conversion applications.

The likely respondents are savings associations applying to obtain OTS approval to undertake voluntary supervisory conversions by filing the necessary information.

Estimated total annual reporting burden: 10,000.

Estimated average annual burden hour per respondent: 500.

Estimated number of respondents: 20.

Estimated frequency of responses: 1.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is hereby certified that this proposal will not have a significant or disproportionate economic impact on a substantial number of small savings associations. Accordingly, a Regulatory Flexibility Act analysis is not required.

Executive Order 12291

The Director of the OTS has determined that this proposed regulation is not a "major rule" and therefore does not require a regulatory impact analysis.

List of Subjects in 12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 563b, title 12, chapter V, Code of Federal Regulations as follows:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563b —[AMENDED]

1. The authority citation for part 563b continues to read as follows:

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); sec. 3, as added by sec. 301, 103 Stat 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); secs. 3, 12, 14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c, 1–n, w).

2. Section 563b.21 is revised to read as follows:

§ 563b.21 Voluntary supervisory conversions.

(a) A voluntary supervisory conversion of a savings association pursuant to this subpart may involve the sale of a converting association's shares directly to an acquiror(s), which may be a person, company, depository institution, or depository institution holding company. The conversion may result in the converting association being merged into or consolidated with an existing or newly created depository institution, but only as authorized by and in accordance with any limitations or restrictions imposed by applicable laws and regulations.

(b) At least a majority of the directors of the converting association must adopt a plan of voluntary supervisory conversion that is in accordance with the provisions of this subpart. The members of the association have no rights of approval or participation in the voluntary supervisory conversion, or to the continuance of any legal or beneficial ownership interests in the converted association, unless otherwise determined by the Office. The members shall have interest in a liquidation account, if one is established, pursuant to § 563b.28 of this subpart.

3. Section 563b.23 is revised to read as follows:

§ 563b.23 Authorization of supervisory conversions.

(a) The Office may authorize or order a voluntary supervisory conversion if a savings association files an application containing the information and documents specified in § 563b.27 of this subpart, in accordance with the procedures specified in § 563b.29 of this subpart, and meets the qualification standards specified in § 563b.24 of this subpart. If the Office authorizes or orders a supervisory stock conversion, the conditions specified in § 563b.30 of this subpart must be fulfilled and the resulting institution and the purchaser(s) of its conversion stock must comply with the requirements of § 563b.31 of this subpart.

(b) In connection with approval of an association's conversion, the Office may impose conditions and restrictions on the converting or resulting institution, its officers, directors, controlling party(ies), and shareholders to the extent the Office determines to be warranted to ensure the safe and sound operation of the converting association or resulting institution and to protect the deposit insurance funds and the public interest. The Office will generally exercise this authority consistent with applicable supervisory policies.

(c) Factors that may cause the Director to deny, or to impose conditions or restrictions on the approval of, an association's conversion include, without limitation:

(1) A determination by the Office that a transaction involves:

(i) Insider abuse, self-dealing, or excessive insider enrichment by management or controlling parties of a converting or resulting institution;

(ii) Continued employment of, or continued contracting with, any person determined by the Office to be responsible for the association's supervisory problems or poor condition; or

(iii) Potential for current or prospective injury or detriment to the converting association, its shareholders, its depositors, the Federal deposit insurance funds, or the public interest; and

(2) Employment contracts that fail to satisfy § 563b.32 of this subpart or contain terms that violate applicable policies of the Office.

(d) For three years following the date of completion of a voluntary supervisory conversion, neither any controlling shareholder nor the resulting institution may acquire shares from minority shareholders without first obtaining prior approval from the Office for such purchases and offering fair value, as determined through an independent appraisal acceptable to the Office.

4. Section 563b.24 is revised to read as follows:

§ 563b.24 Qualification for supervisory conversion of SAIF-insured associations.

(a) The Office in its discretion may authorize the supervisory conversion of a SAIF-insured savings association upon finding that the association:

(1) Fails any of its current minimum capital requirements, as determined in accordance with part 567 of this chapter;

(2) Demonstrates that a standard conversion that would raise sufficient capital to meet its current minimum capital requirements is not feasible; and

(3) Would be a viable entity as determined under § 563b.26 of this subpart, following the conversion.

(b) Notwithstanding any other provision of law, the Office also may authorize, (or in the case of a Federal savings association require), the conversion of a savings association into a Federal savings association pursuant to section 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464(p).

5. Section 563b.26 is amended by revising paragraph (b) to read as follows:

§ 563b.26 Viability of converted savings association.

* * * * *

(b) A converting SAIF-insured association is a "viable entity" if:

(1) As part of the plan of conversion:

(i) The capital being infused into the association through its conversion is sufficient to cause the converted or resulting association to meet all its current minimum capital requirements; provided that the OTS may require the infusion of a greater amount of capital into an association through its conversion because of risk factors particular to such association; and

(ii) The converting association, its proposed conversion, and any acquiror(s) comply with applicable supervisory policies; and

(2) The transaction taken as a whole is in the best interest of, and does not present the potential for injury or detriment to, the converting association, its depositors, the federal deposit insurance funds, and the public interest.

6. Section 563b.27 is amended by revising the introductory text, and paragraphs (a), (d), and (e); removing paragraph (1); redesignating paragraphs (m) through (s) as paragraphs (1) through (r); revising newly designating paragraphs (l), (n), and (o); and adding new paragraphs (s) and (t) to read as follows:

§ 563b.27 Application for voluntary supervisory stock conversion.

A savings association may apply for Office approval of a voluntary supervisory conversion pursuant to this subpart by filing the following information and documents in accordance with the procedures specified in § 563b.29 of this subpart:

(a) A plan of conversion adopted by a majority of the directors of the association, which shall contain at a minimum the name and address of the savings association; the names, addresses, dates and places of birth, and social security numbers of the proposed purchasers of conversion stock and their relationship to the savings association; the title, per-unit par value, number, and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of shares of conversion stock to be purchased by each investor, the aggregate number and percentage of shares of conversion stock to be purchased by directors, officers and their affiliates and associates (as defined in § 563b.2(a) of this part); a description of the liquidation account, if required under § 563b.28 of this subpart

or if otherwise established; and certified copies of all resolutions of the board of directors relating to the Plan.

* * * * *

(d) A business plan, which shall contain a description of the proposed operating policies of the savings association or the resulting savings association following the conversion, including a statement as to how the conversion proceeds will be used, and a projection of the savings association's results of operations for the three-year period following completion of the conversion. The projections should show the continuing ability of the converted association to meet applicable capital requirements. The savings association shall specify the assumptions on which its projections are based.

(e) A Holding Company Act application, Control Act notice, or rebuttal submission for each proposed conversion stock acquiror as may be required under part 574 of this subchapter, if applicable, and any required prior-conduct certification pursuant to RB–20 [1] for each such acquiror.

* * * * *

(l) Information to support the value of any non-cash assets to be contributed to the savings association in connection with the voluntary supervisory conversion, if applicable. Appraisals submitted in this connection must be acceptable to the Office.

* * * * *

(n) The association's most recent audited financial statements and Thrift Financial Report with an appropriate explanation to support the determination that the association's current capital levels qualify it to undertake a supervisory conversion.

(o) *Pro forma* financial statements prepared in accordance with the regulations and policies of the Office to reflect the effects of the transaction. These *pro forma* financial statements should be supplemented to identify the converting or resulting association's tangible, core, and risk-based capital levels and show the appropriate adjustments necessary to compute such capital levels.

* * * * *

(s) An independent appraisal meeting the requirements of § 563b.7(f) of this part will be required if the association is not tangibly insolvent and any of the factors listed below are present. Such appraisal shall describe the amount of capital that the association could be expected to raise in a standard conversion offering. The appraisal shall state, and provide supporting evidence satisfactory to the Office, that the association could not meet its applicable minimum capital requirements through a standard conversion. The appraisal shall be required if:

(1) The association's conversion involves a public offering of its securities; or

(2) More than 25 percent of the stock of the converting association is to be purchased by its officers or directors, or by affiliates or affiliated persons of such persons or the association. In such case, the appraisal must demonstrate that the amount of capital to be infused by such persons through the association's conversion is, at a minumum, equal to their proportionate share of the association's fair market value.

(t) A statement of all other applications required pursuant to federal or state banking laws for transactions related to the association's conversion, copies of all decisions, orders, opinions, and other similar dispositive documents issued by such regulatory authorities deciding upon the proposed conversion and related transactions, and, if requested by the Office, copies of such applications and related documents.

§§ 563b.28 through 563b.32 [Redesignated as §§ 563b.29 through 563b.33]

7. Sections 563b.28 through 563b.32 are redesignated as §§ 563b.29 through 563b.33, respectively.

8. A new section 563b.28 is added to read as follows:

§ 563b.28 Liquidation account.

A liquidation account must be established in accordance with the requirements set forth at 563b.3(f) of this part.

9. Newly designated § 563b.29 is amended by revising paragraph (a) to read as follows:

§ 563b.29 Procedural requirements.

(a) Filing of voluntary supervisory conversion application. A savings association seeking to convert pursuant to this subpart shall file its application containing the information and documents specified in § 563b.27 of this subpart in accordance with the filing requirements of § 500.32(c)(2)(ii) of this chapter. The filing of all companion applications to the supervisory conversion application must conform to the filing requirements specified for the pertinent type of filing as set forth in § 500.32 of this chapter.

* * * * *

Dated: July 18, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92–1312 Filed 1–16–92; 8:45 am]

BILLING CODE 6720–01–M

[1] Regulatory bulletins are available at the address listed in § 500.32(c)(6) of this chapter.

DEPARTMENT OF COMMERCE

Technology Administration

15 CFR Part 1150

[Docket No. 910931–1231]

RIN 0692–AA11

Marking of Toy, Look-Alike and Imitation Firearms

AGENCY: Technology Administration, Commerce.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice reopens the comment period for the proposed revision to the regulations on the "Marking of Toy, Look-Alike and Imitation Firearms" announced in the **Federal Register** (56 FR 56953) on November 7, 1992.

DATES: Comments on the proposed revisions must be received no later than March 17, 1992.

ADDRESSES: United States Department of Commerce, room 4410, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bradford C. Brown, Acting Chief Counsel for Technology, telephone number (202) 377–1984, FAX (202) 377–0253.

Dated: January 10, 1992.

Robert M. White,

Under Secretary for Technology.

[FR Doc. 92–1248 Filed 1–16–92; 8:45 am]

BILLING CODE 3510–18–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 785 and 827

Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Definitions; Requirements for Permits for Special Categories of Mining; Coal Preparation Plants; Performance Standards; Extension of Comment Period

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Petition for rulemaking; extension of the public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior (DOI) extends until January 31, 1992, the public comment period on a petition for rulemaking submitted pursuant to the Surface Mining Control and Reclamation Act (SMCRA or the ACT), to amend OSM's regulations governing offsite coal preparation plants The petition was included in the comments received from the Joint NCA/AMC Committee on Surface Mining Regulations on a proposed rule to amend portions of the permanent program regulations governing coal preparation plants published in the **Federal Register** on September 25, 1991 (56 FR 48714). The notice of availability of the petition and request for comment was published in the December 18, 1991, **Federal Register** (56 FR 65716).

DATES: OSM will accept written comments on the petition until 5 p.m. Eastern time on January 31, 1992.

ADDRESSES: Mail comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240; or hand deliver the comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131–L, 1100 L Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 208–2700.

SUPPLEMENTARY INFORMATION: OSM received a letter on November 22, 1991, from Stuart A. Sanderson, Senior Counsel, and Harold P. Quinn, Jr., Vice President and Counsel, representing the Joint NCA/AMC Committee on Surface Mining Regulations, Coal Building, 1130 17th St., NW., Washington, DC, as a petition for rulemaking. The petitioners requested that the agency propose for comment a rulemaking to revise the definition of "surface coal mining operations" at 30 CFR 700.5 so that the phrase "at or near the mine site" would encompass coal processing and preparation activities and, consistent with the revised definition, to also amend the rules at 30 CFR 785.21(a) and 827.1 by inserting the phrase "at or near the mine site" in those provisions where appropriate. The petition was included in the comments received from the Joint NCA/AMC Committee on a proposed rule to amend portions of OSM's permanent program regulations governing coal preparation plants published in the **Federal Register** on September 25, 1991 (56 FR 48714). OSM published the notice of availability of the petition and request for comment on December 18, 1991 (56 FR 65716).

The comment period for the petition was scheduled to close on January 17, 1992. In response to a request for more time to submit public comments on the petition, OSM is extending the comment period by 14 days. Comments will now be accepted until 5:00 p.m. local time on January 31, 1992.

Dated: January 10, 1992.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 92–1246 Filed 1–16–92; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for Revised Program Amendment Number 53 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has proposed further revisions to one rule in the Ohio Administrative Code concerning the characteristics of highwalls which are not entirely eliminated in areas to be covered by impoundments. The revisions concern the location of the remaining vertical portion of the highwall below the water line, the final slope of the reduced portion of the highwall, and the vegetative cover of the reduced portion of the highwall.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on February 18, 1992. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on February 1, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on February 3, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton, Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of National Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated September 10, 1991 (Administrative Record No. OH–1581), Ohio submitted proposed program Amendment Number 53. The amendment proposed to delete Ohio Administrative Code (OAC) section 1501:13–9–04 paragraph (H)(2)(e). This paragraph currently requires operators to eliminate highwalls in areas which are to be covered by permanent impoundments. In place of this existing provision, Program Amendment Number 53 proposed a new paragraph (H)(1)(i) to OAC 1501:13–9–04. This new paragraph

would require that the vertical portion of any remaining highwall beneath the surface of impoundments shall be located far enough below the low-water line of the impoundment to provide adequate safety and access for future users of the impoundment

OSM announced receipt of proposed Program Amendment Number 53 in the October 2, 1991 **Federal Register** (56 FR 49856), and, in the same notice, opened the public hearing on the adequacy of the proposed amendment. The public comment period ended on November 1, 1991. The public hearing scheduled for November 28, 1991 was not held because no one requested an opportunity to testify.

By letter dated December 17, 1991 (Ohio Administrative Record No. OH–1617), Ohio submitted Revised Program Amendment Number 53 containing four further proposed revisions to OAC Section 1501:13–8–04. The four new revisions proposed in the December 17, 1991, submission are discussed briefly below:

1. Paragraph (H)(1)(i):

Ohio is adding the statement that "For permanent impoundments, the vertical portion of the remaining highwall shall also meet the requirements of paragraph (H)(2)(d) of this rule."

2. Paragraph (H)(2)(d):

Ohio is adding the statement that "For impoundments where the vertical portion of a highwall remains, the vertical portion shall be located at least eight feet below the low-water line."

3. Paragraph (H)(2)(g):

Ohio is adding this new paragraph to provide that the reduced portion of any remaining highwall shall have a final slope appropriate for the postmining land use and shall have a minimum static safety factor of 1.3 or a final slope that is no steeper than 3H:1V, unless the type and permeability of the spoil require a less steep slope to ensure stability.

4. Paragraph (H)(2)(h):

Ohio is adding the statement that, "The face of the reduced portion of any highwall shall be vegetated with species appropriate for the postmining land use."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on February 3, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be make a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 9, 1992

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 92–1259 Filed 1–16–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Utah rules pertaining to coal mining incidental to the mining of other minerals. The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the Utah program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.s.t. February 18, 1992. If requested, a public hearing on the proposed amendment will be held on February 11, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on February 3, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, NM 87102, Telephone: (505) 766–1486.

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 350, Salt Lake City, UT 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated December 39, 1991 (administrative record No. UT–711), Utah submitted a proposed amendment to its program pursuant to SMCRA. Utah submitted the proposed amendment in response to OSM's 30 CFR 732 letter dated February 7, 1990, regarding coal mining incidental to the mining of other minerals. The provisions of the Utah Coal Mining Rules that Utah proposes to amend are: R614–100–200, definitions of "cumulative impact area," "cumulative measurement period," "cumulative production," "cumulative revenue," "mining area," and "other minerals;" R614–100–414, applicability; R614–106–100, scope; R614–106–200, application requirements and procedures; R614–106–300, contents of application for exemption; R614–106–400, public availability of information; R614–106–500, requirements for exemption; R614–106–600, conditions of exemption and right of inspection and entry; R614–106–700, stockpiling of minerals; R614–106–800, revocation and enforcement; R614–106–900, reporting requirements; and R614–300–211, administrative and judicial review of decisions on permits.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., m.s.t. on February 3, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTRACT**" All such meetings will be open to the public and, if possible, notices of meetings will be posed at the locations listed under "**ADDRESSES**." A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surfacing mining, Underground mining.

Dated: January 9, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 92–1260 Filed 1–16–92; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–4093–8]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline and Conventional Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop.

SUMMARY: This notice announces the time and place for a public workshop related to EPA's development of the complex emissions model for reformulated gasoline.

DATES: The public workshop will be held on January 22 and January 23, 1992. It will start at 9 a.m. each day and will continue until 5 p.m. the first day and as long as necessary on the second day to complete the agenda.

ADDRESSES: The public workshop will be held at the Best Western Domino's Farms Hotel, 3600 Plymouth Road, Ann Arbor, Michigan 48105 (telephone 313–769–9800). Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–91–02, at: Air Docket Section (LE–131), U.S. Environmental Protection Agency, Attention: Docket No. A–91–02, First Floor, Waterside Mall, rm. M–1500, 401 M Street, SW., Washington, DC 20460.

Materials related to this rulemaking have been placed in Docket A–91–02 by EPA. The docket is located at the above address and may be inspected between 8:30 a.m. and noon and between 1:30 p.m. and 3:30 p.m., Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Sklar, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313)741–8817.

SUPPLEMENTARY INFORMATION:

Background

Section 211(k) of the Clean Air Act, as amended [1] (Act), requires that EPA promulgate regulations establishing the requirements for a reformulated gasoline program. Under this program, gasoline would be reformulated to reduce the emissions of gasoline-fueled vehicles in specified ozone nonattainment areas.

[1] Clean Air Act Amendments of 1990, 104 Stat. 2399 (1990).

Reformulated gasoline must meet certain general requirements, including restrictions on the oxygen, benzene, and heavy metals content of the gasoline, and on emissions of oxides of nitrogen. Reformulated gasoline must also comply with the move stringent of either the formula specified in section 211(k)(3)(A), or the emissions reduction performance standard specified in section 211(k)(3)(B). The performance standard requires reductions in motor vehicle emissions of ozone forming volatile organic compounds, as well as reductions in emissions of specified toxic air pollutants. Section 211(k) contains various other requirements for the reformulated gasoline program, such as certification requirements, credit programs, and expansion of the geographic scope of the program through state "opt-ins." A related provision, section 211(k)(8), establishes an anti-dumping program for all areas not included in the reformulated gasoline program.

To aid in the promulgation of the required rulemaking, EPA formed a broad based Advisory Committee pursuant to the Federal Advisory Committee Act,[2] and the Negotiated Rulemaking Act of 1990.[3] During the regulatory negotiation process, EPA issued a Notice of Proposed Rulemaking on July 9, 1991 (56 FR 31176). Shortly thereafter, on August 16, 1991, EPA and the members of the Advisory Committee signed an "Agreement in Principle" embodying the members' concurrence on an outline of the underlying principles of the reformulated gasoline and anti-dumping programs. EPA is currently preparing a Supplemental Notice of Proposed Rulemaking incorporating many aspects of the agreement.

Generally, the agreed upon reformulated gasoline program would provide refiners with two modeling options and a testing option for determining whether fuels sold in 1995 and 1996 meet the reformulated gasoline requirements. The samples of these modeling options (the simple model) will be detailed in the Supplemental Proposal described above. The agreement further committed EPA to promulgate a more complex emissions model for use as early as 1995, but which would become mandatory beginning in 1997. Under the Agreement, EPA is to proposed regulation establishing this complex model by November 30, 1992 and promulgate such regulations by March 1, 1993.

Public Workshop

Pursuant to the Agreement in Principle, EPA intends to hold a series of workshops, open to all interested parties, to expedite the development and promulgation of the rule establishing the complex emission model. The first such workshop will be held in Ann Arbor, Michigan, on Wednesday, January 22 and Thursday, January 23. The workshop will include the following topics:

—*Potential complex model fuel parameters:* This topic will include a review and discussion of the fuel parameters currently under consideration for inclusion in the complex model and the reasons for expecting such parameters to influence emissions. Parameters currently under consideration include the simple model parameters (oxygen, RVP, benzene, and aromatics) as well as sulfur, olefins, T50 (the temperature at which 50% of the fuel sample evaporates), T90, end point, vapor pressure at 130°F, and dilution and interactive effects of all considered parameters. This topic is intended to provide an opportunity to identify additional parameters that should be evaluated for inclusion in the model.

—*Information required to add fuel parameters to the complex model:* This topic will focus on the quantity and quality of data required to justify inclusion of parameters in the complex model.

—*Vehicle testing requirements:* This topic will focus on the key elements of an authoritative test program for individual parameters.

—*Computational and statistical procedures to develop 1990 model year in-use emission effects:* This topic will discuss the appropriateness of various statistical analysis procedures to determine the statistical validity of vehicle testing results. It will also review the procedures used to determine expected in-use emission effects on the 1990 model year vehicle fleet from vehicle testing data.

—*Computational and statistical methodology for combining the results of multiple studies:* This topic will focus on identifying methods to combine the results from separate studies, on the appropriate methods to determine emission effects when combining separate studies, and on appropriate statistical analysis procedures to evaluate the statistical significance of effects determined by combining separate studies.

—*Methods for coordinating complex model testing activities:* This topic will focus on the scope of current and planned vehicle testing activities in support of the development of the complex model and will discuss methods and procedures to ensure sufficient coordination of such activities.

Public Participation

As in past rulemaking actions, EPA strongly encourages full public participation in the development and assessment of information that will be used in developing a final rule. This workshop will affect the methods used by the Agency in developing the complex model rule, and EPA welcomes public input regarding which methods should be used.

EPA will make brief presentations on each of the subjects listed above. After EPA's presentations, attendees will be encouraged to make oral presentations. Questions will be taken after each presentation. Any person desiring to make such a presentation at the public workshop should notify the contact person listed above of such intent at least seven days before the workshop. The contact person also should be provided an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment.

EPA suggests that enough copies of the material for presentation be brought to the workshop for distribution to the audience. EPA anticipates attendance of 100 to 150 people. In addition, it will be helpful for EPA to receive an advance copy of any material for presentation before the scheduled workshop date so as to allow EPA staff to give such material full consideration. Mr. Charles Gray, Director of the Emission Control Technology Division of EPA's Office of Mobile Sources will chair the workshop. The workshop will be conducted informally, and technical rules of evidence will not apply.

Dated: January 13, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-1299 Filed 1-16-92; 8:45 am]

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[2] 5 U.S.C. App. 1, *et seq.*

[3] Public Law 101-648.

VOL 57 ISS 12 JA 17 1992 UMI

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 91-22]

Petition of Total Ocean Marine Services, Inc. for Relief From Conditions Unfavorable to Shipping in the United States/Venezuela Trade; Actions To Adjust or Meet Conditions Unfavorable to Shipping

AGENCY: Federal Maritime Commission.

ACTION: Notice of intent to discontinue proceeding.

SUMMARY: A recent maritime agreement concluded between the Government of Venezuela and the Government of the United States would appear to have resolved the unfavorable shipping conditions addressed by the proposed rule issued in this proceeding. The Federal Maritime Commission is therefore giving notice of its intent to discontinue this proceeding. However, before any such final action, the Petitioner and other interested parties can comment on the discontinuance.

DATE: Comments (original and 15 copies) due on or before February 14, 1992.

ADDRESS: Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: On May 13, 1991, the Federal Maritime Commission ("Commission" or "FMC") initiated this rulemaking proceeding ("proposed rule") pursuant to section 19 of the Merchant Marine Act, 1920, 46 U.S.C. 876 ("section 19") in response to a petition ("Petition") filed by Total Ocean Marine Services, Inc. ("Total Ocean"). It appeared from the Petition, and comments on the Petition, that the laws, policies and practices of the Government of Venezuela ("GOV") reserved a substantial portion of general export and import cargo in the United States/Venezuela trade ("Trade") to carriage by national lines to the exclusion of operators of third-flag vessels. In addition, it appeared that agencies of the Government of Venezuela had withheld from the Petitioner authorization to undertake operation as a common carrier by chartering third-flag vessels.

The proposed rule would adjust or meet the apparent unfavorable conditions by imposing a per voyage fee upon certain named Venezuelan carriers. Failure to pay the fee would result in suspension of a carrier's tariffs, or denial of access to or clearance from U.S. ports. The effect of the proposed rule would be to meet unfavorable shipping conditions by imposing burdens upon Venezuelan carriers which approximate those imposed by Venezuelan law, regulation, policy and practice upon the petitioner, a potential operator of third-flag vessels.

The corrective measures advanced in the proposed rule would be applied to the following named carriers: Venezuelan Container Line, C.A. ("VCL"); Naviera Pacifico C.A. ("Naviera Pacifico"); Compania Anonima Venezolana de Navigacion ("CAVN"); Maritima Aragua, S.A. ("Maragua Line"); King Ocean Service de Venezuela, S.A. ("King Ocean"); C.A. Maritima Oceanica Granelera ("CAMOGRA"); Consorcio Naviero de Occidente C.A. ("Conaven"); Naviera Lavinel C.A.; Naviera Transpapel, C.A.; Vencaribe C.A.; Naviera Caribana C.A.; Zade, C.A.; Naviera Naviprobo, C.A.; and Inagua Line—Naviprobo.[1]

The proposed rule was published in the **Federal Register** on May 16, 1991 (56 FR 22685) and the following persons submitted comments: Total Ocean; Shippers for Competitive Ocean Transportation ("SCOT"); Inagua Lines, Inc. ("Inagua"); CAMOGRA; Naviera Pacifico; the Venezuelan American-Chamber of Commerce and Industry ("VenAmCham"); American Transport Lines, Inc. ("AmTrans"); King Ocean; CAVN; and Camara Venezolana de Armadores, the Venezuelan Chamber of Shipowners ("Chamber" or "Venezuelan Shipowners").[2] Comments were thus filed either individually (or collectively by the Chamber) on behalf of all of the Venezuelan-flag carriers named in the Proposed Rule with the exception of the following: Vencaribe; Naviera Caribana; Zade; and Naviera Naviprobo.[3] The Proposed Rule was supported by Total Ocean and SCOT and generally opposed by Venezuela shipowner interests.

The Department of State ("DOS") submitted letters dated July 3, 1991 ("July 3 Letter") and August 9, 1991 ("August 9 Letter"). In its August 9 Letter, DOS indicated that the U.S. Government was in the process of proposing an agreement to the GOV which it believed "* * * would adjust conditions in the trade in such a manner as to address the underlying access issue in the case before the Commission." DOS also reaffirmed the request made in the July 3 Letter that the Commission withhold a final determination of Total Ocean's Petition pending a report on the conclusions of the consultations.

Subsequently, an agreement between the Government of the United States and the GOV was concluded through an exchange of diplomatic notes dated October 15 and 17, 1991. A letter from DOS dated October 24, 1991 ("October 24 Letter") transmitted copies of this exchange of diplomatic notes. DOS indicated in the October 24, Letter that:

> Under the terms of the Agreement, the reserve cargo of the two countries shall be available, on an equal access basis, to the maritime carriers of the two nations for transport in vessels owned or chartered by the carriers (including third-flag chartered vessels).
>
> The agreement is for a two-year term and excludes the defense cargoes of both countries. It supersedes a 1983 bilateral memorandum of understanding on shipping policy.

DOS provided copies of this exchange of diplomatic notes. In addition, DOS provided copies of two other documents which are relevant to this proceeding. One is a letter from Rear Admiral Luis Antonio Mareno Zambrano of the GOV Ministry of Transportation and Communications to Total Ocean dated October 17, 1991 which informs Total Ocean of the new maritime agreement and which states:

> * * * we are authorized to inform you that your firm may operate as of this date in the maritime trade between the two countries, pursuant to the conditions hereby.

The second document is a letter from Celia Benchimol of the Ministry of Transport and Communications to the National Banking Council, dated October 18, 1991, notifying the National Banking Council of the "new commercial

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[1] The proposed rule indicated that the Commission was unable to determine whether the company identified as "Inagua-Naviprobo" by Total Ocean in its Petition was the same as, or distinct from, Naviera Naviprobo C.A. Proposed Rule at 28, n. 2. Accordingly, both Naviera Naviprobo and "Inagua Naviprobo" were listed as separate and distinct carriers in the Proposed Rule. By letter to the Commission dated June 17, 1991, counsel for Inagua Lines, Inc. advised that the tariff is issued by Naviera Naviprobo, and that Inagua is only an agent. Counsel further explained that: "The wording 'Inagua-Naviprobo,' is only the result of an every day common expression resulting from the usage of both companies names combined, by customers in the trade." Apparently, Inagua Lines is a U.S. company operating third-flag vessels and is not a Venezuelan-flag carrier.

[2] The Chamber identified itself as an association of Venezuelan-flag carriers in, *inter alia*, the trade between the United States and Venezuela. The seven members of the Chamber represented by the comment are: VCL; Transpapel; King Ocean; Maragua; Naviera Lavinel; Naviera Pacifico; and Conaven.

[3] According to the comment and letters submitted by Inagua Line, Naviera Naviprobo is a Venezuelan-flag carrier serving the Trade. In the affidavit of Salvador Juan attached to the comment of the Venezuelan Chamber of Shipowners, Vencaribe, Naviera Caribana and Zade are said to be Venezuelan-flag carriers with limited operations in the Trade. See Juan Affidavit at 5-6.

maritime policy" and directing Venezuelan banks not to include restrictive language in letters of credit that would require the use of the state-owned carrier or associated lines for shipments in the trade between the U.S. and Venezuela.

Subsequently, the Commission received a letter from Total Ocean dated November 4, 1991, responding to the recent diplomatic developments. Total Ocean acknowledges the receipt of a letter from Venezuela's Ministry of Transport and states that "* * * it appears that the concerns of the Petitioner in this matter may be substantially resolved." Nevertheless, Total Ocean appears to express reservation over the fact that the new agreement will expire in two years and that the authority (presumably to operate in the trade) contained in the Mininstry's letter to Total Ocean "has not yet been put into practice or tested." Total Ocean therefore requests "that a final ruling * * * in this matter be held in abeyance until a later date when these and other minor issues may be resolved." [4]

Finally, the Commission takes note of recent accounts appearing in the trade press which report that Total Ocean inaugurated a service in the Trade in December, 1991 utilizing a chartered third-flag vessel. These reports provide further indication that Total Ocean has entered the Trade and that the apparent unfavorable shipping conditions described in the Proposed Rule may be resolved.

Accordingly, based on the diplomatic developments, Total Ocean's recent letter, and press reports, it would appear that the unfavorable shipping conditions described in the Commission's Proposed Rule have been substantially alleviated. The Commission therefore is announcing its intention to discontinue this proceeding based on the apparent resolution of unfavorable shipping conditions. Total Ocean and all other interested persons can comment on this discontinuance on or before February 14, 1992.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-1217 Filed 1-16-92; 8:45 am]

BILLING CODE 6730-01-M

[4] Total Ocean sent a letter to the Commission dated November 13, 1991, certifying that a copy of the November 4, 1991 letter was served upon the participants in this proceeding.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 591

RIN 2127-AD00

[Docket No. 89-5; Notice 10]

Importation of Motor Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes two important amendments to the regulation governing importation of motor vehicles subject to requirements of the Department of Transportation. The first is that importers of motor vehicles who are required to furnish bonds to NHTSA upon importation of nonconforming vehicles be permitted, as an alternative to furnishing sureties, to furnish cash deposits or obligations of the United States. The proposal is intended to facilitate the importation of nonconforming vehicles. The second proposal would allow the importation of vehicles less than 25 years old for purposes of studies, provided the vehicle is one of historical or technological interest, and that the importer is, and has been for 5 years before entry of the vehicle, either a tax-exempt corporation or private foundation as recognized by the Internal Revenue Service. Under this allowance, nonconforming vehicles could be imported by museums for static display.

DATES: The comment closing date for the proposal is March 2, 1992. The effective date of the final rule would be 30 days after publication in the Federal Register.

ADDRESSES: Comments should refer to Docket 89-5; Notice 10, and be submitted to: Docket Section NHTSA, room 5109, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202-366-5263).

SUPPLEMENTARY INFORMATION:

A. Allowance of Surety Equivalents

Since the initial regulations governing importation of motor vehicles subject to the Federal motor vehicle safety standards became effective in January 1968, an importer of a noncomplying vehicle has been required to furnish an appropriate bond to ensure that the vehicle will be brought into conformity with all applicable Federal motor vehicle safety standards, and, if it is not, that it will be redelivered for export. Until January 31, 1990, the bond was furnished to the U.S. Customs Service as part of that agency's general importation bond for payment of duty and conformance with other Federal regulations.

Since the amendments made to be National Traffic and Motor Vehicle Safety Act by Public Law 100-562, the Imported Vehicle Safety Compliance Act of 1988 (herein the 1988 Amendments), became effective at the end of January 1990, the bond to ensure conformance has become a separate instrument, no longer part of the general Customs bond, and is furnished directly to the Department of Transportation.

In implementation of the 1988 Amendments, NHTSA provided for importation compliance bonds in 49 CFR 591.5(f) in the form shown in appendix A, and 591.5(g) in the form shown in appendix B. Initially, bonding companies were reluctant to serve as sureties because of their lack of familiarity with the DOT bonds, and prospective importers found it difficult to obtain them for the importation of their vehicles. Although the situation has improved in general, as sureties have become more familiar with bonding requirements, the situations tend to differ at the smaller ports of entries where importation of vehicles is infrequent. NHTSA on one occasion did accept a cash deposit from an importer in lieu of a bond, when the importer pointed out that Customs itself can accept cash or securities of the United States under bond, as an alternative to providing a surety.

The agency has tentatively decided that this alternative should be formalized through an amendment to part 591. It believes that such an amendment might relieve an unintended impediment to the importation of motor vehicles when an importer is unable to find a bonding agency willing to serve as surety on DOT bonds. The benefit to DOT is that it directly holds the security for a vehicle, and will not have to go to an outside entity to foreclose on the bond in the event the terms of entry are forfeited.

Specifically, an importer could provide a bond directly to DOT, and, as surety, could submit United States money, bonds (except for savings bonds), certificates of indebtedness, and Treasury notes or bills in an amount equal to the amount of the bond. At the time of deposit of any obligation other than money the importer would execute

a power of attorney authorizing NHTSA, in the event of default, to sell the obligation and retain the proceeds. A form of power of attorney is proposed as appendix C. NHTSA's proposal is based upon the similar Customs regulation, 19 CFR 113.40.

B. Possible Expansion of Categories of Importation Under Section 108(j)

The 1988 Amendments have significantly restricted the importation of motor vehicles that were previously admissible for purposes other than general on-road use. Before January 31, 1990, NHTSA and the U.S. Customs Service had joint authority to allow the temporary admission into the United States of any motor vehicle in use (15 U.S.C. 1397(b)(4)). Pursuant to this authority, NHTSA and Customs allowed nonconforming motor vehicles to be imported "solely for the purpose of show, test, experiment, competition, repair or alteration." (19 CFR 12.80(b)(1)(vii)). However, section 1397(b)(4) was repealed by the 1988 Amendments, which added section 1397(j). This new section contains allowances comparable, but not identical, to those contained in 19 CFR 12.80. It permits the admission of nonconforming vehicles and equipment, without a time limitation, but only "upon such terms and conditions as [NHTSA] may find necessary solely for the purpose of research, investigation, studies, demonstrations or training, or competitive racing events." Congress did not include the categories of "show," and "repair or alteration" among the specific purposes for which a nonconforming vehicle could be entered, and the legislative history afforded no explanation. In enforcing the 1988 Amendments since January 31, 1990, the agency has found a continued need of importers to bring their cars to the United States for repairs and alteration, and a continued desire in the public to import cars for purposes of show. The agency promised in a previous notice to review these questions.

1. Repair or Alteration

To date, importers who wish to bring in nonconforming vehicles for repair or alteration have been found to qualify under other provisions of the Safety Act and part 591. Most frequently, these importers have been citizens of countries other than the United States, and have been able to import their vehicles as nonresidents, pursuant to 49 CFR 591.5(d). If the importer does not qualify for the nonresident exception, and the vehicle will be exported immediately upon completion of the repairs to it, NHTSA has allowed its temporary importation pursuant to § 591.5(c), the declaration that the vehicle is being importer for export, and bears a label or tag to that effect. In a third category of cases, the vehicle was found to be one needing completion, rather than repair or alteration, and eligible for entry as a vehicle requiring further manufacturing operations to perform its assigned function, under § 591.5(e). Thus, experience to date does not indicate that demonstrable hardship has been caused by a lack of a specific statutory allowance for repairs or alteration.

2. Show

The agency has previously stated (54 FR at 17776 and 55 FR 40876) that § 591.5(j) does not preclude original vehicle manufacturers who import nonconforming vehicles for display at auto shows to gauge public reaction to new styling or engineering features from declaring that such importation is for "research" or "demonstrations." But in the absence of specific authority from Congress to allow importations for show or display, the agency has adopted and maintained a conservative attitude towards entities other than original vehicle or vehicle equipment manufacturers who wish to import nonconforming vehicles for display. In short, under the 1988 Amendments, it has refused to allow them.

In commenting on a previous notice of proposed rulemaking, the law firm of Pillsbury, Madison & Sutro requested that § 591.5(j) be expanded to allow importation for an additional purpose, display, in order to be consistent with EPA requirements. The law firm argued that the 1988 Amendments provide sufficient safeguards against abuse of a display-only exemption, and that NHTSA could provide that the vehicle not be sold until an appropriate certificate of conformity was received. NHTSA responded to the law firm that it would review the issue raised.

Since the new restrictions went into effect, efforts have been made to import examples of the East German Trabant as a historical vehicle for display purposes, either by individuals purporting to represent "museums" or who wish to donate the cars to museums. Efforts have also been made to import vehicles for "show" which are of current or recent production such as the Porsche 959, but whose manufacturers have chosen not to certify them for sale in the United States. Because these vehicles are not substantially similar to certified vehicles, may not be readily capable of being brought into compliance, and have not been the subject of petitions, they are not presently eligible for entry under § 591.5(f). Offers have been made to render such vehicles incapable of operation, and to display them under conditions of static display, in "museums" or in vehicle showrooms.

Section 108(i) indirectly addresses the display issue by permitting the entry without conformance of any vehicle whose age is 25 years or greater. This permits the unrestricted importation of vehicles that were not sold in the United States, and allows them to retain their original character without modification to U.S. requirements. However, the vehicles for which entry have been sought for display are less than 25 years old. Since no specific allowance has been provided for importation for show or display, the question is whether any of the five purposes added by the 1988 Amendments can, in the context of Congress's seemingly intentional omission of the term "show", be reasonably interpreted as allowing importation of nonconforming motor vehicles for the purpose of show or display. Certainly "competitive racing events" does not connote a static display. "Research" and "investigations" indicate that the purpose of importation is test or experiment. NHTSA does not believe that it can fairly interpret "demonstrations or training" to encompass static display; a "demonstration" of a motor vehicles has traditionally involved exhibiting its operation or use, both in the showroom and on the road. "Studies", as defined by The Random House Dictionary of the English Language (1967), means "a personal effort to gain knowledge." The primary meaning of the word "study" is "the application of the mind to the acquisition of knowledge." The static display of a vehicle or equipment item could form a basis for the acquisition of knowledge if that vehicle or equipment item were of historical or technological significance. Therefore, the agency has tentatively concluded that it may be in the public interest to admit vehicles whose age is less than 25 years if their importation can be demonstrated to enhance the acquisition and application of knowledge, that is to say, that they merit admission because they are of historical or technological interest.

The agency believes that this interpretation of "studies" is in accordance with the purposes of both the National Traffic and Motor Vehicle Safety Act (the Act) and the 1988 Amendments. The stated purpose of the Act is to reduce accidents involving motor vehicles, and deaths and injuries to persons resulting from such accidents.

However, section 108(j), added in 1988, represents a concession by Congress that the interests therein enumerated, which are not safety-related, might justify the importation and use of vehicles without requiring their conformance, and provides the Administrator with discretionary authority to allow importation under such terms and conditions as may be found necessary for the purpose of these interests. Thus, the importation of vehicles for static display by a category of importer other than original manufacturer does not *per se* undermine the purposes of Congress. These purposes can be undermined, however, by importations under subterfuge, where the hidden but real intent of the importer is to operate the vehicle on the public roads for his or her private enjoyment. This is NHTSA's primary concern. The agency has no power to seize a vehicle entered under false pretenses, and the maximum civil penalty it can impose on a private importer whose declaration is not confirmed by conduct subsequent to entry is limited to $1,000 per vehicle.

As NHTSA analyses it, thee are two components relevant to importation of a vehicle or equipment item for "studies": the vehicle or item, and the nature of the importer. Occasionally, NHTSA is approached by a prospective vehicle importer who offers to remove the engine if importation will be allowed. Aside from the problems of enforcement that this would present (and NHTSA has not allowed it), NHTSA believes that if a vehicle is of sufficient historical or technological interest to be admitted for "studies", its character must not be altered. Although such offers are well-meaning, NHTSA has no intention of requiring the alteration of a motor vehicle by removal of its engine or other parts.

The agency has considered what types of motor vehicles or equipment might be considered to have sufficient historical or technological interest to be admitted for "studies". Some examples come to mind. A vehicle less than 25 years of age and which is no longer in production may be said to have entered history. The admission and exhibition of the recently discontinued Trabant might be instructive as to comparative manufacturing sophistication between the more advanced industrial nations and the lesser developed ones. Prototypes or early production examples of radial tires, which originated in Europe, or experimental headlamps found on motorshow cars, are examples of nonconforming equipment items that might be eligible for "studies".

As previously noted, these importation requirements would not apply to manufacturers of motor vehicles or equipment whose products are certified for sale in the United States. If importation were sought for "studies" by a person other than a certifying manufacturer, the written request already required before entry would be supplemented by additional information supporting the request, and the prospective importer would bear the burden of persuasion. The agency is not proposing criteria as to what may qualify as "historical" or "technological interest", as it wishes to afford prospective importers flexibility in making their arguments. However, comments are solicited on whether criteria should be adopted and, if so, what those criteria should be.

The second component to be considered is the nature of the importer. It has tentatively decided that the purpose of "studies" is more likely to be achieved if the importer is an institution providing an opportunity for the acquisition of knowledge, such as a museum or educational institution. In general, these are businesses organized other than for profit. Therefore, the agency tentatively concludes that in order to qualify as an importer for studies, an importer must be either a corporation or foundation that has been recognized, for at least 5 years before the date of entry of the vehicle, by the Internal Revenue Service under the Internal Revenue Code, as one qualifying for tax exempt status as a section 501(c)(3) corporation or foundation, or a section 509 private foundation. A section 501(c)(3) or section 509 entity is one that is "organized and operated exclusively for * * * scientific, testing for public safety, * * * or educational purposes, * * * no part of the net earnings of which inures to the benefit of any private shareholder or individual * * *." This would include universities and municipal museums. To discourage the creation of entities for the sole purpose of importing a vehicle under section 108(j), the agency is proposing that importers of such vehicles demonstrate that they have been recognized as a tax-exempt entity under section 501(c)(3) or section 509 by the Internal Revenue Service for at least 5 years before the date of entry. A special exception would be made if the importer is the National Museum of History and Technology of the Smithsonian Institution. An importer for studies could not sell or otherwise dispose of the vehicle until it passed the age required for conformity of nonconforming vehicles, 25 years.

In summary, a prospective importer for studies, other than a certifying manufacturer, would submit a written request to the Administrator, in advance of importation, presenting its views why the vehicle for which request is made is of historical or technological interest, and why its admission would be for the purpose of studies. The importer would also be required to submit proof of its tax-exempt status, and that the status had existed for at least 5 years before the date of its letter. Finally, the importer would have to agree that it would not sell, lease, or transfer either title to, or possession of, the vehicle until it was 25 years old. The agency would consider any failure to comply with the terms of entry to be a violation of the Vehicle Safety Act for which a civil penalty could be imposed, and, if occurring immediately after entry, to constitute entry under a false declaration subject to the civil and criminal sanctions of 18 U.S.C. 1001.

The agency had considered adopting a requirement under which a vehicle produced by a manufacturer doing business in the United States could only be imported by that manufacturer, as being the best judge of its historic or technological significance. However, by restricting importations for studies to corporations or foundations whose tax exempt status has been recognized by the United States for not less than 5 years. The agency hopes to minimize attempts to evade its regulations. The clear intent of the 1988 Amendments is that individuals shall not import nonconforming vehicles for their own private enjoyment on the public roads unless they are capable of being brought into conformity, as determined by the Administrator, and unless they have, in fact, been conformed.

C. Further Importation Issues Under Section 591.5(j)

Chrysler Corporation has raised a question that also bears upon the interpretation of § 591.5(j). Section 591.5(j)(3) requires that the importer of a nonconforming vehicle admitted for research, investigations, studies, demonstrations or training, or for competitive racing events, provide the Administrator with documentary proof of export or destruction not later than 30 days following the end of the period for which the vehicle has been admitted into the United States. In commenting on this requirement when it was proposed, Chrysler asked whether the destructibility requirement would be satisfied by rendering a vehicle permanently inoperable before donation for educational purposes to a bona fide

educational institution. NHTSA responded in the final rule to that proposal that it would consider Chrysler's question regarding destructibility at the same time that it addressed the question of display.

With respect to inoperability as a substitute for destruction prior to donation, Chrysler is really asking two questions: Whether inoperability of a nonconforming vehicle removes the threat it may present to the public safety, and, whether the importer may transfer title to it.

1. Whether Rendering a Vehicle Inoperable Removes a Threat to the Public

In requesting an interpretation, Chrysler did not offer a definition of inoperable. The clearest example of inoperability is, of course, removal of a vehicle's source of propulsion. Other examples of inoperability also come to mind that do not involve disabling the power source, such as removal of wheels and tires, or the vehicle body. Past experience has led NHTSA to question whether any vehicle can be made permanently inoperable. This experience concerns the disposition of surplus M151 vehicles. Because of the rollover tendency manifested by these vehicles when they are improperly driven, it has been the policy of the Department of Defense, with the concurrence of this agency, to disable the vehicles at the end of their service life, and to dispose of them for salvage. This has involved cutting the vehicles into two sections, yet instances have arisen where the vehicles are welded together and sold for on road use. Even a vehicle that has been completely disassembled into its component parts can be reassembled in time.

2. Whether an Importer May Transfer Title

The 1988 Amendments are silent as to whether an importer under § 591.5(j) may transfer title to a vehicle after its importation. Although it could be argued that such a transfer is permissible if its purpose will enable the transferee to accomplish one of the purposes of § 591.5(j), the direct authority of the Amendments does not reach the transferee because the transferee is not the importer of the vehicle. Thus, the conduct of the transferee is not subject to the jurisdiction of the agency, and it may engage in conduct with impunity that might have been forbidden the transferor, such as operation of a vehicle on the public roads without the agency's permission. Because the agency has no definition of inoperability, and cannot control the actions of a transferee, it will not accept transfer of an "inoperable" vehicle as a substitute for a vehicle's export or destruction. However, it has no objection to the export of a section 108(j) vehicle, its subsequent transfer of title, and its reimportation by the transferee for a purpose consistent with section 108(j).

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the economic impacts of this proposal and has made a determination that it is not major within the meaning of Executive Order 12291 nor significant under Department of Transportation policies and procedures. There is no substantial impact upon a major transportation safety program, and the action does not involve any substantial public interest or controversy. There would be no substantial effect on state and local governments who purchase new vehicles since the affected vehicles would not be imported for resale. Therefore, preparation of a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

The agency has also considered the impacts of this proposed rule in relation to the Regulatory Flexibility Act. Since the impact of this proposed rule would be minimal, I certify that this proposed rule would not have a significant economic impact upon a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This agency has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this proposed rule for the purposes of the National Environmental Policy Act. The proposed rule would not have a significant effect upon the environment.

Paperwork Reduction Act

The declaration requirements and submittal of written statements to NHTSA are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. However, they were previously approved by OMB for inclusion in § 591.6 in the final rule published on September 29, 1989 (OMB Approval Number 2127–0002).

List of Subjects in 49 CFR Part 591

Imports, motor vehicle safety, motor vehicles.

In consideration of the foregoing, it is proposed that title 49 Code of Federal Regulations part 591 is amended as follows:

1. The authority section would continue to read:

Authority: Public Law 100–562, 15 U.S.C. 1401, 1407, 1912, 1916, 2022, 2027; delegations of authority at 49 CFR 1.50 and 501.8.

§ 591.6 [Amended]

2. In § 591.6(g)(1), the introductory phrase of the fourth sentence, beginning "If use on the public roads" and ending with "is imported" would be revised to read: "With respect to any vehicle or equipment item imported pursuant to §§ 591.5(j)(1) (i), (ii), or (iv), if use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported."

§ 591.5 [Amended]

3. Section 591.5(g)(2) would be redesignated 591.5(g)(3), and new § 591.5(g)(2) would be added to read as follows:

(2) A declaration made pursuant to § 591.5(j) (2)(i) and § 591.5 (j)(1)(iii) shall be accompanied by a letter from the Administrator authorizing importation pursuant to those sections. In addition to the matters contained in paragraph (g)(1) of this section, the importer's written request shall explain why the vehicle or equipment item is of historical or technological interest, and describe the studies for which its importation is sought. The importer, if other than the National Museum of History and Technology, Smithsonian Institution, shall also provide a copy of the Determination Letter from the Internal Revenue Service approving the importer's status as a tax-exempt corporation or foundation, or private foundation, under 26 U.S.C. 501 (c)(3) or 509 respectively. The time between the date of the Letter and the date of the importer's written request to the Administrator shall be not less than 5 years. The importer shall also provide a statement that it shall not sell, or transfer possession or, or title to, the vehicle, or license it for use, or operate it on the public roads, until the vehicle is 25 or more years old.

§ 591.7 [Amended]

4. Section 591.7(e) would be added to read as follows:

(d) No vehicle or equipment item may be imported pursuant to § 591.5(j)(1)(iii) and (j)(2)(i) unless its importer has been recognized by the United States for not less than 5 years prior to the date of its written request under § 591.6(g)(2) as a tax-exempt corporation or foundation, or private foundation, under 26 U.S.C. 501(c)(3) or 509, respectively, or unless the importer is the National Museum of History and Technology, Smithsonian Institution.

5. A new § 591.10 would be added to read as follows:

§ 591.10 Offer of cash deposits or obligations of the United States in lieu of sureties on bonds.

(a) In lieu of sureties on any bond required under § 591.6(c) of this part, an importer may offer United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the amount of the bond.

(b) At the time the importer deposits any obligation of the United States, other than United States money, with the administrator, (s)he shall deliver a duly executed power of attorney and agreement, in the form shown in appendix C of this part, authorizing the Administrator or delegate of the Administrator, in case of any default in the performance of any of the conditions of the bond, to sell the obligation so deposited, and to apply the proceeds of sale, in whole or in part, to the satisfaction of any penalties for violations of 15 U.S.C. 1397, and 15 U.S.C. 1916 arising by reason of default.

(c) If the importer deposits money of the United States with the Administrator, the Administrator or delegate may apply the cash, in whole or in part, to the satisfaction of any penalties for violations of 15 U.S.C. 3197, and 15 U.S.C. 1916 arising by reason of default.

7. Appendix C would be added to part 591 to read as follows:

Appendix C—Power of Attorney and Agreement

_____ does constitute and appoint the Administrator of the National Highway Traffic Safety Administration, United States Department of Transportation, or delegate, as attorney for the undersigned, for and in the name of the undersigned to collect or to sell, assign, and transfer the securities described below as follows:

Title	Matures	Int. rate	Denom.	Serial #	Coupon/registered

The securities having been deposited by it as security for the performance of the agreements undertaken in a bond with the United States, executed on the date of ____, 199____, the terms and conditions of which are incorporated by reference into this power of attorney and agreement and made a part hereof. The undersigned agrees that in case of any default in the performance of any of the agreements the attorney shall have full power to collect the securities or any part thereof, or to sell, assign, and transfer the securities or any part thereof, or to sell, assign, and transfer the securities of any part thereof at public or private sale, without notice, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived and to apply the proceeds of the sale or collection in whole or in part to the satisfaction of any obligation arising by reason of default. The undersigned further agrees that the authority granted by this agreement is irrevocable. The undersigned ratifies and confirms whatever the attorney shall do by virtue of this agreement. Witnessed and signed this _____ day of _____, 19____.

_____

Before me, the undersigned, a notary public within and for the County of _____ in the State of _____, personally appeared _____ and acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this _____ day of _____, 199____.

[Notarial seal]

Notary Public— _____

Issued on: September 30, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-538 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Meeting, Public Hearing and Extension of Comment Period on Proposed Endangered Status for the Lee County Cave Isopod (Lirceus usdagalun)

RIN 1018-AB66

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; public meeting and public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973 (Act), gives notice that a public meeting, followed by a public hearing, will be held on the proposed endangered status for the Lee County cave isopod (Lirceus usdagalun) The meeting will provide an opportunity for an informal exchange of information between the Service and the public. The hearing will allow all interested parties to submit oral or written comments on the proposal. The comment period for the original proposed rule, published in the **Federal Register** of November 15, 1991 [56 FR 58026], closes on January 14, 1992. That comment period is now reopened until February 21, 1992.

DATES: The public meeting and hearing will be held on Thursday, February 6, 1992, from 7 to 9:30 p.m. in Jonesville, Lee County, Virginia. Written comments must be received from all interested parties by February 21, 1992. Any comments received after this closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public meeting and hearing will be held in the circuit courtroom of the Lee County Courthouse, Jonesville, Virginia. Written comments should be sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, Annapolis, Field Office, 1825 Virginia Street, Annapolis, Maryland 21401. Comments and documents will be available for inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs, Annapolis Field Office (see **ADDRESSES** Section) telephone: (410) 269-5448.

SUPPLEMENTARY INFORMATION:

Background

The Lee County cave isopod is a unique animal related to the shrimp (Class: Crustacea) that was originally known to exist in the world only in two cave systems in Lee County, Virginia. It has been extirpated from one of these systems, that is, from one half its known range, by pollution of the underground stream it inhabited. In its remaining cave system, the isopod is potentially threatened by the proposed construction of a prison facility and an airport in the cave vicinity. These construction projects could degrade groundwater quality sufficiently to threaten the isopod's survival, unless construction plans provide for its protection. The presence of the isopod is an indication of high quality, unpolluted groundwater, which is extremely important to humans as well, since the majority of the area's residents rely on springs or wells for their drinking water. Maintaining the high quality of groundwater in this portion of Lee County is especially challenging due to the fact that the area is underlain by limestone, a porous and water-soluble substrate, which facilitates the movement of potential pollutants from the surface into the groundwater.

The Lee County isopod was proposed for listing as an endangered species, with no critical habitat, in the **Federal Register** of November 15, 1991 (56 FR 58026). Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On December 27, 1991, the Service received a written request for a public hearing from Ronald C. Flanary, Executive Director, Lenowisco, Planning District Commission.

In response to this request, the Service has scheduled a combined public meeting and hearing for February 6, 1992, in the circuit courtroom of the Lee County Courthouse, Jonesville, Virginia. The meeting will run from 7 p.m. to 8 p.m. and will be followed by a short intermission. The public hearing will begin at 8:15 p.m. During the public meeting, the Service will informally answer questions about the proposal; the meeting will not be recorded. The public hearing will provide an opportunity for people to enter formal statements into the record. Those parties wishing to make statements for the record would bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The comment period for this proposal closes on February 21, 1992. Written comments not presented to the Service at the public hearing should be submitted to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Judy Jacobs, Annapolis Field Office, U.S. Fish and Wildlife Service, (see **ADDRESSES** Section).

Authority

The authority of this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625; 100 Stat. 3500) unless otherwise noted.

List of subjects in 50 CFR Part 17

Endangered and threatened species. Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: January 9, 1992.

Nancy M. Kaufman,

Acting Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. 92–1157 Filed 1–16–92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 57, No. 12
Friday, January 17, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement for 1992

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, (7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Definitions

The terms used in this notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR part 225).

Background

Pursuant to section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP during the 1992 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1990 through November 1991.

The new 1992 reimbursement rates in dollars are as follows:

Maximum Per Meal Reimbursement Rates

Operating Costs

Breakfast	1.12
Lunch or Supper	2.01
Supplement	.5275

Administrative Costs

a. For meals served at rural or self-preparation sites:

Breakfast	.1050
Lunch or Supper	.1900
Supplement	.0525

b. For meals served at other types of sites:

Breakfast	.0825
Lunch or Supper	.1575
Supplement	.0400

The total amount of payments to State agencies for disbursement to program sponsors will be based upon these program reimbursement rates and the number of meals for each type served. The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represent a 2.9 per cent increase during 1991 (from 135.4 in November 1990 to 139.3 in November 1991) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Dated: January 10, 1992.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 92–1230 Filed 1–16–92; 8:45 am]
BILLING CODE 3410–30–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Electronics Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronics Technical Advisory Committee will be held February 6, 1992, 9 a.m., Herbert C. Hoover Building, room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors and related equipment or technology.

Agenda

General Session

1. Opening Remarks by the Commerce Representative.
2. Introduction of Members and Visitors.
3. Structure of TAC and Working Groups.
4. Discussion of Enhanced Proliferation Control Initiative (EPCI).
5. Discussion of General Licensing Free World (GFW).
6. Discussion of Composite Theoretical Performance (CTP).
7. Other business.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after

the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials or comments at least one week before the meeting to the address listed below:

Ms. Ruth D. Fitts, Technical Advisory Committee Unit, OTPA/EA/BXA, room 1621, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: January 13, 1992.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 92–1247 Filed 1–16–92; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–122–813]

Postponement of Final Antidumping Duty Determination: Nepheline Syenite From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 17, 1992.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 377–2778.

Postponement

This notice informs the public that we have received a request from Unimin Canada Limited and Unimin Corporation (Unimin) to postpone by one week the final determination in the investigation of nepheline syenite (NS) from Canada, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)). Unimin accounts for a significant proportion of exports of the subject merchandise from Canada to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing until not later than March 10, 1992 the final determination as to whether sales of NS from Canada have occurred at less than fair value.

Public Comment

In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on the preliminary determination in the antidumping duty investigation of NS from Canada. The hearing will be held on February 21, 1992, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than February 14, 1992, and rebuttal briefs no later than February 19, 1992. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: January 10, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–1315 Filed 1–16–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–050]

Racing Plates (Aluminum Horseshoes) From Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from an interested party, the Department of Commerce has conducted an administrative review of the antidumping finding on racing plates (aluminum horseshoes) from Canada. The review covers one manufacturer/exporter of this merchandise to the United States, Equine Forgings Limited, and the period February 1, 1990 through January 31, 1991. We preliminarily determine the dumping margin to be 7.25 percent for the period. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein, Anne D'Alauro, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1991, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (56 FR 5385) of the antidumping finding on racing plates (aluminum horseshoes) from Canada (39 FR 7579; February 27, 1974). On February 20, 1991, the Victory Racing Plate Company, a U.S. producer, requested an administrative review of the antidumping finding with respect to Equine Forgings Limited. We initiated the review, covering the period February 1, 1990 through January 31, 1991, on March 15, 1991 (56 FR 11177). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by the review are shipments of racing plates (horseshoes) that are made of aluminum, may have cleats or caulks, and come in a variety of sizes. They are used on race horses, polo, jumping, hunting and other performing horses, as differentiated from pleasure and work horses. During

the review period such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item number 7616.90.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter, Equine Forgings Ltd., of Canadian racing plates (aluminum horseshoes) and the period February 1, 1990 through January 31, 1991.

United States Price

In calculating United States prices, the Department used purchase price, as defined in section 772 of the Tariff Act, since sales to the first unrelated purchaser were made prior to importation and exporter's sales price was not otherwise indicated. Purchase price was based on the packed f.o.b. price to unrelated purchasers in the United States. We made deductions, where appropriate, for inland freight, U.S. duty, brokerage/handling charges, discounts, and rebates. We made an addition to U.S. price for Canadian Federal Sales Tax which was not collected by reason of the exportation to the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, we used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison.

Home market price was based upon the packed f.o.b. price to unrelated purchasers in Canada, with appropriate deductions for inland freight, discounts, rebates, and a circumstance-of-sale adjustment for the differences in credit and the Canadian Federal Sales Tax.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margin exists:

Manufacturer/Exporter	Period	Margin (Percent)
Equine Forgings Ltd.	02/01/90-01/31/91	7.25
All Others		7.25

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on this exporter directly to the Customs Service.

Further, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of racing plates (aluminum horseshoes) from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final result of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firm or any previously reviewed firm will be the "all other" rate established in the final results of this administrative review.

This rate represents the highest rate for any firm in the administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect for all shipments of Canadian racing plates (aluminum horseshoes) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review and shall remain in effect until the publication of the final results of next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 10, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1314 Filed 1-16-92; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Pittsburgh, PA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $165,000 in Federal funds and a minimum of $29,118 in non-Federal (cost sharing) contributions from 08/1/92 to 07/31/93. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Pittsburgh, Pennsylvania SMSA geographic service area

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of

information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider part performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort MBDCs may charge client fees for management and technical assistance (M&TA) rendered.

Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129 "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmental Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF-LLL, the "Disclosure of Lobbying Activities" (if applicable) are required in accordance with section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is March 6, 1992. Applications must be postmarked on or before March 6, 1992. Proposals will be reviewed by the Chicago Regional Office. The mailing address for submission of RFA responses is:

ADDRESSES: David Vega, Regional Director, Chicago Regional Office, Minority Business Development Agency, 55 E. Monroe Street, suite 1440, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, Washington Regional Office at (202) 377-8275.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at: U.S. Department of Commerce, Minority Business Development Agency, 14th and Constitution Avenue, NW., room 6723, Washington, DC 20230.

A pre-application conference will be held on February 5, 1992 at 9 a.m.

ADDRESS: The William S. Moorehead Federal Building, room 610, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

11.800 Minority Business Development (Catalog of Federal Business Domestic Assistance)

Dated: January 14, 1992.

Gina A. Sanchez,

Regional Director, Washington Regional Office.

[FR Doc. 92-1284 Filed 1-16-92; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons with severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 18, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as

otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have severe disabilities.

It is proposed to add the following commodity and services to the Procurement List:

Commodity

Cover, Water, Canteen 8465–00–753–6490

Services

Grounds Maintenance
Fleet Combat Training Center, Dam Neck
Virginia Beach, Virginia

Janitorial/Custodial
Beale Air Force Base, California

Janitorial/Custodial
Buildings 75, 80(+ 3 adjacent trailers), 82, 83K, 93, 710, 710A and 810
Denver Federal Center
Denver, Colorado

Janitorial/Custodial
Airport Traffic Control Tower
Airway Facilities Sector Office
Flight Service Station
Automated Flight Service Station
Casper, Wyoming

Mail Room Service
U.S. Army Information Systems Command
Adelphi, Maryland

Beverly L. Milkman,
Executive Director.
[FR Doc. 92–1425 Filed 1–16–92; 8:45 am]
BILLING CODE 6820–33–M

Procument List Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.
ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by a nonprofit agency employing persons who are blind.
EFFECTIVE DATE: Fberuary 18, 1992.
ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509. .
FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.
SUPPLEMENTARY INFORMATION:

On November 8, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (56 F.R. 57323) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or more recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to the Procurement List:

Cleaning Compound, Windshield
6850–00–926–2275
(Requirements for Palmetto, GA; Fort Worth, TX; and Belle Meade, NJ Depots only)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.
[FR Doc. 92–1426 Filed 1–16–92; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129A]

Rehabilitation Long-Term Training: Prosthetics and Orthotics; Notice Extending the Closing Date for Transmittal of Applications and Increasing the Available Funds for New Awards Under the Rehabilitation Long-Term Training Program in the Field of Prosthetics and Orthotics

Deadling for transmittal of applications: The closing date for applications is extended from November 22, 1991 to February 14, 1992.

Deadline for intergovernmental review: April 14, 1992.

Available funds: $525,000.

Estimated number of awards: 3.

Note: The Department is not bound by any estimates in this notice.

SUPPLEMENTARY INFORMATION: On September 20, 1991, at 56 FR 47745, a notice was published that established the closing date for transmittal of applications and funding levels for the fiscal year 1992 competitions in several fields of rehabilitation long-term training, including the field of prosthetics and orthotics. Detailed information concerning the Rehabilitation Long-Term Training Program and the Prosthetics and Orthotics competition is included in that notice. The purpose of this notice is to extend the closing date for transmittal of applications and increase the available funds and estimated number of new awards in the field of prosthetics and orthotics. These actions are taken as a result of an increase in the funds available for the Rehabilitation Training Program in fiscal year 1992.
FOR APPLICATIONS OR FURTHER INFORMATION CONTACT: Bruce Rose, U.S. Department of Education, 400 Maryland Avenue, SW., room 332, Switzer Building, Washington, DC 20202–2649. To request an application, call (202) 732–1347; to receive further information, call (202) 732–1325. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service on 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program authority: 29 U.S.C. 774.

Dated: January 13, 1992.

Robert R. Davila,
Assistance Secretary, Office of Special Education and Rehabilitative Services.
[FR Doc. 92–1243 Filed 1–16–92; 8:45 am]
BILLING CODE 4000–01–M

[CFDA No. 84.201]

School Dropout Demonstration Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: To provide Federal financial assistance to demonstrate effective programs to reduce the number of children who do not complete their elementary and secondary education.

Eligible applicants: The following are eligible for new awards under this competition: Local educational agencies (LEAs), community-based organizations, and educational partnerships.

Deadline for transmittal of applications: March 26, 1992.

Deadline for intergovernmental review: May 25, 1992.

Applications available: February 10, 1992.

Available funds: $10,000,000 is estimated for new awards in FY 1992.

Estimated range of awards: $250,000–$750,000.

Estimated average size of awards: $500,000.

Estimated number of awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 36 months.

Applicable regulations: The Education Department General Administrative

Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Description of program: Title VI, parts A and C of Public Law 100-297, as amended by Public Law 102-103 (The School Dropout Demonstration Assistance Act of 1988) (20 U.S.C. 3241 *et seq.*) establishes a program of grants to eligible entities to pay the Federal share of the cost of authorized activities. This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by seeking to develop effective programs to prevent students from dropping out of school and to encourage those who have dropped out to reenter school. It also seeks to collect key information on the reasons for dropping out and effective prevention strategies. National Education Goal 2 specifically calls for the high school graduation rate to increase to at least 90 percent by the year 2000. While your attention is called to the text of these provisions, which will be provided in the application package, the following is a summary of some of the pertinent parts of the authorizing legislation.

Purpose

The purpose of the program is to reduce the number of children who do not complete their elementary and secondary education by providing Federal assistance to LEAs, community-based organizations, and educational partnerships to establish and demonstrate (1) effective programs to identify potential student dropouts and prevent them from dropping out; (2) effective programs to identify and encourage children who have already dropped out to reenter school and complete their elementary and secondary education; (3) effective programs for early intervention designed to identify at-risk students in elementary and early secondary schools; and (4) model systems for collecting and reporting information to local school officials on the number, ages, and grade levels of children not completing their elementary and secondary education and reasons why they have dropped out of school.

Funding Categories

The Secretary will allot FY 1992 funds in four categories as follows: (1) LEAs administering schools with a total enrollment of 100,000 or more elementary and secondary school students (25 percent of the amount appropriated, or an estimated $2,500,000 for new awards in FY 1992); (2) LEAs administering schools with a total enrollment of at least 20,000, but less than 100,000 (40 percent of the amount appropriated, or an estimated $4,000,000 for new awards in FY 1992); (3) LEAs administering schools with a total enrollment of less than 20,000 (30 percent of the amount appropriated, or an estimated $3,000,000 for new awards in FY 1992); and (4) community-based organizations (five percent of the amount appropriated, or an estimated $500,000 for new awards in FY 1992). For category (3), grants may be made to intermediate educational units and consortia of not more than five LEAs if the total enrollment of the largest of these LEAs is less than 20,000 elementary and secondary school students. In addition, not less than 20 percent of the funds in category (3) will be awarded to LEAs administering schools with a total enrollment of less than 2,000 elementary and secondary school students.

Educational Partnerships

In each of the first three categories mentioned under Funding Categories, the Secretary will allot not less than 25 percent and not more than 50 percent of the funds available to educational partnerships. An educational partnership includes: (1) An LEA; and (2) a business concern, or business organization, or, if an appropriate business concern or business organization is not available, one of the following: any community-based organization, nonprofit private organization, institution of higher education, State educational agency (SEA), State or local public agency, private industry council (established under the Job Training Partnership Act), museum, library, or educational television or broadcasting station.

Distribution of Funds

The Secretary ensures that, to the extent practicable, in approving grant applications: Grants will be equitably distributed on a geographic basis within each enrollment size category; the amount of a grant to an LEA will be proportionate to the extent and severity of the local school dropout problem; not less than 30 percent of the available funds will be used for activities related to dropout prevention; and not less than 30 percent of the funds will be used for activities related to persuading dropouts to return to school and assisting former dropouts with specialized services once they return to school.

Limitation on Costs

Not more than five percent of any grant may be used for administrative costs.

Federal Funds

The Federal share of a grant under this program will not exceed 90 percent of the total cost of a project for the first year and 75 percent of the total cost in each succeeding fiscal year. The "non-Federal" share may be paid from any source except for funds under this program, but not more than 10 percent of the "non-Federal" share may be from other Federal sources. The "non-Federal" share may be cash or in kind.

Additional Information

Additional information concerning application requirements, program requirements, and allowable activities is contained in the application package and the authorizing statute.

Priorities:

Absolute Priority

Under 34 CFR 75.105(c)(3) and section 6005(c) of the statute (20 U.S.C. 3245(c)), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Applicants must propose projects that both replicate successful programs conducted in other LEAs or expand successful programs within an LEA and reflect very high numbers or very high percentages of school dropouts in the schools of the applicant in each category described in section 6004(a) of the statute.

Competitive Priorities

Under 34 CFR 75.105(c)(2)(ii) and section 6005(d) of the statute (20 U.S.C. 3245(d)), the Secretary gives preference to applications that meet the following competitive priorities. An application that meets these competitive priorities is selected by the Secretary over applications of comparable merit that do not meet these competitive priorities. The Secretary will give competitive preference to applications that include:

(a) Provisions that emphasize early intervention services designed to identify at-risk students in elementary or early secondary schools; and

(b) Provisions for significant parental involvement.

Invitational Priority

Under 34 CFR 75.105(c)(1), the Secretary also invites applicants to propose projects that include activities designed to address the persistently high dropout rate among Hispanic Americans.

An application that meets this invitational priority does not receive competitive or absolute preference over

other applications that do not meet this invitational priority.

Federal evaluation: The Department is conducting a national evaluation of projects funded under the School Dropout Demonstration Assistance Program. A contract has been competitively awarded to conduct the evaluation. The evaluation will assess all components of the project, including those paid for with other Federal, State, or local funds. Pursuant to 34 CFR 75.591, all grantees will be required to cooperate with the national evaluation that will consist of two parts.

The first part of the evaluation will be a descriptive evaluation that involves collection of data on (1) the students being served, including socio-economic background and attendance, achievement, and retention data; (2) the services provided and cost of providing those services; (3) extent of involvement of parents, business, and community groups and the social and economic environment in which the project operates; (4) coordination with other agencies; (5) staff training and qualifications; and (6) status of program implementation. All projects will be required to collect and report data for the descriptive evaluation in collaboration with the national contractor.

The second part will be an outcome evaluation that assesses the effects of the program. For the outcome evaluation, the Department is selecting a number of sites from grants awarded in FY 1991 for in-depth study. Each remaining site, including each new grant to be awarded in FY 1992, will itself contract with a local evaluator or use district evaluation staff to conduct an outcome evaluation. These evaluation plans will be implemented only upon review and approval by the Department of Education. The local evaluators will establish control or comparison groups and collect prior and current administrative records. Each site will provide outcome data and summaries to the national evaluation contractor for inclusion in national analyses and reports. Technical assistance will be available from the national contractor to local project directors and evaluators.

In the application, each applicant must submit an assurance that it will collaborate with the national evaluation in the collection of descriptive and outcome data, as required by 34 CFR 75.591.

Evaluation by the grantee: The Secretary reminds prospective applicants that the requirements for self-evaluation in 34 CFR 75.590 apply to this program. As part of its application, an applicant must submit a self-evaluation plan that will complement the activities conducted through the national evaluation. An applicant may propose additional local evaluation activities to meet local evaluation needs as well. These evaluation plans will only be implemented upon review and approval by the Department of Education. Once a grant is awarded, the grantee will be expected to submit to the Department a copy of the report from any local evaluation implemented as part of the dropout demonstration.

Selection criteria: In evaluating applications for funds under the School Dropout Demonstration Assistance Program, the Secretary will apply the selection criteria in 34 CFR 75.210(b).

Weighting for selection criteria: Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the selection criteria in 34 CFR 75.210(b) to bring the total possible points for an application to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation. (§ 75.210(b)(3)). Ten (10) additional points will be added for a possible total of 25 points for this criterion.

Evaluation plan. (§ 75.210(b)(6)). Five (5) additional points will be added for a possible total of 10 points for this criterion.

For applications or information contact: John R. Fiegel, School Dropout Demonstration Assistance Program, U.S. Department of Education, 400 Maryland Avenue, SW., room 2049, Washington, DC 20202–6246. Telephone: (202) 401–1342. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m. Eastern time.

Program Authority: 20 U.S.C. 3241 *et seq.*

Dated: January 8, 1992.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 92–1245 Filed 1–16–92; 8:45 am]

BILLING CODE 4000–01–M

Privacy Act of 1974

AGENCY: Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Education publishes this notice proposing to revise the system of records known as the Investigative Files of the Inspector General ED/OIG (46 FR 29606–29607, June 2, 1981). This notice includes proposed new and revised routine uses for the information contained in the system. This system of records provides essential support for Department of Education (ED) Office of Inspector General (OIG) investigative activities relating to the Department's program and operations, enabling the OIG to secure and maintain the necessary information and to coordinate with other law enforcement agencies as appropriate. The Department seeks comments on the proposed routine uses for this system.

DATES: Comments on the proposed routine uses must be submitted by February 18, 1992. The Department filed a report of the revised system of records with the Chairman, Committee on Governmental Affairs, United States Senate; the Chairman, Committee on Government Operations, House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 13, 1992. This altered system of records will become effective after the 60-day period for OMB review of the system expires on March 13, 1992, unless OMB gives specific notice within the 60 days that the amendments are not approved for implementation or requests additional time for its review. The Department will publish any changes to the routine uses that are required as a result of the comments.

ADDRESSES: Address comments to the Assistant Inspector General for Policy, Planning and Management Services, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW, Mail Stop 1510, Washington, DC 20202. Interested persons are invited to submit comments and recommendations regarding the proposed routine uses in this system of records. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 4022 Switzer Building, 330 C Street, SW, Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John L. Horn, Assistant Inspector General for Investigation Services, Office of Inspector General, U.S. Department of Education, room 4115 Switzer Building, 330 C Street, SW, Washington, DC 20202. Telephone: (202) 732–4762. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339

(in Washington, DC, 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (see 5 U.S.C. 552a(e)(4)) requires the Department to publish in the Federal Register this notice of an altered system of records. 5 U.S.C. 552a(e) (4) and (11). The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) at 34 CFR part 5b.

Under the Inspector General Act of 1978, as amended, 5 U.S.C. Appendix 3, Inspectors General (IGs), including the Education Department IG, are responsible for conducting, supervising and coordinating investigations relating to programs and operations of the Federal agency for which their office is established. This system of records facilitates the OIG's performance of this statutory duty. The changes proposed in the attached notice are intended to clarify, to make the routine uses more concise and readable, to address certain recent court decisions dealing with routine uses under the Privacy Act, and to enhance the ability of the OIG to combat fraud, waste and abuse in Department programs as required by the IG Act.

The system includes records on individuals who are the subject of open or closed OIG investigations. The records contain evidence compiled by OIG investigators, investigative reports, referrals to the Department and to other investigative or prosecutorial authorities, and records of disposition of cases by this Department or other agencies and adjudicative bodies.

The information in this system of records will be used for the purposes of: (1) Conducting and documenting investigations by the OIG or other investigative agencies regarding ED programs and operations, and reporting the results of investigations to other Federal agencies, other public authorities or professional organizations which have the authority to bring criminal prosecutions or civil or administrative actions, or to impose other disciplinary sanctions; (2) documenting the outcome of OIG investigations; (3) maintaining a record of the activities which were the subject of investigations; (4) reporting investigative findings to other Departmental components for their use in operating and evaluating their programs and in imposition of civil or administrative sanctions; and (5) acting as a repository and source for information necessary to fulfill the reporting requirements of the IG Act, 5 U.S.C. Appendix 3, section 5.

Information maintained in the system of records will be accessed by name of individual or entity (e.g., school, lending institution, guaranty agency, etc.). Access will be restricted to authorized OIG staff members and other Department officials on a need-to-know basis as determined by the Inspector General. The amount of personal information maintained on each individual will be limited to the amount necessary to ensure that OIG investigative staff possess the information necessary to conduct authorized OIG activities with the greatest practicable degree of efficiency and effectiveness.

Dated: November 13, 1991.

James B. Thomas, Jr.,

Inspector General.

The Inspector General of the U.S. Department of Education publishes notice of an altered system of records to read as follows:

SYSTEM NUMBER:

18–10–0001.

SYSTEM NAME:

Investigative Files of the Inspector General ED/OIG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Inspector General, U.S. Department of Education, Room 4200, Switzer Building, 330 C Street, SW., Washington, DC 20202
Office of Inspector General, U.S. Department of Education, Room 512, PO Box 2142, Boston, MA 02106
Office of Inspector General, U.S. Department of Education, Room 3739, 26 Federal Plaza, New York, NY 10278
Office of Inspector General, U.S. Department of Education, Room 16120, 3535 Market Street, Philadelphia, PA 19104
Office of Inspector General, U.S. Department of Education, P.O. Box 1598, Atlanta, GA 30301
Office of Inspector General, U.S. Department of Education, Room 700–G, 401 South State Street, Chicago, IL 60605
Office of Inspector General, U.S. Department of Education, Room 2130, 1200 Main Tower, Dallas, TX 75202
Office of Inspector General, U.S. Department of Education, 9th Floor, 10220 North Executive Hills Blvd., Kansas City, MO 64190
Office of Inspector General, U.S. Department of Education, Suite 210, 1244 Speer Blvd., Denver, CO 80204
Office of Inspector General, U.S. Department of Education, Room 105, 50 United Nations Plaza, San Francisco, CA 94102

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories include current and former ED employees and individuals who have any relationship to financial assistance or other educational programs administered by the Department of Education, or to management concerns of the Department, including but not limited to: Grantees, subgrantees, contractors, subcontractors, program participants, recipients of Federal funds or federally insured funds, and officers, employees or agents of institutional recipients or program participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigation files pertaining to violations of criminal laws, fraud, waste, and abuse with respect to administration of Department programs and operations; and violations of employee Standards of Conduct as set out in 34 CFR part 73.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended (5 U.S.C. Appendix 3) and 5 U.S.C. 301.

PURPOSES:

Pursuant to the Inspector General Act, the system is maintained for the purposes of: (1) Conducting and documenting investigations by the OIG or other investigative agencies regarding ED programs and operations and reporting the results of investigations to other Federal agencies, other public authorities or professional organizations which have the authority to bring criminal prosecutions or civil or administrative actions, or to impose other disciplinary sanctions; (2) documenting the outcome of OIG investigations; (3) maintaining a record of the activities which were the subject of investigations; (4) reporting investigative findings to other ED components for their use in operating and evaluating their programs or operations, and in the imposition of civil or administrative sanctions; and (5) acting as a repository and source for information necessary to fulfill the reporting requirements of the Inspector General Act, 5 U.S.C. Appendix 3, section 5.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected, under the following routine uses:

(a) *Disclosure for use by other law enforcement agencies.* ED/OIG may disclose information from this system of records as a routine use to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation where that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

(b) *Disclosure to public and private entities to obtain information relevant to Department of Education functions and duties.* ED/OIG may disclose information from this system of records as a routine use to public or private sources to the extent necessary to obtain information from those sources relevant to an ED/OIG investigation, audit, inspection or other inquiry.

(c) *Disclosure for use in employment, employee benefit, security clearance, and contracting decisions.*—(1) *For Decisions by ED.* ED/OIG may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency maintaining civil, criminal or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an ED decision concerning the hiring or retention of an employee or other personnel action, the issuance or retention of a security clearance, the letter of a contract or the issuance or retention of a license, grant, or other benefit.

(2) *For decisions by other public agencies and professional organizations.* ED/OIG may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance or retention of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance or retention of a license, grant or other benefit.

(d) *Disclosure to public and private sources of connection with the Higher Education Act of 1965, as amended ("HEA").* ED/OIG may disclose information from this system of records as a routine use to any accrediting agency which is or was recognized by the Secretary of Education pursuant to the HEA; to any guaranty agency which is or was a party to an agreement with the Secretary of Education pursuant to the HEA; or to any agency which is or was charged with licensing or legally authorizing the operation of any educational institution or school which was eligible, is currently eligible, or may become eligible to participate in any program of Federal student assistance authorized by the HEA.

(e) *Litigation disclosure.*—(1) *Disclosure to the Department of Justice.* If ED determines that disclosure of certain records to the Department of Justice is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, ED/OIG may disclosure those records as a routine use to the Department of Justice. Such a disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in the litigation:

(i) ED, or any component of the Department;

(ii) Any employee of ED in his or her official capacity;

(iii) Any employee of ED in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(iv) The United States, where ED determines that the litigation is likely to affect the Department or any of its components.

(2) *Other disclosure.* If ED determines that disclosure of certain records to a court, adjudicative body before which ED is authorized to appear, individual or entity designated by ED or otherwise empowered to resolve disputes, counsel, or other representative, or potential witness is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, ED/OIG may disclose those records as a routine use to the court, adjudicative body, individual or entity, counsel or other representative, or witness. Such a disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in the litigation:

(i) ED, or any component of the Department;

(ii) Any employee of ED in his or her official capacity;

(iii) Any employee of ED in his or her individual capacity where the Department has agreed to represent the employee; or

(iv) The United States, where ED determines that the litigation is likely to affect the Department or any of its components.

(f) *Disclosure to contractors and consultants.* ED/OIG may disclose information from this system of records as a routine use to a private firm with which ED/OIG contemplates it will contract or with which it has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to an OIG investigation, audit, inspection, or other inquiry. Such contractor or private firm shall be required to maintain Privacy Act safeguards with respect to such information.

(g) *Debarment and suspension disclosure.* ED/OIG may disclose information from this system of records as a routine use to another Federal agency considering suspension or debarment action where the information is relevant to the suspension or debarment action.

(h) *Disclosure to the Department of Justice.* ED/OIG may disclose information from this system of records as a routine use to the Department of Justice, to the extent necessary for obtaining its advice on any matter relevant to Department of Education operations.

(i) *Congressional member disclosure.* ED/OIG may disclose information from this system of records as a routine use from the record of an individual in response to an inquiry from the Member of Congress made at the request of that individual; however the Member's right to the information is no greater than the right of the individual who requested it.

(j) *Computer matching disclosure.* ED/OIG may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency, or other public authority, for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by any agency, to support civil and criminal law enforcement activities of any agency and its components, and to collect debts and overpayments owed to any agency and its components.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on index cards, investigative reports, micro-

computer disks, computer mainframe files and computer-printed listings.

RETRIEVABILITY:

The records are retrieved by manual or computer search of alphabetical indices or cross-indices. Indices list names of individuals, companies and organizations.

SAFEGUARDS:

Access is restricted to authorized staff members of the Office of Inspector General and other officials of the Education Department on a need-to-know basis as determined by the Inspector General. Written documents and computer disks are maintained in secure rooms, in security-type safes or in bar-lock file cabinets with manipulation-proof combination locks. Computer mainframe files are on-line in guarded, combination-locked computer rooms.

RETENTION AND DISPOSAL:

Investigative files are retained for 10 years after completion of the investigation and/or actions based thereon. Paper and computer indices are retained permanently. The records control schedule and disposal standards may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigation Services, U.S. Department of Education, Room 4200, Switzer Building, 330 C Street, SW, Washington, DC 20202-1510.

NOTIFICATION PROCEDURE:

See "system exempted," below. As provided in 34 CFR 5b.11 (b)(2) and (c)(1), the notification procedure is not applicable to criminal investigative files except at the discretion of the Inspector General. To the extent that this procedure may apply to criminal investigative files, it is governed by 34 CFR 5b.5. The notification procedure is applicable to non-criminal investigative files under the conditions defined by 34 CFR 5b.11(c). Under those conditions it is governed by 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

See "system exempted," below. As provided in 34 CFR 5b.11 (b)(2) and (c)(1), the record access procedure is not applicable to criminal investigative files except at the discretion of the Inspector General. To the extent that this procedure may apply to criminal investigative files, it is governed by 34 CFR 5b.5. The record access procedure is applicable to non-criminal investigative files under the conditions defined by 34 CFR 5b.11(c). Under those conditions it is governed by 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

Not applicable. See "system exempted," below.

RECORD SOURCE CATEGORIES:

Departmental and other Federal, State and local government records; interviews of witnesses; documents and other material furnished by nongovernmental sources. Sources may include confidential sources.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to the general authority in the Privacy Act in 5 U.S.C. section 552a(j)(2), the Secretary has by regulation exempted the Investigative Files of the inspector General ED/OIG from the following subsections of the Privacy Act:

5 U.S.C. 552a(c)(3)—access to accounting of disclosure;

5 U.S.C. 552a(d)(1)-(4) and (f)—procedures for notification of, access to, and correction or amendment of records;

5 U.S.C. 552(e)(3)—notice to an individual who is required to provide information to the Department;

5 U.S.C. 552a(e)(4)(G), (H)—inclusion of information on Department procedures on notification of, access to, correction or amendment of records, in the system in the system of records notice.

These exemptions are stated in 34 CFR 5b.11.

[FR Doc. 92-1244 Filed 1-16-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award, Intent To Award Grant to LWT Systems, Inc.

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to LWT Systems, Incorporated under Grant No. DE-FG01-92CE15505. The proposed grant will provide funding in the estimated amount of $88,200 for LWT Systems, Inc., to design, fabricate, and assemble a small 1 kW single-blade wind turbine, which will subsequently be tested in the 10-foot wind tunnel at the Graduate Aeronautical Laboratories of the California Institute of Technology in Pasadena, CA. It is estimated that the 20,000 units, which may be sold in the present market, can save the nation 60,000 barrels of oil annually.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by the Energy Concepts Company is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. Mr. Kenneth Liljegren is the founder and president of LWT Systems, Inc. He is a retired ordinance engineer with some patents to his credit. He also is the patent holder of record for this wind turbine technology.

The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Programs (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 24 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, attn: Bernard G. Canlas, PR-322.2 1000 Independence Avenue, SW., Washington, DC 20585.

Scott Sheffield,

Acting Director Operations Division "B", Office of Placement and Administration.

[FR Doc. 92-1309 Filed 1-16-92; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award, Intent To Award a Grant to Southern States Energy Board

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i)(A), it is making a noncompetitive financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1). This award will be made under Grant Number DE-FG01-92FE62466 to the Southern States Energy Board. The financial assistance will support a regional effort to promote the

increased use of U.S. coal in domestic and international markets.

SCOPE: The grant will provide $137,217 in funding to the Southern States Energy Board (SSEB) to support a regional effort to promote the increased use of U.S. Coal and Clean Coal Technology transfer. The underlying goal of the project is the identification and removal of institutional barriers to the commercial deployment of clean coal technologies by the nation's electric utilities. The grant will allow DOE and SSEB to fashion a long-term program of public outreach and participation with sufficient flexibility to develop new tasks and activities as dictated by the needs of the clean coal program and the interests of SSEB member States. This grant will provide the opportunity for the SSEB to continue studies initiated under Grant DE–FG01–85FE60765 as well as begin new studies.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to the Southern States Energy Board. DOE support of this action will benefit the public by promoting the increased use of U.S. goal and Clean Coal Technology Transfer. DOE knows of no other entity which is conducting or planning such a program.

The term of the grant shall be five years from the date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy Office of Placement and Administration Attn: Gracie Narcho, 1000 Independence Avenue, SW. Washington, DC 20585

Arnold A. Gjerstad,

Acting Director Operations Division "B", Office of Placement and Administration.

[FR Doc. 92–1308 Filed 1–16–92; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public Law No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, extension, or reinstatement; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses per respondent annually; (11) an estimate of the average hours per response; (12) the estimated total annual respondent burden; and (13) a brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before February 3, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION:

The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–566
3. 1902–0114
4. Annual Report of Utility's Twenty Largest Purchasers
5. Extension
6. Annually
7. Mandatory
8. Businesses or other for-profit; Small businesses or organizations
9. 175 respondents
10. 1 response
11. 6 hours per response
12. 1,050 hours
13. The information collected is required by the Federal Power Act section 305(c)(2)(D) as implemented by 18 CFR 46.3. It is used to monitor the holding of interlocking directorate positions between public utilities and their twenty largest purchasers. The information identifies large purchasers of electric energy and possible conflicts of interest.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–525
3. 1902–0092
4. Financial Audits
5. Extension
6. Other (3 to 5 year cycle depending on size and complexity of audit)
7. Mandatory
8. Businesses or other for-profit
9. 83 respondents
10. 1 response
11. 193.25 hours per response
12. 16,040 hours
13. The information collected on FERC financial compliance audits is needed to determine the companies' compliance with the Commission's accounting, ratemaking and related regulations, and the Commission's reporting requirements. The Commission issues letter orders to the companies based on the results of the audits.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, January 13, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–1306 Filed 1–16–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

East Tennessee Natural Gas Co.; Corrections to Prior Filings

January 10, 1992

Take notice that on December 18, 1991, East Tennessee Natural Gas Company (East Tennessee), filed a letter with the Federal Energy Regulatory Commission stating that in its motion to place settlement rates into effect, filed on November 21, 1991, in Docket No.

RP90–111–014, East Tennessee inadvertently failed to properly reflect the cumulative gas cost adjustment to Sheet Nos. 4 and 5, of its FERC Gas Tariff, First Revised Volume No. 1.

East Tennessee states that it is submitting for filing Substitute Second Revised Twelfth Revised Sheet Nos. 4 and 5, to be effective December 1, 1991, which appropriately reflect the cumulative gas cost adjustment.

East Tennessee also submits Substitute Thirteenth Revised Sheet Nos. 4 and 5 to reflect the Docket No. RP90–111 motion rates in its Docket No. TA92–1–2 filing to be effective January 1, 1992. East Tennessee also submits Third Revised Sheet Nos. 6 and 7 to reflect a change to the GRI charge which was inadvertently omitted from its filing in Docket No. TA92–1–2.

East Tennessee states that copies of the filing have been served upon each person on the official service list in the above referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–1235 Filed 1–16–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–189–002]

Midwestern Gas Transmission Co.; Motion To Place Tariff Sheets Into Effect

January 10, 1992.

Take notice that on December 31, 1991, Midwestern Gas Transmission Company (Midwestern) tendered for filing a motion to move rates into effect. Midwestern moves that the rates shown on the tariff sheet attached to the filing be allowed to become effective January 1, 1992.

Midwestern states that the rates in the above referenced proceeding were accepted and suspended, subject to refund and condition, by Commission order dated July 31, 1991. Midwestern also states that the Commission accepted Midwestern's latest effective PGA change on December 18, 1991.

Midwestern further states that it has evaluated the impact on its rates of utilizing both (1) the actual plant balances at the end of the test period, and (2) actual, end of test period demand determinants.

Midwestern states that copies of the filing have been served upon each person designated on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–1237 Filed 1–16–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP92–25–003 and MT92–1–002]

Iroquois Gas Transmission System, L.P.; Compliance Filing

January 10, 1992.

Take notice that Iroquois Gas Transmission System, L.P. (Iroquois) on January 6, 1992, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets effective as indicated on the tariff sheets.

Iroquois states that it is filing revised tariff sheets in compliance with the Commission's order issued December 6, 1991 in the above referenced proceeding.

Iroquois states that copies of the filing were served upon Iroquois' jurisdictional customers, interested state regulatory commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–1236 Filed 1–16–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TF92–1–59–001 and TA91–1–59–003]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 10, 1992.

Take notice that Northern Natural Gas Company (Northern), on January 3, 1992, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2 the following tariff sheets with a proposed effective date of January 1, 1992:

2nd Sub Alt 109 Revised Sheet No. 1C
Sub One Hundred Tenth Revised Sheet No. 1C

Northern states that on December 31, 1991, Northern filed revised tariff sheets in an flex PGA filing in accordance with Section 154.308 of the Commission's Regulations. Northern states that certain tariff sheets reflected an effective date of January 1, 1991 rather than January 1, 1992. Northern states that it is filing the above-referenced revised tariff sheets to reflect the proper effective date of January 1, 1992.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–1238 Filed 1–16–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92-81-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 10, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 6, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume 1, six copies of the following tariff sheets:

Sub Sixth Revised Sheet No. 494
Sub Fifth Revised Sheet No. 507

Texas Eastern states that on January 3, 1991, Texas Eastern submitted for filing eight tariff sheets, including Sixth Revised Sheet No. 494 and Fifth Revised Sheet No. 507, in compliance with the Commission's Final Rule, issued on September 20, 1991, in Docket Nos. RM90-7-000, *et al.* (Order No. 537). In the January 3 filing, Texas Eastern inadvertently failed to modify a relevant portion of Sixth Revised Sheet No. 494 and Fifth Revised Sheet No. 507; Texas Eastern herewith tenders substitute tariff sheets in lieu thereof.

Texas Eastern states that subject to the Commission's acceptance of Sub Sixth Revised Sheet No. 494 and Sub Fifth Revised Sheet No. 507, Texas Eastern withdraws Sixth Revised Sheet No. 494 and Fifth Revised Sheet No. 507.

The proposed effective date of the above tariff sheets is February 3, 1992.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions, and all Rate Schedule FT-1 and IT-1 shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1239 Filed 1-16-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-67-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 10, 1992.

Take notice that Williams Natural Gas Company (WNG) on January 6, 1992 tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet No. 246

The proposed effective date of this tariff sheet is February 6, 1992.

WNG states that the purpose of this filing is to add new tariff language to clarify that WNG may require certifications from shippers to verify that certain transportation qualifies under NGPA Section 311, in compliance with 18 CFR Section 284.102(e). This clarification is provided on First Revised Sheet No. 246.

WNG states that copies of its filing were served on all jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1240 Filed 1-16-92; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of December 2 through December 6, 1991

During the week of December 2 through December 6, 1991, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Aratex Services, Inc., 12/4/91, RA272-45

The DOE issued a Supplemental Order correcting a misstatement contained in a Decision and Order dated November 21, 1991, granting a refund to Aratex Services, Inc. (Aratex), Case No. RF272-25306. In that Decision, the DOE granted Aratex a refund of $263,404 based on its purchases of 329,255,560 gallons of petroleum products. While the amount of the refund was stated correctly in the body of the Decision, Paragraph (3) of the Order mistakenly directed that a refund check in the amount of $17,506 be made payable to Aratex. Therefore, to correct this error, the DOE rescinded Paragraph (3) of the November 21, 1991 Decision, and replaced it with a new paragraph containing the correct refund amount.

Carey Cadillac Renting Co. Inc., 12/6/91, RF272-74489

The DOE issued a Decision and Order concerning the Application for Refund filed by Carey Cadillac Renting Co., Inc. (Carey Cadillac) on July 26, 1988 for a refund in the subpart V crude oil refund proceeding. Carey Cadillac purchased refined petroleum products during the period of crude oil price controls for use in its "chauffeur limousine rental." However, the firm did not provide sufficient information on the nature of its business operations, specifically whether it acted more in the nature of a for-hire carrier or in the nature of a rental car company, to allow the DOE to determine whether the firm would be subject to the injury showing requirement applicable to retailers in the crude oil refund proceeding. The DOE was unable to contact the applicant to solicit this additional information and thus the Application for Refund was denied.

Eli Lilly and Company, 12/3/91, RF272-23220, RD272-23220

The DOE issued a Decision and Order granting an Application for Refund filed by Eli Lilly & Company, a manufacturer of medical and agricultural products, in the subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States asserted that Lilly's net earnings rose during the period of price controls, and submitted an affidavit of an economist stating that in general, the pharmaceutical industry was able to pass through increased petroleum costs. The DOE determined that the evidence

offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. With respect to four products which has not previously been considered in the crude oil refund proceeding, Lilly was found to be ineligible for a refund for its purchases of tetrahydrofuran, triethylamine, and dimethylformamid, but was granted a refund for its purchases of panasol. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $101,956.

Gulf Oil Corporation/P.H. Abernathy Farm, 12/6/91, RF300–13790

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. Based on the information that the applicant provided, the DOE determined that its gallonage claim for 9,617,023 gallons was not reasonable. Accordingly, the Application for Refund was denied.

Shell Oil Company/Cooperativa Del Turabo Shell, 12/5/91, RF315–9043

The DOE issued a Decision and Order concerning the Application for Refund filed in the Shell Oil Company special refund proceeding by Cooperativa del Turabo Shell. A cooperative in Puerto Rico, Cooperativa del Turabo Shell has certified that it will pass through the refund to its members. The total refund granted in this Decision is $4,019 (comprised of $2,871 in principal and $1,148 in interest).

Texaco Inc./Paul's Texaco, 12/6/91, RF321–18075

The DOE rescinded a refund granted to Paul's Texaco on November 18, 1991 in the Texaco Inc. refund proceeding. The November 18 Decision concerned the second Application for Refund filed by Paul's Texaco, a retailer of Texaco products. The first application filed by Mr. Paul Hobbs, the owner of Paul's Texaco, had been dismissed when he filed the second application. Subsequently, on November 26, Mr. Hobbs filed a third refund application. In that application, he stated incorrectly that his first application had been dismissed because he had failed to provide evidence of his Texaco purchase volumes. In addition, he falsely certified that he had filed no other applications in the Texaco refund proceeding other than the first application. Moreover, while the refund granted in the November 18 Decision was based upon his claim that he operated the station from October 1973 to October 1984, he stated in the third application that he did not know the dates that he operated the station. In view of the false certification and the doubts raised by the third application concerning his dates of ownership, the DOE found that the refund granted in the November 18 Decision should be rescinded. Furthermore, the DOE stated that the third application will be denied unless Mr. Hobbs explains his multiple filings and submits documentary evidence concerning the dates of ownership.

Wardair Canada, Inc., 12/3/91, RF272–19369, RD272–19369

Wardair Canada, Inc. (Wardair), a foreign airline, filed an Application for Refund in the subpart V crude oil refund proceeding based upon its United States purchases of non-bonded aviation fuel which was consumed by its planes. A group of thirty States and two Territories of the United States (collectively "the States") filed an objection opposing the receipt of a refund by Wardair, on the basis that: (i) Sales of non-bonded aviation fuel to foreign airlines were price-exempt "export sales" under 10 CFR 212.53 and, as a matter of law, foreign firms cannot claim refunds since they never were intended to benefit under DOE's price control program, and (ii) as a factual matter, the foreign airlines were able to pass through a substantial part of increased fuel costs by virtue of regulations administered by the Civil Aeronautics Board (CAB) and therefore were not injured by crude oil overcharges. In connection with their objection, the States also filed a Motion of Discovery. In considering the States' objection, the DOE determined that: (i) sales of non-bonded aviation fuel were specifically excluded from the "export sales" exemption under 10 CFR 212.53(c), and Wardair was not disqualified from receiving a refund simply because of its foreign status, and (ii) the CAB regulations cited by the States did not constitute a means to automatically pass through increased fuel costs; nor had the States established that foreign airlines systematically passed through increased fuel costs as a matter of industry practice. On the basis of these determinations, the DOE further determined that the States had failed to justify discovery with respect to Wardair's refund claim. Accordingly, Wardair's Application for Refund was approved and the State's Motion for Discovery was denied. The amount of the refund granted in this decision was $33,159.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Armored Transport, Inc. *et al* John P. Weyer, Inc.	RF272–65630 RD272–68275	12/04/91
Atlantic Richfield Company/C & C Oil Co., Inc.	RR304–14	12/05/91
Atlantic Richfield Company/Maxwell Oil Company	RF304–12821	12/02/91
Atlantic Richfield Company/Skepis Arco *et al*	RF304–3713	12/06/91
Atlantic Richfield Company/Smokes 24-Hour Auto Repair *et al*	RF304–10061	12/06/91
Atlantic Richfield Company/Wash-N-Go *et al*	RF304–12571	12/05/91
Bluffton Ex. Village School District *et al*	RF272–83401	12/06/91
Circle Line Sightseeing Yachts Inc.	RF272–89906	12/05/91
Citronelle-Mobile Gathering/American Biltrite Inc. Rhode Island College	RF336–37 RF336–39	12/05/91
Citronelle-Mobile Gathering/Federal Paper Board Company, Inc.	RF336–34	12/04/91
City of Andalusia *et al*	RF272–83203	12/06/91
City of Edgewood *et al*	RF272–83601	12/06/91
Columbia County Board of Education	RA272–43	12/05/91
Enron Corporation/McManus Oil & L.P. Gas Company Inc.	RF340–10	12/04/91
Enron Corporation/Texaco Inc. Texaco Refining & Marketing Inc.	RF340–11 RF340–25	12/06/91
Enron Corporation/Union Carbide Chemicals and Plastics Company Inc.	RF340–22	12/05/91

Farmington School R VII *et al*	RF272–63409	12/02/91
Fomentos Armadora S.A. *et al*	RC272–141	12/06/91
Gulf Oil Corporation/Cagle Gulf *et al*	RF300–14091	12/06/91
Gulf Oil Corporation/Dendy Lumber Company *et al*	RF300–12577	12/03/91
Gulf Oil Corporation/Griffin's Gulf *et al*	RF300–13506	12/06/91
Gulf Oil Corporation/Thomlinson & McWhite Inc.	RR300–64	12/03/91
Murphy Oil Corp./Otis' Spur	RF300–1422	12/06/91
Old Fort Finishing Plant	RF272–74447	12/05/91
Old Fort Finishing Plant	RD272–74447	
Puregro Company	RF272–65886	12/04/91
Tesoro Petroleum Corporation	RF272–66242	12/04/91
Texaco Inc./Dave's Texaco of Marion *et al*	RF321–2224	12/06/91
Texaco Inc./John B. Walker, Inc.	RF321–11637	12/02/91
Texaco Inc./Operators Heat, Inc. *et al*	RF321–12601	12/02/91
TSC Express Co.	RF272–69178	12/03/91
United Refining Company/Petroleum Electronics, Inc.	RF333–11	12/04/91
Jobbers Buying Group, Inc.	RF333–12	
Crago & Cook Enterprises, Inc.	RF333–13	
Everdyke Oil Co.	RF333–15	
Waverly Mineral Products	RF272–62389	12/02/91
Well Tech, Inc.	RF272–63692	12/03/91
Well Tech, Inc.	RF272–63692	
Willy's Express	RF272–74482	12/06/91

Dismissals

The following submissions were dismissed:

Name	Case No.
B. Lloyd's Pecan Products, Inc	RF321–17951
Belltown Service Station	RF321–6329
Black Gold	RF304–6364
Brazos, Inc	RF321–17814
Broadway Gulf	RF300–6861
Campbell's Junction Exxon	RF307–10191
Clardy Oil Company	RF319–4
Clarks Camelot Texaco	RF321–17952
Eddie Texaco Service	RF321–6385
Emporia Gas & Oil Co., Inc	RF300–12590
Farmers Union Oil of Great Falls	RF272–90285
Frank Pratko, Jr	RF307–10196
Garden City Texaco	RF321–17880
Genes Exxon	RF307–10199
Genstar Stone Products	RD272–74240
Gohmann Asphalt & Construction	RF272–73790
Green Lake County, WI	RF272–65236
Harwell Texaco	RF321–1954
Heyward's Texaco	RF321–3190
Hillside Colony	RF321–17954
Jadon Texaco	RF321–2642
James White Co	RF304–6365
Jones Texaco	RF321–17862
Justice, IL	RF272–66430
L K, Inc	RF272–77315
Leslie F. Russell	RF300–12765
Lincrest Exxon	RF307–10194
Mallard & Mallard, Inc	RF321–17822
Marauder Marine Transport, Inc	RF272–64153
Medical Center at Princeton	RF272–65361
Melton's Texaco	RF321–17955
Montana Highway Patrol	RF321–17812
National Motor Fleets Inc	RF321–17820
Needham Texaco	RF321–2135
Perfection Finishing Co	RF321–17819
Placer County, CA	RF272–66859
Pozzi Bros. Transportation, Inc	RF321–17817
Raymond Service Station	RF300–12684
Redding Dump Truck Service	RF321–17818
Ritze's Texaco	RF321–17853
Rock Products Company Inc	RF321–17821
Scenic Exxon	RF307–10197
Shelby Gravel, Inc	RF321–17813
South Putnam Community Schools	RF272–79352
Southern California Edison Company.	RF304–3879
The Arundel Corporation	RD272–72080
The City of Clinton	RF321–66303
The Sico Company	RF319–7
Tolson Motors	RF321–6073
Tom's Texaco	RF321–2008
Villa Park Fuel Oil	RF319–2
Village/Town of Mount Kisco	RF272–61041
Wakefield Taxi	RF321–17818
Ward Parkway Texaco Service	RF321–11299
Western Mechanical, Inc	RF321–17815
Winnebago County, IA	RF272–65609

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 13, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–1305 Filed 1–16–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. 4093–7]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 18, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Superfund Site Evaluation and Hazard Ranking System, EPA ICR #1488.02. This ICR requests renewal of a currently approved collection (OMB #2050–0095).

Abstract: Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 1980 and 1986) amends the National Oil and Hazardous Substances Contingency Plan (NCP) to include criteria prioritizing releases throughout the U.S. before undertaking remedial action at uncontrolled hazardous waste sites. The Hazard Ranking System (HRS) is a model that is used to evaluate the relative risk to human health or the environment posed by actual or potential releases of hazardous substances, pollutants, and contaminants. The HRS criteria take into account the population at risk, the hazard potential of the substances, as well as the potential for contamination of drinking water supplies, direct human contact, destruction of sensitive

ecosystems, damage to natural resources affecting the human food chain, contamination of surface water used for recreation or potable water consumption, and contamination of ambient air.

Under this ICR States will apply the HRS by identifying and classifying those releases that warrant further investigation in anticipation of remedial response. The HRS score is crucial since it is the primary mechanism used to determine whether a site is to be included on the National Priorities List (NPL). Only sites on the NPL are eligible for Superfund-financed remedial actions.

HRS scores are derived from the sources described in this information collection, including field reconnaissance, taking samples at the site, and reviewing available reports and documents. States record the collected information on HRS documentation worksheets and include this in the supporting reference package. States then send the package to the EPA region for a completeness and accuracy review, and the Region then sends it to EPA Headquarters for a final quality assurance review. If the site scores above the NPL designated cutoff value, and if it meets the other criteria for listing, it is then proposed for the NPL.

Burden Statement: The estimated annual reporting burden for this collection of information is estimated to average 1,020 hours per site, including time for workplan preparation, data collection, sampling, fieldwork, data validation, score development and report preparation.

Estimated No. of Respondents: 25 States.

Estimated Total Annual Burden on Respondents: 25,500 hours.

Frequency of Collection: One time; section 116(b) requires an HRS evaluation within four years of the site's entry into CERCLIS.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460 and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: January 9, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–1301 Filed 1–16–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4094–1]

Clean Air Act; Air Docket Closing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of temporary closing of Air Docket.

SUMMARY: To accommodate the installation of new file storage cabinets, the EPA Air Docket will be closed from January 21, 1992, through January 29, 1992.

The following actions will be undergoing public comment while the docket is closed:

FR/Date	Docket No.	Title	Close Date
56 FR 63002 (12/03/91)	A–91–69 A–91–68 A–91–43 A–90–51 A–90–38	40 CFR parts 72, 73, 75 and 77 Acid Rain Programs: Permits, Allowance System, Continuous Emissions Monitoring, Excess Emissions, and Core Rules.	02–03–92
56 FR 63774 (12/05/91)	A–91–76	40 CFR part 55 Outer Continental Shelf Air	02–03–92
56 FR 64382 (12/09/92)	A–88–11	40 CFR part 63 NESHAPS for Source Categories: Perchloroethylene Emissions from Dry Cleaning Facilities	02–07–92
56 FR 64785 (12/12/91)	A–91–38	Control Techniques Guideline Document: Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry.	02–10–92
56 FR 65606 (12/17/91)	A–89–18	40 CFR parts 80 and 86 Evaporative Emission for Gasoline- and Methanol-Fueled Vehicles	01–22–92
56 FR 65461 (12/17/91)	A–91–32	40 CFR part 73 Delegation Proposals to Administer the Auctions and Direct Sales	02–21–92

Written comments may be delivered to the Air Docket, room M–1500, Waterside Mall, January 22–29, 1992, but Docket records will not be available for viewing during this time.

The Air Docket will reopen January 30, 1992, and will be open to the public 8:30 a.m.–noon and 1:30–3:30 p.m., Monday to Friday.

For further information contact Jacqueline Brown, Air Docket Manager, LE–131, 401 M Street, SW., Washington, DC 20460 (202–260–7548).

Raymond B. Ludwiszewski,

Acting General Counsel.

[FR Doc. 92–1298 Filed 1–16–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4094–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 30, 1991 through January 03, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1991 (56 FR 14096).

DRAFT EISs

ERP No. D–AFS–L65155–00 Rating EC2, Northern Spotted Owl Management Plan in the National Forests, Implementation, CA, OR and WA.

SUMMARY:

EPA expressed concern regarding the presentation of alternatives, water quality and fish habitat in the Forest Services management plan for the Northern Spotted Owl. Additional information is requested on potential impacts to fisheries and the spotted owl, including the cumulative effects of timber management on other federal, state, and private lands.

ERP No. D–AFS–L65158–OR Rating E02, Big Bend Timber Sale and Road

Construction Implementation, Umpqua National Forest, North Umpqua Ranger District, Douglas and Lane Counties, OR.

SUMMARY:

EPA expressed environmental objections based on the potential for the Big Ben Timber Sale to have adverse air quality impacts on two Class I airsheds and proposed removal of habitat of a federally listed threatened species (Northern Spotted Owl).

ERP No. D–GSA–E81030–GA Rating EC2, Internal Revenue Service, Service Center Annex Consolidation, Construction, Chamblee, GA.

SUMMARY:

EPA believes that a mobile source dispersion model is needed in order to determine carbon monoxide concentrations in the vicinity of the proposed facility.

Dated: January 13, 1992.

Anne Norton Miller,

FALD Director, Office of Federal Activities.

[FR Doc. 92–1321 Filed 1–16–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4094–3]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5073 OR (202) 260–5075.

Availability of Environmental Impact Statements Filed January 06, 1992 Through January 10, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920002, FINAL EIS, FAA, TX, Dallas/Fort Worth International Airport, Construction and Operation, Runway 16/34 East and Runway 16/34 West, Airport Layout Plan, Approval and Funding, Cities of Dallas and Fort Worth, TX, Due: February 17, 1992, Contact: Ms. Mo Keane (817) 624–5610.

EIS No. 920003, FINAL EIS, COE, FL, Central and Southern Florida Flood Control Project Restoration of the Upper Kissimmee River Basin, through the Headwater Revitalization Project and the Lower Kissimmee River Basin, through the Level II Backfilling Plan, Implementation, Osceola, Glades, Highlands, Polk, Okeechobee and Orange Counties, FL, Due: February 17, 1992, Contact: Russell V. Reed (904) 791–3506.

EIS No. 920004, FINAL EIS, CDB, NY, Northeast Middle School Project Construction and Operation, Site Approval and CDB Grant, City of Rochester, Monroe County, NY, Due: February 17, 1992, Contact: Larry Stid (716) 428–6924.

EIS No. 920005, REVISED DRAFT EIS, AFS, VA, WV, George Washington National Forest, Oil and Gas Land/Resource Management Plan Revision, Alleghany Front Lease Area, Several Counties, WV and VA, Due: April 17, 1992, Contact: George W. Kelley (703) 433–2491.

EIS No. 920006, DRAFT EIS, FHW, NV, Southern Segment of the Las Vegas Beltway Construction, US 93/Boulder Highway in the City of Henderson to the Intersection of Durango Drive and Tropicana Avenue on the West. Funding, Section 10 and 404 Permits, Clark County, NV, Due: March 06, 1992, Contact: A.J. Horner (702) 687–5320.

EIS No. 920007, DRAFT EIS, NOA, Atlantic Ocean Sharks Fishery Management Plan (FMP), Implementation, Possible NPDES, COE and Coast Guard Permits, Exclusive Economic Zone (EEZ) Gulf of Mexico, Atlantic Ocean and the Caribbean Sea, Due: March 02, 1992, Contact: Andrew J. Kemmerer (813) 893–3141.

EIS No. 920008, DRAFT EIS, AFS, ID, Lockwood and North Round Valley Timber Sales and Road Construction, Implementation, Payette National Forest, New Meadows Ranger, Adams County, ID, Due: March 02, 1992, Contact: Pete Walker (208) 634–0629.

EIS No. 920009, DRAFT EIS, UAF, CA, Norton Air Force Base (AFB) Disposal and Reuse, Implementation, San Bernardino, CA, Due: March 09, 1992, Contact: Ltc. Thomas J. Bartol (714) 382–4891.

EIS No. 920010, FINAL EIS, UAF, ID, Air Force in Idaho Proposal, Mountain Home AFB Composite Wing Establishment, Modification of Airspace to Accommodate Air Force and Air National Guard Flying Activities; and Air-to-Ground Training Range Establishment, Elmore County, ID, Due: February 17, 1992, Contact: Ltc. Thomas J. Bartol (714) 382–4891.

EIS No. 920011, DRAFT EIS, BLM, WY, West Rocky Butt (WRB) Tract Coal Mine combined with the Rocky Butt Tract (WYW–78633), Logical Mining Unit (LMU), Mine Leasing and Land Acquisition, Power River Basin, Campbell County, WY, Due: March 16, 1992, Contact: Roger Wickstrom (307) 329–6106.

Dated: January 14, 1992.

Anne Norton Miller,

FALD Director, Office of Federal Activities.

[FR Doc. 92–1322 Filed 1–16–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL 4093–8]

Science Advisory Board; Environmental Engineering Committee Bioremediation Research Review Subcommittee Open Meeting; February 10–11, 1992

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB's) Bioremediation Research Review Subcommittee (BRRS) of the Environmental Engineering Committee (EEC), will meet on Monday, February 10, and Tuesday, February 11, 1992. The meeting will be at the U.S. Environmental Protection Agency Headquarters, Administrator's Conference Room #1103 West Tower, 401 M Street, SW., Washington, DC 20460. The meeting will begin at 9 a.m. on Monday, February 10th and 8:30 a.m. on Tuesday, February 11th and will adjourn no later than 4:00 p.m. on February 11th.

At this meeting, the BRRS will receive briefings from Agency staff, and comment on the December 1991 draft report on the Agency's Bioremediation Research Program Strategy, which was prepared by the Agency's Biosystems Technology Development Steering Committee. The proposed charge to the SAB's BRRS from the Agency's Office of Research and Development (ORD) is to review the research strategy document and provide comments to a number of specific questions related to guiding research to develop the scientific and engineering information necessary to allow the appropriate use of bioremediation techniques. Some of the specific questions to be addressed deal with whether a site-directed approach is appropriate for focusing the Agency's bioremediation research program, and whether it will adequately address application problems that limit its use in the field; whether the waste types and site matrices targeted in the research program strategy as priority site categories are the most appropriate for focusing research efforts; whether the major scientific and engineering gaps and consensus knowledge rankings are reasonable and adequately cover the problems associated with bioremediation; and whether the research outputs will provide adequate guidance to the Agency and the bioremediation industry users for effective and appropriate use of bioremediation in the field.

The meeting is open to the public. Any member of the public wishing further information, such as a proposed agenda

on the meeting or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana L. Pozun, Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/260-6552 by February 3, 1992. Copies of the December 1991 draft report on the Agency's Bioremediation Research Program Strategy may be obtained by contacting Mr. Thomas Baugh of the U.S. Environmental Protection Agency, Office of Research and Development, Office of Environmental Engineering and Technology Demonstration (RD-681), 401 M Street, SW., Washington, DC 20460 or calling at (202) 260-5747 (FTS 260-5747). Seating will be on a first come basis.

Dated: January 9, 1992.

Donald G. Barnes,

Staff Director, Science Advisory Board (A101F).

[FR Doc. 92-1300 Filed 1-16-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

[Docket No. 7100-0124 (FR Y-6) and 7100-0128 (FR Y11I)]

Bank Holding Company Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim approval of agency forms.

SUMMARY: Under the Bank Holding Company Act of 1956, as amended, the Board of Governors of the Federal Reserve System is responsible for the supervision and regulation of all bank holding companies. The Board has granted approval, on an interim basis, to the revisions of the Annual Report of Bank Holding Companies (FR Y-6; OMB No. 7100-0124) and the Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies (FR Y-11I; OMB No. 7100-0218).

BACKGROUND: Notice is hereby given of approval, on an interim basis, by the Board of Governors of the Federal Reserve System of changes to the bank holding company reporting requirements identified below, under delegated authority from the Office of Management and Budget (OMB), as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public.) The changes to the reporting requirements are to be effective with the December 31, 1991, reporting date. The Board will consider all public comments and determine, on the basis of those comments, whether the changes approved on an interim basis should become final.

DATES: Comments must be submitted on or before February 18, 1992.

ADDRESSES: Comments, which should refer to the OMB Docket number, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

The Annual Report of Bank Holding Companies (FR Y-6) is filed annually as of the holding company's fiscal year-end by top-tier bank holding companies. It contains financial statements for the consolidated company, parent company only, and the holding company's nonbank subsidiaries, all in the company's own format; and list of the officers, directors, and shareholders, and their percentage ownership of the holding company; and details on insider lending by the bank holding company. Currently, a bank holding company with total consolidated assets of $150 million or more is required to have the financial statements that are submitted with the FR Y-6 certified by an independent public accountant. Only two minor revisions to the FR Y-6 are being proposed at this time. The first revision would require bank holding companies to list changes, during the fiscal year, in shareholders that own or control five percent or more of any class of voting securities in the bank holding company. The second revision would require a bank holding company to report as a supplement to its organizational chart a list of banking companies in which it holds 25 percent or more of the nonvoting equity shares and which would not otherwise be controlled as subsidiaries.

The Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies (FR Y-11I) is submitted annually by all bank holding companies and provides selected balance sheet and income information on the nonbank subsidiaries of the bank holding company. The following revisions to the FR Y-11I reporting form and instructions are being proposed:

1. Clarification of instructions and reporting form to indicate that inactive subsidiaries are only reportable if the subsidiary previously conducted an activity (i.e., is temporarily inactive or in the process of liquidation). Those subsidiaries that have never engaged in any business activity are not reportable.

2. Clarification of the reporting instructions to indicate that financial data for mortgage banking and consumer finance organizations should only be consolidated in instances where the bank holding company has established separate corporations in various state in order to operate offices in those states. That is, financial data should only be consolidated for organizations that are the functional equivalent of branches.

3. Elimination of the Supplemental Cover Sheet for tiered bank holding companies.

Revisions Approved on an Interim Basis Under OMB Delegated Authority of the Following Reports

1. *FR Y-6* (OMB No. 7100-0124), Annual Report of Bank Holding Companies;

This report is to be filed by all top-tier bank holding companies. The following bank holding companies re exempt from filing the FR Y-6, unless the Board specifically requires an exempt company to file the report: bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by section 211.23(b) of Regulation K. The revised report is to be implemented on an annual basis as of December 31, 1991; reports are to be submitted 90 days after the "as of" date.

Report Title: Annual Report of Bank Holding Companies
Agency Form Number: FR Y-6
OMB Docket Number: 7100-0124
Frequency: Annual
Reporters: Bank Holding Companies
Annual Reporting Hours: 44,784
Estimated Average Hours per Response: 8.0
Number of Respondents: 5,598
Small businesses are affected

The information collection is mandatory [12 U.S.C. 1844]. Confidential treatment is not routinely given to the information filed. However, confidential treatment for the information, in whole or in part, can be requested in accordance with the instructions to the form.

2. *FR Y-11I* (OMB No. 7100-0128), Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies;

This report is to be filed by all bank holding companies that have nonbank subsidiaries. The report is filed for each individual nonbank subsidiary of the holding company. The following bank holding companies re exempt from filing the FR Y-11I, unless the Broad specifically requires an

exempt company to file the report: bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank holding Company Act and foreign banking organizations as defined by section 211.23(b) of Regulation K. The revised report is to be implemented on a quarterly basis as of December 31, 1991, with a submission date of 60 days after the "as of" date.

Report Title: Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies
Agency Form Number: FR Y-11I
OMB Docket Number: 7100-0126
Frequency: Annual
Reporters: Bank Holding Companies
Annual Reporting Hours: 1,693
Estimated Average Hours per Response: 0.6
Number of Respondents: 2,822
Small businesses are affected

The information collection is mandatory (12 U.S.C. 1844). Confidential treatment is not routinely given to the information on the form. However, confidential treatment for the information can be requested in accordance with the instructions to the form.

FOR FURTHER INFORMATION CONTACT: Stephen M. Lovette, Manager, Policy Implementation, Division of Banking Supervision and Regulation (202/452-3622) or Alison J. Waldron, Senior Financial Analyst, Division of Banking Supervision and Regulation (202/452-2538). The following individuals may be contacted with respect to issues related to the Paperwork Reduction Act of 1980: Stephen Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division, (202/452-3920); Frederick J. Schroeder, Chief, Financial Reports, Division of Research and Statistics (202/452-3829); and Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve System has granted approval, on an interim basis, under delegated authority from the Office of Management and Budget (OMB) to the revisions in the following reports.

1. *FR Y-6* (OMB No. 7100-0124), Annual Report of Bank Holding Companies;
2. *FR Y-11I* (OMB No. 7100-0126), Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies;

FR Y-6

The FY Y-6 is an annual report filed by top-tier bank holding companies. It consists of financial statements for the consolidated entity (when the total consolidated assets of the company are $150 million or more) and the parent company only statement for all holding companies in the company's own format. The Form 10-K filed with the SEC usually satisfies the requirement for the consolidated statement. Additionally, financial statements for the nonbank subsidiaries of the holding company and information on the identity, percentage ownership, and businesss interests of principal shareholders, directors, and executive officers are included in the report. Amendments to the organizational documents, information on insider loans, and an organization chart are also required.

The Annual Report of Bank Holding Companies (FR Y-6) is the Federal Reserve's principal source of internally generated and independently audited financial data on individual bank holding companies, their banking and nonbanking subsidiaries, and their other regulated investments. The external audit by an independent public accountant, which is required in connection with this report for holding companies with total consolidated assets of $150 million or more, promotes continued safe and sound operations. The report enables the Federal Reserve (1) to monitor holding company operations and to ensure that the operations are conducted in a safe and sound manner; and (2) to determine holding company compliance with the provisions of the Bank Holding Company Act and Regulation Y (12 CFR part 225).

The information collected by the FR Y-6 on the identity, percentage ownership, and business interests of principal shareholders, directors, and executive officers is also important for supervisory purposes. First, data on outside business interests (including interests in other financial institutions) aid in identifying chain banking organizations by indicating when an individual owns 25 percent or more of each of two or more banking organizations. Second, information on the principal owners and directors is of critical supervisory importance since these individuals have a significant impact on the policies and condition of banking organizations. Experience has shown that this information is extremely valuable in identifying potential problem situations and in developing supervisory follow-up programs. Third, information on the outside business interests of insiders can be useful in uncovering situations that involve a conflict of interest or preferential treatment in the granting of credit. Information on significant borrowings by holding company insiders assists in highlighting situations involving potential insider abuse. Finally, information on ownership helps the Federal Reserve monitor compliance with the Change in Bank Control Act (12 U.S.C. 1817(j)(13)).

Annual reporting of this information in the FR Y-6 is essential for supervisory purposes because it provides information between bank holding company inspections. The timely collection of these data in a supervisory report enhances the Federal Reserve's efforts to monitor the activities of bank holding companies.

FR Y-11I

The FR Y-11I consists of 13 selected financial items and certain other information collected annually from individual nonbank subsidiaries. The FR Y-11I must be submitted for each directly or indirectly held nonbank subsidiary. A subsidiary, for purposes of this report, is defined by § 225.2 of Regulation Y (12 CFR 225.2), which includes companies 25 percent or more owned or controlled by another company. Edge or Agreement corporations, foreign subsidiaries, and nonbank subsidiaries held directly by a bank are exempt from FR Y-11I reporting.

The information collected on this report is used by the Federal Reserve to assess the financial condition of individual nonbank subsidiaries and their impact on the consolidated financial entity.

The FR Y-11I is the only source of standardized financial information on individual nonbank subsidiaries of bank holding companies. This information is essential in light of their potential impact on the subsidiary bank's condition; the different types and degrees of risk inherent in these activities; the trend toward nonbank deregulation; and the potential for nonbank holding company entities to have an adverse impact on affiliated banks due to the volume of intercompany transactions and the complex inter-relationships that can exist between holding companies and their bank and nonbank affiliates.

The Federal Reserve has an increasing interest in and a need for information on the nonbank operations of bank holding companies. Experience has shown that nonbank problems can cause funding, earnings, and asset quality problems for the consolidated holding company, and that nonbank subsidiaries can create serious supervisory problems in bnak subsidiaries. Consolidated reports do not reveal the extent of the problems of

nonbank subsidiaries because the size of the subsidiary bank can obscure the operations of nonbank subsidiaries at the consolidated level. Consequently, a principal focus of the holding company supervisory effort is to evaluate the condition of nonbank companies and their potential impact on affiliated subsidiary banks.

Annual reporting on the FR Y–11I enables the Federal Reserve to place an emphasis on monitoring the capitalization and leverage of the nonbank subsidiaries in relation to industry norms and applicable regulations. In addition, the data submitted on the FR Y–11I are also frequently used to respond to requests from Congress and from the public for information on nonbank subsidiaries.

Report Form Revisions

The Federal Reserve has approved, on an interim basis, the following changes to the Annual Report of Bank Holding Companies (FR Y–6):

1. Modify Report Item 5, the list of shareholders, require the reporting of changes (both additions and deletions), during the fiscal year, in shareholders that own or control five percent or more of any class of voting securities in the bank holding company. Both the name and percent ownership would be reported.

2. Require each bank holding company to report as a supplement to its organizational chart a list of banks or bank holding companies in which it holds 25 percent or more of nonvoting equity shares and which would not otherwise be considered controlled subsidiaries.

The Federal Reserve has approved, on an interim basis, the following changes to the Annual Report of Selected Financial Data for Nonbank Subsidiaries (FR Y–11I):

1. The reporting instructions will be modified to clarify that inactive nonbank companies are only reportable if they have previously engaged in any business activity. Those companies that are part of the holding company organization but have not yet engaged in any business activity are not reportable.

2. The reporting instructions will be modified to indicate instances where more than one nonbanking subsidiary may be consolidated for reporting purposes. Mortgage banking and consumer finance subsidiaries may be consolidated on the FR Y–11I if they operate as the functional equivalent of branches of a mortgage banking or consumer finance operation. In certain instances, a bank holding company will establish separate corporations in various states in order to operate in those states. These separate corporations may be consolidated when reporting on the FR Y–11I.

3. Clarifications are being proposed to the FR Y–11I cover sheet and reporting form. It is also proposed that the supplemental cover page for use by tiered bank holding companies be eliminated.

Time Schedule for Information Collection and Publication

The FR Y–6 is collected annually as of the end of the bank holding company's fiscal year. This report must be submitted to the Federal Reserve within 3 months following the date of the report.

The FR Y–11I is reported annually as of the last calendar day of December. The FR Y–11I must be submitted to the appropriate Federal Reserve Bank within 60 days after the date of the report.

The data from these reports that are not given confidential treatment are available to the public. Data from these reports will generally not be published.

Legal Status and Confidentiality

The reports are required by law (12 U.S.C. 1844 (b) and (c) and 12 CFR 225.5(b) of Regulation Y).

The Federal Reserve has not considered the data in these reports to be confidential. However, a bank holding company may request confidential treatment pursuant to section (b)(4) and (b)(6) of the Freedom of Information of Act (5 U.S.C. 522(b)(4) and (b)(6)). Section (b)(4) provides exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Section (b)(6) provides exemption for "personnel and medical files and similar files the disclosure or which would constitute a clearly unwarranted invasion of personal privacy."

Board of Governors of The Federal Reserve System, January 10, 1992.

Dated: January 10, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–1251 Filed 1–16–92; 8:45 am]

BILLING CODE 6210–01–M

[Docket No. 7100–0124, (FR Y–6A)]

Bank Holding Company Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim approval of agency forms.

BACKGROUND: Notice is hereby given of approval, on an interim basis, by the Board of Governors of the Federal Reserve of changes to the bank holding company reporting requirements identified below, under delegated authority from the Office of Management and Budget (OMB), as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public.) The changes to the reporting requirements are to be effective for transactions occurring on or after January 1, 1992, for reports submitted according to a gradual phase-in period described below. The Board will consider all public comments and determine, on the basis of those comments, whether the changes approved on an interim basis should become final.

DATES: Comments must be submitted on or before February 18, 1992.

ADDRESSES: Comments, which should refer to the OMB Docket number, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

SUMMARY: Under the Bank Holding Company Act of 1956, as amended, the Board of Governors of the Federal Reserve System is responsible for the supervision and regulation of all bank holding companies. The Board has given interim approval to the revisions of the Bank Holding Company Report of Changes in Investments and Activities (FR Y–6A; OMB No. 7100–0124). The Federal Reserve is proposing that the revisions to the FR Y–6A be implemented effective with transactions occurring on or after January 1, 1992.

The Bank Holding Company Report of Changes in Investments and Activities is an event-generated report filed by top-tier bank holding companies to report changes in regulated investments and activities made pursuant to the Bank Holding Company Act and Regulation Y. The report collects structure information on subsidiaries and regulated investments of bank holding companies engaged in both banking and nonbanking activities.

The proposed changes involve a modification to the reporting schedule from a quarterly basis to an event-driven basis in which reports must be submitted within 30 calendar days of the

occurrence of a reportable transaction. Additionally, the report form and instructions have been modified to improve clarity. Proposed changes to the content of the report include the elimination of legal address and activity rank information, and the inclusion of certain nonvoting equity investments and Small Business Investment Corporation (SBIC) investments.

To allow adequate time to adjust to the new reporting schedule and revised reporting form, the Federal Reserve requires all changes in investments or activities that occur during the first quarter of 1992 be filed within thirty days after the end of the quarter. The proposed 30-day flow reporting schedule would be fully implemented for transactions that occur on or after April 1, 1992. The interim approval is subject to any changes the Board may determine to make on the basis of public comments received.

Revisions Approved, on an Interim Basis, Under OMB Delegated Authority of the Following Report

1. *FR Y–6A* (OMB No. 7100–0124), Bank Holding Company Report of Changes in Investments and Activities;

This report is to be filed by all top-tier bank holding companies. The following bank holding companies are exempt from filing the FR Y–6A, unless the Board specifically requires an exempt company to file the report: bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by section 211.23(b) of Regulation K. The revised report is to be implemented on a flow basis as of January 1, 1992, with a submission date of 30 days after the occurrence of a reportable transaction. The implementation of the report is subject to a gradual phase in of the new requirement.

Report Title: Bank Holding Company Report of Investments and Activities
Agency Form Number: FR Y–6A
OMB Docket Number: 7100–0124
Frequency: Flow-basis
Reporters: Bank Holding Companies
Annual Reporting Hours: 2,000
Estimated Average Hours per Response: 1.0
Number of Respondents: 1,000
Small businesses are affected

The information collection is mandatory (12 U.S.C. 1844) and the information is not routinely given confidential treatment. However, confidential treatment for information, in whole or in part, can be requested in accordance with instructions to the form.

FOR FURTHER INFORMATION CONTACT: Stephen M. Lovette, Manager, Policy Implementation, Division of Banking Supervision and Regulation (202/452–3622) or Alison J. Waldron, Senior Financial Analyst, Division of Banking Supervision and Regulation (202/452–2538). The following individuals may be contacted with respect to issues related to the Paperwork Reduction Act of 1980: Stephen Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division, (202/452–3920); Frederick J. Schroeder, Chief, Financial Reports, Division of Research and Statistics (202/452–3829); and Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve has granted approval, on an interim basis, under delegated authority from the Office of Management and Budget (OMB) to the revisions in the *FR Y–6A* (OMB No. 7100–0124), the Bank Holding Company Report of Changes In Investments and Activities.

The Bank Holding Company Report of Changes in Investments and Activities requests information from all top-tier bank holding companies on changes in investments and activities. This report is event-generated and is filed by bank holding companies only when they have changes in structure. The report collects information relating to acquisitions, divestitures, changes in relationships between a parent company and its subsidiaries, changes in activities, and legal authority. The response rate for the FR Y–6A varies depending on the reportable activity engaged in by each bank holding company.

In addition to a redesign of the reporting form and instructions, substantive changes to the FR Y–6A include a revision to the reporting cycle, the revision of existing reporting requirements to eliminate the collection of unnecessary information, and the addition of proposed information required by users of the report.

The Bank Holding Company Report of Changes in Investments and Activities (FR Y–6A) is collected by the Federal Reserve to monitor compliance by bank holding companies with the Bank Holding Company Act of 1956, as amended, and Regulation Y. Structure data are used to support the financial data collected by the Federal Reserve, and to support studies focusing on nonbanking trends of bank holding companies.

In addition to facilitating compliance monitoring by the staff of the Federal Reserve, the structure data are utilized to provide information on the investments and nonbanking activities of bank holding companies to the Federal Reserve.

Report Form Revisions

The Board has granted interim approval to the following changes to the Bank Holding Company Report of Changes in Investments and Activities (FR Y–6A):

1. *Revise the Reporting Cycle*—Change the current quarterly reporting requirement to a flow-basis requirement. Bank Holding Companies will have 30 calendar days following a reportable change in investments or activities to submit the FR Y–6A to the Federal Reserve.

2. *Cease Collection of Certain Information*
—Cease the collection of structure information on companies in the bank holding company organization that have not yet conducted any business activity.
—Cease collection of information on the number of offices operated by nonbanking subsidiaries.
—Cease collection of legal address information for bank holding companies.
—Change requirement for ranking all business activities by order of importance to a requirement that only the primary activity be indicated.

3. *Add Certain Reporting Requirements*
—Require that controlling ownership interests based on nonvoting equity be reported for subsidiaries that are not otherwise controlled.
—Require that investments made through Small Business Investment Corporations registered with the Small Business Administration be reported.

4. *Redesign the Reporting Form and Instructions*—Redesign the FR Y–6A reporting form and rewrite the instructions to correspond with the new form and to improve clarity.

Legal Status and Confidentiality

The reports are required by law (12 U.S.C. 1844 (b) and (c) and 12 CFR 225.5(b)).

The Federal Reserve has not considered the data in these reports to be confidential. However, a company may request confidential treatment pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552 (b)(4) and (b)(6)). Section (b)(4) provides exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Section (b)(6) provides exemption for "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Board of Governors of the Federal Reserve System, January 10, 1992.

Dated: January 10, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–1252 Filed 1–16–92; 8:45 am]
BILLING CODE 6210–01–M

The Long Term Credit Bank of Japan, Tokyo, Japan; Application to Engage in Providing Financial Advisory and Real-Estate Related Advisory Activities

The Long Term Credit Bank of Japan, Tokyo, Japan ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and section 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to engage in providing financial advisory and real-estate related advisory activities through the acquisition of 95.5 percent of the outstanding voting shares of Peers Holdings, Inc., New York, New York ("Company"). Specifically, Applicant proposes to engage through Company in the following activities:

(1) Acting as financial adviser, either on a retainer or success fee basis, to provide corporate finance advisory services to institutional customers, including advice with respect to structuring, financing and negotiating domestic and international mergers, acquisitions, joint ventures, divestitures, leveraged buyouts, capital-raising vehicles, and other corporate transactions, and to provide ancillary services or functions incidental to the foregoing activities;

(2) Performing financial feasibility studies for institutional customers, principally in the context of determining the financial attractiveness and feasibility of particular corporate transactions and financing transactions;

(3) Providing valuation services in connection with the foregoing;

(4) Rendering fairness opinions in connection with corporate transactions;

(5) Providing investment research and advice, and promoting and assisting investors, with respect to real property investments; and

(6) Arranging commercial real estate equity financings.

Applicant proposes to conduct these activities indirectly on an international basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously determined that the financial advisory activities proposed by Applicant are closely related to banking and permissible for bank holding companies. *See, e.g., The Dai-Ichi Kangyo Bank, Limited*, 77 Federal Reserve Bulletin 184 (1991); *First Eastern Corporation*, 76 Federal Reserve Bulletin 764 (1990); *Banca Commerciale Italiana S.p.A.*, 76 Federal Reserve Bulletin 649 (1990); *The Fuji Bank, Limited*, 75 Federal Reserve Bulletin 577 (1989). The Board has also previously determined that providing investment research and advice, and promoting and assisting investors, with respect to real property investments are permissible activities for bank holding companies. *See, e.g., The Royal Bank of Scotland Group plc*, 76 Federal Reserve Bulletin 866 (1990). In addition, the Board has previously determined that bank holding companies may engage in arranging commercial real estate equity financings pursuant to § 225.25(b)(14) of the Board's Regulation Y (12 CFR 225.25(b)(14)). Applicant has made the commitments set forth in § 225.25(b)(14) of the Board's Regulation Y and considered by the Board in previous Orders.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC, 20551, not later than February 12, 1992. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how that party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, January 13, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1254 Filed 1-16-92; 8:45 am]

BILLING CODE 6210-01-F

Saban, S.A., Panama City, Panama; Republic New York Corporation, New York, New York

Saban, S.A., Panama City, Panama, and its subsidiary, Republic New York Corporation, New York, New York (together, the "Applicant"), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8))("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for prior approval to engage *de novo* on a domestic and international basis through the Applicant's wholly-owned subsidiary, Republic New York Securities Corporation, New York, New York ("Company"), in the following activities:

(1) Providing to affiliates and to institutional and retail customers portfolio investment advice and research pursuant to § 225.25(b)(4) of Regulation Y, including furnishing general economic information and advice, general economic statistical forecasting services and industry studies; serving as the advisory company for a mortgage or a real estate investment trust; serving as an investment advisor as defined in Section 2(a)(20) of the Investment Company Act of 1940, as amended, to investment companies registered under that Act; and providing financial advice to state and local governments;

(2) Providing advice to institutional customers in connection with financial transactions, including advice regarding the structuring of and arranging for interest rate swaps and interest rate caps, the valuation of companies and blocks of stock, advice in connection with financing transactions and the rendering of fairness opinions in connection with such transactions and similar transactions ("financial advisory services");

(3) Purchasing and selling all types of securities on the order of institutional and retail customers as a "riskless principal;"

(4) Providing to affiliates and to institutional and retail customers investment advisory and securities brokerage services on a combined basis ("full-service brokerage"), including exercising limited investment discretion on behalf of institutional customers; and

(5) Providing to affiliates and to institutional and retail customers securities brokerage services and activities related or incidental thereto pursuant to § 225.25(b)(15) of Regulation Y, including related securities credit services pursuant to the Board's Regulation T and securities borrowing and lending.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1337 (D.C. Cir. 1975)("*National Courier*"). In addition, the Board may consider any other basis

that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8).

Applicant will conduct the proposed investment advisory activities subject to the conditions of § 225.25(b)(4) of the Board's Regulation Y (12 CFR 225.25(b)(4)). The Board has previously determined by order that the proposed financial advisory services are closely related to banking for purposes of section 4(c)(8) of the BHC Act, and the Applicant has committed to conduct these activities in accordance with the conditions set forth in these Orders. *See Suntrust Banks, Inc.*, 74 Federal Reserve Bulletin 256 (1988); *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987). In addition, the Board has previously approved the proposed buying and selling of all types of securities on the order of investors as "riskless principal." *See, e.g., J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989). Applicant commits that Company will conduct this proposed activity subject to the same limitations and using the same methods and procedures established by the Board in these orders.

Applicant will conduct the proposed securities brokerage activities subject to the conditions of § 225.25(b)(15) of the Board's Regulation Y (12 CFR 225.25(b)(15)). Additionally, the Board has previously determined that, subject to certain conditions, full service brokerage activities are permissible nonbanking activities for bank holding companies and do not violate the Glass-Steagall Act. *See, e.g., PNC Financial Corporation*, 75 Federal Reserve Bulletin 396 (1989); *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988); *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 930 (1987); *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986). The Board has also approved, subject to certain conditions, the provision of discretionary investment management services to institutional customers in connection with securities brokerage and investment advisory services. *J.P. Morgan & Company, Inc.*, 73 Federal Reserve Bulletin 810 (1987). Applicant proposes that Company conduct these activities in accordance with the prudential limitations relied upon by the Board in these orders.

As part of its securities brokerage activities, Company also proposes to engage in securities borrowing and lending activities. The Board has previously determined that securities borrowing and lending is permissible for bank holding companies pursuant to § 225.25(b)(15) of Regulation Y. *See, e.g., Canadian Imperial Bank of Commerce*, 74 Federal Reserve Bulletin 571 (1988); *The Chase Manhattan Corporation*, 69 Federal Reserve Bulletin 725 (1983). In addition, Company proposes to act as a "finder" or "conduit" in arranging securities loans to other broker-dealers either by lending securities held in a customer's margin account or by acting as an intermediary in arranging loans between broker-dealers. Applicant states that, in acting as a conduit, company will comply, as applicable, with the guidelines set forth in the Federal Financial Institutions Examination Council's Uniform Policy for Supervising Financial Institution Securities Lending Activities. Applicant contends that, in acting as a conduit in arranging securities loans, Company would assume a principal's risk no different than the risk assumed in acting as agent on behalf of a brokerage customer and that acting as a conduit in these transactions is a credit intermediation role typical of financial institutions. Thus, Applicant claims that acting as a conduit in securities borrowing and lending activities is closely related to banking for purposes of section 4 of the BHC Act under the standard established in *National Courier*.

Applicant states that the proposed activities will benefit the public. It believes that they will promote competition and provide gains in efficiency and added convenience to customers. Moreover, Applicant believes that the proposed activities will not result in any unsound banking practices. Accordingly, Applicant believes that public benefits of this proposal outweigh adverse effects and the activities are therefore a proper incident to banking for purposes of section 4 of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 10, 1992. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, January 13, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1255 Filed 1-16-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 122391 AND 123191

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
The Gates Corporation, Oryx Energy Company, Sun Operating Limited Partnership	92-0375	12/23/91
UAL Corporation, Pan Am Corporation, Pan American World Airways, Inc.	92-0385	12/23/91
R. E. Turner, Great American Communications Company, The Great American Entertainment Company, Inc.	92-0130	12/25/91
Pacific Telesis Group, Craig O. McCaw, Topeka Cellular Telephone Company, Inc.	92-0256	12/26/91
Applied Bioscience International Inc., Richard J. Hawkins and Nona F. Niland, husband and wife, Pharmaco Dynamics Research, Inc.	92-0322	12/26/91
Richard J. Hawkins and Nona F. Niland, Applied Bioscience International Inc., Applied Bioscience International, Inc.	92-0323	12/26/91
MidSouth Corporation, Tenneco Inc., The Corinth and Counce Railroad Company	92-0331	12/26/91
NISPCO Industries, Inc., Kokomo Gas and Fuel Company, Kokomo Gas and Fuel Company	92-0335	12/26/91
Occidental Petroleum Corporation, General Electric Corporation, General Electric Capital Corporation	92-0340	12/26/91
IES Industries Inc., Whiting Petroleum Corporation, Whiting Petroleum Corporation	92-0344	12/26/91
ALLTEL Corporation, Merrill Lynch Capital Appreciation Partnership V, L.P., CPI Acquisition, Inc.	92-0372	12/26/91
Bindley Western Industries, Inc., William G. Waldron, J.E. Goold & Co.	92-0373	12/26/91
David M. Hicks, ALLTEL Corporation, ALLTEL Corporation	92-0374	12/26/91
Charterhouse Equity Partners, L.P., John Labatt Limited, Everfresh, Inc.	92-0383	12/26/91
Daganeve Foundation, Adamra Foundation, Alfa-Laval U.S. Holding Inc.	92-0421	12/26/91
Abbott Laboratories, Unilever N.V., Sequoia Turner Corporation	92-0304	12/27/91
Charter Consolidated, P.L.C., PMC Holding Company, PMC Holding Company	92-0305	12/27/91
Merrill Lynch & Co., Inc., BBB Holdings Corp. (Joint Venture), BBB Holdings Corp. (Joint Venture)	92-0379	12/27/91
Merrill Lynch Capital Appreciation Company Limited II, BBB Holdings Corp. (Joint Venture), BBB Holdings Corp. (Joint Venture)	92-0380	12/27/91
Peder Kolind, Klaus J. Jacobs, Network Multi-Family Security Corporation	92-0411	12/27/91
Peder Kolind, Asko Deutsche Kauthaus Aktiengesellschaft, Network Multi-Family Security Corporation	92-0412	12/27/91
Lane Investment Limited Partnership, Great American Communications Company, Great American Television and Radio Company, Inc.	92-0352	12/30/91
Acadia Partners, L.P., Multi-Local Media Information Group, Inc., Multi-Local Media Information Group, Inc.	92-0365	12/30/91
Leucadia National Corporation, Transportation Capital Corporation, Transportation Capital Corporation	92-0386	12/30/91
Sumitomo Corporation, Harsco Corporation, Harsco Corporation	92-0426	12/30/91
Green Bay Packaging Inc., Tenneco Inc., Marinette, Tomahawk & Western Railroad	92-0455	12/30/91
Kirin Brewery Co., Ltd., Twyford International, Inc., Twyford International, Inc.	92-0361	12/31/91
Sisters of Charity of Montreal, St. Joseph's Province, Sisters of Charity of St. Hyacinthe, Quebec, Sisters of Charity Health Systems, Inc.	92-0415	12/31/91
CBI Industries, Inc., GEO International Corporation, MQS Inspection, Inc.	92-0420	12/31/91
Wingate Partners, L.P., Boise Cascade Corporation, Boise Cascade Office Productions Corporation	92-0431	12/31/91
Mitac International Corporation, Qume Corporation, Compac Microelectronics, Inc.	92-0435	12/31/91
USAir Group, Inc., Carl C. Icahn, Trans World Airlines, Inc.	92-0439	12/31/91
James W. Wilson, Jr., One Fifty Mall Associates, RGB Venture, a general partnership	92-0447	12/31/91
James W. Wilson, Jr., James W. Wilson, Jr., RGB Venture, a general partnership	92-0448	12/31/91
Metropolitan Life Insurance Company, James W. Wilson, Jr., Wiregrass Venture, Orange Venture, & HMS Venture	92-0449	12/31/91
James W. Wilson, Jr., Metropolitan Life Insurance Company, RGB Venture, a general partnership	92-0456	12/31/91

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010192 AND 010392

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
The Peninsular and Oriental Steam Navigation Company, Richard C. Halpern, Schal Associates, Inc.	92-0424	01/02/92
Tenneco Inc., LaPorte MTBE Limited Partnership, LaPorte MTBE Limited Partnership	92-0324	01/03/92
Unitil Corporation, Fitchburg Gas and Electric Light Company, Fitchburg Gas and Electric Light Company	92-0354	01/03/92
Dr. H.C. Paul Sacher, CompuChem Corporation, CompuChem Corporation	92-0368	01/03/92
American Stores Company, Melville Corporation, Mark Steven Service Merchandisers, Inc.	92-0423	01/03/92
Hellman & Friedman Capital Partners II, L.P., General Cellular Corporation, General Cellular Corporation	92-0444	01/03/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office; Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-1287 Filed 1-16-92, 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3356]

Dive N' Surf, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the California-based company, d/b/a Body Glove International, to label or otherwise identify the constituent fiber content, percentages of fiber content, manufacturer's name, and country of origin for their textile fiber products, as required by the Textile Fiber Products Identification Act. In addition, the order requires the respondent to distribute a copy of the order to each of its operating divisions.

DATES: Complaint and Order issued December 23, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Sylvia Kundig, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Wednesday, September 25, 1991, there was published in the Federal Register, 56 FR 48564, a proposed consent agreement with analysis In the Matter of Dive N' Surf, Inc., d/b/a Body Glove International, for the purpose of soliciting public comment. Interested

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 72 Stat. 1717; 15 U.S.C. 45, 70)

Donald S. Clark,

Secretary.

[FR Doc. 92-1285 Filed 1-16-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt C-3352]

O'Neill, Incorporated; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the California-based company, d/b/a Onax, Inc., to label or otherwise identify the constituent fiber content, percentages of fiber content, manufacturer's name, and country of origin for their textile fiber products, as required by the Textile Fiber Products Identification Act. In addition, the order requires the respondent to distribute a copy of the order to each of its operating divisions.

DATES: Complaint and Order issued December 9, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Sylvia Kundig, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103 (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Wednesday, September 25, 1991, there was published in the **Federal Register** 56 FR 48564, a proposed consent agreement with analysis In the Matter of O'Neill, Incorporated, d/b/a Onax, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 72 Stat. 1717; 15 U.S.C. 45, 70)

Donald S. Clark,

Secretary.

[FR Doc. 92-1286 Filed 1-16-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 902 3309]

Tech Spray, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Texas corporation and its owner from making false and unsubstantiated environmental claims in the marketing of any product.

DATES: Comments must be received on or before March 17, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S-4002, Washington, DC 20580. (202) 326-3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent to Cease and Desist

In the Matter of Tech Spray, Inc., a corporation, and Richard Russell, individually and as officer of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Tech Spray, Inc., a corporation, and Richard Russell, individually and as officer of said corporation ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Tech Spray, Inc., by its duly authorized officer Richard Russell, individually and as officer of said corporation, and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Tech spray, Inc. ("Tech Spray") is a Texas corporation with its office and principal place of business at 88 North Hughes Street, Amarillo, Texas 79105.

Proposed respondent Richard Russell is an officer of Tech Spray. He formulates, directs, and controls the acts and practices of Tech Spray, and his business address is the same as that of Tech Spray.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contained a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents

that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondents' addressed as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

"Class I ozone-depleting substance" means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in title 6 of the Clean Air Act Amendments of 1990, Public Law No. 101–549, and any other substance which may in the future be added to the list pursuant to title 6 of the Act. Class I substances currently include chlorofluorocarbons, halons, carbon tetrachloride, and 1,1,1-trichloroethane.

"Class II ozone-depleting substance" means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in title 6 of the Clean Air Act Amendments of 1990, Public Law No. 101–549, and any other substance which may in the future be added to the list pursuant to title 6 of the Act. Class II substances currently include hydrochlorofluorocarbons.

I.

It is ordered that respondents Tech Spray, Inc. ("Tech Spray"), a corporation, its successors and assigns, and its officers, and Richard Russell, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that any such product containing any Class I or Class II ozone-depleting substance is "ozone friendly," "ozone safe," or, by words, depictions, or symbols representing directly or by implication that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

II.

It is further ordered that respondents Tech Spray, a corporation, its successors and assigns, and its officers, and Richard Russell, individually and as an officer of said corporation, and respondents representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols, that any product offers any environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation. To the extent such evidence consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

III.

It is further ordered that for three years from the date that the representations to which they pertain are last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this Order; and

B. All tests, reports, studies, surveys, or other materials in respondents' possession or control that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation.

IV.

It is further ordered that the corporate respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels, or other such sales materials covered by this Order.

V.

It is further ordered that the corporate respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VI.

It is further ordered that the individual respondent shall promptly notify the Commission in the event of the discontinuance of his present business or employment and of each affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this Order, he shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale, distribution, and/or manufacturing of industrial cleaning or degreasing products or of his affiliation with a new business or employment in which his own duties

and responsibilities involve the sale, distribution, and/or manufacturing of industrial cleaning or degreasing products. Each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which such respondent is newly engaged, as well as a description of such respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

VII.

It is further ordered that respondents shall, within sixty (60) days after service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Tech Spray, Inc., a Texas corporation, and Richard Russell, individually and as officer of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the agreement's proposed order.

This matter concerns labeling and advertising of various Tech Spray electronic equipment products, including Blue Shower, Flux Stripper OF, Instant Chiller, Precision Duster, and Kleen-All. The Commission's complaint in this matter charges that the respondents' labeling and advertising contain false and misleading representations that these products are "ozone friendly." The complaint alleges that the respondents represented that there are no ingredients in their products that will deplete the ozone layer; that because one product contains no CFCs, it will not harm the earth's ozone layer; and that the respondents' products have lower ozone-depletion potential levels than the limits set by the Montreal Protocol and Environmental Protection Agency ("EPA") guidelines. In fact, the complaint alleges, these representations are false and misleading, because although the respondents' products contain lower ozone-depletion potentials than they did before they were reformulated, they still consist primarily of ozone-depleting chemicals; chlorofluorocarbons (CFCs), 1,1,1-trichloroethane, and/or hydrochlorofluorocarbons (HCFCs), and, furthermore, the Montreal Protocol and EPA guidelines do not provide ozone-depletion potential level limits that are applicable to individual products.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

The proposed order defines Class I and Class II ozone-depleting substances, incorporating the definitions established in the Clean Air Act Amendments of 1990. Class I substances currently listed under the Act are CFCs, halons, carbon tetrachloride, and 1,1,1-trichloroethane. Class II substances currently consist of HCFCs.

Part I of the proposed order requires the respondents, in connection with the advertising, sale, or distribution of any product, to cease representing that products containing any Class I or Class II ozone-depleting substance are "ozone friendly" or "ozone safe," or, through the use of similar terms or expression, that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

Under the Clear Air Act Amendments, the EPA has authority to add new chemicals to the Class I and II lists. Thus, the order's definitions of Class I and Class II zone-depleting substances specifically include substances that may be added to the lists. If additional substances are added to the Class I or II lists, Part I of the order becomes applicable to claims made for products containing those substances after the substances are added to the lists.

Part II of the proposed order requires the respondents to cease representing that any of their products offer any environmental benefit, unless the respondents possess a reasonable basis for such representation.

Parts III, IV, V, VI, and VII of the order are standard order provisions requiring the respondents to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, to notify the Commission of any changes in the business or employment of the named individual respondent, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-1288 Filed 1-16-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration; Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), (49 FR 35247, dated September 6, 1984) is amended to include the Secretary's following delegations to the Administrator, HCFA, of the authority to conduct various Medicare/Medicaid studies, demonstrations and program initiatives under the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) (as amended), Public Law 101-239, and the Omnibus Budget Reconciliation Act of 1990 (ORBA 90), Public Law 101-508. These delegations do not include the authority to make reports to Congress. The authority to make reports to Congress is reserved for the Secretary.

The specific amendments to Part F. are described below:

- Section F.30, Delegations of Authority, is amended to include the following delegations of authority under OBRA 89 and 90.

PP. The authorities under the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) (as amended), Public Law 101-239.

1. The authority to conduct seven studies as mandated by sections 6016, 6102(d)(2), 6102(d)(3), 6102(d)(4), 6136, 6142, and 6408(a)(1) of OBRA 89 (as amended), and as may hereafter be amended.

2. The authority to conduct three demonstration projects as mandated by sections 6114(e), 6217 (as amended by section 4207(m)(5) of OBRA 90), and 6407(a) of OBRA 89 (as amended), and as may hereafter be amended.

3. The authority to conduct specific Medicare/Medicaid initiatives defined by sections 6109, 6213(e), 6407(e), 6901(d)(3)(A) and 6901(d)(3)(B) (as amended by section 4008(i)(2) of OBRA

90) of OBRA 89 (as amended), and as may hereafter be amended.

QQ. The authority under the Omnibus Budget Reconciliation Act of 1990 (ORBRA 90), Public Law 101–508.

1. The authority under section 4008(i)(1), and as may hereafter be amended, for waiver of such provisions of Title XVIII of the Social Security Act as are necessary to conduct any demonstration project for limited-service rural hospitals with respect to which HCFA has entered an agreement before the date of the enactment of OBRA 89.

Dated: December 21, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 92–1268 Filed 1–16–92; 8:45 am]

BILLING CODE 4120–03–M

Office of the Secretary

Assistant Secretary for Planning and Evaluation; Privacy Act of 1974; New System of Records

AGENCY: Department of Health and Human Services (DHHS), Office of the Assistant Secretary for Planning and Evaluation (ASPE).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, ASPE is proposing to establish a new system of records 09–90–0083, "Jobs Opportunities and Basic Skills (JOBS) Evaluation Data System," DHHS/OS/ASPE. We have provided background information about the proposed system in the Supplementary Information section below.

DATES: ASPE invites interested parties to submit comments on the proposed routine uses on or before February 18, 1992. ASPE has sent a report of the new system to the Congress and to the Office of Management and Budget (OMB) on January 10, 1992. In addition, ASPE has requested a waiver for the 60-day clearance requirement. If granted, this system of records will be effective 30 days from the date submitted to OMB. The routine uses will take effect February 18, 1992, unless ASPE receives comments that result in a contrary determination.

ADDRESS: Comments should be addressed to the JOBS Evaluation Program Analyst in the Office of the Assistant Secretary for Planning and Evaluation (ASPE) at the address listed below. Comments received will be available for inspection from 9 a.m. to 3 p.m., Monday through Friday, in room 404E, Humphrey Building, at that address.

FOR FURTHER INFORMATION CONTACT: Canta Pian or Karen Armstrong, Hubert H. Humphrey Building, Room 404–E, 200 Independence Ave, SW., Washington, DC 20201, or call (202) 245–7148 (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: DHHS/ASPE proposes to establish a new system of records, called the JOBS Evaluation Data System. This system will be established and maintained by ASPE's contractor and its subcontractors to fulfill its contract to evaluate the JOBS programs.

The JOBS training program was mandated "to assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence" (Pub.L. 100–485, section 201 (a)). The Family Support Act, Pub.L. 100–485, section 203(c), calls for an evaluation of JOBS to determine the effectiveness of different approaches to assisting welfare applicants and recipients. The evaluation will contain three main study areas: An impact analysis, an implementation and process study, and a benefit-cost analysis. Other analyses, such as studies of performance standards, will also be conducted. Records will be collected for approximately 48,000 welfare applicants and recipients, although certain components of the data collection, such as educational testing and surveys, will be completed on smaller subsets of the sample.

Records in this system will be obtained through interviews with sample members, educational tests, case file reviews, and from participating sites' administrative files for AFDC benefits (including AFDC, Food Stamps, and Medicaid files). This information will be collected to inform the evaluation about sample members' JOBS program participation and wage and unemployment benefits receipt. Administrative records may be provided in computer readable formats such as magnetic tapes or disk. Social Security Numbers and/or case and recipient identifiers will be used to retrieve records.

Data in the system will be maintained in a secure manner. ASPE's contractor's project managers will control access to the data. All files will be kept in secure areas, using locked files, password controls and encryption routines. Compilations of individualized data will not be provided to agencies at the research sites.

The routine uses, compatible with the stated purposes of the system, are proposed as follows:

- Disclosure to the Department of Justice, courts or other tribunals in the event of litigation involving the Federal Government, the Department or employees of the Department.
- Disclosure to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.
- Disclosure to employees of the contactor who need the record in performing their duties related to the contract.
- Disclosure to subcontractors for the purpose of collating, analyzing, aggregating or otherwise refining records in the system.

Dated: January 10, 1992.

Martin H. Gerry,

Assistant Secretary for Planning and Evaluation.

09–90–0083

SYSTEM NAME:

JOBS Evaluation Data System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Manpower Demonstration Research Corporation (MDRC), 3 Park Avenue, New York, NY 10016
Deloitte and Touche, 2 Oliver Plaza, Pittsburgh, PA 15222
Response Analysis Corporation, 377 Wall Street, Princeton, NJ 08542–0158
Participating Sites (See list below)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will include records on a sample of approximately 48,000 individuals in 7 to 9 sites who were AFDC recipients or applicants at the time of selection of the research sample and who were eligible to receive JOBS services. Certain categories of records will be collected for all sample members, while others will be collected only for subsamples in selected sites.

CATEGORIES OF RECORDS IN THE SYSTEM:

In each of the evaluation sites, clients will be randomly assigned to either treatment or control groups through a computerized assignment system by the contractor. Similar data will be collected for members of both treatment and control groups in the research sample. Categories of records collected from administrative records, surveys, and testing include client identifiers (including name, social security number,

etc.); demographic characteristics; family status; labor market status; educational status; public assistance status; program status; total income and poverty status; attitudes toward work, welfare, parenting, and jobs; motivational, self-descriptive, and work-related factors; program participation; educational and training utilization; school performance and developmental status of children; and factors related to child care use.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority is provided by the Family Support Act, Public Law 100–485, section 203(c), 42 U.S.C. 661 note, which calls for an evaluation to determine the effectiveness of different approaches to assisting welfare applicants and recipients.

PURPOSE OF THE SYSTEM:

The purpose of the JOBS Evaluation Data System is to build and expand on prior and in-progress research in order to determine which program approaches work best for different subgroups of welfare applicants and recipients. The evaluation will contain three main study areas: an impact analysis, an implementation and process study, and a benefit-cost analysis. Other analyses, such as studies of performance standards, will also be conducted. Numerous reports on the findings (in aggregate form only) will be issued over the course of the multi-year evaluation.

The impact study will examine the effects of various JOBS program approaches on individuals' employment status and earnings levels, receipt and amount of AFDC payments, income levels, and educational attainment, in up to ten sites (and on literacy, basic mathematics achievement, and the development of children in three of the ten sites). The research will provide important information to policy makers who need to decide which services to emphasize for which populations in JOBS in the future.

The implementation and process analysis—the second major evaluation study area—is intended to inform the impact analysis and assess the feasibility and replicability of different approaches. It will do this by examining how various JOBS approaches are implemented in each site, individuals' patterns of participation in JOBS and other services available in the community, the relationship between participation and individuals' baseline characteristics, and the site contexts.

The cost-effectiveness study—the third major study area—will estimate the total costs of the various JOBS approaches in each site as well as the costs of particular activities or components within each approach. These costs will then be compared to program benefits, as estimated through the impact study, to determine the relative cost-effectiveness of different JOBS approaches.

ROUTINE USES OR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following routine uses for the system are proposed:

1. Information may be disclosed to the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

- DHHS, or any component thereof; or
- Any DHHS employee in his or her official capacity; or
- Any DHHS employee in his or her individual capacity where the Department of Justice (or DHHS, where it is authorized to do so) has agreed to represent the employee; or
- The United States or any agency thereof where DHHS determines that the litigation is likely to affect DHHS or any of its components, is a party to litigation or has an interest in such litigation, and DHHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, DHHS determines that such disclosure is compatible with the purpose for which the records were collected.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. The evaluation project is being performed under a contract. Records may be disclosed to employees of the contractor who need the record in performing their duties related to the contract. The contractor will be required to maintain Privacy Act safeguards with respect to such records.

4. Records may be disclosed to the contractor and its subcontractors for purposes of collecting, collating, analyzing, aggregating or otherwise refining records in this system. The contractor and its subcontractors shall be required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and disk, paper records.

RETRIEVABILITY:

The research sites will provide DHHS's contractor with identifying information on each sample member at the time of random assignment, which will be maintained in automated and paper files at the contractor's location. For all sample members, these identifiers will be used to access administrative records, as described above, and to add to files containing survey and test data.

The contractor will assign a sample identifier to each sample member and any personal identifiers will be encrypted on the research files. Thus, the identifiers will be used only for data collection and validation purposes. Once the files are created, the sample ID will be used for maintenance of the research files, with the identifiers encrypted. A master "decryption" routine will be maintained to link the files. Access to this file will be restricted to contractor staff who need to use this routine to validate data.

SAFEGUARDS:

The following safeguards are routinely employed by DHHS and the contractor to insure confidentiality:

- All contract staff sign an agreement to comply with the corporate policies on data security and confidentiality;
- All data, both paper files and computerized files, are kept in secure areas, with access limited on a need to know basis, using locked files, password controls and encryption routines;
- Merged data sources will have identifying information encoded to preclude overt identification of individuals;
- All reports, tables and printed materials will present only aggregate information;
- Compilations of individualized data will not be provided to agencies at the research sites; and
- Confidentiality agreements will be executed with any participating subcontractors and consultants who must obtain access to the detailed files.

Any users of the files in the future will be held to the same confidentiality and use restrictions outlined above.

RETENTION AND DISPOSAL:

Data will be maintained for at least seven years or as long as it serves

legitimate research purposes related to the evaluation.

Data disposal will consist of shredding all individual records (and certifying) and destroying computer files, other than the Public Use File, which will not contain identifiable individual data.

SYSTEM MANAGER AND ADDRESS:

Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW, Washington, DC 20201.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the system manager at the address indicated above. Provide notarized signature as proof of identity. The request should specify the name or identification number and the time period of association with the JOBS Evaluation.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above, reasonably identify the record(s), and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). (These procedures are in accordance with Departmental Regulations (45 CFR 5b.7)).

RECORD SOURCE CATEGORIES:

Information for individuals will be collected from local social services agency records, including benefit payment and claims files, from service providers and from interviews with sample members and their children.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

LIST OF PARTICIPATING SITES:

Michigan—Kent and Wayne Counties:

Director, Bureau of Employment Services, Michigan Department of Social Services, 235 South Grand Avenue, Lansing, MI 48909

Ohio—Franklin County:

Director, Ohio Department of Human Services, Office of Welfare Reform, 30 East Broad Street, 31st floor, Columbus, OH 43266

Georgia—Fulton County:

Director Division of Family and Children Services, Georgia Department of Human Resources, 878 Peachtree Street, NE., Atlanta, GA 30309

Oklahoma—Oklahoma City, Cleveland and Pottawatomie Counties:

Program Support Supervisor, Oklahoma Department of Human Services, Family Support Services Division, PO Box 25352, Oklahoma City, OK 73125

California—Riverside County:

Associate Program Analyst, GAIN and Employment Operations Bureau, California Department of Social Services, 744 P Street, MS–6136, Sacramento, CA 95814

Oregon—Washington and Multnomah Counties:

Program Analyst—JOBS unit, Adult and Family Services Division, Oregon Department of Human Resources, 415 Public Service Building, Salem, OR 97310

[FR Doc. 92–1269 Filed 1–16–92, 8:45 am]

BILLING CODE A150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Suspension Lifted; Laboratory Again Meets Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice

SUMMARY: The Department of Health and Human Services notifies Federal Agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986) dated April 11, 1988. The following laboratory's certification to engage in urine drug testing for Federal Agencies was suspended on July 23, 1991 (56 FR 34205, July 26, 1991) and was reinstated effective January 14, 1992.

Harris Medical Laboratory, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294.

FOR FURTHER INFORMATION CONTACT: Mona W. Brown, Press Officer, National Institute on Drug Abuse, room 10–A–39, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone (301)-443–6245.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 92–1395 Filed 1–16–92; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 91F–0464]

Hoechst Celanese Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoechst Celanese Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2,2'-[1,2-ethanediylbis (oxy-2,1-phenyleneazo)] bis [N-(2,3-dihydro-2-oxo-1*H*-benzimidazol-5-yl)]-3-oxo-butanamide (C.I. Pigment Yellow 180) as a colorant in polymers that are intended to contact food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4289) has been filed by the Hoechst Celanese Corp., 500 Washington St., Coventry, RI 02816. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of 2,2'-[1,2-ethanediylbis (oxy-2,1-phenyleneazo)]bis[N-(2,3-dihydro-2-oxo-1*H*-benzimidazol-5-yl)]-3-oxo-butanamide (C.I. Pigment Yellow 180) as a colorant in polymers that are intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 9, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition

[FR Doc. 92–1262 Filed 1–16–92; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Center for Nursing Research; Notice of Meeting: National Advisory Council for Nursing Research and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Advisory Council for Nursing Research, National Center for Nursing Research; and its Subcommittees, February 3–5, 1992, Building 31C,

Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892.

Meetings of the full Council and its Subcommittees will be held at times and places listed below. Attendance by the public will be limited to space available.

The full Council will meet in open session on February 4, from 9 a.m. to 4:30 p.m. and on February 5, from 11 a.m. to adjournment. Agenda items will include the NIH Strategic Plan, NCNR-Long Range Plan, Report on the Division of Intramural Programs, and the Report on the Division of Extramural Programs.

The Planning Subcommittee will meet in open session February 3, in Building 31C, Conference Room 7, from 8 a.m. to 10:30 a.m. to discuss long-term and strategic planning and policy issues.

The Communications Subcommittee will meet in open session February 3, in Building 31C, Conference Room 7, from 10:30 to 12 noon to discuss goals and strategies for enhancing communications with specific audiences.

The Intramural Program Subcommittee will meet in open session February 3, in Building 31C, Conference Room 6, from 12:30 p.m. to 2:30 p.m. to review, discuss and evaluate individual programs and projects conducted by the NCNR.

The National Nursing Research Agenda Subcommittee will meet in open session February 3, in Building 31C, Conference Room 7, from 2:30 p.m. to 5 p.m. to discuss the National Nursing Research Agenda in general and the Priority Expert Panels in particular.

The Nursing Resources and Health Policy Subcommittee will meet in open session February 4, in Building 31C, Conference Room 6, from 4:30 p.m. to 6 p.m. to discuss nursing resources and health policy as they relate to nursing science and the achievement of quality and effective outcomes in patient care.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92–463, the Intramural Program Subcommittee meeting will be closed to the public on February 3, from 12 noon to 12:30 p.m. for the review, discussion and evaluation of individual intramural programs and projects conducted by the National Center for Nursing Research, including consideration of personal qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting of the Research Subcommittee will be closed to the public on February 3, from 10 a.m. to 12 noon, and the meeting of the full Council on February 5, from 8:30 a.m. to 11 a.m. for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Vicki Thompson, Council Assistant, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, room 5B23, Bethesda, Maryland 20892, (301) 496–0207, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health.)

Dated: January 10, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1294 Filed 1–16–92; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on January 10, 1991.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Agency/Employer Questionnaire—0960–0470. The information collected on the form SSA–4163 is used to determine the need for and the amount of any offset of benefits for certain individuals receiving government pensions and also receiving or applying for Social Security benefits. The respondents are State governments or political subdivisions thereof.

Number of Respondents: 1,000.
Frequency of Response: 1.
Average Burden Per Response: 3 minutes.
Estimated Annual Burden. 50 hours.
OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: January 10, 1992.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 92–1165 Filed 1–16–92; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–2934–N–61]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in

National Coalition for the Homeless v. *Veterans Administration*, No. 88–2503–OG (D.D.C.),

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (202) 693–4583; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366–4246; Dept. of Interior; Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers.)

Dated: January 10, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 01/17/92

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. TO3202, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219210001
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3203, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219210002
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3206, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219210003
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3207, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219210004
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3208, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219210005
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3211, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219210006
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3213, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219210007
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3216, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219210008
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3217, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219210009
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

North Carolina

USCG Station Oak Island
300 A. Caswell Beach Road
Caswell Beach Co: Brunswick NC 28461–
Landholding Agency: DOT
Property Number: 879210001
Status: Excess
Comment: 1300 sq. ft., 3 story wood frame, needs rehab, presence of asbestos on pipes, secured area w/alternate access, off-site removal only.

Unsuitable Properties

Buildings (by State)

Oregon

Storage Building
USCG Marine Safety Office
6767 North Basin Avenue
Portland Co: Multnomah OR 97217–3992
Landholding Agency: DOT
Property Number: 879210002
Status: Excess
Reason: Other
Comment: Extensive deterioration.

Land (by State)

Puerto Rico

119.3 acres
Culebra Island PR 00775–
Landholding Agency: Interior
Property Number: 619210001
Status: Excess
Reason: Floodway

[FR Doc. 92–1111 Filed 1–16–92; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–02–4130–09]

Proposed Plan of Operation Amendment for Open Pit Mining, Baltic Mine

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and to request comments on the scope of the environmental impact statement.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management intends to prepare an environmental impact statement for a portion of the California Desert Conservation Area, Kern County, California. The proposed action, the Baltic Project, is located in the Stringer Mining District, approximately 1 mile south of Randsburg, California. This document will be prepared as a joint Environmental Impact Statement/ Environmental Impact Report with Kern County, to meet the requirements of the National Environmental Policy Act and the California Environmental Quality Act.

Based on the analysis of an environmental assessment, the Bureau has made a finding of potential significant impact. At issue are the direct, indirect, and cumulative impacts to the human environment stemming from a plan amendment to conduct open pit mining and cyanide heap leach processing. The proposed action is surface mining and cyanide heap leach processing of up to 18 million tons of ore and waste on 200 acres of combined public and private land within a 532 acre project area. Possible alternatives include the processing of ore in a closed vat leach circuit, and no action.

ADDRESSES: To be considered in the scoping process, all written comments and suggestions must be received by Lee Delaney, Area Manager, Ridgecrest Resource Area, Bureau of Land Management, 300 South Richmond Road, Ridgecrest, California 93555, not later than February 18, 1992. Written comments made in response to the Kern County Notice of Preparation, need not be resubmitted.

FOR FURTHER INFORMATION CONTACT: Peter Milne, Project Manager, or Joe Liebhauser, Environmental Coordinator, Bureau of Land Management, Ridgecrest Resource Area, 300 South Richmond Road, Ridgecrest, California 93555, (619) 375–7125.

Steve Smith,

Acting Area Manager

[FR Doc. 92–1256 Filed 1–16–92; 8:45 am]
BILLING CODE 4310–40–M

[OR–130–02–4212–13; GPO–2–091]

Realty Action: Exchange of Public Lands in Ferry, Lincoln, Pend Oreille and Stevens Counties, WA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian:

T. 36 N., R. 32 E., sec. 11, M.S. 503 and M.S. 575;
T. 40 N., R. 32 E., sec. 9, NW¼NE¼,
Sec. 14, NW¼NE¼, SE¼NE¼,
Sec. 19, SW¼SE¼,
Sec. 24, NE¼, E½, NW¼;
T. 40 N., R. 33 E., sec. 7, lots 1, 6, and 12,
T. 35 N., R. 34 E., sec. 18, NW¼NE¼,
Sec. 20, SW¼SW¼;
T. 35 N., R. 36 E., sec. 24, NW¼NE¼,
T. 35 N., R. 37 E., sec. 18, NW¼NE¼, SW¼NW¼,
Sec. 34, E½SW¼SE¼;
T. 37 N., R. 37 E., sec. 17, SW¼NW¼,
Sec. 32, Lot 1;
T. 38 N., R. 37 E., sec. 18, Lots 5 and 9, SW¼SE¼;
T. 34 N., R. 38 E., sec. 29, SE¼SE¼,
Sec. 30, Lot 3,
Sec. 33, NW¼NE¼, NE¼,NW¼, SE¼SE¼;
T. 36 N., R. 38 E., sec. 8, SW¼SW¼,
T. 36 N., R. 39 E., sec. 18, SW¼NE¼,
Sec. 19, E½SW¼;
T. 35 N., R. 40 E., sec. 4, SE¼NE¼
Sec. 9, Lots 3, 4, 8, & 9;
T. 38 N., R. 40 E., sec. 28, SW¼NW¼;
T. 32 N., R. 41 E., sec. 32, E½SW¼, SW¼,SW¼;
T. 38 N., R. 41 E., sec. 18, E½NE¼;
T. 39 N., R. 41 E., sec. 13, SE¼SE¼,
Sec. 35, NW¼NE¼;
T. 38 N., R. 42 E., sec. 1, Lot 5;

The area described aggregates 1,706 more or less acres in Ferry, Pend Oreille, and Stevens Counties, Washington.

In exchange for all part of these lands, the Federal Government will acquire all or part of the following described private lands from several landowners using Clearwater Investments, Inc., to facilitate the exchange:

Willamette Meridian:

T. 21 N., R. 32 E., sec. 1, Lots 1, 2, 3, & 4, S½N½, S½;
Sec. 3, These portions of the NE¼, SE¼,NW¼, and N½SW¼ lying south of the Great Northern Railroad Right-of-Way, SW¼,
T. 22 N., R. 32 E., sec. 14, All;
Sec. 15, portion of SW¼SE¼,
Sec. 22, E½;
Sec. 23, All;
T. 21 N., R. 33 E., sec. 6, Lots 3, 4, 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼,
Sec. 7, Those portions of Lot 1 and the NE¼NW¼ lying north of the Great Northern Railroad Right-of-Way;
T. 21 N., R. 35 E., sec. 23, E½, E½W½;
Sec. 24, S½N½, S½;
Sec. 25, N½N½NW¼, S½SNW¼, SW¼;
Sec. 26, N½, E½SE¼;
Sec. 35, N½;

The area described above aggregates 4,982 acres more of less in Lincoln County, Washington.

The Bureau of Land Management (BLM) and Clearwater Investments, Inc. have grouped the exchange of these public and private lands into priorities based on the opportunity to exchange individual properties and through land-use planning. Completion of the total exchange of these lands is expected to occur in several stages. The value of the lands to be exchanged in each stage will be approximately equal. The proponent may be required to make payments to equalize the values of the lands based upon the approved appraisal.

The purpose of the land exchange is to facilitate resource management opportunities in eastern Washington as identified in the Spokane District's Resource Management Plan. The exchange will reduce the number of widely scattered parcels of public land that are difficult and uneconomic to manage, and acquire private property in the Upper Grab Creek Management Area of Lincoln County. The private lands being offered have important values for recreation, fish and wildlife habitat, riparian and watershed management.

The exchange is subject to:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, act of August 30, 1890, (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. All other valid existing rights, including, but not limited to, any right-of-way, permit, or lease of record.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws.

Detailed information concerning the exchange, is available for review at the Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202.

For a period of 45 days, interested parties may submit comments to the Spokane District Manager at the above address. Any adverse comments will be reviewed by the State Director. In absence of any adverse comments, this realty action will become a final determination of the Department of the Interior.

Date of Issue: January 6, 1992.

Joseph K. Buesing,

District Manager.

[FR Doc. 1179 Filed 1–16–92; 8:45 am]

BILLING CODE 4310–33–M

[CA–060–4214–10; CACA 28950]

Proposed Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,262.45 acres of public land to protect the Santa Margarita Ecological Preserve. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Russell L. Kaldenberg, Area Manager, Palm Springs-South Coast Resource Area, 63–500 Garnet Avenue, P.O. Box 2000, North Palm Springs, California 92258.

SUPPLEMENTARY INFORMATION: On December 3, 1991, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

San Bernardino Meridian

T. 8 S., R. 3 W.,
Sec. 23, SE¼SE¼;
Sec. 24, Lots 1, 2, 3, S½SW¼;
Sec. 25, W½NE¼,W½,SE¼;
Sec. 26, E½NE¼,NE¼NW¼,NE¼SE¼;
Sec. 33, NW¼NE¼,S½NE¼,S½NW¼, N½SW¼,NE¼SE¼.
T. 9 S., R. 3 W.,
Sec. 3, Lot 4.

The areas described aggregate approximately 1,262.45 acres in Riverside and San Diego counties.

The purpose of the proposed withdrawal is to protect this unique area's sensitive resources and ensure its principle use as an outdoor classroom and field biology research site in accordance with a memorandum of understanding between San Diego State University, and the Bureau of Land Management. Until an application is filed, no further action will be taken on this proposal.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period may include short-term, low impact permits or licenses, provided such use is compatible with the sensitive resource values associated with the Santa Margarita Preserve.

Dated: January 9, 1992.

James L. Williams,

Acting, District Manager.

[FR Doc. 92–1261 Filed 1–16–92; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Availability of a Draft Habitat Conservation Plan and Environmental Assessment; Citation Builder's Ridge at Cresta Verde Development Project, Riverside Co., CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the draft Habitat Conservation Plan (HCP) and Environmental Assessment (EA) on the proposed issuance of a permit pursuant to section 10(a)(1)(B) to allow incidental take of the endangered Stephens' kangaroo rate (*Dipodomys stephensi*) on the Ridge at Cresta Verde Development Project in the City of Corona, in Riverside County, California, are available for public review. Comments and suggestions are requested. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments are requested 30 days after publication of this notice.

ADDRESSES: Persons wishing to review the draft HCP and EA may obtain a copy by writing the U.S. Fish and Wildlife Service, Laguna Niguel Field Office. Documents will be available for public inspection during normal business hours (8 a.m. to 5 p.m.) at the Laguna Niguel Field Office. Written data or comments concerning the proposed application and draft EA should be submitted to the U.S. Field and Wildlife Service, Laguna Niguel Field Office, 24000 Avila Road, room 3106, Laguna Niguel, California 92656.

FOR FURTHER INFORMATION CONTACT: Mr. Brooks Harper at the above Laguna Niguel Field Office.

SUPPLEMENTARY INFORMATION: Citation Builders, 17731 Irvine Boulevard, suite 201, Tustin, California 92680, has applied to the Fish and Wildlife Service (Service) for an incidental take permit that would authorize take of Stephens' kangaroo rates (SKR) on their proposed development site known as "The Ridge at Cresta Verde" within the City of Corona, Riverside County, California.

The proposed action is to authorize take of SKR on the proposed development site, which is outside of the area of take previously authorized under an interim incidental take permit (#739678) issued to Riverside County Habitat Conservation Agency (RCHCA).

This proposed action is detailed in section 1.3—Proposed Action. The proposed action authorizes take of 21.6 acres of SKR-occupied habitat. The applicant proposes to mitigate for the habitat loss by paying the sum of $42,220 to an entity designated by the Service for use in the SKR preservation program. This amount is equal to that which would be required if the project were within the RCHCA's permit boundary.

Dated: January 10, 1992.

Marvin L. Plenert,

Regional Director.

[FR Doc. 92–1257 Filed 1–16–92; 8:45 am]

BILLING CODE 4310–55–M

Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service announces the dates and locations of the 1992 Federal Duck Stamp Contest, and the public is invited to attend.

DATES: 1. This action is effective July 1, 1992, the beginning of the 1992–1993 contest.

2. The public may view the 1992 Federal Duck Stamp Contest entries on Sunday, November 8, 1992, in the Department of the Interior Auditorium.

3. This year's contest will be held on November 9 and 10, 1992, beginning at 10:30 a.m. on Monday and 9 a.m. on Tuesday.

4. Persons wishing to enter this year's contest may submit entries anytime after July 1, but all must be postmarked no later than midnight September 15.

ADDRESSES: Requests for complete copies of the regulations, reproduction rights and the display and participation agreements should be addressed to: Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 1849 C Street, NW., Suite 2058, Washington, DC 20240.

Location of contest: Department of the Interior Building Auditorium (C Street Entrance), 1849 C Street, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Opgrand, Chief, Federal Duck Stamp Program, U.S. Fish and Wildlife Service, Washington, DC 20240, Telephone: (202) 208–4354 or (202) 208–5508.

SUPPLEMENTARY INFORMATION: The following five eligible species for the 1992–1993 duck stamp contest are listed below:.

(1) Canada Goose
(2) Mallard
(3) Canvasback
(4) Greater Scaup
(5) Northern Pintail

The primary author of this document is Norma Opgrand, U.S. Fish and Wildlife Service.

Dated: January 8, 1992.

Richard N. Smith,

Director

[FR Doc. 92–1267 Filed 1–16–92; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service Environmental Document Prepared for a Proposed 8⅝-Inch Texaco Inc.'s Right-of-Way Pipeline on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of an environmental document prepared for a proposed 8⅝-inch Texaco right-of-way pipeline from the Garden Banks, Block 189, to High Island Area, East Addition, South Extension, Block A–377, near the East Flower Garden Bank.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) prepared by the MMS for the following right-of-way pipeline activity proposed on the Gulf of Mexico OCS.

Activity/Operator	Location	Date
Texaco Pipeline Inc., Right-of-Way Pipeline Activity, SEA No. OCS–G 13219.	High Island Area, East Addition, South Extension, Blocks A–393, A–390, A–377, A–374, A–373, A–367, A–366, A–365, A–364; and Garden Banks, Blocks 189, 188, 187, 186, 142, 141, and 97; Pipeline Right-of-Way Grant, OCS–G 13219, approximately 130 miles southeast of the nearest coastline in Texas.	01/10/92

Persons interested in reviewing the environmental document for the proposal listed above or obtaining information about the EA and FONSI prepared for the activity on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for certain proposals related to exploration for and the development/production of oil and gas resources, rights-of-way pipelines, structure removals, and other actions on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. This notice constitutes the public notice of availability of an environmental document required under the NEPA Regulations.

Dated: January 10, 1992.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 92–1227 Filed 1–16–92; 8:45 am]

BILLING CODE 4310-MR-M

Minerals Management Service

National Outer Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee; Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of National Outer Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463.

The Pacific Regional Technical Working Group (RTWG) Committee of the National OCS Advisory Board is scheduled to meet February 13, 1992, from 8:30 a.m. to 5 p.m., at the Minerals Management Service Regional Office conference room at 770 Paseo Camarillo in Camarillo, California 93010. The tentative agenda for the meeting covers the following topics:

Opening Remarks
1993–1994 Regional Environmental Studies Plan
Committee Procedures
Local Government Issues
  Ventura County
  Santa Barbara County
  San Luis Obispo County
Postlease Issues
  Site Clearance
  Transportation
  Fisheries/Space-Use Conflicts
Members Reports
Public Comment Period

The Pacific RTWG is one of six such committees of the OCS Advisory Board. These committees provide the Director of the MMS with advice on technical matters of regional concern regarding prelease and postlease OCS activities.

The Pacific RTWG consists of seven private sector members and one representative from each of the following: California, Oregon, Washington, U.S. Fish and Wildlife, Environmental Protection Agency, U.S. Coast Guard, Department of the Navy, National Marine Fisheries Service, the National Park Service, and the Minerals Management Service.

The February 13 meeting is open to the public, and time has been set aside for public comment. This is primarily a technical meeting and does not address issues dealing with MMS policy. Interested persons may make oral or written presentations to the committee.

Requests to address the committee should be made by February 7, 1992, to:

Pacific OCS Region, Minerals Management Service, 770 Paseo Camarillo, Camarillo, California 93010.

Requests to make oral statements should be accompanied by a summary of the statement to be made.

Minutes of the meeting will be available for review and copying 20 days after the meeting at the MMS Library, 770 Paseo Camarillo, Camarillo, California 93010.

Dated: January 9, 1992.

J. Lisle Reed,

Regional Director, Pacific OCS Region.

[FR Doc. 92-1155 Filed 1-16-92; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development and Economic Cooperation; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the One Hundred and Ninth Meeting of the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC) on February 13, 1992, from 8:30 a.m. to 5 p.m.

The purposes of the meeting are: (1) To discuss the Administration's policies and programs for the Historically Black Colleges and Universities; (2) to consider A.I.D. deliberations about the future course of U.S. economic assistance; (3) to dialogue with A.I.D.'s task force on former USSR republics and the potential role of universities; and (4) to review current status of the CRSP program and take actions as appropriate.

This meeting will be held in Main State Department Building in room 1105. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent time available for the meeting permits.

All persons, visitors and employees are required to wear proper identification at all times while in the Department of State building. Please let the BIFADEC Staff know (tel # (703) 816-0277) that you expect to attend the meeting and on which days. Provide your full name, name of employing company or organization, address and telephone number not later than February 6, 1992. A BIFADEC Staff Member will meet you at the Department of State Diplomatic Entrance at C and 22nd Streets with your Visitor's Pass.

C. Stuart Callison, Deputy Executive Director, Agency Center for University Cocperation in Development, Bureau for Research and Development, Agency for International Development will be the A.I.D. Advisory Committee Representative at this Meeting. Those desiring further information may write to Dr. Callison, in care of the Agency for International Development, room 900 SA-38, Washington, DC 20523-3801 or telephone him on (703) 816-0255.

Dated: January 13, 1992.

Ralph H. Smuckler,

Executive Director, Agency Center for University Cooperation in Development.

[FR Doc. 92-1264 Filed 1-16-92; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to The Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

January 14, 1992.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Riceland Foods, Inc.

(2) 22nd & Park Avenue, Stuttgart, AR 72160.

(3) 22nd & Park Avenue, Stuttgart, AR 72160.

(4) Terry L. Richardson, P.O. Box 927, Stuttgart, AR 72160.

(1) Tennessee Farmers Cooperative.

(2) P.O. Box 3003, LaVergne, TN 37086-3003.

(3) P.O. Box 3003, LaVergne, TN 37086-3003.

(4) Joe L. Wright, P.O. Box 3003, LaVergne, TN 37086-3003.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1271 Filed 1-16-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31998]

Peter M. Dearness and New England Southern Railroad Co., Inc.—Continuance in Control Exemption—Quincy Bay Terminal Co.; Notice of Exemption

Peter M. Dearness and New England Southern Railroad Co., (NES), jointly have filed a notice of exemption to continue to control Quincy Bay Terminal Co. (QBT) upon QBT's becoming a carrier. QBT concurrently filed, in Finance Docket No. 31997, Quincy Bay Terminal Co.—Operation Exemption—Fore River Railroad Corporation, a notice of exemption to operate a 3.76-mile rail line between Quincy, MA, and an interchange with Consolidated Rail Corporation at East Brainstree, MA, under a license and operating agreement with Fore River Railroad Corporation (Fore River). QBT proposed to commence operations on or after January 15, 1992. The notice is also related to Docket No. AB-359X, Fore River R. Corp.—Discont. of Service—Norfolk County, MA, where Massachusetts Water Resources Authority, Fore River's owner, filed a lease discontinuance exemption or an alternative adverse waiver petition to terminate the rail service of the line's current operator, Fore River Railway Company, Inc.

Peter M. Dearness owns 35 percent of QBT's stock, serves as its president and general manager, and is a 96-percent stock owner of NES, a class III rail carrier. NES owns 18 percent of QBT's stock. Mr. Dearness and NES assert that: (1) The properties they plan to operate and control do not connect with each other; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or

any other railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any comments must be filed with the Commission and served on: Keith G. O'Brien, Rea, Cross & Auchincloss, suite 420, 1920 N Street, NW., Washington, DC 20036.

Decided: January 13, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1272 Filed 1-16-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31985]

Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Co.; Notice of Exemption

Southern Pacific Transportation Company (SP) has agreed to grant Peninsula Corridor Joint Powers Board (JPB): (i) Bridge trackage rights for commuter service over approximately 4.3 miles of SP line between milepost 47.1, at Cahill, CA, and milepost 51.4, at Lick CA; and (ii) trackage rights for extended commuter service over approximately 29.3 miles of line between milepost 51.4 and milepost 80.7, at Gilroy, CA. The trackage rights were to become effective on or after December 27, 1991.

This grant of trackage rights is one of a series of transactions that will allow JPB and San Mateo County Transit District (Samtrans) to conduct rail passenger commuter service on the San Francisco Peninsula without disrupting SP's freight and intercity passenger operations. Verified notices have been filed concurrently in Finance Docket No. 31980, Peninsula Corridor Joint Powers Board and San Mateo County Transit District—Acquisition Exemption—Southern Pacific Transportation Company, to exempt JPB's and Samtrans' acquisition of certain SP main lines, and in Finance Docket No. 31983, Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board and San Mateo County Transit District, to exempt JPB's and Samtrans' grant back to SP of trackage rights over certain main line that they are acquiring from SP. In addition, SP anticipates filing in Finance Docket No. 31984 a verified notice to exempt its grant of certain other trackage rights to JPB.

This notice is filed under 49 CFR 1180.2(d)(7). Petition to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Michael N. Conneran, Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market Street, suite 2300, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: January 13, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1273 Filed 1-16-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31980]

Peninsula Corridor Joint Powers Board and San Mateo County Transit District—Acquisition Exemption—Southern Pacific Transportation Co.; Notice of Exemption

The Peninsula Corridor Joint Powers Board (JPB) and the San Mateo County Transit District (Samtrans), both public agencies, have filed a notice of exemption to acquire segments of the main line track and all of the underlying right-of-way of Southern Pacific Transportation Company (SP) between milepost 0.147, at San Francisco, and milepost 51.40, at Lick, in San Francisco, San Mateo, and Santa Clara Counties, CA, a distance of approximately 51.3 miles. JPB and Samtrans will use the acquired properties to conduct passenger commuter rail service on the San Francisco Peninsula.[1] The transaction was to have been consummated on or after December 27, 1991.

JPB will own the acquired properties within San Francisco County (between mileposts 0.147 and 5.2) and Santa Clara County (between mileposts 29.7 and 51.4); JPB and Samtrans jointly will own the acquired properties within San Mateo County (between mileposts 5.2 and 29.7).

SP is selling all its main line track between milepost 0.147 and milepost 44.0, at Santa Clara Junction, CA, but in concurrently filed Finance Docket No. 31983, Southern Pacific Transportation Company—Trackage Rights Exempiton—Peninsula Corridor Joint Powers Board and San Mateo County Transit District, JPB and Samtrans are granting back trackage rights to SP for freight and intercity passenger operations between these points.

SP will retain ownership of the New Coast Main line between mileposts 44.0 and 51.4. SP is selling separate main line track to JPB between milepost 44.0 and milepost 46.9, at the Cahill Yard in San Jose. Multiple tracks are available in Cahill Yard between milepost 46.9 and milepost 47.4, at Auzerais Street, south of Cahill Yard. SP will retain ownership of the existing main line between mileposts 47.4, and 51.4. JPB will own a second main line now under construction between milepost 47.4 and milepost 48.6, near Alma Street. (JPB plans to extend that line to Lick.)

In concurrently filed Finance Docket No. 31985, Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company, SP is granting JPB overhead trackage rights between mileposts 46.9 and 51.4 (apparently pending completion of the referenced construction and extension of the JPB main line). Also in that proceeding, SP is granting JPB trackage rights between milepost 51.4 and milepost 80.7, at Gilroy. Finally, SP anticipates filing a verified notice for an exemption to grant JPB trackage rights over a 1-mile branch line at Lick (Finance Docket No. 31984 assertedly has been reserved for that transaction).

Any comments must be filed with the Commission and served on David J. Miller, Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market Street, suite 2300, San Francisco, CA 94105.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a

[1] Samtrans will be the manager of the commuter service. Operations will be conducted either directly by Samtrans or by a contract operator to be selected. SP has agreed to serve as interim operator. This notice of exemption covers only the acquisition transaction and not any operation of the rail properties being acquired.

petition to revoke will not automatically stay the transaction.

Decided: January 13, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1274 Filed 1-16-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31997]

Quincy Bay Terminal Co.—Operation Exemption—Fore River Railroad Corp.

Quincy Bay Terminal Co. (QBT), has filed a notice of exemption to operate a 3.76-mile rail line [1] between Quincy, MA, and an interchange with Consolidated Rail Corporation at East Braintree, MA, under a license and operating agreement with Fore River Railroad Corporation (Fore River). QBT proposes to commence operations on or after January 15, 1992.[2]

This transaction is related to a concurrently filed notice of exemption in Finance Docket No. 31998, Peter M. Dearness and New England Southern Railroad Co., Inc.—Continuance in Control Exemption—Quincy Bay Terminal Co.,[3] and a lease discontinuance in Docket No. AB-359X, Fore River R. Corp.—Discont. of Service—Norfolk County, MA.[4]

Any comments must be filed with the Commission and served on: Keith G. O'Brien, Rea, Cross & Auchincloss, suite 420, 1920 N Street, NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 13, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1275 Filed 1-16-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31983]

Southern Pacific Transportation Co.—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board and San Mateo County Transit District, Notice of Exemption

Peninsula Corridor Joint Powers Board (JPB) and San Mateo County Transit District (Samtrans) have agreed to grant trackage rights to Southern Pacific Transportation Company (SP) over approximately 43.8 miles of line between milepost 0.147, at San Francisco, and milepost 44.0, at Santa Clara Junction, CA. The trackage rights were to become effective on or after December 27, 1991.

This grant of trackage rights is one of a series of transactions that will allow JPB and Samtrans to conduct rail commuter passenger service on the San Francisco Peninsula without disrupting SP's freight and intercity passenger operations in the same corridor. Verified notices have been filed concurrently in Finance Docket No. 31980, Peninsula Corridor Joint Powers Board and San Mateo County Transit District—Acquisition Exemption—Southern Pacific Transportation Company, to exempt JPB's and Samtrans' acquisition of certain SP main lines (including the line over which trackage rights are being granted back to SP in this proceeding), and in Finance Docket No. 31985, Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company, to exempt SP's related grants of certain trackage rights to JPB. In addition, SP anticipates filing in Finance Docket No. 31984 a verified notice to exempt its grant of certain other trackage rights to JPB.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary Laakso, Southern Pacific Building, One Market Plaza, room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: January 13, 1992.

By the Commisson, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1276 Filed 1-16-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 408X)]

CSX Transportation, Inc.—Abandonment Exemption—in Richmond, Va; Notice of Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon an approximately 0.51-mile line of railroad between milepost A.R.-1.92, near Maury Street, and milepost A.R.-2.43, at Hopkins Road, in the City of Richmond, VA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 16, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

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[1] QBT indicates that 1.93 miles of line are spur and side track. Under 49 U.S.C. 10907, the Commission lacks jurisdiction over the operation of spur, industrial, team, switching or side tracks that are located entirely in one State.

[2] The verified notice originally filed December 31, 1991, was amended by letter filed January 7, 1992. The exemption became effective on January 15, 1992.

[3] Becaue QBT will become a class III rail carrier upon consummation of this operation exemption, a notice of exemption for continuance of control has been filed under 49 CFR 1180.2(d)(2) in Finance Docket No. 31998. This is because Peter M. Dearness, president and general manager of QBT, owns 35 percent of its stock and 98 percent of the stock of New England Southern Railroad Co., Inc. (NES), a class III rail carrier. NES owns 18 percent of QBT's stock.

[4] A lease discontinuance exemption, and an alternative adverse waiver petition to terminate the rail service now being provided by the Fore River Railway Company, Inc., the line's current operator, was filed on December 31, 1991, by the Massachusetts Water Resources Authority, Fore River's owner.

[1] A stay will be routinely issued by the Commission in those proceedings where an

Continued

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 27, 1992.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by February 6, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 22, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 13, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–1270 Filed 1–16–92; 8:45 am]

BILLING CODE 7035-01-M

informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987)

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Complex in Forrest City, AR

AGENCY: Federal Bureau of Prisons, Department of Justice

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The United States Department of Justice, Federal Bureau of Prisons has determined that a Federal Correctional Complex (FCC) is needed in its system. The Bureau of Prisons will evaluate two proposed sites located in Forrest City, Arkansas for construction of the FCC.

The proposed sites are:

A. A 943 acre site located south of the city in St. Francis County with the northern tip within the Forrest City limits. The property is bounded on the east by the Missouri Pacific Railroad, on the south by County Road No. 56, and on the west by Yacona Road. The northern boundary of the site is just south of Martin Luther King Boulevard.

B. A 526 acre site is located west of the city entirely within St. Francis County and bisected by County Road No. 8, Beck Spur Road. The site is adjacent to the Forrest City water utility sewage oxidation fields and is bounded on the south by the Chicago Rock Island and Pacific Railroad and County Road No. 72 and on the north by Interstate 40.

The Federal Bureau of Prisons proposes to construct a 2,750 bed Federal Correctional Complex, that will be completed in phases. The Bureau of Prisons has been studying a number of options and locations near Forrest City appear to merit further study.

It is anticipated that both of the proposed sites are of sufficient size to provide space for housing, programs, services and support areas as well as administration, staff training and parking.

The Process

In the process of evaluating the two sites, several aspects will receive detailed examination including: utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources and socio-economic impacts.

Alternatives

In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at 7:00 P.M. on January 30, 1992 at the Forrest City Civic Center. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of public information meetings will be held by representatives of the Bureau of Prisons with interested citizens, officials and community leaders.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

Address

Questions concerning the proposed action and the DEIS can be answered by: K. Bradley Wiggins, Site Selection and Environmental Review Specialist, Federal Bureau of Prisons, 320 First St. NW, Washington, DC 20534, (202) 514–6697.

Dated: January 9, 1992.

Patricia K. Sledge,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 92–997 Filed 1–16–92; 8:45 am]

BILLING CODE 4410-5-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II,

chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 27, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 27, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of January 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Atlas Wireline Services (Co)	Abilene, TX	01/06/92	12/13/91	26,713	Oilfield services.
C.A.D. Fashions, Inc. ILGWU	Newark, NJ	01/06/92	12/30/91	26,714	Sportswear
Gleason Corporation (Wkrs)	Rochester, NY	01/06/92	12/30/91	26,715	Cutting and grinding machines.
Northwest Alloys, Inc. (Co)	Addy, WA	01/06/92	12/18/91	26,716	Metal magnesium.
Pan American World Airways (Wkrs)	Jamaica, NY	01/06/92	12/27/91	26,717	Airlines.
Potomac Sportswear ILGWU	Martinsburg, WV	01/06/92	12/27/91	26,718	Children's garments.
Sage Drilling Co., Inc (Wkrs)	Wichita, KS	01/06/92	12/20/91	26,719	Oil, gas drilling.
Volvo GM Heavy Truck Corp (Wkrs)	Ogden, UT	01/06/92	12/29/91	26,720	Trucks.

[FR Doc. 92-1302 Filed 1-16-92; 8:45 am]

BILLING CODE 4510-30-M

Commission on Achieving Necessary Skills; Open Meeting

AGENCY: Employment and Training Administration, Labor.

SUMMARY: The Secretary's Commission on Achieving Necessary Skills (SCANS) was established in accordance with the Federal Advisory Committee Act (Public Law 92-463) on February 20, 1990. The SCANS is to advise the Secretary on national competency guidelines for the skills required of high school graduates for entry into employment. The Commission has the practical task of specifying and quantifying levels of skills' attainment to perform different types of jobs adequately.

TIME AND PLACE: The ninth meeting will be held on February 7, 1992 from 8:30 a.m. until 5 p.m. at the Capitol Hill Hyatt Regency Hotel, 400 New Jersey Avenue, NW., Washington, DC 20001.

AGENDA: Commissioners review draft final SCANS Report and formulate and approve final Commission recommendations.

PUBLIC PARTICIPATION: The meeting will be open to the public. Time will be set aside for public comments. Seating will be available for the public on a first-come, first-serve basis. Five seats will be reserved for the media. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations.

Individuals or organizations wishing to submit written statements should send 10 copies to Dr. Arnold Packer, Executive Director, SCANS—room C-2318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Papers received on or before January 24, 1992 will be included in the record of the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Packer, Exec. Dir., SCANS—room C-2318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-4840.

Signed at Washington, DC this 10th day of January 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92-1303 Filed 1-16-92; 8:45 am]

BILLING CODE 4510-30-M

Office of Work-Based Learning; Federal Committee on Apprenticeship; Public Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-462; 5 U.S. App. 1) of October 6, 1972, notice is hereby given that the Federal Committee on Apprenticeship (FCA) will conduct an open meeting on January 28, 1992, from 10 a.m.-4:30 p.m. and January 29, from 8:30 a.m.-12 noon at the Quality Hotel Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001, Federal Ballroom South.

The agenda for the meeting will include:

Tuesday, January 28

10 a.m. Call meeting to order
Introduction of Members and DOL Officials
Committee Chair's Report and Plans for the meeting
Approval of Minutes
Report from Office of Work-Based Learning
Report from Bureau of Apprenticeship and Training
Presentation of Sub-Committee Reports
- Traditional Apprenticeship Programs
- Non-Traditional Apprenticeship Programs
- Underrepresented Groups
- Quality of Apprenticeship Programs
- National Training System
- Apprenticeship Operations
- Legislation
- Apprentice OSHA Safety Training

Presentation by DOL Womens Bureau
Discussion of Apprenticeship Concept Paper
Developing National Training Standards for Vocational Education (Carl Perkins Act)
4 p.m. Public Comments
4:30 p.m. Recess to reconvene January 29, 1992, at 8:30 a.m.

Note: Lunch will be taken at 12 noon to 1 p.m.

Wednesday, January 29

8:30 a.m. Resume Presentation of Sub-Committee reports
BAT Survey—Final Results and Next Steps
FCA Members' Projects Relating to Apprenticeship
Future FCA Actions and Considerations
Other Business/Administrative Matters
Plans for Next Meeting

12 Noon Adjourn

Note: The order of agenda items may be revised due to time constraints and availability of topic speakers.

Members of the public are invited to attend the proceedings. Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing a

copy to the Executive Director at any time. Papers received on or before January 24, 1992, will be included in the record of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate the nature of intended presentation and the amount of time should be limited to no more than 5 minutes. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests. Communications to the Executive Director should be addressed as follows: Mr. Minor R. Miller, Office of Work-Based Learning, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-4649, Frances Perkins Building, Washington, DC 20210; telephone number (202) 535-0540.

Signed at Washington, DC this 9th day of January 1992.

Roberts T. Jones,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 92-1304 Filed 1-16-92; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers.

Volume II

Ohio:
OH91-12 (Jan. 17, 1992) .... p. All.
OH91-14 (Jan. 17, 1992) .... p. All.

Volume III

South Dakota, SD91-5 p. All. (Jan. 17, 1992).

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York, NY91-11 (Feb. 22, 1991). p. 885, p. 886.

Volume II

Iowa, IA91-14 (Feb. 22, 1991) p. All.
Indiana, IN91-3 (Feb. 22, 1991). p. 279, p. 280.
Michigan, MI91-7 (Feb. 22, 1991). p. 515, pp. 516-534b.
Nebraska, NE91-1 (Feb. 22, 1991). p. All.
Ohio, OH91-29 (Feb. 22, 1991). p. 903, pp. 905, 906, 911, pp. 913-915, 919-930, pp. 932-935.

Texas:
TX91-26 (Feb. 22, 1991)..... p. All
TX91-32 (Feb. 22, 1991)..... p. All.
TX91-48 (Feb. 22, 1991)..... p. All.

Volume III

South Dakota, SD91-3 p. All. (Feb. 22, 1991).

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) documented entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing

Office, Washington, DC 20402 (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 10th day of January 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92–1089 Filed 1–16–92; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Establishment of Advisory Committee on Publications Subvention

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) and advises of the establishment of the Advisory Committee on Publications Subvention for a two-year period. The Committee evaluates applications submitted to the National Historical Publications and Records Commission (NHPRC) by university presses for grant support to publish documentary editions under the NHPRC subvention program. The Committee advises the Commission on which proposals should be supported and makes recommendations on the mechanics and procedures for operation of the NHPRC subvention program.

The Archivist of the United States has determined that the establishment of this advisory committee is in the public interest.

Dated: January 13, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92–1258 Filed 1–16–92; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a Joint Statement between the President and the Nation's governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and report to the nation on the progress toward the goals.

TENTATIVE AGENDA ITEMS: The agenda for the meeting includes a report on the National Council on Education Standards and Testing and a discussion of feedback on the 1991 National Education Goals Report and the National Assessment of Educational Progress (NAEP).

DATES: The eleventh meeting is scheduled for Friday, January 24, 1992, 1:30–4:30 p.m.

ADDRESSES: The Holiday Inn, Capitol Hill, 550 C Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The National Education Goals Panel office at (202) 632–0952. Please give your name to indicate attendance.

Dated: January 7, 1992.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 92–1225 Filed 1–16–92; 8:45 am]

BILLING CODE 3127-01-M

NATIONAL SCIENCE FOUNDATION

Directorate for Education and Human Resources; Human Resource Development for Minorities in Science and Engineering; Availability of Program Announcement

This is to announce the availability of the Program Announcement and Guidelines for Human Resource Development for Minorities in Science and Engineering (NSF 91–129).

You can obtain a copy of this document by sending an E–Mail request to STIS (NSF's Science and Technology Information System). Send your request to "stisserv@nsf.gov" (Internet) or "stisserv@NSF" (BITNET). The "Subject:" line will be ignored. Put the following commands in the text of the message:

Request: stis
Topic: NSF91129
Request: end

If you cannot send E–Mail to Internet or BITNET addresses, you may request a printed copy of the document by calling the Forms and Publications Unit, 202–357–7861 or writing: Forms and Publications Unit, room 232, National Science Foundation, Washington, DC 20550.

Dated: January 14, 1992.

M. Rebecca Winkler,

Management Analyst.

[FR Doc. 92–1265 Filed 1–16–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Chemistry; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemistry.

Date and Time: February 20–21, 1992; 9 a.m. to 5 p.m.

Place: Rooms 523, 536, 543, and 540–B, National Science Foundation 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Edwin H. Abbott, Program Officer, Division of Chemistry, Special Projects Office, National Science Foundation, room 340, Washington, DC 20550. Telephone: (202) 357–7503.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: Review and evaluate Postdoctoral Research Fellowships in Chemistry applications.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: January 13, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–1223 Filed 1–16–92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Engineering Centers Division; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate the project and provide advice and recommendations. Because the project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within

exemptions (4) and (6) of 5 U.S.C. 552b(c), The Government in the Sunshine Act.

Name: Advisory Panel for Engineering Centers Division.
Date: February 11–13, 1992.
Time: 8:30 a.m. to 5 p.m.
Place: Carnegie Mellon University, Pittsburgh, Pennsylvania 15213.
Type of meeting: Closed.
Agenda: Site visit to review and evaluate the Engineering Research Center for Engineering Design.
Contact: Dr. Frederick Betz, Program Director, Engineering Centers Division, National Science Foundation, room 1121, Washington, DC 20550, Telephone: 202–357–9707.

Dated: January 13, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–1219 Filed 1–16–92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Engineering Centers Division; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate the project and provide advice and recommendations. Because the project and provide advice and recommendations. Because the project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), The Government in the Sunshine Act.

Name: Advisory Panel for Engineering Centers Division.
Date: February 18–19, 1992.
Time: 8:30 a.m. to 5 p.m.
Place: University of Maryland, College Park, Maryland 20742.
Type of Meeting: Closed.
Agenda: Site visit to review and evaluate the Engineering Research Center for Systems Research.
Contact: Dr. Frederick Betz, Program Director, Engineering Centers Division, National Science Foundation, room 1121, Washington, DC 20550, Telephone: 202–357–9707.

Dated: January 13, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–1220 Filed 1–16–92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Engineering Centers Division; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate the project and provide advice and recommendations. Because the project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), The Government in the Sunshine Act.

Name: Advisory Panel for Engineering Centers Division.
Date: February 19–21, 1992.
Time: 8:30 a.m. to 5 p.m.
Place: University of Illinois, Urbana, Ilinois 61801.
Type of Meeting: Closed.
Agenda: Site visit to review and evaluate the Engineering Research Center for Computational Field Simulation.
Contact: Dr. Christina Gabriel, Program Director, Engineering Centers Division, National Science Foundation, room 1121, Washington, DC 20550, Telephone: 202–357–9707.

Dated: January 13, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–1221 Filed 1–16–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Mechanical and Structural Systems.
Date and Time: February 19–20, 1992; 8:30 a.m. to 5 p.m.
Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Dr. William W. Hakala, Acting Program Director, 1800 G Street, NW., room 1128, Washington, DC 20550 Telephone: (202) 357–7508.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: Review and evaluate Mechanical and Structural Systems unsolicited proposals.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical informatoin; financial data; such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–1222 Filed 1–16–92; 8:45 am]

BILLING CODE 7555-01-M

THE PRESIDENT'S EDUCATION POLICY ADVISORY COMMITTEE

Meeting

AGENCY: The President's Education Policy Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: The President's Education Policy Advisory Committee was established under Executive Order 12687 and signed by the President of the United States on August 15, 1989.

Tentative Agenda

ITEMS: The tentative agenda for the meeting will include a discussion of suggestions for education-related activities for parental involvement in education and community outreach activities.

DATES: The tenth meeting is scheduled for Wednesday, January 22, 1992, from 2 to 4 p.m.

ADDRESSES: The meeting will be held at the Old Executive Office Building, room 180, Washington, DC.

ATTENDANCE: Please contact the White House Office of Policy Development to indicate attendance or for further information. The phone number is (202) 456–7777. For clearance purposes, please call no less than twenty-four hours in advance. Please provide over the phone, your social security number, date of birth, and name as read on your driver's license. When entering the building, you will be required to show picture identification.

Dated: January 7, 1992.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 92–1224 Filed 1–16–92; 8:45 am]

BILLING CODE 3127-01-M

VOL 57 ISS 12 JA 17 1992 UMI

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30178; File No. SR-CSE-91-5]

Self-Regulatory Organizations; the Cincinnati Stock Exchange; Order Granting Approval to Proposed Rule Change Relating to Administration of Requests for Extensions of Time Under Regulation T and Rule 15c3-3

January 13, 1992.

On October 19, 1991, the Cincinnati Stock Exchange ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Exchange Rule 6.1 to clarify the Exchange staff's authority to grant extensions of time on payment or delivery of securities pursuant to Federal Reserve Board ("FRB") Regulation T and Rule 15c3-3 under the Act ("SEC Rule 15c3-3").

The proposed rule change was published for comment in Securities Exchange Act Release No. 29903 (November 5, 1991), 56 FR 57540 (November 12, 1991). No comments were received regarding the proposed rule change.

Regulation T, issued by the Board of Governors of the Federal Reserve System pursuant to the Act, governs the extension of credit to customers by broker-dealers for purchasing securities.[3] SEC Rule 15c3-3 governs the extension of credit for selling securities.[4] Under Regulation T and Rule 15c3-3(n), a broker-dealer may request an extension of time for payment or delivery of securities from any registered national securities exchange or a registered national securities association.[5] Because it is a registered national securities exchange, the CSE is authorized to grant requests for extensions of time for payment or delivery of securities.

The CSE proposes to amend Exchange Rule 6.1,[6] in order to set forth more clearly the Exchange's existing authority to grant extensions of time for payment or delivery of securities pursuant to Regulation T and SEC Rule 15c3-3. Specifically, the CSE proposes to add to Rule 6.1(b) citations to §§ 220.8(d) and 220.4(c)(3)(ii) under regulation T, which provide that a broker-dealer may request an extension of time for payment or delivery of securities from any registered national securities exchange or a registered national securities association, and to SEC Rule 15c3-3, which governs the extension of credit for selling securities. The Exchange states that the proposed modifications to Rule 6.1 will ensure that the Rule addresses extensions of time for payment or delivery of securities comprehensively, accurately, and in accord with current law and practice.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act.[7] In particular, the Commission believes that the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that the proposed amendment should further the objectives of section 6(b)(5) by clarifying the Exchange's authority to grant extensions of time for payment of delivery of securities pursuant to Regulation T and SEC Rule 15c-3-3. The proposal should result in clear and consistent guidelines for Exchange staff and provide notice to the public of the Exchange's authority to grant extensions of time.[8]

In addition, the Commission believes that the proposed rule change is consistent with section 7 of the Act in that it is designed to prevent the excessive use of credit for the purchase or carrying of securities.[9] The proposal further supports the purposes of Regulation T, which was issued by the FRB pursuant to section 7(a) of the Act, because it helps regulate the extension of credit by member organizations. Also, the proposal should better enable the Exchange to comply with the applicable provisions of the Act, as required by section 6(b)(1) of the Act, because it sets forth in clear and consistent terms the Exchange's authority to grant extensions of time for payment or delivery of securities.

Further, because the CSE is a registered national securities exchange that is authorized to grant requests for extensions of time for payment or delivery of securities, the Commission believes that it is essential for the CSE to have an effective Regulation T regulatory program in effect. To this end, the Commission believes that the CSE should develop a Regulation T regulatory program which includes, but is not limited to: Examination of extension request patterns by security and by registered representative; identification of increases in extension requests by firm, registered representative, and branch office; identification of the number of customers who have reached their extension limit, as well as the identity of customers who have filed extension requests with more than one firm; and sufficient staff so that this information can be analyzed, used, and shared with other self-regulatory organizations.

Finally, the commission notes that the proposed rule change merely codifies in rule form the CSE's existing authority to grant extensions of time for payment or delivery of securities. The Commission's approval of the proposal should not be construed as evaluating the CSE's performance to date in administering this program.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] That the proposed rule change is approved.

For the Commission, by the Division of Market Regulation. Pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1277 Filed 1-16-92; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] 12 CFR part 220 (1991).

[4] 17 CFR 240.15c3-3 (1991).

[5] 12 CFR 220.8(d) and 220.4(c)(3)(ii) (1991); 17 CFR 240.15c3-3(n) (1991).

[6] Exchange Rule 6.1 is found in chapter VI of the CSE rules. The CSE proposes to change the title of this Chapter from Margin Accounts to Extensions of Credit, see *infra* note 8.

[7] 15 U.S.C. 78f (1988).

[8] The Commission further finds that the portion of the CSE proposal which deletes references to §§ 220.3(f) (exchange of securities) and 220.4(c)(6) (not an existing section) of Regulation T from Rule 6.1 and changes the title of chapter VI of the Exchange's Rules from Margin Accounts to Extensions of Credit is consistent with the Act. These changes delete superfluous citations and make the title of chapter VI more explicit and more consistent with the provisions of Regulation T.

[9] 15 U.S.C. 78g (1988).

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30-3(a)(12) and (15) (1991).

[Release No. 34-30178; File No. SR-NYSE-91-40]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments to the Uniform Application for Securities Industry Registration or Transfer, Form U-4 and the Uniform Termination Notice for Securities Industry Registration, Form U-5

January 13, 1992.

On November 18, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the Uniform Application for Securities Industry Registration or Transfer, Form U-4, and the Uniform Termination Notice for Securities Industry Registration, Form U-5.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 30018 (December 2, 1991), 56 FR 64283 (December 9, 1991). No comments were received on the proposal.

The Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and the Uniform Termination Notice for Securities Industry Registration ("Form U-5"), which are employed in connection with the National Association of Securities Dealers, Inc. ("NASD") Central Registration Depository ("CRD") system,[4] are used by the various securities self-regulatory organizations ("SROs") as part of their registration and oversight of member organization personnel. Specifically, Form U-4 is the uniform form for licensing salespersons within the states and various SROs. An individual applies for registration for the first time by filing a Form U-4 with the CRD and, thereafter, the registered person is obligated to update this information as changes occur. Form U-5 contains information relating to the circumstances surrounding the termination of an applicant's prior employment.

The purpose of the proposed rule change is to revise Forms U-4 and U-5 to expand and clarify certain information required by these forms. First, the Exchange proposes a revision to Form U-4 identical to a revision previously submitted to the Commission by the NASD.[5] This revision allows a previously registered person to certify as to the completeness and accuracy of his or her disciplinary record in the NASD's CRD system and alleviates the need to resubmit full details of all reportable items upon transfer of registration to a new broker-dealer.[6] In this regard, the registered person would certify that, having reviewed a copy of the disclosure information taken from the CRD system, the disclosure information is correct, complete and in the proper Disclosure Reporting Page ("DRP") format.[7] An individual may further certify that (1) there is no new information to add to the disclosure file; (2) there is a new item to report, for which a DRP is provided; or (3) there is new information updating a previously reported occurrence, for which a DRP is attached.[8]

The Exchange is also proposing certain amendments to both Forms U-4 and U-5 as a result of the enactment of new legislation. Specifically, the changes are in response to the enactment of the Securities Acts Amendments of 1990 ("1990 Amendments") [9] and the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Remedies Act").[10] The Exchange believes that these new laws, which expand the definition of statutory disqualification in section 3(a)(39) of the Act [11] and expand the enforcement powers of the Commission, respectively, require that changes be made to Forms U-4 and U-5.[12] Certain minor changes to these forms were also requested by the Commodity Futures Trading Commission ("CFTC") and the National Futures Association ("NFA").

Accordingly, the Exchange proposes four amendments to Form U-4. First, on page one, the word "examination" is being added after "Series 3" and "Series 5" in item 11. The boxes for both the Series 3 and the Series 5 [13] represent requests to take an examination as opposed to a request to register as a certain type of registrant, such as a Registered Options Principal. This distinction is consistent with the title of item 11, "Type of Examination/Registration Requested," as well as the boxes labelled S-63 and S-65, which reflect examination requests only.[14] This change was suggested by the NFA to eliminate confusion.

Second, the Exchange proposes several changes to the disciplinary questions on page three of Form U-4 as a result of the enactment of the 1990 Amendments, which became effective November 15, 1990. This law specifies that certain actions taken by foreign financial regulatory authorities will be considered statutory disqualifications under the Act. Pursuant to this legislative change, the definition of a foreign financial regulatory authority is being added to the form,[15] and language reflecting this change has been inserted in certain questions under item 22, where appropriate.[16] For example, in addition to disclosing domestic felony convictions and certain misdemeanor convictions involving fraud or investment related activities, item 22 A would require disclosure of foreign convictions of that nature as well.

Third, the Remedies Act, which became effective October 15, 1990, provides the Commission with additional enforcement remedies, which include cease and desist authority and the ability to impose a civil money penalty for certain securities violations. Accordingly, the Exchange proposes to add item 22 D(5) to Form U-4 to reflect these enforcement powers such that an applicant would be required to report civil monetary penalties as well as

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The NYSE submitted the pages of Forms U-4 and U-5 that are proposed to be amended as Exhibits 2 and 3, respectively, of the rule filing. Copies are available at the Commission as well as at the NYSE.

[4] The CRD is a computer data base containing current registration information as well as the regulatory and enforcement actions taken against securities industry personnel for access by the Commission, state regulators and certain self-regulatory organizations. Specifically, the CRD contains each broker-dealer's Form BD, which is filed with the CRD to both register with the Commission and most state securities commissions, as well as to become a member of the NASD. Forms U-4 and U-5 are also filed with the CRD system.

[5] See Securities Exchange Act Release No. 28534 (October 12, 1990), 55 FR 42962 (approving File No. SR-NASD-90-45).

[6] See item 22 O, Disclosure Certification (Optional), on page 3 of Form U-4.

[7] The DRP is a page of Form U-4 used to report details of affirmative responses to the questions appearing in item 22 of Form U-4. This disciplinary information is then submitted directly into the CRD system.

[8] See questions 1-3 of item 22 O, on page 3 of Form U-4.

[9] Pub. L. No. 101-550, 104 Stat. 2713 (November 15, 1990).

[10] Pub. L. No. 101-429, 104 Stat. 931 (October 15, 1990).

[11] 15 U.S.C. 78c(a) (39) (1988).

[12] Recently, the Commission approved a proposal by the NASD containing similar changes to Forms U-4 and U-5. See Securities Exchange Act Release No. 29699 (November 4, 1991), 56 FR 57541 (approving File No. SR-NASD-91-33).

[13] These boxes are labelled S-3 and S-5, respectively.

[14] S-63 refers to the Series 63, or Uniform Securities Agent State Law Examination, and S-65 refers to the Series 65, or Uniform Investment Advisory Law Examination.

[15] See item 22, Definitions, on page 3 of Form U-4

[16] See item 22, questions A-C and E, on page 3 of Form U-4.

cease and desist orders entered by the SEC or CFTC.[17]

Fourth, the NYSE proposes a minor change to the firm certification section on the bottom of page four of Form U–4. The last sentence certifies that the firm has communicated with the employee's previous employers for the past three years. Previously, the CFTC required contact with former employers for the prior five years, which was noted in parenthesis following this sentence. Due to recent rule change,[18] the CFTC now requires employment verification for three years, so the clause relating to commodities has been deleted.[19]

In addition to the aforementioned amendments to Form U–4, the NYSE also proposes to amend Form U–5, modifying both the instructions and text of the form to include changes to the disciplinary questions consistent with Form U–4. Specifically, the NYSE proposes to add the definition of the term "foreign financial regulatory authority" to items 13 and 14 of Form U-5 as well as to Form U–5 Instructions, item 1, definition (C). Furthermore, an optional certification section has been added so that previously filed information will not have to be filed on subsequent forms.[20]

After careful consideration of the Exchange's proposed amendments to Forms U–4 and U–5, the Commission believes that the proposed rule change is consistent with the Act, as well as the 1990 Amendments and Remedies Act. Absent the amendments reflecting the Commission's additional enforcement powers, the Commission believes that the disclosure of information on Form U–4 would be incomplete because both cease and desist orders entered as well as monetary penalties assessed would go unreported. Furthermore, the Commission believes that the recognition of disciplinary actions taken by foreign financial regulatory authorities supports the international enforcement of securities laws, and, given the rapid internationalization of the securities markets, protects U.S. investors from foreign securities professionals who have engaged in misconduct abroad.

Moreover, the Commission notes that the supplementary material to NYSE Rule 345 both requires Exchange members and member organizations to thoroughly investigate the previous employment records of prospective employees as well as details various registration and recordkeeping requirements. Specifically, verification of the information contained in Form U–4 and review of Form U–5 are required.[21] The Commission believes that these amendments, clarifying and adding to Forms U–4 and U–5, should serve investors and the public interest by assuring that meaningful disclosure is relied upon by members selecting prospective employees as well as the Exchange in its oversight in this area.

Furthermore, the Commission understands that amending Form U–4 to allow for certification by a registered person, upon transfer to another broker-dealer, of previously disclosed disciplinary information in lieu of resubmission should simplify and accelerate the prospective registered person's application process as well as the member-employer's use of CRD information in seeking to make an informed hiring decision.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(5) and 6(c)(3).[22] In particular, the Commssion believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that the amendments eliminate repetitive information requirements, clarify certain language, and update various questions pursuant to legislative changes.

In addition, the Commission believes that the new information requirements of Forms U–4 and U–5 should assist the Exchange in its responsibility under Section 6(c) of the Act to deny membership to those subject to a statutory disqualification, who cannot meet such standards of training, experience, and competence as are prescribed by the rules of the exchange, or who have engaged in conduct inconsistent with just and equitable principles of trade.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] That the proposed rule change (SR–NYSE–91–40) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–1278 Filed 1–16–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30177; File No. SR–PSE–91–50]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Fees Respecting Applications for Membership

January 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 31, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b–4 of the Act, submits this rule filing to amend the following fees relating to applications for membership (italics denote proposed new language; brackets denote deleted language):

Investigation fee	$100
Fingerprinting fee	
In-House fee	$10
FBI processing fee	$30 [$25]
Study package/test fee (options)	$200
[$50 towards Initial Membership Fee]	
Equity examination fee	$50

Initial Membership Fee: 5% of average price of the last three membership sales with a minimum of *$1,000* [$350] and a maximum of *$4,000* [$3,500] (applicable to membership purchases and lease agreements)

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[17] See item 22 D(5) on page 3 of Form U–4.

[18] See Commodities Exchange Act Rules 3.12(c)(1)(ii), 3.16(c)(1)(ii), 3.18(c)(1)(ii), and 3.44(a)(4)(i) (enacted March 8, 1988, 53 FR 8428 (March 15, 1988) and effective April 4, 1988)).

[19] See page 4 of Form U–4.

[20] See Form U–5 Instructions, item 6, and item 16 of Form U–5.

[21] See NYSE Rule 345.11, .12 and .17.

[22] 15 U.S.C. 78f(b)(5) and (c)(3) (1988).

[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30–3(a)(12) (1991).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE is proposing to adopt and increase several fees associated with applying for membership at the Exchange.

Investigation Fees

Currently, no fee is charged for the investigation that the PSE conducts on the background of applicants.[1] The Exchange pays an outside investigating agency for conducting the investigation. The PSE proposes to pass through the investigating agency charge, together with an administrative processing fee, for a total of $100.[2]

Fingerprinting Fee

Applicants for membership are required to have their fingerprints taken and processed by the Federal Bureau of Investigation ("FBI").[3] Currently, there is no fee for taking fingerprints in-house. It is proposed to charge $10 as an in-house fingerprinting fee to offset costs.[4] The PSE pays the FBI for processing the fingerprints. The PSE proposes to increase the current charge of $25 for the FBI fee to $30, which includes a PSE administrative processing fee.

Study Package/Test Fee (Options)

All applicant market makers and floor brokers must take and pass the Options Examination.[5] Currently, the fee for the Options Study Package is $200, $50 of which is refundable if the applicant becomes a member. The proposed charge would eliminate the refund provision to help defray the administrative costs.

Equity Examination Fee

Currently, no fee is charged to specialists or floor brokers for taking the Equity Examination.[6] A non-refundable fee of $50 is proposed to help defray the administrative costs.

Initial Membership Fee

Currently, the Initial Membership Fee is 5% of the average price of the preceding three membership sales, subject to a minimum of $350 and a maximum of $3,500. This fee is applicable to membership purchase and lease agreements. The proposed charge would raise the minimum fee from $350 to $1,000 and the maximum from $3,500 to $4,000. The increased minimum will enable the PSE to establish a revenue base in this area to ensure its administrative expenses are covered.

The proposed rule filing is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were not solicited nor received from members or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–91–50 and should be submitted by February 7, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–1279 Filed 1–16–92; 8:45 am]

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[1] See PSE Rule 1.4(d). Generally, the Exchange investigates the employment history, credit, residence and criminal background of applicants for membership.

[2] Currently, the investigation agency charges $77 per examination.

[3] 15 U.S.C. 78q(f)(2). Pursuant to a plan filed with the Commission under SEC Rule 17f–2(c), the Exchange acts as a processor of fingerprints for its members and others, channeling fingerprint cards and attendant payments to the FBI.

[4] This fee would only apply to the Los Angeles office of the PSE, as fingerprinting is not currently performed in-house at the Exchange's San Francisco office.

[5] See PSE Rules 1.16(c), 6.33 and 6.44.

[6] This examination is administered pursuant to PSE Rules 1.16(c) and 5.27(d)(ii).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

January 13, 1992.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Oceaneering International, Inc.

Common Stock, $.01 Par Value (File No. 7–7775)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 4, 1992, written data, views and arguments concerning the above-referenced

application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions or unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-1280 Filed 1-16-92; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9990]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Coltec Holdings, Inc., 14¾% Senior Discount Debentures Due July 15, 2008)

January 13, 1992.

Coltec Holdings, Inc. ("Company") has filed an application with the Securities and Exchange Commission, pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

(1) The 14¾% Debentures were listed on the PSE in 1988 in order to facilitate compliance by the Company with certain state "blue sky" requirements in connection with their original issuance, and these objectives were met at the time of original issuance and are no longer relevant;

(2) since the original issuance of the 14¾% Debentures in July of 1988, trading volume has been and continues to be very low;

(3) since the original issuance, there have been, and continue to be, a limited number of registered holders of the 14¾% Debentures;

(4) the delisting of 14¾% Debentures would facilitate implementation of the proposed recapitalization ("Recapitalization") currently being pursued by the Company and Coltec Industries, Inc. in that the solicitation of consents from holders of the 14¾% Debentures contemplated by the Recapitalization would not then be subject to compliance with the proxy rules promulgated under the Act; and

(5) the Company seeks to avoid the expense and administrative burden associated with continued listing of the 14¾% Debentures on the PSE and continued registration of the 14¾% Debentures under the Act which would be necessary to permit such continued listing.

Any interested person may, on or before February 4, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-1281 Filed 1-16-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25452]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 10, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 3, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Express Company (31-864)

American Express Company ("American Express"), American Express Tower, World Financial Center, New York, New York 10285, has filed an application for an order declaring that it is not a "holding company" under section 2(a)(7) of the Act.

American Express, a New York corporation, is principally engaged, through subsidiaries, in providing travel-related, financial, international banking, information and investment services. Neither American Express nor any of its subsidiaries is presently a "public utility company" or a "holding company" under the Act.

American Express owns, through subsidiary companies, 186 shares (the "Shares") of auction perferred stock, no par value, of Tucson Electric Power Company ("Tucson Electric"), an electric-utility company. The Shares, which are generally nonvoting, have had voting rights since December 14, 1991 due to a default in dividend payment over a twelve-month period. American Express presently holds approximately 11% of the outstanding voting securities of Tucson Electric.

American Express states that it does not control or exercise such a "controlling influence" over the management or policies of Tucson Electric, as to make it necessary or appropriate in the public interest or the interest of investors or consumers that it be subject to the obligations, duties and liabilities imposed upon holding companies by the Act.

Indiana Michigan Power Company (70-5854)

Indiana Michigan Power Company ("Indiana Michigan"), formerly Indiana & Michigan Electric Company, One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment under Sections 9(a) and 10 of the Act to its application-declaration.

By Commission order dated July 21, 1976 (HCAR No. 19620), Indiana Michigan was authorized to enter into

an agreement of sale ("Agreement") with the City of Lawrenceburg, Indiana ("City") concerning the financing of emission control facilities ("Facilities") at Indiana Michigan's Tanners Creek Generating Station. Under the Agreement the City is to issue and sell one or more series of its pollution control revenue bonds ("Revenue Bonds"). The proceeds from the sales are to be deposited by the City with the trustee ("Trustee") under the indenture ("Indenture") entered into between the City and the Trustee pursuant to which Indenture the Revenue Bonds are issued and secured. The proceeds will then be applied to the payment of the cost of construction of the Facilities, originally estimated at approximately $96,100,000, or, in the case of proceeds from the sale of refunding bonds, to the payment at par of the entire principal amount of the series of Revenue Bonds to be refunded. Indiana Michigan conveyed a portion of the Facilities to the City, which portion became a part of the Facilities which the City sold to Indiana Michigan under an installment sales arrangement requiring Indiana Michigan to pay as the purchase price semi-annual installments in such an amount (together with other monies held by the Trustee under the Indenture for that purpose) as to enable the City to pay, when due, the interest, principal and premium (if any) on the Revenue Bonds.

In the order of July 21, 1976, the City was authorized to issue Revenue Bonds in an initial principal amount of $25 million ("Series A Bonds") and jurisdiction was reserved with respect to the terms of the sale of the Facilities as those terms were affected by the issue and sale of additional Revenue Bonds under the Agreement.

By orders dated May 9, 1977 (HCAR No. 20021) and November 8, 1977 (HCAR No. 20249), jurisdiction was released concerning the sale of Revenue Bonds in the principal amounts of $40 million and $12 million, respectively, as such sales affected the terms of the sale of the Facilities.

It is stated that the City now proposes, through December 31, 1992, to issue and sell a series of refunding bonds ("Series D Bonds") in the aggregate principal amount of up to $25 million, the net proceeds of which will be used to provide for the principal payment required for the early redemption of the $25 million principal amount of Series A Bonds, bearing interest at 8½% and maturing on July 1, 2006. The Series D Bonds will be issued pursuant to the Indenture as supplemented by a third supplemental indenture, will bear interest semi-annually and will mature at a date or dates not more than 30 years from the date of their issuance. Indiana Michigan states that it will not agree to the issuance of any Series D Bond by the City if the rate of interest to be borne by any such Revenue Bonds shall exceed 8% per annum. The Series D Bonds will be subject to mandatory redemption under certain circumstances and, if it is deemed advisable, a sinking fund provision. In addition, the Series D Bonds may not be redeemable at the option of the City in whole or in part at any time for a period of up to ten years. The Series D Bonds may be provided some form of credit enhancement, such as a letter of credit, surety bond or bond insurance, and pay a fee in connection therewith. It is contemplated that the Series D Bonds will be sold by the City pursuant to arrangements with Goldman, Sachs & Co. as underwriter. Indiana Michigan requests authority to alter the terms of the purchase price of the Facilities as it is affected by the sale of the Series D Bonds.

New Orleans Public Service Inc. (70-7350)

New Orleans Public Service Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Entergy Corporation, a registered holding company, has filed a post-effective amendment under Section 6(a)(2) of the Act to its application which was filed under sections 6(b) of the Act and Rule 50(a)(5) thereunder.

By order dated may 22, 1987 (HCAR. No. 24387), the Commission authorized NOPSI to establish a new Mortgage providing for the issuance of rate recovery general and refunding mortgage bonds and to issue and sell to institutional investors $75 million aggregate principal amount of an initial series of Bonds, 10.95% Series, due May 1, 1997 ("10.95% Bonds"). The 10.95% Bonds were issued under a First Supplemental Indenture ("Indenture") to the new Mortgage requiring NOPSI to initiate certain procedures which, under certain circumstances, would permit the holders of the 10.95% Bonds ("Holders") to tender such bonds to NOPSI for redemption, in the event of any modifications to a 1986 rate settlement agreement ("1986" Agreement") between NOPSI and its regulator the Council of the City of New Orleans ("Council"). Subsequently, on November 5, 1991, a new agreement was reached between NOPSI and Council ("1991 Agreement"), which modified and superceded the 1986 Agreement by resolving all pending rate matters and related litigation that had arisen during the interim. Because it modifies the 1986 Agreement, the 1991 Agreement triggers the Indenture's procedural requirements, which could permit the Holders to tender their bonds for redemption by NOPSI.

In light of the anticipated overall favorable impact of the 1991 Agreement of NOPSI's financial condition, and in order to avoid having to commerce the redemption procedures, NOPSI has requested the Holders to waive certain provisions of the Indenture insofar as they relate to such possible redemption. The Holders have unanimously agreed to such waiver. NOPSI requests authority to carry out the waiver set forth, above.

New Orleans Public Service Inc. (70-7448)

New Orleans Public Service Inc. ("NOPSI"), 317 Baronne Street, New Orleans Louisiana 70112, a subsidiary of Entergy Corporation, a registered holding company, has filed a post-effective amendment under section 6(a)(2) of the Act to its application which was filed under section 6(b) of the Act and Rule 50(a)(5) thereunder.

By order dated May 22, 1987 (HCAR. No. 24387), the Commission authorized NOPSI to establish a new Mortgage providing for the issuance of rate recovery general and refunding mortgage bonds ("Bonds") and to issue and sell to institutional investors $75 million aggregate principal amount of an initial series of Bonds, 10.95% Series, due May 1, 1997 ("10.95% Bonds") under a First Supplemental Indenture to the new Mortgage. By subsequent order herein dated January 13, 1988 (HCAR. No. 24559), the Commission authorized NOPSI to issue and sell up to $50 million aggregate principal amount of three additional series of Bonds under a Second Supplemental Indenture to the new Mortgage ("Indenture"). Pursuant to such authority, NOPSI issued and sold to institutional investors an aggregate principal amount of $40 million of Bonds in three series, a 13.20% Series, due February 1, 1991 ("13.20% Bonds"), a 13.60% Series, due February 1, 1993 ("13.20% Bonds"), and a 13.90% Series, due February 1, 1995 ("13.90% Bonds").

The 13.20% Bonds, 13.60% Bonds and 13.90% Bonds were issued under the Indenture requiring NOPSI to initiate certain procedures which, under certain circumstances, would permit the holders of the Bonds, including the holders of the 13.60% Bonds and the 13.90% Bonds ("Holders"), to tender such Bonds to NOPSI for redemption, in the event of any modifications to a 1986 rate settlement agreement ("1986" Agreement") between NOPSI and its

regulator the Council of the City of New Orleans ("Council"). Subsequently, on November 5, 1991, a new agreement was reached between NOPSI and Council ("1991 Agreement"), which modified and superceded the 1986 Agreement by resolving all pending rate matters and related litigation that had arisen during the interim. Because it modifies the 1986 Agreement, the 1991 Agreement triggers the Indenture's procedural requirements, which could permit the Holders to tender their Bonds for redemption by NOPSI.

In light of the anticipated overall favorable impact of the 1991 Agreement on NOPSI's financial condition, and in order to avoid having to commence the redemption procedures, NOPSI has requested the Holders to waive certain provisions of the Indenture insofar as they relate to such possible redemption. The Holders have unanimously agreed to such waiver. NOPSI requests authority to carry out the waiver set forth, above.

System Fuels, Inc., et al. (70–7668)

System Fuels, Inc. ("SFI"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a fuel procurement subsidiary company, together with two of its parent companies, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174 and Arkansas Power & Light Company ("AP&L"), 425 West Capitol, Floor 40, Little Rock, Arkansas 72201, each an electric public-utility subsidiary company of Entergy Corporation ("Entergy"), a registered holding company, and System Energy Resources, Inc. ("SERI"), Echelon One 1340 Echelon Parkway, Jackson, Mississippi 39213, also an electric public-utility subsidiary company of Entergy (LP&L, AP&L and SERI collectively referred to as the "Operating Companies"), have filed a post-effective amendment under sections 6(a), 7 and 12(b) of the Act and Rule 45 thereunder to their declaration.

By order dated September 27, 1989 (HCAR No. 24957), the Commission authorized SFI to enter into a credit agreement in order to borrow funds necessary to finance its nuclear materials and service inventory. In accordance with such order, SFI entered into a credit agreement, dated October 3, 1989 ("Credit Agreement"), with The Yasuda Trust and Banking Company, Ltd., New York Branch ("Yasuda"), as agent for the lenders named therein (collectively, "Banks"), including Yasuda, and the Banks, pursuant to which revolving credit loans ("Loans") are made to SFI in an aggregate principal amount of up to $45 million.

As security for the performance of its obligations under the Credit Agreement, SFI entered into a security agreement with Yasuda, dated October 3, 1989, as amended ("Security Agreement"), under which SFI granted Yasuda a security interest in certain nuclear materials, services inventory, accounts receivable and certain other incidental rights and instruments. The Operating Companies, SFI and Yasuda also entered into a consent and agreement, dated October 3, 1989, under which the Operating Companies acknowledged and consented to SFI's grant of a security interest to Yasuda in its accounts receivable arising from certain sales by SFI of nuclear materials and services to the Operating Companies and also entered into certain covenants.

The Credit Agreement will expire on September 30, 1993, unless SFI requests a one year extension. Therefore, SFI has requested that Yasuda extend the expiration date of the Credit Agreement an additional year until September 30, 1994. As a condition to such an extension, Yasuda has requested that SFI amend the Credit Agreement to provide for an increase in the quarterly commitment fee payable by SFI from 0.125% to 0.15% per year of the difference between: (i) The amount of the Banks' commitments to make Loans and (ii) the total principal amount of their outstanding Loans. In addition, SFI must pay Yasuda a closing fee of $3,000 at the closing of the proposed amendment to the Credit Agreement.

Northeast Utilities, et al. (70–7717)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, and Western Massachusetts Electric Company ("WMECO") and The Quinnehtuk Company ("Quinnehtuk"), both of 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, and Northeast Utilities Service Company ("Service"), The Connecticut Light and Power Company ("CL&P"), Northeast Nuclear Energy Company ("Nuclear") and The Rocky River Realty Company ("Rocky River"), each of 107 Selden Street, Berlin, Connecticut 06037, and Holyoke Water Power Company ("Holyoke"), Canal Street, Holyoke, Massachusetts 01040, subsidiaries of Northeast ("Subsidiaries"), and Public Service Company of New Hampshire ("PSNH") and North Atlantic Energy Corporation ("North Atlantic"), both of 1000 Elm Street, Manchester, New Hampshire 03105 (all companies collectively, "Applicants"), have filed a post-effective amendment to Northeast's and its Subsidiaries' application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.[1]

By order dated December 27, 1990 (HCAR No. 25234), the Commission authorized Northeast's and its Subsidiaries' proposal, through December 31, 1992, to issue short-term notes ("Bank Notes") pursuant to lines of credit, issue and sell commercial paper ("Commercial Paper"), make open account advances ("Advances") by Northeast to its subsidiary companies, and to continue the Northeast system money pool ("Money Pool") to be utilized by the Subsidiaries for operational, maintenance and construction expenses, and to meet certain cash needs. The aggregate amount of all short-term borrowings through December 31, 1992, whether through the issuance of Bank Notes, Commercial Paper, Advances, borrowings from the Money Pool, or through existing revolving credit agreements (HCAR No. 24943, August 18, 1989 and HCAR No. 24886, July 29, 1988) will not exceed the following maximum amounts: Northeast, $135 million; CL&P, $300 million; WMECO, $95 million; Holyoke, $2 million; Nuclear, $50 million; Rocky River, $55 million; Quinnehtuk, $5 million; and Service, $85 million.

The Applicants now propose to add PSNH and North Atlantic, through December 31, 1992, as participants in the Money Pool. PSNH's and North Atlantic's borrowings from the Money Pool will not exceed $125 million and $85 million, respectively. Additionally, Northeast also would be able to borrow funds for the purpose of lending those funds, through the Money Pool, to PSNH and North Atlantic.

Pennsylvania Electric Company (70–7924)

Pennsylvania Electric Company ("Pennelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, a public-utility subsidiary company of General Public Utilities Corporation, a registered holding company, has filed a declaration under section 12(d) of the Act and Rule 44 thereunder.

Pennelec proposes to sell to Pennsylvania State University ("Penn State") for $219,581 certain transformers, manholes and related equipment ("Utility Assets"). These Utility Assets

[1] Northeast was authorized, in relevant part, to acquire PSNH, a New Hampshire publicly owned electric utility, and to form North Atlantic as an electric utility subsidiary of Northeast that will own PSNH's interest in the Seabrook Nuclear Power Plant. HCAR Nos. 25221 and 25273 (Dec. 21, 1990 and Mar. 15, 1991, respectively).

are located on Penn State's property located in Harborcreek Township, Erie County, Pennsylvania. Pennelec arrived at the price through arms length negotiation and the proposed purchase price is in excess of the Utility Assets stated book value of $154,202.

National Fuel Gas Company, et al. (70-7927)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and its wholly owned subsidiary company, National Fuel Gas Distribution Corporation ("Distribution"), 10 Lafayette Square, Buffalo, New York 14203, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45, 50 and 50 (a)(5) thereunder.

National proposes to issue and sell, through December 31, 1993, an aggregate principal amount up to $150 million of debt securities consisting of: (1) One or more series of its Debentures ("New Debentures") maturing from one to forty years, under the competitive bidding procedures of Rule 50 of the Act as modified by the Commission Statement of Policy dated September 2, 1982 (HCAR No. 22623); and/or (2) medium-term notes ("New MTNs") with maturities from nine months to forty years. National proposes to sell the New MTNs, under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5). National has requested that it be authorized to begin negotiations with potential agents to place the MTNs. It may do so.

National proposes to lend the proceeds from the issuance of the New Debentures and/or New MTNs to Distribution in exchange for unsecured notes ("Notes"). Such Notes will bear interest payable semiannually and will mature serially on the date of maturity of the corresponding New Debentures and/or New MTNs; provided that National will have the option to require payment of such Notes at any time to the extent that the New Debentures and/or New MTNs mature are redeemed or otherwise reacquired by National. The Notes will bear interest at the effective interest cost of the principal amount of the New Debentures and/or New MTNs, in each case rounded to the next highest 1/100th of 1%.

Distribution will use the proceeds from the Notes: (1) To reduce their outstanding short-term borrowings under their lines of credit; (2) to repay notes held by National and issued in exchange for loans received by Distribution; (3) for its construction programs; or (4) for general corporate purposes.

Capital Holding Corp. (70-7953)

Capital Holding Corp. ("Capital Holding"), 680 Fourth Avenue, P.O. Box 32830, Louisville, Kentucky 40232, has filed an application for an order declaring that it is not a "holding company" under section 2(a)(7) of the Act.

Capital Holding, a Delaware corporation, is engaged, through subsidiaries, in providing diversified insurance and financial services. Capital Holding owns, through subsidiary companies, 100 shares (the "Shares") of auction preferred stock, no par value, of Tucson Electric Power Company ("Tucson Electric"), an electric-utility company. The Shares, which are generally nonvoting, have had voting rights since December 14, 1991 due to a default in dividend payment over a twelve-month period. Capital Holding presently holds more than 10% of the outstanding preferred stock of Tucson Electric, but less than 10% of all of the outstanding voting securities of Tucson Electric, including common stock.

Capital Holding states that it does not control or exercise such a "controlling influence" over the management or policies of Tucson Electric, as to make it necessary or appropriate in the public interest of investors or consumers that it be subject to the obligations, duties and liabilities imposed upon holding companies by the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1282 Filed 1-16-92; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9947]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; TRC Companies, Inc., Common Stock, $.10 Par Value

January 13, 1992.

TRC Companies, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In addition to being listed on the Amex, the Company's Common Stock also currently is listed on the New York Stock Exchange ("NYSE"). Effective at the opening of business on December 16, 1991, the Company's Common Stock commenced trading on the NYSE, and concurrently therewith, such stock was suspended from trading on the Amex. Thus, in making the decision to withdraw its Common Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the listing of the Common Stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its Common Stock.

Any interested person may, on or before February 4, 1992, submit by letter to the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-1283 Filed 1-16-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended January 10, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47940.

Date filed: January 8, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1278 dated November 22, 1991. North Atlantic-Israel Resos, R-1 To R-17 (intended effective date: January 31/February 1, 1992). TC12 Reso/P 1379 dated November 22, 1991, North Atlantic-

Israel Reso, (intended effective date: April 1, 1992).
Docket Number: 47941.
Date filed: January 8, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC23 MV/P 0175 dated December 16, 1991. Mail Vote 527 (Mileages and Routes for Tariff Purposes).
Proposed Effective Date: April 1, 1992.
Docket Number: 47942.
Date filed: January 8, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1376 dated December 2, 1991, North Atlantic-Africa Resos, R-1 To R-20.
Proposed Effective Date: April 1, 1992.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92-1318 Filed 1-16-92; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 10, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.
Docket Number: 47943.
Date filed: January 9, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 6, 1992.
Description: Application of Air Micronesia, Inc., pursuant to section 401 of the act and subpart Q of the Regulations, applies for an amendment to its certificate of public convenience and necessity for route 170 so as to be authorized to engage in foreign air transportation of persons, property, and mail between the coterminal points Guam and Saipan, Northern Mariana Islands, on the one hand, and the coterminal points Brisbane and Sydney, Australia, on the other hand.
Docket Number: 43250.
Date filed: January 10, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 7, 1992.
Description: Application of Servicio Aereo De Honduras, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations applies for amendment and renewal of the foreign air carrier permit which authorizes it to engage in scheduled foreign air transportation between points in Honduras and points in the United States.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92-1319 Filed 1-16-92; 8:45 am]
BILLING CODE 4910-62-M

Office of the Secretary

Joint Application of Airline of the Americas, Inc. and Independent Air, Inc., for Transfer of Certificate Authority Under Section 401(h)

AGENCY: Department of Transportation.

ACTION: Notice of order of show cause, (Order 92-1-19) Docket 47653.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not (1) find Airline of the Americas, Inc., fit to engage in domestic and foreign charter and interstate and overseas scheduled air transportation of persons, property, and mail, and (2) transfer to it the section 401 certificates held by Independent Air, Inc.

DATES: Persons wishing to file objections should do so no later than January 23, 1992.

ADDRESSES: Objections and answers to objections should be filed in Docket 47653, addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: January 13, 1992.

Patrick V. Murphy, Jr.,
Deputy Assistant Secretary for Policy and International Affairs.
[FR Doc. 92-1317 Filed 1-16-92; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

San Diego International Airport-Lindbergh Field, San Diego, CA; Environmental Impact Statement

AGENCY: Federal Aviation Administration; DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for a proposal to incorporate an Immediate Action Program (IAP) consisting of the development of improved airport facilities at the San Diego International Airport-Lindberg Field. To ensure that all significant issues, related to the proposed action, are identified, a public scoping meeting will be held.

DATES: Comments must be received at the address below on or before Monday, February 24, 1992.

ADDRESSES: Comments may be mailed or delivered in duplicate to the FAA at the following address: Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Hawthorne, California 90261. Mail Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007.

FOR FURTHER INFORMATION CONTACT: Mr. William T. Johnstone (AWP 611.3), Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, (Telephone 310/297-1621).

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the San Diego Unified Port District, will prepare an EIS based on an Environmental Assessment for the IAP. The following projects will be evaluated in the EIS:
—Passenger terminal expansion
—New aircraft gates
—Airport automobile parking and roadway improvements
—Aircraft fuel storage expansion

Comments and suggestions are invited from Federal, State and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified. Comments and suggestions may be mailed to the FAA informational contact listed above.

The objective of the project is the development of facilities consistent with project near term (5 year) growth of airport traffic.

Alternative

The existing configuration of the airport precludes reorientation of the

runways or relocation to different portions of the airport. Therefore, the alternative to the proposed projects is the "No Action" alternative.

Public Scoping Meeting

To effect scoping, the FAA hereby solicits comments for consideration and possible incorporation in the Draft EIS. To ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Interested parties are invited to attend a scoping meeting that will be held Thursday, February 13, 1992, at 2 p.m. in the San Diego Unified Port District Administration Building, 3165 Pacific Highway, San Diego, California.

Documents related to the proposed action that may be useful in defining issues and concerns may be reviewed at the following location: District Clerk's Office, San Diego Unified Port District, 3165 Pacific Highway, San Diego, California 92101.

Issued in Hawthorne, California on January 9, 1992.

Ellsworth Chan,

Acting Manager, Airports Division, AWP-600, Western-Pacific Region.

[FR Doc. 92-1231 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 171, Airborne MLS Area Navigation Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the fourth meeting of Special Committee 171 to be held February 4-7, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the third meeting's minutes, RTCA paper no. 626-91/SC171-40; (3) Technical presentations; (a) Curve Path Testing; (b) MLS RNAV Implementation Work; (c) Other; (4) AWOP activity report; (5) Working Group reports; (a) Operations Working Group (WG-1); (b) Technical Working Group (WG-2); (c) Architecture/Certification (WG-3); (6) Working group sessions; (7) In plenary; (a) Working Group progress; (b) Task assignment; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 8, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-1232 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Aviation Administration

Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemakng Advisory Committee Air Carrier/General Aviation Maintenance Subcommittee.

DATES: The meeting will be held on February 5, 1992, at 9 a.m. Arrange for oral presentations by January 28, 1992.

ADDRESSES: The meeting will be held at Aerospace Industries Associaton of America, suite 1100, 1250 Eye Street, NW., Washington, DC, at 9 a.m.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Renaud, Meeting Coordinator, Aircraft Maintenance Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-7461.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Air Carrier/General Aviation Maintenance Subcommittee to be held on February 5, 1992. The agenda for the meeting will include reports from the working groups dealing with establishment of current standard weights for passengers and baggage, development of a notice of proposed rulemaking (NPRM) for part 65 of the Federal Aviation Regulations (FAR), development of an NPRM for reporting requirements of §§ 121.703 and 121.705 of the FAR, development of an advisory circular for Special Federal Aviation Regulation (SFAR) 36, and development of an NPRM and advisory circular for maintenance recordkeeping and retention of records. The agenda will also include discussion of a new Structural Maintenance Program Guide document that was developed by an industry Airworthiness Assurance Working Group. This document was originally presented to the Transport Airplane and Engine Subcommittee by the industry group. Since it is a maintenance document, it has been transferred to the General Aviation Maintenance Subcommittee for discussion.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before January 28, 1992, to present oral statements at the meeting. Written statements (75 copies) may be presented to the committee at any time through the meeting corrdinator. Arrangements may be made by contacting the meeting coordinator listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on January 14, 1992.

William J. White,

Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-1296 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

In September 1991, the Center for Auto Safety (CFAS) petitioned NHTSA requesting a defect investigation to determine whether 1991 Chevrolet Camaro and Pontiac Firebird passenger cars contain two different safety-related defects. One alleged defect involves failure of the lug studs, five of which attach each of the front and rear wheels to the vehicle. If three or more lug studs supporting a wheel fracture, the wheel will probably detach from the vehicle. The other alleged defect involves rear axle shaft failures. If either of the two rear axle shafts fail, then a rear wheel and the brake for that wheel will detach from the vehicle, but the front brakes will remain functional. Detachment of any of the four wheels adversely affects vehicle stability and at best forces the vehicle to slide to a stop. A detached wheel can also collide with another

vehicle or a pedestrian. A total of 140,804 subject 1991 Chevrolet Camaro and Pontiac Firebird vehicles, which have identical lug studs and axle shafts, were sold in the United States.

CFAS submitted three reports: two reports of alleged rear axle shaft failures with wheel separation, and one report of alleged broken lug studs.

A search of the agency's consumer complaint file produced no other relevant complaints pertaining to lug stud failures on the subject vehicles. General Motors Corporation (GM) indicated that they have received one other report of lug stud failures, and one other report of front wheel separation, possibly due to lug stud failure.

The two, possibly three, reports of lug stud failures do not appear to be indicative of a problem because a small number of similar reports are routinely received by the agency involving most large groups of automobiles. Lug studs can fracture if they have been tightened excessively or insufficiently, and this can occur when tires are changed or rotated after the vehicle has left the factory. The warranty rate of 0.002 percent for lug studs, and 0.034 percent for vehicles (each vehicle has 20 lug studs) also is not indicative of a problem.

CFAS submitted two reports that purported to relate to rear axle shaft failures on the subject vehicles. A search of the agency's consumer complaint file produced no other relevant complaints pertaining to this problem. One of the two reports submitted by the petitioner was not considered relevant because the father of the deceased driver stated that he had hired an independent expert who advised him that the accident caused the axle fracture, and that no relevant vehicle defects were found. The driver apparently lost control on a curve on a wet, oily road, and was struck by an oncoming truck. There is no reason to believe that an axle shaft failed on that vehicle.

GM indicated that they had received 14 additional reports of rear axle shaft failures. This brings the total count of alleged failures to 15 reports, involving 15 accident, 4 injuries, and 2 fatalities. The two fatalities occurred in an accident in which the driver was convicted of vehicular homicide, in spite of his allegations of a vehicle defect. A civil court also accepted GM's position that the accident caused the failure, not vice versa. A total of eight axle shafts were replaced on seven vehicles under warranty, resulting in a relatively low axle shaft warranty replacement rate of 0.003 percent, and a vehicle warranty rate of 0.005 percent.

A review of all of the relevant information indicates that all, or almost all, of the reported axle shaft failures resulted from crashes or impacts with curbs or similar immovable barriers. This conclusion is based on several factors.

1. A similar conclusion was reached during two previous investigations of a similar alleged problem in older model years of the same Camaro and Firebird vehicles. The 1982 models were the subject of a preliminary investigation, IR84–065, and the 1984 through 1988 models were the subject of an Engineering Analysis, EA90–012.

2. Testing submitted by GM in connection with the IR84–065 investigation demonstrated that the axle shaft will fracture before the wheel is damaged if a severe load is applied to the side of the wheel, as would occur if the vehicle is run into a curb or similar barrier while still attached to the vehicle.

3. The fact that 100 percent of the reports involve accidents suggests that accidents were a causative factor. In a different investigation involving wheel detachments (C87–001), only 34 percent (77 out of 228) wheel detachments resulted in accidents. The two wheel detachments that apparently resulted from lug stud fractures in the subject vehicles did not result in accidents.

4. If a rear wheel detaches, the corresponding corner of the vehicle drops to the ground, and the sliding vehicle leaves scrapes and gouges on the road surface leading to the point where the vehicle stops moving. However, none of the failure reports indicate that such evidence was found.

5. It was noted that 85 percent (11 out of 13) of the accidents occurred either on wet roads or between midnight and 3 a.m. If the axles were defective, there is no reason why a majority would fail on wet roads, when reduced tire traction limits axle stress, or at a time when most vehicles are not being driven. However, loss of control due to slippery roads or inappropriate driver behavior is more likely to occur under those conditions and times.

6. It was noted that nine of the reports state that the vehicle "spun out" prior to the crash. This is not consistent with rear wheel detachment, because the rear of the vehicle drags on the road and cannot normally pass the front of the vehicle, as occurs when a vehicle "spins."

In consideration of the available information, it was concluded that there was not a reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to any of the petitioner's allegations would be issued at the conclusion of an investigation. Since no evidence of a safety-related defect trend was discovered, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93–492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 13, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–1241 Filed 1–16–92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92–01–No. 1]

Philatron International; Receipt of Petition for Determination of Inconsequential Noncompliance

Philatron International (Philatron) of Santa Fe Springs, California has determined that some of its trucks and trailers fail to comply with 49 CFR 571.106, "Brake Hoses," and has filed an appropriate report pursuant to 49 CFR part 573. Philatron has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Philatron determined that certain air brake hoses installed in 45,411 trucks and trailers manufactured from January 1991 through September 30, 1991, do not comply with the oil resistance requirements of S7.3.4 of Federal Motor Vehicle Safety Standard No. 106, "Brake Hoses." Section S7.3.4 requires that after immersion in ASTM No. 3 oil for 70 hours at 212 degrees fahrenheit, the volume of a specimen prepared from the inner tube and cover of an air brake hose shall not increase more than 100 percent. Philatron supports its petition with the following: There is no possibility for the interiors of the coiled tubing to become saturated with oil at any temperature; and specifically, there is no possibility under any condition for the items to be saturated with oil for 70 hours at a temperature of 212 [degrees fahrenheit].

The compressors of all trucks are designed to pass compressed air, and

not oil, through the coiled tubing. Any small quantities of oil which might travel with the compressed air are reduced in at least two (2) reservoirs (commonly referred to as the wet truck and the service tank) which are included in all trucks, and in which any moisture and any minute quantities of oil are removed from the compressed air passed through the tubing to the towed vehicles.

Moreover, virtually every truck today is also equipped with an air dryer which dries and purifies the compressed air before it enters the reservoirs. This dryer has a 99.9% oil removal efficiency.

There is also no possibility for the temperature of the compressed air passed through the tubing ever to be above ambient temperature at the inner area if the tubing. The compressed air is rapidly cooled as it travels from the compressor, and when it enters the air reservoirs it is cooled to ambient temperatures well before it reaches the tubing located further down the line.

Most if not all trucks today are equipped with an air dryer which is positioned between the compressor and the air reservoirs, normally 6 to 15 feet from the compressor. Virtually all trucks which are equipped with air dryers are also equipped with pre-cooling coils which pre-cool the air befofe it enters the air dryers. The dryers themselves cool the air. Again, it [sic] is no possibility that compressed air could exceed ambient temperature within the tubing.

There is also no possibility that the outer surface of the items when in use would ever come in contact with or be immersed in hot oil. This is because the items are located between the rear of the towing vehicle and the front of the towed vehicle at a significant distance from any sources of hot oil. Additionally, there is no conceivable possibility of any quantity of hot oil to be spilled on the items while the vehicles are at rest, and any small quantity of oil which might contact the items when the vehicles are in motion are cooled by the wind chill factor of the traveling vehicles to below ambient temperatures.

In addition to the above arguments, Philatron conducted the following tests to demonstrate what it feels to be a considerable margin of safety associated with the hoses in question with respect to oil resistance.

The first test consisted of air brake tubing with couplings plugged at the end and immersed in ASTM No. 3 oil. Ambient temperatures ranged from 33 degrees fahrenheit to 91 degrees fahrenheit. After 3,310 hours, 138 days, the assembly was removed from the oil and subject to a burst test. The tubing burst at 1,200 psi—well above the FMVSS Standard No. 106's requirement for burst strength of 800 psi.

The second test consisted of air brake tubing without the couplings. The tubing was not plugged as to allow the oil to reach the inner and outer surface of the tubing and then immersed in ASTM No. 3 oil for 70 hours at 134 degrees fahrenheit. After 70 hours the assembly was removed from the oven and allowed to cool at ambient temperature for 50 minutes. It was then subjected to a burst strength test. The tubing burst at 1050 psi which is above the requirement.

Interested persons are invited to submit written data, views and arguments on the petition of Philatron, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicating below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 18, 1992.

(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on January 13, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-1242 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-60-M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **FEDERAL REGISTER** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before February 3, 1992.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
6614-X	Hasa, Inc., Saugus, CA (See Footnote 1).	6614
8125-X	Arbel-Fauvet-Rail, Paris, France (See Footnote 2).	8125
9519-X	Transchem I, Inc., Kearny, NJ (See Footnote 3).	9519
10460-X	W. H. Stewart Company, Oklahoma City, OK (See Footnote 4).	10460
10541-X	Aerojet Propulsion Division, Sacramento, CA (See Footnote 5).	10541

[1] To authorize shipment of Hydrochloric acid or Hypochlorite solutions, classed as a corrosive material, contained in one gallon polyethylene bottles overpacked in a polyethylene box to be shipped as a corrosive waste when partially emptied and returned for disposal and refill.

[2] To revew and modify the exemption by replacing the external excess flow valve with an internal valve on non-DOT specification IMO type 5 portable tanks.

[1] To modify the exemption to provide for an additional tank configuration of two (2) 110 gallon bottles mounted in a metal support structure (cage) for shipment of certain corrosive and flammable liquids and an oxidizer.

[2] To authorize those UF-6 cylinders which satisfy the prescribed inspection and test requirements to be stamped and recertified for filling and transport without an exemption.

[3] To authorize use of different rubber inhibitors as filler in the void between the propellant and dome assembly of a rocket motor configuration.

Application No.	Applicant	Parties to exemption
5923-P	Akron Welding and Spring Co., d.b.a. Parry Corp., North Royalton, OH.	5923
6309-P	BASF Corporation, Parsippany, NJ.	6309
6530-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	6530
6626-P	Midwest Airgas, Inc., Fairfield, IA.	6626
6691-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	6691
6691-P	General Welding Products, Inc., Louisville, KY.	6691
6691-P	Valley Welding Supply Company, Wheeling, WV.	6691
7052-P	Catalyst Research, Owings Mills, MD.	7052
7268-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	7268
7835-P	The Jimmie Jones Company, Tulsa, OK.	7835
7969-P	Burlington Environmental, Portland, OR.	7969
8063-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	8063
8156-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	8156
8236-P	Ford Motor Company, Dearborn, MI.	8236
8236-P	Ford Motor Company, Dearborn, MI.	8236
8426-P	Burlington Environmental, Portland, OR.	8426
8451-P	Econex, Inc., Pittsfield, IL.	8451
8723-P	OEI, Inc., Whitesburg, GA.	8723
8862-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	8862
8944-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	8944
8990-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	8990
8995-P	BASF Corporation, Parsippany, NJ.	8995
9047-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	9047
9419-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	9419
9525-P	Air Products and Chemicals, Inc., Allentown, PA.	9525
9610-P	GenCorp—Aerojet Ordnance, Chino Hills, CA.	9610
9758-P	Insulation Material Corporation of America, Haltom City, TX (See Footnote 1).	9758
9847-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	9847
9851-P	Trans States Airlines, St. Louis, MO.	9851
10001-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	10001
10101-P	Airco, The BOC Group, Inc., Murray Hill, NJ.	10101
10184-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	10184
10457-P	PPG Industries, Inc., New Martinsville, WV.	10457

[1] Request party status and to modify the exemption to include cargo aircraft as an additional mode of transportation.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 10, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-1320 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-60-M

Research and Special Programs Administration; Office of Hazardous Materials Safety

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Mateials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before February 18, 1992.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10724-N	Buffalo Sewer Authority Wastewater Treatment Plant, Buffalo, NY.	49 CFR 174.67(i), (j)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (mode 2).
10725-N	Coresa S.A., Santiago, Chile	49 CFR 172.331, 173.154, 173.164, 173.178, 173.182, 173.204, 173.217, 173.234, 173.245(b), 173.366.	To authorize the shipment of certain hazardous materials in polyethylene-lined polypropylene flexible intermediate nonreusable bulk bags. (modes 1, 2, 3).

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10726–N	Metropolitan Water District of Southern California, Los Angeles, CA.	.49 CFR 173.315(a), note 8,	To authorize chlorine filled cargo tank vehicles contents to be unloaded at numerous unloading points. (mode 1).
10727–N	United States Environmental Protection Agency, Denver, CO.	.49 CFR 173.403	To authorize the bulk shipment of soils and debris contaminated with a radioactive material (Radium) from Superfund cleanup site to a disposal facility. (mode 2).

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 10, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92–1316 Filed 1–16–92; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TREASURY

Internal Revenue Service

Establishment of a Form Design Group

OFFICE: Returns Processing, Forms Standardization Project Office.

ACTION: Announcement.

SUMMARY: The Internal Revenue Service has established a Forms Standardization Project Office. The objective of the Forms Standardization Project is to standardize and simplify the tax forms information and documents IRS issues and receives from taxpayers to efficiently process needed information through emerging Tax Systems Modernization (TSM) initiatives. The Forms Standardization Project Office is establishing a multifunctional forms work group. The purpose of this work group is to standardize the location of common data elements (e.g., Form Number, tax Year, etc.) to decease taxpayer confusion and enhance the imaging and data capture of automated systems processing.

SUPPLEMENTARY INFORMATION: The Form Design Group will report to the Forms Standardization Project Manager, who is responsible for information reporting and is charged with the planning and control of all aspects of the project. Increasing public participation in the form design will help to achieve the goal of acceptance of standardized returns.

The Form Standardization Project Office is interested in representation from different areas of the taxpayer community (e.g., forms developers, practitioners, tax software developers, etc.). Anyone wishing to be considered for participation in the Form Design Group should so advise the Internal Revenue Service. Please complete the following questionnaire and forward to Don Tucker, Project Manager, at the address below.

ADDRESSES: Internal Revenue Service, 1111 Constitution Avenue, NW, R:R, room 7046, Washington, DC 20224. If you wish to Fax the questionnaire, the number is (202) 566–4964.

DATES: Completed questionnaires should be received by February 24, 1992. An acknowledgement letter will be sent upon receipt of your application.

FOR FURTHER INFORMATION CONTACT: Larry Dambrose at (202) 786–8495 (not a toll-free number).

Dated: January 10, 1992.

Don Tucker,

Project Manager.

Interest Questionnaire

Form Standardization Project Office—Forms Work Group

This questionnaire must be completed by anyone interested in becoming a member of the Forms Work Group. The form should be returned to Mr. Don Tucker, Project Manager, Form Standardization Project Office, Internal Revenue Service, 1111 Constitution Avenue, NW., R:R room 7046, Washington, DC 20224, and Must be received in that office by February 24, 1992. Applications received after this date will not be considered. All applications received will be acknowledged. Questions should be direct to Larry Dambrose at (202) 786–8495.

1. Name:
2. Title:
3. Company or Organization Name:
4. Business Address:
5. Home Address:
6. Business Phone:
7. Home Phone:
8. Social Security Number (THIS IS REQUIRED FOR A TAX CHECK):
9. Prior IRS employment (if applicable, please state position/s and title/s):
10. Professional credentials (e.g., Ph.D., CPA, Enrolled Agent, Attorney, Accountant, Tax Practitioner, Professor, etc.)
11. Which one professional credential most accurately describes your current professional activity?
12. How many years of tax related experience do you have?
13. What most closely describes your primary area(s) of tax administration expertise? (select no more than three.)

____Individual taxpayers
____Corporate taxpayer
____Small business taxpayers
____Minority taxpayers
____Employee plans
____General tax practice
____Information systems
____Software developer
____Rulings & Regulations
____International taxpayers
____Taxpayer service/assist
____Compliance activities
____Exempt organizations
____Quality management
____Form Designer
____Other (please describe)

14. Summarize your background and identify organizations to which you belong and any leadership positions you have held. Please limit job and organization entries to five each (total of 10).

[FR Doc. 92–1229 Filed 1–16–92; 8:45 am]

BILLING CODE 4830–01–M

VOL 57 ISS 12 JA 17 1992 UMI

Sunshine Act Meetings

Federal Register
Vol. 57, No. 12
Friday, January 17, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, January 14, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) The probable failure of certain insured banks; (2) the Corporation's corporate activities; and (3) a certain financial institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: January 14, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–1345 Filed 1–14–92; 4:38 pm]

BILLING CODE 6714-0-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, January 22, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a perviously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–1348 Filed 1–15–92; 9:48 am]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 57, No. 12
Friday, January 17, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4019-5]

Clean Air Act Advisory Committee of Open Meeting

Correction

In notice document 91-24324 beginning on page 50902 in the issue of Wednesday, October 9, 1991, make the following correction:

On page 50903, in the first column, in the file line at the end of the document, "FR Doc. 91-24324" should read "FR Doc. 91-23424".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement No. 202]

Cooperative Agreements for Minority and Other Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects Program Announcement and Availability of Funds for Fiscal Year 1992

Correction

In notice document 91-29904, beginning on page 65164, in the issue of Friday, December 13, 1991, make the following correction:

On page 65168, in the second column, under **Confidentiality**, in the eighth line, "or" should read "of" the first time it appears in that line.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement No. 201]

Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention

Correction

In notice document 91-29903, beginning on page 65162, in the issue of Friday, December 13, 1991, make the following correction:

On page 65162, in the third column, under **Program Requirements**, in the second paragraph, in the second line, "preparation" should read "prevention".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

Correction

In notice document 91-30490, beginning on page 66038, in the issue of Friday, December 20, 1991, make the following corrections:

1. On page 66038, in the third column, under **MEETINGS:**, in the first line, "advisory" should preceed "meetings".

2. On page 66039, in the second column, in the heading **Ophthalmic Devices Panel of the Medical Devices Advisory Committee**, "ophthalmic" was misspelled.

3. On the same page, in the third column, in the third line, "20856," should read "20857,".

4. On the same page, in the same column, under **Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee**, in the fourth paragraph, in the fifth line, "a" should preceed "formal".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 620

[Docket No. 91N-0366]

Amendment of Additional Standards for Bacterial Products; Pertussis Vaccine

Correction

In rule document 91-29036 beginning on page 63409 in the issue of Wednesday, December 4, 1991, make the following correction:

1. On page 63409, in the 1st column, in the **SUMMARY**, in the 12th line, "1 CFR" should read "21 CFR".

2. On the same page, in the second column, under **I. Current Regulation**, in the seventh line,"§ § 620." should read "§ § 620.2".

3. On the same page, in the third column, in the first full paragraph, in the eighth line, "§ § 620.3" should read "§ § 620.2".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0382]

Community Blood Bank of Southern New Jersey, Inc.; Revocation of U.S. License No. 440

Correction

In notice document 91-29450 appearing on page 64523 in the issue of Tuesday, December 10, 1991, make the following correction:

In the first column, in the last paragraph, in the 11th and 12th lines, "immunodeficiency" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 358

[Docket No. 82N-0214]

RIN 0905-AA06

Dandruff, Seborrheic Dermatitis, and Psoriasis Drug Products for Over-the Counter Human Use; Final Monograph

Correction

In rule document 91-28893 beginning on page 63554 in the issue of Wednesday, December 4, 1991, make the following correction:

On page 63563, in the second column, in the diagram under paragraph (a), "Doesn't itch" should be connected by a line with "Itches a lot" all on one line. Also, in the diagram under paragraph (b), "Not at all" should be connected by a line with "Very Much" all on one line.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 314, and 514

[Docket No. 91N-0074]

RIN 0905 AD45

Use of Aseptic Processing and Terminal Sterilization in the Preparation of Sterile Pharmaceuticals for Human and Veterinary Use; Extension of Comment Period

Correction

In proposed rule document 91-29334, appearing on page 64216, in the issue of Monday, December 9, 1991, make the following correction:

On page 64216, in the second column, in the eighth line, "date" should read "data".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-610-00-4111-02; Circular No. 2630]

RIN 1004-AA67

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations

Correction

In rule document 90-27426 beginning on page 48958, in the issue of Friday, November 23, 1990, make the following corrections:

1. On page 48968, in the first column, in the first line of the last paragraph, "established" was misspelled.

2. On page 48969, in the second column, in the second line, the first "to" should read "be".

3. On page 48972, in the second column, in paragragh b., in the third line "respirator" should read "respiratory".

4. On page 48975, in the first column, in paragraph f., in the last line "he" should read "be".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 90-51]

Alan H. Olefsky, M.D., Revocation of Registration

Correction

In notice document 92-463 beginning on page 928 in the issue of Thursday, January 9, 1992, make the following correction:

On page 929, in the third column, in the last paragraph, in the last line, "1991" should read "1992".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Correction

In notice document 91-24532 beginning on page 51442 in the issue of Friday, October 11, 1991, make the following correction:

On page 51443, in the third column, in the file line at the end of the document, "FR Doc. 91-25532" should read "FR Doc. 91-24532".

BILLING CODE 1505-01-D

federal register

Friday
January 17, 1992

Part II

Environmental Protection Agency

40 CFR Parts 704 and 799
Aryl Phosphate Base Stocks; Proposed Test Rule and Reporting Requirements

VOL 57 ISS 12 JA 17 1992 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 704 and 799

[OPPTS–42038A; FRL 3883–4]

RIN: 2070–Ab07

Aryl Phosphate Base Stocks; Proposed Test Rule Including Reporting and Recordkeeping Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes that manufacturers, importers and processors of chemical substances in the category of aryl phosphate base stocks be required, under section 4 of the Toxic Substances Control Act (TSCA), to conduct testing. For this Proposed Rule, aryl phosphate base stocks are phosphate esters or combination of esters resulting from the reaction of a phenol, mixtures of phenols, or a combination of alkyl-substituted phenols or, in some cases, phenols plus an alcohol, with phosphorus oxychloride ($POCl_3$) or other phosphoric acid derivatives. This definition includes triaryl and mixed aryl/alkyl esters (where one or two of the three ester groups are alkyl). Base stocks are initially manufactured aryl phosphates from which other aryl phosphate products are produced, and are often commercially available. The proposed testing includes chemical analysis and, at certain production volumes, chemical fate and health and environmental effects. This is a category rule to which every substance fitting the above definition would be subject. EPA is also proposing, under TSCA section 8(a), that manufacturers and importers of aryl phosphate base stocks be required to report to EPA the volume of substances manufactured and imported, in accordance with 40 CFR part 704, to allow EPA to determine when certain tests are to be performed. This rule is being proposed under the authority of TSCA sections 4(a)(1)(A) and (B), 8(a), and 26(c)(2). This rule requires that testing be conducted to develop data with respect to health and environmental effects for which there is an insufficiency of data and experience and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of such substances or mixture, or that any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment.

DATES: Submit written comments on or before April 16, 1992. If persons request an opportunity to submit oral comments by April 1, 1992, EPA will hold a public meeting on this proposed rule in Washington, DC. For information on arranging to speak at the meeting, see Unit VII of this preamble.

ADDRESSES: Submit written comments, identified by the document control number OPPTS–42038A, in triplicate, to: TSCA Public Docket Office (TS–793), rm. NE–G004, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. A public version of the administrative record supporting this action (with confidential business information deleted) is available for inspection at the above address from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under section 4(a) of TSCA, EPA shall, by rule, require testing of a chemical substance or mixture (substance) to develop health or environmental data if the Administrator makes certain findings described in TSCA under section 4(a)(1)(A) or (B). Detailed discussion of the TSCA section 4 findings are provided in EPA's first and second proposed test rules, which were published in the **Federal Registers** of July 18, 1980 (45 FR 48524) and June 5, 1981 (46 FR 30300). The aryl phosphate category proposed for chemical analysis, chemical fate, environmental effects and health effects testing includes any chemical fitting the category definition in this proposal that is listed now or in the future in public or confidential portions of the TSCA section 8(b) Inventory of Chemical Substances.

EPA is also proposing, under TSCA section 8(a), that manufacturers and importers of these substances report annual production and/or importation volumes. This information will be used by EPA to trigger testing at levels predetermined by EPA.

The aryl phosphates are a complicated category of chemicals that present unique factors to consider in developing an appropriate test rule. EPA expects to seriously weigh all alternative approaches and may promulgate a test rule that is substantially different from today's proposal.

I. Introduction

This rule requires manufacturers of aryl phosphate base stocks to analyze them chemically and test them for chemical fate, environmental and health effects. The testing requirements are divided into two stages. Stage one is to determine the chemical identity of the base stocks being produced during the period this rule is in effect. Stage one testing requires chemical analysis of base stocks by gas chromatography/mass spectrometry (GC/MS). All manufacturers of aryl phosphate base stocks must perform stage one testing on each base stock they manufacture and report the results to EPA. Since these analytical data may be unique to each manufacturer's product they can not be jointly developed. EPA will use these data to determine equivalency of test substances for stage two testing. Manufacturers of base stocks EPA judges to be equivalent may jointly sponsor stage two testing.

Stage two testing is to determine the chemical fate, environmental effects and health effects of aryl phosphates. To minimize the economic impact of the rule, stage two testing is divided into three levels based upon the annual production volume of the base stock. Aryl phosphate base stocks produced at or above 1 million pounds per year are subject to level one testing requirements. Level one consists of 120–day post-hatch rainbow trout early life stage testing (ELS), three hen

neurotoxicity assays, and a two-generation reproductive effects study. Level two testing is triggered by a production volume of 5 million pounds or higher. It includes anaerobic biodegradation, chronic Daphnia, and subchronic toxicity testing. Aryl phosphate base stocks produced at or above 10 million pounds would be subject to level three testing. Level three includes aerobic biodegradation, microcosm effects, developmental toxicity, and the subchronic rat neurotoxicity battery.

To determine if base stocks have met the trigger levels, EPA is proposing a section 8(a) reporting requirement. EPA would notify manufacturers when the production triggers were met.

A. Definitions

"aryl phosphate" for this proposed rule is a phosphate triester of phenol or of an alkyl-substituted phenol. This definition includes triaryl and mixed aryl alkyl esters (where one or two of the three ester groups are alkyl), and can denote structurally unique substances, base stocks, or downstream products.

"Aryl phosphate base stock" means the phosphate ester or combination of esters resulting from the reaction of a phenol, mixtures of phenols, or, in some cases, phenols plus an alcohol, with phosphorus oxychloride ($POCl_3$) or other phosphoric acid derivatives (see Unit I.C.1 of this preamble for a fuller discussion). This definition includes triaryl and mixed aryl/alkyl esters (where one or two of the three ester groups are alkyl). This reaction can produce a near-pure triaryl phosphate such as triphenyl phosphate (when phenol is used), a mix of aryl phosphates (as when a mix of an alkylphenol and phenol is used) or a mix of isomeric esters such as ortho-, meta- and paracresyl phosphates. Mono and dicresyl esters would also be possible reaction products in the latter example. Base stocks are initially manufactured aryl phosphates from which other aryl phosphate products are produced and are often commercially available. The base stock components remain unreacted in these aryl phosphate products. Thus, when an aryl phosphate product is released into the environment, the base stock components in the product are released into the environment. Likewise, when humans are exposed to aryl phosphate products, they are exposed to the base stock components that are in the products.

"Chemical" means any organic or inorganic substance of a particular molecular identity.

"Complex substance" means a "chemical substance" as defined under section 3 of TSCA that is composed of related chemicals produced as "**** a result of a chemical reaction." Most aryl phosphate base stocks, as defined in this proposal, are complex substances. The names of these substances generally refer to the major component.

"Component" and "constituent" are used interchangeably, and mean one of the individually identified chemicals that, together with other components, comprise a complex substance.

"Feedstocks" are alcohols or phenols used in the manufacture of aryl phosphate base stocks. They may be single or mixed alcohols.

"Isomer" means one of two or more chemical compounds containing the same numbers of atoms of the same elements, but differing in structural arrangement. For example, tri-orthocresyl phosphate (TOCP), with its methyl substituent at the ortho position of the phenyl group, is one of three pure tricresyl phosphate isomers (the others being the tri-meta and tri-para isomers).

"Mixture" is defined in TSCA section 3(8). In the case of aryl phosphate products, a mixture includes combinations of two or more aryl phosphate base stocks, or of an aryl phosphate base stock and other chemicals, but does not include those defined in this proposed rule as "complex substances".

"Product" means the final commercially manufactured substance. It may be a single base stock, a mixture of different base stocks or a mixture of a base stock with an unrelated substance. The product Phosflex 370, for example, is a mixture of the base stocks isodecyl diphenyl phosphate and *tert*-butylphenyl diphenyl phosphate.

"Substituent" means an atom or group that replaces another atom or group in a molecule. In xylol (dimethylphenol), two hydrogens of the phenyl moiety are replaced by two methyl substituents.

B. Background

1. *ITC designation.* The Interagency Testing Committee (ITC) designated the aryl phosphate category for priority testing consideration in its second report. The reasons for this designation are discussed in the **Federal Register** of April 19, 1978 (43 FR 16684).

The ITC defined the category as "****phosphate esters of phenol or of alkyl-substituted phenols. Tri-aryl and mixed alkyl and aryl esters are included, but tri-alkyl esters are excluded." The ITC recommended testing for "carcinogenicity, mutagenicity, teratogenicity, other chronic effects, environmental effects and epidemiology."

2. *Advance Notice of Proposed Rulemaking (ANPR)*—a. *Summary.* The Agency published an ANPR on aryl phosphates on December 29, 1983 (48 FR 57452), following discussions with the Industry Ad Hoc Aryl Phosphate Ester Committee (IAPEC). The ANPR proposed testing nine aryl phosphate complex substances because they had been "identified by industry as being constituents of commercial products currently in production."

The nine substances proposed for testing in the ANPR were: (1) Tricresyl phosphate (TCP), mixed isomers (tritolyl phosphate; CAS Nos. 1330-78-5 and 68952-35-2); (2) Trixylenyl phosphate (TXP), mixed isomers (trixylyl phosphate, CAS Nos. 25155-23-1 and 68952-33-0); (3) Triphenyl phosphate (TPP) (CAS No. 115-86-6); (4) Nonylphenyl diphenyl phosphate (NDP), mixed isomers (CAS No. 38638-05-0); (5) Dimethylbenzylphenyl diphenyl phosphate, mixed isomers (CAS No. 34364-42-6); (6) Isopropylphenyl diphenyl phosphate (IPP), mixed isomers (CAS No. 28108-99-8); (7) *tert*-Butylphenyl diphenyl phosphate (BDP), mixed isomers (CAS No. 56803-37-3); (8) Isodecyl diphenyl phosphate (IDP) (CAS No. 29800-46-3); (9) 2-Ethylhexyl diphenyl phosphate (EDP) (CAS No. 1241-94-7). All were base stocks as defined in this proposed rule.

The ITC designated these chemicals because they were "**** produced in [aggregate] quantities exceeding 65 million pounds/year," NIOSH had estimated exposure of over 2 million workers, and certain members of this chemical class had known toxicities.

Testing proposed for aryl phosphates in the ANPR included: chronic effects - 90-day subchronics; mutagenicity--all substances for some aspect of mutagenicity; oncogenicity (triggered by mutagenicity or data from the 90-day subchronics); teratogenicity for TCP, and for TXP, IPP, BDP, IDP, and EDP if triggered by TCP; reproductive effects for TCP and others if triggered by TCP results; 90-day subchronic neurotoxicity for TCP and TXP; environmental effects — field monitoring studies, tissue residue analyses of biota exposed to water and sediment collected from sites known to contain aryl phosphates at measurable levels and testing on terrestrial organisms. Epidemiology studies were not considered for proposal in the ANPR.

b. *Comments.* EPA requested comments on eight issues in the ANPR, and received comments from eight sources: IAPEC, five corporations (Ciba-

Geigy, Eastman Kodak, FMC, Monsanto, Stauffer), the Environmental Defense Fund (EDF), and D. Muir of the Canadian Fisheries and Wildlife Service. Summaries of the issues and comments submitted and the Agency's response to each appear below.

1. *Issue.* EPA requested information on persons exposed to aryl phosphates from synthetic feedstocks, the type of exposure, notable changes in production of individual substances over the last 5 years, new applications planned for any of these substances and projected growth rate over the next 5 years.

Comments. The IAPEC commented that aryl phosphate production reflects a "mature product category and market growth rate is projected below GNP levels." It stated that production declined between 1979 and 1982, and that EPA should use this production decline when predicting the future trend. IAPEC estimated that fewer than 200 workers are involved in production. It was also exploring a "user survey to address possible concerns" (the Agency has not received any such survey to date). Eastman Kodak Company and FMC also commented about the reduced production. Kodak commented on the lack of justification for a 4(a)(1)(B) finding. Stauffer Chemical Company commented that fewer than 90 of its employees are exposed to aryl phosphates and that downstream worker exposure is insignificant. Stauffer also estimated exposure levels of less than 1.0 part per billion (ppb) to air-borne aryl phosphates during each working day. Stauffer estimated that dermal exposure occurs during less than 20 percent of the day, and that this is minimized by protective clothing worn by its employees. Stauffer also commented that low vapor pressure (typically <0.1 mm Hg at 100 °F) of listed aryl phosphates reduces the potential for inhalation exposure to an insignificant level under typical operating conditions.

EPA Response. The ANPR gave levels of projected production in 1980 as 100 to 140 million pounds. Manufacturers subsequently submitted production levels of individual substances to EPA as confidential business information (CBI). However, EPA's current estimate of aggregate category production, 72.1 million pounds, is available (Ref. 6).

A 1986 EPA report provided information indicating that, although the production levels of individual aryl phosphates dipped to an all-time low in 1982, they subsequently grew 10 percent or more by 1984 (Ref. 38). Information in the Partial Inventory Update Rule (Chemical Update System, CUS) (Ref. 69) shows that, in 1986, levels were down from the highs mentioned in the ITC report, but not to the extent that manufacturers were predicting. According to EPA's assessment, production of this category remains substantial. There has, however, been a reduction in production of some individual base stocks listed in this proposed rule.

IAPEC commented that only about 200 workers are exposed. However, this reference was to manufacturing workers only. Many more workers are exposed while using the end product(s). The 1980 National Occupational Hazard Survey (NOHS) update shows more than 2 million workers may be exposed to aryl phosphates (Ref. 51). It is difficult to evaluate exposure numbers in subsequent data, e.g., the National Occupational Exposure Survey (NOES) (Ref. 52), because of inconsistent reporting terminology.

For purposes of reporting to the TSCA section 8(b) Chemical Inventory, EPA allows manufacturers of a complex substance to report it as such or as its individual components. This makes it difficult to ensure acquisition of all the information relating to the complex substance. For example, NOES (Ref. 52) shows 69 workers exposed to IPP (CAS No. 28108–99–8), one of the substances listed in the ANPR. However, NOES also shows 46,946 workers exposed to "isopropylated phenol, phosphate (3:1)" (Cas No. 68937–41–7), a complex substance that may contain varying amounts of isopropylphenyl diphenyl phosphate (IPP), bis(isopropylphenyl) phenyl phosphate, and/or tris(isopropylphenyl) phosphate, depending upon the degree of propylation required for the desired end properties.

Exposure in the workplace occurs via dermal contact and inhalation. EPA estimates inhalation exposure of TPP may be as high as 150 mg/day (Ref. 35). The 1986–1987 issue of the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values reference book (Ref. 3) listed two aryl phosphates, TPP and TOCP. ACGIH recommends a time-weighted average (TWA) threshold limit value (TLV) of 3 mg/m^3 (cubic meters) for TPP in air, and a TWA TLV of 0.1 mg/m^3 for skin contact with TOCP. Most aryl phosphate base stocks are liquids with high boiling points, but they may be volatile or form an aerosol in certain applications. For example, a NIOSH walkthrough of a General Motors Die Cast Department in Rochester, NY, in which aryl phosphate-containing hydraulic fluids were used at 100 °F, found TPP and IPP in the air at 0.57 and 0.013 milligram (mg)/cubic meter (m^3), respectively (Ref. 75).

Aircraft maintenance workers may have frequent dermal contact with hydraulic fluids containing aryl phosphate base stocks. EPA estimates such exposure to be in the 1300 to 3900 mg/day range if no protective clothing is worn (Ref. 35). EPA described this exposure pattern in its proposed test rule for tributyl phosphate (TBP) (Ref. 71). EPA believes exposure level estimates for users of aircraft hydraulic fluids containing TBP are applicable to users of those containing aryl phosphate base stocks.

2. *Issue.* Would analytical data from the manufacturers of commercial TCP showing the TOCP level of their commercial product, when combined with the results of EPA's proposed 90–day subchronic neurotoxicity study using three dose levels of TOCP, enable the Agency to reasonably determine or predict the neurotoxicity of a TCP commercial product?

Comments. EDF recommended subchronic testing of TOCP and the TCP mixture, while IAPEC and Stauffer mentioned the difficulty and expense of testing pure isomers and suggested testing products instead. Stauffer discussed the use of acute toxicity and percent ortho-cresol as an acceptable neurotoxicity approximation rather than the subchronic test. Stauffer also mentioned a 7–dose-level TOCP toxicity study published in conjunction with the Delayed Neurotoxicity Workshop it recently co-sponsored.

EPA Response. EPA is not proposing toxicity testing of pure TOCP at this time, but is proposing the produced base stock which may or may not include TOCP. EPA did consider the multi-dose study of TOCP (Ref. 56 and 57); however, published data on the test substance and methodology do not give enough information for EPA assessment.

The ANPR also stated that a 90–day subchronic test of TOCP, then under way as a positive control to FMC's 90–day study of IPP, was not an appropriate neurotoxicity test for TCP because it was only a single-dose study. The testing scheme discussed in the ANPR would have required a full 3-dose study of TOCP. The FMC TOCP study received in 1986, although a 2-dose study, was therefore still unacceptable (Ref. 24).

Studies performed on individual tricresyl phosphate isomers indicated the major neurotoxicant was TOCP (Ref. 63). Manufacturers, therefore, endeavored to reduce the TOCP content of their products. However, a recent TSCA section 8(e) submission (Ref. 40) indicates TOCP-reduced (less than 0.1 percent) products have neurotoxic

effects on the hen similar to those arising from exposure to pure TOCP.

EPA believes aryl phosphate testing should focus, at this time, on the complex substances to which people may be exposed. This proposed rule would require testing of base stocks, but not individual chemical constituents or product mixtures (see Unit I.C.3 of this preamble for fuller discussion of test substances). Thus, for isopropylated phenyl phosphates, three base stocks are proposed for testing: isopropylphenyl diphenyl-, bis(isopropylphenyl) phenyl-, and tris(isopropylphenyl) phosphate. Each of these base stocks contains smaller but significant amounts of one or both of the other isopropylated phenyl phosphates. EPA would use test data obtained on base stocks to help determine whether or not testing individual constituents would be necessary.

3. *Issue.* Does the potential for human exposure to certain consumer products containing acutely neurotoxic TXP components warrant subchronic neurotoxicity testing?

Comments. EDF commented that all organophosphates should be tested for subchronic neurotoxicity, not just those selected on the basis of acute data. It specifically suggested testing of IPP and TXP. IAPEC stated that "the neurotoxicity of TXP has been determined," and that "*** human exposure is insignificant. As commercial production continues to decline, no further testing is warranted." Stauffer commented that subchronic testing would be appropriate if exposure were significant, but in any case, an acute test should be performed to determine if subchronic testing is necessary.

EPA Response. EPA believes that acute organophosphorus induced delayed neuropathy (OPIDN) testing combined with acute neurotoxic esterase testing is a valid predictor for the OPIDN syndrome. The subchronic testing is primarily for risk assessment purposes.

EPA does not believe the neurotoxicity of TXP has been adequately determined, and is proposing testing of this complex substance in this test rule. In the case of IPP, the ANPR did not discuss possible subchronic neurotoxicity testing because, at the time, FMC was planning a 90-day subchronic assay of IPP in the hen that was expected to reasonably predict or determine IPP neurotoxicity. However, the data FMC submitted to EPA characterizing the composition of the test material was insufficient for evaluation of the study (see Unit II.C.2 of this preamble).

4. *Issue.* Is TOCP the only agent responsible for the suggested reproductive and teratogenic effects of TCP? Should it be tested separately? Do the existing data for TOCP provide sufficient evidence to implicate other aryl phosphates?

Comments. EDF said all aryl phosphates should be tested. The IAPEC took the position that because no scientific data indicate TOCP or tricresyl phosphates have reproductive or developmental effects, there is no justification for further testing. It stated that because five important commercial aryl phosphates were negative in teratogenicity studies, there was no need for further testing. Stauffer stated that the information on TOCP did not justify any type of reproductive or developmental toxicity testing. The company asserted that validity of seminiferous tubule degeneration observed in a study of male rabbits and dogs with TCP (Ref. 14) must be questioned. Without knowing what was tested, it is difficult to draw any meaningful conclusions. Finally, Stauffer stated testing TOCP had no relevance to predicting the effect of exposure to compounds in commercial production.

EPA Response. EPA is not proposing testing of any component, including TOCP, of any of the complex substances in this test rule. EPA agrees with Stauffer that testing single components of an aryl phosphate is not appropriate at this time, and instead proposes testing of actual manufactured aryl phosphate base stocks (see Unit I.C.3 of this preamble).

The data IAPEC referred to included minimal chemical analysis on the products tested and is of limited use for assessment of hazard potential.

Three recent studies have demonstrated the reproductive toxicity of TCP in several species and strains of laboratory animals (Refs. 12, 13, and 15). The National Toxicology Program (NTP) and National Institute of Environmental Health Sciences (NIEHS) studies both used TCP with less than 0.1 percent TOCP, while the TCP in the EPA study contained less than 9 percent TOCP. All three studies showed effects on male reproductive parameters, and histopathologic effects were seen in the ovaries in the EPA-sponsored study. Both the EPA-sponsored and NIEHS-sponsored studies demonstrated developmental toxicity, while the NIEHS study also showed effects in the F_1 generation at the lowest dose. A confidential TSCA section 8(e) study was submitted to EPA in 1990 demonstrating similar reproductive effects with an additional aryl phosphate.

5. *Issue.* Is it possible to reduce the testing burden by forming subcategories of similar aryl phosphates or by testing a subset that spans the structural spectrum of the aryl phosphates category?

Comments. EDF stated that information about possible toxicity of these compounds was insufficient to justify such approaches. Kodak suggested a decision to choose subcategories should be based on quantities being manufactured and potential exposure, and it would be inappropriate for EPA to decide this matter until these data were available. IAPEC stated that structural subsets could be developed if a need for further testing was demonstrated, and added there was no need to conduct separate tests for each chemical.

EPA Response. EPA has decided not to pursue these possibilities for aryl phosphates at this time. The use of subcategories or subsets for testing implies that the results of such surrogate testing would be valid for all the chemicals not tested. EPA is not convinced there is a sufficient understanding at this time of the relationship of structure and observed toxicity to subcategorize aryl phosphate base stocks for testing.

6. *Issue.* EPA sought comments on criteria used to evaluate the industry-sponsored monitoring study. These included: (i) Detection limit sensitivity; (ii) quality assurance evaluation; (iii) location and selection of sampling sites; (iv) statistical treatment of data obtained; (v) analytical method; and (vi) interpretation of results.

Comments. IAPEC commented on the six criteria as follows:

a. *Detection limit sensitivity.* IAPEC contends the monitoring study they submitted demonstrates adequate margins of safety, and while recoveries were variable for experimental field spikes, standard laboratory spiking and storage showed good recoveries.

b. *Quality assurance evaluation.* Their quality assurance (QA) effort, which involved spiking samples from all aquatic strata tested, was sound and provided valid QA for the environmental monitoring program. IAPEC contends that EPA's concern as to the insufficiency of a 29 percent recovery for "the phosphate esters spiked or sediment samples carried to the field and spiked in the field" is inappropriate. This description referred to early testing involving only six samples, whereas the overall experimental recovery rate was 70 percent.

c. *Location and selection of sampling sites.* Sample site selection was agreed upon by industry and EPA, the collections were conducted exactly as agreed upon, and calculated safety factors for each site (based on rainbow trout MATC) ranged from 2 to 10.

d. *Statistical treatment of data obtained.* Q-test was used to identify extraneous or outlying values in the water data set. All of the monitoring data were given to the Agency, including the raw data from the appendices of the monitoring report. Thus the Agency can apply whatever statistical treatment it considers appropriate.

e. *Analytical method.* All methods were validated according to state-of-the-art validation procedures. Information on methods, detection limits and quality assurance was provided to the Agency before the program began. IAPEC received no comments, questions or suggestions for changes.

f. *Interpretation of results.* This study provides evidence for no concern for exposure through the water column. IAPEC believes that aryl phosphates would be adsorbed to sediment and desorb very slowly, meaning that any potential environmental problems would be to sediment-dwelling organisms.

EPA Response. EPA is not proposing monitoring in this test rule.

Following the ANPR, EPA conducted a Good Laboratory Practices (GLP) Inspection/Study Audit Report on the aryl phosphate monitoring study (Ref. 68), which reported numerous GLP compliance deviations and reporting inconsistencies. In addition, while overall experimental recovery rate was 70 percent, the recovery for the field-spiked sediments was only 29 percent. The minimum recovery specified by the ACS guidelines for reliability (Ref. 2a) is 60 percent. A lower recovery could result in a large occurrence of false negative results. These shortcomings caused EPA to dismiss the monitoring report.

7. *Issue.* How useful is a site-specific aquatic ecotoxicity test procedure compared to standard laboratory ecological tests? Is there a need for terrestrial testing in addition to aquatic testing for a site-specific effect?

Comments. IAPEC commented that a site-specific test was not feasible, because in their monitoring study, five of the esters proposed for testing were not found in water, four were not found in sediment and three were not present in sediment or water. In addition, where aryl phosphates were found, the presence of other organic contaminants would dominate any effects of aryl phosphates. IAPEC held that conventional risk assessment using standardized protocols was preferable. It also contended terrestrial organism testing was not needed, as there was no significant exposure.

EPA Response. EPA is not proposing site-specific aquatic ecotoxicity testing in this test rule. EPA agrees with the comment on testing procedures. This proposed test rule includes standards for environmental testing and chemical fate studies. There has been some evidence of terrestrial exposure, particularly in the vicinity of aryl phosphate manufacturing plants (Ref. 18), but EPA is not proposing terrestrial testing at this time.

8. *Issue.* Should an oncogenicity testing requirement be based on results of selected mutagenicity tests or rather on a section 4(a)(1)(B) finding?

Comments. EDF concluded the use of mutagenicity data as the sole basis for choosing chemicals for oncogenicity testing was inappropriate, and stated that any chemical with substantial human exposure should be tested for oncogenicity and *in vitro* and *in vivo* mutagenicity. IAPEC and Stauffer doubted aryl phosphate exposure would support a section 4(a)(1)(B) finding, and IAPEC suggested that, because all mutagenicity information was negative, oncogenicity testing should not be considered.

EPA Response. NTP is performing a 2-year bioassay on TCP, and EPA will examine the results before deciding whether further oncogenicity testing on any other aryl phosphate is needed.

C. Substances to Which the Rule Applies

1. *Chemistry of aryl phosphates.* Aryl phosphate base stocks, as defined in Unit I.A of this preamble, are phosphate esters of phenol or of alkyl-substituted phenols. They are produced by reaction of a phenol, alkylated phenol, and/or an aliphatic alcohol with phosphorus oxychloride ($POCl_3$) at elevated temperatures in the presence of a catalyst. Mixed aryl phosphate esters are produced by reacting $POCl_3$ with controlled quantities of appropriate phenols. Variations in feedstock, starting proportions or reaction conditions will result in batch-to-batch differences that could account for disparities in the physical properties of these mixed esters (Refs. 42 and 50).

A second alkyl substituent in the starting phenol greatly increases the number of possible components in the final product; there are more than 50 for trixylyl (tris-dimethylphenyl) phosphate, for example. When the feedstock is a mixture of non-isomeric phenols, the possibilities may multiply even further.

The names applied to aryl phosphate base stocks can be confusing. For example, as described in Unit I.A of this preamble, a phenyl group can be alkylated in the ortho, meta, or para position, so that "tricresyl phosphate" (tritolyl phosphate, tri(methylphenyl) phosphate) could be either tri-meta-cresyl phosphate (TMCP) (one of the isomers), the corresponding triortho- (TOCP) or tri-para- (TPCP) ester, or a mixed ester where two or three of the cresyl isomers are present in the same molecule. In practice, because commercial TCP may be manufactured from a blend of ortho, meta, and para-cresol, it may contain up to 10 possible tricresyl phosphates, in proportions that depend not only on the proportions of starting cresol isomers, but also on their relative reactivity under the manufacturing conditions employed. So-called "tricresyl phosphate" is a complex substance containing TOCP, TMCP, and TPCP (though certain commercial mixtures may be primarily the para isomer with 1 percent or less of the ortho isomer), plus some dicresyl phenyl phosphate, cresyl diphenyl phosphate, and triphenylphosphate that reflect the presence of some unsubstituted phenol in the feedstock. If the complex substance is primarily TOCP, but contains some TMCP and TPCP, it is generally called TOCP.

2. *Category.* Under TSCA section 26, EPA has authority to take any action authorized or required to be taken with respect to a chemical substance or mixture with respect to a category of substances or mixtures. TSCA section 26(c)(2) defines "category of chemical substances" to mean

> a group of chemical substances the members of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for classification as such for purposes of this Act, except that such term does not mean a group of chemical substances which are grouped together solely on the basis of their being new chemical substances. Thus, the term "category of chemical substances" is quite broad.

This proposed rule would require testing of the aryl phosphate base stock category under sections 4(a)(1)(A) and (B) of TSCA for both existing members of the category and future entries to it. The category is based on chemical structure. EPA believes that the phosphotriester function common to all aryl phosphates justifies using toxicity data identifying a hazard for one aryl phosphate substance to suggest a hazard potential for other aryl phosphate

category members. In evaluating the testing needs for the aryl phosphate base stock category, EPA considered all available data, including: production volume; use; release; exposure; test data; information included in the ITC's report; TSCA section 8(a), (d) and (e) data; comments received following the publication of the ANPR; recent publications in the literature; any EPA-generated monitoring; and additional information.

EPA, by taking the category approach, will assure that any newly-manufactured aryl phosphate base stock meeting the category definition, such as chemicals on the TSCA Inventory but not being produced, or any aryl phosphate base stocks that are "new chemical substances" under TSCA section 5, would also be subject to the rule. This approach should preclude the necessity of a new test rule if changes in production processes yield differences in aryl phosphate components.

For instance, in a 1984 report by Muir (Ref. 50), cresyl diphenyl phosphate (CAS No. 26444-49-5) was given as the major component in two commercial phosphate esters, and the 1980-81 NOES (Ref. 52) reported 13,370 employees exposed to this substance. However, although this substance is on the TSCA Inventory, no production was reported in the 1986 Chemical Update System (CUS). Without the category finding, cresyl diphenyl phosphate production could easily be resumed without the substance being subject to testing.

3. *Test substances.* Promulgating a test rule for aryl phosphates raises several important policy issues. One of the most difficult is the question of what to test. Data may be difficult or impossible to evaluate if the test substances are not appropriately chosen and their composition not adequately specified.

EPA considered several different test substance options: individual isomers, aryl phosphate components of base stocks listed on the inventory, aryl phosphate base stocks, and commercial products.

a. *Individual isomers.* Because most aryl phosphate base stocks marketed are complex substances whose components may have varying toxicities, EPA considered requiring testing of each isomeric component. The Agency abandoned this approach because of the diversity of some complex substances such as trixylenyl phosphate, which may have 50 or more isomers. The cost and complexity of testing hundreds of isomers would be prohibitive, and the time required for such testing would significantly delay EPA's evaluation of the data.

b. *Base stock components.* The 1977 TSCA Non-Confidential Inventory includes 58 individual base stock components meeting the chemical definition (Ref. 55). Several of the 58 aryl phosphates on the Inventory are components of the base stocks listed in this proposed test rule but are not reported in production. Although the number of inventory components is substantially less than the number of possible isomers, the same objections (high cost and testing program delays) apply. In addition, the benefits of such testing may be even fewer than for testing of individual isomers if the toxicity of aryl phosphates is an isomer-specific phenomenon.

c. *Commercial products.* EPA also rejected testing of commercial aryl phosphate products. These may be aryl phosphate base stocks or mixtures of aryl phosphate base stocks and other substances. Since EPA is interested in aryl phosphate toxicity it does not seem wise to test substances that may contain non-aryl phosphate components or that are mixtures of base stocks. In addition, the number, and often the complexity, of commercial products exceeds that of base stocks, making this a more expensive option.

d. *Base stocks.* EPA is proposing aryl phosphate base stocks as the test substances. EPA believes that this approach strikes a balance between the need to characterize aryl phosphate toxicity, the unacceptably high cost of the other options considered, and the potential difficulties of any case-by-case test substance selection process. Base stocks, as defined in this proposed rule, include all the individual aryl phosphates to which people or the environment may be exposed as a result of activities involving aryl phosphate base stocks or downstream aryl phosphate-containing consumer or industrial products. Finally, if test results on a base stock suggest a need for more detailed characterization, EPA can require by separate rulemaking testing of individual or combined aryl phosphates, guided by the analytical data and other results on all the base stocks initially tested. Thus, this proposed rule can be considered a type of screening rule.

The aryl phosphate base stocks now in production include seven of the nine aryl phosphates listed in the ANPR (see Unit I.B.2.a of this preamble). The other two, NDP and DBDP, are not being produced (Ref. 55) and thus would not be subject to the testing requirements unless production resumed. The more recent additions to the list of in-production category members are di(*n*-butyl) phenyl phosphate (DBP), and four aryl phosphate base stocks closely related to IDP and BDP.

Thus, the Agency has identified 12 members of the aryl phosphate base stock category that it believes to be in production (Ref. 55) for which it is proposing testing at this time. They are as follows (see Unit III.B of this preamble for more information):

i. *tert*-Butylphenyl diphenyl phosphate.
ii. bis-(*tert*-Butylphenyl) phenyl phosphate.
iii. tris-(*tert*-Butylphenyl) phosphate.
iv. Di-*n*-butyl phenyl phosphate.
v. 2-Ethylhexyl diphenyl phosphate.
vi. Isodecyl diphenyl phosphate.
vii. Isopropylphenyl diphenyl phosphate.
viii. bis-(Isopropylphenyl) phenyl phosphate.
ix. tris-(Isopropylphenyl) phosphate.
x. Tricresyl phosphate.
xi. Triphenyl phosphate.
xii. Trixylyl phosphate.

4. *TSCA section 8(a) reporting and triggering of testing.* EPA recognizes costs of the complete testing for some category members may be burdensome (see Unit V of this preamble) and has prioritized the proposed test requirements (see Unit III of this preamble). EPA believes most or all current manufacturers of base stocks can afford the tests in Level 1, some can support the additional tests in Level 2, and a few can afford Level 3 testing. For this reason, EPA proposes a trigger mechanism that ties testing requirements to specified production levels.

To facilitate this approach, EPA is proposing, under section 8(a) of TSCA, a Preliminary Assessment Information Rule (PAIR) to require annual reporting by manufacturers and importers of production and importation volumes for all substances meeting the definition of this chemical category which are now, or become, listed on the public or confidential portion of the TSCA Chemical Substances Inventory.

5. *Synergism and antagonism.* Synergism and antagonism among components may also affect the toxicity of the final product. To some extent this will be reflected in the testing of base stocks; however, testing expressly for these phenomena would require tests of individual components and combinations of components at different levels. The prohibitive cost of testing components individually (Unit I.C.3.a of this preamble) would also apply to any study of synergism and antagonism.

II. Findings

EPA is basing its proposed testing for members of the aryl phosphate category on the authority of sections 4(a)(1)(A)

and 4(a)(1)(B) of TSCA through the use of TSCA section 26(c).

A. Findings Under TSCA Section 4(a)(1)(B)(i)

Pursuant to section 4(a)(1)(B) of TSCA, EPA finds that aryl phosphate base stocks are produced in substantial quantities and that the use of aryl phosphate base stocks may result in substantial human exposure and/or substantial release to the environment.

Under TSCA section 26(c), EPA proposes to make a section 4(a)(1)(B) finding for the entire aryl phosphate base stock category, including (1) all such substances on the TSCA Inventory, both public and confidential, and (2) any substance not yet produced that would fit the definition of aryl phosphate base stocks (see Unit I.C.2 of this preamble).

EPA believes that this is an appropriate category of substances under section 26(c) because they are similar in molecular structure and in use and because their common phosphate triester functionality confers the potential for similar biological activity. This category is also "suitable for classification" because the ITC designated aryl phosphates as a category for priority consideration for testing.

EPA is developing a general policy under TSCA section 4(a)(1)(B) (the "B" policy) in which it will articulate its criteria for making findings under this provision. The "B" policy is being developed in response to the April 12, 1990, decision in *CMA v. EPA*, 899 F.2d 344 (5th Cir. 1990), in which the Court remanded the TSCA section 4 rule for cumene to EPA to "articulate the standards or criteria on the basis of which it found the quantities of cumene entering the environment from the facilities in question to be 'substantial' and human exposure potentially resulting to be 'substantial.'" Although not required to do so by the cumene decision, EPA also will be articulating the criteria for 'substantial production' and 'significant human exposure.' EPA has recently published the criteria for public comment (56 FR 32294).

EPA has decided to move forward in proposing this aryl phosphate test rule under both TSCA sections 4(a)(1)(B) and (A), without waiting for notice and comment on the generic "B" policy. The Court in CMA made it clear that EPA need not adopt a definition applicable to all cases, but may choose to proceed on a case-by-case basis, if it rationally explains its exercise of discretion. Thus, because this proposal articulates the criteria used in making findings under TSCA section 4(a)(1)(B) for aryl phosphate base stocks, it is not necessary to wait for publication of a generic policy before proposing this test rule.

TSCA does not provide EPA with much guidance on what criteria and standards to use in making "B" findings. The statute does not define the terms "significant" or "substantial." The policy section of TSCA, however, makes it clear that Congress considered testing of chemical substances to be an important aspect of the Act. This section provides:

> [that] adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures.

The legislative history of TSCA also provides some guidance on what criteria are to be used in making "B" findings. The legislative history states that "[t]he conditions specified in TSCA section 4(a)(1)(B) reflect the Committee's recognition that there are certain situations in which testing is desirable even though there is an absence of information indicating that the substance or mixture may be harmful." H.R. Rept. No. 1341, 94th Cong. 2d Sess. (1976), at 18 reprinted in, A Legislative History of the Toxic Substances Control Act (Comm. Print 1976) ("Leg. Hist.") at 425, and "there are certain situations in which testing should be conducted even though there is an absence of information indicating that the substance or mixture per se may be hazardous." H.R. Conf. Rept. No. 1679, 94th Cong. 2d Sess. (1976), reprinted in, Leg. Hist. at 674. The legislative history also provides that EPA "is not limited to consideration of sheer volume of production or exposure at a specific point in time. The duration of exposure, the level of intensity of exposure at various periods of time, the number of people exposed, or the extent of environmental exposure are among the considerations which may be relevant in particular circumstances." [Leg. Hist. at 425.] EPA believes that it is reasonable to interpret the duration of exposure and level of intensity of exposure as relating to "significant" human exposure, the number of people exposed as relating to "substantial" human exposure, and the extent of environmental exposure as relating to "substantial" environmental release.

EPA recognizes that it must not define "significant" and "substantial" in ways that would require the Administrator to make findings for every substance in commerce, or the statute would have simply required testing for all substances. Nevertheless, TSCA section 4(a)(1)(B) is designed to support risk management activities under the other provisions of TSCA. Thus, it is reasonable to interpret TSCA section 4(a)(1)(B) as authorizing EPA to require testing for every substance whose environmental or human exposure is of such magnitude or type that it may need to be regulated if test data reveal adverse effects.

EPA believes that, for this category of chemical substances in which certain members are structurally similar, may be used interchangeably, and in which some individual members of the category are produced in substantial quantities, it may be reasonable to require testing of a category of substances that collectively is or will be produced in substantial quantities, greater than 1 million pounds per year, and that either collectively may be released to the environment in substantial quantities, greater than 1 million pounds per year, or to which collectively there may be significant or substantial human exposure, over 1,000 workers, 10,000 consumers or 100,000 people. Furthermore, if EPA made findings only on individual substances that met the thresholds for substantial production, substantial release, and significant or substantial human exposure, persons subject to the rule could avoid providing the required data by switching to substances not in current production. Thus, EPA would have to propose another test rule every time a manufacturer switched to an aryl phosphate base stock not otherwise in production. Theoretically, the persons subject to the rule could continue switching the substances they make and process, and EPA would never catch up. To prevent this, EPA believes it is appropriate, in this special case, to make the findings for the category as a whole, using the same criteria for making such findings that would be used for individual chemical substances and mixtures. However, for other chemical categories EPA may decide not to make the substantial exposure or quantities finding for the category as a whole, instead considering exposure on a subcategory or individual chemical basis.

EPA specifically solicits comment on whether EPA should use the same section 4(a)(1)(B) finding numerical thresholds for a category of chemicals as are used for individual chemicals, or instead require higher thresholds. When this rule is promulgated, EPA will address all comments on the proposed criteria that are relevant to this rule as well as comments on this proposed rule.

1. EPA finds that the category of aryl phosphate base stocks is produced in substantial quantities. Manufacturers recently submitted production levels of individual category members to EPA as confidential business information. However, a nonconfidential EPA-estimated aggregate category production total of 72.1 million pounds is available (Ref. 6).

EPA is reserving discussion on what it considers to be the minimum production volume that can be considered "substantial" until it promulgates its "B" policy. Nevertheless, EPA finds that 72.1 million pounds per year clearly is above the minimum level that can be considered "substantial." EPA believes it is reasonable to interpret substantial production to mean large production, and that 72.1 million pounds is a large amount of production. Although EPA does not know the exact percentage of chemical substances in commerce with production volumes above 72.1 million pounds per year, the TSCA section 8(b) inventory of the substances in commerce shows that only 4.5 percent of the listed substances have production volumes over 10 million pounds, together accounting for over 95 percent of the total production of all substances produced in the United States (see 56 FR 32294, 15 July 1991). Moreover, the inventory shows that only about 1.5 percent of the listed chemical substances in commerce have production volumes over 100 million pounds per year. Thus, EPA believes that substances with production volumes of at least 72.1 million pounds per year comprise somewhere between 1.5 percent and 4.5 percent of the substances in commerce, and together account for over 95 percent of the total production of all substances produced in the United States. EPA believes that it is reasonable to conclude that this small group of substances (i.e., the top 1.5 to 4.5 percent according to production volume), which account for the vast majority of all production, clearly are substances with substantial production.

2. EPA finds that the use of aryl phosphate base stocks in various products results in substantial human exposure to these base stocks. Aryl phosphate base stock components generally comprise 0.5 to 20 parts per hundred parts of resin, or up to 45 percent by weight of plastic formulations (Ref. 73), and 0.5 to 100 percent of functional fluids (Ref. 35) (0.5 to 4 percent as antiwear additives and 100 percent as hydraulic fluids).

Exposure potential in the workplace is substantial. The 1980 National Occupational Hazard Survey (NOHS) update indicates more than 2 million workers are exposed to aryl phosphate base stock components (Ref. 51). Although it is difficult to evaluate exposure numbers in subsequent data, e.g., NOES (Ref. 52), because of inconsistent reporting terminology (see Unit I.D.2 of this preamble), EPA does not know of any reason why the number of workers would have changed significantly between 1980 and 1991.

Exposure in the workplace occurs via inhalation and dermal contact. While most of the aryl phosphate base stocks are high boiling-point liquids, they may be volatile or form aerosols in certain applications. For example, a NIOSH walk-through of a General Motors Die Cast Department in Rochester, NY, in which aryl phosphate-containing hydraulic fluids were used at 100 °F, found TPP and IPP at concentrations of 0.57 and 0.013 mg/m^3, respectively (Ref. 75).

EPA estimates workers having dermal exposure to aryl phosphate base stocks may have 1300 to 3900 mg/day exposure if no protective clothing is worn (Ref. 35). Aircraft maintenance workers frequently work with hydraulic fluids and may be at particular risk. EPA described this exposure pattern in its proposed test rule for TBP (Ref. 71). The Tributyl Phosphate Task Force, an industry group, sponsored a survey of aircraft worker exposure to tributyl phosphate, and provided estimates that 2,200 employees in this industry are routinely exposed to aircraft hydraulic fluid and 43,000 mechanics may, at various times, be exposed (Ref. 34). EPA believes exposure estimates provided for users of aircraft hydraulic fluids containing TBP are applicable to users of those containing aryl phosphate base stocks, as the applications of some of the aryl phosphate base stocks are similar.

Some of these functional fluids are manufactured to meet military specifications. Responding to a recent query by EPA, the U.S. Army responded that there was potential TOCP exposure at 19 bases involving 196 military and 146 civilian workers (Ref. 74).

In addition to worker exposure, the general population uses plastic in many forms and is potentially exposed to aryl phosphates from base stocks used as plasticizers. The heat in a closed automobile can volatilize plasticizers used in upholstery or other plastic components, and has been shown to produce a visible film of TCP on the inside of automobile windshields (Ref. 17). This means millions of Americans may be inhaling TCP in automobiles on a regular basis, particularly on hot days. Room temperature water can leach plasticizers out of plastics (Refs. 2 and 7). Thus, people who drink out of plastic glasses, wash plastic items or handle any such plastic items containing aryl phosphate plasticizers, may be exposed to aryl phosphates through that water.

Disposal of plastics generates additional general population exposure potential, as aryl phosphates may leach out of plastics in landfills and enter groundwater (Ref. 7). Thus, human populations near landfills may be exposed to aryl phosphates in their drinking water. Incineration may cause aryl phosphates to volatilize (Ref. 7), potentially causing populations of people living near incinerators to be exposed to aryl phosphates in the air. One EPA report has postulated that as much as 80 percent of plasticizers may volatilize or leach out (Ref. 73). General population exposure is further confirmed by the detection of aryl phosphates in human adipose tissue (Ref. 64).

EPA believes that it is reasonable to interpret the term "substantial human exposure" to mean widespread human exposure, or in other words, exposure of a large number of people. EPA believes that exposure of 2 million workers is substantial exposure because, where millions of workers are exposed to a chemical substance, it is reasonable that EPA should have data on the potential hazards associated with the substance so that EPA can implement appropriate risk management efforts where necessary to protect workers against unreasonable risk. As a general matter, EPA has found that workers tend to be subject to routine or episodic exposure over a long period of time. The Court in CMA recognized that there could be some overlap between substantial and significant human exposure: "it is not necessarily clear that 'significant' and 'substantial' as used in clause (II) must be understood in a way that prevents their respective meanings or requires that any factor relevant to one may be necessarily irrelevant to the other." CMA at 356, note 17. Thus, exposure, to be considered substantial, does not have to be as widespread for workers as for consumers or the general population. EPA believes that exposure of 2 million workers is widespread enough to necessitate testing for the potential hazards of the substances to evaluate whether worker protection efforts are necessary.

Moreover, EPA believes that millions of consumers may be exposed to aryl phosphate base stocks due to their presence in plastics and that millions of members of the general population may be exposed to aryl phosphate base

stocks that leach out of plastics in landfills and are released into the air during incineration of plastics. EPA believes that potential exposure of millions of consumers and members of the general public to aryl phosphates is substantial exposure because where millions of people are exposed to chemical substances, it is reasonable that EPA should have data on the potential hazards associated with the substance so that EPA can implement appropriate risk management efforts where necessary to protect consumers and members of the general public against unreasonable risk.

3. EPA finds that aryl phosphate base stocks used in various products are released to the environment in substantial quantities. An EPA report estimated that 1 to 3 million pounds of aryl phosphate base stocks may enter the environment annually (Ref. 42).

TPP has been detected in surface waters from the San Francisco Bay (Ref. 39) to the Delaware River (Ref. 60). Los Angeles rainwater was found to contain TPP (Ref. 33). A 1986 survey found TPP in at least three major waterways, in both sediment and fish (Ref. 72). Substantial release is indicated by the presence of aryl phosphates (TPP, IPP, TXP, TCP) in water (Refs. 31, 39, 41, and 60), sediment (Refs. 39, 18, 31, 41, and 72) and fish (Refs. 37, 39, and 72).

IPP was detected in soil and vegetation samples near production sites (Ref. 18).

The presence of TPP and EDP in foodstuffs (Refs. 19, 26, 27, 28, and 29) and of TPP in human adipose tissue (Ref. 64) suggests the possibility of ingestion of these chemicals.

TPP has been found in the water-extractable fraction from items such as plastic car upholstery (Ref. 2). Disposal of such plastics through landfills or incineration adds to environmental exposure, as leaching of plasticizers or volatilization may occur (see Unit II.A.2 of this preamble).

4. Evidence for substantial production, substantial human exposure and substantial environmental release. EPA believes that the phrase "released into the environment in substantial amounts" is intended to capture substances with extensive release to the environment, which in itself would be sufficient reason to require testing in the absence of any information that the substance may be hazardous to human health or the environment. In other words, as with substantial production, release of substantial quantities means large release. Aryl phosphate base stocks are released into the environment in quantities of 1 million to 3 million pounds per year. EPA finds that 1 million to 3 million pounds of release to the environment is a sufficiently large release that EPA should require testing to determine whether measures should be taken to reduce risk to the environment. Moreover, the Toxics Release Inventory (TRI), under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11023, shows that 37 percent of the listed substances have releases over 1 million pounds, accounting for over 99 percent of the total reported releases on the TRI by volume released. Because the TRI does not include all substances, less than 37 percent of all substances would have releases above 1 million pounds. EPA believes that it is reasonable to conclude that this small group of substances (i.e., less than 37 percent), which accounts for over 99 percent of all releases, clearly are substances with substantial releases.

B. Findings Under TSCA Section 4(a)(1)(A)(i)

Pursuant to section 4(a)(1)(A)(i) of TSCA, EPA finds that the manufacturing, processing, use, distribution in commerce, and disposal of aryl phosphate base stocks used in various products may present an unreasonable risk of injury to human health and the environment.

1. *Evidence of potential for adverse human health effects.* Subchronic toxicity testing of TPP, the most acutely toxic aryl phosphate, demonstrates effects in liver, kidney and adrenals (Ref. 30). TCP demonstrates the same toxicities as TPP (liver, Refs. 30 and 54; kidney and adrenals, Refs. 54 and 59), and also affects the immune system (Ref. 10). Long-term treatment with DBP damages liver, kidneys and blood (Refs. 46 and 49). Santicizer 148 (a mixture of 87 to 91 percent isodecyl diphenyl phosphate, 5 to 7 percent di(isodecyl) phenyl phosphate and 4 to 6 percent TPP) affects both the liver and the hematologic system (Ref. 48).

Since the 1930s, various individual and combined aryl phosphates have demonstrated neurotoxicity, including phenol-type syndrome (muscular tremors, hyperexcitability, spastic rigidity, muscular weakness and generalized flaccid paralysis, perhaps due to degradation to the phenol or cresol) (Refs. 62), as well as OPIDN, the well-known human syndrome caused by certain individual aryl phosphates (see Ref. 32). Several cases in humans, primarily due to the tricresyl phosphates, have been reported (see Ref. 1). Studies performed on individual tricresyl phosphate isomers indicated the major neurotoxicant was TOCP (Refs. 61 and 63). Manufacturers, therefore, reduced the TOCP content of their products. However, a recently submitted TSCA section 8(e) hen study (Ref. 40) indicates that complex TCP-containing aryl phosphates containing less than 0.1 percent TOCP have neurotoxic effects similar to those arising from exposure to pure TOCP.

Three recent studies have demonstrated the reproductive toxicity of TCP in several species and strains of laboratory animals (Refs. 12, 13 and 15). The NTP and NIEHS studies both used TCP with less than 0.1 percent TOCP, while EPA's study used TCP with less than 9 percent TOCP. All three studies showed effects on male reproductive parameters, and histopathologic effects were seen in the ovaries in the EPA-sponsored study. Both the EPA-sponsored and NIEHS-sponsored studies demonstrated developmental toxicity, while the NIEHS study also showed reproductive effects in the F_1 generation at the lowest dose.

A two-generation reproductive and fertility study has also been performed on dibutyl phenyl phosphate (Ref. 29a). In the F_0 generation survivability of pups was decreased in both the mid-level and high dose, while in the F_1 generation, only the high dose was so affected.

A confidential TSCA section 8(e) study was submitted to EPA in 1990 demonstrating similar reproductive effects with an additional aryl phosphate.

TOCP has been tested in a standard rat developmental toxicity study (Ref. 67), with significant increases in mean pup body weight at doses as low as 87.5 mg/kg. Further, the two-generation reproductive study on TCP in mice showed significant developmental effects in the pups, with decreases in litter size and live-born pups as well as decreased body weight (Ref. 15). A one-generation study in Long-Evans rats with TCP (Ref. 12) also indicated developmental toxicity effects: decreases in percent of mothers delivering live-born young, and decreases in litter size and pup viability.

2. *Evidence of potential for environmental toxicity.* Mayer et al. (1981) reported rainbow trout exposed to Pydraul 50E (aryl phosphate-containing hydraulic fluid), Pydraul 115E (aryl phosphate-containing hydraulic fluid), or either of their major aryl phosphate components, NDP and cumylphenyl diphenyl phosphate (CDP), developed cataracts after 90 days' exposure. These complex substances also affected bone development and bone collagen content. Reduced growth and survival rates were seen with the two mixtures and also with CDP. With Pydraul 115E, exposure

to 16 μg/L (microgram/liter) and above also caused impaired swimming and feeding activities. This study also examined lake trout fed Pydraul 50E for 120 days and observed cataract effects and growth reduction at 5 μg/L, and effects on vertebral collagen at 2.6 μg/L. Growth and survival were affected in fathead minnows exposed to Pydraul 50E for 30 days at 752 μg/L. Precursors to eye cataracts were seen histologically at 317 μg/L. The most sensitive endpoint in this series of tests was the reduced vertebral collagen in rainbow trout following 90 days of exposure to CDP at 0.22 μg/L (Ref. 39).

A 4–month feeding study on Pliabrac 521, an aryl phosphate containing TPP, TCP, TXP and cresyl diphenyl phosphate, indicated reproductive toxicity in the minnow (Phoxinus phoxinus) (Ref. 5).

A 4–month exposure to IMOL S–140 (composed of TCP, TXP, and assorted other phosphates) in rainbow trout resulted in chronic toxicity, indicated by altered feeding behavior, increased serum enzyme levels of serum glutamic transaminase and lactic dehydrogenase (LDH), presence of muscle LDH in serum and discoloration of internal fatty tissue (Ref. 36).

Ninety-day studies in the fathead minnow for several aryl phosphate base stocks showed differing responses (Ref. 16). The authors indicated that for Santicizer 148 (IDP, TPP), the most sensitive endpoint was growth, while for Fyrquel GT (BDP, TPP), Phosflex 31P (TPP, IPP), and Pydraul 50E (NDP, CDP), the most sensitive endpoint was survival. Gross observation of the minnows did not demonstrate the cataract problems reported in 1981 by Mayer et al. (Ref. 39).

3. *Evidence of potential for unreasonable risk.* In determining that a substance may present an unreasonable risk, EPA must consider both the potential hazard of the substance and the potential for human and environmental exposure to the substance. EPA estimates that 2 million workers and additional millions of consumers and members of the general population may be exposed to aryl phosphate base stocks. In fact, EPA finds that the amount of human exposure to aryl phosphate base stocks is substantial. It is not necessary for human exposure to be "substantial" to support a finding of potential unreasonable risk. Nevertheless, where human substantial exposure does exist, that exposure necessarily is widespread enough to support the exposure component of a potential risk finding. As discussed above, aryl phosphates have been shown to cause human neurotoxicity, and the potential for others such as liver, kidney, adrenal and blood effects, reproductive toxicity and developmental toxicity. The widespread human exposure coupled with the potential human hazards associated with aryl phosphates indicates that aryl phosphate base stocks may present a risk to human health.

EPA estimates aryl phosphate base stocks are released into the environment in quantities of 1 million to 3 million pounds per year. In fact, EPA finds that 1 million to 3 million pounds of aryl phosphate base stocks released into the environment per year constitutes substantial release into the environment. It is not necessary for release into the environment to be "substantial" release to support a finding of potential unreasonable risk to the environment. Nevertheless, where substantial release into the environment exists, that release necessarily is large enough to support the exposure component of the potential risk finding. As discussed above, aryl phosphate base stocks have been shown to cause cataracts, reduced growth and survival rates, impaired swimming and feeding activity, reproductive toxicity, chronic toxicity, and reduced vertebral collagen in fish. The large release into the environment coupled with the potential environmental hazards associated with aryl phosphate base stocks indicates that aryl phosphate base stocks may present a risk to the environment.

From the information presented above on the hazard potential of aryl phosphate base stocks and the amount of potential human and environmental exposure to aryl phosphate base stocks that are used in various products, EPA finds that the manufacturing, processing, use, distribution in commerce, and disposal of aryl phosphate base stocks may present an unreasonable risk of injury to human health and the environment.

C. Findings Under TSCA Section 4(a)(1)(A)(ii) and (B)(ii)

Pursuant to section 4(a)(1)(A)(ii) and (B)(ii) of TSCA, EPA finds that, for all substances comprising the aryl phosphate base stock category, data are insufficient to determine or predict the effects of manufacturing, processing, distribution in commerce, or use of these substances on health and on the environment.

In evaluating the testing needs for the aryl phosphate base stock category, EPA considered all available data including information in the ITC's report, TSCA section 8(d) and 8(e) data, comments received following the publication of the ANPR, and recent scientific publications. An EPA review (Ref. 66) of information available through early 1987 is available. Later sources are included in the docket for this rulemaking.

Without more complete information regarding what was actually tested, and in some cases, how the studies were performed, none of the studies discussed in Unit II.B of this preamble are acceptable to EPA for the purpose of risk assessment.

1. *Subchronic effects.* Monsanto submitted a 3–month feeding study on DBP with Sprague-Dawley rats in March 1987 (Ref. 49). The study was not conducted according to EPA guidelines, as EPA's GLPs require a detailed analysis of all components in the tested compound. However, the report only identified the components (DBP, butyl diphenyl phosphate and TBP) and gave no percentage composition. Analyses of test material in food reported only the levels of DBP.

Similarly, two other subchronic studies, one on TCP (Ref. 59) and the other on Santicizer 148 (Ref. 48), appear to meet the Agency's guidelines (or their equivalent), but inadequate test substance identification.

A subchronic study on *tert*-butylphenyl diphenyl phosphate (Ref. 43) may have an appropriate test protocol, but the high dose (1000 ppm in the diet) induced no treatment-related effects. EPA guidelines require that the high dose for a subchronic study induce some significant toxicity. In lieu of this EPA needs evidence that an appropriate high dose level was selected. In some cases EPA has accepted studies that use a level that exceeds potential human exposure by at least a factor of a hundred. These conditions have not been met for this study.

2. *Neurotoxicity.* Standard acute hen studies demonstrated OPIDN for TCP, TXP and IPP. Subsequently, FMC conducted a 90–day subchronic assay in the hen with Kronitex 50 (IPP) that may have been sufficient to reasonably predict or determine IPP neurotoxicity, but information on the material tested was insufficient for EPA to evaluate the study. The study in question describes the material tested simply as C8096–126–1 Phosphate Ester from FMC. However, FMC's cover letter stated this was Kronitex 50 (Ref. 24). The Material Safety Data Sheet (MSDS) (Ref. 25) gives the composition of Kronitex 50 as phenol, isopropylated, phosphate (3–1) (Cas No. 68937–41–7). EPA has three technical listings of the chemical analysis of Kronitex 50 (none associated with this study): two from the manufacturer (Refs. 20 and 21) and one from the published literature (Ref. 53).

The three listings are significantly different. For instance, the level of triphenyl phosphate in the three papers ranges from 24.9 to 33 percent. This difference may not affect the final toxicity result, but EPA is requesting comment on this issue (Unit IV.A.1 of this preamble).

A multi-dose study of TOCP has been performed in England, but published data on the methodology do not give enough information for EPA's needs (Refs. 56 and 57).

Acute neurotoxicity results on the *tert*-butylphenyl phosphates are mixed. Of the 12 studies on various forms of *tert*-butylphenyl phosphate, 7 are negative but 5 show diverse levels of OPIDN (Refs. 22, 23, 44, and 65 [two reported in Ref. 22]).

EPA does not propose repeating acute hen neurotoxicity studies for those aryl phosphate base stocks for which acceptable studies have already been completed and reviewed for the ANPR. However, DBP, one of the chemicals subject to this proposed rule, was acutely tested by Industrial Bio-Test. Tests carried out by the latter laboratory are questionable, but if the results were independently and appropriately audited, and the test substance adequately defined, EPA will decide if it is acceptable or whether further testing is required.

3. *Reproductive effects.* A two-generation reproductive study on TCP has been performed by NIEHS (Ref. 15). This was a continuous breeding study in mice using TCP with less than 0.1 percent TOCP. Reproductive effects were seen in both sexes, with sperm motility decreases seen in the F_1 generation at the lowest dose tested. A recent section 8(e) study (claimed as CBI) on another aryl phosphate base stock showed similar effects.

A two-generation reproductive and fertility study has also been performed on dibutyl phenyl phosphate (Ref. 29a). This study also was done using EPA guidelines, except for lack of information on the test substance. In the F_0 generation survivability of pups was decreased in both the mid-level dose and the high dose, while in the F_1 generation, only the high dose was so affected.

These studies may be acceptable to EPA for risk assessment if submitters can demonstrate that the test substances used were equivalent to what is now manufactured.

The studies on developmental toxicity submitted to EPA also lack adequate identification of test substance. Monsanto reported on studies for two plasticizers, Santicizer 141 and Santicizer 148 (Ref. 58). The study protocols are adequate, but the 3000 mg/kg/day high dose for the Santicizer 148 did not cause significant maternal toxicity. EPA guidelines require that significant maternal toxicity be elicited at the highest dose, to determine whether developmental toxicity will occur at levels below those that are toxic to the mother. That is, if no developmental effects are seen, then regulating the dose affecting the mother will protect the child. As with the subchronic toxicity guidelines, if the dose is high enough to guarantee a hundred-fold level above potential human exposure, then EPA may consider the study adequate.

Monsanto performed two additional developmental toxicity studies, on Santicizer 154 (Ref. 47) and BDP (Ref. 45), but neither produced maternal toxicity.

4. *Environmental effects.* EPA believes acute fish toxicity information is adequate for the substances tested. Because information from the ELS testing will include acute range-finding data, EPA is not proposing acute toxicity testing for untested aryl phosphate base stocks. However, data on long-term effects are deficient, and more information is needed for risk assessment. Fish toxicity data discussed in Unit II.B of this preamble are primarily from European studies on marketed products; the test substances for which analytical information was provided did not appear to include any aryl phosphate base stocks presently marketed in the United States.

D. Findings Unders TSCA Sections 4(a)(1)(A)(iii) and (B)(iii)

Pursuant to section 4(a)(1)(A)(iii) and (B)(iii) of TSCA, EPA finds that testing of these substances is necessary to determine or predict the effects of manufacturing, processing, use, distribution in commerce and disposal of all substances in the aryl phosphate base stocks category.

Under section 4(a)(1)(A)(iii) and (B)(iii), EPA finds that testing aryl phosphate base stocks is necessary to develop data for chemical analysis, organophosphorus-induced delayed neuropathy, two-generation reproductive and fertility effects, 120-day post-hatch rainbow trout ELS effects, anaerobic biodegradation, chronic Daphnia toxicity, subchronic toxicity, aerobic biodegradation, microcosm effects, subchronic neurotoxicity and developmental toxicity. EPA believes that data resulting from this testing will be relevant to a determination as to whether manufacturing, processing, distribution in commerce, use and disposal of aryl phosphate base stocks does or does not present an unreasonable risk of injury to health or the environment.

III. Proposed Rule

A. Proposed Testing and Test Standards

On the basis of the findings in Unit II of this preamble, EPA is proposing a test rule for aryl phosphate base stocks that meet the category definition specified in Unit I.A of this preamble.

This would be a two-stage test rule. First, the rule would require submission of chemical analysis data obtained by GC/MS. EPA would require for first-stage information any individual aryl phosphate positional isomer, except TOCP, or any other substance present in a base stock, to be identified and quantitated if present at a concentration of 1 percent or greater; quantitation for TOCP would be required to ±0.5 percent. TOCP would have to be quantitated, to ±0.05 percent, unless present at less than 0.10 percent. The Agency would notify manufacturers by certified mail if: (1) A particular chemical to be tested demonstrates equivalence to another manufacturer's product and testing costs may be shared; or, (2) the chemical in question does not demonstrate equivalence to another aryl phosphate base stock and testing costs may not be shared.

EPA would evaluate the analytical chemistry data and determine whether any base stock is equivalent to another. EPA proposes as equivalence criteria that any two base stock substances be considered equivalent if all the individual aryl phosphate components of the two substances are within 2 percent of each other, unless, for a situation involving three or more base stocks, this results in a range greater than 4 percent for any component. In such a case, EPA would apply its best scientific judgement.

Because of the economic impact of certain of these tests on some category members, EPA has prioritized the second-stage tests, providing three levels of testing. Level 1 is the base set of required testing for aryl phosphate base stocks having aggregate annual production volumes of at least 1 but less than 5 million pounds: 120-day post-hatch rainbow trout ELS test; three hen neurotoxicity tests — acute neurotoxic esterase (NTE), acute organophosphate delayed neuropathy, and subchronic organophosphate delayed neuropathy (triggered by a positive NTE or positive acute OPIDN study); and a two-generation reproductive test. Level 2 includes additional tests required for

aryl phosphate base stocks having aggregate annual production volumes of at least 5 but less than 10 million pounds: anaerobic biodegradation; chronic Daphnia; and subchronic toxicity. Level 3 includes additional testing for aryl phosphate base stocks having aggregate annual production volumes of at least 10 million pounds: aerobic biodegradation; microcosm; developmental toxicity; subchronic rat neurotoxicity - functional observation battery (FOB), motor activity (MA) and neuropathology (NP). EPA would notify manufacturers when they meet trigger levels, as determined from the proposed section 8(a) production reporting. Present and future aryl phosphate base stock manufacturers would be subject to testing requirements.

Proposed Test Standards	CFR citations
Level 1	
120-Day post-hatch trout ELS.	40 CFR 797.1600
Neurotoxicity in the hen	
Acute NTE	40 CFR 798.6450
Acute OPIDN	40 CFR 798.6540
Subchronic OPIDN, if triggered.	40 CFR 798.6560
Two-generation reproduction and fertility effects.	40 CFR 798.4700
Level 2	
Anaerobic biodegradation	40 CFR 796.3140
Chronic Daphnia	40 CFR 797.1350
Subchronic toxicity	40 CFR 798.2650
Level 3	
Aerobic biodegradation	40 CFR 799.700 (Bourquin paper (Ref. 9) incorporated by reference)
Microcosm ecosystem	§ 797.3050 (proposed)
Neurotoxicity in the rat: (may be combined with subchronic per specific guideline instruction; FOB and MA acute testing required).	
FOB	40 CFR 798.6050
MA	40 CFR 798.6200
NP	40 CFR 798.6400
Developmental toxicity	40 CFR 798.4900

The original ITC designation also recommended EPA investigate mutagenicity and oncogenicity and conduct epidemiology studies. However, considerable mutagenicity testing on aryl phosphates before and after the ANPR has been predominately negative, and EPA is not proposing such testing at this time. NTP is testing TCP for oncogenicity, and EPA has decided to await the outcome of this study before deciding if oncogenicity testing on other aryl phosphate base stocks is necessary. Any subsequent oncogenicity requirement would be the subject of a separate rulemaking. Epidemiology is discussed in Unit IV.5 of this preamble.

New aryl phosphate base stocks subject to TSCA section 5 would also be subject to this rule. Section 5(b) of TSCA requires that if a person submits a notice to EPA under section 5(a)(1) before the manufacture or processing of a chemical substance, and the substance is subject to a section 4 test rule promulgated before the submission of such notice, the data required by the section 4 test rule shall be submitted at the same time notice is submitted in accordance with section 5(a)(1). In other words, anyone making a "new" aryl phosphate base stock must first do the chemical analysis under § 799.700(e) and submit that analysis with the premanufacture notification to comply with § 799.700(c)(2). New chemical manufacturers will not be required to do tiered testing, however, until EPA has evaluated the chemical analysis data and determined if that aryl phosphate base stock is equivalent to any other substance, and if an aggregate production volume triggering stage 2 testing for that group of equivalent substances has been met. If, at the time a final test rule is promulgated, a substance has already been submitted to EPA and is being reviewed pursuant to section 5(a), EPA requires that the submitter provide the data required by this test rule. Category members subject to a section 5(e) order (i.e., already reviewed by EPA and being regulated) will be re-reviewed by EPA to determine if data required by the test rule are necessary.

B. Test Substances

All aryl phosphate base stocks, as defined by this rule, would be subject to this test rule. EPA has identified 12 aryl phosphate base stocks that are in production at this time (Ref. 55). Base stocks differing from one another by more than 2 percent in a single component (0.1 percent for TOCP) would be considered different base stocks for purposes of this rule. Any other base stock meeting the definition of aryl phosphate base stocks that EPA is not aware of or that comes into production in the future would also be subject to this test rule. See Unit I.C.3.d of this preamble for a more complete discussion of the background and decisions for the following substance listings.

The 12 aryl phosphate base stocks EPA believes are in production are as follows:

1. *tert*-Butylphenyl diphenyl phosphate (CAS No. 56803-37-3) or isobutylenated phenol, phosphate (3:1) (CAS No. 68937-40-6) (based on a 1:3 mol ratio isobutylene to phenol).

2. bis-(*tert*-Butylphenyl) phenyl phosphate (CAS No. 65652-41-7)or isobutylenated phenol, phosphate (3:1) (CAS No. 68937-40-6) (based on a 2:3 mol ratio isobutylene to phenol).

3. tris-(*tert*-Butylphenyl) phosphate (CAS No. 78-33-1) or isobutylenated phenol, phosphate (CAS No. 68937-40-6) (based on a 1:1 mol ratio isobutylene to phenol).

4. Di(*n*-butyl) phenyl phosphate (CAS No. 2528-36-1).

5. 2-Ethylhexyl diphenyl phosphate (CAS No. 1241-94-7).

6. Isodecyl diphenyl phosphate (CAS No. 29761-21-5).

7. Isopropylphenyl diphenyl phosphate (CAS No. 28108-99-8) or phenol, isopropylated, phosphate (3:1) (CAS No. 68937-41-7) (based on a 1:3 mol ratio propylene to phenol).

8. bis-(Isopropylphenyl) phenyl phosphate (CAS No. 28109-00-4) or phenol, isopropylated, phosphate (3:1) (CAS No. 68937-41-7) (based on a 2:3 mol ratio propylene to phenol).

9. tris-(Isopropylphenyl) phosphate or phenol, isopropylated, phosphate (3:1) (CAS No. 68937-41-7) (based on a 1:1 mol ratio propylene to phenol).

10. Tricresyl phosphate (CAS No. 1330-78-5), or tar acids, cresylic, phenyl phosphate (CAS No. 68952-35-2).

11. Triphenyl phosphate (CAS No. 115-86-6).

12. Trixylyl phosphate (CAS No. 25155-23-1) or tar acids, cresylic, C-8 rich, phenyl phosphate (CAS No. 68952-33-6).

For this proposed rule, EPA would not require testing of pure chemicals, but rather the base stocks to which persons (manufacturing workers, users, consumers, general populace, etc.), or the environment are actually exposed. EPA would require chemical analysis as the first stage of testing to help define equivalence for category members.

Any substance meeting the aryl phosphate base stock category definition, even if not named in the final rule, would be considered a member of this category and subject to this test rule.

C. Persons Required to Test

Because of the findings in Unit II of this preamble, EPA is proposing that persons who manufacture (including persons who import) or process or intend to manufacture and/or process an aryl phosphate base stock as defined by this rule, at any time from the effective date of the final test rule to the end of the reimbursement period, be subject to the testing requirements

contained in this proposed rule. This period is defined in 40 CFR 791.3(h).

Each manufacturer of a specific aryl phosphate base stock would pay a pro rata share of the aggregate cost of testing that specific test substance in proportion to its market share. Manufacturers (including importers) potentially subject to this rule should consult the procedures in 40 CFR part 790. As explained in 40 CFR part 790, initially manufacturers, but not processors, of one or more of these substances would be required to submit letters of intent or exemption applications. Pursuant to a recent amendment to part 790, small quantity research and development manufacturers are not required to submit letters of intent or exemption applications. Such manufacturers should consult the **Federal Register** at 55 FR 18881, May 7, 1990, for further details.

Product compositions may change because of feedstock or processing changes, and the toxicity of individual aryl phosphate components can vary widely. For this reason, chemical analysis data are needed to define the test substance and to prove equivalence of products if there are two or more manufacturers. As new manufacturers move into the market, they would also have to demonstrate equivalence, or conduct testing. The Stage 1 chemical analysis would be required for each in-production aryl phosphate base stock in this category.

D. Reporting Requirements

As required under 40 CFR 799.10, EPA is proposing that all data developed under this rule must be reported in accordance with its GLP standards which appear in 40 CFR part 792.

As required by TSCA section 4(b)(1)(c), EPA is proposing specific reporting requirements for each of the proposed test standards as follows: Final reports for the first stage of this test rule, the chemical analysis data, would be due no later than 6 months after the date of publication of the final rule.

Final reports for second stage studies would be due at intervals specified below following the notification of manufacturers by EPA by certified mail that the second stage of testing should begin on their substance or that production volume had triggered another level of testing.

Proposed Test Standards	Reporting Requirements
Level 1	
120–Day post-hatch trout ELS	18 months
Neurotoxicity in the hen	
Acute NTE	6 months
Acute OPIDN	6 months
Subchronic OPIDN	18 months
Two-generation reproduction and fertility effects	24 months
Level 2	
Anaerobic biodegradation	12 months
Chronic Daphnia	12 months
Subchronic toxicity	18 months
Level 3	
Aerobic biodegradation	12 months
Microcosm ecosystem	24 months
Neurotoxicity in the rat: (may be combined with subchronic per specificguideline instruction; FOB and MA acute testing required).	
FOB	18 months
MA	18 months
NP	18 months
Developmental toxicity	12 months

Progress reports on these tests would have to be submitted to EPA every 6 months, beginning 6 months after EPA notifies the manufacturers testing must proceed, until the final report is submitted.

TSCA section 14(b) governs EPA's disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, EPA will publish a notice of receipt in the **Federal Register** as required by section 4(d) of TSCA.

IV. Issues for Comment

A. Issues Relating to Choice of Test Substances

1. EPA requests comments on EPA's approach to choosing test substances.

Most aryl phosphate toxicity testing has been performed on multicomponent technical grade substances. EPA considered requiring testing of individual components because the literature has documented differences in toxicity between components and between individual isomers, but rejected this approach as impractical and too expensive. Instead EPA is proposing to require testing of aryl phosphate base stocks. These may vary significantly from manufacturer to manufacturer and perhaps between batches. EPA is proposing that base stocks differing from one another by more than 2 percent in a single component (0.1 percent for TOCP) be considered different base stocks for purposes of this rule. Would this result in an unnecessary or burdensome amount of base stock testing? Are there better ways or more appropriate criteria to define and differentiate base stocks?

2. How should the specific test substances be chosen?

EPA is proposing the first stage of this two-stage rule to enable the Agency to assess the identity and proportions of constituents of individually manufactured aryl phosphate base stocks. EPA is addressing this issue up front rather than through the exemption application process. To assure equitable sharing of second-stage testing responsibilities and costs among manufacturers in cases where multiple manufacturers produce aryl phosphate base stocks judged by EPA to be equivalent, the Agency would have three alternative courses of action, as follows:

- To have EPA or the manufacturers choose one of equivalent substances for testing.

• To require testing of a composite mixture of equivalent aryl phosphate base stocks.

• To define a "standard" test substance for each group of equivalent substances.

EPA is proposing in this Notice that EPA will choose one of the equivalent substances for testing, but desires comment on this.

3. What level of quantitation should EPA require in the chemical analysis? Should there be a requirement to quantitate any chemical component other than TOCP of an aryl phosphate base stock more precisely than ±2.0 percent?

Except for TOCP, the rule would require chemical analysis with identification of all components of the manufacturers' products present at a level of 1.0 percent or greater. However, data reported in Ref. 40 suggest that observed neurotoxicity from TCP may be due to TOCP present at less than 0.1 percent. Thus, the Agency is proposing to require quantification for TOCP if its concentration is 0.10 percent or greater. For comparison, the Office of Pesticide Programs (OPP) requires identification of all chemicals present in the test material at or above 1.0 percent concentration.

4. How detailed should EPA make the chemical analysis requirement, and what are the most useful techniques? Should EPA allow each submitter to supply justification for the methods he chooses, or require a specific method?

EPA is proposing to require for the chemical analysis GC/MS, which may be the best method for conducting chemical analyses for these compounds, as all these aryl phosphate base stock components are sufficiently volatile. However, isomers in products such as TCP and TXP are difficult to separate even on capillary columns. Determination of specific components such as TOCP, and analysis of phenolic moieties by gas-liquid chromatography following alkaline hydrolysis of the phosphate esters has been proposed (Ref. 50). Alternatives to GC include:

• Gel permeation chromatography.

• High performance liquid chromatography.

• Supercritical fluid chromatography.

Alternatives to MS (which may be too destructive of the separated particles for good analysis) include:

• Nuclear magnetic resonance.

• Infrared radiation.

• Ion track detector.

Should any of these methods be considered as alternatives, particularly if the proposed method may cause destruction of the sample?

5. Does the exposure information on aryl phosphates support testing for all identified base stocks? Could results of more limited testing be used as a screen to develop whether or not it is necessary to test additional base stocks?

B. Issues Related to Required Testing

1. Should EPA propose another level that would have no production trigger and would include only the hen subchronic neurotoxicity and a one-generation reproductive toxicity test for those chemicals where economic impact is severe?

According to information received by EPA, some of the aryl phosphate base stocks do not have an aggregate production level that EPA has determined will adequately support the required Level 1 testing costs. The tests proposed in Level 1 are based on known toxicity for the category, and, in some instances, on toxicity of certain components of the base stocks.

2. Should EPA require developmental neurotoxicity testing of aryl phosphate base stocks?

EPA is requiring both hen (acute delayed neurotoxicity and NTE, and subchronic delayed neurotoxicity, if triggered) and rat (FOB, MA, NP) neurotoxicity studies, but is not proposing to require developmental neurotoxicity testing at this time. EPA's Science Advisory Panel recommended that one criterion for requiring the developmental neurotoxicity screen be "*** test substances that produce neuropathology in developing or adult animals," and another criterion be "*** strong structure-activity relationships with known neurotoxicants" (Ref. 70). Should EPA propose a developmental neurotoxicity test requirement in a subsequent rulemaking if neurotoxicity test results in the rat are positive?

3. Should EPA again consider investigating whether some form of epidemiological study is indicated?

EPA did not suggest epidemiological neurotoxicity studies in the ANPR because available information suggested that a valid cohort was too difficult to identify. However, the Agency is interested in determining if a valid cohort may now be identified. Epidemiological studies of neurotoxic and/or reproductive effects may be warranted because of the suggestive new toxicity data in these areas.

4. Should EPA require that the rainbow trout ELS test be expanded to include histopathological examination specifically for cataracts, bone development and bone collagen deficits as seen in Ref. 39, or carried for a longer post-hatch period, e.g., 6 months, to better ensure that any such effects will be observed?

EPA is proposing to extend the usual 90 day post-hatch duration of the ELS test in the trout to 120 days post-hatch as a surrogate for a chronic fish test, for which EPA has no guideline. Cataracts and reduced vertebral collagen were seen in long-term studies of at least 3 to 4 months in trout, but not detected in a 30-day study in minnows, although histological precursors were detected (Ref. 39).

5. Should EPA require additional testing for the aryl phosphate base stocks to address memory and other neurobehavioral deficits if brain and blood acetylcholinesterase inhibition is significant?

The proposed subchronic toxicity test would include tests for blood and brain acetylcholinesterase (AChE) inhibition. References cited in the 1971 ACGIH Documentation of the Threshold Limit Values reported significant decreases in plasma cholinesterase in workers exposed to TOCP and of red blood cell cholinesterase in workers exposed to TPP, even though the authors found no other effects (Ref. 4). Of more concern, a recent study on an organophosphate pesticide, diisopropylfluorophosphate, showed significant effects on short- and long-term memory, impaired matching accuracy and lengthened response times at levels at which the only other effect observed was depressed brain AChE (Ref. 11), and only after extended treatment with the chemical.

6. Is there a CBI problem if EPA informs all manufacturers of a given base stock substance that there are other manufacturers of the same substance and who those manufacturers are, and that an aggregate production volume trigger was met for that substance?

7. EPA is aware of the interchangeability of some aryl phosphates for the same end use. To gain a greater understanding of this factor which plays a role in the evaluations of the economic impact of this proposed rule, EPA is requesting the submission of additional data relating to interchangeability.

C. Other Issues

1. Should EPA require reporting of exposure and release information beyond that proposed in the test rule?

EPA is proposing TSCA section 8(a) PAIR reporting for manufacturers of the aryl phosphate base stocks to enable EPA to make better decisions on which base stocks can support the testing. Preliminary information indicates that a great deal of human exposure and

environmental release results from processing and use of products containing aryl phosphate base stocks, suggesting that EPA may miss important information by not requiring processors to report.

2. EPA has defined three production-level triggers, one at 1 million pounds for potential unreasonable risk findings, one at 5 million pounds and one at 10 million pounds for additional testing. EPA solicits comment on whether these triggers comport with manufacturers' ability to pay for the level of testing. Is it appropriate to use these triggers based on a high production/high exposure concern? If an exposure value should be included, what should it be and how could EPA apply it as a triggering mechanism?

V. Economic Analysis of Proposed Rule

EPA has prepared an economic analysis of this proposed rule (Ref. 6). The analysis estimates the costs of conducting the proposed testing for each of the chemicals, including both laboratory and administrative costs, and evaluates the potential for economic impacts as a result of these test costs, using a comparison between a chemical's annualized test costs and its annual revenues.

The estimated total cost of the maximum possible testing for each chemical is $1,076,988 to $1,656,638.

In order to evaluate the potential economic impacts of the proposed testing, test costs are annualized and compared with annual revenues from the chemicals. The annualized test costs, using a 7 percent cost of capital over a period of 15 years are $53,974 to $81,167 for Level 1; for Levels 1 and 2, the costs are $66,681 to $99,516; for all 3 Levels, the costs are $118,247 to $161,690. The costs of chemical analysis were not estimated because no protocols were identified for this test. Therefore these costs may be underestimated.

The comparison between annual costs and revenues suggests that for four chemicals, the maximum test cost may have no significant adverse economic impacts. For the remaining chemicals, the test costs do appear to pose some potential for adverse economic impacts. Please refer to the economic analysis contained in the public record for this rulemaking for more details on test cost estimations and the evaluation of economic impacts. EPA's proposed testing and standards devised to reduce the impact of testing costs is described in Unit III.A of this preamble of this notice.

VI. Availability of Test Facilities and Personnel

EPA has determined that test facilities and personnel are available to perform the testing specified in this proposed rule. (Ref. 8).

VII. Public Meeting

If requests for oral comments are submitted, as indicated in the dates section, EPA will hold a public meeting after the close of the public comment period in Washington, DC. Persons wishing to present comments or attend the meeting should call Mary Louise Hewlett, (202) 260–8162. The meetings are open to the public, but active participation will be limited to those who requested to comment and EPA representatives. Participants are requested to submit copies of their statements by the meeting date. These statements and a transcript of the meeting will become part of EPA's record for rulemaking.

VIII. Comments Containing Confidential Business Information

All comments will be placed in the public file unless they are clearly labeled as Confidential Business Information (CBI) when the comments are submitted.

While a part of the record, CBI comments will be treated in accordance with 40 CFR part 2. A sanitized version of all CBI comments should be submitted to EPA for the public file.

It is the responsibility of the commenter to comply with 40 CFR part 2 in order that all materials claimed as confidential may be properly protected. This includes, but is not limited to, clearly indicating on the face of the comment (as well as on any associated correspondence) that CBI is included, and marking "CONFIDENTIAL", "TSCA CBI" or similar designation on the face of each document or attachment in the comment that contains CBI. Should information be put into the public file because of failure to clearly designate its confidential status on the face of the comment, EPA will presume any such information that has been in the public file for more than 30 days to be in the public domain.

IX. Rulemaking Record

EPA has established a record for this rulemaking, (docket number OPPTS–42038A). This record contains the basic information considered by the Agency in developing this proposal and appropriate **Federal Register** notices.

This record includes the following information:

A. Supporting documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of the chemical category of aryl phosphates to the Priority List (43 FR 16684, April 19, 1978).

(b) Rule requiring TSCA section 8(a) reporting on the chemical category of aryl phosphates (47 FR 26992, June 22, 1982).

(c) Rule requiring TSCA section 8(d) reporting on the chemical category of aryl phosphates (47 FR 38780, September 2, 1982).

(d) TSCA test guidelines cited as proposed test standards for this rule, 40 CFR parts 796, 797, and 798.

(e) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (54 FR 34034, August 17, 1989).

(f) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652, May 17, 1985).

(g) Notice of final rule on data reimbursement policy and procedures (48 FR 31786, July 11, 1983).

(h) Advance notice of proposed rulemaking for aryl phosphates (48 FR 57452, December 29, 1983).

(i) Notice of Inventory Update Rule (51 FR 21447, June 12, 1986).

(j) Notice of Agency's first and second proposed test rules (45 FR 48510, July 18, 1980 and 46 FR 30300, June 5, 1981).

(2) Communications before proposal consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

B. References

(1) Abou-Donia, M.B. and D.M. Lapadula. Mechanisms of organophosphorus ester-induced delayed neurotoxicity. *Annual Review of Pharmacology and Toxicology* 30:405–440 (1990).

(2) Ahrens, V.D., Henion, J.D., Maylin, G.A., Leibowitz, L., St. John, L.E., Jr., and D.J. Lisk. A water-extractable toxic compound in vinyl upholstery fabric. *Bulletin of Environmental Contamination and Toxicology* 20:418–422 (1978).

(2a) American Chemical Society Committee on Environmental Improvement. Guidelines for data acquisition and data quality evaluation in environmental chemistry. *Analytical Chemistry* 52:2242–2249 (1980).

(3) American Conference of Governmental Industrial Hygienists. TLVs: Threshold limit values and biological exposure indices for 1986–1987. American Conference of Governmental Industrial Hygienists, Cincinnati, OH (1986).

(4) American Conference of Governmental Industrial Hygienists. Documentation of the threshold limit values for substances in workroom air. American Conference of

Governmental Industrial Hygienists, Cincinnati, OH (1974).

(5) Bengtsson, B.E., Tarkpea, M., Sletten, T., Carlberg, G.E., Kringstad, A. and L. Renberg. Bioaccumulation and effects of some technical triaryl phosphate products in fish and *Nitocra spinipes*. *Environmental Toxicology and Chemistry*, 5:853–861 (1986).

(6) Blake-Hedges, L. Economic analysis of proposed test rule for twelve aryl phosphates (non-CBI version). CBI version DCN 20911000422. Regulatory Impacts Branch, Office of Pollution Prevention and Toxics (OPPT), United States Environmental Protection Agency (USEPA) (April 26, 1991).

(7) Boethling, R.S. and J.C. Cooper. Environmental fate and effects of triaryl and tri-alkyl/aryl phosphate esters. *Residue Reviews* 94:49–99 (1985).

(8) Booz, Allen & Hamilton Inc. EPA census of the toxicological testing industry (draft report). EPA Contract 68D8-0111 for Office of Policy Analysis for the Office of Pollution Prevention and Toxics, USEPA (June 1990).

(9) Bourquin, A.W., Hood, M.A. and R.L. Garnas. An artificial ecosystem for determining effects and fate of toxicants in a salt-marsh environment. *Development in Industrial Microbiology* 18:185–191 (1977).

(10) Brinkerhoff, C.R., Sharma, R.P., and D.R. Bourcier. The effects of tri-ortho-tolyl phosphate (totp) on the immune system of mice. *Ecotoxicology and Environmental Safety*. 5:368–376 (1981).

(11) Bushnell, P.J., Padilla, S.S., Ward, T. Pope, C.N. and V.B. Olszyk. Behavioral and neurochemical changes in rats dosed repeatedly with diisopropylfluorophosphate. *Journal of Pharmacology and Experimental Therapeutics*. 258:741–750 (1991).

(12) Carlton, B.D., Basaran, A.H., Mezza, L.E. and M.K. Smith. Examination of the reproductive effects of tricresyl phosphate administered to Long-Evans rats. *Toxicology*. 46:321–328 (1987).

(13) Carlton, B.D., Irwin, R., Hejtmancik, M., Deskin, R., Ryan, M. and A.C. Peters. Reproductive toxicity of tricresyl phosphate in male rats & mice by two dosing routes. *Toxicologist*. 6:292 (1986).

(14) Carpenter, H.M., Jenden, D.J., Shulman, R. and J.R. Turman. Toxicology of a triaryl phosphate oil. *Archives of Industrial Health*. 20:234–252 (1969).

(15) Chapin, R.E., George, J.D., and J. C. Lamb, IV. Reproductive toxicity of tricresyl phosphate in a continuous breeding protocol in Swiss (CD–1) mice. *Fundamental and Applied Toxicology*. 10:344–354 (1988).

(16) Cleveland, L., Mayer, F.L., Buckler, D.R., and D.U. Palawaski. Toxicity of five alkyl-aryl phosphate ester chemicals to four species of freshwater fish. *Environmental Toxicology and Chemistry*. 5:273–282 (1986).

(17) Crockett, A.B. Preliminary report on aryl phosphate monitoring with attachment. Memorandum from A.B. Crockett, Environmental Monitoring and Support Laboratory, Office of Research and Development (ORD), Las Vegas, NV to M.P. Halper, OPPT, USEPA (1978).

(18) Crockett, A.B. Analysis of aryl phosphate samples. Memorandum from Environmental Monitoring and Support Laboratory, ORD, Las Vegas, NV to Pat Hilgard, OPPT, USEPA (March 6, 1979).

(19) Daft, J.L. Identification of aryl/alkyl phosphate residues in foods. *Bulletin of Environmental Contamination and Toxicology*. 29:221–227 (1982).

(20) FMC Corporation. Gas chromatographic-mass spectral assay of Kronitex isopropylphenyl phosphates. Technical report No. CGP–75–10. Princeton, NJ, (1975).

(21) FMC Corporation. Kronitex 50 - Mutagenicity test screening test *Salmonella* microsomal assay (Ames test). Princeton, NJ (1977).

(22) FMC Corporation. Neurotoxicity study in hens on commercially available phosphate ester products. TSCA section 8(d) submission 878210566 (1977).

(23) FMC Corporation. Neurotoxicity study in hens on commercially available phosphate ester products. TSCA section 8(d) submission 878210567 (1977).

(24) FMC Corporation. Cover letter and unpublished study, the subchronic (90 day) neurotoxicity of C8096–126–1 phosphate ester to the domestic hen. TSCA section 8(d) submission 878214930 (1986).

(25) FMC Corporation. Kronitex (R) 50, Material safety data sheet (1988).

(26) Gartrell, M.J., Craun, J.C., Podrebarac, D.S. and E.L. Gunderson. Pesticides, selected elements, and other chemicals in infant and toddler total diet samples, October, 1979–September, 1980. *Journal of the Association of Official Analytical Chemists*. 68:1163–1183 (1985).

(27) Gartrell, M.J., Craun, J.C., Podrebarac, D.S. and E.L. Gunderson. Pesticides, selected elements, and other chemicals in adult total diet samples, October, 1979–September, 1980. *Journal of the Association of Official Analytical Chemists*. 68:1184–1197 (1985).

(28) Gartrell, M.J., Craun, J.C., Podrebarac, D.S. and E.L. Gunderson. Pesticides, selected elements, and other chemicals in infant and toddler total diet samples, October, 1980–March, 1982. *Journal of the Association of Official Analytical Chemists*. 69:123–145 (1986).

(29) Gartrell, M.J., Craun, J.C., Podrebarac, D.S. and E.L. Gunderson. Pesticides, selected elements, and other chemicals in adult total diet samples, October, 1980-March, 1982. *Journal of the Association of Official Analytical Chemists*. 69:146–161 (1986).

(29a) Healy, C.E., Nair, R.S., Lemen, J.K., and F.R. Johannsen. Subchronic and reproduction studies with dibutyl phenyl phosphate in Sprague-Dawley rats. *Fundamental and Applied Toxicology*. 16:117–127 (1991).

(30) Hierholzer, K., Noetzel, H. and L. Schmidt. Comparative toxicological investigation of triphenyl phosphate and tricresyl phosphate. *Arzneimittel-Forschung*. 7:585–590 (1957).

(31) Jadlocki, J.F. The environmental fate and effects of aryl phosphates and phenolics in wastewaters from the production of Kronitex phosphate esters. FMC, Industrial Chemicals Division, Princeton, NJ (1980).

(32) Johnson, M.K. Organophosphorus esters causing delayed neurotoxic effects. *Archives of Toxicology*. 34:259–288 (1975).

(33) Kawamura, K. and I.R. Kaplan. Organic compounds in the rainwater of Los Angeles. *Environmental Science and Technology*. 17:497–501 (1983).

(34) Kneiss, J. Letter from Managing Director of the Tributyl Phosphate Task Force to M. McCommas, OPPT, USEPA (July 11, 1988).

(35) Lambrecht, L. Summary engineering report. Test rule exposure assessment: aryl phosphates. Chemical Engineering Branch, Economic and Technology Division, Office of Pollution Prevention and Toxics, USEPA (August 14, 1989).

(36) Lockhart, W.L., Wagemann, R., Clayton, J.W., Graham, B. and D. Murray. Chronic toxicity of a synthetic tri-aryl phosphate oil to fish. *Environmental Physiology and Biochemistry* 5:361–369 (1975).

(37) Lombardo, P. and I.J. Egry. Identification and gas-liquid chromatographic determination of aryl phosphate residues in environmental samples. *Journal of the Association of Official Analytical Chemists*. 62:47–51 (1979).

(38) Mathtech. Aryl phosphates market profile (non-CBI version) (July 14, 1988).

(39) Mayer, F.L., Adams, W.J., Finley, M.T., Michael, P.R., Mehrle, P.M. and V.W. Saeger. Phosphate ester hydraulic fluids: an aquatic environmental assessment of Pydraul 50E and 115E. *Aquatic Toxicology and Hazard Assessment: Fourth Conference*, ASTM STP 737, D.R. Branson and K.L. Dickson, Eds., American Society for Testing and Materials, pp. 103–123 (1981).

(40) McCullough, J.P. TSCA section 8(e) notification on tricresyl phosphate (TCP) Cas Registry number 1330–78–5. 8EHQ0788–0744S. Mobil Research and Development Corporation (July 21, 1988).

(41) Michael, P.R. and W.J. Adams. Final report of the 1982 industry-EPA phosphate ester aquatic surveillance program. Monsanto (1982).

(42) Midwest Research Institute (MRI). Assessment of the need for limitation on triaryl and trialkyl/aryl phosphates. EPA Contract No. 68–01–4313 (May 15, 1979).

(43) Monsanto Company. 90–Day subacute oral toxicity study with BPDP (*tert*-butylphenyl diphenyl phosphate) in albino rats (1974).

(44) Monsanto Company. Neurotoxicity study with Santicizer XP 720, Lot No. MIC 248788 in chickens with package of materials relating to validation of Industrial Bio Test Laboratories Report TSCA section 8(d) submission 878211878 (1975).

(45) Monsanto Company. Teratology study in rats (IRD–77252). International Research and Development Corporation (1979).

(46) Monsanto Company. Ninety day feeding study in rats. TSCA section 8(d) submission 878211005 (1980).

(47) Monsanto Company. Teratology study in rats with test article Santicizer 154 with cover letter dated August 7, 1981. International Research and Development Corporation (1981).

(48) Monsanto Company. Subchronic study of Santicizer 148 plasticizer administered in the diet to albino rats. TSCA section 8(d) submission 888600001 (1988).

(49) Monsanto Company. Three month feeding study with dibutylphenyl phosphate with Sprague-Dawley rats. TSCA section 8(d) submission 88870000222 (1988).

(50) Muir, D.C.G. Phosphate esters. *The Handbook of Environmental Chemistry*, Vol. 3, Part C. O. Huntzinger, ed., pp. 41–46 (1984).

(51) National Institute for Occupational Health and Safety (NIOSH). National Occupational Hazard Survey (NOHS) (1977, updated August 6, 1980).

(52) NIOSH. Unpublished provisional data of the National Occupational Exposure Survey (1981–83). Cincinnati, Ohio: U.S. Department of Health and Human Services, NIOSH (July 1, 1990).

(53) Nobile, E.R., Page, S.W. and P. Lombardo. Characterization of four commercial flame retardant aryl phosphates. *Bulletin of Environmental Contaminant Toxicology*. 25:755–761 (1980).

(54) Oishi, I., Oishi, S. and K. Hiraga. Toxicity of several phosphoric acid esters in rats. *Toxicology Letters*. 13:29–34 (1982).

(55) Podall, H.E. Memorandum "Arylphosphates Associated with Specific Uses" (sanitized version), with corrections. Industrial Chemistry Branch, Office of Pollution Prevention and Toxics, to Carol Glasgow, Test Rules Development Branch, OPPT, USEPA (April 6, 1990 and April 9, 1991).

(56) Prentice, D.E. and S.K. Majeed. A subchronic study (90 day) using multiple dose-levels of tri-ortho-cresyl phosphate (TOCP): Some neuropathological observations in the domestic hen. *NeuroToxicology*. 4:277–282 (1983).

(57) Roberts, N.L., Fairley, C. and C. Phillips. Screening, acute delayed and subchronic neurotoxicity studies in the hen: Measurements and evaluations of clinical signs following administration of TOCP. *NeuroToxicology*. 4:263–270 (1983).

(58) Robinson, E.C., Hammond, B.G., Johannsen, F.R., Levinskas, G.J. and D.E. Rodwell. Teratogenicity studies of alkylaryl phosphate ester plasticizers in rats. *Fundamental and Applied Toxicology*. 7:138–143 (1986).

(59) Saito, C., Kato, T., Taniguchi, H., Fujita, T., Wada, H. and Y. Mori. Tests of the subacute toxicity of tricresylphosphate (TCP) in rats. Oyo Yakuri 8:107–118 (1974).

(60) Sheldon, L.S. and R.A. Hites. Organic compounds in the Delaware river. *Environmental Science and Technology*. 12:1188–1194 (1978).

(61) Smith, M.I., Engel, E.W. and E.F. Stohlman. Further studies on the pharmacology of certain phenol esters with special reference to the relation of chemical constitution and physiologic action. *NIH Bulletin*. 160:1–53 (1932).

(62) Smith, M.I., Elvove, E., and W.H. Frazier. The pharmacological action of certain phenol esters, with special reference to the etiology of so–called ginger paralysis. *US Public Health Report*. 45:2509–24 (1930).

(63) Smith, M.I., Elvove, E., Valer, P.J., Frazier, W.H. and G.E. Mallory. Pharmacological and chemical studies of the cause of so-called ginger paralysis. *US Public Health Report*. 45:1703–16 (1930).

(64) Stanley, J.S. Broad scan analysis of the FY82 national human adipose tissue survey specimens. Volume III Semivolatile organic compounds. EPA–560/5–86–037, pp. 84–85 (December 1986).

(65) Stauffer Chemical Company. Acute delayed neurotoxicity study with Phosflex 51B in adult hens (T–6681) (1980).

(66) Syracuse Research Corporation. Technical support document for aryl phosphates. SRC TR–88–028 (January 29, 1988).

(67) Tocco, D.R., Randall, J.L., York, R.G. and M.K. Smith. Evaluation of the teratogenic effects of tri-ortho-cresyl phosphate in the Long-Evans hooded rat. *Fundamental and Applied Toxicology*. 8:291–297 (1987).

(68) USEPA. Report of a TSCA GLP compliance laboratory inspection and data audit. Office of Compliance Monitoring (March 4–6, 1985).

(69) USEPA. Chemical update system. Confidential retrieval of reporting information of aryl phosphates from 1985: DCN 20–901000040 (October 11, 1989).

(70) USEPA. Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel Subpanel: A set of scientific issues being considered by the Agency concerning neurotoxicity testing under FIFRA (October 16, 1987).

(71) USEPA. Tributyl phosphate: proposed test rule. 52 FR 43346 (November 12, 1987).

(72) USEPA. STORET, Triphenyl phosphate. Data retrieved (October 24, 1990).

(73) Versar. Untitled draft report on aryl phosphates. Washington, DC: Office of Pollution Prevention and Toxics, USEPA, Contract 6801–5791 (1980).

(74) Walker, L.D., Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health, letter to M. Dominiak, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency (September 5, 1990).

(75) Zumwalde, R.D. and C. Cottrill. Industrial hygiene walk-through survey report on organophosphorus exposures at Rochester Products Division, General Motors Corporation, 1000 Lexington Avenue, Rochester, New York. Cincinnati, OH: U.S. Department of Health and Human Services, NIOSH (1980).

X. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule would not be major because it does not meet any of the criteria set forth in section 1(b) of the Order, i.e., it would not have an annual effect on the economy of at least $100 million, would not cause a major increase in prices, and would not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in this record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 et seq., Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, would not have a significant impact on a substantial number of small businesses because: (1) There are only a small number of known small manufacturers, (2) any small processors are not expected to perform testing themselves or to participate in the organization of the testing effort, (3) they will experience only very minor cost in securing exemption from testing requirements, and (4) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 14,174 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total public reporting burden is estimated to be 170,088 hours for all.

Send comments regarding the burden estimates for any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0033), Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 704 and 799

Chemicals, Chemical fate, Chemical export, Environmental effects, Environmental protection, Hazardous substances, Health, Laboratories, Recordkeeping and reporting requirements, Testing, Incorporation by Reference

Dated: December 26, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

1. In part 704:

PART 704—[AMENDED]

a. The authority citation for Part 704 would continue to read as follows:

Authority: 15 U.S.C. 2607

b. By adding § 704.32 to read as follows:

§ 704.32 Aryl Phosphate Base Stocks.

(a) *Substances for which reporting is required.* The chemical substances for which reporting is required under this rule consist of the category of aryl phosphate base stocks, as defined in § 799.700 of this chapter, that are now listed on, or in the future are added to, the public or confidential portions of the TSCA Inventory of Chemical Substances maintained by EPA under TSCA section 8(b) at any time after the effective date of the final rule. New chemical substances meeting this definition shall also be subject to this section once entered into the TSCA Inventory of Chemical Substances.

(b) *Persons who must report.* The following persons, unless exempt as provided in § 704.5, are subject to the reporting requirements of this rule; a person may be required to report more than once under this section. Those persons who are small manufacturers as defined in § 704.3 are also required to report.

(1) *Initial reporting.* Persons who manufacture or import any substance identified in paragraph (a) of this section for commercial purposes during the person's latest complete corporate fiscal year prior to (the effective date of the final rule) are required to report.

(2) *Subsequent reporting.* Persons who manufacture or import any substance identified in paragraph (a) of this section for commercial purposes after (the effective date of the final rule) are required to report. The persons described in this paragraph (b)(2) include persons who report initially in response to paragraph (b)(1) of this section and persons who commence the manufacture or importation of any substance identified in paragraph (a) of this section after (the effective date of the final rule).

(c) *When to report*—(1) *Initial reporting.* Persons described in paragraph (b)(1) of this section must submit an initial report within 60 days of (the effective date of the final rule).

(2) *Subsequent reporting.* Persons described in paragraph (b)(2) of this section must submit a report within 60 days of the completion of each corporate fiscal year during which they manufacture or import any substance identified in paragraph (a) of this section. Persons shall submit a separate report for each corporate fiscal year in which they are subject to this section.

(3) *Duplicative reporting.* Persons reporting under this section are exempt, pursuant to § 710.35 of this chapter, from duplicative reporting for the Inventory Update Rule.

(d) *What information to report.* All persons subject to this section shall report the following information to EPA:

(1) Company name and headquarters address.

(2) Name, address, and telephone number (including area code) of the company's principal technical contact.

(3) The chemical name and Chemical Abstracts Service Registry Number (CAS number) of each chemical substance identified in paragraph (a) of this section manufactured or imported during the latest complete corporate fiscal year.

(4) The quantity (in pounds) of each such substance manufactured or imported during the latest complete corporate fiscal year.

(5) A cross reference to any letter of intent to test that has been submitted for that substance under 40 CFR 799.700(d).

(e) *Where to send reports.* Reports must be submitted to the U.S. Environmental Protection Agency, TSCA Document Processing Center (TS–790), Rm. L–100, Office of Pollution Prevention and Toxics, 401 M St., SW., Washington, DC 20460, Attn: TSCA section 4, Aryl phosphates.

2. In Part 799:

PART 799—[AMENDED]

a. The authority citation for part 799 would continue to read as follows:

AUTHORITY: 15 U.S.C. 2603, 2611, 2625.

2. By adding § 799.700 to read as follows:

§ 799.700 Aryl phosphate base stocks.

(a) *Scope and purpose.* This section requires persons who manufacture, import, or process a chemical substance in the "aryl phosphate base stocks" chemical category to conduct chemical analysis and testing for health effects, environmental effects, and chemical fate of the substance. The extent of testing for an individual aryl phosphate base stock depends upon its aggregate annual production volume. The testing requirements are divided into two stages. Stage one, which is required of all manufacturers, importers, and processors, involves chemical analysis that will determine the chemical identity of the base stocks produced during the period this rule is in effect. Stage two, which is subdivided into three levels triggered by production volume, involves testing for health and environmental effects, and chemical fate.

(1) *Stage one.* (i) All persons who manufacture, import, or process, or intend to manufacture, import, or process a particular aryl phosphate base stock will be responsible for conducting chemical analysis of that substance pursuant to paragraph (e) of this section.

(ii) From the results of these analyses, EPA will determine whether two or more chemicals are equivalent and whether further tests can be jointly sponsored. For purposes of this section, base stocks with greater than 2 percent variation in a single component (0.1 percent for TOCP) will be considered different base stocks. As provided in paragraph (d)(3) of this section affected persons will be notified of such decisions by certified mail.

(2) *Stage two*—(i) *Level 1.* When the aggregate annual production volume for all manufactures and importers of a particular aryl phosphate base stock is, or reaches, 1 million pounds, all persons who manufacture, import, or process that substance will be responsible for conducting the following testing of the substance pursuant to paragraphs (g)(1)(ii), (h)(2)(i)(B) and (h)(3)(i) of this section: a 120–day post-hatch rainbow trout early life stage (ELS) test, three hen neurotoxicity assays, and a two-generation reproductive effects study.

(ii) *Level 2.* When the aggregate annual production volume for all manufacturers and importers of an aryl phosphate base stock substance is, or reaches, 5 million pounds, all persons who manufacture, import, or process that substance will be responsible for conducting the following testing of the substance pursuant to paragraphs (f)(1), (g)(1)(i) (g)(1)(ii), (h)(1), (h)(2)(i)(B), and (h)(3)(i) of this section: all Level 1 testing plus anaerobic biodegradation, chronic Daphnia, and subchronic toxicity studies.

(iii) *Level 3.* When the aggregate annual production volume for all manufacturers and importers of an aryl phosphate base stock substance is, or reaches, 10 million pounds, all persons who manufacture, import, or process that substance will be responsible for conducting the following testing of the substance pursuant to paragraphs (f), (g), and (h) of this section: all Level 1 and Level 2 testing plus aerobic biodegradation, a microcosm ecosystem test, and developmental toxicity studies, and the subchronic rat neurotoxicity battery.

(b) *Definitions.* In addition to the definitions in section 3 of TSCA and the definitions of § 790.3 of this chapter, the

following definition also applies to this section.

(1) "Aryl phosphate base stocks" are phosphate esters or combination of esters resulting from the reaction of a phenol, mixtures of phenols, or a combination of alkyl-substituted phenols or, in some cases, phenols plus an alcohol, with phosphorus oxychloride ($POCl_3$) or other phosphoric acid derivatives. This definition includes triaryl and mixed aryl/alkyl esters (where one or two of the three ester groups are alkyl).

(2) [Reserved]

(c) *Identification of test substance.* (1) This section applies to any chemical substance within the aryl phosphate base stock category. The chemical substances in this category listed on the TSCA section 8(b) public inventory are identified in this paragraph. Any aryl phosphate base stock substance that meets the category definition in paragraph (b)(1) of this section shall be tested in accordance with this section. Base stocks differing from one another by more than 2 percent in a single component (0.1 percent for TOCP) shall be considered different base stocks for purposes of this rule.

(2) This section also applies to any new chemical substance within the aryl phosphate base stock substance category. Persons subject to this section by virtue of their intention to manufacture or import a new chemical substance in the category of aryl phosphate base stock substances must comply with this section before submitting a premanufacture notification (PMN) under TSCA section 5(a) for such substance.

(3) The following currently manufactured base stock substances meet the category definition and shall be tested:

(i) *tert*-butylphenyl diphenyl phosphate (CAS No. 56803–37–3), or isobutylenated phenol, phosphate (3:1) (CAS No. 68937–40–6) (based on a 1:3 mol ratio isobutylene to phenol).

(ii) bis-(*tert*-butylphenyl) phenyl phosphate (CAS No. 65652–41–7), or isobutylenated phenol, phosphate (3:1) (CAS No. 68937–40–6) (based on a 2:3 mol ratio isobutylene to phenol).

(iii) tris-(*tert*-Butylphenyl) phosphate (CAS No. 78–33–1), or isobutylenated phenol, phosphate (CAS No. 68937–40–6) (based on a 1:1 mol ratio isobutylene to phenol).

(iv) Di-*n*-butyl phenyl phosphate (CAS No. 2528–36–1).

(v) 2-ethylhexyl diphenyl phosphate (CAS No. 1241–94–7).

(vi) Isodecyl diphenyl phosphate (CAS No. 29761–21–5).

(vii) Isopropylphenyl diphenyl phosphate (CAS No. 28108–99–8), or phenol, isopropylated, phosphate (3:1) (CAS No. 68937–41–7) (based on a 1:3 mol ratio propylene to phenol).

(viii) bis-(Isopropylphenyl) phenyl phosphate (CAS No. 28109–00–4), or phenol, isopropylated, phosphate (3:1) (CAS No. 68937–41–7) (based on a 2:3 mol ratio propylene to phenol).

(ix) tris-(Isopropylphenyl) phosphate or phenol, isopropylated, phosphate (3:1) (CAS No. 68937–41–7) (based on a 1:1 mol ratio propylene to phenol).

(x) Tricresyl phosphate (CAS No. 1330–78–5), or tar acids, cresylic, phenyl phosphate (CAS No. 68952–35–2)

(xi) Triphenyl phosphate (CAS No. 115–86–6).

(xii) Trixylyl phosphate (CAS No. 25155–23–1), or tar acids, cresylic, C–8 rich, phenyl phosphate (CAS No. 68952–33–6).

(d) *Persons required to submit study plans, conduct tests, submit data, and the EPA notification plan*—(1) *Chemical analysis.* All persons who manufacture (including persons who import) or process or intend to manufacture or process any aryl phosphate base stock substance that meets the definition in paragraph (b)(1) of this section including, but not limited to, those listed in paragraph (c)(3) of this section, from the effective date of this section to the end of the reimbursement period, are subject to chemical analysis testing and shall submit letters of intent to test, submit study plans, conduct tests and submit data as described in this section, subpart A of this part, and parts 790 and 792 of this chapter for single-phase rulemaking.

(2) *Chemical fate, environmental effects and health effects tests.* All persons who manufacture, import or process, or intend to manufacture, import or process any aryl phosphate base stock substance that meets the definition in paragraph (b) of this section, from the effective date of this section to the end of the reimbursement period, shall submit letters of intent to test, submit study plans, conduct tests and submit data as described in this section, subpart A of this part, and parts 790 and 792 of this chapter for single-phase rule-making.

(e) *Chemical analysis*—(1) *Required testing.* GC/MS analysis shall be performed on every aryl phosphate base stock substance. The provisions of § 792.105(a) of this chapter require that for each study done under Good Laboratory Practice Standards, the identity, strength, purity and composition stability shall be determined for each batch and shall be documented before the initiation of the study. Any individual aryl phosphate positional isomer, except tri-ortho-cresyl phosphate (TOCP), or any other substance present in a base stock, must be identified and quantitated if present at a concentration of 1 percent or greater; quantitation is required to ±0.5 percent. TOCP shall be quantitated, at ±0.05 percent, unless present at less than 0.10 percent.

(2) *Reporting requirements.* Chemical analysis shall be completed and the final report submitted to EPA no later than 6 months after the effective date of this test rule or, for new chemicals, with the Premanufacture Notification under TSCA section 5(a).

(3) *EPA notification of manufacturers.* The Agency will notify manufacturers by certified mail if their chemical is equivalent to another manufacturer's and costs may be shared, or if they are required to begin additional testing under this test rule without co-sponsors. The notification will also include for each manufacturer the level of testing that should begin for the specific aryl phosphate base stock substance and will specify which of any equivalent substances must be tested.

(f) *Chemical fate*—(1) *Required testing*—(i) Anaerobic biodegradation testing shall be performed in accordance with § 796.3140 of this chapter upon receipt of EPA's written notification to manufacturers, pursuant to paragraph (e)(3) of this section, of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 5 million pounds.

(ii) Aerobic biodegradation testing shall be conducted using clean freshwater sediments in accordance with the method described in an article by Bourquin (1977) entitled "An Artificial Microbial Ecosystem for Determining Effects and Fate of Toxicants in a Salt-Marsh Environment", published in *Developments in Industrial Microbiology*, vol. 18, Chapter 11, 1977, which is incorporated by reference. A copy of this material incorporated by reference is available in the TSCA Public Reading Room, Rm. NE–G004, 401 M St., SW., Washington, DC 20460. This material is also available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This method is incorporated as it exists on the effective date of this section and notice of any change to the method will

be published in the **Federal Register**. The aerobic biodegradation test is required upon receipt of EPA's written notification to manufacturers, pursuant to paragraph (e)(3) of this section, of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 10 million pounds.

(2) *Reporting requirements.* (i) Each chemical fate test shall be completed and the final report submitted to EPA within 12 months after receipt of EPA's written notification that the anaerobic biodegradation or the aerobic biodegradation testing must be initiated.

(ii) Progress reports shall be submitted to EPA at 6–month intervals, beginning 6 months after receipt of EPA's written notification that testing must be initiated until submission of the final report.

(g) *Environmental effects*—(1) *Required testing*—(i) *Daphnid chronic toxicity test.* The chronic test for Daphnia shall be performed according to § 797.1350 of this chapter upon receipt of EPA's written notification to manufacturers, pursuant to paragraph (e)(3) of this section,of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 5 million pounds.

(ii) *Fish ELS toxicity test.* (A) The ELS test for aquatic toxicity in the rainbow trout shall be performed according to § 797.1600 of this chapter, except the provisions of paragraph of § 797.1600(c)(1)(i), upon receipt of EPA's written notification to manufacturers, pursuant to paragraph (e)(3) of this section, of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 1 million pounds.

(B) For the purpose of this section, the following provisions also apply:

(*1*) The test terminates following 120 days of post–hatch exposure (for an approximate total exposure period of 150 days).

(*2*) [Reserved]

(iii) *Generic freshwater microcosm test.* The generic freshwater microcosm test shall be performed according to proposed § 797.3050 (52 FR 36344, September 28, 1987) upon receipt of EPA's written notification to manufacturers, pursuant to paragraph (e)(3) of this section, of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 10 million pounds.

(2) *Reporting requirements.* (i) The Daphnid chronic toxicity test shall be completed and the final report submitted to EPA within 12 months after receipt of EPA's written notification that testing must be initiated.

(ii) The fish ELS test in the rainbow trout shall be completed and the final report submitted to EPA 18 months after receipt of EPA's written notification that testing must be initiated.

(iii) The generic freshwater microcosm test shall be completed and the final report submitted to EPA 24 months after receipt of EPA's written notification that testing must be initiated.

(iv) Progress reports shall be submitted to EPA at 6–month intervals, beginning 6 months after receipt of EPA's written notification that testing must be initiated until submission of the final report.

(h) *Health effects*—(1) *Subchronic toxicity*—(i) *Required testing.* (A) Oral toxicity testing in the Sprague-Dawley rat shall be performed by gavage in accordance with § 798.2650 of this chapter, except the provisions of § 798.2650(e)(9)(i)(B), upon receipt of EPA's written notification to manufacturers, pursuant to paragraph (e)(3) of this section, of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 5 million pounds.

(B) For the purpose of this section, the following provisions also apply:

(*1*) Blood acetylcholinesterase activity shall be determined pre-dosing, and blood and brain acetylcholinesterase activity at termination.

(*2*) [Reserved]

(ii) *Reporting requirements*—(A) Subchronic toxicity testing shall be completed and a final report submitted to EPA within 18 months after receipt of EPA's written notification that testing must be initiated.

(B) Progress reports shall be submitted to EPA at 6–month intervals, beginning 6 months after receipt of EPA's written notification that testing must be initiated until submission of the final report.

(2) *Neurotoxicity*—(i) *Required testing.* (A) Gavage neurotoxicity testing in the Sprague-Dawley rat shall be performed according to § § 798.6050, 798.6200 and 798.6400 of this chapter upon receipt of EPA's written notification to manufacturers of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 10 million pounds (see paragraph (e)(3) of this section). Tests conducted according to § 798.6050 and § 798.6200 of this chapter shall be both acute and subchronic. The test conducted according to § 798.6400 of this chapter shall be subchronic. The acute studies according to § 798.6050 and § 798.6200 of this chapter may be incorporated into the subchronic neurotoxicity tests. The subchronic neurotoxicity tests may be combined with the testing required by paragraph (h)(1)(i) of this section if the test protocol allows. The cited guidelines provide standard information for these procedures.

(B) Gavage neurotoxicity testing in the hen shall be performed according to § § 798.6450, 798.6540, and 798.6560 of this chapter upon receipt of EPA's written notification to manufacturers of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 1 million pounds (see paragraph (e)(3) of this section). Testing according to § 798.6450 of this chapter shall be performed in conjunction with § 798.6540 of this chapter. However, if results for a substance tested according to § 798.6540 and § 798.6450 of this chapter are negative, then testing according to § 798.6560 of this chapter need not be conducted on that substance.

(ii) *Reporting requirements*—(A) Rat neurotoxicity studies shall be completed and the final reports submitted to EPA within 18 months after receipt of EPA's written notification that testing must be initiated until submission of the final report.

(B) The hen neurotoxicity studies pursuant to § 798.6450 and § 798.6540 of this chapter shall be completed and final reports submitted to EPA within 6 months after receipt of EPA's written notification that testing must be initiated. If the subchronic study, § 798.6560 of this chapter as specified in paragraph (g)(2)(i)(B) of this section, is necessary, the final reporting date will be 18 months after receipt of EPA's written notification that testing must be initiated.

(iii) Progress reports shall be submitted to EPA at 6–month intervals, beginning 6 months after receipt of EPA's written notification that testing must be initiated until submission of the final report.

(3) *Reproduction and fertility*—(i) *Required testing.* (A) Reproduction and fertility testing shall be performed by gavage in the Sprague-Dawley rat according to § 798.4700 of this chapter, except the provisions of paragraphs (c)(7)(i), (c)(8)(ii), (c)(9)(i) and (c)(9)(iii) of § 798.4700, upon receipt of EPA's written notification to manufacturers,

pursuant to paragraph (e)(3) of this section, of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 1 million pounds.

(B) For the purposes of this rule, the following provisions apply:

(*1*) Data on female cyclicity in P and F_1 females over the last 3 weeks prior to mating shall be described. The method of Sadleir (1979), found under paragraph (i)(6) of this section, or an equivalent method may be used. Data shall be provided on whether the animal is cycling and the cycle length. P and F_1 females shall continue to be exposed to the test substance through the 3 weeks prior to mating. The ovary shall be serially sectioned with a sufficient number of sections examined to adequately detail oocyte and follicular morphology. The methods of Mattison and Thorgierson (1979) found under paragraph (i)(3) of this section and Pederson and Peters (1988) found under paragraph (i)(4) of this section or their equivalent provide guidance. The strategy for sectioning and evaluation is left to the discretion of the investigator, but shall be described in detail in the test protocol and final report.

(*2*) Measurements of homogenization-resistant spermatid count, caudal epididymal sperm density and motility will be provided. Assessments of motility include quantification of progressively motile and immotile sperm, and techniques that utilize video recording of the samples, as well as objective measurement of the motility parameters. Guidance for assessing motility is provided by Linder et al. (1986) found under paragraph (i)(2) of this section, and Klinefelter et al. (1991) found under paragraph (i)(1) of this section, or their equivalent.

(*3*) Weights of the testes, epididymes (total and cauda), pituitary, seminal vesicles (with coagulating glands), prostate, ovary and uterus shall be recorded at the time of sacrifice of the P and F_1 animals. Histopathology of the testes shall be conducted on the P and F_1 males at the time of sacrifice. Particular attention shall be directed toward achieving satisfactory quality from fixation and embedding, and preparations shall follow the recommendations of Russell et al. (1990) found under paragraph (i)(5) of this section, or an equivalent. Histologic analyses shall include evaluations of the spermatogenic cycle, i.e., the presence and integrity of the 14 cell stages. These evaluations follow the guidance provided by Russell et al. (1990) found under paragraph (i)(5) of this section, or an equivalent.

(ii) *Reporting requirements*—(A) The reproductive and fertility studies shall be completed and final reports received by the EPA 24 months after receipt of EPA's written notification that testing must be initiated.

(B) Progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after receipt of EPA's written notification that testing must be initiated until submission of the final report.

(4) *Developmental toxicity*—(i) *Required testing.* Developmental toxicity studies shall be performed by gavage in the rat and rabbit according to § 798.4900 of this chapter upon receipt of EPA's written notification to manufacturers, pursuant to paragraph (e)(3) of this section, of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 10 million pounds.

(ii) *Reporting requirements*—(A) The developmental toxicity studies shall be completed and final reports submitted to EPA within 12 months after receipt of EPA's written notification that testing must be initiated.

(B) Progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after receipt of EPA's written notification that testing must be initiated until submission of the final report.

(i) *References.* For additional background information, the following references should be consulted.

(1) Klinefelter, G.R., Gray, L.E., Jr. and J.D. Suarez. "The method of sperm collection significantly influences sperm motion parameters following ethane dimethanesulfonate administration in the rat." *Reproductive Toxicology.* 5:39–45 (1991).

(2) Linder, R.E., Strader, L.F. and W.K. McElroy. "Measurement of epididymes sperm motility as a test variable in the rat." *Bulletin of Environmental Contaminant Toxicology.* 36:317–324 (1986).

(3) Mattison, D.R. and Thorgeirsson, S.S. "Ovarian aryl hydrocarbon hydroxylase activity and primordial oocyte toxicity of polycyclic aromatic hydrocarbons in mice." *Cancer Research.* 39:3471–3475 (1979).

(4) Pederson, T. and Peters, H. "Proposal for classification of oocytes and follicles in the mouse ovary." *Journal of Reproduction and Fertility.* 17:555–557 (1968).

(5) Russell, L.D., R.A. Ettlin, Sinha Hikim, A.P. and E.D. Clegg. "Histological and histopathologic evaluation of the testis." Cache River Press: Clearwater, FL (1990).

(6) Sadleir, R.M.F.S. "Cycles and seasons." In: *Reproduction in Mammals: I. Germ Cells and Fertilization,* Austin, C.R. and R.V. Short, eds. Cambridge Press: New York, NY (1979).

(j) *Effective date.* (1) The effective date of the final rule will be (insert date 44 days after date of publication of final rule in the **Federal Register**).

(2) The guidelines cited in this section are referenced here as they exist on (insert effective date of the final rule).

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070–0033.)

[FR Doc. 92–1200 Filed 1–16–92 8:45 am]

BILLING CODE 6560–50–F

Federal Register

Friday
January 17, 1992

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing; Office of Administration

24 CFR Part 901

Public Housing Management Assessment Program; Interim Rule and Notice of Submission of Proposed Information Collection to OMB

VOL 57 ISS 12 JA 17 1992 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 901

[Docket No. R-92-1520; FR-2897-I-02]

RIN 2577-AA89

Public Housing Management Assessment Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This rule establishes the Public Housing Management Assessment Program (PHMAP) in accordance with section 502 of the National Affordable Housing Act (approved November 28, 1990, Public Law 101-625, hereinafter, NAHA) as amended by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (approved October 28, 1991, Public Law 102-139, hereinafter, 92 App. Act). PHMAP does not apply to Indian Housing Authorities, nor to the Family Self Sufficiency Program authorized under section 23. PHMAP provides policies and procedures for the Department's use in identifying public housing agency (PHA) management capabilities and deficiencies, and allows HUD Field Offices to practice accountability monitoring and risk management. PHMAP also establishes procedures for memoranda of agreement between HUD and troubled agencies and agencies troubled with respect to the program under section 14 that set forth targets, strategies, incentives and sanctions for improving performance. Procedures to follow with respect to housing administered by PHAs that substantially default on their management responsibilities are included in PHMAP.

DATES: Effective date: February 18, 1992. Comment due date: May 18, 1992.

FOR FURTHER INFORMATION CONTACT: Casimir R. Bonkowski, Director, Office of Management and Policy, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-0440. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Expedited review has been requested with a seven day public comment period, so that the application process described in this notice may be carried out after approval of the described collections of information. A separate notice of Submission of Proposed Information Collection to OMB inviting comments on the information collection requirements of this rule is published elsewhere in this issue of the **Federal Register**.

Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the documents making up the collection of information. Information on the estimated public reporting burden is provided below:

Reference	Number of respondents	Freq. of response	Est. avg. response time (hours)	Est. annual burden (hrs.)
1-99 Unit PHAs	1,608	1	1.9	3,055.2
100-499 Unit PHAs	1,274	1	2.1	2,675.4
500-1,249 Unit PHAs	244	1	3.1	756.4
1,250-3,999 Unit PHAs	102	1	3.7	377.4
4,000+ Unit PHAs	40	1	4.5	180.0
Total reporting burden				7,044.4

Background

This rule has developed out of the need to ensure that public housing functions as a well-managed enterprise on a uniform, nationwide basis to the benefit of its residents and the public that supports it. This is not the first attempt to accomplish this goal, but it is the most comprehensive, having grown out of the experience of the Department and the public housing community with previous efforts, and having been given new impetus and authority by the mandate of section 502 of NAHA.

The rule first sets out to describe public housing management comprehensively. The Department seeks to accomplish this with a minimum of burden on PHAs by taking data from reports already being submitted and by relying on certifications for 6 out of the 12 indicators, rather than on additional reports.

Once the necessary management information is compiled, it will be evaluated. This will be done by grading or scoring the management performance of each PHA in accordance with uniform and objective criteria.

Finally, when the management performance of a PHA has been accurately described and fairly evaluated, the rule prescribes what action will follow. High-performing PHAs will be rewarded for their excellence. In this way, all PHAs will be encouraged to achieve this status. Troubled PHAs and PHAs troubled with respect to the program under section 14 (mod-troubled PHAs) will be assisted in improving their management performance by focusing resources on the deficiencies identified by the management assessment. Under appropriate conditions, the rule would

permit HUD to make other arrangements in the best interests of residents for managing all or part of a poorly managed PHA's housing.

Congress recognized the need to identify and assist troubled and mod-troubled PHAs and to provide for the consistent good management of PHAs in section 502 of NAHA. Section 502 requires the Department to develop indicators to assess the management performance of PHAs. Seven indicators that must be used for assessment purposes are listed in the statute, and the Department is authorized by the 92 App. Act amendments to develop five additional indicators as it deems appropriate. A PHA assessed as troubled or mod-troubled must enter into a memorandum of agreement (MOA) with HUD that sets forth targets, strategies, incentives and sanctions for improving its management performance. Section 502 also provides that if a PHA substantially defaults upon its agreement or with respect to other covenants or conditions to which it is subject, the Department is permitted to solicit proposals from other public housing agencies and private housing management agents for the management of the housing administered by the defaulted PHA. Alternatively, following a default, the Department may petition the appropriate State or Federal court to appoint a receiver to manage the defaulted PHA. The Department may also require a defaulting PHA to make other acceptable arrangements for managing all or part of the housing in the best interests of the residents.

A proposed rule was published in the Federal Register on April 17, 1991, with a 60 day comment period. The Department received 114 comments on the PHMAP proposed rule.

The 92 App. Act, passed after the publication of the proposed rule, amends NAHA Section 502 in four ways: the number of factors that may be used to assess the management performance of PHAs is limited; the evaluation of PHAs must be administered flexibly to ensure that they are not penalized for circumstances beyond their control; the weights assigned to indicators must reflect the differences in management difficulty that results from physical condition and neighborhood environment; and the determination of a PHA's status as "troubled with respect to the program under section 14" is to be based upon factors solely related to its ability to carry out that program. In a related 92 App. Act amendment to section 14 of the U.S. Housing Act of 1937, the determination of whether a PHA is "troubled with respect to the modernization program" (the equivalent of "troubled with respect to the program under section 14") is to consider only the PHA's ability to carry out the modernization program effectively based upon the PHA's capacity to accomplish the physical work: with decent quality; in a timely manner; under competent contract administration; and with adequate budget controls. Among the changes in this interim rule from the proposed rule is the implementation of these 92 App. Act amendments.

The Department is proceeding to implement section 502 of NAHA, as amended by the 92 App. Act, through this interim rule. This approach is taken in order for the Department and PHAs to gain some experience in the actual execution of the program and to permit additional comments to be received and considered by the Department. A final rule will be issued only after the Department has had the opportunity to review comments submitted on this interim rule and to assess its experience in implementing the PHMAP program under this interim rule.

Public Comments

The Department received 114 comments on the PHMAP proposed rule. The great majority of these were received from PHAs, but comment from industry organizations, resident organizations, cities, towns, individuals, and a congressional subcommittee were also received.

The following is a discussion of PHMAP comments and the Department's responses to them. This discussion is organized according to, first, general comments that resulted in changes to the overall organization of the rule; second, comments that addressed specific sections in the proposed rule; third, "other" comments; and finally, comments on specific PHMAP indicators.

General Comments. The management assessment of a PHA under the proposed rule was based upon the PHA's grade or score on management indicators and standards of performance within those indicators. While this basic approach was generally accepted by those submitting comments, specific aspects of it were called into question. A number of the comments stated that PHMAP had too many indicators/standards; that some of the indicators/standards were duplicative and should be consolidated; and that the indicators/standards that seemed more concerned with measuring compliance with HUD requirements than with measuring management performance should be eliminated from PHMAP.

The Department agrees with these comments, and the number of indicators and standards has been reduced from 39 to 12 indicators. This change also corresponds to one of the requirements of the 92 App. Act amendments. The indicators in the interim rule are: (1) Vacancies; (2) modernization; (3) rents uncollected; (4) energy consumption; (5) unit turnaround; (6) outstanding work orders; (7) annual inspection and condition of units and systems; (8) tenants accounts receivable; (9) operating reserves; (10) routine operating expenses; (11) resident initiatives; and (12) development.

The rest of the compliance-based indicators/standards that were included in the proposed rule have been removed from this interim rule. These were as follows: indicator (8)(a)–(e), general management; indicator (10)(a)–(b), procurement; indicator (11), utilities; indicator (12)(b), Comprehensive Occupancy Plan, and the reporting requirements in indicators (12)(a), occupancy; (13)(e), financial management; (15)(e), modernization; and (16)(d), development.

Two performance standards have been removed as a result of comments received: standard (9)(b), work order response time; and standard (15)(e), timeliness of management improvements. The comments indicated that the concept of work order response time was already addressed in indicator (6), outstanding work orders. The standard for management improvements was eliminated because the major aspects of management improvement are adequately documented elsewhere in the modernization program.

At the urging of comments submitted by members of Congress, industry organizations (National Association of Housing and Redevelopment Officials [NAHRO], Council of Large Public Housing Authorities [CLPHA], and Public Housing Authorities Directors Association [PHADA]), and others, the Department has also consolidated the following indicators/standards from the proposed rule: indicator (2), unexpended modernization funds, has been consolidated with standards (a)–(d) within indicator (15), modernization; indicator (7), annual inspection and condition of units, has been consolidated with standard (9)(a), annual inspection of systems; the four standards within indicator (14), residents' quality of life, have been consolidated into one indicator; and the three remaining standards within indicator (16), development, have been consolidated into one indicator.

Three of these four consolidated indicators have been divided into components to focus on particular aspects of management assessment; Indicator (2), modernization; indicator (7), annual inspection and condition of units and systems; and indicator (12), development. The application of components will be discussed later in this preamble in connection with the subject of computing the assessment score.

A number of the comments suggested additional indicators should be included in PHMAP, as follows: (1) Lease enforcement; (2) support by local government (per cooperation agreement or financial committment); (3) housing type and age of units; (4) classifying the type of neighborhood the housing is located in; (5) PHA involvement in the community; (6) affirmative action/minority business compliance; (7) Resident Management Corporation performance; and, (8) an indicator to measure a PHA's creativity, flexibility, and initiative. The Department has considered these suggestions but has determined, in accordance with the majority of comments received and the 92 App. Act amendments to section 502 that place a limit on the number of indicators that can be used, to reduce the number of indicators rather than to include additional indicators at this time. However, the areas listed in items (3) and (4) of this paragraph will be given active consideration in the interim rule because of the 92 App. Act requirement that the differences in management difficulty that result from physical condition and neighborhood environment be reflected in the management assessment process.

Several comments stated that the method of adding, amending or removing indicators by publishing a notice of the change in the **Federal Register**, as planned in the proposed rule, would violate the Administrative Procedures Act. Because of these concerns, the Department has decided to include the indicators in full in the interim rule. Any amendments to the indicators will follow after an opportunity for notice and comment, using the same procedure as any other change to the rule would follow.

The proposed rule provided a scoring adjustment for indicators according to PHA size, with large PHAs (those having more than 1250 units) being required to meet less stringent standards than small PHAs. While a number of comments approved of this approach, a greater number argued that the size-based adjustment in the proposed rule was not sufficient to account for performance differences in PHAs, or that other adjustments, for example, ones based on the type of population served or the nature of the surrounding community, were more appropriate. The size-based adjustment is eliminated in the interim rule and the standards that applied to smaller PHAs are used in those indicators that remain from the proposed rule. Rather than using scoring adjustments, the interim rule provides for the adjustment of a PHA's designation from troubled to standard status or from standard to high performer status based upon the emphasis to be given to physical condition and neighborhood environment, as required by the 92 App. Act. The approach of not providing any specific scoring or status adjustments other than those required by law is being taken to permit the Department to acquire experience with the program and make more valid determinations on what additional adjustments, if any, would be appropriate. Comments are specifically invited on what scoring or status adjustments would be appropriate in the final rule.

Comments are also invited on the 92 App. Act requirement to give weight to the differences in the difficulty of managing developments that result from their physical condition and neighborhood environment. To put this requirement into effect in the initial year of PHMAP implementation, the Regional Administrator shall consider whether or not to designate a PHA as troubled or mod-troubled or as a high performer in accordance with § 901.125. If a PHA's score falls within ten points below the point value established for troubled, mod-troubled or high performer designation, the Regional Administrator shall take into consideration the extent to which a PHA's performance difficulties are attributable to the physical condition of its development(s) and/or the nature of neighborhood environment. If the Regional Administrator determines that a PHA's performance difficulties are attributable to physical condition and/or neighborhood environment rather than to poor management practices, the Regional Administrator may withhold troubled or mod-troubled designation or award high performer designation. The Department, in the interim rule, has chosen this method to implement the clear, statutory intent to include considerations of physical condition and neighborhood environment in the management assessment process. However, the Department will seek to develop a more exact method of integrating these two factors into the assessment process, and will rely on comments it will receive and its experience in administering the program under the interim rule in doing so.

Two comments stated that no consideration was given to factors beyond a PHA's control, e.g., land availability or lawsuits. The 92 App. Act amendments also require that PHAs not be penalized because of factors beyond their control. The proposed rule provided for modification and exclusion requests that PHA could use to demonstrate the existence of factors beyond its control to avoid penalization. The interim rule continues to provide this option. In addition, several of the indicators now have exemptions based on factors beyond a PHA's control. The score for an indicator to which an exemption applies is not included in the calculation of the overall PHMAP score, and a PHA is thereby not penalized for those particular factors beyond its control.

One comment stated that the current system of checks and balances to oversee PHA management is adequate and PHMAP is not necessary. This comment overlooks the fact that there is a statutory mandate to establish a management assessment program for PHAs using, at least, the seven indicators listed in section 502 of NAHA and up to five others deemed necessary by the Department. In addition, the Department believes that PHMAP enhances the current system of checks and balances, by providing a means of assessing all PHAs with uniform criteria.

Section 901.05 Definitions

One comment stated that the rule should include a definition of "deficiency". The Department agrees and will include a definition in this rule.

Section 901.100 Data Collection

The certification requirement attracted a number of comments. Fifteen comments objected to the requirement for the PHA attorney to attest to a PHA's certification, often citing the sufficient assurances provided by the other required signatories and the additional expense of an attorney review that is especially significant to smaller PHAs. The Department agrees with these observations and has dropped this requirement.

Three comments stated that HUD has no authority to suspend or debar signatories of the certifications. It may be that what suspension or debarment actions are available to the Department were misunderstood in these comments. The Department has authority to

suspend or debar signatories in accordance with 24 CFR part 24. A person debarred or suspended in this way is excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities.

One comment requested the Department to specify the sanctions for intentional false certification, and asks how HUD will determine intentional false certification. The proposed rule lists a range of sanctions that may be used, as would be deemed appropriate under the circumstances. The Department will make a determination of intentional false certification on the basis of any adequate evidence, that is, information sufficient to support the reasonable belief that an intentional false certification has occurred. This information may be obtained from a thorough review, investigation, audit, or any other source that produces adequate evidence of intentional false certification. The interim rule makes clear that the determination of intentional false certification and the sanction imposed may be appealed.

Three comments stated that 45 days after the publication of the rule is not sufficient time for certification to be provided. The Department stated in the proposed rule that only in the first year of PHMAP implementation, for the purposes of the Comprehensive Grant Program, would PHAs with 500 or more public housing units under their management be required to submit certification within 45 calendar days after the publication of the rule. This interim rule also requires an accelerated schedule for submission of certifications in the initial year of PHMAP implementation, as described fully in the discussion and charts below. These time limits are necessary for the timely implementation of the Comprehensive Grant Program.

Three comments stated that HUD lacks the resources to check certifications. The Department will attempt to maximize the effectiveness of the resources available to it and perform confirmatory reviews of PHAs on a risk management basis. The procedure that will be followed is described more fully below, in the preamble discussion of Field Office functions. The Department is considering other methods to verify certifications.

One comment stated that the wording of the certification is too broad and PHA board members should be permitted to rely on the representations made to them by the Executive Director. The Department understands that board members are more generally concerned with policy issues and often rely on their staff to provide them with information on day to day details. Where their reliance is reasonable under the circumstances of the particular case, board members are not penalized. However, the matters to be certified under PHMAP are of a more general nature and reflect management trends rather than day to day details. Because of this, and since the Board of Commissioners is the governing body of, sets policy for, and officially acts on behalf of, the PHA, the Department has determined that the Board chairperson should be required to sign the certification.

One comment stated that the certification is too costly because much of the information sought is not currently tracked by PHAs. Specifically cited were certifications related to work orders, maintenance and inspections. The Department has determined that these certifications are necessary to implement the statutory indicators that require the assessment of PHA performance with regard to work orders, maintenance and inspections. The Department considers certification to be the least burdensome method of gathering the information for these required assessments. The Department is aware that those PHAs that currently have no system for tracking this information will expend more effort in preparing certifications the first year of PHMAP, but certification will be substantially less burdensome in all subsequent years once a PHA implements a tracking system. To further facilitate ease of reporting, items that are currently being certified to will be incorporated into existing HUD forms, where possible. The Department believes that a well-managed PHA should normally be tabulating and submitting the information required on the certification form on a regular basis to its Board of Commissioners.

One comment suggested that certification and HUD review should not take place during the budget review; they should take place on the semi-annual report date. The Department agrees that the certification should not take place during the budget review process, and the interim rule requires PHAs to submit certification 90 calendar days after the beginning of their fiscal year, except for the first year of PHMAP implementation, in which an accelerated schedule will be followed as described fully in the discussion and charts below. The purpose for using the beginning of a PHA's fiscal year is to enable the Field Offices to distribute the workload for 3,135 PHAs across the Federal Fiscal Year.

The interim rule also states that if a PHA does not submit its certification, or submits its certification late, this may be cause for the PHA to receive a presumptive rating of failure in all of the PHMAP indicators, which may result in troubled or mod-troubled designations.

Six comments stated that the time table for data collection is too short. The Department agrees to change the time line for the submission of data to allow a PHA additional time to tabulate year end data and submit its certification to the Field Office. This interim rule establishes the general rule for submitting data that requires a PHA to submit its certification 90 calendar days after the beginning of its fiscal year. However, because of the needs of the Comprehensive Grant Program (CGP) to identify mod-troubled PHAs for Federal Fiscal Year (FFY) 1993 and to develop a management needs assessment component, the submission and assessment of PHMAP data in the initial year of implementation under this rule will take place in three phases.

The following charts show the certification submission schedules and Field Office assessment schedules for the three phases of PHMAP in the initial year of its implementation:

First Phase Submission

500+ unit PHAs shall submit PHMAP certification based upon their 1991 fiscal year by March 2, 1992, which is 45 calendar days after the publication of the PHMAP interim rule in the **Federal Register**. These data submissions will be used for the management needs assessment for FFY 1992 CGP for all 500+ unit PHAs. In addition, these data submissions will be used for those 500+ unit PHAs with their fiscal year beginning (FYB) 01–01–92 for the management needs assessment and mod-troubled determination for FFY 1993 CGP. Field Offices will complete this first phase assessment within 90 calendar days after the publication of the interim rule in the **Federal Register**. The following chart presents the first phase submission schedule:

PHA FYB	Submission	Data source	FO assessment
01-01-92	45 calendar days after FR	12-31-91	90 calendar days after FR.
04-01-92	45 calendar days after FR	03-31-91	90 calendar days after FR
07-01-92	45 calendar days after FR	06-30-91	90 calendar days after FR.
10-01-92	45 calendar days after FR	09-30-91	90 calendar days after FR.

Second Phase Submission

1-499 unit PHAs with FYB 01-01-92 shall submit certifications for the immediate past fiscal year 90 calendar days after the beginning of their fiscal year. For the 250-499 unit PHAs, these submissions will be used for the management needs assessment for FFY 1993 CGP, including the mod-troubled determination; 1-249 and 500+ unit PHAs with FYB 04-01-92, 07-01-92 and 10-01-92, and 250-499 unit PHAs with FYB 07-01-92 and 10-10-92, shall submit certifications for the immediate past fiscal year 90 calendar days after the beginning of their fiscal year. For the 500+ unit PHAs, these submissions will be used for the management needs assessment for FFY 1993 CGP, including the mod-troubled determination. For the 250-499 unit PHAs, these submissions will be used for the management needs assessment and the mod-troubled determination for FFY 1994 CGP. Field Offices will complete the second phase assessments 90 calendar days after PHAs submit certification. The following chart presents the second phase submission schedule:

PHA size	PHA FYB	Submission	Data source	FO assessment
1-499 units	01-01-92	04-01-92	12-31-91	07-01-92
1-249 units, and 500+ units	04-01-92	07-01-92	03-31-92	10-01-92
1-249 units, 250-499 units, and 500+ units	07-01-92	10-01-92	06-30-92	01-01-93
1-249 units, 250-499 units, and 500+ units	10-01-92	12-31-92	09-30-92	04-01-93

Third Phase Submission

250-499 unit PHAs with FYB 04-01-92 shall submit certifications based upon their 1992 fiscal year, and 250-499 PHAs with FYB 07-01-92 and 10-01-92 shall submit certifications based upon their 1991 fiscal year, by June 1, 1992. These submissions will be used for the management needs assessment for FFY 1993 CGP, including mod-troubled determination. Field Offices will complete the third phase assessments 45 calendar days after PHAs submit their certifications. The following chart presents the third phase submission schedule:

PHA size	PHA FYB	Submission	Data source	FO assessment
250-499 units	04-01-92	06-01-92	03-31-92	07-15-92
250-499 units	07-01-92	06-01-92	06-30-91	07-15-92
250-499 units	10-01-92	06-01-92	09-30-92	07-15-93

Two comments inquired as to what period will be covered in the initial assessment. The Department will assess a PHA on its immediate past fiscal year for the initial year and all subsequent years.

Among the comments were suggestions that PHMAP not rely on the fiscal year as an event marker, or not use annual due dates, or measure certain indicators as of the same day for all PHAs. The Department disagrees with these comments and will use the end of a PHA's fiscal year as the time to perform the PHA's annual performance assessment, since PHAs compile and submit other annual reports at this time.

One comment suggested the use of annual averages, not status as of a certain date, in measuring performance. The Department agrees that PHAs should be given the option of using averages over a period of time. The interim rule has revised the indicators to permit PHAs to use status as of certain date or averages over a period of time, where appropriate. The indicators in which PHAs may elect to be scored on data as of a certain date or an average over a period of time are vacancy number and percentage, and TARs.

Eight comments suggested variations of a phase-in or delay of PHMAP implementation for periods ranging over six months, one year, or two years, or running PHMAP as a trial or advisory program. The Department disagrees because this program and its basic parameters are required by statute. The Department will, however, first implement the program through this interim rule rather than a final rule. In this way, additional comments may be submitted on changes from the proposed rule, and the initial years of PHMAP will be used to gain experience that will enable the Department to assess and refine the program in a final rule. The Department is particularly interested in receiving comments from PHAs, residents, industry and resident groups, and other interested parties, on the most appropriate way, if any, to attain equitable comparisons among PHAs through the use of scoring adjustments, as discussed more fully below.

Section 901.105 Computing Assessment Score

Thirty-nine comments addressed the issue of appropriate scoring adjustments, with many disagreeing with the use of a large/small PHA designation as in the proposed rule, or suggesting other or additional adjustments to be used. Suggestions were received to make scoring adjustments on the basis of: (1) Age of stock; (2) demographics; (3) more leeway for small PHAs; (4) more leeway for large PHAs; (5) more strict standards for large PHAs; (6) State and local laws and local conditions; (7) the number of elderly units vs. the number of family units; (8) a two tiered system with strict standards for newer or modernized developments in good condition; (9) urban vs. rural environments; (10)

densely populated developments vs. scattered site housing; and (11) thriving communities vs. depressed communities.

The Department acknowledges the differences that exist among PHAs and believes that some uniform adjustments on the basis of significant differences for management assessment may be appropriate. However, the comments received indicate the lack of consensus and difficulty in proceeding on this issue. The Department does not, therefore, include any scoring adjustments in this interim rule, although it will, in accordance with the 92 App. Act requirement, either withhold troubled or mod-troubled designation or proceed with high performer designation based upon consideration of the differences in the difficulty of managing developments that result from their physical condition and/or the nature of their neighborhood environment. During the initial implementation period of PHMAP under the interim rule, the Department will consider any additional comments submitted on this issue, analyze the operation of the program with particular interest in the types of exclusion and modification requests received, and consult with PHAs, residents and industry groups to develop the most appropriate way to attain equitable comparisons and scoring adjustments among PHAs.

Four comments addressed the process of computing the PHMAP score, stating that the calculation of total points is unclear; that there is no discussion provided of how the weighting system is derived; and that there is no discussion of the statistical bases of standards and grades. The Department did discuss these topics at some length in the preamble of the proposed rule, and will not repeat that discussion here. The Department does believe that in order for PHMAP to be a useful tool for PHAs to perform their own assessments, the program should be as uncomplicated as possible. One area in which the Department is simplifying the process is in the weighting or multiplication of the points scored in an indicator to reflect its importance or significance in relation to other indicators. The proposed rule used weighting factors that ranged from one to five. In the interim rule, the range of weighting factors is more limited and the points scored in an indicator will be weighted or multiplied, if at all, by two or three only.

The Department has determined, based on its experience with PHAs, that indicators receive a higher weight primarily if they reflect a management aspect closely related to the key areas of the condition of PHA stock and delivery of services to PHA residents. On this basis, four indicators are given a high weight of three: vacancies; rents uncollected; annual inspection and condition of units and systems; and resident initiatives. Two indicators are given a medium weight of two: modernization; and unit turnaround. Six indicators are not weighted: energy consumption; outstanding work orders; tenants accounts receivable; operating reserve; routine operating expenses; and development.

Because each indicator is graded from zero to ten points, indicators with a weight of three have a weighted value of zero to 30 points and indicators with a weight of two have a weighted value of zero to 20 points. A PHA being scored for all 12 indicators could receive a maximum total of 220 points. PHAs with indicators not examined because of exclusion requests would have a smaller maximum total of points. The percentage score of a PHA is the result of dividing its actual number of points by its potential maximum (for the indicators that are examined) and multiplying by 100. For example, if a PHA were graded on all 12 indicators and received 176 points, its percentage score would be 80 (176 divided by 220, with the ratio multiplied by 100). On the other hand, if the PHA scored 176 points out of a potential maximum total of 200 points, its percentage score would be 88 (176 divided by 200, with the ratio multiplied by 100).

The 12 indicators in this interim rule provide the basis for overall scoring and assessment. Three of the indicators are divided into subparts or components, to provide a fairer and more accurate measure of different aspects of PHA performance on those indicators. The indicators with components are modernization; annual inspection and condition of units and systems; and development.

The modernization indicator consists of five components, each initially graded from zero to ten points and then weighted as follows: unexpended funds over three years old, x2; timeliness of fund obligation, x1; contract administration, x1; quality of physical work, x3; and budget controls, x1. These factors correspond to a requirement of the 92 App. Act that, in determining whether a PHA is troubled with respect to the modernization program, the Department consider only the PHA's ability to carry out the modernization program effectively based upon the PHA's capacity to accomplish the physical work: (a) With decent quality; (b) within a timely manner; (c) under competent contract administration; and (d) with adequate budget controls. The unexpended funds and timeliness of fund obligation components reflect the timeliness standard of the 92 App. Act, and the other components of this indicator match up one-for-one with the remaining statutory standards.

The five components, after being weighted, have a potential maximum of 80 points. In order to calibrate the overall modernization indicator to the zero to ten point scale used for every other indicator before weighting, the total component score of the modernization indicator is divided by eight, and the result is rounded to one decimal place. For example, if a PHA scored 60 points as the weighted sum of its components on modernization, then its PHMAP indicator score for modernization would be 7.5 (the result of dividing 60 by eight and rounding to one decimal place). In computing the overall PHMAP score, the modernization indicator score of 7.5 in this example would be multiplied by the overall modernization indicator weight of two.

For determinations of mod-troubled status for the purposes of the Comprehensive Grant Program, any score on the PHMAP modernization indicator of less than 6.0 (or fewer than 48 points on the component-weighted preliminary score) will designate a PHA as mod-troubled. During the initial year of PHMAP implementation, the Department will give Field Offices sufficient time to assess PHA modernization performance and compile accurate data so that designations of mod-troubled can be made for the second year of Comprehensive Grant Program funding. The Department will not reduce any PHA's Comprehensive Grant Program FFY 1992 formula allocation due to a mod-troubled designation.

The PHMAP grade for the indicator of development is computed by grading its four components from zero to ten points, then weighting these four component scores as follows: quality of contract administration, x1; timeliness of development, x2; quality of physical work, x3; and budget controls, x1. The weighted component score is divided by seven, with the result rounded to one decimal place.

The PHMAP grade for the indicator of annual inspection and condition of units and systems is computed by grading its four components from zero to ten points, and weighting these four components as follows: systems to track inspection/repair of units, x1; annual inspection of units, x1; correction of unit deficiencies,

x3; inspection and repair of systems, x3. The weighted component score is divided by eight, with the result rounded to one decimal place.

Several comments suggested the restructuring of grades "A"–"F" for more flexibility. The Department has revised the grading of the indicators remaining in the interim rule to reflect the comments received and to provide more flexibility. The grades now reflect a range of zero to ten points, rather than zero to five points as in the proposed rule. The rule will include the following chart that assigns the points attributed to each grade:

Grade and Points

A 10.0
B 8.5
C 7.0
D 5.0
E 3.0
F 0.0

The point values of each grade were revised to reflect a true percentage value for grade "C". In the proposed rule, grade "C" equalled a point value of 3.0, or 60%. In the revised grade points, grade "C" equals a point value of 7.0, or 70%, which is a true percentage for grade "C".

One comment suggested that scores should be computed on a project, not PHA, basis. The Department disagrees since the purpose of PHMAP is to assess the overall management performance of PHAs, not PHA management of individual projects.

Comments were received that suggested additional categories for designating the status of PHAs. The Department has determined not to use any designations in the first year of PHMAP implementation other than high performer, standard and troubled. The Department will use the first year of PHMAP to continue to assess the instrument and determine the most appropriate ways to designate PHAs.

Section 901.110 PHA Request for Exclusion or Modification

A number of comments stated that the most common or expected exclusions should be listed in the rule or handbook. The Department will issue handbook guidance that will include examples of the most common or expected exclusion and modification requests. Handbook guidance will stress that extenuating circumstances should be addressed at the time of PHA certification when a PHA submits its requests for modifications and exclusions. Handbook guidance will also stress that a PHA should submit requests for modifications and exclusions at the time it submits its certification rather than during the appeals process, unless highly unusual circumstances are discovered after a PHA submits its certification request. Modification and exclusion requests submitted during the appeals process that do not reflect highly unusual circumstances discovered after a PHA submitted its certification will not be considered.

Another comment asked what standard HUD will use to evaluate these requests. The Department requires a PHA to submit supporting documentation to justify its request for an exclusion or modification. This documentation should provide a PHA's reasons and the supporting data for requesting the exclusion or modification. HUD will then make its determination using the standard of whether the exclusion or modification request is reasonable under all of the circumstances considered.

One comment stated that the rule should provide examples of required supporting documentation. The Department will issue handbook guidance that will include examples of required supporting documentation.

One comment stated that modification requests should be open for public inspection. The Department agrees. A PHA that has an exclusion or modification request granted is on a different footing from other PHAs with respect to the area covered by the request. The decision to grant a request and the basis on which it was made should, therefore, be an open record that gives the public confidence in the integrity of the process. Similarly, an open record of requests that are denied can dispel any suggestion of favoritism, provide guidance for future actions, and insure consistency in the program. For these reasons, the records of exclusion and modification requests will be open for public inspection.

The Department has further determined that a policy of openness in all areas of PHMAP is in the public interest, for the reasons discussed immediately above, and particularly because what is being assessed is the management of public housing. The interim rule provides in a new § 901.155 for the Field Office to maintain PHMAP files, including certifications, the records of exclusion and modification requests, appeals, and designations of status based on physical condition and neighborhood environment, as open records, available for public inspection in accordance with any procedures established by the Field Office to minimize disruption of normal office operations.

Section 901.115 PHA Scores and Status

The Department received comments that suggested the elimination of high performer status and the use of a simple pass/fail system; or the use of a pass/fail system with a continuum of levels within fail or troubled. The Department disagrees with these suggestions and has determined that the present, three-tiered system of high performer, standard, and troubled (including mod-troubled) will be used in the interim rule. Absent any experience indicating the contrary, this system seems the most appropriate way of implementing the authorizing statute, section 502 of NAHA, which requires the designations of troubled and mod-troubled, and specifically permits the designation of high performer. The Department will identify and commend PHAs that meet the performance indicators established under PHMAP in an exemplary manner, in accordance with section 502 of NAHA.

Two comments stated that the Department has too much discretion in assigning status. The proposed rule provides that HUD "may" designate a PHA as a high-performer, standard or troubled. The Department disagrees with these statements, and believes the Regional Administrator should have the discretion to deny, for example, a PHA high performer status for substantial noncompliance by a PHA in one or more areas. This subject will be discussed further, later in this preamble under "Regional Administrator functions."

A comment stated that PHMAP scores should be open to public inspection. The Department agrees. The local community, residents, local and State officials, and the public should know whether or not a PHA is performing in a capacity to preserve and protect its public housing developments and is operating them in accordance with Federal law and regulations. To ensure that those elected to represent the public are informed of the performance of the PHAs within their purview, the Department will notify local and State officials of a PHA's score once it has been finally determined.

This interim rule states that a PHA that achieves a total weighted score of 90% or above on all of the indicators may be designated as a high performer. A PHA that achieves a total weighted score of less than 60% on all of the indicators may be designated as troubled. A PHA that achieves a total weighted score of less than 60% on the modernization indicator may be designated as mod-troubled.

Section 901.120 Field Office Functions

Several comments stated that the proposed rule places too much of a burden on the Field Office. The comments characterized the Field Offices as competent and hardworking, but too overburdened, understaffed, and poorly trained to implement the program. Concerns were expressed that no time would be left for the Field Offices to provide technical assistance because of other duties imposed upon them by the rule. The Department considers the Field Offices capable of carrying out their duties under the rule. Field Offices have been assessing PHA performance on an annual basis (annual performance review) for the past several years, and the Department believes that a change in the assessment criteria will not overburden Field Office personnel. Field personnel will be trained in the new PHMAP program. The provision of technical assistance to PHAs under Memoranda of Agreement will be ensured under PHMAP.

Two comments stated that Field Offices lack adequate travel funds for on-site reviews. The Department agrees that adequate travel funds are not available to review each PHA in every program area once a year. However, Field Offices will continue to practice accountability monitoring, and review of PHAs, including confirmatory reviews, will be conducted on a risk management basis.

One comment stated that there is too much variation in Field Offices for objective field judgments to be made under the program. The Department agrees that it is impossible to take all subjectivity out of this rule, but the subjective element is a given in any judgmental process. The intent of PHMAP is to be as objective as possible. Indicators are based on numerical data whenever appropriate. The Department also recognizes that a cold, hard, objectivity based entirely on numerical data may not always be appropriate. For this reason, the Regional Administrator has the discretion to review and verify a PHA's score prior to the transmission of the score to the PHA. To avoid the abuse, or even the appearance of abuse, of this discretion, the PHMAP process is an open record.

The Department will issue handbook guidance that will require the Field Office to perform the PHMAP assessment within 180 calendar days after the beginning of a PHA fiscal year (or within 90 calendar days after a PHA submits its certification, which is 90 calendar days after the beginning of a PHA fiscal year). Confirmatory reviews will be conducted on a risk management basis in the following order: (1) Size; (2) borderline mod-troubled designation (5% below and above the percentage for mod-troubled designation); (3) borderline troubled designation (5% below and above the percentage for troubled designation); (4) those PHAs whose PHMAP scores or individual indicator scores indicate a negative trend over a period of three to five years; and (5) high performer designation.

The Field Office will transmit a letter informing a PHA of its PHMAP score and status (notification letter) within 180 calendar days after the beginning of the PHA's fiscal year. If a PHA appeals, a second notification letter will be sent to the appointing official(s), and to the PHA after the appeals process has been concluded. If a PHA does not appeal, a notification letter will be sent to the appointing official(s) 195 calendar days after the beginning of the PHA's fiscal year when the 15 day period for the PHA to appeal has expired. (The appeals process, as revised for this interim rule, is fully described later in this preamble). Each Field Office will transmit notification letters pertaining to all PHAs in its jurisdiction, to the Governor and members of Congress, once a year, at the beginning of the Federal Fiscal Year.

One comment stated that CIAP incentives should not be automatically tied to CIAP performance, but should be within the discretion of the Field Office. The Department disagrees and places discretion with the Regional Administrator.

Section 901.125 Regional Administrator Functions

There were no comments received on Regional Administrator functions, but changes due to comments in other areas have necessitated changes in Regional Administrator functions. The interim rule states that the Regional Administrator may review a PHA's score prior to the transmission of the notification letter to the PHA, within 180 calendar days after the beginning of the PHA's fiscal year. The Regional Administrator will have discretion to determine the method for this review. In the initial year of PHMAP implementation and for the purpose of the public housing Comprehensive Grant Program under section 14, the review will be made in accordance with the schedule set out in the discussion of § 901.100 (data collection), above.

The Regional Administrator has the discretion to deny or rescind a PHA's status as a high performer so that it will not be entitled to any relief or incentives, based on substantial noncompliance with legal or contractual requirements by the PHA. Areas of substantial noncompliance include, but are not limited to, noncompliance with statutes (for example, Fair Housing and Equal Opportunity statutes); regulations (for example, 24 CFR part 85); or the Annual Contributions Contract (ACC) (for example, part II, section 307, Personnel). Substantial noncompliance with the legal and contractual requirements to which it is subject casts doubt on the PHA's capacity to preserve and protect its public housing developments and operate them in accordance with Federal law and regulations. Under these circumstances, a high performer designation would not be appropriate.

If high performer designation is rescinded, the Regional Administrator will send written notification to the PHA, within 15 days of the decision, with an explanation of the reasons. An information copy will be forwarded to the Assistant Secretary for Public and Indian Housing.

In the initial year of PHMAP implementation, the Regional Administrator shall consider whether or not to designate a PHA as troubled or as a high performer in accordance with § 901.125. This section implements the 92 App. Act requirements that weight be given to the differences in the management difficulty that result from physical condition and neighborhood environment, and that the evaluation system be administered flexibly to ensure that PHAs are not penalized for circumstances beyond their control. If a PHA's score falls within ten points below the point value established for troubled, mod-troubled or high performer designation, the Regional Administrator shall take into consideration the differences in the difficulty of managing developments that result from their physical condition and/or the nature of neighborhood environment. If the Regional Administrator determines that a PHA's performance difficulties are attributable to physical condition and/or neighborhood environment rather than to poor management practices, the Regional Administrator may withhold troubled or mod-troubled designation or award high performer designation.

The Regional Administrator, in accordance with handbook guidance, may take into consideration as appropriate, but not be limited to, the below listed guidelines in determining whether to refrain from designating a PHA as troubled or mod-troubled or to designate a PHA as high performer.

Management difficulties attributable to the physical condition for one or more of a PHA's developments may include:

1. Age of the development(s);
2. Size of the development(s); and
3. Modernization needs, i.e., the development has not undergone comprehensive modernization within the past 20 years; or the development has undergone comprehensive modernization within the past 20 years, but neighborhood environment has contributed to additional modernization needs.

Management difficulties attributable to neighborhood environment for one or more of a PHA's developments may include:

1. Crime;
2. Drug activity;
3. Lack of commercial, employment and social services;
4. Age and/or poor condition of the infrastructure;
5. Amount and type of financial resources and services provided by the locality;
6. Population density; and
7. Demographics.

The Department believes that a 10 point range, equal to ten percent of the total PHMAP score, in which the Regional Administrator may act to withhold troubled or mod-troubled status or award high performer status, appropriately reflects the weight to be given to the impact of physical condition and neighborhood environment on management capability. A broader range of correction, equal to fifteen, twenty, or more percent of the total PHMAP score, would unfairly skew the comparability of assessment scores and management performance. However, to avoid any unjust result from not giving sufficient consideration where merited in individual cases, appeals of PHMAP designations of status are specifically permitted in the interim rule on the basis of the Regional Administrator's failure to consider physical condition and neighborhood environment, in cases where a PHA's score falls more than ten points below the point value established for troubled, mod-troubled or high performer designation.

Section 901.130 Right to Appeal

Twelve comments stated that notification of a PHA's status after an appeal should only be provided to a PHA's Executive Director, with no notification provided to Senators, or Governors, because the notification to elected officials would only politicize the issue of a PHA's status. The Department disagrees with these comments and believes that the local community, residents, and local and State officials should know whether or not a PHA is performing in a capacity to preserve and protect its public housing developments and operate them in accordance with Federal law and regulations. Elected officials in particular, as representatives of the public, should be aware of the status of PHAs within their jurisdictions. However, notification to these parties will not occur until after any appeals have been heard. As with all other aspects of PHMAP, the appeal shall be an open record to provide future guidance and avoid any hint of impropriety or favoritism.

Eight comments stated that the appeals process is too complex, too burdensome, and too long. The Department agrees and the interim rule has simplified the appeals process. The interim rule, and handbook guidance, will detail the appeals procedure and provide time frames for processing appeals and HUD responses.

A PHA may appeal its score on the basis of data errors (incorrect data or incorrect calculations), or highly unusual circumstances that were discovered after a PHA submitted its certification and request for modifications and exclusions, or on the basis of the Regional Administrator's failure to consider physical condition and neighborhood environment in the designation of the PHA's status. In addition, a PHA has the statutory right to appeal its designation as a troubled and/or mod-troubled PHA, to petition for removal of either of these designations after it has acted to improve sufficiently its management performance, and to appeal any refusal of a petition to remove these designations.

The deadline date by which the Field Office must receive a PHA's appeal will be specified in the Field Office notification letter. The appeal deadline date will be the 15th calendar day after the Field Office mails the notification letter, not counting the day the notification letter is mailed. If the 15th day falls on a weekend or holiday, the deadline date is the next day that is not on a weekend or a holiday. Any appeal not received by the Field Office by the deadline date will not be considered.

After the Field Office receives an appeal, it will review the issues presented and forward its recommendation for their resolution to the Regional Administrator. The Regional Administrator will review the Field Office recommendation, which will include a copy of the appeal, and will render a decision on the appeal. The Field Office's recommendation and the Regional Aministrator's decision will be made within 30 calendar days of receipt of the appeal. The Field Office's recommendation and the Regional Administrator's decision are a part of the record of the appeal.

A PHA must demonstrate that a successful appeal will have a significant impact on its score (e.g., at least 5 percentage points increase) or its performance standing (e.g., it will remove a PHA from troubled designation, or move a PHA into high performer status). If a PHA appeals on the basis of incorrect data, the PHA must document the corrections, demonstrate the impact of these corrections on its score and supply reasons for the error. If a PHA appeals on the basis of incorrect calculations, the PHA must clearly document the calculation errors, demonstrate the impact of these corrections on its score, and provide corrected calculations. If a PHA appeals on the basis of highly unusual circumstances that were discovered after a PHA submitted its certification and request for modifications and exclusions, the PHA must demonstrate the impact of these unusual circumstances on its score, and submit a request for modifications or exclusions, with supporting justifying documentation. An appeal on the basis of the Regional Administrator's failure to consider physical condition and neighborhood environment must demonstrate the presence of these factors and their direct and substantial impact on the management of the affected PHA.

A PHA may also appeal the rescission of high performer designation. If a PHA appeals the rescission of high performer designation, the PHA must clearly demonstrate that the Regional Administrator's decision to rescind high performer designation was not supported by the evidence.

In cases where an appeal is denied by the Regional Office, the PHA may appeal to the Assistant Secretary for Public and Indian Housing. The deadline date by which the Assistant Secretary must receive a PHA's appeal will be specified in the denial of appeal letter. The appeal deadline date will be the 15th calendar day after the Regional Administrator mails the denial of appeal letter, not counting the day the denial of appeal letter is mailed. If the 15th day falls on a weekend or holiday, the deadline date is the next day that is not on a weekend or a holiday. Any appeal not received by the Assistant Secretary by the deadline date will not be considered. A PHA may appeal for only the reasons discussed above, and only if the PHA can produce new

documentation not previously submitted to the Field Office. The Assistant Secretary will have 30 calendar days from the receipt of the PHA appeal to respond to the PHA.

Handbook guidance will include the following chart which outlines the time lines for the PHA appeal process:

Activity	Completion date
PHA submits Appeal to Field Office.	15 calendar days after notification letter is mailed (date is specified in letter).
Field Office recommendation and Regional Office decision.	30 calendar days after receipt of PHA Appeal.
Regional Administrator responds to PHA Appeal with notification letter.	30 calendar days after receipt of PHA Appeal.
PHA Submits Appeal of Regional Office decision to Assistant Secretary.	15 calendar days after Regional Administrator mails denial of appeal (date is specified in denial letter).
Assistant Secretary responds to PHA Appeal.	30 calendar days after receipt of PHA Appeal.

Three comments suggested that PHAs should be given 30 days to appeal; one comment suggested that the Regional Administrator should have 60 days to review appeals; and one comment suggested the inclusion of an arbitration panel process in the rule. The Department disagrees with these suggestions because the majority of comments on this subject reflect concerns that the appeals process is too long, and these suggestions would add additional time to the appeals process.

Section 901.135 Incentives

Fourteen comments suggested that high performers should be given extra consideration in HUD funding (for example, a higher percentage of funding when the Performance Funding System is under-funded; competitive NOFAs; Section 8 certificate and voucher rankings). The Department agrees, in part, with these comments, and will include the PHMAP assessment as the management capabilities component in conventional public housing competitive grant programs. Other suggested areas of extra consideration will be examined by the Department.

A number of comments stated that the rule provides no specific or substantial incentives; that the only incentive in the rule is not to become troubled. The Department agrees that the proposed rule did not provide specific incentives. This is because the proposed rule specifically requested comments on incentives.

Four comments suggested that the Department re-establish the decontrol program incentives. The Department agrees that many of the incentives under the decontrol program were beneficial to PHAs. A PHA which is designated to be a high performer will be relieved of specific HUD requirements identified in the interim rule, effective upon notification of high performer designation and until the next assessment is completed. All incentives will be awarded to PHAs on this basis. These areas of relief supersede incentives presently prescribed by various other HUD handbooks, to the extent of any inconsistency.

Four comments suggested that high performers be permitted to make line item (not bottom line) changes in the budget. The Department agrees and high performers will be allowed to make specific line item changes to routine expenditures as long as the total level of routine expense is not changed.

Three comments suggested reducing/waiving the number of HUD approvals needed before the PHA can take action in a number of areas. The Department agrees and in the interim rule has included as incentives not requiring prior HUD approval for occupancy of dwelling units by PHA employees, provided the PHA charges market rents for these units; not requiring prior HUD approval under the Development Handbook for contracts for professional and technical services; and other reductions of otherwise necessary HUD approvals for high performing PHAs.

Three comments suggested awards/certificates of recognition for high performers at the formal Performance Awards ceremony. The Department agrees that public recognition for high performers is warranted but is not certain of the exact vehicle that will be used to convey this recognition.

Two comments stated that specific incentives should be in place after notice and comment before the evaluation and sanctions aspect of the rule go into effect. The Department agrees, and incentives for PHMAP will be published in the interim rule.

Two comments suggested that the Department provide incentives or recognition for "substantially improved" PHAs. The Department agrees and will work on implementing this suggestion in the final regulation once experience with the interim rule shows how PHA improvement can best be ascertained.

Two comments suggested that high performers be permitted to retain savings/earnings resulting from management efforts. The Department does not believe this is a new incentive as it basically reflects what is already contained in the Performance Funding System in two areas: (1) Income—increases in rental income generated in a PHA's fiscal year are retained and are not reflected in the subsidy calculation until the following year; and (2) Allowable Expense Level (AEL)—operating savings generated through improved procedures or cost saving measures do not result in a reduction in the AEL. Therefore, this incentive is already available under current regulations.

One comment suggested that high performance in individual indicators should be recognized, not just overall high performance. The Department disagrees due to the oppressive administrative burden this would impose on both PHAs and the Department. However, the Department will identify and commend PHAs that meet the performance indicators established under PHMAP in an exemplary manner, in accordance with section 502 of NAHA.

One comment suggested monetary incentives for PHA employees responsible for "A" ratings. The Department is bound by the comparability provisions of the Annual Contributions Contract. However, the Department is reviewing this issue.

One comment suggested that the Department waive or relax salary comparability requirements for employees of high-performing PHAs. The Department disagrees. Although salaries must be kept at reasonable levels, under existing regulations, bonuses can be paid to PHA employees, as long as the bonuses are comparable to those paid to other comparable local agencies.

One comment suggested that high performers be permitted to receive their entire annual subsidy at once and keep the interest. The Department disagrees with this proposal because it violates United States Treasury regulations, as well as the rule at 24 CFR Part 85. All interest on Federal funds is returned to the government to reduce grant payments. Public housing management enjoys a specific exemption from the provision that that all interest is retained, but is incorporated into the calculation of subsidy eligibility under the Performance Funding System.

One comment suggested that high performers that have exceeded maximum reserves be permitted to establish replacement reserves without meeting all replacement reserve criteria. The Department disagrees because a PHA cannot be permitted to establish a replacement reserve when some or all of

its projects have either bonded debt or notes that were sold to the Federal Financing Bank. Such PHAs are not subject to the Debt Forgiveness provisions of section 3004 of the Housing and Community Development Reconciliation Amendments Act of 1985, Public Law 99–272, which amends section 4 of the U.S. Housing Act of 1937.

One comment suggested that modernization funding be reprogrammed to troubled PHAs that demonstrate local government support. The Department disagrees because one of the technical review factors for the Comprehensive Improvement Assistance Program is local government and resident support for proposed modernization. Once the Annual Contributions Contract amendments have been executed, the Department cannot reprogram modernization funding from one PHA to another; recaptured modernization funding cannot be reprogrammed or reused, but must be returned to the United States Treasury.

One comment suggested that high performers be permitted to budget for vacancies at 4% instead of 3%, even though the actual rate is lower. The Department disagrees with the proposal, which is merely a means of providing an additional increment of subsidy eligibility not currently permitted or budgeted for under the Performance Funding System.

One comment suggested that high performers be permitted to receive Major Reconstruction of Obsolete Projects (MROP) funding if physical conditions warrant without regard to vacancies. The Department disagrees with this suggestion. However, a PHA's ability to compete for competitive grants, including MROP, will be enhanced because high performers will receive the highest management capability rating.

One comment suggested that high performers receive speedier processing of RHPS requests. The Department disagrees because it is currently considering alternative requisition systems that would reduce the paper work requirements and expedite payment for all PHAs.

One comment suggested that high performers receive a limited budget review. The Department already performs limited budget reviews and only performs detailed budget reviews on an exceptional basis.

One comment suggested that the Department limit financial reporting requirements to once per year for high performers. The Department agrees and has included this as an incentive.

One comment suggested that high performers not be designated as mod-troubled. The Department disagrees because section 502 of NAHA mandates the designation of mod-troubled PHAs as a separate determination from the designation of troubled. The Department also expects it to be very rare that any PHA would be both a high performer and mod-troubled.

Section 901.140 Memorandum of Agreement (MOA)

One comment suggested that the Department assess PHAs operating with MOAs under MOA standards, not the PHMAP standards. The Department disagrees with the suggestion to assess PHAs operating with MOAs under the MOA performance goals only. Section 502 requires that all PHAs be assessed under the PHMAP indicators, with no exception for troubled or mod-troubled PHAs. The purpose of the MOA, in part, is to move the PHA to acceptable performance levels, and not just the MOA yearly performance target.

One comment suggested that Comprehensive Grant Program money be allowed in increments if a PHA meets the MOA requirements. The Department disagrees because the Comprehensive Grant Program is based on formula allocations with specific provisions on treating mod-troubled agencies and on the circumstances under which the Department may withhold or reallocate funds.

One comment stated that it was unclear what grade represents a deficiency that must be corrected with an MOA. The Department has determined that the chief purpose of the MOA is to serve as the plan to remove the PHA from troubled or mod-troubled status as quickly as possible. The emphasis in a MOA is not on taking actions to bring a PHA's management performance in each indicator, considered individually, to at least a grade of "C", as is the case with Improvement Plans; rather, the MOA's emphasis is on identifying what combination of actions across what combination of indicators will result in an overall PHA management capability that is no longer considered troubled or mod-troubled. As both the proposed rule and the interim rule state: "the scope of the MOA may vary depending upon the extent of the problems present in the PHA." There are, thus, no set grade levels that must be addressed in a MOA. For example, the goal of removing a PHA from troubled or mod-troubled status may, in a particular instance, be more readily accomplished by raising the grade levels of a number of indicators from "D" to "B", than from raising the grade levels of other indicators from "F" to "D". The "F" grade indicators would still have to be addressed in an Improvement Plan, and these corrections for particular indicators may require extended timeliness, but the remedying of troubled or mod-troubled status should not be contingent upon correcting the most intransigent deficiency. The areas of improvement on which the MOA focuses, the targeted levels of improvement to be achieved, and the strategy for attaining those levels are arrived at through a process of negotiation between the troubled or mod-troubled PHA and the Department.

One comment stated that the statute does not require a MOA for mod-troubled PHAs. The Department interprets the statute to include the requirement of an MOA for mod-troubled PHAs. Although the statute does not specifically state that an MOA is required for mod-troubled PHAs, it does infer this. The determination of a PHA as mod-troubled under section 502 of NAHA is tied into the modernization allocation formula of section 509 of NAHA. Under the formula, a mod-troubled PHA may be allocated less funding than is allowed a PHA that is not troubled. Section 509 provides that a mod-troubled PHA's funding allocation may be restored if its designation as mod-troubled is removed. The obvious mechanism for removing the designation of a PHA as mod-troubled, since no other process is even mentioned in the statute, is the memorandum of agreement (MOA) under section 502, which is the same section under which mod-troubled status is estimated.

One comment suggested that high performers should also be required to enter into MOAs. The Department disagrees because one of the incentives for high-performing PHAs is less paper work requirements, rather than more.

One comment stated that is was not clear what technical aid/assistance will be given to troubled PHAs. The Department will require Field Offices either to provide technical assistance, or direct a PHA to another provider, for all of the deficient areas (below a grade "C") of a PHA's operations. The specific types of technical assistance will be dependent upon the needs of individual PHAs. Examples include, but are not limited to, assistance in developing financial controls; orientation of new board members; procurement training; and assistance in developing required policies.

Section 901.145 Improvement Plan

The Department did not receive specific comments on the improvement plan, but there were two comments asking for clarification of what constitutes a "deficiency". The Department defines deficiency as any grade in any indicator below a grade "C". The Department has made two changes in the improvement plan in order to relieve PHAs of paperwork burden. The first change allows a PHA 90 calendar days after the receipt of its notification letter or a final resolution of an appeal to correct a deficiency, rather than 60 calendar days as stated in the proposed rule. A PHA should be able to correct most deficiencies within this time frame. A PHA will be aware of most deficiencies at the time it performs its own assessment and submits its certification which is due within 90 calendar days after its fiscal year begins. Correction of deficiencies should begin immediately after discovery and continue through the Field Office assessment process and appeals process, if any. At a minimum, a PHA has 270 calendar days after its fiscal year begins to correct a deficiency before an improvement plan may be requested.

The second change involves the submission of an improvement plan. The Field Office will require a PHA to submit an improvement plan for each indicator in which a PHA scored a grade "F". The Field Office may require, on a risk management basis, a PHA to submit an improvement plan for each indicator in which a PHA scored a grade "D" or "E".

Section 901.150 PHAs Troubled With Respect to the Program Under Section 14 (Mod-Troubled)

Eight comments stated that many of the indicator items are not related to mod-troubled or are too broad (such as funds owed to HUD, development funds, excess HUD advances, sustained audit disallowances, annual audit, etc.), and recommended that the entire section be re-analyzed. The Department agrees with this comment and, accordingly, has limited the indicators used to determine mod-troubled PHAs to only one indicator, the modernization indicator, which is composed of only items directly related to modernization performance.

One comment stated this section is so confusing it might better be written as a separate proposed rule. The Department disagrees. In addition to limiting the indicators used to determine mod-troubled to a single indicator directly relating to modernization, the section of the PHMAP rule on mod-troubled PHAs has been rewritten for clarity.

One comment stated that even though this provision may not violate the statute, it breaches its spirit by not providing for a credit system for PHAs that become mod-troubled in subsequent years. This issue will be addressed more appropriately in the Comprehensive Grant Program rule.

One comment stated that the mod-troubled designation should be limited to past performance on modernization using four of the PHMAP modernization standards: quality of physical work, timeliness of physical work, contract administration, and budget controls. The Department agrees, and has incorporated the appropriate standards within the modernization indicator along with the statutory indicator of unexpended modernization funds.

One comment suggested that the process for designating mod-troubled PHAs should be the subject of a separate rulemaking. The Department disagrees. The procedure for designating mod-troubled PHAs is going forward because the modernization program is such an important part of the overall operation of a PHA. An opportunity to comment on this important aspect of PHMAP was provided in the proposed rule. This interim rule provides additional opportunity for public comment on this issue.

Section 901.200 Substantial Default by a PHA

The proposed rule addressed the substantial default provision of section 502 by restating the statutory language, with no amplification, and inviting public comment on the issue. Recognizing that the statutory language may not be adequate for regulatory purposes, the Department developed additional implementing language for inclusion in this interim rule.

The Department's purpose in developing the new subpart C, Substantial Default, is to define clearly the terms and conditions under which the Department can and will intervene in the management of a public housing agency to assure the continued availability of decent, safe, and sanitary housing for PHA residents, and to protect the Department's and the public's financial interest in the preservation of PHAs' real property assets.

Several comments stated that this section needs more adequate definition, or that a description of triggering events for a substantial default should be given in the rule. The Department agrees and has provided both in § 901.205 of the rule. Two comments stated that substantial default should be defined only as an intentional act or an act done with criminal intent. The Department disagrees because events or conditions that constitute a substantial default are not always intentional or done with criminal intent. The significant aspect of a substantial default is an inability to perform as required under contracts or covenants. Whether the harm that results from the inability to perform, or that is avoided by prompt remedial action, is a consequence of an intentionally wrongful act or mere negligence or incompetence, should not, and will not, be the determining factor in defining a substantial default.

One comment suggested that an appeals process to challenge a finding of substantial default should be included. The Department disagrees and has determined that since the finding could only be made by the Assistant Secretary after full Departmental review, court action would be the appropriate avenue for a PHA to challenge the finding.

Other Comments

Three comments stated that PHAs need more money to perform their functions. The Department believes that PHMAP attempts to be flexible in its performance assessment by providing for special circumstances through modification and exclusion requests. Every PHA is given the opportunity to present for consideration its arguments and supporting data that it is unable to perform to a satisfactory level in any indicator because of financial factors beyond its control.

One comment stated that charts and graphs would be helpful for understanding the rule. The Department agrees and has provided charts in this interim rule whenever possible. Handbook guidance that will be issued for this interim rule will include charts and graphs whenever possible.

One comment suggested that PHMAP could have a significant impact on small entities under the Regulatory Flexibility Act. The Department believes it is significant that in this comment the total number of paperwork burden hours was mistaken for the paperwork burden per respondent. The Department considers and is sensitive to size-based impacts and distinctions in this rule. The analysis of the paperwork burden in the proposed rule was broken down by PHA size, and the proposed rule incorporated a scoring adjustment based on PHA size. The Department invites additional comment in this interim rule on what, if any, size-based adjustments would be appropriate for this program, and will be reviewing the operation of the program

under the interim rule with this consideration in mind.

One comment suggested that PHMAP should be suspended anytime the Performance Funding System is funded at less than 100%. The Department disagrees with this suggestion because PHAs do not stop providing housing and basic services if the Performance Funding System is funded at less than 100%. While underfunding of the Performance Funding System creates a challenge, it does not suspend responsibility.

One comment suggested that HUD officials should be graded by PHAs. The Department disagrees that this program is an appropriate vehicle for this activity. The Annual Contributions Contract places monitoring responsibility for PHA compliance on the Department. Section 502 of NAHA, which establishes PHMAP, requires the Department to assess the management performance of PHAs. The Department performs an annual performance evaluation of Regional Offices, and Regional Offices perform annual performance evaluations of Field Office to ensure accountability. PHAs should inform Regional Offices of Field Office nonperformance for review and action, and inform Headquarters of Regional Office nonperformance for review and action.

The Department is particularly interested in receiving suggestions from PHAs, residents, representatives of resident and industry groups, and other interested parties, regarding indicators to assess the management performance of PHAs under the section 8 program, as well as incentives for section 8.

Indicator Comments

Since many indicators/standards have been eliminated or consolidated, the Department will only address those comments that relate to the remaining indicators. The remaining indicators have been renumbered to reflect their order of appearance in this interim rule; the order of numbering that was used in the proposed rule will be included in the following discussion for ease of reference to the proposed rule. The grade "C" in all the indicators reflects acceptable performance, with grades "B" and "A" reflecting higher than acceptable performance, and grades "D", "E" and "F" reflecting lower than acceptable performance.

Vacancy Number and Percentage (Indicator (1) in the Proposed Rule)

Fifty-eight comments stated that vacancies need to be defined and suggested the following categories not be included in the vacancy rate: (1) Vacant units in on-schedule modernization programs; (2) vacant units not available for occupancy that are in developments identified in an approved Comprehensive Plan for modernization but that have not as yet been funded; (3) vacant units that have been determined to contain lead based paint or other hazardous materials; (4) vacant units in an approved demolition or disposition program or in a site for which the PHA has submitted an application for demolition or disposition; (5) vacant units in States whose law requires the PHA to hold abandoned resident possessions in a unit for a stated period of time should not be counted until the PHA is permitted to enter the unit and begin readying it for re-occupancy; (6) vacant units that are vacant because of casualty damage during the period when the claim is being adjusted; (7) vacant units in locations where the units are vacant because of marketability and have been excluded by a modification waiver from HUD; (8) vacancy problems caused by over-building of competing subsidized units, which often have numerous amenities that are not available in public housing; (9) vacant units due to rigorous and necessary eviction practices; (10) units that have been deprogrammed; (11) units that are vacant due to local market conditions; (12) units that are vacant due to resident-caused damages; (13) units that are vacant due to natural disaster; (14) units that are vacant due to drug elimination efforts; (15) a reasonable time to re-rent vacant units after they have been turned back from modernization in large blocks; (16) temporary fluctuations in the vacancy rate due to the addition of new development units; and (17) vacant units due to lack of modernization funds.

The Department agrees that vacant units should not be included in the vacancy rate under the following circumstances: (1) Units in an approved demolition or disposition program; (2) units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in law; (3) units that have sustained casualty damage and are being held off the market to allow adjustment of the insurance claim; and (4) units that are occupied by employees of the PHA and units that are used for resident services.

Vacant units in a funded on-schedule modernization program have been consolidated into this indicator for grade "C" and below. In the private housing sector, most rehabilitation is performed with residents in place. Given the need for public housing, in most circumstances, a PHA should be able to modernize units with residents in place. Under the Comprehensive Grant Program (CGP), the cases where units are rehabilitated with residents in place should increase.

The Department disagrees with the other exemptions suggested by the comments. The other suggestions enumerated above are for unusual or special circumstances that clearly are under the control of PHAs to mitigate, or that existing handbook procedures accommodate. However, in the event a truly unusual or special circumstance exists, the issue should be raised with the Field Office through an exclusion or modification request, as discussed earlier in this preamble.

Twenty-six comments stated that the vacancy percentages are too rigid and the vacancy percentage should be 3% for grade A. The Department disagrees with these comments. Acceptable performance for vacancies in accordance with the Performance Funding System is 3% vacancies.

Twenty-two comments stated that vacancies should be an annual average rather than a snapshot picture because vacancy rates are often seasonal, and it would be unfair to base the vacancy rate determination on one month. The Department agrees that the requirement to use only the snapshot method could result in an unrepresentative vacancy rate. Therefore, the vacancy indicator has been revised specifically to allow for the average vacancy rate for the reporting month, or a snapshot picture at the end of the reporting month. This procedure for calculating vacancy rates is the same as that specified in 24 CFR 990.117.

Nine comments asked how the term "vacant" is defined. The Department defines a vacant unit as a unit that is not under lease to a family that was a low-income family at the time of admission and has not been approved for temporary or long-term nondwelling use in the normal course of project operation. The Department will issue handbook guidance that will include a sample work sheet for calculating the average percentage of vacancy days. The formula used to compute the vacancy rate is vacancy days (less stated exemptions) divided by the unit availability days (less stated exemptions). In the revised indicator (1), vacancies, actual vacancies means: (1) The percent or number of vacancies after deducting vacant units included in an approved demolition or disposition program; (2) vacant units in which resident property has been abandoned.

but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law; (3) vacant units that have sustained casualty damage and are being held off the market to allow adjustment of the insurance claim; and (4) units that are occupied by employees of the PHA and units that are used for resident services. Adjusted vacancies means the percent or number of vacancies after deducting units included in a funded on-schedule modernization program.

Two comments inquired as to what period of time is being assessed. The Department will assess PHAs under PHMAP for the period of the PHA's immediate past fiscal year, unless stated otherwise for assessing modernization.

One comment stated that the industry norm of 5% vacancies should be applied to all PHAs. The Department disagrees with this comment due to the unique nature of public housing. Private industry housing does not have a guarantee of operating subsidy nor does it have the stipulation that a resident shall pay no more than 30% of income towards total housing cost. Since public housing has greater opportunities to rent units, grade "C" of this indicator is the acceptable performance of 3% vacancies.

One comment suggested that specific ranges be used for the vacancy indicator. The Department agrees, and the vacancy indicator has been revised to reflect more specific language.

One comment noted that the number of vacant units does not appear in the grading of the indicator. The Department included the number of vacant units for grade "C" and below in the proposed rule and has included the number of vacant units for grade "B" and below in the vacancy indicator for this interim rule. In addition, a PHA will now be required to certify to the average number and percent of vacancy days.

One comment stated that if a PHA has more than 5% of its units vacant for more than one year, the PHA should fail this indicator. The Department has determined that 8% is the failing percentage.

One comment stated that the vacancy rate is not necessarily a factor of management performance; in an area where vacancies run 15%, a 10% vacancy rate may show exceptional management. The Department disagrees with the statement that the vacancy rate is not necessarily a factor of management performance. The Department considers vacancies one of four major areas of management performance, and has weighted this indicator to reflect its importance in management performance. A private industry housing vacancy rate of 15% does not necessarily mean that a PHA should have a comparable vacancy rate, since the two may not be addressing the same segment of the housing market. Private industry housing does not have a guarantee of operating subsidy nor does it have the stipulation that a resident shall pay no more than 30% of income towards total housing cost. The norms for public housing should, therefore, be more rigid than for the private sector.

A PHA shall certify to this vacancy indicator within 90 calendar days after the beginning of its fiscal year, as of the end of its immediate past fiscal year. Documentation verifying this indicator shall be maintained by the PHA for HUD post-review. This indicator has a scoring weight of three.

Modernization (indicators #2 and 15(a)–(f) in the proposed rule)

In response to public comments, the Department has decided to combine indicators #2 and #15 into one indicator with five components for modernization and to eliminate the items related to program management (#15(e) in the proposed rule) and to timeliness of management improvements (#15(f) in the proposed rule). In addition, the Department has revised indicator #2 in the proposed rule, which is now component #1, Unexpended Funds, of the modernization indicator (#2 in the interim rule) to be a more effective measure of performance. Based on the language in the proposed rule, this indicator allowed for a certain percentage of unexpended funds after 3 years without consideration of whether a revision to the original Project Implementation Schedule had been approved by HUD. The Department did additional field testing of this component and found that it did not accurately reflect the Departmental policy of granting time extensions that resulted in revised Schedules. The results of the field test support the Department's decision to revise this component to a pass/fail component that is consistent with the Department's policy of adherence to the latest HUD-approved Project Implementation Schedule. This approach is consistent with longstanding Departmental policy on issuing time extensions based on valid delays and the effect of these HUD-approved time extensions on the expenditure of funds.

In response to the public comments, the Department has made other significant revisions to the items comprising the modernization indicator. However, in revising the modernization indicator, the Department has concluded that it may be necessary to conduct on-site assessments of the indicator before applying it for the purpose of affecting the formula allocation of modernization funds under the Comprehensive Grant Program (CGP), due to the following reasons:

First, the Department is concerned that, in some cases, Regional and Field Offices may have granted time extensions for fund obligation (also affecting fund expenditure) for reasons within the PHA's control in order to avoid the recapture of funds. Recaptured funds are currently not available to the Department for reuse. Reasons within the PHA's control do not constitute valid reasons for delay, as set forth in the Comprehensive Improvement Assistance Program (CIAP) Handbook 7485.1, as revised. The issuance of time extensions in cases of poor performance solely to avoid fund recapture affects the accuracy of the scoring for the revised components #1 and #2 of the modernization indicator.

Second, some Field Offices may not have adequate documentation of PHA performance in the areas of contract administration and quality of physical work. This lack of adequate documentation affects the accuracy of the scoring for the revised components #3 and #4 of the modernization indicator.

Accordingly, the inadequate or inaccurate data in the Field Offices may result in artificially high scores for certain PHAs on the modernization indicator; and a lack of uniform application of the time extension policy and the monitoring requirements by Field Offices may result in artificially high or low scores for other PHAs. Therefore, the Department has concluded that it is in the best interest of the Public Housing Program to score and rate PHAs on the modernization indicator only after conducting any necessary on-site assessments. This means that in the first year of the CGP, which is FFY 1992, no PHA participating in the CGP will be initially designated as mod-troubled for FFY 1992 and have its formula funding limited.

However, the Department puts the public on notice that it may condition a PHA's annual formula grant in the first year of the CGP, based on substantial evidence of a lack of performance in carrying out its modernization program under the CIAP. Under conditioning, the PHA would receive the full amount of its annual formula grant, subject to carrying out certain activities, such as hiring a construction management firm, or subject to receiving prior HUD approval of certain activities, such as award of

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architect/engineer contracts, bid advertisement, issuance of contract modifications, etc.

As previously stated, the Department intends to use the first year of the PHMAP (FFY 1992) to conduct any necessary on-site assessments of PHAs participating in the CGP in FFY 1992. This will enable the Department to have accurate and sufficient information regarding the PHA's contract administration and quality of work under the CIAP. In addition, the Department intends to work closely with Field and Regional Offices on appropriate application of the time extension policy, as set forth in the CIAP Handbook. Mod-troubled designation will not affect a PHA's formula funding amount until FFY 1993.

One comment questioned how a PHA which has applied for CIAP funding over many years for a specific project, but has not been funded, can be penalized. The comment stated that projects with problems must be excluded when determining performance because the need for CIAP money is a valid reason for the very problems being monitored. The Department does not understand this comment since the indicator relates to PHA performance using modernization funds, not to the condition of units as the comment implies.

One comment stated this indicator should measure the product, not the process. The Department believes that overall, the modernization indicator as revised does measure the product, not the process, in that each of the components has an impact on the quality of the modernization. In addition, the criteria or standards to be used within this indicator have been set by the 92 App. Act.

Comments regarding indicator #2, unexpended section 14 (modernization) funds in the proposed rule (now designated component #1 of the modernization indicator) which is mandated by the statute, are as follows: Two comments stated that a clarification is needed as to whether unexpended means unspent or unobligated. The Department defines unexpended to mean unspent, regardless of obligation status.

Two comments stated that measuring obligated modernization funds is a more appropriate measure from an administrative and construction perspective. The comments also noted that the overlay of the CGP adds another layer of complexity when measuring "expended funds." The comments recommended that HUD should either interpret the starting point for the expenditure of funds to be the time of the contract execution or seek a technical correction to the statute to provide for review based upon the obligation of funds. The Department believes that fund expenditure is an important measure of PHA performance under modernization since expended funds reflect completion of planned work. Completion of planned work is the ultimate objective of modernization in order to improve living conditions for the residents. Therefore, the Department has no plans to seek a technical correction to the statute.

Two comments stated that following a strict time period for funds expended is arduous in that disputes with contractors require time to resolve, architectural and engineering studies and plans/specifications require time to develop, and unanticipated hazard abatement among other things may delay the completion of the modernization work. The Department agrees and has written into this component an exemption for valid delays outside of the PHA's control. Again, PHAs should be aware that the purpose of modernization is to not only obligate funds, but obtain decent living conditions for residents as quickly and responsibly as possible. Furthermore, a PHA should exert maximum effort to resolve contract disputes which can result in delays in expending funds, without compromising its contractual rights.

Two comments stated that this statutory indicator has the unintended and undesirable effect of encouraging PHAs to front-load modernization contracts to ensure that funds are expended more quickly. The Department disagrees in that because of the approved project implementation schedule and time extension exclusions, it would not be to any PHA's advantage to "front-load modernization contracts". It would be far more effective for the PHA to submit an original project implementation schedule which is realistic or request a time extension, where necessary and justified. Where the PHA has unexpended funds over three years old, but has not reached the fund expenditure deadline in the latest HUD-approved schedule, the PHA is not penalized for having such funds unexpended.

One comment stated that this factor needs to be made more stringent, recognizing that HUD can approve longer implementation schedules for those unusual projects which might actually require an extended period of time for fund expenditure. The Department agrees and has reworded this component, making it pass/fail except where the PHA can demonstrate that the approved original or revised schedules gave the PHA longer than 3 years.

One comment stated that in light of the fact that PHAs have traditionally been measured primarily on the percentage of obligated funds, perhaps this standard should initially provide for a lower percentage of expended funds, and raise it each fiscal year, providing a smoother transition to the new measurement than the percentages contained in the proposed rule. The Department disagrees and feels that this statutory component will effectively measure performance under a pass/fail approach with the incorporated valid delay exemption.

One comment stated that PHAs with unexpended funds approved prior to fiscal 1984 should not automatically fail this indicator. For example, litigation might be the cause of the unexpended funds. More generally, there is a danger that the "unexpended after three years" rule will be applied too mechanically, even though HUD can approve longer time frames in the project implementation schedules. The Department agrees and has incorporated the valid delay exemption.

One comment stated that it is not always possible to have funds expended after three years due to the size and complexity of some modernization projects and suggested that current procedures remain in place. The Department agrees that current procedures should remain in place and has written into the component exclusions which cover longer time frames in the approved schedule, as well as exemptions for valid delays outside of the PHA's control.

One comment stated that this indicator would lead to waste of Federal funds. It is reasonable to expect a PHA to plan, design, commit and implement work items within a three-year time period, but it is not reasonable to have necessarily spent all the related funding within three years. The comment also stated that the current handbook requirement requiring obligation of all funding within three years is reasonable and is working well; and that if HUD changes the standard to expended rather than obligated, the effect will be to encourage PHAs to throw money at problems rather than to plan and spend wisely. The Department disagrees and feels that the built-in exemptions and exclusions/modifications provided for this component will allow PHAs to plan to spend the funds appropriately without waste or fear of receiving a low score if all funds are not expended within three years due to a longer time frame

approved by HUD in the original or revised project implementation schedule. If these funds are planned for expenditure past the three years, they would be excluded from the scoring. The Department would like to note that the national norm for expenditure of all funds for single stage comprehensive modernization, as set forth in the CIAP Handbook, is two and one-half years. Furthermore, the Department strongly believes that the objective is to finish the job in a timely manner, not just to obligate the funds.

One comment stated grade "A" should be raised to 10% rather than 20%, and grade "C" should cover a range of 10 to 20%. The entire indicator should have a higher scoring weight. HUD is entirely too lenient on modernization non-performance and it can be reasonably expected that the problem will grow larger when the CGP is in place and large PHAs are no longer competing with one another. The Department agrees that the component was too lenient and has changed it to pass/fail.

One comment stated that there appears to be a major conflict between the PHMAP system and many HUD Handbook requirements and gave as an example indicator #2, unexpended section 14 (modernization) funds, which requires a PHA to expend more than 70% of non-emergency modernization funds a full year ahead of CIAP Handbook requirements to keep from getting an "F" grade. The comment questions whether HUD plans to revise all relevant HUD Handbooks to reflect the new PHMAP requirements and if so, recommends that these Handbooks be rewritten/revised prior to the PHMAP or any other assessment system becoming effective. The Department disagrees that the revised component conflicts with HUD Handbooks since it relies on the expenditure deadline date identified by the PHA in its project implementation schedule. This is consistent with the handbook requirement for submission of schedules.

Comments regarding indicator #15(b), timeliness of physical work (this indicator has been retitled as timeliness of fund obligation and redesignated as component #2) are as follows: Three comments stated that a passing grade should be given to PHAs that obligate 100% of their modernization funds in accordance with their implementation schedule within three years. Those that do not meet this standard should fail. The Department agrees with the pass/fail approach to this indicator and has rewritten the component to so reflect.

Two comments stated that this timeliness is generally not a problem; however, based on past experience, delays encountered in meeting implementation schedules as adopted rest with HUD and the prolonged process of obtaining approvals on such things as change orders and even time extensions themselves may take as long as six months. The Department recognizes that HUD delay is a valid reason for a time extension. However, it is the responsibility of the PHA, when it determines that it will not be able to meet the fund obligation deadline date in the original project implementation schedule, to request a time extension, where there are valid reasons outside of the PHA's control.

Two comments indicated that as long as project completion meets the required date, failing to meet interim dates should not result in a failing grade. The Department has the responsibility to monitor all the key steps leading to the completion of the modernization and must be aware of interim progress in order to anticipate possible delays in completion. However, the Department agrees that failure to meet the first two dates in the project implementation schedule is less important than failing to meet the fund obligation deadline.

Two comments stated that there is no distinct difference between grade "A" and grade "C". If the issue is simply determined by the designated project implementation schedule, it would be more realistic to have this category rated on a simple pass/fail basis. Otherwise, some delineation between grade "A" and grade "C" is necessary. The Department agrees with this comment and has redefined this component on a pass/fail basis.

One comment stated that HUD's own involvement (control) over the "mod" program could easily result in poor PHA performance. The Department recognizes that HUD delay is a valid reason for a time extension. However, it is the responsibility of the PHA, when it determines that it will not be able to meet the fund obligation deadline date in the original project implementation schedule, to request a time extension where there are valid reasons outside of the PHA's control.

One comment stated that this indicator assumes that unobligated funds is linked to poor PHA management when these funds could represent savings from bringing contracts in at cost less than originally budgeted. The Department agrees that unobligated funds due to completing a contract below the budgeted amount is a valid reason for a time extension. Accordingly, the Department has included this exemption in the component.

One comment indicated that it seems excessive to fail a PHA for missing a single implementation date. (A PHA could fail this item merely because a Field Office had not processed a request by the time that it scored this factor.) The Department agrees and has modified this factor to only address the fund obligation deadline date.

One comment stated this indicator fails to consider lawsuits. The Department recognizes lawsuits as a valid delay and time extensions for obligation of funds should be approved on that basis. It is absolutely not the Department's intention to discourage PHAs from pursuing legitimate claims to the maximum degree. This indicator has been modified to exclude funds where programs have been given time extensions.

One comment stated although the project implementation schedule has been a guide in the past (not a law), a PHA should not be penalized for past problems in the event that it was unaware of its importance. While the Department agrees that the requirement for the project implementation schedule is not required by statute, it has been a requirement since 1985 and the Department has continued to emphasize its importance as a monitoring tool for both HUD and the PHA.

One comment stated that HUD should be more responsive to modernization-related activities, particularly when Departmental approval of change orders is necessary. Any delays caused by HUD inaction or indecision should be deducted from the three-year time clock. The Department agrees and has included HUD delay as a valid reason for delay.

One comment stated that grades for this item are subject to change only "when HUD approved a longer time frame in the Project Implementation Schedule." The comment stated that this item should state "excluding HUD delays." The comment further suggested that a provision be added that the entire indicator is based on CIAP requirements. The Department agrees that, at this time, the entire modernization indicator evaluates regulatory CIAP issues as they relate to performance. However, after the implementation of the Comprehensive Grant Program, an indicator will be developed to assess a PHA's performance in that area. Exemptions for good cause including HUD delays have been incorporated into this component.

One comment wanted to know how valid HUD extensions are factored in. The Department will factor in such

funds as follows: all funds which are covered by the extension would be removed from the calculation for determining unobligated funds and therefore would not adversely impact on the PHA's overall unobligated percentage.

Contract Administration (Indicator #15(c) in the Proposed Rule, Redesignated as Modernization Component #3)

One comment indicated a grade "C" designation for a PHA who has identified contract administration problems, and is in the process of resolving those problems, implies a punitive approach. Initiating the same approach used in the quality of physical work designation and not discrediting a PHA for correcting problems identified by the PHA, would be a better approach. The Department has reworked this component to provide gradations and point values for varying levels of performance based on the results of previous Field Office monitoring. Furthermore, a grade "C" is not punitive; it is an acceptable level of performance.

One comment stated this factor is based on a past review and does not allow for any correction to a finding. A more appropriate factor would be that the PHA has addressed any findings raised during the preceding 12 months based on on-site inspections. The Department agrees and, accordingly, has incorporated language into this component to include any correction to a finding.

One comment stated the words "significant monitoring findings" are much too broad and should be more clearly defined. The Department agrees and, accordingly, has defined "significant monitoring findings" to mean certain items within the Monitoring Checklist, Sections II–IV (Appendix 18 of the CIAP Handbook), or where an equivalent review was conducted.

Quality of Physical Work (Indicator #15(a) in the Proposed Rule, Redesignated as Modernization Component #4)

Three comments stated that the standard related to the quality of physical work relies on subjective judgements by different Field Office staff which will seriously undermine the validity of the PHMAP program. (Depends on 8 items on a monitoring checklist which is replete with the terms "adequate", "reasonably inferable", "reasonable promptness", "endeavoring to guard against", etc., these are clearly not objective standards.) The Department maintains that the Monitoring Checklist (Appendix 18) is a valid instrument for determining monitoring findings and considers Section I of the Monitoring Checklist or another equivalent review as appropriate in evaluating the quality of physical work.

One comment suggested that this indicator require HUD to conduct field inspections. The Department disagrees that field inspections are necessary in all cases. Where necessary, and on a priority, risk management basis as explained further in the discussion of Field Office functions, below, HUD will conduct at least one monitoring visit to the PHA in order to evaluate PHA performance in this area.

Budget Controls (Indicator #15(d) in the Proposed Rule, Redesignated as Modernization Component #5)

Two comments stated that this factor ought to measure the successful resolution of any matter raised, not some fixed-in-concrete standard applied retroactively. The Department has revised this component to incorporate budget revisions or where the PHA has obtained prior HUD approval.

One comment indicated that zero-tolerance wording is too rigid (i.e., "In all cases the PHA expends modernization funds only for approved items.") Some tolerance for minor slippage should be provided for an "A" grade, a "C" grade should be defined for more frequent lapses, and "F" should be reserved for those PHAs which demonstrate a pattern of spending outside of the approved budget. The Department disagrees that some slippage should be tolerated within this component and, accordingly, has retained the pass/fail approach. If the PHA wishes to expend funds outside of the latest HUD-approved budget or over the HUD-established threshold for budget revision, the PHA should obtain prior HUD approval.

One comment noted that some Field Offices approve expenditures verbally or by letter in anticipation of a formal budget announcement; such expenditures should not be treated as if they are outside of the HUD-approved budget. The Department agrees since this situation constitutes an informal budget revisions and would be excluded from the scoring.

One comment stated that this category delineates no difference between grade "A" and grade "C". Some benchmarks should be developed as a means of justifying a grade "A" classification over a grade "C" classification. The Department has reworked this indicator as a pass/fail component.

One comment stated that the concept of measuring "Budget Controls" cost allocation systems on "actual time distribution records" is questionable. The comment suggested a better measurement would be "in accordance with budget". The Department agrees and has eliminated it from the component.

This indicator has a scoring weight of two.

Rents Uncollected (Indicator #3 in the Proposed Rule)

Thirty comments stated that a more precise definition of this indicator is required, and raised several specific questions. The Department defines "rents uncollected" as unpaid dwelling rent for residents in possession. Rents that were previously reported uncollected and subsequently received through collection procedures are included in the calculation of this indicator.

Handbook guidance will be issued that will include a sample work sheet for calculating the average percentage of rents uncollected. The indicator compares the rents uncollected at the end of the reporting period to the sum of the current dwelling rent charged for the reporting period plus the total amount of rents uncollected as of the end of the prior reporting period. The term, "current dwelling rent charged" refers to the resident dwelling rent charges reflected in the monthly rent roll(s), and excludes retroactive rent charges (including those identified through the Tenant Integrity Program), maintenance charges, excess utility charges, late charges, and any other charges not specifically identified as dwelling rent.

The formula for the calculation of average percentage of rents uncollected is as follows:

(1) Balance of rents uncollected at the end of the prior fiscal year; plus

(2) Current dwelling rents charged to residents in the current fiscal year; equals

(3) Total dwelling rent to be collected; minus

(4) Collections received for dwelling rent reported in (3); minus

(5) Dwelling rent charges reported in (3) written off as collection losses during the current fiscal year; equals

(6) Rents uncollected for the current fiscal year; divided by total dwelling rent charges to be collected in the current fiscal year as reported in (3); equals

(7) The percentage of rents uncollected.

An example showing the calculation of annual average percentage of rents uncollected is as follows:

(1) Balance of rents uncollected at the end of FY 90	$2,000
(2) Current dwelling rents charged for FY 91	+100,000
(3) Total dwelling rent to be collected in FY 91	102,000
(4) Collections received for dwelling rent reported in line (3)	99,000
(5) Dwelling rent charges reported in line (3) written off as collection losses during FY 91	+1,600
(6) Line (4) plus line (5)	100,600
(7) Rents uncollected for FY 91 (line (3) minus line (6)) divided by total dwelling rent charges to be collected in FY 91 (line (7)) as reported in (3) ($1,400 divided by $102,000) equals	$1,400
(8) The percentage of rents uncollected	1%

Three comments stated that a snapshot picture of rents uncollected could lead to the reporting of what may be distorted information. The Department disagrees, because this indicator does not measure a snapshot picture. This indicator has been revised to specify balance of rents uncollected as a percentage of total rents to be collected.

Three comments stated that this indicator is too stringent and does not sufficiently distinguish between grades, and one comment suggested using the percentages as stated in the proposed rule for PHAs with 1,249 units or less. The Department disagrees that this indicator is too stringent since rent collected is a major portion of PHA income. The Department disagrees that the indicator does not sufficiently distinguish between grades and has determined to average the percentages as stated in the proposed rule for PHAs with greater than 1,250 units and PHAs with 1,249 units or less and has determined to use the same standard of PHAs of all sizes.

Two comments pointed out a typographical error in grade "F". That error has been corrected.

Two comments stated that this indicator should be given less weight and one comment agreed with the weight for this indicator. The Department disagrees with the statement that this indicator should be given less weight. The Department considers rents uncollected as one of four major areas of management performance, and has weighted this indicator x3 to reflect its importance in management performance.

One comment stated that this indicator did not take into account resident fraud which oftentimes results in residents vacating the property as soon as a court awarded judgement or settlement is reached, or legal fees related to the eviction process assessed. The Department considers that those types of situations would be included in tenants accounts receivable for tenants not in possession, and not rents uncollected.

One comment stated that small PHAs are badly penalized using percentages because one resident with a large balance tied up in court or bankruptcy proceedings could skew the percentage, and changes in local economic conditions could change rent collection patterns. The Department agrees with these statements. If a PHA has unusual or special circumstances, the issue should be raised with the Field Office, as stated earlier in this preamble.

One comment stated that this indicator should not be included in the PHMAP assessment when an application has been submitted to HUD for demolition or homeownership. The Department disagrees because applications may be returned for additional information or documentation, and circumstances beyond a PHA's control, such as litigation, may delay the approval process, or the application may not be approved.

A PHA shall certify to this indicator within 90 calendar days after the beginning of its fiscal year, as of the end of its immediate past fiscal year. Documentation verifying this indicator shall be maintained by the PHA for HUD post-review. This indicator has a scoring weight of three.

Energy Consumption (Indicator #4 in the Proposed Rule)

The heating degree days (HDD) variance includes appropriate adjustments to reflect different Regions but does not reflect different unit sizes. One comment stated that it would be helpful if the regulations could contain an adjustment for the different unit sizes. To an extent, this indicator already reflects a PHA's unit size and Region because it is not an absolute standard, but relative to a PHA's past performance. However, the Department is still determining how best to include adjustments to reflect different unit sizes.

Fourteen comments raised issues which address unusual or special circumstances, as follows: (1) The installation of equipment, such as a computer, which may increase annual utility consumption by more than 5%; (2) negotiated or court ordered increases in utility allowances because of threatened or pending litigation; (3) units added to a PHA's inventory; (4) the installation of exterior lighting; (5) the initiation of new programs that use a community building that was not previously used; (6) increases in social services to residents; (7) substantial increases or reductions in overall energy usage; and (8) a change in the type of utilities provided. The Department agrees that there may be unusual circumstances that would increase a PHA's utility consumption more than 5%. A PHA may raise such issues with the Field Office, as stated earlier in this preamble.

Ten comments recommended that there be some increase allowed in energy consumption while still obtaining a grade "A", or suggested other percentages for grade "A". The Department disagrees because the acceptable performance for energy consumption utilized in the Field Office Monitoring of Public Housing Agencies (PHAs) Handbook 7460.7, as revised, is a maximum of 5% increase in utility consumption. Therefore, grade "C" for this indicator will be a maximum increase of 5%.

Nine comments stated that this indicator should include adjustments for cooling degree days (CDD) and energy costs incurred for the use of air conditioners. The Department agrees, and an adjustment for CDD will be included in this indicator once the CDD is included in the Performance Funding System regulations in accordance with section 508 of NAHA.

Eight comments questioned what this indicator measures and how this indicator handles the addition of office space, maintenance buildings, etc. The Department's Performance Funding System (PFS) forms are based on utility consumption which includes office space, maintenance buildings, etc., and not only the buildings occupied by residents. The Department believes that a PHA should be able to establish controls to conserve energy over space under its control, such as office space or maintenance buildings. The only consumption for developments with resident-supplied utilities to be added by the PHA will be for vacant units.

Four comments suggested that this indicator be revised to recognize energy consumption measures that a PHA has taken; the three year average ending with the most recently completed fiscal year could be compared to the average of the three years prior to that. The

Department believes that the three-year rolling base consumption average provides an incentive for new energy conservation and does not penalize previous efforts.

Three comments pointed out typographical errors involving grades "C" and "F". Those errors have been corrected.

Two comments suggested that the utility allowance portion of indicator #11, utilities, be consolidated into this indicator. The Department has determined that the review and revision of utility allowances and surcharges for excess consumption are compliance issues as required in 24 CFR Parts 965.473 and 965.477, and therefore, should not be included in a performance assessment.

Two comments suggested that the Department may wish to reserve this indicator until a means can be developed to compare consumption between different PHAs rather than between a single PHA's operating years, and consideration for the types of units under management should be given. The Department disagrees because the statute specifically calls for appropriate adjustments to reflect different Regions and unit sizes. However, all of the indicators will continue to be refined and revised as circumstances warrant.

Two comments suggested that this indicator be given more weight. The Department believes that this indicator may be weighted higher once a means has been developed to reflect different unit sizes. Until such a means has been developed, this indicator will have a scoring weight of one.

One comment stated that this indicator as worded in the proposed rule stated, "Annual utility consumption". This wording would include all utilities, rather than energy consumption, which is the wording in the statute. The Department has revised this indicator to include the statutory language.

One comment stated that this indicator should include a way to deduct the amount charged to residents for excess utilities. The Department believes the likelihood that charges for excess utilities would be sufficient to alter a PHA's score is remote. In the event of such an occurrence, the Department will give due consideration.

One comment stated that under this indicator, some PHAs will benefit if they have not conserved energy in the past, but a PHA that has historically reduced energy cost will suffer. The Department believes that a PHA which has implemented energy improvements in the past will be able to control increases and achieve an "A" rating. Such PHAs are not penalized by their past positive initiative.

One comment stated that it does not seem proper to judge the PHA with all resident-furnished utilities with the PHA with project-furnished utilities. The Department believes the control of utility consumption, whether resident-furnished or project-furnished, is a management function. There is no inequity between the two classes in that they are both being measured around their own performance.

One comment stated that the HDD adjustment in the Performance Funding System is badly flawed in that it is applied only to the one fuel source that provides the majority of the space heating and there is inadequate information provided on the Performance Funding System forms to make an informed analysis of "reasonable" utility consumption. The Department views the application of the HDD factor to meters with combined uses as a reasonable trade-off between administrative complexity and a reasonable approximation.

One comment stated that there doesn't seem to be any incentive for a PHA to reduce energy consumption when a grade of "A" can be had for maintaining the status quo. The Department disagrees. While the Department wants to encourage reductions in energy consumption, it does not believe this is always possible. On the other hand, no increase is possible even for those PHAs which have already engaged in significant conservation efforts. PHAs with inefficient and wasteful energy practices are seldom able to maintain the status quo.

This indicator has a scoring weight of one.

Unit Turnaround (Indicator #5 in the Proposed Rule)

Fourteen comments felt that certain types of units should be exempted from the calculation of vacancy rate and turnaround time: (1) All units vacant and awaiting modernization; (2) units in an approved demolition/disposition program; (3) those that are ready but unmarketable; (4) units held vacant because they contain abandoned property, and (5) units damaged by fires, floods, extensively vandalized units, etc. The Department agrees that certain types of units should be exempted from the calculation of this indicator, as follows: (1) units in on-schedule CIAP (only) programs; (2) units in an approved demolition or disposition program; (3) units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law; and (4) units that have sustained casualty damage, but only to the extent required to permit adjustment of the insurance claim.

Nine comments felt HUD should take into consideration several factors impacting turnaround: (1) Problems with elderly waiting lists and resident screening committees, both of which constitute additional and sometimes lengthy steps; (2) units that need comprehensive modernization or major reconstruction as documented in the Comprehensive Plan for Modernization which require a longer routine unit turnover time; (3) the extent to which modernization funding has been requested and approved or denied; (4) soft housing markets; (5) numbers on waiting lists and numbers of bedrooms required; (6) older units needing replacement parts which are harder to get; (7) units that will need to be tested for lead-based paint and subsequently abated; and (8) PHAs which experience delays in leasing units for the elderly due to the construction of FmHA projects or section 202 projects by HUD and non-profit sponsors. The Department has agreed to exempt the units in turnaround time that are listed as exempt in the preceding paragraph. The Department is coordinating with FmHA to attempt to limit competition among Federal housing programs. In the event a truly unusual or special circumstance exists, the issue should be raised with the Field Office, as discussed earlier in this preamble.

Eight comments questioned the grade "A" classification: Three comments indicated that 20 working days would be more logical to use than 20 calendar days for the grade "A" classification; three comments felt that an authority that can turnaround a unit in 30 calendar days should be graded "A" (using 30 calendar days to offset the non-working days for maintenance and management, holidays and weekends, and taking into consideration the fact that often applicants must give their landlords a 30-day notice before they can move into a unit); one comment felt grade "A" should be changed to state "is less than or equal to 30 calendar days," for a smaller housing agency, and "is less than or equal to 35 calendar days," for the large housing agency; and one comment felt the standards for vacant unit turnaround time are unrealistic—the standard needs to be less stringent to recognize these factors. The intent of each indicator is to assure this regardless of a low vacancy rate. The Department views grade "A" as an

exceptional rating. A PHA may still achieve a satisfactory rate with the 30 calendar day turnaround suggested by the comment. A grade "A" rating reflects a PHA that plans move-ins in advance and notifies the potential residents.

Four comments commented on the weight and importance of this indicator. Three comments felt this indicator should be given less weight and questioned its importance to justify a separate category. If an authority had a vacancy rate of 2%, why should it be penalized if it has a high turnaround time. One comment recommends this indicator be weighted no more than three; if a PHA is meeting the PHMAP vacancy rate targets, turnaround time is not particularly relevant. The comment feels the indicator is useful, however, if a PHA fails the vacancy rate indicator. The Department views this indicator as important since a PHA can maintain a low vacancy rate by turning vacant units around in a timely manner; therefore, this indicator will have a scoring weight of two.

Three comments felt the definition which states "average number of calendar days for the PHA maintenance staff to turnaround vacant units and for a new lease to be executed * * *" should be replaced with "average number of calendar days for the vacant unit to be prepared for re-rental and for a new lease to be executed * * *." The Department agrees with this comment and has revised the indicator to reflect such language.

Two comments requested that the following language be added to this indicator: "If the lease is executed before the unit is prepared for re-rental, then the turnaround time ends when the tenant is issued the keys and can take occupancy of the unit." The Department does not agree with this concept. The turnaround cycle should end on the effective date of the lease, not the date of execution, and the unit turnaround indicator in the interim rule reflects this determination. Leases are often executed long before a unit is ready for occupancy, but the tenant doesn't take possession of the unit or begin paying rent on it until the effective date.

Two comments thought this factor could be contradictory as related to indicator #1 concerning vacancy rates. The Department has determined that all of the exclusions for this indicator are also allowable exclusions for the vacancy indicator, with CIAP being incorporated into the actual vacancy indicator itself.

One comment thought the indicator needed to be clarified as to the period of time over which performance is to be measured—asking if this is a snapshot reflecting turnaround time for units occupied in the month prior to the certification or if it is an annual average for unit turnaround. Another comment thought one or two units could skew this average significantly and felt the median would be a better indicator of performance and would ignore extremes. The Department will allow for performance to be measured on the basis of the average during a PHA's immediate past fiscal year and has revised this indicator accordingly. Information from a PHA's immediate past fiscal year will be assessed. This average compensates for the extremes identified by the comment and is more commonly used as a statistic.

One comment wanted to know how "vacant unit" is defined? The Department defines a vacant unit as a unit that is not under lease to a family that was a low-income family at the time of admission and has not been approved for temporary or long-term nondwelling use.

One comment wanted to know how "difficult to rent units" (i.e., handicapped accessible units) are to be treated. The answer is, no differently than any other unit. The Department allows a PHA to rent handicapped accessible units to non-handicapped applicants if there are no handicapped applicants on the waiting list.

One comment wanted to know how those situations in which there is a definite lack of demand for public housing (due to oversupply) are to be addressed. The Department believes that unilateral exceptions for "difficult to rent units" and dwelling units where there is no demand would provide no incentive for PHAs to ensure that the units remain occupied. In the event a truly unusual or special circumstance exists, the issue should be raised with the Field Office, as discussed earlier in this preamble.

One comment felt this indicator should be modified to reflect higher average turnaround times in scattered site dispersed units. Turnaround times are higher in those units due to travel time to and from the units and the time associated with ordering replacement parts which are typically not inventoried. PHAs must plan for vacant unit turnaround. While the Department agrees that some additional time is sometimes required in these areas, the standards for 20 calendar days for grade "A" and 30 calendar days for grade "C" should still provide sufficient time for PHAs to accomplish the necessary work in a reasonable period. A PHA with a large amount of scattered site units should be able to plan for the additional travel time required to turnaround those units.

One comment indicated that the proposed termination of the Consolidated Supply Program (CSP) will have a negative effect on PHAs as they attempt to meet the proposed turnaround time indicator. The Department disagrees, and should the CSP be terminated, a PHA may have to adjust its procurement practices to assure that it maintains an adequate inventory to accomplish the unit turnaround in a timely fashion.

One comment felt an arbitrary number of days should not be the rule for measuring turnaround of vacant units. There are many occasions when units with major resident damage ($1,500 or more) are beyond the capabilities and scope of the maintenance rehabilitation crews, and in these cases it is more practical to utilize the small contract concept which takes more time. The Department disagrees. PHAs should be conducting annual inspections and doing routine maintenance so that such circumstances are the exception rather than the rule. Since this indicator uses an annual average, exceptions should not distort a PHA's performance. In addition, the small purchase procedures is a viable option for PHAs to accomplish repairs costing less than $25,000 (or a lesser amount as specified by State law). Under this method, PHAs solicit quotes from an adequate number (no less than three) of sources and can award the contract to the offeror with the lowest quote. This method is significantly less time consuming than the normal sealed bid procedure where formal advertising is involved. Also, it is noted that contractors can be procured for utilization on an as-needed basis, allowing them to begin work immediately.

One comment wanted to know how HUD considers the material differences between housing authorities as to the number of family and elderly units. The Department is not considering material differences between PHAs as to the number of family and elderly units in the initial year of PHMAP implementation, as discussed earlier in this preamble. PHAs should operate maintenance management systems that facilitate timely unit turnaround irrespective of household type.

One comment suggested that rather than one measurement for unit turnaround, there should be a dual tracking system—those units that require minor repairs to ready them for re-occupancy should be measured and graded by the proposed method; units that require substantial repairs or

modernization should be separated out and tracked in tandem by a second system designed to more accurately reflect the longer amount of time necessary to turnaround these units. The Department is not considering a dual tracking system in the initial year of PHMAP implementation. However, in the initial year of PHMAP implementation, the Regional Administrator shall consider whether or not to designate a PHA as troubled or mod-troubled or as a high performer in accordance with § 901.125. If a PHA's score falls within ten points *below* the point value established for troubled, mod-troubled or high performer designation, the Regional Administrator shall take into consideration the extent to which a PHA's performance difficulties are attributable to the physical condition of its development(s) and/or the nature of neighborhood environment. If the Regional Administrator has sufficient reason to determine that a PHA's performance difficulties are attributable to physical condition and/or neighborhood environment rather than to poor management practices, the Regional Administrator may withhold troubled or mod-troubled designation or award high performer designation.

One comment stated that vacancies are important, but overall percentages should be given a higher weight than unit turnaround time. At the very least, there should be some allowance for rental offers made after maintenance has completed the unit and it is ready to rent. There should also be an allowance for lease up time for new developments and large blocks of post-modernization units. The Department agrees that the vacancies should be given a higher weight than unit turnaround; the weight for indicator #1, vacancies, is three, and the weight for this indicator, unit turnaround, is two. With regard to the allowances, the Department disagrees and discussed such allowances under indicator #1, vacancies. A PHA should have management systems in place to facilitate time for unit turnaround and rent up. Consequently, there should not be a need for extra allowances for new developments and large blocks of post-modernization units.

A PHA shall certify to this indicator within 90 calendar days after the beginning of its fiscal year, as of the end of its immediate past fiscal year. Documentation verifying this indicator shall be maintained by the PHA for HUD post-review. This indicator has a scoring weight of two.

Outstanding Work Orders (Indicator #6 in the Proposed Rule)

Nine comments questioned the significance of counting work orders only at the end of the fiscal year; the evaluation should be made on a yearly average basis as opposed to only a year-end basis. The Department believes that outstanding work orders are most appropriately measured on a year-end basis, but as a percent of the total year's work orders.

Five comments stated that demand work orders should not be given preference over those generated as a result of a PHA's annual inspection or a deficiency noted by a PHA employee, and resident initiated work orders should not be the sole measurement. The Department agrees and has revised this indicator to omit the reference to demand (resident initiated) work orders. Instead, all work orders are treated alike.

Four comments stated that it is imperative that the provision for "cyclical work orders" remain in this indicator The Department agrees and does not intend to penalize PHAs for an ongoing preventive maintenance program. In fact, it is the Department's intention to reward PHAs with effective preventive maintenance programs. The term "cyclical work orders" refers to work orders which are performed on a seasonal basis, or in accordance with warranty requirements, or as part of a preventive maintenance program. For example, furnaces may be checked, cleaned and repaired during the late summer in preparation for winter usage, or vehicles may be serviced on a predetermined basis to keep warranties in effect.

Three comments stated the importance of ensuring that the information required to report on this indicator be available for all PHAs. The Department agrees, and will include a sample work sheet as handbook guidance.

Three comments questioned whether there is an adjustment planned for work orders of low priority or for work orders waiting on parts. The Department has not planned for an adjustment for work orders of low priority because of lack of consensus and difficulty in determining "low priority." Special consideration is not given for work orders waiting on parts because this is not a normally recurring or usual occurrence that would have a substantial impact on the score of this indicator. This indicator only excludes cyclical work orders from consideration in calculating outstanding work orders. A PHA should have most replacement parts in its inventory, and since this indicator is assessing the annual average number of non-emergency work orders outstanding during a PHA's immediate past fiscal year, a wait for parts should not materially impact on this indicator.

Two comments stated that there must be a clear line on what is classified as an emergency. The Department defines emergency as physical work items that pose an immediate threat to the life, health and safety of residents or that are related to fire safety.

Two comments stated that the qualification for receiving a grade "A" are unclear, as well as the phrase, "beyond 10 calendar days". The Department has revised this indicator to reflect clearer language; the phrase, "beyond 10 calendar days" has been omitted.

Two comments stated that PHAs should not be penalized for incomplete work orders in situations where the delay is due to circumstances beyond the control of the PHA. The Department agrees and has revised this indicator to reflect the annual average number of non-emergency work orders outstanding during a PHA's immediate past fiscal year.

One comment stated that HUD should consider the effect of the type of units managed by the PHA on work orders. The Department believes that since this indicator is assessing the annual average number of non-emergency work orders outstanding at the end of the PHA's fiscal year, the type of unit should not be taken into consideration during the first year of program implementation.

One comment stated that if an emergency cannot be corrected within 24 hours, then the residents should be relocated from the unit in order to remove them from exposure. The Department agrees that in some cases, the relocation of residents may be appropriate. In such a circumstance, the relocation of residents could constitute the abatement of the emergency.

One comment stated that small PHAs with small staffs and scattered sites may not be able to meet the same standard as single location PHAs. As the Department stated earlier in this preamble, all indicators will apply equally to all PHAs. Income and expenses are directly proportional to the size of the agency, and adequate funding is available to meet this indicator.

One comment stated that the need for CIAP funds increases the likelihood of outstanding work orders. As the Department stated earlier in this preamble, in the initial year of PHMAP implementation, the Regional

Administrator shall consider whether or not to designate a PHA as troubled or mod-troubled or as a high performer in accordance with § 901.125. If a PHA's score falls within ten points *below* the point value established for troubled, mod-troubled or high performance designation, the Regional Administrator shall take into consideration the extent to which a PHA's performance difficulties are attributable to the physical condition of its development(s) and/or the nature of neighborhood environment. If the Regional Administrator has sufficient reason to determine that a PHA's performance difficulties are attributable to physical condition and/or neighborhood environment rather than to poor management practices, the Regional Administrator may withhold troubled or mod-troubled designation or award high performer designation.

One comment stated that consideration should be given where PHAs rank work orders by the degree of urgency. While the Department agrees with setting priorities and recognizes the importance of taking care of emergency situations first, it will not look at that detailed a level of management. Instead, the Department is looking at overall performance.

One comment stated that the weighting of this indicator should be higher since it directly reflects the maintenance of the property and responsiveness of maintenance operations systems. The Department agrees with the importance of this indicator, but feels that a scoring weight of one is appropriate at this time due to the fact that many PHAs do not have systems in place to track adequately outstanding work orders. The weight of this indicator may be increased in the future as appropriate revisions are made to PHMAP.

The term "demonstrates progress" used in the indicator means that the time required to complete work orders has been reduced during the most recent three year period.

A PHA shall certify to this indicator within 90 calendar days after the beginning of its fiscal year, as of the end of its immediate past fiscal year. Documentation verifying this indicator shall be maintained by the PHA for HUD post-review. This indicator has a scoring weight of one.

Annual Inspection and Condition of Units and Systems (Indicators #7 (Units) and #9a (Systems) in the Proposed Rule)

Comments regarding the inspection and condition of *units* are as follows: Three comments suggested that this standard needs two tiers of grading to take into account the difference in conditions at developments that are relatively new or have been comprehensively modernized versus developments that are identified as needing comprehensive modernization or major reconstruction in the Comprehensive Plan for Modernization. This comment also proposed that this indicator be expanded to include the inspection and correction of deficiencies in both units and structures and systems (standard 9(a)). The comment further suggested that the list of systems items identified in the proposed rule for inspection and correction be more specific. The comment recommended that at a minimum this standard should be examining the condition of the structure, including foundations, walls, floors and roof, plus the plumbing, heating, mechanical, electrical, ventilation, utility distribution and security and life safety systems, as well as any elevators; in addition, all non-dwelling spaces should be inspected (this would include maintenance shops and warehouses, community facilities, offices, etc.). While the interim rule does not adopt this specific approach, the requirement of the 92 App. Act, implemented in the interim rule, to reflect the results of physical condition or management difficulty addresses some of the concerns expressed in this comment. As the Department stated earlier in this preamble, in the initial year of PHMAP implementation, the Regional Administrator shall consider whether or not to designate a PHA as troubled or mod-troubled or as a high performer in accordance with § 901.125. If a PHA's score falls within ten points *below* the point value established for troubled, mod-troubled or high performer designation, the Regional Administrator shall take into consideration the differences in the difficulty of managing developments that result from their physical condition and/or the nature of neighborhood environment. If the Regional Administrator determines that a PHA's performance difficulties are attributable to physical condition and/or neighborhood environment rather than to poor management practices, the Regional Administrator may withhold troubled or mod-troubled designation or award high performer designation. Handbook guidance for this interim rule will address specific systems that a PHA should be examining on an annual basis.

Three comments had concerns regarding the use of Housing Quality Standards (HQS) for public housing. One comment felt that the standard that PHAs should use for inspection and habitability should be the local housing and sanitation codes. The comment states that PHAs are already inspecting and maintaining their units according to these codes, and, unless HUD makes HQS a requirement for public housing, this is the actual minimum legal standard for habitability. One comment feels it is unfair for HUD suddenly to impose compliance with a non-required code as a performance standard. One comment suggests that either HUD change this requirement or delay the implementation of this standard for at least a year to allow PHAs to use the HQS inspection form. The Department disagrees. The Department requires PHAs to comply with local codes. The HQS permits variances due to local code requirements. The Department does not believe that the HQS imposes an unreasonable or unduly difficult standard to meet. Consequently, a delay in implementation should not be required. Additionally, the indicator refers to "HQS or its equivalent." Handbook guidance will be issued for this interim rule that will address this issue.

Two comments questioned why HQS has become an operative standard for public housing. (Public housing units do not receive the same level of subsidy being provided to the Section 8 private owners.) The Department believes that all public housing units should be maintained as decent, safe and sanitary. The use of HQS, which is an occupancy code, is a proxy for determining units that are providing acceptable living environments for their residents. In the absence of such standards, the Department has chosen to use the HQS national standard established for a similar Federal housing program, i.e., the Section 8 Program. The Department believes that these are reasonable requirements to assure decent, safe and sanitary housing required under the United States Housing Act of 1937.

One comment stated that while conformity with HQS standards is a reasonable measurement, no reference should be made to utilizing the HQS inspection form if the HQS standard is utilized. The design and use of a form is best determined locally and does not lend itself to the force fitting of the HQS form to this effort. The Department disagrees and the use of HQS review form will be a Handbook requirement for a PHA if the agency uses HQS for the inspection of its public housing units. However, local variations are acceptable as long as the minimum standard is met.

One comment stated that work orders generated as a result of HQS inspections should exclude work orders for painting because of the lead based paint (LBP) abatement requirements. The Department disagrees. There is no reason to delay required painting in units with defective paint surfaces. Instead, the lead based paint should be abated. In addition, the Department is developing interim LBP containment measures which can be used until abatement is completed.

One comment stated that the more detailed a PHA is in conducting its inspections, the more difficult it will be for that PHA is complete the resulting work items and to be less than thorough in its inspections, which may not be in the best interest of improving housing quality. The better the PHA does its inspections, the worse its chances of meeting the PHMAP standards. The Department appreciates this concern. However, the Department expects all PHAs to do proper and thorough inspections.

One comment stated that this indicator, coupled with Outstanding Work Orders, Annual Inspection Systems, and Work Order Response Time will have the effect of stifling or eliminating a PHA's ability to manage its maintenance workload by having it respond to arbitrary time frames instead of following the customary maintenance priorities that relate time frames to the actual urgency of the work needed. The Department has revised the language of this indicator to provide a specific standard or deferring to a PHA's maintenance plan for specific items.

On comment suggested that 30 days be defined as 30 calendar days after the issuance of the work order. The Department disagrees; the calculation begins on the day after the inspection is performed.

One comment stated this standard needs to be modified to take into account the difference in conditions at developments. Units that are relatively new or have comprehensively modernized should be viewed differently than developments that are identified as needing comprehensive modernization or major reconstruction in the Comprehensive Plan for Modernization. As the Department stated earlier in this preamble, in the initial year of PHMAP implementation, the Regional Administrator shall consider whether or not to designate a PHA as troubled or as a high performer in accordance with § 901.125. If a PHA's score fails within ten points below the point value established for troubled or high performer designation, the Regional Administrator shall take into consideration the differences in the difficulty of managing developments that result from their physical condition and/or the nature of neighborhood environment. If the Regional Administrator determines that a PHA's performance difficulties are attributable to physical condition and/or neighborhood environment rather than to poor management practices, the Regional Administrator may withhold troubled or mod-troubled designation or award high performer designation.

One comment indicated a truer measure of a PHA's performance would include actions to correct those units not meeting HQS rather than the length of time to correct. The Department recognizes this concern and has included language in this indicator to provide for scoring either according to a specific time frame or according to a PHA's maintenance plan for specific items.

One comment stated the proposed standard is heavily "loaded" with a reasonable standard for grade "A" but with a relatively minor drop in grade. A grade "D" PHA that is actually inspecting all of its units and correcting all deficiencies within 60 calendar days may be doing a fair job, but receives little better score than the grade "F" PHA which has allowed its units to go "straight to blazes". HUD should also consider that a PHA with an approved modernization program be allowed to forego non-emergency work in units that are going to receive major rehabilitation. The Department appreciates this concern but believes that the indicator in this rule represents a fair differentiation. In addition, the grade "D" PHA used in the comment's example could be required, and the grade "F" PHA would be required, to develop an Improvement Plan to address all deficiencies to achieve a grade "C" level of performance.

One comment suggested that the following types of vacant units need not be inspected for this indicator: (1) Units in an approved modernization program; (2) units not available for occupancy awaiting modernization; and (3) units in an approved demolition/disposition program. The Department has not exempted units not available for occupancy awaiting modernization because units should be occupied until the modernization begins, and has included exemptions for units in on-schedule CIAP and units in approved demolition or disposition.

One comment stated that if a specific part is required but unavailable and if work requires bidding or Wage Rates to be ordered, the work cannot be completed in time to permit receipt of a good grade. The Department disagrees that the unavailability of a spare part merits consideration, although it may under exceptional circumstances, but has included language referencing a specific standard or a PHA's maintenance plan for completing a specific item. This includes the time necessary for bidding or wage rates.

One comment questioned how work orders which are generated from inspections that are not cyclical are to be addressed. As noted above, the Department has included language which permits corrections according to a PHA's maintenance plan for specific items that are not generated from cyclical inspections.

One comment stated that while emergency conditions must be repaired immediately, other non-emergency conditions should be dealt with taking into account their urgency and the remaining workload. Accordingly, more flexibility should be incorporated into this factor and the time frame should be expanded. The Department has included language which permits the PHA to correct deficiencies based on a PHA's maintenance plan for specific deficiencies.

One comment suggested adding "all non-dwelling space" to items requiring annual inspections. The Department intended for all non-dwelling space to be inspected, as indicated in the proposed rule. Such language will be included in handbook guidance that will be issued for this interim rule. The Department expects that all areas will be inspected annually.

One comment stated the measure should include provisions for differentiating for some types of work. The Department does differentiate between units and major systems. Further, the Department recognized the need for this differentiation and included language permitting the use of the PHA's maintenance plan for completing specific items.

One comment stated this item is a poor measure of how well PHAs manage maintenance activities. It provides an undue emphasis on quickly completing non-emergency work orders, rather than encouraging PHAs to concentrate on emergency work, vacant unit preparation, preventive and routine maintenance—precisely the activities that will ensure safety and long term viability of housing stock. The Department recognizes the importance of effective maintenance management. This indicator has been revised to rate four components separately. The Department does believe that both emergency and non-emergency work

must be completed in a timely fashion and has retained similar completion standards for each.

Comments regarding the inspection and condition of systems are as follows: Three comments stated small PHAs cannot do major systems repairs and have to contract out this work. Also, these are the type of repairs that usually require CIAP funding, and this factor adds to the length of time for repairs to be made. The Department believes that both small and large PHAs can have problems in doing major systems. The Department has included language permitting corrections according to a PHA's maintenance plan for the specific items. Where items have deteriorated to a point where they are eligible for CIAP, they are no longer considered to be routine maintenance. To the extent repairs require CIAP funding, they should be tracked separately from repairs under this indicator.

Two comments stated the number of days permitted in the inspection of systems standard in which to identify required maintenance and take action should be 30 days after the inspection, based on the availability or non-availability of parts and getting in touch with outside contractors. The comments also requested further clarification to determine what "takes action" means. The Department has included language which permits correction according to a PHA's maintenance plan for specific items. In addition, a definition of "action taken" has been added to the rule which defines the term as the issuance of a work order to correct the problem where systems are involved.

Two comments stated the concept of preventive maintenance inspections is crucial to competent management. The phrase "takes action to correct" in the inspection of systems indicator might be construed to mean that corrective action be completed within the stated time frames. A major system renovation planned as a result of maintenance could require public bidding and a time frame in excess of those mentioned in the indicator. The Department agrees and has included language permitting the correction according to a PHA's maintenance plan for completing the item in lieu of the stated time frame.

One comment stated the rule should clarify that "takes action" in the inspection of systems standard includes beginning the planning and budgeting process, as long as the process is carried through until the work is completed. The Department has included language permitting a PHA to correct deficiencies or defects based on a PHA's maintenance plan for correcting specific items. The Department disagrees that "takes action" should include planning and budgeting and has included a definition of "takes action" resulting from inspection of systems are being the issuance of a work order to correct the problem.

One comment stated the phrase, "takes action to correct identified maintenance deficiencies * * *" should be modified to allow a PHA to take action to stabilize major items needing correction and show proof of budgeting for permanent correction in the coming fiscal year's budget. The Department agrees, and further recognize that a PHA may not have sufficient funds to permanently correct the item by the coming fiscal year.

One comment requested a technical correction to the inspection of systems standard which should say "The PHA annually inspects all major systems * * * to identify required maintenance and takes action to correct identified maintenance deficiencies * * *" instead of "or does not take action." The Department agrees and has included such language in the revised indicator.

One comment stated HUD should employ the same grading procedures and allow the same number of calendar days to inspect major systems as it does with inspecting individual units. The Department agrees; a PHA must annually inspect all units and all systems, and the same number of calendar days has been allocated for the repair of units and the repair of systems.

One comment questioned who pays for additions to the annual operating budget needed to deal with corrections for deficiencies during annual systems inspections. The comment further questioned who the poor performer is, the PHA for discovering the need for corrections and not having the funds to make the corrections, or HUD for failing to provide sufficient funds to the PHA to maintain properly its public housing stock. The Department believes that PHAs are responsible for maintaining their units from funds available for such purposes. A PHA can repair such system defects by budgeting for extraordinary maintenance or capital improvements, or addressing such deficiencies in its CIAP/Comprehensive Grants Program.

One comment stated that systems to be included in the inspection should be better defined. The Department will issue handbook guidance for this interim rule that will provide further details, as stated earlier in this preamble.

A PHA shall certify to this indicator within 90 calendar days after the beginning of its fiscal year, as of the end of its immediate past fiscal year. Documentation verifying this indicator shall be maintained by the PHA for HUD post-review. The Department considers this indicator to be one of four major areas of PHA accountability, and accordingly, this indicator shall have a scoring weight of three.

Tenants Accounts Receivable (TARs) (Indicator #13c in the Proposed Rule)

Seventeen comments stated that TARs alone is not a true indicator of management. The Department disagrees and believes that a PHA's ability to collect money due to it is indeed a true indicator of management. Any money owed to a PHA that is not collected will eventually be written off by the PHA after the resident vacates the unit. The consideration of TARs in the operating reserve indicator presents a more accurate picture of the available resources.

Fourteen comments stated that a PHA which has all resident-paid utilities has an unfair advantage over a PHA which has all PHA-paid utilities. The Department believes that a PHA should make every effort to collect monies owed to it, whether the amount owed is for excess utilities or for maintenance charges or any other reason.

Seven comments stated that in certain States, PHAs are subject to lengthy court procedures that increase the amount of time required to evict residents and thereby increases TARs; in these situations, the amount of monies owed to the PHA should not be included in TARs. The Department disagrees that the amount of monies owed to a PHA in these situations should not be included in TARs. However, Handbook guidance will be provided to clarify that the PHA may consider in the category of "formal repayment agreements" amounts that must be charged to a tenant in occupancy for which collection cannot be accepted for legal reasons.

Six comments stated that this indicator should be deleted from the PHMAP assessment since indicator #3 addresses rents collected, and assessing TARs becomes either redundant or misleading. The Department disagrees because indicator #3 pertains only to dwelling rent and dwelling rent is only one component of TARs. This indicator takes into account all of the monies owed to a PHA.

Five comments stated that since a PHA's fiscal year will have an impact on this indicator, an annual average of TARs should be assessed rather than a snapshot picture. The Department agrees, and Field Offices will average the semi-annual and annual TARs report when completing the PHMAP assessment. In order for an actual

annual average of TARs to be used. PHAs would have to report on TARs on a monthly basis. The Department will not impose the additional reporting burden that would be necessary to compute an actual annual average. PHA's, however, will be given an option of electing to use either annual TARs report data, or an average of both the semi-annual and annual TARs report data for the PHMAP assessment.

Three comments stated that the Department may be proposing unrealistic TARs standards that will induce PHAs to create unsound accounting procedures. The Department disagrees because a PHA would only fail this indicator if TARs are greater than 10%, which is the current financial management standard for TARs.

One comment stated that no consideration is given to retroactive rent charges that inflate TARs. The Department disagrees since retroactive rent charges are commonly covered by formal up-to-date repayment agreements that are excluded from this indicator. The term "formal up-to-date repayment agreement" means a signed agreement between a PHA and a resident stating the terms and amounts that a resident is repaying money owed to a PHA (which may include back rent, maintenance charges, damage charges, excess utilities, or any other charges), and the resident is in compliance and current with the terms of the repayment agreement; i.e., the resident is remitting a specified amount on specific dates with no lapse in remittance.

One comment stated that the current procedures for TARs should continue to be used. The Department agrees and has retained this indicator in the PHMAP assessment.

This indicator has a scoring weight of one.

Operating Reserves (Indicator #13b in the Proposed Rule)

Forty-one comments stated that the operating reserve percentages to attain a grade "A" or "B" were too high; the overall range preferred was 40% for grade "A", to below 20% as the minimum. The Department agrees, and this indicator has been revised to reflect the comments.

Sixteen comments stated that PHAs that have high AELs have an advantage with this reserve level indicator. The Department agrees that this may be possible, and is in the process of preparing a system of AEL appeals that will provide adjustments for PHAs that claim their initial AEL was too low.

Fourteen comments stated that 40% reserves should be established as a threshold, and above that level, a PHA should be allowed to make management decisions on how best to use reserves and serve residents. The Department disagrees and does not wish to encourage the support of routine expenditures through the use of operating reserves.

Thirteen comments stated that in private business, the rule of thumb is having enough funds for two months operations. The Department believes that although this may be true in the private sector, PHAs have different operating needs from most private landlords and cannot be rated by the same requirements.

Five comments stated that the proration of operating subsidy by the Department lowers the PHA's operating reserve level. The Department will issue handbook guidance for this rule that will include a sample work sheet for calculating operating reserves. The sample work sheet will take into account proration and year end adjustments.

Three comments pointed out typographical errors in grades "A" and "F". Those errors have been corrected.

Two comments stated that PHAs may have emergencies or disasters that deplete reserves. The Department agrees. If the PHA receives Comp Grant funding, it may reprogram funds to address the emergency. If the PHA is not a Comp Grant agency, it may submit a request for emergency modernization funding. The Field Office will consider the nature of expenditures when the reserve level is reduced below 40% and depleted awaiting reimbursement from modernization.

One comment suggested that a PHA should be able to utilize operating reserve to offset the impact of complying with Federal preference rules. The Department disagrees because the Performance Funding System provides additional subsidy to PHAs if the amount charged to residents decreases because of Federal preference rules. The PHA's total operating income and subsidy would not change and would not impact on operating reserves.

One comment stated that the ratio of Section 8 units should be considered since PHAs can supplement public housing operating reserves with Section 8 administrative fees. The Department disagrees. Although PHAs can contribute Section 8 administrative fees towards the operation of public housing through the other income account, it is not a requirement and, therefore, not part of this indicator.

One comment stated that a provision should be made for small PHAs that draw down funds for capital improvements. The Department disagrees. Small PHAs are permitted to use reserves for capital improvements; however, they still must maintain designated levels.

One comment stated that the level of operating reserves a PHA elects to maintain as a minimum should be a local decision. The Department disagrees and believes that a PHA should maintain an acceptable standard of between 20% and 40% of maximum operating reserves.

One comment stated that this indicator is an inadequate management tool. The Department disagrees because a PHA should maintain adequate operating reserves to provide for financial considerations such as cash flow, prepaid inventory, and insurance, and to cover emergencies that may arise that cannot be funded from annual income and subsidy.

One comment stated that there is no necessary relationship between level of reserves and operating a sound, responsive management program. The Department disagrees and believes that maintaining adequate reserves is one of the cornerstones of good financial management.

The term "year end adjustments" in this indicator means the adjustments are usually made after the end of a PHA's fiscal year based upon actual experience during the year and may result in additional operating subsidy eligibility owed to the PHA or a reduction in eligibility and an amount owed to the Department.

This indicator has a scoring weight of one.

Routine Operating Expenses (Indicator #13a in the Proposed Rule)

Five comments criticized this indicator since operating subsidy has not been fully funded in some past years. The Department is cognizant that PHAs would be penalized if this indicator did not take into account the proration of subsidy. The proposed rule stated that operating expenses will be adjusted to avoid penalizing PHAs in years that operating subsidy was funded (prorated) at less than 100%. Handbook guidance will be issued for this rule that will include a sample work sheet for calculating routine operating expenses. The sample work sheet will include adjustments in years where a proration occurred.

Four comments stated that investment income performance should be measured in the indicator. The Performance Funding System has a reward/penalty for investment performance build into the year end adjustment process. The Department

believes that including investment income performance in this indicator would be duplicative.

Four comments stated that the term "continuous positive trend" is too subjective. The Department agrees and has deleted this language from the interim rule.

Three comments stated that this indicator should be incorporated into the independent audit. The Department cannot mandate that additional or specific items be included in a PHA's audit due to the Single Audit Act.

Three comments stated that local contributions should be added to operating income when considering this indicator. The Department disagrees because PHAs report local contributions to the program on the source document (Form HUD–52599, account 3890) being used for this indicator. Therefore, local contributions and the corresponding expenses are already being counted. The Department encourages local contribution of funds toward public housing operations.

Two comments stated that this indicator should be combined with other suggested financial indicators. The Department opposes combining this indicator with procurement, operating reserves or other suggested indicators because this indicator alone measures an important PHA capability. Specifically, a PHA is encouraged by this indicator to maintain a consistent level of routine expenditures, such as administrative overhead, employee benefits, routine maintenance and supplies. However, a PHA is not penalized if funds are needed for capital improvements through extraordinary maintenance, equipment addition/replacement or if a casualty loss or emergency occurs.

Two comments stated that income and expenses should only be evaluated when reserves are below 40%. The Department disagrees. While it is acknowledged that PHAs that have reserves above 40% are viewed as financially healthy, they must still ensure that routine expenses are within the income and subsidy levels provided. These PHAs would not be penalized if they expended funds on non-routine expenditures such as extraordinary maintenance, in which funds are invested in the developments for long term improvements.

Two comments stated that this indicator would prohibit PHAs' spending on initiatives. The Department disagrees. Since there are limited resources, PHAs always have to weigh the benefits of one expense against the other. Implementing an initiative in one area may require initiating efficiencies in other areas.

Two comments stated that it is difficult to pass this indicator over three years given the Federal preference rules The Department disagrees because the Performance Funding System (PFS) provides additional subsidy to PHAs if the amount charged to residents decreases because of Federal preference rules. The PHA's total operating income and subsidy would not change.

Two comments stated that the amount expended by PHAs is a local decision and should not be a measurement. The Department disagrees because although PHAs are autonomous organizations, Federal funds are provided to develop, operate and modernize the buildings, and a PHA's use of the funds is of significant concern to the Department.

One comment state that this indicator should be expanded to include the section 8 program financial performance. The Department agrees and requests suggestions for possible section 8 indicators and incentives under section 8.

One comment stated that this indicator should be expanded to consider what the PHA has done with the funds considering the limited resources. The Department agrees that a PHA's use of funds is important; however, it is not possible at this time to measure the use of funds objectively.

One comment suggested that if residual receipts exits, the PHA should be permitted to spend down the budget for one or two years. The Department will ensure that the work sheet for this indicator will take into account PHAs that have been allowed to retain residual receipts. The Department requires that residual receipts are remitted to the Department with the year end financial statements. Recently, the Department has increased the maximum reserve levels to at least $100,000, significantly reducing the number of small PHAs repaying residual receipts.

One comment suggested to revise this indicator so that operating subsidy is adjusted to reflect adjustments for utilities. The Department will ensure that a large utility adjustment that complicates a PHA's income-expense ratio will be addressed in the work sheet for this indicator.

This indicator has a scoring weight of one.

Resident Initiatives (Indicator #14 in the Proposed Rule)

There were numerous public comments as to why Resident Initiatives, previously called Quality of Life, were included in PHMAP. Several indicated that resident initiatives were not related to property management. Some indicated these initiatives, especially homeownership, were not specified in the law and ACC. Many of these comments felt some resident initiatives were desirable even though they did not necessarily agree that PHMAP should contain these resident initiatives standards. There were other comments that felt that resident initiatives were vital to PHMAP and that the resident standards should receive more weight.

The National Affordable Housing Act of 1990 (NAHA) added self-sufficiency to the mission statement of the U.S. Housing Act of 1937 and included numerous new provisions to implement resident initiatives programs, including the new homeownership program, Homeownership and Opportunity for People Everywhere (HOPE). This is in addition to the numerous other pre-1990 statutory and regulatory authorities for resident initiatives programs, including resident management, drug free public housing, child care and resident employment. Further, the Department believes there is a nexus between good property management and resident initiatives. As discussed in the Joint Declaration on Resident Initiatives, signed by the Council on Large Public Housing Authorities (CLPHA), Public Housing Authorities Directors Association (PHADA), National Association of Housing and Redevelopment Officers (NAHRO), National American Indian Housing Council (NAIHC), National Association of Resident Management Corporations (NARMC) and the Department, resident initiatives are likely to have a positive impact on resident behavior which can help to keep units in decent, safe, and sanitary condition and reduce needs for modernization and maintenance funding.

Since resident initiatives programs are integral to meeting the self-sufficiency requirements of the U.S. Housing Act of 1937 and have been determined to have a positive impact on pubic housing management, the Department will retain resident initiatives in the PHMAP regulation. However, the approach to the resident standard has been modified to reflect public comments as discussed below.

Many comments were concerned that the resident initiatives standards proposed are only for large authorities. Several felt that the standards focused exclusively on written policies and procedures and little on results, such as drug-related crime reduction.

In response to these comments, the Department has consolidated all resident initiatives standards into one measure. Further, the new standard has been written to give PHAs greater flexibility to determine which types of initiatives will be implemented at which developments. The PHAs will be rated by the implementation of resident initiatives and the results achieved, rather than by written resident initiatives policies. Additional measures of successful results will be contained in the program handbook after further discussion with PHAs and PHA associations.

Finally, some comments felt that since the resident initiatives area was recently developed, HUD should consider awarding a higher grade for this indicator. In response to this concern, the Department will give PHAs at least an average (at least a "C") rating for the first year. PHAs performing above this presumptive level will receive a higher rating.

A PHA shall certify to this indicator within 90 calendar days after the beginning of its fiscal year, as of the end of its immediate past fiscal year. Documentation verifying this indicator shall be maintained by the PHA for HUD post-review. This indicator will have a scoring weight of three.

Development (Indicator #16 in the Proposed Rule)

Four comments stated that PHAs should not be judged for delays, some of which are beyond their control and should be given allowances for time paperwork is at HUD, HUD-granted extensions, local opposition, lawsuits, inadequate budgets, etc. The Department agrees, in part, and an appropriate change was made to consider factors beyond the control of the PHA, with the exception of inadequate budgets. A PHA should be able to plan a development program to ensure adequate budgets.

Three comments stated this indicator would be especially vulnerable to subjective judgments and one of the comments suggested that as a potential solution, perhaps HUD could use the term "material findings," to determine the overall quality of physical work. The Department maintains that subjective judgments are unavoidable in most rating systems; there appears to be no real difference between "material findings" and "significant monitoring findings." The Department defines significant finding for development to mean statutory, regulatory or health/safety violations.

Three comments stated that indicator should measure the product, not the process. Quality of design, construction materials, and systems are more important to measure here. The Department disagrees and believes that it is measuring the product. However, the product is more than bricks and mortar. It is also the use of appropriate procurement procedures, the timeliness of actions taken, and the attention paid to fiscal matters. The quality of design, construction materials and systems are approved prior to the commencement of the development. This indicator measures a PHA's ability to ensure such quality through the process of development.

One comment stated that if HUD would choose to go to a "one-step" review process, the 21-month target might be reasonable. Otherwise, HUD's normal review process of the designs, etc., frequently delays this process. The Department has designated the 21-month target as a grade "A" which would apply to exceptional PHAs; the Department does not think that every PHA with a development program in progress will achieve a grade "A". As stated above, HUD delays will not impact on a PHA's score on this indicator.

One comment indicated it is difficult to understand what contract administration would measure that the extremely broad "Quality of Physical Work" did not already assess. The Department maintains that there is a very significant difference between "quality of physical work" and how effectively a PHA administers development contracts, e.g., the award of contracts competitively. This component specifically states what is being assessed.

One comment stated contract administration has no delineation between grade "A" and grade "C" designations. Some benchmarks should be developed for grade "C" similar to the quality of physical work that credits the PHA with identifying and taking independent corrective actions. The Department agrees, and this component in the interim rule has a greater delineation between grades "A" and "C".

One comment stated it is unclear to which contracts this component applies. There can be a variety of contractual obligations on a project in addition to that with a general contractor—architects, attorneys, construction managers, etc. The Department intends that this component should relate to the major contracts involved in the development of projects. This component specifically states what is being assessed.

One comment stated the time should start running for construction/rehabilitation start, or date of funds availability, when the ACC is signed and the funds are available to the PHA, rather than when the funds are initially reserved. Rehabilitation projects may take longer if outside funding and "community partnerships" are involved. The Department disagrees since the basic ACC is executed after HUD approval of a PHA's proposal, which is essentially in the middle of the development process, and a procedure exists for early ACC execution.

One comment stated HUD should employ a single standard in determining a PHA's success in promptly commencing construction as measured by the period of time between the date of fund reservation and the Date of Full Availability (DOFA). The comment states such a standard should be based on whether a PHA has succeeded in reaching DOFA within the requisite 30 month time frame; for such a limited scoring to be equitable, however, a PHA should have the right to receive the full score to be assigned to the extent to which it can demonstrate that any amount of time to DOFA in excess of 30 months which HUD may ultimately permit is attributable to failures on the part of HUD Field Offices to meet Standard Processing Times established by regulation. The Department disagrees since the standard mirrors a statutory time frame and allowances are made for events beyond a PHA's control.

One comment stated that generally the 21-month benchmark of completion of acquisition from DOFA is considered to be equitable. However, some caveats should be developed in the grade "A" designation which allow for an extension of DOFA or reprogramming of funds because of circumstances beyond the control of the PHA, i.e., circumstances such as market conditions, availability of housing, identified lead-based paint abatement needs, and purchasing restrictions imposed by the local unit of government. The Department agrees, and several circumstances have been exempted in this indicator; other unique circumstances should be submitted to the Field Office for consideration.

One comment stated construction/rehabilitation start, or DOFA, makes no allowance for large projects completed in phases, nor does this standard allow for waivers that extend the process. The Department will not penalize a PHA in this indicator if the PHA has a HUD waiver which extends the process or has reformulated the project to eliminate "phasing."

This indicator has a scoring weight of one.

PHMAP at present represents an initial formulation, subject to continued development and modification as may be warranted by experience and consultation between HUD, PHAs, residents and public housing industry and other interested parties. Given current resources, HUD believes the indicators in the interim rule are reasonable and practical, and because of the flexibility build into the system, capable of achieving optimal efficiency.

The Department deems it appropriate to hold this material out for an additional period for public review and comment and is particularly interested in receiving further comments from PHAs, residents, resident and public housing industry groups and other interested parties.

The rulemaking procedure will give PHAs and any other interested party nationwide the opportunity to comment on the PHMAP in accordance with 24 CFR part 10.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Economic Impact

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule established management assessment criteria for PHAs. HUD does not anticipate a significant economic impact on a substantial number of small entities, since the rule establishes management assessment criteria which will be utilized by Field Offices for monitoring purposes and the provision of technical assistance to PHAs.

This rule was listed as Item No. 1510 in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53380, 53429), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule is intended to promote good management practices by including, in HUD's relationship with PHAs, continuing review of PHAs' compliance with already existing requirements. In addition, the rule carries out, as unobtrusively as possible, a Federal statutory mandate. The rule does not create any new significant requirements of its own. As a result, the rule is not subject to review under the Order.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves requirements for management assessment of public housing agencies. Any effect on the family would likely be indirect, and insignificant. To the extent families in public housing will be affected, the impact of the rule's requirements is expected to be a positive one.

List of Subjects in 24 CFR Part 901

Public housing, reporting and recordkeeping requirements.

Appendix 1

Public Housing Management Assessment Program (PHMAP) Certification

DATE: _____

PHA: _____

We hereby certify that, as of the above date, the _____ Housing Authority reports the following indicators under the Public Housing Management Assessment Program (PHMAP) to be true and accurate for its fiscal year ending _____:

Indicator #1: Vacancy Number and Percentage

Actual vacancy percent for the reporting month or a snapshot picture of the actual vacancy percent at the end of the reporting month_____%

Total vacant units_____

Adjusted vacancy percent for the reporting month or a snapshot picture of the adjusted vacancy percent at the end of the reporting month_____%

Percent reduction of actual vacancies over prior 3 years_____%

Indicator #3: Rents Uncollected

Balance of rents uncollected as a percentage of total rents to be collected_____%

Indicator #5: Unit Turnaround

Average number of calendar days for vacant unit to be prepared for re-rental_____%

System has been established to track unit turnaround N/A____ Y____ N____

Indicator #6: Outstanding Work Orders

Percent of emergency items corrected/abated within 24 hours_____%

Percent of outstanding work orders_____%

Progress has been demonstrated over the most recent 3 year period at reducing the time required to complete maintenance work orders N/A____ Y____ N____

Indicator #7: Annual Inspection and Condition of Units and Systems

System has been established to track inspection and repair of units and systems N/A____ Y____ N____

Percent of units inspected annually using standards that were at least equivalent to the Housing Quality Standards (HQS) N/A____ Y____ N____

Percent of units meeting HQS_____%

Percent of emergency items corrected/abated within 24 hours_____%

Average number of days to bring non-emergency maintenance items to HQS_____

PHA is on schedule, according to its maintenance plan, to correct unit deficiencies N/A____ Y____ N____

Major systems are inspected annually N/A____ Y____ N____

Average number of days to correct identified systems deficiencies_____

PHA is on schedule, according to its maintenance plan, to correct systems defects N/A____ Y____ N____

Indicator #11. Resident Initiatives

Policies have been adopted and procedures implemented for:

- Anti-drug strategy/security N/A____ Y____ N____
- Resident participation/management N/A____ Y____ N____

- Homeownership opportunities N/A___ Y___ N___
- Economic development/self-sufficiency N/A___ Y___ N___

Number of areas at which PHA has been successful in significantly improving conditions/activities_____

Number of areas at which PHA shows minimal activity in_____

The PHA elects to use either the annual average or annual TAR percent (choose one and enter at right_____

The undersigned further certify that, to their present knowledge, there is no evidence to indicate seriously deficient performance that casts doubt on the PHA's capacity to preserve and protect its public housing developments and operate them in accordance with Federal law and regulations. Appropriate sanctions for intentional false certification will be imposed, including suspension or debarment of the signatories.

Signed by:

Chairperson, Board of Commissioners

Date

Attested to by:

Executive Director

Date

A Board Resolution approving this certification is required and shall be attached to the executed certification.

Form HUD-50072

Accordingly, subtitle B of title 24 of the Code of Federal Regulations is amended by adding a new part 901, to read as follows:

PART 901—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM

Subpart A—General Provisions

Sec.

901.01 Purpose.
901.05 Definitions.
901.10 Indicators.

Subpart B—Program Operation

901.100 Data collection.
901.105 Computing assessment score.
901.110 PHA request for exclusion or modification of an indicator or component.
901.115 PHA score and status.
901.120 Field Office functions.
901.125 Regional Administrator functions.
901.130 PHA right of appeal.
901.135 Incentives.
901.140 Memorandum of Agreement.
901.142 Removal from troubled status and troubled with respect to the program under section 14 status.
901.145 Improvement Plan.
901.150 PHAs troubled with respect to the program under section 14.
901.155 PHMAP public record.

Subpart C—Substantial Default

901.200 Substantial default by a PHA.
901.205 Events or conditions that constitute substantial default.
901.210 Notice and response.
901.215 Interventions.
901.220 Contraction and funding.
901.225 Receivership.

Authority: Sec. 6(j), United States Housing Act of 1937 (42 U.S.C. 1437d(j)); sec. 502, National Affordable Housing Act (approved November 28, 1990, Pub. L. 101-625); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 901.01 Purpose.

(a) This part establishes the Public Housing Management Assessment Program (PHMAP) that provides policies and procedures for the Department to identify public housing agency (PHA) management capabilities and deficiencies, recognize high-performing PHAs, designate criteria for defining troubled PHAs and PHAs that are troubled with respect to the program under section 14 (Public Housing Modernization Program), and improve the management practices of troubled PHAs and PHAs that are troubled with respect to the program under section 14.

(b) PHMAP will allow HUD to make more effective use of available staff for monitoring overall public housing operations. Appropriately, limited monitoring of PHAs with good performance records will enable the Department, particularly at the Field Office level, to focus on those PHAs that have significant operational problems.

(c) PHMAP provides an objective system for measuring PHA performance using standard criteria for all PHAs that will enable the Department and PHAs to compare performance of PHAs. At the same time, PHMAP provides sufficient flexibility in evaluating PHAs to ensure that they are not penalized as a result of circumstances beyond their control.

(d) With PHMAP, the Department will be able to identify deficiencies in a PHA's management areas and take corrective actions, such as providing advice and guidance in specific areas of concern, or entering into a Memorandum of Agreement with a troubled PHA and/or a PHA troubled with respect to the program under section 14, to focus its improvement efforts.

(e) PHMAP will be used by the Department to provide incentives to high-performing PHAs and encourage all PHAs to achieve high performer designation. High-performing PHAs are afforded greater flexibility in the operation of their public housing programs, with increased responsibility and authority for their own management decisions. In addition, high-performing PHAs will receive national recognition by the Department.

(f) PHAs can utilize this assessment to conduct internal audits of their operations and correct identified deficiencies. The results of the assessment can be utilized by a PHA's Board of Commissioners and Executive Director, resident organizations, and the community to understand more comprehensively the PHA's operations.

§ 901.05 Definitions.

(a) *Action taken* means the issuance of a work order to correct the problem where systems are involved.

(b) *Actual vacancy rate* means the percent of vacancies after excluding the permitted exemptions.

(c) *Adjusted vacancy rate* means the percent of vacancies after deducting units included in a funded on-schedule modernization program.

(d) *Annual average* means an average computation of a PHA's immediate past fiscal year for applicable indicators.

(e) *Annual vacancy rate* means the percent or number of vacancies, after deducting:

(1) Vacant units that HUD has approved for demolition or dispostion;

(2) Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law;

(3) Vacant units that have sustained casualty damage and are being held off the market to allow adjustment of the insurance claim; and,

(4) Units that are occupied by employees of the PHA and non-dwelling units that are utilized for resident services or are under lease to a non-dwelling tenant in the normal course of project operation.

(f) *Assistant Secretary* means the Assistant Secretary for Public and Indian Housing of the Department.

(g) *Confirmatory review* means an on-site review for the purposes of Field Office verification of the performance level of a PHA and the accuracy of the data derived from Field Office files.

(h) *Correct* means to improve performance in an indicator to a level of grade "C" or better.

(i) *Current dwelling rent charged* refers to the resident dwelling rent charges reflected in the monthly rent roll(s), and excludes retroactive rent charges, maintenance charges, excess utility charges, late charges, and any other charges not specifically identified as dwelling rent.

(j) *Cyclical work orders* refers to work orders that are performed on a seasonal basis, or in accordance with warranty requirements, or as part of a preventive maintenance program.

(k) *Deficiency* means any grade below "C" in an indicator.

(l) *Demonstrates progress* means that the time required to complete all work orders has been reduced during the most recent three year period.

(m) *Department* or *HUD* means the U.S. Department of Housing and Urban Development.

(n) *Emergency* means physical work items that pose an immediate threat to the life, health and safety of residents, or that are related to fire safety.

(o) *Emergency status abated* means the emergency situation was abated within 24 hours with completion of needed repairs and/or replacements made at a later time.

(p) *Formal up-to-date repayment agreement* means a signed agreement between a PHA and a resident stating the terms and amounts that a resident is repaying monies owed to a PHA, and the resident is in compliance and current with the terms of the repayment agreement, i.e., the resident is remitting a specified amount on specific dates with no lapse in remittance.

(q) *HQS* means Housing Quality Standards as set forth at 24 CFR 882.109 and amended by the Lead Based Paint regulation at 24 CFR part 35.

(r) *Indicators* means the major categories of PHA management functions that are examined under this program for assessment purposes. The list of individual indicators and the way they are graded is provided in § 901.10.

(s) *Monitoring findings* mean findings that were determined as a result of an on-site physical inspection and transmitted in writing by HUD to the PHA.

(t) *PHA* means a public housing agency.

(u) *Rents uncollected* means unpaid resident dwelling rent for residents in possession.

(v) *Significant finding* in indicator (12), development, means statutory, regulatory or health/safety violations.

(w) *Significant monitoring finding in indicator (2), modernization, component #3, contract administration,* means written findings based on the monitoring reviews as recorded by the Monitoring Checklist, set forth in Appendix 18 of the CIAP Handbook 7485.1, as revised, or other equivalent review. Significant findings relate to any question under Sections II, III, and IV which received a "no" answer, excluding the following: Section II, exclude the items related to the use of Form HUD–51915 and changing the current threshold; Section III, exclude item related to changing the current threshold; and Section IV, exclude items related to changing the current threshold, notifying Field Office of scheduled final inspection, and submitting required settlement documents to the Field Office.

(x) *Significant monitoring finding in indicator (2), modernization, component #4, quality of physical work,* means written findings based on the monitoring reviews as recorded by the Monitoring Checklist, set forth in Appendix 18 of the CIAP Handbook 7485.1, as revised, or other equivalent review. Significant findings relate to any question under Section I which received a "no" answer, excluding the item relating to keeping the premises free from accumulated waste materials caused by the contractor.

(y) *Substantial default* means a PHA is determined by the Department to be in violation of statutory, regulatory or contractual provisions or requirements, whether or not these violations would constitute a substantial default or a substantial breach under explicit provisions of the relevant Annual Contributions Contract or a Memorandum of Agreement.

§ 901.10 Indicators.

(a) Indicators (1)–(7) listed in this section are required by statute to be used to evaluate the management performance of PHAs. Indicators (8)–(12) listed in this section are deemed to be appropriate by the Department to evaluate the management performance of PHAs.

(b) The indicators are as follows:

(1) *Indicator 1, Vacancy Number and Percentage.* The number and percentage of vacancies within an agency's inventory, including the progress that an agency has made within the previous three years to reduce such vacancies. It will be acceptable for the PHA to use the vacancy rate or number of vacant units using data reported on the Form HUD–51234, Report on Occupancy. At its option, a PHA may construct and use an actual average vacancy rate or average number of vacant units using Rent Roll records for the month ending six months before the start of its budget year. This indicator is given a weight of x3. Units in the following categories shall not be included in this calculation:

(i) Vacant units in an approved demolition or disposition program;

(ii) Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law;

(iii) Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted; and

(iv) Units that are occupied by employees of the PHA and units that are utilized for resident services.

(v) Grade A: An actual vacancy percentage of 1% or less.

(vi) Grade B: A vacancy percentage of greater than 1% and less than or equal to 2%, or the PHA has an equivalent of three or fewer vacant units.

(vii) Grade C: The PHA is in one of the following categories:

(A) A vacancy percentage of greater than 2% and less than or equal to 3%, or the PHA has an equivalent of four or five vacant units; or

(B) An adjusted vacancy percentage of 3% or less after permitted adjusting for funded on-schedule modernization; or

(C) The PHA has reduced actual vacancies over the past three years by at least 30%.

(viii) Grade D: The PHA is in one of the following categories:

(A) A vacancy percentage of greater than 3% and less than or equal to 6%; or

(B) An adjusted vacancy percentage of greater than 3% and less than or equal to 5% after permitted adjusting for funded on-schedule modernization; or

(C) The PHA has reduced actual vacancies over the past three years by at least 10%.

(ix) Grade E: The PHA is in one of the following categories:

(A) A vacancy percentage of greater than 6% and less than or equal to 8%; or

(B) An adjusted vacancy percentage of less than or equal to 7% after permitted adjusting for funded on-schedule modernization; or

(C) The PHA has reduced actual vacancies over the past three years.

(x) Grade F: The PHA is in one of the following categories:

(A) An actual vacancy percentage of greater than 8%; or

(B) An adjusted vacancy percentage of greater than 7% after permitted adjusting for funded on-schedule modernization and the PHA has not reduced actual vacancies over the past three years.

(2) *Indicator 2, Modernization.* The amount and percentage of funds obligated to public housing agencies under section 14 which remain unexpended after three years; and the management of the program under section 14 for the modernization and rehabilitation of public housing units and developments. This indicator has a weight of x2.

(i) Component #1—Unexpended Funds Over Three Years Old. This component has a weight of x2.

(A) Grade A: The PHA has no unexpended funds over three years old or if the PHA has unexpended funds over three years old, the PHA can demonstrate that the approved original

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or revised project implementation schedule(s) gives the PHA longer than three years, or there are valid reasons outside of the PHA's control for the unexpended funds, such as litigation, HUD or other institutional delay, extended labor strikes, or extended material shortages.

(B) Grade F: The PHA has unexpended funds over three years old, but cannot demonstrate that the approved original or revised project implementation schedule(s) gives the PHA longer than three years or that there are valid reasons outside of the PHA's control for the unexpended funds.

(ii) Component #2—Timeliness of Fund Obligation. This component has a weight of x1.

(A) Grade A: For any obligation deadline dates occurring in the preceding Federal Fiscal Year, the PHA has obligated 100% of its funds by the obligation dates in its approved original project implementation schedules or approved revised schedule(s) where time extensions were granted for valid reasons outside of the PHA's control, such as litigation, HUD or other institutional delay, extended labor strikes, extended material shortages, or need to use leftover funds.

(B) Grade F: For any obligation deadline dates occurring in the preceding Federal Fiscal Year, the PHA has obligated less than 100% of its approved funds by the obligation dates in its approved project implementation schedules or approved revised schedules, or received approval for time extensions due to reasons within the PHA's control, or has continued to obligate funds after the latest approved obligation deadline date.

(iii) Component #3—Contract Administration. This component has a weight of x1.

(A) Grade A: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, there are no significant monitoring findings related to contract administration.

(B) Grade B: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, there are no more than two significant monitoring findings related to contract administration and the PHA has corrected or is in the process of correcting those monitoring findings related to contract administration.

(C) Grade C: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, there are no more than four significant monitoring findings related to contract administration and the PHA has corrected or is in the process of correcting those significant monitoring findings related to contract administration.

(D) Grade D: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, there are no more than six significant monitoring findings related to contract administration and the PHA has corrected or is in the process of correcting those significant monitoring findings related to contract administration.

(E) Grade E: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, there are more than six significant monitoring findings related to contract administration and the PHA has corrected or in the process of correcting those significant monitoring findings related to contract administration.

(F) Grade F: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, and actions to correct significant monitoring findings related to contract administration have not resulted in progress toward correction.

(iv) Component #4—Quality of Physical Work. This component has a weight of x3.

(A) Grade A: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, and there are no significant monitoring findings related to the quality of physical work or inspections.

(B) Grade B: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, and there are no more than two significant monitoring findings related to the quality of physical work or inspections, and the PHA has corrected or is in the process of correcting those significant monitoring findings related to the quality of physical work or inspections.

(C) Grade C: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, and there are no more than four significant monitoring findings related to the quality of physical work or inspections, and the PHA has corrected or is in the process of correcting those significant monitoring findings related to the quality of physical work or inspections.

(D) Grade D: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, and there are no more than six significant monitoring findings related to the quality of physical work or inspections, and the PHA has corrected or is in the process of correcting those significant monitoring findings related to the quality of physical work or inspections.

(E) Grade E: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract

modifications, and there are more than six significant monitoring findings related to the quality of physical work or inspections, and the PHA has corrected or is in the process of correcting those significant monitoring findings related to the quality of physical work or inspections.

(F) Grade F: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is not carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, or any actions to correct significant monitoring findings related to the quality of physical work or inspections have not resulted in progress toward correction.

(v) Component #5—Budget Controls. This component has a weight of x1.

(A) Grade A: The PHA has expended modernization funds only on work items in the latest HUD-approved budgets or within the limits of the HUD-established threshold for budget revision *or* where the PHA has expended modernization funds on work items other than those in the latest HUD-approved budgets or above the limits of the HUD-established threshold for budget revisions, the PHA obtained prior HUD approval.

(B) Grade F: The PHA has expended modernization funds on work items other than those in the latest HUD-approved budgets, or above the limits of the HUD-established threshold for budget revision, or without getting prior HUD approval.

(3) *Indicator 3, Rents Uncollected.* The balance of rents uncollected as a percentage of total rents to be collected. This indicator has a weight of x3.

(i) Grade A: The balance of rents uncollected in the immediate past fiscal year is less than or equal to 2% of total rents to be collected.

(ii) Grade B: The balance of rents uncollected in the immediate past fiscal year is greater than 2% and less than or equal to 4% of the total rents to be collected.

(iii) Grade C: The balance of rents uncollected in the immediate past fiscal year is greater than 4% and less than or equal to 6% of the total rents to be collected.

(iv) Grade D: The balance of rents uncollected in the immediate past fiscal year is greater than 6% and less than or equal to 8% of the total rents to be collected.

(v) Grade E: The balance of rents uncollected in the immediate past fiscal year is greater than 8% and less than or equal to 10% of the total rents to be collected.

(vi) Grade F: The balance of rents uncollected in the immediate past fiscal year is greater than 10% of the total rents to be collected.

(4) *Indicator 4, Energy Consumption.* The annual energy consumption. This indicator has a weight of x1.

(i) Grade A: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variances in heating degree days (HDD) has not increased.

(ii) Grade B: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variance in heating degree days (HDD) has not increased by more than 3%.

(iii) Grade C: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variance in heating degree days (HDD) has increased by greater than 3% and less than or equal to 5%.

(iv) Grade D: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variance in heating degree days (HDD) has increased by greater than 5% and less than or equal to 7%.

(v) Grade E: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variance in heating degree days (HDD) has increased by greater than 7% and less than or equal to 9%.

(vi) Grade F: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variances in heating degree days (HDD) has increased by more than 9%.

(5) *Indicator 5, Unit Turnaround.* The average period of time that an agency requires to repair and turnaround vacant units. This indicator has a weight of x2. Vacant units in the following categories should not be included in this calculation:

(i) Units in on-schedule CIAP (only) programs;

(ii) Units that HUD has approved for demolition or disposition;

(iii) Units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law; and

(iv) Units that have sustained casualty damage, but only until the insurance claim is adjusted.

(v) Grade A: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is less than or equal to 20 calendar days.

(vi) Grade B: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is greater than 20 calendar days and less than or equal to 25 calendar days.

(vii) Grade C: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is greater than 25 calendar days and less than or equal to 30 calendar days.

(viii) Grade D: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is greater than 30 calendar days and less than or equal to 40 calendar days.

(ix) Grade E: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is greater than 40 calendar days and less than or equal to 50 calendar days.

(x) Grade F: The PHA has not established a system to track the duration of vacancies; or the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is more than 50 calendar days.

(6) *Indicator 6, Outstanding Work Orders.* The proportion of maintenance work orders outstanding, including any progress that an agency has made during the preceding 3 years to reduce the period of time required to complete maintenance work orders. This indicator has a weight of x1.

(i) Grade A: At least 99% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year does not exceed 4% of the total number of work orders received

during the immediate past fiscal year, excluding cyclical work orders.

(ii) Grade B: At least 97% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 4% and less than or equal to 6% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders.

(iii) Grade C: The PHA is in one of the following categories:

(A) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 6% and less than or equal to 8% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders; or

(B) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 8% and less than or equal to 10% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders, and the PHA demonstrates progress over the most recent three year period in which the time required to complete maintenance work orders has been reduced.

(iv) Grade D: The PHA is in one of the following categories:

(A) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 8% and less than or equal to 10% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders; or

(B) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 10% and less than or equal to 12% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders, and the PHA has demonstrated progress over the most recent three year period in which the time required to complete maintenance work orders has been reduced.

(v) Grade E: The PHA is in one of the following categories:

(A) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 10% and less than or equal to 12% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders; or

(B) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year exceeds 12% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders, and the PHA has demonstrated progress over the most recent three year period in which the time required to complete maintenance work orders has been reduced.

(vi) Grade F: Less than 95% of emergency items were corrected within 24 hours of emergency status was not abated, or the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year exceeds 12% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders, or the PHA has not demonstrated progress over the most recent three year period in which the time required to complete maintenance work orders has been reduced.

(7) *Indicator 7, Annual Inspection and Condition of Units and Systems.* The percentage of units that an agency fails to inspect to ascertain maintenance or modernization needs within such period of time as the Department deems appropriate and the percentage of systems, for the purposes of preventive maintenance, that an agency fails to inspect on an annual basis. This indicator has a weight of x3. Units in funded on-schedule section 14 modernization programs and units that HUD has approved for demolition or disposition are not included in this calculation.

(i) Component #1—System to track inspection and repair of units and systems. This component has a weight of x1.

(A) Grade A: The PHA has established a system to track inspection and repair of units and systems.

(B) Grade F: The PHA has not established a system to track inspection and repair of units and systems.

(ii) Component #2—Annual inspection of units. This component has a weight of x1.

(A) Grade A: The PHA inspected 100% of units in the immediate past fiscal year, using standards that were at least equivalent to the Housing Quality Standards (HQS).

(B) Grade B: The PHA inspected at least 97% and less than 100% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(C) Grade C: The PHA inspected at least 95% and less than 97% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(D) Grade D: The PHA inspected at least 93% and less than 95% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(E) Grade E: The PHA inspected at least 90% and less than 93% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(F) Grade F: The PHA inspected fewer than 90% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(iii) Component #3—Correction of unit deficiencies. This component has a weight of x3.

(A) Grade A: All units met the HQS standards at the time of inspection, or of those units not meeting HQS or its equivalent at the time of inspection, at least 99% of emergency items were corrected within 24 hours or the emergency status was abated, and all other unit deficiencies were corrected within an average of, at most, 25 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, in correcting specific unit deficiencies.

(B) Grade B: Of those units not meeting HQS or its equivalent at the time of the inspection, at least 97% and less than 99% of emergency items were corrected within 24 hours or the emergency status was abated, and all other unit deficiencies were corrected within an average of greater than 25 calendar days and less than or equal to 30 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, in correcting specific until deficiencies.

(C) Grade C: Of those units not meeting HQS or its equivalent at the time of the inspection, at least 95% and

less than 97% of emergency items were corrected within 24 hours or the emergency status was abated, and all other unit deficiencies were corrected within an average of greater than 30 calendar days and less than or equal to 40 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, in correcting specific unit deficiencies.

(D) Grade D: Of those units not meeting HQS or its equivalent at the time of the inspection, at least 95% and less than 97% of emergency items were corrected within 24 hours or the emergency status was abated, and all other unit deficiencies were corrected within an average of greater than 40 calendar days and less than or equal to 50 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, in correcting specific unit deficiencies.

(E) Grade E: Of those units not meeting HQS or its equivalent at the time of the inspection, at least 95% and less than 97% of emergency items were corrected within 24 hours or the emergency status was abated, and all maintenance deficiencies were corrected within an average of greater than 50 calendar days and less than or equal to 60 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, to correct unit deficiencies.

(F) Grade F: Of those units not meeting HQS or its equivalent at the time of inspection, fewer than 95% of emergency items were corrected within 24 hours, or emergency status was not abated, or all maintenance deficiencies were corrected within an average of greater than 60 calendar days to meet inspection standards that were at least equivalent to HQS, or the PHA is not on schedule at the end of its immediate past fiscal year, according to its maintenance plan, to correct unit defects, or the PHA inspected fewer than 90% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(iv) Component #4—inspection and repair of systems. This component has a weight of x3.

(A) Grade A: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of less than or equal to 25 calendar days and the PHA is on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(B) Grade B: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of greater than 25 calendar days and less than or equal to 30 calendar days, and the PHA is on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(C) Grade C: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of greater than 30 calendar days and less than or equal to 40 calendar days, and the PHA is on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(D) Grade D: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of greater than 40 calendar days and less than or equal to 50 calendar days, and the PHA is on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(E) Grade E: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of greater than 50 calendar days and less than or equal to 60 calendar days, and the PHA is on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(F) Grade F: The PHA did not annually inspect major systems, or system defects were corrected within an average of greater than 60 calendar days, or the PHA is not on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(8) *Indicator 8, Tenants Accounts Receivable.* The percentage of monies owed to a PHA by residents in possession. This indicator has a weight of x1.

(i) Grade A: Tenants accounts receivable for tenants in possession, excluding amounts covered by formal up-to-date repayment agreements, is 5% or less of total tenant charges for the reporting period.

(ii) Grade C: Tenants accounts receivable for tenants in possession, excluding amounts covered by formal up-to-date repayment agreements, is greater than 5% and less than or equal to 10% of total tenant charges for the reporting period.

(iii) Grade F: Tenants accounts receivable for tenants in possession, excluding amounts covered by formal up-to-date repayment agreements, is greater than 10% of total tenant charges for the reporting period.

(9) *Indicator 9, Operating Reserves.* The percentage of operating reserve maintained by any PHA. This indicator has a weight of x1.

(i) Grade A: Operating reserves, excluding TARs and modified for year-end adjustments, are 40% or greater of maximum operating reserves.

(ii) Grade C: Operating reserves, including TARs and modified for year-end adjustments, are less than 40% and greater than or equal to 20% of maximum operating reserves.

(iii) Grade F: Operating reserves, excluding TARs and modified for year-end adjustments, are less than 20% of maximum operating reserves.

(10) *Indicator 10, Routine Operating Expenses.* An agency's level of operating expenses as compared to operating income and subsidy. This indicator has a weight of x1.

(i) Grade A: Over the most recent three year period total routine operating expenses are less than or equal to operating income and subsidy.

(ii) Grade C: For two out of the past three years, total routine operating expenses are less than, or equal to, operating income and subsidy.

(iii) Grade F: For two out of the past three years, total routine operating expenses exceed operating income and subsidy.

(11) *Indicator 11, Resident Initiatives.* A partnership between residents and PHAs to develop and implement a resident initiatives agenda to create self-sufficiency opportunities and maintain viable, safe, and drug-free public housing developments. This indicator has a weight of x3.

(i) Grade A: The PHA Board has adopted policies and implemented procedures to support and encourage activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency. There is evidence of significant activity in three areas at one or more developments (e.g., reduced drug-related crime, established newly organized resident groups/increased resident participation on the PHA Board; provided technical assistance/training

to resident groups; assisted first-time resident homebuyers; provided supportive services to enhance self-sufficiency for families; has contracted in the past year with a resident-owned business or utilized Comprehensive Grant Program/CIAP activities to promote resident job creation pursuant to section 3) during a PHA's immediate past fiscal year.

(ii) Grade B: The PHA Board has adopted policies and implemented procedures to support and encourage activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency. There is evidence of significant activity in two areas at one or more developments (refer to examples in Grade A above) during a PHA's immediate past fiscal year.

(iii) Grade C: The PHA Board has adopted policies and implemented procedures to support and encourage activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency. There is evidence of significant activity in one area at one or more developments (refer to examples in Grade A above) during a PHA's immediate past fiscal year.

(iv) Grade D: The PHA Board has adopted policies and implemented procedures to support and encourage activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency. There is evidence of minimal activity in one area at one or more developments (refer to examples in Grade A above) during a PHA's immediate past fiscal year.

(v) Grade E: The PHA Board has adopted policies in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency. There is no evidence of activity in any area (refer to examples in Grade A above) during a PHA's immediate past fiscal year.

(vi) Grade F: The PHA Board has not adopted policies and implemented procedures, or has not initiated any activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency during a PHA's immediate past fiscal year.

(12) *Indicator 12, Development.* An agency's ability to develop additional units for occupancy by public housing residents. This indicator applies for projects that have started construction or have an ACC for acquisition projects. This indicator has a weight of x1.

(i) Component #1—Quality of contract administration. This component has a weight of x1.

(A) Grade A: Based on HUD's in-office reviews of the PHA's submissions, development contracting for design and/or inspecting architects, engineering services, site options and purchase agreements, general contractors or turnkey developers, etc., conform to HUD requirements concerning method of selection (procurement), contracting, and contract administration; there are no significant findings (e.g., statutory, regulatory or health/safety violations) regarding a PHA's contracting and contracting administration.

(B) Grade C: Based on HUD's in-office reviews of the PHA's submissions, development contracting and contract administration do not always conform to HUD requirements concerning method of selection (procurement), contracting, and contract administration; there were no more that four significant findings relating to contract administration and the PHA has corrected or is in the process of correcting those monitoring findings related to contract administration.

(C) Grade F: Based on HUD's follow-up monitoring of a PHA's development contracting and contract administration, the PHA's development contracting requirements do not conform to HUD requirements, or there were more than four significant findings relating to contract administration, or the PHA either did not correct its inappropriate practices or it is continuing to engage in improper contracting practices.

(ii) Component #2—Timeliness of development, which shall not include valid delays resulting from legal action affecting a development, or resulting from HUD actions or inaction. This component has a weight of x2.

(A) Grade A: Construction/rehabilitation started (or Date of Full Availability (DOFA) achieved for acquisition) in no more than 21 months from the date of fund reservation, excluding valid delays as described in section (ii), above, and contract for construction/ rehabilitation was completed in accordance with the contract time.

(B) Grade C: Construction/rehabilitation started (or DOFA achieved for acquisition) in more than 21 months, but less than or equal to 30 months from fund reservation, excluding valid delays as described in section (ii), above, and contract for construction/rehabilitation was completed in no more than 30 days past the date specified in the contract and for which liquidated damages were assessed (e.g., the delay was not the responsibility of the PHA).

(C) Grade F: Construction/rehabilitation started (or DOFA achieved for acquisition) more than 30 months from fund reservation, excluding valid delays as described in section (ii), above, or contract for construction/rehabilitation was completed in excess of 30 days past the date specified in the contract or liquidated damages were not assessed.

(iii) Component #3—Quality of physical work. This component has a weight of x3.

(A) Grade A: Based on HUD's on-site inspection(s), the physical work is being carried out in accordance with the HUD-approved budget, plans and specifications; the work is being inspected by the PHA in accordance with requirements and there are no significant monitoring findings (e.g., statutory, regulatory, or health/ safety violation) relating to the quality of physical work or inspections, including items of delayed completion; and all design/ construction deficiencies were corrected within two years of DOFA, or are in the process of being corrected if DOFA was less than two years ago.

(B) Grade C: Based on HUD's on-site inspection(s), the physical work is being carried out in accordance with the HUD-approved budget, plans and specifications; the work is being inspected by the PHA in accordance with requirements; there are no more than four significant monitoring findings; the PHA has or is in the process of correcting those significant findings; and all design/construction deficiencies corrected within three years of DOFA, or are in the process of being corrected if DOFA was less than three years ago.

(C) Grade F: Based on HUD's on-site inspections, the physical work is not being carried out in accordance with the HUD-approved budget, plans and specifications; the work is not inspected by the PHA in accordance with HUD requirements; there are more than four significant monitoring findings; the PHA has not resolved the significant monitoring findings related to the quality of physical work or inspections; or design/ construction deficiencies were not identified within three years of DOFA.

(iv) Component #4—Budget controls.

This component has a weight of x1.

(A) Grade A: Costs do not exceed approved budgets; shifts of funds between major accounts are fully justified and submitted in a timely fashion; financial records are properly maintained in a condition able to be audited; the Actual Development Cost Certificate (ADCC) was submitted within 24 months of DOFA unless prior written approval was granted by HUD for an extension; excess funds were remitted within 30 days of ADCC approval, if applicable.

(B) Grade C: Cost do not exceed the total development cost approved by HUD; overruns in major accounts are in the process of being justified and a revised budget is being submitted; errors in financial record keeping associated with the development brought to the PHA's attention during processing are being corrected by the PHA; the ADCC was submitted for approval more than 24 months after DOFA without prior written approval from HUD for an extension; excess funds were remitted in more than 30 days but less than or equal to 90 days of ADCC approval, if applicable.

(C) Grade F: Costs have exceeded the total development cost approved by HUD; or overruns in major accounts were not properly justified; or the PHA failed to maintain project financial records in a condition able to be audited; or the ADCC was not submitted for approval, if applicable; or excess funds were not returned to HUD as required, if applicable.

Subpart B—Program Operation

§ 901.100 Data collection.

(a) Information on some of the indicators will be derived by the Field Office from existing reporting and data forms.

(b) A PHA shall provide certification as to data on indicators not collected according to paragraph (a) of this section, by submitting a certified questionnaire within 90 calendar days after the beginning of its fiscal year, except that, in the initial year of PHMAP implementation and for the purpose of the public housing Comprehensive Grant Program under section 14, PHAs shall submit their certification in accordance with the following schedule, where FYB means "Fiscal Year Begins" and FO means "Field Office":

PHA size	PHA FYB	Submission	Data source	FO assessment
500+ units	01-01-92	[Insert date 45 days after Federal Register Publication].	12-31-91	[Insert date 90 days after Federal Register Publication].
500+ units	04-01-92	do	03-31-91	Do.
500+ units	07-01-92	do	06-30-91	Do.
500+ units	10-01-92	do	09-30-91	Do.
1-499 units	01-01-92	04-01-92	12-31-91	07-01-92
250-499 units	04-01-92	06-01-92	03-31-91	07-15-92
250-499 units	07-01-92	06-01-92	06-30-91	07-15-92
250-499 units	10-01-92	06-01-92	09-31-91	07-15-93
1-249 units, and 500+ units	04-01-92	07-01-92	03-31-92	10-01-92
1-249 units, 250-499 units, and 500+ units	07-01-92	10-01-92	06-30-92	01-01-93
1-249 units, 250-499 units, and 500+ units	10-01-92	12-31-92	09-30-92	04-01-93

(1) The certification shall be approved by PHA Board resolution, signed by the Chairman of the Board and attested to by the Executive Director.

(2) PHAs shall maintain documentation for three years verifying all certified indicators for HUD on-site review.

(c) If a PHA does not submit its certification, or submits its certification late, appropriate sanctions may be imposed, including a presumptive rating of failure in all of the PHMAP indicators, which may result in troubled or mod-troubled designations.

(d) A PHA's certification will be post-reviewed by HUD during the next on-site review, but is subject to verification at any time. Appropriate sanctions for intentional false certification will be imposed, including suspension or debarment of the signatories, the loss of high performer designation, a lower grade for individual indicators and a lower PHMAP total weighted score.

§ 901.105 Computing assessment score.

(a) Grades within indicators and components have the following point values:

(1) Grade A=10.0 points;
(2) Grade B=8.5 points;
(3) Grade C=7.0 points;
(4) Grade D=5.0 points;
(5) Grade E=3.0 point; and
(6) Grade F=0.0 points.

(b) Where indicators or components are designated as having additional weight (x2 or x3), the points in each grade shall be multiplied times the additional weight.

(c) Indicators will be graded individually. Components within an indicator will be graded individually, and then will be used to determine a single grade for the indicator, by dividing the total number of component points by the total number of component weights and rounding off to one decimal place. The total number of component weights for this purpose is to include a one for components that are unweighed (i.e., they are weighted x1, rather than x2 or x3).

§ 901.110 PHA request for exclusion or modification of an indicator or component.

(a) A PHA shall have the right to request the exclusion or modification of any indicators or components in its management assessment, thereby excluding or modifying the impact of those indicators' or components' grades in its PHMAP total weighted score.

(b) Exclusion and modification requests shall be submitted by a PHA at the time of its PHMAP certification submission to the Field Office along with supporting documentary justification, rather than during the appeal process, unless highly unusual circumstances are discovered after a PHA submits its certification.

(c) Requests for exclusions and modifications that do not include supporting documentary justification will not be considered.

§ 901.115 PHA score and status.

(a) PHAs that achieve a total weighted score of no less than 90% on all applicable indicators may be designated high performers. High performers will be afforded incentives that include substantial relief from reporting and other requirements, as described in § 901.135.

(b) PHAs that achieve a total weighted score of less than 90% but not

less than 60% on all applicable indicators may be designated standard and be subject to standard review and monitoring requirements.

(c) PHAs that achieve a total weighted score of less than 60% on all applicable indicators may be designated as troubled.

(d) PHAs that achieve a total weighted score of less than 60% on indicator (2), modernization, may be designated as troubled with respect to the program under section 14.

(e) Even though PHA has satisfied all of the indicators for high performer designation, the Regional Administrator may reinstate any review as necessary to address the particular deficiencies, deny incentives or deny high performer status, as described in paragraph (a) of this section in the case of the PHA that:

(1) Is operating under a special agreement with HUD;

(2) Is involved in litigation that bears directly upon the management of a PHA;

(3) Is operating under a court order;

(4) Demonstrates substantial evidence of fraud or misconduct resulting from such sources as an Office of Inspector General investigation/audit, or an investigation by any appropriate legal authority; or

(5) Demonstrates substantial noncompliance in one or more areas.

(f) When a Regional Administrator acts for any of the reasons stated in paragraph (e) of this section, the Regional Administrator shall explain, in writing, the reasons for the action of the PHA.

(g) A PHA may appeal denial of high performer status in accordance with § 910.130.

§ 901.120 Field Office functions.

(a) The Field Office will assess each PHA within 180 days after the beginning of a PHA's fiscal year, except that, in the initial PHMAP implementation year and for the purpose of the public housing Comprehensive Grant Program under section 14, it will assess PHAs in accordance with the schedule at § 901.100(b) of this subpart.

(1) The Field Office will make determinations for high-performing, standard, troubled PHAs, and troubled PHAs with respect to the program under section 14 (mod-troubled) in accordance with a PHA's PHMAP weighted score.

(2) The Field Office will also make determinations for exclusion and modification requests.

(b) Each Field Office will notify, within 180 days after the beginning of a PHA's fiscal year, each PHA of the PHA's grade in each indicator, its management assessment total weighted score and status, any determination concerning exclusion and modification requests, and any deadline date by which appeals must be received.

(1) PHA notification could include, at a minimum, offers of pertinent technical assistance in problem areas, suggestions for means of improving problem areas, and areas of relief and incentives as a result of high performer status.

(2) In the initial year of PHMAP implementation and for purposes of the public housing Comprehensive Grant Program under section 14, each Field Office shall notify each PHA by the Field Office (FO) assessment date listed in the schedule at § 901.100(b) of this subpart of the PHA's grade in each indicator and standard, and its management total weighted score and status.

(c) An on-site confirmatory review may be conducted of a PHA by the Field Office. The purpose of the on-site confirmatory review is to verify those indicators for which a PHA provides certification, as well as the accuracy of the information received in the Field Office pertaining to the remaining indicators.

(d) Recommendations on appeals and on petitions to remove troubled or mod-troubled status will be made by the Field Office to the Regional Administrator.

(e) Determinations of intentional false certifications will be made by the Field Office.

(f) The Field Office shall maintain PHMAP files for public inspection in accordance with § 901.155 of this subpart.

§ 901.125 Regional Administrator functions.

(a) The Regional Administrator may review a PHA's score and modification and exclusion requests prior to the transmission of the notification letter to the PHA, except as specified in paragraph (b) of this section. In the initial year of PHMAP implementation and for the purpose of the public housing Comprehensive Grant Program under section 14, these reviews, if undertaken, will be done in sufficient time to permit Field Office notifications to be made in accordance with § 901.120(b)(2) of this subpart.

(b) The Regional Administrator shall review all cases in which a PHA's score falls within ten points below the point value required for designations in accordance with § 901.115 (a), (c) and (d). In these cases, the Regional Administrator shall take into consideration the differences in the difficulty of managing projects that result from their physical condition and/or neighborhood environment. If the Regional Administrator determines that a PHA's performance difficulties result from physical condition and/or neighborhood environment rather than from poor management practices, the Regional Administrator shall withhold troubled or mod-troubled designation or award high performer designation, except as specified in paragraph (c) of this section.

(c) The Regional Administrator may deny or rescind a PHA's status as a high performer, based on substantial noncompliance by a PHA in one or more areas, so that it will not be entitled to any of the areas of relief and incentives. Areas of substantial noncompliance include, but are not limited to, noncompliance with statutes (e.g., Fair Housing and Equal Opportunity statutes); regulations (e.g., 24 CFR part 85); or the Annual Contributions Contract (ACC) (e.g., the ACC, part II, section 201, Use of Projects). Substantial noncompliance would cast doubt on the PHA's capacity to preserve and protect its public housing developments and operate them consistent with Federal law and regulations.

(d) If high performer designation is rescinded, the Regional Administrator will send written notification to the PHA, within 15 days of the decision, with a specific explanation of the reasons. An information copy will be forwarded to the Assistant Secretary for Public and Indian Housing.

(e) The Regional Administrator will decide the initial appeals of PHAs and rulings on petitions to remove troubled or mod-troubled status, and may review Field Office determinations of intentional false certifications.

(f) If the Regional Administrator reverses or rejects a determination or recommendation made by the Field Office, the reason for the reversal or rejection shall be included in the notification to the PHA and shall be a part of the PHMAP public record.

§ 901.130 PHA right of appeal.

(a) A PHA has the right to appeal a troubled designation or designation as troubled with respect to the program under section 14. A PHA may appeal its management assessment rating on the basis of data errors, or highly unusual circumstances that occurred after a PHA submitted its certification and request for modifications and exclusions, or the Regional Administrator's failure to consider physical condition and neighborhood environment in the designation of the PHA's score, or the denial of exclusion or modification requests when their denial affects a PHA's total weighted score.

(1) A PHA may appeal its management assessment rating only for the reasons stated in paragraph (a) of this section and only if the PHA can produce new documentation not previously submitted at the time it submitted its certification and request for modifications and exclusions.

(2) Where applicable, a PHA must demonstrate that a successful appeal will have a significant impact on its score (e.g., at least five percentage points increase), or its performance standing (e.g., remove a PHA from troubled designation, or more a PHA into high-performing status).

(3) The appeal shall be submitted to the Field Office and shall include supporting documentary justification of the reasons for the appeal.

(4) The Field Office will review the issues presented in an appeal and forward its recommendation for their resolution to the Regional Administrator. The Regional Administrator will transmit the determination of the appeal to the PHA in a notification letter that will also include the date and place for submitting any further appeal.

(5) The Regional Administrator will make determinations of all initial appeals, including those based on a failure to consider physical condition and neighborhood environment in the designation of the PHA's status.

(6) Appeals of recission of high performer designation shall be made directly to the Assistant Secretary.

(7) Appeals submitted without appropriate documentation will not be considered and will be returned to the PHA.

(b) A PHA may appeal a determination of intentional false certification.

(c) A PHA may appeal the denial of an initial appeal by the Regional Administrator, which includes initial appeals denying high performer designation, its designation as troubled or designation as troubled with respect to the program under section 14, and the denial of an appeal of a determination of intentional false certification. A PHA may also appeal a recission of high performer designation.

(1) The appeal of a Regional Administrator's denial of an initial appeal and appeals of recission of high performer designation shall be submitted to the Assistant Secretary for Public and Indian Housing with new supporting documentary justification not previously submitted to the Field Office of the PHA's reason(s) for appeal.

(2) Appeals submitted without appropriate documentation will not be considered and will be returned to the PHA.

(d) A PHA has the right to appeal any refusal of a petition in accordance with § 901.142 of this subpar to remove designation of troubled or troubled with respect to the program under section 14 to the Assistant Secretary for Public and Indian Housing.

(e) The date and place by which any appeal must be submitted will be specified in the letter from the Field Office notifying the PHA of any determination or action. For example, the Field Office management assessment score notification letter or denial of initial appeal letter will specify the date and place by which appeals must be received. The date specified will be the 15th calendar day after the letter is mailed, not counting the day the letter is mailed. If the 15th day falls on a weekend or holiday, the date specified will be the next day that is not on a weekend or a holiday. Any appeal not received by the specified time and place will not be considered.

(f) Appeals will be determined by the Department within 30 days.

§ 901.135 Incentives.

(a) A PHA that is designated a high performer will be afforded incentives in several program areas as well as be relieved of specific HUD requirements, effective upon notification of high performer designation.

(b) PHAs must have completed (all funds expended) a modernization program within the last two fiscal years and achieve a total weighted score of no less than 90% on indicator (2), modernization, in order to qualify for incentives in the program area of modernization.

(c) PHAs must achieve a total weighted score of no less than 90% on indicator (12), development, and have a project under development which has not reached Date of Full Availability (DOFA), or projects which reached DOFA within the last five years, in order to qualify for incentives in the program area of development.

(d) Incentives for high-performing PHAs are as follows:

(1) General. (i) The Department shall annually publish a listing of public housing agencies that have been designated as high-performing.

(ii) High-performing PHAs will receive a Certificate of Commendation from the Department as well as special public recognition.

(iii) Requisitions for leased housing annual contributions (Form HUD–52977, Request for Partial Payment of Fixed Annual Contribution, Leased Projects) will be submitted annually rather than quarterly (as presently provided by the Low-Income Leased Housing Handbook 7430.1, as revised) by high-performing PHAs.

(iv) High-performing PHAs will be deemed to be a lower risk and, therefore, will be monitored less frequently.

(v) Representatives of high-performing PHAs will be requested to serve on Departmental Working Groups that will advise the Department in such areas as troubled PHAs, performance standards for all PHAs, incentives for high-performing PHAs, etc.

(2) Financial Management. (i) High-performing PHAs will submit Form HUD–52599, Statement of Operating Receipts and Expenditures, annually instead of semiannually.

(ii) High-performing PHAs will be allowed to make line item (not bottom line) changes to routine expenditures as long as the total level of routine expenses is not changed.

(iii) High-performing PHAs will submit Form HUD–52295, Report of Tenants Accounts Receivable, annually instead of semiannually. The end of the PHA's fiscal year is the annual reporting date, as required in the Financial Management Handbook 7475.1, as revised.

(3) Occupancy. (i) High-performing PHAs will not be required to receive prior HUD approval for occupancy of dwelling units by PHA employees, provided the PHA charges market rents for such units. (This eliminates the requirement for HUD approval under both the Public Housing Occupancy Handbook 7465.1, as revised, and the conversion provisions of the Demolition, Disposition and Conversion Handbook 7486.1, as revised.) The requirement for prior HUD approval will, however, continue to apply if the employee-occupant is charged less than market rent. PHAs should not automatically use Section 8 Fair Market Rents (FMR) as a basis for "market rents." Market rents are rents for comparable standard non-luxury, rental units in the neighborhood or community. Often the market rent and the section 8 FMR will be the same or nearly the same, but specific characteristics of the project, such as location, may dictate a lower or higher rent. Such units, however, shall be removed from the Unit Month Available (UMA) count in the Performance Funding System calculations.

(ii) An internal occupancy audit may be conducted by a high-performing PHA in place of an audit by the Field Office, at the option of the PHA, when the previous audit was conducted by the

Field Office, provided that the PHA meets all of the following conditions:

(A) The PHA has no open occupancy audit findings;

(B) The PHA has sufficient knowledgeable staff to allow the internal audit to be conducted by staff other than those responsible for day-to-day determinations of resident eligibility and resident payments. A small PHA can contract with a high performing PHA or agency to perform an internal occupancy audit, since PHAs can contract for administrative functions generally. Also, a PHA can trade this function with another PHA at no cost, if it so chooses;

(C) The PHA is not in priority category one or two as defined in the Occupancy Audit Handbook 7465.2, as revised, and

(D) The internal audit shall be conducted in accordance with Handbook 7465.2, as revised.

(4) Comprehensive Improvement Assistance Program (CIAP). (i) High-performing PHAs are relieved of the need for prior HUD review of architects'/engineers' contracts.

(ii) High-performing PHAs are relieved of the need for HUD review for construction and bid documents.

(iii) High-performing PHAs are relieved of the need for HUD review of contract modifications (including change orders).

(iv) High-performing PHAs are relieved of the need for HUD review of Request for Proposals (RFPs) and contract modifications for management improvement contracts.

(v) High-performing PHAs are relieved of the need for HUD review of budget revisions that delete or substantially revise approved work items, add new work items or incur costs in excess of the approved budget amount for any work item, but not budget revisions that incur costs in excess of the approved budget amount for any project or change the method of accomplishment from contract to force account labor.

(5) Development. (i) High-performing PHAs may submit applications in response to a Notice of Fund Availability (NOFA) with no further evidence of their capability to develop additional public housing units; full points in the rating criteria for development experience will be awarded, if experience is a NOFA criterion.

(ii) High-performing PHAs may approve construction modifications (change orders) that do not increase the contract amount and which are consistent with the original approved plans.

(iii) High-performing PHAs will not be required to obtain prior HUD approval under the Development Handbook for contracts for professional and technical services.

(iv) High-performing PHAs are relieved of the need for prior HUD approval of contracts for legal, architectural, engineering, or inspection services in connection with development, including the PHAs methodology for selection.

(e) Relief from any standard procedural requirements does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations or other handbook requirements. For example, although a high performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, it must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36).

(1) PHAs will still be subject to regular Independent Auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue to be conducted as circumstances may warrant.

(f) The Regional Administrator will have discretion to subject a PHA to any requirement that would otherwise be omitted under the specified relief. The discretion may be exercised in cases where there is evidence indicating seriously deficient performance that casts doubt on the PHA's capacity to preserve and protect its public housing developments and operate them in a manner consistent with Federal law and regulations. Examples of this evidence include, but are not limited to, substantial allegations or findings of fraud, abuse, or mismanagement; noncompliance with law, such as Fair Housing and Equal Opportunity (FHEO) statutes, based on such sources as FHEO compliance investigations or reviews, OIG audits or investigations, IA audits, and routine reports and reviews; or evidence that the PHA's certification of indicators is not supported by the facts.

§ 901.140 Memorandum of agreement.

(a) A Memorandum of Agreement (MOA), a binding contractual agreement between HUD and a PHA, shall be required for each PHA designated as troubled and troubled with respect to the program under section 14. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which may be the PHA's score in each of the indicators identified as a problem;

(2) Annual and quarterly performance targets, which may be the attainment of a higher grade within an indicator that is a problem, or the description of a goal to be achieved, for example, the reduction of rents uncollected to 6% or less by the end of the MOA annual period;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by the Department, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled designation or the designation as troubled with respect to the program under section 14, fewer conditions placed on grants, and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including such sanctions as the imposition of budgetary limitations, declaration of substantial default and subsequent action under § 901.200, limited denial of participation, suspension, debarment, or the imposition of operating funding and modernization thresholds; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems.

(b) A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(c) A MOA shall be executed by:

(1) The PHA Board Chairperson and accompanied by a Board resolution;

(2) The PHA Executive Director;

(3) The Regional Administrator and/or Field Office manager; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the Regional Administrator.

(d) A PHA will monitor MOA implementation to ensure that performance targets are met in terms of quantity, timeliness and quality.

(e) A PHA will be removed from troubled status upon a determination by the Regional Administrator that the PHA's assessment reflects an improvement to a level sufficient to remove the PHA from troubled status, or troubled with respect to the program under section 14, i.e., a total weighted management assessment score of 60% or more. The Regional Administrator may redelegate to the Field Office Manager the authority to remove PHAs under 1250 units from troubled status or troubled with respect to the program under section 14.

§ 901.142 Removal from troubled status and troubled with respect to the program under section 14 status.

(a) A PHA has the right to petition the Field Office manager for the removal of a designation as troubled or troubled with respect to the program under section 14. The Regional Administrator shall review a Field Office's decision regarding a PHA's petition for the removal of a designation as troubled or troubled with respect to the program under section 14, except where authority has been redelegated to the Field Office.

(b) A PHA may appeal any refusal to remove troubled and troubled with respect to the program under section 14 designation to the Assistant Secretary for Public and Indian Housing in accordance with § 901.130.

§ 901.145 Improvement plan.

(a) After receipt of the Field Office notification letter in accordance with § 901.120(b) or receipt of a final resolution of an appeal in accordance with § 901.130, a PHA shall correct any deficiency indicated in its management assessment within 90 calendar days.

(b) A PHA shall notify the Field Office of its action to correct a deficiency.

(c) If the Field Office determines that a PHA has not corrected a deficiency as required, the Field Office may require a PHA to prepare and submit to the Field Office an Improvement Plan after receipt of the Field Office notification letter in accordance with or receipt of a final resolution of an appeal.

(1) The Field Office shall require a PHA to submit an Improvement Plan, which includes the information stated in (d), below, for each indicator that a PHA scored a grade "F".

(2) The Field Office may require, on a risk management basis, a PHA to submit an Improvement Plan, which includes the information stated in (d), below, for each indicator that a PHA scored a grade "D" or "E".

(d) An Improvement Plan shall:

(1) Identify each uncorrected deficiency indicated in a PHA's management assessment;

(2) Describe the procedures that will be followed to correct each deficiency; and

(3) Provide a timetable for the correction of each deficiency.

(e) The Field Office will approve or deny an Improvement Plan, and notify the PHA of its decision within 30 calendar days of receipt of the Improvement Plan.

(f) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the Field Office for revising the Improvement Plan to obtain approval. A revised Improvement Plan shall be resubmitted by the PHA within 30 calendar days of its receipt of the Field Office recommendations.

(g) If a PHA fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the Field Office will notify the PHA of its noncompliance. The PHA will provide HUD its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be subject to sanctions provided for in the Annual Contributions Contract and HUD regulations.

§ 901.150 PHAs troubled with respect to the program under section 14.

(a) PHAs that achieve a total weighted score of 59% or less on indicator (2), modernization, may be designated as troubled with respect to the program under section 14.

(b) PHAs designated troubled with respect to the program under section 14 may be subject, under the CGP to a reduction of its formula allocation or other sanctions (24 CFR part 968, subpart C) or under the CIAP to disapproval of new funding or other sanctions (24 CFR part 968, Subpart B).

§ 901.155 PHMAP public record.

The Field Office will maintain PHMAP files, including certifications, the records of exclusion and modification requests, appeals, and designations of status based on physical condition and neighborhood environment, as open records, available for public inspection for three years in accordance with any procedures established by the Field Office to minimize disruption of normal office operations.

Subpart C—Substantial Default

§ 901.200 Substantial default by a PHA.

Notwithstanding any other provision of law or any contract for annual contributions, upon the occurrence of events or conditions that constitute a substantial default by a PHA with respect to the covenants or conditions to which the PHA is subject or an agreement entered into in accordance with § 901.140 or § 901.145 of this part, HUD may:

(a) Solicit competitive proposals from other PHAs and/or private housing management agents in the eventuality that these agents may be needed for managing all or part of the housing administered by the PHA; and/or

(b) Petition for the appointment of a receiver (which may be another PHA or a private management corporation) of the PHA to any District Court of the United States or to any Court of the State in which the real property of the PHA is situated, that is authorized to appoint a receiver for the purposes and having the powers to administer the housing of the defaulting PHA; and/or

(c) Require the PHA to make any other or additional arrangements acceptable to the Department and in the best interests of the public housing residents for managing all or part of the PHA's housing.

§ 901.205 Events or conditions that constitute substantial default.

(a) The Department may determine that events have occurred or that conditions exist that constitute a substantial default where a PHA is determined to be in violation of Federal statutes, including but not limited to, the U.S. Housing Act of 1937, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant Annual Contributions Contract (ACC).

(b) The Department may determine that a PHA's failure to satisfy the terms of a Memorandum of Agreement entered into in accordance with § 901.140 of this part, or to make reasonable progress to meet time frames included in a Memorandum of Agreement, are events or conditions that constitute a substantial default.

(c) The Department may declare a substantial breach or default under the

ACC, in accordance with its terms and conditions.

§ 901.210 Notice and response.

(a) If information from an annual assessment, as described in § 901.100 of this part, a management review or audit, or any other credible source indicates that there may exist events or conditions constituting a substantial breach or default, the Department shall advise a PHA of such information. The Department is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, the Department shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as "troubled PHAs" pursuant to § 901.115, or to demonstrate that the information is incorrect.

(b) In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Assistant Secretary is authorized to intercede to protect the residents' and the Department's interests by causing the proposed interventions to be implemented without further appeals or delays.

(c) Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall include, but need not necessarily be limited to:

(1) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in non-compliance;

(2) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;

(3) Citation of the communications and opportunities to effect remedies afforded pursuant to (a), above;

(4) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (a) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate, or to develop and submit for HUD review of plan to remedy the events, occurrences, or conditions that constitute the non-compliance; and

(5) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (c)(4) of this section, the Department will take appropriate action, using any or all of the interventions specified in § 901.210, and determined to be appropriate to remedy the noncompliance, citing § 910.210, and the authority for such action.

(d) Upon receipt of the notification described in paragraph (c), of this section, the burden of proof falls on the PHA to demonstrate factual error in the Department's description of events, occurrences, or conditions, or to show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is subject cited in the notification.

§ 901.215 Interventions.

(a) The Department may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s). Interventions under this subpart (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (e.g., maintenance, modernization, occupancy, or financial management or to a single development or a group of developments. Under this limited intervention procedure, the Department could select, or participate in the selection of, an alternate entity to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, of operational areas and developments not so designated.

(b) Upon determining that a substantial default exists under § 901.200, the Department may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an alternate entity to provide technical assistance or other services up to and including contract management of all or for any part of the public housing developments administered by a PHA; or

(3) Assuming possession and operational responsibility for all or for any part of the public housing administered by a PHA.

(c) HUD may take the actions described in § 901.200 (a) through (c), above, sequentially or simultaneously in any combination.

§ 901.220 Contracting and funding.

(a) Upon a declaration of substantial default or breach, and subsequent assumption of possession and operational responsibility, the Department may enter into agreements, arrangements, and/or contracts for or on behalf of a PHA, or to act as the PHA, and to expend or authorize expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default.

(b) In entering into contracts or other agreements for or on behalf or a PHA, the Department shall comply with requirements for competitive procurement consistent with 24 CFR 85.36, except that, upon determination of public exigency or emergency that will not permit a delay, the Department can enter into contracts or agreements on a non-competitive basis, consistent with the standards of 24 CFR 85.36(d)(4).

§ 901.225 Receivership.

(a) In any proceeding pursuant to § 901.200(b), above, upon a determination that a substantial default has occurred and without regard to the availability of alternate remedies, the Department may petition the court for the appointment of a receiver to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide. The court shall have authority to grant appropriate temporary or preliminary relief pending final disposition of any petition by HUD.

(b) The appointment of a receiver pursuant to this section may be

terminated upon the petition of the PHA, the receiver, or the Department, or upon a finding by the court that the circumstances or conditions that constituted substantial default by the PHA no longer exist and that the operations of the PHA will thereafter be conducted in accordance with applicable statutes and regulations, and contractual covenants and conditions to which the PHA and its public housing programs are subject.

Dated: December 24, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-1213 Filed 1-16-92; 8:45 am]

BILLING CODE 4210-33-M

VOL 57 ISS 12 JA 17 1992

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-92-3375]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB are published in this notice and may also be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is also requested that OMB complete its review within seven days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 9, 1992.

Kay Weaver,

Acting Director, Information Resources Management Policy and Management Division.

Proposal: Public Housing Management Assessment Program (PHMAP) Indicators (FR-2897).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Indicators and Standards will be used to assess the management performance of Public Housing Agencies (PHAs), designate troubled PHAs and mod-troubled PHAs, address deficiencies through a Memorandum of Agreement for each troubled and mod-troubled PHA, and annually submit to Congress a report on the status of troubled and mod-troubled PHAs.

Form Number: None.

Respondents: State or local governments and non-profit institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
1-99 Unit PHAs	1,608		1		1.9		3,055
100-499 Unit PHAs	1,274		1		2.1		2,675
500-1,249 Unit PHAs	244		1		3.1		756
1,250-3,999 Unit PHAs	102		1		3.7		377
4,000+ Unit PHAs	40		1		4.5		180
Recordkeeping	3,268		1		.1		327

Total Estimated Burden Hours: 7,371.

Status: New.

Contact: Wanda Funk, HUD, (202) 708-0660, Jennifer Main, OMB, (202) 395-6880.

Supporting Statement for Information Collection—Public Housing Management Reform

A. Justification

1. Section 502 of the National Affordable Housing Act of 1990 (the 1990 Act) establishes seven specific indicators and directs the Secretary to develop any other factors (indicators) deemed appropriate to assess the management performance of public housing agencies (PHAs) in all major areas of management operations. The 1990 Act further states that such indicators shall be used to designate troubled PHAs and PHAs that are troubled with respect to the program under section 14 (mod-troubled). HUD shall enter into a memorandum of agreement, which will address the failed indicators, with each troubled and mod-troubled PHA. In addition, the Secretary is required by the 1990 Act to annually submit to Congress a report on the status of troubled and mod-troubled PHAs.

These indicators will be used by Field Offices to annually update the automated PHA Performance Profile (Form HUD-52413) module of the System for Management Information Retrieval Public Housing (SMIRPH) for all PHAs at the beginning of the PHA fiscal year to allow the Department to fulfill this mandate of the 1990 Act in a fair and efficient manner. The SMIRPH system is an internal automated system used by only the Department and not by PHAs. PHAs are not required to complete the automated PHA Performance Profile module; that module is completed by the Field Office. PHAs are required to complete and submit a certification form, as described below.

The program developed by the Department is the Public Housing Management Assessment Program (PHMAP) and includes a total of 12 indicators, rather than 39 indicators and standards as published in the proposed rule. Of these, a PHA shall be required to certify to six indicators because information regarding these indicators is not presently reported to HUD by PHAs on any form, rather than 14 indicators and standards as published in the proposed rule. The use of a certification procedure, rather than the preparation and submission of a full data report, was judged to be the least intrusive

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method of gathering the information necessary to carry out section 502.

The first five indicators that will be certified to are indicators required by the 1990 Act: vacancies; rents uncollected; unit turnaround; outstanding work orders; and annual inspection and condition of units and systems. All of these indicators must be used to designate troubled PHAs. Information regarding troubled PHAs and these five indicators will be included in the Secretary's annual report to Congress. Since the 1990 Act requires HUD to assess PHAs on these indicators and this information is not currently reported to HUD, PHAs will have to certify to these indicators to satisfy the statutory requirement. The remaining indicator which will require certification, addresses President Bush's and Secretary Kemp's HUD priorities and relate to important management concerns: Homeownership and affordable housing opportunities; economic development and self-sufficiency; resident participation; and anti-drug strategy/security. This indicator will be used to designate troubled PHAs. Information regarding troubled PHAs and this indicator will be included in the Secretary's annual report to Congress. Since this indicator addresses HUD priorities, is essential to assess management performance, and information on it is not currently reported to HUD, PHAs will have to certify to this indicator.

PHAs will certify compliance with the above listed indicators so HUD can assess PHAs in all major areas of management operations as required by the 1990 Act.

Pursuant to 5 CFR 1320.4(b)(1), the Department has ensured that the collection of information associated with the following nonstatutory requirements is the least burdensome necessary by removing the burden of these requirements for the PHMAP: Board approved policies and procedures; work order response time; Comprehensive Occupancy Plan; and timeliness of management improvements.

There were no comments received regarding the "utility of information collection." However, the reporting associated with the regulation has been reduced due to the elimination of compliance indicators and the combination of others in response to comments received on the proposed rule. There are now 12 indicators.

2. The information provided by PHAs will be used by HUD to assess all major areas of PHAs' management operations, designate PHAs as troubled and mod-troubled, enter into a memorandum of agreement with troubled and mod-troubled PHAs, and report annually to Congress on the status of troubled and mod-troubled PHAs. In addition, HUD will use this information to practice accountability monitoring and risk management as well as to determine the type, scope and frequency of HUD reviews of PHAs and subsequent areas of required technical assistance to PHAs. If the information were not required to be collected, HUD would not be able to fulfill the statutory requirements of the 1990 Act.

3. We have not considered the use of improved technology since all PHA's do not have computer systems and there is no other way to get the information except directly from PHAs.

4. There will be no duplication of information.

5. There is no similar information already available which could be used or modified for use for the purpose described in paragraph 2.

6. We attempted to minimize the burden on PHAs by providing the exact form to be used to provide the required information to HUD. The certification form will include the OMB approval number.

7. The information cannot be collected less frequently than annually due to the statutory requirement for the Secretary to annually report to Congress on the status of troubled and mod-troubled PHAs.

8. There are no special circumstances that require the collection to be conducted in a manner which is inconsistent with the guidelines in 5 CFR 1320.6.

9. There has been consultation outside of HUD Headquarters and Regional and Field Offices on this information collection with the PHMAP Working Group. In addition to HUD Regional and Field Office participation, the Working Group included representatives from PHAs, resident organizations and industry groups. The consultations began December 1989 and are ongoing. The PHMAP Working Group includes the following representation:

Ms. Dorothy Biehle, Executive Director, Maryville Housing Authority, Davidson Square, Maryville, MO 64468.

Ms. Sandra Brown-Abernathy, Executive Director, Sutter County Housing Authority, Post Office Box 631, Uba City, CA 95992.

Mr. Jon Gutzman, Executive Director, St. Paul Housing Authority, 413 Wacouta Street, 350 Gilbert Building, St. Paul, MN 55101.

Mr. Raymond D. Hensen, Director of Research & Policy Division, New York City Housing Authority, 250 Broadway, New York, NY 10007.

Mr. Peter Howe, Executive Director, Portland Housing Authority, 14 Baxter Boulevard, Portland, ME 04101–1822.

Mr. Alphonso Jackson, Executive Director, Dallas Housing Authority, 2525 Lucas Drive, Dallas, TX 75219.

Ms. Patty Rayburn, Executive Director, Owensboro Housing Authority, 2161 E. 19th Street, Owensboro, KY 42301.

Ms. Karen Thoreson, Executive Director, Boulder Housing Authority, 3120 Broadway, Boulder, CO 80302.

Ms. Georgia Stone, Funding Development Director, Ada County/Boise City Housing Authority, 680 Cunningham Place, Boise, Idaho 83702.

Mr. Brown Nicholson, Executive Director, Columbus Housing Authority, Post Office Box 630, Columbus, GA 31993.

Mr. Jack Womack, Oklahoma City Housing Authority, 1700 Northeast Fourth Street, Oklahoma City, OK 73117.

Mr. Charles St. Lawrence, Chairman, Board of Commissioners, Anne Arundel County Housing Authority, 401 Old County Road, Severna Park, MD 21146.

Mr. Mitch Dasher, Executive Director, National Association of Resident Management Corporations, 4510 Quarles Street, NE., Washington, DC 20019.

Ms. Sandra McClellan, Legislative Assistant, Public Housing Authorities Directors Association, 511 Capitol Court, NE., Washington, DC 20002–4937.

Ms. Marcia Sigal, Housing Programs Officer, National Association of Housing and Redevelopment Officials, 1320 18th Street, NW. (5th Floor), Washington, DC 20036.

Ms. Mary Ann Russ, Director, Council of Large Public Housing Authorities, 122 C Street, NW. (suite 865), Washington, DC 20001.

10. The information collection is public information; therefore, there is no assurance of confidentiality provided to PHAs.

11. There are no questions of a sensitive nature included in the information to be collected.

12. We do not estimate that there will be any additional cost to the Federal Government. The information collected from PHAs will be reviewed in accordance with the statutory requirements of the 1990 Act and with HUD's existing review and monitoring procedures (HUD Handbook 7460.7 REV–1). Annual cost to PHAs is estimated to be minimal since PHAs are

normally expected to provide this information to their Boards of Commissioners at monthly meetings.

13. Prior to the passage of the 1990 Act, HUD tested four of the six PHMAP indicators included in this information collection request. The two indicators not included in the test are statutorily required. PHAs were requested to report the amount of time it took to answer each indicator. Based on that information, we estimate that information requirements for these four indicators will have the following reporting burdens per PHA, in hours:

Indicator	1–99 units (1608 PHAs)	100–499 units (1274 PHAs)	500–1249 units (244 PHAs)	1250–3999 units (102 PHAs)	4000+ units (40 PHAs)
Rents Uncollected	.2	.2	.5	.8	.5
Unit Turnaround	.4	.5	.5	.5	.9
Inspection & Condition of Units & Systems	.5	.5	.6	.8	1.3
Resident Initiatives	.4	.4	.5	.5	.5
Subtotal	1.5	1.8	2.1	2.6	3.2

The two indicators that were not field tested were required by the 1990 Act, and we estimate that the information requirement for these indicators will have the following reporting burden per PHA, in hours:

Indicator	1–99 units (1608 PHAs)	100–499 units (1274 PHAs)	500–1249 units (244 PHAs)	1250–3999 units (102 PHAs)	4000+ units (40 PHAs)
Vacancies	.2	.2	.5	.5	.5
Outstanding Work Orders	.2	.3	.5	.6	.8
Total Hours	1.9	2.1	3.1	3.7	4.5

We estimate that the information requirements for the interim rule will have the following reporting burdens:

Reference	Number of respondents	Freq. of response	Est. avg. response time (hours)	Est. annual burden (hrs.)
1–99 Unit PHAs	1608	1	1.9	3055.2
100–499 Unit PHAs	1274	1	2.1	2675.4
500–1249 Unit PHAs	244	1	3.1	756.4
1250–3999 Unit PHAs	102	1	3.7	377.4
4000+ Unit PHAs	40	1	4.5	180.0
Total Reporting Burden				7,044.4

We estimate that the information requirements for the interim rule will have the following recordkeeping burden:

Recordkeepers	Hours per recordkeeper	Total annual responses
3,268	1	327
Total Burden		7,371

The proposed collection of information was not included in this agency's Information Collection Budget.

14. This is a new information collection.

15. The collection of this information will not be published for statistical use, but will be used to comply with the statutory requirements in the 1990 Act that the Secretary designate troubled and mod-troubled PHAs and annually report to Congress their status.

BILLING CODE 4210-01-M

Public Housing Management Assessment Program (PHMAP) Certification

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB No. 2577-0138 (exp. mm/dd/yy)

Public reporting burden for this collection of information is estimated to average X.X hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-xxxx), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

PHA: | Date:

PROOF

We hereby certify that, as of the above date, the (name) _____ Housing Authority reports the following indicators under the Public Housing Management Assessment Program (PHMAP) to be true and accurate for its fiscal year ending _____:

Indicator 1: Vacancy Number & Percentage

Actual vacancy percent	%
Total vacant units	
Adjusted vacancy percent	%
Percent reduction of actual vacancies over prior three years	%

Indicator 3: Rents Uncollected

Percent of average annual rents uncollected	%

Indicator 5: Unit Turnaround

Annual average number of calendar days for vacant unit to be prepared for re-rental	
System has been established to track unit turnaround (enter Yes, No or N/A)	

Indicator 6: Outstanding Work Orders

Percent of emergency items corrected/abated within 24 hours	%
Percent of outstanding work orders	%
Progress has been demonstrated over the most recent three year period at reducing the time required to complete maintenance work orders (enter Yes, No or N/A)	

Indicator 7: Annual Inspection and Condition of Units and Systems

System has been established to track inspection and repair of units and systems (enter Yes, No or N/A)	
PHA used standards that were at least equivalent to the Housing Quality Standards (HQS) (enter Yes, No or N/A)	
Percent of units inspected annually	%
Percent of units meeting HQS	%
Percent of emergency items corrected/abated within 24 hours	%
Average number of days to bring non-emergency maintenance items to HQS	
Percent of Non-emergency maintenance items that were corrected according to PHA's maintenance plan	%
Major systems are inspected annually (enter Yes, No or N/A)	
Average number of days to correct identified systems deficiencies	
Percent of systems deficiencies that were corrected according to PHA's maintenance plan	%
Maintenance plans for units and systems have been established and are followed (enter Yes, No or N/A)	

Indicator 8: Tenants Accounts Receivable (TARs)

The PHA elects to use: (mark one)

- ☐ The Annual Average
- ☐ Annual TAR Percent

Indicator 11: Resident Initiatives

Policies have have been adopted and procedures implemented for: (enter Yes, No or N/A)

Anti-drug strategy/security	
Resident participation/management	
Homeownership opportunities	
Economic development/self-sufficiency	
Number of areas at which PHA has been successful in significantly improving conditions/activities	

The undersigned further certify that, to their present knowledge, there is no evidence to indicate seriously deficient performance that casts doubt on the PHA's capacity to preserve and protect its public housing developments and operate them in accordance with Federal law and regulations. Appropriate sanctions for intentional false certification will be imposed, including suspension or debarment of the signatories.

Chairperson, Board of Commissioner : (signature & date)	Attested to by: Executive Director : (signature & date)
X	X

A Board Resolution approving this certification is required and shall be attached to the executed certification.

Form HUD-50072 (12/17/91)
ref. Handbook 7460.8

[FR Doc. 92-1214 Filed 1-16-92; 8:45 am]
BILLING CODE 4210-01-C

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federal register

Friday
January 17, 1992

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

VOL 57 ISS 12 JA 17 1992 UMI

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

January 1, 1992.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of January 1, 1992, of 10 deferrals contained in the two special messages for FY 1992. These messages were transmitted to Congress on September 30, and December 19, 1991.

Rescissions

As of the date of this report, no rescission proposals are pending before the Congress.

Deferrals (Table A and Attachment A)

As of January 1, 1992, $2,906.4 million in budget authority was being deferred from obligation. Attachment A shows the history and status of each deferral reported during FY 1992.

Information From Special Messages

The special messages containing information on deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

56 FR 50620, Monday, October 7, 1991,
56 FR 67402, Monday, December 30, 1991.

Richard Darman,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1992 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	5,487.1
Routine Executive releases through January 1, 1992.	-2,580.7
Overturned by the Congress.....	---
Currently before the Congress.....	2,906.4

Attachments

ATTACHMENT A
Status of FY 1992 Deferrals – As of January 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 1–1–92
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund.....	D92–1	244,777		09–30–91					
	D92–1A		1,623,312	12–19–91	650,621				1,217,468
Foreign military financing.....	D92–8	1,908,000		12–19–91	777,300				1,130,700
Agency for International Development									
International disaster assistance,									
Executive.....	D92–2	40,704		09–30–91					40,704
Demobilization and transition fund.....	D92–9	13,000		12–19–91					13,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work.....	D92–3	482,378		09–30–91	135,434				346,944
Expenses, brush disposal.....	D92–10	101,006		12–19–91					101,006
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense.....	D92–4	1,416		09–30–91					1,416

ATTACHMENT A
Status of FY 1992 Deferrals – As of January 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 1–1–92
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D92–5	7,317		09–30–91					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D92–6	30,053		09–30–91					
	D92–6A		24,750	12–19–91	7,000				47,803
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D92–7	1,010,375		09–30–91	1,010,375				0
TOTAL, DEFERRALS		3,839,026	1,648,062		2,580,730	0		0	2,906,358

[FR Doc. 92–1234 Filed 1–16–92; 8:45 am]
BILLING CODE 3110–01–C

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Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. A cumulative list of Public Laws for the first session was published in Part II of the **Federal Register** on January 2, 1992.

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Public Laws

102d Congress, 1st Session, 1991

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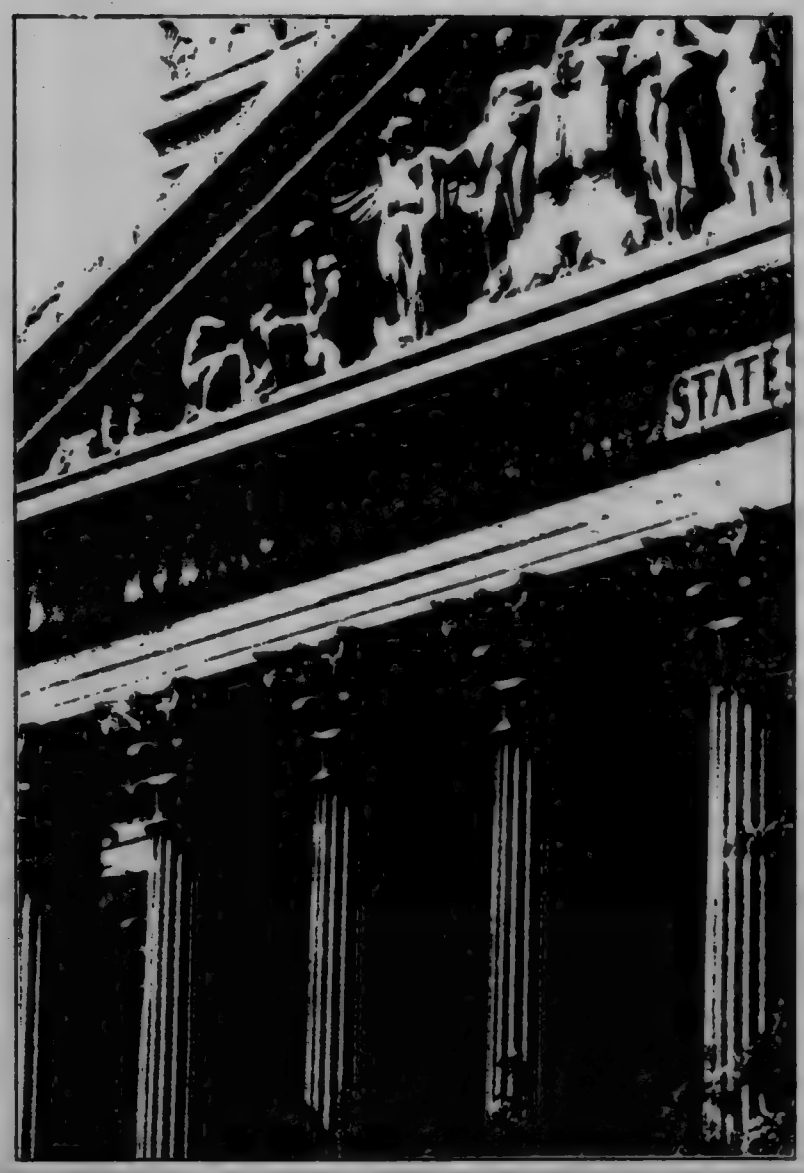

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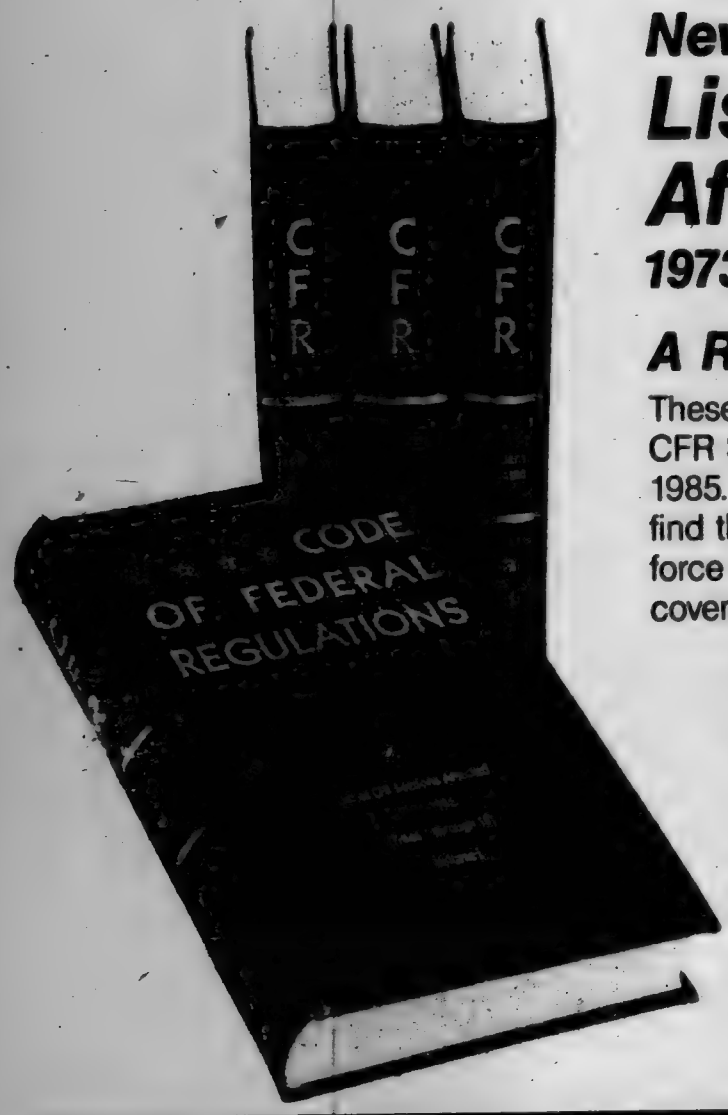

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1973-1985

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VOL 57 ISS 12 JA 17 1992 UMI

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in the Code of Federal Regulations (CFR)

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SUPPLEMENT: Revised January 1, 1991

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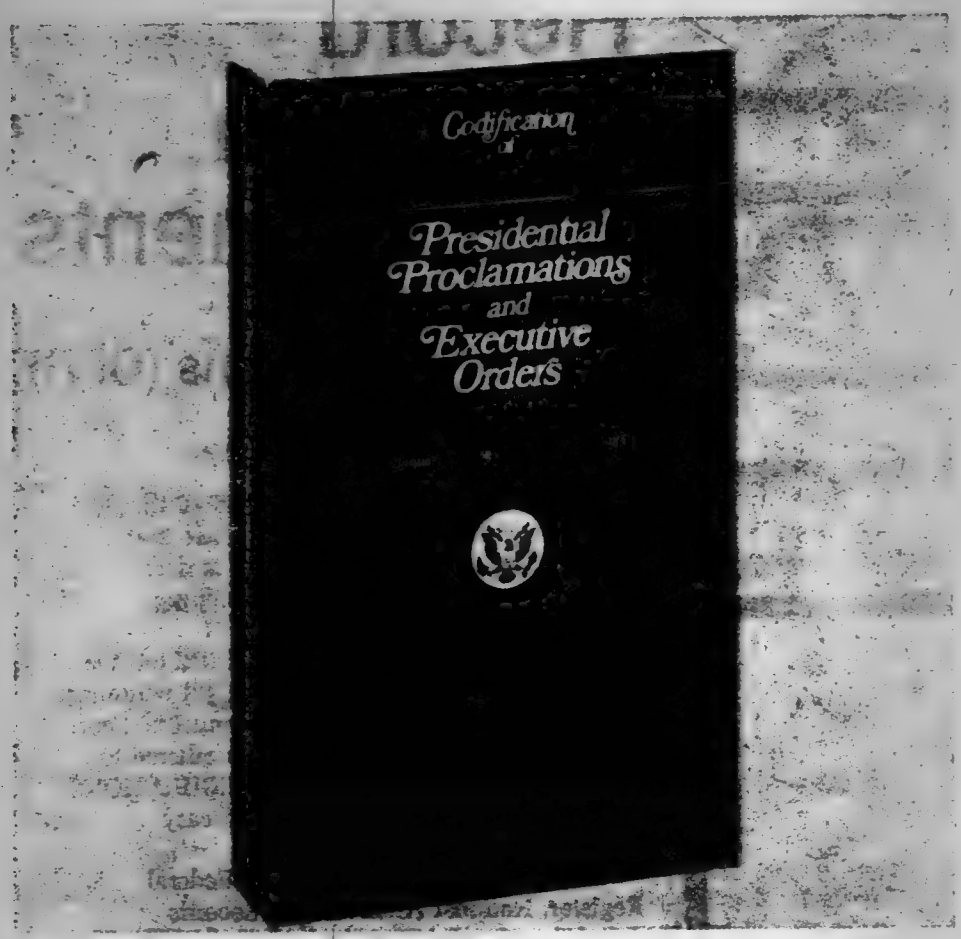

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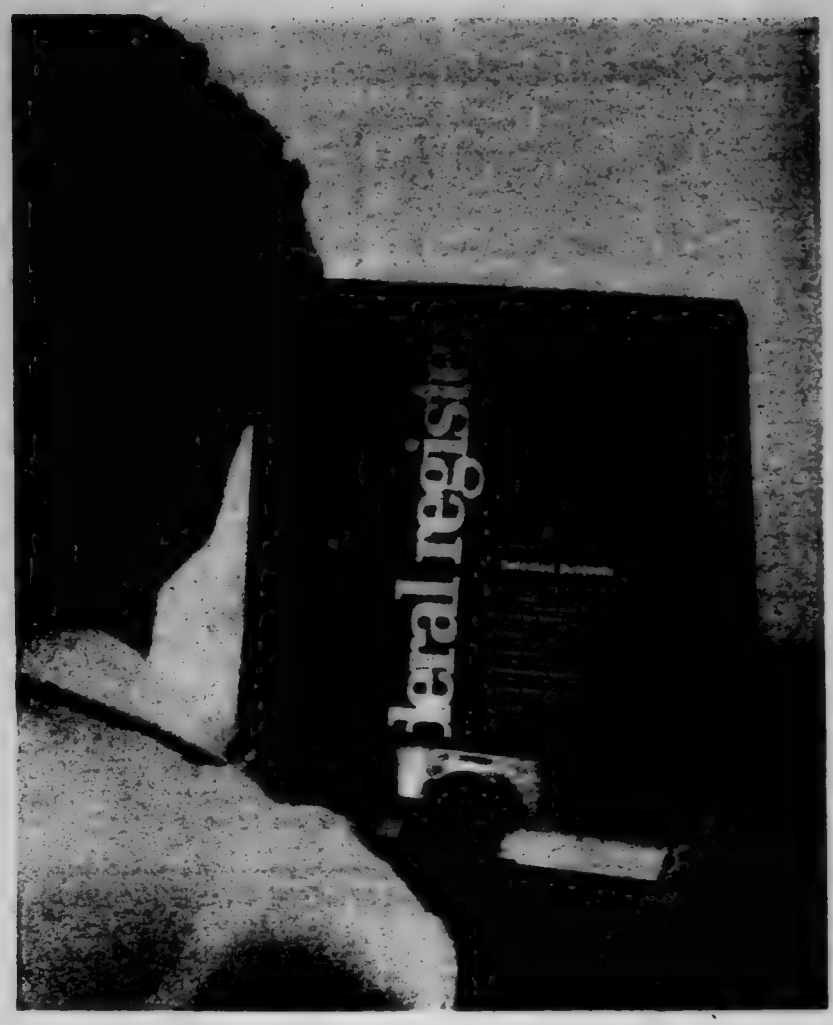

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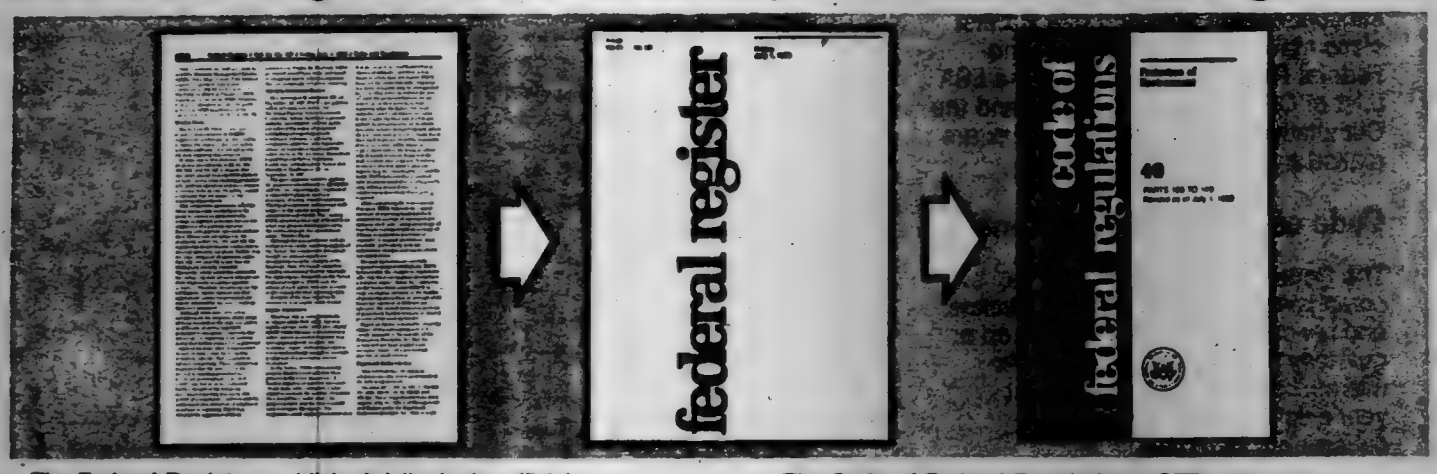

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federal register

Tuesday
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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

VOL 57 ISS 13 JA 21 1992 UMI

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Title 3—

The President

Executive Order 12788 of January 15, 1992

Defense Economic Adjustment Program

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 10 U.S.C. 2391 and the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990, enacted as Division D, section 4001 *et seq.*, of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, and to provide coordinated Federal economic adjustment assistance necessitated by changes in Department of Defense activities, it is hereby ordered as follows:

Section 1. *Function of the Secretary of Defense.* The Secretary of Defense shall, through the Economic Adjustment Committee, design and establish a Defense Economic Adjustment Program.

Sec. 2. *Purpose of the Defense Economic Adjustment Program.* The Defense Economic Adjustment Program shall assist in the alleviation of serious community socioeconomic effects that result from major Defense base closures, realignments, and Defense contract-related adjustments, and the encroachment of the civilian community on the mission of military installations.

Sec. 3. *Functions of the Defense Economic Adjustment Program.* The Defense Economic Adjustment Program shall:

(a) Identify problems of States, regions, metropolitan areas, or communities that result from major Defense base closures, realignments, and Defense contract-related adjustments, and the encroachment of the civilian community on the mission of military installations and that require Federal assistance;

(b) Use and maintain a uniform socioeconomic impact analysis to justify the use of Federal economic adjustment resources, prior to particular realignments;

(c) Apply consistent policies, practices, and procedures in the administration of Federal programs that are used to assist Defense-affected States, regions, metropolitan areas, and communities;

(d) Identify and strengthen existing agency mechanisms to coordinate employment opportunities for displaced agency personnel;

(e) Identify and strengthen existing agency mechanisms to improve reemployment opportunities for dislocated Defense industry personnel;

(f) Assure timely consultation and cooperation with Federal, State, regional, metropolitan, and community officials concerning Defense-related impacts on Defense-affected communities' problems;

(g) Assure coordinated interagency and intergovernmental adjustment assistance concerning Defense impact problems;

(h) Prepare, facilitate, and implement cost-effective strategies and action plans to coordinate interagency and intergovernmental economic adjustment efforts;

(i) Encourage effective Federal, State, regional, metropolitan, and community cooperation and concerted involvement of public interest groups and private sector organizations in Defense economic adjustment activities;

(j) Serve as a clearinghouse to exchange information among Federal, State, regional, metropolitan, and community officials involved in the resolution of community economic adjustment problems. Such information may include, for

example, previous studies, technical information, and sources of public and private financing;

(k) Assist in the diversification of local economies to lessen dependence on Defense activities;

(l) Encourage and facilitate private sector interim use of lands and buildings to generate jobs as military activities diminish; and,

(m) Develop ways to streamline property disposal procedures to enable Defense-impacted communities to acquire base property to generate jobs as military activities diminish.

Sec. 4. *Economic Adjustment Committee.*

(a) *Membership.* The Economic Adjustment Committee ("Committee") shall be composed of the following individuals, or a designated principal deputy of these individuals, and such other individuals from the executive branch as the President may designate. Such individuals shall include the:

(1) Secretary of Agriculture;

(2) Attorney General;

(3) Secretary of Commerce;

(4) Secretary of Defense;

(5) Secretary of Education;

(6) Secretary of Energy;

(7) Secretary of Health and Human Services;

(8) Secretary of Housing and Urban Development;

(9) Secretary of the Interior;

(10) Secretary of Labor;

(11) Secretary of State;

(12) Secretary of Transportation;

(13) Secretary of the Treasury;

(14) Secretary of Veterans Affairs;

(15) Chairman, Council of Economic Advisers;

(16) Director of the Office of Management and Budget;

(17) Director of the Office of Personnel Management;

(18) Director of the United States Arms Control and Disarmament Agency;

(19) Administrator of the Environmental Protection Agency;

(20) Director of the Federal Emergency Management Agency;

(21) Administrator of General Services;

(22) Administrator of the Small Business Administration; and,

(23) Postmaster General.

(b) *Chairman.* The Secretaries of Defense, Commerce, and Labor shall rotate, on a yearly basis, as chairman of the Committee.

(c) *Vice Chairman.* The Assistant Secretary of Defense who oversees the Department of Defense's Office of Economic Adjustment shall serve as vice chairman of the Committee. The vice chairman shall chair the Committee in the absence of both the chairman and the chairman's designee and may also preside over meetings of designated representatives of the concerned executive agencies.

(d) *Executive Director.* The head of the Department of Defense's Office of Economic Adjustment shall provide all necessary policy and administrative support for the Committee and shall be responsible for coordinating the

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application of the Defense Economic Adjustment Program to Department of Defense activities.

(e) *Duties.* The Committee shall:

(1) Advise, assist, and support the Defense Economic Adjustment Program;

(2) Develop procedures for ensuring that State, regional, and community officials and representatives of organized labor in those States, municipalities, localities, or labor organizations that are substantially and seriously affected by changes in Defense expenditures, realignments or closures, or cancellation or curtailment of major Defense contracts, are notified of available Federal economic adjustment programs; and,

(3) Report annually to the President and then to the Congress on the work of the Economic Adjustment Committee during the preceding fiscal year.

Sec. 5. *Responsibilities of Executive Agencies.*

(a) The head of each agency represented on the Committee shall designate an agency representative to:

(1) Serve as a liaison with the Secretary of Defense's economic adjustment staff;

(2) Coordinate agency support and participation in economic adjustment assistance projects; and,

(3) Assist in resolving Defense-related impacts on Defense-affected communities.

(b) All executive agencies shall:

(1) Support, to the extent permitted by law, the economic adjustment assistance activities of the Secretary of Defense. Such support may include the use and application of personnel, technical expertise, legal authorities, and available financial resources. This support may be used, to the extent permitted by law, to provide a coordinated Federal response to the needs of individual States, regions, municipalities, and communities adversely affected by necessary Defense changes;

(2) Afford priority consideration to requests from Defense-affected communities for Federal technical assistance, financial resources, excess or surplus property, or other requirements, that are part of a comprehensive plan used by the Committee.

Sec. 6. *Judicial Review.* This order shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, its agents, or any person.

Sec. 7. *Construction.* (a) Nothing in this order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any agency or head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

(b) This order shall be effective immediately and shall supersede Executive Order No. 12049.

THE WHITE HOUSE,
January 15, 1992.

[FR Doc. 92-1551
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Federal Register
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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the U.S. Department of Agriculture (USDA) to reflect the establishment of the Rural Development Administration.

EFFECTIVE DATE: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: John H. Madding, Deputy Director, Community Facilities Division, Farmers Home Administration, United States Department of Agriculture, Washington, DC 20250, (202) 720–1490.

SUPPLEMENTARY INFORMATION: This document reflects the establishment of the Rural Development Administration. It revises the delegations of authority to the Under Secretary for Small Community and Rural Development and the Administrator of the Farmers Home Administration and adds delegations of authority to the Administrator of the Rural Development Administration.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.23 is amended by revising the section heading and the first sentence of paragraph (a)(1) and making the remaining text a concluding paragraph, and revising paragraph (a)(11), removing and reserving paragraph (a) (4), (5), (6), (10), (14), (16), (18), (20), and (21), and revising paragraph (b) to read as follows:

§ 2.23 Under Secretary for Small Community and Rural Development.

* * * * *

(a) *Related to farmers home activities.* (1) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) except:

(i) The authority contained in section 342 of said act (7 U.S.C. 1013a);

(ii) The authority to administer all programs under Section 306 (7 U.S.C. 1926);

(iii) The authority in section 303(a) (2) and (3) (7 U.S.C. 1923(a) (2) and (3)) relating to real estate loan for recreation and non-Farm purposes;

(iv) The authority in section 304(b) (7 U.S.C. 1924(b)) relating to small business enterprise loans;

(v) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a) regarding assets and programs related to rural development;

(vi) The authority in section 310A (7 U.S.C. 1931) relating to watershed and resource conservation and development loans;

(vii) The authority in section 310B (7 U.S.C. 1932) regarding rural industrialization assistance;

(viii) The authority contained in section 312(a) (5) and (6) (7 U.S.C. 1942(a) (5) and (6)) relating to operating loans for recreation and non-Farm purposes;

(ix) The authority contained in section 312(b) (7 U.S.C. 1942(b)) relating to small business enterprises;

(x) The authority contained in section 306A (7 U.S.C. 1926a) and section 306B (7 U.S.C. 1926b) to administer the emergency community water assistance grant programs;

(xi) The authority contained in section 306C (7 U.S.C. 1926c) to administer the water and waste facility loans and grants to alleviate health risks; and

(xii) The authority in section 364 (7 U.S.C. 2006f), section 365 (7 U.S.C. 2008), section 366 (7 U.S.C. 2008a), section 367 (7 U.S.C. 2008b), and section 368 (7 U.S.C. 2008c) regarding assets and programs related to rural development. * * *

* * * * *

(4)–(6) [Reserved]

* * * * *

(10) [Reserved]

(11) Administer financial assistance programs under part A of title III and part D of title I and the necessarily related functions in title VI of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2763–2768, 2841–2855, 2942, 2943(b), 2961) delegated by the Director of the Office of Economic Opportunity to the Secretary of Agriculture by documents dated October 23, 1964 (29 FR 14764), and June 17, 1968 (33 FR 9850), respectively, except those relating to Economic Opportunity Loans to Cooperatives.

* * * * *

(14) [Reserved]

* * * * *

(16) [Reserved]

* * * * *

(18) [Reserved]

* * * * *

(20)–(21) [Reserved]

* * * * *

(b) *Related to rural development.* (1) Provide leadership and coordination within the executive branch of a nationwide rural development program utilizing the services of executive branch departments and agencies and the agencies, bureaus, offices, and

services of the Department of Agriculture in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(2) Coordinate activities relative to rural development among agencies under the Under Secretary for Small Community and Rural Development and, through appropriate channels, serve as the coordinating agency for other departmental agencies having primary responsibilities for specific titles of the Rural Development Act of 1972, and allied legislation.

(3) Administer a national program of economic, social, and environmental research and analysis, statistical programs, and associated service work related to rural people and the communities in which they live including rural industrialization; rural population and manpower; local government finance; income development strategies; housing; social services and utilization; adjustments to changing economic and technical forces; and other related matters.

(4) Work with Federal agencies in encouraging the creation of rural community development organizations.

(5) Assist other Federal agencies in making rural community development organizations aware of the Federal programs available to them.

(6) Advise rural community development organizations of the availability of Federal assistance programs.

(7) Advise other Federal agencies of the need for particular Federal programs.

(8) Assist rural community development organizations in making contact with Federal agencies whose assistance may be of benefit to them.

(9) Assist other Federal agencies and national organizations in developing means for extending their services effectively to rural areas.

(10) Assist other Federal agencies in designating pilot projects in rural areas.

(11) Conduct studies to determine how programs of the Department can be brought to bear on the economic development problems of the country and assure that local groups are receiving adequate technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities.

(12) Assist other Federal agencies in formulating manpower development and training policies.

(13) Authority to enter into contracts for the support of rural development.

(14) Except with respect to loans for rural telephone facilities and service and financing for community antenna television facilities and services delegated in paragraphs (c)(2) and (3) of this section, administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq):

(i) Sections 303(a)(2) and (3) (7 U.S.C. 1923(a)(2) and (3)) relating to real estate loans for recreation and non-Farm purposes;

(ii) Section 304(b) (7 U.S.C. 1924(b)) relating to small business enterprises;

(iii) Section 306 (7 U.S.C. 1926);

(iv) Section 306A (7 U.S.C. 1926a);

(v) Section 306B (7 U.S.C. 1926b);

(vi) Section 306C (7 U.S.C. 1926c);

(vii) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a) relating to assets and programs related to rural development;

(viii) Section 310A (7 U.S.C. 1931) relating to watershed and resource conservation and development;

(ix) Section 310B (7 U.S.C. 1932) relating to rural industrialization assistance;

(x) Sections 312(a)(5) and (6) (7 U.S.C. 1942(a)(5) and (6)) relating to operating loans for recreation and non-Farm purposes;

(xi) Section 312(b) (7 U.S.C. 1942(b)) relating to small business enterprises;

(xii) Section 342 (7 U.S.C. 1013a);

(xiii) Administrative Provisions of Subtitle D of the Consolidated Farm and Rural Development Act relating to rural development activities;

(xiv) Section 364 (7 U.S.C. 2006f);

(xv) Section 365 (7 U.S.C. 2008);

(xvi) Section 366 (7 U.S.C. 2008a);

(xvii) Section 367 (7 U.S.C. 2008b); and

(xviii) Section 368 (7 U.S.C. 2008c).

(15) Administer section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note).

(16) Administer section 8, and those functions with respect to repayment of obligations under section 4, of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1006a, 1004) and administer the resource conservation and development program to assist in carrying out resource conservation and development projects in rural areas under section 32(e) of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(17) Administer loan programs in the Appalachian region under sections 203 and 204 of the Applachian Regional Development Act of 1965 (40 U.S.C., App. 204).

(18) Administer loans to Indian tribes and tribal corporations (25 U.S.C. 488–492).

(19) Administer section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95–620).

(20) Administer the Drought and Disaster Guaranteed Loan program under section 331 of the Disaster Assistance Act of 1988 (7 U.S.C. 1929a note).

(21) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (7 U.S.C. 1929a note).

(22) Administer the Farms for the Future Act of 1990, as amended (7 U.S.C. 4201 note).

(23) Administer the Water and Waste Loan Program under Section 2322 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1926–1).

(24) Administer the Rural Wastewater Treatment Circuit Rider Program (7 U.S.C. 1926 note).

(25) Administer the Rural Economic Development Demonstration Grant Program (7 U.S.C. 2662a).

(26) Administer the Economically Disadvantaged Rural Community Loan program (7 U.S.C. 6616).

(27) Administer financial assistance programs relating to Economic Opportunity Loans to Cooperatives under part A of title III and part D of title I and the necessarily related functions in Title VI of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2763–2768, 2841–2855, 2942, 2943(b), 2961) delegated by the Director of the Office of Economic Opportunity to the Secretary of Agriculture by documents dated October 23, 1964 (29 FR 14764), and June 17, 1968 (33 FR 9850), respectively.

(28) The authority to collect, service, and liquidate loans made insured or guaranteed by the Rural Development Administration, Farmers Home Administration or its predecessor agencies.

(29) Administer the Federal Claims Collection Act of 1966 and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General with respect to the claims of the Rural Development Administration (31 U.S.C. 951, 953; 4 CFR chapter II).

(30) Administer responsibilities and function assigned under the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061 et seq.) and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. app. 2251 et seq.) relating to rural development credit and financial assistance.

(31) Provide Department-wide operational support and coordination for loan and grant programs to foster and encourage the production of fuels from

agricultural and forestry products and by-products.

* * * * *

Subpart I—Delegations of Authority by the Under Secretary for Small Community and Rural Development

3. Section 2.70 is amended by revising the section heading and the first sentence of paragraph (a)(1) and making the remaining text a concluding paragraph, and revising paragraph (a)(11) and by removing and reserving paragraph (a)(4)–(a)(6), (a)(10), (a)(28), (a)(29), (a)(31), (a)(33), (a)(36), (a)(37), and (b)(2) as follows:

§ 2.70 Administrator, Farmers Home Administration.

(a) *Delegations.* * * *

(1) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) except:

(i) The authority contained in section 342 of said act (7 U.S.C. 1013a);

(ii) The authority to administer all programs under section 306 (7 U.S.C. 1926);

(iii) The authority in section 303(a)(2) and (3) (7 U.S.C. 1923(a)(2) and (3) relating to loans for recreation and non-Farm purposes;

(iv) The authority in section 304(b) (7 U.S.C. 1924(b)) relating to small business enterprises;

(v) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a) regarding assets and programs related to rural development;

(vi) The authority in section 310A (7 U.S.C. 1931) relating to watershed and resource conservation and development loans;

(vii) The authority contained in section 312(a)(5) and (6) (7 U.S.C. 1942(a)) relating to pollution abatement loans and grants and certain operating loans to farmers delegated in section 2.71;

(viii) The authority in section 310B (7 U.S.C. 1932) regarding rural industrialization assistance;

(ix) The authority contained in section 312(b) (7 U.S.C. 1942(b)) relating to small business enterprises;

(x) The authority contained in section 306A (7 U.S.C. 1926a) and section 306B (7 U.S.C. 1926b) to administer the emergency community water assistance grant program;

(xi) The authority contained in section 306C (7 U.S.C. 1926c) to administer the water and waste facility loans and grants to alleviate health risk; and

(xii) The authority in section 364 (7 U.S.C. 2006f) section 365 (7 U.S.C. 2008), section 366 (7 U.S.C. 2008a), section 367 (7 U.S.C. 2008b), and section 368 (7 U.S.C. 2008c) regarding assets and programs regarding to rural development.* * *

* * * * *

(4)–(6) [Reserved]

* * * * *

(10) [Reserved]

(11) Administer financial assistance programs under part A of title III and part D of title I and the necessarily related functions in title VI of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2763–2768, 2841–2855, 2942, 2943(b), 2961) delegated by the Director of the Office of Economic Opportunity to the Secretary of Agriculture by documents dated October 23, 1964 (29 FR 14764, and June 17, 1968 (33 FR 9850), respectively, except those relating to Economic Opportunity Loans to Cooperatives.

* * * * *

(28)–(29) [Reserved]

* * * * * *

(31) [Reserved]

* * * * * *

(33) [Reserved]

* * * * * *

(36)–(37) [Reserved]

(b) * * *

(2) [Reserved]

4. A new section 2.71 is added to read as follows:

§ 2.71 Administrator, Rural Development Administration.

(a) *Delegations.* Pursuant to § 2.23(b), (e) and (i), and subject to policy guidance and direction by the Under Secretary for Small Community and Rural Development, the following delegations are made by the Under Secretary for Small Community and Rural Development to the Administrator, Rural Development Administration:

(1) Provide leadership and coordination within the executive branch of a nationwide rural development program utilizing the services of executive branch departments and agencies and the agencies, bureaus, offices, and services of the Department of Agriculture in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(2) Coordinate activities relative to rural development among agencies under the Under Secretary for Small Community and Rural Development and, through appropriate channels, serve as the coordinating agency for other departmental agencies having primary responsibilities for specific titles of the Rural Development Act of 1972, and allied legislation.

(3)–(13) [Reserved]

(14) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), except with respect to financing for community antenna television services or facilities; or loans for rural electrification or telephone systems or facilities other than hydroelectric generating and related distribution systems and supplemental and supporting structures if they are not eligible for Rural Electrification Administration financing:

(i) Sections 303(a)(2) and (3) (7 U.S.C. 1923(a)(2) and (3)) relating to loans for recreation and non-Farm purposes;

(ii) Section 304(b) (7 U.S.C. 1924(b)) relating to small business enterprises;

(iii) Section 306 (7 U.S.C. 1926);

(iv) Section 306A (7 U.S.C. 1926a);

(v) Section 306B (7 U.S.C. 1926b);

(vi) Section 306C (7 U.S.C. 1926c);

(vii) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a) regarding assets and programs related to rural development;

(viii) Section 310A (7 U.S.C. 1931) relating to watershed and resource conservation and development;

(ix) Section 310B (7 U.S.C. 1932) relating to rural industrialization assistance;

(x) Sections 312(a)(5) and (6) (7 U.S.C. 1942(a)(50 and (6)) relating to land and water development, use and conservation; recreational enterprises; small business enterprises; and pollution abatement;

(xi) Section 312(b) (7 U.S.C. 1942(b)) relating to small business enterprises;

(xii) Section 342 (7 U.S.C. 1013a);

(xiii) Administrative Provisions of Subtitle D of the Consolidated Farm and Rural Development Act relating to rural development activities;

(xiv) Section 364 (7 U.S.C. 2006f);

(xv) Section 365 (7 U.S.C. 2008);

(xvi) Section 366 (7 U.S.C. 2008a);

(xvii) Section 367 (7 U.S.C. 2008b); and

(xviii) Section 368 (7 U.S.C. 2008c);

(15) Administer section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note).

(16) Administer section 8, and those functions with respect to repayment of obligations under section 4, of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1006a, 1004) and administer the resource conservation and development program to assist in carrying out resource conservation and development projects in rural areas under section 32(e) of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(17) Administer loan programs in the Appalachian region under sections 203 and 204 of the Appalachian Regional

Development Act of 1965 (40 U.S.C., App. 204).

(18) Administer loans to Indian tribes and tribal corporations (25 U.S.C. 488–492).

(19) Administer section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95–620).

(20) Administer the Drought and Disaster Guaranteed Loan program under section 331 of the Disaster Assistance Act of 1988 (7 U.S.C. 1929a note).

(21) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (7 U.S.C. 1929a note).

(22) Administer the Farms for the Future Act of 1990, as amended (7 U.S.C. 4201 note).

(23) Administer the Water and Waste Loan Program under section 2322 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1926–1).

(24) Administer the Rural Wastewater Treatment Circuit Rider Program (7 U.S.C. 1926 note).

(25) Administer the Rural Economic Development Demonstration Grant Program (7 U.S.C. 2662a).

(26) Administer the Economically Disadvantaged Rural Community Loan Program (7 U.S.C. 6616).

(27) Administer financial assistance programs relating to Economic Opportunity Loans to Cooperatives under part A of title III and part D of title I and the necessarily related functions in title VI of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2763–2768, 2841–2855, 2942, 2943(b), 2961) delegated by the Director of the Office of Economic Opportunity to the Secretary of Agriculture by documents dated October 23, 1964 (29 FR 14764), and June 17, 1968 (33 FR 9850), respectively.

(28) The authority to collect, service, and liquidate loans made, insured or guaranteed by the Rural Development Administration, Farmers Home Administration or its predecessor agencies.

(29) Administer the Federal Claims Collection Act of 1966 and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General with respect to the claims of the Rural Development Administration (31 U.S.C. 951, 953; 4 CFR Chapter II).

(30) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.) and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. app. 2251 et seq.) relating to rural development credit and financial assistance.

(31) Provide Department-wide operational support and coordination for loan and grant programs to foster and encourage the production of fuels from agricultural and forestry products and by-products.

(32) With respect to land and facilities under the Administrator's authority, exercise the functions delegated to the Secretary by Executive Order No. 12580 under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)) with respect to removal and other remedial action in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment.

(ii) Sections 104(e) through (h), with respect to information gathering and access; compliance order; compliance with Federal health and safety standards; rates for wages and labor standards applicable to covered work; and emergency procurement powers.

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health.

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action.

(v) Section 105(d) of the Act (42 U.S.C. 9605(d), with respect to petition for preliminary assessment of a release or threatened release.

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress.

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations and the granting of awards to individuals providing information.

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund.

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action.

(x) Section 116(a) (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities.

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into.

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to idemnifying response action contractors.

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to selecting cleanup standards.

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to entering into settlement agreements.

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Small Community and Rural Development:

(1) Making and issuing notes to the Secretary of the Treasury for the purposes of the Agricultural Credit Insurance Fund and the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929, 1229a).

(2) Administering loans for rural telephone facilities and service in rural areas as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

For Subpart C.
Dated: January 8, 1992.

Edward Madigan,
Secretary of Agriculture.

For Subpart I.
Dated: January 8, 1992.

Roland R. Vautour,
Under Secretary for Small Community and Rural Development.

[FR Doc. 92–1137 Filed 1–17–92; 8:45 am]
BILLING CODE 3410–07–M

Agricultural Marketing Service

7 CFR Part 58

[DA 91–003]

RIN: 0581–AA42

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products: Revision of User Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is increasing the fees charged for services provided under the dairy

grading program. The program is a voluntary, user-fee funded program conducted under the authority of the Agricultural Marketing Act of 1946, as amended. This action increases the hourly rate to $39.60 per hour for continuous resident services and $44.60 per hour for nonresident services between the hours of 6 a.m. and 6 p.m. These fees represent a $3.60 per hour increase for both resident and nonresident services. The fee for nonresident services between the hours of 6 p.m. and 6 a.m. is $49.00 per hour, which represents an increase of $4.00 per hour. The fees need to be increased to rebuild the required operating reserve, to provide the necessary funding to restore the supervision and training activities that have been curtailed because of funding problems, and to cover approved salary increases for 1992.

EFFECTIVE DATE: January 26, 1992.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Division, Dairy Grading Branch, room 2750–South Building, P.O. Box 96456.00, Washington, DC 20090–6456, (202) 720–9381.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified a "non-major" rule under the criteria contained therein.

The final rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Administrator, Agricultural Marketing Service, has determined that it will not have a significant economic impact on a substantial number of small entities. The changes will not significantly affect the cost per unit for grading and inspection services. The Agricultural Marketing Service estimates that overall this rule will yield an additional $400,000 during 1992. The Agency does not believe the increases will affect competition. Furthermore, the dairy grading program is a voluntary program.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services and as nearly as may be to cover the cost of maintaining the program.

Since the costs of the grading program are covered by user fees, it is essential that fees be increased to cover the cost of maintaining a financially self-supporting program. During the early 1980's the dairy grading program was severely taxed in meeting the needs of the dairy price support program. Government purchases increased from 1.1 billion pounds milk equivalent in the 1978–79 marketing year to 16.6 billion pounds in 1982–83. To accommodate this increased workload, the Dairy Grading Branch had to expand its staff significantly.

Purchases remained high through 1986, and then dropped to 5.6 billion pounds during the 1986–87 marketing year. By 1988, the dairy grading workload associated with the price support program had dropped to the point that it was necessary to cut the grading staff by about half. Staff reductions were made both in Washington and in the field, and three of the four field offices were closed. By the time the grading program was totally restructured, the trust fund reserve had been depleted and a debt of about $1 million incurred. To deal with the funding problem, grading fees have been increased substantially since 1988—131 percent for the resident programs and 116 percent for the nonresident programs. The most recent fee increases became effective January 13, 1991.

On March 12, 1991, the Agricultural Marketing Service published in the **Federal Register** (56 FR 10382) a document proposing a $5.60 increase in the hourly fees for both the resident and nonresident programs. At that time, the grading program was still experiencing significant financial problems and, as set forth in that document, a substantial fee increase was considered necessary.

Prior to final action on the proposed fee increase, however, Congress authorized a $1.25 million appropriation for the dairy grading program for fiscal year 1992. Although this appropriation will help significantly in recapitalizing the program, additional funding is still needed. The funds are necessary to help rebuild a four-month operating reserve of about $1.9 million, to provide the necessary capital (about $450,000 annually) to restore the supervision and training activities that have been curtailed, and to cover salary increases of 4.2 percent that have been authorized for 1992. Accordingly, the program fees are being increased as set forth below.

Program Changes Adopted in the Final Rule

This document makes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increases the hourly fee for nonresident services from $41.00 to $44.60 for services performed between 6 a.m. and 6 p.m. and from $45.00 to $49.00 for services performed between 6 p.m. and 6 a.m.

The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel, plus travel costs.

2. Increases the hourly fee for continuous resident services from $36.00 to $39.60.

The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous, year-round, resident basis.

Response to Industry Comments

As indicated earlier, a rulemaking document proposing changes in the fee structure was published in the **Federal Register**. A 30-day comment period was provided so that interested persons could submit comments on the proposed changes. The Agency received comments from five dairy cooperatives and two national dairy trade associations. The comments and the Agency's responses are set forth below.

All of the commenters focused on the general economic impact the proposed increases would have on processors of dairy products and milk producers. It was contended that the magnitude of the increases would make it difficult for processors to pass these additional costs along through the marketing chain. Processors claimed that they would have to absorb the fee increases or reduce the prices paid to the dairy farmers supplying the milk.

While the Agency understands the concerns of the commenters, the program's severe financial difficulties already described require implementation of a fee increase. The fee increase, though, is considerably less ($3.60 per hour versus the proposed increase of $5.60 per hour) than what had been proposed in the earlier notice. Even so, every effort will be made to operate the program as efficiently as possible and to seek cost-cutting measures that are consistent with the Agency's mission under this program.

Five of the commenters requested that the current "make allowance" provided under the dairy price support program be increased. The price support program is operated by the Commodity Credit Corporation (CCC). CCC establishes estimates of industry costs for

manufacturing butter, cheese and nonfat dry milk. These estimates, or "make allowances," are then used in setting the purchase prices under the support program for surplus dairy products. Since the price support program is administered by another Agency and is not a part of the grading program, the commenters' suggestion is outside the scope of this rulemaking proceeding.

Two of the commenters recommended increasing the productivity and efficiency of USDA graders by increasing the maximum lot size of products eligible for grading. The Dairy Division has long utilized 5,000 pounds of product as the maximum amount which can be represented by a sample. Advances in technology and plant efficiency now provide a production environment in which larger quantities of essentially homogeneous products can be manufactured. AMS reviewed the feasibility of increasing the maximum lot size consistent with statistically sound sampling procedures and has provided an opportunity for the industry to increase lot size to a maximum of 20,000 pounds.

Three commenters recommended that the Agency develop procedures to recognize the use of Hazard Analysis Critical Control Programs (HACCP) by processors that could serve as the basis for the acceptance of products and thereby lessen their costs under the grading program. Current requirements provide for a manufacturer who wishes to offer product for grading to subject the manufacturing facilities and equipment to inspection. Once the facilities and equipment are "approved" products made at the plant are eligible for grading and inspection services. The products offered for grading then undergo a random sample selection process, with strict sample integrity procedures. An official certificate which reflects the final grade of the product offered is then issued.

HACCP concepts, on the other hand, define an industry-operated total quality control program which places emphasis on continuous monitoring by the processor of all phases of production, especially critical areas, to assure that the end product is "within specifications." AMS is presently cooperating with the industry to investigate the HACCP concept and to evaluate its compatibility with the Agency's mission. However, this is a long-term activity and will not result in immediate alterations of dairy inspection and grading procedures.

One commenter stated that the general working relationship between the industry and the government has been strained. The commenter stated further that industry dissatisfaction stems from low USDA productivity and delayed reporting of laboratory results and issuance of grading certificates. The Dairy Grading Section and the Science Division laboratory have experienced a surge of inspection and grading service requests beginning in November 1990 and continuing to the present. The surge in requests was due to changing market conditions in the dairy industry as well as a dramatic increase for laboratory services to test Meals-Ready-to-Eat (MRE's) to supply Desert Shield and Desert Storm. The number of requests for service strained the ability of the available staff to respond in a timely manner. The Agency has taken actions to reduce or eliminate any unnecessary delays.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not delaying the effective date of this action until 30 days after publication of this final rule in the **Federal Register**. A revenue shortfall warrants putting the higher rates into effect as quickly as possible. The increase in fees is essential for effective management and operation of the program and to satisfy the intent of the Agricultural Marketing Act of 1946. A proposed rule setting forth proposed fee increases was published in the **Federal Register** on March 12, 1991. Therefore, the provisions of this final rule are known to interested parties, except that the fee increases adopted are considerably less than had been proposed.

List of Subjects in 7 CFR Part 58

Food grades and standards, Dairy products, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 58, subpart A, is amended as follows:

PART 58—[AMENDED]

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

1. The authority citation for part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. Section 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in § 58.43 and §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of $44.60 for service performed between 6 a.m. and 6 p.m., and $49.00 for service performed between 6 p.m. and 6 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector and grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident service.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $39.60 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Signed at Washington, DC, on: January 15, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–1435 Filed 1–17–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 301

[Docket No. 911203–1303]

Disclosure of Information to the Public

AGENCY: Economic Development Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Economic Development Administration (EDA) is amending its rule at 13 CFR part 301 subpart D to repeal its existing guidelines for the disclosure of information to the Public, and to refer any subsequent inquiries to 15 CFR part 4. The purpose of this rulemaking notice is to implement updated policies and procedures for handling public requests for materials pursuant to the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended.

EFFECTIVE DATE: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph M. Levine, Chief Counsel,

Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., room 7001, Washington, DC 20230, (202) 377-4687.

SUPPLEMENTARY INFORMATION: 13 CFR part 301, subpart D contains outdated information. The information found in 15 CFR part 4, which is the Department of Commerce's (DOC) rules on FOIA procedures, provides a more updated explanation of the scope, purpose, policies, and guidelines for making publicly available certain records as specified in 5 U.S.C. 552(a)(2) and 5 U.S.C. 552(a)(3). 15 CFR part 4 is followed by EDA, since EDA is a part of the Department and follows Departmental procedures.

EDA finds good cause to dispense with the notice and comment and delayed effective date requirements of the Administrative Procedures Act (APA) for this rule. These APA requirements are unnecessary because EDA is deleting superseded regulations and substituting a cross reference for currently operating regulations.

Since a notice and an opportunity for comment are not required to be given for the rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility analysis has to be or will be prepared.

List of Subjects in 13 CFR Part 301

Freedom of information, Organization and functions (Government Agencies).

PART 301—ESTABLISHMENT AND ORGANIZATION

Subpart D—Disclosure of Information to the Public

1. The Authority citation is revised to read as follows:

Authority: Section 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); 5 U.S.C. 301, 552, 553; Department of Commerce Organization Order 10-4, as amended. (40 FR 56702, as amended).

2. Subpart D is amended by removing §§ 301.51 through 301.60, and by revising § 301.50 to read as follows:

§ 301.50 Public information.

The rules and procedures regarding public access to the records of the Economic Development Administration are found at 15 CFR part 4.

Dated: January 9, 1992.

L. Joyce Hampers,

Assistant Secretary for Economic Development.

[FR Doc. 92-1313 Filed 1-17-92; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 102CE, Special Condition 23-ACE-69]

Special Conditions; Twin Commander Model 690, 690A, and 690B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are being issued to Alternative Aviation Services, Inc. for a Supplemental Type Certification (STC) on the Twin Commander Model 690 Series airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is February 18, 1992. Comments must be received on or before February 18, 1992.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 102CE, room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 102CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: J. Lowell Foster, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Service, Central Region, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective 30 days after issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 102CE." The postcard will be date stamped and returned to the commenter.

Background

On November 19, 1991, Alternative Aviation Services, Inc., 6544 Highland Road, Waterford, Michigan 48327, made an application to the FAA for a supplemental type certificate (STC) for the Twin Commander Model 690 airplane. The proposed modification incorporates a novel or unusual design feature such as digital avionics consisting of an electronic flight instrument system (EFIS) that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Twin Commander Model 690, 690A, and 690B Series airplane is as follows: CAR 3, dated May 15, 1956, including paragraphs 3.197, 3.270, 3.385, and 3.396 of Amendment 3-2 dated August 12, 1957, and Amendment 3-3 dated May 17, 1956, 3-4 dated October 6, 1958, 3-6 dated September 13, 1961, paragraph 23.473, 23.479, 23.481, and 23.493 of FAR 23, Amendment 23-7, dated September 14, 1969, plus special conditions dated April 1, 1985, and August 12, 1970; Docket No. 10508, exemptions, if any,

and the special conditions adopted herein.

Discussion

Alternative Aviation Services, Inc., plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment and that were not evisaged by the existing regulations, for this type of airplane.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis, as provided by § 2.17(a)(2).

Protection of System from High Intensity Radiated Fields (HIRF):

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisaged when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment, defined below:

TABLE I.—FIELD STRENGTH VOLTS/METER [1]

Frequency	Peak	Average
10 to 500 KHz	60	60
500 to 2,000	80	80
2 to 30 MHz	200	200
30 to 100	33	33
100 to 200	150	33
200 to 400	56	33
400 to 1,000	4,020	935
1 to 2 GHz	7,850	1,750
2 to 4	6,000	1,150
4 to 6	6,800	310
6 to 8	3,600	666
8 to 12	5,100	1,270
12 to 18	3,500	551
18 to 40	2,400	750

[1] NOTE: Since 1989, a concerted effort has been under way to review, verify, and validate the HIRF environment. This table represents the current estimate of the HIRF environment. The current values overall are lower than the previous values for the HIRF environment. Additional requirements will continue to be required for the certification of installed critical systems in aircraft approved for operation below 500 feet.

or:

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions can withstand a peak of electromagnetic field strength of 100 volts per meter (v/m) or the external HIRF environment, whichever is less, in a frequency range of 10KHz to 18GHz. When using a laboratory test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Twin Commander Model 690, 690A, and 690B Series airplane, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances. For example, the Piper PA–42 (51 FR 37711, October 24, 1986), the Dornier 228–200 (53 FR 14782, April 26, 1988), and the Cessna Model 525 (56 FR 49396, September 30, 1991). For this reason, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions without notice; therefore, special conditions are being issued without substantive changes for this airplane and made effective 30 days after issuance.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Twin Commander Model 690, 690A, and 690B Series airplane:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definitions apply: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on January 3, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1363 Filed 1-17-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Inspector General

24 CFR Parts 2000, 2002, and 2004

[Docket No. R-92-1572; FR-3096-F-01]

Organizations, Functions, and Delegations of Authority; Availability of Information to the Public; Production in Response to Subpoenas or Demands of Courts or Other Authorities

AGENCY: Office of the Inspector General, HUD.

ACTION: Final rule.

SUMMARY: This rule updates the organization, functions and delegations of authority of the Office of Inspector General. The revisions are necessary to reflect the recent statutory amendments to the Inspector General Act of 1978 and other statutory changes involving the Office of Inspector General.

EFFECTIVE DATE: February 20, 1992.

FOR FURTHER INFORMATION CONTACT: Ronnie Ann Wainwright, Trial Attorney, Inspector General and Administrative Proceedings Division, Department of Housing and Urban Development, room 10286, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-3200. This is not a toll free number.

SUPPLEMENTARY INFORMATION: This rule amends the regulations of the Office of Inspector General (OIG) by correcting and updating the current regulations. It also reflects changes made by the Inspector General Act Amendments of 1988. The rule provides clarification of part 2002 by providing the exemptions permitted under the Freedom of Information Act.

Because this rule relates to internal agency organization and management, the Department is exempt from publishing a notice of proposed rulemaking as is normally required by the Administrative Procedure Act (5 U.S.C. 553(a)(2)) and HUD regulations at 24 CFR part 10.

Other Matters

Environmental Review. HUD regulations published at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions for certain actions, activities and programs specified in § 50.20. Since the amendments made by this final rule would fall within the categorical exclusions for internal administrative procedures set forth in paragraph (k) of § 50.20, the preparation of an Environmental Impact Statement or a Finding of No Significant Impact is not required for this rule.

Impact on Economy. This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities. In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule only would affect the operations and functions of the HUD Office of Inspector General.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule only would affect the operations and functions of the HUD Office of Inspector General. As a result, the rule is not subject to review under this Order.

Executive Order 12606, The Family. The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under this Order.

Regulatory Agenda

This rule was listed as item 1468 in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53360, 53425).

List of Subjects

24 CFR Part 2000

Organization and functions (Government agencies).

24 CFR Part 2002

Freedom of information.

24 CFR Part 2004

Administrative practice and procedures, Courts.

Accordingly, 24 CFR parts 2000, 2002, and 2004 are amended as follows:

PART 2000—ORGANIZATION, FUNCTIONS AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 2000 continues to read as follows:

Authority: Inspector General Act of 1978, as amended (5 U.S.C. app.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 2000.1, paragraphs (a) and (b) are revised to read as follows:

§ 2000.1 General statement.

(a) The Inspector General Act of 1978 (the Act) (Pub. L. 95–452, 5 U.S.C. app.) established an Office of Inspector General (OIG) in various executive branch departments and agencies, including the Department of Housing and Urban Development (HUD). The Act provided an explicit statutory basis for the Office of Inspector General, which was created by the Secretary of HUD (Secretary) in 1972. The Act was substantially amended in 1988 by the Inspector General Act Amendments of 1988 (Pub. L. 100–504).

(b) The function of the OIG is to conduct and supervise audits and investigations relating to HUD programs and activities. The audits and investigations are designed to determine the efficiency and effectiveness of HUD's programs and to prevent and detect fraud and abuse. The OIG is also charged with the responsibility of keeping the Secretary and the Congress fully and currently informed about problems and deficiencies relating to the operation of HUD programs and the necessity for and progress of corrective action.

* * * * *

3. In § 2000.2, paragraph (a)(3) is revised to read as follows:

§ 2000.2 Duties.

(a) * * *

(3) To recommend policies for and conduct activities designed to promote economy and efficiency in HUD programs and to prevent and detect fraud and abuse in such programs;

* * * * *

4. In § 2000.3, paragraph (a) is amended by redesignating paragraphs (a)(4) through (8) as (a)(6) through (10); by adding new paragraphs (a)(4) and (5); by revising newly designated (a)(8); and by adding new paragraphs (b)(8) and (b)(9), to read as follows:

§ 2000.3 Authorities.

(a) * * *

(4) Request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by the Inspector General Act from any federal, state, or local governmental agency or unit thereof;

(5) Administer or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions of the OIG, that shall have the same force and effect as if administered by an officer having a seal;

* * * * *

(8) Select, appoint, and employ necessary officers and employees in OIG, including those in the senior executive service, such as a Deputy Inspector General, an Assistant Inspector General for Audit (AIGA), an Assistant Inspector General for Investigation (AIGI), and an Assistant Inspector General for Management and Policy (AIG–OMAP), in accordance with laws and regulations governing the civil service;

* * * * *

(b) * * *

(8) To initiate administrative actions and to impose sanctions, such as debarments, suspensions, determinations of ineligibility and voluntary exclusions, of contractors and participants, in accordance with 24 CFR part 24.

(9) To provide recertifications for the senior executive service employees in OIG, pursuant to section 506 of the Ethics Reform Act of 1989 (Pub. L. 101–194).

* * * * *

5. Section 2000.4 is revised to read as follows:

§ 2000.4 Semiannual reports.

(a) In addition to the duties enumerated in § 2000.2, the IG shall prepare a semiannual report no later than April 30 and October 31 of each year. Each report shall summarize the activities of the OIG for the preceding six-month period ending March 31 and September 30 and shall include, but is not limited to:

(1) A description of significant problems, abuses and deficiencies relating to the administration of HUD programs and operations during the reporting period and a description of the recommendations made to correct such problems;

(2) An identification of each significant recommendation described in previous semiannual reports on which corrective action has not yet been completed;

(3) A summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

(4) A summary of each report, regarding information unreasonably refused or not provided, made during the reporting period to the Secretary under section 6(b)(2) of the Act;

(5) A list of each audit report issued by the OIG during the reporting period and, where applicable, the total dollar value of questioned costs and the dollar value of recommendations that funds be put to better use, with summaries of each significant audit report;

(6) Statistical tables showing the total number of audit reports and, for various defined categories of audit reports, the total dollar value of questioned costs and the dollar value of recommendations that funds be put to better use by management;

(7) A summary of each audit report issued before the commencement of the reporting period for which no management decision has been made by the end of the reporting period, with an explanation of the reasons the decision has not been made and a statement concerning the desired timetable for achieving a decision;

(8) A description and explanation of the reasons for any significant revised management decision made during the reporting period; and

(9) Information concerning any significant management decision with which the IG is in disagreement.

(b) The semiannual report shall be transmitted to the Secretary no later than April 30 and October 31 of each year and shall be submitted by the Secretary to the appropriate Congressional committees or subcommittees within thirty calendar days after receipt of the report, together with a report by the Secretary that contains the following:

(1) Any comments that the Secretary considers appropriate;

(2) Statistical tables showing the total number of audit reports and, for various defined categories of audit reports, the dollar value of disallowed costs and of recommendations agreed to in a management decision that funds be put to better use by management; and

(3) A statement containing information with regard to certain audit reports on which management decisions have been made but final action has not been taken.

(c) Within 60 days of the transmission of a semiannual report to Congress, the Secretary will make the report available to the public upon request and at a reasonable cost, unless particular information included in the report is protected from disclosure by law or by an executive order, or is part of an ongoing criminal investigation;

(d) Notwithstanding the responsibility of the IG to prepare semiannual reports, the IG will report immediately to the Secretary when the IG becomes aware of serious or flagrant problems, abuses, or deficiencies relating to the programs and operations of HUD. The Secretary will transmit any such report to the appropriate congressional committees or subcommittees within seven calendar days, together with a report by the

Secretary containing any comments that the Secretary considers appropriate.

6. Section 2000.5 is revised to read as follows:

§ 2000.5 Headquarters organization.

(a) The IG has a Headquarters office in Washington, DC and Regional offices throughout the Nation. The Headquarters office consists of the immediate office of the Inspector General and three operational units, the Office of Audit, the Office of Investigation, and the Office of Management and Policy. The immediate office of the Inspector General consists of the Inspector General, a Deputy Inspector General, and support staff. The function of the Deputy IG is to assist the Inspector General in the performance of the duties and responsibilities of the IG and to assume those duties and responsibilities when the IG is absent.

(b) *Operational units.* (1) The Office of Audit is headed by the Assistant Inspector General for Audit (AIGA). The AIGA is responsible to the IG primarily for supervising and coordinating the performance of all OIG auditing activities relating to the Department's programs and operations and recommending corrective action concerning abuses and deficiencies. Two divisions assist in carrying out these functions: the Audit Operations Division and the Audit Planning and Oversight Division.

(2) The Office of Investigation is headed by the Assistant Inspector General for Investigation (AIGI). The AIGI is responsible to the IG for supervising the performance of all OIG investigations and investigative activities relating to the Department's programs and operations. Two divisions assist in carrying out these functions: the Headquarters Operations Division and the Field Operations Division.

(3) The Office of Management and Policy is headed by the Assistant Inspector General for Management and Policy (AIG–OMAP). The AIG–OMAP is responsible to the IG for carrying out OIG's programs concerning the prevention and detection of fraud, waste, and mismanagement; for implementing certain administrative activities in support of internal OIG operations and the Act; for writing the IG's semiannual report to Congress; and for conducting evaluations of trends and patterns in program deficiencies and controls. Four divisions assist in carrying out these functions: The Program Integrity Division, the Publications and Awareness Division, the ADP Technology and Assistance Division, and the Budget and Administrative Services Division.

7. In § 2000.6, paragraph (b) is amended by removing, "Area Field Managers, and Service Office Supervisors." and adding, "and Field Office Managers."; and paragraph (d) is revised to read as follows:

§ 2000.6 Regional organization.

* * * * *

(b) * * * and Field Office Managers.

* * * * *

(d) *Regional offices and territories served:*

Region	Territory
Boston Regional Office, Region I, Department of Housing and Urban Development, Thomas P. O'Neill Jr. Federal Building, 10 Causeway Street, Boston, MA 02222–1092.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
New York Regional Office, Region II, Department of Housing and Urban Development, 26 Federal Plaza, New York, NY 10278–0068.	New Jersey, New York.
Philadelphia Regional Office, Region III, Department of Housing and Urban Development, Liberty Square Bldg., 4th Fl., 105 So. 7th St., Philadelphia, PA 19106–3392.	Delaware, Maryland, Pennsylvania, Virginia, Washington, DC, West Virginia.
Atlanta Regional Office, Region IV, Department of Housing and Urban Development, 75 Spring St., S.W., Atlanta, GA 30303–3388.	Alabama, Florida, Kentucky, Mississippi, North Carolina, Puerto Rico and the Virgin Islands, South Carolina, Tennessee.
Chicago Regional Office, Region V, Department of Housing and Urban Development, 77 West Jackson Blvd., Rm. 2603, Chicago, IL 60604–3507.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
Fort Worth Regional Office, Region VI, Department of Housing and Urban Development, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
Kansas City Regional Office, Region VII, Department of Housing and Urban Development, Gateway Tower II, 5th Fl., 400 State Ave., Kansas City, KN 66101–2406.	Iowa, Kansas, Missouri, Nebraska.
Denver Regional Office, Region VIII, Department of Housing and Urban Development, Executive Tower Building, 30th Floor, 1405 Curtis Street, Denver, CO 80202–2349.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
San Francisco Regional Office, Region IX, Department of Housing and Urban Development, 1375 Sutter St., Suite 320, San Francisco, CA 94109.	Arizona, California, Hawaii, Nevada.
Seattle Regional Office, Region X, Department of Housing and Urban Development, Arcade Plaza Building, Rm. 7320, 1321 Second Avenue, Seattle, WA 98101–2058.	Alaska, Idaho, Oregon, Washington.

8. Section 2000.9 is revised to read as follows:

§ 2000.9 Succession of authority.

In the absence or temporary incapacity of the Inspector General, the following individuals, successively, according to availability, shall act in the capacity of the Inspector General: Deputy Inspector General, Assistant Inspector General for Audit, Assistant Inspector General for Investigation, and Assistant Inspector General for Management and Policy.

PART 2002—AVAILABILITY OF INFORMATION TO THE PUBLIC

9. The authority citation for part 2002 is revised to read as follows:

Authority: Freedom of Information Act, as amended (5 U.S.C. 552); Inspector General Act of 1978, as amended (5 U.S.C. app.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 2002.1 [Amended]

10. In § 2002.1, paragraph (a) is amended by removing the entry "§ 15.21" in the list of sections, and paragraph (c) is amended by removing "and § 15.21" and adding "and" between "§ 15.3" and "§ 15.11".

11. In § 2002.3, paragraph (a) is amended by revising the first sentence to read as follows:

§ 2002.3 Request for records.

(a) A request for Office of Inspector General records may be made in person during normal business hours at the Regional Offices listed in § 2000.6(d) of this chapter. * * *

* * * * *

§ 2002.17 [Amended]

12. In § 2002.17(e), the reference to "the Inspector General of HUD" is changed to read "any of the Assistant Inspectors General listed in § 2000.5 of this chapter."

13. Section 2002.21 is revised to read as follows:

§ 2002.21 Authority to deny requests for records and form of denial.

(a) The Assistant Inspectors General described in § 2000.5 of this chapter may deny a request for a record. Any denial will:

(1) Be in writing;

(2) State simply the reasons for the denial;

(3) State that review of the denial by the Inspector General of HUD may be requested;

(4) Set forth the steps for obtaining review consistent with § 2002.25; and

(5) Be signed by the Assistant Inspector General responsible for the denial.

(b) The classes of records authorized to be exempted from disclosure by the Freedom of Information Act (5 U.S.C. 552) are those which concern matters that are:

(1)(i) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy; and

(ii) Are in fact properly classified under the cited executive order;

(2) Related solely to the internal personnel rules and practices of HUD;

(3) Specifically exempted from disclosure by statute (other than section 552b of title 5), provided that the statute either:

(i) Requires that the matters be withheld from the public in a manner that leaves no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information that are obtained from a person and are privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with HUD;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(c) With regard to a request for commercial or financial information, predisclosure notification to business submitters is required by Executive Order 12600 (3 CFR, 1987 Comp., p. 235) to afford the business submitter an opportunity to object to disclosure of the requested information.

(d) Any reasonably segregable portion of a record shall be provided to any person requesting the record, after deletion of the portions that are exempt under this section.

PART 2004—PRODUCTION IN RESPONSE TO SUBPOENAS OR DEMANDS OF COURTS OR OTHER AUTHORITIES

14. The authority citation for part 2004 is revised to read as follows:

Authority: Inspector General Act of 1978, as amended (5 U.S.C. app.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. Section 2004.1 is revised to read as follows:

§ 2004.1 Purpose and scope.

This part contains provisions for service of a subpoena issued by the Inspector General and procedures with regard to demands of courts or other authorities for Office of Inspector General (OIG) documents or testimony by employees of the OIG. For purposes of this part, the term "employees of the Office of Inspector General" includes all officers and employees of the United States appointed by, or subject to the supervision of, the Inspector General.

16. A new § 2004.2 is added, to read as follows:

§ 2004.2 Service of an Inspector General subpoena.

Service of a subpoena issued by the Inspector General may be accomplished as follows:

(a) *Personal service.* Service may be made by delivering the subpoena to the person to whom it is addressed. If the subpoena is addressed to a corporation or other business entity, it may be served upon an employee of the corporation or entity. Service made to an employee, agent or legal representative of the addressee shall constitute service upon the addressee.

(b) *Service by mail.* Service may also be made by mailing the subpoena, certified mail—return receipt requested, to the addressee at his or her last known business or personal address.

17. Section 2004.3 is revised to read as follows:

§ 2004.3 Production or disclosure prohibited unless approved by the Inspector General.

(a) The rules and procedures in paragraphs (b) and (c) of this section shall be followed when a subpoena, order or other demand (hereinafter referred to as a "demand") of a court or other authority is issued for the production of documents or disclosure of testimony concerning:

(1) Any material contained in the files of the Office of Inspector General;

(2) Any information relating to material contained in the files of the Office of Inspector General; or

(3) Any information or material which an individual acquired while an employee of the Office of Inspector General as a part of the performance of official duties or because of his or her official status.

(b) Without prior approval of the Inspector General, no employee or former employee of the Office of Inspector General shall, in response to a demand of a court or other authority, produce any material contained in the files of the Office of Inspector General, or disclose any information relating to material contained in the files of the Office of Inspector General, or disclose any information or produce any material acquired as a part of the performance of official duties or because of official status.

(c) With regard to a request for testimony of a present or former OIG employee as an expert or opinion witness, the employee may not be called to testify as an expert or opinion

witness by any party other than the United States.

§ 2004.7 [Amended]

18. In § 2004.7, the reference to § 2004.3(c) is revised to read "§ 2004.5(c)".

Dated: January 8, 1992.

Paul A. Adams,

Inspector General.

[FR Doc. 92-1115 Filed 1-17-92; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AD09

Predisclosure Notification Procedures for Confidential Commercial Information

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is adding a new section to the regulation that repeats the statutory exemption which authorizes withholding of certain business records requested under the Freedom of Information Act (FOIA) if disclosure of such records could reasonably be expected to cause substantial competitive harm. The new section sets out the Department's predisclosure procedures of notifying the submitters of such records which may contain confidential commercial information, as required by Executive Order 12600. Such notice enables submitters to object to any release which would cause them substantial competitive harm, and to demonstrate that such harm would result, prior to a disclosure decision. The section simply sets out and standardizes Departmental procedures for providing such notice.

EFFECTIVE DATE: February 20, 1992.

FOR FURTHER INFORMATION CONTACT: Marjorie M. Leandri, Records Management Service (723), Office of Information Resources Policies and Oversight, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2454.

SUPPLEMENTARY INFORMATION: On pages 45944 through 45946 of the **Federal Register** of November 15, 1988, the Department of Veterans Affairs, formerly the Veterans Administration, published proposed regulatory changes concerning predisclosure notification procedures for confidential commercial information. Interested persons were given 30 days in which to submit written comments, suggestions, or objections to the proposed changes. Since no written comments were received, the proposed regulations are hereby adopted without change as set forth below. Executive Order 12600 dated June 23, 1987, entitled Predisclosure Notification Procedures for Confidential Commercial Information, requires each executive department and agency subject to the FOIA to establish mandatory and uniform procedures for handling requests for records which may contain confidential commercial information protected by FOIA exemption (b)(4), 5 U.S.C. 552(b)(4). The statutory exemption is repeated in VA regulations at 38 CFR 1.554(a)(4). Accordingly, a new section, 38 CFR 1.554a, is being added to spell out procedures for notifying submitters of records containing confidential commercial information that such records have been requested and may be released. The notification will give submitters an opportunity, prior to a disclosure decision, to object to the disclosure and to state all grounds upon which a disclosure is opposed.

The Executive Order also requires that procedures be established whereby submitters may designate any information, which they reasonably believe may cause substantial competitive harm if it were released, at the time they submit such information to the Department. Such designations will assist the Department in identifying sensitive information, and considering whether it qualifies for protection under FOIA exemption (b)(4).

The Secretary hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the new section simply repeats, and incorporates into VA regulations, the procedures required by Executive Order 12600. These procedures standardize the method by which submitters are given the opportunity to contribute to Department disclosure decisions concerning certain requested records. This section primarily concerns procedures followed by Department employees; no significant new administrative or regulatory burdens are imposed on others. Therefore, this regulation will not have a significant economic impact on small entities (i.e., small business, small private and non-profit organizations, and small governmental jurisdictions).

The Department of Veterans Affairs has determined that these final regulations are non-major as that term is defined by Executive Order 12291, entitled Federal Regulation. It will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic export markets.

The information collection requirement contained in this final rule has been approved by the Office of Management and Budget (OMB) under OMB control number 2900-0393.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedures, Claims, Employment, Freedom of Information Act, Government employees, Government property, and Privacy.

Approved: November 20, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART 1—GENERAL PROVISIONS

1. The Authority citation for part 1, §§ 1.500 to 1.559 continues to read as follows:

Authority: Sections 1.550 to 1.559 issued under 72 Stat. 1114; 38 U.S.C. 210.

2. Section 1.554a is added to read as follows:

§ 1.554a Predisclosure notification procedures for confidential commercial information.

(a) *General.* During the conduct of its business the Department of Veterans Affairs (VA) may acquire records which contain confidential commercial information, as defined in paragraph (b) of this section. Such records will not be released in response to a Freedom of Information Act (FOIA) request, except under the provisions of this section. This section establishes uniform VA procedures for giving submitters predisclosure notice of requests for their records which contain confidential commercial information that may be exempt from disclosure under 38 CFR 1.554(a)(4). These procedures are required by Executive Order 12600,

Predisclosure Notification Procedures for Confidential Commercial Information, dated June 23, 1987.

(b) *Definitions.* (1) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552 (b)(4), as implemented by § 1.554 of this part, because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to corporations, State governments, and foreign governments.

(c) *Notification to submitters of confidential commercial information.* When a request is received, for a submitter's record(s), or information which contains confidential commercial information, and the request is being processed under the FOIA, 5 U.S.C. 552, the submitter will be promptly notified in writing of the request when required by paragraph (d) of this section. The notification will advise the submitter that a request for its record(s) has been received and is being processed under the FOIA. The notice will describe the exact nature of the record(s) requested or will provide to the submitter copies of the record(s) or portions thereof containing the requested confidential commercial information. It will also inform the submitter of the opportunity to object to the disclosure in writing within 10 working days, and of the requirements for such a written objection, as described in paragraph (f) of this section. The notification will be sent by certified mail, return receipt requested.

(d) *When notification is required.* (1) For confidential commercial information submitted to VA prior to January 1, 1988, notification to submitters is required whenever:

(i) The records are less than 10 years old and the requested information has been designated by the submitter as confidential commercial information; or

(ii) VA facility, administration, or staff office which has custody of the requested records has reason to believe that disclosure of the requested information could reasonably be expected to cause substantial competitive harm.

(2) For confidential commercial information submitted to VA on or after January, 1, 1988, notification is required whenever:

(i) The submitter has in good faith designated the requested records as confidential information in accordance with paragraph (e) of this section; or

(ii) VA facility, administration, or staff office which has custody of the requested records has reason to believe that disclosure could reasonably be expected to cause substantial competitive harm.

(e) *Designation by submitters of information as confidential commercial information.* (1) When business records are provided to VA, the submitter may appropriately designate any records or portions thereof which contain confidential commercial information, the disclosure of which could reasonably be expected to cause substantial competitive harm. This designation may be made at the time the information or record is given to VA or within a reasonable period of time thereafter, but not later than 60 days after receipt of the information by VA. Information so designated will be clearly identified by marking it with the words "confidential commercial information" or by an accompanying detailed written description of the specific kinds of information that is designated. If a complete document or record is designated, the cover page of the document or record will be clearly marked "This entire (document, record, etc.) consists of confidential commercial information." If only portions of documents are designated, only those specific designated portions will be conspicuously annotated as "confidential commercial information."

(2) A designation described in paragraph (e)(1) of this section will remain in effect for a period of not more than 10 years after submission to VA, unless the submitter provides acceptable justification for a longer specific period. If a shorter designation period is adequate, the submitter's designation should include the earlier expiration date. Whenever possible, the submitter's designation should be supported by a statement or certification by an officer or authorized representative of the submitter that the records are in fact confidential commercial information and have not been published or made available to the public.

(f) *Opportunity to object to disclosure.* (1) When notification to a submitter is made pursuant to paragraph (c) of this section, the submitter or designee may object to the disclosure of any specified portion of the record(s). Such objection will be in writing, will be addressed to the VA official who provided notice, will identify the specific record(s) or portion(s) of records that should not be disclosed, will specify all grounds upon which disclosure is opposed, and will explain in detail why the information is considered to be a trade secret or confidential commercial information, i.e., why disclosure of the specified records could reasonably be expected to cause substantial competitive harm. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) Any objection to disclosure must be submitted within 10 working days after receipt by the submitter of notification as provided for in paragraph (c) of this section.

(3) If an objection to disclosure is received within the 10 working day time period, careful consideration will be given to all specified grounds for nondisclosure prior to making an administrative determination whether to disclose the record. When it is determined to disclose the requested record(s) or portions of records which are the subject of an objection, the submitter will be provided a written statement of the VA decision, the reason(s) that the submitter's objections to disclosure were overruled, a description or copy of the exact information or record(s) to be disclosed which were the subject of an objection, and the specified date of disclosure. The date of disclosure will not be less than 10 working days from the date this notice is placed into mail delivery channels.

(g) *Notices to requester.* (1) When a request is received for records that may contain confidential commercial information protected by FOIA exemption (b)(4), 5 U.S.C. 552(B)(4), the requester will be notified that the request is being processed under the provisions of this regulation and, as a consequence, there may be a delay in receiving a response.

(2) Whenever a submitter is notified, pursuant to paragraph (c) of this section, that VA has received a request for records which had been provided by such submitter, and that such request was being processed under the FOIA, the requester will be notified that the submitter is being provided an opportunity to comment on the request. The notice to the requester should not include any of the specific information contained in the records being requested.

(3) Whenever VA notifies a submitter of a final decision, the requester will also be notified by separate correspondence. This notification to the requester may be contained in VA's FOIA decision.

(h) *Notices of lawsuit.* Whenever a FOIA requester brings suit seeking to compel disclosure of confidential

commercial information, the submitter of the information will be promptly notified.

(i) *Exceptions to the notification requirements.* The predisclosure notification requirements in paragraph (c) of this section need not be followed if:

(1) It is determined that the record(s) or information should not be disclosed;

(2) The record(s) requested have been published or have been officially made available to the public;

(3) Disclosure of the record(s) or information is required by law (other than the FOIA, 5 U.S.C. 552);

(4) Disclosure is required by an Agency rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to VA that are to be released under the FOIA; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(5) The record(s) requested are not designated by the submitter as exempt from disclosure in accordance with paragraph (e) of this section, and the submitter had an opportunity to do so at the time of submission of the record(s) or a reasonable time thereafter, and VA does not have substantial reason to believe that disclosure of the information would result in competitive harm; or

(6) The designation made by the submitter in accordance with paragraph (e) of this section appears obviously frivolous, except that, in such case, VA must still provide the submitter with advance written notice of any final administrative disclosure determination not less than 10 working days prior to the specified disclosure date.

(Authority: 38 U.S.C. 210(c); 5 U.S.C. 552(b)(4); E.O. 12600 (52 FR 23781))

Approved by the Office of Management and Budget under control number 2900-0308.)

[FR Doc. 92-1353 Filed 1-17-92; 8:45 am]

BILLING CODE 8320-01-M

Proposed Rules

Federal Register
Vol. 57, No. 13
Tuesday, January 21, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Document No. 0361s]

General Administrative Regulations; Appeal Procedure

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of correction.

On Monday, December 30, 1991, the Federal Crop Insurance Corporation (FCIC) published a proposed rule in the **Federal Register** beginning on 56 FR 67228 (FR Doc. 91-31033), 7 CFR part 400, Subpart J, the General Administrative Regulations; Appeal Procedure.

The proposed rule contains a misspelled word on page 67229, column 2, in § 400.81, paragraph (f) Decision, the last sentence, beginning with the word "Al" is corrected to read "All". This notice is published to correct that error.

Done in Washington, DC on January 3, 1992.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-1332 Filed 1-17-92; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-94-AD]

Airworthiness Directives; Aerostar Aircraft Corporation PA-60-600 and PA-60-700 Series (Formerly Piper) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to Aerostar Aircraft Corporation PA-60-600 and PA-60-700 series airplanes. The proposed action would require inspection of the nose landing gear drag brace assembly for corrosion, replacement of any corroded components, and replacement of the spring and piston with new corrosion resistant parts. The Federal Aviation Administration (FAA) has received several reports of corrosion in the spring and piston in the lower drag link of the nose landing gear drag brace assembly. The actions specified by the proposed AD are intended to prevent failure of the nose landing gear, which could lead to nose gear collapse and damage to the airplane.

DATES: Comments must be received on or before April 3, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204; Telephone (509) 455-8872. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-94-AD, room 1558, 601 E. 12th Street, Kansas City,

Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Swope, Aerospace Engineer, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; Telephone (206) 227-2589.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-94-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several reports of corroded nose landing gear drag brace assemblies on certain Aerostar Aircraft Corporation PA-60-600 and PA-60-700 series airplanes. In particular, the spring and piston in the lower drag link are corroding. Failure of the spring or the piston can prevent the nose landing gear from retracting, which could lead to nose gear collapse and damage to the airplane. The manufacturer (Aerostar Aircraft Corporation) has developed new corrosion resistant springs and pistons for the nose landing gear drag brace assemblies on the affected airplanes.

The Aerostar Aircraft Corporation has issued Aerostar Service Bulletin (SB) No. 600-121, dated September 12, 1991, which specifies procedures for inspecting the nose landing gear drag brace assemblies for corrosion and replacing the existing spring and piston with new corrosion resistant parts.

The FAA has reviewed all the available information related to the incidents described above, including the referenced service information, and has determined that AD action should be taken to continue to assure the airworthiness of the affected airplanes.

Since the condition described is likely to exist or develop in other Aerostar Aircraft Corporation PA-60-600 and PA-60-700 series airplanes of the same type design, the proposed AD would require an inspection of the nose landing

gear drag brace assembly for cracks, replacement of any corroded components, and the replacement of the existing spring and piston with new corrosion resistant parts. The actions would be done in accordance with Aerostar SB No. 600–121, dated September 12, 1991.

The manufacturing rights of the affected model airplanes were previously owned by the Piper Aircraft Corporation, but these manufacturing rights were recently transferred to the Aerostar Aircraft Corporation.

It is estimated that 375 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $96 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $118,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Aerostar Aircraft Corporation: Docket No. 91–CE–91–AD.

Applicability: The following model and serial numbered airplanes, certificated in any category.

Model	Serial Nos.
* PA–60–600	60–0001–003 through 60–0606–7961195.
* PA–60–600	60–0614–7961196 through 60–0933–8164262.
* PA–60–601	61–0001–004 through 60–0605–7962136.
* PA–60–601	61–0611–7962137 through 61–0960–8162157.
* PA–60–601P	61P–0157–001 through 61P–0610–7963274.
* PA–60–601P	61P–0612–7963275 through 61P–0859–8163455.
* PA–60–602P	62P–0750–8165001 through 60–8365021.
* PA–60–700P	60–8423001 through 60–8423025.

*=that have been converted to Wabel nose gear system (Option No. 199).

Note: The manufacturing rights of the affected model airplanes were previously owned by the Piper Aircraft Corporation, but these manufacturing rights were recently transferred to the Aerostar Aircraft Corporation.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the nose landing gear, which could lead to nose gear collapse and damage to the airplane, accomplish the following:

(a) Inspect the nose landing gear drag brace assembly for corrosion in accordance with the instructions in Aerostar Service Bulletin No. 600–121, dated September 12, 1991. Replace any corroded component in accordance with the Aerostar Maintenance Manual, and replace the existing spring and piston with a new corrosion resistant spring and piston in accordance with the Instructions in Aerostar Service Bulletin No. 600–121, dated September 12, 1991.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Aerostar Aircraft Corporation, Customer Service Department, South 3808 Davison Boulevard, Spokane, Washington 99204; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 13, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1360 Filed 1–17–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–CE–91–AD]

Airworthiness Directives; Aerostar Aircraft Corporation Models PA–60–600 and PA–60–700 Series (Formerly Piper) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would supersede AD 80–02–09, which currently requires repetitive dye penetrant inspections of the main landing gear torque links for cracks unless a certain replacement part is installed on certain Aerostar Aircraft Corporation PA–60–600 and PA–60–700 series (formerly Piper) airplanes. The proposed action would require the replacement or upgrade of the main landing gear torque links. The Federal Aviation Administration (FAA) has received several reports of main landing gear torque links cracking or collapsing. Upgrade and replacement kits have been designed and manufactured that will help prevent cracking and eliminate the need for the repetitive inspections currently required. The actions specified by this AD are intended to prevent loss of directional control of the airplane during ground operation caused by torque link failure.

DATES: Comments must be received on or before April 3, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Aerostar Aircraft Corporation, Customer Service Department, South 3808 Davison Boulevard, Spokane, Washington 99204; Telephone (509) 455–8872. This information also may be examined at the Rules Docket at the

address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–91–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Swope, Aerospace Engineer, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; Telephone (206) 227–2589.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–91–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness Directive (AD) 80–02–09, Amendment 39–3991, currently requires repetitive dye penetrant inspections of the main landing gear torque links for cracks unless a replacement part number (P/N) 400076–501 is installed on certain Aerostar Aircraft Corporation Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P (formerly Piper) airplanes. This action is accomplished in accordance with the instructions in Piper Service Bulletin (SB) 600–75, dated July 14, 1978. The manufacturing rights of the affected model airplanes were owned by the Piper Aircraft Corporation at the time AD 80–02–09 was issued, but these manufacturing rights have now been transferred to the Aerostar Aircraft Corporation (Aerostar).

The FAA has received several reports of main landing gear torque links cracking or collapsing since the issuance of AD 80–02–09. Aerostar has designed and manufactured upgrade and replacement kits that will help prevent cracking and eliminate the need for the repetitive inspections currently required by AD 80–02–09.

Aerostar has also issued Service Bulletin No. 746B, dated June 11, 1991, which presents inspection procedures for determining whether the main landing gear torque links are both single lug links or are a single lug link fitting into a dual lug link, and installation procedures for a main landing gear torque link upgrade kit. This service bulletin also specifies the installation of a main landing gear torque link replacement kit in accordance with the instructions in Aerostar Drawing No. 88030 Rev F, which is contained in the Main Landing Gear Torque Link Replacement Kit, P/N 765–155 Rev F.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent loss of directional control of the airplane during ground operation caused by torque link failure.

Since the condition described in likely to exist or develop in other Aerostar Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P airplanes of the same type design, the proposed AD would require an inspection to determine whether the main landing gear torque links are both single lug links or are a single lug link fitting into a dual lug link. It also would require either the installation of a main landing gear torque link upgrade kit or a main landing gear torque link replacement kit depending on the result of the inspection. The proposed actions would be accomplished in accordance with the instructions in Aerostar SB No. 746B, dated June 11, 1991, or in accordance with the instructions in the Main Landing Gear Torque Link Replacement Kit, P/N 765–155 Rev F, which is referenced in Aerostar SB No. 746B. AD 80–02–09 would be superseded by the proposed action.

It is estimated that 400 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $550 per airplane. Based on these figures, the total cost impact of the Ad on U.S. operators is estimated to be $264,000. AD 80–02–09, which would be superseded by the proposed action, requires repetitive inspection of the main landing gear torque links. The cost of AD 80–02–09 is $22,000 (1 hour times $55 times 400). The proposed AD would pose an additional cost impact of $242,000 than that already required by AD 80–02–09. In addition, since the proposed action would eliminate the need for the repetitive inspections required by AD 80–02–09, the ongoing cost impact required by AD 80–02–09 action would be eliminated.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed below, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVE

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49, U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 80-02-09, Amendment 3991, and adding the following new AD.

Aerostar Aircraft, Inc.: Docket No. 91-CE-91-AD.

Applicability: The following model and serial number airplanes, certificated in any category.

Models	Serial Nos.
PA-60-600 Aerostar 600.	60-0001-003 through 60-0933-8161262.
PA-60-601 Aerostar 601.	60-0001-004 through 61-0680-8162157.
PA-60-601P Aerostar 601P.	61-0157-001 through 61P-0860-8163455.
PA-60-602P Aerostar 602P.	62P-0750-8165001 through 60-8365021.
PA-60-700P Aerostar 700P.	60-8223001 through 60-8423025.

Note: The manufacturing rights of the affected model airplanes were previously owned by the Piper Aircraft Corporation, but these manufacturing rights were recently transferred to the Aerostar Aircraft Corporation.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent loss of directional control of the airplane during ground operation caused by torque link failure, accomplish the following:

(a) Visually inspect the main landing gear scissors assemblies to determine if the torque links on each main landing gear are both single lug links or are a single lug link fitting into a dual link in accordance with paragraph 1. of the Instructions in Aerostar Aircraft Corporation Service Bulletin (SB) No. 746B, dated June 11, 1991.

(1) If the torque links are both single lug links, prior to further flight, install the main landing gear torque link upgrade kit, Kit No. 765-155A-B Rev N/C in accordance with steps a through e of the Instructions in Aerostar Aircraft Corporation SB No. 746B, dated June 11, 1991.

(2) If the torque links are a single lug link fitting into a dual lug link, prior to further flight, replace the torque links by installing Aerostar Main Landing Gear Torque Link Replacement Kit, Part Number (P/N) 765-155 Rev F, in accordance with the instructions on Aerostar Drawing No. 88030 Rev F. This drawing is contained in the Aerostar Main Landing Gear Torque Link Replacement Kit, P/N 765-155 Rev F, and is referenced in Aerostar Aircraft Corporation SB No. 746B, dated June 11, 1991.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Aerostar Aircraft Corporation, Customer Service Department, South 3608 Davison Boulevard, Spokane, Washington 99204; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment supersedes AD 80-02-09, Amendment 3991.

Issued in Kansas City, Missouri, on January 14, 1992.

Barry D. Clements

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1359 Filed 1-17-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

RIN 1029-AB33

Surface Coal Mining and Reclamation Operations; Underground Mining Activities; Temporary Cessation of Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is announcing the extension, until February 26, 1992, of the public comment period on the proposed rule published in the November 26, 1991, **Federal Register** (56 FR 60012). The proposed rule would amend the regulations governing surface coal mining operations and underground mining activities that cease operations on a temporary basis under an approved permit.

DATES: OSM will accept written comments on the proposed rule until 5 p.m. eastern time on February 26, 1992. Comments received after the close of the comment period may not be considered or included in the Administrative Record for the final rule.

ADDRESSES: Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131, 1100 L Street, NW., Washington, DC or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131, 1100 L Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Daniel Stocker, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 208-2550 (Commercial), 268-2550 (FTS).

SUPPLEMENTARY INFORMATION: OSM published a proposed rule on November 26, 1991 (56 FR 60012), that would amend its permanent program regulations governing surface coal mining operations and underground mining activities which cease operations on a temporary basis under an approved permit. The proposed rule would require permittees to submit an application to the regulatory authority before temporarily ceasing operations for a period of more than 30 days. The proposed rule establishes minimum information requirements for applicants; criteria and timeframes for the regulatory authority's decision to approve or disapprove applications; pre-approval inspections to determine compliance with the regulatory program and procedures for periodic review of temporary cessation status. This rule is necessary to ensure that reclamation of mined land is not unnecessarily delayed, and that any operation for which temporary cessation is requested is in compliance with applicable environmental performance standards and to ensure that hazards to the public health and safety will be eliminated during the period of temporary cessation.

The comment period was scheduled to close on January 27, 1992. In response to a request for more time to submit public comments on this proposal, OSM is extending the comment period by 30 days. Comments will not be accepted until 5 p.m. local time on February 26, 1992.

Dated: January 14, 1992.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 92-1417 Filed 1-17-92; 8:45 am]

BILLING CODE 4310-05-M

VOL 57 ISS 13 JA 21 1992 UMI

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 150

[CGD 91-057]

Louisiana Offshore Oil Port: Expansion of Safety Zone to Include Excursion Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of petition for rulemaking and request for comments.

SUMMARY: In this petition for rulemaking, Louisiana Offshore Oil Port (LOOP) asks the Coast Guard to expand the existing "safety zone." The petitioner wants the Coast Guard to enlarge the safety zone that surrounds the deepwater port by adding to that zone both of two "excursion zones." A safety zone constitutes an area within which no exploration for or extraction of oil or gas may occur.

DATES: Comments must arrive on or before March 23, 1992.

ADDRESSES: Comments must go to: Executive Secretary, Marine Safety Council (G–LRA–2, room 3406) (CGD 91–057), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. They may be mailed, or delivered to room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this petition. Comments will become part of this docket and will be available to inspect or copy at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Direct inquiries to ENS Claudia C. Gelzer, USCGR, Office of Marine Safety, Security, and Environmental Protection (202) 267–6714).

SUPPLEMENTARY INFORMATION:

Request for Comments

By publishing the substance of the petition, the Coast Guard invites the assistance of the public in determining the need, if any, for the Coast Guard to enlarge the safety zone that surrounds the deepwater port by adding to that zone two excursion zones. Interested persons may participate by reviewing the substance of the petition and submitting what written data, views, and arguments they wish. Comments that furnish factual bases for these views and arguments are particularly conducive to reasoned regulatory choices.

This Notice and Request does not propose a rulemaking, represent a policy of the Coast Guard, or otherwise commit the Coast Guard on the merits of the petition. The Coast Guard intends to consider the petition under applicable law, and to act on it after evaluating it with care in light of comments and other pertinent matter. If the Coast Guard finds that a rule is due, it will publish a Notice of Proposed Rulemaking; if not, it will issue a denial of the petition.

Drafting Information

The principal persons involved in drafting this Notice and Request are ENS Claudia C. Gelzer, USCGR, Office of Marine Safety, Security, and Environmental Protection, Project Manager, and Patrick J. Murray, Office of Chief Counsel, Project Counsel.

Background and Purpose

On 29 December 1980 (45 FR 85849) the Coast Guard established a safety zone to protect six single-point moorings for LOOP. On 13 May 1982 (46 FR 20581) the Coast Guard established a safety fairway to serve the safety zone. On 16 January 1984, LOOP submitted to the Coast Guard a Chart 11359 showing two shaded areas called excursion zones; later, deviations from the safety fairway into these zones came to be known as "excursions." On 20 February 1987, the Acting Chief of the Office of Marine Safety, Security, and Environmental Protection granted for one year a waiver of the requirement that tankers enter and leave the safety zone by the safety fairway. Since then the Coast Guard has renewed the waiver a year at a time.

On 30 December 1987, LOOP asked the Coast Guard to make the waiver permanent. On 8 February 1988, the Chief of the Office of Marine Safety, Security, and Environmental Protection refused the request, noting that someday exploration for or extraction of oil or gas might occur within one or both excursion zones. If such activity took place, the Coast Guard might have to revoke the waiver for the sake of safety. (The waiver has never meant—and the Coast Guard has never implied—priority of importing oil over finding it.) In August 1990, LOOP notified the Coast Guard that Conoco intended to drill under authority of Lease OCS–G 9678 within Grande Isle Block 59, about 500 yards outside of the safety zone and of the safety fairway and inside of the southerly excursion zone.

The Coast Guard is examining several possibilities for resolving this conflict. Among them are: Adding to the safety zone both current excursion zones (granting the request of LOOP); revoking one or both current excursion zones; rendering one or both current excursion zones permanent; altering the size or shape of either or both current excursion zones; altering the size or shape of the anchorage area; adding new requirements to operations at the LOOP facility, such as tug-escorts for vessels using the facility (these requirements could coexist with one or more of the previous possibilities or could stand alone); and leaving the situation as it is.

LOOP has asked the Coast Guard to enlarge the safety zone, by adding to that zone the two temporary excursion zones. These excursion zones broaden the entrance to the deepwater port, thereby reducing the number of required vessel maneuverings and possibly the risk of accidents. However, a safety zone constitutes a fairway, and no exploration for or extraction of oil or gas may occur within a fairway. Rulemaking is necessary to establish a new safety zone. The Coast Guard holds safety the paramount value. But it would appreciate help from persons in determining which of these courses—or which other course—would best serve the value here.

Dated: January 7, 1992.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–1427 Filed 1–17–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF57

Claims Based on Exposure to Herbicides Containing Dioxin (Peripheral Neuropathy/Lung Cancer)

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its rules governing the adjudication of claims for service-connected compensation based on exposure to herbicides containing dioxin. The amendments are necessary to implement a determination by the Secretary of Veterans Affairs that a significant statistical association exists between exposure to herbicides containing dioxin and the subsequent development of peripheral neuropathy, and that there is no significant statistical association between exposure to herbicides containing dioxin and lung

cancer. The intended effect is to establish a regulation governing determinations regarding service connection for peripheral neuropathy and lung cancer for all veterans who claim that these disabilities resulted from exposure to herbicides containing dioxin during military service.

DATES: Comments must be received on or before February 20, 1992. Comments will be available for public inspection until March 2, 1992. The amendments are proposed to be effective September 25, 1985.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 170, at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: The Veterans' Advisory Committee on Environmental Hazards (VACEH, or "the Committee") held a public meeting on May 23, 1991, in Washington, DC. At that meeting, the Committee evaluated numerous scientific and medical studies and made recommendations to the Secretary of Veterans Affairs to assist him in determining whether significant statistical associations exist between exposure to herbicides containing dioxin and the subsequent development of peripheral neuropathy or lung cancer.

Under 38 CFR 1.17(c), when VA determines that a significant statistical association exists between exposure to a herbicide containing dioxin and any disease(s), it amends 38 CFR 3.311a to provide guidelines for the establishment of service connection for the disease(s). The regulation stipulates that determinations be based upon evaluations of scientific or medical studies, and that they be made after receiving the advice of the VACEH. A significant statistical association is held to exist when the relative weights of valid positive and negative studies permit the conclusion that it is at least as likely as not that a relationship exists between exposure to dioxin and a specific disease (38 CFR 1.17(d)(1)). The criteria for "valid positive and negative studies" are in 38 CFR 1.17(d)(2)–(4).

In its consideration of peripheral neuropathy, the Committee reviewed 11 valid studies. It noted that three of these studies demonstrate positive findings relative to peripheral neuropathy. One study found a very high prevalence of peripheral neuropathy among study subjects who had experienced a heavy exposure to dioxin, as measured by the presence of chloracne or raised serum hepatic enzyme levels. Another study reported peripheral neuropathy among individuals exposed to polychlorinated phenols as a consequence of a tank car accident. The Ranch Hand study, which involved comparatively low exposure levels, presented mild evidence of a sustained neurologic effect.

On May 23, 1991, the Committee recommended that the evidence supports the finding of a significant statistical association between exposure to herbicides containing dioxin and peripheral neuropathy. In making its recommendation, however, the Committee indicated that peripheral neuropathy related to dioxin exposure normally would occur shortly after exposure, but no later than 10 years thereafter. It also cautioned that the effects of certain confounding factors, such as aging, alcoholism, diabetes, and exposure to other toxic agents, must be taken into account, and hence that peripheral neuropathy resulting from exposure to dioxin should be a diagnosis of exclusion.

After VA's review of the studies and the recommendations of the VACEH, the Secretary determined on June 27, 1991, that there is a significant statistical association between exposure to herbicides containing dioxin and peripheral neuropathy. Accordingly, we are proposing to amend 38 CFR 3.311a(c) to add peripheral neuropathy to the list of diseases for which service connection may be granted on the basis of exposure to herbicides containing dioxin. The proposed amendment stipulates that two requirements deriving from application of sound scientific and medical principles be addressed in all decisions: First, that peripheral neuropathy must appear within 10 years of exposure; and second, that before service connection under § 3.311a may be established, certain confounding factors must be ruled out as causes, including the effects of aging, alcohol abuse, trauma, diseases known to be associated with peripheral neuropathy (e.g., diabetes, Guillain-Barre syndrome, etc.), and exposure to subetances other than dioxin that are known to produce peripheral neuropathy. This list of confounding factors is not intended to be all-inclusive.

On May 23, 1991, the Committee also considered approximately 40 studies dealing with lung cancer. It grouped the studies into the following types: Proportional mortality studies, standardized mortality ratio studies, standardized incidence studies, one case control study, and one cohort mortality study with internal controls. It noted that the results of the proportional mortality studies are consistent with a null result, and that the standardized mortality ratio studies are also essentially negative. The standardized incidence studies present no consistent conclusions.

The Committee observed that most of the studies fail to deal adequately with documentation of exposure and potential confounding factors, particularly smoking. The Committee agreed that a study which did not adequately address the confounder of smoking should be considered invalid, and it noted that the only study to address the factor of smoking, the Ranch Hand study, was negative in regard to lung cancer.

On May 23, 1991, the Committee recommended that, on the basis of currently available epidemiological data, there is no evidence of a significant statistical association between exposure to herbicides containing dioxin and lung cancer. Thereafter, VA carefully reviewed the evidence and the Committee's findings and recommendation, and the Secretary determined on June 27, 1991, that sound scientific and medical evidence does not establish the required association. Accordingly, we are proposing to amend § 3.311a(d) to include lung cancer as a disease for which service connection may not be granted on the basis of exposure to herbicides containing dioxin.

In *Nehmer* v. *United States Veterans Administration*, 712 F. Supp. 1404 (N.D. Cal. 1989), the court concluded that VA incorrectly required that, in determining whether diseases would be service connected based on dioxin exposure, scientific evidence demonstrate a cause-and-effect relationship between the disease and exposure, rather than only a significant statistical association. This decision had the effect of invalidating VA's original determinations on service connection *ab initio*. Because those determinations were made under the regulations mandated by section 5(a)(1) of Public Law 98–542, we are proposing to make our current amendments to § 3.311a effective September 25, 1985, the original effective date of this section.

We believe that this effective date is appropriate because the new regulations required as a consequence of the Nehmer decision are remedial in nature and serve as a substitute for the invalidated regulations.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more;

(2) They will not cause a major increase in costs or prices;

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.101, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: November 21, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3, Adjudication, is proposed to be amended as follows:

PART 3—[AMENDED]

Subpart A—Pension, Compensation, Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.311a, paragraph (c) is revised by adding a new paragraph (c)(3) prior to the parenthetical phrase following paragraph (c)(2), and paragraph (d) is revised to read as follows:

§ 3.311a Claims based on exposure to herbicides containing dioxin.

* * * * *

(c) * * *

(3) Peripheral neuropathy manifested not later than 10 years following the date of exposure, provided that the condition cannot be related to a supervening condition or event, including, but not limited to, the effects of aging, alcohol abuse, trauma, diseases known to be associated with peripheral neuropathy, and exposure to substances other than dioxin known to produce peripheral neuropathy (see § 3.311a(e) on supervening causes or events).

* * * * *

(d) *Diseases not associated with exposure to herbicides containing dioxin.* Sound scientific and medical evidence does not establish a significant statistical association between exposure to herbicides containing dioxin and the following diseases:

(1) porphyria cutanea tarda;

(2) lung cancer.

(Authority: 38 U.S.C. 501(a))

* * * * *

[FR Doc. 92–1354 Filed 1–17–92; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 414

[FRL–4094–9]

Organic Chemicals, Plastics and Synthetic Fibers Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extention of comment period; notice of public hearing.

SUMMARY: On December 6, 1991, EPA proposed a regulation under the Clean Water Act to amend the effluent limitations guidelines, pretreatment standards and new source performances standards for the organic chemicals, plastics, and synthetic fibers (OCPSF) point source category (56 FR 63897). The Agency has received several requests from the OCPSF industry for an extension to the comment period due to the complexity and size of the supporting record for the proposal and because the comment period extended through the holiday season when many facilities were closed and personnel were not available to review the proposal. Also, in reviewing the supporting document ("Supplement to the OCPSF Development Document for Effluent Limitations Guidelines, and New Source Performance Standards for the Organic Chemicals, Plastics and Synthetic Fibers Point Source Category", EPA 440/1–91/009a), EPA has found several errors that may affect a reviewer's ability to adequately evaluate information related to the December 6, 1991 proposal. In order to correct errors that appeared in the support document and allow the industry adequate time to fully comment and to supply data to support their comments, EPA is extending the period for comment on this proposed regulation from January 21 to March 6, 1992.

Additionally, notice is hereby given of a hearing open to the public, pursuant to the Clean Water Act, section 307(b), to discuss and receive comments on the pretreatment standards proposed in the December 6, 1991 **Federal Register** notice. The public hearing has been scheduled for February 26, 1992 at the following address: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in the north conference room number 9 of the EPA Conference Center located on the first floor of the Waterside Mall.

Registration for the hearing will be held from 8:30 to 9:00 a.m. The hearing will start at 9 a.m. Following the registration period there will be a brief presentation by an EPA official on the development of these pretreatment standards. Opportunity will also be given throughout the session for the audience to submit written questions to the presiding officer and for members of the audience to present oral statements. For those people making an oral presentation, it is requested that a written transcript of their presentation as well as correct spellings of names, affiliations and addresses, be sumitted to the presiding officer.

The Agency requests that persons intending to attend the pretreatment hearing please contact Mr. George M. Jett by February 19, 1992 so EPA can arrange to have adequate facilities available for all the parties attending.

DATES: Comments on the proposed regulation for the organic chemicals, plastics and synthetic fibers category (56 FR 63897) must be submitted to EPA by March 6, 1992.

ADDRESSES: Send comments on the proposed regulation and notification of intention to attend the pretreatment hearing to Mr. George M. Jett, Engineering and Analysis Division (WH–552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention: EAD Docket Clerk,

Organic Chemicals, Plastics and Synthetic Fibers Industry. The supporting information and all comments will be available for inspection and copying at the EPA Public Information Reference Unit (PIRU), Waterside Mall, 401 M Street, SW., Washington, DC 20460, room 2404 (EPA Library).

The EPA Information Regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying. The PIRU is open between the hours of 9 a.m. and 4:30 p.m.

FOR ADDITIONAL INFORMATION CONTACT: George M. Jett, (202) 260–7151, for information regarding the errata sheets. Copies of the supplemental development document errata sheets and supplemental economic analysis errata sheets may be obtained by writing or calling Mr. George Jett, Engineering and Analysis Division (WH–552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 between 8 a.m. and 4 p.m.

Dated: January 15, 1992.

Martha G. Prothro,

Acting Assistant Administrator for Water.

[FR Doc. 92–1529 Filed 1–17–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 764

[OPPTS–62089B; FRL–4044–3]

Proposed Ban on Acrylamide and N-methylolacrylamide Grouts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: Notice is hereby given that the period for filing public comment on the proposed regulation of acrylamide and N-methylolacrylamide (NMA) grouts (56 FR 49863, October 2, 1991) is extended.

DATES: Public comments must be received on or before January 30, 1992.

ADDRESSES: Submit nonconfidential written comments, in triplicate, identified by the docket number OPPTS–62089B, by mail to: TSCA Public Docket Office (TS–793), Rm. NE–G004, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Nonconfidential comments will be placed in the rulemaking record for public inspection. See **SUPPLEMENTARY INFORMATION** for information on submitting comments containing confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: David J. Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–543, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: On October 2, 1991, EPA issued a Notice of Proposed Rulemaking on acrylamide and N-methylolacrylamide (NMA) grouts (56 FR 49863). Written comments on the proposed rule were to be received on or before December 2, 1991. On November 25, 1991, after a request by Avanti International, EPA extended the public comment period through January 16, 1992 (56 FR 59239). On January 8, 1992, on behalf of their client, the National Association of Sewer Service Companies (NASSCO), the law firm of Weinberg, Bergeson & Neuman requested an additional 2–week extension of the public comment period because of difficulties encountered while trying to access certain key documents in the public record. The irregularities with the public record have subsequently been remedied; however, EPA hereby grants an extension of time for submission of public comments on the proposed rule.

Written comments must be received on or before January 30, 1992. Any person who submits written comments containing confidential business information (CBI) must mark the comments as "Confidential Business Information." Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as "Confidential Business Information" will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be CBI must prepare and separately submit a public version of the comments that EPA can place in the public file. CBI comments should be submitted in triplicate to: Document Control Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. CBI comments should be mailed in a double envelope with "CBI" and the docket number OPPTS–62089B marked on the inner envelope, and the comments should be marked with docket number OPPTS–62089B.

List of Subjects in 40 CFR Part 764

Acrylamide, Environmental protection, N-methylolacrylamide, Recordkeeping and reporting requirements.

Dated: January 14, 1992.

Joseph A. Cara,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92–1411 Filed 1–17–92; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB38

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Prairie Mole Cricket (Gryllotalpa Major) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Withdrawal of proposal rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is withdrawing the proposed rule (April 25, 1990; 55 FR 17465) to list the prairie mole cricket (*Gryllotalpa major*) as a threatened species under the Endangered Species Act of 1973, as amended (Act). Data received as a result of additional field surveys in the spring of 1991 in Kansas and Oklahoma reveal that the species is more abundant and widespread than previously thought and is found in types of native grass cover that are not under immediate threat of destruction or modification. Because of the number and extent of occurrences and the fact that the species is now known to occur in a wider range of vegetation types that are less threatened with destruction, the Service has determined that the species is not likely to become endangered throughout all or a significant portion of its range in the foreseeable future.

ADDRESSES: The complete file for this notice is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Regional Office, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Johnson, Endangered Species Coordinator, at the above address (612/725–3276 or FTS 725–3276).

SUPPLEMENTARY INFORMATION:

Background

The presettlement tallgrass prairie extended from Canada to Oklahoma and from Nebraska to Indiana. Based on historic records, the prairie mole cricket was presumed to be distributed evenly throughout the southwest portion of the

tallgrass prairie, encompassing an area about the size of the States of Indiana and Oklahoma. The present distribution of the species has been reduced to small remaining prairie segments in the southwest one-fourth of Missouri, eastern Kansas, northwest and central Arkansas, and eastern Oklahoma. Most of these extant populations are found on small fragmented remnant prairie or native grass areas. Wilcove (1987) estimates that less than 0.5 percent of Missouri's presettlement prairie remains.

The earliest records of *Gryllotalpa major* are dated from the 1870's from eastern Kansas and southwest Missouri. Saussure described the first specimen from Illinois in 1874. Historical records indicate that specimens were collected from Arkansas, Illinois, Oklahoma, and Mississippi, in addition to Kansas and Missouri. Collecting continued until the 1930's when it seemed to decline significantly (Figg and Calvert 1987). At the time of the Service's 1984 Invertebrate Species Notice of Review (49 FR 21664), the prairie mole cricket was thought to be extinct. The closest relative to the prairie mole cricket is an African species *Gryllotalpa gryllotalpa* (Dennis Figg, Missouri Department of Conservation, *in litt.* 1989).

Adult prairie mole crickets are among the largest insects in North America and may measure up to 6 cm (2.5 inches) from end to end, including the antennae (Figg and Calvert 1987). The prairie mole cricket can sometimes be distinguished from the normally smaller northern mole cricket (*Gryllotalpa hexadactyla* by its size. The northern mole cricket measures 20–35 mm (.75–1.4 inches). Walker (pers. comm. in Figg and Calvert 1987) reports the prairie mole cricket may weigh up to 2.6 grams. Figg (*in litt.* 1989) suggests that a simple field method to distinguish these species is to observe the process on the trochanter of the foreleg, which is knife-shaped on the prairie mole cricket and more circular on the common northern mole cricket. The northern mole cricket is found in marshes, wetlands, and along rivers and lakes.

Adult mole crickets become active in the soil surface twice during the year, most notably during the spring, for courtship and reproduction (Figg and Calvert 1987). Males and females are identical externally, except for modified forewings that males use to attract sexually responsive females (Alexander 1975). Male prairie mole crickets construct specially designed burrow systems several inches below the soil surface that contain a bulb-like resonant chamber to increase acoustical output when the male calls to attract females during courtship. Males commence calling in late April and continue through May (Figg and Calvert 1987). Calling begins 5 to 10 minutes after sunset and ends at dark. Conditions need to be conducive for the females to fly; warm, dry and still. Calls at one Missouri prairie in 1987 could be heard over a quarter of a mile away (Figg and Calvert 1987). After courtship, the females disperse into the sorrounding habitat, dig a tunnel, and lay their eggs (Figg and Calvert 1987). The eggs then hatch in the soil and the young are miniature versions of the adults except they lack wings. They require two to three years before they grow into adults and are ready for spring courtship.

The habitat preference of the prairie mole cricket is the tallgrass prairie or, at a minimum, native grass areas with little or no disturbance. Communities where the species are found vary within the prairie ecosystem (Figg and Calvert 1987). Observations by Figg and Calvert indicate that most prairie mole cricket populations occur on silty to sandy loam prairies that are well drained. However, it is not unusual to find population sites on ridges with shallow soils. The species has not been found on wet prairies, marshes, dolomite glades, and dry loess prairies. It is difficult to accurately count individual burrows due to vegetative cover and the intensity of calling crickets. Busby (*in litt.* 1989) reports that larger Kansas populations support 24–30 males. At several locations in Arkansas, Shepherd (pers. comm. 1989) estimated approximately 150 prairie mole crickets.

Field work in Arkansas (Harold Grimmett, pers. comm. 1991) reveals counts as high as 296 males on 28 acres.

The proposed rule to list the prairie mole cricket (*Gryllotalpa major*) as a threatened species under the Act was published in the **Federal Register** on April 25, 1990 (55 FR 17465). This proposal was supported by biological information (Figg and Calvert 1987) indicating that the species was limited in distribution to small segments within the tallgrass prairies of southwestern Missouri, eastern Kansas, northeastern Oklahoma, and northwest and central Arkansas. At the time of the proposal, the prairie mole cricket was known from approximately 95 locations in the above four states. The species was thought to be in peril because of the destruction and alteration of its prairie habitat for agricultural and other uses.

Newspaper notices inviting general public comment on the proposal were published in 14 daily newspapers within the current range of the prairie mole cricket in Missouri, Kansas, Oklahoma, and Arkansas. Copies of the **Federal Register** proposal were furnished to landowners, other government agencies, and various interested parties.

Three comments were received during the comment period, which extended from April 25, 1990, until June 11, 1990. The Kansas Department of Wildlife and Parks did not have additional species information to provide and had no recommendation with regard to the proposal. The Kansas Association of Wheat Growers (Association) expressed concerns about how the presence of *Gryllotalpa major* on privately owned lands would affect farming practices if the species were to be placed on the endangered species list and given protection under the Act. Discussions with the Association revealed that the document they had received about the proposal was incomplete. Once the Association was provided with complete information about the prairie mole cricket, how it would be protected, and what the expected impacts upon cultivation practices might be, they had no further questions or comments.

Questions were raised within the Service about the adequacy of surveys that had been conducted and the types of microhabitat that the species requires. The Service debated whether the various types of habitat where the prairie mole cricket might be found had been adequately searched. Concern was expressed that additional surveys should be conducted in other types of grasslands, particularly within the "continuous prairies" of Kansas and Oklahoma, before a final listing decision was to be made.

As a result of these comments, the Service, under section 4(b)(6)(B)(i) of the Act, extended for 6 months the 1-year deadline for the final decision on the proposal to list *Gryllotalpa major* (April 11, 1991; 56 FR 14677). A new comment period opened June 17, 1991, and closed July 16, 1991. Notification of the rule extension was sent to all the parties that had previously received a copy of the proposed rule.

The Service contracted with Dr. William H. Busby, of the Kansas Biological Survey, to coordinate an intensive survey for the prairie mole cricket in the Flint Hills of Kansas. Concurrently, expanded survey efforts were conducted in Oklahoma by the Oklahoma Natural Heritage Inventory and the Service. These surveys revealed that, although the current range of *Gryllotalpa major* remains restricted from its historic range, the occurrences of the species within its current range are more abundant than previously believed. These surveys also revealed

that the species not only occurs in "tallgrass" prairies but in areas that have suffered some form of disturbance and where at least some native grasses remain. As a result of the 1991 surveys, the Service can now document approximately 290 extant occurrences of the prairie mole cricket in 49 counties in southwestern Missouri, eastern Kansas, eastern Oklahoma, and northwest and central Arkansas.

Seven comments were received during the extended comment period from the following: Missouri Department of Conservation, Arkansas Game and Fish Commission, Arkansas Natural Heritage Commission, Kansas Department of Wildlife and Parks, Oklahoma Natural Heritage Inventory, Kansas Biological Survey, and the Service's Tulsa Field Office. All of the respondents recommended that *Gryllotalpa major* not be placed on the Federal list of endangered and threatened species.

Finding and Withdrawal

Data collected by Busby (1991) and information contained in the comments received indicate that *Gryllotalpa major* is more widespread and abundant than previously believed and is found in types of habitat not considered before. It appears that the species does not face the degree of threats previously believed and is able to survive in a wider range of habitats. The known number of species' occurrences has increased from 95 at the time of the proposed rule (55 FR 17465) in 1990 to 290 in 1991. The number of counties where occurrences are recorded has increased from 30 to 49. All comments received by the Service during the reopened comment period in June and July 1991 recommended that the Service withdraw the listing proposal and place the species in category 2 of the Animal Notice of Review. Placing the species in this category will enable the Service to continue funding for additional population surveys and monitoring. If future data reveal a stable and increasing range-wide population, the Service will consider placing the species in the 3C category in a subsequent Animal Notice of Review. Taxa placed in the 3C category are those that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat. Therefore, in compliance with section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended, the Service withdraws its proposed rule of April 25, 1990 (55 FR 17466), to list *Gryllotalpa major* (prairie mole cricket) as threatened.

References Cited

Alexander, R.D. 1975. Natural Selection and Specialized Chorusing Behavior in Acoustical Insects. In D. Pimental, ed., Insects, Science and Society. Academic Press, New York.

Busby, W.H. 1991. Prairie Mole Cricket Report for Kansas, 1991. Unpublished report. 15 pp.

Figg, D.E., and P.D. Calvert. 1987. Status, Distribution, and Life History of the Prairie Mole Cricket (*Gryllotalpa major*), Sassurre. Unpublished report. 39 pp.

Wilcove, D.S. 1987. From Fragmentation to Extinction. Natural Areas Journal 7(1):23–29.

The author of this notice is William F. Harrison (see **ADDRESSES** section).

The authority for this action is 16 U.S.C. 1531–1544.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: January 9, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–1415 Filed 1–17–92; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Karner Blue Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine the Karner blue butterfly (*Lycaeides melissa samuelis*) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Historically, the Karner blue butterfly occurred in a rather narrow band extending from eastern Minnesota, across portions of Wisconsin, Illinois, Indiana, Michigan, Ohio, Canada (Ontario), Pennsylvania, New York, Massachusetts, and New Hampshire. It is now extirpated from Illinois, Ohio, Ontario, Pennsylvania, and Massachusetts. This action is being taken because of constriction of the species' range and the declining size of remaining populations. The primary cause of past and threatened losses is habitat modification and destruction due to development, succession in the absence of natural disturbances, silviculture, and fragmentation of remaining habitat. This proposal, if made final, would extend the Federal protection and recovery provisions afforded by the Act to *Lycaeides melissa samuelis*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by March 23, 1992. Public hearing requests must be received by March 6, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the New York Field Office, U.S. Fish and Wildlife Service, 100 Grange Place, room 202, Cortland, New York 13045. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mark W. Clough at the above address, telephone (607) 753–9334.

SUPPLEMENTARY INFORMATION:

Background

The Karner blue butterfly has been known for more than a century. When W. H. Edwards first described this butterfly in 1861 in Karner, New York, it was considered to be the same species as the Scudder's blue. In the 1940's, Nabokov revised the taxonomy of the group and renamed the Karner blue as a subspecies of the more common Melissa blue. The current scientific name is *Lycaeides melissa samuelis*, Nabokov. Some lepidopterists consider the Karner blue butterfly to be a separate species (D. Schweitzer, The Nature Conservancy, *in litt.*, 1987). However, this change has not been published and the Karner blue butterfly will be considered a subspecies for the purposes of listing.

Karner blues have a wingspan of 22–32 mm (0.87–1.26 in.). The dorsal side of the male is silvery blue or dark blue with narrow black margins. The females are grayish brown, dorsally, with irregular bands of orange inside the narrow black border on the upper wings. Both sexes are slate gray on the ventral side with the orange bands showing more regularity, and black spots circled with white (Shull 1987).

The habitat of the Karner blue butterfly is characterized by the presence of wild lupine (*Lupinus perennis*), a member of the pea family. Wild lupine is the only known larval host food plant for the Karner blue butterfly and is, therefore, closely tied to the butterfly's ecology and distribution. In eastern New York and New Hampshire, the habitat is typically grassy openings within very dry, sandy pitch pine/scrub oak barrens. In the

Midwest, the habitat is dry and sandy, but more prairie-like, including oak savanna and jack pine areas. It is believed that the Karner blue butterfly originally occurred as shifting clusters of populations, or metapopulations, across a vast fire-swept landscape covering thousands of acres. While the fires resulted in localized extinction, post-fire vegetational succession promoted colonization and rapid population buildups (Schweitzer 1989). Periodic disturbance is necessary to maintain openings in the canopy for wild lupine to thrive. A variety of other understory plants associated with the habitat serve as nectar sources for the adult butterflies.

The Karner blue butterfly usually has two broods each year. Eggs that have overwintered from the previous year hatch in April. The larvae feed on the upper surface of wild lupine leaves and mature rapidly. Near the end of May, they pupate and adult butterflies emerge very late in May in most years. The adults are typically in flight for the first 10 to 15 days of June, when the wild lupine is in bloom. Females lay eggs on or near the wild lupine plants. The eggs hatch in about one week and the larvae feed for about three weeks. They then pupate and the second brood adults appear in the second or third week of July. This time, the eggs are laid among plant litter at the base of the lupines, or on lupine pods or stems. By early August, no adults remain, and these eggs do not hatch until the following spring (Schweitzer 1989, Dirig 1979).

The distribution of the Karner blue butterfly is very discontinuous and generally follows the northern limits of wild lupine. Eight population clusters of the Karner blue butterfly were known historically from portions of Wisconsin, Michigan, Minnesota, Indiana, Illinois, Ohio, Massachusetts, New Hampshire, Pennsylvania, New York, and Ontario. Over the past 100 years, Karner blue butterfly numbers have apparently declined rangewide by 99 percent or more. Over 90 percent of the decline occurred in the last 10 to 15 years. It is now extirpated from Illinois, Massachusetts, Pennsylvania, Ohio, and Ontario (Schweitzer 1989; *in litt.*, 1990).

The New York Natural Heritage Program maintains a state list of approximately 50 individual Karner blue butterfly sites, comprising about ten population clusters, all found in the area known as the Albany Pine Bush and at several scattered locations within about 40 miles to the north. Once the site of a massive Karner blue population, the Albany Pine Bush is the locality from which the Karner blue butterfly was first scientifically described. There are unverified records of Karner blues in Manhattan and Brooklyn from the mid-1800's. Givnish *et al.* (1988) noted a decline of Karner blue butterflies in the Albany Pine Bush of 85 to 98 percent over the past decade, exclusive of one site which has remained stable. Schweitzer (1990) described the decline in the Pine Bush population as dropping from numbers of around 80,000 in 1979, to around 1,000 in 1987, to 100–200 in 1990. North of the Albany Pine Bush, one disturbed site located at an airport has persisted with numbers estimated around 14,000 in 1990. This population, which is now the largest left anywhere, may account for over half of the Karner blue butterflies throughout their range, and is several times larger than all the other New York sites combined (Schweitzer 1990). The majority of extant Karner blue sites in New York are in municpal and private ownership. Other landowners include a State Park, The Nature Conservancy, and Saratoga County.

In New Hampshire, the Concord Pine Barrens along the Merrimack River support the only remaining occurrence of the Karner blue butterfly in New England. The sole population is extremely low in numbers and occurs on a privately owned, two- to three-acre site within a power line right-of-way bordering an industrial park, and on the grounds of a nearby airport. The results of 1990 surveys reported by The Nature Conservancy (1990) showed a decline in the population size from an estimated 2,000 to 3,000 individuals in 1983 to an estimated 250 to 400 individuals in 1990. During that survey, Karner blue butterflies were not found at two other sites in the Concord Pine Barrens where the subspecies had been documented in 1983.

In Wisconsin, 33 of 36 historical occurrence sites were surveyed during 1990. Survey results reported by Blesser (1990) revealed that Karner blue butterflies were found at only 11 of the 33 historical sites visited. Although 23 previously unknown populations were discovered, Blesser noted that numbers of Karner blue butterflies were very small at most sites. Only three sites had 50 or more individuals, with none greater than 100. Most of the remnant populations in Wisconsin are also widely scattered, occurring in isolated patches of habitat along roadsides, power line clearings, and on abandoned agricultural fields. Over half of the Wisconsin sites are on publicly administered lands, including Necedah National Wildlife Refuge, Department of Defense, Wisconsin Department of Natural Resources, and County Forest.

The Karner blue butterfly has declined throughout its range in Michigan. It still occurs in six of seven counties from which it was known historically, but the existing populations are greatly reduced and have become highly fragmented within expanses of unsuitable habitat (Wilsmann 1990). The Michigan Natural Features Inventory includes over two dozen historical locations for the Karner blue butterfly. Five of these no longer support populations of Karner blue butterflies, and many of the remainder are ranked as poor quality sites. Information on exact historical locations is lacking, but many general areas reported to have Karner blue butterflies in the 1950's have become unsuitable due to succession or conversion to plantations (L. Wilsmann, Michigan Department of Natural Resources, pers. comm., 1991). In his analysis of recent population studies in the Allegan State Game Area, Michigan's only remaining sizable population, Schweitzer (*in litt.*, 1989) noted that the results indicate a decline to fragmented remnants with dangerously low numbers, which is characteristic of a collapsing Karner blue butterfly population. Other Michigan sites occur on the Manistee National Forest (intermixed with private inholdings), on power company rights-of-way, and on other private lands.

The results of surveys during 1990 in Indiana were summarized by C. Hedge (Indiana Department of Natural Resources, pers. com., 1991). Karner blue butterflies were reconfirmed at one known site, and they were also rediscovered on three of seven historical sites. Searches at 24 sites identified as potentially suitable for the species yielded six new locations for the species. However, all extant sites in Indiana are in two population clusters within three counties. Six sites are located on Indiana Dunes National Lakeshore, and other landowners include a county park, a school district, and The Nature Conservancy. Shull (1977) indicated eight Indiana counties in the historic range of the Karner blue, although some of these records are based on sightings that are not supported with voucher specimens. The species is no longer found at one area where Shull reported observing dozens of individuals in 1980.

Cuthrell (1990) reported the results of 1990 surveys conducted in Minnesota. There are two historical records for Minnesota. During the 1990 surveys of 50 potentially suitable sites, two areas with Karner blue butterflies were located.

Both sites are on a State Wildlife Management Area, in the vicinity of one of the historical locations. Karner blue butterflies were not found at the other historical site.

Karner blues frequently occur with other rare butterfly species such as the persius duskywing (*Erynnis persius*) and the frosted elfin (*Incisalia irus*), which are being listed by states where they occur (D. Schweitzer, pers. comm., 1991). Wild lupine is also the host plant for these species in parts of their range.

The Karner blue butterfly was first recognized by the Federal government in the **Federal Register** Notice of Review published on May 22, 1984 (49 FR 21664). That notice, which covered invertebrate wildlife under consideration for endangered or threatened status, included the Karner blue butterfly as a Category 2 species. Category 2 includes those taxa for which proposing to list as endangered or threatened is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently available to support proposed rules. In the **Federal Register** Animan Notice of Review published on January 6, 1989 (54 FR 554), the Karner blue butterfly was retained as a Category 2 species. Although the decline of the Karner blue butterfly in the Northeast was documented during the 1980's, it was believed that populations in the Midwest were relative secure, particularly in Wisconsin and Michigan. Surveys conducted during 1989 and 1990 in the Midwest revealed that the butterfly is in decline there also. Based on the recent status reviews, the Service's Northeast and North Central Regions recommended in the fall of 1990 that the Karner blue butterfly be included in the next **Federal Register** Notice of Review as a Category 1 species, indicating that the Service now possesses sufficient information to support the appropriateness of proposing to list this butterfly.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Karner blue butterfly (*Lycaeides melissa samuelis*) are as follows:

A. The Present or Threatened Destruction, Modification or Curtailment of its Habitat or Range

Throughout its range, changes in the habitat occupied by the Karner blue butterfly resulting from the declining frequency of wildfires, silviculture, and urbanization are largely the reasons for its decline (D. Schweitzer, *in litt.*, 1991). Modification and destruction of habitat and fragmentation of remaining areas are continuing threats to the survival of this butterfly. In addition to direct destruction of suitable habitat, urbanization has led to fire suppression on interspersed habitat; in the absence of fire, vegetational succession has made this habitat unsuitable. The threats due to fire suppression are discussed in more detail under Factor E.

In New York, the decline of the Karner blue butterfly resulting from loss and alteration of habitat is largely due to industrial, commercial, and residential development, fire suppression, vegetational succession, and habitat fragmentation. The Albany Pine Bush, which once covered as much as 40,000 acres, has been reduced to 2,000 acres. Zaremba (1991) noted that in addition to habitat loss, dissection of metapopulations by development such as buildings and roads is a major threat to the Karner blue butterfly in New York, along with detrimental management of lupine stands and habitat disturbance due to off-road vehicles and horseback riding.

Habitat fragmentation and loss of habitat through development, combined with the extremely small size of the remaining population (discussed under Factor E), are the greatest threats to the Karner blue butterfly's continued existence in New England. The pine barrens in New Hampshire have largely been destroyed as a result of industrial, commercial, and residential development; road and airport construction; and gravel and sand mining. A major retail mall, recently completed on the outer edges of Concord's pine barrens, will encourage additional commercial development and further encroachments into pine barren habitat. A recent proposal to spread and stockpile sewage sludge on airport lands in New Hampshire would, if implemented, alter or eliminate pine barren habitat. Remaining fragments of this natural community are threatened by continued development pressures, vegetational succession in the absence of periodic fires, airport expansion, and degradation due to off-road vehicular use. Sperduto (New Hampshire Natural Heritage Inventory, pers. comm., 1991) estimated that 90 to 95+ percent of the historic pine barrens in the Merrimack system have disappeared.

Most of the remnant populations of the Karner blue butterfly in Wisconsin are small and widely scattered, occurring in isolated patches of habitat along roadsides, power line clearings, and on abandoned agricultural fields. These areas are threatened primarily by encroachment of adjacent forests, conversion to pine plantations, and incompatible management practices including improper application of burning and mowing (Bleser 1990).

In Michigan, the major cause for the butterfly's decline has been the degradation and loss of habitat as a result of succession and development. The habitat has been affected by fire suppression, agriculture, silviculture, and off-road vehicles. Remaining Karner blue butterfly populations continue to be threatened by the decline and loss of wild lupine populations resulting from these factors (Wilsmann 1990).

The two major threats in Indiana identified by C. Hedge (pers. comm., 1991) are destruction of habitat by development, and succession resulting from fire suppression.

Cuthrell (1990) identified fire suppression, development, and other human disturbance as causes for the loss of Karner blue butterfly habitat in Minnesota. The major threat to the two extant sites is succession, but potential logging of the oak savannas also poses a threat (R. Baker, Minnesota Department of Natural Resources, pers. comm., 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There have been large scientific collections of Karner blues in the past (R. Zaremba, The Nature Conservancy, pers. comm., 1991), although past collecting is not considered to have been a significant factor in the butterfly's decline to its present condition. However, the Karner blue butterfly's rarity and distinctively beautiful coloration may make it a desirable addition to private collections. Because the Karner blue butterfly's numbers are so low throughout its range, additional taking or collecting for any purpose other than part of a carefully planned recovery action may eliminate some populations and hamper recovery efforts.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Karner blue butterfly is listed as endangered or threatened by several states:

In New York, the Karner blue butterfly is listed as endangered and the animals and parts thereof, including eggs and larvae, are protected from unauthorized take, import, transport, possession, or sale.

The State of Minnesota lists the Karner blue butterfly as a threatened species. Minnesota law protects state listed animals from take, import, transport, or sale.

In New Hampshire, the Karner blue butterfly is listed as endangered and is protected from unauthorized taking. While New Hampshire law directs other State agencies to avoid funding, carrying out, or authorizing actions that result in the destruction of essential habitat, it has not prevented the loss of habitat through development of private property. Wild lupine is listed by New Hampshire as an endangered plant species. It is protected by the New Hampshire Native Plant Protection Act of 1987, which is implemented by the New Hampshire Natural Heritage Inventory within the Department of Resources and Economic Development. However, this legislation does not prevent alteration of wild lupine habitat on private land, with the landowner's permission.

In Wisconsin, the Karner blue butterfly has been recommended for addition to the State list as threatened, but listing may take one to two years (C. Bleser, Wisconsin Department of Natural Resources, pers. comm., 1991). If listed, in addition to protection from take at occupied sites, Wisconsin law provides for protection and management of habitat on public lands, where a significant proportion of Wisconsin Karner blue occurrences are found.

In Michigan, the Karner blue butterfly has been proposed for addition to the State list as a threatened species. Michigan law prevents taking of listed animals and protects occupied habitat, and would thereby afford protection for eggs and larvae at known sites.

The State of Indiana currently does not have an official State list for insects.

While most states with extant Karner blue butterfly populations have legislation which protects the animals, provisions for protection and management of the habitat are incomplete to non-existent. Destruction and alteration of habitat are major reasons for the butterfly's decline.

Some populations of Karner blue butterflies occur on Federal, State, or privately owned parks, wildlife refuges, or preserves and are thereby recognized and protected. However, this protection has not prevented the range-wide declines of the Karner blue and its habitat due to the reasons discussed in section A above, and section E below.

The pine barrens and oak savannas where the Karner blue butterfly occurs are uplands underlain by extremely well-drained sandy soils and are thus afforded no protection by Federal or State wetland regulations. Should the Karner blue butterfly be federally listed, there will be additional protection provided from take or transport of the species, and from habitat alteration carried out, funded, or authorized by Federal agencies. The Endangered Species Act would also provide for needed habitat management through the recovery process.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The presence of wild lupine is essential to the occurrence and survival of the Karner blue butterfly. Unaltered by humans, a pine barren ecosystem is likely to be a mosiac of interspersed woody vegetation, such as pitch pine (*Pinus rigida*) and scrub oak (*Quercus ilicifolia*) and more open areas characterized by wild lupine, grasses, and other plants such as spreading dogbane (*Apocynum androsaemfolium*) and New Jersey tea (*Ceanothus americana*) which serve as nectar sources for adult butterflies (The Nature Conservancy 1990).

Historically, the pine barren and oak savanna communities were maintained by naturally occurring, periodic fires that released nutrients and created openings favorable for wild lupine and other low growing plants. Residential and commercial development in and adjacent to these areas has lead to fire suppression. Without fire, vegetational succession to unsuitable habitat occurs on interspersed undeveloped areas. In the absence of fire, many areas once dotted with openings and wild lupine are now dominated by forest, with little or no understory. Fire suppression has affected habitat throughout the range of the Karner blue butterfly.

Since no life stage of the Karner blue butterfly is completely resistant to fire, recently burned lupine sites must be colonized by Karner blue butterflies from nearby unburned sites (Schweitzer 1989). Maintenance of the Karner blue butterfly depends on its ability to disperse to newly expanded wild lupine sites (Zaremba 1991). Fragmentation of remaining habitat prevents dispersal and results in small isolated populations.

With small, isolated and declining populations, the subspecies is highly vulnerable to extinction. Extreme isolation, whether by geographic distance, ecological factors, or reproductive strategy, will prevent the influx of new genetic material and can result in a highly inbred population with low viability and/or fecundity (Chesser 1983). Natural fluctuations in rainfall, host plant vigor, or predation may weaken a population to such an extent that recovery to a viable level would be impossible. Isolation prevents recolonization by butterflies from other metapopulations, resulting in extinction.

Small remnant populations are highly vulnerable to a variety of factors. Weather events can eliminate such populations, as exemplified by the failure of the Ontario, Canada remnant to survive the impacts of drought in 1988, followed by unusually cold weather in May and June of 1989 (D. Schweitzer, *in litt.*, 1991). Improper management of existing wild lupine habitat including untimely mowing, the use of herbicides along highways and power line rights-of-way, and poorly timed and/or configured burns also threaten remnant populations (D. Schweitzer, *in litt.*, 1991, Bleser 1990, Zaremba 1991). Browsing of wild lupine by deer, rabbits and/or woodchucks also poses a threat (D. Sperduto, pers. comm., 1991; D. Schweitzer and D. Savignano, pers. comm., in Givnish *et al.* 1988). A relationship between the scarcity of adult nectar sources and Karner blue butterfly abundance has also been observed (Bleser 1990; D. Sperduto, pers. comm., 1991).

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this subspecies in determining to propose this rule. Based on this evaluation, the preferred action is to list the Karner blue butterfly as endangered. It has been extirpated from Canada and from four states in the U.S., and has undergone significant decline in the six states with remaining populations. Due to the magnitude of the range-wide decline of the Karner blue butterfly, particularly within the past decade, and the continuing threats from destruction, alteration, and fragmentation of its habitat, this butterfly is in need of Federal protection if it is to continue to survive. These factors support listing the Karner blue butterfly as an endangered species.

Critical Habitat

Section 4(a)(3) of the Act as amended, requires that, to the maximum extent prudent and determinable, the Secretary

propose critical habitat at the time the species is proposed for listing as endangered or threatened. Section 3 of the Act defines critical habitat as, "(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species." Designation of critical habitat is prudent unless: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)). Designation of critical habitat is determinable unless: (1) information sufficient to perform the required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)).

The Service finds that designation of critical habitat for the Karner blue butterfly is not presently determinable. Most existing populations of this butterfly are located on highly fragmented habitat of declining suitability. The size, spatial configuration, and juxtaposition of habitat areas required to provide for the long-term survival of existing populations have not been identified. Range-wide conservation of the Karner blue butterfly may also require protection and/or restoration of habitat in areas where the species is now extirpated. In addition, information needed to analyze the impacts of critical habitat designation is unavailable at this time.

The Service will be initiating a concerted effort to obtain the information needed to determine critical habitat for the Karner blue butterfly. When the Service finds that critical habitat is not determinable at the time of listing, regulations (50 CFR 424.17(b)(2)) provide that the designation of critical habitat be completed within two years of the date of the proposed rule to list the species. A proposed rule for critical habitat designation must be published in the **Federal Register**, and the notification process and public comment provisions parallel those for a species listing. In addition, the Service will evaluate the economic and other relevant impacts of the critical habitat designation, as required under section 4(b)(2) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal involvement under section 7 is expected for management and other land use activities on Federal lands with Karner blue butterfly populations. Present locations include U.S. Forest Service lands in Michigan, National Park Service lands in Indiana, and U.S. Fish and Wildlife Service National Wildlife Refuge lands and Department of Defense lands in Wisconsin. Activities which are funded, regulated or carried out by the Federal Aviation Administration involving the airport lands in New York and New Hampshire where Karner blue butterflies occur would require section 7 consultation. A proposed airport expansion in New York, and a proposal to stockpile sewage sludge at an airport in New Hampshire could affect the Karner blue butterfly and may require Federal Aviation Administration approval. Some development projects involving Karner blue butterfly sites could require authorization from the U.S. Army Corps of Engineers (Corps) for certain project related activities in regulated waters or wetlands of the United States. Corps' authorization of such projects would require section 7 consultation; however, upland development by itself is not regulated by the Corps. The Service is not aware of any such development proposals at this time.

Listing the Karner blue butterfly would encourage additional research and provide for the development of needed habitat protection and management strategies through the recovery process. Additional information is needed on specific habitat characteristics such as plant community species and structure, soil dryness, shading, and other factors that may affect the suitability of the habitat for Karner blue butterflies. Likely recovery activities would also include continued monitoring, evaluation of habitat management techniques, development of site-specific protection and management plans, and investigations into re-establishing populations.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will

be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Karner blue butterfly;

(2) The location of any additional populations of the Karner blue butterfly and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the Karner blue butterfly;

(4) Current or planned activities in the subject area and their possible impacts on the Karner blue butterfly.

Final promulgation of the regulation on the Karner blue butterfly will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this prposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Field Supervisor, New York Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Bleser, C.A. 1990. The Wisconsin 1990 status survey for the Karner blue butterfly (*Lycaeides melissa samuelis*). Final report submitted to the U.S. Fish and Wildlife Service by the Natural Heritage Inventory Program, Bureau of Endangered Resources, Wisconsin Dept. of Natural Resources, 27 pp.

Chesser, R.K. 1983. Isolation by distance: relationship to the management of genetic resources. pp. 66–77 *in* Schonewald-Cox, S.M. Chambers, B. MacBryde and L. Thomas (ed.), Genetics in Conservation: A Reference for Managing Wild Animal and Plant Populations. The Benjamin/Cummings Pub. Co., Inc.

Cuthrell, D.L. 1990. Status of the Karner blue butterfly, *Lycaeides melissa samuelis* Nabokov, in Minnesota 1990. Report submitted to the Minnesota Nongame Wildflife Program, 44 pp.

Dirig, R. 1979. Occasional Publication Number 2. Pine Bush Historic Preservation Project, Inc., Albany, NY, 1 p.

Givnish, T.J., E.S. Menges, and D.F. Schweitzer. 1988, Minimum area requirements for long term conservation of the Albany Pine Bush and Karner blue butterfly: an assessment. (Vol. IV, Appendix T) Report to the City of Albany from Malcolm Pirnie, Inc., Albany, NY, 95 pp. + figures.

Schweitzer, D.F. 1989. Fact sheet for the Karner blue butterfly with special reference to New York. The Nature Conservancy, internal document, 7 pp.

Schweitzer, D.F. 1990. The status of selected Karner blue remnants in Saratoga and Albany Counties, New York with a discussion of monitoring methods. Report prepared for the New York State Department of Environmental Conservation, Endangered Species Unit, 23 pp.

Shull, E.M. 1967. The Butterflies of Indiana. Indiana Press, Bloomington & Indianapolis, pp. 163–164.

The Nature Conservancy. 1990. Final status survey report: habitat assessment of Karner blue butterfly (*Lycaeides melissa samuelis*). Report submitted to the U.S. Fish and Wildlife Service by the New Hampshire Natural Heritage Inventory, 13 pp.

Wilsmann, L. 1990. Karner blue (draft species abstract). Michigan Department of Natural Resources Wildlife Division, 7 pp. in prep.

Zaremba, R.E. 1991. Chapter 23: The management of Karner blue butterfly habitat in a suburban landscape. *In* Challenges in the Conservation of Biological Resources. (D.J. Decker, M.E. Krasny, G.R. Goff, C.R. Smith, D.W. Gross; eds.) Westview Press, Boulder, CO.

Author

The primary author of this proposed rule is Mark W. Clough (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Wildlife, under "INSECTS".

§ 17.11(h) Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Insects							
Butterfly, Karner blue	*Lycaeides melissa samuelis*	U.S.A. (IL, IN, MA, MI, MN, NH, NY, OH, PA, WI), Canada (Ont.).	NA	E		NA	NA

Dated: January 8, 1992.
Richard N. Smith,
Acting Director, Fish and Wildlife Service.
[FR Doc. 92-1416 Filed 1-17-92; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 911009-1252]

Endangered Fish and Wildlife; Gray Whale

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Due to a request for a pubic hearing on the proposal of NMFS to remove the eastern North Pacific stock of gray whale from the Endangered Species Act's (ESA) List of Endangered and Threatened Species, the comment period on the proposed rule is hereby extended.

DATES: The comment period is extended until March 6, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, NMFS, at (301) 713-2322 or Mr. James Lecky, Southwest Region, NMFS, at (213) 514-6664.

SUPPLEMENTARY INFORMATION: On November 22, 1991 (56 FR 58869), NMFS published a proposed determination that the eastern North Pacific (California) stock of gray whale should be removed from the ESA's List of Endangered and Threatened Wildlife. This proposed change is based on evidence that this stock has recovered to near its estimated original population size and is neither in danger of extinction throughout all or a significant portion of its range, nor likely to become endangered again within the foreseeable. future throughout all or a significant portion of its range. NMFS believes that the western Pacific gray whale stock, which is geographically isolated from the eastern stock, has not recovered and should remain listed as endangered.

In the November 22, 1991 proposed rule, NMFS gave notice that the comment period would close on January 21, 1992. However, as provided under section 4(b)(5)(E) of the ESA, a request for a public hearing on the determination has been received and granted. With the intent to hold a public hearing, this comment period will be extended for 45 days in order to allow the public sufficient time to attend the hearing and complete their written comments. A separate notice will be published in the **Federal Register** shortly, notifying the public of the time and dates of the hearing.

Date: January 14, 1992.
Michael F. Tillman,
Deputy Assistant Administrator for Fisheries
[FR Doc. 92-1369 Filed 1-17-92; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 675

Receipt of Petition for Rulemaking; Central Bering Sea Fishermen's Association

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of petition for rulemaking and request for comments.

SUMMARY: NMFS announces receipt of a petition for rulemaking on issues related to fishery management regulations promulgated under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Central Bering Sea Fishermen's Association (CBSFA) has petitioned the Secretary of Commerce (Secretary) to amend the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) to allocate to the CBSFA 8 percent of the total allowable catch (TAC) for pollock in the Bering Sea and Aleutian Islands (BSAI) area from the reserve established by 50 CFR 675.20(a)(3). The CBSFA also has petitioned the Secretary to issue an interpretive rule indicating that the Fur Seal Act Amendments of 1983 (FSAA) created in the Secretary fiduciary obligations to the Aleut Natives of the Pribilof Islands to transition the economy of St. George and St. Paul Islands from one based on commercial fur sealing to one based on fisheries. Furthermore, CBSFA has petitioned the Secretary to issue a finding that the Community Development Quota (CDQ) system proposed by the North Pacific Fishery Management Council (NPFMC) cannot result in an allocation to the Pribilof Islands that will be timely and sufficient in size and duration to encourage serious investment in fishery related enterprise based on the Pribilof Islands.

DATES: Comments are requested through March 6, 1992.

ADDRESSES: Comments on the need for rulemaking described in the petition should be sent to William W. Fox, Jr., Assistant Administrator for Fisheries, NOAA, NMFS, Silver Spring Metro Center #1, room 9246, 1335 East-West Highway, Silver Spring, MD 20910, telephone (301) 713-2231.

FOR FURTHER INFORMATION CONTACT: Copies of the petition are available and may be obtained from Lauren M. Rogerson, NOAA Office of General Counsel, Silver Spring Metro Center #1, room 9246, 1335 East-West Highway, Silver Spring, MD 20910, telephone (301) 713-2231.

SUPPLEMENTARY INFORMATION:

Description of Request

As stated in their petition, CBSFA represents the vested interest of Aleut Natives of the Pribilof Islands, Alaska, in the creation of a fisheries-based economy on the Pribilof Islands. The CBSFA requested publication of, and action on, the petition concurrent with public notice and review of Amendment 18 to the FMP. Amendment 18 to the FMP was prepared by the NPFMC and has been submitted to the Secretary for review under the provisions of the Magnuson Act. The proposed rule implementing proposed Amendment 18 was published in the **Federal Register** December 20, 1991 (56 FR 66009). Public comments on the proposed regulations are invited through February 3, 1992.

The CBSFA has petitioned the Secretary to amend the FMP to allocate to the CBSFA 8 percent of the TAC of pollock for the BSAI. The 8 percent allocation would be taken from the 15 percent reserve established by 50 CFR 675.20(a)(3). Fifteen percent of the TAC for each target species and the "other species" category is automatically placed in a reserve. The reserve is not designated by species or species group and any amount of the reserve may be apportioned to a target species or the "other species" category provided that such apportionments are consistent with paragraph (a)(2)(i) of § 675.20 and do not result in overfishing of a target species or the "other species" category. The CBSFA has provided proposed regulatory language.

The CBSFA has also petitioned the Secretary to issue an interpretive rule that the FSAA created in the Secretary fiduciary obligations to the Aleut Natives of the Pribilof Islands to transition the economy of St. George and St. Paul Islands, Alaska, from one based on commercial fursealing to one based on fisheries.

The CBSFA has petitioned the Secretary to issue a finding that the CDQ system proposed by the NPFMC cannot result in an allocation to the Pribilof Islands that will be timely and sufficient in size and duration to

encourage serious investment in fishery related enterprise based on the Pribilof Islands. The CBSFA has determined that the CDQ allocation system, as presently conceived, cannot meet the needs in quantity, duration or dependability of the communities of the Pribilof Islands.

Information Requested

NMFS requests interested persons to submit comments, information, and suggestions concerning the proposals as set forth in the petition and the structure and content of regulations necessary to implement the request. NMFS will consider this information in determining whether to proceed with the development of regulations suggested by the petition. Upon determining whether to open the rulemaking suggested by this petition, the Assistant Administrator for Fisheries will publish a notice of NMFS' decision in the **Federal Register.**

Dated: January 13, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-1226 Filed 1-17-92; 8:45 am]

BILLING CODE 3510-22-M

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ADVISORY PRESERVA

Meetings

AGENCY: A Preservatio

ACTION: No

SUMMARY: the Adviso Preservatio February 3 held in the Anthony H Antonio, T

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Notices

Federal Register
Vol. 57, No. 13
Tuesday, January 21, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meetings

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Monday, February 3, 1992. The meeting will be held in the Peraux Room at the St. Anthony Hotel, 300 E. Travis Street, San Antonio, Texas, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening.
II. Report of the Federal Energy Regulatory Commission Task Force.
III. Executive Director's Report.
IV. Implementation of the Theme: Federal Property Management and Historic Preservation in the Local Community.
V. New Business.
VI. Adjourn.

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., room 809, Washington, DC, 202-786-0503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: January 15, 1992.

Robert D. Bush,

Executive Director.

[FR Doc. 92-1347 Filed 1-17-92; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 91-182]

Declaration of Emergency Because of Mediterranean, Mexican, and Oriental Fruit Flies

A serious outbreak of three fruit flies is occurring in California: the Oriental fruit fly (*Bactrocera dorsalis* [Hendel]) in Los Angeles, San Bernardino, and Riverside Counties; the Mediterranean fruit fly (*Ceratitis capitata* [Wiedemann]) and the Mexican fruit fly (*Anastrepha ludens* [Loew]), both in portions of Los Angeles County.

The Mediterranean, Mexican, and Oriental fruit flies are among the world's most destructive pests, affecting more than 200 species of fruits, nuts, and vegetables, including citrus, avocado, peaches, apples, and plums. These pests can develop rapidly and spread easily, causing severe damage to entire citrus and other fruit and vegetable growing areas. Agricultural losses would be great if Mediterranean, Mexican, and Oriental fruit flies were to become established in the United States.

By itself, the economic impact of Mediterranean fruit fly establishment in the United States would be approximately $1 billion per year. This estimated value is based on consideration of the field loss value of crops affected, costs of field treatment, losses in export revenue, quarantine treatment damage, costs of export quarantine compliance treatments, and the costs of eradicating spot infestations in States on the edge of the Mediterranean fruit fly's preferred ecoclimatic zone. The cumulative economic effect of establishment of the three fruit flies could exceed the $1 billion estimated for the Mediterranean fruit fly alone.

California produces more than one-half of the Nation's fruit and one-third of its vegetables, so it can be estimated that the cost of infestation by the three pests to that State alone would be in the realm of $400 million per year.

In September, October, and November 1991, infestations of each of the three pests were detected in California. As of January 3, 1992, 26 Mediterranean fruit flies, 14 Mexican fruit flies, and 76 Oriental fruit flies had been found.

In cooperation with the State of California, the Animal and Plant Health Inspection Service (APHIS) has initiated a program to eradicate these fruit fly infestations. The State of California is funding approximately one half of the total program costs. However, continuing efforts to eradicate fruit flies in different areas and to facilitate the early detection of fruit fly infestations have substantially increased program costs. APHIS resources are insufficient to regulate these multiple and concurrent fruit fly eradication projects, and additional funding is needed.

Therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. 953 (7 U.S.C. 147b), I declare that there is an emergency which threatens the citrus and other fruit and vegetable growing industries of this country, and I authorize the transfer and use of such sums as I may deem necessary from appropriations or other funds available to the agencies or corporations of the Department of Agriculture for the conduct of a program to detect and identify Mexican, Oriental, and Mediterranean fruit fly-infested areas, to control and prevent the spread of Mexican, Oriental, and Mediterranean fruit flies to noninfested areas in the United States, and to eradicate the Mexican, Oriental, and Mediterranean fruit flies wherever they may be found in the continental United States.

Effective Date: This declaration of emergency shall become effective January 3d, 1992.

Edward R. Madigan,

Secretary of Agriculture.

[FR Doc. 92-1520 Filed 1-16-92; 11:44 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 85-91]

Proposed Foreign-Trade Zone; Palmdale, CA; Application Filed

An application has been submitted to the Foreign-Trade Zones Board (the board) by the City of Palmdale, California, requesting authority to establish a general-purpose foreign-trade zone in Palmdale, adjacent to the Los Angeles-Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 6, 1991. The applicant is authorized to make the proposal under chapter 4, section 6300, of the California Government Code.

The proposed Palmdale project would be the second general-purpose zone in the Los Angeles-Long Beach Customs port of entry area. The first zone, FTZ 50, was approved in 1979 (Grantee: Port of Long Beach, Board Order 147, 44 FR 55919). It currently involves sites in Long Beach, Santa Ana and Ontario.

The proposed foreign-trade zone consists of 8 industrial/business park sites (1,315 acres) all of which are located to the east of State Highway 14 and within one-mile of the Palmdale Regional Airport, in the City of Palmdale (60 miles northeast of downtown Los Angeles): 1. Lockheed Advanced Development Company Project (800 acres); 2. Antelope Valley Business Park (120 acres); 3. Freeway Business Center (30 acres); 4. Antelope Valley Auto Center (70 acres); 5. Antelope Valley Country Club Business/Industrial Center (120 acres); 6. Sierra Gateway Center (140 acres); 7. Pacific Business Park (15 acres); and, 8. Winnell Industrial Park (20 acres).

The application indicates there is a need for zone services in the Palmdale area, adjacent to the Los Angeles Customs port of entry. The zone project is designed to provide zone services particularly for companies requiring an airport location. It involves sites which would be available for warehousing/distribution activity for items such as electronics, optical products and hardware.

Specific manufacturing approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John H. Heinrich, District Director, U.S. Customs Service, Pacific Region, 300 South Ferry Street, room 2017, Terminal Island, San Pedro, CA 90731; and Colonel Charles S. Thomas, District Engineer, U.S. Army Engineer District Los Angeles, P.O. Box 2711, Los Angeles, California 90053–2325.

Comments concerning the proposed zone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before March 20, 1992. While no local public hearing has been scheduled for the FTZ Board, consideration will be given to such a hearing during the review.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 11000 Wilshire Boulevard, room 9200, Los Angeles, California 90024

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue, NW. Washington, DC 20230

Dated: January 13, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-1429 Filed 1-17-92; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 559]

Resolution and Order Approving the Application of The Puerto Rico Industrial Development Co. for Special-Purpose Subzone Status at the Pharmaceutical Manufacturing Plants of the Bristol-Myers Squibb Co. in Humacao and Barceloneta, PR

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Puerto Rico Industrial Development Company, grantee of FTZ 7, filed with the Foreign-Trade Zones Board (the Board) on January 28, 1991, requesting special-purpose subzone status at the pharmaceutical manufacturing plants of the Bristol-Myers Squibb Company, in Humacao and Barceloneta, Puerto Rico, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including Sec. § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status

Whereas, By an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, The Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, The Puerto Rico Industrial Development Company, grantee of FTZ 7, has made application (filed 1–28–91, FTZ Docket 5–91, 56 FR 4973, 2–14–91) to the Board for authority to establish special-purpose subzones at the Bristol-Myers Squibb Company plants in Humacao and Barceloneta, Puerto Rico;

Whereas, Notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, The Board hereby authorizes the establishment of two subzones at the Bristol-Myers Squibb Company plants in Humacao and Barceloneta, Puerto Rico, designated on the records of the Board as Foreign-Trade Subzones 7C and 7D, at the locations described in the application, subject to the Act and the Board's

Regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28.

Signed at Washington, DC, this 13th day of January 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–1430 Filed 1–17–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–588–020]

Titanium Sponge From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on titanium sponge from Japan. The review covers two manufacturers/exporters of this merchandise to the United States and the period November 1, 1989 through October 31, 1990. The review indicates the existence of no dumping margins for both manufacturers/exporters during the period.

EFFECTIVE DATE: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth Levy or Michael Rolling, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1990, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 47370) of the antidumping duty order on titanium sponge from Japan for the period November 1, 1989 through October 31, 1990. On November 30, 1990, the petitioner, RMI Titanium Company, requested an administrative review of Osaka Titanium Co. Ltd. (Osaka), Showa Denko K.K. (Showa), and Toho Titanium Co. Ltd. (Toho) for the period November 1, 1989 through October 31, 1990. We initiated the review on December 17, 1990 (55 FR 51742). However, since initiating this review, the Department has revoked the order as it pertains to Osaka (57 FR 557, December 7, 1991). Consequently, Osaka is no longer subject to this order and will no longer be addressed in this review. The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 as amended (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of unwrought titanium sponge. Titanium sponge is a porous, brittle metal which has a high strength-to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingots, slabs, billets, plates, and sheets. During the review period, such merchandise was classified under subheading 8108.10.50.10 of the Harmonized Tariff Schedule (HTS).

The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

The review covers two manufacturers/exporters to the United States of the subject merchandise, Toho Titanium Co., Ltd. and Showa Denko K.K. for the period November 1, 1989 through October 31, 1990.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772(b) of the Tariff Act. For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Tariff Act. In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For the latter sales, the Department determined that purchase price was the appropriate determinant of United States price because the merchandise was shipped directly from the manufacturer to the unrelated buyers, without being introduced into the inventory of the related selling agent. Moreover, direct shipment from the manufacturers to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved. Finally, the unrelated sellling agent located in the United States acted only as a processor of sales-related documentation and as a communication link with the unrelated U.S. buyers.

Purchase price sales were based on the packed, f.o.b price to unrelated purchasers in the United States. We adjusted Showa's price for post-sale price adjustments. We recalculated the credit expenses by multiplying the differences between the reported pay-date and inventory date by the unit price (adjusted unit price for Showa) and then multiplying by the company's reported interest rate. This was then divided by 365 days to determine the credit expense for each sale. We made adjustments, where applicable for foreign and U.S. brokerage, foreign inland freight and insurance, ocean freight and insurance, U.S. freight and insurance, packing, commissions, direct and indirect selling expenses, Japanese consumption tax and U.S. Customs duties as reported.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, when sufficient quantities of merchandise were sold in the home market, at or above the cost of production, to provide a basis for comparison. Home market price was based on the packed, exfactory or delivered price to unrelated purchasers in the home market. We adjusted Showa's price for post-sale price adjustments. We recalcuated the credit expenses by multiplying the difference between the reported pay-date and inventory date by the unit price (adjusted unit price for Showa) and then multiplying by the company's reported interest rate. This was then divided by 365 days to determine the credit expense for each sale. We made adjustments, where applicable for inland freight, packing, credit and, for Showa, the Japanese consumption tax. We made further adjustments, where applicable, for indirect selling expenses to offset U.S. and home market commissions.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the dumping margins to be:

Manufacturer/ exporter	Time period	Margin (percent)
Showa Denko K.K.	11/1/89–10/31/90	(0)
Toho Titanium Co.	11/1/89–10/31/90	(0)
All others	11/1/89–10/31/90	(0)

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after publication of this notice.

Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due.

The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal briefs.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final results or final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent period or the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firm or any previously reviewed firm, will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm in this administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 9, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1431 Filed 1-17-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-504]

Certain Heavy Iron Construction Castings From Brazil; Final Results of Countervailing Duty Administrative Review and Determination Not To Revoke the Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order and final results of countervailing duty administrative review.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on certain heavy iron construction castings from Brazil.

Furthermore, on November 22, 1991, the Department of Commerce (the Department) published the preliminary results of its administrative review of the countervailing duty order on certain heavy iron construction castings from Brazil. We have now completed this review and determine the net subsidy to be 0.33 percent *ad valorem* for all firms for the period January 1, 1990 through December 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth Levy or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On May 6, 1991, the Department published in the **Federal Register** (56 FR 20596) its intent to revoke the countervailing duty order on certain heavy iron construction castings from Brazil in accordance with 19 CFR 355.25(d)(4). We had not received a request for an administrative review of the order for the last four consecutive annual anniversary months.

On May 13, 1991, Collier, Shannon & Scott, on behalf of the petitioners, the Municipal Castings Fair Trade Council, objected to our intent to revoke the order. Following this objection, the Government of Brazil made a timely request for an administrative review of the period January 1, 1990 through December 31, 1990. We initiated the review on June 18, 1991 (56 FR 27943). Pursuant to 19 CFR 355.25(d)(4)(iii), we have determined not to revoke the order.

Background

On November 22, 1991, the Department published in the **Federal Register** (56 FR 58879) the preliminary results of its administrative review of the countervailing duty order on certain heavy iron construction castings from Brazil (51 FR 17786; May 15, 1986). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain heavy iron construction castings from Brazil, which are defined for purposes of this proceedings as manhole covers, rings and frames; catch basin grates and frames; and cleanout covers and frames. Such castings are used for drainage or access purposes for public utility, water and sanitary systems. During the review period, such merchandise was classified under item number 7325.10.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through December 31, 1990, and six programs: (1) Income Tax Reduction for Export Earnings; (2) CACEX Preferential Working Capital Financing for Exports; (3) Preferential Export Financing Under CIC-OPCRE of the Banco do Brasil; (4) Financing for the Storage of Merchandise Destined for Export; (5) Exemption of IPI and Customs Duties on Imported Equipment (CDI); (6) Preferential Financing under Resolution 68 and 509 through FINEX. Three companies produced and

exported the subject merchandise to the United States during the review period.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the net subsidy to be 0.33 percent *ad valorem* for all firms for the period January 1, 1990 through December 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Brazil for all firms exported on or after January 1, 1990 and on or before December 31, 1990.

Due to the Government of Brazil's termination of all of the programs found countervailable during the period of investigation, the Department will instruct the Customs Service to waive the collection of cash deposits of estimated countervailing duties on all shipments of the subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 19 CFR 355.25(d), 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and 19 CFR 355.22.

Dated: January 10, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration

[FR Doc. 92-1432 Filed 1-17-92; 8:45 am]

BILLING CODE 3510-DS-M

COUNCIL ON ENVIRONMENTAL QUALITY

President's Commission on Environmental Quality; Meeting

AGENCY: Council on Environmental Quality, Executive Office of the President, President's Commission on Environmental Quality.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is being provided for a meeting of the President's Commission on Environmental Quality. This meeting is open to the public and there will be an opportunity for public comment.

DATES: The meeting will be held on February 5, 1992.

ADDRESSES: The meeting will be held from 9 a.m. to 3:30 p.m. on Wednesday, February 5, 1992, at room 474 (Indian Treaty Room), Old Executive Office Building, 17th & Pennsylvania Avenue, NW., Washington, DC.

Persons attending the meeting will need to provide their names and dates of birth to Ms. Kim Chastain (telephone: (202) 395-5750) by Friday, January 31, 1992, at 5 p.m. for clearance into the Old Executive Office Building. Space in the Indian Treaty Room is limited and persons interested in attending will be accommodated on a first-come, first-served basis.

AGENDA:

Wednesday, February 5, 1992

Old Executive Office Building, 17th & Pennsylvania Avenue, NW., room 474 (Indian Treaty Room), Washington, DC

9 a.m.-9:10 a.m.—Opening Remarks & Agenda.
9:10 a.m.-9:30 a.m.—General Overview.
9:30 a.m.-12 p.m.—Proposed Project Presentations.
12 p.m.-1:30 p.m.—Break.
1:30 p.m.-3 p.m.—Review & Discussion of Additional Proposed Projects and Wrap-Up.
3 p.m.-3:15 p.m.—Public Comment.
3:15 p.m.-3:30 p.m.—Conclusion.
3:30 p.m.—Adjourn.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Chastain, Staff Assistant, President's Commission on Environmental Quality (telephone: (202) 395-5750).

SUPPLEMENTARY INFORMATION: The President's Commission on Environmental Quality was established by Executive Order No. 12737 on December 12, 1990. The Commission has 25 members and is chaired by the Chairman of the Council on Environmental Quality. The function of the Commission is to advise the President on matters involving environmental quality.

David Struhs,

Chief of Staff, Council on Environmental Quality.

[FR Doc. 92-1444 Filed 1-17-92; 8:45 am]

BILLING CODE 3125-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement on Proposed Force Structure Changes at Moody AFB

The United States Air Force intends to prepare an Environmental Impact Statement (EIS) on proposed force structure changes at Moody AFB, GA.

This EIS will focus on the potential environmental impacts associated with various proposed force structure options. The wing would be composed of A/OA-10 and F-16 aircraft. Other aircraft may also be considered. The mission of the wing would be to provide Close Air Support (CAS) for the Army battlefield commander. The Air Force plans to complete the EIS in early 1993.

The Air Force will conduct public scoping meetings to determine the issues and concerns that should be addressed in the EIS. Notice of the time and place of the scoping meetings will be made available to public officials and announced in the local news media in the areas where the meetings will be held. To ensure the Air Force will have sufficient time to consider public input on issues to be included in the EIS, comments should be forwarded to the addressee listed below by March 16, 1992. However, the Air Force will accept comments to the addressee below at any time during the environmental impact analysis process.

For further information concerning the proposed actions at Moody AFB, GA, contact: Ms. Stephanie Stevenson, HQ TAC/DEVE, Langley AFB, VA 23665, (804) 764-7844.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 92-1374 Filed 1-17-92; 8:45 am]

BILLING CODE 3910-01-M

Notice of Intent To Prepare an Environmental Impact Statement for the Beddown of a Composite Wing at Pope AFB, NC

The United States Air Force will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impact of operating a composite wing at Pope AFB, NC. Pope AFB is proposed as the home of the Air Force's second composite wing. The proposed composite wing at Pope AFB would support the 82nd Airborne Division at nearby Fort Bragg. The Environmental Impact Analysis Process (EIAP) will look at a variety of aircraft and their associated missions, including A/OA-10s, C-130s, and F-16s. Other aircraft may also be considered.

The Air Force will conduct public scoping meetings to determine the issues and concerns that should be addressed in the EIS. Notice of the time and place of the scoping meetings will be made available to public officials and announced in the local news media in the areas where the meetings will be

held. To ensure the Air Force will have sufficient time to consider pubic input on issues to be included in the EIS, comments should be forwarded to the addressee listed below by March 9, 1992. However, the Air Force will accept comments to the addressee below at any time during the EIAP.

For farther information concerning the proposed beddown of a composite wing at Pope AFB, contact: Staff Sergeant Tony Cecchi, HQ TAC/DEVE, Langley AFB, VA 23665, (804) 764–7844.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–1373 Filed 1–17–92; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Space and C³I Panel of 1992 Summer Study on Global Reach/Global Power will meet on 6–7 Feb. 1992 from 8 a.m. to 5:00 p.m. at Space System Division, Los Angeles AFB, CA.

The purpose of this meeting is to receive briefings and hold discussions on projects related to Space and C³I in support of Global Reach/Global Power. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–1325 Filed 1–17–92; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology Options for Global Reach—Global Power: 1995–2020 (Mobility Panel) will meet on 4–5 February 1992, at The ANSER Corporation, 1215 Jefferson Davis Highway Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–1326 Filed 1–17–92; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: February 20, 1992.

TIME: 11 a.m. (e.t.)

PLACE: National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, 20005–4013, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Educational Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and to develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The Executive Committee of the National Assessment Governing Board will meet via teleconference on February 20, 1992. Approval of the agenda for the March 1992 meeting of the Board is the business that will be conducted.

Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: January 14, 1992.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 92–1335 Filed 1–17–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award to the Yakima Indian Nation

AGENCY: U.S. Department of Energy (DOE), Richland Field Office.

ACTION: Notice of Intent to make a noncompetitive financial assistance award.

SUMMARY: The DOE Richland Field Office, Environmental Restoration Division, in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to renew a noncompetitive grant to the Yakima Indian Nation (YIN). Under the terms of the award, the YIN will continue to conduct activities related to the protection of YIN treaty rights which may be impacted by activities associated with DOE's environmental restoration activities at the Hanford Site. This award implements elements of the DOE Five-Year Plan recognizing DOE's commitment to the participation of affected Indian tribes in the planning and implementation of the Five-Year Plan.

DOE has determined that the renewal on a noncompetitive basis is appropriate because the recipient is a unit of government and the activities to be supported are related to the performance of governmental functions within the jurisdiction of that unit of government, thereby precluding DOE provision of support to another entity. Since the award relates to agreements and treaties already made between the United State Government and YIN, it would clearly be inappropriate for DOE to consider funding any other entity to be responsible for carrying out these activities. DOE and the YIN will negotiate the final amount of the grant.

The funding level is not expected to be significantly higher than the current level.

FOR FURTHER INFORMATION CONTACT: Marji W. Parker, U.S. Department of Energy, Richland Field Office, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376–2029.

Dated: January 10, 1992.

Robert D. Larsen,

Director, Procurement Division, Richland Operations Office.

[FR Doc. 92–1419 Filed 1–17–92; 8:45 am]

BILLING CODE 6450–01–M

The Secretary's Hydrogen Technical Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee meeting:

Name: Hydrogen Technical Advisory Panel.

Date and Time: Thursday, February 13, 1992, 8:30 a.m.–1:00 p.m.

Place: Loews L'Enfant Plaza Hotel, Monet IV Room, 480 L'Enfant Plaza, Washington, DC 20565.

Contact: Russell Eaton, Designated Federal Official, 1000 Independence Avenue SW, Washington, DC 20585, Telephone: (202) 586–1506.

Purpose: The Hydrogen Technical Advisory Panel (HTAP) will advise the Secretary of Energy who has the overall management responsibility for carrying out the programs under the Matsunaga Hydrogen Research, Development, and Demonstration Program Act of 1990, Public Law 101–566. The Panel will review and make any necessary recommendations to the Secretary on the following items: (1) the implementation and conduct of programs required by the Act, (2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems, and (3) the contents of the comprehensive 5-year program required by the Act.

Tentative Schedule

Thursday, February 13, 1992

8:30 a.m.—Welcome and Opening Remarks, J. Michael Davis, Assistant Secretary for Conservation and Renewable Energy, and Robert L. San Martin, Deputy Assistant Secretary for Utility Technologies
9:00 a.m.—Panel Introductions and Election of Panel Chairman, Russell Eaton, Designated Federal Official
9:30 a.m.—Discussion of the Hydrogen 5-year Program Plan, Kurt W. Klunder, Director, Office of Energy Management
10:00 a.m.—HTAP Discussions Regarding the Hydrogen 5-year Program Plan
10:45 a.m.—Break
11:00 a.m.—HTAP Discussions Regarding the Hydrogen 5-year Program Plan
1:00 p.m.—Public Comments Regarding the Hydrogen 5-year Program Plan
1:30 p.m.—Adjournment

PUBLIC PARTICIPATION: The meeting is open to the public. The Chairman of the HTAP is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Official at the address or telephone number listed above. Requests must receive before 3 p.m. (E.S.T.) Friday, February 7, 1992, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Official at the address shown above before 5 p.m. (e.s.t.) Friday, February 7, 1992, to assure that it is considered by Panel members during the meeting.

MINUTES: A transcript of the open, public meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on: January 14, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92–1420 Filed 1–17–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–244–000, et al.]

Madison Gas & Electric Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Madison Gas & Electric Co.

[Docket No. ER92–244–000]

January 9, 1992.

Take notice that on December 27, 1991, Madison Gas and Electric Company (MGE) tendered for filing with the Federal Energy Regulatory Commission an Agreement between it and Wisconsin Electric Power Company (WEPCO). MGE and WEPO request waiver of the notice requirements to permit the Agreement to become effective January 1, 1992.

MGE states that a copy of the filing has been provided to WEPCO and also to the Public Service Commission of Wisconsin.

Comment date: January 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. El Paso Electric Co.

[Docket No. ER92–254–000]

January 9, 1992.

Take notice that on December 30, 1991, El Paso Electric Company (EPE) tendered for filing its Established Transmission Service Rate under the provision of the November 23, 1963 Revised Inland Power Pool Agreement (EPE requests that its Established Transmission Service Rate Become effective February 29 1992, sixty (60) days from filing.

Comment date: January 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Electric Power Co.

[Docket No. ER92–247–000]

January 9, 1992.

Take notice that on Decembe 30, 1991, Southwestern Electric Power Company ("SWEPCO"), tendered for filing a Letter Agreement dated December 19, 1991, between SWEPCO and the City of Bentonville, Arkansas ("City").

The Letter Agreement amends the Power Supply Agreement between SWEPCO and the City dated December 28, 1990. Section 10.7 of the Power Supply Agreement contemplated that by December 31, 1991, SWEPCO and the City would have completed that by December 31, 1991, SWEPCO and the City would have completed negotiation of an amendment to the Power Supply Agreement that would have provided the City additional power supply planning flexibility and extended the primary term of the Power Supply Agreement. The Letter Agreement merely extends to January 31, 1992, the time in which the City and SWEPCO may complete negotiation of such an amendment.

Copies of the filing have been served upon the City and the Arkansas Public Service Commission.

Comment date: January 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

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4. Ohio Valley Electric Corp.

[Docket No. ER92-258-000]

January 9, 1992.

Take notice that on January 2, 1992, Ohio Valley Electric Corporation ("OVEC") tendered for filing a Transmission Agreement and a Transmission Scheduling Agreement, both between Louisville Gas and Electric Company ("Lousiville") and OVEC, along with its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation. (together "Transmitting Companies").

The Transmission Agreement is an agreement under which Transmitting Companies could supply to Louisville, at hourly, daily, weekly or monthly rates, transmission service over Transmitting Companies' facilities. This transmission service would be provided between certain interconnection and delivery points. The Transmission Scheduling Agreement provides that, whenever Louisville arranges for certain sales of power and associated energy by means of a particular interconnection, Louisville must utilize the Transmission Agreement for a specified portion of the power and associated energy involved in the transmission.

OVEC has requested an effective date of January 1, 1992.

Copies of the filing were served upon Louisville, the Public Service Commission of Kentucky, The Cincinnati Gas & Electric Company and Indiana Michigan Power Company.

Comment date: January 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. GEO East Mesa Limited Partnership (GEM 1 and GEM 2 Facilities)

[Docket Nos. QF88-202-003 and QF88-203-003]

January 9, 1992.

Take notice that on December 30, 1991, GEO East Mesa Limited Partnership submitted for filing its compliance report pursuant to the Commission's order dated May 22, 1991.

Comment date: January 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Duke Power Co.

[Docket No. ER92-250-000]

January 9, 1992.

Take notice that Duke Power Company (Duke Power) tendered for filing on December 30, 1991, a supplement to the Company's Electric Power Contract with the Commissioners of Public Works of the City of Greenwood. Duke Power states that this contract is on file with the commission and has been designated Duke Power Company Rate Schedule FERC No. 10.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for reduced contract capacity as follows: Delivery Point No. 3 with a contracted demand of 8500 kW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately succeeding the effective date. Duke Power proposes an effecive date of January 22, 1991.

According to Duke Power, copies of this filing were mailed to Mr. Steve D. Reeves, Jr., Manager, Commissioners of Public Works, P.O. Box 549, Greenwood, SC 29648 and the S.C. Public Service Commission.

Comment date: January 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. The Washington Water Power Co.

[Docket No. ER92-238-000]

January 9, 1992.

Take notice that on December 12, 1991, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR part 35, a Capacity Sale Agreement between The Washington Water Power Company (WWP) and Portland General Electric (PGE). WWP states that under the terms of the Agreement, WWP will sell PGE 100 MW of capacity for the period March 1, 1992 to October 31, 1994. WWP requests that the Commission accept the Agreement for filing, effective as of March 1, 1992.

A copy of the filing was served upon Portland General Electric.

Comment date: January 23, 1992, in accordance with Standard Paragraph E end of this notice.

8. Arkansas Power & Light Co.

[Docket No. ER92-246-000]

January 9, 1992.

Take notice that Arkansas Power & Light Company (AP&L) tendered for filing on December 30, 1991, a proposed Agreement (Agreement) between AP&L and The City of Campbell, MO (City). The proposed Agreement modifies existing Agreements for the City's power requirements. The proposed Agreement provides Off-Season demand, incorporates a minimum protection service billing demand and extends the term of peaking power service until December 31, 2000.

The proposed Agreement will increase revenue to AP&L in early years and effect a savings for the city over its term on a net present-value basis compared to assumed alternatives.

Comment date: January 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Power, Inc.

[Docket No. ER92-255-000]

January 9, 1992.

Take notice that Entergy Power, Inc. (Entergy Power), on December 30, 1991, tendered for filing a Notice of Cancellation for the sale of replacement energy to the Tennessee Valley Authority.

Entergy Power requests an effective date of August 31, 1991 for the Notice of Cancellation. Entergy Power requests waiver of the Commission's notice requirements under § 35.15 of the Commission's Regulations.

Comment date: January 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Pennsylvania Power & Light Co.

[Docket No. ER91-600-000]

January 9, 1992.

Take notice that Pennsylvania Power & Light Company (PP&L) on December 31, 1991, tendered for filing an executed Second Supplement to System Power Purchase Agreement, dated as of December 19, 1991, between PP&L and Long Island Lighting Company (LILCO). (Second Supplement). The System Power Purchase Agreement was previously submitted for Commission approval in this docket on August 22, 1991. The System Power Purchase Agreement sets forth the terms and conditions under which PP&L will sell short-term, interruptible electric power from PP&L's electric generating system to LILCO. The Second Supplement reduces the maximum hourly Energy Reservation Charge for system power scheduled by LILCO, and also provides for maximum daily and weekly total Energy Reservation Charges.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of August 26, 1991.

Comment date: January 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service Co.

[Docket No. EL92-12-000]

January 9, 1992.

Take notice that Wisconsin Public Service Company ("WPSC") on December 31, 1991 tendered for filing a petition for permission to amend its fuel

adjustment clause for customers under its W–1, W–2 and W–3 rates and the proposed fuel clause amendments.

The customers affected by WPSC's filing are:

Customer	Rate category	Rate schedule or tariff designation
Alger Delta Electric Assoc	W–1	Tariff, Original Vol 2 Service Agreement #8
Washington Island Electric	W–1	Tariff, Original Vol 2 Service Agreement #5
Village of Daggett	W–1	Tariff, Original Vol 2 Service Agreement #3
City of Stephenson	W–1	Tariff, Original Vol 2 Service Agreement #4
Village of Stratford	W–1	Tariff, Original Vol 2 Service Agreement #6
Wisconsin Public Power, Inc. System	W–1	Tariff, Original Vol 2 Service Agreement #1
City of Wisconsin Rapids	W–1	Tariff, Original Vol 2 Service Agreement #7
Consolidated Water Power Co	W–3	Tariff, Original Vol 3 Service Agreement #1
City of Manitowoc	W–2	Tariff, Original Vol 1 Service Agreement #5
City of Marshfiled	W–1	Tariff, Original Vol 2 Service Agreement #9

The Alger Delta Electric Association, the Village of Daggett and the City of Stephenson are located in Michigan. The other customers are located in Wisconsin.

WPSC requests that the Commission waive the provisions of 18 CFR 35.14 of its regulations to the extent necessary to permit recovery of the buyout costs through the fuel clause and that it waive its notice requirements to allow the change to become effective on January 1, 1992. Alternatively, WPSC requests that the Commission allow the change to become effective on March 1, 1992, 60 days from the date of filing. WPSC states that the filing has been served on the affected customers and on the public service commissions of Michigan and Wisconsin and that the filing has been posted as required by the Commission's regulations.

Comment date: January 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Co.

[Docket No. ER92–253–000]

January 9, 1992.

Take notice that Duke Power Company (Duke Power) tendered for filing on December 30, 1991, a supplement to the Company's Electric Power Contract with the city of Seneca—Seneca Light and Water. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 10.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following additional delivery: Delivery Point No. 2 with a contracted demand of 12,000 kW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately succeeding the effective date. Duke Power proposes an effective date of April 24, 1991.

According to Duke Power, copies of this filing were mailed to Mr. Tommy D. Grant, Director of Utilities, Seneca Light and Water Plant, Seneca, SC 29679; and the S. C. Public Utilities Commission.

Comment date: January 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Power Co.

[Docket No. ER92–249–000]

January 9, 1992.

Take notice that Duke Power Company (Duke Power) tendered for filing on December 30, 1991, a supplement to the Company's Electric Power Contract with the Commissioners of Public Works of the City of Greenwood. Duke Power states that this contract is on file with the Commision and has been designated Duke Power Company Rate Schedule FERC No. 10.

Duke Power further states that the Company's contract supplement, made at the request of the customer's and with agreement obtained from the customer, provides for increased capacity as follows: Delivery Point No. 4 with a contacted demand of 13,000 kW.

Duke Power indicates that this supplement also incudes an estimate of sales and revenue for twelve months immediately succeeding the effective date. Duke Power proposes an effective date of May 22, 1991.

According to Duke Power, copies of this filing were mailed to Mr. Steve D. Reeves, Jr., Manager, Commissioners of Public Works, P.O. Box 549, Greenwood, SC 29648 and the S. C. Public Service Commission.

Comment date: January 23, 1992, in accordance with Standard Paragraph E at the end of the notice.

14. Indiana-Kentucky Electric Corp.

[Docket No. EC92–7–000]

January 8, 1992.

Take notice that on January 2, 1992, Indiana-Kentucky Electric Corporation ("IKEC") filed an application for an order under section 203 of the Federal Power Act authorizing IKEC to lease certain facilities to Louisville Gas and Electric Company ("Louisville"). The facilities that IKEC would lease to Louisville consist of a portion of a bus, along with associated hardware, located in the switchyard of IKEC's Clifty Creek Plant. The proposed lease would be on the terms set forth in a lease Agreement dated December 30, 1991 between IKEC and Louisville.

IKEC submitted with, and in support of, the application the information that part 33 of the Commission's regulations requires.

Comment date: January 27, 1992, in accordance with Standard Paragraph E at the end of the notice.

15. Duke Power Co.

[Docket No. ER92–252–000]

January 9, 1992.

Take notice that Duke Power Company (Duke Power) tendered for

filing on December 30, 1991, a supplement ot the Company's Electric Power Contract with the City of Seneca-Seneca Light and Water, Seneca, SC. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 10.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for reduced contract capacity as follows: Delivery Point No. 1 with a contracted demand of 14,000 kW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately succeding the effective date. Duke Power proposes an effective date of May 22, 1991.

According to Duke Power, copies of this filing were mailed to Mr. Tommy D. Grant, Director of Utilities, Seneca Light and Water Plant, Seneca, SC 29679; and the S.C. Public Service Commission.

Comment date: January 23, 1992, in accordance with Standard Paragraph E end of this notice.

16. Ultrapower-Malaga Fresno

[Docket No. QF86-372-003]

January 8, 1992.

On January 3, 1991, Ultrapower-Malaga Fresno tendered for filing an amendment to its filing in this docket.

The amendment clarifies the ownership structure of the small power production facility.

Comment date: January 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Company of New Mexico

[Docket No. ER92-260-000]

January 10, 1992.

Take notice that on January 6, 1992, Public Service Company of New Mexico (PNM) tendered for filing an Interconnection (including associated Service Schedules C, E and F) between PNM and the City of Anaheim, California (Anaheim). The Interconnection Agreement is entered into in connection with the proposed purchase by Anaheim from PNM of an interest in Unit 4 of the San Juan Generating Station. It provides for the indirect interconnection of PNM's and Anaheim's electric systems, for the exchange of power and energy between the Parties' systems and for the transmission of Anaheim's power and energy associated with its purchase of the interest in San Juan Unit 4.

PNM requests as effective date of May 28, 1992 and any required waiver of applicable notice requirements.

Copies of the filing have been served upon Anaheim and the New Mexico Public Service Commission.

Comment date: January 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Felton J. Capel

[Docket No. ID-2659-000]

January 10, 1992.

Take notice that on December 23, 1991, Felton J. Capel (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director—Carolina Power & Light Company
Director—Wachovia Corporation of North Carolina
Director—Wachovia Bank of North Carolina, National Association

Comment date: January 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Estelle C. Lee

[Docket No. ID-2660-000]

January 10, 1992.

Take notice that on December 23, 1991, Estelle C. Lee (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director—Carolina Power & Light Company
Director—Wachovia Corporation of North Carolina
Director—Wachovia Bank of North Carolina, National Association

Comment date: January 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Canal Electric Co.

[Docket No. ER92-258-000]

January 10, 1992.

Take notice that on December 31, 1991 Canal Electric Company (Canal) tendered for filing, pursuant to § 35.13 of the Commission's regulations, certain revisions to a Power Contract, as amended, by and between itself and Cambridge Electric Light Company (Cambridge) and Commonwealth Electric Company (Commonwealth) which revise section 4(b)(xvi) Decommissioning Expense. Said revisions are in accordance with a Partial Offer of Settlement approved by the Commission on November 13, 1991 and are filed herewith in the Fourth Amendment to the Power Contract, dated December 19, 1991.

Canal further states that copies of the tendered filing have been served upon the Massachusetts Department of Public Utilities, the Municipal Light Department of the Town of Belmont and the Massachusetts Attorney General.

Comment date: January 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Madison Gas & Electric Co.

[Docket No. ER92-131-000]

January 10, 1992.

Take notice that December 20, 1991, Madison Gas & Electric Company (Madison) tendered for filing an amendment in the above-referenced docket.

Comment date: January 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Duke Power Co.

[Docket No. ER92-251-000]

January 10, 1992.

Take notice that Duke Power Company (Duke Power) tendered for filing on December 30, 1991, a supplement to the Company's Electric Power Contract with the Town of Due West, SC. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 10.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for increased capacity as follows: Delivery Point No. 1 with a contracted demand of 2,600 kW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately succeeding the effective date. Duke Power proposes an effective date of October 23, 1991.

According to Duke Power, copies of this filing were mailed to Mr. John A. Simpson, Mayor, Town of Due West, Due West, SC 29639 and the South Carolina Public Service Commission.

Comment date: January 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Canal Electric Co.

[Docket No. ER90-245-000]

January 10, 1992.

Take notice that on December 6, 1991, Canal Electric Company (Canal) submitted for filing a third amendment to the Seabrook Power Contract and a compose conformed copy of the Seabrook Power Contract. Such amendment has been executed pursuant to the Commission's letter order dated

November 13, 1991 approving an Offer of Settlement between Canal and the Town of Belmont. Canal is complying with said letter order by revising the Seabrook Power Contract to conform to the language approved in the Offer of Settlement.

Copies of the tendered filing have been served by Canal upon the Commission's staff, the Massachusetts Attorney General, the Town of Belmont and the Department of Public Utilities.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Western Systems Power Pool

[Docket No. ER91-195-003]

January 10, 1992.

Take notice that on January 6, 1992, Western Systems Power Pool tendered for filing its compliance filing in compliance with the Commission's order issued June 27, 1991.

Comment date: January 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. Cogentrix Eastern Carolina Corp.

[Docket No. QF83-278-005]

January 10, 1992.

On December 26, 1991, Cogentrix Eastern Carolina Corporation (Applicant), of 9405 Arrowpoint Boulevard, Charlotte, North Carolina 28273-8110, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commissions' Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Lumberton, North Carolina. The facility consists of two stoker-type boilers and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility is sold to West Point Pepperell textile plant for process use. The primary energy source is coal. The maximum net electric power production capacity of the facility is approximately 31.7 MW. Commercial operation of the facility commenced in the first quarter of 1986.

The certification of the facility was originally issued on December 9, 1983 [25 FERC ¶ 62,335 (1983)] and a recertification was issued on December 11, 1985 [33 FERC ¶ 62,347 (1985)]. The instant recertification is requested by the Applicant to reflect the termination of the sale/leaseback arrangement and related change in the ownership of the facility. All other facility characteristics remain unchanged as described in the previous recertification.

Comment date: February 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Grayling Generating Station Limited Partnership

[Docket No. QF87-277-003]

January 10, 1992.

On December 19, 1991, Grayling Generating Station Limited Partnership (Applicant), c/o CMS Generation Grayling Company, 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the Township of Grayling, Crawford County, Michigan. The facility will consist of a stoker-type boiler and a steam turbine generator. The primary energy source will be biomass in the form of wood and wood waste. The net electric power production capacity of the facility will be approximately 34 MW. Installation was scheduled to begin in October, 1990.

The certification of the facility was originally issued on July 17, 1987 [40 FERC ¶ 62,042 (1987)] and a recertification was issued on February 26, 1990 [50 FERC ¶ 62,117 (1990)]. The instant recertification is requested by the Applicant to reflect changes in the partnership agreement of the Applicant which affect the "stream of benefits" of the respective partners. All other facility characteristics remain unchanged as described in the previous recertification.

Comment date: February 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. The Toledo Edison Co.

[Docket No. ER92-243-000]

January 9, 1992.

Take notice that on December 26, 1991, The Toledo Edison Company ("Toledo Edison") tendered for filing a Resale Service Rate Agreement effective as of January 1, 1992 between Toledo Edison and Southeastern Michigan Rural Electric Cooperative ("Southeastern Michigan").

Toledo Edison states that Southeastern Michigan presently purchases firm power under its FERC Electric Tariff No. 32 which terminates under its own provisions on December 31, 1991. Under the Resale Service Rate Agreement, Toledo Edison will continue to sell to Southeastern Michigan all of the power and energy needed by Southeastern Michigan to serve its requirements.

Toledo Edison states that the rate set forth in the Resale Service Rate Agreement is a negotiated rate betwen Toledo Edison and Southeastern Michigan. The charges under the Resale Service Rate Agreement reflect a monthly minimum bill of 700 KVA in the first two years of the Agreement. Toledo Edison states that the Resale Service Rate Agreement will help Southeastern Michigan become competitive in its source of power.

Toledo Edison has requested waiver of certain provisions of the Commission's regulations in order to permit the Resale Service Rate Agreement without suspension or modification to be made effective on January 1, 1992.

Comment date: January 23, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. Ultrapower-Rocklin

[Docket No. QF86-373-003]

January 8, 1992.

On January 3, 1991, Ultrapower-Rocklin tendered for filing an amendment to its filing in this docket.

The amendment clarifies the ownership structure of the small power production facility.

Comment date: January 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. Atlantic City Electric Co.

[Docket No. ER91-335-001]

January 8, 1992.

Take notice that on January 3, 1992, Atlantic City Electric Company tendered for filing its refund compliance report in the above-referenced docket.

Comment date: January 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

30. Entergy Services, Inc.

[Docket No. ER92-225-000]

January 8, 1992.

Take notice that Entergy Services, Inc. (ESI), as agent for Arkansas Power & Light Company (AP&L), Louisiana Power & Light Company (LP&L), Mississippi Power & Light Company (MP&L), and New Orleans Public Service Inc. (NOPSI), on December 16, 1991 tendered for filing a contract for Purchases of Economic Energy with Jacksonville Electric Authority (JEA).

ESI requests an effective date of November 19, 1991 for the contract for Purchasing of Economic Energy. ESI requests waiver of the Commission's

notice requirements under § 35.11 of the Commission's regulations.

Comment date: January 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

31. Newport Electric Corp.

[Docket No. ER91-301-000]

January 8, 1992.

Take notice that on December 31, 1991, Montaup Electric Company ("Montaup") filed a correction to its original filing in this docket to its M-11, M-12 and M-13 fuel adjustment clauses incorporating the allocation method required by the Staff effective as of May 1, 1990. Montaup requests that the single set of fuel clause revisions tendered with the original filing be disregarded and that the three sets of enclosed rate schedules be made effective for the M-11, M-12 and M-13 effective periods beginning May 1, 1990, August 19, 1990 and May 7, 1991, respectively.

Comment date: January 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

32. Alabama Power Co.

[Docket No. ER92-257-000]

January 8, 1992.

Take notice that on December 31, 1991, Alabama Power Company tendered for filing proposed changes to the Billing and Payment provision of its FERC Electric Tariff, Original Volume No. 1, pertaining to full-requirements cooperative customers. The effect of this change is to make reference to the applicable agreement between Alabama Power Company and the Southeastern Power Administration for purposes of determining the customers' proper amount of capacity from SEPA. The Company has requested an effective date of February 1, 1992. Copies of the filing were served upon the affected cooperative customers, the Alabama Public Service Commission and the Southeastern Power Administration.

Comment date: January 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

33. Niagara Mohawk Power Corp.

[Docket No. ER92-184-000]

January 8, 1992.

Take notice that on December 24, 1991, Niagara Mohawk Power Corporation ("Niagara Mohawk"), tendered for filing an amendment to its filing dated November 4, 1991 regarding a proposed change to Niagara Mohawk Rate Schedule No. 178, an agreement between Niagara Mohawk and Lake View, Inc. ("Lake View").

Comment date: January 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

34. Northern States Power Co. (Minnesota)

[Docket No. ER92-226-000]

January 8, 1992.

Take notice that on December 16, 1991, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) jointly tendered for filing revised Exhibits VII, VIII and IX to the Agreement to Coordinate Planning and Operations and Interchange Power and Energy Between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).

Exhibit VII sets forth the specification of the rate of return on common equity to determine the overall cost of capital. The return on common equity for calendar year 1992 is the FERC generic rate of return effective November 1, 1991. A statement of the impact of the return on common equity on each Company has been filed.

Exhibit VIII sets forth the specification of average monthly coincident peak demands for calendar year 1992 for each of the Companies. A statement of the impacts of these coincident peak demands on each Company has been filed. These coincident peak demands were determined upon three year data consisting of 18 months actual and 18 months projected. The change from the use of the average of the 12 monthly peak demand allocation method to the use of the 36 months was approved in Docket No. ER87-279-000.

Exhibit IX sets forth a specification of depreciation rates certified by the Minnesota Public Utilities Commission and the Wisconsin Public Service Commission for NSP (Minnesota) and NSP (Wisconsin). A statement of the impact of the depreciation rates of each company has been filed.

The NSP Companies request an effective date of January 1, 1992, for this filing. Copies of the filing letter and revised Exhibits VII, VIII and IX have been served upon the wholesale and wheeling customers of the Companies. Copies of the filing have been mailed to the State Commissions of Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Comment date: January 22, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1389 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2422-004, et al.]

Hydroelectric Applications (James River-New Hampshire Electric, Inc., et al.); Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of application:* New Major License.

b. *Project No.:* 2422-004.

c. *Date filed:* October 11, 1991.

d. *Applicant:* James River-New Hampshire Electric, Inc.

e. *Name of project:* Sawmill Project.

f. *Location:* On the Androscoggin River, Coos County, New Hampshire.

g. *Filed pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant contact:* Mr. George W. Hill, James River-New Hampshire Electric, Inc., 650 Main Street, Berlin, NH 03570-2469, (603) 752-4600.

i. *FERC contact:* Mary Golato (202) 219-2804.

j. *Deadline date:* March 3, 1992.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

1. *Description of project:* The proposed project's principal features consist of the following: (1) an existing 720-foot-long dam; (2) an existing impoundment with a surface area of about 72.5 acres, a storage capacity of about 620 acre-feet, and a normal pool elevation of 1,094.5 feet mean sea level (msl); (3) an existing powerhouse equipped with four turbine-generators having a total rated capacity of 3,174 kilowatts; (4) an existing tailrace

channel; (5) an existing transmission line of about 1,800 feet long; and (6) appurtenant facilities. The owner of the dam is the James River-New Hampshire Electric Company.

The applicant is not proposing any changes to the existing project works as licensed. The applicant estimates the average annual generation would be 17.85 gigawatthours and owns all existing project facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the license expiration of December 31, 1993, the applicant's estimated net investment in the project would amount to $2,158,000.00.

m. *Purpose of project:* All project energy generated would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E.

o. *Available locations of application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. George W. Hill, James River-New Hampshire Electric, Inc., 650 Main Street, Berlin, NH 03570–2489, (603) 752–4600.

2a. *Type of filing:* Report on Barrier Net Effectiveness and Plan for Mitigation of Fish Mortality.

b. *Project No:* 2680–017 & –018.

c. *Date filed:* December 26, 1991.

d. *Licensee:* Consumers Power Co. and Detroit Edison Co.

e. *Name of project:* Ludington Pumped Storage Project.

f. *Location:* The eastern shore of Lake Michigan in the City of Ludington, Mason County, Michigan.

g. *Filed pursuant to:* FERC Order Requiring the Installation and Monitoring of Temporary Barrier Nets, issued September 30, 1988.

h. *Licensee contact:* Mr. William M. Lange, Assistant General Counsel, Consumers Power Corp., 1016 16th Street, NW., Washington, DC 20036, (202) 376–1759.

i. *FERC contact:* Dr. John M. Mudre, (202) 219–1208.

j. *Comment date:* February 28, 1992.

k. *Description of filing:* Consumers Power Company and Detroit Edison Company filed this report on the effectiveness of a barrier net for reducing entrainment mortality of fishes at the Ludington Pumped Storage Project. This report describes the effectiveness of the net during 1991, the third year of a three-year study aimed at optimizing and documenting the performance of the barrier net in excluding fishes from the vicinity of the project intakes.

The filing also contains the licensees' updated recommendations for permanent mitigative measures at the project. The licensee previously filed (on February 1, 1989) mitigation recommendations pursuant to the FERC Order Modifying a Mitigative Plan for Turbine Mortality, issued August 11, 1987. The recommendations contained in the instant filing are based on information gained from the three-year study of net effectiveness and constitute the licensees' current plan for mitigation of fish losses at the project.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

3a. *Type of application:* Surrender of License.

b. *Project No.:* 9920–009.

c. *Date filed:* November 12, 1991.

d. *Applicant:* The Village of St. Johnsville.

e. *Name of project:* Scudder Falls.

f. *Location:* On Zimmerman Creek in Mongomery County, New York.

g. *Filed pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Brian R. Haak, 16 Washington Street, St. Johnsville, NY 13452, (518) 568–2221.

i. *FERC contact:* Charles T. Raabe (202) 219–2811.

j. *Comment date:* February 27, 1992.

k. *Description of project:* The proposed project would have consisted of: (1) a 1-foot-high diversion structure across ¾ of Zimmerman Creek, 30 feet from the edge of the top of a ledge rock falls; (2) a 300-foot-long, 30-inch-diameter steel penstock; (3) a 12-foot by 12-foot masonry powerhouse housing one semi-axial flow turbine with a 150-kW generator, and located 160 feet from the base of the falls; (4) the 0.48-kV generator leads; (5) the 0.48/13.2-kV transformer; (6) the 1,320-foot-long, 13.2-kV transmission line; and (7) appurtenant facilities.

Licensee states that it has determined to abandon this project due to its financial feasibility. The license was issued November 27, 1987, and would have expired October 31, 2027. License states that no construction has occurred and the proposed site remains unaltered.

l. *This notice also consists of the following standard paragraphs:* B, C and D2.

4a. *Type of application:* Preliminary permit.

b. *Project No.:* 11092–000.

c. *Date filed:* February 21, 1991.

d. *Applicant:* Sacramento Municipal Utility District.

e. *Name of project:* Upper American River Project Expansion.

f. *Location:* On South Fork American River, Silver Fork American River, and Silver Creek, a tributary of the South Fork American River; in El Dorado County, California. Sections 33 & 34, T12N, R14E; Sections 1, 2, 3, 10 & 11, T11N, R14E; Sections 3, 4, 17, 21, 22, & 24–28, T10 & 11N, R16E; Section 9, 10, 15–18, 22–24, T11N, R15 & 16E; Sections 19 & 30, T11N, R12E.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Mr. S. David Freeman, Sacramento Municipal District, 6201 S Street, P.O. Box 15830, Sacramento, CA 95819, (916) 452–3211.

i. *FERC contact:* Mr. Surender M. Yepuri, P.E., (202) 219–2847.

j. *Comment date:* March 5, 1992.

k. *Competing application:* Project No. 11017–000, filed October 3, 1991.

l. *Description of project:* The proposed multipurpose project, consisting of the four interrelated components, would collectively enhance applicants's licensed Upper American River Project No. 2101—expand the water supply, operational flexibility, power regulation capabilities, and load following capabilities.

(i) Jones Fork Pump-Back Facility—This component of the proposed project would use applicant's existing Union Valley dam and reservoir and Ice House dam and reservoir and would consist of: (1) a new Lower Ice House dam and reservoir; (2) a 18,507-foot-long water conductor system; (3) an underground powerhouse containing three generating/pumping units with a total rated capacity of 400 MW; (4) a 20,000-foot-long, 230-kV transmission line connecting to the applicant's existing line; and (5) appurtenant structures.

(ii) Lower Ice House Reservoir Addition—This component of the proposed project, an alternate to the existing Ice House dam and reservoir, would consist of: (1) a 270-foot-high concrete-faced rockfill main dam, with a crest elevation of 5,460 feet msl; (2) a 60-foot-high saddle dam, with a crest elevation of 5,460 feet msl; (3) a spillway section with two 65-foot-wide, 10-foot-high radial gates; (4) a 221,200 acre-foot reservoir at elevation 5,450 feet msl; and (5) appurtenant structures.

(iii) South Fork Diversion—This component of the proposed project, diverting water from the South Fork of American River and the Silver Fork of South Fork American River and their tributaries and conveying it into the Ice House Reservoir, would consist of: (1) a

80-foot-high dam (Sherman Diversion) on Silver Fork with a crest elevation of 5,580 feet msl; (2) a 9-foot-diameter, 2.5-mile long pipeline conveying water from the Sherman Diversion to Forni Diversion; (3) a 13.5-foot-diameter, 5.3-mile-long tunnel (Forni Tunnel) (4) a 60-foot-high concrete dam (Forni Diversion) on South Fork American River with a crest elevation of 5,555 feet msl; and (5) appurtenant structures.

(iv) Iowa Hill Pumped Storage Facility—This component of the proposed project would use the existing Slab Creek dam and reservoir and would consist of: (1) an earthfill ring dam, with spillway; (2) a 4,200-foot-long water conductor system; (3) an underground powerhouse containing three generator/motor units with a total rated capacity of 400 MW; (4) a 7,000-foot-long, 230-kV transmission line connecting to the applicant's existing line; and (5) appurtenant structures.

The applicant estimates an increase in the average annual generation from the Jones Fork Pump-Back Facility and/or the Iowa Hill Pumped Storage Facility of 520 GWh, and the cost of the work to be performed under the permit to be $5,000,000.

m. *This notice also consists of the following standard paragraphs:* A6, A10, B, C, and D2.

5a. *Type of application:* Preliminary permit.

b. *Project No.:* 11205–000.

c. *Date filed:* November 19, 1991.

d. *Applicant:* Century Energy Corp.

e. *Name of project:* David D. Terry Lock and Dam.

f. *Location:* On the Arkansas River, near Little Rock, Pulaski County, Arkansas.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Mr. Gene N. Washburn, 406 West South Street, Benton, Arkansas 72015, (501) 778–0786.

i. *FERC contact:* Michael Dees (202) 219–2807.

j. *Comment date:* February 28, 1992.

k. *Description of project:* The proposed project would utilize the existing Corps of Engineers' David D. Terry Lock and Dam and reservoir and would consist of: (1) an approach channel; (2) a proposed powerhouse 240 feet by 154 feet housing hydropower units with a total capacity of 33.4 MW; (3) a proposed tailrace (4) a proposed 115-kV transmission line three miles long; and (5) appurtenant facilities. The estimated annual energy production is 155 GWh. Project power would be sold to Arkansas Power and Light Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $1,030,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

6a. *Type of application:* Preliminary permit.

b. *Project No.:* 11206–000.

c. *Date filed:* November 19, 1991.

d. *Applicant:* Century Energy Corp.

e. *Name of project:* Lock and Dam No. 5.

f. *Location:* On the Arkansas River, near Pine Bluff, Jefferson County, Arkansas.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Mr. Gene N. Washburn, 406 West South Street, Benton, Arkansas 72015, (501) 778–0786.

i. *FERC contact:* Michael Dees (202) 219–2807.

j. *Comment date:* February 24, 1992.

k. *Description of project:* The proposed project would utilize the existing Corps of Engineers' Lock and Dam No. 5 and reservoir and would consist of: (1) an approach channel; (2) a proposed powerhouse 234 feet by 147 feet housing hydropower units with a total capacity of 33.4 MW; (3) a proposed tailrace (4) a proposed 115-kV transmission line five miles long; and (5) appurtenant facilities. The estimated annual energy production is 123 GWh. Project power would be sold to Arkansas Power and Light Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $1,030,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

7a. *Type of application:* Preliminary permit.

b. *Project No.:* 11207–000.

c. *Date filed:* November 19, 1991.

d. *Applicant:* Century Energy Corp.

e. *Name of project:* Emmet Sanders.

f. *Location:* Four miles east of Pine Bluff, Arkansas, at mile 66.0 of the McClellan-Kerr Arkansas River Navigation System, Jefferson County, Arkansas.

g. *Filed pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant contact:* Mr. Gene N. Washburn, Century Energy Corp., 406 West South Street, Benton, AR 72015, (501) 778–0786.

i. *FERC contact:* Mary Golato (dt) (202) 219–2804.

j. *Comment date:* February 24, 1992.

k. *Description of projects:* The proposed project would utilize the existing U.S. Corps of Engineers dam and would consist of: (1) an existing approach channel; (2) a proposed powerhouse containing four bulb-type units with an installed capacity of 26,800 kilowatts; (3) a proposed tailrace; (4) a proposed 5-mile-long transmission line; and (5) appurtenant facilities. The proposed project would have an average annual generation of 123,000,000 kilowatthours. The applicant estimates that the cost of the studies under permit would be $1,030,000.

l. *This notice also consists of the following standard paragraphs:* A3, A7, A9, A10, B, C, & D2.

8a. *Type of application:* Preliminary permit.

b. *Project No.:* 11211–000.

c. *Date filed:* November 29, 1991.

d. *Applicant:* Logway Land Corp.

e. *Name of project:* J.J. Rogers.

f. *Location:* On the West Branch of the AuSable River in the Town of Jay, Essex County, New York.

g. *Filed pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Rodney Estes, Green Street, Au Sable Forks, NY 12912, (518) 647–5889.

i. *FERC contact:* Charles Raabe tag (202) 219–2811.

j. *Comment date:* March 4, 1992.

k. *Description of projects:* The proposed project would consist of: (1) an existing 40-foot-high, 180-foot-long concrete dam having a 100-foot-long Ogee-type spillway section and having intake structures at each abutment; (2) a reservoir having an 8-acre surface area and a 56-acre-foot storage capacity at spillway crest elevation 660; (3) a reconditioned intake structure at the south abutment; (4) a new concrete powerhouse containing a generating unit having an installed capacity of 100-kW operated at a 30-foot head; (5) a tailrace at the toe of the dam; (6) a 4,500-foot-long, 13.8-kV transmission line; and (7) appurtenant facilities.

The applicant estimates that the average annual generation would be 3,500,000 kWh and that the cost of the studies under the permit would be $20,500. Project energy would be sold to Niagara Mohawk Power Corporation. The existing dam is owned by the Applicant.

l. *This notice also consists of the following standard paragraphs:* A7, A5, A9, A10, B, C, and D2.

9a. *Type of Application:* Preliminary permit.

b. *Project No.:* 11215–000.

c. *Date filed:* December 2, 1991.

d. *Applicant:* Hydropower, Inc.

e. *Name of project:* Lake Nockamixon Hydro Project.

f. *Location:* On the Tohickon Creek in Bucks County, Pennsylvania.

g. *Filed pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Mr. Mark Labant, Hydropower, Inc., 109 Apache Drive, Indiana, PA 15701, (412) 463–0737.

i. *FERC contact:* Mary Golato (dt) (202) 219–2804.

j. *Comment date:* February 28, 1992.

k. *Description of project:* The proposed project would consist of the following facilities: (1) an existing dam 1,511 feet long and 112 feet high; (2) an existing reservoir that has a surface area of 1,450 acres, and impounds 40,000 acre-feet of water at a pool elevation of 395 feet mean sea level; (3) an existing 8-foot-diameter penstock; (4) a proposed reinforced, concrete powerhouse consisting of a turbine-generating unit rated at 1,500 kilowatts; (5) existing transmission lines running approximately 350 feet long; and (6) appurtenant facilities. The dam is owned by the Commonwealth of Pennsylvania. The average annual generation would be approximately 3,000,000 kilowatthours and the cost of the studies is about $100,000.

l. *This notice also consists of the following standard paragraphs:* A3, A5, A7, A10, B, C, & D2.

10a. *Type of applications:* Preliminary permit.

b. *Project No.:* 11216–000.

c. *Date filed:* December 13, 1991.

d. *Applicant:* Tacoma Public Utilities.

e. *Name of project:* Sunset Falls Hydroelectric Project.

f. *Location:* Partially within the Mt. Baker-Snoqualmie National Forest, on the Skykomish River South Fork in Snohomish County, Washington. T27N, R10E in sections 27, 28, and 29.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Mark Crisson, Tacoma Public Utilities, 3628 South 35th Street, P.O. Box 11007, Tacoma, Washington 98411, (206) 593–8203.

i. *FERC contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment date:* March 18, 1992.

k. *Competing application:* Sunset Falls Water Power Project (FERC No. 11195–000), Sunset Falls Limited Partnership.

l. *Description of project:* The proposed project would consist of: (1) a 15-foot-high diversion structure on the Skykomish River South Fork; (2) an 18.5-foot-diameter, 9,000-foot-long tunnel; (3) a powerhouse containing two generating units with a combined installed capacity of 45.8 MW; (4) a 2,000-foot-long access road; and (5) a 115-kV, 1,000-foot-long transmission line interconnecting with an existing Puget South Power and Light transmission line.

No new access roads will be required to conduct the studies under the permit. The approximate cost of the studies would be $450,000.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

11a. *Type of application:* Declaration of intention.

b. *Docket No.:* EL92–8–000.

c. *Date filed:* December 27, 1991.

d. *Applicant:* Town of Lake Lure, NC.

e. *Name of project:* Lake Lure Hydro Project (NC).

f. *Location:* Lake Lure, Rutherford County, NC.

g. *Filed pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant contact:* Hugo J. Moireno, P.O. Box 255, Lake Lure, NC 28746, (704) 625–9396.

i. *FERC contact:* Hank Ecton, (202) 219–2678.

j. *Comment date:* February 27, 1992.

k. *Description of project:* The proposed Lake Lure Hydro Project would consist of: (1) a reservoir with a storage area of 1,400 acre feet; (2) an existing 100-foot-high, 630-foot-long concrete dam; (3) a 10-foot-diameter, 100-foot-long penstock; (4) a concrete powerhouse, containing two vertical turbines/generators, producing 1,200 kilowatts (kW) and 2,200 kW; (5) a concrete tailrace; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of project:* Applicant intends to sell energy produced to the Duke Power Company.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

12a. *Type of application:* Declaration of intention.

b. *Docket No:* EL92–9.

c. *Date filed:* December 27, 1991.

d. *Applicant:* The University of Michigan-Dearborn.

e. *Name of project:* Henry Ford Estate.

f. *Location:* On the Rouge River in Dearborn, Michigan, T. 2 S., R. 10 E., Michigan Meridian.

g. *Filed pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant contact:* Robert J. West, Director of Facilities Management, The University of Michigan-Dearborn, 4901 Evergreen Road, Dearborn, MI 48128–1491, (313) 593–5360.

i. *FERC contact:* Diane M. Scire, (202) 219–2682.

j. *Comment date:* February 27, 1992.

k. *Description of project:* The proposed project will consist of: (1) a 60-acre-foot reservoir; (2) a 12-foot-high, 280-foot-long dam; (3) a powerhouse containing one generator with an installed capacity of 55 kilowatts; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of project:* All energy produced will be used within the University of Michigan's campus.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

12a. *Type of application:* Declaration of intention.

b. *Docket No:* EL92–11.

c. *Date filed:* 12/31/91.

d. *Applicant:* Wisconsin Electric Power Co.

e. *Name of project:* Weyauwega Project.

f. *Location:* On the Waupaca River in the City of Waupaca, Waupaca County, Wisconsin.

g. *Filed pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant contact:* James D. Zakrajsheck, Counsel, Wisconsin Electric Power Co., 231 West Michigan Street, P430, P.O. Box 2046, Milwaukee, WI 53201–2046, (414) 221–2715.

i. *FERC contact:* Diane M. Scire, (202) 219–2682.

j. *Comment date:* February 28, 1992.

k. *Description of project:* The existing project consists of: (1) a gravity dam 240 feet long in four sections, including earth

sections of 71 and 90 feet, a 29-foot intake section, and a 50-foot spillway section with three tainter gates; (2) a reservoir with a surface area of 286 acres; (3) a brick powerhouse integral with the intake section housing a 400-kilowatt generator; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

1. *Purpose of project:* The project is connected with and generates power for the Applicant's interconnected transmission system located in both Wisconsin and Michigan.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application , a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.20(b)(1) and (9) and 4.36.

A8. Preliminary Permit— Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such any application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

E. Filing and Service of Responsive Documents—The application is not

ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: January 14, 1992, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1342 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-284-000, et al.]

Northern Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Co.

[Docket No. CP92-284-000]

January 9, 1992.

Take notice that on January 7, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-284-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to reassign certain volumes of natural gas for Wisconsin Gas Company (Wisconsin Gas) and Wisconsin Power and Light Company (WP&L) under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to reassign CD-1 firm sales service of 1,000 Mcf per day for Wisconsin Gas and 100 Mcf per day for WP&L as shown in the attached appendix. Northern explains that Wisconsin Gas and WP&L have requested this reassignment of volumes to provide more flexibility in serving their customers. Northern states that this reassignment of natural gas volumes would not result in an increase in Northern's total peak day and total annual deliveries.

Comment date: February 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

NORTHERN NATURAL GAS COMPANY—REASSIGNMENT OF SALES ENTITLEMENTS

CD-1 Volumes in Mcf per day

Community	Present	Proposed	Net effect
Wisconsin Gas:			
Eagle, WI	0	1,000	1,000
Monroe, WI	2,651	1,651	(1,000)
Total	2,651	2,651	0
WP&L:			
Janesville/Beloit, WI	0	100	100
Portage, WI	1,480	1,380	(100)
Total	1,480	1,480	0

2. Northwest Pipeline Corp.

[Docket No. CP92-277-000]

January 9, 1992.

Take notice that on January 2, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed in Docket No. CP92-277-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the interruptible gas gathering and transportation services provided for Williams Natural Gas Company (Williams) pursuant to agreements originally certificated in Docket No. CP79-115, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that it is requesting authorization to abandon the interruptible gathering and transportation services it is authorized to provide for Williams pursuant to Rate Schedules X-47 and X-48 of Northwest's FERC Gas Tariff, Original Volume No. 2, which incorporate a gas gathering agreement and a gas transportation agreement, respectively, both dated September 20, 1978, as amended. The gathering agreement was for a primary term of twenty years with evergreen provisions, while the transportation agreement was for a term of three years with evergreen provisions. Northwest has neither gathered nor transported any gas for Williams since June 1990. Northwest further states that pursuant to termination agreements dated July 1, 1991, Northwest and Williams agreed to terminate these agreements effective July 1, 1991, subject to resolving any imbalances. Northwest indicates that no abandonment of facilities is proposed in conjunction with the abandonment of these services.

Comment date: January 30, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Co.

[Docket No. CP92-280-000]

January 9, 1992.

Take notice that on January 6, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-280-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new delivery point for Ford Motor Company (Ford), an end-user, under Tennessee's blanket certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that it has entered into a natural gas transportation agreement dated June 1, 1991, with Ford to transport 10,000 Dekatherms equivalent per day on a firm basis under Tennessee's Rate Schedule FT-A. Tennessee explains that, in order to effectuate delivery of the gas, the contract provides for a new delivery point to be constructed in Davidson County, Tennessee. Tennessee further states that the delivery facilities would consist of a 4-inch hot tap assembly, interconnecting pipe, and measurement facilities. Tennessee advises that all costs (estimated to be $115,565) associated with the construction of the proposed new delivery point would be borne by Ford.

Comment date: February 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Co.

[Docket No. CP92-279-000]

January 9, 1992.

Take notice that on January 3, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-279-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to substitute a new delivery point for a gas transportation service presently provided by Tennessee for Flagg Energy Development Corporation (Flagg Energy), an end-user, under the authorization issued in Docket No. CP82-413-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to authorization granted in Docket Nos. CP88-171-000, *et al.*, 51 FERC ¶ 61,113 (1990), it is now serving Flagg Energy under the terms of a firm gas transportation agreement dated April 8, 1991. It is stated that the agreement provides for the transportation by Tennessee of a daily volume of 4,140 Mcf of natural gas from receipt points located in the U.S. Gulf Coast region to a delivery point at the interconnection of the facilities of Tennessee and Connecticut Natural Gas Corporation (Connecticut Natural) near Bloomfield, Connecticut (Tennessee's Meter No. 020205, located at Tennessee's Valve 347A-122 + 9.39). Tennessee states that the gas is then redelivered to the Flagg Energy cogeneration project in Hartford, Connecticut.

Tennessee states that Flagg Energy has requested that the transportation agreement be amended to provide for the termination of deliveries to Connecticut Natural and the commencement of deliveries at Tennessee's existing interconnection with Algonquin Gas Transmission Company near Mahwah, New Jersey (Tennessee's Meter No. 020207 at Valve 328A-101.1 + 4.22). It is stated that Tennessee is willing to make such change in delivery point.

According to Tennessee, no additional facilities are to be constructed and the total quantities of natural gas to be delivered will not exceed presently authorized quantities. Tennessee states that it has sufficient authorized capacity in its system to accomplish delivery of the gas to the proposed delivery point without detriment or disadvantage to any other customer.

Comment date: February 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. ANR Pipeline Co.

[Docket No. CP92-274-000]

January 9, 1992.

Take notice that on December 31, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an application with the Commission in Docket No. CP92-274-000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon transportation services for Mid Louisiana Gas Company (MidLa), all as more fully set forth in the application which is open to public inspection.

ANR proposes to abandon the firm transportation services it provides for MidLa under ANR's FERC Rate Schedules X-112 and X-141, effective January 1, 1992. The Commission authorized on August 25, 1980, ANR's daily firm transportation service of up to 10,000 Mcf of natural gas under Rate Schedule X-112 in Docket No. CP80-384-000 (12 FERC ¶ 61,202). ANR receives the gas for MidLa's account in West Cameron Block 281, offshore Louisiana, and delivers the gas to Texas Eastern Transmission Corporation (Texas Eastern) in West Cameron Block 280, offshore Louisiana, for further transportation for MidLa's account onshore.

The Commission authorized on April 17, 1984, ANR's daily firm transportation service of up to 25,000 Mcf of natural gas under Rate Schedule X-141 in Docket No. CP83-532-000 (27 FERC ¶ 62,052). The Commission amended the daily volumes that ANR transports under this rate schedule to 22,000 Mcf by the order issued July 11, 1991 in Docket No. CP91-1936-000 (56 FERC ¶ 62,024). ANR receives the gas for MidLa's account in Eugene Island Block 34, offshore Louisiana, and delivers the gas to MidLa at an interconnection of their pipeline systems near Gilbert, Franklin Parish, Louisiana, and a meter station in Tensas Parish, Louisiana.

ANR states that MidLa has requested ANR to terminate transportation services under Rate Schedules X-112 and X-141, effective January 1, 1992, and that there would be no adverse effect on MidLa's customers as a result of the proposed abandonments. The abandonments are being requested as part of an agreement with MidLa in a settlement in ANR's Docket No. RP89-161-000, *et al.* No facilities would be abandoned in this proposal.

Comment date: January 30, 1992, in accordance with Standard Paragraph F at the end of this notice.

6. Sumas International Pipeline Inc.

[Docket No. CP92-259-000]

January 9, 1992.

Take notice that on December 20, 1991, pursuant to section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717(b); § 153.1 *et seq.* and 153.10 *et seq* of the Commission's Regulations, 18 CFR 153.1; Executive Order No. 10485, as amended by Executive Order No. 12038; and Delegation Order No. 0204-112 of the Secretary of Energy, Sumas International Pipeline Inc. (SIPI) a wholly-owned subsidiary of BC Gas Inc (BC Gas), seeks authority from the Federal Energy Regulatory Commission (FERC) for a Presidential Permit for the point of entry for the importation of natural gas and authority to construct, operate, maintain and connect a natural gas pipeline interconnect from Canadian pipeline facilities at the Canadian border to a Tap and Meter connection with Northwest Pipeline Corporation (NWP) within its Sumas Compressor Station near Sumas, Washington. SIPI also filed pursuant to section 7(c) of the Natural Gas Act and § 157.7(a) of the Federal Energy Regulatory Commission's Regulations thereunder for a certificate of public convenience and necessity authorizing the construction and operation of SIPI's Interconnect Pipeline Facilities, in Whatcom County, Washington; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

SIPI will consist of 205 feet of 24-inch O.D. pipeline extending from two interconnections with Huntingdon International Pipeline Corporation (HIPCO) at the Canadian border near Sumas, Washington to the interconnection with NWP near Sumas, Washington. NWP will construct and operate tap, pipe and meter facilities in the United States. The design capacity of the natural gas interconnect facilities will be approximately 350 MMCF/d with an estimated cost of $68,500. SIPI will provide an interconnect delivery service for gas to and from facilities owned or operated by BC Gas for approximately 23 billion cubic feet of gas per year.

It is said that BC Gas is a Canadian Local Distribution Utility serving over 600,000 residential, commercial and industrial customers or 95% of the province of British Columbia and provided sales and transportation of some 175 trillion Btu's in 1990. BC Gas holds an existing authorization to import and re-export gas under the Department

of Energy, Office of Fossil Energy (DOE/FE) Opinion and Order No. 285–A for storage at the Jackson Prairie Storage Facility (JPS) in Chehalis, Washington. As certain Canadian Transportation and Exchange Arrangements terminate during 1992, BC Gas has applied to the DOE/FE to use SIPI facilities for delivery and re-delivery of JPS gas from and to Canadian facilities for these volumes and incremental volumes approved by DOE/FE Opinion and Order No. 285–B.

SIPI's affiliate, Inland Gas & Oil Corporation (IGOC) applied to the Commission on December 2, 1991, under sections 4 and 7 of the NGA, for an unlimited term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of natural gas. This Application was Noticed in Docket No. CI92–13–000. IGOC has an existing blanket authority to import and export gas under DOE/FE Opinion and Order No. 517. IGOC has also applied for permission to add SIPI import and export points to its authorization as existing facilities at the Canada/U.S. Border cannot suitably handle these incremental volumes.

Comment date: January 30, 1992, in accordance with Standard Paragraph F at the end of the notice.

7. Northwest Pipeline Corp.

[Docket No. CP92–281–000]

January 9, 1992.

Take notice that on January 6, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP92–281–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an interruptible transportation service for Questar Pipeline Company (Questar) which was performed pursuant to authorization received in Docket No. CP84–79, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northwest seeks authorization to abandon the transportation service it has provided to Questar under a gas gathering and transportation agreement (Y70 agreement) dated August 19, 1983. Northwest states that this agreement covers the gathering and transportation of up to 3,000 MMBtu's of equivalent gas per day from the Jefferson receipt point on Northwest's Big Piney Gathering system to the Crossover 16 mainline interconnect with Questar in Sweetwater County, Wyoming. It is stated that pursuant to a letter agreement dated March 22, 1991, Northwest and Questar agreed to terminate the subject agreement effective as of April 1, 1991. It is further stated that no abandonment of facilities is proposed in conjunction with the abandonment of service.

Comment date: January 30, 1992, in accordance with Standard Paragraph F at the end of this notice.

8. Northwest Pipeline Corp.

[Docket No. CP92–282–000]

January 10, 1992.

Take notice that on January 6, 1992, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84158.0900, filed in Docket No. CP92–282–000 an application pursuant to section 7(B) of the Natural Gas Act for permission and approval to abandon a transportation service it provides for Pacific Gas Transmission Company (PGT), all as more fully set forth in the request which is on file with the Commission and open to the public inspection.

Northwest state that it is requesting approval to abandon the interruptible transportation service it provides for PGT pursuant to Rate Schedule X–36, of Northwest's FERC Gas Tariff, Original Volume No. 2. By letter dated April 5, 1991, Northwest provided PGT with six months written notice that it intends to terminate the Agreement.

Northwest further states that no facilities will be abandoned in conjunction with the abandonment of this service

Northwest states that abandonment of the transportation service is contingent upon retention of the existing Rate Schedule X–36 priority of service date for service under a replacement open-access transportation agreement with PGT dated January 1, 1992. Northwest further requests any necessary waivers of the first-come first-serve provisions of its tariff to allow Janaury 4, 1977, to be the initial prority of service date for the corresponding transportation service under the replacement open-access transportation agreement.

Comment date: January 31, 1992, in accordance with Standard Paragraph F at the end of the notice.

9. Trunkline Gas Co.

[Docket No. CP92–278–000]

January 10, 1992.

Take notice that on January 3, 1992, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP92–278–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon a transportation service provided to Northern Natural Gas Company (Northern) effective December 3, 1988, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline requests authorization to reduce the firm transportation service it provides Northern under Trunkline's Rate Schedule T–81 from 15,000 Mcf per day to 7,500 Mcf per day. Trunkline states that it provides firm transportation service of up to 15,000 Mcf per day for Northern from a point of receipt on Trunkline's Terrebonne System in Grand Isle 82, Offshore Louisiana, to Trunkline's interconnects with United Gas Pipe Line Company at Olla, Centerville, and Garden City, Louisiana, Trunkline states that pursuant to an amendment dated December 3, 1988, Northern and Trunkline agreed to reduce Northern's daily demand level by 50 percent (15,000 Mcf to 7,500 Mcf).

Comment date: January 31, 1992, in accordance with Standard Paragraph F at the end of the notice.

10. West Texas Gas, Inc.

[Docket No. CP92–273–000]

January 10, 1992.

Take notice that on December 31, 1991, West Texas Gas, Inc. (WTG), 211 North Colorado, Midland, Texas 79701, filed in Docket No. CP92–273–000 a request pursuant to section 7(c) of the Natural Gas Act (NGA) and subpart F of part 157 of the Commission's Regulations under the NGA for a blanket certificate of public convenience and necessity authorizing WTG to engage in any of the activities specified in subpart F of part 157 of the Commission's Regulations, as may be amended from time to time, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that WTG is a "natural gas company" within the meaning of the NGA and as determined by the Commission in Docket No. CP83–377–000. It is explained that WTG operates both interstate and intrastate pipeline systems in West Texas and the Texas Panhandle area, serving small residential, commercial and irrigation users in Texas and resale customers in New Mexico and Oklahoma. It is asserted that WTG does not have any currently effective sales or storage rate schedules or outstanding budget-type certificates.

WTG also requests that the Commission waive the applicable regulations in order to authorize under the proposed blanket certificate certain existing facilities. It is asserted that these facilities constitute an interconnection between WTG's 22-inch pipeline and the facilities of Westar Pipeline Company (Westar) for the purpose of purchasing system supply gas from Westar. It is stated that these facilities were installed between April and July, 1991, in order to take advantage of WTG's 1991 peak operating season.

Comment date: January 31, 1992, in accordance with Standard Paragraph F at the end of this notice.

11. Florida Gas Transmission Co.

[Docket No. CP92-275-000]

January 10, 1992.

Take notice that on December 31, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP92-275-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the National Gas Act (18 CFR 157.205, 157.216) for authorization to abandon and transfer by sale to Florida Public Utilities Company (FPU) minor pipeline facilities located in Palm Beach County, Florida, under FGT's blanket certificate issued in Docket No. CP82-553-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to abandon and transfer by sale to FPU approximately 1.7 miles of the 6.2 mile Lake Worth 4-inch lateral located in Palm Beach County, Florida. FGT states that FPU would use this segment of pipeline as part of its existing distribution system. FGT also states that it would not terminate any services nor take any other facilities out of service as a result of this proposal. Additionally, FGT states that the existing Lake Worth 8-inch looping facilities has sufficient capacity to meet FGT's contractual obligations to FPU. Further, FGT states that FPU's certificated entitlements would not be affected by this request.

Comment date: February 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1390 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-02504T Texas-15 Addition 4]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 13, 1992.

Take notice that on December 23, 1991, as supplemented on Janauary 9, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Lower Vicksburg Formation underlying portions of Hidalgo and Starr Counties qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area includes approximately 20,000 acres in Hidalgo and Starr Counties, Texas and consists of the acreage listed in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Lower Vicksburg Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Lower Vicksburg Formation in Hidalgo and Starr Counties, Texas Railroad Commission District 4.

1. "Los Guajes" Segundo Flores Survey #27, A-83 and A-697
2. Hidalgo County School Land Survey #553, A-227, league 1, sections 3 and 4, league 2, w/2 section 1 and sections 2-6 and league 3, sections 5 and 6
3. J.M. Vela Survey #200, A-640
4. Tex. Mex. R.R. Survey #201, A-123
5. E.B. Pue Survey #202, A-182
6. E.B. Pue Survey #204, A-636
7. Tex. Mex. R.R. Survey #206, A-125
8. E.B. Pue Survey #208, A-636
9. Tex. Mex. R.R. Survey #209, A-227
10. Tex. Mex. R.R. Survey #196, A-122
11. "Santa Anita" Manuel Gomez Survey, A-63, Valley Farms Subdivision, w/2 lots 90 and 91

[FR Doc. 92-1339 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-02507T Texas-9 Addition 10]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 13, 1992.

Take notice that on December 23, 1991, as supplemented on January 9, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation underlying portions of Robertson County qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area includes approximately 17,000 acres in Robertson County, Texas and consists of the acreage listed in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Travis Peak Formation in Robertson County, Texas.

1. James Farris, A-147
2. Owen Maynard, A-260
3. James Patterson, A-300
4. Wm. J. Kyle, A-206
5. Jackson Hensley, A-174
6. O'Connor Denson, A-126
7. Wm. Owens, A-279
8. Ezra Corry, A-102
9. Joel Bogguss, A-64
10. Wm. B. Ball, A-76
11. John Copeland, A-92
12. John McNeese, A-231
13. N. McCuistion, A-264
14. Maria DeLa Concepcion Marques, A-25
15. Robert M. Williamson, A-362
16. Clinton A. Rice, A-316
17. G.W. McGrew, A-232

[FR Doc. 92-1340 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-02503T Texas-10 Addition 12]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 14, 1992.

Take notice that on December 23, 1991, as supplemented on January 13, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Edwards Limestone Formation in portions of Webb County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area includes approximately 72,290 acres in Webb County, Texas and consists of the acreage listed in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Edwards Limestone Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Edwards Limestone Formation in Webb County, Texas Railroad Commission District 4.

Survey	Section No.	Approximate acreage
Full Section Within Application Area:		
L.M. McClendon A-851	1839	1156
Hugh P. Sutton A-582	1837	1280
C. Vergara A-2677	31	317.3
C. Vergara A-2949	12	544
W.H. Thaxton A-2675	11	640
L.T. & B. A-2336	10	640
L.T. & B. A-2335	9	640
Z. Villareal A-2805	44	640
Z. Villareal A-2804	43	640
P. Cisneros A-2708	41	640
C. Ortiz A-3145	111	1280
F. Ortiz A-3146	112	1047.5
M. Grandapo A-3146	107	1275.5
M. Grandapo A-3147	109	640
E. Ramos A-3149	106	632.25
Wil H. Hearne A-3143	108	1210
C.C. Tribble A-3306	876	378.1
W. Brown A-3157	110	94.5
B.S. & F. A-3155	875	378.1
L. Vergara A-2951	39	640
R.W. Roberson A-2665	38	642
R.W. Roberson A-2784	35	642
M.G. DeGarza A-2731	36	640
M.G. DeGarza A-2730	34	642
B.S. & F. A-29	877	640
Portion of Section Within Application Area:		
Joaquin Galan A-66 Webb Co.	2182	32,362
Joaquin Galan A-3226	2292	20,844
L. Vergara A-2952	40	374
M. Martinez A-794	2289	133
Mrs. M.M. Nichols A-557	1900	659
Total acreage		72,290

[FR Doc. 92-1387 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-02812T West Virginia-10]

State of West Virginia; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 14, 1992.

Take notice that on January 6, 1992, the West Virginia Department of Commerce, Labor and Environmental Resources (West Virginia) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Maxton/Maxon Sandstone of the Appalachian Plateau of Southern West Virginia qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers approximately 66 square miles in the Davy, Pineville and Welch Quads in McDowell and Wyoming Counties, West Virginia.

The notice of determination also contains West Virginia's findings that the referenced portion of the Maxton/Maxon Sandstone meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1388 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR92-6-000]

Delhi Gas Pipeline Corp.; Petition for Rate Approval

January 14, 1992.

Take notice that on December 30, 1991, Delhi Gas Pipeline Corporation (Delhi) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 30.54 cents per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Delhi states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and currently operates intrastate facilities in several states. The subject of this petition is its intrastate system in North Louisiana. Delhi states in its petition that it intends to seek an opinion letter from the Officer of General Counsel that its facilities in North Louisiana qualify as non-jurisdictional gathering and it requests that this petition be made subject to that filing. Delhi's previous maximum interruptible transportation rate of 21 cents MMBtu for section 311(a)(2) service was approved by a Commission order issued June 21, 1990 in Docket No. ST84-773-000 *et al.*

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before January 30, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1385 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2448-000, and RP91-187-000]

Florida Gas Transmission Co.; Notice Reconvening Informal Settlement Conference and Notice Canceling Separate Informal Settlement Conference

January 13, 1992.

Take notice that the informal settlement conference previously scheduled to be convened on January 14-15, 1992, has been rescheduled to be held on February 11-12, 1992, at 10 a.m., on each day, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1991).

Take notice that the separate informal settlement conference previously scheduled to be convened on February 18-19, 1992, has been canceled and will be rescheduled at a later date.

For further information, please contact Warren C. Wood at (202) 208-2091 or Donald Williams at (202) 208-0743.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1341 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-143-010]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

January 14, 1992.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes"), on January 10, 1992, tendered to the Federal Energy Regulatory Commission (Commission) for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volumes Nos. 2 and 3, the following tariff sheets, proposed to be effective as of November 1, 1991:

First Revised Volume No. 1

Fourth Substitute Twenty-Fourth Revised Sheet No. 4
Fourth Substitute Fortieth Revised Sheet No. 57(i)

Original Volume No. 2

Sixth Revised Sheet No. 3-A
Fourth Substitute Twenty-Sixth Revised Sheet No. 53
Substitute Sixth Revised Sheet No. 53-G
Fourth Substitute Eighteenth Revised Sheet No. 77
Substitute Fourth Revised Sheet No. 78
Fourth Substitute Fourteenth Revised Sheet No. 151
Fourth Substitute Eleventh Revised Sheet Nos. 223 and 245
Fourth Substitute Fifth Revised Sheet No. 289
Fourth Substitute Eleventh Revised Sheet No. 294
Fourth Substitute Sixth Revised Sheet No. 603
Second Substitute Third Revised Sheet No. 604
Fourth Substitute Fourth Revised Sheet Nos. 865 and 866
Fourth Substitute Third Revised Sheet No. 905
Fourth Substitute Fourth Revised Sheet No. 906
Second Substitute First Revised Sheet No. 1006

Original Volume No. 3

Fifth Substitute Fourth Revised Sheet No. 2
Substitute Original Sheet No. 2-A
Fourth Substitute Fourth Revised Sheet No. 3

Great Lakes states that the purpose of the instant filing is to comply with Ordering Paragraph (B) of the "Order On Compliance Filing" issued by the Federal Energy Regulatory Commission ("Commission") on December 20, 1991, in Docket Nos. RP91-143-006, *et al.* (Order). In this regard, the Order directed Great Lakes to file revised tariff sheets to reflect the elimination of costs, in the design of its interruptible and overrun rates, associated with its incrementally-priced, expansion facilities. In addition, Great Lakes is to reflect, in the design of its rates for non-incremental customers, a credit for anticipated revenue from the projected levels of interruptible and overrun services.

Great Lakes further states that its filing includes workpapers setting forth the calculation of projected fuel usage.

Great Lakes states that its filing is being submitted under protest and without prejudice to Great Lakes' request for rehearing filed in response to Opinion Nos. 367 and 368 or the request for rehearing which Great Lakes will file concerning the Commission's December 20, 1991 order herein.

Great Lakes states that copies of this filing were posted and served on all of its customers, upon the Public Service Commissions of the States of Minnesota, Michigan, and Wisconsin, and upon all parties listed on the service list maintained by the Commission's Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1382 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR92-7-000]

Louisiana Intrastate Gas Corporation; Petition for Rate Approval

January 14, 1992.

Take notice that on January 6, 1992, Louisiana Intrastate Gas Corporation (LIG) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 21 cents per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA) through its Eloi Bay Facility.

LIG states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and currently operates intrastate facilities in Louisiana. The subject of this petition is its Eloi Bay Facility. LIG states that the Eloi Bay Facility was the subject of prior orders of the Commission in Docket Nos. ST89-1708-000, *et al.* which determined an incremental rate of 3.37 cents per MMBtu for section 311(a)(2) transportation through this facility. These orders are pending review in *Louisiana Intrastate Gas Corp.* v. *FERC*, DC Cir. Nos. 89-1479, 90-1050 and 90-1476. LIG states that it is filing this petition to have its general system-wide rate of 21 cents currently pending in Docket No. PR91-12-000 apply to section 311(a)(2) transportation using the Eloi Bay Facility.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before January 30, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1386 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-66-000]

Pacific Gas Transmission Co.; Change in FERC Gas Tariff

January 14, 1992.

Take notice that on January 10, 1992, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

First Revised Sheet No. 12

Original Volume No. 1-A

Sixth Revised Sheet No. 4
Second Revised Sheet Nos. 5 and 14
Second Revised Sheet Nos. 72 and 73
Second Revised Sheet Nos. 74 and 75
Second Revised Sheet Nos. 78, 82, 83 and 84

The purpose of this filing is to revise the billing demand under Rate Schedule PL-1 of Second Revised Volume No. 1 coincident with a partial conversion from sales service under Rate Schedule PL-1 to transportation service under Rate Schedule FTS-1 for Pacific Gas and Electric Company (PG&E), and to make certain minor changes to Rate Schedule FTS-1, the form of service agreements for Rate Schedules FTS-1 and ITS-1, and to the format of the Statement of Rates of PGT's FERC Gas Tariff, Original Volume No. 1-A.

PGT has requested an effective date of January 10, 1992 for First Revised Sheet No. 12 of Second Revised Volume No. 1 and February 9, 1992 for all other tariff revisions. A copy of this filing is being served on PGT's jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Comission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1383 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-212-003]

Stingray Pipeline Co.; Supplemental Compliance Filing

January 14, 1992.

Take notice that Stingray Pipeline Company (Stingray), on January 10, 1992, filed certain revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, to correct an earlier compliance filing that it made on October 15, 1991 pursuant to an order of the Federal Energy Regulatory Commission (Commission) issued on September 10, 1991 in Docket No. RP91-212-000, 56 FERC ¶ 61,462 (1991). The proposed tariff sheets, which pertain to § 6.3(d) of Stingray's FTS and ITS Rate Schedules, are as follows:

Revised Second Substitute Original Sheet No. 59
Revised Second Substitute Original Sheet No. 60
Original Sheet No. 60A
Revised Second Substitute Original Sheet No. 97
Original Sheet No. 97A

Stingray requests that the tendered tariff sheets be accepted in lieu of those filed in the October 15 compliance filing to be effective October 1, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1384 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Special Research Grant Program Notice 92-7: Advanced Heterogeneous Catalysts for Energy Applications

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Program Analysis, Office of Energy Research of the Department of Energy, hereby announces its interest in receiving applications for Special Research Grants that seek support for conducting a research needs assessment in the area of advanced heterogeneous catalysts for energy applications. The purpose of this activity is to identify and disseminate priority research needs for achieving high efficiency utilization of state of the art developments in heterogeneous catalysts with superior economic, environmental, and performance potential. This project should focus on topics in heterogeneous catalysis that have a significant impact on energy issues such as energy conservation through process improvement, uses in alternate fuel development or alternate feedstock utilization, and applications to alleviate pollutants from energy processes. The study shall not address electrochemical, photochemical, biochemical, or homogeneous catalysts.

Applicants must include a description of the planned methodology that will be used in assessing long term (up to 20 years) research directions, opportunities, priorities, and degrees of difficulty in accomplishing identified research opportunities.

Applicants must enlist the aid of experts from acdemia and industry to identify, describe, and assess on a worldwide basis, the most promising new (i.e., beyond state of the art) developments, applications, and opportunities in science and technology to facilitate the future utilization of heterogeneous catalysts in energy related areas.

APPLICATION INFORMATION: Information about submission of applications, eligibility, limitations, evaluation, selection processes, and other policies and procedures may be found in the Application and Guide for the Special Research Grant Program. The application kit and guide and copies of 10 CFR Part 605 are available from Paul Maupin, Office of Program Analysis, Office of Energy Research, U.S. Department of Energy, ER-33, Washington, DC 20585. Instructions for preparation of an application are included in the application kit. Telephone requests may be made by calling (301) 903-4355 or FTS 233-4355. The Catalog of Federal Domestic Assistance number for this program is 81.049.

DATES: Formal applications submitted in response to this notice should be received by March 3, 1992.

ADDRESSES: Formal applications sent by U.S. Mail should be addressed to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER-64, Washington, DC 20585, ATTN: Program Notice 92-7. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Reserch, Division of Acquisition and Assistance Mangement, ER-64/GTN, 19901 Germantown Road, Germantown, MD 20874.

SUPPLEMENTARY INFORMATION:

Heterogeneous catalysts are central to our current technology in the production and consumption of fuels, the manufacture and processing of chemical feedstocks, and the manufacture of plastics. They are of wide use in industry since they are easily separated from the product stream by physical means. Another aspect of catalysts is that they often permit transformations that are impractical or unknown by other means. When processes such as this are found, they can significantly impact upon the energy field by changing the basis for comparison. A classic example in the field of heterogeneous catalysis was the advent of cracking catalysts for liquid fuels. The more recent refinements of this technology are represented by the zeolites. It has been estimate that the introduction of this technology has permitted savings of more than 400 million barrels of oil each year. This translates to 2.4 Quads each year. A shift of 1% in the efficiency of oil conversion to liquid fuel is estimated to result in a savings of more than 22 million barrels of oil each year. Aside from the savings in feedstocks, a reduction in processing energy requirements also occurs when the catalyst is more effective. The zeolite type of heterogeneous catalyst has also proven capable of converting unconventional feedstocks such as natural gas, coal gases, wood alcohol, plant oils, or terpenes from grasses and other plants to liquid fuels. Refinements to heterogeneous catalysts for their application to renewable or domestic resources could make a significant impact on the U.S. balance of payments, standard of living, and energy security.

Advances in the sciences have progressed to the point where it is now possible to design heterogeneous catalysts by rational design. Heretofore, these advances have been mostly the result of trial and error. The development of heterogeneous catalysis have long been the domain of the petrochemical industry. As such, the current types of heterogeneous catalysts are tailored to the needs and requirements of this industry. The applicability of these catalysts to alternate feedstocks is in large part coincidental and may not represent the full potential possible in converting from petroleum dependence to alternate feedstocks.

In performing a research needs assessment for heterogeneous catalysts, the grantee shall assemble a panel of experts in the rational design, preparation, modification, characterization, and utilization of heterogeneous catalysts to review, analyze, evaluate, and prioritize the long term (5 to 20 years) research needs and opportunities for application of heterogeneous catalysts to energy applications. The energy applications of heterogeneous catalysts considered should include energy conservation through process improvement, uses in alternate fuel development or alternate feedstock utilization, and applications to alleviate pollutants from energy processes. Specific examples of appropriate technological applications would include heterogeneous catalysts in coal liquefaction, coal gasification, flue gas cleanup, biomass conversion to gaseous and liquid fuels, use of non-petroleum feedstocks in chemical manufacturing, and conversion of natural gas to liquid fuels.

The overall emphasis should primarily address the mutual technologies employed in heterogeneous catalyst research in relation to energy applications. Mutual technologies such as support development, support-catalyst interactions, factors underlying catalyst activity, selectivity, or resistance to poisoning, and unique, innovative catalyst developments are appropriate focal points. The study shall not address electrochemical, photochemical, biochemical, or homogeneous catalysis in order to adequately address the subject of heterogeneous catalysts in detail.

To address the objectives discussed above, the Office of Program Analysis of the Office of Energy Research has coordinated with the DOE Office of Conservation and Renewable Energy

and the Office of Fossil Energy, and is planning to award a grant for a research needs assessment for advanced heterogeneous catalysts in energy applications. The Office of Program Analysis plans to publicly disseminate the results and findings of this research needs assessment in a report. Specific information concerning requirements for the application follow.

The principal investigator of the assessment must be an individual who is competent and accomplished in appropriate scientific and technical areas. Competence and accomplishments shall be described in the application which shall address industrial or academic experience, research publications, contributions while serving as an expert, consultant services, honors and awards, and education, including advanced degrees and other academic qualifications. The principal investigator also shall be an individual with demonstrated ability to conduct research needs assessments for heterogeneous catalysts and their energy related applications and to manage individual experts and groups of experts in the timely and successful identification, analysis, distillation and documentation of scientific and technical information. These demonstrated abilities shall be documented in the application.

The applicant, in order to address adequately and competently the full scope of this endeavor at sufficient technical depths in all major topical areas, must enlist the aid of other scientific/technical experts. The application shall provide tentative identification of all proposed experts and their present affiliation. All experts, both foreign and domestic, are to be individuals who are competent and accomplished in a scientific or technical discipline directly related to the research assessment. Technical competence and accomplishments of each expert shall be described in the application, and should include the individual's experience, research publications, consultant services, contributions while serving as an expert with other groups, honors and awards, professional experience, and education, including advanced degrees and other academic qualifications. The expected contribution of each expert to the assessment's objectives should be identified. The overall technical expertise of the group of experts, when combined with the technical expertise of the principal investigator, should be shown to be adequate to cover the various scientific and technical disciplines involved in the assessment.

These experts will assist the principal investigator in accomplishment of the assessment's objectives, especially in writing major sections of the required final report. They are also expected to conduct technical discussions with other experts, specialists, researchers, and research program managers in the scientific and technical areas; conduct site visits to laboratories and other facilities where research and development directly related to the subject area is conducted and managed; and review and evaluate recent and relevant research including scientific and technical literature.

The initial composition of a group of experts, other consultants, and any subsequent changes must be approved by the Program Manager and Contracting Officer.

Applications also should include the following: a schedule of the assessment's major activities including the tentative content of meetings of various teams of the experts, a description of anticipated site visits to publicly and privately funded facilities, a description of all conferences to be attended as a part of assessment activities, and a description of the methodology for obtaining a peer review of the assessment results.

The applicant is expected to supply the personnel, facilities, and materials necessary to accomplish the objectives of the assessment as described in this notice.

APPLICATION REVIEW AND AWARD INFORMATION: Applications will be reviewed in accordance with the Energy Research Merit Review System, published in the **Federal Register**, March 11, 1991 (56 FR 10244). Subject to the availability of appropriated FY 1992 funds, one grant award at approximately $300,000 is planned. The grant award will be for a 1-year period.

Issued in Washington, DC, on January 10, 1992.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 92-1418 Filed 1-17-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket No. FE C&E 92-01; Certification Notice—94]

Notice of Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311 (a), Supp. V, 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base loan powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Three owners and operators of proposed new electric base load powerplants have filed self-certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies have filed self-certifications:

Name	Dated received	Type of facility	Megawatt capacity	Location
EEA I, L.P., Washington, DC	1-6-92	Combined cycle	150	Union County, NJ.
EEA II, L.P., Washington, DC	1-6-92	Combined cycle	150	Bergen County, NJ.
Selkirk Cogen Partners, L.P., Boston, MA	1-7-92	Topping cycle	[1] 340	Selkirk, NY.

[1] On 1-5-90 Selkirk filed a certification for a 79.9 MW topping cycle facility (phase I) which was published in the Federal Register on 1-26-90 (55 FR 2680). Phase II of the facility is being built and, when completed, the total capacity of the facility will be 340 MW.

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of these self-certifications may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, or for further information call Myra Couch as (202) 586-6769.

Issued in Washington, DC on January 14, 1992.

Anthony J. Comb,

Director, Office of Coal & Electricity, Office of Fuels Programs Fossil Energy.

[FR Doc. 92-1421 Filed 1-17-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4094-6]

Withdrawal of No Migration Petition Reissuance Request

AGENCY: Region 6, EPA.

ACTION: Informational Notice.

SUMMARY: Notice is hereby given that E.I. du Pont de Nemours & Co., Inc. (Dupont), which owns and operates 3 Class I hazardous waste injection wells in Beaumont, Texas, has withdrawn a "no migration" exemption reissuance request it submitted to EPA Region 5 on July 3, 1991. Accordingly, the EPA will take no further action on that reissuance.

FOR FURTHER INFORMATION CONTACT: Minnie Howard (6W-SU) of the EPA Region 6 Office at the address shown below or by calling (214) 655-7165: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

SUPPLEMENTARY INFORMATION: Section 3004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6924, bans disposal of certain restricted hazardous wastes into an injection well unless the owner/operator of the well demonstrates to the EPA that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. Injection well operators seeking approval of such demonstrations file "no migration" petitions with the Agency. The EPA promulgated regulations, now codified at 40 CFR Part 148, setting minimum standards for no migration demonstrations at 53 FR 28118 (July 26, 1988). In relevant part, those regulations allow injection well operators to demonstrate no migration through appropriate mathematical modeling using site specific geological data or, if such data are unavailable, conservative assumptions. Dupont demonstrated no migration for the 3 Class injection wells at the Beaumont site and received an exemption to the land disposal restrictions on July 10, 1990. A condition of that exemption required that Dupont limit the specific gravity of injected wastes to 1.055.

In letter dated July 3, 1991, Dupont requested that the EPA modify its exemption to allow injection of wastes falling within a range of specific gravities into the Lower Oakville Formation. As part of its request, Dupont provided the Agency with additional information, including modeling of the waste plume based on specific gravities at each end of the requested range. Based on a technical review of Dupont's reissuance request, on October 3, 1991, the EPA proposed to reissue the no migration exemption, soliciting public comment on all aspects of Dupont's original petition and reissuance request. As proposed, the reissued exemption would have allowed injection of wastes within a specific gravity range of 1.055 to 1.085.

In comments on the proposed reissuance, Dupont contended the EPA should allow it to inject fluids outside that specific gravity range as long as the average specific gravity of the injected fluids remained within that range. Because neither Dupont's original petition nor its reissuance request contained a no migration demonstration for wastes of specific gravity beyond the proposed range, however, the EPA informed Dupont it did not agree with that comment. Subsequently, Dupont withdrew its reissuance request in a letter dated December 2, 1991. Accordingly, the EPA will taken no further action on that request and Dupont will remain subject to the conditions of the exemption the EPA granted on July 10, 1990.

Dated: January 13, 1992.

Myron O. Knudson,

Director, Water Management Division, EPA Region 6.

[FR Doc. 92-1414 Filed 1-17-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0189.

Title: State/Local Exercise Data.

Abstract: The State/local exercise annex of the Comprehensive Cooperative Agreement contains reporting requirements for exercises documented on each State's 5-year exercise plan. FEMA Form 95-16, Exercise Data, is used to confirm projected exercise activities and document valuable data which may indicate the need for remedial actions at the local level. Collectively, the data also provides FEMA with an indication of the country's state of national preparedness.

Type of Respondents: State and local goverments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 960 Hours.

Number of Respondents: 3,200.

Estimated Average Burden Hours Per Response: 18 minutes.

Frequency of Response: Annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within eight weeks of this notice.

Dated: January 13, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92-1408 Filed 1-17-92; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-929-DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA-929-DR), data December 26, 1991, and related determinations.

DATED: January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3606.

NOTICE: The notice of a major disaster for the State of Minnesota, dated December 26, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 26, 1991:

The counties of Faribault, Fillmore, and Martin for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92-1410 Filed 1-17-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-930-DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-930-DR), dated December 26, 1991, and related determinations.

DATED: January 11, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

NOTICE: The notice of a major disaster for the State of Texas, dated December 26, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 26, 1991:

The counties of Brazos, Johnson, and Williamson for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92-1409 Filed 1-17-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Jugolinija, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011364.

Title: Jugolinija/KESCO Space Charter Agreement.

Parties:

Jugolinija,
Kuwait Eastern Shipping Company ("KESCO").

Synopsis: The proposed Agreement would authorize KESCO to charter space from Jugolinija in the trade between United States ports and ports on the Arabian Gulf incluing Kuwait and Red Sea Ports of Saudi Arabia.

Dated: January 14, 1992.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 92-1328 Filed 1-17-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of November 5, 1991

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on November 5, 1991.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting portrays a sluggish economy and a marked deterioration in business and consumer confidence. Total nonfarm payroll employment was unchanged in October after rising slightly over the third quarter, and the civilian unemployment rate edged back up to 6.8 percent. Industrial production has been flat in recent months. Consumer spending increased considerably through the summer, in part because of a sizable rise in expenditures on motor vehicles; sales of motor vehicles slowed in October, however. Real outlays for business equipment—especially for computers—have been rising, but nonresidential construction has continued to decline. Housing starts and home sales have weakened recently. The nominal U.S. merchandise trade deficit in July-August was significantly above its average rate in the second quarter. Wage and price increases have continued to trend downward.

Short-term interest rates have declined somewhat further since the Committee meeting on October 1, while bond yields are about unchanged to slightly higher on balance. The trade-weighted value of the dollar in terms of the other G-10 currencies declined on balance over the intermeeting period.

Expansion in M2 and M3 resumed in October, albeit at a slow pace. For the year through October, expansion of both M2 and M3 is estimated to have been at the lower ends of the Committee's ranges.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in February for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent, respectively, measured from the fourth quarter of 1990 to the fourth quarter of 1991. The monitoring range for growth of total domestic nonfinancial debt also was maintained at 4-1/2 to 8-1/2 percent for the year. For 1992, on a tentative basis, the Committee agreed in July to use the same

[1] Copies of the Record of policy actions of the Committee for the meeting of November 5, 1991, are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

ranges as in 1991 for growth in each of the monetary aggregates and debt, measured from the fourth quarter of 1991 to the fourth quarter of 1992. With regard to M3, the Committee anticipated that the ongoing restructuring of thrift depository institutions would continue to depress the growth of this aggregate relative to spending and total credit. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to decrease somewhat the existing degree of pressure on reserve positions. Depending upon progress toward price stability, trends in economic activity, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from September through December at annual rates of about 3 and 1 percent, respectively.

By order of the Federal Open Market Committee, January 3, 1992.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 92-1357 Filed 1-17-92; 8:45 am]

BILLING CODE 6210-01-F

His Royal Highness Prince Alwaleed Bin Talal Bin Abdulaziz Al Saud; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 11, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. His Royal Highness Prince Alwaleed Bin Talal Bin Abduleziz Al Saud, Riyadh, Saudi Arabia, and Kingdom 5-KR, Limited, Cayman Islands; to acquire 14.87 percent of the voting shares of Citicorp, New York, New York, and thereby indirectly acquire Citibank (NY State), Rochester, New York, and Citibank NA, New York, New York; Citicorp (Maine), South Portland, Maine, and thereby indirectly acquire Citibank (Maine) NA, South Portland, Maine; Citicorp Holdings Inc., New Castle, Delaware, and thereby indirectly acquire Citibank (Delaware), New Castle, Delaware; Citibank (Florida) NA, Dania, Florida; Citibank (South Dakota) NA, Sioux Falls, South Dakota; Citibank (Arizona), Phoenix, Arizona; and Citibank (Nevada) NA, Las Vegas, Nevada; DeAnza Holding Co., Sunnyvale, California, and thereby indirectly acquire Citibank (Maryland) NA, Towson, Maryland; and DeAnza Bank, Sunnyvale, California.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Quinton E. Daniel and Kathryn S. Daniel, Alamogordo, New Mexico; to acquire an additional 6.09 percent of the voting shares of Western Bancshares of Alamogordo, Inc., Alamogordo, New Mexico, for a total of 11.61 percent, and thereby indirectly acquire Western Bank, Alamogordo, New Mexico.

Board of Governors of the Federal Reserve System, January 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1349 Filed 1-17-92; 8:45 am]

BILLING CODE 6210-01-F

KLT Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than February 11, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. KLT Bancshares, Inc., Kansas City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Farley Bancshares, Inc., Farley, Missouri, and thereby indirectly acquire Farley State Bank, Farley, Missouri.

Board of Governors of the Federal Reserve System, January 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1350 Filed 1-17-92; 8:45 am]

BILLING CODE 6210-01-F

National City Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such

as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 11, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. National City Corporation, Cleveland, Ohio, and NC Acquisition Corp., Cleveland, Ohio; to merge with Merchants National Corporation, Indianapolis, Indiana, and thereby indirectly acquire Merchants National Bank & Trust Company of Indianpolis, Indianapolis, Indiana; Farmers National Bank of Shelbyville, Shelbyville, Indiana; Central National Bank of Greencastle, Greencastle, Indiana; Hancock Bank & Trust, Greenfield, Indiana; Union State Bank, Carmel, Indiana; Mid State Bank of Hendricks County, Danville, Indiana; Mid State Bank, Zionsville, Indiana; Anderson Banking Company, Anderson, Indiana; The National Bank of Greenwood, Greenwood, Indiana; The Seymour National Bank, Seymour, Indiana; Citizens National Bank of Tipton, Tipton, Indiana; Fayette National Bank and Trust Company, Connersville, Indiana; Madison Bank & Trust Company, Madison, Indiana; Elston Bank & Trust Company, Crawfordsville, Indiana; Batesville State Bank, Batesville, Indiana; First National Bank of East Chicago, East Chicago, Indiana; and First National Bank of Indiana, Logansport, Indiana.

In connection with this application, Applicant also proposes to acquire Merchants Mortgage Corporation, Indianapolis, Indiana; Mortgage Company of Indiana, Inc., Indianapolis, Indiana; and Rothenfeld Financial Corporation, Indianapolis, Indiana, and thereby engage in mortgage banking pursuant to § 225.25(b)(1); Merchants Capital Management, Inc., Indianapolis, Indiana, and thereby engage in investment advisory services pursuant to § 225.25(b)(4); Circle Leasing Corporation and its subsidiaries, all of Indianapolis, Indiana, and thereby to engage in equipment lease financing pursuant to § 225.25(b)(5); and North Madison Insurance Agency, Inc., Indianpolis, Indiana, a wholly-owned subsidiary of Madison Bank & Trust Company, and thereby engage in general insurance agency activities pursuant to § 4(c)(8)(D) of the Bank Holding Company Act, as amended. All activities will be conducted throughout the United States with the exception of the general insurance agency activities, which will be confined to the States of Indiana, Illinois, Michigan, Ohio and Kentucky.

Board of Governors of the Federal Reserve System, January 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1351 Filed 1-17-92; 8:45 am]

BILLING CODE 6210-01-F

Second Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 11, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Second Bancorp, Inc., Warren, Ohio; to engage *de novo* through its subsidiary, Aurora Federal Savings Bank, Aurora, Ohio, in owning and operating a savings institution pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1352 Filed 1-17-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Hearing

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that a public hearing of the Federal Accounting Standards Advisory Board will be held on Friday, Februrary 28, 1992, from 9 a.m. to 4 p.m. in room 121, National Building Museum, 401 F St., NW., Washington, DC.

The Board will hears views and testimony of interested parties on the Board's first Exposure Draft, entitled Financial Resources, Funded Liabilities, and Net Financial Resources of Federal Entities. The Board is also interested in hearing views on the timing for the implementation of standards. That is, should standards be issued and implemented as they are decided or should implementation be delayed until there is a broad range of standards completed? Views on other issues such as the Board's agenda and user needs may also be provided. Persons interested in providing either written or oral testimony should notify the Staff Director by Monday, February 3, 1992. Written comments, position papers, and outlines of oral presentations should be submitted to the Board by Wednesday, February 19. The Board will schedule those desiring to give oral testimony who have made timely requests, subject to available time. Copies of any written material submitted to the Board will be

distributed to members of the Board and made a part of its public file. Any interested person may attend the hearing as an observer. Board hearings are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F St., NW., room 302, Washington, DC 20001, or call (202) 504–3336.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: January 14, 1992.

Ronald S. Young,

Staff Director.

[FR Doc. 92–1337 Filed 1–17–92; 8:45 am]

BILLING CODE 1610–01–M

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that a two-day meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday, February 19 and Thursday, February 20, 1992, from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC. No meeting will be held in January.

The agenda for the meeting will consist of a review of the minutes of the December 3 meeting, discussion of the staff work plan, review of a draft document on inventory accounting, review of a draft document on accounting for direct loans and loan guarantees, and a discussion on unfunded liabilities. We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F St., NW., room 302, Washington, DC 20001, or call (202) 504–3336.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: January 14, 1992.

Ronald S. Young,

Staff Director.

[FR Doc. 92–1338 Filed 1–17–92; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Runaway and Homeless Youth; Final Priorities for Fiscal Year 1992

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Notice of Final Fiscal Year 1992 Runaway and Homeless Youth Program Priorities for the Administration for Children and Families.

SUMMARY: The Runaway and Homeless Youth Act requires the Department to publish annually for public comment a proposed plan specifying priorities the Department will follow in awarding grants and contracts under title III Of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. The proposed plan for fiscal year 1992 was published in the **Federal Register** on October 9, 1991. The final priorities, as presented below, take into consideration the comments and recommendations received from the field in response to that notice.

In implementing the final priorities, the actual solicitations for grant applications will be published separately at a later date in the **Federal Register**. Solicitations for contracts will be published in the "Commerce Business Daily." No proposals, concept papers or other forms of application should be submitted at this time.

FOR FURTHER INFORMATION CONTACT: Wade F. Horn, Ph.D., Commissioner, Administration on Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, telephone: (202) 245–0102.

SUPPLEMENTARY INFORMATION:

I. Purposes and Background

The purposes of the Runaway and Homeless Youth Act (the Act) are to improve services for and increase knowledge about runaway and homeless youth and their families. This Act is administered by the Family and Youth Services Bureau (FYSB) of the Administration on Children, Youth and Families (ACYF).

The Act authorizes financial assistance to establish or strengthen community-based projects (Basic Centers) designed to address the immediate service needs of runaway and homeless youth and their families through providing temporary shelter, counseling, aftercare, and related services. Currently, 369 such projects are being supported. The Act also authorizes support for transitional living projects that provide long-term (up to 18 months) shelter and training for homeless youth ages 16 through 21 who are at risk of long-term dependency on the public welfare system. Currently, 77 such projects are being supported.

The Act also authorizes financial support for:

- A national communication system (a toll-free 24-hour National Runaway Switchboard which serves as a neutral channel of communication between at-risk youth and their families and as a source of referral to needed services);
- Grants to statewide and regional non-profit organizations for the provision of training and technical assistance to agencies and organizations eligible to establish and operate runaway and homeless youth centers; and
- Grants for research, demonstration, evaluation, and service projects.

II. Proposed Priorities and Comments

Section 364 of the Act requires that a notice of final program priorities be published each year after taking into consideration comments received from a public notice of proposed priorities. On October 9, 1991, The Department published a notice of proposed priorities for fiscal year 1992 in the **Federal Register** (56 FR 50916–19) and requested comments and recommendations from the field. Comments on topics not covered in that notice, but which were timely and related to the specific needs of runaway and homeless youth, were also solicited.

As indicated in the earlier **Federal Register** notice, no acknowledgement is being made of specific comments. All comments received by the deadline have been considered in preparing the final runaway and homeless youth funding priorities. Thirty-five comments from individuals and organizations were received in response to the proposed priorities published in October. In general, the comments were supportive of the proposed priorities. The following summarizes the major issues raised by a number of respondents.

Expansion Awards

Most respondents, in general recognition of the need to bring equity among Runaway and Homeless Youth Basic Center grantees, supported the policy of allowing expansion awards to

grantees receiving less than $75,000. Several commentors suggested, however, that the policy, as stated, disadvantages grantees who receive more than $75,000, but who divide their awards among two or more sites. The consequence of the policy, they suggested, is that expansion funds are available to single-site grantees receiving less than $75,000, but are not available to individual sites receiving less than this amount if the umbrella grantee receives more than $75,000. In effect, they maintained, the expansion policy penalizes individual sites of umbrella grantees for their collaborative efforts, and could foster a competition for grant funds that would undermine current networking activities. The Administration on Children, Youth and Families is aware of this situation and will continue to review it. In fiscal year 1992, we will continue the policy of allowing smaller continuation grantees to compete for expansion awards as a partial short-term resolution of the issue of perceived inequity among grantees. Further, during review of competitive new-start grant applications, the proposed number of sites and the proposed number of youth to be served will be taken into account as a first step in the long-term resolution of equity issues.

Homeless Youth

Several respondents expressed concern that "truly" homeless youth often do not have access to the Basic Centers and other shelters supported by the Runaway and Homeless Youth Program (RHYP). In part they attributed this to current funding limitations for all social programs. They suggested further, however, that a second, and perhaps the main, cause is the "closed intake" procedures of some shelters, under which all of the bedspace is contracted out to Government agencies, such as child welfare agencies. The result is that street youth are turned away when they try to access these shelters. This "closed intake" system, some respondents fear, is becoming more common across the country, and is shifting some Basic Centers away from their crisis-resolving responsibilities as envisaged in the legislation establishing the program. The Administration on Children, Youth and Families concurs that a "closed intake" system, as described, is inconsistent with the intent of the establishing legislation, and will take this matter into account in establishing the review criteria for applications to be submitted in fiscal year 1992.

Peer Reviews of Basic Centers

A number of respondents suggested ways to design the proposed peer review system. Some indicated that, while it is appropriate for both Federal officials and peers to participate in training and technical assistance (T&TA) activities, it could be counterproductive to have peers participate in official monitoring activities. This latter activity, it was suggested, is better left to Federal officials or to outside, independent evaluators. Allowing peers to judge or rank others could undermine the rapport needed for provision of T&TA. Other respondents noted that, in spite of the potential nagative consequences, successful monitoring by peers is ongoing in several parts of the country. It was recommended that the ACYF system take these ongoing projects into consideration and complement, rather than try to replace them. Respondents further noted that a key to success in this area is allowing the program operators to be involved in the development and implementation of the system.

The Administration of Children, Youth and Families recognizes the sensitive nature of the peer review process and will ensure that the monitoring system addresses these concerns and builds on existing successful practices in this area. In addition, all official monitoring will continue to be conducted by a Federal staff person, either individually or as the peer review team leader.

Related Services

A number of related activities authorized by the Act and proposed by ACYF for new or ongoing support, including the National Communications System, training and technical assistance activities, evaluations, and the proposed Runaway and Homeless Youth Clearinghouse, received broad based support by respondents. No significant changes in these proposed priorities have been made, and the suggestions offered by respondents to strengthen these efforts will be taken into account as the projects are implemented.

III. Final Program Priorities for Fiscal Year 1992

A. Priorities for Runaway and Homeless Youth Basic Centers

Part A, section 311 of the Act authorizes the Department to make grants to public and private entities to establish and operate local runaway and homeless youth Basic Centers. These centers provide services in support of the immediate needs (temporary shelter, food, clothing, counseling, and related services) of runaway or otherwise homeless youth and their families in a manner which is outside the law enforcement structure and the juvenile justice system.

Approximately 370 grants, of which about one-third will be competitive new awards, will be funded in FY 1992 to support organizations which provide services to fulfill the four major goals of the Runaway and Homeless Youth Program. These goals are to:

1. Alleviate the problems of runaway and homeless youth;
2. Reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services;
3. Strengthen family relationships and encourage stable living conditions for youth; and
4. Help youth decide upon a future course of action.

An announcement of the availability of funds for the Basic Centers, along with the instructions and forms needed to prepare and submit applications, will be published in a **Federal Register** announcement later in FY 1992.

Funds for Basic Center grants are allotted annually among the States and other qualifying jurisdictions on the basis of their relative populations of individuals who are less than 18 years of age. For the past several years, Basic Center grants have been awarded for three-year project periods. Approximately two-thirds of the Basic Center grants receive non-competitive continuation awards. The remaining one-third of the Basic Center grants expire each year, requiring these agencies to compete for new awards. Grantees with project periods expiring in FY 1992 will be required to submit new competitive applications. Readers should note that all other eligible youth-serving agencies not holding current awards may also apply for these new competitive funds.

As in FY 1991, if sufficient funds are available, an opportunity to compete for an expansion grant will be offered to continuation grantees receiving less than the average national award. In FY 1992, the threshold amount for eligibility to compete for an expansion grant will be $75,000 or less, the same as in FY 1991. The purposes of this policy are to strengthen programs and to increase equity among Basic Center grantees.

A total of $32,175,900 will be awarded to Basic Center grantees in FY 1992. This includes approximately $21,000,000, which will be awarded in the form of non-competing continuation grants, and approximately $11,175,900, which will be

available for competitive new start and expansion grants.

B. Priorities for a National Communications System

Part A, section 313 of the Runaway and Homeless Youth Act, as amended, mandates support for a National Communications System to assist runaway and homeless youth in communicating with their families and with service providers. In FY 1991, a three-year grant was awarded to Metro Help, Inc., of Chicago to operate the system. It is anticipated that $750,000 in second-year continuation funds will be awarded to the grantee in FY 1992.

C. Priorities for Transitional Living Grants

Part B, section 321 of the Runaway and Homeless Youth Act, as amended, authorizes grants to establish and operate Transitional Living projects for homeless youth. This program is structured to help older homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional Living projects provide shelter, skills training, and support services to homeless youth ages 16 through 21 for a continuous period not exceeding 18 months.

The first 45 Transitional Living grants were awarded in September 1990, for three-year project periods. An addition 32 grants were awarded in FY 1991, also for three-year project periods. Approximately $10,000,000 is available in this program in FY 1992 for non-competitive continuation awards to the current grantees. In additional, because the appropriation for the Transitional Living Program increased from $9.9 million in FY 1991 to $12.0 million in FY 1992, approximately $2,000,000 will also be awarded in the form of new starts. These new starts will be selected from meritorious applicants who could not be funded in FY 1991 due to insufficient funds. There will not be a new solicitation for Transitional Living Program applications in FY 1992.

D. Enhancing the Proficiency of Youth Service Workers and Providers

Both the Runaway and Homeless Youth Act, Section 314, and the Drug Abuse Prevention Program for Runaway and Homeless Youth section 3511 of the Anti-Drug Abuse Act of 1988, also administered by FYSB, authorize support to nonprofit organizations for the purpose of providing training and technical assistance (T&TA) to runaway and homeless youth service providers. This T&TA is a valuable mechanism to strengthen programs and to enhance the knowledge and skills of youth service workers.

In FY 1991, ten Cooperative Agreements were awarded, one in each of the ten Federal Regions, to provide training and technical assistance. Each of these Cooperative Agreements has a three-year project period, and it is anticipated that all funds available for services in this area in FY 1992 will be awarded through non-competing continuations to the current grantees.

To strengthen programs and to promote integration of services, the Cooperative Agreements are designed to include the provision of training and technical assistance to organizations receiving grants under the three Federal runaway and homeless youth programs administered by the Family and Youth Services Bureau: The Runaway and Homeless Youth Basic Center Program (RHYP), the Transitional Living Program (TLP), and the Drug Abuse Prevention Program (DAPP).

E. Priorities of Research, Demonstration, and Service Projects

Section 315 of the Act authorizes the Department to make grants to States, localities, and private entities to carry out research, demonstration, and service projects designed to increase knowledge concerning, and to improve services for, runaway and homeless youth. These activities are important in order to identify emerging issues and to develop and test models which address such issues.

1. Grants for Research, Demonstration, and Service Projects

In FY 1991, through the Coordinated Discretionary Funds Program (CDP) of the former Office of Human Development Services (now the Administration for Children and Families (ACF)), new multi-year research and demonstration projects were funded in the areas of:

a. *Home-Based Services: An Alternative to Out-of-Home Shelter.* These projects are developing home-based intervention models, including mediation, designed to meet the needs of at-risk youth and their families.

b. *Transitional Living/Independent Living Collaborations.* These demonstrations are developing and testing models of interagency collaboration between projects funded under the Transitional Living Program for Homeless Youth and the Independent Living Initiatives Program for youth in foster care under title IV–E of the Social Security Act.

In FY 1992, all Runaway and Homeless Youth Program (RHYP) funds available for demonstration grants will be awarded in the form of second-year continuations to the projects funded under the CDP in FY 1991. Rather than initiate new demonstration projects this year, emphasis will be given to collecting, analyzing and disseminating existing research, information, products and materials that will be of use to the runaway and homeless youth field.

2. Contracts for Research, Demonstration, Evaluation and Service Projects

A number of activities will be carried out to improve the information base on which the runaway and homeless youth programs are founded and to collect and disseminate information to youth-serving organizations. The following projects, which will be funded through new contracts, will be initiated in FY 1992 as proposed in the **Federal Register** on October 9, 1991:

a. *National Evaluation of the Home-Based Services Programs for Runaway and Homeless Youth.* Three demonstration grants under the home-based services initiative of the Runaway and Homeless Youth Program were awarded in FY 1991. This evaluation, to be conducted over a two year period, will provide descriptive information about the programs and outcome information regarding their impact on runaway and homeless youth. The contractor will compare outcomes of youth receiving shelter-based services with those receiving home-based services.

b. *Management Information System Implementation.* This project, with an initial funding period of up to five years, will implement a FYSB Management Information System (MIS) across all three types of RHYP grantees; will provide software, user documentation of the system, and technical assistance to bring grantees on-line; will make updates and system changes; and will produce local and national reports. It is anticipated that all RHYP grantees will have access to and will participate in this national data collection effort by the beginning of FY 1993. Ongoing training and technical assistance for operation of the MIS will be available to grantees.

c. *Clearinghouse on Runaway and Homeless Youth.* This project, with an initial funding period of up to five years, will establish a Clearinghouse for the dissemination of materials to agencies providing services to runaway and homeless youth. Activities will include the collection, analysis, synthesis, packaging, and dissemination of findings and products of past and current FYSB research and

demonstration projects and other information on runaway and homeless youth. Additional efforts to be undertaken by the Clearinghouse will include the identification of issues on which new or additional information, materials and products are needed and the development of such products; and activities to provide the field with the information needed to improve services to runaway and homeless youth.

d. *Monitoring Support for Runaway and Homeless Youth Grantees (Basic Centers, Transitional Living Projects, and Drug Abuse Prevention Projects).* This project, of which the initial phase is to be completed in one year, will develop monitoring tools and site visit protocols for the three target programs, leading to a comprehensive monitoring system that utilizes a peer review model. The peer review model will involve a programmatic and administrative on-site assessment, conducted by a team led by a Federal staff person. Support for full-scale implementation of this peer review monitoring system will be provided in future years upon successful completion of the project's initial phase.

It is anticipated that incremental or continuation funding will be provided to continue the following activities:

e. *Evaluation of the Transitional Living Program (TLP) for Homeless Youth.* The contractor for this study is evaluating the effects of the TLP grants funded in FYs 1990 and 1991 on the youth served. This evaluation is studying who is involved in these projects, how the projects have been organized, the role of community based organizations in meeting the needs of homeless youth, and the relationship of these projects to similar programs.

f. *National Evaluation of the Runaway and Homeless Youth Centers—A Follow-Up Study.* The contractor for this study is evaluating the impact of the Runaway and Homeless Youth Basic Center Program on the youth served. This study will also determine the policy, program, and service delivery issues that impede or facilitate the Runaway and Homeless Youth Program goals.

3. Interagency Agreement for a Research, Demonstration, and Service Project

As discussed in the proposed priorities published on October 9, 1991, the Administration on Children, Youth and Families is continuing to discuss the possibility of a collaborative effort with the Centers for Disease Control to develop and support efforts to prevent HIV infection among runaway and homeless youth.

(Catalog of Federal Domestic Assistance, Program Number 93.623, Runaway and Homeless Youth)

Dated: December 20, 1991.

Wade F. Horn,

Commissioner, Administration on Children, Youth and Families.

Approved: January 14, 1992.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

[FR Doc. 92-1379 Filed 1-17-92; 8:45 am]

BILLING CODE 4130-01-M

Food and Drug Administration

[Docket No. 91N-0429]

Alpha Therapeutic Corp.; Opportunity for Hearing on Intent To Revoke U.S. License No. 744-071

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for hearing on a proposal to revoke the establishment license (U.S. License No. 744-071) and product license issued to Alpha Therapeutic Corp. (doing business as Alpha Plasma Center) for the manufacture of Source Plasma. The proposed revocation is based on significant noncompliance with certain provisions of the biologics regulations specified in this document. Alpha Therapeutic Corp. has several Centers at various locations under their licenses. Only the Alpha Plasma Center is affected by this proposed revocation.

DATES: The firm may submit a written request for a hearing to the Dockets Management Branch by February 20, 1992, and any data justifying a hearing must be submitted by March 23, 1992. Other interested persons may submit written comments on the proposed revocation by March 23, 1992.

ADDRESSES: Submit written requests for a hearing, any data justifying a hearing, and any written comments on the proposed revocation to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn M. Minor, Center for Biologics Evaluation and Research (HFB-132), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20857, 301-295-8188.

SUPPLEMENTARY INFORMATION: FDA is proposing to revoke the establishment license (U.S. License No. 744-071) and the product license issued to Alpha Therapeutic Corp., 2100 Andrews Hwy., Odessa, TX 79761, for the manufacture of Source Plasma. Other locations under the Alpha Therapeutic Corp. license are not affected by this proposed revocation. The proposed revocation is based on the failure of the Alpha Plasma Center and its responsible management to conform to the applicable standards and conditions established in its license and the requirements in 21 CFR parts 600, 601, 606, and 640.

FDA inspections and investigation of the Alpha Plasma Center, conducted from February 4 through 8 and February 12 through 20, 1991, respectively, documented numerous and significant deficiencies from applicable standards in mayor areas of the operation.

An investigation conducted concurrently with the February 1991 inspections showed that the Alpha Plasma Center repeatedly failed to adequately determine donor suitability. The Alpha Plasma Center's failure to adequately determine donor suitability represents serious noncompliance with those standards designed to assure the safety, purity, identity, and quality of plasma, as well as the standards for donor protection, which are intended to assure a continuous and healthy donor population. The following are examples of the Alpha Plasma Center's inadequate performance of donor suitability determination: (1) The Alpha Plasma Center abbreviated or omitted donor screening procedures, such as questioning of donors regarding their medical history (21 CFR 640.63); (2) the Alpha Plasma Center abbreviated or omitted predonation examinations; i.e., temperature, blood pressure, and hematocrit (21 CFR 640.63 (c)(1) through (c)(4)); (3) the Alpha Plasma Center completed donor records giving the appearance that proper screening had been conducted, although not all required screening procedures were conducted (21 CFR 640.72(a)(4)); (4) the Alpha Plasma Center failed to carefully examine donors for needle marks and scars indicative of narcotic addiction (21 CFR 640.63(c)(10)); and (5) the Alpha Plasma Center accepted donors under the infuence of alcohol or drugs, and donors who engaged in activities that put them at risk of human immunodeficiency virus type-1 (HIV-1) infection, with the knowledge of management (21 CFR 640.63(d)).

FDA's investigation also determined that management has not exercised sufficient control over the Alpha Plasma Center's daily operations. The inadequate training of the employees and the management's disregard for the applicable regulations and standards in

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the operation of the Alpha Plasma Center clearly contributed to the acceptance of three self-admitted intravenous drug users as donors (21 CFR 600.10)

By letter dated February 27, 1991, FDA notified and Alpha Therapeutic Corp. that it establishment and product licenses located in Odessa, TX had been suspended and that the licenses would be revoked unless the Alpha Therapeutic Corp. contacted FDA within 10 days.

In its letters dated March 4 and 8, 1991, the Alpha Therapeutic Corp. requested that the revocation of their license be held in abeyance, and outlined proposed corrective actions. The Alpha Therapeutic Corp. acknowledged problems associated with the management of the facility and reported that an internal audit in December 1990 revealed deficiencies in donor suitability determination. In considering the Alpha Therapeutic Corp.'s request, FDA comprehensively reviewed the Alpha Plasma Center's recent inspection history, including the February 1991 inspections and investigation and the corrective actions proposed by the Alpha Therapeutic Corp. FDA's investigation determined that the problems at the Alpha Plasma Center were neither promptly nor adequately addressed, in that unsuitable donors continued to be accepted for plasma donation after the Alpha Plasma Center's December 1990 audit. FDA's review showed that the Alpha Plasma Center's personnel were inadequately trained and supervised to effectively and properly perform their assigned duties. The information obtained during the agency's investigation and inspections of the Alpha Plasma Center demonstrates willfulness on the part of on-site management in that management did not initiate appropriate and necessary control over the Alpha Plasma Center to address and correct known, serious, and ongoing problems at the firm. FDA found significant and continued noncompliance with the applicable Federal regulations and the provisions of the establishment's license. Because the violations at the Alpha Plasma Center were significant and willful, FDA concluded that the firm's request that license revocation be held in abeyance must be denied.

In a letter dated April 26, 1991, pursuant to 21 CFR 601.5(b), FDA notified the Alpha Therapeutic Corp. and its responsible head of the agency's intent to revoke U.S. License No. 0744–071 and announced its intent to offer an opportunity for hearing. In a letter dated May 8, 1991 the Alpha Therapeutic Corp. advised FDA that the firm did not wish to waive its opportunity for a hearing.

Accordingly, FDA is now issuing a notice of opportunity for hearing pursuant to 21 CFR 12.21(b) on a proposal to revoke the licenses for the Alpha Therapeutic Corp., Odessa, TX.

By letter dated August 7, 1991, the Alpha Therapeutic Corp. submitted a citizen petition requesting reconsideration of the proposed revocation of U.S. License No. 744–071. FDA is currently reviewing this petition separately under 21 CFR 10.20, 10.25, 10.30 and 10.33.

FDA has placed copies of documents supporting the proposed license revocation on file with the Dockets Management Branch (address above). These documents, which are filed under the docket number found in brackets in the heading of this notice, include the List of Observations (Form FDA–483's) from the inspections of February 4 through 8 and 12 through 20, 1991; FDA letters of February 27 and April 26, 1991; and the firm's letters of March 4, March 8, and May 8, 1991. The documents are available for public examination in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The Alpha Therapeutic Corp. may submit a written request for a hearing to the Docket Management Branch by February 20, 1992, and any data justifying a hearing must be submitted by March 23, 1992. Other interested persons may submit comments on the proposed license revocation to the Dockets Management Branch by March 23, 1992. The failure of a licensee to file a timely written request for a hearing constitutes an election by the licensee not to avail itself of the opportunity for hearing concerning the proposed license revocation.

FDA procedures and requirements governing a notice of opportunity for hearing, notice of appearance and request for hearing, grant or denial of hearing, and submission of data and information to justify a hearing, are contained in 21 CFR parts 12 and 601. A request for a hearing may not rest upon mere allegations or denials, but must set forth a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses submitted in support of the request for a hearing that there is no genuine and substantial issue of fact for resolution at a hearing, or if a request for hearing is not made within the specified time, the Commissioner of Food and Drugs will deny the hearing request, making findings and conclusions that justify the denial.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 CFR 10.20(j)(2)(i), 21 U.S.C. 331(j), or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act (sec. 351, (42 U.S.C. 262)) and the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 505, 701 (21 U.S.C. 321, 351, 352, 355, 371) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director and Deputy Director, Center for Biologics Evaluation and Research (21 CFR 5.67)).

Dated: January 2, 1992.

Janet Woodcock,

Acting Director, Center for Biologics Evaluation and Research.

[FR Doc. 92–1366 Filed 1–17–92; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending March 31, 1992

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

Section 60.13(a)(4) of the program's implementing regulations (42 CFR part 60, previously 45 CFR part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending March 31, 1992, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 8¼ percent. Using the regulatory formula (45 CFR 126.13(a)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by substracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter

(4.66 percent), and rounding the result (8.16 percent) upward to the nearest ⅛ percent (8¼ percent).

However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending March 31, 1992, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 9¾ percent for the quarter ending June 30, 1991; 9⅝ percent for the quarter ending September 30, 1991; 9⅛ percent for the quarter ending December 31, 1991.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 8¼ percent. Using the regulatory formula (42 CFR 60.13(a)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (4.66 percent); adding 3.50 percent (8.16 percent) and rounding that figure to the next higher one-eighth of one percent (8¼ percent).

3. For fixed rate loans executed during the period of January 1, 1992 through March 31, 1992, and for variable rate loans executed on or after October 22, 1985, the interest rate is 7¾ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (4.66 percent); adding 3.0 percent (7.66 percent) and rounding that figure to the next higher one-eighth of one percent (7¾ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: January 14, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92–1434 Filed 1–17–92; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Wind River Irrigation Project, WY; Irrigation Project

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

PURPOSE: Proposed increase to the Wind River Irrigation Project Operation and Maintenance Rates.

SUMMARY: The Bureau of Indian Affairs is proposing to increase the operation and maintenance rate of the Wind River Irrigation Project from $10.90 to $12.00 per assessable acre. The cost to operate and maintain the irrigation project has increased since the last operation and maintenance rate increase. The cost to operate and maintain the project are anticipated to increase in Fiscal Year 1992.

The project's annual operation and maintenance charges are based on the estimated normal operating cost of the project for one fiscal year. Copies of the proposed Fiscal Year 1992 budget may be acquired from the Superintendent of the Wind River Agency, Bureau of Indian Affairs, Fort Washakie, Wyoming 82514. A self addressed manila envelop with postage must be included when making your request.

The Wind River Irrigation Project manager held meetings with the Crow Heart, Ray, Coolidge, and Arapahoe Water Usage Committees December 31, 1991, January 7 and 8, 1992, respectively on the proposed operation and maintenance rate increase.

The due date for all operation and maintenance charges will be May 1 of each calendar year.

Interest and/or penalty fees will be assessed on all (trust and fee assessed lands) delinquent operation and maintenance charges as prescribed in the 42 Bureau of Indian Affairs Manual and the Code of Federal Regulations, Chapter 4, Part 102. Government agencies, such as Federal, State, and tribal Governments are exempted from interest and/or penalty fees.

This notice will be published and posted at the following locations:

	Newspaper
U.S. Post Offices: Fort Washakie, WY 82514; Lander, WY 82520; Riverton, WY 82501.	Wyoming State Journal, Lander, WY 82520.
Bureau of Indian Affairs: Wind River Agency, Fort Washakie, WY 82514.	Riverton Ranger, Riverton, WY 82501.

COMMENT PERIOD: All comments concerning the proposed Fiscal Year 1992 operating and maintenance rate for the Wind River irrigation project must be in writing and addressed to the Superintendent of the Wind River Agency, Fort Washakie, Wyoming, 82514. All written comments will be accepted on or after January 17, 1992, but no later than the close of business of February 21, 1992.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the Code of Federal Regulations, chapter 25, part 171 under the authority delegated to the Area Director, by the Assistant Secretary of Indian Affairs and the Deputy Assistant Secretary of the Interior (Departmental Manual, chapter 3, part 230, (3.1 & 3.2)).

Norris Cole,

Acting Billings Area Director.

[FR Doc. 92–1334 Filed 1–17–92; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[ID–010–02–4350–06]

Critical Environmental Concern Designation, Bruneau Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of proposed management framework plan amendment; and proposed area of critical environmental concern designations.

SUMMARY: Pursuant to the BLM Planning Regulations (43 CFR part 1600) and the National Environmental Policy Act (NEPA, section 102(2)(C)) the Boise District, BLM has prepared a proposed amendment to the Bruneau Management Framework Plan to designate three sites within the Bruneau Resource Area as areas of critical environmental concern (ACECs). The proposed plan amendment is now available for a 30-day protest period under provisions in the BLM Planning regulations found at 43 CFR 1610.5–2.

DATES: The protest period for the proposed plan amendment will begin on January 17, 1992 and close on February 18, 1992. Written protests to the Director must be received or postmarked no later than the closing date.

ADDRESSES: Protests should be sent to the Director at the following address: Director (760), Department of the Interior, Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240. Any protest should include: (1) Name, address, telephone number

and interest of protesting party, (2) identification of the issue being protested, (3) a statement on the parts of the plan being protested, (4) a copy of all documents addressing the issue that were submitted during the planning process, and (5) a concise statement why the State Director's decision is believed to be wrong.

FOR FURTHER INFORMATION CONTACT: Dennis Hoyem, Bruneau Area Manager or Fred Minckler, Environmental Specialist at the Bureau of Land Management, 3984 Development Avenue, Boise, ID 83705, telephone (208) 384–3300.

SUPPLEMENTARY INFORMATION: The Bruneau Management Framework Plan (MFP) is a land use plan for public lands within the Bruneau Resource Area administered by BLM in southwest Idaho. The Boise District has prepared a proposed amendment to that plan which addresses special management actions and designation of three sites ranging in size from five to 346 acres as research natural area (RNA) ACECs to recognize their value and protect rare and undisturbed plant populations and other resource values. The three proposed sites are: Mud Flat Oolite RNA, five acres; Triplet Butte RNA, 322 acres; and Cottonwood Creek RNA, 346 acres. Resource use limitations proposed for these areas address: Livestock grazing; motorized vehicle use; rights-of-way; mineral leasing, location and disposal; water developments and fire suppression and rehabilitation.

Review of the environmental assessment (EA) prepared on the Proposed Amendment has resulted in a finding that no significant impact on the human environment would result from implementing the proposal and that an environmental impact statement (EIS) need not be prepared.

Dated: January 9, 1992.

J. David Brunner,

District Manager.

[FR Doc. 92–1362 Filed 1–17–92; 8:45 am]

BILLING CODE 4310–GG–M

[MT–060–02–4320–ADVB]

Lewiston District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Lewistown District Office.

ACTION: Notice of Grazing Advisory Board Meeting.

SUMMARY: The Lewistown District Grazing Advisory Board will meet February 20, 1992. The agenda will be:

10 a.m.—Judith Valley Phillips Resource Management Plan
12 noon—Lunch
1 p.m.—Judith Valley Phillips Resource Management Plan
3 pm.—Adjourn

Public comment will be sought at the end of each issue discussion.

LOCATION: Lewistown BLM District Office, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: David L. Mari, District Manager, Bureau of Land Management, P.O. Box 1160, Lewistown, MT 59457.

SUPPLEMENTARY INFORMATION: The Lewistown District Grazing Advisory Board is authorized under the Federal Advisory Committee Act, 5 U.S.C., appendix 1. The board advises the Lewistown District Manager concerning the development of allotment management plans and the utilization of range betterment funds.

Dated: January 10, 1992.

David L. Mari,

District Manager.

[FR Doc. 92–1329 Filed 1–17–92; 8:45 am]

BILLING CODE 4310–DN–M

[AK–910–02–4830–02–ADVB]

Northern Alaska Advisory Council; Meeting

The Northern Alaska Advisory Council will hold a public meeting Thursday, February 20, 1992, at the training rooms of the Bureau of Land Management's Fairbanks Office Building in Fairbanks, Alaska. The public meeting will start at 8:30 a.m. and end at 5 p.m. Public comment will be taken from 2 p.m. to 3 p.m.; written comments may be submitted.

The council will hear BLM reports on: (1) The status of Federal mining claims on State- and Native-selected lands, (2) the budget for 1992 and future program direction, (3) the status of the downsizing of BLM's Washington, DC, office, (4) 638 contracting, and (5) BLM Alaska Fire Service programs.

For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474–2231.

Dated: January 13, 1992.

Helen M. Hankins,

Designated District Manager.

[FR Doc. 92–1361 Filed 1–17–92; 8:45 am]

BILLING CODE 4310–JA–M

Fish and Wildlife Service

Availability of the Draft Environmental Assessment and Land Protection Plan; Proposed Established of Grand Bay National Wildlife Refuge Jackson County, MS and Mobile County, AL

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of availability of the draft environmental assessment and land protection plan for the proposed establishment of Grand Bay National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a national wildlife refuge in the vicinity of Jackson County, Mississippi and Mobile County, Alabama. The purpose of the proposed refuge is to protect and manage approximately 12,940 acres of nationally significant Gulf Coast savanna and associated wetland habitats for the benefit of the endangered Mississippi sandhill crane, wintering waterfowl, and other wildlife. A Draft Environmental Assessment and Land Protection Plan has been developed by Service biologists in coordination with the Mississippi Department of Wildlife, Fishers and Parks, the Alabama Department of Conservation and Natural Resources, and The Nature Conservancy. The assessment considers the biological, environmental, and socioeconomic effects of establishing the refuge. The assessment also evaluates three alternative actions and their potential impacts on the environment. Written comments or recommendations concerning the proposal are welcomed, and should be sent to the address below.

DATES: Land acquisition planning for the project is currently underway. The draft assessment will be available to the public for review and comment on February 12, 1992. Written comments must be received no later than March 30, 1992 to be considered.

ADDRESSES: Comments and requests for copies of the assessment and further information should be addressed to Mr. Charles R. Danner, Chief, Project Development Branch, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 75 Spring Street SW., room 1240, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: The primary objectives of the proposed refuge are to (1) protect one of the most important remaining examples of undisturbed savanna habitat in the Gulf

Coastal Plain region, (2) provide habitat suitable for the establishment of a second breeding flock of endangered Mississippi sandhill cranes, and (3) benefit a diversity of native plants and animals, many of national importance, through the acquisition and protection of a unique ecosystem.

The proposed refuge area is located about 10 miles east of Pascagoula, Mississippi, and 20 miles southwest of Mobile, Alabama. The area is bordered on the north by the community of Franklin Creek, on the west generally by the Bayou Cumbist, and to the east by the Grand Bay Swamp.

On September 22, 1989, the Small Business Administration transferred 3,489 acres of land along the Mississippi-Alabama coast to the U.S. Fish and Wildlife Service for wildlife conservation purposes. This tract comprises the southern portion of the proposed refuge and consists of relatively undisturbed salt and brackish water marshes and forested wetlands. The remaining lands for the proposed refuge lie adjacent to the northern boundary of the tract and encompass a total of 9,451 acres. These lands are currently in private ownership and contain a diversity of vegetation types, including savannas, swamps, pine forests, and pond cypress. Wild orchids and several types of rare insectivorous plants grow throughout the area.

The 3,489-acre southern tract is currently being protected and managed by the Service as part of the Mississippi Sandhill Crane National Wildlife Refuge, located approximately 15 miles northwest. The Service proposes to establish Grand Bay as a new, separate national wildlife refuge by acquiring fee title or less-than-free interest to about 9,451 acres of additional lands north of the tract. These additional lands, if acquired, would greatly increase the proposed refuge's habitat diversity for the benefit of migratory birds and other wildlife.

The draft environmental assessment was developed by the Service in consultation with representatives from the Mississippi Department of Wildlife, Fisheries and Parks, the Alabama Department of Conservation and Natural Resources, and The Nature Conservancy. The biological, environmental, and socioeconomic effects of acquiring approximately 9,451 acres of savanna and other associated wetland habitats for the establishment of the refuge have been considered. Three alternatives and their potential impacts on the environment are presented and evaluated. The Service believes the preferred alternative, Protection and Management by the U.S. Fish and Wildlife Service, is a positive step in preventing the further loss of a nationally significant Gulf Coast savanna ecosystem for the benefit of the endangered Mississippi sandhill crane, migratory birds, waterfowl, and other native wildlife.

Dated: January 14, 1992.

Harold W. Benson,

Acting Regional Director.

[FR Doc. 92-1370 Filed 1-17-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 11, 1992. Puruant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by February 5, 1992.

Carol D. Shull,

Chief of Registration, National Register.

FLORIDA

Lee County

Dubar, Paul Lawrence, School 1857 High St., Fort Myers, 92000025

NEW YORK

Wayne County

Smith—Ely Mansion, 39 W. Genesee St., Clyde, 92000032

Westchester County

The Woodpile, Jct. of Croton Lake and Wood Rds., Mt. Kisco vicinity, 92000030

Wyoming County

Gates, Seth M., House, 15 Perry Ave., Warsaw, 92000031

SOUTH CAROLINA

Anderson County

Ramer, Ralph John, House, 402 Boulevard, Anderson, 92000023

Berkeley County

Pineville Historic District, Rd. S-8-204 S of jct. with SC 45, Pineville, 92000024

TEXAS

Dallas County

Interstate Forwarding Company Warehouse, 3200 Main St., Dallas, 92000021

Nacogdoches County

Blount, Eugene H., House (Nacogdoches MPS), 1801 North St., Nacogdoches, 92000014

Cotton Exchange Building, Old (Nacogdoches MPS), 305 E. Commerce St., Nacogdoches, 92000008

Davidson, Maria A., Apartments (Nacogdoches MPS), 112 E. Main St., Nacogdoches, 92000009

Hayter Office Building (Nacogdoches MPS), 112 E. Main St., Nacogdoches, 92000010

Hoya Land Office Building (Nacogdoches MPS), 120 E. Pilar St., Nacogdoches, 92000015

Jones, Roland, House (Nacogdoches MPS), 141 N. Church St., Nacogdoches, 92000007

Post Office Building, Old (Nacogdoches MPS), 206 E. Main St., Nacogdoches, 92000011

Roberts Building (Nacogdoches MPS), 216 E. Pilar St., Nacogdoches, 92000016

Suthern Pacific Railroads Depot (Nacogdoches MPS), 500 W. Main St., Nocogdoches, 92000013

Sterne—Hoya Historic Disticts (Nacogdoches MPS), 100-200 blocks of S. Lanana St., 500 block of E. Main St. (S side), 500 block of E. Pilar St., Nacogdoches, 92000017

Virginia Avenue Historic District (Nacogdoches MPS), 500 block of Bremond (W side), 500-1800 blocks of Virginia Ave., 521 Weaver, Nacogdoches, 92000018

Washington Square Historic District (Nacogdoches MPS), Roughly bounded by Houston, Logansport, N. Lanana, E., Hospital and N. Fredonia Sts., Nacogdoches, 92000019

Woodmen of the World Building (Nacogdoches MPS), 412 E. Main St., Nacogdoches, 92000012

VIRGINIA

King George County

Powhatan Rural Historic District, Jct. of VA 607 and VA 610, King George, 92000020

WISCONSIN

Langlade County

Antigo Depot, 522 Morse St., Antigo, 92000029

Marinette County

Dunlap Square Building, 1821 Hall St., Marinette, 92000026

Laureman Brothers Departalent Store, 1701-1721 Dunlap Sq., Marinette, 92000027

Sheboygan County

Baizer, John, Wagon Works Complex, 818-820, 820A Pennsylvania Ave., Sheboygan, 92000028

[FR Doc. 92-1428 Filed 1-17-92; 8:45am]

BILLING CODE 4310-70-M

Brandy Station Battlefield; Determination of Eligibility for the National Register of Historic Places

ACTION: Request for comments.

On February 28, 1991, the historic site of Brandy Station Battlefield and

Related Locations was determined eligible for listing in the National Register of Historic Places. The property was determined to meet National Register Criterion A (associated with important events), Criterion B (associated with important persons), and Criterion D (likely to yield important information). This finding was based upon the extensive primary and secondary source documentation contained in the Virginia State Historic Landmark form, a review of this form by National Park Service historians, and several onsite inspections of selected sites within the area. The State Landmark documentation was prepared by the Virginia Department of Historic Resources, the State agency designated to implement the national historic preservation program in Virginia.

This property was determined eligible for the National Register in the area of military history as the site of the June 9, 1863, Battle of Brandy Station, the largest cavalry battle of the Civil War and in North America. It was also determined eligible as a turning point in the Union Cavalry's effectiveness in the Eastern Theater of the Civil War. Brandy Station Battlefield and Related Locations was also determined eligible for its association with the military career of the noted Southern cavalry commander, James Ewell Brown (J.E.B.) Stuart. Finally, the property was determined eligible for the potential of an archeological study of human remains and historic artifacts on the battlefield to provide historical information not available elsewhere.

Since the determination of eligibility was made, property owners within the boundaries of the determined eligible area and individuals nationwide have written to us either endorsing or disagreeing with the eligibility of the property. In order to accommodate those who wish to provide new information on whether or not this property meets the National Register Criteria for Evaluation, the National Park Service is providing a 60 day comment period on this issue.

Anyone wishing to submit additional information bearing on either the historic significance or the location of the June 9, 1863 event for review should do so within 60 days of the date of this notice. A written statement on the determination of eligibility will be issued within 30 days of the close of the comment period.

The determination of eligibility remains in effect pending review of responses submitted during the comment period. To determine that the property is not eligible or to revise to the boundary, the National Park Service will need to receive authoritative information, which when evaluated in conjunction with documentation already on file, results in a finding that the property does not meet the National Register Criteria or that the boundary does not accurately delineate the battlefield in accordance with established National Register standards.

Comments should be addressed to the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013-7127.

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

National Register Criteria for Evaluation

National Register criteria define, for the nation as a whole, the scope and nature of historic and archeological properties that are considered for listing in the National Register of Historic Places.

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

A. That are associated with events that have made a significant contribution to the broad patterns of our history; or

B. That are associated with the lives of persons significant in our past; or

C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

D. That have yielded, or may be likely to yield, information important to prehistory or history.

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

A. A religious property deriving primary significance from architectural or artistic distinction or historical importance; or

B. A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

C. A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his productive life; or

D. A cemetery that derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

E. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

F. A property primarily commemorative in intent if design, age, traditional, or symbolic value has invested it with its own historical significance; or

G. A property achieving significance within the past 50 years if it is of exceptional importance.

[FR Doc. 92-1295 Filed 1-17-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31970]

Grand Trunk Western Railroad Company—Trackage Rights Exemption—the Belt Railway Company of Chicago

Grand Trunk Western Railroad Company (GTW) has agreed to grant overhead trackage rights to The Belt Railway Company of Chicago (BRC) over 5.8 miles of rail line in Chicago, IL, extending between milepost 11.8, at Hayford, and a connection with Consolidated Rail Corporation near 43rd Street and the north end of GTW's Railport complex. The exemption became effective on Janaury 10, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Woodrow M. Cunningham, The Belt Railway Company of Chicago, 6900

South Central Avenue, Chicago, IL 60638.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast RY., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 14, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1372 Filed 1-17-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31994]

Kyle Railways, Inc.—Continuance in Control Exemption—San Joaquin Valley Railroad Co.

Kyle Railways, Inc. (Kyle), a noncarrier in control of several affiliated railroad companies, has filed a notice of exemption to continue to control San Joaquin Valley Railroad Co. (SJVR), upon the latter's becoming a carrier.

SJVR, a noncarrier subsidiary of Kyle, has concurrently filed a notice of exemption in Finance Docket No. 31993, San Joaquin Valley Railroad Co.—Lease and Operation Exemption—Southern Pacific Transportation Company and Visalia Electric Railroad Company, to operate as a railroad common carrier in California. The proposed transaction was expected to be consummated on or after December 31, 1991.

Kyle indicates that: (1) The properties operated by the affiliated railroads will not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern District.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Fritz R. Kahn, Verner, Liipfert, Bernhard, McPherson and Hand, suite 700, The McPherson Building, 901 15th Street, NW., Washington, DC 20005-2301.

Decided: January 14, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1371 Filed 1-17-92; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (92-01)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Space Physics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Space Physics Subcommittee.

DATES: January 29, 1992, 8:30 a.m. to 5:30 p.m.; January 30, 1992, 8:30 a.m. to 5:30 p.m.; January 31, 1992, 8:30 a.m. to 5:30 p.m.

ADDRESSES: The Holiday Inn Capitol, 550 C Street, SW., Columbia North Room, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. George L. Withbroe, Code SS, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1544).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee (SSAAC) consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Space Physics Subcommittee provides advice to the Space Physics Division and to the SSAAC on operation of the space physics program and on formulation and implementation of the space physics research strategy. On Wednesday, January 29, 1992, the Subcommittee will hold an Executive Committee Session followed by plenary sessions on Thursday, January 30, 1992, and Friday, January 31, 1992. The Subcommittee will meet to discuss divisional overviews, intermediate missions, results of the Solar Physics Workshop, supporting research and technology (SR&T) program reviews, solar radiative output, and preparation for the SSAAC meeting. The Acting Chairman of the Subcommittee is Dr. Glenn M. Mason. The Subcommittee is composed of 25 members. The meeting will be open to the public up to the capacity of the room (approximately 50 persons including Subcommittee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

Wednesday, January 29

8:30 a.m.—Opening Remarks.
8:45 a.m.—Division Strategic Planning Issues.
11 a.m.—Long-Range Planning Activities: SPS Involvements.
1 p.m.—Long-Range Planning Activities: SSAAC Interfaces.
5:30 p.m.—Adjourn.

Thursday, January 30

8:30 a.m.—Opening Remarks.
8:45 a.m.—Division Overview: Budget and Future Opportunities.
10:30 a.m.—Intermediate Missions: Science Programs and Mission Status.
2:30 p.m.—Results of the Solar Physics Workshop.
3:45 p.m.—Active Missions Presentation.
4:45 p.m.—Discussion and Writing Assignments.
5:30 p.m.—Adjourn.

Friday, January 31

8:30 a.m.—SR&T Program Reviews.
11:15 a.m.—Solar Radiative Output: A Terrestrial Perspective.
1 p.m.—Discussion and Writing Groups.
3:45 p.m.—Preparation for SSAAC Meeting.
4:45 p.m.—Critique or Write-ups.
5:30 p.m.—Adjourn.

Dated: January 14, 1992.

John W. Geff,

Director, Management Operations Division, National Aeronautics and Space Administration.

[FR Doc. 92-1380 Filed 1-17-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice (92-02)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the

NASA Advisory Council, Space Science and Applications Advisory Committee, Astrophysics Subcommittee.

DATES: January 30, 1992, 9 a.m. to 4:15 p.m.

ADDRESSES: The National Aeronautics and Space Administration, 600 Independence Avenue, SW., room 226A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Lia LaPiana, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1433).

SUPPLEMENTARY INFORMATION: The Space Science and Application Advisory Committee (SSAAC) consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Astrophysics Subcommittee provides advice to the Astrophysics Division and to the SSAAC on operation of the Astrophysics Program and on the formulation and implementation of the Astrophysics strategy. The Subcommittee will meet to discuss the developments since the November 1991 Astrophysics meeting, the Hubble Space Telescope (HST) Outreach Effort, the Astrophysics Lunar Program Update, New Education and Outreach Efforts, International Flight-of-Opportunity Missions and new meeting planning. The Subcommittee is chaired by Dr. Irwin Shapiro and is composed of 28 members. The meeting will be open to the public up to the capacity of the room (approximately 50 people including Subcommittee members). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

Thursday, January 30

9 a.m.—Introduction, Developments Since November 1991 Meeting.
10:30 a.m.—HST Outreach Effort.
11:30 a.m.—Astrophysics Lunar Program Update.
Noon—Space Exploration Initiative.
1:30 p.m.—Overview of Ultraviolet/Visible and Gravity Physics Strategic Plans.
1:45 p.m.—X-ray Timing Explorer Productivity Effort.
2 p.m.—New Education and Outreach Efforts.
2:15 p.m.—International Flight-of-Opportunity Missions.
3:15 p.m.—Mission Operations Update.
3:30 p.m.—Issues and Concerns for the Upcoming SSAAC Meeting.
3:45 p.m.—Astrophysics Subcommittee Membership.
4 p.m.—Future Meeting Planning.
4:15 p.m.—Adjourn.

Dated: January 14, 1992.

John W. Gaff,

Director, Management Operations Division, National Aeronautics and Space Administration.

[FR Doc. 92-1381 Filed 1-17-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Advisory Committee; Renewal

The Humanities Panel Advisory Committee is being renewed for an additional two years.

The Chairman, National Endowment for the Humanities, has determined that the renewal of this committee is necessary and in the public interest in connection with the performance of duties imposed upon the National Endowment for the Humanities by law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Dated: January 14, 1992.

David C. Fisher, Jr.,

Advisory Committee Management Officer.

[FR Doc. 92-1405 Filed 1-17-92; 8:45 am]

BILLING CODE 7536-01-M

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/786-0282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* February 3, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications to the Collaborative Projects Program for projects in New World Archaeology, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

2. *Date:* February 3, 1992.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after September 1, 1992.

3. *Date:* February 4, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Preservation and Access Program, submitted to the Division of Preservation and Access Programs, for projects beginning after July 1, 1992.

4. *Date:* February 5, 1992.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after September 1, 1992.

5. *Date:* February 6, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications to the Collaborative Projects and Humanities, Science, and Technology Programs for projects in Anthropology and Sociology, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

6. *Date:* February 6-7, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted to the

Humanities Project in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects beginning after July 1, 1992.

7. *Date:* February 7, 1992.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Reference Materials Tools and Guides and Interpretive Research applications in Music, Theater and Dance, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

8. *Date:* February 7, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications to the Collaborative Projects Program for projects in Musicology, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

9. *Date:* February 7, 1992.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications in Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after September 1, 1992.

10. *Date:* February 10, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted to the Humanities Projects in Museums an Historical Organizations program received during the December 6, 1991 deadline, submitted to the Division of Public Programs, for projects beginning after July 1, 1992.

11. *Date:* February 10, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications to the Collaborative Projects Program for projects in History, submitted to the Division of Research Programs, for projects beginning after after July 1, 1992.

12. *Date:* February 11, 1992.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications in Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after September 1, 1992.

13. *Date:* February 11, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications in Preservation and Access Program, submitted to the Division of Preservation and Access Programs, for projects beginning after July 1, 1992.

14. *Date:* February 17, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications to the Collaborative Projects Program for projects in Interdisciplinary Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1992.

15. *Date:* February 21, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Preservation and Access, submitted to the Division of Preservation and Access Programs, for projects beginning after July 1, 1992.

David C. Fisher,
Advisory Committee Management Officer.

[FR Doc. 92-1404 Filed 1-17-92; 8:45 am]
BILLING CODE 7536-01-M

National Council on the Humanities; Meeting

January 13, 1992.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on February 13-14, 1992.

The purpose of the meeting is to advise the Chairman of the National Council on the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue NW., Washington, DC. A portion of the morning and afternoon sessions on February 13-14, 1992, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated September 9, 1991.

The agenda for the sessions on February 13, 1992, will be as follows:

Committee Meetings

8:30-9 a.m.—Coffee for Council Members—Room 526

(Open to the Public)

9-10 a.m.—Committee Meetings—Policy Discussion
Education Programs—Room M-14
Fellowships Programs—Room 316-2
Public Programs—Room 415
Research Programs/Preservation and Access—Room 315
State Programs and Office of Outreach—Room M-07

10 a.m. until adjourned—(Closed to the Public for the reasons stated above)—Consideration of specific applications

(Closed to the Public)

3 p.m. until adjourned—Jefferson Lecture Committee to review Jefferson Lecture nominees—Room 430

The morning session on February 14, 1992, will convene at 9 a.m., in the 1st Floor Council Room, M-09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Council Members from 8:30-9 a.m.)

Minutes of the Previous Meeting; Reports

A. Introductory Remarks.
B. Conflict of Interest Resolution.
C. Introduction of New Staff.
D. Contracts Awarded in the Prev Quarter.
E. Status of Fiscal Year 1992 Funds.
F. Legislative Report.
G. Committee Reports on Policy and General Matters Overview.
1. Education Programs.
2. Fellowships Programs.
3. Research Programs.
4. Public Programs.
5. State Programs and Office of Outreach.
6. Preservation and Access Programs.
7. Jefferson Lecture.

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. David C. Fisher, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786-0322, TDD (202) 786-0282. Advance notice of any special needs or accommodations is appreciated.

David C. Fisher,
Advisory Committee Management Officer.

[FR Doc. 92-1406 Filed 1-17-92; 8:45 am]
BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-213]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of permanent exemptions from the requirements of Appendix K to 10 CFR Part 50 to Connecticut Yankee Atomic Power Company (CYAPCO or the licensee) for the Haddam Neck Plant, located at the licensee's site in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant exemptions from sections I.D.3, I.D.4, and I.D.5 of appendix K of 10 CFR part 50 for the Haddam Neck Plant. The proposed action is in accordance with the licensee's request for exemptions dated September 26, 1990.

The Need for the Proposed Action

The proposed exemptions are needed to support the conversion of the Haddam Neck Plant to Zircaloy-clad fuel. The conversion required that the licensee reperform all their loss-of-coolant-accident (LOCA) analyses including the large break to show compliance with 10 CFR 50.46 and appendix K. These exemptions are necessary as the licensee has developed new large break LOCA models which are not in compliance with appendix K, sections I.D.3, I.D.4, and I.D.5 because of the design differences between the Haddam Neck Plant and the model pressurized water reactor (PWR) assumed for 10 CFR part 50, appendix K. The new models make provisions to meet the intent of appendix K and literal compliance with the sections I.D.3, I.D.4, and I.D.5 are not required as these sections are not applicable to the Haddam Neck Plant.

Environmental Impacts of the Proposed Action

The staff has reviewed and approved all the LOCA models used for the compliance with 10 CFR 50.46 and appendix K. The staff has determined that Sections I.D.3, I.D.4, and I.D.5 are not applicable to the Haddam Neck Plant and that the provisions made to the large break LOCA model to reflect the actual plant configuration meet the intent of appendix K. As the proposed exemptions have provided analyses which have been determined to be in compliance with 10 CFR 50.46 and appendix K, the consequences of LOCAs has not been increased and the radiological releases will not be greater than previously determined, nor does the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential nonradiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to deny the exemption requests. Such action would not enhance the protection of the environment and would result in unjustified cost to the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Haddam Neck.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordinlgy, the Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

For further details with respect to this proposed action, see the licensee's letter dated September 26, 1990. This letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Rockville, Maryland this 13th day of January 1992.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-1391 Filed 1-17-92; 8:45 am]

BILLING CODE 7590-01-M

All Nuclear Power Reactors; Receipt and Denial of Petition for Director's Decision

Notice is hereby given that by Petition dated November 25, 1991, Richard P. Grill requested the Executive Director for Operations to institute a proceeding, pursuant to 10 CFR 2.202, "to suspend the operating license of any nuclear power plant licensed by the Commission whose license is not supported by: (a) A thorough analysis of the effects of lightning induced and other electrical transients on nuclear safety related electrical or electronic systems; (b) a determination of potential accident scenarios and their consequences resulting from electrical and electronic system failures; (c) the consequences to both the plant and to public health and safety from such accidents; (d) the specific design features incorporated to prevent system failures from electrical transients; (e) the technical specifications and maintenance features to assure safe operability of these design features and the systems they protect and (f) a thorough licensing review of the above by competent NRC staff."

The Petitioner asserts as grounds for this request that the safety related control and monitoring systems in nuclear power plants are complex and sophisticated with designs based on transistors and solid state integrated logic systems which can be disrupted by "small fluctuations of current"; that the NRC has not critically evaluated the effect of electrical transients induced by lightning, switching surges or other sources on the electrical and electronic monitoring and control designs of any "single U.S. nuclear power plant", and recent lightning related and electrical surge incidents have compromised both NRC and DOE facilities. The Office of Nuclear Reactor Regulation (NRR) has evaluated the Petition and concluded that it does not provide any basis for

immediate suspension of the operating licenses of any NRC-licensed nuclear power plants. In view of this lack of a sufficient basis for immediate action and since the same issues are being treated in a rulemaking requested by the Petitioner on August 16, 1991, which has been docketed by the Commission (notice of that action was published on December 23, 1991 in the **Federal Register** (56 FR 66377)), the Petition has been denied by letter to the Petitioner, dated January 10, 1992.

Dated at Rockville, Maryland this 10th day of January 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-1392 Filed 1-17-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-390 and 50-391]

Tennessee Valley Authority; Availability of Safety Evaluation Report Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2

The U.S. Nuclear Regulatory Commission has published Safety Evaluation Report, Supplement 8 (NUREG-0847, Supp. 8) related to the operation of Watts Bar Nuclear Plant, Units 1 and 2, Docket Nos. 50-390 and 50-391.

Copies of the report have been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and in the Local Public Document Room, Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402, for review by interested persons. Copies of the report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. GPO deposit account holders may charge orders by calling 202-275-2060. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland this 6th day of January, 1992.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-1323 Filed 1-17-92; 8:45 am]

BILLING CODE 7590-01-M

Virginia Electric and Power Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-4, issued to Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Unit No. 1 (NA-1), located in Louisa County, Virginia.

The proposed change would revise the NA-1 Technical Specifications (TS) by changing the minimum measured reactor coolant system (RCS) flow from a value of greater than or equal to 284,000 gallons per minute (gpm), to a reduced value of 275,300 gpm. NA-1 is currently involved in a mid-cycle steam generator inspection outage. An extensive eddy current inspection of the NA-1 steam generator tubes is being performed using very conservative analysis guidelines and plugging criteria. As such, a substantially increased number of tubes are expected to be plugged. As required by TS 3.2.5 and 4.2.5.2, NA-1 performs RCS flow rate measurements once per fuel cycle. NA-1 safety analyses are based, in part, on verifying, via the TS surveillance, that the RCS total flow rate is greater than or equal to 284,000 gpm. The additional steam generator tube plugging anticipated during the current mid-cycle inspection outage increases the likelihood of violating this TS requirement. Therefore, safety analyses and evaluations have been performed which support an approximate 3% reduction in the RCS total flow rate limit to 275,300 gpm.

The propsed TS change implements a reduced total flow rate requirement which is inteded to bound future measured flow values and any required steam generator tube plugging until steam generator replacement. The changes will allow the unit to continue to operate with the expected increase in RCS loop resistance caused by increased steam generator tube plugging levels and ensure that the required safety margins for core cooling and accident analysis presented in the NA-1 Updated Final Safety Analysis Report (UFSAR) are maintained.

In summary, the review has demonstrated that a reduction in minimum measured flowrate for NA-1 to 275,300 gpm is accomodated by current analysis margins or by the assessment of a penalty against available retained departure from nucleate boiling ratio (DNBR) margin for all accidents. Explicit reanalyses were performed for the following events to confirm the adequacy of current analysis margins: (1) Loss of normal feedwater, (2) loss of external electrical load, (3) uncontrolled control rod bank withdrawal at power, (4) complete loss of reactor coolant flow, and (5) locked reactor coolant pump rotor.

The analyses showed that all of the acceptance criteria previously established in the UFSAR continue to be met for each reanalyzed event. This conclusion is reinforced by continued verification that core physics characteristics for operation with a reduced RCS flow rate remain with the envelope established by the current reload safety evaluation. The current Engineered Safety Features and Reactor Protection System setpoints set forth in the NA-1 TS have been demonstrated to provide adequate plant protection at the reduced flow condition. Also, the current core thermal limits have been verified to remain bounding for operation with the reduced minimum RCS flow rate.

A review of the nuclear steam supply system (NSSS) design transients, NSS fluid and control systems, reactor control and protection systems, NSSS primary components (including thermal and structural effects), and steam generator thermal/hydraulic performance has been performed. It was concluded that the NSSS systems and components will continue to meet applicable acceptance criteria for operation with the reduced design flow rates and the associated steam generator tube plugging levels.

An engineering evaluation has also been performed to assess the impact of the reduced flow and tube plugging on the existing containment integrity analyses (including the impact on net positive suction head of the engineered safeguards pumps) and containment subcompartment integrity analyses. The existing analyses were shown to reamain bounding.

In addition, a balance of plant systems review shows continued acceptable performance under the reduced RCS flow/extended tube plugging condition.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means

that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [The proposed change] does not involve a significant increase in the probability or consequences of an accident previously evaluated. The impact of the reduced minimum measured RCS flow rate on operating characteristics, and accident analyses which support [NA–1] operation, have been fully assessed and documented in the attached safety evaluation. The proposed reduction to the [TS] minimum measured RCS flow rate does not impact either equipment or operating conditions that are considered in determining the probability of occurrence for any of the UFSAR Chapter 15 accident analyses. The proposed reduction of minimum measured RCS flow rate has the potential to increase accident analysis consequences. However, the results of the reanalyses show that the design limits are met. Therefore, the consequences of an accident previously evaluated remain unchanged.

2. [The proposed change] does not create the possibility of a new or different kind of accident from an accident previously evaluated. The proposed change to the [NA–1 TS] does not involve modifications to any of the existing equipment. The impact of the proposed reduced minimum measured RCS flow rate on [NA–1] operating characteristics, and accident analyses which support [NA–1] operation, have been fully assessed and documented in the attached safety evaluation. The proposed reduction to the [TS] minimum measured RCS flow rate does not create any new or different accident initiators, so no unique accident possibility is created. Therefore, the proposed [TS] change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. [The proposed change] does not involve a significant reduction in a margin of safety. The proposed amendment has been analyzed and the [TS] continue to ensure that adequate [RCS] total flow is maintained. The impact of proposed reduced minimum measured RCS flow rate on [NA–1] operating characteristics, and an accident analyses which support [NA–1] operation, have been fully assessed and documented in the attached safety evaluation. The analyses and equipment evaluations show that the applicable design limits are met. Therefore, there is no significant reduction in the marign of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 18, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commisison by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 8, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland, this 13th day of January 1992.

For the Nuclear Regulatory Commission.

Leon B. Engle,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–1324 Filed 1–17–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Circular A–25, "User Charges"

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Draft revision of Circular No. A–25, "User Charges, Request For Public Comment."

SUMMARY: Circular No. A–25 establishes guidelines for Federal agencies to assess fees for Government services and for the sale or use of Government property or resources. The authority for charging such fees is provided by Title V of the Independent Office Appropriations Act of 1952 (IOAA). Circular No. A–25 was last issued in 1959. This draft revision is consistent with the authority provided in Title V of the IOAA, as interpreted by the courts, and is not intended to expand this authority. Rather the draft seeks only to clarify Federal policy in light of thirty years of experience and to update the procedures by which agencies are to institute charges.

Notice of the proposed draft revision was last published for comment in the **Federal Register** on July 1, 1987 (52 FR 24890). The current request for public comment is pursuant to the OMB reform of Executive Branch directives announced in September.

With the printing of this Circular in final form, the Office of Management and Budget (OMB) will expect agencies to develop regulations and/or legislation, as appropriate, to implement its guidance in setting new user fees or revising existing fees. The Circular describes in section 7 when legislation is necessary to institute fees. In all other cases, agencies should implement fees through the issuance of regulations. Agencies are also directed to review charges annually and update them as necessary.

The draft revised Circular requires OMB approval of exceptions to its guidelines. For agencies subject to OMB regulatory review, OMB approval of exceptions to proposed fees will be granted through that process. In all other cases, requests for exceptions should be made through the OMB examiner responsible for the agency's budget estimates. OMB's involvement in this process is designed to ensure a better and more consistent management of user-fee policy across Federal agencies.

DATES: Comments from the public should be submitted by February 15, 1992.

ADDRESSES: Comments from the public should be addressed to: Mike ter Maat, Budget Analysis Branch, room 6025, New Executive Office Building, Office of Management and Budget, Washington, DC 20503.

COMMENTS RECEIVED: In response to the request for public comment in 1987, OMB received sixteen comments from Federal agencies, interest groups, nonprofit organizations, and a congressional committee. A careful review of comments received suggests some misunderstanding about the scope of the Circular. Comments generally discussed specific fees contained in other laws, as well as the disposition of collections. Circular No. A–25 itself cannot change user fees that are statutorily mandated; nor can the Circular affect the disposition of collections when fees are implemented pursuant to the generic authority of the IOAA, as that Act requires that they be deposited in the general fund of the

Treasury. Thus these concerns about fees set by statute or the disposition of receipts can only be addressed through legislation. Comments received concerning specific agency fees are best submitted during the public comment period associated with the implementing regulations proposed by the agency involved.

OMB received a comment that questioned whether the revised Circular would require agencies to establish new cost accounting systems. The 1959 Circular stated that agencies did not need to develop new accounting procedures for determining the cost of providing a service. The draft omitted this language, but it was not OMB's intent that agencies should create new cost accounting systems. To clarify its position, OMB has added language to the revision stating that no new cost accounting procedures are required solely for fulfilling the requirements of the Circular.

Finally, it should be noted that the revision contains some examples of user charges, such as the fee for receiving a patent, that are not controlled currently by the Circular because they are set by specific statutes. In another example, a fee for processing new drug applications is used, even though it is currently not being collected due to a temporary congressional prohibition. These examples, nevertheless, appear in the revision because they offer well-known illustrations of the type of activities that are subject to fees under the Circular and thus help to clarify the intent and scope of the Circular.

Barrett B. Anderson,

Assistant Director for Budget, Office of Management and Budget

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: User Charges

1. **Purpose.** The Circular establishes Federal policy regarding fees assessed for Government services and for sale or use of Government property or resources. It provides information on the scope and types of activities subject to user charges and on the bases upon which user charges are to be set. Finally, it provides guidance for agency implementation of charges and the disposition of receipts.

2. **Rescission.** This rescinds Office of Management and Budget Circular No. A–25, dated September 23, 1959, and Transmittal Memoranda 1 and 2.

3. **Authority.** Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701).

4. **Coverage.** The provisions of this Circular cover all Federal activities that convey special benefits to recipients beyond those accruing to the general public, except where the imposition of user charges is prohibited by law or regulated by executive order, or where specific statutes provide authority for the assessment and imposition of user charges. In such cases, the statute or executive order shall take precedence over this Circular (e.g., sale or disposal under Federal surplus property statutes; or fringe benefits for military personnel and civilian employees). In any case where an Office of Management and Budget circular provides guidance concerning a specific user charge area, the guidance of that circular shall be deemed to meet the requirements of this Circular. Examples of such guidance include the following: OMB Circular No. A–45, concerning charges for rental quarters; OMB Circular No. A–130, concerning costs of disseminating information products and services; and OMB Circular No. A–97, concerning providing services to State and local governments. This Circular applies to all agencies, as that term is used in 31 U.S.C. 9701, but does not apply to activities of the legislative and judicial branches or to mixed-ownership Government corporations, as defined in 31 U.S.C. 9701.

5. **Objectives.** It is the objective of the United States Government to:

a. Ensure that each service, sale, or use of Government property or resources provided by an agency to specific recipients be self-sustaining;

b. Promote efficient allocation of the Nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as costs to the Government of providing the special benefits; and

c. Allow the private sector to compete with the Government without disadvantage in supplying comparable services, resources, or property where appropriate.

6. **General policy.** A user charge, as described below, will be assessed against each identifiable recipient for benefits derived from Federal activities beyond those received by the general public. When the imposition of user charges is prohibited or restricted by existing law, agencies will review activities periodically and recommend legislative changes when appropriate. section 7 gives guidance on drafting legislation to implement user charges.

a. Special benefits

(1) Determining when special benefits exist. When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed to recover the full cost to the Federal Government for providing the special benefit. For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service:

(a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or

(b) Provides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., inspection and grading of farm products, or insuring deposits in commercial banks); or

(c) Is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Custom's inspection after regular duty hours).

(2) Determining the amount of user charges to assess.

(a) Except as provided in section 6c, user charges will be sufficient to recover the full cost (as defined in section 6d) of providing the service, resource, or property.

(b) User charges will be based on market prices (as defined in section 6d) when the Government, not acting in its capacity as sovereign, is leasing or selling property or resources, or is providing a service (e.g., leasing space in federally owned buildings). Under these business-type conditions, user charges need not be limited to the recovery of full cost and may yield net revenues.

(c) User charges will normally be collected in advance of, or simultaneously with, the rendering of services.

(d) Whenever possible, charges should be set as rates rather than fixed dollar amounts in order to automatically reflect inflation in costs to the Government or changes in market prices of the property, resource, or service provided (as defined in section 6d).

(3) In cases where the Government is supplying services, property, or resources that provide a special benefit to an identifiable recipient and that also provide a benefit to the general public (e.g., processing a new drug application or inspecting farm products), charges should generally be set in accordance with paragraph (2) of section 6a. Therefore, when the public obtains benefits as a necessary consequence of an agency's provision of special benefits to an identifiable recipient (i.e., the

public benefits are not independent of, but merely incidental to, the special benefits), an agency need not allocate any costs to the public and should seek to recover the full cost of providing the special benefit from the identifiable recipient.

(4) No charge should be made for a service when the identification of the specific beneficiary is obscure, and the service can be considered primarily as benefiting broadly the general public.

b. Charges to the direct recipient. Charges will be made to the direct recipient of the special benefit even though all or part of the special benefits may then be passed to others.

c. Exceptions

(1) Agency heads or their designee may make exceptions to the general policy in the following cases:

(a) The provision of a free service is an appropriate courtesy to a foreign government or international organization; or comparable fees are set on a reciprocal basis with a foreign country; or

(b) The recipient of a special benefit is entitled by law to receive such benefits free or at a subsidized rate. However, if the Administration does not agree with the exception, legislation to change the law should be proposed.

(2) Agency heads or their designee may recommend to the Office of Management and Budget that exceptions to the general policy be made when:

(a) The cost of collecting the fees would represent an unduly large part of the fee for the activity; or

(b) Any other condition exists that, in the opinion of the agency head or his designee, justifies an exception.

(3) All exceptions shall be for a period of no more than four years unless renewed by the agency heads or their designee for exceptions granted under section 6c(1) or the Office of Management and Budget for exceptions granted under section 6c(2) after a review to determine whether conditions warrant their continuation.

(4) Requests for exceptions and extensions under paragraphs (2) and (3) of section 6c shall be submitted to the Director of the Office of Management and Budget.

d. Determining full cost and market price

(1) "Full cost" includes all direct and indirect costs of providing a property, resource, or service. These costs include, but are not limited to, an appropriate share of:

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement (including all costs not covered by employee contributions).

(b) Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment. If imputed rental costs are applied, they should include:

(i) Depreciation of structures and equipment, based on official Internal Revenue Service depreciation guidelines unless better estimates are available; and

(ii) An annual rate of return (equal to the average long-term Treasury bond rate) on land and other capital resources used.

(c) The agency's management and supervisory costs.

(d) The costs of enforcement, collection, research, establishment of standards, and regulation, including any required environmental impact statements.

(e) Full cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.

(2) "Market price" means the price for a unit of property, resource, or service that is based on competition in open markets, and creates neither a shortage nor a surplus of the property, resource, or service.

(a) When a substantial competitive demand exists for a property, resource, or service, its market price will be determined using commercial practices, for example:

(i) By competitive bidding; or

(ii) By reference to prevailing prices in competitive markets for property, resources, or services that are the same or similar to those provided by the Government (e.g., campsites or grazing lands in the general vicinity of private ones) with adjustments as appropriate that reflect demand, level of service, and quality of the good or service.

(b) In the absence of substantial competitive demand, market price will be determined by taking into account the prevailing prices for property, resources, or services that are the same or substantially similar to those provided by the Government, and then adjusting the supply made available and/or price of the property, resource, or service so that there will be neither a shortage nor a surplus (e.g., campsites in remote areas).

7. **Implementation**

a. The general policy is that, unless there are statutory prohibitions or limitations, user charges will be instituted through the promulgation of regulations.

b. When there are statutory prohibitions or limitations on charges, legislation to permit charges to be established should be proposed. In general, legislation should seek to remove restraints on user charges and permit their establishment under the guidelines provided in this Circular. When passage of this general authority seems unlikely, more restrictive authority should be sought. The level of charges proposed should be based on the guidelines in section 6. When necessary, legislation should:

(1) Define in general terms the services for which charges will be assessed and the pricing mechanism that will be used;

(2) Specify that receipts will be collected in advance of or simultaneously with the provision of service; and

(3) Specify where receipts will be credited (see section 9). Legislative proposals should not normally specify precise charges. The user charge schedule should be set by regulation. This will allow administrative updating of fees to reflect changing costs and market values. Where it is not considered feasible to collect charges at a level specified in section 6, charges should be set as close to that level as is practical.

c. Excise taxes are another means of charging specific beneficiaries for the Government services they receive. New user charges should not be proposed in cases where an excise tax currently finances the Government services that benefit specific individuals. Agencies may consider proposing a new excise tax when it would be significantly cheaper to administer than other types of fees, and the burden of the excise tax would rest almost entirely on the user population (e.g., gasoline tax to finance highway construction). Excise taxes cannot be imposed through administrative action but rather require legislation. Legislation should meet the same criteria as in section 7b, although it may be appropriate to state explicitly the level of the tax. Agency review of these taxes must be performed periodically and new legislation should be proposed, as appropriate, to update the tax based on changes in cost.

d. When developing options to institute user charges administratively, agencies should review all sources of statutory authority in addition to the Independent Offices Appropriations Act that may authorize implementation of such charges.

e. In proposing new charges or modifications to existing ones, managers of other programs that provide special benefits to the same or similar user populations should be consulted. Joint

legislative proposals should be made, and joint collection efforts designed to ease the burden on the users should be used, whenever possible.

f. Every effort should be made to keep the costs of collection to a minimum. The principles embodied in Circular No. A–76 (Performance of Commercial Activities) should be considered in designing the collection effort.

g. Legislative proposals must be submitted to the Office of Management and Budget in accordance with the requirements of Circular No. A–19. To ensure the proper placement of user fee initiatives in the budget account structure, agencies are encouraged to discuss proposals with OMB at an early stage of development.

8. **Agency responsibility.** Agencies are responsible for the initiation and adoption of user charge schedules consistent with the policies in this Circular. Each agency will:

a. Identify the services and activities covered by this Circular;

b. Determine the extent of the special benefits provided;

c. Apply the principles specified in section 6 in determining full cost or market price, as appropriate;

d. Apply the guidance in section 7 either to institute charges through the promulgation of regulations or submit legislation as appropriate;

e. Review charges annually and adjust them to reflect changing costs or market values;

f. Ensure that the requirements of OMB Circular No. A–123 (Internal Control Systems) and appropriate audit standards are applied to collection;

g. Maintain readily accessible records of:

(1) The services or activities covered by this Circular;

(2) The extent of special benefits provided;

(3) The exceptions to the general policy of this Circular;

(4) The information used to establish charges and the specific method(s) used to determine them; and

(5) The receipts from each user charge imposed; and

h. Maintain adequate records of the information used to establish charges and provide them upon request to OMB for the evaluation of the schedules.

9. **Disposition of receipts**

a. If user fees are implemented solely under the authority of this Circular, collections will be credited to the general fund of the Treasury as miscellaneous receipts, as required by 31 U.S.C. 3302.

b. Legislative proposals to permit the collections to be retained by the agency may be appropriate in certain circumstances. Proposals should meet the guidelines in section 7b.

(1) Proposals that allow agency retention of receipts may be appropriate when a fee is levied in order to finance a service that is intended to be provided on a substantially self-sustaining basis and thus is dependent upon the collection of adequate receipts.

(a) Generally, the authority to use fees credited to an agency's appropriations should be subject to limits set in annual appropriations language. However, it may be appropriate to request exemption from annual appropriations control, if provision of the service is dependent on demand that is irregular or unpredictable (e.g., a fee to reimburse an agency for the cost of overtime pay of inspectors for services performed after regular duty hours).

(b) As a normal rule, legislative proposals that permit fees to be credited to accounts should also be consistent with the full-cost recovery guidelines contained in this Circular. Any fees in excess of full-cost recovery should be credited to the general fund.

10. **New activities.** Whenever agencies prepare legislative proposals for new or expanded Federal activities that would provide special benefits, the policies and criteria set forth in this Circular will apply.

11. **Inquiries.** For information concerning this Circular, consult the Office of Management and Budget examiner responsible for the agency's budget estimates.

By direction of the President:

Richard G. Darman,

Director, Office of Management and Budget

[FRDoc. 92–1394 Filed 1–17–92; 8:45 am]

BILLING CODE 3110–01–F

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

Mid-Year Meeting of Commissioners

AGENCY: President's Commission on White House Fellowships.

ACTION: Notice of mid-year meeting of the President's Commission on White House Fellowships, closed to the public.

SUMMARY: Notice is hereby given that the mid-year meeting of the President's Commission on White House Fellowships will be held at the Hay Adams Hotel, Washington, DC, on February 3, 1992, beginning at 9:30 a.m.

The mid-year meeting is convened for one day to review the overall operation of the program, including budgetary, recruitment and publicity issues, and to provide the Commissioners an opportunity to discuss new initiatives that will further improve the program.

It has been determined by the Director of the Office of Personnel Management that because of the confidential nature of the meeting, where criteria for the selection of future candidates is discussed, as well as the progress of members of the current class of White House Fellows, which, if revealed to the public would constitute a clear invasion of the individual's professional privacy, the content of this meeting falls within the provisions of seciton 552b(c) of title 5 of the United States Code. Accordingly, this meeting is closed to the public.

DATES: The date of the mid-year meeting of the President's Commission on White House Fellowships, which is closed to the public, is February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Kelliher, Administrative Officer, President's Commission on White House Fellowships, 712 Jackson Place, NW., Washington, DC 20503, (202) 395–4522.

Dated: December 18, 1991.

Marcy L. Head,

Director, President's Commission on White House Fellowships.

[FR Doc. 92–1346 Filed 1–17–92; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–18485; 812–7907]

Mariner Mutual Funds Trust, et al.; Notice of Application

January 14, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Mariner Mutual Funds Trust and Mariner Funds Trust.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) of the Act.

SUMMARY OF APPLICATION: Applicants, on their own behalf and on behalf of their future-formed portfolios, seek a conditional order under section 6(c) of the Investment Company Act of 1940 exempting applicants from the provisions of section 12(d)(3) of the Act to the extent necessary to permit applicants' underlying portfolios to invest in equity securities issued by foreign companies that, in each of their

most recent fiscal years, derived more than 15% of their gross revenues from their activities as brokers, dealers, underwriters or investment advisers, provided such investments meet the conditions in the proposed amendments to rule 12d3–1.

FILING DATE: The Application was filed on October 22, 1991 and amended on December 31, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 10, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 700 West Hillsboro Boulevard, Deerfield Beach, Florida 33441.

FOR FURTHER INFORMATION CONTACT: Nicholas Thomas, Staff Attorney, at (202) 504–2283 or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Applicants are Massachusetts business trusts and are diversified open-end management investment companies registered under the Act. Mariner Funds Trust presently consists of five separate investment portfolios and Mariner Mutual Funds Trust presently consists of six portfolios.

2. Applicants' investment adviser is Marivest Inc., a registered investment adviser owned by two wholly-owned subsidiaries of The Hongkong and Shanghai Banking Corporation Limited. Applicants' sub-adviser is James Capel Fund Managers, also a registered investment adviser and also owned by a wholly owned subsidiary of The Hongkong and Shanghai Banking Corporation Limited.

3. Applicants seeks relief from section 12(d)(3) of the Act to permit investments in the equity securities of foreign issuers that in their most recent fiscal year derived more than 15% of their gross revenues from activities as brokers, dealers, underwriters or investment advisers ("Foreign Securities Companies").

Applicants' Legal Analysis

1. Section 12(d)(3) of the Act generally prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter or investment adviser. Rule 12d3–1 provides an exemption from section 12(d)(3) of the Act for investment companies acquiring securities of an issuer that, in its most recent fiscal year, derived more than 15% of its gross revenues from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule.

2. Subparagraph (b)(4) of rule 12d3–1 provides that "any equity security of the issuer * * * (must be) a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." "Margin Security" status is generally available only to securities traded in the United States, and to a limited number of "foreign margin stocks" identified by the Board of Governors of the Federal Reserve System. See 12 CFR 220.2(i) and (q)(6). Because applicants propose to invest in the equity securities of Foreign Securities Companies that are neither "margin stocks" nor "foreign margin stocks" within the meaning of Regulation T, applicants are unable to take advantage of the exemption provided by rule 12d3–1.

3. Under the proposed amendments to rule 12d3–1, an investment company would be permitted to acquire the equity securities of a Foreign Securities Company that are not "margin securities" if the company meets certain size, quality and operating history criteria. The criteria, as set forth in the proposed amendments "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989).

Applicants' Condition

If the requested exemptive relief is granted, applicants will comply with the proposed amendments to rule 12d3–1 as they are currently proposed, or as they may be re-proposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–1397 Filed 1–17–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18486; 811–3408]

Pilgrim Money Market Fund; Notice of Deregistration

January 14, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Pilgrim Money Market Fund.

RELEVANT ACT SECTIONS: Order requested under section 8(f) of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 5, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 11, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, 183 East Main Street, Rochester, New York 14604.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, at (202) 272–7324, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representataions

1. Applicant is an open-end, diversified management investment

company. Applicant was organized as a corporation under California law in February 1982 under the name R.C. Brown Money Market Fund. In February 1987, applicant changed its name to Pilgrim Money Market Fund.

2. On March 2, 1982, applicant registered as an investment company under the Act, and filed a registration statement pursuant to section 8(b) of the Act. Applicant filed a registration statement under the Securities Act of 1933 ("1933 Act") on March 3, 1982. The 1933 Act registration became effective on May 28, 1982, and the initial public offering of applicant's shares commenced on June 7, 1982.

3. On November 19, 1990, applicant's Board of Directors unanimously approved an Agreement and Plan of Reorganization (the "Agreement") by and between applicant and Cortland General Money Market Fund, an open-end diversified series portfolio of Cortland Trust, Inc. ("Cortland Trust"). Cortland Trust is a Maryland corporation and is a registered open-end management company. Applicant's securityholders approved the Agreement, which provided for a tax-free exchange whereby applicant's securityholders became securityholders of Cortland Trust, and for applicant's subsequent dissolution, at a special meeting of securityholders held on March 15, 1991.

4. Pursuant to the Agreement, on April 1, 1991 Cortland Trust acquired the assets of applicant. All of applicant's assets were distributed to Cortland Trust in return for equivalent interests in shares of Cortland Trust, which were issued to owners of applicant. The exchange of applicant's assets for the equivalent interest in Cortland Trust constituted an even exchange at fair-market value. No brokerage fee were paid in connection with the reorganization.

5. As of March 31, 1991, the date immediately preceding the date of the merger, there were approximately 23,337,088 shares of applicant outstanding, with a per share net asset value of $1.00 per share and an aggregate net asset value of approximately $23,337,088.

6. The total expenses incurred in connection with the transfer of applicant's assets and liquidation of applicant, consisting of legal fees, accounting fees, and printing and mailing costs for the proxy solicitation, were $5,000, $750, and $4,445 respectively. All such expenses were paid by applicant.

7. Applicant states that the principal purpose of the transfer of assets is to allow applicant's securityholders to benefit from the reduced overhead costs and economies of scale as securityholders of Cortland Trust, which has a substantially larger asset base that applicant.

8. Applicant retains no securityholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged in, nor does it intend to engage in, any business activities other than those necessary for the winding up of its affairs. Applicant intends to file a Certificate of Dissolution with the California Department of State.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1396 Filed 1-17-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1556]

Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group D Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and the Message Handling Service-Management Domain (MHS-MD) Ad Hoc Group, will meet on February 20 and 21, 1992, at the American National Standards Institute, 11 West 42nd Street, N.Y.C. from 9 a.m. to 5 p.m. Those expecting to attend this meeting should notify Beth Sommerville at (202) 642-4976. The Group will also meet on June 3, 4, and 5 at the U.S. Department of State: Room 1408 on June 3, 1992, from 8 a.m. to 5 p.m. and room 1207 on June 4 and 5, from 9 a.m. to 5 p.m.

The purpose of the February meeting will be to review Documentation on Registration Requirements and procedures, begin work on drafting and behavioral document for registered U.S. management domains, and to consider any other business within the scope of US Study Group D.

The June 3, 4, and 5 meetings will concentrate on continuing work on the Behavioral Requirements for registered MD's and report on the results of the April meeting of CCITT Study Group VII.

Members of the general public may attend the meetings and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meetings. Prior to the June meeting persons who plan to attend should so advise the Office of Gary Fereno, Department of State, 202-647-0201, (fax 202-647-7407). The above includes government and non-government attendees. Notification should include Date of Birth and Social Security Number. All attendees must use the C Street entrance.

Dated: January 10, 1992.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 92-1331 Filed 1-17-92; 8:45 am]

BILLING CODE 4710-01-M

Office of the Secretary

[Public Notice 1555]

Delegation of Authority No. 193; Management and Other Matters Concerning United States Foreign Relations

Delegation of Authority

By virtue of the authority vested in me as Secretary of State, including the authority of section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), I hereby delegate the following functions as indicated.

Section 1. Functions Delegated to the Under Secretary for Political Affairs

The functions vested in the Secretary of State by the following provisions of the Foreign Relations Authorization Act for Fiscal Years 1992-1993 (Pub. L. 102-138): Sections 170, 181, 192, 356 and 362.

Section 2. Functions Delegated to the Under Secretary for Political Affairs, in consultation with the Under Secretary for Management

The functions vested in the Secretary of State by the following provisions of the Foreign Relations Authorization Act for Fiscal Years 1992-1993 (Pub. L. 102-138): Sections 127 and 175.

Section 3. Functions Delegated to the Under Secretary for Economic and Agricultural Affairs

The function vested in the Secretary of State by section 197 of the Foreign Relations Authorization Act for Fiscal Years 1992-1993 (Pub. L. 102-138).

Section 4. Functions Delegated to the Under Secretary for Management

a. The functions vested in the Secretary of State by the following provisions of the Foreign Relations Authorization Act for Fiscal Years 1992–1993 (Pub. L. 102–138): Sections 115, 116, 117, 118, 119, 122(e), 128, 132 (except 132(f)(2)), 133, 134, 136, 144, 145, 147(d), 149, 174, and 198 (except for that part of 198 which adds a new section 406(a) to the State Department's Basic Authorities Act).

b. The function vested in the Secretary of State in the paragraph headed "Salaries and Expenses" in the Department of State and Related Agencies Appropriations Act, Fiscal Year 1992 (Pub. L. 102–140) to notify Congress concerning certain facts about the Diplomatic Telecommunications Service and the Diplomatic Telecommunications Service Program Office and the report on an enhanced presence in the Baltics requested from the Secretary of the House Report accompanying that Act (H. Rep. 102–106 at 75–76).

c. The function vested in the Secretary of State by 22 CFR 10.735–402(c).

Section 5. Function Delegated to the Assistant Secretary for Public Affairs

The function vested in the Secretary of State by new section 406(a) of the State Department's Basic Authorities Act added by section 198 of the Foreign Relations Authorization Act for Fiscal Years 1992–1993 (Pub. L. 102–138.)

Section 6. Functions Reserved to the Secretary of State

The functions vested in the Secretary of State by the following provisions of the Foreign Relations Authorization Act for Fiscal years 1992–1993 (Pub. L. 102–138): 129, 132(f)(2), 150, 180 and 196.

Section 7. Department of State Delegation No. 148, as amended, is amended further by adding the following new paragraph (d) under General Provisions

(d) Any reference in this delegation of authority to any act, order, determination, delegation of authority, regulation, or procedure shall be deemed to be a reference to such act, order, determination, delegation of authority, regulation, or procedure as amended from time to time.

Section 8. General Provisions

a. Notwithstanding this delegation of authority, the Secretary of State and the Deputy Secretary of State may exercise any function delegated or reserved by this delegation of authority.

b. Any officer to whom functions are delegated by this delegation of authority may, to the extent consistent with law:

(1) Redelegate such functions and authorize their successive redelegation; and

(2) Promulgate such rules and regulations as may be necessary to carry out such functions.

c. Any reference in this delegation of authority to any act, order, determination, delegation of authority, regulation, or procedure shall be deemed to be a reference to such act, order, determination, delegation of authority, regulation, or procedure as amended from time to time.

Dated: January 7, 1992.

James A. Baker, III,

Secretary of State.

[FR Doc. 92–1356 Filed 1–17–92; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Fitness Determination of L & H Aviation, Inc. d/b/a Keene Airways

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 91–1–21, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that L & H Aviation, Inc., d/b/a Keene Airways is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than January 29, 1992.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2342.

Dated: January 14, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–1422 Filed 1–17–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[AC No. 91–XX]

Proposed Advisory Circular on Pilot Qualification and Operation of All Surplus Military Turbine-Powered Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on proposed Advisory Circular.

SUMMARY: The proposed AC provides information and guidance to pilots who desire to qualify to operate surplus military turbine-powered airplanes under a Letter of Authorization.

COMMENTS INVITED: Comments are invited on all aspects of the proposed AC. Commentators must identify file number AC 91–XX.

DATES: Comments must be received on or before February 20, 1992.

ADDRESSES: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, Flight Standards National Field Office (Attention: AFS–550), Advisory Circular Program Manager, P.O. Box 20034, Gateway Building, Suite 110, Dulles International Airport, Washington, DC 20041–2034.

FOR FURTHER INFORMATION CONTACT: Wayne C. Nutsch, AFS–550, at the above address; telephone: (703) 661–0204 (8 a.m. to 4:30 p.m. est).

SUPPLEMENTARY INFORMATION: The proposed AC provides information and guidance to pilots who desire to qualify to operate surplus military turbine-powered airplanes under a Letter of Authorization. Eligibility, qualifications, application procedures, and general training requirements and practical test procedures are described in the proposed AC. Procedures are described for single-place and other than single-place airplanes. Examples of limitations consistent with FAR parts 61 and 91 are included.

Issued in Washington, DC, on January 14, 1992.

Ron Myres,

Acting Manager, General Aviation and Commercial Division.

[FR Doc. 92–1367 Filed 1–17–92; 8:45 am]

BILLING CODE 4910–13–M

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, a subject-matter index, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. These indexes and digests will increase the public's awareness of the Administrator's decisions and orders and will assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index order number ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC-400), Federal Aviation Administration, 701 Pennsylvania Avenue NW., suite 925, Washington, DC 20004: telephone (202) 376-6441.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes that contain identifying information as to those materials required tc oe made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the final decisions and orders issued by the Administrator pursuant to the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR part 13, subpart G. The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number of the Administrator's final decisions and orders in civil penalty cases. In a notice issued on October 26, 1990, the FAA published the indexes and digests herein described for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (i.e., in January, April, July, and October of each year). Only the subject-matter index will be published cumulatively. Both the order number index and the digests will be non-cumulative.

In a notice issued on January 25, 1991, the FAA published the first supplement to the indexes and digests herein described, which included the decisions and orders issued by the Administrator from October 1 through December 31, 1990. 56 FR 4886; February 6, 1991. In a notice issued on May 1, 1991, the FAA published the second supplement, which included decisions and orders issued by the Administrator from January 1, 1991 through March 31, 1991. 56 FR 20250; May 2, 1991. In a notice issued on July 3, 1991, the FAA published the third supplement, which included decisions and orders issued by the Administrator from April 1, 1991 through June 30, 1991. 56 FR 31984; July 12, 1991. In a notice issued on October 8, 1991, the FAA published the fourth supplement, which included decisions and orders issued by the Administrator between July 1, 1991 and September 30, 1991. 56 FR 51735; October 15, 1991.

As noted at the beginning of each of these documents, these indexes and digests do not constitute legal authority, and should not be cited or relied upon as such. The indexes and digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context. The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

Civil Penalty Actions—Decisions and Orders Issued By Administrator

Index By Order Number

(This supplement includes decisions and orders issued by the Administrator from October 1, 1991 through December 31, 1991.)

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

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Civil Penalty Actions—Decisions and Orders Issued By the Administrator

Subject Matter Index

(This cumulative index includes all decisions and orders issued by the Administrator as of December 31, 1991.)

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

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Civil Penalty Actions—Decisions and Orders Issued by the Administrator

Digests

(This supplement includes decisions and orders issued by the Administrator from October 1, 1991 through December 31, 1991.)

These digests do not constitute legal authority, and should not be cited or relied upon as such. These digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from October 1, 1991 through December 31, 1991. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (e.g. April, July, October, and January of each year).

In the Matter of [Airport Operator]

Order No. 91–41 (10/31/91)

Unauthorized Access to AOA—responsibility of airport operator. Contrary to Respondent's assertion, this is not a case of liability without fault. It is clear that the two special agents were able to enter the AOA unchallenged in this case because the tenant's employee failed to challenge them. Respondent is responsible for that failure. The fact that respondent properly instructed the tenant with regard to proper security procedures does not relieve Respondent of its responsibility for that breach. Unless otherwise formally agreed, in the context of airport security, airport tenants and their employees must be treated as agents of the airport authority.

Corrective Action. There is no evidence in the record that Respondent's corrective actions were considered by Complainant in determining what sanction to seek in this case. Nonetheless, the failure of FAA investigative reports to document the corrective action taken by Respondent neither exonerates Respondent nor justifies the imposition of no civil penalty. Citing, Order No. 91–18.

Notice to Respondent. The Federal Aviation Act and its implementing regulations provided Respondent with adequate notice that a violation of the FAR could result in a civil penlty. Citing, Order No. 91–18.

Prosecutorial Discretion. The law judge was correct not to address Respondent's challenge to the FAA's exercise of its prosecutorial discretion. It is well-established that an agency's decision not to prosecute or enforce is a decision generally committed to the agency's absolute discretion, and should be presumed immune from review.

Reduction in Sanction. Respondent's corrective action alone does not warrant a reduction in sanction in this case because Respondent merely reminded tenants of their existing responsibilities. Nonetheless, I will defer to the law judge's assessment of Respondent's positive compliance disposition and, as a result, I will not disturb the law judge's modification of the civil penalty.

In the Matter of Michael Wendt

Order No. 91–48 (10/4/91)

Timeliness of Brief. Although the four-day uncontested extension of time was not officially granted in this case, it likely would have been if Respondent's letter (confirming Complainant's agreement to the extension) had been received by the Appellate Docket Clerk, as Respondent apparently thought it had. Accordingly, good cause exists for accepting Respondent's appeal brief as properly filed.

In the Matter of Lydia Shields

Order No. 91–49 (10/8/91)

Withdrawal of Appeal. Complainant withdrew its notice of appeal from the law judge's oral initial decision. Complainant's appeal is dismissed.

In the Matter of Michael Costello

Order No. 91–50 (10/9/91)

Timeliness of Notice of Appeal and Appeal Brief. Respondent's notice of appeal and appeal brief were filed late. The Administrator held that under the circumstances of this case, in which a genuine question appears to exist regarding whether the settlement agreement entered into by the parties truly reflects a meeting of the minds of the parties, good cause exists to excuse the lateness of the notice of appeal and the appeal brief. The Administrator denied Complainant's motion to dismiss, and granted Respondent an extension of time in which to file its reply brief.

Settlement Agreement. The Administrator suggested that in the future, when parties settle their case at a hearing, they reduce their agreement into written consent order, and that law judges not dismiss such a case until a written consent order is agreed upon.

In the Matter of Troy R. Hagwood

Order No. 91–51 (10/9/91)

Request for Hearing. Although it appears that Respondent wanted a formal hearing on the charges contained in the Final Notice of Civil Penalty, it is clear he failed to properly request one. Complainant could have issued an order assessing civil penalty pursuant to 14 CFR 13.16(b)(2). Instead, however, it appears that the agency attorney decided to waive Respondent's mistake by filing a document which was unequivocally labeled as a complaint.

Timeliness of Complaint. Since Respondent never filed a request for a hearing with the Hearing Docket, the period of limitations for filing a complaint was never triggered. But by waiving Respondent's failure to file a proper request for a hearing Complainant did not also waive its right to file a complaint. In this case, the time within which to file a complaint should logically be counted from the time of the waiver. The law judge's Order Dismissing Complaint is reversed and this case is remanded to the law judge for a hearing on the merits of the complaint.

In the Matter of KDS Aviation Corp.

Order No. 91–52 (10/28/91)

EAJA—prevailing party. KDS could not have filed its application before the case was dismissed because it would not yet have been a prevailing party. It is clear, however, that after the Order of Dismissal, KDS was the prevailing party within the meaning of the EAJA. The agency's rules implementing the EAJA obviously contemplate voluntary dismissal as a basis for an EAJA claim. 14 CFR 14.20(c)(4).

EAJA—substantial justification. The burden of proving substantial justification is on agency counsel, who may avoid an award only by showing that the agency's position was reasonable in law and fact. 14 CFR 14.04(a). Without an evidentiary record in this case, it would be difficult, if not impossible, for agency counsel to meet that burden. Unsworn assertions in the agency's brief do not sustain its burden of proof. The case is remanded to the law judge for further proceedings to determine whether the agency was substantially justified in initiating and continuing this enforcement action and to determine what fees and expenses, if any, should be paid by the agency.

In the Matter of Norbert G. Koller

Order No. 91–53 (10/28/91)

The law judge dismissed the complaint based on his finding that Respondent had intended to declare the disassembled pistol in his luggage to security personnel at the security screening checkpoint, before it was discovered inside the x-ray screening compartment.

Intent to declare a weapon. The Administrator held that Respondent violated 14 CFR 107.21(a)(1) despite Respondent's unsuccessful attempt to declare his gun to security personnel at the security checkpoint before his luggage containing the gun entered the x-ray screening compartment. Respondent's intent to declare his gun to security personnel was not relevant to the determination of whether he violated this section. In no case should he have submitted the bags containing the gun for screening at the security checkpoint for passengers with carry-on bags. By waiting to declare his gun until he submitted his luggage to screening at the security checkpoint, Respondent, at the very least, impermissibly assumed the risk that his declaration would not be heard or understood by the security personnel. It was Respondent's responsibility to declare and check his gun. See 14 CFR 108.11(d).

Submission of Briefs on a New Issue. The Administrator reversed the law judge's decision, and provided the parties, pursuant to 14 CFR 13.233(j)(1), with 30 days in which to submit briefs on the previously unaddressed issue of whether the near maximum penalty of $975 sought by Complainant under section 901(a) of the Federal Aviation Act, 49 U.S.C. 1471(a)(1), was merited by the facts of the case. Review of this issue was necessary because Complainant only charged Respondent with having violated Section 107.21(a)(1), which subjects the violator to a maximum penalty of $1000 under Section 901(a) of the Act. Citing, FAA Order No. 90–10.

In the Matter of Alaska Airlines, Inc.

Order No. 91–54 (11/6/91)

Complainant filed a Notice of Interlocutory Appeal as of Right under 14 CFR 13.219(c), challenging an order of the law judge. The law judge had denied Complainant's motion to quash the subpoena of Raymond Salazar, the former Director of FAA's Office of Civil Aviation Security, to provide testimony by oral deposition. Based upon the law judge's finding that Complainant had obstructed the taking of the deposition, the law judge ordered Complainant to produce Mr. Salazar for a deposition at a place, time and date set by and convenient to Respondent. Under the law judge's order, Respondent did not have to obtian another subpoena or issue another notice of deposition. Complainant was ordered to bear the costs of the deposition, including the cost of expedited copy.

Interlocutory Appeal of Right. Under 14 CFR 13.219(c), the only issue to be decided in this case is whether this sanction is permissible under the Rules of Practice.

Sanction Authority. The Administrator held that the law judge had exceeded his authority. Law judges cannot exercise powers that exceed the authority of the agency. Since the Administrator does not have the authority to impose this sanction, then the law judge also lacks this authority. Moreover, 14 CFR 13.205(b) specifically provides that the law judge does not have the authority to "* * * award costs to any party or impose any sanction not specified in this subpart." By ordering Complainant to pay for the cost of the deposition, including the cost of expedited copy, and by ordering Complainant to produce Mr. Salazar at a place set by, and convenient to Respondent, the law judge acted contrary to this prohibition. The law judge's decision that Respondent did not have to re-notice the deposition was not inconsistent with 14 CFR 13.220(j)(3), but the issuance of a new notice would be both courteous and prudent.

In the Matter of Continental Airlines

Order No. 91–55 (12/6/91)

The law judge held that Respondent violated 14 CFR 108.5(a)(1) by failing to carry out a provision of the SSP, which Respondent adopted, by not detecting FAA-approved test objects at specified security checkpoints at the same airport on three separate occasions. Respondent's arguments on appeal have been addressed in these FAA orders: No. 90–12 (4/25/90); No. 90–18 (8/22/90); No. 90–19 (11/7/90); No. 91–9 (4/12/91). In light of the fact that there are no new issues, and the facts are similar, Respondent's appeal is denied.

In the Matter of Patricia L. Mayhan

Order No. 91–56 (12/3/91)

Withdrawal of Appeal. Complainant withdrew its notice of appeal from the law judge's oral initial decision. Complainant's appeal is dismissed.

In the Matter of Britt Airways

Order No. 91–57 (12/4/91)

Withdrawal of Appeal. Respondent withdrew its notice of appeal from the law judge's oral initial decision. Respondent's appeal is dismissed.

In the Matter of [Airport Operator]

Order No. 91–58 (12/31/91)

Unauthorized Access to AOA—Responsibility of Airport Operator. Respondent argues that it should not be held liable for the errors or omissions of independent third parties. However, for airport security purposes, independent contractors hired by either the airport operator or by an airport tenant must be treated as agents of the airport operator.

In three of the four incidents forming the basis for this appeal, specific provisions in Respondent's security program were shown to have been violated, demonstrating fault on the part of Respondent. However, in the incident occurring at a FBO terminal, the provision in the airport security program that Complainant claims was violated applies only to air carriers and not to FBO's. Because Complainant did not cite, and the Administrator could not find any other provision in the airport security program which would apply to this incident, the Administrator reversed the law judge's finding of a violation of § 107.13(a)(1).

Unauthorized Persons. Although the FAA special agents who entered the AOA had been issued identification badges and were fully authorized to enter the AOA, this does not require reversal of the law judge's findings of violations. A person need not be actually unauthorized in order to demonstrate a violation of the regulation.

In the Matter of William R. Griffin

Order No. 91–59 (12/24/91)

Withdrawal of Appeal. Complainant withdrew its notice of appeal of the oral initial decision. Complainant's appeal is dismissed.

In the Matter of James F. Brinton

Order No. 91–60 (12/26/91)

Withdrawal of Appeal. Complainant withdrew its notice of appeal of the oral initial decision. Complainant's appeal is dismissed.

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800

Independence Avenue, SW., room 924A, Washington, DC 20591; (202) 267–3641.

In addition, these materials are available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AAC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125; (405) 680–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 917–1035.

Office of the Assistant Chief Cousel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; (312) 694–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803; (617) 273–7310.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 18000 Pacific Highway South, Seattle, WA 98188; (206) 227–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 3400 Norman Berry Drive, East Point, GA 30344; (404) 763–7204.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarter, 4400 Blue Mound Road, Forth Worth, TX 76193; (817) 624–5707.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 484–6605.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (213) 297–1270.

The FAA still is pursuing means by which the Administrator's decisions and orders, and the indexes and digests of those decisions, could be published and offered for sale by subscription through a reporting service. The FAA intends to provide further notice regarding such publication and sale in the **Federal Register** when the necessary arrangements are completed. The FAA may discontinue publication of the subject-matter index and the digests at such time as a commercial reporting service publishes similar information and provides it to the public in a timely and accurate manner.

Issued in Washington, DC, on January 13, 1992.

Kenneth P. Quinn,

Chief Counsel.

[FR Doc. 92–1364 Filed 1–17–92; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. MC–92–5]

Parts and Accessories Necessary for Safe Operation; Limited Waiver for Domino's Pizza Distribution Corp.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of petition; request for public comment.

SUMMARY: The Domino's Pizza Distribution Corporation has requested, and the FHWA proposes to grant in part, a petition for a waiver from the requirements of 49 CFR 393.25(e) of the Federal Motor Carrier Safety Regulations (FMCSRs). Domino's Pizza Distribution Corporation requests a waiver to § 393.25(e), Lighting devices to be steady-burning, to allow for the use of a strobe warning lamp, a non-steady-burning lighting device, on the rear of its semi-trailers, which would be activated when the vehicle is being driven in reverse and when the vehicle is being unloaded. The FHWA proposes to grant the waiver to the extent that Domino's Pizza will be permitted to use the strobe lamps on certain of its semi-trailer fleet during a 3-year trial period, subject to the conditions imposed by the FHWA in this notice.

DATES: Written comments must be received on or before February 20, 1992.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–92–5, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk in standard or high density formats containing files compatible with either WordPerfect or WordStar for IBM systems or Microsoft Word or WordPerfect or WordStar for Apple MacIntosh systems. Commenters should clearly label submitted disk with the software format used (e.g., WordPerfect 5.0 (IBM) or Microsoft Word 4.0 (Mac)). All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, HCS–10, (202) 366–2981; or Mr. Paul L. Brennan, Office of the Chief Counsel, HCC–20, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Domino's Pizza Distribution Corporation uses tractor-semi-trailer combination vehicles to distribute supplies to its stores. Approximately 65 to 75 percent of the trailers in the Domino's fleet are navy blue, and most deliveries are made during night-time, non-business hours. Delivery locations are within or in close proximity to "highly marqueed" strip malls. Domino's Pizza has indicated that the vehicles are equipped with all lighting and reflective devices required under the Federal Motor Vehicle Safety Standards (FMVSSs) and the FMCSRs. However, Domino's Pizza has a problem with front-to-rear collisions; motorists are driving into the rear of the semi-trailers. Domino's Pizza believes that the vehicles' conspicuity is adversely impacted by the merchants' advertising methods and further reduced by weather conditions. The advertising methods include signs and lights which, depending on the position of the Domino's vehicle and the time of day, may decrease motorists' ability to recognize the presence of the semi-trailers. To address this problem, Domino's Pizza began studying the possibility of using auxiliary non-steady-burning lamps on the rear of its semi-trailers.

The proposed lighting system is a "non-projecting lighting device" that will be mounted on the vertical centerline of the rear of the trailer, at a height approximately 40 inches above the surface of the road. The diameter of the lens is 4 inches, and the color of the lamp to be used is amber. The flash rate for the strobe warning lamp is 70 to 80 flashes per minute with a luminous intensity of 150 candela (measured through a clear lens). The system has been designed in compliance with 49 CFR 393.25, except paragraph (e);

§ 393.27, Wiring specifications; § 393.29, Grounds; § 393.31, Overload protective devices, and § 393.33, Wiring, installation.

Section 393.25(e) of the FMCSRs requires, in part, that all exterior lighting devices be steady-burning, except turn signals and stop lamps when used as turn signals. The use of "strobe-type backup warning lights" used in "conjunction with the current backup lights" is not in compliance with the requirements of § 393.25(e). Strobe lamps are not included among the lighting devices which are excepted from the steady-burning requirement (i.e., turn signals, warning lamps on service vehicles authorized by State and local authorities, or vehicular hazard warning flashers as required by § 392.22 or permitted by § 392.18). The noncompliance of the proposed lighting devices is acknowledged in the request for waiver. The petition for a waiver is being considered under section 206(f) of the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2829, 2835, 49 U.S.C. app. 2505(f)) which authorizes waivers of any regulation issued under the authority of that Act upon a determination that the waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.

Conditions of the Waiver

I. Effective Intensity of the Strobe

In the strobe light manufacturer's specifications (included with the petition), it is stated that the intensity is 150 candela. Although the intensity of a strobe is typically expressed as "effective intensity," the manufacturer did not specifically state the effective intensity. Effective intensity depends on factors such as duration of the flash, peak intensity and flash rate and can vary by a factor of at least ten, depending on the values of these parameters. As a condition of the waiver, the FHWA proposes limiting the maximum effective intensity of the strobe lamp to no more than 165 candela. The 165 candela limit for the strobe lamp allows for manufacturing tolerances in the production of the 150 candela strobe lamp. The FHWA believes the 165 candela limitation is necessary to prevent the strobe lamp from distracing motorists. This limit is less than the maximum allowable candle power for stop lamps and red turn signals (300 candela) and for yellow rear turn signals (750 candela). A measurement of effective intensity would be made using the proposed strobe lamp under operational conditions and the measurement procedure in "Emergency Vehicle Warning Lights: State of the Art," U.S. Department of Commerce, National Bureau of Standards, Special Publication 480–16, September 1978, pp. 100–105. Domino's Pizza Distribution Corporation would be required to ensure that the effective intensity of the proposed strobe lamp is measured using the method prescribed or by comparable measurement procedures or obtain a written statement from the manufacturer of the strobe lamp indicating the lamp had been tested using comparable measurement procedures. The voltage to be used for the testing of the strobe lamp would be equal to the maximum voltage to be used when the strobe lamp is mounted on the vehicle. Also, the strobe lamp's effective intensity would be measured using the proposed amber lens. The effective color of the light emitted by the strobe lamp would be required to conform to the definition of yellow (amber) found in the Society of Automotive Engineers (SAE) standard J578, *Color Specification*, May 1988. Domino's Pizza would provide written notification to the FHWA that the measurement of the effective intensity of the proposed strobe lamp was made under operational conditions. Domino's Pizza would also provide: The date(s) the measurement was performed; the location of the measurement; certification that the effective color of the strobe lamp conforms to the definition of yellow (amber) in SAE J578; the voltage used during testing and the effective intensity determined at that voltage; the individual(s) or company performing the measurement; and the measurement procedure used.

II. Installation of the Strobe

The strobe lamp would be required to be installed in such a way that it can only be activated when the transmision of the tractor is in reverse or when the vehicle is parked. The strobe lamp would be required to be mounted approximatley on the vertical centerline of the rear of the trailer, at a height between 35 and 60 inches above the surface of the road (measured with the vehicle unloaded). Domino's Pizza would be required to obtain the approval of the FHWA for the installation of the lamp in other locations on the rear of the trailer. The diameter of the lens would be required not to exceed 4 inches, and the color of the lens would be restricted to amber. The flash rate for the strobe would be limited to not exceed 80 flashes per minute.

III. Compliance With Lighting and Wiring Requirements of the FMCSRs

The installation of the strobe lights would be required to be in compliance with §393.25, except paragraph (e); §393.27, Wiring specifications; §393.29, Grounds; §393.31, Overload protective devices; and §393.33, Wiring, installation.

IV. Duration of Waiver; Accident History Monitoring

The FHWA proposes to grant the waiver for a 3-year period. The 3-year period would begin when the FHWA publishes the final conditions of the waiver in the **Federal Register**. Domino's Pizza would be required to provide the FHWA with an annual report on the results of the use of the strobe lamps so that the accident history of the vehicles equipped with the strobe lamp and those vehicles which are not equipped with the lamp can be closely monitored. Domino's Pizza will be required to report accident information and data on all accidents that occur to the vehicles equipped with the strobe lamp, including those which do not involve front-to-rear collisions with Domino's vehicles. In addition, all motor vehicle accidents that occur within 150 feet of Domino's vehicles equipped with the strobe lamp, but not necessarily involving the Domino's vehicles, would be reported. All front-to-rear collisions with Domino's vehicles which are not equipped with the strobe lamp would also be reported. Three copies of the information listed below shall be forwarded to the Office of Motor Carriers on a monthly basis:

1. The position of the vehicles engaged in the accident (description and diagram of the accident scene).
2. Color photographs of the surrounding environment.
3. Environmental conditions (i.e., background environment, time of day, light conditions, weather, roadway type).
4. Interview information with the driver/occupants of the striking vehicle (specifically what the driver/occupants saw).
5. Copy of police report for the accident. In the case of an accident within 150 feet but not necessarily involving the Domino's vehicle, the police report is not required.
6. Copy of motor carrier accident report (MCS–50–T), if required by §394.9.
7. Cost of damage to each of the involved vehicles. In the case of an accident within 150 feet but not necessarily involving the Domino's

vehicle, the cost of damage is not required.

8. Description of injuries/fatalities.

V. Maintenance History

As part of the periodic review of this waiver, Domino's Pizza Distribution Corporation would be required to develop a test and maintenance program to ensure that the operation of the strobes is consistent with the conditions of the waiver, and to keep a maintenance history of the strobe lamps. A copy of the maintenance history would be forwarded to the Office of Motor Carrier Standards on a quarterly basis, each year, for the duration of the waiver. In addition, the maintenance history for the strobe lamps would be maintained at the location at which the vehicles are garaged or maintained, or the principal place of business.

VI. State and Local Laws

The use of the strobe lamps must be in compliance with State and local safety regulations or must be approved by the State or local authorities in the jurisdictions in which the strobe lamp will be used. A list of States in which the vehicles will be operated and copies of State approvals would be required to be provided to the FHWA. The FHWA strongly encourages State and local authorities with safety regulations which would prohibit the use of the proposed lamps to accept the terms of the waiver. It is not the intention of the FHWA to preempt State or local requirements which would preclude the use of the strobe lamps. For jurisdictions in which the safety regulations preclude the use of the strobe lamps, a copy of the approval granted by the States or local authorities shall be provided to the FHWA by Domino's Pizza, if such approval or acceptance of the terms of this waiver is not provided by the jurisdictions in response to this notice.

VII. Number of Vehicles To Be Equipped With Strobe Lights

The number of semi-trailers that may be equipped with the strobe lamps shall not exceed 50 percent of the number of semi-trailers per Domino's Pizza Distribution Corporation terminal. The total number of semi-trailers per terminal, along with the total number of vehicles equipped with the strobe lights, would be provided to the FHWA.

VIII. Termination of Waiver

Domino's Pizza would be required to discontinue the use of the strobe lamps (1) upon the completion of the 3-year trial period or (2) when instructed to do so by the FHWA at either the completion of an annual review or at any time it is determined by the FHWA that the continued use of the strobe lamps decreases the safety of operation of the vehicles on which the lamps are used.

Request for Public Comments

The FHWA requests public comment on this waiver. The FHWA is particularly interested in obtaining technical information which would indicate the need for additional terms of this waiver. Comments are also sought from State and local enforcement officials relating to their experiences investigating accidents involving Domino's Pizza tractor-semi-trailer combination vehicles. Comments should include details on the type of accident and a general description of the accident scene.

The FHWA would also be interested in comments on the projected impacts on safety if the waiver expanded to other regulatees.

Authority: 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

Issued on: January 10, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-1365 Filed 1-17-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 90-13; Notice 4]

Takata-Gerico Corp.; Denial of a Petition for Reconsideration of the Denial of Petition for Inconsequential Noncompliance

This notice denies a petition by Takata-Gerico Corporation, of Denver, Colorado, for reconsideration of the denial of its petition to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for noncompliance with 49 CFR 571.213, Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems. The basis of the original petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

The original was denied on July 30, 1991 (56 FR 36075). Notice of the petition for reconsideration was published on September 16, 1991 (56 FR 46819).

Paragraph S5.4.3.5(a) of Standard No. 213 states that any buckle in a child restraint system belt assembly designed to restrain a child using the system shall: When tested in accordance with S6.2.1 prior to the dynamic test of S6.1, not release when a force of less than nine pounds is applied and shall release when a force of less than nine pounds is applied and shall release when a force of not more than fourteen pounds is applied.

Takata-Gerico Corporation petitioned the agency on June 14, 1990, for a determination of inconsequential noncompliance with the above mentioned requirement of Standard No. 213. Takata-Gerico reported that it estimated that approximately 26,257 buckles that could release with less than nine pounds of pressure were incorporated in Guardian car seats between January 31, 1990 and May 3, 1990. Takata-Gerico supported its petition for inconsequential noncompliance on the basis of the results of the Yellowstone Environmental Science study entitled, Cognitive Skill Based Child-Resistant Safety Belt Buckle [March 1990]. Takata-Gerico claimed that:

1. Excessive force requirements, such as those required under Standard 213, can "impede" rescue in an emergency situation. Id. at 79.

2. The upper limit of thumb opposability strength of two to four year olds is forty pounds. Id. at 45. (Takata-Gerico stated that studies show that children under three years of age are likely to use the Guardian car seat and children in this age group are physically incapable of releasing a belt buckle at seven pounds.)

3. A study of 1500 children, whose car seat habits were studied, revealed that children escape from car seats through means other than releasing the belt buckle. Id. at 16.

4. A car seat design in which the child is denied access to the car seat buckle is more important in ensuring that the child remains restrained while in the car seat than the pounds of pressure needed to release the belt buckle. Id. at 46.

5. Push-button buckle release mechanisms with force requirements less than nine pounds were acceptable to parents. Id. at 32.

6. An excessive force requirement is above the strength abilities of older people, *e.g.*, grandparents, thus discouraging or making impossible the use of child car seats by older persons. Id. at 37, 45 (stating that the lower limit of thumb opposability strength of 61 to 94 years olds is thirteen pounds).

On July 30, 1991, the agency denied Takata-Gerico's petition.

The bases for the denial were:

1. The Yellowstone Study's conclusion regarding an ideal buckle release pressure of 5 lbs. must be viewed in conjunction with other "ideal" child

safety seat attributes and not in isolation.

2. The seats in question can be used by children weighing up to 40 lbs., and not just children three years of age or younger, as the petitioner claimed. (The average child weighing 40 lbs. is older than three years, and children of this age are capable of releasing a buckle that requires only 8 lbs. of pressure).

3. The 9 lbs. force requirement is not excessive and will not impede rescue of a restrained child in an emergency.

4. Maintenance and enforcement of the 9 lbs. minimum reduces the likelihood that a child will be able to release the buckles.

In a petition dated August 30, 1991, Takata-Gerico asked the agency to reconsider its denial. The company bases its new petition on the following claims:

1. The denial incorrectly states that Takata-Gerico claimed the ideal minimum release tension should be 5 lbs.

2. The agency improperly rejected the findings of the Yellowstone study.

3. There is no evidence that the 9 lbs. standard will reduce inadvertent deployment, and children escape from child safety seats by means other than releasing the belt buckle.

4. The agency failed to show how the level of noncompliance poses an unreasonable risk to safety.

5. No instances of injury have been brough to the petitioner's attention in the 19 months the seats have been in the field.

6. The seats in question are used 99.9 percent of the time by children 3 years of age and younger who are incapable of releasing an 8 lbs. buckle.

No comments were received in response to the notice of September 16, 1991.

The agency has carefully reviewed the six new arguments made by the petitioner in its appeal, and responds as follows.

1. NHTSA did not state in the denial notice that the petitioner claimed the ideal minimum release tension should be 5 pounds. What NHTSA said was that the Yellowstone Study had reached this conclusion.

2. NHTSA is unable to understand the petitioner's argument that it improperly rejected the results of the Yellowstone Study as the petitioner did not offer any evidence in support of its argument. The agency continues to support its analysis in the denial notice.

3. To refute petitioner's claim that NHTSA has no evidence that a value of 9 lbs. will reduce inadvertent deployment, the agency calls petitioner's attention to the "Child Restraint Systems" study conducted in 1975 by Peter W. Arnberg for the National Swedish Road and Traffic Research Institute. This study presented evidence that 4-year old children would not be able to release a buckle with a minimum of 9 lbs of pressure on the buckle release.

As for petitioner's contention that children escape from child safety seats by means other than releasing the belt buckle, this in a *non sequitur* as to the appropriations of a 9 lbs. value. If a child is mined to escape a child safety seat, lowering the value will only make it easier to accomplish. The safety standards attempt to reduce safety problems; no standard can entirely eliminate them.

4. The burden is upon the petitioner, not NHTSA, to demonstrate that the level of noncompliance does not pose an unreasonable risk to safety. The 9 lbs. requirement exists because NHTSA, after a public rulemaking procedure, determined that it represents the minimum level of performance required for the safety of children.

5. The fact that the petitioner is unaware of injuries resulting from the noncompliance does not mean that they have not occurred and remain unreported, or that they will not occur in the future. These seats may be in use for an additional 5 to 10 years.

6. While petitoner's survey of 198 purchasers is the basis for its argument that the seats are used by children 3 years of age or younger, who are incapable of applying a pressure of 8 lbs. to the buckle release, the survey did not ask the purchaser the length of time the purchaser intended to use the seat. NHTSA believes it likely that the children for whom the seats were purchased are likely to use them until they outgrew the need for them, around the age of 4. At that age, a child can apply a release pressure of 8 lbs.

In addition, Takata-Gerico submitted further arguments in support of its position by letter dated October 11, 1991. While they were not submitted in a timely fashion, and hence, subject to reveiw by the public, NHTSA has not found them any more persuasive than petitioner's earlier arguments. These arguments and NHTSA's responses are:

1. Petitioner contacted 19 of 102 Guardian car seat purchasers who had gotten in touch with its customer service department. Of these, 17 stated that the car seat was being used by a child 3 years old or younger.

NHTSA notes that the remaining two users were children 3½ and 4 years old. Further, the 17 purchasers with younger children did not state that their children would cease using the seat by the time they were 3½ years old. It is the safety of the older child that is at issue, and petitioner has presented no evidence that older children will not use the seat.

2. Available data indicate that the average weight at which a child is no longer comfortable using the Guardian is 26.18 lbs., which correlates with a child who is 2 to 2½ years old. A child this age is incapable of releasing a buckle that requires seven pounds of pressure.

NHTSA notes that the petitioner derived its age figure from an anthropomorphic study of U.S infants and children, rather than from the actual ages of the children whose parents reported that they no longer were comfortable in the Guardian seat. This argument is not sufficient to show that children who are capable of releasing a buckle with 8 lbs. pressure do not use the Guardian seat, especially since the manufacturer itself declares that the seat is designed for older children.

3. There are only 10 inches between the foam padded wings in a Guardian seat. An average 3-year old child has a shoulder breadth between 9.7 inches and 11.4 inches. Clothing will increase to breadth, making it more difficult for the child to fit in the seat.

Although the average 4-year old child might have difficulty fitting into the Guardian seat, that does not mean that *all* 4-year olds will have this difficulty. Petitioner's study showed that the minimum shoulder breadth for a 4-year old was 8.1 inches. Thus, children at the lower end of the breadth range would be able to fit into the seat. In addition, there are times such as during warm weather, when a child is dressed with very little clothing. This argument of petitioner is not sufficient to convince NHTSA that there is no potential problem of the safety of the older child.

4. The buckle of the Guardian is placed at the center base of the car seat and is not in plain view of the child. Petitioner conducted a study with six children ranging from 2 to 4 years of age. As part of a study, the children were encouraged to escape from the seat. Those who escaped did so by means other than releasing the buckle. Thus, petitioner argues that it is unlikely that children will attempt to escape the seat by releasing the buckle.

It may be unlikely, but it is not impossible. The design of the seat is such that a child can reach under the shield and release the buckle. Petitioner's test was not necessarily indicative of the performance of all children in real life situations. Children are often in safety seats for relatively long periods of time, and under those

conditions may not look for the quickest way to escape.

In consideration of the foregoing, it is hereby found that petitioner has failed to meet its burden of persuasion that the denial of its petition for inconsequential noncompliance should be reversed and its petition is denied. Therefore, NHTSA expects the petitioner to proceed expeditiously to conduct a notification and remedy campaign in accordance with statutory requirements.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50.

Issued on: January 14, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-1343 Filed 1-17-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 91-44, Notice 2]

Thomas Built Buses, Inc. Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Thomas Built Buses, Inc. (Thomas Built) of High Point, North Carolina, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.208, Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection. The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of a petition was published on September 19, 1991 and an opportunity afforded for comment (56 FR 47519).

Paragraph S7.2 of Standard No. 208 specifies that a seat belt assembly installed in any vehicle, except an automatic belt assembly, shall have a latch mechanism that releases at a single point by push button action.

Thomas Built produced 29 type A school buses (under 10,000 pounds GVWR) between September 1990 and October 1990 which do not comply with the above mentioned requirements. The seat belts do not have a push button release. Instead they have a lift lever release. Thomas Built supported its petition for inconsequential noncompliance with the following:

The seat belts installed in these units, although not of the push button release type, meet all other applicable requirements of Standard Nos. 208 and 209.

On the units involved, the seat belts have the same type of release throughout the bus. There was no mixing of push button and lift lever belts.

This type of release (lift lever) has been used on seat belts in school buses for years and the lack of the push button release on a few buses built one month after the required date will have no detectable impact on belt usage or passenger familiarity with the new release.

No comments were received on the petition.

In the pertinent rulemaking notices leading to amendment of Standard No. 208, NHTSA made it clear that data were insufficient to show that push button release buckles had any marked safety advantage over the lever, or flap-type, release buckles. The agency made its decision primarily to standardize the method of buckle operation. Thus, it cannot be said that Thomas, which used a previously complying release buckle for a period of only 20 days after the effective date of the requirement for push button releases, and for a production volume of only 29 vehicles, has failed to comply in a manner that has a consequential effect on motor vehicle safety.

Accordingly, in consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: January 14, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-1423 Filed 1-17-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 14, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505-0080.
Form Number: None.
Type of Review: Extension.
Title: Post-Contract Award Information.
Description: Information requested of contractors is specific to each contract and is required for Treasury to evaluate properly the progress made and/or management controls used by contractors providing supplies or services to the Government and to determine contractors' compliance with the contracts, in order to protect the Government's interest.
Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 5,565.
Estimated Burden Hours Per Response: 15 hours, 32 minutes.
Frequency of Response: On occasion (as specified in contract).
Estimated Total Reporting Burden: 86,421 hours.

OMB Number: 1505-0081.
Form Number: None.
Type of Review: Extension.
Title: Solicitation of Proposal Information for Award of Public Contracts.
Description: Information requested of offerors is specific to each procurement solicitation, and is required for Treasury to evaluate properly the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired. Evaluation will be used to determine which proposals are most advantageous to the Government, price and other factors considered.
Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 29,183.
Estimated Burden Hours Per Response: 34 hours, 27 minutes.
Frequency of Response: Other (one-time response).
Estimated Total Reporting Burden: 1,005,241 hours.

OMB Number: 1505-0107.
Form Number: None.
Type of Review: Extension.
Title: Regulation on Agency Protests.
Description: Information is requested of contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file agency-level protests.

Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 17.
Estimated Burden Hours Per Response: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 34 hours.
Clearance Officer: Lois K. Holland, (202) 566–6579, Departmental Offices, room 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–1375 Filed 1–17–92; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 14, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0002.
Form Number: IRS Form CT–2.
Type of Review: Extension.
Title: Employee Representative's Quarterly Railroad Tax Return.
Description: Employee representatives file Form CT–2 quarterly to report compensation on which railroad retirement and railroad unemployment repayment taxes are dues. IRS uses this information to ensure that employee representatives have paid the correct tax. Form CT–2 also transmits the tax payment.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 112.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—28 minutes.
Learning about the law or the form—13 minutes.
Preparing the form—34 minutes.
Copying, assembling, and sending the form to the IRS—17 minutes.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 169 hours.
OMB Number: 1545–0732.
Regulation ID Number: LR–236–81 Final (T.D. 8251).
Type of Review: Extension.
Title: Credit for Increasing Research Activity.
Description: This information is necessary to comply with requirements of Code section 41 (section 44F before change by TRA (Tax Reform Act) 1984 and section 30 before change by TRA 1986) which describes the situations in which a taxpayer is entitled to an income tax credit for increases in research activity.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 63 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92–1376 Filed 1–17–92; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 14, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0198.
Form Number: ATF REC 5110/03 and ATF F 5110.28.
Type of Review: Extension.
Title: Distilled Spirits Plant (DSP) Processing Records and Reports.
Description: The information collected is necessary to account for and verify the processing of distilled spirits in bond. It is used to audit plant operations, monitor industry activities for the efficient allocation of personnel resources and the compilation of statistics.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 121.
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.
Frequency of response: Monthly.
Estimated Total Reporting/ Recordkeeping Burden: 3,509 hours.
OMB Number: 1512–0207.
Form Number: ATF REC 5110/04 and ATF F 5110.43.
Type of Review: Extension.
Title: Distilled Spirits Plant (DSP) Denaturation Records and Reports.
Description: The information collected is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry activities for the efficient allocation of personnel resources, and compile statistics for government economic planning.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 99.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.
Frequency of response: Monthly.
Estimated Total Reporting/ Recordkeeping Burden: 1,188 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 92–1377 Filed 1–17–92; 8:45 am]
BILLING CODE 4810-31-M

Office of Thrift Supervision

Investors Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Investors Federal Savings Bank, Richmond, Virginia, on December 12, 1991.

Dated: January 14, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-1402 Filed 1-17-92; 8:45 am]

BILLING CODE 6720-01-M

Investors Savings Bank, F.S.B.; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Investors Savings Bank, F.S.B., Richmond, Virginia, OTS No. 7385, on December 12, 1991.

Dated: January 14, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-1403 Filed 1-17-92; 8:45 am]

BILLING CODE 6720-01-M

[No. 92-8]

Proposed Elimination of the Monthly Thrift Financial Report Data Collection

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice; request for comment.

SUMMARY: The Office of Thrift Supervision ("OTS") requests public comment from all interested parties on a proposal to eliminate the monthly Thrift Financial Report ("TFR") data collection. The final monthly data collection would be for December 1992.

DATES: Comments must be received on or before February 20, 1992.

ADDRESSES: Comments should be directed to: Director, Information Services Division, Office of Communication, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Stephen T. Zabrenski, Program Manager for Financial Reporting, (202) 906-6780; Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The OTS has continued the monthly TFR data collection of the predecessor agency, the Federal Home Loan Bank Board ("FHLBB"). That data collection by the FHLBB was designed to support the full range of programs conducted by the Federal Home Loan Bank System, including the housing finance programs of the Federal Home Loan Banks. In addition, other government agencies have supplemented their statistical publications with data from the monthly TFR.

With the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the mission of the OTS was limited to the supervision of savings associations. The quarterly TFR data collection, in conjunction with examinations and other supervisory reports required on a case by case basis, provides the OTS with sufficient financial data to assess the condition of those savings associations. Those quarterly reports are more extensive than the comparable data collection of the quarterly commercial bank call report.

Furthermore, the monthly TFR data collection represents a significant cost to both the OTS and the thrift industry. Those organizations that compile statistics on housing finance, monetary and credit conditions, and macroeconomic trends would assume the full cost of those data collections as a consequence of this proposal to eliminate the monthly TFR. Since most of those data collections would be conducted through surveys based on sampling procedures, many thrift institutions would be relieved of the reporting burden associated with those surveys.

Therefore, the OTS proposes to eliminate the collection of monthly TFR data. The final collection of the monthly data would be for December 1992.

The OTS estimates that the elimination of the montly TFR data collection would reduce annual expenses to the OTS by more than $500,000. This reduction includes expenses associated with report validation, systems maintenance, and printing and mailing.

Similarly, the OTS estimates the annual savings to saving associations to be in excess of $4,000,000, reflecting reductions in report preparation and validation expenses.

Monthly TFR information has been utilized for a variety of purposes other than monitoring the safety and soundness of savings associations. The OTS has identified four such governmental usages that may be affected by this proposal.

The OTS publishes the monthly median cost of funds for all SAIF-insured savings associations for use as an index for certain adjustable rate mortgage loans.

The Department of Housing and Urban Development utilizes selected mortgage data items in its monthly data collection and publication of "Gross Mortgage Flow" information.

The Board of Governors of the Federal Reserve System utilizes selected balance sheet information, deposit balances, and interest rate data, as well as the mortgage data. These items are used to monitor, calculate, and estimate the money stock, money demand, and monetary and credit aggregates.

The Office of Management and Budget has designated the OTS monthly press release, "Monthly Thrift Data", as a principal Federal economic indicator (i.e., major statistical series that describes the current condition of the economy). The release contains a majority of the 180 monthly TFR data items collected.

The OTS invites comments on all aspects of the proposed elimination of the collection of monthly TFR data. Comments from the data users noted above as well as other users should focus on the impact of the proposal on their programs. Specific comments should address such issues as the statutory requirement for OTS data collection, the availability of such information from other sources, the suitability of less frequent data availability, the alternative ways to collect the data that would be borne by the end users rather than the OTS and the proposed implementation date. Comments from savings associations should specifically address the potential savings resulting from the proposed reduction in the reporting burden.

Dated: January 15, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-1401 Filed 1-17-92; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans's benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide in public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 523–3826.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 12.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA published summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

O.G.C. Precedent Opinion 68–91

Questions Presented

a. Where service connection for a veteran's disability is protected under 38 U.S.C. 1159 (formerly 38 U.S.C. 359) and the disability is based on an erroneous diagnosis, should the veteran's rating be increased retroactively based on clear and unmistakable error if the original rating was below the minimum rating provided for the disability under the VA Rating Schedule?

b. If a veteran's rating is increased retroactively based on a finding a of clear and unmistakable error, does that rating become protected under the provisions of 38 U.S.C. 110 and 38 CFR 3.951, if more than 20 years have passed since the retroactive effective date of the rating?

Held

a. Provided that the medical evidence then of record supported a finding of disability, VA's failure to assign the minimum rating required for a service-connected disability under the Rating Schedule is clear and unmistakable error warranting a retroactive correction of the rating.

b. Because protection of a disability pursuant to 38 U.S.C. 110 requires that such a rating be the basis for compensation for twenty years, where a disability rating is retroactively increased and the effective date of such increase is more than twenty years in the past, the revised disability percentage is protected under 38 U.S.C. 110 and 38 CFR 3.951.

Effective Date: September 26, 1991.

O.G.C. Precedent Opinion 69–91

Questions Presented

In 1990, VA promulgated 38 CFR 3.313, a regulation which provides that, effective August 5, 1964, a person who served in Vietnam during the Vietnam era and who subsequently developed non-Hodgkin's lymphoma (NHL) shall be deemed to have service connection for that disease. Assume that a veteran died in 1976 as the result of NHL and that subsequent to the issuance of the mentioned regulation VA rated the death of the veteran from NHL as being service connected:

a. May a child of the veteran be awarded chapter 35 educational benefits retroactive to 1988 if the child first applied in 1990, at age 19, following the issuance of section 3.313 and the service-connected death rating based thereon?

b. May a surviving spouse of the veteran, who also first applies at that time for chapter 35 benefits, elect a beginning date for his or her period of eligibility, under 38 U.S.C. 3512(b)(3), (formerly section 1712(b)(3)), which is retroactive to any date on or after the date of the veteran's death?

c. If the surviving spouse filed a claim for death benefits and was denied in 1976, and a child of the veteran was age 19 on that date, may the child be accorded chapter 35 benefits retroactively for training between his or her 18th and 26th birthdays if the child files an orginal claim for chapter 35 benefits in 1990, at age 33, following the issuance of the regulation and rating?

d. In the example described in (c), may the surviving spouse be awarded chapter 35 benefits retroactively for any period beginning on or after the date of the veteran's death based upon original application in 1990?

Held

a. Concerning the first example presented here, we find the child's eligibility period for chapter 35 extends from age 18 to age 26 (1988–1997), but the child is entitled to receive benefits under that chapter only for training pursued during the period beginning no earlier than 1 year prior to the date of original application in 1990.

b. In the second example, the surviving spouse of the veteran is eligible under chapter 35 during the 10-year period beginning on such date as the spouse selects between 1976 and the date of rating establishing entitlement under that chapter. However, as in the previous example, an award cannot be effective more than 1 year prior to date of application.

c. In the third example, the facts are unclear as to whether the child filed a claim in 1976 for chapter 35 at the same time as the surviving spouse. If not, the child's period of eligibility, from 1976 to 1984, would have expired more than 1 year prior to filing the initial chapter 35 application in 1990. Thus, no chapter 35 benefits could be awarded. If, however, an application had been filed in 1976, benefits could be awarded for the period beginning on the later of the date of the veteran's death or 1 year prior to the date of application. No benefits would be payable beyond the date in 1984, 8 years after the veteran's death (unless the child qualifies for an extension as provided in other provisions of section 3512).

Note: In the first part of the foregoing third example, the fact that the child was age 33 when the original application was filed in 1990 is not relevant in determining the period of eligibility in a death case under section 3512(a)(3). The age 31 limitation only applies in the case of a child seeking to extend the basic eligibility period under subsections 3512 (a)(4), (a)(5), or (c). Thus, on the facts presented by the example, the award based on an application in 1990 at age 33 would be barred as untimely under 38 CFR 21.4131(a), but not due to the child's age at the time of application.

d. Finally, as to the fourth example, the same period of eligibility applies to the surviving spouse as in paragraph 2 above, except that, since the initial chapter 35 application was filed in 1990, no award could be made for any period earlier than 1989. Further, an award back to 1989 could only be made if the surviving spouse elects a delimiting period under section 3512(b)(3) which includes the period from 1989 to the end of the award period. Note that, if the

surviving spouse's death benefit claim in 1976 had included a claim for chapter 35 benefits and he or she now selects a delimiting period beginning on the date of the veteran's death, benefits could be paid for pursuit of an approved program of education during the 10-year period thereafter, due to the retroactivity accorded awards under 38 U.S.C. 5110(g) (formerly 3010(g)) as interpreted by O.G.C. Advisory Opinion 28–90.

Effective Date: September 27, 1991.

O.G.C. Precedent Opinion 70–91

Questions Presented:

1. If there has been a change in the statutory or regulatory standard applicable to a particular case, should a reconsideration section apply the law as it was at the time of the original decision or should it apply current legal standards?

2. To what extent, if any, do the provisions of 38 U.S.C. 5110(g) (formerly section 3010(g)) and 38 CFR 3.114 apply with respect to establishing an effective date for the award of benefits through the use of the liberalized reconsideration procedure, established in the Veterans' Judicial Review Act and recognized in G.C. Precedent Opinion 89–90?

3. When reconsideration has been ordered, is the evidence received since the date of the original decision considered received within the appeal period or prior to the appellate decision, within the meaning of 38 CFR 3.400(q)(1)?

Held

Reconsideration by the Board of Veterans' Appeals under 38 U.S.C. 7103 (formerly section 4003) vacates the original decision and benefits awarded upon reconsideration should be assigned as effective date pursuant to general effective date rules. The reconsideration section should employ current legal standards during its review unless to do so would result in a manifest unjustice, and, within the meaning of 38 CFR 3.400(q)(1), should consider all evidence received since the agency of original jurisdiction decision which was appealed to the BVA as having been received prior to the appellate decision.

Effective Date: October 15, 1991.

O.G.C. Precedent Opinion 71–91

Question Presented

Does 38 CFR 3.105(e) apply to all proposed reductions in evaluation of individual disabilities or only those reductions which result in reduction or discontinuance of compensation payments currently being made?

Held

38 CFR 3.105(e) does not apply where there is no reduction in the amount of compensation payable. It is only applicable where there is both a reduction in evaluation and a reduction or discontinuance of compensation payable. Therefore, where the evaluation of a specific disability is reduced but the amount of compensation is not reduced because of a simultaneous increase in the evaluation of one or more other disabilities, section 3.105(e) is not applicable.

Effective Date: November 7, 1991.

O.G.C. Precedent Opinion 72–91

Question Presented

May VA authorize education benefits to active duty servicemembers for pursuit of courses during "nonduty" time if the individual receives tuition assistance from the Armed Forces for the same courses or training?

Held

A person on "active duty" in the Armed Forces, as defined by 38 U.S.C. 101(21), who is pursuing a course of education paid for by the Armed Forces is barred from receiving education benefits from VA under the programs enumerated in 38 U.S.C. 3681(a) (formerly 1781(a)) for the same training. This bar applies regardless of whether the course is pursued during periods of the day when the individual has no specifically assigned military duties. Even during such periods, the individual is on "active duty" and, thus, subject to the bar.

Effective Date: November 26, 1991.

O.G.G. Precedent Opinion 73–91

Questions Presented

(a) Would proceeds from a life-insurance policy received by a veteran and shares of stock inherited by a veteran, which are placed into a valid irrevocable trust for the benefit of the veteran's grandchildren with the veteran as trustee, be counted as income of the veteran for purposes of determining entitlement to improved-pension benefits?

(b) Would these assets be considered in determining the veteran's net worth for improved-pension purposes?

Held

(a) Where a veteran in receipt of improved pension inherits marketable shares of stock and receives the proceeds of life-insurance policies, the value of the stock and life-insurance proceeds must be counted as income of the veteran in the year in which they are received, regardless of whether they are subsequently placed in trust for the benefit of another. If such income causes termination of pension, the effective day of discontinuance is the end of the month in which the income was received.

(b) Generally, where a veteran places assets into a valid irrevocable trust for the benefit of the veteran's grandchildren, with the veteran named as trustee, and where the veteran, in an individual capacity, has retained no right or interest in the property or the income therefrom and cannot exert control over these assets for the veteran's own benefit, the trust assets would not be counted in determining the veteran's net worth for improved-pension purposes, and trust income would not be considered income of the veteran.

(c) If the beneficiaries of the trust are residing in the veteran's household and the veteran is receiving benefit from expenditures from the trust, a determination must be made under the facts of the particular case whether the veteran is exercising such control and use of the trust assets that the trust may be considered invalid for purposes of determining pension eligibility.

Effective Date: December 17, 1991.

O.G.C. Precedent Opinion 74–91

Questions Presented

A. Whether VA has authority to diclose information concerning veterans and their spouses to their employers in order to obtain health insurance benefit coverage information on those individuals?

B. Whether a patient's refusal to provide health insurance information at the time of admission may have any effect on the patient's entitlement to the medical care?

Held

A. Information to be disclosed to employers which is retrieved by the veterans' names is protected by the Privacy Act (PA), 5 U.S.C. 552a and, as a result, the information may be disclosd outside the VA only with the subject's consent or where the PA expressly authorizes the disclosure. Also, veterans' names and addresses are protected by 38 U.S.C. 5701 (formerly section 3301), and may be disclosed only as authorized by that statute.

B. A veteran who is otherwise eligible for health care from VA is not rendered ineligible by virtue of his or her refusal to provide VA with health insurance information.

Effective Date: December 26, 1991.

O.G.C. Precedent Opinion 75–91

Questions Presented

a. Are "unemployability" and inability to "secure and follow a substantially gainful occupation" interchangeable concepts within the context of 38 CFR 3.340, 3.341, 4.16, 4.18, and 4.19?

b. What are the specific applications and interrelationships of the cited regulations, and how should the inconsistencies therein, as perceived by the Court of Veterans Appeals, be resolved?

Held

a. The term "unemployability," as used in VA regulations governing total-disability ratings for compensation purposes, is synonymous with inability to secure and follow a substantially gainful occupation.

b. VA regulations governing determinations of total disability for compensation purposes based on individual unemployability generally provide that all veterans who, in light of their individual circumstances, but without regard to age, are unable to secure and follow a substantially gainful occupation as a result of service-connected disability shall be rated totally disabled, without regard to whether an average person would be rendered unemployable under the circumstances.

Effective Date: December 27, 1991.

By Direction of The Secretary:

James A. Endicott, Jr.,

General Counsel.

[FR Doc. 92–1355 Filed 1–17–92; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Women Veterans; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Women Veterans will be held February 5–7, 1992, room 401, 801 I Street, NW., Washington, DC. The purpose of the Advisory Committee on Women Veterans is to advise the Secretary regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Department of Veterans Affairs, and the activities of the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

The session will convene on February 5 from 9 a.m.–4:30 p.m. The Committee will divide into subcommittees on February 5 from 1 p.m.–4:30 p.m. and February 6 from 9 a.m.–4:30 p.m. The Subcommittees will address such issues as health, outreach and legislation in preparation for producing the 1992 Report. The full Committee will reconvene at 9 a.m.–12 noon on February 7 in room 401, 801 I Street, NW. All sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Committee Coordinator, Department of Veterans Affairs (phone 202/535–7182) prior to January 30, 1992.

Dated: January 7, 1992.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–1358 Filed 1–17–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 13
Tuesday, January 21, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Notice of Meetings

AGENCY: Commission on National and Community Service.

ACTION: Notice of Meetings.

SUMMARY: In accordance with the National and Community Service Act of 1990, (P.L. 101–610, as amended by P.L. 102–10) the Commission on National and Community Service will hold technical assistance meetings to aid States (including Indian tribes, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and Palau, until such time as the Compact of Free Association is ratified) and local entities eligible to receive funds under the National and Community Service State Grant Program. The meetings will beheld in Washington, DC, Dallas, TX, and San Francisco, CA. The meetings will be from 9:00 a.m. until 3:30 p.m. with registration beginning at 8:15 a.m. (There is no registration fee.) There will be presentations to assist prospective applicants' comprehension of each of the following sections of the Act and their application procedures: Serve-America (Subtitle B, Part I), Higher Education Innovative Projects for Community Service (Subtitle B, Part II), American Conservation and Youth Service Corps (Subtitle C), National and Community Service Program (Subtitle D), and the Administrative Provisions (Subtitle F). Following each presentation there will be a question and answer session. Written material will be provided at the meetings; for those unable to attend, written material will be provided upon a written request to the Commission at the address listed below. Please call the Commission at (202) 724–0600 if you plan to attend any of the meetings.

DATES: The meeting in Washington will be held on Monday, January 27, 1992; the meeting in Dallas will be held on Wednesday, January 29, 1992; and the meeting in San Francisco will be held on Thursday, January 30, 1992.

ADDRESSES: The Washington meeting will be held at the J.W. Marriott Hotel at National Place in Salon IV. The hotel is located at 1331 Pennsylvania Avenue, NW., Washington, DC 20004. Phone: (202) 393–2000. The Dallas meeting will be held at the Holiday Inn Dallas-Fort Worth North. The hotel is located at 4441 Highway 114 and Esters, Irving, TX 75063. Phone: (214) 929–8181. The San Francisco meeting will occur at the Sheraton San Francisco Airport Hotel. The hotel is located at 1177 Airport Boulevard, Burlingame, CA 94010. Phone: (415) 342–9200.

FOR FURTHER INFORMATION CONTACT: Ms. Annmarie Emmet. The Commission on National and Community Service, National Press Building, 529 14th Street, NW., 4th Floor, Washington, DC 20045. Phone: (202) 724–0600; FAX: (202) 724–0608.

Catherine Milton,

Executive Director, Commission on National and Community Service.

[FR Doc. 92–1542 Filed 1–16–92; 2:21 pm]

BILLING CODE 6820-BA-M<

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Wednesday, January 22, 1992, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Choking Hazards Associated with Marbles

The staff will brief the Commission on options for action with regard to a rulemaking proceeding to address choking hazards associated with marbles.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Date January 15, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–1535 Filed 1–16–92; 2:20 am]

BILLING CODE 6355-01-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, January 28, 1992.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda item. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Docket No. AB–33 (Sub-No. 70), *Union Pacific Railroad Company—Abandonment—Wallace Branch, ID.*

Docket No. 40169, *National Grain and Feed Association v. Burlington Northern Railroad Company, Et Al.*

Finance Docket 31862, *International Brotherhood of Electrical Workers, Local Union 465—Petition for Declaratory Order—San Diego Trolley, Inc.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–1508 Filed 1–16–92; 10:53 am]

BILLING CODE 7035-01-M

Corrections

Federal Register
Vol. 57, No. 13
Tuesday, January 21, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

15 CFR Part 400

[Order No. 530; Docket No. 21222-1206]

RIN 0625-AA04

Foreign-Trade Zones in the United States

Correction

In rule document 91-24130, beginning on page 50790, in the issue of Tuesday, October 8, 1991, make the following corrections:

1. On page 50798, in the first column, under *Section 400.45*, in the seventh line, "in" should read "to".

§ 400.45 [Corrected]

2. On page 50807, in the second column, in § 400.45(a), in the first line, insert "trade" after "Retail".

BILLING CODE 1505-01-D

Commodity Futures Trading Commission

Chicago Mercantile Exchange Proposed Futures and Futures Option Contracts

Correction

In notice document 92-700 appearing on page 1258 in the issue of Monday, January 13, 1992, make the following correction:

In the second column, in the **DATES:** paragraph, in the second line, "January 14" should read "February 12".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF AGRICULTURE

Maternal and Child Assistance Programs; Model Application Form

Correction

In notice document 91-29364, beginning on page 64454 in the issue of Monday, December 9, 1991, make the following corrections:

1. On page 64454, in the first column, under **AGENCIES:** "Financial" should read "Financing".

2. On page 64457, in the first column, in the last paragraph, seventh line, insert "a" after "of".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter 1

[Docket No. 91N-0300]

Withdrawal of Certain Pre-1986 Proposed Rules; Final Action

Correction

In proposed rule document 91-30780, beginning on page 67440, in the issue of Monday, December 30, 1991, make the following corrections:

1. On page 67440, in the third column, in the first full paragraph, in the ninth line, "proposals, the" should read "proposals. Additionally, because of the age of these proposals, the".

2. On page 67446, in the table, in the 2d column, under Docket No., in the 36th line, "Aug. 16, 1977, 42 FR 41301." should appear in the 3rd column, under FR Publication date and cite.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094-AA40

White Earth Reservation Land Settlement Act of 1985

Correction

In the issue of Wednesday, December 18, 1991, on page 65782, in the third column, in the correction to rule document 91-28904, in correction 4. of § 4.351, in the third line, "including" should read "succession".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

RIN 1515-AA95

Proposed Amendments to the Customs Regulations Regarding International, Landing Rights and User Fee Airports

Correction

In proposed rule document 91-30770 beginning on page 66814 in the issue of Thursday, December 26, 1991, make the following correction:

1. On page 66815, in the third column, in the sixth line, after the word "rights", "of" should read "at".

§ 122.14 [Corrected]

2. On page 66817, in the first column, in § 122.14(d)(1), in the second line, "no" should read "not".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE42

Finality of Decisions

Correction

In rule document 91-30277 beginning on page 65845 in the issue of Thursday, December 19, 1991, make the following correction:

On page 65845, in the 3d column, in the 2d complete paragraph, in the 12th line, insert "or" after "error".

BILLING CODE 1505-01-D

VOL 57 ISS 13 JA 21 1992 UMI

federal register

Tuesday
January 21, 1992

Part II

Department of Transportation

Research and Special Programs Administration

Hazardous Materials Transportation Enforcement Cases; Notice of Decisions of Appeal Under the Hazardous Materials Transportation Act

VOL 57 ISS 13 JA 21 1992 UMI

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Appeals in Hazardous Materials Transportation Enforcement Cases

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of decisions on appeal in enforcement cases under the Hazardous Materials Transportation Act.

SUMMARY: This Notice publishes the decisions on appeal issued by the Administrator of the Research and Special Programs Administration (RSPA) in hazardous materials transportation enforcement cases that were initiated between 1983 and the present. These appellate decisions were issued in cases initiated under the Hazardous Materials Transportation Act (HMTA), 49 app. U.S.C. 1801 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180. The purpose of this Notice is to increase public awareness and understanding of hazardous materials transportation enforcement cases.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel for Hazardous Materials Safety, Office of the Chief Counsel (DCC–10), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 [Tel. (202) 366–4400].

SUPPLEMENTARY INFORMATION: Section 105 of the HMTA, 49 app. U.S.C. 1804(a), provides that, "The Secretary shall issue regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. The regulations issued under this section shall govern any aspect of hazardous materials transportation safety which the Secretary deems necessary or appropriate." Under this authority, RSPA has issued the HMR, a comprehensive set of regulations concerning the transportation of hazardous materials.

The HMR govern the shipping and transporting of hazardous materials by aircraft, rail car, vessel and motor vehicle. The HMR also prescribe requirements governing "the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a packaging or container which is represented, marked, certified, or sold for use" in transportation of hazardous materials in commerce.

In addition to the HMR, RSPA has issued other regulations (49 CFR parts 106–7) implementing the HMTA. All of these hazardous materials transportation regulations are enforced by RSPA, the U.S. Coast Guard, the Federal Aviation Administration, the Federal Highway Administration, and the Federal Railroad Administration.

Within RSPA, the Office of Hazardous Materials Enforcement (OHME) and Office of Chief Counsel enforce the HMR and parts 106 and 107. RSPA's enforcement regulations are in subpart D of part 107. When a person violates the HMTA or the regulations, the Office of the Chief Counsel may institute an enforcement action. That office may issue a notice of probable violation (notice), in which a respondent is charged with the probable violation(s) and a civil penalty is proposed. In addition, the notice may contain a proposed compliance order.

Generally, under 49 CFR 107.313(a), a respondent must respond to a notice within 30 days of its receipt. The respondent may respond by admitting the violation(s) and accepting the proposed penalty amount (or the proposed compliance order), or may contest the notice. A notice may be challenged through a written response, a telephonic or in-person conference, or a hearing on the record before an administrative law judge.

If the respondent makes no response within the prescribed period, the Chief Counsel may enter an order finding that the alleged violation(s) were committed and imposing the proposed penalty or compliance order. The same result follows if the respondent admits to the violation(s). When the respondent requests a conference, the Office of the Chief Counsel conducts the conference, following which the Chief Counsel reviews the proceeding and considers all relevant evidence, including all submissions of the respondent. The Chief Counsel then issues an order, which may include a finding of violation and imposition of a civil penalty and a compliance order.

In assessing civil penalties, the Chief Counsel considers the nature and circumstances of the violations, their extent and gravity, the respondent's culpability, the respondent's lack of prior offenses, the respondent's ability to pay, the effect of the civil penalty on the respondent's ability to continue in business and any other relevant factors (especially respondent's corrective actions).

Where a hearing is requested, the Office of the Chief Counsel submits the matter to the Department's Office of Hearings. An administrative law judge is assigned to the case and conducts pre-hearing and hearing procedures. The administrative law judge issues an appropriate order.

Following issuance of an order by either the Chief Counsel or an administrative law judge, a respondent must either comply with the order or file an appeal with the Administrator of RSPA. The appeal must be filed within 20 days of respondent's receipt of the order. The appeal must state, with particularity, the findings in the order that the respondent is challenging, and it must include any and all relevant information and arguments. The filing of an appeal stays enforcement of the order.

In a decision on appeal, the Administrator determines whether to affirm or dismiss violations and whether to affirm or modify civil penalty assessments and compliance orders. The Administrator's decision on appeal is the final step in the administrative process.

A respondent has 30 days from the date of issuance of the decision on appeal in which to comply with its terms. Failure to timely comply results in assessment of interest, penalty and administrative charges where a civil penalty has been affirmed in the decision on appeal.

The following is a chronological index of decisions on appeal issued by the Administrator in hazardous materials transportation enforcement cases between 1983 and the present, followed by the full text of those decisions.

Issued in Washington, DC, on December 12, 1991, under the authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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[Ref. No. 83-07-SE]

Grant of Partial Relief

In the Matter of: Air Capital Wholesale Fireworks, Respondent

Background

On September 21, 1984, the Associate Director for Operations and Enforcement (OOE) assessed a $5,000 civil penalty against Air Capital Wholesale Fireworks (Air Capital) for violation of 49 CFR 171.12(a); i.e., failure to "provide the shipper and the forwarding agent at the place of entry into the United States timely and complete information as to the requirements" of subchapter C, 49 CFR parts 177–178. Air Capital submitted an appeal by a one-page letter dated October 2, 1984.

Discussion

In the appeal, Air Capital offered the amount of $1,000 to compromise the civil penalty. Air Capital states in support of mitigation of the penalty amount that it has "never been able to obtain timely and complete information on these regulations." It also claims to have suffered financial loss as a result of the transaction leading to the violation and is "still not financially stable."

Air Capital's concise statement about its lack of knowledge appears to mean that it did not know about the requirements of § 171.12(a). However, once it began its business of importing hazardous materials it had an affirmative duty to acquaint itself with those regulations. There is no evidence in the record to suggest that Air Capital requested information regarding its regulatory responsibilities from the Materials Transportation Bureau or any other Federal entity nor, any indication that "timely" or "complete" information was denied to Air Capital at any time.

With regard to Air Capital's financial condition, there is no new information in the appeal evidencing a deterioration of Air Capital's financial stability since the date of the order assessing the penalty (September 21, 1984). However, the record does reflect a seizure by the U.S. Customs Service of a substantial amount of goods consigned to Air Capital at the time of OOE's investigation. Accordingly, there is some basis for mitigation under 49 CFR 107.331 (e) and (f).

Findings and Order

In consideration of the foregoing, I affirm the finding of the Associate Director for OOE that Air Capital violated 49 CFR 171.12(a). However, sufficient basis exists to mitigate the civil penalty amount from $5,000 to $3,500. Therefore, Air Capital is hereby assessed a civil penalty in the amount of $3,500.

The civil penalty assessed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court. Also failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717. That same authority also provides for a penalty charge of six percent (6%) per annum, which will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order, payable to the Department of Transportation, and sent to the Office of the Chief Counsel, Research and Special Programs Administration, room 8420, 400 7th Street, SW., Washington, DC 20590.

Issued May 28, 1985.

L.D. Santman,
Director, Materials Transportation Bureau

Certified mail—Return receipt requested

[Ref No. 84-02-CM]

Grant of Partial Relief

In the Matter of: Worthington Cylinders Corporation, Respondent.

Background

On September 21, 1984, the Associate Director for the Office of Operations and Enforcement (OOE) issued a five-part compliance order to Respondent, Worthington Cylinder Corporation (Worthington). Worthington submitted a timely appeal to challenge only one of the findings contained in the order, namely a violation of 49 CFR 178.51–11(a) for failing to uniformly and properly heat treat its DOT specification cylinders. The Associate Director's order dated September 21, 1984 is incorporated herein by reference.

The basis of Worthington's appeal is as follows:

First, there is no reasonable basis, in the regulations or otherwise, for the Associate Director's finding that Worthington has violated § 178.51–11(a) with respect to heat treatment. Second, the finding and order is inconsistent with past DOT interpretations of § 178.51–11(a) and represents a sudden, arbitrary and unreasonable departure from past DOT interpretations. Third, even if there were any legitimate basis to support the Associate Director's finding and order, if the order were affirmed without modifying the prescribed time for compliance, the order as written, in conjunction with 49 CFR 107.325(b), would require the completion by Worthington of a major change in its

manufacturing processes within twenty days of the decision and would have a devastating competitive and economic impact on Worthington.

Definition of Heat Treatment

No facts are disputed with regard to the contested finding. Worthington acknowledges that its heat treating procedures does not heat the entire cylinder to a temperature in excess of 1100° F. Worthington's primary argument centers on its own interpretation of the intent and purpose of heat treatment i.e., "to remove the stress induced in drawing and to return the material to a more ductile state."

Worthington contends that "uniform mechanical properties" are achieved throughout the cylinder because most of the "work hardening" is done on the sidewalls, concluding that the top and bottom do not need as much heat treatment.

The purpose of heat treatment is not limited to stress relief as described by Worthington. The function of heat treatment is also to obtain desired "properties." Worthington's description addresses itself only to achieving a desired "condition;" i.e., removing stress itself. The American Society for Metals defines heat treatment and stress relieving as follows:

"Heat Treatment. Heating and cooling a solid metal or alloy in such a way as to obtain desired conditions or properties. Heating for the sole purpose of hot working is excluded from the meaning of this definition."

and

"Stress Relieving. Heating to a suitable temperature, holding long enough to reduce residual stresses and then cooling slowly enough to minimize the development of new residual stresses." (*Metals Handbook*. Vol. 1, American Society for Metals (1985)).

While relief of cold work stresses, if present, is accomplished during heat treatment, it is not the exclusive purpose and function of heat treatment. The intent of the regulation is to assure that the entire cylinder is heat treated, not just that portion of the cylinder considered to have stresses induced in drawing. The heating applied by Worthington wherein the sidewalls reach a temperature of 1350° while the top of the heads and the bottoms of each cylinder reached a temperature below 1100°, could in itself induce harmful residual stresses. Therefore, I affirm the decision of the Associate Director that the regulation requires heat treating the entire cylinder.

Previous MTB Interpretations

Worthington contends that the Associated Director's decision and his interpretation of the regulation are inconsistent with a previous "interpretation" made in 1980 by a memorandum from the Office of Hazardous Materials Regulation (OHMR) to OOE. The OHMR memo responded to a memo from OOE. The OOE memo specifically referred to the induction coil heating process which heats "the sidewall of the cylinder and virtually leaves the ends of the cylinder unaffected." While the OHMR memo was accurately cited by Worthington in its appeal (p.6), that memo did not specifically address the "precise question involved in the current proceeding," which is whether the entire cylinder must be heat treated.

The 1980 dialog between OOE and OHMR concerned failed test results involving coupons from the "crowns" of a cylinder. Had the OHMR memo concluded that a cylinder was properly heat treated if coupons from its crown passed the tests, then Worthington's reliance on that memo would be well-founded. It did not.

Additionally, a review of the paragraph in the OHMR memo dealing with Table I of appendix A, part 178, shows that the requirement to "satisfactorily pass all tests prescribed in 178.51" is joined to the requirement to heat treat in conformance with the specific requirements of Table I of appendix A, part 178 by the conjunctive "and", rather than the disjunctive "or". The ultimate logic of Worthington's argument leads to the erroneous conclusion that if the coupons (not cylinders) pass the required tests the cylinder does not have to be heat treated at all. Accordingly, Worthington's interpretation of the OHMR memo is emphatically rejected.

Uniform and Proper Heat Treatment

The interpretational debate between OOE and Worthington throughout this proceeding has focused on the two essential elements of heat treatment: that it be (1) uniform and (2) proper. Worthington is correct in asserting that the meaning given these two words is not consistent among OOE, OHMR and the Compressed Gas Association (CGA) publication cited by Worthington in its appeal, *Basic Considerations of Cylinder Design*. The regulation uses the two words together, "uniformly and properly." However, in each of the references to heat treatment all parties as well as the regulation have used one word in common, "cylinder." None of the authorities relied upon has used the words, "stress relief" or "coupon," or "portion of the cylinder." Both the HMR and plain English usage of the word "cylinder" without using adjectives implies the entire cylinder. The Associate Director in his compliance order did not interpret the words, "uniform" and "proper" as independent adjectives for "heat treatment." Instead, he joined them together and emphasized their application to the entire cylinder. Thus, the Associate Director's conclusion that the entire cylinder must be heat treated is sound and comports with the intent of the HMR.

Worthington relies upon the CGA's reference to heat treatment in its industry publication. However, it is not unusual for Federal regulations to differ with industry codes, by establishing more stringent standards, while simultaneously incorporating by reference much of the pre-existing industry standard. (Note that 49 CFR 178.51–11 does not incorporate by reference an authority outside of the regulation.)

Rulemaking

Because the interpretation described herein is not novel, there is no basis to require a rulemaking initiative on the part of MTB. In our view, the existing rule is a lawfully promulgated and technically sound regulation based upon sound safety concerns. As stated by the Associate Director in his order, the administrative record of this case alone does not justify additional rulemaking.

Findings and Order

Notwithstanding my affirmation of the Associate Director's findings, it is evident to me that Worthington's reliance on its own interpretation of this regulation was made in good faith. Therefore, some mitigation is warranted with respect to the time period within which compliance must be accomplished.

Having reviewed the administrative record in this case, I hereby affirm the finding of the Associate Director that Worthington violated 49 CFR 178.51–11(a). However, the compliance order is amended by deleting Item 1 thereof, and substituting the following:

1. Worthington shall uniformly and properly heat treat its DOT specification cylinders in accordance with 49 CFR 178.51–11(a) so that the entire cylinder is heated to a temperature above 1100° F. Compliance with this requirement shall be accomplished within 120 days of receipt of this order, provided however that the time period for compliance may be extended beyond 120 days by the Associate Director for Operations and Enforcement if Worthington demonstrates to the satisfaction of the Associate Director that compliance cannot be accomplished within the 120 days. Any request for extension of the 120 day period must be written and received by the Associate Director no later than 45 days prior to termination of the 120 day period.

The Order of September 21, 1984, except as modified herein, continues in full force and effect.

Issued: February 11, 1988.

L.D. Santman,

Director, Materials Transportation Bureau.

Certified mail—Return receipt requested

[Ref No. 84-03-CM]

Grant of Partial Relief

In the Matter of: Kargard Industries, Inc., Respondent.

Background

On October 19, 1984, the Associate Director for Operations and Enforcement (OOE) issued a seven part compliance order to Respondent, Kargard Industries, Inc. (Kargard). Kargard submitted a timely appeal to challenge only the first finding contained in the order, i.e., a violation of 49 CFR 178.61–11(a) for failing to uniformly and properly heat treat its DOT specification cylinders. The Associate Director's order dated October 19, 1984 is incorporated herein by reference. In its appeal Kargard submitted additional arguments by written correspondence and documentation dated November 10, 1984 and February 14, 1985.

Discussion

In its appeal Kargard embellished its previous argument with additional technical information regarding the manufacturing of its 4BW cylinders. Kargard continues to argue that its "three-step" process of heat treating the cylinders produces a product which is safe and "meets the letter and spirit of the code." Additionally, Kargard seems to be defending the induction heat treatment method.

The Office of Operations and Enforcement (OOE) does not contend that inductive heat treatment cannot be "proper." The objection to Kargard's head treating method concerns the "three-step" approach proposed as a remedy to the "uniform and proper" standard which is lacking for compliance under 49 CFR 178.61–11(a). As stated in the Associate Director's order, the cylinder must be heat treated "in its entirety" whether by induction method or furnace method. Also, the heat treatment must be performed after all welding and forming operations. Kargard's system performs localized heat treatment after some welding but also prior to some welding.

Kargard's contention that the multiple stage heat treatment satisfies the safety designs of the heat treatment process relies heavily on Kargard's construction that the purpose of heat treatment is to stress relieve. Stress relief achieves a desired "condition," i.e., removing stress itself. However, the function of heat treatment is also to obtain desired "properties." The American Society for Metals defines heat treatment and stress relieving as follows:

"Heat treatment. Heating and cooling a solid metal or alloy in such a way as to obtain desired conditions or properties. Heating for the sole purpose of hot working is excluded from the meaning of this definition."

and

"Stress Relieving. Heating to a suitable temperature holding long enough to reduce residual stresses and then cooling slowly enough to minimize the development of new residual stresses." *Metals Handbook, Vol. 1,* American Society for Metals (1985).

While relief of cold work stresses, if present, is accomplished during heat treatment, it is not the exclusive purpose and function of heat treatment. The intent of the regulation is to assure that the entire cylinder is heat treated not just that portion of the cylinder considered to have stresses induced in drawing. I agree therefore, with the Associate Director's finding that the regulation at issue does not permit Kargard to heat treat the heads before assembly and the sidewalls after assembly.

Findings and Order

Accordingly, I affirm the finding of the Associate Director for OOE that Kargard violated 49 CFR 178.61–11(a) for failing to uniformly and properly heat treat its DOT specification cylinders. However, his order dated October 19, 1984 in item 1 requires immediate compliance. This portion of the order fails to recognize the potential transition problems if Kargard must modify its heat treatment facilities.

While this order does not forbid the use of heat treatment by induction, there is reason to believe that Kargard's current facilities may not permit the use of induction heat treatment to comply with this order. Kargard's analysis as presented in the administrative record implies that some conversion of its physical plant may be necessary, such as conversion to a furnace heat treating method. Because the record reflects Kargard's good faith desire to comply with DOT regulations, some mitigation with respect to a time period for compliance is warranted. Therefore, the compliance order is amended by deleting Item 1 thereof, and substituting the following:

1. Kargard shall uniformly and properly heat treat its DOT specification cylinders in accordance with 49 CFR 178.61–11(a) so that the entire cylinder is heated to a tempertature above 1100°F. Compliance with this requirement shall be accomplished within 120 days of receipt of this order, provided however that the time period for compliance may be extended beyond 120 days by the Associate Director for Operations and Enforcement if Kargard demonstrates to the satisfaction of the Associate Director that compliance cannot be accomplished within the 120 days. Any request for extension of the 120 day period must be written and received by the Associate Director no later than 45 days prior to termination of the 120 day period."

The Order of October 19, 1984 except as modified herein continues in full force and effect.

Issued: May 2, 1985.

L.D. Santman,

Director, Materials Transportation Bureau.

Certified mail—Return receipt requested

[Ref No. 84–11–CD]

Grant of Partial Relief

In the Matter of: Select Drink, Inc., Respondent.

Background

On January 3, 1985, the Associate Director for the Office of Operations and Enforcement (OOE) issued an Order to Select Drink, Inc. (Respondent) assessing a penalty in the amount of $3,500 for violations of 49 CFR 171.2(c), 173.34(e) and 173.301(c). The Associate Director's Order dated January 3, 1985 is incorporated herein by reference.

Discussion

The basis of Respondent's appeal is that the assessed penalty is too high. In support of this it argued that the Department's goal of compliance has been met by the Respondent and they now comply with the regulations, having set up a retest program to ensure that the violations do not occur again. Other than the amount of the penalty, the Respondent has contested no other findings of the Order.

In the Notice of Probable Violation (NOPV), the Respondent was preliminarily assessed a $7,000 civil penalty. Based on Respondent's response to the NOPV and evidence submitted at the informal conference, the Order assessed a civil penalty of $3,500. The Respondent has now requested the civil penalty be abated further. Due to the nature of the violations and the potential risk posed, the assessment of a civil penalty is warranted. However, additional mitigation is granted based on the Respondent's positive actions in response to the NOPV.

Findings

The Order of January 3, 1985, and each finding made therein, is affirmed except that portion of the Order assessing a penalty of $3,500. The appeal of the Respondent has been considered and partial relief is warranted. Accordingly, Select Drink, Inc. is hereby assessed a civil penalty in the amount of $2,000.

This civil penalty must be paid within 20 days of your receipt of this decision. Failure to pay the civil penalty will result in referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court. Also, failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717. That same authority also provides for a penalty charge of six percent (6%) per annum, which will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order, payable to the Department of Transportation, and sent to the Office of the Chief Counsel, Research and Special Programs Administration, Room 8420, 400 7th Street, SW., Washington, DC 20590.

Issued: January 31, 1985.

L. D. Santman,

Director, Materials Transportation Bureau.

Certified mail—Return receipt requested

[Ref. No. 85-10-CEM]

Denial of Relief

In the Matter of: Europa, USA, Inc., Respondent.

Background

On December 10, 1985, the Acting Chief Counsel issued an Order to Respondent assessing a penalty in the amount of $12,000 for violations of 49 CFR 171.2(c), 172.200, 172.201(a)(4), 172.202 (a)(2) and (a)(3) and 173.306(c), (c)(4), (c)(5) and (c)(6), of the Hazardous Materials Regulations. Respondent submitted a timely appeal of the Order, challenging the findings of the Order. The Acting Chief Counsel's Order, dated December 10, 1985, is incorporated herein by reference.

Discussion

Respondent's basis for appeal is that the inspector did not understand the filling process Respondent was using to fill the halon blend fire extinguishers at issue in this proceeding. Respondent requested that another inspection be performed with an independent third party inspector, as well as DOT's inspector, to ensure a fair inspection. Respondent's assertion that its procedures were proper and in compliance with the Regulations, is not sufficiently substantiated to contradict the findings made in the Order or the evidence on which they were based.

Findings

The issue raised by Respondent in its appeal has been considered, and in the absence of any evidence to support it, the Order of December 10, 1985, assessing a $12,000 civil penalty is affirmed.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court. Also failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717. That same authority also provides for a penalty charge of six percent (6%) per annum, which will accrue, if payment is not made within 110 days of service. Payment should be made by certified check or money order, payable to the Department of Transportation, and sent to the Office of the Chief Counsel, Research and Special Programs Administration, Room 8420, 400 7th Street, SW., Washington, DC 20590.

Date Issued: March 24, 1986.

M. Cynthia Douglass,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 85-14-SFE]

Denial of Relief

In the Matter of: American Security International, Inc., Respondent

Background

On January 22, 1986, the Acting Chief Counsel issued an Order to Respondent assessing a penalty in the amount of $5,000 for violations of 49 CFR 171.2(a), 172.101, 172.200(a), 172.204(a), 172.300(a), 172.301(a), 172.400(a), 172.400(b)(2), and 173.22a(b). The Respondent filed a timely appeal of the Order, requesting revaluation of the assessed civil penalty.

Discussion

Respondent's basis for appeal is financial hardship in paying the civil penalty. Respondent has expressed concern that if it is required to pay this penalty it may not be able to stay in business. As evidence of this, Respondent submitted a copy of its 1984 tax return, which showed that Respondent paid no income tax in 1984 because of a $15,000 loss. The return was certified as being accurate by Respondent's CPA. Although the tax return does show that Respondent sustained a $15,000 loss it does not support Respondent's position that the penalty would put Respondent out of business.

Findings

The issue raised by Respondent in its appeal has been considered, and in the absence of sufficient evidence to support it, the Order of January 22, 1986 is affirmed, including the $5,000 civil penalty assessed therein. In light of Respondent's financial difficulty Respondent will be allowed to pay the civil penalty in monthly installments of $500 per month for ten months. The first $500 must be paid within 20 days of its receipt of this decision. The remaining installments will be due on the first of each month beginning June 1, 1986.

Failure to pay the civil penalty will result in referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court. Also, failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717. That same authority also provides for a penalty charge of six percent (6%) per annum, which will accrue, if payment is not made within 110 days of service. Payment should be made by certified check or money order, payable to the Department of Transportation, and sent to the Office of the Chief Counsel, Research and Special Programs Administration, room 8420, 400 7th Street, SW., Washington, DC 20590.

Issued: April 17, 1986.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

Certified mail—Return receipt requested

[Ref. No. 85-18-CRR]

Denial of Relief

In the Matter of: Indiana Propane Cylinder Corporation, Respondent.

Background

On February 4, 1986, the Acting Chief Counsel issued an Order to Respondent assessing a penalty in the amount of $14,000 for violations of 49 CFR 171.2(c) and 173.34(i). The Respondent submitted a timely appeal of the Order requesting the civil penalty be reduced to $5,000. The Acting Chief Counsel's Order, dated February 4, 1986, is incorporated herein by reference.

Discussion

Respondent's basis for appeal is financial hardship in paying the civil penalty assessed in the Order. Consequently, Respondent has made an offer in compromise of $5,000. Although claiming that the $5,000 would still pose a financial burden, Respondent states that it can pay that amount and still stay in business. To support its claim of financial hardship, Respondent relies on the income statement and balance sheet, submitted in its response to the Notice of Probable Violation, showing the company's status as of December 31, 1985. These financial statements were not certified by an independent accountant nor signed by the company official responsible for the accuracy of such statements; nor were they supported by independent verifiable documentation. Under these circumstances, and in light of the fact that the claim of financial hardship has already been taken into account in reducing the amount of the civil penalty in the Order, there is no additional evidence in the record to support Respondent's position.

Findings

The offer submitted by Respondent to pay a civil penalty of $5,000 is rejected, and the Order of February 4, 1986, assessing a $14,000 civil penalty is affirmed. Respondent's offer to pay $5,000 is accepted as the first installment payment of the civil penalty, with the remaining $9,000 to be paid in consecutive monthly installments of $500.00 per month for the next eighteen months.

Payment of the $5,000 must be made within 20 days of your receipt of this decision. The installment payments of $500 per month are to begin on May 1, 1986, and continue to be paid on the first day of each month thereafter.

Failure to pay the civil penalty will result in referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court. Also failure to pay this civil penalty within 20 days of service will result in accrual of interest in accordance with the rate establishment pursuant to 31 U.S.C. 3717. That same authority also provides for a penalty charge of six percent (6%) per annum, which will accrue, if payment is not made within 110 days of service. Failure to pay an installment on time will result in acceleration of the remaining balance due as well as assessment of penalty and interest. Payment should be made by certified check or money order, payable to the Department of Transportation, and sent to the Office of the Chief Counsel, Research and Special Programs Administration, Room 8420, 400 7th Street, SW., Washington, DC. 20590.

March 24, 1986.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

Certified mail—Return receipt requested

[Ref. No. 86–02–SB]

Denial of Relief

In the Matter of: J.T. Baker Chemical Company, Respondent.

Background

On March 10, 1987, the Chief Counsel, Research and Special Programs Administration, issued an Order to J.T. Baker Chemical Company (Respondent) assessing a penalty in the amount of $1,000 for a violation of 49 CFR 171.2(a), 172.101, and 173.119(a). The Respondent submitted a timely appeal of the Order, challenging it on four bases. The Chief Counsel's Order dated March 10, 1987 is incorporated herein by reference.

Discussion

The Respondent's bases for appeal are: (1) Respondent did not "knowingly" commit any acts which violated the regulations; (2) Respondent did purchase, receive, and ship DOT packages which complied with 49 CFR 178.211–6 in all respects except that the DOT specification marking was missing on some of the packages, and at no time was there any compromise of safety by virtue of a missing manufacturer's DOT marking on an otherwise compliant box; (3) Respondent attempted to purchase DOT specification containers for the shipment; and (4) the charges against Respondent should be dismissed and the matter reviewed on the merits concerning the failure to properly mark a package.

Respondent's first argument is that it did not "knowingly" violate the sections cited in the Notice of Probable Violation. 49 CFR 107.299 states that "knowingly" means:

> that a person who commits an act which is a violation of the Act or of the requirements of this subchapter * * * commits that act with knowledge or knowingly when that person (1) has actual knowledge of the facts that give rise to the violation, or (2) should have known of the facts that give rise to the violation. A person knowingly commits an act if the act is done voluntarily and intentionally. Knowledge or knowingly means that a person is presumed to be aware of the requirements of the Act and this subchapter * * * Knowledge and knowingly does not require that a person have an intent to violate the requirements of the Act or the requirements of this subchapter * * *

Given this definition, the Respondent in this case knowingly offered packages for transportation that were not properly marked. Even if the Respondent was not aware that the boxes were not properly marked, Respondent should have known that they were not. Further, Respondent voluntarily offered the packages for transportation. Therefore, the argument that the Respondent did not knowingly violate the regulations is without merit.

Respondent's second argument is that it did purchase, receive, and ship DOT packages which complied with 49 CFR 178.211–6 in all respects except for the absence of the DOT specification marking on some of the packages, and that at no time was there any compromise in safety by virtue of a missing manufacturer's DOT marking on an otherwise compliant box. This recitation of facts does not excuse the violation, but is an admission of it. Further, without the specification marking on the box there was no way for the Respondent to determine whether or not the box had been subjected to the testing required by the regulations and, therefore, was a safe and authorized container in which to ship the material. Thus, safety, in fact, was compromised by Respondent's actions.

Respondent's third argument is that it tried to obtain DOT specification boxes for the shipment. As the Order in this case states, this fact was taken into consideration prior to the issuance of the Order. Respondent had an obligation to check each box for the proper specification marking prior to its use. The fact that Respondent tried to obtain the appropriate boxes does not serve to excuse the violation, but was taken into account as a mitigating factor.

In its fourth argument, Respondent appears to be saying that the manufacturer should have marked the specification on the boxes. However, that argument is irrelevant to the violation at hand. 49 CFR 171.2(a) requires a person who offers or accepts a hazardous material for transportation in commerce to ensure that the package so offered or accepted is marked in accordance with the regulations. Prior to offering the material for transportation, the Respondent was required to make certain that the boxes were properly marked. Respondent did not do so.

Findings

Based on my review of the record, I find the following:

(1) Respondent knowingly offered packages for transportation that were not properly marked.

(2) The absence of DOT specification markings on some of the packages was a compromise of safety.

(3) The fact that Respondent tried to obtain the required specification boxes does not excuse the violation.

(4) Respondent failed to ensure that the packages were marked with the required specification prior to offering hazardous materials for transportation in those packages, and any separate violation by the package manufacturer is irrelevant.

(5) Consequently, the four issues raised by the Respondent in its appeal are found to be without merit.

(6) The civil penalty was mitigated in the Order by an appropriate amount, and no basis for further mitigation of the penalty exists.

Therefore, the Order of March 10, 1987, assessing a $1,000 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in referral of this matter to the U.S. Attorney for collection of the civil penalty in the appropriate United States District Court. Also, failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717 as well as a penalty charge of six percent (6%) per annum. Payment should be made by certified check or money order payable to the Department of Transportation, and set to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Date Issued: October 19, 1987.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

Certified mail—Return receipt requested

[Ref. No. 86–09–CR]

Partial Grant of Relief

In the Matter of: Brendle, Inc., Respondent.

Background

On November 24, 1987, the Chief Counsel, Research and Special Programs Administration, issued a Final Order to Respondent, assessing a penalty in the amount of $2,250 for violations of 49 CFR 173.34(e)(3) and 173.34(e)(5). By letter received January 26, 1988, Respondent submitted an appeal of the Order, challenging the occurrence of violations on two bases. The Chief Counsel's Final Order is incorporated by reference.

Discussion

With respect to Violation No. 1, performing retests on DOT specification cylinders using equipment not capable of being read to an accuracy of 1 percent, Respondent contends, as it did before issuance of the Final Order, that the employee who performed the retesting during the inspection was a trainee and generally did not perform retesting without supervision. Furthermore, Respondent asserts that its regular employees were qualified to retest, and such an employee could have correctly retested the cylinder during the inspection.

During the inspection, the inspector observed the testing of a DOT specification 3AA cylinder and inquired which burette was used to measure the total expansion of the cylinder. Respondent's employee indicated a burette that could not be read to an accuracy of 1 percent of the total expansion of this cylinder, and a photograph was taken to establish this fact.

Moreover, to confirm the first employee's response, the inspector asked Idus Brendle, Respondent's employee with six years of retest experience, if the previously indicated burette was used to retest that DOT 3AA cylinder; Mr. Brendle replied that use of the indicated burette was standard procedure. Thus, Respondent's regular retesting employee confirmed that the wrong burette was utilized for retesting the DOT 3AA cylinder. Consequently, Respondent's present contention is without merit in light of the direct evidence that the improper burette was utilized.

With respect to Violation No. 2, failing to maintain records listing the reinspection and retest results of DOT specification cylinders, Respondent contends that, while some of its reinspection and retest records were not dated or signed and failed to contain adequate descriptions of each cylinder retested, this required information was available from other business records generated by the Respondent. In response to the Notice of Probable Violation, Respondent had submitted a series of invoices and pressure charts which it claimed provided the information in question. However, these records did not identify the results of reinspection or the DOT specification of the cylinders and thus did not meet the regulatory records requirements. Furthermore, Respondent failed to submit additional information with this appeal that would rebut the finding on this issue contained in the Order. Consequently, Respondent's contention is not supported by evidence and is without merit.

I have considered the two issues raised by the Respondent in its appeal and find them to be without merit. However, based on the delay in processing this case, partial mitigation of $750 is warranted. Therefore, the Chief Counsel's Order of November 24, 1987 is modified to reduce the civil penalty to $1,500.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to that same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC. 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: September 7, 1988.

M. Cynthia Douglass,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 86–13–CR]

Denial of Relief

In the Matter of: Sentry Fire & Welding Supply, Respondent.

Background

On April 9, 1987 the Chief Counsel, Research and Special Programs Administration, issued a Revised Order to Sentry Fire and Welding Supply (Respondent) assessing a penalty in the amount of $1,500 for violations of 49 CFR 173.34(e) (1)–(5). The Respondent submitted a timely appeal of the Order, challenging it on three bases. The Chief Counsel's Revised Order dated April 9, 1987 is incorporated by reference.

Discussion

The Respondent's bases for appeal are: (1) That the DOT inspection was conducted during an illegal raid upon Respondent's place of business; (2) that

the hydrostatic tests were performed but not immediately recorded; and (3) that regulations pertaining to hydrotesting or recordkeeping are not within 49 CFR part 107. Respondent's assertion that DOT participated in an illegal raid of its plant is without merit. 49 App. U.S.C. 1808 authorizes the Secretary of Transportation to conduct investigations to ensure compliance with the Hazardous Materials Transportation Act and the Hazardous Materials Regulations. The December 2, 1985 inspection by the DOT compliance inspector was conducted pursuant to this authority. Additionally, Respondent was informed that the DOT inspection was independent of the Arizona Department of Public Safety investigation. Consequently, the DOT compliance inspection was fully authorized by law.

Respondent's second basis of appeal is that hydrostatic tests were performed but not recorded. The Respondent proffered this same explanation in response to the May 1, 1986 Notice of Probable Violation. The Chief Counsel determined that Respondent's explanation, in combination with conducting retests and providing records of such retests, warranted the mitigation of the proposed penalty by $1,000. However, Respondent propounding this same justification at this point does not give grounds for further reduction in the assessed penalty.

Respondent's third basis of appeal is that 49 CFR part 107 does not impose hydrostatic testing or recordkeeping requirements. Section 107.299 is RSPA's interpretive regulation of the statutory term "knowingly". This section was cited to establish the basis on which the Chief Counsel based his determination that Respondent had acted with knowledge of the acts which constituted violations. Section 107.331 lists the factors that the Chief Counsel considered when assessing the civil penalty. Consequently, §§ 107.299 and 107.331 do not impose hydrostatic testing and recordkeeping requirements, but provide essential information for establishing Respondent's liability and imposing civil penalties.

Findings

The three issues raised by the Respondent in its appeal have been considered. I find that the inspection was conducted pursuant to valid statutory authority. Furthermore, I find that sufficient evidence has not been presented to warrant additional mitigation of the assessed civil penalty. Consequently, I affirm the civil penalty of $1,500 and the payment schedule outlined in the April 9, 1987 Revised Order.

The first monthly installment of the civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in referral of this matter to the U.S. Attorney for collection of the civil penalty in the appropriate United States District Court. Also failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717, as well as a penalty charge of six percent (6%) per annum. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, Room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Issued: September 14, 1987.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[Ref. No. 86–20–CR]

Denial of Relief

In the Matter of: Andre Fire Equipment, Respondent

Background

On March 19, 1987, the Chief Counsel assessed a $2,000 civil penalty against Andre Fire Equipment (Respondent) for violations of 49 CFR 171.2(c) and 171.34 (e)(1) and (e)(2). Respondent submitted an appeal by letter dated April 13, 1987. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order determined that Respondent had (1) knowingly represented and marked DOT specification cylinders as having been properly retested without performing a visual internal inspection, and (2) knowingly represented and marked DOT specification cylinders as having been properly retested without performing hydrostatic retesting with equipment capable of being read to an accuracy of one percent of the test pressure and one percent of total volumetric expansion or 0.1 cubic centimeter.

Respondent's bases for appeal are that: (1) Sommerfeld Welding Supply Inc. (Sommerfeld), not Respondent, owned the hydrostatic testing equipment and the building where the testing occurred, (2) Respondent's part-time employee, Mr. Zastrow, who did the testing, was trained and supervised by Sommerfeld, and (3) immediately after the inspection, Respondent notified Sommerfeld and closed the operation.

First, Respondent's contention that Sommerfeld owned the testing equipment and the building is irrelevant. Of relevance are the facts that Respondent's employee performed the cylinder retesting, that he did so in an incomplete manner, and that he did so without the required testing equipment. Use of another party's equipment and building does not absolve Respondent of responsibility for ensuring the correctness of the retesting it performs.

Second, Respondent's contention that its employee, Mr. Zastrow, was trained and supervised by Sommerfeld also is irrelevant. Mr. Zastrow performed the retesting of Coca-Cola cylinders at issue here, he was paid for that retesting by Respondent, and Respondent then billed Coca-Cola Co. of Sheyboygan, WI for those retesting services. In addition, Sommerfeld's President denies any involvement with retesting cylinders for Coca-Cola, and Respondent has provided no evidence to the contrary. Even if Mr. Zastrow was trained and supervised by Sommerfeld. Respondent is responsible for his retesting activities, which he carried out as Respondent's employee, for which Respondent billed a third party, and of which Sommerfeld claims no knowledge.

Third, Respondent's closing of its retesting operation after the inspection constitutes no defense to the violations. This action appears to be nothing more than termination of a retesting operation which never had received proper authorization in the first place.

Findings

Based on my review of the record, I find the following:

(1) Another party's ownership of the testing equipment and the building where testing occurred does not relieve Respondent of responsibility for cylinder retesting performed by its employee.

(2) Another party's alleged training and supervision of Respondent's employee/retester does not relieve Respondent of responsibility for cylinder retesting performed by its employee and billed for by Respondent.

(3) Respondent's termination of its retesting operations does not relieve it of responsibility for violations which occurred during such operations.

(4) Consequently, the three issues raised by the Respondent in its appeal are found to be without merit.

(5) The civil penalty was mitigated in the Order by an appropriate amount,

and no basis for further mitigation of the penalty exists.

Therefore, the Order of March 19, 1987, assessing a $2,000 civil penalty is affirmed, as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in referral of this matter to the U.S. Attorney for collection of the civil penalty in the appropriate United States District Court. Also failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717 as well as a penalty charge of six percent (6%) per annum. Payment should be made by certified check or money order payable to the Department of Transportation, and sent to the Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Date Issued: November 18, 1987.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

Certified mail—Return receipt requested

[Ref. No. 86-23-RMS]

Denial of Relief

In the Matter of: Advanced Medical Systems, Inc., Respondent.

Background

On October 30, 1986, the Chief Counsel assessed a $2,000 civil penalty against Advanced Medical Systems, Inc. (Respondent) for violations of 49 CFR 171.2(a), 172.202(a)(3), and 173.476(b) of the Hazardous Materials Regulations (HMR). Respondent submitted an appeal by letter dated October 17, 1986, and supplemented it by letter dated November 18, 1986. The Chief Counsel's Superseding Order (superseding the Order dated October 3, 1986) is incorporated herein by reference.

Discussion

Respondent's bases for appeal are that: (1) Respondent did not "knowingly" commit acts which violated the HMR; and (2) Respondent believes that the civil penalty assessed is unjust and would cause Respondent financial difficulty.

Respondent contends that it did not "knowingly" commit acts which violated 49 CFR 173.476(b) because it did not realize that it was required to obtain an International Atomic Energy Commission (IAEA) Certificate of Competent Authority (CCA) for the special form material itself, in addition to obtaining NRC and DOT approval of the Type B package for export under 49 CFR 173.471. DOT has consistently interpreted the word "knowingly" in the Hazardous Materials Transportation Act (HMTA) and defined it in the HMR (49 CFR 107.299) to mean that a person is chargeable with a violation of the HMTA or regulations if the person (1) actually knew of the facts giving rise to the violation or (2) should have known of such facts. In other words, the Department takes non-criminal enforcement action when it can prove that a person, through that person's negligence, has violated the HMTA or the HMR. The definition further provides that a person is presumed to be aware of the requirements of the HMTA and the HMR. "Knowingly" does not require that a person have an intent to violate the requirements of the HMTA or the HMR. See 49 CFR 107.299. Certainly a shipper of hazardous materials is presumed to be aware of the requirements of the HMTA and HMR, and if any doubt or confusion exists, is expected to inquire further.

Respondent's second basis for appeal is also without merit. Respondent has stated that the amount of the penalty under the circumstances is unjust and would present some financial difficulty. Although Respondent did not explain the circumstances involved, presumably it refers to the fact that Respondent filed for the required CCA on October 4, 1985, the day following the RSPA inspection. That fact already was taken into account in assessing the civil penalty, as stated in the Notice of Probable Violation dated August 5, 1986, and the Superseding Order dated October 30, 1986. Respondent also refers to some financial difficulty which the penalty would cause, without providing any specific information concerning the Respondent's ability to pay or the effect on the Respondent's ability to continue in business. Absent such information, no basis exists to mitigate the penalty.

Findings

Based on my review of the record, I find the following:

1. Respondent knowingly offered a hazardous material for transportation in commerce which was not properly described, in violation of 49 CFR 171.2(a) and 172.202(a)(3), by virtue of the fact that four shipping papers had listed on them incorrect identification numbers for shipments of radioactive material, special form, n.o.s. The assessment of a $150 penalty for each of the four violations (for a total of $600) is reasonable.

2. Respondent knowingly offered a hazardous material for transportation in commerce without obtaining proper authorization, in violation of 49 CFR 171.2(a) and 172.476(b), by virtue of the fact that it offered a special form radioactive material for export shipment on at least 14 occasions between December 1983 and June 1985 without obtaining an IAEA CCA for the specific material prior to the first export shipment. This constitutes a separate violation for each of the 14 shipments, and the assessment of a $100 penalty for each of the 14 violations is reasonable.

3. The two issues raised by the Respondent in its appeal are found to be without merit.

4. The civil penalty was assessed with due consideration of the factors listed in 49 CFR 107.331, and no basis exists for mitigation of the penalty.

Therefore, the Order of October 30, 1986, assessing a $2,000 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in referral of this matter to the U.S. Attorney for collection of the civil penalty in the appropriate United States District Court. Also, failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717 as well as a penalty charge of six percent (6%) per annum. Payment should be made by certified check or money order payable to the Department of Transportation, and sent to the Chief, Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

Date Issued: July 31, 1987.

M. Cynthia Douglass

Administrator, Research and Special Programs Administration.

Certified Mail—Return receipt requested

[Ref. No. 86-24-FBB]

Denial of Relief

In the Matter of: Barkoff Container & Supply Co., Respondent.

Background

On February 12, 1987, the Chief Counsel of the Research and Special Programs Administration (RSPA) issued an Order to Barkoff Container and Supply Co. (Respondent) assessing a civil penalty of $2,500 for a violation of

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49 CFR 171.2(c). The Order found that Respondent had sold to CHEMCENTRAL/San Francisco (Chemcentral) 278 DOT Specification 12B boxes which did not have abutting or overlapping inner flaps and which were not accompanied by fill-in pieces or pads to prevent an opening between the inside flaps. The Respondent submitted a timely appeal of the Order by letter dated February 20, 1987. The Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent's bases for appeal are that: (1) The purchaser of the boxes, rather than Respondent, was responsible for the violation and, therefore, Respondent did not "knowingly" violate the Hazardous Materials Regulations; and (2) since the July 25, 1986 warning letter from RSPA to Mercury Container Corporation (Mercury) stated that RSPA would not proceed with any enforcement action unless the violations recurred, and they have not, if any penalty is assessed it should be against Mercury, the manufacturer.

With respect to Respondent's first basis for appeal, Chemcentral's plant manager stated that Chemcentral had specifically requested Respondent to design a specification container in which to package and ship its flammable liquids, and that the boxes that were observed during the inspection of Chemcentral on December 5, 1985, represented the complete boxes received from Respondent. The plant manager stated that Chemcentral had requested by telephone that the boxes be supplied and that the marking DOT 12B30 be printed on them.

Respondent does not contest the fact that it knowingly represented, by sale to Chemcentral, that the fiberboard boxes met the requirements for a DOT Specification 12B box. The boxes supplied to Chemcentral were marked as DOT 12B30 boxes, and Respondent's name and address were printed just above the specification marking on the box. Further, Respondent's Invoice No. 00 0156159, recording the shipment of the boxes to Chemcentral, indicates that the boxes shipped were 12B30 boxes. Chemcentral, as a shipper of hazardous materials, is required to use the appropriate specification packagings to ship its goods, but it is not responsible for the actual manufacture of DOT specification packagings.

It was the responsibility of Respondent as the broker to ensure that the packaging met the Specification 12B fiberboard box specifications of 49 CFR 178.205–.4 before it represented, by sale to Chemcentral, that the fiberboard boxes met DOT specifications. In fact the boxes did not meet DOT specifications, and Respondent's sale of those boxes to Chemcentral as meeting the requirements of 49 CFR 178.205, constitutes a violation of 49 app. U.S.C. § 1804(c) and 49 CFR 171.2(c).

The Respondent's second basis for appeal concerns a July 25, 1986 warning letter which was sent to Mercury, the manufacturer of the boxes. This letter was sent to Mercury and applied only to that corporation, not to Respondent. Enforcement action may be taken against any person who represents, marks, certifies, sells, or offers a packaging or container as meeting the requirements of the HMR if the packaging is not manufactured, fabricated, marked, maintained, reconditioned, repaired or retested in accordance with the HMR. Thus, action may be taken against either the manufacturer or the broker, or both, and the action may be different in each case. The case against Respondent is outlined in the Notice of Probably Violation issued to Respondent on August 11, 1986, which is separate and distinct from the warning letter sent to Mercury.

Findings

Based on my review of the record, I find the following:

1. Respondent knowingly committed an act which violated 49 App. U.S.C. 1804(c) and 49 CFR 171.2(c).
2. The two issues raised by Respondent on appeal are without merit.
3. The civil penalty was assessed with due consideration of the factors listed in 49 app. U.S.C. 1809 and 49 CFR 107.331, and no basis exists for further mitigation of the penalty.

Therefore, the Order of February 12, 1987, assessing a $2,500 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 App. U.S.C. 1809 and 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in referral of this matter to the U.S. Attorney for collection of the civil penalty in the appropriate United States District Court. Also, failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717 as well as a penalty charge of six percent (6%) per annum. Payment should be made by certified check or money order payable to the Department of Transportation, and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Date Issued: October 9, 1987.

M. Cynthia Douglas,
Administrator, Research and Special Programs Administration.

Certified mail—Return receipt requested.

[Enf. Case No. 86–30–CM]

Partial Grant of Relief

In the Matter of: Kargard Industries, Inc., Respondent.

Background

On October 22, 1987, the Chief Counsel, Research and Special Programs Administration (RSPA), issued an Order to Kargard Industries, Inc. (Respondent) assessing a penalty in the amount of $13,000 for violations of 49 CFR 178.51–15(a), 178.51–15(b), 178.61–3, 178.61–14(a), and 178.61–15(b). By letter dated November 13, 1987, Respondent submitted a timely appeal of the Order, challenging it on five bases. The Chief Counsel's Order is incorporated herein by reference. In addition, Respondent has alleged that it has taken four corrective actions which should be considered in determining an appropriate civil penalty.

Discussion

The Respondent's bases for appeal are:

(1) Respondent, instead of cutting two physical test specimens from a DOT 4BA cylinder, cut one specimen because of the cylinder's small size and because 49 CFR 178.61–15(a)(2) (applicable to DOT 4BW cylinders) allows one specimen to be taken from either head on a cylinder when both heads are made of the same material;

(2) The gauge length of physical test specimens for DOT 4 BA cylinders should be based on minimum wall thickness, rather than actual specimen thickness, which would have resulted in a gauge length of at least 24 times thickness;

(3) Respondent has made attempts to locate cylinders covered by Respondent's Inspection Report No. 482 so that a chemical analysis can be performed in the United States;

(4) Respondent's hydrostatic testing equipment did permit readings to an accuracy of 1% of the total expansion.

(5) The gauge length of physical test specimens for DOT 4BW cylinders should be based on minimum wall thickness, rather than actual specimen thickness, which would have resulted in a gauge length of at least 24 times thickness.

First Argument

Respondent's first argument is that, because of the cylinder's small size, it is difficult to obtain two physical test specimens from a single DOT 4BA cylinder. Hence, Respondent applied the test procedure for 4BW cylinders and cut only one specimen from a 4BA cylinder. Respondent states that 4BA cylinders are made of two drawn halves joined by a circumferential weld and that they are so small in size that it is difficult to cut two specimens from a single cylinder. Respondent asserts that, because 4BA cylinders are so small, the specification requirements for 4BW cylinders, allowing one test specimen, should apply. However, the small size of 4BA cylinders fails to justify application of the requirements of a different cylinder specification. In the absence of an exemption issued by the Office of Hazardous Materials Transportation, Respondent was without legal authority to conduct physical tests on a DOT 4BA cylinder using but one specimen.

Second Argument

Respondent's second argument is that, since the regulations do not contain a definition of thickness as it relates to sizing the gauge length for 4BA test specimens, it was justified in using minimum wall thickness rather than actual specimen thickness. Minimum wall thickness is a theoretical value which establishes a minimum material thickness in the cylinder and which is used in calculating wall stress in the worst case or thinnest wall scenario. Wall stress is a calculated value indicating the amount of stress placed on the wall of the cylinder by test pressure. If this stress exceeds the yield strength of the metal in the wall, the cylinder fails. Actual specimen thickness is used to determine the cross-sectional area for the required calculations of yield strength, ultimate tensile strength and reduction in area performed during physical testing. Consequently, the reference to thickness in the physical test requirements refers to actual specimen thickness. Moreover, during a 1984 enforcement conference on prior case against Kargard, gauge length was discussed and RSPA advised Respondent that gauge length must be 24 times the actual specimen thickness.

Third Argument

Respondent's third argument is that it is in the process of obtaining approval from the Office of Hazardous Materials Transportation (OHMT) of a foreign chemical analysis of materials used to manufacture DOT 4BW cylinders. 49 CFR § 178.61–3 requires that chemical analyses be performed in the United States unless otherwise approved by the Director of OHMT. Respondent also stated in its appeal that it is attempting to have a chemical analysis performed in the United States as soon as it locates any cylinder listed on its Inspection Report No. 482. Respondent has been given a sufficient amount of time in which to submit evidence of either approval of foreign chemical analysis or chemical analysis performed in the United States and has failed to do so.

Fourth Argument

Respondent's fourth argument is that a 250 cc burette was used to test DOT 4BW cylinders. However, Respondent's Quality Control Manager, Vincent M. Bahl, stated during the inspection that the 500 cc burette was used to test the cited DOT 4BW cylinders. The evidence concerning this violation was reviewed with Mr. Bahl and Mr. Baumann during the exit interview. Respondent's statement that its quality control people have subsequently reported that a 250 cc burette was used to test these cylinders is not persuasive. Respondent has provided no evidence to support this contention, and it is contradicted by the contemporaneous statement of Mr. Bahl. The incremental accuracy of the 500 cc burette is not adequate to permit reading the total expansion of the cited cylinders to an accuracy of 1 percent, or 0.1 cc's. Further, Respondent contends that their 2000 cc burette can be interpolated to ⅛ or ¼ of the calibration marks. However, Respondent did not use a 2000 cc burette to test the cited DOT 4BW cylinders. In addition, the regulation requires that the expansion gauge permit reading total expansion to an accuracy of 1 percent, or 0.1 cc's. The incremental accuracy of the 2000 cc burette is not adequate to permit reading the total expansion of the cited cylinders to an accuracy of 1 percent, or 0.1 cc's.

Fifth Argument

Respondent's fifth argument is the same, with respect to 4BW cylinders, as its second argument. For the reasons discussed above, I do not find Respondent's argument persuasive.

Summary of Corrective Actions Taken

In its appeal letter, Respondent listed and described four remedial measures it has taken to correct the circumstances leading to the four violations mentioned in the December 17, 1986 Notice of Probable Violation.

Action No. 1 concerns Respondent's failure to take two physical test specimens from a DOT 4BA test cylinder. Respondent claims that while disagreeing with the test requirements, it has changed its test procedure to include taking two specimens from its DOT 4BA test cylinder. Such corrective action warrants mitigation of $250, and the civil penalty assessed for this violation is reduced from $1000 to $750.

In Action No. 2, Respondent states that it has changed the sizing of its tests coupons to a gauge length of 24 times the actual specimen thickness. However, action had been mandated previously by an October 19, 1984 Compliance Order issued to Respondent relating to a prior enforcement action. Therefore, this corrective measure does not warrant mitigation of the civil penalty.

Action No. 3 relates to Respondent's alleged obtaining of chemical analyses of materials used to manufacture DOT 4BW cylinders in Milwaukee, Wisconsin. However, RSPA still has received no evidence from Respondent that it has executed arrangements for having its chemical analyses performed in the United States.

Action No. 4 deals with Respondent's testing of cylinders using a burette that does not permit reading the total expansion of the cylinder to an accuracy of 1 percent or 0.1 cc's. Respondent contends that it has purchased a 1000 cc burette with 5 cc gradations and, therefore, is no longer relying on midpoint interpolations to achieve reading accuracy on its cylinders. Obtaining burettes which would permit accurate expansion readings are corrective measures that warrant mitigation of the assessed civil penalty. Therefore, the civil penalty of $2,500 is reduced by $250 to $2,250.

Actions Nos. 1 and 4 are post-inspection remedial measures that constitute a basis for mitigation of the civil penalties assessed. Actions Nos. 2 and 3, however, provide no basis for mitigation.

Findings

Based on my review of the record, I find the following:

(1) Respondent was required to perform physical tests on two specimens cut from a DOT 4BA cylinder, and failed to do so.

(2) The gauge length of physical test specimens for DOT 4BA and 4BW cylinders is the actual specimen thickness.

(3) There is no evidence of Respondent obtaining a chemical analysis in the United States or approval of a foreign chemical analysis.

(4) There is no evidence that Respondent used a 250 cc burette on hydrostatic testing equipment capable of

being read to an accuracy of 1 percent or 0.1 cubic centimeter.

(5) Mitigation of the proposed civil penalty of $1,000 is granted due to the delay in processing the case. Mitigation of $500 is also granted based on corrective actions taken by Respondent, specifically its taking two test specimens from each DOT 4BA test cylinder and its acquiring burettes which permit expansion readings to an accuracy of 1 percent. There is basis for further mitigation of the penalty.

Therefore, the Order of October 22, 1987, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331, except that the $13,000 civil penalty assessed therein is hereby mitigated to $11,500.

Failure to pay the civil penalty assessed herein within 120 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717. Pursuant to this same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, Room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: August 24, 1988.

M. Cynthia Douglass,

Administrator.

Certified mail—Return receipt requested

[Enf. Case No. 86–38–DM]

Denial of Relief

In the Matter of: JEHL Cooperage, Co., Inc., Respondent.

Background

On September 2, 1987, the Chief Counsel, Research and Special Programs Administration, issued an Order to Jehl Cooperage, Co., Inc. (Respondent), assessing a penalty in the amount of $4,000 for a violation of 49 CFR 178.0–2 and 178.116–12(a). The Respondent submitted a timely appeal of the Order, challenging it on one basis. The Chief Counsel's Order dated September 2, 1987 is incorporated herein by reference.

Discussion

The Respondent's basis for appeal is that it has suffered financial hardship for the past five years, thus making it difficult to pay the assessed civil penalty. In support of its argument, Respondent has submitted financial statements for the years 1985–1987, and a letter from its certified public accountant certifying that Respondent has operated at a loss for the period ending September 30, 1987.

Respondent's financial statements show a positive balance of approximately $300,000 between its current assets and current liabilities. Moreover, Respondent's documents show cash on hand of approximately $50,000. Therefore, the financial information submitted by Respondent indicates that it is financially able to pay the assessed civil penalty.

Findings

Based on my review of the record, I find the following:

(1) Respondent has not submitted any evidence which indicates that it is experiencing financial hardship warranting mitigation of the assessed civil penalty.

(2) Consequently, the argument raised by the Respondent in its appeal is found to be without merit.

(3) There is no basis for mitigation of the civil penalty.

Therefore, the Order of September 2, 1987, assessing a $4,000 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in referral of this matter to the U.S. Attorney for collection of the civil penalty in the appropriate United States District Court. Also, failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717 as well as a penalty charge of six percent (6%) per annum. Payment should be made by certified check or money order payable to the Department of Transportation, and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC. 20590.

Date Issued: June 20, 1988.

M. Cynthia Douglass,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 86–39–FSE]

Denial of Relief

In the Matter of: Paulista Fireworks Company, Respondent.

Background

On August 14, 1987, the Chief Counsel, Research and Special Programs Administration, issued a Revised Order to Paulista Fireworks Company (Respondent) assessing a penalty in the amount of $8,000 for a violation of 49 CFR 171.2(a), 172.301(a), 173.91(a), and 173.86(b). The Respondent submitted a timely appeal of the Revised Order, challenging it on three bases. The Chief Counsel's Revised Order of August 14, 1987, is incorporated herein by reference.

Discussion

The Respondent's bases for appeal are: (1) Respondent did not "knowingly" commit any acts which violated the regulations; (2) the packaging requirements found in the Hazardous Materials Regulations are new; and (3) DOT required larger shells (6 inch) for testing when Respondent had already been approved for testing of smaller shells (3 inch).

Respondent's first argument is that it did not "knowingly" violate the sections cited in the Notice of Probable Violation. 49 CFR 107.299 states that "knowingly" means:

> That a person who commits an act which is a violation of the Act or of the requirements of this subchapter. . . . commits that act with knowledge or knowingly when that person (1) has actual knowledge of the facts that give rise to the violation, or (2) should have known of the facts that give rise to the violation. A person knowingly commits an act if the act is done voluntarily and intentionally. Knowledge or knowingly means that a person is presumed to be aware of the requirements of the Act and this subchapter . . . Knowledge or knowingly does not require that a person have an intent to violate the requirements of the Act or the requirements of this subchapter.

Given this definition, the Respondent in this case knowingly offered packages for transportation that were not properly marked and packaged. Even if the Respondent was not aware that the boxes were not properly marked, Respondent should have known that they were not. Further, Respondent voluntarily offered the packages for transportation. Therefore, the argument that the Respondent did not knowingly violate the regulations is without merit.

Respondent's second argument is that the requirements it violated are new, and that Respondent was not notified of them until after shipping the fireworks

from Brazil to the United States. Respondent contends that it received a copy of the "new procedures" from the American Pyrotechnics Association after it had already shipped the fireworks to Zambelli Internationale Fireworks Manufacturing Company, Inc., of New Castle, Pennsylvania. The American Pyrotechnics Association bulletin to which Respondent refers advised of new administrative procedures of the Bureau of Explosives following a period of uncertainty as to whether the Bureau would remain in operation. The requirement to submit the largest item (in this case, 6-inch shells) and have smaller ones (3-inch shells) approved by analogy is not a new requirement. The only "new" aspect of the process is that the location for submission of test samples was changed from New Jersey to Wisconsin. Hence, there are no new procedures or regulatory requirements, and Respondent is not excepted from compliance with those requirements.

Respondent's third argument is that it could rely upon DOT's earlier approval of its manufacturing 3-inch shells, but that DOT is now unfairly requiring it to obtain a separate approval to manufacture 6-inch shells. Respondent obtained approval to manufacture 3-inch shells under approval numbers EX–8310179 and EX–8310206. Respondent has improperly manufactured and offered for transportation 6-inch shells under these approval numbers. 49 CFR 173.86(b)(1) requires a new explosive to be approved by the Director of OHMT before it may be offered for transportation. Respondent was required to obtain approval prior to manufacturing and shipping of the 6-inch shells. Respondent failed to do so.

Findings

Based on my review of the record, I find the following:

(1) Respondent knowingly offered packages for transportation that were not properly marked.

(2) DOT specification markings were not affixed to any of the boxes, and the boxes inside the freight container did not qualify as DOT 12B specification boxes.

(3) Respondent offered a new explosive for transportation without obtaining approval from the Director of OHMT.

(4) Consequently, the three arguments raised by the Respondent in its appeal are found to be without merit.

(5) The civil penalty was assessed with due consideration of the factors listed in 49 App. U.S.C. § 1809 and 49 CFR § 107.331, and no basis exists for further mitigation of the penalty.

Therefore, the Revised Order of August 4, 1987, assessing an $8,000 civil penalty is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 app. U.S.C. 1809 and 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in referral of this matter to the U.S. Attorney for collection of the civil penalty in the appropriate United States District Court. Also, failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717 as well as a penalty charge of six percent (6%) per annum. Payment should be made by certified check or money order payable to the Department of Transportation, and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Date Issued: November 18, 1987.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

Certified mail—Return receipt requested

[Ref. No. 87–04–SC]

Action on Appeal

In the Matter of: Union Carbide Corporation, Respondent.

On September 3, 1987, the Chief Counsel of the Research and Special Programs Administration (RSPA) assessed a $10,000 civil penalty against Union Carbide Corporation (Respondent) for violations of 49 CFR 171.2(a) of the Hazardous Materials Regulations (HMR). Respondent, through counsel, submitted a timely appeal by letter dated November 23, 1987. The Chief Counsel's Order is incorporated herein by reference.

In its appeal, Respondent made several arguments which I will summarize and discuss. The Chief Counsel determined that Respondent, in four instances, had knowingly offered hazardous materials for transportation in commerce in cylinders which had not been retested in accordance with 49 CFR 173.34(e), in violation of 49 CFR 171.2(a).

The regulations at issue in this case are 49 CFR 173.34 (e)(9) and (e)(10). Subsection (e)(9) provides, in relevant part, that DOT 4BA and 4BW cylinders may be hydrostatically retested every 12 years, instead of every seven years, if used exclusively for the transport of certain hazardous materials.[1] Subsection (e)(10) provides that DOT 4BA and 4BW cylinders which are used exclusively for "fluorinated hydrocarbons and mixtures thereof which are commercially free from corroding components" may, in lieu of the periodic hydrostatic retest, be given a complete external visual inspection at the time the periodic retest becomes due.

The Chief Counsel's Order stated that subsection (e)(9) allows 12-year retesting for cylinders used for a mixture of listed materials with each other, but not a mixture of a listed material with one that is not listed. Consequently, the Chief Counsel found that the mixture contained in Respondent's cylinders, consisting of a listed material, dichlorodifluoromethane, and a nonlisted material, ethylene oxide, was not a mixture falling within the purview of subsection (e)(9).

Respondent argues that the Chief Counsel's interpretation of subsection (e)(9) is too narrow given the language of the subsection and its regulatory history, which indicates that the original intent and application were clearly more expansive than the current interpretation. Respondent contends that the language could logically be construed to allow mixtures of listed materials with non-listed materials. Moreover, Respondent argues that the history of this subsection indicates that its purpose was to provide an alternative method of retesting low pressure cylinders which are not subject to conditions causing corrosion, and that the initial regulation did not limit or restrict its application to any particular non-corrosive gas. Later revisions to the subsection to list specific non-corrosive gases, Respondent contends, were merely to clarify, not restrict, its application.

Respondent argues that the proper interpretation of the words "or mixture thereof" should include mixtures of one or more listed fluorocarbons with any other material, provided the mixture is commercially free from corroding components. Any more restrictive

[1] Subsection (e)(9) provides the 12-year retesting period for cylinders "which are used exclusively for anhydrous dimethylamine; anhydrous monomethylamine; anhydrous trimethylamine; methyl chloride; liquefied petroleum gas; methylacetylene-propadiene stabilized; or dichlorodifluoromethane, difluoroethane, difluoromonochloroethane, monochlorodifluoromethane, monochlorotetrafluoroethane, monochlorotrifluor-ethylene, or mixture thereof, or mixtures of one or more with trichloromonofluoromethane; and which are commercially free from corroding components. . . ." 49 CFR 173.34(e)(9).

interpretation, Respondent contends, would compel the conclusion that the words "commercially free of corroding components" relate to the cylinders themselves, rather than the materials, and allow shipment of gases with corroding components in obvious contradiction of the purpose of the subsection.

Respondent also argues that the history of subsection (e)(10) supports its contentions because, of all the materials listed, only the fluorinated hydrocarbons refer to "and mixtures thereof." Since "liquefied petroleum gas" is a generic category of materials and mixtures of two or more such gases presumably would be allowed, Respondent argues, the use of the "mixture" language with "fluorinated hydrocarbons," also a generic category, must indicate the applicability of subsection (e)(10) to mixtures of fluorinated hydrocarbons with other materials. Respondent also notes that the docket file of the Interstate Commerce Commission (predecessor to DOT) pertaining to the adoption of language which resulted in subsection (e)(10) indicates that the external visual examination "is superior to the presently required hydrostatic test." Respondent asserts that upholding the Order would prohibit the use of a test recognized for over three decades as superior.

Finally, Respondent contends that the regulations are so confusing, and the Chief Counsel's interpretation renders them so vague, that the assessment of a penalty raises substantial questions of equity and due process.

Respondent refers repeatedly to the "Chief Counsel's interpretation" and the "present interpretation" when, in fact, the interpretation of 49 CFR 173.34 (e)(9) and (e)(10) in the Chief Counsel's Order has been the longstanding official agency interpretation of these subsections. Respondent's assertion that the purpose of listing specific non-corrosive gases was merely illustrative is without merit. The regulations, while not a model of good draftsmanship, do not include language suggesting that these gases are merely examples of non-corrosive gases that may be used. The only language which is arguably ambiguous is "mixture(s) thereof," and RSPA has consistently interpreted that language to mean mixtures of the listed materials with each other. Moreover, Respondent's other assertions concerning the meaning of prior ICC dockets, and the lack of notice and comment afforded during the 1969 rulemaking are irrelevant, untimely, or both. Respondent has an obligation to come forward and request an interpretation of the regulations if it believes they are unclear, and may not unilaterally follow its own interpretation. Accordingly, I find that Respondent has not submitted evidence of warrant dismissal of the Order and no mitigation is warranted on this basis.

Respondent asserts that if the Order is not dismissed, substantial mitigation of the penalty is warranted because of the lack of culpability or adverse effect on safety, the understandable confusion with respect to application of the regulations, Respondent's extraordinary record of transportation safety, and the adverse effect of the Order on Respondent's business.

The nature, circumstances, extent, and gravity of the violations, as well as Respondent's history of prior violations, were already taken into account in assessing the civil penalty. Furthermore, Respondent's ability to pay the penalty and its ability to continue in business were also considered. Respondent is clearly able, as it acknowledges, to pay the assessed penalty, and doing so will not adversely affect its ability to continue in business. Therefore, no mitigation is warranted on these bases.

Finally, Respondent argues that the Order represents an immediate and substantial threat to Respondent's ability to continue shipping Oxyfume-12, the hazardous material in question. Respondent asserts that Oxyfume-12 is the only product available for sterilizing certain medical equipment, and that denial of the appeal would result in Respondent having to file an immediate application for an emergency exemption.

Respondent's argument is not persuasive. Respondent is responsible for compliance with the Hazardous Materials Regulations (HMR). Respondent had several options available to it, including seeking an interpretation of the HMR (as stated above), filing a rulemaking petition under § 106.31, testing the cylinders at the appropriate interval, or applying for an exemption. Respondent, however, did none of the above, and no mitigation is warranted because Respondent now claims that compliance with § 173.34(e) may cause it problems.

However, I do find that mitigation of the assessed penalty is warranted due to the extensive delay in processing this case.

Therefore, the Chief Counsel's Order of September 3 1987, finding that Respondent knowingly violated 49 CFR 171.2(a), is modified by reducing the civil penalty from $10,000 to $6,000. The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate of seven percent (7%) in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: April 26, 1989.

Travis P. Dungan,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 87–08–RMC]

Denial of Relief

In the Matter of: A. J. Metler Hauling & Rigging, Inc., Respondent.

On March 10, 1988, the Chief Counsel issued an order assessing a $3,000 civil penalty against A. J. Metler Hauling & Rigging, Inc. for a violation of 49 CFR 177.825(b), transporting highway route controlled radioactive materials on a nonpreferred route, as alleged in an April 1, 1987 Notice of Probable Violation (Notice). Respondent submitted an appeal in a March 29, 1988 letter. The Chief Counsel's Order and the Notice are incorporated herein by reference.

Discussion

In its appeal, Respondent states that "we checked with the [S]tate of Illinois Department of Transportation on our designated routes of travel. We got a verbal commitment from them on this particular route." Respondent's contention, therefore, is that, when it left the Interstate Highway System, it used a State-designated alternative preferred route.

However, a February 24, 1988 letter from E. T. Crawford, Jr., Chief, Compliance Unit, Illinois Department of Transportation states: "To date, the State of Illinois has not designated any alternative preferred routes for the transportation of highway route controlled quantities of radioactive

materials." The existence of this letter was cited in the Chief Counsel's Order, and Respondent has not presented any specific probative evidence to rebut that statement. There is no statement as to who in the Illinois Department of Transportation allegedly made what statements on what dates to what specific employee of Respondent—let alone any contemporaneous document reflecting the occurrence of such a verbal statement.

Therefore, the preponderance of the evidence indicates that Respondent knowingly violated § 177.825(b) as alleged in the Notice.

Findings

Based on my review of the record, I find the following:

(1) Respondent transported highway route controlled quantities of radioactive materials on a nonpreferred route, in violation of § 177.825(b).

(2) Respondent's appeal is without merit.

(3) The $3,000 civil penalty is appropriate.

Therefore, the Order of March 10, 1988, assessing a $3,000 civil penalty is affirmed, as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in referral of this matter to the U.S. Attorney for collection of the civil penalty in the appropriate United States District Court. Also failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717 as well as a penalty charge of six percent (6%) per annum. Payment should be made by certified check or money order payable to the Department of Transportation, and sent to the Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 7th Street SW., Washington, DC 20590.

Date Issued: May 10, 1988.

M. Cynthia Douglass,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 87-09-CR]

Partial Grant of Relief

In the Matter of Consolidated Fire Control, Inc., Respondent.

Background

On March 14, 1988, the Chief Counsel assessed a $5,500 civil penalty against Consolidated Fire Control, Inc. (Respondent), for violations of 49 CFR 173.34(e) of the Hazardous Materials Regulations (HMR). Respondent submitted an appeal by letter dated May 17, 1988. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order determined that Respondent had knowingly (1) performed hydrostatic testing of DOT specification cylinders without including an external visual examination in accordance with Compressed Gas Association Pamphlet C-6, in violation of 49 CFR 173.34(e)(1), (2) retested DOT specification cylinders without holding a current retester's identification number issued by the Research and Special Programs Administration (RSPA), in violation of 49 CFR 173.34(e)(1)(i), and (3) performed hydrostatic testing of DOT specification cylinders using a gauge indicating the total expansion of a cylinder which could not be read with an accuracy of one percent or to a reading of 0.1 cubic centimeter and a pressure gauge which could not be read to within one percent of the test pressure, in violation of 49 CFR 173.34(e)(3).

Respondent does not contest the occurrence of the violations. Respondent's sold basis for appeal is that the civil penalty assessment will work an economic hardship on Respondent. Respondent submitted certain financial information, including copies of its 1985 and 1986 tax returns, and requested a reduction of the penalty amount, or, in the alternative, a suitable payment plan. The Chief Counsel's Order noted that Respondent, despite two requests prior to issuance of that Order, had failed to submit financial information to substantiate its assertion of economic hardship. The Chief Counsel, therefore, determined that mitigation of the civil penalty was not warranted.

After reviewing Respondent's financial information submitted with the appeal, I have determined that partial mitigation is warranted.

Findings

Based on my review of the record, I find the following:

(1) The Chief Counsel correctly determined, based on the information then available to him, that mitigation of the civil penalty was not warranted.

(2) On appeal, Respondent has submitted sufficient evidence to show that payment of the $5,500 penalty will work a financial hardship and could adversely affect the Respondent's ability to continue in business.

Therefore, the Chief Counsel's Order of March 14, 1988, finding that Respondent knowingly violated 49 CFR 173.34(e), is modified by reducing the civil penalty from $5,500 to $4,000, and authorizing payment of the $4,000 civil penalty in 10 consecutive monthly payments of $400 each beginning on August 15, 1988, and due on the 15th day of each month thereafter until a total of $4,000 has been paid. If you default on any payment of the authorized payment schedule, the entire amount of the remaining civil penalty shall, without notice, immediately become due and payable. Your failure to pay this accelerated amount in full will result in referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court, and accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to this same authority, a penalty charge of six percent (6%) per annum will accrue if payment of the accelerated amount is not made within 90 days of default.

Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: July 21, 1988.

M. Cynthia Douglass,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 87-13-PM]

Denial of Relief

In the Matter of: Chicago Pail Manufacturing Co., Respondent.

Background

On May 23, 1988, the Chief Counsel of the Research and Special Programs Administration (RSPA) assessed an $8,000 civil penalty against Chicago Pail Manufacturing Co. (Respondent), for violations of 49 CFR 171.2(c), 178.115-12 (a)(1) and (a)(2), 178.116-6(a), 178.131-11 (a) and (b), and 178.132-11(a) of the Hazardous Materials Regulations (HMR). Respondent submitted an appeal by letter dated June 10, 1988, and supplemented the appeal by letter dated August 11, 1988. The Chief Counsel's

Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order determined that Respondent had knowingly: (1) Manufactured and marked steel pails as DOT specification 17E pails when they were manufactured with 28 gauge steel instead of the required 24 gauge steel; (2) manufactured and distributed DOT specification 17C steel pails without conducting required hydrostatic tests; (3) manufactured and distributed Dock specification 17C steel pails without conducting required drop tests; (4) manufactured and distributed DOT specification 37A60 steel pails without conducting required drop tests; and (5) manufactured and distributed DOT specification 37B60 steel pails without conducting required drop tests.

Respondent does not contest the occurrence of the violations. Respondent's bases for appeal are that (1) the imposition of any civil penalty would work a severe hardship, and (2) Respondent operates in an enterprise zone in the City of Chicago in which approximately 90% of its work force consists of minorities.

With respect to Respondent's first contention, the Chief Counsel's Order noted that, despite two requests prior to issuance of that Order, Respondent had failed to submit financial information and thus failed to substantiate its assertion of economic hardship. Respondent submitted with its appeal uncertified financial statements for the years 1985, 1986, and 1987 showing income and expenses. By letter of July 29, 1988, Respondent was requested to provide a certified balance sheet or financial statement identifying its current assets and liabilities. By letter dated August 11, 1988, Respondent submitted an uncertified balance sheet (dated January 20, 1988) for the years ended November 30, 1987, 1986 and 1985 prepared by Cohen & Pollack, Certified Public Accountants. The balance sheet includes a statement by the accounting firm that "Management has elected to omit substantially all of the disclosures required by generally accepted accounting principles." With these limitations in mind, I have reviewed the financial information submitted by Respondent. The balance sheet shows losses for the years 1986 and 1987. However, these losses were created by a transfer of funds to Respondent's parent corporation, American Steel Container Company. Furthermore, these transfers reflect only the Respondent's tax position, not its ability to pay. In addition, Respondent's liquidity, as evidenced by the ratio of current assets to current liabilities, is good. The ratios for the three years are 2.8, 2.75, and 2.5 for 1985, 1986, 1987, respectively. Finally, the most current data supplied showed a cash balance of $9,615. The information provided by Respondent thus does not support its contention that payment of a civil penalty would affect its ability to pay or its ability to continue in business.

With respect to Respondent's second contention, Respondent was asked by letter dated July 29, 1988, to explain the relevance of its assertion and provide information to substantiate it. Respondent provided a statement from the Department of Economic Development, City of Chicago, to the effect that Respondent is located in Chicago's Enterprise Zone I. Respondent also stated that:

> "Both the City of Chicago and the State of Illinois have recognized the obstacles Chicago Pail must overcome to continue to operate in an economically depressed, crime-ravaged area while employing those not necessarily otherwise employable. In recognition of these obstacles, the City and State have assisted Chicago Pail's continued viability through the enterprise program.

I am not persuaded as to the relevance of this argument. While it may be laudable that Respondent operates in an economically depressed area and employs persons who might otherwise not be employed, Respondent has failed to show that this assertion alone warrants mitigation of the civil penalty. Moreover, Respondent's statement that it has received assistance, from Chicago and the State of Illinois, suggests that its continued operation in the enterprise zone is economically advantageous.

Findings

Based on my review of the record, I find the following:

(1) The issues raised by Respondent are without merit.

(2) The Chief Counsel mitigated the amount of the civil penalty by $1,000.

(3) The civil penalty assessed by the Chief Counsel was appropriate, and no further mitigation is warranted.

Therefore, the Chief Counsel's Order of May 23, 1988, finding that Respondent knowingly violated 49 CFR 171.2(c), 178.115–12 (a)(1) and (a)(2), 178.116–6(a), 178.131–11(a) and (b), and 178.132–11(a), and assessing an $8,000 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria in 49 CFR 107.331. The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to that same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service.

Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: October 17, 1988.

M. Cynthia Douglass,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 87–14–SPT]

Denial of Relief

In the Matter of: Reliance Universal Inc., Respondent.

Background

On July 14, 1987, the Chief Counsel assessed a $10,000 civil penalty against Reliance Universal Inc. (Respondent) for violations of 49 CFR 173.32(e)(1)(ii), 171.2(a), 173.128(a)(3), 172.326(a)(1), and 172.326(a)(2) of the Hazardous Materials Regulations (HMR). Respondent submitted an appeal by letter dated July 26, 1987. The Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent's bases for appeal are that: (1) The violations were merely recordkeeping in nature, with no accident involved and no injury to persons, property, or the environment; and (2) the recordkeeping problems have been solved with the installation of a computerized retest program.

Respondent contends that the violations were merely recordkeeping in nature. Failure to retest DOT Specification 57 portable tanks in accordance with 49 CFR 173.32(e)(1)(ii) is not a mere recordkeeping violation, but a violation of substantive safety requirements. Similarly, offering a hazardous material, in this case flammable liquid, paint, for transportation in commerce in DOT Specification 57 portable tanks which have not been properly retested is a violation of the substantive requirements of 49 CFR 171.2(a) and 173.128(a)(3).

Finally, offering for transportation in commerce DOT Specification 57 portable tanks containing a hazardous material, which tanks have not been properly marked, is a violation of the substantive marking requirements of 49 CFR 172.326(a)(1) and (a)(2). The fact that there has been no known injury to persons or property was already taken into account in considering the gravity of the violation when the civil penalty was assessed. Despite the fact that Respondent had been warned in 1982 about its lack of retest procedures, Respondent failed to comply with the regulations.

Respondent's second basis for appeal is also without merit. Respondent's corrective actions in retesting all DOT 57 portable tanks and installing a computerized retest program were already considered in the Order, and the proposed assessment accordingly was reduced by $1,000 to the $10,000 assessment in the Order. Substantial mitigation is not appropriate merely because Respondent brought its operation into compliance with the law.

Findings

Based on my review of the record, I find the following:

1. Respondent knowingly committed acts which violated 49 CFR 173.32(e)(1)(ii), 171.2(a), 173.128(a)(3), 172.326(a)(1) and 172.326(a)(2).

2. The two issues raised by the Respondent in its appeal are without merit.

3. The civil penalty was assessed with due consideration of the factors listed in 49 app. U.S.C. 1809 and 49 CFR 107.331, and no basis exists for further mitigation of the penalty.

Therefore, the Order of July 14, 1987, assessing a $10,000 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 app. U.S.C. 1809 and 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in referral of this matter to the U.S. Attorney for collection of the civil penalty in the appropriate United States District Court. Also, failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717 as well as a penalty charge of six percent (6%) per annum. Payment should be made by certified check or money order payable to the Department of Transportation, and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

Date Issued: September 1, 1987.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

Certified mail—Return receipt requested

[Enf. Case No. 81–17–CM]

Revised Partial Denial of Relief

In the Matter of: General Fire Extinguisher Corp., Respondent.

Background

On November 3, 1987, the Chief Counsel, Research and Special Programs Administration, issued an Order to General Fire Extinguisher Corp. (Respondent) assessing a penalty in the amount of $2,000 for a violation of 49 CFR 171.2(c) and 178.37–14(a). The Respondent submitted a timely appeal of the Order, challenging it on six bases. The Chief Counsel's Order dated November 3, 1987 is incorporated herein by reference.

Discussion

The Respondent's bases for appeal are:

(1) Respondent did not "knowingly" commit any acts which violated the regulations;

(2) Respondent's representatives did not accompany Inspector Henderson during this June 19, 1986 compliance inspection of their facility, and Inspector Henderson failed to notify anyone in Respondent's employ of his findings;

(3) Respondent, instead of replacing the expansion gauge at issue, installed a new computer on its hydrostatic equipment to increase testing, increase reliability, and decrease maintenance;

(4) Pittsburgh Testing Laboratories (PTL), not Respondent, is responsible for ensuring that Respondent's hydrostatic equipment complies with the Hazardous Materials Regulations;

(5) The electronic expansion gauge on Respondent's hydrostatic equipment can be read by using a midpoint interpolation; and

(6) Respondent is allowed a 10 percent ratio of expansion when testing cylinders.

First Argument

Repondent's first argument is that it did not "knowingly" violate the Sections cited in the Notice of Probable Violation. 49 CFR 107.299 states that "knowingly" means:

> That a person who commits an act which is a violation of the Act or of the requirements of this subchapter . . . commits that act with knowledge or knowingly when that person (1) has actual knowledge of the facts that give rise to the violation. A person knowingly commits an act if the act is done voluntarily and intentionally. Knowledge or knowingly means that a person is presumed to be aware of the requirements of the Act and this subchapter . . . Knowledge or knowingly does not require that a person have an intent to violate the requirements of the Act or the requirements of this subchapter. . . .

Given this definition, the Respondent in this case knowingly performed hydrostatic tests on DOT specification 3AA cylinders with equipment having an expansion gauge that could not be read to an accuracy of 1 percent. Even if Respondent did not know that the expansion gauge on its hydrostatic equipment was not capable of being read to an accuracy of 1 percent, Respondent should have known that the gauge could not be read to the required accuracy. Further, Respondent has been a cylinder manufacturer since 1903 and thus is factually as well as legally presumed to be aware of the hydrostatic testing requirements. Therefore, the argument that the Respondent did not knowingly violate the regulations is without merit.

Second Argument

Respondent's second argument is that Inspector Henderson was not accompanied by Respondent's representatives during his June 19, 1986 compliance inspection. Respondent further alleges that Inspector Henderson failed to speak to anyone in Respondent's employ. Respondent has submitted three affidavits of company officials stating that they did not accompany Inspector Henderson during his inspection. Respondent Quality Control Manager, Neil MacLean, states in his affidavit that he "guided (Inspectors Henderson and Abis) to the hydrotest area where I left them." Obviously this indicates that Inspector Henderson was accompanied by one of Respondent's representatives during his inspection. Respondent's argument that Inspector Henderson failed to speak with anyone in Respondent's employ is not true since, during the inspection, Mr. MacLean provided Inspector Henderson with copies of pertinent inspection reports. Also, Donald Schneckloth, in his affidavit, stated that he talked briefly with Inspectors Henderson and Abis, and delivered various cylinder reports from Respondent's files for their examination. In her affidavit, Beverly Burden states that she met with both DOT inspectors in her office. Hence, Inspector Henderson did speak to individuals in Respondent's employ and was accompanied on his inspection by at least one of Respondent's representatives. Furthermore, the

relevance of this argument is questionable at best since Respondent's officials were aware of the inspectors' presence and free to accompany them throughout the entire inspection, but chose not to do so.

Third Argument

Respondent's third argument is that instead of merely replacing the expansion gauge, it installed a new computer on its hydrostatic equipment to increase testing, increase reliability, and decrease maintenance. The Chief Counsel mitigated the proposed civil penalty, in part, because of Respondent's installation of new equipment. Further mitigation on that basis is not justified.

Fourth Argument

In its fourth argument, Respondent claims that PTL, as an independent inspector, is solely responsible for ensuring that Respondent's hydrostatic equipment complies with the Hazardous Materials Regulations. Both Respondent and PTL had a dual responsibility to ensure compliance with the regulations. While separate enforcement action has been taken against PTL regarding inadequate testing at Respondent's facility, Respondent also was responsible for ensuring that its cylinders were tested in accordance with the Hazardous Materials Regulations. Respondent failed to do so. In addition, the Chief Counsel's partial mitigation of the proposed civil penalty took into account the dual responsibility of PTL and Respondent. Further mitigation on that basis is not justified.

Fifth Argument

Respondent, in its fifth argument, claims that the electronic expansion gauge on its hydrostatic equipment can be read by using a midpoint interpolation. RSPA's engineering staff has studied this contention, and found it to be valid. However, as noted in the Notice of Probable Violation dated July 9, 1987, five attempts at calibration were made with calibrated cylinder S/N 26768Y. The calibrated expansion at 3000 psi is 31.0 cc's. 49 CFR 178.37–14(a) allows a total expansion rate of 1 percent or 0.1 cubic centimeters. The acceptance range is ±0.31 cc's or 30.69 to 31.31 cc's. The five successive attempts at calibration yielded results of 31.5 to 32.5 cc's. The calibration attempt at precisely 3000 psi yielded a total expansion of 31.5 cc's. During the subsequent attempt, the test pressure only reached 2980 psi. However, the total expansion recorded was still 31.5 cc's, which is not within 1 percent or 0.1 cubic centimeters of the required total expansion rate. Therefore, even though Respondent's hydrostatic equipment can be read by using a midpoint interpolation, the preponderance of the evidence nevertheless indicates that Respondent failed to perform hydrostatic tests on cylinders with equipment having an expansion gauge permitting a reading of total expansion to an accuracy of either one percent or 0.1 cubic centimeters.

Sixth Argument

Finally, Respondent argues that it is allowed a 10 percent ratio of expansion when testing cylinders. However, this argument is irrelevant to the alleged violation of failing to produce a reading of total expansion to an accuracy of 1 percent. The section of the regulations to which Respondent refers in its argument is 49 CFR §178.37–14(c). Respondent, however, is being cited for an alleged violation of 49 CFR 178.37–14(a), which mentions nothing about an allowable 10 percent expansion ratio when testing cylinders. Therefore, Respondent's last argument is irrelevant to the alleged violation.

Findings

Based on my review of the record, I find the following:

(1) Respondent knowingly performed hydrostatic tests on DOT specification cylinders with equipment having an expansion gauge that could not be read to an accuracy of 1 percent.

(2) Inspector Henderson spoke with and was accompanied by representatives of Respondent during his June 19, 1986 compliance inspection of Respondent's facility.

(3) The Chief Counsel mitigated the proposed civil penalty, in part, because of Respondent's installation of a new computer on its hydrostatic equipment.

(4) Respondent was responsible for ensuring that its hydrostatic equipment complied with the Hazardous Materials Regulations and already has benefitted from partial mitigation because of the dual responsibilities of Respondent and PTL.

(5) The electronic gauge on Respondent's hydrostatic equipment can be read by using a midpoint interpolation. However, this does not explain Respondent's observed failure to calibrate its equipment to 1 percent.

(6) Respondent is not allowed a 10 percent ratio of expansion when testing cylinders. The 10 percent ratio is not applicable to the violation at issue here.

(7) Consequently, five of the six arguments raised by the Respondent in its appeal are found to be without merit.

(8) The proposed civil penalty was mitigated in the Order by an appropriate amount. Further mitigation of $500 is granted due to the delay in processing the case, specifically the time period between the date of inspection and the date of the NOPV. No basis for further mitigation of the penalty exists.

Therefore, the Order of November 3, 1987, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR § 107.331, except that the $2,000 civil penalty assessed therein is hereby mitigated to $1,500.

The civil penalty affirmed herein must be paid withn 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in referral of this matter to the U.S. Attorney for collection of the civil penalty in the appropriate United States District Court. Also, failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. § 3717 as well as a penalty charge of six percent (6) per annum. Payment should be made by certified check or money order payable to the Department of Transportation, and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Dated Issued: March 5, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

Certified mail—Return receipt requested

[Ref. No. 87–25–CR]

Denial of Relief

In the Matter of: All Fire Equipment, Inc. Respondent

Background

On November 16, 1987, the Chief Counsel assessed a $5,000 civil penalty against All Fire Equipment, Inc. (Respondent) for violations of 49 CFR 173.34(e), 173.34(e)(1)(i), 173.34(e)(3), and 173.34(e)(5) of the Hazardous Materials Regulations. Respondent submitted an appeal by letter dated January 13, 1988. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order determined that Respondent had knowingly (1) failed to retest Department of Transportation (DOT) 3AA cylinders at a minimum retest pressure of 5/3 times service pressure, in violation of 49 CFR

173.34(e); (2) represented to be performing retests on DOT specification cylinders by test date stamping them without holding a retester's identification number issued by the Research and Special Programs Administration (RSPA) in violation of 49 CFR 173.34(e)(1)(i); (3) performed hydrostatic testing on DOT specification cylinders using equipment which did not have a gauge indicating the total expansion of the cylinder such that the total expansion could be read with an accuracy of 1% or to a reading of 0.1 cc, and did not have a pressure gauge that could be read to an accuracy of within 1% of the test pressure, in violation of 49 CFR 173.34(e)(3); and (4) failed to keep records showing the results of reinspection and retest of cylinders, in violation of 49 CFR 173.34(e)(5).

Respondent asserts two bases for its appeal. First, Respondent asserts that it has made subtantial efforts to ensure compliance with the DOT regulations, as evidenced by (a) its initiation of contact with the Department for the purpose of meeting any and all standards for hydrostatic testing, (b) its consultation, at the Department's suggestion, with the Robert Hunt Company, an independent inspection agency, to learn how to properly perform hydrostatic testing, and (c) the Hunt Company's issuance to Respondent of a five-year approval rating and statement that Respondent is in strict conformance with the Department's regulations. Second, Respondent contends that, because of its corrective efforts, the $5,500 proposed civil penalty should have been mitigated by more than $500, and that the $5,000 assessed penalty is excessive and will effect a substantial and undue hardship on Respondent.

With respect to Respondent's first contention, in June 1986 Respondent requested and received from the Department an application for registration of its cylinder requalification facility, with instructions for contacting an independent inspection agency. However, it was not until October 8, 1986, the day after the Department's inspection of Respondent's facility, that Respondent authorized the Hunt Company to conduct a survey of its facility. Furthermore, contrary to Respondent's statement, RSPA's Office of Hazardous Materials Transportation, not the Hunt Company, issued Respondent a registration number valid for a five-year period, and the Hunt Company's recommendation did not contain a statement that Respondent was "in strict conformance" with Department regulations. Only the Department can determine whether a facility is in compliance with the Department's regulations. An inspection agency can only recommend that a facility be approved by the Department.

With respect to Respondent's second contention, the Chief Counsel reduced the civil penalty by only $500 from the proposed assessment because Respondent initiated efforts to obtain a survey by the inspection agency and a retester's identification number only after the Department's inspection. The record does not contain any evidence, nor did Respondent submit any information to support its contention that the penalty would impose an undue financial burden.

Findings

Based on my review of the record, I find the following:

(1) Respondent's efforts to ensure compliance were taken after RSPA's inspection, and were, in any event, no more than the minimum necessary to be in compliance.

(2) There is no evidence that the Respondent is unable to pay the penalty or that the penalty assessment will adversely affect the Respondent's ability to continue in business.

(3) Consequently, the issues raised by Respondent on appeal are without merit.

(4) The civil penalty was mitigated in the Order by an appropriate amount, and no basis exists for further mitigation of the penalty.

Therefore, the Chief Counsel's Order of November 16, 1987, finding that Respondent knowingly violated 49 CFR 173.34(e), 173.34(e)(1)(i), 173.34(e)(3), and 173.34(e)(5), and assessing a $5,000 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in referral of this matter to the U.S. Attorney for collection of the civil penalty in the appropriate United States District Court. Also failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717 as well as a penalty charge of six percent (6%) per annum. Payment should be made by certified check or money order payable to the Department of Transporation, and sent to the Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

Date Issued: March 14, 1988.

M. Cynthia Douglass,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 87–28–CR]

Denial of Relief

In the Matter of: Aurora Beverage Distributors, Inc., Respondent

Background

On March 16, 1988, the Chief Counsel assessed a $2,000 civil penalty against Aurora Beverage Distributors, Inc. (Respondent), for violations of 49 CFR 173.34(e)(1)(i) and 173.34(e)(3) of the Hazardous Materials Regulations (HMR). Respondent submitted an appeal by letter dated April 5, 1988. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order determined that Respondent had knowingly (1) represented to have retested DOT specification cylinders by marking them with a test date without holding a current retester's identification number issued by the Research and Special Programs Administration (RSPA) in violation of 49 CFR 173.34(e)(1)(i), and (2) used a gauge indicating the total expansion of a cylinder which could not be read with an accuracy of one percent or to a reading of 0.1 cc, to perform hydrostatic testing of DOT specification cylinders, in violation of 49 CFR 173.34(e)(3).

Respondent asserts two bases for its appeal. First, Respondent asserts that the penalty imposed "was not commensurate with the minor infraction alleged." In support of this contention, Respondent stated that its machine, while old, was functioning correctly, has since been checked and certified to be accurate, and no testing has been performed since the Notice of Probable Violation was received. Respondent also contends that it was licensed by the Bureau of Explosives and when that function was transferred to the Department of Transportation, no notice was provided to Respondent. Second, Respondent asserts that the financial information it submitted clearly shows an inability to pay the penalty. In support of its assertion, Respondent noted that its tax returns for 1985 and 1986 show a net operating loss, while its most recent financial statement (June 1987) shows a net profit of $2,783.

With respect to Respondent's first contention, the RSPA inspector observed and the Chief Counsel determined that Respondent's retest operator tested DOT specification

cylinders using a burrette incapable of being read to the required accuracy. The violation was not for malfunctioning equipment, but for testing procedures not in compliance with the regulations. The fact that Respondent once held a license from the Bureau of Explosives does not excuse Respondent's failure to obtain a current retester's identification number from RSPA. Respondent has a legal responsibility to comply with the Hazardous Materials Transportation Act and the HMR and is presumed to be aware of the requirements. Further, Respondent was informed during the informal conference that notice was published in the **Federal Register** in 1978 stating that all undated registrations expired on December 31, 1979. Finally, the Chief Counsel took into consideration Respondent's statement that it no longer retests cylinders and mitigated the amount of penalty.

With respect to Respondent's second contention, the Chief Counsel reduced the amount of the penalty initially assessed after considering the financial information submitted by Respondent. Respondent's financial statement shows a bank balance of $1,944 and a current asset/current liabilities ratio of approximately 1.1. There is no justification at this point for any further reduction of the assessed penalty.

Findings

Based on my review of the record, I find the following:

(1) Respondent has not submitted sufficient evidence to show that it is unable to pay the penalty or that the penalty assessment will adversely affect the Respondent's ability to continue in business.

(2) The civil penalty was mitigated in the Order by an appropriate amount, and no basis exists for further mitigation of the penalty.

(3) Consequently, the issues raised by Respondent on appeal are without merit.

Therefore, the Chief Counsel's Order of March 16, 1988, finding that Respondent knowingly violated 49 CFR §§ 173.34(e)(1)(i) and 173.34(e)(3), and assessing a $2,000 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR § 107.331.

In view of Respondent's assertions concerning its financial status, I hereby authorize payment of the $2,000 civil penalty in 10 consecutive monthly payments of $200 each beginning on June 15, 1988, and due on the 15th day of each month thereafter until a total of $2,000 has been paid. If you default on any payment of the authorized payment schedule, the entire amount of the remaining civil penalty shall, without notice, immediately become due and payable. Your failure to pay this accelerated amount in full also will result in referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court, and accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717. Pursuant to this same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: May 31, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

Certified mail—Return receipt requested

[Ref. No. 87–34–CM]

Denial of Relief

In the Matter of: Catalina Cylinders Corporation, Respondent.

Background

On March 31, 1988, the Chief Counsel of the Research and Special Programs Administration (RSPA) assessed a $2,500 civil penalty against Catalina Cylinders Corporation (Respondent), for violations of 49 CFR 178.46–11(a) and 178.46–12(e) of the Hazardous Materials Regulations (HMR). Respondent submitted an appeal by letter dated April 19, 1988. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order determined that Respondent had knowingly (1) performed hydrostatic tests on DOT specification 3AL cylinders on equipment which had a pressure gauge which could not be read to an accuracy of one percent, and an expansion gauge indicating the total expansion of cylinder which could not be read with an accuracy of one percent or to a reading of 0.1 cc, in violation of 49 CFR 178.46–11(a), and (2) performed the alternate bend test on specimens cut from DOT 3AL cylinders without have them bent inward around a mandrel until the interior edges were at a distance apart not greater than the diameter of the mandrel, in violation of 49 CFR 178.46–12(e).

Respondent asserts two bases for its appeal. With respect to the first violation, Respondent asserts that its hydrostatic testing equipment was performing at the required accuracy level at the start of the testing shift as verified by calibration at the start of the test day. However, this assertion is contradicted by the evidence discussed in the Chief Counsel's Order. The RSPA inspector observed DOT specification 3AL cylinders being tested on Respondent's equipment, and witnessed eight unsuccessful attempts by Respondent to calibrate this equipment.

With respect to the second violation, Respondent asserts that the finding of violation was based on an erroneous interpretation of the ASTM (American Society for Testing and Materials) bend test procedure. The requirement that a flattening test be performed on DOT 3AL cylinders authorizes an alternate bend test in accordance with ASTM E 290–77. However, 49 CFR 178.46–12(e) further requires that "when the alternate bend test is used, the test specimens shall remain uncracked when bent inward around a mandrel in the direction of curvature of the cylinder wall until the interior edges are at a distance apart not greater than the diameter of the mandrel." The RSPA inspector observed, and the Chief Counsel determined, that Respondent failed to perform the bend test so that the inside edges of the DOT cylinder were bent to a separation distance of 3½" (the diameter of the mandrel used in the test).

In addition, Respondent stated that Steigerwalt Associates, its independent inspector, had provided a detailed explanation of both these violations in its own response to Notice of Probable Violation No. 87–38–IIA, and requested a meeting with the Administrator and Steigerwalt Associates after review of the appeal. Respondent has already been afforded the opportunity for an informal conference or for a formal administrative hearing before an Administrative Law Judge. Respondent did not avail itself of either opportunity and accordingly has waived its right to a hearing. The non-hearing appeal proceeding which Respondent elected by filing a written appeal does not include any further opportunity for a conference or meeting.

Findings

Based on my review of the record, I find the following:

(1) The issues raised by Respondent on appeal are without merit.

(2) The civil penalty assessed in the Order was appropriate, and no basis exists for mitigation of the penalty.

Therefore, the Chief Counsel's Order of March 31, 1988, finding that Respondent knowingly violated 49 CFR 174.46–11(a) and 178.46–12(e) and assessing a $2,500 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in (1) referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court, and (2) accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to this same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: May 31, 1988.

M. Cynthia Douglass,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 87–38–IIA]

Denial of Relief

In the Matter of: Steigerwalt Associates, Respondent.

Background

On May 4, 1988, the Chief Counsel of the Research and Special Programs Administration (RSPA) assessed a $6,000 civil penalty against Steigerwalt Associates (Respondent), for violations of 49 CFR 178.46–4(d), 178.46–4(d)(11) and 178.46–4(d)(12) of the Hazardous Materials Regulations (HMR). Respondent submitted an appeal by letter dated May 27, 1988, and supplemented that appeal by letters dated June 16 and 29, 1988. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order dismissed Violation No 1 and determined that Respondent had knowingly (1) failed to witness and ensure that hydrostatic testing on Department of Transportation (DOT) specification 3AL cylinders was conducted with equipment that could be calibrated to one percent accuracy, in violation of 49 CFR 178.46–4(d) (Violation No. 2), (2) failed to witness and ensure that bend tests of DOT 3AL cylinders were properly conducted, in violation of 49 CFR 178.46–4(d) (Violation No. 3), (3) failed to ensure that DOT 3AL cylinders are marked in compliance with the specifications, in violation of 49 CFR 178.46–4(d)(11) (Violation No. 4), and (4) failed to provide complete test records to the manufacturer of DOT 3AL cylinders, in violation of 49 CFR 178.46–4(d)(12) (Violation No. 5).

With respect to Violation No. 2, Respondent asserts that the test equipment was properly calibrated before the DOT inspector arrived at the plant, was worked on during the day by a third party, and would not calibrate at the end of the day. Respondent further asserts that no testing was performed that day because the DOT inspector and Respondent's inspector were away from the plant witnessing other tests. Respondent's assertion that the equipment was properly calibrated before the DOT inspector arrived is contradicted by its own inspector's contemporaneous statement, made to the DOT inspectors, that the equipment had not been calibrated on the day of the inspection, and that it was only checked once a week. Respondent's assertion that no testing was performed that day is contradicted by the observations of the DOT inspectors, who actually witnessed hydrostatic testing and made copies of computer printouts showing the test results. Moreover, Respondent's assertion that no testing was conducted is contradicted by its own earlier statement (in response to the Notice of Probable Violation) that "the test data from earlier that day was accurate and properly obtained." Respondent cannot now be heard to claim that no testing was conducted.

With respect to Violation No. 3, Respondent contends that the bend test was performed properly and that the violation is a result of an incorrect interpretation by the DOT inspector. The requirement that a flattening test be performed on DOT 3AL cylinders authorizes an alternate bend test. However, 49 CFR 178.46–12(e) further requires that "when the alternate bend test is used, the test specimens shall remain uncracked when bent inward around a mandrel in the direction of curvature of the cylinder wall until the interior edges are at a distance apart not greater than the diameter of the mandrel." The RSPA inspector observed, and the Chief Counsel determined, that Respondent failed to perform the bend test so that the inside edges of the DOT cylinder were bent to a separation distance of 3.5 inches (the diameter of the mandrel used in the test). The DOT inspector observed an alternate bend test in which the specimen was bent around a 3.5 inch diameter mandrel until the inside edges were approximately 4 inches apart. Mr. Robert Lyddon, Division Manager of Advanced Testing Services, confirmed that this was the standard testing procedure. Respondent's inspector, Mr. Kayser, was present and did not correct or contradict this statement in any way.

With respect to Violation No. 4, Respondent asserts that the DOT inspector must have observed the markings on a cylinder prior to final inspection, whereas Respondent inspects markings on finished, painted cylinders. Respondent also contends that it has never seen any of DOT's evidence and thus is unable to determine what the photographs show. The photographs taken by the DOT inspector are of a DOT 3AL cylinder, painted yellow, serial number A5306, stamped as having been inspected in 8/86 with Respondent's partially legible identification number IA11. Furthermore, Respondent was given specific notice of all of DOT's evidence and could have reviewed any or all of DOT's evidence by requesting an informal conference or a formal hearing, or by simply requesting copies of the evidence referred to in the Notice of Probable Violation.

With respect to Violation No. 5, Respondent asserts that the HMR do not specify a time limit within which test records are to be prepared and provided to the container manufacturer, and contends that a six-month limit is an arbitrary interpretation of the regulations. Respondent claims that it had the records available in its Pennsylvania home office and could have provided them to the California facility had it been requested to do so. The Chief Counsel determined that while 49 CFR 178.46–4(d)(12) does not specify a tme limit, Respondent must prepare and furnish records within a reasonable time period.

The Chief Counsel further determined that a six-month period without test records was not reasonable. Respondent's operations are subject to inspection at any time and the DOT inspectors must have sufficient current information available to conduct such

inspections. Respondent's contention that it could have provided the required reports had it been requested to do so is irrelevant. Resondent is required by 49 CFR 178.46–4(d)(12) to furnish complete test records to the cylinder manufacturer. Neither the cylinder manufacturer nor Mr. Kayser, Respondent's plant inspector, had copies of any test records for the entire period during which the cylinders had been manufactured.

In its June 16, 1988 letter, Respondent stated that the asessed civil penalty would severely impact on its ability to continue in buisness. Respondent was requested to provide a certified financial statement or other information to substantiate this claim. By letter dated June 29, 1988, Respondent submitted copies of Schedule C (Form 1040) for tax years 1985, 1986, and 1987 showing Mr. Ernest E. Steigerwalt's profit from operation of Steigerwalt Associates, a sole proprietorship. On June 14, 1988, Respondent was again asked to provide a certified balance sheet showing its current assets and liabilities, rather than the individual tax returns of Mr. Steigerwalt. Respondent did not choose to provide such information, and therefore I have relied on the information Respondent provided with its June 29 letter. By his failure to respond to requests for pertinent financial information. Mr. Steigerwalt effectively failed to substantiate his assertion that the assessed civil penalty would, in fact, severely impact the ability of Steigerwalt Associates to continue in business. The tax returns provided show that Mr. Steigerwalt had a net profit from operation of Steigerwalt Associates of $7,431 for 1985, $15,999 for 1986, and $13,628 for 1987, after deductions for payment of wages to an unidentified recipient of $15,000 for 1985, $14,600 for 1986, and $12,900 for 1987. This information not only does not support Respondent's claim that payment of a $6,000 penalty would severely impact its ability to continue in business, but on the contrary, reflects that Respondent is able to pay the penalty and still show a profit.

Finally, Respondent requested a meeting with the Administrator after review of the appeal. Respondent has already been afforded the opportunity for an informal conference or for a formal administrative hearing before an Administrative Law Judge. Respondent did not avail itself of either opportunity and accordingly has waived its right to a conference or a hearing. This appeal proceeding does not include any further opportunity for a conference or meeting.

Findings

Based on my review of the record, I find the following:

(1) The issues raised by Respondent on appeal are without merit.

(2) The civil penalty assessed in the Order was appropriate, and no basis exists for mitigation of the penalty.

Therefore, the Chief Counsel's Order of May 4, 1988, finding that Respondent knowingly violated 49 CFR 178.46–4(d), 178.46–4(d)(11), and 178.46–4(d)(12), and assessing a $6,000 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717.

Pursuant to that same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: August 24, 1988.

M. Cynthia Douglass,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 87–43–SC]

Denial of Relief

In the Matter of: G.C. Industries, Inc., Respondent.

Background

On December 4, 1987, the Chief Counsel issued an order assessing a $2,000 civil penalty against G.C. Industries, Inc. (Respondent) for violations of 49 CFR 171.2(a) and 173.304(a) of the Hazardous Materials Regulations, as alleged in the Notice of Probable Violation of August 3, 1987. Respondent submitted an appeal by letters of December 16, 1987, and February 3, 1988. The Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent's bases for appeal are: (1) The permeation devices shipped by Respondent are entirely different from gas cylinders, and thus the gas cylinder regulations cannot be applied to them; (2) Respondent's competitors ignore the regulations and ship similar products by regular mail; (3) on November 16, 1987, Respondent applied for an exemption from the Department's packaging requirements; and (4) during the year ended December 31, 1986, Respondent lost $72,000, with an accumulated loss of $218,000.

I will discuss each of those issues in the order indicated above. First, a party shipping hazardous materials has a legal responsibility to ensure that those shipments comply either with the Hazardous Materials Regulations (49 CFR parts 171–179) or with an exemption from those regulations; the alleged inapplicability of the gas cylinder regulations to Respondent's shipments is irrelevant. Because Respondent elected to ship hazardous materials not in accordance with the regulations, it had no alternative but to obtain an exemption prior to shipping those materials.

Second, the alleged practices of Respondent's competitors are irrelevant to Respondent's legal responsibility to comply with the regulations. Any specific allegations of violations on the part of other parties would be investigated by the Office of Hazardous Materials Transportation.

Third, the fact that Respondent belatedly has applied for an exemption from the Hazardous Materials Regulations does not merit mitigation of the civil penalty for Respondent's violation.

Fourth, the financial information submitted by Respondent reflects cash on hand of over $38,000 and a current assets/current liabilities ratio of about 2.5 ($182,000/$74,000). That information indicates neither an inability to pay a $2,000 civil penalty nor any adverse effect of such a penalty on Respondent's ability to remain in business.

Findings

Based on my review of the record, I find the following:

(1) Respondent offered a hazardous material, hydrogen sulfide, for transportation in commerce in a non-specification packaging, in violation of 49 CFR §§ 171.2(a) and 173.304(a)(2).

(2) The issues raised on appeal by Respondent are without merit.

(3) There is no basis for mitigation of the civil penalty set forth in the Order.

Therefore, the Order of December 4, 1987, assessing a $2,000 civil penalty is affirmed, as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in referral of this matter to the U.S. Attorney for collection of the civil penalty in the appropriate United States District Court. Also failure to pay this civil penalty within 20 days of service will result in the accrual of interest in accordance with the rate established pursuant to 31 U.S.C. 3717 as well as a penalty charge of six percent (6%) per annum. Payment should be made by certified check or money order payable to the Department of Transportation, and sent to the Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

Date Issued: May 10, 1988.

M. Cynthia Douglass,

Administrator.

Certified mail—Return receipt requested

[Enf. Case No. 87–50–CR]

Denial of Relief

In the Matter of: Bennett Welding Supply Corp., Respondent.

Background

On January 21, 1988, the Chief Counsel, Research and Special Programs Administration (RSPA), issued an Order to Bennett Welding Supply Corp. (Respondent) assessing a penalty in the amount of $3,000 for violations of 49 CFR 171.2(c), 173.34(e)(1) and 173.34(e)(3). By letter dated February 26, 1988, the Respondent submitted a timely appeal of the Order, challenging it on two bases. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Respondent's bases for appeal are:

(1) Respondent contends that the results of the hydrostatic testing performed during the January 8, 1987 inspection are identical to the results shown in Respondent's records;

(2) Although Respondent's employee did not know which burette to use for retesting when questioned by the RSPA inspector, this is not a violation of 49 CFR 173.34(e)(3).

First Argument

Respondent's first argument is that the results of hydrostatic testing performed for the RSPA inspector on January 8, 1987, matches the results shown in Respondent's hydrostatic test records, and, therefore, there is no violation. However, Violation No. 1 is based on Respondent's failure to conduct an internal visual examination of the cylinder under § 173.34(e)(1), not the adequacy of its hydrostatic testing.

During the inspection, the RSPA inspector examined the inside of the cylinder and observed an excessive amount of iron oxide deposits caused by internal corrosion. Such an excessive buildup of iron oxide deposits creates a rebuttable presumption that Respondent failed to perform an internal visual examination of the cylinder. Respondent has failed to rebut this presumption. Moreover, Respondent's Vice President of Operations, Thomas J. Bennett, examined photographs of the cylinder during the December 9, 1987 informal conference and agreed that such a buildup would indicate that an internal visual examination was not performed.

Second Argument

Respondent's second argument is that it should not be cited for using hydrostatic equipment that could not be read to an accuracy of 1 percent simply because its employee, David Flight, selected an incorrect burette for retesting. Respondent argues that this evidence shows only that Mr. Flight misunderstood the RSPA inspector's question concerning which burette was to be used for retesting. However, there is sufficient evidence to show that Respondent violated § 173.34(e)(3). First, Mr. Flight stated that he has been retesting cylinders for Respondent for two years. When asked by the RSPA inspector which burette was used to test a cylinder (ICC 3AA 1800, Serial No. 36450) located near the retest equipment, Mr. Flight replied that the middle burette with 0.5 cc increments was used to test the cylinder. The retest record provided by Respondent indicated that this cylinder had been retested by Mr. Flight on January 7, 1987, the day before the inspection. The test report showed a total expansion of 9 cc's. Performing retesting on a cylinder of this size using a burette with 0.5 cc increments will not result in an expansion reading of within 1 percent or 0.1 cc as required by the regulations.

Findings

Based on my review of the record, I find the following:

(1) Respondent failed to conduct an internal examination on a cylinder that had been marked as properly inspected.

(2) Respondent, by marking a DOT specification cylinder, represented it as having been tested on hydrostatic equipment which had an expansion gauge that could not be read to an accuracy of 1 percent of total expansion or 0.1 cc.

Therefore, the Order of January 21, 1988, assessing a $3,000 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in (1) referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court, and (2) accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to this same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M.86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: August 9, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

Certified mail—Return receipt requested

[Ref. No. 87–60–DM]

Denial of Relief

In the Matter of: Myers Container Corporation; Respondent.

Background

On April 5, 1988, the Chief Counsel assessed a $7,600 civil penalty against Myers Container Corporation (Respndent), for violations of 49 CFR 178.116–12(a)(1), 178.116–12(a)(2), and 178.131–11(a) of the Hazardous Materials Regulations (HMR). Respondent submitted an appeal by letter dated April 20, 1988. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order determined that Respondent had knowingly (1) failed to conduct periodic drop tests and retain drop test samples on 20 gauge, 30-gallon DOT specification 17E drums, (2) failed to conduct periodic drop tests and retain drop test samples on [illegible]6 gauge,

55-gallon DOT specification 17E drums, (3) failed to conduct hydrostatic pressure tests and retain hydrostatic test samples on 18/16 gauge, 55-gallon DOT specification 17E drums, and (4) failed to successfully pass a periodic drop test on 22 gauge, 55-gallon DOT specification 37A480 steel drums.

Respondent asserts three bases for appeal. First, Respondent states with respect to violation 1 that what "the original inspection report" [i.e., the Notice of Probable Violation] failed to state was that the drop test sample was located in the DOT retain area, was full of water, and was marked with the date dropped, the DOT specification, and "4 Foot Drop Test".

Respondent contends that the drum was intended to be dropped but that the operator was probably interrupted and failed to get back to it. The fact that Respondent's failure to conduct the required drop test may have been inadvertent does not excuse the occurrence of the violation. Furthermore, Respondent has already admitted, in an August 10, 1987 letter, that due to an oversight the retain sample had not been dropped, and stated that corrective action had been taken. The Chief Counsel mitigated the amount of the proposed penalty for this violation by $300 to reflect the corrective action, and no further mitigation is warranted.

Second, Respondent states, with respect to violations 2 and 3, that it conducted drop and hydrostatic tests for 20/18 gauge and 18 gauge 55-gallon DOT 17E drums. Respondent asserts that these drums are the same type and size as 18/16 gauge 55-gallon DOT 17E drums, and therefore it was not in violation of 49 CFR 178.116–12 which requires that each packaging design type must successfully pass the tests. Contrary to Respondent's contention, 49 CFR 178.116–12(a) provides that a "packaging design type" is defined by the design, size, material, thickness, and manner of construction. "Thickness" means gauge. Moreover, a different thickness would also require a change in the manner of construction because the seamer would have to be adjusted to accommodate a different gauge. Respondent's 18/16 gauge 55-gallon DOT 17E drums are separate packaging design types requiring testing as specified in 49 CFR § 178.116–12.

Finally, Respondent contends that the Chief Counsel's Order erred in stating that prior enforcement actions have been taken against Respondent. Respondent asserts that it is a new corporation formed in 1984, and that it is not a successor in interest to Myers Drum Company, but acquired "only certain assets" of Myers Drum Company, not the corporation itself. The Chief Counsel was responding to Respondent's argument that "other manufacturing" facilities of the same company have recently experienced the same investigation without any noted violations." The Chief Counsel countered this argument by noting that prior enforcement actions had been taken for violations at Respondent's Portland, Oregon and Oakland, California plants, and that a warning letter had been issued to Respondent's San Pablo, California plant.

In considering Respondent's contention concerning its relationship to Myers Drum Company, I observe the following:

(1) A January 4, 1985 letter from John W. Cutt, President of IMACC Corporation (of which Respondent is a division) stating that IMACC had "recently acquired the assets of Myers Drum Company's three steel drum manufacturing plants located in Portland, Oregon; Richmond, and Los Angeles, California."

(2) Respondent's corporate officers responsible for operation and compliance performed similar functions for Myers Drum Company, e.g., John W. Cutt, President of IMACC, was president of Myers Drum Company, and Roger C. Stavig, IMACC's Vice President-Manufacturing, was the manager of Myers Drum Company's Portland, Oregon plant.

(3) Respondent, Myers Container Corp., has continued to manufacture steel drums at the same plants and in the same locations as did Myers Drum Company.

Therefore, I conclude that while Respondent may have acquired only certain assets of Myers Drum, the two entities are so closely aligned that for enforcement purposes Myers Container Corporation may be considered the successor in interest to Myers Drum Company.

Findings

Based on my review of the record, I find the following:

(1) The issues raised by Respondent on appeal are without merit.

(2) The civil penalty was mitigated in the Order by an appropriate amount, and no basis exists for further mitigation of the penalty.

Therefore, the Chief Counsel's Order of April 5, 1988, finding that Respondent knowingly violated 49 CFR 178.116–12(a)(1), 178.116–12(a)(2), and 178.131–11(a), and assessing a $7,600 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in (1) referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court, and (2) accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717. Pursuant to this same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: August 1, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

Certified mail—Return receipt requested

[Enf. Case No. 87–63–RNC]

Denial of Relief

In the Matter of: Contract Courier Services, Inc., Respondent.

Background

On February 8, 1988, the Chief Counsel, Research and Special Programs Administration (RSPA), issued an Order to Contract Courier Services, Inc. (Respondent), assessing a penalty in the amount of $18,000 for violations of 49 CFR 171.2(b) and 177.942(b). By letter dated March 2, 1988, Respondent submitted a timely appeal of the Order, challenging in on four bases. The Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent asserts four bases for its appeal:

(1) Respondent did not "knowingly" commit any acts which violated the regulations;

(2) Respondent's method of stowing radioactive materials does not violate 49 CFR 177.842(b);

(3) The February 8, 1988 Order failed to give appropriate weight to the unusual circumstances which led to the storage violation;

(4) The proposed civil penalties are excessive in view of the level of fines established in the Sentencing Guidelines for United States Courts for criminal

violations of the Hazardous Materials Regulations (regulations) under 49 U.S.C. 1809(b).

First Argument

Respondent's first argument is that the standard for a knowing violation within the meaning of 49 U.S.C. 1809(a)(1) does not permit imposition of a penalty on persons who "should have known" facts giving rise to the violation. Respondent argues that although 49 CFR 107.299 provides that a violation is committed when a person should have known of facts giving rise to a violation, the legislative history of 49 U.S.C. 1809(a)(1) suggests that civil penalties may be imposed only in the event that a defendant knowingly commits an act which is a violation. RSPA considered the legislative history of 49 U.S.C. 1809(a)(1) in lawfully promulgating 49 CFR 107.299 which states that "knowingly" means:

> that a person who commits an act which is a violation of the Act or of the requirements of this subchapter . . . commits that act with knowledge or knowingly when that person (1) has actual knowledge of the facts that give rise to the violation, or (2) should have known of the facts that give rise to the violation. A person knowingly commits an act if the act is done voluntarily and intentionally. Knowledge or knowingly means that a person is presumed to be aware of the requirements of the Act and this subchapter. . . . Knowledge or knowingly does not require that a person have an intent to violate the requirements of the Act or the requirements of this subchapter. . . .

Under this definition, Respondent knowingly placed packages of radioactive material closer than the allowable distances in an area occupied by employees. Even if Respondent did not know that the packages in question were closer than the allowable distance, Respondent should have known this. Therefore, the argument that the Respondent did not knowingly violate the regulations is without merit.

Second Argument

Respondent's second argument is that its method of stowing radioactive materials does not constitute a violation of the regulations. Respondent contends that its normal stowage method involves placement of radioactive packages at least 20 feet apart from each other. Respondent's contention does not address the crux of the storage violation. Respondent is being cited for a storage violation on the date of the inspection, not for its "normal stowage method." During his inspection, Inspector Shuler photographed radioactive packages at Respondent's facility that were closer than a distance of 20 feet apart.

Respondent also contends that it physically painted and marked the storage areas. Inspector Shuler's photographs refute this claim. Moreover, Respondent, in its appeal, admits to the storage violation by stating that incoming materials may have remained together for a short time as part of the vehicle unloading process. Respondent further admitted that a group of radioactive packages were stored together on the date of the inspection in question. Based on these two admissions found in Respondent's appeal and the photographs taken by Inspector Shuler of Respondent's facility, Respondent did violate the regulations by storing radioactive packages at its facility at a distance of closer than 20 feet.

Third Argument

In its third argument, Respondent claims that the February 8, 1988 Order failed to give appropriate weight to the unusual circumstances and desire to avoid exposure to the public which led to the storage violation. Respondent describes the unusual circumstances as a "significant possibility" that a dissatisfied former employee of Respondent who knew of the inspection in question may have removed a padlock from one of the storage bins in order to disrupt Respondent's storage process. Respondent has not produced any evidence of a former employee having notice of Inspector Shuler's inspection leading to removal of the padlock. Respondent further contends that the storage of radioactive packages in one location was a direct result of the missing padlock and was intended to reduce public safety risks by returning the radioactive packages to the bin with the remaining padlock. Respondent has not produced any evidence of a former disgruntled employee's intentional removal of a padlock from one of the storage bins. Even if this were true, this does not excuse Respondent from the storage violation. Similarly, Respondent's professed intent to avoid public exposure does not excuse the violation. The Chief Counsel mitigated the amount of penalty by $1,000 for corrective actions taken and no further mitigation is warranted.

Fourth Argument

Respondent, in its fourth argument, claims that the penalties assessed in the February 8, 1988 Order are excessive in view of the Sentencing Guidelines established for United States Courts for criminal violations of the Hazardous Materials Regulations. First, the Sentencing Guidelines to which Respondent refers apply solely to Federal courts, not Federal agencies. Further, the guidelines apply to criminal cases, not civil ones. The case in question is neither in Federal court, nor is it a criminal proceeding. This is a civil enforcement action brought by a Federal agency which has assessed a civil penalty against Respondent for violations of the Hazardous Materials Regulations. Therefore, the Sentencing Guidelines are not applicable to this case. Moreover, the Chief Counsel mitigated the proposed civil penalties for each of the three violations in the February 8, 1988 Order based on corrective actions taken by Respondent. No basis for further mitigation exists.

Findings

Based on my review of the record, I find the following:

(1) Respondent knowingly committed acts which violated 49 CFR 171.2(b) and 177.842(b).

(2) Respondent violated 49 CFR 177.842(b) by storing packages of radioactive materials at a distance of less than 20 feet apart.

(3) The February 8, 1988 Order gave appropriate weight to the factors involved in Respondent's case involving the storage violation.

(4) The proposed civil penalties are not excessive, and the Sentencing Guidelines for United States Courts do not apply to this case because it is not a criminal proceeding.

(5) The civil penalty was mitigated in the Order by an appropriate amount, and no basis for further mitigation of the penalty exists.

Therefore, the Chief Counsel's Order of February 8, 1988, finding that Respondent knowingly violated 49 CFR 171.2(b) and 178.842(b) and assessing an $18,000 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in (1) referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court, and (2) accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717. Pursuant to this same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations

Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: August 9, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

Certified mail—Return receipt requested

[Ref. No. 87–67–EXR]

Denial of Relief

In the Matter of: Seradyn, Inc., Respondent.

Background

On December 21, 1987, the Chief Counsel, Research and Special Programs Administration (RSPA), issued a Final Order to Respondent, assessing a penalty in the amount of $4,000 for violations of 49 CFR 171.2(a), 173.242(a) and 173.286(c). By letter dated January 6, 1988, the Respondent submitted a timely appeal of the Order, challenging the amount of the penalty assessment on four bases. The Chief Counsel's Final Order is incorporated by reference.

Discussion

The Respondent's bases for appeal are: (1) Respondent did not "intentionally" commit acts that violated the Hazardous Materials Regulations (49 CFR Parts 171–179) (HMR); (2) Respondent's Exemption DOT–E 6702 would have been routinely renewed if the renewal application had been filed in a timely manner; (3) Respondent, to the best of its knowledge, had not committed any prior hazardous materials violations; and (4) the amount of the assessed civil penalty was excessive.

Respondent's first assertion, that it did not "intentionally" commit violations of the HMR, is irrelevant. Under 49 CFR 107.299, a violation is "knowing" when a person has actual knowledge of the facts giving rise to the violation or should have known of those facts; there is no requirement that the person actually knew of, or intended to violate, the legal requirements. Consequently, Respondent's contention that it did not "intentionally" violate the regulations is without merit.

Respondent's second basis for appeal is that, based on its operating experience under DOT–E 6702, the exemption renewal would have been routinely granted. The probability of exemption DOT–E 6702 being renewed does not alter the fact that Respondent was transporting a large volume of hazardous materials under an expired exemption. Respondent admits that it transported 45,500 hazardous materials packages between January 1986 and August 1987 after expiration of the exemption authorizing such transportation. The probability of exemption renewal does not obviate the necessity for timely application for renewal or authorize continued transportation after the exemption expires.

Respondent's third basis for appeal is that it has not been cited for any previous hazardous materials violations. Respondent's compliance record was taken into account in establishing the proposed penalty in this case, and no further mitigation is warranted.

Finally, Respondent has asserted that imposition of a $4,000 civil penalty would have an adverse effect upon its financial viability. However, Respondent failed to submit any financial information or documents supporting this contention. Without such information or documents substantiating Respondent's contention of economic hardship, inability to pay the penalty being imposed, or adverse effect of such a penalty on its ability to continue in business, there is no basis on which to provide mitigation.

Findings

The four issues raised by the Respondent in its appeal have been considered. I find that sufficient evidence has not been presented to warrant mitigation of the assessed civil penalty. Therefore, the Chief Counsel's Order of December 21, 1987, finding that Respondent knowingly violated 49 CFR 171.2(a), 173.242(a) and 173.286(c), and assessing a $4,000 civil penalty is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in (1) referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court, and (2) accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to this same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: August 10, 1988.

M. Cynthia Douglass,

Administrator Research and Special Programs Administration.

Certified mail—Return receipt requested

[Enf. Case No. 87–71–SD]

Denial of Relief

In the Matter of: Twin Terminal Services, Inc., Respondent.

Background

On February 16, 1988, the Chief Counsel, Research and Special Programs Administration (RSPA), issued an Order to Twin Terminal Services, Inc. (Respondent) assessing a penalty in the amount of $8,000 for violations of 49 CFR 171.2(a), 172.202(a)(1), 172.202(a)(3), 172.202(a)(4), 172.204(a), 173.30, and 176.83(d)(1). By letter dated March 17, 1988, Respondent submitted a timely appeal of the Order, challenging it on two bases. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Respondent's bases for appeal are:

(1) Respondent has had no history of prior violations in the 20 years it has been in operation. Respondent admits that it made mistakes which led to the alleged violations and that corrective action has been taken; and

(2) Respondent is financially unable to pay the proposed civil penalty.

First Argument

Respondent's first argument is that it has been in business for 20 years and has no history of prior violations. During this period, Respondent states that it has always handled its cargo with utmost care and has never experienced problems. However, it is clear that Respondent has failed to appreciate the potential level of danger involved in the incorrect intermodal transportation of hazardous materials. Respondent placed into a single freight container for ocean transportation two corrosive materials, one flammable liquid, a flammable solid, and an oxidizer totalling 10,671 pounds. As all of these classes of materials are required to be segregated and not loaded into the same freight container as required by 49 CFR 173.30, 176.83(b), and 176.83(d)(1), Respondent can hardly assert that it is exercising a high degree of care in its day-to-day operations.

Respondent further asserts that it was relying on Marine Cargo Management to

identify the hazardous material contents of the containers in question. Respondent is unjustified in relying on Marine Cargo Management to inform it of the contents of the container. Respondent physically loaded and offered this incompatible freight container for ocean transportation, and it was Respondent's responsibility to ensure that the materials were in proper condition for transportation. Respondent also failed to provide shipping papers with hazardous materials shipping descriptions and shipper's certifications. Moreover, Respondent admitted that it made mistakes which led to the violations and takes full responsibility for their occurrences.

Second argument

Respondent's second argument is that it is financially unable to pay the proposed civil penalty. Respondent submitted copies of its financial statements for the years 1985 through 1987, and bank statements for the period October 1987 through February 1988. However, the bank statements show an average balance on hand of over $24,000. This indicates that Respondent is able to pay the assessed civil penalty. Respondent's financial statements show a total depreciation of $909,000. This does not affect Respondent's current ability to pay because depreciation has no effect on cash flow. Therefore, I find that the financial data provided by Respondent indicates its ability to pay the proposed penalty, and its assertion of financial difficulty is without merit.

Findings

Based on my review of the record, I find the following:

(1) Respondent offered for transportation in commerce hazardous materials without placing the proper shipping names, identification numbers, and quantities on the shipping papers.

(2) Respondent offered for transportation in commerce hazardous materials without placing a shipper's certification on the shipping papers.

(3) Respondent loaded in a single freight container hazardous materials which are required to be segregated, and offered it for ocean transportation.

(4) The proposed civil penalty was mitigated in the Order by an appropriate amount, and no basis for further mitigation of the penalty exists.

Therefore, the Order of February 16, 1988, assessing an $8,000 civil penalty is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in (1) referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court, and (2) accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to this same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation," and sent to the Chief, Accounting Branch Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: July 21, 1988.

M. Cynthia Douglass.

Administrator.

Certified mail—Return receipt requested

[Enf. Case No. 87–76–SD]

Partial Grant of Relief

In the Matter of: Nuodex, Inc., Respondent.

Background

On February 12, 1988, the Chief Counsel, Research and Special Programs Administration, issued an Order to Nuodex, Inc., (Respondent) assessing a penalty in the amount of $5,000 for violations of 49 CFR §§ 171.2(a), 172.301(a) and 173.346(a). By letter dated March 28, 1988, Respondent submitted a timely appeal of the Order, challenging it on two bases. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Respondent's bases for appeal are:

(1) The drums used by Respondent to transport hazardous materials met or exceeded DOT packaging standards; and

(2) Respondent marked the drums with the proper international and domestic shipping name.

First Argument

Respondent's first argument is that the drums in which it transported hazardous materials met or exceeded DOT standards. Respondent also maintains that the marking "GDH" is on file with DOT and therefore verifies compliance insofar as materials used. GDH is a DOT registered symbol which serves only to identify the container manufacturer. Marking a drum in such a manner does not qualify it as a DOT specification drum. In order to make it a DOT specification drum, the DOT specification marking must be placed on the container.

That marking acts as the manufacturer's certification to the user that the container complies with the specification requirements. Therefore, Respondent's drums are not DOT specification packages even though they were marked with the GDH marking. Finally, Respondent contends that the packaging is superior and posed no greater safety hazard than if the drums had been marked in accordance with DOT standards. This argument is irrelevant to Respondent's obligation to mark the drums with the DOT specification marking.

Second Argument

In its second argument, Respondent contends that it marked its drums with the proper international and domestic shipping name. Respondent also claims that toxicological and other precautionary information were included on the label. Respondent submitted a copy of a product label representative of the type used on the drums in question. Although the international description is incorrect (Class B poison, UN 2290), the DOT shipping description is correct (Poison B liquid, n.o.s. UN 2810). Since the product labels submitted by Respondent were marked with the proper DOT shipping name and since there is insufficient evidence that the drums observed during the July 28, 1987 inspection were not properly marked, Violation No. 2 is dismissed and the civil penalty of $2,000 for this violation is eliminated. Respondent is advised, however, that it must discontinue its practice of labeling its drums containing Class B poison as "Isophorine Diisocyanate" and label them under 49 CFR 172.102 as "Isophorone Diisocyanate."

Findings

Based on my review of the record, I find the following:

(1) Respondent offered for transportation hazardous materials in packaging not authorized under the regulations.

(2) There is insufficient evidence to support a finding that Respondent improperly marked its drums. Therefore, elimination of the $2,000 civil penalty for this violation is granted.

Therefore, the Chief Counsel's Order of February 12, 1988, is modified by dismissing Violation No. 2 and reducing the assessed civil penalty to $3,000.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in (1) referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court, and (2) accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to this same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: August 9, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

Certified mail—Return receipt requested

[Ref. No. 88–01–CR]

Denial of Relief

In the Matter of: Atlantic Fire Systems, Inc., Respondent.

Background

On July 28, 1988, the Chief Counsel of the Research and Special Programs Administration (RSPA) assessed a $4,500 civil penalty against H & M Fire Company, predecessor to Atlantic Fire Systems, Inc. (Respondent) for violations of 49 CFR 173.34(e)(1), 173.34(e)(l)(i), and 173.34(e)(3) of the Hazardous Materials Regulations (HMR). Respondent submitted an appeal by letter dated August 26, 1988. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order determined that Respondent had knowingly: (1) Represented that it had retested DOT specification cylinders by marking them with a retester's identification number (RIN) that had not been issued by RSPA to the Respondent; (2) performed periodic retests on DOT specification cylinders with equipment that had a pressure gauge which could not be read to 1 percent of test pressure and an expansion gauge that could not be read to 1 percent of total expansion; and (3) performed periodic retests on DOT specification cylinders without properly conducting external visual inspections in accordance with CGA Pamphlet C–6.

With respect to Violation No. 1, Respondent stated that it had purchased Sun Jan Fire Equipment on December 31, 1986, and understood from representations by the seller that the seller could assign the RIN to Respondent, to be used until Respondent obtained its own RIN. Respondent stated that it had continued to use the same personnel as had performed services for the seller, and contended that 49 CFR 173.34(e)(1)(i) allows assignment of a RIN to remain valid with the use of the same personnel and equipment. Finally, Respondent stated that after acquiring Sun Jan Fire Equipment it had undertaken to obtain its own RIN, and in fact was inspected for that purpose by an independent inspection agency shortly after the RSPA inspection.

Despite what Respondent may have understood from the seller, the Hazardous Materials Regulations at 49 CFR 173.34(e)(1)(i) provide that no person may represent that he has retested a DOT specification cylinder unless that person holds a current RIN issued by RSPA. There is no provision in the regulations authorizing the transfer or assignment of a RIN from one person to another. Respondent's contention that assignment of a RIN is allowed provided the same personnel and equipment are used is incorrect. The regulation to which Respondent apparently refers is 49 CFR 173.34(e)(l)(v), which provides that the "authority to perform retesting under this section, as reflected by assignment of a current retester identification number, remains valid as long as the level of personnel qualifications, and equipment used, is maintained at least equivalent to the level observed at the time of inspection by the independent inspection agency." This regulation does not authorize assignment of a RIN from one person to another, but, in fact, circumscribes RSPA's assignment of a RIN. Therefore, whether Respondent continued to use the same personnel and equipment is irrelevant; Respondent had not been issued a RIN by RSPA and accordingly lacked authority to retest DOT specification cylinders.

Respondent, however, did undertake to obtain its own RIN, as evidenced by an application filed with RSPA on June 24, 1987. Although the application was not made until after the June 2, 1987 RSPA inspection, Respondent had made the necessary arrangements with an independent inspection agency prior to that date. In view of Respondent's efforts to obtain a RIN, I find that mitigation of $500 for Violation No. 1 is appropriate.

With respect to Violation No. 2, Respondent contends that within a few days after the RSPA inspection, the pressure gauge was inspected by the independent inspection agency and certified to be accurate, and, therefore, "any problem with the gauge is inexplicable to the Respondent."

The report of the independent inspection agency includes on page 7, "Note: For this inspection Calibrated cylinder from fayettville [sic] was used." In addition, on page 6 of the report, the primary test gauge is identified as having increments of 20 pounds per square inch (psi). The gauge examined and photographed by the RSPA inspector had 25 psi increments. Based on this evidence, it appears that a different calibrated cylinder and gauge were used for the June 8, 1987 inspection by the independent inspection agency. Respondent has not presented any information to contradict the evidence in the record that the gauge inspected and photographed by RSPA on June 2, 1987, could not be read with the required accuracy and that Respondent did not have any method of calibrating its hydrostatic testing equipment.

With respect to Violation No. 3, Respondent denied that it had failed to conduct external visual inspections, and stated that the duct tape on the side of the cylinder was there "merely to record the owner of the tank and was no more than a decal placed on a CO2 fire extinguisher by the manufacturer."

The cylinder in question was photographed by the RSPA inspector. The tape on the cylinder's lower sidewall was neither duct tape nor a manufacturer's label, but an abrasive tape used to keep the cylinder (a dive tank) from moving around in a backpack. Respondent's shop foreman, Mr. Donald Bradshaw, stated that the black tape was not removed when the cylinder was retested. Regardless of the purpose of the tape, anything which prevents the inspector from examining the entire external surface of the cylinder, including manufacturer's labels and tape, must be removed prior to inspection.

Respondent also disputed the statement atrributed to Mr. Bradshaw that he failed to remove metal bands from DOT specification cylinders prior to retest and reinspection. Respondent stated that it had observed Mr. Bradshaw's retesting on numerous occasions and the bands were always removed. Respondent also suggested that Mr. Bradshaw "was a friend of the Seller and any such statement if made

by him must have been made with malicious intent." Respondent asserted as a general matter that a dispute had arisen between Respondent and the seller, that the seller had threatened to wreck Respondent's business, and that Respondent believes that RSPA inspection was initiated by the seller.

Mr. Bradshaw told the RSPA inspector during the June 2, 1987 inspection, in response to a direct question, that he did not remove the bands to check for corrosion. Mr. Bradshaw's contemporaneous statement has not since been contradicted by an affidavit or other evidence. Moreover, I am not persuaded by Respondent's statements concerning an alleged dispute with the seller that Mr. Bradshaw had any reason to make a false statement. At the time the statement was made, Mr. Bradshaw was in Respondent's employ and would have had no incentive to jeopardize his position with Respondent. Furthermore, the RSPA inspection was not initiated based on a complaint by the seller. The decision to inspect Respondent was not made by the RSPA inspector until June 1, 1987, when he heard that Respondent was retesting but Respondent did not appear on his list of registered retesters.

Finally, Respondent requested an informal telephone conference. Respondent was already afforded the opportunity to request an informal conference or a formal hearing before an Administrative Law Judge. Respondent failed to avail itself of either opportunity and accordingly has waived its rights to a conference or hearing. This administrative review proceeding does not include any further opportunity for a conference or hearing of any kind.

Findings

Based on my review of the record, I find the following:

(1) Respondent has provided information sufficient to warrant mitigation of $500 for Violation No. 1.

(2) Respondent did not provide any information to warrant mitigation of the civil penalties assessed for Violation Nos. 2 and 3.

Therefore, the Chief Counsel's Order of July 28, 1988, finding that Respondent knowingly violated 49 CFR 173.34(e)(1), 173.34(e)(1)(i), and 173.34(e)(3) is modified by reducing the civil penalty from $4,500 to $4,000. The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to that same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: November 18, 1988.

M. Cynthia Douglass.

Certified mail—Return receipt requested

[Enf. Case. No. 88–05–CM]

Action on Appeal

In the Matter of: General Processing Corp., Respondent.

Background

On December 14, 1988, the Chief Counsel, Research and Special Programs Administration (RSPA), issued an Order to General Processing Corporation (Respondent) assessing a penalty in the amount of $15,000 for violations of 49 CFR 171.2(c), 178.51–4(d), 178.51–14(a), 178.51–19(c)(1), 178.61–4(d), 178.61–14(a), 178.61–14(d)(2), 178.61–15(a) and 178.61–15(b). By letter dated January 16, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent contends that, with respect to Violation No. 5, it took steps to ensure that none of the 205 involved cylinders were used until the required testing had been completed. Its March 16, 1989 letter clarified and reaffirmed this pont. This remedial action to correct the absence of prior physical testing of the cylinders merits mitigation of the $3,000 civil penalty for Violation No. 5 to $2,000.

With respect to Violation No. 7, Respondent argues that the civil penalty is unfair because it had been misled by a 1982 OHMT inspection and OHMT's failure to respond to its 1983 letter explaining its stamping procedures. Respondent made this same argument in response to the original Notice, and, in recognition thereof, the Chief Counsel's Order reduced the $1,000 proposed penalty to $500. No new information has been presented, and no additional mitigation is warranted.

Findings

Based on my review of the record, I find the following:

(1) Mitigation of $1,000 is warranted for remedial action taken by Respondent with respect to Violation No. 5.

(2) No additional mitigation is appropriate with respect to Violation No. 7 or any other violations.

Therefore, the Order of December 14, 1988, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331, except that the $15,000 civil penalty assessed therein is hereby mitigated to $14,000.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate of seven percent (7%) in accordance with 31 U.S.C. § 3717. Pursuant to this same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: April 24, 1989.

Travis P. Dungan,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 88–10–CR]

Denial of Relief

In the Matter of: Fire Foe Corporation, Respondent.

Background

On October 12, 1988, the Chief Counsel of the Research and Special Programs Administration (RSPA) assessed a $3,000 civil penalty against Fire Foe Corporation (Respondent) for violations of 49 CFR 173.34(e)(1) and 173.34(e)(3) of the Hazardous Materials Regulations (HMR). Respondent submitted an appeal by letter dated November 7, 1988. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order determined that Respondent had knowingly: (1) Performed periodic retests on DOT specification cylinders without properly conducting internal visual inspections in accordance with the Compressed Gas Association (CGA) Pamphlet C–6 by failing to use an inspection light of sufficient intensity to clearly illuminate the interior walls of the cylinder; and (2) performed periodic retests on DOT specification cylinders with equipment that had a pressure gauge which could not be read to one percent (1%) of test pressure and an expansion gauge that could not be read to one percent (1%) of total expansion or 0.1 cubic centimeter (cc).

In its November 7 appeal, Respondent stated that it had not been provided with certain information it had requested earlier to enable it to respond to the Notice of Probable Violation issued on April 22, 1988. Respondent also asserted that the RSPA attorney then assigned to the case had acted unethically. By letter dated December 7, 1988, Respondent was provided with a complete copy of the enforcement file and the other information it had requested, and was given 45 days from receipt to submit any additional information it desired the Administrator to consider. Respondent was also advised that in order for the Administrator to consider the allegation concerning unethical conduct, Respondent would need to provide specific, factual information to support it. Respondent did not reply to RSPA's December 7, 1988 letter, although Respondent received it on December 13, 1988, as evidenced by return of the certified mail receipt. Accordingly, I find that Respondent's allegations concerning a lack of information necessary to its defense and the conduct of the RSPA attorney are without merit.

With respect to Violation No. 1, Respondent stated that it has four different types of inspection lights available, including two "mini" lights, which the hydrotest stand operators can choose to use based on their belief as to which will best illuminate the interior of a cylinder. Respondent stated that the RSPA inspectors were advised that the "overall hydrotest supervisor" was not available that day, but that the RSPA inspectors refused to delay the inspection until the next day when the supervisor would be available. Respondent alleged that the RSPA inspectors waited more than two hours after observing the inspection of cylinders before requesting that Respondent show them the available inspection lights. Respondent asserted that the test stand operator had already left for the day and the remaining office personnel were unable to locate the small lights which presumably would have illuminated the interior of the cylinders. Respondent also alleged that the light used by the test stand operator provides "the same or greater field of view inside the cylinder as the mini light."

The evidence in the record includes a statement from Mr. Daniel Marino, Respondent's retest operator, to the effect that when he could not see the interior walls of a cylinder he relied on the hydrostatic test to reveal any weakened areas. The RSPA inspectors asked Mr. Marino at the time of the inspection to show them the light he used to inspect five-pound cylinders of that type. Mr. Marino showed the inspectors the inspection light, which they photographed and which did not fit inside the cylinder or clearly illuminate the interior walls as required for a proper visual inspection. Respondent's assertion that other inspection lights were available is irrelevant. The violation which occurred in this instance occurred because Mr. Marino chose to conduct a visual inspection using an inadequate inspection light. Respondent's other assertions are erroneous, irrelevant or both.

With respect to Violation No. 2, Respondent stated that it closed its hydrotest operations for nine days, from September 11, 1987, through September 20, 1987, while its principal operator was on vacation. Respondent stated that on September 21, 1987, when it resumed operations, it placed a new gauge on the machine, conducted a calibration test which was observed by three people, and then, at lunch time, began to have difficulties with leaks. Respondent stated that it had stopped operations to determine the problem and had decided to bring a second test stand into operation when the RSPA inspectors arrived. Respondent alleged that, despite its request that the RSPA inspectors return in the morning, the inspectors stated that they were pressed for time and requested that Respondent hydrotest cylinders so that they could observe Respondent's operation.

Respondent stated that after it had tested a number of cylinders, the RSPA inspectors requested a calibration test. Respondent alleged that each time it raised the pressure in order to locate the leaks it had discovered in the morning, the RSPA inspectors called it an attempt at calibration, which Respondent asserts it was not. Respondent stated that it discovered a screw on the back of the pressure gauge was not seated properly and that the following day it corrected this problem by removing the gauge and reseating the screw. Respondent contends that the gauge was accurate with the screw in the correct position and that the RSPA inspectors' "lack of time to properly inspect our facility resulted in allegations that are without merit."

The inspection report, with which Respondent was provided a copy, states that Mr. Kenneth Foerster, Respondent's Operations Manager, was unable to provide any explanation of why the equipment could not be calibrated. At no time during the inspection did the RSPA inspectors observe, nor did Respondent mention, that a second hydrotest stand existed or was being brought into operation. It is standard practice for RSPA inspectors to inspect each and every hydrotest stand. Respondent did not tell the RSPA inspectors at the time of the inspection that the leaks had recently developed. In fact, the RSPA inspectors observed that testing was being conducted on the test stand in question when they arrived. Several DOT specification cylinders had already been stamped as having been successfully retested on the test stand in question despite the fact that Respondent was unable to calibrate the equipment. Furthermore, even when all the leaks had been located and all pressure released from the system, the pressure gauge still indicated 100 psi. The fact that Respondent may have corrected the problem the following day does not excuse retesting DOT specification cylinders on equipment which could not be read to the required accuracy. The information provided by Respondent in its appeal is insufficient to overcome the preponderance of the evidence obtained at the time of the inspection which indicates that Respondent was in violation of 49 CFR 173.34(e)(3).

Finally, Respondent alleged that throughout the RSPA inspection "there was a constant state of confusion," and that it "looked like a teacher-student situation," with one inspector appearing "to be constantly distracted by questions from the other inspector." The RSPA inspectors informed Mr. Foerster at the beginning of the inspection that Inspector Henderson would be instructing Inspector LaMagdelaine and that all questions should be directed to Inspector Henderson. The RSPA inspectors noted that Mr.. Neil Crowley, who appealed on behalf of Respondent, did not appear until more than half the RSPA inspection had been completed. Furthermore, the RSPA inspectors

advised both Mr. Foerster and Mr. Crowley at the exit interview of the probable violations they had observed and the possible enforcement actions which might be taken. Neither Mr. Foerster nor Mr. Crowley made any contemporaneous statements to attempt to explain, excuse, or deny the probable violations. Respondent's version of events, as presented in its appeal, is simply not persuasive when measured against the evidence in the record.

Findings

Based on my review of the record, I find the following:

(1) Respondent's assertions are without merit.

(2) Respondent did not provide any information to warrant mitigation of the civil penalties assessed for the violations cited in the Order.

Therefore, the Chief Counsel's Order of October 12, 1988, finding that Respondent knowingly violated 49 CFR 173.34(e)(1) and 173.34(e)(3), and assessing a civil penalty of $3,000, is affirmed as being substanuated on the record and in accordance with the assessment criteria prescribed in 49 CFR 107.331. The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operation Division, the assessment of administrative charges, and the accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to that same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: February 17, 1988.

M. Cynthia Douglass.

Certified mail—Return receipt requested

[Ref. No. 88–22–PTM]

Action on Appeal

In the Matter of: Rotational Molding Inc., Respondent.

Background

On February 7, 1990, the Acting Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Rotational Molding Inc. (Respondent), assessing a civil penalty for violations with respect to its DOT–E 9503 exemption to manufacture 300-gallon polyethylene portable tanks. Respondent was found to have knowingly: (1) manufactured, marked, and sold these tanks without conducting the periodic hydrostatic pressure, cold drop, and ambient drop tests; (2) manufactured and marked these tanks with a minimum wall thickness less than 0.224 inches; (3) manufactured and marked these tanks without a pressure relief device that would not open at less than 10 psig or more than 15 psig; (4) manufactured and sold these tanks without embossing the serial number on the tanks; and (5) manufactured, marked, and sold these tanks without including the month that the tanks were manufactured, in violation of 49 CFR 171.2(c) and 178.19–7, and DOT–E 9503, paragraphs 7.a.ii., 7.a.iv., 7.a.v., 7.b.(ii) and 7.c. In the Order, the Acting Chief Counsel waived the civil penalty proposed for violation 5 and assessed a civil penalty of $12,500, reduced from the $20,000 civil penalty originally proposed in the July 22, 1988 Notice of Probable Violation (Notice). The Acting Chief Counsel's Order is incorporated by reference. By letter dated February 21, 1990, Respondent submitted a timely appeal of the Order.

Discussion

In its appeal, Respondent accepts the civil penalties assessed for violations 1 and 3, totalling $6,000. Respondent requests that the civil penalties for violations 2 and 4, totalling $6,500, be dismissed.

Concerning violation 2, Respondent argues that it had established the minimum wall thickness of .224 inches for its exemption, DOT–E 9503, using its own testing methods and equipment. Even though it admits that the ultrasonic tester revealed "spot" inconsistencies in thickness, Respondent avers that it is "highly unlikely that these reflect actual wall thickness." Its basis for this declaration is that if any of the specified number of conditions had been present during testing, the ultrasonic device would have presented a false reading. Not only does Respondent fail to state, let alone demonstrate, that any of those conditions was present, it neglects to mention that the wall thickness measurements of less than .224 inches obtained during the inspection had been taken by Respondent using its own ultrasonic testing device. Moreover, the appeal implies that Respondent had used the same device in its testing when it established the minimum wall thickness of .224 inches.

Respondent also asserts that its violation was not "knowingly" and refers to an argument it had made in response to the Notice, i.e., that it had mistakenly specified minimum wall thickness instead of average wall thickness in its original application for exemption. The Acting Chief Counsel's Order stated that "[i]f Respondent determined that the Exemption issued to it did not read as it intended, Respondent's remedy was to request a correction to the Exemption." The Order then admonished Respondent that "[i]t was not to disregard the plain language of the Exemption." In its appeal, Respondent claims that it did not disregard that language; it implies that it did not realize what the exemption required until after the November 3, 1987 inspection. Respondent knew that it had an exemption and that it was responsible for complying with it. Respondent's failure to read the exemption does not excuse Respondent from complying with its terms. A knowing violation occurs when a person has actual knowledge of the facts giving rise to the violation or should have known of those facts; there is no requirement that the person actually know of, or intend to violate the legal requirements. Respondent's conduct thus met the definition of a "knowing" violation.

Respondent's final argument regarding violation 2 is that wall thickness is determined by charging a specific amount of resin to cover a specific number of square inches. Respondent contends that because the charge weights were correct, the tanks weighed the correct amounts, and the mold size had not changed, it could not selectively alter or control wall thickness. Respondent appears to be saying that, given this manufacturing process, it is not possible to obtain wide variations in wall thickness. Nevertheless, the inspection revealed wall thickness readings as low as .187 inches and as high as .261 inches. It is simply not a credible argument to state that something that did occur—wide variations in wall thickness readings—could not have occurred.

Violation 4 cited Respondent for failing to emboss the serial number on its exemption tanks. Following its receipt of the Notice, Respondent had argued that it engraved the serial number into each tank, thereby

satisfying the embossing requirement. The Acting Chief Counsel's Order stated that embossing required raising the surfaces of the tanks, rather than cutting into them. In its appeal, Respondent agrees with the Acting Chief Counsel. Respondent claims, however, that its original interpretation of the definition of "emboss" is understandable and that it, therefore, did not commit a "knowing" violation. Respondent also maintains that engraving serial numbers is a common practice in the industry for marking tanks, further indication that it did not commit a knowing violation.

The requirement to emboss is not vague, and Respondent's misinterpretation does not excuse the violation. The Acting Chief Counsel did not consider the requirement "ambiguous in any way." In light of Respondent's own admission of its error, I concur with the Acting Chief Counsel. Moreover, even if Respondent had presented any specific evidence that its method of engraving the serial number into the tank is a pervasive industry method, this would not excuse Respondent from complying with the requirements of its exemption. Respondent engraved serial numbers into its tanks and thus had knowledge of the facts giving rise to the violation.

The Acting Chief Counsel, in noting that Respondent had been found in violation of minimum wall thickness requirements, stated that "Respondent's procedure of engraving serial numbers into the tanks is all the more serious, since it further reduces wall thickness." In its appeal, Respondent protests that the places in which it engraved the serial numbers were of sufficient thickness to not be adversely affected by the procedure. This argument is not persuasive. The integrity of a polyethylene tank is compromised whenever a cut is made in it, irrespective of wall thickness.

Finally, Respondent counters the Acting Chief Counsel's contention that, in assessing the civil penalty, she had considered Respondent's ability to pay. Respondent maintains that the total number of tanks that it sells is evidence that it is a very small producer. Respondent's argument is misleading. The record shows that Respondent's manufacturing of 55 exemption portable polyethylene tanks each month represents only about one-tenth of one percent of its production. In fact, a Dun & Bradstreet, Inc. report, indicates that Respondent's controller projected annual sales to be $10,000,000 as of April 19, 1989.

Findings

I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $12,500 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of February 7, 1990, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331. The $12,500 civil penalty is due and payable upon receipt of this Action on Appeal. If the civil penalty is paid within 30 days of the date of issuance of this Action on Appeal, no interest will be charged. If, however, the civil penalty is not paid by that date, the Chief of the General Accounting Branch of the Department's Accounting Operations Division will assess interest and administrative charges and initiate collection activities on the debt and those charges. Interest on the debt will accrue from the date of issuance of this Action on Appeal at the applicable rate in accordance with 31 U.S.C. 3717, 4 CFR 102.13, and 49 CFR 89.23. Pursuant to those same authorities, a late-payment penalty of six percent (6%) per year will be charged on any portion of the debt that is more than 90 days past due. This penalty will accrue from the date this Action on Appeal is received.

Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: September 5, 1990.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 88–23–CR]

Action on Appeal

In the Matter of: Buddy's Fire Protection Service, Inc., Respondent.

Background

On March 13, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Buddy's Fire Protection Service, Inc. (Respondent), assessing a civil penalty in the amount of $3,000 for having knowingly retested DOT specification cylinders on improper equipment, failed to maintain proper DOT specification cylinder reinspection and retest records, and failed to mark retested cylinders with its DOT retester ID number, in violation of 49 CFR 173.34(e)(3), (5) and (6) and DOT Exemption DOT–E 7235. The Order assessed a $3,000 civil penalty, reflecting mitigation of the $4,000 civil penalty originally proposed in the August 23, 1988 Notice of Probable Violation. By an undated letter received March 31, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent's major contention is that it was misled by a DOT-approved independent inspector, Professional Services Industries, Inc. (PSI), which allegedly had approved all of Respondent's practices at issue in this case. As to Violation No. 1, improper testing, DOT's inspectors observed that the expansion gauge on Respondent's hydrostatic test equipment was not being adjusted to compensate for the change in the column weight of water. To determine whether PSI observed and approved that improper procedure, a DOT inspector asked Respondent's President, Charles Stevens, whether he was present during the PSI inspection. He said that he was not present and that his sons, Victor and Cory Stevens, were the operators during that inspection. Both of them have provided written statements indicating that during that inspection they properly adjusted the testing equipment to compensate for the weight of the water column. Therefore, PSI observed proper procedures and cannot be held accountable for Respondent's later use of improper procedures. Thus, no mitigation is appropriate for Violation No. 1 because of alleged reliance on the independent inspector.

Respondent also contends that it relied upon PSI with respect to Violation No. 2, improper recordkeeping, and Violation No. 3, improper marking. Because Respondent itself is responsible for compliance with the Federal regulations, alleged reliance on an independent inspector is not an

appropriate basis for dismissal of a violation but instead may be considered as a matter in mitigation. The Chief Counsel's Order already mitigated the proposed penalty for Violation No. 3 due, in part, to Respondent's reliance on PSI; thus, further mitigation of that penalty is inappropriate. However, mitigation of $250 is appropriate for Respondent's alleged reliance on PSI with respect to Violation No. 2, an issue not previously raised by Respondent.

Respondent further states that the State Fire Marshal had inspected its facility without finding any violations. Inspections by officials responsible for enforcing other statutes and regulations are irrelevant to enforcement actions under the Hazardous Materials Transportation Act.

In addition, Respondent alleges that other companies follow incorrect procedures similar to those of Respondent. If so, those other companies may be subject to similar enforcement actions. However, their alleged practices are irrelevant to a proper disposition concerning Respondent's violations.

Respondent's final argument is that its violations were unintentional and not done with any intent to violate the law. Respondent itself recognized that the lack of intent is not a valid defense: "You will probably say Ignorance is no excuse but you learn from mistakes." Respondent has been found to have committed a civil violation under a "knowing" standard, not a criminal violation under a "willful" standard. As Respondent was advised in the August 23, 1988 Notice, 49 CFR 107.299 provides that a violation is "knowing" when a person has actual knowledge of the facts giving rise to the violation or should have known of those facts, and that there is no requirement that the person actually knew of, or intended to violate, the legal requirements. Respondent met this standard, and its violations thus were "knowing."

In its summation, Respondent stated that civil penalties of $500 for each violation would be reasonable and that it would take legal action against PSI to recover the amount of any civil penalties. Any potential private litigation is irrelevant to an appropriate decision in this proceeding. Respondent has provided no information justifying reduction of the civil penalties of $500 for each violation.

A Dun & Bradstreet report on Respondent indicates that as of March 31, 1987, Respondent had $4,348 cash on hand, current assets of $19,580 and current liabilities of 17,054.

Findings

Respondent has presented sufficient evidence to justify mitigation of the civil penalty assessment for Violation No. 2 from $1,500 to $1,250. It has not justified mitigation of the $1,000 penalty for Violation No. 1 or the $500 penalty for Violation No. 3. Respondent's other arguments are without merit.

I find that a total civil penalty mitigated to $2,750 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability (reduced by some reliance on the independent inspector), the absence of prior offenses, Respondent's ability to pay, the effect of civil penalty on Respondent's ability to continue in business, and all other relevant circumstances.

Therefore, the Order of March 13, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR § 107.331, except that the $3,000 civil penalty assessed therein is hereby mitigated to $2,750.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current rate of seven percent (7%) per annum in accordance with 31 U.S.C. 3717 and 49 CFR Part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: June 6, 1989.

Travis P. Dungan,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 88–45–EXR]

Denial of Relief

In the Matter of: Pointer, Inc., Respondent.

Background

On May 25, 1988, the Chief Counsel, Research and Special Programs Administration (RSPA) U.S. Department of Transportation, issued a Final Order to Respondent, assessing a penalty in the amount of $1,500 for offering lithium batteries for transportation in commerce not violations of 49 CFR §§ 171.2(a) and 173.206 of the Hazardous Materials Regulations (HMR). By letter dated July 10, 1988, Respondent submitted a timely appeal of the Order, challenging the amount of the civil penalty assessment on two bases. The Chief Counsel's Order is incorporated by reference.

Discussion

The Chief Counsel's Order found that Respondent knowingly offerered lithium batteries for transportation in commerce not packaged in accordance with 49 CFR 173.206 after expiration of an exemption from compliance therewith. The Order assessed the $1,500 civil penalty originally proposed in the April 13, 1988 Notice of Probable Violation.

Respondents makes two arguments, each of which I will summarize and discuss.

The Respondent states that it inadvertently received a copy of the 17th Revision of DOT–E 7052, and such copy listed the individuals granted party status to the exemption and the dates their renewal applications were received by RSPA. Respondent contends its renewal application was received by RSPA at the same time as the other applications but that RSPA failed to process Respondent's application in a timely manner.

Respondent is mistaken concerning the time when RSPA received Respondent's exemption renewal application. Of the individuals granted party status to the 17th Revision of DOT–E 7052, the latest renewal application was received by RSPA on September 2, 1987—over 100 days prior to the expiration of DOT–E 7052. However, Respondent's renewal application was received on February 4, 1988—approximately 50 days after its party status to DOT–E 7052 expired. Consequently, Respondent's contention that RSPA failed to timely process its renewal application is without merit.

In addition, Respondent explains it is a small company that provides maintenance and replacement parts for an emergency transmitter it manufactured and installed on a majority of the U.S. Air Force's transport fleet. Accordingly, Respondent asserts that its shipments subsequent to the expiration of DOT–E 7052 were

necessary to maintain these aircraft in "Mission Ready" status. While Respondent's commitment to ensure the U.S. Air Force fleet is in operable condition is commendable, it does not excuse its non-compliance with the requirements of the HMR. The national defense nature of a shipment does not excuse non-compliance with the HMR. Respondent could have applied for an emergency exemption to continue its shipments in accordance with the law. Consequently, Respondent's contention is without merit.

Findings

The two issues raised by the Respondent in its appeal have been considered. I find that sufficient evidence has not been presented to warrant mitigation of the assessed civil penalty. Therefore, the Chief Counsel's Order of May 25, 1988, finding that Respondent knowingly violated 49 CFR 171.2(a) and 173.206, and assessing a $1,500 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to this same authority, a penalty charge of six percent (7%) per annum will accrue if payment is not made within 110 days of service. Filing an appeal within 20 days stays the effectiveness of this order, the accrual of interest, and administrative and penalty charges.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: March 6, 1989.

M. Cynthia Douglass,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 88-45-EXR]

Addendum to Amended Denial of Relief

In the Matter of: Pointer, Inc., Respondent.

On March 27, 1989, the Administrator of the Research and Special Programs Administration (RSPA) issued an Amended Denial of Relief (incorporated herein by reference) to Pointer, Inc. affirming the May 25, 1988 Order of the Chief Counsel assessing a $1,500 civil penalty for knowing violation of 49 CFR 171.2(a) and 173.206. The Amended Denial of Relief provided that the penalty must be paid within 20 days of receipt by Respondent.

By letter dated April 21, 1989, Respondent submitted a check in the amount of $250 in partial payment of the assessed penalty. The Department of Transportation hereby accepts this partial payment and authorizes the remaining $1,250 to be paid in four consecutive monthly installments. The first payment of $300 shall be due on or before June 15, 1989; the second payment of $300 shall be due on or before July 15, 1989; the third payment of $300 shall be due on or before August 15, 1989; and the fourth and final payment of $350 shall be due on or before September 15, 1989.

If Respondent defaults on any payment of the authorized payment schedule, the entire amount of the remaining civil penalty shall, without notice, immediately become due and payable. Respondent's failure to pay this accelerated amount in full will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate of seven percent (7%) per annum in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment of the accelerated amount is not made within 90 days of default. Each payment must be made by certified check or money order (Containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Respondent must send a photocopy of each check or money order to the Office of Chief Counsel (DCC-1), RSPA, room 8405, at the same street address.

Date Issued: May 3, 1989.

Travis P. Dungan.

Certified mail—Return receipt requested

[Enf. Case No. 88-49-NVO]

Denial of Relief

In the Matter of: Gulf Carrier Corporation, Respondent.

Background

On November 3, 1988, the Chief Counsel, Research and Special Programs Administration (RSPA), issued an Order to Gulf Carrier Corporation (Respondent) assessing a penalty in the amount of $13,000 for violations of 49 171.2(a), 172.201(a), 172.201(c), 172.204(a) and 176.83(d)(1). By letter dated November 25, 1988, Respondent submitted a timely appeal of the Order. The Chief Councel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order determined that Respondent had knowingly: (1) Offered for transportation by vessel in commerce, in a single freight container, hazardous materials of different hazard classes not authorized to be loaded together in the same freight container; (2) offered hazardous materials for transportation in commerce without properly describing them on a shipping paper; and (3) offered hazardous materials for transportation in commerce without certifying the compliance of the shipment on the shipping paper.

Respondent's bases for appeal are:

(1) Respondent was improperly refused a hearing to develop a proper record in the proceeding.

(2) Respondent was improperly denied an independent and neutral decisionmaker.

(3) There was no violation of 49 CFR 176.83(d)(1) because Respondent's container was not a "freight container."

(4) The finding of a violation of 49 CFR 176.83(d)(1) was based upon an improper assumption of critical facts.

(5) 49 CFR § 176.83(d)(1) conflicts with 49 CFR 172.504(b) and, therefore, is unenforceable.

I will address each of those arguments in the order described above.

Respondent's first argument is that it was improperly denied a hearing. Respondent states that on June 20, 1988, it filed correspondence offering a settlement; that the settlement was rejected by RSPA in a July 6, 1988 letter; that on July 25, 1988, Respondent submitted a request for a hearing; and that its request for a hearing was denied in a July 29, 1988 letter, which concluded that Respondent had waived its right to a hearing by not having requested a hearing within the timeframe provided in 49 CFR 107.313(b). Respondent contests this determination and cites the Administrative Procedure Act and three court cases in support of its contention that charging time expended in "settlement" negotiations against Respondent's deadline for requesting a hearing violates Respondent's right to due process.

The fallacy in Respondent's argument is that it had waived its right to a hearing before it initiated any

compromise or settlement negotiations. The Notice of Probable Violation (Notice) in this case was issued on May 4, 1988, and received by Respondent (via certified mail return receipt requested) on May 6, 1988. Because 49 CFR 107.313 provides that requests for a hearing must be made within 30 days of receipt of the Notice or otherwise are waived, Respondent had until June 6, 1988, to request a hearing. As evidenced by its June 1, 1988 letter, Respondent requested and received an extension to June 20, 1988, to respond to the Notice, thereby extending to June 20, 1988, Respondent's right to request a hearing. However, by its letter of June 20, 1988, which was received by RSPA on June 22, 1988, Respondent did not request a hearing; instead it made a compromise offer. It was not until July 25, 1988, 19 days after its compromise offer had been rejected, that Respondent finally requested a hearing. By failing to request a hearing on or before June 20, 1988, Respondent waived its right to request such a hearing.

Respondent's second argument is that it was denied its right to an independent and neutral decisionmaker. It argues that the Administrative Procedure Act (APA) applies and requires a separation between prosecutor and fact-finder. It contends that the RSPA procedures violated this principle because the "involved claims were brought by, and in the first instance, have been determined by the Office of General [*sic*] Counsel."

The facts are as follows. The alleged violations were investigated by the Enforcement Division Office of Hazardous Materials Transportation and referred by that Division to the RSPA Chief Counsel's Office. The Notice was issued by Mary M. Crouter, a senior attorney in the Office of Chief Counsel of RSPA. The Order in this case was issued by George W. Tenley, Jr., Chief Counsel of RSPA. This appeal is being decided by the undersigned Administrator of RSPA. Initial legal advice on this appeal has been provided by Edward H. Bonekemper, III, a senior attorney in the Office of the Chief Counsel of RSPA. All of Respondent's arguments have been given exhaustive consideration.

Respondent cites no specific APA provison and no caselaw in support of its proposition that it has been denied due process under the APA by these procedures. The APA provision which comes closest to being relevant is 5 U.S.C. § 554(d), which addresses the separation of investigative/prosecuting and decisionmaking functions in "adjudications." However, § 554 applies only "in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing. . . ." (Emphasis added.) With respect to this proceeding, Section 110 of the HMTA (49 App. U.S.C. § 1809) provides only for civil penalty violation determinations "after notice and an opportunity for a hearing."

Therefore, in accordance with a March 8, 1976 opinion of the General Counsel of the Department of Transportation (DOT), it has been DOT's official position that the APA's requirement for a formal adjudicatory hearing is inapplicable to HMTA civil penalty cases because of the absence of an explicit statutory requirement that decisions in those cases be made on the record. That approach is supported by *United States* v. *Independent Bulk Transport, Inc.*, 480 F. Supp. 474 (S.D.N.Y. 1979), where the APA was held not to apply to a Coast Guard proceeding assessing a civil penalty under the Federal Water Pollution Control Act Amendments of 1972. In this case, therefore, Respondent was not entitled to rights enumerated under the APA, but only those provided in the HMTA, i.e., notice and an opportunity for a hearing. It received that notice, as well as an opportunity for a hearing; however, despite receiving an extension of time to exercise its rights, Respondent failed to make a timely request for a hearing. In summary, Respondent has not been deprived of any procedural rights to which it is entitled.

Respondent's third argument is that there was no violation of 49 CFR § 176.83(d)(1) because that section applies only to "freight containers," not to Respondent's "container," which was affixed to a trailer chassis. Respondent asserts that the Chief Counsel's Order incorrectly assumed that Respondent's equipment was detached from its chassis; it states that this did not occur because its equipment simply was driven on and off a "roll-on/roll-off" (RO/RO) vessel and is never detached from its chassis. In addition, Respondent cites Interstate Commerce Commission (ICC) cases stating that transportation of the type of equipment shipped by Respondent is a movement "in trailers," not a movement "in containers." In essence, Respondent contends that its consolidation and offering for transportation of an oxidizer, a corrosive, and a poison B in a single container did not violate § 176.83(d)(1) because that container is never removed from its chassis and is regarded by the ICC as a "trailer."

Respondent's contention is invalid. The Chief Counsel's Order neither stated nor assumed that Respondent's container was detached from its chassis. The applicable definition of "freight container" is in 49 CFR § 171.8: "a reusable container having a volume of 64 cubic feet or more, designed and constructed to permit being lifted with its contents intact and intended primarily for containment of packages (in unit form) during transportation." Respondent has neither argued nor shown that this definition is inapplicable to the container involved here. In fact, Respondent's appeal itself states that the "involved equipment, trailer GULF 603367, was comprised of a container and the container was affixed to a trailer chassis." The facts that Respondent's container is a RO/RO container and is never detached from it chassis do not render it something other than a freight container. In addition, ICC container classifications for purposes of ICC economic regulation are irrelevant to the construction of the term "freight container" under a safety statute such as the HMTA. Safety statutes are broadly construed in order to carry out their remedial purposes. Therefore, I find that § 176.83(d)(1) applied to Respondent's container and prohibited incompatible stowage therein.

Fourth, Respondent contends that the Chief Counsel's finding of a violation of § 176.83(d)(1) was based on "improper" assumptions of critical facts. It alleges that the Chief Counsel erroneously concluded that Phenylhydrazine is a prohibited Poison B under § 172.101. It also alleges that the Chief Counsel erroneously assumed that the involved oxidizer, Zinc Nitrate, was shipped in a quantity greater than the authorized limited quantity of 25 pounds; it contends that only 17 pounds of Zinc Nitrate were consolidated and shipped. Respondent also contends that there was an unjustified assumption that the involved corrosive exceeded the legally permissible limited quantity amounts. It concluded by asserting that RSPA, therefore, has failed to meet its burden of proof on all the elements of the failure-to-segregate violation.

In fact, none of the alleged "improper" assumptions exists. Although Phenylhydrazine indeed is not a Poison B, the Notice and Order did not assert that it was, and the evidence shows that Respondent consolidated and shipped two Poison B materials, Potassium Cyanide (UN1680) and Mercuric Chloride (UN1624), in the freight container in question. With respect to both of its contentions regarding the possibility of the oxidizer and the corrosive having been shipped in limited quantities, Respondent overlooked the

regulatory requirement that shipments must be packaged in specific packaging configurations (49 CFR §§ 173.153(b)(1) (oxidizers) and 173.244(a) (corrosives)) and be identified on shipping papers as limited quantity shipments in order to qualify for the limited quantity exceptions. 49 CFR § 172.203(b). There is no evidence of compliance with the specific packaging requirements for the limited quantity exceptions. Also, neither the shipping papers for the shipments from Fisher Scientific (which Respondent then consolidated and shipped) nor those for Respondent's shipment identified any of the relevant hazardous materials as limited quantity shipments. Finally, in a March 15, 1988 telephone conversation with RSPA, Mr. Brady of Fisher Scientific stated that, since that Company's shipping papers did not state "LTD QTY," the shipments were not of limited quantities. Therefore, the 49 CFR § 176.80 limited quantity exception from the segregation requirements does not apply.

Respondent's fifth and final argument is that § 176.83(d)(1) conflicts with § 172.504 and, therefore, is unenforceable. Respondent describes § 172.504 as a "threshold" requirement and asserts that it permits the consolidation of two or more classes of materials in one container. However, § 172.504 is compatible with, and does not undermine the enforceability of § 176.83(d)(1). The former section merely specifies required placarding when two or more classes of hazardous materials are placed in a transport vehicle or freight vehicle. It does not authorize stowage deemed incompatible under other regulations. Additionally, the placarding exception for less than 1,000 pounds of hazardous materials contained in § 172.504(c) expressly does not apply to transportation by water (which transportation was involved in this case).

Findings

Based on my review of the record, I find the following:

(1) Respondent waived its rights to a hearing by failing to file a timely request for such a hearing.

(2) Respondent is not entitled, in these proceedings, to any rights under the Administrative Procedure Act.

(3) Respondent violated 49 CFR 173.83(d)(1) by consolidating and offering for transportation by vessel incompatible hazardous materials in a "freight container," as defined in 49 CFR 171.8.

(4) Respondent improperly offered for transportation two Poison B hazardous materials which were incompatible with other hazardous materials with which they were stowed.

(5) Respondent did not comply with the requirements for availing itself of the limited quantity exceptions under the Hazardous Materials Regulations and did not offer limited quantities for transportation.

(6) There is not conflict between the placarding requirements of 49 CFR 172.504(b) and the water transportation stowage requirements of 49 CFR 176.83(d)(1).

(7) there is no basis for mitigation of the proposed civil penalty.

Therefore, the Order of November 3, 1988, including the assessment of a $13,000 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to this same authority, a penalty charge of seven percent (7%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision of appeal constitutes the final administrative action in this proceeding.

Date Issued: February 28, 1989.

M. Cynthia Douglass.

Certified mail—Return receipt requested

[Ref. No. 88–52–HMI]

Partial Grant of Relief

In the Matter of: Boncosky Transportation, Inc., Respondent.

Background

On November 15, 1988, the Chief Counsel of the Research and Special Programs Administration (RSPA), issued an Order to Boncosky Transportation, Inc. (Respondent) assessing a penalty in the amount of $1,500 for violation of 49 CFR 171.16. By letter dated November 30, 1988, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order determined that Respondent, a carrier transporting a hazardous material, failed to report on DOT Form 5800.1, within 15 days of its discovery, an unintentional release of Acid, Liquid N.O.S. , which occurred on May 20, 1987, in violation of 49 CFR 171.16.

In its appeal, Respondent argues that it did not "knowingly" violated the regulation. Respondent contends that it hired Ecology & Environment, Inc. (E&E) to provide emergency response, site clean-up, and hazard risk assessment. Respondent states that it verbally authorized E&E to make state and Federal governmental notifications and that it relied upon the following language in its agreement with E&E:

> E&E also has represented that it can provide appropriate documentation and testimony with regard to services which it furnishes, in administrative or court proceedings, as may be requested by the company.

In addition, Respondent quotes a definition from Black's Law Dictionary to the effect that "knowingly" requires actual, not merely constructive, knowledge.

There are many legal definitions of "knowing" and "knowingly." Respondent's reference to Black's Law Dictionary is unpersuasive and irrelevant. As Respondent was advised in the June 22, 1988 Notice of Probable Violation in this case, 49 CFR § 107.299 provides that a violation is "knowing" when a person has actual knowledge of the facts giving rise to the violation or should have known of those facts; there is no requirement that the person actually knew of, or intended to violate, the legal requirements. Thus, Respondent was legally required to be aware of the reporting requirement. It could not contract away its responsibility to file the report. In any event, its quoted contract language with E&E did not to this. If Respondent did verbally "delegate" this task to E&E, Respondent should have required a copy of the required report from E&E in order to ensure itself that E&E had performed Respondent's legal reporting obligation.

Finally, Respondent argues that it has submitted evidence warranting mitigation and that the civil penalty is excessive. It states that this is its first offense, it acted responsibly and adverted a possible crisis, its contractor provided immediate telephonic notification to the Missouri Department of Natural Resources and the National

Response Center, and Respondent—even if chargeable with constructive knowledge—neither knew nor should have known under these circumstances that the report was not timely field.

All of the cited factors previously were raised by Respondent and already considered in these proceedings. However, even though Respondent was legally responsible to ensure that the required written report was timely filed, its erroneous reliance on E&E is understandable. Therefore, I am mitigating the civil penalty by $250.

Findings

Based on my review of the record, I find the following:

(1) Respondent knowingly committed the violation, as alleged.

(2) Mitigation of the proposed civil penalty by $250 is granted due to the good faith, although erroneous, reliance by Respondent upon its contractor for performance of the report-filing requirement. There is no basis for further mitigation of the penalty.

Therefore, the Order of November 15, 1988, is affirmed as being substantiated on the record and in accordance with the assessment criteria prescribed in 49 CFR § 107.331, except that the $1,500 civil penalty assessed therein is hereby mitigated to $1,250.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717. Pursuant to that same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: February 10, 1989.

M. Cynthia Douglass.

Certified mail—Return receipt requested

[Ref. No. 88–57–CR]

Action on Appeal

In the Matter of: B & C Fire Safety, Inc., Respondent.

Background

On December 13, 1988, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to B & C Fire Safety, Inc. (Respondent) assessing a penalty in the amount of $4,500 for having knowingly committed the following acts in violation of 49 CFR 171.2(c), 173.34(e)(3), 173.34(e)(4), and 173.23(c): (1) representing DOT specification cylinders as meeting the requirements of the Hazardous Materials Regulations (HMR) when hydrostatic retesting was performed using equipment that was not capable of being read to an accuracy of one percent; (2) representing DOT specification cylinders as meeting the requirements of the HMR while failing to condemn a cylinder the permanent expansion of which exceeded 10 percent of the total expansion; and (3) representing a DOT specification cylinder as meeting the requirements of the HMR while failing to remark a cylinder manufactured in conformance with DOT Exemption E 6498 with the specification "3AL" at the time of retesting. By letter dated January 11, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Notice of Probable Violation (Notice), dated July 26, 1988, had originally proposed a total civil penalty of $7,500 for the three probable violations as follows: $1,500 for the first, $5,000 for the second, and $1,000 for the third.

Based upon corrective action taken by Respondent, the Chief Counsel reduced the penalty proposed in the Notice for the first violation from $1,500 to $1,000. In its appeal, Respondent states that further mitigation is warranted but presents no information or arguments not already considered by the Chief Counsel. After reviewing the record in this case, I have determined that the assessment of $1,000 for Violation No. 1 is appropriate.

In its appeal of the second violation, Respondent argues that the cylinder in question is no longer in service. However, the cylinder was not removed from service until after the inspector informed Respondent that the cylinder was required to be condemned because its permanent expansion exceeded 10 percent of total expansion. Even if there were an error in the test results and the cylinder's permanent expansion were actually less than 10 percent of total expansion, as Respondent claims, Respondent's records at the time of the inspection indicated that the cylinder should have been either condemned or retested in accordance with HMR. Respondent did neither. Moreover, the Chief Counsel already considered Respondent's argument about an error in the test results when he reduced the penalty proposed in the Notice for this violation from $5,000 to $2,500. After reviewing the record in this case, I have determined that the assessment of $2,500 for Violation No. 2 is appropriate.

In its appeal of the third violation, Respondent admits the violation but states that the corrective remarking of the "3AL" on the cylinder was done before the cylinder was placed back in use. Respondent also emphasizes that corrective steps have been taken to ensure that none of its personnel will make this mistake again. After reviewing the record in this case, I have determined that corrective action taken by Respondent warrants a partial mitigation of the civil penalty for Violation No. 3 from $1,000 to $500.

Respondent also argues that because it is a small business, it cannot afford to pay the administrative penalty that has been assessed. However, a January 25, 1989 Dun & Bradstreet report concerning Respondent as of December 31, 1987, states: "Current ratio is good. Cash and accounts receivable are sufficient to retire current debts. Condition regarded as good." Moreover, with its September 27, 1988 letter responding to the Notice, Respondent attached its own financial statement for the six months ended June 30, 1988. The statement shows Respondent's annual gross profit to be over $111,000, and its annual net income to be nearly $16,000. After reviewing the Dun and Bradstreet report and Respondent's own financial statement, I have determined that Respondent has the ability to pay the civil penalty, and payment will not adversely affect its ability to continue in business.

Findings

Therefore, the Order of December 13, 1988, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331, except that the $4,500 civil penalty assessed in the Order is hereby mitigated to $4,000.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current rate of seven

percent (7%) per annum in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, Room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: April 24, 1989.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 88–62–PPM]

Denial of Relief

In the Matter of: Bennett Industries, Respondent.

Background

On October 19, 1988, the Chief Counsel of the Research and Special Programs Administration (RSPA) issued an Order to Bennett Industries (Respondent) assessing a penalty in the amount of $10,000 for violations of 49 CFR 171.2(c), 178.16–13(a)(1), 178.16–16(a), 178.19–7(a)(1), 178.19–7(a)(3), and 178.19–7(d). By letter dated November 9, 1988, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

In its appeal, Respondent discusses certain procedural matters and urges that the $10,000 civil penalty be significantly reduced.

Respondent states that, during the September 15, 1988 telephonic informal conference, it advised RSPA that it would be submitting a compromise offer and that it was not aware that an order would be issued prior to RSPA's receipt and evaluation of such a compromise offer. Respondent's October 19 compromise offer and the Chief Counsel's October 19 Order crossed in the mail, and that offer was received on October 21.

During the conference, Respondent admitted the violations and was advised that, therefore, an Order would be issued. Respondent's Counsel stated that he would make a compromise offer and was advised to do so within a week or ten days. Having received no compromise offer by early October, RSPA's Counsel called Respondent's Counsel, Guy V. Croteau, and was told that he no longer was with the law firm and that there was no information concerning who was handling his cases. Although Respondent's compromise offer and appeal letters allege that another attorney, Richard Sanders, also participated in the September 15 telephonic conference, Mr. Sanders did not introduce himself during the conference, and RSPA personnel were unaware of his presence during that conference because Mr. Croteau acted as the sole attorney spokesman for Respondent. Under these circumstances, I find that it was appropriate for the Chief Counsel to issue an Order on October 19 without waiting any longer for a compromise offer.

In its appeal, Respondent asserts that the $10,000 civil penalty should be eliminated or significantly reduced because of Respondent's "good faith" decision to cease production of DOT–E 7802 polyethylene containers resulting in an alleged annual loss of approximately $2 million in annual sales and because of other factors described in the compromise offer letter. Those other factors were Respondent's past record of compliance, its standing policy to comply with regulatory requirements, its belief that RSPA's hydrostatic test pressure requirements are more stringent than necessary, and the good record in transportation of Respondent's containers.

Respondent has admitted seven violations involving failures to test properly, failures to test at all, and failures to maintain test records—all with respect to DOT exemption or specification containers. Respondent's compromise offer stated that it was ceasing production of DOT–E 7802 containers "until corrective action, by way of design change, exemption or rule change can be achieved." In summary, Respondent applied for a DOT Exemption, then knowingly failed to comply with the requirements of that Exemption, had its knowing non-compliance discovered by a RSPA inspector, and then made a business decision to cease production of those exemption containers instead of manufacturing in compliance with the Exemption. If Respondent could not or would not comply with the terms of the Exemption, it was its legal responsibility to stop production of those exemption containers, and I do not view that stoppage of production as a mitigating factor.

Respondent's belief that RSPA's hydrostatic test pressure requirements are too stringent likewise is not a mitigating factor. The implication is that Respondent was free to ignore RSPA's requirements rather than comply with them or seek to have them changed. All of the other mitigating factors raised by Respondent were considered and addressed in the Chief Counsel's Order and do not merit additional mitigation.

Findings

Based on my review of the record, I find the following:

(1) The Chief Counsel's Order in this matter was properly issued on October 19, 1988.

(2) Respondent has presented no valid basis for any further mitigation.

Therefore, the Order of October 19, 1988, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria in 49 CFR 107.331.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to that same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: January 3, 1989.

M. Cynthia Douglass.

Certified mail—Return receipt requested

[Enf. Case No. 88–66–EXR]

Denial of Relief

In the Matter of: Birko Corporation, Respondent.

Background

On September 6, 1988, the Chief Counsel, Research and Special Programs Administration (RSPA), issued an Order to Birko Corporation (Respondent) assessing a penalty in the amount of $2,500 for violations of 49 CFR 171.2(b)

and 177.834(1)(2)(i). By letter dated September 23, 1988, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent admits that it transported flammable liquids in motor vehicles equipped with combustion heaters not meeting regulatory requirements for about 1½ years after expiration of an exemption allowing such transportation. It contends, however, that the $2,500 civil penalty assessed against it should be reduced significantly because, it says, the violation was *de minimis*, Respondent has caused no injuries to health or the environment during its 30-year existence, Respondent had no prior offenses during that time, and Respondent is a small business upon which this $2,500 civil penalty would impose a hardship.

Notwithstanding Respondent's contentions, I find that no mitigation is warranted because, when measured against the $10,000 maximum penalty provided by the Hazardous Materials Transportation Act, the $2,500 civil penalty already reflects the nature of the violations and Respondent's compliance history. Furthermore, Respondent submitted no evidence to support its contention that the $2,500 would impose a hardship on it. In fact, Dun & Bradstreet reports indicate that Respondent has $6,000,000 in annual sales, a 1.9:1 ratio of current assets to current liabilities, and assets constituting 70.6 percent of sales (indicating assets of over $4,200,000).

Findings

Based on my review of the record, I find the following:

(1) Respondent has admitted the allegation described in the Chief Counsel's September 6, 1988 Order.

(2) Respondent's past record of compliance already is reflected in the $2,500 civil penalty in the Chief Counsel's Order.

(3) There is no evidence indicating that Respondent is unable to pay a $2,500 civil penalty or that such a penalty would adversely affect Respondent's ability to continue in business.

(4) There is no basis for mitigation of the $2,500 civil penalty.

Therefore, the Order of September 6, 1988, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR § 107.331.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to this same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: January 3, 1989.

M. Cynthia Douglass,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 88–67–IMP]

Denial of Relief

In the Matter of: GLNIC Corporation of America, Respondent.

Background

By Order dated November 17, 1988, the Chief Counsel of the Research and Special Programs Administration (RSPA) assessed a $9,000 civil penalty against GLNIC Corporation of America (Respondent) for violations of 49 CFR 171.12(a) of the Hazardous Materials Regulations (HMR) (49 CFR parts 171–179). The Chief Counsel's Order is incorporated herein by reference. Respondent, through counsel, filed an appeal by letter dated December 23, 1988.

Discussion

The Chief Counsel's Order determined that Respondent had knowingly imported a hazardous material into the United States and failed to provide either the shipper or the forwarding agent at the place of entry into the United States with timely and complete information as to the requirements of the HMR that would apply to the shipment in the United States. In its appeal, Respondent does not contest the occurrence of the violation, only the amount of the civil penalty. The $10,000 civil penalty proposed in the Notice of Probable Violation (Notice) was mitigated to $9,000 by the Chief Counsel's Order.

Respondent argues that the assessment proposed in the Notice should have been in the $6,000 to $8,500 range because of Respondent's lack of experience in importing hazardous materials, its lack of knowledge of the HMR, its attempt to comply with regulations that were made known to it, and the fact that it has no history of HMR violations.

However, Respondent did not make these arguments until after the Notice was issued. When Respondent earlier was apprised that it was under investigation by OHMT to determine its compliance with 49 CFR 171.12(a), its March 9, 1988 response contained none of the arguments that it now claims should have been considered in issuing the Notice. Moreover, the Chief Counsel did consider these arguments when, on November 17, 1988, he concluded in his Order that partial mitigation of the civil penalty was warranted: "In view of the fact that Respondent has no prior history of violations and that it made some effort, albeit limited, to ascertain its responsibilities, I believe mitigation of $1,000 is warranted in this case." (Order, at 3.)

In its appeal, Respondent also states that it reviewed Office of Hazardous Materials Transportation (OHMT) files for other cases concerning violations of 49 CFR 171.12(a). It submitted copies of four cases, which it believes to be a representative sample of RSPA's administration of the HMR. It admits, however, that the violations in those cases were "not identical" to that in this case. It further admits that "[Respondent's] case differs from the four cases [it had] cited in that the merchandise involved was a Class A explosive. . . ." Since none of the other cases involved the shipment of an unclassified, forbidden, class A explosive, a comparison with those cases to determine a civil penalty would be inappropriate.

Nevertheless, Respondent argues that its case closely parallels one of the four "representative sample" cases that it had reviewed in OHMT files, and that, therefore, the mitigation should be similar. The case to which Respondent refers, Fire Art Corporation (83–08–SE), was a 1983–84 case concerning the violation of 49 CFR 171.12(a) with respect to the shipment of Class B and Class C explosives. Respondent cites RSPA's mitigation of a $5,000 proposed civil penalty to $2,500 in that case and contends that, since the mitigating factors in the two cases are similar, its own civil penalty should be reduced by 50 percent.

While there are some similarities between the two cases, the mitigating factors are not the same. One of the

mitigating factors in Fire Art was that the shipment of fireworks upon which the violation was based was the first shipment Fire Art had ordered directly from a Chinese manufacturer. Respondent contends that it too is a first-time importer of hazardous materials but, unlike Fire Art, had not previously purchased hazardous materials from domestic sources and so had no knowledge of the HMR, "despite its best efforts to learn of, and comply with, any applicable Federal regulations." However, the proposed civil penalty of $10,000 in this case already has been mitigated by $1,000 because Respondent made some effort to ascertain its responsibilities and because it had no prior history of violations (the latter being a necessary result of its not having previously purchased hazardous materials).

Another mitigating factor contained in Fire Art was that it had suffered severe financial loss as a result of its shipment's seizure by U.S. Customs officials. Respondent admits that it did not suffer a severe financial loss, but argues that there were "closely parallel" circumstances because it did not profit from the shipment in this case. Fire Art suffered a severe financial loss because it could not meet contracted holiday commitments since the seized shipment of fireworks was not returned to it until long after the Fourth of July. To attempt to draw a close parallel between Fire Art's circumstances and those of Respondent—where Respondent not only did not suffer a severe loss, but was paid for the merchandise before the shipment was detained—strains credibility.

Respondent next argues that, like Fire Art, it incurred legal fees as a result of the violation. Respondent ignores the fact that while both it and Fire Art hired lawyers, they did so for very different reasons. Fire Art hired legal counsel to seek release of the seized fireworks from Customs; the hiring was part of an unsuccessful effort to avert its severe financial loss. Respondent, on the other hand, hired legal counsel solely to request mitigation of the civil penalty. Respondent's hiring of counsel in an effort to mitigate the civil penalty cannot be considered as a reason for mitigation.

Furthermore, Fire Art had taken affirmative action to get all unapproved fireworks examined by the Bureau of Explosives and approved by the Department. Yet, Respondent admits that it did not take action to have the explosive in this shipment examined.

In a final effort to compare its case with that of Fire Art, Respondent notes that in mitigating Fire Art's civil penalty, RSPA had considered that Fire Art had provided labels, placards, and information on applicable hazardous materials regulations to the Chinese shipper for future imports. Although Respondent has not done this, it attempts to "parallel" the cases by stating that it has chosen not to import other hazardous materials; it argues that it has thereby demonstrated its desire to comply with the regulations. Curiously, Respondent states that it will not import hazardous materials "until it has found a way to comply with [the applicable regulations]." Fire Art, of course, demonstrated that it had found a way to comply. Unlike Respondent, it developed procedures and implemented them.

Of all the cumulative factors that were considered in mitigating Fire Art's civil penalty, the only comparable one in Respondent's case is the factor relating to the first importation of hazardous materials. That factor has already been considered by the Chief Counsel in mitigating the proposed civil penalty. Moreover, even if the factors in both cases were closely parallel, which they are not, the resolution of an enforcement case in 1984 would not constitute a binding precedent for resolving a similar case in 1989.

Respondent also tries to blame RSPA's "regulatory arrangement" for "many needless violations * * * in the case of inexperienced importers [who] cannot reasonably be expected to be *expert in transportation requirements* unless advised of them by their carriers, shipping agents, freight forwarders, customhouse brokers, or the Government." (Emphasis supplied.) Although Respondent acknowledges that there were "transportation requirements" to be discovered, it never sought information from the one source that could supply the expertise: the U.S. Department of Transportation!

As the Chief Counsel stated in his November 17 Order, "Respondent is responsible for compliance with the Hazardous Materials Regulations and should have known when it undertook to import explosives that a careful inquiry should be made to determine all Federal laws and regulations applicable to Respondent's business." (Order, at 2.) This does not imply, as Respondent claims, that inexperienced importers "should be engaging the services of attorneys *specializing in transportation* or customs law to advise them on such matters." (Emphasis supplied.) A careful inquiry by Respondent, knowing that it needed advice on transportation matters, would certainly have led it to the Department of Transportation.

Respondent argues that if the Customs Service and other Federal Agencies referenced RSPA's requirements in brochures and letters, or in connection with other regulations that Customs enforces, this HMR violation could have been avoided. Respondent cites regulations of the U.S. Customs Service and has submitted pamphlets issued by that Agency purportedly to demonstrate that since other agency regulations are referenced therein and RSPA's are not, the Government has not met its responsibility to inform the importing community of all requirements. Yet, of the six pamphlets Respondent submitted, five have nothing to do with importing requirements for businesses. Instead, they discuss personal importations, such as pets, cars, food, and gifts. The sixth, while including import requirements for businesses, lists other agencies only if Customs enforces their requirements. This same information is found in the regulations of the Customs Service, 19 CFR Part 161. Since Customs does not enforce RSPA's regulations, it is not reasonable for Respondent to have expected to discover in a pamphlet issued by the Customs Service or in Customs' regulations any reference to the transportation of hazardous materials. Moreover, even if such a reference were contained in the Customs pamphlet, Respondent would not have known about the reference since it did not contact Customs before the importation involved in this case. In its August 1, 1988 letter to the Office of Chief Counsel responding to the Notice, Respondent contended that since it had relied on the advice of its agents, it did not need to "independently contact a plethora of Federal and State agencies (including, *inter alia, * * * U.S. Customs Service). . . .*" *Finally, it was not the responsibility of BATF, which issued a permit to import ammunition, to inform Respondent of the existence of the HMR. The responsibility to inquire was Respondent's.*

Concerning its ability to pay the civil penalty, Respondent maintains that "[o]ther than [its] primary records, the [unaudited statement dated December 31, 1987] is currently the best evidence of [its] financial position. * * *" Yet, Respondent has not submitted its primary records, which it admits are the best evidence of its financial position. Counsel merely stated that he would be happy to *attempt* to obtain them for RSPA *if* RSPA requests. Again, Respondent attempts to put the onus on the Government. Respondent had the responsibility to either submit its primary records or an audited financial

statement. It chose to do neither. Thus, RSPA is unable to determine Respondent's true ability to pay the penalty or the effect of the penalty on its ability to continue in business. Finally, Respondent requests that, if RSPA does not further mitigate the penalty, arrangements be made to sign a note for its payment since a large majority of Respondent's assets are not liquid.

Findings

Based on my review of the record, I find the following:

(1) Respondent did not provide any information to warrant mitigation of the $9,000 civil penalty assessed for having knowingly violated 49 CFR 171.12(a) of the HMR.

Therefore, the civil penalty assessed by the Chief Counsel's Order of November 17, 1988, is not modified. However, I am persuaded that Respondent's request to make arrangements for payment was made in good faith. Therefore, I authorize payment of the penalty in nine monthly installments of $1,000 each. The first installment shall be due on April 17, 1989, and each succeeding payment shall be due on the seventeenth day of each month thereafter until a total of $9,000 has been paid. Respondent must pay each installment of the civil penalty by sending a certified check or money order payable to "Department of Transportation" to the Chief, General Accounting Branch (M–66.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. If Respondent defaults on any payment of the authorized payment schedule, the entire remaining amount of the civil penalty shall, without further notice, immediately become due and payable. Respondent's failure to pay any amount due will result in the initiation of collection activities by the Chief of the General Accounting Operations Branch, the assessment of administrative charges, and the accrual of interest at the current annual rate of seven percent (7%) in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 90 days of default.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: April 14, 1989.

M. Cynthia Douglass.

Certified mail—Return receipt requested

[Ref. No. 88–68–FSE]

Denial of Relief

In the Matter of: China North Industries Corporation, Respondent.

Background

On October 4, 1988, the Chief Counsel assessed a $14,000 civil penalty against China North Industries Corporation (Respondent) for violations of 49 CFR 171.2(a), 171.12(b), 172.400(a), 173.51(b), 173.64(d) and 173.86(b) of the Hazardous Materials Regulations (HMR). Respondent submitted an appeal by letter dated October 22, 1988. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order determined that Respondent had knowingly: (1) Offered for transportation in commerce a new explosive which had not been examined, classed, and approved by the Research and Special Programs Administration (RSPA); (2) offered for transportation in commerce propellant explosives, Class A explosives, in packages not labeled in accordance with the HMR; and (3) offered for transportation in commerce propellant explosives, Class A explosives, in packages not properly marked as required by the regulations.

In its appeal, Respondent raises two issues. First, it continues to assert that its violation of the HMR was unintentional because it was unaware of the regulations at the time of shipment (November 1987). Second, it asserts that the party (GLNIC International Corporation of America) to whom Respondent shipped hazardous materials is responsible for the violations because that party (GLNIC) had obtained U.S. Government approval for the shipment.

The first issue, Respondent's alleged ignorance of the HMR, is both irrelevant and unsupported by the evidence. It is irrelevant because, as explained in the August 3, 1988 Notice of Probable Violation issued to Respondent, 49 CFR 107.299 specifically states that there is no requirement that the alleged violator actually knew of, or intended to violate, the legal requirements of the HMR.

In any event, the evidence does not support Respondent's contention that it had no prior knowledge concerning the HMR. The Chief Counsel's October 4, 1988 Order indicated that Respondent's statement that the violations were unintentional because it was unaware of the HMR is contradicted by a May 6, 1985 letter to Respondent from the Materials Transportation Bureau (MTB) (predecessor agency to RSPA) approving a new explosive for shipment based on documentation submitted by Respondent. That Order also stated that Respondent not only was aware of the HMR, but had on a previous occasion undertaken to obtain approval for shipment of a new explosive, pursuant to the same requirement that Respondent violated in this case. In its appeal, Respondent denies that it ever applied directly to MTB or RSPA for an approval and suggests that RSPA recheck its files. RSPA's files have been rechecked, and the following documents were found:

(1) April 23, 1985, letter from China North Industries Corporation (NORINCO) to the Office of Hazardous Materials (OHMT), U.S. Department of Transportation, requesting an official classification and Ex-number for certain NORINCO TNT.

(2) April 9, 1985 letter and laboratory report (both enclosed with (1) above) from the Bureau of Explosives of the Association of American Railroads to China North Industries Corp. (NORINCO) referring to a March 15, 1985 NORINCO request for examination and classification of certain TNT, recommending that the TNT be described as a High Explosive and classified as a Class A Explosive, Type 3, specifying applicable HMR packaging, marking and labelling requirements, and stating: "Section 173.86 requires that, except for shipments of sample quantities, the shipper has to submit the test report to the Department of Transportation to apply for approval before any new explosive device is offered for shipment."

(3) May 6, 1985 OHMT letter to China North Industries Corporation approving new explosive products (TNT) for shipment (EX–8505024).

(4) May 20, 1985 OHMT letter to China North Industries Corporation approving new explosive products (TNT) for shipment (EX–8505106).

These letters are attached to, and incorporated in, this Denial of Relief. They clearly demonstrate Respondent's knowledge of the HMR (which knowledge, as indicated above, is not a required element of the violation).

The second issue raised by Respondent is that GLNIC, not Respondent, is responsible for the violations. OHMT has taken enforcement action against GLNIC for its failure to comply with the HMR in this matter. However, any violations by GLNIC do not absolve Respondent of its responsiblility to comply with the HMR when shipping hazardous materials to the United States.

Findings

Based on my review of the record, I find the following:

(1) Respondent had knowledge of the HMR.

(2) Respondent's knowledge of the HMR is not an element of the violations.

(3) Any violations by GLNIC did not relieve Respondent its responsibility to comply with the HMR.

(4) Consequently, the issues raised on appeal by the Respondent are without merit.

Therefore, the Chief Counsel's Order of October 4, 1988, finding that Respondent knowingly violated 49 CFR 171.2(a), 171.12(b), 172.400(a), 173.51(b), 173.64(d) and 173.86(b), and assessing a $14,000 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty affirmed herein must be paid within 20 days of your receipt of this decision. Your failure to pay the civil penalty will result in (1) referral of this matter to the Attorney General for collection of the civil penalty in the appropriate United States District Court, and (2) accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717. Pursuant to this same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M.86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Dated Issued: January 3, 1989.

M. Cynthia Douglass.

Registered mail—Return receipt requested

[Ref. No. 88–71–HMI]

Action on Appeal

In the Matter of: Donald Holland Trucking, Inc., Respondent.

Background

On March 2, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Donald Holland Trucking, Inc. (Respondent) assessing a penalty in the amount of $1,500 for having knowingly failed to file a written hazardous materials incident report, DOT Form 5800.1, within 15 days after discovering an incident involving its unintentional release of a hazardous material during transportation in commerce, in violation of 49 CFR 171.16. The Order assessed the $1,500 civil penalty originally proposed in the June 30, 1988 Notice of Probable Violation. By letter dated March 29, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent appeals the Chief Counsel's Order on several grounds, each of which is discussed herein.

First, Respondent contends that the $1,500 civil penalty is excessive because Respondent cooperated with state and Federal officials in cleanup of the hazardous materials spill and was commended by EPA authorities for its promptness in doing so and because: "Any report to the DOT would have been strictly statistic and is not consistent with the spirit of any statute passed for the protection of the public." Respondent overlooks the fact that it was required by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, to clean up its spill and would have been subject to a separate Federal enforcement action had it failed to so so. In addition, Respondent fails to recognize the purpose of RSPA's requirement for a written hazardous materials incident report: the ongoing compilation of a comprehensive data base concerning such incidents so that corrective actions (e.g., regulatory changes) can be taken to reduce their future occurrence and thereby enhance the safety of hazardous materials transportation. Therefore, Respondent's arguments are without merit.

Second, Respondent contends that the $1,500 penalty is excessive and a financial hardship for a small trucking company. It submitted no financial information. However, a Dun & Bradstreet report on Respondent indicates that on December 31, 1987, it had cash assets of $68,254, working capital of $48,572, and retained earnings of $259,395, and that during 1987 it had sales of $2,737,680 and a net income of $81,222. Therefore, Respondent's financial hardship argument is without merit.

Third, Respondent contents that there was no violation because there has been inadequate dissemination of the HMR. As a transporter of hazardous materials, Respondent should regularly obtain copies of the relevant volumes of the Code of Federal Regulations to ensure its compliance with those regulations. Publication of RSPA's regulations in the **Federal Register** and the Code of Federal Regulations constitutes legal notice to the world of their existence and, therefore, compliance with them is mandatory. As provided in 49 CFR 107.299, actual knowledge of the legal requirements is not a prerequisite to a finding of violation of the Hazardous Materials Regulations for purposes of imposition of a civil penalty.

Findings

(1) Respondent's arguments on appeal have no merit.

(2) In light of the nature and circumstances of the violation, the extent and gravity of the violation, the degree of Respondent's culpability, the absence of any prior offenses by Respondent, and such other matters as justice may require, I find the civil penalty of $1,500 to be appropriate.

(3) I also find that Respondent has the ability to pay such a civil penalty and that such a penalty will have no adverse effect on Repondent's ability to continue in business.

Therefore, the Order of March 2, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current rate of seven percent (7%) per annum in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or many order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, Room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Dated Issued: May 31, 1989.

Travis P. Duncan,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 88–72–FF]

Action on Appeal

In the Matter of: Martin Brokerage Co., Respondent.

Background

On March 2, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Martin Brokerage Co. (Respondent) assessing a penalty in the amount of $7,500 for having knowingly offered hydrofluoric acid for transportation in commerce in unauthorized packages and offered hydrofluoric acid for transportation in commerce without listing the proper shipping name or identification number on the shipping paper, in violation of 49 CFR 171.2(a), 172.202(a)(1), 172.202(a)(3), and 173.264(a)(18). The Order assessed the $7,500 civil penalty originally proposed in the November 17, 1988 Notice of Probable Violation. By letter dated March 17, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent's first contention is that it had no way of knowing what was in the sealed containers because it relies on instructions from the Mexican shipper. Respondent stated that it prepares U.S. Customs documentation and bills of lading days in advance of importation based on information received from the Mexican shipper by telephone. Respondent stated that the Mexican shipper had previously made three shipments of ammonium bifluoride and there was no reason for Respondent to question the telephonic instructions in this particular instance. Respondent stated that it had no way of knowing what was in the containers because they are sealed before they enter the United States.

Respondent's argument is without merit. On April 17, 1989, Inspector William Wilkening of the Office of Hazardous Materials Transportation interviewed Respondent's Customs Broker and Traffic Manager, Mr. George Garcia. Mr. Garcia stated that in this case, as in all cases involving the Mexican shipper, one of Respondent's employees met the shipment at the border in El Paso to satisfy U.S. Customs regulations requiring a U.S. company to assume control of the goods while they are in bond and transit through the U.S. The Mexican truck driver normally has three copies of the shipping paper prepared by the Mexican shipper. One copy is provided to U.S. Customs, one copy is given to Respondent, and one copy continues with the truck to the rail yard. That procedure was followed on December 8, 1987, for the shipment in question. Respondent's employee, after completing U.S. Customs paperwork and securing a copy of the shipping paper, returned to the office. The shipping paper provided to Respondent by the Mexican shipper, identifies the shipment as hydrofluoric acid of 70 percent strength, contained in DOT 34–8 specification drums. Therefore, as of December 8, 1987, Respondent had actual knowledge that the shipment in question was hydrofluoric acid, not ammonium bifluoride, and that the hydrofluoric acid of 70 percent strength was packaged in DOT 34–8 drums, which are not authorized for that material. Nevertheless, Respondent offered this material to the Atchison, Topeka and Santa Fe Railway Company for transportation to Galveston and subsequent shipment to Holland via the Lykes Bros. Steamship Co., accompanied by shipping papers which incorrectly identified the material as ammonium bifluoride.

Respondent's second contention is that it did not knowingly violate the regulations and had no intent to violate any legal requirements. Respondent was advised in the Notice of Probable Violation that, under 49 CFR 107.299, a violation is "knowing" when a person has actual knowledge of the facts giving rise to the violation or should have known of those facts; there is no requirement that the person knew of, or intended to violate, the legal requirements. Respondent's conduct met the definition of "knowingly", and thus its contention is without merit.

Findings

I have determined that there is insufficient evidence to justify mitigation of the civil penalty assessment. I find that a civil penalty of $7,500 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, the absence of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant circumstances. Therefore, the Order of March 2, 1989, assessing a $7,500 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, the accrual of interest at the current rate of seven percent (7%) per annum in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, Room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: June 26, 1989.

Travis P. Dungan,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 88–78–MSC]

Action on Appeal

In the Matter of: Falcon Safety Products, Inc., Respondent.

Background

On May 5, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Falcon Safety Products, Inc. (Respondent) assessing a civil penalty in the amount of $5,000 for having knowingly committed acts which violated 49 CFR 171.2(a), 171.2(c), 172.202(a)(2), 172.202(b), 173.25(a)(4), 173.304(e)(1), 178.65–4(c)(5), 178.65–14(b)(8) and 178.65–15(b) of the Hazardous Materials Regulations (HMR), as alleged in the Notice.

The Order assessed a $5,000 civil penalty, which reflected mitigation in the amount of $1,000 of the originally proposed $6,000 penalty set out in the December 15, 1988 Notice of Probable Violation. By letter dated June 1, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

In its June 1, 1989 Appeal, Respondent stated that it accepted the decisions in the Order as to Violations 1, 2 and 4 and was requesting reconsideration only as to Violations 3 and 5.

Violation 3 involved a finding that Respondent knowingly offered for transportation in commerce dichlorodifluoromethane, a nonflammable gas, accompanied by shipping papers with an incorrect hazard class and an identification number that was out of sequence, in violation of 49 CFR 171.2(c), 172.202(a)(2) and 172.202(b). Because Respondent had made an effort to come into compliance with the HMR, the Order mitigated the proposed $1,000 penalty and assessed a $750 penalty.

Respondent's appeal of Violation 3 is based upon its assertion that it acted in a timely manner to correct the errors in its bill of lading, and that the mistakes which it made were ". . . not of any magnitude . . . since our errors were in interpretation of the rules and every attempt was made to meet the standard."

The $750 penalty assessed for Violation 3 approximately reflects the magnitude of the violation. Respondent's unsuccessful efforts to comply with the HMR do not excuse its violation. As indicated in the Notice, 49 CFR 107.299 specifies that an intent to violate the HMR is not a prerequisite to a finding of violation. Further, although Respondent has updated its bill of lading, the revised document still contains an erroneous hazard class; it references "nonflammable *compressed* gas" (emphasis added) in lieu of the correct classification of "nonflammable gas."

In its appeal of Violation 5, Respondent appears to admit that it was not in compliance, but appeals *its* interpretation of the Chief's Counsel's order. It construes the Order as saying that Respondent took almost one year *following issuance of the NOPV* to achieve compliance with the regulation. In fact, the Order states that Respondent came into compliance ". . . almost one year *following the inspection* by the Office of Hazardous Materials Transportation." (Emphasis added.) Respondent did come into compliance four months after receipt of the NOPV; however, it is required to be in compliance at all times, not merely within a certain time period following receipt of an NOPV. Here, in fact, it was more than 11 months from the time of the inspection to the time of Respondent's achieving compliance. In any event, there was no penalty imposed for Violation 5, and thus the issue of penalty mitigation is moot.

Findings

With respect to the appeal of Violation 3, I have determined that there is no evidence presented in this appeal to warrant further mitigation of the penalty assessed for that violation. Because Respondent has presented no evidence denying Violation 5 and no penalty was assessed therefore, the Chief Counsel's Order as to that violation is affirmed.

Therefore, the order of May 5, 1989, which includes assessment of a civil penalty in the amount of $5,000, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331. Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current rate of seven percent (7%) per annum in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing reference number of this case) payable to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, Room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Dated Issued: November 6, 1989.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 88–80–EXR]

Denial of Relief

In the Matter of: Copps Industries, Inc., Respondent.

Background

On October 31, 1988, the Chief Counsel, Research and Special Programs Administration (RSPA), issued an Order to Copps Industries, Inc. (Respondent) assessing a penalty in the amount of $2,000 for violations of 49 CFR 171.2(a), 173.245 and 173.249. By letter dated November 23, 1988, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order found that Respondent had knowingly: (1) offered for transportation in commerce alkaline corrosive liquid, n.o.s., in a DOT specification 37C80 steel drum not authorized by 49 CFR § 173.245 or 173.249, after expiration of an exemption from compliance therewith; and (2) offered for transportation in commerce alkaline corrosive liquid, n.o.s., in other packages not meeting the requirements of 49 CFR § 173.245 or 173.249, after expiration of an exemption from compliance therewith. That Order mitigated the $3,000 civil penalty originally proposed in the August 1, 1988 Notice of Probable Violation.

Respondent makes several arguments, each of which I will summarize and discuss.

First, Respondent asserts that it has not admitted the alleged violations. However, in a May 3, 1988 letter, Respondent's Vice President of Operations, Richard W. Burgess, stated: "From the time the exemption expired on January 31, 1988 until it was discovered in our office that renewal was not processed and shipments under the exemption (DOT–E 8747) stopped, 407 items were shipped in 14 different shipments." In a separate May 3, 1988 letter concerning the other exemption (DOT–E 8885), Mr. Burgess wrote: "From the time the exemption expired on February 29, 1988 until it was discovered in our office that a renewal was not processed and shipments under this exemption stopped, 100 items were shipped in one shipment." These admissions directly refute Respondent's assertion.

Second, Respondent disputes a statement in the Chief Counsel's Order that "Projected after-tax profits for 1988 would be $33,000." It states that its after-tax profits through October 31, 1988, are only $12,500. This assertion, unaccompanied by any supporting financial data or reports, presents an interesting contrast with the detailed financial statements submitted by Respondent on September 15, 1988, showing 1988 after-tax profits of $22,040.01 through August 31, 1988. In any event, neither profit amount justifies reduction of the $1,000 assessments for each of the two violations on the basis of Respondent's ability to pay or effect on Respondent's ability to remain in business.

Third, Respondent disagrees with a statement in the Chief Counsel's Order that it characterizes as stating "that whether the exemption packagings are safer than the required packagings is not relevant." The complete statements in the Order were:

> Respondent's contention that the exemption packagings are safer is not relevant to the issue of Respondent's continued operation under the terms of an expired exemption. Respondent offered hazardous materials for transportation in violation of the Hazardous Materials Regulations.

Respondent has not demonstrated that its use of unauthorized packagings for 15 shipments of 507 hazardous materials items were safer than authorized by the applicable regulations. In any event, Respondent misses the point that, in the absence of an effective exemption, those shipments were unauthorized and that the regulations, not shippers, determine packaging requirements.

Fourth, Respondent contends that the relevant exemptions never expired because they subsequently were renewed without any lapse. This argument is flawed. Respondent applied for, and received, emergency extensions of both exemptions on June 6, 1988. In addition, the letter forwarding those two extensions to Respondent contained the following language:

> Possible extension of the expiration dates of *DOT-E 3885 and E 8747* beyond the *August 1, 1988* date referenced herein will be considered separately upon the completion of proceedings by the Office of the Chief Counsel, Research and Special Programs Administration. Those proceedings will focus upon the operations identified in your *May 3, 1988* letters, which occurred after the respective *February 29, 1988 and January 31, 1988,* expiration dates. The reason for deferring final action on your request for renewal is that those proceedings are relevant to your company's compliance disposition, which is a key factor in making a final decision.

The language precludes any argument by Respondent that RSPA somehow was waiving Respondent's admitted violations through RSPA's granting of Respondent's requests for emergency extensions of its expired exemptions. Those extensions were effective when issued and had no retroactive legal effect. Therefore, when Respondent made its 15 shipments of 507 hazardous materials items, there were no exemptions in place authorizing such shipments.

Fifth, Respondent contends that it did not "knowingly" violate the regulations because it made no shipments after its discovery that the necessary exemptions had expired. However, as stated in the August 1, 1988 Notice issued to Respondent, under 49 CFR 107.299, a violation is "knowing" when a person has actual knowledge of the facts giving rise to the violation or should have known of those facts; there is no requirement that the person actually knew of, or intended to violate, the legal requirements. Respondent should have been aware that its exemptions had expired and that it, therefore, had no legal authority thereafter to make the hazardous materials shipments it did.

Sixth, Respondent contends that RSPA did not comply with its written request for a conference. In its August 15, 1988 letter, Respondent conditionally requested an informal conference. Subsequently, on August 29, 1988, Respondent's Mr. Burgess had an extended telephone conversation concerning this case with RSPA Senior Attorney Mary M. Crouter and agreed at the end of that conversation that no conference was necessary because all relevant information had been or would be provided by Respondent. Subsequent letters of September 15 and 16, 1988, between those two persons impliedly confirm Mr. Burgess' August 29 verbal withdrawal of the request for a conference.

Seventh, Respondent alleges that some of the 49 CFR § 107.331 penalty assessment criteria either were not considered or were misapplied. Respondent's arguments concerning application of those criteria are either redundant with earlier arguments or incorrect.

Findings

Based on my review of the record, I find the following:

(1) Respondent has admitted the two violations involving a total of 15 shipments of 507 hazardous materials items without authority after the expiration of two separate exemptions.

(2) Assessments of $1,000 for each of two violations adequately take into account Respondent's ability to pay and the effect thereof on Respondent's ability to remain in business.

(3) Respondent's repeated use of unauthorized packages for hazardous materials violated the Hazardous Materials Regulations regardless of Respondent's contention that its packagings were safer than the legally required packagings.

(4) The two exemptions at issue both expired before Respondent's unauthorized shipments, and the later emergency extensions of those exemptions had no retroactive effect.

(5) Respondent knowingly violated the regulations, as alleged in the Notice and as determined in the Chief Counsel's Order.

(6) Respondent withdrew its request for an informal conference.

(7) All of the required statutory and regulatory penalty assessment criteria have been properly applied, and there is no basis for further mitigation of the civil penalties for Respondent's two violations.

Therefore, the Order of October 31, 1988, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR § 107.331.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717. Pursuant to that same authority, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment should be made by certified check or money order payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, Room 2228, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued: February 16, 1989.

M. Cynthia Douglass.

Certified mail—Return receipt requested

[Ref. No. 88–66–CR]

Addendum To Denial of Relief

In the Matter of: Nardo Fire Equipment Company, Respondent.

On February 16, 1989, the Administrator of the Research and Special Programs Administration (RSPA) issued a Denial of Relief (incorporated herein by reference) to Nardo Fire Equipment Company (Respondent) affirming the September 8, 1988 Order of the Chief Counsel assessing a $3,000 civil penalty for knowing violation of 49 CFR 171.2(c), 173.34(e)(1)(i), and 173.34(e)(5). The Denial of Relief provided that the penalty must be paid within 20 days of receipt by Respondent.

By letter dated August 3, 1989, Respondent offered to pay $2,000 in four monthly installments in compromise of the penalty assessment because of its

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WTG also requests that the Commission waive the applicable regulations in order to authorize under the proposed blanket certificate certain existing facilities. It is asserted that these facilities constitute an interconnection between WTG's 22-inch pipeline and the facilities of Westar Pipeline Company (Westar) for the purpose of purchasing system supply gas from Westar. It is stated that these facilities were installed between April and July, 1991, in order to take advantage of WTG's 1991 peak operating season.

Comment date: January 31, 1992, in accordance with Standard Paragraph F at the end of this notice.

11. Florida Gas Transmission Co.

[Docket No. CP92-275-000]

January 10, 1992.

Take notice that on December 31, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP92-275-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the National Gas Act (18 CFR 157.205, 157.216) for authorization to abandon and transfer by sale to Florida Public Utilities Company (FPU) minor pipeline facilities located in Palm Beach County, Florida, under FGT's blanket certificate issued in Docket No. CP82-553-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to abandon and transfer by sale to FPU approximately 1.7 miles of the 6.2 mile Lake Worth 4-inch lateral located in Palm Beach County, Florida. FGT states that FPU would use this segment of pipeline as part of its existing distribution system. FGT also states that it would not terminate any services nor take any other facilities out of service as a result of this proposal. Additionally, FGT states that the existing Lake Worth 8-inch looping facilities has sufficient capacity to meet FGT's contractual obligations to FPU. Further, FGT states that FPU's certificated entitlements would not be affected by this request.

Comment date: February 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1380 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-02504T Texas-15 Addition 4]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 13, 1992.

Take notice that on December 23, 1991, as supplemented on January 9, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Lower Vicksburg Formation underlying portions of Hidalgo and Starr Counties qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area includes approximately 20,000 acres in Hidalgo and Starr Counties, Texas and consists of the acreage listed in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Lower Vicksburg Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Lower Vicksburg Formation in Hidalgo and Starr Counties, Texas Railroad Commission District 4.

1. "Los Guajes" Segundo Flores Survey #27, A-83 and A-697
2. Hidalgo County School Land Survey #553, A-227, league 1, sections 3 and 4, league 2, w/2 section 1 and sections 2-8 and league 3, sections 5 and 6
3. J.M. Vela Survey #200, A-640
4. Tex. Mex. R.R. Survey #201, A-123
5. E.B. Pue Survey #202, A-182
6. E.B. Pue Survey #204, A-636
7. Tex. Mex. R.R. Survey #205, A-125
8. E.B. Pue Survey #206, A-636
9. Tex. Mex. R.R. Survey #208, A-227
10. Tex. Mex. R.R. Survey #209, A-122
11. "Santa Anita" Manuel Gomez Survey, A-93, Valley Farms Subdivision, w/2 lots 90 and 91

[FR Doc. 92-1339 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-02507T Texas-9 Addition 10]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 13, 1992.

Take notice that on December 23, 1991, as supplemented on January 9, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation underlying portions of Robertson County qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area includes approximately 17,000 acres in Robertson County, Texas and consists of the acreage listed in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Travis Peak Formation in Robertson County, Texas.

1. James Farris, A-147
2. Owen Maynard, A-280
3. James Patterson, A-300
4. Wm. J. Kyle, A-206
5. Jackson Hensley, A-174
6. O'Connor Denson, A-128
7. Wm. Owens, A-279
8. Ezra Corry, A-102
9. Joel Bogguss, A-64
10. Wm. B. Ball, A-76
11. John Copeland, A-92
12. John McNeese, A-231
13. N. McCuistion, A-284
14. Maria DeLa Concepcion Marques, A-25
15. Robert M. Williamson, A-362
16. Clinton A. Rice, A-316
17. G.W. McGrew, A-232

[FR Doc. 92-1340 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-02503T Texas-10 Addition 12]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 14, 1992.

Take notice that on December 23, 1991, as supplemented on January 13, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Edwards Limestone Formation in portions of Webb County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area includes approximately 72,290 acres in Webb County, Texas and consists of the acreage listed in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Edwards Limestone Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Edwards Limestone Formation in Webb County, Texas Railroad Commission District 4.

Survey	Section No.	Approximate acreage
Full Section Within Application Area:		
L.M. McClendon A-851	1839	1156
Hugh P. Sutton A-582	1837	1280
C. Vergara A-2677	31	317.3
C. Vergara A-2949	12	544
W.H. Thaxton A-2675	11	640
L.T. & B. A-2336	10	640
L.T. & B. A-2335	9	640
Z. Villareal A-2605	44	640
Z. Villareal A-2604	43	640
P. Cisneros A-2706	41	640
C. Ortiz A-3145	111	1280
F. Ortiz A-3148	112	1047.5
M. Grandapo A-3146	107	1275.5
M. Grandapo A-3147	109	640
E. Ramos A-3149	108	632.25
Will H. Hearne A-3143	108	1210
C.C. Tribble A-3306	876	378.1
W. Brown A-3157	110	94.5
B.S. & F. A-3155	875	378.1
L. Vergara A-2951	39	640
R.W. Roberson A-2665	36	642
R.W. Roberson A-2784	35	642
M.G. DeGarza A-2731	38	640
M.G. DeGarza A-2730	34	642
B.S. & F. A-29	977	640
Portion of Section Within Application Area:		
Joaquin Galan A-65 Webb Co.	2182	32,362
Joaquin Galan A-3226	2292	20,844
L. Vergara A-2952	40	374
M. Martinez A-794	2289	139
Mrs. M.M. Nichols A-557	1900	659
Total acreage		72,290

[FR Doc. 92-1367 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-02812T West Virginia-10]

State of West Virginia; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 14, 1992.

Take notice that on January 6, 1992, the West Virginia Department of Commerce, Labor and Environmental Resources (West Virginia) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Maxton/Maxon Sandstone of the Appalachian Plateau of Southern West Virginia qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers approximately 66 square miles in the Davy, Pineville and Welch Quads in McDowell and Wyoming Counties, West Virginia.

The notice of determination also contains West Virginia's findings that the referenced portion of the Maxton/Maxon Sandstone meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1368 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR92-6-000]

Delhi Gas Pipeline Corp.; Petition for Rate Approval

January 14, 1992.

Take notice that on December 30, 1991, Delhi Gas Pipeline Corporation (Delhi) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 30.54 cents per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Delhi states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and currently operates intrastate facilities in several states. The subject of this petition is its intrastate system in North Louisiana. Delhi states in its petition that it intends to seek an opinion letter from the Officer of General Counsel that its facilities in North Louisiana qualify as non-jurisdictional gathering and it requests that this petition be made subject to that filing. Delhi's previous maximum interruptible transportation rate of 21 cents MMBtu for section 311(a)(2) service was approved by a Commission order issued June 21, 1990 in Docket No. ST84-773-000 *et al.*

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before January 30, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1386 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2448-000, and RP91-187-000]

Florida Gas Transmission Co.; Notice Reconvening Informal Settlement Conference and Notice Canceling Separate Informal Settlement Conference

January 13, 1992.

Take notice that the informal settlement conference previously scheduled to be convened on January 14-15, 1992, has been rescheduled to be held on February 11-12, 1992, at 10 a.m., on each day, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1991).

Take notice that the separate informal settlement conference previously scheduled to be convened on February 18-19, 1992, has been canceled and will be rescheduled at a later date.

For further information, please contact Warren C. Wood at (202) 208-2091 or Donald Williams at (202) 208-0743.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1341 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-143-010]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

January 14, 1992.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes"), on January 10, 1992, tendered to the Federal Energy Regulatory Commission (Commission) for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volumes Nos. 2 and 3, the following tariff sheets, proposed to be effective as of November 1, 1991:

First Revised Volume No. 1

Fourth Substitute Twenty-Fourth Revised Sheet No. 4
Fourth Substitute Fortieth Revised Sheet No. 57(i)

Original Volume No. 2

Sixth Revised Sheet No. 3-A
Fourth Substitute Twenty-Sixth Revised Sheet No. 53
Substitute Sixth Revised Sheet No. 53-G
Fourth Substitute Eighteenth Revised Sheet No. 77
Substitute Fourth Revised Sheet No. 78
Fourth Substitute Fourteenth Revised Sheet No. 151
Fourth Substitute Eleventh Revised Sheet Nos. 223 and 245
Fourth Substitute Fifth Revised Sheet No. 289
Fourth Substitute Eleventh Revised Sheet No. 294
Fourth Substitute Sixth Revised Sheet No. 603
Second Substitute Third Revised Sheet No. 604
Fourth Substitute Fourth Revised Sheet Nos. 865 and 866
Fourth Substitute Third Revised Sheet No. 905
Fourth Substitute Fourth Revised Sheet No. 906
Second Substitute First Revised Sheet No. 1008

Original Volume No. 3

Fifth Substitute Fourth Revised Sheet No. 2
Substitute Original Sheet No. 2-A
Fourth Substitute Fourth Revised Sheet No. 3

Great Lakes states that the purpose of the instant filing is to comply with Ordering Paragraph (B) of the "Order On Compliance Filing" issued by the Federal Energy Regulatory Commission ("Commission") on December 20, 1991, in Docket Nos. RP91-143-000, *et al.* (Order). In this regard, the Order directed Great Lakes to file revised tariff sheets to reflect the elimination of costs, in the design of its interruptible and overrun rates, associated with its incrementally-priced, expansion facilities. In addition, Great Lakes is to reflect, in the design of its rates for non-incremental customers, a credit for anticipated revenue from the projected levels of interruptible and overrun services.

Great Lakes further states that its filing includes workpapers setting forth the calculation of projected fuel usage.

Great Lakes states that its filing is being submitted under protest and without prejudice to Great Lakes' request for rehearing filed in response to Opinion Nos. 367 and 368 or the request for rehearing which Great Lakes will file concerning the Commission's December 20, 1991 order herein.

Great Lakes states that copies of this filing were posted and served on all of its customers, upon the Public Service Commissions of the States of Minnesota, Michigan, and Wisconsin, and upon all parties listed on the service list maintained by the Commission's Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1382 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR92-7-000]

Louisiana Intrastate Gas Corporation; Petition for Rate Approval

January 14, 1992.

Take notice that on January 6, 1992, Louisiana Intrastate Gas Corporation (LIG) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 21 cents per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA) through its Eloi Bay Facility.

LIG states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and currently operates intrastate facilities in Louisiana. The subject of this petition is its Eloi Bay Facility. LIG states that the Eloi Bay Facility was the subject of prior orders of the Commission in Docket Nos. ST89-1708-000, *et al.* which determined an incremental rate of 3.37 cents per MMBtu for section 311(a)(2) transportation through this facility. These orders are pending review in *Louisiana Intrastate Gas Corp.* v. *FERC*, DC Cir. Nos. 89-1479, 90-1050 and 90-1476. LIG states that it is filing this petition to have its general system-wide rate of 21 cents currently pending in Docket No. PR91-12-000 apply to section 311(a)(2) transportation using the Eloi Bay Facility.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before January 30, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1386 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-38-000]

Pacific Gas Transmission Co.; Change in FERC Gas Tariff

January 14, 1992.

Take notice that on January 10, 1992, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

First Revised Sheet No. 12

Original Volume No. 1-A

Sixth Revised Sheet No. 4
Second Revised Sheet Nos. 5 and 14
Second Revised Sheet Nos. 72 and 73
Second Revised Sheet Nos. 74 and 75
Second Revised Sheet Nos. 76, 82, 83 and 84

The purpose of this filing is to revise the billing demand under Rate Schedule PL-1 of Second Revised Volume No. 1 coincident with a partial conversion from sales service under Rate Schedule PL-1 to transportation service under Rate Schedule FTS-1 for Pacific Gas and Electric Company (PG&E), and to make certain minor changes to Rate Schedule FTS-1, the form of service agreements for Rate Schedules FTS-1 and ITS-1, and to the format of the Statement of Rates of PGT's FERC Gas Tariff, Original Volume No. 1-A.

PGT has requested an effective date of January 10, 1992 for First Revised Sheet No. 12 of Second Revised Volume No. 1 and February 9, 1992 for all other tariff revisions. A copy of this filing is being served on PGT's jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Comission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1383 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-212-003]

Stingray Pipeline Co.; Supplemental Compliance Filing

January 14, 1992.

Take notice that Stingray Pipeline Company (Stingray), on January 10, 1992, filed certain revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, to correct an earlier compliance filing that it made on October 15, 1991 pursuant to an order of the Federal Energy Regulatory Commission (Commission) issued on September 10, 1991 in Docket No. RP91-212-000, 56 FERC ¶ 61,462 (1991). The proposed tariff sheets, which pertain to § 6.3(d) of Stingray's FTS and ITS Rate Schedules, are as follows:

Revised Second Substitute Original Sheet No. 59
Revised Second Substitute Original Sheet No. 60
Original Sheet No. 60A
Revised Second Substitute Original Sheet No. 97
Original Sheet No. 97A

Stingray requests that the tendered tariff sheets be accepted in lieu of those filed in the October 15 compliance filing to be effective October 1, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1384 Filed 1-17-92; 8:45 am]

BILLING CODE 6717-01-M

Final Rule changed 49 CFR 107.311(c) to its current form (except for changes in office names following a subsequent reorganization). 48 FR 2652–3; January 20, 1983. The "Supplementary Information" section explained that the change was made based on the following recommendation of a commenter: "[A]mendments to notices should be allowed only where the new information relates directly to allegations in the original notice. In all other cases, [the agency] should have to issue a new notice based on new allegations." 48 FR 2647; January 20, 1983. Thus, the Office of the Chief Counsel would be required to issue a new notice of probable violation only if it determines that any additional information that it may seek to make a part of this proceeding does not relate directly to allegations in the original notice. Because the information does relate directly to those allegations, amending the notice of probable violation is the proper procedure for the Office of the Chief to follow.

If that is the course taken, the Respondent is not entitled to change the form of its reply that it chose under 49 CFR 107.313. It is noteworthy that that portion of the NPRM that would have permitted respondents to treat amended notices as initial notices for purposes of response options was removed from the final rule. I therefore agree with Respondent's assertion in its appeal that the "informal hearing" [49 CFR 107.317(b) refers to this response as an "informal conference"] should have been reopened and that Respondent should have been given notice and opportunity to examine and refute the additional evidence.

Findings

I find that the Chief Counsel's Order was based, in part, upon information outside of this proceeding. Accordingly, that Order is vacated, and this case remanded to the Office of the Chief Counsel to either:

1. Issue an Amended Notice of Probable Violation in accordance with this Action; or

2. Issue a new Order that is not supported by information outside of this proceeding.

If the Office of the Chief Counsel issues an Amended Notice, it must inform Respondent that it will have an opportunity to respond to the amendments by requesting that the informal conference be reconvened. I also direct the Office of the Chief Counsel to make arrangements for Respondent's expert to review any new exhibits that that office seeks to make a part of the record.

Date Issued: February 22, 1990.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 88–113–CR]

Action on Appeal

In the Matter of: Consolidated Fire Protection Services, Inc., Respondent.

Background

On December 27, 1988, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Consolidated Fire Protection Services, Inc. (Respondent) assessing a penalty in the amount of $2,000 for having knowingly committed acts in violation of 49 CFR 171.2(b), 173.34(e)(3), and 173.34(e)(5). (The Order inadvertently cited § 171.2(b) instead of § 171.2(c). The Notice of Probable Violation contained the correct reference.)

The Order assessed a civil penalty of $2,000, reduced from the $2,500 civil penalty originally proposed in the November 9, 1988 Notice of Probable Violation. By letter dated January 20, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order found two violations of the Hazardous Material Regulations. Respondent does not challenge the civil penalty for the second violation, which the Chief Counsel's Order had mitigated from $1,000 to $500. Respondent's appeal concerns only the first violation: that Respondent knowingly represented that it had performed hydrostatic retesting of DOT specification cylinders even though Respondent had not determined that its retesting equipment met the accuracy requirements of 49 CFR § 173.34(e)(3). In its appeal, Respondent argues that the $1,500 penalty for that violation was excessive because Pittsburgh Testing Laboratory, the independent inspection agency, had the responsibility to not certify Respondent's hydro-tester if the calibrated cylinder did not have a recent calibration certificate. Respondent maintains that, had it known of the requirements, it would not have continued its retesting of DOT specification cylinders until it had received a calibration certificate. Respondent further notes that following the inspection of its facility by Office of Hazardous Materials Transportation (OHMT) inspectors, it had stopped retesting the cylinders until it had received the certificate.

The fact that, subsequent to the OHMT inspection, Respondent had obtained an independent calibration of, and a certificate of calibration for, its hydro-tester was known to the Chief Counsel before the Notice issued. Regarding this effort by Respondent, the Notice stated: "this mitigating factor has been considered in determining an appropriate proposed civil penalty assessment." Moreover, during the December 16, 1988 informal telephone conference, an attorney from the Chief Counsel's Office explained to Respondent's President and Vice President that the shared responsibility of the independent inspection agency had also been considered in determining the proposed penalty. However, Respondent cannot escape its obligation to be familiar with, and abide by, the Hazardous Materials Regulations. Finally, Respondent had not been able to determine the accuracy of the calibration of its equipment for a week before the OHMT inspection because, during that time, it did not have the ¾-inch fitting necessary to connect the calibrated cylinder to the high pressure line. Despite the fact that its retest equipment had not been checked for accuracy for about one week, Respondent had continued to test DOT specification cylinders, thereby violating 49 CFR 173.34(e)(3).

Findings

I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $2,000 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability reduced by some reliance on the independent inspector, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of December 27, 1988, assessing a $2,000 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current rate of seven percent (7%) per annum in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a

penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: September 18, 1989.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 88–114–HMI]

Action on Appeal

In the Matter of: Chemcentral Corporation, Respondent.

Background

On March 3, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Chemcentral (Respondent) assessing a penalty in the amount of $1,500 for having knowingly failed to file DOT Form F 5800.1 within 15 days of discovering an incident involving the unintentional release of a hazardous material during transportation, in violation of 49 CFR 171.16. The Order assessed the $1,500 civil penalty originally proposed in the November 30, 1988 Notice of Probable Violation. Although Respondent had waived its right to respond to the Notice, by letter dated March 21, 1989, it submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The incident involving the unintentional release occurred March 3, 1988. Respondent admits that it did not mail the required DOT Form F 5800.1 until November 30, 1988, even though each of its drivers had received a handbook containing the reporting requirements. Moreover, the eventual filing on November 30, 1988, occurred more than 30 days after a Transportation Enforcement Specialist, U.S. Department of Transportation, informed Respondent's General Manager in a telephone interview that the filing was required. Respondent also took more than 30 days following that interview to bring to the attention of its supervisory personnel the necessity of making timely reports.

Respondent requests that the assessed civil penalty be reduced from $1,500 to $250, "because of the relatively insignificant nature of the real or potential harm caused by the release of the hazardous material in this instance." Respondent also reasons that it immediately made repairs to the trailer involved in the incident. Respondent's arguments are not convincing. The significance of the harm caused by the release or the repairs made to the trailer do not determine the amount of the civil penalty assessed for not reporting the release. If the reporting requirements in the regulations are violated consistently, the Department's statistics concerning the unintentional release of hazardous materials will be unreliable. In addition, the amount of the penalty assessed by the Chief Counsel, which Respondent says it has the ability to pay and will not in any way affect its ability to continue in business, is far below the maximum permitted. Pursuant to 49 CFR 107.329, when, as here, the violation is a continuing one, each day of the violation constitutes a separate offense. Thus, Respondent could have been assessed a civil penalty of up to $10,000 per day for each day Respondent was in violation of 49 CFR 171.16. Nevertheless, because Respondent did make the required filing on November 30, 1988, before receiving the Notice issued on that date, mitigation of $100 is justified.

Findings

I have determined that there is sufficient information to warrant partial mitigation of the civil penalty assessed in the Chief Counsel's Order. Respondent argues that it has a "relatively-free record of alleged violations of 49 CFR regulations." Nevertheless, I find that a civil penalty of $1,400 is appropriate in light of the nature and circumstances of this violation, its extent and gravity, Respondent's culpability, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of March 3, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR § 107.331, except that the $1,500 civil penalty assessed therein is hereby mitigated to $1,400.

Failure to pay the $1,400 civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current rate of seven percent (7%) per annum in accordance with 31 U.S.C. 3717 and 49 CFR Part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, Room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: August 21, 1989.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–01–SIT]

Action on Appeal

In the Matter of: FMC Corporation, Respondent.

Background

On March 22, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to FMC Corporation (Respondent) assessing a penalty in the amount of $7,000 for having knowingly committed three violations. The Order assessed the $7,000 civil penalty originally proposed in the January 18, 1989 Notice of Probable Violation.

By letter dated June 9, 1989, after obtaining an extension of time to appeal, Respondent, through counsel, submitted a timely appeal of the Order insofar as it found a violation and imposed a $3,000 civil penalty for Violation No. 3. Violation No. 3 involved the knowing offering of a hydrogen peroxide solution for transportation in commerce in a concentration (70.8%) higher than authorized for an intermodal (IM) portable tank, in violation of 49 CFR 171.2(a) and 173.266(a)(3). (Respondent previously had submitted a $4,000 check in full payment of the civil penalties imposed for Violation Nos. 1 and 2.) The Chief Counsel's Order is incorporated herein by reference.

Discussion

In its appeal, Respondent stated that the maximum 70% figure in the IM Tank Table and 49 CFR 173.266 originated with an exemption issued to an international tank manufacturer whose customer intended to ship standard 70% hydrogen peroxide. Respondent contended that the 70% figure was apparently chosen because that is what the exemption application requested, and that nothing in the available records indicates that RSPA "drew a line at 70% and would have considered 71% unsatisfactory, if the petition had asked for 71%." Respondent also suggested that the 70% figure was incorporated in the IM Tank Table without formal notice and comment under the Administrative Procedure Act. Respondent reiterated the arguments it made in response to the Notice, suggesting that hydrogen peroxide must be shipped in concentrations higher than 70% in order to have 70% at destination because the material slowly loses concentration over time, and that the industry practice is to describe the material by the standard commercial percentage that a company is contractually obligated to deliver (e.g., 70%), not the actual percentage shipped.

Respondent also contended that although RSPA stated that one of the purposes of adopting the portable tank rules was to facilitate international transport of hazardous materials and harmonize with the United Nations (UN) standards, the UN standards do not apply an upper limit of 70%. Furthermore, Respondent noted that a number of organic peroxides and oxidizers listed in the Hazardous Materials Table have concentrations of 52% or 72%, presumably to accommodate standard 50% or 70% material and anticipating product loss, while other materials have more even figures which correlate with uneven percentages in the UN standards. Respondent suggests that these apparent inconsistencies are not explained by any scientific rationale, but rather correlate with what was requested by a variety of petitioners over the years, some of whom accounted for decreasing concentration and some of whom merely identified the material by its commercial standard description.

Finally, Respondent contends that this situation is inappropriate for resolution through the enforcement process because all the commercial parties outside the Department understood the rule to mean one thing, while the agency understood it to mean something else. Respondent stated that it was now shipping hydrogen peroxide below 70% pending resolution of this matter, although doing so puts it at a competitive disadvantage with other companies in the industry.

The meaning of the regulatory requirement has been undisputed since its inception. In January 1981, RSPA published a final rule, after notice and comment, authorizing the use of two new specification intermodal portable tanks to transport certain hazardous materials to be identified by name in the IM Tank Table (46 FR 9880). The rule amended each of the specific packaging requirements in 49 CFR part 173 for the materials authorized. The packaging requirements in 49 CFR 173.266(a)(3) for hydrogen peroxide solution in water authorized shipment of this material, containing 70 percent or less hydrogen peroxide by weight, in specification IM 101 portable tanks, under the conditions specified in the IM Tank Table. The 70 percent figure was corrected to 60 percent by a final rule correction issued April 30, 1981 (46 FR 24184).

The January 1981 final rule stated that the IM Tank Table would be published separately, and provided procedures, in 49 CFR 173.32d, for addition, modification, and removal of entries in the IM Tank Table. The Tank Table was intended to provide flexibility by allowing addition or modification of entries through an approval process based upon a technical analysis of available data concerning the material. Absent that approval process, the Tank Table would be a static document, unable to accommodate the legitimate needs of commerce. In April 1981, the Materials Transportation Bureau (predecessor to the Office of Hazardous Materials Transportation (OHMT)) issued an interim approval, in accordance with 49 CFR 173.32d, to L'air Liquide. The interim approval, which was effective May 1, 1981, authorizes transportation in IM 101 tanks of hydrogen peroxide solution "Over 60 percent but not greater than 70 percent by weight in water" under the conditions specified in the interim approval, and requires that a copy of the interim approval accompany each shipment. The interim approval also states that hydrogen peroxide solution over 70 percent by weight in water is "*Not Authorized for transportation in IM 101 or IM 102 tanks*" (emphasis added). Respondent has been on notice since that time that hydrogen peroxide solution over 70 percent cannot be shipped in IM portable tanks, and that hydrogen peroxide solution over 60 percent but not greater than 70 percent may be shipped only under the authority, and in accordance with the terms, of the interim approval granted by OHMT. If Respondent had any doubt about the 70 percent maximum, it could have requested clarification or sought an amendment to the IM Tank Table, as provided in 49 CFR 173.32d.

The Chief Counsel considered and rejected Respondent's arguments concerning the prevailing industry practice of shipping hydrogen peroxide in concentrations greater than the 70% allowed by the regulations. I concur with the Chief Counsel's conclusion that industry practice is irrelevant as to the legality of Respondent's practice.

Respondent's contention concerning different percentages for other named materials is not directly relevant to this case because those materials are not allowed to be shipped in IM portable tanks. Respondent's contention concerning the different percentages authorized for various materials is valid to the extent that it highlights that exemptions, subsequently incorporated into the regulations, are based upon applications from industry representing what it plans to do. A company is perfectly capable of specifying what concentration it plans to ship, including an allowance for loss of concentration, and apparently many companies did so. It is not for RSPA to conjecture that a given percentage should be understood to mean approximately that percentage. The exemptions that were granted, and subsequently converted to regulation, were issued on the basis of a demonstration that a company's proposed action would result in a level of safety equivalent to the regulations. The fact that a company might have been able to make that demonstration with a higher concentration is irrelevant. The fact that the UN standards do not set a maximum percentage is likewise irrelevant. Although the portable tank rules were adopted, in part, to align with UN standards, the preamble clearly states that the rules are not identical. The Hazardous Materials Regulations, not the UN standards, regulate the packaging of hazardous materials for domestic transportation.

Findings

Accordingly, I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $3,000 is appropriate in light of the nature and circumstances of this violation, its extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of March 22, 1989, assessing a $3,000 civil penalty for Violation No. 3, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the applicable rate in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC-1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: December 4, 1989.

Travis P. Dungan,

Administrator.

cc: Robert H. Malott
Chief Executive Officer
FMC Corporation
200 E. Randolph Drive
Chicago, IL 60601.

FMC Corporation
2000 Market Street
Philadelphia, PA 19103
Attn: David D. Eckert, Branch Manager.

Certified mail—Return receipt requested

[Ref. No. 89-11-SPT]

Action on Appeal

In the Matter of: Chemcentral Corporation, Respondent.

Background

On August 14, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation (DOT), issued an Order to Chemcentral Corporation (Respondent) assessing a penalty in the amount of $2,500 for having knowingly used for transportation of hazardous materials five DOT specification 57 portable tanks that had not been retested at least once every two years, in violation of 49 CFR 173.32(e)(1)(i). The Order assessed a civil penalty which was $500 less than the $3,000 assessment originally proposed in the January 30, 1989 Notice of Probable Violation. By letter dated September 12, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Notice of Probable Violation (NOPV) originally issued in this matter proposed a penalty of $3,000 against Respondent for its knowing use for the transportation of hazardous materials five DOT specification 57 portable tanks which had not been retested as required by the Hazardous Materials Regulations. In February 20 and March 3, 1989 reply letters, Respondent requested mitigation of the penalty and stated that of the five tanks that should have been retested, two tanks subsequently had been retested and passed and the remaining three tanks had been retired from service. The Chief Counsel, RSPA, determined that Respondent's prompt corrective action warranted partial mitigation and, therefore, reduced Respondent's proposed civil penalty by $500.

In its appeal letter, Respondent requests further reduction of the penalty amount. Respondent contends that of the seven criteria listed in 49 CFR 107.331, the only two criteria addressed were Respondent's ability to pay and the effect on Respondent's ability to continue in business. Respondent argues that no harm from the violation was noted, the nature and circumstances of the violation and its extent and gravity seemed to be minor, the degree of culpability is difficult to assess, and there was no history of prior offenses.

The Chief Counsel already has mitigated the penalty by $500 in light of the corrective action taken by Respondent. The Chief Counsel considered all the civil penalty criteria in 49 CFR 107.331, including the nature and circumstances of the violation, its extent and gravity, the degree of Respondent's culpability, the absence of prior offenses by Respondent, Respondent's ability to pay, the effect of the penalty on Respondent's ability to remain in business, and such other matters as justice may require, including Respondent's remedial action. Five instances of knowing use of out-of-test portable tanks for hazardous materials transportation constitute serious offenses. Although they were charged as a single offense, Congress has provided for a possible maximum penalty of $10,000 for that offense. None of the five portable tanks had ever been retested, and there is no indication that Respondent has not presented any new information or argument to warrant further mitigation or to indicate that the Chief Counsel did not properly consider the penalty assessment factors. In light of all the foregoing, I find that the $2,500 penalty (constituting a $500 penalty for each of the out-of-test tanks) is appropriate.

Respondent also requests an informal conference and, if that proves unsatisfactory, a formal hearing to be held in Chicago, Illinois. The time for requesting either option has expired. Respondent's options, pursuant to 49 CFR 107.313, were listed in Addendum B to the Notice of Probable Violation (Notice). Within 30 days of its receipt of the Notice, Respondent could have included in its informal response a request for an informal conference. However, in its February 20 and March 3, 1989 replies to the Notice, Respondent did not request a conference. Also, within this same 30-day period, Respondent could have made a request for a formal hearing before an administrative law judge. Respondent's failure to request either an informal conference or a formal hearing within 30 days of its receipt of the Notice constituted a waiver of Respondent's right to such a conference or hearing. Therefore, I deny Respondent's request for an informal conference and its request for a formal hearing.

Findings

I have determined that there is insufficient information to warrant further mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $2,500 is appropriate in light of the nature and circumstances of the violation, its extent and gravity, Respondent's culpability, the absence of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant circumstances. Therefore, the Order of August 14, 1989, assessing a $2,500 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

Failure to pay the civil penalty assessed in this matter within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current rate of seven percent (7%) per annum in accordance with 31 U.S.C. 3717 and 49 CFR part 89.

Pursuant to those same authorities, a penalty charge of 6 percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: October 12, 1989.

Travis P. Dungan,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 89–12–SP]

Action on Appeal

In the Matter of: Chemco Manufacturing Co., Inc. Respondent.

Background

On February 23, 1990, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Chemco Manufacturing Company, Inc. (Respondent) assessing a penalty in the amount of $2,000 for having knowingly offered for transportation in commerce a hazardous material, a flammable liquid with a flash point of 5 degrees Fahrenheit (#791 Strippable Booth Coating, product name: Liquid Envelope, #791–35), in 5-gallon, open-head DOT-37C pails authorized only for materials having a flash point above 20 degrees Fahrenheit, in violation of 49 CFR 171.2(a) and 173.128(a)(4). The Order assessed a civil penalty of $2,000, reduced from the $5,000 civil penalty originally proposed in the April 20, 1989, Notice of Probable Violation. By letter dated March 9, 1990, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent admitted that the civil penalty was for violations occurring prior to the date of the DOT inspection. Respondent's sole basis for appeal is that Mr. O'Neil, the inspector from the Office of Hazardous Materials Transportation (OHMT), "acknowledged to our General Manager in front of other employees that if we immediately complied with the HMR regulations, of which we had no knowledge, that we were assured no penalties for prior non-compliance would be involved [sic]." Respondent stated that it had disposed of all non-complying containers, at considerable cost, and had complied with the HMR since the date of the OHMT inspection.

It is standard procedure for OHMT inspectors to conduct an exit interview following a compliance inspection. The OHMT inspector discusses the probable violations observed during the inspection, and the range of enforcement sanctions available. The Notice of Probable Violation (Addendum A, Page 1) states that "[b]efore leaving Respondent's facility, Inspector O'Neil showed Mr. Schweizer 49 CFR 173.128(a)(4), and explained to him the probable violation concerning Respondent's shipment of its paint related material #791 packaged in DOT 37C80 5-gallon pails." Inspector O'Neil's inspection report states that the exit interview was conducted with Mrs. J.J. Pape and Mr. Schweizer. Inspector O'Neil's report also states that he discussed the probable violation, showed Mr. Schweizer the relevant section of the Hazardous Materials Regulations, and discussed "all of the enforcement possibilities." OHMT inspectors do not have the authority to waive the imposition of civil penalties, and it is standard practice for them to state during an exit interview that any enforcement decision will be made by the Chief of the Enforcement Division in consultation with the Office of Chief Counsel. Respondent never raised this allegation until it appealed the Chief Counsel's Order, and it provided no corroboration whatsoever to support its contention. I therefore find that there is on credible evidence that Inspector O'Neil made the alleged statement. Even if the inspector mistakenly or improperly had made such an unauthorized statement, the Office of Chief Counsel would not thereby have been precluded from bringing an enforcement action. Respondent has a responsibility to comply with the Hazardous Materials Regulations and is subject to appropriate sanctions for its failure to do so.

Findings

I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $2,000 is appropriate in light of the nature and circumstances of this violation, its extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of February 23, 1990, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331. Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual, of interest at the applicable rate in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service.

Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, Room 9112, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: April 30, 1990.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–20–CR]

Action on Appeal

In the Matter of: New York Fire and Safety Corporation, Respondent.

Background

On November 14, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to New York Fire and Safety Corporation (Respondent) assessing a penalty in the amount of $10,000 for knowingly representing, marking, certifying, and offering 15 DOT specification cylinders as successfully retested in accordance with the Hazardous Materials Regulations (HMR) when they should have been condemned because their permanent expansion exceeded ten percent of total expansion. Respondent's failure to condemn the cylinders was

determined to be in violation of 49 CFR 171.2(c) and 173.34(e)(4).

The Order assessed the maximum penalty of $10,000 allowed under the authority of 49 App. U.S.C. 1809(a)(1) and 49 CFR § 107.329, citing Respondent's failure to respond to the Notice of Probable Violation (Notice) issued August 21, 1989, and, therefore, its failure to contest the probable violation as set forth in the Notice and to present any information which would warrant mitigation of the proposed civil penalty amount. The Chief Counsel's Order is incorporated herein by reference.

Respondent submitted a timely appeal of the Order, and in the alternative, requested that the Chief Counsel vacate the Order "in the interests of justice and with a view to compromising a settlement." Respondent proposed to pay a $2,000 penalty, citing its financial difficulties and inability to pay the assessed penalty. A December 13, 1989 letter from the Acting Chief Counsel, RSPA, was sent to Respondent informing it that the proper procedure for contesting an Order of the Chief Counsel was through an appeal to the Administrator, RSPA, and that its letter was being so considered. As Respondent had not presented any documentary evidence of its financial condition prior to issuance of the Order, the letter also invited the submission of additional evidence. (Respondent had supplied certain financial statements to the staff attorney of record in the matter after its 30-day response period had run (49 CFR 107.313).) This action on appeal is based upon a *de novo* review of the administrative record in this case, as supplemented by Respondent following issuance of the Order.

Discussion

In its appeal, Respondent does not contest that it violated the HMR as stated in the Chief Counsel's Order. The sole ground for appeal is the appropriateness of imposing the maximum penalty authorized by law in light of Respondent's financial circumstances. Respondent also explains that its failure to respond to the Notice and to raise this issue in a timely manner was due to an inadvertent oversight by office personnel. (Respondent was unaware of the action pending against it until an informal conference held on October 26, 1989 with regard to a Notice of Probable Violation issued to its parent corporation, Radec Corporation.)

In order to complete the administrative record, a January 5, 1990 letter from the Office of Chief Counsel again invited the submission of any material which Respondent wished to have considered on appeal. It also presented Respondent with copies of memoranda from the Office of Hazardous Materials Transportation (OHMT) inspector and the RSPA attorney who were present at the informal conference, noting their best recollection of Respondent's statements and other evidence presented at the conference concerning the financial condition of Respondent. This was done to provide Respondent with an opportunity to respond or supplement the record as it saw fit. Respondent's first submission, dated January 22, 1990, included income statements (unverified) and a certified financial statement for its parent corporation. According to those income statements, Respondent was operating at a net loss of about $96,500 as of November 1989. Respondent's January 22, 1990 letter also noted that despite its financial difficulties, Respondent had taken corrective action to ensure its employees were properly trained in hydrostatic testing and inspection of cylinders.

In a February 26, 1990 letter, Respondent advised the Office of Chief Counsel, RSPA, that on February 23, 1990, Radec Corporation had sold all of Respondent's assets, and had realized a net loss of $60,000 on the sale. In response to the Office of Chief Counsel's request for additional information concerning the sale, Respondents supplied a copy of the Asset Purchase Agreement and related documents. Respondent noted that the terms of the sale left Respondent with a substantial amount of accounts payable for which Respondent remains liable. According to the Schedule of Assets Sold and Attachment provided, the company was sold for $280,771.67, for assets having a book value of $238,799.09. This transaction would yield a net of $41,972.58, except that Respondent still had outstanding obligations to discharge. Respondent received only $120,000 at the time of closing. Of these proceeds, $10,000 was placed in escrow for sales tax and $110,000 was used to pay off various of Respondent's obligations, leaving Respondent with another $60–65,000 of accounts payable for which it remains responsible. The balance of the sales price will be paid over five years in equal monthly installments, and $35,000 will not be paid until at least one year from the closing. According to Respondent's calculations, this sale actually resulted in a net loss to Respondent of approximately $92,000.

Respondent's March 28, 1990 letter also stated that it has agreed with the purchaser that the purchaser is in no way responsible for any liability arising out of the instant action.

Findings

I have determined that there is sufficient information to warrant partial mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $5,000 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, and all other relevant factors. The effect of a civil penalty on Respondent's ability to continue in business is, of course, not in issue, as the assets of the business have been sold.

Therefore, the Order of November 14, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CRF 107.331, except that the $10,000 civil penalty assessed therein is hereby mitigated to $5,000.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the applicable rate in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1) RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: May 21, 1990.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–25–SPT]

Action on Appeal

In the Matter of: GRO–MOR, Inc. and USA Fertilizer, Inc., Respondents.

Background

On September 6, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Gro-Mor, Inc. and USA Fertilizer, Inc. (Respondents) assessing, jointly and severally, a penalty in the amount of $8,500 for having knowingly offered for transportation and transported sulfuric acid (1) in concentration of 51 percent or less in packaging not authorized, (2) in concentration of greater than 95% to not over 100.5% in packaging not authorized, and (3) in a motor vehicle not placarded on each end and each side with CORROSIVE placards, in violation of 49 CFR 171.2(a) and (b), 173.272(a), (c), and (g), 172.504(a), 172.506(a)(1), and 177.823. The Order assessed the $8,500 civil penalty originally proposed in the February 24, 1989 Notice of Probable Violation, but authorized payment in four monthly installments. By letter dated September 29, 1989, Respondent, through counsel, submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

In their appeal, Respondents contend that the Hearing Officer (the Chief Counsel) failed to: properly consider the assessment criteria; understand the "corrosion study" submitted by Respondents; or give due credibility to the financial statements submitted by Respondents. Respondents also challenge the findings that the violations in fact occurred and the amount of the penalty. The appeal, however, does not include any arguments or additional information in support of Respondent's contentions. Accordingly, I have carefully reviewed all the information in the record and find Respondents' contentions meritless.

Respondents did not deny, and in fact acknowledged in their March 21 letter and at the informal conference, that Violation Nos. 2 and 3 occurred. Respondents even conceded in their March 21 letter, with respect to Violation No. 1, that although the material that spilled was intended to be a non-corrosive fertilizer vine-kill mix, "it is possible the plant operation could have made a mistake." In fact, the report from the Idaho Department of Health and Welfare included a laboratory analysis of the material that spilled showing it to be 50.5% sulfuric acid. The "Corrosion Study" is for a material Respondents refer to as "26–0–0–6," but there is no evidence to suggest that this material was being transported at the time of Violation No. 1, and there is ample evidence, in the form of the laboratory analysis, to conclude that it was not the material being transported.

With respect to Respondents' contention concerning the consideration given to the financial information they submitted, the information in the financial statement is sketchy, unsubstantiated, and pertained to a natural person affiliated with both corporations, rather than to the corporations themselves. Under these circumstances, the Chief Counsel was more than generous in according the financial statement even limited credibility.

Finally, although they are not required to do so, Respondents have not submitted any information concerning corrective actions taken to prevent the occurrence of such violations in the future. Transporting high concentrations of sulfuric acid in non-specification packagings is a serious violation, and there is no evidence in the record to warrant mitigation of the civil penalty assessed.

In view of the foregoing, the Chief Counsel properly considered each of the assessment criteria and decided that there was no justification for mitigating the penalty amount.

Findings

I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $8,500 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondents' culpability, Respondents lack of prior offenses, Respondents' ability to pay, the effect of a civil penalty on Respondents' ability to continue in business, and all other relevant factors.

Therefore, the Order of September 6, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331. The civil penalty of $8,500 shall be payable in four equal monthly installments of $2,125 each, beginning on January 22, 1990, and due on the 22nd day of each of the three succeeding months. If Respondent defaults on any payment of the authorized payment schedule, the entire amount of the remaining civil penalty shall, without notice, immediately become due and payable.

Respondent's failure to pay this accelerated amount in full will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the applicable rate in accordance with 31 U.S.C. 3717 and part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment of the accelerated amount is not made within 90 days of default.

Each payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondents must send a photocopy of each check or money order to the Office of the Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: December 21, 1989.

Travis P. Dungan.

cc: Mr. Arthur H. Nielson, Jr., President
Gro-Mor, Inc. and USA Fertilizer, Inc.
120 North 12th Avenue
Pocatello, Idaho 83201
Certified mail—Return receipt requested

[Ref. No. 89–27–HMI]

Action on Appeal

In the Matter of: Peoples Cartage, Inc., Respondent.

Background

On April 13, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Peoples Cartage, Inc. (Respondent) assessing a penalty in the amount of $1,000 for having knowingly failed to file DOT Form F 5800.1 within 15 days of discovering an incident involving the unintentional release of a hazardous material during transportation, in violation of 49 CFR § 171.16. The Order assessed a civil penalty of $1,000, reduced from the $1,500 civil penalty originally proposed in the February 3, 1989 Notice of Probable Violation. By letter dated April 19, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent's sole basis for appeal is that the amount of the civil penalty is not warranted or reasonable given certain substantial mitigating factors. Respondent contends that the unintentional violation involved a single written reporting requirement that did not endanger persons or property; the

violation resulted from a good faith misinterpretation of the regulations, not a willful or intentional violation; Respondent has provided its personnel with training; Respondent has no history of prior offenses; Respondent should not be penalized because it is financially able to pay; and Respondent voluntarily undertook remedial action to educate its employees.

The Chief Counsel already has mitigated the $1,500 proposed penalty by $500 in light of Respondent's good faith misinterpretation and its remedial actions. Moreover, the Chief Counsel considered all the civil penalty criteria in 49 CFR 107.331, including Respondent's lack of prior offenses, its degree of culpability, the gravity of the violation, and Respondent's ability to pay and continue in business. Respondent is not being penalized because of its ability to pay. Ability to pay is considered in assessing a civil penalty only to the extent that a person is unable to pay or doing so would adversely affect the ability to continue in business. Otherwise, ability to pay is given minimal weight. Respondent has not presented any new information or argument to warrant mitigation or to indicate that the Chief Counsel did not properly consider the penalty assessment factors.

Findings

I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $1,000 is appropriate in light of the nature and circumstances of the violation, its extent and gravity, Respondent's culpability, Respondent's lack or prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of April 13, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR § 107.331.

Failure to pay the $1,000 civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current rate of seven percent (7%) per annum in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, Room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Respondent must send a photocopy of that check or money order to the Office of the Chief Counsel (DCC–1), RSPA, Room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: July 20, 1989.

Travis P. Dungan,

Administrator.

Certified mail—Return receipt requested

[Ref. No. 89–32–CRR]

Action on Appeal

In the Matter of: Robert Gas Cylinder Co., Inc., Respondent.

Background

On July 5, 1989, the Chief Counsel, Research and Special programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Robert Gas Cylinder Co., Inc. (Respondent), assessing a penalty in the amount of $6,000 for having knowingly represented DOT–4 series specification cylinders as meeting the requirements of the Hazardous Materials Regulations (HMR) by rebuilding them when it was not authorized to do so, in violation of 49 CFR 171.2(c) and 173.34(1). The Order assessed the $6,000.00 civil penalty originally proposed in the March 27, 1989 Notice of Probable Violation (Notice). By letter dated July 24, 1989, Respondent submitted a timely appeal of the Order (the "Appeal"). The Chief Counsel's Order is incorporated herein by reference.

Discussion

In assessing the $6,000 penalty in issue, the Chief Counsel, RSPA, relied on the fact that Respondent had known, for more than four years, that the necessary RSPA approval for rebuilding of DOT cylinders had not been granted to Respondent. Specifically, an inspection performed on the Robert Cylinder Manufacture, Inc. (RCM) on February 12, 1985, revealed the same violation as that which is currently in issue; this violation was discussed with Mr. Roberto Santiago, President of RCM, who did not contest it. Mr. Santiago subsequently attended a meeting on March 24, 1988, at the Puerto Rico Public Service Commission, at which time the need to obtain RSPA approval was discussed and planned enforcement action was reviewed with him.

In the Appeal, Respondent introduced several items which contradict the evidence relied upon to assess the $6,000 penalty. First, Respondent provided a contract for the sale of the business and equipment of RCM to it on February 17, 1987. Additionally, Respondent's counsel, Mr. Fernandez Mejias, stated that, at the time of purchase of the business, Mr. Santiago warranted to Respondent that all Federal licenses and permits necessary to repair, rebuild or manufacture compressed gas cylinders had been issued to RCM, that these licenses and permits were in full force and effect, and that they could be transferred to Respondent upon consummation of the sale (see Appeal, page 2). Respondent's Counsel also stated that "After the March 24, 1988 meeting held at the Puerto Rico Public Service Commission headquarters in which RSPA officials discussed the need for facilities engaged in the rebuilding and repair of compressed gas cylinders to obtain RSPA approval, Respondent acquired constructive knowledge that such approval was needed." (see Appeal, page 3.)

Respondent's Counsel has also provided the sworn statement of Mr. Antonio Navarro, Respondent's administrative office clerk, stating that he was mistaken in this prior oral statement to RSPA inspectors that Mr. Santiago was Respondent's Vice-President; further, Respondent provided the sworn statement of Mr. Hector Barreto, its Secretary, that Mr. Santiago never occupied any office or position with Respondent.

The new evidence contradicts Mr. Navarro's prior oral statement that Mr. Santiago was Respondent's Vice-President, which was relied upon to establish the $6,000 civil penalty in the Notice and the Order. Thus, accepting this evidence as true, Respondent *did not* have knowledge of the violations in issue until sometime after Mach 24, 1988. The Order was issued on the basis of the then-uncontradicted evidence that Respondent had knowledge of the violation since 1985. Respondent's evidence shows that: (1) It did not acquire this facility until 1987, (2) it is a separate corporate entity from RCM, to which the 1985 advisory letter was issued; and (3) far from bringing knowledge of the violation to Respondent, Mr. Santiago dealt at arm's length with Respondent, merely as a predecessor-in-interest, and actually misrepresented to Respondent that it was legally free to continue the cylinder

rebuilding operation. While lack of actual knowledge is not exculpatory, the extent of actual knowledge is relevant in assessment of a penalty. The $6,000 penalty was based on the belief that Respondent knew of the requirements for four years; because Respondent had had actual knowledge of the requirements for only six months prior to the inspection in which the violation was discovered, significant mitigation of the $6,000 penalty is appropriate.

Mitigation of the penalty by $3,000 reflects my evaluation of the nature and circumstances of the violation, its extent and gravity, the degree of Respondent's culpability, and such other matters as justice may require.

Findings

I have determined that there is sufficient information to warrant partial mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $3,000 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of July 5, 1989 is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331, except that the $6,000 civil penalty assessed therein is hereby mitigated to $3,000.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the applicable rate in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of Chief counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: January 3, 1990.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–33–CRR]

Action on Appeal

In the Matter of: Caribe Cylinders, Inc., Respondent.

Background

On February 23, 1990, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Caribe Cylinders, Inc. (Respondent) assessing a penalty in the amount of $3,000 for having knowingly represented DOT–4 series cylinders as meeting the requirements of the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180, by rebuilding them when Respondent was not authorized to rebuild DOT–4 series cylinders, in violation of 49 CFR 171.2(c) and 173.34(1).

The Order assessed a civil penalty of $3,000, reduced from the $6,000 civil penalty originally proposed in the March 27, 1989 Notice of Probable Violation. The Order also provided that the civil penalty was payable in six monthly installments of $500 each. By a March 19, 1990 letter from its President, Ruben D. Milan, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent's appeal is based on two arguments. First, Respondent asserts that it relied upon certification by the Puerto Rico Public Service Commission as authority for its operations. Second, it alleges that, in light of numerous existing debts, the proposed civil penalty would lead to bankruptcy.

With regard to Respondent's alleged reliance on a Public Service Commission certification, it is entirely possible that Respondent could have relied in good faith upon such certification, in lieu of U.S. Department of Transportation (DOT) approval, until early 1985. However, on February 14, 1985, Respondent's President, Mr. Milan, was visited by Inspector James Henderson of the Office of Hazardous Materials Transportation (OHMT) of DOT. Mr. Henderson explained to Mr. Milan the necessity to obtain OHMT approval prior to rebuilding any more DOT specification cylinders. Subsequently, OHMT sent letters to Respondent on March 26, 1985, and September 18, 1987, reiterating the OHMT approval requirement contained in the HMR. In addition, Mr. Milan attended a March 24, 1988 meeting at the Public Service Commission Headquarters at which both OHMT and Public Service Commission representatives informed him of the requirement for OHMT approval. In light of all these notifications, Respondent had no justification for reliance upon its Public Service Commission certificate when it was discovered in November 1988 to be rebuilding DOT specification cylinders without OHMT approval.

With respect to the financial assertions made in Respondent's appeal, most of them are irrelevant because they relate to the personal financial situation of Respondent's President and his family and to the financial situation of another family business. Although Respondent alleges that both it and the other company have combined debts of over $154,000, no separate information is provided for Respondent itself. The appeal also states that Respondent is closed and non-productive and that its assets are "under threat of IRS (Social Security Taxes) embargo." This financial information concerning Respondent does not justify any further reduction of the $3,000 civil penalty imposed in the Chief Counsel's Order.

Findings

I have determined that there is not sufficient information to warrant any mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $3,000 payable in six monthly installments of $500 each is appropriate in light of the serious nature and all of the circumstances concerning this violation, its extent and gravity, Respondent's culpability (aggravated by the numerous "warnings" given to Respondent about such a violation), Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of February 23, 1990, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

Failure to pay the first $500 monthly installment of the $3,000 civil penalty assessed herein within 20 days of receipt of this decision and each subsequent $500 monthly installment during each of the five subsequent months will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations

Division, the assessment of administrative charges, and the accrual of interest at the applicable rate in accordance with 31 U.S.C. § 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: May 15, 1990.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–38–CRR]

Action on Appeal

In the Matter of: Carli Cylinder Repair Co., Respondent

Background

On October 27, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Carli Cylinder Repair Co. (Respondent) assessing a penalty in the amount of $1,500 for having knowingly represented DOT–4 series specification cylinders as meeting the requirements of the Hazardous Materials Regulations by rebuilding them when Respondent was not authorized to rebuild DOT–4 series cylinders, in violation of 49 CFR 171.2(c) and 173.34(l). The Order assessed a civil penalty of $1,500, reduced from the $3,000 civil penalty originally proposed in the March 27, 1989 Notice of Probable Violation. By letter dated February 2, 1990, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent does not contest the violation or the amount of the civil penalty. However, it indicates that Hurricane Hugo collapsed and destroyed its working facilities and that its owner is unemployed and penniless. On that basis, Respondent requests that the civil penalty be suspended or that its monthly payments be reduced.

Respondent's allegations concerning its facilities have been confirmed by the Public Service Commission of Puerto Rico. In light of that calamity and Respondent's greatly reduced ability to pay, mitigation of the civil penalty by an additional $750 and a proportional reduction of the monthly payments are appropriate.

Findings

I have determined that there is sufficient information to warrant partial mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $750 is appropriate in light of the nature and circumstances of this violation, its extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of October 27, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331, except that the $1,500 civil penalty assessed therein is hereby mitigated to $750, payable in six consecutive equal monthly installments of $125 each. The first payment shall be due on July 12, 1990, and each succeeding payment shall be due on the 12th day of each month thereafter until a total of $750 has been paid. Failure to pay the first installment or any succeeding monthly installment on time will result in the entire remaining amount of the civil penalty, without notice, becoming immediately due and payable on July 12, 1990.

Failure to pay the first $125 installment payment of the $750 civil penalty assessed herein by July 12, 1990, will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the applicable rate in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service.

Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, Room 9112, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, Room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: June 15, 1990.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–40–CR]

Action on Appeal

In the Matter of: Eagle Industries, Inc., Respondents.

Background

On July 10, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Eagle Industries, Inc. (Respondent) assessing a penalty in the amount of $2,500 for having knowingly represented and marked cylinders as meeting the requirements of the Hazardous Materials Regulations when hydrostatic testing was conducting using equipment having an expansion gauge which could not be read to an accuracy of one percent or 0.1 cubic centimeter (cc) (Violation No. 1), and when records showing the results of reinspection and retest were not kept (Violation No. 2), in violation of 49 CFR 171.2(c), 173.34(e)(3), and 173.34(e)(5). (The Chief Counsel's Order inadvertently omitted citation of 49 CFR 173.34(e)(5), although the Order clearly found a violation of that requirement.) The Order assessed the $2,500 civil penalty originally proposed in the March 22, 1989 Notice of Probable Violation, as amended on June 5, 1989. By letter dated August 1, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

With respect to Violation No. 1, Respondent contends that it offered the inspector from the Office of Hazardous Materials Transportation (OHMT) the opportunity to return the day following the inspection to meet with the shop foreman (who had been absent during the inspection), but that the OHMT inspector declined to do so. Respondent further stated that burettes must be stored carefully as they are easily broken and expensive to replace.

The OHMT inspector informed Respondent that he was investigating an accident on the day after his inspection of Respondent's operation, and could not return. Respondent is essentially reiterating the argument that it raised

before the Chief Counsel that its shop foreman is responsible for testing cylinders and uses the correct size burettes. During the inspection, however, Mr. Bill Salmon stated that the only burette used to test cylinders was the one marked in increments of 1.0 cc, and that he had never used the other burettes, which were still in the package. The OHMT inspector asked Bill Salmon specifically if there were any cylinders in the shop that had been tested with the burette in question, and Mr. Salmon identified a cylinder (Serial #HO 24528) as one so tested. In addition, the OHMT inspector photographed retest records for a cylinder (Serial No. 706691C) which Bill Salmon signed as having tested. The fact that Respondent may have had other employees who tested cylinders correctly does not alter the fact that Bill Salmon, identified by Respondent as a designated hydrostatic test operator, admitted that he did not test cylinders as required. Moreover, as noted in the Order, this violation was reviewed with Bill Salmon at the time of the inspection and he did not contest the violation. Therefore, I find there is sufficient evidence in the record to sustain a finding of violation.

With respect to Violation No. 2, Respondent appears to contend that, since it used a proof pressure test rather than a water jacket test for certain cylinders, no expansion results were necessary. Proof pressure tests are permissible only for low pressure cylinders, not for cylinders with 1800 psi service pressure and 3000 psi test pressure. In addition, during the OHMT inspection, Bill Salmon stated that Respondent tests all cylinders by the water jacket method. The Notice alleged and the Order found that Respondent's hydrostatic retest records omitted total, elastic, and permanent expansion information for several cylinders for which a proof pressure test is not allowed. Therefore, Respondent's argument concerning proof pressure testing for low pressure cylinders is irrelevant to this violation.

Finally, Respondent reiterated its argument that it is a small family-owned business and the penalty would cause it a financial hardship. Respondent contends that its total liabilities are greater than $60,000, and that a recent move cost more than $10,000. Respondent provided no financial statement supporting its contention or contradicting the information provided in the Dun & Bradstreet report which the Chief Counsel used in assessing the penalty. In addition, the Dun & Bradstreet report indicates that Respondent had cash on hand of $36,704 as of December 31, 1988. I find that the Chief Counsel correctly determined that Respondent is able to pay the civil penalty and doing so would not adversely affect its ability to continue in business.

Findings

In summary, I find Respondent's arguments on appeal to be without merit. I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $2,500 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Repondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of July 10, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accurual of interest at the applicable rate in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date issued: November 28, 1989.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–46–HMI]

Action on Appeal

In the Matter of: Walters-Dimmick Petroleum, Inc., Respondent.

Background

On May 4, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Walters-Dimmick Petroleum, Inc. (Respondent) assessing a penalty in the amount of $1,000 for having knowingly failed to file a DOT Form F 5800.1 report within fifteen (15) days of discovering an incident involving the unintentional release of a hazardous material during transportation, in violation of 49 CFR 171.16.

The Order assessed a civil penalty of $1,000, which was $500 less than the $1,500 assessment originally proposed in the March 13, 1989 Notice of Probable Violation. By letter dated May 15, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Notice of Probable Violation (Notice) originally issued in this matter assessed a penalty of $1,500 against Respondent for failing to timely comply with the 15-day deadline for filing a written report on DOT Form F 5800.1, as mandated by 49 CFR 171.16. Respondent requested mitigation of the penalty, based on its lack of bad faith and on the fact that, upon being informed that it had committed a violation, it did file the Form F 5800.1; this filing, however, occurred subsequent to expiration of the 15-day deadline. The Chief Counsel, RSPA, reduced Respondent's civil penalty, by one-third of the proposed assessment, to $1,000.

Respondent has alleged that it was not guilty of "knowingly" failing to file the Form F 5800.1 within the requisite 15-day period. Respondent, as a carrier of hazardous materials, is expected to be aware of the hazardous materials transportation regulations. Furthermore, as explained in the Notice, under 49 CFR 107.299, a violation is "knowing" when a person has actual knowledge of the facts giving rise to the violation or should have known of those facts; there is no requirement that the person actually knew of, or intended to violate, the legal requirements. The fact that Congress has permitted the Chief Counsel to assess a penalty as high as $10,000 per violation further supports the reasonableness of the reduced penalty of $1,000 for this violation.

Findings

I have determined that there is not sufficient information to warrant further mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $1,000 is appropriate in

light of the nature and circumstances of this violation, its extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of May 4, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current rate of seven percent (7%) per annum in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC-1), RSPA, room 8405, at the same street address. This decision on appeal constitutes the final administrative action in this proceeding.

Dated issued: July 5, 1988.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89-52-HMI]

Action on Appeal

In the Matter of: Westar Corporation, Respondent.

Background

On May 31, 1988, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Westar Corporation (Respondent) assessing a penalty in the amount of $1,500 for a knowing failure to file a written Hazardous Materials Incident Report, DOT Form F. 5800.1, in violation of 49 CFR 171.16. The Order assessed the $1,500 civil penalty originally proposed in the March 13, 1989 Notice of Probable Violation. By letter dated June 20, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order determined that Respondent, a carrier transporting a hazardous material, failed to report on DOT Form F 5800.1, within 15 days of its discovery, an unintentional release of approximately 200 pounds of sodium cyanide, which occurred on June 14, 1988, in violation of 49 CFR 171.16.

Respondent primarily bases its appeal on the double jeopardy clause of the Fifth Amendment to the United States Constitution. Respondent alleges that the State of Arizona earlier fined it for the spilling of sodium cyanide on an Interstate Highway. This argument is invalid for several reasons. First, the Double Jeopardy Clause is applicable only in criminal, not civil penalty cases. Since this case involves a civil penalty action, the principle of double jeopardy is inapplicable. Second, the Double Jeopardy Clause does not even preclude separate criminal prosecutions for the same act by two different sovereigns—the Federal Government and a State Government. Third, although the State and Federal actions against the Respondent related to the same incident, two different sets of regulatory requirements are involved. That is, there are two different violations—one for the spill and one for a failure to report the spill. In the State action, Respondent was fined for the hazardous materials release which occurred on an Interstate Highway. This Federal case involves Respondent's failure to file a written report of the incident within 15 days of its discovery as required by 49 CFR 171.16. Fourth, Mr. Robert Bartlett, a motor carrier investigator for the Arizona Department of Public Safety's Hazardous Materials Division, has stated to RSPA that no action has been taken concerning this spill by either his Department or the Arizona Department of Environmental Quality. In summary, any State assessment of a fine against Respondent related to the spill does not excuse Respondent's failure to file the required written report.

Respondent also contends that a civil penalty cannot be levied against it because on October 25, 1988, it filed a Chapter 11 petition with the U.S. Bankruptcy Court for the District of Nevada. Although 11 U.S.C. 362(a) of the Bankruptcy Code grants Respondent an automatic stay while it is under the protection of the Bankruptcy Court, it does not preclude RSPA from issuing this Final Order. Pursuant to 11 U.S.C. 362(b)(4) of the Bankruptcy Code, an automatic stay is not applicable to the commencement or continuation of an action by a governmental unit to enforce its regulatory power. This Order should not be construed as a demand and is issued to administratively conclude this case and to establish the fact of Respondent's liability for a civil penalty. Thus, this Order is not an effort to collect a debt, and, therefore, is unimpeded by Respondent's protection under the Bankruptcy Court.

Findings

I have considered the issues raised by Respondent in its appeal and find them to be without merit. Furthermore, I find that sufficient evidence has not been presented to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. Therefore, the Order of May 31, 1989, assessing a $1,500 civil penalty, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

If this penalty is not voluntarily paid, RSPA will seek collection through the Bankruptcy Court while the Respondent's Chapter 11 proceeding is pending. In the event that Respondent elects to pay the civil penalty, a certified check or money order (containing the Ref. No. of this case) should be made payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. In that event, Respondent also should send a photocopy of that check or money order to the Office of Chief Counsel (DCC-1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Dated issued: August 21, 1989.

Travis P. Dungan.

Certified Mail—Return receipt requested

[Ref. No. 89-55-HMI]

Action on Appeal

In the Matter of: Slay Transportation Co., Inc., Respondent.

Background

On May 15, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Slay Transportation Co., Inc. (Respondent) assessing a civil penalty in the amount of $1,500 for having knowingly failed to file a DOT Form F 5800.1 report within fifteen (15) days of

discovering an incident involving the unintentional release of a hazardous material during transportation, in violation of 49 CFR 171.16.

The Order assessed the $1,500 civil penalty originally proposed in the March 13, 1989 Notice of Probable Violation. By letter dated May 31, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

With its appeal, Respondent submitted a Motor Carrier Accident Report (MCS 50–T), which it had filed with the Federal Highway Administration (FHWA) in October 1988, concerning the incident in question. Respondent also states that it did file the required DOT Form F 5800.1 after being advised in February 1989 of the necessity to do so and having been provided with the blank form. It has provided a copy of the completed 5800.1.

Filing of the MCS 50–T did not obviate the need to file the 5800.1 since each form provides important information to a separate government agency, which information is utilized by each agency to compile a data base used for its own regulatory purposes. However, Respondent's filing of the 5800.1 after being advised of the need to do so and prior to its receipt of the Notice of Probable Violation merits partial mitigation of $100.

Findings

I have determined that there is sufficient information to warrant partial mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $1,400 is appropriate in light of the nature and circumstances of this violation, its extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of May 15, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331, except that the $1,500 civil penalty assessed therein is hereby mitigated to $1,400.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current rate of seven percent (7%) per annum in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, Room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: July 25, 1989.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–60–SP]

Action on Appeal

In the Matter of: Tennant Company, Respondent.

Background

On September 20, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), United States Department of Transportation (Department), issued an Order to Tennant Company (Respondent) assessing a penalty in the amount of $3,000 for having knowingly offered for transportation in commerce a flammable liquid, resin solution, and a corrosive liquid, n.o.s., not in compliance with the packaging requirements, in violation of 49 CFR 171.2(a), and 173.119, and 173.245(a), respectively. (Although the Order inadvertently cited 49 CFR 171.16, the Notice of Probable Violation (Notice), issued May 2, 1989, cited the correct sections of the regulations, and the facts in the Order were correct.)

The Order assessed a civil penalty of $3,000, reduced from the $3,500 civil penalty originally proposed in the Notice. By letter dated October 9, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

The Chief Counsel's Order found two violations of the Hazardous Materials Regulations. Respondent does not challenge the civil penalty for the second violation: That Respondent knowingly offered for transportation in commerce corrosive liquid, n.o.s., in one-gallon containers that were not authorized by 49 CFR 173.245(a). Respondent's appeal concerns only the first violation: that Respondent knowingly offered for transportation in commerce a flammable liquid, resin solution, in 37A open-head steel pails that were not authorized by 49 CFR 173.119. In its appeal, Respondent argues that the $2,000 assessment for this violation is too harsh, and requests a further reduction of the penalty amount by approximately 50 percent. Respondent states that it provided for nonspecification containers of resin solution to the transporter for shipment and inquired whether the containers were acceptable. Respondent contends that the transporting company assured it that the containers met the Department's regulatory requirements, and that it in good faith left the containers with the carrier for transportation. Respondent also raises the issue that the Department's regulations are confusing. Finally, Respondent contends that it did not knowingly violate any of the Department's laws and should not be held to that level of intent.

The Chief Counsel already mitigated the penalty by $500 in light of Respondent's good faith mistake in interpreting the regulations, its reliance on advice from its carrier that it was in compliance with the regulations, and its corrective action to avoid a recurrence of these violations. Moreover, Respondent's contention that it did not knowingly violate any of the Department's regulations is not persuasive. As indicated in the Notice, under 49 CFR 107.299, a violation is "knowing" when a person has actual knowledge of the facts giving rise to the violation or should have known of those facts; there is no requirement that the person actually know of, or intend to violate, the legal requirements. As an offeror of hazardous materials, Respondent is required to be knowledgeable concerning all of the hazardous materials regulations. I therefore find the violations were "knowing." Respondent has not presented any new information or argument to warrant further mitigation or to indicate that the Chief Counsel did not properly consider the penalty assessment factors.

Findings

I have determined that there is not sufficient information to warrant further mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $3,000 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability,

Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of September 20, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331. Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the applicable rate in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: December 18, 1989.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–63–HM]

Action on Appeal

In the Matter of: John's Oil Company, Respondent.

Background

On May 26, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to John's Oil Company (Respondent) assessing a penalty of $1,500 for having knowingly failed to file a written report on DOT Form F 5800.1 within 15 days of discovering an incident involving the unintentional release of a hazardous material during transportation, in violation of 49 CFR 171.16.

The Order assessed the $1,500 civil penalty originally proposed in the March 28, 1989 Notice of Probable Violation. By letter dated June 20, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated into this appeal by reference.

Discussion

Respondent has requested reconsideration of the penalty because it attempted to notify all local, state and Federal agencies. Respondent states that its failure to file a written hazardous materials incident report occurred while it was concentrating its efforts on consoling the family of its deceased driver, assisting in the cleanup of the gasoline spill and trying to find other means to make deliveries to its customers. Respondent also states that it has not been reimbursed for the loss of its truck and other accident-related expenses.

I recognize that the death of Respondent's driver was a sad and difficult time for Respondent and that clean-up efforts consumed much of Respondent's time. However, reporting incidents of this nature is critical to the development of a complete hazardous materials transportation data base and to the prevention of similar incidents in the future. Partial mitigation of the penalty by $100 is appropriate in recognition of the remedial action Respondent took by filing DOT Form 5800.1 on June 29, 1989.

Findings

I have determined that there is sufficient information to warrant partial mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $1,400 is appropriate in light of the nature and circumstances of this violation, its extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of may 26, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331, except that the $1,500 civil penalty assessed in that Order is mitigated to $1,400.

Failure to pay the civil penalty assessed in this matter within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current rate of seven percent (7%) per annum in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: October 17, 1989.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–69–CR]

Action on Appeal

In the Matter of: Jim Hollis' Scuba World, Respondent.

Background

On August 28, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Jim Hollis Scuba World (Respondent) assessing a civil penalty in the amount of $3,250 for having knowingly (1) represented to be retesting DOT specification cylinders in accordance with the Hazardous Materials Regulations (HMR) when Respondent's equipment had a pressure gauge which could not be read to within one percent of test pressure and an expansion gauge which could not be read to within one percent of total expansion or 0.1 centimeter; (2) represented a DOT specification cylinder as meeting the requirements of the HMR when the cylinder had not been marked with the specification identification "3AL" at the time of retest; and (3) represented DOT specification cylinders as meeting the requirements of the HMR when records showing the results of reinspection and retest had not been maintained as required, in violation of 49 CFR 171.2(c), 173.23(c), 173.34(e)(3), and 173.34(e)(5). The Order assessed a civil penalty of $3250, reduced from the $4000 civil penalty originally proposed in the April 19, 1989 Notice of Probable Violation (Notice). By letter dated October 16, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

In its appeal, Respondent maintains that a $500 civil penalty would be more appropriate for the first violation than the "proposed" penalty of $1500. Respondent admits that it may have committed a "knowing" violation, but argues that there is no evidence that it was intentional. Respondent further admits that the calibration of the hydrotesting equipment was incorrect and acknowledges that it has a responsibility to be aware of its legal obligations as a retester of scuba tanks. Respondent argues, however, that its immediate response to correct the problem should be taken into consideration by the Department when determining the assessment amount. Respondent also points out that this is its first violation and that it relied on the past manager's instruction regarding calibration.

Respondent raised, and the Chief Counsel considered, each of these arguments following the issuance of the Notice, which had proposed a civil penalty of $2,000 for this violation. The Chief Counsel's Order pointed out that the Notice had "advised Respondent that a 'knowing' violation does not require any intention to violate the legal requirements." Furthermore, the Order specifically referred to Respondent's "lack of prior offenses" as well as Respondent's "reliance on its prior manager, and the immediate corrective action it took" as reasons for "reducing the proposed penalty amount for this violation by $500, to $1,500." Thus, the $1,500 was the amount assessed, not, as Respondent mistakenly believes, the amount proposed. In addition, the Chief Counsel may have been too generous in reducing the proposed amount in part because of Respondent's reliance on its prior manager. A Dun & Bradstreet report dated April 11, 1989, which is part of the record of this case, indicates that Respondent's Chief Executive Officer and 100% owner of its stock, Mr. James E. Hollis, started the business in 1969. Therefore, although Respondent's current business manager may not have received correct information concerning retesting requirements from the previous business manager, Respondent's CEO and owner should have know the requirements.

In its appeal, Respondent raises for the first time the argument that it "is a *small* business that tests scuba tanks making a minimum return on its investment * * *. A fine in the magnitude of $1500 to a business the size of (Respondent) would be financially devastating to his business." Respondent provides no information concerning the size of its business, the amount of its investment, or the size of its profit. Merely concluding that financial devastation will occur, without supporting documentation, is unconvincing. Moreover, the Chief Counsel's Order considered Respondent's "ability to pay" as well as "the effect of a civil penalty on Respondent's ability to continue in business" in determining the amount of the civil penalty. The Dun & Bradstreet report rates the company's worth at $200,000.

It also states that, as of March 3, 1988, projected annual sales were $600,000, and sales and profit for the 12 months ended December 31, 1987, were up compared with the same period the previous year. Finally, the report indicates that, at least until March 3, 1988, Respondent did more than test scuba tanks. Fifty percent of its business consisted of retailing scuba diving equipment, while the remainder consisted of teaching scuba diving.

Respondent contends that the second violation cited in the Chief Counsel's Order did not occur. Respondent's position is that it was not required to mark the cylinder with the specification identification "3AL" because the test had not been completed. Respondent claims that the cylinder was still in the testing zone and would not be completely tested until the final stamping and VIP stickers [1] are attached and the cylinder is moved to the service area. A form of the same argument was made by Respondent in its May 11 response to the Notice. That argument was considered and rejected by the Chief Counsel; he stated in the Order that "(t)he cylinder in question was stamped as having been retested by Respondent in October 1988, but was not marked as required at that time. Moreover, the inspection took place January 27, 1989, and the cylinder had still not been marked at that time." It is simply not a credible argument that a cylinder, stamped as having been retested in October, was still in testing merely because it had not been marked as required and may not have reached the "service area."

Regarding the third violation, Respondent admits that there were some errors on the retest data sheets, denies that they were numerous, and categorizes them merely as "technical" and "minor." Respondent again states that it "has corrected the situation and, for the most part kept good records." Respondent proposes a $100 penalty for this violation. I disagree. The evidence in the Notice demonstrates that the errors were numerous and were neither technical nor minor. Respondent was assessed a civil penalty for this violation because it represented DOT specification cylinders as meeting the requirements of the HMR when they did not. The Notice had proposed a civil penalty of $1,500 although the maximum possible assessment for this violation is $10,000. The Chief Counsel reduced the assessment to $1,250 "(i)n view of Respondent's reliance on the former manager and its corrective action[.]" Respondent has not made a convincing case for further reduction.

Findings

I have determined that there is not sufficient information to warrant any mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $3,250 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability reduced by some reliance on the instructions of the former manager, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors. Therefore, the Order of August 28, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the current annual rate in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the reference number of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

[1] Visual inspection stickers are not required by the HMR and, therefore, are irrelevant.

Dated Issued: March 5, 1990.

Travis P. Dungan.

cc: Jim Hollis' Scuba World
5107 E. Colonial Avenue
Orlando, FL 32807

Certified mail—Return receipt requested

[Ref. No. 89-75-HMI]

Action on Appeal

In the Matter of: Central Grain Corporation, Respondent.

Background

On November 7, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Central Grain Corporation (Respondent) assessing a penalty in the amount of $1,500 for having knowingly failed to file a written report, on DOT Form F 5800.1, within 15 days of discovering a December 19, 1988 incident involving the unintentional release of a hazardous material during transportation, in violation of 49 CFR 171.16. The Order assessed the $1,500 civil penalty originally proposed in the April 7, 1989 Notice of Probable Violation. By letter dated December 20, 1989, Respondent (through counsel) submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

In its appeal, Respondent stated that it has taken steps to ensure that there will not be any future violation by instructing its drivers about the incident reporting requirements and instituting new written procedures, which it included with its appeal. Respondent's remedial action warrants mitigation of the civil penalty in the amount of $200.

Findings

I have determined that there is sufficient information to warrant partial mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $1,300 is appropriate in light of the nature and circumstances of this violation, its extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of November 7, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331, except that the $1,500 civil penalty assessed therein is hereby mitigated to $1,300.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the applicable rate in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC-1), RSPA, Room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: March 1, 1990.

Travis P. Dungan

cc: Mr. W.R. Harrell, President
Central Grain Corporation
Route 3, Box 459
Elizabeth City, NC 27090

Certified mail—Return receipt requested

[Ref. No. 89-81-SE]

Action on Appeal

In the Matter of: Aztec International Limited, Respondent.

Background

On December 13, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Aztec International Limited (Respondent) assessing a penalty in the amount of $12,000 for having knowingly offered for transportation in commerce a new explosive device that had not been classed and approved in accordance with the Hazardous Materials Regulations (HMR), and which was not in compliance with the packaging and shipping requirements of the HMR, in violation of 49 CFR 171.2(a), 172.101(c)(13)(ii), 172.200(a), 172.202(a), 172.301(a), 172.400(a), 173.3(a), 173.51(b), and 173.86(b).

The Order assessed a civil penalty of $12,000, payable in six monthly installments of $2,000 each, reduced from the $13,500 civil penalty originally proposed in the December 13, 1989 Notice of Probable Violation (Notice). By letter dated January 19, 1990, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

In its appeal, Respondent does not deny that it was in violation of the HMR, as determined in the Order. Respondent maintains that the violations were not done knowingly because it relied upon information obtained from the Bureau of Alcohol, Tobacco, and Firearms (BATF). Respondent also raises the issue of its financial ability to pay the civil penalty assessed. The remainder of Respondent's arguments are a reiteration of the arguments presented below to the Office of Chief Counsel.

Respondent's argument that it did not "knowingly" violate the HMR because it contacted BATF in a good faith effort to comply with Federal regulations was considered by the Chief Counsel and found uncompelling. As stated in the Notice, a violation is "knowing" when a person has actual knowledge of the facts giving rise to the violation or should have known of those facts. There is no requirement that a person actually know of, or intend to violate, the HMR. As an offeror of hazardous materials, Respondent is responsible for having knowledge of and complying with all applicable regulations. Respondent's reliance on the representations of another Federal agency which does not have authority to enforce the Hazardous Materials Transportation Act does not excuse its violation of the HMR.

Furthermore, the administrative record in this case indicates that at least one company official had actual knowledge of the regulations. The record reflects that in 1982, Respondent's managing director, Mr. Sandy Brygider, corresponded with the Office of Hazardous Materials Transportation (OHMT) in his capacity as president of Bingham, Ltd., Norcross, Georgia. The correspondence arose out of RSPA's inquiry into a possible violation of the HMR by Bingham, Ltd., specifically, offering for transportation in commerce certain small arms ammunition without that material having been examined, classed, and approved as required by the regulations. I therefore find that the record supports the Chief Counsel's determination that the violations were committed knowingly.

Respondent's second basis for appeal is its financial condition. Respondent argues that the February 1988 Dun & Bradstreet Report reflected in the Notice was inaccurate and did not reflect the company's actual cash value. Respondent also challenges the penalty

amount because it does not know how the Dun & Bradstreet Report figures were used in arriving at the penalty amount proposed in the Notice.

Respondent's financial condition is relevant to two of the assessment criteria listed in the HMR at 49 CFR 107.331: the Respondent's ability to pay and the effect of the penalty on the Respondent's ability to continue in business. The Dun & Bradstreet Report is a tool used in evaluating the financial aspects of the assessment criteria. The nature and circumstances of the violation, the extent and gravity of the violation, the degree of culpability, prior offenses, and such other matters as justice may require were also considered. Accordingly, on the basis of all of the foregoing criteria, the Chief Counsel determined that partial mitigation of the penalty in light of Respondent's corrective action and implementation of an employee training program was warranted.

Respondent's financial condition was duly considered by the Chief Counsel. The Order provides for a payment schedule whereby Respondent could pay the penalty amount in six monthly installments of $2,000, in order to avoid cash flow problems. On appeal, Respondent has provided unverified figures which it states were prepared by its accountant for income tax purposes. These figures show a net loss for 1989 of $12,361.42. This unverified financial information does not warrant reduction of the penalty. Respondent's submission reflects a health current ratio and retained earnings. Furthermore, according to Respondent's representations at an informal conference conducted on October 20, 1989, it has annual sales of $250,000–$300,000. The record does not support further reduction of the penalty amount of the basis of Respondent's financial condition.

Findings

I have determined that there is not sufficient information to warrant further mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $12,000 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of December 13, 1989, including the payment schedule, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331. The civil penalty of $12,000 shall be payable in six monthly installments of $2,000 each, with the first payment due within 20 days of receipt of this decision. The five remaining payments shall be due on the same date of the succeeding five months until the entire amount is paid. If Respondent defaults on any payment of the authorized payment schedule, the entire amount of the remaining civil penalty shall, without notice, immediately become due and payable.

Respondent's failure to pay this accelerated amount in full will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the applicable rate in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue on the entire penalty amount if payment is not made within 90 days of default.

Each payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Dated Issued: April 30, 1990.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–83–EXR]

Action on Appeal

In the Matter of: Central Vermont Railway Inc., Respondent.

Background

On December 5, 1989, the Acting Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Central Vermont Railway, Inc. (Respondent) assessing a penalty in the amount of $1,750 for having knowingly transported in commerce railway track torpedoes, Class B explosives, and railway fusees, flammable solid material, in non-DOT specification packaging, in violation of 49 CFR 171.2(b), 173.91(f), and 173.154a. The Order assessed a civil penalty of $1,750, reduced from the $2,000 civil penalty originally proposed in the June 8, 1989 Notice of Probable Violation. By letter dated January 24, 1990, Respondent (through counsel) submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

In its appeal, Respondent contends that the penalty assessment should be reduced to a total of $250 because one of the factors applied in originally proposing the penalty is incorrect, and that "this is a significant variation in the factors used." Respondent contends that the evidence cited in the Notice of Probable Violation included a statement that Respondent had retained earnings of $18.9 million at the end of 1988, when in fact Respondent had accumulated losses of $18.9 million at that time. Respondent attached a copy of "consolidating balance sheets for 1987 and 1988."

The balance sheet Respondent submitted shows only liabilities, not assets, making an accurate evaluation difficult. The balance sheet shows Respondent's parent corporation, Grand Trunk Railroad, as having retained earnings in excess of $38 million in 1988. It is noteworthy that Respondent did not dispute the other financial evidence in the Notice of Probable Violation, which included $10,000 in cash on hand, current assets of $8.36 million, and current liabilities of $8.3 million. The financial information cited in the Notice of Probable Violation is not used to increase the proposed penalty amount. It is only used to reduce the proposed penalty amount if the information indicates the Respondent would have difficulty paying the proposed assessment, or doing so would adversely affect its ability to continue in business. Accordingly, I find that the evidence in the record does not support Respondent's contention that the penalty should be further mitigated.

Respondent also contended that its "paper violation" did not result in injury to anyone, and that it has successfully monitored the three-month extensions to its exemption which were granted throughout 1989 and timely applied for further extensions.

The nature and gravity of the violation were already considered in proposing and assessing the civil penalty. Respondent's efforts to monitor its exemption subsequent to the violation, while laudable, do not warrant mitigation. The Chief Counsel already mitigated the penalty by $250 based on Respondent's remedial action

in establishing a computer warning system to apprise it of exemption expiration dates.

Findings

I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $1,750 is appropriate in light of the nature and circumstances of this violation, its extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of December 5, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331. Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the applicable rate in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Dated Issued: March 16, 1990.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–91–SB]

Action on Appeal

In the Matter of: Lumenyte International Corp. Respondent.

Background

On June 7, 1990, the Acting Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Lumenyte International Corporation (Respondent) assessing a penalty in the amount of $6,750 for having knowingly offered an organic peroxide for transportation by vessel in nonspecification, unauthorized packages; without properly blocking and bracing those packages inside a freight container; in packages not marked with the proper shipping name or identification number of the hazardous material; and accompanied by shipping papers which contained additional information about the hazardous material in front of and within the proper hazardous material shipping description, listed the hazardous material description in the improper sequence, and failed to contain a shipper's certification indicating compliance with the regulations, in violation of 49 CFR 171.2(a), 173.216(a)(1), 176.76(a)(2), 176.76(a)(6), 172.301(a), 172.201(a)(4), 172.202(b) and 172.204(a). The Order assessed a civil penalty of $6,750, reduced from the $7,750 civil penalty originally proposed in the July 12, 1989 Notice of Probable Violation. By letter dated June 27, 1990, Respondent submitted a timely appeal of the Order. The Acting Chief Counsel's Order is incorporated herein by reference.

Discussion

In its letter of appeal, Respondent raises several issues. Each issue is summarized and discussed in the following paragraphs.

First, Respondent contends that the "should have known" test has not been met with respect to any of the violations because it relied upon the advice of an "expert" company in offering the organic peroxide for transportation and did not know what the regulations require. With two exceptions, discussed below, Respondent asserts that it knew of the facts constituting the violations but did not know that there was a violation. Respondent's contentions concerning the "should have known" test are without merit. As indicated in both the Notice and the Order, 49 CFR 107.299 provides that there is no requirement that a person actually knew of, or intended to violate, the regulatory requirements. Because Respondent either knew or should have known the facts constituting its six violations, the requisite "knowledge" test of the statute and the regulations has been met.

Second, Respondent contends that greater weight should be given to its reliance upon a third party with respect to its use of unauthorized packages. The evidence indicates that Respondent loaded organic peroxides in fiberboard boxes marked for transportation of frozen vegetables and containing no UN or DOT specification markings. Offering hazardous materials for transportation cannot be excused by alleged reliance upon a third party; sufficient weight already has been given to that reliance.

Third, Respondent alleges that it did provide blocking, bracing and dunnage, and points to the fact that the packages completed their voyage intact and in place as evidence of that fact. The evidence indicates otherwise. Photographs taken by Office of Hazardous Materials Transportation (OHMT) Inspector Gary P. McGinnis show that there was no blocking, bracing or dunnage around the pallet containing the organic peroxide packages when the freight container was opened for inspection. Thereafter, on November 19, 1988, when Respondent corrected the specification packaging problem, its employee, Mr. Scott Dill, and OHMT inspectors McGinnis and Douglas S. Smith corrected the blocking and bracing. Because this action was taken prior to the water voyage of the hazardous materials, their eventual safe arrival does not constitute evidence that Respondent had properly blocked and braced the hazardous materials when it offered them for transportation.

Fourth, Respondent states that the packages in question were properly marked except for the absence of a DOT number. To the contrary, the photographs taken by Inspector McGinnis show that the packages were not marked with either the proper shipping name or the identification number required by 49 CFR 172.301. Instead the boxes were preprinted with information about broccoli and were not marked with the required hazardous materials information.

Fifth, Respondent contends that there was no evidence concerning information improperly preceding the "hazardous material" information on the shipping papers. However, the shipping paper for the hazardous materials in question describes the shipment as "Chemical **, ceramic Jars, fiberboard containers, and dry ice. **CHEMICAL IS ORGANIC PEROXIDE—PRODUCED BY PPG INDUSTRIES. * * *" All of the quoted verbiage improperly preceded the required information which must appear first on the shipping paper: the proper shipping name, hazard class and identification number.

Sixth, Respondent asserts that it prepared and delivered to the "shipper" (apparently it means the carrier) a shipper's certificate to accompany the shipment and that the "shipper" apparently "failed to include it." Neither of the documents relating to this

shipment and provided to the OHMT inspectors (the invoice/shipping paper and the export declaration) contained the required certification that the shipment complied with the Hazardous Materials Regulations. Respondent has not asserted at any earlier time in this proceeding that it ever made or prepared such a certification. Furthermore, Respondent has not provided a copy of a certification. The evidence in the record, therefore, supports a finding that Respondent offered a hazardous material for transportation accompanied by a shipping paper not containing the required shipper's certification.

Seventh, Respondent contends that the civil penalty should be further mitigated because it acted in good faith, the Acting Chief Counsel's Order did not adequately reduce the penalty to reflect Respondent's actual annual sales, it was a one-time shipper of hazardous materials, and its financial condition continues to worsen. The Acting Chief Counsel's Order sufficiently reduced the civil penalty to reflect all of the issues raised by Respondent— in light of all the statutory assessment criteria—and also adequately took into account Respondent's financial condition by authorizing a reasonable payment plan. No additional mitigation is justified.

Findings

I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $6,750 is appropriate in light of the assessment criteria prescribed in 49 CFR 107.331: nature and circumstances of these violations, their extent and gravity, Respondent's culpability (reduced by some reliance on a third party), Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of June 7, 1990, including the authorization of a payment plan, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The civil penalty of $6,750 shall be payable in six monthly installments of $1,000 each and a final installment of $750, with the first payment due within 30 days of the date of issuance of this Action on Appeal and each succeeding payment due every 30 days thereafter until the entire amount is paid. If Respondent defaults on any payment of this payment schedule, the entire amount of the remaining civil penalty shall, without further notice, become immediately due and payable as of the date that the first $1,000 installment is due.

If Respondent fails to pay this $6,750 civil penalty in accordance with the terms of this Action on Appeal, the Chief of the General Accounting Branch of the Department's Accounting Operations Division will assess interest and administrative charges and initiate collection activities on the debt and those charges. Interest on the debt will accrue from the date of issuance of this Action on Appeal at the applicable rate in accordance with 31 U.S.C. 3717, 4 CFR 102.13, and 49 CFR 89.23. Pursuant to those same authorities, a late-payment penalty of six percent (6%) per year will be charged on any portion of the debt that is more than 90 days past due. This penalty will accrue from the date this Action on Appeal is received.

Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: August 22, 1990.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–122–HMI]

Action on Appeal

In the Matter of: Warrenton Oil Company, Respondent.

Background

On September 14, 1989, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Warrenton Oil Company (Respondent) assessing a penalty in the amount of $900 for having knowingly failed to file a written report on DOT Form F 5800.1 within 15 days of discovering an incident involving the unintentional release of a hazardous material during transportation, in violation of 49 CFR 171.16. The Order assessed a civil penalty of $900, reduced from the $1,500 civil penalty originally proposed in the July 20, 1989 Notice of Probable Violation. By letter dated September 29, 1989, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

In its appeal, Respondent requested that a new attorney review its original reply and stated that the grounds for appeal are based on that original reply. Respondent contends that mitigation of the civil penalty to $900 from the original $1,500 is not appropriate, considering the nature and gravity of the violation.

It is RSPA's standard procedure to assign a different attorney to review an appeal. Respondent did not present any new information in its appeal and accordingly, I have reviewed its original response to the Notice and the notes of the informal telephone conference, in addition to the other evidence in the record. Respondent, as a carrier of hazardous materials, has a responsibility to be aware of the regulations applicable to its operations. The fact that it was not aware of the regulations and relied on the representations of Federal officials was adequately considered by the Chief Counsel. Respondent's reliance does not excuse the occurrence of the violation. Further, Respondent did not file a written report until more than a month after it was advised of the need to do so. The Chief Counsel provided sufficient mitigation of the proposed penalty amount.

Findings

Accordingly, I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $900 is appropriate in light of the nature and circumstances of this violation, its extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of September 14, 1989, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

Failure to pay the civil penalty assessed herein within 20 days of receipt of this decision will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the applicable rate in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same

authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: December 21, 1989.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–138–CR]

In the Matter of: A-Advanced Fire & Safety, Inc. Respondent.

Action on Appeal

Background

On February 14, 1990, the Acting Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to A-Advanced Fire & Safety, Inc. (Respondent) assessing a penalty in the amount of $3,300, payable in six equal monthly installments of $550 each, for having knowingly: (1) Represented cylinders as meeting the requirements of the Hazardous Materials Regulations (HMR) when performing cylinder retests with equipment having a pressure gauge that could not be read to an accuracy of 1 percent of test pressure; (2) failed to keep accurate records showing the results of reinspections and retests of DOT specification cylinders; (3) failed to mark each DOT specification cylinder passing retest with the retester's identification number (RIN); and (4) failed to mark a DOT–E 6498 cylinder with the specification identification "3AL" at the time of its retest, in violation of 49 CFR 171.2(c), 173.34(e)(3), 173.34(e)(5), 173.34(e)(6), and 173.23(c) of the HMR. The Order assessed a civil penalty of $3,300, reduced from the $4,250 civil penalty originally proposed in the October 4, 1989 Notice of Probable Violation (Notice). By letter dated March 8, 1990, Respondent submitted a timely appeal of the Order. The Acting Chief Counsel's Order is incorporated herein by reference.

Discussion

In its appeal, Respondent acknowledges that the gauge was not working properly at low test pressures, but maintains that the gauge still gave accurate test readings on the cylinders between 1,000 and 5,000 pounds of pressure. Respondent's argument ignores the fact that 49 CFR 173.34(e)(3) requires that a pressure gauge be capable of being read to within 1 percent of test pressure. Moreover, it cannot state with certainty that its improperly calibrated equipment gave accurate test readings. Pursuant to 49 CFR 173.34(e)(4), a cylinder must be condemned when the permanent expansion exceeds 10 percent of the total expansion. The use of inaccurate equipment to conduct hydrostatic testing increases the risk that a cylinder will fail after being placed back in service when it should have been condemned.

Respondent also admits the second and fourth violations. (Respondent did not address the third violation, for which no civil penalty was assessed.) Regarding the former, Respondent acknowledges that its paperwork was sloppy and that the employees who fill out the retest inspection sheets had been interrupted with other duties. With respect to the fourth violation, Respondent contends that it had ignored the DOT letter advising it of the requirement to mark the DOT–E 6498 cylinder with the specification identification "3AL" at the time of retest because the letter had not been sent by certified mail. This does not warrant a further reduction of the civil penalty.

Respondent refers to the changes in its operation to prevent these violations from occurring again. This is not new information. In the February 14 Order, the Acting Chief Counsel took these changes into consideration when she reduced the civil penalty to $3,300 from the proposed amount of $4,250. Finally, Respondent argues that the civil penalty should be reduced because the violations were not intentional, and occurred only because of Respondent's sloppiness. The fact that the violations were not intentional does not excuse them. The Notice had advised Respondent that a "knowing" violation does not require any intention to violate the legal requirements.

Findings

I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Acting Chief Counsel's Order. I find that a civil penalty of $3,300, payable in six equal monthly installments of $550 each, is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of February 14, 1990, including the authorization of a payment plan, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331. The civil penalty of $3,300 shall be payable in six monthly installments of $550 each, with the first payment due within 30 days of the date of issuance of this Action on Appeal, and each succeeding payment due every 30 days thereafter until the entire amount is paid. If Respondent defaults on any payment of this payment schedule, the entire amount of the remaining civil penalty shall, without further notice, become immediately due and payable as of the date that the first $550 installment is due.

If Respondent fails to pay this $3,300 in accordance with the terms of this Action on Appeal, the Chief of the General Accounting Branch of the Department's Accounting Operations Division will assess interest and administrative charges and initiate collection activities on the debt and those charges. Interest on the debt will accrue from the date of issuance of this Action on Appeal at the applicable rate in accordance with 31 U.S.C. 3717, 4 CFR 102.13, and 49 CFR 89.23. Pursuant to those same authorities, a late-payment penalty of six percent (6%) per year will be charged on any portion of the debt that is more than 90 days past due.

Each payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001. Respondent must send a photocopy of each check or money order to the Office of Chief Counsel (DCC–1), RSPA, Room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: August 21, 1990.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89-152-CR]

Action on Appeal

In the Matter of: J's Cylinder Requalification and Maintenance Co., Inc. Respondent.

Background

On March 9, 1990, the Acting Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to J's Cylinder Requalification and Maintenance Co., Inc. (Respondent) assessing a civil penalty in the amount of $3,250 for having knowingly represented cylinders as meeting the requirements of the Hazardous Materials Regulations (HMR) (49 CFR parts 171–180) when the following violations were found: (1) retesting was not performed using equipment having an expansion gauge which could be read with an accuracy of one percent of total expansion or 0.1 cubic centimeters (cc); (2) the cylinders were marked with a test date when the hydrostatic retest had not yet been performed; (3) proper records showing the results of reinspection and retest were not maintained; and (4) a cylinder manufactured for use as a DOT–E 6498 exemption cylinder had not been marked with the specification "3AL" before or at the time of retesting. The Order found that Respondent had violated 49 CFR 171.2(c), 173.23(c), 173.34(e)(1)(ii), 173.34(e)(3), and 173.34(e)(5) of the HMR.

The penalties assessed in the Order reflect partial mitigation of the penalty amounts proposed in the Notice of Probable Violation (Notice) issued December 26, 1989, based upon Respondent's corrective action. No additional mitigation was deemed warranted based upon Respondent's financial circumstances or the effect of the penalty amount on Respondent's ability to continue in business. The Order of the Acting Chief Counsel is incorporated herein by reference.

Respondent submitted a timely appeal of the Order, and, on the basis of the arguments set forth in its appeal, proposed a settlement of $500.00 for its failure to conduct retesting with an expansion gauge which could be read with an accuracy of one percent of total expansion or 0.1 cubic centimeters. Respondent proposed that a compliance order be issued for the other violations.

Discussion

In its appeal, Respondent does not contest the findings of the Acting Chief Counsel with respect to Violation No. 1, as set forth in the Order. With respect to Violations Nos. 2 and 3, Respondent disputes whether the acts which form the bases of the violations were in violation of the HMR. Respondent argues that the regulations are subject to interpretation and can be read in a manner which supports a finding of no violation. With respect to Violation No. 4, Respondent argues that its actions were neither in violation of the regulations nor done knowingly or intentionally. Respondent's arguments with respect to Violations Nos. 2–4 are discussed in greater detail below.

Violation No. 2

In the Order, Respondent was assessed a penalty of $750 for marking the cylinders with a test date before hydrostatic testing had been performed. In its appeal, Respondent states that the cylinders were marked and then tested by one individual, in assembly line fashion, within a one hour period. Any cylinder which failed had its stamp or marking "removed" by that same individual. Thus, Respondent argues, there was little chance that a failed cylinder would retain its mark and be returned for service or be placed where someone other than the retest operator would be misled by the mark. Respondent argues that the regulatory directive that cylinders shall not be marked as meeting the requirements of the regulations unless retested should be construed broadly to encompass the entire requalification and maintenance procedure.

The HMR unequivocally state that a packaging or container *shall not be marked unless* it has been retested or has undergone any other required manufacturing or maintenance procedure required by the HMR. (emphasis supplied) This is to avoid any opportunity for error. Respondent has taken corrective action and discontinued its practice of marking cylinders before retesting. For this reason, the proposed penalty was mitigated by $250 in the Order. I find that further mitigation of the penalty amount by an additional $250 is appropriate on the basis of Respondent's argument that there is a negligible chance of error in a one-person retesting operation where the retest operator does not relinquish control of the cylinders being tested until all testing has been completed. Under these circumstances, I agree there is less likelihood of a safety risk.

Violation No. 3

Respondent was assessed a penalty of $750 for its failure to maintain proper records showing the results of reinspection and retest. Partial mitigation of the proposed penalty was found appropriate in the Order because of procedures Respondent has adopted to assure the proper recording of the results of visual inspection on its retest rocords. In its appeal, Respondent argues that its records did comply with the regulations because it noted the cause of any cylinder failing visual inspection on its retest report. Therefore, the absence of any notation indicated that the cylinder had passed inspection. Respondent further asserts that what constitutes proper record keeping is a subjective determination, and that under Respondent's proposed interpretation of the regulations, its "negative reporting system" was proper.

Section 173.34(e)(5) of the HMR is explicit. It states that "[r]ecords *showing the result of reinspection* and retest must be kept * * *." (emphasis supplied) No provision is made for negative implications in recording those results. I do not find that additional mitigation of the penalty amount is warranted for this violation. Furthermore, Respondent did not submit any evidence of records showing failures noted or any written procedures or directions to employees to support its position that visual inspections are actually done.

Violation No. 4

Respondent has been assessed a penalty of $500 for its failure to mark a DOT–E 6498 Exemption cylinder "3AL" before, or at the time of, its next retest, as required under 49 CFR 173.23(c). Respondent denies that its failure to so mark the cylinder was done knowingly, or that it was a violation of the regulations. In support of its argument, Respondent notes that § 173.23(c) provides that a DOT–E 6498 Exemption cylinder may be continued in "USE" if marked 3AL before or "AT THE TIME OF NEXT RETEST." (emphasis supplied by Respondent) Since the cylinder was not in use, Respondent argues there was no violation. In addition, Respondent argues that the provision referring to the time of retest could be interpreted to include the entire time the cylinder is in the uninterrupted possession of the retester for purposes of reinspection and retesting. Under Respondent's interpretation of § 173.23(c), the violation would not occur until the cylinder left the retester's premises, and perhaps not until it was actually filled and used.

Respondent's interpretation of this regulatory requirement is too broad. In 1982, Exemption DOT–E 6498 was eliminated, and its provisions became the manufacturing and testing requirements for specification 3AL

cylinders contained in 49 CFR 178.346 and 178.46–1 *et seq.* (See 46 FR 62452, published December 24, 1981, and corrections published April 1, 1982 and May 13, 1982, at 47 FR 13816 and 47 FR 20591, respectively.) Following notice and comment rulemaking, the HMR were amended to require that a DOT–E 6498 Exemption cylinder be marked 3AL to signify that it is a specification cylinder, and that, accordingly, provisions pertaining to its use and manufacture are contained in the HMR. (See 46 FR 62452, published December 24, 1981). The regulations provide that markings on the cylinder be changed before or at the time of the next retest in order to prevent the cylinder from being released from retesting before it has been marked. If a cylinder were released without receiving the necessary markings, it could be another five years before another opportunity to mark it arises. (Under 49 CFR 173.34(e), most cylinders, including DOT–3AL cylinders, must be retested at five year intervals.) Nevertheless, I find that Respondent's failure to mark the cylinder at the time of retesting did not impact upon the safe use of the cylinder. Accordingly, I find that additional mitigation of the assessed penalty in the amount of $250 is warranted.

Financial Assessment Criteria

Respondent has again placed its financial circumstances and ability to pay the assessed penalty in issue on appeal. Respondent asserts that it was unaware that the purpose of the Dun & Bradstreet inquiry into its finances was for purposes of an investigation by the U.S. Department of Transportation when its Director, Mr. Eddins, provided the information. Respondent states that had it known the purpose of the Dun & Bradstreet inquiry, it would have made certain that the appropriate, knowledgeable person provided the information to ensure that it was reliable and accurate. Respondent, and its Director, knew or should have known that the financial information reported to Dun & Bradstreet would be relied upon by third persons, and should have ensured that its response was accurate. Respondent's argument that the Dun & Bradstreet report was misleading was presented by Respondent in response to the Notice and further mitigation on this basis was not found warranted. In its appeal, Respondent has submitted additional information indicating that it is experiencing reduced demand for its services and has had to reduce its workforce in order to cut costs.

Findings

I have determined that there is sufficient information to warrant further mitigation of the civil penalty assessed in the Chief Counsel's Order, for the reasons set forth above. I find that a civil penalty of $2,750 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors. Respondent's offer of compromise is hereby rejected.

Therefore, the Order of March 9, 1990, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR § 107.331, except that the $3,250 civil penalty assessed therein is hereby mitigated to $2,750. Due to Respondent's financial circumstances, however, the civil penalty of $2,750 shall be payable in three monthly installments of $950, $900, and $900 each, with the first payment due within 20 days of receipt of this decision. The remaining two payments shall be due on the same date of the succeeding two months until the entire amount is paid. If Respondent defaults on any payment of the authorized payment schedule, the entire amount of the remaining civil penalty shall, without notice, immediately become due and payable.

Respondent's failure to pay this accelerated amount will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the applicable rate in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue on the entire penalty amount if payment is not made within 90 days of default.

Each payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: August 1, 1990.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 89–154–HMI]

Action on Appeal

In the Matter of: Regional Enterprises, Inc. Respondent.

Background

On January 17, 1990, the Acting Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Regional Enterprises, Inc. (Respondent) assessing a civil penalty for having knowingly failed to file a DOT Form F 5800.1 report within 15 days of discovering an incident involving the unintentional release of a hazardous material during transportation, in violation of 49 CFR § 171.16. The Order assessed a civil penalty of $1,100, reduced from the $1,400 civil penalty originally proposed in the November 3, 1989 Notice of Probable Violation (Notice). The Acting Chief Counsel's Order is incorporated herein by reference. By letter dated March 6, 1990, Respondent submitted a timely appeal of the Order.

Discussion

In its appeal, Respondent contends that the Notice was inaccurate because it stated that the "incident * * * involved the unintentional release of between 10,000 and 12,000 pounds of sodium hydroxide solution *from a tank truck operated by Regional Enterprise[s], Inc. (Respondent)* * * *" (Emphasis added.) Respondent maintains that the material was released from the equipment of its customer, Champion International Corporation, not through its own equipment. Respondent further argues that because the release occurred after the unloading of the sodium hydroxide solution from its equipment to that of its customer had been completed, it was not required to file Form F 5800.1.

Respondent had argued these same points in a November 14, 1989 written response to the Notice. In the January 17, 1990 Order, the Acting Chief Counsel did not address Respondent's contention that the unintentional release of the hazardous material had occurred through the customer's equipment. As alleged in the Notice, the Order stated, without discussion, that the sodium hydroxide solution was unintentionally released from Respondent's tank truck. The Order also found "that Respondent knowingly committed acts that violated 49 CFR 171.16 of the Hazardous Materials Regulations, *as alleged in the*

Notice." (Emphasis supplied.) There is nothing in the record, however, to refute Respondent's contention that the leak occurred from its customer's equipment, not Respondent's tank truck. The Acting Chief Counsel's finding with respect to this issue, therefore, was not supported by evidence in the record.

The second issue presented in this case is whether Respondent had completed the unloading of the hazardous material from its equipment to that of its customer at the time of the unintentional release. If unloading had not been completed, Respondent, as the carrier, would be the party responsible for filing the form. Section 171.16(a) [as in effect at the time of the incident] required each carrier that transported hazardous materials to have filed Form F 5800.1 within 15 days of having discovered that, during the course of transportation (including loading, unloading, or temporary storage), there had been an unintentional release of hazardous materials from a package. Had unloading been completed, however, the release would not have occurred during the course of transportation, and Respondent would not have been required to file Form F 5800.1.

The Acting Chief Counsel's Order addressed this issue only indirectly. It stated: "During the informal conference, Respondent was informed that a written report must be filed for any hazardous materials incident that includes loading and unloading operations. Respondent now realizes that whenever a hazardous materials release occurs during unloading operations a written report should be filed." There is no evidence in the Order, however, to prove that this release of a hazardous material occurred during unloading operations. In fact, Respondent argued both in its response to the Notice and its appeal that the release occurred after unloading had been completed.

Respondent's December 11, 1989 document, labeled Appendix K, entitled, "IMPORTANT NOTICE TO ALL DRIVERS AND TERMINAL PERSONNEL:" does not prove that this incident occurred during unloading operations. It indicates that, following the informal conference, Respondent believed that its interpretation of the hazardous material incident reporting regulations must be expanded. Part of this expansion included a statement that a reportable incident can occur at any time during transportation, including loading, unloading, or temporary storage. Nevertheless, this revised interpretation is not evidence that this was a reportable incident.

The record, therefore, provides no evidence to prove that the release of the hazardous material occurred during the course of transportation. Without that evidence, the Acting Chief Counsel's Order cannot be upheld.

Findings

I have determined that there is not sufficient evidence presented to find a violation of 49 CFR 171.16. Accordingly, this case is dismissed. This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: August 10, 1990.

Travis P. Dungan,

Certified mail—Return receipt requested

[Ref. No. 89-162-EXR]

Action on Appeal

In the Matter of: Thermex Energy Corp., Respondent.

Background

On April 11, 1990, the Acting Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Thermex Energy Corporation (Respondent) assessing a penalty in the amount of $1,400 for having knowingly offered for transportation in commerce a hazardous material, blasting agent, n.o.s., in bulk packagings, in violation of 49 CFR 171.2(a) and 173.114a(i). The Order assessed a civil penalty of $1,400, the same penalty amount originally proposed in the November 2, 1989 Notice of Probable Violation (Notice), and authorized payment in seven monthly installments of $200 each. By letter dated May 9, 1990, Respondent submitted a timely appeal of the Order. The Acting Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent's Appeal did not dispute the Order's finding of violation but protested the assessment of the $1,400 civil penalty. The Respondent stated that it did not have the financial ability to pay the penalty and that attempting to do so would adversely affect its ability to remain in business. In support of this assertion, Respondent stated that it owed back taxes, was currently a defendant in approximately 28 legal actions, and had 20 judgments against it. Respondent further stated that it was appealing a judgment of eviction obtained by its landlord and, insofar as it was financially unable to post a bond in the appeal, had been required to post a sworn pauper's affidavit. A copy of the affidavit was attached as an exhibit to Respondent's appeal.

Finally, Respondent attached a March 14, 1990 financial statement which it had prepared in an effort to compromise some of its indebtedness.

The $1,400 penalty proposed in the Notice and assessed in the Order was based upon information contained in an August 29, 1989 Dun and Bradstreet Report on Respondent. Prior to the Appeal, this was the most timely financial information covering Respondent which was available to RSPA. Review of the additional information supplied by the Respondent in the April 2, 1990 Affidavit of Inability to Pay and the March 14, 1990 Balance Sheet indicates that partial mitigation of the penalty, coupled with continued authorization of a payment plan, is appropriate. Imposition of a $1,000 penalty will take into account the serious nature of Respondent's violation, but will also give adequate consideration to Respondent's ability to pay and the effect of the penalty on Respondent's ability to remain in business.

Findings

I have determined that there is sufficient information to warrant partial mitigation of the civil penalty assessed in the Acting Chief Counsel's Order. I find that a civil penalty of $1,000 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

In addition, I have determined that the Respondent may pay this $1,000 civil penalty in five consecutive monthly installments of $200 each.

Therefore, the Order of April 11, 1990, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331, except that the $1,400 civil penalty assessed therein is mitigated to $1,000, to be paid in accordance with the following payment plan. The $1,000 civil penalty shall be payable in five monthly installments of $200 each, with the first payment due within 30 days of the date of issuance of this Action on Appeal, and each succeeding payment due every 30 days thereafter until the entire amount is paid. If Respondent defaults on any payment of this payment schedule, the entire amount of the remaining civil penalty shall, without further notice, become immediately due and payable as of the date that the first $200 installment was due.

If Respondent fails to pay the $1,000 civil penalty in accordance with the terms of this Action on Appeal, the Chief of the General Accounting Branch of the Department's Accounting Operations Division will assess interest and administrative charges and initiate collection activities on the debt and those charges. Interest on the debt will accrue from the date of issuance of this Action on Appeal at the applicable rate in accordance with 31 U.S.C. 3717, 4 CFR 102.13 and 49 CFR 89.23. Pursuant to those same authorities, a late payment penalty of six percent (6%) per year will be charged on any portion of the debt that is more than 90 days past due. This penalty will accrue from the date this Action on Appeal is received.

Payment must be made by certified check or money order (containing the reference number of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of the check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: March 5, 1991.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 90–21–CR]

Action on Appeal

In the Matter of: Hoopes Fire Equipment Corp., Respondent.

Background

On May 9, 1990, the Chief Counsel, Research and Special Progams Administration (RSPA), U.S. Department of Transportation, issued an Order to Hoopes Fire Equipment Corp. (Respondent) assessing a penalty in the amount of $2,750 for having knowingly: (1) represented to be retesting DOT specification cyclinders with inadequate equipment, (2) failed to maintain records showing the results of such retesting, and (3) representing inadequately marked DOT specification cyclinders as meeting the requirements of the Hazardous Materials Regulations, in violation of 49 CFR 171.2(c), 173.23(c), 173.34(e)(3) and 173.34(e)(5).

The Order assessed a civil penalty of $2,750, reduced from the $4,000 civil penalty originally proposed in the January 9, 1990 Notice of Probable Violation. By letter dated May 25, 1990, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

In its appeal, Respondent addressed each of the three violations. With respect to Violation 1, it enclosed a $130.65 invoice showing prompt corrective action and contended that it was unaware of the violation prior to the RSPA inspection and thus could not have "knowingly" committed the violation. As explained in the original Notice in this case, 49 CFR 107.299 provides that a violation is "knowing" when a person has actual knowledge of the facts giving rise to the violation or should have known of those facts and that there is no requirement that the person actually knew or intended to violate the legal requirements. The Chief Counsel's $750 reduction of the proposed penalty for this violation, partically due to Respondent's corrective action, has resulted in an appropriate assessment and obviated the need for any further reduction.

With respect to Violation 2, Respondent stated that it ordinarily kept proper records and that its violation was an aberration. The fact is that Respondent did not keep accurate records and that it was necessary for the Chief Counsel to point out in her Order that Respondent's corrective actions in this regard required additional changes to avoid a recurrence of this type of violation. The Chief Counsel's $250 mitigation of the proposed penalty for this violation is sufficient.

Concerning Violation 3, Respondent contended that the penalty assessment is excessive because it took immediate corrective action and no one was harmed. Again, the Chief Counsel's $250 mitigation of the proposed penalty for this violation resulted in an equitable assessment.

Finally, Respondent stated that its $9,324 cash balance on December 31, 1989, was misleading because much of that money was a reserve for payment of a mortgage and various taxes. In light of Respondent's allegations relating to its ability to pay a civil penalty and the effect of a civil penalty on Respondent's ability to remain in business, I am extending the time for Respondent to pay the civil penalty in this case from three to five months.

Findings

I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $2,750 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

However, I find that it is appropriate to modify the terms of the payment schedule authorized for the payment of this civil penalty by allowing and requiring Respondent to pay the $2,750 civil penalty in five equal consecutive monthly payments of $550 each instead of the three larger monthly payments set forth in the Chief Counsel's Order.

Therefore, the Order of May 9, 1990, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331, except that the civil penalty payment schedule authorized therein is hereby modified to authorize and require the payment of the $2,750 civil penalty imposed herein in five equal consecutive monthly payments of $550 each, with the first payment being due and payable on July 16, 1990, and each subsequent payment being due on the 16th day of each of the succeeding four months.

Respondent's failure to pay the first installment of the civil penalty assessed herein by July 16, 1990, or to make any of the subsequent payments when required will result in the entire amount of the remaining civil penalty, without notice, becoming immediately due and payable July 16, 1990. Failure to pay the first $550 of the $2,750 civil penalty assessed herein by July 16, 1990, or to make any of the subsequent monthly payments when required will result in the initiation of collection activities by the Chief of the General Accounting Branch of the Department's Accounting Operations Division, the assessment of administrative charges, and the accrual of interest at the applicable rate in accordance with 31 U.S.C. 3717 and 49 CFR part 89. Pursuant to those same authorities, a penalty charge of six percent (6%) per annum will accrue if payment is not made within 110 days of service. Payments must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of those checks or money orders to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: June 15, 1990.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 90-22-PDM]

Action on Appeal

In the Matter of: Delta Drum, Inc. Respondent.

Background

On July 30, 1990, the Acting Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Delta Drum, Inc. (Respondent) assessing a penalty in the amount of $11,500 for having knowingly represented, marked, certified and offered DOT 34 specification containers as meeting the requirements of 49 CFR 178.19 and 178.19–1 *et seq.* without having conducted required cold drop and hydrostatic tests and without having properly marked the containers with letters and figures at least ⅛ inch in size. The Order found that these actions violated 49 CFR 171.2(c), 178.0–2, 178.19–7(b), 178.19–7(a)(3) and 178.19–6. The Order assessed a civil penalty of $11,500, the same amount as had been proposed in the March 13, 1990 Notice of Probable Violation (Notice), to which Respondent had not replied.

By letter dated August 17, 1990, Respondent submitted a timely appeal of the Order. The Acting Chief Counsel's Order is incorporated herein by reference.

Discussion

In its appeal, Respondent raises three issues: (1) Its failure to respond to the Notice was due to the abrupt departure of its on-site operating officer, (2) its failure to comply with the Hazardous Materials Regulations (49 CFR 171–180; HMR) was caused by confusion and was ameliorate by similar testing, and (3) the financial information concerning Respondent was outdated and inaccurate.

First, Respondent explains the confusion surrounding the unexpected resignation of the corporate official who normally would have responded to the Notice. Respondent now has availed itself of the additional opportunity to respond to the allegations set forth in the Notice, and full consideration is being given in this action to Respondent's allegations.

Second, Respondent asserts that it attempted to comply with the HMR and had believed that it complied with, and exceeded, the HMR testing requirements. Respondent alleges that its employees mistakenly overlooked the fact that § 178.19–7(b) requires frequent periodic testing in addition to the four-month testing requirements § 178.19–7(a). Respondent states that it exceeds the HMR test requirements by conducting 20-foot drop tests, it now has brought its testing program into full compliance with the HMR, no drum has failed the required tests, it was not advised during an earlier inspection of any testing deficiencies, and its quality assurance supervisor believed that the July 13, 1989 inspection (which resulted in the Notice in this case) would not result in any civil penalities.

Section 178.19–7(b) of the HMR clearly states that tests must be performed on three randomly selected containers out of each lot produced of up to 1,000 containers. Furthermore, at the time of an April 23, 1987 inspection, Respondent's employees had been aware of the proper testing procedures. This explains why no corrective advice was given at that time and makes the 1989 improper practices difficult to understand. In addition, Respondent's 20-foot ambient drop tests do not adequately compensate for its failure to conduct cold drop and hydrostatic tests which are designed to reveal deficiencies which would not be detected by ambient drop testing at any height.

Furthermore, the RSPA Inspector who conducted the 1989 inspection at issue here followed standard RSPA procedures and, at the exit conference, advised Mr. James Schultz, Respondent's Quality Assurance Supervisor, and Mr. and Mrs. Evans, Respondent's Vice Presidents for Administration and Marketing, of the several types of sanctions which might result from the discovery of probable violations (letter of warning, civil penalty proceeding, criminal proceeding). At the request of Mr. Schultz, who inquired what Respondent could do to "get back on track," RSPA's Inspector reviewed all of the applicable testing requirements and photocopied the relevant pages of the HMR.

However, the corrective actions Respondent took following the inspection, and before its receipt of the Notice, justify mitigation of the proposed civil penalties.

Third, Respondent states that the financial information relied upon in the Notice is outdated and no longer accurate. It has provided, on a confidential basis, detailed financial information which is relevant to its ability to pay a civil penalty and to its ability to continue in business. That information justifies additional mitigation of the proposed civil penalties and authorization of a payment plan.

In light of all the relevant evidence, I believe that an $8,000 civil penalty is appropriate for the serious violations in this case, but that Respondent should be permitted to pay that penalty in eight consecutive monthly installments of $1,000 each. This will ensure that adequate consideration is given to Respondent's ability to pay and to the effect of this penalty on Respondent's ability to continue in business.

Findings

I have determined that there is sufficient information to warrant mitigation of the civil penalty assessed in the Acting Chief Counsel's Order. I find that a civil penalty of $8,000 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors (including Respondent's corrective actions).

In addition, I have determined that the Respondent may pay this $8,000 civil penalty in eight consecutive monthly installments of $1,000 each.

Therefore, the Order of July 30, 1990, is affirmed as being substantiated on the record except that, in accordance with the assessment criteria prescribed in 49 CFR 107.331, the civil penalty assessed therein in reduced to $8,000 and is authorized to be paid in accordance with the following payment plan. The civil penalty of $8,000 shall be payable in eight monthly installments of $1,000 each, with the first payment due within 30 days of the date of issuance of this Action on Appeal and each succeeding payment due every 30 days thereafter until the entire amount is paid. If Respondent defaults on any payment of this payment schedule, the entire amount of the remaining civil penalty shall without further notice, become immediately due and payable as of the date that the first $1,000 installment is due.

If Respondent fails to pay this $8,000 civil penalty in accordance with the terms of this Action on Appeal, the Chief of the General Accounting Branch of the Department's Accounting Operations Division will assess interest and administrative charges and initiate collection activities on the debt and those charges. Interest on the debt will accrue from the date of issuance of this Action on Appeal at the applicable rate in accordance with 31 U.S.C. 3717, 4 CFR

102.13, and 49 CFR 89.23. Pursuant to those same authorities, a late-payment penalty of 6 percent (6%) per year will be charged on any portion of the debt that is more than 90 days past due. This penalty will accrue from the date this Action on Appeal is received.

Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary room 9112, Department of Transportation, 400 Seventh Street SW., Washginton, DC 20590–0001. Respondent must send a photocopy of each or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: April 10, 1991.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 90–25–CR]

Action on Appeal

In the Matter of: Quincy Heating Co., Respondent.

Background

On May 31, 1990, the Acting Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Quincy Heating Company (Respondent) assessing a penalty in the amount of $3,000 for having knowingly represented to be retesting DOT specification cylinders without holding a current retester's identification number issued by the RSPA, in violation of 49 CFR 173.34(e)(1)(i); and having knowingly represented DOT specification cylinders as meeting the requirements of the HMR when records showing the results of reinspection and retest had not been maintained as required, in violation of 49 CFR 171.2(c) and 173.34(e)(5). The Order assessed a civil penalty of $3,000, reduced from the $3,500 civil penalty originally proposed in the January 26, 1990 Notice of Probable Violation (Notice).

By letter dated June 25, 1990, Repsondent submitted a timely appeal of the Order. The Acting Chief Counsel's Order is incorporated herein by reference.

Discussion

In its appeal, Respondent strongly objects to the finding that it "knowingly" violated the two cited regulations. Respondent states that in 1985 it bought a business which had been retesting DOT specification cylinders for many years without the requisite RSPA approval and without maintaining the required records. Respondent states that it was unaware of the regulatory requirements.

As indicated in the original Notice to Respondent, under 49 CFR 107.299, a violation is "knowing" when a person has actual knowledge of the facts giving rise to the violation or should have known of those facts; there is no requirement that the person actually knew of, or intended to violate, the legal requirements.

Therefore, Respondent's lack of knowledge about the regualtory requirements does not excuse its operating without a RSPA retester's identification number or its failure to maintain records of that testing.

Respondent also requests that additional consideration be given to its ability to pay the $3,000 civil penalty and to the effect of such a penalty on its ability to remain in business. It states that it is unable to pay its accountant for services rendered or to afford the cost of obtaining the RSPA approval necessary for it to resume testing of DOT specificaion cylinders.

In response to financial information submitted by Respondent, the Acting Chief Counsel's Order reduced the proposed penalty by $500 and authorized payment of the $3,000 penalty in five monthly installments of $600 each. In light of Respondent's renewed plea of financial hardship, I have indenpendently reviewed all the financial information Respondent has submitted. I particularly note that Respondent is making $500 semi-monthly payments to the Internal Revenue Service to pay off a $65,000 tax liability.

In light of all the relevant evidence, I believe that the $3,000 civil penalty is appropriate for the serious violations in this case, but that Respondent should be permitted to pay that penalty in 12 consecutive monthly installments of $250 each. This will ensure that adequate consideration is given to Respondent's ability to pay and to the effect of this penalty on Respondent's ability to continue in business.

Findings

I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Acting Chief Counsel's Order. I find that a civil penalty of $3,000 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability (reduced by some reliance on its predecessor), Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

In addition, I have determined that the Respondent may pay this $3,000 civil penalty in 12 consecutive monthly installments of $250 each.

Therefore, the Order of May 31, 1990, including the authorization of a payment plan, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331, except that the civil penalty assessed therein is authorized to be paid in accordance with the following payment plan. The civil penalty of $3,000 shall be payable in 12 monthly installments of $250 each, with the first payment due within 30 days of the date of issuance of this Action on Appeal and each succeeding payment due every 30 days thereafter until the entire amount is paid. If Respondent defaults on any payment of this payment schedule, the entire amount of the remaining civil penalty shall, without further notice, become immediately due and payable as of the date that the first $250 installment is due.

If Respondent fails to pay this $3,000 civil penalty in accordance with the terms of this Action on Appeal, the Chief of the General Accounting Branch of the Department's Accounting Operations Division will assess interest and administrative charges and initiate collection activities on the debt and those charges. Interest on the debt will accrue from the date of issuance of this Action on Appeal at the applicable rate in accordance with 31 U.S.C. 3717, 4 CFR 102.13, and 49 CFR 89.23. Pursuant to those same authorities, a late-payment penalty of six percent (6%) per year will be charged on any portion of the debt that is more than 90 days past due. This penalty will accrue from the date this Action on Appeal is received.

Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

VOL 57 ISS 13 JA 21 1992

Date Issued: September 14, 1990.
Travis P. Dungan.
Certified mail—Return receipt requested
[Ref. No. 90-35-PEM]

Action on Appeal

In the Matter of: Consolidated Plastechs, Inc. (d/b/a Contech), Respondent.

Background

On July 2, 1990, the Acting Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Consolidated Plastechs, Inc. (d/b/a CONTECH) (Respondent) assessing a penalty in the amount of $7,000 for having knowingly represented, marked, certified, sold, and offered polyethylene bottles marked with DOT specification 2E as meeting the requirements of the Hazardous Materials Regulation when the required samples representing those bottles had not been subjected to the required periodic cold-drop test (Violation No. 1), and when the bottles had not been marked by embossment with the name and address or symbol of the person making the mark, or with the current year of manufacture (Violation Nos. 2 and 3), in violation of 49 CFR 171.2(c), 178.24a–5(c), 178.24a–6(a), and 178.24a–6. The Order assessed the $7,000 civil penalty originally proposed in the April 11, 1990 Notice of Probable Violation. By letter dated July 25, 1990, Respondent submitted a timely appeal of the Order. The Acting Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent contends that the $7,000 civil penalty is excessive "for the three minor infractions we were cited for." With respect to Violation No. 1, Respondent contends that it performed the required monthly cold-drop tests, but failed to log the results of the tests. Respondent's contention represents the third explanation offered by Respondent to this violation. At the time of the inspection, Mr. Cumings, Respondent's General Manager, stated that Respondent had not conducted cold-drop tests since 1986. In response to the Notice of Probable Violation, Respondent stated that it had conducted cold-drop tests "randomly" since 1984. Now Respondent asserts that it conducted cold-drop test "monthly." Respondent's latest assertion is no more persuasive than its earlier statements. As the Acting Chief Counsel found, the totality of the evidence indicates Respondent did not perform the required cold-drop testing. Failure to conduct required testing of a DOT specification container is not a "minor infraction." Testing is an essential part of the representation by the manufacturer that the container meets the DOT specifications, and is the opportunity to demonstrate the integrity of the container or discover deficiencies that may require adjustments to the manufacturing process. The gravity of the violation, its extent (from 1986 to the date of the DOT inspection), and all other relevant circumstances were considered in determining the penalty assessment for this violation. I find that a $5,000 penalty for failure to conduct required cold-drop testing is appropriate in light of all the factors required to be considered.

With respect to Violation Nos. 2 and 3, Respondent reiterated its attempts in 1986 to obtain registration numbers from DOT, and noted that it had corrected both these violations immediately following the DOT inspection. As the Acting Chief Counsel observed, it was Respondent's responsibility to obtain a manufacturer's registration number and emboss both the number and the year of manufacture on the DOT 2E bottles it manufactures—steps it easily took following the DOT inspection. Respondent was assessed penalties of $1,250 and $750 respectively for these two violations, primarily because of their lesser degree of gravity. I do not find any basis in the record for mitigating the amount of the penalty for these violations.

Findings

I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $7,000 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of July 2, 1990, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The $7,000 civil penalty is due and payable upon receipt of this Action on Appeal. If the civil penalty is paid within 30 days of the date of issuance of this Action on Appeal, no interest will be charged. If, however, the civil penalty is not paid by that date, the Chief of the General Accounting Branch of the Department's Accounting Operations Division will assess interest and administrative charges, and initiate collection activities on the debt and those charges. Interest on the debt will accrue from the date of issuance of this Action on Appeal at the applicable rate in accordance with 31 U.S.C. 3717, 4 CFR 102.13, and 49 CFR 89.23. Pursuant to those same authorities, a late-payment penalty of six percent (6%) per year will be charged on any portion of the debt that is more than 90 days past due. This penalty will accrue from the date this Action on Appeal is received.

Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of the Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: October 9, 1990.
Travis P. Dungan.
Certified mail—Return receipt requested
[Ref. No. 90-37-SD]

Action on Appeal

In the Matter of: Acid Products Co. Inc., Respondent

Background

On May 25, 1990, the Acting Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Acid Products Co. Inc. (Respondent) assessing a penalty in the amount of $2,000 for having knowingly offered for transportation and transporting in commerce a hazardous material, acetone, a flammable liquid, in unauthorized packaging, in violation of 49 CFR 171.2(a), 171.2(b), and 173.119(a)(3). The Order assessed a civil penalty of $2,000, reduced from the $2,509 civil penalty originally proposed in the March 19, 1990 Notice of Probable Violation. By letter dated June 22, 1990, Respondent submitted a timely appeal of the Order. The Acting Chief Counsel's Order is incorporated herein by reference.

Discussion

In its appeal, Respondent stated that it purchased the company in 1986 from previous owners and was not aware of any problems until the RSPA inspection. Respondent stated that it immediately corrected any discrepancies that were

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identified. Respondent stated that it is located in an established enterprise zone, with the goal of employing local residents, and that its partners have diverted capital to replacing old equipment and improving the building rather than taking any salary. Respondent requested that the penalty assessment be waived so that it may fulfill its goals and policies.

Respondent presented identical information in response to the Notice of Probable Violation, and the Acting Chief Counsel mitigated the amount of the proposed penalty by $500. Respondent has not presented any additional information that would justify further mitigation.

Findings

I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Acting Chief Counsel's Order. I find that a civil penalty of $2,000 is appropriate in light of the nature and circumstances of this violation, its extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of May 25, 1990, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The $2,000 civil penalty is due and payable upon receipt of this Action on Appeal. If the civil penalty is paid within 30 days of the date of issuance of this Action on Appeal, no interest will be charged. If, however, the civil penalty is not paid by that date, the Chief of the General Accounting Branch of the Department's Accounting Operations Division will assess interest and administrative charges, and initiate collection activities on the debt and those charges. Interest on the debt will accrue from the date of issuance of this Action on Appeal at the applicable rate in accordance with 31 U.S.C. 3717, 4 CFR 102.13, and 49 CFR 89.23. Pursuant to those same authorities, a late-payment penalty of six percent (6%) per year will be charged on any portion of the debt that is more than 90 days past due. This penalty will accrue from the date this Action on Appeal is received.

Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, Room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: August 28, 1990.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 90–73–SP]

Action on Appeal

In the Matter of: Kimson Chemical Inc., Respondent.

Background

On November 6, 1990, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Kimson Chemical Inc. (Respondent) assessing a penalty in the amount of $2,750 for having knowingly offered for transportation in commerce an oxidizer, potassium permanganate, in unauthorized packaging and in packagings that were not marked with a UN identification number, in violation of 49 CFR 171.2(a), 172.301(a), 173.1(b), 173.3(a), 173.154(a) and 173.194(a).

The Order assessed a $2,750 civil penalty, reduced from the $3,000 penalty originally proposed in the July 12, 1990 Notice of Probable Violation (Notice). By letter dated November 5, 1990, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

In its Appeal, Respondent contends that the Order did not consider the responses it made in its July 18, 1990 letter since it was clear that any violation was without Respondent's knowledge, consent or instigation. Respondent also argues that significant mitigation is warranted taking into account the assessment criteria set forth in 49 CFR 107.331. In reaching a decision on this Appeal, I have reviewed Respondent's July 18 response to the Notice and the notes from the August 14, 1990 informal conference, in addition to the other evidence in the record.

For Respondent to have knowingly committed the violations, there is no requirement that Respondent actually knew of, or intended to violate, the legal requirements. A violation is knowing when a person has actual knowledge of the facts giving rise to the violation or should have known of those facts. The Chief Counsel's Order noted that Respondent stated in its July 18 letter that it thought the containers of potassium permanganate satisfied the requirements of the Hazardous Materials Regulations, even though the containers did not have DOT specification markings. Additionally, Respondent said that it had instructed its agent warehouse to mark the containers with a UN identification number and believed that its instructions were being followed. Thus, the record shows that Respondent had knowledge of the facts, or was in a position to know the facts, that gave rise to the violations described. Therefore, Respondent knowingly committed the violations.

Respondent had a responsibility to be aware of the regulations applicable to its operations and that responsibility cannot be excused by reliance upon another party. Reliance, however, is relevant to Respondent's culpability. The Chief Counsel considered Respondent's reliance upon its overseas exporters in assuming that the potassium permanganate was packaged correctly, but found no basis in Respondent's argument for reducing the proposed penalty for this violation. The record shows that the Chief Counsel adequately considered Respondent's argument and I agree with the penalty amount assessed for the violation.

With respect to the labelling violation, in its informal responses, Respondent stated that it had instructed its agent warehouse that the packagings should be marked with the UN identification number. Since the UN identification number appeared on the bill of lading the warehouse prepared, Respondent believed that the packagings were labelled in accordance with its instructions. The Chief Counsel found that Respondent's reliance upon the warehouse did not warrant a reduction in the proposed penalty amount. A $250 reduction was given, however, for the corrective measures Respondent instituted to ensure that packagings would be correctly labelled in the future. I find that the record presents a basis for further mitigation of $250, due to Respondent's reliance on its agent.

In the July 18 letter and in the informal conference, Respondent stated that the proposed penalty would pose a financial hardship, due to the size of its operations, and requested a payment plan. Respondent did not follow up with any financial information to document its claim of financial difficulty. In its Appeal, Respondent maintains that the penalty will adversely affect its three-person operation, even if it will be able to continue in business. The Order did not reduce the penalty or authorize a

payment plan because Respondent did not submit any information to support its claim of financial hardship. Because Respondent has still not provided any financial information, no further mitigation is warranted on this basis. However, based on Respondent's assertion concerning the penalty's adverse effect on its three-person business, authorization of a payment plan is appropriate.

The Chief Counsel's Order assessed the penalty to reflect all of the issues raised by Respondent, in light of all the statutory assessment criteria. Thus, in addition to the factors already described, the nature and circumstances, extent and gravity of the violations and Respondent's lack of prior offenses were considered in determining an appropriate penalty amount.

Findings

I have determined that there is sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. Additionally, a payment plan of three monthly installments is authorized. I find that a civil penalty of $2,500 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of October 17, 1990, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331, except that the penalty is reduced to $2,500, and payment is authorized in installments.

The civil penalty of $2,500 shall be payable in three monthly installments of $1,000 each for the first two months and a final installment of $500, with the first payment due within 30 days of the date of issuance of this Action on Appeal and each succeeding payment due every 30 days thereafter until the entire amount is paid. If Respondent defaults on any payment of this payment schedule, the entire amount of the remaining civil penalty shall, without further notice, become immediately due and payable as of the date the first $1,000 installment is due.

If Respondent fails to pay this $2,500 civil penalty in accordance with the terms of this Action on Appeal, the Chief of the General Accounting Branch of the Department's Accounting Operations Division will assess interest and administrative charges, and initiate collection activities on the debt and those charges. Interest on the debt will accrue from the date of issuance of this Action on Appeal at the applicable rate in accordance with 31 U.S.C. 3717, 4 CFR 102.13, and 49 CFR 89.23. Pursuant to those same authorities, a late-payment penalty of six percent (6%) per year will be charged on any portion of the debt that is more than 90 days past due. This penalty will accrue from the date this Action on Appeal is received.

Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Respondent must send a photocopy of that check or money order to the Office of the Chief Counsel (DCC-1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: March 20, 1991.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 90-74-SP]

Action on Appeal

In the Matter of: Eastern Warehouses Inc., Respondent.

Background

On October 17, 1990, the Acting Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Eastern Warehouses Inc. (Respondent) assessing a penalty in the amount of $2,500 for having knowingly offered for transportation in commerce an oxidizer, potassium permanganate, in unauthorized packaging and in packagings that were not marked with a UN identification number, in violation of 49 CFR 171.2(a), 172.301(a), 173.1(b), 173.3(a), 173.154(a) and 173.194(a).

The Order assessed a $2,500 civil penalty, reduced from the $3,000 penalty originally proposed in the April 11, 1990 Notice of Probable Violation (Notice). By letter dated November 28, 1990, Respondent submitted a timely appeal of the Order. The Acting Chief Counsel's Order is incorporated herein by reference.

Discussion

In its Appeal, Respondent contends that with respect to Violation No. 1 which concerned Respondent's offering of potassium permanganate in unauthorized packaging, the Order did not properly address the ownership of the material. Due to its reliance upon the owner of the material, Kimson Chemical Corporation (Kimson), Respondent argues that it cannot be held responsible for knowingly offering the material since Respondent was not aware of any possible violation of Department of Transportation (DOT) rules.

Respondent maintains that it had no choice but to rely on Kimson since it is part of Respondent's agreement for accepting customers that all materials accepted for storage and transportation meet all applicable government regulations. Respondent states that it merely acted as Kimson's agent and prepared the bill of lading only at the instruction of Kimson, and in good faith. Short of conducting independent examination and testing of the packaging, Respondent contends that it had no way of knowing there was a violation.

Respondent did more than prepare the bill of lading. Respondent held the material in its warehouse and then offered the potassium permanganate back into transportation by arranging for its shipment to the purchaser. Respondent was in the best position to determine if violations existed since it physically handled the packages. Furthermore, Respondent signed the certification on the bill of lading stating that the potassium permanganate was properly classified, described, packaged, marked and labeled in accordance with the applicable DOT regulations. Even if this were done under Kimson's instructions, reliance upon another does not relieve Respondent of its responsibility to be aware of the regulations applicable to its operations. By preparing the shipping documentation and offering the potassium permanganate into transportation, Respondent was responsible for ensuring compliance with the requirements of the Hazardous Materials Regulations applicable to its operations.

Contrary to Respondent's assertion, in the Order the Acting Chief Counsel considered the ownership and responsibility arguments, and as noted in the Order, reduced the proposed penalty by $250 because of Respondent's reliance upon Kimson. I do not find any basis in the record for further mitigating the amount of the penalty for this violation.

With respect to Violation No. 2 concerning the lack of a UN identification number on the pails containing the potassium permanganate, Respondent contends that it affixed a safety sticker incorporating the UN

identification number to each pail before shipment. Respondent states that there is no proof to the contrary that the labels were not affixed before leaving Respondent's warehouse and that due to the delay in bringing this action, the actual pails cannot be examined. Respondent also suggests that the recipient of the pails has a motive for removing the labels since they also reveal the supplier's identity.

Proof to the contrary is found in the observation report Inspector O'Neil made and the photographs he took during his inspection at American Industrial Chemical Company, which had purchased the potassium permanganate from Kimson. The Inspector's observation report shows that he observed 36 pails of potassium permanganate, none of which were marked with a UN identification number. The photographs show, as Respondent argues they should, the clear plastic wrap Respondent puts around the pails to hold them in position. Respondent maintains that the labels are placed on the top of the pails. However, the photographs clearly show the tops of the upper row of pails and no label can be seen on any of the tops, nor anywhere else. The photographs and the observation report are sufficient evidence to conclude that the labels were not affixed to the pails at the time they left Respondent's warehouse. Furthermore, Respondent does not present any evidence to substantiate its suggestion that the labels were later removed.

The Acting Chief Counsel mitigated the proposed penalty by $250 for the delay between the inspection and the issuance of the Notice. There is no basis in the record for further mitigation.

Findings

I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Acting Chief Counsel's Order. I find that a civil penalty of $2,500 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of October 17, 1990, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The $2,500 civil penalty is now due and payable. If the civil penalty is paid within 30 days of the date of issuance of this Action on Appeal, no interest will be charged. If, however, the civil penalty is not paid by that date, the Chief of the General Accounting Branch of the Department's Accounting Operations Division will assess interest and administrative charges, and initiate collection activities on the debt and those charges. Interest on the debt will accrue from the date of issuance of this Action on Appeal at the applicable rate in accordance with 31 U.S.C. 3717, 4 CFR 102.13, and 49 CFR 89.23.

Pursuant to those same authorities, a late-payment penalty of six percent (6%) per year will be charged on any portion of the debt that is more the 90 days past due. This penalty will accure from the date this Action on Appeal is received.

Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Divisions, Office of the Secretary, room 9112, Department of Transportation 400 Seventh Street, SW, Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of the Chief Counsel (DCC–1), RSPA room 8405, at the same street address.

This decision of appeal constitutes the final administrative action in this proceeding.

Date Issued: March 20, 1991.

Travis P. Dungan.

Certified Mail—Return Receipt Requested

[Ref. No. 90–84–SB]

Action on Appeal

In the Matter of: Whitaker Oil Co., Respondent

Background

On October 29, 1990, the Acting Chief, Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Whitaker Oil Company (Respondent) assessing a penalty in the amount of $3,000 for having knowingly offered for transportation in commerce corrosive liquid, n.o.s., in non-DOT specification packaging (Violation No. 1) and without marking the proper shipping name and hazard class on the shipping paper (Violation No. 2), in violation of 49 CFR 171.2(a), 172.202(a)(1), 172.202(a)(2), and 173.245(a). The Order assessed a $3,000 civil penalty, reduced from the $4,000 civil penalty originally proposed in the June 15, 1990 Notice of Probable Violation. By letter dated November 27, 1990, Respondent submitted an appeal of the Order. RSPA received the appeal letter on December 5, 1990, more than a week after the November 20 deadline for appeal. Although the appeal was filed after the deadline, I am waiving the 20-day appeal period requirement in this case. The Chief Counsel's Order is incorporated herein by reference.

Discussion

Respondent contends that the $3,000 civil penalty is excessive for the two violations, and states that there was no intent to "specifically circumvent the regulations." Respondent contends that consideration of the "nature, circumstances, extent and gravity of these allegations, would dictate a much lower penalty if at all."

Respondent was advised in the Notice that a violation is "knowing" when a person has actual knowledge of the facts giving rise to the violation or should have known of those facts. There is no requirement that the person intend to violate or circumvent the regulations. The Acting Chief Counsel specifically considered the nature, circumstances, extent, and gravity of the violations when assessing the civil penalty, in addition to the other factors required to be considered. The Acting Chief Counsel substantially reduced the amount of the civil penalty after considering corrective action taken by the Respondent. I do not find any basis in the record for further mitigating the amount of the penalty for these violations.

Findings

I have determined that there is not sufficient information to warrant mitigation of the civil penalty assessed in the Order. I find that a civil penalty of $3,000 is appropriate in light of the nature and circumstances of these violations, their extent and gravity, Respondent's culpability, Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

Therefore, the Order of October 29, 1990, is affirmed as being substantiated or the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The $3,000 civil penalty is now due and payable. If the civil penalty is paid within 30 days of the date of issuance of this Action on Appeal, no interest will be charged. If, however, the civil penalty is not paid by that date, the Chief of the General Accounting Branch of the Department's Accounting Operations Division will assess interest and administrative charges, and initiate collection activities on the debt and those charges. Interest on the debt will accrue from the date of issuance of this

Action on Appeal at the applicable rate in accordance with 31 U.S.C. 3717, 4 CFR 102.13, and 49 CFR 89.23. Pursuant to those same authorities, a late-payment penalty of six percent (6%) per year will be charged on any portion of the debt that is more than 90 days past due. This penalty will accrue from the date this Action on Appeal is received.

Payment must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Respondent must send a photocopy of that check or money order to the Office of the Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: January 28, 1991.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 90–165–SP]

Action on Appeal

In the Matter of: United Laboratories, Inc. Respondent.

Background

On February 6, 1991, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to United Laboratories, Inc. (Respondent) assessing a penalty in the amount of $4,750 for having knowingly offered for transportation in commerce a hazardous material, oxidizer, corrosive solid, n.o.s., in non-DOT specification packaging, in violation of 49 CFR 171.2(a) and 173.154. The Order reduced the civil penalty originally proposed in the November 13, 1990 Notice of Probable Violation from $5,500 to $4,750. By letter dated February 14, 1991, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Knowingly

The first issue raised by the Respondent concerns whether the violation was committed "knowingly" as required by the Hazardous Materials Regulations (HMR). Respondent stated: "The record is clear that the supplier, on a one time basis, breached that contract, and shipped United non-conforming containers. There is no proof that United had actual recognition and knowledge of the breach."

A violation is committed "knowingly" if a person has actual knowledge of the facts that gave rise to the violation or "should have known" the facts that gave rise to the violation. 49 CFR 107.299.

A party offering hazardous materials for transportation is presumed to be aware of the regulations' requirements. Therefore, the issue on appeal is whether the Respondent should have known the facts that gave rise to the violation.

The Respondent was found to have violated the HMR by offering for shipment, and actually shipping, a corrosive oxidizer in non-DOT specification polyethylene packages. Although, as noted in the Respondent's August 28, 1990 letter, these non-DOT specification packages were manufactured and filled by third parties; these packages were stored in the Respondent's facilities, handled by the Respondent's employees and distributed by the Respondent to its Sparks, Nevada facility. Hence, the Respondent's employees had the ability and the opportunity to discover that these containers were in fact non-DOT specification packaging. Thus, the general rule that notice to a corporation's employee is notice to the corporation applies, since the Respondent's employees exercised functional responsibilities over the area where the violation occurred and therefore, could be reasonably expected to perceive the violation. As a result, I find that a reasonable party acting under circumstances similar to those which confronted the Respondent and exercising reasonable caution would have known the facts which gave rise to the Respondent's violation. Thus, I conclude that for the purposes of the HMR the Respondent should have known those facts that gave rise to its violation.

The Respondent also argues that it was the unfortunate victim of a third party supplier who "slipped in nonconforming containers." However, a Respondent may not escape its HMR responsibilities by shifting those responsibilities to a third party. As the Respondent recognized so aptly in its appeal: "It is a simple case of inadvertence: all the steps for compliance were taken by United; a third party breached and *United's shipping department failed to recognize the breach.* (emphasis added). The fact that the Respondent may have received nonconforming containers from a third party supplier may support mitigating the penalty, but on its own merits, it would not justify reducing the Respondent's civil penalty to zero.

Assessment Criteria

With regard to imposing a civil penalty, the Respondent argues that the assessment criteria do not justify imposing a fine. In addition, the Respondent claims that such a penalty would impose a financial hardship and adversely affect its ability to stay in business. The gravity of offering hazardous materials for transportation in non-DOT specification packages involves the issue of package integrity.

There is no built-in assurance that non-DOT specification packaging can withstand the stress associated with the transportation process. One goal of the HMR is to reduce the risk of such failures by requiring that all hazardous materials, which are in transportation, be packaged in containers which satisfy certain DOT specifications.

Addressing the financial considerations, an August 31, 1990 Dun & Bradstreet report indicates that as of July 31, 1989, the Respondent has a current ratio of 1.62, on current assets of $5.9 million, including $82,000 in cash, and current liabilities of $3.6 million. The Respondent's retained earnings were listed as $3.9 million. These figures must be weighted against the Respondent's claims of "shrinking" sales and profits. The Respondent submitted "Exhibit A" which indicates that it is in violation of its loan covenants with the Northern Trust Bank. This exhibit and the Respondent's written comments support the claim that the Respondent is experiencing "shrinking" sales and profits. I have considered this information in determining the amount of the civil penalty.

I have determined that there is sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. The Respondent's appeal emphasized that it had recently invested in numerous capital expenditures to improve its facility. The Respondent claims it demonstrated good faith by taking immediate corrective action. Based on the evidence submitted by the Respondent, I find that a reduction in the civil penalty is appropriate.

In light of the violation's nature and circumstances, the violation's extent and gravity, Respondent's culpability, Respondent's single prior offense, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors, I am reducing the assessed civil penalty from $4,750 to $3,900. In addition, the Respondent is permitted to pay the penalty in 12 consecutive monthly installments of

$325 each. These measures are taken in light of the Respondent's financial condition.

Amount of Relief

Therefore, the Order of February 6, 1991, is modified to reduce the assessed penalty to $3,900 and to include a payment plan. The remainder of the Order is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331.

The $3,900 civil penalty shall be payable in 12 monthly installments of $325 each, with the first payment due within 30 days of the date of issuance of this Action on Appeal and with each succeeding payment due every thirty days thereafter until the entire amount is paid.

Should the Respondent default on any payment in this schedule, the entire amount of the remaining civil penalty shall, without further notice, become immediately due and payable as of the date the first $325 was due.

If the Respondent fails to pay this $3,900 civil penalty in accordance with the terms of this Action on Appeal, the Chief of the General Accounting Branch of the Department's Accounting Operations Division will assess interest and administrative charges and initiate collection activities on the debt and those charges.

Interest on the debt will accrue from the date of issuance of this Action on Appeal at the applicable rate in accordance with 31 U.S.C. 3717, 4 CFR 102.13, and 49 CFR 89.23. Pursuant to those same authorities, a late-payment penalty of six percent (6%) per year will be charged on any portion of the debt that is more than 90 days past due. This penalty will accrue from receipt of this Action on Appeal.

Payments must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, General Accounting Branch (M–86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street , SW., Washington, DC 20590–0001. Respondent must send a photocopy of each check or money order to the Office of the Chief Counsel (DCC–1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: May 20, 1991.

Travis P. Dungan.

Certified mail—Return receipt requested

[Ref. No. 91–02–EXR]

Action on Appeal

In the Matter of: Abacana Industries, Respondent

Background

On February 27, 1991, the Chief Counsel, Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued an Order to Abcana Industries (Respondent) assessing a penalty in the amount of $5,000 for having knowingly offered for transportation in commerce corrosive materials in non-DOT specification plastic bottles inside a high-density polyethylene box, in violation of 49 CFR 171.2(a) and 173.277(a)(6). The Order assessed a civil penalty of $5,000, reduced from the $5,500 civil penalty originally proposed in the January 11, 1991 Notice of Probable Violation (Notice). The Order also authorized a payment plan of eight monthly installments of $625 each.

By letter dated March 4, 1991, Respondent submitted a timely appeal of the Order. The Chief Counsel's Order is incorporated herein by reference.

Discussion

In its appeal, Respondent denied that it "knowingly" committed the violation. Respondent stated that it thought it only had to apply for the exemption once.

As indicated in the original Notice to Respondent, under 49 CFR 107.299, a violation is "knowing" when a person has actual knowledge of the facts giving rise to the violation or should have known of those facts; there is no requirement that the person actually knew of, or intended to violate, the legal requirements. As stated in the Order, the two-paragraph document making Respondent a party to the exemption contained a clear statement: "The expiration date of the exemption is September 1, 1985 for the party(s) listed below." Respondent was one of four parties on that list.

Therefore, Respondent's failure to read the exemption document does not excuse its offering hazardous materials in packaging not authorized by the regulations.

Respondent also stated that it was under the impression that it would have a telephone conference. An informal conference must be requested in writing. Respondent's January 18, 1991 response to the Notice stated that it would like to make an informal response *or* ask for a conference. Respondent's January 18 letter was considered the informal response, and Respondent did not renew its request for a conference.

Respondent also requested that additional consideration be given to its ability to pay the $5,000 civil penalty. Respondent submitted an additional financial statement with its appeal.

In response to financial information submitted by Respondent, the Chief Counsel's Order reduced the proposed penalty by $500 and authorized payment of the $5,000 penalty in eight monthly installments of $625 each. In light of Respondent's renewed plea of financial hardship and its most recent financial statement, I have independently reviewed all the financial information Respondent has submitted. I note that although Respondent has cash on hand of approximately $42,000, its ratio of current assets ($399,800) to current liabilities ($722,800) is an unfavorable 0.55.

In light of all the relevant evidence, I believe that a $3,000 civil penalty is appropriate for the violation in this case, and that Respondent should be permitted to pay that penalty in eight consecutive monthly installments of $375 each. This will ensure that adequate consideration is given to Respondent's ability to pay and to the effect of this penalty on Respondent's ability to continue in business.

Findings

I have determined that there is sufficient information to warrant mitigation of the civil penalty assessed in the Chief Counsel's Order. I find that a civil penalty of $3,000 is appropriate in light of the nature and circumstances of this violation, its extent and gravity, Respondent's culpability. Respondent's lack of prior offenses, Respondent's ability to pay, the effect of a civil penalty on Respondent's ability to continue in business, and all other relevant factors.

In addition, I have determined that the Respondent may pay this $3,000 civil penalty in eight consecutive monthly installments of $375 each.

Therefore, the Order of February 27, 1991, including the authorization of a payment plan, is affirmed as being substantiated on the record and as being in accordance with the assessment criteria prescribed in 49 CFR 107.331, except that the civil penalty assessed therein is reduced to $3,000, and authorized to be paid in accordance with the following payment plan. The civil penalty of $3,000 shall be payable in eight monthly installments of $375 each, with the first payment due within 30 days of the date of issuance of this Action on Appeal and each succeeding payment due every 30 days thereafter until the entire amount is paid. If

Respondent defaults on any payment of this payment schedule, the entire amount of the remaining civil penalty shall, without further notice, become immediately due and payable as of the date that the first $375 installment is due.

If Respondent fails to pay this $3,000 civil penalty in accordance with the terms of this Action on Appeal, the Chief of the General Accounting Branch of the Department's Accounting Operations Division will assess interest and administrative charges and initiate collection activities on the debt and those charges. Interest on the debt will accrue from the date of issuance of this Action on Appeal at the applicable rate in accordance with 31 U.S.C. 3717, 49 CFR 102.13, and 49 CFR 89.23. Pursuant to those same authorities, a late-payment penalty of six percent (6%) per year will be charged on any portion of the debt that is more than 90 days past due. This penalty will accrue from the date this Action on Appeal is received.

Payments must be made by certified check or money order (containing the Ref. No. of this case) payable to the "Department of Transportation" and sent to the Chief, Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, room 9112, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Respondent must send a photocopy of each check or money order to the Office of the Chief Counsel (DCC-1), RSPA, room 8405, at the same street address.

This decision on appeal constitutes the final administrative action in this proceeding.

Date Issued: May 6, 1991.

Travis P. Dungan,

Certified mail—Return receipt requested

[FR Doc. 92-609 Filed 1-17-92; 8:45 am]

BILLING CODE 4910-60-M

VOL 57 ISS 13 JA 21 1992 UMI

federal register

Tuesday
January 21, 1992

Part III

Department of Health and Human Services

Administration for Children and Families

Drug Abuse Prevention Program for Runaway and Homeless Youth; Availability of Financial Assistance for FY 1992 and Request for Applications; Notice

VOL 57 ISS 13 JA 21 1992 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93657.91]

Drug Abuse Prevention Program for Runaway and Homeless Youth; Availability of Financial Assistance for FY 1992 and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF).

ACTION: Announcement of the availability of financial assistance and request for applications for drug abuse prevention programs for runaway and homeless youth.

SUMMARY: The Family and Youth Services Bureau of the Administration on Children, Youth and Families announces the availability of fiscal year 1992 funds for competing new discretionary grants under the Drug Abuse Prevention Program for Runaway and Homeless Youth. The purpose of this program is to improve and expand drug abuse prevention, education and information services to runaway and homeless youth and their families.

This announcement contains all of the necessary application materials to apply for Community-Based Comprehensive Service Projects. Approximately $4,500,000 is available to support grant awards under this program announcement. An estimated 45 to 50 grants will be awarded.

DATES: The closing date for receipt of grant applications is March 23, 1992.

ADDRESSES: Application receipt point: Drug Abuse Prevention Program for Runaway and Homeless Youth, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, room 341–F.2, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Attention: Ruthelle O. Stafford.

FOR FURTHER INFORMATION CONTACT: Anita G. Wright, Administration on Children, Youth and Families, Family and Youth Services Bureau, Program Support Division, P.O. Box 1182, Washington, DC 20013; Telephone: (202) 245–0049.

SUPPLEMENTARY INFORMATION:

Part I: General Information

A. Program Purpose

Section 3511 of Public Law 100–690, the Anti-Drug Abuse Act of 1988 (the Act), established the Drug Abuse Education and Prevention Program for Runaway and Homeless Youth. The specific purposes of this Program are to:

1. Provide individual, family, and group counseling to runaway youth and their families and to homeless youth for the purpose of preventing or reducing the illicit use of drugs by such youth;
2. Develop and support peer counseling programs for runaway and homeless youth related to the illicit use of drugs;
3. Develop and support community education activities related to the illicit use of drugs by runaway and homeless youth, including outreach to individual youth;
4. Provide runaway and homeless youth in rural areas with assistance (including the development of community support groups) related to the illicit use of drugs;
5. Provide information and training regarding issues related to the illicit use of drugs by runaway and homeless youth to individuals involved in providing services to these youth;
6. Support research on illicit drug use by runaway and homeless youth, the effects on such youth of drug abuse by family members, and any correlation between such use and attempts at suicide; and
7. Improve the availability and coordination of local services related to drug abuse for runaway and homeless youth.

While funds are available for drug treatment referral as a project component, there is no provision in the statute for the direct provision of drug treatment services.

The overall purpose of the Drug Abuse Prevention Program is to help communities address the problem of drug abuse among runaway and homeless youth through the prevention, early intervention, and reduction of drug dependency. The Administration on Children, Youth and Families will award grants to support direct services and coordination activities which are designed to achieve the specific purposes identified above. Research on illicit drug use by runaway and homeless youth and related issues is currently being supported by ACYF and will not be funded under this announcement.

B. Definitions

For the purposes of this program announcement, the following definitions apply:

1. *Drug* means a beverage containing alcohol or a controlled substance as defined in section 102 of the Controlled Substances Act.
2. *Illicit* means unlawful or injurious.
3. *Community-Based* means located within the community and maintained with community and consumer participation in the planning, operation, and evaluation of its programs.
4. *Public Agency* means any State, unit of local government, combination of such States or units, or any agency, department, or instrumentality of any of the foregoing.
5. *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau).
6. *Runaway Youth* means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of parents or legal guardian. This definition is derived from the regulatory definition (45 CFR 1351.1(f)) of runaway youth for the Runaway and Homeless Youth Act (42 U.S.C. 5701 *et seq.*).
7. *Homeless Youth* means a person under 21 years of age who is in need of services and for whom it is not possible to live in a safe environment with a relative and for whom there is no other safe alternative living arrangement. This definition is derived from the statutory definition in the Transitional Living Grant Program (42 U.S.C. 5714–1 *et seq.*).

The definitions of "runaway youth" and "homeless youth" above are used to ensure that any such youth being served under the Runaway and Homeless Youth Act are included in the target population for services under this announcement.

C. Background

The Family and Youth Services Bureau (FYSB) within the Administration on Children, Youth and Families (ACYF) administers programs that target services to an adolescent population of approximately 1.3 million runaway and homeless youth who inhabit the streets of this nation annually. This population's lifestyles put them among the most high-risk groups in the nation for exposure to and use of alcohol and other illegal substances. The abuse of drugs has had an increasingly severe impact on this vulnerable group. Reports from shelters which serve runaway and homeless youth under the provisions of the Runaway and Homeless Youth Act (title III of the Juvenile Justice and Delinquency Prevention Act of 1974, Public Law 93–415, as amended) indicate a growing drug abuse problem. In 1988, 15.4 percent of the youth entering the shelters indicated a personal drug abuse

problem. In addition, 16.6 percent of the youth entering the shelters reported their reason for running away as being drug and/or alcohol abuse on the part of their parents.

A 1990 survey by The National Network of Runaway and Youth Services of 185 community-based agencies that serve runaway and homeless youth found substance abuse to be the leading health problem among the youth served. Several other studies reveal that the incidence of substance abuse by runaway and homeless youth in large urban areas is significantly greater than the rate of abuse by other adolescents. The prevalence of the problem is underscored by the fact that not only are youth-serving agencies in major urban areas reporting an increase in drug use among their client population, but providers in small towns and rural communities are also finding that more than half of their clients are reporting drug abuse as a primary problem.

While several studies provide some evidence of alcohol and drug abuse decline in the general population, recent locally based studies indicate that this is not the trend among the runaway and homeless youth population. While there are indications that the use of marijuana among this population is declining, there has been a marked increase in the use of alcohol and other dangerous and addictive drugs such as cocaine and its derivative, crack. Alcohol use among the younger adolescent population is also on the increase. The use of alcohol is of particular concern because it often leads to other serious substance abuse.

The youth entering the shelters today appear to be more disturbed and difficult to serve; a trend often associated with an increase in substance abuse. These youth often suffer from a variety of mental, physical, educational and social deficiencies which are exacerbated by involvement with illicit drugs. The street life environment places runaway and homeless youth at a significant risk of involvement in the abuse of drugs and the related consequence of contracting and transmitting communicable diseases, including the AIDS virus. The implementation of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690) provides Federal assistance to more comprehensively address the problem of drug involvement among runaway and homeless youth. Initial grant awards under section 3511 of Public Law 100–690 were made in FY 1989. During fiscal years 1989 and 1990, approximately $25.5 million was awarded to 184 organizations to address the problem.

Under the FY 1989 program announcement, approximately $14 million in discretionary grant awards were made to 104 agencies and organizations located in 36 States, including Puerto Rico and the District of Columbia. These awards were made to support projects designed to improve or expand existing services; develop networking in rural and other areas with minimal services; develop innovative program models; and provide special services for Native American youth on or near Indian reservations and Alaska Native villages.

In FY 1990, approximately $11.5 million in discretionary grants were made to an additional 80 organizations throughout the United States. In addition to the above purposes, demonstration grants were awarded in FY 1990 to focus on services to the following subgroups among the general runaway and homeless youth population: Minority youth, older homeless youth in transition to independent living, and pregnant adolescents. Networking grants were also expanded to focus on local as well as statewide coordination efforts.

Also during FY 1990, a contract was awarded to study the incidence of illicit drug use among runaway and homeless youth, the effects of drug abuse by family members on such youth and any correlations between drug use and attempts at suicide and other harmful or risk-taking behavior caused or abetted by drugs. In addition, a management information (data collection) system (MIS) is currently being developed and tested for use by grantees. Grantees funded under this program announcement will be required to fully cooperate with MIS and research contractors funded by ACYF to support the Drug Abuse Prevention Program for Runaway and Homeless Youth.

No program announcement was published during FY 1991 under section 3511 of the Anti-Drug Abuse Act of 1988. However, approximately $13.5 million was awarded non-competitively to grantees previously funded in fiscal years 1989 and 1990.

Given the magnitude of the problem of illicit drug involvement among runaway and homeless youth and the continuing need to support communities in their efforts to address the problem, ACYF will award new grants under this announcement to focus on Comprehensive Service Projects that improve and/or expand services to the target population.

The Administration on Children, Youth and Families seeks to expand the availability of services pertaining to effective drug abuse prevention, particularly early intervention, community education methods and coordinated service delivery systems for this hard to reach population. All applications should reflect an understanding that drug abuse prevention and reduction cannot be addressed in isolation, particularly in cases where family members, especially parents, are also users of illicit drugs. Where family members are present, their involvement should be strongly encouraged as an integral part of the services provided. In addition, in the development of drug abuse prevention services, ACYF encourages awareness of and sensitivity to the particular needs of runaway and homeless youth who are members of ethnic and racial minority groups, and/or are street youth from economically deprived communities. These groups are among the most hard to reach subpopulations of runaway and homeless youth and are in greatest need of services.

The improvement and expansion of direct drug abuse prevention, intervention and reduction services, including more accessible community resources and support for runaway and homeless youth, are essential activities under this program announcement. Although section 3511 of the Act provides for services as well as referrals to drug treatment programs, drug treatment itself is not the focus of this program, and will not be supported under this program announcement.

Because of a shortage of drug treatment programs in many areas of the country, applicants are encouraged to develop innovative approaches to securing appropriate treatment services for the runaway and homeless youth they serve.

D. Additional Resources

The Administration on Children, Youth and Families, through an Interagency Agreement with the Public Health Service, DHHS, is working to improve access to medical services, including drug treatment for runaway and homeless youth. The Bureau of Health Care Delivery and Assistance (BHCDA) of the Public Health Service, with funds made available under the Stewart B. McKinney Homeless Assistance Act of 1987, has awarded grants to public and private non-profit organizations across the country to provide primary health care to homeless populations. Applicants are encouraged to contact these organizations and, where possible, access and coordinate with these resources. These grantees are listed in appendix II.

This announcement is specifically targeted to runaway and homeless youth. Potential applicants interested in providing drug abuse prevention services to high-risk youth other than runaway and homeless youth are encouraged to contact the Office of Substance Abuse Prevention (OSAP). For information on OSAP grant programs and other drug abuse prevention resources, applicants should contact: National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, Maryland 20852, 1–800–487–4890.

E. Eligible Applicants

Any State, unit of local government (or combination of units of local government), public or non-profit private agency, organization, institution, or other non-profit entity is eligible to apply; except those grantees listed in appendix III, which were originally awarded Drug Abuse Prevention Program grants in FY 1990 and which, pending satisfactory performance, are eligible for non-competitive continuation funding during FY 1992. All other previously funded Drug Abuse Prevention Program grantees and other eligible agencies may apply under this program announcement.

Federally recognized Indian Tribes are eligible to apply for grants as units of local government. Non-federally recognized Indian Tribes and urban Indian organizations are eligible to apply for grants as private, non-profit agencies. In instances where more than one organization submits a joint application to coordinate activities under this announcement, one legal entity must be designated as the prospective grantee.

Non-profit applicants who have not previously received financial support from the Administration on Children, Youth and Families must submit proof of their non-profit status with their grant application. This can be done either by making reference to the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by submitting a copy of its letter from IRS (IRS Code, sections 501(c)(3) and 501(c)(6)). Non-profit applicants cannot be funded without acceptable proof of this status. Although for-profit entities may participate as sub-grantees to eligible applicants, they do not qualify as applicants under this grant announcement.

Applicants must indicate in their applications a willingness to cooperate with third party contractors funded by ACYF, including participation in any management information (data collection) system operated by ACYF.

F. Available Funds and Duration of Projects

The Administration on Children, Youth and Families expects to award approximately $4,500,000 in grants. Project periods for grants awarded under this announcement will be for three years. The award of funds for the second and third budget periods will be based upon the availability of funds and satisfactory performance by the grantee. The maximum Federal share for each 12-month budget period of the grant award will be $100,000.

G. Applicant Share of Project Costs

A 25 percent non-Federal share ($1 for every $3 of Federal funding), either in cash or third party in-kind contributions, or a combination thereof, secured from non-Federal sources, is required of all projects. For example, an applicant who applies for $75,000 in Federal funding must provide $25,000 toward the project, for a total project cost of $100,000. An applicant who applies for $100,000 in Federal funding must provide $33,333 toward the project, with a total project cost of $133,333. Contributions of more than 25 percent are encouraged. Applicants which do not provide the required 25 percent non-Federal share will not be considered for funding.

Part II: Responsibilities of Community-Based Comprehensive Service Projects

Approximately 45–50 grants will be awarded to improve and/or expand existing services related to preventing or reducing the use of illicit drugs by runaway and homeless youth. To ensure that agencies with the greatest capacity for providing quality services are selected for funding under this announcement, applicants must demonstrate in the program narrative section of their applications that they are able to meet the requirements of the Act and other applicable Federal policies and procedures.

The program narrative statement should be prepared in response to the requirements enumerated below and to the review criteria, presented in part III, which will be used to evaluate the applications. To assist applicants in preparing the narrative statements of their grant submissions, the relevant requirements of the Drug Abuse Prevention Program for Runaway and Homeless Youth (sections 3511–3515 of the Anti-Drug Abuse Act of 1988) and applicable policies and procedures have been arranged according to the five review criteria.

The program narrative should be clear and concise, and should not exceed 30 double-spaced pages exclusive of necessary attachments, such as organization charts, resumes, and letters of agreement or support. Review of the narrative portion of the statement will be limited to the first 30 pages.

A. Objectives and Need for Assistance

Applicants should specifically identify one or more purposes of the Act, as described in section A of part I of this announcement, which it will carry out through the use of grant funds (section 3514(b)(1)).

Further, applicants should discuss the rate of illicit drug use by juveniles with particular attention being paid to runaway and homeless youth in the community(ies) to be served (section 3515(a)(4)) and the availability (or lack thereof) of similar services, especially for runaway and homeless youth, in the geographical area where services will be provided (section 3515(a)(5)). ACYF encourages applications that target the particular needs of runaway and homeless youth who are members of ethnic and racial minority groups, and/or are street youth from economically deprived communities in the development of drug abuse prevention services.

B. Results and Benefits Expected

Applicants should identify the results and benefits to be derived from the project, stating the numbers of runaway and homeless youth and their families to be served, and describing the types and quantities of services to be provided. The applicant should discuss how the project will increase the capacity of the applicant to provide services to address the illicit use of drugs by runaway and homeless youth (section 3515(a)(3)). Further, the applicant should describe the extent to which the project will increase the level of services, or improve the coordination of services, in the community for runaway and homeless youth (section 3515(a)(6)).

C. Approach

Applicants should discuss how the project will be carried out, including a plan of action detailing how the proposed work will be accomplished.

ACYF encourages comprehensive approaches to the problem of drug involvement by runaway and homeless youth and their families. Some applicants, however, may want to focus more narrowly on a particular problem(s) confronting their community or on a specific gap in services. Therefore, while interested applicants are encouraged to propose as comprehensive a project as possible, applications that demonstrate how the

grant will be utilized to expand or improve a particular aspect of a program serving runaway and homeless youth will be considered. Applicants proposing narrowly focused efforts should describe how other resources available in the community will be used to ensure that the array of services needed will be available. All applicants should discuss how the proposed project will be integrated with other services to runaway and homeless youth that are provided by the applicant or that are available in the community.

Activities that may be undertaken or expanded include; but are not necessarily limited to:

- Improving networking and service coordination to increase the availability of services to runaway and homeless youth;
- Expanding outreach activities, particularly street-based outreach programs;
- Providing individual, family, group, and/or peer prevention and intervention counseling related to alcohol and other drug use;
- Strengthening intake and assessment procedures for substance abuse at runaway and homeless youth shelters;
- Coordinating services with drug treatment facilities and making referrals to treatment that are geared to the runaway and homeless youth population;
- Providing aftercare and follow-up services to runaway and homeless youth with substance abuse problems that have received shelter;
- Increasing staff knowledge and skills related to working with runaway and homeless youth with substance abuse problems by improving or accessing training opportunities;
- Improving programming to address the unique cultural needs and concerns of minority runaway and homeless youth;
- Involving and educating parents, siblings and peers of runaway and homeless youth receiving drug abuse prevention services;
- Developing and implementing programs designed to reduce drug involvement among the target population by improving coping skills and reducing stress factors arising from such problems as hopelessness, family dysfunction, and peer pressure; or
- Establishing linkages with community mental health programs that will provide comprehensive substance abuse counseling to runaway and homeless youth.

The applicant should discuss the extent, if any, to which the project will incorporate new or innovative techniques (section 3515(a)(2)). Further, the applicant should discuss its plans for evaluating the project, including assessing the outcomes and accomplishments of the program and service delivery models employed (section 3514(b)(4)).

D. Staff Background and Organizational Experience

Priority will be given to agencies and organizations that have experience in providing services to runaway and homeless youth [Section 3511(b)]; therefore, applicants should include a brief description of their organizational experience in providing services to such youth. The applicant should further demonstrate that the organization is capable of the proper and efficient administration of the project (section 3514(b)(3)).

Applicants are encouraged to show evidence of collaboration with other agencies in the community in the development of a comprehensive approach to service delivery for runaway and homeless youth. Applicants should list all organizations with which they will work and describe the contributions of these organizations to the project. (When more than one agency joins to submit a single application, one entity must be identified as the applicant organization with legal responsibility for the grant, should it be awarded.) Letters of commitment should be included for each participating agency as well as a clearly defined task chart showing the responsibilities and involvement of the designated agencies.

E. Budget Appropriateness

The applicant should discuss the relative cost and effectiveness of the proposed project or activity (section 3515(a)(1)). This should include information on the appropriateness of the proposed budget relative to the nature and scope of the activities to be undertaken. The applicant should also describe the fiscal control and fund accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement (section 3514 (b)(6)).

Part III: Criteria for Review and Evaluation of Applications

An application must meet all of the eligibility requirements specific to this announcement. This includes eligibility of the applicant, duration of the project, 25 percent minimum applicant share, and responsiveness to the purposes of the announcement.

Applications will be evaluated by a panel of non-Federal experts knowledgeable about issues related to runaway and homeless youth and illicit drug use who will comment on and score the applications based on the five criteria listed below.

To ensure the maximum score for each criterion, it is imperative that the program narrative section of the application clearly address each of these five areas and include the information requested in part II.

A. Objectives and Need for Assistance: (15 Points)

- Identify the specific purpose(s) of section 3511 of the Anti-Drug Abuse Act that is being addressed by the proposal.
- Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution (including the need for additional services for addressing the illicit use of drugs by runaway and homeless youth) in the geographic area(s) that the project is proposed to serve (section 3515(a)(5)).
- Give the precise location of the project and area(s) to be served by the proposed project (maps or other graphic aids may be attached). Provide a detailed description of the emerging or current status of illicit drug use among runaway and homeless youth and their families in the proposed target area (section 3515(a)(4)).
- Demonstrate the need for the project and state the principal and subordinate objectives of the project. Supporting documentation from concerned interests other than the applicant may be used.

B. Results or Benefits Expected: (20) Points

- Identify the results and benefits to be derived from the project, especially any quantifiable increases in the applicant's capacity to provide services to address the illicit use of drugs by runaway and homeless youth (section 3515(a)(3)); and the extent to which the project will increase the level of services, or will coordinate with other services, in the community (section 3515(a)(6)).
- Describe any anticipated changes in policy and/or practice among public and private service providers that will result in improved service delivery (e.g., identify any manuals, training curricula or reports proposed as a project accomplishment).
- Describe the plans for evaluating the effectiveness of the project, including assessing the outcomes and accomplishments of the program and service delivery models employed.

C. Approach (30 Points)

- Outline a plan of action pertaining to the scope of the project and detail how the proposed work will be accomplished. Cite factors which might accelerate or decelerate the work and the reasons for taking the approach proposed.
- Provide a description of the proposed project, including the activities for accomplishing intervention, prevention, education, client involvement, treatment referral, outreach efforts, and coordination with other agencies.
- Describe any unusual features of the project, such as design or technological innovations (section 3515(a)(2)), reductions in cost or time, or extraordinary social and community involvements (e.g., how project will be maintained after termination of Federal support).
- Describe the relationship between this project and other work planned, anticipated, underway with Federal assistance, or accomplished. Projects are encouraged to replicate existing programs and strategies. Those that are not should explain why or how they plan to incorporate successful strategies into their projects.
- Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. Provide quantitative projections of the accomplishments to be achieved, if possible.

D. Staff Background and Experience (20 Points)

- Present a biographical sketch of the proposed program director with the following information: name, address, telephone number, background, and other qualifying experience for the project.
- List the name, training and background for other proposed key personnel.
- List each organization, cooperator, consultant, or other key individuals who will work on the project (including the lead agency) along with a short description of the nature of their effort or contribution. In the case of an application submitted by more than one agency, describe the lead agency's role and method for coordinating activities; and role and responsibility of each member agency. Letters of commmitment that show evidence of a joint planning and implementation role in the project must be included. Letters of commitment from appropriate service delivery agencies and community and political organizations that express potential involvement may also be attached.
- Provide a brief description of the applicant's organizational experience in providing services to runaway and homeless youth (section 3511(b)).

E. Budget Appropriateness: (15 Points)

Section 3515(a)(1) of the Act requires that Federal officials give consideration to the relative cost and effectiveness of the proposed project or activity in carrying out the purposes for which the requested grant is authorized to be made. Therefore, applicants should demonstrate that the project's costs (line item costs, costs for different services) are reasonable in view of the anticipated results and benefits. (Applicants should refer to the budget information presented in Standard Forms (SF) 424 and 424A and to the Instructions for the SF–424A which follows these forms and relate this information to the results or benefits expected (Criterion B). Applicants should also indicate non-Federal sources of support.

Part IV: Application Process

A. Availability of Forms

All of the forms and instructions needed for submitting an application for Federal assistance under this announcement are included in appendix I. Single sided copies of these forms should be reproduced and used to prepare the application package.

A complete application consists of:

1. Standard Form 424: Application for Federal Assistance;
2. Standard Form 424A: Budget Information;
3. Assurances—The assurances in (3) (a), (b) and (c) must be signed and returned.
   (a) Standard Form 424B: Non-Construction Programs;
   (b) Certification Regarding Lobbying;
   (c) The Anti-Drug Abuse Act of 1988 Certification;
   (d) Debarment Certification; and
   (e) Drug-Free Workplace Certification.
4. Program Narrative: A narrative description of the project, organized under the headings which address the requirements identified in part II and the five evaluation criteria identified in part III.

(A) Objectives and Need for Assistance; (B) Results or Benefits Expected; (C) Approach; (D) Staff Background and Experience; and (E) Budget Appropriateness.

The program narrative must be typed, double-spaced, on 8½ x 11 inch bond paper. All pages of the narrative (including charts, tables, and maps) must be sequentially numbered, beginning with the "Objective and Need for Assistance" section as page number one. The program narrative must not exceed 30 double-spaced pages.

5. Project Abstract: A brief (approximately 100 words) description of the project, typed on 8½ x 11 inch bond paper.
6. Appendices/Attachments: Letters of support, exhibits, and other supporting documents must not exceed 15 pages.

B. Application Submission

Each application must be signed by an official authorized to act on behalf of the applicant agency, organization, institution, or other entity and to assume responsibility for the obligations imposed by the terms and conditions of any grant awarded.

Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package.

One signed original and two copies of the application, including all attachments, are required.

Completed applications must be sent to: Drug Abuse Prevention Program for Runaway and Homeless Youth, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, room 341–F.2, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Attention: Ruthelle O. Stafford. Hand-delivered applications will be accepted at the ACF agency during the normal working hours of 8:30 a.m. to 5 p.m., Monday through Friday, except holidays.

C. Closing Date for the Submission of Applications

The closing date for receipt of applications under this announcement is March 23, 1992.

1. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the address specified in the application submission section of this announcement; or

b. Sent on or before the deadline date and received in time for the independent review under Chapter 1–62 of the HHS Grants Administration Manual. Applicants are cautioned to request a legibly dated U.S. Postal Service

postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in the above paragraphs are considered late applications. The granting agency will notify each late applicant that its application will not be considered in the current competition.

3. Extension of Deadline

The Administration on Children, Youth and Families may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is widespread disruption of the mail. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

D. Assistant to Prospective Grantees

Potential grantees can receive informational assistance in developing applications from the appropriate ACYF Regional Youth Contacts listed in appendix IV, or from the Family and Youth Services Bureau in Washington, DC (see address at the beginning of this announcement).

E. Application Consideration

Each application will be reviewed and scored against the criteria outlined in part III of this announcement. The review will be conducted in Washington, DC. Reviewers will be persons knowledgeable about issues relating to runaway and homeless youth and illicit drug use.

The results of the competitive review will be analyzed by Federal staff and will be the primary factor taken into consideration by the Associate Commissioner, Family and Youth Services Bureau, who, in consultation with ACF Regional officials, will recommend to the Commissioner of ACYF programs to be funded. The Commissioner of ACYF will make the final selections. Applications may be funded in whole or in part. Consideration may also be given to ensuring that a variety of geographic areas are served, that projects with different auspices are selected, and that a variety of project designs and models are represented. As required by section 3511(b) of the Act, priority will be given to applicants that have experience in providing services to runaway and homeless youth.

Successful applicants will be notified through the issuance of a Financial Assistance Award. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the grant, the total project period, the budget period, and the amount of the non-Federal matching share.

Organizations whose applications have been disapproved will be notified in writing by the Commissioner of the Administration on Children, Youth and Families.

F. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements and regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved by OMB.

G. Executive Order 12372—Notification Process

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Pennsylvania, Virginia, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). (See attached list of the Single Points of Contact for each State and Territory included in appendix V of this announcement.) Applicants from these ten areas need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

Other applicants should contact their SPOC as soon as possible to alert them to the perspective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF–424, Block 16a. The Administration on Children and Families will notify the State of any applicant who fails to indicate SPOC contact (when required) on the application form.

SPOCs have 60 days from the grant application deadline date to comment on applications for financial assistance under this program. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Drug Abuse Prevention Program for Runaway and Homeless Youth, Department of Health and Human Services, Administration for Children and Families, Grants and Contracts Management, room 345–F.2, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Catalogue of Federal Domestic Assistance Program Number 93.657, Drug Abuse Education and Prevention Program for Runaway and Homeless Youth)

Dated: January 5, 1992.

Wade F. Horn,

Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4130-01-M

APPENDIX I

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State — H Independent School Dist
B County — I State Controlled Institution of Higher Learning
C Municipal — J Private University
D Township — K Indian Tribe
E Interstate — L Individual
F Intermunicipal — M Profit Organization
G Special District — N Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States etc.):

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF

a Applicant	b Project

15. ESTIMATED FUNDING:

a Federal	$	.00
b Applicant	$	.00
c State	$	.00
d Local	$	.00
e Other	$	.00
f Program Income	$	.00
g TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a Typed Name of Authorized Representative	b Title	c Telephone number
d Signature of Authorized Representative		e Date Signed

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Standard Form 424 REV 4-88
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Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   —"New" means a new assistance award.
   —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions For The SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agenices should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or

supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348–0040

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*).

14. Will comply with Pub. L. 93–348

regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 *et seq.*) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agenMember of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Organization

Authorized Signature Title Date

Note: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW., Washington, DC 20201–0001.

Assurances Required by Section 3514 of the Anti-Drug Abuse Act of 1988

The grantee certifies that, as a condition of the grant, the agency, organization, or individual will meet the following statutory requirements:

(1) Provide that such project or activity shall be administered by or under the supervision of the applicant;

(2) Provide for the proper and efficient administration of such project or activity;

(3) Provide that regular reports on such project or activity shall be submitted to the Administration for Children and Families; and

(4) Provide such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program.

Signature of Authorized Certifying Official
Title

Applicant Organization

Date Submitted

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when HHS determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and,

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Program Narrative Statement

A. *New Applications*

1. *Objectives and need for assistance.* Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

2. *Results or Benefits Expected.* Identify results and benefits to be derived. The anticipated contribution to policy, practice, theory and/or research should be indicated.

3. *Approach.* Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each project. Cite factors which might accelerate or decelerate the work and your reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key

individuals who will work on the project along with a short description of the nature of their effort or contribution.

4. *Geographic Location.* Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

5. If applicable, provide the following information: for research and demonstration assistance requests, present a biographical sketch of the program director with the following information: Name, address, telephone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project. Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance.

B. *Supplemental Applications*

Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify. For other requests for changes, or amendments, explain the reason for the change(s). If the total budget has been exceeded or if the individual budget items have changed more than the prescribed limits, explain and justify the change and its effect on the project.

C. *Continuation Applications*

Continuation applications need only provide information explaining significant changes to the original Program Narrative Statement and a description of accomplishments from the prior budget period.

Appendix II—Section 340 Health Care for the Homeless Public Health Service Grantees

Region I

Charter Oak Terrace/Rice, Heights Health Center, 81 Overlook Terrace, Hartford, CT 06106, Alfreda Turner, (203) 236–1638/236–0857.
Portland Public Health Division, 389 Congress Street, Room #307, Cumberland County, Portland, ME 04101, Meredith L. Tipton, (207) 774–4581.
Hill Health Center, 428 Columbus Avenue, New Haven, CT 06519, Mr. Cornell Scott, (203) 776–9594 Ext. 293.
Southwest Community Health Center, 361 Bird Street, Bridgeport, CT 06605, Ms. Janet Stern, (203) 576–8368.
Windham Area Community Action Program, Inc., 231 Broad Street, Danielson, CT 06239, Kerrie J. Clark, (203) 774–0400.
Boston Health Care for Homeless Project, 723 Massachusetts Avenue, Boston, MA 02118, Dr. James O'Connell, (617) 534–4623.
Franklin County Dial/Self, 196 Federal Street, Greenville, MA 01301, Melanie Goodman, (413) 774–7054.
New England Consortium for Families and Youth, 14 Beacon Street, Suite 706, Boston, MA 02106, Nancy Jackson, (617) 742–8555.
Springfield Health Services for the Homeless, 1414 State Street, Springfield, MA 01109, John Cipolla, (413) 787–6755.
Worcester Area Community, Mental Health Center, Inc., POB 229, Greendale Station, Worcester, MA 01606, David Higgins, (508) 756–4354.
City of Manchester Public Health Department, 795 Elm Street, Suite 302, Manchester, NH 03101, Fred Rusczek, (603) 624–6466.
Travelers Aid Society, 177 Union Street, Providence, RI 02903, Marion F. Avarista, (401) 521–2255.
Community Health Center of Burlington, 279 North Winooski Avenue, Burlington, VT 05401, Marilyn McKenzie, (802) 862–9011.

Region II

William F. Ryan Community Health Center, 110 West 97th Street, New York, NY 10025, Julio Bellber, (212) 645–2500.
United Hospital Fund, 55 Fifth Avenue, New York, NY 10003, Bruce Vladeck, (212) 645–2500.
Bowery Residents Committee Human Services, Corp., 191 Chrystie Street, New York, NY 10002, Joyce Wolbarst, (212) 533–5700.
Westchester Health Network Neighborhood Health Association of Mt. Vernon, Inc., 280 Dobbs Ferry Road, White Plains, NY 10607, Georganne Chapin, (914) 949–3080.
Newark Homeless Health Care Project, DHHS, 15 Roseville Avenue, Newark, NJ 07107, Bobbi N. Ruffin, (201) 733–5705.
Under 21—Covenant House, 460 West 41st Street, New York, NY 10036, Joseph Borgo, (212) 330–0505.
St. Vincent's Hospital Dept. of Community Medicine, 153 West 11th Street, New York, NY 10011, Dr. Phillip Brickner, (212) 790–2706.
NY Childrens Health Project, 317 East 64th Street, New York, NY 10021, Dr. Irwin E. Redlener, (212) 535–9779.
Jersey City Family Health Center Medical and Social Svcs for the Homeless, 114 Clifton Place, Murdock Hall, Second Floor, Jersey City, NJ 07304, Carol Lightsey, (201) 915–2528.
San Juan Dept. of Health, San Juan Health Dept., Calle Cerra 900, PDA 15, Santurce, PR 00907, Pedro A. Borras, M.D., (809) 721–3207.
Henry J. Austin Health Center, Health Care for the Homeless, 321 N. Warren Street, Trenton, NJ 08618, Derek Beckford, (609) 695–7122.

Region III

Health Care for the Homeless Project, Inc., 1511 K Street, N.W., Suite 500, Washington, DC 20005, Melvin Wilson, (202) 628–5660.
Health Care for the Homeless, 232 North Liberty Street, Baltimore, MD 21201, Jackie Gaines, (301) 837–5533.
Primary Health Care Services of NW Pennsylvania, 1720 Holland Street, Erie, PA 16503, Darlene Collins, (814) 453–5744.
Philadelphia Health Mgmt. Corporation, 260 South Broad Street, 20th Floor, Philadelphia, PA 19102, Richard Cohen, Ph.D, (215) 985–2553.
Primary Care Health Services, Alma Illery Medical Center, 7227 Hamilton Avenue, Pittsburgh, PA 15206, Wilford A. Payne, (412) 244–4700.
Rural Health Corporation of Northeastern Pennsylvania, 116 South Main Street, Wilkes-Barre, PA 18701, Stanford Weiss, (717) 825–8741.
The Daily Planet, 302 West Canal Street, Richmond, VA 23220, Sheila Crowley, (804) 783–0678.
Peninsula Institute for Community Health, Health Care for Homeless, 707 Howmet Drive, Suite C, Hampton, VA 23661, Edwina S. Davis, (804) 825–0465.
Valley Health Systems, Inc., 401 Tenth Street, Suite 410, Huntington, WV 25701, Steve Shattla, M.D., (304) 525–3334.

Region IV

Atlanta Community Health Program for the Homeless, Georgia Hill Street Neighborhood Facility, 250 Georgia Avenue, S.E., Suite 202, Atlanta, GA 30312, Lorine Spencer, (404) 522–5659.
Birmingham Health Care for the Homeless Coalition, Inc., P.O. Box 11523, Birmingham, AL 35202, Karen J. McGee, (202) 252–9624.
Charleston Interfaith Crisis Ministry, 573 Meeting Street, Charleston, SC 29403, Floy Work-Deaton, (803) 723–9477.
Chattanooga Hamilton County Health Department, 921 East Third Street, Chattanooga, TN 37403, Howard Roddy, (615) 265–5706.

Pinellas County Department of Social Services, Mobile Medical Team, 647 First Avenue North, St. Petersburg, FL 33701, Evelyn Rust, (813) 892–7577.
Lincoln Community Health Center, Inc., 1301 Fayetteville Street, Durham, NC 27707, Evelyn Schmidt, M.D., (919) 688–9078.
Midlands Primary Health Care Center, Inc., P.O. Box 248, Eastover, SC 29044, John Patrick, (803) 353–8741.
Broward County Board of County Commissioners, Health Care for the Homeless, 115 South Andrews Drive, Room 428, Ft. Lauderdale, FL 33021, Henry Thompson, (305) 581–4888.
Jackson-Hinds Comprehensive Health Department, P.O. Box 3437, Jackson, MS 39207, Aaron Shirley, M.D., (602) 364–5116.
Lexington-Fayette County Health Department, 650 Newton Pike, Lexington, KY 40508, Dr. John Poundstone, (606) 252–2371.
Seven Counties Services, Inc., 101 W. Muhammad Ali Blvd., Louisville, KY 40201, Howard Bracco, Ph.D., (502) 589–8928.
Memphis Health Center, Inc., Memphis Health Care for the Homeless, 360 E. H. Crump Blvd., Memphis, TN 38126, Phillip L. Williams, (901) 775–2000.
Camillus Health Concern, 311 Northeast First Avenue, Miami, FL 33103, Marland Bluhm, (305) 577–4840.
Metropolitan Health Dept., 311 23rd Avenue North, Nashville, TN 37203, Dr. Fredia Wadley, (615) 259–5500.
Wake Health Services, Inc., P.O. Box 95104, Raleigh, NC 27625, Malvise Scott, (919) 790–2270.
Tampa Community Health Center, Inc., Sine Domus Health Center, P.O. Box 5299, Tampa, FL 33675, Norbert Heib, Jr., (813) 248–6283.

Region V

Travelers and Immigrants Aid, Health Care for the Homeless Program, 327 South La Salle, Chicago, Illinois 60657, Sid Mohn, (312) 281–4288.
Crusaders Central Clinic Association, 120 Tay Street, Rockford, IL 61102, John Frana, (815) 968–7613.
Indiana Health Centers, Inc., 21 North Pennsylvania, 4th Floor, Indianapolis, IN 46204, Lynn Clothier, (219) 234–9033.
East Side Promise, Inc. People's Health Center, 2340 East 10th Street, Indianapolis, IN 46201, Dave Robinson, (317) 633–7360.
Visiting Nurse Services of Southern Michigan, 311 East Michigan Avenue, Suite 200, Battle Creek, MI 49017, Sally Whitten, (619) 962–0303.
Ingham County Health Department, P.O. Box 30161, Lansing, MI 48909, Bruce B. Bragg, (517) 887–4311.
St. Mary's Health Services, 200 Jefferson, S.E., Grand Rapids, MI 49503, William A. Himmelsback, Jr., (616) 774–6162.
Family Health Center, Inc., 17 West Paterson Street, Kalamazoo, MI 49007, Grace M. Lockett, (616) 349–2641.
Detroit Health Care for the Homeless, 3611 Cass Avenue, Detroit, MI 48201, Cynthia Reynolds-Caine, (313) 832–2450.
Downriver Community Services, P.O. Box 306, 329 Columbia Street, Algonac, MI 48001, Alice M. Johnson, (313) 794–4982 Ext. 14.
Hamilton Family Health Center, 4001 North Saginaw Street, Flint, MI 48505, Gerald E. Matthews, Ph.D., (313) 789–9141.
Hennepin County Homeless Assistance Project, Health Services Bldg., Level 3, 525 Portland Avenue, South, Minneapolis, MN 55415, Allain Hankey, (612) 348–5553.
West Side Community Health Center, 153 Concord Street, St. Paul, MN 55107, Jane Berg, (612) 222–1816.
ECCO Family Health Center, Health Care for the Homeless Project, 1166 East Main Street, Columbus, OH 43205, Jewel Barron, (614) 253–0861.
Cordelia Martin Health Center, 905 Nebraska Avenue, Toledo, OH 43607, Paula W. Stewart, (419) 255–7883.
Cincinnati Health Network, 400 Oak Street, Suite 225, Cincinnati, OH 45219, Randall Garland, (513) 961–0600.
Federation for Community Planning, Cleveland Health Care for the Homeless, The Rockefeller Building, Suite 300, 614 Superior Building, Cleveland, OH 44113, Dr. Ralph Brody, (216) 781–2944.
Coalition for Community Health Center, 2770 North 5th Street, Milwaukee, WI 53212, Mark Rosnow, (414) 226–8883.

Region VI

New Orleans Health Department, Health Care for the Homeless Clinic, 914 Union Street, New Orleans, LA 70112, Brobson Lutz, M.D., (504) 528–3750.
Albuquerque Health Care for the Homeless, P.O. Box 25141, Albuquerque, NM 87125, Marsha McMurrary-Avila, (503) 247–3361.
Youth Shelters and Family Services, P.O. Box 8135, Santa Fe, NM 87504, Ann Begin, (505) 473–0240.
National Resource Center for Youth Services, 202 W. 8th, Tulsa, OK 74119, James M. Walker, (918) 585–2986.
Community Health Center, Inc., Healing Hands Hlth Care Svcs., Mary Mahoney, 6291/2 West Main, Oklahoma City, OK 73102, Michael K. Fire, (405) 272–0476.
Morton Comprehensive Health, Services, Inc., 603 East Pine, Tulsa, OK 74106, Leona Young, (918) 587–2171.
South Plains Health Provider Organization, 824 Martin Road, Amarillo, TX 79107, Henry Hawley, (806) 374–7341.
City of Dallas, Dept. of Health and Human Services, 1500 Marilla 7/A/N, Dallas, TX 75201, Adela N. Gonzales, (214) 670–3968.
Harris County Hospital Dist., P.O Box 66769, Houston, TX 77266, Lois Moore, (713) 529–4624.
Guadalupe Economic Services Corporation, 1416 First Street, Lubbock, TX 79401, Richard Lopez, (806) 744–4416.
San Antonio Centro Del Barrio, 301 S. Frio, Suite 180, San Antonio, TX 78201–4414, Ronald Kemp, (319) 236–1332.

Region VII

Community Health Care, Inc., 428 Western Avenue, Davenport, IA 52801, William Rodgers, (319) 322–7899.
Polk County Health Services, Broadlawns Medical Center Homeless Outreach Program, 18th and Hickman Road, Des Moines, IA 50703, Lynn Ferrell, (515) 282–2599.
People's Community Health Clinic, Inc., 403 Sycamore, Suite 2, Waterloo, IA 50703, Ronald Kemp, (319) 236–1332.
Hunter Health Clinic, Inc., 2318 East Central, Wichita, KS 67214, Bert Steeves, (316) 262–3611.
Charles Drew Health Center, P.O. Box 111609, Omaha, NE 68111, Robert Patterson, (402) 453–1433.
Swope Parkway Health Center, 4900 Swope Parkway, Kansas City, MO 64130, E. Frank Ellis, (816) 923–5800.
Grace Hill Neighborhood Health Center, 2500 Hadley Street, St. Louis, MO 63106, Richard Gram, (314) 241–2200.

Region VIII

Volunteers of America, 1865 Larimer Street, Denver, CO 80202, Linda Sinton, (303) 297–0408.
Colorado Coalition for the Homeless, Stout Street Clinic, 2100 Broadway, Denver, CO 80205, John Parvensky, (303) 293–2220.
Community Health Center of Colorado Springs, 2828 International Circle, Colorado Springs, CO 80910, Karen Marczynski, (719) 632–3700.
Blackfeet Tribe, Blackfeet Child Abuse Prevention, White Buffalo Home, P.O. Box 1210, Browning, MT 59417, Violet Butterfly, (406) 338–2243.

Health Care for the Homeless, 30 Main Street, Rapid City, SD 57701, Nancy Glassgow, (605) 394–2230.
Fargo-Moorhead Health Care for the Homeless Project, 401 Third Avenue North, Fargo, ND 58102–4839, Sherlyn Dahl, R.N., (701) 241–1360.
Salt Lake Community Health Centers, Inc., 2300 West 1700 South, Salt Lake City, Utah 84104, Susan Reed, (801) 359–7917.

Region IX

El Rio Santa Cruz Neighborhood Hlth Ctr, P.O. Box 1271, Tucson, AZ 85701, Robert Gomez, (602) 792–9890.
Maricopa County Department of Health Services, 806 West Madison, Phoenix, AZ 85006, Adolfo Echeveste, (602) 258–2122.
The Family Health Foundation of Alviso, Inc., 1621 Gold Street, Alviso, CA 95002, Rick Ugarte, (408) 262–7944.
Clinical Sierra Vista, Inc., P.O. Box 457, Lamont, CA 93241, Stephen Schilling, (805) 845–3731.
Logan Heights Family Health Center, 1809 National Avenue, San Diego, CA 92113, Fran Bulter-Cohen, (619) 234–0360.
Merced Family Health Centers, Inc., P.O. Box 858, Merced, CA 95341, Michael Sullivan, (209) 383–1848.
San Francisco Community, Clinic Consortium, 1520 Stockton Street, San Francisco, CA 94133, Kimberly Kent-Wyard, (818) 898–0531.
Nipomo Community Medical Center, Inc., P.O. Box 430, 150 Tegas Place, Nipomo, CA 93444, Ronald Castle, (805) 929–3211.
West Contra Cost Community Health Care Corporation, Martin Luther King, Jr., Family Health Center, 101 Broadway Street, Richmond, CA 94804, Wilbur Kelly, (415) 233–3994.
Waianae Coast District Comprehensive Health and Hospital Board, Inc., 86–260 Farrington Highway, Waianae, HI 96792, Michael Tweedell, (808) 696–7081.
Sacramento County Hlth Dept., 3701 Branch Center Road, Sacramento, CA 95827, Sonia Parker, (916) 366–2171.
Santa Cruz County Health Services Agency, Homeless Persons Health Project, 739 River Street, Santa Cruz, CA 95060, Elizabeth McCarty, (408) 425–3480.
Alameda County Health Care Services Agency, Alameda County Health Care for the Homeless Program, 1900 Fruitvale Avenue, Suite 3–E, Oakland, CA 94601, Barbara Cowan, MPH, (415) 532–1930.
Santa Barbara County Health Care Services, 300 San Antonio Road, Room M331, Santa Barbara, CA 93110, Lawrence Hart, M.D., (805) 681–5145.
San Mateo County Department of Health Services, Alcohol and Drug Program, 225 West 37th Avenue, San Mateo, CA 94403, Carolina Jane, (415) 573–3703.

Region X

Terry Reilly Health Services, 211 16th Avenue North, Nampa, ID 83687–4058, Erwin Teuber, (208) 467–4431.
White Bird Clinic, 341 East Twelfth Street, Eugene, OR 97401, Robert Dritz, (503) 342–8255.
Sea Mar Community Health Community, 8720 Fourteenth Avenue, South, Seattle, WA 98108, Rogelio Riojas, (206) 428–4075.
Multnomah County Health Division, 426 SW Stark, Portland, OR 97204, Billie Odegaard, (206) 627–8588.
Central Seattle Community Health Centers, 105 Fourteenth Avenue, Suite 2–C, Seattle, WA 98122, William Hobson, (206) 461–6910.
Northwest Human Services, 681 Center Street, N.E., Salem, OR 97301, Karen Hill, (503) 588–5828.

Appendix III—Fiscal Year 1990 Runwaway and Homeless Youth Drug Abuse Prevention Grantees Who Are Ineligible to Apply Under This Announcement

Region I

Child and Family Services, 99 Hanover Street, Manchester, NH 03101.
Stopover Shelters, 3380 East Main Road, Portsmouth, RI 02871.
Wayside Community Programs, 4 Thurber Street, Framingham, MA 01701.
Massachusetts Committee for Children and Youth, Coalition of Adolescent Emergency Services, 14 Beacon Street, Suite 706, Boston, MA 02108.
University of Southern Maine, Edmund S. Muskie Institute, 96 Falmouth Street, Portland, ME 04103.
Vermont Coalition of Runaway Youth, P.O. Box 627, Montpelier, VT 05601.

Region II

Together, 7 State Street, Glassboro, NJ 08028.
Somerset Youth Shelter, 49 Brahma Avenue, Bridgewater, NJ 08807.
Ocean's Harbor House, 2445 Windsor Avenue, Toms River, NJ 08754.
Crossroads, P.O. Box 321, Lumberton, NJ 08048.
Pinelands Regional High School, School Based Youth Services, Nugentown Road, P.O. Box 248, Tuckerton, NJ 08087.
Society for Seamen's Children, 28 Bay Street, Staten Island, NY 10301.
Project Equinox, 214 Lark Street, Albany, NY 12210.
Covenant House (Under 21), 460 West 41st Street, New York, NY 10036.
The Salvation Army, 749 S. Warren Street, Syracuse, NY 13202.
Urban Strategies, Inc., 1542 East New York Avenue, Brooklyn, NY 11212.
Metropolitan Association Corporation, 2 Lafayette Street, 3rd Floor, New York, NY 10007.
Tri County Youth Services, 435 Main Street, Paterson, NJ 07501.
Sendero De La Cruz Counseling Center, 114 Eleanor Roosevelt Avenue, Hato Rey, PR 00918.
YWCA Centro de Servicios a La Juventud, Box 9368 Cotto Station, Arecibo, PR 00613.

Region III

National Association of Social Workers, 7981 Eastern Avenue, Silver Spring, MD 20910.
University of Pittsburgh, Office of Child Development, 3939 O'Hara Street, Pittsburgh, PA 15260.
Mid-Atlantic Network of Youth and Family Services, 1168 Prince Andrew Court, Pittsburgh, PA 15237.
Volunteer Emergency Foster Care, 2317 Westwood Avenue, Suite 109, Richmond, VA 23230.
Department for Children, 805 E. Broad Street, 11th Flr., Richmond, VA 23219.
Alternatives, Inc., 1520 Aberdeen Road, Suite 102, Hampton, VA 23666.
Latin American Youth Center, 3045 15th Street, NW, Washington, D.C. 20009.

Region IV

Youth Crisis Center, Inc., 3015 Parental Home Road, Jacksonville, FL 32216.
Tri-County Protective Agency, P.O. Box 1937, Hinesville, GA 31313.
Emory University, Emory University, Atlanta, GA 30322.
Mountain Youth Resources, P.O. Box 2847, Cullowhee, NC 28723.
South Carolina Department of Youth Services (Crossroads), 1122 Lady Street, Columbia, SC 29202.
MS. Childrens Home and Family Service Assn. P.O. Box 1078, 1801 NW Street, Jackson, MS 39205.

Region V

Omni Youth Services, 22 East Dundee Road, Wheeling, IL 60090.
The Sanctuary, 1232 South Washington, Royal Oak, MI 48067.
Juvenile Diversion Program, 301 Francis Street, Jackson, MI 49201.
Boysville of Michigan, 8744 Clinton-Macon Road, Clinton, MI 49236.
New Life Youth Services, 6128 Madison Road, Cincinnati, OH 45227.
YWCA, 65 South Fourth Street, Columbus, OH 43215.

Upper Midwest American Indian Center, 1113 West Broadway, Minneapolis, MN 55411.
Institute for Adolescent Development, P.O. Box 175, Batavia, OH 45103.
Ohio Youth Services Network, 50 W. Broad St., Suite 705, Columbus, OH 43215.
Kenosha Youth Development Service, 5407 8th Avenue, Kenosha, WI 53140.

Region VI

Cherokee Nation of Oklahoma, P.O. Box 948, Tahlequah, Oklahoma 74465.
Youth and Family Services of Canadian County, 2404 Sunset Drive, El Reno, OK 73036.
Youth and Family Services of North Oklahoma, 2925 North Midway, Enid, OK 73701.
Youth Services of Oklahoma County, 2915 N. Lincoln, Oklahoma City, OK 73105.
New Day, 1817 Sigma Chi N.E., Albuquerque, NM 87106.
The Bridge Association, 115 West Broadway, Fort Worth, TX 76104.
San Antonio Cares, 1411 N. Main, San Antonio, TX 78212.

Region VII

Youth Homes, Inc., P.O. Box 324, Iowa City, IA 52244.
Youth in Need, 529 Jefferson, St. Charles, MO 63301.

Region VIII

Yellowstone County Tumbleweed Runaway Program, Inc., P.O. Box 35000, 217 N. 27th Street, Billings, MT 59107.
Mountains Plains Youth Services, 311 North Washington Street, Bismarck, ND 58501.
Standing Rock Sioux Tribe, P.O. Box "D", Fort Yates, ND 58538.
Threshold, 514 S. Minnesota, Sioux Falls, SD 57103.
IHRD Proyecto La Familia, 431 South 300 East #100, Salt Lake City, UT 84111.

Region IX

Center for Youth Resources, 915 N. Fifth Street, Phoenix, AZ 85004.
The Navajo Nation, P.O. Box 1599, Window Rock, AZ 86515.
San Diego Youth Community, 3878 Old Town Avenue, Suite 200B, San Diego, CA 92110.
Youth Advocates, Inc., 285 12th Avenue, San Francisco, CA 94118.
United Cambodian Community, Inc., 2110 East 1st Street, #103, Santa Ana, CA 92705.
Santa Clara Social Advocates, 509 View Street, Mountain View, CA 94041.
Angel's Flight Catholic Charities, 1400 W. 9th Street, P.O. Box 15095, Los Angeles, CA 90015.
Klein Bottle, 401 N. Milpas, Santa Barbara, CA 93103.
Orange County Youth and Family Services, 2050 W. Chapman Avenue, Orange, CA 92668.
Community Service Programs, 17200 Jamboree, Suite D, Irvine, CA 92714.
Los Angeles Free Clinic, 8405 Beverly Boulevard, Los Angeles, CA 90048.

Region X

Alaska Youth and Parent Foundation, 3745 Community Park Loop, Anchorage, AK 99508.
Fairbanks Native Association, 310 First Avenue, Fairbanks, AK 99701.
Nez Perce Tribe, P.O. Box 305, Lapwai, ID 83540.

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Region II: Estelle Haferling, Administration for Children and Families, 26 Federal Plaza, Room 4149, New York, NY 10278, (NJ, NY, ME, PR, VI), (212) 264–2974
Region III: David Lett, Administration for Children and Families, 3535 Market Street, Post Office Box 13714, Philadelphia, PA 19101, (DC, DE, MD, PA, VA, WV), (215) 596–1224
Region IV: Viola Brown, Administration for Children and Families, 101 Marietta Towers, Suite 903, Atlanta, GA 30323 (AL, FL, GA, KY, MS, NC, SC, TN), (404) 331–2128
Region V: William Sullivan, Administration for Children and Families, 105 West Adams, 21st Floor, Chicago, IL 60603 (IL, IN, MI, MN, OH, WI), (312) 353–4241
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Region VIII: Bob Rease, Administration for Children and Families, Federal Office Building, 1961 Stout Street, 9th Floor, Denver, CO 80294 (CO, MT, ND, SD, UT, WY), (303) 844–3106
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[FR Doc. 92–1378 Filed 1–17–92; 8:45 am]
BILLING CODE 4130–01–M

VOL
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federal register

Tuesday
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Part IV

The President

Proclamation 6400—Women's History Month, 1992

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The President

Proclamation 6400 of January 16, 1992

Women's History Month, 1992

By the President of the United States of America

A Proclamation

Women's History Month provides a wonderful opportunity to reflect on the myriad contributions and achievements of American women—from the millions of unsung heroines who have strengthened our Nation through their homes, families, and communities to the many celebrated women who have enjoyed more widespread recognition and fame. While this occasion helps to bring honor where it is due, we must nevertheless resist the notion that "women's history" is somehow separate from the rest of history. In fact, they are thoroughly entwined.

When our ancestors fought for this Nation's independence, when they pushed westward across the frontier, women played integral, if not then widely acclaimed, roles in the success of the great American experiment. They shared in the labors that produced thriving farms and towns across this great land, and they helped to nurture in their children the faith and the love of freedom that have long characterized the American dream.

Over the years, women have continued to share in the pioneer spirit, and this month we remember in a special way those who were early leaders in their respective fields. We gratefully recall women like Emma Hart Willard and Elizabeth Ann Seton, who helped to shape American education, as well as trailblazers like Elizabeth and Emily Blackwell, who were two of the first women in the United States to earn medical degrees. We also recount the achievements of women like Maria Mitchell, an astronomer, educator, and the first woman to be elected to the American Academy of Arts and Sciences, and Louise Bethune, who in 1886 became the first woman elected to the American Institute of Architects. These noted women were just a few of the many who have helped to open doors of opportunity for others.

More than the collected stories of pioneers and their progeny, history also traces the development of principles and ideals—and the epic struggle for human freedom and progress. Thus, this month we also remember those women who have helped to uphold this Nation's promise of liberty and justice for all. Well over a century ago, women like Harriet Tubman, Harriet Beecher Stowe, and Sojourner Truth helped to wage the triumphant struggle against slavery. These heroines have been followed by other courageous women, such as Ida Wells-Barnett and Rosa Parks, who made further contributions to the fight for equality by calling public attention to the evils of bigotry and segregation.

Many women who opposed slavery and segregation in the United States were also early supporters of the women's suffrage movement, and vice versa. For example, we recall Lucretia Mott, a well-known abolitionist who also worked with Elizabeth Cady Stanton and Susan B. Anthony to secure for women the right to vote. These women and the countless others who joined their ranks shared a strong commitment to the ideals of equal opportunity and fairness, and their efforts helped to increase the participation of women not only in politics but also in virtually every field of endeavor.

Devotion to the ideals on which the United States is founded has inspired millions of women to engage in service to our country. As demonstrated last year by U.S. military operations in the Persian Gulf, we have come a long way since the days of Sarah Edwards, who disguised herself as a young man so she could help defend the Union during the Civil War. Today women not only play highly visible and important roles in America's Armed Forces but also hold positions of leadership and responsibility in government, business, education, science, and the arts.

Most important, women continue to strengthen and enrich this country by helping their children to recognize the value of learning, as well as the importance of self-respect, personal responsibility, and respect and concern for others. Indeed, our families and communities constitute the basic fabric of America, and the women who have strengthened these institutions merit as much recognition and thanks as the great historical figures whose achievements we celebrate this month.

The Congress, by Public Law 102–70, has designated March 1992 as "Women's History Month" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim March 1992 as Women's History Month. I invite all Americans to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of January, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 92-1624
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing these parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing these chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

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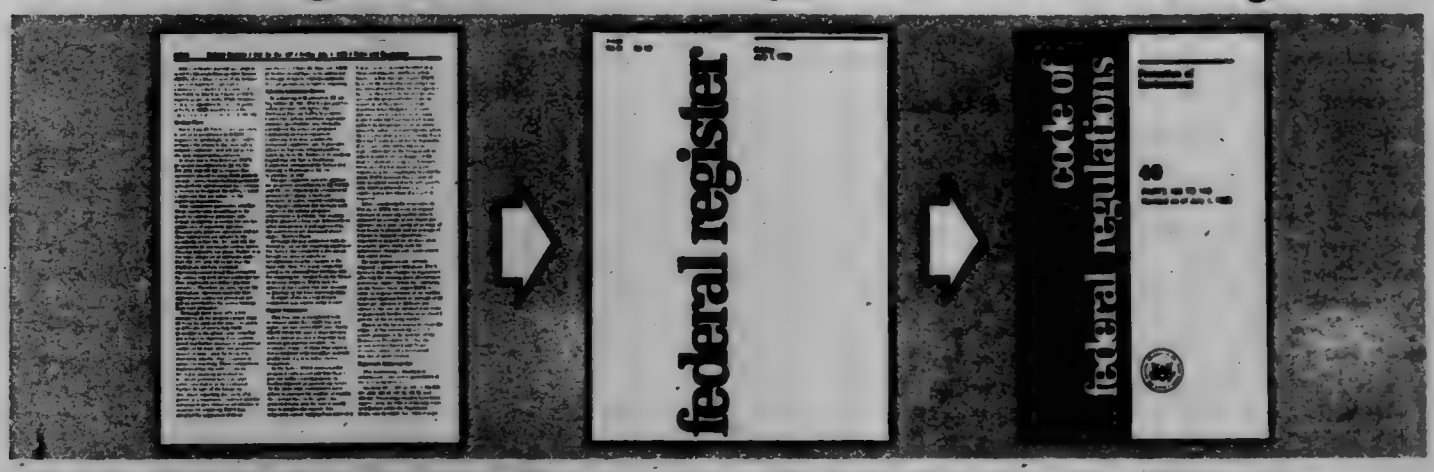

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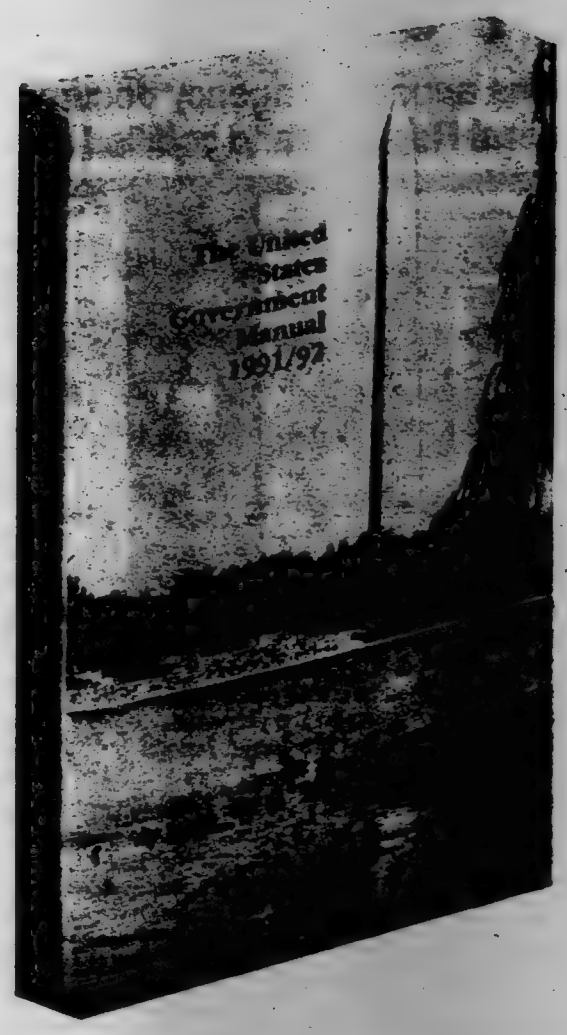

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federal register

Wednesday
January 22, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

VOL 57 ISS 14 JA 22 1992 UMI

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 31, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

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Rules and Regulations

Federal Register
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Wednesday, January 22, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531, 550, and 575

RIN 3206-AE23

Special Pay Adjustments for Law Enforcement Officers in Selected Cities

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on the special pay adjustments for law enforcement officers authorized by section 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA). The final regulations establish rules for applying these special pay adjustments to law enforcement officers under the General Schedule, the Senior Executive Service, or the Senior Level pay system in the following designated Consolidated or Metropolitan Statistical Areas (CMSA's or MSA's): Boston-Lawrence-Salem, MA–NH; Chicago-Gary-Lake County, IL–IN–WI; Los Angeles-Anaheim-Riverside, CA; New York-Northern New Jersey-Long Island, NY–NJ–CT; Philadelphia-Wilmington-Trenton, PA–NJ–DE–MD; San Francisco-Oakland-San Jose, CA; San Diego, CA; and Washington, DC–MD–VA.

EFFECTIVE DATES: These regulations are effective on the first day of the first pay period beginning on or after January 1, 1992, except 5 CFR 550.101(b)(9), which is effective on January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Belva MacDonald, (202) 606–2858 or (FTS) 266–2858.

SUPPLEMENTARY INFORMATION: On October 22, 1991, OPM published proposed regulations to implement section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509, November 5, 1990), which established special pay adjustments of 4, 8, or 16 percent of basic pay for a law enforcement officer whose official duty station is in one of eight designated areas (56 FR 54349). These adjustments will become effective on the first day of the first pay period beginning on or after January 1, 1992.

The 30-day comment period ended on November 21, 1991. Comments were received from three individuals, two Federal agencies, and one labor organization. These comments, as well as certain changes and clarifications of the proposed regulations, are summarized below.

Definition of Law Enforcement Officer

An agency commented that several employees have successfully appealed their retirement coverage and have retroactively received service credit as law enforcement officers for retirement purposes. The agency observed that in the future such a retroactive decision granting an employee in one of the designated areas law enforcement officer retirement coverage would mean that the employee's basic pay, premium pay, and employment benefits, such as retirement contributions and life insurance premiums, must be recalculated to reflect the special pay adjustment for law enforcement officers. OPM agrees. If employees retroactively are granted retirement system coverage, there is no basis for depriving such employees of their pay entitlements under the back pay law.

The definition of "law enforcement officer" used in these regulations is taken directly from title IV of FEPCA. OPM has no authority to modify this definition. However, it should be noted that the title IV provisions for law enforcement officers are intended as interim entitlements pending development of a separate pay and classification system for law enforcement officers. As required by FEPCA, OPM is conducting a study to develop a plan for such a system and is considering the use of definitional criteria other than those used in the retirement laws. In the meantime, agencies are bound by findings under the retirement laws.

Computation of Overtime Pay

A labor organization noted that the proposed regulations would revise 5 CFR 550.113(a) to incorporate special pay adjustments for law enforcement officers under section 404 into the computation of the GS–10, step 1, limitation on the hourly rate of overtime pay for an employee whose rate of basic pay does not exceed the minimum rate of pay for GS–10, but would not make a similar revision in 5 CFR 550.113(b) (concerning an employee whose rate of basic pay exceeds the minimum rate of pay for GS–10). On May 3, 1991, OPM amended § 550.113(b) to incorporate the rates of basic pay determined under § 550.113(a). (See 56 FR 20342.) Since the proposed regulations incorporated references to the special pay adjustments for law enforcement officers in § 550.113(a), modification of § 550.113(b) is unnecessary.

Limitations on Pay

An individual noted that the proposed regulations do not reflect statutory limitations on the total amount of basic pay plus special pay adjustments for law enforcement officers that may be paid. This individual pointed out that 5 U.S.C. 5304(g) limits the total of comparability payments under section 5304 of title 5, United States Code, plus basic pay, to a maximum of the rate for level IV (or, for certain employees, such as those in the Senior Executive Service, level III) of the Executive Schedule. Since the statute requires OPM, to the extent practicable, to administer special pay adjustments for law enforcement officers in the same manner as comparability payments, OPM is incorporating these limitations in the final regulations.

Definitions of "Rate of Basic Pay"

An individual noted that the proposed regulations excluded the special rates of pay under section 403 of FEPCA from the definitions of "rates of basic pay" for purposes of computing recruitment and relocation bonuses, retention allowances, and supervisory differentials. Since special rates of pay, whether established under 5 U.S.C. 5305 or section 403 of FEPCA, are the employee's rates of basic pay, they must be used to compute recruitment and relocation bonuses, retention allowances, and supervisory

differentials. References to special rates of pay for law enforcement officers established under section 403 of FEPCA as "additional pay" have been deleted from the appropriate sections of the final regulations.

FBI Demonstration Project

An individual questioned the reduction in the retention payment payable to an employee of the New York Field Division of the Federal Bureau of Investigation (FBI) under section 601(a)(2) of Public Law 100–453, as amended, by the full 16 percent special pay adjustment for law enforcement officers in the New York Consolidated Metropolitan Statistical Area (CMSA). The individual observed that under the interim regulations on interim geographic adjustments, the retention payment has already been reduced by the 8 percent interim geographic adjustment paid to all General Schedule employees, including employees of the New York Field Division of the FBI. (See 56 FR 773, January 9, 1991). OPM has clarified the regulations to avoid an implication that the retention payment will be reduced both by the 8 percent interim geographic adjustment and the 16 percent special pay adjustment for law enforcement officers.

Miscellaneous

An agency requested clarification of a statement in the Supplementary Information accompanying the proposed rule concerning rates of basic pay to be used for certain pay administration purposes. The agency observed that a special salary rate established under 5 U.S.C. 5305 may be used as an employee's highest previous rate under 5 CFR part 531 only in limited circumstances—i.e., in a reassignment within the agency where an appropriate official determines that the need for the employee's services will be greater in the position to which reassigned. The agency is correct. In circumstances other than the limited one described above, the highest previous rate is based on the law enforcement officer's scheduled rate of basic pay for the grade or pay level and step (or relative position in the rate range) and does not include any applicable special salary rate under section 403 of FEPCA.

Proposed changes in the interim regulations on the aggregate limitation on pay (5 CFR part 530, subpart B) are being made effective as part of a separate **Federal Register** notice. Also, the final regulations clarify the definition of "scheduled annual rate of pay" in 5 CFR 531.101 and 531.301.

Finally, OPM is publishing regulations to implement section 411 of FEPCA. Section 411 amends section 5541(2)(iv) of title 5, United States Code, to permit payment, effective January 1, 1992, of premium pay for night work under section 5545(a) and for Sunday and holiday work under section 5546 to members of the United States Park Police and members of the United States Secret Service Uniformed Division. Therefore, OPM is making a technical and conforming change in the regulations that previously prevented members of the United States Park Police and members of the United States Secret Service Uniformed Division from receiving these types of premium pay under title 5, United States Code.

E.O. 12291, Federal Regulations

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal employees and agencies.

List of Subjects

5 CFR Parts 531 and 575

Government employees, Wages, Administrative practice and procedure.

5 CFR Part 550

Government employees, Wages Civil defense, Administrative practice and procedures.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending parts 531, 550, and 575 of Title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, 5338, and Chapter 54; E.O. 12748; subpart A issued under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462, and E.O. 12736; subpart B also issued under 5 U.S.C. 5303(g), 5333, 5402, and 7701(b)(2); subpart C also issued under section 404 of Public Law 101–509, 104 Stat. 1466, and E.O. 12748; subpart D also issued under 5 U.S.C. 7701(b)(2); subpart E also issued under 5 U.S.C. 5336.

2. In § 531.101, paragraph (a) of the definition of "scheduled annual rate of pay" is revised to read as follows:

§ 531.101 Definitions.

* * * * *

Scheduled annual rate of pay means—

(a) The General Schedule rate of basic pay (or a nationwide or worldwide special salary rate under part 530 of this chapter or a special rate for law enforcement officers under section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), if applicable) for the employee's grade and step (or relative position in the rate range), exclusive of additional pay of any kind, such as premium pay.

* * * * *

3. In § 531.205, the section heading, paragraph (a) introductory text, and paragraph (b) are revised to read as follows:

§ 531.205 Pay schedule conversion rules at the time of an annual pay adjustment under 5 U.S.C. 5303.

(a) On the effective date of a pay adjustment under 5 U.S.C. 5303, the rate of basic pay of an employee subject to the General Schedule shall be initially adjusted, except as provided in paragraph (b) of this section, as follows:

* * * * *

(b) Rates of basic pay authorized under section 5305 of title 5, United States Code, paid to an employee subject to the General Schedule shall be adjusted by reason of a pay adjustment under 5 U.S.C. 5303 in accordance with § 530.307 of this part.

4. Subpart C is added to read as follows:

Subpart C—Special Pay Adjustments for Law Enforcement Officers

Sec.

531.301 Definitions.
531.302 Determining special law enforcement adjusted rates of pay.
531.303 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.
531.304 Administration of special law enforcement adjusted rates of pay.
531.305 Reports.
531.306 Effect of special pay adjustments for law enforcement officers on retention payments under FBI demonstration project.

Subpart C—Special Pay Adjustments for Law Enforcement Officers

§ 531.301 Definitions.

In this subpart:

Law enforcement officer means a law enforcement officer within the meaning of section 8331(20) or section 8401(17) of title 5, United States Code, with respect to whom the provisions of chapter 51 of such title apply, including members of the Senior Executive Service.

Official duty station means the duty station for a law enforcement officer's position of record as indicated on his or her most recent notification of personnel action.

Scheduled annual rate of pay means—

(a) The rate of basic pay for a law enforcement officer's grade or pay level and step (or relative position in the rate range), including special rates for law enforcement officers under section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), but not including special salary rates established under 5 U.S.C. 5305, or additional pay of any kind, such as premium pay;

(b) For a law enforcement officer covered by the Performance Management and Recognition System who is receiving a special salary rate under 5 U.S.C. 5305 or similar provision of law (other than section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509)), the rate of pay resulting from the following computation—

(1) Using the special salary rate schedule established under 5 U.S.C. 5305, subtract the dollar amount for step 1 of the law enforcement officer's grade from the dollar amount for the law enforcement officer's special salary rate; and

(2) Add the result of paragraph (b)(1) to the dollar amount for step 1 of the employee's grade on the General Schedule; or

(c) The retained rate of pay under Part 536 of this chapter or 5 CFR 359.705, where applicable, exclusive of additional pay of any kind.

Special law enforcement adjusted rate of pay means an employee's scheduled annual rate of pay multiplied by the factor listed in § 531.302(a) of this part for the special pay adjustment area in which the employee's official duty station is located, subject to the limitation described in § 531.302 (b) or (c) of this part, if applicable.

Special pay adjustment area means any of the following Consolidated Metropolitan Statistical Areas (CMSA's) or Metropolitan Statistical Areas (MSA's), as defined by the Office of Management and Budget (OMB):

(a) Boston-Lawrence-Salem, MA–NH;

(b) Chicago-Gary-Lake County, IL–IN–WI;

(c) Los Angeles-Anaheim-Riverside, CA;

(d) New York-Northern New Jersey-Long Island, NY–NJ–CT;

(e) Philadelphia-Wilmington-Trenton, PA–NJ–DE–MD;

(f) San Francisco-Oakland-San Jose, CA;

(g) San Diego, CA;

(h) Washington, DC–MD–VA.

§ 531.302 Determining special law enforcement adjusted rates of pay.

(a) To determine the special law enforcement adjusted rate of pay, the scheduled annual rate of pay for a law enforcement officer whose official duty station is in one of the special pay adjustment areas listed below shall be multiplied by the factor shown for that area:

Special pay adjustment area	Factor
Boston-Lawrence-Salem, MA–NH	1.16
Chicago-Gary-Lake County, IL–IN–WI	1.04
Los Angeles-Anaheim-Riverside, CA	1.16
New York-Northern New Jersey-Long Island, NY–NJ–CT	1.16
Philadelphia-Wilmington-Trenton, PA–NJ–DE–MD	1.04
San Francisco-Oakland-San Jose, CA	1.16
San Diego, CA	1.08
Washington, DC–MD–VA	1.04

(b) Except as provided in paragraph (c) of this section, the special law enforcement adjusted rate of pay may not exceed the rate of basic pay payable for level IV of the Executive Schedule.

(c) The special law enforcement adjusted rate of pay for an employee in a position described in 5 U.S.C. 5304(h)(1)(A)–(E), including members of the Senior Executive Service, may not exceed the rate of basic pay payable for level III of the Executive Schedule.

§ 531.303 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.

When it is necessary to convert the special law enforcement adjusted rate of pay to an hourly, daily, weekly, or biweekly rate, the following methods apply:

(a) To derive an hourly rate, divide the adjusted annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as a whole cent;

(b) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the employee's basic daily tour of duty;

(c) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

§ 531.304 Administration of special law enforcement adjusted rates of pay.

(a) A law enforcement officer shall receive the greater of—

(1) The special law enforcement adjusted rate of pay;

(2) The "adjusted annual rate of pay" under subpart A of this part (Interim Geographic Adjustments) for the employee's grade or pay level and step (or relative position in the rate range), if applicable; or

(3) Any applicable special salary rate established under 5 U.S.C. 5305 for the employee's grade and step (or relative position in the rate range).

(b) A special law enforcement adjusted rate of pay is considered basic pay for purposes of computing—

(1) Retirement deductions and benefits under parts 831, 841, 842, 843, and 844 of this chapter;

(2) Life insurance premiums and benefits under parts 870, 871, 872, and 873 of this chapter;

(3) Premium pay under subparts A and I of part 550 of this chapter (including the computation of limitations on premium pay under 5 U.S.C. 5547, overtime pay under 5 U.S.C. 5542(a), and compensatory time off under 5 U.S.C. 5543);

(4) Severance pay under subpart G of part 550 of this chapter; and

(5) Advances in pay under subpart B of part 550 of this chapter.

(c) When an employee's official duty station is changed form a location not in a special pay adjustment area to a location in a special pay adjustment area, payment of the special law enforcement adjusted rate of pay begins on the effective date of the change in official duty station.

(d) A special law enforcement adjusted rate of pay is paid only for those hours for which a law enforcement officer is in a pay status.

(e) A special law enforcement adjusted rate of pay shall be adjusted as of the effective date of any change in the applicable scheduled annual rate of pay.

(f) Except as provided in paragraph (g) of this section, entitlement to a special law enforcement adjusted rate of pay under this subpart terminates on the date—

(1) An employee's official duty station is no longer located in a special pay adjustment area;

(2) An employee moves to a position not covered by this subpart;

(3) An employee separates from Federal service;

(4) An employee's "adjusted annual rate of pay" under Subpart A of this part exceeds his or her special law enforcement adjusted rate of pay; or

(5) An employee's special salary rate under 5 U.S.C. 5305 exceeds his or her special law enforcement adjusted rate of pay.

(g) In the event of a change in the geographic area covered by a CMSA or MSA described in § 531.301 of this chapter, the effective date of a change in an employee's entitlement to a special law enforcement adjusted rate of pay under this subpart shall be the first day of the first pay period beginning on or

after the date on which a change in the definition of the CMSA or MSA is made effective.

(h) Payment of, or an increase in, a special law enforcement adjusted rate of pay is not an equivalent increase in pay within the meaning of 5 U.S.C. 5335.

(i) A special law enforcement adjusted rate of pay is included in an employee's "total remuneration," as defined in § 551.511(b) of this chapter, and "straight time rate of pay," as defined in § 551.512(b) of this chapter, for the purpose of computations under the Fair Labor Standards Act of 1938, as amended.

(j) Termination of a special law enforcement adjusted rate of pay under paragraph (f) of this section is not an adverse action for the purpose of subpart D of part 752 of this chapter.

§ 531.305 Reports.

The Office of Personnel Management may require agencies to report pertinent information concerning the administration of payments under this subpart.

§ 531.306 Effect of special pay adjustments for law enforcement officers on retention payments under FBI demonstration project.

As required by section 406 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), a retention payment payable to an employee of the New York Field Division of the Federal Bureau of Investigation under section 601(a)(2) of Public Law 100–453, as amended, shall be reduced by the amount of any special pay adjustment for law enforcement officers payable to that employee under this subpart. For the purpose of applying this section, the amount of the special pay adjustment for law enforcement officers shall be determined by subtracting the employee's scheduled annual rate of pay, plus the amount of any interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), as determined under § 531.105 of this part, from his or her special law enforcement adjusted rate of pay.

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

5. The authority citation for subpart A of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5548 and 6101(c); sec. 302, 404, and 411 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462, 1466, and 1469, respectively; E.O. 12748.

6. In § 550.101, paragraph (b)(9) is revised to read as follows:

§ 550.101 Coverage and exemptions.

* * * * *

(b) *Employees to whom this subpart does not apply.*

* * * * *

(9) A member of the United States Park Police or the United States Secret Service Uniformed Division, except for the purpose of night pay under §§ 550.121 and 550.122, pay for holiday work under §§ 550.131 and 550.132, and pay for Sunday work under §§ 550.171 and 550.172 of this subpart;

* * * * *

7. In § 550.103, paragraph (j) is revised to read as follows:

§ 550.103 Definitions.

* * * * *

(j) *Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee, including any applicable interim geographic adjustment or special pay adjustment for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively, or locality-based comparability payment under 5 U.S.C. 5304, before any deductions and exclusive of additional pay of any other kind.

* * * * *

8. In § 550.107, paragraph (a) is revised to read as follows:

§ 550.107 Special maximum earnings limitation for law enforcement officers.

* * * * *

(a) 150 percent of the minimum rate for GS–15, including a locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment or special law enforcement adjustment under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively, and any special salary rate established under 5 U.S.C. 5305, rounded to the nearest whole cent, counting one-half cent and over as a whole cent; or

* * * * *

9. In § 550.111, paragraph (d)(2) is revised to read as follows:

§ 550.111 Authorization of overtime pay.

* * * * *

(d) * * *

(2) Performed by an employee, when the employee's basic pay exceeds the minimum rate for GS–10 (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law) or when the employee is engaged in professional or technical, engineering or scientific activities. For purposes of this section and section 5542(a) of title 5, United States Code, an employee is engaged in professional or technical engineering or scientific activities when he or she is assigned to perform the duties of a professional or support technician position in the physical, mathematical, natural, medical, or social sciences or engineering or architecture.

* * * * *

10. In § 550.113, paragraph (a) is revised to read as follows:

§ 550.113 Computation of overtime pay.

(a) For each employee whose rate of basic pay does not exceed the minimum rate for GS–10 (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law), the overtime hourly rate is 1½ times his or her hourly rate of basic pay.

* * * * *

11. In § 550.114, paragraph (c) is revised to read as follows:

§ 550.114 Compensatory time off.

* * * * *

(c) The head of an agency may provide that an employee whose rate of basic pay exceeds the maximum rate for GS–10 (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law) shall be compensated for irregular or occasional overtime work with an equivalent amount of compensatory time off from the

employee's tour of duty instead of payment under § 550.113 of this part.

* * * * *

12. § 550.151 is revised to read as follows:

§ 550.151 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of other premium pay prescribed in this subpart (except premium pay for regular overtime work, and work at night, on Sundays, and on holidays), to an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. Premium pay under this section is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of the employee's rate of basic pay (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law).

13. In § 550.154, paragraph (a) introductory text is revised to read as follows:

§ 550.154 Rates of premium pay payable under § 550.151.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.151 to an employee who meets the requirements of that section, at one of the following percentages of the employee's rate of basic pay (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law):

* * * * *

Subpart B—Advances in Pay

14. The authority citation for Subpart B is revised to read as follows:

Authority: 5 U.S.C. 5524a; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748.

15. In § 550.202, the definition of "rate of basic pay" is revised to read as follows:

§ 550.202 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including annual premium pay for standby duty under 5 U.S.C. 5545(1); night differential for prevailing rate employees under 5 U.S.C. 5343(f); a special rate established under 5 U.S.C. 5305, § 532.231 of this subchapter, or other legal authority; and locality-based comparability payments under 5 U.S.C. 5304; or any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; but not including additional pay of any other kind.

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

16. The authority citation for part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; sec. 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1466; E.O. 12748.

17. In § 575.103, the definition of "rate of basic pay" is revised to read as follows:

§ 575.103 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is or will be newly appointed, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304; or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

* * * * *

18. In § 575.203, the definition of "rate of basic pay" is revised to read as follows:

§ 575.203 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304; or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

* * * * *

19. In § 575.303, the definition of "rate of basic pay" is revised to read as follows:

§ 575.303 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304; or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

20. In § 575.403, the definition of "rate of basic pay" is revised to read as follows:

§ 575.403 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304; or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

* * * * *

21. In § 575.405, paragraph (c)(2) is revised to read as follows:

§ 575.405 Calculation and payment of supervisory differentials.

* * * * *

(c) * * *

(2) A locality-based comparability payment under 5 U.S.C. 5304; or interim geographic adjustment or special pay adjustment for law enforcement officers under section 302 or 404 of the Federal

Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively;

* * * * *

[FR Doc. 92–1476 Filed 1–21–92; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 729]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from January 17 through January 23, 1992. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 729 (7 CFR Part 907) is effective for the period from January 17 through January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number a growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 79 percent of the total production in 1990–91. District 2 is located in the southern coastal area of California and represented almost 18 percent of 1990–91 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 3 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's revised estimate of 1991–92 production is 64,600 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 32,895 cars during the 1990–91 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee has estimated that about 68 percent of the 1991–92 crop of 64,600 cars will be utilized in fresh domestic channels (43,650 cars), with the remainder being exported fresh (14 percent), processed (16 percent), or designated for other uses (2 percent). This compares with the 1990–91 total of 16,675 cars shipped to fresh domestic markets, about 51 percent of that year's crop. In comparison to other seasons, 1990–91 production was low because of a devastating freeze that occurred during December 1990.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1991–92 season on June 25, 1991. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 24, 1991, in Visalia, California; and District 2 and 3 on October 1, 1991, in Ontario, California. The Committee subsequently revised its marketing policy at a meeting on October 15, 1991. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season.

This marketing policy is available from the Committee or Mr. Nissen. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on January 14, 1992, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with 7 members voting in favor, 2 opposing, and 2 abstaining, that 1,600,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1991–92 marketing policy. The recommended amount of 1,600,000 cartons compares to the 1,500,000 cartons specified in the Committee's shipping schedule. Of the 1,600,000 cartons, 81.6 percent or 1,305,600 cartons are allotted for District 1, 15.5 percent or 248,000 cartons are allotted for District 2, and 2.9 percent or 46,400 cartons are allotted for District 4. Handlers in District 3 will not be regulated as they are not shipping a sufficient quantity of navel oranges to warrant volume regulation at this point in the season.

During the week ending on January 9, 1992, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,097,000 cartons compared with 409,000 cartons shipped during the week ending on January 10, 1991. Export shipments totaled 163,000 cartons compared with 134,000 cartons shipped during the week ending on January 10, 1991. Processing and other uses accounted for 161,000 cartons compared with 821,000 cartons shipped during the week ending on January 10, 1991.

Fresh domestic shipments to date this season total 10,808,000 cartons compared with 13,506,000 cartons shipped by this time last season. Export shipments total 1,623,000 cartons compared with 1,698,000 cartons shipped by this time last season. Processing and other use shipments total 2,221,000 cartons compared with 4,138,000 cartons shipped by this time last season.

For the week ending January 9, 1992, regulated shipments of navel oranges to the fresh domestic market were 1,031,000 cartons on an adjusted allotment of 954,000 cartons which resulted in net overshipments of 77,000 cartons. Regulated general maturity shipments for the current week (January 10 through January 16, 1992) are estimated at 1,210,000 cartons on an adjusted allotment of 1,233,000 cartons. Thus, undershipments of 23,000 cartons could be carried forward into the week ending on January 23, 1992.

The average f.o.b. shipping point price for the week ending on January 9, 1992, was $9.47 per carton based on a reported sales volume of 800,000 cartons. The season average f.o.b. shipping point price to date is $10.21 per carton. The average f.o.b. shipping point prices for the week ending on January 10, 1991, was $15.62 per carton; the season average f.o.b. shipping point price at this time last year was $9.94.

Committee members discussed implementing volume regulation at this time, as well as different levels of allotment. It was reported that poor weather conditions have hampered harvesting. Two Committee members commented that the weather has had a positive effect on prices. Several Committee members commented that they believe demand is improving. Two Committee members favored open movement at this time, while the majority of Committee members favored the issuance of general maturity allotment.

According to the National Agricultural Statistics Service, the 1990–91 season average fresh equivalent on-tree price for California-Arizona navel oranges was $7.75 per carton, 119 percent of the season average parity equivalent price of $6.52 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1991–92 season average fresh on-tree price is estimated at $6.33 per carton, about 85 percent of the estimated fresh on-tree parity equivalent price of $7.44 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from January 17 through January 23, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1991–92 season was published in the September 30, 1991, issue of the **Federal Register** (56 FR 49432). The Department is currently in the process of analyzing comments received in response to this proposal and, if warranted, may finalize that action this season. However, issuance of this final rule implementing volume regulation for the regulatory week ending on January 23, 1992, does not constitute a final decision on that proposal.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until January 15, 1992, and this action needs to be effective for the regulatory week which begins on January 17, 1992. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1029 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

907.1029 Navel orange regulation 729.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from January 17 through January 23, 1992, is established as follows:

(a) District 1: 1,305,600 cartons;
(b) District 2: 248,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: 46,400 cartons.

Dated: January 16, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-1548 Filed 1-17-92; 8:45 am]

BILLING CODE 3410-02-M

Federal Grain Inspection Service

7 CFR Part 800

Aflatoxin Testing Service

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the regulations under the United States Grain Standards Act (USGSA) as amended (7 U.S.C. 71 *et seq.*), to require, prior to shipment, all corn exported from the United States be tested for aflatoxin unless the contract stipulates that testing is not required. FGIS is also amending the regulations to provide aflatoxin testing service for all grains, including corn, under the authority of the USGSA.

EFFECTIVE DATE: February 21, 1992.

FOR FURTHER INFORMATION CONTACT: George Wollam, Federal Grain Inspection Service, USDA, room 0623 South Building, P.O. Box 96454, Washington, DC, 20090-96454, telephone (202) 720-0282.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this rule will not have a significant economic impact on substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform those services do not meet the requirement for small entities. Aflatoxin text services will be applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements contained in this rule have been approved by the Office of Management and Budget (OMB) and assigned OMB number 0580-0013.

Background

The Grain Quality Incentives Act of 1990 (Pub. L. No. 101-624; (section 2007), GQIA) amended section 5 of the USGSA (7 U.S.C. 77) to require that all corn exported from the United States be tested for aflatoxin, unless the contract for export stipulates that such testing is not required. Specifically, the amendment states,

> The Administrator is authorized and directed to require that all corn exported from the United States be tested to ascertain whether it exceeds acceptable levels of aflatoxin contamination, unless the contract for export between the buyer and seller stipulates that aflatoxin testing shall not be conducted.

The Conference Report covering the GQIA (H.R. Conf. Rep. No. 916, 101st Cong., 2nd Sess. 595(1990)) states,

> * * * buyer and seller may agree not to have corn tested for aflatoxin. However, if a buyer and seller desire an official USDA test and certification for aflatoxin, such test must be conducted by USDA. This does not preclude buyer and seller from utilizing private (unofficial) testing laboratories in lieu of USDA official testing.

On August 6, 1991, FGIS proposed in the **Federal Register** (56 FR 37302) to revise the regulations under the USGSA to implement the new aflatoxin testing requirements in section 5 of the USGSA. Specifically, FGIS proposed to revise sections 800.15, 800.16, and 800.162 to require aflatoxin testing service for all corn exported from the United States. In addition, FGIS proposed to begin providing aflatoxin testing services on all grains, including corn, under the authority of the USGSA in conjunction with implementing the required testing of export corn. Testing of grains, other than corn, for aflatoxin contamination will be provided upon the request of an applicant.

On August 16, 1991, FGIS published a correction docket in the **Federal Register** (56 FR 40812) correcting errors in proposed § 800.15(b)(1)(ii).

Providing aflatoxin testing service under the authority of the USGSA would increase the availability of official aflatoxin testing service to the grain industry and facilitate the implementation of the required testing of export corn.

During the 30 day comment period ending September 5, 1991, FGIS received a total of 14 comments from various segments of the grain industry including producer associations, grain trade associations, handlers, foreign organizations, and corn processors. In general, six commentors supported the proposed action, five opposed the proposed action, and three did not specifically address the changes proposed.

Aflatoxin Testing of Corn by FGIS

The six commentors supporting the proposal indicated that the proposed action would promote the use of standard aflatoxin testing methods and expand the availability of official aflatoxin testing service.

The five commentors opposing the proposal expressed concern that the proposed actions were not consistent with the law, as passed, nor with the intent of the law, as discussed by the conference committee. These commentors agreed that all corn exported from the United States must be tested for aflatoxin unless the buyer and seller agree not to have the corn tested. However, they disagree that buyer and seller must agree on unofficial testing in lieu of USDA testing.

FGIS believes that such action is necessary to fulfill its responsibilities as mandated by Congress. The GQIA of 1990 amended the USGSA to authorize and direct the FGIS Administrator to establish aflatoxin testing services for export corn. The amendment also establishes FGIS as the primary testing agency, since unofficial testing is permitted "in lieu of USDA official testing."

Currently, there are many export contracts which permit independent laboratory testing as an alternative to FGIS testing. Since it is already common practice to permit independent laboratory testing, FGIS does not believe the proposal to require agreement between the buyer and seller is unreasonable or impractical. In fact, such action assures that the buyer and the seller are aware of the requirements for testing. Consequently, FGIS shall provide aflatoxin testing services for export corn unless the buyer and seller agree to have it tested by an entity other than FGIS.

Testing Grains for Aflatoxin Under the USGSA

One commentor opposed the proposed action to provide aflatoxin testing services for grain under the authority of the USGSA. This commentor recommended that aflatoxin testing service remain under the Agricultural Marketing Act of 1946 (AMA).

The authority to test grain for which a standard has been established is included under the USGSA. Therefore, providing official aflatoxin testing service for all grains, including corn, under the authority of the USGSA is logical and justifiable. Additionally, this transfer would increase the availability of official testing service to the grain industry.

The commentor also indicated that transferring of testing authority from the AMA to the USGSA will significantly increase costs to exporters. FGIS charges $29.20 per hour with $7.50 charged per test under AMA and $41.90 per hour under USGSA.

FGIS is required to recover, as nearly as practicable, the cost associated with performing official services. FGIS acknowledges the higher hourly fee under USGSA, as opposed to the hourly fees provided under AMA. However, FGIS believes the unit cost is lower under USGSA.

ESTIMATED COST COMPARISON PER TEST

[Non-contract, regular work-day]

No. of samples tested per hour	Cost per test	
	Under USGSA	Under AMA *
1	41.90	36.70
2	20.95	22.10
3	13.97	17.23

* The estimated cost per test under AMA includes $7.50 per test to recover test kit cost.

The table above provides an estimated cost per aflatoxin test under USGSA compared to unit cost under AMA. This table shows that as the number of tests per hour increase, the cost per test decreases under both Acts. However, when two or more aflatoxin tests per hour were performed, the estimated cost per test is lower than USGSA.

Final Action

Based on the comments received and other available information, FGIS has decided to implement the changes to the regulations as appears in this final rule.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Conflict of interests, Exports, Freedom of Information, Grains, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR Part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Public Law 94-582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*).

2. Section 800.15 paragraph (b)(1) is revised to read as follows:

§ 800.15 Services.

* * * * *

(b) *Responsibilities for complying with the official inspection, aflatoxin testing, and weighing requirements—*

(1) *Export grain.* Exporters are responsible for (i) complying with all inspection, Class X weighing, and other certification provisions and requirements of section 5(a)(1) of the Act and the regulations applicable to export grain and (ii) having all corn, as defined in § 810.401, exported from the United States tested for aflatoxin contamination unless the buyer and seller agree not to have the corn tested. The Service shall perform the aflatoxin testing service unless the buyer and seller agree to have the corn tested by an entity other than the Service.

* * * * *

3. Section 800.16 paragraph (a) is revised to read as follows:

§ 800.16 Certification requirements for export grain.

(a) *General.* Official Export Grain Inspection and Weight Certificates, Official Export Grain Inspection Certificates, and Official Export Grain Weight Certificates for bulk or sacked grain shall be issued according to § 800.162 for export grain loaded by an export elevator. Only these types of export certificates showing the official grade, official aflatoxin test results if required under the Act and the regulations, and/or the Class X weight of the grain shall be considered to be in compliance with inspection and weighing requirements under the Act for export grain.

* * * * *

4. Section 800.162 paragraph (d) is added to read as follows:

§ 800.162 Certification of grade; special requirements.

* * * * *

(d) *Aflatoxin Test for Corn.* Official corn export certificates shall show, in addition to the requirements of paragraphs (a), (b), and (c) of this section, the official aflatoxin test results if required under § 800.15(b).

Dated: December 27, 1991.

John C. Foltz,

Administrator

[FR Doc. 92-1398 Filed 1-21-92; 8:45 am]

BILLING CODE 3410-EN-M

Animal and Plant Health Inspection Service

9 CFR Part 75

[Docket No. 88-173]

Communicable Diseases in Horses, Asses, Ponies, Mules, and Zebras

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning communicable diseases in horses, asses, ponies, mules, and zebras by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing certain references to "Veterinary Services" and replacing them with references to the "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

EFFECTIVE DATE: January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Manual A. Thomas, Jr., Senior Staff Veterinarian, Equine Diseases Staff, VS, APHIS, USDA, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-6954.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 75 (referred to below as the regulations) contain restrictions on the interstate movement of horses, asses, ponies, mules, and zebras because of certain communicable diseases. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Services (APHIS) was the official responsible for various decisions under these regulations. We are revising 9 CFR part 75 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions

in all other APHIS regulations. These revisions will be published in separate **Federal Register** documents.

We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service (APHIS)." We are also adding definitions of "Administrator," "Animal and Plant Health Inspection Service," and "APHIS representative" and deleting the definitions of "Deputy Administrator" and "Veterinary Services representative." Further, we are revising the definitions of "Accredited veterinarian" and "Veterinarian in Charge" to make them more consistent with the definitions in other parts of 9 CFR, and are revising APHIS mailing addresses to reflect the current addresses.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this section is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR part 75 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 75

Animal diseases, Horses, Quarantine, Transportation.

Accordingly, we are amending 9 CFR part 75 as follows:

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

1. The authority citation for part 75 continues to read as follows:

Authority: 21 U.S.C. 111–113m 115, 117, 120, 121, 123–126, 134–134h; 7 CFR 2.17, 2.51, and 371.2(d).

§ 75.1 [Amended]

2. In § 75.1, in the heading, remove the words "Veterinary Services" and add the words "Animal and Plant Health Inspection Service (APHIS)" in their place; and in the first sentence, remove the words "Veterinary Services" and add the word "APHIS" in their place.

§ 75.2 [Amended]

3. In § 75.2, in the heading, remove the words "Veterinary Services" and add the words "Animal and Plant Health Inspection Service (APHIS)" in their place; and in the text, remove the words "a Veterinary Services" and add the words "an APHIS" in their place.

4. In § 75.4, paragraph (a), remove the definitions of "Deputy Administrator" and "Veterinary Services representative"; revise the heading and the definitions of "Accredited veterinarian" and "Veterinarian in Charge"; and add definitions of "Administrator," "Animal and Plant Health Inspection Service" and "APHIS representative", in alphabetical order, to read as follows:

§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards.

(a) * * *

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service).

APHIS representative. An individual employed by APHIS who is authorized to perform the functions involved.

* * * * *

Veterinarian in Charge. The veterinary official of APHIS who is assigned by the Administrator to supervise and perform the animal health activities of APHIS in the State concerned.

* * * * *

§ 75.4 [Amended]

5. In § 75.4, paragraph (a), in the definition of "Certificate" remove the words "Veterinary Services" and add the word "APHIS" in their place.

§ 75.4 [Amended]

6. In § 75.4, paragraph (a), in the definition of "Officially identified" remove the words "a Veterinary Services" and add the words "an APHIS" in their place.

§ 75.4 [Amended]

7. In § 75.4, in the following paragraphs, remove the word "Deputy" wherever it appears:

a. § 75.4(a), definition of "Official test";

b. § 75.4(c)(1);

c. § 75.4(c)(2) both times it appears;

d. § 75.4(d) introductory text;

e. § 75.4(d)(2) both times it appears;

f. § 75.4(d)(3); and

g. § 75.4(d)(4) both times it appears.

§ 75.4 [Amended]

8. In § 75.4, paragraphs (a), footnote 1; (c)(1), footnote 2; and (c)(2), footnote 3, remove the words "Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Federal Building," and add, in their place, the words "Administrator, c/o SGEPDS, VS, APHIS, room 769, Federal Building, 6505 Belcrest Road,".

9. In § 75.5, the definition of "Accredited Veterinarian" is revised to read as follows:

§ 75.5 Definitions.

Accredited Veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

* * * * *

Done at Washington, DC, this 15th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-1521 Filed 1-21-92; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 11

RIN 3150-AE03

DOE-L or DOE-Q Reinvestigation Program for NRC-R Access Authorization Renewal Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to allow an exception to NRC-R access authorization renewal requirements. The final rule allows acceptance of the DOE-L or DOE-Q Reinvestigation Program for NRC-R access authorization renewal requirements and reduces and clarifies for the licensee the documentation required by the NRC when an exception is used. The final rule is intended to reduce administrative and investigative costs to affected licensees and administrative costs to the Federal government. Affected licensees are those who use or possess a formula quantity of special nuclear material.

EFFECTIVE DATE: February 21, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Rocio Castaneira, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2392.

SUPPLEMENTARY INFORMATION:

Background

In 1985, 10 CFR part 11, "Criteria and Procedures for Determining Eligibility for Access to or Control over Special Nuclear Material" was amended in § 11.15 to allow, among other things, an exception in the access authorization renewal requirements for NRC-U renewals. These requirements apply to licensees who use or possess a formula quantity of special nuclear material. An NRC-U special nuclear material access authorization is required for—

(1) All positions in the licensee's security force;

(2) Management positions with the authority to direct the actions of members of the security force or alter security procedures, direct routine movements of special nuclear material, or direct the routine status of vital equipment;

(3) All jobs which require unescorted access within onsite alarm stations; and

(4) All jobs which require unescorted access to special nuclear material or within vital areas.

The NRC provided an exception in § 11.15 that allowed individuals subject to the Department of Energy's (DOE) Selective Reinvestigation Program for DOE-Q access authorization to use the DOE reinvestigation for NRC-U renewal requirements. The investigative basis for the DOE-Q is comparable to the investigative basis of the NRC-U. Allowing this exception for NRC-U renewal requirements reduced administrative and investigative costs to the licensees and avoided duplicate investigations of an individual.

However, in 1985, the DOE-L Selective Reinvestigation Program did not meet NRC-R renewal requirements. Therefore, no provisions were made for allowing the use of the DOE-L Selective Reinvestigation Program for NRC-R renewal requirements. An NRC-R special nuclear material access authorization is required for an individual whose job requires unescorted access within protected areas but does not fall within any of the categories that require an NRC-U access authorization.

Subsequently, DOE implemented an "L" Reinvestigation Program which meets NRC-R renewal requirements. Accordingly, the NRC has determined that it would be appropriate to amend Part 11 to include the DOE-L program. The NRC has also determined that allowing the DOE-Q Reinvestigation Program for NRC-R renewal requirements would be appropriate. The NRC has found that many individuals that have NRC-R access authorizations also have DOE-Q clearances and are thereby subject to reinvestigation by DOE. Additionally, the title of the DOE program is changed to reflect its current title, i.e., "DOE Reinvestigation Program."

Public Comments

On September 30, 1991, the proposed rule was published for comment (56 FR 49435). The comment period expired on October 30, 1991. One comment was received during the comment period. The commenter agreed that amending the rule would be appropriate to allow the use of the DOE-Q or DOE-L Reinvestigation Program for NRC-R renewal requirements. However, the commenter objected to the documentation required to be submitted to the NRC when the exceptions allowed were used.

Specifically, the proposed rule would have required the licensee to submit a duplicate security clearance package to the NRC when submitting the individual's security clearance package to the DOE for a reinvestigation. The commenter recommended that the licensee provide the NRC with critical identifying data on the individual when submitting that individual's security clearance package to the DOE for reinvestigation. If a need arises, the NRC can obtain copies of the security clearance package from the DOE. This comment has been adopted for the NRC-R renewal requirements and expanded to the NRC-U renewal requirements, and the final rule has been revised to incorporate this comment. Additionally, in order to conform other regulatory text with the planned changes, the introductory text to paragraph (c)(1) has been revised.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, room LL6, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Ms. Rocio Castaneira, Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2392.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule does not have a significant economic impact upon a substantial number of small entities. The final rule affects three nuclear fuel facility licensees. Because these licensees are not classified as small entities as defined by the NRC's size standards (November 6, 1991; 56 FR 56671), the Commission finds that this final rule does not have a significant economic

impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109 does not apply to this final rule, and therefore, that a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 11.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.15, the introductory text of paragraph (c)(1) is revised, paragraph (c)(2) is revised, paragraph (c)(3) is redesignated as paragraph (c)(5) and revised, and new paragraphs (c)(3) and (c)(4) are added to read as follows:

§ 11.15 Application for special nuclear material access authorization

* * * * *

(c)(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, NRC–U and NRC–R special nuclear material access authorizations must expire 5 years from the date of issuance. If continued NRC–U and NRC–R special nuclear material access authorization is required, an application for renewal must be submitted at least 120 days prior to its expiration date. Failure to make a timely application will result in an expiration of special nuclear material access authorization. Special nuclear material access authorization for which a timely application for renewal has been made may be continued beyond the expiration date pending final action on the application. An application for renewal must include:

* * * * *

(2) An exception to the NRC–U special nuclear material access authorization expiration date and the time for submission of NRC–U special nuclear material access authorization renewal applications is provided for those individuals who have a current and active DOE–Q access authorization and who are subject to DOE Reinvestigation Program requirements. For these individuals, the time for submission of NRC–U special nuclear material access authorization renewal applications may coincide with the time for submission to DOE of the SF–86 pursuant to DOE Reinvestigation Program requirements. The licensee may submit to NRC, concurrent with its reinvestigation submission to DOE, a completed NRC Form 237, "Request for Access Authorization," containing the individual's full name, to include social security number, date of birth, reinvestigation submittal date to DOE, type of request, i.e., renewal, and the information required by paragraph (c)(1)(i) of this section, as the supporting documentation for an NRC–U special nuclear material access authorization renewal application. Any NRC–U special nuclear material access authorization issued in response to a renewal application submitted pursuant to this paragraph will not expire until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program (generally every five years). NRC–U special nuclear material access authorizations for which timely applications for renewal have been made may be continued beyond the expiration date, pending final action on the application.

(3) An exception to the NRC–R special nuclear material access authorization expiration date and the time for submission of NRC–R special nuclear material access authorization renewal applications is provided for those individuals who have a current and active DOE–L or DOE–Q access authorization and who are subject to DOE Reinvestigation Program requirements. For these individuals, the time for submission of NRC–R special nuclear material access authorization renewal applications may coincide with the time for submission to DOE of the SF–86 pursuant to DOE Reinvestigation Program requirements. The licensee may submit to NRC, concurrent with its reinvestigation submission to DOE, a completed NRC Form 237, "Request for Access Authorization," containing the individual's full name, to include social security number, date of birth, reinvestigation submittal date to DOE, and type of request, i.e., renewal, as the supporting documentation for an NRC–R special nuclear material access authorization renewal application. Any NRC–R special nuclear material access authorization issued in response to a renewal application submitted pursuant to this paragraph will not expire until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Reinvestigation Program (generally every five years). NRC–R special nuclear material access authorizations for which timely applications for renewal have been made may be continued beyond the expiration date, pending final action on the application.

(4) The licensee may use either of the exceptions as specified in paragraphs (c)(2) or (c)(3) of this section for an individual who is subject to an NRC–U or NRC–R reinvestigation, even if less than five years has passed since the date of the issuance or renewal of the NRC–U or NRC–R access authorization. Failure to file a renewal application concurrent with the time for submission of an individual's SF–86 to DOE pursuant to DOE Reinvestigation Program requirements will result in the expiration of the individual's NRC special nuclear material access authorization.

(5) Notwithstanding the provisions of paragraphs (c)(2), (c)(3), or (c)(4) of this section, the period of time for the initial and each subsequent NRC–U or NRC–R renewal application to NRC may not exceed 7 years. Any individual who is subject to the DOE Reinvestigation Program requirements but, for administrative or other reasons, does not submit reinvestigation forms to DOE within 7 years of the previous submission, shall submit a renewal application to NRC using the forms prescribed in paragraph (c)(1) of this section before the expiration of the 7 year period. Failure to request an NRC–U or NRC–R renewal for any individual within the 7 year period will result in termination of the individual's NRC–U or NRC–R access authorization.

* * * * *

Dated at Rockville, Maryland this 9th day of January, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92–1502 Filed 1–21–92; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR PART 121

Small Business Size Regulations; Restatement to Accrual Method of Accounting

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: The Small Business Administration (SBA) hereby amends its size regulations to provide that small business concerns whose size status is determined pursuant to annual receipts must restate their books of account to the accrual method of accounting only with respect to fiscal years beginning on or after January 1, 1990.

DATES: Effective date: January 1, 1990. Comments must be submitted on or before February 21, 1992.

ADDRESSES: Written comments should be addressed to David R. Kohler, Associate General Counsel for General Law, Office of General Counsel, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, (202) 205–6645.

SUPPLEMENTARY INFORMATION: On December 21, 1989, the Small Business Administration (SBA) published a complete revision governing the procedural rules relative to SBA's size determination program, 54 FR 52634. The definition of the term "annual receipts" was amended as part of this revision. The revised rule required, for the first time, that revenues be measured as entered on the regular books of account of the concern or as shown on the concern's Federal Income Tax return, "*Provided That * * * revenue shown on the regular books of account or the Federal Income Tax return on a basis other than accrual is restated to show revenue on an accrual basis.*" 13 CFR 121.402(d)(1). This requirement for restatement of revenue to reflect an accrual basis of accounting was a change from earlier regulations which permitted revenues to be measured as entered on the regular books of account whether on a cash, accrual or other basis. The supplementary information to the rule that appeared in the **Federal Register** noted that the effective date of the revised regulations was to be January 1, 1990.

SBA received numerous inquiries concerning whether revenues for fiscal years begun prior to January 1, 1990 had to be restated on an accrual basis under the new regulation. SBA's response was that the revised regulations were not effective until January 1, 1990 and, as such, this requirement was not intended to apply to fiscal years begun prior to January 1, 1990. Although SBA believed that this response was consistent with the regulation, SBA concluded it should resolve any ambiguity by issuing a formal statement of policy. This resulted in the publication of Size Policy Statement No. 2 in the **Federal Register** on November 19, 1990, 55 FR 48106.

SBA Size Policy Statement No. 2 was not intended to create a new substantive regulation, but merely to provide an interpretation of the existing regulation. However, in two separate size appeals decisions, SBA's Office of Hearings and Appeals (OHA) held that SBA Size Policy Statement No. 2 could be applied only to size self-certifications occurring on or after its publication date of November 19, 1990. Size Appeal of Geofon, Inc., No. 3429 (March 4, 1991); Size Appeals of Research Analysis and Maintenance, Inc. and Stewart Associates, Inc., No. 3445 (March 28, 1991); Appellant petition for reconsideration denied, No. 3486 (June 20, 1991); SBA petition for reconsideration denied, No. 3489 (July 3, 1991).

This interim final rule would substantively amend SBA's size regulations to now explicitly apply the requirement for restatement of receipts to the accrual method of accounting only as to fiscal years beginning on or after January 1, 1990. The revision would apply to all size self-certifications made after the effective date of the interim final rule and to all size determinations begun or completed after that date. In those cases, a firm may elect to show revenues for fiscal years beginning prior to January 1, 1990 on either a cash or an accrual basis of accounting.

As indicated, OHA's rulings uphold the interpretation given the size regulations by SBA Size Policy Statement No. 2 for size self-certifications made on or after November 19, 1990. Pursuant to those decisions, SBA has been authorized to determine the size of a concern in accord with the Size Policy Statement for any size self-certification made on or after November 19, 1990. The Size Policy Statement permitted the calculation of receipts on a cash basis as to fiscal years beginning prior to January 1, 1990. Thus, this interim final rule will have no effect on size self-certifications made after November 19, 1990. Additionally, most, if not all, size self-certifications made between January 1, 1990 and November 19, 1990 would have been done in reliance upon SBA's informal advice to the effect that fiscal years beginning prior to January 1, 1990 need not be restated to reflect revenue on an accrual basis. There is the possibility that in a few instances firms relied on their own interpretation of the December 21, 1989 regulation and did restate their revenues for fiscal years commencing earlier than January 1, 1990, before making a size self-certification. The validity of those certifications is not affected in this interim final rule since the rule provides for an election as to those fiscal years. This rule is not intended to invalidate, or affect in any way, size self-certifications or size determinations completed before its publication date in the **Federal Register**. If a size determination has not been completed in connection with a firm that did restate its revenues to the accrual method of accounting, the revision would permit such a firm to elect to show revenues for fiscal years beginning prior to January 1, 1990 on either a cash or an accrual basis of accounting.

In promulgating this interim final rule, the Agency adopts the interpretation given SBA's regulations announced in SBA Size Policy Statement No. 2 and the rationale contained therein. This rule is intended to promote consistency in the way size determinations are made. SBA believes that it would be an anomaly for size certifications made between January 1, 1990 and November 19, 1990 to be treated differently than all other size determinations. This rule is needed to ensure the uniform application of the regulations as intended and should promote stability in the procurement process.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act (55 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. chap. 35)

SBA certifies that this interim final rule is not a major rule within the meaning of Executive Order 12291 and will not have a significant economic impact on a substantial number of entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The change in the size regulations will affect a very limited number of concerns and procurements. In theory, the change in the size regulations will affect all size certifications made between January 1, 1990 and November 19, 1990. However, because size with respect to those certifications has been, for the most part, already decided in accord with the interpretation set forth in this interim final rule, there should be very little impact on any concerns or Government acquisitions currently being finalized. In addition, this rule does not affect any of

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the size standards contained in § 121.601. This rule, in and of itself, would not impose costs upon the businesses which might be affected by it. Because the rule will have no affect on the amount or dollar value of any contract requirement or the number of requirements reserved for the small business set-aside and 8(a) programs, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purpose of the Paperwork Reduction Act, 44 U.S.C. ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Handicapped, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, SBA amends title 13, Code of Federal Regulations (CFR), as set forth below.

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 13 CFR Part 121 continues to read as follows:

Authority: Sections 3(a) and 5(b)(6) of the Small Business Act, as amended (15 U.S.C. 632(a), 634(b)(6)), and Pub. L. 100–656, 102 Stat. 3853 (1988).

§ 121.402(d)(1) [Revised]

2. Section 121.402(d)(1) is revised to read as follows:

* * * * *

(d)(1) *Method of determining annual receipts.* Revenue may be taken from the regular books of account of the concern. If the concern so elects, or has not kept regular books of account, or the IRS has found such records to be inadequate and has reconstructed income of the concern, then revenues shown on the Federal Income Tax return of the concern may be used in determining annual receipts. Subject to the exception in paragraph (d)(2) of this section, revenue shown on the regular books of account or the Federal Income Tax return on a basis other than accrual must be restated to show revenue on an accrual basis for all fiscal years beginning on or after January 1, 1990. For purposes of either a self-certification as to size made, or any size determination initiated or completed, subsequent to January 22, 1992, a firm may elect to show revenues for fiscal years beginning prior to January 1, 1990 on either a cash or an accrual basis of accounting. Further, where the completed contract method of determining income has been used, revenue must be restated to a percentage of completion method prior to determining annual receipts.

* * * * *

Dated: December 20, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 92–1458 Filed 1–21–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 103CE, Special Condition 23–ACE–70]

Special Conditions; Beechcraft Model A36 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are being issued to Tradewind Turbines for a Supplemental Type Certification (STC) on the Beechcraft Model A36 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is February 21, 1992.

Comments must be received on or before February 21, 1992.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 103CE, room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 103CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: J. Lowell Foster, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Service, Central Region, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective 30 days after issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 103CE." The postcard will be date stamped and returned to the commenter.

Background

On November 6, 1991, Tradewind Turbines, Post Office Box 31930, Amarillo, Texas 79120–1930, made an application to the FAA for a supplemental type certificate (STC) for the Beechcraft Model A36 airplane. The proposed modification incorporates a novel or unusual design feature such as digital avionics consisting of an electronic flight instrument system (EFIS) that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Beechcraft Model A36 airplane is as follows: Part 23 of the Federal Aviation Regulations (FAR), effective February 1,

1965, including amendments 23–1 through 23–41; Special Federal Aviation Regulations (SFAR) No. 27, effective February 1, 1974, as amended by amendments 27–1 through 27–5; part 36 of the FAR, effective December 1, 1969, as amended by amendments 36–1 through 36–15 and special conditions adopted by this rulemaking action.

Discussion

Tradewind Turbines plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment and that were not envisaged by the existing regulations, for this type of airplane.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis, as provided by § 21.17(a)(2).

Protection of System from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisaged when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment, defined below:

TABLE I.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–500 KHz	60	60
500–2,000	60	60
2–30 MHz	200	200
30–100	33	33
100–200	150	33
200–400	56	33
400–1,000	4,020	935
1–2 GHz	7,850	1,750
2–4	6,000	1,150
4–6	6,800	310
6–8	3,600	666
8–12	5,100	1,270
12–18	3,500	551
18–40	2,400	750

The envelope given in paragraph 1 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the United States. It will also be adopted by the European Joint Airworthiness Authorities.

or:

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions can withstand a peak of electromagnetic field strength of 100 volts per meter (v/m) or the external HIRF environment, whichever is less, in a frequency range of 10KHz to 18GHz. When using a laboratory test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Beechcraft Model A36 airplane, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances. For example, the Piper PA–42 (51 FR 37711, October 24, 1986), the Dornier 228–200 (53 FR 14782, April 26, 1988), and the Cessna Model 525 (56 FR 49396, September 30, 1991). For this reason, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions without notice;

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therefore, special conditions are being issued without substantive changes for this airplane and made effective 30 days after issuance.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Beechcraft Model A36 airplane:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definitions apply: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on January 13, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1485 Filed 1-21-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-241-AD; Amdt. 39-8158; AD 91-13-10 R1]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With Pratt and Whitney PW4000 Engines; and Boeing Model 767 Series Airplanes Equipped With Pratt and Whitney PW4000 or General Electric CF6-80C2-B2F and CF6-80C2-B6F Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Models 747 and 767 series airplanes, which currently requires the installation of new Engine Indicating and Crew Alerting System (EICAS) computers. The requirements of that AD are intended to prevent overspeed or uncommanded shutdown of an engine. This amendment adds additional airplane/engine configurations to the applicability of the rule. This action is prompted by a determination that these additional airplanes are subject to the same unsafe condition addressed in the existing AD.

DATES: Effective February 26, 1992.

The incorporation by reference of certain publications listed in the regulations was approved by the Director of the Federal Register on August 21, 1991 [Amendment 39-7041, (56 FR 29174, June 26, 1991)].

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2687; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On June 5, 1991, the FAA issued AD 91-13-10, Amendment 39-7041 (56 FR 29174, June 26, 1991), which is applicable to Boeing Model 747 series airplanes equipped with Pratt and Whitney PW4000 engines and Model 767 series airplanes equipped with Pratt and Whitney PW4000 or General Electric CF6-80C2-B6F Engines. That AD requires the installation of new Engine Indicating and Crew Alerting System (EICAS) computers on these airplanes to provide proper message function and allow removal of a limitation from the airplane flight manual (AFM). The requirements of that AD are intended to prevent overspeed or uncommanded shutdown of an engine.

After issuance of that AD, it came to the attention of the FAA that some Boeing Model 767 airplanes that are equipped with GE CF6-80C2-B2F series engines are also subject to the unsafe condition addressed by AD 91-13-10, but were not included in the applicability of that AD. A careful review of Boeing Service Bulletin 767-31-0038, dated April 12, 1990, which is referenced in the existing AD as the appropriate source for service information, indicated that all Model 767 airplanes equipped with either GE CF6-80C2-B2F or CF6-80C2-B6F series engines were identified in the effectivity of the service bulletin, However, this information is not clearly stated in the service bulletin; the service bulletin identifies the affected airplanes, but does not list their engine models. Therefore, the applicability of AD 91-13-10 must be revised by including the Model 767 airplanes equipped with GE CF6-80C2-B2F series engine, since these airplanes are also subject to the addressed unsafe condition.

The FAA has determined that all Model 767 airplanes equipped with General Electric CF6-80C2-B2F engines are operated currently by foreign operators under foreign registry and, therefore, are not directly affected by this AD action. Nevertheless, this AD action is necessary to advise the cognizant foreign authorities that the subject unsafe condition may exist on these airplanes. Should one of the affected airplanes be placed on the U.S. Register in the future, it will require approximately 3 work hours to accomplish the replacement procedures, at an average labor charge of $55 per work hour. Based on these figures, the cost impact of this AD would be $165 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference. Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by revising Amendment 39-7041, to read as follows:

91-13-10 R1 Boeing: Amendment 39-8158. Docket No. 91-NM-241-AD. Revises AD 91-13-10, Amendment 39-7041.

Applicability: Model 747 series airplanes equipped with Pratt and Whitney PW4000 engines; and Model 767 series airplanes equipped with Pratt and Whitney PW4000, General Electric CF6-80C2-B2F, or General Electric CF6-80C2-B6F series engines; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent overspeed or uncommanded shutdown of an engine, accomplish the following:

(a) For Model 747 series airplanes equipped with Pratt and Whitney PW4000 engines, and Model 767 series airplanes equipped with Pratt and Whitney PW4000 or General Electric CF6-80C2-B6F engines: Within 3 days after May 22, 1989 (the effective date of Amendment 39-6210), add the following to the Limitations Section of FAA-approved Airplane Flight manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM.

"Prior to each departure, with all engines running, refer to the EICAS status page and determine the dispatch capability of the aircraft."

(b) Within the next 24 months after August 12, 1991 (the effective date of Amendment 39-7041), replace the EICAS computers in accordance with the appropriate service bulletin listed below. After replacement of the EICAS computers in accordance with the specified service bulletins, the AFM limitation required by paragraph (a) of this AD may be removed.

(1) For Model 747 series airplanes listed in Boeing Service Bulletin 747-31-2151, dated March 29, 1990.

(2) For Model 767 series airplanes equipped with Pratt and Whitney PW4000 engines listed in Boeing Service Bulletin 767-31-0033, Revision 1, dated September 27, 1990.

(3) For Model 767 series airplanes equipped with General Electric CF6-80C2-B6F engines listed in Boeing Service Bulletin 767-31-0038, dated April 12, 1990.

(c) For Model 767 series airplanes equipped with General Electric CF6-80C2-B2F engines:

(1) Within the next 3 days after the effective date of this AD, add the following to the Limitations Section of FAA-approved Airplane Flight manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM.

"Prior to each departure, with all engines running, refer to the EICAS status page and determine the dispatch capability of the aircraft."

(2) Within the next 24 months after the effective date of this AD, replace the EICAS computers in accordance with Boeing Service Bulletin 767-31-0038, dated April 12, 1990. After incorporation of the EICAS computers, the AFM limitation required by paragraph (c)(1) may be removed.

(d) For airplanes not subject to paragraph (b) or (c) of this AD, within the next 30 days after the effective date of this AD, remove the AFM limitation required by paragraph (a) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(g) The replacement requirements shall be done in accordance with the following Boeing Service Bulletins, which incorporate the following list of affected pages:

Service bulletin	Revision level	Date	Pages
747-31-2151	Original	March 29, 1990.	1-10
767-31-0033	1	September 27, 1990.	1, 2, 4, 5
	Original	May 31, 1990.	3, 6, 7, 8, 9, 10
767-31-0038	Original	April 12, 1990.	1-8

This incorporation by reference was previously approved by the Director of the Federal Register at 56 FR 29174 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register 1100 L Street NW., room 8401, Washington, DC.

(h) This amendment (39-8158), AD 91-13-10 R1, becomes effective February 26, 1992.

Issued in Renton, Washington, on January 7, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1486 Filed 1-21-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 148 and 178

[T.D. 92-8]

RIN 1515-AA75

Customs Regulations Amendments Relating to the United States-Canada Free-Trade Agreement

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adopting final rules implementing the duty preference provisions of the United States-Canada Free-Trade Agreement, also referred to as the CFTA. The document addresses the public comments submitted in response to the interim regulations by which the CFTA was initially implemented, and it makes certain changes to those interim regulatory texts in response to the public comments and in order to set forth administrative decisions under the CFTA that are currently in effect.

EFFECTIVE DATE: January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Judy Schoeny, Office of Trade Operations (202) 566-7060); Audit and Forms Aspects: Marcus Sircus, Office of Regulatory Audit (202-566-2812); Legal Aspects: John Valentine, Office of Regulations and Rulings (202-566-8530).

SUPPLEMENTARY INFORMATION:

Background

On January 2, 1988, the United States and Canada entered into an agreement, the United States-Canada Free-Trade Agreement (CFTA). The objectives of the CFTA are to eliminate Customs duties and other barriers to trade in goods and services between the two countries, facilitate conditions of fair competition within the free-trade area, liberalize significantly conditions for investments within the free-trade area, establish effective procedures for the joint administration of the CFTA and the resolution of disputes, and lay the foundation for further bilateral and multilateral cooperation to expand and enhance the benefits of the CFTA. The provisions for the CFTA were adopted by the United States with the enactment of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (the "Act"), Public Law 100-449, 102 Stat. 1851

The function of the U.S. Customs Service is to implement those portions of the CFTA and the Act that relate to certain trade issues, in particular the rules of origin and related provisions, which form the basis for determining whether goods imported into the U.S. from Canada are eligible for the preferential duty treatment accorded to goods originating in Canada, and which are also set forth in General Note 3(c)(vii), Harmonized Tariff Schedule of the United States (HTSUS). To this end, Customs published interim Customs Regulations as T.D. 89-3 in the **Federal Register** on December 23, 1988 (53 FR 51762). The interim regulations provided for a 60-day public comment period which was subsequently extended, by a notice published in the **Federal Register** on March 13, 1989 (54 FR 10322), to March 23, 1989.

A total of thirteen parties submitted comments regarding one or more aspects of the interim regulations. The comments received, and the Customs responses thereto, are set forth below.

Discussion of Comments

A. Automotive Products—§ 10.84

Comment: One commenter suggested that § 10.84 be amended to provide that the certifications under paragraphs (b)(1)–(3) may appear on the commercial invoice or be attached thereto, as is allowed under current APTA procedures.

Customs response: The interim regulations did not in any way affect the previously accepted methods for providing the certification required by § 10.84. Moreover, under paragraph (a)(1) a Customs officer has the discretion to not require the certificate based on the circumstances of the particular importation. Accordingly, Customs does not believe that the proposed amendment is necessary.

Following publication of the interim regulations, Customs noticed an error in the next to last sentence of § 10.84(a)(1), where reference is made to a certificate executed by the "importer". It is clear that reference should be to the (Canadian) "exporter" because only a Canadian party would normally have knowledge of the facts set forth in the certificate regarding the Canadian origin of the imported goods. This document corrects this error.

B. Originating Goods—§ 10.303

Comment: One commenter suggests that the regulations should allow a maximum amount of permissible non-qualifying content (de minimis test), *e.g.*, 10 percent of the export value, before resort to the value content requirement is deemed necessary, because (1) it is not always possible to obtain 100 percent accurate (often, second hand) information from suppliers, (2) the exporter runs an unfair risk in being required to be 100 percent accurate, and (3) otherwise, even a minute amount of untransformed material would expose the whole product to the value test.

This same commenter also suggests that the regulations should be amended to clearly state that, for the purposes of the value test, the determination of what is originating or non-originating material is to be made on the basis of the condition of the exported product (*i.e.*, if a product has been transformed in accordance with the tariff shift test, then 100 percent of the value should be attributed to the value of materials originating in either country). This commenter argues that to require otherwise would contradict the CFTA because it would require disregarding the further processing performed by the exporter.

Customs responses: The rules of origin set forth in the CFTA do not provide for a de minimis test on third country content.

With regard to the second point, it should first be emphasized that the condition of the exported product is, indeed, the basis for determining whether an applicable value-added requirement is met. This being said, it appears that this commenter is misreading the CFTA rules of origin which in certain circumstances require that a distinction be made between the origin of the exported article and the origin of the constituent materials contained in that exported article: In cases where the rules of origin require application of a value-added test, the value of materials contained in the article may be counted only if the materials are considered to have already had their origin in either CFTA country at the time that they were incorporated into the article. In other words, an exported article would be considered to consist of 100 percent originating materials only if all of its constituent materials were wholly (*i.e.*, entirely, including in all prior forms or conditions) produced in a CFTA country and/or transformed so as to obtain origin in a CFTA country prior to their incorporation into the article. Conversely, an exported article would be considered to contain no originating material if the article resulted directly from the transformation of a material which had retained its non-CFTA country origin up until that transformation in the CFTA country. Moreover, even in a case where the exported article contains no originating materials, the further processing performed by the manufacturer is not simply disregarded, because the direct cost of that processing is independently countable toward the value-added requirement.

In the process of reviewing § 10.303, Customs noticed that the HTSUS General Note citation in paragraph (d) refers to subdivision "(Q)", whereas the proper reference should be to subdivision "(R)", and that the word "to" is missing before the citation. This document corrects these errors.

C. Circumvention—§ 10.304(b)

Comment: One commenter alleges that even though this provision follows the CFTA text, it will result in subjective and uneven application of the CFTA. Accordingly, this commenter recommends that the regulations be amended to indicate that operations performed solely in order to gain the preference (so-called "tariff engineering") are permissible. This commenter further suggests that examples of circumvention, as distinguished from qualifying operations performed in Canada, should be inserted in the regulation.

Customs response: Customs does not believe that this provision will lead to subjective and uneven application of the CFTA, because CFTA eligibility will be determined solely on the basis of compliance with the rules of origin and those rules are separate and distinct from the CFTA "circumvention" provision. The fact that "tariff engineering" by itself would not constitute "circumvention" is made clear in the Statement of Administrative Action, which accompanied the Act, wherein the following is stated: "The well-established right to configure merchandise in such a way that it is within the scope of one tariff provision that is more advantageous than another will not be infringed in any respect. The exercise of this right by itself will not be presumed to be circumvention." Customs does not believe that it is necessary to amend the regulations to state this basic principle which is implicit by virtue of the very existence of the CFTA program and the rules of origin incorporated therein. Moreover, because a case-by-case approach is necessary in applying the CFTA provisions, it is not possible to lay down general rules as regards what is or is not "circumvention". If doubt arises as to whether a particular operation would be allowable, the concerned private party may submit a request for a prospective ruling on the CFTA eligibility of the

goods in question under Part 177 of the Customs Regulations.

D. Value Content Requirement—§ 10.305

Comment: One commenter states that the regulations should be amended to clarify the difference between includable brokerage charges §§ 10.305(b)(2)(ii) and (c)(1)(ii)) and excludable brokerage charges (§ 10.305(e)(2)).This commenter, referring as an example to a case where a Canadian broker is paid for purchasing a product from abroad by telephone for the manufacturer, asks whether this is paid in Canada, or whether it relates to the importation, or both, and if both, whether it is part of the value of materials and not part of the direct costs of processing.

Customs response: This comment refers to two separate situations. Paragraphs (b)(2)(ii) and (c)(1)(ii) address those costs which are includable in determining the value of originating materials or the value of goods when exported (and for which CFTA status is claimed); paragraph (e)(2), on the other hand, refers to those costs which are not considered "direct" costs of processing operations. Although a brokerage charge may be includable for purposes of determining the value of either constituent materials or exported goods, it may not be included as a direct cost of processing. Customs believes that the regulations are sufficiently clear on this point and that no change is required.

Comment: Two commenters recommend amending § 10.305(b)(2)(iv) by adding at the end a reference to "assists", because the reference to subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the GATT is not sufficiently explanatory. One of these commenters further suggests the inclusion therein of citations to the Customs Regulations provisions which discuss assists.

Customs response: Customs does not agree that the proposed amendments should be made. The regulatory reference follows the terms of the CFTA and of General Note 3(c)(vii)(N)(1)(IV), HTSUS, where use of the international GATT reference was deemed appropriate in consideration of the bilateral (hence, international) nature of the CFTA. Thus, a reference to "assists", which is not used in the international valuation code, would not be appropriate in this regulatory context.

E. Retroactive Claims/Reliquidation—§§ 10.307(b) and (c)

Comment: Six commenters state that § 10.307 is too restrictive in requiring that a claim for CFTA treatment be filed when the entry summary is filed (§ 10.307(b)) and that the Exporter's Certificate of Origin (Customs Form 353) be available when that claim is filed (§ 10.307(c)). They argue that these provisions bar retroactive claims for CFTA treatment, that better accuracy of claims will result if claims are allowed after filing the entry summary when all the facts are known, and that, as in the case of the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI), claims should be allowed, and Customs Form 353 made available, at any time prior to final liquidation. These commenters propose one or more of the following regulatory amendments to address these problems:

—Deletion of the restriction in § 10.307(b).
—Amendment of § 10.307 to reflect the language in §§ 10.172, 10.173(a), 10.198(a) and 10.112 of the Customs Regulations and to specifically allow action under 19 U.S.C. 1514 and 1520(c)(1). One commenter specifically suggests amending § 10.307(c) by inserting the following in the last sentence after "section": "or at the time of the filing of a request for remedial action under Parts 173 or 174 of this Chapter".
—Amendment of § 10.112 to explicitly allow for later availability of the Customs Form 353.

Customs response: The requirement in the second sentence of § 10.307(c) that the Exporter's Certificate of Origin "must be available" (*i.e.*, must be in existence) at the time the preference is claimed is merely a consequence of the requirement in the first sentence that a claim "shall be based" on the Exporter's Certificate of Origin. This first sentence requirement reflects the terms of Annex 406 of the CFTA which provides, among other things, that any importer making a declaration that goods meet the CFTA rules of origin must "base such declaration on the exporter's written certification to the same effect".

However, Customs does agree that § 10.307 may be overly restrictive in appearing to provide that a claim for CFTA treatment can be made only at the time of the filing of the entry summary by placing thereon the symbol "CA" before the HTSUS subheading covering the goods in question. There was never any intent on the part of Customs to deny to importers the opportunity afforded under other provisions of law to make a claim for a CFTA duty preference after the filing of the entry summary or equivalent documentation, either before or after liquidation of the entry. Thus, an importer may file a claim for a CFTA preference after filing the entry summary or its equivalent (1) at any time prior to liquidation, by requesting correction of the entry and submitting a valid Exporter's Certificate of Origin with a corrected entry, (2) within 90 days after liquidation, by filing a protest under 19 U.S.C. 1514, or (3) at any time within one year of the date of liquidation, by submission of a letter to Customs under 19 U.S.C. 1520(c)(1) requesting reliquidation of the entry provided the request is based on a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law. It should be noted, however, that a valid Exporter's Certificate of Origin covering the goods in question also must be in existence at the time that such a post-entry/entry summary claim is made.

Customs does not believe that it would be appropriate to amend § 10.307 to reflect the language of §§ 10.112, 10.172, 10.173(a), and 10.198(a) because those provisions generally concern the submission of documents which are a condition of entry (such as the GSP/CBI Certificate of Origin Form A), whereas the CFTA Exporter's Certificate of Origin is not required as part of the entry/entry summary (it is submitted to Customs only after entry and only if specifically requested). Nor does it seem necessary or appropriate to refer specifically to the right to file an amended entry or seek remedial action under 19 U.S.C. 1514 or 1520(c)(1) because these are actions of general applicability and thus are not normally cited in a context as specific as the CFTA, and it is noted in this regard that no problems appear to have arisen from the longstanding absence of such references in the GSP and CBI regulations. Rather, it would appear preferable to simply remove the overly restrictive language from § 10.307 so as to better reflect the law and current Customs policy. Accordingly, § 10.307 has been amended (1) in paragraph (a), by replacing the words "is claimed" by the words "may be claimed", (2) in paragraph (b), by deleting the first sentence and by redrafting the retained second sentence of refer to a timely claim "for a preference under the Agreement", and (3) in paragraph (c), by deleting the words "under paragraph (a) of this section" which appear twice and by simply referring to a claim for a preference "under the Agreement".

F. General Use of Customs Form 353

Comment: One commenter argues that Customs Form 353 should not be used at all, because in its present form it is not required by the CFTA, is too long and

complicated, and does not serve to enforce the basic thrust of the CFTA which is country of origin of the imported goods. Instead, this commenter suggests allowing a simple written statement that the goods qualify under the CFTA, which could be put on existing Customs documents.

Customs response: Customs does not agree. The format of the Exporter's Certificate of Origin was developed during bilateral discussions between the United States and Canada. Moreover, this commenter appears to misunderstand the main thrust of the CFTA, which is reduced or duty-free treatment for goods that meet specific rules of origin (which involve more than merely "country" of origin); the elements on Customs Form 353 are included primarily with those rules of origin in mind and are necessary to establish CFTA eligibility. A simple written statement that the goods qualify under the CFTA, placed on existing Customs documents, would be totally inadequate for verifying CFTA eligibility.

Comment: One commenter suggests that the regulations be amended to allow bonding for production of Customs Form 353, as is done in the case of the GSP and CBI.

Customs response: Inasmuch as the CFTA specifically requires that a claim for duty preference be based on an existing written certification by the exporter, and in view of the fact that the Exporter's Certificate of Origin does not form part of the entry package (rather, it is only submitted after entry and only if requested by Customs), it is not a bondable form. As regards the practice under the GSP and CBI, this commenter fails to note the distinction between the Certificate of Origin Form A (which is normally part of the entry package) and the GSP and CBI Declaration which, like the CFTA form, is submitted only upon request for post-entry verification and thus has never been a bondable form. Moreover, Customs has taken a policy decision, reflected in Directive 3550–27 dated September 8, 1987, to reduce paperwork by requiring neither a bond for production of a missing document (such as a GSP or CBI Form A) nor actual submission of the missing document unless Customs specifically requests it in writing. Accordingly, Customs does not accede to this commenter's suggestion.

Comment: One commenter recommends that § 10.307(c) be amended to permit completion and signature of Customs Form 353 by the person who has knowledge of the origin content of the goods (*i.e.*, the actual supplier or manufacturer), because the exporter is often a consolidator or packager who does not have the necessary information and thus should not bear the responsibility and liability for this. This commenter suggests that this could be done by defining "exporter" to include the actual supplier or manufacturer, with the result that the consolidator/exporter who is not the actual supplier would only be responsible for passing on the Customs Form 353 which accompanied the goods to their consolidation location.

Customs Response: The CFTA specifically requires that the certification be made by the "exporter". In a case in which the exporter is only a consolidator or packager, it nevertheless remains the responsibility of that exporter to obtain from the supplier or manufacturer the information needed to make the required certification.

Comment: One commenter suggests that brokers should be permitted in the regulations to correct clerical and more substantial errors appearing on Customs Form 353, with the approval of the exporter. This commenter further argues that brokers should not be required to possess or retain Customs Form 353 at any time, because it is the responsibility and liability of the consignee/buyer to do so.

Customs response: As regards the correction of clerical or other errors on Customs Form 353, a broker with a valid power of attorney from the exporter is empowered to act in that principal's name and thus would have the authority to correct such errors. With regard to the possession or retention of Customs Form 353, it should be noted that brokers acting as importer of record or as an agent on behalf of the importer of record are required to maintain records pertaining to the transaction, under 19 U.S.C. 1508 and under 19 U.S.C. 1641 and the regulations issued thereunder (19 CFR part 111). Accordingly, Customs does not believe that any changes to the regulations are necessary or appropriate in regard to these points.

Comment: One commenter recommends that Customs Form 353 be amended throughout to include citations to the HTSUS General Note provisions dealing with the CFTA.

Customs Response: Customs believes that inclusion of citations to the various HTSUS General Note 3(c) provisions dealing with the CFTA would unduly complicate Customs Form 353, thus rendering it more difficult to use. Moreover, inclusion of such citations would require amending the Form if at any future time the numbering scheme within General Note 3(c) were changed. In addition, because Customs Form 353 is a dual-use form acceptable in both Canada and the United States under the CFTA, inclusion of only citations to United States legal provisions would appear to be inappropriate. Customs believes that the present approach, whereby a general cross-reference to HTSUS General Note 3(c) is set forth in § 10.301, is preferable.

G. Specific Elements of Customs Form 353

1. Field 2—Blanket Certification

Comment: In order to align with the Canadian practice and reduce paperwork, two commenters recommend that the 6-month period for blanket certifications be extended to 12 months. Another commenter suggests that the regulations be amended to specifically provide for blanket certifications, including the length of time for which they will be valid.

Customs response: When the CFTA went into effect Customs determined that for import purposes it would be preferable to provide for blanket certifications for a maximum period of only 6 months, until such time as it could be determined that a longer period (*i.e.*, 12 months) would be workable. Customs subsequently reviewed the issue and concluded that it would be in the best interests of the public and the Government to allow a 12-month blanket certification period. Accordingly, on May 2, 1990, Customs Headquarters advised field offices by telex (and the trade community through those field offices) that blanket exporter's certificates completed on or after June 1, 1990, could have a maximum valid period of 12 months.

Customs agrees that the regulations should refer to blanket certifications and to the maximum 12-month period, and it is noted in this regard that, as further discussed below, such a change will also provide an opportunity to clarify an administrative position which Customs has taken with regard to the use of blanket certifications.

2. Field 3—Consignee Identification

Comment: Two commenters recommend complete elimination of Field 3 on the grounds that (1) it is burdensome for exporters who ship identical merchandise to many consignees, (2) the name of the consignee is irrelevant to the issue of whether the goods qualify for CFTA treatment and (3) the identity of the consignee appears elsewhere in the entry package.

Customs response: Field 3 should be retained because its inclusion on the Form resulted from bilateral discussions between the U.S. and Canada, and its

elimination should similarly be made only by bilateral agreement. Nevertheless, Customs has recognized that completion of Field 3 may create an unnecessary burden when the same information is on the entry documents. Accordingly, on October 1, 1990, Customs Headquarters advised field offices by telex (and the trade community through those field offices) that henceforth (1) an exporter will be allowed to leave Field 3 blank unless it is the exporter's intention to restrict the applicability of the Form to one or more buyers, or (2) alternatively, exporters will be allowed to issue blanket certificates showing "Various" in Field 3. In connection with the next revision of Customs Form 353, consideration will be given to whether the instructions on the reverse side should be amended to reflect this position.

Comment: Three commenters raise issues regarding the identity of the party to be included in Field 3. One commenter simply recommends that the regulations define "consignee" so that it is clear what party should be identified in the field. Another commenter suggests that, to avoid the need for obtaining a new Customs Form 353 when a blanket certification is out of date because there are new ultimate customers to whom the goods will be delivered, only the identity of the intended user (*i.e.*, the importer of record) should be required in Field 3. The third commenter states that the regulations should allow the identification in Field 3 to include the consignee, purchaser or importer.

Customs response: Shortly after the CFTA went into effect, Customs Headquarters issued a telex to field offices (with instructions that copies be provided to the trade community) stating that the party to be identified in Field 3 could be the consignee, the purchaser, or the importer of record, and this remains the Customs position. The flexibility provided by this position could, among other things, solve the problem of having to obtain a new Customs Form 353 where a blanket certification is no longer valid due to the acquisition of new ultimate customers. As in the case of the blanket certification period, Customs is of the opinion that any further clarification as to the party or parties to be identified in Field 3, if deemed necessary, should not be done through a regulatory amendment but rather should be reflected in the instructions set forth on the reverse side of Customs Form 353. Accordingly, Customs will consider including this change in connection with the next revision of Customs Form 353.

3. Field 4—Producer Identification

Comment: Three commenters suggest elimination of Field 4 because (1) it goes beyond the intent of the Customs Form 353 which is to show the relationship between the exporter and the importer, (2) identification of the manufacturer(s) poses a substantial administrative burden in cases involving multiple line items and manufacturers in one shipment and (3) confidentiality of business information would be lost if the exporter is compelled to reveal the names of its suppliers to its export customers, and this could potentially lead to a loss of future sales to those customers who would be able to source the goods directly from the suppliers. On the issue of confidentiality, one of these commenters suggests, in the alternative, that some way be found to maintain confidentiality, *e.g.*, by merely requiring that the exporter maintain on file the certificates of origin from its suppliers.

Customs response: Customs does not agree that Field 4 goes beyond the intent of Customs Form 353, because the true purpose of the form is to demonstrate that the imported goods originate in Canada under the CFTA rules, and information regarding the producer is often a crucial factor in verifying the origin of the goods. As regards the alleged substantial administrative burden resulting from this requirement, Customs would point out that a decision whether to enter into a CFTA transaction is essentially a business decision requiring a balancing of anticipated rewards against possible drawbacks or risks. Accordingly, Field 4 must be retained.

On the issue of confidentiality, Customs has recognized that completion of Field 4 could result in the disclosure of sensitive information regarding the exporter's sources of supply. In order to address this problem, Customs Headquarters on October 1, 1990, advised field offices (and the trade community through those field offices) that henceforth Field 4 may be completed with the statement "Available to U.S. Customs Upon Request". Customs will consider whether a corresponding amendment to the instructions applicable to Field 4 should be made during the next revision of Customs Form 353.

4. Fields 5 and 7—Origin Criteria

Comment: One commenter states that these two fields are unnecessary and thus should be eliminated because they do not serve to establish eligibility. In other words, if Customs questions the claimed eligibility, other evidence would still have to be presented to Customs to support the claim.

Customs response: Customs does not agree that these two fields should be eliminated. Where a claim for CFTA treatment is filed, there is a presumption that the exporter has performed a review of the goods to determine that they comply with the CFTA origin criteria. The Exporter's Certificate of Origin, and in particular the information in Fields 5 and 7, serves to support that presumption. In many cases the information provided on the certificate, coupled with the Customs officer's knowledge of the particular product line, will obviate the need to ask for additional evidence to support the claim. On the other hand, in the absence of the information contained in Fields 5 and 7, other evidence to support the claim would have to be submitted in every case.

Comment: One commenter points out that an additional criterion is necessary in Field 5, namely, a category for goods which comprise only goods which are wholly produced or obtained in Canada or the United States and/or goods which otherwise qualify as materials originating in Canada or the United States.

Customs response: The CFTA texts do not specifically address a product which is not "wholly" produced or obtained in the United States or Canada but which consists entirely of materials that have United States or Canadian origin under the CFTA origin rules. Consultations between the United States and Canada to resolve this problem are ongoing.

5. Field 8—Description of Goods

Comment: Two commenters argue that Field 8 is unnecessary because the information requested is already available on invoices and other documents in the entry package.

Customs response: Customs does not agree. A description of the goods is necessary to establish a connection between the goods covered by the CFTA claim and those goods as described on the invoices and other documents in the entry package. This is particularly true in cases where the shipment in question covers both goods covered by a CFTA claim and goods for which no CFTA claim is made. Finally, given the fact that the Exporter's Certificate of Origin is only supplied to Customs after entry has taken place, it would be extremely difficult, if not impossible, to connect a certificate to the correct entry package without a description of the goods covered by the certificate.

Comment: Two commenters object to the onerous administrative burden

imposed by the requirement that the precise or estimated number of third country constituent materials per unit be indicated in Field 8 if a change in tariff classification criterion is used and there are multiple constituent materials.

Customs response: In connection with the administrative review and approval of the use of Customs Form 353, the instructions regarding third country materials were eliminated from the reverse side of the form. Accordingly, there is no longer any requirement that third country materials be separately listed in Field 8.

6. Field 11—Certification

Comment: Two commenters argue that the certification language should be amended to include the words "to the best of my knowledge and belief" in order to avoid the strict warranty that presently appears, because often the person signing the Customs Form 353 is under severe time constraints and does not have direct knowledge as to all facts when the certificate must be completed.

Customs response: The CFTA requires that the exporter certify that the goods in fact meet the CFTA rules of origin, not that they appear to do so based on the exporter's knowledge (however incomplete that knowledge may be) and belief (however misplaced that belief may be). To amend the certification language as proposed would be contrary to the express terms of the CFTA and would in effect totally nullify the legal force of the certification procedure and the CFTA rules or origin upon which the duty preference is based. In response to the alleged lack of direct knowledge problem, Customs points out that use of the CFTA duty preference is not an absolute right but rather is conditional on the establishment of certain facts, and the exporter must establish those facts in advance of the claim for CFTA treatment. As regards time constraint problems, the exporter can always wait until those time constraints have disappeared and, as discussed above, so long as liquidation has not become final the U.S. importer can always delay making the claim until a proper Exporter's Certificate of Origin is in hand.

Comment: One commenter states that the certification language imposes an impossible burden on retailers that source goods from hundreds of vendors for resale, because there is often a lack of first-hand knowledge of the true facts regarding the production of the goods and because such retailers cannot maintain the required records where supply and manufacturing operations are constantly changing.

Customs response: The response to the preceding comment is also relevant here. The retailer simply must obtain from its supplier the information necessary to complete the Exporter's Certificate of Origin, and the retailer must obtain updated information if sources or manufacturing operations change. Customs recognizes that meeting the CFTA requirements may be more difficult for some parties than for others (given the variables that apply from one business operation to another).

H. Records Retention—§ 10.308

Comment: One commenter suggests that this provision be amended to allow a broker to retain the records in place of the importer of record, because the broker interfaces directly with Customs.

Customs response: Under 19 U.S.C. 1508 and 19 CFR 162.1b and 162.1c, an importer must retain records pertaining to his import transactions for a period of 5 years from the date of entry of the merchandise. It would be clearly contrary to this legal requirement for Customs to provide in the CFTA regulations for retention of the Exporter's Certificate of Origin by a broker as a replacement for retention by the importer of record. A broker acting as an agent of the importer is separately required to maintain records pertaining to that importer's transactions, both under 19 U.S.C. 1508 and the regulations thereunder and under 19 U.S.C. 1641 and 19 CFR 111.21–111.23.

Additional Changes to the Regulations

Since the CFTA went into effect, Customs has had occasion to address a number of important CFTA issues in connection with the issuance of binding rulings and other administrative decisons. These rulings and decisions, which clarify and interpret the CFTA and the regulations thereunder, reflect official positions of Customs and thus are currently being applied by Customs. In order to provide the trade community with the greatest possible guidance and predictability as regards application of the CFTA provisions, Customs believes that the principles reflected in those rulings and decisions should be incorporated in the regulations. Accordingly, this final rule document sets forth additional regulatory changes to incorporate those rulings and decisions as well as certain editorial or organizational changes to add clarity and improve the readability of the regulations. The sections of the interim regulations affected by these changes are indicated below.

Section 10.303

This section, which has been reorganized, includes a new paragraph (b) which clarifies the meaning of "originating materials"; the definition of "materials" reflects the definition in article 304 of the CFTA and the definition of "originating" is based on the definition in article 201 of the CFTA. In addition, a new paragraph (c) has been added to clarify that under the CFTA a "change in classification" has reference to a change within the international Harmonized System. Finally, a reference to the HTSUS provision covering the CFTA has been added to the paragraph concerning goods wholly obtained or produced, in order to align on the approach used in the following paragraph.

Section 10.305

This section, which has been reorganized, includes a new paragraph (a)(3) which interprets the CFTA provisions regarding direct cost of processing or assembling. In addition, a new paragraph (b)(3) has been added to set forth interpretations of the CFTA provisions regarding the value of originating materials.

Section 10.307

A new paragraph (d)(2) has been added to clarify the manner in which blanket certifications may be used.

Section 10.310

The first sentence in paragraph (b) has been amended to clarify that the election to average is binding for the entire period covered by the election.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, Customs believes that, with the exception of the interim amendment to § 24.23 which was the subject of a separate rulemaking procedure implementing the Customs user fee provisions contained in § 111 of the Customs and Trade Act of 1990 (Public Law 101–382) (see T.D 91–95 published December 5, 1991, 56 FR 63648), the interim regulations published as T.D. 89–3 should be adopted as a final rule with certain changes thereto as discussed above and set forth below In addition, part 178, Customs Regulations (19 CFR part 178), is being amended to indicate the OMB-assigned control number for the information collections contained in this final rule

Inapplicability of Public Notice and Delayed Effective Date Provisions

Because the amendments contained in this document reflect existing statutory requirements or relieve a restriction or merely implement interpretations and policies that are already in effect under interim regulations, good cause exists under 5 U.S.C. 553(b) (A) and (d) for dispensing with public notice and delayed effective date procedures.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in Executive Order 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information in this final regulation, contained in §§ 10.84, 10.307, 10.310 and 10.311, have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(h)) under control number 1515–0164. The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 225 hours, depending on individual circumstances, with an estimated average of 3.55 hours. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspections, Imports, Motor Vehicles.

19 CFR Part 148

Customs duties and inspections, Imports.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

Amendments to the Regulations

Accordingly, that portion of the interim rule amending parts 10 and 148, Customs Regulations (19 CFR parts 10 and 148), which was published at 53 FR 51762–51777 on December 23, 1988, is adopted as a final rule with the following changes:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624.

§ 10.84 [Amended]

2. In § 10.84(a)(1), fifth sentence, remove the word "importer" and add, in its place, the word "exporter".

3. Section 10.303 is revised to read as follows:

§ 10.303 Originating goods.

(a) *General.* For purposes of eligibility for a preference under the Agreement, goods may be regarded as originating goods if:

(1) *Wholly of Canadian or United States origin.* The goods are wholly obtained or produced in the Territory of Canada or the United States, or both, as set forth in General Note 3(c), HTSUS;

(2) *Transformed with a change in classification.* The goods have been transformed by a processing which results in a change in classification and, if required, a sufficient value-content, as set forth in General Note 3(c), HTSUS; or

(3) *Transformed without a change in classification.* An assembly of goods, other than goods of chapters 61 to 63 of the HTSUS, which does not result in a change in classification because the goods were imported in an unassembled or disassembled form and classified as the goods, unassembled or disassembled, pursuant to General Rule of Interpretation 2(a), HTSUS, or because the tariff subheading for the goods provides for both the goods themselves and their parts, shall nonetheless be treated as originating goods if:

(i) The value of originating materials and the direct cost of assembling in Canada or the United States, or both, as defined in § 10.305 constitute not less than 50 percent of the value of the goods when exported to the United States;

(ii) The assembled goods are not subsequently processed or further assembled in a third country; and

(iii) The goods satisfy the requirement in § 10.306.

(b) *Originating materials.* For purposes of this section and § 10.305, the term "materials" means goods, other than those included as part of the direct cost of processing or assembling, used or consumed in the production of other goods, and the term "orginating" when used with reference to such materials means that the materials satisfy one of the criteria for originating goods set forth in paragraph (a) of this section.

(c) *Change in classification.* For purposes of paragraph (a) of this section, the expression "change in classification" means a change of classification within the Harmonized Commodity Description and Coding System (Harmonized System) as published and amended from time to time by the Customs Cooperation Council.

(d) *Articles of feather.* The goods are eligible to be treated as originating in Canada pursuant to General Note 3(c)(vii)(R)(12)(ee), HTSUS.

4. Section 10.305 is revised to read as follows:

§ 10.305 Value content requirement.

(a) *Direct cost of processing or assembling.*

(1) *Definition.* For purposes of applying a specific rule of origin under the Agreement which requires a value content determination, the terms "direct cost of processing" and "direct cost of assembling" mean the costs directly incurred in, or that can be reasonably allocated to, the production of goods, including:

(i) The cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees of independent contractors;

(ii) The cost of inspection and testing the goods;

(iii) The cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of the United States or Canada;

(iv) Development, design, and engineering costs;

(v) Rent, mortgage interest, depreciation on buildings, property

insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of the goods; and

(vi) Royalty, licensing, or other like payments for the right to the goods.

(2) *Exclusions from direct costs of processing or assembling.* Excluded from the direct costs of processing or assembling are:

(i) Costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance;

(ii) Brokerage charges relating to the importation and exportation of goods;

(iii) Costs for telephone, mail, and other means of communication;

(iv) Packing costs for exporting the goods;

(v) Royalty payments related to a licensing agreement to distribute or sell the goods;

(vi) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used by personnel charged with administrative functions; and

(vii) Profit on the goods.

(3) *Interpretation.* (1) *Indirect materials.* Under the definition of "materials" set forth in § 10.303(b), certain types of materials are treated as direct costs of processing or assembling under paragraph (a) of this section. This applies principally to materials used or consumed indirectly in the production of exported goods, where no portion of those materials is physically incorporated in the exported goods. In addition to the items specified in paragraph (a)(1)(iii) of this section, such materials include items such as gloves and safety glasses worn by production workers, tape used in painting processes, and tools, materials and spare parts used in the repair and maintenance of machinery and equipment used in the production of the exported goods. Such materials are to be distinguished from waste and spoilage specified in paragraph (b)(1)(ii)(C) of this section, which relate to materials that are physically incorporated in the exported goods.

(ii) *Directly incurred.* In order for costs incurred by a production facility to be treated as direct costs of processing or assembling, those costs must be directly incurred in the production of the exported goods and not merely associated with the production facility as peripheral costs necessary to operate the facility. In addition to the exclusions set forth in paragraph (a)(2) of this section, such peripheral costs include labor costs for nurses tending to employees, for accounting personnel involved in physical inventory taking, for personnel responsible for purchasing or requisitioning materials to be used or consumed in the production process, and for second level supervisors and above who are not directly involved in the production process.

(iii) *Labor costs.* Under paragraph (a)(1)(i) of this section, labor costs includable as direct costs of processing or assembling are limited to labor provided by the producer's employees or by independent contractors. Thus, for example, where processing operations are performed on components in the United States and those components are sold to a manufacturer in Canada where they are incorporated in goods exported to the United States, the cost of those processing operations in the United States cannot be separately counted as a direct cost of processing attributable to the finished goods exported to the United States.

(iv) *Interest expense.* Under paragraphs (a)(1)(v) and (a)(2)(vi) of this section, mortgage interest, secured by real property, will be treated as a direct cost of processing or assembling, but only for that portion of the interest which is related to real property directly used in the production of the exported goods; thus, where the entire production facility is covered by a mortgage and incorporates both production and administrative or other general expense space, an appropriate allocation must be made in order to ensure that only that portion of the interest which is attributable to the production area is counted toward the value-content requirement. Interest expenses not covered by a mortgage (including interest on funds borrowed to meet the payroll of personnel who are directly involved in the production process, interest on inter-company loans and interest on lines of credit) are general and administrative costs or expenses and thus are not considered direct costs of processing or assembling.

(b) *Value of originating materials.* (1) *Definition.* The term "value of materials originating in the United States or Canada or both" means the aggregate of:

(i) The price paid by the producer of exported goods for materials originating in either the United States or Canada, or both, or for materials imported from a third country used or consumed in the production of such originating materials; and

(ii) When not included in that price, the following costs related thereto:

(A) Freight, insurance, packing and all other costs incurred in transporting any of the materials referred to in paragraph (b)(1)(i) of this section to the location of the producer;

(B) Duties, taxes and brokerage fees on such materials paid in the United States, or Canada, or both;

(C) The cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(D) The value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(2) *Directly attributable.* Whenever a value-content determination is required by the rules of the Agreement and whenever originating materials and materials obtained or produced in a third country are used or consumed together in the production of goods in the United States or Canada, the value of originating materials may be treated as such only to the extent that the value is directly attributable to the goods under consideration.

(3) *Interpretation.* (i) *Price paid.* As provided in paragraph (b)(1) of this section, the "price paid" for materials by the producer of exported goods forms the basis for determining the value of such materials when incorporated in the exported goods. The actual price paid for such materials will determine the value of those materials for purposes of the value-content requirement, even though a relationship between the producer and the seller of the materials may have influenced the price, except where the price did not include items specified in paragraph (b)(1)(ii) of this section that relate to the materials. The following examples will illustrate these principles. Notwithstanding these examples, the totality of the facts must be examined in each case to determine whether § 10.304(b) is applicable.

Example 1. Non-originating materials are sold by Company X (a foreign corporation located outside the United States or Canada) to Company Y (a Canadian corporation) for $100; Company X also sold identical materials to Company Z (a U.S. corporation) for $200 which was the price Company Z had paid to Company X for similar materials prior to implementation of the Agreement; and those non-originating materials sold by Company X to Company Y are then incorporated by Company Y into goods exported to the United States. In this case the $100 price paid by Company Y to Company X constitutes the value of those materials for purposes of the value-content requirement.

Example 2. Company X purchased materials for $100, added a four percent

mark-up to the price paid to defray purchasing expenses, and then sold the marked-up materials to Company Y (a Canadian corporation) which incorporated the materials in goods exported to the United States. In this case the $104 price paid by Company Y to Company X constitutes the value of the materials for purposes of the value-content requirement.

Example 3. Company X (a foreign corporation located outside the United States) sold non-originating materials to Company Y (a U.S. corporation) for $200, and Company Y then sold those materials for $100 to Company Z (a Canadian corporation) which incorporated the materials in goods which were imported into the United States by Company P (the U.S. parent company of Company Y). In this case, in accordance with paragraph (b)(1)(ii)(D) of this section, $100 would be added to the price paid by Company Z for purposes of the value-content requirement because the materials were sold at a reduced cost within the meaning of subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(ii) *Originating materials for which no price paid.* In cases involving a vertically integrated producer (that is, an entity which produces goods for export from materials which that producer has also made) a "price paid" for such originating materials normally does not exist. Even in the absence of a "price paid", such a vertically integrated producer may still claim the materials as originating materials for purposes of qualifying the finished goods exported to the United States as goods originating in Canada. However, under paragraph (b)(1)(i) of this section the value of those materials for purposes of applying the value-content requirement is limited to the price paid for those materials imported from the third country plus any costs added thereto under paragraph (b)(1)(ii) of this section. The following examples will illustrate these principles.

Example 1. If an automobile producer in the United States or Canada fabricates body panels wholly from third country steel coil, those body panels can qualify as originating materials without having to satisfy a value-content requirement because steel coil is classified in chapter 72 of the Harmonized System and body panels are classified in chapter 87 and the change in classification rules in chapter 87 do not incorporate a value-content requirement in this context. Thus, the producer can claim the body panels fabricated from the third country steel as originating materials for purposes of the value-content requirement applicable to the finished automobile which will be exported to the United States. The value of those originating materials is the price paid for the steel coil imported from the third country and used or consumed in the production of the body panels.

Example 2. An automobile exporter in Canada purchases and imports body panels fabricated in a third country in order to join them with vertically (locally) fabricated body panels to form an automobile body. If the body qualifies as an originating material, the exporter has two options. Under the first option, the exporter can claim the body as originating material, in which case the value of originating material is the price paid for the foreign body panels. Under the second option, the exporter may elect not to claim the body as originating material; but, rather, the exporter may claim as originating material any domestic steel coil used in producing the vertically (locally) fabricated body panels, in which case the value of originating materials is the price paid for the domestic steel coil.

(c) *Value of goods when exported.* The term "value of the goods when exported to the United States" means the aggregate of:

(1) The price paid by the producer for all materials, whether or not the materials originate in the United States, or Canada, or both, and, when not included in the price paid for the materials, the following costs related thereto:

(i) Freight, insurance, packing, and all other costs incurred in transporting all materials to the location of the producer;

(ii) Duties, taxes, and brokerage fees on all materials paid in the United States, or Canada, or both;

(iii) The cost of waste or spoilage resulting from the use or consumption of such materials, less the value of, renewable scrap or by-product; and

(iv) The value of goods and services relating to all materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs Trade; and

(2) The direct cost of processing or the direct cost of assembling the goods.

5. Section 10.307 is amended by revising paragraphs (a) through (d) to read as follows:

§ 10.307 Documentation.

(a) *Claims for a preference.* A preference in accordance with the Agreement may be claimed by including on the entry summary, or equivalent documentation, the symbol "CA" as a prefix to the subheading of the HTSUS under which each eligible good is classified.

(b) *Failure to claim a preference.* Failure to make a timely claim for a preference under the Agreement will result in liquidation at the rate which would otherwise be applicable.

(c) *Documentation showing origin.* A claim for a preference under the Agreement shall be based on the Exporter's Certificate of Origin, properly completed and signed by the person who exports or knowingly causes the goods to be exported from Canada. The Exporter's Certificate of Origin must be available at the time the preference is claimed and shall be presented to the district director upon request.

(d) *Exporter's Certificate of Origin.* (1) *General.* The Exporter's Certificate of Origin shall be prepared on Customs Form 353. In lieu of the Customs Form 353, the exporter may use an approved computerized format or such other format as is approved by the Headquarters, U.S. Customs Service, Office of Trade Operations, Washington, DC 20229. Alternative formats must contain the same information and certification set forth on Customs Form 353.

(2) *Blanket certifications.* A blanket Exporter's Certificate of Origin, not to exceed a period of 12 months, issued for goods claimed as originating goods under the Agreement, can only be used if the certifying exporter is able to verify that the goods in each shipment to be covered by the blanket certification actually qualify for treatment under the Agreement. A blanket certification does not allow an exporter to average its costs over the blanket certification period in order to establish that the exported goods meet the criteria for originating goods under the Agreement. Under § 10.308, the exporter must retain supporting records that will permit a review of the eligibility of the goods in each shipment covered by a blanket certification.

* * * * *

6. In § 10.310(b), the first sentence is revised to read as follows:

§ 10.310 Election to average for motor vehicles.

* * * * *

(b) * * *

"An election to average shall be binding at the time of the first entry of vehicles for which the election has been made and shall remain binding for the plant for the entire period covered by the election."

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continued to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number under the column indicated:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
§ 10.84	Origin certificate for automotive products from Canada	1515–0164
§§ 10.307, 10.310, and 10.311	Claim for duty-free entry and election to average for automotive products under the U.S.-Canada Free Trade Agreement.	1515–0164

Carol Hallett,
Commissioner of Customs.

Approved: December 18, 1991.

Peter K. Nunez,
Assistant Secretary of the Treasury.

[FR Doc. 92–1437 Filed 1–21–92; 8:45 am]

BILLING CODE 4820–02–M

19 CFR Part 24

[T.D. 92–7]

Update of Ports Subject to the Harbor Maintenance Fee

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulation; solicitation of comments.

SUMMARY: Commercial cargo loaded on or unloaded from commercial vessels at certain ports is subject to the harbor maintenance fee pursuant to the Water Resources Development Act of 1986 and interim Customs Regulations regarding the harbor maintenance fee. This document amends the list of ports subject to the fee. This amendment is made to further clarify the port descriptions and to update the list as to locations which are exempt from the fee.

DATES: The port descriptions are effective as of January 22, 1992. Written comments must be received by February 21, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, Customs Service Headquarters, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20029.

FOR FURTHER INFORMATION CONTACT: Patricia Barbare, User fee Task Force, (202) 566–8848.

SUPPLEMENTARY INFORMATION:

Background

The Water Resources Development Act of 1986 (Pub. L. 99–662) established a Harbor Maintenance Trust Fund to be used for improving and maintaining ports and harbors in the U.S. Pursuant to the Act, this fund is supported by a harbor maintenance fee assessed on port use by vessels carrying water-borne commercial cargo. By assessing a charge for port use, the Act causes those shippers and importers who benefit from the maintenance of a Federal port or harbor to share in the cost of that maintenance.

The Act defines port generally as any channel or harbor or component thereof in the U.S. which is not an inland waterway, is open to public navigation, and at which Federal funds have been used since 1977 for construction, maintenance or operation.

Customs published T.D. 87–44 in the **Federal Register** (52 FR 10198) on March 30, 1987, establishing interim regulations for the collection of the harbor maintenance fee. The regulations are set forth in § 24.24, Customs Regulations (19 CFR 24.24). When drafting T.D. 87–44, Customs, in conjunction with the U.S. Army Corps of Engineers, took the definition of port in the Act and established a list of ports in § 24.24(b)(1), Customs Regulations (19 CFR 24.24(b)(1)). The list of ports includes in the descriptions and notations column the description of movements which are considered intraport; pursuant to the Water Resources Development Act and § 24.24(d)(1) of the regulations, the fee is not to be assessed on the mere movement of commercial cargo within a port. Commercial ports with depths of less than nine feet were not included on the list. Customs stated in T.D. 87–44 that the list is subject to change and will be amended, if necessary, to reflect money spent by the U.S. Army Corps of Engineers for construction, maintenance or operation of any port not on the list.

On July 14, 1987, Customs published a clarifying amendment to the harbor maintenance fee interim regulations in the **Federal Register** (52 FR 26297) reformatting the list of ports to assist users.

On May 9, 1991, Customs published in the **Federal Register** (56 FR 21445), T.D. 91–44, an amendment to the interim harbor maintenance fee regulations that increased the fee pursuant to the Omnibus Budget Reconciliation Act of 1990, and changed certain forms used for remitting payments, requesting refunds and making supplemental payments.

In this document, Customs again is amending the interim regulations on the harbor maintenance fee to clarify the listing in § 24.24(b)(1) of ports subject to the harbor maintenance fee. The Army Corps of Engineers has informed Customs that the list published in 1987 inadvertently included some areas that did not have Army Corps of Engineers work done there and excluded some areas in which Army Corps of Engineers work was done. Further, the Army Corps of Engineers has determined that clarification is necessary regarding the intraport nature of certain movements. Customs is amending § 24.24(b)(1) accordingly.

Comments

It is noted that the harbor maintenance fee regulations are still interim. While the comment period has expired on the main portion of the interim regulations (see 52 FR 20593, dated June 2, 1987; extension of comment period on interim regulations to August 28, 1987), Customs will give consideration to any written comments (preferably in triplicate) timely submitted relating to the description of the ports set forth in this document. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs

Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Inapplicability of Notice and Delayed Effective Date

The statutory effective date of the harbor maintenance fee was April 1, 1987. Because these amendments merely clarify the interim regulations that implement the statutory provision and do not impose any additional burdens on, or take away any existing rights or privileges from the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure is impracticable and unnecessary. Similarly, pursuant to 5 U.S.C. 553(d)(1)(3), a delayed effective date is not provided. These amendments are effective as of the date of publication in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

This amendment does not meet the criteria for a "major rule" within the meaning of Executive Order 12291, and a regulatory impact analysis has not been prepared. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are not applicable.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 24

Accounting, Customs duties and inspection, Imports, Taxes.

Amendments to the Regulations

Part 24, Customs Regulations (19 CFR part 24) is amended as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority for part 24, Customs Regulations (19 CFR part 24) and the specific relevant authority for § 24.24 Customs Regulations (19 CFR 24.24), continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624; 31 U.S.C. 9701, unless otherwise noted.

* * * * *

Section 24.24 also issued under 26 U.S.C. 4461, 4462;

* * * * *

2. The list of ports subject to the harbor maintenance fee set forth in § 24.24(b)(1), Customs Regulations (19 CFR 24.24(b)(1) is revised to read as follows:

§ 24.24 Harbor maintenance fee.

* * * * *

(b) *Definitions.*

(1) * * *

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE

[Section 1402 of PL 99-662, as amended]

Port code, port name and state	Port descriptions and notations
Alabama	
1901—Mobile	
Alaska	
3126—Anchorage	Includes Iliuliuk Harbor, Seldovia Harbor, and Homer. Movements between these points are intraport. (Dutch Harbor—not intraport.)
3106—Dalton Cache	Includes Haines Harbor.
3101—Juneau	Includes only Hoonah Harbor. Fee does not apply to Juneau Harbor.
3102—Ketchikan	Includes Metlakatla Harbor.
3127—Kodiak	
3112—Petersburg	Includes Wrangell Narrows.
3125—Sand Point	Includes Humboldt and King Cove.
3115—Sitka	Includes Sergius-Whitestone Narrows.
California	
2802—Eureka	Includes Crescent City.
Los Angeles/Long Beach Ports	Includes Ventura, Port Hueneme, Channel Islands Harbor, Santa Barbara, Los Angeles and Long Beach. Movements between these points are intraport.
2709—Long Beach Harbor	
2704—Los Angeles	
2713—Port Hueneme	
2712—Ventura	
2805—Monterrey	
2719—Moro Bay	Includes only Moro Bay.
2501—San Diego	Includes Oceanside Harbor.
2707—San Luis	
San Francisco Bay Area Ports*	Includes all points inshore of the Golden Gate Bridge on the bays and the straits and on the Napa, Sacramento and San Joaquin Rivers, and on the deep water channels to Sacramento and Stockton. Movements between points above Suisun Bay (Longitude 122 degrees West at Port Chicago) are intraport. Movements between points below Longitude 122 degrees West and the Golden Gate Bridge are all intraport. All other movements are interport.
2813—Alameda	
2830—Carquinez Strait	
2815—Crockett	
2820—Martinez	
2811—Oakland	
2821—Redwood City	
2812—Richmond	
2816—Sacramento	
2809—San Francisco	
2828—San Joaquin	
2829—San Pablo Bay	
2827—Shelby	
2810—Stockton	
2831—Suisun Bay	
Connecticut	
0410—Bridgeport	Includes Housatonic River, and Stamford Harbor, and Wilson Point Harbor. Movements between these points are intraport.

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE—Continued

[Section 1402 of PL 99-662, as amended]

Port code, port name and state	Port descriptions and notations
0411—Hartford	Includes all points on the Connecticut River between Hartford and Long Island Sound. Movements within this area are intraport.
0412—New Haven	
0413—New London	
Delaware	
Delaware River Ports, DE, NJ, PA*	Includes all points on the Delaware River from Trenton to the sea at a line between Cape Henlopen and Cape May, all points on the lower four miles of the Christina River, Delaware, and all points on the lower six miles of the Schuylkill River, Pennsylvania. Fee applies to all movements on the Chesapeake and Delaware Canal east of U.S. Highway 13. Includes Absecon Inlet (Atlantic City) and Cold Spring Inlet. Movements within this area are intraport.
1102—Chester, PA	
1107—Camden, NJ	
1113—Gloucester, NJ	
1118—Marcus Hook, PA	
1105—Paulsboro, NJ	
1101—Philadelphia, PA	
1103—Wilmington, DE	
District of Columbia	
Potomac River Ports, DC, MD, VA*	Includes all points on the Potomac River (see Chesapeake Bay Ports map) from a line between Point Lookout and the Little Wicomico River at Chesapeake Bay to and including Washington and Alexandria. Movements between these points are intraport.
5402—Alexandria, VA	
5401—Washington, DC	
Florida	
1807—Boca Grande	
1805—Fernandina Beach	
5205—Fort Pierce	
1803—Jacksonville	
5202—Key West	
5201—Miami	
1818—Panama City	For HMF purposes, also includes Carrabelle and Port St. Joe.
1819—Pensacola	
1816—Port Canaveral	
5203—Port Everglades	
Tampa Bay Ports*	Includes Alafia River, Port Manatee, Port Sutton, Port Tampa, Weedon Island, and all other points on o approached using the Tampa Harbor Channel inshore of the Sunshine Skyway Bridge. Movements between these points are intraport.
1814—St. Petersburg	
1801—Tampa	
5204—West Palm Beach	
Georgia	
1701—Brunswick	Includes St. Marys River.
1703—Savannah	
Hawaii	
3202—Hilo	Includes Kawaihae.
3201—Honolulu	Includes Barbers Point Harbor.
3203—Kahului	Includes Kaunakakai Harbor.
3204—Nawiliwili-Port Allen	Includes both Nawiliwili and Port Allen.
Illinois	
Southern Lake Michigan Ports	Includes Waukegan Harbor, IL. Indiana Harbor (East Chicago, IN) Calumet Harbor, the Chicago River (up to the North Avenue Bridge) and the Chicago Harbor. Fee applies at the ports of Michigan City and Burns Waterway Harbor, IN. Fee does not apply at Buffington Harbor or Gary Harbor. Movements within an area from Waukegan, IL to Michigan City, IN are intraport.
3901—Chicago	
3902—East Chicago	
3905—Gary	
Indiana	
Southern Lake Michigan Ports	Includes Waukegan Harbor, IL. Indiana Harbor (East Chicago, IN) Calumet Harbor, the Chicago River (up to the North Avenue Bridge) and the Chicago Harbor. Fee applies at the ports of Michigan City and Burns Waterway Harbor, IN. Fee does not apply at Buffington Harbor or Gary Harbor. Movements within an area from Waukegan, IL to Michigan City, IN are intraport.
3901—Chicago	
3902—East Chicago	
3905—Gary	
Louisiana	
2017—Lake Charles	Includes all points on the Calcasieu River and Pass.
Mississippi River Ports/Baton Rouge and Vicinity*	Includes all river points from River Mile 115 Above Head of Passes (AHP) at the St. Charles Parish-Jefferson Parish line, to River Mile 233.9 AHP at Baton Rouge. Movements between these points are intraport.
2004—Baton Rouge	
2009—Destrehan	
2010—Gramercy	
2014—Good Hope	
2013—St. Rose	
Mississippi River Ports/New Orleans and Vicinity*	Includes all river points from River mile 115 AHP to Mile 21.6 Below Head of Passes (BHP) via Southwest Pass and to Mile 14.7 BHP via South Pass. Also includes all points on the Inner Harbor Navigation Canal and the Mississippi River Gulf Outlet. Movements between these points are intraport.
2012—Avondale	
2002—New Orleans	
2005—Port Sulphur	
2001—Morgan City*	Includes Atchafalaya River from Morgan City to the Gulf, the Houma Navigation Canal, and points on the Gulf Intracoastal Waterway between Mile 49.8 West and Mile 107.0 West. Movements between these points are intraport.
Maine	
0102—Bangor	
0111—Bath	
0132—Belfast	Includes all Penobscot River points (Bucksport and Winterport). Fee does not apply at Belfast, Sandy Point, or Castine Harbor.

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE—Continued

[Section 1402 of PL 99-662, as amended]

Port code, port name and state	Port descriptions and notations
0101—Portland	
Maryland	
Chesapeake Bay Ports, MD*	Includes all Maryland points on Chesapeake Bay and its tributary waters except for the Potomac River. Also includes the Waterway from Delaware River to Chesapeake Bay west of U.S. 13 highway bridge. Movements between these points are intraport. (Also see Chesapeake Bay Ports: VA).
1303—Baltimore	
1302—Cambridge	
Massachusetts	
0401—Boston	Includes all of the Port of Boston inshore of Castle Island on the Inner Harbor and Chelsea and Mystic Rivers and all points on the Weymouth Fore, and Town and Black Rivers, and Dorchester Bay. Movements between points on the Saugus River in the north to Scituate in the south are intraport.
0404—Gloucester	
0407—Fall River	
Michigan	
3843—Alpena	Fee does not apply to Stoneport.
Monroe/Detroit/Harbor Beach	Includes Monroe, Detroit, and the Detroit River, St. Clair and the St. Clair River, Port Huron and all points on the Rouge and Black Rivers. Fee also applies at Harbor Beach, MI. All movements within this area between Monroe and Harbor Beach, MI are intraport.
3801—Detroit	
3802—Port Huron	
3806—Escanaba	Fee applies at all points on the little Bay de Noc above Escanaba, including Gladstone and Kipling. Movements within an area from Escanaba to the Mackinac Bridge are intraport. Fee does not apply at Escanaba.
South Central Lake Superior Ports	Includes Ontonagon Harbor, all points on the Keweenaw Waterway, Presque Isle Harbor and Marquette and Grand Marais. Movements between all Michigan ports on Lake Superior are intraport.
3809—Marquette	
3842—Presque Isle	
Eastern Lake Michigan Ports	Fee applies at Charlevoix, Frankfort, Manistee, Ludington, Pentwater Harbor, Ferrysburg, White Lake Harbor, Muskegon, Grand Haven, and South Haven, Holland, and St. Joseph/Benton Harbor, MI. All movements between Eastern Lake Michigan ports are intraport.
3815—Muskegon	
3816—Grand Haven	
3844—Ferrysburg	
Upper Lake Huron Ports	Includes all points on the St. Mary's River, the ports of Cheyboygan, Alpena, Bay City, and Saginaw, MI. Includes the Saginaw River. Does not include Alabaster, Cecil, Port Dolomite, Port Inland, Port Gypum or Stoneport. Movements within an area from Sault Ste. Marie and the Saginaw River are intraport.
3803—Sault Ste. Marie	
3804—Saginaw-Flint-Bay City	
3843—Alpena	
Minnesota	
Duluth/Superior Area Ports	Fee applies at Two Harbors and Duluth, MN and Superior, WI. Fee also applies at Ashland and Port Wing, WI and Grand Marais, MN. Fee does not apply at Taconite, or Silver Bay, MN. All movements between Silver Bay, MN and Ashland, WI are considered intraport.
3601—Duluth	
3602—Ashland	
3608—Superior	
3614—Silver Bay	
3614—Silver Bay	Fee applies only at Grand Marais. See Duluth/Superior Area Ports.
Mississippi	
1902—Gulfport	
1903—Pascagoula	
New Hampshire	
0131—Portsmouth	
New Jersey	
Delaware River Ports, DE, NJ, PA*	Includes all points on the Delaware River from Trenton to the sea at a line between Cape Henlopen and Cape May, all points on the lower four miles of the Christina River, Delaware, and all points on the lower six miles of the Schuylkill River, Pennsylvania. Fee applies to all movements on the Chesapeake & Delaware Canal east of U.S. Highway 13. Includes Absecon Inlet (Atlantic City) and Cold Spring Inlet. Movements between these points are intraport.
1102—Chester, PA	
1107—Camden, NJ	
1113—Gloucester, NJ	
1118—Marcus Hook, PA	
1105—Paulsboro, NJ	
1101—Philadelphia, PA	
1103—Wilmington, DE	
1003—Newark	See New York Harbor.
1004—Perth Amboy	See New York Harbor
New York	
New York Harbor, NY, NJ*	Includes all points in New York and New Jersey within the Port of New York on the waters inshore of a line between Sandy Hook and Rockaway Point and south of Tappan Zee Bridge on the Hudson and west of Throge Neck Bridge of the East River. Movements between these and all points within the New York Port District boundaries described in New York Code (Chapter 154, Laws of New York, 1921), are intraport.
1001—New York	
1003—Newark	
1004—Perth Amboy	
1002—Albany*	Includes all points on the Hudson River between Tappan Zee Bridge and the Troy Lock and Dam. Movements between points within this area are intraport.
0901—Buffalo-Niagara Falls	Includes Buffalo Harbor, Black Rock Channel and Tonawanda Harbor, and all points on Cattaraugus Creek, and Dunkirk Harbor. Movements between these points are intraport.
0706—Cape Vincent	
0701—Ogdensburg	
0904—Oswego	
0903—Rochester	
0905—Sodus Point	Includes Little Sodus Bay Harbor, and Great Sodus Bay Harbor
North Carolina	
1511—Beaufort-Morehead City	Includes Ocracoke Inlet. Movements within this area are intraport.
1501—Wilmington	Includes all points on the Cape Fear and Northeast Cape Fear Rivers inshore of the Atlantic Ocean entrance. Movements within this area are intraport.

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE—Continued

[Section 1402 of PL 99-662, as amended]

Port code, port name and state	Port descriptions and notations
Ohio	
Lake Erie Ports	Includes Toledo, Sandusky, Huron, Lorain, Cleveland, Fairport, Ashtabula, Conneaut and Erie. Movements between these points are intraport. Fee does not apply at Marblehead.
4106—Ashtabula	
4101—Cleveland	
4109—Conneaut	
4106—Erie	
4111—Fairport	
4117—Huron	
4121—Lorain	
4105—Toledo-Sandusky	
Oregon	
Columbia River Ports, OR, WA	Includes all points on the Columbia River downstream of Bonneville Dam, and all points on the Willamette River downstream of River mile 21. Includes the Multnoma Channel, the Skipanon Channel, and Oregon Slough. Movements between points within this area are intraport.
2901—Astoria, OR	
2904—Portland, OR	
2909—Kalama, WA	
2905—Longview, WA	
2908—Vancouver, WA	
2903—Coos Bay	Includes Port Orford, the Siuslaw River, and Umpaqua River. Movements between these points are intraport.
2902—Newport	Includes Tillamook Bay, and Yaguina Bay and Harbor.
Pennsylvania	
Delaware River Ports, DE, NJ, PA *	Includes all points on the Delaware River from Trenton to the sea at a line between Cape Henlopen and Cape May, all points on the lower four miles of the Christina River, Delaware, and all points on the lower six miles of the Schuylkill River, Pennsylvania. Fee applies to all movements on the Chesapeake and Delaware Canal east of U.S. Highway 13. Includes Absecon Inlet (Atlantic City) and Cold Spring Inlet. Movements between these points are intraport.
1102—Chester, PA	
1107—Camden, NJ	
1113—Gloucester, NJ	
1118—Marcus Hook, PA	
1105—Paulsboro, NJ	
1101—Philadelphia, PA	
1103—Wilmington, DE	
Puerto Rico	
4907—Mayaguez	
4906—Ponce	Does not include Guayanilla.
4909—San Juan	Includes Arecibo.
Rhode Island	
0502—Providence	
South Carolina	
1601—Charleston	Includes the Ashley River, Cooper River, Shipyard River, and Port Royal Harbor. Movements within this area are intraport.
1602—Georgetown	
Texas	
2301—Brownsville	Includes Port Isabel and Brazos Island Harbor. Movement between these points is intraport.
5312—Corpus Christi	
5312—Freeport	
Galveston Bay Ports *	Includes Port Bolivar and all points on Galveston Bay in Galveston County. Movements between points within this area are intraport.
5310—Galveston	
5306—Texas City	
5301—Houston *	Includes Bayport, Baytown, and all other points on or accessed via the Houston Ship Channel from the Liberty/Chambers county line on the north to the Chambers/Galveston county line to the south. Movements within this area are intraport.
5313—Port Lavaca	Includes Matagorda Ship Channel.
Sabine Ports *	Includes Port Neches, Sabine Pass and all other points on the Sabine-Neches Waterway. Movements between these points are intraport.
2104—Beaumont	
2103—Orange	
2101—Port Arthur	
2102—Sabineport	
Virginia	
Potomac River Ports, DC, MD, VA *	Includes all points on the Potomac River (see Chesapeake Bay Ports map) from a line between Point Lookout and the Little Wicomico River at Chesapeake Bay to and including Washington and Alexandria. Movements between these points are intraport.
5402—Alexandria, VA	
5401—Washington, DC	
Chesapeake Bay Ports, VA *	Includes all Virginia points on Chesapeake Bay inshore of a line from Cape Henry to Cape Charles, and tributary waters including the ports of Hampton Roads. Does not include the Potomac River or the James River above the James River Bridge at Newport News. Movements between points within this area are intraport. (Also see Chesapeake Bay Ports, MD.)
1406—Cape Charles	
1402—Newport News	
1401—Norfolk	
James River Ports, VA	Includes all points on the James River above the James River Bridge at Newport News. Movements between these points within this area are intraport.
1408—Hopewell	
1404—Richmond/Petersburg	
Washington	
3003—Aberdeen	Includes Grays Harbor and Yaguina Bay and Harbor. Movements between these points are intraport.

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE—Continued

[Section 1402 of PL 99-662, as amended]

Port code, port name and state	Port descriptions and notations
Puget Sound Ports, WA *	Fee applies only at ports listed. Bellingham includes all of Bellingham Bay and tributary waters north of Chuchanut Bay on the east, and Portage Island on the west. Port Everett includes all of Port Gardner (an arm of Possession Sound) between Elliott Point on the south to, and including, the Snohomish River on the north. The port of Olympia includes all points on Budd Inlet extending from Cooper and Dofflemyer Point on the north to, and including, the city of Olympia on the south. The fee applies to all points within the Inner Harbor of the Port of Seattle, including Salmon Bay, Lakes Union and Washington, the Lake Washington Ship Canal, and Kenmore Navigation Channel. Includes all points on Elliott Bay and tributary waters between West Point on the north and Duwamish Head on the south. Fee applies at all points within Tacoma Harbor including all of Commencement Bay and tributary waters between Browns Point on the east and Point Defiance on the west. Movements between these ports and any other U.S. points on Puget Sound or the Strait of Juan de Foca east of Cape Flattery are intraport.
3005—Bellingham	
3006—Everett	
3026—Olympia	
3007—Port Angeles	
3001—Seattle	
3002—Tacoma	
Columbia River Ports, WA, OR	Includes all points on the Columbia River downstream of Bonneville Dam, and all points on the Willamette River downstream of River mile 21. Includes the Multnoma Channel, the Skipanon Channel, and Oregon Slough. Movements between points within this area are intraport.
2901—Astoria, OR	
2904—Portland, OR	
2909—Kalama, WA	
2905—Longview, WA	
2906—Vancouver, WA	
Wisconsin	
3602—Ashland	See Duluth/Superior Area Ports, MN.
Green Bay/Marinette Area Ports	Fee applies to all movements between points along the Sturgeon Bay and Lake Michigan Ship Canal. Fee also applies to Green Bay, Oconto, and Menominee/Marinette. Movements between points from Menominee and points along the Sturgeon Bay and Lake Michigan Ship Canal are intraport.
3703—Green Bay	
3702—Marinette	
Western Lake Michigan Ports	Includes the ports of Milwaukee, Racine, and Sheboygan, MN. All movements between these points are intraport.
3701—Milwaukee	
3708—Racine	
3707—Sheboygan	

* Indicates that a map of this area is available from the Users Fee Task Force, U.S. Customs Service, Room 4112, 1301 Constitution Ave. NW., Washington, DC 20229; tel. 202-566-8648.

* * * * *

Michael H. Lane,

Acting Commissioner of Customs.

Approved: January 15, 1992.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 92-1436 Filed 1-21-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

Records and Reports of Importation and Exportation of Certain Machines

AGENCY: Drug Enforcement Administration, (DEA).

ACTION: Final rule.

SUMMARY: This final rule amends the regulations implementing the Chemical Diversion and Trafficking Act of 1988 (CDTA) by requiring that regulated persons who import or export tableting or encapsulating machines maintain records and file reports.

EFFECTIVE DATE: February 21, 1992.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington. DC 20537, telephone (202) 307-7297.

SUPPLEMENTARY INFORMATION: On May 20, 1991, a notice of proposed rulemaking was published in the **Federal Register** (56 FR 23037). The DEA proposed to amend 21 CFR 1310.05 and 1310.06 to include requirements that regulated persons who import or export tableting or encapsulating machines maintain records and file reports. This requirement was inadvertently omitted from the Notice of Proposed Rulemaking to implement the CDTA. The proposed rulemaking provided an opportunity for interested parties to submit comments or objections in writing before July 19, 1991.

One comment regarding procedural changes was received. Specifically, the comment noted that to be consistent with the Chemical Diversion and Trafficking Act and DEA regulations, the term 'report', rather than 'notify', should be used. DEA agrees, and the term 'report', rather than 'notify' will be used as appropriate. The comment further noted that the proposed regulation was worded in such a way that there might be confusion regarding where, when and how the reports should be made. As a result, changes were made in the format of the regulation in order to clarify the requirements. No changes were made to the specific requirements of the rule.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this final rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This final rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(c) of Executive Order 12291, this final rule has been reviewed by the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug Enforcement Administration, Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR part 1310 is amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.05 is amended by adding new paragraph (c) as follows:

§ 1310.05 Reports.

* * * * *

(c) Each regulated person who imports or exports a tableting machine, as

defined in § 1310.01(i), or encapsulation machine, as defined in § 1310.01(j), shall file a report (not a 486) of such importation or exportation with the Administration at the following address on or before the date of importation or exportation: Drug Enforcement Administration, P.O. Box 28346, Washington, DC 20038. In order to facilitate the importation or exportation of any tableting machine or encapsulating machine and implement the purpose of the Act, regulated persons may wish to report to the Administration as far in advance as possible. A copy of the report may be transmitted directly to the Drug Enforcement Administration through electronic facsimile media. Any tableting machine or encapsulating machine may be imported or exported if that machine is needed for medical, commercial, scientific, or other legitimate uses. However, an importation or exportation of a tableting machine or encapsulating machine may not be completed with a person whose description or identifying characteristic has previously been furnished to the regulated person by the Administration unless the transaction is approved by the Administration.

3. Section 1310.06 is amended by revising paragraph (c) and adding new paragraphs (e), (f) and (g) as follows:

§ 1310.06 Contents of records and reports.

* * * * *

(c) Each report required by § 1310.05(a) shall include the information as specified by § 1310.06(a) and, where obtainable, the telephone number of the other party. A report submitted pursuant to § 1310.05(a)(1) or (a)(3) must also include a description of the circumstances leading the regulated person to make the report, such as the reason that the method of payment was uncommon or the loss unusual. If the report is for a loss or disappearance under § 1310.05(a)(3), the circumstances of such loss must be provided (in-transit, theft from premises, etc.).

* * * * *

(e) Each report of an importation of a tableting machine or an encapsulating machine required by § 1310.05(c) shall include the following information:

(1) The name, address, telephone number, telex number, and, where available, the facsimile number of the regulated person; the name, address, telephone number, telex number, and, where available, the facsimile number of the import broker or forwarding agent, if any:

(2) The description of each machine (including make, model, and serial number) and the number of machines being received;

(3) The proposed import date, and the first U.S. Customs Port of Entry; and

(4) The name, address, telephone number, telex number, and, where available, the facsimile number of the consignor in the foreign country of exportation.

(f) Each report of an exportation of a tableting machine or an encapsulating machine required by § 1310.05(c) shall include the following information:

(1) The name, address, telephone number, telex number, and, where available, the facsimile number of the regulated person; the name, address, telephone number, telex number, and, where available, the facsimile number of the export broker, if any;

(2) The description of each machine (including make, model, and serial number) and the number of machines being shipped;

(3) The proposed export date, the U.S. Customs Port of exportation, and the foreign Port of Entry; and

(4) The name, address, telephone, telex, and, where available, the facsimile number of the consignee in the country where the shipment is destined; the name(s) and address(es) of any intermediate consignee(s).

(g) Declared exports of machines which are refused, rejected, or otherwise deemed undeliverable may be returned to the U.S. exporter of record. A brief written report outlining the circumstances must be sent to the Drug Enforcement Administration, P.O. Box 28346, Washington, DC 20038, following the return within a reasonable time. This provision does not apply to shipments that have cleared foreign customs, been delivered, and accepted by the foreign consignee. Returns to third parties in the United States will be regarded as imports.

* * * * *

Dated: December 17, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-1461 Filed 1-21-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 725

Release of Official Information for Litigation

AGENCY: Department of the Navy, DOD.

ACTION: Interim rule and request for comments.

SUMMARY: This regulation assigns responsibilities to Department of the Navy (DON) personnel in responding to requests from members of the public for official DON information (testimonial, documentary, or otherwise) in connection with litigation. The publication of this DON instruction will assist members of the public in submitting such requests. It implements Department of Defense Directive 5405.2 of July 23, 1985, codified in 32 CFR part 97, regarding the release of official information in connection with litigation. It restates the requirements contained in Secretary of the Navy Instruction 5820.8A of August 27, 1991, and is intended to conform to that instruction in all respects.

DATES: Interim rule effective January 22, 1992; comments must be received on or before February 21, 1992.

ADDRESSES: Comments may be mailed to the following address: Department of the Navy, Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332-2400.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael T. Palmer, Office of the Judge Advocate General, General Litigation Division, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone: (703) 325-9870.

SUPPLEMENTARY INFORMATION:

(a) *Purpose of the regulation.* This regulation establishes policy, assigns responsibilities, and prescribes procedures for responding to requests for the release of official DON information, including testimony by DON personnel as witnesses, in connection with actual or contemplated litigation. It does not apply to requests unrelated to litigation or pursuant to the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a. In addition to providing an orderly means for obtaining information needed in litigation to members of the public, its provisions also protect the interests of the United States, including the safeguarding of classified and privileged information. This regulation ensures that responses to litigation requests are provided in a manner that does not prevent the accomplishment of the mission of the command or activity affected. It sets forth the proper content of a request received from a member of the public for release of official DON information in connection with litigation and indicates the factors to be considered in deciding whether to authorize the release of official DON

information or the testimony of DON concerning official information. The regulation also prescribes the conduct of DON personnel in response to a litigation request or demand.

(b) *Impact of the regulation.* The regulation is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The DON certifies that this regulation will not have an impact on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared. The regulation has no collection of information requirements and does not require the approval of OMB under 44 U.S.C. 3501 et seq. This regulation is not subject to the relevant provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and does not contain reporting or record-keeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 725

Courts, Government employees.

For the reasons set out in the preamble it is proposed to revise title 32, part 725 of the Code of Federal Regulations to read as follows:

PART 725—RELEASE OF OFFICIAL INFORMATION FOR LITIGATION PURPOSES AND TESTIMONY BY DEPARTMENT OF THE NAVY PERSONNEL

Sec.

725.1 Purpose.
725.2 Policy.
725.3 Authority to act.
725.4 Definitions.
725.5 Applicability.
725.6 Authority to determine and respond.
725.7 Contents of a proper request or demand.
725.8 Considerations in determining to grant or deny a request.
725.9 Action to grant or deny a request.
725.10 Response to requests or demands in conflict with this instruction.
725.11 Fees.

Authority: 5 U.S.C. 301; 10 U.S.C. 113, 5013; 31 U.S.C. 9701 and 32 CFR part 97.

§ 725.1 Purpose.

This instruction implements 32 CFR part 97 regarding the release of official Department of the Navy (DON) information and provision of testimony by DON personnel for litigation purposes, and prescribes conduct of DON personnel in response to a litigation request or demand. It restates the information contained in Secretary of the Navy Instruction 5820.8A of 27 August 1991[1], and is intended to conform in all respects with the requirements of that instruction.

§ 725.2 Policy.

(a) It is DON policy that official factual information, both testimonial and documentary, should be made reasonably available for use in Federal courts, state courts, foreign courts, and other governmental proceedings unless that information is classified, privileged, or otherwise protected from public disclosure.

(b) DON personnel, as defined in § 725.4(b), however, shall not provide such official information, testimony, or documents, submit to interview, or permit a view or visit, without the authorization required by this part.

(c) DON personnel shall not provide, with or without compensation, opinion or expert testimony concerning official DON or Department of Defense (DOD) information, subjects, personnel, or activities, except on behalf of the United States or a party represented by the Department of Justice, or with the written special authorization required by this part.

(d) Section 725.2(b) and (c) constitute a regulatory general order, applicable to all DON personnel individually, and need no further implementation. A violation of those provisions is punishable under the Uniform Code of Military Justice for military personnel and is the basis for appropriate administrative procedures with respect to civilian employees. Moreover, violations of this instruction by DON personnel may, under certain circumstances, be actionable under 18 U.S.C. 207.

(e) Upon a showing by a requester of exceptional need or unique circumstances, and that the anticipated testimony will not be adverse to the interests of the DON, DOD, or the United States, the General Counsel of the Navy, the Judge Advocate General of the Navy, or their respective delegates may, in their sole discretion, and pursuant to the guidance contained in this instruction, grant such written special authorization for DON personnel to appear and testify as expert or opinion witnesses at no expense to the United States.

§ 725.3 Authority to act.

(a) The General Counsel of the Navy, the Judge Advocate General of the Navy, and their respective delegates [hereafter "determining authorities" described in § 725.4(a), shall respond to litigation requests or demands for official DOD information or testimony by DON personnel as witnesses.

(b) If required by the scope of their respective delegations, determining authorities' responses may include: consultation and coordination with the Department of Justice or the appropriate United States Attorney as required; referral of matters proprietary to another DOD component to that component; determination whether official information originated by the Navy may be released in litigation; and determination whether DOD personnel assigned to or affiliated with the Navy may be interviewed, contacted, or used as witnesses concerning official DOD information or as expert or opinion witnesses. Following coordination with the appropriate commander, a response may further include whether installations, facilities, ships, or aircraft may be visited or inspected; what, if any, conditions will be imposed upon any release, interview, contact, testimony, visit, or inspection; what, if any, fees shall be charged or waived for access under the fee assessment considerations set forth in § 725.11; and what, if any, claims of privilege, pursuant to this instruction, may be invoked before any tribunal.

§ 725.4 Definitions.

(a) *Determining authority.* The cognizant DON or DOD official designated to grant or deny a litigation request. In all cases in which the United States is, or might reasonably become, a party, or in which expert testimony is requested, the Judge Advocate General or the General Counsel of the Navy, depending on the subject matter of the request, will act as determining authority. In all other cases, the responsibility to act as determining authority has been delegated to all officers exercising general court-martial convening authority, or to their subordinate commands, and to other commands and activities indicated in § 725.6.

(b) *DON personnel.* Active duty and former military personnel of the naval service including retirees; personnel of other DOD components serving with a DON component; Naval Academy midshipmen; present and former civilian employees of the DON including non-appropriated fund activity employees; non-U.S. nationals performing services overseas for the DON under provisions of status of forces agreements; and other specific individuals or entities hired through contractual agreements by or on

[1] Copies may be obtained, if needed, from the Naval Publications and Forms Directorate, Attn: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120-5099.

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behalf of DON, or performing services under such agreements for DON (e.g., consultants, contractors and their employees and personnel).

(c) *Factual and expert or opinion testimony.* DON policy favors disclosure of factual information if disclosure does not violate the criteria stated in § 725.8. The distinction between factual matters, and expert or opinion matters (where DON policy favors non-disclosure), is not always clear. The considerations set forth below pertain.

(1) Naval personnel may merely be percipient witnesses to an incident, in which event their testimony would be purely factual. On the other hand, they may be involved with the matter only through an after-the-event investigation (e.g., JAGMAN investigation). Describing the manner in which they conducted their investigation and asking them to identify factual conclusions in their report would likewise constitute factual matters to which they might testify. In contrast, asking them to adopt or reaffirm their findings of fact, opinions, and recommendations, or asking them to form or express any other opinion—particularly one based upon matters submitted by counsel or going to the ultimate issue of causation or liability—would clearly constitute precluded testimony under the above policy.

(2) Naval personnel, by virtue of their training, often form opinions because they are required to do so in the course of their duties. If their opinions are formed prior to, or contemporaneously with, the matter in issue, and are routinely required of them in the course of the proper performance of their professional duties, they constitute essentially factual matters (i.e., the opinion they previously held). Opinions formed after the event in question, including responses to hypothetical questions, generally constitute the sort of opinion or expert testimony which this instruction is intended to severely restrict.

(3) Characterization of expected testimony by a requester as fact, opinion, or expert is not binding on the determining authority. When there is doubt as to whether or not expert or opinion (as opposed to factual) testimony is being sought, advice may be obtained informally from, or the request forwarded, to the Deputy Assistant Judge Advocate General (General Litigation) or the Associate General Counsel (Litigation) for resolution.

(d) *Litigation.* All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards (including the Armed Services Board of Contract Appeals), or other tribunals, foreign and domestic. This term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving, or reasonably anticipated to involve, civil or criminal litigation.

(e) *Official information.* All information of any kind, however stored, in the custody and control of the DOD and its components including the DON; relating to information in the custody and control of DOD or its components; or acquired by DOD personnel or its component personnel as part of their official duties or because of their official status within DOD or its components, while such personnel were employed by or on behalf of the DOD or on active duty with the United States Armed Forces (determining whether "official information" is sought, as opposed to non-DOD information, rests with the determining authority identified in § 725.6, rather than the requester).

(f) *Request or demand (legal process).* Subpoena, order, or other request by a federal, state, or foreign court of competent jurisdiction, by any administrative agency thereof, or by any party or other person (subject to the exceptions stated in § 725.5) for production, disclosure, or release of official DOD information or for appearance, deposition, or testimony of DON personnel as witnesses.

§ 725.5 Applicability.

(a) This instruction applies to all present and former civilian and military personnel of the DON whether employed by, or assigned to, DON temporarily or permanently. Affected personnel are defined more fully in § 725.4(b).

(b) This instruction applies only to situations involving existing or reasonably anticipated litigation, as defined in § 725.4(d), when DOD information or witnesses are sought, whether or not the United States, the DOD, or its components are parties thereto. It does not apply to formal or informal requests for information in other situations.

(c) This instruction provides guidance only for DON operation and activities of its present and former personnel in responding to litigation requests. It is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable at law or equity against the United States, DOD, or DON.

(d) This instruction is not intended to infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States.

(e) This instruction does not supersede or modify existing laws, DOD or DON regulations, directives, or instructions governing testimony of DON personnel or release of official DOD or DON information during grand jury proceedings.

(f) This instruction does not control release of official information in response to requests unrelated to litigation or under the Freedom of Information Act (FOIA), 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a. This instruction does not preclude treating any written request for DON records as a request under the FOIA or Privacy Acts. Activities are encouraged to treat such requests for documents under the FOIA or the Privacy Act if they are invoked by the requestor either explicitly or by fair implication. See 32 CFR 701.3(a), 701.10(a). Activities are reminded that such treatment does not absolve them of the responsibility to respond in a timely fashion to legal process. In any event, if the official information requested pertains to a litigation matter which the United States is a present or potential party, the release authority should notify the delegate of the General Counsel or the Judge Advocate General, under § 725.6.

(g) This part does not apply to release of official information or testimony by DON personnel in the following situations:

(1) Before courts-martial convened by any DOD component, or in administrative proceedings conducted by, or on behalf of, such component;

(2) Under administrative proceedings conducted by, or on behalf of, the Equal Employment Opportunity Commission (EEOC) or the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority, the Federal Services Impasse Panel, or under a negotiated grievance procedure under a collective bargaining agreement to which the Government is a party;

(3) In response to requests by Federal Government counsel, or counsel representing the interests of the Federal Government, in litigation conducted, in whole or in part, on behalf of the United States (e.g., Medical Care Recovery Act claims, affirmative claims, or subpoenas issued by, or concurred in by, Government counsel when the United States is a party), but the regulation does apply to an action brought under the qui tam provisions of the False Claims Act in which a private party

brings an action in the name of the United States but in which the Department of Justice either has not yet determined to intervene in the litigation or has declined to intervene;

(4) As part of the assistance required by the Defense Industrial Personnel Security Clearance Review Program under DOD Directive 5220.6[2];

(5) Release of copies of Manual of the Judge Advocate General (JAGMAN) investigations, to the next of kin (or their representatives) of deceased or incompetent naval personnel;

(6) Release of information by DON personnel to counsel retained on their behalf for purposes of litigation, unless that information is classified, privileged, or otherwise protected from disclosure (in the latter event, compliance with 32 CFR part 97 and this part is required);

(7) Cases involving garnishment orders for child support and/or alimony. The release of official information in these cases is governed by 5 CFR 581 and SECNAVINST 7200.16[3], or;

(8) Release of information to Federal, state, and local prosecuting and law enforcement authorities, in conjunction with an investigation conducted by a DOD component or DON criminal investigative organization.

(h) This part does not preclude official comment on matters in litigation in appropriate cases.

(i) The DOD General Counsel may notify DOD components that DOD will assume primary responsibility for coordinating all litigation requests for demands for official DOD information or testimony of DOD personnel in litigation involving terrorism, espionage, nuclear weapons, and intelligence sources or means. Accordingly, determining officials who receive requests pertaining to such litigation shall notify the Associate General Counsel (Litigation) or the Deputy Assistant Judge Advocate General (International Law or General Litigation) who shall consult and coordinate with DOD General Counsel prior to any response to such requests.

(j) *Relationship with Federal Rules of Procedure.* The requirements imposed by this instruction are intended, among other things, to provide adequate notice to DON regarding the scope of proposed discovery. This will assure that certain DON information, which properly should be withheld, is not inadvertently released in response to a litigation request or demand, including a subpoena or other request for discovery issued under Federal rules of procedure. When the United States is a party to Federal litigation and the party opponent uses discovery methods (e.g., request for interrogatories and admissions, depositions) set forth in Federal rules of procedure, the Judge Advocate General or General Counsel, in consultation with representatives of the Department of Justice or the cognizant United States Attorney, may determine whether the requirement for a separate written request in accordance with § 725.7 should be waived. Even if this requirement is waived, however, DON personnel who are subpoenaed to testify still will be required to obtain the written permission described in § 725.2.

§ 725.6 Authority to determine and respond.

(a) *Matters proprietary to DON.* If a litigation request or demand is made of DON personnel for official DON or DOD information or for testimony concerning such information, the individual to whom the request or demand is made will immediately notify the cognizant DON official designated in § 725.6(c) and (d), who will determine availability and respond to the request or demand.

(b) *Matters proprietary to another DOD component.* If a DON activity receives a litigation request or demand for official information originated by another DOD component or for non-DON personnel presently or formerly assigned to another DOD component, the DON activity will forward appropriate portions of the request or demand to the DOD component originating the information, to the components where the personnel are assigned, or to the components where the personnel were formerly assigned, for action under 32 CFR part 97. The forwarding DON activity will also notify the requester and court (if appropriate) or other authority of its transfer of the request or demand.

(c) *Litigation matters to which the United States is, or might reasonably become, a party.* Examples of such instances include suits under the Federal Tort Claims Act, Freedom of Information Act, Medical Care Recovery Act, Tucker Act, and suits against Government contractors where the contractor may interplead the United States or seek indemnification from the United States for any judgment paid, e.g., aviation contractors or asbestos matters. Generally, a suit in which the plaintiff is representing the interests of the United States under the Medical Care Recovery Act is not a litigation matter to which the United States is, or might reasonably become, a party. Determining authorities, if in doubt whether the United States is likely to become a party to the litigation, should seek guidance from representatives of the Offices of the Judge Advocate General or General Counsel. The Judge Advocate General and the General Counsel have the authority to determine whether a litigation request should be forwarded to them, or retained by a determining authority, for resolution.

(1) Litigation requests regarding matters assigned to the Judge Advocate General of the Navy under Navy Regulations, art. 0331 (1990)[4], shall be referred to the Deputy Assistant Judge Advocate General (DAJAG) for General Litigation, 200 Stovall Street, Alexandria, VA 22332-2400, who will respond for the Judge Advocate General or transmit the request to the appropriate Deputy Assistant Judge Advocate General for response.

(2) Litigation requests regarding matters assigned to the General Counsel of the Navy under Navy Regs., art. 0327 (1990)[5], shall be referred to the cognizant Command Counsel under, and subject to, limitations set forth in § 725.6(d)(2). That Command Counsel may either respond or refer the matter for action to another office. Requests involving asbestos litigation shall be referred to the Office of Counsel, Naval Sea Systems Command Headquarters, Personnel and Labor Law Section (Code 00LD), Washington, DC 20362-5101. Matters not clearly within the purview of a particular command counsel shall be referred to Associate General Counsel (Litigation), who may either respond or refer the matter for action to another office.

(3) Matters involving the Armed Services Board of Contract Appeals shall be forwarded to these respective counsel except where the determination may involve the assertion of the deliberative process privilege before that Board. In such an event, the matter shall be forwarded for determination to the Associate General Counsel (Litigation).

(d) *Litigation matters in which the United States is not, and is reasonably not expected to become, a party.* (1) *Matters within the cognizance of the Judge Advocate General.* (i) *Fact witnesses.* Requests to interview, depose, or obtain testimony of any present or former DON personnel as defined in § 725.4(b) about purely factual matters shall be forwarded to the Navy or Marine Corps officer exercising general court-martial jurisdiction (OEGCMJ) in whose chain of command the prospective witness or requested documents lie. That determining authority will respond for

[2] See footnote 1 to § 725.1.
[3] See footnote 1 to § 725.1.
[4] See footnote 1 to § 725.1.
[5] See footnote 1 to § 725.1.

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the Judge Advocate General under criteria set forth in § 725.8.

(A) If the request pertains to personnel assigned to the Office of the Chief of Naval Operations, the Office of the Vice Chief of Naval Operations, or an Echelon 2 command located in the Washington, DC, area, it shall be forwarded to that office which will likewise respond for the Judge Advocate General under the criteria set forth in § 725.8.

(B) If a request pertains to Marine Corps personnel assigned to Headquarters Battalion, Headquarters Marine Corps, or to other Marine Corps commands located in the Washington, DC, area, it shall be forwarded to the Commandant of the Marine Corps (JAR), Headquarters, U.S. Marine Corps, Washington, DC 20380-0001, which will respond for the Judge Advocate General under criteria set forth in § 725.8.

(C) Nothing here shall prevent a determining authority from referring requests or demands to another determining authority better suited under the circumstances to determine the matter and respond, but the requester shall be notified of the referral. Further, each determining authority specified in this paragraph may further delegate his or her decisional authority to a principal staff member, staff judge advocate, or legal advisor.

(D) In the alternative, the requester may forward the request to the Deputy Assistant Judge Advocate General (General Litigation), who may refer the matter to another determining authority for response, and so notify the requester.

(ii) *Visits and views.* A request to visit a DON activity, ship, or unit, or to inspect material or spaces located there will be forwarded to one of the authorities stated in § 725.6(d)(1)(i), who will respond on behalf of the Judge Advocate General. Action taken by that authority will be coordinated with the commanding officer of the activity, ship, or unit at issue, or with his or her staff judge advocate (if applicable). The military mission of the unit shall normally take precedence over any visit or view. The commanding officer may independently prescribe reasonable conditions as to time, place, and circumstances to protect against compromise of classified or privileged material, intrusion into restricted spaces, and unauthorized photography.

(iii) *Documents.* 10 U.S.C. 7861 provides that the Secretary of the Navy has custody and charge of all DON books, records, and property. Under DOD Directive 5530.1[6], the Secretary of the Navy's sole delegate for service of process is the General Counsel of the Navy. See 32 CFR 257.5(c). All process for such documents shall be served upon the General Counsel at the Department of the Navy, Washington, DC, 20350-1000, who will refer the matter to the proper delegate for action. Matters referred to the Judge Advocate General will normally be provided to the determining authorities described in § 725.6(c) and (d). That authority will respond per criteria in § 725.8. Process not properly served on the General Counsel is insufficient to constitute a legal demand and shall be processed as a request by counsel. Requests for documents maintained by the National Personnel Records Center will be determined by the official provided in § 725.8(b)(2)(iii).

(iv) *Expert or opinion requests.* Any request for expert or opinion consultations, interviews, depositions, or testimony will be referred to the Deputy Assistant Judge Advocate General (General Litigation) who will respond for the Judge Advocate General, or transmit the request to the appropriate DAJAG for response. Matters not clearly within the purview of a particular Deputy Assistant Judge Advocate General will be retained by the Deputy Assistant Judge Advocate General (General Litigation), who may either respond or refer the matter to another determining authority for response.

(2) *Matters within the cognizance of the General Counsel of the Navy.* (i) *Matters not involving issues of Navy policy.* Such matters shall be forwarded for determination to the respective counsel for Naval Sea Systems Command, Naval Air Systems Command, Naval Supply Systems Command, Naval Facilities Engineering Command, Space and Naval Warfare Command, Office of the Navy Comptroller, Commandant of the Marine Corps, Office of the Chief of Naval Research, Military Sealift Command, Office of Civilian Personnel Policy, or to the Assistant General Counsel (Acquisition), depending upon who has cognizance over the information or personnel at issue.

(ii) *Matters involving issues of Navy policy.* Such matters shall be forwarded for determination to the General Counsel of the Navy via the Associate General Counsel (Litigation).

(iii) *Matters involving asbestos litigation.* Such matters shall be forwarded to the Office of Counsel, Naval Sea Systems Command Headquarters, Personnel and Labor Law Section (Code 00LD), Washington, DC 20362-5101.

(3) *Matters not clearly within the cognizance of either the Judge Advocate General or the General Counsel.* Such matters may be sent to the Deputy Assistant Judge Advocate General (General Litigation) or the Associate General Counsel (Litigation), who will, in consultation with the other, determine the appropriate authority to respond to the request.

§ 725.7 Contents of a proper request or demand.

(a) *Routine requests.* If official information is sought, through testimony or otherwise, a detailed written request must be submitted to the appropriate determining authority far enough in advance to assure an informed and timely evaluation of the request, and prevention of adverse effects on the mission of the command or activity that must respond. The determining authority shall decide whether sufficient information has been provided by the requester. Absent independent information, the following data is necessary to assess a request.

(1) *Identification of parties, their counsel and the nature of the litigation.* (i) Caption of case, docket number, court.

(ii) Name, address, and telephone number of all counsel.

(iii) The date and time on which the documents, information, or testimony sought must be produced; the requested location for production; and, if applicable, the estimated length of time that attendance of the DON personnel will be required.

(2) *Identification of information or documents requested.* (i) A description, in as much detail as possible, of the documents, information, or testimony sought, including the current military service, status (active, separated, retired), social security number, if known, of the subject of the requested pay, medical, or service records;

(ii) The location of the records, including the name, address, and telephone number, if known, of the person from whom the documents, information, or testimony is sought; and

(iii) A statement of whether factual, opinion, or expert testimony is requested (see §§ 725.4(c) and 725.8(b)(3)(ii)).

(3) *Description of why the information is needed.* (i) A brief summary of the facts of the case and the present posture of the case.

[6] See footnote 1 to § 725.1.

(ii) A statement of the relevance of the matters sought to the proceedings at issue.

(iii) If expert or opinion testimony is sought, an explanation of why exceptional need or unique circumstances exist justifying such testimony, including why it is not reasonably available from any other source.

(b) *Additional considerations.* The circumstances surrounding the underlying litigation, including whether the United States is a party, and the nature and expense of the requests made by a party may require additional information before a determination can be made. Providing the following information or stipulations in the original request may expedite review and eliminate the need for additional correspondence with the determining authority.

(1) A statement of the requester's willingness to pay in advance all reasonable expenses and costs of searching for and producing documents, information, or personnel, including travel expenses and accommodations (if applicable);

(2) In cases in which deposition testimony is sought, a statement of whether attendance at trial or later deposition testimony is anticipated and requested. A single deposition normally should suffice;

(3) An agreement to notify the determining authority at least 10 working days in advance of all interviews, depositions, or testimony. Additional time for notification may be required where the witness is a DON health care provider or where the witness is located overseas;

(4) An agreement to conduct the deposition at the location of the witness, unless the witness and his or her commanding officer or cognizant superior, as applicable, stipulate otherwise;

(5) In the case of former DON personnel, a brief description of the length and nature of their duties while in DON employment, and a statement of whether such duties involved, directly or indirectly, the information or matters as to which the person will testify;

(6) An agreement to provide free of charge to any witness a signed copy of any written statement he or she may make, or, in the case of an oral deposition, a copy of that deposition transcript, if taken by a stenographer, or a video tape copy, if taken solely by video tape, if not prohibited by applicable rules of court;

(7) An agreement that if the local rules of procedure controlling the litigation so provide, the witness will be given an opportunity to read, sign, and correct the deposition at no cost to the witness or the Government;

(8) A statement of understanding that the United States reserves the right to have a representative present at any interview or deposition; and

(9) A statement that counsel for other parties to the case will be provided with a copy of all correspondence originated by the determining authority so they may have the opportunity to submit any related litigation requests and participate in any discovery.

(c) *Response to deficient requests.* A letter request that is deficient in providing necessary information may be returned to the requester by the determining authority with an explanation of the deficiencies and a statement that no further action will be taken until they are corrected. If a subpoena has been received for official information, counsel should promptly determine the appropriate action to take in response to the subpoena. See § 725.9(g).

(d) *Emergency requests.* Written requests are generally required by 32 CFR part 97.

(1) The determining authority, identified in § 725.6, has discretion to waive that requirement in the event of a bona fide emergency, under conditions set forth here, which were not anticipated in the course of proper pretrial planning and discovery. Oral requests and subsequent determinations should be reserved for instances where factual matters are sought, and compliance with the requirements of a proper written request would result in the effective denial of the request and cause an injustice in the outcome of the litigation for which the information is sought. No requester has a right to make an oral request and receive a determination. Whether to permit such an exceptional procedure is a decision within the sole discretion of the determining authority, unless overruled by the General Counsel or the Judge Advocate General, as appropriate.

(2) If the determining authority concludes that the request, or any portion of it, meets the emergency test, he or she will require the requester to agree to the conditions set forth in § 725.7(a). The determining authority will then orally advise the requester of the determination, and seek a written confirmation of the oral request. Thereafter, the determining authority will make a written record of the disposition of the oral request including the grant or denial, circumstances requiring the procedure, and conditions to which the requester agreed.

(3) The emergency procedure should not be utilized where the requester refuses to agree to the appropriate conditions set forth in § 725.7(a) or indicates unwillingness to abide by the limits of the oral grant, partial grant, or denial.

§ 725.8 Considerations in determining to grant or deny a request.

(a) *General considerations.* In deciding whether to authorize release of official information, or the testimony of DON personnel concerning official information (hereafter referred to as "the disclosure" under a request conforming with the requirements of § 725.7, the determining authority shall consider the following factors:

(1) The DON policy regarding disclosure in § 725.2;

(2) Whether the request or demand is unduly burdensome or otherwise inappropriate under applicable court rules;

(3) Whether disclosure, including release in camera (i.e., to the judge or court alone), is appropriate under procedural rules governing the case or matter in which the request or demand arose;

(4) Whether disclosure would violate or conflict with a statute, executive order, regulation, directive, instruction, or notice;

(5) Whether disclosure, in the absence of a court order or written consent, would violate 5 U.S.C. 552, 552a;

(6) Whether disclosure, including release in camera, is appropriate or necessary under the relevant substantive law concerning privilege (e.g., attorney-client, attorney work-product, or physician-patient in the case of civilian personnel);

(7) Whether disclosure, except when in camera (i.e., before the judge alone) and necessary to assert a claim of privilege, would reveal information properly classified under the DOD Information Security Program under DOD 5200.1-R[7], withholding of unclassified technical data from public disclosure following OPNAVINST 5510.161; privileged Naval Aviation Safety Program information (OPNAVINST 3750.6Q (NOTAL))[8], or other matters exempt from unrestricted disclosure under 5 U.S.C. 552, 552a;

(8) Whether disclosure would unduly interfere with ongoing law enforcement proceedings, violate constitutional rights, reveal the identity of an intelligence source or source of confidential information, conflict with

[7] See footnote 1 to § 725.1.

[8] See footnote 1 to § 725.1.

U.S. obligations under international agreement, or be otherwise inappropriate under the circumstances:

(9) Whether attendance of the requested witness at deposition or trial will unduly interfere with the military mission of the command; and

(10) Whether, in a criminal case, requiring disclosure by a defendant of detailed information about the relevance of documents or testimony as a condition for release would conflict with the defendant's constitutional rights.

(b) *Specific considerations.* (1) *Documents, interviews, depositions, testimony, and views (where the United States is, or may become, a party).* All requests pertaining to such matters shall be forwarded to the Judge Advocate General or the General Counsel, as appropriate under § 725.6(c).

(2) *Documents (where the United States is not, and is reasonably not expected to become a party).* (i) *Unclassified Navy and Marine Corps records.* Where parties or potential parties desire unclassified naval records in connection with a litigation matter, the subpoena duces tecum or court order will be served, under 32 CFR 257.5(c), upon the General Counsel of the Navy, along with a written request complying with § 725.7.

(A) If the determining authority to whom the matter is referred determines to comply with the order or subpoena, compliance will be effected by transmitting certified copies of records to the clerk of the court from which process issued. If, because of an unusual circumstance, an original record must be produced by a naval custodian, it will not be removed from the custody of the person producing it, but copies may be placed in evidence.

(B) Upon written request of one or more parties in interest or their respective attorneys, records which would be produced in response to a court order signed by a judge as set forth above may be furnished without a court order, but only upon a request complying with § 725.7 and only when such records are not in a "system of records" as defined by the Privacy Act (5 U.S.C. 552a). In determining whether a record not contained in a "system of records" will be furnished in response to a Freedom of Information Act (FOIA) request, SECNAVINST 5720.42E[9] controls.

(C) Generally, a record in a Privacy Act "system of records" may not be released under a litigation request except with the written consent of the person to whom the record pertains or in response to a court order signed by a judge. See SECNAVINST 5211.5C[10] and 5 U.S.C. 552, 552a for further guidance.

(D) Whenever compliance with a court order or subpoena duces tecum for production of DON records is denied for any reason, the subpoena or court order and complete copies of the requested records will be forwarded to the appropriate Deputy Assistant Judge Advocate General (General Litigation) or the Associate General Counsel (Litigation) for action, and the parties to the suit notified in accordance with this part.

(ii) *Classified Navy and Marine Corps records.* Any consideration of release of classified information for litigation purposes, within the scope of this instruction, must be coordinated within the Office of the Chief of Naval Operations (OP-09N) per OPNAVINST 5510.1H.[11]

(iii) *Records in the custody of the National Personnel Records Center.* Court orders or subpoenas duces tecum demanding information from, or production of, service or medical records of former Navy and Marine Corps personnel in the custody of the National Personnel Records Center will be served upon the Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132. If records responsive to the request are identified and maintained at the National Personnel Records Center, that Center shall make appropriate certified (authenticated) copies of the information requested. These copies will then be forwarded, along with the request, in the case of Navy personnel, to Chief, Bureau of Naval Personnel (Pers-06), Washington, DC 20370-5000, or his delegate, who will respond. In the case of Marine Corps personnel, the copies and request will be sent to the Commandant of the Marine Corps (MMRB-10), Quantico, VA 22134-0001, who will respond. Those requests that do not constitute legal demands will be refused by the Director, National Personnel Records Center, and written guidance provided to the requester.

(iv) *Medical and other records of civilian employees.* Production of medical certificates or other medical reports concerning civilian employees is controlled by Federal Personnel Manual, chapter 294 and chapter 339.1-4.[12] Records of civilian employees, other than medical records, may be produced upon receipt of a court order and a request complying with § 725.7, provided no classified or for official use only information, such as loyalty or security records, are involved. Disclosure of records relating to compensation benefits administered by the Office of Workers' Compensation Programs of the Department of Labor are governed by Secretary of the Navy Instruction 5211.5C (Privacy Act implementation) and Secretary of the Navy Instruction 5720.42E (Freedom of Information Act implementation), as appropriate. Where information is furnished per this subparagraph in response to a court order and proper request, certified copies rather than originals should be furnished. Where original records must be produced because of unusual circumstances, they may not be removed from the custody of the official producing them, but copies may be placed on the record.

(v) *JAGMAN investigations (other than to next of kin).* The Deputy Assistant Judge Advocate General having cognizance over the records at issue for litigation or prospective litigation purposes may release the records if a complete release will result. The Assistant Judge Advocate General (Civil Law) will make determinations concerning the release of the records specified in this subparagraph if a release of less than the complete requested record will result. A release to next of kin of incompetent or deceased DON personnel or their representatives is exempt from these requirements and this part.

(vi) *Affirmative claims files.* Affirmative claims files (including Medical Care Recovery Act files), except to the extent they contain copies of JAGMAN investigations prepared under the Manual of the Judge Advocate General, or classified or privileged information, may be released by the commanding officer of the Naval Legal Service Office having cognizance over the claim at issue, without compliance with this instruction, to: insurance companies to support claims; to civilian attorneys representing injured service persons, their dependents, and the Government's interests; and to other DOD components. When a request for production involves material related to claims in favor of the Government, either the cognizant Command Counsel or the Naval Legal Service Office having territorial responsibility for the area should be notified.

(vii) *Accounting for disclosures from "systems of records."* When compliance with a litigation request or demand for production of records is appropriate, or when release of records is otherwise authorized, and records contained in a "system of records," are released, the

[9] See footnote 1 to § 725.1.

[10] See footnote 1 to § 725.1.

[11] See footnote 1 to § 725.1

[12] See footnote 1 to § 725.1.

releasing official will consult Secretary of the Navy Instruction 5211.5C regarding disclosure accounting requirements.

(viii) *Pay records.* Official pay records of active-duty, reserve, retired, or former Navy members should be requested from Director, Defense Finance and Accounting Service (DFAS), Cleveland Center, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199-2055. Official pay records of active-duty, reserve, retired, or former Marines should be requested from Director, Defense Finance and Accounting Service, Kansas City Center (Code G), Kansas City, MO 64197-0001.

(3) *Interviews, depositions, and testimony (where the United States is not, and is reasonably not expected to become, a party).* (i) *Factual matters.* DON policy favors disclosure of factual matters when disclosure does not violate the criteria stated in this section. Distinguishing between factual matters and expert or opinion matters (where DON policy favors non-disclosure) requires careful analysis. Opinion matters are defined at § 725.4(c).

(ii) *Expert, opinion, or policy matters.* Such matters are to be determined, under the delegation in § 725.6, by the cognizant Deputy Assistant Judge Advocate General or by General Counsel. General considerations to identify expert or opinion testimony are in § 725.4(c). DON personnel shall not provide, with or without compensation, opinion or expert testimony concerning official information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice. Upon a showing by the requester of exceptional need or unique circumstances, and that the anticipated testimony will not be adverse to the interests of the DOD or the United States, the appropriate DON official designated in § 725.6, may grant, in writing, special authorization for DON personnel to appear and testify at no expense to the United States. In determining whether exceptional need or unique circumstances exist, the determining official should consider whether such expert or opinion testimony is available to the requester from any other source. The burden of demonstrating such unavailability, if any, is solely upon the requester.

(iii) *Visits and views (where the United States is not, and is reasonably not expected to become, a party).* Such disclosures are normally factual in nature and should not be accompanied by interviews of personnel unless separately requested and granted. The authority of the commanding officer of the activity, ship, or unit at issue is not limited by this part. Accordingly, he or she may prescribe appropriate conditions as to time, place, and circumstances (including proper restrictions on photography).

(iv) *Non-DOD information.* A request for disclosure under this part, particularly through the testimony of a witness, may involve both official information and non-DOD information (e.g., in the case of a person who has acquired additional and separate knowledge or expertise wholly apart from Government employment). Determining whether or not official information is at issue is within the purview of the determining authority, not the requester. A requester's contention that only non-DOD information is at issue is not dispositive. The requester must still comply with this instruction to support that contention. If non-DOD information is at issue in whole or in part, the determining authority shall so state in the written determination described in § 725.9. He or she shall make no other determination regarding that non-DOD information.

§ 725.9 Action to grant or deny a request.

(a) The process of determining whether to grant or deny a request is not an adversary proceeding. This part provides guidance for the operation of DON only and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable at law against the United States, DOD, or DON.

(b) 32 CFR part 97 and this part apply to testimony by former naval personnel and former civilian employees of DON. A proper request must be made, under § 725.7, to obtain testimony by former personnel regarding official DOD information. However, this part is not intended to place unreasonable restraints upon the post-employment conduct of such personnel. Accordingly, requests for expert or opinion testimony by such personnel will normally be granted unless that testimony would constitute a violation of the U.S. Code (e.g., 18 U.S.C. 201 et seq.), conflict with pertinent regulations (e.g., Secretary of the Navy Instruction 5370.2H), or disclose properly classified or privileged information.

(c) A determination to grant or deny should be made as expeditiously as possible to provide the requester and the court with the matter at issue or with a statement of the reasons for denial. The decisional period should not exceed 10 working days from receipt of a complete request complying with the requirements of § 725.7, absent exceptional or particularly difficult circumstances. The requester should also be informed promptly of the referral of any portion of the request to another authority for determination.

(d) Except as provided in § 725.7(d), a determination to grant or deny shall be in writing.

(e) The determination letter should respond solely to the specific disclosures requested, stating a specific determination on each particular request. When a request is denied in whole or in part, a statement of the reasons for denial should be provided to fully inform a court of the reasons underlying the determination if it is challenged.

(f) A copy of any denial, in whole or in part, of a request, should be forwarded to the cognizant Deputy Assistant Judge Advocate General or the Associate General Counsel (Litigation), as appropriate. Such notification is likewise appropriate when the litigation request has been treated under 5 U.S.C. 552, 552a and § 725.5(f). Telephonic notification is particularly appropriate where a judicial challenge or contempt action is anticipated.

(g) In cases in which a subpoena has been received and the requester refuses to pay fees or otherwise comply with the guidance and requirements imposed by this part, or if the determining authority declines to make some or all of the subpoenaed information available, or if the determining authority has had insufficient time to complete its determination as to how to respond to the request, the determining authority must promptly notify the General Litigation Division of the Office of the Judge Advocate General or the Navy Litigation Office of the Office of the General Counsel, which offices will determine, in consultation with the Department of Justice, the appropriate response to be made to the tribunal which issued the subpoena. Because the Federal Rules of Civil Procedure require that some objections to subpoenas must be made either within 10 days of service of the subpoena or on or before the time for compliance, whichever first occurs, and because this will require consultation with the Department of Justice, timely notice is essential.

§ 725.10 Response to requests or demands in conflict with this instruction.

(a) Except as otherwise provided in this paragraph, DON personnel, including former military personnel and civilian employees, shall not produce, disclose, release, comment upon, or testify concerning any official DOD information in response to a litigation

request or demand without prior written approval of the appropriate DON official designated in § 725.6. If a request has been made, and granted, in whole or in part, per 32 CFR part 97 and this part, DON personnel may only produce, disclose, release, comment upon, or testify concerning those matters specified in the request and properly approved by the determining authority designated in § 725.6. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(b) If, after DON personnel have received a litigation request or demand and have in turn notified the appropriate determining authority described in § 725.6, a response to the request or demand is required before instructions from the responsible official have been received, the responsible authority designated in § 725.6 shall notify the Deputy Assistant Judge Advocate General or Associate General Counsel (Litigation) who has cognizance over the matter. That official will furnish the requester, the court, or other authority that the request or demand is being reviewed in accordance with this part and seek a stay of the request or demand pending a final determination.

(c) If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken under § 725.10(b), or if such court or other authority orders that the request or demand must be complied with, notwithstanding the final decision of the appropriate DON official, the DON personnel upon whom the request or demand was made will, if time permits, notify the determining authority of such ruling or order. That authority will notify the Deputy Assistant Judge Advocate General or the Associate General Counsel (Litigation) having cognizance over the matter. After due consultation and coordination with the Department of Justice, as required by the Manual of the Judge Advocate General, that official will determine whether the individual is required to comply with the request or demand and will notify the requester, the court, or other authority accordingly. The witness shall, if directed by the appropriate DON official, respectfully decline to comply with the demand. Legal counsel for the command concerned should accompany and advise DON personnel during any court proceedings involving the foregoing circumstances.

(d) It is expected that all DON actions in the foregoing paragraphs will be taken only after active consultation with the appropriate component of the Department of Justice. Generally, DON personnel will be instructed to decline to comply with a court order only if the Department of Justice commits to represent the DON personnel in question.

§ 725.11 Fees.

(a) *Generally.* Except as provided below, determining authorities shall charge reasonable fees and expenses to parties seeking official DON information or testimony under this instruction. Pursuant to 32 CFR 288.4, 288.10, these fees should include all costs of processing a request for information, including time and material expended. Travel for active duty members summoned as witnesses is governed by Joint Travel Regulations, Vol. I, Chap. 7, pt. E. and Navy Travel Instructions, Chap. 6, pt. E.[13] Travel for civilian personnel summoned as witnesses is governed by the Joint Travel Regulations, Vol. II, Chap. 4, pt. E.[14]

(1) *When DON is a party.* No fees normally shall be charged when the DON is a party to the proceedings, and the activity holding the requested information or employing the witness shall bear the expense of complying with the request.

(2) *When another federal agency is a party.* No fees shall be charged to the requesting agency. Travel and per diem expenses may be paid by the requesting agency, or by the Navy activity to which the requested witness is assigned, subject to reimbursement from the requesting agency.

(3) *When neither DON nor another federal agency is a party.* Fees shall be charged to the requester for time taken from official duties by DON personnel who are authorized to be interviewed, give testimony, or escort persons on views and visits of installations. At the discretion of the cognizant command, DON personnel need not be made available during duty hours unless directed by subpoena. Time which DON personnel spend in court testifying, or waiting to testify on factual matters shall not be charged. Fees should be charged, however, for expert or opinion testimony based upon the witness's education, training, or experience. Testimony by a treating physician called to testify about his personal knowledge of a specific case is considered fact not expert testimony. Fees are payable to the Treasurer of the United States for deposit in the Treasury's miscellaneous receipts. Rates for uniformed personnel are published in NAVCOMPT Notice 7041 series.[15] Pursuant to 32 CFR 288.4, charges for civilian personnel should include the employee's hourly rate of pay, as well as allowances and benefits. Except as provided in § 725.11(b)(4), no funds may be expended for travel or per diem of active duty members when an agency of the Federal Government is not a party. The requesting party is responsible for travel arrangements and funding. Government funding of travel and per diem for civilian employees is authorized.

(b) *Special circumstances.* (1) *Refusal to pay fees.* In cases in which a subpoena has been received and the requester refuses to pay appropriate fees, it may become necessary to request the Department of Justice to take appropriate legal action before the court issuing the subpoena. Determining authorities should consult promptly with the OJAG General Litigation Division or the Navy Litigation Office of the General Counsel if this course of action appears necessary, because some objections to subpoenas must be made either within ten days of service of the subpoena or on or before the time for compliance, whichever first occurs, and because this will require timely consultation with the Department of Justice. If no subpoena has been issued, the determining authority must decide whether to deny the request or, if appropriate, waive the fees.

(2) *Waiver or reduction of fees.* The determining authority may waive or reduce fees pursuant to 32 CFR 288.4, 288.9, provided such waiver or reduction is in the best interest of the DON and the United States. Fee waivers and reductions shall not be routinely granted, or granted under circumstances which might create the appearance that DON favors one party over another.

(3) *Witness fees required by the court.* Witness fees required by the rules of the applicable court shall be paid directly to the witness by the requester. Such amounts are to defray the cost of travel and per diem. In a case where the Government has paid the cost of travel and per diem, the witness shall turn over to his or her supervisor any payment received from a private party to defray the cost of travel that, when added to amounts paid by the Government, exceed the actual cost of travel. The supervisor shall forward the amount turned over by the witness to the Office of the Comptroller of the Navy for appropriate action.

(4) *Exceptional cases.* If neither the DON, nor an agency of the Federal Government is a party, appropriated funds may be used to pay, without reimbursement, travel and per diem of DON personnel who are witnesses in

[13] See footnote 1 to § 725.1.
[14] See footnote 1 to § 725.1.
[15] See footnote 1 to § 725.1.

criminal or civil proceedings, provided, the case is directly related to the Armed Services, or its members, and the Armed Services have a genuine and compelling interest in the outcome.

Dated: January 14, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc 92-1433 Filed 1-21-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corp.

33 CFR Part 402

Tariff of Tolls

AGENCY: Saint Lawrence Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. The Authority proposed and the Corporation agreed that the definition of "feed grains" will be revised to include meal from these grains for animal consumption, which will eliminate inequity in the treatment of this meal relative to competing products. The Authority also proposed and the Corporation agreed that the volume discount will be amended as follows: To allow the discount to be based upon commodities shipped from a particular origin, that is a particular country outside of North America and a particular port within North America; that the amount shipped must exceed the five navigation season average by 100,000 tons; and that cargoes subject to new downbound or upbound business refunds not be used in the calculations for volume discounts. This is intended to increase use of this discount and make it more practical.

EFFECTIVE DATE: January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-0091.

SUPPLEMENTARY INFORMATION: The definition of "feed grains" in section 402.3(g) is amended to include meal from the other types of feed grains for animal consumption. These meal products have been subject to the higher bulk rate even though they compete with other feed grains in feed formulations. The amendment will eliminate this inequity. The volume discount in § 402.11 also is amended as follows: To allow the discount to be based upon commodities shipped from a particular origin, that is a particular country outside of North America and a particular port within North America; to provide that the amount shipped must exceed the five navigation season average by 100,000 tons; and to provide that cargoes subject to new downbound or upbound business refunds not be used in the calculations for volume discounts. The principal purpose of this amendment is to allow rebates under this section to be more effectively available to prospective beneficiaries of volume rebates. By being calculated on the basis of port as well as commodity, it is believed that eligible Seaway users will increase their shipments through the system. In addition, the present volume rebate method can result in increases in shipments from one port being negated by decreases from another port. It is believed that the amendment resolves this situation.

No comments were received in response to the September 19, 1991 (56 FR 47431), Notice of Proposed Rulemaking. An exchange of diplomatic notes between Canada and the United States approving this amendment occurred on December 20, 1991.

Regulatory Evaluation

This final rule involves a foreign affairs function of the United States, and therefore, Executive Order 12291 does not apply. This final rule has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and this final rule is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this final rule will not only have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls relates to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne by foreign vessels.

Environmental Impact

This final rule does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation amends part 402—Tariff of Tolls (33 CFR part 402) as follows:

PART 402—[AMENDED]

1. The authority citation for 33 CFR part 402 continues to read as follows:

Authority: 68 Stat. 93, 33 U.S.C. 981-990.

2. In § 402.3, paragraph (g) is revised to read as follows:

§ 402.3 Interpretation.

* * * * *

(g) Feed grains means barley, corn, oats, flaxseed, rapeseed, soybeans, field crop seeds, grain screenings, and meal from these grains for animal consumption;

* * * * *

3. Section 402.11 is revised to read as follows:

§ 402.11 Volume discount.

(a) A volume discount shall be granted to carriers at the end of the 1991, 1992, and 1993 navigation seasons after payment of the full tolls specified in the schedule under the tariff in § 402.8 of this part if shipments of a commodity from a particular origin exceed the average amount of shipments from that origin for that commodity in the Seaway during the five navigation seasons immediately preceding the season in which the volume discount is applied by an amount of at least 100,000 tons. The volume discount shall be equal to a 20 percent reduction of the portion of the composite toll related to charges per metric ton of cargo paid for the shipments that surpass the average for the preceding five seasons. The volume discount shall be applied on a pro rata basis to all carriers of the particular commodity from that origin within one navigation season.

(b) For the purposes of this section, "origin" means the country at which the cargo is loaded, except if the cargo is loaded in North America, "origin" means the country at which the cargo is loaded.

(c) If the conditions in paragraphs (a) and (b) of this section are met, a volume discount shall be granted with respect to the following commodities:

(1) Grain;

(2) Other agricultural products;

(3) Iron ore;
(4) Other mine products;
(5) Coal;
(6) Coke;
(7) Petroleum products;
(8) Chemicals;
(9) Stone;
(10) Salt;
(11) Other bulk cargo;
(12) Iron and steel;
(13) Other general cargo;
(14) Containers.

(d) Cargoes having been the subject of a new downbound or new upbound business refund shall be excluded from the statistics used for the calculation of volume discounts.

(e) Notwithstanding anything in this Tariff (33 CFR part 402), a carrier shall not obtain, at the end of a navigation season, both a volume discount and n new downbound or upbound business refund with respect to the same shipment, but a carrier shall obtain the greater of the said discount or refund.

Issued at Washington, DC on January 13, 1992.

The Saint Lawrence Seaway Development Corporation.

Stanford E. Parris,

Administrator.

[FR Doc. 92-1330 Filed 1-21-92; 8:45 am]

BILLING CODE 4910-61-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA5-1-5380; FRL-4039-5]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Iowa Department of Natural Resources (IDNR) has submitted revisions to its open burning rule, 23.2. The revisions approve exemptions for the burning of trees and agricultural structures. EPA is taking final action to approve these revisions in the Iowa State Implementation Plan (SIP).

DATES: This action will be effective March 23, 1992 unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the state submittal for this action are available for public inspection during normal business hours at: The Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Environmental Protection Division, Iowa Department of Natural Resources, Henry A. Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551-7603 (FTS 276-7603).

SUPPLEMENTARY INFORMATION: On October 3, 1991, the Iowa Department of Natural Resources submitted a revision to its SIP which includes revisions to Iowa Pollution Control Rule 23.2—Open burning, Chapter 23—Emission Standards For Contaminants. This revision was effective in the state on September 12, 1990.

The minor rule revisions consisted of three changes to rule 23.2. First, 23.2(3) Exemptions, paragraph b—diseased trees, was replaced in its entirety with language that exempts from the open burning prohibition trees and tree trimmings not originating on the premises, provided the burning is controlled and operated by a local governmental entity. Old paragraph 23.2(3)b exempted only diseased trees. Diseased trees would still be exempt from the open burning prohibition under the revised rule. The exemption would not be permitted in major urban areas of the state.

Second, rule 23.2(3) is revised by adding a new paragraph "i" to exempt the open burning of agricultural structures in rural areas. The rule states this exemption is applicable only if, among other things, the agricultural structures are outside of cities or towns, have had all chemicals and asphalt shingles removed, and permission is obtained from the local fire chief in advance of burning. Also, rubber tires shall not be used to ignite the structures. A definition of "agricultural structures" is provided.

Third, rule 23.2(4)—Unavailability of exemptions in certain areas, was revised to be consistent with revised subrule 23.2(3)b pertaining to trees or tree trimmings, rather than diseased trees.

EPA believes that these rule revisions will not cause or contribute to any violation of the National Ambient Air Quality Standard, especially with respect to particulate matter. There are no nonattainment areas for particulate matter in Iowa. Furthermore, the open burning is restricted to rural areas where ambient particulate levels are well within the standard.

The state provided proper public notice of the proposed revisions and made available the opportunity for public comment and hearing. The revised rule was adopted by the Iowa Environmental Protection Commission and became effective on September 12, 1990.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective March 23, 1992 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective March 23, 1992.

EPA Action

EPA is taking final action to approve a revision to Iowa rule 23.2 pertaining to open burning.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), EPA certifies that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by March 23, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be

challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

November 25, 1991.

Morris Kay,

Regional Administrator.

PART 52—[AMENDED]

40 CFR part 52 is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(56) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(56) Revised Chapter 23, rule 23.2, submitted on October 3, 1991, incorporates changes to the open burning rule.

(i) Incorporation by reference.

(A) Amendment to Chapter 23, "Emission Standards for Contaminants, "Iowa Administrative Code, subrule 23.2, adopted by the Environmental Protection Commission, effective September 12, 1990.

(ii) Additional information.

(A) Letter from Allan Stokes, IDNR, to William Spratlin, dated October 3, 1991.

[FR Doc. 92–1413 Filed 1–21–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 5

RIN 0905–AC68

Criteria for Designation of Mental Health Professional Shortage Areas

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends the existing regulations governing the criteria for designation of health manpower shortage areas, or HMSAs (now health professional shortage areas, or HPSAs; name changed by Public Law 101–597, the National Health Service Corps Revitalization Amendments of 1990) under section 332 of the Public Health Service Act. Specifically, this amendment revises the existing criteria for designation of HMSAs having shortages of psychiatric manpower, transforming them into criteria for designation of HPSAs having shortages of mental health professionals, to take into account not only psychiatrists but also mental health service providers other than psychiatrists. The intended effect of this amendment is to more accurately assess the supply of mental health service providers when making shortage area determinations. This notice also summarizes the comments received by the Department on the Notice of Proposed Rulemaking published on August 8, 1989, which set forth the proposed methodology for making this and other changes to the HMSA criteria. It also formally changes "HMSA" to "HPSA" throughout the regulation, to conform with Public Law 101–597.

EFFECTIVE DATE: This rule will be effective upon publication.

FOR FURTHER INFORMATION CONTACT: Richard C. Lee, Director, Office of Shortage Designation, Bureau of Health Care Delivery and Assistance, Health Resources and Service Administration, Parklawn Building Room 4–101, 5600 Fishers Lane, Rockville, Maryland 20857 (telephone: 301–443–6932).

SUPPLEMENTARY INFORMATION: Section 332 of the Public Health Service Act, as amended by Public Law 101–597, requires the Secretary to establish, by regulation, criteria for the designation of Health Professional Shortage Areas (HPSAs). The regulations setting forth these criteria are codified at 42 CFR part 5. On August 8, 1989, the Department published a Notice of Proposed Rulemaking (NPRM) which proposed certain changes to the then-HMSA criteria, and requested public comments. The NPRM proposed to revise appendix C of the existing regulations, until now entitled "Criteria for Designation of Areas having Shortages of Psychiatric Manpower," to take into account clinical (or "health-service-provider") psychologists, clinical social workers and psychiatric nurse specialists, as well as psychiatrists, in the designation of mental health manpower shortage areas. It also proposed a new minimum size-of-shortage criterion for primary care, dental and mental health HMSAs.

Seventy letters were received commenting on various aspects of the proposed changes to the HMSA criteria. The Secretary would like to thank the respondents for the quality and thoroughness of their comments. As a result of these comments, the Department has reconsidered its position on a number of issues raised and made modifications accordingly. The comments and the Department's responses are discussed below, arranged according to the subjects raised.

Minimum Size-of-Shortage Criterion

Fifty of the seventy letters received dealt with the one proposed change that applied not only to the psychiatric or mental health HMSA criteria, but also to the primary medical care and dental HMSA criteria, i.e. the imposition of a new minimum size-of-shortage criterion. Under the proposed change, a computed need for at least 1.0 additional full-time-equivalent (FTE) practitioner (to lower the population-to-practitioner ratio to the minimum level already required by the criteria for designation) would have to exist within the area or population under consideration for HMSA designation, unless the area or population was already served by less than 0.2 FTE practitioners.

As many of the commentors point out, this change would eliminate about ⅓ of all primary medical care HMSA designations. The NPRM stated that most of the affected primary care and dental HMSAs would have had very low priorities for placement and, therefore, were already unlikely to receive National Health Service Corps (NHSC) personnel. However, as a large number of the commenters point out, many Federal and State programs other than the NHSC are dependent on HMSA designations. In the areas that would lose their designations, both existing NHSC sites and these other programs would be in jeopardy. According to the House and Senate Rural Health Caucus and other commentors, this change would have a severe negative impact on rural and frontier areas. Other commentors stated that this change would also artificially reduce the number of HMSAs, implying a decline in the need for health professionals when problems with recruitment and retention are, in fact, a major current concern for community health centers in HMSAs.

Some commentors suggested that the proposed change was an effort to solve a placement problem—too many areas requesting the few available NHSC practitioners—with a change to the shortage criteria that would reduce the number of HMSAs. One commentor expressed concern that population group designations would be particularly jeopardized by the proposed size-of-shortage change because they have a smaller population base.

The Department recognizes and appreciates the concerns raised about

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the proposed minimum size-of-shortage criterion, particularly that the proposed change could negatively affect areas' eligibility for programs other than the NHSC. Therefore, the Department is withdrawing this particular proposed amendment to the HMSA criteria. However, we expect that the size of the shortage will continue to be an important NHSC placement factor.

Proposed Change From Psychiatric to Mental Health Professional Shortage Criteria

At least five commentors stated simply that they supported the change from psychiatric shortage criteria to mental health professional shortage criteria, including clinical psychologists, clinical social workers, and psychiatric nurse specialists. Others expressed support for the general concept and questioned some of the specifics; their comments are dealt with below. Several others expressed support for this change but concentrated their comments on their opposition to the proposed size-of-shortage criterion.

Three commentors, including the American Psychiatric Association (APA), stated the opinion that mental health professionals other than psychiatrists should not be included due to their lack of skills in biological/medical fields. According to these commentors, such professionals can do psychotherapy but cannot recognize physical/medical components of mental health problems. The Department rejects the contention that only psychiatrists should be included as mental health professionals. The proposed methodology gives extra weight to psychiatrists because of their unique position as physicians.

The APA objected to a statement in the NPRM's preamble suggesting APA support of the proposed revisions, and stated that the APA strongly opposes transforming the existing psychiatric shortage criteria into criteria for mental health professional shortages, including non-physician practitioners. However, an earlier Health Resources and Services Administration study of how such a revision might be made was, in fact, coordinated both with the APA and with associations representing the other mental health professional groups. At that time, there seemed to be a consensus that there is overlap in roles between the various types of mental health professionals and that, if the overlap could be properly quantified, all the associations involved could support the use of mental health professional shortage criteria. Unfortunately, a proposed survey which was developed to exactly quantify this overlap in functions did not achieve clearance and therefore was not carried out. While the methodology used in the NPRM may be less satisfactory, the Department believes it represents a clear improvement over the previous psychiatrist-only approach, and, therefore, will retain it as proposed.

According to some commentors, the term "counseling" should have been included instead of or as well as "psychotherapy" in the description of the overlap in functions of the core mental health service providers. We agree. However, this would not affect the regulations themselves.

Types of Mental Health Professionals Included

One commentor noted that master's level psychologists were omitted from the definition of the "core" mental health service professionals, although social workers and nurses trained at the master's level were included. This commentor stated that it is difficult to recruit doctorate-level psychologists to underserved rural areas; that many of the psychologists providing services in the public mental health sector hold only master's degrees; and suggested that it is reasonable to believe that master's-level psychologists can function at the same level as nurses or social workers trained at the master's level.

In response, the Department wishes to point out that the approach taken in the development of these criteria was to include those numbers of each core mental health service professional group that had received the highest level of training available in that discipline. In this way, the professionals included are those that are clearly fully-trained according to their colleagues, just as psychiatrists are only considered fully trained if they have completed medical school and residency in psychiatry. While we recognize that this leads to inclusion of holders of master's degrees in two of the disciplines while only holders of doctorates are accepted in the other two, we nevertheless believe that this approach is basically sound. Since only one comment to the contrary was received, we conclude that most psychologists reading the notice were in agreement with the restriction to holders of doctorates, and we do not plan to alter this approach.

The American Association for Marriage and Family Therapy (AAMFT) commented that marriage and family therapists should be included in the definition of core mental health professionals in the new criteria. They pointed out that 20 States license or certify marriage and family therapists; 41 graduate degree and post-degree training programs in this field have been accredited by the Commission on Accrediation for Marriage and Family Therapy Education; 600 additional training programs offer coursework in this field; and more than 16,000 qualified practitioners are members of the AAMFT. In addition, this discipline has already been recognized in relevant legislation; it was added in 1988 to the other four disciplines eligible for mental health traineeships under Section 303 of the Public Health Service Act. (Recipients of such traineeships are obligated to serve in HPSAs, in public inpatient mental institutions, or in other areas or entities designated by the Secretary under section 303.)

The Department agrees with this suggestion. The regulation has been revised to include this discipline. The definition of marriage and family therapists for this purpose includes those individuals (normally with a master's or doctoral degree in marital and family therapy and at least two years of supervised clinical experience) who are practicing marital and family therapy and are licensed or certified to do so by the State of practice; or, where licensure or certification is not required, are eligible for clinical membership in the AAMFT. (The use of "master's or doctoral" here is because some accredited programs lead only to the master's degree, while others lead only to the doctoral degree; our intent is that the programs covered be accredited and lead to at least a master's degree, analogous to the situation in social work.)

One commentor suggested that we also include registered occupational therapists, licensed physical therapists, vocational therapists, registered dieticians and registered pharmacists as part of the interdisciplinary team of professionals considered in the mental health shortage criteria, although no suggestion was included as to how or with what weight to include them. The Department recognizes that these professionals provide important contributions to the care given to persons suffering from mental health disorders, but the services they provide are not interchangeable with those provided by the core disciplines already identified, and shortages of these professionals are not correlated with shortages of psychiatrists, psychologists, etc. Therefore, this change is not being made.

Methodology Used in Combining Different Mental Health Professional Types

One commentor objected to the use of a population-to-core professional ratio involving the simple addition of the "core" types of mental health professionals. According to the commenter, this approach assumes that the core types are all equal, even though only psychiatrists have hospital admitting privileges and can prescribe medication. In response, the Department points out that although the core types are treated equally in the particular ratio question, the proposed methodology also uses the ratio of population-to-psychiatrists by themselves, specifically to take into account the medical role which only psychiatrists can exert.

Two commentors suggested that the criteria should treat all mental health professionals equally, resulting in the use of a single ratio, rather than using a mixture of one population-to-core-professional ratio and one population-to-psychiatrist ratio, which treats psychiatrists differently. These commentors pointed out that there is growing collaboration between primary care physicians and non-physician mental health professionals; that there is existing expertise in psychopharmacology and some options for limited prescription privileges among non-physician mental health professionals; and that the overwhelming majority of mental health patients do not require medication. They also stated that, according to CHAMPUS data, all the core mental health professionals treat schizophrenia and affective disorders as well as neurotic and personality disorders and adjustment reaction problems.

Despite the factors cited, the Department recognizes a distinct role for the psychiatrist. Furthermore, the methodology as proposed implicitly allows for a smooth transition from the previous criteria, based primarily on the population-to-psychiatrist ratio, to the new criteria which take into account both that ratio and the population-to-core-professional ratio.

One commentor felt that areas with adequate psychiatric coverage but shortages of clinical social workers or psychiatric nurses would not be identified by the proposed designation process, and that separate shortage designations for each type of mental health professional would be better. In response, the Department points out that the purpose of the criteria is to identify areas with shortages of mental health professionals. Clearly, the particular type of mental health professional(s) needed in each area will vary according to what types, if any, are already there; the characteristics of the population involved; and the need to have a balanced team of various types of professionals to meet community needs. This degree of specificity will need to be worked out on a site-by-site basis, just as the needs of individual sites identified as primary medical care HPSAs are currently analyzed to determine whether the site requires a family practice physician; a pediatrician, internist, or obstetrician/ gynecologist; or a nurse practitioner, nurse midwife, or physician assistant.

Choice of Ratio Levels in the Mental Health Shortage Criteria

Several commentors pointed out that national average population-to-provider ratios do not necessarily represent adequacy levels; their use presupposes the adequacy of current supply to meet demand if it were equitably distributed. They stated that the rationale for "shortage=1.5 to 2.0 times national mean" is not clear, and suggested that lower levels of these ratios should instead be used. According to these commentors, previous research has shown that many individuals with mental health problems are not receiving service for a variety of reasons, including inaccurate diagnosis, fear of being labeled, geographic remoteness from available care and insufficient financial resources to pay for treatment. Therefore, they believe the threshold ratios in the criteria should be carefully monitored for accuracy and utility as indicators of shortage, and replaced if evidence of the appropriateness of using smaller ratios is found. They further suggested that research be conducted to obtain better criteria. The Department concurs that research should go forward and that future changes should be considered if a better basis for threshold ratios is developed.

Data Issues

Two commentors pointed out that the available data on the number of professionals in each of the core disciplines are variable in scope, accuracy, currency and completeness and are not necessarily comparable; this could result in errors in the choice of threshold ratios and in the designation of particular areas. The Department recognizes that this may be a problem, but sees no immediate practical solution, except to urge both the States and the professional associations involved to improve the quality of their data on these professionals wherever possible.

Three commentors stated that in order to determine accurately the numbers of mental health professionals in these disciplines, expensive surveys would be required, especially in States where not all four types are licensed, certified or registered. Again, the Department recognizes and appreciates that this is likely to be a problem, particularly in States where no existing system is in place to collect data on one or more of the professions involved. States will need to make judgements about whether the expense of setting up such a system will likely yield benefits, not only to ease HPSA designation but also in monitoring these professionals in connection with other programs.

High Need/Insufficient Capacity Indicators

Several commentors, including four associations of mental health professionals, recommended that the Department not drop age-related indicators of high need. Two associations indicated that, contrary to the statement in the preamble to the NPRM, the Epidemiological Catchment Areas study cited did not include individuals aged 17 or younger, and further stated that no high-quality data exist on the prevalence of mental disorders in children and adolescents. These commentors argued further that high need determinations should not be based on utilization data, since previous research has shown that although children and the elderly are at no lower risk of experiencing mental health problems than the rest of the population, they tend to underutilize mental health services due to problems of inaccurate diagnosis, limited accessibility, and lack of financing.

A third commentor recommended that a large aged population be retained as a high need indicator, since "studies point to a correlation between the availability of mental health services and decreased utilization of unnecessary medical care, particularly among the aging population." A fourth commentor stated that higher rates of suicide occur among the elderly than in any other group, and that high rates of "self-destructive" behavior occur in young adults, specifically males. A fifth commentor recommended that we retain both the youth and elderly indicators because of "the strong evidence provided by empirical research that the psychiatric needs of the elderly are underserved" and "the strong evidence that children/ adolescents have "high need" for psychiatric services due to their

involvement in the use of illegal drugs and the evidence of high co-morbidity between mental disorders and substance abuse disorders."

Based on these comments, the Department will retain the youth and elderly high need indicators.

Some commentors noted that alcoholism and other substance abuse are important indicators of high need and should be included. They felt that the lack of availability of a national alcoholism index should not mean that alcoholism rates will not be considered; alternative measures should be used. The Department concurs and will add an allowance for the use of indicators of high prevalence of alcoholism or substance abuse, where available.

One commentor suggested that other factors such as homelessness, unemployment, natural disasters and HIV-endemic areas should also be considered for high needs. In response, the Department points out that an estimate of the number of homeless persons can be included in geographic area designations, and a homeless population can be separately designated as a population group or combined with the poverty population in a poverty/homeless population group. At this time, the Department does not plan to include any of the other suggested variables as high need factors.

Another commentor suggested that adjustments for high needs also be made for families receiving AFDC or other public income support, as well as for areas with elevated rates of school dropouts, homicide, and suicide. In response, the Department points out that several of these factors correlate with percent of the population below poverty, already used as a high need indicator. We are not prepared to adjust for local levels of school dropouts, homicide, and suicide.

Two commentors raised the question of how poverty is defined for the purposes of HMSA designation and expressed reservations about basing it on Department of Agriculture estimates of cost for a family of four to purchase food. One also commented that the rationale for using poverty "should acknowledge the established relationship between social status and mental disorders." In response, we feel that although any definition of poverty would likely be imperfect, it is important to have a single government-wide standard. The Bureau of the Census, rather than the Department of Health and Human Services, is responsible for annual updates of the official Federal Government statistical poverty thresholds, and application of those thresholds to prepare statistical estimates of the number of persons and families in poverty. (Contact: Enrique Lamas, Chief, Poverty and Wealth Statistics Branch, U.S. Bureau of the Census.)

Poverty is used in the primary medical care HPSA criteria because it tends to correlate with both lower health status and lack of access to health services; in the mental health HPSA criteria, the same correlation is assumed.

One commentor suggested there should be language in the rule to recognize areas in which a disproportionate number of chronically mentally ill reside. This would be a good suggestion, but for the fact that data on residence locations of the chronically mentally ill is not generally available, except where they are institutionalized. The institutionalized mentally ill are addressed in the existing mental health facilities criteria.

According to one commentor, the importance of language or cultural barriers should be reinforced, as well as the related shortages of professionals sensitive to minority populations and cultures, and the resulting disproportionate representation of minorities in State mental hospitals. In response, the Department notes that the population group HMSA criteria already address language and cultural barriers; the selection criteria for recipients of NHSC scholarships and loan repayments and for hiring in general emphasize minorities; and the NHSC's matching process stresses culturally sensitive placements.

According to one commentor, the criterion for determining insufficient capacity for a facility from number of patient visits per provider, as currently written, appears to allow consideration only of patient visits at the facility rather than counting staff visits outside the facility to serve the patients' needs. In response, the word "patient" is meant to include all patients served by the facility's staff as a service of that facility, whether on or off site. This, of course, would not include patients served by facility staff through private practices, if any.

Service Area/Contiguous Area Issues

According to one commentor, the proposed regulations would change the way of measuring distance to contiguous resources, by measuring the distance of the contiguous resources from the closest population center of the area proposed for designation, rather than from its geographic center, in contrast to the approach used in primary care and dental HMSA designation; this could lead inappropriately to dedesignation of some areas.

The wording of the contiguous area criterion as stated in the mental health criteria (appendix C) does appear to be slightly different from that stated in the primary medical care and dental criteria (appendices A and B). However, no functional difference was intended. Where a service area has one major population center, distances/travel times to contiguous resources are to be measured from this center; where the population is fairly evently distributed, distances/travel times are to be measured from the geographic center; where two population centers of roughly equal size are present, distances may be measured from a point halfway between them. However, where three or more population centers are present, as in the case of many multi-county mental health catchment areas, no simple rule is obviously applicable. Therefore, for these larger areas, we use the practical approach of measuring the distance from each contiguous area's population center to the nearest population center of the service area.

Other Issues on Mental Health Shortage Criteria

One commentor suggested that separate mental health shortage criteria be developed for children and adolescents, involving providers such as child psychiatrists, psychologists, speech pathologists, audiologists and therapists.

The Department points out that separate criteria for children and adolescents would logically require that we also do separate criteria for adult males, females of child-bearing age, females not child-bearing age, etc. We would then need to allocate each practitioner's time in patient care to one or more of these age/sex groupings. The age/sex groupings should be nonoverlapping, which would be difficult or impossible (for example: adolescent females fall in two or three categories). The whole system would thus become impossibly complex; we do not plan to proceed in this direction.

Other Issues on the Primary Medical Care HMSA Criteria

One commentor suggested that the HMSA criteria were already too stringent, and that the population-to-practitioner ratio required for designation should be reduced, particularly in high need areas such as those with high percentages of elderly. However, there seems to be relative satisfaction with the existing levels on the part of most commentors. At this time, the Department is making no change to the population-to-practitioner

ratios required for primary care and dental HPSA designation.

One commentor suggested that separate criteria for shortages of obstetricians should be developed, since areas which have no overall shortage of primary care physicians can have shortages of obstetricians and resulting elevated rates of infant mortality, low birth weight babies, and inadequate prenatal care. Our response to this is analogous to that for the previous issue regarding separate mental health shortage criteria for children and adolescents. In sum, our approach is that an area or population should be identified as having an overall primary medical care shortage in order to qualify for designation, not just a shortage for a particular age/sex group or a particular type of primary care physician.

One commentor raised the issue that service areas in the west are much larger and the populations that comprise market areas much smaller than in the rest of the country, and suggested that the HMSA regulations regarding rational service areas be modified to recognize these geographic differences. In response, we recognize this problem, particularly in the case of frontier areas. We therefore will allow some flexibility, i.e., use of larger service areas, in designation of frontier or near-frontier areas.

Two commentors suggested that a lower population-to-primary care provider ratio be used in isolated and low-density rural and frontier areas, and pointed out that this need was recognized in the preamble to the 1980 publication of the HMSA criteria but that nothing has been done. The Department has made no decision to reduce the population-to-practitioner ratios required for HPSA designation of frontier areas; however, under section 6213(c) of Public Law 101–239, areas which have not been designated as HPSAs but have been identified under State criteria and designated by State Governors as having shortages for State program purposes can be certified by the Secretary as appropriate for Rural Health Clinic purposes. Frontier areas designated by States using population-to-practitioner ratios less than the HPSA designation threshold could quite possibly achieve such certification.

Designation Process Issues

One commentor suggested that the medically underserved area (MUA) and HMSA designation processes be combined. These two designation processes have been kept separate because each is the basic requirement for a particular program, i.e., HMSA designation for NHSC placement and MUA designation for community health center (CHC) funding. However, primary medical care health manpower shortage is really one type of medical underservice. Regulation changes now being considered for the CHC program would make primary medical care HPSAs automatic MUAs.

Publication Process Issues

Two commentors expressed concern that the proposed rules changes were referenced incorrectly in the **Federal Register's** Table of Contents; these commentors felt that the comment period should be extended or the rules change republished. The Department regrets the publication error, but did consider comments received after expiration of the formal comment period deadline.

Regulatory Flexibility Act and Executive Order 12291

This rule reforms the criteria for designating the geographic areas in which a small fraction of National Health Service Corps enrollees are placed. It thereby establishes one condition for this type of Federal financial assistance to such areas. No standards in this rule go beyond the minimum necessary to achieve this purpose effectively. The benefits of this rule arise from improved measurement of mental health shortage areas, through taking into account not only psychiatrists but also other mental health service providers. This rule imposes no direct costs. As discussed elsewhere in this preamble, a number of alternatives were considered. We selected alternatives which minimize unnecessary complexity, minimize unnecessary change and disruption to the existing system, and recognize the most important and salient needs for mental health services.

Most areas designatable under the previous criteria will also be designatable under the revised criteria; although their degree-of-shortage group may change. When both psychiatrists and other core mental health service professionals are considered, some new mental health HPSAs will be designatable. However, since the number of obligated-service psychiatrists (or other core mental health professionals) available for placement in mental health HPSAs is limited, only a few placements will occur in newly-designated areas.

As a result, this rule meets the general requirements under Executive Order 12291 for maximizing benefits and minimizing costs, and the Secretary has determined that this rule will not impose costs of $100 million or otherwise meet the criteria for major rule established in the Executive order. Therefore, a Regulatory Impact Analysis is not required. The Secretary also certifies that this amendment to the regulations does not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act of 1980

There are no information collection requirements in this regulation.

List of Subjects in 42 CFR Part 5

Shortage.
Health.
Health professionals.
Psychiatrists.
Psychologists.
Social workers.
Psychiatric nurse specialists.
Marriage and family therapists.
Primary medical care physicians.
Dentists.

Dated: May 23, 1991.

James O. Mason,

Assistant Secretary for Health.

Approved: October 10, 1991.

Louis W. Sullivan,

Secretary.

Accordingly, 42 CFR part 5 is amended as set forth below:

PART 5—DESIGNATION OF HEALTH PROFESSIONAL SHORTAGE AREAS

1. The authority citation for 42 CFR part 5 continues to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); Sec. 332 of the Public Health Service Act, 90 Stat. 2770–2772 (42 U.S.C. 254e).

2. The heading for appendix C of part 5 is revised to read as follows:

Appendix C—Criteria for Designation of Areas Having Shortages of Mental Health Professionals

3. Part I.A of appendix C is revised to read as follows:

Part I—Geographic Areas

A. *Criteria.* A geographic area will be designated as having a shortage of mental health professionals if the following four criteria are met:

1. The area is a rational area for the delivery of mental health services.

2. One of the following conditions prevails within the area:

(a) The area has

(i) a population-to-core-mental-health-professional ratio greater than or equal to 6,000:1 and a population-to-psychiatrist ratio greater than or equal to 20,000:1, or

(ii) a population-to-core-professional ratio greater than or equal to 9,000:1, or
(iii) a population-to-psychiatrist ratio greater than or equal to 30,000:1;
(b) The area has unusually high needs for mental health services, and has
(i) a population-to-core-mental-health-professional ratio greater than or equal to 4,500:1 and
a population-to-psychiatrist ratio greater than or equal to 15,000:1, or
(ii) a population-to-core-professional ratio greater than or equal to 6,000:1, or
(iii) a population-to-psychiatrist ratio greater than or equal to 20,000:1;

3. Mental health professionals in contiguous areas are overutilized, excessively distant or inaccessible to residents of the area under consideration.

* * * * *

4. In Part I.B, Methodology, the term "psychiatric" in the heading of paragraph 1 and the text of paragraphs 1(a) and 1(a)(ii) is changed to "mental health". Paragraphs 3, 4, and 5 are revised to read as follows:

* * * * *

3. *Counting of mental health professionals.* (a) All non-Federal core mental health professionals (as defined below) providing mental health patient care (direct or other, including consultation and supervision) in ambulatory or other short-term care settings to residents of the area will be counted. Data on each type of core professional should be presented separately, in terms of the number of full-time-equivalent (FTE) practitioners of each type represented.

(b) Definitions:

(i) *Core mental health professionals* or *core professionals* includes those psychiatrists, clinical psychologists, clinical social workers, psychiatric nurse specialists, and marriage and family therapists who meet the definitions below.

(ii) *Psychiatrist* means a doctor of medicine (M.D.) or doctor of osteopathy (D.O.) who

(A) is certified as a psychiatrist or child psychiatrist by the American Medical Specialities Board of Psychiatry and Neurology or by the American Osteopathic Board of Neurology and Psychiatry, or, if not certified, is "broad-eligible" (i.e., has successfully completed an accredited program of graduate medical or osteopathic education in psychiatry or child psychiatry); and

(B) practices patient care psychiatry or child psychiatry, and is licensed to do so, if required by the State of practice.

(iii) *Clinical psychologist* means an individual (normally with a doctorate in psychology) who is practicing as a clinical or counseling psychologist and is licensed or certified to do so by the State of practice; or, if licensure or certification is not required in the State of practice, an individual with a doctorate in psychology and two years of supervised clinical or counseling experience. (School psychologists are not included.)

(iv) *Clinical social worker* means an individual who

(A) is certified as a clinical social worker by the American Board of Examiners in Clinical Social Work, or is listed on the National Association of Social Workers' Clinical Register, or has a master's degree in social work and two years of supervised clinical experience; and

(B) is licensed to practice as a social worker, if required by the State of practice.

(v) *Psychiatric nurse specialist* means a registered nurse (R.N.) who

(A) is certified by the American Nurses Association as a psychiatric and mental health clinical nurse specialist, or has a master's degree in nursing with a specialization in psychiatric/mental health and two years of supervised clinical experience; and

(B) is licensed to practice as a psychiatric or mental health nurse specialist, if required by the State of practice.

(vi) *Marriage and family therapist* means an individual (normally with a master's or doctoral degree in marital and family therapy and at least two years of supervised clinical experience) who is practicing as a marital and family therapist and is licensed or certified to do so by the State of practice; or, if licensure or certification is not required by the State of practice, is eligible for clinical membership in the American Association for Marriage and Family Therapy.

(c) Practitioners who provide patient care to the population of an area only on a part-time basis (whether because they maintain another office elsewhere, spend some of their time providing services in a facility, are semi-retired, or operate a reduced practice for other reasons), will be counted on a partial basis through the use of full-time-equivalency calculations based on a 40-hour week. Every 4 hours (or ½ day) spent providing patient care services in ambulatory or inpatient settings will be counted as 0.1 FTE, and each practitioner providing patient care for 40 or more hours per week as 1.0 FTE. Hours spent on research, teaching, vocational or educational counseling, and social services unrelated to mental health will be excluded; if a practitioner is located wholly or partially outside the service area, only those services actually provided within the area are to be counted.

(d) In some cases, practitioners located within an area may not be accessible to the general population of the area under consideration. Practitioners working in restricted facilities will be included on an FTE basis based on time spent outside the facility. Examples of restricted facilities include correctional institutions, youth detention facilities, residential treatment centers for emotionally disturbed or mentally retarded children, school systems, and inpatient units of State or county mental hospitals.

(e) In cases where there are mental health facilities or institutions providing both inpatient and outpatient services, only those FTEs providing mental health services in outpatient units or other short-term care units will be counted.

(f) Adjustments for the following factors will also be made in computing the number of FTE providers:

(i) Practitioners in residency programs will be counted as 0.5 FTE.

(ii) Graduates of foreign schools who are not citizens or lawful permanent residents of the United States will be excluded from counts.

(iii) Those graduates of foreign schools who are citizens or lawful permanent residents of the United States, and practice in certain settings, but do not have unrestricted licenses to practice, will be counted on a full-time-equivalency basis up to a maximum of 0.5 FTE.

(g) Practitioners suspended for a period of 18 months or more under provisions of the Medicare-Medicaid Anti-Fraud and Abuse Act will not be counted.

4. *Determination of unusually high needs for mental health services.* An area will be considered to have unusually high needs for mental health services if one of the following criteria is met:

(a) 20 percent of the population (or of all households) in the area have incomes below the poverty level.

(b) The youth ratio, defined as the ratio of the number of children under 18 to the number of adults of ages 18 to 64, exceeds 0.6.

(c) The elderly ratio, defined as the ratio of the number of persons aged 65 and over to the number of adults of ages 18 to 64, exceeds 0.25.

(d) A high prevalence of alcoholism in the population, as indicated by prevalence data showing the area's alcoholism rates to be in the worst quartile of the nation, region, or State.

(e) A high degree of substance abuse in the area, as indicated by prevalence data showing the area's substance abuse to be in the worst quartile of the nation, region, or State.

5. *Contiguous area considerations.* Mental health professionals in areas contiguous to an area being considered for designation will be considered excessively distant, overutilized or inaccessible to the population of the area under consideration if one of the following conditions prevails in each contiguous area:

(a) Core mental health professionals in the contiguous area are more than 40 minutes travel time from the closest population center of the area being considered for designation (measured in accordance with paragraph B.1(b) of this part).

(b) The population-to-core-mental-health-professional ratio in the contiguous area is in excess of 3,000:1 and the population-to-psychiatrist ratio there is in excess of 10,000:1, indicating that core mental health professionals in the contiguous areas are overutilized and cannot be expected to help alleviate the shortage situation in the area for which designation is being considered. (If data on core mental health professionals other than psychiatrists are not available for the contiguous area, a population-to-psychiatrist ratio there in excess of 20,000:1 may be used to demonstrate overutilization.)

(c) Mental health professionals in contiguous areas are inaccessible to the population of the requested area due to geographic, cultural, language or other barriers or because of residency restrictions of programs or facilities providing such professionals.

* * * * *

5. Part I.C is revised to read as follows:

* * * * *

C. *Determination of degree of shortage.* Designated areas will be assigned to degree-of-shortage groups according to the following table, depending on the ratio (R_C) of population to number of FTE core-mental-health-service providers (FTE_C); the ratio (R_P) of population to number of FTE psychiatrists (FTE_P); and the presence or absence of high needs:

High Needs Not Indicated

Group 1—$FTE_C=0$ and $FTE_P=0$
Group 2—R_C gte * 6,000:1 and $FTE_P=0$
Group 3—R_C gte 6,000:1 and R_P gte 20,000
Group 4(a)—For psychiatrist placements only: All other areas with $FTE_P=0$ or R_P gte 30,000
Group 4(b)—For other mental health practitioner placements: All other areas with R_C gte 9,000:1.

* Note: "gte" means "greater than or equal to".

High Needs Indicated

Group 1—$FTE_C=0$ and $FTE_P=0$
Group 2—R_C gte 4,500:1 and $FTE_P=0$
Group 3—R_C gte 4,500:1 and R_P gte 15,000
Group 4(a)—For psychiatrist placements only: All other areas with $FTE_P=0$ or R_P gte 20,000
Group 4(b)—For other mental health practitioner placements: All other areas with R_C gte 6,000:1.

6. A new paragraph D is added to part I, as follows:

* * * * *

D. *Determination of Size of Shortage.* Size of Shortage (in number of FTE professionals needed) will be computed using the following formulas:

(1) For areas without unusually high need:

Core professional shortage = area population/6,000 − number of FTE core professionals
Psychiatrist shortage = area population/20,000 − number of FTE psychiatrists

(2) For areas with unusually high need:

Core professional shortage = area population/4,500 − number of FTE core professionals
Psychiatrist shortage = area population/15,000 − number of FTE psychiatrists

7. Part II of appendix C is revised to read as follows:

* * * * *

Part II—Population Groups

A. *Criteria.* Population groups within particular rational mental health service areas will be designated as having a mental health professional shortage if the following criteria are met:

1. Access barriers prevent the population group from using those core mental health professionals which are present in the area; and

2. One of the following conditions prevails:

(a) the ratio of the number of persons in the population group to the number of FTE core mental health professionals serving the population group is greater than or equal to 4,500:1 and the ratio of the number of persons in the population group to the number of FTE psychiatrists serving the population group is greater than or equal to 15,000:1; or,

(b) the ratio of the number of persons in the population group to the number of FTE core mental health professionals serving the population group is greater than or equal to 6,000:1; or,

(c) The ratio of the number of persons in the population group to the number of FTE psychiatrists serving the population group is greater than or equal to 20,000:1.

B. *Determination of degree of shortage.* Designated population groups will be assigned to the same degree-of-shortage groups defined in part I.C of this appendix for areas with unusually high needs for mental health services, using the computed ratio (R_C) of the number of persons in the population group to the number of FTE core mental health service providers (FTE_C) serving the population group, and the ration (R_P) of the number of persons in the population group to the number of FTE psychiatrists (FTE_P) serving the population group.

C. *Determination of size of shortage.* Size of shortage will be computed as follows:

Core professional shortage = number of persons in population group/4,500 − number of FTE core professionals
Psychiatrist shortage = number of persons in population group/15,000 − number of FTE psychiatrists

* * * * *

8. Part III, section C, *Community Mental Health Facilities and Other Public or Nonprofit Private Facilities,* is amended by changing "psychiatric manpower" to "mental health professional(s)" and "psychiatric services" to "mental health services" wherever they occur in paragraphs 1, 2(a)(i) and 2(b), and in paragraphs 2(a)(ii) and 2(b) change "psychiatric services" to read "mental health services", by revising paragraphs 2(c) (i) and (ii) to read as follows, and by adding a new paragraph 2(c)(iii):

* * * * *

(c) *Insufficient capacity to meet mental health service needs.* A facility will be considered to have insufficient capacity to meet the mental health service needs of the area or population it serves if:

(i) there are more than 1,000 patient visits per year per FTE core mental health professional on staff of the facility, or

(ii) there are more than 3,000 patient visits per year per FTE psychiatrist on staff of the facility, or

(iii) no psychiatrists are on the staff and this facility is the only facility providing (or responsible for providing) mental health services to the designated area or population.

9. Appendix A, *Criteria for Designation of Areas Having Shortages of Primary Medical Care (Manpower,*

Part I—Geographic Areas, is amended by adding new paragraph D, as follows:

* * * * *

D. *Determination of size of primary care physician shortage.* Size of Shortage (in number of FTE primary care physicians needed) will be computed using the following formulas:

(1) For areas without unusually high need or insufficient capacity:

Primary care physician shortage = area population/3,500 − number of FTE primary care physicians

(2) For areas with unusually high need or insufficient capacity:

Primary care physician shortage = area population/3,000 − number of FTE primary care physicians

10. Appendix A, Part II—*Population Groups*, is amended by adding new paragraph C, as follows:

* * * * *

C. *Determination of size of primary care physician shortage.* Size of shortage (in number of primary care physicians needed) will be computed as follows:

Primary care physician shortage = number of persons in population group/3,000 − number of FTE primary care physicians

11. Appendix B, Criteria for Designation of Areas Having Shortages of Dental Manpower, Part I—*Geographic Areas*, is amended by adding new paragraph D, as follows:

* * * * *

D. *Determination of size of dental shortage.* Size of Dental Shortage (in number of FTE dental practitioners needed) will be computed using the following formulas:

(1) For areas without unusually high need:

Dental shortage = area population/5,000 − number of FTE dental practitioners

(2) For areas with unusually high need:

Dental shortage = area population/4,000 − number of FTE dental practitioners

12. Appendix B, Part II—*Population Groups*, is amended by adding new paragraph C, as follows:

* * * * *

C. *Determination of size of dental shortage.* Size of dental shortage will be computed as follows:

Dental shortage = number of persons in population group/4,000 − number of FTE dental practitioners

13. The entire text of part 5, including its title, is amended by replacing the word "manpower" throughout with the word "professional(s)".

[FR Doc. 92-1131 Filed 1-21-92; 8:45 am]
BILLING CODE 4160-15-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 89-326, 89-327; RM-5138, RM-6315, RM-6448, RM-6765, RM-6779, RM-6782, RM-6836, RM-6840, RM-7304, RM-7305, RM-7306, RM-7307, RM-7308; FCC 92-4]

Radio Broadcasting Services; Carolina Beach, Havelock, Hertford, Jacksonville, Fair Bluff, Wilmington, Shallotte and Longwood, North Carolina, and Murrells Inlet, Bucksport, Darlington, Loris, St. Stephen, North Myrtle Beach, Surfside Beach, Johnsonville, Scranton, Kure Beach, Georgetown and Stallsville, South Carolina

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission resolves competing requests for FM channel allotments to various communities in North Carolina and South Carolina, pursuant to the Memorandum Opinion and Order consolidating consideration of MM Docket Nos. 89-326 and 89-327, as follows. See 55 FR 6643 (February 26, 1990) and Supplementary Information, *infra*. With this action, this proceeding is terminated.

DATES: Effective March 2, 1992. The window period for filing applications for Channel 294A at Carolina Beach, North Carolina, and Channel 300C2 at Bucksport, South Carolina, will open on March 3, 1992, and close on April 2, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Ruger or Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket Nos. 89-326 and 89-327, adopted January 2, 1992, and released January 15, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

The request of RJM Broadcasting to allot Channel 292A to either Stallsville or Ladson, SC, is denied because Stallsville is not a community for allotment purposes, and the Ladson proposal was untimely filed. The request of Great Southern Media to allot Channel 235A to Longwood, NC, is dismissed because no timely filed expression of interest was received. At the request of Jones, Eastern of the Grand Strand, Inc., Channel 276C3 is substituted for Channel 276A at Surfside Beach, SC, and the license of Station WYAK(FM) is modified to specify operation on the higher powered channel. At the request of Marine Broadcasting Corporation, Channel 288C2 is substituted for Channel 288A at Jacksonville, NC, the license of Station WXQR-FM is modified to specify operation on the higher powered channel, Channel 283A is substituted for Channel 287A at Wilmington, NC, and the construction permit of Beatriz Garcia Suarez de McCommas is modified accordingly. At the request of G&M Communications, Channel 300C2 is allotted to Bucksport, SC, as that community's first local FM service. At the request of Musicradio of North Carolina, Inc., Channel 286C2 is substituted for Channel 285A at Havelock, NC, and the license of Station WMSQ(FM) is modified to specify operation on the higher powered channel. At the request of Maranatha Broadcasting Company, Inc., Channel 285C2 is substituted for Channel 285A at Hertford, NC, and the construction permit of Station WKJE(FM) is modified to specify the higher powered channel. At the request of Todd Spoeri, Channel 294A is allotted to Carolina Beach, NC, as the community's first local FM service. At the request of Jennings Communications Corporation, Channel 279C3 is substituted for Channel 228A at Shallotte, NC, the license of Station WDZD-FM is modified to specify operation on the higher powered channel, and Channel 252C3 is allotted to Shallotte for use by other interested parties. Spoeri's request to substitute Channel 252A for Channel 292A at Shallotte and modify the license of Station WCCA-FM accordingly, is denied because the allotment of Channel 252A would require the denial of two wide coverage area FM services at Shallotte. In addition, Spoeri failed to provide a sufficiently compelling showing demonstrating that Station WCCA-FM receives prohibited interference from Station WSYN-FM, Channel 293C2, Georgetown, SC. At the request of Ogden Broadcasting of South Carolina, Inc., Channel 290C3 is substituted for Channel 288A at North Myrtle Beach, SC, the license of Station WNMB(FM) is modified to specify the higher powered channel, Channel 291A is substituted for Channel 290A at St. Stephen, SC, the construction permit of Station WTUA-FM is modified to

specify the alternate Class A channel, and Channel 235A is substituted for Channel 290A at Loris, SC, and the construction permit of Robert L. Rabon is modified to specify operation on the alternate Class A channel. At the request of Radio Carolina Limited Partnership, Channel 288C3 is substituted for Channel 288A at Darlington, SC, and the license of Station WDAR–FM (formerly Station WMWG–FM) is modified to specify the higher powered channel. The request of RJM Broadcasting to allot Channel 289A to Georgetown, SC, as the community's fourth local FM service is denied because the upgraded operations at North Myrtle Beach and Darlington would provide additional service to more people than would a new station at Georgetown. In addition, the allotment of Channel 290C3 at North Myrtle Beach permits upgrades at Jacksonville, Havelock and Hertford. The request of Hendrix Broadcasting to allot Channel 294A to Kure Beach, SC, is dismissed because no expression of interest in use of the channel was received.

Coordinates for Channel 276C3 at Surfside Beach are 33–43–00 and 78–52–00, which reflect a site restriction of 15.8 kilometers (9.8 miles) northeast to avoid a short-spacing to the construction permit (BPH–880804MM) for a new station on Channel 275A at Scranton, SC. Because the petition which resulted in the allotment of Channel 276C3 at Surfside Beach was filed prior to October 2, 1989, Jones may avail itself of the provisions of Section 73.213(c)(1) with respect to the construction permit for Channel 275A at Scranton. Coordinates for Channel 288C2 at Jacksonville are 34–31–45 and 77–27–49, which reflects a site restriction of 24.5 kilometers (15.2 miles) south to avoid a short-spacing to the construction permit for Station WRSF–FM, Channel 289C, Columbia, NC, and the construction permit for Station WGQR–FM, Channel 289A, Elizabethtown, NC. Coordinates for Channel 283A at Wilmington, NC, are 34–16–15 and 77–57–23, the site specified in McCommas' outstanding construction permit. Because the petition which resulted in the allotment of Channel 283A to Wilmington was filed prior to October 2, 1989, McCommas may avail herself of the provisions of § 73.213(c)(1) with respect to Station WCCG, Channel 283A, Hope Mill, NC. Coordinates for Channel 286C2 at Havelock are 34–49–42 and 76–42–12, which reflects a site restriction of 19 kilometers (11.8 miles) east to avoid a short-spacing to Station WDCG, Channel 286C, Durham, NC. Coordinates for Channel 285C2 at Hertford are 36–08–42 and 76–28–20, which reflects a site restriction of 5 kilometers (3.1 miles) south to avoid a short-spacing to Station WMXN, Channel 287B, Norfolk, VA. Coordinates for Channel 252C3 at Shallotte are 33–55–49 and 78–11–54, which reflects a site restriction of 17.6 kilometers (10.9 miles) east to avoid a short-spacing to the licensed site of Station WQSM, Channel 251C1, Fayetteville, NC. Coordinates for Channel 279C3 at Shallotte are 33–58–51 and 78–22–24, which reflects a site restriction of 1.3 kilometers (0.8 miles) northeast to avoid a short-spacing to Station WYAV, Channel 281C1, Conway, SC, and Station WZXS, Channel 280A, Topsail Beach, NC. Coordinates for Channel 294A at Carolina Beach are 33–58–30 and 77–54–50, which reflects a site restriction of 6.9 kilometers (4.3 miles) south to avoid a short-spacing to the licensed site of Station WSFL–FM, Channel 293C1, New Bern, NC. Because the petition which resulted in the allotment of Channel 294A to Carolina Beach was filed prior to October 2, 1989, applicants may avail themselves of the provisions of § 73.213(c)(1) of the Commission's Rules with respect to Station WSFL–FM, Channel 293C1, New Bern, NC. Coordinates for Channel 300C2 at Bucksport are 33–38–45 and 79–08–12, which reflects a site restriction of 3.2 kilometers (2.0 miles) southwest to avoid a short-spacing to the licensed site for Station WNCT–FM, Channel 300C, Greenville, NC. Coordinates for Channel 290C3 at North Myrtle Beach are 33–50–00 and 78–45–39, which reflects a site restriction of 7.2 kilometers (4.5 miles) west to avoid a short-spacing to Station WSYN–FM, Channel 293C2, Georgetown, SC. Coordinates for Channel 288C3 at Darlington are 34–20–40 and 80–01–02, which reflects a site restriction of 14.5 kilometers (9.0 miles) west to avoid a short-spacing to vacant but applied for Channel 287A, Fair Bluff, NC, and the applications for that channel. Because the petition which resulted in the allotment of Channel 288C3 at Darlington was filed prior to October 2, 1989, RCLP will be permitted to avail itself of the provisions of § 73.213(c)(1) of the Commission's Rules with respect to Station WJYQ, Channel 288A, Moncks Corner, SC, and to the allotment and pending applications for Channel 287A at Fair Bluff, NC. The coordinates for Channel 291A at St. Stephen are 33–29–36 and 79–53–21, the coordinates for Station WTUA–FM's construction permit. The coordinates for Channel 235A at Loris are 34–05–26 and 78–52–59, which reflect a site restriction of 2.5 kilometers (1.5 miles) north to avoid a short-spacing to the construction permit for Station WSSX–FM, Channel 236C, Charleston, SC.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Carolina Beach, Channel 294A; removing Channel 285A and adding Channel 286C2 at Havelock; removing Channel 285A and adding Channel 285C2 at Hertford; removing Channel 288A and adding Channel 288C2 at Jacksonville; removing Channel 228A and adding Channels 252C3 and 279C3 at Shallotte; and removing Channel 287A and adding Channel 283A at Wilmington.

§ 73.202 [Amended]

3. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Bucksport, Channel 300C2; removing Channel 288A and adding Channel 288C3 at Darlington; removing Channel 290A and adding Channel 235A at Loris; removing Channel 288A and adding Channel 290C3 at North Myrtle Beach; removing Channel 290A and adding Channel 291A at St. Stephen; and removing Channel 276A and adding Channel 276C3 at Surfside Beach.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–1445 Filed 1–21–92; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 57, No. 14
Wednesday, January 22, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Beans, Whole Dry Peas, Split Peas, and Lentils

AGENCY: Federal Grain Inspection Service. USDA.[1]
ACTION: Advance notice of proposed rulemaking.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) invites comments and suggested changes to the United States Standards for Beans, Whole Dry Peas, Split Peas, and Lentils under the Agricultural Marketing Act of 1946.

DATES: Comments must be submitted on or before April 21, 1992.

ADDRESSES: Written comments must be submitted to George Wollam, FGIS, USDA, room 0619 South Building, P.O. Box 96454, Washington, DC, 20090–6454; telemail users may respond to IRSTAFF/FGIS/USDA; telex users may respond to 7607351, ANS:FGIS/UC; and telecopy users may respond to the automatic telecopier machine at (202) 720–4628.

All comments received will be made available for public inspection at room 0619 South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0231.

SUPPLEMENTARY INFORMATION: This periodic review of the United States Standards for Beans, Whole Dry Peas, Split Peas, and Lentils in 7 CFR part 68 is being conducted in accordance with Executive Order 12291 and Departmental Regulation 1512–1.

During this review, FGIS will assess the need for revision of the various sections of the standards, the potential for improvements, and language clarity. Specifically, FGIS will review the need to establish criteria for inspecting thresher-run beans without reference to grade.

FGIS invites any comments and/or suggestions on changes to the official standards for beans, whole dry peas, split peas, and lentils.

Authority: Sec. 203(c), Agricultural Marketing Act of 1946 (7 U.S.C. 1622).

Dated: December 17, 1991.

John C. Foltz,
Administrator.

[FR Doc. 92–1399 Filed 1–21–92; 8:45 am]
BILLING CODE 3410–EN–M

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75e; 7 CFR 68.5).

7 CFR Part 68

United States Standards for Rice

AGENCY: Federal Grain Inspection Service, USDA.[1]
ACTION: Advance notice of proposed rulemaking.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) invites comments and suggested changes to the United States Standards for Rice under the Agricultural Marketing Act of 1946.

DATES: Comments must be submitted on or before April 21, 1992.

ADDRESSES: Written comments must be submitted to George Wollam, FGIS, USDA, room 0619 South Building, P.O. Box 96454, Washington, DC, 20090–6454; telemail users may respond to IRSTAFF/FGIS/USDA; telex users may respond to 7607351, ANS:FGIS UC; and telecopy users may respond to the automatic telecopier machine at (202) 720–4628.

All comments received will be made available for public inspection in room 0632 USDA South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above telephone (202) 720–0231

SUPPLEMENTARY INFORMATION: This periodic review of the United States Standards for Rice in 7 CFR part 68 is being conducted in accordance with Executive Order 12291 and Departmental Regulation 1512–1.

During this review, FGIS will assess the need for revision of the various sections of the standards, the potential for improvements, and language clarity. Specifically, FGIS will review the need to:

1. Establish standards for edible brown rice,
2. Establish a special grade for aromatic rice,
3. Increase the limits for broken kernels removed by a 5 plate for U.S. Nos. 1 and 2 Long grain, Medium grain, Short grain, and Mixed milled rice,
4. Eliminate the class Screenings milled rice,
5. Revise the definitions of the classes Long grain, Medium grain, Short grain, and Mixed rough rice by eliminating the requirement that these classes must contain more than 25 percent whole kernels, and
6. Revise the definitions of the classes Second head, Screenings, and Brewers milled rice by eliminating the southern production criteria and adopting the western production criteria for rice grown in all areas of production.

FGIS invites any comments and/or suggestions on changes to the official standards for rice.

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

Dated: December 20, 1991

John C. Foltz,
Administrator

[FR Doc. 92–1400 Filed 1–21–92; 8:45 am]
BILLING CODE 3410–EN–M

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75e; 7 CFR 68.5).

Food Safety and Inspection Service

9 CFR PART 391

[Docket No. 91-040P]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments. The fee increase would reflect the increased costs of providing these services due primarily to the increase in salaries of Federal employees allocated by Congress under the Federal Employees Pay Comparability Act of 1990.

DATES: Comments must be received on or before: February 6, 1992.

ADDRESSES: Send written comments to the Policy Office, Attention: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700. Oral comments as provided under the Poultry Products Inspection Act should be directed to Mr. William L.West, (202) 720–3367. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700, (202) 720–3367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." It will not result in an annual effect of the economy of $100 million or more; in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The fee increases reflect a small increase in costs only to establishments that elect to utilize certain inspection services.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601) because the fees provided for in this document reflect only a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to the docket number that appears in the heading of this document. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Mr. West so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this action will be available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

Background

Each year the fees for certain services rendered by FSIS to operators of official meat and poultry establishments, importers, or exporters are reviewed, and a cost analysis is performed to determine if such fees are adequate to recover the costs of providing the Services.[1] The analysis relates to fees charged in connection with overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services. The fees to be charged for these services have been determined by an analysis of data on the current cost of these services and by estimating costs associated with the coming year's operations of the program, including increases in those costs due to an increase in the salaries of Federal employees allocated by Congress under the Federal Employees Pay Comparability Act of 1990, and by other increases affecting Federal employees, such as costs for benefits.

Based on the Agency's analysis of the increased costs in providing these services to be incurred as a result of the pay raise of 4.2 percent for Federal employees effective January 1992, of increasing number employees covered by the Federal Employees Retirement System in 1992, which is subject to the Federal Insurance Contributions Act (FICA) wage tax, and of increased health insurance costs, FSIS proposes to increase the fees relating to such services.

The Agency charges for the costs of services that are incidental to mandatory inspection. Mandatory inspection by Federal inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products.

The ordinary costs of providing that inspection are borne by the U.S. Government. However, costs for these inspection services performed on holidays or on an overtime basis may be incurred to accommodate the business needs of particular establishments. Any or all of these costs which are not a part of the mandatory inspection service are recoverable by the Government.

Section 307.5 (9 CFR 307.5) of the meat inspection regulations provides that FSIS shall be reimbursed for the cost of meat inspection on holidays or on an overtime basis at the rate specified in § 391.3, currently $28.32 per inspector hour. Similarly, § 381.38 (9 CFR 381.38) of the poultry products inspection regulations provides that FSIS shall be reimbursed for the cost of poultry inspection on holidays or on an overtime basis at the rate specified in § 391.3, currently $28.32 per inspector hour. These fees would be increased to $29.72 per inspector hour.

FSIS also provides a range of voluntary inspection services (9 CFR 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5); the costs of which are totally recoverable by the Government. These services, provided under Subchapter B—Voluntary Inspection and Certification Service, are provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) to assist in the orderly marketing of various animal products and byproducts not subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

The basic hourly rate for providing such certification and inspection service is currently $27.72 per inspector hour as specified in § 391.2. The overtime and

[1] The cost analysis is on file with the FSIS Hearing Clerk. Copies may be requested free of charge from the FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700.

holiday hourly rate is currently $28.32 as specified in § 391.3. the rate for laboratory services is currently $47.96 per hour as specified in § 391.4. The hourly rates for these services would be increased to $29.00, $29.72, and $49.80, respectively.

List of Subjects in 9 CFR Part 391

Meat inspection; Poultry products inspection; Fees and charges.

Accordingly, 9 CFR 391, the Federal meat and poultry products inspection regulations would be amended as follows:

PART 391—[AMENDED]

1. The authority citation for part 391 would continue to read as follows:

Authority: 21 U.S.C. 601 *et seq.*, 460 *et seq.*; 7 CFR 2.17 (g) and (i), 2.55; 7 U.S.C. 394, 1622, and 1624.

2. Sections 391.2, 391.3, and 391.4 would be revised to read as follows:

§ 391.2 - Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $29.00 per hour, per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 shall be $29.72 per hour, per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $49.80 per hour, per program employee.

Done at Washington, DC, on January 2, 1992.

Ronald J. Prucha,

Acting Administrator.

[FR Doc. 92-1511 Filed 1-21-92; 8:45 am]

BILLING CODE 3410-DM-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 705

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The current regulations in 12 CFR part 705 govern loans made from a revolving loan fund to certain low-income credit unions. The NCUA Board is proposing to modify § 705.7(b)(2) of the regulations so as to allow disbursement of the entire loan proceeds in a single payment without the credit union having to generate matching funds at the time of disbursement. The intended effect of this amendment is to provide expeditious disbursement of loan funds to participating credit unions.

DATES: Comments must be submitted by February 21, 1992.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Office of General Counsel, at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION: The purpose of the Community Development Revolving Loan Program ("Program") is to make reduced rate loans to both federal and state-chartered credit unions serving low income communities so that those credit unions may provide needed financial services and help to stimulate the economy in the communities served. To implement the Program the NCUA Board published a final rule on September 16, 1987 (52 FR 34891). The final regulation set forth, among other things, the scope and purpose of the program, application procedures, types of activities participating credit unions can perform, and the procedure for disbursing and collecting loans. Although the Program has functioned well, the Board is proposing a technical amendment to provide for more expeditious disbursement of Program loan proceeds.

Currently, under § 705.7 of the Regulations, loans of up to $200,000 may be made to participating credit unions. Loan funds must be matched dollar for dollar with increased shares by the participating credit union. Only 50% of the loan will be disbursed if the credit union has not met the dollar for dollar match at the time its loan is approved. The remainder of the funds are only made available to the credit union after it has documented that it has met the match requirement for the total amount of the loan. This procedure was set forth to alleviate some of the perceived risk of the loan not being repaid in a timely manner.

The NCUA Board believes it is important to expeditiously disburse loan funds to participating credit unions to help them provide financial services in their communities. Furthermore, during the two years NCUA has administered the Program, no participating credit union has failed to make its loan payments on time. Therefore, the Board believes that a loan can be disbursed in its entirety even if the credit union has not met the matching requirement. The matching requirement is still an important aspect of the Program and participating credit unions will have to match the loan amount received from the Program with increased shares, dollar for dollar, within one year of the approval of their loans. A participating credit union's failure to generate the required match within one year of the approval of the loan will result in the reduction of the loan proportionate to the amount of match actually generated. Any funds already advanced to the credit union in excess of the revised amount must be repaid immediately to NCUA. The NCUA Board is proposing to amend § 705.7(b)(2) of the Regulations in order to allow for disbursement of the entire loan proceeds in a single payment without the credit union having to generate the match by the time of disbursement. The Board would still have the flexibility to withhold a portion of the loan where deemed appropriate for safety and soundness reasons.

Paperwork Reduction Act

The Office of Management and Budget has approved the collection requirements contained in part 705 of NCUA's Regulations (OMB No. 3133-0109). The proposed amendment does not change the paperwork requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed amendment is less restrictive than the current regulation. Overall, the NCUA Board expects the change to benefit credit unions by permitting them to receive the entire loan proceeds before meeting the required match. Accordingly, the Board determines and certifies that this proposed amendment does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The Program is implemented in its entirety by the NCUA. The proposed amendment, if adopted, will make it easier for all credit unions participating in the Program, including state-chartered credit unions, to receive approved loans in their entirety. Therefore, the NCUA Board

has determined that the proposed amendment, if adopted, will not a have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 705

Community development, Credit unions, Loan programs—housing and community development, Reporting and recordkeeping requirements, Technical assistance.

By the National Credit Union Administration Board on January 15, 1992.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 705 as follows:

PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN PROGRAM FOR CREDIT UNIONS

1. The authority citation for part 705 continues to read as follows:

Authority: Pub. L. 97–35, 95 Stat. 498; Pub. L. 99–609, note to 42 U.S.C. 9822; Pub. L. 101–144.

2. Section 705.7(b)(2) is revised as follows:

§ 705.7 Loans to participating credit unions.

* * * * *

(b) * * *

(2) Upon approval of its loan application, and before it meets its matching requirement, a participating credit union may receive the entire loan commitment in a single payment. If any funds are withheld, the remainder of the funds committed will be available to the participating credit union only after it has documented that it has met the match requirement for the total amount of the loan committed.

* * * * *

[FR Doc. 92–1550 Filed 1–21–92; 8:45 am]

BILLING CODE 7535–01–M

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12 CFR Part 722

Appraisals

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board is proposing to amend part 722 to exempt additional transactions from the requirements of the appraisal regulation. The proposed amendments would: Permit federally-insured credit unions to use appraisals prepared for loans insured or guaranteed by an agency of the federal government if the appraisal conforms to the requirements of the federal insurer or guarantor; and add a definition of "real estate" and "real property" to clarify that the appraisal regulation does not apply to mineral rights, timber rights, or growing crops. This amendment reduces appraisal costs for credit unions.

DATES: Comments must be submitted by March 23, 1992.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Office of General Counsel, at the above address or telephone: (202) 682-9630

SUPPLEMENTARY INFORMATION:

Discussion

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") directed NCUA and the other financial institution regulatory agencies, to publish appraisal rules for federally related real estate transactions within the jurisdiction of each agency. In accordance with statutory requirements, NCUA's final rule set minimum standards for appraisals used in connection with federally related real estate transactions and identified those transactions that require a state certified appraiser and those that require either a state certified or licensed appraiser. The final rule was published July 25, 1990 (55 FR 30199). The NCUA Board is proposing to amend part 722 to exempt additional transactions from the requirement of the appraisal regulation.

Government Guaranted Loans

The NCUA Board proposes to amend subsection 722.3(a) to add a new paragraph (6) which would exempt from the appraisal requirement any transaction involving a loan insured or guaranteed by an agency of the federal government if that loan is supported by a current appraisal that meets the standards of the federal agency providing the insurance or guarantee. The NCUA Board is proposing this amendment in response to credit unions' concern about the differences in requirements for appraisals under part 722 and appraisals required by various federal agencies insuring or guaranteeing the loans.

Because of differences in appraisal requirements, it may not be clear to credit unions what appraisal rules are applicable to a particular transaction. At least one credit union manager was told that certain federal loan insurance or guarantee programs do not allow their appraisers to report any additional information in an appraisal or prepare a supplement to an appraisal which includes information beyond that required on the agency's appraisal form. Consequently, some credit unions may believe that they are required to obtain two separate appraisals in order to comply with the requirements of the federal insurer or guarantor and the requirements of part 722.

The proposed amendment would eliminate this problem by exempting those transactions that involve federally insured or guaranteed loans from NCUA's appraisal rule if the transaction is supported by a current appraisal that conforms to the requirements of the insuring or guaranteeing agency. The NCUA Board believes that the appraisal standards of the federal agencies that insure or guarantee loans protect federal financial and public policy interests in those real estate-related transactions. Consequently, requiring these transactions to meet additional appraisal requirements may increase costs for federally insured credit unions and consumers of federally insured or guaranteed loans without providing additional benefits or furthering the purposes for which title XI of FIRREA was enacted. Furthermore, without this exemption credit unions would be at a competitive disadvantage in granting these types of loans if other financial institutions have this exemption.

Definition of "Real Estate" and "Real Property"

The NCUA Board is also proposing a technical amendment which adds a definition of real estate and real property to its appraisal rule. This change is being made in response to questions concerning the application of the appraisal rule to interests in real property such as mineral rights, standing timber and growing crops.

Title XI of FIRREA does not define "real estate" or "real property" nor does the context in which these terms are used unambiguously suggest that the terms are intended to have different technical meanings. For instance, real estate-related financial transaction is defined in FIRREA and part 722 of NCUA's Regulations as:

> Any transaction involving (1) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; (2) the refinancing of real property or interests in real property; and (3) the use of real property as security for a loan or investment, including mortgage backed securities.

Section 1110 of FIRREA also directed NCUA to issue regulations that require "real estate appraisals be performed in

accordance with generally accepted appraisal standards promulgated by the Appraisal Foundation." The Appraisal Foundation's standards, the Uniform Standards of Professional Appraisal Practice ("USPAP"), have separate definitions for real property ("the interest, benefits, and rights inherent in the ownership of real estate") and real estate ("an identified parcel or tract of land, including improvements, if any"). USPAP also recognizes that the terms are used interchangeably in some jurisdictions. Furthermore, state laws define real estate or real property in various ways. Some states include timber, mineral rights and growing crops within the general definition of real estate. This may cause confusion on whether such transactions come within the scope of the rule.

In its appraisal rule, the NCUA Board used real property and real estate interchangeably to mean interests in an identified parcel or tract of land and improvements. However, it is not clear whether these terms were intended to include mineral rights, timber rights, or growing crops, since valuation of such interests generally requires the services of a professional other than a real estate appraiser. The proposed amendment makes NCUA's intent clear by defining real property and real estate for purposes of the appraisal regulation as "an identified parcel or tract of land, including easements, rights of way, undivided or future interests and similar rights in a tract of land, but excluding mineral rights, timber rights, or growing crops." The proposed change will allow NCUA's rule to remain consistent with the other regulatory agencies' rules with respect to the definition of real property and real estate. Few, if any, federally insured credit unions make loans secured by mineral rights or timber rights. A limited number of credit unions, with agriculturally-based fields of membership, make loans secured by growing crops. In those cases, NCUA will continue to monitor, through the normal examination process, the credit unions' methods for establishing the value of their security interests.

Paperwork Reduction Act

The Office of Management and Budget has approved the collection requirements contained in part 722 of NCUA's Regulations (OMB No. 3133–0125) relating to appraisal requirements in federally related transactions for federally-insured credit unions. The proposed amendments do not change the paperwork requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). Overall, the NCUA Board expects the changes to benefit consumers and federally-insured credit unions regardless of size by reducing costs without substantially increasing the risk of loss for federally insured credit unions from fraudulent or inaccurate appraisals of real estate collateral. In addition, most small credit unions do not offer real estate loans. Accordingly the Board determines and certifies that these proposed amendments do not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. FIRREA requires that the appraisal regulations apply to all federally insured credit unions. If the proposed amendments are adopted, regulatory requirements for state-chartered federally-insured credit unions will be reduced. Therefore, the NCUA Board has determined that the proposed amendments, if adopted, will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 722

Appraisals, Credit unions, Mortgages, Reporting and recordkeeping requirements, State-certified and State-licensed appraisers.

By the National Credit Union Administration Board on January 15, 1992.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 722 as follows:

PART 722—APPRAISALS

1. The authority citation for part 722 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and Pub. L. No. 101–73.

2. In § 722.2 existing paragraphs (g) through (k) are redesignated as paragraphs (h) through (l) and a new paragraph (g) is added to read as follows:

§ 722.2 Definitions.

* * * * *

(g) *Real estate or real property* means an identified parcel or tract of land, including easements, rights of way, undivided or future interests and similar rights in a tract of land, but excluding mineral rights, timber rights, and growing crops.

* * * * *

3. In § 722.3, paragraph (a)(4)(iv) and (a)(5) are revised and a new paragraph (a)(6) is added to read as follows:

§ 722.3 Appraisal not required; transactions requiring a State-certified or licensed appraiser.

(a) * * *

(4) * * *

(iv) There has been no obvious and material deterioration in market conditions or physical aspects of the property which would threaten the institution's collateral protection; (5) A regulated institution purchases a loan or interest in a loan, pooled loans, or interest in real property, including mortgage-backed securities, provided that the appraisal prepared for each pooled loan or real property interest met the requirement of this regulation, if applicable, at the time of origination; or

(6) A regulated institution makes or purchases a loan secured by real estate, which loan is insured or guaranteed by an agency of the United States government and is supported by an appraisal that conforms to the requirements of the insuring or guaranteeing agency.

* * * * *

[FR Doc. 92–1549 Filed 1–21–92; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–283–AD]

Airworthiness Directives; British Aerospace Viscount Model 744, 745D, and 810 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Viscount Model 744, 745D, and 810 airplanes. This proposal would require visual inspection and rework of the nose and main landing

gear retraction jacks assembly; removal of any obstructions, if necessary; and repair or replacement of damaged parts. This proposal is prompted by a reported failure of a nose landing gear to lower, while the normal extension landing gear system was being used. The actions specified by the proposed AD are intended to prevent failure of one or more of the landing gears.

DATES: Comments must be received by March 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-283-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins; P.O. Box 17414; Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or argument as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-283-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention Rules Docket No. 91-NM-283-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority, which is the airworthiness authority of the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Viscount Model 744, 745D, and 810 series airplanes. The Civil Aviation Authority advises that a case has been reported of a Viscount Model 806 series airplane, whose pilot had to use the emergency landing gear system, when the normal system failed to work. The nose landing gear retraction jack shuttle valve malfunctioned, which prevented the nose undercarriage from lowering. It has been established that the cause was the seizure of the shuttle within the shuttle valve assembly. Cadmium plating within the bore of a valve end connector had degraded, restricting the movement of the shuttle. If uncorrected, this condition could result in the failure of one or more of the landing gears to lower.

British Aerospace has issued Viscount Alert Preliminary Technical Leaflet (PTL) 319 (for Model 744 and 745D series airplanes) and PTL 188 (for Model 810 series airplanes), both dated March 14, 1990, which describe procedures for visual inspection and rework of the nose and main landing gear retraction jacks shuttle valve assembly; removal of any obstructions, if necessary; and repair or replacement of damaged parts. The Civil Aviation Authority has classified these service bulletins as mandatory.

These airplane models are manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA totally informed of the above situation. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require visual inspection and rework of the nose and main landing gear retraction jacks shuttle valve assembly; removal of any obstructions, if necessary; and repair or replacement of damaged parts. The actions would be required to be accomplished in accordance with the service bulletins previously described.

It is estimated that 29 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 50 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $79,750.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

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PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 91–NM–283–AD.

Applicability: All Viscount Model 744, 745, and 810 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of one or more of the landing gear, accomplish the following:

(a) Within 500 hours time in-service or within 6 months after the effective date of this AD, whichever occurs first, accomplish the following procedures in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 319 (for Model 744 and 745D series airplanes) or PTL 188 (for Model 810 series airplanes), both dated March 14, 1990, as applicable:

(1) Remove the nose and main landing gear retraction jacks. Remove the shuttle valve elbow connections, part numbers 70050–69 and 74450–117, and the shuttle, part number A5133–7, from the jacks, in accordance with the service bulletin.

(2) Ream the bore of each shuttle valve elbow connection, and chamfer the elbow bore aperture to 45 degrees. Remove the swarf and clean each shuttle valve elbow. If any residual obstructions or burrs are detected, prior to further flight, remove them in accordance with the service bulletin.

(3) Visually inspect the "hard chrome" plating of the shuttle for damage. If any damaged or binding shuttles are detected, prior to further flight, replace them with new parts, in accordance with the service bulletin.

(4) Visually inspect the bores in the retraction jack cylinder ends for obstructions. If any obstructions or damaged parts are detected, prior to further flight, remove or replace them in accordance with the service bulletin.

(5) Reassemble the shuttles and shuttle valve elbow connections to their respective retraction jacks. Immediately subsequent to installation and reassembly, perform bench checks on the retraction jack assemblies, in accordance with the Viscount Maintenance Manual, to ensure proper operation of the shuttle valves. If any malfunctioning parts are detected, prior to further flight, repair or replace them in accordance with the Maintenance Manual. Reinstall the retraction jacks on the airplane, bleed the hydraulic system and perform landing gear functioning checks in accordance with the Viscount Maintenance Manual. If any malfunctioning parts are detected, prior to further flight, replace or repair them in accordance with the Maintenance Manual.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 7, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1490 Filed 1–21–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–265–AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model ATP series airplanes. This proposal would require repetitive application of rain repellent fluid onto the windshields and adjacent sliding side windows. A terminating action is also provided, which, when accomplished, would eliminate the need for repetitive applications of raid repellent fluid. This proposal is prompted by reports of poor visibility during adverse weather, resulting from the inadequate operation of windshield washers and wipers. The actions specified by the proposed AD are intended to prevent poor visibility through the windshield and adjacent sliding side windows, which could adversely affect the pilot's and co-pilot's ability to navigate the airplane visually.

DATES: Comments must be received by March 10, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–265–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–265–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention Rules Docket No. 91–NM–265–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority, which is the airworthiness authority of the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model ATP series airplanes. The Civil Aviation Authority advises that cases have been

reported of poor visibility through the windshield and adjacent side windows during adverse weather, resulting from the inadequate operation of windshield washers and wipers. If uncorrected, this condition could adversely affect the pilot's ability to navigate the airplane visually.

British Aerospace has issued Service Bulletin ATP–30–3, Revision 3, dated October 19, 1990, which describes procedures of repetitive application of rain repellent fluid onto the windshields and adjacent sliding side windows.

British Aerospace has also issued Service Bulletin ATP–30–10, dated September 30, 1991, which describes procedures for relocating windshield washer nozzles and rerouting fluid supply lines. When accomplished, these modifications would eliminate the need for repetitive applications of rain repellent fluid onto the windshields.

The Civil Aviation Authority has classified these service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA totally informed of the above situation. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive applications of rain repellent fluid onto the windshields and adjacent sliding side windows. Additional requirements would include relocating windshield washer nozzles and rerouting fluid supply lines; when accomplished, these modifications would constitute terminating action for the requirements of this AD. The actions would be required to be accomplished in accordance with the service bulletins previously described.

It is estimated that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,266 per airplane, for those airplanes having serial numbers 2001 through 2019. Required parts would cost approximately $372 for all other airplanes. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,916 per airplane for those airplanes having serial numbers 2001 through 2019; and $2,022 per airplane for all other airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 91–NM–285–AD.

Applicability: All Model ATP series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent poor windshield visibility, which could adversely affect the pilot's and co-pilot's ability to navigate the airplane visually, accomplish the following:

(a) For all airplanes: Within 14 days after the effective date of this AD, and thereafter at intervals not to exceed 50 hours time-in-service, apply Repcon wipe-on rain repellant, or other equivalent rain repellant, onto the windshields and adjacent sliding side windows, in accordance with British Aerospace Service Bulletin ATP–30–3, Revision 3, dated October 19, 1990.

(b) For airplanes having serial numbers 2001 through 2019: Within 9 months after the effective date of this AD, relocate the windshield washer nozzles by incorporating Modification 35073A, in accordance with British Aerospace Service Bulletin ATP–30–10, dated September 30, 1991.

(c) For all airplanes: Within 9 months after the effective date of this AD, reroute the windshield washer fluid supply lines by incorporating Modification 35198A, in accordance with British Aerospace Service Bulletin ATP–30–10, dated September 30, 1991.

(d) Accomplishment of the modifications required by paragraphs (b) and (c) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 8, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1491 Filed 1–21–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–261–AD]

Airworthiness Directives; British Aerospace Model DH/BH/HS 125 Series Airplanes, Excluding Model 125–700A, –800A, and –1000A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model DH/BH/HS 125 series airplanes. This

proposal would require a one-time visual inspection of both upper wing skins for corrosion, and if necessary, repair of corroded parts. This proposal is prompted by reports of corrosion on the left and right wing top skins under the boundary layer fence. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wings.

DATES: Comments must be received by March 10, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103. Attention: Rules Docket No. 91-NM-261-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-261-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention Rules Docket No. 91-NM-261-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority, which is the airworthiness authority of the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model DH/BH/HS 125 series airplanes, excluding Model 125-700A, -800A and -1000A series airplanes. The Civil Aviation Authority advises that cases have been reported of corrosion on the left and right wing top skins under the boundary layer fence. If uncorrected, this condition could result in reduced structural integrity of the wings.

British Aerospace has issued Service Bulletin S.B. 57-73, dated July 30, 1991, which describes procedures for conducting a visual inspection of the left and right wing upper skins for corrosion beneath the boundary layer fence, and repair of certain corroded parts, if necessary. The Civil Aviation Authority has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA totally informed of the above situation. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time visual inspection of both upper wing skins for corrosion, and repair of corroded parts, if necessary. In addition operators would be required to submit a report of inspection results to British Aerospace. These actions would be required to be accomplished in accordance with the service bulletin previously described.

This is considered interim action. The manufacturer intends to review the reports of inspection results and, from them, develop any necessary additional inspection requirements to adequately control the corrosion, or develop design modifications to prevent the subject corrosion problem. Once these additional inspection requirements or design modifications are developed and approved, the FAA may consider additional rulemaking action.

It is estimated that 175 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $19,250.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 91–NM–261–AD.

Applicability: Model DH/BH/HS 125 series airplanes, excluding Model 125–700A, –800A, and –1000A series airplanes; as listed in British Aerospace Service Bulletin S.B. 57–73, dated July 30, 1991, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wings, accomplish the following:

(a) Within 3 months after the effective date of this AD, visually inspect left and right wing upper skins for corrosion beneath the boundary layer fence, in accordance with British Aerospace Service Bulletin S.B. 57–73, dated July 30, 1991.

(1) If any corroded parts are found in which the corrosion is within the limits specified in British Aerospace Service Bulletin S.B. 57–73, dated July 30, 1991, prior to further flight, repair in accordance with that service bulletin.

(2) If any corroded parts are found in which the corrosion exceeds the limits specified in British Aerospace Service Bulletin S.B. 57–73, dated July 30, 1991, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of inspection findings to British Aerospace, in accordance with Appendix A of British Aerospace Service Bulletin S.B. 57–73, dated July 30, 1991. Report all findings, including nil defects to: Service Support Manager, BAe 125, British Aerospace (Commercial Aircraft) Ltd., Corporate Aircraft Division (H121), Customer Support Department, Comet Way, Hatfield, Hertfordshire, AL 10 9TL, England; fax 0707 251216; telex 21429 (BAA HPS–G). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 8, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1492 Filed 1–21–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–260–AD]

Airworthiness Directives; British Aerospace Model BAe 125–800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 125–800A series airplanes. This proposal would require an eddy current inspection of the rudder pedal torque tubes, and replacement of any defective or cracked parts. This proposal is prompted by reports of longitudinal defects/cracks in rudder pedal torque tubes. The actions specified by the proposed AD are intended to prevent failure of the rudder pedal torque tubes, which could lead to reduced controllability of the airplane.

DATES: Comments must be received by March 10, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–260–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–260–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention Rules Docket No. 91–NM–260–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority, which is the airworthiness authority of the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 125–800A series airplanes. The Civil Aviation Authority advises that cases have been reported of longitudinal defects/cracks in rudder pedal torque tubes manufactured from a particular batch of material. If uncorrected, this condition could result in failure of the rudder pedal torque tubes, which could lead to reduced controllability of the airplane.

British Aerospace has issued Service Bulletin SB 27–155, dated August 16, 1991, which describes procedures for a high frequency eddy current inspection of the rudder pedal torque tubes, and the replacement of any defective or cracked

torque tubes. The service bulletin recommends that the high frequency eddy current inspection be accomplished in accordance with BAe Non Destructive Testing (NDT) Technique number 27–20–101, which is included as Appendix A1 of the service bulletin. The Civil Aviation Authority has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA totally informed of the above situation. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a high frequency eddy current inspection of the rudder pedal torque tubes to detect defects or cracks, and replacement of any defective or cracked torque tubes, if found. The actions would be required to be accomplished in accordance with the service bulletin previously described.

It is estimated that 20 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,700.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 91–NM–260–AD.

Applicability: Model BAe 125–800A series airplanes, having NA numbers as listed in British Aerospace Service Bulletin SB 27–155, dated August 16, 1991, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 3 months after the effective date of this AD, inspect the rudder pedal torque tubes (for per airplane) for defects or cracks, using BAe High Frequency Eddy Current Inspection Technique No. 27–20–101, in accordance with British Aerospace Service Bulletin SB 27–155, dated August 16, 1991.

(b) If any defects or cracks are detected that exceed the limit specified in British Aerospace Service Bulletin SB 27–155, dated August 16, 1991, prior to further flight, replace them with serviceable components in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirement of this AD can be accomplished.

Issued in Renton, Washington, on January 8, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1488 Filed 1–21–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–272–AD]

Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd., Model 1123, 1124, and 1124A Westwind Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to all Israel Aircraft Industries (IAI), Ltd., Model 1123, 1124, and 1124A Westwind series airplanes, which currently requires repetitive visual inspections to detect corrosion on the lower exterior surface of the aileron torque transfer tubes. This action would require replacement of the aileron control rod assemblies. This proposal is prompted by results of a recent evaluation of aileron control rod assemblies which demonstrated the need to replace all rod assemblies with improved rod assemblies. The actions specified by the proposed AD are intended to prevent reduced controllability of the airplane.

DATES: Comments must be received by March 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–272–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA

98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–272–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–272–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On May 18, 1990, the FAA issued AD 90–10–04, Amendment 39–6589 (55 FR 18304, May 2, 1990), to require repetitive visual inspections to detect corrosion on the lower exterior surface of the aileron torque transfer tubes. That action was prompted by a report of multiple holes found in an aileron torque transfer tube due to corrosion. The requirements of that AD were intended to prevent reduced controllability of the airplane.

Results of a recent evaluation of aileron control rod assemblies that had been inspected since issuance of the existing AD have revealed a need to require the replacement of the currently-installed aileron control rod assemblies with new rod assemblies that have been manufactured with improved corrosion protection. Installation of these improved assemblies will preclude the corrosion problem addressed by the existing AD.

Astra Jet Corporation has issued Revision 2 to Service Bulletins 1123–27–026 (for Model 1123 Westwind series airplanes) and 1124–27–100 (for Model 1124 and 1124A Westwind series airplanes), both dated April 24, 1991, which describe procedures for replacement of aileron control rod assemblies with improved rod assemblies. The Civil Aviation Administration of Israel (CAAI) has classified these service bulletins as mandatory and has issued Israeli Airworthiness Directive 91–02 in order to assure the airworthiness of these airplanes in Israel.

This airplane model is manufactured in Israel and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority of Israel, has kept the FAA totally informed of the above situation. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 90–10–04 with a new AD that would continue to require repetitive visual inspections to detect corrosion on the lower exterior surface of the aileron torque transfer tubes; it would also require the eventual replacement of aileron control rod assemblies with improved assemblies. The actions would be required to be accomplished in accordance with the service bulletins previously described.

It is estimated that 240 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per manhour. Required parts would cost approximately $3,568 ($1,784 per aileron control rod assembly) per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $895,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided udner the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6589, and by adding the following new airworthiness directive:

Israel Aircraft Industries (IAI), LTD.: Docket 91–NM–272–AD. Supersedes AD 90–10–04, Amendment 39–6589.

Applicability: Model 1123, 1124, and 1124A Westwind series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 20 hours time-in-service after May 18, 1990 (the effective date of AD 90–10–04, Amendment 39–6589), and thereafter at intervals not to exceed 150 hours time-in-service, perform a detailed visual inspection

to detect evidence of corrosion, such as pits, and/or blisters under the paint, on the lower exterior surface of the aileron torque tubes, in accordance with Astra Service Bulletin 1123–27–026 (for Model 1123 Westwind series airplanes), Revision 1, dated April 25, 1990; or Astra Service Bulletin 1124–27–100 (for Models 1124 and 1124A Westwind series airplanes), Revision 1, dated April 25, 1990.

(b) If corrosion or cracks are found as a result of the inspections required by paragraph (a) of this AD, prior to further flight, remove and replace the aileron control rod assemblies with improved assemblies, P/N 513506–503 RD or RE, in accordance with Astra Service Bulletin 1123–27–026 (for Model 1123 Westwind series airplanes), Revision 1, dated April 25, 1990, or Revision 2, dated April 24, 1991; or Astra Service Bulletin 1124–27–100 (for Models 1124 and 1124A Westwind series airplanes), Revision 1, dated April 25, 1990, or Revision 2, dated April 24, 1991; as applicable.

(c) Within 150 hours time-in-service after the effective date of this AD, or within 6 months after the effective date of this AD, whichever occurs first, replace the left and right aileron rod assemblies with improved rod assemblies, P/N 513506–503 RD or RE, in accordance with Astra Service Bulletin 1123–27–026 (for Model 1123 Westwind series airplanes), Revision 2, dated April 24, 1991; or Astra Service Bulletin 1124–27–100 (for Models 1124 and 1124A Westwind series airplanes), Revision 2, dated April 24, 1991; as applicable.

(d) Replacement of the left and right aileron rod assemblies with improved rod assemblies, P/N 513506–503 RD or RE, in accordance with Astra Service Bulletin 1123–27–026 (for Model 1123 Westwind series airplanes), Revision 2, dated April 24, 1991; or Astra Service Bulletin 1124–27–100 (for Models 1124 and 1124A Westwind series airplanes), Revision 2, dated April 24, 1991; as applicable; constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 7, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1487 Filed 1–21–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–276–AD]

Airworthiness Directives; McDonnell Douglas Models DC–8–61, –62, –63, and –73 Series Airplanes Equipped With a Cargo Conversion Modification Installed in Accordance With Supplemental Type Certificate (STC) SA1802SO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Models DC–8–61, –62, –63, and –73 series airplanes equipped with a specific cargo conversion modification. This proposal would require modification of the cargo area subfloor structure, installation of fuselage overhead external doubler straps, installation of transverse cusp membranes, and re-attachment of the longitudinal cusp membrane to the seat track outboard flange. This proposal is prompted by the discovery of design deficiencies in the modification. The action specified by the proposed AD are intended to prevent reduced structural integrity of the cargo compartment and possible loss of cargo restraint capability during emergency landing conditions.

DATES: Comments must be received by March 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–276–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rosenbalm Aviation, Inc., c/o Zantop International Airlines, Macon Municipal Airport, P.O. Box 10138, Macon, Georgia 31297. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Altanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Cundy, Aerospace Engineer, Airframe Branch, ACE–120A, FAA Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991–2910; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–276–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–276–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

Recently, a repair station performing periodic maintenance on a Model DC–8 series airplane discovered design deficiencies of the Supplemental Type Certificate (STC) SA1802S0 data concerning the attachment of the 9g forward bulkhead to the floor substructure. Further investigation revealed that the overhead fuselage section external doublers at the 9g bulkhead did not extend far enough forward to attach the upper beams to the 9g bulkhead, and that the cargo floor seat track structure needed to be attached to the fuselage cusp membrane in order to provide an adequate load path for hoop-tension loads. This condition, if not corrected, could result

in reduced structural integrity of the cargo compartment and possible loss of cargo restraint capability during emergency landing conditions.

The FAA has reviewed and approved Rosenbalm Aviation, Inc., Service Bulletin DC–8 51–01, dated May 1, 1991, which describes procedures for modification of the cargo area subfloor structure and installation of fuselage overhead external doubler straps. The actions described in the service bulletin are divided into two work areas. Procedures in area one, the cargo area subfloor structure, consist of (1) the addition of a series of steel plates, (2) the addition of an arrangement of aluminum longitudinal plates, (3) the addition of channels and angles at fuselage station 80, (4) the replacement of supports to the subfloor structure, (5) the replacement and attachment to the outboard seat track flange of the existing cusp membrane with aluminum plates, (6) the replacement of an existing ZEE angle which is acting as a dust cover from the outboard flange of the seat track at the left butt line with heavier guage ZEE angles, and (7) the replacement of a section of the cargo flooring. Procedures in area two, the external fuselage overhead skin, consist of the addition of shims and doubler straps to the fuselage overhead skin at each of the 9g bulkhead beam upper attachment points at the left and right butt lines from fuselage station 55 to fuselage station 100.

In addition, the FAA has reviewed and approved Rosenbalm Aviation, Inc., Service Bulletin DC–8 51–02, dated June 1, 1991, which describes procedures for the installation of transverse cusp membranes and re-attachment of the longitudinal cusp membrane to the seat track outboard flange. The transverse cusp membrane installation consists of a series of aluminum plates installed at various locations throughout the fuselage subfloor structure. The longitudinal cusp membrane requires re-attachment to the seat track outboard flange by installing aluminum plates attached to the seat track flange and the existing longitudinal cusp membrane along with aluminum shims.

After examining the circumstances and reviewing all available information related to the situation described above, the FAA has determined that AD action shall be taken to prevent reduced structural integrity of the cargo compartment and possible loss of cargo restraint capability during emergency landing conditions.

Since the unsafe condition described is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the cargo area subfloor structure, installation of fuselage overhead external doubler straps, installation of transverse cusp membranes, and re-attachment of the longitudinal cusp membrane to the seat track outboard flange. The actions would be required to be accomplished in accordance with the service bulletins previously described.

There are approximately 12 Model DC–8 series airplanes of the affected design in the worldwide fleet. It is estimated that 11 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 380 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $12,500 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $367,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 91–NM–276–AD.

Applicability: Models DC–8–61, –62, –63, and –73 series airplanes equipped with a cargo conversion modification installed in accordance with Supplemental Type Certificate (STC) SA1802SO, certificated in any category.

Compliance: Required within 180 days after the effective date of this AD, unless accomplished previously.

To prevent reduced structural integrity of the cargo compartment and possible loss of cargo restraint capability during emergency landing conditions, accomplish the following:

(a) Modify the cargo area subfloor structure and install fuselage overhead external doubler straps, in accordance with Rosenbalm Aviation, Inc., Service Bulletin DC-8 51–01, dated May 1, 1991.

(b) Install transverse cusp membranes and re-attach the longitudinal cusp membrane to the seat track outboard flange, in accordance with Rosenbalm Aviation, Inc., Service Bulletin DC–8 51–02, dated June 1, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, Small Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Atlanta Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 7, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1489 Filed 1–21–92; 8:45 am]

BILLING CODE 4910–13–M

VOL 57 ISS 14 JA 22 1992 UMI

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-15; Notice 2]

RIN 2127-AC85

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 205, Glazing Materials, to revise the light transmittance requirements to replicate real-world conditions more closely. This notice proposes to measure light transmittance of window glazing in a laboratory test at the angle at which the window is mounted in a vehicle, rather than at the 90 degree angle specified in the current standard. In addition, the proposed amendment would adjust the required light transmittance levels in the standard in response to the new test procedure and other considerations. The proposed amendment would also make the light transmittance requirements consistent for passenger cars and light trucks.

DATES: Comment closing date: Comments on this notice must be received on or before March 23, 1992.

Proposed effective date: If adopted, compliance with these amendments would be mandatory on September 1, 1994. NHTSA is considering allowing voluntary compliance with the amendments either immediately or 30 days after publication of the final rule.

ADDRESSES: All comments on this notice should refer to the above docket and notice numbers and be submitted to the following: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested that 10 copies be submitted. The Docket is open from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-6346).

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Standard

Federal Motor Vehicle Safety Standard No. 205, Glazing Materials (49 CFR 571.205), specifies performance requirements for the types of glazing (i.e., glass for windows) that may be installed in motor vehicles. The standard also specifies the vehicle locations in which the various types of glazing may be installed. Standard No. 205 was adopted as part of the initial Federal Motor Vehicle Safety Standards, published in the **Federal Register** on February 3, 1967 (32 FR 2408). The National Traffic and Motor Vehicle Safety Act of 1966 (the Safety Act), signed on September 9, 1966, required the issuance of these initial standards, based upon the existing safety standards of various organizations, by January 31, 1967. Standard No. 205 was based on the "American Standard Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways" of the United States of America Standards Institute, now the American National Standards Institute (ANSI). The standard currently incorporates by reference ANSI Standard Z26.1 "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," as amended through 1980 (ANS Z26). The requirements in ANS Z26 are specified in terms of performance tests that the various types or "items" of glazing must pass. ANS Z26 also specifies the locations in which each type of glazing may be installed. For passenger cars, Item 1 or Item 14 glazing normally must be installed in the windshield. Either Item 1, Item 2, or Item 14 glazing normally must be installed in side and rear windows of passenger cars.

Item 1, Item 2, and Item 14 glazing are currently required to meet the luminous transmittance test of ANS Z26 (Test Number 2). This is a laboratory test in which the luminous transmittance of the glazing is measured when the glazing is perpendicular to the measuring device. Only glazing which meets the 70 percent light transmittance requirement may be installed in passenger cars, with minor exceptions. Those exceptions involve the use of bullet-proof glass (i.e., Item 11 glazing). Item 11 glazing may be installed anywhere except the windshield if the combined parallel luminous transmittance with perpendicular incidence through both the Item 11 glazing and the permanent vehicle glazing is at least 60 percent.

For buses, trucks, and multipurpose passenger vehicles (MPV's), Item 1 or Item 14 glazing normally must be installed in the windshield, and Item 1, Item 2, or Item 14 glazing normally must be installed in the windows to the immediate right and left of the driver and in any rear or rear side window requisite for driving visibility. The standard does not specify which rear and rear side windows are requisite for driving visibility. As explained above, Item 1, Item 2, and Item 14 glazing must meet the 70 percent light transmittance test. However, Item 3, Item 9, and Item 12 glazing, which are not subject to the 70 percent light transmittance requirements, may be installed in rear windows in buses, trucks, and MPV's that are not requisite for driving visibility. In addition, Item 5 glazing (which is not subject to the 70 percent light transmittance requirements) may be installed if the rear window is not requisite for driving visibility and other means of visibility to the side and rear of the vehicle are provided. Item 3 glazing is commonly installed in sightseeing buses, in which all windows behind the driver are darkly tinted. Item 3 glazing is also installed in the rear and rear side windows of some MPV's.

On April 23, 1991, NHTSA published a final rule creating a new Item 15A, which is required to meet the luminous transmittance test of ANS Z26 (56 FR 18256). This item of glazing may be used anywhere in most motor vehicles, except the front windshield. As discussed more fully later in this notice, NHTSA is proposing to redesignate this glazing as Item 15.

As mentioned above, light transmittance of glazing is measured in a laboratory test with the glazing perpendicular to the measuring device, instead of at the angle at which it is mounted in the vehicle. Vehicle glazing transmits the maximum amount of light when it is mounted perpendicular to the line of sight (i.e., at an angle of 90 degrees), as in the current Standard No. 205 test. As the mounting angle decreases, the amount of light transmitted by the windshield also decreases. For example, windshield glazing with a light transmittance of 73 percent when tested perpendicular to the measured light beam, would have a light transmittance of about 65 percent when tested at a typical windshield rake (i.e., mounting) angle of 60 degrees. (A rake angle of 60 degrees from the vertical axis places the sample at a 30 degree angle with respect to the horizontal light beam representing the line of sight.)

The amount of light transmitted through vehicle glazing affects the ability of the driver to see objects on the road. Low light transmittance can make it particularly difficult to spot low contrast objects, such as pedestrians, whose luminance and coloring causes them to blend in with the background of the roadside environment. The effect of low light transmittance levels on the driver's vision is most pronounced at dusk and night when the ambient light level is low. This is because the

"contrast sensitivity" of the eye diminishes as the overall brightness of the scene decreases. This lower contrast sensitivity makes it more difficult to discern low contrast objects. This problem is most acute for older drivers who have poorer visual contrast sensitivity. Visual contrast sensitivity declines by a factor of two about every 20 years after age 30. Thus, older drivers have poorer dusk and night vision.

B. Petition for Rulemaking

On August 10, 1988, Gila River Products, Inc., Madico, Inc., Martin Processing, Inc., and 3M Energy Control Products petitioned NHTSA to amend Standard No. 205 "to permit 35 percent minimum luminous transmittance plastic film on glazing in the side and rear locations of passenger cars." Since the minimum light transmittance for such motor vehicle glazing is 70 percent, this would effectively permit a total light transmittance of as low as 24.5 percent. On January 11, 1989, NHTSA granted the petition in a letter to the petitioners. However, NHTSA stated in its letter that the granting of the petition did not necessarily mean that the standard would be revised as requested. Instead, it signified "that the agency believes that a review of the issues raised in the petition appears to have merit." To aid in that review, NHTSA issued a Request for Comments on July 20, 1989 (54 FR 30427). The Request for Comments included 85 questions for the public on the issues raised by the petition for rulemaking. NHTSA received over 100 comments from a variety of groups in response to the Request for Comments. The comments are available for public review in Docket 89–15, Notice 1.

NHTSA received many comments from police departments and other safety groups opposing allowing darker tinting. These commenters where concerned about the ability of the police to see occupants and objects in vehicles with darker tinting and about traffic safety risks. The Insurance Institute for Highway Safety, the Motorcycle Safety Foundation, and the American Optometric Association opposed any reduction in the required level of window light transmittance under Standard No. 205. They stated that the current level of light transmittance was necessary, particularly for older drivers and for night driving. United States automobile manufacturers did not support the amendment to Standard No. 205 requested by petitioners. They advocated more research to define driving visibility needs and opposed allowing additional tinting unless research shows that driver and police safety would be maintained. They further indicated that they were pursuing technological advances to reduce solar loads without reducing safety. Three German automobile manufacturers, Flachglas AG (a German glazing manufacturer), and TUV Rheinland (a European research institute working on visibility issues) supported allowing darker tinting for rear and rear side windows, but opposed it for front side windows. A number of commenters submitted the results of research to support their positions. The petitioners and other commenters stated that darker tinting reduces solar heat transmittance. They stated that this would increase the comfort of vehicle occupants and reduce chloroflorocarbon (CFC) emissions, thus providing environmental benefit.

The House Appropriations Committee Report accompanying the Department of Transportation Appropriations Act for Fiscal Year 1991, requested NHTSA to report to the House and Senate Committees on Appropriations on the adequacy of current regulations governing window tinting. The report was to include information on (1) the current performance requirements in the Federal standard concerning window light transmittance, (2) how vehicles on the road today (particularly newer cars) compare to the standard's requirements, (3) the rules and regulations other countries have in effect on light transmittance through windows, (4) research on the effect of various tinting levels on depth perception, night vision, or other faculties that affect safety. If possible, the report was to reach some conclusions on what level of tinting results in unsafe conditions.

II. Analysis of Issues

NHTSA analyzed the issues raised in the petition for rulemaking, in the many comments submitted in response to the Request for Comments, and in the House Appropriations Committee Report. For example, NHTSA conducted analyses of the potential benefits of more heavily tinted vehicle windows and of the potential effect on safety of various levels of light transmission. NHTSA also analyzed law enforcement issues presented by window tinting and reviewed the light transmittance requirements in other nations. That analysis is discussed in the NHTSA Report to Congress On Tinting of Motor Vehicle Windows and summarized below. (The Report to Congress is available for public review in Docket 89–15, Notice 1).

A. Suggested Benefits of Tinting

The petitioners and some other commenters asserted that tinting has a number of benefits. The benefits asserted include a reduction in heat and energy transmittance, which they asserted increases driver comfort and awareness and decreases use of air conditioning, thus reducing fuel consumption and CFC emissions; a reduction in ultraviolet radiation, which damages human eyes and skin and vehicle interiors; a reduction in the presence of excessive amounts of visible light, which they assert may affect driver performance as much as inadequate levels of visible light and also cause retinal damage and fatigued eye muscles; a reduction in glare; and a reduction in lacerations and ejections. Potential benefits not identified by commenters include increased privacy and aesthetic appeal. Below, NHTSA analyzes the potential benefits of window tinting.

1. Reduction in Heat and Energy Transmittance

A number of commenters, including automobile manufacturers and tinting film manufacturers, stated that window tinting can reduce the amount of solar energy entering a vehicle. They suggested that window tinting allows reductions in air conditioning system size and CFC emissions and increases in fuel economy.

NHTSA believes that window tinting is one approach to reduce the solar energy entering a vehicle. However, there are other approaches that are as effective or more effective.

Sunlight contains a range of wavelengths comprising the visible light spectrum, as well as shorter ultraviolet wavelengths and longer infrared wavelengths which are not visible to humans. Fifty-two percent of the heat of the sun is from the visible spectrum, 2 percent is from the ultraviolet spectrum, and 46 percent is from the infrared spectrum. Light striking a window may be either transmitted, reflected, or absorbed. Glass can be manufactured to filter certain frequencies by reflection or absorption while transmitting other frequencies. Heat absorbing glass can be manufactured to transmit about 70 percent of the visible light while blocking about 90 percent of the infrared light. A drawback of heat absorbing glass is that some of the solar energy absorbed by the glass still enters the vehicle because the glass is heated. Almost one-third of absorbed heat would eventually enter a moving car by radiation and convection, and close to one-half would eventually enter a parked car.

Another approach to limit the solar load is to design glass to reflect solar

energy. The reflectivity of conventional clear or tinted glass is almost entirely in the visible spectrum. The reflectivity is limited to avoid creating blinding glare for other drivers. However, a glass that preferentially reflects infrared light would block solar heat without causing visible glare. Coatings which filter infrared light by reflection are commercially available, but they must be used between layers of laminated glass because they are delicate. Some production vehicles use infrared reflective windshields, but this technology is not used for side and rear windows because of its high cost.

In the Report to Congress, NHTSA analyzed the typical transmittance, reflectance, absorption, and solar load characteristics of various glazing chocies (i.e., clear glass, standard tinted glass, heat absorbing glass, typical tint film with clear glass, standard privacy glass, and multi-layer coated glass). That analysis is presented in Table 4 of the Report and the accompanying text and is summarized below. Information concerning the visible light transmittance of the glazing choices analyzed is presented in Table B1 of the Report to Congress.

NHTSA estimates that standard tinted glass (with 79 percent light transmittance), which is standard equipment in most new vehicles, reduces the solar load about 15 percent compared to clear glass. NHTSA estimates that heat absorbing glass (with 72 percent light transmittance) reduces the solar load about 18 percent, compared to standard tinted glass. NHTSA estimates that typical tinting film (with 35 percent light transmittance), applied to clear glass, reduces the solar heat load about 13 percent, compared to standard tinted glass. NHTSA estimates that typical tinting film filters about 33 percent of the infrared light and passes about 35 percent of the visible light for a combined solar transmittance of 48 percent. This compares to heat absorbing glass, which NHTSA estimates filters about 90 percent of the infrared light and passes about 70 percent of the visible light, for a combined solar transmittance of 41 percent. Standard privacy glass also transmits more infrared than visible light because of its gray color. It achieves a 31 percent reduction in solar load, compared to standard tinted glass, with a 72 percent loss of visible light. Multi-layer coated glass achieves the same solar load reduction as privacy glass, but had only an 11 percent loss in visible light, compared to standard tinted glass.

NHTSA estimates that about 25 percent of the load on non-recirculating auto air conditioners and about 50 percent of the load on recirculating air conditioners results from the solar load passing through glazing. The solar load attributable to glazing may reach 70 percent for a parked car. Windows covered with tinting film would decrease the air conditioning load between 3 and 7 percent. The solar load for a parked car is not appreciably reduced by tinting film, since the inside of the window is heated. Heat absorbing glass would reduce the solar load about 5 to 9 percent, and multi-layer coated glass would reduce it about 8 to 15 percent.

Current multi-layer coated glass is relatively efficient in reducing the solar load while maintaining visibility. In addition, new technologies, such as electrically variable transmittance and directionally variable transmittance are being developed to provide higher night visibility, while reducing solar loads.

NHTSA concludes that the tinted glass reduces the solar load of a vehicle relatively little. Since only a small portion of a vehicle's fuel consumption is the result of air conditioning, the reduction in fuel consumption from window tinting or glass with an advanced coating is relatively small. Similarly, tinted glass would result in only a relatively small decrease in CFC emissions from vehicle air conditioners.

2. Reduction in Ultraviolet Radiation

Commenters also stated that window tinting causes a reduction in ultraviolet radiation, which damages human eyes and skin and vehicle interiors. Some have argued that window tinting can protect persons with skin conditions that are aggrevated by exposure to sunlight.

NHTSA has analyzed this issue and agrees with the comment of the American Optometric Association that there is no evidence that additional tinting will have any significant effect on preventing eye damage due to ultraviolet (or infrared) exposure. NHTSA believes that window tinting has relatively little benefit in preventing harm to persons with skin conditions that are aggrevated by exposure to sunlight. These skin conditions are most likely aggrevated by exposure to ultraviolet light. Plastic is effective in blocking ultraviolet light. It may be formulated to block out 97 percent of the ultraviolet light. In addition, as pointed out by the California Highway Patrol, clear film is just as effective in blocking ultraviolet light as is tinting film. Further, as also pointed out by the California Highway Patrol, tinted glazing does not increase a vehicle occupant's protection from the most harmful type of ultraviolet rays (i.e., UV-A rays). Instead, the glass itself, with or without tinting, blocks or absorbs the UV-A rays. Tinting film blocks the least harmful kind of ultraviolet radiation (i.e., UV-B rays) which usually affect only persons taking photo-sensitizing medications.

3. Reduction in the Presence of Excessive Amounts of Visible Light

The petitioners also asserted that window tinting causes the reduction in the presence of excessive amounts of visible light, which they assert may affect driver performance as much as inadequate levels of visible light and may also cause retinal damage and fatigued eye muscles. Assuming that the assertions of the petitioners are correct, "excessive amounts" of visible light can be reduced through use of sunglasses. Of course, sunglasses, unlike window tinting, normally do not detract from night vision since they can easily be removed at night. NHTSA also notes that "excessive amounts" of light would be most noticed through the windshield. However, the petitioners did not request any change to the light transmittance requirements of windshields.

4. Reduction in Glare

The petitioners and other commenters stated that tinted glazing causes a reduction in glare. Glare is the sensation produced by a source within the visual field sufficiently bright, in comparison to the background luminance to which the eyes have become accustomed, to cause discomfort or loss of visual performance. The disabling effects of glare diminish rapidly with an increase in the angle between the glare source and the object being viewed by the driver. Thus, the only significant disabling glare sources are those in the forward field of view. Side and rear tinting would have no effect on glare sources viewed through the front windshield. In fact, it could make the glare problem worse by reducing the background luminance to which the eyes are adapted. Glare during the day can be reduced most effectively through use of sunglasses, which can be removed at night.

Rear window tinting may have benefit in reducing glare sources in the rear view mirror. However, these glare sources can also be overcome by using the night setting on the mirror. This would reduce the reflectance by a factor of ten, while window tinting would only reduce incoming light by a factor of three.

5. Reduction in Lacerations and Ejections

The petitioners and some other commenters asserted that tinting film would reduce the number of persons suffering laceration injuries from broken window glass and the number of persons ejected through broken window glass. NHTSA does not agree with these assertions. NHTSA does not believe that the tempered glass used in side and rear windows is likely to cause severe lacerations since it breaks into very small pieces with relatively smooth edges. NHTSA understands that anti-lacerative plastic coatings are being applied to the inner surfaces of some automotive windows by glazing manufacturers. However, this material is different from tinting film. The thickness of the anti-lacerative coatings is about ten times the thickness of tinting film. Further, NHTSA does not believe that tinting film can prevent ejections since it is not fastened to the window frame. finally, assuming hypothetically that tinting film has some ability to reduce lacerations and ejections, NHTSA agrees with the California Highway Patrol that an untinted film would reduce lacerations and ejections as well as a tinted film.

6. Increased Privacy and Aesthetic Appeal

NHTSA believes that other reasons persons choose to have tinting film installed on their vehicle include the increased privacy it affords and its aesthetic appeal. NHTSA believes that some people are willing to give up some of their ability to see out of the vehicle to restrict others from seeing in. As mentioned in the Report to Congress, NHTSA believes that these people include those wanting to hide that they are traveling alone, those who want to keep items in parked cars out of the sight of potential thieves, and those wanting to hide objects and actions from the casual scrutiny of the police and others. NHTSA also believes that some people like tinting film because of the aesthetic appeal of darker windows. Some people apparently believe darker windows give the vehicle a "sleek" look. NHTSA believes that these attributes of tinting film should be considered by the agency, but not at the expense of a negative impact on highway safety.

B. Potential Effect on Safety of Various Levels of Light Transmission

NHTSA also analyzed the potential effect on highway safety of various levels of light transmission. As explained in the Report to Congress, the visual detection of an object depends on its brightness contrast with the background. The brightness of an object is the amount of light reflected or emitted from the object, per unit of surface area. Contrast is the ratio of the brightness difference between the object and the background to the brightness of the background. The contrast sensitivity depends on the overall brightness of the scene. In daylight, a low contrast object, such as a dark animal on a dark road, can be seen. However, at dusk, the low contrast object would no longer be visible since the overall brightness level at dusk is insufficient to discern an object of its contrast.

The same perceptual effect can be created by viewing an object through glass panes of varying light transmittance. A low contrast object that is visible through a pane of shaded glass passing 75 percent of the light may not be discernible when viewed through a pane passing only 25 percent of the light. The contrast of the object has not changed, but the reduced brightness of the scene has caused a reduction in the contrast sensitivity.

The aging process causes a similar reduction in the contrast sensitivity of the human eye. Visual contrast sensitivity declines by a factor of two approximately every 20 years after age 30. Thus, older drivers are not able to see as well at dusk and night.

With heavily tinted glass (i.e., glass passing only about a third of the light), the scene would still be bright enough for most drivers to see low contrast objects important to driving safety during the day. At night and during adverse visibility conditions (e.g., during rain, snow, sleet, fog, and mist), high contrast objects, such as headlights, would be visible. however, low contrast objects (e.g., animals, pedestrians, vehicles without lights, road debris, and road signs) would become more difficult to see. In addition, the visual problems of older drivers would be exacerbated. With heavily tinted windows, a typical 60 year old driver would experience the effective visual acuity of a typical 80 year old driver, in many night driving situations.

1. Impact of Light Transmittance in Certain Driving Situations

There are a number of driving situations where transmittance of lesser levels of light through vehicle windows could present the potential for collisions. Petitioners did not recommend allowing lower windshield light transmittance. Thus, while NHTSA believes that heavily tinted front windshields could affect visibility of many road objects, the agency did not analyze the issue in detail. However, NHTSA analyzed the impact of tinting on visibility through other vehicle windows.

a. *Front side windows.* The direct view through the front side windows is essential at virtually every intersection. Without good visibility through the front side windows, a driver would have difficulty seeing such objects as a car without lights, a pedestrian, or a bicyclist in situations with lesser light (i.e., at night, at dusk, or in snow or rain).

Safe lane changes require direct peripheral view through side windows and indirect side views through outside mirrors. Front side tinting could seriously affect peripheral views at night because cars in the next lane could appear as low contrast objects. In addition, the driver's eyes would be adjusted to the light level passing through the relatively lightly tinted windshield and might not adjust quickly enough during the rapid side glances made in connection with lane changes. Further, with heavier tinting on front side windows, drivers would have less visibility through side view mirrors, unless those mirrors had higher reflectance than they currently do.

It would be more difficult to make eye contact with a driver of a vehicle with darkly tinted front side windows. Professional drivers are trained to make eye contact with other motorists in situations where one driver will have to yield the right of way. In addition, pedestrians normally want eye contact with a driver before walking in front of his or her vehicle. Dark front side windows could have the effect of intimidating other drivers and pedestrians, or causing them to take risky actions.

b. *Rear side windows.* Dark rear side windows could also have some effect on visibility. At intersections with acute angles, drivers may look through the rear side window. With a heavily tinted rear side window, this would be more difficult. In such a case, the driver would have to stop short of the intersection to be able to look through the front side window, if that window is less heavily tinted.

Another situation in which tinting on rear side windows could have an effect on visibility is during merging onto limited access highways. In theory, only indirect rear vision through the left side mirror is necessary to merge safely from the acceleration lane. However, some drivers look over their shoulders before merging. To the extent that drivers do not feel comfortable relying exclusively on the available mirrors, dark tinting of rear side windows could affect visibility in merging situations.

c. *Rear windows.* Similarly, dark rear windows could affect visibility in merging situations as some drivers stop and look behind them when merging. More importantly, dark rear windows could affect visibility when backing. When backing at night, at dusk, or under adverse visibility conditions (e.g., during rain, snow, sleet, fog, or mist), drivers would be less likely to see low contrast objects, such as pedestrians and parked cars. As pointed out by IIHS, this would be of particular concern when drivers back up in areas such as driveways and parking lots where small children, who are difficult to see even without heavy tinting, are likely to be present.

Dark rear windows could also affect the visibility of center high mounted stops lights (CHMSL) as pointed out by a number of commenters (e.g., Dr. Merill J. Allen of the Indiana University School of Optometry, Ford Motor Company, and Chrysler Corporation). Dark rear windows would reduce the usefulness of CHMSL's since a driver would not be able to see a CHMSL in a vehicle two or three places ahead in a line of vehicles if those intervening vehicles had dark rear windows. Similarly, interior mounted CHMSL's would be less visible through a dark rear window. Thus, drivers could lose the benefit of CHMSL's (i.e., better warning of braking by other drivers) if vehicles had dark rear windows. The petitioners asserted that tinted glazing would not have an impact on the visibility of the CHMSL of an immediately preceding vehicle since they believe that NHTSA set the illumination level for the stop lamp at a level that ensured that it would be detectable under adverse conditions. However, the minimum illumination level required for the CHMSL by Standard No. 108 is 25 candela. NHTSA does not believe that a 25 candela lamp provides adequate visibility of a CHMSL through heavily tinted glazing.

2. Research on the Relationship Between Window Light Transmittance and Highway Safety

A number of groups have conducted research on the impact of window light transmittance on highway safety. The usual method of determining whether a vehicle or driver characteristic has a significant effect on highway safety is to use accident data bases. However, an accident data base can relate vehicle features to probable accident rates only if the feature under investigation is tracked in the accident description. The existence of window tinting has not been included in the vehicle description of any data base known to NHTSA. Therefore, research has focused on the effect of window light transmittance on driving visibility, with an underlying assumption that lesser driving visibility could cause an increase in vehicle crashes. NHTSA (with Brown Engineering Company as the contractor), TUV Rheinland (with Flachglas AG as the sponsor), and the Insurance Institute for Highway Safety (IIHS) have conducted research in the area. The petitioners also conducted related research. A discussion of that research follows.

a. *NHTSA research.* The NHTSA research was designed to derive the relationship between the window light transmission levels and the ability of drivers to detect low contrast objects through the windows. The findings of the research are summarized in Figure 1 of the Report to Congress and the accompanying text. NHTSA concluded in the Report that the probability of seeing a minimum contrast object at dusk through a window transmitting 70 percent of the available light is 93 percent. However, the probability of seeing the same object through a window transmitting 50 percent of the available light is about 85 percent. Therefore, the probability of not seeing a minimum contrast object at dusk doubles (i.e., goes from 7 percent to 15 percent) when the window light transmittance is changed from 70 percent to 50 percent.

b. *TUV Rheinland Research.* TUV Rheinland (a research organization which advises the German Ministry of Transportation) conducted experiments (under the sponsorship of Flachglas AG, a major European glass manufacturer) which related visibility to driving more directly than the laboratory experiments conducted for NHTSA. TUV Rheinland had subjects use driving simulators with windshields having five different levels of light transmittance. The windshields were (1) a standard clear one (89 percent light transmittance), (2) a standard tinted one (76 percent light transmittance), (3) a standard tinted one with 1.2 percent haze, (4) a deeply tinted one (58 percent light transmittance), and (5) a very deeply tinted one (40 percent light transmittance). All of the windshields were mounted at a 55 degree angle, which reduced the line of sight light transmittance by about 4 percentage points (e.g., from 76 percent to 72 percent).

Figure 2 of the Report to Congress and the accompanying text summarizes the results of the experiment. The experiment showed that both the normally sighted subjects and the subjects wearing spectacles had little difficulty seeing high contrast objects through any of the windshields. The normally sighted group performed equally well in seeing low contrast objects through windshields of 89 percent, 76 percent, and 58 percent light transmittance. They were much less able to recognize low contrast objects through the 40 percent light transmittance windshield and the windshield with haze. The drivers wearing spectacles performed equally well in seeing low contrast objects through clear and standard tinted windshields. However, their performance declined seriously with even the 58 percent light transmittance windshield.

TUV Rheinland concluded that windshield transmittance should not be reduced because drivers with spectacles, who are a large and growing segment of the population, would have increased difficulty with night driving. Volkswagen and Flachglas AG, in their comments to NHTSA in response to the Request for Comments, used the TUV Rheinland study as a basis for advocating 30 to 40 percent light transmittance windows behind the driver and 70 to 75 percent light transmittance windows in the driver's forward 180 degree field of view. Those commenters asserted that only high contrast objects are significant in the rear field of view and that even spectacled subjects saw those objects well through 40 percent light transmittance glazing.

3. IIHS Research

IIHS performed laboratory experiments designed to measure direct visibility needs at the rear of a vehicle for safe backing. In the experiment, test subjects sat in a simulated passenger car and looked for projected images of five common roadway objects (i.e., a vehicle, a bicyclist, a pedestrian, a small child, and debris). The visual objects and the simulated car were stationary, but the images were projected to the rear and rear sides to provide a driver's view when backing a car out of a driveway. Two levels of luminous contrast of objects were used to simulate dimly lighted and moderately lighted conditions. Windows with perpendicular light transmittances of 89, 53, 36, and 22 percent were tested.

Each of the 48 test subjects (licensed drivers from 16 to 80 years of age) was shown projected objects (along with blank trials) and the subject indicated whether one of the objects was present. In general, the detection error rates increased as the rear window transmittance level decreased below 89 percent. In addition, the error rates were strongly influenced by the subject's age,

the contrast of the object, and its size. The vehicle image was detected by all subjects even with 22 percent light transmittance. However, the detection of the images of the pedestrian, the child, and the debris declined with reductions in contrast and window transmittance and increases in the age of the test subject. IIHS concluded that the experiments provided evidence that the safety of backing maneuvers during dusk and nighttime conditions are substantially compromised for all drivers looking through windows with light transmittance levels below 50 percent. They further concluded that drivers over age 55 may need higher levels of light transmittance.

a. *Research by IIT Research Institute.* The petitioners sponsored research by the IIT Research Institute (IITRI) on the impact of window tinting on visibility. The IITRI research measured the visibility of high contrast objects through glazing with various levels of light transmittance. The research showed that different levels of window tinting did not affect the viewing of high contrast objects. This is consistent with the results of the IIHS study. However, unlike the IIHS study, the petitioners' study did not measure the visibility of low contrast objects.

b. *Conclusions concerning research.* The first three studies showed a lowering of the ability to detect objects as the tint level increases. Specifically, the studies showed that it was more difficult to detect low contrast objects in dusk and other dark conditions. The IITRI study is not to the contrary since that study did not address low contrast objects. While NHTSA believes that the studies enable one to conclude that relatively low levels of light transmittance are a safety problem, the agency is unable to predict accurately the numerical relationship between vehicle collisions and window tinting.

C. Law Enforcement Issues

NHTSA also analyzed law enforcement issues as part of its review of window light transmittance requirements. In comments in response to the Request for Comments, 26 police departments or other public safety organizations opposed 35 percent transmittance tinting. These commenters stated that such tinting makes motor vehicles windows too dark for police officers to approach safely after making traffic stops. Two commenters cited examples of police officers who were shot by assailants firing through tinted windows. The commenters also stated that dark window tinging hinders their ability to spot suspicious activities and objects in moving vehicles. Some commenters also stated that it is difficult to identify hit-and-run drivers in vehicles with dark window tinting.

Two commenters cited test results to support their position that 35 percent light transmittance tinting as a safety threat to police officers. The Virginia State Police performed a test in which 111 police officers looked for unconcealed items in a car with 35 percent tinting film on the rear and rear side windows. The items they looked for were a green bag, a white plastic bag, a slim jim, cocaine straws, a machine gun, glass cutters, a knife, a blackjack, a pistol, a license plate, and a crow bar. Only 41 percent of the officers were able to see at least half of the items in the car with tinting film. In contrast, 82 percent of the officers were able to see at least half of the items in a car without tinting film on the windows.

The Maine State Police performed a demonstration experiment for a committee of the Maine state legislature. A plan clothes officer with a drawn weapon held in a shadow was seated in the rear of a car with 35 percent transmittance tinting film. None of the state legislators were able to see the gun on a bright day when approaching the vehicle. When the experiment was repeated with 50 percent light transmittance tinting film, adequate visibility was reported.

The petitioners submitted a study evaluating the ability of police officers to recognize objects and occupant movements in vehicles with varying levels of window tinting. The light transmittance of the glazing ranged from 20 percent to 70 percent The study concluded that the tinting had no detrimental effect on the ability to see into the vehicles. However, NHTSA believes that the conclusion of the study is questionable because of the methodology of the study. For example, the subjects appear to have had unlimited time to detect objects in the vehicles and may have been viewing from a point closer to the window than is considered prudent under normal police procedure. In addition, some of the findings seem counterintuitive an violate principles of visual detection. For example, in the study, (1) the ambient light level had no effect on object recognition, (2) window light transmittance had no effect on object recognition, and (3) the lowest recognition scores obtained under nighttime conditions were with the 70 percent light transmittance glazing, rather than with more heavily tinted glazing.

D. Light Transmittance Requirements in Other Nations

NHTSA also reviewed the light transmittance requirements in other nations. The Economic Commission for Europe (ECE) of the United Nations has adopted Regulation No. 43 concerning light transmittance of automotive glazing. This ECE regulation has been accepted by Germany, France, Italy, the Netherlands, Belgium, Spain, the United Kingdom, Luxembourg, Sweden, Hungary, Czechoslovakia, Yugoslavia, Austria, Finland, and Romania. The ECE Regulation No. 43 requires that the light transmittance measured perpendicular to the glazing be at least 75 percent for windshields and 70 percent for other windows essential for driving vision. The rules of the individual countries vary regarding which windows are considered essential for driving vision. The United Kingdom and most other countries accepting the ECE regulation consider rear windows and side windows to be essential for driving vision and thus subject to the requirement for 70 percent perpendicular light transmittance. However, Germany does not consider windows behind the driver to be essential for driving vision. Thus, rear and rear side windows are not subject to the light transmittance requirement in Germany.

Currently, a tentative proposals for new light transmittance requirements is under discussion within the ECE. It is based on the research performed by TUV Rheinland under contract to Flachglas AG that is discussed above. The principal provisions of the tentative proposal are:

1. A change in the method of measuring light transmittance to take into account the installed angle of the window,

2. A requirement of 65 percent light transmittance for windshields and front side windows measured at the installed angle,

3. A requirement of 30 percent light transmittance for rear side windows measured at the installed angle, assuming right and left outside rear view mirrors, and

4. A requirement that the product of the rear view mirror reflectance (typically 40 percent) and the rear window transmittance (typically 70 percent) equal 30 percent to assure adequate indirect rear vision.

The tentative proposal apparently did not address the impact of rear window light transmittance on center high mounted stop lamps, since CHMSL's are not required in Europe.

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NHTSA also reviewed the light transmittance requirements in non-European nations. Japanese Standard V–25 cover light transmittance. The Japanese standard is similar to the German standard. It requires the windshield and front side windows to have a minimum of 70-percent light transmittance, but the rear and rear side widows are not subject to light transmittance requirements. There is no requirement for rear window light transmittance, in part because Japanese cars are not required to have inside rear view mirrors.

Australian Design Rule 8/00 requires at least 85 percent light transmittance in the primary vision area of the windshield. The primary vision area is defined by the 95th percentile eye ellipses used to set standards for windshield wiper and defroster systems. The other windows are required to meet the British, ECE, Japanese, or United States requirements.

E. Conclusions After Analyzing the Issues Concerning Window Tinting

After analyzing the issues concerning window tinting discussed above, NHTSA reached conclusions, which were presented in the Report to Congress. NHTSA concluded that a "wise policy on window transmittance would permit the greatest freedom to manufacturers seeking solar control that can be justified by current research, but would prevent the reduction in safety that could occur with decreased light transmittance. It would also remove the difference in light transmittance requirements between passenger vans and automobiles, thereby improving passenger van safety and making the Federal rule a more consistent signal to the states." The Report to Congress also included the following additional conclusions:

1. The light transmittance of windows on new passenger cars complying with Standard No. 205 does not present an unreasonable risk of accident occurrence. While it is not possible to quantify the safety effects of lowering the light transmittance through window tinting, data indicate that extensive tinting can reduce the ability of drivers to detect objects, which could lead to an increase in accidents.

2. A change in the way light transmittance is measured in Standard No. 205 may be appropriate. Currently, the Standard requires the test to be performed on a sample of the glass with the light directed perpendicular to the glass. A change to perform the test at the angle the glass is installed on the vehicle, along the driver's line of sight could be based on the performance of production cars since, as noted [in paragraph one above], windows in these vehicles provide light transmittance which does not present an unreasonable risk of accident occurrence.

3. Because light trucks, including pick-ups, vans and sport utility vehicles, have become personal transportation vehicles, it may be appropriate to harmonize light transmittance of these vehicles with the requirements of passenger cars.

4. The benefits of tinting do not appear great enough to justify any loss in safety that may be associated with allowing excessive tinting of windows. Further, technology already being applied in production car windows can reduce the heat build up in the occupant compartment while preserving the driver's visibility. A greater reduction in the ability of drivers to see through the windshield, rear window or front side windows would be expected to decrease highway safety.

III. The Proposed Rule

After considering the many comments in response to the Request for Comments, analyzing other available information, and reaching the above conclusions presented in the Report to Congress, NHTSA has decided to propose an amendment to Standard No. 205. The proposed amendment would revise the test procedure for measuring light transmittance. Under the proposed amendment, light transmittance would be measured through a laboratory test procedure that would test vehicle glazing at its installation angle. In this proposed amendment, NHTSA would revise the light transmittance requirements for various windows to reflect the proposed test procedure. Under the proposed amendment, a minimum of 60 percent light transmittance would be required for the front windshield and the front side windows, a minimum of 50 percent for the rear window, and a minimum of 30 percent for the rear side windows. NHTSA is proposing to adopt the requirements discussed above for all passenger cars and all trucks, MPV's, and buses with a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less. (NHTSA will refer to such trucks, MPV's, and buses collectively as "light trucks" in this preamble.) Below, NHTSA describes the proposed amendment in more detail and discusses the rationale for the proposal. NHTSA also discusses below a variety of issues that it will consider further before adopting any final rule.

A. Proposed Test Procedure

This proposed rule includes a new test procedure for measuring luminous transmittance, as specified in S5.1.1.8.1. Under the proposed procedure, each item of applicable glazing would be tested for its luminance transmittance in a laboratory procedure, much like the test procedure in ANS Z26 that is currently incorporated by reference in Standard No. 205. The proposed test procedure's principal difference is that the glazing sample's luminous transmittance would be viewed and measured at the maximum installation angle (i.e., the maximum nominal rake angle at which glazing could be installed in a motor vehicle). This would account for the effect of rake angle on light transmittance.

The proposal contains detailed specifications about how the test procedure would be conducted, including how the test sample and test apparatus would be arranged, how the light transmittance would be measured, and how the luminous transmittance ratio would be calculated. In addition, in S5.1.1.8.2, the proposal specifies detailed test conditions about the glazing material samples, the light source, and the device used to measure the luminous transmittance, known as the photoreceptor. While NHTSA believes that the proposed test procedure would be relatively simple for manufacturers to follow, it welcomes comments about the proposed test procedures and conditions. (Question 1)

In developing the proposed test procedures and conditions, the agency used as a starting point the Society of Automotive Engineer's (SAE) Recommended Practice J1203, Light Transmittance of Automotive Windshields Safety Glazing Materials and the current Test No. 2 in ANS Z26. However, the agency modified certain procedures and conditions to be in accordance with the Vehicle Safety Act's statutory criteria and to simplify certain provisions that the agency believed were unnecessarily complex. In addition, NHTSA considered proposing a different laboratory method for measuring the light transmittance of glazing at its installed rake angle. On January 2, 1981, NHTSA adopted a laboratory method for measuring light transmittance of windshields at their nominal installed rake angle as part of Standard No. 128, Fields of Direct View (46 FR 40). That laboratory method was developed for NHTSA by the National Bureau of Standards and is similar to SAE's J1203. NHTSA revoked Standard No. 128 on June 22, 1981 in response to

nine petitions for reconsideration, largely concerning issues other than the laboratory test method (46 FR 32254).

NHTSA has tentatively concluded that the proposed test method is more appropriate than the one adopted in 1981. The proposed test method, unlike the measurement technique in former Standard No. 128 and SAE Recommended Practice J1203, does not involve the complication of using the seating reference point in the measurement of light transmittance. NHTSA believes that the proposed test method is sufficient to account for the effect of the rake angle of glazing on light transmittance. A possible source of error in the proposed method (which also is present in the measurement technique in former Standard No. 128 and SAE Recommended Practice J1203) is the slight shift of the light beam on the receiving surface when the glazing is placed in the beam. If the receiver has uniform sensitivity, there would be no error. If the receiver is not uniform, it can be mapped for correction factors or replaced with a higher quality instrument. The instructions for realigning the receiver to the altered beam in the SAE Recommended Practice may also be sufficient to eliminate any error. However, NHTSA requests suggestions of possible ways to eliminate any possible source of error in the proposed test method, while avoiding unnecessary complexity. (Question 2)

B. Proposed Light Transmittance Levels

NHTSA is proposing new levels of minimum light transmittance in conjunction with the proposed test procedure to measure light transmittance. Under the proposed amendment, 60 percent "line of sight" light transmittance would be required for the front windshield and the front side windows, 50 percent for the rear window, and 30 percent for the rear side windows. NHTSA decided to propose these levels based on the policy discussed in the Report to Congress. NHTSA believes that the proposed levels would permit the greatest freedom to manufacturers seeking solar control that can be justified by current research, but would prevent the reduction in safety that could occur with decreased light transmittance. The levels are also consistent with NHTSA's conclusion in the Report to Congress that the light transmittance of windows on most new passenger cars complying with the current Standard No. 205 does not present an unreasonable risk of accident occurrence.

NHTSA obtained information from vehicle manufacturers on the line of sight light transmittance of the various windows in their vehicles. That information is presented in appendix C of the Report to Congress. NHTSA did not propose lower levels of light transmittance because of the agency conclusion in the Report to Congress that, while it is not possible to quantify the safety effects of lowering the light transmittance through window tinting, data indicate that extensive tinting can reduce the ability of drivers to detect objects, which could lead to an increase in accidents. Below, NHTSA presents its rationale for proposing a particular level of light transmittance for each window in a vehicle.

1. Front Windshields

NHTSA is proposing to require 60 percent minimum "line of sight" light transmittance for the front windshield. NHTSA believes that this level of light transmittance is sufficient for safety purposes and that a lower level could present a safety concern. In addition, the 60 percent level is close to the current level of transmittance for most vehicles. A windshield with the 70 percent light transmittance measured perpendicular as specified in the current Standard No. 205 has a line of sight transmittance of about 60 percent when mounted at a 60 degree rake angle. This combination of perpendicular light transmittance and rake angle is typical of an aerodynamically styled family sedan with a windshield of the latest design.

NHTSA knows of only two 1990 vehicle models that would not meet the proposed 60 percent line of sight light transmittance requirement for front windshields. These are the Corvette ZR1 and the Lumina MPV family. The windshields of these vehicles are much darker than the rest of the 1990 vehicle population. The Corvette ZR1 has a windshield with 71 percent perpendicular transmittance, with a rake angle of 64.7 degrees. This results in a line of sight transmittance of 58 percent. The Lumina MPV has a windshield with 71 percent perpendicular transmittance, with a rake angle of 66 degrees. This results in a line of sight transmittance of 55 percent. However, NHTSA believes that the manufacturers could make simply changes that would enable them to comply with a 60 percent minimum line of sight light transmittance requirement. The Corvette ZR1 could meet the proposed requirement by using the standard Corvette tinted windshield. This would give it a line of sight transmittance of 63.6 percent. The Lumina MPV could have a line of sight transmittance of 69 percent or more if it used a standard tinted windshield with a perpendicular transmittance of 77 percent, rather than the current metallized windshield with a perpendicular transmittance of 71 percent.

NHTSA considered proposing a line of sight transmittance level greater than 60 percent. The TUV Rheinland experiment indicated that a driver with spectacles would experience some increased difficulty seeing low contrast objects with a light transmittance level of 60 percent. In addition, the proposal being considered by the ECE recommends 65 percent line of sight light transmittance for the windshield. However, a line of sight transmittance level of greater than 60 percent for the windshield would disallow many existing vehicle designs, for which no safety problem has been identified. NHTSA does not believe that the agency should take such action based on only this one study. However, NHTSA requests comment on whether the agency should require greater than 60 percent line of sight light transmittance for the windshield. (Question 3)

2. Front Side Windows

NHTSA is proposing to require front side windows to have a line of sight light transmittance of 60 percent. This is the same level being proposed for the front windshield. NHTSA believes that all current vehicle models would comply with the proposed requirement. NHTSA chose this level because the agency believes that the light transmittance level for side vision should be the same as for front vision.

NHTSA acknowledges that front side windows could become slightly darker under the proposed amendment. However, NHTSA does not believe that this is likely to occur. In addition, NHTSA is not convinced that slightly darker side windows would present a safety problem. However, one approach to alleviate a potential safety problem would be to require a higher level of side mirror reflectance. Currently, the European mirror standard, ECE Regulation No. 46, requires side mirrors to have at least 40 percent reflectance. NHTSA Standard No. 111, Rearview Mirrors, requires a side mirror to have an average reflectance of at least 35 percent. NHTSA believes that side mirrors in most current motor vehicles have an average reflectance of at least 40 percent. NHTSA requests comment on whether the agency should amend Standard No. 111 to require side mirrors to have an average reflectance of at least 40 percent, rather than the current 35 percent. (Question 4)

3. Rear Windows

NHTSA is proposing to require 50 percent minimum line of sight light transmittance for rear windows. NHTSA is not proposing the 60 percent line of sight transmittance for three reasons. First, NHTSA believes that the 50 percent level is adequate for high contrast objects. Concerning highway driving, NHTSA generally agrees with Volkswagen that low contrast objects are less important in rear vision than in frontal vision. Second, NHTSA believes that 50 percent transmittance would be adequate to preserve the benefits of CHMSL's. Third, NHTSA believes that requiring, for example, 60 percent minimum line of sight light transmittance would disallow a number of current vehicle designs, for which no safety problem has been identified. Some vehicle models, such as the Ford Probe, have rear windows with such great rake angles that a 60 percent line of sight transmittance would not be possible even with clear glass. As stated above, NHTSA does not believe that light transmittance in most passenger cars complying with the current Standard No. 205 present an unreasonable risk of accident occurrence. However, the "privacy windows" offered as optional equipment on some MPV's would not be permitted under the proposed amendment since they have a line of sight light transmittance of 20 percent or even less.

NHTSA is also requesting comment on whether the mirror reflectance requirements for the inside rear view mirror should be changed. Currently, Standard No. 111 requires at least 35 percent reflectance for inside rear view mirrors. NHTSA requests comment on whether the mirror reflectance should be increased to 50 percent or some other level since NHTSA is proposing to allow 50 percent line of sight light transmittance for the rear window. (Question 5)

4. Rear Side Windows

NHTSA is proposing to require 30 percent minimum line of sight light transmittance for the rear side windows. All new passenger cars currently have rear side line of sight light transmittance levels above 30 percent (generally between 70 and 82 percent). In addition, MPV's currently have line of sight light transmittance levels above 30 percent for the rear side windows generally offered as standard equipment. However, "privacy windows" offered as an option on MPV's have line of sight light transmittance of less than 30 percent. In addition, privacy windows with a similar light transmittance are offered as standard equipment on the Oldsmobile Silhouette MPV. As discussed more fully below, the manufacturer of the Oldsmobile Silhouete could achieve compliance by using the windows which are standard in other vehicles in the same body family as the Silhouette. Similarly, other manufacturers would be able to use the standard windows in place of privacy windows in other MPV's.

As stated above, NHTSA believes that rear side windows are less important for driving visibility than other vehicle windows. Therefore, NHTSA believes that it is possible to allow darker tinting on such windows without significant adverse safety consequences. The rear side field of view can be preserved completely through use of dual side rear view mirrors with 40 percent minimum reflectance. While only driver's side view mirrors are required by Standard No. 111, passenger side view mirrors are included on almost all new vehicles. However, because a relatively few vehicles do not have dual side view mirrors, NHTSA requests comment on whether such mirrors should be required through an amendment to Standard No. 111. (Question 6) In addition, NHTSA requests comment on the impact of darker rear side windows on the safety of police officers. (Question 7)

C. Vehicles Covered Under the Proposal

NHTSA is proposing to adopt the requirements discussed above for all passenger cars and light trucks (i.e., trucks, MPV's, and buses with a GVWR of 10,000 pounds or less). Standard No. 205 currently applies to all light trucks. However, the standard currently does not specify which rear and rear side windows in light trucks are requisite for driving visibility. In interpretation letters, NHTSA has stated that under the current standard, rear and rear side windows in many light trucks are not considered requisit for driving visibility. Thus, glazing not subject to the 70 percent perpendicular light transmittance test may be used in such windows. Today, glass with very low light transmittance is being installed in some light trucks used as passenger vehicles. NHTSA believes that such glass may present a safety problem.

NHTSA recognizes that certain light trucks, (e.g., commercial cargo vans) currently do not have rear and/or rear side windows. The drivers of such vehicles, largely commercial drivers driving during daylight, use outside mirrors for rear visibility. This proposed rule would not require additional windows in such vehicles. Instead, the proposed amendment would require that any window in a light truck, if present, have glazing with the level of light transmittance established by the proposed amendment to Standard No. 205. Thus, rear windows, if present, would be required to have 50 percent line of sight light transmittance. Rear side windows, if present, would be required to have 30 percent line of sight light transmittance.

NHTSA requests comment on whether the proposed requirements should be applied to all types of light trucks. (Question 8) For example, should the proposed requirements be applied to buses with a GVWR of 10,000 pounds or less? In addition, is the 10,000 pounds GVWR cut-off appropriate or should a lower GVWR cut-off be adopted in the final rule? Further, NHTSA requests comment on whether all trucks, including those with a GVWR of over 10,000 pounds should be subject to the new light transmittance requirements being proposed for light trucks. (Question 9)

D. Compliance by Multi-Stage Manufacturers

NHTSA recognizes that some light trucks are manufactured in more than one stage or altered after they are certified by the original manufacturer. There are a number of final-stage manufacturers, many of which are small businesses, involved in installing truck bodies and/or work-related equipment on chassis. There are also a number of alterers involved in modifying the structure of new vehicles. Under NHTSA's regulation, a final-stage manufacturer must certify that the completed vehicle complies with all applicable safety standards and alterers must certify that the altered vehicle continues to comply with all applicable safety standards. (Throughout the rest of this preamble, the term "final-stage manufacturer" is used to refer to both final-stage manufacturers and alterers.)

Final-stage manufacturers are currently subject to the requirements of Standard No. 205 and NHTSA is not aware of any difficulties in compliance. The practical impact of the proposed amendments on final-stage manufacturers would be to require them to certify compliance with light transmittance requirements for rear and rear side windows, if such windows are present in a vehicle, as they now do for front windshields and front side windows. NHTSA does not believe that the proposed amendment would significantly affect the current compliance practices of multi-stage manufacturers.

NHTSA believes that final-stage manufacturers would generally be able to certify compliance with the Standard No. 205, without conducting compliance testing, if this proposed amendment is adopted. Under the proposed amendment, prime glazing manufacturers would be required to certify each piece of glazing material. The prime glazing manufacturer would certify that its glazing material would comply with the light transmittance requirements of the standard if installed in a vehicle at a certain rake angle, or range of rake angles. A final-stage manufacturer would be able to rely on the certification by the prime glazing manufacturer if the final-stage manufacturer installed the glazing material at a rake angle within the range specified.

E. Leadtime

NHTSA is proposing to make the proposed amendments effective on September 1, 1994. NHTSA anticipates that this would be at least 180 days after the publication of the final rule. NHTSA believes that this would allow sufficient time for glazing manufacturers and motor vehicle manufacturers to make the necessary changes in current vehicles. As stated above, almost all passenger car models would be in compliance with the proposed amendment, if it is adopted as a final rule. The only passenger car that the agency knows would not comply with the proposed amendment is the Corvette ZR-1. In that vehicle, only the infrared reflecting, coated front windshield would not comply. The other windows of that vehicle would be in compliance. As discussed above, NHTSA believes that it would be easy for the Corvette ZR-1 to comply by using the standard Corvette windshield.

In addition, most light trucks equipped with standard equipment would be in compliance with the proposed amendment, if it is adopted as a final rule. As discussed above, only the Lumina MPV would not comply because of its infrared reflecting, coated front windshield. However, a Lumina windshield made of standard tinted glass would comply with the proposed amendments. In addition, infrared reflecting, coated windshields would comply if they were installed with rake angles of 60 degrees or less. The front windshields in all other light trucks about which manufacturers submitted information on line of sight light transmittance to NHTSA would comply with the proposed amendments.

The privacy glass in many light trucks would not comply with the proposed amendments. However, privacy glass is normally offered as optional equipment, rather than the standard equipment for a model. NHTSA believes that the manufacturers of light trucks with optional privacy glass would only have to substitute the glazing used as standard equipment to comply. NHTSA understands that the Oldsmobile Silhouette has privacy glass as standard equipment. However, the standard windows of the Pontiac Transport and the Lumina APV would fit the Oldsmobile Silhouette. NHTSA does not believe that manufacturers would have to make any other changes in light trucks if they substituted for privacy glass.

NHTSA is not aware of particular types of glazing or particular types of motor vehicles for which additional leadtime is necessary. However, NHTSA requests comments that would identify any such glazing or motor vehicles. (Question 10)

NHTSA is considering allowing voluntary compliance with any new requirements before those requirements before mandatory. NHTSA is considering allowing such voluntary compliance either immediately or 30 days after publication of the final rule. NHTSA requests comment on this issue (Question 11)

F. Proposed Amendments to the Language of Standard No. 205

NHTSA is proposing a number of amendments to the current Standard No. 205 to accomplish the proposed changes to that standard. NHTSA proposes to add a new section S5.1.1.8 to the standard. This section would state the luminous transmittance requirements for particular windows and then state the proposed test procedure. NHTSA also proposes to require manufacturers of glazing to place a number on the glazing to represent the maximum angle at which the glazing may be installed in a motor vehicle in compliance with Standard No. 205. NHTSA does not anticipate that this proposed requirement would increase costs to manufacturers. NHTSA believes that the proposed number would be an inconsequential addition to the various codes and symbols currently required for glazing.

In addition, NHTSA is proposing other conforming changes to the standard. Currently, ANS Z26, which is incorporated by reference in the standard, describes the tests that various items of glazing must pass and states the windows in which those items of glazing may be installed. Since the new section S5.1.1.8 would substitute a new test procedure for the current Test No. 2 in certain cases, NHTSA is proposing new regulatory text where necessary. Specifically, NHTSA is proposing to amend Section S5.1.2.1 to state that Item 4, Item 5, Item 6, Item 7, Item 8, Item 9, Item 10, Item 11A, and Item 11B glazing may be installed in the locations of motor vehicles specified in ANS Z26. Item 1 glazing would be allowed anywhere in a truck, bus, or MPV, with a GVWR over 10,000 pounds. Under the proposed amendment, NHTSA would designate glazing which meets the tests established for Item 1 glazing (except Test No. 2) and the proposed new light transmittance test as Item 1A glazing. Item 1A glazing would be allowed anywhere in a passenger car or light truck. Similarly, Item 14 glazing would be allowed anywhere in a truck, bus, or MPV with a GVWR over 10,000 pounds and NHTSA would designate glazing which meets the tests established for Item 14 glazing (except Test No. 2) and the proposed new light transmittance test as Item 14A glazing. Item 14A glazing would be allowed anywhere in a passenger car or light truck. The proposed amendment would allow Item 2 glazing to be installed anywhere in a truck, bus, or MPV, with a GVWR over 10,000 pounds, except in a windshield. The proposed amendment would designate glazing which meets the tests established for Item 2 glazing (except Test No. 2) and the proposed new light transmittance test as Item 2A glazing. Item 2A glazing would be allowed anywhere in a passenger car or light truck, except in the windshield.

On April 23, 1991, in a rulemaking resulting from a petition from Taliq Corporation, NHTSA published a final rule creating a new category of glazing (56 FR 18256). This glazing currently must meet the luminous transmittance test of ANS Z26 and may be used anywhere, except the front windshield, in most motor vehicles. The April 1991 rule designated this glazing as Item 15A. In today's proposed rule, NHTSA proposes to redesignate that material as Item 15 glazing and to limit its use to trucks, buses, and MPV's over 10,000 pounds GVWR. The glazing would not be allowed in front windshields of these vehicles. NHTSA is proposing to limit the use of the glazing since it is subject to the old light transmittance requirements of Test No. 2. Today's proposal would designate glazing which meets the proposed new light transmittance test and the tests established for glazing in the April 1991 rule, except Test No. 2, as Item 15A glazing. This glazing would be allowed anywhere in most passenger cars or light trucks, except the front windshield. (The designations made in the April

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1991 rule remain in effect until changed in a final rule.)

Recently, NHTSA proposed an amendment to Standard No. 205 that would designate a new Item 15B glazing that would be allowed anywhere, except the front windshield, in most motor vehicles (56 FR 18559, April 23, 1991). In this notice, NHTSA is proposing to limit the use of Item 15B glazing to trucks, buses, and MPV's over 10,000 pounds GVWR since that Item was proposed to comply with the old light transmittance requirements of Test No. 2. In addition, NHTSA is proposing to designate glazing which meets the tests proposed for Item 15B glazing (except Test No. 2) and the proposed new light transmittance test as Item 15C glazing. Item 15C glazing would be allowed anywhere in most passenger cars or light trucks, except in the windshield. However, consistent with the prior proposal for Item 15B glazing, the newly designated Item 15C glazing would not be allowed for use in convertibles, in vehicles that have no roof, or in vehicles with roofs that are completely removable.

NHTSA is also proposing to designate Item 11D glazing, which would be bullet-resisting glazing where the bullet-resisting glazing and the permanent vehicle glazing has a combined parallel luminous transmittance with perpendicular incidence through both the shield and the permanent vehicle glazing at least 0.85 times the transmittance required of the permanent vehicle glazing.

In addition to the provisions of the proposed amendment discussed above, NHTSA is also proposing additional changes to Standard No. 205. These changes include adding definitions of "installation angle," "luminous transmittance," "multiple glazed unit-Class 1," "multiple glazed unit-Class 2," and "prime glazing manufacturer" to the standard. Some of these definitions already appear in ANS Z26. In addition, NHTSA is proposing to amend the current definition of "motor home" to make it consistent with the definition in Standard No. 206, Occupant Crash Protection. Finally, NHTSA is proposing to amend section S5.1.1 of the standard to state that glazing materials "shall comply with" ANS Z26 in certain cases, rather than the current wording that such glazing "shall conform to" ANS Z26. NHTSA believes that the proposed wording is more consistent with similar provisions in other standards.

IV. Rulemaking Analyses

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this proposed rule and determined that it is not "major" within the meaning of Executive Order 12291. However NHTSA has determined that the proposed rule is "significant" within the meaning of the Department of Transportation regulatory policies and procedures because of the significant public and Congressional interest in the rulemaking. NHTSA has estimated the costs of these proposed amendments to Standard No. 205 in a Preliminary Regulatory Evaluation which is included in the docket for this rulemaking. Briefly, the proposed amendments would prohibit the combination of the darkest current windshields and the steepest current rake angles. It would also require that the privacy windows of passenger vans become more transparent. The proposed amendments would allow the front side windows to be slightly darker than permitted under the present standard. It would allow rear side windows of passenger cars to be significantly darker than the current standard, but not as dark as the privacy windows on passenger vans. NHTSA does not believe that significant costs would be incurred to comply with the proposed amendments if they are adopted in a final rule. As discussed above, almost all passenger car models and most light trucks equipped with standard equipment would be in compliance with the proposed amendment. As also discussed above, the privacy glass in many light trucks would not comply with the proposed amendments. However, privacy glass is normally offered as optional equipment and NHTSA believes that the manufacturers of light trucks with optional privacy glass would only have to substitute the glazing used as standard equipment to comply. NHTSA does not believe that manufacturers would have to make any other changes in light trucks if they substituted for privacy glass. For example, NHTSA does not believe that light trucks without privacy glass would have to be fitted with larger air conditioning units. NHTSA does not believe that MPV's are fitted with smaller air conditioning units when option privacy glass is ordered. In addition, vehicle manufacturers have not shown that MPV's with optional glass achieve greater fuel efficiency than those with standard glass. As discussed more fully above, NHTSA believes that other items can provide the same or better protection against solar heat as window tinting. Similarly, NHTSA does not expect any improvements in fuel economy in passenger cars if somewhat darker glazing is used in some windows as allowed under this amendment. Therefore, NHTSA does not believe that the proposed amendments would have any significant impact on fuel efficiency.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. The result of its consideration appears in the Preliminary Regulatory Evaluation, which is available in the docket for this rulemaking. Based upon the agency's evaluation, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

As discussed in the Preliminary Regulatory Evaluation, NHTSA concludes that the proposed amendment would have a minimal effect on manufacturers of motor vehicle glazing. These businesses would continue to provide the same amount of glazing to vehicle manufacturers. They may provide glazing with somewhat more tint for passenger cars and glazing with somewhat less tint for light trucks.

NHTSA does not expect that the proposed amendment would significantly affect the aftermarket tint film industry for cars and light trucks. The industry is composed of tint film manufacturers, distributors, and installers. The industry consists, almost exclusively, of small businesses. The proposed amendment would not have a negative impact on aftermarket tint film installers to the extent that these installers are observing the prohibition against rendering inoperative glazing subject to the current 70 percent light transmittance requirement of Standard No. 205 for passenger cars. NHTSA believes that the proposed amendment might possibly benefit these installers. Since the amendment would allow somewhat darker glazing to be installed on new passenger cars, and since NHTSA would not take enforcement action against aftermarket businesses that install window tinting that would be permitted on new vehicles under the proposed amendment, the proposal could increase the potential legal market for installing aftermarket tint film in older passenger cars. However, the agency cannot conclusively state that the proposed amendment would result in these benefits because the agency is aware that many consumers desire tinting which results in a lower level of light transmittance than even this proposed amendment would allow. The

potential market for aftermarket installation of tint film in light trucks would change little. Further, the actual market for installing tint film on used vehicles would depend on the number of new vehicles sold without tinted glazing and consumer demand for medium to light tint film for those vehicles in the aftermarket.

NHTSA acknowledges that the proposed amendment could have a negative impact on aftermarket tint film installers who are not obeying the current requirements of Standard No. 205 (i.e., who are installing tint film which results in less than 70 percent light transmittance). One Florida District Court has held that Standard No. 205 is not currently enforceable against window tinting businesses because the agency did not issue a "new and revised Federal Motor Vehicle Safety Standard" pursuant to the second sentence of Section 103(h) of the Safety Act. *United States* v. *Blue Skies Projects, Inc.*, No. 90–253–CIV–ORL–18, (M.D. Fla., August 13, 1991). The agency notes that the court cited in its opinion the provisions of the Senate version of section 103(h) and its legislative history in the Senate report instead of the enacted version of section 103(h) and its history in the House report. NHTSA strongly believes that the court's opinion was erroneous and that the current standard is valid and enforceable. Nevertheless, it is also true that the proposed amendment would constitute a "new and revised Federal Motor Vehicle Safety Standard" within the meaning of section 103(h) and thus, even according to the reasoning of this court's ruling, would be enforceable against window tinting businesses. Consequently, to the extent that these businesses are currently installing tint film that reduces light transmittance below the levels contained in this proposal, the agency would be able to take enforcement action to prevent such installers.

NHTSA does not believe, however, that the potential negative impact of the proposed amendment on aftermarket tint film installers who are not complying with the current requirements of Standard No. 205 should affect the analysis of the proposed amendment under the Regulatory Flexibility Act. The Regulatory Flexibility Act was not intended to protect small businesses engaging in illegal conduct from the impact of a regulation that would prevent them from engaging in that illegal conduct.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the proposed rule would have no Federalism implication that warrants the preparation of a Federalism Assessment.

The proposed rule would amend existing performance requirements (including requirements for minimum levels of light transmittance) for glazing materials used in passenger cars and other motor vehicles, as well as certain procedures for compliance testing of those glazing materials. As discussed more fully below, the Safety Act prohibits states from adopting or maintaining a safety standard which is not identical to an existing Federal standard applicable to the same aspect of motor vehicle or motor vehicle equipment performance. Accordingly, any state laws establishing performance requirements applicable to the manufacture of motor vehicles or glazing materials that differ from those currently specified in Standard No. 205 are federally preempted. Similarly, and state law establishing performance requirements for manufacturers of glazing materials which differed from those contained in the proposed amendment would be preempted.

Section 103(d) of the Safety Act (15 U.S.C. 1392(d)) provides that: Whenever a Federal motor vehicle safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard.

Thus, a state law which established a non-identical performance standard for manufacturers of glazing materials would be preempted.

The Safety Act specifically prohibits the sale of new motor vehicle and items of motor vehicle equipment which are not in conformity with all applicable Federal Motor Vehicle Safety Standards, including Standard No. 205. Section 108(a)(1)(A) of the Safety Act (15 U.S.C. (a)(1)(A) provides that no person shall:

> Manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or item of motor vehicle equipment manufactured on or after the date any applicable Federal motor vehicle safety standard takes effect * * * unless it is in conformity with such standard * * *.

Thus, it would be a violation of this provision for a person to manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States any item of glazing that does not comply with Standard No. 205. Further, a state law that purported to allow the manufacture or sale of new vehicles containing glazing materials that did not meet the specifications of Standard No. 205 would be preempted.

The Safety Act does not, however, prohibit the sale of used vehicles that are not in conformity with applicable safety standards. Section 108(b)(1) of the Safety Act (15 U.S.C. 1397(b)(1) states that the prohibition contained in section 108(a)(1)(A) (quoted above):

> Shall not apply to the sale, the offer for sale, or the introduction or delivery for introduction in interstate commerce of any motor vehicle or motor vehicle equipment after the first purchase of it in good faith for purposes other than resale * * *.

Hence, the Safety Act would not prohibit the sale of a used motor vehicle with glazing materials that did not meet the specifications of Standard No. 205. Moreover, a state law which applied to the glazing materials on used vehicles would not be preempted.

Moreover, both before and after the first sale to a consumer, the Safety Act imposes limits on the ability of certain businesses to alter motor vehicles and motor vehicle equipment. Pursuant to section 108(a)(2)(A) of the Safety Act (15 U.S.C. 1397(a)(2)(A)):

> No manufacturer, distributor, dealer or motor vehicle repair business shall knowingly render inoperative, in whole or in part, any device or element of design installed on or in a motor vehicle or item of motor vehicle equipment in compliance with an applicable Federal motor vehicle safety standard * * *.

In light of this provision, a manufacturer, distributor, dealer, or motor vehicle repair business who installs a sun screen device or window tinting that would result in a light transmittance less than that required by Standard No. 205, would be in violation of the Safety Act. Further, because the Safety Act prevents businesses from installing tinting film which results in a lower level of light transmittance than Standard No. 205 allows, a State law that purported to allow automotive businesses to make modifications violating Standard No. 205 would be preempted.

The provisions of the Safety Act quoted above do not, however, prohibit individual vehicle owners themselves from tinting the windows on their own vehicles and operating those vehicles on the highways. No provision of Federal law or this agency's regulations prevents vehicle owners from installing tinting

film, even if the owner's alternations cause the vehicle's windows to no longer comply with Standard No. 205's specifications for light transmittance.

Since Federal law does not regulate the actions of vehicle owners, individual states have the authority to regulate the modifications vehicle owners may make and to establish requirements for vehicles operated or registered in that State. For example, a State vehicle inspection law or operational requirement that imposed a light transmittance requirement lower than the level required by Standard No. 205 would not be preempted. Thus, an individual vehicle owner could apply tinting film to his or her own vehicle without violating Federal law, but that vehicle owner would be subject to any applicable State law. It is important to recognize that such a state law would not legitimize any action prohibited by Federal law. For example, a business that installed tinting that reduces light transmittance below the level required by Standard No. 205 would still be in violation of Federal law even if it had not violated state law.

As discussed more fully in the Report to Congress, 37 States have laws concerning window tinting that differ from Standard No. 205. These state laws are not Federally preempted, however, because they apply to individual vehicle owners' modification and operation of their own motor vehicle and not to aspects of motor vehicle or motor vehicle equipment performance covered by an existing Federal safety standard. The proposed rule, if adopted, would not directly affect the various State inspection and operational requirements. While some states might choose to bring their laws into conformity with the amended provisions, this does not appear to raise any Federalism implications. However, NHTSA encourages comments from the States and others on these issues. (Question 12)

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this proposed rule. The agency has determined that this proposed rule, if adopted as a final rule, would not have a significant impact on the quality of the human environment. As discussed above, NHTSA does not believe that the proposed rule would have any significant impact on fuel economy or on emissions of CFC's. A more complete discussion of potential environmental impacts appears on an Environmental Assessment, which is included in the docket for this rulemaking.

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, NHTSA has determined that there are no requirements for information collection associated with this rule.

V. Comments

Interested persons are invited to submit comments on the proposal. NHTSA specifically requests comment on 12 issues in this notice. Those requests are identified by question number. NHTSA requests that commenters reference the question numbers applicable to these response to these issues. NHTSA requests, but does not require, that 10 copies of comments be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket at the above address. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. NHTSA recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.205 [Amended]

2. In 571.205, S4 would be amended by adding the following definitions:

* * * * *

Installation Angle means the angle in the vertical plane between the vertical reference line and a chord of the window running from the lower daylight opening to the upper daylight opening at the window center line, as illustrated in Figure 1. In the case of wrap-over glass, the chord is 18.0 inches (457mm) long and is drawn from the lower daylight opening to the intersecting point of the window.

* * * * *

Luminous transmittance means the ratio, expressed as a percentage, of the amount of incident light flux that reaches a designated viewing point after passing through a glazing material whose transmittance is being measured compared to the amount of incident light flux that reaches that viewing point when the material is absent.

* * * * *

Multiple glazed unit—Class 1 means two or more sheets of safety glazing material separated by an airspace or spaces and glazed in a common mounting in which each component single layer or laminated layer complies with the appropriate requirements of ANS Z26.

* * * * *

Multiple glazed unit—Class 2 means two or more sheets of safety glazing material separated by an airspace or spaces and glazed in a common mounting in which any component single layer or laminated layer does not comply with the appropriate requirements of ANS Z26.

* * * * *

Prime glazing material manufacturer means one who fabricates, laminates, or tempers glazing material.

* * * * *

3. In 571.205, S4 would be amended by revising the following definition:

* * * * *

Motor home means a motor vehicle with motive power that is designed to provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities: cooking, refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a potable water supply system including a faucet and a sink; and a separate 110–125 volt electrical power supply and/or an LP gas supply.

* * * * *

4. The first sentence of section S5.1.1 would be modified by replacing the phrase "shall conform to" with the phrase "shall comply with."

5. In § 571.205, S5 would be amended by adding S5.1.1.8 through S5.1.1.8.2.6 which would read as follows:

S5.1.1.8 Luminous Transmittance for Glazing Materials. Glazing materials for use in passenger cars, and trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less shall have, both before and after irradiation, a luminous transmittance at the installation angle of not less than 60 percent for front windshields and front side windows, 50 percent for rear windows, and 30 percent for rear side windows, when measured in accordance with the test procedures specified in S5.1.1.8.1 and the test conditions in S5.1.1.8.2.

S5.1.1.8.1 Test Procedures. Each item of glazing material for use in passenger cars, and trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less shall meet the requirements of S5.1.1.8 when tested in accordance with the procedures set forth in this section.

S5.1.1.8.1.1 Mount the glazing material so that it is aligned at the maximum installation angle marked on the window from which the sample was taken under S6.2.1 of this standard. Clean the glazing material surfaces thoroughly.

S5.1.1.8.1.2 Arrange the components of the measurement apparatus so that the major axis of the area on the glazing material surface traversed by the measuring beam is not less than 0.28 inches (7 mm) nor more than 1.57 inch (40 mm). The major axis is the maximum width of the generally elliptical spot illuminated on the glass.

S5.1.1.8.1.3 Check the photoreceptor-indicator unit reading at zero and full scale. Calibrate the complete measurement apparatus for the range of interest prior to each use with an item of control glazing of known illuminant A transmittance measured at a similar installation angle.

S5.1.1.8.1.4 Align the optical axis of the photoreceptor to be coincident with the optical axis of the measuring beam emerging from the glazing material. This common axis shall be horizontal.

S5.1.1.8.1.5 Measure and record the illumination with the glazing material in place. Measure and record the illumination without the glazing in place.

S5.1.1.8.1.6 With the glazing material and equipment repositioned as specified in S5.1.1.8.1.1 through S5.1.1.8.1.4, repeat the procedure in S5.1.1.8.1.5 with two other samples of glazing material.

S5.1.1.8.1.7 Calculate the percent luminous transmittance (t), as follows: Average the value of the three separate measurements obtained with the glazing material in place. Average the value of three separate measurements obtained without the glazing material in place. Divide the average value of measurements obtained with the glazing material in place (Fr) by the average value of measurements obtained without the glazing in place (Fo). Multiply the ratio by 100.

$$t = \frac{Fr}{Fo} \times 100$$

S5.1.1.8.2 Test conditions. The glazing material shall meet the requirements of S5.1.1.8 under the following conditions:

S5.1.1.8.2.1 The glazing materials are three 12x12 inch (305x305mm) or three 3x12 inch (76mmx305mm) substantially flat specimens that have been irradiated following the procedure for Test No. 1 of ANSI Z26.1.

S5.1.1.8.2.2 The light source for luminous transmittance testing has a color temperature of 2856 degrees Kelvin ±50 degrees K (CIE Illuminant A).

S5.1.1.8.2.3 The photoreceptor used in luminous transmittance testing shall have the characteristics described in paragraphs (a) and (b) of this section.

(a) The photoreceptor has a relative spectral sensitivity consistent with the spectral efficiency of the CIE 1931 standard observer for photopic vision as specified in the Illumination Engineering Systems Handbook published by the Illuminating Engineering Society, 345 East 47th Street, New York, New York 10017. A diffusing screen is placed immediately in front of the detector if needed to improve the uniformity of illumination over the sensitive surface.

(b) The photoreceptor response as read on the indicating device is a linear function of the incident light intensity within ±2 percent accuracy of the full scale (100 percent transmittance) or 10 percent of the reading, whichever is smaller.

S5.1.1.8.2.4 During all measurements, including calibration, the optical axis of the photoreceptor is horizontal and coincident with the optical axis of the measuring beam.

S5.1.1.8.2.5 The optical system of the light source is corrected for chromatic aberrations and is capable of producing a light beam collimated within two degrees. The optical system of the photoreceptor is designed to minimize polarization effects.

S5.1.1.8.2.6 Luminous transmittance tests are conducted in a facility in which all light, other than the measuring beam, from primary and reflected sources is eliminated. Stray light from within the measuring apparatus may not exceed 1 percent.

6. In § 571.205, S5.1.2 through S5.1.2.10 would be revised and a new S5.1.2.11 through S5.1.2.19 would be added to read as follows:

S5.1.2 The following glazing materials specified in ANS Z26 may be used in the locations of motor vehicles as specified in ANS Z26: Item 4, Item 5, Item 6, Item 7, Item 8, Item 9, Item 10, Item 11A, and Item 11B. In addition, materials complying with S5.1.2.1 through S5.1.2.17 may be used in the locations of motor vehicles specified in those sections.

S5.1.2.1 Item 1—Safety Glazing Material for Use Anywhere in a Truck, Bus, or Multipurpose Passenger Vehicle With a GVWR of More than 10,000 Pounds. Safety glazing material specified in paragraph (a), (b) or (c) of this section is Item 1 glazing and may be used anywhere in a motor vehicle with a GVWR of more than 10,000 pounds—

(a) Safety glazing material that complies with Tests Nos. 1, 2, 3, 4, 9, 12, 15, 18, and 26 of ANS Z26.

(b) A multiple glazed unit, Class 1, whose individual component units each comply with the tests listed in paragraph (a) of this section and which, as a whole unit, complies with Tests Nos. 1, 2, and 15 of ANS Z26.

(c) A multiple glazed unit, Class 2, which, as a whole unit, complies with Tests Nos. 1, 2, 3, 5, 9, 12, 14, 15, 18, and 26 of ANS Z26.

S5.1.2.2 Item 1A—Safety Glazing Material for Use Anywhere in a Passenger Car, or Truck, Bus and Multipurpose Passenger Vehicle with a GVWR of 10,000 Pounds or Less. Safety glazing material specified in paragraph (a), (b) or (c) of this section is Item 1A glazing and may be used anywhere in a passenger car, or truck, bus, and

multipurpose passenger vehicle with a GVWR of 10,000 pounds or less.

(a) Safety glazing material that complies with S5.1.1.8 and Tests Nos. 1, 3, 4, 9, 12, 15, 18, and 26 of ANS Z26.

(b) A multiple glazed unit, Class 1, whose individual component units each comply with paragraph (a) of this section and which, as a whole unit, complies with S5.1.1.8 and Tests Nos. 1 and 15 of ANS Z26.

(c) A multiple glazed unit, Class 2, which, as a whole unit, complies with S5.1.1.8 and Tests Nos. 1, 3, 5, 9, 12, 14, 15, 18, and 26 of ANS Z26.

S5.1.2.3 Item 2—Safety Glazing Material for Use Anywhere in a Truck, Bus or Multipurpose Passenger Vehicle With a GVWR of More than 10,000 Pounds Except Windshields. Safety glazing material specified in paragraph (a), (b), (c), or (d) of this paragraph may be used anywhere in a motor vehicle with a GVWR of 10,000 pounds except windshields.

(a) Safety glazing material that complies with Tests Nos. 1, 2, 3, 4, 9, 12, and 18 of ANS Z26.

(b) Safety glazing material that complies with S5.1.1.8 and Tests Nos. 1, 6, 7, 8, and 18 of ANS Z26.

(c) A multiple glazed unit, Class 1, whose individual component units comply with the tests specified in paragraph (a) or (b) of this section, and which, as a whole unit, complies with Tests Nos. 1 and 2 of ANS Z26.

(d) A multiple glazed unit, Class 2, that complies with Tests Nos. 1, 2, 3, 5, 9, 12, 14, and 18 of ANS Z26 or Tests Nos. 1, 2, 3, 5, 6, 7, 8, 14, and 18 of ANS Z26.

S5.1.2.4 Item 2A—Safety Glazing Material for Use Anywhere in a Passenger Car, or Truck, Bus and Multipurpose Passenger Vehicle with a GVWR of 10,000 Pounds or Less Except Windshields. Safety glazing material specified in paragraph (a), (b), (c), or (d) of this section, may be used anywhere in a passenger car, or truck, bus, and multipurpose passenger vehicle with a GVWR of 10,000 pounds or less, except windshields.

(a) Safety glazing material that complies with S5.1.1.8 and Tests Nos. 1, 3, 4, 9, 12, and 18 of ANS Z26.

(b) Safety glazing material that complies with S5.1.1.8 and Tests Nos. 1, 6, 7, 8, and 18 of ANS Z26.

(c) A multiple glazed unit, Class 1, whose individual component units comply with the tests specified in paragraph (a) or (b) of this section, and which, as a whole unit, complies with S5.1.1.8 Test No. 1 of ANS Z26.

(d) A multiple glazed unit, Class 2, that complies with S5.1.1.8 and Tests Nos. 1, 3, 5, 9, 12, 14, and 18 of ANS Z26 or S5.1.1.8 and Tests Nos. 1, 3, 5, 6, 7, 8, 14, and 18 of ANS Z26.

S5.1.2.5 Item 3—Safety Glazing Material for Use Anywhere in Motor Vehicles Except Windshields and Certain Specified Locations.

S5.1.2.5.1 Safety glazing material specified in paragraph (a), (b), (c) or (d) of this section is Item 3 glazing and may be used anywhere in a motor vehicle, except as specified in S5.1.2.5.2—

(a) Safety glazing material that complies with Tests Nos. 1, 3, 4, 9, 12, and 18 of ANS Z26.

(b) Safety glazing material that complies with Tests Nos. 1, 6, 7, 8, and 18 of ANS Z26.

(c) A multiple glazed unit, Class 1, whose individual component units each comply with the tests specified in paragraph (a) or (b) of this section, and which, as a whole unit, complies with Test No. 1 of ANS Z26.

(d) A multiple glazed unit, Class 2, which, as a whole unit, complies with Tests Nos. 1, 3, 5, 9, 12, 14, and 18 of ANS Z26 or Tests Nos. 1, 3, 5, 6, 7, 8, 14, and 18 of ANS Z26.

S5.1.2.5.2 Item 3 glazing may not be used in windshields and in the following locations requisite for driving visibility:

(a) For buses and trucks with a GVWR of more than 10,000 pounds, glazing of windows to the immediate right and left of the driver and in the rearmost window if the latter is used for driving visibility.

(b) For passenger cars, and buses and trucks with a GVWR of 10,000 pounds or less, glazing of all windows, including the rear window, all interior partitions, and all apertures created for window purposes.

S5.1.2.6 Item 11C—Safety Glazing Material for Use in Bullet Resistant Shields in a Truck, Bus, or Multipurpose Passenger Vehicle With a GVWR of More than 10,000 Pounds. Bullet resistant glazing that complies with S5.1.2.18, and Test Nos. 2, 17, 19, 20, 21, 24, 27, 28, 29, 30, and 32 of ANS Z26 is Item 11C glazing and may be used only in bullet resistant shields that can be removed from the vehicle easily for cleaning and maintenance in a motor vehicle with a GVWR of more than 10,000 pounds. A bullet resistant shield may be used in areas requisite for driving visibility only if the combined parallel luminous transmittance with perpendicular incidence through both the shield and the permanent vehicle glazing is at least 0.85 times the transmittance of the permanent vehicle glazing.

S5.1.2.7 Item 11D—Safety Glazing Material for Use in Bullet Resistant Shields in Passenger Car, or Truck, Bus and Multipurpose Passenger Vehicle with a GVWR of 10,000 Pounds or Less. Bullet resistant glazing that complies with S5.1.1.8, S5.1.2.19, and Test Nos. 17, 19, 20, 21, 24, 27, 28, 29, 30, and 32 of ANS Z26 is Item 11D glazing and may be used only in bullet resistant shields that can be removed from the motor vehicle easily for cleaning and maintenance in a passenger car, or truck, bus, and multipurpose passenger vehicle with a GVWR of 10,000 pounds or less. A bullet resistant shield may be used in areas requisite for driving visibility only if the combined parallel luminous transmittance with perpendicular incidence through both the shield and the permanent vehicle glazing is at least 0.85 times the transmittance required of the permanent vehicle glazing.

S5.1.2.8 Item 12—Rapid Plastics. Safety plastic materials that comply with Test Nos. 10, 13, 16, 19, 20, 21, and 24 of ANS Z26, with the exception of the test for resistance to undiluted denatured alcohol Formula SD No. 30, and that comply with the labeling requirements of S5.1.2.19, are Item 12 glazing and may be used in a motor vehicle only in the following specified locations at levels not requisite for driving visibility.

(a) Windows and doors in slide-in campers and pick-up covers.

(b) Motorcycle windscreens below the intersection of a horizontal plane 15 inches vertically above the lowest seating position.

(c) Standee windows in buses.

(d) Interior partitions.

(e) Openings in the roof.

(f) Flexible curtains or readily removable windows or in ventilators used in conjunction with readily removable windows.

(g) Windows and doors in motor homes and buses, except for the windshield and windows to the immediate right or left of the driver.

S5.1.2.9 Item 13—Flexible plastics. Safety plastic materials that comply with Tests Nos. 16, 19, 20, 22, and 23 or 24 of ANS 26, with the exception of the test for resistance to undiluted denatured alcohol Formula SD No. 30, and that comply with the labeling requirements of S5.1.2.19 are Item 13 glazing and may be used in the following specific locations at levels not requisite for driving visibility.

(a) Windows except forward-facing windows, and doors in slide-in campers and pick-up covers.

(b) Motorcycle windscreens below the intersection of a horizontal plane 15 inches vertically above the lowest seating position.

(c) Standee windows in buses.

(d) Interior partitions.

(e) Openings in the roof.

(f) Flexible curtains or readily removable windows or in ventilators used in conjunction with readily removable windows.

(g) Windows and doors in motor homes, except for the windshield, forward-facing windows, and windows to the immediate right or left of the driver.

S5.1.2.10 Item 14—Glass-Plastics for Use in a Truck, Bus, or Multipurpose Passenger Vehicle With a GVWR of More than 10,000 Pounds. Glass-plastic glazing materials that comply with the labeling requirements of S5.1.2.19 and Tests Nos. 1, 2, 3, 4, 9, 12, 15, 16, 17, 18, 19, 24, 26, and 28 of ANS Z26, as those tests are modified in S5.1.2.18, Requirements and Test Procedures for Glass Plastics, are Item 14 glazing and may be used anywhere in a motor vehicle with a GVWR of more than 10,000 pounds, except that it may not be used in vehicles that have no roof, or in vehicles whose roofs are completely removable.

S5.1.2.11 Item 14A—Glass-Plastics for Use in Passenger Cars, or Trucks, Buses and Multipurpose Passenger Vehicles with a GVWR of 10,000 Pounds or Less. Glass-plastic glazing materials that comply with S5.1.1.8, the labeling requirements of S5.1.2.19, and Tests Nos. 1, 3, 4, 9, 12, 15, 16, 17, 18, 19, 24, 26, and 28 of ANS Z26, as those tests are modified in S5.1.2.18, Requirements and Test Procedures for Glass Plastics, are Item 14A glazing and may be used anywhere in a passenger car, or truck, bus and multipurpose passenger vehicle with a GVWR of 10,000 pounds or less subject to the requirements of S5.1.1.8, except that it may not be used in convertibles, in vehicles that have no roof, or in vehicles whose roofs are completely removable.

S5.1.2.12 Item 15—Annealed Glass-Plastic for Use in all Positions in Trucks, Buses or Multipurpose Passenger Vehicles With a GVWR of More Than 10,000 Pounds Except the Windshield. Glass-plastic glazing materials that comply with Tests Nos. 1, 2, 3, 4, 9, 12,16, 17, 18, 19, 24, and 28 of ANS Z26, as those tests are modified in S5.1.2.18 Requirements and Test Procedures for Glass-Plastics, are Item 15 glazing and may be used anywhere in motor vehicles with a GVWR of more than 10,000 pounds except the windshield. However, these materials may not be used in vehicles that have no roof, or in vehicles with roofs that are completely removable.

S5.1.2.13 Item 15A—Annealed Glass-Plastic for Use in all Positions in a Passenger Car, or Truck, Bus and Multipurpose Passenger Vehicle With a GVWR of 10,000 Pounds or Less Except the Windshield. Glass-plastic glazing materials that comply with S5.1.1.8 and Test Nos. 1, 3, 4, 9, 12, 16, 17, 18, 19, 24, and 28 of ANS Z26, as those tests are modified in S5.1.2.18 Requirements and Test Procedures for Glass-Plastics, are Item 15A glazing and may be used anywhere in passenger cars, or trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less except the windshield. However, these materials may not be used in convertibles, in vehicles that have no roof, or in vehicles with roofs that are completely removable.

S5.1.2.14 Item 15B—Tempered Glass-Plastic for Use in all Positions in a Truck, Bus or Multipurpose Passenger Vehicle With a GVWR of More Than 10,000 Pounds Except the Windshield. Glass-plastic glazing materials that comply with Tests Nos. 1, 2, 3, 4, 6, 7, 8, 16, 17, 18, 19, 24, and 28 of ANS Z26, as those tests are modified in S5.1.2.18, Requirements and Test Procedures for Glass-Plastics, are Item 15B glazing and may be used anywhere in a motor vehicle with a GVWR of more than 10,000 pounds except the windshield. In addition, these materials may not be used in convertibles, in vehicles that have no roof or in vehicles with roofs that are completely removable.

S5.1.2.15 Item 15C—Tempered Glass-Plastic for Use in all Positions in a Passenger Car, or Truck, Bus and Multipurpose Passenger Vehicle With a GVWR of 10,000 Pounds or Less Except the Windshield. Glass-plastic glazing materials that comply with S5.1.1.8 and with Tests Nos. 1, 3, 4, 6, 7, 8, 16, 17, 18, 19, 24, and 28 of ANS Z26, as those tests are modified in S5.1.2.18, Requirements and Test Procedures for Glass-Plastics, are Item 15C glazing and may be used anywhere in a passenger car, or truck, bus and multipurpose passenger vehicle with a GVWR of 10,000 pounds or less except the windshield. In addition, these materials may not be used in vehicles that have no roof or in vehicles with roofs that are completely removable.

S5.1.2.16 Item 16A—Annealed Glass-Plastic for Use in all Positions in a Vehicle Not Requisite for Driving Visibility. Glass-plastic glazing materials that comply with Test Nos. 3, 4, 9, 12, 16, 19, 24, and 28 of ANS Z26, as those tests are modified in S5.1.2.18 Requirements and Test Procedures for Glass-Plastics, are Item 16A glazing and may be used in a motor vehicle in all locations not requisite for driving visibility.

S5.1.2.17 Item 16B—Tempered Glass-Plastic for Use in all Positions in a Vehicle Not Requisite for Driving Visibility. Glass-plastic glazing materials that comply with Test Nos. 3, 4, 6, 7, 8, 16, 19, 24, and 28 of ANS Z26, as those tests are modified in S5.1.2.18 Requirements and Test Procedures for Glass-Plastics, are Item 16B glazing and may be used in a motor vehicle in all locations not requisite for driving visibility.

S5.1.2.18 Requirements and Test Procedures for Glass-Plastics.

(a) Tests Nos. 6, 7, 8, 9, 12, 16, and 18 of ANS Z26 shall be conducted on the glass side of the specimen, i.e., the surface which would face the exterior of the vehicle. Test Nos. 17, 19, 24, and 26 of ANS Z26 shall be conducted on the plastic side of the specimen, i.e., the surface which would face the interior of the vehicle. Test No. 15 of ANS Z26 shall be conducted with the glass side of the glazing facing the illuminated box and the screen, respectively. For Test No. 19 of ANS Z26, add the following to the specified list: An aqueous solution of isopropanol and glycol ether solvents in concentration no greater than 10% or less than 5% by weight and ammonium hydroxide no greater than 5% or less than 1% by weight, simulating typical commercial windshield cleaner.

(b) Glass-plastic specimens shall be exposed to an ambient air temperature of −40 °C (±5 °C), which is equivalent to −40 °F (±9 °F), for a period of 6 hours at the commencement of Test No. 26 of ANS Z26, rather than at the initial temperature specified in that test. After testing, the glass-plastic specimens shall show no evidence of cracking, clouding, delaminating, or other evidence of deterioration.

(c) Glass-plastic specimens tested in accordance with Test No. 17 of ANS Z26 shall be carefully rinsed with distilled water following the abrasions procedure and wiped dry with lens paper. After this procedure, the arithmetic means of the percentage of light scattered by the three specimens as a result of abrasion shall not exceed 4.0 percent.

S5.1.2.19 Labeling about Cleaning Instructions.

(a) Each manufacturer of glazing materials designed to meet the requirements of S5.1.2.6, S5.1.2.7, S5.1.2.8, S5.1.2.9, S5.1.2.10, S5.1.2.11, S5.1.2.12, S5.1.2.13, S5.1.2.14, S5.1.2.15, S5.1.2.16, and S5.1.2.17, shall affix a label, removable by hand without tools, to each item of such glazing material. The label shall identify the product involved, specify instructions and agents for cleaning the material that will minimize the loss of transparency, and instructions for removing frost and ice, and, at the option of the manufacturer, refer owners to the vehicles's Owner's

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Manual for more specific cleaning and other instructions.

(b) Each manufacturer of glazing materials designed to meet the requirements of paragraph S5.1.2.18 may permanently and indelibly mark the lower center of each item of such glazing material, in letters not less than 3/16 inch nor more than 1/4 high, the following words: Glass Plastic Material—See Owner's Manual for Care Instructions.

7. In § 571.205, S6.1 would be revised and S6.1.1 through S6.1.2.3 would be added to read as follows:

S6.1 Each prime glazing material manufacturer shall legibly and permanently mark in letters and numerals at least 0.070 inch (1.78 mm) in height, glazing materials manufactured by him with the information specified in S6.1.1 and in the locations specified in S6.1.2.

S6.1 Glazing material shall be marked with the information set forth in S6.1.1.1 through S6.1.1.5. Any section of safety glazing material cut from a piece of safety glazing material marked by the manufacturer in accordance with this section shall be marked with the same words, designation, characters, and numerals as the piece from which it was cut.

S6.1.1.1 The manufacturer's distinctive designation or trademark.

S6.1.1.2 The words "American National Standard" or the characters "AS."

S6.1.1.3 The "Item number" as specified in S5.1.2.1 through S5.1.2.17.

S6.1.1.4 A model number that identifies the type of construction of the glazing material.

S6.1.1.5 In addition to the other required markings, following the letters AS and the Item number, bullet-resisting glazing shall be marked with one of the following Type designations: Type MP, Type HP, Type SP, and Type RR.

S6.1.2 The information set forth in S6.1.1.1 through S6.1.1.5 shall be located as follows—

S6.1.2.1 The Item number in S6.1.1.3 shall be immediately adjacent to "American National Standard" or "AS".

S6.1.2.2 The characters, or the words for which they stand, and the numerals as prescribed in S6.1.1.2, S6.1.1.3, and S6.1.1.4 shall be in close proximity to, but outside of and separate from, the manufacturer's distinctive designation or trademark.

S6.1.2.3 If the manufacturer's code or date markings are used outside the trademark, they shall be separated from any other letters or characters by a space or hyphen to avoid confusion.

8. In § 571.205, S6.2 would be revised to read as follows:

S6.2 Each prime glazing material manufacturer shall certify each piece of glazing material that is designed as a component of any specific model of motor vehicle or camper, by adding to the mark required by section S6.1, in letters and numerals of the size specified in section S6.1:

(a) The symbol "DOT;"

(b) A manufacturer's code mark, which will be assigned by NHTSA on the written request of the manufacturer; and

(c) A number which represents the maximum installation angle at which the manufacturer is certifying that the glazing will meet the luminous transmittance requirements of S5.1.1.8 of this standard when tested in accordance with the test procedures of S5.1.1.8.1 and the test conditions of S5.1.1.8.2 of this standard.

9. In § 571.205, S6.4 would be revised to read as follows:

S6.4 Each manufacturer or distributor who cuts a section of glazing material to which this standard applies, for use in a motor vehicle or camper, shall mark that material in accordance with section S6.1.

Issued on January 10, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92–1465 Filed 1–21–92; 8:45 am]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC–203]

Petition to Amend 49 CFR Part 1057 Lease and Interchange of Vehicles

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to amend its written lease requirements at 49 CFR 1057.12(c). The purpose of the proposed amendment is to give notice to the courts and the States workers' compensation and other administrative tribunals that it is not the intention of the Commission's regulations to define or affect the agency relationship between a motor carrier lessee and an independent owner-operator lessor by requiring that a lease provide for the lessee's "exclusive possession, control, and use" of the equipment provided by the lessor. Any interested person may file a comment in this proceeding.

DATES: Comments are due on or before February 21, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. MC–203 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard Hartley, (202) 927–5319 or Richard Felder, (202) 927–5313. [TTD for hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: At the request of the Interstate Truckload Carriers Conference and the American Trucking Associations, Inc., the Commission is instituting a proposed rulemaking proceeding to consider amending the regulations dealing with written lease requirements at 49 CFR 1057.12(c), *Exclusive possession and responsibilities*, by inserting a new paragraph (4) as set forth below.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Initial Regulatory Flexibility Analysis

The Commission preliminarily concludes that these rules will not have a significant economic impact upon a substantial number of small entities.

List of Subjects in 49 CFR Part 1057

Motor carriers, Reporting and recordkeeping requirements.

Decided: January 13, 1992.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1057 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1057—LEASE AND INTERCHANGE OF VEHICLES

1. The authority citation for part 1057 continues to read as follows:

Authority: 49 U.S.C. 11107 and 10321; 5 U.S.C. 553.

2. In § 1057.12 a new paragraph (c)(4) is proposed to be added to read as follows:

§ 1057.12 Written lease requirements.

* * * * *

(c) * * *

(4) Nothing in the provisions required by paragraph (c)(1) of this section is intended to affect the agency relationship between the lessor or driver provided by the lessor and the authorized carrier lessee. An independent contractor or employment relationship may exist when a carrier lessee complies with 49 U.S.C. 11107 and attendant administrative requirements

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[FR Doc. 92-1507 Filed 1-21-92; 8:45 am]

BILLING CODE 7035-01-M

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Notices

Federal Register
Vol. 57, No. 14
Wednesday, January 22, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV-91-751]

Announcement of Public Meetings To Receive Information on the Effect of Grade Standards for Fruits and Vegetables on Pesticide Use

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given that two public meetings will be held to provide information to the U.S. Department of Agriculture (Department) on whether grade standards or related Department regulations governing the appearance of fresh fruits and vegetables affect pesticide use. Interested parties are invited to submit written comments to the Department and/or present oral comments at the meetings with respect to completed and ongoing research on this subject, as well as views on the need for additional research.

DATES: One public meeting will begin at 8:30 a.m., E.S.T. on March 12, 1992, and continue if necessary on March 13, 1992, in the Key Biscayne Room, Miami Airport Hilton and Marina, 5101 Blue Lagoon Drive, Miami, Florida 33126; telephone (305) 262–1000. A second public meeting will begin at 8:30 a.m., P.S.T. on March 19, 1992, and continue if necessary on March 20, 1992, in the Windsor Room, Grosvenor Hotel, 380 S. Airport Boulevard, San Francisco, California 94080; telephone (415) 873–3200.

Written comments must be received by April 3, 1992.

ADDRESSES: Written comments should be sent to: Fruit and Vegetable Division, room 2077–S, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456, Attention: Sharon E. Bomer. Two copies of all material should be submitted. Written comments received will be available for public inspection at room 2077-South Building, Fruit and Vegetable Division, AMS, USDA, 14th and Independence Avenue SW, Washington, DC, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Sharon E. Bomer, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2077–S, Washington, DC 20090–6456; telephone: (202) 720–2945, or Marlene Betts, Fresh Products Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2064–S, Washington, DC 20090–6456: telephone: (202) 720–2188.

SUPPLEMENTARY INFORMATION: Section 1352 of the Food Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, (7 U.S.C. 1622 note), hereinafter referred to as FACTA, requires the Secretary of Agriculture to conduct research to examine the effects of grade standards and other regulations, as developed and promulgated pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) and other statutes governing cosmetic appearance, on pesticide use in the production of perishable commodities. The Conference Report accompanying the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 1992 (Pub. L. 101–142) states that the Agricultural Marketing Service is expected to report by March 1992 on the need for additional research on whether grade standards and other regulations governing cosmetic appearance affect pesticide use in the production of perishable commodities. As part of the report, AMS is expected to identify existing research that is completed or ongoing in this regard.

For the purposes of this activity, "perishable commodity" shall be defined as fresh fruits and vegetables. The definition of "cosmetic appearance" shall be as defined in section 1351 of the FACTA as meaning "the exterior appearance of an agricultural commodity including changes to that appearance resulting from superficial damage or other alteration that do no significantly affect yield, taste, or nutritional value."

In order to complete this report, the Department is conducting a literature review of completed and ongoing research. The Department will also conduct two public meetings. The purpose of the meetings is for the Department to obtain information on completed and ongoing research as well as views on what research is needed on this subject.

The Department specifically seeks information on:

(1) Studies of the effect that Federal grade standards (or other related Department regulations affecting appearance) have on pesticide use in fruit and vegetable production;

(2) Studies on the purpose and use of specific pesticides used in fruit and vegetable production by commodity;

(3) Studies on the effect, if any, of reducing the emphasis on appearance in grade standards and other regulations on crop yield, pesticide use, the adoption of agriculture practices that result in reduced pesticide use, water quality, and production and marketing costs;

(4) Marketing studies on where, how and to what extent USDA, State and private grade standards are used;

(5) Consumer studies identifying acceptable levels of quality for fruits and vegetables; and

(6) Studies of the impact on the produce industry's international competitiveness should appearance factors in Federal grade standards or related Department regulations be changed. The Department also seeks views on what additional research is needed on this subject.

An official of the Department will preside over the meetings. Those wishing to make oral comments must register by 2 p.m. of the first day of each meeting in each location. A time limitation of ten minutes for each commenter will be imposed. Questions from the audience will not be permitted, although the presiding official may ask questions for purposes of clarification.

A written transcript of the meeting will be taken. Copies may be obtained by contacting the reporting service at the meeting.

Written comments will be accepted through April 3, 1992. Comments received will be available for public inspection in the Fruit and Vegetable Division (address above) during regular business hours.

(Authority: Sections 1351–1354; 104 Stat. 3566–7)

Dated: January 16, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-1512 Filed 1-21-92; 8:45 am]

BILLING CODE 3410-02-M

COMMISSION ON CIVIL RIGHTS

Vermont Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will be convened at 9:30 a.m. on Monday, February 10, 1992, in Memorial Lounge of the Waterman Building, 85 South Prospect Street, at the University of Vermont in Burlington, Vermont, and adjourn at 4 p.m.

The purpose is to hold an informal fact-finding meeting to review the topic, "Sources of Bias-Related Tensions on College Campuses and Approaches to Reducing Racial/Religious Bigotry Affecting Campuses." The main speakers are expected to represent the administrations, student bodies, faculties, and campus security forces of the University of Vermont and Middlebury College. Other speakers will include law enforcement officials and other experts.

Persons desiring additional information, or planning a presentation to the Advisory Committee, should contact Chairperson Samuel B. Hand (802/656-3180, 656-4489) or Eastern Regional Division Director John I. Binkley (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, DC, January 9, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-1451 Filed 1-21-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Humanitarian License.

Form Number: Agency—EAR section 773.5; OMB Control No. 0694-0033.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: Four respondents; 32 reporting/recordkeeping hours. Average hours per respondent 1½ hour.

Needs and Uses: The information required under this regulation is necessary to monitor the shipment and distribution of donations to meet basic human needs to embargoed destinations. Basic human needs are those requirements essential to individual well-being: health, food, clothing, shelter, and education. The respondents are comprised of private and voluntary charitable organizations.

Affected Public: Non-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: January 14, 1992.

Edward Michals,

Departmental Clearance Officer Office of Management and Organization.

[FR Doc. 92-1480 Filed 1-21-92; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Notification of Commercial Invoices That Do Not Contain a Destination Control Statement.

Form Number: Agency—EAR section 786.6.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 20 respondents; 11 reporting/recordkeeping hours. Average time per respondent is 30 minutes for reporting and 1 minute for recordkeeping.

Needs and Uses: This collection is the written request and/or written assurance that a destination control statement is entered on a commercial invoice covering U.S. exports. The U.S. exporter is responsible for this requirement that ensures that U.S. exports go only to legally authorized destinations.

Affected Public: Businesses or other for-profit institutions; small business or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearnace Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: January 14, 1992.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 92-1481 Filed 1-21-92; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Report on Unscheduled Unloading.

Form Number: Agency—EAR section 786.5(b); OMB Control No. 0694-0040.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1 respondent; 1 reporting hour. Average time per respondent is 1 hour.

Needs and Uses: This collection is the report required by the carrier exporting

controlled goods or technology when it is necessary to unload the cargo at a destination other than that shown on the Shipper's Export Declaration.

Affected Public: Businesses or other for-profit institutions; small business or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC. 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: January 4, 1992.

Edward Michals,

Departmental Clearance Officer Office of Management and Organization.

[FR Doc. 92–1482 Filed 1–21–92; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Application for Transfer of Licenses to Another Party.

Form Number: Agency—EAR section 772.13; OMB—Control No. 0694–0051.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 20 respondents; 18 reporting/recordkeeping hours. Average time per respondent is 30 minutes for reporting and 1 minute for recordkeeping.

Needs and Uses: This collection of information is necessary to approve the transfer of outstanding validated export licenses from the original licensee to another party.

Affected Public: Business or other for-profit institutions; small business or organizations.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: January 14, 1992

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 92–1483 Filed 1–21–92; 8:45 am]

BILLING CODE 92–1483–M

Bureau of Export Administration

Sensors Technical Advisory Committee; Partially Closed Meeting

A meeting of the Sensor Technical Advisory Committee will be held February 11, 1992, 9 a.m., in the Herbert C. Hoover Building, room 1617F, 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to sensors and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of COCOM Core List 6 (Sensors) export controls.
4. Discussion of nuclear nonproliferation and missile tech controls relating to Core List 6.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, TAC Staff/BXA/rm. 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees therefore, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a) (3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2583.

Dated: January 16, 1992.

Betty Anne Ferrell,

Director, Technical Advisory Committee Staff.

[FR Doc. 92-1543 Filed 1-21-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[C–535–001]

Cotton Shop Towels from Pakistan; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on cotton shop towels from Pakistan for the period January 1, 1990 through December 31, 1990. We preliminarily determine the total bounty or grant to be 12.74 percent *ad valorem* for Eastern Textiles Ltd., 12.93 percent *ad valorem* for Hilal Corporation Ltd., 11.78 percent *ad valorem* for Mohsin Brothers and 6.86 percent *ad valorem* for all other companies. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (56 FR 9936) of the countervailing duty order on cotton shop towels from Pakistan (49 FR 8974; March 9, 1984). On March 12, 1991, Milliken & Company, the petitioner, requested an administrative review of the order. We published the initiation on April 18, 1991 (56 FR 15856). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The Department published the final results of the last administrative review on June 24, 1991 (56 FR 28740).

Scope of Review

Imports covered by this review are shipments of Pakistani cotton shop towels. During the review period, such merchandise was classifiable under item number 6307.10.20 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through December 31, 1990, sixteen companies and five programs.

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in 19 CFR[4] 355.22(d). First we calculated a country-wide rate, weight-averaging the benefits received by the sixteen companies subject to review to determine the overall subsidy from all countervailable programs benefitting exports of the subject merchandise to the United States. Our analysis next requires that we examine the aggregate *ad valorem* rate calculated for each company combining all countervailable programs, in order to determine whether individual company rates differed significantly from the weighted-average country-wide rate. Based on these calculations, we preliminarily determine that three companies received aggregate benefits which were five percentage points greater than the weighted-average country-wide rate (significantly different within the meaning of 19 CFR 355.22(d)(3)(i)). These three companies must be treated separately for assessment and cash deposit purposes.

The remaining thirteen companies received aggregate benefits from all countervailable programs combined which were not significantly different from the weighted-average country-wide rate; their rates were used in the calculation to establish the "all other" rate for the review period.

Analysis of Programs

(1) Export Financing

The Export Finance Scheme (EFS), which is administered by the State Bank of Pakistan, grants short-term loans at below-market interest rates to exporters. The EFS has two parts. Under Part I, exporters may obtain financing on specific letters of credit or irrevocable contracts. Under Part II, exporters may establish a credit line amounting to 33 percent of the value of the previous year's exports. During the current year, a company must export merchandise for a total value equivalent to three times the amount of financing obtained under Part II. The exports used to obtain financing under Part I may not be used to satisfy the export performance requirement under Part II. If exports fall short of the Part II requirement, there is an interest penalty of 20 percent.

During the review period, shop towel exporters made interest payments on loans obtained under Parts I and II of the EFS. The loans had an interest rate of 6 or 7 percent, and the term of the loans varied from three to twelve months. We used as our commercial benchmark the comparable commercial rate of 16 percent which was reported by certain companies in the questionnaire response. Because this program provides loans only to exporters at less than commercial rates, we preliminarily determine that it is countervailable.

To calculate the benefit, we took the difference between the actual interest paid and the interest that would have been paid if the loans had been obtained at commercial rates. Since EFS loans can be tied to exports to specific countries, we divided each firm's interest benefit on loans obtained for exports to the United States by the value of its exports to the United States. We then weight-averaged the result by each firm's share of total exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program during the review period to be 7.80 percent *ad valorem* for Eastern Textiles Ltd., 3.83 percent *ad valorem* for Hilal Corp., 2.68 percent *ad valorem* for Mohsin Brothers and 1.78 percent *ad valorem* for all other companies.

(2) Excise Tax, Sales Tax, and Customs Duty Rebate Programs

The Central Bureau of Revenue administers the rebate of excise taxes, customs duties and sales taxes on both domestic and imported inputs used in exported products. During the review period, the excise tax rebate was 3.80 percent, the sales tax rebate was 0.11 percent, and the customs duty rebate was 0.37 percent. All the rebates were calculated on the basis of the f.o.b. value of exports.

The Government of Pakistan failed to provide any documentation linking the amount of these rebates to actual indirect taxes included in the cost of production for shop towels. Therefore, we preliminarily determine that the Government of Pakistan pays these rebates without regard to specific duties and taxes incurred in the production of shop towels and that the full amount of the rebates is countervailable because the rebates are contingent upon export performance.

These cash rebates are earned on a sale-by-sale basis, and a firm can precisely calculate the amount of rebate it will receive for each export sale at the moment the sale is made. Because the amount of these rebates is known at the time of export, we calculate the benefit from these programs on a credit-as-earned basis. Using the rates applicable to cotton shop towel exports during the review period, we preliminarily determine the benefit from these programs to be 4.28 percent *ad valorem* for all companies during the review period.

(3) Income Tax Reductions

The Government of Pakistan provides firms with a maximum 50-percent reduction of taxes on income generated from exports. The percenage of the reduction depends on the size of the company and the form of business ownership. Because this program is contingent upon export performance, we preliminarily determine that it is countervailable.

Seven companies responded that they used this program during the review period. Six companies responded that they did not use this program and three companies did not provide a response. For the three companies that did not respond to the questionnaire, we assumed that they received benefits from this program and used as the best information available ("BIA") the

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highest rate calculated (4.82 percent) for any company that used this program and provided complete information in the questionnaire response. Of these three BIA companies, two received separate rates for this program because their aggregate benefits were significantly different from the weighted-average country-wide rate. On this basis, we preliminarily determine the benefit during the review period to be 0.66 percent *ad valorem* for Eastern Textiles Ltd., 4.82 percent *ad valorem* for Hilal Corp., 4.82 percent *ad valorem* for Mohsin Brothers and 0.82 percent *ad valorem* for all other companies.

(4) Other Programs

We examined the following programs and preliminarily determine that exporters of cotton shop towels did not use them during the review period:

a. Import Duty Rebates; and
b. Export Credit Insurance.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant during the period January 1, 1990 through December 31, 1990 to be 12.74 percent *ad valorem* for Eastern Textiles Ltd., 12.93 percent *ad valorem* for Hilal Corporation Ltd., 11.78 percent *ad valorem* for Mohsin Brothers and 6.88 percent *ad valorem* for all other companies.

The Department intends to instruct the Customs Service to assess countervailing duties of 12.74 percent of the f.o.b. invoice price on shipments from Eastern Textiles Ltd., 12.93 percent of the f.o.b. invoice price on shipments from Hilal Corporation Ltd., 11.78 percent on shipments from Mohsin Brothers and 6.88 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies exported on or after January 1, 1990 and on or before December 31, 1990.

Further, the Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of the f.o.b. invoice price on all merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review at the rate of 12.74 percent for Eastern Textiles Ltd., 12.93 percent for Hilal Corporation Ltd., 11.78 percent for Mohsin Brothers and 6.88 percent for all other companies.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: January 13, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1545 Filed 1-21-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92-00001." A summary of the application follows.

Summary of the Application

Applicant: Aerospace Industries Association of America, Inc. ("AIA"), 1250 Eye Street, NW., Washington, DC 20005; Contact: Mac S. Dunaway, Esquire; Telephone: (202) 862-9700.

Application No.: 92-00001.

Date Deemed Submitted: January 14, 1992.

Members (in addition to applicant): Aerojet, a Segment of GenCorp, Rancho Cordova, CA (Controlling Entity: GenCorp, Fairlawn, OR); Allied-Signal Aerospace Company, Torrance, CA (Controlling Entity: Allied Signal Inc., Morristown, NJ); Aluminum Company of America, Cleveland, OH; American Pacific Corporation, Las Vegas, NV; Argo-Tech Corporation, Cleveland, OH; BASF Structural Materials, Charlotte, NC (Controlling Entity: BASF Corporation, Parsippany, NJ); Bechtel National, Inc., San Francisco, CA (Controlling Entity: Bechtel Group, Inc., San Francisco, CA); Best Foam Fabricators, Inc., Chicago, IL; B.H. Aircraft Company, Inc., Farmingdale, NY; The Boeing Company, Seattle WA; Chrysler Technologies Corporation, Arlington, VA (Controlling Entity: Chrysler Corporation, Highland Park, MI); Coltec Industries Inc., New York, NY; Dowty Aerospace Los Angeles, Duarte, CA (Controlling Entity: Dowty Group LTD, ENGLAND GL5 1TOP); E-Systems, Dallas, TX; FMC Corporation, Chicago, IL; GEC-Marconi, Wayne, NJ (Controlling Entity: GEC-PLC, ENGLAND W1A 1ER); General

Dynamics Corporation, St. Louis, MO; General Electric Company, Fairfield, CT; General Motors/Hughes Electronics, Los Angeles, CA; (Controlling Entity: General Motors Corp., Detroit, MI); The BF Goodrich Company, Akron, OH; Grumman Corporation, Bethpage, NY; Gulfstream Aerospace Corporation, Savannah, GA; Harris Corporation, Melbourne, FL; Heath Tecna Aerospace Company, Kent, WA (Controlling Entity: CIBA-GEIGY, Ardsley, NY); HEICO, Hollywood, FL; Hercules Incorporated, Wilmington, DE; Hexcel Corporation, Dublin, CA; Honeywell Inc., Minneapolis, MN; IBM Corporation, Armonk, NY; ITT Defense, Inc., Arlington, VA (Controlling Entity: ITT Corporation, New York, NY); Kaman Aerospace Corporation, Bloomfield, CT (Controlling Entity: Kaman Corporation, Bloomfield, CT); Lockheed Corporation, Calabassas, CA; Lord Corporation, Erie, PA; The LTV Corporation, Dallas, TX; Lucas Aerospace, Inc., Brea, CA (Controlling Entity: Lucas Industries, ENGLAND B91 3TX); Martin Marietta Corporation, Bethesda, MD; McDonnell Douglas Corporation, Berkeley, MO; Northrop Corporation, Los Angeles, CA; Ontario Corporation, Muncie, IN; Parker Hannifin Corporation, Cleveland, OH; Precision Castparts Corporation, Portland, OR; Raytheon Company, Lexington, MA; Rockwell International Corporation, El Segundo, CA; Rohr Industries, Inc., Chula Vista, CA; Smiths Industries Aerospace & Defense, Grand Rapids, MI (Controlling Entity: Smith Industries PLC, ENGLAND NW1 18DS); Teledyne, Inc., Los Angeles, CA; Texas Instruments Incorporated, Dallas, TX; Textron Inc, Providence, RI; Thiokol Corporation, Ogden, UT; TRW Inc., Cleveland, OH; United Technologies Corporation, Hartford, CT; Westinghouse Electric Corporation, Pittsburgh, PA; and Williams International, Walled Lake, MI.

Export Trade

Products

None. (AIA does not export any products or services. AIA proposes to provide export trade promotion and facilitation services to its members under the Certificate of Review.)

Export Trade Facilitation Services

Export trade promotion and facilitation services consisting of exchange of information; consulting; trade show participation; marketing and trade promotion; coordination and negotiation of the terms and conditions of participation in trade promotion activities such as air shows, trade shows, expositions, exhibitions, conferences or similar events; negotiations with providers of transportation, insurance, exhibits and lodging in connection with such trade promotion opportunities; and transportation and insurance related to the promotion of products produced by the industry and liaison with foreign government agencies and foreign trade associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. AIA and one or more of its Members seeks to:

a. Engage in planning and implementation of joint promotional activities, such as foreign trade shows, aimed at promoting the industry's products in existing or new Export Markets;

b. Agree on the frequency, level of, duration or other terms and conditions of participation in joint promotional activities, such as trade shows, for the purpose of promoting the industry's products in Export Markets; and

c. Enter into agreements wherein AIA or one or more Members acts in certain countries or markets as the Members' exclusive or non-exlusive Export Intermediary for joint promotional and facilitation activities, such as trade shows. The Export Intermediary shall be responsible for coordinating the level of participation in joint promotional activities by AIA and its Members, as well as for negotiating agreements with foreign government agencies, corporations or trade associations concerning terms and conditions of participation, transportation, insurance coverage, lodging, local transportation, and good services in connection with such joint promotional activities.

2. AIA Members seek to exchange and discuss the following types of information solely about Export Markets:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or of United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information specific to participating in promotional activities in Export Markets, such as trade shows, including, without limitation, information about the expenses, costs or other terms and conditions of participation in such activities, transportation, intermodal shipments, insurance, commissions, documentation, customs, duties and taxes; and

c. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets.

3. AIA itself, or by agreement with Members or other parties, seeks to provide its Members the benefit of any services to facilitate participation in joint promotional activities in Export Markets.

4. Members seek to meet to engage in the activities described in paragraphs one through three above.

5. AIA and/or its Members seek to refuse to make available export promotional services, or participation in activities described in paragraphs one through four above, to Non-Members.

Definitions

1. "Export Intermediary" means any person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Promotion and Facilitation Services.

2. "Member" means those AIA companies that are listed in this Notice, which is incorporated by reference.

3. "Non-Member" means any person other than AIA, Members, and their respective U.S. and foreign subsidiaries and affiliates.

Abbreviated Amendment Procedure

New AIA Members and current AIA Members not listed in this Notice may from time to time be incorporated in the Certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of a written notification to the Secretary of Commerce and the Attorney General stating changes to AIA membership, identifying all new AIA Members that desire to become a member under this abbreviated amendment procedure. Notice of Members so identified shall be published in the **Federal Register**. However, AIA may withdraw one or more individual Members from the application for the abbreviated amendment. If thirty days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney

General, determines that the incorporation in the Certificate of these Members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the Certificate of Review, such amendment must be sought through the non-abbreviated amendment procedure. This same procedure may be utilized by AIA to delete one or more Members from the Certificate.

Terms and Conditions of Certificate

(a) In engaging in Export Trade Activities and Methods of Operation, neither AIA nor any Member shall intentionally disclose, directly or indirectly, to any other Member any information that is about its or any other Member's costs, production, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (i) such information is already generally available to the trade or public; or (ii) the information disclosed is a necessary term or condition (e.g., price, length of participation, etc.) of an actual or potential bona fide promotional activity and the disclosure is limited to the prospective activity sponsor.

(b) Any agreement, discussions, or exchanges of information under this Certificate shall be in connection only with actual or potential bona fide export promotional activity and shall be on an event-by-event basis only, and shall include only those Members participating or having a genuine interest in participating in the event.

(c) Participation by a Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to that Member, subject to the honoring of contractual commitments for participating in specific export promotional activities. A Member may withdraw from coverage under this Certificate at any time by giving written notice to AIA, a copy of which AIA shall promptly transmit to the Secretary of Commerce and the Attorney General.

(d) AIA and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or Attorney General for information or documents relevant to conduct under this Certificate. The Secretary of Commerce will request such information when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade Activities or Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Dated: January 15, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-1484 Filed 1-21-92; 8:45 am]

BILLING CODE 3510-DR-M

University of Southern California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-127. *Applicant:* University of Southern California, Los Angeles, CA 90089-0483. *Instrument:* Epitor Metalorganic Chemical Deposition System. *Manufacturer:* Thomas Swan and Company, United Kingdom. *Intended Use:* See notice at 56 FR 47187, September 18, 1991. *Advice Submitted by:* National Institute of Standards and Technology, December 5, 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides concentration control of reactants to 0.01% by electronic monitoring and optical access with sufficient aperture and mechanical stability for micron-sized imaging with laser-assisted crystal growth for selected area deposition. The National Institute of Standards and Technology advises in its memorandum that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-1546 Filed 1-21-92; 8:45 am]

BILLING CODE 3510-DS-M

Argonne National Laboratory; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-148. *Applicant:* Argonne National Laboratory, Argonne, IL 60439-4837. *Instrument:* ICP Mass Spectrometer System, Model PlasmaQuad PQ2. *Manufacturer:* Fissons Instruments, Inc., United Kingdom. *Intended Use:* See notice at 56 FR 56408, November 4, 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a detection limit of 0.01 ng/ml for uranium and other actinide elements and may be operated in isolation from radioactive samples. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-1547 Filed 1-21-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service.

ACTION: Modification of Scientific Research Permit (674).

Notice is hereby given that pursuant to the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service regulations governing endangered species permits (50 CFR

parts 217–222), and the Conditions hereinafter set out, Scientific Research Permit No. 674, issued to the State of Connecticut, Department of Environmental Protection, Fisheries Bureau, Marine Fisheries Office, P.O. Box 248, Waterford, CT 06385 on June 28, 1989, is modified to extend the effective date until December 31, 1993.

The modification becomes effective upon publication in the **Federal Register**.

Documents pertaining to this Modification and Permit are available for review in the following offices by appointment.

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Silver Spring, Maryland, 20910 (301/713-2289); and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts, 01930 (508/281-9200).

Dated: January 14, 1992.

Nancy Foster,

Director, Office of Protected National Marine Fisheries Service.

[FR Doc. 92-1454 Filed 1-21-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification No. 5 to Permit No. 558 (P365).

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 558 issued to Loro Parque, S.A., 38400 Puerto de la Cruz, Tenerife, Spain on July 9, 1986 (51 FR 26176) and modified on July 31, 1987 (52 FR 29406), March 15, 1989 (54 FR 10694), February 2, 1990 (55 FR 3632) and January 1, 1991 (56 FR 1520), is further modified as follows:

Section B.7 is changed to read:

B.7 The authority to capture or otherwise acquire these marine mammals shall extend from the date of issuance through December 31, 1992. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit holder.

All other conditions of the original Permit and subsequent modifications shall remain in force and effect.

This modification becomes effective on January 1, 1992.

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, SSMC#1, room 7324, Silver Spring, Maryland 20910 (301/713-2289);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893-3141); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7415 (213/514-6196).

Dated: January 13, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-1455 Filed 1-21-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

January 15, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for several categories are being adjusted by the application of swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58988, published on November 7, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 15, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 4, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1991 and extends through June 30, 1992.

Effective on January 23, 1992, you are directed to amend further the directive dated June 4, 1991 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted twelve-month limit [1]
219	3,561,232 square meters.
313	9,043,559 square meters.
315	19,151,257 square meters.
347/348	1,062,470 dozen.
351/651	329,139 dozen.
604-A [2]	314,135 kilograms.
613/614/615	16,231,039 square meters.
641	1,811,006 dozen.
Levels in Group II	
611	4,260,299 square meters.
619/620	5,410,134 square meters
634	54,266 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1990.

[2] Category 604-A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-1478 Filed 1-21-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a Guaranteed Access Level and Amendment of the Export Visa Arrangement for Certain Textiles and Textile Products Produced or Manufactured in Panama

January 16, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending the export visa arrangement and establishing a guaranteed access level.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Republic of Panama agreed to amend their existing export visa arrangement to require the complete name and address of the actual manufacturer of the textile product on the original visa document. If a textile product has been processed by more than one manufacturer, the complete name and address of the last firm to substantially transform the article into a new and different article of commerce must be included on the original visa document.

In addition, certification requirements are being established for goods entered under the Special Access Program and exported from Panama on and after February 1, 1992. A notice published in the **Federal Register** on December 13, 1991 (56 FR 65045) announced that on January 1, 1992, U.S. Customs Service would begin signing the first section of form ITA–370P for goods to be re-exported from Panama to the United States during the period February 1, 1992 through March 31, 1993.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989. Also see 56 FR 41335, published on August 20, 1991.

Interested persons are advised to take all necessary steps to ensure that textile products, produced or manufactured in Panama, which are entered into the United States for consumption, or withdrawn from warehouse for consumption, meet the visa requirements or, if entered under the Special Access Program and exported from Panama on or after February 1, 1992, meet the stated certification requirements.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

January 16, 1992.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 14, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Panama which were not properly visaed by the Government of Panama.

Effective on February 3, 1992, for goods produced or manufactured in Panama and exported from Panama on and after February 1, 1992, you are directed to require that the complete name and address of the actual manufacturer of the textile product be included on the original visa document. If a textile product has been processed by more than one manufacturer, the complete name and address of the last firm to substantially transform the article into a new and different article of commerce must be included on the original visa document.

In accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, and the Special Access Program as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1986) and 54 FR 50425 (December 6, 1989), you are directed to prohibit, effective on February 3, 1992, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, assembled in Panama from fabric formed and cut in the United States and exported from Panama on and after February 1, 1992, to be re-entered into the United States under the Special Access Program, which are not certified in accordance with the procedures outlined below.

Each shipment of apparel or made-up products which has been assembled in Panama wholly from components cut in the United States from U.S.-formed fabric and which falls under HTS number 9802.00.8010 which is subject to a Guaranteed Access Level (GAL) must be accompanied by a certification issued by the appropriate Panamanian authorities and a completed Export Declaration (form ITA-370P).

Each shipment of apparel or made-up products as assembled in the preceding paragraph and then subject in Panama to bleaching, acid-washing, stone-washing, garment dyeing, or permapressing following assembly will still qualify for a GAL even though it may not be classified under HTS number 9802.00.8010 and shall be GAL certified by the appropriate Panamanian authorities.

Shipments of textile products not accompanied by a properly issued certification and an Export Declaration shall be accompanied by a properly issued visa.

Each shipment shall be certified by the placing of the original square shaped stamped marking in blue ink on the front of the original commercial invoice. The original certification shall not be affixed to duplicate copies of the invoice. The original copy of the invoice with the original certification will be required in order to enter the shipment into the United States. Duplicate copies of the certification may not be used.

The certification stamp will include the following:

1. The certification number. The certification number shall be the standard nine-digit/letter format beginning with one numeric digit for the last digit of the year of export, followed by the International Organization for Standardization (ISO) (the Code for Panama is "PA"). The first two codes shall be followed by the number "2" and a five-digit numerical serial number identifying the shipment (e.g., 2PA212345).

2. The date of issuance. The date of issuance shall be the day, month and year on which the certification was issued.

3. The signature of the issuing official.

4. The correct category, merged category, quantity(s), and unit(s) of quantity provided for in the U.S. Department of Commerce - CORRELATION and in the Harmonized Tariff Schedule of the United States or successor document shall be reported in the spaces provided within the certification stamp (e.g., "Cat. 347/348–510 doz").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category certification or the correct category corresponding to the actual shipment. Rounding up or down to the nearest whole number shall be permitted. Quantities of less than a single unit shall not be construed to be zero.

U.S. Customs shall not permit entry of a product under HTSUSA 9802.00.8010 or subject to chapter 61 Statistical Note 5 or chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule which require the use of the statistical prefix "H" unless it is accompanied by a Shipper's Declaration.

U.S. Customs shall not permit entry if the shipment does not have a certification, or if the certification number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the certification is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the certification is more than that of the shipment, entry shall be permitted.

If U.S. Customs determines that the certification is invalid because of a minor error, such as a typographical error, and the

remaining documentation fulfills requirements for entry under the Special Access Program, then a new certification or waiver must be obtained and presented to the U.S. Customs Service before any portion of the shipment will be released.

Entry of textile and apparel products subject to the certification system will be permitted only for those shipments accompanied by:

1. A valid certification by the Government of Panama.

2. A completed copy of the Shipper's Declaration (U.S. form ITA-370P or successor document) with a proper declaration by the Panama assembler that the articles were subject to assembly in Panama.

3. A proper importer's declaration.

Any shipment which is declared for the Special Access Program but found not to qualify may be permanently denied entry into the United States.

You are directed to establish a guaranteed access level of 400,000 dozen for properly certified textile products in Categories 347/348 which are assembled in Panama from fabric formed and cut in the United States and exported during the fourteen-month period which begins on February 1, 1992 and extends through March 31, 1993.

Visaed merchandise and products eligible for the Special Access Program may not appear on the same invoice.

A facsimile of the certification stamp and a list of the authorizing officials of the Government of the Republic of Panama are enclosed with this letter.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

REPUBLIC OF PANAMA
GAL

Visa Nº .....PA2 .....

Category --- Quantity

....

....

....

Date: .....
Authorized:
Signature: .....

TEXTILE & APPAREL VISA

Officials of the Government of the Republic of Panama Authorized to Sign GAL Certifications

Joaquin Fernando Franco III, Director Ejecutivo
Enrique Jimenez V., Jefe de Tramites de Exportacion
Ledie Caballero, Subjefe de Tramites de Exportacion
Cecilia De MacOficial de Tramites
Amada De Casis, Inspectora de Aduana
Johvanny Synnak, Inspector de Aduana

[FR Doc. 92-1544 Filed 1-21-92; 8:45 am]
BILLING CODE 3510-DR-F

DEPARTMENT OF EDUCATION

Intent to Repay to the Louisiana State Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the Louisiana State Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the $103,056 recovered by the U.S. Department of Education as a result of a final audit determination. This notice describes the SEA's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All comments must be received on or before February 21, 1992.

ADDRESSES: All comments should be addressed to Mr. Ramon Ruiz, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-6135.

FOR FURTHER INFORMATION CONTACT: Mr. Ramon Ruiz, Telephone: (202) 401-0740. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION:

A. Background

The U.S. Department of Education recovered $103,056 from the Louisiana Department of Education (SEA) in satisfaction of claims arising from audits covering fiscal year (FY) 1985.

The claims involved the SEA's administration of the Migrant Education Program (MEP) authorized under chapter 1 of title I of the elementary and Secondary Education Act of 1965, a program that addresses the special educational needs of migrant children. Specifically, the final audit determination issued by the Assistant Secretary for Elementary and Secondary Education found that MP funds had been spent in Jefferson Davis and Acadia Parishes (a) in a manner inconsistent with the Louisiana SEA's approved Migrant Education Program State plan and with the approved parish subgrant applications, which did not authorize the research project carried out with the funds in question, and (b) using improper, non-competitive procurement practices. The determination was appealed to the Education Appeal Board, which issued an initial decision upholding the Assistant Secretary's claim. After the decision became final, the SEA and Secretary executed a settlement agreement in which the SEA, while admitting no wrongdoing, agreed to repay $103,056 to the Department. Louisiana paid this sum to the Department on June 29, 1990.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purpose of the

program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $77,292 and has submitted a plan for use of the grantback funds to meet the special educational needs of migrant children in programs administered under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended.

Because of the nature of the activities that led to the original audit determination, the Secretary is satisfied with Louisiana's assertions that migrant children Statewide were those affected by the practices that were the subject of the audit determination. Therefore, the SEA plan for the use of grantback funds to benefit eligible migrant children Statewide, as described below, is satisfactory.

The SEA proposes to use grantback funds for allowable activities and costs under the Chapter 1 Migrant Education Program. Under the plan, grantback funds will be used in two areas: school/community resource linkages and special secondary projects. These components are extensions or enhancements of objectives contained in the currently approved State plan. During the 1991–92 school year, the SEA will appoint a State-level staff member to monitor and provide technical assistance to local project "linkers." Linkers are local school district employees who are responsible for placing eligible migrant children in school, community, State, and regional support services. Funds also will be made available to develop and reproduce school or project site-level materials for the linker manuals.

During the summer and fall of 1992, an LEA fiscal agent will use other grantback funds to coordinate a statewide summer institute for migrant secondary students, focusing on dropout prevention and college/career orientation needs. The remaining portion of the grantback funds will be used to provide follow-up tutoring for summer institute participants.

D. The Secretary's Determinations

Based on a detailed review of the plan and information submitted by the SEA, the Office of Elementary and Secondary Education (OESE) is satisfied that the SEA has met the conditions imposed by section 456(a) on the award of a grantback.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded form taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Secton 456(d) of GEPA required that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Louisiana SEA under a grantback arrangement. The grantback award would be in the amount of $77,292, which is 75 percent—the maximum percentage authorized by the statute—of the funds recovered by the Department as a result of the audit.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan submitted by the SEA and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by December 31, 1992 and in accordance with the SEA's plan.

(3) The SEA, not later than March 31, 1993 will submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describes the results and effectiveness of the projects for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditure of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.011, Chapter 1 Migrant Education Program.)

Dated: January 15, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–1536 Filed 1–21–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91–558–000]

Cleveland Electric Illuminating Co.; Notice of Filing

January 15, 1992.

Take notice that on November 22, 1991, Centerior Energy, on behalf of the Cleveland Electric Illuminating Company, tendered for filing additional information supplementing its earlier filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–1467 Filed 1–21–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–211–000]

Detroit Edison Co.; Notice of Filing

January 15, 1992.

Take notice that on December 23, 1991, the Detroit Edison Company tendered for filing additional information supplementing its earlier filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 22, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1466 Filed 1-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-255-000]

Northwest Pipeline Corp., Notice of Application

January 15, 1992.

Take notice that on December 18, 1991, Northwest Pipeline Corp. (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed in Docket No. CP92-255-000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a transportation service for ANR Pipeline Company (ANR), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that the transportation service was authorized by the Commission in Docket No. CP78-119 and carried out under the terms of a Gas Gathering and Transportation Agreement dated September 23, 1977, and an amended Gas Transportation Agreement dated November 17, 1978. It is stated that these agreements are on file with the Commission as ANR's Rate Schedule X-58 and X-59 in Northwest's FERC Gas Tariff, Original Volume No. 2. It is explained that Northwest and ANR have mutually agreed to terminate the transportation service by signing Termination Agreements dated April 30, 1991, and April 1, 1991, respectively, to terminate the Rate Schedule X-58 agreement effective June 1, 1991, and the Rate Schedule X-59 agreement effective April 1, 1991. It is further explained that no facilities would be abandoned in conjunction with the proposed abandonment of service.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1468 Filed 1-21-92; 8:45 am]

BILLING CODE 6717-01-M

Applications Filings, Establishing Relicensing Processing Deadlines and Establishing Date for Submission of Final Amendments

January 15, 1992.

Applications for new license have been filed with the Commission as described on the list attached to this notice.

If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of any listed application on its merits, a request for study, together with justification for such a request in accordance with § 4.32 of the Commission's regulations, must be filed no later than 60 days after the application filing date. For those applications filed before December 31, 1991, this time is hereby extended to March 1, 1992.

The following are the procedures and preliminary schedules that will be followed to the extent feasible in processing each application:

Date	Action
May 1, 1992 [1]	Commission notifies applicant that its application has been accepted. The notification of acceptance will specify the need for additional information, if any, and the date information is due.
May 15, 1992 [1]	Commission issues public notice of the accepted application in local newspapers and the Federal Register establishing dates for filing motions to intervene and protests.
December 1, 1992	Commission publishes notice in the Federal Register that the application is ready for environmental analysis and solicits recommendations, mandatory terms, fishway prescriptions, and pubic comments on the application.

[1] These dates are September 1 and 15, 1992, respectively for applications found to be deficient.

The Commission's deadline for the applicant's filing of a final amendment to each application is April 1, 1992.

Upon receipt of all additional information and the responses to both of the above public notices, the Commission will evaluate each application in accordance with applicable statutory requirements and take appropriate action on the application.

Lois D. Cashell,

Secretary.

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Project No., state filing date	Applicant	Contact
P-1862-009, WA 12/26/91	City of Tacoma, Department of Public Utilities, 3628 South 35th Street, P.O. Box, 11007, Tacoma, WA 98411.	Garth Jackson, P.E., Resource Development Coordinator, City of Tacoma, Department of Public Utilities, Light Division, P.O. Box, 11007, Tacoma, WA 98411, (206) 593-8296.
P-2187-002, CO, 12/30/91	Public Service Company of Colorado, 1225-17th Street, P.O. Box 940, Denver, CO 80201-0840.	Richard A. Petzke, Public Service Company of Colorado, 5900 E. 39th Avenue, Denver, CO 80207, (303) 329-1578.
P-2275-001, CO, 12/30/91	Public Service Company of Colorado, 1225-17th Street, P.O. Box 940, Denver, CO 80201-0840.	Richard A. Petzke, Public Service Company of Colorado, 5900 E. 39th Avenue, Denver, CO 80207, (303) 329-1578.
P-2283-005, ME, 12/10/91	Central Maine Power Company, Edison Drive, Augusta, ME 04336.	Gerald C. Poulin, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623-3521.
P-2287-003, NH, 12/26/91	Public Service Company of New Hampshire, 1000 Elm Street, P.O. Box 330, Manchester, NH 03105.	James J. Kearns, Public Service Company of New Hampshire, 1000 Elm Street, P.O. Box 330, Manchester, NH 03105, (603) 634-2799.
P-2288-004, NH, 12/26/91	Public Service Company of New Hampshire, 1000 Elm Street, P.O. Box 330, Manchester, NH 03105.	James J. Kearns, Public Service Company of New Hampshire, 1000 Elm Street, P.O. Box 330, Manchester, NH 03105, (603) 634-2799.
P-2290-006, CA, 12/27/91	Southern California Edison Company, P.O. Box 800, Rosemead, CA 91770.	David N. Barry, Southern California Edison Company, 2244 Walnut Grove Ave., Rosemead, CA 91770, (818) 302-1564.
P-2300-002, NH, 12/17/91	James River-New Hampshire Electric, Inc., 650 Main Street, Berlin, NH 03570-2489.	George W. Hill, James River-New Hampshire Electric, Inc., 650 Main Street, Berlin, NH 03570-2489, (603) 752-4600.
P-2306-008, VT, 12/23/91	Citizens Utility Company, High Ridge Park, Stamford, CT 06905.	Douglas C. Anderson, Citizens Utility Company, High Ridge Park, Stamford, CT 06905, (203) 329-8800.
P-2311-001, NH, 12/23/91	James River-New Hampshire Electric, Inc., 650 Main Street, Berlin, NH 03570-2489.	George W. Hill, James River-New Hampshire Electric, Inc., 650 Main Street, Berlin, NH 03570-2489, (603) 752-4600.
P-2315-002, SC, 12/30/91	South Carolina Electric & Gas Company, 1426 Main Street, Columbia, SC 29201.	Randolph R. Mahan, Asst. General Counsel, South Carolina Electric & Gas Company, Columbia, SC 29218, (803) 733-2841.
P-2318-002, NY, 12/19/91	Niagara Mohawk Power Corporation, 300 Erie Blvd. West, Syracuse, NY 13202.	Jerry L. Sabattis, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 474-1511.
P-2320-005, NY, 12/23/91	Niagara Mohawk Power Corporation, 300 Erie Blvd. West, Syracuse, NY 13202.	Jerry L. Sabattis, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 474-1511.
P-2323-012, MA, 12/27/91	New England Power Company, Research Drive, Westborough, MA 01582.	Mark E. Slade, New England Power Company, 25 Research Drive, Westborough, MA 01582, (508) 366-9011.
P-2325-007, ME, 11/20/91	Central Maine Power Company, Edison Drive, Augusta, ME 04336.	Gerald C. Poulin, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 632-3521.
P-2329-005, ME, 12/10/91	Central Maine Power Company, Edison Drive, Augusta, ME 04336.	Gerald C. Poulin, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623-3521.
P-2330-007, NY, 12/23/91	Niagara Mohawk Power Corporation, 300 Erie Blvd. West, Syracuse, NY 13202.	Jerry L. Sabbatis, 300 Erie Blvd. West, Syracuse, NY 13202, (315) 428-8941.
P-2331-002, SC, 12/19/91	Duke Power Company, South Church Street, Charlotte, NC 28242.	John E. Lausche, Duke Power Company, 422 S. Church Street, Charlotte, NC 28242, (704) 382-8125.
P-2332-003, SC, 12/19/91	Duke Power Company, South Church Street, Charlotte, NC 28242.	John E. Lausche, Duke Power Company, 422 S. Church Street, Charlotte, NC 28242, (704) 382-8125.
P-2333-005, ME, 12/30/91	Rumford Falls Power Co., c/o Boise Cascade Corporation, Rumford, ME 04276.	Robert L. Stickney, Rumford Falls Power Co., c/o Boise Cascade Corp., Rumford, ME 04276, (207) 364-4521.
P-2334-001, MA, 12/23/91	Western Massachusetts Electric Company, P.O. Box 270, Hartford, CT 06141-0270.	R. A. Reckert, Western Massachusetts Electric Company, P.O. Box 270, Hartford, CT 06141, (203) 665-5315.
P-2336-009, GA, 12/17/91	Georgia Power Co., P.O. Box 4545, Atlanta, GA 30302	Major H. Thompson, Jr., Manager, FERC Licensing and Compliance, P.O. Box 4545, Atlanta, GA 30302, (404) 526-7140.
P-2341-004, GA, 11/20/91	Georgia Power Co., P.O. Box 4545, Atlanta, GA 30302	Major H. Thompson, Jr., Manager, FERC Licensing and Compliance, P.O. Box 4545, Atlanta, GA 30302, (404) 526-7140.
P-2342-005, WA, 12/23/91	PacifiCorp Electric Operations, S.W. Sixth Avenue, Portland, OR 97204.	Stanley A. deSousa, Dir. Hydro Resources, PacifiCorp Electric Operation, 920 S.W. Sixth Ave., Portland, OR 97204, (503) 464-5343.
P-2347-001, WI, 12/23/91	Wisconsin Power and Light Company, P.O. Box 192, 222 W. Washington Ave., Madison, WI 53701.	Norman E. Boys, P.O. Box 192, Madison, WI 53701, (608) 252-3088.
P-2348-001, WI, 12/17/91	Wisconsin Power and Light Company, P.O. Box 192, 222 W. Washington Ave., Madison, WI 53701.	Norman E. Boys, P.O. Box 192, 222 W. Washington Ave., Madison, WI 53701, (608) 252-3088.
P-2350-005, GA, 11/20/91	Georgia Power Co., P.O. Box 4545, Atlanta, GA 30302	Major H. Thompson, Jr., Manager, FERC Licensing and Compliance, P.O. Box 4545, Atlanta, GA 30302, (404) 526-7140.
P-2354-018, GA, 12/18/91	Georgia Power Co., P.O. Box 4545, Atlanta, GA 30302	Major H. Thompson, Jr., Manager, FERC Licensing and Compliance, P.O. Box 4545, Atlanta, GA 30302, (404) 526-7140.
P-2360-022, MN, 12/27/91	Minnesota Power & Light Company, 30 West Superior St., Duluth, MN 55802.	Stephen A. Kopish, Manager, Hydro Operations, Minnesota Power & Light Company, 30 West Superior Street, Duluth, MN 55802, (218) 722-2641.
P-2361-001, MN, 12/13/91	Minnesota Power & Light Company, 30 West Superior St., Duluth, MN 55802.	Stephen A. Kopish, Manager, Hydro Operations Minnesota Power & Light Company, 30 W. Superior Street, Duluth, MN 55802, (218) 722-2641.
P-2362-002, MN, 12/30/91	Blandin Paper Company, 115 First Street, SW, Grand Rapids, MN 55744.	Joseph Maher, Engineering Manager, Blandin Paper Company, (218) 327-6398.
P-2363-007, MN, 12/26/91	Potlatch Corporation, Northwest Paper Division, P.O. Box 510, 207 Avenue C, Cloquet, MN 55720.	Charles R. Pottenger, Vice President, Potlatch Corporation, (218) 879-1055.

Project No., state filing date	Applicant	Contact
P-2373-001, IL, 12/23/91	South Beloit Water, Gas and Electric Co., P.O. Box 192, Madison, WI 53701-0192.	Norman E. Boys, Wisconsin Power and Light Company, 222 W. Washington Ave, Madison, WI 53701, (608) 252-3068.
P-2376-001, VA, 12/13/91	Appalachian Power Co., 40 Franklin Road, Roanoke, VA 24022.	B.H. Bennett, Assistant Vice President, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, OH 43215, (614) 223-2930.
P-2385-002, NY, 12/2/91	Finch, Pruyn and Company, Inc.,1 Glen Street, Glen Falls, NY 12801.	David P. Manny, Secretary, 1 Glen Street, Glen Falls, NY 12801, (518) 793-2541 ext. 203.
P-2389-012, ME, 12/30/91	Edwards Manufacturing Company, P.O. Box 97, Lisbon Falls, ME 04252.	Fred Ayer, Northrop, Devine & Tarbell, Inc., 500 Washington Ave., Portland, ME 04103, (207) 775-4495.
P-2390-003, WI, 12/16/91	Northern States Power Company, 100 N. Barstow St., P.O. Box 8, Eau Claire, WI 54702.	Anthony G. Schuster, P.O. Box 8, Eau Claire, WI 54702, (715) 839-2401.
P-2391-001, VA, 12/12/91	The Potomac Edison Co., 10435 Downsville Pike, Hagerstown, MD 21740.	D.E. Gervenak, Executive Director, Operation Allegheny Power Service Corp., 800 Cabin Hill Drive, Greensville, PA 15601, (412) 838-6835.
P-2395-003, WI, 12/31/91	Flambeau Paper Corporation, 200 N. First Ave., Park Falls, WI 54552.	James M. McGinnity, 200 N. First Ave., Park Falls, WI 54552, (715) 762-3231.
P-2396-001, VT 12/31/91	Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701.	Robert de R. Stein, Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773-2711.
P-2397-001, VT, 12/31/91	Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701.	Robert de R. Stein, Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773-2711.
P-2399-001, VT, 12/31/91	Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701.	Robert de R. Stein, Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773-2711.
P-2400-001, VT, 12/31/91	Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 0570.	Robert de R. Stein, Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773-2711.
P-2402-003, MI, 12/23/91	Upper Peninsula Power Corporation, 600 Lakeshore Drive, Houghton, MI.	Clarence Fisher, P.O. Box 130, 600 Lakeshore Drive, Houghton, MI, (906) 487-5000.
P-2404-017, MI, 12/30/91	Thunder Bay Power Company, 10850 Traverse Hwy, Suite 1101, Traverse, MI 49684.	Roger Stead, 10850 Traverse Hwy, Suite 1101, Traverse, MI 49684, (616) 941-5255.
P-2406-002, SC, 12/20/91	Duke Power Company, South Church Street, Charlotte, NC 28242.	John E. Lausche, Duke Power Company, 422 S. Church Street, Charlotte, NC 28242, (704) 382-8125.
P-2407-006, AL, 12/17/91	Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291.	John E. Dorsett, Vice-President, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291, (205) 250-1380.
P-2408-007, AL, 12/17/91	Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291.	John E. Dorsett, Vice-President, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291, (205) 250-1380.
P-2411-005, VA, 12/24/91	Dan River, Inc., STS Hydropower, 111 Pfingsten Road, Northbrook, IL 60062.	Curtis Whittaker Rath, Young, Pignatelli and Oyer, P. A., Two Capital Plaza, Concord, NH 03302, (708) 272-6520.
P-2417-001, WI, 12/23/91	Northern States Power Company, 100 N. Barstow St., P.O. Box 8, Eau Claire, WI 54702.	Anthony Schuster, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839-2401.
P-2419-007, MI, 12/30/91	Thunder Bay Power Company, 10850 Traverse Hwy, Suite 1101, Traverse, MI 49684.	Roger Stead, 10850 Traverse Hwy, Suite 1101, Traverse, MI 49684, (616) 941-5255.
P-2420-001, UT, 12/23/91	PacifiCorp Electric Operations, 920 S.W. Sixth Avenue, Portland, OR 97204.	Stanley A. deSousa, Director, Hydro Resources, PacifiCorp Electric Operations, 920 S.W. Sixth Avenue, Portland, OR 97204, (503) 464-5343.
P-2421-003, WI, 12/31/91	Flambeau Paper Corporation, 200 N. First Ave., Park Falls, WI 54552.	James McGinnity, 200 North First Avenue, Park Falls, WI 54552, (715) 762-3231.
P-2425-001, VA, 12/12/91	The Potomac Edison Co., 10435 Downsville Pike, Hagerstown, MD 21740.	D.E. Gervenak, Executive Director, Operation Allegheny Power Service Corp., 800 Cabin Hill Drive, Greensville, PA 15601, (412) 838-6835.
P-2431-008, MI, 12/2/91	Wisconsin Electric Power Company, 231 West Michigan Street, P.O. Box 2046, Milwaukee, WI 53201.	David K. Porter, 231 West Michigan Street, P.O. Box 2046, Milwaukee, WI 53201.
P-2433-004, MI, 12/17/91	Wisconsin Public Service Corporation, 700 N. Adams St., Green Bay, WI 54307.	R.A. Krueger, 700 North Adams Street, P.O. Box 19002, Green Bay, WI 54307, (414) 433-1268.
P-2436-007, MI, 12/19/91	Consumers Power Company, 212 West Michigan Ave., Jackson, MI 49201.	R.J. Nicholson, 1945 W. Parnall Road, Jackson, MI 49201, (517) 788-1270.
P-2440-002, WI, 12/16/91	Northern States Power Company, 100 N. Barstow St., P.O. Box 8, Eau Claire, WI 54702.	Anthony G. Schuster, P.O. Box 8, Eau Claire, WI 54702, (715) 839-2401.
P-2441-009, CT, 12/23/91	City of Norwich, Department of Public Utilities, 34 Court House Square, Norwich, CT 06360.	Richard DesRoches, Department of Public Utilities, 34 Court House Square, Norwich, CT 06360, (203) 887-2555.
P-2442-001, NY, 12/30/91	City of Watertown, Watertown Municipal Building, 245 Washington Street, Watertown, NY 13601-3380.	Karl R. Amylon, Watertown Municipal Building, 245 Washington Street, Watertown, NY 13601-3380, (315) 785-7730.
P-2444-002, WI, 12/30/91	Northern States Power Company, 100 N. Barstow St., P.O. Box 8, Eau Claire, WI 54702.	Anthony Schuster, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839-2401.
P-2445-002, VT, 12/26/91	Vermont Marble Company, 61 Main Street, Proctor, VT 05765.	David L. Ferris, Vermont Marble Company, 61 Main Street, Proctor, VT 05765, (802) 459-3311.
P-2446-001, IL, 12/27/91	Commonwealth Edison Company, P.O. Box 767, Chicago, IL 60690-0767.	J.S. Graves, Commonwealth Edison Company, P.O. Box 767, Chicago, IL 60690, (312) 294-3545.
P-2447-008, MI, 12/19/91	Consumers Power Company, 212 West Michigan Ave., Jackson, MI 49201.	R.J. Nicholson, 1945 W. Parnall Road, Jackson, MI 49201, (517) 788-1270.
P-2448-011, MI, 12/19/91	Consumers Power Company, 212 West Michigan Ave., Jackson, MI 49201.	R.J. Nicholson, 1945 W. Parnall Road, Jackson, MI 49201, (517) 788-1270.
P-2449-007, MI, 12/19/91	Consumers Power Company, 212 West Michigan Ave., Jackson, MI 49201.	R.J. Nicholson, 1945 W. Parnall Road, Jackson, MI 49201, (517) 788-1270.
P-2450-005, MI, 12/19/91	Consumers Power Company, 212 West Michigan Ave., Jackson, MI 49201.	R.J. Nicholson, 1945 W. Parnall Road, Jackson, MI 49201, (517) 788-1270.

Project No., state filing date	Applicant	Contact
P-2451-004, MI, 12/19/91	Consumers Power Company, 212 West Michigan Ave., Jackson, MI 49201.	R.J. Nicholson, 1945 W. Parnall Road, Jackson, MI 49201, (517) 788-1270.
P-2452-007, MI, 12/19/91	Consumers Power Company, 212 West Michigan Ave., Jackson, MI 49201.	R.J. Nicholson, 1945 W. Parnall Road, Jackson, MI 49201, (517) 788-1270.
P-2453-003, MI, 12/19/91	Consumers Power Company, 212 West Michigan Ave., Jackson, MI 49201.	R.J. Nicholson, 1945 W. Parnall Road, Jackson, MI 49201, (517) 788-1270.
P-2454-018, MN, 12/10/91	Minnesota Power & Light Company, 30 West Superior St., Duluth, MN 55802.	Stephen A. Kopish, Manager, Hydro Operations, Minnesota Power & Light Company, 30 West Superior Street, Duluth, MN 55802, (218) 722-2641.
P-2456-009, NH, 12/26/91	James J. Kerns, Public Service Company of New Hampshire, 100 Elm Street, P.O. Box 330, Manchester, NH 03105, (603) 634-2799.	James J. Kerns, Public Service Company of New Hampshire, 100 Elm Street, P.O. Box 330, Manchester, NH 03105, (603) 634-2799.
P-2458-009, ME, 12/17/91	Great Northern Nekoosa Corporation, c/o Northern Paper Division, Georgia Pacific Corporation, One City Center, Portland, ME 04104.	Thomas E. Mark, LeBoeuf, Lamb, Leiby, MacRae, 520 Madison Avenue, New York, NY 10022, (212) 715-8000.
P-2459-005, WV, 12/20/91	West Penn Power Co., 800 Cabin Hill Drive, Greensburg, PA 15601.	Mr. D.E. Gervenak, Allegheny Power, Service Corporation, 800 Cabin Hill Drive, Greensburg, PA 15601, (412) 838-6835.
P-2465-003, SC, 12/20/91	Duke Power Company, South Church Street, Charlotte, NC 28242.	John E. Lausche, Duke Power Company, 422 S. Church Street, Charlotte, NC 28242, (704) 382-8125.
P-2466-002, VA, 12/13/91	The Potomac Edison Co., 10435 Downsville Pike, Hagerstown, MD 21740.	D.E. Gervenak, Executive Director, Operation Allegheny Power Service Corp., 800 Cabin Hill Drive, Greensville, PA 15601, (412) 838-6835.
P-2468-003, MI, 12/19/91	Consumers Power Company, 212 West Michigan Ave., Jackson, MI 49201.	R.J. Nicholson, 1945 W. Parnall Road, Jackson, MI 49201, (517) 788-1270.
P-2473-002, WI, 12/31/91	Flambeau Paper Corporation, 200 N. First Ave., Park Falls, WI 54552.	James McGinnity, 200 North First Avenue, Park Falls, WI 54552, (715) 762-3231.
P-2474-004, NY, 12/6/91	Niagara Mohawk Power Corporation, 300 Erie Blvd. West, Syracuse, NY 13202.	Jerry L. Sabbatis, 300 Erie Boulevard West, Syracuse, NY 13202. (315) 428-5582.
P-2475-006, WI, 12/18/91	Northern States Power Company, 100 N. Barstow St., P.O. Box 8, Eau Claire, WI 54702.	Anthony G. Schuster, P.O. Box 8, Eau Claire, WI 54702, (715) 839-2401.
P-2476-001, WI, 12/19/91	Wisconsin Public Service Corporation, 700 N. Adams St., Green Bay, WI 54307.	R.A. Krueger, 700 North Adam Street, P.O. Box 19002, Green Bay, WI 54307, (414) 433-1268.
P-2482-014, NY, 12/19/91	Niagara Mohawk Power Corporation, 300 Erie Blvd. West, Syracuse, NY 13202.	Jerry L. Sabattis, 300 Erie Blvd. West, Syracuse, NY 13202, (315) 428-5582.
P-2486-002, WI, 12/23/91	Wisconsin Electric Power Company, 231 West Michigan Street, P.O. Box 2046, Milwaukee, WI 53201.	David K. Porter, 231 W. Michigan Street, P.O. Box 2046, Milwaukee, WI 53201, (414) 221-2500.
P-2489-001, VT, 12/31/91	Central Vermont Public Service Corporation, 77 Grove Street, Ruthland, VT 05701.	Robert de R. Stein, Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773-2711.
P-2490-001, VT, 12/31/91	Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701.	Robert de R. Stein, Central Vermont Public Servcies Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773-2711.
P-2493-006, WA, 12/25/91	Puget Sound Power & Light Company, One Bellevue Center, P.O. Box 97034, Bellevue, WA 98009-9734.	Puget Sound Power & Light Company, ATTN: Virginia Pistorese, One Bellevue Center, P.O. Box 97034, Bellevue WA 98009, (206) 462-3058.
P-2496-006, OR, 12/26/91	Eugene Water & Electric Board, 500 East 4th Avenue, P.O. Box 10148, Eugene, OR 97440.	Randy L. Berggren, 500 East 4th Avenue, P.O. Box 10148, Eugene, OR 97440, (503) 484-2411.
P-2506-002, MI, 12/23/91	Mead Corporation, County Road 426, Escanaba, MI 49829	Gary L. Butryn, County Road 426, P.O. Box 757, Escanaba, MI 49829, (906) 786-1660.
P-2508-002, CT, 12/23/91	City of Norwich, Department of Public Utilities, 34 Court House Square, Norwich, CT 06360.	Richard DesRoches, Department of Public Utilities, 34 Court House Square, Norwich, CT 06360, (203) 887-2555.
P-2509-001, VA, 12/12/91	The Potomac Edison Co., 10435 Downsville Pike, Hagerstown, MD 21740.	D.E. Gervenak, Executive Director, Operation Allegheny Power Service Corp., 800 Cabin Hill Drive, Greensville, PA 15601, (412) 838-6835.
P-2513-003, VT, 12/26/91	Green Mountain Power Company, 25 Green Mountain Drive, South Burlington, VT 05402.	Eugene L. Shlatz, Green Mountain Power Corporation, 25 Green Mountain Drive, P.O. Box 850, South Burlington, VT 05402, (802) 864-5731.
P-2514-003, VA, 12/16/91	The Potomac Edison Co., 10435 Downsville Pike, Hagerstown, MD 21740.	D.E. Gervenak, Executive Director, Operation Allegheny Power Service Corp., 800 Cabin Hill Drive, Greensville, PA 15601, (412) 838-6835.
P-2519-003, ME, 11/13/91	Central Maine Power Company, Edison Drive, Augusta, ME 04336.	Gerald C. Poulin, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623-3521.
P-2522-002, WI, 12/18/91	Wisconsin Public Service Corporation, 700 N. Adams St., Green Bay, WI 54307.	R.A. Krueger, P.O. Box 19002, Green Bay, WI 54307, (414) 433-1268.
P-2525-004, WI, 12/17/91	Wisconsin Public Service Corporation, 700 N. Adams St., Green Bay, WI 54307.	R.A. Krueger, 700 North Adams Street, P.O. Box 19002, Green Bay, WI 54307, (414) 433-1268.
P-2527-002 ME, 12/17/91	Central Maine Power Company Edison Drive Augusta, ME 04336.	Gerald C. Poulin, Edison Drive, Augusta, ME 04336, (207) 623-3521.
P-2529-005, ME, 12/18/91	Central Maine Power Company, Edison Drive, Augusta, ME 04336.	Gerald C. Poulin, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623-3521.
P-2532-005, MN, 11/25/91	Minnesota Power & Light Company, 30 West Superior St., Duluth, MN 55802.	Stephen A. Kopish, Manager, Hydro Operations Minnesota Power & Light Company, 30 West Superior Street, Duluth, MN 55802, (218) 722-2641.
P-2533-006, MN, 11/26/91	Potlatch Corporation, Northwest Paper Division, P.O. Box C, 207 Avenue C, Cloquet, MN 55720.	Charles R. Pottenger, Vice President, Potlatch Corporation, (218) 879-1055.
P-2535-003, GA, 12/30/91	South Carolina Electric, Gas Company, Columbia, SC 29218.	David R. Moore, General Manager, Production Engineering, S. Carolina Electric & Gas Company, Columbia, SC 29218, (803) 526-7140.
P-2538-001 NY, 12/23/91	Beebee Island, Corporation, 100 Clinton Square, Syracuse, NY 13202-1049.	David Bristol, Beebee Island Corp., 100 Clinton Square, Suite 400, Syracuse, NY 13202-1049, (315) 474-2881.

Project No., state filing date	Applicant	Contact
P-2539-003, NY, 12/23/91	Niagara Mohawk Power Corporation, 300 Erie Blvd. West, Syracuse, NY 13202.	Jerry L. Sabattis, 300 Erie Blvd. West Syracuse, NY 13202, (315) 428-5582.
P-2541-004, NC, 12/18/91	The Cascade Power Company, P.O. Box 1137, Brevard, NC 28712.	Mr. John Boaze, Fish and Wildlife Associates, Inc., P.O. Box 241, Whittier, NC 28789, (704) 497-6505.
P-2544-001, WA, 12/27/91	Washington Water Power Company, East 1411 Mission Ave., P.O. Box 3727, Spokane, WA 99220.	Mr. Daniel E. Pfeiffer, Licensee Coordination, The Washington Water Power Company, East 1411 Mission Ave., P.O. Box 3727, Spokane, WA 99220, (509) 482-4416.
P-2546-001, WI, 12/19/91	Wisconsin Public Service Corporation, 700 N. Adams St., Green Bay, WI 54307.	R.A. Krueger, P.O. Box 19002, Green Bay, WI 54307, (414) 433-1268.
P-2551-004, MI, 12/11/91	Indiana Michigan Power, One Summit Square, Fort Wayne, IN 46801,(219) 425-2111.	B.H. Bennett, American Electric Power Corporation, 1 Riverside Plaza, Columbus, OH 43215, (614) 223-2930.
P-2552-007, MI, 11/25/91	Central Maine Power Company, Edison Drive, Augusta, ME 04336.	Gerald C. Poulin, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623-3521.
P-2554-003, NY, 12/20/91	Moreau Manufacturing Company, 100 Clinton Square Suite 400, Syracuse, NY 13202.	John M. Cordes, 100 Clinton Square Suite 400, Syracuse, NY 13202, (315) 471-2881.
P-2555-001, ME, 12/4/91	Central Maine Power Co., Edison Drive, Augusta, ME 04336.	Gerald C. Poulin, Central Maine Power Co., Edison Drive, Augusta, ME 04336, (207) 623-3521.
P-2556-004, ME 12/4/91	Central Maine Power Co., Edison Drive, Augusta, ME 04336.	Gerald C. Poulin, Central Maine Power Co., Edison Drive, Augusta, ME 04336, (207) 623-3521.
P-2557-004, ME 12/4/91	Central Maine Power Co., Edison Drive, Augusta, ME 04336.	Gerald C. Poulin, Central Maine Power Co., Edison Drive, Augusta, ME 04336, (207) 623-3521.
P-2559-003, ME 12/4/91	Central Maine Power Co., Edison Drive, Augusta, ME 04336, (207) 623-3521..	Gerald C. Poulin, Central Maine Power Co., Edison Drive, Augusta, ME 04336, (207) 623-3521.
P-2560-001, WI, 12/19/91	Wisconsin Public Service Corporation, 700 N. Adams St., Green Bay, WI 54307.	R.A. Krueger, P.O. Box 19002, Green Bay, WI 54307, (414) 433-1268.
P-2561-003, MO, 12/27/91	Sho-Me Power Corporation, 301 West Jackson, Marshfield, MO 65706.	Howard Fillmer, Sho-Me Power Corporation, 301 West Jackson, Marshfield, MO 65706, (417) 468-2615.
P-2569-004, NY, 11/29/91	Niagara Mohawk Power Corporation, 300 Erie Blvd. West, Syracuse, NY 13202.	Jerry L. Sabbatis, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 428-5582.
P-2572-005, ME 12/17/91	Great Northern Nekoosa Corporation, c/o Northern Paper Division, Georgia Pacific Corporation, One City Center, Portland, ME 04104.	Thomas E. Mark, LeBoeuf, Lamb, Leiby, MacRae, 520 Madison Avenue, New York, NY 10022, (212) 715-8000.
P-2579-010, IN, 12/9/91	Indiana Michigan Power, One Summit Square, Fort Wayne, IN 46801, (219) 425-2111.	B.H. Bennett, American Electric Power Corporation, 1 Riverside Plaza, Columbus, OH 43215, (614) 223-2930.
P-2580-015, MI, 12/19/91	Consumers Power Company, 212 West Michigan Ave., Jackson, MI 49201.	R.J. Nicholson, 1945 W. Parnall Road, Jackson, MI 49201, (517) 788-1270.
P-2581-002, WI, 12/19/91	Wisconsin Public Service Corporation, 700 N. Adams St., Green Bay, WI 54307.	R.A. Krueger, P.O. Box 19002, Green Bay, WI 54307, (414) 433-1268.
P-2582-002, NY, 12/27/91	Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649.	Earnest J. Ierardi, Nixon, Hargrave, Evans & Doyle, P.O. Box 1051, Rochester, NY 14603, (716) 263-1596.
P-2583-004, NY, 12/17/91	Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649.	Earnest J. Ierardi, Nixon, Hargrave, Evans & Doyle, P.O. Box 1051, Rochester, NY 14603, (716) 263-1596.
P-2584-003, NY, 12/27/91	Rochester Gas & Electric Corporation, 89 East Avenue, Rochester, NY 14649.	Clyde A. Forbes, Rochester Gas & Electric Corporation, 89 East Avenue, Rochester, NY 14649, (716) 724-8110.
P-2587-002, WI/MI, 12/18/91	Northern States Power Company, 100 N. Barstow St., P.O. Box 8, Eau Claire, WI 54702.	Anthony Schuster, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839-2401.
P-2595-005, WI, 12/18/91	Wisconsin Public Service Corporation, 700 N. Adams St., Green Bay, WI 54307.	R.A. Krueger, P.O. Box 19002, Green Bay, WI 54307, (414) 433-1268.
P-2596-002, NY, 12/4/91	Rochester Gas and Electric, 89 East Avenue, Rochester, NY 14649.	Earnest J. Ierardi Nixon, Hargrave, Evans & Doyle, P.O. Box 1051, Rochester, NY 14603, (716) 263-1596.
P-2599-005, MI, 12/19/91	Consumers Power Company, 212 West Michigan Ave., Jackson, MI 49201.	R. J. Nicholson, 1945 W. Parnall Road, Jackson, MI 49201, (517) 788-1270.
P-2607-001, NC, 12/18/91	Duke Power Company, 422 South Church St., Charlotte, NC 28242.	Mr. John E. Lansche, Associate General Counsel, Duke Power Company, 422 S. Church St., Charlotte, NC 28242, (704) 382-8125.
P-2608-002, MA, 12/23/91	Decorative Specialties International Inc., Front Street, West Springfield, MA 01089.	David Garwood, Decorative Specialties International Inc., Front Street, West Springfield, MA 01089, (413) 736-4554.
P-2613-005, ME, 12/24/91	Central Maine Power Co., Edison Drive, Augusta, ME 04336.	Gerald C. Poulin, Central Maine Power Co., Edison Drive, Augusta, ME 04336, (207) 623-3521.
P-2613-005, ME, 12/24/91	Madison Paper Industries, P.O. Box 129, Madison, ME 04950.	Jack E. Chinn, Madison Paper Industries, P.O. Box 129, Madison, ME 04950, (207) 696-3307.
P-2613-005, ME, 12/24/91	Scott Paper Company, Scott Plaza Two, Philadelphia, PA 19113.	Nicholas DeBenedictus, Scott Paper Company, Scott Plaza Two, Philadelphia, PA 19113, (215) 522-5617.
P-2613-005, ME, 12/24/91	Merimil Limited Partnership, c/o Central Maine Power Co., Edison Drive, Augusta, ME 04336.	R. Edward Hanson, Merimil Ltd Partnership, Edison Drive, Augusta, ME 04336, (207) 623-3521.
P-2613-005, ME, 12/24/91	Augusta Development Corp., c/o Edwards Manufacturing Company, P.O. Box 97, Lisbon Falls, ME 04252.	Mark L. Isaacson, Edwards Manufacturing Company, P.O. Box 97, Lisbon Falls, ME 04252.
P-2616-004, NY, 12/19/91	Niagara Mohawk Power Corporation, 300 Erie Blvd. West, Syracuse, NY 13202.	Jerry L. Sabattis, 300 Erie Blvd. West, Syracuse, NY 13202, (315) 428-5582.
P-2640-010, WI, 12/27/91	Flambeau Paper Corporation, 200 N. First Ave., Park Falls, WI 54552.	James M. McGinnity, 200 N. First Ave., Park Falls, WI 54552, (715) 762-3231.
P-2641-001, NY, 12/30/91	Niagara Mohawk Power Corporation, 300 Erie Blvd. West, Syracuse, NY 13202.	Jerry L. Sabbatis, 300 Erie Blvd. West, Syracuse, NY 13202, (315) 428-6941.
P-2643-001, OR, 12/24/91	PacifiCorp Electric Operations, 920 S.W. Sixth Avenue, Portland, OR 97204.	Stanley A. deSousa, Director, Hydro Resources, PacifiCorp Electric Operations, (503) 464-5343.
P-2645-029, NY, 11/29/91	Niagara Mohawk Power Corporation, 300 Erie Blvd. West, Syracuse, NY 13202.	Jerry L. Sabbatis, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 428-5582.
P-2671-002, ME, 12/24/91	Kennebec Water Power Company, c/o Central Maine Power Company, Edison Drive, Augusta, ME 04336.	Gerald C. Poulin, Kennebec Water Power Company, c/o Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623-3521.

Project No., state filing date	Applicant	Contact
P-2689-001, WI, 12/27/91	Scott Paper Company, 106 E. Central Avenue, Oconto Falls, WI 54154.	Thomas Cosgrove, 106 E. Central Avenue, Oconto Falls, WI 54154, (414) 846-3411 ext. 3272.
P-2712-004, ME, 12/30/91	Bangor Hydro-Electric Company, 33 State Street, Bangor, ME 04401.	William J. Madden, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005, (202) 371-5700.

[FR Doc. 92-1469 Filed 1-21-92; 8:45 am]
BILLING CODE 6717-01-M

Office of Energy Research

Fusion Energy Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Fusion Energy Advisory Committee (FEAC).

Date and Time: Wednesday, February 5, 1992—9 a.m.—5 p.m., Thursday, February 6, 1992—9 a.m.—5 p.m.

Place: Sheraton Hotel, 5115 Hopyard Road, Pleasanton, CA.

Contact: Deborah Lonsdale, U.S. Department of Energy, GTN, Office of Fusion Energy (ER-50), Office of Energy Research, Washington, DC 20585, Telephone: 301-903-4941.

Purpose of the Committee: To provide advice on a continuing basis to the Department of Energy on the complex scientific and technical issues that arise in the planning, management, and implementation of its Fusion Energy Program.

Tentative Agenda:

Wednesday, February 5, 1992

- Reports from Panel #1 on the International Thermonuclear Experimental Reactor, and from Panel #2 on the U.S. Program after the Tokamak Fusion Test Reactor (TFTR).
- Discussion of Panel #1 and Panel #2 Reports.
- Public Comment (10 Minute Rule).

Thursday, February 6, 1992

- Continued Discussion of Panel #1 and Panel #2 Reports.
- Public Comment (10 Minute Rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Deborah Lonsdale at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 15, 1992.

Marcia L. Morris,

Deputy Advisory Commitee Management Officer.

[FR Doc. 92-1541 Filed 1-21-92; 8:45 am]
BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of November 4 through November 8, 1991

During the week of November 4 through November 8, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

David Dekok, 11/5/91, *LFA-0151*

David Dekok (DeKok) filed an Appeal from a partial determination issued by the DOE's Freedom of Information and Privacy Branch on two requests for information DeKok had filed under the Freedom of Information Act (FOIA). In his requests, DeKok sought a wide range of documents pertaining to the Three Mile Island incident. The Freedom of Information and Privacy Branch failed to provide all the requested items, and DeKok appealed, challenging the adequacy of the search. The DOE remanded certain portions of the requests, either because it determined that the search for those items was inadequate or because it was not able to obtain the information necessary to evaluate the adequacy of the search within the time permitted for the Appeal.

Firearms Training Systems, Inc., 11/4/91, LFA-0161

Firearms Training Systems, Inc., filed an Appeal from a denial by the Inspector General (IG) of a request for information filed under the Freedom of Information Act (FOIA). The appellant sought records of a pending investigation by the IG into a complaint that had been made by the appellant alleging improper use of its proprietary information. In his determination, the IG found that the requested information fell within the scope of Exemption 7(A), which exempts from mandatory disclosure documents whose release could interfere with enforcement proceedings. However, the IG completed his investigation subsequent to his FOIA determination. The DOE found that because there was currently no pending or potential investigation, the documents could not be withheld pursuant to Exemption 7(A) but noted that other FOIA exemptions might apply to the requested documents. Accordingly, the Appeal was granted in part and the matter was remanded to the IG for a determination on whether the requested documents should be withheld pursuant to some other FOIA exemption.

James L. Schwab, 11/4/91, *LFA-0162*

James L. Schwab (Schwab) filed an Appeal from a denial by the DOE Field Office, Albuquerque (DOE/AL), of a request for information submitted under the Freedom of Information Act. In its determination, DOE/AL stated that a search had been conducted but that no responsive documents were found. Schwab challenged the adequacy of the search. In considering the Appeal, the DOE found (1) Schwab's request did not reasonably describe the documents he was seeking and (2) if a new request is submitted which is still ambiguous, the Authorizing Official should invite Schwab to confer with DOE/AL personnel in an attempt to restate the request. Schwab's appeal was accordingly denied.

Refund Applications

Exxon Corp./Karas Car Wash, Inc., 11/16/91, RR307-13

On November 6, 1991, the DOE issued a Decision and Order denying a Motion for Reconsideration filed by Donald Kuhn, the owner of Karas Car Wash, Inc. (Karas). In that Motion, Mr. Kuhn sought reconsideration of an earlier Decision and Order that concluded that a refund granted to him in the Exxon refund proceeding should be rescinded. The refund has been rescinded because Mr. Kuhn had failed to show that he owned Karas during the period of price controls or that he was otherwise

entitled to a refund. In denying Mr. Kuhn's Motion, the DOE found that Mr. Kuhn did not own Karas during the refund period and that the agreement under which he purchased Karas did not transfer the right to a refund to him. The DOE also rejected the claim that the right to a refund was transferred to Mr. Kuhn under the doctrine of equitable assignment.

Liquid Petroleum Corp., 11/8/91, RF272–63868

The DOE issued a Decision and Order concerning an Application for Refund submitted on behalf of the Liquid Petroleum Corp. (LPC), a reseller of refined petroleum products. LPC requested a refund from crude oil overcharge monies available for disbursement pursuant to the provisions of 10 CFR part 205, subpart V (subpart V). To support its refund request, LPC submitted its "banks" of unrecovered product costs, the testimony of Dr. Peter Linneman, a report written by Dr. Linneman entitled "The Econometric Evidence Concerning The Absorption Of Crude Oil Cost Increases By The Liquid Propane Gas Industry And End Users," and a third report prepared by Dr. Linneman which consisted of an analysis of the Texas and Oklahoma regional propane prices in connection with crude oil price increases. However, the DOE determined that LPC's submissions did not demonstrate that LPC absorbed the crude oil overcharges. Accordingly, LPC's Application for Refund was denied.

Orion & Global Chartering Co., Inc. Erota Oceanica Brasileria, 11/8/91, RF272–64069, RD272–64069, RF272–71305, RD272–71305

The DOE granted two Applications for Refund filed in the Subpart V crude oil special refund proceeding by foreign flagship carriers operating ocean-going vessels in foreign commerce with the United States. Rejecting arguments raised by a group of State governments, the DOE concluded that (i) the applicants were eligible to receive crude oil refunds even though they were under foreign ownership and (ii) foreign ocean carriers were not automatically able to pass through increased bunker fuel costs to their customers. As end-users of the petroleum products involved, the applicants were presumed injured by the crude oil overcharges. Therefore, the DOE granted refunds to both applicants in the amount of $192,630, and denied two related Motions for Discovery filed by the States. The Statement of Objections filed by a consortium of 32 States and U.S. Territories was denied and two related Motions for Discovery were dismissed.

Pendleton Construction Corp., 11/4/91, RF272–73256, RD272–73256

The DOE issued a Decision and Order concerning an Application for Refund filed by the Pendleton Construction Corp. in the subpart V crude oil special refund proceeding. The basis for the Pendleton submission was estimates of its purchases of refined products in connection with its construction operations during the period August 1973 through January 1981. Although the Pendleton Application included a brief explanation of the technique by which the firm had estimated its refined product purchases, the DOE requested that the firm submit additional information to support its Application, including a more detailed explanation of its estimations techniques and material concerning the contracts to which the firm was a party during the refund period. However, Pendleton failed to provide this material, and after repeated requests for the additional information, the firm's Application for Refund was denied. Under the circumstances, a related Motion for Discovery filed by a consortium of 32 States and Territories of the United States was dismissed.

Texaco, Inc./Farlow's Texaco, 11/7/91, RF321–5030

The DOE issued a Decision and Order in the Texaco Inc. subpart V special refund proceeding concerning an Application for Refund filed by Farlow's Texaco. The applicant was unable to substantiate its claim that it was a purchaser of Texaco products during the consent order period. Accordingly, the Application was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full text of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Centerton ARCO	RF304–12520	11/05/91
Atlantic Richfield Company/Cragin ARCO *et al*	RF304–3786	11/06/91
Atlantic Richfield Company/Don's AM/PM ARCO *et al*	RF304–3998	11/06/91
Atlantic Richfield Company/Elwell's ARCO	RR304–3	11/05/91
Atlantic Richfield Company/Gene's ARCO	RF304–12025	11/05/91
Atlantic Richfield Company/Hardy Oil Company	RF304–12606	11/08/91
Atlantic Richfield Company/Les' Service Center *et al*	RF304–3500	11/05/91
Atlantic Richfield Company/Rias ARCO	RF304–12610	11/07/91
Atlantic Richfield Company/Richard D. Thomson	RR304–5	11/04/91
Atlantic Richfield Company/Roosevelt Service Station	RF304–4215	11/04/91
State of Missouri	RF304–4661	
Miller & Sons Garage	RF304–5162	
Central Milwaukee ARCO	RF304–9227	
Atlantic Richfield Company/Sinkler, Inc.	RF304–12516	11/05/91
Atlantic Richfield Company/V&B ARCO	RF304–12515	11/05/91
Fred McDowell, Inc.	RF272–28146	11/07/91
Fred McDowell, Inc.	RF272–28146	
Gulf Oil Corporation/Cox Oil Company	RF300–6390	11/04/91
Gulf Oil Corporation/Griffin's Grocery *et al*	RF300–13511	11/04/91
Gulf Oil Corporation/Nebeker Oil Company, Inc.	RF300–13597	11/08/91
Nebeker Oil Company	RF300–13598	
H&D, Inc.	RF272–28354	11/07/91
Interstate Container Corp.	RF272–11116	11/07/91
Interstate Container Corp.	RF272–11116	
Finch, Pruyn & Co., Inc.	RF272–50456	
Finch, Pruyn & Co., Inc.	RF272–50456	
Libby-Owens-Ford Co.	RF272–47940	11/05/91
Libby-Owens-Ford Co.	RF272–47940	
Mass Merchandisers, Inc.	RF272–72084	11/07/91

Pavers, Inc.	RF272-51572	11/07/91
Peabody Municipal Light Plant	RF272-5363	11/07/91
Reinauer Petroleum Co./Knickerbocker Bed Co. *et al*	RF341-7	11/08/91
Shell Oil Company/National Butane Company	RF315-6856	11/07/91
AP Propane, Inc.	RF315-6296	
Tesoro Petroleum Corp./Texas Crushed Stone Co. *et al*	RF328-3	11/07/91
Texaco Inc/ A&A Texaco Station *et al*	RF321-10129	11/07/91
Texaco Inc./Al-N-Jack's Texaco Service *et al*	RF321-3323	11/06/91
Texaco Inc./H.L. Evans & Son, Inc. *et al*	RF321-4281	11/07/91
Texaco Inc./Haner's Texaco *et al*	RF321-5322	11/07/91
Texaco Inc./Hunt Oil Co.	RF321-17668	11/04/91
Texaco Inc./Tony's Texaco *et al*	RF321-1416	11/07/91
V.A.W. of America, Inc.	RF272-65189	11/06/91
Waconia School District *et al*	RF272-78722	11/06/91

DISMISSALS

The following submissions were dismissed:

Name	Case No.
Aberdeen and Rockfish Railroad Company.	RF272-88568
Bellows Texaco	RF321-5678
Bruce's Clark Service	RF321-11054
Cedar County, IA	RF272-85758
City of Colby	RF272-83974
City of Lenexa	RF272-84801
City of Quitman, MS	RF272-83277
Clay County, NE	RF272-85606
Glen Miller	LFA-0160
Goins Holiday Gulf	RF300-11758
Goodwill Service	FR315-7548
Jimmy Mask Texaco	RF321-14467
Kulp & Gordon, Inc.	RF272-88641
Martins Gulf #1	RF300-14155
Potomac Edison Company	RR300-107
R. L. Jones Co., Inc.	RF300-12696
Ramsey & Kelley Inc.	RF300-12600
The Arrow Line, Inc.	RF272-89558
Time Gulf	RF300-12660
Usher Transport, Inc.	RF272-90034

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 15, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-1538 Filed 1-21-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 91-115-NG]

CMEX Energy, Inc.; Application for Blanket Authorization to Import and Export Natural Gas and Liquefied Natural Gas

AGENCY: Department of Energy Office of Fossil Energy;

ACTION: Notice of application for blanket authorization to import and export natural gas and liquefied natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on December 23, 1991, of an application filed by CMEX Energy, Inc. (CMEX), for blanket authorization to import and to export a combined total of up to 100 Bcf of natural gas, including liquefied natural gas (LNG), from and to any foreign country. CMEX requests that the authorization be granted for a period of two years beginning on the date of the first delivery of gas or LNG after April 30, 1992, when its current blanket import/export authorization expires. CMEX intends to use existing pipeline and LNG facilities for the processing and transportation of the volumes to be imported and exported and would continue to file quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or ntices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC, at the address listed below no later than 4:30 p.m., eastern time, February 21, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50; 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-070, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy; Forrestal Building, room 6E-042, GC-14; 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: CMEX, a Texas corporation with its principle place of business in Dallas, Texas, is a marketer of natural gas. CMEX is currently authorized to import and export a combined total of up to 76 Bcf through April 30, 1992, under DOE/FE Opinion and Order No. 329 (Order 329), issued August 24, 1989 (1 FE Para. 70,238). CMEX's prior quarterly reports filled with FE pursuant to Order 329's reporting requirements indicate that approximately 931 MMcf of gas was exported under Order 329 through September 30, 1991. There were no imports. Under the blanket import authority sought, CMEX would purchase natural gas and LNG from a variety of foreign suppliers and resell it to various U.S. purchasers, including local distribution companies, pipelines, and commercial and industrial end-users. Under the export authority sought, CMEX would acquire domestic natural gas or LNG for resale to international markets. CMEX would import and export this gas and LNG both for its own account or as agent for the accounts of others.

The transaction which CMEX plans to enter would be for terms of up to two years or less. It anticipates that the purchase price would not remain fixed in any blanket contract for a period of more than one year, but would be adjusted on a monthly or quarterly basis

as required by market conditions, and would fluctuate with changes in the price and availability of competing fuels, including domestic natural gas. Sales would typically be on a best-efforts basis, although CMEX anticipates the possibility of entering into some firm transactions for period of up to one year. The purchase price would be determined by competitive factors in the gas market through arm's length negotiations between CMEX and its suppliers.

In support of its application, CMEX asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term nature of the transactions will minimize the potential for undue long-term dependence on foreign sources of energy. With regards to the proposed exports, CMEX states that the volumes would be incremental to current U.S. needs and that the sale of the gas would result in a reduction of the current excess domestic natural gas supply, generate income and tax revenues, reduce the U.S. trade deficit, and increase efficiency in the North American gas market.

The decision on CMEX's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, domestic need for the gas to be exported is considered, and any other issue determined to be appropriate in a particular case, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. CMEX asserts that the proposed imports would be competitive and there is no current need for the domestic gas that would be exported. Parties opposing this application bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, request for additional procedures, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CMEX's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 15, 1992.

Clifford P. Tomaszewski,

Acting Assistant Deputy Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–1537 Filed 1–21–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–108–NG]

HPL GAS Co.; Application for Blanket Authorization To Export Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on December 17, 1991, of an application filed by HPL Gas Company (HPL Gas) requesting blanket authorization to export to Mexico up to 275 Bcf of natural gas over a two-year term beginning on the date of first delivery. The proposed exports would take place at any point on the international border where existing pipeline facilities are located.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, February 21, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal

Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: HPL Gas is a Texas corporation with its principal place of business in Houston, Texas. It is a wholly-owned subsidiary of Houston Pipeline Company, and a marketer of natural gas. HPL Gas states that the exports would be sold to Mexican purchasers under contracts with varying terms, but not to exceed two years. Although the identity of actual purchasers is presently unknown their names and the specific details of each export transaction would be filed by HPL Gas in conformity with DOE's quarterly reporting requirement. HPL Gas anticipates all sales would result from arms-length negotiations and the prices would be determined by market conditions.

This export application will be reviewed under section 3 of the NGA and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority.

HPL Gas asserts that due to the current gas supply surplus in the U.S., domestic producers and the states where the domestic gas is produced would benefit from the sales resulting from this export authorization. Further, HPL Gas contends that the proposed exports would lower the overall U.S. trade deficit and enhance the integration of U.S.-Mexico gas markets. HPL Gas asserts that there is no current regional or national need for the domestic gas that would be exported under the proposed arrangement. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must be the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests of additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of HPL Gas' application is available for inspection and copying in the Office of Fuels Programs Docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 15, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–1540 Filed 1–21–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–117–NG]

RIO Energy International, Inc., Application for Blanket Authorization to Export Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on December 24, 1991, of an application filed by Rio Energy International, Inc. (Rio) requesting blanket authorization to export to Mexico up to 75,000 MMBtu of natural gas (one MMBtu equals approximately one Mcf) per day over a two-year term beginning on the date of first delivery. The proposed exports would take place either at, or near, Reynosa, Tamaulipas, Mexico, where the pipeline facilities of Texas Eastern Transmission Corporation interconnect with those of Petroleos Mexicanos (Pemex) or at other existing pipeline interconnections in Mexico. Rio intends to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, February 21, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: Rio, a Texas corporation with its principal place of business in Houston, Texas, is a marketer of hydrocarbons including natural gas, light hydrocarbons and gaseous petroleum chemicals. Rio proposes to export natural gas primarily to Pemex for local distribution by Pemex to industrial and residential users in Mexico. Rio states that gas supplies available to it in Louisiana, Texas, and New Mexico are more than adequate to provide the requested export authorization. All sales would result from arms-length negotiations and prices would be determined by market conditions. Rio believes that the competitive, short-term nature of the natural gas sales will aid in the efficient allocation of natural gas in the general marketplace.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority.

All parties should be aware that if DOE approves this requested blanket export authorization, it would designate a total authorized volume for the two-year term, or 54.75 Bcf of natural gas, rather than the 75,000 MMBtu per day requested by Rio, in order to maximize the applicant's flexibility of operation.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriation action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Amy request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Rio's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 15, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-1530 Filed 1-21-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4093-5]

Fuels and Fuel Additives; Waiver Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 211(f)(4) of the Clean Air Act (Act), Ethyl Corporation (Ethyl) has requested a waiver to permit the sale of its gasoline additive, methylcyclopentadienyl manganese tricarbonyl (MMT), an octane enhancer, commercially labeled by Ethyl as HiTEC 3000. Section 211(f)(4) authorizes EPA to grant such a waiver if it determines that the applicant has established that its fuel or additive will not cause or contribute to the failure of vehicles to meet applicable emissions standards.

In support of its request, Ethyl conducted an extensive test program to determine the effect of MMT on the ability of vehicles to comply with current and future emission standards. It also considered the impact of MMT on nonregulated vehicle emissions, urban smog or ozone, refinery emissions, and crude oil use. Ethyl claimed that its test results established that MMT would not cause or contribute to exceedences of current or future emission standards. It also claimed that MMT use would result in other benefits consistent with Clean Air Act goals.

The Agency is today denying Ethyl's request for a waiver for HiTEC 3000 based on new data submitted to the Agency which indicate that factors other than those taken into account in Ethyl's test program may significantly and adversely influence the magnitude of the emissions increase caused by the addition of HiTEC 3000 to unleaded gasoline. Hence, the Agency is unable to conclude that Ethyl has met its burden of establishing that HiTEC 3000 will not cause or contribute to the failure of a significant number of vehicles to fail emissions standards. Therefore, Ethyl's waiver request is denied.

ADDRESSES: Copies of the information relative to this application are available for inspection in public docket A-91-46 and A-90-16 at the Air Docket (LE-131)

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of the EPA, room M–1500, 401 M Street, SW., Washington, DC 20460, (202) 260–7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, or James W. Caldwell, Chief, Fuels Section, Field Operations and Support Division (EN–397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–2635.

SUPPLEMENTARY INFORMATION:

Decision of the Administrator

I. Introduction

On July 12, 1991, Ethyl submitted its application for a waiver for use of MMT in unleaded gasoline at a concentration of 1/32 gram per gallon manganese (gpg Mn).[1] MMT is a maganese-based octane enhancer that is currently used in leaded gasoline in the United States and in unleaded gasoline (at concentrations up to 1/16 gpg Mn) in Canada. As explained later in this decision, because MMT is less expensive than other available octane enhancers, EPA expects, and Ethyl acknowledges, that MMT would eventually be used in most gasoline sold in the United States if this waiver application is granted.

II. Statutory Framework

Ethyl is seeking this waiver because the sale of MMT for use in unleaded gasoline in the United States is currently prohibited by section 221(f) of the Clean Air Act. Section 211(f)(1) bans the sale of fuels and fuel additives (collectively referred to here as fuels) that are not "substantially similar" to those used to certify 1975 and later model year motor vehicles as complying with applicable emission standards. Under EPA's interpretive rule, MMT is not considered substantially similar to certification fuel additives.[2]

Congress added section 211(f) to the Clean Air Act in 1977 to protect vehicle emission control devices from being damaged by fuels. As Congress was considering the Clean Air Act Amendments of 1977, concerns were raised that MMT, then used in unleaded gasoline, was impairing the performance of emissions control systems and increasing exhaust hydrocarbon emissions.[3] Although section 211(c) gives EPA authority to prohibit or control fuels found to harm emission control devices or public health and welfare, Congress acknowledged that the procedural safeguards required by that section did not permit EPA to act quickly enough to protect current catalysts.[4] Congress therefore decided to take a preventative approach, banning fuels not substantially similar to those used to determine compliance with emission standards. The effect of 211(f) was to ban the use of MMT in unleaded gasoline, effective September 15, 1978.

At the same time, Congress recognized that its ban could prevent the sale of cheaper or energy-optimizing fuels that did not harm emission controls.[5] In section 211(f)(4), it authorized the Administrator of EPA to waive the prohibitions and limitations of section 211(f) "if the Administrator determines that the [waiver] applicant has established that such fuel or fuel additive * * * will not cause or contribute to the failure of an emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards to which it has been certified pursuant to section 206 of the Act." [6] If the Admistrator does not act to grant or deny the waiver request within 180 days of receipt of the application (in this case, by January 8, 1992), the statute provides that the waiver request shall be treated as granted.

III. Method of Review

Section 211(f)(4) clearly places upon the waiver applicant the burden of establishing that its fuel will not cause or contribute to the failure of any vehicle to meet emission standards. Absent a sufficient showing, the Administrator may not make the required determination and may not grant the waiver. If interpreted literally, however, this burden of proof imposed by the Act would be virtually impossible for an applicant to meet, as it requires the proof of a negative proposition: That no vehicle will fail to meet emission standards to which it has been certified. Such a literal interpretation would require the testing of every vehicle. Recognizing that Congress contemplated a workable waiver provision, EPA has previously indicated that reliable statistical sampling and fleet testing protocols may be used to demonstrate that a fuel under consideration would not cause or contribute to a significant failure to meet emission standards by vehicles in the national fleet.[7]

To determine whether a waiver applicant has established that the proposed fuel will not cause or contribute to vehicles failing emissions standards, EPA reviews all the material in the public docket, including the data submitted with the application, and analyzes the data to ascertain the fuel's emission effects. The analysis concentrates on four major areas of concern—exhaust emissions, evaporative emissions, materials compatibility, and driveability—and evaluates the date under statistical methods appropriate to the various types of emission effects. Emission data are analyzed according to the effects that a fuel is predicted to have on emissions over time. If the fuel is predicted to have only an instantaneous effect on emissions (that is, the emission effects of the fuel are immediate and remain constant throughout the life of the vehicle when operating on the waiver fuel), then "back-to-back" emission testing will suffice.[8]

Unlike materials traditionally allowed in unleaded gasoline, metalics, such as MMT, produce non-gaseous combustion products, some of which are deposited in the parts of the vehicle which come in contact with the combustion products of the burned fuel. These areas of the vehicle include the combustion chamber, the catalyst, the oxygen sensor, and all parts of the exhaust system.[9] Since

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[1] On August 1, 1991, a notice was published in the **Federal Register** (56 FR 36610) acknowledging receipt of the application and requesting comments on it. Comments that were received have been placed in public docket A–91–46.

[2] EPA's revised interpretation of "substantially similar" was published in the **Federal Register** on February 11, 1991 at 56 FR 5352. Under this rule, fuel additives must contain only carbon, hydrogen, and any or all of the following elements: oxygen, nitrogen, and/or sulfur.

[3] S. Rep. No. 127, 95th Cong., 1st Sess. 90 (1977).

[4] *Id.*

[5] *Id.* at 91.

[6] Section 206 of the Act sets forth the certification requirements with which vehicle manufacturers must comply in order to introduce into commerce new model year motor vehicles.

Standards for hydrocarbon, carbon monoxide, and oxides of nitrogen emissions from gasoline-powered motor vehicles have been established under section 202 of the Act.

[7] See Waiver Decision on Tertiary Butyl Alcohol ("TBA"), 44 FR 10530 (February 2, 1979).

[8] Back-to-back emission testing involves testing a vehicle on a base fuel (i.e., a gasoline which meets specifications for certification fuel or is representative of a typically available commercial gasoline), then testing that same vehicle on the fuel for which the waiver is requested. The difference in emission levels is attributed to the waiver fuel.

[9] Automakers and catalyst manufacturers point out that, since catalysts are designed with a boneycomb structure in order to maximize contact between engine combustion gases and catalyst materials, if channels within the boneycomb become blocked, the catalyst is less able to break down the exhaust gases. Furthermore, although the mechanisms associated with manganese deposits have not been completely described, catalyst manufacturers suggest that the mere deposition of manganese (without blockage of channels) would hinder the catalytic activity of the catalyst. Ethyl,

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these materials build up over time,[10] it has been traditionally accepted that the emissions effects of such additives occur over time as miles are accumulated, and that the method of deposition suggests that the effects are permanent. If the fuel is predicted to have a long-term deteriorative effect, durability testing over the useful life of the vehicle,[11] in addition to back-to-back testing, is appropriate.[12] In the past, EPA has analyzed durability data using statistical tests to determine if the fuel additive will cause or contribute to a "significant" number of vehicles failing emissions standards.[13] Reasonable theoretical judgments as to the emission effects of the fuel may be utilized as an alternative to direct testing of vehicles. In most cases, the theory needs to be supported by confirmatory testing.[14] If the applicant has such a theoretical basis, it may only need to conduct testing sufficient to demonstrate the validity of the theory. The theory and confirmatory testing may then form a basis from which the Administrator may exercise his judgment on whether the additive will cause or contribute to a failure of emission control devices or systems which result in vehicles failing to achieve compliance with emission standards.

In addition to emissions data, EPA also reviews data on fuel composition and specifications, both to fully characterize a proposed fuel, and to determine whether that fuel would cause or contribute to a failure of vehicles to comply with their emission standards. Such failure often can be predicted from characterization data. For example, volatility specifications of the fuel could demonstrate a tendency for high evaporative emissions. Similarly, data on materials compatibility could show potential failure of fuel systems, emission related parts, and emission control parts from use of the fuel. Such failures could result in greater emissions. Likewise, fuel characteristics that could cause significant driveability problems could result in tampering with emission controls and, thus, increased emissions.

An issue in this waiver decision is whether Ethyl must show that MMT will not cause or contribute to noncompliance with emission standards by vehicles certified to the 1994 model year emission standards, as well as vehicles certified to the current standards. Ethyl believes that the statute only requires it to establish that MMT will not cause or contribute to the failure of vehicles to meet current emission standards. EPA disagrees.

Section 211(f)(4) provides that EPA may grant a waiver if the Agency determines that the waiver applicant establishes that its candidate fuel "will not cause or contribute" to a vehicle's failure to comply with "the emissions standards with respect to which [the vehicle] has been certified pursuant to section [206]." The section thus calls for EPA to make a prospective determination—what will be the effect of the candidate fuel on vehicles in the future. Whether EPA should consider the effect on vehicles' ability to meet future emissions standards is not explicitly addressed. Clearly, consideration of future standards is not expressly prohibited.

There is no need to infer from the use of the past tense in the phase, "standards * * * to which [a vehicle] has been certified" that only current standards may be considered. Section 203 of the Act requires each new model of motor vehicle or engine to be certified as complying with emissions standards before it can be sold. In section 211(f)(4), the phrase "has been certified" simply reflects that fact. Any vehicle affected by a commercial gasoline additive will be of a type that "has been certified" to emissions standards in effect when the model was new. For vehicles made in the future, these standards could be future standards.

It would make little sense to grant a waiver without regard to its effect on vehicles' ability to meet tighter standards that take effect in the near future. It also would be inconsistent with Congress's concern that fuels not cause or contribute to vehicles' inability to comply. Conceivably, a fuel could have no effect on vehicles designed to meet current standards, but a significant effect on the technology automakers have strived to develop to meet tighter standards. EPA notes that section 211(f)(4) does not require the Agency to grant a waiver if the statutory waiver criterion is met. (See, for comparison, sections 211(k)(5)(B) and 211(m)(3).) The Agency thus has discretion in granting waivers, and for the reasons given above, EPA believes it reasonable to take into account the effect of a fuel on vehicles' ability to meet future emissions standards in exercising its discretion.

While it may not be feasible for a waiver applicant to consider the effect of its fuel on vehicles' ability to comply with standards due to take effect far in the future, that is not the case here. The "Tier I" tailpipe standards prescribed by section 202(g) begin to take effect in model year 1994, which begins in September 1993.[15] The technology that will be used to meet those standards is largely developed, and as explained later, test data submitted on MMT's emissions effect includes data from vehicles the design or technology of which are at least in part representative of vehicles being planned for the 1994 model year. EPA has previously considered the effects of an additive on vehicles' ability to meet more stringent future standards under circumstances

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however, believes that the manganese deposition on the catalyst does not hinder its activity.

[10] Reply Comments of Ethyl Corporation in Support of the HiTEC 3000 Waiver Application, August 10, 1990, 28.

[11] The current "useful life" of a light-duty vehicle (LDV) (i.e., the amount of time or mileage accumulation through which the LDV must meet the standards to which it has been certified) is 50,000 miles or five years, whichever occurs first (section 202(d). However, the Clean Air Act Amendments of 1990 extended the useful life of LDV's to 100,000 miles or ten years, beginning with 1994 model year vehicles. The amendments also tightened emissions standards for 40 percent of a vehicle manufacturer's LDV and light-duty truck (LDT) sales in model year 1994, 80 percent in model year 1995 and for all vehicles after model year 1995 (section 202(g)).

[12] Durability testing over the useful life of the vehicle involves testing two identical sets of vehicles for 50,000 miles (in the case of current standards for passenger cars), one set using the base fuel and the other using the waiver fuel. Each vehicle is tested for emissions at 5,000 mile intervals. This is essentially the same testing pattern which is required for certification of a new motor vehicle under section 206 of the Act. As noted above, under the Clean Air Act Amendments of 1990, the useful life of passenger cars will be extended to 100,000 miles beginning with the 1994 model year when more stringent standards take effect (see sections 202(d) and (g)).

[13] The Agency has statistically analyzed exhaust emissions data to determine long-term durability effects of an additive only once previously: Ethyl's original 1978 application for MMT. The portion of the statistical tests that EPA used to determine if the additive would cause (or contribute) to emissions failures deems an additive not to cause such a failure for a particular vehicle model if its use would result in no more than 10 percent of vehicles of that model failing emissions standards. Before the additive was judged to have failed the test overall, more models must fail (as discussed above) than is consistent with the hypothesis, used for statistical purposes, that the population failure rate for models is 50% (for the 8 models tested with this application, at least 7 would have to fail). As discussed later in this section, EPA questions whether it would still be appropriate for the Agency to grant a waiver to an additive that would potentially cause such a large number of vehicles to fail emissions standards, in light of continuing and widespread pollution problems to which vehicles contribute. However, the Agency did not reach that issue in this decision since, as is indicated below, newly submitted data indicate that the design of the Ethyl test program may have insufficiently covered parameters which may have a significant adverse impact on the emissions effects of MMT.

[14] See Waiver Decision on Application of E.I. DuPont de Nemours and Company (DuPont), 46 FR 9124 (February 26, 1988).

[15] 56 FR 25724/25790 (June 5, 1991).

similar to these, and believes it is appropriate to do so again here.[16]

This application also raises some important questions regarding the test programs the Agency has required to be performed and statistical criteria the Agency has used in the past to evaluate waiver applications. As noted above, the tests do permit a potentially large number of vehicles to exceed emissions standards.[17] In addition, the extent to which highly controlled vehicle testing simulates "real world" in-use [18] vehicle emissions changes is questionable. Further, the large amount of headroom [19] between test vehicles' certification emissions levels and the applicable standard that has been seen in recent years [20] may effectively result in a much lower pass/fail standard than in the past, since it is easier to pass the previously used statistical tests when there is a large amount of headroom. As emissions standards become more stringent beginning in 1994 (See appendix 2), the Agency would expect that the headroom between vehicle emissions and the standard is likely to decrease. This will result in more vehicles more easily failing standards.

In light of the Clean Air Amendments of 1990 and the likely widespread use of MMT, however, EPA questions whether its tests are still appropriate. The Clean Air Act Amendments of 1990 are a strong statement of the concern shared by Congress and the President that more needs to be done to ensure that people are not exposed to unhealthy levels of airborne pollution. Ozone, in particular, has been a difficult air pollution problem to solve. Despite the efforts states and industry had undertaken pursuant to the Clean Air Act of 1970 and the Amendments to the Act in 1977, in 1990 there were still 98 areas, containing approximately 135 million people, that violated the ambient zone standard. In the 1990 Amendments to the Act, Congress prescribed increasingly stringent and costly control measures for inclusion in state SIP's. For example, depending on the severity of an area's ozone problem, it may be required to establish or tighten already established automobile inspection and maintenance programs; install automobile refueling pumps with controls to capture refueling vapors; implement transportation control measures such as establishing carpooling lanes; or require the use of cleaner alternative fuels in fleet vehicles. Congress also called on automakers to significantly reduce new vehicle emissions and on oil refiners to reformulate gasoline so as to significantly reduce ozone-producing and toxic emissions from existing vehicles. EPA estimates the costs associated with the programs contained in the new amendments for ozone reduction in nonattainment areas to reach $11 billion per year by 2005.[21]

However, as explained in a later section, EPA cannot conclude that Ethyl has established that MMT will not cause or contribute to vehicles failing emissions standards under EPA's previously used statistical tests in light of additional data submitted to the Agency. Consequently, the Agency did not decide whether or how to change its statistical tests for determining whether a fuel will "cause or contribute" to vehicles failing emissions standards. EPA is continuing to evaluate the appropriateness of these tests.

IV. Ethyl's Application

This is Ethyl's fourth application for a waiver for MMT. Ethyl first submitted an application on March 17, 1978 for concentrations of MMT resulting in 1/16 and 1/32 gpg Mn in unleaded gasoline. That application was denied because the Agency found that the use of MMT would cause or contribute to the failure of vehicles to meet the hydrocarbon exhaust emissions standard (43 FR 41424, September 19, 1978).

Ethyl's second application was submitted on May 26, 1981 for concentrations of MMT resulting in 1/64 gpg Mn in unleaded gasoline. EPA denied the second request because Ethyl provided no test data to support its claim that MMT at that concentration would not cause or contribute to exceedences of the HC emission standard, and instead relied on a flawed mathematical argument extrapolating from HC emission data collected at higher concentrations (46 FR 58630, December 1, 1981).

Ethyl's third application was submitted on May 9, 1990 for concentrations of MMT resulting in 1/32 gpg Mn in unleaded gasoline. Ethyl withdrew its third application on November 1, 1990, before the deadline for the Administrator to make a determination on the application. Because no determination had been made at the time the applicant withdrew the application, EPA accepted the withdrawal and terminated the proceeding without taking action on it. Ethyl reapplied in July of 1991 after supplementing the data and analysis that had been contained in its third application. Essentially, the information related to the third (1990) application is pertinent to the application being considered today and all docket material submitted in consideration of the 1990 application has been incorporated, by reference, into the docket for the current (1991) application.

In support of its current application, Ethyl conducted the most extensive test program ever conducted by a waiver applicant. It sought and received EPA's help in the design of a test program that was expected to provide the data needed to determine whether MMT passed EPA's previously used statistical criteria for granting waivers. Ethyl assembled a test fleet of 48 light-duty vehicles, composed of eight different model types that together represented a broad spectrum of then current (1988) technology vehicles. It utilized two laboratories to measure each vehicle's exhaust emissions of the regulated pollutants (HC, oxides of nitrogen (NO_X) and carbon monoxide (CO)) at 5,000-mile intervals up to 75,000 miles in the case of most vehicles and up to 100,000 miles in the case of several.[22] It also tested the vehicles for evaporative HC, particulate and manganese emissions,

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[16] See 43 FR 41424 (September 18, 1978). In Re Application for MMT Waiver.

[17] The structure of the sign test used as the final step in most of the statistical tests is extremely conservative because it essentially places a very light burden on the applicant. It requires only that the applicant show that no more than half of the fleet will be caused to fail the standards by the additive. The practical implication of this arrangement of the test is that, with the small number of models usually included in the sample for such test programs, all or almost all of them must fail before the overall test is failed and the conclusion reached that the additive "causes or contributes" to the failure of a "significant portion" of the fleet to meet the standards to which they were certified.

[18] "In-use" refers to the emissions of vehicles actually being driven on public roads and highways and not part of any test program.

[19] "Headroom" here refers to the difference in emissions between the level of emissions seen in highly controlled testing of vehicles in a test program (such as with vehicle certification) and the emissions standard applicable to the vehicle. It is EPA's experience that vehicle manufacturers design this headroom into certification vehicles in order to account for the unknown effects of in-use operation. The manufacturers believe that such headroom is necessary in order to avoid expensive recalls of vehicles that fail standards in use. Despite this headroom, in calender year 1991, 1.7 million cars were recalled for emissions exceedences.

[20] An analysis of EPA's certification data indicates that hydrocarbon certification data average 0.21 gpm.

[21] "Ozone Nonattainment Analysis—Clean Air Act Amendments of 1990", E.H. Pechan Associates, prepared for USEPA, September, 1991.

[22] The current "useful life" of a light-duty vehicle (LDV) is 50,000 miles or five years, whichever occurs first (section 202(d)). However, the Clean Air Act Amendments of 1990 extended the useful life of LDV's to 100,000 miles or ten years, beginning with 1994 model year vehicles. For the standards that begin to take effect in model year 1994, section 207(c) provides for intermediate in-use standards for several years.

materials compatibility, driveability and catalyst durability.

Ethyl analyzed the data collected using EPA's previously used statistical tests and additional tests developed by its consultants to further characterize the data. Its analysis indicated that, on average, MMT at the requested concentration would result in a 0.018 gpm increase in HC emissions and decreases in NO_X and CO emissions. The analyses further indicated that, when EPA's previously used tests are applied, the increase in HC emissions would not cause or contribute to vehicles' failure to meet the current HC emission standard. The results of Ethyl's testing for materials compatibility, driveability and catalyst durability also indicated that MMT would have no significant adverse effects on vehicles' ability to meet current emission standards under average driving conditions. On that basis, Ethyl claimed that it has made its statutorily required showing.

Additionally, Ethyl submitted an analysis of its data which, according to Ethyl, indicates that MMT will not cause or contribute to the failure of vehicles to meet future standards. Ethyl Corporation engaged Systems Applications Inc. (SAI) to undertake an analysis to determine whether the additive would be likely to pose a problem for vehicles required to meet more stringent future standards and useful life definitions. The standards used in the analysis were those which were then being considered by Congress for inclusion in the Clean Air Act. The standards Congress eventually adopted are essentially the same.

The basic strategy of the analysis was to see if a subset of five of the eight models Ethyl tested in the larger program would pass the statistical tests previously used by EPA when compared to the proposed standards. The models selected were those passing the current standard for hydrocarbon. No adjustment was made to the test vehicles' emissions other than to remove the methane fraction of hydrocarbons for comparison against the proposed non-methane hydrocarbon (NMHC) standard. The three statistical tests used were all regression-based tests: (1) The Violation Mileage test, (2) the Maximum Percent Failing to Meet Standard test, and (3) the test labeled by Ethyl the "Cause or Contribute" test.[23] Ethyl concluded that its analysis indicates that HiTEC 3000 will not cause or contribute to the failure of vehicles to meet future standards.[24]

While stating that "public health issues are not relevant to the legal standard for approval of waiver applications established by section 211(f)(4)," [25] Ethyl also assessed the potential effect of MMT use on public health and the nation's economy and energy security. In the area of public health, it examined whether MMT use would result in manganese emissions that could endanger public health. (While manganese is an essential nutrient, occupational studies have demonstrated that, at high doses, manganese can have severe adverse effects on the nervous, respiratory and reproductive systems. The health effects of manganese are discussed further in section VI–C.) Based on the data Ethyl had collected on manganese exposure, Ethyl concluded that MMT use at the requested concentration would not perceptibly change environmental exposure to manganese and, in any event, would not present any danger to human health.

Ethyl also considered the effect of MMT use on emissions of other, unregulated vehicle emissions. Its testing indicated that vehicles run on MMT emitted less formaldehyde and benzene than vehicles operated on "clear" fuel. Ethyl hired Turner and Mason, refining industry consultants, to assess how the availability of MMT would likely change gasoline composition, yield and refinery emissions. The study by Turner and Mason concluded that MMT would allow a reduction in refining severity,[26] which in turn would reduce refinery emissions (NOx, CO, oxides of sulfur (SO_x), particulates, and carbon dioxide), the use in gasoline of aromatics (which increase benzene emissions and are very reactive in forming urban smog) and benzene (a known carcinogen), as well as the demand for crude oil (by about 82,000 barrels per day).

V. Public Comments

EPA held a public hearing on Ethyl's application on September 12, 1991. It also provided an opportunity for the public to submit written comments.[27] Many comments were received from a wide variety of interests, including refiners, automakers, emission control manufacturers, manganese-related industries, federal health agencies, states, localities, environmental and public interest groups and private citizens. Taken together, the comments touched on every aspect of Ethyl's application. They are summarized below; more detailed descriptions of some of the comments and EPA's responses to them appear in later sections of this document.

A. Emission-Related Comments

Five automakers (Ford Motor Company (Ford), General Motors Corporation (GM), Toyota Technical Center, U.S.A., Inc. (Toyota), Chrysler Motors Corporation (Chrysler), and Nissan Research and Development Corporation (Nissan)), the Motor Vehicle Manufacturers Association (MVMA), the Association of International Automobile Manufacturers, Inc. (AIAM), and the Manufacturers of Emission Controls Association (MECA) all recommended denial of Ethyl's request and expressed two major concerns with regard to the addition of MMT to unleaded gasoline. First, they noted that the use of MMT will cause an increase in HC emissions. Most indicated that the more stringent emissions standards which begin taking effect in model year 1994 will make any increase in HC emissions particularly troublesome. Further, they stated that newer technology vehicles will likely be equipped with catalysts which are nearer the engine (more "closely coupled"). Such close coupling results in higher catalyst temperatures which, for at least older model vehicles, studies indicate make the catalyst more prone to the deposition of manganese.[28] These commenters stated that deposition of manganese compounds on the surface of the catalyst would impair the catalytic breakdown of emissions from the

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[23] For a description of these tests see appendix 2A, Ethyl 1990 Waiver Application. For a description of Ethyl's analysis using these tests, see appendix 11. Ethyl 1990 Waiver Application.

[24] Ethyl 1990 Waiver Application, 57.

[25] Ethyl waiver application (July 12, 1991) at 38.

[26] Refinery severity refers to the temperature and pressure at which certain parts of the refinery are operated. A "reformer", one of many refineries processing units, may be operated at higher temperatures and pressures to produce more high octane components such as benzene, xylene, and toluene, collectively referred to as "aromatics". Since MMT would supply a less expensive source of octane, the presumption is that the refinery would operate at a lower severity, thus using less fuel to operate and producing fewer emissions. Additionally, gasoline produced at a refinery operating at lower severity would presumably contain lower aromatics.

[27] As mentioned previously, the comments received in consideration of Ethyl's 1990 application have been included in the public record for the current 1991 application. This includes all docket materials in docket A–90–16, as well as all testimony at the June 22, 1990 hearing.

[28] Benson, Jack D., "Manganese Fuel Additive (MMT) Can Cause Vehicle Problems," SAE Paper 770855, June 7, 1977.

Furey, Robert L., and Jack C. Summers, "How MMT Causes Plugging of Monolithic Converters," SAE Paper 780004, February 27–March 3, 1978.

engine, thereby decreasing catalyst effectiveness. Additionally, they were concerned that MMT, even at the 1/32 gpg Mn concentration requested, would plug catalysts and thus reduce the surface area of the catalyst which could potentially act to break down emissions from the engine, especially in the case of vehicles operated under driving conditions which result in higher temperatures such as heavy load or high speed. Under such conditions, it was pointed out, the vehicle may be more prone to deposition of manganese.

Most of these commenters cited what they considered to be flaws in the Ethyl test program, especially the fact that Ethyl utilized a fuel to accumulate mileage on its test vehicles (Howell EEE) which, unlike fuels typically used by the driving public and for mileage accumulation when certifying vehicles, did not contain a detergent additive. Since detergents prevent the normal deposition of heavy hydrocarbon deposits in the intake system and combustion chamber of a vehicle that results from burning any gasoline, and since such deposits can increase HC emissions,[29] the automakers felt that these emissions increases may have masked any MMT-induced emissions increases.

Some pointed out that high temperature vehicle operation may increase the risk of manganese deposits and that Ethyl accumulated mileage on its vehicles using a driving regimen that may not be conducive to the building of manganese deposits, since it did not include much driving that would result in high catalytic converter inlet temperatures. (As is discussed in section IV–A of this decision, research suggests that high temperatures may result in higher rates of manganese deposition when MMT-containing gasoline is combusted in a vehicle.)

Several of these commenters also pointed out that Ethyl replaced the fuel injectors on its vehicles after the 50,000 mile point, which may have masked the effect of MMT. The automakers felt that since the fuel injectors had been changed at 50,000 miles, any negative impact on emissions caused by manganese fouling of the injectors would not have been seen by Ethyl.

Two automakers submitted new emissions data on vehicles operating on MMT. Ford submitted data on eight vehicles representing two model groups, four of which accumulated mileage using MMT-containing fuel and four of which were used as "controls" operating on "clear" fuel (fuel not containing MMT). Toyota submitted data on one vehicle which was operated on MMT-containing fuel for 30,000 miles and then, after replacing the catalytic converter and oxygen sensors, operated on clear fuel for 30,000 miles. General Motors submitted data on bench tests [30] of two truck engines. As described in more detail in section VI–A, all of this data suggested that use of MMT may result in hydrocarbon increases greater than those reported by the Ethyl test program and/or catalyst plugging.

The California Air Resources Board (CARB) also recommended denial of the waiver on emission-related grounds. California state law currently bans the use of MMT in unleaded gasoline, and an EPA decision to grant Ethyl's waiver request would not affect that ban. (The California ban, however, does not preclude the possibility that, if the waiver were granted, vehicles exposed to MMT could be used in California since vehicles would be able to utilize MMT-containing fuel in other states and then be driven in California. There is no evidence that any effect due to mileage accumulation using MMT-containing fuel would disappear if clear fuel were used subsequently. In fact, evidence that MMT deposits on catalysts suggests otherwise.)

According to CARB, the increased HC emissions attributable to MMT would make it difficult for vehicles operating on unleaded gasoline containing MMT to meet the new more stringent HC standards recently adopted for California vehicles.[31] CARB urged that testing be conducted to determine the effect of MMT on new technology vehicles designed to meet the more stringent HC standards, such as vehicles with electrically heated catalysts. It also expressed concern that manganese retained in the vehicle's catalyst could impair the performance of the vehicle's catalyst.

Environment Canada, a ministry of the Canadian government, commented on Canada's experience using MMT in unleaded gasoline. (As mentioned previously, MMT is allowed in unleaded gasoline in Canada at twice the level asked for by Ethyl in this current waiver proceeding.) Environment Canada reported that it had little data on MMT effects on Canadian vehicles, but that it appeared that only a relatively small number of catalysts installed on Canadian vehicles had been adversely affected by plugging. It indicated, however, that differences between the Canadian and United States vehicle emission control programs made it less likely that any catalyst plugging would be discerned in Canada than might be the case in the United States.

Ethyl submitted responses to the comments summarized here. It noted that the test cycle which it used was the federal certification mileage accumulation cycle utilized to certify vehicles as meeting standards. Ethyl also criticized the test programs which were used by the automakers to collect data on the emissions-related effects of MMT use. Ethyl pointed out that the programs had little similarity to procedures utilized to certify vehicles as meeting standards. Ethyl stated that, in any event, statistical analyses of its data demonstrated that MMT at the requested concentration would not cause or contribute to failure by vehicles to meet current or future emissions standards. It also submitted, in its comments, additional data on catalysts from Ethyl's test fleet which, according to Ethyl, indicated that catalyst degradation would not occur as a result of MMT use.

In response to the automakers comments regarding Ethyl's replacement of all fuel injectors after 50,000 miles, Ethyl stated that the fuel injectors were changed precisely to determine if use of its test fuel, Howell EEE, resulted in injector fouling since it did not contain a detergent additive. Ethyl indicated that emissions data collected on the vehicles before and after the injector replacements showed no significant emissions changes.

Ethyl also pointed out that, in the area of regulated emissions, once it has presented a prima facie case in support of its application, those opposing the application must present "competent" evidence sufficient to create an issue of fact to be determined by the fact finder.[32] Farther, Ethyl stated that the Agency's decision must turn upon what the preponderance of the competent evidence in the record shows. (A more in-depth description of these issues is presented in section VI–A of this decision.)

In response to comments that Ethyl did not use a detergent in its test fuel, Ethyl stated that the purpose of using a mileage accumulation test fuel without a detergent was to provide a worst-case scenario for deposit formation and, thus,

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[29] See for example, "Gasoline Additives Solve Injector Deposit Problems", SAE Technical Paper 881537, October 6–9, 1988.

[30] Bench tests here refer to tests on engines which were conducted with the engine removed from the vehicle so as to facilitate the collection of data.

[31] The new California standards are introduced in several stages beginning in 1994, each stage of which establishes a more stringent control over non-methane organic gas (NMOG) which consists of HC and oxygenated hydrocarbons.

[32] Docket A–91–48, Item No. IV–E–6, Attachments.

address the concerns of the auto industry that MMT causes engine deposits which result in emissions increases. (The purpose of detergent additives is to prevent deposit formation.) Also in response to these comments, Ethyl operated six Buicks from its 48-vehicle fleet an additional 15,000 miles (after the original 75,000 miles) with commercial gasoline with MMT (for the MMT vehicles) and without MMT (for the clear fuel vehicles). Emissions tests every 5,000 miles indicated no significant change in emissions patterns from the original 75,000 miles of operation.

In regard to the Canadian experience with MMT, Ethyl pointed out that Canadian oil companies (including government-owned Petro Canada) that have used MMT in unleaded gasoline in the past are unaware of any catalyst problems experienced by customers using gasoline with MMT.

B. Other Comments

Commenters addressed other issues raised by Ethyl's application. Many dealt with the potential effect of MMT on public health. Commenters that supported the application generally pointed to Ethyl's analyses indicating that MMT use would result in an overall reduction of vehicle and refinery emissions. Several stated that MMT use would result in more flexibility for refiners in enhancing gasoline octane quality. Others, however, were troubled by the prospect of allowing MMT on the market before more was known about the health consequences of the manganese emissions that MMT would cause.

The National Institute of Environmental Health Sciences (NIEHS), the Environmental Defense Fund, CARB, and the American Psychological Association, among others, noted that little is known about low-level chronic exposure to airborne manganese. These commenters generally recommended that the Administrator exercise his discretion to deny the waiver request until the completion of studies sufficient to determine a "safe level" of exposure to ambient manganese. (This issue is discussed further in section VI–B of this decision.)

Chemetals, Inc., a manufacturer of manganese alloys, submitted comments stating that manganese is an essential human nutrient and that exposure levels expected to result from MMT use are far below any known toxic levels. Chemetals also strongly indicated its support of the Ethyl application.

In response to these comments, Ethyl pointed out that available data reveal no adverse health effects of exposure to manganese emissions at the levels expected to occur as a result of MMT use in unleaded gasoline. Ethyl also stated that monitoring and modeling data on exposure to manganese which it had submitted demonstrate that no significant difference in exposure would occur as a result of MMT use. It argued that having made a *prime facie* case that MMT would not harm public health, the burden shifted to those commenters who thought otherwise to substantiate their claims.

Comments from refineries and refinery trade associations were supportive of Ethyl's application. They concurred in Ethyl's assessment of the economic benefits and reduced refinery and vehicle emissions that would accrue from the replacement of octane obtained through higher-severity refining with octane obtained from MMT. Several emphasized that MMT would be especially helpful to small refiners since octane enhancement from MMT requires less capital investment than other means of increasing octane. Many refiners also pointed out that refinery operations at lower severity would result in decreased aromatic and benzene emissions from vehicles and increased yield for each barrel of crude oil refined.

VI. Analysis

As indicated in the earlier section describing EPA's method of review, the Agency considers the effect of a fuel on compliance with vehicle emission standards in deciding whether to grant a waiver for the fuel. New data submitted to the Agency indicate that factors other than those taken into account in Ethyl's test program may significantly and adversely influence the emissions caused by the addition of HiTEC 3000 to unleaded gasoline. Hence, the Agency is unable to conclude that Ethyl has established that HiTEC 3000 will not cause or contribute to the failure of a significant number of vehicles to fail emissions standards.

As noted earlier, Ethyl and the commenters also raised issues about the effects of MMT on public health, refineries and crude oil demand. Moreover, since it is expected that, if allowed, the additive would be used very widely in gasoline, the Agency is concerned about the potential for MMT to increase the overall atmospheric loading of HC emissions, given the widespread serious ozone nonattainment problems. Because Ethyl has not met its primary statutory burden, the Agency chose not to base its decision to deny the waiver request on these issues. While EPA believes that the discretionary nature of its waiver authority permits the Agency to consider such issues in making waiver decisions, because the decision is being denied based on increases in HC emissions that cause or contribute to the vehicles failing emissions standards, these other issues need not be resolved. Nevertheless, EPA considers it worthwhile to address these other issues. Decisions on future waiver applications might turn on such issues, and wiaver applicants might benefit from the Agency's consideration of the issues here. These issues are thus addressed in the last subsection of this section.

A. Exhaust Emissions

Ethyl's test program, as noted earlier, was designed and conducted to provide the data necessary to perform the statistical analyses that EPA has previously used to determine whether a waiver applicant has made the statutorily required showing. (These statistical tests, developed in the late 1970's by the Agency, are applicable only to additives which may produce a long-term durability effect on emissions and not an instantaneous effect and, in fact, have only been used previously to evaluate other applications by Ethyl to use MMT.) Assuming the data collected by the Ethyl program are accurate (and the Agency has no reason to believe they are not), EPA agrees with Ethyl that under the conditions simulated by Ethyl's test program, MMT at the requested concentration meets the statistical criteria EPA used in assessing the 1978 Ethyl application to establish that a fuel will not cause or contribute to a failure of a significant number of vehicles to meet current emission standards.

Ethyl's examination of MMT's effect on vehicles' ability to meet future standards for HC, is less convincing, but nevertheless indicates that MMT passes the determinative "cause or contribute" portion of EPA's previously used statistical tests. The approach Ethyl took to its examination—a statistical analysis based on data from 1988 vehicles—has two potential problems. First, it assumes that (1) the emission control systems that manufacturers design and use to meet the new standards will be similar in technology to those used on the models Ethyl selected for testing, and (2) the response of these future systems to MMT is thus appropriately modeled by looking at the test vehicles. Ethyl did not evaluate the extent to which its test fleet was representative of vehicles designed to meet the 1994 model year standards. It

did, however, make an effort to include in its test fleet vehicle models that were equipped or designed in what was thought to be representative of 1994 model year vehicles. Among the forward-looking technologies and designs found in Ethyl test cars were close-coupled catalysts and multiport fuel injection. While EPA is concerned that Ethyl's fleet was not fully representative of 1994 model year vehicles, the Agency appreciates the difficulty of obtaining test vehicles representative of future technology vehicles. Since Ethyl's fleet did contain vehicles that to some extent were representative of 1994 vehicles and the newer technology test vehicles did not show emission problems significantly different from older technology vehicles, EPA believes that the technological problems with Ethyl's future standards case are not significant enough to deny the waiver request on that basis.

Ethyl's case also presents statistical problems. The set of models selected by Ethyl for this analysis is statistically troubling for two reasons. First the set represents only the "cleanest" portion of the fleet—a fleet that has substantial variability in emissions performance. It is not surprising that the lower tail of such a distribution would have very low emissions with or without MMT. The behavior of these vehicles reveals little about the entire distribution and its variability—information that is important to a robust conclusion regarding whether future vehicles will be able to meet the new and tougher standards when operating on MMT.

The second concern about the sample for this analysis is its small size. The sign test, which is the final step in each of the three tests used, requires that at least five models be included in the analysis before it becomes possible for the additive to "fail" any of the three tests. Even with five models, the additive only fails the overall test if all five models fail individually. In most of the comparisons that are made in the course of the analysis, some models drop out for various reasons and leave us looking at samples of four or fewer. Even if each of the four models in such a comparison were to fail the test (which happened in one case), the result would be inability to detect a difference at the 95% confidence level. In short as a result of the data limitations in Ethyl's analysis, it would have been impossible to fail four of the five tests. However, Ethyl's data is sufficient to apply EPA's previously used "cause or contribute" portion of the statistical tests. Application of that portion of the tests to the Ethyl data indicate that MMT would not cause or contribute to vehicles failing the 1994 model year standard. At the same time, however, EPA is troubled about some aspects of the statistical tests (as explained above).

In any event, in regard to both current and future standards, the Agency has reason to believe that for conditions other than those used by Ethyl in its test program, the Ethyl test data may significantly understate the effect of MMT on HC emissions.

Ethyl employed two independent laboratories [33] to test its fleet of 48 model year 1988, light-duty vehicles (i.e., passenger cars), including three pairs of vehicles in each of eight model groups representing a broad spectrum (over 50 percent) of the national 1988 car fleet. After all of the vehicles had accumulated 1000 miles on a clear (i.e., no MMT added) test fuel referred to as "Howell EEE",[34] one vehicle from each pair was operated on the same clear fuel (the control vehicle) and the other vehicle from each pair was switched to a test fuel composed of the clear fuel to which HiTEC 3000 was added at a level of 1/32 gpg Mn (the MMT vehicle).

Each of the vehicles was tested for HC, CO and NO_X exhaust emissions at 1000 miles to establish matched vehicle pairs and then, after switching half the vehicles to MMT-containing fuel, at each 5000-mile interval to 75,000 miles in the case of most vehicle pairs and to 100,000 miles in the case of several. The actual emissions testing at each of the mileage increments was performed using clear fuel for both the control vehicles and the MMT vehicles. This was done so that the effect of accumulating mileage with MMT could be isolated, since past research indicates (and Ethyl agrees) that the emissions effects of MMT results from manganese accumulation over many miles of use, not from the instantaneous effect of adding MMT to the fuel. To accumulate mileage, Ethyl utilized the "Alternative Mileage Accumulation Cycle" (AMA) which is a standard procedure utilized to accumulate mileage for certification purposes.[35]

Ethyl subjected its test data to the statistical analyses used by EPA in its past consideration of a request by Ethyl to use MMT and to further analyses developed by an independent contractor. Based on these analyses, one Ethyl contractor reported the following results: MMT at the requested concentration had a beneficial impact on NOx emissions, reducing them on average by 0.07 gpm for the first 50,000 miles and 0.11 gpm averaged over 75,000 miles. It also had a beneficial impact on CO emissions, reducing them on average by 0.09 gpm for the first 50,000 miles and 0.22 gpm averaged over 75,000 miles. Only in the case of HC emissions did Ethyl's analysis indicate that MMT had any adverse effect: HC emissions were on average 0.018 gpm greater for the MMT vehicles both for the first 50,000 miles and for 75,000 miles.[36]

Ethyl also submitted data on the catalyst efficiency of the vehicles which it tested. Ethyl performed back-pressure tests[37] on all its vehicle fleet except one model group after accumulation of 75,000 miles. Back-pressure tests were also performed on a pair of Ford Crown Victorias, one operated on MMT-fuel and one on clear fuel, at speeds higher than those used in Ethyl's 48-vehicle test program.[38] The results of these tests indicate that back-pressure was not significantly different in the MMT vehicles when compared to the clear fuel vehicles. Ethyl also operated two 5.7 liter Corvettes at extremely high speeds (100 mph) for 25,000 miles, one using MMT fuel and one using clear fuel.

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[33] EPA and Ethyl's contract laboratories performed correlation tests (i.e., tests to measure the variability of emissions results between laboratories) and found the correlation to be good.

[34] Howell EEE is a high-quality gasoline with very tight specification of chemical and physical properties. Ethyl stated that it used Howell EEE in order to minimize base fuel variations over the life of the test program so that MMT-induced changes could be better isolated.

[35] A driving cycle is a description of how to drive a vehicle to accumulate mileage including such things as what percentage of driving should be done at what speed and what the overall average speed should be. The AMA cycle is described in EPA Mobile Source Advisory Circular 37–A. (See Docket A–91–46) and is essentially prescribed for use by manufacturers to accumulate mileage for certification of vehicles (See 40 CFR 86.092–26). A driving cycle is used so that test vehicles accumulate mileage in a manner that is supposedly representative of in-use vehicles. The emissions of a test vehicle that has accumulated mileage according to a driving cycle representative of in-use vehicles are more likely to be representative of in-use vehicles' emissions. There are actually three alternative cycles associated with the AMA; however, the average speeds of the three alternatives are very similar ranging from 29.9 mph to 30.72 mph.

[36] Ethyl 1990 Waiver Application, appendix 2A, pp. D–25 through D–27. (Based on integrated emissions analysis of data set ETHYLAS2.)

[37] Back pressure tests are used to determine if significant plugging has occurred in a vehicle's catalyst. The total pressure ahead of the catalyst is back pressure. This pressure is a measure of constriction in flow through the exhaust system caused by flow of the exhaust through the emissions control system and the noise-reducing components of the vehicle. If plugging has occurred in a vehicle, the total pressure ahead of its catalyst, the back pressure, should be greater than expected (e.g., greater than a matching control vehicle).

[38] In this program the maximum speed was 65 mph for the first 25,000 miles and 80 mph for an additional 10,000 miles.

Although similar in magnitude, the back pressure for the MMT vehicle was slightly higher than that for the clear vehicle. Ethyl also presented catalyst efficiency [39] data based on engine-out emissions of its fleet and based on "slave engine" testing [40] for half of its fleet. Results of the slave engine testing indicated no statistically significant difference between the catalyst efficiencies for the MMT vehicle components when compared with the clear vehicle components. Finally, four Chevrolet Corsicas were operated to 100,000 miles, two utilizing MMT fuel and two clear fuel. The purpose of this testing was to investigate the MMT's effect on the catalyst for a longer mileage interval than the 75,000 miles over which most of Ethyl's fleet was driven. However, these Corsicas were not driven at speeds different from the vehicles in Ethyl's 48-vehicle program. Catalyst efficiencies of the MMT vehicles were not significantly different when compared to the clear fuel vehicles.

As mentioned previously, Ford presented original test data which Ford said supported its contention that actual in-use MMT-induced HC emissions increases are potentially far greater than those reported by Ethyl.[41] Ford conducted testing on a more limited scale utilizing eight vehicles, representing two model groups, run for 105,000 miles. Ford chose two model groups which are representative of its newest technology vehicles. One (the Explorer) represented a technology that Ford believed may be especially prone to exhibit a buildup of manganese, due to significantly higher operating temperatures and loads than those of passenger cars. The other model group, the Escorts, had close coupled catalysts, a design which is being incorporated into many new vehicles in order to meet tighter emissions standards. Like Ethyl, Ford used both vehicles run on clear fuel and vehicles run on fuel containing 1/32 gpg MMT. However, Ford's test program differed from Ethyl's program in several ways. When accumulating mileage, Ford utilized a commercial gasoline which contained all of the additives (detergents, etc.) typically found in such fuels. As mentioned previously, Ethyl utilized a very high quality test fuel with tight specifications and no additives. (Although used for actual emissions testing purposes, Ethyl's fuel would not be allowed for mileage accumulation when certifying vehicles since it is not representative of in-use fuel.) When accumulating mileage, Ford utilized what it called its "durability cycle" which it had previously developed. Compared to the AMA cycle used by Ethyl, Ford's driving cycle has a higher average speed (54 miles per hour (mph) versus 30 mph), and a higher percentage of high speed driving.[41] (As previously mentioned, Ethyl utilized the AMA cycle used for certification purposes.) Additionally, in the Ford program, vehicles were tested for emissions at five mileage intervals (5,000, 20,000, 55,000, 85,000 [42] and 105,000 miles) and six emissions tests were done at each testing interval. Ethyl, by comparison, conducted testing every 5,000 miles to 75,000 miles (15 intervals) and utilized two emissions tests at each interval.[44] Ford's MMT vehicles showed HC emissions 0.12 gpm higher, on average, than the control vehicles (compared with 0.018 gpm seen in the Ethyl program).

Ethyl stated that the Ford results generally reflect the emissions performance of a single test vehicle and that the results are not credible. EPA evaluated the Ford data and has concluded that the Ford HC test data represent a very small set of model groups, only two, that were not selected through a statistical sampling process. Thus, very little can be said in a purely statistical way about the implications that the sample results have for the performance of the vehicle fleet as a whole. The Ford data have, however, been examined on a model-by-model basis to see what they tell us about the likely behavior of vehicles from each of the two model groups.

The Ford Escort data failed three of the five tests performed on them.[45] Data from the Explorer model failed all five tests. Thus the picture that emerges from examining the HC data for these models is one of definite increases associated with MMT in both cases. In one of the two models the increase was not sufficient to cause a failure of the current HC standard by the "cause or contribute" test and one other test. In the other model, the Explorers, the increase brings about an unequivocal failure of the current HC emissions standard.

Ford also exchanged the catalysts and oxygen sensors between each pair of vehicles after 100,000 miles of operation and tested for emissions effects. Generally, for HC emissions, the MMT vehicles performed better with components from the control vehicles and the control vehicles' performance degraded when run with components from the MMT vehicles. (A graphical summary of the results of this "component interchange" data can be seen in appendix 1.) Ford concluded that the data clearly show that MMT impairs to a significant degree the performance of emission control devices.

Toyota also submitted data on a single vehicle which was operated for 30,000 miles on MMT-containing fuel after which the oxygen sensor and catalyst were replaced with new components and then driven on fuel not containing MMT for 30,000 miles. Toyota also used a driving cycle with an average speed (41.7 mph) higher than that used by Ethyl for mileage accumulation and used fuel with what Toyota believed was a relatively high trace level of lead than that usually found in unleaded gasoline (0.0045 gpg lead) and oil with a relatively high phosphorus level (0.13 weight percent). Toyota referred to this test procedure as the "Toyota 9-Laps" and presented evidence which it said suggested that the catalyst degradation seen by vehicles using the Toyota 9-Lap test was very similar to in-use catalysts tested by Toyota. Hence, Toyota suggested, these "adjustments" made in creating the Toyota 9-Lap make the testing of a vehicle more consistent with what would happen in actual in-use driving.

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[39] Catalyst efficiency is a measure of what fraction of the emissions entering the catalyst are actually removed (or catalyzed) by the catalyst.

[40] "Slave engine testing" is the testing of vehicle components on a single engine which is not in a vehicle. In this case, catalyst efficiencies between control and MMT vehicles were investigated using exhaust gases from this single engine which were routed through the removed catalysts. This would likely result in a more accurate analysis of catalyst efficiency, since one possible confounding factor, vehicle to vehicle variability, would be eliminated.

[41] EPA's emissions testing lab and Ford's lab routinely undergo correlation testing and the data indicate that correlation is good between the labs. (See memorandum, with attached data, from Martin R. Reineman, EPA Manager of Correlation and Engineering Services, Office of Mobile Sources, January 3, 1992, Docket A-91-49.)

[42] Ford indicated that drives who accumulated mileage in its test program were asked to follow posted speed limits. Ford indicated that the cycle consisted of 8% city driving (25 to 45 mph), 5% gravel or off road driving (25 to 45 mph), 20% rural driving (45 to 55 mph), and 70% highway driving (55 mph). Posted speed limits are shown in parentheses. By way of comparison, the AMA cycle consists of 18.1% of driving at 30 mph, 22.8 at 35 mph, 20.9 at 40 mph, 9.4 at 45 mph, 17% at variable speed and one of the three following options: 16.7% at 50 mph or 10.5% at 55 mph or 8.6% and 7.9% at 55 mph and 70 mph, respectively.

[43] In fact, only two of the four Escorts were tested at 85,000 miles.

[44] Although Ethyl conducted additional emissions tests at some mileage intervals when the initial two tests showed high variation, these additional tests were not used in Ethyl's analysis of its data.

[45] Tests performed on both model groups were: (1) Deterioration factors test, (2) violation mileage test, (3) maximum percentage exceeding the standard test, and (4) "cause or contribute" test. A description of this analysis can be found in a memo to Docket A-91-49 from John Holley, EPA, dated January 7, 1992.

Toyota's data indicated an HC level after the first 30,000 miles of vehicle use (on MMT fuel) about 0.1 gpm higher than the same vehicle after the vehicle was driven for a second 30,000 mile interval with a new catalyst and oxygen sensor. Toyota also submitted data indicating that the efficiency at which the catalyst was operating for the MMT-exposed components was less than that for the non-MMT exposed components.

Ethyl criticized both the Ford data and the Toyota data. Ethyl stated that the Ford "fleet" is not representative of the national fleet in that it contains only two model groups and that half of the vehicles (the Explorers) were "prototype vehicles" unrepresentative of any existing production vehicles. EPA agrees with Ethyl that the Ford test vehicles are not representative of the entire U.S. fleet. As mentioned earlier, the fact that Ford's fleet is not representative is one of the reasons that Ford's data is insufficient to determine, using EPA's past statistical tests, whether MMT will cause or contribute to significant emissions noncompliance. At the same time, the Escort and Explorer represent a significant portion of the vehicle fleet, about four percent of vehicle sales for 1991 in the U.S. [46] More importantly, Ford's data is sufficient to indicate that MMT may affect vehicles more adversely under operating conditions different from those Ethyl used in its test program. The concern that Ford's data raises is not so much that particular models like the Escorts and the Explorers are more sensitive to MMT exposure than others, but that differences in driving cycle or other operating conditions may lead to differences in MMT's emmission effect. If operating conditions are key to MMT's effect, then many, or even most, models may be more seriously affected by MMT than Ethyl's data indicate under certain conditions. As a result, EPA believes Ford's data may be instructive despite the fact that Ford tested only two models.

Ethyl was also concerned that the Explorers which Ford used were "prototypes" unrepresentative of existing production vehicles. Ford has stated that the Explorers tested are different from production vehicles only in their engine design and air pump, which are representative of 1993 model year production engines and air pumps. Moreover, none of the Explorers' emission control related equipment (i.e, catalyst and oxygen sensor) are different from current model vehicles. Based on its knowledge of vehicle design and development, the Agency believes that these vehicles are substantially similar to vehicles which are currently used or will be used in the future. For the reasons given earlier, EPA believes that testing of such prototype vehicles is appropriate because MMT's effect on vehicles' ability to meet the 1994 model year standards is relevant to whether MMT should be granted a waiver.

Ethyl also criticized Ford's component interchange data pointing out that, for at least some of the Ford component interchange data, when the HC emissions increased after putting an MMT-exposed catalyst in a clear vehicle, CO and NO_x emissions did not likewise increase. Ethyl concluded that if "the additive had truly impaired the catalyst, one would expect to see this impariment reflected for all emissions, not just HC emissions." [47] EPA does not agree. In order to draw this conclusion, one would have to assume that the chemical and physical processes whereby each exhaust species is catalyzed are identical. This is not the case. The catalyst component material which breaks down HC and CO is different than that which breaks down NO_x. Furthermore, the physical and chemical processes involved in catalysis of CO ahd HC, such as surface adsorption are different.[48] Additionally, the complex interactions between these exhaust species, the catalyst amd manganese are not understood. Therefore, it is not possible to conclude that the presence of manganese on the catalyst should effect all species in the same manner. Therefore, the Agency believes that the mere fact that different emissions were affected differently by the appearent catalyst degradation seen by Ford does not, in itself, impugn the Ford data.

Ethyl also stated that vehicle maintenance logs provided by Ford demonstrated inconsistent treatment of its test vehicles. Ethyl indicated that Ford replaced ignition system components and spark plugs apparently using different types of components in different vehicles of the same model type. Concerning these issues, Ford noted that, during the course of the test program, spark plugs slightly different from the initial components were used as replacement parts for some vehicles. Ford stated that the plugs were of the same type and heat range as the initial plugs. The Agency believes that this type of slight variation in plug design would likely not materially effect emissions of the vehicle since the plug was the appropriate application and heat range. As to the ignition system component changes, Ford has stated that these components were materially identical, were of a design which had previously proven their durability and reliability and which would not account for any emission or emission deterioration differences between the vehicles. Hence, the Agency agrees that the change in ignition components that took place would not have affected the emissions differences between the vehicles because the components were, as stated by Ford, materially identical.

Ethyl also stated that Ford's vehicles experienced electronic engine control software problems and that vehicle maintenance logs provided by Ford demonstrated inconsistent treatment of its test vehicles. The software problems to which Ethyl refers are concerned with occurrences in Ford's maintenance logs which indicate that the "check engine light" [49] was illuminated. It its reply comments, Ford indicated that engineering evaluations of the vehicles were conducted after any check light illumination and that these evaluations did not indiciate emissions system malfunctions, but, rather, that the sensing logic or methodologies associated with these devices were shown to be more sensitive than necessary. The Agency believes that, lacking any additional information regarding the emissions/related [50] significance of illumination of these lights, engineering evaluations by Ford that the illumination were due to an overly sensitive logic design are sufficient to reassure the Agency that the illumination of these devices did not indicate emissions problems which should be taken into consideration.

Ethyl also noted that emissions tests were not always conducted by Ford before and after maintenance of its vehicles. Ford has supplied data that indicate that it did conduct emissions tests prior to and after emissions-related maintenance. It would be highly unlikely that non-emissions-related maintenance would have any effect on emissions performance. In fact, the regulations for

[46] Automotive News, December 9, 1991.

[47] Ethyl Comments, November 26, 1991, 21.

[48] Heterogeneous Catalysis: Principle & Applications 2nd ed., G.C. Bond, Clarendon Press, Oxford, 1987.

Heterogeneous Catalysis in Practice, Charles Satterfield, McGraw-Hill, New York, 1980.

[49] These diagnostic lights indicate to the driver (by illumination) that there may be a problem associated with a vehcile component. "Software" or computer directions which are associated with this feature "tell" the light when to illuminate as a result of electronic signals which emanate from various vehicle components.

[50] The Agency has defined emissions-related maintenance at 40 CFR 86.090–25.

certification do not require emissions testing before and after all unscheduled maintenance. Therefore, the Agency believes that testing before and after emissions-related maintenance is sufficient to assure that the breakdown of components within the vehicle did not drive the emissions changes seen by Ford.

Ethyl also pointed out that a "prep" cycle [51] was not conducted by Ford prior to emissions testing. Ford has replied that a prep cycle was conducted just prior to emissions testing of the first of several repeated tests but not before each subsequent test of a series of tests at each mileage interval. The Agency agrees with Ford that an additional prep cycle prior to each repeated test at a single mileage interval would not have significantly altered the results of the emissions tests. In the case of subsequent tests after the initial emissions test (which was itself proceeded by a prep cycle), driving associated with the previous emissions test would ensure that no erratic circumstances had been encountered prior to testing the vehicle. Furthermore, since both clear and MMT vehicles were treated similarly, any difference in emissions between the two would likely not be due to lack of a prep cycle.[52]

Ethyl also argued that the driving cycle used by Ford was not the cycle used for certification testing and, in any event, was not representative of actual in-use driving. The fact that Ford used other than the certification durability cycle is not, by itself, a problem with Ford's test program. The purpose of the certification durability cycle is to represent in-use driving for the purpose of determining whether a production prototype vehicle will meet emissions standards in-use. As a matter of practicality, the Agency has required the use of a specified "average" cycle for mileage accumulation in the certification of vehicles. However, the Agency believes that driving habits, like any human activity, vary over a range. Hence, it is reasonable, when evidence is presented suggesting that a driving cycle outside that used for certification may result in very different effects from use of an additive, that the Agency consider the repercussions of such effects. Furthermore, some automakers, believe that vehicles are subjected to more severe conditions in-use than the certification cycle represents. Since automakers whose vehicles do not comply with standards in-use face recall of their noncomplying vehicles, they have a strong incentive to realistically appraise in-use conditions for their effect on vehicle emissions compliance and to test their cars accordingly. Thus, Ford's use of other than the certification cycle is not necessarily inappropriate.

EPA agrees that the Ford test program used a driving cycle that was not representative of "average" in-use driving. Indeed, the Agency doubts that the Ford cycle is representative of the experience of more than a few in-use vehicles. Notwithstanding this, the Ford program does suggest that, under conditions other than those used in the Ethyl program, vehicles show substantially higher MMT-induced HC emissions increases than those found by Ethyl. Because of the relationship described earlier between high driving speeds, engine temperatures and manganese deposition, EPA believes that the difference in driving cycles between the Ethyl and Ford test programs is the likely reason for at least some of the differences in test results. The Agency believes that the AMA cycle that Ethyl used reflects a mileage accumulation driving cycle that approaches the average; however, available data on driving cycle is inadequate to reliably establish the distribution of driving cycles around the average cycle.[53] In fact, the Agency is currently investigating the driving cycles to which in-use vehicles are subjected as part of its implementation of section 206 of the Act. This data will not be available until the spring of 1992. Since the Agency has only 180 days to consider a waiver application, it was not possible to determine, with reasonable confidence, how many vehicles are subjected to driving cycles "more severe" (i.e., higher speed) than the average or how much more severely those cars are driven. Even if the distribution of driving cycles around the average were known, the Agency does not have enough information to determine how the HC emissions increases seen in the Ethyl program would be affected by driving cycles more severe than the AMA but less severe than Ford's. The only data points it has on the effect of driving cycle on MMT-induced HC increases are those from the Ethyl and Ford test programs. Until additional testing is done using driving cycles intermediate in severity to the Ethyl and Ford cycles, EPA cannot map the shape of the curve defining the relationship between driving cycle and MMT HC effect—it could be linear or there could be a "threshold" point after which MMT's effect does not worsen. Thus, despite the fact that Ford's driving cycle is not representative of in-use driving, its use appears to have confirmed that MMT's effect on HC increases will worsen with more severe driving. Until more is known about in-use vehicles' driving cycles and the effects of those cycles on MMT-induced HC increases, EPA cannot conclude that MMT will not cause or contribute to emissions increases based on the Ethyl data alone. Furthermore, although the Toyota test program design is open to some criticism,[54] the limited data is suggestive of a larger MMT-induced increase in HC emissions especially in light of its similarity to the Ford data.

Ethyl indicated that the high-speed testing which it had performed indicates that no catalyst problems should occur at driving cycles outside of "the average". Catalyst durability tests performed by Ethyl on most of its 48-vehicle fleet as well as on other vehicles which were driven using high-speed or high stress driving cycles were evaluated by EPA. As mentioned previously, these involved back-pressure tests on the 48-vehicle fleet after 75,000 miles, on two Crown Victorias driven at higher speeds for a

[51] A "prep" cycle is the driving of a vehicle for a short distance prior to the actual emissions test to ensure that erratic driving or unusual conditions (e.g., extreme heat or cold) just prior to testing, does not have an undue influence on the emissions test, itself.

[52] See memorandum from Martin E. Reineman, EPA Manager of Correlation and Engineering Services, Office of Mobile Sources, January 3, 1992, Docket A-91-46.

[53] EPA found four data sets concerning in-use driving cycles. Two of them do not provide any information on the distribution of driving cycles around the average. A third set is based on diaries kept by vehicle owners and as such is not as reliable as data based on independently monitored vehicles. The third data set also does not reflect actual speed travelled. The fourth set is based on well-monitored (by instruments inserted in the vehicle) vehicles but is limited to a relatively small number of vehicles in one area of the country over a relatively short period and thus is not broad-based enough to permit generalizing to the rest of the country. Furthermore, it has been suggested that the use of instrument monitored vehicles to study driving habits may skew the results since an operator may drive differently if the operator knows his driving is being constantly monitored. (See "Data from Driving Cycle Studies", EPA submission to Docket A-91-46.)

[54] For example, the use of the same vehicle as a control and an MMT vehicle by Toyota has been criticized as poor program design since any observed MMT-effect could be simply due to variation between the quality of components. (When a separate control and test vehicle is used, this variability can be taken into account.) Toyota believes that since the "control" portion of the test occurred after the vehicle had been exposed to MMT, if anything this would minimize the differences in HC emissions between the MMT and control vehicle.

The addition of slightly higher contamination levels of lead (in the gasoline) and phosphorus (in the motor oil) by Toyota also may have led to increased catalyst degradation.

total of 45,000 miles, and on two Corvettes driven for 25,000 miles at very high speeds. The 48-vehicle fleet data appear to indicate that at higher mileage (75,000 miles) and for the driving conditions under which Ethyl's 48-vehicle fleet was tested (the AMA driving cycle), little or no plugging occurred. The tests on the two Crown Victorias suggest that little plugging occurred up to 45,000 miles at speed despite the fact that the cars were driven more severely than the AMA. The tests on the two Corvettes suggested that, at low mileage (25,000 miles) and very high speeds, some small amount of increased plugging occurred.

EPA does not believe that Ethyl's back-pressure test data establishes that MMT's emissions effect is not worsened by more severe driving. The back-pressure data for vehicles that were subjected to high-speed driving are limited to only four vehicles from two model groups and over a mileage range which is less than the vehicles' useful life. Hence, although the 75,000-mile fleet back-pressure testing indicates little plugging, the data on the potential for high speed driving to increase plugging is too limited to come to a statistically sound conclusion. Furthermore, it is not apparent that plugging of the catalyst is the only mechanism which may result in increased HC emissions or catalyst degradation. In fact, automakers and catalyst manufacturers indicate that the mere presence of manganese on the surface of the catalyst may reduce the number of sites at which emissions may be catalyzed. Hence, back-pressure data do not necessarily prove that substantial degradation has not taken place.

Likewise, the catalyst efficiency data was collected on vehicles which had operated at speeds associated with the AMA driving cycle, and thus no conclusions can be reached regarding catalyst efficiency at higher speed cycles for a representative number of vehicles over the appropriate "useful life" of the vehicles.

As mentioned previously, Environment Canada, in its comments, stated that it had little data on MMT effects on Canadian vehicles, but that it appeared that only a relatively small number of catalysts installed on Canadian vehicles had been adversely affected by plugging. It indicated, however, that difference between the Canadian and United States vehicle emission control programs made it less likely that any catalyst plugging would be discerned in Canada than might be the case in the United States. In light of these comments, EPA did not find Canada's experience instructive.

The Agency believes that without additional investigation as to what parameters alter the effect of MMT on emissions, it is impossible to say precisely why Ford (or Toyota) saw significantly greater emissions increases with MMT use than Ethyl saw. As noted earlier, EPA believes a likely candidate parameter to explain the differences between the Ford and Ethyl results is driving cycle. In the past, the Agency has said that in order to meet the section 211(f)(4) burden, it is reasonable for an applicant to choose a representative subset of the fleet to predict what effect the additive would have on the entire U.S. fleet. Hence, the Agency has always accepted data from test programs which "model" the fleet in support of waiver applications. Nevertheless, if an interested party were to present data that a potentially significant subset of the fleet, not tested by the applicant, was especially susceptible to the negative effects of the additive, it would not be unreasonable for the Agency to require specific testing on representative models of that sub-fleet. Likewise, the Agency in the past has accepted emissions testing based on "average" driving cycles using "average" fuels for additive testing. In this case, however, Ford has presented reasonably reliable data that suggest that MMT may have a significantly different effect on a potentially significant subset of the fleet that operates outside of the "average" based upon factors other than model type (such as driving cycle). Further, Toyota has presented data that, although problematic, is notably similar to the Ford data. In the face of such data, the Agency may reasonably conclude that the waiver applicant has not met its burden of establishing that its additive will not cause or contribute to vehicles' noncompliance with emissions standards and that testing under certain "non-average" conditions is required.

Ethyl has asserted in its application that upon presentation of a *prima facie* case that use of HiTEC 3000 will not cause or contribute to the failure of emission control devices to meet applicable standards, the burden of proof then shifts to others trying to refute or critique that case. EPA does not agree. The statute states that the waiver applicant must establish that the additive does not cause or contribute to any vehicle's failure to meet the emission standards with respect to which it has been certified. Nowhere does it provide that the burden of proof shifts upon an applicant making a *prima facie* case. EPA believes the burden stays with the applicant, which has the financial interest in obtaining the waiver. It would not be reasonable to require other entities without a financial interest in the waiver to expend the kind of resources a waiver applicant must sometimes expend to develop data adequate for use in EPA's statistical tests. It is enough that other interested entities provide reasonably reliable data that raises a substantial doubt that the waiver applicant has failed to make the required showing. The burden is then on the waiver applicant to address the doubt raised by the additional data.

Ethyl also claims that EPA must decide issues of fact in wavier decisions based on the preponderance of the evidence in the record. Section 211(f)(4), however, does not specify this standard of proof. Rather, it provides that the wavier applicant must "establish" that its fuel will not cause or contribute to vehicle emission noncompliance. Where, as here, there is insufficient data to make a determination one way or another on important factual issues, Ethyl may not use a preponderance of evidence test to bootstrap the requisite showing. Until data exist that are adequate to make the relevant determinations with reasonable confidence, Ethyl has not established that MMT will not cause or contribute to emissions noncompliance.

Beyond that, the conclusions to which Ethyl's evidence point do not address the conclusions that result from the Ford evidence. As stated above, the results of the Ford data indicate that factors other than those taken into account in Ethyl's test program may significantly and adversely influence the emissions caused by the addition of HiTEC 3000 to unleaded gasoline.

Ethyl's test data indicate that, when EPA's traditional statistical tests are applied, the 0.018 gpm increase in HC emissions would not cause or contribute to vehicles' failure to meet emissions standards. On this basis, Ethyl claimed that it had made its statutorily required showing. However, Ethyl's data do not address the fact that a potentially significant subset of the fleet may be susceptible to the negative effects of HiTEC 3000. Although the Ford data does not unequivocally demonstrate that HiTEC 3000 does cause or contribute to the failure of vehicles to meet standards, the Ford data show that some factor or combination of factors can cause emissions increases far larger than those observed by Ethyl. Moreover, although it can be hypothesized what these factor(s) may be, the Agency cannot say with any degree of certainty why Ford's

vehicles demonstrated such a different MMT-induced emissions increase. Finally, the uncertainty posed by the possibility of increases higher than those seen by Ethyl is complicated by the fact that, beginning in model year 1994, vehicles must meet new more stringent hydrocarbon emission standards over a longer useful life. (A description of these new more stringent standards can be found in appendix 2.) Thus, any MMT-induced increase in emissions over and above those seen by the Ethyl program would be even more significant in contributing to vehicles to fail standards. Until the factor which caused the differences between the Ford and Ethyl test programs can be isolated and the effect that this parameter may have on MMT-induced emissions changes can be investigated, whether MMT will cause or contribute to vehicles failing to meet emissions standards cannot be determined. Thus, the Agency must deny the application.

b. Other Issues

As mentioned previously in this decision, many commenters expressed concerns about the possible adverse health effects of an increase in airborne manganese. The bulk of these concerns dealt primarily with first, the known sever neurotoxic effect of high-level exposure to manganese through inhalation, and second, with the profound lack of data regarding the chronic effects of low-level inhalation exposure to manganese in humans. It was repeatedly pointed out by commenters that neurotoxic damage could occur prior to the onset of overt symptoms.

Ethyl submitted comments regarding manganese emissions. It is Ethyl's position that the manganese emissions resulting from the use of MMT in unleaded gasoline would be so small as to not materially affect human exposure to airborne manganese. In support of this view, Ethyl submitted analyses in its 1990 application (and subsequent comments) as well as further analyses and data on exposure modeling and monitoring in its 1991 application.

During EPA's consideration of the 1990 Ethyl submission, EPA's Office of Research and Development (ORD) conducted a manganese inhalation risk assessment based on the available data which found that because of "the considerable uncertainties and data gaps in the available information. * * * It is not possible * * * to conclude definitively that the increased use of MMT as a fuel additive will (or will not) increase public health risk." [55] (ORD also investigated potential hazards associated with water contamination resulting from accidental spills or leakages of pure MMT and concluded that while spills or leaks would not pose a human health risk due to groundwater contamination, available data are insufficient to determine whether spills and leaks could affect exposure to benthic organisms.

In order to obtain assistance in describing information needed to improve its manganese health risk assessment (and also to improve its environmental hazard identification of issues associated with MMT itself), EPA, in conjunction with National Institute of Environmental Health Sciences, conducted a Manganese/MMT Conference on March 12–15, 1991. The conference allowed the Agency to solicit scientific information and judgments from invited extramural scientists reflecting a wide range of scientific disciplines. Invited participants included representatives of Ethyl Corporation, the Environmental Defense Fund, the Center for Disease Control, the U.S. Food and Drug Administration and Environment Canada. A summary of the workshop discussion was provided to each participant. The information obtained in that meeting was also used by ORD to prepare a prioritized list of needed research for improving its manganese inhalation risk assessment. EPA currently is evaluating ORD's recommendations. Because the data needed are unavailable to make a reasonable judgment as to MMT's manganese health effects, this issue remains unresolved.

In addition, the Agency is concerned about possible additional atmospheric loading associated with widespread use of MMT in light of the serious ozone nonattainment problem in the U.S. As mentioned earlier, in 1990 there were still 98 areas, containing 135 million people, that violated the ambient ozone standard. The magnitude of the hydrocarbon increase associated with the use of MMT is an environment concern because hydrocarbons plays a key role in the information of ozone or urban smog and in secondary formation of particulate matter.

Using the HC increase shown by the Ethyl fleet (0.018 gpm) for 1981 and later model vehicles and a HC increase of 0.09 for pre-1981 model vehicles,[56] EPA estimates, prior to 1995 [57] that with an 84 percent market penetration for HiTEC 3000,[58] HC increases for the entire nation could be approximately 48,000 tons per year.[59] In comparison, the estimated HC reductions associated with full implementation of the Tier I standards for passenger cars and light-duty trucks prescribed under the new Clean Air Act is expected to be 193,600 tpy when fully implemented in the year 2010.[60]

Ethyl argues that the MMT-induced HC increases observed in its test fleet are mitigated by other claimed benefits. First, "real world" HC emissions will be less since the replacement of aromatic octane enhancers by MMT will offset the HC increase and result in less reactive emissions. Second, MMT use will actually result in decreases in NOX, CO, benzene and formaldehyde emissions. Finally, refinery emissions will decrease and crude oil savings will be realized.

EPA is still evaluating the validity of Ethyl's arguments and their impact on total atmospheric loading and, as such the Agency has chosen not to base its decision, in whole or part, on this issue.

VII. Findings and Conclusions

As discussed in section VI above, data submitted to the Agency by Ford indicate that the amount of HC increase

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[55] See "Comments on the use of Methylcyclopentadienyl Manganese Tricarbonyl in Unleaded Gasoline", Docket A–90–16.

[56] This 0.09 gpm increase is based on the Coordinating Research Council study of MMT (Benson, J.D., and R.J. Campion and L.J. Painter. "Results of Coordinating Research Council MMT Field Test Program", SAE Paper 790708, June 11–15, 1979, p.6.). Using Mobile 4.1 data for 1992, almost 14 percent of the gasoline vehicle miles traveled (VMT) were pre-1981 model vehicles.

[57] In 1995, section 211(k) of the Act requires that reformulated gasoline be sold in at least the nine worst ozone nonattainment areas in the country. This provision provides for a ban on fuels containing heavy metals like Mn unless waived. It is premature to preduct whether such a waiver would be granted and the extent to which, if granted, refiners might need to compensate in other ways for any HC increases due to MMT use.

[58] Sobotka, Inc., an EPA contractor investigated the likely market penetration which would be achieved by HiTEC 3000 nationwide. For an all-conventional gasoline scenario (i.e., prior to the introduction of reformulated gasoline), Sobotka estimated that 84% of U.S. gasoline would likely utilize HiTEC 3000. (See Memo from Sobotka, Inc., dated January 7, 1992 in Docket A–91–46.)

[59] This estimate is based on a yearly U.S. gasoline consumption of 110 billion gallons (DOE/EIA Petroleum Supply Monthly, November 1991, Table 5, p. 37) and an average nationwide fuel economy of 19.1 miles per gallon (USEPA Mobile 4.1 Motor Fuel Consumption Model, 1991). California, which represents about 12 percent of U.S. consumption was excluded from this nationwide figure because it has a statewide statutory prohibition of manganese-containing gasoline additives.

[60] "Ozone Nonattainment Analysis Clean Air Amendments of 1990" (September, 1991), a draft report prepared for EPA by E.H. Pechan & Associates, Inc., pp. 7 & 9. The tonnage figures were reduced by 12% to remove California tonnage and make the figures comparable to MMT increases.

resulting from the use of HiTEC 3000 in gasoline may significantly depend upon factors other than those considered by Ethyl. The Agency cannot determine what other factors resulted in the large HC increases observed by Ford. Therefore, until the factor or factors which resulted in these differences can be isolated and the effect that these parameters may have on MMT-induced emissions changes can be investigated, the Agency must conclude that the record does not adequately show that vehicles will not fail standards as a result of using MMT-containing fuel under diverse operating conditions. Therefore the applicant has not met the statutory burden required by the Act and the request for a waiver is hereby denied.

Finally, EPA acknowledges the broad scope and generally high quality of the testing program carried out by Ethyl. However, the core of the Agency's dilemma, and the root of its decision to deny the waiver request by Ethyl, is the Agency's inability to reconcile the results of the vehicle testing done by Ford and Ethyl. The Agency believes that it may be possible to design a test program aimed at reconciling these differences. We would be willing to work with Ethyl and representatives of motor vehicle manufacturers to explore means of promptly developing such additional data.

EPA has determined that this action does not meet any of the criteria for classification as a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. This action is not a "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because EPA has not published, and is not required to publish, a Notice of Proposed Rulemaking under the Administrative Procedure Act, 5 U.S.C. 553(b), or any other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small entities.

This is a final Agency action of national applicability. Jurisdiction to review this action lies exclusively in the U.S. Court of Appeals for the District of Columbia Circuit. Under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of January 22, 1992. Under section 307(b)(2) of the Act, today's action may not be challenged later in a separate judicial proceeding brought by the Agency to enforce the statutory prohibitions.

Dated January 8, 1992.

William K. Reilly,

Administrator.

BILLING CODE 6560-50-M

VOL 57 ISS 14 JA 22 1992 UMI

Appendix 1: FORD EMISSIONS DATA: COMPONENT CHANGES
Tailpipe Hydrocarbons

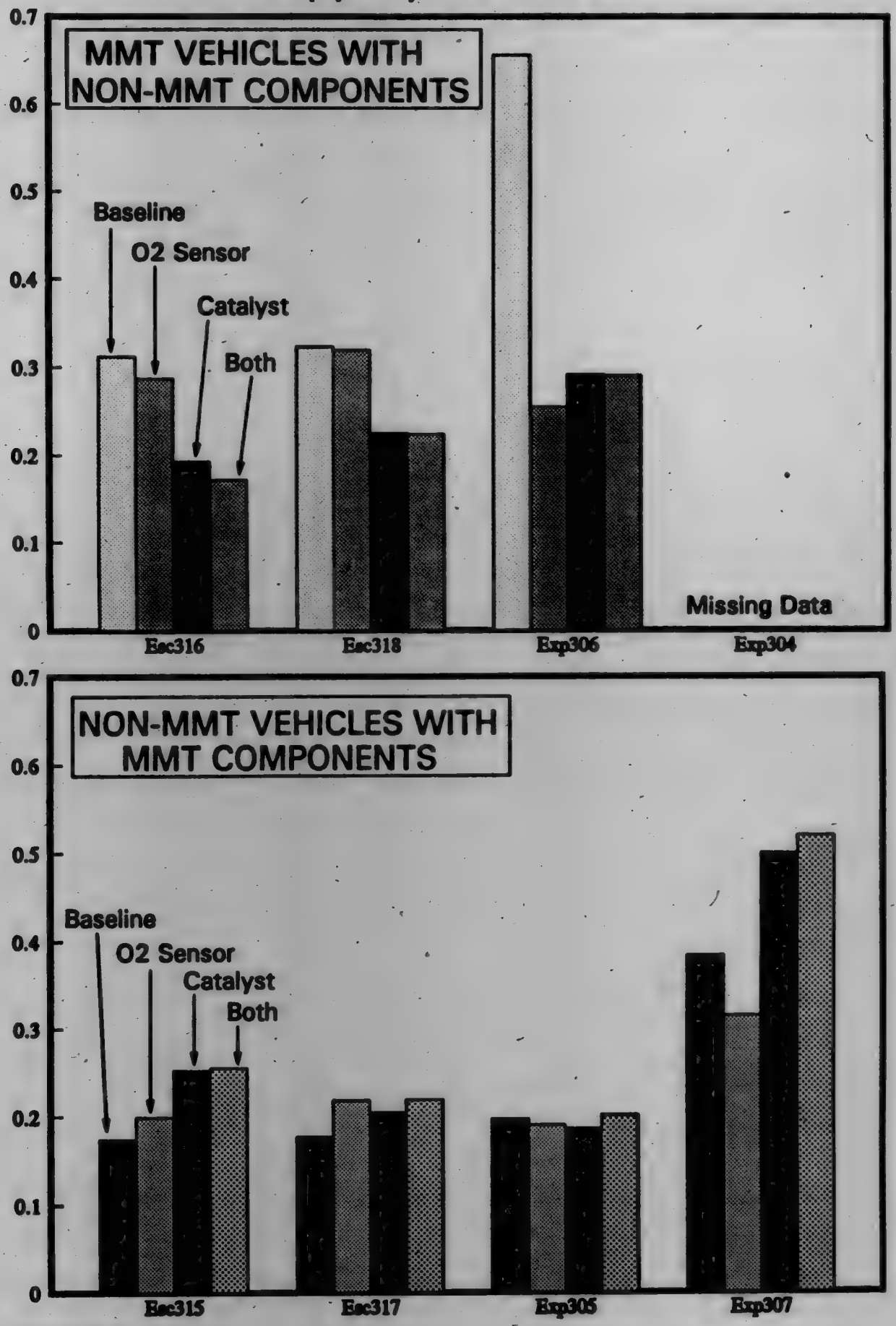

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APPENDIX 2.—CURRENT AND FUTURE HYDROCARBON STANDARDS

Vehicle type	Current HC standard	Future NMHC [1] standard [2]
LDV [3] 5 year/50K	0.41 gpm	0.25
LDT 11 year/120K	0.8 gpm	
LDT 5 year/50K		0.25
LDV/LDT 10 year/100K		0.31
LDT>3750 lbs (5/50K)		0.32
LDT>3750 lbs (10/100K).		0.40

Notes:
[1] NMHC refers to non-methane hydrocarbon. The new standard is based upon a subset of the total hydrocarbons emitted. Therefore, direct comparison with the current standard is not appropriate. The new standard, however, is more stringent than the old standard in consistent hydrocarbon species.
[2] Future standards are phased in over a three year period during which 40 percent of a manufacturer's sales volumes must meet these standards for model year 1994, 80 percent for 1995, and 100 percent after 1995.
[3] LDV refers to light duty vehicle. LDT refers to light duty truck.

[FR Doc. 92-1187 Filed 1-21-92; 8:45 am]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-400061; FRL-4043-2]

Emergency Planning and Community Right-To-Know Act; Train-the-Trainers Workshops

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of conferences.

SUMMARY: EPA will hold a series of 3-day train-the-trainers workshops on section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) reporting requirements. The purpose of these workshops is to present a model course to persons who plan to train others to comply with the reporting requirements of EPCRA section 313. Additionally, this year's workshops will address in detail the new reporting requirements under EPCRA section 313 on source reduction and recycling activities which have been added pursuant to the Pollution Prevention Act of 1990.

DATES: The conferences will held on the following dates: February 4–6, February 18–20, March 3–5, March 17–19, and April 7–9, 1992. The meetings will start each day at 9 a.m. and end at approximately 5 p.m.

ADDRESSES: The conferences will be held at the following locations: February 4–6, at the Holiday Inn, Financial District, 750 Kearny St., San Francisco, CA 94108; February 18–20 at the Hyatt Regency Reston, 1800 Presidents St., Reston VA 22090; March 3–5, and the Stouffers Orlando Resort, 6677 Sea Harbor Dr., Orlando, Florida; March 17–19 at the Crockett Hotel, 320 Bonham, San Antonio, TX 78205; and April 7–9, at the Chicago Hilton and Towers, 720 South Michigan Ave., Chicago, IL 60605.

FOR FURTHER INFORMATION CONTACT: Tamara McNamara, Economics and Technology Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., (TS-779), Washington DC 20460, Telephone: 1-703-934-3195, Fax: 1-703-934-3156.

SUPPLEMENTARY INFORMATION: Registration will be taken on a first-come-first served basis until one week prior to the start of each conference. Persons who should consider attending are representatives from industry, trade associations, consulting firms, or university continuing education departments. Attendance is restricted to those organizations that intend to provide training on a regular basis and expect to conduct a minimum of two training courses on section 313 prior to July 1, 1992. Persons who successfully complete the course will obtain a certification of proficiency. There is limited space available. To register, contact either by telephone, fax, or in writing, the person listed under **FOR FURTHER INFORMATION CONTACT.** Notification will be sent to each applicant regarding their acceptance for the training session. There is no registration fee for this training.

If there is insufficient interest in any of the conferences, they may be canceled. The Agency bears no responsibility for attendees' decision to purchase nonrefundable transportation tickets or accommodation reservations.

Dated: January 13, 1992.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92-1534 Filed 1-21-92; 8:45 am]
BILLING CODE 6560-50-F

[OPP-180857; FRL-4007-1]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 12 States as listed below, and one to the Puerto Rico Department of Agriculture and to the United States Department of Agriculture. Crisis exemptions were initiated by six various States, and one by the United States Department of Agriculture. These exemptions, issued during the months of August and September, except for the one in May and July, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA denied specific exemption requests from the Iowa Department of Agriculture, Louisiana Department of Agriculture and Forestry, and the Pennsylvania Department of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-5806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Department of Agriculture for the use of avermectin B_1 on head lettuce to control the American serpentine leafminer; September 10, 1991, to June 15, 1992. (Susan Stanton)

2. Arizona Department of Agriculture is modifying the trigard 75W (cyromazine) crop rotation restrictions to allow rotation to alfalfa, sudangrass, and wheat following treatment of head lettuce to control the American serpentine leafminer; September 10, 1991, to June 15, 1992. (Susan Stanton)

3. California Department of Food and Agriculture for the use of methyl bromide on potatoes to control nematodes; August 15, 1991, to August 14, 1992. (Libby Pemberton)

4. Florida Department of Agriculture and Consumer Services for the use of avermectin B_1 on fresh market tomatoes to control leafminers; September 20, 1991, to July 31, 1992. (Libby Pemberton)

5. Florida Department of Agriculture and Consumer Services for the use of avermectin B_1 on head lettuce to control leafminers; August 26, 1991, to July 31, 1992. (Libby Pemberton)

6. Florida Department of Agriculture and Consumer Services for the use of fenprofenthrin on tomatoes to control the sweet potato whitefly; May 8, 1991, to April 1, 1992. (Andrea Beard)

7. Illinois Department of Agriculture for the use of permethrin on snap beans to control European corn borers and

corn earworm; August 16, 1991, to December 31, 1991. (Andrea Beard)

8. Kansas State Plant Board for the use of bifenthrin on field corn to control two-spotted spider mites; August 26, 1991, to September 15, 1991. Kansas had initiated a crisis exemption for this use. (Jim Tompkins)

9. Minnesota Department of Agriculture for the use of permethrin on snap beans to control European corn borer and corn earworm; August 16, 1991, to December 31, 1991. (Andrea Beard)

10. Nebraska Department of Agriculture for the use of bifenthrin on field corn to control spider mites; August 26, 1991, to September 15, 1991. Nebraska had initiated a crisis exemption for this use. (Jim Tompkins)

11. New Mexico Department of Agriculture for the use of bifenthrin on field corn to control spider mites; August 26, 1991, to September 15, 1991. New Mexico had initiated a crisis exemption for this use. (Jim Tompkins)

12. Oregon Department of Agriculture for the use of oxyfluorfen on grasses grown for seed to control various weeds; September 18, 1991, to January 15, 1992. (Libby Pemberton)

13. Oregon Department of Agriculture for the use of bifenthrin on potatoes to control spider mites; August 29, 1991, to September 30, 1991. (Jim Tompkins)

14. Puerto Rico Department of Agriculture for the use of esfenvalerate on pineapples to control Batrachedra comosae moth; August 26, 1991, to August 25, 1992. (Libby Pemberton)

15. Texas Department of Agriculture for the use of bifenthrin on field corn to control spider mites; August 26, 1991, to September 15, 1991. Texas had initiated a crisis for this use. (Jim Tompkins)

16. Texas Department of Agriculture for the use of linuron on parsley to control broadleaf weeds; September 18, 1991, to March 31, 1992. (Jim Tompkins)

17. Texas Department of Agriculture for the use of fenpropathrin on tomatoes to control sweet potato whitefly; September 27, 1991, to September 26, 1992. A solicitation of public comment was published in the **Federal Register** of August 30, 1991 (56 FR 43022); no comments were received. An emergency situation appeared to exist. The proposed use is not expected to pose an unacceptable risk to the public or the environment. (Jim Tompkins)

18. Washington Department of Agriculture for the use of bifenthrin on potatoes to control spider mites; August 29, 1991, to September 30, 1991. (Jim Tompkins)

19. Wisconsin Department of Agriculture for the use of permethrin on snap beans to control European corn borer and corn earworm; August 16, 1991, to December 31, 1991. (Andrea Beard)

Crisis exemptions were initiated by the:

1. Georgia Department of Agriculture on September 17, 1991, for the use of iprodione on canola (rape) seed to control *alternaria brassicicola*. This program is expected to last until December 31, 1991. (Libby Pemberton)

2. Idaho Department of Agriculture on July 10, 1991, for the use of chlorpyrifos on wheat to control orange blossom wheat midge. This program has ended. (Andrea Beard)

3. Louisiana Department of Agriculture and Forestry on August 16, 1991, for the use of cyfluthrin on sugarcane to control sugarcane borer. This crisis exemption was revoked by EPA on August 23, 1991. (Libby Pemberton)

4. Mississippi Department of Agriculture on September 3, 1991, for the use of paraquat on field corn as a desiccant. This program has ended. (Jim Tompkins)

5. New Mexico Department of Agriculture on September 3, 1991, for the use of cyhalothrin on sorghum to control fall armyworm and the sorghum headworm. This program has ended. (Andrea Beard)

6. United States Department of Agriculture on September 23, 1991, for the use of methyl bromide on asparagus to control foreign plant pests. This program is expected to last until September 22, 1994. (Libby Pemberton)

EPA has denied specific exemption requests from the:

1. Iowa Department of Agriculture to authorize feeding of corn seed screenings to livestock following applications of chlorothalonil to corn grown for seed to control foliar diseases. (Susan Stanton)

2. Louisiana Department of Agriculture and Forestry for the use of cyhalothrin on sorghum to control the sorghum midge. (Andrea Beard).

3. Pennsylvania Department of Agriculture for the use of imazethapyr on alfalfa to control broadleaf weeds. (Andrea Beard)

Authority: 7 U.S.C. 136.

Dated: December 27, 1991.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 92-1530 Filed 1-21-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180859; FRL 4042-4]

Receipt of Application for Emergency Exemption to use Hydrogen Cyanimide; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Georgia Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide hydrogen cyanimide (CAS 420-04-2) on up to 5,000 acres of peach trees as a growth regulator, to break peach tree dormancy. The Applicant proposes the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before February 6, 1992.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180859," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone

number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–305–7890).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of Dormex on peach trees as a growth regulator to break the trees' dormancy period. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that a serious situation could be developing in Georgia, due to the unusually warm winter temperatures, which are likely to result in inadequate chilling hours required to break peach dormancy. Each peach variety requires a certain number of "chilling hours" (hours below 45°F) during the winter to resume normal growth in the spring. Insufficient chilling results in lack of leaves, and fruit abortion. Peach varieties grown in Georgia require anywhere from 400 up to 1,050 chill hours to break their dormancy period. The applicant claims that peaches that are as little as 100 hours short on their chilling hours will have yields reduced by one-half or more. If they are 200 hours short of their chilling requirement, a total crop failure often results. Trees which are 200 hours or more short on chilling requirement frequently have major limbs die and produce a reduced crop the following year.

The National Weather Service is predicting warmer than normal temperatures for Georgia for the November-January period. For example, on November 20, 1991, the high temperature was 81°F. February 15th is considered the cut-off date for peach chilling accumulation, and the Applicant fears that a crisis situation may be developing.

The Applicant states that in a severe low chilling year (such as occurred in 1973-74), production fell to one-third of normal. It is estimated that in a moderately low chilling winter, about 25 percent of the peach trees in the state of Georgia would suffer from lack of chilling. Based on the farm gate value for peaches in 1990 of $36.7 million, a 25 percent loss in production would represent a dollar loss of up to $9.2 million for Georgia peach growers.

The Applicant plans to treat up to 5,000 acres using up to 7,500 gallons of product (3,675 gallons active ingredient). A single application would be applied (if conditions warrant) during mid-winter (usually late January - first week in February) in south and middle Georgia, 4-6 weeks before normal bud break. A 0.5 to 1.5 percent Dormex plus 0.25 percent non-ionic surfactant solution will be prepared in water to make 100 gallons of spray solution. Fifty to 100 gallons of finished spray per mature acre would be applied using an air blast sprayer or handgun.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Georgia Department of Agriculture.

Dated: January 10, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–1533 Filed 1–21–92; 8:45 am]

BILLING CODE 6560–50–F

[PF–559; FRL–4010–4]

E.I. DuPont de Nemours & Co.; Notice of Amended Pesticide Petition for Hexazinone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from E.I. DuPont de Nemours & Co. the filing of an amendment to pesticide petition (PP) 1F3967 proposing to establish a tolerance of 10 parts per million (ppm) for the residues of the herbicide hexazinone and its metabolites in or on pasture and rangeland hay.

ADDRESSES: By mail, submit written comments identified by the document control number, (PF–559), to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM–23), Registration Division (H–7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–7830.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from E.I. DuPont de Nemours & Co., Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880–0038, an amendment to the notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 1F3967 that appeared in the **Federal Register** of May 1, 1991 (56 FR 19997) and proposed to amend 40 CFR 180.396 to establish a tolerance of 30.0 parts per million (ppm) for residues of the herbicide hexazinone (3-cyclohexyl-6-dimethylamino-1-methyl-1,3,5-triazine-2-4(1H,3H)-dione) in or on pasture and rangeland hay. The petitioner has requested that the petition be amended to revise the tolerance for hexazinone and its metabolites in or on pasture and rangeland hay at 10 ppm. The analytical method for determining residues is nitrogen-selective gas chromatography.

Authority: 21 U.S.C. 346a and 348.

Dated: January 12, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–1532 Filed 1–21–92; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS-59830; FRL 4044-5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 3 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92-82, January 23, 1992.
Y 92-83, January 26, 1992.
Y 92-84, January 27, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-82

Manufacturer. Confidential.

Chemical. (G) Modified polyethylene glycol.

Use/Production. (G) Thickner for water based systems. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 8 g/kg species (rat). Eye irritation: moderate species (rabbit). Skin irritation: moderate species (rabbit).

Y 92-83

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) Polymer from aromatic amine maleimide and a vinyl comonomer.

Use/Production. (G) Coating resin. Prod. range: Confidential.

Y 92-84

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer.

Use/Production. (G) Coating for an open, nondispersive use. Prod. range: Confidential.

Dated: January 15, 1992.

Ruby N. Boyd,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-1531 Filed 1-21-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4094-81]

Massachusetts Marine Sanitation Device Standard for Coastal Waters of Wareham; Determination

On November 14, 1991, notice was published that the State of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the coastal waters of the Town of Wareham, County of Plymouth, within the State of Massachusetts (56 FR 57891). The petition was filed pursuant to section 312(f)(3) of Public Law 92-500 as amended by Public Law 95-217 and Public Law 100-4.

Section 312(f)(3) states:

> After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of Massachusetts certified that there are seven pump-out facilities available to service vessels in Wareham coastal waters.

Pump-out facility No. 1 is located at Bevan's Marina, near the head of Buttermilk Bay. Service is limited to vessels less than seven feet in height because of two bridges crossing the mouth of the Bay. This facility is open from 8: a.m. to 5:p.m., seven days a week, and has a $5.00 fee per pump-out.

Pump-out facility No. 2 is located at Onset Bay Marine, on the northern shore of Onset Bay, and will acccommodate vessels with a draft of six feet. This facility is open from 7:30 a.m. to 6 p.m. Sunday through Friday, and 7:30 a.m. to 7 p.m. on Saturday. There is a $5.00 fee per pump-out with a resident sticker or purchase of $10.00 or more at the marina store, or $15.00 fee per pump-out without those conditions.

Pump-out facility No. 3 is located at the Point Independence Yacht Club, on the northern shore of Onset Bay, and will accommodate vessels with a draft of six feet. This facility is open from 9 a.m. to 5 p.m., seven days a week, and there is no charge per pump-out.

Pump-out facility No. 4 is located at Stonebridge Marina, on the northern shore of Onset Bay. Stonebridge Marina is located on East Avenue and the East River, just north of the Onset Avenue Bridge. The height of the bridge, 11 feet at low tide, prohibits some boats from using this marina. This facility is open from 9 a.m. to 7 p.m., seven days a week, and there is no charge per pump-out.

Pump-out facility No. 5 is located at the Onset Town Pier, on the northern shore of Onset Bay near the mouth of Sunset Cove, and will accommodate vessels with a draft of 16 feet. This facility is open from 8 a.m. to 4 p.m., seven days a week, and is free to the public.

Pump-out facility No. 6 is located at Warr's Marine, on the Wareham River, and can accommodate vessels with a draft of 6 feet. This facility is open from 8 a.m. to 4 p.m., and charges a $10.00 fee per pump-out.

Pump-out facility No. 7 is located at the Wareham Boat Yard, on the Weweantic River. The Wareham Boat Yard is located on Rose Point Avenue north of the Route 6 bridge. The bridge, which has a clearance of 5 feet, and the 4 foot water depth prohibit larger boats from accessing the marina. This facility is open from 9 a.m. to 5 p.m., seven days a week, and there is no charge per pump-out.

All pump-out facilities are tied into the municipal sewage system with the exception of Bevan's Marine, which is scheduled to be connected by Spring, 1992, and the Wareham Boat yard, which treats its pump-out waste in an on-site septic system and which services primarily small vessels without MSDs. The Wareham Water Pollution Control Facility is located on Route 6, and discharges to the Agawam River. This

facility, which was built in the early 1970s, provides secondary treatment and has consistently met EPA and Massachusetts Department of Environmental Protection effluent discharge standards.

Annual vessel usage of Wareham coastal waters consists of approximately 1300 vessels, including 15 commercial and 200 transient recreational vessels. None of these vessels will be excluded from using one or more of the existing pump-out facilities. More accurate data on the type and number of boats, and type and number of MSDs used, will be collected during mooring registration for the 1992 boating season.

There were no comments received by the Agency on the merits of the petition prior to the deadline for receipt of comments as stated in the November 14, 1991 **Federal Register** "Receipt of Petition" notice.

Based on an examination of the petition and its supporting information, which included a site visit by EPA Region I staff, and the fact that the Agency recieved no comments concerning the petition, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the coastal waters of Wareham, within the State of Massachusetts. This determination is made pursuant to section 312(f)(3) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4.

Dated: January 10, 1992.

Julie Belaga,

Regional Administrator.

[FR Doc. 92–1528 Filed 1–21–92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Peter Deilmann Reederei, Am Hafensteig 19, 2430 Neustadt in Holstein, Germany.
Vessel: BERLIN

Dated: January 16, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–1496 Filed 1–21–92; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Royal Cruise Line Limited and Kloster Cruise Limited
One Maritime Plaza, Suite 1400
San Francisco, CA 94111
Vessel: Royal Odyssey

Dated: January 15, 1992

Joseph C. Polking,

Secretary.

[FR Doc. 92–1470 Filed 1–21–92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Dkt. C–3357]

Reproductive Genetics In Vitro, P.C., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a provider of infertility services and its president from making false and unsubstantiated claims regarding the success of their in vitro fertilization program.

DATES: Complaint and Order issued December 23, 1991.[1]

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Walter Gross or Michael Katz, FTC/H–200, Washington, DC 20580. (202) 326–3319 or 326–3123.

SUPPLEMENTARY INFORMATION: On Wednesday, October 16, 1991, there was published in the **Federal Register**, 56 FR 51901, a proposed consent agreement with analysis In the Matter of Reproductive Genetics In Vitro, P.C., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 92–1526 Filed 1–21–92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C–3353]

Spanish Telemarketing Industries, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, three California telemarketing companies and an individual, that produce Spanish-language television advertisements for a weight loss product, from representing that any weight control food, drug, product, device, or service causes weight loss without increased physical activity and/or decreased caloric intake.

DATES: Complaint and Order issued December 20, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Sylvia Kundig, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744–7920.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On Wednesday, October 16, 1991, there was published in the **Federal Register**, 56 FR 51903, a proposed consent agreement with analysis in the Matter of Spanish Telemarketing Industries, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 92-1525 Filed 1-21-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Advisory Committee Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following advisory committees scheduled to meet during the month of February 1992:

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: February 5-7, 1992, 8 a.m.

Place: Holiday Inn—Chevy Chase, Chase Room, 5520 Wisconsin Avenue, Chevy Chase, Maryland. Open February 5, 1 p.m. to 2 p.m. Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing experimental, analytical and theoretical research on costs, quality, access, effectiveness and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research.

Agenda: The open session of the meeting on February 5 from 1 p.m. to 2 p.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing research and demonstration grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, Appendix 2 and title 5, U.S. Code 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, Suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227-8449.

Name: Health Care Technology Study Section.

Date and Time: February 10-12, 1992, 8 a.m.

Place: Marriott Residence Inn, Montgomery II Room, 7335 Wisconsin Avenue, Bethesda, MD. Open February 10, 8 a.m. to 9 a.m. Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the utilization and effects of health care technologies and procedures as well as applications in the area of information and decision sciences relating to health care delivery.

Agenda: The open session on February 10 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. The closed sessions of the meeting will be devoted to a review of health services research grant applications emphasizing medical care technologies and procedures, and relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, Appendix 2 and title 5, U.S. Code 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Alan E. Mayers, Ph.D., Agency for Health Care Policy and Research, Suite #602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227-8449.

Name: Health Services Research Review Subcommittee.

Date and Time: February 20-21, 1992, 8:30 a.m.

Place: Marriott Residence Inn, Calvert I Conference Room, 7335 Wisconsin Avenue, Bethesda, Maryland. Open February 20, 8:30 a.m. to 9 a.m. Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research.

Agenda: The open session of the meeting on February 20 from 8:30 AM to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing analytical and theoretical research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2 and title 5, U.S. Code 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Patricia G. Thompson, Ph.D., Agency for Health Care Policy and Research, Suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227-8449.

Name: Health Services Research Dissemination and User Liaison Advisory Committee

Date and Time: February 25-26, 1992, 8 a.m.

Place: Residence Inn, Montgomery II, 7335 Wisconsin Avenue, Bethesda, Maryland. Open February 25, 8 a.m. to 9 a.m. Closed for remainder of meeting.

Purpose: The Committee is charged with the review of and making recommendations on grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and AHCPR liaison with health care policy makers, providers, and consumers.

Agenda: The open session of the meeting on February 25 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed portions of the meeting, the Committee will be reviewing grant applications relating to the dissemination of research on the organization, costs, and efficiency of health care. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2 and title 5, U.S. Code 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Mrs. Linda Blankenbaker, Agency for Health Care Policy and Research, Suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227-8449.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: January 15, 1992.
J. Jarrett Clinton, MD,
Administrator.
[FR Doc. 92-1497 Filed 1-21-92; 8:45 am]
BILLING CODE 4160-60-M

Centers for Disease Control

[Announcement Number 210]

Availability of Fiscal Year 1992 Funds for STD Professional Education in Computer-Based Clinic Quality Assurance Systems

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of cooperative agreement funds to design, develop, and implement or improve computer-based medical record systems to enhance training at the Sexually Transmitted Diseases (STD) Prevention/Training (P/T) Centers.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection and Sexually Transmitted Diseases. (For ordering a copy of Healthy People 2000, see the section Where To Obtain Additional Information.)

Authority

This program is authorized under the Public Health Service Act: Section 318 [42 U.S.C. 247c], as amended. Regulations governing Grants and Cooperative Agreements for STD Research, Demonstrations, and Public and Professional Education are codified in part 51b, subparts A and F of title 42, Code of Federal Regulations.

Eligible Applicants

Eligible applicants are the current recipients of STD Prevention/Training Center grant funds. Eligibility is limited to these organizations since they currently provide (1) specialized courses for STD clinicians to improve their examination skills according to CDC curricula and (2) a "model" clinic environment according to published CDC standards. (These eligible recipients are located in San Juan, Puerto Rico; Chicago, Illinois; Cincinnati, Ohio; Baltimore, Maryland; Denver, Colorado; Newark, New Jersey; Seattle, Washington; Birmingham, Alabama; Dallas, Texas; San Francisco, California; and Long Beach, California.)

Availability of Funds

Approximately $500,000 is available in Fiscal Year 1992 to fund approximately two to three awards for a 12-month budget period within a 1 year project period. Awards will range from $100,000 to $250,000 with an average award of $200,000. Awards are expected to be made on or about June 1, 1992. Funding estimates outlined above may vary and are subject to change. Recipients must provide support to maintain the computer-based medical record system in subsequent years.

Use of Funds

Funds may be used to support software development and necessary equipment. Funds may not be used to lease space, or for equipment or services that do not directly relate to this project. Unless specifically approved, funds may not be used for substantial renovation of space. Funds shall be used to supplement and not supplant the non-Federal funds that would otherwise be made available for a computer-based medical records system.

Program Requirements

In conducting activities to achieve the purpose of the program, the recipient shall be responsible for conducting activities under A., and the Centers for Disease Control for the activities under B., below:

A. Recipient Activities

1. Identify an individual with appropriate experience and credentials (computer coordinator) within the health department who has primary responsibility and authority necessary to conduct this project, including the ability to communicate with clinical staff and understand the needs of the clinic and the training application of the project.

2. Maintain liaison with state and local STD and HIV prevention program managers regarding disease morbidity reporting and future data linkages.

3. Maintain liaison with the STD P/T Center program coordinator regarding the budget, needs of the system for training, and compliance with the "model" clinic concept in the STD Clinical Practice Guidelines, 1991.

4. Collaborate with CDC in (a) selecting and defining software and a medical record that share common elements, meet requirements for quality assurance, and are compatible with future information linkages; and (b) selecting hardware that is cost efficient, based on available resources, and meets requirements for training and linkage with CDC-produced computer information systems.

5. Let a contract for services (software development, equipment, etc.) within 60 days of award stating the activity, time schedule, and cost of contract services. The contract should also allow the flexibility to refine the activity during the service period.

6. Coordinate with other award recipients to publish a final analysis on the success of computer-based medical record systems and to share common experiences.

B. CDC Activities

1. Provide scientific expertise in the selection of software design, and computer equipment.

2. Conduct site visits (a) at the applicant's request to advise on potential system designs and (b) to provide technical assistance with project development, implementation, and analysis.

3. Coordinate publication on the success of computer-based medical records systems in improving the quality of care in the STD clinic.

4. Assist project to identify potential problems and provide technical assistance.

Evaluation Criteria

Application will be reviewed and evaluated according to the following criteria (Maximum 100 points):

A. The need for program support, the level of financial effort of the local program toward total project costs, and the estimates of "maintenance of effort," and ability to support the system in subsequent years. (10 points)

B. The applicant's demonstrated ability to successfully purchase software and hardware in a timely manner, as demonstrated in previous grants/cooperative agreements. (20 points)

c. The extent to which the applicant has satisfactorily described (1) the proposed integration of an automated medical record system into its current record management structure, (2) the design of the medical record, quality assurance audit criteria, and "model" clinic status relative to the *STD Clinical Practice Guidelines, 1991,* and (3) the proposed training based on past P/T center performance. (60 points)

D. The extent to which the applicant (1) intends to collaborate with CDC on project design, implementation, and training and (2) ensures coordination with state and local STD and HIV prevention programs regarding future data needs. (10 points)

In addition, consideration will be given to the appropriateness and

reasonableness of the budget request, proposed use of project funds, and the need for program support. The level of support will depend on the availability of funds.

Other Requirements

Any materials for which support has been provided in whole or in part with PHS funds shall be subject to a nonexclusive, irrevocable, royalty-free license to the Government to reproduce, translate, publish, or otherwise use and authorize others to use the work for government purposes.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.978, Sexually Transmitted Disease Research, Demonstrations, and Public Information and Education Grants.

Application Submission and Deadline

The original and two copies of the application, using PHS form 5161–1, must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, MS E14, Atlanta, GA 30305, on or before April 1, 1992.

A. Deadline: Applications shall be considered as meeting the deadline if they are either: 1. Received on or before the deadline, or 2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.)

B. Late Applications: Applications that do not meet the criteria in A.1., or A.2., will be considered late applications. Late applications will not be considered in the current funding cycle and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Linda Long, Grants Management Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., MS E14, Atlanta, GA 30305, (404) 842–6640 or FTS 236–6640.

Programmatic technical assistance may be obtained from Kimberly Geissman, National Center for Prevention Services, DSTD/HIVP, MS E27, Centers for Disease Control, Atlanta, GA 30333, (404) 639–1233 or FTS 236–1233.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Governments Printing Office, Washington, DC 20402–9325, (202) 783–3238.

Announcement Number 210, "STD PROFESSIONAL EDUCATION IN COMPUTER-BASED CLINIC QUALITY ASSURANCE SYSTEMS," must be referenced in all requests for information pertaining to these projects.

Dated: January 15, 1992.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 92–1477 Filed 1–21–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 92N–0013]

Drug Export; Retro-Tek™ HIV–1/HTLV–I Combination ELISA Test Kit

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cellular Products, Incorporated, has filed an application requesting approval for the export of the RETRO-TEK™ HIV–1/HTLV–I COMBINATION ELISA Test Kits to Italy, and Spain.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Cellular Products, Inc., 872 Main St., Buffalo, NY 14202, has filed an application requesting approval for the export of RETRO-TEK™ HIV–1/HTLV–I COMBINATION ELISA test kits to Italy and Spain. The RETRO-TEK™ HIV–1/HTLV–I COMBINATION ELISA test kit is an enzyme linked immunosorbent assay (ELISA) for the simultaneous detection of antibodies to either Human Immunodeficiency Virus Type 1 (HIV–1) and/or Human T-Lymphototrophic Virus Type I (HTLV–I) in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on December 9, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 3, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: January 7, 1992.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 92-1553 Filed 1-21-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92N-0016]

Drug Export; Optiray 240 (Ioversol Injection 51%), Optiray 300 (Ioversol Injection 64%), Optiray 350 (Ioversol Injection 74%)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Millinckrodt Medical, Inc., has filed an application requesting approval for the export of the human drug Optiray (ioversol injection) to Germany.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Mallinckrodt Medical, Inc., 675 McDonnel Blvd., P.O. Box 5840, St. Louis, MO 63134, has filed an application requesting approval for the export of the drug Optiray (ioversol injection) to Germany. This product is used as diagnostic radiopaque media. The application was received and filed in the Center for Drug Evaluation and Research on December 23, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 3, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 15, 1992.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 92-1552 Filed 1-21-92; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OIS-015-N]

Medicare Program; Quarterly Listing of Program Issuances and Coverage Decisions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretative regulations and other **Federal Register** notices, and statements of policy that were published during July, August, and September 1991 that relate to the Medicare program. Section 1871(c) of the Social Security Act requires that we publish a list of our Medicare issuances in the **Federal Register** at least every three months.

Wefd also are providing the content of the revisions to the Medicare Coverage Issues Manual published during this quarter. On August 21, 1989 (54 FR 34555), we published the content of the Manual and indicated that we will publish quarterly any updates. Adding the Medicare Coverage Issues Manual changes to this listing allows us to fulfill this requirement in a manner that facilitates identification of coverage and other changes in our manuals.

FOR FURTHER INFORMATION CONTACT:

Allen Savadkin, (410) 966-5265 (For Instruction Information).

Sam Shekar, (410) 966-5316 (For Coverage Information).

Margaret Teeters, (410) 966-4678 (For All Other Information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare program, a program that pays for health care and related services for 34 million Medicare beneficiaries. Administration of the program involves (1) providing information to beneficiaries, health care providers, and the public; and (2) effective communications with regional offices, State governments, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the program is based, we issue regulations under authority granted the Secretary under sections 1102 and 1871 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necesseary to administer the program efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** no less frequently than every three months a list of all Medicare manual instructions, interpretative rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). As in prior notices, although both substantive and interpretative regulations published in the **Federal Register** in accordance with section 1871(a) of the Act are not subject to the publication requirement of section 1871(c), for the sake of completeness of the listing of operational and policy statements, we are including those regulations (proposed and final) published.

II. Coveraged Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers and intermediaries have copies of the Medicare Coverage Issues Manual,

which identifies those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the **Federal Register**. We also sometimes issue proposed or final national coverage decision changes in separate **Federal Register** notices. Table IV of this notice contains the text of revisions to the Coverage Issues Manual published between July 1 and September 30, 1991. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare. If no Coverage Issues Manual revisions were published during a particular quarter, our listing will reflect that fact.

Not all revisions to the Coverage Issues Manual contain major changes. As with any instruction, sometimes minor clarifications or revisions are made within the text. We have reprinted manual revisions as transmitted to manual holders. The new text is shown in italics. We will not reprint the table of contents, since the table of contents serves primarily as a finding aid for the user of the manual and does not identify items as covered or not.

We issued our first update that included the text of changes to the Coverage Issues Manual on March 20, 1990 (55 FR 10290), our second on February 6, 1991 (56 FR 4830), our third on July 5, 1991 (56 FR 30752), and our fourth on November 22, 1991 (56 FR 58913). The issuance update found in Table IV of this notice, when added to material from the manual published on August 21, 1989, and the updates published on March 20, 1990, February 6, 1991, July 5, 1991, and November 22, 1991 constitute a complete manual as of September 30, 1991. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

III. How to Use the Listing

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretative regulations, or coverage decisions published during this timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577); those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication; and those seeking information on the location of regional depository libraries may wish to review Table IV of our first notice. We have divided this current listing into four tables.

Table I describes where interested individuals can get a description of all previously published HCFA manuals and memoranda.

Table II of this notice lists, for each of our manuals or Program Memoranda, a transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Table III lists all substantive and interpretative Medicare regulations and general notices published in the **Federal Register** during this period. For each item, we list the date published, the title of the regulation, and the Parts of the Code of Federal Regulations (CFR) which have changed.

Table IV sets forth the revisions to the Medicare Coverage Issues Manual that were published during this quarter. For each revision, we give a brief synopsis of the revision as it appears on the transmittal sheet, the manual section number, and the title of the section. We present a complete copy of the revised material, no matter how minor the revision, and identify the revision by printing in italics the text that was changed. If the transmittal includes material unrelated to the revised sections, for example, when the addition of revised material causes other sections to be repaginated, we do not reprint the unrelated material.

IV. How to Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, Washington, DC 20402, Telephone (202) 783-3238; National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487-4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS will give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the Government Printing Office at the same address indicated above for manual issuances. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

V. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the Federal Depository Library Program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal Government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are

shown in Table II, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Regional Office Manual, Part 2, Medicare (HCFA–Pub. 23–2) transmittal entitled "The Contractor Performance Evaluation Program," use the Superintendent of Documents No. HE 22.8/8 and the HCFA transmittal number 315.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Individuals are expected to purchase copies or arrange to review them as noted above.

Questions concerning items in Tables I or II may be addressed to Allen Savadkin, Office of Insuances, Health Care Financing Administration, room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5265.

Questions concerning items in Tables IV may be addressed to Sam Shekar, Office of Coverage and Eligibility Policy, Health Care Financing Administration, room 445 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5316.

Questions concerning all other information may be addressed to Margaret Teeters, Regulations Staff, Health Care Financing Administration, room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–4678.

Table I

Description of Manuals, Memoranda and HCFA Rulings

An extensive descriptive listing of manuals and memoranda was previously published at 53 FR 21730 and supplemented at 53 FR 36891 and 53 FR 50577. Also, for a complete description of the Medicare Coverage Issues Manual, please review 54 FR 34555.

TABLE II—MEDICARE MANUAL INSTRUCTIONS JULY–SEPTEMBER 1991

Trans. No.	Manual/Subject/Publication No.
	Intermediary Manual **Part 1—Fiscal Administration (HCFA-Pub. 31-1)** **(Superintendent of Documents No. HE 22.8/6-3)**
121	● HCFA Approval of Subcontracts and Requests for Automated Data Processing Systems and Operations Changes
	Intermediary Manual **Part 3—Claims Process (HCFA-Pub. 13-3)** **(Superintendent of Documents No. HE 22.8/6**
1534	● Payment for Blood Clotting Factor Administered to Hemophilia Inpatients
	PPS Pricer Program
1535	● Reporting Claims for Outpatient Services Using HCFA Common Procedure Coding System
	HCPCS Codes for Diagnostic Services and Medical Services
	Non-Reportable HCPCS Codes
1536	● Review of Form HCFA–1450 for Inpatient and Outpatient Bills
	Coding Structures
	Billing For Durable Medical Equipment and Orthotic/Prosthetic Devices
1537	● Additional Payment Amounts for Hospitals with a Disproportionate Share of Low Income Patients
	Radiology Pricer Program
1538	● Doctors of Podiatric Medicine
	Services of Interns or Residents-In-Training
	Services of Interns and Residents
	Physician Members of Utilization Review Committee
1539	● Incorrect Determinations of Noncoverage By Provider—Demand Bills
1540	● Form HCFA–1450 Consistency Edits
	HCPCS for Hospital Outpatient Radiology and Other Diagnostic Services
	Radiology Services HCPCS Codes
	Carriers Manual **Part 1—Fiscal Administration (HCFA-Pub. 14-1)** **(Superintendent of Documents No. HE 22.8/7-2)**
116	● HCFA Approval of Subcontracts and Requests for Automated Data Processing Systems and Operations Changes
	Carriers Manual **Part 2—Program Administration (HCFA-Pub. 14-2)** **(Superintendent of Documents No. HE 22.8/7-3)**
115	● Common Working File Host Performance Evaluation Progam
	Carriers Manual **Part 3—Claims Process (HCFA-Pub. 14-3)** **(Superintendent of Documents No. HE 22.8/7)**
1398	● Prohibition Against Billing for Unassigned Physician Services Which are Determined to be Not Reasonable and Necessary
1399	● Evidence of Medical Necessity for Home Oxygen Therapy
	Scheduling and Documenting Recertification of Medical Necessity for Oxygen
	Coverage Guidelines for Durable Medical Equipment Claims
	Evidence of Medical Necessity for Home Oxygen Therapy
	Evidence of Medical Necessity in Other Than Oxygen Claims
	Evidence of Medical Necessity-Oxygen Claims
1400	● Rural Health Clinic Services

TABLE II—MEDICARE MANUAL INSTRUCTIONS JULY–SEPTEMBER 1991—Continued

Trans. No.	Manual/Subject/Publication No.
	Inpatient Services Not Directly Delivered or Arranged for by the Hospital
	General Billing and Claims Processing Requirements
	Payment Determination
	Special Requirements for Oxygen Claims
	EOMB Messages
	Oxygen HCPCS Code
	Oxygen Equipment and Contents Billing Chart
1401	● Doctors of Podiatric Medicine
	Physician's Certification and Recertification
1402	● Calculation
	Calculation of Fee Schedule Amounts
	National Limitation Amount
	Who Can Bill and Receive Payment for Clinical Laboratory Tests
	Program Memorandum Intermediaries (HCFA-Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–91–5	● Letter to Participating Hospitals Regarding Hospital Organ Procurement Protocol Requirements
A–91–6	● Coverage of the Use of Air Fluidized Beds under Part A in SNFs
A–91–7	● Investigational Intraocular Lenses
	Program Memorandum Carriers (HCFA-Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)
B–91–7	● Computing the Historical Payment Basis
B–91–8	● Note: This transmittal will not be issued.
B–91–9	● Medicare Certification Numbers for Clinical Laboratories, Ambulatory Surgical Centers, Portable X-Ray Supplies and Physical Therapists in Independent Practice
B–91–10	● Investigational Intraocular Lenses
	Program Memorandum Intermediaries/Carriers (HCFA-Pub. 60A/B) (Superintendent of Documents No. HE 22.8/6–5)
AB–91–6	● Section 1879 Limitation of Liability—Statutory and Administrative Extensions of Favorable Presumptions for Home Health Agencies, Skilled Nursing Facilities and Hospices
	Regional Office Manual Part 2—Medicare (HCFA-Pub. 23–2) (Superintendent of Documents No. HE 22.8/6)
315	● The Contractor Performance Evaluation Program
	Scoring Methodology
	Appeals
	Recording and Reporting CPEP Scores
	Corrective Action Plan
	Multi-Regional and Multi-State Contractors
316	● Subcontracts and Automated Data Processing Changes
317	● Regional Office Medicare Secondary Payer Outreach Responsibilities
318	● Target Dates in Preparing ACERs/Service Area Reports
	ACERS for Multi-Regional Contractors
	Multi-Regional/State SAR Composition
	Evaluation of Contractors Under Budget—Flexibility Contracts
	Corrective Action
	ACER Format
	Contractor Profile
	CWF Host Performance Evaluation Program
	Hospital Manual (HCFA-Pub. 10) (Superintendent of Documents No. HE 22.8/2)
618	● Payment for Blood Clotting Factor Administered to Hemophilia Inpatients
619	● Reporting Outpatient Services Using HCFA Common Procedure Coding System
	HCPCS Codes for Diagnostic Services and Medical Services
	Non-Reportable HCPCS Codes
620	● Services of Interns or Residents-In-Training
	Who May Sign Certification or Recertification
	Content of Physician's Certification
	Utilization Review Plan
	Other Diagnostic or Therapeutic Items or Services
621	● HCPCS for Hospital Outpatient Radiology and Other Diagnostic Services
	Radiology Services HCPCS Codes
	Other Diagnostic Services HCPCS Codes

TABLE II—MEDICARE MANUAL INSTRUCTIONS JULY–SEPTEMBER 1991—Continued

Trans. No.	Manual/Subject/Publication No.
	Home Health Agency Manual (HCFA-Pub. 11) (Superintendent of Documents No. HE 22.8/5)
246	● Billing for Durable Medical Equipment and Orthotic/Prosthetic Devices
	Completion of Form HCFA–1450 For Home Health Agency Billing
	Coding Structures
247	● Benefits
	Services of Interns and Residents
	Skilled Nursing Manual (HCFA–Pub. 12) (Superintendent of Documents No. HE 22.8/3)
304	● Who May Sign Certification or Recertification
	Medical Services of an Interm or Resident-In-Training
	Physician's Certification and Recertification for Outpatient Physical Therapy, Occupational Therapy, and Speech Pathology
	Utilization Review Plan
	Physician Members of Utilization Review Committee
	Limitations on Payment for Inpatient Services Following Adverse Finding by Utilization Review Committee
	Availability and Appropriateness of Other Facilities and Services
	Failure to Make Timely Review of Cases
305	● Index
	Rural Health Clinic Manual (HFCA–Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
44	● Completion of HCFA–1450 by Independent Rural Health Clinics
	Billing for Mammography Screening
	Carrier Quality Assurance Handbook (HCFA–Pub. 25) (Superintendent of Documents No. HE 22.8/4)
45	● Coding/Data Entry
46	● Review Procedures and Error Determinations Based HCFA–1500 Claim Form Entries
	Coverage Issues Manual (HCFA-Pub. 9) (Superintendent of Documents No. HE 22.8/14)
49	● Percutaneous Transluminal Angioplasty in the Treatment of Obstructive Lesions of Arteriovenous Dialysis Fistulas
50	● Intraocular Lenses
51	● Note: This transmittal will not be issued
52	● Adult Liver Transplantation
	Pediatric Liver Transplantation
	Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9) (Superintendent of Documents No. HE 22.8/9)
103	● Physician's Certification and Recertification
	Provider Reimbursement Manual Part 1—(HCFA-Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)
360	● Methodology for Determining Per Diem Prospective Payment Rates Effective for Cost Reporting Periods Beginning on or After October 1, 1990 and Before October 1, 1991
361	● Contracts Exceeding 5 Years
	Insurance Purchased From a Limited Purpose Insurance Company Premium Costs
	Provider Reimbursement Manual Part 1—Chapter 27 (HCFA-Pub. 15–27) Reimbursement for ESRD and Transplant Services (Superintendent of Documents No. HE 22.8/4)
16	● Inform HCFA Central Office of Composite Rate Exception Requests
	Submission of Documentation
	Provider Reimbursement Manual Part II—(HCFA-Pub. 15–II(X) Provider Cost Reporting Forms and Instructions (Superintendent of Documents No. HE 22.8/4)
3	● Supplemental Worksheet E–3, Part IV—Direct Graduate Medical Education and ESRD Outpatient Direct Medical Education Cost

TABLE III.—REGULATIONS AND NOTICES PUBLISHED JUNE–SEPTEMBER 1991

Publication date/cite	42 CFR Part	Title
	FINAL RULES	
07/10/91 (56 FR 31332)	405	Medicare Program; Changes Concerning Interest Rates Charged on Overpayments and Underpayments (Correction Published 08/22/91 (56 FR 41726)).
07/16/91 (56 FR 32987)	484	Medicare Program; Home Health Agencies: Conditions of Participation.
08/12/91 (56 FR 38074)	400, 406, 407	Medicare and Medicaid Programs; Eligibility for Premium Hospital Insurance; State Buy-In Agreements.
08/30/91 (56 FR 43196)	412, 413	Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1992 Rates.
08/30/91 (56 FR 43358)	412, 413	Prospective Payment System for Inpatient Hospital Capital-Related Costs.
09/04/91 (56 FR 43708)	405, 410, 413, 414	Medicare Program; Coverage of Erythropoietin (EPO) Used by Competent Home Dialysis Patients.
09/13/91 (56 FR 46559)	405	Medicare Program; Review of Information and Recordkeeping Requirements for Providers of Outpatient Physical Therapy and/or Speech Pathology Services.
09/13/91 (56 FR 46562)	417	Medicare Program; Explanation of Enrollee Rights and Other Provisions Applicable to Health Maintenance Organizations and Competitive Medical Plans.
09/24/91 (56 FR 48110)	408	Medicare Program; Grace and Termination for Nonpayment of Supplementary Medical Insurance (Part B) Premiums for Insured and Uninsured Persons.
09/26/91 (56 FR 48826)	442, 447, 483, 488, 489, 498	Medicare and Medicaid; Requirements for Long Term Care Facilities.
09/26/91 (56 FR 48880)	431, 433, 483	Medicare and Medicaid Programs; Nurse Aide Training and Competency Evaluation Programs.
	PROPOSED RULES	
07/05/91 (56 FR 30723)	417	Health Maintenance Organizations; Conforming Health Maintenance Organization Rules to Statutory Requirements.
07/11/91 (56 FR 31597)	417	Health Maintenance Organizations; Group Specific Ratings (Correction Published 08/13/91 (56 FR 38485)).
07/22/91 (56 FR 33403)	417, 431, 434, 1003	Medicare and State Health Care Programs: Fraud and Abuse; Civil Monetary Penalties and Intermediate Sanctions for Certain Violations by Health Maintenance Organizations and Competitive Medical Plans.
08/02/91 (56 FR 37054)	441, 488, 489	Medicare and Medicaid Programs; Survey and Enforcement Requirements and Alternative Sanctions for Home Health Agencies.
08/19/91 (56 FR 41110)	413	Medicare Program; Uniform Electronic Cost Reporting System for Hospitals.
09/09/91 (56 FR 45926)	405	Medicare Program; Revision of the Medicare Economic Index.
09/27/91 (56 FR 49154)	409, 418, 484	Medicare Program; Medicare Coverage of Home Health Services, Medicare Conditions of Participation, and Home Health Aide Supervision.

NOTICES

Publication date/cite	Title
07/01/91 (56 FR 29967)	Medicare Program; Peer Review Organization Contracts; Solicitation of Statements of Interest from In-State Organizations (AK, ID, ME, VT, DC).
07/05/91 (56 FR 30752)	Medicare Program; Quarterly Listing of Program Issuances and Coverage Decisions.
07/11/91 (56 FR 31666)	Medicare Program; Revised Procedures for Paying Claims From Providers of Services.
07/12/91 (56 FR 31952)	Medicare Program; Medicare Secondary Payer Data Match.
07/16/91 (56 FR 32437)	Medicare Program; Establishment of the Practicing Physicians Advisory Council and Request for Nominations for Members.
07/30/91 (56 FR 36030)	Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1992 Rates (Correction Notice for the Proposed Rule Published 06/03/91 (56 FR 25178).
09/04/91 (56 FR 43790)	Medicare Program; Peer Review Organizations: Revised Scopes of Work for Delaware, Missouri, Montana, Nebraska, New Jersey, Nevada, Oklahoma, Rhode Island, South Caroline, Washington, and Wyoming.
09/05/91 (56 FR 43929)	Medicare and Medicaid Programs; Recognition of the Community Health Accreditation Program Standards for Home Care Organizations.
09/20/91 (56 FR 47758)	Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance.
09/20/91 (56 FR 47763)	Medicare Program; Conditional Designation of States in Which Medicare SELECT Insurance May be Issued.

Table IV—Medicare Coverage Issues Manual

(For the reader's convenience, new material and changes to previously published material are in italics. If any part of a sentence in the manual instruction has changed, the entire line is shown in italics. The transmittal includes material unrelated to revised sections. We are not reprinting the unrelated material.)

[Transmittal No. 49; section 50–32, Percutaneous Transluminal Angioplasty (PTA) in the Treatment of Arteriosclerotic Obstructions in the Lower Extremities, and section 50–34, Obsolete or Unreliable Diagnostic Tests.

CHANGED IMPLEMENTING INSTRUCTION—EFFECTIVE DATE: For services performed on or after 7/29/91.

Section 50–32.4, Percutaneous Transluminal Angioplasty (PTA) in the Treatment of Obstructive Lesions of Arteriovenous Dialysis Fistulas. This section is revised to provide for coverage of PTA in the treatment of obstructive lesions of arteriovenous dialysis fistulas. This procedure was previously excluded from coverage. This revision also includes the appropriate International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) codes and/or the HCFA Common Procedure Coding System (HCPCS) codes.

Note: ICD–9–CM and HCPCS codes have also been added to §§ 50–32 through 50–32.3.]

50–32 PERCUTANEOUS TRANSLUMINAL ANGIOPLASTY (PTA) IN THE TREATMENT OF ARTERIOSCLEROTIC OBSTRUCTIONS IN THE LOWER EXTREMITIES (EFFECTIVE FOR SERVICES PERFORMED ON AND AFTER MAY 15, 1981)

This procedure involves inserting a balloon catheter into a narrow or occluded artery in order to recanalize and dilate the artery by inflating the balloon. *PTA in the treatment of arteriosclerotic obstructions in the lower extremities, i.e., the iliac, femoral, and popliteal arteries is a covered service. (ICD–9–CM code 39.59 or CPT codes 75962 or 75963)*

50–32.1 Percutaneous Transluminal Coronary Angioplasty (PTCA) in the Treatment of Stenotic Lesions of a Single Coronary Artery (Effective for Services Performed on and After November 22, 1985.)

PTCA (ICD–9–CM codes 36.01–36.03 or CPT code 92982), a percutaneous transluminal angioplasty procedure performed in the coronary artery, is covered for treatment of stenotic lesions of a single coronary artery for patients for whom the likely alternative treatment is coronary bypass surgery, and who exhibit the following characteristics:

- angina refractory to optimal medical management;
- objective evidence of myocardial ischemia; and
- lesions amenable to angioplasty.

50–32.2 Percutaneous Transluminal Angioplasty (PTA) in the Treatment of Stenotic Lesions of the Renal Arteries (Effective for Services Performed on and After March 21, 1983)

PTA in the treatment of stenotic lesions of the renal arteries is a covered procedure for a limited group of patients. (ICD–9–CM code 39.59 or CPT codes 75966 or 75967.) This group comprises those patients in whom there is an inadequate response to a thorough medical management of symptoms and for whom surgery is the likely alternative. PTA for this group of patients is an alternative to surgery, not simply an addition to medical management.

50.32.3 Percutaneous Transluminal Angioplasty (PTA) in the Treatment of Obstructive Lesions of the Aortic Arch Vessels—Not Covered

PTA in the treatment of obstructive lesions of the aortic arch vessels, *including the carotid, subclavian, and vertebral arteries, is excluded from coverage. (ICD–9–CM code 39.59 or use CPT code 76498, unlisted diagnostic radiologic procedure, and submit report with claim.) This treatment is a* relatively new procedure whose safety and efficacy has not yet been established.

50–32.4 Percutaneous Transluminal Angioplasty (PTA) in the Treatment of Obstructive Lesions of Arteriovenous Dialysis Fistulas (Effective for services performed on and after 7/29/91)

The use of PTA to dilate failing arteriovenous dialysis fistulas and grafts is a covered procedure. (ICD–9–CM code 39.59 or use CPT code 76499, unlisted diagnostic radiologic procedure, and submit report with claim.) Current medical data support a conclusion that PTA for this indication is clinically effective and well tolerated by patients.

50–34 OBSOLETE OR UNRELIABLE DIAGNOSTIC TESTS (Effective for services performed on and After May 15, 1980)

Do not routinely pay for the following diagnostic tests because they are obsolete and have been replaced by more advanced procedures. The listed tests may be paid for only if the medical need for the procedure is satisfactorily *justified by the physician who performs it. When the services are subject to PRO review, the PRO is responsible for determining that satisfactory medical justification exists. When the services are not subject to PRO review, the* intermediary or carrier is responsible for determining that satisfactory medical justification exists:

- amylase, blood isoenzymes, electrophoretic
- chromium, blood
- guanase, blood
- zinc sulphate turbidity, blood
- skin test, cat scratch fever
- skin test, lymphopathia venereum
- circulation time, one test
- cephalin flocculation
- congo red, blood
- hormones, adrenocorticotropin quantitative animal tests
- hormones, adrenocorticotropin quantitative bioassay
- thymol turbidity, blood
- skin test, actinomycosis
- skin test, brucellosis
- skin test, psittacosis
- skin test, trichinosis

[Transmittal No. 50; section 65–7, Intraocular Lenses (IOLs).

CHANGED IMPLEMENTING INSTRUCTIONS—EFFECTIVE DATE: Services performed on or after May 30, 1991. This section has been revised to reflect the fact that Medicare no longer covers most investigational IOLs. Medicare coverage of IOLs is not allowed for lenses in the FDA core study or modified core study investigational groups. Medicare coverage of IOLs is only allowed for lenses fully approved for marketing by the FDA or those awaiting FDA approval in the FDA adjunct study group. IOLs in the adjunct study group differ only slightly from fully approved models. Manufacturers that wanted to continue an investigational IOL model in the adjunct study group into 1989 were required to submit to FDA a pre-market application for those IOLs before January 1, 1989.

Because emerging technology has resulted in IOLs manufactured from a variety of materials, including soft silicone gels, the word "hard" has been deleted from the definition of an IOL as an artificial lens.]

65–7 INTRAOCULAR LENSES (IOLS)

An intraocular lens, or pseudophakos, is an artificial lens which may be implanted to replace the natural lens after cataract surgery. Intraocular lens implantation services, as well as the lens itself, may be covered if reasonable and necessary for the individual. Implantation services may include hospital, surgical, and other medical services, including pre-implantation ultrasound (A-scan) eye measurement of one or both eyes.

The Food and Drug Administration (FDA) has classified IOLs into the following four categories, any of which may be covered:

- Anterior chamber angle fixation lenses;
- Iris fixation lenses;
- Irido-capsular fixation lenses; and
- Posterior chamber lenses.

Medicare does not cover IOLs in the FDA core study or modified core study investigational groups. Medicare covers only IOLs fully approved for marketing by the FDA or those lenses awaiting FDA approval in the FDA adjunct study group. IOL models in the adjunct study group differ only slightly from those already approved by FDA. Manufacturers that wanted to continue an investigational IOL model in the adjunct study group into 1989 were required to submit to FDA pre-market application for those IOLs before January 1, 1989.

[Transmittal No. 52; section 35–53, Adult Liver Transplantation.

CHANGED IMPLEMENTING INSTRUCTIONS—EFFECTIVE DATE: For services performed on or after March 8, 1990, in certain facilities approved by Medicare as meeting regulatory criteria. This section is renamed and revised to extend coverage of liver transplantation to adults with specific conditions when performed in facilities approved by HCFA as meeting certain institutional criteria.]

[Transmittal N. 52; section 35–53.1, Pediatric Liver Transplantation.

NEW IMPLEMENTING INSTRUCTIONS—EFFECTIVE DATE:

For services performed on or after April 12, 1991. This section reiterates our policy on coverage of pediatric liver transplantation and, effective for services performed on or after April 12, 1991, provides instructions for applying to become a HCFA approved pediatric liver transplant facility described in the Federal Register of that date, 56 FR 15006.]

35–53 ADULT LIVER TRANSPLANTATION

A. General. Adult liver transplantation is covered under Medicare when performed in a facility which is approved by HCFA as meeting institutional coverage criteria, and for patients with one of the following conditions:

- *Primary biliary cirrhosis;*
- *Primary sclerosing cholangitis;*
- *Postnecrotic cirrhosis, hepatitis B surface antigen negative;*
- *Alcoholic cirrhosis;*
- *Alpha-1 antitrypsin deficiency disease;*
- *Wilson's disease; or*
- *Primary hemochromatosis.*

Coverage of adult liver transplantation is effective as of the date of the facility's approval, but for applications received before July 13, 1991, can be effective as early as March 8, 1990. (See Federal Register 56 FR 15006 dated April 12, 1991.)

B. Follow-up Care. Follow-up care required as a result of a covered liver transplant is covered, provided such services are otherwise reasonable and necessary. Follow-up care is also covered for patients who have been discharged from a hospital after receiving a noncovered liver transplant. Coverage for follow-up care is for items and services that are reasonable and necessary as determined by Medicare guidelines. (See Intermediary Manual § 3101.14 and Medicare Carriers Manual § 2300.1.)

C. Immunosuppressive Drugs. See Intermediary Manual § 3660.8 and Medicare Carriers Manual §§ 2050.5, 4471 and 5249.

35–53.1 PEDIATRIC LIVER TRANSPLANTATION

Effective for services performed on or after February 9, 1984, liver transplantation is covered for children (under age 18) with extrahepatic biliary atresia or any other form of end-stage liver disease, except that coverage is not provided for children with a malignancy extending beyond the margins of the liver or those with persistent viremia.

Effective for services performed on or after April 12, 1991, liver transplantation is covered for Medicare beneficiaries when performed in a pediatric hospital that performs pediatric liver transplants if the hospital submits an application which HCFA approves documenting that:

- *The hospital's pediatric liver transplant program is operated jointly by the hospital and another facility that has been found by HCFA to meeting the institutional coverage criteria in the* Federal Register *notice of April 12, 1991;*
- *The unified program shares the same transplant surgeons and quality assurance program (including oversight committee, patient protocol, and patient selection criteria); and*
- *The hospital is able to provide the specialized facilities, services, and personnel that are required by pediatric liver transplant patients.*

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 9, 1992.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 92–1453 Filed 1–21–92; 8:45 am]

BILLING CODE 4120–01–M

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHs becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Service in the Federal Register.

The Secretary of the Treasury has certified a rate of 14⅞% for the quarter ended December 31, 1991. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: January 14, 1992.

Dennis J. Fischer,

Deputy Assistant Secretary, Finance.

[FR Doc. 92–1509 Filed 1–21–92; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–92–3268; FR–3052–N–03]

Public and Indian Housing Drug Elimination Program—FY 1991 Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for the Public and Indian Housing Drug Elimination Program—FY 1991. The announcement contains the names and addresses of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Malcolm E. Main, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197 or 708–3502. The TDD number for the hearing impaired is (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to provide grants to Public Housing Agencies and Indian Housing Authorities for activities designed to eliminate drug-related crime.

The 1991 awards announced in this Notice were selected for funding in a competition announced in a Federal Register Notice published on June 19, 1991 (56 FR 28290). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $140,775,000 was awarded to 496 Public Housing Agencies and Indian Housing Authorities. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names addresses, and amounts of those awards as follows:

NOFA FOR THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM—FY 1991

PHA/IHA Recipient	Amount approved
Region I: Boston Regional Office	
Bridgeport Housing Authority, 376 E. Washington Ave., Bridgeport, CT 06608–2128	$80,347
New Haven Housing Authority, 360 Orange St., New Haven, CT 06509	704,400
New Britain Housing Authority, 34 Marimac Rd., New Britain, CT 06053–2699	250,000
Waterbury Housing Authority, 70 Lakewood Rd., Waterbury, CT 06704–2498	250,000
Willimantic Housing Authority, 49 West Ave., Willimantic, CT 06226–0606	50,000
East Hartford, Housing Auth., 452 Main St., East Hartford, CT 06108–1498	250,000
Norwich Housing Authority, 10 Westwood Park, Norwich, CT 06360–6699	50,000
Greenwich Housing Authority, 249 Millbank Ave., Greenwich, CT 06836–6620	64,900
New London Housing Authority, 78 Walden Ave., New London, CT 06320–0119	50,000
Lowell Housing Authority, 350 Moody St., Lowell, MA 01853–60	248,500
Boston Housing Authority, 52 Chauncy St., Boston, MA 02111–2302	1,932,750
Fall River Housing Authority, 85 Morgan St., Fall River, MA 02722–0989	245,580
Worcester Housing Authority, 40 Belmont St., Worcester, MA 01605–0000	243,780
Chelsea Housing Authority, 54 Locke St., Chelsea, MA 02150–2209	158,600
Woburn Housing Authority, 59 Campbell St., Woburn, MA 01801	153,500
Quincy Housing Authority, 80 Clay St., Quincy, MA 02170	250,000
Lynn Housing Authority, 174 S. Common St., Lynn, MA 01905–2513	220,000
Brockton Housing Authority, 45 Goddard Rd., Brockton, MA 02403	233,500
Gloucester Housing Authority, Gloucester, MA 01931–1599	44,000
Somerville Housing Authority, 30 Memorial Rd., Somerville, MA 02145	218,500
Springfield Housing Authority, 25 Saab Ct., Springfield, MA 01101–1609	250,000
Portland Housing Authority, 14 Baxter Bl., Portland, ME 04101–4935	250,000
Manchester Housing Authority, 198 Hanover St., Manchester, NH 03104	248,080
Nashua Housing Authority, 101 Major Dr., Nashua, NH 03060–4783	250,000
Providence Housing Authority, 100 Broad St., Providence, RI 02903	398,127
Woonsocket Housing Authority, 679 Social St., Woonsocket, RI 02895–3251	245,335
Newport Housing Authority, 1 Park Holm, Newport, RI 02840–1212	250,000
Winooski Housing Authority, 69 Barlow St., Winooski, VT 05404	50,000

NOFA FOR THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM—FY 1991—Continued

PHA/IHA Recipient	Amount approved
Region II: New York Regional Office	
Newark Housing Authority, 57 Sussex Ave., Newark, NJ 07103–3892	1,895,050
Elizabeth Housing Authority, 688 Maple Ave., Elizabeth, NJ 07202–2690	250,000
Perth Amboy Housing Authority, 881 Amboy Ave., Perth Amboy, NJ 08862–1998	250,000
Ashbury Park Housing Authority, 1000½ Third Ave., Ashbury Park, NJ 07712–3847	247,000
Long Branch Housing Authority, P.O. Box 336, Long Branch, NJ 07740–0336	250,000
Jersey City Housing Authority, 400 U.S. Highway 1, Jersey City, NJ 07306	748,000
Camden Housing Authority, 422 Dudley St., Camden, NJ 08105	466,800
Passaic Housing Authority, 333 Passaic St., Passaic, NJ 07055	250,000
Atlantic City Housing Auth., 227 N. Vermont Ave., Atlantic City, NJ 08404–7549	250,000
Hoboken Housing Authority, 400 Harrison St., Hoboken, NJ 07030	250,000
Paterson Housing Authority, 160 Ward St., Paterson, NJ 07509	432,215
New Brunswick Housing Auth., 176 Memorial Pkwy., New Brunswick, NJ 08903–1368	250,000
Morristown Housing Authority, 31 Early St., Morristown, NJ 07960	100,000
Orange Housing Authority, 530 Thomas Bl., Orange, NJ 07050–4121	250,000
Rahway Housing Authority, 165 E. Grand Ave., Rahway, NJ 07065–5491	110,146
Woodbridge Housing Authority, 10 Burns Lake, Woodbridge, NJ	214,920
Plainfield Housing Authority, 510 E. Front St., Plainsfield, NJ 07060–1443	236,500
Edison Housing Authority, William Durham Dr., Edison, NJ 08837–3560	80,000
Bridgeton Housing Authority, 110 E. Commerce St., Bridgeton, NJ 08302–2606	225,000
Glassboro Housing Authority, 737 Lincoln Bl., Glassboro, NJ 08028–0563	90,000
Syracuse Housing Authority, 516 Burt St., Syracuse, NY 13202–3999	495,600
Buffalo Municipal Housing Auth., 901 City Hall, Buffalo NY 14202	1,000,000
Yonkers Housing Authority, 1511 Central Bank Ave., Yonkers, NY 10710–0035	250,000
New York City Housing Auth., 250 Broadway, New York, NY 10007	12,545,211
Utica Housing Authority, 509 Second St., Utica, NY 13501–2450	291,048
Albany Housing Authority, 4 Lincoln Square, Albany, NY 12202–1637	345,900
Troy Housing Authority, 1 Eddy's Lane, Troy, NY 12180–1498	219,435
Binghamton Housing Authority, 35 Exchange St., Binghamton, NY 13902–1909	236,000
Cohoes Housing Authority, Remsen St., Cohoes, NY 12047–2803	107,500

NOFA FOR THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM—FY 1991—Continued

PHA/IHA Recipient	Amount approved
Freeport Housing Authority, 3 Buffalo Ave., Freeport, NY 11520–4096	180,000
Watervliet Housing Authority, 2400 Second Ave., Watervliet, NY 12189–2748	75,000
Schenectady Housing Authority, 375 Broadway, Schenectady, NY 12305–2595	412,420
Elmira Housing Authority, 346 Woodlawn Ave., Elmira, NY 14901–1397	249,500
Rochester Housing Authority, 140 West Ave., Rochester, NY 14611–2744	490,618
White Plains Housing Authority, 223 Grove St., White Plains, NY 10601–4199	249,971
Town of Hempstead Housing Auth., 760 Jerusalem Ave., Uniondale, NY 11553	255,800
Long Beach Housing Authority, 500 Centre St., Long Beach, NY 11561–2015	179,500
Newburgh Housing Authority, 150 Smith St., Newburg, NY 12550–3601	64,500
Amsterdam Housing Authority, 52 Division St., Amsterdam, NY 12010–4002	132,500
Poughkeepsie Housing Authority, 221 Smith St., Poughkeepsie, NY 12601–0832	180,000
Glen Cove Housing Authority, 140 Glen Cove Ave., Glen Cove, NY 11542–3403	125,000
Peekskill Housing Authority, 507 Main St., Peeksville, NY 10566–2028	141,000
Hempstead Housing Authority, 75 Laurel Ave., Hempstead, NY 11550–5599	181,000
New Rochelle Housing Authority, 50 Sickles Ave., New Rochelle, NY 10801–4029	250,000
Region III: Philadelphia Regional Office	
Washington DC Housing Auth., Washington, DC	1,727,835
Wilmington Housing Authority, 400 Walnut, Wilmington, DE 19801	250,000
Dover Housing Authority, 1266-76 White Oak Rd., Dover, DE 19901–3437	87,225
Delaware State Housing Auth., 18 The Green, Dover, DE 19903	50,000
Annapolis Housing Authority, 1217 Madison St., Annapolis, MD 21403	250,000
Baltimore Housing Authority, 417 E. Lafayette St., Baltimore, MD 21202	2,661,523
Frederick Housing Authority, 209 Madison St., Frederick, MD 21701	279,300
Hsng. Oppor.—Montgomery Cnty., 10400 Detrick Ave., Kensington, MD 20895	275,600
St. Michaels Housing Authority, St Michaels, MD 21663	50,000
Anne Arundel County HA, 7665 Gordon Ct., Glen Burnie, MD 21061	249,980
Pittsburgh Housing Authority, 200 Ross St., Pittsburgh, PA 15219–2068	657,272
McKeesport Housing Authority, Ohio & Brownlee St., McKeesport, PA 15132–1706	250,000
Allegheny County Housing Auth., 341 Fourth Ave., Pittsburgh, PA 15222	816,200

NOFA FOR THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM—FY 1991—Continued

PHA/IHA Recipient	Amount approved
Harrisburg Housing Authority, 351 Chestnut St., Harrisburg, PA 17105-9713	250,000
Reading Housing Authority, 400 Hancock Bl., Reading, PA 19611	322,800
City of Erie Housing Authority, 606 Holland St., Erie, PA 16501-1285	250,000
Beaver County Housing Auth., 300 State St., Beaver, PA 15009-1798	379,500
Westmoreland County HA, R.D. #6 S. Greengate Rd., Greensburg, PA 15601	236,300
Lycoming County Housing Auth., 400 Lycoming St., Williamsburg, PA 17701-4976	86,461
Delaware County Housing Auth., 1855 Constitution Ave., Woodlyn, PA 19094	121,000
Easton Housing Authority, 221 S. Fourth St., Easton, PA 18042-4441	242,418
Franklin County Housing Auth., 202 Elder Ave., Waynesboro, PA 17268-1224	133,750
Lackawanna County Housing Auth., 2019 W. Pine St., Dunmore, PA 18512-0079	243,885
Shamokin Housing Authority, 1 E. Independence St., Shamokin, PA 17872-5861	42,700
Portsmouth Housing Authority, 339 High St., Portsmouth, VA 23705-1096	247,800
Alexandria Redevelopment Hsgn., Alexandria, VA	250,000
Norfolk Housing Authority, Norfolk, VA 23501-6988	816,800
Richmond Housing Authority, 901 N. Chamberlayne Pkwy., Richmond, VA 23261-6887	251,269
Roanoke Housing Authority, Roanoke, VA 24017-0359	309,000
Fairfax County Redevelopment, Fairfax, VA	250,000
Petersburg Housing Authority, 128 S. Sycamore St., Petersburg, VA 23804-0311	235,500
Waynesboro Housing Authority, 1708 New Hope Rd., Waynesboro, VA 22980-2515	84,900
Suffolk Housing Authority, P.O. Box 1858, Suffolk, VA 23434-1858	188,850
Cumberland Plateau Hsgn. Auth., Lebanon, VA 24266-1328	154,008
Charleston Housing Authority, 911 Michael Ave., Charleston, WV 25321	250,000
Huntington Housing Authority, 30 Northcott Ct., Huntington, WV 25722-2183	245,000
Parkersburg Housing Authority, 1901 Cameron Ave., Parkersburg, WV 26101-9316	50,000
Bluefield Housing Authority, Hill St., Bluefield, WV 24701-1800	71,000
Kanawha County Housing Auth., 237 Hale St., Charleston, WV 25338	50,000
Region IV: Atlanta Regional Office	
Birmingham Housing Authority, 1826 Third Ave., Birmingham, AL 35255-5906	1,084,896
Mobile Housing Authority, 151 S. Claiborne St., Mobile, AL 36633-1345	827,000
Phenix City Housing Authority, 209 16th St., Phenix City, AL 36869-0338	250,000

NOFA FOR THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM—FY 1991—Continued

PHA/IHA Recipient	Amount approved
Montgomery Housing Authority, 1020 Bell St., Montgomery, AL 36197-3501	520,200
Dothan Housing Authority, P.O. BOX 1727, Dothan, AL 36302-1727	185,800
Fairfield Housing Authority, P.O. Box 352, Fairfield, AL 35064-0352	144,000
Decatur Housing Authority, P.O. Box 878, Decatur, AL 35602	250,000
Gadsden Housing Authority, 422 Chestnut St., Gadsden, AL 35902-1219	226,019
Auburn Housing Authority, Booker St., Auburn, AL 36830	160,000
Florence Housing Authority, 303 N. Pine St., Florence, AL 35630	249,996
Haleyville Housing Authority, P.O. Box 786, Haleyville, AL 35565	128,300
Sylacauga Housing Authority, 76 Betsy Ross Ln., Sylacauga, AL 35150	250,000
Russellville Housing Authority, 601 Engle Dr., Russellville, AL 35653	103,750
Opelika Housing Authority, P.O. Box 786, Opelika, AL 36801-0786	250,000
Lanett Housing Authority, 1431 S. 14th St., Lanett, AL 36863-0465	100,000
Sheffield Housing Authority, W. 17th St., Sheffield, AL 35660-0429	189,500
Ozark Housing Authority, 7 Matthews Ave., Ozark, AL 36361-0586	217,000
Tuscaloosa Housing Authority, 2808 10th Ave., Tuscaloosa, AL 35403-2281	249,590
Jefferson County Hsgn. Auth., 2100 Walker Chapel Rd., Fultondale, AL 35068	280,000
Hartselle Housing Authority, P.O. Box 1165, Hartselle, AL 35640-1165	92,500
Talladega Housing Authority, 151 Curry Ct., Talladega, AL 35160	69,240
Demopolis Housing Authority, 800 E. Pettus St., Demopolis, AL 36732-0730	89,000
Piedmont Housing Authority, 154 Craig Ave., Piedmont, AL 36272-0420	48,700
Opp. Housing Authority, P.O. Drawer 579, Opp, AL 36467-0579	54,200
York Housing Authority, 209 5th Ave., York, AL 36925	50,000
Eufaula Housing Authority, S. Orange St., Eufaula, AL 36027-0036	160,500
Prattville Housing Authority, 316 Walter St., Prattville, AL 36067-0006	25,000
Northport Housing Authority, P.O. Drawer 349, Northport, AL 35476-0349	196,500
Greenville Housing Authority, 601 Bestland St., Greenville, AL 36037-0521	99,500
Foley Housing Authority, 302 Fourth Ave., Foley, AL 36536	49,050
Prichard Housing Authority, 500 Hinson Ave., Prichard, AL 36610	164,494
Alexander City Housing Authority, P.O. Drawer 766, Alexander City, AL 35010-0766	206,900
Livingston Housing Authority, Highway 11, Livingston, AL 35470-9997	55,000
Greene County Housing Auth., P.O. Box 369, Eutaw, AL 35462-0369	117,900
St. Petersburg Housing Auth., 325 Martin Luther King St., St. Petersburg, FL 33739-2949	194,852

NOFA FOR THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM—FY 1991—Continued

PHA/IHA Recipient	Amount approved
Orlando Housing Authority, 300 Reeves Ct., Orlando, FL 32801-3199	391,060
Pensacola Housing Authority, Pensacola, FL 32523-6370	221,352
Daytona Beach Housing Auth., 116 Cedar St., Daytona Beach, FL 32014-4904	250,000
Ft. Lauderdale Housing Auth., 437 SW. 4th Ave., Fort Lauderdale, FL 33315-1093	250,000
Lakeland Housing Authority, 430 Hartsell Ave., Lakeland, FL 33802	250,000
Cocoa Beach Housing Authority, 626 Magnolia St., Merritt Island, FL 32954-0338	218,000
Brevard County Housing Auth., 615 Kurek #32958 Ct., Merritt Island, FL 32954-0338	125,000
Ocala Housing Authority, 1415 NE. 32nd Tr., Ocala, FL 32670	83,500
Chipley Housing Authority, 500 N. Boulevard W., Chipley, FL 32428-0388	50,000
Ft. Pierce Housing Authority, 707 N. 7th St., Fort Pierce, FL 34950	250,000
Ft. Myers Housing Authority, 4224 Michigan Ave., Fort Myers, FL 33916	250,000
Palatka Housing Authority, 400 N. 15th St., Palatka, FL 32077	158,980
Gainesville Housing Authority, 1900 SE. 4th St., Gainesville, FL 32601	250,000
Hialeah Housing Authority, 70 E. 7th St., Hialeah, FL 33010-4465	250,000
Ft. Walton Beach Housing Auth., 27 Robinwood Dr., Fort Walton Beach, FL 32548-5394	83,976
Alachua County Housing Auth., 636 NE. First St., Gainesville, FL 32601-5398	58,000
Deland Housing Authority, 300 Sunflower Cir., DeLand, FL 32724-5999	99,500
Tallahassee Housing Authority, 2940 Grady Rd., Tallahassee, FL 32312-2210	250,000
Broward County Housing Auth., 1773 N. State #7 Rd., Lauderhill, FL 33313	222,913
Deerfield Beach Housing Auth., 425 NW. 1st Ter., Deerfield Beach, FL 33441	96,000
Delray Beach Housing Authority, 770 SW 12th Ter., Delray Beach, FL 33444-1367	97,250
Pasco County Housing Authority, 507 Acorn Cir., Dade City, FL 33525	103,500
Augusta Housing Authority, P.O. Box 3246, Augusta, GA 30901	453,660
Savannah Housing Authority, 200 E. Broad St., Savannah, GA 31402-1179	451,400
Athens Housing Authority, P.O. Box 1469, Athens, GA 30603-1469	250,000
Columbus Housing Authority, P.O. Box 68, Columbus, GA 31993	425,600
Rome Housing Authority, P.O. Box 1466, Rome, GA 30161-2737	247,000
Atlanta Housing Authority, 730 W. Peachtree St., Atlanta, GA 30365	2,113,750
Macon Housing Authority, P.O. Box 4928, Macon, GA 31208-4928	420,200
Brunswick Housing Authority, P.O. Box 1118, Brunswick, GA 31521-1118	228,000

NOFA FOR THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM—FY 1991—Continued

PHA/IHA Recipient	Amount approved
Decatur Housing Authority, P.O. Box 1627, Decatur, GA 3003–1627	99,000
Albany Housing Authority, P.O. Box 485, Albany, GA 31702–0485	200,000
Waycross Housing Authority, P.O. Box 1427, Waycross, GA 31501–1407	246,500
Gainesville Housing Authority, P.O. Box 653, Gainesville, GA 30503–0653	214,105
Moultrie Housing Authority, P.O. Box 1048, Moultrie, GA 31768	156,500
Americus Housing Authority, P.O. Box 1226, Americus, GA 31709–1226	227,305
Cordele Housing Authority, 401 Tenth St., Cordele, GA 31015–2301	237,500
Monroe Housing Authority, P.O. Box 550, Monroe, GA 30655–0550	191,500
Eastman Housing Authority, P.O. Box Drawer 100, Eastman, GA 31023–0100	107,751
Nashville Housing Authority, P.O. Box 278, Nashville, GA 31639–0278	250,000
Lawrenceville Housing Auth., 502 Glen Ridge Dr., Lawrenceville, GA 30245	106,000
Newnan Housing Authority, P.O. Box 881, Newnan, GA 30264–0881	235,500
Camilla Housing Authority, P.O. Box 247, Camilla, GA 31730–0247	197,893
Pelham Housing Authority, P.O. Box 269, Pelham, GA 31779–0269	103,500
Valdosta Housing Authority, P.O. Box 907, Valdosta, GA 31601	250,000
Carrollton Housing Authority, P.O. Box 627, Carrollton, GA 30117–0627	79,406
Calhoun Housing Authority, 111 F South Fair St., Calhoun, GA 30701–2369	39,146
Alma Housing Authority, P.O. Box 190, Alma, GA 31510–0190	161,000
Social Circle Housing Auth., P.O. Box 550, Monroe, GA 30655–0550	50,000
Montezuma Housing Authority, P.O. Box 67, Montezuma, GA 31063–1724	82,000
Warner Robins Housing Auth., P.O. Box 2048, Warner Robins, GA 31099–2048	202,000
Loganville Housing Authority, P.O. Box 550, Monroe, GA 30655–0550	50,000
Madison Housing Authority, P.O. Box 550, Monroe, GA 30655–0550	50,000
Canton Housing Authority, 1 Shipp St., Canton, GA 30114–2813	50,000
College Park Housing Authority, 1908 W. Princeton Ave., College Park GA 30337–2418	182,833
Dekalb County Housing Auth., P.O. Box 1627, Decatur, GA 30031	249,000
Covington Housing Authority, P.O. Box 1367, Covington, GA 30209–1367	138,001
Louisville Housing Authority, 420 S. Eighth St., Louisville, KY 40203	994,484
Covington Housing Authority, 2940 , Madison Ave., Covington, KY 41015	250,000
Lexington-Fayette HA, 635 Ballard St., Lexington, KY 40508	330,400
Paducah Housing Authority, 2330 Tennessee St., Paducah, KY 42002	250,000
Owensboro Housing Authority, 2161 E. 19th St., Owensboro, KY 32301	161,090
Hopkinsville Housing Authority, P.O. Box 437, Hopkinsville, KY 42240–0437	217,000

NOFA FOR THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM—FY 1991—Continued

PHA/IHA Recipient	Amount approved
Moorehead Housing Authority, 200 Heritage Pl., Moorehead, KY 40351	111,000
Georgetown Housing Authority, 139 Scroggin Bl., Georgetown, KY 40324	152,550
Bowling Green Housing Auth., P.O. Box 116, Bowling Green, KY 42102–0116	152,280
Danville Housing Authority, 116 Carrie Bolin St., Columbia, KY 42728	46,080
Dayton Housing Authority, 201 Clay St., Dayton, KY 41074	25,430
Todd County Housing Authority, P.O. Box 68, Guthrie, KY 42234	46,000
Hattiesburg Housing Authority, Hattiesburg, MS 39403–0832	120,000
Meridian Housing Authority, 2305 D St., Meridian, MS 39302–0870	250,000
Biloxi Housing Authority, Biloxi, MS 39533	250,000
MS Regional HA IV, Columbus, MS 39704–2249	127,000
MS Regional HA VIII, Gulfport, MS 39505	359,600
Starkville Housing Authority, Starkville, MS 39759	121,000
Corinth Housing Authority, 3600 Tinin Dr., Corinth, MS 38834	149,000
Columbus Housing Authority, Columbus, MS 39703	233,464
Tupelo Housing Authority, Tupelo, MS 38802	203,500
Water Valley Housing Authority, HH–1 Blackmur Dr., Water Valley, MS 38965	99,500
Oxford Housing Authority, Oxford, MS 38655	89,000
Lumberton Housing Authority, Lumberton, MS 39455	50,000
Jackson Housing Authority, 3430 Albemarle Rd., Jackson, MS 39213	244,000
Wilmington Housing Authority, 508 S. Front St., Wilmington, NC 28402	244,950
Raleigh Housing Authority, 600 Tucker St., Raleigh, NC 27611	406,800
Charlotte Housing Authority, 1301 S. Boulevard, Charlotte, NC 28236	755,000
Kinston Housing Authority, 608 N. Queen St., Kinston, NC 28501	250,000
New Bern Housing Authority, 837 Tryon Palace Dr., New Bern, NC 28560	174,137
High Point Housing Authority, 500 E. Russell Ave., High Point, NC 27261	269,600
Ashville Housing Authority, 165 S. French Broad Ave., Asheville, NC 28802	312,400
Concord Housing Authority, 283 SW. Goodman Drive, Concord, NC 28025	76,000
Fayetteville Housing Authority, 108 Wiley St., Fayetteville, NC 28302	197,075
Greensboro Housing Authority, 450 N. Church St., Greensboro, NC 27420	418,750
Winston-Salem Housing Auth., 901 Cleveland Ave., Winston-Salem, NC 27101	401,650
Durham Housing Authority, 330 E. Main St., Durham, NC 27702	419,800
Goldsboro Housing Authority, 1729 Edgerton St., Goldsboro, NC 27533–1403	249,000
Salisbury Housing Authority, 200 S. Boundary St., Salisbury, NC 28145–0159	250,000

NOFA FOR THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM—FY 1991—Continued

PHA/IHA Recipient	Amount approved
Laurinburg Housing Authority, 645 Woodlawn St., Laurinburg, NC 28352	236,000
Rocky Mount Housing Authority, 1006 Aycock St., Rocky Mount, NC 27803	250,000
Greenville Housing Authority, 1103 Broad St., Greenville, NC 27835–1426	250,000
Mount Airy Housing Authority, 302 Virginia St., Mount Airy, NC 27030	109,700
Smithfield Housing Authority, 801 S. Fifth St., Smithfield, NC 27577	102,500
Chapel Hill Housing Authority, 317 Caldwell St., Chapel Hill, NC 27516	136,000
Hickory Housing Authority, 841 S. Center St., Hickory, NC 28603	155,500
Monroe Housing Authority, 504 Hough St., Monroe, NC 28110	103,000
Statesville, Housing Authority, 433 S. Meeting St., Statesville, NC 28677	228,400
Oxford Housing Authority, 101 Hillside Dr., Oxford, NC 27565	120,500
Ayden Housing Authority, 705 Liberty St., Ayden, NC 28513	83,707
Mid-East Regional Housing Auth., 809 Pennsylvania Ave., Washington, NC 27889	57,500
Charleston Housing Authority, 20 Franklin St., Charleston, SC 29401	212,529
Columbia Housing Authority, 1917 Harden St., Columbia, SC 29204	250,000
Spartenburg Housing Authority, 764 North Church St., Spartanburg, SC 29305	304,400
Greenville Housing Authority, 511 Augusta Rd., Greenville, SC 29603	245,636
Beaufort Housing Authority, 1009 Prince St., Beaufort, SC 29901	111,000
Florence Housing Authority, 400 E. Pine St., Florence, SC 29503	250,000
Greenwood Housing Authority, 315 Foundry Rd., Greenwood, SC 29648	50,000
Cheraw Housing Authority, 345 Dizzy Gillespie, Dr., Florence, SC 29503	115,000
Fort Mill Housing Authority, 105 Bozeman Dr., Fort Mill, SC 29715	50,000
Anderson Housing Authority, 1335 E. River St., Anderson, SC 29621	102,500
York Housing Authority, 221 California St., York, SC 29745	62,000
Johnson City Housing Authority, 901 Pardee St., Johnson City, TN 37605–0059	250,000
Knoxville Communmity Devel. Corp., 901 Broadway, Knoxville, TN 37927	742,400
Chattanooga Housing Authority, 505 W. Martin Luther King Bl., Chattanooga, TN 37401–1148	735,600
Metro Development/Housing Agn., 701 S. Sixth St., Nashville, TN 37202–0846	1,000,000
Jackson Housing Authority, 175 Preston St., Jackson, TN 38301–3188	199,240
Paris Housing Authority, 917 Minor St., Paris, TN 38242–0159	700,000
LaFollette Housing Authority, P.O. Box 392, LaFollette, TN 37766–0392	250,000
Brownsville Housing Authority, 205 Summer Oaks, Brownsville, TN 38012–0194	64,000
Murfreesboro Housing Authority, 318 E. Lokey Ave., Murfreesboro, TN 37130	175,000

NOFA for the Public and Indian Housing Drug Elimination Program—FY 1991—Continued

PHA/IHA Recipient	Amount approved
Tullahoma Housing Authority, 2401 Cedar Lane Village Dr., Tullahoma, TN 37388	33,760
Crossville Housing Authority, 202 Irwin Ave., Crossville, TN 38557	144,467
Columbia Housing Authority, 215 Dyer St., Columbia, TN 38401–0115	122,706
Virgin Islands Housing Auth., 402 Estate Anna Retreat, St. Thomas, VQ 00801–7668	250,000
Region V: Chicago Regional Office	
Poarch Creek Indian HA, P.O. Box 243–A, Atmore, AL 36502	50,000
Seminole Tribal IHA, 3101 NW. 63rd Ave., Hollywood, FL 33024	219,922
East St. Louis Housing Auth., 709 N. Twentieth St., East St. Louis, IL 62205	496,400
Chicago Housing Authority, 22 W. Madison St., Chicago, IL 60602	5,927,250
Springfield Housing Authority, 200 N. Eleventh St., Springfield, IL 62705	250,000
Champaign County Housing Auth., 1201 E. Colorado St., Urbana, IL 61801–0183	153,078
Danville Housing Authority, 611 Oak St., Danville, IL 61834–0312	250,000
Decatur Housing Authority, 1808 E. Locust St., Decatur, IL 62521–1409	158,945
LaSalle County Housing Auth., P.O. Box 782, Ottawa, IL 61350–0782	200,000
Madison County Housing Auth., 1609 Olive St., Collinsville, IL 62234	249,250
Joliet Housing Authority, P.O. Box 2519, Joliet, IL 60434–2519	250,000
Cook County Housing Authority, 59 E. Van Buren St., Chicago, IL 60605	436,400
Waukegan Housing Authority, 200 S. Utica St., Waukegan, IL 60085	50,000
Freeport Housing Authority, 10 N. Galena, Freeport, IL 61032–4302	193,000
St. Clair County Housing Auth., 100 N. Forty-eighth St., Belleville, IL 62223	241,208
Williamson County Housing Auth., 300 Hickory St., Carterville, IL 62918–0045	250,000
Bloomington Housing Authority, 104 E. Wood, Bloomington, IL 61701–6768	121,016
Jackson County Housing Auth., 300 N. Seventh St., Murphysboro, IL 62966	247,536
Alton Housing Authority, 2406 Crawford, Alton, IL 62002–0967	124,700
Lake County Housing Authority, 33928 N. Rte. 45, Grayslake, IL 60030	242,530
Morgan County Housing Auth., 301 W. Beecher, Jacksonville, IL 62650	50,000
Fort Wayne Housing Authority, 1 Main St., Fort Wayne, IN 46802	249,861
Muncie Housing Authority, 402 E. Second St., Muncie, IN 47302–2495	250,000
Gary Housing Authority, 578 Broadway St., Gary, IN 46402–1986	427,205
South Bend Housing Authority, 513 S. Scott St., South Bend, IN 46634–0057	250,600
Indianapolis Housing Authority, 419 N. Meridian St., Indianapolis, IN 46204–1790	122,209
Bloomington Housing Authority, 1007 N. Summit St., Bloomington, IN 46401–1615	155,390
Elkhart Housing Authority, 1396 Benham Ave., Elkhart, IN 46516–2505	238,503
East Chicago Housing Authority, 4920 Larkspur Dr., East Chicago, IN 46312–0498	228,050
Saginaw Housing Commission, 2811 Davenport Ave., Saginaw, MI 48602–3747	250,000
River Rouge Housing Commission, 180 Visger Rd., River Rouge, MI 48218–1159	150,000
Flint Housing Commission, 3820 Richfield Rd., Flint, MI 48506–2616	250,000
Benton Harbor Housing Comm., 925 Buss St., Benton Harbor, MI 49022	179,000
Ypsilanti Housing Commission, 601 Armstrong Dr., Ypsilanti, MI 48197–5224	109,000
Inkster Housing Commission, 2000 Inkster Rd., Inkster, MI 48141–1871	250,000
Royal Oak Township HC, 21312 Wyoming Ave., Ferndale, MI 48220–2125	50,000
Port Huron Housing Commission, 905 Seventh St., Port Huron, MI 48060–5399	219,476
Lansing Housing Commission, 310 Seymour Ave., Lansing, MI 48933	250,000
Sault St. Marie Tribal IHA, Sault Ste. Marie, MI 49783	126,500
Grand Traverse Band IHA, Suttons Bay, MI 49682	50,000
St. Paul Housing Authority, 413 Wacouta St., St. Paul, MN 55101	737,898
Minneapolis Housing Authority, 1001 N. Washington, Minneapolis, MN 55401	765,412
Leech Lake Reservation IHA, Cass Lake, MN 56633	170,800
White Earth Reservation IHA, White Earth, MN 56591	192,500
Fond du Lac Reservation IHA, Cloquet, MN 55720	96,194
Columbus Housing Authority, 960 E. Fifth Ave., Columbus, OH 43201	520,000
Cuyahoga Metropolitan HA, 1441 W. Twenty-fifth St., Cleveland, OH 44113–3101	1,755,000
Cincinnati Metropolitan HA, 16 W. Central Pkwy., Cincinnati, OH 45210–1991	953,830
Dayton Metropolitan HA, 400 Wayne Ave., Dayton, OH 45410	857,800
Lucas Metropolitan HA, 435 Nebraska Ave., Toledo, OH 43602–0477	657,400
Trumbull Metropolitan HA, 1977 Niles Rd., Warren, OH 44484–5187	277,696
Zanesville Housing Authority, 2748 Maple Ave., Zanesville, OH 43701	250,000
Butler Metropolitan HA, 4110 Hamilton-Middletown Rd., Hamilton, OH 45013–3362	175,000
Stark Metropolitan HA, 1800 W. Tuscarawas St., Canton, OH 44708–4997	490,000
Superior Housing Authority, 1219 N. Eighth St., Superior, WI 54880	50,000
City of Milwaukee Housing Auth., P.O. Box 324, Milwaukee, WI 53201	960,800
Madison Community Development, 215 Martin Luther King, Jr. Dr., Madison, WI 53701	218,000
Lac du Flambeau Chippewa IHA, P.O. Box 187, Lac du Flambeau, WI 54538	175,000
Oneida Housing Authority IHA, P.O. Box 68, Oneida, WI 54155	115,720
Beloit Community Development, 220 Portland Ave., Beloit, WI 53511	47,825
Menominee Tribal IHA, P.O. Box 476, Keshena, WI 54135	220,560
Region VI: Ft. Worth Regional Office	
North Little Rock HA, 2201 Division, North Little Rock, AR 72115–0516	250,000
Little Rock Housing Authority, 100 Wolfe St., Little Rock, AR 72202–4614	250,000
Camden Housing Authority, 600 Monroe St., Camden, AR 71701	190,080
Pine Bluff Housing Authority, 2503 Belle Meade, Pine Bluff, AR 71611–8872	112,298
West Memphis Housing Authority, 2820 Harrison St., West Memphis, AR 72301–6099	199,000
Van Buren Housing Authority, 1701 Chestnut St., Van Buren, AR 72956	101,000
Wynne Housing Authority, 206 Fisher Pl., Wynne, AR 72396–0136	28,879
Dewitt Housing Authority, 101 Oakland, Dewitt, AR 72042–6447	50,000
Brinkley Housing Authority, 501 W. Cedar St., Brinkley, AR 72021–2713	67,000
Warren Housing Authority, 1 King Square W., Warren, AR 71671–0602	73,000
Malvern Housing Authority, Third & Gloster, Malvern, AR 72104–0550	84,500
Polk County Housing Authority, 1107 Morrow Ave., Mena, AR 71953–4396	39,228
New Orleans Housing Authority, 918 Carondelet St., New Orleans, LA 70130	990,000
Lafayette City HA, 100 C.O. Circle, Lafayette, LA 70501–7602	183,044
Monroe Housing Authority, 300 Harrison St., Monroe, LA 71201–1194	300,660
Alexandria Housing Authority, 2556 Loblolly Ln., Alexandria, LA 71306–1219	250,000
New Iberia Housing Authority, 325 North St., New Iberia, LA 70560–3585	77,882
Morgan City Housing Authority, Morgan City, LA 70381–2393	50,000
Welsh Housing Authority, 511 N. Thompson Ave., Iowa, LA 70647–0700	49,650
Bossier City Housing Authority, 157 Riverview Cir., Bossier City, LA 71771–5666	50,000
Lafourch Parish HA, 750 Triple Oaks St., Raceland, LA 70394–0498	34,606
Houma Housing Authority, 332 West Park Ave., Houma, LA 70364–4267	110,650
St. John the Baptist HA, 1 Elm Loop, La Place, LA 70069–1599	158,600
Grambling Housing Authority, 300 B.T. Woodard Cir., Grambling, LA 71245–0628	50,600
Slidell Housing Authority, 1230 Martin Luther King Dr., Slidell, LA 70458–1392	58,200

NOFA FOR THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM—FY 1991—Continued

PHA/IHA Recipient	Amount approved
Dequincy Housing Authority, 500 South Grand Ave., Dequincy, LA 70633–0126	50,000
Natchitoches City HA, 416 Shady Lane Dr., Natchitoches, LA 71458–0754	195,500
Rapides Parish Housing Auth., Boyce, LA 71409	32,800
City of Las Cruces HA, 926 S. Pedor, Las Cruces, NM 88001	143,076
Alamogordo Housing Authority, 104 Avenida Amigos, Alamogordo, NM 88310–0336	110,000
Santa Fe City Housing Auth., 624 Alta Vista St., Santa Fe, NM 87502	215,500
Bernalillo Town Housing Auth., 990 Calle Los Mayores, Bernalillo, NM 87004–0070	39,228
Oklahoma City Housing Auth., 1700 NE. Fourth St., Oklahoma City, OK 73117	628,400
Lawton Housing Authority, 620 E. Ave, Lawton, OK 73501–4501	159,500
McAlester Housing Authority, 620 W. Kiowa, McAlester, OK 74501–0819	137,000
Tulsa Housing Authority, 415 E. Independence, Tulsa, OK 74148–0369	250,000
Sac & Fox Nation of Ok. IHA, P.O. Box 1252; Shawnee, OK 74801	208,825
Absentee Shawnee IHA, P.O. Box 425, Shawnee, OK 74801	145,800
Shawnee Housing Authority, 1002 W. 7th St., Shawnee, OK 74802–3427	204,650
Delaware IHA, P.O. Box 334, Chelsea, OK 74016	50,000
Austin Housing Authority, 1640 E. Second St., Austin, TX 78762–6159	232,600
El Paso Housing Authority, 1600 Montana Ave., El Paso, TX 79902–9895	1,000,000
Fort Worth Housing Authority, 212 Burnet St., Fort Worth, TX 76101–0430	250,000
Houston Housing Authority, 4217 San Felipe, Houston, TX 77252–9950	804,300
San Antonio Housing Authority, 818 S. Flores St., San Antonio, TX 78295–1300	944,450
Corpus Christi Housing Auth., 3701 Ayres, Corpus Christi, TX 78467–7019	391,012
Dallas Housing Authority, 2525 Lucas Dr., Dallas, TX 75219	990,997
Waco Housing Authority, 800 Clay, Waco, TX 76706–0978	250,000
Laredo Housing Authority, 2000 San Francisco Ave., Laredo, TX 78040	250,000
Baytown Housing Authority, 805 Nazro St., Baytown, TX 77520	50,000
Del Rio Housing Authority, 401 Las Vascas, Del Rio, TX 78841–4080	78,300
Galveston Housing Authority, 920 53rd St., Galveston, TX 77550–1012	250,000
Lubbock Housing Authority, 515 N. Zenith, Lubbock, TX 79408–2568	249,710
Eagle Pass Housing Authority, 2095 Main St., Eagle Pass, TX 78853–0844	50,000
Wichita Falls Housing Auth., 501 Webster, Wichita Falls, TX 76307–0544	250,000
Beaumont Housing Authority, P.O. Box 1312, Beaumont, TX 77704	250,000
Denison Housing Authority, Denison, TX 75021–0447	99,000

NOFA FOR THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM—FY 1991—Continued

PHA/IHA Recipient	Amount approved
Temple Housing Authority, 700 W. Calhoun, Temple, TX 76501–0634	81,833
Corsicana Housing Authority, NW. Avenue, Corsicana, TX 75151	59,420
Port Arthur Housing Authority, P.O. Box 2295, Port Arthur, TX 77642	114,423
Orange City Housing Authority, 101 Pine Grove Dr., Orange, TX 77630	196,000
Mission Housing Authority, 906 E. 8th St., Mission, TX 78572	104,000
Dublin Housing Authority, 210 May St., Dublin, TX 76446	55,000
Paris Housing Authority, Paris, TX 75460–0688	104,000
Edinburg Housing Authority, 2301 N. 13th St., Edinburg, TX 78540–0295	122,116
Harlingen Housing Authority, 202 S. First St., Harlingen, TX 78551–1669	250,000
Sherman Housing Authority, Sherman, TX 75090–2147	132,430
Victoria Housing Authority, 1410 E. Crestwood, Victoria, TX 77901	90,280
San Marcos Housing Authority, 1201 Thorp Ln., San Marcos, TX 78666	102,744
Crystal City Housing Authority, 1014 E. Uvalde, Crystal City, TX 78839	109,600
Kingsville Housing Authority, 1000 Brown Villa, Kingsville, TX 78363	100,000
Robstown Housing Authority, 625 W. Avenue F, Robstown, TX 78380	50,000
Vernon Housing Authority, Vernon, TX 76384–1780	89,720
Pearsall Housing Authority, 501 W. Medina, Pearsall, TX 78061	50,000
Palacios Housing Authority, Palacios, TX 77465	50,000
Starr County Housing Authority, 106 Arredondo, Rio Grande City, TX 78582–0050	50,000
Roma Housing Authority, Roma, TX 78584–1002	50,000
Odessa Housing Authority, 124 E. Second, Odessa, TX 79760–4398	50,000
Nacogdoches Housing Authority, 804 Jordan St., Nacogdoches, TX 75961	49,000
Region VII: Kansas City Regional Office	
Des Moines Housing Authority, 1101 Crocker St., Des Moines, IA 50309–1110	140,938
Iowa City Housing Authority, 410 E. Washington St., Iowa City, IA 52240	26,251
So. Iowa Regional Hsng. Augh., 219 N. Pine St., Creston, IA 50801–2413	50,000
Knoxville Housing Authority, 305 S. Third St., Knoxville, IA 50138–2287	19,500
No. Iowa Regional Hsng. Auth., 121 3rd St., NW., Mason City, IA 50401	60,500
Central Regional Iowa HA, 1111 9th St., Des Moines, IA 50314	33,666
Kansas City Housing Authority, Kansas, KS	250,000
Topeka Housing Authority, 1312 Polk, Topeka, KS 66608	250,000
Lawrence Housing Authority, 1600 Haskell Ave., Lawrence, KS 66044	148,483
Manhattan Housing Authority, 300 N. 5th St., Manhatten, KS 66502–1024	46,629
City of St. Louis Housing Auth., 4100 Lindell Bl., St. Louis, MO 63108–2999	664,000

NOFA FOR THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM—FY 1991—Continued

PHA/IHA Recipient	Amount approved
Kansas City Housing Authority, 299 Paseo, Kansas City, MO 64106–2606	175,754
St. Louis County HA, St. Louis, MO	250,000
Columbia Housing Authority, Pacquin Towers, Columbia, MO 65205–5010	144,950
Jefferson City Housing Auth., Jefferson City, MO 65101–1029	179,500
Mexico Housing Authority, 828 Garfield, Mexico, MO 65265–0484	127,000
Moberly Housing Authority, 23 Kehoe, Moberly, MO 65270–0159	125,000
Fulton Housing Authority, 350 Sycamore St., Fulton, MO 65251–0814	100,000
Excelsior Springs Housing Auth., 320 W. Excelsior, Excelsior Springs, MO 64024–2173	50,000
Springfield Housing Authority, 421 W. Madison St., Springfield, MO 65806–2931	249,118
Macon Housing Authority, 218 Lakeview Towers, Macon, MO 63552–4160	50,933
Bowling Green Housing Auth., 501 W. Champ Clark Dr., Bowling Green MO 63334–2015	50,000
Hannibal Housing Authority, Hannibal, MO 63401–0996	116,155
Wellstone Housing Authority, 1584 Ogden Avenue, Wellstone, MO 63133	105,000
Omaha Housing Authority, 540 S. 27th St., Omaha, NE 68105–1521	525,400
Region VIII: Denver Regional Office	
Denver Housing Authority, 1100 W. Colfax Ave., Denver, CO 80204	783,800
Billings Housing Authority, 2415 First Ave., Billings, MT 59101	57,153
Great Falls Housing Authority, 1500 Sixth Ave., Great Falls, MT 59405–2599	100,000
Blackfeet IHA, Browning, MT 59417	250,000
Fort Peck IHA, Poplar, MT 59255	250,000
Chippewa Cree IHA, Box Elder, MT 59521	186,500
Cass County Housing Authority, 230 Eighth Ave., West Fargo, ND 58078	9,000
Turtle Mountain IHA, Belcourt, ND 58316	170,000
Trenton, IHA, Trenton, ND 58853	46,796
Omaha Tribal IHA, Macy, NE 68039	49,674
Oglala Sioux IHA, Pine Ridge, SD 57770	244,402
Cheyenne River IHA, Eagle Butte, SD 57625	240,000
Sisseton-Wahpeton IHA, Sisseton, SD 57262	50,000
Salt Lake City Housing Auth., 1800 SW., Temple, Salt Lake City, UT 84115	68,957
Wind River IHA, P.O. Box 327, Fort Washakie, WY 82514	138,050
Region IX: San Francisco Regional Office	
City of Phoenix Housing Auth., Phoenix, AZ	455,600
Glendale Housing Authority, Glendale, AZ	77,500
Tucson Housing Authority, Tucson, AZ	264,408
Maricopa County Housing Auth., Maricopa, AZ	250,000
Pinal County Housing Dept., Pinal, AZ	50,000

NOFA FOR THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM—FY 1991—Continued

PHA/IHA Recipient	Amount approved
Colorado River Indian Housing, Parker, AZ 85344	7,587
Tohono O'Odham Housing Auth., Sells, AZ 85634	250,000
Chandler Housing Authority, Chandler, AZ	100,000
Pascua Yaqui Housing Authority, Tucson, AZ 85746	250,000
San Francisco HA, San Francisco, CA	1,013,550
Los Angeles County HA (No. 1), Los Angeles, CA	620,000
Housing Authority City of LA, Los Angeles, CA	1,340,400
Fresno City HA, Fresno, CA	217,812
Contra Costa HA, Contra Costa, CA	250,000
San Bernardino County HA, San Bernardino, CA	172,449
Stanislaus, HA, Stanislaus, CA	249,754
Fresno County HA, Fresno, CA	250,000
San Diego Housing Commission, San Diego, CA	250,000
Madera Housing Authority, Madera, CA	100,000
City of Santa Barbara HA, Santa Barbara, CA	238,500
Owens Valley IHA, P.O. Box 490, Big Pine, CA 93513	175,000
Northern Circle Tribe IHA, 694 Pinoleville, Dr., Ukiah, CA 95482	85,500
Hawaii Housing Authority, Honolulu, HI	968,715
Reno HA, Reno, NV	250,000
Las Vegas HA, Las Vegas, NV	252,000
Washoe Indian Tribe, IHA, 1588 Watasheamu Dr., Gardnerville, NV 89410	102,664
North Las Vegas HA, Las Vegas, NV	110,500
Clark County HA, Las Vegas, NV	242,065
Region X: Seattle Regional Office	
Housing Authority of Portland, 135 SW. Ash, Portland, OR 97204	526,800
Seattle HA, 120 Sixth Ave., Seattle, WA 98109	1,000,000
King County HA, 15455 65th Ave., Seattle, WA 98188–2583	591,904
Bremerton HA, Bremerton, WA 98310–0131	33,680
Tacoma HA, 1728 E. 44th St., Tacoma, WA 98404–4699	291,400
Bellingham HA, 208 Unity (Lower Level) St., Bellingham, WA 98225–4844	280,000
Quinault IHA, Taholah, WA 98587	40,500
Makah IHA, Neah Bay, WA 98357	83,500
Kitsap County HA, 9265 Bayshore Dr., Silverdale, WA 98383	63,000
Snohomish County HA, 3423 Broadway, Everett, WA 98201–5095	91,000

Dated: January 14, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–1438 Filed 1–21–92; 8:45 am]

BILLING CODE 4210–33–M

[Docket No. N–92–3236; FR 2952–N–03]

Public Housing Development/Major Reconstruction of Obsolete Public Housing; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the FY 91 Notice of Fund Availability (NOFA), Invitation for Applications: Public Housing Development/Major Reconstruction of Obsolete Public Housing. The announcement contains the names and addresses of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1800. The TDD number for the hearing impaired is (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to provide development or acquisition costs of public housing, including major reconstruction of obsolete public housing.

The 1991 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on March 29, 1991 (56 FR 13246) (corrections and clarifications were published on April 11, 1991 (56 FR 14730) and June 28, 1991. (56 FR 29694). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $666,923,182 was awarded to 170 Public Housing Agencies (PHAs). In addition, $66.8 million was set aside for incentive awards in the Family Self-Sufficiency program under section 554 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990). In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as follows:

FY 91 Notice of Fund Availability (NOFA), Invitation for Applications: Public Housing Development/Major Reconstruction of Obsolete Public Housing

PHA name	Amount
I—Boston Regional Office:	
Bridgeport Hsg. Auth., E. Washington Ave., Bridgeport, CT.	2,534,200
Bristol Hsg. Auth., Quaker La., Brieton, CT.	797,600
Cambridge Hsg. Auth., 270 Green St., Cambridge, MA.	4,095,000
Danbury Hsg. Auth., Mill Ridge Rd., Danbury, CT.	3,507,550
Fall River Hsg. Auth., 85 Morgan St., Box 989, Fall River, MA.	2,994,100 3,504,500 7,513,136
Johnston Hsg. Auth., 8 Forand Circle, Johnston, RI.	2,810,300
Manchester Hsg. Auth., 198 Hanover St., Manchester, NH.	3,008,219
Milford Hsg. Auth., Wildemere Beach, Milford, CT.	1,696,950
New Britain Hsg. Auth., Marimac Rd., New Britain, CT.	3,011,850
Norwalk Hsg. Auth., Monroe St., Norwalk, CT.	2,808,000
Norwich Hsg. Auth., Westwood Park, Norwich, CT.	2,458,700
Rockville Hsg. Auth., Franklin Park West, Rockville, CT.	981,250
Salem Hsg. Auth., 27 Charter St., Salem, MA.	2,916,400 1,890,550
Swansea Hsg. Auth., 100 Gardner Neck Rd., Swansea, MA.	1,624,000
Waterbury Hsg. Auth., Lakewood, Waterbury, CT.	3,361,500
II—New York Regional Office:	
Jersey City Hsg. Auth., 400 US Hwy. #1, Jersey City, NJ.	854,350
Kiryas Joel Hsg. Auth., PO Box 1038, Monroe, NY.	8,011,800
Newark Hsg. Auth., 57 Sussex Ave., Newark, NJ.	10,913,750 10,483,850 9,590,800 9,590,800 8,051,907
New Square Hsg. Auth., 767 N Main St., New Square, NY.	3,393,800
New York City Hsg. Auth., 250 Broadway, New York City, NY.	13,354,200 16,827,000 15,106,200 15,106,200 15,718,800
Rochester Hsg. Auth., 140 West Ave., Rochester, NY.	2,345,000 2,345,000
Troy Hsg. Auth., 1 Eddy La., Troy, NY	10,667,300
III—Philadelphia Regional Office:	
Altoona Hsg. Auth., 1100 Eleventh St., Altoona, PA.	1,232,000
Cumberland Co. Hsg. Auth., 114 N Hanover St., Carlisle, PA.	930,800 930,800
Delaware State Hsg. Auth., 18 The Green, Dover, DE.	1,057,650
Dover Hsg. Auth., 1266–76 Whitecak Rd., Dover, DE.	1,938,250
Fairfax Co. Hsg. Auth., One Univ Plaza, Fairfax, VA.	905,400 765,450
Hsg. Opportunities Comm., 10400 Detrick Ave., Kensington, PA.	3,039,000
Lancaster Hsg. Auth., 333 Church St., Lancaster, PA.	4,000,000
Luzerne Co. Hsg. Auth., 250 First Ave., Kingston PA.	2,482,500 4,425,000
Morgantown Hsg. Auth., 517 Fairmont Ave., Fairmont, WV.	2,076,250
Newport News Hsg. Auth., 227 27th St., Newport News, VA.	1,519,350

PHA name	Amount
Northampton Hsg. Auth., 15 S Wood, Nazareth, PA.	1,712,750
Northumberland Hsg. Auth., 50 Mahoning St., Milton, PA.	2,251,400
Petersburg Hsg. Auth., 128 S. Sycamore St., Petersburg, VA.	2,359,500
Philadelphia Hsg. Auth., 2012 Chestnut St., Philadelphia, PA.	5,204,348
Pittsburgh Hsg. Auth., 200 Ross St., Pittsburgh, PA.	4,644,548
Raleigh Co. Hsg. Auth., PO Box 273, Beckley, WV.	2,076,000
Reading Hsg. Auth., 400 Hancock Blvd., Reading, PA.	850,000
St. Mary's Co. Hsg. Auth., Box 653, Leonardtown, MD.	645,200
Westmoreland Hsg. Auth., S. Greengate Rd., Greensburg, PA.	4,032,500 1,388,800
Williamsport Hsg. Auth., 505 Center St., Williamsport, PA.	1,584,300
York Hsg. Auth., 31 S. Broad St., York, PA.	871,000
IV—Atlanta Regional Office:	
Anderson Hsg. Auth., 1335 E. River St., Anderson, SC.	2,800,000
Charleston Co. Hsg. Auth., 2106 Mt. Pleasant, Charleston, SC.	4,958,500
Cleveland Co. Hsg. Auth., 605 S. Pond St., Toccoa, GA.	379,650
Columbia Hsg. Auth., 1917 Harden St., Columbia, SC.	1,758,750
Concord Hsg. Auth., P.O. Box 308, Concord, NC.	1,759,560
Darlington Hsg. Auth., P.O. Box 1440, Darlington, SC.	1,490,700
Erwin Hsg. Auth., 100 Town Acres, Erwin, TN.	181,200
Fairfield Hsg. Auth., 6704 Avenue D, Fairfield, AL.	930,000
Fayetteville Hsg. Auth., P.O. Drawer 2349, Fayetteville, NC.	2,113,500
Florence Hsg. Auth., 400 E. Pine St., Florence, SC.	2,830,750
Ft. Mill Hsg. Auth., 105 Bozeman Dr., Ft. Mill, SC.	1,434,800
Greensboro, Hsg. Auth., PO Box 21287, Greensboro, NC.	3,107,500
Hanceville Hsg. Auth., PO Box 330, Hanceville, AL.	1,426,000
Hialeah Hsg. Auth., 70 E. 70th St., Hialeah, FL.	3,867,000
Jacksonville Hsg., Auth., 1300 Broad St., Jacksonville, FL.	11,194,200
Jacksonville Hsg., Auth., 100 Roebuck Manor, Jacksonville, AL.	1,855,800
Jefferson Co. Hsg. Auth., 2100 Walker Chapel Rd., Fultondale, AL.	3,220,800
Lexington Hsg. Auth., 100 Lexington St., PO Box 1085, Lexington, NC.	2,458,400
Long Beach Hsg. Auth., PO Box 416, Long Beach, MS.	3,490,200
Louisville Hsg. Auth., 420 S 8th St., Louisville, KY.	4,024,800
Macon Hsg. Auth., PO Box 4928, Macon, GA.	4,487,100
Metro Devel. & Hsg. Auth., 701 S. Sixth St., Nashville, TN.	3,382,500
MS Regional Hsg. IV, PO Drawer 1051, Columbus, MS.	2,466,750
MS Regional Hsg. VI, 2180 Terry Rd., Jackson, MS.	2,440,000 1,037,000
Myrtle Beach Hsg. Auth., PO Box 2468, Myrtle Beach, SC.	1,326,850
NW Regional Hsg. Auth, PO Box 2510, Boone, NC.	1,290,450
Oxford Hsg. Auth., 900 Molly Barr Rd., Oxford, MS.	2,028,400
Paducah Hsg. Auth., 2330 Ohio St., Paducah, KY.	2,710,200
Prichard Hsg. Auth., PO Box 10307, Prichard, AL.	3,723,500
SC Reg 3 Hsg. Auth., PO Box 1326, Barnwell, SC.	3,825,600
Tallahassee Hsg. Auth., 2940 Grady Rd., Tallahassee, FL.	2,653,200
Warner Robins Hsg. Auth., PO Box 2048, Warner Robins, GA.	2,183,000
York Hsg. Auth., 221 California St., York, SC.	2,164,600
V—Chicago Regional Office:	
Alma Hsg. Auth., 423 Gratiot St. Alama, MI.	2,072,500
Athens Hsg. Auth., 490 Richland Ave., Athens, OH.	2,383,500
Brown Co. Hsg. Auth., 200 S Green St., Georgetown, OH.	1,716,000
Chicago Hsg. Auth., 22 W. Madison, Chicago, IL.	8,500,000
Columbiana Hsg. Auth., 325 Moore St., E. Liverpool, OH.	2,145,000
Cuyahoga Hsg. Auth., 1441 W. 25th, Cleveland, OH.	16,438,866 4,921,875
Grand Rapids Hsg. Auth., 1420 Fuller SE, Grand Rapids, MI.	4,246,500
Greene Co. Hsg. Auth., 536 N. Detroit, Xenia, OH.	2,145,000
Habitat Co-Receiver, 405 N. Wabash Ave., Chicago, IL.	2,300,000 2,300,000 2,300,000 2,300,000 2,300,000 2,300,000 2,300,000
Hocking Hsg. Auth., 50 S High St., Logan, OH.	2,137,500
Ishpeming Hsg. Auth., 111 Bluff St., Ishpeming, MI.	1,921,750
Kokomo Hsg. Auth., 210 E. Taylor, Kokomo, IN.	1,737,000
La Crosse Co. Hsg. Auth., 615 Plainview Rd., La Crosse, WI.	3,502,700
Menomonie Hsg. Auth., 1202 10th St., Menomonie, WI.	966,500
Milwaukee Hsg. Auth., 809 N Broadway St., Milwaukee, WI.	4,682,800 675,400
Minneapolis Hsg. Auth., 331 2nd Ave. S., #600, Minneapolis, MN.	1,176,650
Muskegon Hsg. Auth., 1080 Terrace St., Muskegon, MI.	2,123,250
Portage Hsg. Auth., 223 W. Main St., Ravenna, OH.	3,655,800
Rochester Hsg. Auth., 2122 Campus Dr., SE, Rochester, MN.	949,800
St. Cloud Hsg. Auth., 619 Mall Germain, St. Cloud, MN.	1,862,400
St. Louis Park Hsg. Auth., 5005 Minnetonka Blvd., St. Louis Park, MN.	1,547,950
St. Paul Hsg. Auth., 413 Wacouta, St. Paul, MN.	2,844,250
Sault Ste. Marie HA, 808 Pine St., Box 928, Sault Ste. Marie, MI.	1,281,800
Stark Hsg. Auth., 1800 W. Tuscarawas, Canton, OH.	4,805,600
Warren Co. Hsg. Auth., 990 E. Ridge Dr., Box 63, Lebanon, OH.	4,521,500
VI—Ft. Worth Regional Office:	
Bernalillo Co. Hsg. Auth., 620 Lomas Blvd. NM, Albuquerque, NM.	2,079,100
Bexar Co. Hsg. Auth., 1405 N. Main, #240, San Antonio, TX.	2,270,000
Brownsville Hsg. Auth., 2606 Boca Chica Blvd., PO Box 4420, Brownsville, TX.	2,893,000
Copperas Cove Hsg. Auth., 701 Casa Circle, Copperas Cov, TX.	1,208,700
Corpus Christie Hsg. Auth. 3701 Ayers, Corpus Christi, TX.	2,442,000
Dallas Hsg. Auth., 2525 Lucas Dr., Dallas, TX.	5,909,650 5,909,650 4,180,700
El Paso Hsg. Auth., 1600 Montana, El Paso, TX.	4,002,750
Elsa Hsg. Auth., 309 W. Third, Elsa, TX.	2,486,000
Fenton Hsg. Auth., PO Box 310, Fenton, LA.	1,768,750
Houston Hsg. Auth., PO Box 2971, Houston, TX.	4,155,900
La Joya Hsg. Auth., PO Drawer H, La Joya, TX.	2,139,500
Las Cruces Hsg. Auth., 926 S. San Pedro, Las Cruces, NM.	2,640,250
Marksville Hsg. Auth., 100 N. Hillside Dr., Marksville, LA.	1,092,600
Mission Hsg. Auth., 906 E. Eighth, Mission, TX.	2,594,100
New Orleans Hsg. Auth., 918 Carondelet St., New Orleans, LA.	1,788,234
Plano Hsg. Auth., 1321 Ave. G, Plano, TX.	1,958,306
San Angelo Hsg. Auth., 115 W. First, San Angelo, TX.	1,766,000
San Antonio Hsg. Auth., 818 S. Flores, San Antonio, TX.	2,860,000
Seguin, Hsg. Auth., 516 Jefferson Ave., Seguin, TX.	690,600
Shreveport Hsg. Auth., 623 Jordan St., Shreveport, LA.	2,506,400
White River Reg. Hsg. Auth., PO Box 650, Melbourne, AR.	1,016,250
VII—Kansas City Regional Office:	
Cabool Hsg. Auth., 301 W. First St., Mountain Grove, MO.	807,900
Central Iowa Reg. HA, 1111 9th St., Suite 240, Des Moines, IA.	2,248,200 1,395,000
Chanute Hsg. Auth., 110 S. Ronda La., Chanute, KS.	592,500
Eastern Iowa Reg. HA, Suite 330, Nesler Ctr., Dubuque, IA.	359,500 269,100 115,400 366,400
Holcomb Hsg. Auth., PO Box 78, Holcomb, MO.	731,800
Iowa City Hsg. Auth., 410 E. Washington St., Iowa City, IA.	1,605,500
Knoxville Hsg. Auth., 305 S. 3rd St., Knoxville, IA.	640,500
Linn Hsg. Auth., Church St., Linn, KS....	376,200
Muscatine Hsg. Auth., 215 Sycamore, Muscatine, IA.	1,153,500
Salina Hsg. Auth., 469 S. Fifth, Salina, KS.	634,000
St. Joseph Hsg. Auth., 502 S. 10th St., St. Joseph, MO.	2,430,100
St. Louis Co. Hsg. Auth., 8865 Natural Bridge, St. Louis, MO.	3,626,000
West Plains Hsg. Auth., 302 Walnut, West Plains, MO.	2,278,500
VIII—Denver Regional Office:	
Adams Co. Hsg. Auth., 7190 Colorado Blvd., Commerce City, Co.	1,192,500
Cheyenne Hsg. Auth., 3304 Sheridan Ave., Cheyenne, WY.	806,350
Colorado Spr. Hsg. Auth., 30 S. Nevada, Colorado Springs, CO.	1,234,200
Denver Hsg. Auth., 1100 W. Colfax, Denver, CO.	1,192,500
Jefferson Co. Hsg. Auth., 1445 Holland St., Lakewood, CO.	1,192,500
Lakewood Hsg. Auth., 445 S. Allison Pkwy., Lakewood, CO.	1,234,200
Loveland Hsg. Auth., 2105 Maple Dr., Loveland, CO.	1,248,100
Salt Lake Co. Hsg. Auth., 1962 S. 200 E., Salt Lake City, UT.	1,206,100
Salt Lake City Hsg. Auth., 1800 SW Temple, Salt Lake City, UT.	1,169,100
Utah Co. Hsg. Auth., 257 E. Center St., Provo, UT.	386,100 772,200 1,184,500
WY Comm. Devel. Admin., PO Box 634, Casper, WY.	1,067,800
IX—San Francisco Regional Office:	

PHA name	Amount
Chandler Hsg. Auth., 127 N. Kingston St., Chandler, AZ.	8,191,550
Clark Co. Hsg. Auth., 5064 E. Flamingo Rd., Las Vegas, NV.	4,420,000 7,665,760
Hawaii Hsg. Auth., 1002 N. School St., Honolulu, HI.	4,664,000
LA Co. Hsg. Auth., Corporate Pl., Los Angeles, CA.	10,375,000
LA City Hsg. Auth., 515 Columbia Ave., Los Angeles, CA.	1,988,200 3,006,500 963,500 560,500 385,400 2,031,700 826,600
Mendocino Hsg. Auth., 405 W. Perkins, Ukiah, CA.	1,998,150 2,378,750
Phoenix Hsg. Auth., 920 E. Madison, Suite D, Phoenix, AZ.	7,952,000
Sacramento Co. Hsg. Auth., 630 "I" Street, Sacramento, CA.	8,550,000
Sacramento City HA, 630 "I" Street, Sacramento, CA.	8,550,000
S. Barbara City Hsg. Auth., 808 Laguna St., Santa Barbara, CA.	5,122,200
San Diego City Hsg. Auth., 1625 Newton Ave., San Diego, CA.	9,185,000
San Bernardino Co. HA, 1053 N. D St., San Benardino, CA.	9,276,600
Santa Clara Co. Hsg. Auth., 505 W. Julian, San Jose, CA.	2,163,000
Santa Cruz Hsg. Auth., 2160 41st Ave., Capitola, CA.	1,613,250
Tuscon Hsg. Auth., 1501 N. Oracle, Tucson, AZ.	1,922,500
X—Seattle Regional Office:	
Jackson Co. Hsg. Auth., 2231 Table Rock Rd., Medford, OR.	333,200 2,611,500
King Co. Hsg. Auth., 15455 65th Ave., S. Seattle, WA.	3,054,400
Nampa Hsg. Auth., 1703 Third St, N., Nampa, ID.	929,250
Othello Hsg. Auth., 335 N. Third, Othello, WA.	1,206,750
Pierce Co. Hsg. Auth., 603 S. Polk St., Taxoma, WA.	3,054,400
Portland Hsg. Auth., 135 SW Ash, #400, Portland, OR.	1,706,000
Spokane Hsg. Auth., W. 55 Mission #104, Spokane, WA.	1,927,061
Tacoma Hsg. Auth., 1728 E. 44th St., Tacoma, WA.	2,978,050
Vancouver Hsg. Auth., 500 Omaha Way, Vancouver, WA.	2,559,000

Dated: January 14, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-1439 Filed 1-21-92; 8:45am]

BILLING CODE 4210-33

[Docket No. N-92-3229; FR 2947-N-02]

Indian Housing Development for Fiscal Year 1991 Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Indian Housing Development for Fiscal Year 1991. The announcement contains the names and addresses of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Ralph Gonzalez, Director, Housing Development Division, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1015. The TDD number for the hearing impaired is (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to provide grants for the development of new Indian housing units.

The 1991 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on April 1, 1991 (56 FR 13378). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $210,022,133 was awarded to 104 Indian Housing Authorities for the development of 2,518 new units. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the names addresses, and amounts of those awards as follows:

NOFA for Indian Housing Development for Fiscal Year 1991

Funding recipient	Amount
Region V:	
Bad River, P.O. Box 57, Odanah, WI 54861	$756,040 756,040 1,512,080
Bay Mills, Route 1, P.O. Box 3345, Brimley, MI 49715	716,900
Eastern Cherokee (Qualla), Acquoni Road, P.O. Box 174, Cherokee, NC 28719-1749	1,096,640
Fond Du Lac, 105 University Avenue, Cloquet, MN 55720	735,200
Grand Traverse, Route 1, Box 474, Suttons Bay, MI 49682	1,023,440
Hannahville Potowatomi, Hannahville B1 Road Community Center Wilson, MI 49896	693,550
Keweenaw Bay (Ojibwa), P.O. Box 615, Baraga, MI 49908	714,380
Lac Vieux Desert, P.O. Box 446, Watersmeet, MI 49969	714,390
Mashantucket West. Pequot, P.O. Box 160, Indiantown Road Ledyard, CT 06339	1,223,410
Mississippi Band Choctaw, P.O. Box 6088, Choctaw Branch, Philadelphia, MS 39350	1,163,534
Mowa Band of Choctaw, P.O. Box 268, McIntosh, AL 36553	1,696,000
Oneida Indian Nation, 101 Canal Street, Canastota, NY 13032	2,290,066
Oneida Tribe of Wisconsin, P.O. Box 68, Oneida, WI 54155	756,040
Paucatuck Eastern Pequot, 935 Lantern Hill Road, Ledyard, CT 06339	1,261,204
Penobscot, Indian Island, P.O. Box 498, Old Town, ME 04468	721,330
Pleasant Pt. Passamaquoddy, P.O. Box 339, Perry, ME 04667	778,415
Poarch Band of Creek, Route 3, P.O. Box 243-A, Atmore, AL 36502	816,365
Red Lake, P.O. Box 219, Highway 1 East, Red Lake, MN 56671	735,200
Sac and Fox, Route 2, Box 56C, Tama, IA 52339	686,600
Saginaw Chippewa, 2451 Nish-Na-Be-Anong Road, Mt. Pleasant, MI 48858	644,450
Saint Croix, P.O. Box 347, Hertel, WI 54845	756,040
Saint Regis (Akwesasne), Route 37, P.O. Box 540, Hogansburg, NY 13655	1,124,810
Sault Sainte Marie, 2218 Shunk Road, Sault Ste. Marie, MI 49783	969,665
Seminole, 3101 Northwest 63rd Avenue, Hollywood, FL 33024	570,550 533,916
Seneca Nation, 50 Iroquois Drive, Irving, NY 14081	1,366,705
White Earth, P.O. Box 436, White Earth, MN 56591	735,200 735,200
Wisconsin Potawatomi, P.O. Box 346, Crandon, WI 54520	810,520
Region VI:	
Louisiana-Coushatta, P.O. Box 818, Elton, LA 70532	1,154,200
Delaware, P.O. Box 334, Chelsea, OK 74647	1,096,490
Apache, P.O. Box 1172, Anadarko, OK 74647	1,154,200
Kaw, P.O. Box 371, Newkirk, OK 74647	1,154,200
Absentee-Shawnee, P.O. Box 425, Shawnee, OK 74801	1,154,200
Absentee-Shawnee, P.O. Box 425, Shawnee, OK 74801	1,154,200
Seneca-Cayuga, P.O. Box 1304, Miami, OK 74354	1,154,200
Cherokee, P.O. Box 1007, Tahlequah, OK 74474	8,656,500
Choctaw, P.O. Box G, Hugo, OK 74743	5,771,000
Pawnee, P.O. Box 408, Pawnee, OK 74058	560,610
Region VIII:	
Standing Rock, P.O. Box 484, Fort Yates, ND 58538	1,902,330
Oglala Sioux, P.O. Box C, Pine Ridge, SD 57770	4,277,054
Chippewa Cree, P.O. Box 615, Box Elder, MT 59521	1,868,397
Utah Paiute, 900 North, 100 East, Cedar City, UT 84720	1,342,980
Ute Mountain Uts, General Delivery, Towaoc, CO 81334	1,613,767
Oglala Sioux, P.O. Box C, Pine Ridge, SD 57770	2,519,350
Ute Mountain Uts, General Delivery, Towaoc, CO 81334	1,027,456
Crow Creek, P.O. Box 655, Fort Thompson, SD 57339	951,564

Funding recipient	Amount
Flandreau, P.O. Box 328, Flandreau, SD 57028	1,502,580
Fort Peck, P.O. Box 667, Poplar, Montana 59255	2,353,542
Wind River, P.O. Box 327, Fort Washakie, WY 82514	2,144,958
Crow Tribal, P.O. Box 99, Crow Agency, Montana 59022	2,144,958
Crow Creek, P.O. Box 655, Fort Thompson, SD 57339	952,325
Rosebud, P.O. Box 69, Rosebud, SD 57570	1,857,550
Turtle Mountain, P.O. Box 620, Belcourt, ND 58316	1,360,455
Winnebabo, Winnebego, NE 68071	886,290
Salish-Kootenai, P.O. Box 38, Pablo, MT 59855	1,413,945
Region IX:	
All Mission-La Jolla, 1523 E. Valley Pkwy., Escondido, CA 92027	539,383
MODOC LASSEN-Grindstone, P.O. Box 1172, Anadarko, OK 73005	1,059,973
Tule River, P.O. Box 748, Porterville, CA 93257	2,674,766
All Mission-Barona, 1523 E. Valley Pkwy., Escondido, CA 92027	1,679,001
Quechan, P.O. Box 650, Yuma, AZ 95364	1,877,771
All Mission-San Pasqual, 1523 E. Valley Pkwy., Escondido, CA 92027	2,870,282
All Mission-Viejas, 1523 E. Valley Pkwy., Escondido, CA 92027	957,596
All Mission-Torres Martinez, 1523 E. Valley Pkwy., Escondido, CA 92027	753,761
All Indian-Sandia, P.O. Box 35040, Station D, Albuquerque, NM 87176	1,367,227
White Mountain, P.O. Box 1270, Whiteriver, AZ 85941	5,783,449
All Indian-Zia, P.O. Box 35040, Station D, Albuquerque, NM 87176	1,894,358
Tule River, P.O. Box 748, Porterville, CA 93257	2,174,050
All Mission-La Jolla, 1523 E. Valley Pkwy., Escondido, CA 92027	1,252,825
All Mission-Pauma, 1523 E. Valley Pkwy., Escondido, CA 92027	523,242
White Mountain, P.O. Box 1270, Whiteriver, AZ 85941	5,729,804
Fallon, 8955 Mission Rd., Fallon, NV 89406	1,518,693
All Mission-Morongo, 1523 E. Valley Pkwy., Escondido, CA 92027	1,437,177
All Mission-Rincon, 1523 E. Valley Pkwy., Escondido, CA 92027	1,001,258
All Mission-Rincon, 1523 E. Valley Pkwy., Escondido, CA 92027	1,369,507
Pyramid Lake, P.O. Box 213, Nixon, NV 89424	3,580,166
Northern Pueblos-San Ildefonso, P.O. Box 3502, Pojoaque, NM 87501	1,446,309
Pascua Yaqui, 4720 W. Calle Tetakusim, Tucson, AZ 85746	3,065,668
Walker River, P.O. Box 238, Schurz, NV 89427	1,026,150
Hoopa, P.O. Box 1295, Hoopa, CA 95546	3,319,108
All Mission-Soboba, 1523 E. Valley Pkwy., Escondido, CA 92027	560,628
Hualapai, P.O. Box 8, Peach Springs, AZ 86434	2,719,061
Karuk, P.O. Box 1206, 351 Oberlin Road, Yreka, CA 96097	1,800,587
Northern Pueblos-Nambe, P.O. Box 3502, Pojoaque, NM 87501	1,010,391
Northern Pueblos-Tesuque, P.O. Box 3502, Pojoaque, NM 87501	711,603
San Carlos, P.O. Box 187, San Carlos, AZ 85550	2,952,254
Washoe, 1588 Watasheamu Dr., Gardenerville, NV 89410	1,779,115
Pascua Yaqui, 4720 W. Calle Tetakusim, Tucson, AZ 85746	3,016,831
Reno Sparks, 15-A Reservation Rd., Reno, NV 89502	1,748,586
Fallon, 8955 Mission Rd., Fallon, NV 89406	1,224,945
Navajo-Coyote Canyon, NM	1,863,996
Navajo-Fort Defiance, AZ, P.O. Box 387, Window Rock, AZ 86515	2,939,066
Hopi, P.O. Box 698, Second Mesa, AZ 86043	1,727,637
Navajo-Crownpoint, NM	3,484,569
Region X:	
Quileute, P.O. Box 159, La Push, WA 98350	2,327,000
Lummi, 3220 Baich Road, Bellingham, WA 98226	3,436,000
Warm Springs, P.O. Box 177, Warm Springs, OR 97761	3,320,000
Makah, P.O. Box 888, Neah Bay, WA 98357	2,236,000
Lower Elwha, 1705 Stratton Road, Port Angeles, WA 98362	1,948,000
Coeur D'Alene, P.O. Box 267, 1005 Eighth Street, Plummer, ID 83851	1,176,200

Dated: January 14, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 91-1440 Filed 1-21-91; 8:45 am]

BILLING CODE 4210-33-M

[Docket No. N-92-3194; FR-2917-N-02]

Public Housing Drug Elimination, Technical Assistance Program; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice for the Public Housing Drug Elimination Technical Assistance Program; Fund Availability—FY 1991. The announcement contains the names and addresses of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Elizabeth Cocke or David Tyus, Office for Drug Free Neighborhoods (ODFN), Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1197 or (202) 708–3502. The TDD number for the hearing impaired is (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to provide short-term technical assistance to better prepare public and Indian housing and resident organization officials to confront the widespread abuse of controlled substances in public housing communities.

The 1991 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on April 11, 1991 (56 FR 14828). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $72,700 was awarded to 12 consultants to provide short-term technical assistance to applicant Public Housing Agencies, Indian Housing Authorities, and resident organizations. The assistance is to aid housing authorities and resident organizations in assessing their drug-related problems; implementing anti-drug programs; and improving the applicant's ability to respond to drug problems in targeted public housing. The balance of the announced funds shall remain available under the NOFA until expended. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of the awards as follows:

Public Housing Drug Elimination, Technical Assistance Program; Fund Availability—FY 1991 (Fourth Quarter)

Funding recipient	PHA	Amount approved
Lexie Williams, 1177 Dominion Court, Port Orange, FL 32119	Housing Authority of the City of Daytona Beach, 118 Cedar Street, Daytona Beach, FL 32114.	$5,300
George King, 2984 SE 50 Terrace, Ocala, FL 32671	Ocala Housing Authority, 1415 N.E. 32nd Terrace, Ocala, FL 32670	9,000
Anita Dunston, 7312 Ewing Place, Raleigh, NC 27604	So. Delta Reg. Housing Auth, P.O. Box 1120, Greenville, MS 38702	5,300

Funding recipient	PHA	Amount approved
Quadel Consulting Corp., 1250 Eye St. NW., Suite 330, Washington, DC 20005.	Chattanooga Housing Authority, P.O. Box 1466, Chattanooga, TN 37401	7,700
Isaac Montoya, Affiliated Systems Corp., 1200 Post Oak Blvd., Houston, TX 77056.	Housing Authority of the City of Las Cruces, 926 So. San Pedro St., Las Cruces, NM 88001.	5,200
Isaac Montoya, Affiliated Systems, 1200 Post Oak Blvd., Houston, TX 77056.	Housing Authority of the City of Alamogordo, P.O. Box 336, Alamogordo, NM 88310.	5,200
Janice Yates, Route 3, Box 35, Wellston, OK 74881	Housing Authority of the City of McAlester, 820 W. Kiowa, McAlester, OK 74502.	1,900
Nikki Johnson, Daystar Associates, 2311 E. Burnside, Portland, OR 97214	Housing Authority of the County of Clackamas, 13930 South Gain Street, Oregon City, OR 97045.	7,500
Helen Liere, Vantage Consulting, 357-A Warner Milne Rd., Oregon City, OR 97045.	Housing Authority and Community Services Agency, of Lane County, 300 West Fairview Dr., Springfield, OR 97477.	10,000
Shirley Robbins, P.O. Box 4479, Williams Lake, B.C., Canada V2G 2V5	Tlingit Haida Regional Housing Authority, P.O. Box 32237, Juneau, AK 99803.	2,800
Lena Paul, P.O. Box 4145, Williams Lake, B.C., Canada V2G 2V5	Tlingit Haida Regional Housing Authority, P.O. Box 32237, Juneau, AK 99803.	2,800
Safe Streets Campaign, Lyle Quasim, Exec. Dir., 934 Broadway, Tacoma, WA 98402.	Housing Authority of the City of Tacoma, 1728 E. 44th St., Tacoma, WA 98404.	10,000

Dated: January 14, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-1441 Filed 1-21-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intentional Introductions Policy Review Committee Public Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Intentional Introductions Policy Review Committee, a committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.). The meeting is open to the public. Interested persons may make oral statements to the Committee or may file written statements for consideration. The meeting will provide attendees with additional background on the mandate of the Committee; review the options identified through written statements; and provide interested parties the opportunity to present additional options or elaborate on any options previously identified. To facilitate discussion at the meeting, written statements submitted to the Committee should: (1) Identify approaches (e.g., voluntary guidelines, model state codes, evaluation protocols, or other means) which substantially reduce the risk of adverse consequences associated with intentional introduction of aquatic organisms; (2) evaluate how and to what extent those approaches will reduce risks; and (3) suggest criteria and techniques the Committee should use to evaluate all approaches identified.

DATES: Interested parties may submit written statements to the Committee, at the address listed below, on or before January 31, 1992. This scoping meeting will be held on February 26, 1992, beginning at 9:00 a.m. with registration during the half-hour preceding the meeting. The meeting is scheduled to end at 1 p.m., but may be extended into the afternoon if warranted.

PLACE: The meeting will be held in the auditorium of the Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

ADDRESS: Intentional Introductions Policy Review Committee, c/o Dr. Dennis R. Lassuy, U.S. Fish and Wildlife Service (820 ARLSQ), U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION: Contact Dr. Dennis Lassuy at (703) 358-1718.

Dated: January 16, 1992.

Gary Edwards,

Assistant Director, Fish and Wildlife Service.

[FR Doc. 92-1568 Filed 1-21-92; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf, Availability Proposed Notice of Sale Central Gulf of Mexico Oil and Gas Lease Sale 139

Gulf of Mexico Outer Continental Shelf (OCS); Notice of Availability of Proposed Notice of Sale, Central Gulf of Mexico, Oil and Gas Lease Sale 139.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for Sale 139, Central Gulf of Mexico, may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, or by telephone (504) 736-2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for mid-1992.

This Notice of Availability is hereby published, pursuant to 30 CFR 256.29(c), as a matter of information to the public.

Dated: January 15, 1992.

Scott Sewell,

Director, Minerals Management Service.

[FR Doc. 92-1473 Filed 1-21-92; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service, Interior.

Mississippi River Corridor Study Commission Meeting

AGENCY: National Park Service, Interior

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act, 5 U.S.C. appendix (1988).

DATES AND TIMES: March 2, 8 a.m. to 5 p.m., March 4, 8 a.m. to 12 noon.

ADDRESSES: Washington Plaza Hotel, Massachusetts and Vermont Avenues, NW., Washington, DC 20005.

The business meeting will be open to the public. Space and facilities to

accommodate members of the public are limited and persons will be accommodated on a first come, first served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resource Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221–3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101–398, September 28, 1990.

Dated: January 9, 1992.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 92–1524 Filed 1–21–92; 8:45 am]

BILLING CODE 4310–70–M

National Park System Advisory Board; Meeting

AGENCY: National Park Service.

ACTION: Notice of meeting of History Areas Committee of Advisory Board.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board will be held at 9 a.m. at the following location and date.

DATE: February 6, 1992.

LOCATION: National Park Service Director's Conference Room 3119, Main Interior Building, 1849 C Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Benjamin Levy, Senior Historian, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Telephone (202) 343–8164, or FTS 343–8164.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on February 26, 1992 of the qualifications of properties being proposed for National Historic Landmark designation, and to recommend to the full Board those properties that the Committee finds meet the criteria of the National Historic Landmarks Program. The members of the History Areas Committee are:

Dr. Holly Anglin Robinson, Chairperson.
Mr. Robert Burley, FAIA.
Mrs. Anne Walker.
Judge Robert Flynn Orr.
Lt. Governor Connie B. Binsfeld.
Mr. Paul F. Cole.
Dr. Stuart Kaufman.
Mr. F.C. Duke Zeller.

The meeting will include presentations and discussions on the national historic significance and the integrity of a number of properties being nominated for National Historic Landmark designation. These nominations include 3 architectural properties located in the District of Columbia, New York, and Pennsylvania; 6 maritime resources in Iowa, Kansas, Michigan, South Carolina, and Washington; 1 property being considered for archeology located in West Virginia; 4 sites relating to the women's history theme study in California, Massachusetts, and New York; a World War II site in Arkansas; a site in Maryland dealing with Naval history; a recreation site in Pennsylvania; a Louisiana site relating to agriculture; an engineering site in New York; and an industrial site in Pennsylvania.

The Committee will consider a potential National Historic Trail in Alabama in order to recommend to the full Board whether the potential trail is of National historic significance. Also to be discussed will be at least seven properties proposed for study as potential additions to the National Park System; for these properties the Committee will determine from existing information on hand whether to urge that the full Board recommend that the properties be fully studied. The properties now on the agenda are located in Idaho, Kansas, Maryland, Massachusetts, Montana, New York, and Virginia. The Committee will also be conducting an alternatives study for the preservation and interpretation of historic resources at Dutch Harbor Naval Operating Base and U.S. Defenses, Unalaska, Alaska to determine whether to make recommendations to the full Board regarding transmittal of a report on this property to Congress.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Committee a written statement concerning matters to be discussed. Written statements may be submitted to the Senior Historian, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

Dated: January 14, 1992.

Rowland T. Bowers,

Deputy Associate Director, Cultural Resources, National Park Service, WASO.

[FR Doc. 92–1523 Filed 1–21–92; 8:45 am]

BILLING CODE 4310–70–M

Office of the Secretary

[WO–220–02–4320–12]

Grazing Administration—Exclusive of Alaska; Grazing Fee for the 1992 Grazing Year

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of establishment of grazing fee for the 1992 grazing year.

SUMMARY: The Secretary of the Interior hereby announces that the fee for livestock grazing for the 1992 grazing year is $1.92 per animal unit month on public lands administered by the Bureau of Land Management.

EFFECTIVE DATE: March 1, 1992, through February 28, 1993.

ADDRESSES: Any inquiries should be sent to Director (220), Bureau of Land Management, Main Interior Bldg., rm. 5650, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Donald D. Waite, (202) 653–9210.

SUPPLEMENTARY INFORMATION: Grazing Fees for the use of public rangelands are established and collected under the authority of section 3 of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), and Executive Order 12548 of February 14, 1986. The grazing fees are computed by the formula established in 43 CFR 4130.7–1.

Dated: January 14, 1992.

Dave O'Neal,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 92–1452 Filed 1–21–92; 8:45 am]

BILLING CODE 4310–84–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, related form and explanatory material

may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0038), Washington, DC 20503, telephone 202–395–7340.

Title: Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources 30 CFR part 783.

OMB Number: 1029–0038.

Abstract: Applicants for underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed underground coal mining activities.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Underground Coal Mining Operators.

Estimated Completion Time: 16 hours.

Annual Responses: 1,160.

Annual Burden Hours: 18,076.

Bureau clearance officer: Andrew F. DeVito, (202) 343–5150.

Dated: January 13, 1992.

Andrew F. DeVito,

Acting Chief, Division of Technical Services.

[FR Doc. 92–1450 Filed 1–21–92; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Lodging of consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 29 CFR 50.7, notice is hereby given that a partial consent decree was lodged in the United States District Court for the Sourthern District of Texas on December 2, 1991, in settlement of the allegations in the amended complaint in the action styled *United States* v. *Cumberland International Corporation, et al.* This partial consent decree settles the government's claims brought pursuant to section 107 of CERCLA, 42 U.S.C. 9607, for costs incurred by the United States because of actual or threatened releases of hazardous substances from the Crystal chemical Company Site located in Houston, Texas.

Under the terms of the proposed partial consent decree, the defendants agree to pay the United States three million dollars ($3,000,000) for costs incurred by the United States relating to the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Cumberland International Corporation, et al.* D.J. Ref. 90–11–3–7A.

The proposed consent decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs) payable to consent Decree Library. The proposed Consent Decree may also be reviewed at the Environmental Protection Agency.

EPA Region VI

Contact: Michael Barra or Anne Miller, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 655–2120.

Roger B. Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–1449 Filed 1–21–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree

Notice is hereby given that on January 13, 1991, a proposed Consent Decree was lodged with the United States District Court for the Southern District of Illinois in *United States and the State of Illinois* v. *Village of Sauget, Illinois*, C.A. No. 88–5131, an action brought pursuant to section 309 of the Clean Water Act ("the Act"), 33 U.S.C. 1319, alleging violations of the Act, and Sauget's National Pollution Discharge Elimination Permit. This action concerns the American Bottoms Regional Wastewater Treatment Facility, located in Sauget, Illinois. The proposed Consent Decree would resolve the violations alleged in the United States' and the State of Illinois' second amended complaint.

The Department of Justice will receive comments on the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Illinois* v. *Village of Sauget, Illinois*, D.J. Ref. No. 90–5–1–1–3036. The proposed Consent Decree may be examined at the Office of the United States Attorney (Civil Division) for the Southern District of Illinois, 9 Executive Drive, suite 300, Fairview Heights, Illinois 62208, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004 (202–347–7829). A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $22.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–1448 Filed 1–21–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–25,792 and TA–W–25,792A]

Bergman Knitting Mills, Philadelphia, PA and NY; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 6, 1991 applicable to all workers of Bergman Knitting Mills, Philadelphia, Pennsylvania.

The Department is amending the certification to include the New York, New York location of Bergman Knitting Mills.

New information received by the Department shows that the New York City office ceased operations in November 1991 and all Bergman employees were laid off by November 1991.

The amended notice applicable to TA–W–25,792 is hereby issued as follows:

All workers of Bergman Knitting Mills, Philadelphia, Pennsylvania and New York, New York who became totally or partially separated from employment on or after April 22, 1990 are eligible to apply for adjustment assistance.

Signed at Washington, DC this January 10, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-1494 Filed 1-21-92; 8:45 am]

BILLING CODE 4510-30-M

TA-W-25,933. Dekalb Energy Co., Denver, CO; TA-W-25,933A Operations at Various Other Locations in Colorado; TA-W-25,933B Operations at all Locations in Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 14, 1991 applicable to all workers of Dekalb Energy Company in Denver, Colorado and in various other locations in the state of Colorado.

The Department is amending the certification to include all locations in the State of Texas.

New information received by the Department shows that the Dekalb workers in Texas are under the control of the Denver, Colorado headquarters and that worker separations occurred at the Dekalb Energy Company in Texas because of reduced exploration and drilling activity.

The amended notice applicable to TA-W-25,933 is hereby issued as follows:

"All workers of Dekalb Energy Company, Denver, Colorado (TA-W-25,933) and in various other locations throughout the State of Colorado (TA-W-25,933A) and at all locations in Texas (TA-W-25,933B) who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance."

Signed at Washington, DC this January 10, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-1493 Filed 1-21-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,516]

H.H. Cutler Co., Grand Rapids, MI; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 4, 1991 in response to a worker petition which was filed on behalf of workers at H.H. Cutler Company, Grand Rapids, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 13th day of January 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-1495 Filed 1-21-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Federal Network Council Advisory Committee; Notice of Amendment

A Federal Advisory Networking Council Advisory Committee (FNCAC) meeting is being held on January 29, 1992, 9 a.m. to 4 p.m.

The location of the FNCAC meeting has been changed from the National Science Foundation to the Ramada Inn, 1430 Rhode Island Avenue, NW., Washington, DC 20005 (in the Cambridge Room, 2nd floor).

For additional information, contact Lynn Behnke, Executive Assistant, Federal Networking Council, 4001 N. Fairfax Drive, suite 200, Arlington, VA 22203-1614. Telephone: (703) 522-6410.

The notice for this meeting originally appeared in the January 9, 1992 issue of the **Federal Register**, Vol. 57, No. 6, p. 935.

January 15, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-1464 Filed 1-21-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-3392]

Finding of no significant impact and notice of opportunity for a hearing amendment of source materials; license no. SUB-526; Allied-Signal, Inc.; Metropolis, Illinois

The U.S. Nuclear Regulatory Commission (the Commission) is considering the amendment of Source Materials License No. SUB-526 for the Allied-Signal, Inc., facility located in Metropolis, Illinois, to authorize the release of calcium fluoride for use in the steel-making industry.

Summary of the Environmental Assessment

Indentification of the Proposed Action: The proposed action is to ship the synthetic CaF_2 to briquette plants where it will be blended with natural CaF_2 (fluorspar) to form briquettes used as a fluxing agent in the steel-making industry. The synthetic CaF_2 is a byproduct of Allied's uranium hexafluoride (UF_6) conversion operation and contains trace amounts of natural uranium, thorium-230, radium-226, and arsenic.

The Need For The Proposed Action: Currently, Allied is authorized to transport synthetic CaF_2 to an Allied hydrofluoric acid (HF) production plant where it is blended with natural CaF_2 for routine HF production. Allied produces more CaF_2 than can be used in HF production, and the proposed action would authorize the recycle of the excess synthetic CaF_2 instead of Allied having to dispose of it. Also, the use of the synthetic CaF_2 will decrease the amount of natural CaF_2, a non-renewable natural resource, currently being used in the production of steel.

Environmental Impacts of the Proposed Action: The Allied UF_6 conversion process produces appropriately 4,000 to 6,000 tons of CaF_2 (dry weight basis) annually. When the CaF_2 is produced, it has a water content of approximately 20 percent.

For the most recent three-year period (1988-1990), the natural uranium content of the CaF_2 has averaged 131 pCi/gm (dry weight basis). This corresponds to a uranium content of 105 pCi/gm for CaF_2 with a 20 percent moisture content.

All CaF_2 produced at Allied is sampled and analyzed for uranium content. Currently at Allied, if the uranium concentration of the CaF_2 is less than 338.5 pCi/gm or 500 parts per million, the CaF_2 is added to the warehouse inventory. If the concentration is greater than 338.5 pCi/gm, then the CaF_2 is either disposed of as low-level radioactive waste or it is blended into the warehouse inventory, as long as doing so will not cause the uranium content of the inventory to exceed 338.5 pCi/gm.

A recent comparison by Allied of synthetic CaF_2 and natural fluorspar (CaF_2) follows:

Element or isotope	Synthetic CaF_2	Natural CaF_2
Natural Uranium	105 pCi/gm	18 pCi/gm.
Radium-226	0.26 pCi/gm	1.4 pCi/gm.
Thorium-230	1.9 pCi/gm	2.1 pCi/gm.
Arsenic	483 parts per million.	292 parts per million.

The license concluded that the only impurity that may be of public or worker

impact is the natural uranium. The levels of radium-226 and thorium-230 detected in the synthetic CaF_2 are comparable to levels found in the natural CaF_2. The airborne levels of arsenic detected in Allied's synthetic CaF_2 warehouse are less than 1 percent of the Occupational Safety and Health Administration (OSHA) permissible exposure limit of 0.010 mg/m³.

The level of natural uranium is approximately six times greater in the synthetic CaF_2 than in the natural CaF_2. However, the information supplied by the licensee shows that the synthetic CaF_2's natural uranium concentration is comparable to levels of natural uranium found in materials to which the general population is routinely exposed, such as Florida phosphate rocks (120 pCi/gm), Tennessee bituminous shale (50–80 pCi/gm), and cattle feed supplements (up to 122 pCi/gm).

A radiation dose assessment has been performed by Allied to determine the critical group and exposed general population doses which might result from the recycle of the synthetic CaF_2. The following table summarizes the maximum dose expected for individuals in the critical group and for the exposed general population. Allied used the following assumptions to complete the dose assessment:

1. Natural uranium is the only radioactive material present in the synthetic CaF_2. The concentration of the natural uranium is 105 pCi/gm. The solubility fraction of the natural uranium is 6.5 percent Class D and 93.5 percent Class W, as determined from lung fluid solubility testing. The particle size is one micron.

2. The finished briquettes are composed of 25 percent synthetic CaF_2.

3. The concentration of total dust in the briquetting work is 15 mg/m³ of which 25 percent is synthetic CaF_2. The briquetting plant worker wears a one-half face respirator as required by OSHA.

4. Based on the briquettes containing 25 percent synthetic CaF_2 and a distance of 1 meter, the external exposure rate to the briquette plant operator is 0.055 μR/hour.

Critical group	No. of persons	Total [1] mrem/year
Truck driver—Allied to loading dock.	2	5.2E-2
Clamshell operator at Metropolis dock.	1	1.3E-1
Clamshell operator at Ohio dock.	1	6.6E-2
Clamshell operator at Indiana dock.	1	6.6E-2
Truck driver—Ohio dock to briquette plant.	2	2.2E-1
Truck driver—Indiana dock to briquette plant.	2	1.9E-1
Briquette plant operator	1	7.6E-1
Truck driver—Briquette plant to steel mill.	2	8.3E-2
Total Critical Group Collective Dose.		1.6

[1] Total dose = Deep Dose Equivalent plus the Committed Effective Dose Equivalent times the number of persons exposed.

Exposed general population	No. of persons	Total mrem/year
CaF_2 truck route—Metropolis.	70	8.69E-5
CaF_2 truck route—Ohio	700	4.51E-4
CaF_2 truck route—Indiana	140	9.02E-5
Briquette truck routes—Ohio and Indiana.	420	5.15E-4
Total General Population Collective Dose.		1.14E-3

The dose assessment also evaluated two credible accidents: The overturning of a dump truck load of synthetic CaF_2 enroute to the briquette plant could produce a total effective dose commitment of 0.0004 mrem to an emergency response worker; and the overturning of a dump truck of briquettes enroute to a steel mill could produce a total effective dose commitment of 0.00001 mrem to an emergency response worker.

While the staff agrees with Allied's conclusion that the briquette plant operator is the maximally exposed individual, an independent dose assessment was performed. Most of Allied's assumptions were used in this assessment, however, no credit was given for the respiratory protection worn by the briquette plant operator, and the Th-230 and Ra-226 concentrations were included.

Based on the staff's independent assessment, the briquette plant operator will receive a committed effective dose equivalent of 12.35 mrem per year and a deep-dose equivalent of 0.11 mrem per year. The total effective dose equivalent is 12.46 mrem per year. However, if the concentration of natural uranium in the synthetic CaF_2 is 338.5 pCi/gram, then the briquette plant operator's total effective does equivalent will be 40.17 mrem per year, which exceeds the 25 mrem per year limit found in 40 CFR 190. Therefore, to ensure the dose received shall be within all federal limits, the staff recommends that the concentration of uranium in the synthetic CaF_2 released to each briquette manufacturer not exceed the average of 212 pCi/gram for any consecutive 12-month period.

In addition, the staff calculated the dose to the briquette plant operator if only the natural CaF_2 was used to manufacture the briquettes. Many of the same assumptions Allied used to calculate the dose from synthetic CaF_2 were used except that the natural uranium, Ra-226, and Th-230 concentrations in natural CaF_2, listed above, were used; no protection factor was allowed, and all CaF_2 used in the briquette was natural CaF_2. From this dose assessment, it was determined that the briquette plant operator would receive a committed effective dose equivalent of 45.48 mrem per year. The committed dose effective equivalent that the briquette plant operator would receive using 25 percent synthetic CaF_2 and 25 percent natural CaF_2 would drop to 35.20 mrem per year, of which 12.46 mrem would be from the synthetic CaF_2 and 22.79 mrem would be from the natural CaF_2. Therefore, by manufacturing the briquettes with 25 percent synthetic CaF_2 and 25 percent natural CaF_2, the dose to the briquette operator would be lower than if only natural CaF_2 was used. Based on lung solubility tests performed by the licensee, the uranium in the synthetic CaF_2 is more soluble in the body than the uranium in the natural CaF_2. Therefore, the biological clearance rate of the uranium in the synthetic CaF_2 is more rapid, thereby resulting in a lower committed effective dose equivalent.

After the briquettes are charged into the slag on the top of the steel melt, the amount of uranium contained in the briquettes is not transferred to the steel but remains in the slag.[1], [2] Members of the general public working with the finished steel products will receive no radiation exposure as a result of the synthetic CaF_2 being used in the briquettes.

The licensee calculated that the briquettes will comprise not more than 5 percent of the total slag weight. The final uranium content in the slag will be 1.6 pCi/gram. Based on this uranium content, Allied estimated that the dose to a member of the public from any foreseeable use of the steel mill slag will not exceed an effective dose equivalent of 0.02 mrem/year.

Over 90 percent of the slag generated by the steel mills is stored at the mills in U.S. Environmental Protection Agency (EPA)-approved storage areas with both dusting and leaching conditions

[1] Mautz E. W., et.al., "Uranium Decontamination of Common Metals by Smelting—A Review," Document No. NLCO–1113, February 1978.

monitored. Occasionally, steel mill slag is used as a minor constituent in cement manufacturing or as road fill for highway construction where drainage, subsoil, and paving circumstances permit. The level of uranium contained in the slag is so small that any environmental effects from storage, road fill, or cement manufacturing would be insignificant.

Conclusion: The staff's dose assessment performed for the proposed action demonstrates that the doses received by members of the critical group and the exposed general population was well below the dose limits of 100 mrem/year and 25 mrem/year, as specified in 10 CFR part 20 (56 FR 23360–474) and 40 CFR part 190, respectively. To ensure the dose limits are not exceeded, the staff recommends that the uranium concentration of the synthetic CaF2 shall not exceed 212 pCi/gram averaged over any consecutive 12-month period. The environmental impact from using the synthetic CaF_2 is insignificant. The uranium content in the slag will be less than the 10 pCi/gram limit for unrestricted release of natural uranium set in Option 1 of the staff's Branch Technical Position, "Disposal and On-site Storage of Thorium or Uranium Wastes from Past Operations" (46 FR 52061–63). With Allied limiting the concentration of natural uranium in the synthetic CaF_2 to be sold to the steel-making industry to less than 338.5 pCi/gram, then the limit set in 10 CFR 40.13(a) for unimportant quantities of source material will also not be exceeded. Therefore, the staff concludes that there will be no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action: The alternative to the proposed action would be the denial of the proposed action. By denying approval of the amendment, Allied would not be able to sell the synthetic CaF_2 to the steel-making industry. While this would eliminate any possible negative impact to human health and safety due to the trace amounts of natural uranium in the CaF_2, there would be an increased burden placed on the environment because the synthetic CaF_2 would have to be disposed of, probably in a landfill. Furthermore, the amount of natural CaF_2 currently being extracted from natural sources would not be reduced.

Agencies and Persons Consulted: Staff utilized the amendment application dated July 1, 1991, and supplementary information dated October 28, 1991.

Finding of No Significant Impact: The Commission has prepared an Environmental Assessment related to the amendment of Source Materials License No. SUB–526. On the basis of this assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register** be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Allied-Signal, Inc., P.O. Box 430, Metropolis, Illinois 62960); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must describe in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 14th day of January, 1992.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 92–1503 Filed 1–21–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–348]

Southern Nuclear Operating Co., Inc.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–2 issued to Southern Nuclear Operating Company, Inc. (the licensee), for operation of the Joseph M. Farley Nuclear Plant (Farley), Unit 1, located in Houston County, Alabama. The amendment request was submitted by Alabama Power Company, however, subsequent to the submittal, Amendment No. 90 to Facility Operating License No. NPF–2 authorized Southern Nuclear Operating Company, Inc., to become the licensed operator. The change to Southern Nuclear Operating Company, Inc., as the operator of Farley was implemented on December 23, 1991.

The proposed amendment would reduce the steam generator primary-to-secondary leakage limit for Farley, Unit 1. The current technical specification allows one gallon per minute (1440 gallons/day) total primary-to-secondary leakage through all steam generators and 500 gallons per day through any one steam generator. This amendment request proposes to reduce the leakage limit to 420 gallons per day total primary-to-secondary leakage through all steam generators and 140 gallons per day through any one steam generator.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Farley Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The license amendment reduces the primary-to-secondary leakage limit for steam generators. No physical changes will be made to the plant. A reduction in the leakage limit will result in more conservative operation of the plant requiring an earlier shutdown for steam generator leakage. As a result, neither the probability or consequences of any previously evaluated accident will be increased.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the reduced primary-to-secondary leakage limit will not introduce any physical changes to the plant. Use of the reduced leakage limit will result in a more conservative response to primary-to-secondary steam generator leakage.

3. The proposed license amendment does not involve a significant reduction in margin of safety.

The use of the reduced primary-to-secondary steam generator leakage limit will result in improved margin to steam generator tube failure. Reducing the allowed leakage limit to 140 gallons per day will result in more conservative operation of the plant since unit shutdown will be required at a lower leakage level.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 21, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama 36302. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a

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hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment requests involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to James H. Miller, III, Esq., Balch and Bingham, P.O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, attorney for the licensee.

Normally filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 29, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 306, Dothan, Alabama 36302.

Dated at Rockville, Maryland, this 14th day of January 1992.

For the Nuclear Regulatory Commission.

Stephen T. Hoffman,

Project Manager, Project Directorate II/I, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–1506 Filed 1–21–92; 8:45 am]

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Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on February 5, 1992, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 5, 1992—2 p.m. until 5:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Raymond F. Fraley (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 15, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–1498 Filed 1–21–92; 8:45 am]

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Advisory Committee on Reactor Safeguards Subcommittee on Extreme External Phenomena; Meeting

The ACRS Subcommittee on Extreme External Phenomena will hold a meeting on February 5, 1992, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Wednesday, February 5, 1992—8:30 a.m. until the conclusion of business

The Subcommittee will continue the discussion of the proposed revisions to 10 CFR part 100, Appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," considered during the Subcommittee meeting on December 10, 1991.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the nuclear industry, their respective consultants, and other interested persons regarding this view.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 15, 1992.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–1499 Filed 1–21–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Systematic Assessment of Experience; Meeting

The Subcommittee on Systematic Assessment of Experience will hold a meeting on February 4, 1992, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 4, 1992—1 p.m. until the conclusion of business

The Subcommittee will discuss a draft paper on the status of the NRC's evaluation of accident sequence precursors.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made. During the initial portion of the meeting, the Subcommittee, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Thomas S. Rotella (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 14, 1992.

Gary R. Quittschreiber,

Chief Nuclear Reactors Branch

[FR Doc. 92–1501 Filed 1–21–92; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 27, 1991, through January 9, 1992. The last biweekly notice was published on January 8, 1992 (57 FR 707).

Notice Of Consideration Of Issuance Of Amendment To Facility Operating License And Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 21, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of amendment request: December 24, 1991

Description of amendment request: The amendment request revises the technical specifications to be consistent with the reload safety analysis for operation in fuel cycle 4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1: Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Unit 1 Technical Specification Figures 3.2-2 and 3.2-2a will not increase the probability or consequences of an accident previously evaluated because the revisions are required to maintain consistency with the Unit 1, Cycle 4 safety analysis.

a) The Cycle 4 safety analyses have shown that when [Core Operating Limit Supervisory System] COLSS is in service and at least one [Control Element Assembly Calculators] CEAC is operable, Technical Specification 3.2.4a. provides adequate margin to [departure from nucleate boiling] DNB to accommodate the most limiting [Anticipated Operational Occurrence] AOO without violating the Specified Acceptable Fuel Design Limits (SAFDLs).

b) When neither CEAC is operable and COLSS is in service, the Core Protection Calculators (CPCs) cannot obtain the required position information to ensure that the SAFDLs will not be violated during an AOO. As a result of the re-evaluation of the limiting AOO for the Cycle 4 core design, Technical Specification 3.2.4b requires that the core power operation limit (POL), as calculated by COLSS, be reduced as currently indicated on Figure 3.2-1. This reduction in COLSS POL will ensure that the most limiting AOO will not result in a violation of the SAFDLs.

c) The proposed revision to Figure 3.2-2 accounts for the situation when COLSS is out of service but at least one CEAC is operable. In this case the Cycle 4 safety analyses has shown that by maintaining the CPC calculated [departure from nucleate boiling ratio] DNBR above the value shown in the revised figure, the limiting AOO will not result in a violation of the SAFDLs.

d) When COLSS and both CEACs are out of service, there must be additional margin in the initial CPC DNBR value to ensure that the limiting AOO will not result in exceeding a SAFDL. The evaluation of the Cycle 4 core design has shown that by maintaining the CPC calculated DNBR above the limits shown in proposed Figure 3.2-2a, the SAFDLs will not be exceeded during the most limiting AOO.

The non-loss of coolant accident (LOCA) transient analysis for the Single Reactor Coolant Pump Shaft Seizure/Sheared Shaft design basis event, as presented in Section 7.3.2 of the Reload Analysis Report (RAR), identified that the amount of predicted failed fuel has increased for that event over previous Unit 1 analysis. However, the revised predicted fuel failure of 4.32 [percent] is less than the 4.5 [percent] evaluated for this event in Unit 3, Cycle 3 analysis, and accepted by the NRC in the Safety Evaluation for that analysis dated May 20, 1991. Therefore, this does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2: Would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revisions to Unit 1 Technical Specification Figures 3.2-2 and 3.2-2a are required to make the Technical Specifications consistent with the Unit 1, Cycle 4 safety analyses. Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3: Would not involve a significant reduction in a margin of safety.

The revisions in the content of Figures 3.2-2 and 3.2-2a are required to make the Technical Specifications consistent with the Cycle 4 safety analyses. Operation of the reactor within the limits of the revised figures will ensure that the SAFDLs are not exceeded during the most limiting AOO. The revision of these figures would therefore not involve a significant reduction in a margin of safety.

The non-LOCA transient analysis for the Single Reactor Coolant Pump Shaft Seizure/Sheared Shaft design basis event, as presented in Section 7.3.2 of the Reload Analysis Report (RAR), identified that the amount of predicted failed fuel has increased for that event over previous Unit 1 analysis from 3.79 [percent] to 4.32 [percent]. This is less than the 4.5 [percent] predicted fuel failure evaluated for this event in Unit 3, Cycle 3 analysis, and found acceptable by the NRC in the Safety Evaluation for Unit 3, Cycle 3 analysis dated May 20, 1991. The resultant radiological consequence is a two hour site boundary thyroid dose of less than 240 Rem, which is within 10 CFR 100 limits. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999.

NRC Project Director: Theodore R. Quay

Arizona Public Service Company, et al., Docket Nos. 50-528, 50-529 and 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: December 26, 1991

Description of amendment request: The proposed amendments revise the technical specifications to allow replacement of existing 125V DC batteries with new batteries at each unit refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below: Standard 1: Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Class 1E DC system provides DC electric power to the Class 1E DC loads, including the inverters which power the Class 1E 120V AC, busses, and for control and switching of the Class 1E systems. It is not an accident initiator; however, it serves as an accident mitigation system. The replacement batteries are being purchased to meet the same requirements as the installed batteries. There is no change in the physical and electrical separation provisions for the batteries. The performance of plant safety functions will not be degraded by the new batteries.

Implementation of battery bank replacement will commence when the unit is either in Mode 5 or 6 or in a defueled condition. Technical Specification 3.8.2.2 states that "As a minimum, one DC train as listed in Table 3.8-1 shall be OPERABLE and energized." A DC train consists of two

redundant channels with the following equipment:

125V DC bus
125V DC battery bank
Battery charger or backup battery charger

Technical Specification 3.8.3.2 states that "As a minimum, the following electrical busses shall be energized in the specified manner:'

a. One train of AC emergency busses consisting of one 4160V AC ESF [emergency safety features] bus, and three 480V AC load centers and their associated four Class 1E MCCs [motor control centers].

b. Two 120V AC channel vital busses energized from their associated inverters connected to their respective DC channels.

c. One 125V DC train with both required channels energized from their associated battery banks.

Since the battery replacement will be conducted within a Technical Specification LCO and one DC train is operable, it can be concluded that the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2: Create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no new or common failure modes created by the new batteries. The new batteries perform the same function as the existing batteries. The existing batteries have experienced various problems since their original installation; specifically, cracking of cell post nuts and cell covers, voltage gradient conditions, copper contamination and premature electrical failure. As these cells continue to age, cracking and copper contamination will become more widespread.

The existing Exide batteries because of their continuing problems are approaching the end of their useful life; therefore, the new AT&T batteries are expected to be more reliable than the existing ones. For these reasons, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created.

Standard 3: Involve a significant reduction in a margin of safety.

The 125V DC batteries are required to power the emergency diesel generator load sequencers during certain accident conditions.

Ultimately, safety-related equipment required to maintain the integrity of fission product barriers can depend upon the performance of the sequencer, and therefore, the batteries. For the replacement batteries, no fission product barriers are affected by the battery changeout.

Two of the four separate Class 1E 125V DC subsystems, one per each load group, supply control power for their respective Class 1E AC load groups. Complete loss of either one of these subsystems does not prevent the minimum safety functions from being performed.

For these reasons, the amendment does not involve a significant reduction in a margin of safety. Based on the above and the supporting technical justification, APS has concluded that there is no significant hazard consideration involved in this amendment request.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: December 10, 1991

Description of amendment request: The proposed amendment would revise Calvert Cliffs Unit 1 Technical Specifications to allow for Cycle 11 operation. The safety analyses performed by the licensee in support of this submittal are based on previously reviewed and approved methods. The proposed amendment would make the following changes:

1. Figure 2.2-1 is modified on the negative Axial Shape Index (ASI) side to accommodate the increased core average linear heat generation rate (CALHGR) of Unit 1 Cycle 11.

2. The text of 3.1.3.1 and Figure 3.1-3 are modified to incorporate an increase in maximum allowed F_r^T from 1.65 to 1.70. Also, this Technical Specification reflects the use of the CECOR 3.3/BASSS computer codes which was assumed in the Unit 1 Cycle 11 setpoint analysis.

3. Figure 3.2-3b is modified to indicate a reduction in its acceptable value region due to a reduction in the 100% power F_{xy}^T from 1.54 to 1.50.

4. Implementation of the CECOR 3.3/BASSS computer codes as the on-line incore LCO monitoring system requires changes in Technical Specifications 3.2.2.1, 4.2.2.1.2, 4.2.2.1.3, 4.2.2.1.4, 4.2.2.2.2, 4.2.2.2.3, 4.2.2.2.4, 4.2.3.2, 4.2.3.3, 4.2.3.4 and B 3/4.1.3 to ensure they adequately reflect the CECOR 3.3/BASSS system. A new Surveillance Requirement, 4.2.5.3, is added to accommodate the use of the CECOR 3.3/BASSS network.

5. Technical Specification 3.2.3 is modified to increase the F_r^T from 1.65 to 1.70 to accommodate the increased neutron flux peaking associated with this 24-month cycle for Unit 1 and implementation of the CECOR 3.3/BASSS on-line incore monitoring system.

6. Figure 3.2-3c is modified to accommodate the increased F_r^T limit.

7. The text of 3.2.5 and Table 3.2-1 is modified by changing "core power" terminology to "thermal power" to maintain consistency with other Technical Specifications.

8. The text of B 3/4.7.1.2 is modified by increasing the maximum allowed Auxiliary Feedwater flow from 1300 gpm to 1550 gpm.

9. The text of 5.3.1 is modified to indicate an increase in the maximum enrichment for a reload core from 4.1 w/o to 4.35 w/o U-235.

10. Figure 3.1-1b is modified to show the reduced shutdown margin available at the end of this cycle.

11. Figure 3.2-1 is modified to eliminate specific cycle times.

12. Replacement of the center CEA on Unit 1 eliminates the need for the footnote on the following Technical Specifications: 4.1.1.1.1, 4.1.1.2, 3.1.3.1, 4.1.3.1.1, 4.1.3.1.2, 4.1.3.1.3, 3.1.3.3, 4.1.3.3.1, 4.1.3.3.2, 3.1.3.4, 4.1.3.4, 4.1.3.5, 3.1.3.6, 4.1.3.6, 3.10.1, 4.10.1.1, 4.10.1.2, 3.2.2.1, 4.2.1.3, 4.2.2.1.3, 4.2.2.2.3, 3.2.3 and 4.2.3.3. The text is modified to remove the exclusion concerning the center CEA.

The proposed amendment would also make several editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed change has been evaluated against the standards in 10 CFR 50.92 and has been determined to involve no significant hazards considerations, in that operation of the facility in accordance with the proposed amendment would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated; or

All the non-LOCA [loss-of-coolant accident] transient safety analyses for Unit 1 Cycle 11 are bounded by previously presented and approved analyses. All key transient input parameters of the Cycle 11 non-LOCA analyses are equal to or conservative with respect to the reference cycle values (Unit 2 Cycle 9), with one exception. The shutdown margin at the end of cycle decreased from 5.0% delta rho to 4.5% delta rho. This change impacts the Steam Line Rupture analysis. Even with this change incorporated, the results of the analysis are still bounded by the reference cycle.

An ECCS [emergency core cooling system] performance analysis (large and small break LOCA) was done for Unit 1 Cycle 11 to demonstrate compliance with 10 CFR 50.46. In addition to the normal differences in core

design parameters, the differences between Cycle 11 and the reference cycle were: (1) use of the GUARDIAN design for the Batch N fuel assemblies, and (2) the assumption of 500 plugged steam generator tubes (small break LOCA analysis only). These two changes required reanalysis of the hydraulic portion of both analyses.

Since the results of the Unit 1 Cycle 11 analyses are all conservatively bounded by the reference cycle, and due to the nature of the changes to the inputs to the safety analyses addressed above, the Unit 1 Cycle 11 core reload does not present a significant hazards consideration with respect to the existing safety analyses. The Cycle 11 reload does not involve an increase in the probability or consequences of an accident previously evaluated.

2. create the possibility of a new or different type of accident from any accident previously evaluated; or

The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The design of Unit 1 Cycle 11 closely follows that of the reference cycle, Unit 2 Cycle 9. The mechanical design of each assembly in the Batch N reload fuel is identical to the Batch L fuel previously inserted in Calvert Cliffs Unit 2 with the following two exceptions:

(1) The Batch N assemblies use the new GUARDIAN design debris resistant feature. The GUARDIAN design uses a redesigned Inconel spacer grid assembly that improves the grid assembly's capability to entrap debris.

(2) The Zircaloy spacer grids used for Batch N are larger than those used previously. They were redesigned to allow the fuel rods located along the periphery of the fuel bundle to receive more coolant flow when in contact with adjacent bundles. This was accomplished by increasing the size of the outer pin cell by making the outside envelope of the spacer grid assembly larger.

The GUARDIAN design and the larger spacer grids used in the Batch N reload fuel have been considered in all aspects of the nuclear, mechanical, thermal-hydraulic, and transient (LOCA and non-LOCA) safety analyses for Unit 1 Cycle 11. Each of these areas considered the impact of increased core differential pressure due to the introduction of the GUARDIAN design and the larger spacer grid. It was determined that a new accident type would not result from these changes. Reactor coolant system flow is maintained and individual assembly flow is not adversely affected. The impact of the flow both through the assemblies with the GUARDIAN design and the other standard fuel designs were analyzed to determine whether the presence of the more flow restrictive design causes an imbalance in the inlet flow to the other assemblies. It was determined that no significant impact or imbalance occurs for the Unit 1 Cycle 11 design.

All the fuel to be loaded in Cycle 11 was reviewed to ascertain that adequate shoulder gap clearance exists. Analyses were performed with approved models and it was concluded that all shoulder gap and fuel length clearances are adequate for Cycle 11 operation.

Additionally, neutron flux suppressors, called Guide Tube Flux Suppressors (GTFSs), will be installed in the fuel assemblies at selected locations. The basic design of the GTFSs is identical to that of control rod fingers. They are not moveable and serve no control rod function. They are provided to enhance the low fluence fuel management scheme for this cycle. The analyses performed have considered the effect of the GTFSs on fuel performance. The installation of GTFSs does not degrade fuel performance and the results of the analyses remain bounded by the reference cycle. It was determined that a new accident type would not result from these changes.

3. involve a significant reduction in a margin of safety.

No margins of safety for Unit 1 Cycle 11 reload core design are reduced with respect to the previously reported and approved reference cycle. With each proposed Technical Specification change, sufficient conservatism or margin of safety remains between the proposed limits of the changes and actual safety limits (Specified Acceptable Fuel Design Limits - SAFDLs). In fact, the margin previously reported in the reference cycle is applicable to Unit 1 Cycle 11. Therefore, the Cycle 11 reload does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket No. STN 50-454 Byron Station, Unit No. 1, Ogle County, Illinois; Docket No. STN 50-456, Braidwood Station, Unit No. 1, Will County, Illinois

Date of application for amendments: October 26, 1990, as supplemented April 23, 1991, and November 18, 1991.

Description of amendments request: The proposed amendment would revise a portion of the Technical Specification Tables 2.2-1 and 3.3-4, Reactor Trip System Instrumentation Trip Setpoints and Engineered Safety Features Actuation System Instrumentation Trip Setpoints, respectively. New setpoints are specified for the Low-Low Steam Generator Level-Reactor Trip/Auxiliary Feedwater Initiation for the Unit 1 Model D-4 Steam Generators. These changes incorporated results from the licensees recent study and will allow operation of the Unit 1 steam generators over a greater range during operational transients.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below. The proposed amendment involves the following changes:

1.For Byron, Unit 1, and Braidwood, Unit 1, steam generators (SG), the low-low SG water level reactor TRIP SETPOINT in Table 2.2-1 of the Technical Specification (TS) is changed from greater than or equal to 40.8 percent of the old instrument span to greater than or equal to 33 percent of the new instrument span. The corresponding ALLOWABLE VALUE is changed from greater than or equal to 39.1 percent of the old instrument span to greater than or equal to 31 percent of the new instrument span. The current values for TOTAL ALLOWANCE (TA), Z, and SENSOR ERROR (SE) are replaced by N.A.

2.The low-low SG water level auxiliary feedwater initiation TRIP SETPOINT in Table 3.3-4 of the TS is changed from greater than or equal to 40.8 percent of the old instrument span to greater than or equal to 33 percent of the instrument span. The corresponding ALLOWABLE VALUE is changed from greater than or equal to 39.1 percent of the old instrument span to greater than or equal to 31 percent of the new instrument span. The current values for TA, Z and SE are replaced by N.A.

The following analysis of the proposed changes for the evaluation of no significant hazards consideration is in accordance with the standards set forth in 10 CFR 50.92(c).

1.Involve a significant increase in the probability or consequences of an accident previously evaluated

The basic function of the low-low SG water level reactor trip is to preserve the SG heat sink for removal of residual heat. The automatic start of the auxiliary feedwater pumps at the same low-low SG water level setpoint is designed to supply feedwater to the SG secondary side to maintain heat removal capability after the reactor trip. Although the low-low SG water level reactor trip/auxiliary feedwater initiation setpoint was revised, the safety analysis limit of 13.7 percent of span for the SG low-low water level trip setpoint used in the Updated Final Safety Analysis Report (UFSAR)

remains unchanged. The licensee reviewed the Non-LOCA and LOCA accidents analyzed in the UFSAR and verified that the regulatory or design limits were satisfied in each case. The proposed changes do not affect the initiating event of any accident and the safety functions associated with the SG are not affected by the revised level setpoint. Therefore, the proposed amendment changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2.Create the possibility of a new or different kind of accident from any accident previously evaluated

The proposed low-low SG water level setpoint changes will not introduce new modes of operation nor will it introduce new limiting single failure. Since the accident analysis conclusions as presented in Chapter 15 of the UFSAR are bounding and remain valid, and no new failure mechanism has been introduced, the possibility of a new or different kind of accident from any previously evaluated is not created.

3.Involve a significant reduction in a margin of safety

The proposed TS setpoint changes have accounted for the instrument error and uncertainties identified in the recently completed CECo setpoint study. The proposed low-low SG water level reactor trip/auxiliary feedwater initiation setpoint is bounded by the original safety analysis limit value used in the applicable UFSAR safety analyses. The licensee investigated the affect of these changes on non-LOCA and LOCA transients and has verified that the plant operation will remain within the bounds of safe, analyzed conditions as defined in the UFSAR. Furthermore, the new setpoints will improve safety since the SG will be less susceptible to feedwater transients, thus, reducing the potential for unnecessary reactor trips, auxiliary feedwater initiation and avoid unnecessary transients on the primary and secondary system. Therefore, the proposed changes do not result in a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: October 11, 1991

Description of amendments request: The amendment modifies the Technical Specifications (TS) so that an NRC granted exemption to the requirements of 10 CFR Part 50, Appendix J would also apply to the requirements of Section 4.6.1.2 of the TS. The amendment is necessary to effectuate an exemption granted by the NRC because the Appendix J testing requirements are repeated in the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because: The proposed amendment allows the station to waive the requirements of Surveillance Requirement 4.6.1.2. if an exemption is granted by the NRC. 10 CFR 50.12(a) states:

"The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, ..."

Allowing the use of the exemption process towards the CILRT test requires LaSalle Station to show that the granting of the exemption is authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Also, special circumstances are required to be present for the granting of an exemption. One of the special circumstances that would apply in this instance is 10 CFR 50.12(a)(2)(ii) which states:

"Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule..."

The granting of such an exemption by the NRC staff requires LaSalle Station to show that unacceptable containment leakage has been identified and corrected. Alternatives to the testing requirements of Appendix J must assure that Primary containment leakage will continue to be within limits.

Exceeding the allowable leakage rate during the performance of the Containment Integrated Leak Rate Test (CILRT) is indicative of either a passive or a structural component that is leaking or that there is an inadequacy in the Local Leak Rate Test (LLRT) program. When the failure of a CILRT is due to a passive or structural component, the only test for adequate repair would be the CILRT. For a LLRT program inadequacy, the CILRT would serve as a means of verification of the results of the test program. The more frequent performance of the CILRT as required by LaSalle County Station Technical Specifications due to the significant contribution of Local Leak Rate Test failures is redundant to the performance of LLRTs; under such circumstances there is little or no benefit to be gained by performing a Type A test on an accelerated schedule.

Analyzed accidents at LaSalle Station that involve a potential off-site radioactive release include as an assumption the minimum pathway Primary Containment Isolation Valve leakage. The performance of Local Leak Rate Tests (Type B and C) identifies leaking valves and penetrations. The verification of "as-found" and "as-left" local leakage assures that Primary Containment leakage will be within the analyzed limit assumed for accident analyses. The possibility exists that slightly increased local leakage rates may lead to slightly increased dose consequences in the event of an accident. However, the potential dose consequences are maintained to acceptable minimum levels if Primary Containment Isolation Valve leakage is maintained below analyzed limits. Any exemption request to the requirements of Appendix J must satisfy 10 CFR 50.12(a)(2)(iv) to verify there is no adverse impact on the public health and safety. LaSalle's proposed amendment requires Staff review and approval of any exemption from the surveillance requirements of 10 CFR 50, Appendix J. Therefore, there is no significant increase in the dose consequences of any accident previously evaluated.

Containment leakage is not considered an initiator of any previously evaluated accident; therefore, there is no increase in the probability of an accident previously analyzed.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

Both Local Leak Rate Testing and Containment Integrated Leak Rate Testing as specified in the LaSalle County Station Safety Analysis Report were evaluated in Section 6.2.6 of LaSalle's Safety Evaluation Report, NUREG-0519, and found to be acceptable. Local Leak Rate Testing identifies and verifies correction of penetration leakage. Local Leak Rate Testing penalty additions caused the failure of "as-found" CILRTs for LaSalle Station (two "as-found" CILRTs for LaSalle Unit Two failed as a direct result of incorporation of the minimum pathway leakage determined by Local Leak Rate Tests). Local Leak Rate Testing will provide adequate assurance of the continued integrity of the Primary Containment without increasing the frequency of Containment Integrated Leak Rate Tests. Following Staff review and approval of an exemption request, primary Containment integrity will continue to be maintained as designed and previously evaluated.

Because there are no changes to the facility or operation of the facility as described in the

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UFSAR, this amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) Involve a significant reduction in the margin of safety because:

At the design basis accident pressure specified in Technical Specification 3.6.1.2.a, a 40 percent margin to the maximum allowable containment leakage rate (La) is maintained for total maximum pathway leakage determinations. This limit is determined from Local Leak Rate Tests. Administrative guidelines have been set for each penetration or valve to ensure that abnormal leakages will be corrected. Repairs or corrections to penetrations demonstrating excessive leakage are performed unless the total Type B and Type C leakage is maintained at less than 0.6 La. Although there exists the possibility of slightly increased leakage rates for a small sample of penetrations, all repairs are required to restore leakage rates to less than the administrative limit at the next refueling outage.

Local Leak Rate Tests in conjunction with a comprehensive corrective and preventive maintenance program for penetrations determined to be poor performers will assure that the Primary Containment Integrity will be maintained without additional Containment Integrated Leak Rate Tests.

The proposed amendment request allows pursuit of an exemption from the requirements of 10 CFR 50, Appendix J as recommended in IEN 85-71. To meet the guidance provided in IEN 85-71, LaSalle is required to propose a Corrective Action Plan that demonstrates CECo's commitment to ensuring Primary Containment leakage rates are maintained to acceptable levels.

Local Leak Rate Test minimum pathway leakage rate penalties were the direct cause of "as-found" Containment Integrated Leak Rate Test failures for LaSalle Station; therefore, verification of an adequate margin of safety is assured by the conduct of Local Leak Rate Tests. Section 6.2.6 of the Standard Review Plan (SRP) assures that CILRT tests are performed in accordance with the requirements of 10 CFR 50, Appendix J. LaSalle's proposed exemption process requiring Staff pre-approval ensures Primary Containment integrity will be maintained and would therefore result in no significant reduction in the margin of safety.

Guidance has been provided in "Final Procedures and Standards on No Significant Hazards Considerations," Final Rule, 51 FR 7744, for the application of standards to license change requests for determination of the existence of significant hazards considerations. This document provides examples of amendments which are and are not considered likely to involve significant hazards considerations. This proposed amendment request most closely fits the example of a change which may either result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

This proposed amendment request does not involve a significant relaxation of the criteria used to establish safety limits, a significant relaxation of the bases for the limiting safety system settings or a significant relaxation of the bases for the limiting conditions for operations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348. Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: November 7, 1991

Description of amendments request: The proposed amendment would revise the Technical Specifications to permit the replacement of the current low pressure air start system for the Diesel Generators with a new high pressure system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change addresses a new Emergency Diesel Generator Starting Air system being installed at Zion. The function of the starting air system is to provide air of sufficient pressure and volume to enable cranking of a cold diesel engine, and to provide diesel engine control air to enable safe operation and shutdown of the diesel engine during emergency situations. The proposed change involves the addition of Surveillance Requirements pertaining to the capability of the high pressure starting air system compressors to charge the air receivers from 0 psig to 560 psig within 60 minutes, and the capability of the high pressure starting air receivers to hold a pressure of at least 350 psig, from an initial pressure of 480 ± 10 psig, for at least 60 minutes. The proposed change also involves the addition of the start point for the current low pressure air compressor performance test. A Failure Modes and Effects Analysis [sic] has been performed on the new starting air system. This analysis demonstrates that no single active failure will have an adverse affect on more than one redundant EDG. The starting air system and its function are not assumed to be a precursor to any design basis accident assumed in the Safety Analysis Report. The starting air system is assumed to function in the mitigation of design basis accidents and transients as described in the Safety Analysis Report. There is however, no significant increase in the consequences of an accident previously evaluated since the new high pressure starting air system will provide adequate reliability through its system redundancy. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change, which involves the addition of a Surveillance Requirement necessary to address the new emergency diesel generator high pressure starting air system compressor capability, is necessary due to a physical alteration of the plant. New and different type of equipment will be installed, and changes in parameters governing normal plant operation will be made.

However, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons:

A) Although the change results from a physical alteration of the plant, this physical alteration will be made in accordance with Commonwealth Edison Company (CECo) approved procedures and the 10 CFR 50.59 review process. The plant alterations necessary to incorporate the new high pressure starting air system will be reviewed for plant safety significance under the 10 CFR 50.59 review process prior to installation.

B) Although the change results from the installation of new and different type of equipment in the plant (particularly the new regulating/security valves), a Failure Modes and Effects Analysis [sic] has been performed on the new starting air system. This analysis demonstrates that no single active failure will have an adverse affect on more than one redundant EDG. No new or different kinds of accidents from any accident previously evaluated for the plant were identified by the Failure Modes and Effects Analysis.

Surveillance and testing requirements will be provided to ensure the results of the Failure Modes and Effects Analysis remain valid.

The high pressure starting air system modification associated with this Technical Specification Change Request will maintain the starting air capabilities consistent with the assumptions made in the Safety Analysis Report and the reliability and availability of the diesel generators is expected to improve.

C) The proposed change does affect parameters governing normal plant operation. The proposed changes are required to ensure appropriate Surveillance Requirements are applied to the new starting air system. However, these parameters are not assumed

in any accident analysis. These new parameters and associated Surveillances will demonstrate proper system performance and will not create a new or different kind of accident, since the new Surveillance procedure and test methodology for the compressor performance Surveillance will be similar to that used on the existing low pressure starting air compressors. While the new system leakage Surveillance will require a new Surveillance procedure, the test methodology will be similar to current leakage test methodology on existing plant equipment and will ensure the new air start system air capacity is equivalent to the existing air start system. Therefore, the implementation of this proposed specification does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Zion Station.

3. Does the change involve a significant reduction in the margin of safety?

The replacement and additional Surveillance Requirements proposed by this change will provide assurance, equivalent to that provided by the current Surveillance Requirement for the low pressure starting air system, that the emergency diesel generator starting air system can be relied upon during accident conditions. The design/accident function of the starting air system has not been altered as a result of the new high pressure starting air system modification and the proposed additional Surveillance Requirements. A Failure Modes and Effects Analysis [sic] has been performed on the new starting air system. This analysis demonstrates that no single active failure will have an adverse affect on more than one redundant EDG. Furthermore, the overall reliability of emergency diesel generators is expected to improve. Therefore, this change does not represent a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: March 31, 1988, as supplemented December 23, 1991.

Description of amendment request: The proposed amendment would add a license condition requiring the Connecticut Yankee Atomic Power Company (the licensee) to implement and maintain an Integrated Implementation Schedule Program Plan. The Program Plan provides a methodology to be followed for scheduling plant modifications and engineering evaluations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change would require the implementation of the IIS methodology described in the Program Plan. As such, it requires that CYAPCO establish an administrative means for tracking, prioritizing, and scheduling NRC-required plant modifications and engineering evaluations, and licensee-identified plant improvement projects. This methodology is intended to enhance plant safety by more effectively controlling the number and scheduling of plant modifications, thereby assuring that issues required for safe operation of the plant receive priority and are completed in a timely manner.

Because the license condition addresses only an administrative scheduling mechanism, it does not affect directly the design or operation of the plant. Therefore, no accident analyses are affected and the proposed change does not increase the probability or consequences of any previously evaluated accident.

2. Operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed license condition establishes a new requirement relating to scheduling of modifications and engineering evaluations. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with this proposed change will not involve a significant reduction in any margin of safety.

As discussed above, the proposed license condition establishes a new administrative requirement intended to enhance public safety and reliable plant operation. It does not affect any accident analysis or involve any modification to the plant configuration or operation. Therefore, the proposed change does not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: November 16, 1989

Description of amendment request: The proposed changes to the Fermi-2 Technical Specifications (TS) is submitted pursuant to License Condition 2.C(7) of the Operating License and adds surveillance requirements for periodic leakage testing and visual inspection of the Control Room Emergency Filtration System (CREFS) to assure the integrity of those portions of the system external to the Control Room. This requested surveillance satisfies the requirements of the License Condition 2.C(7) and thus the License Condition is proposed to be deleted from the Operating License.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The new surveillance requirements act to give assurance that the radiation dose to Control Room personnel is maintained below the criteria of General Design Criteria (GDC) 19 of [10 CFR 50] Appendix A as previously evaluated. As such, the change acts to ensure that the consequences of previously evaluated accidents remain as evaluated. The CREFS is not associated with any accident initiating mechanism; therefore, the probability of any previously evaluated accident is unchanged.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The change provides verification that passive features of the CREFS are not degrading. The proposed leakage test must be performed when the ductwork to be tested is permitted by the Technical Specifications to be out-of-service, or the ACTION statement for CREFS will apply. Therefore, the test does not affect the ability of the CREFS to operate in the normal or emergency mode when required. Conduct of the proposed inspections does not affect the normal or emergency modes of CREFS operation. The proposal does not result in any modification of system or plant design. Therefore, the proposal does not create any new accident initiating mechanisms.

(3) Involve a significant reduction in a margin of safety. The change assures that the radiation dose to Control Room personnel

during accident conditions remain below GDC 19 criteria over the plant lifetime. In so doing, the change acts to maintain the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: L. B. Marsh.

Duquesne Light Company, et. al., Docket No. 50-412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of amendment request: October 9, 1991

Description of amendment request: The proposed amendment would revise Table 2.2-1 (Note 1) for Technical Specification 2.2.1, "Reactor Trip System Instrumentation Setpoints." Specifically, it would revise a constant (K_2) in the equation used to determine the overtemperature delta temperature (OTDT) trip setpoint.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed change merely corrects the value for K_2, in the OTDT equation, to provide protection for the core as originally assumed in the safety analysis. The current OTDT setpoint does not protect the core from departure-from-nucleate-boiling at high pressure over a small range of temperatures, unless the parameters of the justification for continued operation are met. The change does not affect the operation or function of the reactor trip system, does not involve any physical modification to the facility, and does not affect the manner in which the facility is operated.

B. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because it does not affect the manner in which the facility is operated. The proposed change merely corrects a constant in the OTDT equation to provide protection for the core limits as originally assumed in the safety analysis.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed change will continue to ensure that the core is protected against a low departure-from-nucleate-boiling ratio by tripping the reactor at the required setpoint.

Based on this review, it appears that the three criteria of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, et. al., Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: October 15, 1991

Description of amendment request: The proposed amendment would revise the Appendix A Technical Specifications to provide for the use of VANTAGE 5H fuel in subsequent plant operating cycles. Specifically, the proposed amendment increases control rod drop time.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the VANTAGE 5H and standard 17 x 17 fuel assemblies are hydraulically equivalent. Implementation of the VANTAGE 5H fuel design will not significantly change the core physics characteristics and will meet all design bases. Mechanical testing and analysis of the VANTAGE 5H Zircaloy grid and fuel assembly have demonstrated that the VANTAGE 5H structural integrity under seismic/LOCA loads will provide margins comparable to the standard 17 x 17 fuel assembly design. The results of NRC-approved analysis show some changes in the consequences of accidents previously evaluated; however, the results are all clearly within NRC acceptance criteria and demonstrate the capability to operate the plant safely.

2. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the VANTAGE 5H and standard 17 x 17 fuel assemblies are hydraulically equivalent and the VANTAGE 5H assembly will not significantly affect the overall method and manner of plant operation; therefore, the change does not create the possibility of a new or different kind of accident.

3. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the evaluations and analysis to support the proposed change concluded that, in all cases, the results will be within the plant design bases. Although NRC-approved analysis shows some change in the consequences of accidents previously evaluated, the results are clearly within NRC acceptance criteria and demonstrate the capability to operate the plant safely. Therefore, the change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, et. al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: October 9, 1991

Description of amendment request: The proposed amendment would revise the primary containment air temperature sensor locations currently specified in Surveillance Requirement 4.6.1.5 for Units 1 and 2. The proposed amendment would also replace the word "thermocouple" with "detector" to more accurately describe the resistance temperature devices installed in Unit 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c): The NRC staff's review is presented below:

1. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed change to the primary containment air temperature sensor locations will continue to ensure that containment operation is maintained within the limits of the DBA analyses for containment. The ability of the containment to perform as a fission product barrier remains unchanged.

2. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the proposed changes in sensor location will continue to provide a representative sample of the overall containment atmosphere temperature. The changes do not affect the manner by which the facility is operated, or change equipment or features which affect the operational characteristics of the facility.

3. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3) because the proposed amendment does not change the maximum and minimum allowable containment temperatures. The proposed change in sensor locations will ensure that containment temperature is maintained within these limits.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: December 5, 1991

Description of amendment request: The proposed amendment revises the Technical Specifications supporting the Cycle 6 Reload for Grand Gulf Nuclear Station, Unit 1. Specifically, the amendment would revise a) the Safety Limit Maximum Critical Power Ratio (MCPR) values for Two Loop Operation and Single Loop Operation (SLO), b) the SLO Maximum Average Planar Heat Generation Rate (MAPLHGR) multiplier, c) the flow-dependent MCPR operating limits, d) the power-dependent MCPR operating limits, e) the exposure-dependent MCPR operating limits, f) Linear Heat Generation Rate (LHGR) limits for 8X8 fuel types for average planar exposures beyond 40,000 MWd/MTU, and g) the flow-dependent and power-dependent LHGR multipliers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. No significant increase in the probability or consequences of an accident previously evaluated results from these changes.

a) This change consists of a revision to the Safety Limit MCPR values for Two Loop Operation and for SLO. The revised limits are determined using the SNP [Siemens Nuclear Power] Safety Limit methodology, which accounts for the effects of channel bow. This change only redefines the safety limits and does not affect the precursors to any event evaluated previously. Therefore, the change to the MCPR safety limits does not involve a significant increase in the probability of any event previously evaluated.

As a result of this change, a decrease from the Cycle 5 values is observed. The revised limits take account of the uncertainties associated with safety limit determination and the effects of channel bow. Compliance with the applicable criterion for incipient boiling transition continues to be ensured. Therefore, the revision of the MCPR limits does not involve a significant increase in the consequences of any event previously evaluated.

b) This change consists of a revision to the MAPLHGR multiplier for SLO during Cycle 6. This change only redefines the MAPLHGR for the 8X8 and 9X9-5 fuel types that will be resident in the core for Cycle 6; it does not affect the precursors to any event previously evaluated. Therefore, the revision of the MAPLHGR limits does not involve a significant increase in the probability of any event previously evaluated.

Use of the revised MAPLHGR multiplier for SLO ensures that the PCT [Peak Clad Temperature] for SLO continues to be bounded by the PCT for Two Loop Operation. For both Two Loop Operation and SLO, the calculated PCTs for both the 8X8 and 9X9-5 fuel types are well below the 10CFR50.46 limit of 2200 degrees F. Therefore, the revision of the MAPLHGR limits does not involve a significant increase in the consequences of any event previously evaluated.

c) This change revises the flow-dependent MCPR operating limits ($MCPR_f$) for Cycle 6. This change only redefines the $MCPR_f$ operating limits and does not affect the precursors to any event previously evaluated. Therefore, the revision of the $MCPR_f$ operating limits does not involve a significant increase in the probability of any event previously evaluated.

The Cycle 6 analyses have demonstrated that the slow flow runout will not result in the safety limit being exceeded. Therefore, the revision of the $MCPR_f$ operating limits does not involve a significant increase in the consequences of any event previously evaluated.

d) This change revises the power-dependent MCPR operating limits ($MCPR_p$) for Cycle 6. This change only redefines the $MCPR_p$ operating limits and does not affect the precursors to any event previously evaluated. Therefore, the revision of the $MCPR_p$ operating limits does not involve a significant increase in the probability of any event previously evaluated.

The Cycle 6 analyses have demonstrated that the limiting events will result in a minimum CPR [Critical Power Ratio] at or above the MCPR safety limit with the plant initially at the $MCPR_p$ limit. Therefore, the revision of the $MCPR_p$ operating limits does not involve a significant increase in the probability of any event previously evaluated.

e) This change revises the exposure-dependent MCPR operating limits ($MCPR_e$) for Cycle 6. This change only redefines the $MCPR_e$ operating limits and does not affect the precursors to any event previously evaluated. Therefore, the revision of the $MCPR_e$ operating limits does not involve a significant increase in the consequences of any event previously evaluated.

The Cycle 6 analyses have demonstrated that the limiting events will result in a minimum CPR at or above the MCPR safety limit with the plant initially at the $MCPR_e$ limit. Therefore, the revision of the $MCPR_e$ operating limits does not involve a significant increase in the consequences of any event previously evaluated.

f) This change increases the LHGR limit for 8X8 fuel types for average planar exposures beyond 40,000 MWd/MTU. This change only redefines the LHGR limit for all 8X8 fuel types that will be resident in the core for Cycle 6; it does not affect the precursors to any event evaluated previously. Therefore, the increase of the LHGR limits for 8X8 fuel types does not involve a significant increase in the probability of any event previously evaluated.

The revised LHGR limits for the 8X8 fuel types that will be resident in the core for Cycle 6 satisfy the applicable fuel mechanical design criteria. Therefore, the revision of the LHGR limits for 8X8 fuel types does not involve a significant increase in the consequences of any event previously evaluated.

g) This change addresses the revision of the flow-dependent and power-dependent LHGR multiplier curves to incorporate fuel type-specific multipliers. This change does not affect the precursors to any event previously evaluated. Therefore, the revision of the LHGR multipliers does not involve a significant increase in the probability of any event previously evaluated.

The LHGR multipliers ensure that the transient LHGR limits are not exceeded during operation at off-rated conditions. Therefore, the revision of the LHGR multipliers does not involve a significant increase in the consequences of any event previously evaluated.

Overall, the proposed changes define parameters determined conservatively and consistent with the fuel that will be resident in the core during Cycle 6. They do not affect the precursors to any accident previously evaluated or challenge any acceptance criteria previously evaluated. These changes, therefore, do not involve a significant increase in the probability or consequence of any accident previously evaluated.

2. These changes do not create the possibility of a new or different kind of accident from any previously evaluated.

This response addresses Items a) through g).

The Cycle 6 reload fuel has been shown to be of a design compatible with the fuel loaded for previously cycles. It has been determined that the Cycle 6 reload fuel will not create the possibility of a new or different kind of accident. The proposed changes do not involve any new modes of operation, any changes to setpoints, or any plant modifications. They introduce revised limits that have been shown to be acceptable for Cycle 6 operation. Therefore, the proposed changes do not result in the creation of any new precursors to an accident. Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

3. These changes do not involve a significant reduction in the margin of safety.

a) This change consists of a revision to the Safety Limit MCPR values for Two Loop Operation and for SLO. The revised limits are based on SNP methodology, which takes account of channel bow effects. The CPR performance of the SNP 9X9-5 fuel, improved performance for Cycle 6 due to CarTech channels being used for two reload batches and improved local power distributions, result in a change in the safety limit from 1.09 to 1.06 for Two Loop Operation and from 1.09 to 1.07 for SLO. The margin to the point of incipient boiling transition is not changed significantly. Therefore, the revision of the MCPR safety limits does not involve a significant reduction in the margin of safety.

b) A revised MAPLHGR multiplier is provided for Single Loop Operation (SLO). The MAPLHGR multiplier ensures that the PCTs for SLO are bounded by the PCTs for Two Loop Operation. For SLO, the PCTs for the 8X8 and 9x9-5 fuel types are 1631 degrees F and 1609 degrees F, respectively. The PCTs for SLO are approximately 100 degrees F below the corresponding values for Two Loop Operation. The PCTs for both SLO and Two Loop Operation are well below the 10CFR50.46 limit of 2200 degrees F. Therefore, the revision of the SLO MAPLHGR multiplier does not involve a significant reduction the the margin of safety.

c) This change revises the flow-dependent MCPR operating limits ($MCPR_f$) for Cycle 6. This change only redefines the $MCPR_f$ operating limits established previously. The Cycle 6 analyses have dedmonstrated that the slow flow runout will mot result in the safety limit being exceeded. Therefore, the revision of the $MCPR_f$ operating limits does not involve a significant reduction in the margin of safety.

d) This change revises the power-dependent MCPR operating limits for Cycle 6. This change only redefines the $MCPR_p$ operating limits established previously. The Cycle 6 analyses have demonstrated that the limiting events will result in a minimum CPR which is at or above the MCPR safety limit. Therefore, the revision of the $MCPR_p$ operating limits does not involve a significant reduction in the margin of safety.

e) This change revises the exposure-dependent MCPR operating limits for Cycle 6. This change only redefines the $MCPR_e$ operating limits established previously. The Cycle 6 analyses have demonstrated that the limiting events will result in a minimum CPR which is at or above the MCPR safety limit. Therefore, the revision of the $MCPR_e$ operating limits does not involve a significant reduction in the margin of safety.

f) This change increases the LHGR limits for 8X8 fuel types for average planar exposures beyond 40,000 MWd/MTU. The Cycle 6 analyses have shown that the mechanical design criteria continue to be satisfied. Therefore, the revision of the LHGR limits for 8X8 fuel types does not involve a significant reduction in the margin of safety.

g) This change addresses the revision of the flow-dependent and power-dependent LHGR multiplier curves to incorporate fuel type-specific multipliers. The Cycle 6 analyses have shown that the transient LHGR limits are not exceeded at off-rated conditions, protecting against both fuel centerline melting and 1% clad strain during anticipated operational occurences. Therefore, the revision of the LHGR multiplier curves does not involve a significant reduction in the margin of safety.

Overall, the proposed changes define parameters determined conservatively and consistent with the fuel that will be resident in the core during Cycle 6. They do not impact any of the acceptance criteria established previously. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: John T. Larkins

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: December 17, 1991

Description of amendment request: The proposed amendments would remove the schedules for the withdrawal of reactor vessel material specimens from the Technical Specifications. These requests are made in accordance with the guidance of Generic Letter 91-01, "Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens From Technical Specifications."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the regulatory requirement of 10 CFR 50 Appendix H will remain in effect in the Technical Specifications. Removing Table 4.4-5, and any references to it, will not result in any loss of regulatory control because changes to this schedule are controlled by the requirements of 10 CFR 50 Appendix H.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of this modified specification cannot create the possibility of a new or different kind of accident from any previously evaluated because as previously stated in Appendix H Section II.B.3 of 10 CFR 50, the licensee must have a withdrawal schedule approved by the NRC prior to implementation. By removing Table 4.4-5, and any references to that table, FPL will only eliminate duplication of a requirement that it already adheres to in 10 CFR 50 Appendix H.

(3) Use of the modified specification would not involve significant reduction in a margin of safety.

By removing Table 4.4-5 the margin of safety would not be compromised because the surveillance requirement still requires surveillance specimens to be removed and examined, to determine changes in material properties, at intervals required by 10 CFR 50 Appendix H. In addition the results of these examinations shall be used to update the figures for the pressure and temperature operating limits required by the Technical Specifications.

Based on the above, we have determined that the proposed amendment[s] [do] not (1) involve a significant increase in the

probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore [do] not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 20, 1991

Description of amendment request: The proposed amendments would change the Technical Specifications (TS) for Vogtle Electric Generating Plant Units 1 and 2, to allow deletion of the autoclosure interlock (ACI), for the suction valve of the residual heat removal system (RHRS), to revise the setpoint of the associated open permissive interlock (OPI), and to increase the surveillance interval for verifying operability of the RHRS suction relief valves which provide cold overpressurization protection. Specifically, the following three TSs would be changed: (1) TS 4.5.2.d., item 1, presently requires "verifying automatic isolation and interlock action of the RHR system from the Reactor Coolant System by ensuring that: a) With a simulated or actual Reactor Coolant System pressure signal greater than or equal to 377 psig, the interlocks prevent the valves from being opened ..." This TS would be revised to delete reference to the ACI and to revise valve opening setpoint associated with the OPI from 377 psig to 365 psig. The revised TS would read: "verifying automatic isolation action of the RHR system from the Reactor Coolant System by ensuring that with a simulated or actual Reactor Coolant System pressure signal greater than or equal to 365 psig the interlocks prevent the valves from being opened...," (2) The surveillance requirement TS 4.5.2.d 1. b for verifying ACI operability would be deleted, and (3) The surveillance interval in TS 4.4.9.3.2 for verifying operability of the RHRS suction relief valves would be increased from 12 to 72 hours.

Basis for proposed no significant hazards consideration determination: The design of RHRS suction line includes two motor-operated gate valves which are normally closed unless the RHRS is in operation. These valves isolate the low pressure RHRS (design pressure of 600 psig) from the high pressure (RCS) reactor coolant system (normal operating pressure of 2235 psig). Currently, each isolation valve is provided with two automatic interlocks, namely OPI and ACI. The OPI prevents inadvertent opening of the valves when the RCS pressure is above the design pressure of the RHRS. The ACI ensures that the isolation valves are fully closed when the RCS pressure is above the RHRS design pressure.

The Georgia Power Company (licensee) proposes to delete the ACI and revise the valve opening setpoint for the OPI. In support of its request, the licensee has performed safety evaluations based on a Westinghouse Owners Group document WCAP-11736, "Residual Heat Removal System Autoclosure Interlock Removal Report for the Westinghouse Owners Group" dated February 1988 and documented its results in WCAP-12927, "Residual Heat Removal System Autoclosure Interlock Removal Report for Vogtle Electric Generating Plant Units 1 and 2." The Nuclear Regulatory Commission (the Commission) has previously reviewed and approved WCAP-11736 for generic use by its Safety Evaluation Report (SER) of August 8, 1989. In its SER, the Commission concluded that the removal of the ACI for Westinghouse plants can produce a net safety benefit provided five specific areas for plant improvements, including certain hardware and procedural changes, are in place. The licensee's plant-specific analyses and evaluations for the removal of ACI address the required plant improvements, and include probabilistic risk assessments (PRA) and safety analyses to ensure that the Vogtle facilities do not show results that invalidate the conclusions of WCAP-11736. Concurrent with the removal of the ACI, the licensee proposes to revise the surveillance interval for verifying operability of the RHRS suction relief valves for cold overpressurization protection purposes, from 12 to 72 hours.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment do not involve a significant increase in the probability or consequences of accident previously evaluated. The two motor-operated gate valves located in each RHRS suction line are normally closed to keep the low pressure RHRS (design pressure of 600 psig) isolated from the high pressure RCS (normal operating pressure of 2235 psig). An ACI was provided to isolate the low pressure RHRS from the RCS when the pressure increases above the ACI setpoint. However, spurious ACI actuation has resulted in RHRS isolation and subsequent loss of decay heat removal capability. The removal of the ACI feature will preclude this inadvertent isolation. The addition of a control room alarm to alert the operator that a suction isolation valve(s) is not fully closed when the RCS pressure is above the alarm setpoint in conjunction with administrative procedures will ensure that the RHRS will be isolated from the RCS, if the RCS pressure increases above the alarm setpoint. The modified OPI setpoint further minimizes the potential of opening the RHRS suction isolation valves while the RCS pressure is above the design pressure of the RHRS. Therefore, the performance of the RHRS would not be adversely affected by the RHRS ACI deletion and OPI setpoint modification.

Note, the interlock provided an automatic closure to the RHRS suction valves on high pressure; however, rapid overpressure protection of the RHRS is provided by the RHRS relief valves and not by the slow acting suction isolation valves. This overpressure protection will remain available following the removal of the ACI feature. Thus, the RHRS integrity will not be affected by the removal of the ACI feature. In addition, the removal of the ACI feature does not adversely affect any fission barrier, alter any assumptions made in the radiological consequences evaluations, or affect the mitigation of radiological consequences.

The probabilistic and overpressurization analyses addressed the effect of removing the RHRS ACI on the potential for an interfacing system LOCA (loss of coolant accident), RHRS availability, and low temperature overpressurization. The results indicate that the frequency of an interfacing system LOCA is reduced by 35 percent, and the short-term and long-term cooling phase failure probabilities are reduced by 25.5 and 39.8 percent, respectively. The failure probability for RHRS initiation and the consequences of low temperature overpressure events are not significantly affected by removal of the RHRS ACI. With the deletion of the ACI, the potential for spurious automatic closure of a RHRS suction isolation valve resulting in inadvertent RHRS isolation has been significantly reduced.

Finally, with the deletion of the ACI, there is no need for a 12-hour surveillance interval for verifying that the RHRS suction isolation valves are open when the RHRS relief valves are being used for cold overpressure protection. Therefore, increasing the interval of surveillance requirement 4.4.9.3.2 from 12 hours to 72 hours (equivalent to that required for the PORV block valves) will have no

effect on the probability or consequences of any accident previously evaluated.

Thus, operation of [Vogtle Electric Generating Plant] VEGP in accordance with the proposed amendments does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The removal of the RHRS ACI and the OPI setpoint change will not result in the initiation of any accident nor create any new credible limiting single failure. The removal of the RHRS ACI significantly reduces the potential for spurious actuation causing isolation of the RHRS. The RHRS relief valves will remain available to protect the RHRS from overpressure transients. Since an alarm is being added to the logic of each valve, the operators are alerted if the RCS pressure exceeds a conservative preset value and a suction isolation valve is not fully closed. The modified OPI setpoint further minimizes the potential of opening the RHRS suction isolation valves while the RCS pressure is above the design pressure of the RHRS. The modified OPI setpoint will continue to prevent the RHRS suction isolation valves from being opened while the RCS pressure is above the RHRS design pressure. The removal of the ACI, the change in the interval of surveillance requirement 4.4.9.3.2, and the OPI setpoint modification do not result in any event previously deemed incredible being made credible.

Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The analyses presented in WCAP-12927 indicate a significant reduction in the frequency of an interfacing system LOCA and in the failure probabilities for the RHRS in the short-term and long-term cooling phases associated with the removal of the ACI. The modified OPI setpoint of 365 psig further minimizes the potential of opening the RHRS suction isolation valves while the RCS pressure is above the design pressure of the RHRS. The removal of the ACI will have a positive impact on the availability of the RHRS relief valves for mitigating cold overpressure events. Consequently, the change in the interval of surveillance requirement 4.4.9.3.2 does not involve a significant reduction in the margin of safety.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30303-1810.

NRC Project Director: David B. Matthews

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: February 15, 1991

Description of amendment request: The amendments would revise Technical Specification (TS) 5.6.1.1 "Criticality - Spent Fuel," to allow Westinghouse fuel in Region I of the spent fuel pool which is currently arranged in a 3-out-of-4 storage array with one storage location empty to be arranged in a "checkerboard" pattern where highly reactive fuel would be alternated with adequately burnt fuel with no empty storage locations. Additionally, minor administrative changes, i.e., page renumbering and corrections to Table titles are being made.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, a proposed amendment to an operating license will not involve a significant hazards consideration if the proposed amendment satisfies the following three criteria:

(1) Does not involve a significant increase in the probability or consequences of an accident previously analyzed,

(2) Does not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated, or

(3) Does not involve a significant reduction in a margin of safety.

Criterion 1

Westinghouse has performed analyses that demonstrate the acceptability of the proposed changes with regard to criticality. The analyses demonstrate that fuel stored in the spent fuel pool will remain subcritical under design basis conditions. However, accidents or incidents can take place which would increase reactivity such as dropping a fuel assembly between the rack and pool wall or inadvertently placing a fuel assembly in the wrong location. For those conditions, the double contingency principle of ANSI N16.1-1975 can be applied. That principle states that one is not required to assume two unlikely, independent, concurrent events to ensure protection against criticality. Thus, the presence of greater than or equal to 2400 ppm of soluble boron in the spent fuel pool can be assumed as a realistic initial condition, since not assuming it would be a second unlikely event. The reactivity of the fuel stored in the spent fuel pool would be decreased by about 0.25 delta-k, with approximately 2000 ppm of boron; that is, for an accident or an incident resulting in an increase in reactivity, k_{eff} would remain less than or equal to 0.95 due to the effect of the dissolved boron. In addition, paragraph 2.3 of the SER related to Amendments 118 and 104 for Cook Nuclear Plant Units 1 and 2, respectively, states that "the reactivity reduction due to the required pool boration of 2400 ppm of boron more than offsets the potential reactivity increases from postulated fuel mishandling accidents." It is concluded that the proposed T/Ss changes should not involve a significant increase in the probability or consequences of a previously analyzed accident.

Criterion 2

The Westinghouse analyses demonstrate continued acceptability of the spent fuel pool regarding criticality. The T/Ss changes will not result in physical changes to the plant (other than to the fuel assemblies, which were the subject of the Westinghouse analyses). Therefore, we believe the proposed T/Ss changes will not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3

Westinghouse has performed analyses that demonstrate the acceptability of the proposed changes with regard to criticality. The analyses demonstrate that the fuel stored in the spent fuel pool will remain subcritical under design basis conditions. However, accidents or incidents can take place which would increase reactivity such as dropping a fuel assembly between the rack and pool wall or inadvertently placing a fuel assembly in the wrong location. For those conditions, the double contingency principle of ANSI N16.1-1975 can be applied. That principle states that one is not required to assume two unlikely, independent, concurrent events to ensure protection against criticality.

Thus, the presence of greater than or equal to 2400 ppm of soluble boron in the spent fuel pool can be assumed as a realistic initial condition, since not assuming it would be a second unlikely event. The reactivity of the fuel stored in the spent fuel pool would be decreased by about 0.25 delta-k, with approximately 2000 ppm of boron; that is, for an accident or an incident resulting in an increase in reactivity, k_{eff} would remain less than or equal to 0.95 due to the effect of the dissolved boron. In addition, paragraph 2.3 of the SER related to Amendment 118 and 104 for Cook Nuclear Plant Units 1 and 2, respectively, states that "the reactivity reduction due to the required pool boration of 2400 ppm of boron more than offsets the potential reactivity increases from postulated fuel mishandling accidents." It is concluded that the proposed T/Ss changes should not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Further, the staff notes that the remaining changes are administrative in

nature. Therefore, these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed,

(2) Create the possibility of an new or different kind of accident from any accident previously analyzed or evaluated, or

(3) Involve a significant reduction in a margin of safety.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: L. B. Marsh.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: January 7, 1992

Description of amendment request: The proposed amendment would clarify the applicability of surveillance requirements for equipment out of service, and for equipment not required to be operable by Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, the essence of which, is presented below:

This proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change will not significantly increase the probability or consequences of an accident, because surveillance testing normally verifies system or component operability, as opposed to discovering inoperability. Clarification of surveillance applicability while the plant is shut down and equipment is not operable, or not required to be operable, is considered an administrative change. This change does not alter the availability or condition of applicable equipment and, therefore, does not alter the accident analyses or their conclusions associated with that equipment.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, because surveillance requirements to verify operability will continue to be performed in accordance with the Technical Specifications at the specified surveillance interval. This change will not affect the design of the plant and will not allow the plant to be operated outside the currently allowed modes of operation.

3. Involve a significant reduction in a margin of safety. The clarification of Specification 4.0 will not affect equipment reliability when that equipment is required to be operable. The Limiting Conditions for Operation and associated remedial action statements govern operability of the equipment subject to surveillance. This change does not alter these specifications or their applicability. Guidance has been provided in the **Federal Register** (51 FR 7744) for the application of standards to license change requests for determination of the existence of amendments that are not considered likely to involve significant hazards considerations. This proposed amendment does not involve a significant relaxation of the criteria used to establish safety limits, a significant relaxation of the bases for the limiting safety system settings, nor a significant relaxation of the bases for the limiting conditions for operations. Therefore, based on the guidance provided in the **Federal Register** and the criteria established in 10 CFR 50.92, the proposed change does not constitute a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: March 24, 1988, as supplemented December 23, 1991. The March 24, 1988 submittal was published in the **Federal Register** on May 4, 1988 (53 FR 15914).

Description of amendment request: The proposed amendment will add a license condition requiring the licensee to implement and maintain its Integrated Implementation Schedule Program Plan. This Program Plan will provide a methodology to be followed for scheduling plant modifications and engineering evaluations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change would require the implementation of the IIS methodology described in the Program Plan. As such, it requires that NNECO establish an administrative means for tracking, prioritizing, and scheduling NRC-required plant modifications and engineering evaluations, and licensee-identified plant improvement projects. This methodology is intended to enhance plant safety by more effectively controlling the number and scheduling of plant modifications, thereby assuring that issues required for safe operation of the plant receive priority and are completed in a timely manner.

Because the license condition addresses only an administrative scheduling mechanism, it does not affect directly the design or operation of the plant. Therefore, no accident analyses are affected and the proposed change does not increase the probability or consequences of any previously evaluated accident.

2. Operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed license condition establishes a new requirement relating to scheduling of modifications and engineering evaluations. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with this proposed change will not involve a significant reduction in any margin of safety.

As discussed above, the proposed license condition establishes a new administrative requirement intended to enhance public safety and reliable plant operation. It does not affect any accident analysis or involve any modification to the plant configuration or operation. Therefore, the proposed change does not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 20, 1991

Description of amendment request: The proposed amendment to the Technical Specifications would change the limitations associated with the Regulatory Control Element Assembly (CEA) insertion limits during hot standby and power operations for Technical Specifications 2.10.2(7) and 2.10.2(7)c. Also, the proposed amendment modifies Technical Specification 2.10.2(9)b(i) to achieve consistency with the Combustion Engineering (CE) Standard Technical Specifications (STS) as contained in NUREG-0212, Revision 2.

Basis for proposed no significant hazards consideration determination: The first part of the proposed amendment to the Technical Specifications deals with limitations associated with Regulatory CEA insertion limits. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment changes the CEA long term insertion limits in the third (or longest time interval) category from "14 EFPD [Effective Full Power Days] per calendar year" to "14 EFPD per fuel cycle." Since a fuel cycle is greater than a calendar year, the proposed changes are more conservative. Evaluation of the impact of CEA insertions on the fuel residing in the core for a given fuel cycle is also more appropriate than evaluating the insertions on a calendar year basis, which may impact two fuel cycles.

(2) Create the possibility of a new or different kind of accident. It has been determined that a new or different type of accident is not created because no new or different modes of operation result from this change.

(3) Involve a significant reduction in the margin of safety. The CEA insertion duration limits proposed by this change are more conservative than the current Technical Specifications. Therefore, the margin of safety remains unchanged.

The second part of the proposed amendment to the Technical Specifications deals with achieving consistency with the CE Standard Technical Specifications (STS). As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes result in a consistency between the Fort Calhoun Station Technical Specifications and the NUREG-0212 Revision 2 CE Standard Technical Specifications for the STS 3/4.10.1 exception on required shutdown margin during measurement of CEA worths. Maintaining an available shutdown margin equivalent to at least the highest estimated CEA worth during CEA worth measurement ensures the reactor can be adequately shut down if the need arises. Thus, the proposed change establishes a consistency with the STS while not significantly deviating from the existing Specifications 2.10.2(9)b(i)1 and 2.10.2(9)b(i)2 and does not increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. It has been determined that a new or different type of accident is not created because no new or different modes of operation are proposed for the plant. Maintenance of an adequate available shutdown margin, defined as the reactivity equivalent to the highest estimated CEA worth, prevents possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The available shutdown margin is allowed to be reduced for CEA measurements which confirm core design and further insure shutdown margin Mode 1 operations. The brief time period the shutdown margin is reduced is deemed acceptable as confirmed by the current allowed reduction for shutdown CEA worth measurements and also in the CE Standard Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036

NRC Project Director: John T. Larkins

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: December 11, 1991

Description of amendment request: The proposed amendment would change the Technical Specifications in support of the ensuing Unit 1, Cycle 7 reload (U1C7). Changes to the following Technical Specifications and Bases are requested:

a. 3/4.2.1Average Planar Linear Heat Generation Rate

b. 3/4.2.2APRM Setpoints

c. 3/4.2.3Minimum Critical Power Ratio

d. 3/4.2.4Linear Heat Generation Rate

e. 3/4.4.1Recirculation System (Two Loop Operation)

f. 3/4.4.1Recirculation System (Single Loop Operation)

g. 5.3.1Fuel Assemblies The references discussed in the analysis below are available with the incoming application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following three questions are addressed for each of the proposed Technical Specification changes:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

3. Does the proposed change involve a significant reduction in a margin of safety?

a.) Specification 3/4.2.1, Average Planar Linear Heat Generation Rate

The changes to this specification are completely editorial in nature in that they reflect that there will be no 8X8 fuel in the U1C7 core, and therefore all references to it are being removed. Also, references to "ANF" are updated to "SNP."

1. No. The changes are totally editorial in nature. No limits are being changed. References to ANF 8X8 fuel are dropped since this fuel type will not reside in the U1C7 core. These changes cannot impact the probability or consequences of an accident previously evaluated.

2. No. See 1. above.

3. No. See 1. above.

b.) Specification 3/4.2.2, APRM Setpoints

The changes to this specification are editorial in nature. They update "ANF" references to "SNP," correct words that were

inadvertently reversed, and relocate some figure labels.

1. No. Each change cited above is editorial in nature. No technical changes are proposed that could impact any previously evaluated event.

2. No. See 1. above.

3. No. See 1. above.

c.) Specification 3/4.2.3, Minimum Critical Power Ratio [MCPR]

The changes to this specification support new MCPR operating limits based on the PP&L reactor analysis methods described in Reload Summary Report Reference 3. The limits calculated for U1C7 will be a function of scram speed. Therefore, the requirements have been revised to reflect this basis.

1. No. The MCPR Operating Limits for U1C7 were generated using PP&L's reactor analysis methods described in PP&L reports PL-NF-87-001-A (See Reload Summary Report Reference 1), PL-NF-89-005 (See Reload Summary Report Reference 2), PL-NF-90-001 (See Reload Summary Report Reference 3) and corresponding supplements (See Reload Summary Report References 4, 5, 6, and 38). As a result of these analyses delta CPRs were generated, and after combining with the MCPR Safety Limit as calculated by SNP, MCPR operating limits were developed as MCPR versus Percent of Rated Core Flow and MCPR versus Percent of Rated Core Thermal Power. These limits cover the allowable operating range of power and flow. As specified in PL-NF-90-001, seven major events were analyzed. These events can be divided into two categories: Core Wide Transients and Local Transients; the wide transient events analyzed were:

1) Generator Load Rejection Without Bypass (GLRWOB),

2) Feedwater Controller Failure (FWCF),

3) Recirculation Flow Controller Failure - Increasing Flow (RFCF), and

4) Loss of Feedwater Heating (LOFWH).

As discussed in PL-NF-90-001, the other core wide transients are non-limiting (i.e, they would produce lower calculated delta CPRs than one of the above four events). The local transient events analyzed were:

1) Rod Withdrawal Error (RWE), and

2) Fuel Loading Error (FLE).

The fuel loading error evaluation includes analysis of both rotated and mislocated fuel assemblies.

Sufficient analyses were performed to define the MCPR operating limits as a function of core power, core flow, and scram speed. These limits were also determined for three plant equipment availability conditions:

1) Main Turbine and EOC-RPT operable,

2) Main Turbine Bypass inoperable, and

3) EOC-RPT inoperable.

Core-Wide Transients

The PP&L RETRAN model and methods described in PL-NF-89-005 (See Reload Summary Report Reference 2), PL-NF-90-001 (See Reload Summary Report Reference 3), and corresponding supplements (See Reload Summary Report References 4, 5, 6 and 38), were used to analyze the GLRWOB, FWCF, and RFCF events. The delta CPRs were evaluated using the XN-3 Critical Power Correlation (See Reload Summary Report Reference 28) consistent with the methods described in PL-NF-90-001. The GLRWOB and FWCF events were analyzed based on an average scram speed of 4.4 feet/second and the minimum allowed Technical Specification scram speed. Thus, given that these two events are limiting, the Technical Specification power dependent MCPR operating limits determined for U1C7 will be a function of scram speed for the three plant equipment availability conditions as discussed above. The RFCF event was conservatively analyzed at the Technical Specification scram speed. The RFCF event is the limiting event in determining the Technical Specification flow dependent MCPR operating limits for U1C7. The delta CPR results for the GLRWOB, FWCF, and RFCF are provided in Reload Summary Report Tables 3, 4, and 5 respectively.

The LOFWH event was conservatively analyzed by PP&L using the steady state core physics methods described in PL-NF-90-001 as supplemented in Reload Summary Report Reference 5. The delta CPR calculated for the LOFWH event is 0.11 and is bounded by the results of the three core wide transients.

Local Transients

The RWE and FLE (rotated and mislocated bundle) were analyzed using the methodology described in PL-NF-87-001-A (See Reload Summary Reference 1), PL-NF-90-001 (See Reload Summary Report References 3), and corresponding supplements (See Reload Summary Reports References 5 and 6). The delta CPR resulting from the RWE analysis (based on a Rod Block Monitor setpoint of 108%) and the delta CPRs resulting from the FLE analyses are provided in Reload Summary Report Table 6. The results of these events are bounded by those of the GLRWOB, and thus these events are non-limiting for U1C7.

Based on the above, the methodology used to develop the new MCPR operating limits for the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The methodology and results described above can only be evaluated for their effect on the consequences of analyzed events; they cannot create new ones. The consequences of analyzed events were evaluated in 1. above.

3. No. Based on 1. above, the methodology used to generate the MCPR operating limits for U1C7 is both sufficient and conservative. Furthermore, although the methodology (PL-NF-90-001) is still undergoing NRC review, PP&L believes it meets all pertinent regulatory criteria for use in this application. Therefore, its use will not result in a significant decrease in any margin of safety.

d.) Specification 3/4.2.4, Linear Heat Generation Rate

The changes to this specification are editorial in nature. They delete references to 8X8 fuel, which will not reside in the U1C7 core, and update a reference from "ANF" to "SNP."

1. No. The changes are editorial in nature. No technical methods or limits are proposed to be revised; references are changed to reflect the fuel type that will reside in the U1C7 core. These changes cannot impact the probability or consequences of any previously evaluated event.

2. No. See 1. above.

3. No. See 1. above.

e.) Specification 3/4.4.1, Recirculation System (Two Loop Operation)

The changes to this specification (i.e., Figure 3.4.1.1.1-1) reflect the results cycle-specific stability analysis.

1. No. COTRAN core stability calculations were performed by SNP for Unit 1 Cycle 7 to determine the decay ratios at predetermined power/flow conditions. The resulting decay ratios (See Reload Summary Report Table 2) were used to define operating regions which comply with the interim requirements of NRC Bulletin No. 88-07, Supplement 1 "Power Oscillations in Boiling Water Reactors," (See Reload Summary Report Reference 18). As in the previous cycle, Regions B and C of the NRC Bulletin have been combined into a single region (i.e., Region II), and Region A of the NRC Bulletin corresponds to Region I.

Region I has been defined such that the decay ratio for all allowable power/flow conditions outside of the region is less than 0.90. To mitigate or prevent the consequences of instability, entry into this region requires a manual reactor scram. Region II has been defined such that the decay ratio for all allowable power/flow conditions outside of the region (excluding Region I) is less than 0.75. For Unit 1 Cycle 7, Region II must be immediately exited if it is inadvertently entered.

In addition to the region definitions, PP&L has performed stability tests in SSES, Unit 2 over the course of Cycles 2, 3 and 4 to demonstrate stable reactor operation with SNP 9X9 fuel. The test conditions covered a range from a mixed core of SNP 9X9 and GE 8x8R fuel (Cycles 2 and 3) to a full core of SNP 9x9 fuel (Cycle 4). Reload Summary Report Reference 19 provided an NRC evaluation of the test data and concluded that the use of 9X9 fuel does not produce significant changes in stability behavior as compared to BWRs loaded standard 8X8 fuel. Based on the above, operation within the limits specified by the proposed changes will ensure that the probability and consequences of unstable operation will not significantly increase.

2. No. The methodology described above can only be evaluated for its effect on the consequences of unstable operation; it cannot create new events. The consequences were evaluated in 1. above.

3. No. PP&L believes that the use of Technical Specifications that comply with NRC Bulletin 88-07 Supplement 1, and the tests and analyses described above, provide assurance that SSES, Unit 1 Cycle 7 will comply with General Design Criteria 12, Suppression of Reactor Power Oscillations. This approach is consistent with the SSES, Unit 1 Cycle 6 method for addressing core stability (See Reload Summary Report References 10 and 11). Therefore, no margin of safety will be significantly reduced as a result of the proposed changes.

f.) Specification 3/4.4.1, Recirculation System (Single Loop Operation)

The changes to this specification are either evaluated above or are editorial in nature. The changes to the single loop limits for

Specification 3.2.3 are the result of the MCPR operating limit analyses evaluated above.

1. No. the changes are either evaluated elsewhere in the No Significant Hazards Considerations evaluation, or are editorial in nature.

2. No. See 1. above.

3. No. See 1. above. 1*g.) Specification 5.3.1, Fuel Assemblies*.

The proposed changes reflect that the U1C7 core will contain only 9X9 fuel, and the reference to Zircaloy-2 cladding has been editorially relocated for consistency with the wording in the Susquehanna, Unit 2 Technical Specifications.

1. No. The proposed changes are editorial to reflect the configuration of the U1C7 core, (i.e., all 9X9 fuel), and to insert a minor word change for clarity and consistency with the Unit 2 Technical Specifications. These changes cannot impact the probability or consequences of any previously evaluated event.

2. No. See 1. above.

3. No. See 2. above.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Charles L. Miller

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: December 11, 1991

Description of amendments request: The proposed change removes the 3.25 limitation for three consecutive intervals from Technical Specification (TS) 4.0.2. It also clarifies the Bases for TS 4.0.2 to reflect the increased flexibility for scheduling surveillances in accordance with the guidance provided by Generic Letter 89-14, "Line-Item Improvements in Technical Specifications-Removal of the 3.25 Limit on Extending Surveillance Intervals."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The surveillance intervals will continue to be constrained by the 25 percent limit. For surveillance required during refueling shutdown, the risk associated with exceeding the 3.25 limit is outweighed by the risk associated with a forced shutdown to perform the surveillance. In addition, deletion of the 3.25 limit actually realizes a safety benefit by permitting surveillance intervals to be extended such that performance of "at power" surveillance may be accomplished while the plant is shut down, thus minimizing the risk of an unnecessary transient. Existing equipment surveillance requirements are not affected by this license amendment and the extension of surveillance intervals will continue to be limited by the allowable 25 percent extension limit discussed above. The equipment on which the surveillances are being performed will continue to be proven operable and will continue to be available to respond to and mitigate any previously evaluated transients or accidents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change will not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change would not result in any physical alteration to any plant system, nor would there be a change in the method in which any safety related system performed its function. The change would not result in any equipment being operated in a manner different than that in which it was designed to be operated.

3. The proposed change does not involve a significant reduction in a margin of safety. Deletion of the 3.25 limit will not significantly affect equipment reliability, rather it will reduce the potential for interrupting normal plant operation due to surveillance scheduling. Surveillance intervals will continue to be constrained by the 25 percent limit which is sufficient to ensure reliability for surveilled equipment. The added flexibility in scheduling surveillances afforded by deletion of the 3.25 limit should have a positive safety benefit by allowing surveillances to be performed under appropriate plant conditions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, P. O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Elinor G. Adensam

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: November 25, 1991

Description of amendment requests: The licensee proposes to revise Technical Specifications 3/4.7.8, "Fire Suppression Systems" and 3/4.8.1, "Electrical Power Systems." The first proposed revision deletes the existing surveillance restriction 4.7.8.1.2.c that requires the diesel fire pump surveillance to be performed during shutdown. The second revision corrects misidentified electrical circuit breakers listed under surveillance requirement 4.8.1.1.1.a. The licensee characterizes both revisions as administrative changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The function of the fire pump diesel engine is to provide power to the backup fire pump P220 for Units 2 and 3. Pump P220 provides redundancy to the two electrical-driven fire pumps P221 and P222. The proposed change clarifies that plant shutdown is not required to perform the 18 month surveillance of the diesel engine. This clarifies that performance of the surveillance is allowed at any time, including when one or both Units 2 or 3 are in operation. Action statement 3.7.8.1 provides an allowed outage time of 7 days for the fire pump diesel engine. Based on previous experience, maintenance is expected to take less than 7 days. The surveillance has no effect on plant configuration or operation and takes place in the yard outside containment. Therefore, the proposed change will not significantly increase the probability or consequences of previously evaluated accidents.

The A.C. sources of the electrical power system provide a source of power from the offsite transmission network. The proposed change corrects a misidentification of tie breakers 2A0417 and 2A0619 for Unit 3. This is an editorial change and has no effect on the plant. Therefore, the proposed change will not significantly increase the probability or consequences of previously evaluated accidents.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No

The 18 month interval of the fire pump diesel engine inspection is unaffected by the proposed Technical Specification change so that reliability and availability of the diesel engine are unaffected. There is no change in the design, configuration or accident analysis assumptions of the facility. This surveillance is performed in the yard area outside containment and has no effect on plant status or operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

The proposed Technical Specification change to the A.C. Power Sources is a correction of a misidentification of two circuit breakers. This is an editorial change and has no effect on facility configuration or operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed change to the fire pump diesel engine Surveillance requirement does not change the 18 month inspection interval. Performing the surveillance typically renders the diesel engine INOPERABLE for approximately 18 hours, and the combined surveillance and maintenance have been performed within the 7 day allowed outage time. Additionally, the intertie with the Unit 1 fire suppression system can be used as an alternate backup. There is no change in the reliability or availability of this redundant equipment. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The proposed change to the electrical systems Surveillance Requirements corrects a misidentification of two circuit breakers. It is an editorial change and does not affect facility configuration, operation, or accident analysis assumptions. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: Theodore R. Quay

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: November 27, 1991 (TS 91-16)

Description of amendment request: The proposed Technical Specification (TS) amendment would modify Table 3.3-3 (Engineered Safety Feature Actuation System Instrumentation), Item 7 (Loss of Power), by replacing the reference to Action Statement 20 with reference to new Action Statements 34 or 35. Items 7.a.2 and 7.b, which address the 6.9-kilovolt (kv) shutdown board load shedding and degraded voltage instrumentation, would then reference Action Statement 34.a and result in retaining the present required actions in the event that the number of operable channels is one less than the Total Number of Channels listed in the table. However, in the event that the number of operable channels is less than the Total Number of Channels listed in the table by more than one, the new Action Statement 34.b would allow continued operation provided that the associated 6.9-kv shutdown board is declared inoperable and the actions specified in Specification 3.8.2.1 or 3.8.2.2 (as applicable) are complied with.

Item 7.a.1 of Table 3.3-3 addresses operability of the 6.9-kv shutdown board diesel generator start instrumentation. In the event that the number of operable channels is less than the Total Number of Channels by one or more, the new Action Statement 35 would require that the diesel generator be declared inoperable and Specification 3.8.1.1 or 3.8.1.2 (as applicable) be complied with.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below.

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant in accordance with the the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes to existing TS Table 3.3-3 action requirements for loss of power instrumentation that creates the new Actions 34 and 35 only affect the requirements for instrumentation inoperability. These actions do not alter plant configurations for accident mitigation equipment, but provide acceptable time requirements for inoperabilty and provide for instrumentation conditions that are consistent with plant design. The revised actions will not disable safety-related instrumentation outside of the TS requirements for the associated accident mitigation equipment or allow inappropriate inhibits to safety functions and, therefore, will not significantly increase the consequences of an accident. The functions of the instrumentation remain the same; only the actions for inoperability are modified. The proposed changes to these TS actions do not alter plant equipment configurations such that the potential for an accident is impacted. The affected instrumentation and associated equipment are utilized for accident mitigation and are not considered to be the source of any accident. Therefore, the probability of an accident previously evaluated is not increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As discussed above, only accident mitigation equipment is affected by the proposed changes. The equipment functions have not been altered; only the actions for inoperability have been modified to allow TS-required testing. Therefore, no equipment postulated to created an accident is impacted, and the possibility of a new or different kind of accident is not increased.

3. Involve a significant reduction in a margin of safety.

These proposed changes do not alter the functions of any safety-related equipment. All accident mitigation functions will remain the same, and actions for inoperable instrumentation will provide for TS-required testing. This will allow for operability testing of equipment used to mitigate accidents to ensure margins of safety are not impacted. The changes to the actions for inoperable loss of power instrumentation are still consistent with the actions for the associated equipment. Therefore, a significant reduction in any margin of safety is not involved as a result of the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: December 18, 1991

Description of amendment request: The proposed amendment would revise Technical Specification 5.3.2 to allow the use of a control rod design containing hafnium metal and/or boron

carbide powder as a neutron absorbing material.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated:

The use of hafnium as a neutron absorbing material has been specificially approved by the NRC for use in BWR control rod assemblies. Use of approved control rod designs and materials will not significantly alter the neutron absorption (reactivity worth), mechanical properties (e.g. corrosion resistance) or other functional characteristics (e.g. weight and dimensions) of the control rods. The control rods are designed to be neutronically and physically compatible with the existing rod design. Since their characteristics are similar to the existing design, the probability of an accident and the consequences of an accident are not significantly increased. The proposed change does not alter the required number of control rods nor does it affect any of the specifications relating to the control rods (e.g. the shutdown margin and scram timing requirements are unaffected). Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated:

The use of NRC approved control rod designs using hafnium as an absorber material does not produce any new mode of plant operation or alter the control rods in such a way as to affect their function or operability since the new control rods are designed to be compatible with the existing control rods. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety:

The proposed change does not significantly affect the neutronic or mechanical characteristics of the control rods since the hafnium-containing control rods are designed to be compatible with the existing design and reload licensing criteria, therefore, there is no significant change in the margin of safety. It does not change the required number of existing control rods. It does not affect the existing Technical Specifications related to control rods i.e., required shutdown margin, scram time, etc. The margins of safety will be verified in accordance with 10 CFR 50.59 as part of the reload development and review process. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: November 22, 1991

Description of amendment request: The proposed changes would revise Callaway Plant Technical Specifications (TSs) 3/4.3.2 and 3/4.7.6 concerning the control room emergency ventilation system, and its associated isolation instrumentation to allow an exception to TS 3.0.4, which prevents entry into an operational mode unless the conditions of the Limiting Conditions for Operation are met. The proposed change would allow mode changes in MODES 5 and 6, while operating in compliance with the existing ACTION statements. This proposed change is consistent with the guidance of Generic Letter 87-09, which allows exceptions to TS 3.0.4, where existing ACTION statements allow continued operation for an unlimited time period.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed changes to Technical Specifications 3.3.2 and 3.7.6 do not involve a significant hazards consideration because operation of Callaway Plant with these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes do not effect [sic] equipment involved in the initiation of previously evaluated accidents. The probability of such accidents is therefore not increased. The CREVS and its actuation instrumentation function to mitigate the consequences of accidents by maintaining control room habitability. The proposed change does not alter the design or method of operation of the Control Room Emergency Ventilation System or its actuation instrumentation. The revised ACTIONS would allow Callaway Plant to make operational changes while operating in accordance with existing ACTIONS which allow continuted operation for an unlimited period of time after the system has been placed in its Emergency (recirculation) mode of operation. Operational MODE changes within the bounds of the ACTION would not degrade the capability of the Control Room Emergency Ventilation System to mitigate an accident, therefore, the consequences of previously analyzed accidents are not increased by the proposed changes.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes do not introduce any new type of accident or malfunction and the method and manner of plant operation remain unchanged. Since the proposed changes do not introduce any new or revised failure modes, a new or different kind of accident could not occur.

3. Involve a significant reduction in a margin of safety. There are no plant design changes involved and no changes are being made to the safety limits or safety system settings that would adversely impact plant safety. Operating mode changes within the constraints of the action statements do not reduce the level of protection provided by the CREVS; therefore, margins of safety are not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: December 18, 1991

Description of amendment request: The proposed amendment would revise Technical Specification 4.5.2.h to change the charging and safety injection pump flows and to revise the requirements for performing a flow balance test on an ECCS subsystem.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change does not involve a significant hazards consideration because operation of Callaway Plant with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The Callaway Safety

Analysis has been reviewed and been found to be unaffected by this proposed change. The design of the ECCS piping, valves, and pumps has been reviewed and found adequate to support operation with increased flow. The Callaway Safety Analysis has been evaluated based on the proposed changes to the ECCS flow criteria. The consequences of any accident or malfunction of equipment has not increased. Performing a flow balance test on just the affected ECCS Subsystem has no effect on any accident as the intent of the Technical Specifications is being met.

2. Create the possibility of a new or different kind of accident from any previously evaluated. There is no new type of accident or malfunction created and the method and manner of plant operation remains unchanged.

3. Involve a significant reduction in a margin of safety. The margin of safety remains unaffected since no design change is made and ECCS operation remains the same.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 23, 1991

Description of amendment request: The proposed amendment would revise the Vermont Nuclear Power Station's (VNPS) Technical Specifications by effecting a change in surveillance requirements resulting from the upgrade of mechanical-actuated instrumentation, differential pressure switches, with an analog trip system. This instrumentation would provide the Main Steam Line High Flow inputs to the Primary Containment Isolation System Logic.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change to extend the high steam line flow calibration interval from every three months to once/operating cycle reflects the replacement of differential pressure switches with analog instrumentation. The proposed calibration interval is consistent with those previously approved for similar analog instrumentation utilized at Vermont Yankee (References b, c, and d). A calibration interval of once/operating cycle has been demonstrated to be appropriate for similar instrumentation installed at Vermont Yankee. The requested change to the existing calibration interval does not impact any FSAR safety analysis. Under this proposed change, operability is assured and valve closure functions for preventing excessive loss of reactor coolant and release of significant amounts of radioactive material from the nuclear system process barrier are provided. Therefore, it is concluded that the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed change to increase the calibration interval for high steam line flow instrumentation meets the intent of Technical Specification requirements for assuring operation of equipment as designed. Based upon past operational history for similar instrumentation installed at Vermont Yankee, performance of calibration requirements once/operating cycle will adequately assure operation as designed. The proposed change does not involve any change in Technical Specification setpoints, plant operation, redundancy, protective function or design basis of the plant. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change represents an increase in safety since existing instrumentation is being replaced with newer more reliable instrumentation while maintaining system function and design basis. The occurrence of trip system inoperability during the performance of calibration or following calibration due to possible human error is reduced by requiring less frequent calibration. In addition, the potential for inadvertent steam line isolations or challenges to plant systems and operation is reduced by providing the option of performing calibration during plant shutdown. Based upon the above, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 27, 1991

Description of amendment request: The proposed amendment would: (1) Delete specific supervisory titles from Section 6.2 of the Technical Specifications relative to the composition of the Plant Operations Review Committee (PORC) and authorize the Plant Manager to appoint members, and (2) reinstate the surveillance frequency required for testing automatic closure of the primary containment isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis the essence of which is provided below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment is strictly administrative in nature. The first part of the proposed amendment removes the specific position titles listed in Technical Specifications for managerial personnel responsible for the membership on the Plant Operations Review Committee (PORC). The quality of representation remains unaltered. The second part of the proposed amendment restores a previously existing surveillance requirement for the primary containment isolation valves, which was inadvertently deleted in recent

Amendment No. 128 to the facility Operating License. (In the interim, plant procedures will continue to ensure that the surveillance is performed.)

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. No physical changes are being made to the plant and no new testing techniques or procedures are being proposed. The proposed amendment does not affect the quality or level of expertise for managerial personnel who constitute the PORC, and does not change the previously existing surveillance requirement for primary containment isolation valves.

3. The proposed amendment will not involve a significant reduction in a margin of safety. The proposed amendment does not alter the existing criteria for managerial personnel who constitute the PORC, nor does the proposed amendment change surveillance requirements for primary

containment isolation valves from those that existed prior to issuance of Amendment No. The net effect of the proposed change is to reduce the frequency of administrative Technical Specification changes made necessary by a supervisory title change, and to reinstate previously existing surveillance requirement for the primary containment isolation valves.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director: Walter R. Butler

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: November 20, 1991

Description of amendment request: This amendment would revise the Technical Specifications (TS) in Section 6, "Administrative Controls." The amendment is being requested to reflect recent organizational changes at Wisconsin Public Service Corporation (WPSC), the licensee for the Kewaunee Nuclear Power Plant. Administrative changes are also being proposed dealing with format and typographical inconsistencies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

This proposed amendment reflects organizational changes at Wisconsin Public Service Corporation. These revisions do not change the intent of the Technical Specifications or decrease WPSC's management support or involvement in activities at the Kewaunee Plant.

Therefore, the proposed changes pose no significant hazards for the following reasons:

1. The proposed changes will not result in a significant increase in the probability of occurrence or consequences of an accident.

2. The proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes will not involve a significant decrease in the margin of safety.

The proposed changes are similar to example C.2.e.i in 51 FR 7751. Example C.2.e.i is given to describe purely administrative changes that are, therefore, not likely to involve a significant hazard.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq., Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: John N. Hannon.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: December 12, 1991

Description of amendment request: This amendment would revise the Technical Specifications (TS) in Section 3.5, "Instrumentation System," Table TS 3.5-6, "Instrumentation Operating Conditions for Indication," and Table TS 4.1-1, "Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels." The proposed amendment would add operability and surveillance requirements for the reactor vessel level indication instrumentation which was installed at Kewaunee in 1987 as part of the instrumentation to detect inadequate core cooling. Administrative changes are also being proposed dealing with format and typographical inconsistencies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are consistent with the guidance provided in NRC Generic Letter 83-37. Specifically, surveillance requirements, limiting conditions for operation, and required actions are provided for the instrumentation. These new specifications help to ensure instrument reliability and availability, and add restrictions not presently included in the TS. The other proposed changes are administrative in nature. Hence, the probability or consequences of an accident previously evaluated would not be increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes would not alter the plant configuration, operating set points or overall plant performance. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created.

3. Involve a significant reduction in the margin of safety.

The proposed changes include enhancements to the specifications and additional controls and limitations. Hence, overall plant safety would be enhanced, and the margin of safety would not be reduced.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq., Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: John N. Hannon.

Previously Published Notices Of Consideration Of Issuance Of Amendments To Operating Licenses And Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: December 15, 1991

Description of amendment request: The amendment would revise: (1) Trojan Technical Specification (TTS) Section 3.4.6.2.c, "Operational Leakage," and Bases 3/4.4.5, "Steam Generators," and 3/4.4.6.2, "Operational Leakage," to reduce the total allowable primary-to-secondary leakage for any one steam generator from 500 gallons per day (gpd) to 130 gpd and to reduce the total allowable primary-to-secondary leakage through all steam generators from one gallon per minute (gpm) to 400 gpd; and, (2) Technical Specification Surveillance Requirement 4.4.5.4.a.6, "Repair Limit," and associated Bases will be modified to clarify that the percent tube wall degradation criteria is inappropriate to determine serviceability of tubes with outer diameter stress corrosion cracking/intergranular attack (ODSCC/IGA) at tube support plate (TSP) intersections. Rather, the appropriate method for determining serviceability for tubes with ODSCC/IGA at TSP intersections is by a methodology that more reliably assesses structural integrity. TTS 4.4.5.4.a.6 and the associated Bases will indicate that this change is applicable only for Operating Cycle 14. Date of publication of individual notice in **Federal Register:** December 31, 1992 (56 FR 67638)

Expiration date of individual notice: January 30, 1992

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Notice Of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: August 9, 1991, as supplemented October 10, 1991, and December 18, 1991.

Brief description of amendments: The amendments delete eighteen tables, and references to those tables, from the Zion Technical Specifications. The tables, which consisted of component lists, were proposed to be deleted based on the guidance provided in NRC Generic Letter 91-08.

Date of issuance: January 3, 1992

Effective date: January 3, 1992

Amendment Nos.: 131 and 120

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 18, 1991 (56 FR 47232) The October 10, 1991, and December 18, 1991, submittals provided additional clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 3, 1992.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: April 8, 1991, with supplement dated December 12, 1991.

Brief description of amendment: The amendment will change the following sections of the Technical Specifications:

a. 3/4.1.3, Movable Control Assemblies,

b. 3/4.3.1, Table 4.3-1,

c. 3/4.5.1, ECCS Subsystems—Tavg Greater Than or Equal to 3500F and Table 4.5-1,

d. 3/4.7.6, Fire Suppression Systems,

e. 3/4.7.9, Feedwater Isolation Valves and Table 3.7-6,

f. 3/4.9.2, Instrumentation,

g. 3/4.10.2, Physics Test, and

h. BASES—3/4.7.6, Fire Suppression Systems These changes are corrections, clarifications and additions to

Amendment No. 125. Date of Issuance: January 7, 1992

Effective date: January 7, 1992

Amendment No.: 147

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 24, 1991 (56 FR 33952) The December 12, 1991, submittal withdrew proposed changes to Technical Specification Sections 3/4.9.4 and 3/4.9.8, which will be resubmitted at a later date. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 7, 1992.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: February 21, 1991

Brief description of amendment: The amendment revises the Pressure Temperature Curves in the TS in accordance with Regulatory Guide 1.99, Revision 2.

Date of issuance: December 27, 1991

Effective date: December 27, 1991

Amendment No.: 77

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** November 13, 1991 (56 FR 57694) The Commission's related

evaluation of the amendment is contained in a Safety Evaluation dated December 27, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: September 25, 1991

Brief description of amendment: This amendment revises TS Surveillance Requirement 4.8.4.4.a. reactor protective system electrical protective assemblies channel functional test surveillance interval. The proposed change is in accordance with Generic Letter 91-09, "Modification of Surveillance Interval for the Electrical Protective Assemblies in Power Supplies for the Reactor Protection System."

Date of issuance: December 27, 1991

Effective date: December 27, 1991

Amendment No.: 78

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: November 27, 1991 (56 FR 60115) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 27, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: September 24, 1991

Brief description of amendment: This amendment revises the TS by changing the rod block monitor system downscale trip set point to reflect design changes made during the recent refueling outage.

Date of issuance: December 27, 1991

Effective date: December 27, 1991

Amendment No.: 79

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in Federal Register: November 27, 1991 (56 FR 60115) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 27, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: August 12, 1991

Brief description of amendment: The amendment revised the Fort Calhoun Technical Specifications, modifying the emergency diesel generator surveillance requirements to reduce the number of diesel generator fast starts.

Date of issuance: December 23, 1991

Effective date: December 23, 1991

Amendment No.: 140

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 1, 1991 (56 FR 47240). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 1991. No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: October 27, 1988, as supplemented by letters dated November 9, 1988, January 9, 1989, July 5, 1989, February 22, 1990, March 20, 1991 and July 31, 1991. The November 9, 1988 and January 9, 1989 letters requested information be treated as proprietary. The additional supplemental letters did not change the initial proposed no significant hazards determination.

Brief description of amendments: These amendments made changes to the Technical Specifications related to the reactor protection system, revising surveillance test intervals and allowed outage times.

Date of issuance: December 30, 1991

Effective date: December 30, 1991

Amendment Nos.: 115 and 84

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in FEDERAL REGISTER: December 14, 1988 (53 FR 50333) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 30, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: May 31, 1990, and supplemented October 31, 1990, December 5, 1990, June 28, 1991, July 12, 1991, July 16, 1991, and September 19, 1991

Brief description of amendment: The amendment revises the Technical Specifications to allow for the expansion of the spent fuel pool storage capacity from the current 2244 fuel assemblies to the proposed 2797 fuel assemblies.

Date of issuance: December 31, 1991

Effective date: December 31, 1991

Amendment No.: 175

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in Federal Register: July 24, 1990 (55 FR 30051) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1991 and an Environmental Assessment dated December 13, 1991. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of Oswego, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: April 2, 1990

Brief description of amendments: These amendments increased the allowable isolation times associated with the feedwater control valves and established consistent isolation times for Salem, Units 1 and 2.

Date of issuance: January 2, 1992

Effective date: As of the date of issuance and to be implemented within 60 days of the date of issuance.

Amendment Nos. 132 and 111

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 16, 1991 (56 FR 51930) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 2, 1992.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: December 7, 1990, as supplemented June 11, 1991, and August 26, 1991

Brief description of amendment: The amendment changes the TS to specify that training for the unit licensed staff shall be in accordance with 10 CFR 55.59(c) and 55.31(a)(4). It also specifies that training for personnel other than unit licensed staff shall be in accordance with Section 5.5.2 of American National Standards Institute ANS 3.1 - 1981.

Date of issuance: December 24, 1991.

Effective date: December 24, 1991.

Amendment No.: 106.

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 15, 1991 (56 FR 22477) and November 13, 1991 (56FR 57704)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 24, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: July 1, 1991, as supplemented October 18, 1991.

Description of amendments request: The amendments change the Technical Specifications to increase enrichment to a nominal 5.0 weight percent U-235 for optimized fuel assemblies (OFA) and for VANTAGE-5 fuel assemblies taking credit for the presence of integral fuel burnable absorbers (IFBA).

Date of issuance: December 30, 1991

Effective date: December 30, 1991

Amendment Nos.: 91 and 84.

Facility Operating License Nos. NPF-2 and NPF-8: Amendments revise the Technical Specifications

Date of initial notice in Federal Register: August 21, 1991 (56 FR 41575) and November 13, 1991 (56 FR 57688)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 30, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: August 21, 1989, as supplemented September 1, 1989.

Brief description of amendment: The amendment removed all line items using the term "status" from the Technical Specification (TS) Tables regarding post-accident monitoring instrumentation, removed the line item on containment vessel hydrogen from the same TS Tables, added a monthly channel check for the hydrogen analyzers to TS 3/4.6.4, changed the bases regarding hydrogen analyzers, and made several administrative changes.

Date of issuance: December 17, 1991

Effective date: December 17, 1991

Amendment No. 167

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 2, 1991 (56 FR 49929) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: November 8, 1990, as supplemented May 31, 1991 and clarified October 8, 1991.

Brief description of amendments: These amendments provide allowed outage times (AOTs) and operator actions for the engineered safeguards instruments. In addition, the amendments incorporate the operability and surveillance requirements for the feedwater isolation/turbine trip instruments in accordance with Generic Letter 89-19.

Date of issuance: December 30, 1991

Effective date: December 30, 1991

Amendment Nos. 165 and 164

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 29, 1991 (56 FR 24222) The May 31 and October 6, 1991 letters provided supplemental information which did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1991. No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: February 21, 1991

Brief description of amendment: The amendment revised Table 4.3.6-1, of the technical specifications, to increase the surveillance intervals for channel functional tests of the control rod block instrumentation from monthly to quarterly.

Date of issuance: December 26, 1991

Effective date: December 26, 1991

Amendment No.: 97

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 7, 1991 (56 FR 37592) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 26, 1991. No significant hazards consideration comments requested: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 27, 1991, as supplemented by letter dated September 11, 1991.

Brief description of amendment: The amendment revises Section 6.0 of the Technical Specifications to reflect miscellaneous changes to the administrative controls. Modifications include title changes of plant personnel, updated references, and clarifications regarding individuals responsible for

assuming Control Room command and control.

Date of Issuance: December 24, 1991
Effective date: December 24, 1991
Amendment No.:
Amendment No. 54
Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13672) The September 11, 1991, submittal provided additional clarifying information and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 24, 1991. No significant hazards consideration comments received: No. Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 13th day of January 1992.

For the Nuclear Regulatory Commission

Bruce A. Boger,

Director, Division of Reactor Projects - III/IV/V Office of Nuclear Reactor Regulation

[FR Doc. 92-1393 Filed 1-21-92; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 040-08724, License No. SUB-1357 EA 91-060]

Chemetron Corporation Newburgh Heights, OH; Order Imposing Civil Monetary Penalty

I

Chemetron Corporation (Licensee) is the holder of Source Material License No. SUB-1357 issued by the Nuclear Regulatory Commission (NRC or Commission) on June 12, 1979. The License authorizes the Licensee to store and possess depleted uranium contamination incident to conducting radiation surveys and decontamination of facilities, equipment and plant areas at 2910 Harvard Avenue, Newburgh Heights, Ohio, in accordance with the conditions specified therein. Previously, on October 8, 1965, the Atomic Energy Commission (predecessor agency of the NRC) issued Source Material License No. SUB-852 which authorized the Licensee to use depleted uranium compounds in the manufacture of a chemical catalyst at 2910 Harvard Avenue, Newburgh Heights, Ohio, in accordance with the conditions specified therein. Source Material License No. SUB-852 was in effect until superseded on June 12, 1979, with the issuance of Source Material License No. SUB-1357.

II

An inspection of the Licensee's activities was conducted from March 19 through April 15, 1992. The results of the inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated August 14, 1991. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee has violated, and the amount of the civil penalty proposed for the violation. The Licensee responded to the Notice by letter dated September 20, 1991. In its response, the Licensee requested that the severity level of the violation be reduced or the amount of the proposed civil penalty be mitigated in its entirety.

III

After consideration of the Licensee's response and the statements of fact, explanation, and arguments for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $7,500 within 30 days of the date of this Order, by check, draft, electronic transfer or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

Whether on the basis of the violation admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 13th day of January 1992.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix

Evaluation and Conclusion

On August 14, 1991, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for the violation identified during an NRC inspection. Chemetron Corporation responded to the Notice on September 20, 1991. In its response, the Licensee did not contest the violation, but requested that the severity level of the violation be reduced or the amount of the proposed civil penalty be mitigated in its entirety. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

I. Restatement of Violation

10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secure from unauthorized removal from the place of storage.

10 CFR 20.207(b) requires that licensed materials in an unrestricted area and not in storage be under constant surveillance and the immediate control of the licensee. As defined in 10 CFR 20.3(a)(17), an unrestricted area includes any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials.

Contrary to the above, on March 19, 1991, licensed material consisting of depleted uranium as contamination was located on equipment and in structures in Building Numbers 1, 3B, 3C, 4, 5B, 6, 9, 10, 11, 14, 16A, 16B, 17, 19, and 20 at 2910 Harvard Avenue, Newburgh Heights, Ohio, which are unrestricted areas, and this material was not in storage, was not secured against unauthorized removal, and was not under constant surveillance and immediate control of the licensee.

This is a Severity Level III violation (Supplement IV). Civil Penalty—$7,500

II. Summary of Licensee's Response Concerning Severity Level

The Licensee did not contest the violation. The Licensee contends that the NRC did not give full consideration to the circumstances surrounding the violation. The Licensee argues that the severity level of the violation should be reduced to Level IV, based on the following: (1) The safety significance of the violation is low; (2) the NRC acknowledged that Chemetron's current management was not responsible for the actual violation; (3) the present Chemetron management team identified the violation to the NRC; and (4) Chemetron's remediation efforts were reasonable.

First, the Licensee refers to the NRC's characterization of the contamination as representing a relatively low hazard to the public health and safety. The Licensee also notes that the contamination is limited to an industrial complex, access to which is carefully controlled and is used by only a relatively few individuals.

Second, the Licensee asserts that the NRC's August 14, 1991, letter transmitting the Notice stated that the major factor contributing to the violations was the failure of prior management to recognize the extent of the contamination controls necessary to the project.

Third, the Licensee contends that as early as August 1990 the Licensee identified the spread of contamination.

Fourth, the Licensee concludes that the violation represented an isolated occurrence rather than a programmatic breakdown in the management controls applied to its control of contamination and that its efforts at remediation have been "responsive and effective."

Fifth, the Licensee contends that the violation was not willful in any fashion.

Sixth, the Licensee argues that the NRC has given undue weight to the Licensee's lack of responsiveness to this matter, which it attributes to prior management. The Licensee further asserts that the NRC Enforcement Manual states that the promptness and extensiveness of corrective actions are normally not considered at all for the purposes of determining the severity level and concludes that the NRC should revisit its severity level determination in that regard.

NRC's Evaluation of Licensee's Response Concerning Severity Level

First, with regard to safety significance, the Licensee is correct in stating that the NRC's August 14, 1991, letter transmitting the Notice acknowledged the contamination represents a relatively low hazard to public health and safety. This does not mean that the violation was not of significant regulatory concern. Nor has NRC stated that the level of contamination is not of concern. More than 200 areas of contamination were found in the various buildings with numerous areas in substantial excess of NRC guidelines in Regulatory Guide 1.86 for release for unrestricted use. In fact, the August 14, 1991, letter stated:

"* * * The violation is significant due to the length of time that it has existed, the broad area over which the contamination was spread, and the fact that it may involve equipment, materials and areas that are no longer under the licensee's control. The NRC acknowledges that the contamination represents a relatively low hazard to public health and safety. Nonetheless, non-radiation workers were unnecessarily exposed to licensed material possessed by Chemetron Corporation for which Sunbeam-Oster Company is now responsible * * *"

This statement accurately reflects the situation and categorization of the violation at Severity Level III. Example C.11 of Supplement IV to the NRC enforcement policy provides an example of a Severity Level III violation as the "significant failure to control licensed material." The violation for the failure to control licensed material is significant because of the large area (more than 134,000 square feet in 15 buildings) which had become contaminated and the duration of the violation from the time uncontrolled contamination was first discovered until access to the material was restricted. In this regard, the NRC notes that the Licensee interprets the violation as one of dispersal of the contamination, rather than the failure to maintain control of that material once it was identified. Clearly, both elements are important, but the Licensee failed to establish a restricted area to control access to the contamination. While identifying the areas to which contamination had been previously dispersed is necessary to identify the areas requiring control, the violation stated in the Notice of Violation was of 10 CFR 20.207, and did not involve the actions that caused the dispersal.

The violation described in the Notice concerns the widespread and long-term nature of the contamination and the inadequate controls the Licensee had in place for the purpose of protecting individuals from exposure to radiation and radioactive materials and to prevent the spread of contamination. The NRC's regulatory concern arising from the violation is the Licensee's failure to recognize the significance of controlling access to the contamination, as discussed throughout the appendix. Accordingly, this was not an isolated occurrence, but resulted from inadequate management controls.

The Licensee's characterization that the contamination is limited to an industrial complex, access to which was carefully controlled and which was utilized by a small number of individuals, does not take into consideration that those individuals are not employees of the Licensee and are therefore members of the general public. These workers, through no fault of their own, but through the inadequate controls the Licensee had in place for the purpose of protecting individuals from exposure to radiation and radioactive material, have been exposed to the contamination spread by the activities of the Licensee.

Second, with respect to the Licensee's current management responsibility for the violation, the Licensee accurately points out that the NRC stated that the major factor contributing to the violation was the failure of prior management to recognize the extent of the contamination controls necessary to the project. The NRC recognizes that the Licensee's present management team did not become involved with this project until August 1990 and concludes that the present management team did not cause the prior lack of contamination controls. However, regardless of the cause of the violation, current management is responsible for satisfying all Commission requirements.

Third, the Licensee contends that as early as August 1990 the Licensee identified the spread of contamination. The Licensee did inform the NRC that contamination had been spread to Building 20. However, the Licensee did not act promptly to fully discover the extent of the contamination either in Building 20 or elsewhere nor did it act promptly to regain control over that material. These concerns are reflected in the NRC's letter of January 28, 1991, which transmitted Inspection Report No. 040-08724/91001. That letter stated in part:

"* * * In addition to responding to the violation in the enclosed Notice, we request that you also address the following two concerns that were identified during this inspection:

1. Low level uranium contamination was discovered in Building 20. We are concerned that the building appears to be contaminated above the NRC's release criteria, is an unrestricted area, and it is currently occupied by non-radiation workers.

2. Equipment with low level uranium contamination was discovered in Building 14 which is an unrestricted area. It appears that the contaminated equipment originated from the previously demolished Building 21. We are concerned that thorough surveys have not been performed to determine the extent and level of contamination that may exist in Buildings 14 and 20 and in other unrestricted facilities at Harvard Avenue * * *"

While the Licensee may have identified that contamination was spread to Building 20, the NRC had to inquire whether contamination had been spread elsewhere and whether the Licensee had taken any action to comply with 10 CFR 20.207 or restrict access to that contamination.

Fourth, the Licensee contends that it took reasonable remediation steps in light of other decontamination activities. The Licensee's remediation program concerning the disposal of the previously known contamination from Building 21 is irrelevant to the severity level of the violation. Rather, the Licensee failed to recognize the need to control all contamination, which is the basis for classifying the violation at Severity Level III. The Licensee also contended that the violation represented an isolated occurrence rather than a programmatic breakdown in the management controls applied to its control of contamination. As discussed above, the NRC rejects this position. Moreover, the Licensee's assertion that the violation was an isolated occurrence is refuted by the fact that contamination was found in 15 buildings, none of which were previously within the Licensee's restricted radiation area.

Fifth, the NRC acknowledges that the violation was not willful. The NRC did not assert willfulness as a basis for classifying the violation at Severity Level III.

Sixth, the Licensee's lack of responsiveness in this matter is only partially attributable to

prior management. The NRC staff is most concerned that the Licensee took only limited actions to identify the extent of contamination after first identifying it in August 1990 until the NRC staff, in its letter of January 28, 1991, prodded the Licensee to take more extensive action, and the Licensee took no action to regain control of that contamination until after the NRC identified that lack of control in the March 1991 inspection.

As for the Licensee's argument that the promptness and extensiveness of corrective actions are normally not considered at all for the purposes of determining severity level, the NRC staff does not fully agree. While corrective action after the identification of a violation is considered under the escalation and mitigation factors, the safety significance of the violation, and the corresponding severity level, depends on the opportunity for exposure to ionizing radiation. In this instance, the Licensee did not take appropriate steps to recognize the need to regain control of source material until after the March 1991 inspection, even though it had a reasonable opportunity to identify that need based on the earlier findings of contamination in buildings 14 and 20. Accordingly, the potential for exposure was increased.

Based on the foregoing, the NRC staff concludes that the violation stated in the Notice is properly classified at Severity Level III.

III. Summary of Licensee's Request for Remission of the Civil Penalty

With respect to the "Identification and Reporting" factor, the Licensee contends that it, and not the NRC, identified the violation. Also, the Licensee contends that the NRC's request that the Licensee extend surveys to other buildings does not appear to be the proper subject of the identification and reporting adjustment factor under the NRC Enforcement Policy. Further, the Licensee argues that whether its response was comprehensive is a separate matter to be considered under the corrective actions adjustment factor, which the staff addressed separately. The Licensee quotes the Enforcement Policy as stating that escalation is considered only "if the NRC identifies the violation provided the licensee should have reasonably discovered the violation before the NRC identified it."

The Licensee also contends that its corrective actions were appropriate and reasonable given the Licensee's established priorities for decontaminating the Harvard Avenue facility and the Bert Avenue landfill.

Specifically, the Licensee quotes the Enforcement Manual as stating "[m]itigation of the base civil penalty may be appropriate if there was essentially no other reasonable action that the licensee should have taken," and asserts that it took all reasonable actions to correct the violation, and therefore deserves mitigation of the civil penalty.

Additionally, the Licensee contends that it is unreasonable to expect Chemetron to be able to anticipate all potential locations of contamination. Finally, the Licensee argues that the NRC abused its discretion by considering extraneous matters, i.e., the site characterization and remediation of the Harvard and Bert Avenue sites beyond the contamination of the buildings cited in the violation.

NRC's Evaluation of Licensee's Request for Remission of the Civil Penalty

As discussed above, the NRC agrees that the Licensee identified the contamination of Building 20. However, it was the NRC's letter of January 28, 1991, which specifically requested the Licensee to determine the extent of the contamination in Buildings 14 and 20 and to determine if contamination had been spread to any other unrestricted area at 2910 Harvard Avenue, Newburgh Heights, Ohio. This NRC questioning of the Licensee led to the discovery of contamination in at least 15 buildings, which the Licensee had not considered. In addition, during its March 1991 inspection, the NRC, and not the Licensee, identified the need to restrict access or otherwise regain control of this contamination. The NRC concludes that the Licensee's identification of contamination in Building 20 in August 1990 should have reasonably led it to identify the other areas of contamination and regain control of that contamination. The NRC staff's primary concern is the Licensee's failure to investigate other potentially contaminated locations which would, and should, have resulted in the Licensee's identification of the contamination in the other buildings. The Licensee presents no reasons why it should not have reasonably identified this additional contamination. The Licensee's failure to identify the full extent of the spread of contamination or the need to regain control of the contamination it did identify are the reasons for increasing the amount of the civil penalty by 50 percent under the civil penalty adjustment factor for identification and reporting.

Regarding the Licensee's contention that its corrective actions were reasonable and appropriate considering its other priorities and that the Licensee could not anticipate all locations to which contamination was spread, the NRC acknowledged in the August 14, 1991, letter transmitting the Notice, "* * * your actions were not extensive, though adequate. For instance, current and former employees were not contacted to determine if they had removed any property from the facility and radiation surveys of their homes were not performed. . . ." The Licensee's point that its corrective actions were reasonable and appropriate considering its other priorities is of no relevance as the other priorities to which the Licensee refers are the cleanup of the Harvard and Bert Avenue sites which were known to be contaminated prior to determining that an additional 15 buildings had been contaminated. Further, the fact that the Licensee did not canvass employees to determine what property had been removed from the facility, even after becoming aware that contaminated lumber had been taken from the facility, is indicative of the less than extensive approach the Licensee has taken to ensure that contamination is controlled and removed from the public domain. Therefore, the NRC concluded that no escalation or mitigation of the amount of the civil penalty is appropriate for the Licensee's corrective actions.

Finally, the Licensee argues that the NRC considered extraneous matters, namely the schedule for site characterization and remediation of the Harvard and Bert Avenue sites, which the Licensee considered impermissible, tainting the decision regarding this enforcement action, and was an abuse of discretion. The Licensee is referring to the following passage in the August 14, 1991, letter transmitting the Notice:

"* * * we have concluded that Chemetron Corporation has not been proactive or aggressive in gaining control over all radioactive material under its responsibility and in developing firm time lines and schedules for remediation of all hazards. Consequently, we have concluded that enforcement discretion for the unauthorized removal and loss of control of licensed material would be inappropriate and that a civil penalty should be proposed * * *."

This statement was made as a follow-up to the NRC's May 24, 1991, letter which stated that the NRC was withholding a decision concerning the enforcement action pending Chemetron's response on the spread of contamination outside the facility and on the schedule for characterization and remediation of the Harvard and Bert Avenue sites.

Enforcement discretion is addressed in Paragraph V.G. of the NRC Enforcement Policy which states, "Because the NRC wants to encourage and support licensee initiative for self-identification and correction of problems, NRC may exercise discretion" [emphasis added]. As relevant here, Paragraph V.G.3 of the NRC Enforcement Policy provides that the NRC may refrain from proposing a civil penalty for a Severity Level III violation, as was the case here, only if: (a) It does not involve the release of radioactive material, (b) it was identified by the licensee and reported, (c) comprehensive corrective action is well underway within a reasonable time following identification, and (d) it was not a violation that reasonably should have been corrected prior to the violation because the Licensee had prior notice of the problem involved. In this case: (a) The violation was identified by the Licensee only at the urging of the NRC, (b) comprehensive corrective action was slow and taken only at the insistence of the NRC, and (c) the Licensee had notice of the problem at least six months before the violation was identified, and should have corrected it within that time. Accordingly, enforcement discretion was not warranted.

As for the Licensee's contention that the Staff improperly considered the Licensee's failure to submit its characterization reports and remediation plans in a timely fashion in issuing the Notice, the Staff was merely pointing to the Licensee's general pattern of conduct in responding to problems on time as its chief area of concern. This language was intended to improve the Licensee's future responsiveness to potential problems. The Staff's recitation of its concern in no way implies that enforcement discretion is warranted, as explained above. The Licensee's contention that the NRC abused its discretion is without basis.

IV. NRC Conclusion

The NRC has concluded, based on the information presented by the Licensee and evaluated by the NRC, that the violation occurred as stated in the Notice and that the Licensee has not provided an adequate basis for either reducing the severity level of the violation or for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $7,500 is justified and appropriate and should be imposed.

[FR Doc. 92-1505 Filed 1-21-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-13204-OM, E.A. 91-130 ASLBP No. 92-655-03-OM]

Atomic Safety and Licensing Board Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. Charles N. Kelber, Dr. George F. Tidey, Memorandum and Order (Scheduling Prehearing Conference)

In the Matter of Lafayette Clinic (Order Modifying Byproduct Material License No. 21-00864-02)
January 14, 1992

On October 3, 1991, the NRC staff issued an immediate effective order modifying the 10 CFR part 30 byproduct material license of Lafayette Clinic, See 56 FR 51,415 (1991). One of the license conditions imposed by that order precludes the clinic from utilizing Dr. Natraj Sitaram in any licensed activities for a period of three years. Acting in accordance with 10 CFR 2.205(b), in a letter filed November 25, 1991 (as supplemented by letter filed December 2, 1991), Dr. Sitaram answered the specifications set forth in the staff's order in support of its enforcement action. He also requested a hearing. This Board has been convened to consider Dr. Sitaram's hearing petition. See 56 FR 65,279 (1991).

We previously informed Dr. Sitaram and the staff of our intention to set a prehearing conference during the last week in January 1992 or the first week in February 1992. We now advise petitioner and the staff that a prehearing conference is scheduled for Wednesday, February 5, 1992, beginning at 9:30 a.m. in Courtroom 103 in the Federal Building—United States Courthouse, 231 W. Lafayette Street, Detroit, Michigan. Among other things, this prehearing conference will afford the Board and the litigants an opportunity to:

1. Simplify and clarify the issues;
2. Identify any issues that, in advance of any hearing, may be decided on summary disposition pursuant to 10 CFR 2.749 and establish a schedule for briefing such issues;
3. Discuss the proper allocation of the burden of proof and the burden of going forward with evidence in the context of the staff's specific allegations in support of its order;
4. Set a schedule for any discovery that petitioner or the staff may wish to conduct in accordance with 10 CFR 2.740–.742, 2.744;
5. Set a tentative time and place for a hearing.

If it wishes to do so, the staff may submit a reply to Dr. Sitaram's November 25 answer to its license modification order, which should be filed no later than January 24, 1992. In addition, Dr. Sitaram and the staff are invited to submit proposals outlining specific agenda items for the prehearing conference. Agenda item proposals should be filed no later than January 31, 1992. Petitioner and the staff should provide copies of their agenda item proposals to the Board by facsimile (301-492-7285) or other method that will ensure their submissions are received by the Board by the close of business (4:30 p.m. EST) on January 31.

As background for our consideration of the issues in this proceeding, we request that by January 24, 1992, the staff provide the Board with (1) copies of the April 30, 1991 synopsis of investigation conducted by the NRC Office of Investigations, which is referenced on page one of Dr. Sitaram's November 25 answer/hearing request; and (2) copies of the March 15, 1989 inspection report and the June 11, 1991 enforcement conference report, which are referenced on page one of the staff's October 3, 1991 Notice of Violation and Proposed Imposition of Civil Penalty directed to Lafayette Clinic. Copies of the latter two documents also should be provided to Dr. Sitaram in the event he has not already received them.

It is so Ordered.

Bethesda, Maryland, January 14, 1992
For the Atomic Safety and Licensing Board.
G. Paul Bollwerk, III,
Chairman, Administrative Judge.

[FR Doc. 92-1500 Filed 1-21-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8027, License No. SUB-1010 EA 91-196]

Sequoyah Fuels Corp.; Gore, OK; Confirmatory Order Modifying License (Effective Immediately)

I

Sequoyah Fuels Corporation (SFC or Licensee) is the holder of Source Material License No. SUB-1010 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 40. The license authorizes possession and use of source material in the production of uranium hexaflouride (UF6) and depleted uranium tetraflouride (DUF4) in accordance with the terms and conditions of the license. The license was due to expire on September 30, 1990, but currently remains in effect based on a timely renewal application submitted by the Licensee.

II

The Commission issued an Order Modifying License (Effective Immediately) and Demand for Information to SFC (EA 91-067) on October 3, 1991, to address a number of significant safety violations and regulatory problems that occurred at the facility since the August 1990 solvent extraction tank excavation. The Order removed Ms. Carolyn L. Couch, who then held the position of Manager, Environmental, from supervisory and managerial responsibilities over NRC-related activities at the SFC facility for one year and required the Licensee for a two year period to inform the NRC 30 days prior to reassigning her to supervisory or managerial functions for NRC-regulated activities. The Order also requested information as to why the License should not be modified to prohibit Ms. Couch from serving in any capacity involving the performance of NRC-regulated activities at the SFC facility. The purpose of the Demand was to obtain further information from the Licensee in order to determine whether the Commission can have reasonable assurance that (1) in the future the Licensee will conduct its activities in accordance with Commission requirements and (2) certain individual managers identified in Section VIII of EA 91-067 holding key positions described in the License will carry out their responsibilities and authorities. Because it appeared that these key SFC management officials failed to carry out their responsibilities with regard to licensed activities and have not been candid with the NRC, the Demand specifically required the Licensee to provide information to demonstrate why the License should not be modified (1) to probibit Messrs. Mestepey, Lacey, and Simeroth from serving in any capacity involving the performance or supervision of any NRC-regulated activities at the SFC facility, and (2) to require 30 days prior notice to the NRC of reinvolvement of Mr. Nichols by SFC in any capacity in NRC-regulated activities. The Licensee responded to the Order and Demand in two letters, both dated December 2, 1991.

In those responses, the Licensee asserted that, based on the information

available to SFC, SFC believed that the individuals named the Demand neither acted in careless disregard of their respective responsibilities for licensed activities nor failed to be candid with the NRC. However, the Licensee admitted that the individuals made errors in judgement, missed opportunities to identify and correct deficiences at an earlier stage, and could have done more to assure that the NRC was fully informed of SFC activities. While not admitting the allegations in the Order regarding Ms. Couch, SFC stated that Ms. Couch did not wish to continue to be involved in the performance or supervision of NRC-regulated activities at the SFC facility, and SFC, therefore, consented to the Order as to Ms. Couch.

In a letter dated November 15, 1991, the Licensee described management changes that included the reassignment of several of the individuals named in the Order and the Demand to other assignments at SFC or General Atomics, parent company of SFC. By letter dated December 18, 1991, the Licensee stated that, as a matter of clarification, SFC does not intend to use any of the named individuals in the performance or supervision of NRC-licensed activities, or to reemploy Mr. Nichols. The Licensee further stated that should it desire to utilize any of the named individuals in the performace or supervision of NRC-licensed activities, it will provide the NRC notice 30 days prior to such utilization.

iii

In view of the information contained in the December 18, 1991 letter, the NRC finds that it is not necessary at this time to further address the past performance of these individuals. If at a future date the Licensee decides to utilize one or more of these individuals in the performance or supervision of NRC-licensed activities, NRC would then determine if the individual(s) should be performing or supervising licensed activities after considering, among other things, the position in which the individual would be used, changes in circumstances since August 1990, if any, additional training, and the degree of management oversight.

Accordingly, I find that the public health, safety and interest require that License No. SUB-1010 be modified by order to confirm the Licensee's commitment of December 18, 1991 and that pursuant to 10 CFR 2.202 (56 FR 40664, August 15, 1991) this Order be effective immediately. The Licensee consented to this order in a discussion between L. J. Callan, Director, Division of Radiation, Safety, and Safeguards, Region IV, and J. J. Sheppard, President, SFC, on January 8, 1992.

IV

Accordingly, pursuant to sections 62, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commissions regulations in 10 CFR 2.202 and 10 CFR part 40, *it is hereby ordered, effective immediately, that license no. sub-1010 is modified as follows:*

SFC shall provide the NRC at least 30 days notice prior to SFC's reassignment of Ms. Couch or Messrs. Mestepey, Lacey, or Simeroth, to directly perform or supervise NRC-licensed activities, or rehiring Mr. Nichols for the purpose of performing or supervising NRC-licensed activities.

The Regional Administrator, Region IV, may, in writing, relax or rescind the above condition upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, any person other than the licensee adversely affected by this Order may submit an answer to this Order within 20 days of this order. Within the same time period, such persons may request a hearing on this Order. The hearing request may be included in the answer. The answer may consent to the Order. Unless the answer consents to the Order, the answer shall, in writing, under oath or affirmation, specifically admit or deny each allegation or charge made in the Order and shall set forth the matters of fact and law on which such person adversely affected relies, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 and to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, and to the Licensee. If such person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

VI

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 13th day of January 1992.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 92-1504 Filed 1-21-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30187; File No. S7-2-92]

Joint Industry Plan; Notice of Filing of a Proposed Option Market Linkage Plan by the Chicago Board Options Exchange, and American, New York, and Pacific Stock Exchanges

January 14, 1992.

I. Introduction

On December 4, 1990, pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), the Chicago Board Options Exchange, Inc. ("CBOE"), American Stock Exchange, Inc. ("Amex"), New York Stock Exchange, Inc. ("NYSE") and Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed Joint Industry Plan ("Plan") providing for the creation and operation of an Options Intermarket Communications Linkage ("Linkage").[1] The filing was amended on April 29, 1991, when the signatories to the Plan submitted the Model Option Trade-Through Rule as Exhibit A to the Plan.[2] As discussed

[1] Although the Philadelphia Stock Exchange, Inc. ("Phlx") participated in the preparation of the Plan, it declined to sign the Plan without a time priority rule. The Phlx stated that, notwithstanding its agreement with many linkage policy issues, it believes that any system implemented by the options exchanges should identify the best intermarket quote by price, time and size priority. Any order, regardless of its origin, would be routed to the identified "best" market for automatic execution. See letter to Richard G. Breeden, Chairman, SEC, for Nicholas A. Giordano, President and Chief Executive Office, Phlx, dated September 28, 1990.

[2] See letter to Jonathan G. Katz, Secretary, SEC, from Edward L. Provost, First Vice President, Operation Planning Group, CBOE, dated April 29, 1991.

below, the Commission is soliciting comment on the Plan.

II. Background

In view of the development of the options markets since 1980 and the recognition that multiple market trading is likely to bring benefits to investors, the Commission determined that restrictions on options multiple trading impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Accordingly, in 1989, the Commission adopted Rule 19c–5, which amended the rules of national securities exchanges governing the listing and trading of standardized options to prohibit (after a specified phase-in period) any exchange from limiting by any means its ability to list any stock option class because that option class is listed on another exchange.[3]

In addressing proposed Rule 19c–5, several exchanges with options programs that opposed the adoption of Rule 19c–5 stressed the harm to public investors that they believed would result from the absence of a centralized market or linked markets for each option.[4] They believed that multiple trading might hinder fair competition between brokers and dealers if member firms automatically were to route options order flow to the exchange with the greatest volume and, consequently, threaten the financial viability of the regional exchanges that depend on revenues from their options trading programs. In addition, they expressed concern that trading options on multiple exchanges that were not linked would produce market fragmentation.[5]

After considering the potential adverse consequences of an expansion of multiple trading under the current market structure, the Commission concluded that the potential benefits to customers that would result from competition among options exchanges would outweigh any potential adverse effects of multiple trading. The Commission concluded that multiple trading would result in improved market and service quality for customers. Furthermore, in reviewing multiple trading in options on over-the-counter stocks, the Commission found that market fragmentation problems have been minimal and little evidence exists that full-scale multiple trading would significantly increase these problems.[6]

Although the Commission was willing to approve multiple trading under the current market structure, it endorsed a thorough review of the benefits and costs entailed in developing market integration facilities. Accordingly, the Commission published for comment a staff White Paper, which discussed a number of potential market integration facilities that could be built to address market fragmentation concerns and requested comment on whether any of the facilities should be implemented.[7] The Commission received nine comment letters [8] and two studies in response to its notice.[9]

Several weeks before the phase-in of multiple trading was to begin, the Commission asked each of the five options exchanges to voluntarily commit to: (1) Work with each of the other exchanges to develop a joint plan for a market linkage facility and (2) refrain from listing any options that were traded on another options exchange before January 22, 1990, as permitted under paragraph (a)(2) of Rule 19c–5 under the Act on or before June 30, 1990 ("voluntary moratorium").[10] The voluntary moratorium was intended to provide the exchanges additional time to reach an agreement on linkage facility to accommodate options multiple trading. In June, 1990, the exchanges submitted two proposals for the development of a linkage and formed several committees to consider the proposals and discuss the actual implementation of the linkage system.[11] In light of the progress achieved in the development of the Linkage, the Commission has extended, most recently until June 30, 1992, its request to each exchange to refrain voluntarily from listing any options that were traded on another exchange before January 22, 1990. The extended voluntary moratorium would provide time for public comment on the Plan and for the Commission to consider the submission.[12]

III. Description of the Plan and Model Trade-Through Rule

A. The Plan

The Plan provides for the creation and operation of an Options Intermarket Communications Linkage between the signatories to the Plan, and the creation of a standardized intermarket Option Trade-Through Rule. The purpose of the Plan is to enable the participants to act jointly in planning, developing, operating and regulating the Linkage. The Plan contemplates that participating exchanges also will file with the Commission as proposed rule changes for review under Section 19(b) of the Act any rules or rules changes that may be necessary to incorporate the

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[3] 17 CFR 240.19c–5. Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963 ("Rule 19c–5 Adoption Release").

As of January 22, 1990: (1) An options exchange may list up to 10 standardized stock option classes overlying exchange-listed stocks that were also listed on another options exchange before January 22, 1990 and (2) any new options class first listed on any exchange as of January 22, 1990, can be multiply traded. Finally, as of January 21, 1991, no options exchange may limit its ability to list any stock options class because that class is listed on another exchange. In January 1990, Chairman Breeden requested the exchanges to refrain voluntarily from listing any options that were traded on another exchange before January 22, 1990. See note 10, infra and accompanying text.

[4] The CBOE, PSE, and Phlx opposed an expansion of multiple trading, while Amex and the National Association of Securities Dealers generally supported the adoption of Rule 19c–5. The NYSE did not theoretically oppose multiple trading on exchange-listed stocks but believed that the Commission should postpone action on multiple-trading until the events of October 1987 could be more fully analyzed.

[5] They argued that the dispersion of options order flow for a particular option class across several exchanges would cause each market to be less deep and liquid than would otherwise be the case if the option were traded on only one exchange, thus negatively affecting the prices at which customers can trade and the market making ability of floor traders.

[6] See Rule 19c–5 Adoption Release, supra note 1, at note 117 and accompanying text.

[7] See Securities Exchange Act Release No. 26871 (May 26, 1989), 54 FR 24056 ("White Paper"). Specifically, the Division of Market Regulation requested comment on three measures that might be employed to reduce fragmentation and increase competitive opportunities for the options markets. The presented alternatives were an ITS-like intermarket linkage to allow orders to be sent among markets; a mechanism to route small customer orders, on an order-by-order basis, to the "best" market; and a central limit order exposure system, an electronic facility for collecting, displaying and providing automatic execution of limit orders in multiply traded options.

[8] See letters to Jonathan G. Katz, Secretary, SEC, from John C. Katovich, Vice President and General Counsel, PSE, dated September 15, 1989; Alger B. Chapman, Chairman and Chief Executive Officer, CBOE, dated September 15, 1989; Clayton A. Struve, General Partner, O'Connor & Associates, dated September 15, 1989; Nicholas A. Giordano, President, Phlx, dated September 21, 1989; Kenneth R. Leibler, President and Chief Operating Officer, Amex, dated September 21, 1989; James E. Buck, Senior Vice President and Secretary, NYSE, dated September 25, 1989; Raymond Skelton, Chairman, SIA, dated October 11, 1989; Thomas A. Petrone, Managing Director, Smith Barney, dated November 3, 1989; and Michael Schwartz, Chairman, Oppenheimer & Co., dated November 8, 1989.

[9] See Options Intermarket Linkage System Feasibility and Conceptual Design, presented to the NYSE, PSE and Phlx, by the Tellefsen Consulting Group, Inc., (September, 1989); and Option Market Integration: An Evaluation, presented to the Amex and CBOE, by Yakov Amihud and Haim Mendelson, (January, 1990).

[10] See letter to the exchanges from Chairman Breeden, dated January 9, 1990.

[11] One of the plans was the precursor to the present submission; the other was a plan favored by the Phlx that differs most significantly from the current proposal by requiring that customer orders be routed to the exchange displaying the best bid or offer, calculated on the basis of price, time and size priority. See note 8, *supra*.

[12] See letter to the exchanges from Chairman Richard C. Breeden, dated December 30, 1991.

requirements of the Plan into the rules of each participant exchange.

The following is a summary of the major provisions of the Plan. The full text of the Plan is contained in the original filing, which is available for inspection and copying in the Commission's Public Reference Room and at the participating exchanges.

The Linkage is designed to accommodate trading in any eligible option series.[13] While the generation and management of quotation information is not part of the Linkage, the Plan presupposes that each member in each participant Market has access to the best bid and the best offer, for each series that it is permitted to transmit through the Linkage, from among the bids and offers then being furnished to the participant Market in which the member is located by or on behalf of each other participant. Each participant must make available on its trading floor the best bid and the best offer, for each eligible series that it trades, from among the bids and offers then being furnished to that participant.

As to each eligible series that is traded on its floor, each participant would be required to furnish, or cause to be furnished, to the Options Price Reporting Authority ("OPRA") the current bid-asked quotation emanating from its trading floor. Each quotation so furnished shall be considered "firm" to the extent provided in the Plan.

The Linkage is intended to provide mechanisms for routing customer and proprietary orders to the market displaying the best bid or offer. Those mechanisms vary, however, as between customer and proprietary orders. In addition, the Plan provides specific additional procedures for customer orders for greater than ten contracts. The specific Plan provisions that govern the handling of these types of orders are illustrated below.

(1) Customer Commitments of 10 Contracts or Fewer

When a member firm of a participant Market ("Originating Market") receives from a customer an order to purchase 10 contracts of a given option class that is also traded on other participant Markets ("Receiving Market") it may send that order to the Originating Market floor for execution. The member will go to the post where the option is traded at the Originating Market and inquire as to the market for that option. The broker may discover, however, that the best bid for the option from another participant Market is a bid of 4¼ and the best offer from another participant Market is on of 4⅜. With this information, the broker may decide to attempt to buy the 10 contracts for this customer from the 4⅜ offer. By using a Linkage station located on the Originating Market trading floor, the broker may send, or cause to be sent, to the Receiving Market a "commitment to trade" (in this case a commitment to buy 10 contract of the option at 4⅜). When more than one other participant is displaying a bid or offer equal to the highest bid or lowest offer, the broker may choose from among those bids and offers and direct the commitment to that participant. This commitment is firm and irrevocable. As specified in section 6(b)(iv)(A) of the Plan, if the 4⅜ offer on the Receiving Market is disseminated when the commitment to buy at 4⅜ is received at the Receiving Market, or if a better offer is then available, the Receiving Market must accept the commitment within the required time period and execute the order at 4⅜ (or at the better price). The Receiving Market will then report the trade to OPRA for dissemination under the OPRA Plan at 4⅜ (or at the better price), with the trade identified as executed on the receiving Market, and report the execution to the Originating Market through the Linkage within the prescribed time period. Should the bid or offer sought by a customer commitment no longer be disseminated by the Receiving Market when the customer commitment is received, the Receiving Market shall report that information to the Originating Market within one minute of the receipt of the customer commitment.

The Plan allows, but does not require, a participant Market to use its exchange systems to automate the processes of sending a customer commitment to trade through the Linkage and executing a customer commitment received through the Linkage. If the option in the previous example were also a series eligible for automatic execution in the Originating Markets' automatic execution systems may electronically read the markets being disseminated by the other participants. When no member of the Originating Market, having been provided the opportunity to improve on the 2½ offer, offers to sell the 10 option contracts of 4⅜, the Originating Market will send to the Receiving Market a commitment to buy 10 contracts at 4⅜. When more than one particpant is disseminating a bid or offer equal to the best bid or offer and the Origination Market provides automated rerouting of orders, the Originating Market will provide to its members the choice of destination market based upon price/time priority or price/random priority from among those participants then displaying the best bid or offer.

(2) Customer Commitments on Behalf of Orders Larger Than 10 Contracts

When a broker represents a customer order for larger than 10 contracts, the broker, after establishing that a higher bid or lower offer is disseminated by another participant, would initiate the routing of a customer commitment to trade in one of three ways. First, the Broker may choose to enter the larger than 10 contract sell (buy) order into the Linkage as a single commitment without prior verification of the size of the higher bid (lower offer). In that case, if the higher bid (lower offer) is disseminated when the larger than 10 contract sell (buy) commitment is received in the Receiving Market, that market must execute the commitment for at least a minimum of 10 contracts at the disseminated bid (offer).[14] Alternatively, the broker may choose to verify the size of the higher bid (lower offer) before sending the larger than 10 contract sell (buy) commitment through the Linkage. The broker may receive verification from the Receiving Market that the higher bid (lower offer) is firm for larger than 10 contracts. The broker would then immediately rout through the Linkage a commitment to sell (buy) for the verified size to the Receiving Market where the size bid (offer exists. If the bid is disseminated in the Receiving Market at the time the commitment is received in that market, the commitment will be executed at the disseminated bid for the verified size and reported to OPRA and to the Originating Market. Finally, the broker may choose to send the larger than 10 contract sell (buy) order through the Linkage to a single

[13] The procedure for determining the particular series that may be transmitted through the Linkage at any time shall be established by unanimous vote of the Administration Committee with all the participants voting.

[14] Section 6(b)(iv)(A) of the Plan provides that if the bid or offer that is sought by a customer commitment to trade was disseminated at the time the customer commitment was received, the customer commitment shall be accepted for up to 10 contracts. In the event that the bid or offer is no longer available in the Receiving Market but a new bid or offer is available in that market that would enable the customer commitment to be executed at a price that, from the standpoint of the sender of the customer commitment, is at least as favorable as the price specified in the customer commitment, then, under the rules of the Receiving Market, the member who make the new bid or offer shall accept the customer commitment at the price of such new bid or offer for up to 10 contracts. Should the bid or offer sought by a customer commitment no longer be disseminated by the Receiving Market when the customer commitment is received, the Receiving Market shall report that information to the Originating Market within one minute of the receipt of the customer commitment.

participant, without verifying the size, by sending the order in 10 contract (or fewer) increments. The broker would enter the order into the Linkage and direct that the order be routed as separate commitments, each of which is no larger than 10 contracts. If the Receiving Market is disseminating a bid (offer) equal to or superior to the reference price on the 10 contract or fewer commitments at the time such commitments are received, each commitment will be executed in accordance with section 6(b)(iv)(A).[15]

(3) Broker-Dealer Commitments

A specialist/market maker registered in a particular option class in which there are series eligible for routing through the Linkage or a floor broker on behalf of an account in which a broker-dealer has an interest may access the Linkage. The method of accessing the Linkage does not differ based upon the size of the commitment to trade. The Originating Market must assure, however, that the information contained on the commitment is complete and that a pre-notification message is sent to the Receiving Market indicating the Eligible Series that is the subject of the broker-dealer's commitment.[16]

Section 6(b)(iv)(B) of the Plan provides that members in a participant Market are not obligated to satisfy commitments entered through the Linkage for the account of a broker-dealer, except that if a customer offer (bid) is disseminated by the Receiving Market and the broker-dealer commitment to buy (sell) is received prior to that customer offer (bid) being executed, the rules of the participant Market shall require that the broker-dealer commitment be executed against the customer offer (bid). When a broker-dealer's commitment is not executed, the Receiving Market shall immediately adjust its disseminated quotation to reflect that the bid or offer sought by the broker-dealer's commitment is no longer available.

B. Model Trade-Through Rule

In addition to prescribing how and under what circumstances commitments are routed through the Linkage, the Plan also contains a Model Trade-Through Rule that each participant Market will incorporate into its own rules. The Model Rule provides that, absent reasonable justification or excuse, a member in a participant Market should avoid initiating a trade-through when purchasing or selling an option contract permitted to be transmitted through the Linkage. A trade/through occurs whenever a member of an exchange initiates the purchase of an option series eligible for routing through the Linkage at a higher price than the price then being offered (or initiates the sale of the option at a lower price than the option is being bid for) in another participating market as reflected by the offer (bid) then being disseminated in accordance with the Plan.

The trade-through rules adopted by the participants would apply to transactions that are, or are a part of, a block trade.[17] The block trade provisions of the trade-through rule shall require any member who executes a block trade in any eligible series at a clean-up price inferior to the quotation for such eligible series then being furnished from any other participant Market furnishing a bid or offer (as the case may be) superior to the clean-up price to send a commitment to trade at the clean-up price to satisfy such other participant Market's bid or offer to the extent provided by the rule.

The Model Rule provides that if a trade-through occurs and the participant Market receives a complaint from the party whose bid or offer was traded-through ("Aggrieved Party"), then the member who initiated the trade-through ("Initiating Member") must: (1) Satisfy the bids or offers traded-through for up to the number of contracts involved in the trade that caused the trade-through at the price of the transaction that caused the trade-through; or (2) the Initiating Member, with the consent of the *contra* party, must adjust the price of the trade to a price that would not have caused the trade-through; or (3) the Initiating Member must cancel the trade as being null and void, if both the Initiating Member and the *contra* party were trading for their own account. Each customer order, the execution of which caused the trade-through, shall receive: (1) The price that caused the trade-through; (2) the satisfaction price, if the trade-through is to be satisfied; or (3) the adjustment price, whichever of the three alternatives is of greatest benefit to the customer. Any resulting differences in price shall be the liability of the member who initiated the trade-through.

If the Initiating Member does not take the appropriate corrective action or, if applicable, promptly notify the Aggrieved Party that the Initiating Member is relying on an exception from the trade-through Rule, the Initiating Member shall be liable to the Aggrieved Party for the amount of the Aggrieved Party's actual loss or the loss calculated based on the loss basis price, whichever is greater. The loss basis price generally is the highest bid (in the case of an offer that was traded-through) or lowest offer (in the case of a bid that was traded-through) after six minutes from the OPRA report of the transaction.

These obligations will not apply if: (1) The trade-through was unavoidable because of a systems or equipment failure or malfunction; (2) the market that was traded through had declared a fast situation and, thus, the quotes the market was disseminating were not firm; (3) the Aggrieved Party failed to complain promptly after the trade report for the trade that caused the trade-through was disseminated by OPRA; or (4) in the case of a third participating market center trade-through, the Initiating Member promptly sent a commitment to trade to the Aggrieved Party to satisfy the trade-through and had preceded the commitment to trade with an administrative message informing the Aggrieved Party that the commitment was in satisfaction of the trade-through.

C. Implementation of the Plan

The participants stated that the Plan will be implemented upon the Commission's approval of the Plan and related rules and the participants' completion of the development of the systems necessary to effectuate the Linkage described in the Plan. Among the systems to be developed are systems that will allow for the calculation of the best bid and best offer from among those participants trading an eligible series; provide for the transmittal of "commitments to trade" and "administrative messages" between participants and response thereto; and provide for the clearing and settlement of trades that take place as a result of commitments to trade routed through the Linkage. Each of the participants is represented on a "Joint Participant Technical Committee," which has made

[15] When a broker chooses the third alternative, each participant Market shall assure that the 10 contract or fewer commitments that are part of a greater than 10 contract customer order are not sent through the Linkage within 10 seconds of each other or such other minimum time period as determined by the Administration Committee.

[16] The message must be received no less than six seconds and no more than 10 seconds before the broker-dealer's commitment.

[17] A "block trade," as that term is used in the Plan, means a trade on the exchange that: (a) Involves 100 or more contracts ("block size"); (b) is effected at a price outside the bid or offer disseminated from another participating market center and available for display on the exchange; and (c) involves either (i) a cross of block size (where the member represents all of one side of the transaction and all or a portion of the other side), or (ii) any other transaction of block size (i.e., in which the member represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer on the exchange.

progress toward developing a requirements specification and technical design document that will be filed with the Commission upon completion. The linkage shall be operable at anytime two or more participants are open for trading in an eligible series.

D. Development and Implementation Phases

The Technical Committee will prepare the requirement specification and technical design document described above. Upon approval of this document by the participants, a working schedule will be prepared by the Committee. Assuming prompt approval of the Plan and the technical design document, and no major changes in the requirements, it is estimated that the Linkage can be operational within 24 months of the date of the completion of the Plan filing.

E. Analysis of Impact on Competition

The Plan provides for the creation of an Option Market Linkage and rules providing inter-market trade-through protection. In adopting Rule 19c–5, the Commission found that multiple trading of standardized options on exchange-listed securities is consistent with the purposes of the Act. In particular, the Commission found that permitting the options exchanges to compete in a multiple trading environment will bring substantial benefits to investors, in the form of improved prices and better services.

F. Description of Operation of Facility Contemplated by the Plan

Each participant will undertake efforts to modify its internal quotation display, order routing, order handling and execution systems so as to ensure that orders are handled in accordance with the Plan. The participants will interface through a telecommunications network. All order handling, processing, logging, switching and matching will be undertaken by the participants using existing and/or modified in-house systems.

G. Terms and Conditions of Access

Any national securities exchange in whose market eligible series become traded that agrees to abide by section 3 of the Plan may become a participant. Section 3 of the Plan provides that any other national securities exchange or association may subscribe to the Plan and become a participant by agreeing, in an amendment to the Plan, to comply and enforce compliance with the provisions of the Plan.

H. Method of Determination of Imposition, and Amount of Fees and Charges

The Plan does not provide for the imposition of any fees or charges in connection with the use of the Linkage. Section 10 of the Plan provides that the participants will share costs associated with any shared telephone lines that connect the participants with each other in accordance with a cost-sharing formula to be developed by the participants.

I. Method and Frequency of Processor Evaluation

The Linkage's architecture does not call for an independent processor. The Plan calls for the creation of an Administration Committee which has authority to: (i) Oversee development of the linkage in accordance with the specifications agreed upon by each participant; (ii) monitor the participant's use of the linkage; and (iii) advise the participants with respect to any deficiencies, problems or recommendations as the Committee may deem appropriate in its administration of the Plan. One of the Administration Committee's responsibilities, however, will be to oversee the telecommunication network.

J. Dispute Resolution

Section 4 of the Plan provides for the specialized mechanism for the resolution of disputes arising under the Plan.[18] The section provides for a procedure by which a participant may request an interpretative opinion of a ruling made by another participant on the application of the Plan or the Model Trade-Through Rule. The dispute must pertain to a situation involving a minimum loss of $5,000, which must have been established pursuant to the Plan and Model Rules, including their applicable mitigation procedures. All routine self-regulatory organization surveillance reviews respecting the initial ruling must be completed prior to such request. Opinions will be submitted to the Administration Committee for its information and review.

K. Written Understandings or Agreements Relating to Interpretation of, or Participation in the Plan

Not Applicable.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office the Participating exchanges. All submissions should refer to File No. S7–2–92 and should be submitted by February 12, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–1514 Filed 1–21–92; 8:45 am]

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[18] The proposed dispute resolution process is essentially the same process adopted by the Intermarket Trading System Operating Committee and approved by the Commission. See Securities Exchange Act Release No. 29194 (May 15, 1991), 56 FR 23318.

[Release No. 34-30196; File No. SR-CBOE-91-39]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Offers of Settlement and Scheduling of Hearings

January 14, 1992.

On October 25, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the procedures provided in Exchange Rule 17.8 for offers of settlements and the scheduling of hearings. Specifically, the CBOE proposed (i) to limit to 120 the number of days in which a respondent in a CBOE disciplinary proceeding may submit settlement offers after a statement of charge has been served; (ii) to limit the number of settlement offers within that 120-day period to two; (iii) to provide that a hearing will be scheduled following the end of the 120-day period, or earlier, if the Business Conduct Committee ("BCC") has rejected the respondent's second settlement offer; and (iv) to provide that respondents must request access to documents in writing within 60 days after being served a statement of charges.

The proposal was published for comment in Securities Exchange Act Release No. 29959 (November 19, 1991), 56 FR 60135. No comments were received on the proposed rule change.

Currently, the Exchange's rules do not limit the number of settlement offers a respondent may submit, nor do they establish specific time limits in which a disciplinary hearing must be held. During a recent inspection of the Exchange, the Commission found that the CBOE's disciplinary procedures have afforded respondents the opportunity to protract unreasonably the resolution of formal disciplinary matters through requests for dismissal of charges and unrealistic offers of settlement. Accordingly, in response to Commission's findings, the CBOE submitted the current proposal. As mentioned earlier, the amendments provide that a respondent will have 120 calendar days from the date of service of a statement of charges in which to present settlement offers. During that time, a respondent will be allowed to submit only two settlement offers, although the BCC, at its discretion, may permit a respondent to submit an additional settlement offer if the pertinent details of the respondent's offer are consistent with the parameters and criteria deemed acceptable by the BCC. In order to reinforce these limitations, the CBOE's proposal also requires the BCC to schedule a hearing date at the end of the 120-day period, or earlier, if the BCC has rejected a respondent's second settlement offer. In addition, the proposal amends CBOE Rule 17.4(c) to require a respondent to make a written request for access to documents within 60 calendar days after being served a statement of charges.[3]

The commission finds that the proposed rule change is consistent with the requirements of the act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(7).[4] Specifically, the Commission believes the CBOE's proposal strikes a reasonable balance between the Exchange's need to provide prompt, effective, and meaningful discipline for violations of Exchange rules and the Federal securities laws and the need to ensure a fair procedure for the respondents to contest CBOE disciplinary proceedings. In particular, the Commission believes 120 days is sufficient time for respondents to make offers of settlement once a statement of charges has been served. This period will provide adequate time for respondents and their counsel to review the charges, request and collect documents, and then determine whether to contest the charges or attempt of settle them. Similarly, it is reasonable for the CBOE to limit to two the number of settlement offers that respondents are entitled to submit. The CBOE is not obligated to accept *any* settlement offers, so it is well within its rights to limit settlement offers it will consider to two offers. Moreover, the Commission also notes that respondents are not necessarily limited to two offers of settlement under the proposal. The BCC, in its discretion, may permit a respondent to submit more than two offers within the 120-day period.

The Commission believes 60 days is a sufficient amount of time to provide respondents to request access to documents. The 60-day time period does not restrict respondents' access to documents in any way and it serves to prevent respondents from circumventing the requirement that offers of settlement be submitted within 120 days by prohibiting document requests on the 119th day. Moreover, the Commission notes that the 120-day period in which to submit offers does not include those days in excess of seven that it takes the CBOE to provide respondents access to documents.

Accordingly, the Commission believes that the proposal will continue to safeguard the procedural rights of respondents to request documents and to make settlement offers, while at the same time streamlining the Exchange's disciplinary process by providing for the prompt scheduling of disciplinary hearings. By minimizing opportunities for delay, and thereby helping to preserve evidence, memories, and the availability of witnesses, the Commission believes the proposal will enhance the quality, consistency, and fairness of the Exchange's disciplinary proceedings and will enable the CBOE to better enforce compliance by its members with the Exchange's rules and the Federal securities laws. Therefore, the Commission believes that the CBOE's proposal is consistent with section 6(b)(7) of the Act because it provides a fair procedure for disciplining members.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR-CBOE-91-39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1515 Filed 1-21-92; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] The proposal also provides that the 120-day period does not include the number of calendar days in excess of seven in which it takes CBOE staff to provide access to documents after a request for documents is made pursuant to CBOE Rule 17.4(c).

[4] 15 U.S.C. 78f (1988).

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30-3(a)(12) (1990).

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[Release No. 34-30188; File No. SR-CSE-91-4]

Self-Regulatory Organizations; the Cincinnati Stock Exchange; Order Granting Partial Approval to Proposed Rule Change Relating to Public Agency Order Size Guarantees

January 14, 1992.

On August 28, 1991, the Cincinnati Stock Exchange ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the Exchange's guarantee for public agency orders contained in CSE Rule 11.9, which governs the Exchange's National Securities Trading System.[3] The CSE also proposes to modify its existing guidelines for market making spreads. This order grants approval only to the proposal to amend the Exchange's public agency order guarantee.

The proposed rule change was published for comment in Securities Exchange Act Release No. 29843 (October 21, 1991), 56 FR 55702 (October 29, 1991). No comments were received regarding the proposed rule change.

Currently, Exchange Rule 11.9(n), the CSE's public agency order guarantee rule, requires Designated Dealers ("DDs") [4] to accept and guarantee the execution of public agency market and marketable limit orders up to 2,099 shares entered after the opening in their designated issues. Under this Rule, the DD is obligated to fill these orders on the basis of the best Intermarket Trading System ("ITS") bid (for sell orders) or offer (for buy orders),[5] regardless of the size of the bid or offer in the primary market and regardless of the identity of the customer, as long as the customer is not a broker-dealer. The CSE proposes to amend its public agency order guarantee to require DDs to fill public agency market and marketable limit orders entered after the opening in their designated issues up to the size of either: The ITS best bid or offer (on sell and buy orders, respectively) or 2,099 shares, whichever size is lower. In addition, under the CSE proposal, DDs would no longer be required to guarantee any portion of an order larger than 2,099 shares.

In its rule filing, the CSE states that its proposal is designed to balance the Exchange's interest in attracting order flow with the need to ensure that only those orders which are "retail" in the traditional sense of the word receive a guaranteed execution. The Exchange states that this amendment to its public agency order guarantee rule is necessary to address two concerns. First, the Exchange believes that the DD's current obligations under Exchange rules, which may, in certain instances, provide guarantees that are better than the ITS BBO, results in an undue burden for CSE DDs. In addition, the Exchange believes that the potential exists for abuse of the intent of the guarantee by institutional or other substantial traders who, though not broker-dealers, are not "retail" in the conventional sense, as evidenced by the size and timing of their orders.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 of the Act.[6] Specifically, the Commission believes that the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

Under the Exchange's proposed amendment to its public agency order guarantee rule, CSE DDs would not be obligated to fill certain orders that they may be obligated to fill under the existing rule. Currently, DDs must guarantee the execution of up to 2,099 shares of public agency market and marketable limit orders at the ITS BBO regardless of the size of the ITS BBO. For example, if the size of the ITS BBO was 1,000 shares, the DD would still be required to guarantee the execution of orders up to 2,099 shares. In addition, for orders greater than 2,099 shares, the DD currently is required to guarantee the execution of 2,099 shares of that order. Under the CSE proposal, DDs would be required to fill public agency market and marketable limit orders up to the size of the lesser of either the size of the ITS BBO or 2,099 shares. Therefore, in the example above in which the size of the ITS BBO was 1,000 shares, the DD would be required to guarantee the execution of 1,000 shares. Further, under the new rule, the DD would not be obligated to fill any portion of an order over 2,099 shares.

Although implementation of the new order guarantee rule may result in a DD not being required to fill orders that he or she may have been required to fill under the prior rule, the Commission believes nonetheless that the CSE proposal is reasonable and should ensure that public customer orders are guaranteed up to the size of the national best bid or offer. As stated in the filing, the CSE's existing public agency order guarantee rule may result in guarantees by its DDs that are better than the size of the national best bid or offer or guarantees for larger orders by substantial traders that are not truly "retail" orders. The Commission believes that relieving a regional market maker from an obligation to guarantee a size greater than the best prevailing national size should not be harmful to investors because customer orders would continue to be guaranteed up to the size of the ITS best bid or offer or 2,099 shares (whichever amount is lower). Therefore, customers would continue to be guaranteed either a stated number of shares or the best prevailing size in the market.

In addition, the CSE's amendment to its order guarantee rule should bring the obligations of CSE DDs more in line with the obligations of regional stock exchange specialists. For example, the current agency order guarantee rule of the Midwest Stock Exchange ("MSE") is substantially similar to the CSE's new rule.[7] Furthermore, the Commission

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The National Securities Trading System is an electronic securities communication and execution facility through which bids and offers of competing dealers and public orders are consolidated for review and execution by Exchange members or approved dealers. See CSE Rule 11.9(a).

[4] A DD is an Exchange proprietary member who maintains a minimum net capital of at least the greater of $100,000 or the amount required under Rule 15c3-1 of the Act [17 CFR 240.15c3-1 (1991)], and who has been approved by the Exchange's Securities Committee to perform market making functions by entering bids and offers for securities designated by the Securities Committee to be traded in the CSE's National Securities Trading System ("designated issues") into that System. See CSE Rule 11.9(a)(3).

[5] For purposes of CSE Rule 11.9, the term "ITS BBO" means the best bid/ask quote among the ITS participants in those issues that are traded on ITS. See CSE Rule 11.9(a)(11).

[6] 15 U.S.C. 78f (1988).

[7] For example, MSE specialists are required to accept and guarantee execution on all agency orders other than limit orders in NASDAQ/NMS securities from 100 up to and including 2,099 shares in accordance with MSE Rule 37, which provides that the MSE specialist is obligated to execute agency limit orders on a share for share basis with trades executed at the limit price in the primary market if volume prints in the primary market at the bid or offer limit price. See MSE Rule 37.

believes that the portion of the proposed rule change that relieves DDs from any requirement to guarantee any portion of an order larger than 2,099 shares is consistent with the CSE's stated objective of not requiring DDs to guarantee large orders that are not retail in the conventional sense. As discussed above, the guarantee still allows for protection of orders up to the size of the ITS BBO, which is generally the prevailing customer order size in the marketplace.

Finally, the Commission emphasizes that, because the CSE proposal is limited to amending the Exchange's size guarantees, the Exchange's best execution rules would not be affected. Investors would still be guaranteed the best price execution of their orders. For these reasons, the Commission believes that the portion of the proposed rule change relating to the CSE's public agency order guarantee is consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the portion of the proposed rule change relating to amending the CSE's public agency order guarantee is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1518 Filed 1-21-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18487; 812-7739]

Cortland Trust, Inc., et al.; Application

January 15, 1992.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Cortland Trust, Inc. (the "Trust"), Reich & Tang L.P. ("Reich & Tang"), and Reich & Tang Distributors L.P. (the "Distributor").

RELEVANT ACT SECTIONS: Applicants seek an order under section 11(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order of the SEC under section 11(a) of the Act approving offers of exchange between certain money market investment companies, and portfolios and classes thereof, currently existing or established in the future, for which Reich & Tang or its affiliates serve as investment adviser, and for which the Distributor or its affiliates serve as distributor, sponsor or underwriter (individually, a "Money Market Fund" and collectively, the "Money Market Funds") and certain non-money market funds outside the Money Market Funds' group of investment companies (the "Participating Funds") on a basis other than the relative net asset value of the securities to be exchanged.

FILING DATES: The application was filed on June 18, 1991 and amended on November 26, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 10, 1992, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Cortland Trust, Inc., Three University Plaza, Hackensack, New Jersey 07601; Reich & Tang L.P. and Reich & Tang Distributors L.P., 100 Park Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Osterman, Staff Attorney, at (202) 504-2525 or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is registered under the Act as an open-end management investment company. The Trust is a series investment company that currently offers investors three types of money market portfolios.[1] The requested order would extend to the Trust, all portfolios and series thereof, and all other Money Market Funds, as defined above.

2. Reich & Tang, a registered investment adviser, serves as investment adviser to the Trust's portfolios. The Distributor, a registered broker-dealer, serves as distributor of the shares of the Trust's portfolios.

3. The Participating Funds are non-money market funds, currently existing or established in the future, that are members of an investment company group that either does not include taxable and tax-exempt money market portfolios,[2] or includes money market portfolios that, because of their size or lower returns, would not serve their investors' needs as well as would the Money Market Funds. Some of the Participating Funds may be sold with a sales load.

4. In all exchange programs created pursuant to the terms and conditions set forth in the application, the Money Market Funds and the Participating Funds will share the same transfer agent.

5. If the requested order is granted, shareholders of a Participating Fund could exchange their shares for shares of a Money Market Fund, and thereafter exchange such Money Market Fund shares for shares of that Participating Fund or, to the extent permitted by Applicants and the principal underwriter of such Participating Fund, for shares of another Participating Fund that is part of the same "group of investment companies" as such Participating Fund. A Money Market Fund shareholder seeking to exchange his or her shares would have to establish an account with a Participating Fund, or be formally acknowledged as a potential investor in a Participating Fund.[3] Applicants' share exchange

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[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12) (1991).

[1] The Trust offers the Cortland General Money Market Fund, the U.S. Government Fund, and the Municipal Fund. The Cortland General Money Market Fund is a portfolio of securities and instruments issued or guaranteed by the United States Government, its agencies or instrumentalities, bank instruments, and corporate commercial instruments. The U.S. Government Fund is a portfolio of securities and instruments issued or backed by the full faith and credit of the United States Government and repurchase agreements collateralized by United States Government obligations. The Municipal Money Market Fund is a portfolio of obligations issued by states, territories, and possessions of the United States, and their political subdivisions, public authorities and other entities authorized to issue debt, the interest on which is exempt from federal income taxes.

[2] It is also possible that the program would be used in other circumstances (for example, where such group has a taxable portfolio but not a tax-exempt portfolio).

[3] In some cases, it may be desirable for an investor to establish an account with a Money Market Fund pending selection of a particular fund within a Participating Fund group or pending a decision as to the appropriate time of investment. In these cases, the fact that the investor in the Money Market Fund is a potential investor in the Participating Fund group would be noted on the

Continued

program would not permit shares of one Participating Fund to be exchanged directly for shares of another Participating Fund, nor would the program allow a shareholder of one Participating Fund group to acquire shares of a Participating Fund in a different group.

6. The same entity would be utilized for effectuating the exchange of shares of both the Money Market Fund and the Participating Fund and would hold the records for individual shareholders in any given exchange transaction between a Money Market Fund and a Participating Fund. The entity conducting the share exchange would be the transfer agent ordinarily used by the Participating Fund involved in the exchange and would serve as the recordkeeping agent for the shares of the Money Market Fund involved in the exchange. In its transfer agency or other recordkeeping capacity, the transfer agent would be responsible for various tasks, including accepting and recording the payment of sales loads, administrative fees, and redemption fees. Share exchanges would be conducted in accordance with rule 11a–3 of the Act, except that the Money Market Funds and the Participating Funds would not be in the same "group of investment companies."

7. Any sales load payable in connection with Applicants' share exchange would be payable to the underwriter for the Participating Fund involved in the exchange, which may reallow some or all of the sales load to a selling broker-dealer (*i.e.*, a broker-dealer that is entitled to a portion of the sales load from the underwriter as a dealer's reallowance). Applicants also may impose an administrative and/or redemption fee, as permitted under rule 11a–3. The only compensation that would be payable directly by an exchanging shareholder to a transfer agent in connection with a share exchange would be an administrative fee or other charges that are permissible under rule 11a–3.[4] The Distributor would receive no fee or other compensation in connection with a share exchange.

Legal Analysis

1. Section 11(a) of the Act provides, among other things, that "[i]t shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers which are in effect at the time such offer is make." Applicants' offer of exchange requires Commission approval under section 11(a) because the imposition of sales loads and other fees will result in the share exchanges not being made at relative net asset value.

2. Rule 11a–3 under the Act provides that, notwithstanding section 11(a), a registered open-end investment company or its principal underwriter making an exchange offer may cause a securityholder to be charged a sales load on the security acquired in the exchange, a redemption fee, an administrative fee, or any combination of the foregoing, provided certain conditions are met. One of these conditions is that the exchange offer must be made only to security holders in investment companies that are within a single "group of investment companies." Rule 11a–3 defines "group of investment companies" as "any two or more registered open-end investment companies that hold themselves out to investors as related companies for the purposes of investment and investor services, and (i) that have a common investment adviser or principal underwriter, or (ii) the investment adviser or principal underwriter of one of the companies is an affiliated person as defined in section 2(a)(3) of the Act [15 U.S.C. 80a–2(3)] of the investment adviser or principal underwriter of each of the other companies." Applicants cannot rely on rule 11a–3 because the Money Market Funds and the Participating Funds are not part of the same "group of investment companies."

3. Applicants' share exchange program will satisfy all of the conditions set forth in rule 11a–3, except that the Participating Funds and the Money Market Funds will not be in the same "group of investment companies." Applicants assert that the proposed share exchange program would be operationally and administratively convenient because the entity conducting an exchange would be the transfer agent ordinarily used by the Participating Funds involved in the exchange and would serve as the recordkeeping agent for the shares of the Money Market Fund involved in the exchange. Thus, even though members of different "groups of investment companies" would be involved in a share exchange, Applicants assert that the transfer agent would be logically positioned to implement the program because a single entity would possess the information and maintain the records that are required to execute both the redemption and purchase orders involved in a share exchange.

4. Applicants assert that the proposed share exchange program is intended to benefit the Participating Funds and their shareholders by providing the shareholders with access to the money market portfolios offered by the Money Market Funds through the share exchange, without the shareholders losing the benefit of the sales load previously paid by them for their Participating Fund shares. Applicants also assert that the proposed share exchange program is intended to benefit the Money Market Funds and their shareholders through the expansion of the Money Market Funds' group of potential investors and the advantages that can result from a larger asset base. Further, the share exchange program will permit a shareholder's redemption proceeds to be reinvested without delay.

Applicants' Conditions

The Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. Each Money Market Fund and group of Participating Funds shall have the same transfer agent (the "Transfer Agent"). The Transfer Agent will be responsible for tracking the payment of sales loads, administrative fees, and redemption fees by shareholders of investment companies or portfolios, series or classes thereof covered by the application, and otherwise will conduct share exchanges in accordance with Applicants' representations.

2. Offers of exchange pursuant to the Applicants' exchange program will be conducted in accordance with rule 11a–3 of the Act, except for that rule's requirement that an offering company make an exchange offer only to the holder of a security of the offering company, or of another open-end investment company within the same group of investment companies as the offering company.

3. Any principal underwriter or investment company relying on the requested order in order to participate in Applicants' exchange program will adopt and enforce internal control

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records of the transfer agent that eventually would process the exchange, based upon information provided by the financial services firm processing the purchase.

[4] Currently, an share exchange administrative fee is expected to be charged.

procedures that are designed to assure the program's compliance with all applicable provisions of rule 11a–3 under the Act.

4. Any principal underwriter or investment company relying on the requested order in order to participate in Applicants' exchange program will, in connection therewith, comply with all applicable provisions of rule 11a–3 and the representations and conditions of any applicable order, and monitor actively consumer complaints and other indicators of possible improprieties in connection with Applicants' exchange program.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–1517 Filed 1–21–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30186; File No. SR–MSE–91–10]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Temporarily Proposed Rule Change Relating to a Pilot Program for Stopped Orders in Minimum Variation Markets

January 14, 1992.

On May 30, 1991, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend MSE Article XX, Rule 37 to revise the MSE's procedure for the execution of "stopped" market orders [3] in minimum variation markets.[4] The MSE proposes to implement the proposed rule change as a one-year pilot program. Amendment No. 1, which made minor language changes to the proposed procedure, was submitted to the Commission on November 27, 1991.[5]

The proposed rule change was noticed in Securities Exchange Act Release No. 29958 (November 18, 1991), 56 FR 59309 (November 25, 1991). No comment letters were received on the proposal.

Current MSE Article XX, Rule 37, which governs the MSE's Guaranteed Execution System, requires specialists to grant a stop for Dual Trading System issues [6] if an out of range [7] execution will result, regardless of the spread. The Exchange's current policy regarding the execution of stopped orders is to execute such orders after the next primary market sale on a "next no better" basis.[8] The MSE states that in a minimum variation market, this policy frequently causes the anomalous result of requiring the execution of all pre-existing orders even if those orders are not otherwise entitled to be filled.

The MSE presents the following example of the operation of the Exchange's current policy for the execution of stopped market orders in minimum variation markets: assume the market for a particular stock is 20–20⅛; 50×50 with ⅛ being out of range. A customer places an order with the MSE specialist to buy 100 shares of the stock at the market and a stop is effected. The order is stopped at 20⅛ and the MSE specialist includes the order in his or her quote by bidding the 100 shares at 20. If the next sale on the primary market is for 100 shares at 20, current Exchange policy requires the specialist to execute the stopped market order at 20. However, because the stopped market order does not have time or price priority, its execution triggers the requirement for the MSE specialist to execute all pre-existing bids (in this case 5,000 shares) based on the MSE's rules of priority and precedence even though the pre-existing bids were not otherwise entitled to be filled.[9]

In the above example, if there had been no stopped order, Exchange Rule 37 (Article XX) would require the MSE specialist to fill orders at the limit price only if such orders would have been filled had they been transmitted to the primary market. Therefore, the 100 share print at 20 in the primary market would cause at most 100 of the 5,000 share limit order to be filled on the MSE. However, because the Exchange's current policy regarding stopped orders requires the 100 share stopped market order to be filled, all pre-existing bids at the same price must also be filled in accordance with Exchange Rule 16 (Article XX).

The MSE proposes to amend its policy to require the execution of stopped market orders in minimum variation markets after either (1) a transaction takes place on the primary market at the bid price or lower (for a stopped sell order) or the offering price or higher (for a stopped buy order) or (2) the displayed MSE share volume at the offering (or bid) has been exhausted. In no event will a stopped order be executed at a price inferior to the stop price.[10] Moreover, the proposed policy will require that all orders stopped pursuant to the policy be executed by the end of the trading day on which the order was stopped at no worse than the stopped price. The MSE proposes to implement the proposed rule change as a one-year pilot program.

In the above example, the customer's stopped buy order would be executed at 20⅛ if there is a sale on the primary market for 100 shares at 20⅛ or higher or at 20 if 5,000 shares trade on the primary market at 20. If neither event occurs, the specialist must execute the customer's order at 20⅛ or better by the end of the trading day.

The Exchange believes that the proposed rule change is designed to promote just and equitable principles trade. The Exchange states that the proposed rule change will continue to benefit customers because they might receive a better price than the stop price, yet it also protects MSE specialists by eliminating their exposure to executing potentially large amounts of pre-existing bids or offers when such

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240 19b–4 (1990).

[3] When a specialist agrees to "stop" a market order at a specified price, the specialist guarantees the purchase or sale of the securities at the price or its equivalent in the amount specified. See MSE Article XX, Rule 20.

[4] MSE Rule 22, Article XX sets forth the minimum variations for stocks traded on the Exchange. This rule provides that bids or offers in stocks above $1.00 per share shall not be made at less variation than ⅛ per share; in stocks below $1.00 but above $.50 per share, at a less fraction than 1/16 of $1.00 per share; in stocks below $.50 per share, at less variation than 1/32 of $1.00 per share; provided that the MSE Committee on Floor Procedure may fix variations of less than the above for bids and offers in specific securities or classes of securities.

[5] See letter from Daniel J. Liberti, Associate Counsel, MSE to Mary Revell, Branch Chief, Commission, dated November 22, 1991.

[6] The Dual Trading System of the MSE provides for the execution of both round-lot (100 shares) and odd-lot (1 to 99 shares) orders in certain issues assigned to specialists on the MSE and either the New York Stock Exchange ("NYSE") or the American Stock Exchange ("Amex"). See MSE Guide, Explanatory Notes, at 800 (CCH 1990).

[7] "Out of range" means either higher or lower than the range in which the security traded on the primary market during a particular trading day.

[8] "Next no better" means that a customer who requests a stop at a specific price won't do any worse than that price and could do better.

[9] See MSE Rule 16 (Article XX).

[10] Exchange Rule 28 (Article XX) states:

An agreement by a member or member organization to "stop" securities at a specified price shall constitute a guarantee of the purchase or sale by him or it of the securities at the price or its equivalent in the amount specified.

If an order is executed at a less favorable price than that agreed upon, the member or member organization which agreed to stop the securities shall be liable for an adjustment of the difference between the two prices.

executions would otherwise not be required under Exchange rules.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) [11] and section 11(b) [12] of the Act. Section 6(b)(5) requires, among other things, that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. Section 11(b) permits a specialist to accept only market or limit orders. The Commission believes that the proposed amendments to MSE Article XX, Rule 37 should further the objectives of section 6(b)(5) and section 11(b) through the implementation of a pilot program which is designed to provide a revised policy for the execution of stop orders, in minimum variation markets, while providing the possibility of price improvement to customers whose orders are granted stops.

Historically, the Commission has been concerned about the practice of stopping stock. In the 1963 Report of the Special Study of the Securities Markets,[13] the Commission commented that in many instances "[t]he practice of stopping stock against orders on the specialist's book * * * involves too great a compromise of the specialist's fiduciary obligation for personal profit without any offsetting gain to his market making function." [14] The Special Study's concern with stopping stock was that unexecuted customer limit orders on the specialist's book would be bypassed by the stopped orders. Nevertheless, the Commission has allowed the practice of stopping stock in market where the spread is twice the minimum variation because the possible harm to orders in the book would be offset by the possibility of price improvement when the spread between the bid and offer is reduced.[15] The Commission also has approved, as a one year pilot program, an NYSE proposal to stop stock in minimum variation markets under certain limited circumstances where there is an imbalance on the opposite side from the order being stopped, and the imbalance is of sufficient size, given the characteristics of the security, to suggest the likelihood of price improvement.[16]

The MSE currently has a policy for the execution of stop orders in minimum variation markets. MSE rule 37, Article XX requires that a specialist grant a stop if requested by an MSE number firm if the execution would occur outside of the primary market range for the day. Thus, this rule generally operates to ensure that MSE customers receive executions on the MSE that are no worse than if executed on the primary market. While the MSE's proposal would revise the procedures for stopping stock, the MSE has limited this practice to situations where the specialist granting stopped orders would not violate his or her fiduciary obligation to orders on the book. Under the revised procedures, stopped market orders would be executed in minimum variation markets after a transaction takes place on the primary market at the bid price or lower (or the offering price or higher) on the primary exchange or the displayed MSE share volume has been executed. The Commission, therefore, believes that it is unlikely that limit orders on the book would not be executed as a result of granting a stop to a market order under the proposed rule change. The Commission, however, requests that the MSE analyze the impact on orders on the book resulting from the execution of stopped orders at a price that is better than the stop price to determine whether the book orders are being bypassed.

The Commission believes that the proposal is consistent with Rule 11b–1(a)(2)(ii) of the Act.[17] Rule 11b–1(a)(2)(ii) requires that a specialist engage in a course of dealings for his or her own account that assist in the maintenance, so far as practicable, of a fair and orderly market. The Commission believes that the proposal should further the objectives of this Rule because the implementation of the proposal should help the specialist to provide an opportunity for price improvement to the customer whose stop order is granted, without requiring that the specialist execute other pre-existing bids or offers when such executions otherwise would not be required under Exchange rules.

The Commission also believes that the proposal is consistent with the prohibition in section 11(b) against providing discretion to a specialist in the handling of an order.[18] Section 11(b) was designed, in part, to address potential conflicts of interest that may arise as a result of the specialist's dual role as agent and principal in executing stock transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialist's book and their handling of discretionary agency orders.[19] The Commission has stated that, pursuant to section 11(b), all orders other than market or limit orders are discretionary and therefore cannot be accepted by specialists.[20]

After careful review, the Commission concludes that it is appropriate to treat stopped orders, even under the revised pilot procedures, as equivalent to limit orders. A limit order is an order to buy or sell a stated amount of security at a specified price, or better if obtainable. The Commission believes that stopped orders are equivalent to limit orders, in this instance, because the orders would be automatically elected after a transaction takes place on the primary market at the stopped price. The Commission, therefore, believes that the requirements imposed on the specialist for granting stops in minimum variation markets provide sufficiently stringent guidelines to ensure that the specialist will implement the proposed rule change in a manner consistent with his or her market making duties and section 11(b).

Finally, the Commission believes that it is reasonable for the Exchange to test the proposed rule change in a pilot program. The Commission believes that the pilot program should provide both the Exchange and the Commission with an opportunity to study the effects of the revised procedures for stopped orders in minimum variation markets. At the same time, the pilot program should provide a benefit to customers whose orders are granted stops in minimum variation markets. The Commission, however, requests that the MSE monitor the operation of the revised procedures during the pilot program and report its findings to the Commission. This report should include, among other things, the MSE's findings with respect to the percentage of stopped orders that are executed as the stop price and the percentage of such orders that receive a price that is better than the stop price. The report should also contain an

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[11] 15 U.S.C. 78f(b)(5) (1988).

[12] 15 U.S.C. 78k(b) (1988).

[13] SEC, Report of the Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess., Pt.2 (1963) ("Special Study").

[14] *Id.* at 168.

[15] See NYSE Rule 116.30; Amex Rule 109(c).

[16] See Securities Exchange Act Release No. 28899 (March 21, 1991), 56 FR 12896 (March 28, 1991) (File No. SR–NYSE–90–46

[17] 17 CFR 240.11b–1(a)(2)(ii) (1988).

[18] Section 11(b) permits a specialist to accept only market or limit orders.

[19] See H. Rep. No. 1383, 73rd Cong., 2d Sess., 22. S. Rep. 792, 73rd Cong., 2d Sess. 18 (1934).

[20] See, e.g., SEC, Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess., part 2, 72 (1963).

analysis of the impact on orders on the book resulting from the execution of stopped orders at a price that is better than the stopped price. The Commission requests that the MSE report its findings on these matters by September 15, 1992.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[81] that the proposed rule change is approved for a one year period ending on January 15, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1516 Filed 1-21-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0207]

ANB Venture Corporation; License Surrender

Notice is hereby given that ANB Corporation (ANB), 33 North LaSalle Street, Chicago, Illinois, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). ANB was licensed by the Small Business Administration on September 11, 1987.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of ANB was accepted on January 6, 1992 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 10, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-1456 Filed 1-21-92; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0490]

WFG-Harvest Partners, Ltd; Surrender of License

Notice is hereby given that, pursuant to Section 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1991)), WFG-Harvest Partners, Ltd., 767 Third Avenue, New York, NY 10017, incorporated under the laws of the State of New York has surrendered its license, No. 02/02-0490 issued by the SBA on September 30, 1985.

WFG-Harvest Partners, Ltd. has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of WFG-Harvest Partners, Ltd. is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company effective December 31, 1991.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 6, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-1457 Filed 1-21-92; 8:45 am]

BILLING CODE 8025-01-M

Administration

AGENCY: Small Business Administration.

ACTION: Notice Delegating Loan Approval Authority to Specific Agency Field Personnel.

SUMMARY: This notice increases the delegated authority of certain specific Small Business Administration (SBA) field personnel to approve SBA guaranteed loans. This increased authority is based upon the education, training, or experience of such personnel and is meant to expedite Agency action in processing loan applications.

EFFECTIVE DATE: This notice is effective January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Assistant Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, Tel. (202) 205-6490.

SUPPLEMENTARY INFORMATION: On December 19, 1991, SBA published, in the **Federal Register**, 56 FR 65823, a final rule amending § 101.3-2 of part 101, title 13, Code of Federal Regulations, which set forth a clarified standard delegation of authority to conduct program activities in SBA field offices. Previously, § 101.3-2 had set forth the standard delegation of authority to SBA field personnel as well as all deviations from the standard based upon education, experience, and/or training. The December 19, 1991 publication eliminated all deviations in favor of a standard delegation of authority. In addition, the rule provided authority by which SBA might, as it deemed appropriate, increase, decrease, or set the level of authority for any individual SBA field official in a regional district, or branch office, based upon education, training, or experience by publication of a notice in the **Federal Register**.

The Agency believes that, when appropriate, delegating increased levels of authority to field personnel yields increased benefits for program participants and SBA. SBA is authorized to guaranty up to 90% of a loan depending upon total loan amount. As such, it is essential that the Agency have qualified loan officers to process expeditiously and accurately the applications submitted. Branch managers who are delegated greater levels of authority in light of their additional education, training, or experience allows for loan applications of greater amounts being processed where both the lender and the borrower are located. In this fashion, the loan applicant and the lender are both served with quicker and accurate processing, while the Agency is served by quality lending and better relations with its participating lenders.

This notice increases the delegated authority of specific SBA officials to approve guaranteed loan applications based upon each respective officials' education, training, or experience. The SBA branch managers in Harrisburg and Wilkes-Barre, PA and in Wilmington, DE have successfully completed training courses offered by the Agency. Such training qualifies them to better analyze and process loan applications submitted by SBA participating lenders for SBA guarantees. The SBA branch manager and assistant branch manager in Gulfport, MS are loan officers with as much as 25 years experience processing SBA guaranteed loans. It is anticipated that loan volume in Gulfport would increase if the SBA participating lenders were assured that the Agency personnel there had increased delegated authority.

SBA branch managers have, as a standard, delegated authority to approve SBA guaranteed loans of up to $250,000. This notice increases the delegated loan approval authority for the branch managers in Harrisburg and Wilkes-Barre, PA and Wilmington, DE to $750,000 and the branch manager in Gulfport, MS to $500,000. Further, this notice delegates authority to approve SBA guaranteed loans to the assistant branch manager in Gulfport, MS in the amount of $500,000. This increased delegation of authority is specific to the individuals presently incumbent and continues only so long as they remain in such positions.

[81] 15 U.S.C. 78s(b)(2) (1988).

Dated: January 7, 1992.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 92-1459 Filed 1-21-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8 92-01]

Lower Mississippi River Waterway Safety Advisory Committee; VTS Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II) notice is hereby given of the VTS Subcommittee of the Lower Mississippi River Waterway Safety Advisory Committee meeting. The meeting will be held on Thursday, February 20, 1992. The meeting will be held at the Crescent River Port Pilots office, 409 Belle Chasse Hwy. South, Belle Chasse, LA 70037. The meeting is scheduled to begin at 9 a.m. The agenda for the meeting consists of the following items:

1. Call to order.
2. Update on recommendations for a proposed New Orleans Vessel Traffic Service.
3. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander E. N. Funk, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA. 70130-3396, telephone number (504) 589-3074.

Dated: January 8, 1992.

J.M. Loy,

Rear Admiral, U.S. Coast Guard, Commander Eighth Coast Guard District.

[FR Doc. 92-1527 Filed 1-21-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Cuban Assets Control Regulations, Fitness and Qualification of Applicants

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: Consistent with the licensing requirements governing persons engaged in travel service to, from, and within Cuba and persons forwarding family remittances to Cuba, the Office of Foreign Assets Control invites public comment concerning the fitness and qualification of license applicants. It also informs the public of the identity of additional travel service providers and family remittance forwarders authorized to engage in these services.

DATES: Comments must be submitted on or before March 23, 1992.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief of Enforcement, Tel.: (202) 566-5021, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 535-9449, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Sections 515.560 and 515.563 of the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), were amended, effective December 23, 1988, to require that persons engaged in service transactions related to travel to Cuba or the forwarding of remittances to close relatives in Cuba obtain a specific license from the Office of Foreign Assets. Control. The Regulations provide that licenses will be issued only upon the applicant's affirmation and demonstration "that it does not participate in discriminatory practices of the Cuban government against certain residents and citizens of the United States." 31 CFR 515.560(i)(1)(ii).

The Office of Foreign Assets Control has published previously lists of license applicants, who had been granted provisional authority to provide services pending review of their completed license applications. Provisional authority based on submission of a completed license application is necessary to lawfully provide travel services or family remittance forwarding services. Subsequent to the publications of the earlier notices, 38 additional license applicants, listed below, have submitted completed applications and have been granted provisional authority to engage in these services.

In order to evaluate the assertions made by license applicants that they do not engage in discriminatory practices, and to determine the fitness and qualification of the license applicants listed below, anyone having personal knowledge regarding the applicants (including employees, officers, and directors) is invited to comment concerning the following:

1. Any evidence of discrimination based on race, color, religion, sex, citizenship, place of birth, national origin, or ability to pay (charging different amounts based on the financial means of the travelers) with regard to the provision of or payment required for accommodations and meals, or other services provided in connection with travel to, from, or within Cuba;

2. Any evidence of demanding, soliciting, receiving, or forwarding to Cuba payments or remittances in excess of the amounts permitted by § 515.563 of the Regulations, namely, family remittances to close relatives in amounts not to exceed $300 in any consecutive 3-month period to any one payee or household, and remittances for the purpose of enabling emigration from Cuba on a one-time basis in an amount not to exceed $500 to any one payee; and

3. Any evidence of charging any fees prohibited by U.S. law or any arbitrary and exorbitant fees which exceed the total of official Cuban government consular fees and reasonable service charges.

Comments should be submitted in writing to the Office of Foreign Assets Control, Department of the Treasury, Treasury Annex, Washington, DC 20220. To the extent permitted by law, the identity of anyone submitting information, as well as any identifying information provided, will be held in confidence and will not be released without the express permission of the person submitting the information. Any information provided will be evaluated by the Director of the Office of Foreign Assets Control to determine its reliability and relevance to the investigation of applicants.

List of Applicants for Licenses to Perform Travel, Carrier, and Family Remittance Forwarding Services:

Name of Applicant (Company Name of Individual); Principal Officer (If Applicant is Incorporated); Address (As Supplied by Applicant)	Travel service provider ("TSP"); Carrier service provider ("CSP"); Family remittance forwarder ("FRF")
Aero Cuba, Inc., Rolando Valdes, 815 NW 57th Avenue, #430, Miami, FL 33126.	TSP, FRF
Aerojet, Inc., Warren C. Dukes, 6101 NW 31st Way, Fort Lauderdale, FL 33309.	CSP
Air Sunshine, Inc., Mirmohamad Adil, 300 Terminal Drive, Fort Lauderdale, FL 33315.	CSP
California Florida Services, Manuel Castro, 4306 West 104th Street, Inglewood, CA 90304.	TSP, FRF
Carga Area De Yucatan, Ramon Masso Rodriguez, 919 S.W. 87th Avenue, Miami, FL 33174.	TSP, FRF

Name of Applicant (Company Name of Individual); Principal Officer (If Applicant is Incorporated); Address (As Supplied by Applicant)	Travel service provider ("TSP"); Carrier service provider ("CSP"); Family remittance forwarder ("FRF")
Calce 25-A No. 485-A Itzimna, Apartado Postal 508, Merida, Yucatan, Mexico	
Caribe Tours, Diana M. Guasch, 4378 E. Gage Avenue, Bell, CA 90201.	TSP, FRF
C.B.T. Charters, Inc., S. Skip Taylor, 239 N.E. 20th Street, Miami, FL 33137.	TSP, CSP
Celimar Travel, Lazara T. Rodriguez, 3655 East 4th Avenue, Hialeah, FL 33135.	TSP, FRF
Cuba Express Corporation, Leonel Acosta, 4050 W. 12th Avenue, Hialeah, FL 33012.	TSP, FRF
Cuban American Business Alliance, Reggie L. Llagosters, 2323 South Voss, suite 123, Houston, TX 77057.	TSP, FRF
Cuban Travel Agency Corp., Jose Jimenez, 6884 West Flagler Street, Miami, FL 33144.	TSP, FRF
Cuba Packs International, Inc., Garciela Padron, 1161 West 29th Street, Hialeah, FL 33012.	TSP, FRF
Douglas Executive Travel, Inc., Vivian Mannerud, 169 Miracle Mile, Suite A, Coral Gables, FL 33134.	TSP, FRF
Envios Internationales, Inc., Dolores Castaneda, 3901 NW 79th Avenue, Suite 119, Miami, FL 33166.	TSP, FRF
8603 Roosevelt Avenue, Second Floor, Jackson Heights, New York, NY 11372.	
8211 B Lone Point, Houston, TX 77055.	
Francis Envios Internationales, Inc., Francisca Martinez, 88 Nagle Avenue, New York, New York 10040.	TSP, FRF
1355 E. Main Street, Bridgeport, CT 06608.	
Hight Mailing and Packaging, Jesus Villaloboe, 723 West 181 Street, New York, New York 10033.	FRF
Interamerican Clerical Service Corp., Rosa C. Garcia, 4697 W. Flagler Street, Miami, FL 33126.	TSP, FRF
Interamerican Express, Inc., Maria J. Valdes, 2129 West Flagler Street, Miami, FL 33135.	TSP, FRF
Interconsul Cuba Envios, Inc., Heidy L. Ruiz, 1461 N.W. 27th Avenue, Miami, FL 33125.	TSP, FRF
3678 W. 12th Avenue, Hialeah, FL 33012	
Inter-Cuba Envios, Inc., Aida Ramos, 1943 West 60th Street, Hialeah, FL 33012.	TSP, FRF
International Leo-Cas, Inc., Leonard Castro, 7921 SW 40th Street, suite 40, Miami, FL 33155.	TSP, FRF
Lafont International Services, Manuel V. Lafont, 11675 W. Bellfort, #914, Houston, TX 77099.	TSP, FRF
Mercedes Lavenders, 8201 Blossom Avenue, Tampa, FL 33614.	TSP, FRF
Miami Air Charter, Mark W. McDonald, 13200 SW 128th Street, Miami, FL 33186.	CSP
Orzan Travel and Tours Services, Inc., Lourdes V. Orjales, 12421 SW 26th Street, Miami, FL 33175.	TSP, FRF
Pa-Cuba, Inc., Herminia Rosario, 4410 W. 16th Avenue, #2, Hialeah, FL 33012.	TSP, FRF
2750 W. 68th Street, Bay 110, Hialeah, FL 33016	
Paradise Island Airlines, Inc., S. Paul Allen, 1550 S.W. 43rd Street, Fort Lauderdale, FL 33315.	CSP
Personal Jet Charter, Inc., Corwin J. Zimmer, 5401 N.W. 15th Avenue, Fort Lauderdale, FL 33309.	CSP
Playa Azul, Corp., Jose E. Flores, 3310 SW 82nd Avenue, Miami, FL 33155.	TSP, FRF
Servicios de Importacion y Exportacion, William Hernandez Castellanos, 782 NW Le Jeune Road, #447, Miami, FL 33126.	TSP, FRF
Calle 20 No. 143, Entre 7 y 9, Colonia Gineres, Merida, Yucatan, Mexico.	
Servicuba, Inc., Oscar Espinosa Hernandez, 1240 East Fourth Avenue, Hialeah, FL 33010.	TSP, FRF
Sonic Air, Vernon Green, P.O. Box 660656, Miami, FL 33266.	CSP
Torrente Enterprises Corp., Jorge Torrente, 3240 SW 129th Avenue, Miami, FL 33175.	TSP, FRF
U.S.A.—Cuba Express, Corp., Alejandro Valdes, 548 NW 57th Avenue, Miami, FL 33126.	TSP, FRF
U.S.S. Uribe Sanchez Service, Inc., Julian Uribe, 901 SW 87th Avenue, #953, Miami, FL 33174.	TSP, FRF
Via-Cuba Corp., Elsa I. Gonzalez, 2784 NW 4th Terrace, Miami, FL 33125.	TSP, FRF
Vinales Express, Inc., Hermenegulld I. Gonzalez, 8578 SW Eighth Street, Miami, FL 33144.	TSP, FRF
World Travel Service, Maria A. Diaz, 95-03 Roosevelt Avenue, Jackson Heights, New York 11372.	TSP, FRF

Dated: January 2, 1992.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 6, 1992.

Nancy L. Worthington,

Acting Assistant Secretary (Enforcement).

[FR Doc. 92-1519 Filed 1-21-92; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TREASURY

Internal Revenue Service

Internal Revenue Service Metric Conversion Plan

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice provides the Internal Revenue Service's (IRS) metric conversion plan. In compliance with the Omnibus Trade and Competitiveness Act of 1988, section 5164, the plan describes a comprehensive and integrated approach to convert to the metric system of measurement for IRS procurements and business-related activities.

DATES: This plan became effective on November 4, 1991. Comments or suggestions may be submitted in writing before July 1, 1992.

ADDRESSES: Comments or suggestions should be addressed to the Internal Revenue Service, 1111 Constitution Ave., NW., Metrication Project Office, (HR:F:MET, room 3617/IR), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Ray O'Brien, Acting Manager, Metrication Project Office, (202) 927-6505.

Dated: January 14, 1992.

Approved:

David A. Mader,

Assistant Commissioner (Human Resources and Support).

Metric Conversion Plan

A. Background

Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418) designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce. It requires that:

"* * * each Federal agency, by a certain date and to the extent economically feasible by the end of fiscal year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units."

The new law also requires each agency to issue implementing guidelines and to report annually to Congress on actions taken, or planned, to implement the metric system. Internal Revenue Manual 12(11)7, Internal Revenue Service Program provides the implementing guidelines required by the law.

The IRS Metric Conversion Plan describes a comprehensive and integrated program to comply with Section 5164, Public Law 100-418, Executive Order 12770, applicable regulations, and Treasury Directive 75-05. The plan is intended as a practical approach to metric transition and is

consistent with the implementation efforts of other Government agencies.

Many of the conversion tasks to be accomplished under this plan will, as they progress, make it easier to acquire metric suppliers and services. Recognizing our dependence upon the transition efforts of our suppliers and contractors, our efforts will be closely coordinated with the appropriate functional subcommittees of the Metrication Operation Committee (MOC) and should act as stimulants to industries to increase their competitiveness in the world marketplace.

This plan discusses the overall IRS strategy for metrication, defines general requirements and procedures for transition efforts, and details the tasks to be accomplished by designated IRS functions. The plan will be dynamic in that it will be periodically updated to redefine the tasks when needed, add actions and goals, and include new tasks as necessitated by the transition activities of other agencies, the MOC subcommittees, or the private sector.

B. Definitions

Dual Systems. The use of both inch-pound and metric dimensions. For example, an item is designed, produced, and described in inch-pound values with soft conversion metric values also shown for information or comparative purposes.

Hard Metric. The use of only hard metric (SI) measurements in specifications, standards, supplies, and services.

Hybrid Systems. The use of both inch-pound and hard metric values in specifications, standards, supplies, and services (e.g., an engine with internal parts in metric dimensions and external fittings or attachments in inch-pound dimensions).

Inch-pound system. The English form of measurement currently used in the United States.

Metric System. The International System of Units (Le Systeme International d'Unites (SI) of the International Bureau of Weights and Measures. The units are listed in Federal Standard 376A, Preferred Metric Units for General Use by the Federal Government.

Metrification. Any act that increase the use of the metric system, including metric training and initiation or conversion; of measurement-sensitive processes and systems to the metric system.

Soft Metric. The expression of measurement in metric—equivalent units in converting from the inch-pound system. The physical dimensions of the objects are not changed.

C. Strategy

The Internal Revenue Service's metrication conversion strategy emanates from the following program requirements.

1. IRS will implement the metric system in a manner and on a schedule consistent with Public Law 100—418 and Executive Order 12770.

2. IRS will support Federal transition and national conversion to the metric system through participation on the Interagency Council on Metric Policy's (ICMP) Metrication Operating Committee (MOC) and subcommittees and other Government/industry subcommittees, associations, working panels, and groups.

3. IRS National Office and field organizations will use the metric system in procurements, grants, and other business-related activities consistent with security, operational, economic technical, logistical, training, and safety requirements.

4. IRS will stimulate industry in the change to the metric system by acquiring commercially available metric products and services that meet the functional requirements of IRS and its customers, so long as competition is maintained.

5. IRS will develop metric specifications and standards for procurements where IRS functional requirements are unique or mission specific. Commercially developed metric specifications and internationally or domestically developed standards using metric shall be adopted whenever feasible. When metric is not the predominate measurement system used by industry or accepted international standards do not use the metric measurement system, existing products or dual inch-pound/metric dimensioned products/systems may be used during the transition period.

6. IRS will retain the measurement units in which a project or product is originally designed for the life of that project or product, unless conversion is necessay or advantegeous.

7. IRS will handle metric conversion costs as normal operating expenses rather than as special one-time costs. Any additional costs and any significant cost savings resulted from metric conversion will be identified and reported, to the extent practical to the Chief Financial Officer, as part of the annual report.

8. IRS will establish training plans and practices that increase employee awareness and understanding of the metric system and IRS metric efforts.

D. IRS Metrication Program Organization

1. *Metric Executive.* Pursuant to Department of the Treasury Directive 75–05, section 7.e(2)., the Assistant Commissioner (Human Resources and Support) has been designated as the IRS Metrics Executive. The Director, Facilities and Information Management Support Division has continuing staff responsibility for the IRS Metrication Program.

2. *IRS Metrication Policy Board.* The Assistant Commissioner (Human Resources and Support) is the Chairman of the IRS Metrication Policy Board (IMPB). The IMPB is responsible for establishing IRS metric policy and recommending exclusions to the Treasury Department's policy to the Assistant Secretary (Management). The graph depicting the composition of the IMPB appears as Exhibit 1.

3. *IRS Metrication Steering Committee.* The IRS Metrication Sterring Committee (IMSC) consists of representatives from the affected IRS functions and is responsible for developing the IRS metrication transition plan as well as monitoring progress towards the milestones contained in the plan. Each IMSC member will be either the chairperson or an active participant in their respective functional subcommittee. The IMSC functional subcommittees are shown as Exhibit 2.

4. *IRS Metrication Project Office.* The IRS Metrication Project Office (IMPO) is responsible for the overall coordination of the IRS metrication effort and the provision of administrative support to the IMSC activities.

E. Responsibilities

1. The Assistant Commissioner (Human Resources and Support), will:

a. Act of the IRS Metric Executive and ensure the implementation of Public Law 100–418 and its applicable directives within the IRS;

b. Establishes IRS policy for use of the metric system of measurement and approve or disapprove deviations from that policy;

c. Appoint the IRS Metrication Officer to have continuing staff responsibility for metrication matters and to represent the IRS on the Treasury Coordinating Committee (TCC) and appropriate meetings of the MOC; and

d. Approve the organization, charter, resources, and reports of the Internal Revenue Service Metrication Steering Committee.

2. Assistant Commissioner (Procurement) will:

a. Establish policies and procedures for use of the metric system in procurements;

b. Evaluate the effects of the metric policies and practices on the IRS small business program; and

c. Ensure that IRS offices accept, without prejudice, products and services dimensioned in metric when they are offered at competitive prices and meet the needs of the Government consistent with the Federal acquisiton Regulation System (48 FAR), and ensure that acquisition planning considers metric requirements.

3. Assistant Commissioner (Finance)/ Controller will include in annual budget submissions to the Treasury Department, IRS' progress in implementing the metric system pursuant to section 12 of Public Law 100–418.

4. Assistants to the Commissioner, Chief Counsel, Chief Inspector, Regional Commissioners, and Assistant Commissioners will:

a. Designate an organizational element to monitor metric conversion activities for which they are responsible;

b. If appropriate, appoint an individual as their metric coordinator to represent their office on the IMSC and appropriate MOC subcommittees; and

c. Develop metric guidelines applicable to their specific mission and responsibility consistent with this directive and the policies and interpretations of the IMSC.

5. Chief, Office of Training Program Management will identify and coordinate appropriate metrication training programs for IRS employees.

6. Director, Facilities and Information Management, Support Division will serve as the IRS management official having continuing staff responsibility for IRS metrication matters. This includes:

a. Acting as chairperson of the IMSC;

b. Supervising the IRS Metrication Project Office;

c. Coordinating and preparing required reports; and

d. Maintaining adequate documentation to support the IRS policies, plans, decisions, and progress towards implementing the IRS metrication conversion effort.

7. Internal Revenue Service Metrication Sterring Committee (IMSC) members will:

a. Determine which functions, activities, and procedures of IRS operations require conversion to the metric system;

b. Identify barriers to metric transition;

c. Estimate costs (budgetary, opportunity, and revenue) of transition;

d. Develop and monitor the IRS Metric Conversion Plan;

e. Attend appropriate MOC subcommittee meetings as the IRS functional representative;

f. Provide input to the annual progress report required by Executive Order 12770, section 2. (e)(4); and

g. Make recommendations to the IRS Metric Executive concerning metrication policy and program matters, including proposed exceptions to metric usage.

8. IRS Metrication Project Office will:

a. Coordinate and provide administrative support for the IMSC activities;

b. Be the liaison with the MOC and Treasury Metrication Coordinating Committee;

c. Be the IRS focal point for the exchange of metrication information with IRS organizations, other government agencies, and the private sector; and

d. Establish and maintain the official files of the IRS metrication program and a reference library for metric phases: transition, implementation, and evaluation.

F. IRS Metric Conversion Plan

The IRS Metric Conversion Plan consists of three phases: transition, implementation, and evaluation.

1. *Transition.* The transition phase of the plan consists of milestones necessary to most effectively establish the Internal Revenue Service's metrication program. Representative milestones include the issuance of directives and program guidance, development of a uniform recordkeeping and reporting system, and establishment of the functional subcommittees.

2. *Implementation.* The implementation portion of the plan represents the actions required to actually make the conversion to the metric system. Since total conversion is contingent on many metrication factors, i.e., initiatives undertaken by the oversight agencies (GSA, GPO, and Commerce), the status of conversion by the industries, and progress achieved by the MOC subcommittee, this initial plan concentrates on actions that can be independently accomplished by the IRS functions. It is important to note that these actions will have little effect if the overall Government metrication effort is not supported by the leadership agencies.

The actions of the IMSC functional subcommittees comprise the majority of The milestones and tasks contained in the implementation phase. These subcommittees are categorized into the following functions:

a. Training.
b. Logistics.
  a. Space.
  b. Property.
  c. Physical Security.
c. Procurement.
d. Publishing.
  a. Printing.
  b. Mail Services.
e. Public Affairs.

3. *Evaluation.*

The final phase of the plan is an evaluation of the progress made and problems encountered in the Internal Revenue Service's conversion effort. Typical milestones include periodic status reports of the IMSC subcommittees. Information derived from this portion of the plan is shared with all subcommittees and forms the basis for the annual progress report submitted to the Department of Commerce.

BILLING CODE 4830-01-M

Exhibit 1

IRS METRICATION POLICY BOARD (IMPB)

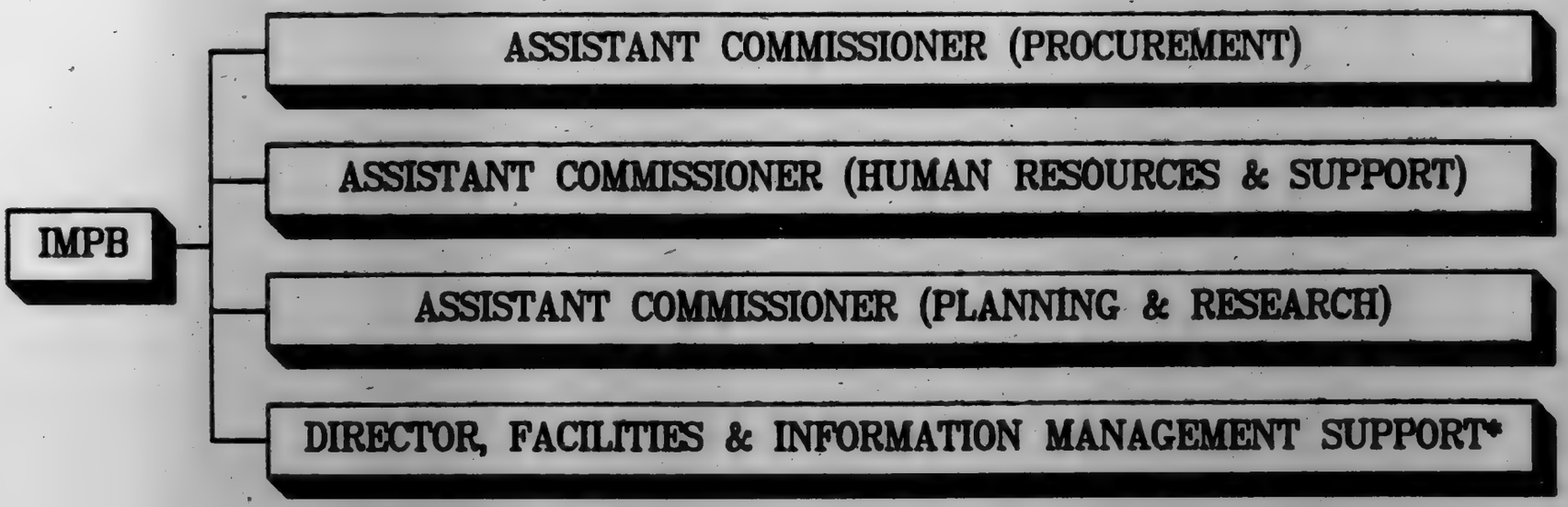

* BUREAU METRIC OFFICER

Exhibit 2

IRS METRICATION STEERING COMMITTEE FUNCTIONAL SUBCOMMITTEES

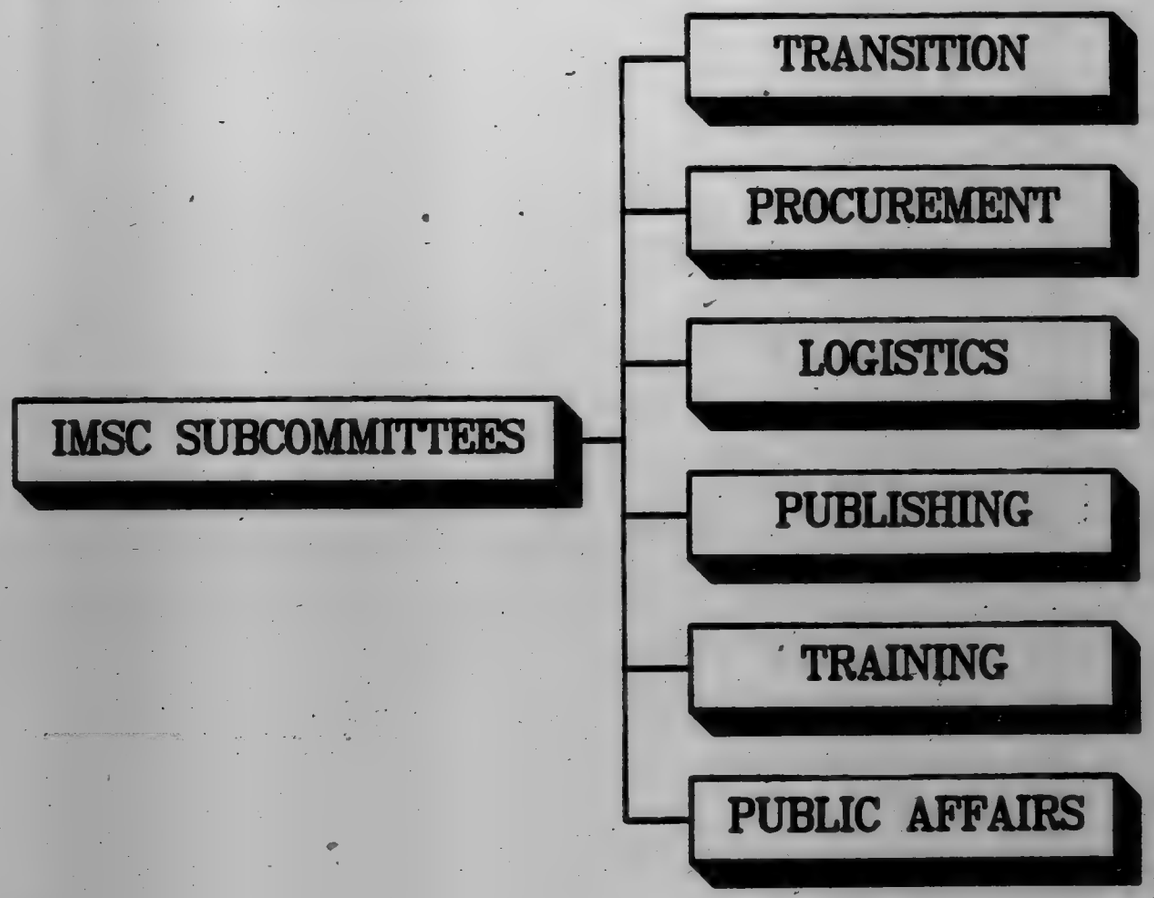

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G. Milestones and Tasks

1. Transition

Milestone 1—Establish IRS Metrication Program—(11/1/91)

Status: Completed.

Task 1—Issue Internal Revenue Manual (IRM) 12 (11)7 (10/30/91)

Status: Completed. Due to IRS Procurement's estimate of a 5-year metric conversion, the format for issuing the metrication program directive was changed from a supplement to an IRM transmittal. Concurrences were received from all Assistant Commissioners, Regional Commissioners, Chief Counsel, and Chief Inspector.

Task 2—Designate IRS Metric Officer—(10/30/91)

Status: Completed. Pursuant to Treasury Directive 75–05, a memorandum was sent to the Director, Office of Management Support Systems designating the Director, Facilities and Information Management Support Division as the IRS Metric Officer. Furthermore, this designation and the designation of the IRS Metric Executive (Assistant Commissioner (Human Resources and Support) appears in the initial IRS Metric Conversion Plan and the metrication program directive.

Task 3—Convene IRS Metrication Steering Committee—(1/15/92)

Status: Completed. All subcommittee chairpersons have been designated. Formal meeting was convened on January 15, 1991.

Task 4—Issue Information Notice to employees—(12/23/91)

Status: Completed. The Annual Metrication Progress Report was sent to all Assistant Commissioners and Regional Commissioners on December 23, 1991. The report's appendices contained the IRS and Treasury conversion plans.

Milestone 2—Establish IMSC Functional Subcommittees—(11/15/91)

Status: Completed

Task 5—Enlish representatives to subcommittees—(11/15/91)

Status: Completed. Chairpersons have been designated for all IMSC Subcommittees: transition, procurement, logistics, publishing, training, and public affairs.

Task 6—Define scope, charter, and objectives of subcommittees—(10/16/91)

Status: Completed. IMSC subcommittee charters containing scope, responsibilities, and objectives have been developed and distributed to subcommittee chairpersons.

Task 7—Perform functional subcommittee training—(10/25/91)

Status: Completed. Instructional video tapes obtained from the United States Metric Association were shown to the IMSC functional subcommittee chairpersons.

Task 8—Determine final subcommittee milestones, tasks, and time frames—(11/15/91)

Status: Completed. This information appears in this document.

Milestone 3—Determine Recordkeeping and Reporting Requirements—(12/26/91)

Status: Completed

Task 9—Develop management information system to monitor milestone accomplishment—(12/16/91)

Status: Completed. Internal control system has been developed and appears in the subcommittee charters. Modifications may be required to integrate information with the Treasury tracking system.

Task 10—Establish reporting schedules for functional subcommittees—(11/15/91)

Status: Completed. Schedules appear in the subcommittee charters.

2. Implementation

A. Training

Milestone 4—Assess IRS Environment for Metric Training Needs—(3/16/92)

Task 11—Evaluate the IRS organizational climate for converting to the metric system—(2/12/92)

Subtasks:

A. Identify occupations affected by metrication (e.g., contracting officers, management and program analysts, architects, engineers, etc.).

B. Identify discrepancies between current performance levels and levels required by metrication.

C. Determine the major reason for the performance level discrepancies (i.e., lack of metric knowledge and skills, organizational or environmental interference, etc.).

D. For each major performance level discrepancy, determine if metrication training is or is not a solution.

Task 12—Determine the focus of metrication training development efforts—(3/16/92)

Subtasks:

A. Examine existing measurement-sensitive training to identify related performance level discrepancies.

B. Determine if current training strategies (e.g., on-the-job training) are conducive for metrication.

C. Identify future training requirements.

D. Identify metrication activities revisions necessary to correct the existing training program deficiencies.

E. Identify the activities necessary to address the new metrication training requirement.

Milestone 5—Analyze Functional Needs for Metric conversion Training—(5/22/92)

Task 13—Describe the metrication trainee population—(4/1/92)

Subtasks:

A. Determine the characteristics that are needed to describe the employees needing metrication training (e.g., age, education, job descriptions, grade levels, job environment, mathematical aptitude, entry level skills/prerequisities, and current level of proficiency).

B. Develop, distribute, and analyze the research instrument(s) to be used for determining the employees needing metrication training (e.g., survey, questionnaire).

C. Write a description of the trainees for whom the training is intended.

Task 14—Inventory the measurement-sensitive processes—(4/8/92)

Subtasks:

A. Review all available occupational documentation such as position descriptions and functional mission statements to identify measurement-related work definitions.

B. Review any previous task analyses or task lists paralleling the metrication effort.

C. Examine trends in workforce planning and design (e.g., Computer Assisted Design (CAD), metric conversion software, etc.) to determine their applicability to IRS metrication training.

D. Gather information about measurement-related tasks that are done in the specific jobs.

E. Construct initial metric task inventory.

F. Verify accuracy and completeness of initial task inventory with job incumbents and managers.

G. Revise initial task inventory into a final task inventory.

H. Assign unique identifying numbers to all final metric tasks.

Task 15—Select the measurement-sensitive processes for metrication training—(4/15/92)

Subtasks:

A. Establish with the IMSC functional subcommittees, the factors, method, and criteria for metric task selection, as well as a recourse for resolving differences.

B. Develop and analyze the research instruments used to inventory the measurement-sensitive processes.

C. Select tasks for training based on selection method and criteria.

E. Convene a representative group of job incumbents and supervisors to verify selections.

F. Record selections and rationale for decisions.

F. Compile the metrication training task list.

Task 16—Analyze the measurement-sensitive processes—(5/15/92)

Subtasks:

A. Define sub-tasks including, as appropriate, conditions, cues, and standards for metric use.

B. Very the metric task and sub-task specifications.

Task 17—Conduct a learning analysis—(5/22/92)

Subtasks:

A. Identify the supporting skills and knowledge required to perform the metrication tasks.

B. Delineate the relationships (customary measurement system v. metric system) among the skills and knowledge required by the job (i.e., dependent, independent, and supportive).

C. Establish the metric skills and knowledge baseline.

D. Identify potential job aids for as many metric tasks as possible.

E. Develop observable and measurable learning objectives for the remaining metric tasks.

Milestone 6—Design the Metrication Training Methodology—(6/17/92)

Task 18—Develop the metrication training plan—(5/29/92)

Subtasks:

A. Assess the effectiveness of existing IRS training plans and corresponding course material system to determine their applicability to metrication training.

B. Identify external metric training courses, material, and delivery systems (OPM, GSA, OMB, Commerce, universities, etc.) to determine their appropriateness to IRS.

C. Organize metric training objectives according to the most effective method of instruction (i.e., group instruction, self-instruction, and on-the-job (OJT) training).

D. Integrate and sequence group-instruction, job aids, self-instructional, and OJT into a training plan, specifying training location and the associated delivery systems.

E. Make necessary revisions to the list of prioritized training revisions and developmental activities.

Task 19—Devise the metrication course design strategy—(6/5/92)

Subtasks:

A. Group and organize the metrication training objectives into lessons/modules.

B. Specify which metrication learning activities are necessary to accomplish each objective.

C. Select instructional methods and media that will optimally present the activities of each metric objective.

D. Select test items, if appropriate, that will comprise end-of-lesson/module and end-of-course test instruments.

E. Outline course administration and instructor requirements.

F. Determine which materials are to be used to educate the instructors, on-the-job instructor (OJI), coach, etc.

G. Complete the course design strategy outline.

Task 20—Prescribe the OJT design strategy—(6/12/92)

Subtasks:

A. Review the task specifications which were selected as appropriate for OJT.

B. Group and organize the metric training objectives in terms of job environment and typical work assignments.

C. Specify learning activities which support the objectives and how they may be accomplished (e.g., group instruction, Continuing Professional Education (CPE), self-instruction, actual task assignment, coaching, and peer instruction).

D. Specify the methods and media which support each learning activity and reflect realistic job conditions.

E. Describe the roles and duties of the group manager and the one-the-job instructor (OJI), as well as the OJI selection criteria.

F. Determine administrative guidelines to include in student training system (e.g., job book, performance summary, etc.).

G. Specify the materials needed the OJI.

Task 21—Prescribe the metric job aid design strategy—(6/12/92)

Subtasks:

A. Review potential job aids to determine their applicability to the metrication training objectives (i.e., their context with the job environment, how each job aid will be introduced, used, and whether it requires training.

B. Specify the job aid type, format, and medium.

C. Examine existing job aids to find opportunities for modification, revision, and/or linkage with the new ones.

D. Outline the job aid design to include specifications of content, organization, sequence of steps, graphics, etc., as appropriate.

Task 22—Prescribe the training evaluation strategy—(6/17/92)

Subtasks:

A. Review the metrication work requirements to define context of the evaluation strategy.

B. Prepare assessment guidelines for reviewing metrication work products.

C. Select the methodology for evaluating trainees' reactions to the training.

D. Select the methodology for evaluating trainees' OJT performance.

E. Select the methodology for evaluating the impact on organizational effectiveness brought about by the training.

F. Specify what trainee and training data will be required for implementation of the evaluation strategy, as well as sources of information.

G. Develop appropriate data gathering instruments; ensure reliability and validity.

H. Determine sample size, sampling techniques, etc.

I. Develop the plan for training evaluation data collection and analysis.

J. Determine when and how to train evaluators/administrators.

K. Specify resource requirements for completing the evaluation.

Milestone 7—Develop the Training Materials—(8/31/92)

Task 23—Develop the draft materials—(7/15/92)

Subtasks:

A. Review existing training materials (IRS and non-IRS produced) to determine whether they can be modified for the design and evaluation strategy outline.

B. Identify what instructional materials must be developed, purchased, and/or what changes need to be made to existing materials.

C. Develop printed training materials for the students, instructors, and/or administrators.

D. Develop audio, visual, audiovisual materials, and job aids.

E. Develop computer-based training (CBT) courseware.

F. Develop OJT program material/guidelines.

G. Perform technical and functional review of material for content accuracy; disclosure review, as appropriate.

H. Develop the testing instruments.

Task 24—Pilot the use of the draft materials—(8/14/92)

Subtasks:

A. Compile representative samples of the populations (e.g., students, trainers, instructors, and OJTs).

B. Specify methodology/criteria for distributing draft materials, including data gathering instruments.

C. Pretest the sample.

D. Pilot instructor-dependent materials (classroom courses) and OJT guidelines and materials.

E. Developmentally test instructor-independent materials (self-instruction modules, job aids, and CBT courseware).

F. Post-test and interview the samples.

G. Validate self-instruction and CBT courseware materials.

H. Analyze data and prepare data summary report.

Task 25—Revise and produce final version of the draft materials—(8/31/92)

Subtasks:

A. Consult data summary report.

B. Revise materials to correct weaknesses and fill gaps according to recommendations presented in the report.

C. Establish trainee and instructor training and preparation times.

D. Prepare camera copy, audio/visual/audiovisual masters, job aids, and final CBT courseware.

E. Arrange for printing, reproduction, and distribution (e.g., prepare IRS Form 1767–T, Publishing Services Requisition for training publications).

Milestone 8—Conduct Metrication Training—(To be determined)

Task 26—Implement training tracking system—(6/15/92)

Subtasks:

A. Prepare Course Catalog Listing (IRS Form 9123).

B. Maintain Electronic Status Notice database.

C. Prepare audiovisual documentation.

D. Update the National Office Training and Development Guide (IRS Document 6054).

E. Update the Training Aids Catalog (IRS Document 6314).

F. Update the Training Materials Catalog (Training Publications Distribution System (TPDS), IRS Document 6398A).

G. Update Training Program Index (IRS Document 6172).

H. Specify how training and trainee data are to be maintained and accessed.

I. Specify how trainees/groups of trainees will be tracked (for training evaluation purposes) subsequent to training.

Task 27—Prepare training program guidelines—(6/15/92)

Subtasks:

A. Ensure that administrative systems will support the metrication training efforts.

B. Prepare Internal Revenue Manual (IRM) guidelines.

C. Submit IRM guidelines for approval and transmittal.

Task 28—(Oversee metrication training implementation—(To be determined)

Subtasks:

A. Select qualified instructors, OJIs, evaluators, and administrators.

B. Train instructors, OJIs, and administrators.

C. Select individuals for training.

D. Prepare classroom sites.

E. Issue reporting instructions.

F. Distribute training materials.

G. Conduct training (classroom, OJT, self-instruction, etc.)

H. Record training tracking system data.

Milestone 9—Evaluate Metrication Training Program—(To be determined)

Task 29—Evaluate trainee reaction and development—(To be determined)

A. Identify the population or sample of the trainees to evaluate.

B. Prepare guidelines for evaluation.

C. Coordinate administration of instructions and collection of data regarding student reaction and learning achievement.

D. Analyze and interpret data.

E. Prepare evaluation reports for student reaction and learning achievement.

F. Make recommended adjustments, as appropriate.

Task 30—Evaluate job performance and organizational impact of metrication training—(To be determined)

Subtasks:

A. Identify the population or sample of the trainees to evaluate.

B. Make arrangements for any field visits.

C. Notify field respondents of their participation and responsibilities.

D. Select observers, interviewers, or survey administrators, as appropriate.

E. Train observers, interviewers, or survey administrators, as appropriate.

F. Coordinate administration of instruments, surveys, and supervisory input regarding job performance of trainees.

G. Obtain additional data about job performance and task performance.

H. Review organizational data and/or survey upper level management regarding organizational impact of training programs.

I. Analyze and report data.

J. Prepare evaluation reports.

B. Logistics

Milestone 10—Coordinate Plan Elements with Federal Oversight Agencies—(2/12/92)

Status: Pending

Task 31—Transmit plan to Commerce, GSA, OPM, MOC subcommittees, etc.—(12/13/91)

Status: Pending. The initial IRS Metric Conversion Plan, including the preliminary milestones and tasks for the IMSC Logistics Subcommittee have been sent to the Department of Commerce. As soon as the appropriate offices are identified within GSA, the IRS plan will be transmitted. Likewise, pending the outcome of the recharting of the MOC Procurement and Supply Subcommittee, the plan will be sent to those entities.

Task 32—Establish contacts with Federal oversight agencies (11/29/91)

Status: Pending. Initial contacts are in progress through the Department of Commerce. The next step will be to use the appropriate MOC functional subcommittees to establish these contacts. The Chairman of the IMSC Logistics Subcommittee has developed communications with the MOC Construction Subcommittee.

Task 33—Update plan to include oversight agency revisions and developments—(2/12/92)

Status: Pending. IRS will continue to incorporate GSA's detailed conversion plan. In addition, the MOC Construction Subcommittee's transition plan has been received and will soon be analyzed to determine its impact on the IRS plan.

Milestone 11—If Appropriate, Revise Directives, Guidelines, and Publications to Include Metric Policy, Procedures, and Dimensions—(9/30/92)

Status: Pending.

Task 34—Inventory IRS issuances for measurement-sensitive references—(3/16/92)

Status: Pending. Initial briefings have transpired to determine the strategy for obtaining a comprehensive listing of measurement-sensitive references in IRS documents. A decision has been reached to perform a computer-assisted key-word-in-context (KWIC) search of pertinent portions of the LEXIS system.

Task 35—Analyze need for conversion—(5/14/92)

Status: Pending. The respective functional programs within the IRS Facilities Standards Branch will be responsible for analyzing their corresponding portions of measurement-sensitive material.

Task 36—As appropriate, issue revised directives, guidelines, and publications—(9/30/92)

Status: Pending. A procedural decision has been made to include metrication revisions to documents requiring changes for other purposes (i.e., organizational, functional, policy, changes, etc.).

Milestone 12—Advise the Private Sector of Planned Metrication Policy and Procedural Changes—(7/24/92)

Status: Pending accomplishment of Task 36

Task 37—Transmit plan to the American National Metric Council (ANMC) and United States Metric Association (USMA)—(3/16/92)

Status: Completed. An acknowledgement has been received from ANMC who intends to treat IRS as a "demonstration agency."

Task 38—Participate in metric associations' meetings and conferences—(7/24/92)

Status: Pending. As of yet, IRS has not been notified of the scheduling of meetings and conferences.

C. Procurement

Milestone 13—Advise IRS Procurement Personnel of Metric Policy—(8/31/92)

Task 39—Issue IRS supplement to Treasury Acquisition/Procurement Regulation—(To be determined by issuance of TAPR)

Task 40—Issue IRS acquisition procedures—(8/31/92)

Subtasks	Responsible office(s)
A. Develop and implement the metric communication plan.	Office of Procurement Policy and Regional Chief Procurement Officers (RCPOs).
B. Raise metric awareness.	Office of Procurement Policy and field RCPOs.
C. Revise IRS Acquisition Procedures (IRSAP).	Office of Policy and Procedures.
D. Issue Policy and Procedures Memorandum.	Office of Policy and Procedures.

Milestone 14—Adopt Procedures to Foster the Use of Metrics in the Procurement Function—(8/31/92)

Task 41—Establish guidelines for metric analysis in major acquisitions over $20 million—(8/31/92)

Subtasks	Responsible office(s)
A. Include metric analysis in Source Selection Plan (SSP).	Contracting Officers (National Office & field).
B. Issue guidance to heads of offices for advance procurement planning and metric analysis (over $25,000).	Office of Policy and Procedures and RCPOs.
C. Develop a database of metric commodities and sources.	Office of Policy and Procedures.
D. Sponsor training for all N.O. and field contracts and procurement personnel.	Office of Policy and Procedures.
E. Include metrication as a topic in continuing professional education (CPE).	National Office and field.
F. Include interview question regarding metric knowledge and experience for procurement positions.	National Office and field.

Task 42—Establish guidelines for metric analysis in acquisitions under $20 million—(8/31/91)

Subtasks	Responsible office(s)
A. Issue a request to program offices to identify measurement-sensitive requirements.	Office of Policy and Procedures and RCPOs.
B. Provide a status of metric conversion through N.O. Procurement Process to Procurement and Program personnel.	Office of Policy and Procedures.
C. Provide guidance to program offices regarding metric-related questions for trade conferences and market surveys.	Office of Policy and Procedures.

Task 43—Revise requisition forms to accommodate metric conversions—(8/31/92)

Subtasks	Responsible office(s)
A. Identify and review IRS originated procurement related forms for possible revisions.	Office of Policy and Procedures
B. If revised, issue IRS Form 1334, Requisition for Services and Supplies, Blanket Purchase Agreements (BPAs), logs, etc.	Office of Policy and Procedures
C. Coordinate printing and distribution of revised forms.	Office of Policy and Procedures and Publishing Services.

Task 44—Include evaluation of metric conversion efforts as topic for field assistance visits—(8/31/92)

Milestone 15—Establish Communication With the Private Sector Concerning Procurement Metrication Initiatives of IRS—(8/31/92)

Task 45—Identify measurement-sensitive requirements in contract forecast submissions—(8/31/92)

Subtask	Responsible office(s)
A. Request that Treasury modify their software program for contract forecast reports.	Office of Policy and Procedures.

Task 46—Participate in private sector outreach activities (such as industry conferences and counseling sessions with small businesses)—(8/31/92)

Subtasks	Responsible office(s)
A. Participate in Metric Week activities through posters, exhibits, videos, speakers, etc.	National Office and field.
B. Subscribe to magazines and newsletters on metrication in the private sector.	Procurement managers (National Office and field).

Subtasks	Responsible office(s)
C. Provide a list of IRS measurement-sensitive requirements for the private sector.	Office of Policy and Procedures.

Task 47—Conduct survey of the metric marketplace using the ANMC, USMA, CBD, conferences, etc.—(8/30/92)

Subtask	Responsible office(s)
A. Compile list of IRS commodities available in metric dimensions.	Office of Policy and Procedures.

Task 48—Develop questionnaire for IRS small business specialists to use during counseling sessions—(8/30/92)

Task 49—Contribute articles to metric magazines and publications—(8/30/92)

D. Publishing

Milestone 16—Assess Status of Metrication in the Printing and Paper Manufacturing Industries—(8/30/92)

Status: Pending.

Task 50—Coordinate plan with the GPO and Postal Service—(6/10/92)

Status: Pending

Subtasks:

A. Transmit initial plan milestones and tasks to GPO and Postal Service.

B. Research the status of metrication in major printing and paper manufacturing firms.

C. Update IRS plan to incorporate policy and procedural guidance established by GPO and the Postal Service.

D. Participate on TCC Publishing Subcommittee.

E. Transmit plan milestones and tasks to the Department of Defense.

F. Public Affairs

Milestone 17—Inform the Public of Metrication Developments—(8/30/92)

Status: Pending

Task 51—Publish IRS Metric Conversion Plan in the Federal Register—(5/15/92)

Status: Pending

Subtasks:

A. Explore costs and funding availability through Chief Counsel (Technical).

B. Pursue likelihood of having the Treasury Department issue the bureaus' plans in one Federal Register issuance.

Task 52—Issue significant IRS metrication decisions, procedures, etc. in Federal Register or press releases—(8/30/92)

Status: Pending

Subtasks:

Same as Task 51.

Task 53—Issue metrication policies, procedures, and developments in the Commerce Business Daily—(8/30/92)

Status: Pending

Phase III—Evaluation

Milestone 18—Prepare annual report describing IRS accomplishment of plan milestone and goals—(10/23/92)

Task 53—Compile IRS input of metric conversion achievements—(10/5/92)

Task 54—Identify IRS problems or barriers discouraging metric conversion—(10/23/92)

[FR Doc. 92-1327 Filed 1-21-92; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "When Kingship Descended from Heaven: Masterpieces of Mesopotamian Art from the Louvre" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, DC, beginning on or about March 8, 1992, to on or about August 9, 1992, and of some of the objects at the Metropolitan Museum of Art, New York, New York, following exhibition in Washington, is in the national interest.

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619-6975, and the address is U.S. Information Agency, 301 Fourth Street, SW., room 700, Washington, DC 20547.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: January 14, 1992.

Alberto J. Mora,
General Counsel.

[FR Doc. 92-1462 Filed 1-21-92; 8:45 am]

BILLING CODE 8230-01-M

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Proposed collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256. USIA is requesting approval for a three-year extension as well as approval for revisions made to the Fulbright Teacher Exchange Program, United States Information Agency Application for Teaching Positions/Seminars Abroad under OMB control number 3116-0181 which expires June 30, 1992. The proposed revisions are suggested to ensure easier readability and clarity of instructions for applicants. Estimated burden hours per response is two (2) hours. Respondents will be required to respond only one time.

DATES: Comments should be submitted no later than February 21, 1992.

Copies: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619-5503; and OMB review: Ms. Lin Liu, Office of Information and Regulatory Affairs, Office of Management and

Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average two (2) hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Fulbright Teacher Exchange Program United States Information Agency Application for Teaching Positions/Seminars Abroad.

Form Number: IAP 92.

Abstract: To be used by applicants under the Fulbright Teacher Exchange Program which provides opportunities for U.S. teachers to exchange positions for designated periods with foreign counterparts, or to attend one of a number of short-term seminars abroad on a variety of topics.

Proposed Frequency of Responses:

No. of Respondents—940.
Recordkeeping Hours—.1.
Total Annual Burden—2,609.

Dated: January 15, 1992.

Rose Royal,
Federal Register Liaison.

[FR Doc. 92–1472 Filed 1–21–92; 8:45 am]
BILLING CODE 8230–01–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment. Notice of hearing.

SUMMARY: On January 2, 1992, (57 FR 90) the Commission promulgated 36 amendments to the sentencing guidelines, policy statements, and commentary. The Commission is considering promulgating two additional amendments. The proposed amendments or a synopsis of issues to be addressed are set forth below. The Commission may report amendments to the Congress on or before May 1, 1992. Comment is sought on these two supplementary amendments, as well as all proposals and alternative proposals published January 2, 1992.

DATES: Public comment should be received by the Commission no later than March 2, 1992, in order to be considered by the Commission in the promulgation of amendments due to the Congress by May 1, 1992. The Commission has scheduled a public hearing on these amendments for February 25, 1992, at 9:30 a.m.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., suite 1400, Washington, DC 20004, Attention: Guideline comment.

The hearing will be held at the Ceremonial Courtroom, United States Courthouse, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 626–8500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered under 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p).

Ordinarily, the Administrative Procedure Act rule-making requirements are inapplicable to judicial agencies; however, 28 U.S.C. 994(x) makes the Administrative Procedure Act rulemaking provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Commission.

Section 1B1.10 of the United States Sentencing Commission Guidelines Manual sets forth the Commission's policy statement regarding retroactivity of amended guideline ranges. Comment is requested regarding whether any of the proposed amendments should be made retroactive under this policy statement.

Although the amendments below are specifically proposed for public comment and possible submission to the Congress by May 1, 1992, the Commission emphasizes that it welcomes comment on any aspect of the sentencing guidelines, policy statements, and commentary, whether or not the subject of a proposed amendment.

Note: Publication of an amendment for comment does not necessarily indicate the view of the Commission or any individual Commissioner on the merits of the proposed amendment.

Authority: 28 U.S.C. § 994 (a), (o), (p), (x).

William W. Wilkins, Jr.,
Chairman.

Section 1B1.5. Interpretation of References to Other Offense Guidelines

37. *Issue for Comment:* The Commission seeks comment regarding whether section 1B1.5 (Interpretation of References to Other Offense Guidelines) and/or its commentary should be amended to further clarify how the guidelines are to be applied when a Chapter Two offense guideline references another guideline.

Section 5G1.3. Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment

38. *Proposed Amendment:* Section 5G1.3(b) is amended by deleting "or if the prior undischarged term of imprisonment resulted from a federal offense and was imposed pursuant to the Sentencing Reform Act,".

Section 5G1.3(c) is amended by inserting "(Policy Statement)" immediately before "In any other case".

Reason for Amendment: This amendment deletes the second prong of § 5G1.3(b). Cases currently addressed by this prong would henceforth be addressed by subsection (c). Consistent with the structure of the Guidelines Manual, subsection (c) is expressly designated a policy statement. The Commission has found a number of problems in implementation of the second prong of subsection (f). This amendment would provide for consideration of such cases under subsection (c), which is designed to produce the same result but requires less precise calculations.

[FR Doc. 92–1471 Filed 1–21–92; 8:45 am]
BILLING CODE 2210–40–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 14
Wednesday, January 22, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 F.R. 953.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Wednesday, January 22, 1992.

ADDED TO THE AGENDA:

Rule 4.7—proposed rules on accredited investors.

Guideline on economic and public interest requirements for contract market designation.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–63142.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–1670 Filed 1–17–92; 1:14 pm]

BILLING CODE 6351–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, January 27, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building: C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: CLOSED.

MATTERS TO BE CONSIDERED:

1. Matters relating to the Plans administered under the Federal Reserve system's employee benefits program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 17, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–1701 Filed 1–17–92; 8:45 am]

BILLING CODE 6210–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, February 4, 1992, in Miami, Florida. The meeting is open to the public and will be held in Conference Room 102–B at the Miami Post Office, 2200 NW 72nd Avenue. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, February 3, 1992, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

February 4–8:30 a.m. (Open)—Room 102–B, Miami Division

1. Minutes of Previous Meeting, January 6–7, 1992.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Appointment of Audit Committee Members. (Vice Chairman Griesemer)
4. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate)
5. Quarterly Report on Financial Performance. (Comer S. Coppie. Senior Assistant Postmaster General, Finance Group)
6. Capital Investment. (Stanley W. Smith, Assistant Postmaster General, Facilities Department, and Hector A. Barraza, Wichita, Kansas, Field Division General Manager/Postmaster)
   a. Kansas City, Kansas, GMF
7. Report on the Southern Region. (Jerry K. Lee, Sr., Regional Postmaster General)
8. Report on the Miami Division. (James C. Walton, Field Division General Manager/Postmaster)
9. Tentative Agenda for the March 9–10, 1992, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 92–1692 Filed 1–17–92; 2:40 pm]

BILLING CODE 7710–12–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 20, 27, February 3, and 10, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 20

Tuesday, January 21

12:30 p.m.
Briefing on Enforcement Strategy Related to Contaminated Sites (Closed—Ex. 9 and 10)

Thursday, January 23

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 27—Tentative

Wednesday, January 29

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 3—Tentative

Wednesday, February 5

1:30 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

Thursday, February 6

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 10—Tentative

Wednesday, February 12

1:30 p.m.
Briefing on Requirements for Integral System Testing of Westinghouse AP–600 (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: "Collegial Discussion of Items of Commissioner Interest" scheduled for January 16, was *cancelled.*

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meeting call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: January 17, 1992.
William M. Hill, Jr.,
Office of the Secretary.
[FR Doc. 92-1663 Filed 1-17-92; 2:17 pm]
BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 57, No. 14
Wednesday, January 22, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 104

[Notice 1991-24]

Loans From Lending Institutions to Candidates and Political Committees

Correction

In rule document 91-30766 beginning on page 67118 in the issue of Friday, December 27, 1991, make the following corrections:

1. On page 67118, in the first column, in the **SUMMARY**, in the fourth line, "of" should read "to".

2. On the same page, in the third column, in the last paragraph, in the fifth line, "loan" should read "loans".

3. On page 67122, in the third column, in the first paragraph, in the seventh line, "not" should read "now".

4. On the same page, in the same column, in the last paragraph, in the tenth line, "my" should read "may".

5. On page 67123, in the first column, in the fourth paragraph, in the fifth line, "reports" should read "receipts".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0431]

Ciba-Geigy Corp.; Filing of Food Additive Petition

Correction

In notice document 91-29099, appearing on page 63737, in the issue of Thursday, December 5, 1991, make the following correction:

On page 63737, in the second column, under **SUPPLEMENTARY INFORMATION:**, in the third line, "sec. 490" should read "sec. 409".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88F-0372]

Ciba-Geigy Corp.; Withdrawal of Food Additive Petition

Correction

In notice document 91-29100, appearing on page 63737, in the issue of Thursday, December 5, 1991, make the following correction:

On page 63737, in the 3rd column, under **SUPPLEMENTARY INFORMATION:**, in the 15th line, "not" should read "now".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90P-0218]

Canned Fruit Cocktail Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

Correction

In notice document 91-29103, beginning on page 63737, in the issue of Thursday, December 5, 1991, make the following correction:

On page 63738, under **SUPPLEMENTARY INFORMATION:**, in the second column, in the first full paragraph, in the eighth line, "an" should read "and".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0481]

Chelsea Laboratories, Inc.; Withdrawal of Approval of 20 Abbreviated New Drug Applications

Correction

In notice document 91-29105, appearing on page 63740, in the issue of Thursday, December 5, 1991, make the following corrections:

1. On page 63740, in the first column, under **EFFECTIVE DATE:**, "December 8" should read "December 5".

2. On the same page, in the same column, in the table, under the column heading ANDA No., in the third line, "ANDA 70140" should read "ANDA 70-140".

3. In the same table, under the column heading Drug, in the 11th line, "Propranolol" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0352]

Chelsea Laboratories Inc., Withdrawal of Approval of 12 Abbreviated New Drug Applications

Correction

In notice document 91-29104, beginning on page 63740, in the issue of Thursday, December 5, 1991,, make the following corrections:

1. On page 63740, in the third column, in the table, in the column under the heading Drug, in the first line, "Perphenazine" was misspelled.

2. On the same page, in the same column, in the first full paragraph, in the sixth line, "manufacturer" should read "manufacture".

3. On page 63741, in the first column, in the third line, "and" should read "any".

4. On the same page, in the same column, in the fourth line, "ground" should read "grounds".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-940-4730-12]

Filing of Plats of Survey

Correction

In notice document 91-30615 appearing on page 66640 in the issue of Tuesday, December 24, 1991, make the following correction:

In the first column, in the land description, in the fifth line, "T. 51" should read "T. 57".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-04; Amendment 39-8036, AD 91-20-02]

Airworthiness Directives; General Electric Company (GE) CF6-80C2 Series Turbofan Engines

Correction

In rule document 91-25717, beginning on page 55231, in the issue of Friday, October 25, 1991, make the following correction:

§ 39.13(3)(b) [Corrected]

On page 55232, in the third column, in § 39.13(3)(b), in the third line, "P/N 130M31G10," should read "P/N 1303M31G10,".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-91-33]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

Correction

In notice document 91-21790, beginning on page 46348, in the issue of Wednesday, September 11, 1991, make the following correction:

On page 46349, in the second column, in the file line at the end of the document, "FR Doc. 91-27190" should read "FR Doc. 91-21790".

BILLING CODE 1505-01-D

VOL
57

ISS
14

JA
22

1992

UMI

federal register

Wednesday
January 22, 1992

Part II

Department of Health and Human Services

Indian Health Service

Core Data Set Requirements; Notice

VOL
57
ISS
14
JA
22
1992
UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Core Data Set Requirements

AGENCY: Indian Health Service, HHS.

ACTION: Notice of Indian Health Service Core Data Set Requirements (CDSR).

FOR FURTHER INFORMATION CONTACT: Jack Markowitz, telephone (301) 443–0750 or Anthony D'Angelo, telephone (301) 443–1180. (These are not toll free numbers.) Copies of the forms referenced as being contained in appendix A may be obtained by contacting Anthony D'Angelo, Indian Health Service, room 6–41, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: The Indian Health Service (IHS) has established a set of core program data elements that all IHS programs and facilities are required to submit for the IHS National data base.

These core data requirements are necessary for good management purposes and to fulfill Congressional and other mandatory reporting requirements including the requirements for meeting the management information needs of IHS and tribal contractors set out in section 602 of the Indian Health Care Improvement Act, Public Law 94–437, as amended (25 U.S.C. 1662). The core data requirements were developed by a joint IHS and Tribal Representative Work Group over a period of seven months. Two meetings were held—December 1988 and June 1989. The participants included 11 IHS personnel, 8 tribal personnel, and 9 persons representing the various IHS information systems. The efforts of the working group were a major step toward reconciling the differences in data priorities between the IHS and providers and ensuring the development of a core data set that has beneficial uses and reasonable costs.

The core data set requirements were published in the **Federal Register** on August 7, 1990, as an IHS proposal with an opportunity to comment. This final notice takes into account the comments that were received from 11 IHS offices and 12 tribal groups. There were general comments in support of or against the concept of the core data set. There were specific comments indicating the need to add or delete data elements or reporting requirements. There were also comments requesting clarification of some aspects of the requirements. The significant changes to the core data set requirements as a result of the comments include:

(1.) Reduction of the reporting burden associated with the Facility Data System and the Environmental Health Reporting System (i.e., one form is now used for both purposes thereby eliminating redundant reporting of data);

(2.) Provision of a sampling option for eight IHS information systems (i.e., Dental Reporting System—non-clinical activities, Environmental Health Activity Reporting and Facility Data System—environmental health activities, Mental Health and Social Services Reporting System, Chemical Dependency Management Information System—non-clinical activities, Community Health Representative Information System, Community Health Activity Reporting System, Health Education Resource Management System, and Nutrition and Dietetic's Program Activities Reporting System);

(3.) Deletion of the requirement for fluoridator maintenance and repair reports;

(4.) Deletion of the Generic Activities Reporting System as a separate information system since it is just a software package for processing input documents from systems described elsewhere in the core data set;

(5.) Specification of safeguards to protect patient confidentiality wherever records identify individual patient health care;

(6.) Clarification of reporting requirements for Mental Health and Social Services (i.e., deletion of references to organizational/administrative and human resources/manpower data which are not part of the CDSR);

(7.) Specification of the transition period from use of the Alcoholism Treatment Guidance System to use of the Chemical Dependency Management Information System (CDMIS) and description of CDMIS; and

(8.) Inclusion of reporting requirements for Pharmacy (they were inadvertently omitted from the initial CDSR notice); and

(9.) Inclusion of reporting requirements for Urban Indian Health Programs. The initial notice indicated that IHS planned to include the Urban Indian program core data reporting requirements in the final publication. They were originally omitted since they had already been established in the instruction manual, "Urban Indian Health Programs, Common Reporting Requirements" and were incorporated into contract requirements. They are included now in order that all CDSRs will be found in the same document.

The core data requirements are a subset of the data that is already being collected locally by IHS providers in order to manage effective health service programs. The data are used to define current health status (e.g., prevalance of diabetes); to identify problems requiring attention (e.g., high number of facility visits related to accidents); and to evaluate effectiveness of intervention programs (e.g., reduced infant deaths related to increased prenatal care). The core data set is needed for the following purposes:

Quality assurance;
Epidemiology;
Problem identification;
Identification of population in need;
Resource management/allocation;
Budget support and justification;
Facilities and program planning; and
National billing.

Specifically, the elements of the core data set are derived from those elements already embodied within the following IHS information systems:

Patient Registration System
Ambulatory Patient Care (APC) System
Direct Inpatient Care System
Contract Health Services Inpatient System
Contract Health Services Outpatient System
Dental Reporting System
Pharmacy System
Environmental Health Activity Reporting and Facility Data System
Mental Health and Social Services Reporting System
Alcoholism Treatment Guidance System (ATGS)/Chemical Dependency Management Information System (CDMIS)
Community Health Representative Information System (CHRIS)
Community Health Activity Reporting System
Health Education Resource Management System (HERMS)
Nutrition and Dietetic's Program Activities Reporting System
Clinical Laboratory Workload Reporting System
Urban Indian Health Common Reporting
Fluoridation Reporting Data System

Each of the above systems has its own manual. This notice consolidates and summarizes the data submission formats, edits and schedules from these existing information systems. The core data set reduces the total number of data elements required from the IHS health care providers and the frequency of reporting, for certain elements, has been reduced from monthly to quarterly. Moreover, for activities-type reporting, data need only be reported for a sample of the services provided.

The IHS wants to use the social security number (SSN) as the unique

patient identifier in the IHS National data base. Patients may voluntarily disclose their SSN to health care providers after being informed of: (1) The purposes of collecting the SSN (for uniquely identifying patient records, reducing duplicative counting of cases of a disease, improving patient and health program management, and third party billing); (2) refusal will not result in denial of services; and (3) the provider must submit the SSN to IHS. If the health care provider is unable to obtain the SSN, then there is no longer a requirement, as indicated in the initial CDSR notice, that it submit a 9-digit substitute SSN for the patient. However, it is still required that the chronological health record number (HRN) be submitted for every patient.

There are some data that need to be reported by IHS providers, contractors, and grantees to IHS headquarters in order to participate in special funds established through federal legislation or Congressional appropriations language. There is no mandate that providers, contractors, or grantees submit such data, but they need to do so to be eligible to receive the funds. Examples of such special programs are the Contract Health Services Catastrophic Health Emergency Fund and Deferred Services.

Information collected in accordance with the core data set requirements, which identifies individual patients provided health care, is included in the IHS system of records titled: 09–17–0001, Health and Medical Records Systems, HHS/IHS/OHP (**Federal Register**, November 22, 1988, pages 47348–47353). These records are to be afforded safeguard protections as required by the Privacy Act of 1974 (5 U.S.C. 552a). These safeguards are described in general terms in the system of records notice for system 09–17–0001. In addition, information supplied by staff of health care facilities established to provide alcohol or drug abuse treatment are to be protected under the safeguard provisions of the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR part 2. These were last published in the **Federal Register**, June 9, 1987, pages 21796–21814.

As required, program reporting requirements will be submitted to OMB for clearance pursuant to the Paperwork Reduction Act. Not all of the program reporting requirements will need to be submitted to OMB for clearance. The following have already received OMB approval and only extensions of their expiration dates will need to be sought.

Contract Health Services Inpatient System
Contract Health Services Outpatient System
Community Health Representative Information System
Urban Indian Health Common Reporting

The following reporting requirements are totally exempt from the OMB approval process because the information collected by them is used to properly treat clinical disorders of patients.

Ambulatory Patient Care System
Direct Inpatient Care System

The remaining program reporting requirements either are not covered or only partially covered by the "clinical" exemption. Therefore, OMB clearance will be sought for the applicable portions, as noted below, of these information systems.

Patient Registration System (portion dealing with third party eligibility status)
Dental Reporting System (portion dealing with non-clinical activities reporting)
Pharmacy System (all)
Environmental Health Activity Reporting and Facility Data System (all)
Mental Health and Social Services Reporting System (all)
Chemical Dependency Management Information System (portion dealing with non-clinical activities reporting)
Community Health Activity Reporting System (all)
Health Education Resource Management System (all)
Nutrition and Dietetic's Program Activities Reporting System (all)
Clinical Laboratory Workload Reporting System (all)
Fluoridation Reporting System (all)

For now, Indian tribes and tribal organizations with contracts or grants under authority of the Indian Self-Determination Act, Public Law 93–638, as amended, will continue to be governed by the data collection and reporting requirements of the contract or grant as well as any applicable laws, regulations, and policies. The extent of any future applicability of the CDSR to Public Law 93–638 contracts, grants, and cooperative agreements will be determined in the final regulations implementing the 1988 amendments to Public Law 93–638. For the convenience of those reviewing the notice of proposed rulemaking (NPRM) for Public Law 93–638, the CDSR will be reprinted in the same **Federal Register** issue in which the Public Law 93–638 NPRM appears.

As long as their own data collection and reporting system provides for the timely submission of accurate and complete data meeting the core data set requirements, the IHS contractors and grantees will not be required to use the collection and reporting system used by IHS. The contractor/grantee data system must meet the requirements of the Security Act of 1987, Public Law 100–275, which are also applicable to the IHS directly operated programs. The IHS will provide technical assistance to tribal contractors and grantees to convert their data into the formats and appropriate transmission media required for IHS data collection and reporting.

All data will, unless otherwise agreed upon, be sent to the Division of Data Processing Services (DDPS) in Albuquerque through the appropriate Area Office. Each IHS Area will establish its own procedures for reporting data and will monitor compliance with reporting requirements consistent with applicable laws, regulations, policies, and grant and contract instruments. Contractors and grantees are responsible for correcting problems regarding incomplete and inaccurate data.

Contractors and grantees may use IHS forms or collect the required data in any manner consistent with their operations. The submission of these data must meet the format and data requirements of the IHS information systems.

Core Data Set Requirements for the Following IHS Information Systems

A. Patient Registration System

1. Reporting Requirements

a. Data on new patients, or changes to previously registered patients, is submitted at least quarterly through the appropriate Area Office to the Division of Data Processing Services (DDPS) in Albuquerque. Data must be submitted monthly for central billing purposes.

b. Data must be received by the DDPS by the 1st of the month to ensure it being included in the next month's registration reports.

c. The IHS maintains a complete registration data base for each Area on the IHS central computer at DDPS. The types of activity that are reported include:

(1) Registration of new patients.

(2) Changes in any of the required registration fields (i.e. name, residence) for a patient.

(3) Deletion of an entire patient record. (This would only be done when the patient is registered in error, or is registered twice at the same facility

under two different health record numbers).

(4) Delete and merge to another health record number. This is done when a patient is registered twice at two different facilities, and you wish to merge the two records together by deleting one and merging the data to the second number indicated.

Normally the last two activities will only be performed by the registration data base administrator at the Area Office.

2. Record Formats

New patient data, or modifications to patient data, are submitted in a 310 character record as shown in Figures A–1 through A–3. Generally data from different facilities will be given different batch numbers to facilitate error correction, since all errors are listed by batch number, but this is not required.

Transactions to delete a patient record entirely, or delete a patient and merge the data into another health record number, require a different format, as shown in Figures A–4 and A–5. For these transactions, a separate batch header is submitted followed by any number of delete/merge transactions. The patient ID number used for these transactions is not the normal health record number, but the unique patient ID used in the centralized registration system. This number consists of three alpha codes indicating the Area, SU and facility followed by six numerics.

The delete/merge transactions must have a different batch number than other transactions, and the individual delete/merge transactions must immediately follow the delete/merge header. However, regular batches and delete/merge batches can be combined on the same tape.

Samples of the IHS patient registration forms are included in Appendix A.

3. Transmission Media

Registration records should be sent by the Area to DDPS on nine track, unlabeled EBCDIC tapes, at 1600 or 6250 bits per inch (BPI). Records should be blocked at 10 records per block. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS Facility Registration System

An ANSI MUMPS facility registration system is available to any covered contractor that wishes to implement it. This system provides the capability of generating the transactions described above automatically, and creating a tape cartridge (or transaction file for transmission by telecommunications) to be sent to DDPS for all new and/or modified patients.

REGISTRATION FORMAT NEW AND/OR MODIFIED TRANSACTIONS

Position	Field	Edits	Required fields
1–4	BATCH NUMBER	Numeric, Right Justified	
5–10	FACILITY CODE	Area-SU-Facility Code. Must be in IHS Facility Table	X
	5–6 Area Code		
	7–8 Service Unit Code		
	9–10 Facility Code		
11–16	HEALTH RECORD NUMBER	Numeric, Right Justified	X
17–56	PATIENT NAME	See Note 1. Last and First Name. Data must be left justified	X
	17–36 LAST		
	37–47 FIRST		
	48–56 MIDDLE		
59–60	CLASSIFICATION CODE	Numeric, Right Justified. Codes must be in range 01–20	
61–67	DATE OF BIRTH	Must be less than current date. Month not greater than 12, day not greater than 31.	X
	61–62 MONTH		
	63–64 DAY		
	65–67 Year (Last three digits)		
68	SEX	M or 1 for Male; F or 2 for Female	X
69–77	SOCIAL SECURITY NUMBER	Numeric, Right Justified	X
78–80	TRIBE OF MEMBERSHIP CODE	Numeric, right justified. Must be valid code in IHS Tribe Table	X
81	BLOOD QUANTUM	Numeric	X
82–113	FATHER'S NAME	See Note 1	
	82–101 LAST		
	102–112 FIRST		
	113 MIDDLE INITIAL		
114–128	COMMUNITY OF RESIDENCE	Community-County-State Code, must be in IHS Community Table	X
	114–116 COMMUNITY CODE		
	117–118 COUNTY CODE		
	119–120 STATE CODE		
121–176	MAILING ADDRESSES		
	121–150 STREET/BOX NUMBER	Alpha-Numeric. If submitted, town and state also required	
	151–165 TOWN	Alphabetic, left justified. If submitted, state also required	
	166–167 STATE	Alphabetic. Required if town submitted	
	168–176 ZIP	Numeric, right justified	
177–208	MOTHER'S NAME	See Note 1	
209–214	DATE OF DEATH (MM/DD/YY)	Same Edit as Date of Birth	X*
215–235	MEDICARE A	If central billing, all fields required.	
	215 ELIGIBLE	Y or N (N will delete an authorization previously submitted)	X
	216–224 ENROLLMENT NUMBER	Numeric, all digits required	
	225–229 ENROLLMENT SUFFIX	Alphanumeric, left justified. Must be valid code in Medicare suffix table	
	230–235 DATE OF ELIGIBILITY (MD/DD/YY)	Month and Year Required. Standard Date Edit	
236–256	MEDICARE B	Same as Medicare A	X
257–277	MEDICARE AB	Same as Medicare A	X
278–286	MEDICAID	If central billing, all fields required	
	278 ELIGIBLE	Y or N (N will delete an authorization previously submitted)	X
	279–287 ELIGIBILITY NUMBER	No Edit	
	288–292 SUFFIX	No Edit	

REGISTRATION FORMAT NEW AND/OR MODIFIED TRANSACTIONS—Continued

Position	Field	Edits	Required fields
	293–298 DATE OF ELIGIBILITY (MM/DD/YY)	Month and Year Required. Standard Date Edit	
299	VETERAN (VA) ELIGIBLE	Y, N or Blank	X
300	BLUE CROSS	Y, N or Blank	
301	OTHER INSURANCE	Y, N or Blank	X
302	CHS ELIGIBILITY	Y, N or Blank	
303	PATIENT ASSIGNMENT/RELEASE SIGNATURE ON FILE.	Y, N or Blank. Required to initiate billing Medicare	
304	ADD/MODIFY CODE	1—New Patient 2—Modification	
305–310	RELEASE DATE (MM/DD/YY)	Standard Date Edit. Required for billing	

Note 1: ALL NAME FIELDS MUST BE ALPHABETIC WITH THE FOLLOWING SPECIAL CHARACTERS ALLOWED:
- ONE SET OF LEFT AND RIGHT PARENTHESES IMBEDDED IN NAME.
- ONE OCCURRENCE OF AN APOSTROPHE.
- TWO OCCURRENCES OF A PERIOD.
- FIVE OCCURRENCES OF A DASH, OR HYPHEN.
- NO LOWER CASE.

*As available.

REGISTRATION FORMAT DELETE/MERGE TRANSACTIONS

[Header Record]

Position	Field	Description	Required
1–3	IDENTIFIER	THREE VERTICAL BARS (HEX "4F"CHARACTERS)	X
4–5	AREA CODE	STANDARD AREA CODE OF THE REGISTRATION DATA BASE.	X
6–11	AREA/SU/FAC CODE*	AREA, SERVICE UNIT, FACILITY CODE OF THE SUBMITTING FACILITY.	X
12–17	AREA/SU/FAC OF HEALTH REC NO.	CODE PREFIX FOR HEALTH RECORD NUMBERS BEING USED. NORMALLY DUPLICATE OF POSITIONS 6–11.	X
18	NOT USED		
19–22	BATCH NUMBER	NUMERIC, RIGHT JUSTIFIED	X
23–25	NO FORMS	NUMBER OF TRANSACTIONS IN THE BATCH	X
26–31	DATE	DATE SUBMITTED (YYMMDD)	X
32–34	INITIALS OF REQUESTOR	OPTIONAL	
35–60	COMMENTS	OPTIONAL—FOR LOCAL USE	
61–80	NOT USED		

REGISTRATION FORMAT DELETE/MERGE TRANSACTIONS

[Transaction Record]

Position	Field	Description	Required
1	IDENTIFIER	A "7" IN POSITION 1	X
2–4	INITIALS & SEX	INITIALS (LAST, FIRST) AND SEX OF PATIENT TO BE DELETED.	X
5–13	PATIENT ID	PATIENT ID TO BE DELETED. (THREE ALPHA AND SIX NUMERICS). THIS IS THE CENTRALIZED REGISTRATION UNIQUE ID NUMBER.	X
14–15	TRANSACTION TYPE	"99"	X
16	NOT USED		
17–22	DATE	DATE SUBMITTED (YYMMDD)	X
23–25	ASTERISKS	"* * *"	X
26–34	PATIENT ID	PATIENT ID TO WHICH DATA IS TO BE MERGED	X
35	MOVE DEMOGRAPHIC	FLAG TO INDICATE WHETHER TO MOVE DEMOGRAPHIC DATA FROM DELETED RECORD, OR TO RETAIN DEMOGRAPHIC DATA OF THE RECORD TO WHICH MOVED. "1" INDICATES TO RETAIN DEMOGRAPHIC DATA OF DELETED RECORD, "2" TO RETAIN DATA OF RECEIVING RECORD.	X
36–37	FACILITY	FACILITY CODE SUBMITTING FORM	X
38–67	SUBMITTED BY	NAME OF PERSON SUBMITTING FORM	X

TO DELETE A PATIENT, POSITIONS 1–25 ARE REQUIRED. TO DELETE AND MERGE TO A NEW PATIENT, POSITIONS 1–37 ARE REQUIRED.

B. Ambulatory Patient Care System (APC)

1. Reporting Requirement

a. An Ambulatory Patient Care (APC) record is required for an encounter between a patient and health care provider in an organized clinic within an IHS facility (including covered contractors) where service resulting from the encounter is not part of an inpatient stay. The patient or his/her representative (representative only to pick up prescription) must be physically present at the time of service. Also, a note must be written in the medical record by a licensed, credentialled or other provider qualified by the medical staff or facility administrator.

b. Part 4, chapter 3, section 1 of the Indian Health Manual, provides

complete definitions and procedures for reporting into the APC system. The definition of an APC visit given in 1a above is somewhat different and supersedes the definition in the IHS Manual. The IHS Manual will be changed to reflect the new definition.

c. Each Area will define procedures for collecting APC data and creating automated records in the format described in the next section. Options include:

(1) Key-entry of forms at the Area.

(2) Key-entry of forms by a contractor.

(3) Key-entry at the local facility with an RPMS ANSI MUMPS data entry system.

d. Records will be consolidated at the Area level and forwarded at least quarterly to the Division of Data Processing Services (DDPS) at Albuquerque by the 15th of the month. Data must be submitted monthly for central billing purposes.

2. Record Formats

a. The APC record contains individual patient encounter information. Each record is 200 characters in length.

b. The format of the APC record is shown in Figures B–1 through B–3.

c. A sample of the IHS APC form is included in Appendix A.

3. Transmission Media

a. APC records for each Area are generally mailed to DDPS on nine track unlabeled, unblocked EBCDIC tape. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS APC Data Entry System

a. There is available an RPMS ANSI MUMPS APC data entry program which allows for records to be keyed locally, transmitted to the Area, and fowarded from the Area to DDPS by telecommunications.

5. Community Health Aide Program

a. An Ambulatory Patient Care (APC) or equivalent record is required for an encounter between a community health aide and a patient.

b. The format of the required record is shown in Figures B–1 through B–3. A sample of the IHS APC form is included in Appendix A.

c. The Alaska Area Office and the contractor will need to determine how the required data will be collected and transmitted to the Area.

DIRECT OUTPATIENT SYSTEM RECORD [2]

Position	Field	Required
1–2	Record Code. Always "15".	X
3–4	Area Code	X
5–6	Service Unit Code	X
7–8	Service Location Code (Facility Code).	X
9–14	Date of Service (MMDDYY).	X
15	Day of Week (Sunday=1, Saturday=7)	
16–21	Patient Health Record Number.	X
22–30	Social Security Number	X
31–38	Date of Birth (MMDDYY)	X
37	Sex	X
38–40	Tribe of Membership Code.	X
41–43	Optional Code (Area options)	
44–50	Community of Residence	
	44–46 Community Code.	X
	47–48 County Code	X
	49–50 State Code	X
51	Time of Day Code; "1" 8AM-Noon; "2" Noon-5PM; "3" 5PM-10PM; "4" 10PM-8AM	
52–53	Type of Clinic (IHS Table)	
54–61	Service Rendered by (Discipline Code)	
	54–55 Primary Provider Discipline.	X
	56–57 Other Provider Discipline	
	58–59 Other Provider Discipline.	
	60–61 Other Provider Discipline.	
62–71	Immunizations Given	X
	62 1 for Tetanus Toxin	
	63 2 for DT	
	64 3 for DPT	
	65 4 for Polio	
	66 5 for Measles	
	67 6 for Rubella	
	68 7 for Small Pox	
	69 8 for Mumps	
	70 9 for Influenza	
	71 0 for Other	
72	All Immunizations Current (1 yes; 2 no).	X
73	Immunization Register Update	
74	Skin Test Result "1" PPD 0–4M; "2" PPD 5–9MM; "3" PPD 10–19M; "4" PPD 20+MM; "5" TINE NEG.; "6" TINE POS	
75	Purpose of Skin Test "1" Routine; "2" Contact; "3" Suspect; "4" School	
76	INH Prophylaxis "1" 1 Year Completed; "2" Start "3" Continue; "4" Discontinue	
77–78	Next TB Appointment in months	
79–82	TB Diagnosis	
	79 "1" 1st visit, "2" revisit.	
	80–82 Three digit APC code (005–012)	

DIRECT OUTPATIENT SYSTEM RECORD [1]—Continued

Position	Field	Required
83–93	Maternal Health and Family Planning	
	83 Marital Status (1 Married; 2 Not Married)	
	84–85 Gravida	
	86–87 Number of Living Children	
	88 Trimester of 1st Prenatal Visit	
	89 "1" 1st visit for prenatal care "2" revisit for prenatal care	
94–96	Not Used	
97–102	IHS Unit No at Parent Facility	
103–107	Accidents (required for 1st visits of APC codes 700–792).	
	103–104 Cause of Accident (01–19).	X [3]
	105–106 Place (01–12)	X [3]
	107 Alcohol related (1 yes; 2 no)	X [3]
108–113	Area optional code	
114–117	APC Codes for Injury	
	114 "1" 1st visit; "2" revisit	
	115–117 APC Code	X [3]
118–121	APC Codes for Other Problems/Clinical Imp	
	118 "1" 1st visit, "2" revisit	
	119–121 APC code	X [3]
122–132	Diagnostic Services Requested	
	122 "0" or blank for none	
	123 "1" for Urinalysis	
	124 "2" for Hematology	
	125 "3" for Chemistry	
	126 "4" for Bacteriology	
	127 "5" for Serology	
	128 "6" for Pap	
	129 "7" for ECG/EKG	
	130 "8" for Other	
	131 "1" for X-Ray-Chest	
	132 "2" for Other X-ray	
133	Minor Surgical Procedures ("1" if yes).	X [3]
134	Disposition Code "1" Return by appointment "2" Return PRN "3" Admit to IHS Hospital "4" Admit to non-IHS Hospital "5" Refer for OP Consultation—IHS "6" Refer for OP Consultation—non-IHS "7" Did not Answer	
135–139	CPT4/HCPCX Code 1	X [3]
140–144	CPT4/HCPCX Code 2	X [3]
145–149	CPT4/HCPCX Code 3	X [3]
150–154	CPT4/HCPCX Code 4	X [3]
155–159	CPT4/HCPCX Code 5	X [3]
160–166	Unused	
167–176	Specific provider codes	
177–181	ICD-9-CM Code 1	X [3]
182–186	ICD-9-CM Code 2	X [3]
187	Unused	

DIRECT OUTPATIENT SYSTEM RECORD [1]—Continued

Position	Field	Required
186–191	Surgical Procedure (ICD-9-CM Code).	X [2]
192–200	Unused, except for some Area-specific fields	

[1] Not all patient identification data elements will need to be reported on every record in a fully integrated information system.
[2] If appropriate.

C. Direct Inpatient Care System (INP)

1. Reporting Requirement

a. A direct Inpatient Clinical Brief is required for any person who is admitted to an Indian Health Service facility or a facility operated by a covered contractor.

b. Part 4, chapter 3, section 2 of the Indian Health Manual provides complete definition and procedures for reporting into the Direct Inpatient System.

c. Each Area will define procedures for collecting Inpatient data and creating automated records on the format described in the next section. Options include:

(1) Key-entry of forms at the Area.

(2) Key-entry of forms by a contractor.

(3) Key-entry at the local facility with an RPMS ANSI MUMPS data entry system.

d. Records will be consolidated at the Area level and forwarded at least quarterly to the Division of Data Processing Services (DDPS) at Albuquerque by the 15th of the month. Data must be submitted monthly for central billing purposes.

2. Record Formats

a. The record format for the Direct Inpatient Clinical Record Brief, is shown in Figures C–1 through C–3. Each record is 160 characters in length.

b. A sample of the IHS Clinical Record Brief is included in appendix A.

3. Transmission Media

a. Clinical Record Brief for each Area are generally mailed to DDPS on nine track unlabeled, unblocked EBCDIC tape. The Area Office and the tribal contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS Data entry system

a. There is an RPMS ANSI MUMPS facility based Direct Inpatient data entry program which allows for records to be keyed locally, transmitted to the Area, and forwarded from the Area to DDPS by telecommunications.

DIRECT INPATIENT CLINICAL RECORD BRIEF [1]

Position	Field	Required
1–2	Record Code. Always "16".	X
3–8	Patient Health Record Number.	X
9–17	Social Security Number	X
18–23	Date of Birth (MMDDYY)	X
24	Sex	X
25–27	Tribe of Membership Code.	X
28–30	Optional Code (Area Option)	
31–37	Community of Residence	
	31–33 Community Code.	X
	34–36 County Code	X
	36–37 State Code	X
38–39	Classification Code	
40–41	Area Code	X
42–43	Service Unit Code	X
44–45	Facility Code	X
46	Admission Code	X
47–48	Clinical Service Admitted to Code	
49–54	Admission Date (MMDDYY).	X
55–60	Disposition Date (MMDDYY).	X
61–63	Number Hospital Days	
64–67	Third Party Payers	
	64 Medicaid	
	65 Medicare	
	66 VA	
	67 Other	
68	Unused	
69–73	ICD Code 1 (Principal Diagnosis).	X
74	Hospital Acquired "1"	X [2]
75–79	ICD Code 2	X [2]
80	Hospital Acquired "1"	X [2]
81–85	ICD Code 3	X [2]
86	Hospital Acquired "1"	X [2]
87–91	ICD Code 4	X [2]
92	Hospital Acquired "1"	X [2]
93–97	ICD Code 5	X [2]
98	Hospital Acquired "1"	X [2]
99–103	ICD Code 6	X [2]
104	Hospital Acquired "1"	X [2]
105–108	1st ICD Operation Code	X [2]
109	Diagnosis Number (Appropriate Code)	
110	Infection "1" if checked	X [2]
111–114	Operating Physician Code	
115–118	2nd ICD Operation Code	X [2]
119	Diagnosis Number (Appropriate Code)	
120	Infection "1" if checked	X [2]
121–124	3rd ICD Operation Code	X [2]
125	Diagnosis Number (Appropriate Code)	
126	Infection "1" if checked	X [2]
127	Disposition Code (1–7)	X
128–133	Facility Transferred to Code	
134–135	Clinical Service Discharged from	
136–137	Number of Consultations	
138–141	Accident Code (No Leading "E") (E800–E999).	X [2]
142–143	Accident Place Code	X [2]
144–148	Cause of Death (ICD Code).	X [2]
149–152	Attending Physician Code	
153	Nurse-Midwifery Code	
154–160	Unused	
161–170	Operating Physician EIN	X [2]

DIRECT INPATIENT CLINICAL RECORD BRIEF [1]—Continued

Position	Field	Required
171–180	Attending Physician EIN	X

[1] Not all patient identification data elements will need to be reported on every record in a fully integrated information system.
[2] If appropriate.

D. Contract Health Services (CHS) Inpatient System (CHI)

1. Reporting Requirement

a. A Contract Health Service Purchase/Delivery Order for Hospital Services Rendered (HRSA–43) is required for all hospital inpatient care provided to Indian and Alaska Native patients in contract community facilities. This includes CHS administered by covered contractors.

b. Part 4, chapter 3, section 3 of the Indian Health Service Manual provides complete definition and procedures for reporting into the Contract Inpatient System.

c. Each Area will define procedures for collecting Contract Inpatient data and creating automated records in the format described in the next section. Options include:

(1) Key-entry forms at the Area.

(2) Key-entry forms by a contractor.

(3) Key-entry at the local facility with an RPMS ANSI MUMPS data entry system.

d. Records will be consolidated at the Area level and forwarded at least quarterly to the Division of Data Processing Services (DDPS) by the 5th of the month.

2. Record Formats

a. There is only one record format for the Contract Health Service Purchase/Delivery Order for Hospital Services Rendered as shown in Figures D1 and D2. Each record is 185 characters in length.

b. A sample of the IHS Contract Health Service Purchase/Delivery Order for Hospital Services Rendered is included in appendix A. Since this is a government purchase order form, it is recommended that a similar form in terms of data elements be developed for use by tribal contractors.

3. Transmission Media

a. Contract Inpatient Authorizations are generally mailed to DDPS on nine track unlabeled, unblocked EBCDIC tape. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS Data Entry System

a. There is an RPMS ANSI MUMPS Contract Inpatient data entry program which allows for records to be keyed locally, transmitted to the Area and forwarded from the Area to DDPS by telecommunications.

5. Fiscal Intermediary

a. IHS has contracted with a Fiscal Intermediary to perform the management of that portion of the CHS program administered by the IHS.

CONTRACT HEALTH SERVICE PURCHASE/DELIVERY ORDER FOR HOSPITAL SERVICES RENDERED *

[HRSA-43]

Position	Field	Required
1-2	Record Code. Always "19"	X
3-9	Authorization Number	X
10-15	Patient Health Record Number.	X
16-24	Social Security Number	X
25-30	Date of Birth (MMDDYY)	X
31	Sex (1=Male, 2=Female)	X
32-34	Tribe Code	X
35-37	Optional Code (Area Options)	
38-44	Community of Residence	
	38-40 Community Code	X
	41-42 County Code	X
	43-44 State Code	X
45-50	Authorizing Facility (Area-Service Unit-Facility).	X
51-52	Provider Type	X
53-62	Provider Code (EIN)	X
63-68	Admission Date (MMDDYY)	X
69-74	Discharge Date (MMDDYY)	X
75-77	Total Hospital Days	
78	Disposition	X
79-83	ICD Code 1 (Principal Diagnosis).	X
84-88	ICD Code 2	X [1]
89-93	ICD Code 3	X [1]
94-98	ICD Code 4	X [1]
99-103	ICD Code 5	X [1]
104-107.	ICD Operation Code 1	X [1]
108-111.	Unused	
112-115.	ICD Operation Code 2	X [1]
116-119.	ICD Operation Code 3	X [1]
120-124.	ICD Newborn Diagnosis	
125	Newborn Death Indicator	
126-129.	Attending Physician Code	
130-133.	ICD External Cause or Injury	X [1]
134-135.	Place of Injury	X [1]
136-143.	Charges—to IHS *only* $ and cents.	X
144	Full/Part Pay (1=Full, 2=Part).	X
145-175.	Unused	
176-185.	Attending Physician EIN	X

* Not all patient identification data elements will need to be reported on every record in a fully integrated information system.
[1] If appropriate.

E. Contract Health Services (CHS) Outpatient System (CHO)

1. Reporting Requirement

a. A Purchase Order for Contract Health Service Other Than Hospital Inpatient or Dental (HSA-64) is required for all outpatient services to Indian and Alaska Native patients in contract community facilities. This includes CHS administered by covered contractors.

b. Part 4, chapter 3, section 3 of the Indian Health Service Manual provides complete definition and procedures for reporting into the Contract Outpatient System.

c. Each Area will define procedures for collecting Contracting Outpatient data and creating automated records in the format described in the next section. Options include:

(1) Key-entry forms at the Area.

(2) Key-entry forms by a contractor.

(3) Key-entry at the local facility with an RPMS ANSI MUMPS data entry system.

d. Records will be consolidated at the Area level and forwarded to the Division of Data Processing Services (DDPS) at least quarterly by the 5th of the month.

2. Record Formats

a. There is only one record format for the Purchase Order for Contract Health Service Other Than Hospital Inpatient or Dental as shown in Figures E1 and E2. Each record is 110 characters in length.

b. A sample of the Purchase Order for Contract Health Service Other Than Hospital Inpatient or Dental form is included in Appendix A. Since this is a government purchase order form, it is recommended that a similar form in terms of data elements be developed for use by tribal contractors.

3. Transmission Media

a. Contract Outpatient Authorizations are generally mailed to DDPS on nine track unlabeled, unblocked EBCDIC tapes. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS Data Entry System

a. There is an RPMS ANSI MUMPS Contract Outpatient data entry program which allows for records to be keyed locally, transmitted to the Area and forwarded from the Area to DDPS by telecommunications.

5. Fiscal Intermediary

a. IHS has contracted with a Fiscal Intermediary to perform the management of that portion of the CHS program administered by the IHS.

PURCHASE ORDER FOR CONTRACT HEALTH SERVICE OTHER THAN HOSPITAL INPATIENT OR DENTAL *

Position	Field	Required
1-2	Record Code. Always "20"	X
3-9	Authorization Number	X
10-15	Patient Health Record Number.	X
16-24	Social Security Number	X
25-30	Date of Birth (MMDDYY)	X
31	Sex (1=Male, 2=Female)	X
32-34	Tribe Code	X
35-37	Optional Code (Area Options)	
38-44	Community of Residence	
	38-40 Community Code	X
	41-42 County Code	X
	43-44 State Code	X
45-50	Authorizing Facility (Area-Service Unit Facility).	X
51-52	Provider Type	X
53-62	Provider Code (EIN/SSN)	X
63-69	HSA-43 Authorization Number	
70-75	Date of Service (MMDDYY)	X
76	Unused	
77-79	Outpatient Diagnostic Recode 1.	X [1]
80	1st or Revisit Code	
81-83	Outpatient Diagnostic Recode 2.	X [1]
84	1st or Revisit Code	
85-86	Number of Visits	X [1]
87-92	Charges	X
93-94	Immunization 1	X [1]
95-96	Immunization 2	X [1]
97-98	Immunization 3	X [1]
99-100	Immunization 4	X [1]
101-102.	Immunization 5	X [1]
103-105.	Maternal Health 103-104 Gravida 105 1st Trimester	
106	Full/Part Pay (1=Full, 2=Part).	X
107-110.	Surgical Procedure (ICD-9-CM Code).	X [1]
111-115.	CPT4/HCPCX Procedure Code 1.	X [1]
116-120.	CPT4/HCPCX Procedure Code 2.	X [1]
121-125.	CPT4/HCPCX Procedure Code 3.	X [1]
126-130.	CPT4/HCPCX Procedure Code 4.	X [1]
131-135.	CPT4/HCPCX Procedure Code 5.	X [1]
136-150.	Unused	
151-155.	ICD-9-CM Code 1	X [1]
156-160.	ICD-9-CM Code 2	X [1]

* Not all patient identification data elements will need to be reported on every record in a fully integrated information system.
[1] If appropriate.

F. Dental Services and Needs Reporting System

1. Reporting Requirement:

a. A description of dental services provided will be submitted for each patient visit to either a (1) direct care facility or a (2) contract provider. In addition, specified data will be submitted on a sample basis from oral exams to provide epidemiologic and

needs data for program monitoring or evaluation and for determining resource requirements. Tribal programs will be included in such a sample with no greater frequency than once every three years.

b. Dental treatment provided, as well as a recording of number of patient visits, persons treated, and patients receiving all planned treatment, will be identified using the standard nomenclature of the American Dental Association (see list of codes marked F–1) and include the number of units of each service provided, and for contract dentist, the fee for each service. These codes are revised periodically by the ADA. Updated lists of codes will be provided, as available, to both IHS and Tribal programs.

c. Non-clinical dental health services not reported in the HERMS, CHRIS, or other components of the IHS Generic Activities Reporting System (GARS) should be reported using the data elements and the data record format shown in Figure F–4. This system serves as a supplement for the IHS Dental Data Reporting System to specify a range of public health services which cannot be included in the patient record system. Headquarters requirements can be met with a sampling procedure that uses one full week of activities per month in accordance with the sample reporting week schedule to be specified by IHS Headquarters. There is an RPMS ANSI MUMPS GARS data entry program which allows for records to be submitted to Area for compilation and forwarding from Area to DDPS. The dental non-clinical activities database can be maintained locally or at regional sites at the discretion of program management. Local programs are responsible to provide the Area Dental Office with up-to-date dental activity records after the close of each month. The timing and method of data submission may vary per negotiated arrangements in each Area; however, each Area Office is responsible to transmit all available activity records which have not been previously submitted to the DDPS in Albuquerque as a merged data extract on tape or via telecommunication within 10 working days after the close of each quarter of the Fiscal Year.

d. The procedures for collecting the required data for centralized processing by the IHS Division of Data Processing Services (DDPS) will be defined by each area program. The options available for key-entering the data into a computer are:

1. Weekly submission to a key-entry contractor (IHS or Tribal source) who transmits the data to the IHS.

2. In-house local key entry into RPMS database with submission of extracted data to area office by the end of each month.

3. Local key-entry into non-RPMS database with the submission of formatted records to the DDPS by the end of the month.

e. Oral exam records data will be collected periodically among an adequate number of dental patients of all ages for processing by the IHS to monitor the oral health status and treatment needs of the population being served. The protocol for selecting/sampling of patients and completing examination records is described in Section III of the Oral Health Program Guide (OHPG) published by the IHS. Where variation is noted, the latest version of the OHPG takes precedence over the following instructions. The required data from exams will include:

1. Tooth status: sound, decayed, recurrent decay, missing, filled, filled and decayed, sealed, sealed and decayed, unrestorable and needs extraction (XC, XP, XO, XT (trauma), X (pros.), fractured, replaced, crowned (cast restoration).

2. Periodontal status: Using the Community Periodontal Index of Treatment Needs (C.P.I.T.N.) score by specific mouth sextants (UR, tooth #1–5), UA (#6–11), UL (#12–16), LL (#17–21), LA (#22–27), LR (#28–32).

3. Treatment Needs—reported using ADA or other codes in Section III of the OHPG: all teeth needing restoration by number of surfaces involved, extractions, other surgery, full or partial dentures needed per arch and possession of existing dentures, endodontic needs, fixed bridges needed including number of pontics, orthodontic status (limited, comprehensive, treatment in progress, or completed).

f. Options for collecting and submitting exam data include:

1. Submission of required data directly to the IHS in hard copy using standard forms (as shown in Appendix A).

2. Submission of data in automated record format from RPMS or non-RPMS database.

g. Data input forms used by the IHS are included in Appendix A. Except for the Oral Health Status Form, the use of these forms is not required, but is highly recommended for use as part of the patient's record and for data submission. They include: 1.) Patient Service Record (HRSA–42–1); 2.) Record, Clinic and Doctor Identification (HSA–42–2); 3.) Services Provided—Dental Progress Notes (HRSA–42–2); 4.) Purchase Order for and Report of Contract Dental Care (HSA–57) (Since this is a government purchase order form, it is recommended that a similar form be developed for use by tribal contractors. The IHS is testing a simplified form which will combine the HSA–57 and HSA–64. The final version of the combined form will be made available to tribal contractors and may be used by tribes also to develop a similar form.); and 5.) Oral Health Status Form.

2. Format of Data Processing Records:

a. The required automated record format for processing dental services data is shown in Figures F–1 through F–3.

b. The automated record for non-clinical dental health services/activities is shown in Figure F–4.

c. The automated record for processing oral examination data is shown in Figure F–5.

d. Transmission to DDPS

1. Data will be transmitted to DDPS on a periodic basis as defined by area policy on an unlabeled EBCDIC tape, blocked 20 records per block.

2. The cut-off date at DDPS for inclusion in monthly reports is the 5th working day of each month.

3. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. Oral health status data will be transmitted and processed separately from dental services data.

3. The data elements for dental epidemiology and services are as follows:

Data element	Required
Health Status:	
Demographics*	X
Health Needs Assessment	X
Dental caries (decay) index	X
Prosthodontic status	X
Periodontal status	X
Orthodontic status	X
Oral pathology status	X
Treatment Required	X
Services Provided:	
Patient demographic information*	X
Mode of delivery (direct/contract)	X
Date of Visit	X
Provider/Location	X
Cost of Visit (contract only)	X
Services Provided	
ADA procedure code	X
Units	X
Cost	X

* Not all patient identification data elements will need to be reported on every record in a fully integrated information system.

Record Layout for Processing Dental Services Data (Used for Both Direct and Contract Services)

[Input Record Format for Processing Dental Services Data by the IHS Data Center at Albuquerque]

Field position and size	Field name, record identification and (data type)
1	Type of Patient (I-Indian; O-Non-Indian).
2	Type of program (D-Direct; K-Contract).
Provider/ Location of encounter	
3–4	Area Code (std. 2-digit numeric).
5–16	Dentist ID (Normally 9-digit numeric SSN, either with hypens or without. If no hyphens, must be left justified).
17–18	Service Unit Code (std. 2-digit numeric).
19–20	Facility Code (std. 2-digit numeric).
Date of Visit	
21–22	Year (numeric).
23–24	Month (numeric).
25–26	Day (numeric).
Patient Identification	
27–29	Age in years. This field or date of birth field required. (3-digit numeric).
Birthdate/Sex	
30–31	Year (numeric).
32–33	Month (numeric).
34–35	Day (numeric).
36	Sex (M-Male; F-Female).
Social Security Number	
37–39	Blank.
40–48	Social Security Number.
Address	
49–53	Zip Code-Optional (numeric).
54–57	Zip Extension-Optional (numeric).
Third Party Coverage	
58	Medicaid (Y or blank) Optional.
59	Commerce (Y or blank) Optional.
60	Private (Y or blank) Optional.
Total Charge for Visit	
61–65	Dollar amount up to 5-digits (numeric).
66–67	Amount in cents (numeric).
Service #1	
68–71	ADA Procedure Code (from standard set of codes).
72–73	Units (numeric, 1 to 99).
74–78	Fee (dollar amount only, cents not allowed).
Service #2	
79–82	ADA Procedure Code.
83–84	Units.
85–89	Fee.
Service #3	
90–93	ADA Procedure Code.
94–95	Units.
96–100	Fee.
Service #4	
101–104	ADA Procedure Code.
105–106	Units.
107–111	Fee.
Service #5	
112–115	ADA Procedure Code.
116–117	Units.
118–122	Fee.
Service #6	
123–126	ADA Procedure Code.
127–128	Units.
129–133	Fee.
Service #7	
134–137	ADA Procedure Code.
138–139	Units.
140–144	Fee.
Service #8	
145–148	ADA Procedure Code.
149–150	Units.
151–155	Fee.
Service #9	
156–159	ADA Procedure Code.
160–161	Units.
162–166	Fee.
Service #10	
167–170	ADA Procedure Code.
171–172	Units.
173–177	Fee.
Service #11	
178–181	ADA Procedure Code.
182–183	Units.
184–188	Fee.
Service #12	
189–192	ADA Procedure Code.
193–194	Units.
195–199	Fee.
Service #13	
200–203	ADA Procedure Code.
204–205	Units.
206–210	Fee.
Service #14	
211–214	ADA Procedure Code.
215–216	Units.
217–221	Fee.
Service #15	
222–225	ADA Procedure Code.
226–227	Units.
228–232	Fee.

If more than 15 ADA procedure codes are associated with a visit date, then a separate (second) input record must be created for processing purposes.

GARS/Dental Non-Clinical Activity Reporting System Data Record Format

Position	Field name	Data type
1–6	REPORTING LOCATION	6-digit Code (from IHS standard table of values).
7–12	DATE OF ACTIVITY	mmddyy.
13–21	PROVIDER ID	9-digit SSN.
22–23	ACTIVITY TYPE	2-digit numeric code from list of accepted values.
24–25	TARGET GROUP	6-digit alpha/numeric code, from list of values, right justified.
26–30	RELATED OBJECTIVE	5-digit alpha code or blank, right justified.
31–33	ACTIVITY TIME	3-digit numeric to represent total minutes (blank accepted).
34–36	TRAVEL TIME	3-digit numeric to represent total minutes (blank accepted).
37–41	ACTIVITY SETTING	3-digit alpha code from list of values or blank.
42–121	NARRATIVE COMMENT	80 character free text entry or blank.

Record Layout for the Oral Health Survey Data

Position	Data field label	Data type specification
1–6	LOCATION CODE	6 NUMERIC (Accepts values from a table).
7–12	EXAM DATE	6 NUMERIC DATE IN FORMAT—mmddyy.
13–18	PATIENT NUMBER	6 NUMERIC RT. JUSTIFY (fill with lead 0's).
19–24	DATE OF BIRTH	6 NUMERIC DATE IN FORMAT—mmddyy.
25	SEX	ALPHA CODE—(m or f).
26	EXAM TYPE	ALPHA CODE—(d g f).
27	USER TYPE	ALPHA CODE—(x r s u).
28	FLUORIDE HISTORY	ALPHA CODE—(x nf y n).
29–33	HEALTH FACTORS	Key x for each factor marked except Tobacco. None, Diabetes, Handicap, Pregnancy, Tobacco (1, 2, or 3), or No info.

RECORD LAYOUT FOR THE ORAL HEALTH SURVEY DATA—Continued

Position	Data field label	Data type specification
34–35	EDENTULISM	Key x for each arch (upper, lower) as marked.
#36–444 and 496–775	TOOTH STATUS DATA	1 or 2-DIGIT A/N CODES IN 1–7 DATA FIELDS FOR EACH OF 28 TEETH and 0–2 A/N CODES FOR 4 ADDITIONAL TEETH (#1, 17, 16, 32) AS FOLLOWS:
36–37	TOOTH #1 TREATMENT DATA	1st A/N 2-DIGIT CODE.
38–39		2nd A/N 2-DIGIT CODE.
40–41	TOOTH #2 mesial (M)	A/N 2-DIGIT CODE (25 possible entries).
42–43	occlusal (O)	A/N 2-DIGIT CODE.
44–45	distal (D)	A/N 2-DIGIT CODE.
46–47	buccal (B)	A/N 2-DIGIT CODE.
48–49	lingual (L)	A/N 2-DIGIT CODE.
50–51	TREATMENT DATA	1st A/N 2-DIGIT CODE (10 possible entries)
52–53		2nd A/N 2-DIGIT CODE
54–67	TOOTH #3 (In same sequence as tooth #2 format).	
68–82	TOOTH #4 (In same sequence as tooth #2 format).	
83–96	TOOTH #5 (In same sequence as tooth #2 format).	
97–110	TOOTH #6 (In same sequence as tooth #2 format).	
111–124	TOOTH #7 (In same sequence as tooth #2 format).	
125–138	TOOTH #8 (In same sequence as tooth #2 format).	
139–152	TOOTH #9 (In same sequence as tooth #2 format).	
153–166	TOOTH #10 (In same sequence as tooth #2 format).	
167–180	TOOTH #11 (In same sequence as tooth #2 format).	
181–194	TOOTH #12 (In same sequence as tooth #2 format).	
195–208	TOOTH #13 (In same sequence as tooth #2 format).	
209–222	TOOTH #14 (In same sequence as tooth #2 format).	
223–236	TOOTH #15 (In same sequence as tooth #2 format).	
237–240	TOOTH #16 (In same sequence as tooth #1 format).	
241–444	Same format as listed above applies to each tooth in the lower arch numbered: #17 through 32.	
445	ORAL TRAUMA Tooth #7	NUMERIC (0–5) OR x PER TOOTH #.
446	ORAL TRAUMA Tooth #8	NUMERIC (0–5) OR x PER TOOTH #.
447	ORAL TRAUMA Tooth #9	NUMERIC (0–5) OR x PER TOOTH #.
448	ORAL TRAUMA Tooth #10	NUMERIC (0–5 OR x) PER TOOTH #.
449	ORAL TRAUMA Tooth #23	NUMERIC (0–5 OR x) PER TOOTH #.
450	ORAL TRAUMA Tooth #24	NUMERIC (0–5 OR x) PER TOOTH #.
451	ORAL TRAUMA Tooth #25	NUMERIC (0–5 OR x) PER TOOTH #.
452	ORAL TRAUMA Tooth #26	NUMERIC (0–5 OR x) PER TOOTH #.
453	FLUOROSIS Group I	NUMERIC (0–4) OR x OR BLANK.
454	FLUOROSIS Group II	NUMERIC (0–4) OR x OR BLANK.
455	CPITN SCORE UR	NUMERIC (0–6) OR X OR BLANK.
456	CPITN SCORE UA	NUMERIC (0–6) OR X OR BLANK.
457	CPITN SCORE UL	NUMERIC (0–6) OR X OR BLANK.
458	CPITN SCORE LR	NUMERIC (0–6) OR X OR BLANK.
459	CPITN SCORE LA	NUMERIC (0–6) OR X OR BLANK.
460	CPITN SCORE LL	NUMERIC (0–6) OR X OR BLANK.
461	LOA SCORE UR	NUMERIC (0, 3–6) OR X OR BLANK.
462	LOA SCORE UA	NUMERIC (0, 3–6) OR X OR BLANK.
463	LOA SCORE UL	NUMERIC (0, 3–6) OR X OR BLANK.
464	LOA SCORE LR	NUMERIC (0, 3–6) OR X OR BLANK.
465	LOA SCORE LA	NUMERIC (0, 3–6) OR X OR BLANK.
466	LOA SCORE LL	NUMERIC (0, 3–6) OR X OR BLANK.
467	PATHOLOGY CODE NONE	BLANK OR LETTER CODE AS MARKED.
468	PATHOLOGY SUP	BLANK OR LETTER CODE AS MARKED.
469	PATHOLOGY BL	BLANK OR LETTER CODE AS MARKED.
470	PATHOLOGY CP	BLANK OR LETTER CODE AS MARKED.
471	PATHOLOGY HV	BLANK OR LETTER CODE AS MARKED.
472	PATHOLOGY TBA	BLANK OR LETTER CODE AS MARKED.
473	PATHOLOGY ST	BLANK OR NUMERIC (1–3) AS CIRCLED.
474	PROS. POSSESSION Upper	BLANK OR ALPHA CODE (N, F or P) IF MARKED.
475	PROS. POSSESSION Lower	BLANK OR ALPHA CODE (N, F or P) IF MARKED.
476	PROS. NEED Upper	BLANK OR A/N CODE IF MARKED (P/F–1, 2, or 3).
477	PROS. NEED Lower	BLANK OR A/N CODE IF MARKED (P/F–1, 2, or 3).
478	ORTHO. STATUS None	BLANK OR X IF MARKED.
479	ORTHO. STATUS Minor	BLANK OR X IF MARKED.
480	ORTHO. STATUS Comp.	BLANK OR D or S AS MARKED.

RECORD LAYOUT FOR THE ORAL HEALTH SURVEY DATA—Continued

Position	Data field label	Data type specification
481	ORTHO. STATUS in tx	BLANK OR X IF MARKED.
482	ORTHO. STATUS Completed	BLANK OR X IF MARKED.
483–485	SPECIAL USE VARIABLE #1	3 NUMERIC (0–9) OR BLANK.
486–487	SPECIAL USE VARIABLE #2	2 NUMERIC (0–9) OR BLANK.
488–489	SPECIAL USE VARIABLE #3	2 NUMERIC (0–9) OR BLANK.
490	DENTURE QUESTION #1	BLANK OR LETTER CODE (Y N or U).
491	DENTURE QUESTION #2	BLANK OR X AS MARKED IN A CODE BLANK (IHS, TRIBAL, OTHER, or PRIVATE).
492	DENTURE QUESTION #3	BLANK OR a, b, or c AS MARKED.
493	ACCESS QUESTION #1	BLANK OR LETTER CODE (y, n or u) AS MARKED.
494	ACCESS QUESTION #2	BLANK OR NUMERIC (0–60) AS MARKED.
495	ACCESS QUESTION #3	BLANK OR LETTER CODE (y, n or u) AS MARKED.
496–497	TOOTH #4d mesial (M)	A/N 2-DIGIT CODE.
498–499	occlusal (O)	A/N 2-DIGIT CODE.
500–501	distal (D)	A/N 2-DIGIT CODE.
502–503	buccal (B)	A/N 2-DIGIT CODE.
504–505	lingual (L)	A/N 2-DIGIT CODE.
506–507	TREATMENT DATA	1st A/N 2-DIGIT CODE.
508–509		2nd A/N 2-DIGIT CODE.
510–775	TOOTH #5d–20d (in same sequence as tooth #4d format).	

G. Pharmacy System

1. Reporting Requirements

a. *Pharmacy quarterly and cumulative workload report.* This form (HSA–91) is required to be completed by the Chief Pharmacist at each IHS and tribal facility. Raw workload data relating to both inpatient and outpatient pharmacy activities are collected and compiled using this form. Raw data are converted to workload units on this form. These data are entered on the HSA 91 report at the end of each quarter. The report is completed by the 15th day following the end of the quarter at which time it is forwarded to the Area Pharmacy Officer (APO). The APO compiles the Area data and prepares a summary report for submission to the Pharmacy Program at Headquarters within 30 days after the end of the quarter.

The data are used for identifying trends, measuring workload and correlating staffing and space requirements.

b. *Monthly report for narcotics and other controlled substances.* This form (HSA–174) is a record of all Schedule II Controlled Substance usage. It contains a record of the actual physical count of all Schedule II items at the beginning of the month and the end of the month. Records at the facility must correlate with the amount dispensed.

The report is required to be completed monthly and sent to the facility director with a copy to the APO. It is to be completed by the 10th day following the end of the month.

2. Record Formats

a. A copy of the HSA–91 Pharmacy Quarterly and Cumulative Workload Report is included in appendix A.

b. A copy of the HSA–74, Monthly Report for Narcotics and Other Controlled Substances is included in appendix A.

3. Transmission Media

Reports are to be submitted in hardcopy format to the APO.

H. Environmental Health Activity Reporting and Facility Data System

1. Reporting Requirements

a. The Environmental Health Activity Reporting and Facility Data System (EHAR & FDS) Instruction Manual provides complete instructions for reporting into the EHAR & FDS.

b. The EHAR & FDS is a microcomputer based system which combines two previously separate data collection systems. The system is decentralized to the Area level providing maximum flexibility for Area environmental health programs. The EHAR section of the new system is used to collect environmental health activity data. The FDS section is a tracking system for surveys conducted at specific facilities. For the EHAR section, Headquarters requirements can be met with a sampling procedure that uses one full week of activities per month in accordance with the sample reporting week schedule to be specified by IHS Headquarters. The FDS section will not utilize sampling; all surveys conducted at specific facilities will be reported into the system.

c. Each Area, utilizing standard forms and software, will define procedures for collecting the EHAR & FDS data. Key entry of forms will occur at the Area level.

2. Record Formats

a. One form is used to update the EHAR & FDS Area Master File.

b. A sample of the EHAR & FDS form is included in appendix A. Each form consists of 7 records. To eliminate redundant hand coding, data fields for each of these 7 records contained in record positions 1–14 are entered only once per form. If one of these values changes, a new form must be started.

c. Fields in the EHAR & FDS system.

Field	Record position	Required
Area Code	1–2	X
Service Unit	3–4	X
Community Code	5–7	X
Worker Number	8–10	X
Month	11–12	X
Year	13–14	X
Service Code	15–16	X
Category Code	17–18	X
Id Code	19–21	X
Activity Code	22–24	X
Number Activities	25–32	X
Activity Time	33–40	X
Linkage Code	41–49	X
Facility Name	50–79	X

3. Data Transmission

The EHAR & FDS data will be forwarded electronically to the Division of Environmental Health computer bulletin board in Rockville, Maryland. on a quarterly basis.

I. Mental Health and Social Services Reporting System (MH & SS)

1. Reporting Requirements

a. Direct patient care is reported on the appropriate direct care reporting system. The Mental Health and Social

Services record is used to report program related activities as a supplement to patient care reporting.

2. Record Formats

a. Mental Health or Social Services direct patient care recording will follow the appropriate procedures noted in prior sections for Ambulatory Patient Care, Direct Inpatient, Contract Health Services Outpatient and Contract Health Services Inpatient.

b. The MH & SS record is used as an activities reporting document to record staff effort. Headquarters requirements can be met with a sampling procedure that uses one full week of activities per month in accordance with the sample reporting week schedule to be specified by IHS Headquarters. The data are to be reported quarterly.

c. The format of the MH & SS record is shown in Figure I–1.

d. A sample of the MH & SS Activity Reporting Form, an activity code list, and a problem code list are included in Appendix A. A copy of the instructions for using the MH & SS Activities Reporting Form are available on request from Headquarters, IHS.

3. Transmission Media

a. *Patient care.* Mental Health or Social Services direct patient care recording will follow the appropriate procedures noted in prior sections for Ambulatory Patient Care, Direct Inpatient, Contract Health Services Outpatient and Contract Health Services Inpatient.

b. *Activities reporting.* Activities reports for each Area are submitted to the Division of Data Processing Services by mail on nine track unlabeled, unblocked EBCDIC tape or by other methods arranged between Area and DDPS. Any arrangements between Area and Contractors on how the data will be submitted at that level will have to conform to the methods the Area uses to submit data to DDPS.

c. *RPMS Generic Activities Reporting System (RPMS-GARS).* There is an RPMS ANSI MUMPS GARS data entry program which allows for records to be submitted to Area for compilation and forwarding from Area to DDPS.

MENTAL HEALTH AND SOCIAL SERVICES ACTIVITIES REPORTING

[Input Record Data Fields]

Position	Item	Content/comment	Required
2–3	Area	Standard IHS Codes	X
4–5	Service Unit	Standard IHS Codes	X
6–7	Facility	Standard IHS Codes	X
8–9	Discipline	Program affiliation, MH/SS	X
10–15	Date	Date of Service-Mo/Da/Yr	X
16–18	Provider	Provider identifier	X
19–21	Location	IHS 3-digit code (from St/Co/Comm code list) identifying community where activity took place	X
22–23	Activity	Two digit numeric code. See attached *Activity Codes*	X
24–25	Recipient	Two digit numeric code using Six category field to designate categories of recipients.	
26–27	Primary Purpose	Two digit numeric code. See attached *Problem Codes*	X
28–29	Secondary Purpose	Two digit numeric code. See attached *Problem Codes*	
30–31	Setting Codes	Two digits distinguishing up to ten service settings.	
32–34	Number Served	Up to three digits to specify Number of persons served directly by reported activity	X
35–36	Age	Two digits to show age in years	
37	Sex	M or F	X
38–40	Activity Time	Up to three digits showing Time in minutes	
41–43	Travel Time	Up to three digits to show Time in minutes	
44–45	Refer: From	2-Digit Code distinguishing up to 10 referral sources	
46–47	Refer: To	Same as "Refer From" Codes	
48	Flag 1	Yes/No Field	
49	Flag 2	Yes/No Field	
50	Flag 3	One digit field distinguishing up to five categories of data	
51	Flag 4	One digit field distinguishing up to five categories of data	
52–100	Notes	Narrative (up to 48 alpha characters)	

J. Alcoholism Treatment Guidance System (ATGS)/Chemical Dependency Management Information System (CDMIS)

1. General Reporting Requirements for ATGS and CDMIS

a. All IHS-funded alcohol/substance abuse programs, including Urban Programs, will report their activities on either ATGS or CDMIS. Programs will use ATGS until CDMIS is operational and implemented in their specific program. ATGS will be discontinued upon implementation of ATGS in a program.

b. CDMIS will be beta-tested in fiscal year (FY) 1991, with implementation beginning in FY 1992 and will be completed as quickly as funding, logistics, and staffing allow.

2. Reporting Requirement for ATGS

a. An Alcoholism Treatment Guidance System (ATGS) record is required for each person treated in an IHS alcoholism and substance abuse treatment program (including covered contractors) until a program is converted to CDMIS. Patients are usually present at the time of a service, but services such as multi-disciplinary staffing and family counseling without the client present are also documented. In addition to completing the computer form, the provider must also note services in the progress notes maintained in the treatment chart. Certified chemical dependency counselors, counselors-in-training, and other providers qualified by the program director may enter information in the client record. In addition to treatment services, prevention services and other staff activities are reported through ATGS.

b. The ATGS Counselor's Resource Manual, October 1983, provides complete definitions and procedures for reporting in the ATGS system and client chart.

3. Record Formats for ATGS

a. The formats of the ATGS records are shown in Figures J–1 through J–9.

b. Samples of ATGS forms are included in appendix A.

4. Transmission Media for ATGS

a. Computer forms are sent by the alcoholism and substance abuse programs to the appropriate IHS Area Office by the 6th day of the month.

Forms are then batched and mailed to the keytaping contractor, UNICOR, on or before the 10th of each month. UNICOR key tapes the data and forwards a tape to the IHS Division of Data Processing Services (DDPS) in Albuquerque, New Mexico. DDPS produces reports from the tapes and provides two copies to each IHS Area Office, who in turn distributes one copy to each program that provided data.

5. New System Under Development

a. Current plans call for a gradual phasing out of the ATGS in favor of the new Chemical Dependency Management Information System (CDMIS) beginning in FY 1992 with implementation to proceed as quickly as funds, logistics, and staffing allow. Final beta testing is to take place during the last quarter of FY 1991. Once on CDMIS, a program will discontinue ATGS. There will be two parallel systems operating during the CDMIS implementation period.

b. The Alcoholism PSG (also known as the CDMIS Committee and the ATGS Revision Committee) has examined every item of the ATGS and CDMIS, asking what is the minimum information required by both the Director, IHS, and the Congress. Drafts have been distributed to tribal programs through the Area Alcohol Program Coordinators, with comments carefully considered. Only those items that are being demanded on a regular basis by the Director, IHS, or the Congress, those items required in law, and specific items requested by a majority of the tribal programs have been included in CDMIS.

6. Reporting Requirement for CDMIS

a. The Chemical Dependency Management Information System is an IHS RPMS application that builds on the Patient Registration module. CDMIS consists of two forms. CDMIS–1 is patient-specific and is completed upon initial entry into the program, during treatment, and during a follow-up phase. Preventive activities are also recorded on this form for electronic incorporation into the Generic Activities Reporting System (GARS). CDMIS–2 is an annual staffing, funding, and program report. Either or both forms may be completed for later entry into the computer-based system, or the data may be entered directly into the database. Certified chemical dependency counselors, counselors-in-training, other approved providers, data entry personnel, and others certified as qualified by the program director are to complete the CDMIS forms and/or enter the data into the computer.

b. The CDMIS Program Manual (complete with sub-manuals) scheduled for completion in June 1991, provides the definitions and procedures for reporting on the CDMIS.

c. Staff prevention activities from CDMIS–1 will be reported through GARS. Headquarters requirements can be met with a sampling procedure that uses one full week of activities per month in accordance with the sample reporting week schedule to be specified by IHS Headquarters.

7. Record Formats for ATGS

a. The formats of the CDMIS records are shown in Figures J–10 through J–12.

b. Samples of CDMIS forms are included in Appendix A.

8. Transmission Media

a. Data will be transmitted electronically (or by computer disk in those cases where electronic transmission is unreliable as certified by the Area ISC) to either the servicing Service Unit or Area Office using an approved IHS extract program. This data will be forwarded by the Service Unit to the Area Office electronically. The Area Office will electronically forward the data to the IHS Division of Data Processing Services (DDPS) in Albuquerque, New Mexico. Data will be forwarded to the Area Office quarterly by the 7th day of the month following the end of the quarter. The Area Office will transmit the data to DDPS by the 10th of the month. DDPS produces reports from the data and provides the copy to the ASAPB and two copies to each IHS Area Office, who, in turn, distributes one copy to each program that provided data. DDPS also provides the capability for ASAPB to download data for special reports, graphing reports, etc. Programs may download their data from the Service Unit (or Area Office if serviced by the Area Office) to print local program reports as desired.

b. The Area ISC will, in consultation with the Area Alcohol Program Coordinator, appropriate service unit personnel, and alcohol program director, determine whether the program will be serviced by the Service Unit or by the Area Office.

ATGS KEYTAPING INSTRUCTIONS

	Field Name	Record position	Location on documents or special instructions
	FORM NAME: SHORT TERM NO: A		
	RECORD TYPE	1–2	NUMERIC '00'.
	PROGRAM ID	3–8	NUMERIC.
1.	CASE NUMBER	9–17	9–11 ALPHANUMERIC, 12–17 NUMERIC.
2.	SEX	18	"1" IF M, "2" IF F.
3.	ETHNICITY	19–21	ENTER '1' IF INDIAN, '2' IF ALASKAN, '3' IF OTHER, RIGHT BLANK FILL UNUSED POSITIONS.
4.	TRIBE CODE	22–24	BLANK OF NUMERIC.
5.	EMPLOYED	25	"1" IF Y, "2" IF NO.
6.	DEPENDENTS	26	"1" IF Y, "2" IF NO, OR BLANK.
	NUMBER OF	27–28	BLANK OR LEFT-ZERO FILLED NUMERIC.
7.	CHILD CARE	29	"1" IF Y, "2" IF NO, OR BLANK.
8.	ALC/DRUG TREATMENT	30	"1" IF Y, "2" IF NO, OR BLANK.
9.	COMPONENT CODES	31–32	BLANK OR NUMERIC.
		33–34	BLANK OR NUMERIC.
		35–36	BLANK OR NUMERIC.
10A.	ADMIT/DISCHARGE	37–38	BLANK OR ENTER NUMBERS CIRCLED.
	TOTAL DAYS	39–40	BLANK OR LEFT-ZERO FILLED NUMERIC.
	2ND LINE OF 10A	41–44	—SEE INSTRUCTIONS FROM RECORD POS. 37–40.
	3RD LINE OF 10A	45–48	—SEE INSTRUCTIONS FROM RECORD POS. 37–40.
10B.	SERVICE CODE	49–50	BLANK OR NUMERIC.
	TOTAL HOURS	51–52	BLANK OR LEFT-ZERO FILLED NUMERIC.
	2ND LINE OF 10B	53–56	—SEE INSTRUCTIONS FROM RECORD POS. 49–52.
	3RD LINE OF 10B	57–60	—SEE INSTRUCTIONS FROM RECORD POS. 49–52.

ATGS KEYTAPING INSTRUCTIONS—Continued

	Field Name	Record position	Location on documents or special instructions
11.	REFERRAL CODES	61–72	BLANK AND/OR NUMERIC, ENTER 2-DIGIT CODES LEFT TO RIGHT, RIGHT BLANK FILL ANY UNUSED POSITIONS.
12.	PRIMARY PROBLEM	73–74	NUMERIC.
	STATE FUNDS CODE	75–76	BLANK OR NUMERIC.
13.	NEW/REOPEN PROGRAM	77	ENTER "1" or "2" FOR BOX CHECKED.
	NEW/REOPEN ATGS	78	ENTER "1" or "2" FOR BOX CHECKED OR BLANK.
14.	DISCHARGE	79	ENTER NUMBER OF BOX CHECKED (1–5) OR BLANK.
15 & 16.		—	DO NOT KEYTAPE.
17.	STATE ID NUMBER	80–88	BLANK OR ALPHANUMERIC.
18.	SERVICE MONTH	89–90	NUMERIC, LEFT ZERO FILLED.
	SERVICE YEAR	91–92	NUMERIC, LEFT ZERO FILLED.
FORM NAME: INITIAL CONTACT NO: 1			
	RECORD TYPE	1–2	NUMERIC '01'.
	PROGRAM ID	3–8	NUMERIC.
	COMPONENT CODE	9–10	NUMERIC.
	CASE NUMBER	11–19	11–13 ALPHANUMERIC, 14–19 NUMERIC.
	STAFF CODE	20–21	BLANK OR NUMERIC.
	COUNTY CODE	22–24	BLANK OR NUMERIC.
	PRIMARY PROBLEM	25–26	NUMERIC.
	SECONDARY PROBLEM	27–28	BLANK OR NUMERIC.
	STATE FUNDS CODE	29–30	BLANK OR NUMERIC.
	STATE CLIENT ID	31–39	BLANK OR ALPHANUMERIC.
	OPTIONAL CODE C	40–41	BLANK OR NUMERIC.
	OPTIONAL CODE D	42–43	BLANK OR NUMERIC.
1.	SEX	44	"1" IF M, "2" IF F.
2.	REFERRED TO PROGRAM	45–46	NUMERIC.
3.	COURT REFERRAL	47–48	BLANK OR NUMERIC.
4.	ETHNICITY	49–54	ENTER NUMBER CORRESPONDING TO BOX CHECKED, RIGHT-BLANK FILL UNUSED FIELDS, (i.e., IF BOXES 1 & 3 CHECKED ENTER '13').
5.	TRIBE CODE	55–57	BLANK OR NUMERIC.
	DEGREE OF BLOOD	58	BLANK OR NUMERIC.
6.	IHS ELIGIBLE	59	"1" IF YES, "2" IF NO, "3" IF NONE AVAILABLE.
7.	MARITAL	60	ENTER NUMBER OF FIRST BOX CHECKED.
8.	EMPLOYED	61	"1" IF YES, "2" IF NO.
	OCCUPATION	62–63	BLANK OR NUMERIC.
	INCOME	64–68	BLANK OR NUMERIC OR ZEROS.
9.	EDUCATION	69–70	ENTER NUMBER CIRCLED, LEFT-ZERO FILLED.
	OTHER	71–72	BLANK OR NUMERIC.
10.	SKILL DEVELOPMENT	73	"1" IF YES, "2" IF NO.
11.	HEALTH INSURANCE	74	"1" IF YES, "2" IF NO.
	MEDICARE	75	"1" IF YES, "2" IF NO.
	MEDICAID	76	"1" IF YES, "2" IF NO.
12.	VETERAN	77	"1" IF YES, "2" IF NO.
13.	YEARS DRINKING/DRUG	78–79	LEFT ZERO-FILLED NUMERIC.
	YEARS HEAVY USE	80–81	BLANK OR LEFT ZERO-FILLED NUMERIC.
	PREVIOUS TREATMENT	82	"1" IF YES, "2" IF NO.
	PRIOR TREATMENT-IHS	83	BLANK OR "1" IF YES, "2" IF NO, "3" IF UNKNOWN.
14.	DEPENDENTS	84	"1" IF YES, "2" IF NO.
	HOW MANY	85–86	BLANK OR NUMERIC.
15.	BEEN HOSPITALIZED	87	"1" IF YES, "2" IF NO.
	ALCOHOL RELATED	88	"1" IF YES, "2" IF NO, OR BLANK.
	ARRESTED	89	"1" IF YES, "2" IF NO.
	DWI	90	"1" IF YES, "2" IF NO, OR BLANK.
	USED ALCOHOL	91	"1" IF YES, "2" IF NO.
	NUMBER OF DAYS	92–93	BLANK OR LEFT-ZERO FILLED NUMERIC.
	USED OTHER DRUGS	94	"1" IF YES, "2" IF NO.
	NUMBER OF DAYS	95–96	BLANK OR LEFT-ZERO FILLED NUMERIC.
	TYPE OF DRUGS CODE	97–98	BLANK OR NUMERIC.
16.	ALCOHOL STAGE	99	BLANK OR NUMERIC.
	PHYSICAL STAGE	100	BLANK OR NUMERIC.
	EMOTIONAL STAGE	101	BLANK OR NUMERIC.
	CULTURAL STAGE	102	BLANK OR NUMERIC.
	SPIRTUAL STAGE	103	BLANK OR NUMERIC.
	RECOMMENDED:	104	BLANK OR ENTER NUMBER OF FIRST BOX CHECKED.
	DIFFERENCE CODE	105–106	BLANK OR NUMERIC.
17.	ACTUAL PLACEMENT	107	ENTER NUMBER OF FIRST BOX CHECKED (1–7).
	PLACEMENT TYPE	108	BLANK OR ENTER LETTER OF BOX (A–F).
18.	REFERRAL MADE	109	BLANK OR "1" IF YES, "2" IF NO.
	REFERRAL CODE	110–111	BLANK OR NUMERIC.
	REFERRAL CODE	112–113	BLANK OR NUMERIC.
19.	SPIRITUAL PREFERENCE	114–115	BLANK OR NUMERIC.
	SPIRITUAL PREFERENCE	116–117	BLANK OR NUMERIC.
	PRACTICE	118	"1" IF REGULAR, "2" IF OCCASIONAL, "3" IF NEVER, OR BLANK.
	ORIGINAL CONTACT DATE	119–124	BLANK OR NUMERIC (MMDDYY FORMAT). AS REQUIRED, LEFT-ZERO FILL ANY 2-DIGIT FIELD.

ATGS KEYTAPING INSTRUCTIONS—Continued

	Field Name	Record position	Location on documents or special instructions
	DATE FORM COMPLETED	125–130	NUMERIC (MMDDYY FORMAT). AS REQUIRED, LEFT-ZERO FILL ANY 2-DIGIT FIELD.
FORM NAME: DISCHARGE REPORT	NO: 7		
	RECORD TYPE	1–2	NUMERIC '07'.
	PROGRAM ID	3–8	NUMERIC.
	COMPONENT CODE	9–10	NUMERIC.
	CASE NUMBER	11–19	11–13 ALPHANUMERIC, 14–19 NUMERIC.
	STAFF CODE	20–21	BLANK OR NUMERIC.
	COUNTY CODE	22–24	BLANK OR NUMERIC.
	PRIMARY PROBLEM	25–26	NUMERIC.
	STATE FUNDS CODE	27–28	BLANK OR NUMERIC.
	STATE CLIENT ID	29–37	BLANK OR ALPHANUMERIC.
	OPTIONAL CODE C	38–39	BLANK OR NUMERIC.
	OPTIONAL CODE D	40–41	BLANK OR NUMERIC.
1.	DATE OF ADMISSION	42–47	NUMERIC (MMDDYY FORMAT) LEFT-ZERO FILLED EACH 2-DIGIT FIELD IF NECESSARY.
2.	DATE OF DISCHARGE	48–53	see instructions for 42–47.
3.	DISCHARGE FROM	54	ENTER LETTER OF BOX CHECKED (A–M).
4.	SERVICES USED	55–60	ENTER FIRST 6 LETTERS LEFT TO RIGHT, RIGHT-BLANK FILL ANY REMAINING POSITIONS.
5.	DISCHARGE REASON	61	ENTER LETTER OF FIRST BOX CHECKED.
6.	CLIENT GOALS STATUS	62	ENTER NUMBER OF BOX CHECKED.
7.	ADMISSION STAGES	63–67	BLANKS OR ENTER COLUMN OF NUMBERS UNDER ADMISSION.
	DISCHARGE STAGES	68–72	BLANKS OR ENTER COLUMN OF NUMBERS UNDER DISCHARGE.
8.	USING WHAT	73	ENTER "1" IF ALCOHOL CIRCLED, "2" FOR DRUG, "3" FOR SUBSTANCES, "4" IF MORE THAN ONE ITEM CIRCLED.
	USING ALC/DRG/SUB	74	"1" IF YES, "2" IF NO, "3" IF UNKNOWN.
9.	DISCHARGE PLAN NEGOT	75	"1" IF YES, "2" IF NO, OR BLANK.
10.	DISCHARGE TO:	76	ENTER LETTER CHECKED IN CR ° COLUMN.
		77	ENTER LETTER CHECKED IN CD ° COLUMN.
	DATE FORM COMPLETED	78–83	BLANK OR NUMERIC (MMDDYY FORMAT) AS REQUIRED, LEFT ZERO-FILL EACH 2-DIGIT FIELD.
FORM NAME: FOLLOW-UP STATUS	NO: 8		
	RECORD TYPE	1–2	NUMERIC '08'.
	PROGRAM ID	3–8	NUMERIC.
	COMPONENT CODE	9–10	BLANK OR NUMERIC.
	CASE NUMBER	11–19	11–13 ALPHANUMERIC, 14–19 NUMERIC.
	STAFF CODE	20–21	BLANK OR NUMERIC.
	COUNTY CODE	22–24	BLANK OR NUMERIC.
	PRIMARY PROBLEM	25–26	NUMERIC.
	STATE FUNDS	27–28	BLANK OR NUMERIC.
	STATE CLIENT ID	29–37	BLANK OR ALPHANUMERIC.
	OPTIONAL CODE C	38–39	BLANK OR NUMERIC.
	OPTIONAL CODE D	40–41	BLANK OR NUMERIC.
1.	TYPE STATUS REPORT	42	ENTER NUMBER OF BOX CHECKED.
2.	MOVED/DIED	43	BLANK OR NUMERIC. IF QUESTION 2 IS CHECKED, SKIP REST OF RECORD AND ENTER DATE ON BOTTOM OF FORM (RECORD POSITION 75–80).
3.	CLIENT STATUS	44	ENTER LETTER OF BOX CHECKED.
4.	CLIENT STAGE	45–49	BLANK OR NUMERIC.
5.	EMPLOYED	50	"1" IF YES, "2" IF NO.
	OCCUPATION	51–52	BLANK OR NUMERIC.
	INCOME	53–57	BLANK OR LEFT-ZERO FILLED NUMERIC.
6.	SKILL DEV./TRNG.	58	"1" IF YES, "2" IF NO.
7.	MARITAL	59	ENTER NUMBER OF BOX CHECKED.
8.	HOSPITALIZED	60	"1" IF YES, "2" IF NO.
	ALCOHOL RELATED	61	"1" IF YES, "2" IF NO, OR BLANK.
	ARRESTED	62	"1" IF YES, "2" IF NO.
	DWI	63	"1" IF YES, "2" IF NO, OR BLANK.
	USED ALCOHOL	64	"1" IF YES, "2" IF NO.
	NUMBER DAYS	65–66	BLANK OR LEFT-ZERO FILLED NUMERIC.
	USED OTHER DRUGS	67	"1" IF YES, "2" IF NO.
	NUMBER DAYS	68–69	BLANK OR LEFT-ZERO FILLED NUMERIC.
	TYPE CODE	70–71	BLANK OR NUMERIC.
9.	DAYS LAST DRINK	72–74	BLANK OR LEFT-ZERO FILLED NUMERIC OR "NA".
	DATE FORM COMPLETED	75–80	NUMERIC (MMDDYY FORMAT). LEFT-ZERO FILL EACH TWO-DIGIT FIELD IF NECESSARY.
FORM NAME: SERVICES REPORT	NO: 9		
	RECORDTYPE	1–2	NUMERIC '09'.
	MONTH	3–4	LEFT-ZERO FILLED NUMERIC.
	YEAR	5–6	LEFT-ZERO FILLED NUMERIC.
	PROGRAM ID	7–12	NUMERIC.
	COMPONENT CODE	13–14	NUMERIC.

ATGS KEYTAPING INSTRUCTIONS—Continued

	Field Name	Record position	Location on documents or special instructions
	CASE NUMBER	15–23	15–17 ALPHANUMERIC, 18–23 NUMERIC.
	STAFF CODE	24–25	BLANK OR NUMERIC.
	COUNTY CODE	26–28	BLANK OR NUMERIC.
	PRIMARY PROBLEM	29–30	NUMERIC.
	STATE FUNDS CODE	31–32	BLANK OR NUMERIC.
	STATE CLIENT ID	33–41	BLANK OR ALPHANUMERIC.
	OPTIONAL CODE C	42–43	BLANK OR NUMERIC.
	OPTIONAL CODE D	44–45	BLANK OR NUMERIC.
1.	DAY OF MONTH	46–47	BLANK OR LEFT-ZERO FILLED NUMERIC.
	COMPONENT MONTH	48–49	BLANK OR NUMERIC.
	STAFF CODE	50–51	BLANK OR ALPHANUMERIC.
	SERVICE CODE	52–53	BLANK OR NUMERIC.
	TOTAL HOURS	54–56	54–55 LEFT-ZERO FILLED NUMERIC, NO DECIMAL POINT. 56 NUMERIC, ZERO-FILL TENTH'S POSITION IF ONLY WHOLE NUMBER ENTERED.
	14 ADDITIONAL LINES OF DATA, SAME FORMAT AS POSITIONS 46–56.	57–210	ENTER EACH 11-DIGIT FIELD DISREGARDING ANY IMBEDDED BLANK LINE, RIGHT-BLANK FILL UNUSED FIELDS.
2.	TREATMENT PLAN NEG	211	"1" IF YES, "2" IF NO, OR BLANK.
	TREATMENT PLAN PROG	212	"1" IF YES, "2" IF NO, OR BLANK.
3.	ARRIVE AT AGENCY	213	"1" IF YES, "2" IF NO, OR BLANK.
	ACCEPTED FOR SERVICE	214	"1" IF YES, "2" IF NO, OR BLANK.
4.	IHS-NEW/REOPEN/CONT	215	"1, 2 OR 3" FOR NEW, REOPEN OR CONTINUE RESPECTIVELY OR BLANK.
	PROG-NEW/REOPEN/CONT	216	"1, 2 OR 3" FOR NEW, REOPEN OR CONTINUE RESPECTIVELY OR BLANK.
	COMP.-NEW/REOPEN/CONT	217	"1, 2 OR 3" FOR NEW, REOPEN OR CONTINUE RESPECTIVELY OR BLANK.
5.	REFERRALS OUT	218–223	BLANK &/OR NUMERIC, ENTER 2-DIGIT CODES LEFT TO RIGHT, RIGHT BLANK FILL ANY UNUSED POSITIONS.
6.	STATUS	224–226	ENTER NUMBERS CIRCLED OR BLANK.
	COMPONENT CODE	227–228	BLANK OR NUMERIC.
	TOTAL DAYS	229–230	BLANK OR LEFT-ZERO FILLED NUMERIC.
	4 ADDITIONAL LINES OF DATA, SAME FORMAT AS POSITIONS 224–230.	231–258	ENTER EACH 9-DIGIT FIELD DISREGARDING ANY IMBEDDED BLANK LINE, RIGHT-BLANK FILL UNUSED FIELDS.
	DATA FORM COMPLETED	259–264	BLANK OR NUMERIC (MMDDYY FORMAT) AS REQUIRED, LEFT-ZERO FILL ANY 2-DIGIT FIELD.
	FORM NAME: SERVICES REPORT—CONTINUATION NO: 9A		
	RECORD TYPE	1–2	CHARACTERS 'OA' (NUMERIC 0).
	PAGE	3	NUMERIC.
	MONTH	4–5	LEFT-ZERO FILLED NUMERIC.
	YEAR	6–7	LEFT-ZERO FILLED NUMERIC.
	PROGRAM ID	8–13	NUMERIC.
	COMPONENT CODE	14–15	NUMERIC.
	CASE NUMBER	16–24	16–18 ALPHANUMERIC, 19–24 NUMERIC.
	STAFF CODE	25–26	BLANK OR NUMERIC.
	COUNTY CODE	27–29	BLANK OR NUMERIC.
	PRIMARY PROBLEM	30–31	NUMERIC.
	STATE FUNDS CODE	32–33	BLANK OR NUMERIC.
	STATE CLIENT CODE	34–42	BLANK OR ALPHANUMERIC.
	OPTIONAL CODE C	43–44	BLANK OR NUMERIC.
	OPTIONAL CODE D	45–46	BLANK OR NUMERIC.
1.	DAY OF MONTH	47–48	LEFT-ZERO FILLED NUMERIC.
	COMPONENT CODE	49–50	NUMERIC.
	STAFF CODE	51–52	BLANK OR ALPHANUMERIC.
	SERVICE CODE	53–54	NUMERIC.
	TOTAL HOURS	55–57	55–56 LEFT-ZERO FILLED NUMEPIC, NO DECIMAL POINT. 57 NUMERIC, ZERO-FILL TENTHS POS.TION IF ONLY WHOLE NUMBER ENTERED.
	38 ADDITIONAL LINES OF DATA, SAME FORMAT AS POSITIONS 47–57.	58–475	ENTER EACH 11-DIGIT FIELD DISREGARDING ANY IMBEDDED BLANK LINE, RIGHT-BLANK FILL UNUSED FIELDS.
	FORM NAME: ACTIVITY REPORT NO: 10		
	RECORD TYPE	1–2	NUMERIC 10.
	MONTH	3–4	LEFT-ZERO FILLED NUMERIC.
	YEAR	5–6	LEFT-ZERO FILLED NUMERIC.
	PROGRAM ID	7–12	NUMERIC.
	COMPONENT CODE	13–14	NUMERIC.
	STAFF CODE	15–16	NUMERIC.
	STAFF TYPE	17	"1, 2, 3 OR 4" FOR REG., CHR, VOLUN., OR CETA, RESPECTIVELY.
	DIRECT SERVICE STAFF	18	"1" IF YES, "2" IF NO. UNDER PREVENTION AND COMMUNITY EDUCATION; (ALL ROWS EXCEPT BOTTOM ONE).
	TYPE SESSION	19–21	LEFT-ZERO FILLED NUMERIC.
	TARGET GROUP	22–23	NUMERIC.
	NUMBER OF PEOPLE	24–27	LEFT-ZERO FILLED NUMERIC.
	21 ADDITIONAL LINES OF DATA, SAME FORMAT AS POSITIONS 19–27.	28–216	ENTER EACH 9-DIGIT FIELD DISREGARDING ANY BLANK LINES, RIGHT-BLANK FILL UNUSED FIELDS.
			TOTAL ROW:
	CONFERENCE & WORKSHOPS	217–219	FOR ALL REMAINING FIELDS, BLANK OR LEFT-ZERO.
	INSERVICE TRAINING	220–222	FILLED NUMERIC NO DECIMAL POINTS.
	STAFF MEETINGS	223–225	ALL TOTAL FIELDS ARE THREE DIGITS EXCEPT THOSE NOTED BELOW:
	LEAVE	226–228	

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ATGS KEYTAPING INSTRUCTIONS—Continued

Field Name	Record position	Location on documents or special instructions
SUPERVISION OF STAFF	229-231	
REPORT TO TRIBAL CNCL	232-234	
ATGS	235-237	
PLANNING & DEVELOPMENT	238-240	
GENERAL ADMINISTRATION	241-243	
INPATIENT DIRECT HOURS	244-246	
OUTPATIENT DIRECT HOURS	247-249	
PREVENTION-INDIVIDUALS	250-252	
TRAVEL DIRECT-CLIENT	253-255	
TRAVEL INDIRECT	256-258	
OTHER	259-261	
INFORMATION INQUIRIES	262-264	
CONTACTS FOR INFO.	265-268	4 DIGIT FIELD.
SESSION CODE	269-271	BLANK.
TARGET GROUP	272-273	BLANK—2 DIGIT FIELD.
PERSONS IN GROUP	274-277	4 DIGIT FIELD.
HOURS PREPARATION	278-280	
HOURS PRESENTATION	281-283	
TOTAL HOURS	284-286	
FORM NAME: ACTIVITY REPORT—CONTINUATION NO: 10A		
RECORD TYPE	1-2	NUMERIC '11'.
	3-286	THIS RECORD IS IDENTICAL TO FORM NO. 10 EXCEPT THE RECORD TYPE CODE.

RECORD FORMAT CONTROL LIST OF FIELDS

[CDMIS Client Demographics]

Field name	Starts	Length	Ends	Fill logic	XS	Length logic
Program	1	6	6	Blanks		Truncate.
Service Date	7	6	12	Blanks		Truncate.
Component	13	4	16	Blanks		Truncate.
Provider	17	5	21	Blanks		Truncate.
Contact	22	2	23	Blanks		Truncate.
Follow-up Months	24	2	25	Blanks		Truncate.
Client ID	26	9	34	Blanks		Truncate.
Client Age RNG	35	1	35	Blanks		Truncate.
Client DOB	36	7	42	Blanks		Truncate.
Client Tribe	43	3	45	Blanks		Truncate.
Client Sex	46	1	46	Blanks		Truncate.
Client Community	47	7	53	Blanks		Truncate.
Primary Problem	54	2	55	Zero/Blank		Truncate.
Secondary Problem	56	2	57	Zero/Blank		Truncate.
In Treatment	58	1	58	Blanks		Truncate.
Alcohol Days	59	3	61	Zero/Blank		Truncate.
Drug Days	62	3	64	Zero/Blank		Truncate.
Drug Combination	65	1	65	Blanks		Truncate.
Drug Type	66	8	73	Blanks		Truncate.
Hospital Days	74	3	76	Zero/Blank		Truncate.
Arrests	77	3	79	Zero/Blank		Truncate.
Alc/Sub Stage	80	1	80	Blanks		Truncate.
Physical Stage	81	1	81	Blanks		Truncate.
Emotional Stage	82	1	82	Blanks		Truncate.
Social Stage	83	1	83	Blanks		Truncate.
Cultural Stage	84	1	84	Blanks		Truncate.
Behavioral Stage	85	1	85	Blanks		Truncate.
Recommended Placement	86	4	89	Blanks		Truncate.
Actual Placement	90	4	93	Blanks		Truncate.
Difference Reason	94	2	95	Blanks		Truncate.
Inpatient Days	96	3	98	Zero/Blank		Truncate.
Goal Attainment	99	1	99	Blanks		Truncate.
TDC Reason	100	2	101	Blanks		Truncate.
Discharge Plan	102	1	102	Blanks		Truncate.

RECORD FORMAT CONTROL LIST OF FIELDS

[CDMIS Client Services]

Field name	Starts	Length	Ends	Fill Logic	XS	Length Logic
Program	1	6	6	Blanks		Truncate.
Service Date	7	6	12	Blanks		Truncate.
Component	13	4	16	Blanks		Truncate.
Provider	17	5	21	Blanks		Truncate.
Contact	22	2	23	Blanks		Truncate.
Client ID	24	9	32	Blanks		Truncate.

RECORD FORMAT CONTROL LIST OF FIELDS—Continued

[CDMIS Client Services]

Field name	Starts	Length	Ends	Fill Logic	XS	Length Logic
Client Age Range	33	1	33	Blanks		Truncate.
Client DOB	34	7	40	Blanks		Truncate.
Client Tribe	41	3	43	Blanks		Truncate.
Client Sex	44	1	44	Blanks		Truncate.
Client Community	45	7	51	Blanks		Truncate.
Record Order	52	2	53	Zeroes		Truncate.
Service1	54	9	62	Blanks		Truncate.
Service2	63	9	71	Blanks		Truncate.
Service3	72	9	80	Blanks		Truncate.
Service4	81	9	89	Blanks		Truncate.
Service5	90	9	98	Blanks		Truncate.
Service6	99	9	107	Blanks		Truncate.
Service7	108	9	116	Blanks		Truncate.
Service8	117	9	125	Blanks		Truncate.
Service9	126	9	134	Blanks		Truncate.
Service10	135	9	143	Blanks		Truncate.
Service11	144	9	152	Blanks		Truncate.

RECORD FORMAT CONTROL LIST OF FIELDS

[CDMIS Program]

Field name	Starts	Length	Ends	Fill logic	XS	Length logic
CDMIS Program	1	6	6	Blanks		Truncate.
Fiscal Year	7	2	8	Zero/Blank		Truncate.
Director	9	35	43	Blanks		Truncate.
Fund CAT1	44	3	46	Blanks		Truncate.
Fund CAT2	47	3	49	Blanks		Truncate.
Fund CAT3	50	3	52	Blanks		Truncate.
Fund CAT4	53	3	55	Blanks		Truncate.
Staff Total	56	3	58	Zeroes		Truncate.
IHS Staff	59	3	61	Zeroes		Truncate.
Male Staff	62	3	64	Zeroes		Truncate.
Female Staff	65	3	67	Zeroes		Truncate.
Indian Staff	68	3	70	Zeroes		Truncate.
NON Indian Staff	71	3	73	Zeroes		Truncate.
Salary Average	74	5	78	Zeroes		Truncate.
Salary PCT IHS Funded	79	3	81	Zeroes		Truncate.
IHS Funds Direct	82	10	91	Zeroes		Truncate.
IHS Funds Indirect	92	10	101	Zeroes		Truncate.
IHS Indirect Rate	102	3	104	Zeroes		Truncate.
Outpatients to See	105	5	109	Zeroes		Truncate.
Smoke Free	110	1	110	Zeroes		Truncate.
CAC	111	3	113	Zeroes		Truncate.
NAC	114	3	116	Zeroes		Truncate.
PSY	117	3	119	Zeroes		Truncate.
SW	120	3	122	Zeroes		Truncate.
FT	123	3	125	Zeroes		Truncate.
RT	126	3	128	Zeroes		Truncate.
AT	129	3	131	Zeroes		Truncate.
PHY	132	3	134	Zeroes		Truncate.
NUR	135	3	137	Zeroes		Truncate.
ED	138	3	140	Zeroes		Truncate.
ADM	141	3	143	Zeroes		Truncate.
SPT	144	3	146	Zeroes		Truncate.
OCC	147	3	149	Zeroes		Truncate.
ONC	150	3	152	Zeroes		Truncate.
CON	153	3	155	Zeroes		Truncate.
VOL	156	3	158	Zeroes		Truncate.
STU	159	3	161	Zeroes		Truncate.
OTH-CC	162	3	164	Zeroes		Truncate.
ADC	165	3	167	Zeroes		Truncate.
FT-JD	168	3	170	Zeroes		Truncate.
MH	171	3	173	Zeroes		Truncate.
SW-JD	174	3	176	Zeroes		Truncate.
ADE	177	3	179	Zeroes		Truncate.
RT-JD	180	3	182	Zeroes		Truncate.
AT-JD	183	3	185	Zeroes		Truncate.
MED	186	3	188	Zeroes		Truncate.
ED-JD	189	3	191	Zeroes		Truncate.
AFT	192	3	194	Zeroes		Truncate.
OC-JD	195	3	197	Zeroes		Truncate.
ADM-JD	198	3	200	Zeroes		Truncate.
VOL-JD	201	3	203	Zeroes		Truncate.
STU-JD	204	3	206	Zeroes		Truncate.

RECORD FORMAT CONTROL LIST OF FIELDS—Continued

[CDMIS Program]

Field name	Starts	Length	Ends	Fill logic	XS	Length logic
OTH-JD	207	3	209	Zeroes		Truncate.
NO HS GRAD	210	3	212	Zeroes		Truncate.
HS GRAD	213	3	215	Zeroes		Truncate.
AART	216	3	218	Zeroes		Truncate.
BA/BS	219	3	221	Zeroes		Truncate.
MA/MS	222	3	224	Zeroes		Truncate.
MD/PHD	225	3	227	Zeroes		Truncate.
Other ED LVL	228	3	230	Zeroes		Truncate.
DTX-Type	231	1	231	Blanks		Truncate.
DTX-Fund	232	1	232	Blanks		Truncate.
DTX-Beds	233	2	234	Zero/Blank		Truncate.
OTX-OCC	235	3	237	Zero/Blank		Truncate.
DTX-IHS	238	3	240	Zero/Blank		Truncate.
DTX-TOT	241	3	243	Zero/Blank		Truncate.
PRT-Type	244	1	244	Blanks		Truncate.
PRT-Fund	245	1	245	Blanks		Truncate.
PRT-Beds	246	2	247	Zero/Blank		Truncate.
PRT-OCC	248	3	250	Zero/Blank		Truncate.
PRT-IHS	251	3	253	Zero/Blank		Truncate.
PRT-TOT	254	3	256	Zero/Blank		Truncate.
HWH-Type	257	1	257	Blanks		Truncate.
HWH-Fund	258	1	258	Blanks		Truncate.
HWH-Beds	259	2	260	Zero/Blank		Truncate.
HWH-OCC	261	3	263	Zero/Blank		Truncate.
HWH-IHS	264	3	266	Zero/Blank		Truncate.
HWH-TOT	267	3	269	Zero/Blank		Truncate.
TLC-Type	270	1	270	Blanks		Truncate.
TLC-Fund	271	1	271	Blanks		Truncate.
TLC-Beds	271	2	273	Blanks		Truncate.
TLC-OCC	274	3	276	Zero/Blank		Truncate.
TLC-IHS	277	3	279	Zero/Blank		Truncate.
TLC-TOT	280	3	282	Zero/Blank		Truncate.
GRH-Type	283	1	283	Blanks		Truncate.
GRH-Fund	284	1	284	Blanks		Truncate.
GRH-Beds	285	2	286	Zero/Blank		Truncate.
GRH-OCC	287	3	289	Zero/Blank		Truncate.
GRH-IHS	290	3	292	Zero/Blank		Truncate.
GRH-TOT	293	3	295	Zero/Blank		Truncate.
FGH-Type	296	1	296	Blanks		Truncate.
FGH-Fund	297	1	297	Blanks		Truncate.
FGH-Beds	298	2	299	Zero/Blank		Truncate.
FGH-OCC	300	3	302	Zero/Blank		Truncate.
FGH-IHS	303	3	305	Zero/Blank		Truncate.
FGH-TOT	306	3	308	Zero/Blank		Truncate.
TFH-Type	309	1	309	Blanks		Truncate.
TFH-Fund	310	1	310	Blanks		Truncate.
TFH-Beds	311	2	312	Zero/Blank		Truncate.
TFH-OCC	313	3	315	Zero/Blank		Truncate.
TFH-IHS	316	3	318	Zero/Blank		Truncate.
TFH-TOT	319	3	321	Zero/Blank		Truncate.
DIC-Type	322	1	322	Blanks		Truncate.
DIC-Fund	323	1	323	Blanks		Truncate.
DIC-Beds	324	2	325	Zero/Blank		Truncate.
DIC-OCC	326	3	328	Zero/Blank		Truncate.
DIC-IHS	329	3	331	Zero/Blank		Truncate.
DIC-TOT	332	3	334	Zero/Blank		Truncate.
OPT-Type	335	1	335	Blanks		Truncate.
OPT-Fund	336	1	336	Blanks		Truncate.
OPT-OCC	337	3	339	Zero/Blank		Truncate.
OPT-IHS	340	3	342	Zero/Blank		Truncate.
OPT-TOT	343	3	345	Zero/Blank		Truncate.
AFT-Type	346	1	346	Blanks		Truncate.
AFT-Fund	347	1	347	Blanks		Truncate.
AFT-OCC	348	3	350	Zero/Blank		Truncate.
AFT-IHS	351	3	353	Zero/Blank		Truncate.
AFT-TOT	354	3	356	Zero/Blank		Truncate.
DIA-Type	357	1	357	Blanks		Truncate.
DIA-Fund	358	1	358	Blanks		Truncate.
DIA-OCC	359	3	361	Zero/Blank		Truncate.
DIA-IHS	362	3	364	Zero/Blank		Truncate.
DIA-TOT	365	3	367	Zero/Blank		Truncate.
DIB-Type	368	1	368	Blanks		Truncate.
DIB-Fund	369	1	369	Blanks		Truncate.
DIB-OCC	370	3	372	Zero/Blank		Truncate.
DIB-IHS	373	3	375	Zero/Blank		Truncate.
DIB-TOT	376	3	378	Zero/Blank		Truncate.
PRV-Type	379	1	379	Blanks		Truncate.
PRV-Fund	380	1	380	Blanks		Truncate.

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RECORD FORMAT CONTROL LIST OF FIELDS—Continued

[CDMIS Program]

Field name	Starts	Length	Ends	Fill logic	XS	Length logic
PRV-OCC	381	3	383	Zero/Blank		Truncate.
PRV-IHS	384	3	386	Zero/Blank		Truncate.
PRV-TOT	387	3	389	Zero/Blank		Truncate.
Address	390	70	459	Blanks		Truncate.
City	460	30	489	Blanks		Truncate.
State	490	2	491	Blanks		Truncate.
ZIP	492	11	502	Blanks		Truncate.
Phone	503	12	514	Blanks		Truncate.

K. Community Health Representative Information System (CHRIS)

1. Reporting Requirement

a. A one line entry is required to be completed on a Community Health Representative (CHR) Activities Report form for each CHR service that was provided on the day to which the form applies. Continuation CHR Activities forms (containing all header information as well as CHR activity line entries) are to be completed if all CHR services provided on a reporting day cannot all be reported on a single CHR Activities form. CHR Activities forms are to be completed during one sample week (a 7-day week) per month in accordance with the CHR sample reporting week schedule to be specified by the IHS Headquarters Director of the CHR Program.

b. The CHR Activities Report User Manual provides complete definitions and procedures for reporting into the Community Health Representative Information System (CHRIS).

c. Each CHR Program, in cooperation with their respective IHS Area Office CHR Coordinator, will determine procedures for collecting CHR Activities data and creating automated records in the format described in the next section. Options include:

(1) Key-entry of forms at the CHR Program.

(2) Key-entry of forms at the Area.

(3) Key-entry of forms by a contractor.

(4) Key-entry of forms at the service unit.

d. Records will be consolidated at the Area level and forwarded to the Division of Data Processing Services (DDPS) at Albuquerque no later than two weeks after the last day of each sample reporting week.

e. The contractor will be required to submit on a quarterly basis a report to the Area Office which analyzes the differences between projected and actual services, and explains major differences.

2. Record Formats

a. The CHR Activities record contains individuals patient encounter and/or group encounter information. Each record is proposed as 39 characters in length. These specifications may be slightly modified after systems design work is completed.

b. The proposed format of the CHR Activities record is shown in Figures K–1 through K–3.

c. A draft CHR Activities Report form is included in Appendix A.

3. Transmission Media

a. CHR Activities records for each Area are generally mailed to DDPS on nine track unlabeled, unblocked EDCDIC tape. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS CHR Data Entry System

a. There is available an RPMS ANSI MUMPS CHR data entry program which allows for records to be keyed locally, transmitted to the Area, and forwarded from the Area to DDPS by telecommunications.

CHR ACTIVITIES RECORD

[Note: All fields are required reporting fields]

Position	Field	Required
	A. Header Information	
1–4	PROVIDER (Last 4 digits of each CHR's Social Security Number unless otherwise instructed by the CHR's supervisor. If more than one CHR in the same CHR program have the same last four Social Security Number digits, a different 4-digit number may be given by the CHR supervisor to use.).	All
5–11	PROGRAM 5–6 Area Code 7–8 Service Unit Code 9–11 Tribe/Community Code	
12–17	DATE 12–13 Month (01–12) 14–15 Day (01–31) 16–17 Year (last 2 digits of year)	
18–19	PAGE 18 Specific Report Page 19 Total Reporting Pages for that day ("Page of " is used to distinguish between forms when one CHR provides more services than can be reported on one reporting form.)	
	B. Service Data	
	Note: One line is used for each service provided on the day to which the form applies. If more services are performed on one day than can be reported on one CHR Activities form, an additional form(s) should be used and number as described above. All spaces should be filled in with information. If an item does not apply to a particular service, enter a dash "—", not a zero. For additional reporting instructions consult the CHR Activities Report User Manual..	

CHR ACTIVITIES RECORD—Continued

[Note: All fields are required reporting fields]

Position	Field	Required
20–21	Service Code 1 Provide Health Education Services 2 Case Find; Screen 3 Case Management—Coordinate 4 Monitor Patient 5 Provide Emergency Patient Care 6 Provide Non-Emergency Patient Care 7 Provide Homemaker Services 8 Transport; Deliver 9 Interpret; Translate 10 Provide Environmental Services 11 Administrative Reporting and Record Keeping 12 Provide Patient Clerical Services 13 Attend Meetings 14 Obtain Training 15 Other Administrative Services 16 Other Services	
22–23	Health Area 1 Diabetes 2 Cancer 3 Hypertension 4 AIDS 5 Communicable Disease 6 Substance Abuse 7 Community Injury Control 8 Health Promotion/Disease Prevention 91 Other General Medical 92 Dental 93 Gerontological 94 Maternal/Child Health 95 Mental Health 96 Environmental — Not Applicable	
24	Setting 1 Home 2 Hospital/Clinic 3 CHR Office 4 Community	
25–26	Age Two digits for age. If the recipient is less than 1 year of age use a zero, "0.", If no personal service is given or a group is served, enter a dash, "—."	
27	Sex 1 Male 2 Female Where service for both males and females is provided or no direct client service is involved, enter a dash, "—."	
28–30	Number Served When a group service is provided, the number of participants receiving direct service is to be recorded here. If there is only one main client, enter a "1." A breast feeding class is an example of services provided for more than one person. If an infant is the main client, the number served is "1" even though the mother is instructed in infant care. Record the number of people served here. Enter a dash "—" in the box for a service in which people are not provided for directly, e.g., CHR administrative service.	
30–31	Referral From	
32–33	Referral To *Referral Codes* — None 1 Medical 2 Nursing 3 Dental 4 Eye 5 Social Worker 6 Substance Abuse Professional 7 Other Professional 8 Technician 9 Agency/Program 10 Family/Self/Community	
34–36	Minutes Used—Service	
37–39	Minutes Used—Travel	

L. Community Health Activity Reporting System

1. Reporting Requirement

a. A Community Health Activity record is required for all activities performed by each Public Health Nurse (PHN). These are to include both direct and indirect patient care contacts and all administrative and training activities. A CHA record must be completed on each discrete activity according to the time required for the activity. Each daily activity sheet should include records to account for the total time during the day that the PHN was on duty.

b. All reporting requirements and procedures are outlined in the CHA Reporting System Guide.

c. Each Area will define procedures for getting the data from each reporting

site. All data from each Area will be sent at least quarterly to the designated UNICORP data entry point.

d. Headquarters requirements can be met with a sampling procedure that uses one full week of activities per month in accordance with the sample reporting week schedule to be specified by IHS Headquarters. There is an RPMS ANSI MUMPS Generic Activities Reporting System (GARS) data entry program which allows for records to be submitted to Area for compilation and forwarded from Area to DDPS.

2. Record Formats

a. The CHA record contains data on each discrete activity performed by a Public Health Nurse. Each record is 82 characters in length.

b. The format of the CHA record is shown in Figure L–1.

c. A sample of the IHS CHA form is included in Appendix A.

3. Transmission Media

a. The CHA records are mailed to DDPS by UNICORP on nine track unlabeled, unblocked EBCDIC tape.

4. CHA Data Entry System

a. Currently all data is entered onto a data entry sheet. These are consolidated at the Area level and transmitted to UNICORP for data entry.

b. A MUMPS based Generic Activities Reporting System is being developed which will allow service units, contractors and/or Area Offices to do their own data entry and transmit the data via 9 track disks or data cartridges to the data center.

COMMUNITY HEALTH ACTIVITY RECORD FORMAT

Position	Field	Required
1–2	Record Code (Always "14")	
3–8	Area/Service Unit/Facility Code.	X
9–10	Position Code	X
11–16	Date (MMDDYY)	X
17–19	Community	X
20–21	Activity	X
22–24	Primary Purpose Code	X
25	First Visit	
26	Nursing Diagnosis	
27–29	Secondary Purpose Code	
30	First Visit	
31	Nursing Diagnosis	
32	Time for Activity (Hour(s))	X
33–34	Time for Activity (Minutes)	X
35–37	Number Counseled in Clinic/ Number Contacted in Group Session	
38–43	Health Record Number (Required for patient contacts)	
44–45	Date of Birth (Month)	X
46–47	Date of Birth (Day)	X
48–49	Date of Birth (Year)	X
50	Sex	X
51	Family Status	X
52	Travel Time (Hour(s))	
53–54	Travel Time (Minutes)	
55–56	Total Time (Hours)	
57–58	Total Time (Minutes)	
59–60	Leave Taken (Annual—Hours)	
61–62	Leave Taken (Annual—Minutes)	
63–64	Leave Taken (Sick—Hours)	
65–66	Leave Taken (Sick—Minutes)	
67–68	Leave Taken (Compensatory—Hours)	
69–70	Leave Taken (Compensatory—Minutes)	
71–72	Leave Taken (Station—Hours)	
73–74	Leave Taken (Station—Minutes)	
75–76	Leave Taken (Other—Hours)	
77–78	Leave Taken (Other—Minutes)	
79–80	Overtime Worked—Hours	
81–82	Overtime Worked—Minutes	
83–91	Social Security Number (Required for patient contacts).	X

M. Health Education Resources Management System (HERMS)

1. Reporting Requirements

a. The Indian Health Service Health Education Program developed a new data system—the Health Education Resources Management System (HERMS) over three years ago. This system has undergone several field tests, and all data during these tests have been generated manually by the field health education staff.

The HERMS includes a daily record encounter and this record system is required for service unit health education staff. This includes covered contractors.

b. HERMS forms are due in the Area Health Education Office. Specific collection procedures will be determined by the Area Health Education Branch Chief. The Area Office will collect and key-enter all data. The Area Health Education Office will be required to submit a quarterly report to the field staff and IHS Headquarters Director of the Health Education Program.

c. Part 3, Chapter 12 of the Indian Health Service Manual (Health Education) is currently being revised and will require the HERMS.

d. The HERMS forms are to be completed during one sample week (a 7 day week) per month in accordance with the HERMS reporting week schedule to be specified by the IHS Headquarters Director of the Health Education Program.

2. Record Format

a. The format of the HERMS form is shown in Figures M–1 through M–5.

b. A sample of the IHS HERMS form is included in Appendix A.

3. Reports

The following reports will be generated from the Health Education Resources Management System (HERMS) to be provided to Headquarters, Areas, and service unit/ tribal health education personnel as required.

Reports To Be Provided:

Report I: Quarterly Summary
Report II: Annual Summary
Report III: Quarterly Cost of Activities by Provider

4. RPMS MUMPS Data Entry System

There is an RPMS ANSI MUMPS Generic Activities Reporting System (GARS) data entry program which allows for records to be submitted to Area for compilation and forwarding from Area to the Division of Data Processing Services.

5. Additional Benefits

This new data system will enable the IHS and tribal programs to have the ability to collect and generate statistical data to address the efficiency and effectiveness of health education services, RAM issues relevant to staff productivity and cost benefit, reporting for Area and Headquarters requirements, justification and tracking system for staffing, etc.

Improved control, communication, coordination, and up-to-date reporting for categorical activities for the Chief, Health Education Branch, and Chief, Health Education Section, Indian Health Service, is also anticipated.

6. HERMS Manual

A complete instruction manual for the HERMS is available from the Area Health Education Office.

HERMS Record Reporting Instructions

Position	Field		Required
To Be Determined	Ia.	*Area Coding* is to be numbered according to the *IHS Standard Code Book*	X
	Ib.	*Service Unit/Tribal Program Coding* is to be numbered according to the *IHS Standard Code Book*	X
	Ic.	*PROVIDER NO.*: This number is assigned by the Area Branch Chief	X
	Id.	*FACILITY NO.*: Assigned in *IHS Standard Code Book*. Facility is where the Health Education staff member completes H.E.R.M.S. forms.	X
	Ie.	*MONTH*: Enter the Month that reports are being submitted for workload activities. *01–12*	X
	If.	*FISCAL YEAR*: Enter the last two digits of the fiscal year	X
	Ig.	*PAGE*: Enter the number of forms submitted for the reporting period, example: page 1 of 3 pages, page 2 of 3, page 3 of 3	
	Box I	*DATE*: List each day's date	X
	Box II	*TASK MATRIX*: The purpose of this column is to identify those direct services which are provided in the course of health education activities. The following tasks are to be utilized in the task matrix categories: 100 series, Identification of Health Problems and Needs; 200 series, Design Educational Objectives and Develop Methodology; 300 series, Implementation/Teaching; 400 series, Health Education Program Evaluation; 500 series, Support Services; and 600 series, Professional Training. Use one line per task.	X
	Box III	*HEALTH EDUCATION PROGRAM CODES*: See back side of form—Box III	X
	Box IV	*NUMBER OF PEOPLE SERVED*: List the number of individuals reached in the appropriate box	
	Box V	*AGE CATEGORIES: Only list for "300" activities* Box V is to be used to indicate the age categories of individuals reached during "direct 300 level" health education activities. Select one age category that best represents the majority of the group *1*=0–2 Infant *23*–5 Pre-school *36*–13 Elementary *414*–18 High School *519*–25 College/Young Adult *626*–55 Adult *756*+ Sr. Citizen *8*All Ages, Mixed	X
	Box VI	*TOTAL NUMBER OF PEOPLE REACHED*	X
	Box VII	*TASK/ACTIVITY HOURS*: Box 7 is to be used to code the number of service hours required for accomplishing the health education activity or task. Must be marked for each activity. Mark, to the nearest half hour, the time spent in carrying out the task. Example: an activity taking seven hours and 35 minutes, code as 07.5; five hours and 12 minutes code as 05.0	X
	Box VIII	*TRAVEL TIME*: Travel will be handled as an activity and therefore this box will be eliminated Time is heavily influenced by such variables as distance, climate, number of Indian communities, etc Box 8 is to be used when travel is required to carry out a health education activity Includes the physical act of moving between ones usual work site (office) to other locations where client/patient services are to be rendered or performed. Include travel time for follow-up, evaluation, data collections. Mark to the nearest half hour. Example: travel time of 2 and ½ hours would be coded as 02.5	
	Box IX	*LOCATION*: Box 9 is to be used to identify the specific location of the program and educational activity. Utilize the following location codes to identify the specific location. Use a location code for each task. *Location Codes* (i.e., settings where services are being provided) 901 *Home* 902 *School* 903 *Clinic* 904 *Hospital* 905 *Tribal/Comm Bldg** 906 *Tribal Worksite* 907 *Recreational Facility* 908 *Street/Highway (Roadside)* 909 *Health Education Office* 910 *Other*	X
	Box X	*COMMUNITY CODE*: The health educator is to identify the specific community where the service or activity was provided. *See the IHS Standard Code Book for the specific community code.* Available from the Health Education Area Office. *See Appendix A–111 for sample, pg 12.*	X

* (*905*—i.e., Services Center, Facility Building, Chapter House, Church, etc.)

HERMS Record Task Matrix

Code	Task
101	Needs Assessment.
102	Data Collection.
103	Analyze Data.
104	Summarize Data.
201	Educational Diagnosis.
202	Information Gathering/ Obtaining Resources.
203	Develop Program Objectives.
204	Establish Approach & Sequence of Events.
205	Materials Development & Design.
206	Publicizing & Promoting
301	Staff In-Service Training.

HERMS Record Task Matrix—Continued

Code	Task
302	Presentation & Discussion.
303	Staff Support w/ Education Activities.
304	Patient Education.
401	Process Evaluation.
402	Evaluation of Knowledge, Attitudes and Beliefs.
403	Outcome Evaluation.
404	Quality Assurance.
405	Reports.
406	Debriefing.
501	General Program Admin.

HERMS Record Task Matrix—Continued

Code	Task
502	Special Admin. Assignment (within Health Education).
503	Special Admin. Assignment (outside Health Education).
504	Staff Meetings.
505	Maintenance of Resource Center/Audiovisual Library.
506	Clerical Tasks.
601	Professional Training.
602	Self-Development.

HERMS RECORD TASK MATRIX—Continued

Code	Task	Required
	Travel.	

N. Nutrition and Dietetics Program Activities Reporting System (NDPARS)

1. Reporting Requirement

a. A one line entry is required to be completed on a Nutrition and Dietetics Program Activity Reporting System (NDPARS) form for each nutrition/dietetics activity. NDPARS forms are to be completed daily.

b. The NDPARS Users Manual provides complete definitions and procedures for completing the forms.

c. Each nutrition/dietetics staff member completes the forms and sends the forms to the Area Nutrition/Dietetics Branch Chief monthly. The Area sends the forms to Headquarters for entry into the computer.

d. Headquarters requirements can be met with a sampling procedure that uses one full week of activities per month in accordance with the sample reporting week schedule to be specified by IHS Headquarters. There is an RPMS ANSI MUMPS Generic Activities Reporting System (GARS) data entry program which allows for records to the submitted to Area for compilation and forwarding from Area to DDPS.

2. Record Format

a. The NDPARS record contains individual patient encounters and/or group encounter information. Additionally, the record contains program management, technical assistance, and training information.

b. The format of the NDPARS record is shown in Figures N–1 through N–4.

c. A NDPARS form is included in Appendix A.

3. Transmission Media

NDPARS records are mailed to Area Office and then Headquarters for data entry.

4. RPMS NDPARS Data Entry System

There is available an RPMS ANSI MUMPS NDPARS data entry program which allows for records to be keyed locally, transmitted to the Area, and forwarded from the Area to DDPS by telecommunications.

NDPARS RECORD

Position	Field	Required
This is a Fileman global and no expert and merge programs are available at this time.	Header Information	
	NAME	X
	SERVICE UNIT	X
	DATE	X
	Service Data	
	NOTE: One line is used for each service provided. All spaces should be filled in with codes. For additional reporting instruction consult the NDPARS User Manual.	
	Function Code:	X
	01 Clinical Nutrition Services	
	02 Hospital Foodservice Systems Management	
	03 Community Nutrition Program Management	
	04 Routine Nutritional Care	
	05 Nutrition Education Service	
	06 N&D Program Coordination, Consultation & Technical Assistance	
	07 N&D Program Administration	
	08 Continuing Education	
	09 Continuing Training	
	10 Conducting Research/Writing for Professional publication	
	11 Leave	
	99 Other	
	PRIMARY PURPOSE CODE:	X
	101 Alcohol Related	
	102 Anemia	
	103 Calcium Controlled	
	104 Cancer	
	105 Clear Liquid	
	106 Diabetes	
	107 Dumping Syndrome	
	108 Elimination	
	109 Fat Controlled	
	110 Full Liquid	
	111 Gestational Diabetes	
	112 Gluten Free	
	113 High Protein	
	114 Hypoglycemia	
	115 Increased Fiber	
	116 Lactose Restricted	
	117 Low caffeine	
	118 Low Residue	
	119 Normal Nutrition	
	120 Potassium Controlled	
	121 Prenatal	
	122 Purine Restricted	
	123 Renal	
	124 Sodium Controlled	
	125 Tonsillectomy	

NDPARS RECORD—Continued

Position	Field	Required
	126 Tube Feeding	
	127 Undernutrition	
	128 Vegetarian	
	129 Weight Control	
	130 Other Clinical Diets	
	131 Other Clinical Diets	
	201 Consultation/ Technical Assistance	
	202 Administrative/ Management	
	203 Educational Materials Review/ Development	
	204 Chart Review and/ or Quality Assurance	
	205 Staff Meetings	
	206 Employee Supervision/ Counseling	
	301 Travel	
	401 Not Nutrition/ Dietetics Related	
	999 Other	
	ENCOUNTER CODE:	X
	1 First Visit	
	2 Follow-up Visit	
	3 Limited Series	
	4 Ongoing	
	9 Other	
	RECIPIENT CODE:	X
	01 Patient	
	02 Community	
	03 CHR	
	04 Health Team	
	05 Tribal Staff	
	06 Dietary Staff	
	07 WIC Client	
	08 WIC Staff	
	09 Commodity Foods Client	
	10 Commodity Foods Staff	
	11 Headstart/Daycare Client	
	12 Headstart/Daycare Staff	
	13 Elderly Nutrition Program Client	
	14 Elderly Nutrition Program Staff	
	15 Alcohol/Substance Abuse Program Staff	
	16 Alcohol/Substance Abuse Program Staff	
	17 Schools, Student	
	18 Schools, Staff	
	19 Government Agency Staff	
	96 No Recipient	
	99 Other	
	RECIPIENT AGE CODE:	X
	1 Infant	
	2 Child	
	3 Adolescent	
	4 Adult	
	5 Elderly	
	6 All Ages	
	9 No Recipient Type	
	RECIPIENT TYPE CODE:	X
	1 Individual	
	2 Group	
	9 No Recipient Type	
	DELIVERY SETTING CODE:	X
	1 Hospital In-Patient	
	2 Clinic	
	3 Home	
	4 Community	

NDPARS RECORD—Continued

Position	Field	Required
	5 Hospital Dietary Department	
	6 Public Health Nutrition Department	
	7 Administrative	
	9 Other	
	NUMBER REACHED:	X
	Record actual number of people reached	
	Write NA if no personal contacts were involved	
	Record zero (0) for missed appointments and meetings where no one came	
	SERVICE-TIME:	X
	Record actual time spent in the activity (in hours and minutes)	

O. Clinical Laboratory Workload Reporting System

1. Reporting Requirement

a. The workload recording system for IHS laboratories is contracted with the College of American Pathologists (CAP) national computerized workload system. Raw data are required to be collected monthly by the individual lab. CAP or a similar workload reporting system is recommended for contractors.

b. Workload data and productivity rates are computed, comparisons with other labs are included, and the report is sent back to the individual lab. Summary reports are sent by CAP to IHS Headquarters. Summary workload reports on a quarterly basis are the only time requirement of IHS Headquarters.

c. The CAP Instruction Manual for Computer Assisted Workload Program describes the reporting system.

2. Record Formats

a. CAP forms are tailored for a specific lab, although the basic data element collected (shown in Figure O–1) are the same. Each portion of the lab completes its own form. If it is desired to electronically generate the CAP data, then CAP needs to be contacted for instructions.

b. A sample of the CAP form is included in Appendix A.

3. Transmission Media

Data is to be sent either by mail or electronic communication to the CAP computer center.

CLINICAL LABORATORY WORKLOAD REPORTING SYSTEM

Data elements	Required for cap
1. Name of Lab	X
2. Month/Year	X
3. Procedure Name	X
4. CAP Code No.	X
5. Unit Value Per Procedure	X
6. Lab Section	X
7. Procedure Designation—IP/OP/QCSTD/REP.	X
8. Number of Procedures	X

From the above we get: Total Unit Value, Worked Productivity, Paid Productivity, Comparisons with other labs.

How we use it: For Determining Staffing, Scheduling, Space, Instrument and Equipment Requirements.

P. Urban Indian Health Common Reporting

1. Reporting Requirement

a. Urban Indian Projects are required to collect and report information from patient records as well as administrative and financial records. There is a facesheet (which must be included each time any table is submitted) and a series of 8 tables which need to be submitted on a semi-annual or annual basis. Some portions of the tables do not apply to some urban Indian health programs. The tables must be submitted by all organizations directly receiving Federal funds under title V of the 1976 Indian Health Care Improvement Act, Public Law 94–437 as amended.

b. The Urban Indian Health Programs Instruction Manual for Common Reporting Requirements provides complete definitions and procedures for reporting. Organizations must report on their entire health program activity even though it may be supported only in part by the IHS grant(s) or contract(s).

c. The semi-annual reporting period ends 26 weeks after the start of the fiscal year (FY) and the annual reporting period ends the last day of the FY. The reports are due into the IHS Area Offices 4 weeks after the end of the reporting period. IHS Area Officers review and send reports to the IHS Headquarters Office 5 weeks after the end of the reporting period. The IHS Office reviews and sends reports to the contractors for data entry and to the technical assistance contractor 6 weeks after the end of the reporting period.

2. Record Formats

a. A description of the facesheet and the 8 tables follows.

(1). Face sheet. Identifies the project, location, project director, etc.

(2). Table 1. Identifies the user population by age and sex.

(3). Table 2. Identifies the user population by type of provider and by Indian versus non-Indian status.

(4). Table 3. Collects information by health occupational group—also called functional cost center (number of full-time equivalent staff and number of encounters).

(5). Table 4. Provides hospital inpatient admissions and hospital inpatient encounters by type of service provider.

(6). Table 5. Provides information on the adherence to established treatment goals for the provision of follow-up activities (pap smear, hypertension, and diabetes), immunizations appropriate for age, family planning counseling, and anemia screening.

(7). Table 6. Provides financial information by various health care functions.

(8). Table 7. Provides financial information on monies the urban project receives from non-IHS sources.

(9). Table 8. Provides information on total receipts from all sources and total expenditures for each project.

b. Copies of the face sheet and the 8 tables are included in appendix A.

3. Transmission Media

a. The face sheet and tables are to be submitted in hardcopy format. Two (2) copies are to be submitted to the appropriate Project Officer or IHS Area Urban Coordinator.

Q. Fluoridation Reporting Data System

1. Reporting Requirements

a. Fluoride ion analysis records and fluoridator maintenance and repair records for community water systems will be maintained and submitted for centralized processing as described in the IHS Fluoridation Policy Issuance dated August 1981, and any subsequent updates. Each water system must be identified by its assigned EPA/Sanitary Facility Code and include the date of the activity. The general surveillance procedures are described in Table Q–1.

b. In most cases, local programs will report the required data on a weekly or monthly basis using any of several options:

(1) Submission of completed data forms directly to the IHS Area Office or IHS key entry contractor, or

(2) Submission of formatted records from data entered into local RPMS database, or

(3) Submission of formatted records from a local non-RPMS database.

The frequency schedule for submission of each type of fluoridation tracking data is shown on Table Q–2.

If the required data for water systems are maintained in an Area database, the data must be submitted for central processing to the IHS Division of Data Processing Services by the last day of each month.

2. Record Formats

a. The basic data elements for community fluoridation reporting are shown in Figure Q–1.

b. The keytape record format specifications for fluoride ion test results is shown in Figure Q–2 (formatted records can be extracted from existing RPMS software).

c. An example of the standard input form for reporting the results of fluoride ion analysis is shown in Appendix A. The use of this form is not required, but is highly recommended when data are not keyed into a computer locally.

The form for adding or deleting water systems for data reporting purposes is shown in Appendix A. Use of this form is *required* when the status of a water system is to be changed.

Table Q–1: Fluoridation Surveillance Procedures

1. Control Limits for Fluoridated Water Systems

The fluoride level in fluoridated water systems should be maintained as close to the recommended concentration as possible, and in no case above or below the ranges noted below.

Annual average of maximum daily air temperatures (OF)	Recommended fluoride concentrations		Allowable range of fluoride concentrations	
	Community (ppm)	School (ppm)	Community (ppm)	School (ppm)
50.0–53.7	1.2	5.4	1.1–1.7	4.3–6.5
53.8–58.3	1.1	5.0	1.0–1.6	4.0–6.0
58.4–63.8	1.0	4.5	0.9–1.5	3.6–5.4
63.9–70.6	0.9	4.1	0.8–1.4	3.3–4.9
70.7–79.2	0.8	3.6	0.7–1.3	2.9–4.3
79.3–90.5	0.7	3.2	0.6–1.2	1.6–3.8

2. Sample Collection and Analysis

a. Samples for analysis should be obtained from a convenient tap on a main line of water system that is representative of the water throughout the system. In some systems with multiple sources, more than one sample may be required.

b. Samples for fluoridation analysis should be collected and analyzed as follows:

- Weekly intervals w/split sample every fourth week.
- Anytime equipment failure or malfunction is suspected.
- Immediately following repair of equipment.

c. All fluoride monitoring instruments should have their measurement results verified by split sampling of the last sample collected each month. The split sample should be analyzed at a recognized laboratory, preferably an EPA or State approved facility.

3. Reporting

a. Analytical Results: Analytical results of all samples for each water system should be recorded on the Fluoride Analysis Report Form (HSA–T) and submitted to the address indicated on the form for data processing. Normally, this should be done by the system operator.

Table Q–2: Recommended Frequency Schedule for Submitting Fluoridation Data

Submission of Forms

The following tabulation indicates the forms and submission schedules that are required in order to develop meaningful data reports:

Input form	Frequency of input	Reports generated	Frequency of reports	Prime responsibility for inputting form
Sanitary Facility Data System Form Parts A & B.	Annually (data as of Oct. 1)	Sanitation Facility Data System Summary by Area/SU and replica of data input form.	Annually and upon request	Area OEH designee.
Fluoride Analysis Report Form.	At least weekly is recommended.	Fluoride Analysis Report	Monthly	Person doing fluoride concentration analysis.
Fluoride System Add/Delete Form.	As Fluoridators are added to or deleted from community water system.	No specific report—system will be added/deleted from the Fluoride Analysis Report or M&R Report as appropriate.	N/A	Area OEH Fluoridation coordinator.

COMMUNITY WATER FLUORIDATION REPORTING

[Fluoride Test Results]

Data element	Required
Sanitary facility code	X
Person conducting test	X
Fluoride test instrument	X
Fluoride test result	X

FLUORIDE TEST RESULTS RECORD LAYOUT:

DENTAL FLUORIDE RECORD FORMATS

RECORD: DENTAL FLUORIDE SURVEILLANCE KEYTAPE TRANSACTION

RECORD LENGTH: 128
RECORD FORM: FIX-BLK
BLKSIZE: 2560
BLKFACT: 20
OUTPUT SOURCE: FROM KEYTAPEING
MEDIA: MAGTAPE
INTERNAL NAME: N/A
DATA SET NAME: UNLABLED
INPUT SOURCE: TO MRSDENQO
MEDIA: MAGTAPE
INTERNAL NAME: MRSTAPE
DATA SET NAME: UNLABLED

Position	Lang	Field name	Contents
1–2	2	RECORD CODE	"21".
3	1		BLANK.
4–9	6	REPORT DATE	DATE SAMPLES TAKEN—MMDDYY.
10	1	INSTRUMENT USED #1	"C", "I", "S", "T" OR "X".
11–17	7	EPA SANITARY FACILITY CODE #1	VALID EPA–SFC (SYSTEM) CODE.
18–20	3	TEST RESULTS IN PPM #1	NUMERIC WITH 1 ASSUMED DECIMAL.
21	1	INSTRUMENT USED #2	"C", "I", "S", "T" OR "X".
22–28	7	EPA SANITARY FACILITY CODE #2	VALID EPA–SFC (SYSTEM) CODE.
29–31	3	TEST RESULTS IN PPM #2	NUMERIC WITH 1 ASSUMED DECIMAL.
32	1	INSTRUMENT USED #3	"C", "I", "S", "T" OR "X".
33–39	7	EPA SANITARY FACILITY CODE #3	VALID EPA–SFC (SYSTEM) CODE.
40–42	3	TEST RESULTS IN PPM #3	NUMERIC WITH 1 ASSUMED DECIMAL.
43	1	INSTRUMENT USED #4	"C", "I", "S", "T" OR "X".
44–50	7	EPA SANITARY FACILITY CODE #4	VALID EPA–SFC (SYSTEM) CODE.
51–53	3	TEST RESULTS IN PPM #4	NUMERIC WITH 1 ASSUMED DECIMAL.
54	1	INSTRUMENT USED #5	"C", "I", "S", "T" OR "X".
55–61	7	EPA SANITARY FACILITY CODE #5	VALID EPA–SFC (SYSTEM) CODE.
62–64	3	TEST RESULTS IN PPM #5	NUMERIC WITH 1 ASSUMED DECIMAL.
65	1	INSTRUMENT USED #6	"C", "I", "S", "T" OR "X".
66–72	7	EPA SANITARY FACILITY CODE #6	VALID EPA–SFC (SYSTEM) CODE.
73–75	3	TEST RESULTS IN PPM #6	NUMERIC WITH 1 ASSUMED DECIMAL.
76	1	INSTRUMENT USED #7	"C", "I", "S", "T" OR "X".
77–83	7	EPA SANITARY FACILITY CODE #7	VALID EPA–SFC (SYSTEM) CODE.
84–86	3	TEST RESULTS IN PPM #7	NUMERIC WITH 1 ASSUMED DECIMAL.
87	1	INSTRUMENT USED #8	"C", "I", "S", "T" OR "X".
88–94	7	EPA SANITARY FACILITY CODE #8	VALID EPA–SFC (SYSTEM) CODE.
95–97	3	TEST RESULTS IN PPM #8	NUMERIC WITH 1 ASSUMED DECIMAL.
98	1	INSTRUMENT USED #9	"C", "I", "S", "T" OR "X".
99–105	7	EPA SANITARY FACILITY CODE #9	VALID EPA–SFC (SYSTEM) CODE.
106–108	3	TEST RESULTS IN PPM #9	NUMERIC WITH 1 ASSUMED DECIMAL.
109	1	INSTRUMENT USED #10	"C", "I", "S", "T" OR "X".
110–116	7	EPA SANITARY FACILITY CODE #10	VALID EPA–SFC (SYSTEM) CODE.
117–119	3	TEST RESULTS IN PPM #10	NUMERIC WITH 1 ASSUMED DECIMAL.
120–128	9	ANALYST I.D.	ALPHA NUMERIC.

Dated: August 7, 1991

Everett R. Rhoades,

Assistant Surgeon General Director

[FR Doc. 92–1573 Filed 1–21–92; 8:45 am]

BILLING CODE 4160–16–M

VOL 57 ISS 14 JA 22 1992 UMI

federal register

Wednesday
January 22, 1992

Part III

The President

Proclamation 6401—Martin Luther King, Jr., Federal Holiday, 1992

VOL
57

ISS
14

JA
22
1992

UMI

Federal Reg
Vol. 57, No
Wednesday

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The Pre

Federal Register
Vol. 57, No. 14
Wednesday, January 22, 1992

Presidential Documents

Title 3—

The President

Proclamation 6401 of January 17, 1992

Martin Luther King, Jr., Federal Holiday, 1992

By the President of the United States of America

A Proclamation

"The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy." On the 63rd anniversary of the birth of the Reverend Dr. Martin Luther King, Jr., we honor an American who took a brave stand for justice and equality, even though his message of racial harmony met with stubborn, sometimes brutal, opposition.

Martin Luther King told us that, in spite of the cruel reality of segregation in the United States, "I still have a dream. It is a dream deeply rooted in the American dream. I have a dream that one day this nation will rise up and live out the true meaning of its creed . . . ." He believed that for this creed to be truly fulfilled, his children would "one day live in a nation where they will not be judged by the color of their skin but by the content of their character."

Throughout his years as leader of the civil rights movement, Dr. King adhered to an ethic of nonviolence. Time and again, he urged his listeners: "Let us not seek to satisfy our thirst for freedom by drinking from the cup of bitterness and hatred. We must forever conduct ourselves on the high plane of dignity and discipline." King knew that it would take great patience, courage, and fortitude to wage a peaceful struggle in the face of sometimes bitter resistance, but he also knew that acting in the spirit of nonviolence could make virtue out of suffering. "The nonviolent approach . . . first does something to the hearts and souls of those committed to it," he explained. "It gives them new self-respect; it calls up resources of strength and courage that they did not know they had." Dr. King urged his listeners to rely on the force of moral truth.

Recognizing the redemptive power of love and sacrifice, King labored to lead the civil rights movement in a manner consistent with its noble goals. "You can't reach good ends through evil means," he explained, "because the means represent the seed and the end represents the tree." Dr. King aspired not only to change laws but also to plant in the hearts and minds of the American people a new sense of brotherhood.

King's approach was more than a rejection of bitterness and violence; it was a resounding affirmation of the dignity and potential of each individual. Sharing the faith that had been nurtured in him from youth, he declared that the key to "peace on earth and good will toward men is the . . . affirmation of the sacredness of all human life. Every man is somebody because he is a child of God." That message is worth repeating today.

During the past few decades, our Nation has made tremendous strides toward ensuring equal opportunity for all. The Civil Rights Act of 1957, the Civil Rights Act of 1964, and the Voting Rights Act of 1965 marked only the beginning of many important advances for minority men and women—advances that continue to this day. However, while we have overcome the painful legacy of legal segregation in this country, we know that many challenges remain. At a time when too many lives are being claimed by violence in our cities, by drug abuse, or by unfulfilled potential; at a time when too many young Americans lack confidence in themselves and in the future, we do well to reflect, once again, on Martin Luther King's timeless message—a

message that underscores the importance of faith, family, self-respect, and respect for others.

In his last public speech, given the night before he fell victim to the violence he so fervently opposed, Martin Luther King enjoined his listeners, "let us move on in these powerful days, these days of challenge, to make America a better nation . . . ." Recalling those words and his dream for America, let us make this occasion a time of renewed commitment to our families and to our fellowman.

By Public Law 98–144, the third Monday in January of each year has been designated as a legal public holiday.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, January 20, 1992, as the Martin Luther King, Jr., Federal Holiday.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of January, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

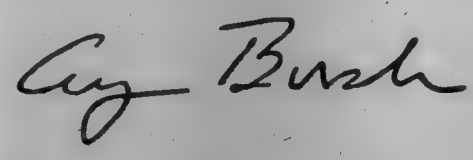

[FR Doc. 92–1743
Filed 1–21–92; 10:15 am]
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Editorial note: For the President's remarks on signing this proclamation, see the *Weekly Compilation of Presidential Documents*, issue no. 3.

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Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. A cumulative list of Public Laws for the first session was published in Part II of the **Federal Register** on January 2, 1992.

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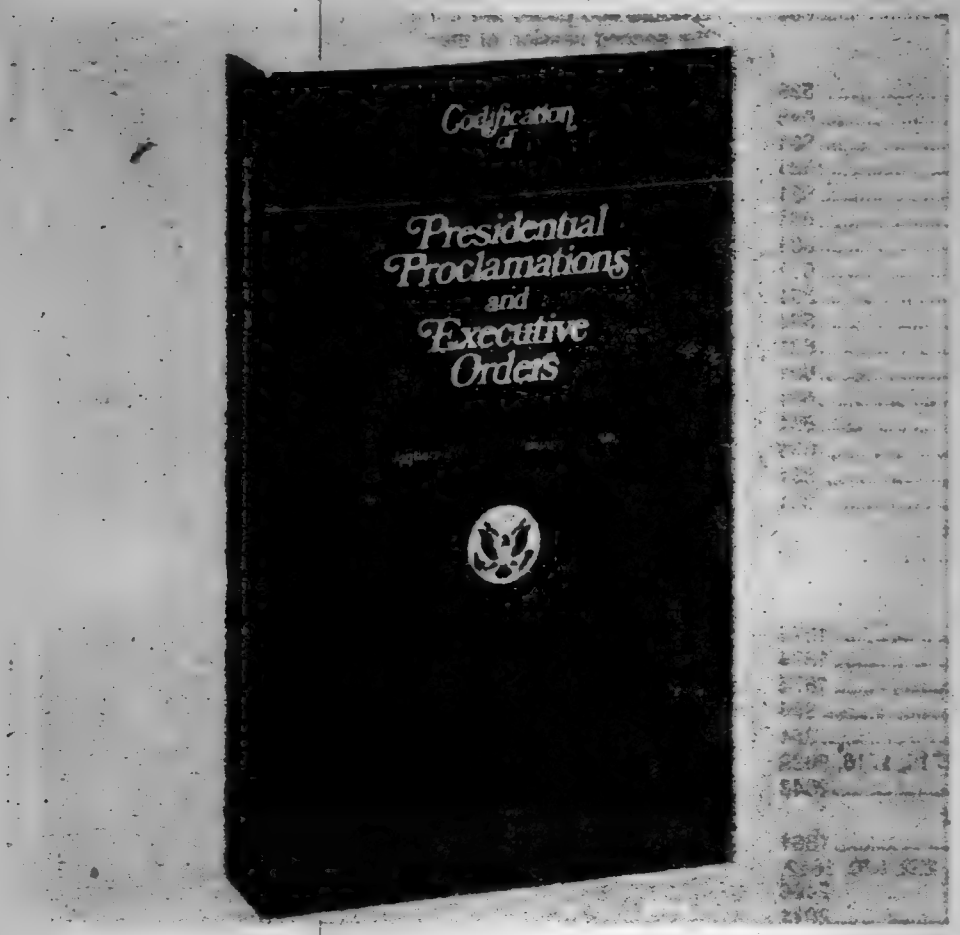

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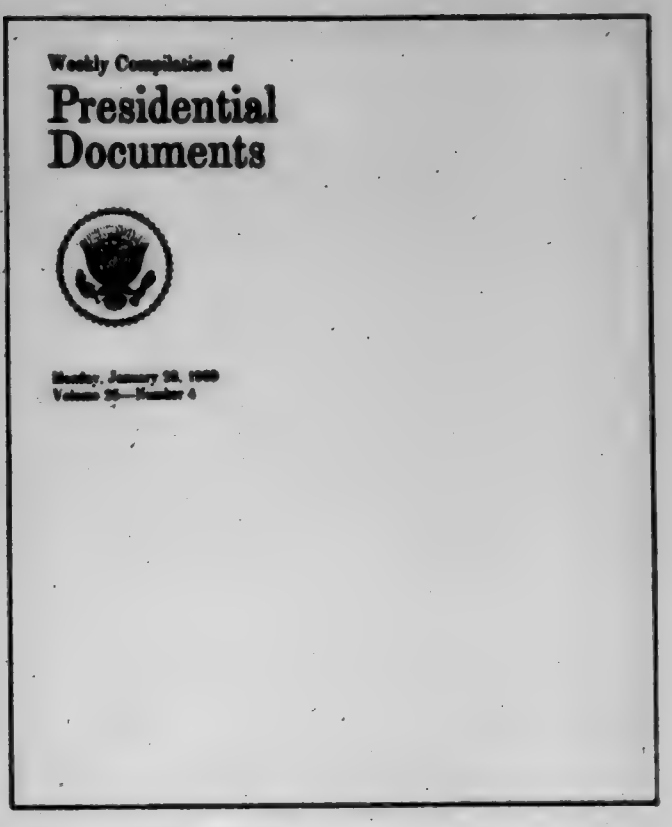

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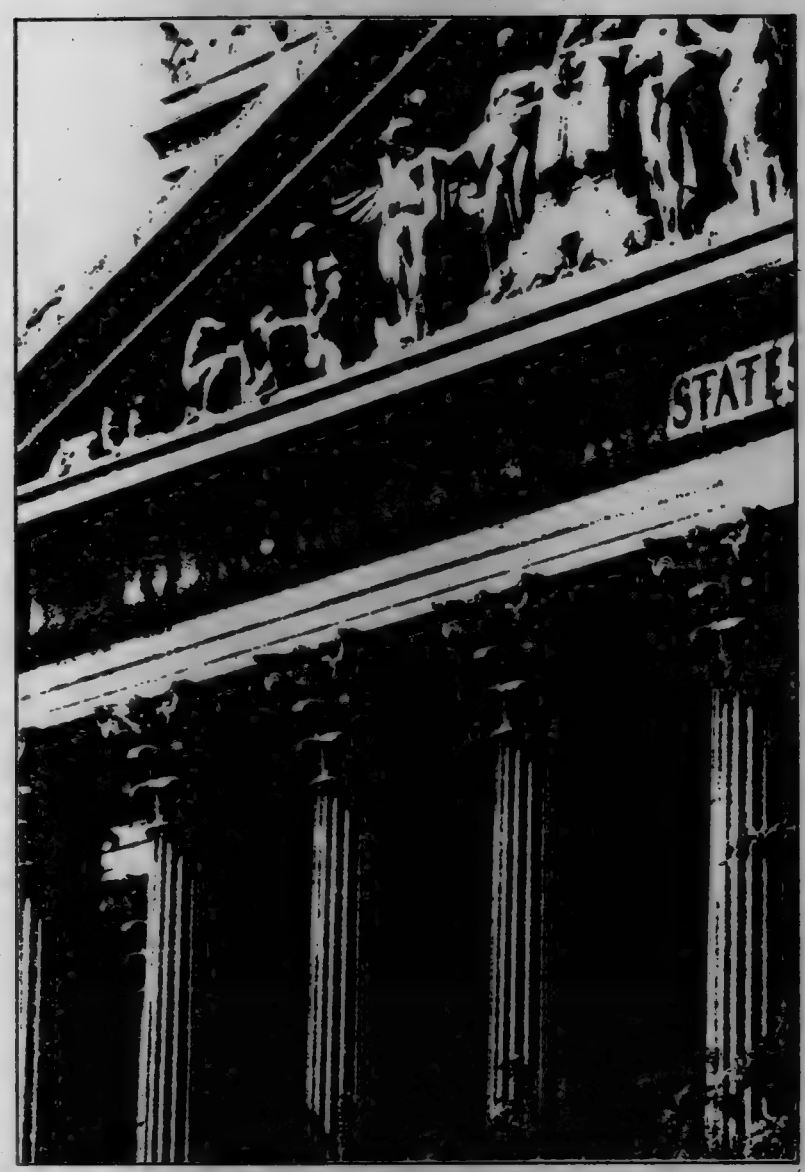

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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WHEN: January 31, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202-523-5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 801

RIN 0580–AA21

Official Performance Requirements for Grain Inspection Equipment

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the regulations under the United States Grain Standards Act, as amended, concerning the Official Performance Requirements for Grain Inspection Equipment. It incorporates by reference the applicable sections of the Grain Moisture Meters Code and General Code of the National Institute of Standards and Technology (NIST) Handbook 44, which is entitled "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1991 edition (Handbook 44), into the regulations.

EFFECTIVE DATE: February 24, 1992.

FOR FURTHER INFORMATION CONTACT: George Wollam, Federal Grain Inspection Service, USDA, room 0619 South Building, Box 96454, Washington, DC 20090–6454; telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Background

In the June 12, 1991, **Federal Register** (56 FR 26944), FGIS proposed to revise the regulations under the United States Grain Standards Act, as amended, entitled Official Performance Requirements for Grain Inspection Equipment to incorporate by reference the applicable requirements of the Grain Moisture Meters Code and General Code of the National Institute of Standards and Technology (NIST) Handbook 44, which is entitled "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1991 edition (Handbook 44) into the regulations.

Incorporation of applicable sections of the Grain Moisture Meters Code and General Code is consistent with efforts to achieve greater uniformity of specifications and technical requirements for grain moisture determinations. Those provisions of Handbook 44 that did not pertain to or were not practical for moisture meters used in the official system are not included in the incorporation by reference.

During the 60-day comment period one comment was received from a grain industry association. The association stated that they did not oppose the proposal and that they generally support the development of nationally uniform standards, specifications, and tolerances for inspection equipment.

Final Action

Accordingly, FGIS is revising Part 801 of the regulations, Official Performance Requirements for Grain Inspection Equipment, to incorporate by reference the applicable requirements contained in the 1991 edition of the NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," as stated in the June 12, 1991, proposed rule.

List of Subjects in 7 CFR Part 801

Administrative practice and procedure, Export, Grain, Incorporation by reference.

For reasons set forth in the preamble, 7 CFR part 801 is amended as follows:

1. The authority citation for Part 801 continues to read as follows:

Authority: Pub. L. 94–582, 90 stat. 2867, as amended, (7 U.S.C. 71 *et seq.*).

PART 801 [AMENDED]

2. Part 801 is amended to add § 801.12 to read as follows:

§ 801.12 Design requirements incorporated by reference.

(a) *Moisture meters.* All moisture meters approved for use in official grain moisture determination and certification shall meet applicable requirements contained in the FGIS Moisture Handbook and the General Code and Grain Moisture Meters Code of the 1991 edition of the National Institute of Standards and Technology's (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices." Pursuant to the provisions of 5 U.S.C. 552(a), the materials in Handbook 44 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**.

The NIST Handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. It is also available for inspection at the Office of the Federal Register, room 8401, 1100 "L" Street, NW., Washington, DC.

The following Handbook 44 requirements are not incorporated by reference:

General Code (1.10.)
- G–S.5.5. Money Values, Mathematical Agreement
- G–T.1. Acceptance Tolerances
- G–UR.3.3. Position of Equipment
- G–UR.3.4. Responsibility, Money-Operated Devices

Grain Moisture Meters (5.56.)
- N.1.1. Transfer Standards
- N.1.2. Minimum Test
- N.1.3. Temperature Measuring Equipment
- T.2. Tolerance Values
- T.3. For Test Weight Per Bushel Indications or Recorded Representations
- UR.3.2. Other Devices not used for Commercial Measurement

UR.3.7. Location
UR.3.11. Posting of Meter Operating Range
(b) [Reserved]

Dated: December 11, 1991.

John C. Foltz,
Administrator.

[FR Doc. 92-776 Filed 1-22-92; 8:45 am]
BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 944

[Docket No. FV-91-423IR]

Fruits; Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule; correction.

SUMMARY: This action corrects an incorrect effective date specified in the regulatory text of an interim final rule which temporarily suspended the grade requirements for oranges imported into the United States. The October 31, 1991, date specified should be October 24, 1991.

EFFECTIVE DATE: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-9918.

SUPPLEMENTARY INFORMATION: This action makes a correction in an interim final rule which appeared in the **Federal Register** (56 FR 55983, October 31, 1991). The correction changes the effective date specified in paragraph (a)(1) of § 944.312 from October 31, 1991, so that it conforms with the date appearing in the "Effective Date" section on the first page of the interim final rule.

The interim final rule was issued under section 8e (7 U.S.C. 608e-1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 944.312 is amended by revising paragraph (a)(1) to read as follows:

Note: This section will appear in the annual *Code of Federal Regulations.*

§ 944.312 Orange import regulation.

(a) * * *

(1) Such oranges grade at least U.S. No. 2: *Provided,* That such requirement is hereby temporarily suspended beginning October 24, 1991.

* * * * *

Dated: January 17, 1992.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-1630 Filed 1-22-92; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 979

[Docket No. FV-91-450]

South Texas Melons; Amended Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the level of authorized expenses and establishes the assessment rate under Marketing Order No. 979 for the 1991-92 fiscal period. Authorization of this budget enables the South Texas Melon Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: October 1, 1991, through September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-720-9918.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 27 handlers of South Texas melons under this marketing order, and approximately 27 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of South Texas melon producers and handlers may be classified as small entities.

The budget of expenses for the 1991-92 fiscal period was prepared by the South Texas Melon Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of South Texas melons. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

Committee administrative expenses of $93,187, recommended in a mail vote completed September 19, 1991, were approved on November 13, 1991, and published in the **Federal Register** on November 19, 1991 (56 FR 58302). The committee subsequently met on November 18, 1991, and unanimously recommended funding for several research and promotion projects and adjustments to a number of the previously approved administrative items. The 1991-92 budget of $285,309.51

is $6,180.51 more than the previous year. Major increases in the manager and field salaries, rent and utilities, field travel, and research categories will be partially offset by decreases in the office salary and promotion categories.

The committee also unanimously recommended an assessment rate of $0.05 per carton of melons, $0.01 more than last season. This rate, when applied to anticipated shipments of 6 million cartons of melons, will yield $300,000 in assessment income. This will be adequate to cover budgeted expenses. Funds in the reserve as of October 31, 1991, estimated at $287,210.22, were within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register on December 17, 1991 (56 FR 65449). This document contained a proposal to amend § 979.214 to increase the level of authorized expenses and establish an assessment rate for the committee. This rule provided that interested persons could file comments through December 31, 1991. No comments were filed.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (5 U.S.C. 553) because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1991–92 fiscal period for the program began on October 1, 1991, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable South Texas melons handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is hereby amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 979.214 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 979.214 Expenses and assessment rate.

Expenses of $285,309.51 by the South Texas Melon Committee are authorized and an assessment rate of $0.05 per carton of regulated melons is established for the fiscal period ending September 30, 1992. Unexpended funds may be carried over as a reserve.

Dated: January 17, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–1629 Filed 1–22–92; 8:45 am]

BILLING CODE 3410–02–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing option contracts on the Nikkei Stock Average Futures Contract traded on the Singapore International Monetary Exchange Limited ("SIMEX") to be offered or sold to persons located in the United States. This Order is issued pursuant to: (1) Commission rule 30.3(a), 17 CFR 30.3(a) (1991), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and (2) the Commission's Order issued on July 20, 1988, 53 FR 28826 (July 29, 1988), authorizing certain option products traded on SIMEX to be offered or sold in the United States.

EFFECTIVE DATE: February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Barney Charlon, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under Commission Rule 30.3(a) Permitting Option Contracts on the Nikkei Stock Average Futures Contract Traded on the Singapore International Monetary Exchange Limited To Be Offered or Sold in the United States Thirty Days After Publication of This Notice in the Federal Register

By Order issued on July 20, 1988 ("Initial Order"), the Commission authorized, pursuant to Commission rule 30.3(a),[1] certain option products traded on the Singapore International Monetary Exchange Limited ("SIMEX") to be offered or sold in the United States. 53 FR 28826 (July 29, 1988). Among other conditions, the Initial Order specified that:

> Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, * * * no offer or sale of any SIMEX option product in the United States shall be made until thirty days after publication in the Federal Register of notice specifying the particular option(s) to be offered or sold pursuant to this Order * * *.

By letter dated December 9, 1991, SIMEX represented that it would be introducing an option contract based on the Nikkei Stock Average Futures Contract. SIMEX has requested that the Commission supplement its Initial Order and subsequent Order [2] authorizing Options on Eurodollar Futures, Options on Japanese Yen Futures, Options on Deutschemark Futures and Options on Three-Month Euroyen Interest Rate Futures by also authorizing SIMEX's Option Contract on the Nikkei Stock Average Futures Contract to be offered or sold to persons in the United States. By letter dated December 5, 1988, Commission staff recommended that no enforcement action be taken based on sections 2(a)(1)(B)(v), 4(a) or 12(e) of the Commodity Exchange Act, as amended, if the Nikkei Stock Average Futures Contract is offered or sold in the United States. Upon due consideration, and for the reasons previously discussed in the Initial Order and the December 5, 1988

[1] Commission rule 30.3(a), 17 CFR 30.3(a) 1991), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States. See 53 FR 28826, 28827 no. 10.

[2] See 55 FR 28428 (June 28, 1990).

letter, the Commission believes that the request for authorization to offer or sell an option contract on the Nikkei Stock Average Futures Contract should be granted.[3]

Accordingly, pursuant to Commission rule 30.3(a) and the Commission's Initial Order issued on July 20, 1988, and subject to the terms and conditions specified therein, the Commission hereby authorizes SIMEX's Option Contract on the Nikkei Stock Average Futures Contract to be offered or sold to persons located in the United States thirty days after publication of this Order in the **Federal Register**.

Contract Specifications

Option on the Nikkei Stock Average Futures Contract

Contract Size: One SIMEX Nikkei futures contract (Y500 * Index).

Contract Month: 2 serial months and March, June, September, December contracts listing on one-year cycle.

Trading Hours: Same as the underlying futures (*i.e.*, 8:00 a.m. to 2:15 p.m. Singapore time).

Minimum Price Fluctuation: Y2,500 except that trades may occur at a price of Y100 if such trades result in the liquidation of positions for both parties to the trade.

Strike Price: 500 Nikkei index points interval.

Trading Halt: Option trading is not allowed if the underlying futures is bid or offered at its price limit. (This practice is same as that of the S&P 500 options traded at CME.)

Option Exercise: An option can be exercised by the buyer on any day when the option is traded. In the absence of contrary instructions delivered to the Clearing House, an option in the March quarterly cycle that is in-the-money will be exercised automatically on the day of determination of final settlement price. Similarly, an in-the-money option that expires in a month other than those in the March quarterly cycle will be exercised automatically on the day of termination of trading

Last Trading Day: The day before the second Friday of the contract month.

Position Limit: 1,000 futures equivalent contracts net on the same side of the market in all contract months combined. Exemptions to the foregoing position limit may be granted by the Board or the Clearing House Committee.

[3] See also letter from William H. Heyman, Director, Division of Market Regulation, Securities and Exchange Commission, to Joanne T. Medero, General Counsel dated January 10, 1992.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign transactions.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by adding the following entry after the existing entries for "Singapore International Monetary Exchange Limited" to read as follows:

Appendix B—Option Contracts Permitted to be Offered or Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
• •	• •	•
Singapore International Monetary Exchange Limited.	Options on the Nikkei Stock Average Futures Contract.	, 1992; ___ FR ___
• •	• •	•

Issued in Washington, D.C. on January 16, 1992.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 92-1669 Filed 1-22-92; 8:45 am]

BILLING CODE 6351-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 345

RIN 3220-AA94

Employers' Contributions and Contribution Reports

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends part 345 of its regulations to authorize the agency to require all employers subject to the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 351 *et seq.*) to make the contributions required by that Act through the Automated Clearing House (ACH) system transfer in order to promote more efficient and less costly administration of that Act.

EFFECTIVE DATE: January 23, 1992.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4945 (FTS 386-4945).

SUPPLEMENTARY INFORMATION: Section 345.10(b) of the Board's regulations currently provides that employers whose liability under the Railroad Retirement Tax Act (RRTA) (26 U.S.C. 3201 *et seq.*) equals or exceeds $1,000,000 shall deposit contributions payable under the RUIA in accordance with Board instructions. Those instructions now require employers of that size to make deposits by wire transfer. Under § 345.10(c)(2) of the regulations, smaller employers are given the option of paying contributions by wire transfer, but are not required to do so. Section 345.10(c)(1) gives such smaller employers the option of paying by certified or uncertified checks. In order to provide for more efficient and less costly administration of the RUIA, the Board hereby amends § 345.10 so as to authorize the agency to require all employers to make RUIA contributions in accordance with instructions issued by the Board. It is anticipated that future instructions will require all employers to use the Automated Clearing House (ACH) system. Employers now required to make deposits by wire use the Fedwire Deposit System (Fedwire). ACH is less costly for employers to use than Fedwire. ACH would also provide more information on deposits and facilitate better control over the collection of contributions.

This regulation was published as a proposed rule on October 24, 1991 (56 FR 55102). One comment was received during the comment period, which ended November 25, 1991. The commenter supported the proposed regulations, but objected to the proposed instructions that would require all payments to be made through the ACH system. The commenter expressed the belief that the actual form of payment should be left to the discretion of the individual employer and that the Board should provide a range of options available which could include wires, ACH system transfers, checks or other forms of electronic payments.

The Board has considered the comment, but still anticipates that future instructions will require all employers to use the ACH system. In addition to the reasons cited above for use of ACH, that system also offers the following advantages: Employers can use either a personal computer or telephone to initiate payments; the use of ACH eliminates the problem of lost checks and mail delays; the Board will have

faster access to data and to funds transferred by ACH than to those paid by check; the Internal Revenue Service (IRS) is testing the use of ACH to collect railroad retirement taxes, and the Board has obtained formal support from the IRS for the Board's proposal to use ACH; and the Board wants to streamline operations by eliminating check processing rather than to expand the methods which employers can use to pay contributions.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections imposed by these amendments.

List of Subjects in 20 CFR Part 345

Railroad employees, Railroad unemployment insurance.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is hereby amended as follows:

PART 345—EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

1. The authority citation for part 345 is revised to read as follows:

Authority: 45 U.S.C. 358; 45 U.S.C. 362(1).

2. Section 345.10(b) is revised to read as follows:

§ 345.10 Payment of employers' contributions.

* * * * *

(b) An employer shall deposit the contributions under the Railroad Unemployment Insurance Act required to be deposited for the current calendar year in accord with instructions issued by the Railroad Retirement Board. At the direction of the Board, the Secretary of the Treasury shall credit such contributions to the railroad unemployment insurance account in accord with section 10 of the Railroad Unemployment Insurance Act and to the railroad unemployment insurance administration fund in accord with section 11 of the Railroad Unemployment Insurance Act.

§ 345.10 Amended

3. Section 345.10(c) is hereby removed.

Dated: January 14, 1992.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92-1561 Filed 1-22-92; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 86

[Docket No. R-92-1587; FR-3134-F-01]

Requirements Governing the Lobbying of HUD Personnel; Section 112 of the Reform Act; Reporting Requirements and Public Inspection of Documents

AGENCY: Office of the Secretary, HUD.

ACTION: Interpretive rule.

SUMMARY: To implement section 112 of the Housing and Urban Development Reform Act of 1989, the Department published a final rule in the **Federal Register** on May 17, 1991, at 56 FR 22912, establishing the requirements governing the lobbying of HUD personnel. The final rule established a new part 86 in title 24 of the Code of Federal Regulations.

The rule codifies the explanation contained in the preamble to the May 17, 1991 final rule regarding reporting of expenditures and receipts and clarifies the level of detail that is needed to comply with the reporting requirements under section 112. It also establishes that information filed under section 112 is to be made available to the press and the public under the Freedom of Information Act.

EFFECTIVE DATE: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708-3815; TDD number (202) 708-1112. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 112 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235, approved December 15, 1989, (the "Reform Act") added a new section 13 to the Department of Housing and Urban Development Act, 42 U.S.C. 3531, *et seq.*

Section 13 requires, among other things, that:

—Persons that make expenditures to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must keep records, and report to HUD, on the expenditures; and

—Persons that are engaged to influence a HUD officer or employee in the award of financial assistance or the taking of a management action must register with HUD and report to HUD on their lobbying activities.

On May 17, 1991, at 56 FR 22912, the Department promulgated a final rule to implement section 13. Below are clarifications on two provisions of the final rule.

I. Questions have been raised about what registrants (i.e., persons that are engaged to influence a HUD officer or employee) must report in order to comply with the reporting requirements for registrants.

Section 13(c)(1) requires each registrant to file—a detailed report of all money received and expended by the registrant during the preceding year in carrying out the work, including information as to whom money was paid and for what purposes.

As stated in the preamble to the May 17, 1991 final rule, the Department believes that the registrant must report on all amounts received pursuant to the retaining agreement with respect to the lobbying activity. On the receipt side, the statute reaches "all money received * * * in carrying out the work * * *." In the Department's view, the amounts agreed upon in the agreement define the "work" to be carried out—they are the amounts that comprise the overall lobbying effort. This includes amounts directly related to the lobbying activities (such as the preparation of documents), as well as amounts indirectly related (such as travel and accommodation expenses). Direct or indirect, the agreed-upon amounts define the lobbying job.

The statute also requires registrants to report on "all money * * * expended * * * in carrying out the work * * *." If the agreement comprises the total "work" involved, the expenditures should have the same coverage: They must cover all amounts expended in pursuit of that "work."

Thus, the Department believes that the registrant must report on all amounts provided in the retaining agreement for the lobbying activities involved. All amounts received, and all amounts expended, under the agreement during the reporting year must be reported. Each side of the ledger—receiving and expending (which shall include the fee retained)—should total the same amounts.

However, the Department does not believe that it is necessary to report in a line-by-line itemization every taxicab fare, tuna sandwich, or telephone call. Reasonable aggregations of expenses by type of expenditure with appropriate labeling are sufficient, provided the aggregations are related to the same lobbying activity; i.e., the same award for financial assistance or the same

management action. Examples of labels of reasonable aggregations are "meals," "transportation," "lodging," and "document preparation."

As noted in the preamble to the May 17, 1991 final rule, the Department believes that section 13 envisions a "two-party" expenditure/receipt approach, under which the report of the two parties can be compared and cross-checked. Aggregations of similar expenses related to the same work effort will ease the reporting burden, yet still provide the figures necessary to check compliance with the reporting requirement.

II. The statute requires that the information filed under section 13 by persons making expenditures constitute part of the public records of the Department and be open for public inspection (section 13(b)(4)(B)) and be published annually in the **Federal Register** (section 13(b)(5)). In addition, registration information filed by persons engaged to influence is also subject to **Federal Register** publication (section 13(c)(3)).

The final rule extended that publication requirement to reports filed by persons engaged to influence, because of the Department's belief that the statute's publication requirement covers information from both sources. This is substantiated by the legislative history which states that "in addition to being published annually in the **Federal Register**, the information filed under this act with the Secretary is considered to be public information, available to the press and the public under the Freedom of Information Act." (135 CONG. REC. H8615 (daily ed. November 14, 1989), comments of Mr. Kanjorski.) Therefore, in light of the publication requirement of all registration and reporting documents, the Department issues this interpretive rule to make clear that all registration and reporting documents may be made available to the press and the public prior to publication in the **Federal Register** under the provisions of the Freedom of Information Act.

Authority: Secs. 7(d) and 13(g), Department of Housing and Urban Development Act (42 U.S.C. 3535(d) and 3537b(g)).

Dated: January 7, 1992.

Jack Kemp,

Secretary.

Accordingly, the Department adds the discussion contained in the "Supplementary Information" section of this document to Appendix C of 24 CFR part 86, as "Interpretive Rule, dated January 23, 1992."

[FR Doc. 92-1563 Filed 1-22-92; 8:45 am]
BILLING CODE 4210-32-M

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 990

[Docket No. R-92-1453; FR-2504-C-03]

Performance Funding System: Energy Conservation Savings, Audit Responsibilities, Miscellaneous Revisions; Announcement of OMB Approval Numbers and Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; Announcement of OMB approval numbers and correction.

SUMMARY: On September 11, 1991 (56 FR 46356), the Department published in the **Federal Register**, a final rule that implemented provisions of section 118 of the Housing and Community Development Act of 1987 that required several modifications of the Performance Funding System (PFS) of calculating operating subsidy eligibility of Public Housing Agencies and Indian Housing Authorities (collectively called PHAs) operating public housing and Indian housing rental projects.

The effective date section of the September 11 rule indicated that the rule would become effective after the Office of Management and Budget approved the information collections contained in §§ 990.107(c)(4) and (g), 990.108(e), 990.110 (c)(1)(i), (e) and (f), and the corresponding sections of 24 CFR part 905, and after a separate Notice of that fact had been published in the **Federal Register**. It also indicated that the first date the rule was expected to take effect was January 1, 1992.

The purpose of this document is to announce the effective date of the final rule published September 11, 1991 (56 FR 46356) and the OMB approval number for sections that contained information collection requirements. This document will also correct an erroneous reference contained in § 990.107(g)(2).

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: John Comerford, Director, Financial Management Division, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-1872. A telecommunications device for hearing or speech-impaired persons is available at (202) 245-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory sections listed below have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned OMB control number 2577-0125.

List of Subjects

24 CFR Part 905

Grant programs—Indians, Low and moderate income housing, Aged, Grant programs—Housing and community development, Handicapped, Indians, Loan programs—Housing and community development, Loan programs—Indians, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 990

Grant programs—Housing and community development, Public housing, Reporting and recordkeeping requirements.

Text of the Amendment

Accordingly, parts 905 and 990 of title 24 of the Code of Federal Regulations is amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 continues to read as follows:

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (Pub. L. 100-358) (42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§§ 905.715, 905.720 and 905.730 [Amended]

2. Sections 905.715, 905.720, and 905.730 are amended by revising the sentence at the end of each section to read as follows:

(Approved by the Office of Management and Budget under OMB control numbers 2577-0029 and 2577-0125)

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

3. The authority citation for part 990 continues to read as follows:

Authority: Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 990.107 [Amended]

4. In § 990.107, paragraph (g)(2) is amended by correcting the reference at the end of the paragraph from "§ 990.110(f)" to read "§ 990.110(e)", and by revising the sentence at the end of the section, to read as follows:

(Approved by the Office of Management and Budget under OMB control number 2577–0125)

§ 990.108 [Amended]

5. Section 990.108 is amended by adding at the end of the section the following sentence:

(Approved by the Office of Management and Budget under OMB control number 2577–0125.)

§ 990.110 [Amended]

6. Section 990.110 is amended by revising the sentence at the end of the section to read as follows:

(Approved by the Office of Management and Budget under OMB control numbers 2577–0026, 2577–0029, 2577–0071, and 2577–0125.)

Dated: January 16, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92–1580 Filed 1–22–92; 8:45 am]

BILLING CODE 4810–33–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–320; Reference Notice No. 721]

RIN 1512–AA07

Atlas Peak Viticultural Area (90F–262P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is establishing an American viticultural area located in Napa County, California, to be known as "Atlas Peak." This final rule is the result of a petition filed by Mr. Richard Mendelson on behalf of Atlas Peak Vineyards, Napa, California. The Atlas Peak viticultural area is located entirely within the approved "Napa Valley" viticultural area, which is in turn located within the approved "North Coast" area. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they purchase. The establishment of viticultural areas also allows wineries to specify more accurately the origin of wines they offer for sale to the public.

EFFECTIVE DATE: This final rule is effective February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226; telephone (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which are delineated in subpart C of part 9. Under 27 CFR 4.25a(e)(2), any interested person may petition ATF to establish a grape-growing region as an American viticultural area. Approved American viticultural areas are listed in 27 CFR part 9.

Petition

Mr. Richard Mendelson, on behalf of Atlas Peak Vineyards, the only bonded winery within the area, petitioned ATF to establish a viticultural area in Napa County, California, to be known as "Atlas Peak." This viticultural area is located six to ten miles north-northeast of Napa, California on the western slope of the Vaca Range which separates Napa Valley and Sacramento Valley. The Atlas Peak viticultural area includes the mountain of that name as well as the Foss Valley and portions of the Rector and Milliken Canyons. It has an area of approximately 11,400 acres, with approximately 565 acres planted to vineyards. One winery, Atlas Peak Vineyards, is established within the area, while one additional winery is under construction. There are 14 commercial vineyards in this viticultural area.

The petition presented evidence of the name of the viticultural area, viticultural history, boundaries, and geographical data relating to this viticultural area.

Name

With an elevation of 2,663 feet, Atlas Peak is the most prominent feature of the viticultural area. The petition states that the original derivation of the name "Atlas Peak" for the mountain and the surrounding Foss Valley remains unclear but that the name has been applied since at least 1875.

As evidence of the name, the petitioner provided copies of newspaper articles from the 1870's discussing the merits of Atlas Peak as a resort area. The first, from the July 10, 1875, Napa County Recorder, describes Atlas Peak as the "divide between Foss and Capelle Valleys" and lists the fine scenery, the pure water, the moderate temperature and the dry air as its advantages over nearby areas for camping. The second article, in the November 18, 1876, Napa County Recorder, describes the health benefits of a visit to Atlas Peak. The petitioner also provided a copy of the Report of the Committee on the Establishment of a State Hospital for Consumptives to the California State Legislature in 1880. Atlas Peak was considered as a site for such a hospital on the basis of its "equability of temperature, freedom from fogs, or from harsh winds, the dryness of the atmosphere," and "abundant supply of pure water." The petitioner also stated that "Atlas Peak" is the recognized name for the Foss Valley since the name is used for the valley's main road and only school.

Viticultural History

According to the petition, James Reed Harris planted the first vineyard of 1,000 vines in 1870. By 1893, Harris' vineyard had grown to 47 acres. The petitioner provided an 1895 Napa County assessor's map marked with the locations of six vineyards shown by the assessor's records to be located within the area. According to the petitioner, vineyards in the Atlas Peak area survived the Phylloxera epidemic of the 1890's, but were abandoned after enactment of Prohibition in 1920. No new vines were planted until 1940 when the first new vineyard was planted on Mead Ranch, in the southwest portion of the viticultural area. Between 1951 and 1966, six new vineyards were added. Beginning in 1961, several new vineyard plantings were developed in the Atlas Peak area, often utilizing sites previously planted to vines in the 19th century. The petitioner states that Zinfandel is presently the grape variety most recognized for its regional character, but he anticipates that as "young vineyards in the region reach maturity, other grape varieties—including Cabernet Sauvignon and Chardonnay—may well receive individual recognition for their special character." The petitioner submitted samples of Zinfandel labels utilized by one California winery which identifies the grapes in the wine as being grown in

the Atlas Peak area. He also submitted copies of the lists of offerings at the annual Napa Valley Wine Auctions of 1981, 1982 and 1988, which show the source of grapes used in some of the Rutherford Hill wines as "vines at the Mead Ranch atop Atlas Peak."

Boundaries

As evidence for the viticultural area boundary, the petitioner pointed out that the name "Atlas Peak" is used to designate the region's oldest access road with a route that traverses Milliken Canyon and Foss Valley as well as Atlas Peak. The boundaries of the viticultural area consist mainly of ridge lines which separate Atlas Peak and the Foss Valley from surrounding valleys and canyons, such as Soda Canyon to the west; Wooden Valley and Capell Valley to the east; and Sage Canyon and Pritchard Hill to the north. The petitioner describes these canyons and valleys as different in history, climate and geology. The exact boundaries of the Atlas Peak viticultural area are described in § 9.140.

Distinguishing Features

The petitioner provided the following evidence relating to geographic features which distinguish the Atlas Peak viticultural area from surrounding areas:

Topography

The area's highest elevation is 2663 feet above sea level at the summit of Atlas Peak. The lowest points are 780 feet above sea level at the bottom of Rector Canyon, in the northwest corner of the area, and the water level of the Milliken Reservoir, 924 feet elevation, at the bottom of Milliken Canyon, in the southeastern portion of the area. Most of the viticultural area, even the Foss Valley described by the petitioner as an "elevated hanging valley," is more than 1400 feet above sea level. It is bound by volcanic ridges and drained by Rector Canyon to the west and Milliken Canyon to the south. According to the petitioner, the topography, "an elevated valley surrounded by volcanic mountains of relatively shallow relief," is unusual for the area.

Soils

According to a report prepared by Eugene L. Begg, Soils Consultant, and submitted by the petitioner, soils of the Atlas Peak viticultural area are predominantly volcanic in origin. The soil series reported within the area by the "Soil Survey of Napa County, California" (updated 1978), are Aiken, Boomer, Felta, Guenoc, and Hambright soils from andesite and basalt; the Forward soils from rhyolite; the Bale, Perkins, and Maxwell soils from valley fill alluvium; and the henneke and Montara soils from serpentine. According to Begg's report, only the Henneke and Montara soils, which represent a small percentage of the soils within the area, are from a non-volcanic source. By way of contrast, the soils in surrounding areas such as Soda Canyon, Capell Valley, Wooden Valley, Napa Valley and Stags Leap are far more diverse since they are derived from both volcanic and sedimentary rock sources.

Climate

The petitioner included a separate report on the climate of the proposed area prepared by Michael Pechner, a consulting meteorologist. His report describes the area as "very distinctive, and perhaps unique in Northern California." In support of this claim, it describes the effect of the location and topography of the Atlas Peak area on the growing conditions. Although the area is only 40 miles from the Pacific Ocean and subject to the afternoon and evening cooling which are characteristic of maritime influence, the area is free from the fogs which are drawn up into the rest of the Napa Valley. Mr. Pechner attributes the lack of fog to the fact that the area is east of Napa, has a high elevation, and is connected to Napa Valley by narrow canyons.

The report also indicates that cooling in the area is influenced by the fact that the area is characterized by shallow volcanic soils and large areas of volcanic rock. This contributes to radiant cooling, resulting in late afternoon temperatures which can drop as much as 30 degrees in two hours, and in daily minimum temperatures which are usually lower than those in nearby Stags Leap, Yountville, or Napa.

Finally, Mr. Pechner's report indicates that the annual rainfall in the Atlas Peak area is greater than in surrounding areas, "due to the terrain forcing the moist air masses of winter storms upward as they move inland along a southeasterly path from the coast, causing condensation." He contrasts average rainfall within the Atlas Peak area of 37.5 inches per year (over a 45-year period) with averages of 25 to 35 inches of rain per year in other parts of Napa Valley. According to the petition, only Howell Mountain, well to the north, has higher rainfall totals than the Atlas Peak area.

Notice of Proposed Rulemaking

In response to the petition submitted by Mr. Richard Mendelson on behalf of Atlas Peak Vineyards, ATF proposed the Atlas Peak viticultural area in Notice No. 721 (56 FR 37501), on August 7, 1991. ATF solicited comments in that notice regarding the proposed viticultural area.

Comments

ATF received three comments in response to the notice during the 45-day comment period ending on September 23, 1991. All three respondents supported the adoption of the "Atlas Peak" viticultural area.

Two of the respondents own vineyards within the proposed area. One of these, Arthur Havenner, confirmed that the proposed Atlas Peak viticultural area rarely experiences morning fog. He stated that "It is very often the case that the (Napa) valley is fogged in until late in the day while we are in clear sunshine. Our fields heat up earlier as a result." All three respondents stated that the evidence of name, viticultural history, soils, climate and topography contribute to a unique grapegrowing area, and that ATF should, as a result, adopt the Atlas Peak viticultural area.

Based on the evidence furnished with the petition for the Atlas Peak viticultural area, and additional evidence in support of the area provided in written comments, ATF is adopting the Atlas Peak viticultural area as proposed in Notice No. 717. Section 9.140 contains the name and description of the boundaries of the viticultural area. The boundaries are unchanged from those proposed, although their description is slightly modified for better clarity.

Miscellaneous

ATF does not wish to give the impression by approving the Atlas Peak viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, but not better than other areas. By approving the area, ATF will allow wine producers to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Atlas Peak wines.

The use of Atlas Peak as a brand name is governed by 27 CFR 4.39(i), Geographic Brand Names. This section states that (unless it is used in an existing certificate of label approval issued prior to July 7, 1986) the brand name "Atlas Peak" may not be used unless the wine meets the appellation of origin requirements for the viticultural area; i.e., not less than 85% of the wine is derived from grapes grown within the boundaries of the viticultural area and the wine has been fully finished in the

State in which the viticultural area is located.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because this final rule is not expected (1) to have a significant secondary, or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal authors of this document are Marjorie Dundas and Charles N. Bacon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Accordingly, 27 CFR part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.140 to read as follows:

§ 9.140 Atlas Peak.

(a) *Name.* The name of the viticultural area described in this section is "Atlas Peak."

(b) *Approved maps.* The appropriate maps of determining the boundaries of the Atlas Peak viticultural area are two U.S.G.S. maps. They are entitled:

(1) "Yountville, Calif.," 7.5 minute series, edition of 1951, (photorevised 1968); and

(2) "Capell Valley, Calif.," 7.5 minute series, edition of 1951, (photorevised 1968).

(c) *Boundaries.* The Atlas Peak viticultural area is located in Napa County, California. It lies entirely within the Napa Valley viticultural area. The beginning point is Haystack (peak) found in section 21, T. 7 N., R. 4 W. on the "Yountville" U.S.G.S. map;

(1) From the beginning point, the boundary proceeds south in a straight line approximately 0.5 miles, to the highest point of an unnamed peak of 1443 feet elevation on the boundary of sections 21 and 28, T. 7 N., R. 4 W.;

(2) Then southeast in a straight line approximately one mile to an unnamed pass with an elevation of 1485 feet, located on Soda Canyon Road;

(3) Then easterly in a straight line approximately 0.5 miles to an unnamed peak of 2135 feet elevation;

(4) Then in a generally southeasterly direction, as a series of five straight lines connecting the highest points of unnamed peaks with elevations of 1778, 2102, 1942, 1871 and 1840 feet, ending in the center of section 2, T. 6 N., R. 4 W.;

(5) Then southeast in a straight line approximately 1.8 miles to the highest point of an unnamed peak of 1268 feet elevation in section 12, T. 6 N., R. 4 W. on the Capell Valley U.S.G.S. map;

(6) Then east-southeast in a straight line approximately 1.1 miles to the point where an unnamed tributary stream enters Milliken Creek, immediately south of the Milliken Reservoir in section 7, T. 6 N., R. 3 W.;

(7) Then following the unnamed stream east-northeast approximately 0.5 miles to its source;

(8) Then northeast in a straight line approximately 0.5 miles, through the highest point of an unnamed peak of 1846 feet elevation, to the 1600 foot contour line in the eastern portion of section 8, T. 6 N., R. 3 W.;

(9) Then following the 1600 foot contour line generally north and west for approximately 10 miles, to the point of intersection with the boundary line between sections 12 and 13, T. 7 N., R. 4 W. on the Yountville U.S.G.S. map;

(10) Then following the section boundary line west approximately 1.1 miles to the intersection with an unnamed, unimproved road;

(11) Then northwest in a straight line approximately 0.7 miles to the highest point of an unnamed peak of 2114 feet elevation, located in section 10, T. N., R. 4 W.;

(12) Then northwest in a straight line approximately 0.7 miles to the highest point of an unnamed peak of 2023 feet elevation, located in section 10, T. N., R. 4 W.;

(13) Then southwest in a straight line approximately 2.2 miles to Haystack (peak), the point of beginning.

Signed: November 20, 1991.

Stephen E. Higgins,

Director.

Approved: December 6, 1991.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 92–1604 Filed 1–22–92; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AA 82

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of administrative stay.

SUMMARY: On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register on occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). In response to numerous public comments which indicated confusion about the hazard warning provisions of the newly revised Formaldehyde Standard, on December 13, 1988, OSHA announced an administrative stay of paragraphs (m)(1)(i) through (m)(4)(ii) for a period of nine months. OSHA also announced its intention to revoke paragraphs (m)(1)(i) through (m)(4)(ii) and invite comments on replacing them with the Hazard Communication Standard (29 CFR 1910.1200) or another equally protective alternative which would be less confusing to the public (53 FR 50198). The stay was subsequently extended (54 FR 35639, August 29, 1989; 55 FR 24070,

June 13, 1990; 55 FR 32616, August 10, 1990; 55 FR 51698, December 17, 1990; 56 FR 10377, March 12, 1991; 56 FR 26909, June 12, 1991; 56 FR 37650, August 8, 1991; 56 FR 57593, November 13, 1991).

On July 15, 1991, OSHA published a proposal to resolve several remaining issues on formaldehyde, including those raised by the stayed paragraphs (56 FR 32302). The public was given until August 14, 1991 to comment on the proposal. OSHA is completing its analysis of the comments and developing a final response. Consequently the stay is being extended for an additional 90 days so that OSHA may complete this process. While this stay is in effect, affected employers must continue to comply with the provisions of OSHA's Hazard Communication Standard.

EFFECTIVE DATE: The administrative stay of 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) will be effective until May 5, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to section 4(b), 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1-90 (55 FR 9033) and 29 CFR part 1911.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

§ 1910.1048 [Stayed in part]

Therefore, 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) is stayed until May 5, 1992.

Signed at Washington, DC this 17th day of January, 1992.

Gerard F. Scannell,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 92-1652 Filed 1-22-92; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5C]

Personal Privacy and Rights of Individuals Regarding Records Pertaining to Themselves

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is removing an exemption rule subject to the Privacy Act of 1974, (5 U.S.C. 552a). This action removes the exemption rule for a system of records identified as N01070-3, "Navy Personnel Records System".

EFFECTIVE DATE: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000. Telephone (703) 614-2004.

List of Subjects in 32 CFR Part 701

Privacy.

For the reasons set forth in the preamble, 32 CFR part 701 is amended as follows:

PART 701—[AMENDED]

1. The authority citation for 32 CFR part 701, subpart G continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 701.119 is amended by removing and reserving paragraph (b)(5) as follows:

§ 701.119 Exempt Navy record systems.

* * * * *

(b) Bureau of Naval Personnel. * * *

(5) [Reserved].

* * * * *

Dated: January 17, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-1632 Filed 1-22-92; 8:45 am]

BILLING CODE 3810-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7532]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, SW., Room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or a Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood

insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

PART 64—[AMENDED]

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective date, authorization/cancellation of sale of flood insurance in community	Current effective map date
NEW ELIGIBLE—Emergency Program				
Maine	Winn, Town of, Penobscot County	230404	December 16, 1991	Jan. 24, 1975.
REINSTATEMENTS—Regular Program				
Delaware	Cheswold, Town of, Kent County	100004	April 16, 1975 Emerg.; Jan. 7, 1977 Reg.; Nov. 18, 1988 Susp.; Dec. 2, 1991 Rein.	Jan. 7, 1977.
Wisconsin	Independence, City of, Tempealeau County	550444	July 5, 1974 Emerg.;Sept. 27, 1991 Reg.; Sept. 27, 1991 Susp.; Dec. 5, 1991 Rein.	Sept. 27, 1991.
Vermont	Randolph, Town of, Orange County	500073	Nov. 21, 1784 Emerg.; July 16, 1991 Reg.; July 16, 1991 Susp.; Dec. 9, 1991 Rein.	July 16, 1991.
New York	Woodstock, Town of, Ulster County	360868	May 28, 1975 Emerg.; Sept. 27, 1991 Reg.; Sept. 27, 1991 Susp.; Dec. 16, 1991 Rein.	Sept. 27, 1991.
Pennsylvania	Stoneboro, Borough of, Mercer County	420679	June 18, 1975 Emerg.; Mar. 18, 1991 Reg.; Mar. 18, 1991 Susp.; Dec. 20, 1991 Rein.	Mar. 18, 1991.
Region I—Regular Program Conversions				
New York	Bainbridge, Town of, Chenango County	361085	Dec. 3, 1991, Suspension withdrawn	Dec. 3, 1991.
Do	North Norwich, Town of, Chenango County	361089	do	Dec. 3, 1991.
Region IX				
California	Santa Barbara, City of, Santa Barbara County	060335	do	Dec. 3, 1991.
Region II				
New York	Stanford, Town of, Dutchess County	361145	Dec. 17, 1991, Suspension withdrawn	Dec. 17, 1991.
Do	Sandyston, Township of, Sussex County	340455	do	Dec. 17, 1991.
West Virginia	Summers County, Unincorporated Areas	540186	Nov. 5, 1991	Nov. 5, 1991.
Region V				
Ohio	Wood County, Unincorporated Areas	390809	Dec. 17, 1991	Dec. 17, 1991.
Illinois	Sunnyside, Village of, McHenry County	170486	do	Dec. 17, 1991.
Region X				
California	Ada County, Unincorporated Areas	160001	do	Dec. 17, 1991.
Region V—Regular Conversions				
Ohio	Baltimore, Village of, Fairfield County	390159	do	Dec. 17, 1991.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Issued: January 16, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-1638 Filed 1-22-92; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 911177-2016]

RIN 0648-AE45

Groundfish of the Gulf of Alaska, Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 20 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 25 to the FMP for Groundfish of the Gulf of Alaska (GOA). The amendments authorize regulations to protect marine mammal populations. This final rule (1) prohibits trawling year-round within 10 nautical miles (nm) of 37 Steller sea lion rookeries in the GOA and BSAI; (2) expands the prohibited zone to 20 nm for five of these rookeries from January 1 through April 15 each year; (3) establishes new GOA pollock management districts, and (4) imposes a limit on the amount of an excess pollock seasonal harvest that may be taken in a quarter in each district. These actions are necessary to

minimize potential adverse effects of groundfish fisheries on Steller sea lions. They are intended to further the goals and objectives contained in both FMPs that govern these fisheries.

EFFECTIVE DATE: January 20, 1992.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, Director, Alaska Region, NMFS, 907–586–7221.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the GOA and BSAI are managed by the Secretary of Commerce (Secretary) according to FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

The Council approved Amendments 20 and 25 for review by the Secretary or his or her designee under section 304(b) of the Magnuson Act to determine consistency with the Magnuson Act and other applicable law. The Secretary, or his or her designee, is required to approve, disapprove, or partially disapprove FMPs or FMP amendments within 95 days following receipt. A notice of availability of the amendments was published in the **Federal Register** on November 6, 1991 (56 FR 56623). It invited review of, and comment on, the amendments until December 30, 1991. A proposed rule to implement the amendments was published in the **Federal Register** on November 18, 1991. (56 FR 58214). It invited comments until December 30, 1991. Three letters of comments were received.

The preamble to the proposed rule presented a full description of, and reasons for: (1) Closure year-round of the area within 10 nm of specified sea lion rookeries located in the GOA and the Bering Sea (BS) and Aleutian Islands (AI) subareas to fishing by vessels using trawl gear, and (2) in the GOA, further division of the specified total allowable catch (TAC) for pollock in the combined Western/Central (W/C) Regulatory Area among Statistical Area 61 between 170° and 159° W. longitudes, Statistical Area 62 between 159° and 154° W. longitudes, and Statistical Area 63 between 154° and 147° W. longitudes, and elimination and incorporation into Statistical Areas 62 and 63 of the Shelikof Strait pollock management district.

Existing regulations at 50 CFR 672.20(a)(2)(iv) require the pollock TAC for the W/C Regulatory Areas to be divided equally into four quarterly allowances. Existing regulations also require that any unharvested amount of a quarterly allowance, or excessive harvests of a quarterly allowance, be added to, or subtracted from, the subsequent quarters' allowances in equal proportions.

To prevent excessive accumulation of unharvested portions in any quarterly allowance, a limit of 150 percent of the initial quarterly allowance was proposed. For example, if each initial quarterly allowance of pollock TAC is 10,000 metric tons (mt) in a pollock management district, the maximum amount of any subsequent quarterly allowance resulting from the accumulations of pollock unharvested in previous quarters would be 15,000 mt in that district.

The final rule adopted these proposals.

Other Regulatory Changes

In addition to the measures described in the preamble to the proposed rule, other measures have been determined to be necessary.

The Alaska Regional Director, NMFS, (the Secretary's designee) upon reviewing the reasons justifying the closures within 10 nm of sea lion rookeries in the GOA and BSAI, determined that the size of the closures around five of the rookeries should be expanded to 20 nm to afford greater protection to sea lions during January 1-April 15, a period when intensive pollock fishing occurs. These five rookeries are on Akutan Island, Akun Island, Sea Lion Rocks, Seguam Island, and Agligadak Island. Therefore, the final rule expands the closed areas to 20 nm during the period January 1 through April 15 of a fishing year, subject to other regulatory closures. In making this determination, the Regional Director reviewed new information that has become available since the filing of the proposed rule on November 13, 1991.

The Council recommended during its December 2–9, 1991, meeting, that the Secretary establish a TAC specification of 1,000 metric tons (mt) for pollock in an area called the Bogoslof District. Prior to this recommendation, the Council submitted to the Secretary Amendment 17 to the BSAI FMP. Amendment 17 includes a management measure that, if approved, would establish the Bogoslof District as a pollock management area. Implementing regulations were proposed December 4, 1991 (56 FR 63487). If the amendment is approved and implementing regulations issued, a new Bogoslof District (Statistical Area 518) would be established along with management and conservation measures deemed necessary to protect the depressed stock of Aleutian Basin pollock. Until the amendment is approved or disapproved, NMFS will close the Bogoslof District as an inseason action necessary to prevent overfishing of Aleutian Basin pollock.

In 1991, about 442,000 mt, or 40 percent of the total pollock harvest in the Bering Sea subarea, occurred from January 1-April 15 period (commonly referred to as the "A" season). A significant proportion (44 percent) of the "A" season harvest in 1991 occurred in the Bogoslof District. As discussed above, a TAC of only 1,000 mt of pollock will be available in the Bogoslof District during 1992, effectively closing it to directed fishing for pollock during 1992. Because the amount of pollock specified for the "A" season in 1992 is 442,000 mt (*i.e.*, the same amount that was specified in 1991), the harvest that would otherwise have occurred in the Bogoslof District will likely occur in adjacent statistical areas east and north of the Bogoslof District.

Although fishing effort for pollock during 1992 will be shifted away from potential sea lion foraging habitats within the Bogoslof District, fishing effort will be more concentrated in statistical areas 517 and 511, where key sea lion rookeries exist. The likelihood that adverse effects to sea lions will result from the effort shift away from the Bogoslof District is uncertain. Nevertheless, to reduce the potential for adverse effects, the Secretary has determined that expanding the trawl closures around sea lion rookeries is prudent within those areas where increased pollock fishing during the "A" season is expected. The effects of these expanded closures were analyzed in the environmental assessment prepared for Amendments 20 and 25.

Finally, paragraph (d) of 50 CFR 672.23 and 675.23 is deleted. Paragraph (d) prohibits trawling in the GOA and in the BSAI until the final action implementing or disapproving Amendments 20 and 25 is taken.

The Secretary has reviewed these measures and the reasons for them. He has determined that these measures are

consistent with the Magnuson Act and other applicable law. He has approved these measures as authorized under section 304 of the Magnuson Act.

Response to Comments

Three letters of comments were received during the comment period. The comments are summarized and responded to below:

Comment 1: Promulgation of regulations implementing Amendments 20 and 25 to protect Steller sea lions under the Magnuson Act is inconsistent with the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA), because (1) the regulations are solely for the purpose of protecting a threatened species, (2) certain agency findings under the ESA and MMPA have not been made; and (3) the regulations would change the enforcement system crafted by Congress for violations of the ESA and the MMPA.

Response: The Secretary has determined that fishery management measures implemented under the Magnuson Act, which are intended to protect marine mammals, including Steller sea lions, are appropriate and consistent with the ESA and the MMPA. A purpose of the Magnuson act is to conserve and manage marine resources, including non-fish species. Accommodating food requirements of marine mammals is considered part of "conservation and management" of fishery resources under the Magnuson Act. Further, Congress's intent that the Secretary retain authority under the Magnuson Act to protect marine mammals and exercise that authority is explicitly stated in the MMPA's recently enacted interim commercial fisheries exemption. Congress therein specifically directed the Secretary to request the Regional Fishery Management Councils to take appropriate action whenever incidental taking of marine mammals in a fishery will have a significant adverse impact over a long period of time. NOAA, the agency charged with the administration of both the Magnuson Act and the MMPA, has consistently interpreted the Magnuson Act as authorizing regulatory actions directed at the full marine environment, specifically including non-fish species, which are part of that environment, such as marine mammals. In addition, agency findings under the ESA and MMPA with respect to Steller sea lions have been accomplished in the environmental assessment prepared for this action. Enforcement of fishing regulations promulgated under the Magnuson Act will not change the enforcement system intended for violations of the ESA and MMPA

Comment 2: A no-trawl zone in the Pribilof Island Region should be established as being necessary to protect certain sea bird populations on the Pribilof Islands.

Response: The efficacy of an additional no-trawl zone around the Pribilof Islands is not presented nor analyzed in this rulemaking. The no-trawl area established by this amendment within 10 nautical miles of the Walrus Island sea lion rookery might provide additional protection to sea birds on the Pribilof Islands. The Secretary encourages the Council to work with appropriate management agencies to develop fishery management measures as necessary to protect sea birds.

Comment 3: The EA does not adequately address the environmental impacts of the commercial fisheries on declining Steller sea lion populations and an Environmental Impact Statement (EIS) should have been prepared to fully access all marine ecosystem interactions, the potential effect of commercial fisheries on the marine environment, and the viability of all marine species.

Response: These final regulations implementing Amendments 20 and 25 restrict the groundfish fisheries of Alaska to prevent adverse effects on Steller sea lions. Based on the EA prepared for Amendments 20 and 25, NMFS finds that these restrictions will not have a significant impact on the human environment. As a result of this finding, NMFS reasonably concludes that the preparation of an EIS for Amendments 20 and 25 is unnecessary.

Comment 4: Documented foraging ranges for pregnant female Steller sea lions increase from a mean 7.8 nm in summer to 79.7 nm in winter and interactions with commercial fisheries occur primarily within 20 nm of sea lion rookeries. Since best scientific data available indicate that Steller sea lions forage for food further than 10 nm from rookery sites and because sea lion foraging apparently changes seasonally, year-round no-trawl zones of only 10 nm are not the most protective measure to lessen the decline of Steller sea lions. Alternative 5, which establishes 20 nm no-trawl zones around rookeries in summer and 60 nm no-trawl zones in winter, should be adopted.

Response: As presented in the EA for Amendments 20 and 25, the causes for the decline in Steller sea lions are not known. The commercial groundfish fishery off Alaska has been identified as one possible cause. Although there is a lack of evidence demonstrating that the decline has been related to commercial fishing, NMFS nevertheless is prohibiting trawl fishing effort in areas believed to be important habitat for Steller sea lions. These protective measures are being implemented to alleviate potential, but as yet unproved, adverse effects commercial fishing may have on Steller sea lion populations. Because a causal connection between commercial fisheries and the decline of Steller sea lion populations has not been established, implementation of Alternative 5 would result in significant socioeconomic dislocation without any assurance of additional benefits to Steller sea lion populations.

In addition to the year-round, 10 nm no-trawl zones, NMFS is implementing expanded seasonal closures around five rookeries as additional prudent protection for Steller sea lion populations (see "other Regulatory Changes"). Although the extended winter closures are intended to mitigate potential adverse effects of a compressed BSAI pollock roe fishery, these winter closures also respond to the commenter's concerns for extended winter protection for Steller sea lions.

Classification

The Regional Director determined that the FMP amendments are necessary for the conservation and management of the groundfish fisheries in the GOA and BSAI and that they are consistent with the Magnuson Act and other applicable laws.

The Council prepared an environmental assessment (EA) for these amendments. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), found that no significant impact on the quality of the environment will result from this rule. A copy of the EA may by obtained from the Council (see **ADDRESSES**).

On April 19, 1991, NMFS concluded formal section 7 consultation on the BSAI and GOA groundfish FMPs and fisheries. The biological opinions issued for these consultations concluded that the FMPs and fisheries are not likely to jeopardize the continued existence and recovery of any endangered or threatened species under the jurisdiction of NMFS. Formal section 7 consultation also has been conducted on the GOA 1991 pollock TAC (June 5, 1991) and the fourth quarter pollock fishery (September 20, 1991). These biological opinions concluded that the 1991 GOA pollock fishery, under the time and area constraints imposed by NMFS, was not likely to jeopardize the continued existence of Steller sea lions. Adoption of the management measures described in the proposed amendments will not

affect listed species in a way that was not already considered in the aforementioned biological opinions. In fact, these management measures are designed to reduce the adverse effects of the BSAI and GOA groundfish fisheries on Steller sea lions, and thus, may aid recovery of the species. NMFS has determined that formal section 7 consultation is not required for adoption of these FMP amendments.

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/FRFA prepared by the Council. A copy of the EA/RIR/FRFA may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator concluded that this rule will have significant economic effects on a substantial number of small entities. These effects have been discussed in the EA/RIR/FRFA, a copy of which may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator has determined that delaying the effectiveness of the final rule for 30 days under the Administrative Procedure Act, 5 U.S.C. 553(d), is impracticable and contrary to the public interest. The start of the 1992 groundfish fishery in the GOA and BSAI was delayed by regulatory amendment until final rules implementing amendments 20 and 25 become effective or until the Secretary disapproves Amendments 20 and 25. The Secretary has approved Amendments 20 and 25 and adopted the reasons justifying the implementation of this final rule. Further delay of the opening in the BSAI pollock fishery beyond late January could result in significant amounts of forgone revenue to fishermen and processors that depend on pollock roe product. Therefore, he is waiving the 30-day delayed effectiveness period.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination has been submitted for review by the responsible State of Alaska agencies under section 307 of the Coastal Zone Management Act. The State agencies did not comment within the statutory time period, and, therefore, consistency is automatically inferred.

This rule does not contain policies with federalism implications under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping.

Dated: January 17, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 672.2 [Amended]

2. In § 672.2, the definition of statistical area is revised by removing paragraph (3), Statistical Area 621, and redesignating paragraphs (4) through (7) as (3) through (6).

3. In § 672.20, paragraphs (a)(2)(iv), (h)(2) and (i)(4) are revised to read as follows:

§ 672.20 General limitation.

(a) * * *

(2) * * *

(iv) The TAC for pollock in the combined Western and Central Regulatory Areas will be apportioned among statistical areas 61, 62, and 63 in proportion to the distribution of the pollock biomass as determined by the most recent NMFS surveys. Each apportionment will be divided equally into the four quarterly reporting periods of the fishing year. Within any fishing year, any unharvested amount of any quarterly allowance of TACs will be added in equal proportions to the quarterly allowances of the following quarters, resulting in a sum for each quarter not to exceed 150 percent of the initial quarterly allowance. Within any fishing year, harvests in excess of a quarterly allowance of any TAC will be deducted in equal proportions from the quarterly allowances of each of the remaining quarters of that fishing year.

* * * * *

(h) * * *

(2) *Trip.* For purposes of this paragraph, the operator of a vessel is engaged in a single fishing trip from the commencement of, or the continuation of, fishing for any groundfish after the effective date of a notice prohibiting directed fishing under paragraphs (c)(2) or (f)(1) of this section until any offload or transfer of any fish or fish product from the vessel, or until the vessel enters or leaves a regulatory area, or district, or statistical area to which a directed fishing prohibition applies, whichever occurs first.

(i) * * *

(4) *Trip.* For purposes of this paragraph, a trip is defined as set forth under paragraph (h)(2) of this section.

* * * * * * *

§ 672.23 [Amended]

4. In § 672.23, paragraph (d) is removed.

5. In § 672.24, paragraph (e) is added to read as follows:

§ 672.24 Gear limitations.

* * * * * *

(e) Steller sea lion protection areas. (1) Year-round closures. Trawling is prohibited in the Gulf of Alaska within 10 nautical miles of each of the following 14 Steller sea lion rookeries:

Island	From		To	
	Lat.	Long.	Lat.	Long.
Outer I.	59°20.5 N	150°23.0 W	59°21.0 N	150°24.5 W
Sugarloaf I.	58°53.0 N	152°02.0 W		
Marmot I.	58°14.5 N	151°47.5 W	58°10.0 N	151°51.0 W
Chirikof I.	55°46.5 N	155°39.5 W	55°46.5 N	155°42.0 W
Chowiet I	56°00.5 N	156°41.5 W	56°00.5 N	156°42.0 W
Atkins I.	55°03.5 N	159°18.5 W		
Chernabura I.	54°47.5 N	159°31.0 W	54°45.5 N	159°33.5 W
Pinnacle Rock	54°46.0 N	161°46.0 W		
Clubbing Rks–N	54°43.0 N	162°26.5 W		
Clubbing Rks–S	54°42.0 N	162°26.5 W		
Ugamak I.	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W
Akun I.	54°17.5 N	165°34.0 W	54°18.0 N	165°31.0 W

Island	From		To	
	Lat.	Long.	Lat.	Long.
Akutan I.	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W
Ogchul I.	53°00.0 N	168°24.0 W		

NOTE: The bounds of each rookery extend in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

(2) Seasonal closures. During January 1 through April 15, or a date earlier than April 15 if adjusted under 50 CFR 675.20(e), trawling is prohibited in the Gulf of Alaska within 20 nautical miles of each of the following 2 Steller sea lion rookeries:

Island	From		To	
	Lat.	Long.	Lat.	Long.
Akun I.	54°17.5 N	165°34.0 W	54°18.0 N	165°31.0 W
Akutan I.	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W

NOTE: The bounds of each rookery extend in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIANS ISLANDS AREA

6. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 675.23 [Amended]

7. In § 675.23, paragraph (d) is removed.

8. In § 675.24, paragraph (f) is added to read as follows:

§ 675.24 Gear limitations.

* * * * *

(f) Steller sea lion protection areas. (1) Bering Subarea. (i) Year-round closures. Trawling is prohibited within 10 nautical miles of each of the following eight Steller sea lion rookeries:

Island	From		To	
	Lat.	Long.	Lat.	Long.
Sea Lion Rks	55°28.0 N	163°12.0 W		
Ugamak I.	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W
Akun I.	54°17.5 N	165°34.0 W	54°18.0 N	165°31.0 W
Akutan I.	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W
Bogoslof I.	53°56.0 N	168°02.0 W		
Ogchul I.	53°00.0 N	168°24.0 W		
Adugak I.	52°55.0 N	169°10.5 W		
Walrus I.	57°11.0 N	169°56.0 W		

NOTE: The bounds of each rookery extend in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

(ii) Seasonal closures. During January 1 through April 15, or a date earlier than April 15 if adjusted under 50 CFR 675.20(e), trawling is prohibited within 20 nautical miles of each of the following three Steller sea lion rookeries:

Island	From		To	
	Lat.	Long.	Lat.	Long.
Sea Lion Rks	55°28.0 N	163°12.0 W		
Akun I.	54°17.5 N	165°34.0 W	54°18.0 N	165°31.0 W
Akutan I.	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W

NOTE: The bounds of each rookery extend in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

(2) Aleutian Islands subarea. (i) Year-round closures. Trawling is prohibited within 10 nautical miles of each of the following 19 Steller sea lion rookeries:

Island	From		To	
	Lat.	Long.	Lat.	Long.
Yunaska I	52°42.0 N	170°38.5 W	52°41.0 N	170°34.5 W
Seguam I	52°21.0 N	172°35.0 W	52°21.0 N	172°33.0 W
Agligadak I	52°06.25 N	172°54.0 W		
Kasatochi I	52°10.0 N	175°31.0 W	52°10.5 N	175°29.0 W
Adak I	51°36.5 N	176°58.5 W	51°38.0 N	176°59.5 W
Gramp Rock	51°29.0 N	178°20.5 W		
Tag I	51°33.5 N	178°34.5 W		
Ulak I	51°20.0 N	178°57.0 W	51°18.5 N	178°59.5 W
Semisopochnoi	51°58.5 N	179°45.5 E	51°57.0 N	179°46.0 E
Semisopochnoi	52°01.5 N	179°37.5 E	52°01.5 N	179°39.0 E
Amchitka I	51°22.5 N	179°28.0 E	51°22.0 N	179°25.0 E
Amchitka I	51°32.5 N	179°50.0 E		
Column Rocks:				
Ayugadak Pt	51°45.5 N	178°24.5 E		
Kiska I	51°57.5 N	177°21.0 E	51°56.5 N	177°20.0 E
Kiska I	51°52.5 N	177°13.0 E	51°53.5 N	177°12.0 E
Buldir I	52°20.5 N	175°57.0 E	52°23.5 N	175°51.0 E
Agattu I	52°24.0 N	173°21.5 E		
Gillion Point:				
Agattu I	52°23.5 N	173°43.5 E	52°22.0 N	173°41.0 E
Attu I	52°57.5 N	172°31.5 E	52°54.5 N	172°28.5 E

NOTE: Each rookery extends in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

(ii) Seasonal closures. During January 1 through April 15, or a date earlier than April 15 if adjusted under 50 CFR 675.20(e), trawling is prohibited within 20 nautical miles of each of the following two Steller sea lion rookeries:

Island	From		To	
	Lat.	Long.	Lat.	Long.
Seguam I	52°21.0 N	172°35.0 W	52°21.0 N	172°33.0 W
Agligadak I	52°06.25 N	172°54.0 W		

NOTE: Each rookery extends in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

[FR Doc. 92-1664 Filed 1-17-92; 2:54 pm]
BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 911177-2016]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS announces the closure of the directed fishing season for pollock in part of reporting area 515 of the Bering Sea and Aleutian Islands Management Area (BSAI) that is west of 167° W. longitude. This action is necessary to prevent overfishing of a pollock stock in that area. It is intended to ensure optimum use of groundfish while conserving pollock stocks.

EFFECTIVE DATES: Effective at 0001 hours, Alaska local time (A.l.t.) filing January 17, 1992 through December 31, 1992.

ADDRESSES: Comments should be mailed to Ronald J. Berg, Acting Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska, 99802-1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fisheries in the exclusive economic zone within the BSAI management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council (Council) and is implemented by regulations appearing at 50 CFR part 611 and parts 620 and 675.

Existing regulations specify a total allowable catch (TAC) for pollock for the Bering Sea subarea, including reporting area 515. A stock of pollock, called Aleutian Basin pollock, occurs in part of reporting area 515 that is west of 167° W. longitude. NMFS has determined that the condition of Aleutian Basin pollock is extremely depressed.

To manage Aleutian Basin pollock separately from pollock occurring in the rest of the Bering Sea subarea, the Council has adopted a measure in Amendment 17 to the FMP, which is currently being reviewed by the Secretary (56 FR 63487; December 4, 1991). The measure would establish that part of Reporting Area 515 that lies west of 167° W. longitude as the Bogoslof District. In anticipation of the Secretary of Commerce (Secretary) approving this measure to establish the Bogoslof District, the Council recommended that the Secreary implement a TAC of 1,000 metric tons (mt) for the Bogoslof District, which would be managed as bycatch in other fishing operations occurring in the Bogoslof District during the 1992 fishing year.

Until the Secretary makes a decision to approve or disapprove Amendment 17, existing regulations require that the pollock TAC specified for the Bering Sea subarea also include Aleutian Basin pollock. If fishing operations were to target on the Aleutian Basin pollock to achieve the allowable harvest level,

overfishing of Aleutian Basin pollock could occur.

Under 50 CFR 675.20(e)(l)(i), a fishing season may be closed in all or part of a management area to prevent overfishing of any stock of fish. The final notice of fishery specifications establishes a pollock initial TAC of 1,105,000 mt for the Bering Subarea. Without a closure in the Bogoslof District, fishing effort could be directed at this amount in the Bogoslof District. To prevent overfishing of Aleutian Basin pollock, NMFS is closing the directed fishing season for pollock in that part of the reporting area 515 that lies west of 167° W. longitude under 50 CFR 675.20(e)(l)(i).

This closure allows fisheries for other species to continue and is the least restrictive available measure to prevent overfishing of Aleutian Basin pollock. After the effective date of this action, in accordance with §§ 675.20(h)(1) and (6), the operator of any vessel fishing in that part of reporting area 515 west of 167° W. longitude may not retain at any time during a trip, a round weight equivalent amount of pollock equal to or greater than 20 percent of the aggregate amount of the other fish retained at the same time during the same trip.

Classification

This action is taken under 50 CFR 675.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 17, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-1665 Filed 1-17-92; 1:35 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 15
Thursday, January 23, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV-91-456]

Table Grapes Grown in Southeastern California; Proposed Rule To Establish Interest and Late Payment Charges on Late Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish interest and late payment charges on late assessments owed by handlers regulated under the marketing order. This action would contribute to the efficient operation of the program by ensuring that adequate funds are available to cover budgeted expenses incurred under the marketing order.

DATES: Comments must be received by February 24, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2529–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S Washington, DC 20090–6456, telephone (202) 720–8139.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 925 (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California. The marketing agreement and order are authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California Desert grapes subject to regulation under the marketing order, and approximately 90 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the grape handlers and producers may be classified as small entities.

The California Desert Grape Administrative Committee (committee), the agency responsible for local administration of the order, met on October 31, 1991, and unanimously recommended establishing interest and later payment charges on handler assessments payable to the committee.

Under the terms of the marketing order, each regulated table grape handler is required to pay a pro-rata share of the cost of administering the program. This cost is in the form of a uniform assessment rate applied to each handler's shipments. It is important for handlers to pay their assessments promptly so that the committee has sufficient funds to cover its expenses. The order also authorizes the committee, with the Secretary's approval, to establish interest and late payment charges on delinquent assessments.

The committee recommended imposing a late payment charge of 5 percent of the unpaid balance and charging interest of 1½ percent per month on late assessments. The committee believes that this action would encourage handlers to pay their assessments in a timely manner. The interest and late payment charges would not be imposed until 45 days after the initial billing date, so that handlers would have ample time to pay their assessments and avoid incurring the additional charges.

Based on the above, the Administrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons an opportunity to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 925

Marketing agreements, Reporting and recordkeeping requirements, Table grapes.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 925 be amended to read as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Part 925 is amended by adding a new section 925.141 to read as follows:

§ 925.141 Late payments.

(a) The committee shall impose a late payment charge of 5 percent on the unpaid balance on any handler whose assessment has not been received in the committee's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 45 days of the invoice date shown on the handler's assessment statement.

(b) In addition to that specified in paragraph (a) of this section, the

committee shall impose an interest charge on any handler whose assessment payment has not been received in the committee's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 45 days of the invoice date. The rate of 1½ percent per month shall be applied to the unpaid balance and late payment charge for the number of days all or any part of the assessment specified in the handler's assessment statement is delinquent beyond the 45 day period.

(c) The committee, upon receipt of a late payment, shall promptly notify the handler (by registered mail) of any late payment charge and/or interest charge due as provided in paragraphs (a) and (b) of this section. If such charges are not paid, or the envelope containing payment is not legibly postmarked by the U.S. Postal Service, within 45 days of the date of such notification, late payment and interest charges as provided in paragraphs (a) and (b) of this section will accrue on the unpaid amount.

Dated: January 17, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-1628 Filed 1-22-92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1099

[DA-91-008]

Milk in the Paducah, Kentucky, Marketing Area; Termination of Proceeding on Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding on proposed suspension of rule.

SUMMARY: This action terminates the proceeding that was initiated to consider a proposal to suspend portions of the producer milk definition of the Paducah, Kentucky, milk order for an indefinite period. The suspension would have increased the amount of milk that may be shipped directly from farms to nonpool plants and still be priced under the order. The suspension was requested by cooperative associations that represent a large number of the producers who supply the market.

An evaluation of data, views, arguments, and other pertinent information available, leads to the conclusion that no suspension action should be taken and the proceeding should be terminated.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6274.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued May 6, 1991; published May 10, 1991 (56 FR 21630).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This proceeding was initiated by a notice of rulemaking published in the **Federal Register** on May 10, 1991 (56 FR 21630), concerning a proposed suspension of certain provisions of the order regulating the handling of milk in the aforesaid marketing area. Interested parties were invited to comment on the proposal in writing by May 17, 1991. The proposal would have increased the amount of milk that may be shipped directly from farms to nonpool plants and still be priced under the order.

Statement of Consideration

The suspension was requested by cooperative associations that represent a large number of the producers who supply the market. The proposal would have allowed more milk to be shipped directly from farms to nonpool plants and still be priced and pooled under the order. Currently the order provides that a handler may divert up to 33 percent of the producer milk that is received by the handler. The proposed suspension would increase the diversion allowance to a volume equal to the volume of producer milk actually received during the month.

The cooperative associations contend that an indefinite suspension is necessary to recognize changes in marketing conditions. They indicate that in recent years the Class II needs of a distributing plant regulated under the Paducah order have been processed at another plant owned by the handler that is regulated under the Memphis, Tennessee order. The cooperatives indicate that the milk needed to process the Class II products has been priced under the Paducah order even though it is processed in the Memphis regulated plant.

The cooperative associations also indicate that a partially regulated plant located at Murray, Kentucky, now requires additional supplies of milk and that a major portion of the plant's needs for milk are for other than fluid use. Also, the cooperative indicate that, historically, the main source of milk for this nonpool plant has been producer milk received by diversion from a Paducah order regulated distributing plant. In effect, the cooperatives contend that a suspension of the diversion limits is necessary to accommodate the needs of this and the previously mentioned plant.

Comments (letters and petitions) in opposition to the proposed suspension were received from 34 non-member producers. These non-member producers, whose milk is delivered to the Paducah order regulated distributing plant, stated the cooperatives have been pooling unneeded milk on the Paducah market for some time. This pooling practice, according to the non-member producers, lowers the Class I utilization percentage in this market and, consequently, lowers their pay prices.

An analysis of market statistics indicates that the Class I utilization of producer receipts under the Paducah order is at about the same percentage as the average for the region, about 80 percent. As a result, the current diversion limit of 33 percent is adequate to accommodate pooling of reserve supplies in this market in an amount that is sufficient to allow the Paducah pool to carry its proportionate share of the reserve milk supplies in the region. An increase in the diversion allowance to 50 percent, as requested, would risk burdening the Paducah pool with an undue proportion of the reserve milk supply in the region. Any additional supply of milk for Class II use at the two plants should now appropriately be associated with neighboring order pools to better assure equity in returns to producers among the orders, and thereby tend to promote orderly marketing in the region. Therefore, the requested action is denied and this proceeding is terminated.

List of Subjects in 7 CFR Part 1099

Milk marketing orders.

The authority citation for 7 CFR part 1099 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on January 17, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-1627 Filed 1-22-92; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 317, 320, and 381

[Docket No. 91-006N]

RIN 0583-AB34

Nutrition Labeling of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public hearing.

SUMMARY: On November 27, 1991, the Food Safety and Inspection Service (FSIS) published a proposed rulemaking entitled, "Nutrition Labeling of Meat and Poultry Products." Comments regarding this rulemaking must be received by February 25, 1992. To provide additional opportunity for interested persons to present their views on this proposal, FSIS is participating in the Food and Drug Administration's (FDA) "Food Labeling Hearing" on January 30 and 31, 1992.

DATES: The public hearing will be held on Thursday and Friday, January 30 and 31, 1992, 8 a.m. to 6 p.m. The records of the underlying rulemakings will remain open for comments until February 25, 1991.

ADDRESSES: The public hearing will be held in the Jack Masur Auditorium, Warren Grant Magnuson Clinical Center, Building 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Written notices of participation are to be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 1-23, 12420 Parklawn Drive, Rockville, MD 20857.

Transcripts of the hearing and copies of data and information submitted during the hearing will be available for review at the FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 under the docket number 91-006P.

To obtain a copy of FSIS's proposal (Docket No. 91-006P) or to send in comments, write to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Persons needing information about the various food labeling issues to be addressed at the public hearing should contact:

At FSIS: Mr. Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 205-0080.

At FDA: Ms. Virginia Wilkening, Center for Food Safety and Applied Nutrition (HFF-200), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, (202) 245-1561.

Questions regarding the hearing should be directed to: Ms. Annette Funn, Office of Consumer Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-5006 or for FAX (301) 443-9767.

SUPPLEMENTARY INFORMATION: On January 3, 1992, FDA published a notice in the **Federal Register** (57 FR 239) announcing a public hearing to provide an opportunity for interested persons to present their views regarding the food labeling proposed rulemakings that were published in the **Federal Register** on November 27, 1991. FSIS will be participating in this public hearing and will be taking comments regarding the Agency's proposed rulemaking entitled, "Nutrition Labeling of Meat and Poultry Products" (56 FR 60302). The hearing will address several subject areas including mandatory nutrition labeling, nutrient content claims, and health claims. FSIS advises those wishing to participate in the hearing to refer to FDA's **Federal Register** notice, 57 FR 239.

Done at Washington, DC, on January 17, 1992.

W.J. Hudnall,

Acting Administrator.

[FR Doc. 92-1837 Filed 1-22-92; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-269-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to British Aerospace Model ATP series airplanes. This proposal would require placing a life limit on certain brake unit torque plates. This proposal is prompted by recent reports of fatigue cracks developing in brake unit torque plates. The actions specified by the proposed AD are intended to prevent structural failure of the brake torque plates.

DATES: Comments must be received by March 10, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-269-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletin, P.O. Box 17414, Dulles International Airport, Washington DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227-2113; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-269-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-269-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, recently notified the FAA that an unsafe condition may exist on British Aerospace Model ATP series airplanes. The CAA advises that there have been recent reports of fatigue cracks developing in brake unit torque plates, part numbers AHA 1650 and AHA 1777. This condition, if not corrected, could result in structural failure of the brake unit torque plates and subsequent brake failure.

British Aerospace has issued Service Bulletin ATP-32-36, dated June 26, 1991, which describes procedures for establishing a life limit of 10,000 landings for part no. AHA 1650 torque plates, and a life limit of 14,500 landings for part No. AHA 1777 torque plates. (This service bulletin refers to Dunlop Limited Aviation Division Mandatory Service Bulletin 32-1033 Revision 1, dated May 16, 1990, for additional information). The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the CAA has kept the FAA totally informed of the above situation. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require placing a life limit of 10,000 and 14,500 landings for pat no. AHA 1650 and part no. AHA 1777 brake unit torque plates, respectively. The actions would be required to be accomplished in accordance with the service bulletin previously described.

It is estimated that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. (If the proposed actions are implemented during normal maintenance, no additional work hours will be necessary). Dunlop will provide new torque plates at normal brake overhaul at no cost to the airplane operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $11,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration pursuant to amend 14 CFR pat 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 91-NM-269-AD.

Applicability: Model ATP Series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of certain brake torque plates and accompanying brake failure, accomplish the following:

(a) Within 400 landings after the effective date of this AD or prior to the accumulation of 10,000 landings on part no. AHA 1650 brake torque plates, whichever occurs later, replace part no. AHA 1650 brake torque plates, in accordance with British Aerospace Service Bulletin ATP-32-36, dated June 25, 1991. Thereafter, prior to the accumulation of 10,000 landings on each part no. AHA 1650 brake torque plates, it must be replaced with a serviceable part.

(b) Within 400 landings after the effective date of this AD or prior to the accumulation of 14,500 landings on part no. 1777 brake torque plates, whichever occurs later, replace part no. AHA 1777 brake torque plates, in accordance with British Aerospace Service Bulletin ATP-32-36, dated June 25, 1991. Thereafter, prior to the accumulation of 14,500 landings on each part no. AHA 1777 brake torque plate, it must be replaced with a serviceable part.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21. 197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 8, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1647 Filed 1-22-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-97-AD]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 series airplanes, which would require repetitive visual inspections to detect damaged in-line splices in the integrated drive and in the Auxiliary Power Unit (APU) generator circuits, and repair, if necessary; and eventual modifications which would terminate the requirement for the repetitive inspections. This proposal is prompted by reports of

damage to the in-line splices in the integrated drive and APU generator circuits due to overheating. The actions specified by the proposed AD are intended to prevent overheating of in-line splices in the integrated drive and APU generator circuits, which could result in a fire.

DATES: Comments must be received by March 10, 1992.

ADDRESSES: Send comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-97-AD. 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles, International Airport, Washington, DC 20041. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-97-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-97-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146 series airplanes. The United Kingdom CAA advises that there have been recent reports of damage to the in-line splices in the integrated drive and Auxiliary Power Unit (APU) generator circuits due to overheating. This condition, if not corrected, could lead to overheating of the in-line splices in the integrated drive and APU generator circuits, which could result in a fire.

British Aerospace has issued the following service bulletins to address inspection, repair, and modification of the affected airplanes:

a. Inspection Service Bulletin 24-83, dated January 22, 1991, which describes procedures to perform repetitive visual inspections to detect damaged in-line splices in the APU generator circuit, and repair, if necessary.

b. Modification Service Bulletin 24-83-50134A, Revision 1, dated March 15, 1991, which describes installation of an ERMA in-line splice for APU generator feeder cables as a temporary splice repair to provide a more efficient crimp on the cable splices used in the existing feeder circuits. This modification enables any single splice, together with any adjacent section of damaged wire, to be cut away and temporarily replaced by a new length of wire together with two new splices.

c. Modification Service Bulletin 24-82-36097A&B, dated February 11, 1991, which describes two modifications: Modification HCM36097A, which involves the removal of a group of three splices at any one or more positions and the installation of a length of new twisted wire with new splices; and Modification HCM36087B, which involves the removal of existing APU generator feeder circuit triple wires (together with their splices) that are located between the APU generator and the external power/aux gen line contactor, and the installation of a continuous length of triple wire (without splices) between the generator and contactor.

d. Inspection Service Bulletin 24-84, dated January 22, 1991, which describes procedures to perform repetitive visual inspections to detect damaged in-line splices in the integrated drive generator circuits, and repair, if necessary.

e. Modification Service Bulletin 24-84-50134B, Revision 1, dated March 15, 1991, which describes an ERMA in-line splice for integrated drive generator feeder cables as a temporary splice repair to provide a more efficient crimp on the cable used in the existing feeder circuits. This modification enables any single splice, together with any adjacent section of damaged wire, to be cut away and temporarily replaced by a new length of wire together with two new splices.

f. Modification Service Bulletin 24-85-01253A, Revision 1, dated March 15, 1991, which describes a permanent splice repair that changes all splices to the new standard and, where necessary, replaces wires and splices.

The United Kingdom CAA has classified the inspection service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the United Kingdom CAA has kept the FAA totally informed of the above situation. The FAA has examined the findings of the United Kingdom CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive visual inspections to detect damaged in-line splices in the integrated drive and APU generator circuits, and repair, if necessary. Repairs may be of either a "permanent" type or a "temporary" type and, once accomplished, would terminate the need for the repetitive inspections. Temporary repairs would be required to be replaced with a permanent repair within 12 months. The actions would be required to be accomplished in accordance with the service bulletins previously described

It is estimated that 4 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 6 work hours per airplane to accomplish the proposed inspections, and approximately 66 work hours to accomplish the proposed modifications. The average labor rate would be $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $16,280.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace; Docket No. 91–NM–97–AD.

Applicability: Model BAe 146 series airplanes, as listed in British Aerospace Inspection Service Bulletins 24–83 and 24–84, both dated January 22, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a fire and to provide overheat protection, accomplish the following:

(a) Within 60 days after the effective date of this AD, and thereafter at intervals not to exceed 180 days for a period of two years after the initial inspections, perform a visual inspection of the in-line splices in the Auxiliary Power Unit (APU) generator circuits for heat damage, in accordance with the Accomplishment Instructions in British Aerospace Inspection Service Bulletin 24–83, dated January 22, 1991.

Note: The FAA has determined that if the in-line splices do not show signs of overheating within a two-year period of time, no problem will develop.

(1) If heat-damaged splices are found, prior to further flight, accomplish one of the following:

(i) Perform a temporary repair in accordance with paragraph 2.A(4) of British Aerospace Inspection Service Bulletin 24–83, dated January 22, 1991, by installing Modification HCM50134A, as described in Modification Service Bulletin 24–83–50134A, Revision 1, dated March 15, 1991; or

(ii) Perform a permanent repair in accordance with paragraph 2.A(4) of British Aerospace Inspection Service Bulletin 24–83, dated January 22, 1991, by installing Modification HCM36097A, as described in Modification HCM36097B, as described in Modification Service Bulletin 24–82–36097A&B, dated February 11, 1991.

(2) Accomplishment of one of the modifications at a splice location in accordance with either paragraphs (a)(1)(i) or (a)(1)(ii) of this AD, constitutes terminating action for the requirements for the repetitive inspections required by paragraph (a) of this AD at that splice location.

(b) Within 60 days after the effective date of this AD, and thereafter at intervals not to exceed 180 days for a period of two years after the initial inspection, perform a visual inspection of all in-line splices in the integrated drive generator circuits, in accordance with the Accomplishment Instructions in British Aerospace Inspection Service Bulletin 24–84, dated January 22, 1991.

(1) If heat-damaged splices are found, prior to further flight, accomplish one of the following:

(i) Perform a temporary repair in accordance with paragraph 2.A(4) of British Aerospace Inspection Service Bulletin 24–84, dated January 22, 1991, by installing Modification HCM50134B, as described in Modification Service Bulletin 24–84–50134B, Revision 1, dated March 15, 1991; or

(ii) Perform a permanent repair in accordance with paragraph 2.A(4) of British Aerospace Inspection Service Bulletin 24–84, dated January 22, 1991, by installing Modification HCM01253A, as described in Modification Service Bulletin 24–85–01253A, Revision 1, dated March 15, 1991.

(2) Accomplishment of one of the modifications at a splice location in accordance with either paragraphs (b)(1)(i) or (b)(1)(ii) of this AD, constitutes terminating action for the requirements for the repetitive inspections required by paragraph (b) of this AD at that splice location.

(c) Temporary repairs made at a splice location in accordance with paragraphs (a) or (b) of this AD, and temporary repairs made previously in accordance with British Aerospace Service Bulletin 24–A75 or 24–A76, must be replaced with a permanent repair at that splice location within 12 months after the temporary repair was installed, or within 12 months after the effective date of this AD, whichever occurs later, in accordance with British Aerospace Service Bulletin 24–83, dated January 22, 1991, or British Aerospace Service Bulletin 24–84, dated January 22, 1991, as applicable.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 8, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1646 Filed 1–22–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–279–AD]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes. This proposal would require removal of a redundant component from the central audio unit station selection boards. This proposal is prompted by the identification of a single redundant component in the communications system central audio unit station selector board, the failure of which could render the communication system inoperative. The actions specified by the proposed AD are intended to prevent loss of all radio communications.

DATES: Comments must be received by March 11, 1992.

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ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-279-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2113; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-279-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-279-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, recently notified the FAA that an unsafe condition may exist on British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. The CAA advises that a single redundant component in the communications system central audio unit station selector boards has been identified, the failure of which could render the communication system inoperative. This condition, if not corrected, could result in loss of all radio communications.

British Aerospace has issued Modification Service Bulletin SB.23-36-01238A, dated December 21, 1990, which describes procedures for removing a certain redundant component from the central audio unit station selector boards. The CAA has classified this service bulletin as mandatory.

(Note: British Aerospace Modification Service Bulletin SB.23-36-01238A refers to GEC Sensors Limited Service Bulletin 15504-23-14, Revision 3, dated November 1990, for additional modification instructions.)

This airplane model is manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the CAA has kept the FAA totally informed of the above situation. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require removal of a certain redundant component from the central audio unit station selector boards. The actions would be required to be accomplished in accordance with the service bulletin previously described.

It is estimated that 74 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,140.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 91-NM-279-AD.

Applicability: Model BAe 146-100A, -200A, and -300A series airplanes, as listed in British Aerospace Modification Service Bulletin SB.23-36-01238A, dated December 21, 1990, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of all radio communications, accomplish the following:

(a) Within 60 days after the effective date of this AD, remove Capacitor C68 (2.2uF, 35V) from the central audio unit station selector boards in accordance with British Aerospace Modification Service Bulletin SB.23-36-01238A, dated December 21, 1990.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch.

(c) Special flight permits maybe issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 9, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1649 Filed 1-22-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-275-AD]

Airworthiness Directives; British Aerospace Model 125-800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of new airworthiness directive (AD) that is applicable to certain British Aerospace Model 125-800A series airplanes. This proposal would require a modification of the main landing gear assembly, which consists of installing steel torque links and reducing axial clearances at torque link pins and knuckle joints. This proposal is prompted by recent reports of main landing gear vibration due to lack of stiffness in the caster mode. The actions specified by the proposed AD are intended to prevent excessive wear and premature structural failure of the main landing gear.

DATES: Comments must be received by March 11, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-275-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2113; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-275-AD." The postcard will be date stamped and returned to the commenter

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-275-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model 125-800A series airplanes. The CAA advises that there have been recent reports of main landing gear vibration due to lack of stiffness in the caster mode. This condition, if not corrected, can result in excessive wear and premature structural failure of the main landing gear.

British Aerospace has issued Service Bulletin SB.32-226-3257A, dated May 3, 1991, which describes procedures for installation of British Aerospace Modification Number 253257A, which consists of installing steel torque links and reducing axial clearances at torque link pins and knuckle joints. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, the CAA has kept the FAA totally informed of the above situation. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of British Aerospace Modification Number 253257A. The actions would be required to be accomplished in accordance with the service bulletin previously described.

It is estimated that 137 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 17 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $128,095.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Polices and Procedures (44 FR 11034, February

26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 91–NM–275–AD.

Applicability: Model 125–800A airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive wear and premature structural failure of the main landing gear, accomplish the following:

(a) Within 180 days after the effective date of this AD, install steel torque links, on the right and left main landing gear, and reduce torque link and knuckle axial clearances, by installing British Aerospace Modification Number 253257SA in accordance with British Aerospace Service Bulletin SB.32–228–3257A, dated May 3, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 9, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1648 Filed 1–22–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 911188–1288]

RIN 0651–AA53

Patent Interference Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office proposes to amend the rules of practice in patent cases, part 1 of title 37, Code of Federal Regulations, relating to patent interference proceedings. The proposed changes generally consist of clarifying and housekeeping amendments with respect to patent interference practice, particularly preliminary motions under 37 CFR 1.633.

DATES: Comments must be submitted on or before march 23, 1992. A public hearing will not be held.

ADDRESSES: Address written comment to Box Interference, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Saul I. Serota.

FOR FURTHER INFORMATION CONTACT: Saul I. Serota by telephone at 703–557–4072 or Ian A. Calvert at 703–557–4000, or by mail to the attention of either and addressed by Box Interference, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Several of the proposed changes are based upon suggestions submitted by the American Intellectual Property Law Association.

(1) Access to Interference Files

Under § 1.11(e) it was intended that, once an interference had terminated or an award of priority or judgment had been entered as to all parties and all counts, the file of the interference would then be available to the public if the file of at least one of the cases involved in the interference was open to the public. However, although § 1.11(b) provides that the file of a reissue application is open to the public, interferences involving reissue applications were inadvertently not specifically included in § 1.11(e). The proposed amendment to § 1.11(e) more clearly expresses the practice under current § 1.11(e).

(2) Patentability of an Interference Count

As presently written, § 1.60(f) states that "A phantom count is not patentable to any party." This language may be construed as meaning that the count need not be patentable over prior art, which is incorrect; as provided in § 1.601(i), the parties must be claiming the same patentable invention. The proposed amendment to § 1.601(f) would make it clear, consistent with *Case* v. *International, Inc.*, 730 F.2d 745, 221 USPQ 196 (Fed. Cir.), *cert. denied*, 469 U.S. 872 (1984), that a phantom count is unpatentable to all parties because no party complies with 35 U.S.C. 112 for that count.

(3) Preliminaries to Interference With a Patent

(A) 35 U.S.C. 135(b) provides:

> A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted.

Under 35 U.S.C. 135(b), an interference should not be instigated with a patent unless the applicant claims the same or substantially the same subject matter as claimed in the patent within one year after the patent issues. See *In re Sasse*, 629 F.2d 675, 207 USPQ 107 (CCPA 1980), and *Parks* v. Fine, 773 F.2d 1577, 227 USPQ 432 (Fed Cir. 1985), *modified*, 783 F.2d 1036, 228 USPQ 677 (1986). However, it has been found that there is a tendency to overlook the requirement of 35 U.S.C. 135(b). The proposed amendment to § 1.607(a) would reverse this trend by requiring the applicant to explain how the requirements of 35 U.S.C. 135(b) are met whenever the applicant seeks to have an interference declared between the application and a patent and the claim presented or identified by the applicant under 1.607(a)(4) was not present in the application until more than one year after the issue date of the patent. For example, if an applicant filed an amendment presenting a claim corresponding to a claim of a patent more than one year after the patent issued, the applicant would have to explain in the amendment how one or more of the claims which were in the application prior to expiration of the one-year period was drawn to "substantially the same subject matter" as a claim of the patent.

(B) It is proposed to change present § 1.608(a) in two respects. The first change would specify that the effective filing date of the patent is the effective filing date under 35 U.S.C. 120, i.e., in determining whether the patent should be accorded the benefit of a prior application, only a prior United States application, and not a prior foreign application (35 U.S.C. 119), would be considered. This change is desirable to

conform the language of paragraph (a) to that of paragraph (b), since the same considerations are applicable to both paragraphs, namely, that under *In re Hilmer*, 359 F.2d 859, 149 USPQ 480 (CCPA 1966), a patent's foreign priority date under 35 U.S.C. 119 does not constitute its effective filing date for reference purposes.

The second proposed change in § 1.608(a) would relax the requirement that an affidavit be filed by the applicant, and instead permit the filing of a statement by either the applicant or the applicant's attorney or agent of record. This proposed change would bring the rule into conformity with § 1.621(a), which allows an attorney or agent of record to sign a preliminary statement.

(4) Notice of Intent To Argue Abandonment, Suppression or Concealment

Present § 1.632 provides that a notice of intent to argue abandonment, suppression or concealment is timely when filed "within ten (10) days of the close of the testimony-in-chief of the opponent." Section 1.632 may be interpreted as requiring that the notice be filed either ten days before or ten days after the close of the testimony. The proposed change would make clear that the ten-day period runs for ten days after the opponent's testimony-in-chief closes.

(5) Preliminary Motions

(A) It is proposed to amend § 1.633(a) to incorporate the substance of the Notice of August 10, 1990, by the Chairman of the Board of Patent Appeals and Interferences entitled "Interferences—Preliminary Motions for Judgment", and published at 1118 Off. Gaz. Pat. Off. 19 (September 11, 1990). The Notice deals with the procedure to be followed when a party to an interference files a motion for judgment on the ground of unpatentability over prior art and the dates of the cited prior act, relative to the effective filing dates of the applications and/or patents involved in the interferences, are such that the prior art would appear to apply to the moving party. In such a case, if the motion does not contain an explanation as to why the prior art would not be applicable to the movant, the Notice provides that the examiner-in-chief will send a letter to the moving party (a) informing the movant that the prior act appears to be applicable against him/her, (b) setting a time period for the movant to provide an explanation as to why the prior art does not apply to him/her, and (c) stating that unless a sufficient explanation (and evidence if appropriate) is filed within the time set, the movant will not be permitted to rely on any such explanation (and evidence) in response to or in any subsequent action in the interference.

The purpose of the proposed amendment to § 1.633(a) is to eliminate the necessity for the examiner-in-chief to send a letter to the moving party, and the resulting delay. Under proposed § 1.633(a), the burden would be placed on the moving party to include with the motion itself a sufficient explanation of why the prior art would not be applicable to him/her. If no explanation was provided, or the explanation was insufficient, the moving party would be placed in the same position as a moving party who, under current practice as specified in the Notice, provides no explanation or an insufficient explanation in response to the examiner-in-chief's letter, i.e., the moving party would not be permitted to rely on any later-submitted explanation, or evidence, in response to or in any subsequent action in the interference.

The following examples illustrate the operation of the proposed rule:

Example 1. Party A files a motion for judgment against Party B on the basis of a reference which atendates Party A's own effective filing date, and does not include with the motion an explanation of why the reference does not apply to Party A. If the examiner-in-chief grants the motion and finds that the claims of the parties corresponding to the count are unpatentable, he/she will issue an order to show cause under § 1.640 against Parties A and B. Any showing or motion for a testimony period under § 1.651(c)(4) which Part A files in response to the order to show cause may not be based on reasons which could have been, but were not, given with the motion in explanation of why the reference would not apply to Party A.

Example 2. Party A files a motion for judgment against Party B based on a reference which antedates Party A's effective filing date by less than a year, and which is antedated by the date of first actual reduction to practice alleged in Party A's preliminary statement (§ 1.623). Party A explains in the motion that the reference does not apply to him/her in view of the dates alleged in Party A's preliminary statement. If the examiner-in-chief finds that the claims of the parties corresponding to the count are unpatentable over the reference and grants the motion, he/she will issue an order to show cause under § 1.640 against Parties A and B. In response to the order to show cause, Party A could filed a motion to take testimony in accordance with the allegations in its preliminary statement in order to antedate the reference, as well as to prove priority of invention.

(B) Section 1.633(e), if amended as proposed, would permit a party to file a preliminary motion to declare an additional interference between a patent owned by a party but not involved in the interference and an opponent's application involved in the interference. This would permit a party to seek an additional interference directly between a patent commonly owned by the party and an opponent's application, rather than having to file a reissue application in order to be able to bring the motion under the present rule.

(C) Section 1.633(i), if amended as proposed, would provide a party-patentee opposing a motion for judgment (§ 1.633(a) or (b)) or a motion attacking the party's benefit (§ 1.633(g)) the option of moving under § 1.633(h) to add to the interference an application for reissue of the party's involved patent. This would give the patentee an option similar to that afforded a party-applicant in the same situation, i.e., the patentee could attempt to change the patent claims my way of reissue in order to avoid the grounds on which the motion under § 1.633(a), (b) or (g) is based.

(D) The proposed changes in § 1.637(c)(2) (ii) and (iii) would clarify the language of these two paragraphs and are self-explanatory.

(E) When a party files a preliminary motion to add or substitute a count under § 1.633(c)(1), to substitute a different application under § 1.633(d), or to declare an additional interference under § 1.633(e), the moving party must also file a motion under § 1.633(f) for benefit of the filing date of a prior application if the party wishes to be accorded such benefit. See §§ 1.637(c)(1)(vi), (d)(4), (e)(1)(viii) and (e)(2)(vii). However, if the party's opponent was accorded benefit of a prior application in the notice of declaration of the interference (§ 1.611(c)(5)), confusion has arisen as to whether the opponent will automatically be accorded benefit if the motion under § 1.633(c)(1) (d) or (e) is granted, or whether the opponent must file a motion under § 1.633(f) in order to be accorded such benefit. In the latter case, filing of the motion for benefit by the opponent tends to cause further delay in resolution of the interference.

The proposed amendment of § 1.637, by adding paragraphs (c)(1)(vii), (d)(5), (e)(1)(ix) and (e)(2)(viii), would address this problem by providing, in substance,

that for motions under § 1.633(c)(1), (d) or (e), an opponent who has been accorded the benefit of the filing date of an earlier application in the notice of declaration of the interference will be presumed to be entitled to such benefit if the motion is granted unless the moving party shows why the opponent should not be so entitled.

(F) It is proposed that paragraphs (c)(2)(iv) and (c)(3)(iii) of § 1.637 be deleted. These paragraphs require that a preliminary motion to amend or add an application claim (§ 1.633(c)(2)), or to designate an application or patent claim to correspond to a count (§ 1.633(c)(3)), be accompanied by a motion under § 1.633(f) requesting the benefit of a prior application. This requirement is, however, unnecessary in the case of motions under § 1.633(c)(2) or (3), because the question of whether a party should be accorded benefit of a prior application for priority purposes is determined by reference to whether the prior application supports an embodiment within the count. *Weil* v. *Fritz*, 572 F.2d 856, 865–66 n.16, 196 USPQ 600, 608 n.16 (CCPA 1978). Motions under § 1.633(c)(2) or (3), which concern only the claims and do not affect the count, would have no effect on a party's entitlement to benefit of a prior application even if they were granted.

(6) Content of the Record

Paragraph (c)(5) of § 1.653 currently requires that the record filed by each party include each notice, official record, and publication relied upon by the party and filed under § 1.682(a). This requirement is considered unnecessary, since such notices, official records and printed publications are in the nature of exhibits, which are not included in the record under § 1.653(c). Their inclusion in the record merely increases the size of the record without serving any useful purpose. It is therefore proposed that § 1.653(c)(5) be deleted, and paragraphs (c)(6) and (c)(7) be renumbered as (c)(5) and (c)(6), respectively.

(7) Failure of the Junior Party to Timely File an Opening Brief

Under the provisions of § 1.656(i), if a junior party fails to timely file an opening brief for final hearing, an order may be issued by the examiner-in-chief requiring the junior party to show cause why the failure to file the brief should not be treated as a concession of priority. Currently, § 1.656(i) further states that judgment may be entered against the junior party if the junior party "fails to respond" within a time period set in the order.

The expression "fails to respond" has been interpreted by some junior parties as meaning that the mere filing of a response of any kind to the order to show cause should be sufficient to avoid the entry of judgment. Such an interpretation was not intended, and if adopted would effectively negate § 1.656(i). In order to make clear that a junior party's failure to file a timely opening brief will not be excused unless sufficient cause is shown to explain or justify the failure, it is proposed to amend § 1.656(i) by changing "respond" to "show good cause." The language of the rule will then be consistent with other interference rules dealing with orders to show cause, e.g., §§ 1.640(e) and 1.652.

Other Considerations

The proposed rule changes will not have a significant impact on the quality of the human environment or conservation of energy resources.

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule changes will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)), because they are primarily intended to simplify by clarification and amplification certain rules governing the conduct of an interference.

The Patent and Trademark Office has determined that these proposed rule changes are not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers; individual industries; Federal, state or local government agencies; or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., however, they do involve a paperwork burden currently approved by the Office of Management and Budget under control number 0651–0011.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Inventions and patents.

Notice is hereby given that, pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office proposes to amend title 37 of the Code of Federal Regulations as set forth below. **Note:** Deletions are indicated by brackets and additions by arrows.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.11 is proposed to be amended by revising paragraph (e) to read as follows:

§ 1.11 Files open to the public.

* * * * *

(e) The file of any interference involving a patent, a statutory invention registration, ► a reissue application, ◄ or an application on which a patent has been issued or which has been published as a statutory invention registration, is open to inspection by the public, and copies may be obtained upon paying the fee therefor, if:

(1) The interference has terminated, or

(2) An award of priority or judgment has been entered as to all parties and all counts.

3. Section 1.601 is proposed to be amended by revising the introductory text and paragraph (f) to read as follows:

§ 1.601 Scope of rules, definitions.

This subpart governs the procedure in patent interferences in the Patent and Trademark Office. This subpart shall be construed to secure the just, speedy, and inexpensive determination of every interference. For the meaning of terms in the Federal Rules of Evidence as applied to interferences, see § 1.671(c). Unless otherwise clear from the context, the following definitions apply to this subpart:

* * * * *

(f) A *count* defines the interfering subject matter between two or more applications or one or more applications and one or more patents. When there is more than one count, each count shall define a separate patentable invention. Any claim of an application or patent which corresponds to a count is a claim

involved in the interference within the meaning of 35 U.S.C. 135(a). A claim of a patent or application which is identical to a count is said to "correspond exactly" to the count. A claim of a patent or application which is not identical to a count, but which defines the same patentable invention as the count, is said to "correspond substantially" to the count. When a count is broader in scope than all claims which correspond to the count, the count is a "phantom count." A phontom count is (not patentable to any party) ► unpatentable to all parties under 35 U.S.C. 112 ◄.

* * * * *

4. Section 1.607 is proposed to be amended by adding new paragraph (a)(6) as follows:

§ 1.607 Request by applicant for interference with patent.

(a) * * *

► (6) Explaining how the requirements of 35 U.S.C. 135(b) are met, if the claim presented or identified under paragraph (a)(4) of this section was not present in the application until more than one year after the issue date of the patent. ◄

* * * * *

5. Section 1.608 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.608 Interference between an application and a patent; prima facie showing by applicant.

(a) When the earlier of the filing date or effective filing date of an application is three months or less after the earlier of the filing date or effective filing date ► under 35 U.S.C. 120 ◄ of a patent, (the applicant,) before an interference will be declared, ► either the applicant or the applicant's attorney or agent of record ◄ shall file (an affidavit) ► a statement ◄ alleging that there is a basis upon which ► the ◄ applicant is entitled to a judgment relative to the patentee.

* * * * *

6. Section 1.632 is proposed to be revised to read as follows:

§ 1.632 Notice of intent to argue abandonment, suppression or concealment by opponent.

A notice shall be filed by a party who intends to argue that an opponent has abandoned, suppressed ► , ◄ or concealed an actual reduction to practice (35 U.S.C. 102(g)). A party will not be permitted to argue abandonment, suppression, or concealment by an opponent unless the notice is timely filed. Unless authorized otherwise by an examiner-in-chief, a notice is timely when filed within ten (10) days ► after ◄ (of) the close of the testimony-in-chief of the opponent.

7. Section 1.633 is proposed to be amended by revising paragraphs (a), (e) and (i) to read as follows:

§ 1.633 Preliminary motions.

A party may file the following preliminary motions:

(a) A motion for judgment on the ground that an opponent's claim corresponding to a count is not patentable to the opponent. In determining a motion filed under this paragraph, a claim may be construed by reference to the prior art of record. A motion under this paragraph shall not be based on:

(1) Priority of invention of the subject matter of a count by the moving party as against any opponent or

(2) Derivation of the subject matter of a count by an opponent from the moving party. See § 1.637(a). ► If a party files a motion for judgment under this paragraph on the ground of unpatentability over prior art, and the dates of the cited prior art are such that it would appear to be applicable to the moving party, it will be presumed, without regard to the dates alleged in the preliminary statement of the moving party, that the cited prior art is applicable to the moving party unless there is included with the motion a sufficient explanation, and evidence if appropriate, as to why the prior art would not apply to the movant. If no such explanation, or an insufficient explanation, is provided with the motion, the movant will not be permitted to rely on any such explanation, or evidence, in response to or in any subsequent action in the interference. ◄

* * * * *

(e) A motion to declare an additional interference:

(1) Between an additional application not involved in the interference and owned by a party and an opponent's application or patent involved in the interference ►,

(2) Between a patent not involved in the interference and owned by a party and an opponent's application involved in the interference, ◄ or ([2]) ►

(3) ◄ When an interference involves three or more parties, between less than all applications and any patent involved in the interference. See § 1.637 (a) and (e).

* * * * *

(i) When a motion is filed under paragraph (a), (b), or (g) of this section, an opponent, in addition to opposing the motion, may file a motion to redefine the interfering subject matter under paragraph (c) of this section (or) ► , ◄ a motion to substitute a different application under paragraph (d) of this section ► , or a motion to add a reissue application to the interference under paragraph (h) of this section ◄.

* * * * *

8. Section 1.637 is proposed to be amended by revising paragraphs (c)(2)(ii) and (iii); adding paragraphs (c)(1)(vii), (d)(5), (e)(1)(ix) and (e)(2)(viii); and removing paragraphs (c)(2)(iv) and (c)(3)(iii), as follows:

§ 1.637 Content of motions.

* * * * *

(c) * * *

(1) * * *

► (vii) If an opponent is accorded the benefit of the filing date of an earlier application in the notice of declaration of the interference, show why the opponent is not entitled to its benefit. Otherwise, the opponent will be presumed to continue to be entitled to the benefit of the earlier application with respect to the proposed count. ◄

(2) * * *

(ii) Show that the ► claim ◄ proposed ► to be amended ◄ or added (claim) defines the same patentable invention as the count.

(iii) Show the patentability to the applicant of each ► claim proposed to be ◄ amended or (added) ► each ◄ claim ► proposed to be added, ◄ and apply the terms of the ► claim proposed to be ◄ amended or (added) claim ► proposed to be added ◄ to the disclosure of the application; when necessary a moving party applicant shall file with the motion (an) ► a proposed ◄ amendment (making the amended) ► to the application amending the claim corresponding to the count ◄ or (added) ► adding the proposed additional ◄ claim to the application.

((iv) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier application filed in the United States or abroad.)

(3) * * *

((iii) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier application filed in the United States or abroad.)

(d) * * *

► (5) If an opponent is accorded the benefit of the filing date of an earlier application in the notice of declaration of the interference, show why the opponent is not entitled to its benefit. Otherwise, the opponent will be presumed to continued to be entitled to the benefit of the earlier application. ◄

(e) * * *

(1) * * *

► (ix) If an opponent is accorded the benefit of the filing date of an earlier application in the notice of declaration of the interference, show why the opponent is not entitled to its benefit. Otherwise, the opponent will be presumed to continue to be entitled to the benefit of the earlier application with respect to the proposed count. ◄

(2) * * *

► (viii) If an opponent is accorded the benefit of the filing date of an earlier application in the notice of declaration of the interference, show why the opponent is not entitled to its benefit. Otherwise, the opponent will be presumed to continue to be entitled to the benefit of the earlier application with respect to the proposed count. ◄

9. Section 1.653 is proposed to be amended by removing paragraph (c)(5) and redesignating paragraphs (c)(6) and (c)(7) as (c)(5) and (c)(6) to read as follows:

§ 1.653 Record and exhibits.

* * * * *

(c) * * *

((5) Each notice, official record, and publication relied upon by the party and filed under § 1.682(a).)

► (5) ◄ ((6)) Any evidence from another interference, proceeding, or action relied upon by the party under § 1.683.

► (6) ◄ ((7)) Each request for an admission and the admission and each written interrogatory and the answer upon which a party intends to rely under § 1.688.

* * * * *

10. Section 1.656 is proposed to be amended by revising paragraph (i) as follows:

§ 1.656 Briefs for final hearing.

* * * * *

(i) When a junior party fails to timely file an opening brief, an order may issue requiring the junior party to show cause why the Board should not treat failure to file the brief as a concession of priority. If the junior party fails to (respond) ► show good cause ◄ within a time period set in the order, judgment may be entered against the junior party.

Dated: January 14, 1992.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 92-1424 Filed 1-22-92; 8:45 am]

BILLING CODE 3510-16-M

POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Certain Special Bulk Rate Third-Class Mail

AGENCY: Postal Service.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Postal Service published in the **Federal Register** (56 FR 63895-63896) on December 6, 1991, a proposal to amend the Domestic Mail Manual so as to provide guidelines in conjunction with the Postal Service Appropriations Act of 1991 (Pub. L. 101-509) for determining when promotional materials that pertain to an insurance policy may be mailed by an authorized nonprofit organization at the special (nonprofit) bulk third-class rates of the postage. The Postal Service requested comments by February 4, 1992. Due to the needs of the mailing public, from whom several requests for additional time were received, the Postal Service is extending the comment period to April 6, 1992.

DATES: Comments on the proposed rule change must be received on or before April 6, 1992.

ADDRESSES: Mail or deliver written comments to: Director, Office of Classification and Rates Administration, U.S. Postal Service, room 8430, 475 L'Enfant Plaza, SW., Washington, DC 20260-5903. Copies of all written comments may be inspected and photocopied between 9 a.m. and 4 p.m., Monday through Friday, in room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Martin L. Cohen (202) 268-5169.

SUPPLEMENTARY INFORMATION: Representatives of a certain nonprofit organization interested in the mailing of group health insurance materials at the special bulk third-class rates have requested an extension of time to file comments regarding the proposed rules published on December 6, 1991. Central to this request is an asserted difficulty in gathering facts to demonstrate that certain types of insurance for the elderly—long/term care insurance, Medicare supplement (Medigap) insurance, and hospital indemnity insurance—are not generally commercially available throughout the United States from sources other than a nonprofit organization. This difficulty is said to be exacerbated by differences in the market for each category of insurance, and the existence of varying issues, such as Federally-required Medigap policy standardization, which have a potential impact on insurance availability. A further complication is said to arise because the facts concerning commercial availability are held by third party insurers who are not required to provide that information to other parties. Accordingly, any nonprofit organization with an interest in this matter must assemble relevant public information regarding insurance marketing and availability from state regulatory sources. The Postal Service believes that the public interest will be served by the fullest practicable exposition of facts concerning this issue, and accordingly extends the time for comments until April 6, 1992.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-1605 Filed 1-22-92; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Petition No. P1-92]

Proceedings Concerning Rate Changes Under Section 3(a) of the Intercoastal Shipping Act, 1933

AGENCY: Federal Maritime Commission.

ACTION: Petition for rulemaking.

SUMMARY: A petition for rulemaking has been filed by the State of Hawaii ("Hawaii") requesting that the Federal Maritime Commission institute a rulemaking proceeding to amend Rule 67 of the Commission's Rules of Practice and Procedure, 46 CFR 502.67, which concerns proceedings under section 3(a) of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 845. Specifically, Hawaii proposes that the Commission amend Rule 67 by (1) eliminating or modifying requirements that protests to rate increases or decreases include information requests and certain witness information; (2) eliminating provisions dealing with filing of direct cases and prehearing statements in docketed cases; (3) providing that underlying workpapers required to be made available to attorneys general of offshore governments may be disclosed to the public as required by the laws of those governments and may be used in subsequent Commission proceedings; (4) requiring that carriers file supporting testimony, exhibits and workpapers with offshore governments at the time of filing rate changes affecting 50% or more of the rate items in the carrier's tariffs in the particular trade, regardless of the amount of change; (5) prohibiting carriers for amending cargo, revenue, or

rate base projections during the pendency of an investigation; and (6) making clear that carriers bear the burden of proof in any proceeding commenced under section 3(a).

DATES: Responses to this petition are to be submitted on or before March 23, 1992.

ADDRESSES: Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001, (202) 523–5725.

SUPPLEMENTARY INFORMATION: In order for the Commission to make a thorough evaluation of the petition, interested persons are requested to respond to the petition within 60 days from publication of this notice. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, in an original and 15 copies. Responses shall also be served on counsel for Hawaii: Lawrence M. Reifurth, Esq., Deputy Attorney General, State of Hawaii, 425 Queen Street, 3rd Floor, Honolulu, Hawaii 96813.

Copies of the petition are available for examination at the Washington, DC office of the Commission, 1100 L Street, NW., rm. 11101.

Joseph C. Polking,

Secretary.

[FR Doc. 92–1569 Filed 1–22–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–268, DA 92–63]

Advanced Television Systems; HDTV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Order extending time.

SUMMARY: Action taken herein extends the time for filing reply comments to the Notice of Proposed Rulemaking in MM Docket No. 87–268, 56 FR 58207 (November 18, 1991). This *Notice* proposes policies and rules for implementing advanced television (ATV) service in this country. The EIA/ATV Committee (EIA) requested a six-week extension of the deadline for submission of reply comments in this proceeding. While the circumstances which EIA describes do not justify a six-week postponement of the reply deadline, they do merit some allowance. A moderate extension will help interested parties address numerous complicated and technical issues generated by the comments in this proceeding.

DATES: Reply comments are due on or before January 31, 1992.

FOR FURTHER INFORMATION CONTACT: Gina Harrison, Policy and Rules Division, Mass Media Bureau (202) 632–7792.

SUPPLEMENTARY INFORMATION: .

Order

Adopted: January 17, 1992.

Released: January 17, 1992.

Reply Comment Date: January 31, 1992.

In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, MM Docket No. 87–268.

By the Acting Chief, Mass Media Bureau:

1. The EIA/ATV Committee (EIA) requests a six-week extension of the deadline for submission of reply comments in this proceeding, from January 20, 1992, to March 2, 1992. EIA argues that extraordinary circumstances justify its request.[1]

2. EIA states that this is an unusually important and complex docket with profound decisional effects. EIA contends that the deadlines established in the Notice of Proposed Rulemaking are "quite brief," permitting 42 days for comments and 31 days for replies. EIA claims that the reply period also coincides with a consumer electronics show, which is the electronics industry's biggest annual event. It states that preparation of reply comments is further complicated by the number and length of first-round comments, in which over 50 pleadings were filed by about 150 individuals and organizations.

3. EIA believes that its request will not prejudice the rights of other parties or impede the development of ATV technology or the testing of ATV systems. It states that the Commission would likely benefit should an allowance of additional time lead to increased quality in reply pleadings or to development of an intra- or inter-industry consensus.

4. As EIA concedes, motions for extension of time are not routinely granted.[2] While the circumstances which EIA describes do not justify a six-week postponement of the reply deadline, they do merit some allowance. This is a significant and complex docket. The large record generated by the comments raises numerous complicated and technical issues. A moderate extension will help interested parties to address these issues in greater depth and may, as EIA suggests, facilitate industry consensus on contentious questions.

5. Accordingly, in response to the Motion of the EIA/ATV Committee for Extension of Time, and pursuant to sections 4(j) and 5(c) of the Communications Act, 47 U.S.C. 154(j) and 155(c), and the authority delegated thereunder pursuant to 47 CFR 0.61 and 0.283, the time for filing reply comments in this proceeding *is hereby extended* until January 31, 1992.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

[FR Doc. 92–1812 Filed 1–22–92; 8:45 am]

BILLING CODE 6712–01–M

[1] Motion of the EIA/ATV Committee for Extension of Time (filed Jan. 13, 1992).

[2] 47 CFR 1.46(a).

Notices

Federal Register
Vol. 57, No. 15
Thursday, January 23, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee of Adjudication; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of the meeting of the Committee on Adjudication of the Administrative Conference of the United States.

Committee on Adjudication

Date: Friday, February 7, 1992.
Time: 9:30 a.m.
Location: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. (Library, 5th Floor).
Agenda: The Committee will meet to continue discussion of the project on enforcement under the Fair Housing Act amendments.
Contact: Nancy G. Miller, 202–254–7020.

Attendance at the committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during and after the meeting. Minutes of the meeting will be available on request. The contact person's mailing address is: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: 202–254–7020.

Dated: January 15, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92–1586 Filed 1–22–92; 8:45 am]

BILLING CODE 6110–01–M

Committee on Rulemaking; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of the meeting of the Committee on Rulemaking of the Administrative Conference of the United States.

Committee on Rulemaking

Date: Monday, February 10, 1992
Time: 3:30 p.m.
Location: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).
Agenda: The Committee will meet to discuss Professor Robert Anthony's study of non-rule rulemaking.
Contact: Kevin L. Jessar, 202–254–7020.

Attendance at the committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: 202–254–7020.

Dated: January 11, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92–1555 Filed 1–22–92; 8:45 am]

BILLING CODE 6110–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Louisiana Advisory Committee to the U.S. Commission on Civil Rights will hold a factfinding meeting on environmental issues in minority communities on February 19–20, 1992 in Baton Rouge. The meeting will be held at Pleasant Hall, room 148 on the Louisiana State University campus. The meeting will convene at 9 a.m. on February 19 and recess at 8 p.m. and reconvene at 9 a.m. on February 20 and adjourn at 4:30 p.m. The purpose of the meeting is to collect information on the issue of environmental waste and contamination and its impact on selected minority communities in Louisiana.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426–5253, (TTY 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 13, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–1556 Filed 1–22–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with December anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Roland L. McDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements, with December anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than December 31, 1992.

Antidumping duty proceedings and firms	Periods to be reviewed
Japan	
Small Business Telephone Systems & Subassemblies A-588-809:	
Iwatsu Electric Co.	12/1/90-11/30/91
Mexico	
Porcelain-On-Steel Cookware A-201-504:	
Cinsa, S.A. de C.V., Acero Porcelanizado	12/1/90-11/30/91
Peoples Republic of China	
Porcelain-On-Steel Cookware A-570-506:	
Clover Enamelware Enterprises/Lucky Enamelware Factory Limited	12/1/90-11/30/91
Sweden	
Stainless Steel Hollow Products A-401-603:	
Sandvik AB, AB Sandvik Steel, Sandvik Steel Company	12/01/90-11/30/91
Taiwan	
Small Business Telephone Systems & Subassemblies A-583-806:	
Bitronic Telecoms Co., Ltd., Sinoca Enterprises Co., Tecom Co., Ltd	12/1/90-11/30/91
Countervailing Duty Proceedings	
Mexico	
Porcelain-On-Steel Cooking Ware C-201-505:	1/1/91-12/31/91
Suspended Investigations None.	

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) and § 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 355.22(c) (1989).

Dated: January 10, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-1675 Filed 1-22-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-601]

Brass Sheet and Strip From Sweden; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by a manufacturer/exporter, the Department of Commerce has conducted an administrative review of the antidumping duty order on brass sheet and strip from Sweden. The review covers one exporter during the period from March 1, 1990 through February 28, 1991.

As a result of the review, the Department has preliminarily determined to assess antidumping duties based on the best information available.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Jonathan Freilich or Linda L. Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1987, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order on brass sheet and strip from Sweden (52 FR 6998). On March 29, 1991, Outokumpu Copper Rolled Products AB (OAB) requested that we conduct an administrative review for the period from March 1, 1990 through February 28, 1991. We published a notice of initiation of the antidumping administrative review on April 18, 1991 (56 FR 15859). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review are shipments of brass sheet and strip, other than leaded brass and tinned brass sheet and strip, from Sweden. The chemical composition of the products under review is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this review. The merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer/exporter, OAB, and its related U.S. company, Outokumpu Copper U.S.A. (OCUSA), and the period from March 1, 1990 through February 28, 1991.

Best Information Available

The Department has determined to use the best information available (BIA) for OAB in accordance with section 776(c) of the Act. We conducted a verification of OAB's responses in Sweden the week of October 21, 1991, and in the United States the week of November 25, 1991. At verification, the Department was unable to verify total quantity and value of sales in the home market (HM) or to the United States. Moreover, we found a significant number of unreported HM sales. These unreported sales were produced on OAB's small lot mill and were found to be such or similar merchandise that could have been used in our calculation of foreign market value.

Also at verification, we found numerous unreported sales to one U.S. customer. We have no information on the record which would allow us to measure the total extent of the unreported sales. In addition, OAB misrepresented the nature of these sales to this one U.S. customer. Only after reviewing certain documents provided at the U.S. verification and after requesting clarification of those documents did respondent explain that sales to this U.S. customer were, in fact, part of a closed-consignment arrangement. For these closed-consignment sales, the customer is not invoiced at the time of purchase, but rather, the customer is invoiced by OCUSA for the merchandise when the customer withdraws it from warehouse or at the end of a certain period, whichever comes first. OAB has a similar type of closed-consignment arrangement with another large U.S. customer. Throughout both verifications, OAB maintained that this second customer was the only one with which OAB had a closed-consignment arrangement. After verification, OAB stated that it did not report the closed-

consignment arrangement with the first customer because the arrangement was on and off since 1989 and was off at the time the response was prepared.

The questionnaire specifically requested OAB to provide "* * * the total quantity and value of such and similar merchandise that you sold to the United States and which entered the United States during the period of review, as well as all U.S. entries during the period of review which were pursuant to sales made prior to the period of review." As a result of verification, we learned that OAB reported only those sales that were invoiced during the period and not all the sales of merchandise that entered during the period. Therefore, OAB failed to comply with the Department's request to report all entries to the United States during the period.

Because of our inability to verify total quantity and value of sales in either the United States or the HM, and because of respondent's misrepresentations concerning sales to this U.S. customer, we did not believe that any margin we could calculate from information on the record would accurately measure whether OAB dumped its merchandise in the United States. Therefore, we used BIA. In this case, BIA is OAB's rate from the original investigation, 9.49 percent.

Interested parties to the proceeding may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all entries of the subject merchandise covered by this review. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise from Sweden entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for OAB will be that established in the final results of this review; (2) For merchandise exported by manufacturers or exporters not covered in this review but covered in the previous review or the final determination in the original less than fair value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) If the exporter is not a firm covered in this review or an earlier review, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of the most recently completed review of the manufacturer; and (4) The cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firm will be 6.69 percent. This is the most current non-BIA rate for any firm in this proceeding. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: January 15, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1673 Filed 1-22-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-601]

Brass Sheet and Strip From Sweden; Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Reviews.

SUMMARY: On June 28, 1991, the Department of Commerce ("the Department") published the preliminary results of two administrative reviews of the antidumping duty order on brass sheet and strip from Sweden. The reviews cover one exporter and two consecutive periods from March 1, 1988 through February 28, 1990. We preliminarily found that dumping margins exist.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of comments received, we have changed the final results from those presented in our preliminary results of these reviews.

EFFECTIVE DATE: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Jonathan Freilich or Linda L. Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1991, the Department published in the **Federal Register** (56 FR 29619) the preliminary results of two administrative reviews of the antidumping duty order on brass sheet and strip from Sweden. The Department has now conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by these reviews are shipments of brass sheet and strip, other than leaded brass and tinned brass sheet and strip, from Sweden. The chemical composition of the products under review is currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by these reviews. Prior to January 1, 1989, such merchandise was classifiable in the Tariff Schedules of the United States Annotated (TSUSA) under item numbers 612.3960, 621.3982, and 621.3986. Since January 1, 1989, the merchandise has been classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.20. The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

The reviews cover one manufacturer/exporter, Outokumpu Copper Rolled Products AB (OAB) (formerly Metallverken AB), and the two review periods from March 1, 1988 through February 28, 1990.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received timely comments from

petitioners, Hussey Copper Ltd., *et al.*, and respondent, OAB. At the request of both parties, a public hearing was held on August 12, 1991.

Comments Pertaining to Both Reviews

Comment 1: Respondent asserts that the Department's decision to adjust for commissions paid to Outokumpu Copper U.S.A. (OCUSA), a related party, is contrary to law because such payments are merely intracorporate transfers not directly related to sales and are not "arm's-length" transactions. Respondent supports the latter assertion with the claim that the commission rate paid to this related party differs from that respondent paid to an unrelated seller. If, however, the Department insists on adjusting for these commissions, respondent argues that the Department should (1) not use best information available (BIA) for closed-consignment sales (which are invoiced either when the customer withdraws the merchandise from warehouse or at the end of a set period, whichever comes first) because OAB was unable to provide the exact commissions paid on these sales since commissions are the mechanism for covering OCUSA's general operating expenses which relate to a wide range of subject and non-subject merchandise countries, or (2) correct the error in the computation of the commissions on non-closed consignment sales.

Petitioners agree with the Department's decision to treat the related party commissions as directly related to U.S. sales and assert that the commissions paid to OCUSA are at arm's length.

Department's Position: The Court of Appeals remand in *LMI-La Metalli Industriale S.p.A.* v. *United States*, 912 F.2d 455 (1990), instructed the Department to adjust for commissions paid to a related party in the home market when the commissions were determined to be (1) at arm's length and (2) directly related to the sales in question. Subsequent to this, the Department has developed the following guidelines to determine whether commissions paid to related parties either in the United States or in the foreign market are at arm's length:

(1) We will compare the commission paid to the related selling agent to those paid by respondent to any unrelated selling agents in the same market (home or U.S.) or in any third country market.

(2) In cases where there is not an unrelated sales agent, we will compare the commission earned by the related selling agent on sales of merchandise produced by the respondent to commissions earned by the related selling agent on sales of merchandise produced by other unrelated sellers or manufacturers (Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland, 56 FR 56369 (November 4, 1991) (Coated Groundwood Paper from Finland).

As we stated in Coated Groundwood Paper from Finland, in appropriate circumstances we will also examine the nature of the agreements or contracts between the manufacturer(s) and selling agent(s) which establish the framework for payment of commissions and for services rendered in return for payment, in order to ensure that both related and unrelated agents perform approximately the same services for the commissions. If, based on the above analysis, the Department is satisfied that the commissions are at arm's length as well as directly related to the sales, we will make an adjustment for these commissions.

The Department is satisfied that the commissions OAB paid OCUSA were directly related to the sales. During the period covered by these reviews, however, OAB did not use unrelated commissionaires to sell the subject merchandise in either the U.S. or the home market. Nor is there information on the record that indicates that OCUSA acted as a commissionaire for unrelated producers. Therefore, because we have no appropriate benchmark against which to test the arm's-length nature of the commission arrangement between OAB and OCUSA, we are not satisfied that these payments are at arm's length. Accordingly, we have not adjusted for these payments as commissions.

The Department, however, regards such payments to related parties as indirect selling expenses (Television Receivers, Monochrome and Color, from Japan: Final Results of Antidumping Duty Administrative Review, 54 FR 13917 (April 6, 1989)). We have, therefore, deducted these from the exporter's sales price (ESP) calculation. Normally, we would offset this deduction by the amount of the home market (HM) indirect selling expenses. For a full explanation of why we did not do so in this case, please refer to Comment 1 under **Comments Pertaining Only to the 89/90 Review.**

Comment 2: Respondent asserts that the Department erred in making a BIA adjustment for freight charges which respondent allegedly paid for movement between an independent U.S. warehouse and a U.S. purchaser's warehouse. Respondent denies making such payments and, further, reports the actual charges it claims the customer paid.

Department's Position: The Department has received conflicting information from OAB concerning which party eventually paid the freight charges for movement between the independent U.S. warehouse and the U.S. purchaser's warehouse. As an appendix to its original questionnaire response, respondent submitted copies of a letter that stated that respondent paid certain of these freight charges. In a supplemental questionnaire, the Department asked about these charges and specifically drew respondent's attention to that letter. In its response to the supplemental questionnaire, OAB stated that the U.S. customer paid the freight and was not reimbursed by any party. However, OAB did not address the contradictory information in the letter that it had supplied to the Department, despite the Department's specific request to do so. Not until after the Department issued its preliminary results did respondent address this specific issue. Therefore, the Department considers this additional information untimely, and deducted a freight charge from U.S. price, using for freight the BIA used in the preliminary results for these final results.

Comment 3: Respondent argues that the Department should have modified the such or similar merchandise groups from those three groups the Department used in the original investigation and in the first administrative review. Instead of using three groups of such or similar merchandise based on width (merchandise greater than 2.36 inches wide; merchandise ranging from 1.18 inches wide to 2.36 inches, inclusive; and merchandise less than 1.18 inches wide), OAB proposes that the Department use a fourth group, encompassing merchandise of over 15 inches in width, for these reviews.

Petitioners content that respondent has failed to provide any evidence of cost of production differences between the over 15 inch and under 15 inch categories. According to petitioners, the main difference respondent cites is that the under 15 inch merchandise is produced at an older, less efficient mill than that used to produce the over 15 inch merchandise. This difference reflects only OAB's allocation of production capacity, not inherent physical differences in the material produced.

Departments' Position: We disagree with respondent. Respondent did not quantify the cost differences between the four proposed groups. As a result, there are no data on the record that the Department can use to demonstrate that cost differences exist between the under

15 inch and over 15 inch groups. Consequently, there is no basis upon which the Department should add a fourth width group to the three used in the investigation and the first review.

Comment 4: Petitioners maintain that what respondent calls "sheet" is actually coiled strip that is 15 inches or wider. Petitioners also maintain that respondent should submit the length of the sheet, if it is sheet. Petitioners assert that unless proper product comparisons are made, the margins will be skewed.

Respondent disagrees, maintaining that it has stated for the record that what it calls "sheet" is, in fact, cut-to-length and what it calls "strip" is coiled, and that the sheet's length is not relevant for determining price.

Department's Position: We disagree with petitioners. There is no evidence on the record which suggests that the respondent has not accurately described the merchandise in question. Furthermore, even if respondent reported sheet length, it would be irrelevant because the unit price is based on weight, not length.

Comment 5: Petitioners urge the Department to change its model match methodology so that, when a match cannot be found for width and/or for gauge, a sale from the next most expensive category will become the basis of foreign market value (FMV). Petitioners detailed their suggestions in a sample computer program they submitted to the Department.

Respondent objects to petitioners' submission of a computer program, asserting that they are attempting to take control of the proceeding. Respondent asserts that petitioners' proposed computer program is designed to penalize OAB by comparing U.S. sale to more costly HM sales when identical matches cannot be found.

Department's Position: The model match method the Department used for these reviews is consistent with the one used for the original investigation and for the first review. Neither respondent nor petitioners raised any objection to the model match until after the Department issued its preliminary results. Additionally, petitioners have not provided any compelling reasons why the Department should now change its model match method for these reviews.

Comment 6: Petitioners request that two errors be corrected for the final results. The first one concerns U.S. sales of alloys 1085 and 1090 that were inappropriately reclassified as alloy 1063. The second one concerns U.S. credit expenses which were reported in Swedish kroner and should have been converted to U.S. dollars.

Department's Position: We agree and have corrected the errors.

Comment 7: Petitioners argue that OCUSA acted as more than a communications link between OAB and the U.S. purchasers. As a result, petitioners contend that closed-consignment sales are ESP transactions.

Respondent disagrees with petitioners, maintaining that OCUSA functioned only as a communications link, and that these sales are in substance purchase price (PP) transactions.

Department's Position: We disagree with petitioners. The Department must determine whether these sales were PP transactions based on the following criteria: (1) Whether the merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent; (2) whether this was a customary commercial channel for sales of this merchandise between the parties involved; and (3) whether the related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer (Final Determination of Sales at Less Than Fair Value: Color Picture Tubes from Japan, 52 FR 44171 (November 18, 1987)).

In this case, and based on the record, the Department finds that: (1) OAB shipped the merchandise directly to the unrelated buyer; there is no evidence on the record that the material was ever introduced into OCUSA's inventory; (2) the procedure described above was the customary commercial channel for OAB's sales of subject merchandise to its U.S. customers; and (3) OCUSA acted only as a processor of sales-related documentation and a communications link with OAB's unrelated U.S. customers. As we stated in Color Picture Tubes from Japan, because all of the above elements were met, we regarded the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions were performed in the United States or abroad does not change the substance of the transactions or the functions themselves.

Comment 8: Petitioners assert that U.S. price should be adjusted downward to compensate for the alleged absorption or reimbursement by OCUSA of antidumping duties. Petitioners cite OAB's consolidated financial statements, which also contain OCUSA's financial information. Petitioners maintain that this adjustment would achieve the price equilibrium intended by § 353.26 of the Commerce regulations.

The respondent maintains that the entries in OCUSA's records are cash deposits for estimated antidumping duties and that the U.S. price should not be adjusted downward.

Department's Position: We disagree with petitioners. Section 353.26 of the Commerce regulations provides that in calculating the U.S. price, the Department will deduct any amount of antidumping duties that are reimbursed to the importer by the producer or reseller. There is no evidence on the record that OAB pays any antidumping duties directly for OCUSA or reimburses OCUSA for such duties. Absent evidence of reimbursement, the Department has no authority to make such an adjustment to U.S. price (Brass Sheet and Strip from the Republic of Korea, 54 FR 33257 (August 14, 1989)). As a protection against such reimbursement, § 353.26 also requires that importers provide the Customs Service a certificate of nonreimbursement prior to liquidation of entries. As we stated in brass sheet and strip from the Republic of Korea, if that certificate is not provided, the Customs Service will liquidate the entry at twice the antidumping duty rate.

Comment 9: Petitioners argue that the Department should have deducted early payment discounts for PP as well as for ESP transactions.

Department's Position: We agree and have corrected the error.

Comments Pertaining Only to the 88/89 Review

Comment 1: Respondent contends that, if the Department adjusts for commissions OAB paid OCUSA, the Department should correct a clerical error in the computation of the commission offset that mistakenly calculated the offset on a per pound, rather than on a per kilogram, basis.

Petitioners argue that the Department should have added U.S. commissions to the home market price since OAB did not provide HM indirect selling expenses.

Department's Position: Because the Department has not adjusted for these commissions, these issues are moot. (Refer to Comment 1 of **Comments Pertaining to Both Reviews.**)

Comment 2: Petitioners maintain that respondent's alleged refusal to submit HM sales of alloy 1087 should cause the Department to reject respondent's HM data base in its entirety and to use BIA. However, petitioners have no objection

to the Department's allowing respondent to submit all HM sales of alloy 1067 for the final results.

Respondent maintains it had no need to submit its HM sales of alloy 1067 because there were no U.S. sales of that alloy, and the questionnaire did not require it to report these HM sales. Respondent further argues that if the Department required those sales, it should have specifically requested them in a supplemental questionnaire.

Department's Position: The Department agrees with petitioners that respondent should have submitted all HM sales of alloy 1067. While the questionnaire sent to respondent in this review did state that respondent might not have to report certain HM sales, it also stated that respondent could not make such a decision without consulting with the Department. This the respondent failed to do. Taking into account petitioners' suggestion, however, the Department requested respondent to submit the sales data for the five HM sales of alloy 1067 for use in the final results of this period of review.

Comment 3: Petitioners allege that respondent failed to provide adequate difference in merchandise (difmer) information as well as HM sales of plastic-coated merchandise. Therefore, petitioners argue that the Department should use BIA for the difmer adjustment and for comparisons using HM sales of plastic-coated merchandise.

Respondent counters that, although it did not distinguish between coated and uncoated merchandise in this period, it did report sales of coated merchandise. Respondent also states that it supplied adequate inter-alloy difmer information and, therefore, the Department's use of BIA is not warranted.

Department's Position: We disagree with petitioners. We determined that respondent provided HM sales of plastic-coated merchandise and adequate inter-alloy difmer information for most matches. Where difmer data were insufficient, as BIA the Department compared HM sales of coated merchandise to U.S. sales of non-coated merchandise, and did not adjust for the differences in merchandise. Because respondent did not identify which sales were of coated merchandise, the Department could not, and did not, exclude them from its calculation of FMV.

Comments Pertaining Only to the 89/90 Review

Comment 1: Respondent claims that the Department should either allow it to submit its HM indirect selling expenses now that the preliminary results of the review have been published, or that the Department should use the data the respondent submitted for the 88/89 review in this review.

Department's Position: The Department disagrees with respondent. Because respondent only submitted its HM indirect selling expenses after publication of the preliminary results of the review, the Department considers this information untimely. It is also the Department's standard practice not to include information from one review in another.

Comment 2: Petitioners urge the Department not to exclude HM sales of plastic-coated merchandise in the calculation of FMV. They allege that the cost of the coating is not a significant difference and would allow the Department to make comparisons between coated and non-coated merchandise.

Respondent counters that the Department has adequate inter-alloy difmer information, and that it never requested difmer information between plastic-coated and non-coated merchandise. Further, respondent maintains that because there were only a small number of plastic-coated sales in the HM, and that most of them were alloy 1063, for which matches were readily available, the inclusion of these sales would not result in more similar product comparisons.

Department's Position: The Department disagrees with petitioners. The Department determined that the respondent provided adequate inter-alloy difmer information, and that the inclusion of the plastic-coated merchandise would not produce better product comparisons.

Comment 3: Petitioners urge the Department not to adjust for a "tool setting charge" for certain HM sales, which they allege is an "unproven and unjustified quantity discount claim."

Respondent maintains that this charge is a legitimate expense assessed on certain small quantity HM sales and the Department should make a circumstance of sale adjustment for this expense.

Department's Position: The Department determined that the tool setting charge, which is not included in the unit price, is not a circumstance of sale adjustment as defined in section 353.56 of the Commerce regulations. The tool setting charge is an additional cost which OAB passes on to the customer as a result of the increase in the cost of production associated with small quantity orders. Therefore, no adjustment to price is warranted.

Final Results of the Review

As a result our analysis of the comments received, we have changed our preliminary results and determine that the following margins exist for OAB:

Period of review	Margin (percent)
3/1/88 to 2/28/89	4.62
3/1/89 to 2/28/90	6.69

The Department shall determine, and the Customs Service shall assess, antidumping duties on all entries of the subject merchandise covered by these reviews. Individual differences between U.S. price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will remain in effect until publication of the final results of the next administrative review for all shipments of the subject merchandise from Sweden entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for OAB will be 6.69 percent, as established in the final results of the 89/90 review; (2) if the exporter is not a firm covered by these reviews, a previous review, or by the initial investigation, but the manufacturer is covered by these reviews, a previous review, or the investigation, then the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (3) the cash deposit rate for any exporter/producers which are unrelated to any firm covered by this review, previous reviews, or the investigation, shall be 6.69 percent.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: January 15, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1674 Filed 1-22-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[Docket No. 920113-2013]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of affirmative finding.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) announces a finding that the Republic of Vanuatu has submitted documentary evidence that establishes under the yellowfin importation regulations at 50 CFR 216.24(e) that the average rate of incidental taking of marine mammals by vessels of the harvesting nation is comparable to the average rate of incidental taking of marine mammals by U.S. vessels in the course of harvesting yellowfin tuna by purse seine in the eastern tropical Pacific Ocean (ETP), and that other requirements for an affirmative finding have been met. As a result of this affirmative finding, yellowfin tuna and products derived from yellowfin tuna harvested by Vanuatu-flag purse seine vessels operating in the ETP can be imported into the United States through December 31, 1992.

EFFECTIVE DATE: The finding is effective January 22, 1992 and remains in effect through December 31, 1992, or until superseded.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731. Phone (213) 514-6196, FAX (213) 514-6194.

SUPPLEMENTARY INFORMATION: On March 30, 1990, NMFS promulgated a final rule (55 FR 11921) to implement portions of the Marine Mammal Protection Act Amendments of 1988. That rule governs the importation of yellowfin tuna caught by purse seining in the ETP. The rule requires submission of an annual report to include, among other things, the number, by species, of marine mammals killed and seriously injured, and the number of sets made.

On March 28, 1991, the United States District Court for the Northern District of California ordered a prohibition on the importation of all yellowfin tuna and products derived from yellowfin tuna harvested with purse seines in the ETP by any foreign nation whose vessels intentionally set purse seine nets on marine mammals. The District Court also ordered the revocation of any certification of any foreign nation then importing commercial yellowfin tuna or products derived from yellowfin tuna harvested with purse seines in the ETP. As a result of that court order, an embargo on imports of yellowfin tuna and products derived from yellowfin tuna caught by Vanuatuan purse seine vessels operating in the ETP went into effect on April 3, 1991, when it was directed by the United States Customs Service (56 FR 21098).

On July 2, 1991 (56 FR 30379), NMFS published a list of intermediary nations known to trade in yellowfin tuna or products derived from yellowfin tuna from Vanuatu and Venezuela. Italy was the only country listed as intermediary to Vanuatu.

The Assistant Administrator, after consultation with the Department of State, finds that the Republic of Vanuatu has submitted documentary evidence that establishes under the tuna importation provisions of 50 CFR 216.24(e), that the average rate of the incidental taking by vessels of Vanuatu was 0.92 times that of the U.S. fleet during the period October 1, 1990, through September 30, 1991, (no more than 1.25 times that of U.S. vessels is permitted), and the percentage of the total mortality for eastern spinner dolphin and coastal spotted dolphin was 7.46 and 0.55 percent, respectively (no greater than 15.0 and 2.0 percent of the total mortality is permitted), and Vanuatu's regulatory program governing the incidental taking of marine mammals in the course of harvesting yellowfin tuna by purse seine in the ETP is comparable to the regulatory program of the United States. As a result of this affirmative finding, yellowfin tuna and products derived from yellowfin tuna harvested by Vanuatu-flag purse seine vessels operating in the ETP can be imported into the United States through December 31, 1992, either from Vanuatu or from an intermediary nation.

Dated: January 16, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 92-1603 Filed 1-22-92; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Comprehensive Data Gathering Committee (Committee) will hold a public meeting on February 4, 1992, from 11 a.m. to 5 p.m. and February 5, 1992, from 8 a.m. to 5 p.m. The meeting will be held in the conference room of the Pacific States Marine Fisheries Commission, 2501 SW. First Avenue, Portland, Oregon.

The Committee will draft a report on the need for a program to gather fishery data from vessels at-sea as well as data that can be obtained when vessels return to port. The Committee will also discuss biological information on various species, the amounts of fish that are discarded at-sea, the effect of various regulations on such discards, and associated costs and funding sources. This report will be reviewed by industry and management agency representatives prior to submission to the Council at its upcoming March 10-13 meeting in Seattle, Washington.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: January 16, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-1577 Filed 1-22-92; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Select Committee for the Resolution of Gear Conflict and Longline Area Closure Hardships will hold a public meeting on January 29, 1992, beginning at 1:30 p.m. The meeting will be held in the Boardroom of the Department of Land and Natural Resources (DLNR), Hawaii DLNR, 1151 Punchbowl Street, Honolulu, Hawaii.

The Committee's meeting agenda is as follows: (1) Review the catch and effort data of the National Marine Fisheries Service and the Hawaii Division of Aquatic Resources, which is related to fishing patterns within closure areas; (2) discuss additional information on fishing patterns and social concerns needed; (3) develop possible modifications to longline area closures; and (4) discuss other business.

For more information contact Kitty M. Simonds, Executive Director, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 526-0824.

Dated: January 16, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-1578 Filed 1-22-92; 8:45 am]

BILLING CODE 3510-22-M

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Department of State, the National Marine Fisheries Service, on behalf of the Secretary of State, publishes for public review and comment on summary of an application received by the Secretary of State requesting permits for foreign fishing vessels to operate in the Exclusive Economic Zone under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). Specifically, the Russian Federation has submitted an application proposing the purchase of up to 10,000 metric tons of joint venture Atlantic mackerel in the Northwest Atlantic Ocean. The large stern trawler/processors IVAN BOCHKOV and MIKHAIL KVASNIKOV are identified as the vessels that will receive Atlantic mackerel from U.S. vessels. Send comments on this application to: NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1335 East West Highway, Silver Spring, Maryland 20910.

and/or, to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422.

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331.

For further information contact John D. Kelly or Robert A. Dickinson (Office of Fisheries Conservation and Management, 301-713-2337.

Dated: January 16, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-1579 Filed 1-22-92; 8:45 am]

BILLING CODE 3510-22-M

Alaska Fish and Game Department; Petition for Rulemaking

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of decision on petition for rulemaking; The State of Alaska, Department of Fish and Game (ADF&G).

SUMMARY: NMFS publishes notice of its decision not to undertake at this time the rulemaking requested by a petition submitted by ADF&G. ADF&G petitioned for a rule to reinstate a Federal regulation requiring completion of ADF&G fish tickets, with a requirement for accurate reporting of price information, for federally managed fisheries off Alaska. NMFS will give further consideration to a requirement to complete State of Alaska (State) fish tickets if it is determined that Federal enforcement assistance is needed for vessels landing their catch outside the State.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, Fisheries Management Biologist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

On September 18, 1991, NMFS published a notice of receipt of a petition for rulemaking submitted by ADF&G (56 FR 47190). The petition requested that NMFS reinstate, for fisheries off Alaska, a Federal regulation requiring completion of ADF&G fish tickets with a requirement for accurate reporting of price information. The notice provided a 45-day public comment period that closed on November 4, 1991. No comments were received.

Disscussion

NMFS has considered the petition to reinitiate Federal reporting requirements for State fish tickets, and has decided not to proceed with the rulemaking at this time. There are Federal fishery management plans for crab, salmon, and groundfish off Alaska. Crab and salmon are managed under cooperative fishery management plans between the Federal government and the State, with reporting requirements deferred to the State. NMFS does not believe that it is necessary to institute a Federal requirement to complete the crab or salmon fish tickets at this time, because the State is already authorized to require fish tickets in these fisheries from vessels registered under the laws of the State. The groundfish fisheries are Federally managed, in part, through use of information gathered with State fish tickets. These fish tickets are useful for verifying groundfish data from vessels delivering their catch to shoreside processing facilities or motherships, and for pre-season planning and post-season analyses. These fish tickets also provide detailed information that will be useful in documenting historical participation in the groundfish fisheries. However, this information is presently available to NMFS, Alaska Region, under terms of a cooperative agreement with the State. Nonetheless, NMFS will give further consideration to reinstating Federal requirements for completing State fish tickets if it is determined that Federal enforcement assistance is needed for vessels landing their catch outside of the State.

Dated: January 16, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-1666 Filed 1-22-92; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151 or by telephoning (703) 487-4732. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650. Issued patents maybe obtained from the Commissioner of Patent, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist Center for the Utilization of Federal Technology.

Department of Health and Human Services

7-349,772 (5,071,977) Plaque Inhibiting Oligosaccharide

7-702,479 A Catheter Tip for Intratracheal Ventilation and Intratracheal Pulmonary Ventilation

7–769,626 Astrocyte-Specific Transcription of Human Genes

Department of the Interior

7–570,749 (5,069,800) Chemical Process for the Denitrification of Water
7–631,838 (5,071,472) Induction Slag Reduction Process for Purifying Metals

Department of Agriculture

7–459,405 (5,069,061) Estimation of Fumigant Residues in Commodities
7–513,480 (5,071,763) Lactose Hydrolysis by Mutant Streptococcus thermiphilus
7–764,466 Diagnostic Assays for Genetic Mutations Associated with Bovine Leukocyte Adhesion Deficiency
7–769,289 Anionically Dyeable Non-Formaldehyde Crosslinked Cellulosic Materials and Processes for Their Production
7–781,601 A Method for the Production of Biocontrol Formulations Using Bacterial Alginates as the Gelling Agent
7–791,691 Preparation of Simulated Human Milk Protein by Low Temperature Microfiltration and Precipitation of Bovine Milk Background of the Invention
7–795,447 Factice from Mixtures of Vegetable Oils

[FR Doc. 92–1598 Filed 1–22–92; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

January 14, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended and extended, between the Governments of the United States and the Philippines establishes limits for the period beginning on January 1, 1992 and extending through December 31, 1992.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 14, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Product and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended and extended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 23, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1992 and extending through December 31, 1992, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels not in a group	
669–P [1]	3,173,611 kilograms.
670–L [2]	5,405,405 kilograms.
Levels in Group I	
237	1,338,226 dozen.
239	7,181,029 kilograms.
331/631	3,854,090 dozen pairs.
333/334	186,439 dozen of which not more than 26,765 dozen shall be in Category 333.
335	121,353 dozen.
336	441,614 dozen.
338/339	1,472,049 dozen.
340/640	761,611 dozen of which not more than 418,885 dozen shall be in Categories 340–Y/640–Y [3].
341/641	674,040 dozen.
342/642	368,085 dozen.
345	113,750 dozen.
347/348	1,338,226 dozen.
350	100,700 dozen.
351/651	401,468 dozen.
352/652	1,605,870 dozen.
359–C/659–C [4]	636,000 kilograms.
361	1,272,000 numbers.
369–S [5]	266,330 kilograms.
431	159,229 dozen pairs.
433	4,220 dozen.
443	24,900 numbers.
445/446	25,894 dozen.
447	8,264 dozen.
611	3,817,374 square meters.
633	24,612 dozen.
634	294,269 dozen.
635	291,377 dozen.
636	1,150,874 dozen.
638/639	1,512,195 dozen.
643	587,886 numbers.
645/646	536,916 dozen.
647/648	807,474 dozen.
649	5,436,702 dozen.
650	69,454 dozen.
659–H [6]	874,091 kilograms.
847	626,993 dozen.
Group II	
200–229, 300–326, 330, 332, 349, 353, 354, 359–O [7], 360, 362, 363, 369–O [8], 400–414, 432, 434–442, 444, 448, 459, 464–469, 600–607, 613–629, 630, 632, 644, 653, 654, 659–O [9], 665, 666, 669–O [10], 670–O [11], and 831–835, as a group.	99,991,879 square meters equivalent.
Sublevel in Group II	
604	1,348,561 kilograms.

[1] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[2] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

[3] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510,

6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[6] Category 369–S: only HTS number 6307.10.2005.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[7] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C).

[8] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[9] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H).

[10] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[11] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020 (Category 670–L).

Imports charged to these category limits for the period January 1, 1991 through December 31, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Philippines.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–1368 Filed 1–22–92; 8:45 am]

BILLING CODE 3510–DR–F

Consolidation and Amendment of Export Visa and Exempt Certification Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

January 16, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs consolidating and amending visa and exempt certification requirements.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Thailand agreed to amend the existing visa arrangement, under the terms of the new bilateral textile agreement.

The amended arrangement consolidates existing and new provisions of the export visa arrangement and exempt certification system and includes the coverage of additional categories covered in the new agreement.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 42 FR 5994, published on February 1, 1977; and 47 FR 46732, published on October 20, 1982.

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa and exempt certification requirements set forth in the letter published below to the Commissioner of Customs.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 16, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on January 26, 1977, as amended, and October 14, 1982, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Thailand, for which the Government of Thailand has not issued an appropriate visa or exempt certification.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement of September 3, 1991, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 3, 1992, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670 and 800–899, including merged and part categories (see Annex A), produced or manufactured in Thailand and exported from Thailand on and after February 1, 1992, for which the Government of Thailand has not issued an appropriate export visa fully described below. Should additional categories, merged categories or part categories be added to the bilateral agreement the entire category or part categories shall be included in the coverage of this visa arrangement on an agreed effective date. Merchandise exported on or after the date the category(s) is added to the agreement shall require a visa or exempt certification.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice or its successor document. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numerical digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO)(the code for Thailand is "TH"), and a six digit numerical serial number identifying the shipment; e.g., 2TH123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the bilateral agreement shall be reported in the spaces provided within the visa stamp (e.g., "Cat. 434–210 dz").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 359–H/659–H may be visaed as 359–H/659–H or if the shipment consists solely of Category 359–H merchandise, the shipment may be visaed as

"Cat. 359–H," but not as "Cat. 659–H"). If, however, a merged quota category such as 625/6/7/8/9 has a quota sublimit on Category 625, then there must be a "Cat. 625" visa for the shipment if it includes Category 625.

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, printed name of signer, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa is not acceptable then a new visa must be obtained from the Government of Thailand, or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Government of Thailand in Washington, DC, and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Thailand has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S.$250 or less, do not require a visa for entry and shall not be charged to agreement levels.

The exempt certification system established in the directive dated January 28, 1977, as amended, which exempts handmade cottage industry products of handloomed fabric, and an agreed list of Thai traditional folklore products, shall be continued unchanged, except for the following:

1. The exemption for all items valued U.S.$250 or less shall not be continued.

2. Handloomed fabrics produced in Thailand may be certified as exempt.

3. The exemption for handknotted/tufted carpets shall be clarified to be for "handmade carpets" (i.e., carpets in which the pile was inserted/knotted by hand in HTS numbers 5701.10.1600 (Category 465), 5701.10.2010 (Category 465), 5702.42.2010 (Category 665), 5702.49.1010 (Category 369) and 5703.20.1000 (Category 665).

The visa and certification stamps remain unchanged.

Goods manufactured in Thailand and exported from Thailand during the period February 1, 1992 through March 1, 1992 in Categories 359–H [1] and 359–O [2] may be visaed as 359; Category 369–S [3] may be visaed as 369–S or 369–O [4]; and Categories 659–H [5] and 659–O [6] may be visaed as 659. Goods in Categories 359–H, 359–O, 369–S, 659–H and 659–O which are produced or manufactured in Thailand and exported from Thailand after March 1, 1992 must be visaed as 359–H, 359–O, 369–S, 659–H and 659–O, respectively.

Goods manufactured in Thailand and exported from Thailand in Categories 369–L [7] and 604–P [8] during the period February 1, 1992 through March 1, 1992 may continue to be visaed as 369–L and 604–P, respectively. Goods manufactured in Thailand and exported from Thailand in Categories 369–L and 604–P on and after March 2, 1992, must be visaed as 369–O [9] and 604–O [10], respectively.

Textile products in the aforementioned part-categories which are produced or manufactured in Thailand and exported from Thailand on and after March 2, 1992 must be accompanied by the correct merged and/or part-category corresponding to the actual shipment.

The actions taken concerning the Government of Thailand with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

ANNEX A

Part Categories (descriptions below are for general reference only):

301–P—Chief weight cotton combed yarn, less than 85% cotton—only HTS numbers 5206.21.000, 5206.22.000, 5206.23.000, 5206.24.000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

301–O—Chief weight cotton combed yarn, 85% or more cotton—all HTS numbers except those in Category 301–P.

359–H—Cotton headwear—only HTS numbers 6505.90.1540 and 6505.90.2060.

359–O—Other cotton apparel, not elsewhere specified—all HTS numbers except those in Category 359–H

369–D—Cotton dish towels—only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

369–S—Cotton shop towels—only HTS number 6307.10.2005.

369–O—Other cotton made-ups, not elsewhere specified—all HTS numbers except those in Categories 369–D and 369–S.

604–A—Plied acrylic spun yarn—only HTS number 5509.32.0000.

604–O—Other staple fiber yarn, 85% or more synthetic—all HTS numbers except 5509.32.0000 (Category 604–A).

659–H—Man-made fiber headwear—only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

659–O—Other man-made fiber apparel, not elsewhere specified—all HTS numbers except those in Category 659–H.

Merged Categories

313/314/315 (subcategories 313, 314, 315)
317/326
331/631
334/634
335/635/835
336/636
338/339
341/641
342/642
347/348/847
351/651
359–H/659–H [1]
613/614/615 (subcategories 614, 613/615)
625/6/7/8/9 (subcategory 625)
638/639
645/646
647/648

[FR Doc. 92–1596 Filed 1–22–92; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[2] Category 359–O: all HTS numbers except 6505.90.1540 and 6505.90.2060 (Category 359–H).

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000 (Category 369–L).

[5] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[6] Category 659–O: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090 (Category 659–H).

[7] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.

[8] Category 604–P: only HTS number 5509.21.0000.

[9] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); and 6307.10.2005 (Category 369–S).

[10] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[1] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: 1992 Reserve Components Survey of Spouses.

Type of Request: New Collection.

Average Burden Hours/Minutes per Response: 20 minutes.

Responses per Respondent: 1.

Number of Respondents: 54,873.

Annual Responses: 54,873.

Annual Burden Hours: 18,291.

Needs and Uses: The purpose of this survey is to assess the attitudes and/or discern perceptions of social problems observed by people married to members of the National Guard and Reserve. This survey, along with the 1992 Reserve Components Survey of Officer and Enlisted Personnel, will assess the effectiveness of current policies and programs and help to plan new ones including intentions with regard to staying in the reserves, treatment by the Department, and the impact on families and finances.

Affected Public: Individuals or households.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: January 17, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–1633 Filed 1–22–92; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Application Form, and Applicable OMB Control Number: Acquisition Management Systems and Data Requirements Control List; OMB Control Number: 0704–0188.

Type of Request: Revision.

Average Burden Hours/Minutes per Response: 110 hours.

Responses per Respondent: 763.

Number of Respondents: 1,518.

Annual Responses: 1,158,234.

Annual Burden Hours: 127,405,740.

Needs and Uses: This information is utilized by the Department of Defense (DoD) to administer, manage, control the cost of, and enforce contractual requirements; evaluate engineering design and control configuration; satisfy safety, human engineering, and personnel manning requirements; monitor and evaluate plans, procedures, and results associated with qualification, system, and equipment components and parts testing; meet the requirements of reliability, maintainability, survivability, electromagnetic compatibility, quality assurance and inspection, technical reporting, mathematical modeling, design parameters, and performance details; support procurement, production, scheduling facilities, and tooling; obtain technical publications to support the installation, operation, maintenance, overhaul of equipment, and training of personnel; and provide preparation and operational support including the transportation, handling, preservation and packing of items of defense material.

Affected Public: Businesses or other for profit; Small businesses or organizations; and Non-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: January 17, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–1634 Filed 1–22–92; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Amend a Record System

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Amend a record system.

SUMMARY: The Defense Logistics Agency proposes to amend one existing record system to its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The proposed action will be effective without further notice on February 24, 1992, unless comments are received which would result in a contrary determination.

ADDRESSES: Ms. Susan Salus, DLA–XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100. Telephone (202) 274–6234 or Autovon 284–6234.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follows)
50 FR 51898, Dec. 20, 1985
51 FR 27443, Jul. 31, 1986
51 FR 30104, Aug. 22, 1986
52 FR 35304, Sep. 18, 1987
52 FR 37495, Oct. 7, 1987
53 FR 04442, Feb. 16, 1988
53 FR 09965, Mar. 28, 1988
53 FR 21511, Jun. 8, 1988
53 FR 26105, Jul. 11, 1988
53 FR 32091, Aug. 23, 1988
53 FR 39129, Oct. 5, 1988
53 FR 44937, Nov. 7, 1988
53 FR 48706, Dec. 2, 1988
54 FR 11997, Mar. 23, 1989
55 FR 21918, May 30, 1990 (DLA Address Directory)
55 FR 32284, Aug. 8, 1990
55 FR 34050, Aug. 21, 1990
55 FR 42755, Oct. 23, 1990
55 FR 53178, Dec. 27, 1990
56 FR 5806, Feb. 13, 1991
56 FR 8987, Mar. 4, 1991
56 FR 11207, Mar. 15, 1991
56 FR 19830, Apr. 30, 1991
56 FR 35852, Jul. 29, 1991

56 FR 52017, Oct. 17, 1991
56 FR 55910, Oct. 30, 1991
56 FR 56065, Oct. 31, 1991
56 FR 65245, Dec. 16, 1991

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, in its entirety. This notice is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), which requires the submission of an altered system report.

Dated: January 17, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

System name:

Defense Manpower Data Center Data Base (56 FR 65245, December 16, 1991).

Changes:

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the first paragraph and replace with"To the Department of Veterans Affairs (DVA) to provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans."

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location—W.R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93920–5000.

Back-up files maintained in a bank vault in Hermann Hall, Naval Postgraduate School, Monterey, CA 93920–5000.

Decentralized segments—Portions of this file may be maintained by the military and non-appropriated fund personnel and finance centers of the military services, selected civilian contractors with research contracts in manpower area, and other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All uniformed services officers and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired military personnel; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

DoD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey. Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veterans Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors.

Individuals receiving disability compensation from the Department of Veterans Affairs or who are covered by a Department of Veterans Affairs' insurance or benefit program; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All U.S. Postal Service employees.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization records; and home and work addresses.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax ID of providers or potential providers of care.

Selective Service System registration data.

Department of Veterans Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

U.S. Postal Service employment/personnel records containing Social Security Number, name, salary, home and work address. U.S. Postal Service records will be maintained on a temporary basis for approved computer matching between the U.S. Postal Service and DoD.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing data, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Assistant Secretaries of Defense; Appointment Powers and

Duties; 10 U.S.C. 2358; Research Projects; Public Law 95–452, as amended (Inspector General Act of 1978); and Executive Order 9397.

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel functions to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, and to collect debts owed to the United States Government and state and local governments.

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of Veterans Affairs (DVA) to provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans.

To the Department of Veterans Affairs (DVA) to provide identifying military personnel data to the DVA and its contractor, the Prudential Insurance Company, for the purpose of notifying members of the Individual Ready Reserve (IRR) of their right to apply for Veteran's Group Life Insurance coverage.

To the Department of Veterans Affairs (DVA) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

1. Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program (38 U.S.C. 3104(c), 3006–3008). The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment.

2. Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (title 10 U.S.C., Chapter 106—Selected Reserve and title 38 U.S.C., Chapter 30—Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

3. Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 684) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

4. Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law (38 U.S.C. 3104(c)) requires recoupment of severance payments before DVA disability compensation can be paid.

5. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 3104(c), 3006–3008). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

To the Office of Personnel Management (OPM) consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

To the Office of Personnel Management (OPM) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

1. Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

2. Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

3. Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the "guaranteed minimum" disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

4. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

To the Department of Health and Human Services (DHHS):

1. To the Office of the Inspector General, DHHS, for the purpose of

identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

2. To the Office of Child Support Enforcement, DHHS, pursuant to 42 U.S.C. 653 and Public Law 94-505, to assist state child support offices in locating absent parents in order to establish and/or enforce child support obligations.

3. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

4. To the Social Security Administration (SSA), Office of Research and Statistics, DHHS for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

5. To the Bureau of Supplemental Security Income, SSA, DHHS to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of verifying information provided to the SSA by applicants and recipients who are retired military members or their survivors for Supplemental Security Income (SSI) benefits. By law (42 U.S.C. 1383) the SSA is required to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information as necessary before making SSI determinations of eligibility, payment amounts or adjustments thereto.

To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. app. 451 and E.O. 11623).

To DoD Civilian Contractors for the purpose of performing research on manpower problems for statistical analyses.

To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95-452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 10 U.S.C. 2397.

To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the United States Government under the Debt Collection Act of 1982 (Pub. L. 97-365).

To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

1. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

2. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

The Defense Logistics Agency "Blanket Routine Uses" published at the beginning of the DLA compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

W.R. Church Computer Center—Tapes are stored in a locked cage in a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location—Tapes are stored in a bank-type vault; buildings are locked after hours and properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

U.S. Postal Service records are temporary and are destroyed after the computer matching program results are verified.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Deputy Director, Defense Manpower Data Center, 99 Pacific Street, Suite 155A, Monterey, CA 93940–2453.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records"; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veterans Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, Selective Service System, and the U.S. Postal Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–1635 Filed 1–22–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Privacy Act of 1974; Amend Records Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend records systems.

SUMMARY: The Department of the Navy proposes to amend four existing systems of records to its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The amendments will be effective on February 24, 1992, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Mrs. Gwendolyn Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP–09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000. Telephone (703) 614–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy record system notices for records systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) were published in the **Federal Register** as follows:

51 FR 12906	Apr. 16, 1986
51 FR 18086	May 16, 1986
(DON Compilation changes follow)	
51 FR 19884	Jun. 3, 1986
51 FR 30377	Aug. 26, 1986
51 FR 30393	Aug. 26, 1986
51 FR 45931	Dec. 23, 1986
52 FR 2147	Jan. 20, 1987
52 FR 2149	Jan. 20, 1987
52 FR 8500	Mar. 18, 1987
52 FR 15530	Apr. 29, 1987
52 FR 22871	Jun. 15, 1987
52 FR 45646	Dec. 2, 1987
53 FR 17240	May 16, 1988
53 FR 21512	Jun. 8, 1988
53 FR 25363	Jul. 6, 1988
53 FR 39499	Oct. 7, 1988
53 FR 41224	Oct. 20, 1988
54 FR 8322	Feb. 28, 1989
54 FR 14378	Apr. 11, 1989
54 FR 32882	Aug. 9, 1989
54 FR 40160	Sep. 29, 1989
54 FR 41406	Oct. 10, 1989
54 FR 43453	Oct. 25, 1989
54 FR 45781	Oct. 31, 1989
54 FR 48131	Nov. 21, 1989
54 FR 51784	Dec. 18, 1989
54 FR 52976	Dec. 20, 1989
55 FR 21910	May 30, 1990
(Navy Mailing Addresses)	
55 FR 37930	Sep. 14, 1990
55 FR 42758	Oct. 23, 1990
55 FR 47506	Nov. 14, 1990
55 FR 48078	Nov. 21, 1990
55 FR 53167,	Dec. 27, 1990
56 FR 424,	Jan. 4, 1991
56 FR 12721,	Mar. 27, 1991
56 FR 27503,	Jun. 14, 1991
56 FR 28144,	Jun. 19, 1991
56 FR 31394,	Jul. 10, 1991
(DoD Updated Indexes)	
56 FR 40677,	Aug. 16, 1991
56 FR 46167,	Sep. 10, 1991

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) which requires the submission of altered systems reports. The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended.

Dated: January 17, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070–3

System name:

Navy Personnel Records System (51 FR 45931, December 23, 1986).

Changes:

* * * * *

System location:

Delete entry and replace with "Primary systems are located at the Bureau of Naval Personnel, Navy Department, Washington, DC 20370–5000; Naval Reserve Personnel Center, Naval Support Activity (East Bank), Building 603, New Orleans, LA 70159–7800; and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

Secondary systems are located at Department of the Navy Activities in the chain of command between the local activity and the headquarters level and Federal Records Storage Centers; National Archives. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices."

* * * * *

Authority for maintenance of the system:

Add to the end of the entry "and Executive Order 9397."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with "To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease; of Prognosis and of Epidemiology. Each study in which the records of members and former members of the naval service are used must be approved by the Chief of Naval Personnel.

To officials and employees of the Department of Health and Human Services, Department of Veteran Affairs, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

To officials and employees of the Department of Veteran Affairs in the performance of their duties relating to approved research projects.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of Members of Congress.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To federal, state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of system of record notices also apply to this system."

* * * * *

Storage:

Delete entry and replace with "Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche or microfilm."

Retrievability:

Delete entry and replace with "Automated records may be retrieved by name and Social Security Number. Manual records may be retrieved by name, Social Security Number, enlisted service number, or officer file number."

Safeguards:

In lines 1 and 2, delete the phrase "and punched card processing."

Retention and disposal:

Delete entry and replace with "Records are retained one year past retirement, removal, or resignation of the member and then transferred to the National Personnel Records Center (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132-5101 for permanent retention."

System manager(s) and address:

Delete first two lines of entry and replace with "Chief of Naval Personnel (Pers 06), Washington, DC 20370-5000;".

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370-5000 or contact the personnel office where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel, Arlington Annex (FOB 2), Washington, DC, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370-5000 or contact the personnel officer were assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

Contesting record procedures:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

Exemptions claimed for the system:

Delete entry and replace with "None."

N01070-3

SYSTEM NAME:

Navy Personnel Records System.

SYSTEM LOCATION:

Primary system are located at the Bureau of Naval Personnel, Navy Department, Washington, DC 20370-5000; Naval Reserve Personnel Center, Naval Support Activity [East Bank], Building 603, New Orleans, LA 70159-7800; and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Secondary systems are located at the Department of the Navy Activities in the chain of command between the local activity and the headquarters level; Federal Records Storage Centers; National Archives. Official mailing

addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, and Naval Reserve Officer Training Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel service jackets and service records, correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, promotion, advancement, performance, recruiting, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, discipline and administration of naval personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To assist officials and employees of the Navy in the management, supervision and administration of Navy personnel (officer and enlisted) and the operations of related personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease; of Prognosis and of Epidemiology. Each study in which the records of members and former members of the naval service are used must be approved by the Chief of Naval Personnel.

To officials and employees of the Department of Health and Human Services, Department of Veteran Affairs, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

To officials and employees of the Department of Veteran Affairs in the performance of their duties relating to approved research projects.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of Members of Congress.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To federal, state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by name and Social Security Number. Manual records may be retrieved by name, Social Security Number, enlisted service number, or officer file number.

SAFEGUARDS:

Computer facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are retained one year past retirement, removal, or resignation of the member and then transferred to the National Personnel Records Centers (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5101 for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 06), Washington, DC 20370–5000; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000 or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel, Arlington Annex (FOB 2), Washington, DC, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000 or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's

compilation of system of records notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel (Pers 06), Arlington Annex (FOB 2), Washington, DC, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence; educational institutions; federal, state, and local court documents; civilian and military investigatory reports; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01080-1

System name:

Enlisted Master File Automated System (51 FR 18100, May 16, 1986).

Changes:

* * * * *

System location:

Delete entry and replace with "Bureau of Naval Personnel, Navy Department, Washington, DC 20370-5000; Personnel Management Information Center, New Orleans, LA 70159-7800; Naval Reserve Personnel Center, New Orleans, LA 70159-7800."

* * * * *

Categories of records in the system:

Delete entry and replace with "System contains information related to enlisted assignment, planning, programming, accounting, promotions, career development, procurement, education, training, retirement, performance, security, personal data, qualifications, programming, and enlisted reserve drill data. The system also contains Activity Personnel Diaries, personnel accounting documents, Reserve Unit Drill reports, and other personnel transaction documents necessary to maintain file accuracy and currency; and, all computer extracts, microform, and printed reports."

Authority for maintenance of the system:

Add to the end of the entry "and Executive Order 9397."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such users:

Delete first two paragraphs.

* * * * *

Storage:

Delete entry and replace with "Automated records are stored on magnetic tapes, disks, and drums. Printed reports and other related documents supporting the system are stored in authorized areas only."

Retrievability:

Delete entry and replace with "Name and Social Security Number."

* * * * *

System manager(s) and address:

Delete entry and replace with "Chief of Naval Personnel, Navy Department, Washington, DC 20370-5000."

Notification procedure:

Delete entry and replace with "Active duty enlisted personnel seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370-5000.

Inactive duty and reserve personnel seeking to determine whether this system of records contains information about themselves shall address written inquiries to the Commanding Officer, Naval Reserve Personnel Center (ATTN: Privacy Act Coordinator), New Orleans, LA 70149-7800.

Written request should contain full name, Social Security Number, rank, status, and signature of requester."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370-5000.

Inactive duty and reserve personnel seeking to determine whether this system of records contains information about themselves shall address written inquiries to the Commanding Officer, Naval Reserve Personnel Center (ATTN: Privacy Act Coordinator), New Orleans, LA 70149-7800.

Written request should contain full name, Social Security Number, rank, status, and signature of requester."

Contesting record procedures:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

Record source categories:

Delete entry and replace with "Official records, correspondence, and educational institutions."

* * * * *

N01080-1

SYSTEM NAME:

Enlisted Master File Automated System.

SYSTEM LOCATION:

Bureau of Naval Personnel, Navy Department, Washington, DC 20370-5000; Personnel Management Information Center, New Orleans, LA 70159-7800; Naval Reserve Personnel Center, New Orleans, LA 70159-7800.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy enlisted personnel: active and inactive.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains information related to enlisted assignment, planning, programming, accounting, promotions, career development, procurement, education, training, retirement, performance, security, personal data, qualifications, programming, and enlisted reserve drill data. The system also contains Activity Personnel Diaries, personnel accounting documents, Reserve Unit Drill reports, and other personnel transaction documents necessary to maintain file accuracy and currency; and, all computer extracts, microform, and printed reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To assist in the administration, management, and supervision of Navy enlisted personnel and the operation of personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of system of record notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tapes, disks, and drums. Printed reports and other related documents supporting the system are stored in authorized areas only.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Within the computer center, controls have been established to disseminate computer output over the counter only to authorized users. Specific procedures are also in force for the disposal of computer output. Output material in the sensitive category, i.e., inadvertent or unauthorized disclosure that may result in harm, embarrassment, inconvenience or unfairness to the individual, will be shredded. Computer files are kept in a secure, continuously manned area and are accessible only to authorized computer operators, programmers, enlisted management, placement, and distributing personnel who are directed to respond to valid official requests for data. These accesses are controlled and monitored by the security system.

RETENTION AND DISPOSAL:

Automated records are retained for seven years and then destroyed. For more specific information, contact the system manager.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel, Navy Department, Washington, DC 20370–5000.

NOTIFICATION PROCEDURE:

Active duty enlisted personnel seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000.

Inactive duty and reserve personnel seeking to determine whether this system of records contains information about themselves shall address written inquiries to the Commanding Officer, Naval Reserve Personnel Center (ATTN: Privacy Act Coordinator), New Orleans, LA 70149–7800.

Written request should contain full name, Social Security Number, rank, status, and signature of requester.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000.

Inactive duty and reserve personnel seeking to determine whether this system of records contains information about themselves shall address written inquiries to the Commanding Officer, Naval Reserve Personnel Center (ATTN: Privacy Act Coordinator), New Orleans, LA 70149–7800.

Written request should contain full name, Social Security Number, rank, status, and signature of requester.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Official records, correspondence, and educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01080–2

System name:

Officer Master File Automated System (51 FR 16100, May 16, 1986).

Changes:

* * * * *

System location:

Delete entry and replace with "Bureau of Naval Personnel, Navy Department, Washington, DC 20370–5000; Personnel Management Information Center, New Orleans, LA 70149–7800; Naval Reserve Personnel Center, New Orleans, LA 70149–7800.

* * * * *

Categories of records in the system:

Delete first word "Computer" and last word "therefrom".

Authority for maintenance of the system:

Add to the end of the entry "and Executive Order 9397."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such users:

Delete first two paragraphs.

* * * * *

Storage:

Delete entry and replace with "Automated records are stored on magnetic tapes, disks, and drums. Printed reports and other paper documents supporting the system are stored in authorized personnel areas only."

Retrievability:

Delete entry and replace with "Name and Social Security Number."

* * * * *

System manager(s) and address:

Delete entry and replace with "Chief of Naval Personnel (Pers 06), Naval Military Personnel Command, Department of the Navy, Washington, DC 20370–5000."

Notification procedure:

Delete entry and replace with "Active duty officers/officer candidates seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000.

Naval reserve and retired officers seeking to determine whether this system of records contains information about themselves shall address written inquiries to the Commanding Officer, Naval Reserve Personnel Center (ATTN: Privacy Act Coordinator), New Orleans, LA 70149–7800.

Written request should contain full name, Social Security Number, rank, status, and signature of requester."

Record access procedures:

Delete entry and replace with "Active duty officers/officer candidates seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000.

Naval reserve and retired officers seeking to determine whether this system of records contains information about themselves shall address written

inquiries to the Commanding Officer, Naval Reserve Personnel Center (ATTN: Privacy Act Coordinator), New Orleans, LA 70149–7800.

Written request should contain full name, Social Security Number, rank, status, and signature of requester."

Contesting record procedures:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

Record source categories:

Delete entry and replace with "Official records of professional qualifications and educational institutions."

* * * * *

N01080–2

SYSTEM NAME:

Officer Master File Automated System.

SYSTEM LOCATION:

Bureau of Naval Personnel, Navy Department, Washington, DC 20370–5000; Personnel Management Information Center, New Orleans, LA 70149–7800; and the Naval Reserve Personnel Center, New Orleans, LA 70149–7800.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All naval officers; commissioned, warrant, active, inactive; officer candidates, and Naval Reserve Officer Training Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains data concerning officer assignment, planning, accounting, promotions, career development, procurement, education, training, retirement, performance, security, personal data, qualifications, programming, and Reserve Officer drill data, activity Personnel Diaries, personnel accounting documents, Reserve Unit Drill Reports and other personnel transaction documents necessary to maintain file accuracy and currency; and all computer file extracts, microform and printed reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

PURPOSE(S):

To assist officials and employees of the Navy in their official duties related to the management, supervision, and administration of both active duty and retired naval officers, and in the operation of personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of system of record notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Automated records are stored on magnetic tapes, disks, and drums. Printed reports and other paper documents supporting the system are stored in authorized personnel areas only.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Within the computer center, controls have been established to disseminate computer output over the counter only to authorized users. Specific procedures are also in force for the disposal of computer output. Output materials in the sensitive category, i.e., inadvertent or unauthorized disclosure that would result in harm, embarrassment, inconvenience or unfairness to the individual, will be shredded. Computer files are kept in a secure, continuously manned area and are accessible only to authorized computer operators, programmers, enlisted management, placement, and distributing personnel who are directed to respond to valid, official request for data. These accesses are controlled and monitored by the security system.

RETENTION AND DISPOSAL:

Automated records are retained for periods that range from one month to permanent, and are to numerous to list in this notice. For more specific information, contact the system manager.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 06), Naval Military Personnel Command, Department of the Navy, Washington, DC 20370–5000.

NOTIFICATION PROCEDURE:

Active duty officers/officer candidates seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000.

Naval reserve and retired officers seeking to determine whether this system of records contains information about themselves shall address written inquiries to the Commanding Officer, Naval Reserve Personnel Center (ATTN: Privacy Act Coordinator), New Orleans, LA 70149–7800.

Written request should contain full name, Social Security Number, rank, status, and signature of requester.

RECORD ACCESS PROCEDURES:

Acting duty officers/officer candidates seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000.

Naval reserve and retired officers seeking to determine whether this system of records contains information about themselves shall address written inquiries to the Commanding Officer, Naval Reserve Personnel Center (ATTN: Privacy Act Coordinator), New Orleans, LA 70149–7800.

Written request should contain full name, Social Security Number, rank, status, and signature of requester.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Official records of professional qualifications and education institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01306–1

System name:

Enlisted Development and Distribution Support System (51 FR 18107, May 16, 1986).

Changes:

* * * * *

System location:

Delete entry and replace with "Primary system is located at the Bureau of Naval Personnel, Navy Department, Washington, DC 20370–5000.

Secondary systems are located at the Enlisted Personnel Management Center, New Orleans, LA 70159–7900 and Naval Reserve Personnel Center, Naval Support Activity (East Bank), Building 603, New Orleans, LA 70149–7800."

* * * * *

Authority for maintenance of the system:

Add to the end of the entry "; 10 U.S.C. 5013; and Executive Order 9397."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such users:

Delete first two paragraphs.

* * * * *

Storage:

In paragraph one, lines two and three, delete the phrase "and on punched cards."

* * * * *

Safeguards:

In line one, delete the phrase "and punched card".

* * * * *

System manager(s) and address:

Delete entry and replace with "Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to either the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000; or, for Training and Administration of Reserve personnel: to the Commanding Officer, (ATTN: Privacy Act Coordinator) Naval Reserve Personnel Center, Naval Support Activity (East Bank), Building 603, New Orleans, LA 70149–7800.

The letter should contain full name, Social Security Number (and/or enlisted service number), rate, military status, and signature of the requester.

The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex (FOB #2), room 1066, Washington, DC for assistance records located in that building; or the Training and Administration of Reserve personnel may visit the Commanding Officer (Privacy Act Coordinator), Naval Support Activity (East Bank), Building 603, New Orleans, LA 70149–7800. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification."

Record access procedures:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to either the Chief of Naval Personnel (Code 06), Navy Department, Washington, DC 20370–5000; or, for Training and Administration of Reserve personnel: to the Commanding Officer, (ATTN: Privacy Act Coordinator) Naval Reserve Personnel Center, Naval Support Activity (East Bank), Building 603, New Orleans, LA 70149–7800.

The letter should contain full name, Social Security Number (and/or enlisted service number), rate, military status, and signature of the requester.

The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex (FOB #2), room 1066, Washington, DC for assistance with records located in that building; or the Training and Administration of Reserve personnel may visit the Commanding Officer (Privacy Act Coordinator), Naval Support Activity (East Bank), Building 603, New Orleans, LA 70149–7800. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification."

Contesting record procedures:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

Record source categories:

Delete entry and replace with "Personnel service jackets, correspondence, official records of professional qualifications, and educational institutions."

* * * * *

N01306–1

SYSTEM NAME:

Enlisted Development and Distribution Support System.

SYSTEM LOCATION:

Primary system is located at the Bureau of Naval Personnel, Navy Department, Washington, DC 20370–5000.

Secondary systems are located at the Enlisted Personnel Management Center, New Orleans, LA 70159–7900 and Naval Reserve Personnel Center, Naval Support Activity (East Bank), Building 603, New Orleans, LA 70149–7800.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy enlisted personnel: active, inactive, reserve, fleet reserve, and retired.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, advancement, performance, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, and administration of Navy military personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013; and Executive Order 9397.

PURPOSE(S):

To assist Navy officials and employees in the initiation, development, implementation of policies pertaining to enlisted personnel assignment, placement, retention, career enhancement, and motivation, and other career related matters, in order to meet manpower allocations and requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of system of record notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche, or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by Social Security Number and/or name. Manual records may be retrieved

by name, Social Security Number, or enlisted service number.

SAFEGUARDS:

Computer processing facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared, and trained. Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are generally maintained until superseded or for a period of two years and then disposed of by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to either the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000; or, for Training and Administration of Reserve personnel: to the Commanding Officer, (ATIN: Privacy Act Coordinator) Naval Reserve Personnel Center, Naval Support Activity (East Bank), Building 603, New Orleans, LA 70149–7800.

The letter should contain full name, Social Security Number (and/or enlisted service number), rate, military status, and signature of the requester.

The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex (FOB #2), room 1066, Washington, DC for assistance with records located in that building; or the Training and Administration of Reserve personnel may visit the Commanding Officer (Privacy Act Coordinator), Naval Support Activity (East Bank), Building 603, New Orleans, LA 70149–7800. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to either the Chief of Naval Personnel (Code 06), Navy Department, Washington, DC 20370–5000; or, for Training and Administration of Reserve personnel: to the Commanding Officer, (ATTN: Privacy Act Coordinator) Naval Reserve Personnel Center, Naval Support Activity (East Bank), Building 603, New Orleans, LA 70149–7800.

The letter should contain full name, Social Security Number (and/or enlisted service number), rate, military status, an signature of the requester.

The individual may visit the Commander, Naval Military Personnel Command, Arlington Annex (FOB #2), room 1066, Washington, DC for assistance records located in that building; or the Training and Administration of Reserve personnel may visit the Commanding Officer (Privacy Act Coordinator), Naval Support Activity (East Bank), Building 603, New Orleans, LA 70149–7800. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personnel service jackets, correspondence, official records of professional qualifications, and educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–1631 Filed 1–22–92; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; Amend Record System Notices

AGENCY: Department of the Navy.

ACTION: Amend record system notices.

SUMMARY: The Department of the Navy proposes to amend six existing system of records to its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The specific changes are set forth below followed by the system notices as amended.

DATES: The actions will be effective February 24, 1992, unless comments are received that result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP–09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000. Telephone (703) 614–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy record system notices for records systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) were published in the Federal Register as follows:

51 FR 12906, Apr. 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, Jun. 3, 1986
51 FR 30377, Aug. 26, 1986
51 FR 30393, Aug. 26, 1986
51 FR 45931, Dec. 23, 1986
52 FR 2147, Jan. 20, 1987
52 FR 2149, Jan. 20, 1987
52 FR 8500, Mar. 18, 1987
52 FR 15530, Apr. 29, 1987
52 FR 22671, Jun. 15, 1987
52 FR 45846, Dec. 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun. 8, 1988
53 FR 25363, Jul. 6, 1988
53 FR 39499, Oct. 7, 1988
53 FR 41224, Oct. 20, 1988
54 FR 8322, Feb. 28, 1989
54 FR 14378, Apr. 11, 1989
54 FR 32682, Aug. 9, 1989
54 FR 40160, Sep. 29, 1989
54 FR 41495, Oct. 10, 1989
54 FR 43453, Oct. 25, 1989
54 FR 45781, Oct. 31, 1989
54 FR 48131, Nov. 21, 1989
54 FR 51784, Dec. 18, 1989
54 FR 52976, Dec. 26, 1989
55 FR 21910, May 30, 1990 (Navy Mailing Addresses)
55 FR 37930, Sep. 14, 1990
55 FR 42758, Oct. 23, 1990
55 FR 47508, Nov. 14, 1990
55 FR 48878, Nov. 21, 1990
55 FR 53167, Dec. 27, 1990
56 FR 424, Jan. 4, 1991
56 FR 12721, Mar. 27, 1991
56 FR 27503, Jun. 14, 1991
56 FR 28144, Jun. 19, 1991
56 FR 31394, Jul. 10, 1991 (DoD Updated Indexes)
56 FR 40677, Aug. 16, 1991
56 FR 46167, Sep. 10, 1991

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), which requires the submission of altered systems reports.

Dated: January 17, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01850–1

System name:

Origins of Disabilities for Retired Military Members (51 FR 18125, May 16, 1986).

Changes:

* * * * *

System location:

Delete "12" in line two and replace with "32".

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The request should contain the full name of the individual concerned and the approximate date on which relief was requested. Written request must be signed by the requesting individual. Visits may be made to the Civil Affairs Division (Code 32), Office of the Judge Advocate General, Room 9N11, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400. Armed Forces' identification card or state driver's license is required for identification."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The request should contain the full name of the individual concerned and the approximate date on which relief was requested. Written request must be signed by the requesting individual. Visits may be made to the Civil Affairs Division (Code 32), Office of the Judge Advocate General, Room 9N11, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400. Armed Forces' identification card or state driver's license is required for identification."

Contesting record procedures:

Delete entry and replace with the "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

N01850–1

SYSTEM NAME:

Origins of Disabilities for Retired Military Members.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 32), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Retired or former members of the Navy or Marine Corps who have been placed on the Temporary Disability Retired List or Permanent Disability Retired List and who have subsequently obtained or applied for Federal civilian employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests originated by individuals concerned or any federal agencies employing such individuals; Chief, Bureau of Medicine and Surgery historical narratives and opinions concerning the origins of disabilities of individuals on whom determinations have been requested; copies of Judge Advocate General determinations; and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3502(a), 6303(a), 6332(c); 5 U.S.C. 301, Departmental Regulations; and 44 U.S.C. 3101.

PURPOSE(S):

Information is used as the basis for determinations concerning the eligibility of individuals to certain benefits connected with Federal civilian employment available to those disabled in combat with enemies of the U.S. or having disabilities caused by instrumentalities of war during periods of war.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Determinations are rendered, upon request, to any federal agencies employing members who retired from the naval service for disability.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are permanent and are retained indefinitely in the Office of the Judge Advocate General.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The request should contain the full name of the individual concerned and the approximate date on which relief was requested. Written request must be signed by the requesting individual. Visits may be made to the Civil Affairs Division (Code 32), Office of the Judge Advocate General, Room 9N11, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400. Armed Forces' identification card or state driver's license is required for identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The request should contain the full name of the individual concerned and the approximate date on which relief was requested. Written request must be signed by the requesting individual. Visits may be made to the Civil Affairs Division (Code 32), Office of the Judge Advocate General, room 9N11, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400. Armed Forces' identification card or state drive's license is required for identification.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Employment information in the system is submitted by the individuals concerned or the federal agencies employing them. Medical information in the system is obtained from the individuals' medical records, physical evaluation board records, and service records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05801-1

System name:

Legal Services Management Information System (51 FR 18165, May 16, 1986).

Changes:

System name:

Delete entry and replace with "JAG Management Information System (JAGMIS)."

System location:

Delete entry and replace with "Naval Legal Service Command, 200 Stovall Street, Alexandria, VA 22332-2400; Naval Legal Service Offices; Naval Legal Service Office Detachments; Naval Legal Service Branch Offices; and any other Naval Legal Offices providing legal assistance services. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices."

Categories of individuals covered by the system:

Add the following to the end of the first sentence "Service members who are pending courts-martial, administrative separation proceedings, nonjudicial punishment proceedings, or who have sought advice or counseling or other representational services from a Naval Legal Service Office, Detachment, or Branch Office. Authorized military and civilian personnel and dependents who have sought legal assistance, advice or counseling or other representational services from Naval Legal Service Offices or Detachments and any command with a legal assistance office."

Categories of records in the system:

Delete the phrase at the beginning of subparagraph (2), "Case Analysis and Tracking System (CATS): CATS" and replace with "Judge Advocate General Management Information System (JAGMIS): JAGMIS."

Add to end of the subparagraph "This information may also be entered into the JAGMIS system by the office rendering the service." Delete the words "service number" in line 12 and replace with "Social Security Number."

Authority for maintenance of the system:

Add "; and Executive order 9397." to the end of the entry.

Purpose(s):

Delete entry and replace with "To process courts-martials and render legal assistance and advice to naval personnel and their dependents. Naval Legal Service Offices and legal assistance offices will use the data for internal management purposes, such as court scheduling and counsel assignment information, and generating monthly workload productivity and statistical reports."

* * * * *

Storage:

Delete entry and replace with "Military justice, legal assistance, and personal representation case files are stored in file cabinets. Case data for each of these categories which is entered into the JAGMIS computer system is maintained on computer hard disks."

Retrievability:

Delete entry and replace with "Military justice, legal assistance, and personal representation case and card files are retrieved by name of client or accused. Case information in the JAGMIS system is retrieved by the name of the client or accused or by assigned case number."

Safeguards:

Delete the last two sentences and replace with "Information in the JAGMIS system is stored on computer hard disks which are afforded the same physical protection afforded to manual records/cards. Additionally, computers containing JAGMIS information are protected by individual operator passwords to preclude access by unauthorized personnel."

Retention and disposal:

Add the following to the beginning of the entry "Manual records, cards, and case files". After the first sentence, add "JAGMIS records, maintained since July 1985, are retained indefinitely."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400, for legal assistance card files; Deputy Assistant Commander, Naval Legal Service Command (Management and Plans), 200 Stovall Street, Alexandria, VA 22332-2400, for case files.

The written request should include full name and must be signed by the requesting individual."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400, for legal assistance card files; Deputy Assistant Commander, Naval Legal Service Command (Management and Plans), 200 Stovall Street, Alexandria, VA 22332-2400, for case files.

The written request should include full name and must be signed by the requesting individual. Requests from individuals should be addressed to the system manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g., driver's license, etc., and give some verbal information that could be verified in the file."

Contesting record procedures:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

Record source categories:

In the first sentence, delete the word "card" and replace with "legal assistance records". Insert the following sentence before the last sentence of the section, "Information regarding personal representation services is provided by the client, by the commanding officer of the individual being processed, and by administrative personnel of the Naval Legal Service Office."

* * * * *

N05801-1

SYSTEM NAME:

JAG Management Information System (JAGMIS).

SYSTEM LOCATION:

Naval Legal Service Command, 200 Stovall Street, Alexandria, VA 22332–2400; Naval Legal Service Offices; Naval Legal Service Office Detachments; Naval Legal Service Branch Offices; and any other Naval Legal Office providing legal assistance services. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Service members who are pending courts-martial, administrative separation proceedings, nonjudicial punishment proceedings, or who have sought advice or counseling or other representational services from a Naval Legal Service Office, Detachment, or Branch Office. Authorized military and civilian personnel and dependents who have sought legal assistance, advice or counseling or other representational services from Naval Legal Service Offices or Detachments and any command with a legal assistance office.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Legal Assistance Card Files. Legal assistance card files typically contain client identification information, e.g., name, address, duty station, telephone numbers, etc., client description of legal problem, attorney classification of problem, and attorney time expended.

(2) Judge Advocate General Management Information System (JAGMIS): JAGMIS records contain identification information about the individual being courts-martialed such as name; rank/rate; Social Security Number; organizational information, such as Convening Authority and Supervisory Authority; information relevant to internal management of the Legal Service Office, such as dates of receipt, docketing, trial, and transcript completion; identities of counsel and military judge; information on the charges of which convicted, if any, sentence adjudged; and other information describing overall case management and processing. This information may also be entered into the JAGMIS system by the office rendering service.

(3) Legal Assistance and Personal Representation Client Records: File contains ID information about the individual seeking legal advice such as name, address, duty station, telephone number, type of assistance requested, results of any hearing involved, and attorney time expended.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Manual of the Judge Advocate General; 44 U.S.C. 3101; and Executive Order 9397.

PURPOSE(S):

To process courts-martials and render legal assistance and advice to naval personnel and their dependents. Naval Legal Service Offices and legal assistance offices will use the data for internal management purposes, such as court scheduling and counsel assignment information, and generating monthly workload productivity and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of system of record notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Military justice, legal assistance, and personal representation case files are stored in file cabinets. Case data is entered into the JAGMIS computer system which is maintained on computer hard disks.

RETRIEVABILITY:

Military justice, legal assistance, and personal representation case and card files are retrieved by name of client or accused. Case information in the JAGMIS system is retrieved by the name of the client or accused or by assigned case number.

SAFEGUARDS:

Manual records/cards are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours. Information in the JAGMIS system is stored on computer hard disks which are afforded the same physical protection afforded to manual records/cards. Additionally, computers containing JAGMIS information are protected by individual operator passwords to preclude access by unauthorized personnel.

RETENTION AND DISPOSAL:

Manual records, cards, and case files are retained for two years after completion of the case, they destroyed. JAGMIS records, maintained since July 1985, are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400, for legal assistance card files. Deputy Assistant Commander, Naval Legal Service Command (Management and Plans), 200 Stovall Street, Alexandria, VA 22332–2400, for case files.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400, for legal assistance card files; Deputy Assistant Commander, Naval Legal Service Command (Management and Plans), 200 Stovall Street, Alexandria, VA 22332–2400, for case files.

The written request should include full name and must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400, for legal assistance card files; Deputy Assistant Commander, Naval Legal Service Command (Management and Plans), 200 Stovall Street, Alexandria, VA 22332–2400, for case files.

The written request should include full name and must be signed by the requesting individual. Requests from individuals should be addressed to the

system manager. Written requests for access should contain the full name of the individual, current address and telephone number, and the serial code of any prior correspondence received from this office pertaining to the request. For personal visits, the individual should be able to provide some acceptable identification, e.g., driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Basic information contained in the legal assistance records file is provided by the client. Basic information contained in the courts-martial files is provided by the Convening Authority for the courts-martial, the attorneys and military judge assigned to the case, and administrative personnel assigned to the Naval Legal Service Office. Information regarding personal representation services is provided by the client, by the commanding officer of the individual being processed, and by administrative personnel of the Naval Legal Service Office. Information regarding the ultimate disposition of the matter is provided by the attorney rendering the service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05810-1

SYSTEM NAME:

Article 138 Complaint of Wrongs (51 FR 18167, May 16, 1986).

Changes:

* * * * *

System location:

Delete the "13" in line two and replace with "32."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The written request should contain full name and the approximate date the complaint was submitted for review if known. Written requests must be signed by the requesting individual. Personal visits may be made to the Civil Law Division, Office of the Judge Advocate General, Room 9N11, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The written request should contain full name and the approximate date the complaint was submitted for review if known. Written requests must be signed by the requesting individual. Personal visits may be made to the Civil Law Division, Office of the Judge Advocate General, Room 9N11, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc."

Contesting record procedures:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

N05810-1

SYSTEM NAME:

Article 138 Complaint of Wrongs.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 32), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400. Complaints, three years old or older, are stored at the Federal Records Center, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Navy and Marine Corps personnel who have submitted complaints of wrong pursuant to Article 138, UCMJ, which have been forwarded to the Secretary of the Navy for final review of the complaint and the proceedings had thereon.

CATEGORIES OF RECORDS IN THE SYSTEM:

The complaint and all proceedings had thereon.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article 138, Uniform Code of Military Justice, (10 U.S.C. 938).

PURPOSE(S):

Used by JAG as a working file to review and make recommendations to the Secretary of the Navy on Article 138 complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept in alphabetical order according to last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under control of authorized personnel during working hours; the office spaces in which the file cabinets and storage devices are located is locked outside office working hours.

RETENTION AND DISPOSAL:

Complaints are maintained in office for three years and then forwarded to the Federal Records Center, Suitland, MD 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The written request should contain full name and the approximate date the complaint was submitted for review if known. Written requests must be signed by the requesting individual. Personal visits may be made to the Civil Law Division, Office of the Judge Advocate General, Room 9N11, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The written request should contain full name and the approximate date the complaint was submitted for review if known. Written requests must be signed by the requesting individual. Personal visits may be made to the Civil Law Division, Office of the Judge Advocate General, Room 9N11, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc. The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The records are comprised of the following source materials: (1) Complaint of wrongs; (2) results of examination into complaint of wrongs by the general courts-martial authority; and (3) final review action by the Secretary of the Navy.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05810–2

System name:

Military Justice Correspondence File (54 FR 40168, September 29, 1989).

Changes:

System name:

Add "and Information" after "Correspondence"

* * * * *

Categories of individuals covered by the system:

At end of last sentence, add the words "or investigations."

Categories of records in the system:

Delete the entire entry and substitute with "Filed contain background information relevant to specific military justice cases and copies of incoming and outgoing correspondence relating to military justice cases."

Purpose(s):

Delete the phrase "for reference purposes" in lines 3 and 4, and replace with ", and to maintain background information on military justice matters to assist in responding to inquiries."

* * * * *

Storage:

Add ", binder-notebooks, and computer hard drive and floppy disks" to the end of the entry.

Retrievability:

Delege "Correspondence is" in line 1 and replace with "Files are." Delete "correspondence" in line 4 and replace with "file.".

* * * * *

Retention and disposal:

Add "Files containing background material are maintained on computer hard drive for two years and then purged." to the end of the entry.

System manager(s) and address:

Delete "200 Stovall Street, Alexandria, VA 22332–2400" in line four and replace with "Washington Navy Yard, Building 111, Washington, DC 20374–1111."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Criminal Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–1111.

Information may be obtained by written request stating the full name of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Criminal Law Division, Office of the Judge Advocate General at the above address. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces' identification card, driver's license, etc.".

Record access procedures:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Criminal Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–1111.

Information may be obtained by written request stating the full name of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Criminal Law Division, Office of the Judge Advocate General at the above address. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces' identification card, driver's license, etc.".

Contesting record procedures:

After the word "appealing," in line 3, insert the word "initial".

Record source categories:

Delete entry and replace with "Records in this system are compiled from information received from naval field offices, records of trial, and correspondence."

* * * * *

N05810–2

SYSTEM NAME:

Military Justice Correspondence and Information File.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 20), Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–1111.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, retired, and discharged Navy and Marine Corps personnel who were the subject of military justice proceedings or investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain background information relevant to specific military justice cases, and copies of incoming and

outgoing correspondence relating to military justice cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To provide a record of individual inquiries and JAG responses concerning military justice related matters, and to maintain background information on military justice matters to assist in responding to inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, binder-notebooks, and computer hard drive and floppy disks.

RETRIEVABILITY:

Files are kept in alphabetical order according to the last name of the individual who is the subject of the file.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for two years and then forwarded to the Federal Records Center, Suitland, MD 20409 for storage; files containing background material are maintained on computer hard drive for two years and then purged.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–1111.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Criminal Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–1111.

Information may be obtained by written request stating the full name of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Criminal Law Division, Office of the Judge Advocate General at the above address. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces' identification card, driver's license, etc.

RECORD ACCESS PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Criminal Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–1111.

Information may be obtained by written request stating the full name of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Criminal Law Division, Office of the Judge Advocate General at the above address. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces' identification card, driver's license, etc.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records in this system are compiled from information received from naval field offices, records of trial, and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05813–2

SYSTEM NAME:

Courts-Martial Case Report (51 FR 18169, May 16, 1986).

Changes:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals having appeared before a special or general courts-martial."

* * * * *

Storage:

Delete entry and replace with "Computer hard disk on office personal computer by circuit and fiscal year."

Safeguards:

Delete entry and replace with "Personal computer is located in office which is under observation during working hours and is locked at night. The office is located in a secure building which is guarded 24-hours a day. Access to hard disk is controlled by password and is restricted to personnel having a need to know."

Retention and disposal:

Delete entry and replace with "Database contains up to 10 fiscal years of information. Prior information is purged from database.

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Circuit Military Judge, ATLANTIC Judicial Circuit, Navy-Marine Corps Trial Judiciary, Washington Navy Yard, Washington, DC 20374–2004. Requesters should provide full name, branch of service, military status, where stationed when tried, and when tried."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves should address written inquiries to the Circuit Military Judge, ATLANTIC Judicial Circuit, Navy-Marine Corps Trial Judiciary, Washington Navy Yard, Washington, DC 20374–2004. Requesters should provide full name, branch of service, military status, where stationed when tried, and when tried."

Contesting record procedures:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

N05813–2

SYSTEM NAME:

Courts-Martial Case Report.

SYSTEM LOCATION:

Chief, Navy-Marine Corps Trial Judiciary, Washington Navy Yard, Washington, DC 20374–2004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having appeared before a special or general courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

The recording of the Article violation of the UCMJ, the plea, the finding, the sentence and other related information concerning the trial.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To formulate status reports for the Judge Advocate General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of system of record notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer hard disk on office personal computer by circuit and fiscal year.

RETRIEVABILITY:

By name or case number.

SAFEGUARDS:

Personal computer is located in office which is under observation during working hours and is locked at night. The office is located in a secure building which is guarded 24-hours a day. Access to hard disk is controlled by password and is restricted to personnel having a need to know.

RETENTION AND DISPOSAL:

Database contains up to 10 fiscal years of information. Prior information is purged from the database.

SYSTEM MANAGER(S) AND ADDRESS:

Circuit Military Judge, ATLANTIC Judicial Circuit, Navy-Marine Corps Trial Judiciary, Washington Navy Yard, Washington, DC 20374–2004.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Circuit Military Judge, ATLANTIC Judicial Circuit, Navy-Marine Corps Trial Judiciary, Washington Navy Yard, Washington, DC 20374–2004. Requesters should provide full name, branch of service, military status, where stationed when tried, and when tried.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Circuit Military Judge, ATLANTIC Judicial Circuit, Navy-Marine Corps Trial Judiciary, Washington Navy Yard, Washington, DC 20374–2004.

Requesters should provide full name, branch of service, military status, where stationed when tried, and when tried.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military Judge of respective individual's courts-martial.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–1636 Filed 1–22–92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board's Ad Hoc Committee on the Relationship of NAEP to a National Examination System. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: February 5, 1992.

TIME: 11 a.m. (E.T.)

PLACE: National Assessment Governing Board, suite 7322, 1100 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, suite 7322, 1100 L Street NW., Washington, DC, 20005–4013, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), 20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Educational Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and to develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The National Assessment Governing Board's Ad Hoc Committee on the Relationship of NAEP to a National Examination System will meet on February 5, 1992 beginning at 11 a.m. (ET). The purpose of this meeting is to prepare recommendations for development of the Board's response to two reports to be released this month—one by the National Council on Standards and Testing, and the other by the National Education Goals Panel.

Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 7322, 1100 L Street NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: January 17, 1992.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 92–1625 Filed 1–22–92; 8:45 am]

BILLING CODE 4000-01-M

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of partially closed meeting.

VOL 57 ISS 15 JA 23 1992 UMI

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: January 30, 1992 beginning at 8:30 a.m. and ending at 5 p.m.; and January 31, 1992 beginning at 8:30 a.m. and ending at 12 noon, but closed from 8:30 a.m. to 9:30 a.m.

ADDRESSES: DeKalb College, North Campus, Building C, Decatur, Georgia 30034.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, room 4600, ROB–3, 7th & D Streets. SW., Washington, DC 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 10050 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, and conducting a study of institutional lending in the Stafford Student Loan Program. The Congress has also directed the Advisory Committee to provide assistance in preparing for the reauthorization of the Higher Education Act.

The Advisory Committee will meet in Decatur, Georgia on January 30, 1992 from 8:30 a.m. to 5 p.m., and on January 31, from 8:30 to 12 noon. The meeting will be closed to the public from 8:30 a.m. to 9:30 a.m. to elect a new chairman and discuss other personnel matters. The ensuring discussions will relate to internal personnel rules and practices and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session, and such matters are protected by exemptions (2) and (6) of section 552(b)(c) of title 5 U.S.C. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. appendix 2) and under exemptions (2) and (6) of section 552(b)(c) of the Government Sunshine Act (Pub. L. 94–409).

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552(b) will be available to the public within fourteen days of the meeting.

The proposed agenda includes (a) an update on the reauthorization of the Higher Education Act and impact analysis; (b) a discussion of multiple data entry and delivery system issues; and (c) an Advisory Committee report and regulatory update.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, room 4600, 7th and D Streets, SW., Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: January 16, 1992.

Brian K. Fitzgerald,

Staff Director,

Advisory Committee on Student Financial Assistance.

[FR Doc. 92–1567 Filed 1–22–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Wetlands Involvement Notification for Proposed Construction of an Industrial Waste Landfill at the Department of Energy's Y–12 Plant, Oak Ridge, TN

AGENCY: Department of Energy.

ACTION: Notice of wetlands involvement; reopening of comment period.

SUMMARY: The Department of Energy issued a notice of wetlands involvement for the Proposed Construction of an Industrial Waste Landfill on December 27, 1991, 56 FR 67069. The comment period was scheduled to end on January 13, 1992. The Department has decided to reopen the comment period to accommodate additional comments from the public.

DATES: Comments must be received by February 7, 1992.

ADDRESSES: Send comments to: Joy L. Sager, Environmental Engineer, Waste Management and K–25 Operations Division (EW–92), U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8541, phone number (615) 576–0850. Fax comments to: (615) 576–5333.

Issued at Washington, DC, January 16, 1992.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92–1662 Filed 1–22–92; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before February 24, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk

Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–881(P).
3. N.A.
4. Farm Energy Consumption Survey Pretest.
5. New.
6. One-time.
7. Voluntary.
8. Farms.
9. 150 respondents.
10. 150 responses.
11. .333 hours per response.
12. 50 hours.
13. EIA–881(P) will be a pretest of a data collection effort to measure the purchases, expenditures, and end use by energy source for the agriculture sector of the U.S. economy. Data will be used to determine whether respondents are able to understand the questionnaire and instructions, if the information requested is available, and the amount of burden being imposed upon the respondent. Respondents will be a sample of farmers in Standard Industrial Classification (SIC) codes 01 and 02.

Statutory Authority: Secs. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, January 16, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–1659 Filed 1–22–92; 8:45 am]

BILLING CODE 6450–01–M

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–580.
3. 1902–0137.
4. Fuel Purchase Practices.
5. Revision.
6. Biennially.
7. Mandatory.
8. Businesses or other for-profit.
9. 134 respondents.
10. 1 response.
11. 45 hours per response.
12. 6,030 hours.
13. The information requested is needed to comply with the requirements of section 205(f)(2) of the Federal Power Act for a review "not less frequently than every two years" of practices to insure efficient use of resources.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. §§ 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, January 16, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–1660 Filed 1–22–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 2212–001, et al.]

Weyerhaeuser Co., et al.; Relicensing of Hydroelectric Projects

Take notice that the following filings have been made with the Commission:

1. Weyerhaeuser Company

[Project No. 2212–001—Wisconsin]

January 15, 1992.

Take notice that on July 29, 1991, the Weyerhaeuser Company filed an application to relicense the Rothschild Dam Hydroelectric Project No. 2212.

The Rothschild Dam Project is located on the Wisconsin River, in Marathon County, Wisconsin. The project consists of a concrete and timber dam with an earth embankment, a 1,604-acre reservoir, and a powerhouse containing seven generating units for a total installed capacity of 4,600 kW. The licensee proposes no changes in operation or new construction for the project. The current operating license expires July 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

2. Tomahawk Power & Pulp Company

[Project No. 2239-004—Wisconsin]

January 15, 1992.

Take notice that on July 31, 1991, the Tomahawk Power & Pulp Company filed an application to relicense the Kings Dam Hydroelectric Project No. 2239.

The Kings Dam Project is located on the Wisconsin River in Lincoln County, Wisconsin. The existing project consists of a concrete spillway with three 20-foot-wide by 25-foot-high tainter gates, a 1,420-acre reservior, and a powerhouse having a total installed capacity of 1,900 kW. The licensee proposes up-grading of the generating units for an additional capacity of 800 kW. The current operating license expires July 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L at the end of this notice.

3. Maine Public Service Company

[Projects Nos. 2366-001 & 2367-001—Maine]

January 15, 1992.

Take notice that on June 27, 1991, the Maine Public Service Company filed an application to relicense the Aroostook River Project which will include the existing Millinocket Lake Storage Dam Project No. 2366 and the existing Caribou Hydro Project No. 2367, located on the Aroostook River and Millinocket Stream, in Piscataguis and Aroostook Counties, Maine.

The Aroostook Project will utilize the Millinocket storage dam and reservoir licensed under Projects No. 2366 and the Caribou dam licensed under Project No. 2367. The licensee proposes no changes in operation or new construction for the project. The current operating licenses expire June 30, 1992, and December 31, 1993, respectively.

Comment date: 60 days after the date of filing in accordance with Standard Paragraph L end of this notice.

4. James River—New Hampshire Electric, Inc.

[Project No. 2327-002—New Hampshire]

January 15, 1992.

Take notice that on February 1, 1989, the Jame River—New Hampshire Electric, Inc., filed an application to relicense the Cascade Hydroelectric Project No. 2327.

The Cascade Project is located on the Androscoggin River in Coos County, New Hampshire. The existing project consists of a 583-foot-long and 53-foot-high concrete dam with flashboards, a 200-acre reservoir, and a powerhouse containing three generating units for a total installed capacity of 7,920 kW. The licensee proposes new construction for the project that would include a new intake structure and penstock and a second powerhouse having an installed capacity of 14,300 kW. The current operating license expires December 31, 1993.

Comment date: 60 days after the date of filing in accordance with Standard with Paragraph L at the end of this notice.

Standard Paragraph

L. Any resource agency, Indian tribe, or person believing that additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with § 4.32 of the Commission's regulations, must be filed no later than 60 days after the date of filing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1581 Filed 1-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-293-000, et al.]

Sea Robin Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Sea Robin Pipeline Co.

[Docket No. CP92-293-000]

January 13, 1992.

Take notice that on January 9, 1992, Sea Robin Pipeline Company (Sea Robin), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP92-293-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a portion of the contract demand under its X-3 Rate Schedule covering a transportation service for Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application on file with the Commission and open to public inspection.

Sea Robin states that it currently provides transportation service to Columbia pursuant to Sea Robin's Rate Schedule X-3 (transportation agreement dated January 15, 1970, as amended), which provides for the firm transportation of up to 30,000 Mcf per day from various locations offshore Louisiana to the terminus of Sea Robin's pipeline near Erath, Louisiana. Sea Robin further states that, although the primary term of the underlying agreement has expired and in lieu of termination of the agreement, Columbia has requested a reduction of 15,000 Mcf per day in its contract demand to be effective July 1, 1991, as provided in an amendment dated July 1, 1991. Thus, Sea Robin seeks abandonment authorization of this released contract demand.

Comment date: February 3, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Iroquois Gas Transmission System L.P.

[Docket No. CP89-634-015]

January 13, 1992.

Take notice that on December 30, 1991, Iroquois Gas Transmission System, L.P. (Applicant), One Corporate Drive, Suite 606, Shelton, Connecticut 06484, filed in Docket No. CP89-634-015 proposed changes in its FERC Gas Tariff, Original Volume No. 1. The filing consists of Second Revised Sheet Nos. 14, 16, 25, 26, 36, 37, 38, 41, 53, 54, 61, 63, 64, 65, 68, 70, and Original Sheet No. 54A.

These proposed changes were made to comply with the Commission's Order on Compliance Filing, 57 ¶ FERC 61,277, issued on November 29, 1991. Iroquois filed Original Tariff Sheets on October 1, 1991 in compliance with the Commission's Opinion No. 357, issued on November 14, 1990, 53 ¶ FERC 61,194.

Comment date: February 3, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. K N Energy, Inc.

[Docket No. CP92-292-000]

January 13, 1992.

Take notice that on January 9, 1992, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP92-292-000 request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate sales taps for the delivery of natural gas to various end-users under its blanket certificate issued in Docket No. CP83-140-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N requests authorization to construct and operate sales taps to various end-users, listed in the attached appendix, located along its jurisdictional pipelines. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps would have no significant impact on its peak day and annual deliveries. The gas delivered and sold by K N to the various end-users would be priced in accordance with the currently filed rate schedules authorized

by the applicable state and local regulatory bodies having jurisdiction over the sales, it is indicated.

Comment date: February 27, 1992, in accordance with Standard Paragraph G at the end of this notice.

Customer	Location of Tap	Approx. quantity to be sold (Mcf)		End use of gas	Est. cost of facilities
		Peak day	Annual		
Resident/Occupant 91-99; D. Kelly Travis	Chase Co., NE	6	120	Irrigation	$850
Resident/Occupant 91-100; Arlan Enquist	Phelps Co., NE	26	800	Irrigation	850
Resident/Occupant 91-101; Dan Zierott	York Co., NE	23	800	Irrigation	850
Resident/Occupant 91-102; Roger Pribyl	Fillmore Co., NE	36	850	Irrigation	850
Resident/Occupant 91-103; D.J. Farms, Inc.	Hamilton Co., NE	31	850	Irrigation	850
Resident/Occupant 91-104; Steven E. Betka	Fillmore Co., NE	31	850	Irrigation	850
Resident/Occupant 91-105; Joe Hoarty	Fillmore Co., NE	30	850	Irrigation	850
Resident/Occupant 91-106; Bob Higby	Clay Co., NE	2	120	Domestic	850
Resident/Occupant 91-107; Merlin Stuhr	York Co., NE	30	850	Irrigation	850
Resident/Occupant 91-108; J-W Gathering Co	Yuma Co., CO	150	30,000	Commercial	850
Resident/Occupant 91-109; Mervin or Lola Fastenau	Gosper Co., NE	36	850	Irrigation	850

4. El Paso Natural Gas Co.

[Docket No. CP92-289-000]

January 14, 1992.

Take notice that on January 8, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in docket No. CP92-289-000 an application with the Commission, pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon a gathering and exchange service with Northwest Pipeline Corporation (Northwest) and certain minor jurisdiction facilities, all as more fully set forth in the application which is open to public inspection.

El Paso and Northwest currently gather and exchange natural gas volumes under the San Juan Gathering Agreement, authorized in the Commission order issued January 22, 1974, in Docket No. CP74-14, *et al.* (51 FPC 329). The San Juan Gathering Agreement allows El Paso and Northwest to use their respective gathering systems in the San Juan Basin area of Colorado and New Mexico to gather natural gas from those wells owned by one of the parties but connected to the other party's gathering system. El Paso and Northwest gather and exchange gas under their respective FERC Rate Schedules X-31 and X-24. El Paso also proposes to remove Balancing Points Nos. 1, 2, and 4 from jurisdictional service but would continue to use these facilities for non-jurisdictional service. El Paso, however, would continue to use Balancing Point No. 3 as a jurisdictional facility for mainline transmission services.

Comment date: February 4, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Co.

[Docket No. CP92-283-000]

January 14, 1992.

Take notice that on January 7, 1992, Northern Natural Gas Company (Northern) 1111 South 103d Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-283-000 a request pursuant to Sections 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade an existing delivery point to accommodate increased natural gas deliveries to Peoples Natural Gas Company, a Division of Utilicorp United, Inc. (Peoples), under its blanket certificate in Docket No. CP82-401-000, all as more fully set in the request on file with the Commission and open to public inspection.

Northern states that it requests authority to upgrade its existing delivery point for Peoples to accommodate natural gas deliveries under Northern's IT-1 Rate Schedule. Peoples has requested an upgrade of this delivery point due to increase demand for natural gas service in Wakefield, Nebraska.

Northern also states that the estimated volumes proposed to be delivered to Peoples is expected to result in an increase in Northern's peak day deliveries to 2,640 Mcf and annual deliveries to 324,867 Mcf. The total cost to upgrade the Wakefield delivery point is $14,500.

Comment date: February 28, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. CNG Transmission Corp.

[Docket No. CP92-288-000]

January 14, 1992.

Take notice that on January 3, 1992, CNT Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301 filed in the above docket an abbreviated application, pursuant to section 7 of the Natural Gas Act and section 157.5 *et seg.* of the Federal Energy Regulatory Commission's (FERC or Commission) regulations thereunder, for a certificate of public convenience and Necessity authorizing CNG to abandon transportation service to two customers which have terminated their storage agreements with Steuben Gas Storage Company (Steuben) and their transportation agreements with CNG because of Transcontinental Gas Pipe Line Company's (Transco) failure to accept its certificate in Docket No. CP90-685-000. CNG states that no facilities need be abandoned, only services.

Specifically, CNG requests abandonment of the transportation service to New Jersey Natural which was authorized in Docket No. CP-90-177-000. Existing customer, Public Service Electric and Gas Co. (Public Service) has subscribed to the storage capacity terminated by New Jersey Natural. CNG states that it will provide the increase in transportation service to Public Service via its blanket certificates, while using the authority received in CP90-177-000 to serve the original volumes. Also, CNG requests abandonment of transportation service to the City of Union, which has also terminated its storage and transportation agreements, as permitted under each. Existing customer Commonwealth Gas has subscribed to the additional storage capacity made available by the City of Union's termination. The additional service will be provided via CNG's blanket certificate authorizations. No new authority is necessary in CNG Docket No. CP90-177-000. Only authority to

abandon service to the City of Union and New Jersey Natural is requested.

Comment date: February 4, 1992, in accordance with Standard Paragraph F at the end of this notice.

7. KN Energy, Inc.

[Docket No. CP92-276-000]

January 15, 1992.

Take notice that on January 2, 1992, KN Energy, Inc. (KN), Post Office Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP92-276-000 an application pursuant to section 7 of the Natural Gas Act, and part 157 of the Commission's Regulations for authorization and approval to construct/operate and abandon certain facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, KN proposes the following:

(1) Install 13.7 miles of 8-inch pipeline to replace an equal quantity of 6-inch pipeline in the Otis-Stockton line in Ellis and Rush Counties, Kansas. Abandon 13.7 miles of 6-inch pipeline in the Otis-Stockton line in Ellis and Rush Counties, Kansas.

(2) Install 10.5 miles of 3-inch pipeline to replace 2.85 miles of 5-inch pipeline and 7.6 miles of 2-inch pipeline in the Nelson Lateral in Nuckolls County, Nebraska. Abandon 2.85 miles of 5-inch pipeline and 7.6 miles of 2-inch pipeline in the Nelson Lateral in Nuckolls County, Nebraska.

(3) Install 9.3 miles of 3-inch pipeline to replace equal quantity of 4-inch pipeline in the Beaver City Lateral in Furnas County, Nebraska. Abandon 9.3 miles of 4-inch O.D. pipeline in the Beaver City Lateral in Furnas County, Nebraska.

(4) Abandon 8.8 miles of 6-inch pipeline from the Clay Center-Sutton line in Clay County, Nebraska. Abandon 1.1 miles of 5-inch pipeline that parallels a 6-inch pipeline north of Clay Center Compressor Station in Clay County, Nebraska.

(5) Abandon by sale 0.5 mile of 4-inch pipeline, measuring station and dehydrator serving the Union-WPS-35 D11 well in West Poison Spider Field in Section 11, Township 33 North, Range 84 West, Natrona County, Wyoming.

(6) Abandon by sale a total of 2.93 miles of 2-inch, 3-inch, 4-inch and 6-inch pipeline and one measuring station from the Muskrat Field in Section 34, township 34 North, Range 92, all in Fremont County, Wyoming.

Comment date: February 5, 1992, in accordance with Standard Paragraph F at the end of this notice.

8. Northwest Pipeline Corp.

[Docket No. CP92-291-000]

January 15, 1992.

Take notice that on January 8, 1992, Northwest Pipeline Corporation, (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed in Docket No. CP92-291-000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for permission and approval to abandon the sale for resale, transportation, and exchange service provided for Colorado Interstate Gas Company (CIG), from the Creston Nose area of Carbon County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that it is requesting approval to abandon the sale for resale, transportation and exchange service it is authorized to provide for CIG pursuant to Northwest's Rate Schedule X-26 of its FERC Gas Tariff, Original Volume No. 2, which incorporates an agreement dated April 7, 1976, as amended. Northwest states that the agreement expired according to its terms on February 28, 1988.

Northwest also states that no abandonment of facilities is proposed in conjunction with the abandonment of this service.

Comment date: February 5, 1992, in accordance with Standard Paragraph F at the end of this notice.

9. Northwest Pipeline Corp.

[Docket No. CP92-295-000]

January 15, 1992.

Take notice that on January 10, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed an application in Docket No. CP92-295-000 pursuant to section 7(b) of the Natural Gas Act and section 157.18 of the Commission's Regulations under the Natural Gas Act to abandon an interruptible transportation service for Questar Pipeline Company (Questar), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that on March 9, 1977, Northwest and Questar's predecessor, Mountain Fuel Supply Company, entered into a gas purchase, transportation and exchange agreement under which Northwest would receive up to 500 Mcf per day of Questar's gas from the Wilson Ranch #2 well, connected to Northwest's system in Lincoln County, Wyoming, and then redeliver equivalent volumes to Questar at a point of interconnection between the facilities of Northwest and Questar near Granger, Sweetwater County, Wyoming. It is indicated that Northwest originally had the right to purchase from Questar up to 25 percent of the volumes of gas tendered for transportation under the agreement.

It is indicated that the Commission's order issued August 18, 1977, in Docket Nos. CP77-379 and CP77-359 authorized the proposed transportation by Northwest and the sale by Questar to Northwest, respectively. Northwest States that Questar was authorized to abandon the sales service effective on October 1, 1989.

Northwest states that by a termination agreement dated April 1, 1989, Questar and Northwest have agreed to terminate the transportation agreement effective on May 1, 1991. No abandonment of facilities is proposed.

Comment date: February 5, 1992, in accordance with Standard Paragraph F at the end of the notice.

10. Northwest Pipeline Corp.

[Docket No. CP92-290-000]

January 15, 1992.

Take notice that on January 8, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP92-290-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, for approval to operate and utilize the Gas Company of New Mexico (CNM) Meter in San Juan County, New Mexico as a transmission facility under section 7(c) of the Natural Gas Act for the delivery of gas for the account of Williams Gas Marketing Company (Williams) and any other eligible shipper, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams states that the GCNM Meter is being constructed by Northwest pursuant to section 311 of the Natural Gas Policy Act (NGPA), to be used initially for the delivery of gas to GCNM pursuant to part 284 of the Commission's Regulations.[1] The meter, consisting of a 12-inch turbine meter with appurtenances, would provide up to 150 MMcf per day of natural gas to GCNM and will be located within the boundaries of the jointly-owned Northwest/Transwestern "Blanco Hub" facilities.

Comment date: March 2, 1992, in accordance with Standard Paragraph G at the end of this notice.

[1] Northwest immediately began construction pursuant to Commission order issued November 25, 1991.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1582 Filed 1-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-39-000]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 15, 1992.

Take notice that Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), on January 10, 1992, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of January 1, 1992:

Substitute 28th Revised Sheet No. 4
Second Revised Sheet No. 51
Second Revised Sheet No. 52
Second Revised Sheet No. 52A
Third Revised Sheet No. 52D

Alabama-Tennessee states that these tariff sheets are being filed in conjunction with a request for a temporary waiver of § 154.302(j) of the Commission's Regulations, 18 CFR 154.302(j), to permit Alabama-Tennessee to recover through its purchased gas adjustment (PGA) provisions (shown at section 20 of the General Terms and Conditions of Alabama-Tennessee's FERC Gas Tariff, First Revised Volume No. 1) certain transportation charges which it will incur attributable to the exercise of its conversion rights from firm sales to firm transportation service on its upstream pipeline supplier, Tennessee Gas Pipeline Company (Tennessee), under 18 CFR 284.10.

Alabama-Tennessee explains that in anticipation of obtaining certain transportation and assignment rights under the so-called "Cosmic Settlement" filed by Tennessee on June 25, 1991 in Docket Nos. RP88-228, et al.,[1] its jurisdictional sales customers are currently incurring costs relating to storage rights which they have obtained in connection with the use of storage facilities located off Tennessee's system as well as purchased gas quantities which are now being stored in these facilities. Alabama-Tennessee states that it is willing at this time to convert 10,000 dekatherms of its firm sales entitlement with Tennessee to a firm transportation entitlement in order to facilitate the delivery of these stored gas volumes so as to enable its jurisdictional sales customers to reduce their purchased gas costs. According to Alabama-Tennessee, unless the waiver which it is seeking is granted, such savings can only be accomplished at Alabama-Tennessee's expense.

Alabama-Tennessee further states that approval of its request will result in a rate reduction to all of its jurisdictional sales customers and will not result in any rate increase to its other customers. Alabama-Tennessee also proposes that its authorization to recover these costs through its PGA be for a limited period of time only, terminating no later than the effective date of its next Section 4 rate case, which it currently intends to file on or about September 30, 1992. Alabama-Tennessee states that its jurisdictional sales customers support this filing in its entirety.

In addition to a waiver of § 154.302(j), Alabama-Tennessee has requested any other authorizations including other waivers of the Commission's Regulations which may be necessary in order to approve its request as submitted.

Alabama-Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1583 Filed 1-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-86-000]

Pennsylvania Electric Co., Metropolitan Edison Co.; Filing

January 16, 1992.

Take notice that on December 26, 1991, Pennsylvania Electric Company and Metropolitan Edison Company tendered for filing Supplemental

[1] See Cosmic Settlement, appendix C, section IV.

information in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 27, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1584 Filed 1-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-6-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 15, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 10, 1992, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the following tariff sheets:

Proposed To Be Effective December 1, 1991

1st / 39th / Sheet No. 50.2.

Proposed To Be Effective January 1, 1992

2nd / Fortieth / Sheet No. 50.2.

Proposed To Be Effective February 1, 1992

Sub Forty-first Revised Sheet No. 50.2.

Texas Eastern states that these sheets are being filed pursuant to section 4.F of Texas Eastern's Rate Schedules SS-2 and SS-3 to flow through changes in CNG Transmission Corporation's (CNG) Rate Schedule GSS rates which underlie Texas Eastern's Rate Schedules SS-2 and SS-3.

Texas Eastern states that CNG filed tariff sheets on December 13, 1991 in Docket No. RP90-143-009, which revised Rate Schedule GSS rates effective December 1, 1991 and January 1, 1992.

Texas Eastern states that Sub Forty-first Revised Sheet No. 50.2 is being filed solely to incorporate CNG's revised GSS rates effective January 1, 1991 into Texas Eastern's regular Annual PGA effective February 1, 1992.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 23, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1585 Filed 1-22-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Furnace Test Procedures From Carrier Corp. (Case No. F-042)

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Carrier Corporation (Carrier) from the existing Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the company's 58GFA/394HAD, 58PAP/383KAD, 58DFA/396HAD, 58RAP/373LAD, GA1A, and GA2A induced draft furnaces.

Today's notice also publishes a "Petition for Waiver" from Carrier. Carrier's Petition for Waiver requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification. Carrier seeks to test using a blower delay time of 45 seconds for its 58GFA/394HAD, 58PAP/383KAD, 58DFA/396HAD, 58RAP/373LAD, GA1A, and GA2A induced draft furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than February 24, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-042, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Indeperdence Avenue SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, Subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the

prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On October 21, 1991, Carrier filed an Application for Interim Waiver regarding blower time delay. Carrier's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Carrier requests the allowance to test using a 45-second blower time delay when testing its 58GFA/394HAD, 58PAP/383KAD, 58DFA/396HAD, 58RAP/373LAD, GA1A, and GA2A induced draft furnaces. Carrier states that the 45-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.6 percent. Since current DOE test procedures do not address this variable blower time delay, Carrier asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, 55 FR 37521, September 12, 1990, and 56 FR 63946, December 6, 1991; Trane Company, 54 FR 19226, May 4, 1989, 55 FR 41589, October 12, 1990, and 56 FR 64609, December 11, 1991; Lennox Industries, 54 FR 50525, December 7, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Inter-City Products Corporation, 55 FR 31099, July 31, 1990, and 56 FR 27959, June 18, 1991; Amana Refrigeration Inc., 56 FR 853, January 9, 1991, and 56 FR 29857, July 1, 1991; Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991, 56 FR 34200, July 26, 1991, and 56 FR 63941, December 6, 1991; Snyder General Corporation, 56 FR 14511, April 10, 1991; Goodman Manufacturing Corporation, 56 FR 20421, May 3, 1991; Thermo Products, Inc., 56 FR 32205, July 15, 1991; and The Ducane Company, 56 FR 45958, September 9, 1991, and 56 FR 64510, December 10, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Carrier an Interim Waiver for its 58GFA/394HAD, 58PAP/383KAD, 58DFA/396HAD, 58RAP/373LAD, GA1A, and GA2A induced draft furnaces. Pursuant to paragraph (e) of section 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver to Carrier was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, January 6, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Department of Energy

Washington, DC 20585

January 16, 1992

Mr. Edward A. Baily,

Vice President, Government and Industry Relations, Carrier Corporation, P.O. Box 4808, Syracuse, NY 13221

Dear Mr. Baily: This is in response to your October 1, 1991, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces regarding blower time delay for Carrier Corporation (Carrier) 58GFA/394HAD, 58PAP/383KAD, 58DFA/396HAD, 58RAP/373LAD, GA1A, and GA2A induced draft furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, 55 FR 37521, September 12, 1990, and 56 FR 63946, December 6, 1991; Trane Company, 54 FR 19226, May 4, 1989, 55 FR 41589, October 12, 1990, and 56 64609 December 11, 1991; Lennox Industries, 54 FR 50525, December 7, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Inter-City Products Corporation, 55 FR 31099, July 31, 1990, and 56 FR 27959, June 18, 1991; Amana Refrigeration Inc., 56 FR 853, January 9, 1991, and 56 FR 29857, July 1, 1991; Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991, 56 FR 34200, July 26, 1991, and 56 FR 63941, December 6, 1991; Snyder General Corporation, 56 FR 14511, April 10, 1991; Goodman Manufacturing Corporation, 56 FR 20421, May 3, 1991; Thermo Products, Inc., 56 FR 32205, July 15, 1991; and The Ducane Company, 56 FR 45958, September 9, 1991, and 56 FR 64510, December 10, 1991.

Carrier's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Carrier will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Carrier's Application for an Interim Waiver from the DOE test procedures for its 58GFA/394HAD, 58PAP/383KAD, 58DFA/396HAD, 58RAP/373LAD, GA1A, and GA2A induced draft furnaces regarding blower time delay is granted.

Carrier shall be permitted to test its line of 58GFA/394HAD, 58PAP/383KAD, 58DFA/396HAD, 58RAP/373LAD, GA1A, and GA2A induced draft furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below.

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/AHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall

be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary Conservation and Renewable Energy.

October 21, 1991.

The Assistant Secretary for Conservation and Renewable Energy,

United States Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Subject: *Petition For Waiver and Application for Interim Waiver.*

Gentlemen:

This is a Petition for Waiver and Application for Interim Waiver which are submitted pursuant to title 10 CFR 430.27 as amended November 14, 1986. Waiver is requested from Test Procedures for Measuring the Energy Consumption of Furnaces found in appendix N to subpart B of part 430.

Under the existing Test Procedure, a 1.5 minute time delay between burner and blower startup is required. Carrier requests a waiver from the specified 1.5 minute delay. In its place, we request the use of a 45-second delay on Carrier's line of 58GFA/394HAD, 58PAP/383KAD, 58DFA/396HAD, 58RAP/373LAD, GA1A and GA2A induced draft furnaces.

The time delay in all lines of equipment is fixed within the furnace control, and cannot be adjusted by the installer or servicer.

The current test procedures do not credit Carrier for the energy savings associated with the shorter blower time delays. Test data on our mid-efficiency furnaces show a 7.9% decrease in the heat-up cycle energy loss when using the 45-second delay, resulting in an increase in AFUE of approximately 0.6 AFUE points. Confidential supporting test data is available upon request.

Carrier is confident that a waiver will be granted for public policy reasons in the light of previous rulings in which DOE granted waivers of this type to Lennox Industries, Inter-City Products, Amana, Rheem Manufacturing, and the Trane Company. In addition, an interim waiver of this type was recently granted to Goodman and Snyder-General. Lastly, the proposed ASHRAE 103-88 allows the use of non-adjustable blower-on-delays in place of the specified 90 seconds. Both DOE and NIST were instrumental in the development of Standard 103-88, and suggested it be included so as to address furnaces with fixed blower-on-dalays.

Respectfully,

Edward A. Baily,

Vice President, Government & Industry Relations

[FR Doc. 92-1661 Filed 1-22-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4095-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Data Collection to Compile a Directory of Non-Industrial Indoor Air Quality Firms (EPA ICR #1448.02; OMB #2060-0166). This ICR requests reinstatement of a previous collection.

Abstract: The EPA's Indoor Air Division is compiling a directory of firms who provide indoor air quality diagnostic and mitigation services. To that end, the Agency is seeking clearance to request that firms in the industry voluntarily complete a questionnaire which will be mailed to them. The information will be used to update a directory of firms in the business of diagnosing and mitigating indoor air quality problems. The instrument includes questions relating to types of services provided, types of staff employed and types of tests conducted.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1.25 hours per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: Indoor Air Quality Firms.

Estimated Number of Respondents: 2,500.

Estimated Total Annual Burden on Respondents: 3,125 hours.

Frequency of Collection: occasional (one response per directory update very 3-5 years).

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street SW., Washington, DC 20460

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: January 15, 1992

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-1654 Filed 1-22-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4095-3]

Public Water Supply Supervision Program Revision for the States of Arkansas, Oklahoma and Texas

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the States of Arkansas, Oklahoma, and Texas are revising their approved State Public Supply Supervision Primacy Program. Arkansas, Oklahoma and Texas have adopted drinking water regulations for (1) filtration, disinfection, turbidity, giardia lamblia, viruses, legionella, and heterotrophic bacteria that correspond to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, giardia lamblia, viruses, legionella, and heterotrophic bacteria promulgated by EPA on June 29, 1989 (54 FR 27486); and (2) total coliforms (including fecal coliforms and E. Coli) that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and E. Coli) promulgated by EPA on June 29, 1989 (54 FR 27544).

EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by February 24, 1992 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by February 24, 1992, a public hearing will be held. If no timely and appropriate for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on February 24, 1992.

A request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices.

Division of Engineering, Arkansas Department of Health, 4815 West Markham, Little Rock, Arkansas 72201

Water Quality Service-0207, Oklahoma State Department of Health, 1000 NE. 10th Street, Oklahoma City, Oklahoma 73117–1299

Water Hygiene Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756

Regional Administrator, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: O. Thomas Love, Jr., EPA, Regional 6, Water Supply Branch, at the Dallas address given above; telephone (214) 655–7150, FTS 255–7150.

(Sec. 1413 of the Safe Drinking Water Act, as amended, (1988) and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: December 31, 1991.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 92–1656 Filed 1–22–92; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00315; FRL–4045–3]

State FIFRA Issues Research and Evaluation Group (SFIREG); Working Committee on Groundwater Protection and Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Groundwater Protection and Pesticide Disposal will hold a 2–day meeting, begining on January 30, 1992, and ending January 31, 1992. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG Working Committee will meet on Thursday, January 30, 1992, from 8:30 a.m. to 5 p.m. and on Friday, January 31, 1992, begining at 8:30 a.m. and adjourning at approximately 1 p.m.

ADDRESSES: The meeting will be held at: Holiday Inn Crowne Plaza, 300 Army-Navy Drive, Arlington, VA, (703) 892–4100.

FOR FURTHER INFORMATION CONTACT: By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1100–E, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7371.

SUPPLEMENTARY INFORMATION: The tentative agenda includes the following:

1. Discussion on developing field standards for residue removal.
2. Disposal regulations under FIFRA Section 19.
3. SFIREG site remediation survey.
4. Discussion on the Illinois Agricultural Chemical Site Remediation Manual.
5. Phase 2 Report of the National Pesticides in Drinking Water Survey.
6. Committee discussion on comprehensive State ground water plan guidance and Regional "Round table" meetings.
7. Status of Pesticides and Ground Water strategy support documents.
8. Updated OPP ground water database status.
9. University of Illinois and Ciba Geigy's report on a developmental mobile pesticide container incinerator.
10. State reports on initiatives related to ground water protection and pesticide disposal.
11. Other topics as appropriate.

Dated: January 16, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92–1658 Filed 1–22–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4095–7]

Administrative Order on Consent Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act; Lee Farm Site

AGENCY: United States Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: In accordance with the requirements of Section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), notice is hereby given of a proposed Administrative Order on Consent under section 122(h) concerning the Lee Farm Site in St. Croix County, Wisconsin. The proposed Consent Agreement requires the owner, Theresa B. Lee, to provide access to U.S. EPA to transport and treat hazardous waste at the property known as Lee Farm. In return, the U.S. EPA covenants not to sue Theresa B. Lee regarding claims available to the United States under section 107 of CERCLA relating to the Lee Farm Site.

DATES: Comments must be received on or before February 24, 192.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Region V, 77 West Jackson Blvd., Chicago, Illinois, 60604–3590, and should refer to: In the Matter of the Lee Farm Site.

FOR FURTHER INFORMATION CONTACT: Mary McAuliffe (CS–3T), Office of Regional Counsel, U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, Illinois 60604–3590, (312) 886–6237.

Notice of Section 122(h) Administrative Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, notice is hereby given that on or about November 22, 1991, a proposed administrative settlement was agreed to by Theresa B. Lee and the United States

of America. The proposed settlement requires Theresa B. Lee to provide U.S. EPA with access to her property to dispose of and treat soil contaminated with lead from batteries.

U.S. EPA is entering into this agreement under the authority of section 122(h) and 107 of CERCLA. Section 122(h) authorizes administrative settlement of a claim under section 107. Where total response costs incurred by the United States for the facility concerned exceed $500,000 (excluding interest), the Attorney General of the United States must also approve the settlement. As response costs incurred in this case exceed $500,000, the Attorney General has approved this settlement.

Under the terms of the settlement, Theresa B. Lee will provide U.S. EPA with access for disposal and treatment of soil contaminated with lead. In return, the U.S. EPA covenants not to sue Theresa B. Lee regarding claims available to the United States under Section 107 of CERCLA relating to the Lee Farm Site.

A copy of the proposed Administrative Agreement may be obtained in person or by mail from the Office of Regional Counsel, United States Environmental Protection Agency, Region V, (CS–3T), 77 West Jackson Blvd., Chicago, Illinois 60604–3590.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601–9675.

Dated: January 13, 1992.

Ralph Bauer,

Acting, Regional Administrator.

[FR Doc. 92–1650 Filed 1–22–92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–930–DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–930–DR), dated December 26, 1991, and related determinations.

DATED: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective January 14, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92–1637 Filed 1–22–92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

San Francisco Port Commission/ Stevedoring Services of America Management; et al.; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004070–005.

Title: San Francisco Port Commission/Stevedoring Services of America Management.

Parties:

San Francisco Port Commission ("Port")
Stevedoring Services of America ("Sea")

Synopsis: This Agreement, filed January 9, 1992, provides that SSA will assume responsibility for billing demurrage and wharf storage for which service they will be paid a fee by the Port.

Agreement No.: 224–200209–003.

Title: Port of Portland/Stevedoring Services of America Management Agreement.

Parties:

Port of Portland ("Port")
Stevedoring Services of America ("SSA")

Synopsis: This Agreement, filed January 13, 1992, changes the Contract Year to begin on July 1 and end on June 30 and accordingly reduces the Minimum Annual Guarantee for Contract Year 1991–1992 to $1,026,060.28. A surcharge of $4.00 per container shall be assessed by the Port on each container loaded on liner service cellularized vessels calling at Terminal 2 with the exception of Philippines, Micronesia & Orient Navigation Company ships.

Agreement No.: 224–200603.

Title: Port of Portland/Hyundai Merchant Marine Co., Ltd. Preferential Use Agreement.

Parties:

Port of Portland ("Port")
Hyundai Merchant Marine Co., Ltd. ("Hyundai")

Synopsis: The Agreement, filed January 13, 1992, provides that in return for Hyundai agreeing to call at the Port for a minimum of 68 vessel calls per year and provide a minimum number of containers, the Port will provide preferential use of a container yard area, a vessel berth and two container cranes.

Agreement No.: 232–011247–001.

Title: Safbank/Lykes Reciprocal Space Charter and Coordinated Sailing Agreement.

Parties:

Lykes Bros. Steamship Co., Inc.
Safbank Line, Ltd.

Synopsis: The proposed amendment would expand the scope of the Agreement to East Africa to the Cape of Guardafui, including the islands of Ascension and St. Helena in the South Atlantic and Madagascar and adjacent islands in the Indian Ocean, and inland and coastal points via such ports. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: January 16, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–1565 Filed 1–22–92; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and

the Federal Maritime Commission's implementing regulations at 46 C.F.R. Part 540, as amended: Peter Deilmann Reederei, and Schiffahrtsgesellschaft MS Berlin, Kreuzfahrten GmbH & Co., Am Hafensteig 19, 2430 Neustadt in Holstein, Germany.

Vessel: Berlin.

Dated: January 16, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-1566 Filed 1-22-92; 8:45 am]

BILLING CODE 6730-01-M

Availability of List of Non-Vessel-Operating Common Carriers in Compliance With the Bonding Requirements of 46 CFR Part 583; Notice

January 17, 1992.

Notice is given that a revised list of non-vessel-operating common carriers in compliance with the bonding requirements of 46 CFR part 583 is available. This list is effective five days after publication of this notice in the **Federal Register**. For copies of this list please contact: Office of Tariffs, Bureau of Tariffs, Certification and Licensing, 1100 L Street, NW., suite 10220, Washington, DC 20573, (202) 523-5821.

Joseph C. Polking,

Secretary.

[FR Doc. 92-1671 Filed 1-22-92; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Transportation and Motor Vehicles

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of intent to revise Standard Form 91.

SUMMARY: Notice is hereby given that the General Services Administration (GSA) intends to revise Standard Form (SF) 91, Operator's Report of Motor Vehicle Accident. Notice is further given that GSA intends to cancel SF 91-A, Investigation Report of Motor Vehicle Accident, and Optional Form (OF) 26, Data Bearing Upon Scope of Employment of Motor Vehicle Operator.

Motor Vehicle operators or their supervisors presently must complete SFs 91 and 91-A and OF 26 in virtually all instances where a Federally-owned or leased vehicle is involved in an accident. Information contained on SF 91, SF 91-A, and OF 26 is redundant in many instances. Significant data elements will be taken from each of the three forms and consolidated on the revised SF 91, Motor Vehicle Accident Report.

DUE DATE FOR COMMENTS: Comments must be received by March 23, 1992.

ADDRESS: Comments should be sent to the following address: General Services Administration, Fleet Management Division (FBF), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Michael W. Moses, Sr., of the General Services Administration, Fleet Management Division (FBF), Washington, DC 20406, telephone number (commercial) 703 305-6273 or (FTS) 265-6273.

SUPPLEMENTARY INFORMATION: Federal Property Management Regulations 101-38.601 and 101-39.4 require all motor vehicle operators to complete Standard Forms (SFs) 91 and 91-A whenever they are involved in an accident. Operators of GSA Interagency Fleet Management System (IFMS) motor vehicles are required to complete Optional Form (OF) 26 whenever they are involved in an accident. Some of the entries on SF 91, SF 91-A, and OF 26 are repetitive and require a burdensome amount of time to report an accident. Items which are duplicated on two or more forms include vehicle operator names, addresses, and telephone numbers; vehicle descriptions; vehicle ownership; location of accident; and a narrative of the incident.

The third party's insurance company information, to include company, address, and policy number, will be added as an additional element on the revised SF 91. Operators of GSA IFMS motor vehicles are already required to obtain this information using GSA regionally prescribed forms.

The SF 91 will be printed as a 4-page single form. The form will be reformated to achieve optimal use of space and contain all elements of information necessary to report a motor vehicle accident.

Dated: January 10, 1992.

Allan W. Beres,

Assistant Commissioner, Office of Transportation and Property Management.

BILLING CODE 6820-24-M

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MOTOR VEHICLE ACCIDENT REPORT

INSTRUCTIONS: Sections I thru IX are filled out by the vehicle operator. Section IX, Items 74 thru 75c are filled out by the operator's supervisor. Sections X thru XII are filled out by an accident investigator for bodily injury, injury or fatality, and/or damage exceeding $500.

SECTION I - ACCIDENT TIME AND LOCATION *(Use Section VIII if additional space is needed.)*

1. DATE OF ACCIDENT

2. PLACE OF ACCIDENT *(Street address, city, state, ZIP Code; Nearest landmark; Distance nearest intersection)*

3. TIME OF ACCIDENT
AM
PM

4. INDICATE ON THIS DIAGRAM HOW THE ACCIDENT HAPPENED

Use one of these outlines to sketch the scene. Write in street or highway names or numbers.

a. Number Federal vehicle as 1, other vehicle as 2, additional vehicle as 3, and show direction of travel with arrow.
Example: → [1] [2] ←

b. Use solid line to show path before accident ——— 2 and broken line after the accident - - - - - 2

c. Show pedestrian by —→○

d. Show railroad by +++++++++++

e. Place arrow in this circle to indicate *NORTH*

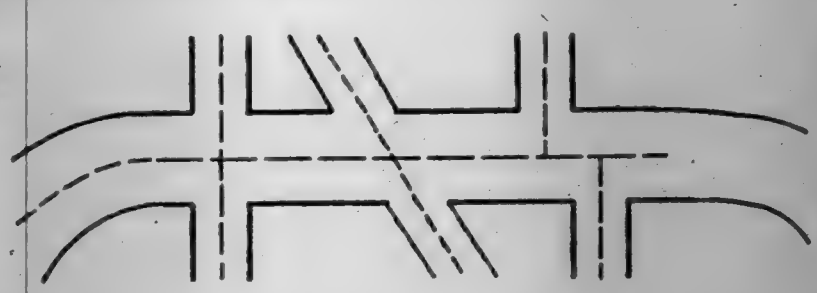

5 POINT OF IMPACT *(Check one for each vehicle)*

FED	2	AREA
		a. FRONT
		b. R. FRONT
		c. L. FRONT
		d. REAR
		e. R. REAR
		f. L. REAR
		g. R. SIDE
		h. L. SIDE

6. DESCRIBE WHAT HAPPENED *(Refer to vehicles as "Fed", "2", "3", etc. Please include information on posted speed limit, approximate speed of the vehicles, road conditions, weather conditions, driver visibility and condition of accident vehicles.)*

SECTION II - OTHER VEHICLE DATA *(Use Section VIII if additional space is needed.)*

7 DRIVER'S NAME *(Last, first, middle)*

8. DRIVER'S LICENSE NUMBER/STATE /LIMITATIONS

9a. DRIVER'S WORK ADDRESS

9b. WORK TELEPHONE NUMBER ( )

10a. DRIVER'S HOME ADDRESS

10b. HOME TELEPHONE NUMBER ( )

11. DESCRIBE VEHICLE DAMAGE

12 ESTIMATED REPAIR COST $

13. YEAR OF VEHICLE

14. MAKE OF VEHICLE

15. MODEL OF VEHICLE

16. TAG NUMBER AND STATE

17a. DRIVER'S INSURANCE COMPANY NAME AND ADDRESS

17b. POLICY NUMBER

17c. TELEPHONE NUMBER ( )

18. VEHICLE IS
☐ CO-OWNED ☐ RENTAL
☐ LEASED ☐ PRIVATELY OWNED

19a. OWNER'S NAME *(Last, first, middle)*

19b. TELEPHONE NUMBER ( )

20. OWNER'S ADDRESS

NSN 7540-01-000-0000
Previous edition not usable
AUTHORIZED FOR LOCAL REPRODUCTION

EXPIRATION DATE: 0-00-91

91-000

STANDARD FORM 91 PAGE 1 (REV 9-91)
Prescribed by GSA FPMR 101-38.6

U.M.I.

SECTION III - KILLED OR INJURED *(Use Section VIII if additional space is needed.)*

A

21. NAME *(Last, first, middle)* | 22. SEX | 23. AGE

24. ADDRESS

25. MARK "X" IN TWO APPROPRIATE BOXES: ☐ KILLED ☐ INJURED | ☐ DRIVER ☐ HELPER | ☐ PASSENGER ☐ PEDESTRIAN

26. IN WHICH VEHICLE: ☐ FED ☐ OTHER (2)

27. LOCATION IN VEHICLE

28. FIRST AID GIVEN BY

29. TAKEN BY | 30. TAKEN TO | 31. REGISTRATION NUMBER

B

32. NAME *(Last, first, middle)* | 33. SEX | 34. AGE

35. ADDRESS

36. MARK "X" IN TWO APPROPRIATE BOXES: ☐ KILLED ☐ INJURED | ☐ DRIVER ☐ HELPER | ☐ PASSENGER ☐ PEDESTRIAN

37. IN WHICH VEHICLE: ☐ FED ☐ OTHER (2)

38. LOCATION IN VEHICLE

39. FIRST AID GIVEN BY

40. TAKEN BY | 41. TAKEN TO | 42. REGISTRATION NUMBER

43 Pedestrian

a. NAME OF STREET OR HIGHWAY

b. DIRECTION OF PEDESTRIAN *(SW corner to NE corner, etc.)* | FROM | TO

c. DESCRIBE WHAT PEDESTRIAN WAS DOING AT TIME OF ACCIDENT *(Crossing intersection with signal, against signal, diagonally; in roadway; playing, walking, hitchhiking, etc.)*

SECTION IV - WITNESS/PASSENGER *(Witness must fill out SF 94, Statement of Witness) (Continue in Section VIII.)*

A

44. NAME *(Last, first, middle)* | 45. WORK TELEPHONE NUMBER ( ) | 46. HOME TELEPHONE NUMBER ( )

47. BUSINESS ADDRESS | 48. HOME ADDRESS

B

49. NAME *(Last, first, middle)* | 50. WORK TELEPHONE NUMBER ( ) | 51. HOME TELEPHONE NUMBER ( )

52. BUSINESS ADDRESS | 53. HOME ADDRESS

SECTION V - PROPERTY DAMAGE *(Use Section VIII if additional space is needed.)*

54a. NAME OF OWNER | 54b. OFFICE TELEPHONE NUMBER ( ) | 54c. HOME TELEPHONE NUMBER ( )

54d. BUSINESS ADDRESS | 54e. HOME ADDRESS

55a. NAME OF INSURANCE COMPANY | 55b. TELEPHONE NUMBER ( ) | 55c. POLICY NUMBER

56. ITEM DAMAGED | 57. LOCATION OF DAMAGED ITEM | 58. ESTIMATED COST $

SECTION VI - POLICE INFORMATION

59a. NAME OF POLICE OFFICER | 59b. BADGE NUMBER | 59c. TELEPHONE NUMBER ( )

60. PRECINCT OR HEADQUARTERS | 61a. PERSON CHARGED WITH ACCIDENT | 61b. TYPE OF VEHICLE ☐ FED ☐ 2

SECTION VII - FEDERAL VEHICLE DATA

62. DRIVER'S NAME *(Last, first, middle)* | 63. SOCIAL SECURITY NO. | 64. DRIVER'S LICENSE NO./STATE/LIMITATIONS

65a. DEPARTMENT/FEDERAL AGENCY PERMANENT OFFICE ADDRESS | 65b. TELEPHONE NUMBER ( )

66. TAG OR IDENTIFICATION NUMBER | 67. EST REPAIR $ | 68. YEAR OF VEHICLE | 69. MAKE | 70. MODEL | 71. SEAT BELTS USED ☐ YES ☐ NO

72. DESCRIBE VEHICLE DAMAGE

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SECTION X - ACCIDENT INVESTIGATION DATA

70. DID THE INVESTIGATION DISCLOSE CONFLICTING INFORMATION ☐ YES ☐ NO *(If "Yes", explain below.)*

77. PERSONS INTERVIEWED

NAME	DATE	NAME	DATE
a.		c.	
b.		d.	

78. ADDITIONAL COMMENTS *(Indicate section and item number for each comment.)*

SECTION XI - ATTACHMENTS

LIST ALL ATTACHMENTS TO THIS REPORT

SECTION XII - COMMENTS/APPROVALS

79. REVIEWING OFFICIAL'S COMMENTS

80 ACCIDENT INVESTIGATOR	81. ACCIDENT REVIEWING OFFICIAL
a. SIGNATURE AND DATE	a. SIGNATURE AND DATE
b. NAME *(First, middle, last)*	b. NAME *(First, middle, last)*
c. TITLE	c. TITLE
d. OFFICE	d. OFFICE

STANDARD FORM 91 PAGE 4 (REV. 9-91)

SPACE FOR DE

In compliance
Disclosure
accident. Th
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investigation
vehicle or w

I certify tha
73a. NAME AN

74 COMPLE
DRIVER
SUPERV
75a. NAME AN

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SECTION VIII - EXTRA DETAILS

SPACE FOR DETAILED ANSWERS. INDICATE SECTION AND ITEM NUMBER FOR EACH ANSWER. IF MORE SPACE IS NEEDED, CONTINUE ITEMS ON PLAIN BOND PAPER.

SECTION IX - FEDERAL DRIVER CERTIFICATION

In compliance with the Privacy Act of 1974, solicitation of the information requested on this form is authorized by Title 40 U S C Section 491. Disclosure of the information by a Federal employee is mandatory as the first step in the Government's investigation of a motor vehicle accident. The principal purposes for using this information is to provide necessary data for legal counsel in legal actions resulting from the accident and to provide accident information/statistics in analyzing accident causes and developing methods of reducing accidents. Routine use of information may be by Federal, State or local governments, or agencies, when relevant to civil, criminal, or regulatory investigations or prosecutions. An employee of a Federal agency who fails to report accurately a motor vehicle accident involving a Federal vehicle or who refuses to cooperate in the investigation of an accident may be subject to administrative sanctions.

I certify that the information on this form *(Sections I thru VIII)* is correct to the best of my knowledge and belief.

73a. NAME AND TITLE OF DRIVER	73b. DRIVER'S SIGNATURE AND DATE

74 COMPLETED BY DRIVER'S SUPERVISOR	a. DID THIS ACCIDENT OCCUR WITHIN THE EMPLOYEE'S SCOPE OF DUTY? ☐ YES ☐ NO	b. COMMENTS

75a. NAME AND TITLE OF SUPERVISOR	75b. SUPERVISOR'S SIGNATURE AND DATE	75c TELEPHONE NUMBER ( ) -

STANDARD FORM 91 PAGE 3 (REV 9-91)

[FR Doc. 92-1559 Filed 1-22-92; 8:45 am]

BILLING CODE 6820-34-C

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Public Meeting on Clinical Practice Guideline for Evaluation of and Early Intervention for the HIV+ Asymptomatic Individual

Two public meetings will be held on the clinical practice guidelines for Evaluation of and Early Intervention for the HIV+ Asymptomatic Individual, under development by a panel of experts and health care consumers, arranged for by the Agency for Health Care Policy and Research. The guidelines will address the following topics: General medical assessment and early medical intervention; women's issues; issues related to infants, children and adolescents; and patient knowledge, attitudes and practices.

A Notice announcing the development of clinical practice guidelines for the evaluation of and early intervention for the HIV+ asymptomatic individual and inviting nominations for the panel of experts and consumers was published in the **Federal Register** on December 10, 1990 (55 FR 50776).

The panel has been selected and now two public meetings are being held to provide an opportunity for interested parties to contribute relevant information and comments concerning the evolution of and early intervention for the HIV+ asymptomatic individual.

The meetings will be held as follows:

Monday, February 10, 1992 in San Francisco as follows: 8 a.m. to Noon and 1 p.m. to 5 p.m., Holiday Inn, Golden Gateway, 1500 Van Ness Avenue, San Francisco, California, 94109; (Telephone Number 415–441–4000).

Tuesday, March 10, 1992, in New York City as follows: 8 a.m. to Noon and 1 p.m. to 5 p.m., St. Moritz on the Park Hotel, 50 Central Park South, New York, New York 10019; (Telephone Number 212–755–5800).

Arrangements for Meetings on the Evaluation of and Early Intervention for HIV+ Asymptomatic Individuals

Individuals and representatives of organizations are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. Mikalix and Company (M & C), the organization which provides logistical and technical support to the panels, is making the administrative arrangements for this public meeting on behalf of the panel. Individuals and representatives who would like to attend must register with M & C at the address set out below. Those wishing to make oral statements and/or provide written information should submit copies to M & C, by the deadlines below:

January 30 for the February 10 meeting in San Francisco, and February 28 for the March 10 meeting in New York City.

Individuals should indicate the date and the place of the meeting that they will be attending. If more requests to make oral statements are received than can be accommodated, the chair persons will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals and providers, health care consumers, and product and pharmaceutical manufacturers is presented. Those who cannot be allocated their requested speaking time because of time restraints can be assured that their written comments will be considered by the panel in developing the guidelines.

Registration should be made with and written materials sent to:

Mikalix and Co. (M & C), Attn: M. A. Freshour, 404 Wyman Street, Suite 375, Waltham, MA 02154–1210, Phone 617–290–0090, FAX 617–290–0180.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), enacted on December 19, 1989, added a new title IX to the Public Health Service Act (the Act) (42 U.S.C. 299–299c–6), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services and access to such services.

Section 911 of the Act (42 U.S.C. 299b) established, within AHCPR, the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Through this office, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, other health care practitioners, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 914 of the Act (42 U.S.C. 299b–3) lists factors to be considered in establishing priorities for guidelines, including the extent to which the proposed guidelines would:

1. Improve methods of prevention, diagnosis, treatment and clinical management, and thereby benefit a significant number of individuals;
2. Reduce significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
3. Reduce clinically significant variations in the outcomes of health care services and procedures.

The following topics were selected in 1990 for guideline development:

1. Management of Functional Impairment Due to Cataract in the Adult
2. Diagnosis and Treatment of Benign Prostatic Hyperplasia
3. Urinary Incontinence in Adults
4. Prediction, Prevention, and Early Intervention of Pressure Ulcers
5. Provision of Comprehensive Care in Sickle Cell Disease
6. Acute Pain Management: Operative or Medical Procedures and Trauma
7. Diagnosis and Treatment of Depressed Outpatients in Primary Care Settings

In addition, in 1991 the following topics were selected for guideline development:

1. Management of Cancer-Related Pain
2. Treatment of Stage Two and Greater Pressure Ulcers
3. HIV Positive Asymptomatic Patients: Evaluations and Early Intervention
4. Low Back Problems.
5. Development of Quality Determinants of Mammography
6. Otitis Media in Children
7. Diagnosis and Treatment of Heart Failure Secondary to Coronary Vascular Disease
8. Post Stroke Rehabilitation
9. Alzheimer's Disease Screening

To ensure the development of guidelines, AHCPR, acting through the Forum, has arranged for panels of experts in the above-listed topics and consumer representatives, who will develop the specific guidelines. Panel responsibilities include determination of the scope of the guidelines, assessment of the available scientific evidence and clinical consensus, and conducting peer review and pilot review of drafts of the guidelines.

Dated: January 15, 1992.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92–1600 Filed 1–22–92; 8:45 am]

BILLING CODE 4160–90–M

Workgroup on Methods of Developing Medical Review Criteria, Standards and Performance Measures

The Agency for Health Care Policy and Research (AHCPR) announces that it is establishing a workgroup to develop

methods for deriving and assessing medical review criteria, standards of quality, and performance measures consistent with clinical practice guidelines, being developed by panels of experts and contractors supported by AHCPR. This Notice also invites nominations of qualified individuals to serve as the chairperson(s) and members of this workgroup.

The methods developed by the workgroup are intended for widespread distribution to and use by a variety of groups, such as professional review organizations (PROs, hospitals, medical societies, medical review organizations) in developing medical review criteria and performance measures in general, and, particularly, in developing medical review criteria and standards derived from guidelines developed with AHCPR support. The methods for developing review criteria also will be used to assist AHCPR in carrying out the mandate of section 914 of the Public Health Service Act (42 U.S.C. 299b–3) to establish standards and criteria to be utilized by contractors and expert panels in the development and periodic review and updating of guidelines, standards, performance measures, and review criteria.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) enacted on December 19, 1989, added a new title IX to the Public Health Service Act (the Act), which established AHCPR to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. The AHCPR is to achieve its goals not only through the establishment of a broad base of scientific research but also through the promotion of improvements in clinical practice and in the organization, financing and delivery of health care services.

Section 911 of the Act (42 U.S.C. 299b) established within the AHCPR, the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Section 912 of the Act (42 U.S.C. 299b–1) directs the Forum to arrange for the development and periodic review and updating of clinical practice guidelines and standards of quality, performance measures and medical review criteria through which health care providers and other appropriate entities may assess or review the provision of health care and assure the quality of such care.

Section 912 (42 U.S.C. 299b–1) also requires that the guidelines, standards, performance measures and review criteria be:

1. Based on the best available research and professional judgment;
2. Presented in formats appropriate for use by physicians, health care practitioners, providers, medical educators, medical review organizations and consumers of health care; and
3. In forms appropriate for use in clinical practice and educational programs and in reviewing quality and appropriateness of medical care.

Section 914 of the Act (42 U.S.C. 299b–3) further requires that the Director of the Forum establish standards and criteria to be used by recipients of contracts and by expert panels in developing, reviewing and updating guidelines, standards, performance measures, and review criteria.

Workgroup Nominations

The workgroup will consist of a chairperson(s) and nine to fifteen members. To assist in identifying members, AHCPR is requesting recommendations from a broad range of interested individuals and organizations, including physicians representing specialty and general practices, nurses, health services researchers, health care consumers and others with expertise or information in such pertinent areas as: quality assurance, utilization review, peer review, licensure, accreditation, and medical education. AHCPR is especially interested in receiving nominations of individuals with experience in quality and utilization review in hospitals, health maintenance organizations, managed care, third party payors, and other organizations in both the private and public sectors.

The functions of the chairperson(s) are critical to leading the group in its consideration of methodological issues and formulation of a methodology to develop medical review criteria, standards of quality, and performance measures derived from clinical practice guidelines created with the assistance of AHCPR. The chairperson(s) will provide leadership regarding methodology, literature review, deliberations of the workgroup, and formulation of the final report. Nominations for the chairperson(s) should take into consideration the criteria specified below, which AHCPR will use in making its selection.

AHCPR will appoint the chairperson(s) from among the nominations received using criteria that include the following:

- Relevant training and clinical experience
- Demonstrated experience in quality assurance, utilization review, and associated research including publications of relevant peer-reviewed articles
- Demonstrated experience or expertise in such areas as peer review, professional credentialing, accreditation, and medical education
- Commitment to the need to develop methods for quality and utilization review
- Recognition in the field with a record of leadership in relevant activities
- Broad view of medical review processes and approaches
- Demonstrated capacity to lead a health care team in a group decisionmaking process
- Demonstrated capacity to respond to consumer concerns
- Familiarity with the clinical practice guideline process used by AHCPR guideline panels, and
- No potential conflict of interest that would impair the impartial participation in the development of methods for review criteria.

Once the chairperson(s) has (have) been appointed, the nominations for members of the workgroup will be submitted for further review and consideration to the selected chairperson(s), who will in turn recommend members to AHCPR. Appointments of the workgroup members will be made by the AHCPR, after review of proposed members' qualifications and the overall composition of the group to ensure representation of a range of experience and expertise.

Nominations should indicate whether the individual is being recommended to serve as the chairperson(s) or to serve as a member of the workgroup. Each nomination must include a copy of the individual's curriculum vitae or resume, plus a statement of the rationale for the specific nomination. To be considered, nominations must be received by February 5, 1992 by Mikalix & Company, the contractor which provides administrative support to the Office of the Forum, at the following address:

Mikalix & Co., Attention: C. Delaney, R.N., 404 Wyman Street, Suite 375, Waltham, Massachusetts 02154–1210

Dated: January 15, 1992.

J. Jarrett Clinton,
Administrator.

[FR Doc. 92–1602 Filed 1–22–92; 8:45 am]
BILLING CODE 4160–90–M.

Agency for Health Care Policy and Research; Meeting

Name: Health Services Research Training Advisory Committee.

Date and Time: February 6–7, 1992, 8 a.m.

Place: Hyatt Regency, Old Georgetown Room, One Bethesda Metro Center, Bethesda, Maryland.

Open February 5, 8 a.m. to 8:30 a.m.

Closed for remainder of meeting.

Purpose: The Committee is charged with conducting the initial review of grant applications from educational institutions, individuals, or organizations for Federal support for research centers to ensure that highly-trained scientific personnel will be available in adequate numbers and in the appropriate research areas and fields to maintain the nation's health services research agenda.

Agenda: The open session on February 6 from 8 a.m. to 8:30 a.m. will be devoted to a business meeting covering administrative matters and reports. The closed session of the meeting will be devoted to a review of grant applications for MEDTEP Research Centers on Minority Populations. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2 and Title 5, U.S. Code 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mrs. Linda Blankenbaker, Agency for Health Care Policy and Research, Executive Office Center, suite 602, 2101 E. Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227–8449.

Agenda items are subject to change as priorities dictate.

Dated: January 15, 1992.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92–1602 Filed 1–22–92; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control

Immunization Practices Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following committee meeting:

Name: Immunization Practices Advisory Committee.

Times and Dates: 8:30 a.m.–5 p.m., February 12, 1992. 8:30 a.m.–12 noon, February 13, 1992.

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters To Be Discussed: The Committee will discuss the Japanese encephalitis vaccine statement; the polio vaccine and recent developments in molecular virology and virulence testing; hepatitis A: Morbidity and status of vaccine development; immunization in the immunocompromised; the acellular pertussis vaccine statement; and will consider other matters of relevance among the Committee's objectives.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Staff Specialist, CDC (1–B72), 1600 Clifton Road, NE., Mailstop A20, Atlanta, Georgia 30333, telephone 404/639–3851 or FTS 236–3851.

Dated: January 16, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92–1593 Filed 1–22–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 92N–0020]

Drug Export; Coagulation Factor IX (Human), Affinity Purified, Solvent Detergent Treated

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alpha Therapeutic Corp., has filed an application requesting approval for the export of the biological product Coagulation Factor IX (Human), Affinity Purified, Solvent Detergent Treated to The Federal Republic of Germany.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Alpha Therapeutic Corp., 5555 Valley Blvd., Los Angeles, CA 90032, has filed an application requesting approval for the export of the biological product Coagulation Factor IX (Human), Affinity Purified, Solvent Detergent Treated to The Federal Republic of Germany. Coagulation Factor IX (Human), Affinity Purified, Solvent Detergent Treated is intended for the prevention and control of bleeding in patients with Factor IX deficiency due to hemophilia B. The application was received and filed in the Center for Biologics Evaluation and Research on January 6, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 4, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: January 14, 1992.

Thomas S. Bozzo,

Director, Office of Compliance Center for Biologics Evaluation and Research.

[FR Doc. 92-1677 Filed 1-22-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92N-0021]

Drug Export: Recombinant Human Erythropoietin (r-HuEPO)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Biologics, Inc., has filed an application requesting approval for the export of the biological products Recombinant Human Erythropoietin a finished bulk product to Switzerland, a country in which the product is approved. The finished bulk product will be shipped from Switzerland to Belgium where it will be formulated and filled into final containers. The bulk vials will be shipped back to Switzerland for labeling and for export to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Biologics, Inc., Route 202 South, Box 300, Raritan, NJ 08869, has filed an application requesting approval for the export of the biological products Recombinant Human Erythropoietin a finished bulk product to Switzerland, a country in which the product is approved. The finished bulk product will be shipped from Switzerland to Belgium where it will be formulated and filled into final containers. The bulk vials will be shipped back to Switzerland for labeling and for export to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, and The United Kingdom. Recombinant human erythropoietin is designed for use in the treatment of anemia associated with chronic renal failure on hemodialysis or the treatment of severe anemia of renal origins in patients with renal insufficient not yet undergoing dialysis. The application was received and filed in the Center for Biologics Evaluation and Research on October 8, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 4, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Comestic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: January 14, 1992.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 92-1678 Filed 1-22-92; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: MINNEAPOLIS DISTRICT OFFICE, chaired by John Feldman, District Director. The topic to be discussed is food labeling reform.

DATES: Friday, February 7, 1992, 1 p.m. to 3 p.m.

ADDRESSES: Whitney Senior Center, 1125 Northway Dr., St. Cloud, MN 56301.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Public Affairs Specialist, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-334-4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 16, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-1679 Filed 1-22-92; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: MINNEAPOLIS DISTRICT OFFICE, chaired by John Feldman, District Director. The topic to be discussed is food labeling reform.

DATES: Monday, February 24, 1992, 7 p.m. to 8 p.m.

ADDRESSES: Extension Bldg., 1421 Third Ave., SE., Conference Rm. D, Rochester, MN 55904.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Public Affairs Specialist, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–334–4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 16, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1580 Filed 1–22–92; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Meeting (President's Cancer Panel)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, February 21, 1992, at the University of California, San Francisco, Cole Hall, Medical Sciences Building, 513 Parnassus Avenue, San Francisco, CA 94143.

This meeting will be open to the public on February 21, 1992, 8:30 a.m. to 12:30 p.m. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel. the Director, NCI, members of the staff of the University of California, San Francisco, and other participants.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, room 4A34, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1148) will provide a roster of the Panel members and substantive program information upon request.

Dated: January 16, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1587 Filed 1–22–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting

Notice of meeting: The Health Care Issues Subcommittee and Lithotripsy Workshop of the National Kidney and Urologic Diseases Advisory Board.

Pursuant to Public Law 92–463, notice is hereby given of the Health Care Issues Subcommittee meeting of the National Kidney and Urologic Diseases Advisory Board which will be held on February 2, 1992, from 7 p.m. to approximately 10 p.m. The Health Care Issues Subcommittee will meet to discuss a future workshop on rehabilitation. The workshop on the long-term consequences of lithotripsy, sponsored by the National Kidney and Urologic Diseases Advisory Board, will be held on February 3–4, 1992. The Lithotripsy Workshop will begin on February 3 at 8 a.m. and adjourn at approximately 4:30 p.m. On February 4, the workshop will begin at 8:15 a.m. and adjourn at approximately 11 a.m. The focus of this workshop will be to identify the potential for a clinical trial focused on the long-term consequences of lithotripsy therapy. All meetings will be held at the Sun Burst Hotel and Conference Center, 4925 North Scottsdale Road, Scottsdale, Arizona 85251–7692. All meetings will be open to the public. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members.

Summaries of the meeting may also be obtained by contacting his office.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: January 15, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1588 Filed 1–22–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting

Notice of meeting: National Digestive Diseases Advisory Board.

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on February 24–25, 1992. On Monday, February 24, the meeting will begin at approximately 8:30 a.m. and adjourn at approximately 4:30 p.m. This portion of the meeting will be devoted to a discussion of the epidemiology of digestive diseases. On Tuesday, February 25, the meeting will begin at 8:30 a.m. and adjourn at approximately 3 p.m. The NIH Strategic Plan as well as current and future Board business will be discussed at this time. The meeting, which will be open to the public, will be held at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: January 15, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1589 Filed 1–22–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–92–3234; FR–3037–N–03]

Rental Voucher Program and Rental Certificate Program FY 1991 Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in competitions for funding under the notice of funding availability for housing assistance budget authority available for incremental rental vouchers and rental certificates for HUD-established allocation areas during Fiscal Year 1991. The announcement contains the names and addresses of the award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Rental

Assistance Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The 1991 awards announced in this notice were selected for funding in a competition announced in a **Federal Register** notice published on May 29, 1991, at 56 FR 24290. Applications were scored and selected for funding on the basis of selection criteria contained in that notice.

A total of $558,417,010 of budget authority for rental vouchers (18,174 units) was awarded to 706 recipients, and a total of $716,918,330 of budget authority for rental certificates (22,922 units) was awarded to 810 recipients. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards (see Attachment 1 for rental vouchers and Attachment 2 for rental vouchers).

Dated: January 14, 1992

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Section 8 Rental Certificates Funding Decisions

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 882 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
01	Lowell, 350 Moody St., Box 60, Lowell, MA 01853–0060	MA06–E001–020	$726,745	18
01	Boston, 52 Chauncy St., Boston, MA 02111	MA06–E002–044	5,210,840	93
01	Fall River, 85 Morgon St., Box 989, Fall River, MA 02725	MA06–E006–017	421,155	15
01	New Bedford, 132 S. Second St. A 2081, New Bedford, MA 02741	MA06–E007–016	1,593,975	50
01	Chicopee, 128 Meetinghouse Rd., Chicopee, MA 01013	MA06–E008–012	464,790	11
01	Revere, 70 Cooledge St., Revere, MA 02151	MA06–E014–018	300,775	6
01	Woburn, 59 Campbell St., Woburn, MA 01801	MA06–E019–071	415,270	8
01	Quincy, 80 Clay St., Quincy, MA 02170	MA06–E020–012	805,680	15
01	Malden, 630 Salem St., Malden, MA 02148	MA06–E022–014	573,720	10
01	Somerville, 30 Memorial Rd., Somerville, MA 02145	MA06–E031–022	576,900	10
01	Newbury Port, 25 Temple St., Newbury Port, MA 01950	MA06–E032–011	358,945	9
01	Brookline, 90 Longwood Ave., Brookline, MA 02146	MA06–E033–015	273,780	5
01	Springfield, 25 Saab Court, Box 1609, Springfield, MA 01101	MA06–E035–028	404,570	10
01	Shrewsbury, 35 N. Quinsigamond Ave., Shrewsbury, MA 01545	MA06–E041–010	647,115	13
01	Weymouth, 402 Essex St., Weymouth, MA 02188	MA06–E045–010	277,485	5
01	Weymouth, 402 Essex St., Weymouth, MA 02188	MA06–E045–012	250,380	5
01	Arlington, 4 Winslow St., Arlington, MA 02174	MA06–E048–013	172,555	4
01	Adams, 4 Columbia St., Adams, MA 01220	MA06–E051–014	197,375	7
01	EOCD-Northeast, 100 Cambridge St., Boston, MA 02202	MA06–E052–157	835,950	17
01	EOCD-Boston, 100 Cambridge St., Boston, MA 02202	MA06–E052–158	2,624,855	46
01	EOCD-Worcester, 100 Cambridge St., Boston, MA 02202	MA06–E052–159	919,870	24
01	EOCD-Western MA, 100 Cambridge St., Boston, MA 02202	MA06–E052–160	1,976,525	45
01	Peabody, 75–81 Central St., Peabody, MA 01960	MA06–E054–015	325,860	7
01	Plymouth, 69 Allerton St., Box 3537, Plymouth, MA 02361	MA06–E059–012	156,420	3
01	Plymouth, 69 Allerton St., Box 3537, Plymouth, MA 02361	MA06–E059–015	516,525	11
01	Milford, 45 Birmingham Ct., Milford, MA 01757	MA06–E069–014	213,840	4
01	Marlborough, 240 Main St., Marlborough, MA 01572	MA06–E070–008	417,120	8
01	Rockport, 13 Millbrook Park, Rockport, MA 01966–1414	MA06–E073–014	266,966	7
01	Holden, 9 Flager Dr., Holden, MA 01520	MA06–E082–007	523,935	16
01	Leominster, 100 Main St., Leominster, MA 01453	MA06–E086–013	831,740	24
01	Haverhill, Box 751, 192 Merrimac St., Haverhill, MA 01830	MA06–E087–013	519,680	12
01	Yarmouth, Long Pond Plaza, S. Yarmouth, MA 02664	MA06–E095–007	2,363,890	50
01	Yarmouth, Long Pond Plaza, S. Yarmouth, MA 02664	MA06–E095–010	551,945	12
01	Saugus, 19 Talbot St., Saugus, MA 01906	MA06–E099–011	521,320	10
01	Pembroke, Kilcommons Dr., Box 306, Pembroke, MA 02359	MA06–E111–006	534,660	9
01	Burlington, 15 Birchcrest St., Burlington, MA 01803	MA06–E112–009	461,045	10
01	Holliston, 492 Washington St., Holliston, MA 01746	MA06–E165–003	678,000	12
01	North Attleborough, 20 S. Washington St., N. Attleborough, MA 02760	MA06–E170–003	738,560	29
01	New Haven HA, 360 Orange St., New Haven, CT 06509	CT26–E004–026	1,626,180	28
01	New Britain HA, 34 Marimac Rd., New Britain, CT 06053	CT26–E005–019	918,550	24
01	Greenwich HA, 249 Milbank Ave., Greenwich, CT 06836	CT26–E019–009	707,575	17
01	Stratford HA, 75 Griffen St., Stratford, CT 06497	CT26–E027–009	660,480	15
01	Torrington HA, Torrington Towers, Torrington, CT 06790	CT26–E031–010	853,215	22
01	Hamden HA, Box 4051, Hamden, CT 06514	CT26–E042–009	452,835	10
01	CT Dept. of Housing, 1179 Main Street, Hartford, CT 06103	CT26–E045–035	1,154,400	25
01	CT Dept. of Housing, 1179 Main Street, Hartford, CT 06103	CT26–E045–036	171,325	4
01	CT Dept. of Housing, 1179 Main St., Hartford, CT 06103	CT26–E045–037	1,473,640	36
01	Windsor HA, 40 Henry St., Windsor, CT 06095	CT26–E048–006	804,510	26
01	Hartford HA, 940 Main St., Hartford, CT 06106	CT26–E051–029	1,085,280	26
01	Plainfield HA, 8 Community Ave., Plainfield, CT 06374	CT26–E058–006	867,055	25
01	Killingly HA, Davis Ave., Danielson, CT 06239	CT26–E061–002	930,070	25
01	Ft. Fairfield HA, P.O. Box 252, Ft. Fairfield, ME 04742	ME36–E002–010	266,845	10
01	Portland HA, 14 Baxter Blvd., Portland, ME 04101	ME36–E003–022	1,024,450	25
01	Auburn HA, P.O. Box 3037, Auburn, ME 04210	ME36–E007–021	335,275	13
01	Waterville HA, 60 Elm St., Waterville, ME 04901	ME36–E008–015	681,020	25
01	Sanford HA, P.O. Box 1006, Sanford, ME 04073	ME36–E011–015	700,860	20
01	Old Town HA, P.O. Box 404, Old Town, ME 04468	ME36–E018–015	104,375	3
01	Tremont HA, P.O. Box 28, Bar Harbor, ME 04609	ME36–E026–002	655,030	25
01	Manchester HA, 198 Hanover St., Manchester, NH 03101	NH36–E001–022	1,447,810	43
01	Portsmouth HA, 245 Middle St., Portsmouth, NH 03801	NH36–E004–006	891,490	25

SECTION 8 RENTAL CERTIFICATES FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 882 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
01	Concord HA, 15 Pitman St., Concord, NH 03301	NH36-E005-016	1,137,815	25
01	Newmarket HA, 34 Great Hill Terrace, Newmarket, NH 03857	NH36-E013-009	301,755	8
01	Franklin HA, 915 Central St., Franklin, NH 03235	NH36-E018-006	262,590	6
01	Franklin HA, 915 Central St., Franklin, NH 03235	NH36-E018-007	93,610	4
01	Burlington HA, 230 St. Paul Street, Burlington, VT 05401	VT36-E001-018	568,025	13
01	VSHA, P.O. Box 397, Montpelier, VT 05601-0397	VT36-E007-009	696,190	25
01	VSHA, P.O. Box 397, Montpelier, VT 05601-0397	VT36-007-010	772,620	25
01	Providence Housing Authority, 100 Broad Street, Providence, RI 02903	RI43-E001-026	310,805	8
01	Pawtucket Housing Authority, P.O. Box 1303, Pawtucket, RI 02862	RI43-E002-026	747,285	25
01	East Providence Housing Authority, 99 Goldsmith Avenue, East Providence, RI 02914	RI43-E007-016	143,060	4
01	West Warwick Housing Authority, 62 Robert Street, West Warwick, RI 02893	RI43-E015-011	66,700	2
01	North Providence Housing Authority, 947 Charles Street, North Providence, RI 02904	RI43-E017-012	496,075	15
01	Rhode Island Housing Mortgage Finance Corp., 60 Eddy Street, Providence, RI 02903	RI43-E023-031	765,895	19
01	Rhode Island Housing Mortgage Finance Corp., 60 Eddy Street, Providence, RI 02903	RI43-E023-032	842,370	18
01	Tiverton Housing Authority, 99 Hancock Street, Tiverton, RI 02878	RI43-E027-004	307,625	10
02	Syracuse HA, 516 Burt Street, Syracuse, NY 13202	NY06-E001-021	2,784,320	92
02	Cortland HA, 42 Church St., Cortland, NY 13045	NY06-E021-007	334,500	10
02	Rochester HA, 140 West Avenue, Rochester, NY 14611	NY06-E041-030	1,389,495	51
02	Norwich HA, 13 Brown St., Norwich, NY 13815	NY06-E065-006	190,660	6
02	Div. of Hsg. & Comm. Ren. Cattaraugus Co., One Fordham Plaza, Bronx, NY 10458	NY06-E108-022	170,665	7
02	Div. of Hsg. & Comm. Ren. Cayuga County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-041	316,880	11
02	Div. of Hsg. & Comm. Ren. Chemung County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-164	346,060	13
02	Div. of Hsg. & Comm. Ren. Franklin County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-201	51,750	2
02	Div. of Hsg. & Comm. Ren. Genesee County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-220	381,885	14
02	Div. of Hsg. & Comm. Ren. Greene County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-240	637,365	19
02	Div. of Hsg. & Comm. Ren. Jefferson County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-285	742,320	30
02	Div. of Hsg. & Comm. Ren. Lewis County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-302	84,780	3
02	Div. of Hsg. & Comm. Ren. Ontario County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-358	376,490	11
02	Div. of Hsg. & Comm. Ren. Oswego County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-398	390,000	13
02	Div. of Hsg. & Comm. Ren. St. Lawrence County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-422	942,630	45
02	Div. of Hsg. & Comm. Ren. Tompkins County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-518	682,400	22
02	Div. of Hsg. & Comm. Ren. Washington County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-538	131,705	5
02	Div. of Hsg. & Comm. Ren. Niagara County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-577	742,980	29
02	Div. of Hsg. & Comm. Ren. Allegany County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-619	416,465	18
02	Div. of Hsg. & Comm. Ren. Otsego County, One Fordham Plaza, Bronx, NY 10458	NY06-E108-714	341,930	14
02	Salamanca Public Housing Agency, 225 Wildwood Avenue, Salamanca, NY 14779	NY06-E403-003	292,180	18
02	Fairport Urban Renewal Agency, 31 South Main Street, Fairport, NY 14450	NY06-E406-009	844,200	30
02	Town of Colonie, HA, Memorial Hall, Newtonville, NY 12128	NY06-E408-007	818,450	30
02	City of Buffalo HA, City Hall, Buffalo, NY 14203	NY06-E409-016	53,700	2
02	City of Buffalo HA, City Hall, Buffalo, NY 14203	NY06-E409-017	2,508,400	110
02	Town of Middletown HA, Box 577—Main St., Margaretville, NY 12455	NY06-E440-001	503,275	21
02	Town of Greece c/o Rochester HA, 140 West Avenue, Rochester, NY 14611	NY06-E444-004	262,800	10
02	NYCHA, 250 Broadway, New York, NY 10007	NY36-E005-131	61,575,380	1,755
02	Beacon Housing Authority, One Forrestal Heights, Beacon, NY 12508	NY36-E049-010	98,130	2
02	Village of Spring Valley HA, 200 North Main Street, Spring Valley, NY 10977	NY36-E056-016	472,950	15
02	Greenburgh HA, 9 Maple Street, White Plains, NY 10603	NY36-E057-008	1,076,780	26
02	Town of Islip HA, 93 Montauk Highway, Oakdale, NY 11769	NY36-E077-013	701,575	14
02	DHCR—NYC, One Fordham Plaza, Bronx, NY 10458	NY36-E108-104	3,596,715	137
02	DHCR—Dutchess County, One Fordham Plaza, Bronx, NY 10458	NY36-E108-105	1,321,720	30
02	DHCR—Orange County, One Fordham Plaza, Bronx, NY 10458	NY36-E108-106	1,134,040	37
02	DHCR—Suffolk County, One Fordham Plaza, Bronx, NY 10458	NY36-E108-107	1,081,345	25
02	DHCR—Nassau County, One Fordham Plaza, Bronx, NY 10458	NY36-E108-108	2,377,500	48
02	DHCR—Ulster County, One Fordham Plaza, Bronx, NY 10458	NY36-E108-111	746,870	26
02	DHCR—Westchester, One Fordham Plaza, Bronx, NY 10458	NY36-E108-112	1,157,490	28
02	NYCHPD, 100 Gold Street, New York, NY 10038	NY36-E110-017	11,049,275	330
02	City of New Rochelle, 515 North Avenue, New Rochelle, NY 10801	NY36-E113-022	652,460	19
02	Village of Ellenville HA, 10 Eastwood Avenue, Ellenville, NY 12428	NY36-E140-006	385,935	15
02	Jersey City Housing Authority, 400 U.S. Hgwy #1–Marion Gardens, Jersey City, NJ 07306	NJ39-E009-024	1,385,130	41
02	Passaic Housing Authority, 333 Passaic Street, Passaic, NJ 07055	NJ39-E013-021	1,084,005	20
02	Rahway Housing Authority, 498 Capobianco Plaza, Box 12740, Rahway, NJ 07075	NJ39-E032-006	431,040	9
02	East Orange Housing Authority, 160 Halsted Street, East Orange, NJ 07018	NJ39-E050-014	2,664,420	62
02	Lakewood Housing Authority, 317 Sampson Avenue, P.O. Box 1543, Lakewood, NJ 08701	NJ39-E054-006	524,085	12
02	Clementon Housing Authority, 22 Gibbsboro Road, Clementon, NJ 08021	NJ39-E073-002	265,415	9
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-E087-220	2,026,070	62
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-E087-221	5,548,930	130
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-E087-223	590,195	13
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-E087-224	4,395,295	92
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-E087-225	2,667,845	66
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-E087-227	546,580	13
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-E087-230	348,595	10

SECTION 8 RENTAL CERTIFICATES FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 882 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
02	Passaic Co. Public Housing Agency, 317 Pennsylvania Avenue, Paterson, NJ 07503	NJ39-E090-013	711,240	13
02	Paterson Dept. of Community Development, 125 Ellison Street, Paterson, NJ 07505	NJ39-E091-011	4,328,265	79
02	Morris County Housing Authority, 99 Ketch Road, CN 900, Morristown, NJ 07960-0900	NJ39-E092-009	630,840	14
02	Somerville Borough, Borough Hall, Somerville, NJ 08876	NJ39-E097-008	232,440	5
02	Linden Hap Program, 4 Knopf Street, Linden, NJ 07036	NJ39-E104-011	249,645	6
02	Lakewood Twp. Rental Assistance Program, P.O. Box 871, 419 First Street, Lakewood, NJ 08701.	NJ39-E214-012	571,360	13
02	Burlington Co. Public Housing Agency, 9 Rancocas Road, Mt. Holly, NJ 08060	NJ39-E215-007	352,910	12
02	Housing Authority of Baltimore City, 417 E. Fayette Street, Baltimore, MD 21202	MD06-E002-030	2,714,120	74
03	CDA-Dorchester County, 100 Community Place, Crownsville, MD 21032	MD06-E020-070	101,005	5
03	CDA-Allegany County, 100 Community Place, Crownsville, MD 21032	MD06-E020-075	219,600	10
03	CDA-Snow Hill, 100 Community Place, Crownsville, MD 21032	MD06-E020-077	180,480	10
03	CDA-Baltimore Regional Council of Govts., 100 Community Place, Crownsville, MD 21032	MD06-E020-078	511,485	22
03	Howard County Housing Commission, 10650 Hickory Ridge Rd., Columbia, MD 21044	MD06-E023-009	463,885	11
03	Charles County Office of Govt. Services, Star Route 1, Box 1144, Port Tobacco, MD 20677	MD06-E024-010	1,666,820	35
03	Cecil County Housing Agency, County Office, Rm. 122, Main St., Elkton, MD 21921	MD06-E029-012	797,820	22
03	Wicomico County Housing Authority, 911 Booth Street, Salisbury, MD 21801	MD06-E030-002	910,980	31
03	Carroll Co. Bureau of Hsg. & Community Dev., 125 N. Court St. #203, Westminster, MD 21157	MD06-E032-007	702,950	22
03	Baltimore County Dept. of Community Dev., 1 Investment Pl., Suite 825, Towson, MD 21204	MD06-E033-012	670,065	24
03	Morgantown PHA, c/o 517 Fairmont Ave., Fairmont, WV 26554	WV15-E002-002	470,480	16
03	Fairmont PHA, 517 Fairmont Avenue, Fairmont, WV 26554	WV15-E009-006	444,940	15
03	Beckley PHA, P.O. Box 1780, Beckley, WV 25801	WV15-E015-006	195,630	9
03	Clarksburg PHA, 916 West Pike Street, Clarksburg, WV 26301	WV15-E027-006	244,100	10
03	Jackson County PHA, Tanglewood Villa-Whispering Wy., Ripley, WV 25371-1357	WV15-E035-014	837,420	29
03	Kanawha Co. HRA, P.O. Box 3826, Charleston, WV 25338	WV15-E036-011	580,110	16
03	Boone County PHA, Black Diamond Arbors, Danville, WV 25053	WV15-E042-007	441,040	20
03	Harrison County PHA, 301 West Main Street, Clarksburg, WV 26301	WV15-E043-007	490,800	20
03	Randolph County PHA, P.O. Box 1579, Elkins, WV 26241-1579	WV28-E045-006	207,650	10
03	Wilmington Housing Authority, 400 Walnut Street, Wilmington, DE 19801	DE26-E001-018	528,610	11
03	Dover Housing Authority, 1266-76 Whitesak Road, Dover, DE 19901	DE26-E002-002	194,380	6
03	Newark Housing Authority, 313 E. Main Street, Newark, DE 19711	DE26-E003-009	268,015	8
03	New Castle Co. Dept., Suite 500, 800 French St., Wilmington, DE 19801	DE26-E005-021	1,304,305	35
03	Philadelphia Hsg. Auth., 2012-18 Chestnut Street, Philadelphia, PA 19103	PA26-E002-027	5,168,665	132
03	Harrisburg Hsg. Auth., 351 Chestnut Street, Harrisburg, PA 17101	PA26-E008-012	225,215	6
03	Montgomery Co. Hsg., 55 East Marshall St., Norristown, PA 19401	PA26-E012-025	668,010	43
03	Schuylkill Co. Hsg., 118 E. Norwegian St., Pottsville, PA 17901	PA26-E016-012	182,650	6
03	Delaware Co. Hsg. Auth., 1855 Constitution Ave., Woodlyn, PA 19094	PA26-E023-027	854,755	46
03	Franklin County Hsg., 202 Elder Avenue, Waynesboro, PA 17268	PA26-E034-006	173,670	6
03	Dauphin County Hsg. Auth., Latsha Towers, 501 Mohn St., Steelton, PA 17113-0596	PA26-E035-007	369,785	12
03	Lancaster Housing Auth., 333 Church Street, Lancaster, PA 17602	PA26-e036-012	256,420	7
03	Pottsville Housing Auth., 410 Laurel Boulevard, Pottsville, PA 17901	PA26-E037-012	226,425	7
03	Chester County Hsg., 222 N. Church Street, West Chester, PA 19380	PA26-E046-015	136,220	6
03	Wilkes-Barre HSG. Auth., Lincoln Plaza, S. W-Barre Blvd., Wilkes-Barre, PA 18702	PA26-E047-010	136,220	6
03	Shamokin Housing Auth., 201 West Mulberry St., Shamokin, PA 17872	PA26-E055-012	55,250	2
03	Luzerne County Hsg., 250 First Avenue, Kingston, PA 18704	PA26-E057-011	185,360	8
03	Northumberland County Hsg., Milton Towers, 50 Mahoning St., Milton, PA 17847	PA26-E060-008	164,185	6
03	Allentown Housing Authority, 1339 Allen Street, Allentown, PA 18102	PA26-E067-013	530,285	16
03	Carbon County Housing Authority, 215 S. First Street, Lehighton, PA 18235	PA26-E067-013	200,595	6
03	Berks County Hsg. Auth., 256 Haycreek Road, Birdsong, PA 19508	PA26-E071-011	293,355	13
03	Wyoming County Hsg., SJ Bailey Mem. Apts. Main St., Nicholson, PA 18446-0350	PA26-E073-010	162,620	7
03	Susquehanna Co., Hsg., 61 Church Street, Montrose, PA 18801	PA26-E074-008	125,630	6
03	Cumberland Co. Hsg., 114 N. Hanover Street, Carlisle, PA 17013	PA26-E075-013	155,875	5
03	Cumberland County Hsg., 114 N. Hanover Street, Carlisle, PA 17013	PA26-E075-014	250,870	8
03	Wayne County Hsg. Auth., 100 4th Street, Honesdale, PA 18431	PA26-E078-015	205,745	6
03	Lehigh County Housing Authority, 333 Ridge Street, Emmaus, PA 18049	PA26-E081-017	217,440	8
03	Union County Hsg. Auth., P.O. Box 274, Lewisburg, PA 17837-0274	PA26-E082-008	84,785	3
03	Columbia Co. Hsg. Auth., United Penn Bond Bldg., 37W. Main, Bloomburg, PA 17815	PA26-E083-014	197,645	8
03	Snyder County Hsg. Auth., Court House, P.O. Box 333, Middleburg, PA 17842	PA26-E092-007	151,395	6
03	Pittsburgh Housing Authority, 200 Ross Street, 9th Floor, Pittsburgh, PA 15219-2068	PA26-E001-027	2,409,555	89
03	Mckeesport Housing Authority, Ohio & Brownlee Streets, Mckeesport, PA 15132	PA26-E005-016	230,730	8
03	Allegheny County Housing Auth., 341 Fourth Avenue, Pittsburgh, PA 15222	PA26-E008-028	1,914,295	72
03	Butler County H/A, 111 South Cliff Street, Butler, PA 16001	PA26-E010-012	770,640	26
03	City of Erie H/A, 606 Holland Street, Erie, PA 16501-1285	PA26-E013-019	569,610	18
03	Westmoreland County Housing Authority, RD #6, P.O. Box 223, S. Greengate Rd., Greensburg, PA 15601.	PA26-E018-021	56,800	2
03	Johnstown Housing Authority, P.O. Box 419, Johnstown, PA 15907	PA26-E019-013	701,920	27
03	Somerset County Housing Auth., 600 Kircher Place, Boswell, PA 15531	PA26-E029-006	110,550	4
03	Altoona Housing Authority, 1100 Eleventh Street, P.O. Box 671, Altoona, PA 16603	PA26-E031-015	213,600	8
03	Armstrong County H/A, 280 South McKean Street, Kittanning, PA 16201	PA26-E039-006	603,160	26
03	Indiana County Housing Authority, 101 Morewood Avenue, Blairsville, PA 15717	PA26-E048-012	792,935	28
03	Elk County Housing Authority, Water Street Ext, P.O. Box 100, Johnsonburg, PA 15845	PA26-E054-015	116,520	6
03	Titusville Housing Authority, 107 Central Towers, Titusville, PA 16354	PA26-E058-009	72,560	4
03	Jefferson County Housing Authority, 201 N. Jefferson Street, Punxsutawney, PA 15767	PA26-E061-011	330,460	14
03	Portsmouth RHA, P.O. Box 1098, 339 High St., Portsmouth, VA 23705-1098	VA36-E001-009	219,575	7
03	Newport News RHA, P.O. Box 77, 227 27th St, Wilbern, Newport News, VA 23607-0077	VA36-E003-018	482,160	16
03	Richmond RHA, P.O. Box 26887, 901 N. Chamberlayne, Richmond, VA 23261-6887	VA36-E007-018	1,438,320	51
03	Lynchburg RHA, P.O. Box 1298, Lynchburg, VA 24505-1298	VA36-E013-011	852,625	33

SECTION 8 RENTAL CERTIFICATES FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 882 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
03	Hampton, RHA, P.O. Box 280, 30 N. King St., Hampton, VA 23669-0280	VA36-E017-017	1,139,675	36
03	Petersburg RHA, P.O. Box 311, 128 S. Sycamore St., Petersburg, VA 23804-0311	VA36-E020-002	382,455	13
03	Wise County RHA, Drawer W, Rte. 72, Litchfield, St., Coeburn, VA 24230	VA36-E024-006	1,360,500	57
03	Suffolk RHA, P.O. Box 1858, Suffolk, VA 23434-1858	VA36-E025-010	226,560	7
03	VHDA, 601 S. Belvidere St., Richmond, VA 23220-6504	VA36-E027-011	502,250	16
03	VHDA, 601 S. Belvidere St., Richmond, VA 23220-6504	VA36-E027-012	90,745	3
03	VHDA, 601 S. Belvidere St., Richmond, VA 23220-6504	VA36-E027-013	2,364,575	102
03	Scott County RHA, P.O. Box 266, 133 W. Jackson St., Gate City, VA 24244	VA36-E031-003	547,620	25
03	Lee County RHA, P.O. Box 665, Jonesville, VA 22463	VA36-E034-002	520,065	29
03	Big Stone Gap RHA, P.O. Box 536, Big Stone Gap, VA 24219	VA36-E036-001	561,060	23
03	Department of Public and Assisted Housing, 1133 N. Capitol Street, NE., Washington, DC 20002-7599.	DC39-E001-024	947,340	20
03	P.G. County Dept. of Housing & Community Deve., 9400 Peppercorn Drive, Landover, MD 20785.	MD39-E015-019	542,955	13
03	Fairfax County Redevelopment and HA, One University Plaza, Fairfax, VA 22030	VA39-E019-030	995,160	20
03	Fairfax County Redevelopment and HA, One University Plaza, Fairfax, Va 22030	VA39-E019-032	6,418,840	144
03	Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220	VA39-E027-001	1,852,105	39
03	Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220	VA39-E027-002	787,320	16
03	Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220	VA39-E027-003	418,725	10
04	Savannah Housing Authority, P.O. Box 1179, Savannah, GA 31402	GA06-E002-014	747,890	30
04	Columbus Housing Authority, P.O. Box 630, Columbus, GA 31993	GA06-E004-014	1,253,025	53
04	Atlanta Housing Authority, P.O. Box 739, Atlanta, GA 30365	GA06-E006-021	2,116,575	62
04	Macon Housing Authority, P.O. Box 4928, Macon, GA 31206	GA06-E007-014	1,616,200	68
04	DeKalb County Housing Authority, P.O. Box 1627, Decatur, GA 30031	GA06-E237-017	1,049,060	30
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-E267-043	1,569,340	46
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-E267-045	38,965	2
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-E267-046	213,150	8
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-E267-047	61,720	3
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-E267-048	714,735	42
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-E267-049	661,530	32
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-E267-050	501,335	28
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-E267-051	801,465	46
04	Guntersville Housing Authority, P.O. Box 521, Guntersville, AL 35976	AL09-E014-005	471,945	25
04	Auburn Housing Authority, 931 Booker Street, Auburn, AL 36830	AL09-E050-008	573,985	25
04	Columbiana Housing Authority, P.O. Box 496, Columbiana, AL 35051	AL09-E072-001	441,850	20
04	Jefferson County Housing Authority, 2100 Walker Chapel Road, Fultondale, AL 35068	AL09-E088-011	1,559,855	64
04	Prichard Housing Authority, P.O. 10307, Prichard, AL 36610	AL09-E119-019	707,945	29
04	Midland City Housing Authority, Route 1 Box 100, Midland City, AL 36350	AL09-E124-002	728,850	30
04	Greenville Housing Authority, P.O. Box 521, Greenville, AL 36037	AL09-E155-005	291,970	15
04	South Central Alabama Housing Authority, 100 Spring Street, Troy, AL 36081	AL09-E192-026	694,430	34
04	Huntsville Housing Authority, P.O. Box 486, Huntsville, AL 35804	AL09-E047-010	1,452,795	50
04	Columbia Housing Authority, 1917 Hardin Street, Columbia, SC 29204	SC16-E002-021	2,018,715	66
04	South Carolina Region 1 Housing Authority, P.O. Box 326, Laurens, SC 29360	SC16-E008-021	622,650	40
04	Greer Housing Authority, 103 School Street, Greer, SC 29651	SC16-E016-007	755,965	33
04	Sumter Housing Authority, P.O. Box 1030, Sumter, SC 29151	SC16-E023-009	1,192,800	50
04	Beaufort Housing Authority, P.O. Box 1104, Beaufort, SC 29901	SC16-E026-008	732,800	32
04	Myrtle Beach Housing Authority, P.O. Box 2468, Myrtle Beach, SC 29578	SC16-E034-002	850,190	40
04	South Carolina State Agency, P.O. Box 7008, Columbia, SC 29204	SC16-E055-087	128,520	5
04	South Carolina State Agency, P.O. Box 7008, Columbia, SC 29204	SC16-E055-091	132,595	6
04	South Carolina State Agency, P.O. Box 7008, Columbia, SC 29204	SC16-E055-094	259,790	10
04	South Carolina State Agency, P.O. Box 7008, Columbia, SC 29204	SC16-E055-095	244,500	10
04	South Carolina State Agency, P.O. Box 7008, Columbia, SC 29204	SC16-E055-097	156,480	6
04	South Carolina State Agency, P.O. Box 7008, Columbia, SC 29204	SC16-E055-098	119,935	5
04	Wilmington Housing Authority, P.O. Box 899, Wilmington, NC 28402	NC19-E001-008	336,840	13
04	Raleigh Housing Authority, P.O. Box 28007, Raleigh, NC 27611	NC19-E002-016	735,150	30
04	Charlotte Housing Authority, P.O. Box 36795, Charlotte, NC 28236	NC19-E003-020	653,040	24
04	Highpoint Housing Authority, P.O. Box 1779, High Point, NC 27261	NC19-E006-011	212,940	7
04	Asheville Housing Authority, P.O. Box 1898, Asheville, NC 28802	NC19-E007-013	592,320	24
04	Fayetteville Housing Authority, P.O. Box 2349, Fayetteville, NC 28302	NC19-E009-017	167,940	6
04	Greensboro Housing Authority, P.O. Box 21287, Greensboro, NC 27420	NC19-E011-013	240,280	8
04	Winston-Salem Housing Authority, 901 Cleveland Avenue, NE., Winston-Salem, NC 27101	NC19-E012-045	394,290	15
04	Laurinburg Housing Authority, P.O. Box 1437, Laurinburg, NC 28352	NC19-EO18-003	416,785	20
04	Sanford Housing Authority, P.O. Box 636, Sanford, NC 27330	NC19-EO35-007	477,780	21
04	Hickory Housing Authority, P.O. Box 2927, Hickory, NC 28603	NC19-EO56-004	318,060	13
04	Gastonia Housing Authority. P.O. Box 2398, Gastonia, NC 28053	NC19-EO57-009	902,820	35
04	Statesville Housing Authority, P.O. Box 187, Statesville, NC 28677	NC19-EO72-006	398,590	18
04	Asheboro Housing Authority, 3380 West Wainman Avenue, Asheboro, NC 27203	NC19-EO81-012	497,300	25
04	Roanoke-Chowan Housing Authority, P.O. Box 516, Gaston, NC 27832	NC19-E118-010	963,175	45
04	North Carolina Comm. of Indian Affairs, 325 North Salisbury Street, Raleigh, NC 27611	NC19-E133-011	503,280	25
04	Nash-Edgecombe Housing Authority, P.O. Box 2346, Rocky Mount, NC 27802	NC19-E137-011	596,940	28
04	Western Carolina Housing Authority,. P.O. Box 685, Hendersonville, NC 28793	NC19-E140-008	272,725	15
04	Economic Improvement Council, P.O. Box 549, Edenton, NC 27932	NC19-E145-025	937,200	35
04	Brunswick County Housing Authority, P.O. Box 9, Bolivia, NC 28422	NC19-E147-011	428,910	20
04	Sandhills Cap, P.O. Box 937, Carthage, NC 28327	NC19-E149-008	237,225	15
04	Mountain Projects Housing Authority, Route 1 Box 732, Waynesboro, NC 28786	NC19-E152-010	823,340	41
04	Franklin-Vance-Warren Counties Hsg. Authority, P.O. Box 1453, Henderson, NC 27536	NC19-E155-005	601,605	20
04	Franklin-Vance-Warren Counties Housing Authority, P.O. Box 1453, Henderson, NC 27536	NC19-E155-006	476,585	25

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SECTION 8 RENTAL CERTIFICATES FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 882 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
04	Hartnett County Housing Authority, P.O. Box 1239, Lillington, NC 27546	NC19-E156-007	949,500	45
04	Northwest Regional Housing Authority, P.O. Box 2570, Boone, NC 28607	NC19-E167-011	1,230,625	58
04	TN Valley Regional Housing Authority, P.O. Box 1329, Corinth, MS 38834	MS26-E006-029	292,860	20
04	MS Regional Housing Authority II, P.O. Box 486, Oxford, MS 38655	NMS26-E016-006	423,650	25
04	MS Regional Housing Authority IV, P.O. Box 2249, Columbus, MS 39704	MS26-E019-038	204,550	10
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS-E040-032	630,835	36
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS-E040-033	540,075	24
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-E040-034	243,505	10
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-E040-035	773,440	51
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-E040-038	363,115	23
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-E040-039	875,365	45
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-E057-015	429,555	25
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-E058-034	422,485	13
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-E058-035	599,755	22
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-E058-036	207,480	10
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-E058-037	101,805	5
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-E058-038	195,910	10
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-E058-044	267,856	18
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-E058-045	392,345	17
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-E0128-015	184,910	9
04	North Delta Housing Authority, P.O. Box 1153, Clarksdale, MS 38614	MS26-E128-016	529,205	24
04	Orlando Housing Authority, 300 Reeves Court, Orlando, FL 32804	FL29-E004-012	936,750	39
04	Lakeland Housing Authority, P.O. Box 1009, Lakeland, FL 33802	FL29-E011-007	271,590	11
04	Northwest Florida Regional Housing Authority, P.O. Box 218, Graceville, FL 32440	FL29-E015-001	375,720	19
04	Northwest Florida Region Housing Authority, P.O. Box 218, Graceville, FL 32440	FL29-E015-002	94,200	5
04	Northwest Florida Region Housing Authority, P.O. Box 218, Graceville, FL 32440	FL29-E015-003	188,400	10
04	Brevard County Housing Authority, P.O. Box 540338, Merritt Island, FL 32954	FL29-E020-010	1,236,300	45
04	New Smyrna Beach Housing Authority, P.O. Box 666, New Smyrna Beach, FL 32070	FL29-E022-003	208,850	8
04	Plant City Housing Authority, 1306 Larrick Lane, Plant City, FL 33385	FL29-E034-008	1,350,980	44
04	Pinellas County Housing Authority, 209 South Garden Avenue, Clearwater, FL 34616	FL29-E062-020	282,250	10
04	Hialeah Housing Authority, 70 East 7th Street, Hialeah, FL 33010	FL29-E068-013	900,080	30
04	Deland Housing Authority, 300 Sunflower Circle, Deland, FL 32724	FL29-E078-006	595,775	20
04	Tallahassee Housing Authority, 2940 Grady Road, Tallahassee, FL 32570	FL29-E073-015	806,040	27
04	Clearwater Housing Authority, P.O. Box 960, Clearwater, FL 34617	FL29-E075-019	1,032,480	36
04	Broward County Housing Authority, 1773 North State Road 7, Lauderhill, FL 33313	FL29-E079-016	3,712,880	97
04	Palm Beach County Housing Authority, 3432 West 45th Street, West Palm Beach, FL 33407	FL29-E080-017	916,850	25
04	Deerfield Beach Housing Authority, 1425 Northwest First Terrace, Deerfield Beach, FL 33441	FL29-E081-003	799,820	20
04	Gainesville Housing Authority, P.O. Box 1466, Gainesville, FL 32602	FL29-E088-012	918,960	33
04	Hillsborough Housing Authority, 6260 Bay Plaza Boulevard, Tampa, FL 33619	FL29-E089-016	850,815	29
04	Lee County BCC Housing Authority, P.O. Box 398, Fort Myers, FL 33902	FL29-E090-011	743,100	20
04	Pensacola Housing Authority, P.O. Box 12910, Pensacola, FL 32521	FL29-E092-011	436,150	18
04	Santa Rosa County/Milton Housing Authority, 1498 Byrom Street, Milton, FL 32570	FL29-E097-011	336,280	10
04	Baker County Housing Authority, P.O. Box 1111, MacClenny, FL 32063	FL29-E102-007	480,950	22
04	Pasco County Housing Authority, 507 Acorn Circle, Dade City, FL 33525	FL29-E104-018	373,070	12
04	Haines City Housing Authority, P.O. Box 1507, , Haines City, FL 33845	FL29-E107-006	351,075	14
04	Washington County Housing Authority, 301 North Oklahoma Street, Bonifay, FL 32425	FL29-E109-006	187,105	10
04	Walton County Housing Authority, P.O. Box 1258, Defuniak Springs, FL 32433	FL29-E110-010	574,920	22
04	Volusia County Housing Authority, 123 West Indiana Avenue, Deland, FL 32720	FL29-E113-006	658,536	22
04	Hendry County Housing Authority, P.O. Box 1760, LaBelle, FL 33935	FL29-E123-002	199,020	8
04	Hollywood Housing Authority, 7300 North Davie Road, Hollywood, FL 33024	FL29-E136-008	1,499,940	43
04	Hernando County Housing Authority, 8055 Kennedy Boulevard, Brooksville, FL 34601	FL29-E137-008	616,900	20
04	Polk County Housing Authority, P.O. Box 589, Bartow, FL 33830	FL29-E143-002	594,190	20
04	Citrus County Housing Authority, P.O. Box 310, Lecanto, FL 32661	FL29-E147-001	672,740	39
04	Somerset Housing Authority, P.O. Box 449, Somerset, KY 42501	KY36-E008-006	490,560	25
04	Hopkinsville Housing Authority, P.O. Box 437, Hopkinsville, KY 42241	KY36-E011-018	761,980	28
04	Jefferson County Housing Authority, 300 York Street, Louisville, KY 40203	KY36-E105-020	470,625	23
04	Louisville Housing Authority, 745 West Main Street, Louisville, KY 40202	KY36-E131-014	906,185	45
04	Covington Housing Authority, 638 Madison Avenue, Covington, KY 41011	KY36-E133-010	1,030,060	43
04	Kentucky Housing Corporation, Louisville Road, Frankfort, KY 40601	KY36-E134-075	199,270	10
04	Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, KY 40601	KY36-E134-076	883,320	37
04	Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, KY 40601	KY36-E134-078	667,800	25
04	Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, KY 40601	KY36-E134-080	175,055	10
04	Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, KY 40601	KY36-E134-081	250,135	10
04	Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, KY 40601	KY36-E134-083	221,375	12
04	Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, KY 40601	KY36-E134-089	944,629	30
04	Breckinridge County Housing Authority, P.O. Box 227, Hardinsburg, KY 40143	KY36-E145-006	647,660	32
04	Barbourville Housing Authority, P.O. Box 84, Barbourville, KY 40906	KY36-E150-008	171,720	7
04	Cumberland Valley Housing Authority, P.O. Box 806, Barbourville, KY 40906	KY36-E160-011	545,170	25
04	Lake Cumberland Housing Authority, P.O. Box 1570, Russell Springs, KY 42642	KY36-E162-011	861,980	44
04	Glasgow Housing Authority, P.O. Box 473, Glasgow, KY 42141	KY36-E173-006	607,335	32
04	Crossville Housing Authority, 202 Irwin Avenue, Crossville, TN 38557	TN37-E042-002	743,050	50
04	Sethra Housing Authority, P.O. Box 805, Dunlap, TN 37327	TN37-E117-003	755,930	33
04	Sethra Housing Authority, P.O. Box 805, Dunlap, TN 37327	TN37-E117-004	1,380,290	50
04	Kingsport Housing Authority, P.O. Box 44, Kingsport, TN 37662	TN37-E008-013	431,000	25
04	Jackson Housing Authority, P.O. Box 3166, Jackson, TN 38301	TN40-E007-013	513,800	20
04	Brownsville Housing Authority, P.O. Box 194, Brownsville, TN 38012	TN40-E013-001	772,300	50
04	Tennessee Housing Development Agency, 401 Church Street, Nashville, TN 37219	TN40-E112-004	1,522,900	60

SECTION 8 RENTAL CERTIFICATES FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 882 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
04	Tennessee Housing Development Agency, 401 Church Street, Nashville, TN 37219	TN40-E112-025	384,855	18
04	Metropolitan Development & Housing Agency, P.O. V Box 846, Nashville, TN 37202	TN43-E005-015	1,531,550	50
04	Murfreesboro Housing Authority, 318 Lokey, Murfreesboro, TN 37130	TN43-E020-007	507,600	15
04	Tennessee Housing Development Agency, 401 Church Street, Nashville, TN 37219	TN43-E112-033	80,950	5
04	Tennessee Housing Development Agency, 401 Church Street, Nashville, TN 37219	TN43-E112-035	202,840	10
04	Tennessee Housing Development Agency, 401 Church Street, Nashville, TN 37219	TN43-E112-036	77,305	5
04	Tennessee Housing Development Agency, 401 Church Street, Nashville, TN 37219	TN43-E112-037	725,300	35
04	Tennessee Housing Development Agency, 401 Church Street, Nashville, TN 37219	TN43-E112-038	201,655	10
04	Tennessee Housing Development Agency, 401 Church Street, Nashville, TN 37219	TN43-E112-039	207,950	10
04	Moca Housing Authority, P.O. Box 163, Moca, PR 00716	RQ46-E010-003	249,000	10
04	Dorado Housing Authority, P.O. Box 588, Dorado, PR 00646	RQ46-E015-006	565,800	18
04	Cayey Housing Authority, P.O. Box 1365, Cayey, PR 00633	RQ46-E018-006	105,600	4
04	Toa Baja Housing Authority, P.O. Box M, Toa Baja, PR 00951	RQ46-E022-007	252,070	8
04	Manati Housing Authority, P.O. Box 367, Manati, PR 00701	RQ46-E028-005	255,300	8
04	Utuado Housing Authority, P.O. Box 190, Utuado, PR 00761	RQ46-E033-004	494,400	24
04	San Lorenzo Housing Authority, P.O. Box K, San Lorenzo, PR 00754	RQ46-E037-005	512,400	18
04	Las Marias Housing Authority, P.O. Box 91, Las Marias, PR 00670	RQ46-E046-002	275,400	13
04	Sabana Grande Housing Authority, P.O. Box 356, Sabana Grande, PR 00743	RQ46-E048-005	238,800	7
04	Barceloneta Housing Authority, P.O. Box 277, Barceloneta, PR 00617	RQ46-E054-005	238,800	7
04	Cidra Housing Authority, P.O. Box Y, Cidra, PR 00739	RQ46-E062-005	1,009,800	37
04	Naranjito Housing Authority, P.O. Box 53, Naranjito, PR 00719	RQ46-E064-004	255,300	8
04	Naranjito Housing Authority, P.O. Box 53, Naranjito, PR 00719	RQ46-E064-005	590,700	18
04	Isabela Housing Authority, P.O. Box 507, Isabela, PR 00662	RQ46-E066-002	163,500	7
04	Salinas Housing Authority, P.O. Box I, Salinas, PR 00751	RQ46-E069-003	186,905	9
04	Aguas Buenas Housing Authority, P.O. Box 128, Aguas Buenas, PR 00703	RQ46-E082-003	520,500	18
04	Virgin Islands Housing Authority, P.O. Box 7668, Charlotte, VI 00801	RQ46-E001-009	559,860	14
05	Chicago Housing Authority, 22 West Madison Street, Chicago, IL 60602	IL06-E002-036	25,584,870	533
5	Danville Housing Authority, 611 North Oak Street, P.O. Box 312, Danville, IL 61832-0312	IL06-E011-012	1,241,625	50
5	Decatur Housing Authority, 1808 East Locust Street, Decatur, IL 62521	IL06-E012-013	549,480	21
5	madison County Housing Authority, 1609 Olive Street, Collinsville, IL 622347	IL06-E015-009	718,950	25
5	Rockford Housing Authority, 330 Fifteenth Avenue, Rockford, IL 61108	IL06-E022-014	1,223,895	31
5	Vermilion County Housing Authority, South Chicago Street, Rossville, IL 60963	IL06-E036-002	776,800	30
5	Montgomery County Housing Authority, P.O. Box 591, 100 Shelbyville Rd., Hillsboro, IL 62049	IL06-E037-003	1,443,600	50
5	City of Bloomington Housing Authority, 104 East Wood Street, Bloomington, IL 61701-6768	IL06-E051-008	674,425	25
5	Lake County Housing Authority, 33928 North Route 45, Grayslake, IL 60030	IL06-E056-018	200,880	4
5	Housing Authority of the County of Wayne, 303 North First Street, Fairfield, IL 62837	IL06-E088-002	348,625	20
5	Aurora Housing Authority, 1630 Plum Street, Aurora, IL 60506	IL06-E090-011	1,634,965	29
5	Cincinnati MHA, 16 West Central Parkway, Cincinnati, OH 45202	OH10-E004-022	1,680,550	58
5	Butler MHA, 4110 Hamilton.Middletown, Hamilton, OH 45012	OH10-E015-010	1,808,760	67
5	Clermont MHA, 65 South Market Street, Batavia, OH 45103	OH10-E038-014	1,119,195	33
5	Brown MHA, 200 South Green Street, Georgetown, OH 45121	OH10-E061-002	707,125	31
5	Youngstown MHA, 131 West Broad Main Street, Youngstown, OH 44503	OH12-E002-021	377,280	14
5	Cuyahoga MHA, 1441 West 25th Street, Cleveland, OH 44113	OH12-E003-037	3,010,075	86
5	Akron MHA, 180 West Cedar Street, Akron, OH 44307	OH12-E007-033	1,013,815	35
5	Trumbull MHA, 1977 Niles Road, SE., Warren, OH 44484	OH12-E008-014	235,350	8
5	Lorain MHA, 1730 Broadway, Lorain, OH 44052	OH12-E012-018	1,766,325	59
5	Jefferson MHA, 815 North Sixth Avenue, Steubenville, OH 43952	OH12-E014-006	273,480	11
5	Stark MHA, 1800 West Tuscarawas, Canton, OH 44708	OH12-E018-018	430,325	19
5	Lake MHA, 200 West Jackson Street, Painesville, OH 44077	OH12-E025-010	1,499,725	48
5	Columbiana MHA, 325 Moore Street, East Liverpool, OH 43920	OH12-E026-006	616,225	21
5	Portage MHA, 223 West Main Street, Ravena, OH 44266	OH12-E031-021	78,300	3
05	Tuscarawas MHA, 172 North Broadway, New Philadelphia, OH 44663	OH12-E063-006	$244,485	11
05	Harrison MHA, P.O. Box 146, Cadiz, OH 43907	OH12-E067-005	280,100	12
05	Henry MHA, P.O. Box 1029, Mansfield, OH 44901	OH12-E071-006	603,100	24
05	Williams MHA, P.O. Box 1029, Mansfield, OH 44901	OH12-E074-005	644,380	24
05	Springfield MHA, 437 East John Street, Springfield, OH 45505	OH16-E021-016	1,100,460	40
05	Springfield MHA, 437 East John Street, Springfield, OH 45505	OH16-E021-017	655,680	25
05	Cambridge MHA, P.O. Box 744, Cambridge, OH 43725	OH16-E033-12	786,550	30
05	Licking MHA, P.O. Box 1029, Mansfield, OH 44901	OH16-E043-010	821,620	31
05	Fayette MHA, 101 East East Street, Washington Ch., OH	OH16-E056-001	705,345	30
05	Pike MHA, 2626 Shyville Road, Piketon, OH 45661	OH16-E060-012	813,600	30
05	Noble MHA, P.O. Box 744, Cambridge, OH 43725	OH16-E069-002	359,025	15
05	Logan County MHA, 116 North Everett Street, Bellefontaine, OH 43311	OH16-E072-006	370,925	15
05	City of Marietta Housing authority, 301 Putnam Street, Marietta, OH 45750	OH16-E077-003	811,610	31
05	Delaware Housing Authority, P.O. Box 1292, Delaware, OH 43015	OH16-E079-002	821,620	31
05	Dearborn Housing Commission, 13615 Michigan Avenue, Dearborn, MI 48126-3586	MI26-E003-005	180,745	10
05	Pontiac Housing Commission, 132 Franklin Boulevard, Pontiac, MI 48341	MI26-E005-011	1,174,280	47
05	Flint Housing Commission, 3820 Richfield Road, Flint, MI 48506-2616	MI26-E009-015	588,670	25
05	Ypsilanti Housing Commission, 601 Armstrong Drive, Ypsilanti, MI 48197-5224	MI26-E026-005	1,176,240	43
05	Inkster Housing Commission, 2000 Inkster Road, Inkster, MI 48141-1871	MI26-E027-006	687,155	25
05	Wayne Housing Commission, 34808 Sims, Wayne, MI 48178-1322	MI26-E029-002	117,610	6
05	Port Huron Housing Commission, 905 7th Street, Port Huron, MI 48060-5399	MI26-E039-006	1,340,945	50
05	Clinton Township Housing Commission, 34947 Village Road, Mt. Clemens, MI 48043-7692	MI26-E040-003	727,410	28
05	East Detroit Housing Commission, 15701 East Nine Mile Road, East Detroit, MI 48021-0000	MI26-E044-004	274,735	15
05	Plymouth Housing Commission, 1160 Sheridan, Plymouth, MI 48170-1561	MI26-E045-007	1,345,130	50
05	Lincoln Park Housing Commission, 1355 Southfield Road, Lincoln, MI 48146	MI26-E051-007	1,202,625	50
05	Livonia Housing Commission, 19300 Purlingbrook, Livonia, MI 48152-1902	MI26-E055-011	754,160	32

SECTION 8 RENTAL CERTIFICATES FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 882 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
05	Ann Arbor Commission, 727 Miller, Ann Arbor, MI 48104-3351	MI26-E084-012	610,345	31
05	Ferndale Housing Commission, 415 Withington, Ferndale, MI 48220	MI26-E096-009	797,690	30
05	Redford Housing Commission, 12121 Hemingway, Redford, MI 48239	MI26-E141-009	175,570	10
05	Battle Creek Housing Commission, 250 Champion Street, Grand Rapids, MI 49017	MI33-E035-006	670,835	28
05	Jackson Housing Commission, 301 Steward Avenue, Jackson, MI 49201	MI33-E038-002	984,755	29
05	Lansing Housing Commission, 310 Seymour Avenue, Lansing, MI 48933	MI33-E058-006	613,515	25
05	St. Louis Housing Commission, 306 S. Delaware, P.O. Box 115, St. Louis, MI 48880	MI33-E061-003	1,431,600	50
05	Hancock Housing Commission, 1401 Quincy Street, Hancock, MI 49930	MI33-E063-002	85,410	6
05	Grand Rapids Housing Commission, 1420 Fuller SE., Grand Rapids, MI 49507	MI33-E073-016	1,167,600	40
05	Traverse City Housing Commission, 150 Fine Street, Grand Rapids, MI 49684	MI33-E080-001	1,131,940	50
05	Munising Housing Commission, 200 City Park Drive, Munising, MI 49862	MI33-E094-002	177,740	10
05	Elk Rapids Housing Commission, 701 Chippewa, Elk Rapids, MI 49629	MI33-E116-001	557,790	25
05	Alma Housing Commission, 423 Gratiot Avenue, Alma, MI 48801	MI33-E121-001	635,940	25
05	Montcalm County Housing Commission, 120 Mulberry S., Box 249, Howard City, MI 49329	MI33-E186-002	660,770	30
05	Anderson Housing Authority, 528 West 11th Street, Anderson, IN 46016	IN36-E006-016	1,430,410	57
05	Kokomo Housing Authority, 210 East Taylor Street, Kokomo, IN 46901	IN36-E007-012	902,520	36
05	South Bend Housing Authority, P.O. Box 11057, South Bend, IN 46634-0057	IN36-E015-012	1,463,820	59
05	Tell City Housing Authority, 1648 10th Street, Tell City, IN 47586	IN36-E018-004	353,845	18
05	Michigan City Housing Authority, 621 East Michigan Boulevard, Michigan City, IN 46360	IN36-E019-005	673,440	25
05	Bloomington Housing Authority, 1007 North Summit Street, Bloomington, IN 47402	IN36-E022-015	611,660	23
05	Elkhart Housing Authority, 1396 Benham Avenue, Elkhart, IN 46516	IN36-E026-011	353,820	16
05	Sullivan Housing Authority, 200 North Court Street, Sullivan, IN 47882	IN36-E-034-001	553,435	25
05	Mt. Vernon Housing Authority, 1500 Jefferson Drive, Mt. Vernon, IN 47620	IN36-E037-005	1,378,200	50
05	Seymour Housing Authority, Post Office Box 822, Seymour, IN 47274	IN36-E056-009	367,080	15
05	LaFayette Housing Authority, 911 Main Street, LaFayette, IN 47902	IN36-E071-011	765,920	28
05	Department of Family and Social Services, 150 West Market Street, Indianapolis, IN 46206	IN36-E072-066	350,986	29
05	Department of Family and Social Services, 150 West Market Street, Indianapolis, IN 46206	IN36-E072-068	296,055	29
05	Department of Family and Social Services, 150 West Market Street, Indianapolis, IN 46206	IN36-E072-070	521,625	33
05	Fayette City Housing Authority, 812 North Grand Avenue, Connersville, IN 47331	IN36-E073-008	120,980	6
05	Union City Housing Authority, 115 North Columbia Street, Union City, IN 47390	IN36-E086-004	370,260	19
05	Greencastle Housing Authority, 620 Tennessee Street, Greencastle, IN 46135	IN36-E094-005	760,970	30
05	Milwaukee Housing Authority, 809 North Broadway, Milwaukee, WI 53202	WI39-E002-020	2,402,350	67
05	Madison Community Development Agency, P.O. Box 1785, Madison, WI 53701	WI39-E003-009	1,494,630	66
05	Antigo Housing Authority, 535 Third Avenue, Antigo, WI 54409	WI39-E085-003	1,004,400	50
05	City of Waukesha Housing Authority, 120 Corrina Boulevard, Waukesha, WI 53186	WI39-E142-010	599,075	27
05	Dunn County Housing Authority, Dunn County Courthouse, Menomonie, WI 54751	WI39-E160-001	537,455	25
05	Kenosha Housing Authority, 625 52nd Street, Kenosha, WI 53140	WI39-E195-005	996,245	32
05	Eau Claire Housing Authority, Call Box 5148, Eau Claire, WI 54701	WI39-E207-010	435,370	23
05	Walworth County Housing Authority, P.O. Box 1007, Elkhorn, WI 53121	WI39-E244-008	1,003,075	50
05	Richland County Housing Authority, P.O. Box 184, Richland Center, WI 53581	WI39-E256-002	856,750	50
05	Waukesha County Housing Authority, 120 Corrina Boulevard, Waukesha, WI 53186	WI39-E261-001	599,075	27
05	St. Paul HRA, 413 Wacouta Street, St. Paul, MN 55101	MN46-E001-019	3,039,550	86
05	Duluth HRA, 222 East 2nd Street, Box 16900, Duluth, MN 55816-0900	MN46-E003-011	869,170	38
05	Worthington HRA, 819 Tenth Street, Worthington, MN 56187	MN46-E034-007	567,545	30
05	Aitkin HRA, 215 Third Street Southeast, Aitkin, MN 56431	MN46-E037-001	657,490	31
05	Mankato HRA, 202 East Jackson Street, Mankato, MN 56001	MN46-E063-007	729,310	30
05	Cambridge HRA, 121 South Fern, Cambridge, MN 55008	MN46-E067-001	717,440	22
05	Austin HRA, 200 First Avenue North, Austin, MN 55912	MN46-E085-007	657,975	30
05	Metro Council HRA, 230 East Fifth Street, St. Paul, MN 55101	MN46-E163-021	1,268,500	41
05	Swift County HRA, P.O. Box 266, Benson, MN 56215	MN46-E166-006	457,340	23
05	Kandiyohi County HRA, Box 1359, Willmar, MN 56201	MN46-E168-007	235,685	10
05	Stearns County HRA, 619 Mall Germaine, Suite 212, St. Cloud, MN 56301	MN46-E172-006	319,130	14
05	Morrison County HRA, Morrison County Courthouse, Little Falls, MN 56345	MN46-E179-006	670,665	32
05	Douglas County HRA, 115 Third Avenue West, Alexandria, MN 56308	MN46-E192-010	612,015	31
06	Albuquerque HA, P.O. Box 1293, Albuquerque, NM 87103	NM16-E001-014	580,440	19
06	Alamogordo HA, P.O. Box 336, Alamogordo, NM 88310	NM16-E004-002	512,640	20
06	Santa Fe Co. HA, 52 Camino De Jacobo, Santa Fe, NM 87501	NM16-E050-008	183,605	7
06	Bernalillo Co. HA, 620 Lomas Blvd, NW., Albuquerque, NM 87102	NM16-E057-006	536,320	15
06	Region VI HA, P.O. Box 2303, Roswell, NM 88201	NM16-E063-011	990,900	41
06	Region VI HA, Curry Co. Courthouse, Clovis, NM 88101	NM16-E064-008	425,515	19
06	Mountainair HA, P.O. Box 272, Mountainair, NM 87036	NM16-E069-005	461,430	20
06	Los Lunas HA, P.O. Box 1209, Los Lunas, NM 87031	NM16-E070-006	230,520	10
06	El Paso HA, 1600 Montana Ave., El Paso, TX 79902	TX16-E003-015	1,026,550	35
06	Dallas HA, 2525 Lucas Dr., Dallas, TX 75219	TX16-E008-013	1,472,400	41
06	Waco HA, P.O. Box 978, Waco, TX 76703	TX16-E010-016	1,265,600	50
06	Quanah HA, P.O. Box 208, Quanah, TX 79252	TX16-E075-008	347,300	22
06	Plano HA, 1321 Ave. G, Plano, TX 75074	TX16-E128-004	697,735	26
06	Brady HA, P.O. Box 28, Brady, TX 76825	TX16-E251-006	470,400	21
06	Alto HA, Route 1, Box 309, Alto, TX 75925	TX16-E272-003	221,880	10
06	Alpine HA, P.O. Box 1274, Alpine, TX 79011	TX16-E284-004	415,320	23
06	Tarrant Co. HA, 1501 Merrimac Cir., Forth Worth, TX 76107	TX16-E431-009	960,200	27
06	Arlington HA, 401 W. Sanford St., #2600, Arlington, TX 76011	TX16-E433-014	481,860	17
06	Anthony HA, Drawer 1740, Anthony, TX 88021	TX16-E439-008	429,360	17
06	Odessa HA, P.O. Drawer 154, Odessa, TX 79760	TX16-E455-012	1,199,700	31
06	City of Longview, P.O. Box 1952, Longview, TX 75606	TX16-E459-010	339,660	12
06	Amarillo Comm. Dev. Dept., P.O. Box 1971, Amarillo, TX 79186	TX16-E472-011	431,160	17
06	City of Terrell, P.O. Box 310, Terrell, TX 75160	TX16-E483-007	376,080	11

SECTION 8 RENTAL CERTIFICATES FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 882 and Notice of Fund Availability, 56 FR 24280]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
06	Wichita Falls HA, P.O. Box 1431, Wichita Falls, TX 76307	TX16-E496-009	470,810	19
06	Greenville HA, P.O. Box 826, Greenville, TX 75403-0826	TX16-E522-009	172,040	8
06	Tex. Dept. of Comm. Affairs, P.O. Box 13166, Austin, TX 78711-3166	TX16-E527-027	277,200	14
06	Tex. Dept. of Comm. Affairs, P.O. Box 13166, Austin, TX 78711-3166	TX16-E527-028	600,060	27
06	City of Lamesa, 310 S. Main, Lamesa, TX 79331-6328	TX16-E535-007	317,880	15
06	Hale Co. HA, P.O. Box 99, Plainview, TX 79072	TX16-E537-007	479,940	22
06	Ralls HA, P.O. Box 904, Ralls, TX 79357	TX16-E546-003	518,820	23
06	City of Grand Prairie, P.O. Box 531167, Grand Prairie, TX 75053	TX16-E557-001	484,060	15
06	Dallas Co. Comm. Court, 411 Elm St., Dallas, TX 75202-3301	TX16-E559-001	842,880	27
06	West Cen. Tex. Cog, P.O. Box 3195, Abilene, TX 79604-3195	TX16-E578-003	770,820	33
06	Houston Housing Authority, P.O. Box 2971, Houston, TX 77252-2971	TX24-E005-018	4,255,560	139
06	Port Arthur Housing Authority, P.O. Box 2295, Port Author, TX 77643	TX24-E034-009	1,144,975	45
06	Bay City Housing Authority, 3012 Sycamore, Bay City, TX 77414	TX24-E035-008	790,960	30
06	Brazos Valley Development Council, P.O. Drawer 4128, Bryan, TX 77805-4128	TX24-E526-055	982,455	27
06	Brazos Valley Development Council, P.O. Drawer 4128, Bryan, TX 77805-4128	TX24-E526-056	185,700	5
06	Brazos Valley Development Council, P.O. Drawer 4128, Bryan, TX 77805-4128	TX24-E526-057	38,170	2
06	Brazos Valley Development Council, P.O. Drawer 4128, Bryan, TX 77805-4128	TX24-E526-058	55,990	3
06	Brazos Valley Development Council, P.O. Drawer 4128, Bryan, TX 77805-4128	TX24-E526-059	59,710	3
06	Brazos Valley Development Council, P.O. Drawer 4128, Bryan, TX 77805-4128	TX24-E526-060	38,170	2
06	Brazos Valley Development Council, P.O. Drawer 4128, Bryan, TX 77805-4128	TX24-E526-061	65,820	3
06	North Little Rock HA, Box 516, North Little Rock, AR 72115	AR37-E002-011	100,290	4
06	Little Rock HA, 1000 Wolfe Street, Little Rock, AR 72202	AR37-E004-014	360,500	13
06	Northwest Regional HA, Box 699, Harrison, AR 72601	AR37-E010-015	183,320	11
06	Camden HA, P.O. Box 39, Camden, AR 71701	AR37-E016-005	106,720	6
06	Searcy HA, 501 South Fir Street, Searcy, AR 72143	AR37-E035-008	177,840	10
06	Wynne HA, P.O. Box 552, Wynne, AR 72396	AR37-E039-007	174,030	9
06	Pike County HA, Box 241, Murfreesboro, AR 71958	AR37-E045-003	193,060	11
06	Polk County HA, 1107 Morrow Avenue, Mena, AR 71953	AR37-E117-005	436,380	25
06	Paragould HA, P.O. Box 137, Paragould, Ar 72450	AR37-E121-009	157,740	9
06	Jonesboro HA, 600 Alpine, Jonesboro, AR 72401	AR37-E131-011	163,670	7
06	Lake Village HA, P.O. Box 786, Lake Village, AR 71653	AR37-E152-005	78,355	4
06	Siloam Springs HA, Box 280, Siloam Springs, AR 72761	AR37-E163-012	187,945	11
06	Lawrence County PHA, Box 225, Walnut Ridge, AR 72476	AR37-E177-006	145,795	8
06	Sebastian County PHA, 51 S. 6th St., Suite 200, Fort Smith, AR 72901	AR37-E182-011	814,555	34
06	Crawford County PFB, 11-A Pointer Trail W., Van Buren, AR 72956	AR37-E194-006	162,105	7
06	White River Reg. HA, Box 650, Melbourne, AR 72556	AR37-E197-042	427,680	25
06	Walnut Ridge PHA, Box 225, Walnut Ridge, AR 72476	AR37-E201-007	140,170	8
06	Hoxie PHA, Box 225, Walnut Ridge, AR 72476	AR37-E202-004	144,780	8
06	St. Francis County HA, Box 310, Forrest City, AR 72335	AR37-E224-006	183,530	10
06	Magnolia HA, Box 1863, Magnolia, AR 71753	AR37-E228-004	127,155	9
06	Desha County PHA, P.O. Box 725, McGehee, AR 71654	AR37-E229-004	91,945	5
06	Dewitt PHA, 120 Court Square, Dewitt, AR 72042	AR37-E236-004	152,300	8
06	Scott County PHA, P.O. Box 996, Waldron, AR 72958	AR37-E240-005	258,210	20
06	Dallas County HA, Box 1863, Magnolia, AR 71753	AR37-E249-002	96,525	7
06	Lafayette County HA, Box 1863, Magnolia, AR 71753	AR37-E250-002	117,960	7
06	Pulaski County HA, 201 S. Broadway, Little Rock, AR 72201	AR37-E252-010	190,500	6
06	New Orleans HA, 918 Carondelet Street, New Orleans, LA 70126	LA48-E001-018	1,855,800	60
06	Shreveport Housing Authority, 623 Jordan Street, Shreveport, LA 71101	LA48-E002-021	1,067,700	34
06	Lake Charles HA, P.O. Box 1206, Lake Charles, LA 70602-1206	LA48-E004-016	268,470	12
06	Monroe HA, P.O. Box 1194, Monroe, LA 71210	LA48-E006-016	196,695	9
06	Ascension Parish Police Jury, P.O. Box 351, Donaldsonville, LA 70346	LA48-E009-004	730,560	24
06	Kenner HA, 1013 31st Street, Kenner, LA 70065	LA48-E012-015	1,247,100	40
06	St. Landry Parish HA, P.O. Box 276, Washington, LA 70589	LA48-E067-010	393,750	25
06	Hammond HA, 421 West Coleman, Hammond, LA 70403	LA48-E104-007	398,850	20
06	Rapides Parish HA, 119 Boyce Gardens, Boyce, LA 71409	LA48-E129-007	147,620	8
06	Concordia Parish Police Jury, New Courthouse, Highway 54 W., Vidalia, LA 71373	LA48-E159-002	447,885	21
06	Ouachita Parish Police Jury, P.O. Box 3007, Monroe, LA 71210-300	LA48-E171-009	200,780	8
06	St. Bernard Parish Police Jury, 8201 W Judge Perez Drive, Chalmette, LA 70043	LA48-E187-003	1,247,100	40
06	Iberia Parish, 300 Iberia St., Suite 400, New Iberia, LA 70560-4587	LA48-E189-004	319,010	15
06	City of New Roads, 211 West Main Street, New Roads, LA 70760	LA48-E205-002	56,300	4
06	Lincoln Parish Police Jury, P.O. Box 979, Ruston, LA 71273	LA48-E212-008	262,200	13
06	Iberville Parish Police Jury, P.O. Box 389, Plaquemine, LA 70765-0389	LA48-E214-004	245,275	15
06	St. Mary Parish Police Jury, Parish Courthouse, Rm. 107, Franklin, LA 70538	LA48-E220-005	575,300	25
06	Bienville Parish Police Jury, P.O. Box 479, Arcadia, LA 71001	LA48-E241-003	262,200	13
06	Lafourche Parish Police Jury, P.O. Drawer 5548, Thibodaux, LA 70302	LA48-E253-001	234,000	9
06	Oklahoma City PHA, 1700 N.E. 4th St., Oklahoma City, OK 73117	OK56-E002-016	773,150	30
06	Chickasaw Nation IHA, 901 Country Club, Box 668, Ada, OK 74820	OK56-E047-026	360,160	20
06	Chickasaw Nation IHA, 901 Country Club, Box 668, Ada, OK 74820	OK56-E047-027	360,160	20
06	Chickasaw Nation IHA, 901 Country Club, Box 668, Ada, OK 74820	OK56-E047-028	352,110	20
06	Tulsa PHA, 415 E. Independence, Tulsa, OK 73145	OK56-E073-024	628,850	26
06	Shawnee PHA, P.O. Box 3427, Shawnee, OK 74802-3427	OK56-E095-011	674,115	30
06	Norman PHA, 700 N. Berry Rd., Norman, OK 73069	OK56-E139-007	482,375	25
06	Stillwater PHA, 807 Lowry S., Stillwater OK 74074	OK56-E146-010	1,052,935	50
06	Tecumseh PHA, 601 Leisure, Tecumseh, OK 74873	OK56-E148-002	355,650	16
06	Housing Authority of City of San Antonio, P.O. Drawer 1300, San Antonio, TX 78295	TX59-E006-020	1,447,200	40
06	Housing Authority of the City of Brownsville, P.O. Box 4420, Brownsville, TX 78523	TX59-E007-019	691,800	26
06	Housing Authority of Corpus Christi, P.O. Box 7019, Corpus Christi, TX 78467	TX59-E008-008	1,189,680	38

SECTION 8 RENTAL CERTIFICATES FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 882 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
06	Housing Authority of the City of Del Rio, P.O. Box 4060, Del Rio, TX 78841	TX59-E016-014	496,500	25
06	Housing Authority of the City of McAllen, 2301 Jasmine Ave., McAllen, TX 78501	TX59-E028-014	336,360	13
06	Housing Authority of the City of Edinburg, P.O. Box 295, Edinburg, TX 78540	TX59-E062-015	672,760	24
06	Housing Authority of the City of Harlingen, P.O. Box 1669, Harlingen, TX 78551	TX59-E065-010	181,880	8
06	Housing Authority of the City of Pharr, 211 W. Audrey, Pharr, TX 78577	TX59-E073-013	169,260	7
06	Housing Authority of the City of Sinton, P.O. Box 1302, Sinton, TX 78387	TX59-E174-005	499,980	15
06	Housing Autority of the City of Nixon, P.O. Box 447, Nixon, TX 78140	TX59-E175-003	126,720	5
06	Housing Authority of the City of Los Fresnos, P.O. Box 627, Los Fresnos, TX 78566	TX59-E206-008	88,335	3
06	Housing Authority of the City of Marble Falls, P.O. Box 668, Marble Falls, TX 78654	TX59-E263-002	112,245	7
06	Housing Authority of the City of New Braunfels, P.O. Box 310906, New Braunfels, TX 78131	TX59-E343-008	221,040	8
06	Housing Authority of the City of Schertz, 204 Schertz Parkway, Schertz, TX 78154	TX59-E350-007	593,280	17
06	Housing Authority of Starr County, P.O. Box 50, Rio Grande City, TX 78582	TX59-E398-010	617,400	30
06	Housing Authority of the City of Boerne, P.O. Box 1677, Boerne, TX 78006	TX59-E444-007	710,940	33
06	Housing Authority of the City of La Villa, C/O P.O. Box 425, Elsa, TX 78543	TX59-E446-005	24,180	1
06	Housing Authority of Bexar County, 1405 N. Main, Suite 240, San Antonio, TX 78212	TX59-E452-014	144,600	5
06	Housing Authority of the County of Hidalgo, 501 Jasmine, McAllen, TX 78501	TX59-E497-005	145,080	6
07	Iowa City Housing Authority, 410 E. Washington, Iowa City, IA 52240	IA05-E022-016	609,840	20
07	City of Cedar Rapids, 1215 1st St. SE., Cedar Rapids, IA 52401	IA05-E024-012	715,120	25
07	City of Ames, P.O. Box 811, Ames, IA 50010	IA05-E069-005	153,175	5
07	Fort Dodge, 700 S. 17th St., Fort Dodge, IA 50501	IA05-E107-012	722,025	37
07	SIRHA, 219 N. Pine St., Creston, IA 50801	IA05-E117-015	492,300	22
07	Warren County Low Rent HA, P.O. Box 456, Indianola, IA 50125	IA05-E120-006	999,535	45
07	New Hampton Municipal HA, P.O. Box 385, New Hampton, IA 50659	IA05-E121-004	202,205	10
07	Region XII Reg. HA, 108 W. 6th St., P.O. Box 663, Carroll, IA 51401	IA05-E122-013	832,480	39
07	EIRHA, P.O. Box 1140, 330 Nesler Center, Dubuque, IA 52001	IA05-E126-032	365,625	15
07	Upper Explorland RHA, 134 Greene St., Postville, IA 52162	IA05-E130-007	385,980	17
07	CIRHA, 1111 9th St., Ste. 240, Des Moines, IA 50314	IA05-E131-014	309,450	15
07	CIRHA, 1111 9th St., Ste. 240, Des Moines, IA 50314	IA05-E131-016	282,105	12
07	CIRHA, 1111 9th St., Ste. 240, Des Moines, IA 50314	IA05-E131-017	269,760	13
07	Region Seven Housing Authority, 35 N. 1st. St., Marshalltown, IA 50158	IA05-E136-002	665,795	25
07	Dodge City, 407 E. Bend St., Dodge City, KS 67801	KS16-E006-002	816,765	41
07	OLATHE, 100 West Santa Fe, Olathe, KS 66061-0768	KS16-E043-005	69,080	4
07	Lawrence, 1600 Haskell, Lawrence, KS 66044	KS16-E053-009	472,560	17
07	Junction City, 1202 W. Sixth, Junction City, KS 66441	KS16-E105-002	843,025	41
07	Dept. of Commerce, 400 SW. 8th St., Topeka, KS 66603	KS16-E156-005	410,360	14
07	SEK-CAP, Inc., P.O. Box 128, Girard, KS 66743-0325	KS16-E161-005	468,935	24
07	Johnson County, 9307 W. 74th St., Merriam, KS 66202	KS16-E162-004	355,340	14
07	Kansas City, 299 Paseo, Kansas City, MO 64106-2606	MO16-E002-031	951,110	42
07	St. Joseph, P.O. Box 1153, St. Joseph, MO 64501	MO16-E003-017	286,500	12
07	Lee's Summit, 111 South Grand, Lee's Summit, MO 64063-2699	MO16-E030-009	673,200	27
07	Chillicothe, 320 Park Land, Chillicothe, MO 64601-1549	MO16-E065-001	781,075	40
07	Maryville, Margaret Davison Complex, Maryville, MO 64468-2366	MO16-E072-004	182,195	10
07	Nevada, P.O. Box 541, Nevada, MO 64772-0541	MO16-E133-003	589,740	40
07	MDHC, 3770 Broadway, Kansas, City, MO 64106-2606	MO16-E195-006	1,197,840	41
07	Dallas County, 1451 E. Pythian St., Springfield, MO 65806-2931	MO16-E216-012	186,445	8
07	Dallas County, 1451 E. Pythian St., Springfield, MO 65806-2931	MO16-E216-013	471,805	23
07	Omaha Housing Authority, 540 South 27th St., Omaha, NE 68105	NE26-E001-021	701,170	22
07	Hall County HA, 915 Baumann Drive, Grand Island, NE 68803	NE26-E003-005	518,110	25
07	Crete HA, 1600 Grove Ave., Crete, NE 68333	NE26-E041-002	89,100	5
07	Cozad HA, 421 West 9th St., Cozad, NE 69130	NE26-E083-002	323,370	25
07	South Sioux City HA, 2120 Dakota Ave., Suite A, South Sioux City, NE 68776	NE26-E175-006	654,480	25
07	South Sioux City HA, 2120 Dakota Ave., Ste. A, South Sioux City, NE 68776	NE26-E175-007	324,560	12
07	Goldenrod Joint HA, P.O. Box 280, Wisner, NE 68791	NE26-E181-003	920,070	38
07	St. Louis County, 4100 Lindell Blvd., St. Louis, MO 63108	MO36-E001-021	1,147,245	33
07	St. Louis County, 8865 Natural Bridge, St. Louis, MO 63108	MO36-E004-026	1,413,860	41
07	Columbia, P.O. Box K, Columbia, MO 65205	MO36-E007-013	435,620	19
07	Sikeston, P.O. Box 829, Sikeston, MO 63801	MO36-E008-017	455,045	21
07	Oran, P.O. Drawer F, Oran, MO 63771	MO36-E060-006	179,630	6
07	Lincoln County, P.O. Box 470, Bowling Green, MO 63334	MO36-E199-034	653,895	22
07	Lincoln County, P.O. Box 470, Bowling Green, MO 63334	MO36-E199-035	596,845	29
07	St. Francois County, P.O. Box N, Flat River, MO 63601	MO36-E203-031	343,450	15
07	Franklin County, 304 Locust Street, Hillsboro, MO 63050	MO36-E205-022	355,815	13
07	Phelps County, 101 W. 10th Street, Rolla, MO 65401	MO36-E206-015	360,960	16
07	Ripley County, P.O. Box 1183, Poplar Bluff, MO 63901	MO36-E212-015	256,340	15
07	Stoddard County, P.O. Box 6, Bloomfield, MO 63825	MO36-E225-002	188,985	15
08	Hsg. Auth. City of Pueblo, 1414 N. Santa Fe Ave., Pueblo, CO 81003	C099-E002-021	172,625	5
08	Hsg. Auth. City of Colorado Springs, 30 S. Nevada Ave., #304, Colorado Springs, CO 80903	C099-E029-015	123,445	4
08	LaJunta Hsg. Auth., 315 E. Fifth Street, LaJunta, CO 81050	C099-E031-004	35,040	1
08	HSG. Auth. City of Loveland, 2105 Maple Drive, Loveland, CO 80538	C099-E034-011	801,775	25
08	Littleton Hsg. Auth., 5844 S. Datura Street, Littleton, CO 80120	C099-E036-011	795,125	25
08	Arvada Hsg. Auth., 8101 Ralston Rd., Arvada, CO 80002	C099-E050-015	279,295	8
08	Aurora Hsg. Auth., 10745 E. Kentucky Ave., Aurora, CO 80012	C099-E052-014	1,006,335	33
08	Sheridan Hsg. Auth., 4101 S. Federal Blvd., Englewood, CO 80010	C099-E057-011	527,055	19
08	Colo. Dept. of Institutions, 4131 S. Julian Way, Denver, CO 80236	C099-E074-027	179,910	6
08	Colo. Dept. of Institutions, 4131 S. Julian Way, Denver, CO 80236	C099-E074-028	326,765	13
08	Colo. Dept. of Institutions, 4131 S. Julian Way, Denver, CO 80236	C099-E074-029	154,455	7
08	Colo. Dept. of Institutions, 4131 S. Julian Way, Denver, CO 80236	C099-E074-031	202,035	9

SECTION 8 RENTAL CERTIFICATES FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 882 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
08	Colo. Dept. of Institutions, 4131 S. Julian Way, Denver, CO 80236	C099-E074-032	240,445	14
08	Colo. Dept. of Institutions, 4131 S. Julian Way, Denver, CO 80236	C099-E074-033	300,255	15
08	Colo. Dept. of Institutions, 4131 S. Julian Way, Denver, CO 80236	C099-E074-034	98,935	6
08	Colo. Division of Housing, 1313 Sherman St., #623, Denver, CO 80203	C099-E093-018	1,519,275	36
08	Helena Hsg. Auth., 812 Abbey Street, Helena, MT 59601	MT99-E004-004	944,655	25
08	Montana Dept. of Commerce, Capitol Station, Helena, MT 59620-0413	MT99-E032-036	375,885	14
08	Montana Dept. of Commerce, Capitol Station, Helena, MT 59620-0413	MT99-E032-037	1,381,435	44
08	Stutsman County Hsg. Auth., 217 First Ave., North, Jamestown, ND 58401	ND99-E011-004	441,100	20
08	Fargo Hsg. Auth., 101 S. Second St., Fargo, ND 58103	ND99-E014-004	636,220	29
08	Hsg. Auth. of Foster County, 55 Sixteenth Ave. South, Carrington, ND 58206	ND99-E028-003	269,040	12
08	North Dakota Finance Agency, 1600 E. Interstate Ave., Bismarck, ND 58502	ND99-E056-035	289,000	15
08	Sioux Falls Hsg. & Redevelopment, 224 N. Phillips Ave., Sioux Falls, SD 57102	SD99-E016-012	309,230	14
08	Aberdeen Hsg. & Redevelopment, 2222 Third Ave. Southeast, Aberdeen, SD 57401	SD99-E034-002	573,105	25
08	Pierre Hsg. & Redev., 301 W. Pleasant Drive, Pierre, SD 57501	SD99-E035-001	383,450	16
08	Meade County Hsg. & Redevelopment, 1220 Cedar Street, Sturgis, SD 57785	SD99-E047-002	411,880	18
08	Vermillion Hsg. & Redevelopment, P.O. Box 362, Vermillion, SD 57069	SD99-E055-002	478,000	25
08	Hsg. Auth. of County of Salt Lake, 1962 S. 200 East, Salt Lake City, UT 84115	UT99-E003-018	165,735	7
08	Hsg. Augh. City of Provo, 650 West 100 North, Provo, UT 84601	UT99-E007-011	557,525	25
08	Utah Piaute Tribal, 600 North 100 East, Cedar City, UT 84720	UT99-E010-001	172,465	5
08	St. George Hsg. Authority, 975 N. 1725 W., #101, St. George, UT 84770	UT99-E021-004	679,815	21
08	Weber County Hsg. Authority, 2650 Washington Blvd., #103, Ogden, UT 84401	UT99-E022-003	768,500	25
08	West Valley City Hsg. Auth., 3600 Constitution Blvd., West Valley City, UT 84119	UT99-E025-004	535,250	20
08	Hsg. Auth. City of Casper, 1985 E. "A" Street, Casper, WY 82601	WY99-E004-010	205,200	4
08	Wyoming Community Development Auth., P.O. Box 6588, Cheyenne, WY 82003	WY99-E017-006	1,001,650	33
09	Hawaii Housing Authority, P.O. Box 17907, Honolulu, HI 96817	HI10-E001-019	865,750	25
09	City and County of Honolulu, 650 S. King Street, Honolulu, HI 96813	HI10-E003-020	2,222,255	62
09	County of Maui, 200 S. High Street, Wailuka, HI 96793	HI10-E004-010	1,689,870	40
09	County of Kauai, 4193 Hardy Street, Lihue, HI 96766	HI10-E005-010	892,560	18
09	Area Hsg. Authority of the County of Ventura, 99 South Glenn Drive, Camarillo, CA 93010	CA14-E092-022	554,880	13
09	Hsg. Authority of the County of Los Angeles, 4800 Brooklyn Avenue, Los Angeles, CA 90022	CA16-E002-040	17,446,730	412
09	Hsg. Auth. of the County of Los Angeles, 4800 Brooklyn Avenue, Los Angeles, CA 90022	CA16-E002-041	6,655,990	160
09	Hsg. Authority of the City of Los Angeles, 515 Columbia Avenue, Los Angeles, CA 90017	CA16-E004-035	13,792,500	317
09	Hsg. Authority of the County of Wern, 525 Roberts Lane, Bakersfield, CA 93308-4799	CA16-E008-020	692,695	23
09	Hsg. Auth. of the County of San Bernardino, 1053 North "D" Street, San Bernardino, CA 92410	CA16-E019-024	1,648,190	46
09	Hsg. Authority of the County of Santa Barbara, 815 W. Ocean Ave., P.O. Box 397, Lompoc, CA 93436-0397.	CA16-E021-020	558,360	14
09	Housing Authority of the City of Needles, 908 Sycamore Drive, Needles, CA 92363	CA16-E022-001	626,940	19
09	Hsg. Authority of the County of Riverside, 5555 Arlington Avenue, Riverside, CA 92504	CA16-E027-030	2,264,520	49
09	Housing Authority of the County of Riverside, 5555 Arlington Avenue, Riverside, CA 92504-2506	CA16-E027-031	914,270	25
09	Hsg. Authority of the City of Oxnard; 1470 Colonia Road, Oxnard, CA 93030	CA16-E031-018	600,640	14
09	City of Oxnard Housing Authority, 1470 Colonia, Oxnard, CA 93030	CA16-E031-019	339,260	11
09	Housing Authority of San Buenaventura City, P.O. Box 1648, Ventura, CA 93002	CA16-E035-021	385,835	9
09	Housing Authority of the City of Calexico, 1006 East Fifth Street, Calexico, CA 92231	CA16-E039-013	473,570	12
09	Hsg. Auth. of the City of San Luis Obispo, P.O. Box 638, San Luis Obispo, CA 93406	CA16-E064-022	1,257,175	35
09	Long Beach Housing Authority, 333 W. Ocean Blvd., 7th Floor, Long Beach, CA 90802	CA16-E068-025	2,172,720	57
09	Hsg. Authority of the City of Santa Paula, P.O. Box 404, Santa Paula, CA 93061	CA16-E075-013	938,555	22
09	Hsg. Authority of the City of Santa Barbara, 808 Laguna Street, Santa Barbara, CA 93101	CA16-E076-012	485,055	15
09	Housing and Redevelopment Dir., 2965 Roosevelt St., Suite B, Carlsbad, CA 92008-2389	CA16-E077-013	1,088,615	29
09	Pasadena Community Development Commission, 87 N. Raymond Ave, Suite 900, Pasadena, CA 91103.	CA16-E079-023	710,390	17
09	Santa Ana Housing Authority, 500 W. Santa Ana Blvd, Ste. 400, Santa Ana, CA 92702	CA16-E093-022	319,750	6
09	Hsg. Authority of the County of Orange, 2043 North Broadway, Santa Ana, CA 92702-4048	CA16-E094-034	576,180	12
09	Hsg. Authority of the City of Garden Grove, P.O. Box 3070, Garden Grove, CA 92640	CA16-E102-022	314,450	6
09	Hsg. Authority of the City of Anaheim, 300 S. Harbor Blvd., Suite 600, Anaheim, CA 92805	CA16-E104-022	4,583,495	96
09	Anaheim Housing Authority, 300 S. Harbor Blvd., Suite 605, Anaheim, CA 92805	CA16-E104-024	275,100	6
09	Hsg. Authority of the City of Burbank, P.O. Box 7145, Burbank, CA 91510	CA16-E105-015	876,000	25
09	Housing Authority of Burbank, P.O. Box 7145, Burbank, CA 91510	CA16-E105-016	298,820	8
09	Hsg. Authority of the County of San Diego, 7917 Ostrow Street, San Diego, CA 92111-3694	CA16-E108-027	4,558,120	117
09	Culver City Public Housing Agency, P.O. Box 507, Culver City, CA 90232-0507	CA16-E110-013	354,020	6
09	Hsg. Authority of the City of Santa Monica, 1685 Main Street, Santa Monica, CA 90401	CA16-E111-015	824,490	21
09	Hsg. Authority of the City of Santa Monica, 1685 Main Street, Santa Monica, CA 90401	CA16-E111-016	422,525	12
09	Div. of Comm. Affairs, DHCD, (S. Luis Obispo Co.), P.O. Box 952054, Sacramento, CA 94252-2054.	CA16-E112-061	116,080	4
09	Div. of Comm. Affairs, DHCD, (Imperial Co.), P.O. Box 952054, Sacramento, CA 94252-2054	CA16-E112-062	86,200	4
09	Div. of Comm. Affairs, DHCD, (Los Angeles Co.), P.O. Box 952054, Sacramento, CA 94252-2054.	CA16-E112-063	445,765	12
09	Div. of Comm. Affairs, DHCD, (Los Angeles City), P.O. Box 952054, Sacramento, CA 94252-2054.	CA16-E112-064	235,495	6
09	Div. of Comm. Affairs, DHCD, (Orange Co.), P.O. Box 952054, Sacramento, CA 94252-2054	CA16-E112-065	85,540	2
09	Dept. of Housing and Community Development, P.O. Box 952054, Sacramento, CA 94252-2054	CA16-E112-066	282,135	10
09	Div. of Comm. Affairs, DHCD, (San Diego Co.), P.O. Box 952054, Sacramento, CA 94252-2054	CA16-E112-067	767,420	23
09	Div. of Comm. Affs., DHCD, Hsg. Ass'TCE. Program, P.O. Box 952054, Sacramento, CA 94252-2054.	CA16-E112-068	171,825	5
09	Hsg. Authority of the City of Glendale , 520 E. Broadway, Suite 302, Glendale, CA 91205-4912	CA16-E114-016	733,805	20
09	Comm. Dev. Commission, City of National City, 41 East 12th Street, Suite D, National City, CA 91950.	CA16-E116-011	1,458,195	36
09	Pico Rivera Hsg. Assistance Agency, 6615 S. Passons Blvd., Pico Rivera, CA 90660	CA16-E117-009	404,310	12

SECTION 8 RENTAL CERTIFICATES FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 882 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
09	Hsg. Authority of the City of Baldwin Park, 14403 East Pacific Avenue, Baldwin Park, CA 91706	CA16-E120-011	742,350	19
09	Hsg. Authority of the City of Baldwin Park, 14403 E. Pacific Avenue, Baldwin Park, CA 91706	CA16-E120-013	884,445	19
09	City of Torrance, 3031 Torrance Blvd. Torrance, CA 90503	CA16-E121-010	385,205	9
09	City of Pomona Housing Agency, P.O. Box 660, Pomona, CA 91769	CA16-E123-013	736,945	17
09	City of Oceanside Hsg. Dept., Nevada St. annex, 300 North Hill Street, Oceanside, CA 92054	CA16-E132-011	1,333,570	33
09	City of Lakewood Housing Authority, 5050 N. Clark Avenue, Lakewood, CA 90712	CA16-E135-003	337,870	8
09	City of Hawaiian Gardens Hsg. Authority, 21815 Pioneer Blvd., Hawaiian Gardens, CA 90716	CA16-E136-002	446,805	12
09	Paramount Housing Authority, 16400 Colorado Avenue, Paramount, CA 90723	CA16-E137-003	206,940	6
09	Housing Authority of the City of Lawndale, 1417 Burin Avenue, Lawndale, CA 90260	CA16-E138-003	385,090	10
09	Housing Authority of the City of Lomita, 24300 Narbonne Avenue, Lomita, CA 90717	CA16-E139-003	575,285	12
09	West Hollywood Housing Authority, 8611 Santa Monica Blvd., West Hollywood, CA 90069	CA16-E145-001	487,700	13
09	City of Tucson, 1501 N. Oracle Road, Apt. 122, Tucson, AZ 85726-7210	AZ20-E004-025	1,311,720	38
09	City of Mesa, 415 N. Pasadena, Mesa, AZ 85201-5916	AZ20-E005-015	826,150	22
09	City of South Tucson, 1713 S. Third Avenue, South Tucson, AZ 85713	AZ20-E025-006	405,855	14
09	City of Chandler, 99 N. Delaware Street, Chandler, AZ 85225	AZ20-E028-007	1,441,200	46
09	City of Tempe, P.O. Box 5002, Tempe, AZ 85280	AZ20-E031-015	530,335	15
09	Cochise County, 619 Melody Lane, Bisbee, AZ 85603	AZ20-E034-007	742,085	32
09	City of Yuma, 1350 W. Colorado Street, Yuma, AZ 85364	AZ20-E035-012	734,400	20
09	City of Bullhead City, P.O. Box 1048, Bullhead City, AZ 86430	AZ20-E044-002	645,485	20
09	Gila County, 1400 E. Ash, Globe, AZ 85501	AZ20-E045-002	135,535	5
09	Sacramento Housing and Redevelopment Agency, P.O. Box 1834, Sacramento, CA 95812	CA30-E005-020	2,266,070	54
09	Hsg. Authority of the County of San Joaquin, P.O. Box 447, Stockton, CA 95201	CA30-E024-011	487,255	19
09	Hsg. Authority of the County of Butte, 580 Vallombrosa Avenue, Chico, CA 95926	CA30-E043-017	830,455	35
09	Shasta County Housing Authority, 1670 Market Street, #300, Redding, CA 96001	CA30-E096-017	709,800	20
09	State of California, DHCD (Alpine Co.), P.O. Box 952054, Sacramento, CA 94252	CA30-E112-117	306,060	10
09	State of California, DHCD (Placer Co.), P.O. Box 952054, Sacramento, CA 94252	CA30-E112-118	414,840	10
09	State of California, DHCD (Tehama Co.), P.O. Box 952054, Sacramento, CA 94252	CA30-E112-121	558,335	25
09	Stanislaus County Housing Authority, 1701 Robertson Rd., P.O. Box 3958, Modesto, CA 95352-3958.	CA30-E026-020	2,494,805	85
09	San Francisco Housing Authority, 440 Turk Street, San Francisco, CA 94102	CA39-E001-020	7,632,525	171
09	San Francisco Housing Authority, 440 Turk Street, San Francisco, CA 94102	CA39-E001-021	3,069,420	52
09	Oakland Housing Authority, 1619 Harrison Street, Oakland, CA 94612	CA39-E003-032	2,456,990	45
09	Contra Costa Housing Authority, P.O. Box 2759, Martinez, CA 94552	CA39-E011-027	2,956,800	70
09	San Mateo County Housing Authority, 456 Peninsula Avenue, San Mateo, CA 94401	CA39-E014-016	3,186,660	50
09	San Mateo County Housing Authority, 456 Peninsula Avenue, San Mateo, CA 94401	CA39-E014-017	1,513,500	25
09	Merced County Housing Authority, 405 "U" Street, Merced, CA 95340	CA39-E023-016	887,340	34
09	Tulare County Housing Authority, P.O. Box 791, Visalia, CA 93279	CA39-E030-020	1,836,960	43
09	Monterey County Housing Authority, 123 Rico Street, Salinas, CA 93907	CA39-E033-024	2,052,420	49
09	Kings County Housing Authority, P.O. Box 355, Hanford, CA 93232	CA39-E053-009	582,425	25
09	Santa Clara County Housing Authority, 505 West Julian Street, San Jose, CA 95110	CA39-E056-018	3,693,620	63
09	Alameda County Housing Authority, 29800 Mission Blvd., Hayward, CA 94544	CA39-E067-023	1,201,310	31
09	Santa Cruz County Housing Authority, 2160 41st Avenue, Capitola, CA 95060-2060	CA39-E072-022	2,794,595	62
09	Mendocino County Housing Authority, 405 W. Perkins Street, Ukiah, CA 95482	CA39-E084-017	1,621,390	55
09	Sonoma County Housing Authority, 3033 Cleveland Avenue, Santa Rosa, CA 95403	CA39-E085-026	181,320	4
09	Las Vegas Housing Authority, 420 N. 10th St. P.O. Box 1897, Las Vegas, NV 89101	NV39-E002-017	371,806	11
09	Clark County Housing Authority, 5084 E. Flamingo Road, Las Vegas, NV 89122	NV39-E013-021	1,063,110	26
09	Nevada State Rural Housing Authority, 2100 California Street, Carson City, NV 89701	NV39-E021-014	1,947,600	60
10	Alaska State Housing Authority, P.O. Box 230329, Anchorage, AK 99523	AK06-E102-049	1,745,145	38
10	Boise City Housing Authority, 680 Cunningham Pl., Boise, ID 83702	ID16-E013-014	361,160	11
10	Southwestern Idaho Cooperative HA, 1108 W. Finch Drive, Nampa, ID 83651	ID16-E016-012	1,340,535	48
10	Idaho Housing Agency, P.O. Box 7899, Boise, ID 83707-1899	ID16-E020-033	2,221,525	83
10	Housing Authority of Clackamas County, 13930 S. Gain St., Oregon City, OR 97045	OR16-E001-015	698,085	20
10	Housing Authority of Portland, 135 Swash, Suite 400, Portland, OR 97204	OR16-E002-036	2,603,480	83
10	HA and Community Service Agency of Lane Cty., 177 Day Island Road, Eugene, OR 97401	OR16-E006-016	664,845	18
10	Housing Authority of the City of Salem, 360 Church St., Salem, OR 97301	OR16-E011-023	473,280	14
10	Housing Authority of Yamhill County, 414 N. Evans, McMinnville, OR 97128	OR16-E016-009	232,650	10
10	Klamath Housing Authority, P.O. Box 5110, Klamath Falls, OR 97601	OR16-E017-011	310,245	11
10	Linn-Benton Housing Authority, 1250 SE. Queen Avenue, Albany, OR 97321	OR16-E019-015	701,685	28
10	Coos Curry Housing Authority, 1700 Monroe, North Bend, OR 97459	OR16-E020-006	736,320	23
10	Mid-Columbia Housing Authority, 506 East Second St., The Dalles, OR 97058	OR16-E025-015	377,340	12
10	Josephine Hsg. & Comm. Deve. Council, 101 NW. "A", Grants Pass, OR 97526	OR16-E031-012	651,755	23
10	Northeast Oregon Housing Authority, P.O. Box 3357, Lagrande, OR 97850	OR16-E032-006	317,585	11
10	Housing Authority of the City of Vancouver, 500 Omaha Way, Vancouver, WA 98661	WA16-E008-013	335,250	15
10	King County HA, 15455 65th Ave. S., Seattle, WA 98188	WA19-E002-027	2,033,640	58
10	Tacoma Housing Authority, 1728 E. 44th, Tacoma, WA 98404	WA19-E005-027	2,304,675	76
10	Grays Harbor HA, 505 North "F" Street, Aberdeen, WA 98520	WA19-E016-004	282,815	9
10	Kitsap County HA, 9265 Bayshore Drive, Silverdale, WA 98383	WA19-E036-012	647,195	21
10	Snohomish County, 3425 Broadway, Everett, WA 98201	WA19-E039-022	2,741,955	81
10	Yakima Housing Authority, 110 Fair Avenue, Yakima, WA 98901-3106	WA19-E042-010	707,515	28
10	Walla Walla HA, P.O. Box 475, Walla Walla, WA 99362-0215	WA19-E057-005	1,532,315	43
10	Dept. of Comm. Development (Stevens County), 9th & Columbia, Bldg. GH51, Olympia, WA 98504.	WA19-E060-078	207,245	10
10	Dept. of Comm. Development (Asotin County), 9th & Columbia, Bldg. GH51, Olympia, WA 98504.	WA19-E060-079	485,620	15
10	Dept. of Comm. Development (Columbia County), 9th & Columbia, Bldg. GH51, Olympia, WA 98504.	WA19-E060-080	339,965	12
10	Dept. of Comm. Development (Grant County), 9th & Columbia, Bldg. GH51, Olympia, WA 98504.	WA19-E060-081	399,370	19

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SECTION 8 RENTAL CERTIFICATES FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 882 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
10	Dept. of Comm. Development (Okanogan County), 9th & Columbia, Bldg. GH51, Olympia, WA 98504.	WA19-E060-082	305,515	12
10	Dept. of Comm. Development (Pend Oreille Co.), 9th & Columbia, Bldg. GH51, Olympia, WA 98504.	WA19-E060-083	136,950	6

SECTION 8 RENTAL VOUCHERS FUNDING DECISIONS

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 887 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
01	Boston, 52 Chauncy St., Boston, MA 02111	MA06-V002-013	$1,765,135	34
01	Holyoke, 475 Maple St., Holyoke, MA 01040	MA06-V005-007	808,235	17
01	New Bedford, 132 So. Second St., A2081 New Bedford, MA 02741	MA06-V007-00010	1,251,855	43
01	Medford, 121 Riverside Ave., Medford, MA 02155	MA06-V015-006	700,370	13
01	Woburn, 59 Campbell St., Woburn, MA 01801	MA06-V019-007	735,275	14
01	Gloucester, P.O. Box 1599 Gloucester, MA 01931-1599	MA06-V025-007	498,290	11
01	Framingham, 1 John J. Brady Dr., Framingham, MA 01701	MA06-V026-009	834,820	15
01	Brookline, 90 Longwood Ave., Brookline, MA 02146	MA06-V033-005	404,220	7
01	Dedham, 163 Dedham Blvd., Dedham, MA 02026	MA06-V040-007	771,960	14
01	Shrewsbury, 35 N. Quinsigamond Ave., Shrewsbury, MA 01545	MA06-V041-003	464,145	14
01	Weymouth, 402 Essex St., Weymouth, MA 02188	MA06-V045-003	289,440	6
01	Arlington PHA, 4 Winslow St., Arlington, MA 02174	MA06-V048-006	241,710	5
01	EOCD-Southeast, 100 Cambridge St., Boston, MA 02202	MA06-V052-026	517,005	16
01	EOCD-Northeast, 100 Cambridge St., Boston, MA 02202	MA06-V052-027	513,555	13
01	EOCD-Boston, 100 Cambridge St., Boston, MA 02202	MA06-V052-028	3,119,700	54
01	EOCD-Worcester, 100 Cambridge St., Boston, MA 02202	MA06-V052-029	896,915	26
01	EOCD-Western, MA 100 Cambridge St., Boston, MA 02202	MA06-V052-030	1,523,160	35
01	EOCD-Nonmetro 100 Cambridge St., Boston, MA 02202	MA06-V052-031	1,290,060	23
01	Peabody, 75-81 Central St., Peabody, MA 01960	MA06-V054-002	229,500	5
01	Salem, 27 Charter St., Salem, MA 01970	MA06-V055-007	548,725	11
01	Plymouth, 69 Allerton St., Box 3537 Plymouth, MA 02361	MA06-V059-002	265,540	4
01	Milford, 45 Birmingham Ct., Milford, MA 01757	MA06-V069-002	299,940	5
01	Rockport, 13 Millbrook Park, Rockport, MA 01966-1414	MA06-V073-004	234,895	6
01	Franklin County, 80 Canal St., Turners Falls, MA 01376	MA06-V094-003	399,500	10
01	Bourne, 871 Shore Rd., Pocasset, MA 02559	MA06-V110-002	4,166,890	10
01	Stoughton, 4 Capen St., Stoughton, MA 02072	MA06-V117-002	658,690	14
01	Danvers, 14 Stone St., Danvers, MA 01923	MA06-V118-006	80,850	2
01	Easton, Parker Terrace, W. Easton, MA 02356	MA06-V122-004	478,615	11
01	Winchester, 13 Westley St., Winchester, MA 01890	MA06-V125-004	619,220	13
01	Mansfield, 22 Bicentennial Ct., Mansfield, MA 02048	MA06-V134-003	649,860	14
01	Dennis, 167 Center St., Box 53, S. Dennis, MA 02660	MA06-V136-003	440,720	10
01	Salisbury, 37 Beach Rd., Salisbury, MA 01952	MA06-V174-003	246,370	6
01	Milton, 65 Miller Ave., Milton, MA 02186	MA06-V174-006	797,985	17
01	Bridgeport HA, 376 E. Washington, Bridgeport, CT 06606	CT26-V001-011	1,211,620	29
01	New Haven HA, 360 Orange St., New Haven, CT 06509	CT26-V004-014	1,377,160	25
01	New Britain HA, 34 Marimac Rd., New Britain, CT 06053	CT26-V005-006	555,580	16
01	Waterbury HA, 70 Lakewood Rd., Waterbury, CT 06704	CT26-V006-013	94,555	4
01	Stamford HA, 22 Clinton Ave., Stamford, CT 06904	CT26-V007-006	966,665	16
01	Middletown HA, 40 Broad St., Middletown, CT 06457	CT26-V009-005	544,275	20
01	East Hartford HA, 452 Main Street, East Hartford, CT 06106	CT26-V013-006	1,062,745	26
01	Norwich HA, 10 Westwood Pk., Norwich, CT 06360	CT26-V018-001	707,845	20
01	Manchester HA, 24 Bluefield Dr., Manchester, CT 06040	CT26-V026-003	962,840	26
01	Vernon (Rockville) HA, 114 Franklin Park W., Rockville, CT 06606	CT26-V026-005	848,485	21
01	Hamden HA, Box 4051, Hamden, CT 06514	CT26-V042-002	446,145	10
01	Ct Dept. of Housing, 1179 Main St., Hartford, CT 06103	CT26-V045-006	314,525	8
01	Ft. Fairfield HA, 255 Main St., P.O. Box 252, Ft. Fairfield, ME 04742	ME36-V002-004	145,840	5
01	Portland HA, 14 Baxter Blvd., Portland, ME 04101	ME36-V003-011	872,030	21
01	Auburn HA, 143 Mill St., P.O. Box 3037, Auburn, ME 04210	ME36-V007-004	322,405	12
01	Waterville HA, 60 Elm St., Waterville, ME 04901	ME36-V008-004	693,055	25
01	Sanford HA, 277 Main St., P.O. Box 1008, Sanford, ME 04073	ME36-V011-005	587,525	20
01	Bar Harbor HA, 15 Eagle Lake Rd., Bar Harbor, ME 04609	ME36-V023-002	1,164,465	45
01	Biddeford HA, P.O. Box 586, Biddeford, ME 04005	ME36-V028-004	176,215	5
01	Manchester HA, 198 Hanover St., Manchester, NH 03101	NH36-V001-011	271,365	8
01	NHHFA, P.O. Box 5087, Manchester, NH 03108	NH36-V019-025	2,142,000	52
01	Burlington HA, 230 St. Paul Street, Burlington, VT 05401	VT36-V001-013	343,310	10
01	Providence Housing Authority, 100 Broad Street, Providence, RI 02903	RI43-V001-012	1,860,870	53
01	West Warwick Housing Authority, 62 Robert Street, West Warwick, RI 02893	RI43-V015-005	833,750	25
01	Bristol Housing Authority, P.O. Box 535, Bristol, RI 02809	RI43-V019-008	170,115	4
02	Syracuse HA, 516 Burt Street, Syracuse, NY 13202	NY06-V001-011	852,040	28
02	Albany HA, 4 Lincoln Square, Albany, NY 12202	NY06-V009-008	238,115	8
02	Rochester HA, 140 West Avenue, Rochester, NY 14611	NY06-V041-011	562,800	24
02	Gloversville HA, Kingsboro Towers, Gloversville, NY 12078	NY06-V048-003	543,540	30
02	Ithaca HA, 800 South Plain St., Ithaca, NY 14850	NY06-V054-005	877,885	36
02	Glens Falls HA, Stichman Towers—Jay St., Glens Falls, NY 12801	NY06-V079-008	830,420	36

SECTION 8 RENTAL VOUCHERS FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 887 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
02	Div. of Hsg. & Comm. Ren. Cayuga County, One Fordham Plaza, Bronx, NY 10458	NY06-V106-037	309,360	11
02	Div. of Hsg. & Comm. Ren. Clinton County, One Fordham Plaza, Bronx, NY 10458	NY06-V106-114	281,150	15
02	Div. of Hsg. & Comm. Ren. Chemung County, One Fordham Plaza, Bronx, NY 10458	NY06-V106-153	313,660	11
02	Div. of Hsg. & Comm. Ren. Jefferson County, One Fordham Plaza, Bronx, NY 10458	NY06-V106-279	373,440	15
02	Div. of Hsg. & Comm. Ren. Oswego County, One Fordham Plaza, Bronx, NY 10458	NY06-V106-393	313,155	11
02	Div. of Hsg. & Comm. Ren. Seneca County, One Fordham Plaza, Bronx, NY 10458	NY06-V106-452	278,375	11
02	Div. of Hsg. & Comm. Ren. Washington County, One Fordham Plaza, Bronx, NY 10458	NY06-V106-531	56,770	2
02	Div. of Hsg. & Comm. Ren. Allegany County, One Fordham Plaza, Bronx, NY 10458	NY06-V106-611	423,640	18
02	Div. of Hsg & Comm. Ren Saratoga County, One Fordham Plaza, Bronx, NY 10458	NY06-V106-792	121,780	5
02	Salamanca Public Housing Agency, 225 Wildwood Avenue, Salamanca, NY 14779	NY06-V403-003	232,565	12
02	Fairport Urban Renewal Agency, 31 South Main St., Fairport, NY 14450	NY06-V406-004	604,200	20
02	City of Buffalo, City Hall, Buffalo, NY 14203	NY06-V409-007	2,577,330	116
02	City of Johnstown, 33-41 East Main St., Johnstown, NY 12095	NY06-V433-006	249,840	13
02	City of Hudson, 611 Warren Street, Hudson, NY 12534	NY06-V438-004	655,020	30
02	Town of Irondequoit, c/o Rochester HA, 140 West Avenue, Rochester, NY 14611	NY06-V439-004	586,900	25
02	Town of Greece, c/o Rochester HA, 140 West Avenue, Rochester, NY 14611	NY06-V444-003	394,200	15
02	Town of Hoosick HA, P.O. Box 149, Hoosick Falls, NY 12090	NY06-V501-001	405,470	17
02	Village of Manlius, c/o Christopher Comm., 1654 West Onondaga St., Syracuse, NY 13204	NY06-V547-005	665,115	27
02	Village of Manlius, c/o Christopher Comm., 1654 West Onondaga St., Syracuse, NY 13204	NY06-V547-006	285,955	12
02	Yonkers HA, 1511 Central Pk. Ave., P.O. Box 35, Yonkers, NY 10710	NY36-V003-006	2,020,750	46
02	New York City HA, 250 Broadway, New York, NY 10007	NY36-V005-013	48,725,300	1,389
02	Village of Spring Valley, 200 North Main Street, Spring Valley, NY 10977	NY36-V056-007	472,950	15
02	DHCR—Nassau County, One Fordham Plaza, Bronx, NY 10458	NY36-V106-006	1,957,950	38
02	DHCA—NYC, One Fordham Plaza, Bronx, NY 10458	NY36-V106-064	3,592,715	137
02	DHCR—Suffolk County, One Fordham Plaza, Bronx, NY 10458	NY36-V106-065	708,015	16
02	DHCR—Putnam County, One Fordham Plaza, Bronx, NY 10458	NY36-V106-067	969,475	28
02	DHCR—Ulster County, One Fordham Plaza, Bronx, NY 10458	NY36-V106-069	697,610	24
02	DHCR—Westchester County, One Fordham Plaza, Bronx, NY 10458	NY36-V106-070	2,194,960	54
02	NYCHPD, 100 Gold Street, New York, NY 10038	NY36-V110-007	5,651,670	169
02	City of White Plains, 255 Main Street, White Plains, NY 10601	NY36-V115-006	476,310	12
02	Town of Babylon HA, 100 W. Main St., P.O. Box 304, Babylon, NY 11702	NY36-V130-010	810,975	16
02	City of Port Jervis, P.O. Box 1002, Port Jervis, NY 12771	NY36-V134-006	164,150	5
02	Town of Southampton, 116 Hampton Road, Southampton, NY 11968	NY36-V141-007	31,080	7
02	Newark Housing Authority, 57 Sussex Avenue, Newark, NJ 07103-3992	NJ39-V002-004	1,049,255	33
02	North Bergen Housing Authority, 6121 Grand Avenue, North Bergen, NJ 07047	NJ39-V004-006	778,630	34
02	Jersey City Housing Authority, 400 U.S. Hgwy. #1—Marion Gardens, Jersey City, NJ 07306	NJ39-V009-012	3,236,560	92
02	Bayonne Housing Authority, 50 East 21St Street, Bayonne, NJ 07002	NJ39-V012-007	1,274,315	34
02	Passaic Housing Authority, 333 Passaic Street, Passaic, NJ 07055	NJ39-V013-016	844,945	18
02	Orange Housing Authority, 340 Thomas Boulevard, Orange, NJ 07050	NJ39-V025-010	589,225	14
02	Woodbridge Housing Authority, 10 Bunns Lane, Woodbridge, NJ 07095	NJ39-V033-005	485,620	12
02	South Amboy Housing Authority, Bayshore Drive, South Amboy, NJ 08879	NJ39-V035-004	549,435	12
02	Boonton Housing Authority, 125 Chestnut Street, Boonton, NJ 07005	NJ39-V052-004	539,445	15
02	Bergen County Housing Authority, Court Place So., 21 Main ST. 307W, Hackensack, NJ 07601-7000.	NJ39-V067-009	1,276,145	28
02	Secaucus Housing Authority, 777 Fifth Street, Secaucus, NJ 07094	NJ39-V083-005	1,062,910	34
02	Montclair Housing Assistance Program, 205 Claremont Avenue, Montclair, NJ 07042	NJ39-V086-009	553,735	15
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-V087-124	723,595	15
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-V087-126	1,405,810	41
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-V087-127	643,355	16
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-V087-128	166,580	6
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-V087-129	314,090	8
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-V087-130	200,205	5
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-V087-131	225,135	5
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-V087-132	540,435	14
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-V087-133	931,195	22
02	N.J. Department of Community Affairs, South Broad & Front Sts., CN051, Trenton, NJ 08625-0051.	NJ39-V087-134	136,870	6
02	Clifton Public Housing Agency, City Hall, 900 Clifton Avenue, Clifton, NJ 07015	NJ39-V089-005	555,130	11
02	Warren Co. Housing Program, 415B Front Street, Belvidere, NJ 07823	NJ39-V102-006	367,355	15
02	Sayreville Housing Authority, 167 Main Street, Sayreville, NJ 08872	NJ39-V106-005	549,015	12
02	Union Twp. Housing Assistance Program, Municipal Bldg., 976 Morris Ave., Union, NJ 07083	NJ39-V109-004	208,850	5
02	Old Bridge Twp. Housing Authority, One Old Bridge Plaza, Old Bridge, NJ 08857	NJ39-V110-005	508,255	12
02	Union Co. Board of Freeholders, Courthouse, Elizabeth, NJ 07207	NJ39-V113-013	2,091,600	40
02	Middlesex Co. Public Housing Agency, 303 George Street, Suite 304, New Brunswick, NJ 08901	NJ39-V114-007	528,650	12
02	Gloucester County Housing Authority, 223 So. Evergreen Avenue, Woodbury, NJ 08096	NJ39-V204-012	686,700	25
03	Housing Authority of Baltimore City, 417 E. Fayette St., Baltimore, MD 21202	MD06-V002-015	4,851,445	144
03	Housing Authority of the City of Hagerstown, P.O. Box 2859, Hagerstown, MD 21740	MD06-V006-003	452,095	17
03	CDA-Town of Easton, 100 Community Place, Crownsville, MD 21032	MD06-V020-030	247,895	10

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SECTION 8 RENTAL VOUCHERS FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 887 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
03	CDA-Somerset County, 100 Community Place, Crownsville, MD 21032	MD06-V020-035	390,175	16
03	CDA-Dorchester County, 100 Community Place, Crownsville, MD 21032	MD06-V020-036	278,230	14
03	Howard County Housing Commission, 10660 Hickory Ridge Rd., Columbia, MD 21044	MD06-V023-006	513,230	11
03	Baltimore Co. Dept. of Community Development, 1 Investment Pl., Suite 825, Towson, MD 21204.	MD06-V033-014	484,600	19
03	Charleston PHA, P.O. Box 86, Charleston, WV 25321	WV15-V001-016	460,435	15
03	Huntington PHA, P.O. Box 2183, Huntington, WV 25722	WV15-V004-009	193,590	6
03	Parkersburg PHA, 1901 Cameron Avenue, Parkersburg, WV 26101	WV15-V005-009	367,570	14
03	Martinsburg PHA, 703 Porter Avenue, Martinsburg, WV 25401	WV15-V006-003	560,725	21
03	Buckhannon PHA, 23½ Hinkle Drive, Buckhannon, WV 26201-2417	WV15-V013-004	315,865	11
03	Raleigh County PHA, P.O. Box 273, Beckley, WV 25801	WV15-V039-004	947,920	41
03	Wilmington Hsg. Auth., 400 Walnut Street, Wilmington, DE 19801	DE26-V001-007	528,610	11
03	Newark Housing Auth., 313 E. Main Street, Newark, DE 19711	DE26-V003-005	304,820	9
03	Delaware State Hsg., 18 The Green, P.O. Box 1401, Dover, DE 19901	DE26-V004-009	95,180	3
03	New Castle County Dept., Suite 500, 800 French St., Wilmington, DE 19801	DE26-V005-011	513,995	14
03	Philadelphia Hsg. Auth., 2012-16 Chestnut St., Philadelphia, PA 19103	PA26-V002-011	2,959,610	70
03	Scranton Housing Auth., 400 Adams Ave., P.O. Box 711, Scranton, PA 18510	PA26-V003-006	507,830	18
03	Harrisburg Housing Auth., 351 Chestnut Street, Harrisburg, PA 17101	PA26-V008-011	105,350	3
03	Reading Housing Auth., 400 Hancock Blvd., Reading, PA 19611	PA26-V009-004	389,810	11
03	York Housing Authority, 31 S. Broad St., P.O. Box 1963, York, PA 17405	PA26-V022-010	536,055	20
03	Delaware County Hsg., 1855 Constitution Ave., Woodlyn, PA 19094	PA26-V023-021	470,410	10
03	Easton Housing Auth., P.O. Box 876, Easton, PA 18044-0876	PA26-V024-004	317,370	11
03	Lancaster Housing Auth., 333 Church Street, Lancaster, PA 17602	PA26-V036-011	256,420	7
03	Hazleton Housing Auth., 320 West Mine Street, Hazleton, PA 18201	PA26-V044-009	367,635	13
03	Chester County Hsg., 222 N. Church Street, West Chester, PA 19380	PA26-V046-011	994,640	20
03	Bucks County Hsg. Auth., 350 S. Main St., Ste. 205, Box 1329, Doylestown, PA 18901-0967	PA26-V051-009	1,693,720	51
03	Luzerne County Hsg., 250 First Avenue, Kingston, PA 18704	PA26-V057-011	421,820	16
03	Carbon County Hsg. Auth., 215 S. First Street, Lehighton, PA 18235	PA26-V067-003	200,595	6
03	Lehigh County Housing, 333 Ridge Street, Emmaus, PA 18049	PA26-V081-009	195,125	7
03	Lancaster Co. Hsg. Auth., 29 E. King Street, Suite 316, Lancaster PA 17603	PA26-V090-009	415,110	13
03	Pittsburgh Housing Authority, 200 Ross Street, Pittsburgh, PA 15219	PA28-V001-012	1,849,855	69
03	McKeesport Housing Authority, Ohio & Brownlee Streets, McKeesport, PA 15132	PA28-V005-007	208,640	7
03	Allegheny County Housing Authority, 341 Fourth Avenue, Pittsburgh, PA 15222	PA28-V006-015	1,423,990	54
03	City of Erie Housing Authority, 606 Holland Street, Erie, PA 16501-1285	PA28-V013-012	354,100	10
03	Beaver County H/A, State Ave. & Toy St., Beaver, PA 15009	PA28-V014-006	82,955	3
03	Fayette County H/A, P.O. Box 1007, Uniontown, PA 15401	PA28-V015-009	700,140	28
03	Westmoreland County Housing Authority, Rd. #6, Box 223, S. Greengate Rd., Greensburg, PA 15601	PA28-V018-013	23,055	1
03	Altoona Housing Authority, 1100 11th St., P.O. Box 671, Altoona, PA 16603,	PA28-V031-012	239,820	7
03	Elk County Housing Authority, Water St. Ext., P.O. Box 10. Johnsonburg, PA 15845	PA28-V054-015	121,645	6
03	Titusville Housing Authority, 107 Central Towers, Titusville, PA 16354	PA28-V058-005	95,600	4
03	Jefferson County Housing Authority, 201 N. Jefferson Street Punxsutawney, PA 15767	PA28-V061-001	493,080	18
03	Dubois Housing Authority, 21 East Long Avenue Dubois, PA 15801	PA28-V063-004	540,435	21
03	Mckean County Housing Authority, 410 East Water Street Smethport, PA 16749	PA28-V080-005	300,215	11
03	Clarion County H/A 8 West Main Street Clarion, PA 16214	PA28-V086-005	280,895	11
03	Venango County Housing Authority, Cherry Hill Apt., P.O. Box 988 Oil City, PA 16301	PA28-V089-007	423,740	18
03	Portsmouth RHA P.O. Box 1098, 339 High St. Portsmouth, VA 23705-1098	VA36-V001-009	219,580	7
03	Norfolk RHA P.O. Box 968 Norfolk, VA 23501-0968,	VA36-V006-013	1,260,710	42
03	Richmond RHA P.O. Box 26887, 901N. Chamberlayne Richmond, VA 23261-6887	VA36-V007-011	258,560	9
03	Danville RHA P.O. Box 2669, 651 Cardinal PL Danville, VA 24541-0669	VA36-V010-010	409,580	22
03	Petersburg RHA P.O. Box 311, 128 S. Sycamore St Petersburg, VA 23804-0311	VA36-V020-004	261,225	10
03	Waynesboro RHA 1700 New Hope Rd, Waynesboro, VA 22980-2515	VA36-V022-006	255,270	11
03	Suffolk RHA, P.O. Box 1858, Suffolk, VA 23434-1858	VA36-V025-008	165,990	5
03	VHDA, 601 S. Belvidere St., Richmond, VA 23220-6504	VA36-V027-025	881,825	43
03	VHDA, 601 S. Belvidere St., Richmond, VA 23220-6504	VA36-V027-026	365,040	12
03	VHDA, 601 S. Belvidere St., Richmond, VA 23220-6504	VA36-V027-027	753,220	21
03	VHDA, 601 S. Belvidere St., Richmond, VA 23220-6504	VA36-V027-028	2,770,015	127
03	Lee County RHA P.O. Box 665, Jonesville, VA 24263	VA36-V034-007	284,735	16
03	Big Stone Gap RHA, P.O. Box 536, Big Stone Gap, VA 24219	VA36-V038-001	409,785	18
03	HSG Opportunities Commission of Montg Co, 10400 Detrick Avenue, Kensington, MD 20895	MD39-V004-016	4,945,010	107
03	Alexandria Redevelopment Housing and HA 600 N. Fairfax Street, Alexandria, VA 22314	VA39-V014-012	3,666,110	89
03	Fairfax Co. Redevelopment & HA One University Plaza, Fairfax, VA 22030	VA39-V019-014	704,605	14
03	Augusta Housing Authority, P.O. Box 3246, Augusta, GA 30914	GA06-V001-010	149,690	6
03	Savannah Housing Authority, P.O. Box 1179, Savannah, GA 31402	GA06-V002-009	742,875	30
04	Columbus Housing Authority, P.O. Box 630, Columbus, GA 31993	GA06-V004-010	700,110	30
04	Atlanta Housing Authority, 739 W. Peachtree St. NE., Atlanta, GA 30365	GA06-V006-014	2,063,640	80
04	Brunswick Housing Authority, 1126 Albany Street, Brunswick, GA 31521	GA06-V009-006	420,085	18
04	Americus Housing Authority, 825 N. Mayo Street, Americus, GA 31709	GA06-V062-004	142,035	6
04	Dekalb County Housing Authority, P.O. Box 1627, Decatur, GA 30031	GA06-V237-013	666,760	19
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-V267-072	1,126,845	31
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-V267-028	1,154,200	56
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-V267-029	653,570	31
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-V267-030	676,070	39
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-V267-031	573,160	28
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-V267-032	526,115	29
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-V267-033	938,205	46
04	Georgia Housing Finance Authority, 60 Executive Parkway, Atlanta, GA 30329	GA06-V267-034	883,575	48

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SECTION 8 RENTAL VOUCHERS FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 887 and Notice of Fund Availability, 56 FR 24280]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
04	Mobile Housing Authority, P.O. Box 1345, Mobile, AL 36633	AL09-V002-015	555,720	22
04	Montgomery Housing Authority, 1202 Bell Street, Montgomery, AL 36104	AL09-V006-010	562,080	22
04	Auburn Housing Authority, 931 Booker Street, Auburn, AL 36830	AL09-V050-005	573,985	25
04	Florence Housing Authority, 303 N. Pine Street, Florence, AL 35630	AL09-V054-001	515,350	25
04	Columbiana Housing Authority, P.O. Box 498, Columbiana, AL 35051	AL09-V072-002	490,950	20
04	Albertville Housing Authority, P.O. Box 1126, Albertville, AL 35950	AL09-V121-001	754,010	30
04	Walker County Housing Authority, P.O. Box Q, Dora, AL 35062	AL09-V129-004	1,307,570	50
04	Uniontown Housing Authority, P.O. Box 1160, Uniontown, AL 36786	AL09-V171-003	539,100	25
04	South Central Alabama Housing Authority, 100 Spring Street, Troy, AL 36081	AL09-V192-007	667,270	33
04	Columbia Housing Authority, 1917 Harden Street, Columbia, SC 29204	SC16-V002-010	500,820	23
04	Spartanburg Housing Authority, P.O. Box 4534, Spartanburg, SC 29305	SC16-V003-013	177,525	9
04	Union Housing Authority, 2010 Porter Street, Union, SC 29379	SC16-V019-007	707,410	30
04	Beaufort Housing Authority, P.O. Box 1104, Beaufort, SC 29901	SC16-V026-007	393,300	18
04	Fort Mill Housing Authority, 105 Bozeman Drive, Fort Mill, SC 29715	SC16-V036-003	1,283,250	50
04	York Housing Authority, P.O. Box 687, York, SC 29745	SC16-V046-005	384,300	15
04	South Carolina State Agency, P.O. Box 7008, Columbia, SC 29202	SC16-V055-016	229,910	13
04	South Carolina State Agency, P.O. Box 7008, Columbia, SC 29202	SC16-V055-021	92,030	4
04	South Carolina State Agency, P.O. Box 7008, Columbia, SC 29202	SC16-V055-033	406,275	20
04	South Carolina State Agency, P.O. Box 7008, Columbia, SC 29202	SC16-V055-034	135,915	7
04	South Carolina State Agency, P.O. Box 7008, Columbia, SC 29202	SC16-V035-035	203,000	12
04	South Carolina State Agency, P.O. Box 7008, Columbia, SC 29202	SC16-V055-037	230,075	10
04	South Carolina State Agency, P.O. Box 7008, Columbia, SC 29202	SC16-V055-039	181,025	10
04	Wilmington Housing Authority, P.O. Box 899, Wilmington, NC 28402	NC19-V001-009	257,420	13
04	Raleigh Housing Authority, P.O. Box 28007, Raleigh, NC 27611	NC19-V002-011	579,080	20
04	Asheville Housing Authority, P.O. Box 1898, Asheville, NC 28802	NC19-V007-011	522,960	24
04	Fayetteville Housing Authority, P.O. Box 2349, Fayetteville, NC 28302	NC19-V009-013	146,010	6
04	Winston-Salem Housing Authority, 901 Cleveland Avenue, NE., Winston-Salem, NC 27101	NC19-V012-010	413,610	15
04	Durham Housing Authority, P.O. Box 1726, Durham, NC 27702	NC19-V013-010	256,240	11
04	Laurinburg Housing Authority, P.O. Box 1437, Laurinburg, NC 28352	NC19-V016-003	201,630	10
04	Rocky Mount Housing Authority, P.O. Box 4717, Rocky Mount, NC 27803	NC19-V019-004	136,140	5
04	Wilson Housing Authority, P.O. Box 3876, Wilson, NC 27895	NC19-V020-009	141,785	5
04	Greenville Housing Authority, P.O. Box 1426, Greenville, NC 27834	NC19-V022-009	989,380	45
04	Sanford Housing Authority, P.O. Box 636, Sanford, NC 27330	NC19-V035-002	455,020	20
04	Hickory Housing Authority, P.O. Box 2927, Hickory, NC 28603	NC19-V056-010	216,375	13
04	Graham Housing Authority, P.O. Box 88, Graham, NC 27253	NC19-V059-009	289,695	10
04	Statesville Housing Authority, 4335 Meeting Street, Statesville, NC 28677	NC19-V072-011	234,090	10
04	Asheboro Housing Authority, 338 West Wainman Avenue, Asheboro, NC 27203	NC19-V081-005	595,970	25
04	Rowan County Housing Authority, 121 West Council, Suite 103, Salisbury, NC 28144	NC19-V102-004	855,330	35
04	North Carolina Comm. of Indian Affairs, 325 North Salisbury Street, Raleigh, NC 27611	NC19-V133-004	382,770	18
04	Western Carolina Housing Authority, P.O. Box 685, Hendersonville, NC 28793	NC19-V140-004	595,255	28
04	Economic Improvement Council, P.O. Box 549, Edenton, NC 27932	NC19-V145-004	951,420	54
04	Four Square CAC, P.O. Box K, Andrews, NC 28901	NC19-V146-002	856,975	41
04	Brunswick County Housing Authority, P.O. Box 9, Bolivia, NC 28422	NC19-V147-002	532,575	25
04	Sandhills Cap Housing Authority, P.O. Box 937, Cardrage, NC 28327	NC19-V149-004	622,700	28
04	Concord Housing Authority, P.O. Box 308, Concord, NC 28025	NC19-V156-006	361,640	18
04	MS Regional Housing Authority V, P.O. Box 419, Newton, MS 39345	MS26-V030-011	75,755	5
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-V040-032	158,595	8
04	MS Regional Housing Authority VIII, P.O. Box 234, Gulfport, MS 39505	MS26-V040-033	1,503,350	72
04	MS Regional Housing Authority VIII, P.O. Box 2347, Gulfport, MS 39505	MS26-V040-035	202,770	15
04	MS Regional Housing Authority VII, P.O. Box 866, McComb, MS 39648	MS26-V057-009	353,865	23
04	MS Regional Housing Authority VI, P.O. Drawer 6746, Jackson, MS 39284	MS26-V058-034	187,125	10
04	MS Regional Housing Authority VI, P.O. Drawer 6746, Jackson, MS 39284	MS26-V058-035	385,640	25
04	MS Regional Housing Authority VI, P.O. Drawer 6746, Jackson, MS 39284	MS26-V058-036	783,745	30
04	MS Regional Housing Authority VI, P.O. Drawer 6746, Jackson, MS 39284	MS26-V058-037	334,120	16
04	MS Regional Housing Authority VI, P.O. Drawer 6746, Jackson, MS 39284	MS26-V058-038	1,309,170	56
04	North Delta Housing Authority, P.O. Box 1153, Clarksdale, MS 38614	MS26-V128-009	178,930	9
04	Tampa Housing Authority, 1514 Union Street, Tampa, FL 33607	FL29-V003-011	719,000	20
04	Dade County Housing Authority, 2153 Coral Way, Miami, FL 33145	FL29-V005-015	3,852,975	105
04	West Palm Beach Housing Authority, 3801 Georgia Avenue, West Palm Beach, FL 32405	FL29-V009-009	367,490	10
04	Fort Lauderdale Housing Authority, 427 Southwest 4th Street, Fort Lauderdale, FL 33302	FL29-V010-011	1,298,800	36
04	Key West Housing Authority, P.O. Box 2476, Key West, FL 33040	FL29-V013-009	374,050	10
04	Sanford Housing Authority, P.O. Box 2359, Sanford, FL 32772	FL29-V016-004	651,140	28
04	Panama City Housing Authority, 804 East 15th Street, Panama City, FL 32405	FL29-V018-012	321,390	15
04	Pompano Beach Housing Authority, P.O. Box 2006, Pampano, FL 33061	FL29-V028-006	1,115,045	26
04	Ocala Housing Authority, 415 Northeast 32nd Terrace, Ocala, FL 32670	FL29-V032-008	187,550	5
04	Punta Gorda Housing Authority, P.O. Box 1146, Punta Gorda, FL 31146	FL29-V060-001	520,530	18
04	Hialeah Housing Authority, 70 East 7th Street, Hialeah, FL 33010	FL29-V066-015	1,153,055	39
04	Riviera Beach Housing Authority, 2014 West 17th Court, Riviera Beach, FL 33404	FL29-V076-005	263,300	10
04	Delray Beach Housing Authority, 770 Southwest 12th Terrace, Delray Beach, FL 33444	FL29-V083-008	667,645	21
04	Gainesville Housing Authority, P.O. Box 148, Gainesville, FL 32602	FL29-V086-013	479,925	27
04	Hillsborough County Housing Authority, 9260 Bay Plaza Boulevard, Tampa, FL 33619	FL29-V089-008	814,035	30
04	Fort Myers Housing Authority, 3326 Dr. M.L. King Boulevard, Fort Myers, FL 33916	FL29-V091-004	718,645	23
04	Pensacola Housing Authority, P.O. Box 12910, Pensacola, FL 32521	FL29-V092-009	289,175	10
04	Escambia County Housing Authority, 1920 West Garden Street, Pensacola, FL 32597	FL29-V094-009	422,760	12
04	Pasco County Housing Authority, 507 Acorn Circle, Dade City, FL 33525	FL29-V104-005	562,595	18
04	Washington County Housing Authority, 301 North Oklahoma Street, Bonifay, FL 32425	FL29-V109-002	123,000	6
04	Tri-County CC Housing Authority, 301 North Oklahoma, Bonifay, FL 32425	FL29-V109-003	44,315	3

SECTION 8 RENTAL VOUCHERS FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 887 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
04	Volusia County Housing Authority, 123 West Indiana Avenue, Deland, FL 32720	FL29-V113-006	417,780	17
04	Volusia County Housing Authority, 123 West Indiana Avenue, Deland, FL 32720	FL29-V113-007	449,840	16
04	Leesburg Housing Authority, P.O. Box 492344, Leesburg, FL 34749	FL29-V115-005	213,160	10
04	Lee County Housing Authority, 14170 Warner Circle Northwest, North Fort Myers, FL 33903	FL29-V128-004	521,530	20
04	Hollywood Housing Authority, 7300 North Davie Road Hollywood, FL 33024	FL29-V136-007	1,194,365	43
04	Collier County Housing Authority, 3050 North Horseshoe Drive, Naples, FL 33942	FL29-V141-005	228,540	8
04	Monroe County Housing Authority, P.O. Box 2476, Key West, FL 33040	FL29-V144-006	594,630	17
04	Madisonville Housing Authority, 211 Pride Avenue, Madisonville, KY 42131	KY36-V007-004	1,001,515	50
04	Jefferson County Housing Authority, 300 York Street, Louisville, KY 40203	KY36-V105-011	1,019,130	46
04	Jefferson County Housing Authority, 300 York Street, Louisville, KY 40203	KY36-V105-012	435,365	21
04	Louisville Housing Authority, 745 West Main Street, Louisville, KY 40202	KY36-V131-012	1,019,130	46
04	Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, KY 40601	KY36-V134-096	276,830	14
04	Kentucky Housing Corporation, 1231 Louisville Road, Frankfort, KY 40601	KY36-V134-108	185,590	10
04	Williamsburg Housing Authority, 212 Cumberland Avenue, Williamsburg, KY 40769	KY36-V143-004	1,171,620	50
04	Laurel County Housing Authority, 106 Tobacco Road, London, KY 40741	KY36-V169-005	1,104,660	50
04	Bowling Green Housing Authority, P.O. Box 430, Bowling Green, KY 42102	KY36-V171-014	511,405	25
04	Kentucky Council Development Corporation, P.O. Box 3550, Knoxville, TN 37927	TN37-V003-013	150,755	7
04	Chattanooga Housing Authority, P.O. Box 1486, Chattanooga, TN 37401	TN37-V004-013	1,077,750	50
04	Kingsport Housing Authority, P.O. Box 44, Kingsport, TN 37662	TN37-V006-008	431,000	25
04	Lafollette Housing Authority, P.O. Box 392, Lafollette, TN 37766	TN37-V012-005	754,625	50
04	Jackson Housing Authority, P.O. Box 3188, Jackson, TN 38301	TN40-V007-005	457,550	19
04	Jackson Housing Authority, P.O. Box 3188, Jackson, TN 38301	TN40-V007-006	714,500	30
04	Tennessee Housing Development Agency, 401 Church Street, Nashville, TN 37219	TN40-V112-024	456,975	27
04	Tennessee Housing Development Agency, 401 Church Street, Nashville, TN 37219	TN40-V112-025	271,065	17
04	Tennessee Housing Development Agency, 401 Church Street, Nashville, TN 37219	TN40-V112-026	493,830	27
04	Metropolitan Development & Housing Agency, P.O. Box 846, Nashville, TN 37202	TN43-V005-009	1,583,295	51
04	Murfreesboro Housing Authority, 318 Lokey, Murfreesboro, TN 37130	TN43-V020-003	420,770	15
04	Tennessee Housing Development Agency, 401 Church Street, Nashville, TN 37219	TN43-V112-046	626,500	35
04	Dorado Housing Authority, P.O. Box 588, Dorado, PR 00646	RQ46-V015-004	472,770	14
04	Penuelas Housing Authority, P.O. Box 38, Penuelas, PR 00724	RQ46-V019-002	330,670	13
04	Toa Baja Housing Authority, P.O. Box M, Toa Baja, PR 00951	RQ46-V022-004	215,740	6
04	Maricao Housing Authority, P.O. Box 837, Maricao, PR 00706	RQ46-V029-001	309,490	12
04	Hormigueros Housing Authority, P.O. Box 97, Hormigueros, PR 00660	RQ46-V035-002	234,790	10
04	San Lorenzo Housing Authority, P.O. Box K, San Lorenzo, PR 00754	RQ46-V037-001	433,145	14
04	Hatillo Housing Authority, P.O. Box 8, Hatillo, PR 00659	RQ46-V039-002	32,740	1
04	Gurabo Housing Authority, P.O. Box 317, Gurabo, PR 00658	RQ46-V041-004	65,185	2
04	Anasco Housing Authority, P.O. Box 1385, Anasco, PR 00610	RQ46-V043-003	235,380	12
04	Anasco Housing Authority, P.O. Box 1385, Guanica, PR 00653	RQ46-V043-004	645,130	28
04	Guanica Housing Authority, P.O. Box 785, Guanica, PR 00653	RQ46-V044-001	77,715	3
04	Guanica Housing Authority, P.O. Box 785, Sabana Grande, PR 00637	RQ46-V044-002	80,130	3
04	Sabana Grande Housing Authority, P.O. Box 356, Sabana Grande, PR 00637	RQ46-V048-004	208,160	8
04	Barceloneta Housing Authority, P.O. Box 277, Barceloneta, PR 00617	RQ46-V048-005	144,845	5
04	Naranjito Housing Authority, P.O. Box 53, Naranjito, PR 00719	RQ46-V054-003	215,085	6
04	Lares Housing Authority, P.O. Box 218, Lares, PR 00669	RQ46-V064-003	514,770	15
04	Lares Housing Authority, P.O. Box 218, Isabela, PR 00661	RQ46-V065-003	199,085	8
04	Isabela Housing Authority, P.O. Box 507, Vieques, PR 00765	RQ46-V065-004	133,550	5
04	Vieques Housing Authority, P.O. Box 154, Orocovis, PR 00720	RQ46-V068-002	158,100	6
04	Orocovis Housing Authority, P.O. Box 1367, Aguas Buenas, PR 00703	RQ46-V074-004	160,265	6
04	Aguas Buenas Housing Authority, P.O. Box 128, Chicago, IL 60602	RQ46-V080-003	507,570	19
05	Chicago Housing Authority, 22 West Madison Street, Ottawa, IL 61350	RQ46-V082-001	460,745	14
05	LaSalle County Housing Authority, P.O. Box 782, Collinsville, IL 62234	IL06-V002-015	17,914,895	383
05	Madison County Housing Authority, 1609 Olive Street, Dixon, IL 61021	IL06-V014-010	813,000	30
05	Lee County Housing Authority, 1000 Washington Avenue, Kankakee, IL 60901	IL06-V015-011	718,950	25
05	Kankakee County Housing Authority, P.O. Box 1289, Lincoln, IL 62656	IL06-V035-001	1,280,095	42
05	Logan County Housing Authority, 1028 North College, Murphysboro, IL 62966	IL06-V039-004	866,690	28
05	Jackson County Housing Authority, P.O. Box 521, Grayslake, IL 60030	IL06-V040-002	838,740	33
05	Lake County Housing Authority, 33928 North Route 45, Centralia, IL 62801	IL06-V053-004	487,500	15
05	Marion County Housing Authority, 719 East Howard Street, Belvedere, IL 61008-4322	IL06-V056-010	1,300,035	24
05	Housing Authority of Boone County, 618 South State Street, Cincinnati, OH 45210	IL06-V057-005	710,015	28
05	Cincinnati MHA, 16 West Central Parkway, Cincinnati, OH 45210	IL06-V122-005	866,690	26
05	Clinton, MHA, 478 Thorne, Avenue, Wilmington, OH 45177	OH10-V04-012	1,543,630	50
05	Youngstown MHA, 131 West Broad Main Street, Youngstown, OH 44503	OH10-V004-015	2,054,765	70
05	Cuyahoga MHA, 1441 West 25th Street, Cleveland, OH 44113	OH10-V053-003	542,110	26
05	Akron MHA, 180 West Cedar Street, Akron, OH 44307	OH12-V002-016	442,145	16
05	Trumbull MHA, 1977 Niles Road, S.E., Warren, OH 44484	OH12-V003-027	3,518,600	101
05	Lorain MHA, 1730 Broadway, Lorain, OH 44052	OH12-V007-019	91,950	3
05	Stark MHA, 1800 West Tuscarawas, Canton, OH 44708	OH12-V008-014	258,885	9
05	Columbia MHA, 325 Moore Street, East Liverpool, OH 43920	OH12-V012-013	1,366,535	46
05	Portage MHA, 223 West Main Street	OH12-V018-017	430,325	19
05	Tuscarawas MHA, 172 North Broadway, New Philadelphia, OH 44663	OH12-V026-002	550,675	20
05	Harrison MHA, P.O. Box 146, Cadiz, OH 42907	OH12-V031-016	671,025	24
05	Seneca MHA, P.O. Box 1029, Mansfield, OH 44901	OH12-V063-007	182,655	8
05	Allen MHA, 600 South Main Street, Lima, OH 45804	OH12-V067-005	257,840	12
05	Pickaway MHA, 176 Rustic Drive, Circleville, OH 43113	OH12-V075-006	849,805	39
05	Fairfield MHA, 1506 Amherst Place, Lancaster, OH 43130	OH16-V044-010	1,113,050	43
		OH16-V059-009	730,905	31
		OH16-V070-011	843,635	31

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SECTION 8 RENTAL VOUCHERS FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 887 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
05	Marion MHA, P.O. Box 1029, Mansfield, OH 44901	OH16-V076-009	1,109,000	50
05	Vinton MHA, P.O. Box 487, McArthur, OH 45651	OH16-V076-004	667,040	30
05	Pontiac Housing Commission, 132 Franklin Boulevard, Pontiac, MI 48341	MI26-V005-007	66,500	3
05	Saginaw Housing Commission, 2811 Davenport St., P.O. Box A, Saginaw, MI 48602	MI26-V006-009	1,102,955	50
05	Flint Housing Commission, 3820 Richfield Road, Flint, MI 48506-2616	MI26-V009-010	570,740	25
05	Ypsilanti Housing Commission, 601 Armstrong Drive, Ypsilanti, MI 48197-5224	MI26-V026-004	182,690	7
05	Roseville Housing Commission, 18330 Eastland, Roseville, MI 48066-2134	MI26-V037-004	898,680	50
05	East Detroit Housing Commission, 15701 East Nine Mile Road, East Detroit, MI 48021-0000	MI26-V044-004	695,440	35
05	Livonia Housing Commission, 19300 Purlingbrook, Livonia, MI 48152-1902	MI26-V055-005	304,320	16
05	Taylor Housing Commission, 15270 Plaza South Drive, Taylor, MI 48180-5249	MI26-V069-002	843,310	40
05	Lapeer Housing Commission, 576 Liberty, Lapeer, MI 48446-2141	MI26-V100-002	514,035	25
05	Westland Housing Commission, 32715 Dorsey Road, Westland, MI 48185	MI26-V139-006	1,179,466	50
05	Redford Housing Commission, 12121 Hemingway, Redford, MI 48239	MI26-V141-006	1,078,825	40
05	Dearborn Heights Housing Commission, 13615 Michigan Avenue, Dearborn Heights, MI 48126-3586.	MI26-V160-001	1,270,585	50
05	Battle Creek Housing Commission, 250 Champion, Battle Creek, MI 49017	MI33-V035-003	592,255	29
05	Jackson Housing Commission, 301 Steward Avenue, Jackson, MI 48801	MI33-V038-007	474,450	21
05	Grayling Housing Commission, 308 Lawndale, Grayling, MI 49738	MI33-V047-006	967,200	50
05	Manistique Housing Commission, 400 East Lakeshore Drive, Manistique, MI 49854	MI33-V049-002	776,425	50
05	Lansing Housing Commission, 310 Seymour Avenue, Lansing, MI 48933	MI33-V058-012	612,250	25
05	Wyoming Housing Commission, 2450 36th Street, SW., Wyoming, MI 49509	MI33-V115-003	823,110	30
05	Wyoming Housing Commission, 2450 36th Street, SW., Wyoming, MI 49509	MI33-V115-006	67,035	4
05	Alma Housing Commission, 423 Gratiot Avenue, Alma, MI 48801	MI33-V121-001	635,940	25
05	Montcalm County Housing Commission, 120 Mulberry S. Box 249, Howard City, MI 49329	MI33-V186-007	141,200	7
05	Montcalm County Housing Commission, 120 Mulberry S. Box 249, Howard City, MI 49329	MI33-V186-007	277,430	13
05	Hammond Housing Authority, 7329 Columbia Circle West, Hammond, IN 46324	IN36-V001-011	118,250	3
05	Vincennes Housing Authority, 501 Hart Street, Vincennes, IN 47591	IN36-V002-005	106,675	5
05	Muncie Housing Authority, 402 East 2nd Street, Muncie, IN 47302	IN36-V005-007	1,131,955	50
05	Anderson Housing Authority, 528 West 11th Street, Anderson, IN 46016	IN36-V006-007	472,420	18
05	Hammond Housing Authority, 7329 Columbia Circle West, Hammond, IN 46324	IN36-V010-012	118,250	3
05	Gary Housing Authority, 578 Broadway, Gary, IN 46402	IN36-V011-009	329,310	8
05	South Bend Housing Authority, P.O. Box 11057, South Bend, IN 46634	IN36-V015-013	327,495	3
05	Michigan City Housing Authority, 621 East Michigan Avenue, Michigan City, IN 46460	IN36-V019-002	47,210	2
05	Washington Housing Authority, 520 South East 2nd Street, Washington, IN 47501	IN36-V030-001	143,720	5
05	Sullivan Housing Authority, 200 North Court Street, Sullivan , IN 47882	IN36-V034-001	548,020	25
05	Seymour Housing Authority, P.O. Box 822, Seymour, IN 47274	IN36-V056-001	200,745	8
05	Warsaw Housing Authority, 220 S. Buffalo Street, Suite 5, Warsaw, IN 46580	IN36-V060-004	504,010	24
05	Department of Family and Social Services, 150 West Market Street, Indianapolis, IN 46206	IN36-V072-016	187,040	28
05	Department of Family and Social Services, 150 West Market Street, Indianapolis, IN 46206	IN36-V072-017	464,765	27
05	Department of Family and Social Services, 150 West Market Street, Indianapolis, IN 46206	IN36-V072-018	173,200	17
05	Department of Family and Social Services, 150 West Market Street, Indianapolis, IN 46206	IN36-V072-019	369,570	39
05	Department of Family and Social Services, 150 West Market Street, Indianapolis, IN 46206	IN36-V072-020	43,485	4
05	Rome City Housing Authority, 500 Front Street, Rome City, IN 46784	IN36-V089-001	113,740	5
05	St. Joseph Housing Authority, 1047 Lincoln Way West, South Bend, IN 46634	IN36-V100-003	506,005	20
05	Goshen Housing Authority, 302 South 5th Steet, Goshen IN 46526	IN36-V101-003	87,305	3
05	Milwaukee Housing Authority, 809 North Broadway , Milwaukee, WI 53202	WI39-V002-014	1,500,550	51
05	City of LaCrosse Housing Authority, P.O. Box 1053, LaCrosse, WI 54602	WI39-V006-003	672,615	25
05	Wausau Community Development Agency, 407 Grant Street, Wausau, WI 54401	WI39-V031-009	778,350	30
05	Kaukauna Housing Authority, 125 West 10th Street, Kaukauna, WI 54130	WI39-V043-006	291,585	15
05	West Bend Housing Authority, 475 Meadowbrook Drive, West Bend, WI 53095	WI39-V063-002	605,570	27
05	Wisconsin Hsg. and Economic Development Agency, P.O. Box 1728, Madison, WI 53701	WI36-V22-005	534,150	25
05	Wisconsin Hsg. and Economic Development Agency P.O. Box 1728, Madison, WI 53701	WI39-V200-006	552,165	27
05	Wisconsin Hsg. and Economic Development Agency, P.O. Box 1728, Madison, WI 53701	WI39-V200-007	722,715	33
05	Wisconsin Hsg. and Economic Development Agency, P.O. Box 1728 Madison, WI 53701	WI39-V200-008	780,670	50
05	Wisconsin Hsg. and Economic Development Agency, P.O. Box 1728 Madison, WI 53701	WI39-V200-009	822,280	50
05	Wisconsin Hsg. and Economic Development Agency, P.O. Box 1728 Madison, WI 53701	WI39-V200-010	958,830	50
05	West Allis Community Development Agency, 7525 West Greenville Avenue, West Allis, WI 53214.	WI39-V201-007	231,450	10
05	Chippewa County Housing Authority, P.O. Box 550, Chippewa Falls, WI 54729	WI39-V246-008	517,290	25
05	St. Louis Park HRA, 5005 Minnetonka Boulevard, St. Louis, MN 55416-2290	MN46-V144-005	494,175	15
05	Duluth HRA, 222 East 2nd Street, Box 16900, Duluth, MN 55816-0900	MN46-V003-008	255,840	7
05	Crookston HRA, 110 Sargent Street, Crookston, MN 56716	MN46-V021-004	404,155	19
05	Brainerd HRA, Box 831, Brainerd, MN 56401	MN46-V032-006	355,540	17
05	Mora HRA, 420 Bean Avenue, Mora, MN 55051	MN46-V101-003	745,435	31
05	Bloomington HRA, 2215 West Old Shakopee Road, Bloomington, MN 55431	MN46-V152-005	532,350	22
05	Metro Council HRA, 230 East Fifth Street, St. Paul, MN 55101	MN46-V163-021	2,491,495	83
05	Clay County HRA, Box 99, Dilworth, MN 56529	MN46-V164-005	386,090	20
05	Kandiyohi County HRA, Box 1359, Willmar, MN 56201	MN46-V166-004	474,410	20
05	Faribault County HRA, 410 Jackson Street, Box 3327, Mankato, MN 56001	MN46-V200-002	398,040	18
05	Richfield HRA, 6700 Portland Avenue, Richfield, MN 55423-2599	MN46-V216-005	668,660	22
05	South Central Multi-County HRA, 410 Jackson Street, Box 3327, Mankato, MN 56001	MN46-V219-002	752,670	30
06	Albuquerque HA, P.O. Box 1293, Albuquerque, NM 87103	NM16-V001-008	634,300	20
06	Santa Fe County HA, 52 Camino De Jacobo, Santa Fe, NM 87501	NM16-V050-005	183,605	7
06	Santa Fe Civic HA, P.O. Box 4039, Santa Fe, NM 87501	NM16-V058-007	607,335	19
06	Region VI HA, Curry Co. Courthouse, Clovis, NM 88101	NM16-V064-003	490,960	22
06	Los Lunas HA, P.O. Box 1209, Los Lunas, NM 87031	NM16-V070-003	246,105	10
06	Dallas HA, 2525 Lucas Dr., Dallas, TX 75219	TX16-V009-009	1,583,960	43

SECTION 8 RENTAL VOUCHERS FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 887 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
06	Brownwood HA, P.O. Drawer 1647, Brownwood, TX 76804	TX16-V021-004	535,520	32
06	Gainesville HA, P.O. Box 1359, Gainesville, TX 76240	TX16-V072-004	974,550	33
06	Tarrant Co. HA, 1501 Merrimac Cir. Fort Worth, TX 76107	TX16-V431-003	434,735	11
06	Tarrant Co. HA, 1501 Merrimac Cir., Fort Worth, TX 76107	TX16-V431-005	464,130	18
06	Arlington HA, 401 W. Sanford St., #2600, Arlington, TX 76011	TX16-V433-005	546,685	18
06	Harrison Co. HA, P.O. Box 1343, Marshall, TX 75631	TX16-V438-003	325,860	11
06	Anthony HA, Drawer 1740, Anthony, TX 88021	TX16-V439-003	465,000	17
06	Odessa HA, P.O. Drawer 154, Odessa, TX 79760	TX16-V455-003	916,125	25
06	Tyler HA, P.O. Box 2039, Tyler, TX 75710	TX16-V456-008	473,550	15
06	City of Longview, P.O. Box 1952, Longview, TX 75606	TX16-V459-007	264,850	9
06	Amarillo Comm. Dev. Dept., P.O. Box 1971, Amarillo, TX 79186	TX16-V472-012	530,695	21
06	Central Texas COG, P.O. Box 729, Belton, TX 76513	TX16-V482-018	572,950	20
06	Panola Co. HA, P.O. Box 38, Beckville, TX 75631	TX16-V487-003	504,710	21
06	City of Terrell, P.O. Box 310, Terrell, TX 75160	TX16-V493-003	413,115	13
06	Wichita Falls HA, P.O. Box 1431, Wichita Falls, TX 76307	TX16-V498-008	379,580	15
06	Ark-Tex COG, P.O. Box 5307, Texarkana, TX 75505	TX16-V499-003	991,520	36
06	Athens City Hsg., 807A N. Palestine, Athens, TX 75751	TX16-V519-002	298,975	14
06	Greenville HA, P.O. Box 826, Greenville, TX 75403-0826	TX16-V522-004	286,725	15
06	Texoma COG, 10000 Grayson Dr., Denison, TX 75020	TX16-V542-007	482,335	17
06	City of Grand Prairie, P.O. Box 531167, Grand Prairie, TX 75053	TX16-V557-001	525,575	18
06	Pasadena Housing Authority, P.O. Box 672, Pasadena, TX 77501	TX24-V440-004	381,290	15
06	Harris County Housing Authority, 3100 Timmons Lane, Suite 200, Houston, TX 77027	TX24-V441-013	1,748,925	50
06	Nacogdoches County Housing Authority, 804 Jordan Street, #701, Nacogdoches, TX 75961	TX24-V501-003	1,254,135	49
06	Brazos Valley Development Council, P.O. Drawer 4128, Bryan, TX 77805-4128	TX24-V526-028	44,430	2
06	Brazos Valley Development Council, P.O. Drawer 4128, Bryan, TX 77805-4128	TX24-V526-029	544,970	18
06	Brazos Valley Development Council, P.O. Drawer 4128, Bryan, TX 77805-4128	TX24-V526-030	69,030	4
06	Brazos Valley Development Council, P.O. Drawer 4128, Bryan, TX 77805-4128	TX24-V526-031	15,430	1
06	Brazos Valley Development Council, P.O. Drawer 4128, Bryan, TX 77805-4128	TX24-V526-032	32,360	2
06	Brazos Valley Development Council, P.O. Drawer 4128, Bryan, TX 77805-4128	TX24-V526-033	32,360	2
06	Brazos Valley Development Council, P.O. Drawer 4128, Bryan, TX 77805-4128	TX24-V526-034	36,015	2
06	North Little Rock HA, Box 516, North Little Rock, AR 72115	AR37-V002-009	101,605	4
06	Little Rock HA, 1000 Wolfe Street, Little Rock, AR 72202	AR37-V004-012	450,100	20
06	Northwest Regional HA, Box 699, Harrison, AR 72601	AR37-V010-006	222,380	13
06	Wynne HA, P.O. Box 552, Wynne, AR 72396	AR37-V039-001	240,780	12
06	Polk County HA, 1107 Morrow Avenue, Mena, AR 71953	AR37-V117-001	436,380	25
06	Paragould HA, P.O. Box 137, Paragould, AR 72450	AR37-V121-006	155,460	9
06	Jonesboro HA, 600 Alpine, Jonesboro, AR 72401	AR37-V131-013	408,275	16
06	Lake Village HA, P.O. Box 786, Lake Village, AR 71653	AR37-V152-002	123,060	6
06	Sebastian County PHA, 51 S. 6th St., Suite 200, Fort Smith, AR 72901	AR37-V182-007	474,030	18
06	Crawford County PFB, 11-A Pointer Trail W., Van Buren, AR 72956	AR37-V194-004	90,325	4
06	White River Reg HA, Box 650, Melbourne, AR 72556	AR37-V197-006	169,715	8
06	Ashley County HA, Box 493, Hamburg, AR 71646	AR37-V214-004	297,270	15
06	St. Francis County HA, Box 310, Forrest City, AR 72335	AR37-V224-006	576,635	31
06	Desha County PHA, P.O. Box 725, McGehee, AR 71654	AR37-V229-004	309,995	14
06	Pulaski County HA, 201 S. Broadway, Little Rock, AR 72201	AR37-V252-001	145,695	5
06	New Orleans HA, 918 Carondelet Street, New Orleans, LA 70126	LA48-V001-010	630,550	20
06	E. Baton Rouge Parish HA, 4546 North Street, Baton Rouge, LA 70821	LA48-V003-014	979,200	31
06	Lafayette HA, 100 C.D. Circle, Lafayette, LA 70501	LA48-V005-010	230,040	9
06	Monroe HA, P.O. Box 1194, Monroe, LA 71210	LA48-V006-009	158,215	7
06	Jefferson Parish HA, 1718 Betty Street, Marrero, LA 70072	LA48-V013-007	1,382,940	43
06	Slidell HA, P.O. Box 1392, Slidell, LA 70459	LA48-V103-007	672,000	20
06	Hammond HA, 411 West Coleman Avenue, Hammond, LA 70403	LA48-V104-001	264,275	15
06	Newellton HSG Program, P.O. Box 1021, Newellton, LA 71351	LA48-V169-002	214,225	13
06	Acadia-Vermillion, P.O. Box 1404, Crowley, LA 70527-1347	LA48-V176-001	172,130	13
06	St. Martin Parish Police Jury, P.O. Box 9, St. Martinville, LA 70582	LA48-V178-002	730,800	26
06	St. Martin Parish Police Jury, P.O. Box 9, St. Martinville, LA 70582	LA48-V178-003	264,240	9
06	Lafayette Parish Government, 1010 Lafayette Street, Lafayette, LA 70502	LA48-V180-001	390,850	13
06	Iberia Parish Government, Courthouse Building, Suite 400, New Iberia, LA 70560-4587	LA48-V189-003	190,900	9
06	Tangipahoa Parish Police Jury, P.O. Box 317,Tickfaw, LA 70466	LA48-V207-003	242,055	15
06	Webster Parish Police Jury, P.O. Box 389, Minden, LA 71058-0389	LA48-V213-003	308,060	19
06	Morgan City HA, P.O. Box 2393, Morgan City, LA 70381-2393	LA48-V221-003	207,840	8
06	City of Ruston, P.O. Box 280, Ruston, LA 71273-0280	LA48-V232-001	262,200	13
06	West Carroll Parish Police Jury, P.O. Drawer 630, Oak Grove, LA 71263	LA48-V233-001	201,270	15
06	City of Kinder, P.O. Drawer AH, Kinder, LA 70648	LA48-V247-005	207,275	15
06	Morehouse Parish Police Jury, P.O. Box 509, Bastrop, LA 71221-0509	LA48-V258-002	233,450	23
06	Vernon Parish Police Jury, P.O. Box 1247, Leesville, LA 71496-1247	LA48-V259-002	247,410	13
06	Oklahoma City PHA, 1700 NE 4th, Oklahoma City, OK 73117	OK56-V002-011	689,700	30
06	Chickasaw Nation IHA, 901 Country Club, Ada, OK 74820	OK56-V047-008	132,785	7
06	Chickasaw Nation IHA, 901 Country Club, Ada, OK 74820	OK56-V047-009	129,965	7
06	Chickasaw Nation, 901 Country Club, Ada, OK 74820	OK56-V047-010	115,500	6
06	Choctaw Nation IHA, 1005 S. 5th, Hugo, OK 74743	OK56-V049-006	142,570	10
06	Choctaw Nation IHA, 1005 S. 5th, Hugo, OK 74743	OK56-V049-007	259,325	20
06	Choctaw Nation IHA, 1005 S. 5th, Hugo, OK 74743	OK56-V049-008	142,570	10
06	Tulsa PHA, 415 E. Independence, Tulsa, OK 73145	OK56-V095-003	785,800	30
06	Shawnee PHA, P.O. Box 3427, Shawnee, OK 74802	OK56-V095-003	390,980	16
06	Norman PHA, 700 N. Berry Rd., Norman, OK 73069	OK56-V139-010	408,365	21
06	Stillwater PHA, 807 S. Lowry, Stillwater, OK 74074	OK56-V146-001	1,517,150	73

SECTION 8 RENTAL VOUCHERS FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 887 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
06	Housing Authority of the City of Austin, P.O. Box 6159, Austin, TX 78672	TX59-V001-009	2,420,950	70
06	Housing Authority of the City of San Antonio, P.O. Drawer 1300, San Antonio, TX 78295	TX59-V006-013	1,848,570	61
06	Housing Authority of the City of Del Rio, P.O. Box 4080, Del Rio, TX 78841	TXC59-V016-005	541,250	25
06	Housing Authority of the City of Harlingen, P.O. Box 1669, Harlingen, TX 78551	TX59-V065-003	497,175	18
06	Housing of the City of Kingsville, 1000 Brown Villa, Kingsville, TX 78363	TX59-V114-004	585,925	25
06	Housing Authority of Marble Falls, P.O. Box 668, Marble Falls, TX 78654	TX59-V263-001	456,110	26
06	Housing Authority of Travis County, P.O. Box 1748, Austin, TX 78767	TX59-V480-007	197,190	7
07	Council Bluffs Municipal HSG Agency, 505 S. 6th St., Council Bluffs, IA 50704	IA05-V023-008	780,430	32
07	Muscatine Municipal HA, 215 Sycamore St., Muscatine, IA 52761	IA05-V049-004	1,168,135	50
07	Waterloo Housing Authority, Box 1587, 215 E. 4th St., Waterloo, IA 50704	IA05-V050-010	1,034,525	33
07	City of Mason City, 109 First St., SE., Mason City, IA 50401	IA05-V108-003	316,810	15
07	SIRHA, 219 N. Pine St., Creston, IA 50801	IA05-V117-008	967,925	45
07	Knoxville PHA, 305 S. Third, Knoxville, IA 50138	IA05-V119-002	229,350	15
07	Region XII Reg. HA, 108 W. 6th St., P.O. Box 663, Carroll, IA 51401	IA05-V122-004	227,735	11
07	EIRHA, P.O. Box 1140, 330 Nesler Center, Dubuque, IA 52001	IA05-V126-012	131,295	5
07	MIRHA, 4 N. 13th St., Fort Dodge, IA 50501	IA05-V133-004	597,885	37
07	Wichita, 307 North Riverview, Wichita, KS 67203	KS16-V004-009	1,870,290	64
07	Chanute, 110 S. Ronda Lane, Chanute, KS 66720	KS16-V062-001	521,520	25
07	SEK-CAP, Inc., P.O. Box 128, Girard, KS 66743-0325	KS16-V161-001	462,110	26
07	Johnson County, 9307 W 74th St., Merriam, KS 66202	KS16-V162-007	257,390	11
07	Hutchison, 200 E. Third St., Hutchison, KS 67505	KS16-V163-005	975,535	41
07	Riley County, 437 Houston St., Manhattan, KS 66502-1024	KS16-V167-002	606,610	40
07	Kansas City, 299 Paseo, Kansas City, MO 64106-2606	MO16-V002-013	703,650	35
07	Pulaski County, P.O. Box 69, Richland, MO 65556-0037	MO16-V207-002	229,445	13
07	Dallas County, 1451 E. Pythian St., Springfield, MO 65806-2931	MO16-V216-004	516,800	18
07	Dallas County, 1451 E. Pythian St., Springfield, MO 65806-2931	MO16-V216-005	230,100	12
07	Dallas County, 1451 E. Pythian St., Springfield, MO 65806-2931	MO16-V216-006	244,640	12
07	Lincoln HA, 5700 "R" St., Lincoln, NE 68505	NE26-V002-016	1,058,255	45
07	Kearney HA, 2715 Ave. I, Kearney, NE 68847	NE26-V004-001	1,095,750	50
07	West Central Nebraska Joint HA, 710 N. Spruce St., Ogallala, NE 69153	NE26-V179-002	290,435	17
07	Goldenrod Joint HA, P.O. Box 280, Wisner, NE 68791	NE26-V181-003	304,335	12
07	St. Louis City, 4100 Lindell Blvd., St. Louis, MO 63108	MO36-V001-012	912,450	35
07	Columbia, P.O. Box K, Columbia, MO 65205	MO36-V007-007	67,965	3
07	West Plains, 302 Walnut, West Plains, MO 65775	MO36-V037-003	211,425	15
07	MHDC, 301 E. Armour, Suite 600, Kansas City, MO 63845	MO36-V195-004	913,435	24
07	Boone County, P.O. Box 1038, Columbia, MO 54205	MO36-V198-006	230,460	12
07	Lincoln County, P.O. Box 470, Bowling Green, MO 63334	MO36-V199-009	618,805	30
07	Lincoln County, P.O. Box 470, Bowling Green, MO 63334	MO36-V199-010	656,735	22
07	St. Francois County, P.O. Box N, Flat River, MO 63601	MO36-V203-010	297,045	13
07	Franklin County, 304 Locust Street, Hillsboro, MO 63050	MO36-V205-005	346,650	12
07	Phelps County, 101 W. 10th St., Rolla, MO 65401	MO36-V206-004	361,325	15
08	Mississippi County, 529 N. Lincoln, East Prairie, MO 63845	MO36-V224-004	336,750	18
08	HSG Auth-CO. Springs, 30 So. Nevada Ave., #304, Colorado Springs, CO 80903	CO99-V026-012	646,390	25
08	Lajunta Hsg. Auth., 315 E. Fifth St., Lajunta, CO 81050	CO99-V031-001	377,385	15
08	Englewood HSG. Auth., 3400 S. Elati St., Englewood, CO 80110	CO99-V046-007	645,650	25
08	City of Lakewood, 445 S. Allison Pkwy., Lakewood, CO 80226	CO99-V049-010	612,600	24
08	Grand Junction HSG Auth., 805 Main St., Grand Junction, CO 81501	CO99-V051-005	939,175	25
08	Sheridan Hsg. Auth., 4101 So. Federal Blvd., Englewood, CO 80110	CO99-V057-002	163,745	6
08	HSG. Auth. Boulder, 3120 Broadway Avenue, Boulder, CO 80302	CO99-V061-009	484,975	19
08	Jeffco Hsg. Auth. 1445 Holland St., Lakewood, CO 80215	CO99-V072-007	721,735	25
08	CO. Dept. Institutions, 4131 S. Julian Way, Denver, CO 80236	CO99-V074-015	117,000	6
08	CO. Dept. Institutions, 4131 S. Julian Way, Denver, CO 80236	CO99-V074-016	47,610	2
08	Archuleta CO. Hsg., 572 6th Ave., Durango, CO 81301	CO99-V081-002	30,645	1
08	HSG Auth. Weld Co., 315 N. Eleventh Ave., Greeley, CO 80632	CO99-V090-009	352,530	12
08	Cold Division of Hsg., 1313 Sherman St., #623, Denver, CO 80203	CO99-V093-017	215,310	6
08	HSG. Auth. Billings, 2415 First Ave. North, Billings, MT 59101	MT99-V001-007	193,050	5
08	Montana Dept. of Comm., Capitol Station, Helena, MT 59620-0413	MT99-V032-022	1,169,060	34
08	Montana Dept. of Comm., Capitol Station, Helena, MT 59620-0413	MT99-V032-023	76,260	2
08	Missoula Hsg. Auth., 1319 E. Broadway, Missoula, MT 59802	MT99-V033-007	670,395	25
08	Cass County Hsg. Auth., 230 Eighth Ave., West Fargo, ND 58078	ND99-V001-006	749,635	30
08	Fargo Housing & Redv., 101 S. Second St., Fargo, ND 58103	ND99-V014-009	181,415	7
08	ND Hsg. Finance Agency, 1600 E. Interstate Ave., Bismarck, ND 58502	ND99-V056-012	305,025	15
08	City of Lennox Hsg. Redv., Highway 17 at Second Ave., Lennox, SD 57039	SD99-V010-001	351,115	15
08	Sioux Falls Hsg. & Redv., 224 No. Phillips Ave., Sioux Falls, SD 57102	SD99-V016-002	214,770	10
08	Pierre Hsg. & Redv., 301 N. Pleasant Dr., Pierre, SD 57501	SD99-V035-001	261,245	9
08	Watertown Hsg. & Redv., 6 First Street, SW., Watertown, SD 57201	SD99-V043-005	542,050	30
08	Brookings Hsg. Auth., 311 3rd Ave., Brookings, SD 57006	SD99-V056-001	292,605	15
08	Hsg. Auth. Co. of SL, 1962 So. 200 East, Salt Lake City, UT 84115	UT99-V003-009	136,890	6
08	Davis County Hsg., 352 So. 200 W., #1, Farmington, UT 84025	UT99-V009-013	784,570	35
08	Utah Piaute Tribal, 600 N. 100 E., Cedar City, UT 84720	UT99-V010-001	633,610	16
08	Hsg. Auth. Utah Co., 257 E. Center, Provo, UT 84601	UT99-V011-006	577,515	25
08	West Valley City, 3600 Constitution Blvd., West Valley City, UT 84119	UT99-V025-011	121,250	5
08	Hsg. Auth. of Cheyenne, 3304 Sheridan Ave., Cheyenne, WY 82009	WY99-V002-010	129,685	3
08	Wyoming Community Dev., P.O. Box 6588, Cheyenne, WY 82003	WY99-V017-005	589,295	19
08	Wyoming Community Dev., P.O. Box 6588, Cheyenne, WY 82003	WY99-V017-006	166,510	6
08	Hawaii Housing Authority, P.O. Box 17907, Honolulu, HI 96817	HI10-V001-006	657,970	19
09	City and County of Honolulu, 650 S. King Street, Honolulu, HI 96813	HI10-V003-013	1,701,560	47

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SECTION 8 RENTAL VOUCHERS FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 887 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
09	County of Maui, 200 S. High Street, Wailuka, HI 96793	HI10-V004-007	1,148,300	27
09	County of Kauai, 4193 Hardy Street, Lihue, HI 96766	HI10-V005-006	643,480	16
09	Hsg. Authority of the County of Los Angeles, 4800 Brooklyn Avenue, Los Angeles, CA 90022	CA16-V002-011	17,446,730	412
09	Hsg. Authority of the County of Los Angeles, 4800 Brooklyn Avenue, Los Angeles, CA 90022	CA16-V002-013	4,425,455	108
09	Hsg. Authority of the City of Los Angeles, 515 Columbia Avenue, Los Angeles, CA 90017	CA16-V004-014	7,513,550	181
09	Hsg. Authority of the County of Kern, 525 Roberts Lane, Bakersfield, CA 93308-4799	CA16-V008-012	493,935	17
09	Hsg. Auth. of the County of San Bernardino, 1053 North "D" Street, San Bernardino, CA 92410	CA16-V019-012	763,845	22
09	Hsg. Authority of the County of Santa Barbara, 815 West Ocean Avenue, Lompoc, CA 93438	CA16-V021-006	1,498,500	33
09	Hsg. Authority of the County of Riverside, 5555 Arlington Avenue, Riverside, CA 92504	CA16-V027-012	1,802,670	37
09	Hsg. Authority of the County of Riverside, 5555 Arlington Avenue, Riverside, CA 92504-2506	CA16-V027-013	519,205	14
09	Oxnard Housing Authority, 1470 Colonia Road, Oxnard, CA 93030	CA16-V031-009	643,975	15
09	Hsg. Authority of the City of Oxnard, 1470 Colonia Road, Oxnard, CA 93030	CA16-V031-010	339,745	11
09	Hsg. Authority of the City of Port Hueneme, 250 North Ventura Road, Port Hueneme, CA 93041	CA16-V032-004	442,670	10
09	Hsg. Authority of the City of San Buenaventura, P.O. Box 1648, Ventura, CA 93002	CA16-V035-006	314,285	9
09	Hsg. Authority of the City of Calexico, 100 East Fifth Street, Calexico, CA 92231	CA16-V039-006	429,645	11
09	Hsg. Authority of the City of San Luis Obispo, P.O. Box 638, San Luis Obispo, CA 93406	CA16-V064-006	586,775	15
09	Hsg. Authority of the City of Long Beach, 333 W. Ocean Blvd, 7th Floor, Long Beach, CA 90802	CA16-V068-011	1,417,480	37
09	Hsg. Authority of the City of Santa Barbara, 806 Laguna Street, Santa Barbara, CA 93101	CA16-V076-007	376,055	9
09	Hsg. Authority of the City of Carlsbad, 2965 Roosevelt St., Suite B, Carlsbad, CA 92008-2389	CA16-V077-004	1,068,615	29
09	Pasadena Community Development Commission, 67 N. Raymond Ave, Suite 900, Pasadena, CA 91103.	CA16-V079-006	761,580	18
09	Area Hsg. Authority of the County of Ventura, 99 South Glenn Drive, Camarillo, CA 93010	CA16-V092-006	437,480	10
09	Hsg. Authority of the City of Santa Ana, 500 W. Santa Ana Blvd, Ste. 400, Santa Ana, CA 92702	CA16-V093-015	319,750	6
09	Hsg. Authority of the County of Orange, 2043 North Broadway, Santa Ana, CA 92702-4048	CA16-V094-014	524,025	11
09	Hsg. Authority of the City of Garden Grove, P.O. Box 3070, Garden Grove, CA 92640	CA16-V102-011	314,450	6
09	Hsg. Authority of the City of Redondo Beach, 200 N. Pacific Coast Hwy., Redondo Beach, CA 90277.	CA16-V103-004	736,700	20
09	Hsg. Authority of the City of Redondo Beach, 200 North Pacific Coast Hwy., Redondo Beach, CA 90277.	CA16-V103-006	296,275	7
09	Anaheim Housing Authority, 300 S. Harbor Blvd, Suite 600, Anaheim, CA 92805	CA16-V104-013	4,272,625	95
09	Hsg. Authority of the City of Anaheim, 300 S. Harbor Blvd, Suite 606, Anaheim, CA 92805	CA16-V104-014	473,900	10
09	Hsg. Authority of the City of Burbank, P.O. Box 7145, Burbank, CA 91510	CA16-V105-009	951,960	25
09	Hsg. Authority of the City of Burbank, P.O. Box 7145, Burbank, CA 91510	CA16-V105-011	298,820	8
09	Hsg. Authority of the County of San Diego, 7917 Ostrow Street, San Diego, CA 92111-3694	CA16-V108-015	2,835,450	73
09	Culver City Public Housing Agency, P.O. Box 507, Culver City, CA 90232-0507	CA16-V110-004	354,020	8
09	Hsg. Authority of the City of Santa Monica, 1685 Main Street, Santa Monica, CA 90401	CA16-V111-008	824,490	21
09	Hsg. Authority of the City of Santa Monica, 1685 Main Street, Santa Monica, CA 90401	CA16-V111-009	427,530	12
09	Dept. of Housing and Community Development, P.O. Box 952054, Sacramento, CA 94252-2054	CA16-V112-003	119,600	5
09	Dept. of Housing and Community Development, P.O. Box 952054, Sacramento, CA 94252-2054	CA16-V112-004	136,325	4
09	Dept. of Hsg. and Community Development, P.O. Box 952054, Sacramento, CA 94252-2054	CA16-V112-005	131,290	4
09	Dept. Housing and Community Development, P.O. Box 952054, Sacramento, CA 94252-2054	CA16-V112-006	229,175	5
09	Hsg. Authority of the City of Glendale, 520 East Broadway, Suite 302 Glendale, CA 91205	CA16-V114-012	735,120	20
09	Comm. Dev. Commission of National City, 1243 National City Blvd., RM 210, National City, CA 92050.	CA16-V116-009	874,585	23
09	Hsg. Authority of the City of Norwalk, 12700 Norwalk Blvd., Norwalk, CA 90650	CA16-V118-009	776,580	19
09	Hsg. Authority of the City of South Gate, 8650 California Avenue, South Gate, CA 90280	CA16-V119-007	907,155	25
09	Hsg. Authority of the City of Baldwin Park, 14403 East Pacific Avenue, Baldwin Park, CA 91706	CA16-V120-004	404,910	10
09	Hsg. Authority of the City of Torrance, 3031 Torrance Blvd., Torrance, CA 90503	CA16-V121-003	365,205	9
09	City of Pomona Housing Agency, P.O. Box 660, Pomona, CA 91769	CA16-V123-010	279,090	7
09	Hsg. Authority of the City of Oceanside, 300 N. Hill St., Nevada St. Annex, Oceanside, CA 92054.	CA16-V132-008	1,333,570	33
09	Hsg. Authority of the City of Lakewood, 5050 N. Clark Avenue, Lakewood, CA 90712	CA16-V135-003	337,870	8
09	Hsg. Authority of the City of Paramount, 16400 Colorado Avenue, Paramount, CA 90723	CA16-V137-004	206,940	6
09	Hsg. Authority of the City of Lawndale, 14717 Burin Avenue, Lawndale, CA 90260	CA16-V138-003	234,075	6
09	City of Phoenix 920 E. Madison, Suite D, Phoenix, AZ 85034-2230	AZ20-V001-016	1,415,285	34
09	City of Tucson, 1501 N. Oracle Road, Apt. 122, Tucson, AZ 85726-7210	AZ20-V004-011	810,545	22
09	City of Mesa, 415 N. Pasadena, Mesa, AZ 85201-5916	AZ20-V005-007	332,560	10
09	City of Flagstaff, P.O. Box 1367, Flagstaff, AZ 86002	AZ20-V006-003	276,410	8
09	Navajo Tribe, P.O. Box 387, Window Rock, AZ 86515	AZ20-V012-003	219,645	9
09	City of South Tucson, 1713 S. Third Avenue, South Tucson, AZ 85713	AZ20-V025-003	519,990	14
09	City of Tempe, P.O. Box 5002, Tempe, AZ 85280	AZ20-V031-008	453,870	13
09	Cochise County, 619 Melody Lane, Bisbee, AZ 85603	AZ20-V034-005	147,470	5
09	City of Yuma, 1350 W. Colorado Street, Yuma, AZ 85364	AZ20-V035-008	346,635	9
09	Gila County, 1400 E. Ash, Globe, AZ 85501	AZ20-V045-001	754,270	32
09	Hsg. Authority of the County of Butte, 580 Vallombrosa Avenue, Chico, CA 95926	CA30-V043-008	1,163,820	52
09	City of Redding, 760 Parkview Avenue, Redding, CA 96001	CA30-V106-013	388,080	12
09	State of California, DHCD (El Dorado Co.), P.O. Box 952054, Sacramento, CA 94252	CA30-V112-027	718,620	20
09	State of California, DHCD (Lassen Co.), P.O. Box 952054, Sacramento, CA 94252	CA30-V112-029	349,985	15
09	State of California, DHCD (Placer Co.), P.O. Box 952054, Sacramento, CA 94252	CA30-V112-031	546,175	20
09	State of California, DHCD (Tehama Co.), P.O. Box 952054, Sacramento, CA 94252	CA30-V112-032	536,515	25
09	HSG. & Redevelopment, City of Roseville, 405 Vernon Street, #8, Roseville, CA 95678	CA30-V128-006	834,300	25
09	Oakland Housing Authority, 1619 Harrison Street, Oakland, CA 94612	CA39-V003-018	2,356,665	46
09	Contra Costa Housing Authority, P.O. Box 2759, Martinez, CA 94553	CA39-V011-010	3,040,625	71
09	San Mateo County Housing Authority, 456 Peninsula Avenue, San Mateo, CA 94401	CA39-V014-011	1,582,125	25
09	Merced County Housing Authority, 405 U Street, Merced, CA 95340	CA39-V023-009	887,340	34
09	Stanislaus County Housing Authority, 1701 Robertson Rd., P.O. Box 3958, Modesto, CA 95352	CA39-V026-008	2,507,370	85
09	Marin County Housing Authority, P.O. Box 4282, San Rafael, CA 94913	CA39-V052-013	3,252,785	62

SECTION 8 RENTAL VOUCHERS FUNDING DECISIONS—Continued

[Pursuant to Section 8 of the U.S. Housing Act of 1937, 24 CFR Part 887 and Notice of Fund Availability, 56 FR 24290]

Regional office	Funding recipient name/address	Project No.	Amount approved	No. of units
09	Kings County Housing Authority, P.O. Box 355, Hanford, CA 93232	CA39-V053-007	582,425	25
09	Berkeley Housing Authority, 3200 Adeline Street, Berkeley, CA 94703	CA39-V058-002	3,222,210	78
09	Santa Clara County Housing Authority, 505 West Julian Street, San Jose, CA 95110	CA39-V059-019	2,409,995	44
09	Alameda County Housing Authority, 29800 Mission Blvd., Hayward, CA 94554	CA39-V067-016	835,670	21
09	Madera County HSG Authority, 600 East Yosemite Avenue, Madera, CA 93638-3463	CA39-V069-005	1,199,065	50
09	Santa Cruz Housing Authority, 2160 41st Avenue, Capitola, CA 95060-2060	CA39-V072-013	2,055,640	46
09	Mendocino County Housing Authority, 405 W Perkins Street, Ukiah, CA 95482	CA39-V084-005	175,860	6
09	Sonoma County Housing Authority, 3033 Cleveland Avenue, Santa Rosa, CA 95403	CA39-V085-012	1,396,030	30
09	City of Santa Rosa Housing Authority, P.O. Box 1806, Santa Rosa, CA 95402	CA39-V088-006	1,316,110	30
09	State of California, DHCD, 1800 3rd Street, Sacramento, CA 95814	CA39-V112-016	524,325	13
09	Soland County Housing Authority, 601 W. Texas Street, Fairfield, CA 94533	CA39-V131-003	1,105,030	28
09	Reno Housing Authority 1525 East Ninth Street, Reno, NV 89512	NV39-V001-012	1,466,530	32
09	Las Vegas Housing Authority, 420 N. 10th St., P.O. Box 1897, Las Vegas, NV 89101	NV39-V002-011	371,805	10
09	Clark County Housing Authority, 5064 East Flamingo Road, Las Vegas, NV 89122	NV39-V013-011	1,083,110	26
09	Nevada State Rural Housing Authority, 2100 California Street, Carson City, NV 89701	NV39-V021-007	961,030	30
10	Alaska State Housing Authority, P.O. Box 230329, Anchorage, AK 99523	AK06-V102-020	263,700	12
10	Alaska State Housing Authority, P.O. Box 230329, Anchorage, AK 99523	AK06-V102-021	1,094,975	21
10	Boise City Housing Authority, 680 Cunningham Pl., Boise, ID 83702	ID16-V013-012	493,175	11
10	Idaho Housing Authority, P.O. Box 7899, Boise, ID 83707-1699	ID16-V020-007	1,422,835	52
10	Housing Authority of Ada County, 680 Cunningham Pl., Boise, ID 83702	ID16-V021-007	402,165	10
10	Housing Authority of Clackamas County, 13930 S. Gain St., Oregon City, OR 97045	OR16-V001-012	967,450	32
10	Housing Authority of Lincoln County, P.O. Box 1470, Newport, OR 97365	OR16-V005-003	877,485	31
10	HA and Community Service Agency of Lane Co., 177 Day Island Rd., Eugene, OR 97401	OR16-V006-016	411,975	12
10	Housing Authority of the City of Salem, 360 Church St., Salem, OR 97301	OR16-V011-010	372,840	12
10	Housing Authority of Yamhill County, 414 N. Evans, McMinnville, OR 97128	OR16-V016-005	686,450	25
10	Klamath Housing Authority, P.O. Box 5110, Klamath Falls, OR 97601	OR16-V017-007	282,970	10
10	Linn-Benton Housing Authority, 1250 SE. Queen Avenue, Albany, OR 97321	OR16-V019-013	1,239,420	39
10	Mid-Columbia Housing Authority, 506 E. Second Ave., The Dalles, OR 97058	OR16-V025-008	326,060	12
10	Northeast Oregon Housing Authority, P.O. Box 3357, Lagrande, OR 97850	OR16-V032-004	334,415	11
10	Central Oregion Regional Housing Authority, 2445 SW. Canal Blvd., Redmond, OR 97756	OR16-V034-005	684,835	19
10	Housing Authority of the City of Vancouver, 500 Omaha Way, Vancouver, WA 98661	WA16-V008-011	873,990	36
10	Seattle Housing Authority, 120 Sixth Avenue North, Seattle, WA 89109	WA19-V001-012	3,734,500	97
10	King County HA, 15455-65th Avenue South, Seattle, WA 98188	WA19-V002-014	307,090	9
10	Island County HA, 7 N.W. 6th St. #24, Coupeville, WA 98239	WA19-V024-004	726,105	25
10	Bellingham HA, 208 Unity St., Lwr. Lvl., Bellingham, WA 98225	WA19-V025-010	367,780	13
10	Bellingham HA, 208 Unity St., Lwr Lvl., Bellingham, WA 98225	WA19-V025-012	730,140	26
10	Snohomish County HA, 3425 Broadway, Everett, WA 98201	WA19-V039-010	804,970	23
10	Yakima Housing Authority, 110 Fair Avenue, Yakima, WA 98901-3106	WA19-V042-009	1,313,960	52
10	Spokane Housing Authority, W. 55 Mission, Ste. 104, Spokane, WA 99201	WA19-V055-011	376,795	17
10	Dept. of Comm. Development, Chelan/Douglas, 9th & Columbia, Bldg. GH51, Olympia, WA 98504.	WA19-V060-006	300,145	12
10	Dept. of Comm. Development/Lenis County, 9th & Columbia, Bldg. GH51, Olympia, WA 98504	WA19-V060-010	403,640	15
10	Dept. of Comm. Development/Pacific County, 9th & Columbia, Bldg. GH51, Olympia, WA 98504	WA19-V060-012	912,340	28
10	Dept. of Comm. Development/Whitman County, 9th & Columbia, Bldg. GH51, Olympia, WA 98504.	WA19-V060-015	407,050	12
10	Dept. of Comm. Development/Lewis County, 9th & Columbia, Bldg. GH51, Olympia, WA 98504	WA19-V060-017	483,200	18
10	Skagit County HA, 2405 Austin Lane, Mt. Vernon, WA 98273	WA19-V061-006	461,130	15
10	Cascade Inter-Tribal HA, 2286 Community Plaza, Sedro Woolly, WA 98284	WA19-V062-004	164,330	5

[FR Doc. 92-1443 Filed 1-22-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Final Report to Congress

AGENCY: Department of the Interior.

ACTION: Notice of availability of a Final Report to Congress.

SUMMARY: The final report to Congress on the impact of crude oil spills in the Arctic Ocean on Alaskan Natives (the Report), required by section 8302 of the Oil Pollution Act of 1990, Public Law 101-380, is now available from the contact listed below in the "**ADDRESSES**" section. Topics in the Report are identified below in the "**SUPPLEMENTARY INFORMATION**" section.

DATES: Copies of the Report will be available beginning January 23, 1992.

ADDRESSES: Written requests for a copy of the final Report should be sent to Mr. Paul Gates, U.S. Department of the Interior, Office of Environmental Affairs, ATTN: Section 8302 Report, 1689 C Street, room 199, Anchorage, AK 99501-5126.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Gates, U.S. Department of the Interior, Office of Environmental Affairs, Anchorage, AK at (907) 271-5011 (telephone) or (907) 271-4102 (telefax).

SUPPLEMENTARY INFORMATION: Section 8302 of the Oil Pollution Act of 1990, Public Law 101-380, directs the Secretary of the Department of the Interior, in consultation with the Governor of the State of Alaska, to conduct a study of the issues associated with the recovery of damages, contingency plans and coordinated actions in the event of an oil spill in the Arctic Ocean and to transmit a report to Congress on the study's findings and conclusions.

Opportunities for public input to this Report were provided in three ways. First, comments on, and information for, the Report were requested through a Notice in the November 26, 1990, **Federal Register** Second, information meetings were held in Barrow (November 1990), Kotzebue (December 1990), and Shishmaref (December 1990) for interested Alaskan Natives. Third, copies of the draft Report were made

available to all interested parties for a 30-day review period, beginning in July 1991. Notification of the availability of the public review draft Report was published in the **Federal Register** on July 16, 1991. The final Report incorporates additions and changes, based on the public review process.

The study area of the Report is defined as the Canadian and American Beaufort Seas and Chukchi Sea and Alaskan Native communities in the North Slope Borough, the Northwest Arctic Borough to, and including, Cape Prince of Wales. The Report, which is based on existing information and extensive consultation with appropriate parties, summarizes Alaskan Native concerns regarding oil spills, oil spill cleanup activities, and the recovery of damages from oil spill in the study area. The report also summarizes the following information for the study area:

—Characteristics of the natural and physical environment that are important considerations in oil spill contingency planning and oil spill responses;
—The location and population of Alaskan Native Communities, subsistence species harvested by study-area residents, the importance of those subsistence resources to the residents, and relevant subsistence laws;
—Existing and planned exploration, development, production, and transportation activities, facilities and vessels;
—Environmental evaluation processes for proposed crude oil exploration, development, production and transportation activities, facilities and vessels;
—Public-sector oil spill prevention regulations;
—Public- and private-sector oil spill contingency plan requirements and existing international, bilateral, national, state and local contingency plans/coordinated actions related to crude oil activities, facilities and vessels;
—Private-sector contingency plans for study area crude oil activities and facilities;
—Existing Canadian and U.S. oil spill response organizations with primary responsibility for responding to an oil spill;
—Response actions based on four generalized oil spill scenarios;
—Existing and planned research on oil spill prevention and response technologies applicable to the Arctic; and
—International, Canadian and U.S. national, and State of Alaska legal regimes available to Alaskan Natives to recover damages related to the lost use of subsistence resources arising from an oil pollution incident.

The Report concludes by identifying issues and findings related to contingency planning/coordinated actions and the recovery of damages.

Dated: January 17, 1992.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 92-1663 Filed 1-22-92; 8:45 am]

BILLING CODE 4310-RG-M

Bureau of Land Management

[AA-680-01-4142-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number list below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0103), Washington, DC 20503, telephone 202-395-7340.

Title: Mineral Materials Disposal, 43 CFR part 3600.

OMB approval number: 1004-0103.

Abstract: Respondents supply information and data necessary to process applications for the removal of mineral materials from the public lands. This information is needed to prevent unnecessary destruction of natural resources, to ensure that the Government is not liable for costly reclamation of abandoned sites, and to ensure that the Government receives fair market value for the disposal of mineral materials.

Bureau Form Number: 3600-4, 3600-5.

Frequency: Upon application.

Description of Respondents: Individuals and entities applying for a permit or contract to remove mineral materials from the public lands.

Estimated completion time: 15 minutes.

Annual Responses: 4,920.

Annual Burden Hours: 1,230.

Bureau Clearance Officer (Alternate): Gerri Jenkins 202-653-8853.

Hillary A. Oden,

Assistant Director—Energy and Mineral Resources

[FR Doc. 92-1560 Filed 1-22-92; 8:45 am]

BILLING CODE 4310-84-M

[G-010-4332-10/G2-0106]

Intent To Amend the Rio Puerco Resource Area Management Plan and Prepare a Draft Environmental Impact Statement for Vehicle Use in the Ignacio Chavez Special Management Area; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to advise the public that the Bureau of Land Management (BLM) is proposing to prepare a draft Resource Management Plan Amendment and Environmental Impact Statement (RMPA/EIS) for vehicle use in the Ignacio Chavez Special Management Area (SMA), New Mexico. This action will be completed in accordance with the National Environmental Policy Act of 1969.

The primary purpose of the EIS is to analyze and document the direct, indirect, and cumulative impacts of reasonably foreseeable future actions resulting from vehicle use in the Ignacio Chavez SMA.

DATES: Written comments will be accepted until February 21, 1992. Oral and/or written comments may also be presented at three public scoping meetings to be advertised in local news media, but tentatively scheduled as follows: The first public meeting will be on February 11, 1992, at the Cibola Convention Center, Grants, New Mexico, 6:30 p.m. The second public meeting will be on February 12, 1992, at the BLM, Albuquerque District Office, 435 Montano, NE., Albuquerque, New Mexico, 6:30 p.m. The third public meeting will be on February 13, 1992, at the Cuba Municipal Complex Building, Cuba, New Mexico, 6:30 p.m.

ADDRESSES: Comments should be sent to Albert Abee, Area Manager, BLM, 435 Montano NE., Albuquerque, New Mexico 87107, (505) 761-8700.

FOR FURTHER INFORMATION CONTACT: Katherine Walter, Outdoor Recreation Planner, Rio Puerco Resource Area, 435 Montano NE, Albuquerque, New Mexico, 87107, (505) 761-8700.

SUPPLEMENTARY INFORMATION: An emergency road closure was initiated in 1987, in accordance with the guidance

contained in 43 CFR 8341.2. The emergency road closure was implemented due to unusually wet conditions that caused vehicles to leave the roadway and develop parallel vehicle trails adjacent to BLM Road 1103. Road 1103 traverses the SMA and serves as the boundary road for two wilderness study areas.

Due to the revegetation of the alternate vehicle trails and the improved environmental conditions, the emergency road closure for vehicle use in the SMA was lifted on September 28, 1991. The SMA received over 3,000 users within a 3-month period. Due to early precipitation, the SMA was again closed to vehicle use on November 25, 1991. The closure was to reduce the possibility of recurring resource damage due to vehicle use. The EIS will address long-term management of vehicle uses in the SMA. The plan amendment and EIS will amend the Resource Management Plan vehicle use designations in the SMA. The EIS will address the alternative of seasonal closure of BLM Road 1103 between July 1, 1992 to September 15, 1992, and November 15, 1992 to March 30, 1992. The closure will be for approximately 7 months, however; the period of the closure may also vary each year based on the environmental conditions.

A quarter mile segment of BLM Road 1103 would be realigned to its historic location, approximately 100-feet west of Ned's Tank Meadow. Closure points on BLM Road 1103 would be at the Forest Service/BLM boundary on the south utilizing US Forest Service Road 239A at El Banquito and ½ mile south of Barrel Springs on the north. Approximately 17 miles of secondary routes off BLM Road 1103 within the SMA would be closed and rehabilitated. The use of 8 miles of additional vehicle trails for livestock grazing management purposes would be permitted. This alternative would close approximately 33 miles of existing vehicle trails within the SMA.

Additional alternatives to be evaluated include closing the entire SMA road network and "no action". The no action alternative would allow vehicle use on all existing roads and trails not closed through the existing Rio Puerco Resource Management Plan.

Correction: A correction to the **Federal Register**, Vol. 56, No. 183, Friday, September 20, 1991. Due to the controversial nature of vehicle use in the SMA, the Rio Puerco RMPA and Environmental Assessment will be changed to a Río Puerco RMPA/EIS.

Dated: January 14, 1992.

Jack Peterson,

Acting Associate State Director.

[FR Doc. 92-1570 Filed 1-22-92; 8:45 am]

BILLING CODE 4310-FB-M

[UT-040-02-4212-14; UTU-67778]

Intent To Do a Plan Amendment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent to do a Plan Amendment for the Cedar/Beaver/Garfield/Antimony (CBGA) Resource Management Plan (RMP), Beaver County, Utah.

SUMMARY: This notice of intent is to advise the public that the BLM is proposing to amend the CBGA RMP.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the CBGA RMP approved October 1, 1986, which includes public land in Beaver County, Utah. The purpose of the amendment would be to make certain public lands available for noncompetitive sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976.

The public land being considered for sale, comprising 10 acres, is described as follows: Salt Lake Meridian, T. 29 S., R. 7 W., sec. 5, SE¼SE¼SE¼.

The existing plan does not identify these lands as suitable for disposal. However, because of resource values, public values, and objectives involved, the public interest may be well served by offering these lands for sale. An environmental assessment will be prepared to analyze the impacts of this proposal and alternatives.

For 30 days from the date of publication of this notice, the BLM will accept comments on this proposal.

Existing planning documents and information area available at the Beaver River Resource Area Office, 365 South Main, Cedar City, Utah 84720, telephone (801) 586-24358.

FOR FURTHER INFORMATION CONTACT: Arthur L. Tait, Beaver River Resource Area Manager.

Dated: January 15, 1992.

Thomas F. Slater,

Acting State Director.

[FR Doc. 92-1571 Filed 1-22-92; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-943-4214-10; GP2-096; OR-22029-C(WASH), et al.]

Proposed Continuation of Withdrawals; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation, U.S. Coast Guard proposes that all of the nine separate land withdrawals continue for an additional 25 years and requests that the lands involved remain closed to surface entery and mining.

DATES: Comments should be received by April 22, 1992.

ADDRESSES: Comments should be sent to State Director, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, 503-280-7171.

SUPPLEMENTARY INFORMATION: The U.S. Coast Guard proposes that the following identified land withdrawals be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands and projects are involved:

1. OR-22029-C(WASH), Executive Order of September 11, 1854, Smith Island Light Station, 58.56 acres, located in Island County, on Smith Island on the east end of the Strait of Juan de Fuca, in Sec. 29, T. 33 N., R. 1 W., W.M., Washington.

2. OR-22031(WASH), Executive Order No. 3528 of August 9, 1921, Gig Harbor Light Station, 0.46 acre, located in Pierce County, at the entrance to Gig Harbor, in Sec. 8, T. 21 N., R. 2 E., W.M., Washington.

3. OR-22050(WASH), Executive Order No. 2755 of November 14, 1917, Blakely Rock Light Station, 1.13 acres, located in Kitsap County, at the entrance to Blakely Harbor, Puget Sound, T. 24 N., R. 2 or 3 E., unsurveyed, W.M., Washington.

4. OR-22074(WASH), Executive Order of December 7, 1868, Eagle Island Light Station, 9.36 acres, located in Pierce County, on Eagle Island, in Secs. 28 and 29, T. 20 N., R. 1 E., W.M., Washington.

5. OR-22097(WASH), Executive Order No. 3648 of March 8, 1922, Pillar Rock Light Station, 20+ acres, located in Wahkiakum County, on Pillar Rock in the Columbia River, in Sec. 17, T. 9 N., R. 7 W., unsurveyed, W.M., Washington.

6. OR-22101(WASH), Executive Order of July 31, 1865, as modified by Executive Order of September 14, 1926,

Three Tree Point Light Station, 0.65 acre, located in King County, on East Passage, Puget Sound, in Sec. 14, T. 9 N., R. 7 W., N.M., Washington.

7. OR–22117(WASH), Executive Order of September 13, 1859, Point Roberts Light Station, 1.34 acres, located in Whatcom County, on Point Roberts in the Strait of Georgia, in Sec. 9, T. 40 N., R. 3 W., W.M., Washington.

8. OR–22120(WASH), Executive Order of March 26, 1869, Blake Island East Light Station, 5.00 acres, located in Kitsap County, on Blake Island on Puget Sound, in Sec. 30, T. 24 N., R. 3 E., unsurveyed, W.M., Washington.

9. OR–24423(WASH), Executive Order of May 24, 1879, Point No Point Light Station, 3.40 acres, located in Kitsap County, on Point No Point on Puget Sound, in Sec. 22, T. 28 N., R. 2 E., W.M., Washington.

The withdrawals currently segregate the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. The Cost Guard requests no changes in the purposes of segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writting to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will continue until such final determination is made.

Dated: January 6, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92–1599 Filed 1–22–92; 8:45 am]

BILLING CODE 4310–33–M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation (Reclamation), Department of the Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions pending through March 1992. This notice is one of a variety of means being used to inform the public about proposed contractual actions for water service and repayment. The Reclamation announcements of individual repayment and water service contract actions will be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary of the Interior or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if Reclamation determines that the contract action may or will have "significant" environmental effects.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Dick L. Porter, Chief, Contracts and Repayment Division, Bureau of Reclamation, 1849 C St. NW., Washington, DC 20240; telephone (202) 208–3014, [FTS] 268–3014.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to section 43 CFR 426.20 of the rules and regulations published in the **Federal Register** 48 FR 54785, December 6, 1983, Vol. 48, page 54785, Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of water for irrigation or other uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution and, pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** 48 FR 54785, February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during January, February, or March of 1992. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** 48 FR 54785 for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P–SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(BCP) Boulder Canyon Project

PACIFIC NORTHWEST REGION: Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724–0043, telephone (208) 334–1894.

1. Cascade Reservoir Water Users, Boise Project, Idaho: Repayment contracts for irrigation and M&I water; 19,201 acre-feet of stored water in Cascade Reservoir.

2. Individual Irrigators, M&I, and Miscellaneous Water Users, Pacific Northwest Region, Idaho, Montana, Oregon, and Washington: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

3. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot

or $50 minimum per annum for terms up to 40 years.

4. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $50 minimum per annum for terms up to 40 years.

5. Irrigation Districts and Similar Water User Entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. Forty-four Palisades Reservoir Shareholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

7. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

8. Baker Valley Irrigation District, Baker Project, Oregon: Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

9. Crooked River Project, Oregon: Irrigation repayment or water service contracts with several individuals, with the Ochoco Irrigation District, and with North Unit Irrigation District for a total of up to 25,000 acre-feet of storage space in Prineville Reservoir (Arthur R. Bowman Dam).

10. Minidoka-Palisades Project: Repayment contract with Palisades Water Users Inc., for additional 500 acre-feet of storage space in Palisades Reservoir.

11. Willow Creek Project, Oregon: Repayment or water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

12. Five Project Spaceholders, Minidoka-Palisades Project, Idaho-Wyoming: Contract amendments to provide for rental of water to other parties.

13. Bridgeport Irrigation District, Bridgeport, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

14. Hermiston Irrigation District, Umatilla Project, Oregon: Repayment contract for reimbursable cost for Safety-of-Dams repairs to Cold Springs Dam.

15. Ochoco Irrigation District and Various Individual Spaceholders, Crooked River Project, Oregon: Repayment contract for reimbursable cost for Safety-of-Dams repairs to Arthur R. Bowman Dam and Ochoco Dams.

16. The Dalles Irrigation District, The Dallas Project, Oregon: SRPA loan repayment contract; $2,000,000 proposed loan obligation.

17. Oroville-Tonasket Irrigation District, Chief Joseph Dam Project, Washington: SRPA loan repayment contract; $661,500 proposed loan obligation.

18. State of Idaho, Payette Division of the Boise Project, Idaho: Proposed repayment contracts with the State of Idaho for the sale of uncontracted space in Cascade and Deadwood Reservoirs.

19. Sidney Irrigation Cooperative, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 2,300 acre-feet; $1.50 per acre-foot for a term of up to 40 years.

20. P.P.R.T. Water System, Inc., Idaho: Amendatory contract to defer the 1990 and 1991 construction installments of a contract for a loan to construct facilities authorized pursuant to the Emergency Drought Act of 1977.

21. Douglas County, Oregon: SRPA loan repayment contract; proposed loan obligation of $20,715,760 and grant of $9,228,380.

22. Othello School District No. 147, Columbia Basin Project, Washington: 30 acre-feet for irrigation of lawns.

23. City of Hillsboro, Oregon, Tualatin Project: Repayment contract for the purchase of 500 acre-feet of water for M&I use.

24. Mitigation, Inc., Palisades/Ririe Projects: Contracts for storage space in Palisades and Ririe Reservoirs (18,900 and 80,500 acre-feet, respectively) pursuant to the Fort Hall Indian Water Rights Act of 1990.

MID-PACIFIC REGION: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone (916) 978–5030.

1. Tuolumne Regional Water District, CVP, California: Water service contract, up to 9,000 acre-feet from New Melones Reservoir.

2. Calaveras County Water District, CVP, California: Water service contract, up to 2,000 acre-feet from New Melones Reservoir; **Federal Register** notice published February 5, 1982, Vol. 47, page 5473.

3. Individual irrigators, M&I and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,900 acre-feet annually.

Note: Copies of the standard form of temporary water service contract for the various types of service are available, upon written request, from the Regional Director at the address shown above.

4. Friant Division Contractors, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern and Madera Canals, or who divert from Millerton Reservoir, whose contracts expire 1992–1997 with two contracts expiring later. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

5. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. State of California, CVP, California: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP as contemplated in the Coordinated Operation Agreement.

7. Madera ID, Madera Canal, CVP, California: Warren Act contract to convey and/or store nonproject water through project facilities.

8. Cross Valley Canal Contractors, CVP, California: Renewal of existing long-term water service contracts with eight contractors on the Cross Valley Canal whose contracts expire on December 31, 1995. Water quantities in existing contracts range from 1,142 to 40,000 acre-feet.

9. Shasta Dam Area Public Utilities District, CVP, California: Renewal/Increase of M&I water supply contract. Less than 6,000 acre-feet.

10. U.S. Fish and Wildlife Service, CVP, California: Long-term contract for water supply for Federal refuge in Grasslands area of California.

11. North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District, Kern River Project, California: Amendatory contract to provide storage space for M&I water.

12. Contra Costa Water District, CVP, California: Amendatory water service contract to add the operation of the Los Vaqueros Project including an additional point of delivery. The amendment will also conform the contract to current Reclamation policies including the water ratesetting policy.

13. San Juan Suburban Water District, CVP, California: Amend Contract No. 14–06–0200–152A to provide for the current CVP water rates to conform the

contract with the provisions of Section 105 and 106 of Public Law 99–546 and the right to renew.

14. Centerville Community Services District, CVP, California: Water service contract for up to 800 acre-feet of M&I water annually.

15. Shasta County Water Agency, CVP, California: Amendatory water service contract to provide for reduction in annual entitlement of 800 acre-feet.

16. Mid-Pacific Region, California, Oregon, Nevada: Amendatory contracts to include the provision of the Act of July 2, 1956 (70 Stat. 483) and/or the Act of June 21, 1963 (77 Stat. 68) in existing water service contracts.

17. California Department of Corrections, CVP, California: Water service for up to 1,000 acre-feet of water annually to serve the Sierra Conservation Center (a State prison) near Jamestown, California.

18. Redwood Valley Water District, SRPA, California: Amendatory loan repayment contract.

19. Placer County Water Agency, CVP, California: Amend Contract No. 14–06–200–5082A to provide for the current CVP water rates.

20. Broadview Water District, CVP, California: Amend Contract No. 14–06–200–8092 to provide for change in point of diversion, right to construct new turnout on the San Luis Canal, and contract renewal.

21. Sutter Butte Mutual Water Company, CVP, California: Water service contract for a long-term supplemental water supply. Contract will assure Company's water users an alternate water supply during periods of deficiency in their appropriative water rights. Annual water quantity not determined at this time.

22. Paramount Citrus Association, CVP, California: Contract to convey nonproject water through Federal facilities with exemption of RRA under 43 CFR 426.18. Up to 4,000 acre-feet of water to be transferred through Friant-Kern Canal for delivery to Southern San Joaquin Municipal District.

23. Butte Slough Irrigation Company, CVP, California: Water service contract for a long-term supplemental water supply. Contract will assure company's water users an alternate water supply during periods of deficiency in their appropriative water rights. Annual water quantity not determined at this time.

24. Lindsay-Strathmore ID, Friant-Kern Canal, CVP, California: Warren Act contract to convey and/or store nonproject water through project facilities.

25. Madera ID, Hidden Unit CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 29, 1992.

26. Madera ID, Hidden Unit, CVP, California: Amend existing water service contract to extend the current contract one year from February 29, 1992, to February 28, 1993, to allow time to complete the environmental requirements.

27. Chowchilla WD, Buchanan Unit, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 29, 1992.

28. Chowchilla WD, Hidden Unit, CVP, California: Amend existing water service contract to extend the current contract one year from February 29, 1992, to February 28, 1993, to allow time to complete the environmental requirements.

29. Truckee Carson Irrigation District, Newlands Project, Nevada: Warren Act contract to convey and/or store nonproject water in Project facilities.

30. Truckee Carson Irrigation District, Newlands Projects, Nevada: Contract for repayment of construction costs of Newlands Projects.

31. Santa Barbara County Water Agency, Cachuma Project, California: Repayment contract for reimbursement of funds expended under the Emergency Fund Act for continuation of water service.

32. San Luis Water District, CVP, California: Amendatory water service contract to provide that the District pay full O&M rate for all deliveries resulting from the Azhderian Pumping Plant enlargement and the cost of service rate for such deliveries beginning in 1996 and each year thereafter.

33. United Water Conservation District, SRPA, California: Amendatory loan repayment contract.

34. Carmichael Irrigation District, CVP, California: Water service contract for a long-term supplemental water supply. Contract will assure District's water users an alternate water supply during periods of deficiency in their appropriative water rights. Annual water quantity not determined at this time.

35. Delta Mendota Canal Contractors, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Delta-Mendota Canal whose contracts expire in 1994–2003. Water quantities in existing contracts range from 70 to 50,000 acre-feet.

36. Sacramento County Water Agency, CVP, California: Long-term water service contract for 22,000 acre-feet for M&I use.

37. San Juan Suburban Water District, CVP, California: Long-term water service contract for 13,000 acre-feet for M&I use.

38. El Dorado County Water Agency, CVP, California: Long-term water service contract for 15,000 acre-feet for M&I use.

39. East Bay Municipal Utility District, CVP, California: Amendatory Contract No. 14–06–200–5183A to provide for current CVP water rates and temporary change in point of diversion.

40. City of Redding, CVP, California: Amendment to Contract No. 14–06–200–5272A to add point of diversion on turnout, Spring Creek Power Conduit, to facilitate proposed water treatment plant for Buckeye service area.

41. United States Department of Veteran Affairs, CVP, California: Contract for M&I water purposes in support of the new San Joaquin Valley National Cemetery under construction near Santa Nella, California.

42. Century Ranch Water Company, Inc., CVP, California: Long-term exchange contract for M&I, less than 100 acre-feet, Stony Creek Watershed above Black Butte Dam.

43. State of California, Department of Forestry, CVP, California: Water right exchange agreement, less than 100 acre-feet, above Black Butte Dam.

44. San Luis Water District, CVP, California: Amendment to Contract No. 14–06–200–7773A to transfer lands and allocated share of CVP water supply to San Luis Water District that were previously served by Romero Water District.

45. Romero Water District, CVP, California: Amendment to Contract No. 14–06–200–7758 to transfer lands and allocated share of CVP water supply to San Luis Water District.

46. ID's and similar water user entities: Amendatory water service contracts; purpose is to change the definition of "year."

47. Sacramento River water rights settlement contractors, CVP, California: Contract amendment for assignment under voluntary land ownership transfers to provide for the current CVP water rates and update standard contract articles.

48. Santa Clara WD, CVP, California: Amend water service Contract No. 7–07–20–W0023 to reallocate up to 13,300 acre-feet from Mercy Springs WD, Contract No. 14–06–200–3365A to Santa Clara WD and terminate the Mercy Springs WD contract.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone (702) 293–8536.

1. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts—a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

2. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the City of Tucson, Arizona.

3. Contracts, as recommended by Arizona Department of Water Resources, with agricultural entities located near the Colorado River, BCP, Arizona: Water service contracts for up to 20,424 acre-feet per year total.

4. Gila River Indian Community, CAP, Arizona: Water service contract for delivery of up to 173,100 acre-feet per year.

5. Irrigation districts and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Public Law 97–293).

6. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts and amendments for repayment of Federal expenditures for construction of distribution systems.

7. State of Arizona, BCP, Arizona: Contract for an undetermined amount of Colorado River water for M&I use and for agricultural use and related purposes on State-owned land.

8. Imperial Irrigation District and/or the Coachella Valley Water District, California: Contract providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal (AAC) for an equivalent quantity and quality of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project, California.

9. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California adjacent to the Colorado River for an aggregate consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the AAC from a well field to be constructed adjacent to the canal.

10. County of San Bernardino, SRPA, California: Repayment contract for a $29.6 million loan.

11. Tohono O'odham Nation, SRPA, Arizona: Repayment contract for a $7.3 million loan for the Schuk Toak District.

12. Sturges Trust, Supreme Court Decree in *Arizona* v. *California* and BCP, Arizona: Contract for delivery of 8,500 acre-feet of Colorado River water per year for agricultural use as recommended by the State of Arizona and to recognize a 780 acre-foot present perfected right to the use of Colorado River water.

13. BCP, Arizona: Contracts for additional allocations of Colorado River water to cities located along the Colorado River in Arizona for up to 15,116 acre-feet per year as recommended by the Arizona Department of Water Resources.

14. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in *Arizona* v. *California*, and BCP in Arizona and Nevada: Memorandum of Understanding for delivery of Colorado River water for its Federal Establishments' present perfected right of 500 acre-feet of diversions annually, and the Federal Establishments' perfected right pursuant to Executive Order No. 5125 (April 25, 1930).

15. Eastern Municipal Water District, SRPA, California: Repayment contract for a $31 million loan.

16. City of Yuma, Gila Project, Arizona: Contract to add an additional point of diversion.

17. Colorado River Commission of Nevada and Southern Nevada Water Authority, BCP, Nevada: Final allocations and contracts for Nevada's remaining apportionment of Colorado River water.

18. The Metropolitan Water District of Southern California or Imperial Irrigation District, California: Construction and funding contract to conserve water along a portion of the AAC in accordance with Title II AAC Lining Act dated November 7, 1988.

19. Elsinore Valley Municipal Water District, SRPA, California: Repayment contract for a $22.3 million loan.

20. Cibola Valley Irrigation and Drainage District and Mohave Valley Irrigation and Drainage District, BCP, Arizona: Amendments of current contracts for additional Colorado River water service areas, diversion points, and other minor changes.

21. Miscellaneous present perfected rights holders, BCP, Arizona and California: Contracts for Supreme Court decreed entitlements of Colorado River water as identified in *Arizona* v. *California*, as supplemented or amended and as required by section 5 of the BCP.

22. Federal Establishments' present perfected rights holders: Individual contracts for administration of Colorado River water entitlements of the Colorado River, Fort Mojave, Fort Yuma, Quechan, and Cocopah Indian Tribes.

23. Yuma County Water Users' Association, Yuma Project, Arizona: Contract to enable the Association to administer non-irrigation water within its service area.

Upper Colorado Region: Bureau of Reclamation, P.O. Box 11568, (125 South State Street), Salt Lake City, Utah 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

2. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement in principle.

3. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

4. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract for 7,600 acre-feet per year for M&I use.

5. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract for 9,900 acre-feet per year for irrigation use.

6. Uintah Water Conservancy District, Jensen Unit, Central Utah Project, Utah: Amendatory repayment contract to reduce M&I water supply and corresponding repayment obligation.

7. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Public Law 96–550.

8. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Repayment contract for R&B work of selected project facilities.

9. San Juan Pueblo, San Juan-Chama Project, New Mexico: Repayment contract for up to 5,165 acre-feet of project water for irrigation purposes.

10. City of El Paso, Rio Grande Project, Texas and New Mexico: Amendment to the 1941 and 1962 contracts to expand acreage owned by the City to 3,990 acres; expand terms of water rights assignments from 25 years to 75 years; and allow assignments outside City limits under authority of the Public Service Board.

11. Mancos Water Conservancy District, Mancos Project, Colorado: Amendatory contract to remove contract restrictions that prevent the Mancos Water Conservancy District from developing hydropower on the Mancos Project.

12. James A. and Sandra J. Stratman, Blue Mesa Reservoir, Wayne N. Aspinall Unit, Colorado River Storage Project, Colorado: Water service contract for domestic use of 1 acre-foot for 40 years.

13. Weber Basin Water Conservancy District and Ogden River Water Users, Weber Basin Project, Utah: Repayment contract under safety of dams program for the repair of Pineview Dam.

14. Unitah Water Conservancy District, Vernal Unit, Central Utah Project, Utah: Repayment contract under safety of dams program for the repair of Steinaker Dam.

15. The National Park Service, Bureau of Land Management, Colorado Water Conservation Board, Wayne N. Aspinall Unit, CRSP, Colorado: Contract for between 180,000 to 740,000 acre-feet of project water to provide specific river flow patterns in the Gunnison River through the Black Canyon of the Gunnison National Monument.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone (406) 657–6413.

1. Individual irrigators, M&I, and miscellaneous water users, Great Plains Region: Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas: Temporary (interim) water service contract for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5-years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Fort Shaw Irrigation District, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

3. Owl Creek Irrigation District, Owl Creek Unit, P–SMBP, Wyoming: Amendatory water service contract to reflect reduced water supply benefits being received from Anchor Reservoir.

4. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts; contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

5. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Water service contracts; proposed second round contract negotiations for sale of agricultural, municipal, domestic, and industrial water from the regulatory capacity of Ruedi Reservoir.

6. Cedar Bluff Irrigation District No. 6, Cedar Bluff Unit, P–SMBP, Kansas: Repayment contract; pending passage of congressional legislation, terminate the Cedar Bluff Irrigation District's contract. The use of the District's portion of the reservoir storage capacity will be sold to the State of Kansas for fish, wildlife, recreation, and other purposes.

7. Frenchman Valley Irrigation District, Frenchman Unit, P–SMBP, Nebraska: Pending passage of congressional legislation, renegotiate District's existing contract to reduce payments based on payment ability and reduced water supply.

8. Garrison Diversion Unit, P–SMBP, North Dakota: Repayment contract; renegotiation of the master repayment contract with Garrison Diversion Conservancy District to bring the terms in line with the Garrison Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

9. Corn Creek Irrigation District, Glendo Unit, P–SMBP, Wyoming: Repayment contract for 10,350 acre-feet of supplemental irrigation water from Glendo Reservoir.

10. East Bench Irrigation District, East Bench Unit, P–SMBP, Montana: D&MC contract for $300,000 for minor construction work over a 10-year period.

11. Glen Elder Irrigation District, Glen Elder Unit, P–SMBP, Kansas: Negotiations for a long-term contract for agricultural water service from Waconda Lake.

12. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

13. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

14. Board of Water Commissioners of the City and County of Denver, the Colorado River Water Conservation District, and the Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Operating agreement for substitution of water in the proposed Woolford Mountain (Muddy Creek) Reservoir for Green Mountain Reservoir water.

15. Sargent Irrigation District, Middle Loup Division, P–SMBP, Nebraska: R&B loan repayment contract not to exceed $2,475,000.

16. Chinook Water Users Association, Milk River Project, Montana: SRPA contract for loan of up to $6,000,000 for improvements to the Association's water conveyance system.

17. Heart River Unit, Dickinson Subunit, P–SMBP, North Dakota: Renegotiate water service Contract No. I79r–1412 with the City of Dickinson. Existing contract expired September 24, 1989.

18. Malta Irrigation District, Malta Division, Milk River Project, Montana: R&B contract for repayment of up to $5,600,000.

19. Midvale Irrigation District, Riverton Unit, P–SMBP, Wyoming: Long-term contract for water service from Boysen Reservoir.

20. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Pending passage of congressional legislation, negotiate amendatory contract to increase irrigable acreage within the project.

21. Palmetto Bend Project, Texas: Amendment of the tripartite contract among the United States, the Lavaca-Navidad River Authority and the Texas Water Development Board to transfer the Board's remaining repayment obligation and interest in the Palmetto Bend Project to the Authority.

22. Canadian River Municipal Water Authority, Canadian River Project, Texas: Amendatory contract to reflect credit for project lands transferred to the National Park Service under Public Law 101–628 for the Lake Meredith National Recreation Area.

23. City of Havre, Milk River Project, Montana: New long-term water service contract for up to 2,800 acre-feet annually.

24. Lakeview Irrigation District, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir.

25. Hidalgo County Irrigation District No. 6, Texas: SRPA contract for a 25-year loan for up to $5,762,400 to rehabilitate the District's irrigation facilities.

26. City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

27. Shoshone, Heart Mountain, Willwood, and Deaver Irrigation Districts, Shoshone Project, Wyoming: R&B contract for a loan through the Joint Powers Board, of up to $7,500,000 to rehabilitate project irrigation facilities.

28. City of Aurora, Fryingpan-Arkansas Project, Colorado: Long-term carriage contract for up to 1,000 acre-feet of conveyance capacity in the Fryingpan-Arkansas Project facilities.

29. Board of Commissioners of the City and County of Denver, Northern Colorado Water Conservancy District, Colorado River Water Conservation District, Colorado-Big Thompson Project, Colorado: Operating agreement for substitution of Williams Fork Reservoir water for Green Mountain Reservoir water.

30. Thirty Mile Canal Company, Nebraska: SRPA contract for a loan of $2,264,000 to reline the main canal, replace open laterals with buried pipe, and replace bridges.

31. City of Estes Park, Colorado-Big Thompson Project, Colorado: Modification of water service contract to change point of diversion and other administrative revisions.

32. City of Loveland, Colorado-Big Thompson Project, Colorado: Long-term conveyance contract for conveyance of up to 12,000 acre-feet of city-owned water annually through Federal project facilities.

33. Belle Fourche Irrigation District, Belle Fourche Unit, P-SMBP, South Dakota: Amendment to D&MC contract to extend work through to 1995 and provide an additional $1 million to complete the work.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on proposed contract or contract action must be submitted to the appropriate Reclamation officials at locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification, and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Dated: January 16, 1992.

J. Austin Burke,

Assistant Commissioner.

[FR Doc. 92-1564 Filed 1-22-92; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-518 (Final)]

Aspherical Ophthalmoscopy Lenses From Japan; Investigation

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-205-3182), Office of Investigation, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION: On October 15, 1991, the Commission instituted the subject investigation and established a schedule for its conduct (56 FR 56860). The Commission is now revising its schedule in the investigation.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than February 19, 1992; the prehearing conference will be held at the U.S. International Trade Commission Building on February 24, 1992; the prehearing staff report will be placed in the nonpublic record on February 14, 1992; the deadline for filing prehearing briefs is February 24, 1992; the hearing will be held at the U.S. International Trade Commission Building on February 28, 1992; and the deadline for filing posthearing briefs is March 5, 1992.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Dated: January 16, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-1640 Filed 1-22-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-520 and 521 (Final)]

Certain Carbon Steel Butt-Weld Pipe Fittings From China and Thailand; Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-520 and 521 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Thailand of certain carbon steel butt-weld pipe fittings,[1] provided for in subheading

[1] For purposes of these investigations, certain carbon steel butt-weld pipe fittings are defined as carbon steel butt-weld pipe fittings having an inside diameter of less than 360 millimeters (14 inches).

Continued

7307.93.30 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 24, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain carbon steel butt-weld pipe fittings from China and Thailand are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigations were requested in a petition filed on May 22, 1991, by counsel for the U.S. Fittings Group (USFG).[2]

Participating in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report

The prehearing staff report in these investigations will be placed in the nonpublic record on May 1, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on May 14, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 4, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 7, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is May 11, 1992. Parties may also file written testimony in connecting with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is May 22, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before May 22, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: January 16, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–1639 Filed 1–22–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–334]

Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 12, 1991, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Modine Manufacturing Company, 1500 DeKoven Avenue, Racine, Wisconsin 53403. A supplement to the complaint was filed on December 23, 1991. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after important of certain condensers, parts thereof and products containing same by reason of alleged infringement of claims 6, 8, 9, and 10 of U.S. Letters Patent 4,998,580, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

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imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded, grooved, or bolted fittings).

[2] The USFG is an ad hoc trade association consisting of five domestic producers of carbon steel butt-weld pipe fittings (Hackney, Inc., Ladish Co., Inc.; Mills Iron Works, Inc.; Steel Forgings, Inc.; and Tube Forgings of America, Inc.).

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2577.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR § 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on January 13, 1992, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain condensers, parts thereof or products containing same, including air conditioners for automobiles, by reason of alleged infringement of claims 6, 8, 9, or 10 of U.S. Letters Patent 4,998,580, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Modine Manufacturing Company, 1500 DeKoven Avenue, Racine, Wisconsin 53403

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Showa Aluminum Corporation, 6–5 Ildabashi 3-Chome, Chiyoda-Ku, Tokyo, Japan 102
Mitsubishi Heavy Industries Ltd., 2–5–1 Marunouchi, Chiyoda-Ku, Tokyo, Japan
Mitsubishi Motors Corporation, 33–8 Shiba 5–Chome, Minato-Ku, Tokyo, Japan
Mitsubishi Motor Sales Of America, 6400 Katella Avenue, Cypress, California 90630
Mitsubishi Heavy Industries America, Inc., 3030 East Victoria Street, Rancho Dominguez, California 90221

(c) Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401K, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the Notice of Investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this Notice may be deemed to constitute a waiver of the right appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this Notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order, or both, directed against such respondent.

Issued: January 13, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–1642 Filed 1–22–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–328]

Certain Bathtubs and Other Bathing Vessels and Materials Used Therein; Commission Determination not To Review an Initial Determination Terminating the Investigation as to One Respondent on the Basis of a Consent Order; Issuance of Consent Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 8) terminating the above-captioned investigation as to the last remaining respondent, SWC Industries, Inc., on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Katherine M. Jones, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone 202–205–3097.

SUPPLEMENTARY INFORMATION: On December 9, 1991, complainant American Standard, Inc. and respondent SWC Industries, Inc. ("SWC"), the sole remaining respondent in this investigation, filed a joint motion to terminate the investigation as to SWC on the basis of a proposed consent order, consent order agreement, and settlement agreement. On December 19, 1991, the presiding ALJ issued an ID (Order No. 8) terminating the investigation as to SWC on the basis of the consent order. No petitions for review or public comments were filed.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337) and Commission interim rules 210.53 and 211.21, (19 CFR 210.53 and 211.21, as amended).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: January 13, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–1643 Filed 1–22–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–522 (Final)]

Minivans From Japan; Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–522 (Final) under section 735(b) of the Tariff Act of 1990 (19 U.S.C. 1673d(b))

(the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of new minivans, provided for in heading 8703 or 8704 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Brain C. Walters (202–205–3198), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of minivans from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on May 31, 1991, by Chrysler Corp., Detroit, MI, Ford Motor Co., Dearborn, MI, and General Motors Corp., Detroit, MI.

Participation in the investigation and public service list

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the AOP.

Staff report

The prehearing staff report in this investigation will be placed in the nonpublic record on May 4, 1992, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on May 21, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 15, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 13, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is May 14, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is May 29, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 29, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Dated: January 14, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–1641 Filed 1–22–92; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31993]

San Joaquin Valley Railroad Co.—Lease and Operation Exemption—Southern Pacific Transportation Co. and Visalia Electric Railroad Co.

The San Joaquin Valley Railroad Co. (SJVR) has filed a notice of exemption to lease and operate certain rail lines owned by Southern Pacific Transportation Company (SP) or Visalia Electric Railroad Company (VE), and to assume trackage rights granted to SP over certain lines of The Atchison,Topeka and Santa Fe Railway Company (ATSF), a total distance of 354.70 miles, in Fresno, Tulare, Kern, and Kings Counties, CA.[1] The proposed transaction was expected to be consummated on or after December 31, 1991.

SJVR will lease the following lines own by SP: (1) That segment of the Exeter Branch between milepost 206.15, near Fresno, and milepost 308.64, at Famoso; (2) the Coalinga Branch,

[1] SJVR indicates that its lease will be "pending finalization of purchase agreement * * *" The exemption in this proceeding does not cover any such future purchase transactions.

between milepost 240.15, at Goshen Junction, and milepost 293.80, near Turk; (3) the Stratford Branch, between milepost 263.44, at Roesi, and milepost 271.89, at Stratford; (4) the Visalia Branch, between milepost 240.01, at Goshen Junction, and milepost 262.87, at Exeter; (5) those segments of the Clovis Branch, between milepost 200.15, near Fresno, and milepost 206.99, and between milepost 212.50 and milepost 223.15, near Clovis; and (6) the Richgrove Branch, between milepost 295.01, at Richgrove, and milepost 299.17, at Jovista. SJVR will lease VE's line between milepost 0.00, at Exeter, and milepost 1.13, near Citro Junction.

SJVR will assume SP's trackage rights over: (1) That segment of the Exeter Branch between mileposts 228.05 and 229.20, at Lacjac; (2) those segments of the Clovis Branch between mileposts 996.8 and 999.67 and (includes switching rights) between Fresno Interurban Railway Company mileposts 0.00 and 5.13; and (3) the following lines owned jointly by SP and ATSF, (i) the Arvin Branch, between milepost 316.80, at Magunden, and milepost 333.55, at Arvin, and (ii) the Oil City Branch, between milepost 308.74, at Oil Junction, and milepost 312.50, at Maltha.[2] Finally, SP is granting SJVR incidental trackage rights over a line between milepost 196.0, near Biola Junction, and milepost 316.6, at Magunden.

This proceeding is related to Finance Docket No. 31994, *Kyle Railways, Inc.—Continuance in Control Exemption—San Joaquin Valley Railroad Co.*, wherein SJVR's parent, Kyle Railways, Inc., has concurrently filed a verified notice to exempt its continuance in control of SJVR upon the latter's becoming a carrier.

Any comments must be filed with the Commission and served on: Fritz R. Kahn, Verner, Liipfert, Bernhard McPherson and Hand, suite 700, The McPherson Building, 901 15th Street, NW., Washington, DC 20005–2301.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The Filing of a petition to revoke will not automatically stay the transaction.

Decided: January 14, 1992.

[2] The parties indicate that some of the lines to be leased and operated by SJVR have not generated sufficient revenue freight to justify continued operation of them, and, unless there are significant improvements in the traffic moving over the lines in the near future, SJVR will seek the Commission's authorization to discontinue operations over such lines, coupled with requests by SP and/or VE, as the case may be, to abandon the properties.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–1591 Filed 1–22–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31981]

Temple-Inland, Inc.—Control Exemption—Texas South-Eastern Railroad Co.

Temple-Inland, Inc. (Temple), a noncarrier, has filed a notice of exemption to acquire control, through stock purchase, of class III rail carrier Texas South-Eastern Railroad Company (TSR). TSR operates an approximately 18-mile line between mileposts 1± and 18±, in Angelina County, TX.

Temple indirectly controls nonconnecting class III rail carrier Sabine River & Northern Railroad Company (SRN), also operating in Texas.[1] Temple will acquire indirect control of TSR through Temple subsidiary and noncarrier Temple Inland Forest Products Corporation (TIFP). TIFP has entered into an agreement to purchase all of the outstanding stock of TSR.

Temple indicates that: (1) The properties operated by SRN and TSR will not connect with each other; (2) the acquisition of control is not part of a series of anticipated transactions that would connect the rail carriers with each other; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction involves control of a nonconnecting carrier and is exempt from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Suzanne M. Te Beau, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., suite 800, 1350 New York Avenue, NW., Washington, DC 20005.

Decided: January 16, 1992.

[1] Temple subsidiary and noncarrier Inland Container Corporation is the parent company of noncarrier Inland-Orange, Inc., which, in turn, is SRN's parent.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–1592 Filed 1–22–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Certification of Identity.
(2) DOJ–361, Justice Management Division.
(3) On occasion.
(4) Individuals or households, state or local governments, farms, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations. This form is used to identify individuals requesting certain data under the Privacy Act. Without this form an individual can not obtain the information requested.
(5) 41,000 annual responses at 1 hour per response.
(6) 41,000 annual burden hours.
(7) Not applicable under 3504(h).

(1) Department of Justice Procurement Blanket Clearance.
(2) None, Justice Management Division.
(3) On occasion.
(4) Business or other for-profit, non-profit institutions, small businesses or organizations. 48 CFR requires contractors to submit data in response to solicitation requirements. These representations and certifications pertain to the contractor's business status and eligibility for contract awards.
(5) 3,000 annual responses at 20 hours per response.
(6) 60,000 annual burden hours.
(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 92–1554 Filed 1–22–92; 8:45 am]

BILLING CODE 4410–03–M.

Drug Enforcement Administration

[Docket No. 91–21]

Liberty Discount Drugs, Inc.; Granting Application for Registration

On May 15, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Liberty Discount Drugs, Inc. (Respondent) proposing to deny its application, executed on January 31, 1990, for registration as a retail pharmacy under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Detroit, Michigan on September 25, 1991. On November 13, 1991, Judge Tenney issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed to Judge Tenney's opinion and recommended ruling, and on December 5, 1991, the record was transmitted to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

Respondent pharmacy previously possessed DEA Certificate of Registration, BL0809523. On July 22, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration issued an Order to Show Cause proposing to revoke that Certificate of Registration alleging that the continued registration of the pharmacy would be inconsistent with the public interest. Following a hearing held by Administrative Law Judge Mary Ellen Bittner, the then-Administrator revoked the Respondent's DEA registration effective August 17, 1989. See, Liberty Discount Drugs, Inc., Docket No. 88–73, 54 FR 30116 (1989). The then-Administrator concluded that "from the pattern of dispensing in this case, Respondent knew or should have known that the cough syrup he dispensed was being obtained for other than legitimate medical purposes."

The Administrative Law Judge concluded that the previous Administrator's decision in regard to Respondent is *res judicata* for purposes of this proceeding. The then-Administrator's determination of the facts relating to the previous revocation of the Respondent's DEA registration is conclusive, and accordingly, the Administrator hereby adopts the above-referenced final order in its entirety.

In this proceeding, no new allegations of improper handling of controlled substances were introduced. As a result, the critical issue is whether the circumstances, which existed at the time of the prior proceeding, have changed sufficiently to support a conclusion that Respondent's registration is now in the public interest.

The Government contends that the circumstances leading to the previous revocation of Respondent's DEA registration persist, and that the attitudes of George Esho, the owner and pharmacist of Respondent, have not changed. In support of this contention, the Government cities Respondent's current application for registration wherein Mr. Esho stated that he, "believes that Judge Bittner, in all due respect, erred in finding a violation of 21 U.S.C. 829(c) based upon 'excessive' distributions of a nonprescription substance." George Esho contends that he has learned his lesson and asserts that the revocation of Respondent's DEA registration for a period of two years is sufficient corrective action.

The Administrator may deny an application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "(i)n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.
(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
(4) Compliance with applicable State, Federal, local laws relating to controlled substances.
(5) Such other conduct which may threaten the public health or safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See, Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989); Neveille H. Williams, D.D.S., Docket No. 87–47, 53 FR 23465 (1988); David E. Trawick, D.D.S., Docket No. 86–69, 53 FR 5326 (1988).

In this proceeding factors two, four and five apply. Respondent has had a DEA registration revoked in the past. Respondent violated 21 CFR 1306.32(b), several times by dispensing more than four ounces of codeine-based syrup to the same individual within a 48 hour period. Pursuant to this regulation, Schedule V controlled substances may be dispensed, subject to certain conditions, without a prescription from a physician. In addition, Respondent's overall dispensing practice involving codeine-based cough syrup violated 21 U.S.C. 829(c)'s requirement that all Schedule V controlled substances must be dispensed for a legitimate medical

purpose. During the relevant time period, the average pharmacy in Michigan dispensed only 14 four ounce bottles of codeine-based cough preparations per month, while Respondent dispensed an average of 341 bottles per month.

The Administrative Law Judge found that George Esho credibly testified that he has learned his lesson from the previous proceeding, and that he is now aware that he must determine whether a Schedule V cough preparation is being sought by a customer for a legitimate medical purpose.

Judge Tenney concluded that unqualified registration is not yet fully consistent with the public interest. The sheer volume of codeine-based cough preparations dispensed by Respondent pharmacy indicated obvious abuse. However, Judge Tenney concluded that Respondent should be registered with DEA. Accordingly, Judge Tenney recommended that the Administrator grant Respondent's application for DEA registration subject to the condition that for one year thereafter, Respondent shall not be permitted to dispense any Schedule V controlled substance without a prescription from a physician.

The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge with one exception. The Administrator does not adopt Judge Tenney's statement that, "the Administrator need not exact a full measure of retribution available in each case." The Administrator's role in granting registration is not to punish, but to assure that the registrant will faithfully discharge his duties consistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for registration, executed on January 31, 1990, by Liberty Discount Drugs, Inc., be, and it hereby is, granted subject to the condition that for one year, the pharmacy shall not dispense any Schedule V controlled substance without a prescription from a physician. This order is effective January 23, 1992.

Dated: January 15, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-1572 Filed 1-22-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-25,676]

K.T. Swasey a/k/a/ Giddings & Lewis, Solon, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a certification of Eligibility to Apply for Worker Adjustment Assistance on June 7, 1991, applicable to all workers of K.T. Swasey, Solon, Ohio. The notice was published in the **Federal Register** on June 21, 1991 (56 FR 28576).

New information received by the Department indicates that K.T. Swasey was sold on October 31, 1991 to Giddings & Lewis. The Solon facility continues to produce the same product with the same work force and to the same customers. Accordingly, the Department is amending the subject certification by indicating the new name of Giddings & Lewis.

The amended notice applicable to TA-W-25,676 is hereby issued as follows:

All workers of K.T. Swasey also known as (a/k/a) Giddings & Lewis, Solon Ohio who became totally or partially separated from employment on or after April 4, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 14th day of January 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-1607 Filed 1-22-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,678]

Liz Ann Manufacturing Co.; a Division of Jerell, Inc.; New Braunfels, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 19, 1991, applicable to all workers of Liz Ann Manufacturing Company, New Braunfels, Texas. The notice was published in the **Federal Register** on June 28, 1991 (56 FR 29718).

At the request of the Regional Office, the Department reviewed the subject certification. The Investigation files show that the subject firm is a division of Jerell, Inc. Other findings show that the name used to report wages paid and taxes as well as the employer ID number is Jerell, Inc. The notice, therefore, is amended to properly reflect this finding.

The amended notice applicable to TA-W-25,678 is hereby issued as follows:

All workers of Liz Ann Manufacturing Company, a division of Jerell, Inc., New Braunfels, Texas who became totally or partially separated from employment on or after April 3, 1990 and before September 30, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of January 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-1606 Filed 1-22-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-03]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, High-Speed Rotorcraft Technology Task Force.

DATES: February 20, 1992, 8 a.m. to 4:30 p.m.

ADDRESSES: Atlantic Research Corporation, suite 700, Staff Room, 600 Maryland Avenue SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. George Unger, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-5420.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special task forces are formed to address specific topics. The High-Speed Rotorcraft Technology Task Force, chaired by Mr. Stan Martin,

is composed of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the task force members and other participants).

Type of Meeting

Open.

Agenda

February 20, 1992

8 a.m.—Opening Remarks.
8:15 a.m.—Update of NASA's Reorganization and Budget Outlook.
8:45 a.m.—Review of Final Report Draft Chapters.
1 p.m.—Group Discussion of Final Report.
4:30 p.m.—Adjourn.

Dated: January 10, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-1614 Filed 1-22-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meetings

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is hereby given of a public meeting to be held in the Cypress Room of Disney's Village Resort Conference Center, 1 Club Lake Drive, Lake Buena Vista, Florida.

DATES:

Thursday, February 20, 1992, 8:30 a.m.–12 p.m.
Friday, February 21, 1992, 8:30 a.m.–12 p.m.

STATUS: The meeting is to be open to the public.

MATTERS TO BE DISCUSSED: The purpose of this public meeting is to enable the Commission members to discuss progress on the research agenda, future research, and budget and administrative matters.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., suite 300, Washington, DC 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to title IV-F of the Job Training Partnership Act (Pub. L. 97-300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues.

The meeting will be open to the public. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made.

Anyone wishing to submit comments prior to the meeting, should do so by February 12, and they will be included in the record. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., suite 300, Washington, DC 20005.

Signed at Washington, DC, this 16th day of January 1992.

Carol J. Romero,

Deputy Director, National Commission for Employment Policy.

[FR Doc. 92-1608 Filed 1-22-92; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL SCIENCE FOUNDATION

Academic Research Infrastructure Program; Availability of Program Announcement

This is to announce the availability of the Program Announcement and Guidelines for Academic Research Infrastructure (NSF 91-140).

You can obtain a copy of this document by sending an E-Mail request to STIS (NSF's Science and Technology Information System). Send your request to "stisserv@nsf.gov" (Internet) or "stisserv@NSF" (BITNET). The "Subject:" line will be ignored. Put the following commands in the text of the message:

Request: stis
Topic: NSF91140
Request: end

If you cannot send E-Mail to Internet or BITNET addresses, you may request a printed copy of the document by calling the Forms and Publication Unit, 202-357-7861 or writing: Forms and Publications Unit, Room 232, National Science Foundation, Washington, DC 20550.

Dated: January 17, 1992.

Nathaniel Pitts,

Director, Office of Science and Technology Infrastructure.

[FR Doc. 92-1660 Filed 1-22-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 14, No. 3).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event that the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the third calendar quarter of 1991. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that are undertaken are also described.

The report discusses two abnormal occurrences at NRC-1 licensed facilities, neither involving a nuclear power plant. One involved radiation exposures to members of the public from a lost radioactive source and the other involved a medical diagnostic misadministration. The Agreement States reported no abnormal occurrences. The report also contains information that updates some previously reported abnormal occurrences.

A copy of the report is available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street (Lower Level), NW., Washington DC, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG-0090, Vol. 14, No. 3 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. A year's subscription to the NUREG-0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, U.S. Department of

Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD this 16th day of January 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-1615 Filed 1-22-92; 8:45 am]

BILLING CODE 7590-01-M

Baltimore Gas and Electric Co.

[Docket Nos. 50-317 and 50-318]

Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix J, Paragraphs III.D.2 and III.D.3, Type B Tests and Type C Tests, to the Baltimore Gas and Electric Company (BG&E/licensee) for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located at the licensee's site in Calvert County, Maryland.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempt from the requirements of 10 CFR part 50, Paragraphs III.D.2 and III.D.3, to the extent that an extension would be allowed for performing Type B and C local leak rate tests (LLRT) on penetration and containment isolation valves which are currently required to be tested at intervals no greater than 2 years. This requested extension would allow Type B and C LLRT to be performed at intervals no greater than 30 months.

The exemption is responsive to the licensee's application for exemption dated November 27, 1991.

The Need for the Proposed Action

The requirements of 10 CFR part 50, appendix J, paragraphs III.D.2 and III.D.3, indicate that Type B and C LLRT shall be performed during each reactor shutdown for refueling at intervals no greater than 2 years. However, in order to conform with the regulations, the licensee would have to enter a forced outage at Calvert Cliffs Unit 1 on February 28, 1992, although the next refueling outage is scheduled to begin on March 6, 1992.

The NRC staff has recognized that the regulations do not accommodate longer fuel cycles, such as the 24-month fuel cycle currently in use at Calvert Cliffs, Units 1 and 2. Consequently, the NRC staff has issued Generic Letter (GL) 91-04 which provides guidance to licensees on how to prepare requests for exemption to the requirements of appendix J.

The proposed exemption represents a 6-month maximum extension to the Type B and C LLRT interval currently required by 10 CFR part 50, appendix J, for containment penetrations and isolation valves. The proposed exemption would allow the licensee to perform the Type B and C LLRT on containment penetrations and isolation valves during the scheduled refueling outages for Calvert Cliffs, Units 1 and 2, and therefore avoid additional forced outages.

Environmental Impact of the Proposed Action

The proposed exemption will not change plant equipment, operation or procedures, and does not adversely affect either the probability or the consequences of any accident at this facility. The exemption does not affect radiological effluents from the facility or the radiation levels at the facility. The licensee has provided the results of previous LLRT performed at Calvert Cliffs, Units 1 and 2, and details relating to the methodology used in extrapolating the previous LLRT data to the proposed 30-month intervals. The requested exemption is also based on reducing the allowed combined leakage rate limit to increase the margin by 25 percent. The NRC staff has determined that these actions are consistent with the guidance provided in GL 91-04 and that the containment leakage rate would be maintained within acceptable limits with the LLRT interval increased to a maximum of 30 months. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

The proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the requirements of 10 CFR part 50, appendix J, Paragraphs III.D.2 and III.D.3, for performing the LLRT on Type B and C containment penetrations and isolation valves. Such action would not enhance the protection of the environment.

Alternative Use of Resource

This action involves no use of resources not previously considered in the Final Environmental Statement of the Calvert Cliffs Nuclear Power Plant, Units Nos. 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letter dated November 27, 1991. This letter is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 15th day of January 1992.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-1616 Filed 1-22-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp.; Notice of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to two exemptions from certain requirements of 10 CFR part 50, appendix J, to Niagara Mohawk Power Corporation (the licensee) for Nine Mile Point Nuclear Station Unit No. 1, located at the licensee's site in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

By letter dated December 12, 1991, the licensee requested extensions for two schedular exemptions previously granted pursuant to 10 CFR 50.12(a) from the requirements of 10 CFR Part 50,

Appendix J, regarding (1) leak testing of the emergency condenser condensate return line valves 39–03, –04, –05, and –06; (2) leak testing of the shutdown cooling system isolation valves 38–01, –02, –12, and –13; and (3) that the leakage of these valves be included in the 0.60 La acceptance criteria for Type B and C tests. The previously granted exemptions were issued by letters dated October 17, 1988, and August 29, 1989. Both of these previously granted schedular exemptions are valid until startup from the next (1992) refueling outage. The licensee has requested that the proposed extensions be valid until startup from the 1994 refueling outage.

The exemptions issued on October 17, 1988, and August 29, 1989, were requested and granted after the NRC staff determined that although the subject valves were required to be leak tested in accordance with the requirements of 10 CFR part 50, appendix J, additional time was required to perform the modifications required to perform the leak testing and to possibly obtain and install replacement valves. At the time these exemptions were issued, the licensee anticipated that the required modifications would be performed during the next (1992) refueling outage. However, the licensee has recently revised its plans for the 1992 and 1994 refueling outages. The licensee states that during the 1992 refueling outage, it will emphasize electrical work and that during the 1994 refueling outage, it will emphasize mechanical work. The licensee further states that by emphasizing the different types of activities during these refueling outages, the complexity of both outages will be reduced thereby reducing the potential for human errors. Additionally, the 1994 refueling outage is expected to include a chemical decontamination of the reactor coolant system which is expected to reduce the occupational exposures associated with the appendix J modifications by approximately 100 person-rem. Such a decontamination is not planned for the 1992 refueling outage. Therefore, the licensee has proposed to delay these appendix J modifications until the 1994 refueling outage and has requested that the previously-approved exemptions be extended until startup from the 1994 outage.

The Need for the Proposed Action

The proposed extension to the previously granted schedular exemptions is required to permit the licensee to startup and operate the plant following the next (1992) refueling outage. Delaying the required modifications until the 1994 refueling outage is expected to reduce the occupational exposures associated with the required modifications by approximately 100 person-rem. Without this extension to the previously-granted schedular exemptions, restart and operation of this plant after its 1992 refueling outage would be delayed until the necessary modifications and testing were completed.

Environmental Impacts of the Proposed Action

The proposed extension to the previously-granted exemption would allow the licensee to continue to operate the plant until the emergency condenser condensate return line valves and the shutdown cooling isolation valves are modified during the 1994 refueling outage so that these valves can be leak tested in accordance with the requirements of 10 CFR part 50, appendix J.

The environmental effects of a design basis loss-of-coolant accident involving emergency consdenser tubing with the condensate return line valves leaking excess of the Appendix J limits were evaluated in the Environmental Assessment and Finding of No Significant Impact (53 FR 37376) issued in conjunction with the October 17, 1988, exemption. That assessment concluded that there would be no significant radiological or non-radiological environmental impacts associated with the October 17, 1988, exemption. Likewise, the environmental effects of leakage past the shutdown cooling system isolation valves in excess of the appendix J limits (during normal operation, shutdown, and accident conditions) were evaluated in the Environmental Assessment and Finding of No Significant Impact (54 FR 26279) issued in conjunction with the August 29, 1989, exemption. That assessment also concluded that there would be no significant radiological or non-radiological environmental impacts associated with the August 29, 1989, exemption. The proposed extensions of these exemptions will not change the environmental effects (determined to be not significant) of excessive leakage past these valves. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed extensions to these exemptions.

Alternative to the Proposed Action

The NRC staff has concluded that there is no measurable impact associated with the proposed extension of these exemptions. Therefore, alternatives to the proposed extension of these exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested extension of these exemptions. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station Unit No. 1 operations and would result in unwarranted delays in plant startup and operation.

Alternative Use of Resources

These actions associated with the granting of the proposed extension to these exemptions as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Nine Mile Point Nuclear Station, Unit No. 1," dated January 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal that supports the proposed extensions to these exemptions discussed above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed extension to these exemptions.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the extension to these exemptions as listed herein, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Penfield Library, State University College, Oswego, New York 13126.

Dated at Rockville, Maryland, this 15th day of January 1992.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 92–1617 Filed 1–22–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Boiling Water Reactors; Revised Meeting

A portion of the ACRS Subcommittee meeting on Advanced Boiling Water

Reactors scheduled for January 23–24, 1992 will be closed to discuss Proprietary Information (5 U.S.C. 552b(c)(4)). All other items pertaining to this meeting remain the same as published previously in the **Federal Register** on Tuesday, December 24, 1991 (56 FR 66654).

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Medhat M. El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 15, 1992.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–1618 Filed 1–22–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published December 27, 1991 (56 FR 67106). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be closed in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the February 1992 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Improved Light Water Reactors, January 22, 1992, Bethesda, MD. The Subcommittee will review SECY–91–300, Draft Safety Evaluation Report for Chapter 10 of the EPRI's Requirements Document for Evolutionary Designs.

Advanced Boiling Water Reactors, January 23–24, 1992, Bethesda, MD. The Subcommittee will review SECY–91–294 and SECY–91–309, addressing two Draft Safety Evaluation Reports (DSERs) related to different chapters of the GE/Standard Safety Analysis Report for the ABWR design, and other related issues.

Reliability Assurance, Week of January 27, 1992 (tentative) Bethesda, MD—Cancelled.

Systematic Assessment of Experience, February 4, 1992, Bethesda, MD, 1 p.m. The Subcommittee will discuss a draft paper on the status of the NRC's evaluation of accident sequence precursors.

Extreme External Phenomena, February 5, 1992, Bethesda, MD. The Subcommittee will continue the discussion of the proposed revisions to 10 CFR part 100, appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," considered during the Subcommittee meeting on December 10, 1991.

Planning and Procedures, February 5, 1992, Bethesda, MD, 2 p.m.–5:30 p.m. The Subcommittee will discuss proposed ACRS activities and related matters.

Joint Materials and Metallurgy/Maintenance Practices and Procedures, February 13, 1992, Bethesda, MD. The Subcommittees will discuss the ASME Risk-Based Inspection Guidelines.

Auxiliary and Secondary Systems, February 14, 1992, Bethesda, MD. The Subcommittee will discuss the proposed resolution of Generic Issue 57, "Effects of Fire Protection System Actuation on Safety Related Equipment," and other fire-related matters.

Mechanical Components, February 19, 1992, Bethesda, MD. The Subcommittee will discuss the status of the motor-operated valve (MOV) and the check valve operability programs and other related matters.

Advanced Boiling Water Reactors, February 20–21, 1992, Bethesda, MD. The Subcommittee will review SECY–91–320 and SECY–91–355, addressing two DSERs related to different chapters of the GE/Standard Safety Analysis Report for the ABWR design, and other related issues.

Structural Engineering. Week of February 24, 1992 (tentative), Bethesda, MD—Cancelled.

Planning and Procedures, March 4, 1992, Bethesda, MD, 2 p.m.–5:30 p.m. The Subcommittee will discuss proposed ACRS activities and related matters.

Joint Computers in Nuclear Power Plant Operations, Instrumentation and Control Systems and Human Factors, March 5, 1992, Bethesda, MD. The Subcommittees will discuss Control Room Designs, the Design Process and Associated Human Factors Issues.

Thermal Hydraulic Phenomena, March 26, 1992, Bethesda, MD. The Subcommittee will review the GE generic program supporting power level increases for operating GE BWR nuclear power plants.

Decay Heat Removal Systems, April 1, 1992, Bethesda, MD. The Subcommittee will review the proposed final resolution of Generic Safety Issue 23, "Reactor Coolant Pump Seal Failures."

Planning and Procedures, April 1, 1992, Bethesda, MD, 2 p.m.–5:30 p.m. The Subcommittee will discuss proposed ACRS activities and related matters.

Joint Plant Operations/Probabilistic Risk Assessment, Date to be determined (February), Bethesda, MD. The Subcommittees will continue their review of the NRC staff's program to address the issue of risk from low power/shutdown operations.

Advanced Reactor Designs, Date and location to be determined (February). The Subcommittee will visit the ORNL facility and will discuss the testing program and experiments for the MHTGR design.

Advanced Pressurized Water Reactors, Date to be determined (March), Bethesda, MD. The Subcommittee will continue its review of the ABB CE System 80+ CESSAR Design Certification. Subject material being proposed for discussion includes Engineered Safety Feature Systems and USIs/GSIs.

Ad Hoc Working Group, Date and location to be determined (March/April). The Working Group will discuss a proposed alternative implementation plan for the Safety Goal Policy.

Joint Individual Plant Examinations/Severe Accidents, Date to be determined (March/April), Bethesda,

MD. The Subcommittee will discuss the status of the IPE program and the development of Severe Accident Management Guidelines.

Thermal Hydraulic Phenomena, Date to be determined (March/April), Bethesda, MD. The Subcommittee will continue its review of the NRC staff program to address the issue of interfacing systems LOCAs.

Joint Thermal Hydraulic Phenomena/ Core Performance, Date to be determined (March/April, tentative), Bethesda, MD. The Subcommittees will continue the review of the issues pertaining to BWR core power stability.

Regional Programs, Date to be determined, NRC Region V Office, Walnut Creek, CA. The Subcommittee will discuss the activities of the NRC Region V Office.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will review the status of the application of the Code Scaling, Applicability, and Uncertainty (CSAU) Evaluation Methodology to a small-break LOCA calculation for a B&W plant.

ACRS Full Committee Meetings

382nd ACRS Meeting, February 6–8, 1992, Bethesda, MD. Items are tentatively scheduled.

*A. *Reactor Operating Experience*—Briefing and discussion of recent reactor operating experience including events resulting from a turbine over speed and failure at the Salem Nuclear Generating station and a main coolant system leak at the Oconee Nuclear Station.

*B. *Reactor Safety Research*—Discuss proposed ACRS annual report to the United States Congress on the NRC reactor safety research program and budget.

C. *Certification of Standardized Nuclear Plants (tentative)*—Review and report on proposed requirements for design features of standardized (passive) nuclear plants.

*D. *Meeting with the Director, NRC Office of Nuclear Regulatory Research*—Meeting with the Director of the NRC Office of Nuclear Regulatory Research to discuss items of mutual interest, including items such as the need for the NRC Office of Research, what research should be done by the NRC, industry, and DOE, priorities assigned to various research topics, research program budget, and management aspects of the research programs.

E. *Key Technical Issues*—Discuss proposed plans for resolution of Key Technical Issues identified by the ACRS that are in need of early resolution with respect to future plant designs.

F. *Meeting with Senior NRC Managers*—Meeting to discuss issues related to the NRC regulatory process and the interface between the NRC staff and the ACRS including such items as consistent use of PRA in the regulatory process, the NRC regulatory impact survey, and criteria to accommodate severe accidents in containment design.

G. *Accident Sequence Precursors*—Briefing and discussion on the status of NRC work regarding the identification and evaluation of accident precursors.

H. *Impact of Public Utility Commissions on Reactor Safety*—Briefing and discussion regarding the impact of the policies and practices of Public Utility Commissions on the safety of nuclear power stations. An invited expert will brief the Committee.

*I. *Integral Systems Testing for the Westinghouse AP–600 Nuclear Plant*—Review and report on proposed integral testing requirements to support design certification of the Westinghouse AP–600 passive nuclear plant.

J. *Design Acceptance Criteria for Certification of Nuclear Power Plants*—Review and comment on proposed use of design acceptance criteria as a basis for certification of standardized nuclear plants.

K. *Federal Advisory Committee Act*—Discuss proposed comments on proposed changes to the Federal Advisory Committee Act (1991 Amendment).

L. *Activities of ACRS Subcommittees*—Reports and discussion regarding the status of assigned subcommittee activities, including a report of the Safety Research Program Subcommittee, and a report of the Planning and Procedures Subcommittee on topics proposed for consideration by the full Committee. Anticipated subcommittee activities will also be discussed.

M. *Proposed Revisions of Appendix A to 10 CFR Part 100 (tentative)*—Review and report on the proposed revisions of appendix A to 10 CFR part 100, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," and related proposed regulatory guides.

*N. *Appointment of ACRS Members*—Discuss status of activities related to the appointment of new Committee members during 1992, including the qualifications of candidates proposed for consideration.

O. *Miscellaneous*—Discuss topics related to the conduct of ACRS activities and specific issues that were not completed during previous meetings as time and availability of information permit.

383rd ACRS Meeting, March 5–7, 1992, Bethesda, MD—Agenda to be announced.

384th ACRS Meeting, April 2–4, 1992, Bethesda, MD—Agenda to be announced.

ACNW Full Committee and Working Group Meetings

ACNW Working Group on Systems Analysis Approach to Reviewing the Overall High-Level Waste Program, February 19, 1992, Bethesda, MD. The Working Group will discuss the feasibility of systems-analysis approach to reviewing the overall high-level waste program, including the short, and mid-range technical milestones for handling high-level waste.

40th ACNW Meeting, February 20–21, Bethesda, MD. Items are tentatively scheduled.

A. Continue work on a systems analysis approach to high-level waste interim storage of spent fuel.

B. Briefing by Louisiana Energy Services on their private uranium enrichment facility plans. Topics of interest include the disposal of the depleted uranium and the licensing process for the facility.

C. Report on EPRI follow-on meeting concerning the EPA's High-Level Waste Standards.

D. Report on recent attendances at the Low-Level Waste Forum Winter Meeting in San Diego, CA.

E. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

41st ACNW Meeting, March 12–13, 1992, Bethesda, MD—Agenda to be announced.

42nd ACNW Meeting, April 23–24, 1992, Bethesda, MD—Agenda to be announced.

ACNW Working Group on the Impact of Long-Range Climate Change in the Area of the Southern Basin and Range, Date to be determined (April), Bethesda, MD. The Working Group will discuss the historical evidence and the potential for climate changes in the southern Basin and Range and the impact of climate changes on the performance of the proposed high-level waste repository at Yucca Mountain.

ACNW Working Group on Inadvertent Human Intrusion Related to the Presence of Natural Resources at a High-Level Waste Site, Date to be determined, Bethesda, MD. The Working Group will discuss methodologies for

the assessment of the potential for natural resources at the proposed high-level waste repository site at Yucca Mountain. The relationship between such resources and the potential for human intrusion will be emphasized.

ACNW Working Group on Residual Contamination Clean-up Criteria, Date to be determined, Bethesda, MD. The Working Group will discuss the clean-up criteria levels for unrestricted use of contaminated sites that are or have been under NRC/AEC license.

Dated: January 17, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92-1619 Filed 1-22-92; 8:45 am]

BILLING CODE 7590-01-M

[EA 88-40; Docket Nos. 50-348-CivP and 50-364-CivP; ASLBP No. 91-626-02-CivP]

Alabama Power Co., Joseph M. Farley Nuclear Plant, Units 1 and 2; Notice of Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 (1980), the Atomic Safety and Licensing Board for Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2) (EA 88-40), Docket Nos. 50-348-CivP and 50-364-CivP, is hereby reconstituted by appointing Administrative Judge G. Paul Bollwerk, III, as Chairman in place of Administrative Judge John H Frye, III, who has resigned from the panel.

As reconstituted, the Board is comprised of the following Administrative Judges: G. Paul Bollwerk, III, Chairman, James H. Carpenter, and Peter A. Morris.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 15th day of January 1992.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92-1620 Filed 1-22-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-31570-EA; ASLBP No. 92-657-02-EA]

Patrick K.C. Chun, M.D.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register** 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

In the matter of Patrick K.C. Chun, M.D., Materials License No. 35-27026-01, EA 91-001

This Board is being established pursuant to the request of Dr. Patrick K.C. Chun for a hearing in response to an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, dated November 12, 1991, entitled "Order Prohibiting Involvement in Certain NRC-Licensed Activities (Effective Immediately)" (56 FR 58716, November 21, 1991). The November 12, 1991 Order was subsequently modified by the Staff in an Order dated November 27, 1991, and published in the **Federal Register** at 56 FR 63985 (December 6, 1991).

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Administrative Law Judge Morton B. Marquilies, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Harry Rein, 1877 Wingfield Drive, Longwood, Florida 32779

Issued at Bethesda, Maryland, this 14th day of January 1992.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92-1621 Filed 1-22-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-254 and 50-265]

Commonwealth Edison Co.; Quad Cities Nuclear Power Station, Units 1 and 2, Notice of Partial Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted a request from Commonwealth Edison Company (CECo, the licensee) to partially withdraw CECo's application for proposed amendments to Facility Operating License Nos. DPR-29 and DPR-30, issued to the licensee for operation of Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing was published in the **Federal Register** on November 13, 1991 (56 FR 57693).

The proposed amendments would change the Technical Specifications to revise a position title, revise approval authority and add the Radiation Protection Program and requirements of a High Radiation Area.

By letter dated December 13, 1991, the licensee partially withdrew the application for the proposed amendments. The Commission has considered the licensee's request and has determined that permission to partially withdraw the October 11, 1991, application for amendments should be granted.

For further details with respect to this action, see (1) the application for amendments dated October 11, 1991, (2) partial withdrawal request dated December 13, 1991, and (3) the staff's letter dated January 14, 1992.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. Washington, DC and at the local public document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland, this 14th day of January 1992.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Project Directorate III-2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-1622 Filed 1-22-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Priority Foreign Countries: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submission from the public on policies and practices that should be considered with respect to designation of foreign countries under section 182 of the Omnibus Trade and Competitiveness Act of 1988 (Act).

SUMMARY: Section 182 of the Act requires the United States Trade Representative (USTR) to identify

countries that deny adequate and effective protection of intellectual property rights or which deny fair and equitable market access to U.S. persons that rely on intellectual property protection. (19 U.S.C. 2242.) In addition, USTR is required to determine which of those countries identified are priority foreign countries. Such priority foreign countries could be subject to self-initiation of a section 301 investigation. USTR is requesting written submissions from the public concerning foreign countries' policies and practices that should be considered under section 182.

DATES: Submissions must be received on or before 12 noon on February 21, 1992.

FOR FURTHER INFORMATION CONTACT: Emery Simon, Deputy Assistant USTR for Intellectual Property (202) 395–7320, or Catherine Field, Associate General Counsel (202) 395–3432, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Section 182(a) requires the USTR, no later than April 30, 1992, to identify countries that deny adequate and effective protection of intellectual property rights or which deny fair and equitable market access to U.S. persons that rely on intellectual property protection.

Requirements for Submissions

Submissions should consist of a description of the problems experienced and their effect on U.S. industry. Submissions should be as detailed as possible. Interested persons must provide twenty copies of any submission to Dorothy Balaban, room 223, 600 17th Street, NW., Washington, DC 20506 no later than 12 noon on Friday, February 21, 1992. Because submissions will be placed in a public file, open to public inspection at USTR, business-confidential information should not be submitted.

Public Inspection of Submissions

Within one business day of receipt, submissions will be placed in a public file, open for inspection at the USTR Reading Room, in room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Assistant USTR for Intellectual Property, Environment, and Science and Technology.

[FR Doc. 92–1590 Filed 1–22–92; 8:45 am]

BILLING CODE 3190–01–M

OVERSIGHT BOARD

Regional Advisory Board Meetings, Regions I–VI

AGENCY: Oversight Board for the Resolution Trust Corporation.

ACTION: Meeting notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 7 Regional Advisory Board meetings for regions I through VI. The meetings are open to the public.

DATES: The meetings are scheduled as follows:

1. February 5, 9 a.m. to 12: 30 p.m., Richmond, VA, Region I Advisory Board.
2. February 11, 9 a.m. to 12:30 p.m., Austin, TX, Region IV Advisory Board.
3. February 13, 9 a.m. to 12:30 p.m., Tulsa, OK, Region II Advisory Board.
4. February 21, 9 a.m. to 12:30 p.m., Portland, OR, Region V Advisory Board.
5. February 25, 9 a.m. to 12:30 p.m., Tucson, AZ, Region VI Advisory Board.
6. February 27, 9 a.m. to 12:30 p.m., Omaha, NE, Region III Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Richmond, VA—Federal Reserve Bank of Richmond, 701 Byrd St.
2. Austin, TX, LBJ School of Public Affairs, University of Texas at Austin, 2315 Red River Road, Bass Lecture Hall.
3. Tulsa, OK—City Hall Bldg., 100 Civic Center, room 1101.
4. Portland, OR—Federal Reserve Bank of San Francisco/Portland Branch, 915 Southwest Stark St.
5. Tucson, AZ—Tucson Convention Center, 260 South Church Street, Coconino Room.
6. Omaha, NE—Federal Reserve Bank of Kansas/Omaha Branch, 2201 Farnam St.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Oversight Board/RTC, 1777 F Street, NW., Washington, DC 20232, 202/786–9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the Act), Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose

The advisory boards provide the Resolution Trust Corporation (RTC) with information and recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda

A detailed agenda will be available at the meeting.

Statements

Interested persons may submit to the advisory board written statements, data, information, or views on the issues pending before the board prior to or at the meeting. The meeting will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: January 17, 1992.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 92–1667 Filed 1–22–92; 8:45 am]

BILLING CODE 2222–01–M

RESOLUTION TRUST CORPORATION

Notice Concerning Availability of Documents Issued by the Office of Ethics to the General Public

AGENCY: Resolution Trust Corporation.

ACTION: Public notice.

SUMMARY: RTC is giving notice that certain documents issued by its Office of Ethics will now be made available to the public upon request.

FOR FURTHER INFORMATION CONTACT: Charles M. Loveless, Senior Ethics Specialist, Office of Ethics, 801 17th Street NW., Washington, DC 20434–0001 (202) 416–4396 (This is not a toll free number).

NOTICE: The following documents issued by the Office of Ethics will be available in the Public Reading Room, 801 17th Street NW., Washington, DC 20434–0001 between the hours of 9 a.m. and 5 p.m., Monday through Friday. Phone number: (202) 416–6940; Fax number (202) 416–4753.

1. Notices of proposed exclusion issued pursuant to 12 CFR 1618.240.
2. Notices of suspension issued pursuant to 12 CFR 1618.340.
3. Decisions of the RTC Ethics Officer issued pursuant to 12 CFR 1618.250 and 1618.350.
4. Settlement Agreements made pursuant to 12 CFR 1618.4.

Signed at Washington, DC, this 17th day of January 1992.

Resolution Trust Corporation.
John M. Buckley, Jr.,
Executive Secretary.
[FR Doc. 92-1672 Filed 1-22-92; 8:45 am]
BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

January 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Biopharmaceutics
Common Stock, $.001 Par Value (File No. 7-7778)
Employee Benefit Plan, Inc.
Common Stock, $.01 Par Value (File No. 7-7779)
Healthtrust, Inc.-The Hospital Company
Common Stock, $.001 Par Value (File No. 7-7780)
Horizon Healthcare Corp.
Common Stock, $.001 Par Value (File No. 7-7781)
Medchem Product, Inc.
Common Stock, $.01 Par Value (File No. 7-7782)
Nuveen Insured Muni Opportunity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7783)
Nuveen Quality Income Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7784)
Railroad Financial Corp.
Common Stock, $.10 Par Value (File No. 7-7785)
Response Technologies, Inc.
Common Stock, $.002 Par Value (File No. 7-7786)
SPI Pharmaceuticals, Inc.
Common Stock, $.01 Par Value (File No. 7-7787)
U.S. West, Inc.
Common Stock, No Par Value (File No. 7-7788)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 7, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.
Jonathan G. Katz,
Secretary.
[FR Doc. 92-1574 Filed 1-22-92; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-30256; International Series Release No. 360; File Nos. SR-MSE-90-40; SR-NYSE-90-8; SR-PHLX-90-14; SR-PHLX-90-27 and SR-PSE-90-12]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the Midwest Stock Exchange, Inc., et al.

January 16, 1992.

The New York ("NYSE") Philadelphia ("PHLX"), Pacific ("PSE") and Midwest ("MSE") Stock Exchanges, (collectively, the "Exchanges") have submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] proposed rule changes to list warrants based on the Nikkei Stock Price Average ("Nikkei")—a broad-based index of 225 Japanese stocks traded on the Tokyo Stock Exchange ("TKE"). Additionally, the PHLX submitted to the Commission a proposed rule change to list warrants based on the Tokyo Stock Price Index ("TOPIX")—a broad-based index of over 1,100 Japanese stocks traded on the TKE (collectively the Nikkei and TOPIX are referred to as the "Indexes").

The proposed rule changes were published for comment in various releases.[3] No comments were received on these proposed rule changes.

The Exchanges propose to list index warrants [4] based on the Nikkei, an internationally-recognized, price-weighted index consisting of 225 actively-traded stocks traded on the TKE.[5] Previously the Commission approved a proposal by the American Stock Exchange, Inc. ("Amex") to list warrants based on the Nikkei.[6] Additionally, the PHLX proposes to list index warrants based on the TOPIX, an internationally-recognized, capitalization-weighted index consisting of all the stocks listed on the First Section of the TKE.[7] The Exchanges propose to trade Nikkei and TOPIX warrants pursuant to their rules which establish a general regulatory framework for the listing of warrants on established market indexes, both foreign and domestic.[8]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] See Securities Exchange Act Release Nos. 27795 (March 13, 1990), 55 FR 10340 (notice of File No. SR-NYSE-90-08); 27868 (April 2, 1990), 55 FR 12977 (notice of File No. SR-MSE-90-40); 27915 (April 18, 1990), 55 FR 17887 (notice of File No. SR-PSE-90-12); 28245 (July 20, 1990), 55 FR 30781 (notice of File No. SR-PHLX-90-14); and 28525 (October 10, 1990), 55 FR 42122 (notice of File No. SR-PHLX-90-27).

[4] Warrants on a stock index are securities that incorporate certain characteristics of both equity debt and options. Like debt, they are issued by a corporation that serves as guarantor of the warrant obligation. Like a stock index option, however, an index warrant is based on the performance of an underlying index and has a fixed expiration date. Index warrants also are cash-settled and, just as with long options positions, the risk to a buyer is known and limited.

[5] The Nikkei is calculated and distributed at one-minute intervals throughout the TKE trading day on a real-time basis. The Nikkei is a widely disseminated index that is published daily in, among other places, the Wall Street Journal. The Nikkei is calculated and managed by Nihon Keisai Shimbun, Inc. of Japan ("NKS"). To calculate the Nikkei, NKS takes the sum of the prices of the 225 stocks in the index and divides this number by a specified divisor. The divisor is adjusted periodically to reflect certain factors such as stock splits, stock dividends, and rights offerings in order to provide continuity for the index's value. For additional information regarding the calculation of the Nikkei, see letter from Jonathan G. Katz, Secretary, SEC, to Dr. Paula Tosini, Director, Division of Economic Analysis ("DEA"), Commodity Futures Trading Commission ("CFTC"), dated April 18, 1990 at 3 ("Nikkei Index letter").

[6] See Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376.

[7] The TOPIX is calculated and distributed at one-minute intervals throughout the TKE trading day on a real-time basis. The TOPIX is calculated by the TKE and is a widely disseminated index that is published daily in, among other places, the Wall Street Journal. To calculate the TOPIX, the sum of the current aggregate market values of the stocks in the Index is divided by a specified divisor, which is adjusted periodically to reflect certain factors such as stock splits, stock dividends, and rights offerings. For additional information regarding the TOPIX, see letter from Jonathan G. Katz, Secretary, SEC, to Paula Tosini, Director, DEA, CFTC, dated September 1, 1988 at 3-5 ("TOPIX Index letter").

[8] See Securities Exchange Act Release Nos. 28034 (May 22, 1990), 55 FR 22001 (PSE); 28153 (June 28, 1990), 55 FR 27734 (NYSE); 28288 (July 26, 1990), 55 FR 31275 (PHLX); and 28133 (June 19, 1990), 55 FR 28316 (MSE) (collectively, "Index Warrant Approval Orders"). With the exception of some minor differences, these guidelines are uniform.

Consistent with the Index Warrant Approval Orders, the Exchanges represent that the Nikkei and TOPIX warrant issues will conform to their respective index warrant listing guidelines.[9]

Specifically, the listing guidelines of the Exchanges require that: (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the respective Exchange's size and earnings requirements; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance;[10] and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.[11]

The Exchanges propose that the Nikkei and TOPIX warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Nikkei or the TOPIX has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Nikkei or TOPIX has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Because index warrants are derivative in nature and closely resemble index options, the Exchanges have proposed safeguards that are designed to meet the investor protection concerns raised by the trading of index warrants. First, the Exchanges propose to apply their options suitability standards to Nikkei or TOPIX warrant recommendations and the requirement that discretionary orders in Nikkei or TOPIX warrants be approved on the day entered by a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP"). In addition, the Exchanges have recommended that the Nikkei and TOPIX warrants only be sold to options approved accounts. Moreover, the Exchanges represent that, prior to the commencement of trading of Nikkei or TOPIX warrants, they will distribute circulars to their memberships calling attention to the specific risks associated with warrants on the Nikkei or TOPIX and any additional sales practice requirements that will be imposed.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[12] Specifically, the Commission believes that Nikkei and TOPIX warrants are innovative securities instruments that can provide investors a means by which to hedge against exposure to the Japanese equity market and act as surrogate instruments for trading the Japanese securities market.[13]

The Commission also believes that the Nikkei and TOPIX warrants are consistent with the guidelines set forth in the Exchanges' Index Warrant Approval Orders. Because both Indexes are broad-based indexes comprised of actively-traded, highly-capitalized stocks, the trading of cash-settled warrants on these Indexes on the Exchanges does not raise unique regulatory concerns.[14]

The Commission notes that the Exchanges' rules and procedures that address the special concerns attendant to the secondary trading of index warrants will be applicable to the Nikkei and TOPIX warrants. In particular, by imposing the special suitability, disclosure, and compliance requirements noted above, the Exchanges have addressed adequately the potential public customer problems that could arise from the derivative nature of Nikkei and TOPIX warrants. Moreover, the Exchanges plan to distribute circulars to their memberships calling attention to the specific risks associated with Nikkei and TOPIX warrants and, pursuant to the Exchanges' listing guidelines, only substantial companies capable of meeting their warrant obligations will be eligible to issue Nikkei and TOPIX warrants.

The Commission realizes that the warrants, unlike standardized options, do not contain a clearinghouse guarantee but are instead dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of warrants may not be able to receive full cash settlement upon exercise. To some extent this risk is minimized by the Exchanges' standard that warrant issuers possess at least $100,000,000 in assets. In any event, financial information regarding the issuer will be disclosed or incorporated in the prospectus accompanying the offering of the warrants.

There is a systemic concern, however, that broker-dealers or broker-dealer subsidiaries issuing index warrants or providing a hedge for the issuer will incur position exposure. This position exposure, if left partially hedged or dynamically hedged, could not only create a risk of non-performance but add a systemic risk in that the broker-dealer will have to dynamically hedge the position to minimize losses should the market turn against it. To date the warrant issuances have been so small in relation to the broker-dealer issuer's (or underwriter's) total equity positions as not to raise significant concerns. Nevertheless, the Exchanges should continue to monitor this area.

The Commission as a general matter believes that surveillance sharing agreements between the relevant foreign and domestic exchanges are important where a foreign stock index product is to be traded in the United States. Such agreements are an important measure

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[9] See § 702.17 of the NYSE Listed Company Manual; PHLX Rule 808; PSE Rule I, Section 3(b); and MSE Rule 8 of Article XXVIII.

[10] The NYSE and MSE Rules provide for a minimum term of one year, but do not impose a five-year limitation on the duration of an index warrant. See *supra* note 8.

[11] In addition, the PHLX, PSE, and MSE propose to trade Nikkei warrants on an unlisted trading privilege basis. To do so, the PHLX, PSE and MSE would have to make a separate application under section 12(f) of the Act for each warrant issue.

[12] 15 U.S.C. 78f(b)(5) (1982).

[13] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest and consistent with the protection of investors. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[14] The Commission previously has examined the Nikkei in three contexts. First, the SEC did not object to a proposal by the Singapore Monetary Exchange ("SIMEX") to offer and sell to U.S. persons Nikkei futures contracts traded on the SIMEX. See letter from Richard G. Ketchum, Director, Division of Market Regulation ("Division"), SEC, to Kenneth M. Raisler, General Counsel, CFTC, dated November 25, 1986. Second, the Commission did not object to the designation of the Chicago Mercantile Exchange as a contract market to trade Nikkei futures and options on Nikkei futures. See Nikkei Index Letter, *supra* note 5, and letter from Jonathan G. Katz, Secretary, CFTC, to Dr. Paula Tosini, Director, DEA, CFTC, dated October 7, 1988. Finally, as mentioned earlier, the SEC approved a proposal by the Amex to list warrants based on the Nikkei. *See supra* note 6. Similarly, the Commission previously has reviewed the TOPIX. Specifically, the Commission did not object to the designation of the Chicago Board of Trade as a contract market to trade TOPIX futures and options on TOPIX futures. See TOPIX Index Letter, *supra* note 7, and letter from Jonathan G. Katz, Secretary, SEC, to Dr. Paula Tosini, Director, DEA, CFTC, dated December 27, 1989.

for surveillance of the derivative and underlying securities markets. Most importantly, they ensure the availability of information which is necessary to detect and deter potential manipulations and other trading abuses. In most cases, in the absence of such a surveillance sharing agreement, the Commission believes that it would not be possible to conclude that a derivative product, such as a Nikkei or TOPIX warrant, was not readily susceptible to manipulation.

In this case, however, a number of other factors outweigh the absence of a specific surveillance sharing agreement between the TKE and the Exchanges regarding these particular products. First, while the size of an underlying market is not necessarily determinative of whether a particular derivative product based on that market is readily susceptible to manipulation, the sheer size of the market for the securities underlying the Nikkei and TOPIX make it less likely that the proposed Nikkei and TOPIX warrants are readily susceptible to manipulation.[15]

Second, the Commission notes that the TKE is under the regulatory oversight of the Japanese Ministry of Finance ("MOF"). The MOF has responsibility for both the Japanese securities and derivative markets. Accordingly, the Commission believes that the ongoing oversight of the trading activity on the TKE by the MOF will help to ensure that the trading of Nikkei and TOPIX warrants will be carefully monitored with a view to preventing unnecessary market disruptions.

Third, the Commission notes that it has a longstanding working relationship with the MOF on a number of matters. This relationship, which has developed over a number of years through the SEC's and the MOF's active involvement in the International Organization of Securities Commissions, bilateral meetings between the SEC and the MOF, and trilateral meetings between the SEC, MOF, and the Department of Trade and Industry and the Securities and Investment Board of the United Kingdom, provides a framework for ongoing discussions in the event any particular market activity raised concerns regarding potential market manipulation. Moreover, at least since the introduction of stock index futures based on Japanese equities, both the TKE and MOF repeatedly have acted to address any market disruption concerns that might be raised.

Fourth, the SEC and the MOF have concluded a Memorandum of Understanding ("MOU") that provides a framework for mutual assistance in investigatory and regulatory matters.[16] Based on the longstanding relationship between the SEC and the MOF and the existence of the MOU, the Commission is confident that it and the MOF could acquire information from one another similar to that available pursuant to a surveillance sharing agreement between exchanges about transactions in TKE-traded stocks related to Nikkei or TOPIX warrants transactions and vice versa.[17]

Nevertheless, the Commission continues to believe strongly that surveillance sharing agreements between the TKE and the Exchanges would be an important measure to deter and detect potential manipulations or other improper or illegal trading involving Nikkei and TOPIX warrants. Accordingly, the Commission believes it is critical that the TKE and the Exchanges continue to work together to consummate formal surveillance sharing agreements as soon as practicable.[18]

Finally, the Commission finds that, in light of the composition of the Indexes, the customer protection provisions applicable to trading in the warrants, and the Exchanges guidelines for the listing of the warrants, trading in Nikkei and TOPIX warrants will not have an adverse impact on U.S. financial markets. In fact, the Commission believes that Nikkei and TOPIX warrants will benefit U.S. markets by providing U.S. issuers more flexibility in raising capital at potentially lower costs and allowing U.S. investors an opportunity to better hedge against stock market fluctuations in Japan.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule changes (SR–NYSE–90–8; SR–PHLX–90–14; SR–PHLX–90–27; SR–PSE–90–12; and MSE–90–40) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–1612 Filed 1–22–92; 8:45 am]

BILLING CODE 8010–01–M

[15] In evaluating the manipulative potential of a proposed index derivative product, as it relates to the securities that comprise the index, the Commission has considered several factors, including: (1) The number of securities comprising the index or group; (2) the capitalization of those securities; (3) the depth and liquidity of the secondary markets for those securities; (4) the diversification of the group or index; (5) the manner in which the index or group is weighted; and (6) the ability to conduct surveillance of the product. See Nikkei Index letter, *supra* note 5, at pages 3–4 and 6–7 and TOPIX Index letter, *supra* note 7, at pages 3–6.

[16] Memorandum of the United States Securities and Exchange Commission and the Securities Bureau of the Japanese Ministry of Finance on the Sharing of Information, dated May 23, 1986.

[17] The information could include transaction, clearing, and customer information necessary to conduct an investigation.

[18] In addition, the Commission notes that by permitting U.S. persons access to Nikkei and TOPIX warrants competition among the markets for Japanese-based derivatives will be enhanced.

[19] 15 U.S.C. 78s(b)(2) (1982).

[20] 17 CFR 200.30–3(a)(12) (1989).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

January 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Chemical Banking Corp.
Series F Preferred Stock, No Par Value (File No. 7–7789)
Equimark Corp.
Rights to Subscribe to Additional Shares of Common Stock (File No. 7–7790)
Hanson Plc
Class B Warrants, No Par Value (File No. 7–7791)
Luby's Cafeterias, Inc.
Common Stock, $.32 Par Value (File No. 7–7792)
LVI Group, Inc.
Common Stock, $.001 Par Value (File No. 7–7793)
Mesa, Inc.
Common Stock, $.01 Par Value (File No. 7–7794)
Standard Pacific Corp.
Common Stock, $.01 Par Value (File No. 7–7795)
Savin Corp.
Common Stock, $.001 Par Value (File No. 7–7796)
Tidewater, Inc.
Common Stock (Citizen or Non-Citizen Certificate), $.50 Par Value (File No. 7–7797)
U.S. Alcohol Testing of America, Inc.
Common Stock, $.01 Par Value (File No. 7–7798)
K–V Pharmaceutical Company
Class A Common Stock, $.01 Par Value (File No. 7–7799)
Duplex Products, Inc.
Common Stock, $1.00 Par Value (File No. 7–7800)
Fab Industries, Inc.
Common Stock, $.20 Par Value (File No. 7–7801)
GTI Corporation

Common Stock, $.04 Par Value (File No. 7–7802)
Tyco Toys, Inc.
Common Stock, $.01 Par Value (File No. 7–7803)
Tyco Toys, Inc.
Warrants to Purchase Common Stock, at $16.50 per share, expiring June 7, 1993.

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 7, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–1575 Filed 1–22–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

January 16, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Kimco Realty Corporation
Commion Stock, $.01 Par Value (File No. 7–7776)
Ford Motor Co.
Preferred Stock, $1 Par Value (File No. 7–7777)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 7, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–1576 Filed 1–22–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18490; 812–7736]

Prudential-Bache Short-Term Global Income Fund, Inc. (Doing Business as Prudential Short-Term Global Income Fund), et al.

January 16, 1992

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act" or "Investment Company Act").

APPLICANTS: Prudential-Bache Short-Term Global Income Fund, Inc. (doing business as Prudential Short-Term Global Income Fund) and existing or future series thereof (the "Short-Term Global Income Fund"), and any open-end management investment companies, currently in existence or to be established in the future, that are part of the same group of investment companies and (i) whose investment adviser is Prudential Mutual Fund Management, Inc. ("PMF") or Prudential Securities Incorporated ("Prudential Securities") or an investment adviser that is an affiliated person, as defined in the 1940 Act, of PMF or Prudential Securities, (ii) whose principal underwriter is Prudential Mutual Fund Distributors, Inc. ("PMFD") or Prudential Securities or a principal underwriter that is an affiliated person of PMFD or Prudential Securities, and (iii) which hold themselves out to investors as being related for purposes of investment and investor services (the "Fund" or the "Funds"), Prudential Securities, PMF and PMFD.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from the provisions of sections 18(f), 18(g) and 18(i) of the Act.

SUMMARY OF APPLICATION: The applicants are requesting an order of the SEC to permit the Funds to sell two classes of securities and implement a conversion feature for the purpose of establishing an alternative purchase and conversion plan (the "Alternative Purchase and Conversion Plan").

FILING DATES: The application was filed on June 11, 1991 and amended on November 18, 1991 and January 9, 1992 and will be amended during the notice period to conform with this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 10, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One Seaport Plaza, New York, New York 10292.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Staff Attorney, at (202) 504–2259, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Short-Term Global Income Fund is an open-end management investment company registered under the 1940 Act, comprised of two separate portfolios, the Short-Term Global Income Portfolio (the "Global Income Portfolio") and the Global Assets Portfolio. The Short-Term Global Income Fund has entered into a management agreement with PMF and distribution agreements with PMFD and Prudential Securities (collectively, the "Distributor") pursuant to which the Distributor acts as principal underwriter for the Short-Term Income Fund.

2. The Short-Term Global Income Fund currently offers two classes of shares in each of its two portfolios in reliance on an order of the SEC (the "Prior Order").[1] Pursuant to the Prior Order, it offers investors the option of either purchasing shares with a front-end sales load together with a rule 12b–1 distribution plan ("Class A" shares) or subject to a CDSC and a rule 12b–1 distribution plan ("Class B" shares). The Prior Order prohibits exchanges between classes and does not provide for the conversion feature described herein.

3. Class A shares of the Global Assets Portfolio are subject to an initial sales charge of .99% and an annual Rule 12b–1 distribution fee of .50% of the average daily net asset value of the portfolio's Class A shares. Class B shares are subject to a contingent deferred sales charge of 1% which will be imposed on certain redemptions made within one year of purchase and an annual rule 12b–1 distribution fee of up to 1% of the average daily net asset value of the portfolio's Class B shares.

4. If the relief sought in this application is granted, Class B shares of the Global Assets Portfolio will automatically convert into Class A shares after one year, as more fully described below, in order to relieve the holders of Class B shares of the higher distribution fee to which that class is subject after the Distributor has been compensated for the distribution expenses related to sales of those shares. Currently, the Global Assets Portfolio is the only portfolio that is expected to participate in the Alternative Purchase and Conversion Plan.

5. All Class B shares of the Global Assets Portfolio, including those purchased prior to the implementation of the Alternative Purchase and Conversion Plan, will automatically convert to Class A shares after one year from the date of purchase without the imposition of any additional sales charge and thereafter be subject to the lower rule 12b–1 distribution fee applicable to that class. However, Class B shares in a shareholder's fund account that were purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's fund account convert to Class A, all of the Class B shares then in the sub-account will also convert to Class A. Thus, Class A shares will consist of Class A shares purchased by investors prior to and after the implementation of the Alternative Purchase and Conversion Plan, Class B shares (including Class B shares purchased through the reinvestment of dividends and other distributions in respect to Class B shares) that have converted to Class A status, and shares purchased by holders of outstanding Class A shares through the reinvestment of dividends and distributions paid in respect of those outstanding Class A shares.

6. Net asset value will be computed separately for each class of shares by first allocating gross income and expenses (other than rule 12b–1 fees and any other incremental expenses properly attributable to one class which the Commission shall approve by an amended order) to each class of shares based on the net assets attributable to each class at the beginning of the day and then by separately recording the differing 12b–1 fees and other incremental expenses to the appropriate class. The net asset value attributable to each share of each class will then be calculated by dividing the net assets calculated for each class by the number of shares outstanding in that class. Because of the higher ongoing distribution fees paid by the holders of Class B shares, the net income attributable to and the dividends payable on Class B shares will be lower than the net income attributable to and the dividends payable on Class A shares. To the extent that a Fund has undistributed net income, the net asset value of the Class A shares will be higher than the net asset value of the Class B shares.

7. Distribution expenses attributable to the sale of both classes of shares will be allocated annually to each class of shares on the basis hereinafter described. It is recognized by the applicants that expenditures attributable to the sale of one class of shares cannot be presented to the Board of Directors to justify rule 12b–1 distribution fees of the other class of shares.

8. On a quarterly basis, the Board of Directors of the Short-Term Global Income Fund receive statements of distribution revenues and expenditures for each class of shares ("Statements") containing sufficient information so that they may generally monitor distribution revenues and expenditures. On an annual basis, the Board of Directors receive annual Statements which will be reviewed by an independent expert which set forth the distribution revenues received from the distribution fee and the CDSC and the distribution expenses to be considered by the Board of Directors in determining that there is a reasonable likelihood that the rule 12b–1 plan will benefit the Short-Term Global Income Fund and its shareholders.

9. The annual Statements include two categories of distribution expenses. The first category is comprised of distribution expenses that are exclusively attributable to selling shares of the Short-Term Global Income Fund ("direct expenses"). Direct expenses are comprised of financial adviser compensation, interest (where applicable) on accumulated and unreimbursed distribution expenses, financial printing and specific fund advertising, if any, solely directed to selling the shares of the Short-Term Global Income Fund.[2] Because direct expenses are exclusively attributable to the Short-Term Global Income Fund, the entire amount thereof is reported as a distribution expense in the Short-Term Global Income Fund's Statements.

10. The principal direct expense will be payments made to sales personnel for selling shares of a particular class and will require no allocation between classes. However, certain other direct expenses properly attributable to the Short-Term Global Income Fund as a whole if only a single class existed will apply to both classes ("other direct expenses") and will be allocated as expenses to both classes of shares. Such other direct expenses are comprised of certain financial printing expenses for prospectuses, statements of additional information, shareholder reports and brochures used for distribution purposes as well as advertising, if any, solely directed to selling shares of the Short-Term Global Income Fund. The allocation of these direct expenses will be made according to the ratios which the sales of the shares of each class bear to the total sales of the Short-Term Global Income Fund's shares each year. As a result of this allocation, the expenses reported in the Statements with respect to Class B shares will exclude those expenses which resulted in the distribution of the Class A shares.

11. The second category consists of indirect expenses attributable to the distribution of all investment products sold by the Distributor, including shares of the Short-Term Global Income Fund ("indirect expenses"). Indirect expenses are comprised of management sales compensation (as distinguished from financial adviser compensation), other

[1] Prudential-Bache California Municipal Fund, Investment Company Act Release Nos. 17277 (Dec. 20, 1989) (notice) and 17308 (Jan. 18, 1990) (order).

[2] As used herein, "financial adviser" refers to all salespersons who are compensated for selling shares of the Fund.

employee compensation and benefits, communications, postage, stationery and printing, occupancy and equipment, general sales promotion which is not directed specifically to selling shares of the Short-Term Global Income Fund, and general overhead expenses. Unlike direct expenses, indirect expenses are not exclusively attributable to the Short-Term Global Income Fund, or even a single product line. Therefore, the Short-Term Global Income Fund bears only an allocated portion of indirect expenses.

12. Once allocable distribution-related indirect expenses have been identified and accumulated, such costs will be allocated to the Short-Term Global Income Fund, and each class within the Short-Term Global Income Fund, based upon the ratio which the Short-Term Global Income Fund's (and class) financial adviser compensation bears to the total financial adviser compensation paid on all products distributed by the Distributor. The denominator of total financial adviser compensation is used because indirect distribution expenses being allocated may relate to all investment products and not exclusively to the Short-Term Global Income Fund and because the Distributor believes that financial adviser compensation is the most meaningful common element relating to all the products which it sells.

13. The Distributor's allocations of indirect expenses will be attributed to the Class A shares and the Class B shares based upon the same cost accounting methodologies described above as though each class of shares was a separate fund.

14. Financial advisers selling shares of the Short-Term Global Income Fund will be compensated differently as a result of whether an investor chooses Class A or Class B. Because the size of a financial adviser's compensation will vary from case to case depending on breakpoints, performance of the financial adviser, size of the client accounts in the Short-Term Global Income Fund, length of time client accounts are maintained in the Short-Term Global Income Fund and other factors, it is not possible to generalize as to which class will provide the financial adviser with the highest levels of compensation. The applicants will include a statement in the Short-Term Global Income Fund's prospectus to the effect that a financial adviser may receive different levels of compensation for selling Class A shares or Class B shares. Also, the Distributor has adopted compliance standards as to when Class A shares and Class B shares may appropriately be sold to particular investors, and will amend these standards to reflect the addition of the conversion feature for the Class B shares.

15. Applicants believe that the Alternative Purchase and Conversion Plan will provide a meaningful choice for investors. An investor's decision to invest in Class A or Class B shares at any given time will depend on a number of factors, including, among others, the amount of money to be invested initially and, over a period of time, the current level of the front-end sales load or CDSC imposed by the Short-Term Global Income Fund and the period of time over which the investor proposes to retain his or her investment in the Short-Term Global Income Fund and the anticipated level of yield from the Class A and Class B shares.

16. Without the conversion feature, an investor wishing to convert his or her Class B shares to Class A shares to take advantage of the lower Class A distribution fee would have to first redeem his or her Class B shares and then buy Class A shares subject to the front-end sales charge.

Applicants' Legal Conclusions

17. The applicants do not believe that the implementation of the Alternative Purchase and Conversion Plan will give rise to any conflicts between the interests of the two classes.

18. The proposed Alternative Purchase and Conversion Plan does not create the potential for the abuses relating to complex capital structures and mutuality of risk which section 18 of the 1940 Act was intended to redress. The proposed arrangement will not increase the speculative character of the shares of the Short-Term Global Income Fund, since each class of shares will participate in all of the Short-Term Global Income Fund's income and all of the Short-Term Global Income Fund's expenses, with the exception of the differing distribution fees payable by each class of shares which will disproportionately reduce the net income of each such class, in the same proportion that the net assets attributable to that class bears to the Short-Term Global Income Fund's total net assets. Further, both classes of shares would be redeemable at all times, and no class of shares will have any preference or priority over any other class in the Short-Term Global Income Fund in the usual sense (that is, no class will have a distribution or liquidation preference with respect to particular assets and no class would be protected by any reserve or other account).

19. The applicants believe that the interests of the two classes of shares as to the management and advisory fees of the Short-Term Global Income Fund participating in the Alternative Purchase and Conversion Plan are the same and not in conflict. These fees are used to compensate the Manager for providing management and advisory services that are common to all investors, regardless of the class of shares.

20. The Alternative Purchase and Conversion Plan permits investors to choose the method of purchasing shares that is most beneficial given the length of time the investor expects to hold his or her shares and other relevant circumstances and affords investors the opportunity to defer any sales charge by purchasing Class B shares initially and relieves them of the higher distribution fee associated with the Class B shares by allowing for the automatic conversion of those shares to Class A shares without the imposition of any additional sales charge after the Distributor has been compensated for distribution expenses related to the Class B shares.

Applicants' Conditions

The Applicants agree that the order of the SEC granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of the Fund, and be identical in all respects, except as set forth below. The only differences between the classes of shares of the Fund will relate solely to: (a) The impact of the disproportionate payments made under the rule 12b–1 distribution plans and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order, (b) the fact that the classes will vote separately with respect to the Fund's rule 12b–1 distribution plans, (c) the different exchange privileges of the classes of shares, (d) the designation of each class of shares of the Fund, and (e) the fact that only Class B shares will have a conversion feature.

2. The directors of the Fund, including a majority of the independent directors, have approved the Alternative Purchase and Conversion Plan. The minutes of the meeting of the directors of the Fund regarding the deliberations of the directors with respect to the approvals necessary to implement the Alternative Purchase and Conversion Plan reflect in detail the reasons for the directors' determination that the proposed Alternative Purchase and Conversion Plan is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the directors of the Fund, pursuant to their fiduciary responsibilities under the Investment Company Act and otherwise, will monitor the fund for the existence of any material conflicts between the interests of the two classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Manager and the Distributor shall be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Manager and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. Any rule 12b–1 plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b–1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

5. The directors of the Fund will receive quarterly and annual statements concerning distribution expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale of a particular class of shares will be used to justify any distribution fee charged to that class. Expenditures not related to the sale of a particular class will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

6. Dividends paid by the Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that distribution payments relating to each respective class of shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the two classes and the proper allocation of expenses between the two classes has been reviewed by an expert (the "Independent Examiner"), which has rendered a report to the Applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Investment Company Act. The work papers of the Independent Examiner with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the Commission staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the two classes of shares and the proper allocation of expenses between the two classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (7) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Independent Examiner or appropriate substitute Independent Examiner.

9. The prospectus of the Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

10. The Distributor has adopted compliance standards as to when each class of shares may appropriately be sold to particular investors, and will amend these standards to reflect the addition of the conversion feature for Class B shares. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of the Fund with respect to the Alternative Purchase and Conversion Plan will be set forth in guidelines which will be furnished to the directors.

12. The Fund will disclose the respective expenses performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by Applicants for publication in any newspaper or similar listing of the Fund's net asset value and public offering price will present each class of shares separately.

13. The Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to its rule 12b–1 distribution plans in reliance on the exemptive order.

14. Class B shares will convert into Class A shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1613 Filed 1-22-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Under Secretary for International Security Affairs

[Public Notice 1557]

Determination on Assistance to the United Nations Special Commission for the Elimination of Iraqi Weapons of Mass Destruction

Pursuant to section 451 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2261) (the "Act"), Section 1-201 of Executive Order 12163, as amended, and section 1(a)(1) of State Department Delegation of Authority No. 145, I hereby authorize the use of $1.334 million in funds made available under chapter 6 of part II of the Act in fiscal year 1992 for assistance to the UN Special Commission for the Elimination of Iraqi Weapons of Mass Destruction to support its operation in Iraq and related activities pursuant to UN Security Council Resolution 687 of April 3, 1991, notwithstanding any other provision of law.

This determination shall be reported to Congress immediately and published in the Federal Register.

January 11, 1992.

Reginald Bartholomew,

Under Secretary of State for International Security Affairs.

[FR Doc. 92-1562 Filed 1-22-92; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration; Radio Technical Commission for Aeronautics (RTCA) Ad Hoc Group 5

Airborne Loran-C Area Navigation Equipment; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for the second meeting of Ad Hoc Group 5 to be held February 13-14, 1992, in the RTCA conference room, 1140 Connecticut Avenue NW, Suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the first meeting's minutes, RTCA paper no. 227-91/AG5-8; (3) FAA briefing on CDI test; (4) Review status of proposed changes to DO-194. Define proposed end product, remaining work and estimated completion date; (5) Discuss new tasking relative to the use of Loran C as a sole means of navigation. Develop terms of reference; (6) Establish initial work program and schedule; (7) Assignment of tasks; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 14, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-1644 Filed 1-22-92; 8:45]

BILLING CODE 4910-13-M

Federal Aviation Administration Radio Technical Commission for Aeronautics (RTCA) Special Committee 169

Aeronautical Data Link Applications Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for the fifth meeting of Special Committee 169 to be held February 11-12, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of minutes of the fourth meeting held on October 17-18, 1991, RTCA paper no. XXX-91/SC169-XX (enclosed); (4) Report on first meeting of the GNSS Task Force; (5) Report of Air Traffic Services Data Link Communications Working Group (WG-1) activities; (6) System Architecture and Dependencies Working Group (WG-2) activities; (a) Working group status report; (b) Consideration of formal working group terms of reference; (c) Consider working group recommendation to establish new working groups on Flight Operations and Customer Services; (7) Report of Special Committee 162 status and recommended actions; (8) Briefing on Boeing ATN Plans and Schedules; (9) Briefing on FAA ATN End Systems; (10) Briefing on Data Link Management; (11) Discussion of Conformance Testing Issues; (12) Develop proposals to establish new special committees; (13) Establish working groups; (14) Assignment of tasks; (15) Other business; (16) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 16, 1992.

Joyce J. Gillen,

Designated Officer.

FR Doc. 92-1645 Filed 1-22-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR part 235 and 49 app. U.S.C. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS-AP)-No. 3128.

Applicant: Burlington Northern Railroad Company, Mr. W.G. Peterson, Chief Engineer-Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas, 66201-9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system (TCS), on the two main tracks, between milepost 1.0 and milepost 3.0, near Alliance, Nebraska, on the Denver Division, Third Subdivision, by the discontinuance and removal of the TCS limits by approximately two miles.

The reason given for the proposed changes is to make better use of signals in a traffic congested area.

BS–AP–No. 3129.

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer-C&S, 15 North 32nd Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of "Altamont" Interlocking, milepost 152.3, near Altamont, Illinois, on the St. Louis Line, Indianapolis Division, consisting of the removal of automatic interlocking signals 2E and 2W and the installation of automatic back to back signals 152E and 152W.

The reason given for the proposed changes is to retire facilities no longer required for present operation due to the removal of the crossing diamond.

BS–AP–No. 3130.

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer-C&S, 15 North 32nd Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of "CP Horn" Interlocking, milepost 186.4, near Crestline, Ohio, on the Fort Wayne Line, Pittsburgh Division, consisting of the removal of five controlled signals, two power-operated crossovers, and the conversion of one power-operated switch to hand operation.

The reason given for the proposed changes is to retire facilities no longer required for present operation.

BS–AP–No. 3131.

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals, 1416 Dodge Street, room 920, Omaha, Nebraska 68179.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of two control points, CPR037, milepost 36.9, and CPR038, milepost 38.0, near Kildare, Texas, on the Red River Division, Dallas Subdivision, consisting of the conversion of two power-operated switches to hand operation with electric locks, the removal of six controlled signals, and the installation of two automatic signals.

The reason given for the proposed changes is that the siding is rarely used for the passing of trains.

BS–AP–No. 3132.

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals, 1416 Dodge Street, room 920, Omaha, Nebraska 68179.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of two control points, CPR070, milepost 70.0, and CPR072, milepost 71.0, near Quincy, Texas, on the Red River Division, Dallas Subdivision, consisting of the conversion of two power-operated switches to hand operation with electric locks, the removal of six controlled signals, and the installation of two automatic signals.

The reason given for the proposed changes is that the siding is rarely used for the passing of trains.

BS–AP–No. 3133.

Applicant: Southern Pacific Transportation Company, Mr. J.A. Turner, Chief Engineer-Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105.

The Southern Pacific Transportation Company seeks approval of the proposed discontinuance and removal of the traffic control system between milepost 46.7 and milepost 47.4, on main track No. 12, near San Jose, California, on the Coast District, Coast Line, consisting of the removal of three controlled signals and four automatic signals.

The reason given for the proposed changes is that, as a result of track and facility rearrangement, track No. 12 will become a yard track.

BS–AP–No. 3134.

Applicant: Southern Pacific Chicago St. Louis Corporation, Mr. J.A. Turner, Engineer-Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105.

The Southern Pacific Chicago St. Louis Corporation seeks approval of the proposed discontinuance and removal of two automatic block signals at milepost 184.3, near Springfield, Missouri, on the Springfield District, Wilmington Line.

The reason given for the proposed changes is the installation of coded track circuits and that removing these signals will improve train handling and allow for future train speed increases.

BS–AP–No. 3135.

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer-C&S, 15 North 32nd Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of the manual block signal system on the single Xenia Secondary Track between "CP 163," milepost 25.0 and End of Track, milepost 39.1, near London, Ohio and between Cincinnati Line Connection, milepost 15.4 and End of Track milepost 12.0, near Dayton, Ohio, on the Indianapolis Division, redesignating the trackage as an industrial track.

The reason given for the proposed changes is to retire facilities no longer required for present operations.

BS–AP–No. 3136.

Applicant: Burlington Northern Railroad Company, Mr. W.G. Peterson, Chief Engineer-Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system on the single main track, near Teague, Texas, milepost 208.0, on the Fort Worth Division, First Subdivision, consisting of the relocation of two automatic back to back block signals from milepost 207.7 to milepost 207.9.

The reason given for the proposed changes is to facilitate the installation of motion type grade crossing protection at milepost 207.9.

BS–AP–No. 3137.

Applicant: CSX Transportation, Inc., Mr. W.J. Scheerer, Chief Engineer-Train Control, 500 Water Street, Jacksonville, Florida 32202.

The CSX Transportation, Inc. (CSX) seeks approval of the proposed modification of the traffic control system between South Bellwood, Georgia, milepost 862.3 and Manchester, Georgia, milepost 788.8, on the Atlanta Division, Manchester Subdivision, consisting of the removal of 1 automatic signal, the relocation of 17 automatic signals, and the installation of 11 automatic signals.

The reason given for the proposed changes is to provide follow block capability and to respace signals to allow for improved train operations.

BS–AP–No. 3138.

Applicants:

New Orleans Public Belt Railroad, Mr. A.C. Marinello, Jr., Manager, Engineering and Maintenance, P.O. Box 51658, New Orleans, Louisiana 70151–1658.

Illinois Central Railroad Company, Mr. John T. Sharkey, Engineer Signals, 233 North Michigan Avenue, Chicago, Illinois 60601–5799.

The New Orleans Public Belt Railroad (NOPB) and the Illinois Central Railroad Company (IC) jointly seek approval of the proposed discontinuance and removal of the automatic interlocking, at Jefferson Avenue, New Orleans, Louisiana, milepost 3.65, where two NOPB main tracks cross at grade two main tracks of the IC, consisting of the

removal of eight automatic interlocking signals, the removal of four approach signals, and the installation of eight stop signs.

The reason given for the proposed change is the low traffic density through the area.

BS–AP–No. 3139.

Applicant: CSX Transportation, Inc., Mr. W.J. Scheerer, Chief Engineer-Train Control, 500 Water Street, Jacksonville, Florida 32202.

The CSX Transportation, Inc. seeks approval of the proposed discontinuance and removal of the automatic block signal system between Greencastle, Indiana, milepost 176.7 and Bedford, Indiana, milepost 245.7, a distance of 69 miles, on the Chicago Division, Monon Subdivision, and proposes to operate under DTC Rules.

The reason given for the proposed changes is that the traffic density does not warrant retention of the signal system.

BS–AP–No. 3140.

Applicant: Mr. Richard L. Keller, Chief Engineer, Montana Rail Link, Incorporated, P.O. Box 8779, Missoula, Montana 59807.

The Montana Rail Link, Incorporated seeks approval of the proposed modification of the signal system between milepost 228.1 and milepost 235.5, near Helena, Montana, on the Second Subdivision, consisting of the conversion of controlled signals 81L and 81R to automatic signals 2331 and 2330, the discontinuance and removal of four automatic signals; 2315, 2314, 2295, and 2294, and the installation of two back to back automatic signals 2305 and 2306, in connection with the installation of coded track circuits.

The reasons given for the proposed changes are the upgrade of the signal system and the improvement of train operations in the area.

BS–AP–No. 3141.

Applicant: Southern Pacific Transportation Company, Mr. J.A. Turner, Chief Engineer-Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105.

The Southern Pacific Transportation Company seeks approval of the proposed discontinuance and removal of the automatic block signal system between milepost 70.3 and milepost 75.6 (Tracy Line), and milepost 78.8 and milepost 82.2 (West Side Line), on the Stockton Division, San Joaquin District; also between milepost 82.26 and 82.7 (Mocoso Line), on the Sacramento Division, Martinez District, near Tracy, California, consisting of the removal of 19 automatic block signals. Operations would be under Direct Traffic Control Rules.

The reason given for the proposed changes is that, due to changes in operations and the reduction of train traffic in the area, the cost of operating and maintaining the signal system is not warranted.

BS–AP–No. 3142.

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer-C&S, 15 North 32nd Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of the traffic control system on the single main track of the Corning Secondary between "Baker", milepost 67.7 and "CP Gibson" and "CP Corning", milepost 70.9, near Corning, New York, on the Albany Division, including the discontinuance and removal of "CP Glass" interlocking, consisting of the following: the removal of four controlled signals, the removal of one automatic block signal, the removal of one approach signal, and the conversion of four power-operated switches to hand-operation.

The reason given for the proposed changes is to retire facilities no longer required for present operation.

BS–AP–No. 3143.

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer-C&S, 15 North 32ad Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of the automatic block signal system and automatic cab signals on the single track of the Enola Branch, between "Park" Interlocking, milepost 0.0 and End of Track, milepost 1.1, near Parkesburg, Pennsylvania, on the Harrisburg Division. The track would be reclassified as an industrial track.

The reason given for the proposed changes is to retire facilities no longer required for present operations.

BS–AP–No. 3144.

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer-C&S, 15 North 32nd Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of the traffic control system between "CP246" interlocking, milepost 165.4 and End Block/Begin Block sign at "Dow" and the manual block signal system between "Dow" and signal 1611, on the "Dow" Secondary Track, near Anderson, Indiana, on the Indianapolis Division, consisting of the removal of three automatic block signals, 1642, 1632, and 1611.

The reason given for the proposed changes is to retire facilities no longer required for present operations.

BS–AP–No. 3145.

Applicant: Burlington Northern Railroad Company, Mr. W.G. Peterson, Chief Engineer-Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company Seeks approval of the proposed modification of the traffic control system on the single main track and controlled siding, between milepost 24.25 and milepost 24.71, on the Nebraska Division, Fourth Subdivision, at Ralston, Nebraska, consisting of the discontinuance and removal of two control points at "Ralston", by discontinuing and removing six controlled signals and converting two power-operated switches to hand operation with electric locks.

The reason given for the proposed changes is that changes in traffic patterns have eliminated the need for a controlled siding at this location.

BS–AP–No. 3146.

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer-C&S, 15 North 32nd Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of "CP 10" Interlocking, milepost 10.0, at Bayview, New York, on the Pittsburgh Division, Chicago Line, consisting of the discontinuance and removal of four controlled signals (101E, 102E, 101W, & 102W) and the conversion of one controlled signal (84E) to an automatic signal.

The reason given for the proposed changes is to retire facilities no longer required for present operations.

BS–AP–No. 3147.

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer-C&S, 15 North 32nd Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of "CP Farwell" Interlocking, milepost 168.5 and "CP South Farwell" Interlocking, milepost 172.2, at Renovo, Pennsylvania, on the Harrisburg Division, Buffalo Line, consisting of the conversion of two

controlled signals (2E & 2W) to automatic signals (168N & 168S) at "CP Farwell" and the conversion of two controlled signals (2E & 2W) to automatic signals (172N & 172S) at "CP South Farwell".

The reason given for the proposed changes is to retire facilities no longer required for present operations.

BS–AP–No. 3148.

Applicant Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer-C&S, 15 North 32nd Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of the traffic control system and supplemental cab signal system on the single and double main tracks between, "CP Conpit" Interlocking, milepost 0.0, near New Florence, Pennsylvania, and "CP Penn" Interlocking, milepost 77.9, near Pittsburgh, Pennsylvania, approximately 77.9 miles, on the Conemaugh Line, Pittsburgh Division, consisting of the removal of 14 remote-controlled interlockings, the conversion of all remaining switches to hand-operation, establish 7 block limit stations, reclassify the trackage as a secondary track, and operate by Manual Block Signal System Rules.

The reason given for the proposed changes is to retire facilities no longer required for present operation.

BS–AP–No. 3149.

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer–C&S, 15 North 32nd Street, room 1215, Philadelphia, Pennsylvania 19104–2849.

Consolidated Rail Corporation seeks approval of the proposed discontinuance and removal of the automatic block signal system on the double main track and the traffic control system on the single main track of the Meadville Line between, "BK" Interlocking, milepost 105.4, near Meadville, Pennsylvania, and "CP 52" Interlocking, milepost 150.8, near Hubbard, Ohio, approximately 45.4 miles, on the Pittsburgh Division, consisting of the removal of six remote-controlled interlockings, the conversion of all remaining switches to hand operation, establish 7 block limit stations, reclassify the trackage as a secondary track, and operate by Manual Block Signal System Rules.

The reason given for the proposed changes is to retire facilities no longer required for present operation.

BS–AP–No. 3150.

Applicant: Indiana Harbor Belt Railroad Company, Mr. C.H. Allen, General Manager, 2721–161st Street, P.O. Box 389, Hammond, Indiana 46325.

Indiana Harbor Belt Railroad Company seeks approval of the proposed discontinuance and removal of the traffic control system on the single and double main track between, "CP Harvey", milepost 13.7 and "Dolton" Interlocking, milepost 10.6, near Dolton, Illinois, approximately 3.1 miles, on the Main Line, consisting of the removal of signals 2, 4, 5, 6, 11.7, 11.8, 129W, and 129E.

The reason given for the proposed changes is to retire facilities no longer required for present day operation.

Rules Standards & Instructions Application (RS&I–AP)–No. 1082.

Applicant: Burlington Northern Railroad Company, Mr. W.G. Peterson, Chief Engineer–Control Systems, 9401 Indian Creek Parkway, P.O. Box 29136, Overland Park, Kansas 66201–9136.

The Burlington Northern Railroad Company seeks relief from § 236.23 of the Rules, Standards, and Instructions (49 CFR part 236) to the extent that a single white light is used as an indicator to inform train crews that they should remain clear of grade crossings, while waiting for the dispatcher to line a route for conflicting train movements.

The applicant's justification for relief is that the indicators are not roadway signals.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on January 16, 1992.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 92–1078 Filed 1–22–92; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. LVM 89–01; Notice 12]

Passenger Automobile Average Fuel Economy Standards; Denial of Petitions for Exemption From Maserati Automobiles, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for low volume exemption from average fuel economy standards.

SUMMARY: This notice denies petitions filed by Maserati Automobiles, Inc. (MAI), requesting a low volume exemption from the generally applicable passenger automobile fuel economy standards, and seeking establishment of alternative standards for model years (MY) 1992, 1993, 1994, and 1995. MAI is the exclusive U.S. importer for Maserati S.r.1. (Maserati), a company which manufactures passenger automobiles in Italy. The agency denies MAI's petition since Maserati's production will exceed 10,000 passenger automobiles and thus make Maserati ineligible to qualify as a low volume manufacturer. Comments on a proposed decision to deny the petitions were requested in a notice published in the **Federal Register** (56 FR 36193) on July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366–0846.

SUPPLEMENTARY INFORMATION:

Background

The Energy Policy and Conservation Act (EPCA) includes provisions establishing an automobile fuel economy regulatory program under which standards are established for the corporate average fuel economy (CAFE) of the annual production fleets of passenger automobiles and light trucks. Those provisions were added to the Motor Vehicle Information and Cost Savings Act ("the Cost Savings Act"), 15 U.S.C. 2001 et seq. Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA.

The compliance of a manufacturer with CAFE standards is determined by averaging the fuel economy ratings of the various models produced by that manufacturer. The averaging approach enables manufacturers to produce

vehicles with fuel economy below the level of the standard if they produce sufficient numbers of vehicles with fuel economy above the level of the standard. The generally applicable standards for passenger automobiles for MYs 1992 through 1995 are at present 27.5 miles per gallon (mpg).

Section 502(c) of the Cost Savings Act, 15 U.S.C. 2002(c), provides that a small manufacturer of passenger automobiles (referred to here as "low volume manufacturer") may be exempted from the generally applicable corporate average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for the manufacturer and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Cost Savings Act, a low volume manufacturer is one that manufactures (whether or not in the United States) fewer than 10,000 passenger automobiles in the model year (MY) for which the exemption is sought and in the second model year preceding that model year.

The Petitions

In a submission dated April 14, 1989, Maserati Automobiles, Inc. (MAI) petitioned the agency for an exemption from the generally applicable CAFE standards for MYs 1990, 1991, and 1992. MAI requested an alternate standard of 17.8 miles per gallon (mpg) for MY 1992. In a Federal Register notice dated June 22, 1990 (55 FR 25787), the agency rejected MAI's petitions for exemption from generally applicable CAFE standards for several years, including MYs 1990 and 1991. The petitions were untimely for MYs 1990 and 1991 and the agency concluded that MAI did not show "good cause" for the late filing of the petitions. However, in the June 1990 notice, the agency acknowledged that the petition for MY 1992 was timely filed and stated that it would separately address MAI's petition for MY 1992.

In a submission dated July 31, 1990, MAI petitioned the agency for an exemption from the generally applicable CAFE standards for MYs 1993, 1994, and 1995. Maserati requested an alternate standard of 15.5 mpg for MY 1993, 15.2 mpg for MY 1994, and 15.1 mpg for MY 1995. The petition for exemption was timely for each of MYs 1993, 1994, and 1995.

The information provided by MAI in its July 1990 petition included the following:

MAI is a wholly owned subsidiary of DeTomaso Industries, Inc. ("DTI"), a Maryland corporation that is publicly traded over-the-counter in the United States. DTI does not manufacture any automobiles, but it controls (i.e., owns 84 percent of) Officine Alfieri Maserati S.p.A. (OAM), which in turn controls (i.e., owns 51 percent of) Maserati S.r.l. (Maserati) that has facilities in Italy that produce maserati automobiles.

Maserati assembles, on a contract basis, Innocenti automobiles (approximate annual production: 10,000 vehicles) and, commencing in 1990, began assembling Fiat Panda automobiles on the same basis (estimated annual production: 25,000 vehicles).

MAI argued that these Innocenti and Fiat Panda automobiles should not be counted toward the 10,000 vehicle limitation since Maserati is not considered the manufacturer of the vehicles by the Italian government, the vehicles are not built to comply with U.S. requirements, and no company is authorized to import such automobiles into the United States. MAI concluded it was eligible for an exemption for each of MYs 1993, 1994, and 1995 since, according to the petitioner, "under sections 502(c) and 503(d) of the Cost Savings Act, the Innocenti and Fiat automobiles are not to be counted towards Maserati's 10,000 vehicle limit."

MAI's petition also indicated that Fiat owns 49 percent of Maserati, as of January 1, 1990.

Notice Proposing To Deny Petitions

On July 31, 1991, the agency published a Federal Register notice (56 FR 36193) proposing that MAI's petitions be denied for each of MYs 1992, 1993, 1994, and 1995. The agency proposed to deny MAI's petitions since Maserati's production will exceed 10,000 passenger automobiles in each of the model years for which an exemption was requested, and thus make Maserati ineligible to qualify as a low volume manufacturer. The agency's proposal to deny the petitions was based on the following.

The agency began by noting that section 502(c) of the Cost Savings Act limits eligibility for low volume exemptions to those manufacturers "who manufactured [whether or not in the United States) fewer than 10,000 passenger automobiles in the second model year preceding the model year for which the application is made * * *." Section 501(9) defines the term "manufacture," except for purposes of section 502(c), as meaning "to produce or assemble in the customs territory of the United States, or to import." A broader definition of "manufacture," derived from section 502(c)'s phrase "manufactured (whether or not in the United States)," applies for purposes of determining eligibility for a low volume exemption under section 502(c). Therefore, in considering whether MAI is eligible for a low volume exemption, the agency must count all of the cars manufactured by Maserati worldwide, and not merely those imported into the U.S. by MAI.

NHTSA notes that, given the broader definition of "manufacture" that applies for purposes of section 502(c), it is clearly necessary for the agency to look beyond MAI (the importer of Maserati cars) to Maserati S.r.l. (the foreign company which produces the cars) in deciding whether MAI is eligible for a low volume exemption. Moreover, MAI and Maserati S.r.l. are under common control. As discussed in a notice published in the Federal Register (56 FR 31459) on July 10, 1991, it is NHTSA's interpretation of section 503(c) of the Act, in conjunction with section 502(c), that all cars produced worldwide by all manufacturers within a control relationship should be counted for purposes of low volume eligibility.

In proposing to deny MAI's petition, the agency tentatively concluded that all cars manufactured by Maserati should be counted, including those which it assembles for Innocenti and Fiat. Under this approach, MAI is not eligible for a low volume exemption since Maserati manufactures more than 10,000 cars each year.

The agency noted that in its petition, MAI had argued that the Innocenti and Fiat automobiles assembled by Maserati should not be counted toward the 10,000 car limitation since (1) Maserati is not considered the manufacturer of these automobiles by the Italian government (Innocenti and Fiat are), and (2) none of these automobiles comply with U.S. requirements or are authorized to be imported into the U.S.

For the following reasons, NHTSA did not consider these arguments to be persuasive. MAI's second argument is clearly inconsistent with the special definition of "manufacturer" that applies for purposes of section 502(c). In considering manufacturers' worldwide production for purposes of low volume exemption eligibility, the agency necessarily counts cars that are produced for markets other than the U.S. Such cars typically do not meet U.S. requirements and are not authorized by the manufacturer to be imported into the U.S.

With respect to MAI's first point, the agency noted that, for purposes of applying section 502(c), the determination of whether Maserati is considered a manufacturer of the vehicles in question must be decided under the criteria of the Cost Savings

Act, and not Italian law. Since Maserati "assembles" the vehicles, it is clearly a manufacturer of the vehicles under the Cost Savings Act.

NHTSA recognized that a vehicle may have more than one manufacturer. It is possible, for example, that Innocenti and Fiat might also be considered manufacturers of the vehicles as well as Maserati. The agency noted that for purposes of determining compliance with CAFE standards, it is important that each vehicle be included in only one manufacturer's fleet. There is, however, no reason to resolve which manufacturer should include a vehicle in its fleet prior to considering eligibility for a low volume exemption. Moreover, in this case, since the vehicles which might also be considered to be manufactured by Innocenti and Fiat are not imported into the United States, the issue of attribution is irrelevant with respect to compliance with CAFE standards.

The agency further noted that the legislative history of section 502(c) demonstrates that Congress authorized low volume exemptions to provide relief for small manufacturers. H.R. Rep. No. 94–340, 94th Cong., 1st Sess. 90 (1975). The Conference Report, in describing the Senate version of this provision, described it as providing the Secretary authority to exempt "small (less than 10,000 vehicles per year) manufacturers" from passenger car standards. S. Rep. No. 94–516, 94th Cong., 1st Sess. 151 (1975).

NHTSA stated it did not believe there is any reason to exclude any vehicles manufactured by a manufacturer from consideration for purposes of low volume exemption eligibility. Congress decided to limit eligibility for low volume exemptions to small manufacturers, using the number of vehicles a company manufactures (worldwide) per year as the measure of whether a company is small. Since Congress chose magnitude of annual worldwide production as the test for whether a manufacturer is small, NHTSA believed it is necessary and appropriate to count all of a manufacturer's production in making that inquiry.

Accordingly, NHTSA stated its belief that its inquiry concerning eligibility is over once it is established that a company manufactures more than 10,000 vehicles. MAI's petition indicates that, as of model year 1990, it manufactures close to 50,000 vehicles per year.

For these reasons, NHTSA tentatively concluded that MAI is not eligible for an exemption for MYs 1992, 1993, 1994, and 1995. NHTSA therefore proposed to deny MAI's petition for exemption from the generally applicable CAFE standard for those years.

Public Comment

In response to the NPRM, the agency received one public comment. from Mr. William G. Allen, Jr., on behalf of Maserati S.r.l. ("Maserati"). Maserati's primary argument was that it is "inappropriate" for NHTSA to count passenger automobiles which Maserati assembles for other companies in considering whether Maserati "manufactures" fewer than 10,000 passenger automobiles annually and is thus eligible for a low volume exemption. Maserati asserted that the provision for an alternate low volume standard is based primarily on two conditions: (1) Since small manufacturers sell only a limited number of vehicles in the U.S., allowing small companies to meet an alternate standard has a negligible effect on nationwide fuel consumption, and (2) since small manufacturers have fewer resources, requiring them to implement fuel economy improvements at the same time as other manufacturers would impose an "undue burden" on small manufacturers that would limit their competitive abilities and would not serve the best interests of American consumers.

In support of its first point, Maserati reiterated arguments made in MAI's July 1990 petition for exemption that none of the passenger automobiles that Maserati manufactures for Fiat or Innocenti are intended to be sold in the United States and that, given the small number of Maserati passenger automobiles imported into the United States each year, granting an alternate CAFE standard will have only an "infinitesimal" effect on U.S. fuel consumption.

In support of its second point, Maserati argued that manufacturing an automobile includes much more than just assembling its parts. In particular, that company stated that manufacturing includes the following four activities: Design, purchasing, assembly and marketing. Maserati asserted that only design, purchasing, and marketing play a role in improving fuel economy. Noting that it had no role in the design, purchasing or marketing of the vehicles it assembles for Innocenti and Fiat, that company argued that it has no influence over the fuel economy of those vehicles. It concluded that it thus cannot be considered the manufacturer of the vehicles for purposes of the Cost Savings Act. That company argued further that since it is the design, purchasing and marketing efforts that affect fuel economy, it is also those efforts which truly define a manufacturer's "size" in this context.

Maserati also argued that since it only assembles the vehicles at issue, it makes much less profit per vehicle than if it had "actually manufactured" the vehicles, and that the fact that it, in effect, rents underutilized assembly facilities to other companies "does not in any way transform Maserati into a 'large' manufacturer with a significantly greater ability to improve its CAFE."

Agency Decision

NHTSA does not find Maserati's arguments to be persuasive. As discussed in the proposed denial notice, Congress decided to limit eligibility for low volume exemptions to small manufacturers, using the number of vehicles a company manufactures (worldwide) per year as the measure of whether a company is small. Maserati is clearly a manufacturer of the vehicles at issue, since assembly is specifically included in the Cost Savings Act's definition of "manufacture." Congress decided to limit low volume eligibility to companies which manufacture fewer than 10,000 automobiles annually, and Maserati in fact manufactures about 50,000 automobiles annually.

In the July 1991 notice, NHTSA noted that MAI's argument that the vehicles at issue should not be counted since they do not comply with U.S. requirements and are not authorized to be imported into the U.S. is inconsistent with the special definition of "manufacturer" that applies for purposes of low volume exemption eligibility. In considering manufacturers' worldwide production, the agency necessarily counts cars that are produced for markets other than the U.S. Maserati did not comment on this point.

The agency also notes that the mere fact that granting Maserati a low volume exemption would not have a significant effect on U.S. fuel consumption is not determinative of whether that company is eligible for an exemption. The importation of a very small number of automobiles by any large foreign manufacturer would have a negligible effect on U.S. fuel consumption. However, Congress specifically decided that a manufacturer's worldwide production should be the basis for low volume eligibility. Moreover, while Maserati argued in its comment that Congress did not want large foreign companies, such as Fiat, with internal capabilities and resources that are comparable to one of the "Big Three" domestic manufacturers to be eligible for exemptions, Congress chose to enact a much more stringent limitation for

such eligibility, i.e., annual production of fewer than 10,000 automobiles.

NHTSA also does not agree with Maserati's suggestion that only design, purchasing, and marketing activities, and not assembly, are relevant to defining a manufacturer's "size" for purposes of low volume exemption eligibility. The assembly of vehicles is one of the most significant and complex aspects of vehicle manufacturing, and indeed perhaps the primary activity typically associated with the word "manufacture." NHTSA believes that the number of vehicles assembled each year by a manufacturer is highly relevant to its overall manufacturing capability and does not believe there is any reasonable basis to exclude vehicles assembled by Maserati from the total number of vehicles that company manufactures each year, particularly given the Cost Savings Act's use of the word "assembly" in its definition of "manufacture." The agency notes that since the term "manufacture" is disjunctively defined as meaning "to produce or assemble," it is clear that assembly by itself is sufficient to come within that definition, irrespective of whether another company is responsible for design, purchasing, and marketing activities.

NHTSA also does not accept Maserati's argument that the vehicles it assembles for other companies should be excluded since it makes less profit on such vehicles. Congress did not make extent of profitability a consideration in the determination of whether a manufacturer is eligible for a low volume exemption. The agency notes that a small company which manufactures less than 10,000 automobiles annually may be highly profitable, and a larger company which is not eligible for an exemption may have poor profitability.

After carefully considering the comments from Maserati, NHTSA has decided to adopt as final the tentative conclusions in its proposed decision of July 31, 1991 (56 FR 36193). For purposes of determining eligibility for a low volume exemption under section 502(c) of the Cost Savings Act, NHTSA concludes that all cars manufactured by Maserati should be counted, including those which it assembles for Innocenti and Fiat. Under this approach, Maserati is not eligible for a low volume exemption since it manufactures more than 10,000 passenger automobiles each year. Therefore, MAI's petition for each of model years 1992, 1993, 1994, and 1995 is denied.

Issued on: January 15, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-1597 Filed 1-22-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 16, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thriff Supervision

OMB Number: 1550-0033.

Form Number: None.

Type of Review: Extension.

Title: Finance Subsidiaries of Federal Associations.

Description: 12 CFR 545.82 requires Federal savings associations to notify the Office of Thrift Supervision (OTS) and Federal Deposit Insurance Corporation (FDIC) not less than 30 days before the commencement of the activities of the finance subsidiary in order to determine that such a transaction is within applicable laws and regulations.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 10.

Estimated Burden Hours Per Response/Recordkeeper: 30 minutes.

Frequency of Response: Other (when application is made).

Estimated Total Reporting/ Recordkeeping Burden: 8 hours.

Clearance Officer: John Turner (202) 906-6840, Office of Thrift Supervision, 2d Floor, 1700 G. Street, NW.,

OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-1609 Filed 1-22-92; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

January 16, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0033.

Form Number: ATF F 1534-A (5000.19).

Type of Review: Extension.

Title: Tax Authorization Information.

Description: ATF F 1534-A (5000.19) is required by ATF to be filed when a respondent's representative, not having a power of attorney, wishes to obtain confidential information regarding the respondent. After proper completion of the form, information can be released to the representative.

Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 50 hours.

Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-1610 Filed 1-22-92; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

January 16, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0117.
Form Number: IRS Form 1099-OID.
Type of Review: Extension.
Title: Original Issue Discount.
Description: The form is used for reporting original issue discount as required by section 6049 of the Internal Revenue Code. It is used to verify that income earned on discount obligations is properly reported by the recipient.
Respondents: Businesses or other for-profit, small businesses or organizations.
Estimated Number of Respondents: 9,185.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 765,000 hours.

OMB Number: 1545-0138.
Form Number: IRS Form 2063.
Type of Review: Extension.
Title: U.S. Departing Alien Income Tax Statement.
Description: Form 2063 is used by a departing resident alien against whom a termination assessment has not been made, or a departing nonresident alien who has no taxable income from United States sources, to certify that they have satisfied all U.S. income tax obligations. The data is used by IRS to certify that departing aliens have complied with U.S. income tax laws.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 20,540.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 minutes
Learning about the law for the form—2 minutes
Preparing the form—32 minutes
Copying, assembling, and sending the form to IRS—14 minutes
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 16,691 hours.

OMB Number: 1545-0746.
Regulation ID Number: LR-100-78 Final.
Type of Review: Extension.
Title: Creditability of Foreign Taxes.
Description: The information needed is a statement by the taxpayer that it has elected to apply the safe harbor formula of § 1901-2A(e) of the foreign tax credit regulations. This statement is necessary in order that the IRS may properly determine the taxpayer's tax liability.
Respondents: Individuals or households, Farms, Businesses or other for-profit.
Estimated Number of Respondents: 110.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: Other (nonrecurring).
Estimated Total Reporting Burden: 37 hours.

OMB Number: 1545-0755.
Regulation ID Number: LR-58-83 Final.
Type of Review: Extension.
Title: Related Group Election with Respect to Qualified Investments in Foreign Base Company Shipping Operations.
Description: The election described in the attached justification converted an annual election to an election effective until revoked. The computational information required is necessary to assure that the U.S. shareholder correctly reports any shipping income of its controlled foreign corporations which taxable to that shareholder.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: Other (nonrecurring election).
Estimated Total Reporting Burden: 205 hours.

OMB Number: 1545-0887.
Form Number: IRS Form 8281.
Type of Review: Extension.
Title: Information Return for Policy Offered Original Issue Discount Instruments.
Description: Form 8281 is filed by issuer of a publicly offered debt instrument having OID. The information is used to update Pub. 1212, List of Original Issue Discount Instruments.
Resondents: Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 500.
Estimated Burden Hours per Respondent/Recordkeeper:
Recordkeeping—5 hours, 1 minute.
Learning about the law or the form—18 minutes
Preparing, copying, assembling, and sending the form to IRS—23 minutes
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 2,855 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-1611 Filed 1-22-92; 8:45 am]

BILLING CODE 4810-01-M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 2-92]

Treasury Notes, Series E-1999

Washington, January 9, 1992.

The Secretary announced on January 8, 1992, that the interest rate on the notes designated Series E-1999, described in Department Circular—Public Debt Series—No. 2-92 dated January 2, 1992, will be 6-⅜ percent. Interest on the notes will be payable at the rate of 6-⅜ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-1595 Filed 1-22-92; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 15
Thursday, January 23, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

January 21, 1992.

DATE AND TIME: Friday, January 31, 1992, 12:00 noon to 1:00 p.m.

PLACE: Carlos Rosario Adult Education Center, 34th Street and Wisconsin Avenue, NW, Washington, DC 20007.

STATUS: Open to the Public.

January 31, 1992

I. Approval of Agenda
II. Approval of Minutes of December Meeting
III. Announcements
IV. Appointments for the Kansas, Michigan, Minnesota, and Pennsylvania Advisory Committees
V. Task Force Report
VI. Staff Director's Report
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376-8312.

Emma Monroig,
Solicitor.

[FR Doc. 92-1841 Filed 1-21-92; 3:50 pm]
BILLING CODE 6335-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE; 11:30 a.m., Friday, January 24, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92-1833 Filed 1-21-92; 3:08 am]
BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, January 28, 1992, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Report of the Director, Office of Budget and Corporate Planning.

Memorandum and resolution re: Award of a Contract for the FDIC Loose-Leaf Reporting Service.

Discussion Agenda

Memorandum and resolution re: Final amendments to Part 335 of the Corporation's rules and regulations, entitled "Securities of Nonmember Insured Banks," which final rule incorporates by reference the Securities and Exchange Commission's extensive revisions to its rule relating to section 16 of the Securities Exchange Act of 1934.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: January 21, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 92-1759 Filed 1-21-92; 11:11 am]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, January 28, 1992, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote by the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: January 21, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 92-1760 Filed 1-21-92; 11:11 am]
BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 28, 1992 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, January 30, 1992 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth Floor).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Title 26 Certification Matters.
Final Audit Report—George Bush for President, Inc.
Advisory Opinion Request 1991–39: Robert S. Royer on behalf of Friends of Senator D'Amato.
Advisory Opinion Request 1991–40: Jay Valasquez on behalf of NRSC & Sue Wadel on behalf of the NRCC.
Regulations: Update to the Computerized Magnetic Media Requirements for Presidential Campaign Committees.
FR '92 First Quarter Management Plan Reallocations.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 92–1840 Filed 1–21–92; 3:46 pm]

BILLING CODE 6715–01–M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 A.M., Wednesday, January 29, 1992.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC. 20419.

STATUS: The meeting will be closed to the public under Exemption 2 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED: Internal personnel rules and practices.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: January 21, 1992.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 92–1746 Filed 1–21–92; 10:13 am]

BILLING CODE 7400–01–M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Thursday, January 30, 1992.

PLACE: Hearing Room, Suite 850, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Equal Employment Opportunity Training Plan.
(2) Report and recommendations by Task Force IV (Training).
(3) Report and recommendations by Task Force III (Representation Investigations).
(4) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Mr. William A. Gill, Jr., Executive Director, Tel: (202) 523–5920.

Date of Notice: January 21, 1992.

John J. Bavis,

Assistant Executive Director, National Mediation Board.

[FR Doc. 92–1826 Filed 1–21–92; 2:42 pm]

BILLING CODE 7550–01–M

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Corrections

Federal Register
Vol. 57, No. 15
Thursday, January 23, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 911215-1315]

RIN 0648-AD59

Foreign Fishing; Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands

Correction

In proposed rule document 91-30374, beginning on page 66009, in the issue of Friday, December 20, 1991, make the following corrections:

1. On page 66009, in the third column, under **SUMMARY:**, in the third line, "6" should read "18".

2. On page 66010, in the first column, under **ADDRESSES:**, in the last line, "99520." should read "99510.".

3. On the same page, in the same column, under **Background**, in the second paragraph, in the ninth line, "alter" should read "later".

4. On the same page, in the second column, in the first full paragraph, in the fourth line, "at" should read "a".

5. On page 66012, in the 3rd column, under **Classification**, in the 4th paragraph, in the 20th line, "in" should read "is".

§ 672.20 [Corrected]

6. On page 66013, in the third column, In § 672.20, in the second line, "(b)" should read "(2)".

§ 672.20 [Corrected]

7. On page 66014, in the 1st column, in § 672.20(c)(1)(ii)(A), in the 22d line, "processing will" should read "processing capacity and the extent to which U.S. harvesting and processing will".

8. On the same page, in the same section, in the second column, in the seventh line, "halibut" was misspelled.

§ 672.20 [Corrected]

9. On the same page, in § 672.20(c)(2)(ii), in the 3rd column, in the 26th line, "of" should read "for".

§ 675.2 [Corrected]

10. On page 66015, in the first column, in § 675.2, under the definition for *Inshore*(b), in the second line, "§ 672.5(c)(1)" should read "§ 675.5(c)(1)".

§ 675.2 [Corrected]

11. On the same page, in the second column, in § 675.2(l)(3), in the first line, "559" should read "519".

§ 675.7 [Corrected]

12. On page 66016, in the 2d column, in § 675.7(a)(6)(i), in the 28th line, "as" should read "in".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 91F-0059]

Food Additves Permitted for Direct Addition to Food for Human Consumption; Cocoa Butter Substitute

Correction

In rule document 91-30923 beginning on page 66969 in the issue of Friday, December 27, 1991, make the following correction:

§ 172.861 [Corrected]

On page 66970, in the second column, in § 172.861, in the section heading, "bath" should read "both".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-932-4214-10; A/060160]

Conformance to Survey; Alaska

Correction

In notice document 91-27490 beginning on page 58088 in the issue of Friday, November 15, 1991, make the following corrections:

1. On page 58088, in the 3d column, under **Copper River Meridian**, in the 11th line, after Alaska; a sentence is missing and should read as set forth below.

"Commencing at corner No. 3 of U.S. Survey No. 3269; said corner having U.T.M. Grid Coordinates of E. 1,772,092.04;"

2. On page 58089, in the first column, in the next to the last line, "no" should read "not".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 90-41]

Michael J. Schnitzer, M.D.; Revocation of Registration

Correction

In notice document 91-31060 beginning on page 67331 in the issue of Monday, December 30, 1991, make the following correction:

On page 67333, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 91-31060 Filed 12-29-91; 8:45 am]

BILLING CODE 4410-09-M

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Office of Worker's Compensation Programs

20 CFR Part 10

RIN 1215-AA67

Claims for Compensation Under the Federal Employees' Compensation Act, as Amended

Correction

In proposed rule document 91-30800 beginning on page 66817 in the issue of Thursday, December 26, 1991, make the following correction:

On page 66823, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 91-30800 Filed 12-24-91; 8:45 am]

BILLING CODE 4510-27-M

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[T.D. 8383]

Disclosure of Tax Return Information for Purpose of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer; Correction

Correction

In rule document 91-31305 appearing on page 12 in the issue of Thursday, January 2, 1992, make the following correction:

On page 12, in the third column, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 91-31305 Filed 12-31-91; 8:45 am]

BILLING CODE 4830-01-M

BILLING CODE 1505-01-D

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Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 45

Federal Acquisition Regulation; Reports of Government Property; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 45

[FAR Case 91-58]

Federal Acquisition Regulation; Reports of Government Property

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are considering a revision to the coverage at FAR 45.505-14, Reports of Government Property. The proposed rule will require contractors to report annually all classifications of Government property in their possession. The revision also expands the list of property classifications to include special tooling, special test equipment, material, and agency peculiar property.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 23, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAR case 91-58 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR case 91-58.

SUPPLEMENTARY INFORMATION:

A. Background

This revision is considered necessary to ensure that the classes of property reported are the same as those defined in FAR 45.101 and 45.301, and to improve the Federal Government's visibility of Government property in the hands of contractors.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because this rule, while an expanded version of that currently in the FAR, is currently in effect in regulations used by the agencies (DOD and NASA) who are accountable for the majority of Government property in custody of contractors. Therefore, the revision to 45.505-14 will have a negligible effect on small businesses in custody of Government property. An initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR case 91-58) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning OMB number 9000-0075, Government furnished property requirements, is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: January 15, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 45 be amended as set forth below:

PART 45—GOVERNMENT PROPERTY

1. The authority citation for 48 CFR part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 45.505-14 is amended by revising paragraphs (a), (a)(3), and (a)(4), and adding paragraphs (a)(5) through (a)(7) to read as follows:

45.505-14 Reports of Government property.

(a) The contractor's property control system shall provide annually the total acquisition cost of Government property for which the contractor is accountable under each contract with each agency, including Government property at subcontractor plants and alternate locations. The following classifications (property classifications may be varied to meet individual agency needs) shall be reported:

(1) * * *

(3) Plant equipment.

(4) Special tooling.

(5) Special test equipment.

(6) Material.

(7) Agency peculiar property.

* * * * * *

[FR Doc. 92-1558 Filed 1-22-92; 8:45 am]

BILLING CODE 6820-34-M

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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 19 and 52
Federal Acquisition Regulation; Small Business Concern Representation; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAR Case 91-61]

Federal Acquisition Regulation; Small Business Concern Representation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are considering revising FAR 19.502–4(b) and paragraphs (a) and (c) of 52.219–1 to clarify language regarding an offeror's size status and to remove the requirement for offerors to certify that all supplies to be furnished will be manufactured in the United States.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 23, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), ATTN: Deloris Baker, 18th & F Streets NW., room 4041, Washington, DC 20405.

Please cite FAR case 91–61 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 91–61.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of the Small Business Concern Representation at 52.219–1 is to determine if the offeror is a small business. Whether the firm is providing foreign supplies is not a factor in determining the size status of the firm. Small business set-aside clauses will continue to require that manufacturers or dealers furnish only end items manufactured or produced inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. A sentence has been added to the provision to clarify that set-aside clauses of the solicitation contain restrictions on the source of end items to be furnished. FAR 19.502–4(b) is being amended to clarify that questions regarding the size status of an offeror are matters of eligibility, not responsiveness, and must be referred to the Small Business Administration.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it will clarify language regarding an offeror's size status and removes the requirement for offerors to certify that all supplies to be furnished will be manufactured in the United States. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR case 91–61) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: January 13, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 19 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 19.502–4 is amended in paragraph (b) by adding a second sentence to read as follows:

19.502–4 Methods of conducting set-asides.

(b) * * * However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see subpart 19.3).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.219–1 is amended by revising the date of the clause and paragraph (a); redesignating paragraphs (c)(1), (c)(2), and (c)(3) as (c)(2)(i), (c)(2)(ii), and (c)(2)(iii), and the introductory text of paragraph (c) as (c)(2), and adding a new paragraph (c)(1) to read as follows:

52.219–1 Small Business Concern Representation.

* * * * *

Small Business Concern Representation (Date)

(a) *Representation.* The offeror represents and certifies as part of its offer that it is: ☐ a small business concern, ☐ not a small business concern.

* * * * *

(c) *Notice.* (1) If this solicitation is for supplies and has been set-aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) * * *

(i) * * *

(ii) * * *

(iii) * * *

(End of provision)

[FR Doc. 92–1557 Filed 1–22–92; 8:45 am]

BILLING CODE 6820–34–M

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Part IV

Congressional Budget Office

Sequestration Preview Report for Fiscal Year 1993 to Congress and the Office of Management and Budget; Notice of Transmittal

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CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Sequestration Preview Report for Fiscal Year 1993 to Congress and the Office of Management and Budget

Pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Sequestration Preview Report for Fiscal Year 1993 to the House of Representatives, the Senate, and the Office of Management and Budget.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 92-1856 Filed 1-22-92; 8:32 am]

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3 CFR

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102d Congress, 1st Session, 1991

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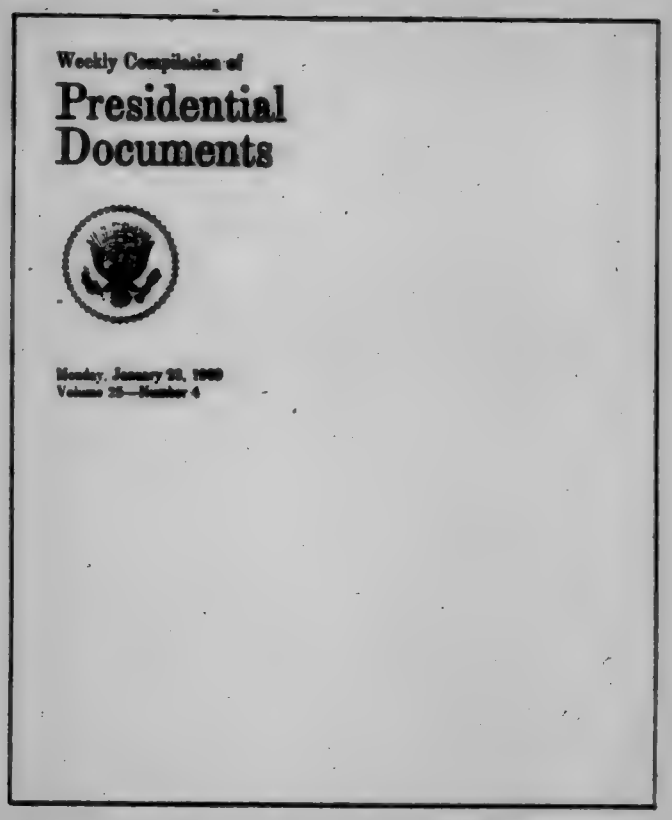

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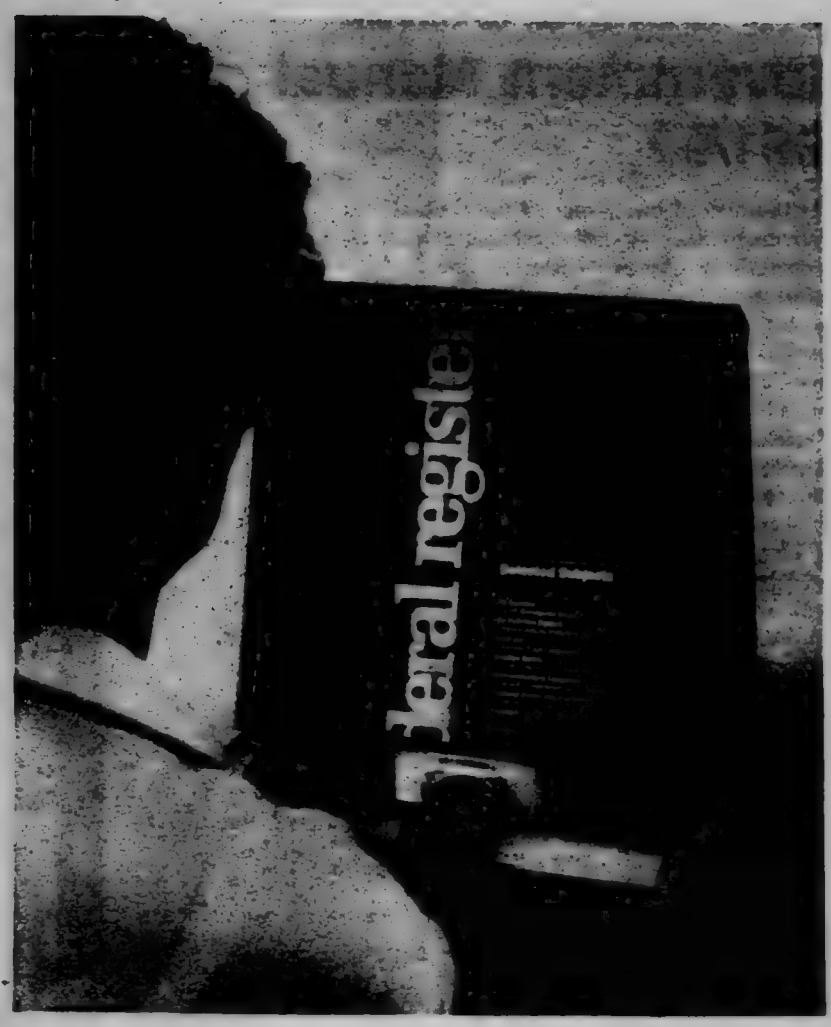

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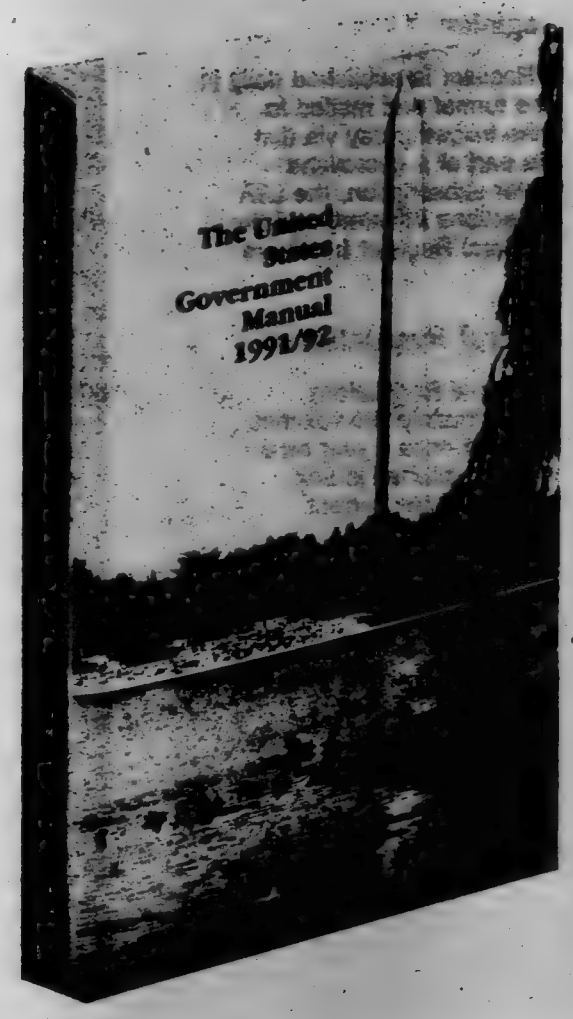

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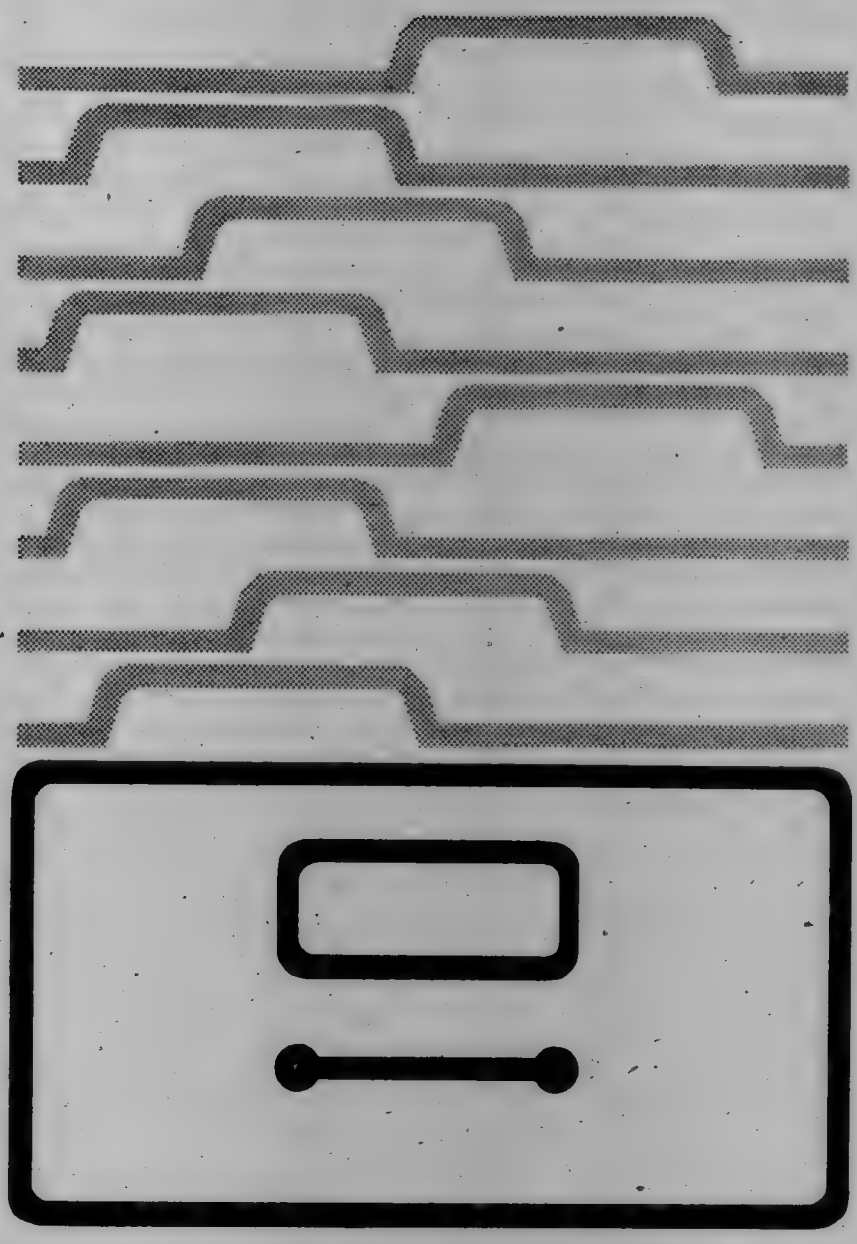

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federal register

Friday
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Briefing on How To Use the Federal Register
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Federal Register
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 275

[Amdt. No. 325]

Food Stamp Program: Quality Control Claims Adjustments for State Agency Investments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking puts in final form Food Stamp Program regulations, published November 27, 1990 (55 FR 49290), that provide the process by which States can invest in program management activities that are intended to reduce quality control (QC) payment error rates.

Section 601 of the Hunger Prevention Act of 1988 (Pub. L. 100–435), requires the Secretary to review a State agency's plans for new dollar investments in program management activities when determining whether to settle, adjust, compromise, or waive the State agency's QC payment error rate liability.

DATES: This action is effective January 24, 1992. State agencies may immediately submit requests for waivers of all or part of a QC liability claim for Fiscal Year 1986 and all fiscal years thereafter.

FOR FURTHER INFORMATION CONTACT: John Knaus, Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 305–2472.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum No. 1512–1

The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512–1. It has been determined that the action will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Additionally, this action will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this action has been classified as "not major."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in 7 CFR part 3015, subpart V and related Notice (48 FR 29115 June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980; 5 U.S.C. 601 through 612). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect the State and local agencies which administered the Program.

Paperwork Reduction Act

This rulemaking does not contain recordkeeping and reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

In accordance with section 13 of the Food Stamp Act of 1977, as amended, 7 U.S.C. 2022, (Act) and 7 CFR 271.3(b) of the Food Stamp Program regulations, the Secretary of Agriculture has the authority to determine the amount of, settle, adjust and compromise any claim arising under the provisions of the Act. When a State agency's quality control (QC) payment error rate exceeds established tolerance levels, the Food and Nutrition Service (FNS) establishes a claim against the State agency based on the excessive error rate (7 U.S.C. 2025(c); 7 CFR 275.23 (e)). Section 601 of the Hunger Prevention Act of 1988 (Pub. L. 100–435) amended section 13(a)(1) of the Food Stamp Act to require the Department of Agriculture (Department) to review a State agency's new dollar investments in program management activities that are intended to reduce the payment error rate when making a determination to settle, adjust, compromise, or waive a claim resulting from an excessive payment error rate. To secure Department review, the State agency would propose a settlement of all or a portion of an outstanding claim that would be based upon investment in an activity designed to reduce errors. The Secretary and the State agency could then negotiate a dollar-for-dollar offset of quality control liabilities for new State monies invested in program improvement. The Department will consider proposals for new dollar investment in amounts less than the liability. While the amount of money proposed to be invested will be set off dollar-for-dollar against potential liabilities, the Department may, in connection with settlement of the entire claim, if it is determined to be appropriate under the circumstances of a particular case, reduce the liability in accordance with its general authority to settle, adjust, compromise or waive a claim. The consideration of new dollar investments in the claim settlement process is effective for the liabilities associated with the Fiscal Year 1988 QC review period and subsequent fiscal years.

The Food and Nutrition Service published proposed rules on November 27, 1990. We received comment letters directly from fourteen State agencies and two comment letters from local agencies. One multi-state association commented twice. Another multi-state association forwarded comment letters from eleven State agencies and a multi-state association along with its own comments. We received one comment

letter from a law firm which was writing on behalf of thirteen State agencies.

Nineteen commenters provided general comments on the proposed rule. One commenter strongly supported the rule. One commenter stated general opposition to the proposed regulation, without providing specifics. Eight commenters agreed with the concept of State agency investment, but found problems with the proposed regulations. Five commenters stated that the proposed provisions were not supported by legislation and one stated that the proposed provisions were supported by legislation. Five commenters believed that the proposed rule was counterproductive and unbalanced.

A full explanation of the rationale of the proposed rule is contained in its preamble. It is suggested that interested parties refer to that preamble for additional background information (55 FR 49290, November 27, 1990). Following is a detailed discussion of the comments we received on the proposed rule, and the provisions of the final rule.

New Program Management Activities

Section (i)(A) of the proposed rule required that the new management activity represent a new expenditure of money and be in addition to minimum program requirements.

Four commenters requested that FNS provide a clearer definition of "new" activities. Four commenters were in favor of using "new" funds for proven activities. As one commenter stated: "(M)any existing and proven error reduction activities have not been expanded or left in place as long as states would like because of a lack of funds. If States can show that these activities have been consistent with the goal of these regulations, which is to reduce errors and improve management, they should be allowed to use a proven activity and expand its design or scope." Three commenters commented on the use of proven error reduction activities. One commenter stated that "* * * many ongoing state activities have an ongoing impact on state error rates and should be considered for offset. As stated in the regulations, even a substantial increase in the level of effort of an ongoing corrective action would not qualify. Such an effort should be recognized and allowed."

One commenter said that the prohibition against previously funded activities was not supported by the legislation. While the legislation only refers to new dollar investments, the legislative history states that (House Report No. 100-828, page 30), "(A)ny relief the Secretary grants should be for planned expenditures for *new* (emphasis added) activities that would not otherwise be undertaken as part of normal program administration. The *new* (emphasis added) activities should represent an additional expenditure of funds, not just a reallocation of resources." The proposed rule reflected a literal reading of this passage from the House Report. On reading the comments and reevaluating this provision, we believe that an expansion of an activity or the continuation of the activity beyond the original timeframe is within the intent of the legislative history and meets the requirements of the legislation.

The Department agrees with the commenters that the goal is error reduction and the best methods to use may be those that have been used in the past. As a result we have deleted from the final rule the requirement for the activity to be "new". In fact, expansions or continuations of projects of known success will be welcome.

The Department will allow the use of activities that were previously federally funded. The limits on these activities will be that no Federal matching funds will be used on this activity until the State investment is expended; that the activity must be an addition to the minimum program administration required by law and regulations; and that the activity must represent an increase in expenditures designed to reduce errors.

No Federal Matching Funds

Section (i)(B) of the proposed rule required that the investments be funded in full by the State agency, without any Federal matching funds. Six comments were received on this section. One commenter agreed with this section. One commenter stated that it was "* * * unrealistic to require States to fund activities geared toward saving Federal dollars without providing Federal matching funds." Two commenters stated that money spent in excess of the pledged dollars should be matched.

Section (i)(B) of the final rule has been rewritten to provide for the possibility of Federal matching funds, after the settlement amount has been spent by the State agency. It is not appropriate for the Department to match the entire investment in the usual fashion, as the State agency is being allowed to use monies previously owed to the Federal government for these investments.

Activities Directly Related to Error Reduction

Section (i)(C) of the proposed rule required activities to be directly related to error reduction. In addition, this provision prohibited the use of waivers or demonstration projects. Twelve comments were received on this section. One commenter agreed with these provisions.

Two commenters requested that a definition of "directly related" to error reduction be included in the regulation. We have not defined directly related to error reduction in the final rule. We do not want to inadvertently restrict what a State agency might propose as an activity by an arbitrary definition. We are open to reasonable proposals designed to reduce errors.

One commenter stated that based on its experience, it is not possible to project a quantitative error reduction. We agree with the commenter; the rule has been modified accordingly.

The proposed rule detailed certain activities which would not be acceptable for an investment plan. Specifically, the rule mentioned new issuance systems, demonstration projects and other efforts which required waivers of existing rules. Ten commenters objected to this provision. Two commenters supported allowing the inclusion of computerized/electronic issuance systems. Both commenters stated that these systems would allow eligibility workers to spend more time on case management activities. When we proposed the rule, we did not believe that activities which are unrelated to error reduction could have an effect on error reduction. As a result of the comments we received, we have deleted the mention of issuance systems from the rule. Although we have deleted this reference, to be acceptable under the provisions of this final rule, the primary intent of the activity must be error reduction. If a review of the activity does not disclose strong error reduction potential, the activity could not be approved under the investment plan but could be eligible for the usual Federal matching rules.

The proposed rule prohibited the use of demonstration projects and other efforts which require a waiver of existing rules.

One commenter stated that "(S)ome of the most effective error reduction efforts may require a waiver of existing rules in order to be successfully implemented. The exclusion of projects solely because a waiver is required unreasonably restricts States' options for innovative, effective corrective actions." Another commenter stated that if "* * * a waiver that will not undermine integrity is needed, the state should be allowed to request such a waiver."

Investment does not limit States' ability to request waivers. The system

for approval of waivers will continue as it is, and once approved, the waiver will be considered as part of that State agency's ongoing program. States that believe a waiver is necessary for the implementation of its investment plan should submit that waiver through the normal channels for approval. States which are operating the program under FNS-approved waivers will be allowed to continue to use those waivers. Two commenters stated that the provision to prohibit the use of demonstration projects and other efforts which require a waiver of existing rules was not based in legislation. We disagree with the commenters. According to the legislative history (House Report No. 100-828, page 37), "(T)he goal of the new system is a well administered Food Stamp Program in compliance with national standards where both the measures of performance and the consequences of performance are simple and clearly understood." We believe that this reinforces the idea that we should be working within the normal standards for the program and not developing a different program based on demonstration projects and waivers.

As we stated earlier, the purpose of the investment plan is to make improvements in the ongoing program. In addition, monies are to go to management improvement, not to paying the costs of designing and implementing alternative program designs. For those reasons demonstration projects will be prohibited under the investment planning process. We have clarified in the final rule that the costs of demonstration, research, or evaluation projects which are authorized under sections 17 (a) through (c) of the Act will not be accepted.

One commenter stated that the provision "* * * implies that the new management activity must be implemented on a statewide basis without the benefit of a trial or pilot venture. The final rule allows for testing an investment activity as a pilot project, if the State and the Department agree that it is appropriate. In addition, the final rule allows a State to direct the investment plan to targeted areas within the State rather than statewide implementation.

Compliance With the Terms of the Investment Plan

Section (i)(D) of the proposed rule required that the activity be effective in reducing errors and not just a good faith effort. Thirteen commenters addressed this condition.

Ten commenters objected to this provision, stating that it would place a State in double jeopardy since if the expected error reduction did not occur, the state would have spent money that it would now be obligated to pay FNS. Nine commenters stated that compliance with an FNS-approved plan would be sufficient to satisfy the agreement. This included spending the money as agreed. Two commenters stated that a reasonable approach would be to end the settlement agreement, reinstate the original liability, and allow it to be contested. Two commenters remarked that States should provide thorough assessments of the activity to determine what did or did not work, and why.

In response to comments, we have deleted this provision from the final rule. However, it should be noted that, State agency compliance with an FNS-approved plan will be required to satisfy the agreement.

Requirements for Investment Plan Request

Sections (ii) (A) through (G) details the requirements for the request for consideration of an investment plan activity. There were six commenters. Two commenters made general remarks about the documentation provisions for the Investment request. One commenter stated that "(N)ot only are these requirements onerous but there is no prospect that the documentation effort will ever end because FNS can require periodic reports even after a claim against a state has been suspended as a result of FNS' approval of an investment plan." Another commenter said that "(T)he investment plan request requirements appear logical and appropriate".

The second component (ii)(B) is a detailed description of the planned activity. One commenter asked that a state be allowed to submit the proposal in the State's approved corrective action plan (CAP). While the Department does not object to a State using its CAP format (provided that it includes all the components required by this regulation), we are requiring that the plan be submitted separately from the CAP.

The third component (ii)(C) is a time schedule. One commenter stated that the proposed regulations did not provide a timeframe for implementation of the investment plan. The Department purposely did not include a timeframe in the proposed regulations. We intend that the timeframe for a plan will be specific to that plan. We believe that the timeframe should conform to the plan, not the plan to a timeframe. This provision remains unchanged in the final regulation.

The fourth component (ii)(D) is an identification of the types of errors expected to be affected and an estimate of the reduction. One commenter stated that there are multiple factors that affect errors rates and it is impossible to anticipate error rates or to prove direct cause-and-effect relationships. We think that this is an important component of the plan. We do not see how a State can develop a plan for error reduction, if it does not target the errors it plans to reduce. In addition, the State must have an estimate of the level of reduction that it plans to accomplish in order to establish the scope of its investment activity. While we agree with the commenter that there are multiple factors that affect error rates, the State should try to identify those activities that have the most potential for success, and incorporate those activities into the investment plan.

The Department is retaining components (A) through (D) in the final rule. The Department did not receive any comments on components (E) through (G). As a result of the change in the focus of the final rule from guaranteed error reduction to compliance with the investment plan, we have deleted components (E) and (F) as they existed in the proposed rule. The proposed rule's component (G) which contained two parts, has been split for clarity and is covered by components (E) and (F) of the final rule.

Periodic Documented Reports

Section (iv) of the proposed rule provided for periodic reports. (This section has been renumbered (v) in the final rule.) There were eight commenters who had general remarks on the provisions of this section. One commenter stated that the requirements "appear logical and appropriate." Seven commenters opposed the provisions as complicated and duplicative of other reports.

No comments were received on requirement (A). Four comments were received on requirement (B) which provided for a detailed description of the actual activity.

Our intent in the proposed rule was to allow for the most flexibility in the requirements for the reports. We anticipate that the format and timeframes for reports will vary greatly, depending on the components of the plan and the amount of money that is being invested. We do not intend for this to be a cumbersome process for either the State or Federal government.

Two comments were received on requirement (C) which provided for a detailed explanation of the activity's effect on errors. One commenter stated that this "* * * is an area that can only

be addressed adequately at the end of the project, when final results are known." The other commenter stated that we should "(G)ive more latitude for failure in the regulation * * *. (W)ithout any latitude for failure, participation would be limited. An alternative plan would be to have the States report a thorough assessment of the activity to determine what worked and what didn't work so some benefit can be gleaned from the disappointing results. However, if the dollars were expended on a mutually agreed upon plan, the liability should be satisfied."

We agree with the commenter that stated that final results will only be known at the end of the project. However we believe that a State should be monitoring the activities of the plan to be aware of changes that occur as a result of the plan. At a minimum, when these changes become known they should be included in the next report. If the changes necessitates a modification in the plan, the State should make FNS aware of it as soon as possible.

Plan Modifications

All of the commenters upon the requirements for periodic reports proposed that States be allowed to modify the investment plan. One commenter suggested that a "State would notify the Secretary of modifications and proceed with the change unless denied within 14 days of the Secretary's receipt of the modified plan. The only basis for denial of a modification would be if the Secretary determined that the modification was not directly related to error reduction."

The Department has added a new section (iv) to the final rule which provides for modification of the investment plan. We have not adopted the suggestion that modifications are approved unless denied by the Secretary within 14 days. We intend to act expeditiously on any requests for modification, but do not want requests to be approved by default. We also have not adopted the suggestion to limit the reasons for denying the modification request. Requested modifications would be reviewed in the same manner as the original investment plan.

Criteria for Withdrawal of the Investment Amount

In addition to section (i)(D), section (v) of the proposed rule contained the conditions under which the investment amount could be withdrawn by FNS. This section has been renumbered (vi) in the final rule and has been substantially rewritten.

Seven commenters provided general comments on the provisions for withdrawing the investment amount. One commenter strongly objected to the provisions. While it agreed "* * * that reduction should only be given when the re-investment agreement is substantially complied with, the regulations are far too restrictive and give FNS far too much discretion in this regard." Another commenter stated that "States should be protected * * * unless there was obvious failure on the State's part to monitor or carry out the provisions of the plan. Their inability to predict the future (error rate and cause and effect) should not be a consideration when making a decision regarding withdrawal of liability reduction." The following issues were also addressed by the commenters.

Not supported by legislation. Two commenters stated that these provisions were not supported by legislative history. Both commenters stated that compliance with the plan should only be based on expenditure of funds on the planned, FNS approved activity.

We agree with this concept and have written the final rule so that withdrawal of the investment amount is the result of not spending the funds according to the FNS approved plan.

Plan is void if money not spent in accordance with agreement. One commenter stated that if the funds are not spent as approved the plan would be void, the State would not have to pay FNS any unspent money, and the amount spent on the activity would be applied against the liability. The other commenter stated that the settlement would be null and void and the "* * * parties are returned to the posture of contesting the penalty, *not* that the State automatically must pay the penalty."

The Department does not agree with these commenters. Basically, money not spent in accordance with the investment plan or its approved modifications will not have been used in accordance with the negotiated settlement of the QC liability. Any money agreed to be spent in the investment plan, but not spent, will be payable to the Federal government, or used, subject to FNS approval, in another investment plan. Once the settlement incorporating the investment plan is agreed to, the amount involved in that settlement can no longer be contested, even if the State does not comply with the investment plan that it agreed to.

State not liable for outcome of plan. Two commenters stated that once the plan is approved, the State should not be held liable if the outcome does not fulfill the expectations.

We agree and in the final rule States will not be penalized if the goal is not met, provided that the State spent the money as agreed to under the plan.

Nine commenters commented on section (A) which provided for withdrawing the reduction in liability if a State does not spend the funds as specified. One commenter stated that it agreed with the provision. The commenters addressed the following additional issues.

Only basis for withdrawal is not spending the money. One commenter stated that the only condition placed on the waiver of the error liability should be based on the expenditure of funds on the planned, FNS approved activity. If this did not happen—"(T)hat part of the plan would simply be void and the amount spent on the activity would be applied against the claim."

This section has been rewritten to provide that withdrawal of the investment amount will be based on not spending the money according to the investment plan.

The Department has reevaluated the goal of the investment plans based on the extensive comments that were received. As a result, we will approve only those plans which, in the opinion of FNS have a likelihood of being successful in error reduction. We will direct our efforts to the plan approval process to assure, to the extent possible, that the plan that we approve will meet this goal. In evaluating the plans we will look at the State agencies' previous experiences with error reduction projects, the specified goals, similar efforts tried by other State agencies, and state project management practices. The expenditures proposed under the plan will be closely monitored.

Appeal of Settlement Amounts Used in Investment Plan

The preamble to the proposed regulation (page 49292) stated that if a State agency decides to submit a proposal, the State agency would be accepting liability for the amount of the claim being suspended at the time of the Department's approval.

Four commenters objected to the provision. They characterized the preamble language as "admitting" liability. One commenter provided three reasons for objecting to the admission of liability. Those reasons were: (1) A state may dispute the validity of a penalty claim but be willing to agree to investment in reducing its error rate, or not be willing to spend time or money challenging the claim; (2) a state that wishes to settle part of its claim would be unable to contest the balance of the claim; and (3) admission may prejudice the ability of a state to contest another

year's liability, based on similar circumstances.

It was not our intent to force a State agency to "admit" liability in order to enter into an agreement. Acknowledgement by the State agency of this liability is not necessary for the State agency to enter into an investment plan. Our purpose was to reinforce the idea that we view the establishment of an investment plan as a legal settlement agreement between Federal and State governments. As such, once the parties have entered into the agreement as to what portion of the liability claim will be paid, waived, or invested, the validity of that portion of the claim is no longer at issue, and may not be raised again before the Department.

Interest Payments on Unpaid Liabilities

Sixteen commenters commented on this provision of section (vi) of the proposed rule for charging interest on the unpaid liability. All opposed the provision. Four of the commenters stated that charging interest was not supported by the legislation. Three of the commenters opposed paying interest on money allocated but not spent on a plan, because of a state's efficiency. Five commenters stated that interest should not be charged if a state has made a good faith effort to invest in error reduction activities.

Section 602 of the Hunger Prevention Act of 1988, Public Law 100–435, mandates the imposing of interest on QC claims, and in part, specifically requires that "If the State agency appeals such claim (in whole or in part), the interest on any unpaid portion of the claim shall accrue from the date of the decision on the administrative appeal, or from a date that is 2 years after the date the bill is received, whichever is earlier, until the date the unpaid portion of the payment is received." Settlement amounts spent in accordance with an investment plan will not accrue interest. Good faith efforts are no longer an issue, as compliance is determined as spending the settlement amount from the investment plan.

No Appeal of Decision on Suspension of Liability

Section (iii) adopts from the proposed rule the provision that the Department's decision to suspend all, part, or none of the QC liability claim is final and not appealable within the Department. None of the thirteen commenters supported this provision. The commenters addressed a number of concerns. As there was no provision for appeal, States had concerns about fairness and consistency in evaluating plans. Three commenters stated that FNS should disclose its guidelines and criteria for approval of plans.

It is our intent to be fair and consistent in our application of the provisions of this rule while taking into account the individual circumstances surrounding a State's investment plan. FNS has established guidelines for approval of plans in the rule. All plans must fall within those parameters. All plans will be evaluated as to the scope of the plan, the likely effect of the plan, and the ability of the State to carry out its plan. However, the nature of that evaluation will vary based on the plan and the State agency. We expect that the plans will be so individualized and so State-specific that further development of approval standards will not be useful or desirable.

Determination to withdraw a reduction in liability is not appealable. Seventeen comments were received on this provision of section (vi) of the proposed rule which stated that the determination to withdraw a reduction is not appealable within the Department. Eleven commenters stated that the regulation should be rewritten to provide for appeals. Six commenters suggested that guidelines for withdrawing the reduction be developed.

We have retained the provision in the final rule to not allow for appeal of the Department's determination. The legislative history gives sole discretion to the Secretary on whether to reduce a State's liability. In addition, we have not published guidelines in the rule because we think that each settlement will be unique and that limiting negotiations with guidelines to cover all situations would be counterproductive.

Timeframes for entering the agreement. The proposed regulation provided that a state agency could enter into an investment plan at any time during the QC liability claim process. One commenter proposed a structured timeframe for the investment plans. Two commenters stated that States should be able to enter into the plan after they have exhausted all appeals. Another commenter stated that it was unlikely that a state would submit a plan until all appeals/negotiations were settled and that allowing an investment plan to run concurrently with the appeal process would "* * * induce the state agency to develop and implement timely corrective action initiatives * * *."

The provisions in the proposed rule have been adopted in the final rule. The purpose of that provision was to allow the State agencies to use their discretion in determining the appropriate time to enter into an investment plan. State agencies may propose investment plans at any time during the QC liability claim process, i.e., from the time a claim is received to the conclusion of judicial review. The provision provides the necessary flexibility to be responsive to the concerns of the commenters.

Dollar-for-dollar offset. Two commenters objected to requiring a dollar-for-dollar offset of the liability. The commenters stated that the States and FNS should be free to enter into an investment plan of less than the claimed penalty amount.

The intent of the proposed and final rule is that in reaching the settlement, the State agency will negotiate how much of its liability that it is willing to invest in an error reduction plan. This could be less than the full amount of the liability. The language of the proposed rule has been adopted as written.

Retroactive Investment Plans

Three commenters suggested that the final rule be written to provide for retroactive error reduction investment plans. One commenter stated that the proposed regulation "* * * negates any possible offset benefits for activities back to the FY 1986 effective date." Another commenter remarked that States which have already fulfilled the requirements of the proposed rules through past activities should be entitled to a reduction in liability.

We have not included a specific provision for retroactive error reduction investment plans in the final regulation. We believe that the regulation provides flexibility in regard to proven error reduction activities.

Implementation

As mandated in the Hunger Prevention Act of 1988, (Pub. L. 100–435), the provision for review of new dollar investments in determining whether to waive all or part of a QC liability claim is effective for liabilities associated with the Fiscal Year 1988 QC review period and subsequent fiscal years. State agencies would be eligible to submit requests for such waivers for Fiscal Year 1988 and all fiscal years thereafter. The Department may consider an investment plan that includes more than one year's claim.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Grant

programs-social programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 272 and 275 are amended as follows:

1. The authority citation for parts 272 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(124) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(124) *Amendment No. 325.* The quality control changes to § 275.23 that are made by Amendment No. 325 shall be implemented effective January 24, 1992.

PART 275—PERFORMANCE REPORTING SYSTEM

3. In § 275.23, a new paragraph (e)(10) is added to read as follows:

§ 275.23 Determination of State agency program performance.

* * * * *

(e) *State agencies' liabilities for payment error rates.* * * *

(10) *Suspension and waiver of liabilities for investments in program management activities.* In connection with the settlement of all or a portion of a QC liability for FY 1986 and subsequent QC review periods, the Department may suspend and subsequently waive all or part of a State agency's payment error rate liability claim based on the State agency's offsetting investment in program management activities intended to reduce errors measured by the QC system. A State agency may submit a request to the Department for review of planned investments in program management activities intended to reduce error rates as part of a proposed settlement of all or a portion of a QC liability at any time during the QC liability claim process.

(i) The State agency's investment plan activity or activities must meet the following conditions to be accepted by the Department:

(A) The activity or activities must be directly related to error reduction in the ongoing program, with specific objectives regarding the amount of error reduction, and type of errors that will be reduced. The costs of demonstration, research, or evaluation projects under sections 17 (a) through (c) of the Act will not be accepted. The State agency may direct the investment plan to a specific project area or implement the plan on a statewide basis. In addition, the Department will allow an investment plan to be tested in a limited area, as a pilot project, if the Department determines it to be appropriate. A request by the State agency for a waiver of existing rules will not be acceptable as a component of the investment plan. The State agency must submit any waiver request through the normal channels for approval and receive approval of the request prior to including the waiver in the investment plan. Waivers that have been approved for the State agency's use in the ongoing operation of the program may continue to be used.

(B) The program management activity must represent a new or increased expenditure. The proposed activity must also represent an addition to the minimum program administration required by law for State agency administration including corrective action. Therefore, basic training of eligibility workers or a continuing corrective action from a Corrective Action Plan shall not be acceptable. The State agency may include a previous initiative in its plan; however, the State agency would have to demonstrate that the initiative is entirely funded by State money, represents an increase in spending and there are no remaining Federal funds earmarked for the activity.

(C) Investment activities must be funded in full by the State agency, without any matching Federal funds until the entire investment amount agreed to is spent. Amounts spent in excess of the settlement amount included in the plan may be subject to Federal matching funds.

(ii) The request shall include:

(A) a statement of the amount of money that is a quality control liability claim that is to be offset by investment in program improvements;

(B) a detailed description of the planned program management activity;

(C) planned expenditures, including time schedule and anticipated cost breakdown;

(D) anticipated impact of the activity, identifying the types of errors expected to be affected;

(E) documentation that the funds would not replace expenditures already earmarked for an ongoing effort; and

(F) a statement that the expenditures are not simply a reallocation of resources.

(iii) The State's and the Department's agreement to settle all, part, or none of the QC liability claim under this paragraph is final and not subject to further appeal within the Department. An agreement to settle all or part of a State agency's QC liability claim will result in suspension of the claim for the specified amount, pending the State's satisfactory completion of the initiative or action taken by the Department under the provisions of paragraph (e)(10)(vi) of this section.

(iv) The State agency shall submit modifications to the plan to the Department for approval, prior to implementation. Expenditures made prior to approval by the Department may not be used in offsetting the liability.

(v) Each State agency which has all or part of a claim suspended under this provision shall submit periodic documented reports according to a schedule in its approved investment plan. At a minimum, these reports shall contain:

(A) A detailed description of the expenditure of funds, including the source of funds and the actual goods and services purchased or rented with the funds;

(B) A detailed description of the actual activity; and

(C) An explanation of the activity's effect on errors, including an explanation of any discrepancy between the planned effect and the actual effect.

(vi) Any funds that the State agency's reports do not document as spent as specified in the investment plan may be withdrawn by the Department from the reduction in QC liability. Before the reduction is withdrawn, the State agency will be provided an opportunity to provide the missing documentation.

(vii) If the reduction in QC liability is withdrawn, the Department shall charge interest on the funds not spent according to the plan, in accordance with section 602 of the Hunger Prevention Act of 1988, which amended section 13(a)(1) of the Food Stamp Act of 1977.

(viii) The Department's determination to withdraw a reduction in QC liability is not appealable within the Department.

Dated: January 17, 1992.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 92–1788 Filed 1–23–92; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 728 Amendment 1]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation increases the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from January 10 through January 16, 1992. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 728, Amendment 1 (7 CFR part 907) is effective for the period from January 10 through January 16, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1754.

SUPPLEMENTARY INFORMATION: This amendment is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 79 percent of the total production in 1990–91. District 2 is located in the southern coastal area of California and represented almost 18 percent of 1990–91 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 3 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's revised estimate of 1991–92 production is 64,600 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 32,895 cars during the 1990–91 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee has estimated that about 68 percent of the 1991–92 crop of 64,600 cars will be utilized in fresh domestic channels (43,650 cars), with the remainder being exported fresh (14 percent), processed (16 percent), or designated for other uses (2 percent). This compares with the 1990–91 total of 16,675 cars shipped to fresh domestic markets, about 51 percent of that year's crop. In comparison to other seasons, 1990–91 production was low because of a devastating freeze that occurred during December 1990.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1991–92 season on June 25, 1991. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 24, 1991, in Visalia, California; and District 2 and 3 on October 1, 1991, in Ontario, California. The Committee subsequently revised its marketing policy at a meeting on October 15, 1991. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Mr. Nissen. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

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The Committee met publicly on January 14, 1992, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommend in a vote of 8 members voting in favor, 1 opposing, and 2 abstaining, that the early maturity allotment for District 2 be suspended, and that open movement be established for District 2 for the specified period. Several Committee members commented that they believe demand is improving. Due to increased demand and poor picking weather in District 1, District 2 would be able to ship significantly more fruit than they had requested on early maturity applications submitted to the Committee last week.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1991–92 marketing policy. The recommendation compares with 37,260 cartons allotted to District 2 under early maturity for the specified period. The Department established volume regulation in the amount of 1,390,000 cartons for Districts 1 and 3, and early maturity allotments for Districts 2 and 4 (57 FR 1215).

During the week ending on January 9, 1992, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,097,000 cartons compared with 409,000 cartons shipped during the week ending on January 10, 1991. Export shipments totaled 163,000 cartons compared with 134,000 cartons shipped during the week ending on January 10, 1991. Processing and other uses accounted for 161,000 cartons compared with 821,000 cartons shipped during the week ending on January 10, 1991.

Fresh domestic shipments to date this season totaled 10,808,000 cartons compared with 13,508,000 cartons shipped by this time last season. Export shipments total 1,823,000 cartons compared with 1,808,000 cartons shipped by this time last season. Processing and other use shipments total 2,221,000 cartons compared with 4,138,000 cartons shipped by this time last season.

For the week ending January 9, 1992, regulated shipments of navel oranges to the fresh domestic market were 1,031,800 cartons on an adjusted allotment of 954,000 cartons which resulted in net overshipments of 77,000 cartons. Regulated general maturity shipments for the current week (January 10 through January 16, 1992) are estimated at 1,210,800 cartons on an adjusted allotment of 1,233,000 cartons. Thus, undershipments of 23,000 cartons could be carried forward into the week ending on January 23, 1992.

The average f.o.b. shipping point price for the week ending on January 9, 1992, was $9.47 per carton based on a reported sales volume of 800,000 cartons. The season average f.o.b. shipping point price to date is $10.21 per carton. The average f.o.b. shipping point prices for the week ending on January 10, 1991, was $15.62 per carton; the season average f.o.b. shipping point price at this time last year was $8.84.

According to the National Agricultural Statistics Service, the 1990–91 season average fresh equivalent on-tree price for California-Arizona navel oranges was $7.75 per carton, 119 percent of the season average parity equivalent price of $6.52 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1991–92 season average fresh on-tree price is estimated at $6.33 per carton, about 85 percent of the estimated fresh on-tree parity equivalent price of $7.44 per carton.

Increasing the quantity of navel oranges that may be shipped during the period from January 10 through January 16, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1991–92 season was published in the September 30, 1991, issue of the Federal Register (56 FR 49432). The Department is currently in the process of analyzing comments received in response to this proposal and, if warranted, may finalize that action this season. However, issuance of this final rule implementing volume regulation for the regulatory week ending on January 16, 1992, does not constitute a final decision on that proposal.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until January 14, 1992, and this action needs to be effective for the regulatory week which ends on January 16, 1992. Further, interested persons were given an opportunity to submit information and views on the amended regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1028 (57 FR 1215) is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1028 Navel Orange Regulation 728.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from January 10 through January 16, 1992, is established as follows:

(a) District 1: 1,232,880 cartons;

(b) District 2: unlimited cartons;

(c) District 3: 67,340 cartons;

(d) District 4: 16,282 cartons.

Dated: January 15, 1992.

Robert O. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–1781 Filed 1–23–92; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1710

RIN 0572-AA43

Borrower Eligibility for Different Types of Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR part 1710, General and Pre-loan Policies and Procedures Common to Insured and Guaranteed Electric Loans by adding a new § 1710.102, Borrower Eligibility for Different Types of Loans. This new section sets forth REA policies for determining which borrowers are eligible for the different types of REA financial assistance. This regulation updates and clarifies REA policies for determining borrower eligibility for different types of financial assistance.

EFFECTIVE DATE: This rule is effective February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Frank W. Bennett, Deputy Assistant Administrator-Electric, U.S. Department of Agriculture, Rural Electrification Administration, room 4048–S, 14th and Independence Avenue, SW., Washington, DC 20250–1500, Telephone: (202) 720–9547.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Regulatory Flexibility Act Certification

The Administrator of REA has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Most borrowers of REA loans do not meet the requirements for small entities.

National Environmental Policy Act Certification

The Administrator of REA has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA electric loans and loan guarantees from coverage under this Order.

Information Collection and Recordkeeping Requirements

This final rule contains no information collection or recordkeeping provisions requiring Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Background

On February 20, 1991, REA published a proposed rule at 56 FR 6912 proposing to amend 7 CFR chapter XVII by adding part 1710, General and Pre-loan Policies and Procedures Common to Insured and Guaranteed Electric Loans. The proposed rule consisted of subpart A, General, § 1710.2, Definitions and Rules of Construction, and subpart C, Loan Purposes and Basic Policies, § 1710.102, Borrower Eligibility for Different Types of Loans. The remainder of 7 CFR part 1710, subparts A through H, was published as a proposed rule at 56 FR 8234 on February 27, 1991.

While the two rules are related, this final rule is limited in scope, consisting of only § 1710.102, which sets forth REA policies for determining which borrowers are eligible for the different types of REA financial assistance. The definitions section contained in the proposed form of this rule has been deleted since the same definitions section, with some revisions made in response to public comments, has recently been issued in final form as § 1710.2 in 7 CFR part 1710, subparts A through H.

Two other related rules, 7 CFR part 1712, Pre-loan Policies and Procedures for Guaranteed Electric Loans, subpart B, section 314 Loan Guarantees-Private Sector, and 7 CFR part 1719, Post-loan Policies and Procedures for Guaranteed Electric Loans, subpart B, section 314 Loan Guarantees-Private Sector, were published as interim final rules, with request for comments, at 56 FR 42460 on August 27, 1991. These rules set forth policies, procedures and requirements for the execution and administration of loan guarantees authorized by section 314 of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*).

Since publication of proposed § 1710.102, the fiscal year 1992 Appropriations Act for the Department of Agriculture has been enacted. That Act prohibits REA from implementing a needs-based method for allocating insured funds in fiscal year 1992. Therefore, those provisions of the proposed rule dealing with needs-based allocation of insured loans, basically proposed paragraphs (e) through (i), have been deleted. This final rule retains only those provisions relating to general policy as to which borrowers qualify for the different types of REA loans and loan guarantees.

The Appropriations Act did not amend the authority in section 314 of the REA Act of 90 percent private-sector loan guarantees. Therefore, the applicable rules, subparts A and B of 7 CFR parts 1712 and 1719, remain in force.

Comments

Comments were received from a total of 324 commenters, including 270 borrowers, the National Rural Electric Cooperative Association (NRECA), 14 state borrower associations, and 39 others, including several members of Congress. The vast majority of comments related to the proposed needs-based method for allocating insured loan funds and section 314 guarantees, and the criteria and weighting system for determining need.

Several comments were received on the provisions retained in the final rule. One commenter asked whether the rule proposes a change in existing REA policy on requirements and qualification criteria for supplemental financing. It does not. Those requirements were set forth in 7 CFR 1710.110.

One commenter recommended that the factors be specified which the Administrator will use in determining financial hardship with respect to waiving requirements for supplemental financing. REA believes that it is important that the Administrator continue to have flexibility in determining whether or not to waive requirements for supplemental financing. Such flexibility has worked well in the past without any complaint from borrowers. However, REA is developing a new proposed section to be added to 7 CFR 1710 that will set forth

the factors that the Administrator will consider in determining whether a borrower is experiencing financial hardship.

It was also suggested that specific procedures be established for borrowers to request a waiver of the supplemental financing requirements. Paragraph (a) of § 1710.102 has been modified to make it clear that consideration of a waiver of the supplemental financing requirements will be initiated at the request of a borrower.

List of Subjects in 7 CFR Part 1710

Administrative practice and procedure, Electric power, Electric utilities, Guaranteed loan program, Insured loan program, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons given in the preamble, 7 CFR part 1710 is amended as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for 7 CFR part 1710 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Pub. L. 99–591, 100 Stat. 3341, 3341–16; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

2. The text of § 1710.102 is added to read as follows:

Subpart C—Loan Purposes and Basic Policies

§ 1710.102 Borrower eligibility for different types of loans.

(a) *Insured loans under section 305.* Insured loans are normally reserved for the financing of distribution and subtransmission facilities of both distribution and power supply borrowers. In accordance with § 1710.110, except in cases of financial hardship, as determined by the Administrator, an applicant for an insured loan must obtain a portion of the total debt financing required for a proposed project by means of a supplemental loan from another lender without an REA guarantee. A borrower may request that the Administrator review its situation to determine whether it qualifies as a financial hardship case.

(b) *One hundred percent loan guarantees under section 306.* Both distribution and power supply borrowers are eligible for 100 percent loan guarantees under section 306 of the RE Act for any or all of the purposes set forth in § 1710.106. (See 7 CFR part 1712.) These guarantees are normally used to finance bulk transmission and generation facilities, but they may also be used to finance distribution and subtransmission facilities. If a borrower applies for a section 306 loan guarantee to finance all or a portion of distribution and subtransmission facilities, such request will not affect the borrower's eligibility for an insured loan to finance any remaining portion of said facilities or for any future insured loan to finance other distribution or subtransmission facilities. A section 306 loan guarantee, however, may not be used to guarantee a supplemental loan required by § 1710.110.

(c) *One hundred percent loan guarantees under section 306A.* Under section 306A of the RE Act, both distribution and power supply borrowers are eligible under certain conditions to use an existing section 306 guarantee to refinance advances made on or before July 2, 1986 from a loan made by the Federal Financing Bank. (See 7 CFR part 1786.)

(d) *Ninety percent guarantees of private-sector loans under section 314.* Both distribution and power supply borrowers are eligible under section 314 of the RE Act to receive from REA a 90 percent guarantee of a loan made by a private lender for any or all of the purposes set forth in § 1710.106. (See 7 CFR part 1712.) In allocating fiscal year authority for section 314 guarantees, priority will be given to financing of distribution and subtransmission facilities if section 314 guarantees are required to be offered to borrowers as a result of a reduction in insured loan funding pursuant to section 314 of the RE Act. A section 314 guarantee may not be used to guarantee a supplemental loan required by § 1710.110.

(e) *Ninety percent guarantees of private-sector loans under section 311.* Under section 311 of the RE Act, both distribution and power supply borrowers in the state of Alaska are eligible under certain conditions to obtain from REA a 90 percent guarantee of a private-sector loan to refinance their Federal Financing Bank loans. (See 7 CFR part 1786.)

Dated: December 17, 1991.

R.R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 92–1513 Filed 1–23–92; 8:45 am]

BILLING CODE 3410–15–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 932 and 941

[92–18]

Operations of the Office of Finance

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule, with request for comments.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is removing selected sections from part 932 and adopting a new part 941 that will revise the regulations establishing, and governing the duties of, the Office of Finance, a joint office of the Federal Home Loan Bank System, to reflect the changes in the activities of the Office of Finance as well as to implement a restructuring of the management organization of the Office of Finance in order to improve the administration of its functions.

DATES: This rule is effective January 24, 1992. Comments must be submitted by February 24, 1992.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC, 20006.

FOR FURTHER INFORMATION CONTACT: Thomas D. Sheehan, Assistant Director, Financial Division, District Banks Directorate, (202) 408–2870, or Charles Szlenker, Attorney, Office of General Counsel, (202) 408–2554, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Finance of the Federal Home Loan Bank System ("FHLBank System") was created in 1972 by regulation of the former Federal Home Loan Bank Board ("FHLBB"). See 37 FR 16864 (Aug. 22, 1972). It replaced the Office of the Fiscal Agent of the FHLBanks, which had been organized in the 1930's, shortly after the establishment of the FHLBanks, by the FHLBB under the Federal Home Loan Bank Act. The creation of a Fiscal Agent of the FHLBanks facilitated the Federal Home Loan Bank Act's mandate that the FHLBB "issue" the FHLBank consolidated debentures, bonds or notes ("FHLBank consolidated obligations"). See 12 U.S.C. 1431 (b) and (c) (Supp. I 1989). Although the FHLBank consolidated obligations were issued by the FHLBB, they were obligations of the FHLBank System, not the FHLBB or the Federal government. See *id.* at 1435.

Accordingly, the Fiscal Agent issued the FHLBank consolidated obligations under authority delegated by the FHLBB, but serviced the obligations as the agent of the FHLBanks.

In 1972, the FHLBB expanded the role of the Office of Fiscal Agent to include the purchase of investment securities on behalf of the FHLBanks and to perform other miscellaneous financial functions for the FHLBanks as well as for the former Federal Savings and Loan Insurance Corporation ("FSLIC") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"). In addition, the FHLBB required the Office of Finance to monitor FHLBank compliance with certain statutory or regulatory requirements and make reports of such compliance to the FHLBB. With this broader responsibility came an internal reorganization and a new name, the Office of Finance.

Significant changes since 1972 have occurred to the FHLBank System. The FHLBanks no longer use the Office of Finance in order to perform investment services on their behalf. Both FSLIC and the FHLBB have been dissolved by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101–73, 103 Stat. 183–553 (1989). The Finance Board has replaced the former FHLBB as regulator of the FHLBank System. Moreover, the Finance Board has assumed direct responsibility for monitoring the FHLBanks' compliance with statutory, regulatory or policy requirements. These changes have effectively reduced the duties of the Office of Finance, although it continues to perform certain functions on behalf of the Financing Corporation and the Resolution Funding Corporation.

This interim final rule revises the regulations governing the Office of Finance and its duties to reflect the aforementioned changes in the activities of the Office of Finance as well as to implement a restructuring of the Office of Finance in order to improve its administration.

II. Overview of Regulation

A. Summary of Changes

This regulation reorganizes the management structure of the Office of Finance by establishing a new three member administrative body, called the Office of Finance Board of Directors ("OF Board of Directors"), responsible for the operations and management of the Office of Finance. The administrative powers previously granted the Director of the Office of Finance are now to be vested in the OF Board of Directors.

The Office of Finance will continue as a joint office of the FHLBanks, organized pursuant to section 2B(b)(2) of the Bank Act (12 U.S.C. 1422b(b)(2) (Supp. I 1989)), and will continue to issue FHLBank consolidated obligations on behalf of the Finance Board. The Office of Finance will also continue to be responsible for principal and interest payments on the consolidated obligations on behalf of the FHLBanks. The references to functions no longer performed by the Office of Finance have been removed as obsolete.

B. Effect of Changes

Under the new structure, the responsibility for issuing and servicing FHLBank consolidated obligations, is delegated to the OF Board of Directors. That entity, in turn, will appoint the Director of the Office of Finance, subject to Finance Board approval, and sub-delegate to the Director the duties of the Fiscal Agent of the FHLBanks. The OF Board of Directors, in its discretion, may delegate other duties to the Director.

Under this new structure, the Director of the Office of Finance will be directly accountable to the OF Board of Directors for Office of Finance administration. The Director is retained as the managing officer of the Office of Finance, responsible for day-to-day operations.

The Finance Board will continue to exercise oversight over the OF Board of Directors and the Office of Finance. Both will be subject to the rules, regulations and policies as may be established from time to time by the Finance Board pursuant to section 2B of the Bank Act (12 U.S.C. 1422b).

C. Purpose of Changes

The purpose of these regulations is to achieve an internal reorganization of the management structure of the Office of Finance. The Finance Board does not intend to abolish the current Office of Finance or re-create or re-charter it by these regulations. Neither does the Finance Board intend to alter any duties or responsibilities of the Office of Finance regarding outstanding FHLBank consolidated obligations, or any rights of the holders of those obligations.

The Finance Board desires to improve the management control and accountability over Office of Finance activities by focusing the lines of authority and chain of command over the Office of Finance. The ultimate purpose herein is to promote cost savings for FHLBank System activities by providing for more economic and efficient Office of Finance operations.

Administrative Procedure Act

The Finance Board is adopting these regulations as an interim final rule, effective immediately. However, it is incorporating a 30-day comment period. The Administrative Procedure Act ("APA") requires executive agencies to publish a substantive rule in the Federal Register not less than 30 days prior to its effective date. 5 U.S.C. 553(b) (1988). The APA provides an exception to the 30-day publication requirement whenever the agency finds "good cause" therefor and publishes such finding with the rule. *Id.* at 553 (b)(3)(B) & (d).

The Finance Board finds such good cause in this case. The courts have found that the underlying purpose of the notice requirements for rulemaking in the APA is to allow members of the general public, who will be affected by a new rule, a reasonable time to prepare for the effective date of the rule and the consequences of the new rule. The issue of whether "good cause" exists to waive the notice requirement is decided by weighing the need to quickly implement a new rule against any hardship to members of the public affected by it. *Nance* v. *EPA*, 645 F.2d 701, 708 (9th Cir. 1981) *cert. denied*, 454 U.S. 1081 (1981).

This rule deals with the internal management organization of the FHLBank System. Accordingly, it will not directly result in any additional burden to, or otherwise effect, any member of the public outside the FHLBank System. However, the rule will make changes to the administration of the Office of Finance which the Finance Board has determined should be implemented immediately. The Finance Board therefore concludes that the facts weigh in favor of waiving the notice period. *Cf. id. at* 709.

The Finance Board may promulgate this rule without the notice period required by the APA as the record shows that the interests of both the FHLBank System and holders of its consolidated obligations are served by improving Office of Finance operations. *See Texaco, Inc.* v. *FEA*, 531 F.2d 1071, 1082 (Temp. Emer. Ct. App. 1976) *cert. denied*, 426 U.S. 941 (1976).

Although these regulations will be effective immediately, the Finance Board recognizes the importance, value and benefit of public comment and input on FHLBank operations. Accordingly, it has provided for a 30-day comment period from the date of publication of these regulations. The comments received during this 30-day period may result in revisions to these regulations after their effective date.

Regulatory Flexibility Act

In accordance with section 605(b) of title 5, United States Code, the Finance Board hereby certifies that these interim final regulations will not have a significant impact on a substantial number of small entities. The Finance Board finds that these regulations deal strictly with the internal structure and operations of the FHLBank System. Accordingly, a regulatory flexibility analysis is not necessary.

List of Subjects

12 CFR Part 932

Federal home loan banks.

12 CFR Part 941

Organization and functions (government agencies).

Accordingly, the Finance Board hereby amends its general regulations, at chapter IX, title 12, Code of Federal Regulations, as follows:

1. The authority section for part 932 continues to read in its current form.

§§ 932.55, 932.56 and 932.57 [Removed]

2. Sections 932.55, 932.56 and 932.57 are removed.

3. A new part 941 is added to read as follows:

PART 941—OPERATIONS OF THE OFFICE OF FINANCE

941.1 Definitions.
941.2 General.
941.3 Federal Housing Finance Board oversight.
941.4 Office of Finance.
941.5 Functions of the Office of Finance.
941.6 Director of the Office of Finance.
941.7 Office of Finance Board of Directors.
941.8 Powers of the Office of Finance Board of Directors.
941.9 Duties of the Office of Finance Board of Directors.
941.10 Meetings of the Office of Finance Board of Directors.
941.11 Budget, funding and expenses.
941.12 Savings clause.

Authority: Sec. 2B, 103 Stat. 414, as amended (12 U.S.C. 1422b); sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431).

§ 941.1 Definitions.

In this part, the following terms mean:

Bank. A Federal Home Loan Bank.

Bank Act. The Federal Home Loan Bank Act.

Bank System. The Federal Home Loan Bank System, consisting of the twelve Federal Home Loan Banks and including the Office of Finance as a joint office of the Federal Home Loan Banks.

Chair. The Chairperson of the Office of Finance Board of Directors.

Consolidated obligation. A Federal Home Loan Bank consolidated debenture, bond or note issued under authority of section 11 of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1431).

Director. The Director of the Office of Finance.

Finance Board. The Federal Housing Finance Board.

OF Board of Directors. The three member administrative body responsible for management of the Office of Finance.

§ 941.2 General.

This part reorganizes the Office of Finance, a joint office of the Bank System, establishes the OF Board of Directors as the body responsible for the management and operations of the Office of Finance, and defines their respective duties and responsibilities.

§ 941.3 Federal Housing Finance Board oversight.

(a) Section 12(a) of the Bank Act (12 U.S.C. 1432(a)) provides that all activities of a Bank are subject to the approval of the Finance Board. The Finance Board retains the same oversight authority over the Office of Finance and the OF Board of Directors as it has over a Bank and its respective board of directors.

(b) Pursuant to section 20 of the Bank Act (12 U.S.C. 1440), the Finance Board shall audit and examine the Office of Finance, the OF Board of Directors and the Office of Finance Operations Imprest Fund.

§ 941.4 Office of Finance.

(a) *Establishment.* An Office of Finance is hereby established which shall have the responsibilities, duties and functions described herein.

(b) *Status.* The Office of Finance is recognized as a joint office of the Bank System.

(c) *Mission.* The Office of Finance shall:

(1) Issue the consolidated obligations pursuant to section 11 of the Bank Act, as amended (12 U.S.C. 1431);

(2) Perform all other necessary and proper functions in relation to the consolidated obligations, as fiscal agent on behalf of the Banks; and

(3) Undertake any other activities expressly approved by the Finance Board.

§ 941.5 Functions of the Office of Finance.

Subject to limitations set by the OF Board of Directors, the Office of Finance shall have the following duties and functions:

(a) Conduct all negotiations relating to the public or private offering and sale of consolidated obligations, and perform such other related functions as may be authorized by resolution of the Finance Board;

(b) Perform such functions for the Financing Corporation and/or the Resolution Funding Corporation, on behalf of the Banks, as may be requested by each such entity; and

(c) Make timely payments on behalf of the Banks of principal and interest due on all consolidated obligations issued pursuant hereto.

§ 941.6 Director of the Office of Finance.

(a) The Office of Finance shall be headed by a Director who shall be responsible for the overall daily management of the Office of Finance functions and organization, including:

(1) Implementation of the OF Board of Directors' plans and policies for the administration of the Office of Finance;

(2) Organization and development of the personnel structure of the Office of Finance;

(3) Employment and management of personnel;

(4) Preparation of the budget for presentation to the OF Board of Directors pursuant to § 941.11; and

(5) Performance of any duty assigned by the OF Board of Directors, including providing it any records, reports or other data in the possession of the Office of Finance whenever requested to do so.

(b) The Director shall perform the duties described herein and the functions of the Office of Finance subject to the policies adopted by the OF Board of Directors.

(c) The Director shall be:

(1) The Fiscal Agent of the Federal Home Loan Banks;

(2) A member of the Directorate of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1441(b)(1)(A)); and

(3) A member of the Directorate of the Resolution Funding Corporation, pursuant to section 41B(c)(1)(A) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1441b(c)(1)(A)).

§ 941.7 Office of Finance Board of Directors.

(a) *Establishment.* The Office of Finance Board of Directors is hereby created.

(b) *Use of facilities or personnel.* The OF Board of Directors may utilize the facilities or personnel of the Office of Finance or any Bank in order to perform its functions.

(c) *Membership.* The OF Board of Directors shall consist of three part-time members appointed by the Finance Board as follows:

(1) *Bank System.* Two Bank Presidents; and

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(2) *Private Citizen.* A citizen of the United States with a demonstrated expertise in financial markets. Such appointee may not be an officer, director or employee of a Bank or Bank System member, hold shares, or any other financial interest in, any member of a Bank, or be affiliated with any FHLBank consolidated obligation selling or dealer group member under contract with the Office of Finance.

(d) *Terms*—(1) *Length.* Except as provided below, the terms of the OF Board of Directors members shall be as follows:

(i) The terms of the two Bank President members shall be for two years, beginning on April 1st, and each term shall begin and end in alternate years staggered with the other term;

(ii) The term of the Private Citizen member shall be for two years, beginning on April 1st.

(2) *Vacancy.* The Finance Board shall fill any vacancy occurring on the OF Board of Directors. An appointment to fill a vacancy shall be only for the remainder of the term during which the vacancy occurred.

(3) *Holdover.* At the direction of the Finance Board, any member of the OF Board of Directors is authorized to continue to serve on the OF Board of Directors after the expiration of the member's term until a successor has been appointed by the Finance Board.

(4) *Initial terms.* Notwithstanding paragraph (d)(1) herein, the terms of the members of the first OF Board of Directors convened pursuant to this part shall be as follows:

(i) The initial term of one of the Bank President members shall be from the date of appointment until March 31, 1993, and the initial term of the other shall be from the date of appointment until March 31, 1994;

(ii) The initial term of the Private Citizen member, as selected by the Finance Board, shall be from the date of appointment until March 31, 1994.

(e) *Chair.* (1) The Finance Board shall designate one member of the OF Board of Directors as the Chair, and another member as the Vice Chair.

(2) The Chair shall preside over the meetings of the OF Board of Directors. In the absence of the Chair, the Vice Chair shall preside.

(3) The Chair shall be responsible for ensuring that the directives and resolutions of the OF Board of Directors are drafted and maintained and for keeping the minutes of all meetings.

(f) *Compensation*—(1) *Bank System members.* (i) The Bank President members shall not receive any additional compensation or reimbursement as a result of their service on the OF Board of Directors.

(ii) Each Bank is authorized to continue to pay its President a salary during attendance at the OF Board of Directors meetings and to pay such President's travel and *per diem* expenses for attendance at OF Board of Directors meetings.

(iii) Each Bank shall be entitled to be reimbursed by the Office of Finance for its expenditure of travel and *per diem* expenses associated with its Bank President's attendance at OF Board of Directors meetings as a member thereof.

(2) *Private Citizen member*—The Office of Finance shall pay the Private Citizen member of the OF Board of Directors for attendance at each meeting thereof and shall reimburse such member for the expenses associated with attendance in the same amount and under the same conditions as the Banks pay and reimburse the chairmen of their boards of directors.

§ 941.8 Powers of the Office of Finance Board of Directors.

(a) *General.* The OF Board of Directors shall enjoy such incidental powers under section 32(a) of the Bank Act (12 U.S.C. 1432(a)), as are necessary, convenient and proper to accomplish the efficient operation and management of the Office of Finance pursuant to this part.

(b) *Agent.* Subject to any limitations set by the Finance Board, the OF Board of Directors, in the performance of its duties, shall have the power to act:

(1) On behalf of the Finance Board in the issuing of consolidated obligations; and

(2) On behalf of the Banks in the paying of principal and interest due on the consolidated obligations.

(c) *Delegation.* The OF Board of Directors shall be empowered to delegate any of its powers to any employee of the Office of Finance in order to enable the Office of Finance to carry out its functions.

§ 941.9 Duties of the Office of Finance Board of Directors.

(a) *General*—(1) *Bylaws.* The OF Board of Directors shall adopt bylaws governing its operations and issue such guidance or instructions as will promote the efficient operation of the Office of Finance.

(2) *Conduct of Business.* The OF Board of Directors shall conduct its business by majority vote of its members convened at a meeting in accordance with its bylaws.

(b) *Oversight.* The OF Board of Directors shall:

(1) Have overall responsibility for the performance of the duties and functions of the Office of Finance pursuant hereto and for its efficient and effective operation;

(2) Set policies for the Office of Finance;

(3) Approve a strategic business plan for the Office of Finance and monitor the progress of its operations under such plan;

(4) Subject to Finance Board approval, review, adopt and monitor the annual operating budget of the Office of Finance including any supplemental expenditure thereto;

(5) Develop and implement the pricing mechanism by which the Office of Finance will make private or public offerings of consolidated obligations, in consultation with the Finance Board or its designee;

(6) Subject to Finance Board approval, select and employ the Director under an annual contract of employment;

(7) Review and approve all contracts of the Office of Finance; and

(8) Assume any other responsibilities that may from time to time be delegated to it by the Finance Board.

§ 941.10 Meetings of the Office of Finance Board of Directors.

(a) *Meetings.* (1) The OF Board of Directors shall adopt procedures for holding meetings which shall be set forth in the bylaws and such meetings shall be held not less than once each quarter of each year.

(2) Due notice shall be given to the Finance Board by the Chair prior to each meeting.

(b) *Quorum.* A quorum for purposes of OF Board of Directors meetings shall be three members.

§ 941.11 Budget, funding and expenses.

(a) *General.* The budget of the Office of Finance shall be calculated on a calendar year basis.

(b) *Initial review.* The OF Board of Directors shall be responsible for initially reviewing and approving the budget of the Office of Finance, which shall include the budget for the OF Board of Directors.

(c) *Agency review.* After its approval of the budget, pursuant to paragraph (b) herein, the OF Board of Directors annually shall submit the Office of Finance budget to the Finance Board for its review and approval. Upon approval by the Finance Board, the OF Board of Directors shall transmit a copy of the budget to each of the Bank Presidents.

(d) *Expenses.* Upon the approval of the budget by the Finance Board in accordance with paragraph (c) herein,

the OF Board of Directors may authorize the Director to make payments pursuant to the budget as necessary.

(e) *Imprest fund*—(1) *Checking account.* The Office of Finance shall establish a checking account in a financial depository institution approved by the OF Board of Directors, to be called the "Office of Finance Operations Imprest Fund." The Director shall maintain an amount therein approved by the OF Board of Directors.

(2) *Use.* The funds in such checking account shall be:

(i) Available for expenses of the Office of Finance and the OF Board of Directors, according to their approved budgets; and

(ii) Subject to withdrawal by check or draft signed by the Director or other person designated by the OF Board of Directors.

(f) *Funding*—(1) *General.* The Bank System is responsible for funding the expenses of the Office of Finance and the OF Board of Directors.

(2) *Method.* (i) The Banks shall jointly fund the Office of Finance by periodically reimbursing the Office of Finance Operations Imprest Fund in order to maintain in such Fund the amount approved in paragraph (e)(1) herein.

(ii) Each Bank's respective *pro rata* share of the reimbursement described in paragraph (f)(2)(i) herein shall be based on the ratio of the total paid-in value of its capital stock relative to the total paid-in value of all capital stock in the Bank System.

(iii) Notwithstanding the formula devised herein, the OF Board of Directors may devise an alternative formula for determining each Bank's respective share of Office of Finance expenses. Upon approval by the Finance Board, such alternative formula shall supersede the formula devised herein.

(3) *Payment.* Each Bank from time to time shall promptly forward funds to the Office of Finance in an amount representing its share of the reimbursement described in paragraph (f)(2)(i) herein when directed to do so by the Director pursuant to procedures of the OF Board of Directors.

(4) *Receipt.* All Bank funds received by the Office of Finance pursuant to this section shall be promptly deposited into the checking account described in paragraph (e)(1) herein and disbursed according to this part.

(5) *Procedures.* The OF Board of Directors shall adopt procedures governing the payment or reimbursement of expenses of the Office of Finance and the OF Board of Directors.

§ 941.12 Savings clause.

(a) The Office of Finance Operations Imprest Fund is available to pay for all expenses of the Office of Finance existing prior to the adoption of this part.

(b) All actions taken by the Office of Finance as it existed prior to the adoption of this part continue to be valid as regards the Finance Board and the Bank System.

(c) Notwithstanding any provision of this part, the Office of Finance or its Director may continue to exercise any powers delegated to it by the Finance Board or the former Federal Home Loan Bank Board, which they exercise on the date of the adoption of this part, until the first meeting of the OF Board of Directors created pursuant hereto.

Dated January 16, 1992.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 92-1727 Filed 1-23-92; 8:45 am]

BILLING CODE 6725-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Hyal Pharmaceutical Corp. (formerly Sterivet Laboratories, Ltd.), to Sanofi Animal Health, Inc.

EFFECTIVE DATE: January 24, 1992.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8646.

SUPPLEMENTARY INFORMATION: Hyal Pharmaceutical Corp. (formerly Sterivet Laboratories, Ltd.), 3909 Nashua Dr., Unit 5 Mississauga, ON, Canada L4V 1 R3, has informed FDA that it has transferred ownership of, and all rights and interests of approved NADA 113-510 (phenylbutazone granules) to Sanofi Animal Health, Inc., 7101 College Blvd., suite 610, Overland Park, KS 66210. Accordingly, FDA is amending the regulations in 21 CFR 520.1720b(b) to reflect this change. Also, the regulations are amended in 21 CFR 510.600(c) by removing Sterivet Laboratories, Ltd., because the firm is no longer the sponsor of any approved NADA's

List of Subjects

21 CFR Part 510

Administrative practice and procedure; Animal drugs; Labeling; Confidential business information; Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry "Sterivet Laboratories, Ltd.", and in the table in paragraph (c)(2) by removing the entry "047408".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1720b [Amended]

4. Section 520.1720b *Phenylbutazone granules* is amended in paragraph (b) by removing "047408" and adding in its place "050604".

Dated: January 13, 1992.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92-1742 Filed 1-23-92; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject To Certification; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of a new animal drug application (NADA) from Hyal Pharmaceutical Corp. (formerly Sterivet Laboratories, Ltd.), to Schering-Plough Animal Health Corp.

EFFECTIVE DATE: January 24, 1992.

FOR FURTHER INFORMATION CONTACT: Benjamin Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8646.

SUPPLEMENTARY INFORMATION: Hyal Pharmaceutical Corp. (formerly Sterivet Laboratories, Ltd.), 3909 Nashua Dr., Unit 5 Mississauga, ON, Canada L4V 1 R3, has informed FDA that it has transferred ownership of, and all rights and interests in approved NADA 140–474 (hyaluronate sodium injection) to Schering-Plough Animal Health Corp., P.O. Box 529, Galloping Hill Rd., 91–705 Kenilworth, NJ 07033. Accordingly, the agency is amending the regulations in 21 CFR 522.1145 to reflect this change.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b):

§ 522.1145 [Amended]

2. Section 522.1145 *Hyaluronate sodium injection* is amended in paragraph (d)(2) by removing the number "047406" and adding in its place "000061".

Dated: January 13, 1992.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92–1741 Filed 1–23–92; 8:45 am]

BILLING CODE 4160–01–M

INTER-AMERICAN FOUNDATION

22 CFR Part 1007

Claims Collection; Salary Offset

AGENCY: Inter-American Foundation.

ACTION: Final rule.

SUMMARY: This final rule implements the collection procedures of the Debt Collection Act of 1982, Public Law 97–365, codified in 5 U.S.C. 5514, which authorize the federal government to collect debts owed by a federal employee to the United States through salary offset.

EFFECTIVE DATE: This final rule is effective February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Adolfo A. Franco, Deputy General Counsel, 1515 Wilson Boulevard, Rosslyn, VA 22209, (703) 841–3894.

SUPPLEMENTARY INFORMATION: Under the Debt Collection Act of 1982, when the head of a federal agency determines that an employee of an agency is indebted to the United States or is notified by a head of another federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his or her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin. As is required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management on July 3, 1984, 40 FR 27470, codified in 5 CFR part 560, subpart K.

A proposed rule was published in the August 9, 1991, **Federal Register** (56 FR 37866), allowing interested persons until September 9, 1991, to file written comments. Because no comments were received, no changes were made to the final rule.

Paperwork Reduction Act

Under section 3518 of the Paperwork Reduction Act of 1980, 5 CFR 1320.3(c), the information collection provisions contained in these regulations are not subject to review and approval by the Office of Management and Budget.

Executive Order 12291

This rule has been reviewed and determined not to be a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individuals, industries, federal, state, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule applies only to individual federal employees. It will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 5 U.S.C. 805(b). Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 22 CFR Part 1007

Administrative Offset, Administrative practice and procedure, Claims, Debt collection, Government employees, and Wages.

For the reasons set out in the Preamble, chapter X of title 22 of the Code of Federal Regulations is amended by adding part 1007 to read as follows:

PART 1007—SALARY OFFSET

1007.1 Purpose and scope.
1007.2 Definitions.
1007.3 Applicability.
1007.4 Notice requirements.
1007.5 Hearing.
1007.6 Written decision.
1007.7 Coordinating offset with another Federal Agency.
1007.8 Procedures for salary offset.
1007.9 Refunds.
1007.10 Statute of limitations.
1007.11 Non-waiver of rights.
1007.12 Interest, penalties, and administrative costs.

Authority: 5 U.S.C. 5514, E.O. 12107, 3 CFR, 1978 Comp., p. 264; 5 CFR part 550, subpart K, and 22 U.S.C. 290f(e)(11).

§ 1007.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his/her consent to satisfy certain debts owed to the federal government. These regulations apply to all federal employees who owe debts to the Inter-American Foundation (IAF) and to current employees of the Inter-American Foundation who owe debts to other federal agencies. This regulation does not apply when the employee consents

to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.*;

(2) The Social Security Act, 42 U.S.C. 301 *et seq.*;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 *et seq.*, 4 CFR parts 101 through 105, 45 CFR part 1177.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq.*

§ 1007.2 Definitions.

For the purposes of the part, the following definitions will apply:

Agency means an executive agency as defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal government.

Creditor Agency means the agency to which the debt is owed.

Debt means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Disposable pay means the amount that remains from an employee's federal pay after the required deductions for social security, federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, federal employment taxes, and any other deductions that are required to be withheld by law.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the President of the Inter-American Foundation.

Paying Agency means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

President means the President of the Inter-American Foundation or the President's designee.

Salary offset means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his/her consent.

§ 1007.3 Applicability.

(a) These regulations are to be followed when:

(1) The Inter-American Foundation is owed a debt by an individual currently employed by another federal agency;

(2) The Inter-American Foundation is owed a debt by an individual who is a current employee of the Inter-American Foundation; or

(3) The Inter-American Foundation employs an individual who owes a debt to another federal agency.

§ 1007.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice, signed by the President, of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards at 4 CFR 101.1 *et seq.*;

(5) The employee's right to inspect, request, and receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 1007.5 Hearing.

(a) *Request for hearing.* (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the agency's notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the President of the Inter-American Foundation stating why the employee disputes the existence or amount of the debt. The petition for a hearing must be received by the President no later than fifteen (15) calendar days after the date of the notice to offset unless the employee can show good cause for failing to meet the deadline date.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards, 4 CFR

102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 1007.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include: a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions; the amount and validity of the debt, and the repayment schedule.

§ 1007.7 Coordinating offset with another Federal agency.

(a) *The Inter-American Foundation as the creditor agency.* (1) When the President determines that an employee of another federal agency owes a delinquent debt to the Inter-American Foundation, the President shall as appropriate:

(i) Arrange for a hearing upon the proper petitioning by the employee;

(ii) Certify to the paying agency in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that Foundation regulations for salary offset have been approved by the Office of Personnel Management;

(iii) If collection must be made in installments, the President must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment;

(iv) Advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(v) If the employee is in the process of separating, the Foundation must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification and notice of the employee's separation to the Inter-American Foundation. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund or similar payments, it must certify to the agency responsible for making such payments the amount of the debt and that the provisions of 5 CFR 550.1108 have been followed; and

(vi) If the employee has already separated and all the payments due from the paying agency have been paid, the President may request unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(b) *The Foundation as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that the Inter-American Foundation has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The Inter-American Foundation shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim.

(2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the Inter-American Foundation and before the debt is collected completely, the Inter-American Foundation must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished to the creditor agency with notice of the employee's transfer.

§ 1007.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the President's notice of intention to offset as provided in § 1007.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay interval for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary or leave payments in accordance with 31 U.S.C. 3716.

§ 1007.9 Refunds.

(a) The Inter-American Foundation will refund promptly any amounts deducted to satisfy debts owed to the IAF when the debt is waived, found not owed to the IAF, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by IAF to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this subsection shall not bear interest.

§ 1007.10 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 1007.11 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutes or contract(s) to the contrary.

§ 1007.12 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

Dated: January 16, 1992.

Adolfo A. Franco,

Acting General Counsel, Inter-American Foundation.

[FR Doc. 92-1712 Filed 1-23-92; 8:45 am]

BILLING CODE 7025-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8256]

RIN 1545-AS15

Reimbursement to State and Local Law Enforcement Agencies

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the temporary regulations (T.D. 8255), which were published Tuesday, May 16, 1989 (54 FR 21053). The regulations provided guidance to State and local law enforcement agencies in applying for reimbursement of expenses incurred in an investigation where resulting information furnished by the agency to the Service substantially contributed to the recovery of Federal taxes with respect to illegal drug or related money laundering activities.

EFFECTIVE DATE: May 16, 1989.

FOR FURTHER INFORMATION CONTACT: Gail M. Winkler (202) 566–4442 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections relate to reimbursement of expenses to State and local law enforcement agencies under section 7624 of the Internal Revenue Code of 1986. The provision was added to the Code by section 7602 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, 102 Stat. 4181, 4507–08 (1988)).

Need for Correction

As published, the temporary regulations contain errors which are in need of clarification.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

PART 301—PROCEDURE AND ADMINISTRATION

Accordingly, 26 CFR part 301 is corrected by making the following correcting amendments:

1. The authority citation for part 1 continues to read as follows:

Authority: Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805 * * * Section 301.7624–1T also issued under 26 U.S.C. 7624.

§ 301.7624–1T [Corrected]

2. Section 301.7624–1T is amended as follows:

a. In the flush material following paragraph (b)(1)(ii), the first phrase is revised to read "For purposes of this paragraph (b),".

b. Paragraph (f) is revised by removing the language "7624".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–1724 Filed 1–23–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 860

Contractor's Flight Operations

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending title 32, chapter VII of the CFR by removing part 860, Contractor's Flight Operations. This rule is removed because it has limited applicability to the general public. This action is the result of departmental review. The intended effect is to insure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AAIA, Pentagon, Washington, DC 20330–1000, telephone (703–614–3431).

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 860

Government contractor's flight operations.

Authority: 10 U.S.C. 8013.

PART 860—[REMOVED]

Accordingly, 32 CFR, chapter VII, is amended by removing part 860.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–1779 Filed 1–23–92; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD2–91–07]

Drawbridge Operation Regulations; Green River, KY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This action amends the drawbridge operating regulations governing the Paducah and Louisville Railroad Drawbridge on the Green River, Mile 94.8, at Rockport, Kentucky, to permit operation of the bascule span from a remote location.

EFFECTIVE DATE: This rule is effective on February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, 314–539–3724.

SUPPLEMENTARY INFORMATION: On November 6, 1991, the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** at 56 FR 56610. Interested persons were invited to participate in this rulemaking by submitting written views, comments, data, or arguments no later than December 23, 1991. One comment was received.

Drafting Information

The drafters of this notice are Wanda G. Renshaw, Project Officer, Commander(ob), Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri, 63103–2832, and Lieutenant Michael A. Suire, Project Attorney, Commander(dl), Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri, 63103–2832.

Discussion of Comment and Regulation

The single comment received expressed full support for the proposed rule. Consequently no changes have been made to the proposed rule. Under the prior regulations, when the vertical clearance beneath the closed drawspan was less than 34 feet, the drawspan was raised and kept in the open-to-navigation position. While open, bridge closures were automatically activated by approaching trains. When a train approached the open bridge, it activated a series of sound and visual signals that warned approaching vessels that the drawspan was about to close to allow passage of a train. When there was 34 feet or more beneath the closed drawspan, it was maintained in the closed-to-navigation position. When closed, mariners were required to give eight hours advance notice to the railroad in order to have the span opened. The advance notice was required to allow sufficient time for the railroad to send a drawtender to the bridge from Central City, Kentucky.

The Paducah and Louisville Railroad requested Coast Guard approval to install equipment at the bridge and in the train dispatcher's office that allows operation of the span from the rail

facility in Paducah, Kentucky. The drawspan will now be maintained in the closed position at all river stages and remotely opened only upon receipt of a request from an approaching vessel. Direct radio contact between the vessel and the train dispatcher will be established and maintained until the vessel clears the bridge. Communications will be by full-frequency range VHF radio in the dispatcher's office. Communications between the vessel and the dispatcher are enhanced with a directional VHF antenna installed on a 275-foot tower in the Paducah and Louisville rail yard located at Central City, Kentucky. The tower and antenna are about seven miles southwest of the bridge, and the antenna is linked to the radio at Paducah by microwave. The radio will be continuously monitored by trained dispatchers on duty 24 hours a day.

The drawspan in the closed position provides 41.3 feet vertical clearance at pool stage. The majority of vessels navigating the Green River are able to pass under the closed span at pool stage. The Railroad has calculated that train crossings exceed vessel transits by a factor of ten. During those periods when the vertical clearance was less than 34 feet and the drawspan maintained in the open position, the span was opened and closed 10 to 14 times a day for train crossings, resulting in high energy consumption as well as increased wear and tear on the bridge structure and machinery. Remote operation of the bridge will eliminate delays to vessels caused by late arrival of the drawtender as well as eliminate the need for vessels that are delayed by weather or mechanical causes to provide an additional 8 hour notification for a bridge opening. This action will improve the operation of the drawbridge because the vessel operator will be in direct communication with the person who will actually open the bridge.

Federalism Assessment and Certification

This action has been analyzed in accordance with the principles and criteria outlined in Executive Order 12612, and it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment. This action simplifies operation of the drawspan by maintaining the span in the closed to navigation position and only opening the span when requested by radio from an approaching vessel. The proposal will eliminate the requirement for providing advance notification to open the bridge at low water stages, and enable the bridge to be operated like a manned drawspan by establishing constant communication between the vessel operator and the person who controls the bridge opening.

Environmental Assessment and Certification

This action has been reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Certification is available for review on the docket.

Economic Assessment and Certification

This action has been reviewed under the provisions of Executive Order 12291 and determined not to be a major rule. In addition, these regulations are considered to be nonsignificant under the guidelines of DOT Order 2100.5 dated May 22, 1980, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An economic evaluation has not been conducted and is deemed unnecessary as the impact of these regulations is expected to be minimal. This rule allows the span to be maintained in the closed to navigation position, and only be opened for the passage of vessels after a request is made by radio. It will eliminate the need for advance notice to open the bridge at low water stages, and enable the bridge to be operated like a manned drawspan by establishing constant communication between the vessel operator and the person who controls the bridge opening. Pursuant to 5 U.S.C. 601, et seq., Regulatory Flexibility Act, it is certified that these regulations will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulation

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS [AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Part 117 is amended by revising § 117.415(c) to read as follows:

§ 117.415 Green River.

* * * * *

(c) The bascule span of the Paducah and Louisville Railroad Bridge, Mile 94.8 at Rockport, is maintained in the closed position and is remotely operated. Bridge clearance in the closed position in 41.3 feet at pool stage. Vessels requiring more clearance for passage must contact the remote bridge operator by radio telephone to request opening. The bridge operator will confirm by radiotelephone whether the bridge can be opened safely and promptly. If rail traffic is on or approaching the bridge, the bridge operator will advise the vessel that the bridge cannot be opened, and provide an approximate time when the bridge can be opened safely. Continuous radio contact between the bridge operator and the vessel shall be maintained until the vessel has transited and cleared the bridge.

Dated: January 10, 1992.

James L. Walker,

Captain, U.S. Coast Guard, Commander, Second Coast Guard District, Acting.

[FR Doc. 92-1765 Filed 1-23-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6919

[CO-930-4214-10; COC-56888]

Partial Revocation of Public Land Order 1825; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 10 acres of National Forest System land withdrawn for use as a picnic area. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land under the General Exchange Act of 1922. This action will open the land to such forms of disposition as may by law be made of National Forest System land. The land is temporarily closed to mining by a Forest Service exchange proposal. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: January 24, 1992.

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FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 1825, which withdrew National Forest System land for use as a picnic area, is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

Arapaho National Forest

T. 5 S., R. 78 W.,
Sec. 28, SW¼SW¼SE¼.

The area described contains 10 acres in Summit County.

2. At 9 a.m. on February 24, 1992, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: January 16, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92–1771 Filed 1–23–92; 8:45 am]

BILLING CODE 4310–JB–M

43 CFR Public Land Order 6920

[CO–930–4214–10; COC–0102703]

Public Land Order No. 6894, Correction; Withdrawal of Public Lands and National Forest System Lands for the Fryingpan-Arkansas Project; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct errors in acreage and land descriptions in Public Land Order No. 6894.

EFFECTIVE DATE: January 24, 1992.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

The acreages and land descriptions in Public Land Order No. 6894, 56 FR 52211–52212, October 18, 1991, FR Doc. 91–25328, are hereby corrected as follows:

In SUMMARY on page 52211, second column, the line which reads "SUMMARY: This order withdraws 2,122.58" is hereby corrected to read "SUMMARY: This order withdraws 2,222.58".

In SUMMARY on page 52211, second column, line 13 of the SUMMARY, which reads "797.34 acres of public lands are" is hereby corrected to read "897.34 acres of public lands are".

In paragraph 1, third column, line 10, which reads "Sec. 19, lot 46;" is hereby corrected to read "Sec. 19, lot 46, NE¼SE¼, E½NW¼SE¼, and SW¼SE¼;".

In paragraph 1, third column, line 28, which reads "approximately 797.34 acres of public lands" is hereby corrected to read "approximately 897.34 acres of public lands".

Dated: January 16, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92–1774 Filed 1–23–92; 8:45 am]

BILLING CODE 4310–JB–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 88–2, Phase I; FCC 91–382]

Filing and Review of Open Network Architecture Plans

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Bell Operating Companies (BOCs) filed further amendments to their Open Network Architecture (ONA) plans pursuant to the Commission's BOC ONA Amendment Order, (55 FR 27468 (July 3, 1990)). The Commission adopted a Memorandum Opinion and Order generally approving the further amendments to the BOC ONA plans submitted by the BOCs. The Commission also required the BOCs to file further amendments, and it established new annual reporting requirements in a number of areas. The Commission concluded that these amendments and annual reports will permit the Commission to ensure continuing BOC progress in the provision of new ONA services and new technical capabilities to enhanced service providers (ESPs).

EFFECTIVE DATE: February 24, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rose Crellin, Policy and Program Planning Division, Common Carrier Bureau (202) 632–9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, FCC 91–382, adopted November 21, 1991, and released December 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Summary of Memorandum Opinion and Order

1. The Bell Operating Companies (BOCs) filed initial Open Network Architecture (ONA) plans on February 1, 1988, pursuant to the Phase I Order, (51 FR 24350 (July 3, 1986)). Under the ONA requirements set forth in that order, the BOCs were required to unbundle basic service building blocks and offer all enhanced service providers (ESPs) equal access to these unbundled network elements. On November 17, 1988, the Commission adopted the BOC ONA Order (54 FR 3453 (Jan. 24, 1989)), approving in part the ONA plans of each of the BOCs. The Commission also ordered the BOCs to file ONA plan amendments; by May 19, 1989, addressing specifically identified deficiencies.

2. On April 12, 1990, the Commission approved the BOCs' amended ONA plans, subject to certain conditions (BOC ONA Amendment Order, 55 FR 27468 (July 3, 1990)). The Commission directed the BOCs to file minor amendments by July 15, 1990, and to submit further amendments by April 15, 1991 for Commission approval. In addition, the Commission stated that it would continue to oversee ONA development, and that it would continue to monitor the evolution of ONA with periodic reports, further amendments, or other actions.

3. In response to the amendments filed by the BOCs in July 1990 and April 1991, the Commission adopted a Memorandum Opinion and Order (FCC 91–382, adopted November 21, 1991). The Commission generally found that the BOCs' further amendments were responsive to the requirements of the

BOC ONA Amendment Order. The Commission determined that the BOCs' further amendments reflect BOC active participation in Information Industry Liaison Committee (IILC) activities, and progress in developing and providing evolutionary ONA services to ESPs within the ONA model that the Commission adopted in the BOC ONA Order. The Commission required the BOCs to make further amendments to their ONA plans, and established new annual reporting requirements to enable the Commission to monitor the BOCs' progress in providing ONA capabilities to ESPs.

4. The Commission required that once structural separation requirements are removed for a BOC, it must amend its ONA plan prior to offering an enhanced service that uses a basic serving arrangement (BSA), basic service element (BSE), or complementary network service (CNS) other than those listed in its approved ONA plan.

5. The Commission also required each BOC to amend its ONA plan by February 14, 1992, to include: (1) A description of its plans for the unbundling of Signaling System 7 (SS7), Integrated Services Digital Network (ISDN), and Intelligent Network (IN), and generally how these services will fit into the ONA framework; and (2) a description of changes to its customer proprietary network information (CPNI) plan that it makes to reflect the Commission's modified CPNI requirement adopted in the BOC Safeguards Order (FCC 91–381, adopted November 21, 1991), including changes to the multiline CPNI notification form, procedures for customer authorization of CPNI access by the BOCs' own enhanced services marketing personnel and by other ESPs, and procedures for restricting unauthorized access to a customer's CPNI.

6. The Commission required each BOC to amend its ONA Plan by April 15, 1992, to include: (1) A description of changes in its databases that are password/ID or otherwise restricted from access by BOC enhanced services marketing personnel to reflect the Commission's modified CPNI requirement adopted in the BOC Safeguards Order; and (2) additional CNSs that will be offered as BSEs.

7. The Commission required each BOC to report on the following initially by April 15, 1992, and on or before April 15 annually thereafter: (1) Annual projected deployment schedules for its ONA services by type of ONA service (BSA, BSE, CNS, or ancillary network service (ANS)) in terms of percentage of access lines served system-wide and by market-area. The April 15, 1992 report should cover the years beginning July 1, 1993, 1994, and 1995. Subsequent reports should cover the three-year period for the three corresponding future years; (2) new ONA service requests from ESPs and their disposition, and disposition of ONA service requests that have previously been designated for further evaluation; (3) those ONA service requests previously deemed technically infeasible, and their disposition; (4) projected deployment of SS7, ISDN, and IN in terms of percentage of access lines served system-wide and on a market-area basis. SS7 data should be reported by Technical Reference (TR) 317 and TR 394, ISDN data by basic rate interface (BRI) and primary rate interface (PRI), and IN data by release number or other designation by type; (5) new ONA services available through SS7, ISDN and IN, and plans to provide these services; (6) progress on the efforts in the IILC on continuing activities for the implementation of service-specific and long-term uniformity issues; (7) progress in providing billing information, including billing name and address (BNA), line-side calling number identification (CNI), or possible CNI alternatives, and call detail services to ESPs; (8) progress in developing and implementing OSS services and ESP access to those services; (9) progress on the uniform provision of ESP access to operations support systems (OSS); and (10) a list of BSEs used in the provision of BOC's own enhanced services.

8. The Commission required the BOCs by March 31, 1992, and every six months thereafter, to work through the IILC: (1) To develop one consolidated nationwide matrix of BOC ONA services and state and federal ONA tariffs, and file the matrix with the Commission; (2) to file computer diskettes and printouts of data regarding state and federal tariffs; (3) to file a printed copy and computer diskette of the ONA Services User Guide; (4) to file updated information contained in appendix A of the January 31, 1991 Cross Reference Guide on ESP requests received and how they were addressed by the BOCs with details and matrices; (5) to file updated information contained in appendix B of the January 31, 1991 Cross Reference Guide on BOC responses to the requests and to the matrix; and (6) to file updated information contained in appendix C of the January 31, 1991 Cross Reference Guide on services offered by the BOC in response to the requests.

Ordering Clauses

1. *It is hereby ordered,* that pursuant to Sections 1, 4(i) and (j), 201, 202, 203, 205, 214, 218, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. § § 151, 154(i) and (j), 201, 202, 203, 205, 214, 218, and 403, the BOC ONA Plan Further Amendments of Ameritech, Bell Atlantic, BellSouth, NYNEX, Pactel, SWBT, and US West are approved, subject to the conditions described herein.

2. *It is further ordered* that the BOCs must provide the reports and amendments as described herein.

List of Subject in 47 CFR Part 64

Communications common carriers; Computer technology.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–1690 Filed 1–23–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–231; RM–6706, RM–6406, RM–5381, RM–5604, RM–7459, RM–7325, RM–5094, RM–7372]

Radio Broadcasting Services; Shreveport, Bastrop, Homer, Mansfield, Ruston, Vivian and Jonesboro, LA; El Dorado and Stamps, AR; Atlanta, Henderson, Hooks and San Augustine, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 259C2 for Channel 261A at Shreveport, Louisiana, and modifies the license of Station KMJJ–FM, Channel 261A, Shreveport, Louisiana, to specify operation on Channel 259C2. The reference coordinates for the Channel 259C2 allotment at Shreveport are 32–32–30 and 93–46–06. This document also makes related channel allotments at Atlanta, Texas; El Dorado, Arkansas; Hooks, Texas; Henderson, Texas; Jonesboro, Louisiana; Mansfield, Louisiana; Stamps, Arkansas; Bastrop, Louisiana; Homer, Louisiana; Vivian, Louisiana; and San Augustine, Texas.

DATES: Effective March 2, 1992; the window period for filing applications for the Channel 238A allotment at Stamps, Arkansas, and the Channel 284C3 allotment at Mansfield, Louisiana, will open on, March 3, 1992, and close on April 2, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Third Report and Order, MM Docket No. 84–

231, adopted December 20, 1991, and released January 14, 1992.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Louisiana by removing Channel 261A and adding Channel 259C2 at Shreveport; by removing Channel 239A and adding Channel 287A at Vivian; by removing Channel 260A and adding Channel 272A at Homer; by removing Channel 285A and adding Channel 285C3 at Jonesboro; and by adding Channel 284C3 at Mansfield.

3. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by removing Channel 257A and adding Channel 254C3 at El Dorado; and by adding Channel 236A at Stamps.

4. Section 73.202(b), the Table of FM Allotments, is amended under Texas by removing Channel 257A and adding Channel 261C2 at Atlanta, by removing Channel 240A and adding Channel 240C3 at Hooks; by removing Channel 261A and adding Channel 260A at Henderson; and by removing Channel 288A and adding Channel 223A at San Augustine.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-1446 Filed 1-23-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-440; RM-6763]

Radio Broadcasting Services; Texarkana, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 292C2 for 292A at Texarkana, Arkansas, and modifies the permit of State Line County Broadcasting Company for Station KUKB to specify operation on the higher class channel. See 54 FR 41465 (October 10, 1989). Channel 292C2 can be allotted to Texarkana in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.5 kilometers (10.3 miles) southeast at petitioner's requested site at coordinates 33-18-05 and 93-57-10. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Arthur Scrutchins, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-440, adopted January 9, 1991, and released January 21, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 292A and adding Channel 292C2 at Texarkana.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-1816 Filed 1-23-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 911176-2016]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final notice of 1992 initial specifications of groundfish and Pacific halibut bycatch management measures; directed fishing allowances; prohibition of directed fishing; and request for comments.

SUMMARY: NMFS announces initial specifications of groundfish in the Gulf of Alaska (GOA) for the 1992 fishing year and determinations pertaining to management of the GOA groundfish fisheries during 1992. This action is necessary to inform the public of the determinations. The measures are intended to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective 00:01 hours a.m., Alaska local time (a.l.t.), January 20, 1992. Comments are invited on the apportionments of reserves on or before February 3, 1992.

ADDRESSES: Comments on the apportionments of reserves, or directed fishery closures should be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 021668, Juneau, AK 99802. Copies of an environmental assessment (EA) may also be obtained from this address. The final Stock Assessment and Fishery Evaluation (SAFE) report, dated November 1991, may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

This notice announces for the 1992 fishing year: (1) Total allowable catches (TACs) for each category of groundfish in the GOA and apportionments thereof to domestic annual processing (DAP); (2) apportionment of reserves to DAP; (3) assignments of the sablefish TAC to authorized fishing gear users; (4) prohibitions of directed fishing; (5) prohibited species catch (PSC) limits relevant to fully utilized groundfish species; (6) Pacific halibut PSC mortality limits; and (7) seasonal apportionments of the Pacific halibut PSC limits. Each of these measures is discussed as follows:

The process for determining TACs for groundfish species in the GOA is established by regulations implementing the FMP which was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations

implementing the FMP appear at 50 CFR 611.92 and part 672. The sum of the TACs for all species must fall within the combined optimum yield (OY) range established for these species of 116,000–800,000 metric tons (mt) (§ 672.20(a)(2)(ii)).

Under § 611.92(c)(1) and § 672.20(a)(2)(i), TACs are apportioned initially among DAP, joint venture processing (JVP), total allowable level of foreign fishing (TALFF), and reserves. The DAP amounts are intended for harvest by U.S. fisherman for delivery and sale to U.S. processors. Any JVP amounts are intended for joint ventures in which U.S. fishermen typically deliver their catches to foreign processors at sea. Any TALFF amounts are intended for harvest by foreign fishermen. The reserves for the GOA are 20 percent of the TAC for pollock, Pacific cod, flatfish target species categories, and "other species." If necessary, these reserve amounts may be set aside for possible reapportionment to DAP and/or JVP if the initial apportionments prove inadequate. Reserves that are not reapportioned to DAP or JVP may be reapportioned TALFF. Other groundfish target species, including sablefish and the rockfish species, are fully utilized by DAP, and no reserves are established.

The Council met during September 23–28, 1991, and developed recommendations for proposed 1992 TAC specifications for each target species category of groundfish on the basis of the best available scientific information. The Council also recommended other management measures pertaining to the 1992 fishing year.

Under § 672.20(c)(1), Council recommendations were proposed in the **Federal Register** (56 FR 58866; November 21, 1991). No JVP or TALFF amounts were specified. Under § 672.20(c)(1)(i), one-fourth of the proposed specifications and apportionments and one-fourth of the Pacific halibut PSC limits are effective January 1 on an interim basis and are now superseded by this **Federal Register** notice of final specifications.

Written comments on the proposed specifications and other management measures were requested until December 18, 1991. The Director, Alaska Region, NMFS (Regional Director) received no comments.

The Council met December 2–9, 1991, to review the best available scientific information concerning groundfish stocks, and intended industry harvest plans for 1992. The information is contained in the Stock Assessment and Fishery Evaluation Report for the 1992 Gulf of Alaska Groundfish Fishery (SAFE report) dated November 1991, which was prepared and presented by the GOA Plan Team to the Council and to the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP). New information contained in the November SAFE report includes the following.

1. For Pollock

Data from the 1991 spring hydroacoustic survey in Shelikof Strait conducted by the Alaska Fisheries Science Center; estimates of catch-at-age from the spring 1991 fishery; annual estimates of weight-at-age from the hydroacoustic survey; and revised estimates of maturity-at-age.

2. For Groundfish, Generally

Data from the NMFS Observer Program Office for 1991; revised estimates of groundfish biomass from the 1990 bottom trawl survey in the GOA; and updated estimates of catch.

The SSC adopted Acceptable Biological Catch (ABC) recommendations from the Plan Team, as provided in the SAFE report, for Pacific cod, deep-water flatfish, shallow-water flatfish, flathead sole, arrowtooth flounder, "other rockfish", shortraker/rougheye rockfish, pelagic shelf rockfish, and demersal shelf rockfish. The SSC recommended different ABCs for pollock, Pacific ocean perch, and thornyhead rockfish. The Council adopted SSC recommendations for the ABC for each target species category except pollock.

The Council recommended that TACs be equal to ABC for Pacific cod, sablefish, shortraker/rougheye rockfish, "other slope rockfish", pelagic shelf rockfish, demersal shelf rockfish, and thornyhead rockfish. The Council recommended that TAC be less than ABC for pollock, deep-water flatfish, shallow-water flatfish, flathead sole, arrowtooth flounder, and Pacific ocean perch.

The sum of the TACs approved by the Council for GOA groundfish is 282,066 mt (Table 1), which is within the OY range specified by the FMP. New information and subsequent actions by the Council for those target species categories for which final ABCs are different from those contained in the final SAFE report are summarized following Table 1. Additional information can be found in the SAFE report.

TABLE 1.—FINAL 1992 SPECIFICATIONS FOR OVERFISHING LEVELS, ACCEPTABLE BIOLOGICAL CATCHES (ABC), AND TOTAL ALLOWANCE CATCHES (TAC) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE SHUMAGIN (SH), CHIRIKOF (CH), KODIAK (KD), WEST YAKUTAT (WYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA (GW). SPECIFICATIONS OF DOMESTIC ANNUAL PROCESSING (DAP) EQUAL TAC. VALUES ARE IN METRIC TONS

Species	Overfishing level	Area [1]	ABC	TAC=DAP
Pollock	219,000	SH	96,000	19,320
		CH		18,480
		KD		46,200
		W/C [2]		94,000
	8,900	E	3,400	3,400
		Total	99,400	87,400
Pacific cod		W	23,500	23,500
		C	39,000	39,000
		E	1,000	1,000
	87,900	Total	63,500	63,500
Deep water flatfish [3]		W	1,740	1,740
		C	33,550	15,000
		E	3,990	3,000
	51,500	Total	39,280	19,740
Shallow water flatfish [4]		W	27,480	3,000
		C	21,260	7,000
		E	1,740	1,740

TABLE 1.—FINAL 1992 SPECIFICATIONS FOR OVERFISHING LEVELS, ACCEPTABLE BIOLOGICAL CATCHES (ABC), AND TOTAL ALLOWANCE CATCHES (TAC) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE SHUMAGIN (SH), CHIRIKOF (CH), KODIAK (KD), WEST YAKUTAT (WYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA (GW). SPECIFICATIONS OF DOMESTIC ANNUAL PROCESSING (DAP) EQUAL TAC. VALUES ARE IN METRIC TONS—Continued

Species	Overfishing level	Area [1]	ABC	TAC=DAP
Flathead sole	70,900	Total	50,490	11,740
		W	12,580	2,000
		C	31,990	5,000
		E	3,710	3,000
Arrowtooth flounder	63,100	Total	48,280	10,000
		W	38,880	5,000
		C	253,320	15,000
		E	11,680	5,000
Sablefish	427,000	Total	303,880	25,600
		W	2,500	2,500
		C	9,570	9,570
		WYK	3,740	3,740
		SEO	4,990	4,990
Other rockfish [6]	28,200	Total	20,800	20,800
		W	1,390	1,390
		C	6,510	6,510
		E	6,160	6,160
Pacific ocean perch [6]	20,710	Total	14,060	14,060
		W	1,820	1,470
		C	1,720	1,561
		E	2,390	2,169
Shortraker/rougheye rockfish [7]	5,730	Total	5,730	5,200
		W	108	100
		C	1,290	1,290
		E	570	570
Pelagic shelf rockfish [8]	2,900	Total	1,900	1,900
		W	1,212	1,212
		C	4,393	4,393
		E	1,281	1,281
Demersal shelf rockfish [9]	11,380	Total	6,886	6,886
Thornyhead rockfish	732	SEO	550	550
Other species [10]	2,440	GW	1,798	1,798
	NA	GW	NA	13,432
		TOTAL	656,604	282,066

Footnotes.
[1] See figure 1 of § 672.20 for description of regulatory areas/districts.
[2] TAC for W/C Regulatory Area is 84,000 mt, representing the sum of the Shumagin (SH), Chirikof (CH), and Kodiak (KD) districts.
[3] "Deep-water flatfish" means rex sole, Dover sole, and Greenland turbot.
[4] "Shallow-water flatfish" means flatfish not including deep water flatfish, arrowtooth flounder, or flathead sole.
[5] "Other rockfish" in the West Yakutat district and in the Central and Western Regulatory Areas means the 8 species of demersal shelf rockfish listed in footnote #9, below, and the following 17 rockfish species: *Sebastes polyspinis* (northern rockfish), *S. zacentrus* (sharpchin rockfish), *S. aurora* (aurora rockfish), *S. melanostomus* (blackgill rockfish), *S. goodei* (chilipepper rockfish), *S. crameri* (darkblotch rockfish), *S. elongatus* (greenstriped rockfish), *S. variegatus* (harlequin rockfish), *S. wilsoni* (pygmy rockfish), *S. jordani* (shortbelly rockfish), *S. diploproa* (splitnose rockfish), *S. saxicola* (stripetail rockfish), *S. miniatus* (vermilion rockfish), *S. reedi* (yellowmouth rockfish), *S. paucispinis* (bocaccio rockfish), *S. brevispinis* (silvergrey rockfish), and *S. proriger* (redstripe rockfish). "Other rockfish" in the Southeast Outside District means the above 17 species, but excludes the eight species of demersal shelf rockfish listed in footnote number 9 below.
[6] Pacific ocean perch means *Sebastes alutus*.
[7] Shortraker/rougheye rockfish includes 2 species *Sebastes borealis* and *S. aleutianus*, respectively.
[8] "Pelagic shelf rockfish" includes 5 species: *Sebastes melanops* (black rockfish) *S. mystinus*, (blue rockfish) *S. ciliatus* (dusky rockfish) *S. entomelas* (widow rockfish), and *S. flavidus* (yellowtail rockfish).
[9] "Demersal shelf rockfish" includes 8 species: *Sebastes nebulosus* (China rockfish), *S. caurinus* (copper rockfish), *S. maliger* (quillback rockfish), *S. helvomaculatus* (rosethorn rockfish), *S. nigrocinctus* (tiger rockfish), *S. ruberrimus* (yelloweye rockfish), *S. pinniger* (canary rockfish), and *S. babcocki* (red banded rockfish).
[10] The category "other species" includes Atka mackerel, sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC is equal to 5 percent of the TACs of the target species.

1. New Information on Acceptable Biological Catch Determinations

Pollock—The exploitable biomass for pollock in the combined Western and Central Regulatory Areas during 1992 is 838,000 mt, which is based on the Stock Synthesis (SS) model. The Plan Team incorporated two revisions to information used for determining 1991 exploitable biomass. First, biomass estimates determined from the 1984, 1987, and 1990 bottom trawl surveys have been revised. This revision was necessary to accommodate differences related to survey methodologies and resulting data obtained from the surveys. Second, estimates of discards occurring in the domestic commercial fishery since 1986 were included. These changes were reflected in the preliminary SAFE report, dated September 1991.

New information about pollock stocks has become available since September. This information includes: (1) Biomass estimates from the 1991 hydroacoustic survey; (2) estimates of catch-at-age from the spring 1991 commercial fishery; (3) annual estimates of weight-at-age from the hydroacoustic survey; (4) revised estimates of maturity-at-age; (5) updated estimates of discard and catch; (6) historical length-frequency data; and (7) an estimate of biomass for the Chirikof statistical area in 1975 that was expanded to provide a GOA-wide estimate.

The Plan Team estimated ABC for pollock to be 108,000 mt, which represents the average expected yield between the years 1992–1994 under a pessimistic recruitment scenario and a fishing strategy in which fishing mortality (F) equals F_{max}. The SSC

believed that the density-dependent relationship used by the Plan Team was not credibly demonstrated and could not support the F_{max} derived from the relationship. The SSC further believed that estimating the pollock ABC should continue to be done with caution to reflect uncertainty about the abundance of pollock stocks. The SSC also noted that a conservative exploitation strategy was appropriate because the pollock population biomass continues to decline, and because pollock are important to some marine mammals and sea birds for food. The SSC recommended that the pollock ABC in the Western/Central Regulatory Area be set at 84,000 mt, based on a harvest rate of 10 percent of the estimated pollock biomass at the beginning of the year.

The Council, on reviewing the Plan Team and SSC recommendations, recommended that the ABC for pollock in the combined Western/Central (W/C) Regulatory Area be 98,000 mt. This amount is midway between the Plan Team recommendation of 108,000 mt and the SSC recommendation of 84,000 mt. Nonetheless, the Council adopted the AP recommendation that TAC be 84,000 mt for the combined W/C Regulatory Areas. The Council also adopted the SSC and AP recommendations that specifications for ABC and TAC for pollock in Eastern Regulatory Area should be 3,400 mt.

Regulations that implement Amendment 25 to the FMP allow apportioning the pollock TAC specified for the combined W/C Regulatory Area among the Shumagin, Chirikof, and Kodiak Districts. These are coextensive with Statistical Areas 61, 62, and 63, respectively. Apportionments are proportional to distribution of exploitable biomass as determined by the most recent NMFS biomass surveys. These respective proportions are 23, 22, and 55 percent. Accordingly, respective apportionments would be 19,320 mt, 18,480 mt, and 46,200 mt. Table 1 of this notice establishes these apportionments.

Pacific ocean perch—The exploitable biomass is 229,100 mt based on the average of the 1987 and 1990 trawl surveys. The SSC recommended that ABC be 5,730 mt, using an exploitation rate one-half of that recommended by the Plan Team. The SSC also recommended that the ABC be apportioned among the regulatory areas according to the following amounts: Western—1,620 mt; Central—1,720 mt, and Eastern—2,390 mt. Because the sum of these amounts equaled the amount defined by the FMP to be overfishing, the AP recommended that TACs be established among the regulatory areas as follows: Western—1,470 mt, Central—1,561 mt, and Eastern—2,169 mt. The Council adopted the SSC recommendations for ABC and the AP recommendations for TACs.

Apportionment of TACs

The Council, after adopting the TACs in Table 1, deliberated on the apportionment of the TACs for each category between DAP, JVP, TALFF, and reserve. Based on 1991 harvest levels and expected markets in 1992, the Council determined that the TAC for each target species category will be fully harvested by U.S. fishermen. The Council recommended that DAP be equal to TAC for each target species category. Therefore, no amounts are available for JVP or for TALFF.

NMFS has reviewed the Council's recommendations for ABCs, TACs, and apportionments of TAC to DAP for each target species category and hereby approves and implements these specifications of TAC and DAP under § 672.20(c)(1).

2. Apportionment of Reserves to DAP

Regulations implementing the FMP stipulate that 20 percent of each TAC for pollock, Pacific cod, flatfish species, and the "other species" category be set aside in a reserve for possible reapportionment at a later date (§ 672.20(a)(1)(i)). Because DAP is projected to need all reserve amounts, NMFS is reapportioning reserves for each species category to DAP at this time. By doing so, NMFS is anticipating that the domestic industry will need all of the DAP amounts so specified. The specifications of DAP for pollock, Pacific cod, flatfish categories, and the "other species" category that are shown in Table 1 of this notice reflect DAP totals after apportioning reserves to TAC.

Under § 672.20(d)(5)(iv), the public may submit comments on the apportionments of reserves. Comments should focus on whether, and the extent to which, vessels of the United States will harvest reserve or DAP amounts during the remainder of the year and whether, and the extent to which, U.S. harvested groundfish can or will be processed by U.S. fish processors or received at sea by foreign fishing vessels.

3. Assignments of the Sablefish TAC to Authorized Fishing Gear Users

Sablefish TACs for each of the regulatory areas and districts are further assigned to hook-and-line and trawl gear (Table 2) according to the percentages required by § 672.24(c).

TABLE 2.—SABLEFISH TOTAL ALLOWABLE CATCHES (TACS) IN METRIC TONS, ALLOCATED TO AUTHORIZED GEAR IN THE REGULATORY AREAS AND DISTRICTS OF THE GULF OF ALASKA

Area/district	TAC	Hook-and-line share	Trawl share
Western	2,500	2,000	500
Central	9,570	7,656	1,914
West Yakutat	3,740	3,553	187
Southeast Outside/ East Yakutat	4,990	4,740	250
Total	20,800	17,949	2,851

4. Prohibition of Directed Fishing

(A) Shortraker/Rougheye Rockfish in the Western Regulatory Area

The Regional Director has determined that the TAC for shortraker/rougheye rockfish will be taken as incidental catch to support other directed fisheries for other groundfish species in the Western Regulatory Area.

Under authority of § 672.20(c)(2), the Regional Director is establishing a directed fishing allowance in the Western Regulatory Area of zero mt for shortraker/rougheye rockfish effective January 17, 1992 and prohibits for the remainder of the fishing year directed fishing for shortraker/rougheye rockfish in the Western Regulatory Area. Under § 672.20(g)(3), the operator of a vessel is engaged in directed fishing for shortraker/rougheye rockfish if he retains, at any particular time during a trip, an amount of this species group equal to or greater than 20 percent of all other fish species retained at the same time on the vessel during the same trip.

(B) Sablefish by Vessels Using Trawl Gear in the Central and Western Regulatory Areas

The Regional Director has determined that the amount of the TAC for sablefish assigned to vessels using trawl gear will be taken as incidental catch to support other directed fisheries for other groundfish species in the Western and Central Regulatory Areas.

Under authority of § 672.20(c)(2), the Regional Director is establishing a directed fishing allowance of zero mt for sablefish in the Western and Central Regulatory Areas. This allowance is applicable to vessels using trawl gear, effective January 17, 1992 and prohibits, for the remainder of the fishing year, directed fishing for sablefish in the Western and Central Regulatory Areas. Under § 672.20(g)(1), the operator of a vessel is engaged in directed fishing for

sablefish if he retains at any particular time during a trip an amount of this species equal to or greater than the sum of 15 percent of the aggregate amount of deep-water flatfish and rockfish of the genera *Sebastes* and *Sebastolobus*, plus 5 percent of all other fish species retained at the same time on the vessel during the same trip.

This action is in addition to a closure to directed fishing for sablefish in the Eastern Regulatory Area by vessels using trawl gear. The closure is already required by regulations at 50 CFR 672.24(c)(1).

(C) Pollock in the Eastern Regulatory Area

The Regional Director has determined that the TAC for pollock will be taken as incidental catch to support other directed fisheries for other groundfish species in the Eastern Regulatory Area.

Under authority of § 672.20(c)(2), the Regional Director is establishing a directed fishing allowance in the Eastern Regulatory Area of zero mt for pollock effective January 17, 1992 and prohibits, for the remainder of the fishing year, directed fishing for pollock in the Eastern Regulatory Area. Under § 672.20(g)(3), the operator of a vessel is engaged in directed fishing for pollock if he retains, at any particular time during a trip, an amount of this species group equal to or greater than 20 percent of all other fish species retained at the same time on the vessel during the same trip.

5. PSC Limits Relevant to Fully Utilized Groundfish Species

Under § 672.20(b)(1), if the Secretary determines after consultation with the Council that the TAC for any species or species group will be fully utilized in the DAP fishery, he may specify a groundfish PSC limit applicable to the JVP fisheries for that species or species group.

The Council recommended that DAP equal TAC for each species category. Zero amounts of JVP are available. The Secretary concurs with the Council's recommendation, and has not established any JVP amounts. Therefore, no groundfish PSC limits under § 672.20(b)(1) are necessary. If future apportionments from DAP to JVP occur, the Secretary will also make the necessary determinations under § 672.20(c)(4) for PSC limits at that time.

6. Pacific Halibut PSC Mortality Limits

Under § 672.20(f)(2)(ii), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be apportioned to pot gear. For 1992, the Council recommended that 2,000 mt and 750 mt of Pacific halibut mortality be apportioned to trawl and hook-and-line gear, respectively. For purposes of accounting for Pacific halibut bycatch mortality, hook-and-line gear includes jigs.

The Regional Director will use observed halibut bycatch rates and reported groundfish catch to project when the 1992 Pacific halibut PSC limits will be reached during the fishing year. Mortality rates vary, depending on the gear being used. Based on information contained in the SAFE report (November 1991), assumed mortality rates of Pacific halibut that are caught as bycatch are the following: non-pelagic trawl—65 percent; hook-and-line—16 percent; and pot, 10 percent.

The 65 percent mortality rate for trawl-caught Pacific halibut bycatch will result in smaller amounts of Pacific halibut caught before the 2,000 mt cap is reached, compared to the assumed 50 percent mortality rate of previous years. Whether this rate will constrain the groundfish trawl fisheries is speculative. Fishermen are expected to actively change fishing methods in response to a vessel incentive program in which a fisherman is subject to a civil penalty if his observed Pacific halibut bycatch rate exceeds a standard rate specified in regulations. Full harvests of groundfish, subject to market constraints, may occur even under a lower Pacific halibut morality cap.

The Council recommended that pot gear be exempt from accountability for Pacific halibut bycatch mortality for the 1992 fishing year. Groundfish catches by pot gear have been small to date. About 9,700 mt of Pacific cod were caught through December 8, 1991. Observer information, although not substantial, suggests that bycatch mortality is low, about 10 percent of the Pacific halibut caught in pots. Using this rate, NMFS estimates that about 5 mt of Pacific halibut mortality has occurred in the GOA pot fisheries during 1991.

NMFS concurs with the Council's recommendations listed above. The following types of information as presented in, and summarized from, the 1992 SAFE report, or as otherwise available from NMFS, Alaska Department of Fish and Game (ADF&G), the International Pacific Halibut Commission (IPHC), or public testimony have been considered.

(A) Estimated Pacific Halibut Bycatch in Prior Years

The best available information on estimated Pacific halibut bycatch is 1991 data on the groundfish fishery collected by NMFS observers. The total calculated Pacific halibut bycatch mortality by all gear types through November 22, 1991, was 2,864 mt. Resulting mortality by gear type was trawl gear—2,034 mt (71 percent of all mortality), hook-and-line gear—825 mt (29 percent), and pot gear—5 mt (less than 1 percent). In 1991, these amounts constrained groundfish catches in fisheries using hook-and-line gear and trawl gear: hook-and-line fisheries were closed on July 8, 1991, and trawl fisheries were closed on October 14, 1991. Pot gear was exempt from Pacific halibut PSC accountability during 1991.

(B) Expected Changes in Groundfish Catch

The 1992 TACs for pollock, Pacific cod, and flatfish are reduced from 1991. Catches of pollock and Pacific cod during 1991 were larger than the specified TACs for 1992. Actual catches of these two species in 1992 are expected to reach 1992 TACs. Full attainment of the pollock TAC is expected because pollock can be harvested with pelagic trawls. The 1992 TACs for rockfish and flatfish in the aggregate are larger than the 1991 catches. Pacific halibut bycatch may be significant in these fisheries, depending on the time of year and actual species being fished. Because the starting date for the rockfish trawl fishery is expected to be delayed until July 1 for purposes of reducing Pacific halibut bycatches, TACs for each of the rockfish target species categories are expected to be attained. The Pacific halibut PSC mortality limit is expected to constrain trawl fisheries for flatfish.

Sablefish is the only GOA groundfish species that is allocated by gear type. When the hook-and-line fishery was closed on July 8, 1991, all the TAC for sablefish assigned to hook-and-line in the Eastern and Central Regulatory Areas had been caught. In the Western Regulatory Area, 747 mt of sablefish TAC remained unharvested during 1991 because the Pacific halibut PSC assigned to hook-and-line gear had been reached. A shortfall may again occur in 1992.

(C) Expected Changes in Groundfish Stocks

Reductions in the TACs for pollock, Pacific cod, sablefish, and rockfish have resulted from new analyses of information obtained from stock assessments that show decreased biomass estimates, as derived from the 1990 bottom-trawl survey. Except for reduced abundance of rock sole, which is a component of shallow-water flatfish, all flatfish species are at high levels of abundance. A full discussion of

these changes is contained in the final SAFE report.

(D) Current Estimates of Pacific Halibut Biomass and Stock Condition

The most current stock assessment of Pacific halibut biomass from the IPHC indicates that the total exploitable biomass of Pacific halibut available in 1991 was 236.0 million pounds (106,576 mt). This amount represents a decline of 8 percent from 1990, which is a rate slightly higher than the 5–6 percent decline observed in recent years. A substantial decline in recruitment (abundance of 8-year-old fish) was also noted for 1991, an observation that is consistent with cyclical patterns of recruitment that have occurred over the last 50 years. The 1991 13-year-old age class continues to make up a large part of the catch and should continue to influence the catch for several more years. The low recruitment exhibited in recent years in conjunction with an exploitation rate of 0.35 in the commercial fishery can be expected to contribute to a continued decline in the overall stock at a rate of 5–15 percent over the next several years.

(E) Potential Impacts of Expected Fishing for Groundfish on Pacific Halibut Stocks and U.S. Pacific Halibut Fisheries

Impacts of the groundfish fishery on Pacific halibut stocks and the halibut fisheries will be constrained by the overall PSC mortality limit. The 1992 groundfish fisheries are expected to use the entire Pacific halibut PSC limit of 2,750 mt. According to the IPHC, the PSC limit will result in an equal amount of 2,750 mt being deducted from the constant exploitable yield (CEY). The effect of this deduction depends on the CEY as determined by the IPHC. The CEY represents about one-third of the exploitable biomass, based on an exploitation rate of 0.35. The allowable directed commercial catch is determined by subtracting recreational catch and waste and bycatch amounts from the CEY, and then providing the remainder to the directed fishery.

(F) Methods Available for, and Costs of, Reducing Pacific Halibut Bycatches in Groundfish Fisheries

Methods available for reducing Pacific halibut bycatch include (1) reducing amounts of groundfish TACs, (2) reducing the Pacific halibut bycatch rate through vessel incentive programs, (3) gear modifications, (4) changes in groundfish fishing seasons, and (5) reducing the PSC mortality limits. Reductions in groundfish TACs provide no incentives for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TACs depend on species and amounts of groundfish foregone.

The Council has recommended that NMFS implement regulatory changes that would place all trawl fisheries under the Vessel Incentive Program (VIP) during 1992. This action, if approved by the Secretary, is a change from existing regulations that only include the Pacific cod and rockfish trawl fisheries under the VIP. The proposed expansion of the program is intended to encourage operators of all trawl vessels to take action to reduce Pacific halibut bycatch rates such that each vessel's rate observed in a fishery during a month would not exceed specified standard bycatch rates. If the standard rate is exceeded, the vessel operator would be subject to civil penalties under the Magnuson Act.

The Council also has recommended that NMFS delay, by regulatory amendment, the start of the trawl fishery for all rockfish target species categories, except demersal shelf rockfish, until July 1. One purpose of the delay is to prohibit the rockfish trawl fishery until such time when Pacific halibut would have migrated into shallower water, thereby escaping the rockfish trawl fishery, which largely is conducted at depths through which Pacific halibut migrate during late winter and spring months. If this regulation is implemented, fewer Pacific halibut might be caught as bycatch in the rockfish trawl fishery, providing more Pacific halibut PSC to support other trawl fisheries.

The start of the sablefish hook-and-line fishery is May 15, as it was in 1991. The purpose of this date is to allow sufficient time for most Pacific halibut to migrate into shallower water and thereby escape the sablefish fishery, which is primarily conducted in deep water. During 1991, observed bycatch rates in the sablefish fishery were lower in each management area during May than corresponding rates in the same areas during April in 1990. During June, bycatch rates increased. Although the reason for the increase is not certain, overcrowding on the fishing grounds may have caused some fishermen to fish in shallower water where Pacific halibut would be more prevalent in June, causing the rates to increase.

Regulations at 50 CFR 672.24(b)(2) require groundfish pots to have Pacific halibut exclusion devices to reduce Pacific halibut bycatches by that gear type. Amounts of Pacific halibut PSC that otherwise might have been caught by pots have been made available to trawl and hook-and-line gear, promoting the potential for increased groundfish catches.

While the numerical mortality limits for Pacific halibut have not been reduced, the new assumed mortality rate applied to trawl gear has increased from 50 percent to 65 percent. This increase will result in the trawl mortality limit being reached sooner.

NMFS and the Council will continue to review methods listed under (F) to determine their effectiveness. Changes will be implemented, as necessary, in response to this review, either through regulatory or FMP amendments.

In keeping with the goals and objectives of the FMP to reduce Pacific halibut bycatches while providing opportunity to harvest the groundfish OY, NMFS has approved the assignments of 2,000 mt and 750 mt of Pacific halibut PSC mortality limits to trawl and hook-and-line gear, respectively. The 65 percent mortality rate is expected to result in smaller amounts of halibut being caught before the cap is reached by trawl gear. Whether the cap constrains the groundfish trawl fishery depends, in part, on action taken by vessel operators to reduce Pacific halibut bycatches as they respond to requirements of the current and proposed VIP.

NMFS notes the recommendation made by the Council that a regulatory amendment be implemented that would authorize a PSC mortality limit specifically for the demersal shelf rockfish hook-and-line fishery in the Southeast Outside District of the Eastern Regulatory Area. If this regulatory amendment is approved, a PSC limit of 10 mt is expected to be subtracted from the balance of the overall 750 mt hook-and-line PSC limit. The demersal shelf rockfish hook-and-line fishery is slower paced, and the proposed PSC limit intended for this fishery is expected to result in fuller harvest of demersal shelf rockfish.

7. Seasonal Apportionments of Pacific Halibut PSC Limits

Under § 672.20(f)(2)(iii), the Pacific halibut PSC limits are apportioned based on recommendations from the Council (Table 3), which are the same apportionments that were in effect during the 1991 fishing year. Regulations specify that any overages or shortfalls in PSC catches will be accounted for in the next season within the current fishing year.

TABLE 3.—ALLOCATION OF PACIFIC HALIBUT PSC LIMITS BETWEEN GEAR TYPES

Trawl gear		Hook-and-line gear	
Dates	Amount (mt)	Dates	Amount (mt)
Jan. 1–Mar. 31.	600 (30%)	Jan. 1–May 14.	200 (27%)
Apr. 1–Jun. 30.	600 (30%)	May 15–Aug. 31.	500 (66%)
Jul. 1–Sep. 29.	400 (20%)	Sep. 1–Dec. 31.	50 (7%)
Sep. 30–Dec. 31.	400 (20%)		
Total	2,000 (100%)		750 (100%)

As required by § 672.20(f)(2)(iii), determinations about seasonal allocations of the Pacific halibut PSC limits are based on information found in the SAFE report, or as otherwise available, which is summarized as follows:

(A) Seasonal Distribution of Pacific Halibut

Adult Pacific halibut spawn in deep water during winter months, then migrate to shallow water in summer months and feed. They generally spawn in water 230–450 meters deep from November through March; the peak of spawning is in December and January. During April and May, Pacific halibut migrate onto the offshore banks in water 135–270 meters deep. During June through August, Pacific halibut are found in much shallower water, 45 meters or less. During September and October, Pacific halibut migrate back to deeper water for spawning.

The recommended seasonal trawl apportionments will accommodate intensive fishing for deep-water rockfish and flatfish species, which occurs during the first half of the fishing year when most Pacific halibut will be in deep water. These amounts will also accommodate intensive fishing for Pacific cod. Although Pacific cod is mostly a shallow water species, some juvenile Pacific halibut in shallow water will be caught as bycatch in this fishery. The recommended seasonal hook-and-line apportionments will accommodate intensive fishing for sablefish starting on May 15. Even though Pacific halibut bycatches should be markedly reduced after that date as Pacific halibut migrate into shallower water, the sablefish fishery is so valuable that the industry prefers to have substantial bycatch to support the sablefish fishery.

(B) Seasonal Distribution of Target Groundfish Species Relative to Pacific Halibut Distribution

Most of the groundfish species are found in deep water during winter when water temperatures are relatively warmer (4°C) than temperatures in shallower water (1°C). As detailed in the SAFE report, pollock, Pacific cod, shallow water flatfish species, and certain rockfish species are in deep water during winter but generally at depths shallower than where Pacific halibut are found. In summer, these species are in the same shallow water as Pacific halibut.

In winter, deep-water flatfish, certain rockfish species, and sablefish are found in deep water with Pacific halibut and remain in deep water throughout the year, whereas Pacific halibut move to shallow water in summer. The Council's recommended larger first and second quarterly apportionments of the Pacific halibut PSC limit assigned to trawl gear will accommodate fishing for deep-water flatfish and rockfish species, as well as the Pacific cod fishery, which is in shallower water and has some Pacific halibut bycatch.

(C) Expected Pacific Halibut Bycatch Needs on a Seasonal Basis Relevant to Changes in Pacific Halibut Biomass and Expected Catches of Target Groundfish Species.

TACs for pollock, Pacific cod, sablefish, and flatfish are lower in 1992 than in 1991. Nonetheless, all of the 2,000 mt of Pacific halibut bycatch mortality allocated to trawl gear and the 750 mt allocated to hook-and-line gear are expected to be taken.

The Council has recommended four seasonal apportionments of the Pacific halibut PSC mortality limit for trawl gear that are equal to 30, 30, 20, and 20 percent. These proportions are the same that were in effect during 1991. Most of the trawl share of the Pacific halibut PSC limit is expected to be needed during the first three quarters. The TAC for pollock is allocated quarterly. During the first quarter, most of the pollock harvest will be conducted with pelagic trawls, which take very small amounts of Pacific halibut as bycatch. During the first quarter, most of the Pacific halibut bycatch will occur in trawl fisheries for Pacific cod and flatfish. Pacific halibut bycatch mortality while trawling for deep water species of flatfish could be proportionately higher and require a larger proportion of the halibut seasonal allocation at this time.

The starting date for the rockfish trawl fishery is proposed to be July 1, which is the start of the third quarter. Most of this trawl fishery will be conducted in deep water, whereas Pacific halibut will be in shallower water during the third quarter. A smaller proportion of Pacific halibut (20 percent) is allocated to the third quarter as a result. A smaller proportion of the Pacific halibut PSC mortality limit is needed for trawl fisheries for Pacific cod during the third quarter, because trawl fishing for this species will be minimal while the fish are dispersed. Directed trawl fishing for Pacific cod could occur during the fourth quarter, but by that time Pacific halibut would be expected to have migrated to deeper water. Therefore, bycatch needs of Pacific halibut during the fourth quarter are expected to be smaller during any fourth quarter Pacific cod fishery. Nonetheless, some PSC would be needed to harvest the remaining Pacific cod TAC and to continue fishing for flatfish. The latter will probably be the principal species category available during the fourth quarter.

(D) Expected Variations in Bycatch Rates Throughout the Fishing Year

Pacific halibut bycatch rates will vary with the seasonal distribution of Pacific halibut. During winter months when Pacific halibut are in deep water, groundfish fisheries for deepwater species will result in higher Pacific halibut bycatch rates. Fisheries for shallow-water species will result in lower Pacific halibut bycatch rates. This situation will be reversed during summer months when Pacific halibut are in shallower water. For a given amount of effort, higher by-catch rates would be expected in summer when Pacific halibut commingle with shallow-water species, such as Pacific cod, and in winter when halibut commingle with deep-water species, such as sablefish. Nonetheless, the Council's recommended large first and second quarterly apportionments to trawl gear and large second trimester apportionment to hook-and-line gear reflect expected increases in bycatch rates resulting from higher catches per unit of effort in trawl fisheries for Pacific cod and hook-and-line fisheries for sablefish, respectively.

(E) Expected Changes in Directed Groundfish Fishing Seasons

As of the date of this notice, the only changes in the groundfish fishing seasons pertain to the trawl fishery, which will commence when regulations implementing Amendment 25 are effective. The Council also has recommended that the rockfish trawl fishery be delayed until July 1. Should

the Secretary implement the Council's recommendation for the rockfish fishery, a substantial amount of Pacific halibut PSC is expected to be needed at the start of the third quarter. Because Pacific halibut bycatch is relatively minor in the pollock fishery, the Council's recommended season change for pollock is not a major factor for the Secretary's consideration of Pacific halibut PSC management.

(F) Expected Start of Fishing Effort

Fishing with trawl gear will start for most groundfish species near the end of January. Fishing with hook-and-line and pot gear for Pacific cod might start in early January, because Pacific cod are aggregated into spawning schools, promoting good catch rates. Trawling for rockfish species might start July 1.

(G) Economic Effects of Establishing Seasonal Pacific Halibut Allocations on Segments of the Target Groundfish Industry

The manner in which PSC limits are seasonally apportioned will affect the amount of groundfish OY that will be harvested during a season. Ideally, the seasonal apportionment of Pacific halibut PSC limits will provide the means for each fishery to fully harvest the available resource without exceeding the PSC limits for each gear group. Nonetheless, seasonal apportionments may not allow full harvests. For example, the second trimester allocation of 500 mt of Pacific halibut PSC is intended to support the hook-and-line sablefish fishery, which starts May 15. This amount may not be sufficient to harvest the sablefish TAC. Expressed in pounds and round weight, the resulting shortfall in 1991 was 747 mt of sablefish that cost fishermen about $1.1 million in gross revenue. Hook-and-line fishermen could have also continued to harvest Pacific cod if the closure had not occurred in 1991.

After the trawl fisheries were closed October 14, 1991, upon reaching the PSC limit for Pacific halibut, about 21,000 mt of flatfish target categories (excluding arrowtooth flounder, which is largely a bycatch species) and about 7,700 mt of Pacific cod remained unharvested. Lacking market incentives, some groundfish would not have been harvested, regardless of the closure. Market demand for Pacific cod was strong in 1991, and fishing for Pacific cod likely would have continued. At $0.20 per pound round weight for Pacific cod, trawl fishermen could have lost $3.4 million in gross revenue. A fuller discussion of economic effects is contained in the SAFE report.

NMFS has determined that the Council's recommendation for the seasonal apportionments of the Pacific halibut PSC to gear types is appropriate and, therefore, is implementing the Council's recommendation.

Classification

This action is taken under § 611.92 and § 672.20 and complies with Executive Order 12291. NMFS finds that the purpose of the reserves is to save portions of the TAC in case they were needed by DAP later in the fishing year rather than apportioning them to JVP or TALFF at the beginning of the fishing year. Because the best available information indicates that DAP will harvest all the TAC amounts, no JVP or TALFF specifications have been established. Providing an opportunity for public comment on the apportioning of reserves before actually apportioning them would serve no purpose, when no JVP or TALFF has been established, and therefore is unnecessary. This adjustment is effective January 17, 1992. Comments are invited on the reserve apportionments for 15 days after the date of filing of this notice.

NMFS prepared an environmental assessment on the 1992 TAC specifications, which concludes that no significant impact on the environment will result from their implementation.

NMFS concluded formal Section 7 Consultation on the GOA FMP and fisheries. The biological opinion issued for the consultation concluded that the FMP and fisheries are not likely to jeopardize the continued existence and recovery of any endangered or threatened species under the jurisdiction of NMFS. Implementation of the management measures described in this notice will not affect listed species in a way that was not already considered in the aforementioned biological opinions. NMFS has determined that no further Section 7 Consultation is required for the implementation of these measures.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: January 17, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-1711 Filed 1-17-92; 4:29 pm]

BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 911174-2010]

RIN 0648-AE32

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to establish an April 15 opening date for the Pacific whiting season in the exclusive economic zone (EEZ) off Washington, Oregon, and California. This action is intended to maintain the traditional fishing season, prevent potential bycatches of rockfish and salmon south of 39° N. latitude from exceeding current levels, and spread the harvesting and processing of whiting along the entire coast. This action is authorized under the Pacific Coast Groundfish Fishery Management Plan (FMP).

EFFECTIVE DATE: January 17, 1992.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, Rodney R. McInnis at 213-514-6677, or the Pacific Fishery Management Council at 503-326-6352.

SUPPLEMENTARY INFORMATION: This rule amends the regulations implementing the FMP at 50 CFR 663.23. The FMP contains a socioeconomic framework process that provides the authority, guidelines, and criteria for the Pacific Fishery Management Council (Council) to recommend changes to the implementing regulations to the Secretary of Commerce (Secretary) without further amending the FMP.

Since the FMP was implemented in 1982, the domestic whiting fishery was allowed to start at any time of year. However, there was a restriction on joint venture operations (foreign processing at sea of U.S.-caught fish) prohibiting foreign processing vessels south of 39° N. latitude (near Pt. Arena, California). The traditional whiting fishery, which since 1986 was dominated by joint venture processing, usually started between April and May because whiting, which migrate south to north between March and October, were not predictably available north of 39° N. latitude earlier in the year. Since 1986, shore-based processors, all located north of 39° N. latitude and whose fishing vessels stay relatively close to port to maintain product quality, processed small amounts of whiting in March, and much larger amounts in April and May. In 1991, the high-capacity American at-sea processing fleet totally displaced foreign processing

vessels. The American fleet was not limited to waters north of 39° N. latitude as foreign processors had been. The Council became concerned about the impact that such high levels of effort could have in areas (south of 39°) and times (January-April) that were new to the fishery.

At its September, 1991, meeting the Council considered the analysis and public comments regarding various opening dates for the Pacific whiting fishery. It indicated its preference for an opening between April and May, and preliminarily selected April 15 as the preferred date. At its November meeting, the Council again reviewed the analysis and public testimony, and confirmed its choice of an April 15 opening date for the 1992 fishing year.

In making its recommendation for an April 15 opening date, the Council sought to maintain the fishing patterns of the traditional whiting fishery, to keep the bycatch of rockfish and salmon from increasing over current levels and to spread the harvest and processing of whiting along the coast so that, like the traditional whiting fishery, effort is not concentrated in any particular area. The Council also sought to enhance product quality, yield per recruit, and sustainable yield by delaying the season beyond January 1. A more complete discussion of the proposal, its background, and supporting rationale appears in the preamble to the proposed rule and environmental assessment and regulatory impact review (EA/RIR) available from the Northwest Region, NMFS, or the Council, and is not repeated here.

The Council's initial recommendation for an April 15 opening was published as a proposed rule in the **Federal Register** (56 FR 59241; November 25, 1991). Public comments were requested through December 16, 1991. One public comment was received and is addressed below.

Comments and Responses

Comment: A fisherman delivering to a shore-side processor in Oregon prefers a staggered season of May 1–September 15 for at-sea processing and an April 15 opening for shore-side processors.

Response: The Council has indicated that different opening dates for shore-based and at-sea processors may be considered for the 1993 season. A staggered season was not proposed by the Council or analyzed this year, and is beyond the scope of the proposed rule for this action. Magnuson Act administrative requirements to promulgate a different opening date would make even a May 1 opening for either group unlikely.

The Secretary concurs with the Council's recommendation; the final rule is the same as proposed. An opening on January 1 (status quo) could have severe allocative impacts by enabling the at-sea processing fleet to harvest at times and in areas unavailable to fishermen making shore-based deliveries. An opening after May could severely disadvantage shore-based processors, particularly those in California, who would not be able to make up for lost processing time. An April 15 opening appears to achieve the objectives of maintaining traditional harvesting and processing patterns along the coast, and of keeping the bycatch of salmon and rockfish from exceeding current levels, while providing opportunities for both the shore-based and at-sea processors. An April 15 opening also would occur after the winter spawning season, and could improve yield and product quality relative to a January opening.

To institute season opening dates outside the scope of the proposed rule as suggested by the commenter, the Magnuson Act would require publication of another proposed rule, followed by a public comment period. This could impose serious adverse impacts on the fishery by allowing concentrated fishing effort at the beginning of the year.

Classification

This final rule is published under the authority of section 305(d) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1855(d), and was prepared at the request of the Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law. This rule is based on the best available scientific information.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this final rule. You may obtain a copy of the EA from the Council (see **ADDRESSES**).

NMFS issued a Biological Opinion under the Endangered Species Act (ESA) on August 10, 1990, pertaining to Amendment 4 of the FMP. It concluded that implementation of the FMP would not jeopardize the continued existence of any of the species considered. Consultation was reinitiated on this action at the request of the Council because of substantial changes in the structure of the whiting fishery (the displacement of foreign vessels by domestic at-sea processors, which are able to fish in areas south of 39 degrees N. latitude prohibited to foreign vessels) and renewed concern about salmon bycatch and the resulting effect on Sacramento winter-run chinook salmon. NMFS completed the ESA Section 7 Biological Opinion on this issue on November 26, 1991, which concluded that the whiting fishery, particularly when opening later in the year, is unlikely to jeopardize the continued existence of Sacramento winter-run chinook. This action falls within the scope of that biological opinion.

The Assistant Administrator has determined that this is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This action will not have a cumulative effect on the economy of $100 million or more nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises. This conclusion is based on the EA/RIR prepared for this rule which indicates that the gross revenues generated from the whiting fishery are not expected to differ substantially as a result of setting an opening date of April 15. The net effect of this rule will be to distribute the impact of the fishery along the coast; it does not guarantee shares to any particularly user group.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 603 *et seq.* This rule would spread the impact of the fishery along the coast without encouraging additional effort early in the year in areas that traditionally have been unexploited by the whiting fleet south of 30° N. latitude. As a result, opportunities for approximately 15 shore-based processors north of 39° N. latitude, who rely predominantly on local concentrations of whiting, will not be precluded by an early fishery in southern waters. (Large at-sea processors are not considered small businesses based on NMFS survey information indicating average annual gross revenues in the range of $8,000,000.)

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The Council has determined that this rule is consistent to the maximum extent practicable with the applicable State coastal zone management programs as required. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State of Washington concurred in this determination. The States of Oregon and California did not comment within the statutory time period, and therefore consistency is inferred.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This rule complies with the requirements for general notice and opportunity for interested persons to comment. The 30-day cooling-off period required under the Administrative Procedure Act may be waived if the Secretary finds, for good cause, that the delay in effectiveness is unnecessary, impracticable, or contrary to the public interest. It is essential that this rule be effective as soon as possible after January 1, 1992. Although a January fishery has not occurred in the past, it is not precluded, and there is potential for substantial effort by the at-sea processing fleet before and during the first Alaska pollock season, which currently is scheduled to start in late January. Therefore, the Secretary finds that such delay would be impracticable and contrary to the public interest, and this rule is effective on January 17, 1992.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 17, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 663 is amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.23, paragraph (b)(3), which expired on December 31, 1991, is replaced with a new paragraph (b)(3), as follows:

§ 663.23 Catch Restrictions.

* * * * *

(b) * * *

(3) *Pacific whiting—Season.* Pacific whiting may not be taken and retained, possessed, or landed in any calendar year between 0001 hours January 1 and 2400 hours April 14 (local times).

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[FR Doc. 92-1709 Filed 1-17-92; 4:45 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 911178-1278]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of change in recordkeeping and reporting requirements.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that Daily Production Reports must be submitted by processor vessels and shoreside processing facilities that catch pollock in, or receive pollock from, the Gulf of Alaska (GOA) pollock management districts. These pollock management districts are coextensive with GOA reporting areas 61, 62 and 63.

This action is necessary to prevent overharvest of the quarterly allotment of the total allowable catch (TAC) for pollock. The intent of this action is to ensure optimum use of pollock stocks.

EFFECTIVE DATES: From 12 noon, Alaska local time (A.l.t.), January 20, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the GOA (FMP) governs the groundfish fishery in the exclusive economic zone in the GOA under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council (Council) and is implemented by regulations governing the foreign fishery at 50 CFR 611.92 and by regulations governing the U.S. fishery at 50 CFR parts 620 and 672.

Under § 672.5(c)(3)(i), the Regional Director is requiring processor vessels and shoreside processing facilities that catch pollock in or receive pollock from the pollock management districts in which directed fishing for pollock is allowed to submit Daily Production Reports in addition to weekly processor reports. Daily Production Reports are required through 12 midnight December 31, 1992, during periods when directed fishing for pollock in the relevant pollock management district is authorized. Daily Production Reports must include the information required by § 672.5(c)(3)(ii).

These requirements are necessary to manage the pollock fisheries in the GOA. The Regional Director is doing so in consideration of the potential for exceeding the TAC specified for pollock.

The amount of a species or species group apportioned to a fishery is TAC, as stated in § 672.20(a)(2). The first-quarter TACs for pollock in the pollock management districts of the GOA will become available for directed fishing by trawl vessels on or about January 20, 1992, and are expected to be rapidly harvested. Fishing effort by trawl vessels in the GOA is not expected to follow any previous year's pattern since the combined Western/Central pollock Regulatory District was further divided in 1992 among three pollock management districts coextensive with reporting areas 61 (Shumagin), 62 (Chirikof), and 63 (Kodiak). In addition, an existing management district, named Shelikof Strait, was eliminated and subsumed into Statistical Areas 62 and 63.

Daily Production Reports must include all information required by § 672.5(c)(3)(ii) for groundfish harvested from reporting areas 61, 62, and 63. Processors must submit the required information on the "Alaska Groundfish Processor Daily Production Report" form available in the processors' recordkeeping reference manual or from the Regional Director at the address listed in the manual. Processors must transmit their completed Daily Production Reports to the Regional Director by facsimile transmission to number (907) 586-7131, by telephone via number (907) 586-7228, or by telex (U.S. code) at 6229600 no later than 12 hours after the end of the day the groundfish was processed.

If and when the Regional Director determines that these reports are no longer necessary, he may rescind them. Criteria used to assess the need for the reports include the stability of effort and harvest rates in the fishery, and remaining amounts of pollock TAC.

Classification

The Assistant Administrator for Fisheries, NOAA, finds that reasons justifying promulgation of this action also make it impracticable and contrary to the public interest to provide notice

and opportunity for prior comment or to delay for 30 days its effective date under sections 553 (b) and (d) of the Administrative Procedure Act. Intense fishing effort without Daily Production Reports would risk exceeding the quarterly allowances of TAC for pollock.

This action is taken under §§ 672.5 and 672.20 and complies with Executive Order 12291.

The collection-of-information requirement contained in this notice was approved by the Office of Management and Budget (OMB) as a revision to OMB No. 0648–213 (56 FR 9636; March 7, 1991).

List of Subjects in 50 CFR 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 17, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–1728 Filed 1–21–92; 10:22 am]

BILLING CODE 3510–22–M

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50 CFR Parts 672 and 675

[Docket No. 911176–1276]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Pacific halibut and red king crab bycatch rate standards and request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the first half of 1992 for purposes of the vessel incentive program that has been implemented to reduce prohibited species bycatch rates in the groundfish trawl fisheries. This action is necessary to implement the bycatch rate standards that must be met by individual trawl vessel operators who participate in specified groundfish fisheries included in the incentive program. The intent of this action is to enhance prohibited species bycatch management and promote conservation of groundfish and other fishery resources.

DATES: Effective 12:01 a.m., Alaska local time (A.l.t.), January 17, 1992, through 12 midnight, A.l.t., June 30, 1992. Comments on this action are invited through February 3, 1992.

ADDRESSES: Comments should be mailed to Ronald J. Berg, Acting Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9100 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fishery Management Biologist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Area (BSIA) and Gulf of Alaska (GOA) are managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the FMP for Groundfish of the Gulf of Alaska. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

Regulations at §§ 672.26 and 675.26 implement a vessel incentive program to reduce Pacific halibut and red king crab bycatch rates in specified groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must comply with Pacific halibut bycatch rate standards specified for the BSAI and GOA Pacific cod trawl fisheries, the BSAI flatfish fishery, and the GOA "bottom rockfish" trawl fishery. Vessel operators must also comply with red king crab bycatch standards specified for the BSAI flatfish fishery in Zone 1, as defined in § 675.2. Definitions of the fisheries included under the incentive program are set forth in regulations at § 672.26(b) and § 675.26(b).

Regulations implementing the incentive program require NMFS to publish a notice in the **Federal Register** specifying Pacific halibut and red king crab bycatch rate standards for each fishery monitored under the incentive program. These standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Any vessel operator whose monthly bycatch rate exceeds the bycatch rate standard is in violation of the regulations implementing the incentive program.

At its December 3–9, 1991, meeting, the Council recommended bycatch rate standards for the first half of 1992. These standards are set forth in Table 1. The Council's recommended bycatch rate standards for January 1 through June 30 are based on the following information, as required by § 672.26(c) and § 675.26(c):

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under § 672.20(f) and § 675.21;

(D) Anticipated groundfish harvests; and

(E) Anticipated seasonal distribution of fishing effort for groundfish.

The Council's Pacific halibut bycatch rate standards for the BSAI Pacific cod and flatfish trawl fisheries are largely based on anticipated seasonal fishing effort for these species and historic Pacific halibut bycatch rates observed in the Pacific cod and flatfish fisheries. As such, the Council recommended that the Pacific halibut bycatch rate standards for the BSAI Pacific cod and flatfish trawl fisheries during the first half of 1992 be set at levels that approximate the average rates observed on trawl vessels participating in these fisheries during the first half of 1991. For the first quarter of 1992, the recommended bycatch rate standards are 30 kilograms (kg) of Pacific halibut per metric ton (mt) of groundfish (3.0 percent) in the Pacific cod trawl fishery and 20 kg of Pacific halibut per mt of groundfish (2.0 percent) in the flatfish fishery. The Council recognized that the 1992 trawl fisheries would not start until January 20 or later under a final rule to delay the 1992 trawl fisheries (57 FR 381; January 6, 1992). The Council also recognized that the only flatfish fishery authorized to start at the beginning of the fishing year is the rock sole fishery. This fishery targets on roe-bearing rock sole and normally concludes by early March. The remaining flatfish fisheries included under the incentive program (yellowfin sole and other flatfish) are delayed until 12 noon A.l.t., May 1 of each year under regulations at § 675.23(c).

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 1992 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

[Pacific halibut bycatch as kg of Pacific halibut/mt of allocated groundfish catch]

Fishery and quarter	1992 bycatch standard
BSAI Pacific cod:	
Qt 1	30.0
Qt 2	25.0

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 1992 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA—Continued

[Pacific halibut bycatch as kg of Pacific halibut/mt of allocated groundfish catch]

Fishery and quarter	1992 bycatch standard
BSAI flatfish:	
Qt 1	20.0
Qt 2	5.0
GOA rockfish:	
Qt 1	50.0
Qt 2	50.0
GOA Pacific cod:	
Qt 1	50.0
Qt 2	50.0
Zone 1 red king crab bycatch rates (number of crab/mt of allocated groundfish)	
BSAI flatfish:	
Qt 1	2.5
Qt 2	2.0

The second quarter Pacific halibut bycatch rate standards recommended by the Council for the BSAI Pacific cod and flatfish fisheries are 2.5 percent and 0.5 percent, respectively. The Pacific cod rate is reduced from 3.0 percent to 2.5 percent to reflect the reduction in average bycatch rates observed between the first and second quarter fisheries. The second quarter Pacific halibut bycatch rate standard recommended for the flatfish fishery approximates the average 1991 Pacific halibut bycatch rate observed in the yellowfin sole fishery, which is the predominant flatfish fishery after the season opens on May 1. Estimated weekly bycatch rates in the 1991 flatfish fishery for 7 of the 9 weeks between May 1 and June 30 were below 0.5 percent.

Mid-summer bycatch rates in the flatfish fishery may increase as fishermen target on other flatfish species (e.g., flathead sole) that are normally associated with higher Pacific halibut bycatch rates, or as new vessels enter the flatfish fishery after the closure of the Bering Sea pollock fishery. Council adoption of Amendment 19 to the BSAI FMP at its December 1991 meeting, would address differences in Pacific halibut bycatch rates among different flatfish fisheries by amending regulations to specify separate bycatch rate standards for the yellowfin sole and the rock sole/other flatfish fisheries. Separate bycatch rate standards for the rock sole/other flatfish fisheries will be published in the **Federal Register** for public comment as part of the proposed rule to implement Amendment 19. Pending approval by the Secretary of Commerce, Amendment 19 is scheduled to be effective prior to July 1, 1992.

If vessels maintained Pacific halibut bycatch rates at the standards recommended by the Council for the BSAI flatfish fisheries, the Council recognized that portions of the 1992 total allowable catch (TAC) amounts specified for yellowfin sole, rock sole, and other flatfish may not be harvested by trawl vessels under the Pacific halibut prohibited species catch (PSC) restrictions set forth for these fisheries at § 675.21. The Council further recognized that its recommended Pacific halibut bycatch rates standards for the BSAI Pacific cod trawl fishery will not allow for the trawl harvest of the 1992 TAC specified for Pacific cod under Pacific halibut PSC limit restrictions at § 675.21. The Council determined that its recommended bycatch rate standards would reduce Pacific halibut bycatch rates during the first half of 1992, consistent with the Council's intent for the incentive program, and that other gear types could continue to harvest the Pacific cod TAC under existing Pacific halibut PSC regulations.

The Council's recommended red king crab bycatch rate standard for the flatfish fishery in Zone 1 of the Bering Sea subarea is 2.5 crab per mt of groundfish during the first quarter of 1992, and 2.0 crab per mt of groundfish during the second quarter. These standards are an increase from the 1991 bycatch rate standard of 1.5 crab per mt of groundfish.

Little fishing effort for flatfish occurred in Zone 1 during 1991 because commercial concentrations of yellowfin sole normally occur north of this area by the time the fishery opens May 1. As such, limited observer data exist for the 1991 fishery in Zone 1, which indicate average red king crab rates between 1 and 1.5 crab per mt groundfish. During late summer 1991, some flatfish fishermen experienced relatively high bycatch rates of Pacific halibut north of Zone 1 and expressed a desire to explore fishing ground in Zone 1 that may have lower Pacific halibut bycatch rates. However, fishermen were reluctant to fish in Zone 1 because of possibly exceeding the red king crab bycatch rate standard. The total 1991 bycatch of red king crab by vessels participating in the rock sole, yellowfin sole, and other flatfish fisheries was under 75,000 crab, or about 40 percent of the combined red king crab bycatch allowances specified for these fisheries (190,000 crab). In recognition that the red king crab bycatch allowance will restrict bycatch amounts to specified levels, the Council increased the 1992 bycatch rate standards for red king crab to support those fishermen who actively pursue alternative fishing grounds in an attempt to reduce Pacific halibut bycatch rates.

The Council recommended a single Pacific halibut bycatch rate standard for the GOA Pacific cod and rockfish fisheries of 50 kg per mt groundfish (5 percent). This recommendation was based on Council intent to simplify the GOA incentive program by specifying a single bycatch rate standard for the fisheries under the incentive program, yet maintain the Council's objective of reducing Pacific halibut bycatch rates in the GOA trawl fisheries. Observer data collected from the 1991 GOA trawl fisheries (excluding the midwater pollock fishery) show first and second quarter Pacific halibut bycatch rates of 2.4 percent and 6.6 percent, respectively. The first and second quarter Pacific cod trawl fishery exhibited observed bycatch rates of 1.2 and 2.4 percent, respectively, whereas the rockfish fishery exhibited respective Pacific halibut bycatch rates of 8.3 and 7.9 percent. Representatives for the GOA trawl industry provided comments to the Council that, based on 1991 observer data, a bycatch rate standard of 6 percent would better accommodate the rockfish trawl fishery and that setting the Pacific halibut bycatch rate standard slightly higher than the average observed in the Pacific cod fishery would not encourage vessels operators to fish up to the standard. The Council determined that a Pacific halibut bycatch rate standard of 5 percent would better meet its objective to restrict Pacific halibut bycatch rates to levels consistent with the Council's intent to reduce Pacific halibut bycatch rates under the incentive program.

The Regional Director has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 672.26(c) and § 675.26(c). He concurs in the Council's determinations and recommendations for Pacific halibut and red king crab bycatch rate standards for the first half of 1992 as set forth in Table 1. These bycatch rate standards may be revised by notice in the **Federal Register** when deemed appropriate by the Regional Director pending his consideration of the information set forth at § 672.26(c) and § 675.26(c).

Classification

This action is taken under 50 CFR parts 672.26 and 675.26 and complies with Executive Order 12291.

To avoid a lapse in vessel accountability under the vessel incentive program, this notice must be effective by the start of the 1992 trawl season as determined by the final rule implementing the 1992 trawl season delay (57 FR 381; January 6, 1992). Without this accountability, prohibited species bycatch rates will increase in the groundfish trawl fisheries, prohibited species bycatch allowances will be reached sooner, specified groundfish trawl fisheries will be closed prematurely, and owners and operators of groundfish trawl vessel will incur additional foregone revenues. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to extend prior notice and comment on this notice beyond the start of the 1992 trawl season, or to delay its effective date.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 17, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-1729 Filed 1-17-92; 5:04 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 911172-1272]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of change in recordkeeping and reporting requirements.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that Daily Production Reports must be submitted by processor vessels and shoreside processing facilities that catch and/or receive pollock and/or Atka mackerel from the Aleutian Islands (AI) subarea in the Bering Sea and Aleutian Islands management area (BSAI).

This action is necessary to prevent exceeding the total allowable catch (TAC) for pollock and Atka mackerel. The intent of this action is to ensure optimum use of pollack and Atka mackerel stocks.

EFFECTIVE DATE: From 12 noon, Alaska local time (A.l.t.), January 20, 1992, through the duration of the 1992 pollock and Atka mackerel directed fisheries or until the Regional Director determines the supplementary reporting requirements are no longer necessary.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the BSAI (FMP) governs the groundfish fishery in the exclusive economic zone in the BSAI under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council (Council) and is implemented by regulations governing the foreign fishery at 50 CFR 611.93 and by regulations governing the U.S. fishery at 50 CFR parts 620 and 675.

Under § 675.5(c)(3)(i), the Regional Director is requiring processor vessels and shoreside processing facilities that catch and/or receive pollock and/or Atka mackerel from the AI subarea to submit Daily Production Reports in addition to weekly processor reports. Daily Production Reports must include the information required by § 675.5(c)(3)(ii).

These requirements are necessary to manage the pollock and Atka mackerel fisheries in the AI. The Regional Director is doing so in consideration of the potential for exceeding the TAC specified for pollock and Atka mackerel.

The amount of a species or species group apportioned to a fishery is TAC, as stated in § 675.20(a)(2). The TACs for pollock and Atka mackerel in the AI will become available for directed fishing by trawl vessels on or about January 20, 1992, and are expected to be rapidly harvested. Fishing effort by trawl vessels in the BSAI is not expected to follow any previous year's pattern due to the closure of the Bogoslof district (that part of reporting area 515 west of 167 degrees west longitude) to directed fishing for pollock. The 1991 harvest from the Bogoslof district accounted for approximately 43.9 percent of the "A" season TAC. Displaced effort from the Bogoslof district is expected to focus on the AI as an alternate source of pollock and Atka mackerel.

Daily Production Reports must include all information required by § 675.5(c)(3)(ii) for groundfish harvested from the applicable reporting areas. Processors must submit the required information on the "Alaska Groundfish Processor Daily Production Report" form available in the processors' recordkeeping reference manual or from the Regional Director at the address listed in the manual. Processors must transmit their completed Daily Production Reports to the Regional Director by facsimile transmission to number (907) 586-7131, by telephone via number (907) 586-7228, or by telex (U.S. code) at 6229600 no later than 12 hours after the end of the day the groundfish was processed.

If and when the Regional Director determines that these reports are no longer necessary, he may rescind the requirement. Criteria used to assess the need for the reports include the stability of effort and harvest rates in the fishery, and remaining amounts of pollock and Atka mackerel TAC.

Classification

The Assistant Administrator for Fisheries, NOAA, finds that reasons justifying promulgation of this action also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under sections 553 (b) and (d) of the Administrative Procedure Act. Intense fishing effort without Daily Production Reports would invite exceeding the TAC for pollock and Atka mackerel.

This action is taken under §§ 675.20 and 675.21 and complies with Executive Order 12291.

The collection-of-information requirement contained in this notice was approved by the Office of Management and Budget (OMB) as a revision to OMB No. 0648-213 (56 FR 9636; March 7, 1991).

List of Subjects in 50 CFR 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 17, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-1710 Filed 1-21-92; 10:22 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 16
Friday, January 24, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-39]

Airworthiness Directives; Pratt & Whitney (PW) JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to PW JT8D series turbofan engines. This proposed action would require the installation and periodic inspection of temperature indicators installed on the No. 4 and 5 bearing compartment scavenge oil tube, and require the installation of No. 4 and 5 bearing compartment hardware modifications for certain engines. This proposal is prompted by reports of high pressure (HP) turbine shaft fractures caused by oil fires which resulted from internal leakage of thirteenth stage compressor discharge air into the No. 4 and 5 bearing compartment. This condition, if not corrected, could result in fracture of the HP turbine shaft which may result in uncontained release of engine fragments, fire, inflight shutdown, or possible aircraft damage.

DATES: Comments must be received no later than February 24, 1992.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91-ANE-39, 12 New England Executive Park, Burlington, Massachusetts 01803, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location in Room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This applicable service information may be obtained from Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Engine Certification Office, ANE-140, Engine & Propeller Directorate, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, (617) 273-7121.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-ANE-39." The postcard will be date/time stamped and returned to the commenter. DISCUSSION: There have been 31 HP turbine shaft fractures which resulted from compartment oil fires caused by leakage of thirteenth stage compressor discharge air into the No. 4 and 5 bearing compartment. These oil fires cause a reduction in material properties of the HP turbine shaft which results in overload and fracture. Five of the fractures have resulted in uncontained engine debris exiting the engine. An investigation to determine the cause and to define corrective action for this problem has identified the need to incorporate an oil temperature monitoring system and installation of hardware improvements to the No. 4 and 5 bearing compartment which would eliminate thirteenth stage compressor discharge air leakage and oil fires.

An investigation and analysis of this problem indicates that JT8D engines installed on the Boeing 727 series and McDonnell Douglas DC-9-80 series (MD-80) aircraft are susceptible to No. 4 and 5 bearing compartment oil fires. This susceptibility is attributed to aircraft utilization and engine differences, and is supported by considerable JT8D field service experience.

This proposed AD will require oil temperature monitoring and installation of No. 4 and 5 bearing compartment hardware modifications to prevent bearing compartment oil fires and subsequent shaft fractures. A temperature indicator installed on the No. 4 and 5 bearing scavenge oil tube line will detect hot air leakage into the bearing compartment by evidence of excessive No. 4 and 5 bearing scavenge oil temperature. The oil temperature indicators will provide warning that the oil scavenge temperature is abnormally high and that certain troubleshooting and diagnostic test procedures are required. Operators that utilize JT8D-1 through -17AR series engines installed on Boeing 727 series aircraft will be required to install and monitor the temperature indicators until such a time that the required No. 4 and 5 bearing compartment hardware modifications are installed. Operators that utilize JT8D-200 series engines will be required to install and monitor the temperature indicators, or alternatively may install the No. 4 and 5 bearing compartment hardware modifications. This condition, if not corrected, may result in uncontained release of engine fragments, fire, inflight shutdown, or possible aircraft damage.

Furthermore, due to the high rate of uncontained events in JT8D-200 series engines, the FAA is reviewing the need to require improved HP turbine containment hardware on these series engines to prevent engine debries from exiting the engine. The containment

hardware for JT8D–200 series engines will be available at a later date and further rulemaking may be required.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. 5944, Revision No. 1, dated April 10, 1991, which describes the procedures for the temperature monitoring program for certain JT8D engines; PW Service Bulletin (SB) No. 5945, dated December 19, 1990, which describes No. 5 compartment modifications to reduce oil leakage; and PW SB 5514, Revision 7, dated February 28, 1991, which describes modifications to the No. 4 and 5 bearing inner heat shield and scavenge tube assembly.

Since this condition is likely to exist or develop on other engines of this same type design, an AD is proposed which would require inspections and hardware modifications in accordance with the service bulletins previously described.

There are approximately 6,323 JT8D–1 through –17AR series engines and 1,843 JT8D–200 series engines of the affected design in the worldwide fleet. It is estimated that 5,237 engines in the domestic fleet would be affected by this AD, that it would take approximately 46 manhours per engine to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of required parts is estimated to be $7,200 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $50,956,010.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the evaluation prepared for this action is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g), and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney: Docket No. 91–ANE–39

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines installed on Boeing 727 series aircraft, and JT8D–209, –217, –217A, –217C, and –219 turbofan engines installed on, but not limited to, McDonnell Douglas DC–9–80 series and Boeing 727 series aircraft.

Compliance: Required as indicated, unless previously accomplished:

To prevent fracture of the high pressure turbine shaft which may result in uncontained release of engine fragments, fire, inflight shutdown or possible aircraft damage, accomplish the following:

(a) For PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –15, –15A, –17, –17A, –17R, and –17AR engines installed on Boeing 727 series aircraft, install and inspect temperature indicators, Part No. 809129 and Part No. 809130, on the No. 4 and 5 bearing compartment scavenge oil tube, and install No. 4 and 5 bearing compartment hardware modifications as follows:

(1) Install temperature indicators on the No. 4 and 5 bearing compartment scavenge oil tube in accordance with Section 2.A.(1) of the Accomplishment Instructions of PW Alert Service Bulletin No. 5944, Revision 1, dated April 10, 1991, within 65 hours of engine operation after the effective date of this AD.

(2) Visually inspect temperature indicators within 65 hours of installation. Thereafter, reinspect at intervals not to exceed 65 hours of engine operation since last inspection.

(3) If upon inspection, the color of the temperature indicator window(s) has turned completely black, perform troubleshooting and diagnostic testing in accordance with Section 2.A.(2) (c) and (d) of the Accomplishment Instructions of PW Alert Service Bulletin No. 5944, Revision 1, dated April 10, 1991. Reinstall temperature indicators prior to returning the engine to service and reinitiate the inspection requirements in accordance with paragraph (a)(2) of this AD.

(4) Install No. 4 and 5 bearing compartment hardware modifications in accordance with PW SB 5945, dated December 19, 1990, and PW SB 5514, Revision 7, dated February 28, 1991, at next ship visit when the No. 4 and 5 compartment is accessible after the effective date of this AD, but no later than December 31, 1996. The inspection requirements identified in paragraph (a)(2) of this AD are not required once the No. 4 and 5 bearing compartment modifications are installed.

(b) For PW JT8D–209, –217, –217A, –217C, and –219 engines, install and inspect temperature indicators, Part No. 809129 and Part No. 809130, on the No. 4 and 5 bearing compartment scavenge oil tube or install No. 4 and 5 bearing compartment hardware modifications, as follows:

(1) Install temperature indicators on the No. 4 and 5 bearing compartment scavenge oil tube in accordance with Section 2.A(1) of the Accomplishment Instructions of PW Alert Service Bulletin No. 5944, Revision 1, dated April 10, 1991, within 65 hours of engine operation after the effective date of this AD.

(2) Visually inspect temperature indicators within 65 hours of installation. Thereafter, reinspect at intervals not to exceed 65 hours of engine operation since last inspection.

(3) If upon inspection, the color of the temperature indicator window(s) has turned completely black, perform troubleshooting and diagnostic testing in accordance with Section 2.A.(2) (c) and (d) of the Accomplishment Instructions of PW Alter Service Bulletin No. 5944, Revision 1, dated April 10, 1991. Reinstall temperature indicators prior to returning the engine to service and reinitiate the inspection requirements in accordance with paragraph (b)(2) of this AD.

(4) For PW JT8D–209, –217, –217A, –217C, and –219 engines, incorporation of No. 4 and 5 bearing compartment hardware modifications in accordance with PW SB 5945, dated December 19, 1990, and PW 5514, Revision 7, dated February 28, 1991, can be substituted for the requirements identified in paragraph (b) (1), (2) and (3) of this AD.

(c) If inspection of the temperature indicators reveals a missing indicator, install a new indicator in accordance with Section 2.A.(1) of the Accomplishment Instructions of PW Alert Service Bulletin No. 5944, Revision No. 1, dated April 10, 1991, and reinitiate the inspection requirements after replacing the indicator, prior to returning the engine to service.

(d) Report the data elements identified in § 2.A.(2)(e) of the Accomplishment Instructions of PW Alert Service Bulletin No. 5944, Revision 1, dated April 10, 1991, whenever an overtemperature condition is observed on any color temperature indicator which is the result of an internal engine problem only and not resulting from an external cause corrected by the published troubleshooting procedures. Data elements should be reported within 30 days to the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803–05299; Telex Number 949301 FAANE BURL.

(e) Information collection requirements contained in this proposed regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2120–0056.

(f) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished. Engines which are confirmed by diagnostic testing to have an overtemperature condition cannot be operated during ferry flights.

(g) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on December 26, 1991.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92-1794 Filed 1-23-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

Unlading of Foreign Vessels Allowed Prior to Entry at U.S. Ports Subsequent to Initial U.S. Port of Arrival

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide that it is within the discretion of the district director to issue a permit to unlade to allow a foreign vessel that has already made formal entry at its first port of arrival in the U.S. to unlade cargo at subsequent coastwise ports without the necessity of making preliminary entry and prior to the vessel making formal entry at those ports. The document proposes that if the district director deems it necessary, however, before allowing unlading prior to the vessel's formal entry, he may require the master to make an oath or affirmation to the truth of the statements contained in the vessel's manifest to a Customs officer who boards the vessel and require delivery of the manifest prior to issuing the permit to unlade. All foreign vessels are still required to report arrival and make formal entry at all coastwise ports. It is believed that this amendment would expedite the discharge of cargo without diminishing Customs enforcement effectiveness.

DATES: Comments must be received on or before March 24, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Leo Morris, Office of Inspection and Control, 202-566-8151.

SUPPLEMENTARY INFORMATION:

Background

Section 1448 of title 19 of the United States Code provides that no merchandise, passengers, or baggage shall be unladen from any vessel or vehicle arriving from a foreign port or place until entry of such vessel or report of arrival of such vehicle has been made and a permit for the unlading of the same has been issued by the appropriate Customs officer. It also provides that if the master of a vessel makes preliminary entry, a permit to unlade may be issued by Customs prior to formal entry.

Customs has interpreted this statute to mean that merchandise, passengers or baggage could not be unladen from any foreign vessel at any U.S. port until entry has been made, whether it was a formal entry or preliminary entry. This would be the case whether the vessel was arriving from a foreign port or from another U.S. port. Reading 19 U.S.C. 1448 in conjunction with 19 U.S.C. 1434, which provides that U.S. vessels are not required to make entry at a U.S. port when arriving from another U.S. port, Customs has permitted merchandise, passengers or baggage to be unladen from U.S. vessels arriving at one U.S. port from another U.S. port without entry being made. Section 4.8, Customs Regulations (19 CFR 4.8), now provides that if it is desired that any vessel having on board inward foreign cargo, passengers or baggage shall discharge or take on cargo, passengers or merchandise before the vessel has been formally entered, preliminary entry shall be made. Section 4.8 has been applied only to foreign vessels.

Currently, based on this interpretation, a foreign vessel carrying residue cargo, passengers or baggage would request preliminary entry if it wishes to discharge passengers or cargo prior to making formal entry at the customhouse. After the vessel makes preliminary entry, the district director generally issues a permit to unlade. If preliminary entry is granted, the vessel can begin discharging cargo or passengers shortly after arriving, rather than waiting hours for formal entry to be completed at the customhouse.

After reviewing the statutory language, Customs now believes that 19 U.S.C. 1448 is only applicable to vessels that are arriving from a foreign port or place and not to vessels arriving at a U.S. port from another U.S. port. In other words, if a vessel is arriving at a U.S. port from a foreign port, it may not receive a permit to unlade from Customs until either formal or preliminary entry is made; however, if a vessel is arriving at a U.S. port from another U.S. port, merchandise, passengers or baggage may be unladen prior to entry. This new interpretation is especially significant for foreign vessels. As indicated above, U.S. vessels are not required to make entry at a U.S. port when arriving from another U.S. port so in this situation they have been permitted to unlade without making entry. Foreign vessels, on the other hand, pursuant to 19 U.S.C. 1433 and 1435 respectively, are required to report arrival immediately after arriving at any port or place in the U.S. and must make entry within 48 hours after arriving within the limits of a Customs port. According to this new proposed interpretation, Customs now can issue a permit to unlade prior to a foreign vessel's entry at a U.S. port when it is arriving from another U.S. port.

The only statutory reference to preliminary entry is in 19 U.S.C. 1448. According to this proposed interpretation that 19 U.S.C. 1448 relates only to vessels arriving from a foreign port or place, the right of a master to seek preliminary entry so that he may unlade prior to making formal entry is only applicable to vessels arriving from a foreign port or place. There would be no need for a master of a foreign vessel to seek preliminary entry when arriving at one U.S. port from another U.S. port if the vessel could be unloaded prior to formal entry.

Customs is proposing in this document to amend § 4.8, Customs Regulations (19 CFR 4.8) to clarify that preliminary entry is required for both U.S. and foreign vessels arriving from a foreign port or place that wish to discharge cargo, passengers or baggage or take on cargo, passengers or baggage before the vessel has been formally entered.

Further, the document proposes to amend § 4.30 to provide that permits to unlade or lade may be issued by the district director to a foreign vessel arriving at a U.S. port from another U.S.

port prior to formal entry and without the vessel having to make preliminary entry at the second port and to a U.S. vessel arriving at a U.S. port from another U.S. port without requirement of entry at the second port. If he deems it necessary, the district director may require the master to make an oath or affirmation to the truth of statements contained in the vessel's manifest to a Customs officer who boards the vessel prior to issuing the permit. The authority of the district director to require an oath or affirmation to the truth of the statements contained in the vessel's manifest and delivery of the manifest prior to issuing a permit if he deems it necessary derives from 19 U.S.C. 1433 (d) and (e)(2) which provides that the master shall present to customs officers such documents, papers, or manifests as the Secretary may by regulation prescribe and that a vessel may after arriving in the U.S. discharge any passenger or merchandise (including baggage) only in accordance with regulations prescribed by the Secretary.

Customs believes that by easing the requirement that preliminary entry be made before a foreign vessel may be issued a permit to lade or unlade when arriving from another U.S. port, but by retaining the right to board and examine manifests if necessary, Customs efficiency regarding the discharge of cargo, passengers and baggage will be improved without a diminution in enforcement effectiveness.

In accordance with the above discussion, amendments are being proposed to §§ 4.1, 4.8, 4.10, and 4.30, Customs Regulations (19 CFR 4.1, 4.8, 4.10, and 4.30). Amendments are also being proposed to §§ 4.7, 4.13, 4.81, 4.85, and 4.87 to eliminate the reference to "boarding officer" where such references are no longer appropriate.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Carrier, Release of merchandise, Vessels.

Proposed Amendments

It is proposed to amend part 4, Customs Regulations (19 CFR Part 4), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4, Customs Regulations (19 CFR part 4) and the relevant specific authority citations for §§ 4.1, 4.7, 4.8, 4.10, 4.81 and 4.85 (19 CFR 4.1, 4.7, 4.8, 4.10, 4.81, 4.85) continue to read and the relevant specific authority for § 4.30 (19 CFR 4.30) is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

§ 4.1 also issued under 46 U.S.C. App. 163;
* * *

§ 4.7 also issued under 19 U.S.C. 1431, 1439, 1465, 1581(a), 1583, 46 U.S.C. App. 883a, 883b;
* * *

§ 4.10 also issued under 19 U.S.C. 1448, 1451; * * *

§ 4.30 also issued under 19 U.S.C. 288, 1433, 1446, 1448, 1450–1454, 1490; * * *

§ 4.81 also issued under 19 U.S.C. 1433, 1439, 1442, 1443, 1444, 1486; 46 U.S.C. App. 251, 313, 314, 883; * * *

§ 4.85 also issued under 19 U.S.C. 1439, 1442, 1443, 1444, 1623;

* * * * *

2. It is proposed to revise § 4.1(b), Customs Regulations (19 CFR 4.1(b)), to read as follows:

§ 4.1 Boarding of vessels; cutter and dock passes.

* * * * *

(b) Every vessel arriving within a Customs district directly from a point outside the Customs territory of the United States shall be boarded and shall be subject to such supervision while in port as the district director deems necessary. When he deems it desirable, the district director may detail Customs officers to remain on board a vessel to secure the enforcement of this part. If preliminary entry is requested, boarding is required. Except as provided in paragraph (a) of this section, boarding of a vessel arriving within a Customs district directly from another port in the United States shall not be required.

* * * * *

3. It is proposed to remove footnote 16 from part 4, Customs Regulations (19 CFR part 4).

4. It is proposed to amend § 4.7, Customs Regulations (19 CFR 4.7), by revising the second sentence of § 4.7(b) and entire paragraph (d)(3) to read as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form.

* * * * *

(b) * * * The master shall deliver the original and one copy of the manifest to the Customs officer who shall first demand it. * * *

* * * * *

(d) * * *

(3) The declaration shall be ready for production on demand for inspection and shall be presented as part of the original manifest when formal entry of the vessel is made.

5. It is proposed to remove footnote 18 from part 4, Customs Regulations (19 CFR part 4).

6. It is proposed to revise § 4.8, Customs Regulations (19 CFR 4.8), to read as follows:

§ 4.8 Preliminary entry.

Preliminary entry allows a U.S. or foreign vessel arriving from a foreign port or place to discharge cargo, passengers, or baggage or take on additional cargo, passengers or baggage prior to making formal entry at the customhouse by allowing the master to make an oath or affirmation to the truth of statements contained in the vessel's manifest and deliver the manifest to the Customs officer who boards the vessel. Customs officers are required to board a vessel before a preliminary entry is permitted. Preliminary entry shall be made by compliance with § 4.30 and execution by the master of the Master's Certificate on Preliminary Entry on Customs Form 1300.

7. It is proposed to amend § 4.10, Customs Regulations (19 CFR 4.10), by revising the first sentence to read as follows:

§ 4.10 Request for overtime services.

Request for overtime services in connection with the entry or clearance

of a vessel, including the boarding of a vessel in accordance with § 4.1 of this part, shall be made on Customs Form 3171. * * *

8. It is proposed to remove footnote 22 from part 4, Customs Regulations (19 CFR part 4).

9. It is proposed to amend § 4.13(a), Customs Regulations (19 CFR 4.13(a)), by revising the first sentence to read as follows:

§ 4.13 Alcoholic liquors on vessel of not over 500 net tons.

(a) When a vessel of not over 500 net tons which arrives from a foreign port or a hovering vessel has on board any alcoholic liquors, a certificate respecting the importation of any spirits, wines, or other alcoholic liquors on board, other than sea stores, shall be delivered to the appropriate Customs officer with the inward foreign manifest. * * *

10. It is proposed to amend § 4.30, Customs Regulations (19 CFR 4.30), by revising paragraphs (a) and (d) to read as follows:

§ 4.30 Permits and special licenses for unlading and lading.

(a) Except as prescribed in paragraph (f), (g), or (k) of this section or in § 123.6 of this chapter and except in the case of a vessel exempt from entry or clearance under 19 U.S.C. 288, no passengers, cargo, baggage or other article shall be unladen from a vessel which arrives directly or indirectly from any port outside the Customs territory of the United States or from a vessel which transits the Panama Canal and no cargo, baggage, or other article shall be laden on a vessel destined to a port or place outside the Customs territory of the United States if Customs supervision of such lading is require until the district director shall have issued a permit or special license therefor on Customs Form 3171.

(1) U.S. and foreign vessels arriving at a U.S. port directly from a foreign port or place are required to make entry, whether it be formal or, as provided in § 4.8 of this part, preliminary, before the district director may issue a permit or special license to lade or unlade.

(2) U.S. vessels arriving at a U.S. port from another U.S. port at which formal entry was made may be issued a permit or special license to unlade or lade without having to enter at the second port. Foreign vessels arriving at a U.S. port from another U.S. port at which formal entry was made may be issued a permit or special license to lade or unlade at the second port prior to formal entry without the necessity of making preliminary entry. The district director, in these circumstances, may issue the permit or special license after the master has reported arrival of the vessel, or may, in his discretion, require the master to make an oath or affirmation to the truth of the statements contained in the vessel's manifest to a Customs officer who boards the vessel and require delivery of the manifest prior to issuing the permit.

* * * * *

(d) Except as prescribed in paragraph (f) or (g) of this section, a separate application for a permit or special license shall be filed in the case of each arrival.

* * * * *

11. It is proposed to remove footnotes 56 through 58 from part 4, Customs Regulations (19 CFR part 4).

§ 4.81 [Amended]

12. It is proposed to amend § 4.81 (d) and (e), Customs Regulations (19 CFR 4.81 (d), (e)), by removing the words "the boarding officer" where they appear and inserting in their place the words "the appropriate Customs officer" and by removing the words "the Customs boarding officer" in § 4.81(e) and inserting in their place the words "the appropriate Customs officer".

13. It proposed to amend § 4.85, Customs Regulations (19 CFR 4.85), by removing the words "the Customs boarding officer" appearing in the last sentence of paragraph (b) and inserting in their place the words "the appropriate Customs officer" and by revising paragraph (d) to read as follows:

§ 4.85 Vessels with residue cargo for domestic ports.

* * * * *

(d) If boarding is required before the district director will issue a permit or special license to lade or unlade, the abstract manifest described in paragraph (c) of this section shall be ready for presentation to the boarding officer.

* * * * *

§ 4.87 [Amended]

14. It is proposed to amend § 4.87(c), Customs Regulations (19 CFR 4.87(c)), by removing the words "the Customs boarding officer" and inserting in their place the words "the appropriate Customs officer".

Carol Hallett,

Commissioner of Customs.

Approved: January 6, 1992.

Nancy L. Worthington,

Acting Assistant Secretary of the Treasury.

[FR Doc. 92-1761 Filed 1-23-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803 and 807

[Docket No. 91N-0295]

Medical Devices; Medical Device, User Facility, Distributor, and Manufacturer Reporting, Certification, and Registration, Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period for the tentative final rule for medical device user facility, distributor, and manufacturer reporting, certification, and registration, due to several requests for an extension to assure adequate time for preparation of comments..

DATES: FDA is extending the comment period until February 26, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 26, 1991 (56 FR 60024), FDA published a tentative final rule that would require device user facilities and distributors, including importers to submit reports to FDA and to device manufacturers, of deaths, serious illnesses and serious injuries related to medical devices. The tentative final rule also amends existing reporting requirements for manufacturers to conform them with the proposed reporting requirements for user facilities and distributors, and requires distributors and manufacturers to report certain malfunctions that may cause a death, serious illness, or serious injury. It also requires foreign manufacturers to be subject to the same reporting requirements as domestic manufacturers. Interested persons were originally given until January 27, 1992, to comment on the tentative final rule.

FDA received several requests for an extension of the comment period. The requests asked for an extension of up to

60 days. However, in the light of the statutory deadlines applicable to this regulation, FDA has determined that an extension of 60 days is not appropriate. FDA proposes to extend the comment period for 30 days to assure adequate time for preparation of comments.

Interested persons may, on or before February 26, 1992, submit to the dockets Management Branch (address above) written comments regarding this tentative rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 17, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-1740 Filed 1-23-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-53-89]

RIN 1545-AN90

Inclusions in Income of Lessees of Passenger Automobiles and Other Listed Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Internal Revenue Service published temporary rules relating to the treatment of lessees of luxury automobiles and other listed property in the **Federal Register** on August 9, 1988, and published amendments to those rules in the **Federal Register** on April 12, 1990. This document proposes to adopt the temporary rules as final regulations. The final regulations will affect lessees who lease luxury automobiles or other listed property after December 31, 1990.

DATES: Written comments must be received by May 22, 1992. Requests to appear at, and outlines of oral comments for, the public hearing scheduled for June 26, 1992, must be received by June 5, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn.: CC:CORP:T:R (PS-53-89), room 5228, Washington, DC 20044. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John E. Moffat at 202-566-3553.

SUPPLEMENTARY INFORMATION:

Background

Section 280F of the Internal Revenue Code limits depreciation deductions for passenger automobiles and for certain other property that is not used predominantly in a taxpayer's trade or business. In the case of leased property, however, the special rules of section 280F(c) apply. In general, these rules provide that the limitations on depreciation do not apply to the lessor of the property. Instead, an equivalent limitation applies to the lessee's rental deductions.

Section 1.280F-7T of the temporary Income Tax Regulations provides temporary rules relating to the treatment of lessees under section 280F(c). Section 1.280F-7T was added to the Income Tax Regulations by temporary regulations published in the **Federal Register** on August 9, 1988 (53 FR 29880), and was amended by temporary regulations published in the **Federal Register** on April 12, 1990 (55 FR 13769). Although the 1990 amendments were also issued as proposed regulations, the original rules published in 1988 have not been issued in proposed form. Thus, there has been on opportunity for pubic comment on many of the provisions of § 1.280F-7T. This notice of proposed rulemaking invites public comment on these provisions.

This document proposes to adopt the temporary rules of § 1.280F-7T as final regulations. Accordingly, those rules serve as the comment document for this notice of proposed rulemaking. For the text of the temporary rules, see 26 CFR 1.280F-7T (revised as of April 1, 1991). The preambles of the temporary regulations explain the temporary rules and are published in the Cumulative Bulletin at 1988-2 C.B. 40 and 1990-1 C.B. 64.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for pubic inspection and copying. Written comments will be available for public inspection and copying. Consideration will also be given to oral comments at the public hearing announced in the notice of hearing published elsewhere in this issue of the **Federal Register**

Drafting Information

The principal author of these proposed regulations is John E. Moffat of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 92-1725 Filed 1-23-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-53-89]

RIN 1545-AN90

Inclusions in Income of Lessees of Passenger Automobiles and Other Listed Property; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on supplemental proposed regulations.

SUMMARY: This document provides notice of public hearing on supplemental proposed regulations relating to the treatment of lessees of luxury automobiles and other listed property.

DATES: The public hearing will be held on Friday, June 26, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, June 5, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service

Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS–53–89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–8236 or (202) 566–3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is supplemental proposed regulations under section 280F(c) of the Internal Revenue Code. The supplemental proposed regulations appear elsewhere in this issue of the Federal Register.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, June 5, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–1728 Filed 1–23–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF EDUCATION

34 CFR Part 201

RIN 1810–AA63

Chapter 1—Migrant Education Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Chapter 1—Migrant Education Program. These amendments would remove the requirement that the educational progress of migratory children be evaluated, to the extent possible, in comparison to an appropriate non-project comparison group.

DATES: Comments must be received on or before February 24, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to James English, U.S. Department of Education, 400 Maryland Avenue, SW., room 2148, Washington, DC 20202–6134.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: James English, Telephone: (202) 401–0744. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC, 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On October 23, 1989, final regulations for the Chapter 1—Migrant Education Program (34 CFR part 201) were published in the Federal Register (54 FR 43218). Sections 201.52(b)(1), (c), and (d) and 201.54 of these regulations currently require that State educational agencies (SEAs) and local educational agencies (LEAs) use, to the extent possible, evaluation procedures that involve measurement of the educational progress of project participants against the performance of an appropriate non-project comparison group.

Since publication of the regulations, the Department has determined that the existing requirement for use of a non-project comparison group is difficult to implement for programs and projects serving migratory students. The Secretary therefore proposes removing the requirements for non-project comparison groups from the regulations. If the requirement is removed, program regulations still would require evaluation of the program to be based upon objective measures of the educational progress of program participants including, if possible, the use of national or State-normed achievement tests. Because this method of evaluation is still necessary, removing the non-project comparison requirements will not impact on the Chapter 1—Migrant Education Program Projects may of course continue to use non-project comparison groups as an option in designing and implementing evaluations of their own activities.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities because the regulations primarily affect States and State agencies, which are not defined as "small entities" under the Regulatory Flexibility Act.

The small entities that would be affected are small LEAs receiving Federal funds under this program. The regulations will remove a difficult and unnecessary requirement without imposing a significant economic impact on these small LEAs.

Paperwork Reduction Act of 1980

Section 201.52 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 110 hours per response for 51 respondents.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be

available for public inspection, during and after the comment period, in room 2149, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 201

Children, Education, Evaluation, Grant programs-education, Local educational agencies, Migratory children, Migratory workers, Reporting and recordkeeping requirements, State educational agencies.

(Catalog of Federal Domestic Assistance Number 84.011 Migrant Education Basic State Formal Grant Program)

Dated: January 21, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend part 201 of title 34 of the Code of Federal Regulations as follows:

PART 201—CHAPTER 1—MIGRANT EDUCATION PROGRAM

1. The authority citation for part 201 continues to read as follows:

Authority: 20 U.S.C. 2781–2782, unless otherwise noted.

2. Section 201.52 is amended by revising paragraphs (b)(1), (c), and (d) to read as follows:

§ 201.52 Evaluation information to be collected.

* * * * *

(b) * * *

(1) Objective measures of the educational progress of project participants (including educational achievement in basic skills) as measured, if possible, over a 12-month testing interval through the use of appropriate forms and levels of national or State normed achievement tests. If this is not possible, the SEA or operating agency may use other acceptable measures of educational progress of migratory children, such as changes in attendance patterns, dropout rates, and other objectively applied indicators of student achievement; and

* * * * *

(c) The evaluation design for the summer school instructional project must include objective measures of the educational progress of project participants (including educational achievement in basic skills) over the project performance period.

(d) During either the regular or summer terms, the evaluation design for any support-service components must include measures of the effects of the project on participants that are consistent with the defined support services objectives. (For example, changes is student attendance rates may be an appropriate measure of the effect of guidance and counseling services.)

* * * * *

§ 201.54 [Removed]

3. Section 201.54 is removed and reserved.

[FR Doc. 92–1797 Filed 1–23–92; 8:45 am]

BILLING CODE 4000–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7039]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
CONNECTICUT	
Ansonia (city), New Haven County	
Beaver Brook:	
Approximately 630 feet upstream of confluence with Naugatuck River	*28
At downstream side of Quillinan Reservoir Dam	*127
Whitemore Brook:	
At confluence with Beaver Brook	*98
Approximately 1,000 feet upstream of Doyle Drive	*398
Maps available for inspection at the Town Clerk's Office, 253 Main Street, Ansonia, Connecticut.	
FLORIDA	
Seminole County (unincorporated areas)	
Linden Lake: Entire shoreline within community	*46
Rice Lake: Entire shoreline within community	*46
Twin (Sanford) East: Entire shoreline within community	*50
Twin (Sanford) West: Entire shoreline within community	*52
Bath Lake: Entire shoreline within community	*89
Horseshoe Lake: Entire shoreline within community	*40
Lake Markham: Entire shoreline within community	*48
Lake Howard: Entire shoreline within community	*48
Rose Lake: Entire shoreline within community	*48
Lake Cockran: Entire shoreline within community	*39
Mills Lake: Entire shoreline within community	*45
Lake Gore: Entire shoreline within community	*43
Lake Deeks: Entire shoreline within community	*67
Lake Geneva: Entire shoreline within community	*31
Twin (Oviedo): Entire shoreline within community	*34
Buck Lake: Entire shoreline within community	*32
Lake Marion: Entire shoreline within community	*62
Lake Catherine: Entire shoreline within community	*88
Lake Alice: Entire shoreline within community	*46
Lake Proctor (Upper): Entire shoreline within community	*31
Lake Proctor (Lower): Entire shoreline within community	*29
Lake Rogers: Entire shoreline within community	*75
Lake Lucerne: Entire shoreline within community	*58
Boat Lake: Entire shoreline within community	*55
Clear Lake: Entire shoreline within community	*66
Lake Tony: Entire shoreline within community	*61
Sand Lake: Entire shoreline within community	*118
Pearl Lake: Entire shoreline within community	*54
Forest Lake: Entire shoreline within community	*67
Lake Harriet: Entire shoreline within community	*57
Maps available for inspection at the Seminole County Development Review Department, c/o Sheila Hill, County Services Building, Room W225, 1101 East First Street, Sanford, Florida.	
Send comments to Mr. Ron H. Raburn, Seminole County Manager, County Services Building, Room W312, 1101 East First Street, Sanford, Florida 32771.	
NEW JERSEY	
Lawrence (township), Cumberland County	
Delaware Bay: Entire shoreline within community	*9
Maps available for inspection at 67 South Main Street, Cedarville, New Jersey.	
Send comments to The Honorable Thomas Sheppard, Mayor of the Township of Lawrence, Cumberland County, R.D. 1, Cedarville, New Jersey 08311.	
NEW YORK	
Rutland (town), Jefferson County	
Black River:	
At downstream corporate limits	*511
At upstream corporate limits	*514
Boynton Creek:	
Approximately 0.75 mile downstream of Mud Rock Road	*909
Approximately 0.53 mile upstream of County Route 161	*1,043
Churchill Creek:	
Approximately 130 feet (.024 mile) downstream of Sandy Creek Road	*1,052
Approximately 0.50 mile upstream of State Route 12	*1,091
Felts Mills Creek:	
At confluence with Black River	*577
Approximately 130 feet (.024 mile) upstream of Staplin Road	*784
Freeman Creek:	
Approximately 0.44 mile downstream of Hitchcock Road	*972
Approximately 0.39 mile upstream of Archer Road	*1,070
North Branch Sandy Creek:	
Approximately 0.61 mile downstream of Middle Road	*967
Approximately 425 feet upstream of confluence of Staplin Creek	*963
Rutland Hollow Creek:	
Approximately 1.36 miles downstream of Rutland Hollow Road	*661
Approximately 0.9 mile upstream of Andrews Road	*730
Staplin Creek:	
At confluence with North Branch Sandy Creek	*963
Approximately 115 feet upstream of Staplin Road	*1,061
Maps available for inspection at the Town Clerk's Office, 116 South Main Street, Black River, New York.	
Send comments to Mr. Herman L. Zahn, Jr., Supervisor of the Town of Rutland, Jefferson County, Route 5, Watertown, New York 13601.	
OKLAHOMA	
Noble County (unincorporated areas)	
Dry Creek:	
At county boundary	*915
Approximately 1.3 miles upstream of county boundary	*932
North Stillwater Creek:	
At county boundary	*905
Approximately 500 feet upstream of county boundary	*906
Maps available for inspection at the Noble County Courthouse, Perry, Oklahoma.	
Send comments to Mr. Bill Harney, Chairman of the Noble County Floodplain Board, Route 1, Box 241, Perry, Oklahoma 73077.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	Town of Moody, St. Clair County.	Little Cahaba River	About 1,100 feet downstream of Moody Parkway.	None	*847
			Just upstream of Park Avenue	*870	*872
			About 2,600 feet upstream of Park Avenue	*876	*876
Maps available for inspection at the Town of Moody, Rt. 5, Moody, Alabama.					
Send comments to The Honorable James Sollis, Mayor, Town of Moody, Rt. 5, Box 348, Moody, Alabama 35604.					
Subject to flooding more than one source:					
Arizona	Maricopa County, Unincorporated Areas.	Basin 3, 4A, 4B, 4C or 4D	At the intersection of Grovers Avenue and 56th Street.	None	#1
		Basin 4A, 4B, 4C or 4D	Approximately 3,000 feet north of the intersection of Anderson Drive and 56th Way.	None	#1

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Basin 5, 6A, 6B, or 6C	Approximately 1,900 feet west and 1,300 feet south of the northeast corner of Section 31 in Township 5 North Range 4 East.	None	*1
		Basin 6A, 6B, or 6C	At the intersection of Rancho Loredo Drive and Rancho Tierra Drive.	None	*1
			Approximately 1,100 feet south of the intersection of 64th Street and Lone Mountain Road.	None	*2
			Approximately 2,500 feet south and 2,000 feet east of the intersection of 64th Street and Lone Mountain Road.	None	*3
Maps available for review at the Maricopa County Flood Control District, 3335 West Durango Street, Phoenix, Arizona.					
Send comments to The Honorable James Bruner, Chairman, Maricopa County Board of Supervisors, 111 South Third Avenue, Phoenix, Arizona 85003.					
Arizona	City of Phoenix, Maricopa County.	Basin 5	Approximately 1,000 feet west and 1,000 feet south of the intersection of Dynamite Boulevard and 56th Street.	None	*1
Subject to flooding from more than one source:					
		Basin 3, 4A, 4B, 4C or 4D	Approximately 500 feet west and 1,000 feet south of the intersection of Scottsdale Road and Beardsley Road.	None	*1
		Basin 4A, 4B, 4C or 4D	Approximately 1,000 feet west of the intersection of Scottsdale Road and Deer Valley Road.	None	*1
		Basin 5, 6A, 6B, or 6C	Approximately 2,200 feet north and 500 feet west of the southeast corner of Section 31, in Township 5 North Range 4 East.	None	*1
		Basin 6A, 6B, or 6C	Just north of the intersection of Lone Mountain Road and 56th Street.	None	*1
Maps available for review at the Street Transportation Department, 125 East Washington Street, Phoenix, Arizona.					
Send comments to The Honorable Paul Johnson, Mayor, City of Phoenix, City Hall, 251 West Washington Street, Phoenix, Arizona 85003.					
Arizona	City of Scottsdale, Maricopa County.	Basin 1A	Approximately 2,500 feet west of the intersection of 104th Street and Section Line 29/32 of Township 4 North Range 5 East.	None	#1
			At the intersection of Mountain Spring Road and 112th Street.	None	#2
		Basin 2B	At the intersection of Pima Road and Beardsley Road.	None	#1
			At the intersection of Foothill Road and Church Road.	None	#2
			Approximately 200 feet west of the intersection of Pinnacle Peak Road and Via Ventosa.	None	#3
		Basin 3	At the intersection of Happy Valley Road and Golf Club Drive.	None	#1
			Approximately 900 feet south of the intersection of Alma School Road and Desert Highland Drive.	None	#2
		Basin 4A	Approximately 4,000 feet east of the intersection of Pima Road and Dynamite Boulevard.	None	#2
		Basin 4C	Approximately 2,000 feet north and 3,000 feet east of the intersection of Pima Road and Dynamite Boulevard.	None	#2
			Approximately 100 feet north and 1,700 feet east of the intersection of Pima Road and Dynamite Boulevard.	None	#3
		Basin 5	Approximately 2,600 feet east and 2,600 feet north of the intersection of Scottsdale Road and Dynamite Boulevard.	None	#1
			At intersection of Lone Mountain Road and Section Line 23/24 in Township 5 North Range 4 East.	None	#2
		Basin 6A	Approximately 2,000 feet north of the intersection of Lone Mountain Road and Section Line 13/14 in Township 5 North Range 4 East.	None	#2
			Approximately 500 feet north of the intersection of Pima Road and Dove Valley Road.	None	#3
		Basin 6C	Approximately 1,500 feet east of the intersection of Dove Valley Road and Section Line 13/14 in Township 5 North Range 4 East.	None	#3
Subject to flooding from more than one source:					
		Basin 1A or 1B	Approximately 1,000 feet east and 2,500 feet south of the intersection of Beardsley Road and 96th Street.	None	#1

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 500 feet north of the intersection of Mountain Spring Road and 104th Street.	None	#2
		Basin 1A, 1B, 2A, or 2B	At the intersection of Old Verde Canal and Section Line 5/6 in Township 3 North Range 5 East.	None	#1
		Basin 2A or 2B	At the intersection of Beardsley Road and 96th Street.	None	#1
			At the intersection of Deer Valley Road and Church Road.	None	#2
		Basin 2A, 2B or 3	At the southwest corner of Section 36 in Township 4 North Range 4 East.	None	#1
		Basin 2B or 3	At the intersection of Union Hills Road and Section Line 35/36 in Township 4 North Range 4 East.	None	#1
		Basin 2B, 3, 4A, 4B, 4C or 4D	Approximately 2,000 feet east and 1,000 feet north of the intersection of Bell Road and Scottsdale Road.	None	#1
		Basin 3, 4A, 4B, 4C or 4D	At the intersection of Scottsdale Road and Beardsley Road.	None	#1
		Basin 4A or 4B	Approximately 2,500 feet east of the intersection of Pima Road and Dynamite Boulevard.	None	#2
		Basin 4A, 4B or 4C	At the intersection of Jomax Road and Wrangler Road.	None	#1
			Approximately 1,000 feet east and 1,000 feet south of the intersection of Pima Road and Dynamite Boulevard.	None	#2
			Approximately 1,500 feet east and 200 feet south of the intersection of Pima Road and Dynamite Boulevard.	None	#3
		Basin 4A, 4B, 4C or 4D	At the intersection of Pinnacle Peak Road and Los Portones Drive.	None	#1
			At the intersection of Happy Valley Road and Section Line 1/2 in Township 4 North Range 4 East.	None	#2
			Approximately 1,000 feet west of the intersection of Saddlehorn Road and Gate Road.	None	#3
			Approximately 100 feet south and 1,000 feet west of the intersection of Jomax Road and Wrangler Road.	None	#4
		Basin 6A, 6B or 6C	Approximately 2,000 feet west and 600 feet north of the intersection of Scottsdale Road and Lone Mountain Road.	None	#1
			Approximately 300 feet north of the intersection of Scottsdale Road and Lone Mountain Road.	None	#2
			Approximately 1,500 feet south and 200 feet west of the intersection of Scottsdale Road and Lone Mountain Road.	None	#3
	Maps are available for review at City Clerk's Office, 3939 Civic Center Plaza, Scottsdale, Arizona.				
	Send comments to The Honorable Herbert Drinkwater, Mayor, City of Scottsdale, 3939 Civic Center Plaza, Scottsdale, Arizona 85251.				
Arizona	City of Show Low, Navajo County.	Show Low Creek	Approximately 1.57 miles upstream of U.S. Highway 60.	°6,346	°6,346
			Approximately 5,390 feet downstream of Jaques Dam.	None	°6,512
			Approximately 1,050 feet downstream of Jaques Dam Weir.	None	°6,552
	Maps are available for review at the City Engineering Department, City Hall, 200 West Cooley Street, Show Low, Arizona.				
	Send comments to The Honorable Gerry Whipple, Mayor, City of Show Low, City Hall, 200 West Cooley Street, Show Low, Arizona 85901.				
Arkansas	Russellville, City, Pope County.	Engineers Ditch	Approximately 0.2 river mile upstream of confluence with Prairie Creek.	°335	°334
			Approximately 0.4 river mile upstream of West 3rd Place.	None	°371
		Engineers Tributary	At confluence with Engineers Ditch	None	°348
			Approximately 1,000 feet upstream of South Vancouver.	None	°367
		Prairie Creek	Approximately 0.2 river mile upstream of confluence of Engineers Ditch.	°335	°334
			Upstream of State Route 326	None	°348
		Prairie Creek Tributary	At confluence with Prairie Creek	None	°363
			Upstream of State Route 326	None	°386
		Whig Creek	Approximately .5 river mile downstream of State Route 7.	None	°323

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Upstream side of Union Pacific Railroad	None	*396
		Whig Creek Tributary	At confluence with Whig Creek	None	*345
			Approximately 0.5 river mile upstream of East 16th Street.	None	*363
		Illinois Bayou	At confluence with Arkansas River	None	*339
			Approximately 530 feet upstream of Point View Road.	None	*346
		Arkansas River	At State Route 7	None	*323
			At confluence of Illinois Bayou	None	*339
Maps available for inspection at the Planning and Zoning Department, 200 Block W. 2nd Street, Russellville, Arkansas.					
Send comments to The Honorable Woody Harris, Mayor of the City of Russellville, Pope County, P.O. Box 428, Russellville, Arkansas 72801.					
California	City of Bell, Los Angeles County.	Los Angeles River	Between Los Angeles River and Long Beach Freeway, 2,000 feet south of Florence Avenue.	None	*109
Maps are available for review at City of Bell Department of Community Services, 6330 Pine Avenue, Bell, California.					
Send comments to The Honorable Rolf Janssen, Mayor, City of Bell, 6330 Pine Avenue, Bell, California 90201.					
California	City of Bellflower, Los Angeles County.	Los Angeles River	At the intersection of Rose Street and Lakewood Boulevard.	None	*61
			At the intersection of Artesia Freeway and Lakewood Boulevard.	None	*67
			At the intersection of Lakewood Boulevard and Alondra Street.	None	*71
Maps are available for review at the Planning Department, City Hall, 16600 Civic Center Drive, Bellflower, California.					
Send comments to The Honorable William J. Pendleton, Mayor, City of Bellflower, 16600 Civic Center Drive, Bellflower, California 90706.					
California	City of Bell Gardens, Los Angeles County.	Rio Hondo	Approximately 500 feet west of the intersection of Shull Street and Eastern Avenue.	None	*109
Maps are available for review at the Building Department, City of Bell Gardens, 7100 South Garfield Avenue, Bell Gardens, California.					
Send comments to the Honorable Robert Cunningham, Bell Gardens City Hall, 7100 South Garfield Avenue, Bell Gardens, California 90201.					
California	City of Carson, Los Angeles County.	Los Angeles River	Approximately 4,600 feet south of the Sepulveda Boulevard bridge over Domiguez Channel.	None	*13
			At the Carson Street underpass beneath San Diego Freeway.	None	*20
			At the intersection of Prospect Avenue and Van Buren Street.	None	*35
			Just east of Compton Creek and west of Long Beach Freeway.	None	*52
			At the intersection of Carson Street and Wilmington Avenue.	None	#3
Maps are available for review at the Public Works Department, 701 East Carson Street, Carson, California.					
Send comments to The Honorable Michael I. Mitoma, 701 East Carson Street, Carson, California 90749.					
California	City of Compton, Los Angeles County.	Los Angeles River	Approximately 1,200 feet south of Artesia Freeway just east of the Southern Pacific Railroad.	None	*56
			At the intersection of Long Beach Boulevard and Temple Avenue.	None	*65
			At the intersection of Long Beach Boulevard and Elm Street.	None	*71
			At the intersection of South San Antonio Avenue and East Compton Boulevard.	None	*74
			At Banning Street west of Santa Fe Avenue	None	*80
Maps are available for review at the Planning Department, 205 South Willowbrook Avenue, Compton, California.					
Send comments to The Honorable Walter Tucker, Mayor, City of Compton, 205 South Willowbrook Avenue, Compton, California 90220.					
California	City of Downey, Los Angeles County.	Los Angeles River	At the intersection of Century Boulevard and Verdura Avenue.	None	*81
			At the intersection of Golden Avenue and Bixler Avenue.	None	*83
		Rio Hondo	Approximately 100 feet west of the intersection of Brock Avenue and Gardendale Street.	None	*85
			At the intersection of Bellflower Boulevard and Washburn Road.	None	*100
			At the intersection of Muller Street and Lakewood Boulevard.	None	*118
			At the intersection of Paramount Boulevard and Florence Avenue.	None	*126
			At the intersection of Telegraph Road and Lakewood Boulevard.	None	*143
			At the intersection of Patton Road and Cleta Street.	None	#1

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground °Elevation in feet (NGVD)	
				Existing	Modified
			At the intersection of Downey Avenue and Texas Street.	None	#2
Maps are available for review at Downey City Hall, 11111 Brookshire Avenue, Downey, California.					
Send comments to the Honorable Barbara Hayden, Mayor, City of Downey, 11111 Brookshire Avenue, Downey, California 90240.					
California	City of Gardena, Los Angeles County.	Los Angeles River	At the intersection of Artesia Boulevard and Normandie Avenue.	None	°20
Maps are available for review at the Community Development Department, 1700 West 162nd Street, Room 101, Gardena, California.					
Send comments to The Honorable Donald Dear, Mayor, City of Gardena, 1700 West 162nd Street, Gardena, California 90247.					
California	City of Lakewood, Los Angeles County.	Los Angeles River	At the intersection of Carson Street and Palo Verde Avenue.	None	°36
			At the intersection of Palo Verde Avenue and Turner Grove Drive.	None	°43
			Approximately 700 feet south of the intersection of South Street and Lakewood Boulevard.	None	°54
			Approximately 400 feet north of the intersection of Lakewood Boulevard and Ashworth Street.	None	°61
			At the intersection of Del Amo Boulevard and Palo Verde Avenue.	None	#1
			At the intersection of Woodruff Avenue and Arbor Road.	None	#2
Maps are available for review at the Community Development Department, Lakewood City Hall, 5050 Clark Avenue, Lakewood, California.					
Send comments to The Honorable Robert Wagner, Mayor, City of Lakewood, c/o Howard Chambers, City Administrator, 5050 Clark Avenue, Lakewood, California 90712.					
California	City of Long Beach, Los Angeles County.	Los Angeles River	At the intersection of Second Street and the Pacific Coast Highway.	None	°11
			Approximately 200 feet south of the intersection of Santa Fe Avenue and 23rd Street.	None	°15
			At the intersection of Willow Avenue and Magnolia Avenue.	None	°23
			Just upstream of the intersection of Wardlow Road and Bellflower Boulevard.	None	°30
		Los Angeles River	Just east of the Los Angeles River and south of San Diego Freeway.	None	°38
			At the intersection of Virginia Avenue and 48th Street.	None	°50
			At the intersection of Long Beach Freeway and Del Amo Boulevard.	None	°52
			At the intersection of Myrtle Avenue and 63rd Street.	None	°57
			At the intersection of Myrtle Avenue and 72nd Street.	None	°68
Maps are available for review at the Department of Public Works, 333 West Ocean Boulevard, Long Beach, California.					
Send comments to The Honorable Ernie Kell, Mayor, City of Long Beach, Civic Center Plaza, 333 West Ocean Boulevard, Long Beach, California 90802.					
California	City of Los Angeles, Los Angeles County.	Los Angeles River	At the intersection of Alameda Street and Avalon Boulevard.	None	°11
			At Pacific Coast Highway bridge over Dominguez Channel.	None	°12
			At the intersection of Vermont Avenue and Artesia Freeway.	None	°20
			Approximately 2,000 feet south of San Diego Freeway.	None	°27
			Approximately 200 feet upstream of the Brooklyn Avenue bridge, just east of the Los Angeles River channel.	None	°297
			Approximately 1,650 feet upstream of the Broadway bridge, just east of the Los Angeles River channel.	None	°311
Maps are available for review at the current address, 200 North Main Street, Room 600, City Hall East, Los Angeles, California, and at the new address, tentatively effective November 25, 1991, 600 South Spring Street, Suite 400, Los Angeles, California.					
Send comments to The Honorable Tom Bradley, Mayor, City of Los Angeles, 200 North Spring Street, Room 305, City Hall, Los Angeles, California 90012.					
California	Los Angeles County, Unincorporated Areas.	Los Angeles River	Approximately 1,600 feet south of the intersection of Westminster Avenue and Studebaker Road.	None	°11
			Approximately 500 feet south of the intersection of Westminster Avenue and Studebaker Road.	None	°12

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground °Elevation in feet (NGVD)	
				Existing	Modified
			At the intersection of Del Amo Boulevard and Santa Fe Avenue.	None	°41
			At the intersection of Del Amo Boulevard and Susana Road.	None	°52
			Approximately 650 feet south of the intersection of Atlantic Avenue and Compton Boulevard.	None	°68
			At Long Beach Freeway just north of the Fernwood Avenue overpass.	None	°85
			Just west of the intersection of Del Amo Boulevard and Alameda Street.	None	#3
		Rio Hondo	Just east of the Los Angeles River, just upstream of Fernwood Avenue.	None	83
			Just east of the Los Angeles River and just south of the Imperial Highway bridge.	None	94
Maps are available for review at the Los Angeles County Public Works Department, 11th Floor, Planning Division, 900 South Fremont Avenue, Los Angeles, California.					
Send comments to The Honorable Michael D. Antonovich, Chairperson, Los Angeles County Board of Supervisors, 869 Hall of Administration, 320 West Temple Street, Los Angeles, California 90012.					
California	City of Lynwood, Los Angeles County.	Los Angeles River	At the intersection of McMillan Street and Atlantic Avenue.	None	°75
			At the intersection of Euclid Avenue and Peach Street.	None	°78
			At the intersection of Atlantic Avenue and Agnes Avenue.	None	°81
			At the intersection of Cortland Street and Louise Avenue.	°78	°85
			At the intersection of Century Boulevard and Louise Avenue.	°81	°85
Maps are available for review at the Department of Public Works, Engineering Division, City Hall Annex, 11330 Bullis Road, Lynwood, California.					
Send comments to the Honorable Louis Heine, Mayor, City of Lynwood, 11330 Bullis Road, Lynwood, California 90262.					
California	City of Montebello, Los Angeles County.	Rio Hondo	Just east of Rio Hondo Channel in line with Beach Street.	None	°168
			Just east of Rio Hondo Channel, 300 feet south of Beverly Boulevard.	None	°184
Maps are available for review at City Hall, 1600 West Beverly Boulevard, Montebello, California.					
Send comments to The Honorable Arthur Payan, Mayor, City of Montebello, 1600 West Beverly Boulevard, Montebello, California 90640.					
California	City of Paramount, Los Angeles County.	Los Angeles River	At the intersection of South Downey Avenue and East Flower Street.	None	°68
			Four hundred feet north of the intersection of South Orange Avenue and East Alondra Boulevard.	None	°71
			At the intersection of East Golden Avenue and Obispo Avenue.	None	°83
			Just west of the Los Angeles River channel and south of the Union Pacific Railroad Bridge.	None	°84
		Rio Hondo	At the intersection of South Orizaba Avenue and East Golden Avenue.	None	°83
			At the intersection of South Orange Avenue and East Hogee Drive.	None	°84
			Approximately 200 feet northwest of the intersection of East Gardendale Street and South Brocks Avenue.	None	°86
Maps are available for review at City Public Works Yard, 15300 Downey Avenue, Paramount, California, and City Building Department, 16400 Colorado Avenue, Paramount, California.					
Send comments to The Honorable Gerald A. Mulrooney, Mayor, City of Paramount, 16400 Colorado Avenue, Paramount, California 90723.					
California	City of Pico Rivera, Los Angeles County.	Rio Hondo	Just upstream of the intersection of Rosemead Boulevard and Telegraph Road.	None	°143
			At the intersection of Loch Alene Avenue and Foxbury Way.	None	°158
			At the intersection of Rieshel Street and Picovista Road.	None	°162
			At the intersection of Calico Avenue and Friendship Avenue.	None	°190
			At the intersection of Mines Avenue and Cord Avenue.	None	#1

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at the Public Works Department, 6615 Passons Boulevard, Pico Rivera, California 90660. Send comments to The Honorable Garth Gardner, Mayor, City of Pico Rivera, 6615 Passons Boulevard, Pico Rivera, California 90660					
California	City of South Gate, Los Angeles County.	Rio Hondo	At the intersection of Paramount Boulevard and Florence Avenue.	None	*83
			At the intersection of Imperial Highway and Garfield Place.	None	*94
			At the crossing of Union Pacific Railroad and Miller Way.	None	*108
			At the intersection of Garfield Avenue and Firestone Boulevard.	None	*109
			At Southern Pacific Railroad just east of Rio Hondo Channel.	None	*113
		Los Angeles River	At the intersection of Century Boulevard and Paramount Boulevard.	None	*83
Maps are available for review at the Office of the City Clerk, South Gate City Hall, 8650 California Avenue, South Gate, California. Send comments to The Honorable Gregory Staughter, Mayor, City of South Gate, 8650 California Avenue, South Gate, California 90280.					
Connecticut	Marlborough, Town, Hartford County.	Cattle Lot Brook	Approximately 175 feet upstream of confluence with Dickinson Creek.	*355	*356
			At upstream corporate limits	None	*375
		Fawn Hill Brook	Approximately 400 feet upstream of confluence of Dickinson Creek.	*360	*361
			Approximately .6 mile upstream of State Route 66.	None	*415
		Fawn Brook	Approximately 215 feet upstream of confluence with Black Ledge River.	*179	*180
			Approximately 230 feet upstream of confluence with Black Ledge Creek.	*179	*181
		West Branch Dickinson Creek	Upstream side of New London Turnpike	None	*418
			At Chapman Road	None	*420
Maps available for inspection at the Town Hall, 26 North Main Street, Marlborough, Connecticut. Send comments to Mr. Allan Shusterman, First Selectman of the Town of Marlborough, Hartford County, Town Hall, P.O. Box 29, Marlborough, Connecticut 06447.					
Connecticut	Washington, Town, Litchfield County.	Shepaug River	At the downstream corporate limits	*373	*370
			At the upstream corporate limits	*732	*736
		Bantam River	At the confluence with Shepaug River	*625	*617
			At a point approximately 1,950 feet upstream of the confluence with Shepaug River.	*625	*624
Maps available for inspection at the Town Hall, 2 Bryan Plaza, Washington, Connecticut. Send comments to Mr. Alan Chapin, First Selectman of the Town of Washington, Litchfield County, Town Hall, P.O. Box 383, Washington Depot, Connecticut 06794.					
Florida	Unincorporated Areas of Clay County.	Black Creek	At mouth	*6	*5
			At confluence with North Fork and South Fork Black Creek.	*14	*15
		Grog Creek	At mouth	None	*14
			About 2,750 feet upstream of Blanding Boulevard.	None	*22
		Bradley Creek	At mouth	*9	*8
			About 400 feet downstream of trail road	None	*45
			Just upstream of trail road	None	*52
			Just downstream of State Road 218	None	*74
			Just upstream of State Road 218	None	*80
		Dillaberry Branch	At mouth	None	*17
			Just downstream of State Route 218	None	*79
		Polander Branch	At mouth	None	*18
			Just downstream of County Highway 218	None	*25
			About 350 feet upstream of County Highway 218.	None	*32
		Big Branch	At mouth	None	*24
			Just downstream of County Highway 218	None	*75
			Just upstream of County Highway 218	None	*84
		Duckwater Branch	At mouth	None	*48
			Just downstream of County Highway 218	None	*74
			Just upstream of County Highway 218	None	*80
		Mill Creek	At mouth	None	*22
			Just upstream of Calendula Avenue	None	*48
		Peters Creek	At mouth	*6	*5
			Just downstream of Farm Road	*6	*8
		Ortega River	Just upstream of Interstate 295	*8	*7
			About 2,000 feet upstream of confluence of Tributary No. 1.	*15	*11

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground °Elevation in feet (NGVD)	
				Existing	Modified
		Governors Creek	At mouth	°6	°5
			About 1,300 feet downstream of State Road 16.	°6	°6
		Clarkes Creek	At mouth	°6	°5
			About 2,650 feet downstream of County Highway 209.	°6	°6
		Double Branch	At mouth	°11	°14
			About 4,000 feet upstream of mouth	°14	°14
		Bull Creek	At mouth	None	°22
			About 4,550 feet upstream of County Highway 215.	None	°50
		South Prong Double Branch	At mouth	None	°32
			About 1.1 miles upstream of Branan Field Road.	None	°60
		North Fork Black Creek	At mouth	°14	°15
			Just downstream of North Road	None	°91
		North Fork Black Creek Tributary No. 2.	At mouth	°17	°17
			Just downstream of Long Bay Road	None	°57
		North Fork Black Creek Tributary No. 1.	At mouth	°14	°16
			About 600 feet upstream of County Highway 220.	°16	°16
		Swimming Pen Creek	Entire reach	°6	°5
		St. Johns River	Within community	°6	°5
		St. Johns River Tributary No. 1.	At mouth	°6	°5
			Just upstream of U.S. Route 17	°7	°7
		St. Johns River Tributary No. 2.	At mouth	°6	°5
			Just downstream of County Highway 209	°6	°6
		St. Johns River Tributary No. 3.	Entire reach	°6	°5
		South Fork Black Creek	At mouth	°14	°15
			About 2,500 feet upstream of State Road 218	°15	°15
		Peters Branch	At mouth	None	°5
			Just downstream of U.S. Route 17	None	°10
		Little Black Creek	At mouth	°9	°9
			About 1,900 feet downstream of Cheswick Oak Avenue.	°35	°34
		Little Black Creek Tributary No. 1.	At mouth	°10	°14
			About 7,000 feet upstream of Branan Field Road.	None	°41
		Little Black Creek Tributary No. 2.	At mouth	°12	°14
			About 3,000 feet above mouth	°14	°14
		Lake Opal	Along shoreline	None	°124
		Loch Lomond	Along shoreline	None	°108
		North Lake Ashbury	Along shoreline	None	°28
		South Lake Ashbury	Along shoreline	None	°48
		Lake Lark	Along shoreline	None	°41
		Lake Ryan	Along shoreline	None	°52
		Crystal Lake	Along shoreline	None	°114
		Blue Pond	Along shoreline	None	°176
		Little Lake Geneva	Along shoreline	None	°100
		Deer Springs Lake	Along shoreline	None	°111
		Lake Lure	Along shoreline	None	°100
		Lake Hutchinson	Along shoreline	None	°109
		Silver Sand Lake	Along shoreline	None	°96
		Allen Pond	Along shoreline	None	°95
		Oldfield Pond	Along shoreline	None	°103
		Bundy Lake	Along shoreline	None	°83
		Pebble Lake	Along shoreline	None	°109
		Lake Lily	Along shoreline	None	°113

Maps available for inspection at the Clay County Building & Zoning Department, Green Cove Springs, Florida.
Send comments to the Honorable Doug Anderson, Clay County Manager, P.O. Box 1366, Green Cove Springs, Florida 32043.

Florida	Unincorporated Areas of Hillsborough County.	*Rocky Creek	Just upstream of Gunn Highway	None	°31
			Just downstream of Lutz Lake-Fern Road	None	°65
		Baker-Pemberton Creek	At mouth	None	°40
			Just downstream of Forbes Road	None	°91
		Tributary A	At mouth	None	°80
			About 700 feet upstream of U.S. Route 92	None	°86
		Spartman Branch	At mouth	None	°90

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground °Elevation in feet (NGVD)	
				Existing	Modified
			About 3,500 feet upstream of Turkey Creek Road.	None	°102
		Brushy Creek	Just upstream of Gunn Highway	None	°33
			Just downstream of Dale Mabry Highway	None	°56
		Sweetwater Creek Diversion	At mouth	None	°10
		Sweetwater Creek	About 3,900 feet upstream of Hanley Road	None	°10
			Just upstream of divergence from Sweetwater Creek Diversion.	None	°10
			Just downstream of Water Control Structure G-6.	None	°10
			Just upstream of Water Control structure G-1	None	°18
			Just downstream of Lake Magdalene Boulevard.	None	°51
		Curiosity Creek	Just upstream of West Fowler Avenue	None	°32
			Just downstream of Bearss Avenue	None	°51
		Brooker Creek	At county boundary	None	°30
		Flint Creek	Just downstream of Van Dyke Road	None	°53
			At mouth	None	°39
			About 2,900 feet upstream of Knights-Griffin Road.	None	°40
		Campbell Branch	Just upstream of confluence of Flint Creek	None	°40
			Just downstream of Forbes Road	None	°92

Maps available for inspection at the Development Services Center, 660 Twigg Street, Room 101, Tampa, Florida.

Send comments to The Honorable Fred Karl, County Administrator, Hillsborough County, P.O. Box 1110, Tampa, Florida 33601.

Florida	Unincorporated Areas of Pasco County.	Bear Creek	Just downstream of Bear Creek Drive	°24	°24
			About one mile upstream of Citrus Street	None	°42
		Buckhorn Creek	At mouth	°26	°25
			About 1.5 miles upstream of Sugar Creek Boulevard.	None	°35
		Cabbage Swamp	About 1300 feet upstream of mouth	°52	°52
			Just downstream of Interstate 75	°54	°53
		Fivemile Creek	At mouth	°46	°46
			About 1,000 feet downstream of CSX railroad	None	°66
		Trout Creek	At county boundary	°53	°52
			About 0.9 mile upstream of unnamed road	None	°78
		Tributary No. 1	Just downstream of Ridge Top Drive	°10	°10
			Just upstream of Summerfield Drive	None	°12
		Tributary No. 2	About 0.3 mile upstream of mouth	°10	°10
			About 0.9 mile downstream of unnamed road	None	°46
		Tributary No. 3	At mouth	None	°39
			About 4,000 feet upstream of mouth	None	°41
		Tributary No. 5	At mouth	°11	°11
			Just downstream of unnamed road	None	°17
		Tributary No. 6	At mouth	°13	°13
			Just downstream of Cedar Boulevard	None	°16
		Tributary No. 7	At mouth	°26	°26
			About 1.1 miles upstream of unnamed road	None	°32
		Tributary No. 9	At mouth	°34	°34
			About 1,800 feet upstream of Trail Road	None	°35
		Tributary No. 11	Just downstream of Manatee Avenue	None	°36
			Just downstream of State Road 587	None	°41
		Tributary No. 12	At mouth	None	°32
			Just downstream of Quail Hollow Boulevard	None	°42
		Tributary No. 13	Just downstream of Star Terrace	None	°18
			Just downstream of Lake View Drive	None	°25
		Tributary No. 14	About 0.3 mile upstream of Massachusetts Avenue.	None	°23
			About 1.0 mile upstream of Massachusetts Avenue.	None	°24
		Tributary No. 15	Within community	None	°35
		Tributary No. 16	At mouth	None	°62
			Just downstream of CSX railroad	None	°66
		Tributary No. 18	About 1,600 feet upstream of mouth	None	°65
			Just upstream of Golden Meadow Boulevard North.	None	°72
		Tributary No. 19	At mouth	None	°70
			Just downstream of Quail Hollow Boulevard	None	°73
		Tributary No. 20	At mouth	°57	°57
			Just downstream of unnamed road	None	°70
		Tributary No. 21	At mouth	°55	°58
			About 0.5 mile upstream of Haverhill Road	None	°70
		Tributary No. 22	About 0.4 mile upstream of mouth	°52	°57
			About 300 feet downstream of Interstate 75	None	°66
		Tributary No. 23	At mouth	None	°60

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			About 400 feet downstream of State Route 54	None	*78
		Tributary No. 24	At mouth	None	*60
			Just downstream of unnamed road	None	*86
		Tributary No. 25	About 0.3 mile downstream of Lake View Drive	None	*24
			About 0.7 mile upstream of Lake View Drive	None	*26
		Zephyr Creek	About 0.6 mile upstream of mouth	*62	*62
			About 1.4 miles upstream of Geiger Road	None	*129
Maps available for inspection at the Development Services, 7432 Little Road, New Port Richey, Florida. Send comments to The Honorable John Gallagher, County Administrator, Pasco County, 7530 Little Road, New Port Richey, Florida 34654.					
Georgia	City of Decatur, De Kalb County.	Shoal Creek	About 2,500 feet downstream of Midway Road	*915	*916
			Just downstream of Kirk Road	*957	*950
			Just upstream of Kirk Road	*960	*961
			Just downstream of Hilldale Drive	*973	*970
			Just upstream of Hilldale Drive	*976	*978
			About 900 feet upstream of South Columbia Drive.	None	*992
		Shoal Creek West Tributary	At mouth	*933	*931
			Just downstream of South McDonough Street	*967	*965
			Just upstream of South McDonough Street	*972	*971
			Just downstream of Adams Street	*975	*971
			Just upstream of Adams Street	*977	*976
			Just downstream of Ansley Street	*989	*988
		Peavine Creek	At confluence of Peavine Creek Tributary	*930	*935
			Just downstream of Coventry Road	*930	*935
			Just upstream of Coventry Road	*942	*945
			About 1,000 feet upstream of Coventry Road	*942	*945
		Peavine Creek Tributary	At mouth	*930	*935
			Just downstream of West Ponce de Leon Avenue.	None	*970
		South Fork Peachtree Creek Tributary.	Just downstream of North Decatur Road	None	*902
			Just upstream of North Decatur Road	*909	*907
			Just downstream of Scott Boulevard	*911	*911
			Just upstream of Scott Boulevard	*913	*917
			Just downstream of Church Street	*926	*927
			Just upstream of Church Street	*932	*936
			Just downstream of Glendale Avenue	*941	*949
		Sugar Creek Tributary	About 700 feet downstream of Second Avenue	*978	*982
			About 1,050 feet upstream of Second Avenue	*1000	*989
		Church Street Branch	At mouth	None	*923
			Just downstream of Willow Lane	None	*925
			Just upstream of Willow Lane	None	*930
			Just downstream of Medlock Road	None	*944
		Lamont Drive Branch	At mouth	None	*956
			Just downstream of Wilton Drive	None	*964
			Just upstream of Wilton Drive	None	*979
Maps available for inspection at the City Engineer's Office, Public Works Building, 2635 Talley Street, Decatur, Georgia. Send comments to The Honorable Michael Mears, Mayor, City of Decatur, P.O. Box 220, Decatur, Georgia 30031.					
Georgia	Unincorporated Areas of Effingham County.	Little Ogeechee River	About 1.9 miles downstream of CSX Railroad	None	*22
			Just downstream of Blue Jay Road	None	*44
		Ogeechee River	About 4.1 miles downstream of State Route 404.	None	*30
			About 6.2 miles upstream of State Route 26	None	*51
		Horning Swamp	At mouth	None	*32
			Just downstream of State Route 30	None	*59
		Walthour Swamp	About 3.2 miles downstream of State Route 30	None	*20
			Just downstream of State Route 30	None	*42
		Ogeechee Run	At mouth	None	*42
			About 1.1 miles upstream of State Route 17	None	*53
Maps available for inspection at the County Courthouse Annex, Zoning Office, Springfield, Georgia. Send comments to The Honorable Kim Warnock, Chairman, Board of County Commissioners, Effingham County, East 7th Street, P.O. Box 307, Springfield, Georgia 31329.					
Iowa	City of Urbandale, Polk and Dallas Counties.	North Walnut Creek	Just upstream of Hickman Road	*848	*847
			About 2,300 feet upstream of Northwest 100th Street.	*914	*911
		Beaver Creek	About 0.8 mile upstream of Chicago and North Western railroad.	None	*808
			About 1.9 miles upstream of Chicago and North Western railroad.	None	*810

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Walnut Creek	Just upstream of U.S. Highway 6	*878	*878
			About 7,750 feet upstream of U.S. Highway 6	*886	*886
Maps available for inspection at the City Engineers Office, 3315 70th Street, Urbandale, Iowa 50332.					
Send comments to The Honorable B.J.E. Giovannetti, Mayor, City of Urbandale, 3315 70th Street, P.O. Box 3540, Urbandale, Iowa 50332.					
Kentucky	Lexington-Fayette Urban County Government, Fayette County.	Cane Run	Just upstream of Private Drive	*890	*892
			Just upstream of Newton Road	*918	*919
		South Elkhorn Creek	Just upstream of Old Versailles Road	*846	*849
			Just upstream of Higbee Mill Road	*929	*931
		Cave Creek	At mouth	*859	*862
			Just downstream of Man O' War Boulevard	*916	*916
			Just upstream of Man O' War Boulevard	*917	*936
			Just downstream of Ridgecane Road	*937	*939
			Just upstream of Ridgecane Road	*937	*947
			About 1,470 feet upstream of Ridgecane Road	*956	*956
		Parker's Mill Tributary	At mouth	*867	*869
			About 0.72 miles upstream of Private Drive	*906	*912
		Dogwood Tributary	At mouth	*937	*947
			About 0.55 miles upstream of Unnamed Drive	None	*996
		Drive-In Tributary	At mouth	None	*900
			About 1.09 miles upstream of mouth	None	*915
		Quarry Tributary	At mouth	None	*917
			About 950 feet upstream of Clays Mill Road	None	*943
		Waveland Museum Tributary	At mouth	None	*931
			Just downstream of Grassy Creek Drive	None	*936
			Just upstream of Grassy Creek Drive	None	*941
			About 0.28 miles upstream of Field Road	None	*987
		West Hickman Creek	Just downstream of New Circle Road	*930	*931
			Just upstream of New Circle Road	*931	*937
			Just downstream of Alumni Drive	*940	*941
			Just upstream of Alumni Drive	*940	*946
		Higbee Mill Road Tributary	At mouth	None	*894
			About 1.79 miles upstream of mouth	None	*983
		Tiverton Way Tributary	At mouth	None	*896
			Just downstream of Man O' War Boulevard	None	*913
		I-75 Tributary	Just downstream of Interstate 75	*922	*923
			Just upstream of Interstate 75	*924	*930
			About 1.39 miles upstream of Residential Drive	None	*1,021
		Eastland Park Tributary	At mouth	*925	*931
			About 0.42 miles upstream of the mouth	*933	*936
		U.S. Route 60 Tributary	At mouth	None	*936
			Just downstream of dam	None	*952
			Just upstream of dam	None	*960
			Just downstream of Winchester Road	None	*970
		Tiverton Way Tributary	Just upstream of Man O' War Boulevard	None	*921
			Just downstream of Yale Drive	None	*957
			Just upstream of Yale Drive	None	*964
		Wilson Downing Road Tributary.	At mouth	*905	*906
			Just downstream of Camelot Road	*934	*935
			Just upstream of Camelot Road	*938	*945
			About 370 feet upstream of Argonne Circle	*980	*989
		Flintridge Drive Tributary	At mouth	None	*964
			About 950 feet upstream of mouth	None	*977
		Pleasant Ridge Church Tributary.	At mouth	None	*950
			About 0.60 mile upstream of mouth	None	*966
		Two Ponds Tributary	At mouth	None	*966
			About 0.32 mile upstream of mouth	None	*986
		East I-75 Tributary	At mouth	None	*937
			About 0.26 mile upstream of Residential Drive	None	*978
		Shadeland Tributary	At mouth	*980	*980
			Just downstream of Tates Creek Road	*993	*994
			Just upstream of Tates Creek Road	None	*999
			About 850 feet upstream of Tates Creek Road	None	*1,004
		Todds Road Tributary	Just downstream of Interstate 75	None	*995
			Just upstream of Interstate 75	None	*1,002
			About 0.45 mile upstream of Walnut Hill-Chilesburg Road.	None	*1,013
		Todds Road Tributary North	At mouth	None	*986
			About .060 mile upstream of mouth	None	*1,012
		Reservoir Tributary East	Just upstream of dam	None	*971
			Just downstream of Jerrico Drive	None	*994
			Just upstream of Jerrico Drive	None	*1,003

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground °Elevation in feet (NGVD)	
				Existing	Modified
			Just downstream of Private Drive	None	°1,008
			Just upstream of Private Drive	None	°1,020
			Just downstream of Palumbo Drive	None	°1,626
		Cadentown Branch	At mouth	°970	°972
			Just downstream of Gingermill Lane	°973	°977
			Just upstream of Gingermill Lane	°973	°984
			Just downstream of Caden Lane	°1,025	°1,206
		Cadentown Branch East	At mouth	°990	°991
			Just downstream of Todds Road	None	°996
			Just upstream of Todds Road	None	°1,006
			About 0.36 mile upstream of Todds Road	None	°1,018
		Tates Creek	Just downstream of eastbound New Circle Road exit ramp.	°931	°930
			Just upstream of eastbound New Circle Road exit ramp.	°938	°935
			Just upstream of New Circle Road	°940	°940
			Just downstream of Tates Creek Road	°942	°943
			Just upstream of Tates Creek Road	°948	°949
			About 1,500 feet upstream of Alumni Drive	°993	°1,004
		Lansdowne Road Tributary	At mouth	°943	°943
			About 800 feet upstream of Libby Lane	None	°967

Maps available for inspection at the Planning Department, 200 East Main Street, Lexington, Kentucky.
Send comments to The Honorable Scotty Baesler, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, Kentucky 40501.

Louisiana	Gonzales, City, Ascension Parish.	Bayou Francois	At downstream corporate limits	°7	°9
			Approximately 1,300 feet upstream of upstream corporate limits.	°11	°12

Maps available for inspection at the City Hall, 120 South Irma Boulevard, Gonzales, Louisiana.
Send comments to The Honorable John A. Berthelot, Mayor of the City of Gonzales, Ascension Parish, 120 South Irma Boulevard, Gonzales, Louisiana 70737.

Maine	Greenville (Town), Piscataquis County.	Moosehead Lake	At West Cove Point	None	°1,030

Maps available for inspection at the Town Office, Minden Street, Greenville, Maine.
Send comments to Mr. David Cota, Greenville Town Manager, Piscataquis County, P.O. Box 1109, Greenville, Maine 04441

Maryland	Baltimore County (Unincorporated Areas).	Gwynns Falls	Approximately 200' upstream of McDonough Road.	°428	°429
			Approximately 50' upstream of South Dolfield Road.	°461	°462

Map available for inspection at the County Office Building, 111 W. Chesapeake Avenue, Floor 3, Room 315, Towson, Maryland.
Send comments to Mr. Roger Hayden, Baltimore County Executive, Baltimore County, 400 Washington Avenue, Towson, Maryland 21204.

Massachusetts	Webster, Town, Worcester County.	Lake Webster	Entire shoreline	None	°481

Maps available for inspection at the Town Hall, Building Inspector's office, Engineering Department, Webster, Massachusetts.
Send comments to Mr. Bill Cunningham, Chairman of the Town of Webster, Board of Selectmen, Worcester County, P.O. Box 249, Webster, Massachusetts 01570.

Minnesota	Unincorporated Areas of Aitkin County.	Mississippi River	About 4.7 miles downstream of confluence of Sandy River.	None	°1,221
			About 10.0 miles upstream of confluence of Sandy River.	None	°1,226

Maps available for inspection at the Aitkin County Courthouse, Planning and Zoning Office, Aitkin, Minnesota.
Send comments to The Honorable Darrell Brouggman, Acting Chairman of Aitkin County Board, Aitkin County Courthouse, Aitkin, Minnesota 56431.

Minnesota	City of Austin, Mower County.	Dobbins Creek	At mouth	°1,192	°1,192
			Just downstream of East Side Lake Dam	°1,195	°1,192
			Just upstream of East Side Lake Dam	°1,195	°1,198
			Just downstream of Interstate 90	°1,199	°1,198

Maps available for inspection at the City Hall, Engineering Department, Austin, Minnesota.
Send comments to The Honorable John O'Rourke, Mayor, City of Austin, City Hall, 500 4th Avenue, NE, Austin, Minnesota 55912

Minnesota	City of Brownton, McLeod County.	Buffalo Creek	About 3,200 feet downstream of County Highway 25.	None	°1,012
			About 1,900 feet upstream of County Highway 25.	None	°1,014

Maps available for inspection at the City Hall, 528 2nd Street North, Brownton Minnesota.
Send comments to The Honorable Carl Wachter, Mayor, City of Brownton, 528 2nd Street North, Brownton, Minnesota 55312.

Minnesota	City of Dayton, Hennepin and Wright Counties.	Crow River	At mouth	°857	°857
			About 1.44 miles upstream of mouth	°863	°859

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground °Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, City Administrator's Office, 12260 South Diamond Lake Road, Dayton, Minnesota. Send comments to The Honorable Philip Forseth, Mayor, City of Dayton, City Hall, 12260 South Diamond Lake Road, Dayton, Minnesota 55327.					
Minnesota	City of Glencoe, McLeod County.	Buffalo Creek	About 1.19 miles downstream of Hennepin Avenue.	°989	°986
			About 0.72 mile upstream of pedestrian bridge	None	°991
Maps available for inspection at the City of Glencoe, City Administrative Office, 630 10th Street East, Glencoe, Minnesota. Send comments to The Honorable Raymond Wilkens, Mayor, City of Glencoe, 630 10th Street East, Glencoe, Minnesota 55336.					
Minnesota	City of Greenfield, Hennepin County.	Crow River	About 6.0 miles downstream of Soo Line Railroad.	None	°°899
			About 0.45 mile downstream of confluence with North and South Fork Crow Rivers.	°918	°914
		South Fork Crow River	Just upstream of confluence with Crow River	°918	°914
			About 2.06 miles upstream of confluence with Crow River and North Fork Crow River.	°919	°915
Maps available for inspection at the City of Greenfield, City Clerk's Office, 6390 Town Hall Drive, Loretta, Minnesota. Send comments to The Honorable Willard Sipe, Mayor, Town Hall Drive, Loretta, Minnesota 55357.					
Minnesota	City of Hutchinson, McLeod County.	South Fork Crow River	About 3,650 feet downstream of State Highway 22.	°1,034	°1,034
			Just upstream of State Highway 22	°1,037	°1,036
			Just upstream of Burlington Northern Railroad	°1,040	°1,039
			About 3,100 feet upstream of School Road	°1,045	°1,045
Maps available for inspection at the City Engineer's Office, 37 Washington Avenue West, Hutchinson, Minnesota. Send comments to The Honorable Paul Ackland, Mayor, City of Hutchinson, 37 Washington Avenue West, Hutchinson, Minnesota 55350.					
Minnesota	City of Lester Prairie, McLeod County.	South Fork Crow River	Just upstream of County Highway 9	None	°967
			About 2,300 feet upstream of County Highway 9.	None	°988
Maps available for inspection at the City Hall, City Clerk's Office, Lester Prairie, Minnesota. Send comments to The Honorable Eric Angvall, Mayor, City of Lester Prairie, P.O. Box 66, Lester Prairie, Minnesota 55354.					
Minnesota	Unincorporated Areas of McLeod County.	South Fork Crow River	At county boundary	°986	°964
			Just downstream of County Road 63	None	°975
			About 3,700 feet downstream of State Highway 22.	None	°1,034
			About 500 feet upstream of Burlington Northern Railroad.	None	°1,039
		Buffalo Creek (near city of Glencoe).	Just upstream of U.S. Highway 212	None	°982
			About 4.37 miles upstream of State Highway 261.	None	°991
		Buffalo Creek (near city of Brownton).	About 3,200 feet upstream of County Highway 13.	°1,016	°1,011
			About 800 feet upstream of confluence of Lake Addie.	°1,018	°1,014
Maps available for inspection at the County Zoning Office, McLeod County Courthouse, 830 11th Street East, Glencoe, Minnesota. Send comments to The Honorable Grant Knutson, Chairman, McLeod County Board, McLeod County Courthouse, 830 11th Street East, Glencoe, Minnesota 55336.					
Minnesota	City of Rockford, Hennepin and Wright Counties.	Crow River	About 4,000 feet downstream of Bridge Street	°913	°910
			About 4,150 feet upstream of Soo Line Railroad.	°917	°913
Maps available for inspection at the City Clerk's Office, 6031 Main Street, Rockford, Minnesota. Send comments to The Honorable Douglas White, Mayor, City of Rockford, 6031 Main Street, Rockford, Minnesota 55373.					
Minnesota	City of Watertown, Carver County.	South Fork River	About 0.78 mile downstream of footbridge	°935	°933
			About 1.25 miles upstream of Chicago and Northwestern railroad.	°941	°937
		Mapes Creek	About 2,500 feet downstream of County Highway 10.	°935	°933
			About 1,500 feet upstream of State Highway 25.	None	°934
Maps available for inspection at the City Hall, Office of City Planner, 309 Jefferson Avenue, S.W., Watertown, Minnesota. Send comments to The Honorable Norman Bauer, Mayor, City of Watertown, 309 Jefferson Avenue, S.W., P.O. Box 278, Watertown, Minnesota 55388.					
Minnesota	Unincorporated Areas of Wright County.	Buffalo Lake	Entire shoreline	None	°922

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		North Fork Crow River	Just upstream of confluence with Crow River	*916	*914
			Just upstream of Old State Highway 6	*940	*940
		South Fork Crow River	Just upstream of confluence with Crow River	*914	*914
			At confluence of Mapes Creek in Carver County.	None	*933

Maps available for inspection at the County Planning and Zoning Office, Courthouse Annex, Buffalo, Minnesota.
Send comments to The Honorable Michelle Bogenrief, Chairman, Wright County Board, Wright County Courthouse, Buffalo, Minnesota 55313.

Mississippi	Unincorporated Areas of Hinds County.	Pearl River	At county boundary	None	*251
			About 7.71 miles upstream of Old Byram Road	*267	*267
		Rhodes Creek	At confluence with the Pearl River	None	*256
			Just downstream of Seven Springs Road	None	*390
		Trahon Creek Tributary 1	At confluence with Trahon Creek	*264	*265
			Just upstream of Terry Road	*265	*265
		Straight Fence Creek	Just upstream of Williamson Road	None	*243
			Just downstream of Pinehaven Drive	None	*266

Maps available for inspection at the Hinds County Permit and Zoning Office, Jackson, Mississippi.
Send comments to The Honorable Robert Miller, President, Hinds County Board of Supervisors, P.O. Box 686, Jackson, Mississippi 39205.

Montana	Flathead County, Unincorporated Areas.	Ashley Creek	Approximately 1,500 feet upstream of Cemetery Road.	None	*2,919
			Approximately 100 feet downstream of Airport Road.	*2,922	*2,921
			Approximately 150 feet upstream of Airport Road.	*2,923	*2,922
			Approximately 500 feet upstream of Airport Road.	*2,923	*2,922
			Approximately 1,500 feet upstream of Begg Park Drive.	*2,923	*2,924
			Approximately 3,000 feet upstream of Begg Park Drive.	None	*2,924
			At the footbridge approximately 1,000 feet downstream of Sunnyside Drive.	None	*2,925
			Approximately 200 feet upstream of Sunnyside Drive.	None	*2,927
			Approximately 3,000 feet downstream of Foys Lake Road.	None	*2,928
			Approximately 1,100 feet downstream of Foys Lake Road.	*2,930	*2,929
			Approximately 50 feet downstream of Foys Lake Road.	*2,933	*2,933

Maps are available for review at the Flathead County Regional Development Office, Court House East, 723 Fifth Avenue East, Kalispell, Montana.
Send comments to The Honorable Mary E. Adkins, Chairperson, Flathead County Board of Commissioners, 800 South Main, Kalispell, Montana 59901.

Montana	City of Kalispell, Flathead County.	Ashley Creek	Approximately 1,850 feet downstream of Airport Road.	None	*2,921
			Approximately 100 feet downstream of Airport Road.	*2,922	*2,921
			Approximately 200 feet upstream of Airport Road.	*2,923	*2,922
			Approximately 50 feet downstream of Begg Park Drive.	*2,923	*2,922
			Approximately 50 feet upstream of Begg Park Drive.	*2,923	*2,924
			Approximately 1,150 feet upstream of Begg Park Drive.	*2,923	*2,924
			Approximately 2,500 feet upstream of Begg Park Drive.	*2,923	*2,924
			Approximately 250 feet northeast of the intersection of Fifth Avenue West and Sunnyside Drive.	None	*2,925
			Approximately 250 feet southeast of the intersection of Fifth Avenue West and Sunnyside Drive.	None	*2,925
			Approximately 1,500 feet downstream of Sunnyside Drive.	None	*2,925
			Approximately 5,000 feet downstream of Foys Lake Road.	None	*2,928
			Approximately 850 feet downstream of Foys Lake Road.	*2,930	*2,930

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground °Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at the City of Kalispell, Building Department, 248 Third Avenue East, Kalispell, Montana.					
Send comments to The Honorable Douglas D. Rauthe, Mayor, City of Kalispell, P.O. 1997, Kalispell, Montana 59903–1997.					
New Jersey	Hopewell, Township, Cumberland County.	Cohansey River	At Perry Blew Road extended	None	°9
			At upstream corporate limits (located approximately 0.5 mile northeast of intersection of Gilmore Road & Dutch Neck Road).	None	°9
Maps available for inspection at the Hopewell Township Building, 590 Shiloh Pike, Bridgeton, New Jersey.					
Send comments to The Honorable Leroy Brooks, Mayor of the Township of Hopewell, Cumberland County, 590 Shiloh Pike, Bridgeton, New Jersey 08302.					
New Mexico	Sunland Park, City, Doña Ana County.	Unnamed Pond	Area located between State Route 273 and the Rio Grande River (in the Anapra subdivision).	None	°3,730
Maps available for inspection at the County Courthouse, 180 West Amador, Las Cruces, New Mexico.					
Send comments to Ms. Sandra Peticolas, Doña Ana County Manager, 180 West Amador, Las Cruces, New Mexico 88001.					
New York	Big Flats, town, Chemung County.	Owen Hollow Creek diversion Channel.	Approximately 1,450 feet upstream of confluence with Gardner Creek.	°894	°893
			Approximately 1,950 feet upstream of State Route 17.	°905	°904
		Owen Hollow Creek	Confluence with Gardner Creek	°899	°898
			Approximately 1,550 feet downstream of Chestnut Street.	°922	°921
		Gardner Creek	Approximately 1,650 feet upstream of confluence with Chemung River.	°891	°892
			At State Route 17	°897	°898
Maps available for inspection at the Office of the Building Inspector, Town Hall, 476 Maple Street, Big Flats, New York.					
Send comments to Mr. J. Clifford Schafer, Supervisor of the Town of Big flats, Chemung County, Town Hall, 476 Maple Street, P.O. Box 449, Big Flats, New York 14814.					
New York	Hurley, Town, Ulster County.	Englishmans Creek	Approximately 0.5 mile downstream of County Route 29A.	None	°165
			At the confluence of Tributaries 7 & 2	None	°202
		Tributary 2	At the confluence with Englishmans Creek	None	°202
			Approximately 0.4 mile upstream of confluence of Tributary 2A.	None	°618
		Tributary 3	At the confluence with Englishmans Creek	None	°194
			Approximately 0.6 mile upstream of confluence with Englishmans Creek.	None	°356
		Tributary 6	At the confluence with Englishmans Creek	None	°173
			Approximately 1.7 miles upstream of confluence with Englishmans Creek.	None	°867
		Tributary 2A	At the confluence with Tributary 2	None	°549
			Approximately 1,710 feet upstream of confluence with Tributary 2.	None	°604
		Tributary 7	At the confluence with Englishmans Creek	None	°202
			Approximately 1.2 miles upstream of the confluence with Englishmans Creek.	None	°631
		Preymaker Brook	At the confluence with Englishmans Creek	None	°165
			Approximately 200 feet upstream of State Route 28A.	None	°423
		Tributary 8	At the confluence with Preymaker Brook	None	°255
			Approximately 1.6 miles upstream of confluence with Preymaker Brook.	None	°556
		Stony Creek	At the downstream corporate limits	None	°464
			Approximately 0.6 mile upstream of the confluence with Tributary 10.	None	°562
		Tributary 10	At the confluence with Stony Creek	None	°553
			Approximately 1.2 miles upstream of confluence with Stony Creek.	None	°638
		Tributary 11	Approximately 1.3 miles down stream of County Route 8A.	None	°582
			Approximately 0.3 mile upstream of County Route 8A.	None	°656
Maps available for inspection at the Hurley Town Hall, 637 Lucas Avenue, Hurley, New York.					
Send comments to Mr. Alfred DiCaprio, Supervisor of the Town of Hurley, Ulster County, P.O. Box 569, Hurley, New York 12443.					
New York	Manlius, Town Onondaga County	Limestone Creek	Approximately .5 mile upstream of State Route 115.	°398	°399
			Just downstream of State Route 53	°403	°404
		Butternut Creek	At confluence with Limestone Creek	°399	°400
			Approximately 250 feet downstream of Meyers Road.	°399	°400

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Chittenango Creek	Approximately 100 feet downstream of downstream corporate limits.	None	*392
			At downstream corporate limits	None	*392
Maps available for inspection at the Planning and Zoning Department, Town Hall of Manlius, 301 Brooklea Drive, Fayetteville, New York					
Send comments to Mr. Richard Lowenberg, Supervisor of the Town of Manlius, Onondaga County, 301 Brooklea Drive, Fayetteville, New York 13066.					
North Carolina	City of Graham, Alamance County.	Big Alamance Creek	About 3,650 feet downstream of State Highway 87.	*484	*485
			Just upstream of State Highway 2,309	*495	*495
Maps available for inspection at the City Hall, Planning Department, 201 South Main Street, Graham, North Carolina.					
Send comments to The Honorable Troy Woodard, Mayor, City of Graham, 201 South Main Street, Graham, North Carolina 27253.					
North Carolina	City of Roanoke Rapids, Halifax County.	Roanoke River	About 1,800 feet downstream of Interstate 95	*57	*58
			Just downstream of dam	*64	*67
Maps available for inspection at the City of Roanoke Rapids Planning Department, Roanoke Rapids, North Carolina.					
Send comments to The Honorable Lloyd Andrews, Mayor, City of Roanoke Rapids, P.O. Box 38, Roanoke Rapids, North Carolina 27870.					
North Carolina	Unincorporated Areas of Wilkes County.	Yadkin River	About 2,000 feet upstream of State Road 115	*961	*961
			About 1.05 miles upstream of Wilkesboro Boulevard.	*964	*966
			About 950 feet upstream of State Road 1143	*983	*979
Maps available for inspection at the County Administrative Building, County Planners Office, Wilkesboro, North Carolina.					
Send comments to The Honorable Cecil Wood, County Manager, 110 North Street, Wilkesboro, North Carolina 28697.					
Oklahoma	Bartlesville (City) (Osage and Washington Counties).	Rice Creek	Approximately 0.6 mile upstream of U.S. Highway 75 (Washington Boulevard).	*707	*708
			Approximately 0.7 mile upstream of Madison Boulevard.	*752	*753
Maps available for inspection at the City Administration Building, 6th and Dewey, Bartlesville, Oklahoma.					
Send comments to Mr. Robert E. Metzinger, Manager of the City of Bartlesville, Osage and Washington Counties, P.O. Box 699, Bartlesville, Oklahoma 74005.					
Oklahoma	Oklahoma City, City	West Branch Harrison Creek Tributary 2.	Approximately 1,650 feet upstream of Tall Trees Way.	None	*1,103
	Canadian, Cleveland, Oklahoma, McClain, and Pottawatomie Counties.		Approximately 275 feet downstream of Two Bridge Drive.	*1,090	*1,089
Maps available for inspection at the City Hall, 200 North Walker, Oklahoma City, Oklahoma.					
Send comments to The Honorable Ronald J. Norick, Mayor of the City of Oklahoma City, Canadian, Cleveland, Oklahoma, McClain, and Pottawatomie Counties, 200 North Walker, Oklahoma City, Oklahoma 73102.					
Oklahoma	Washington County (Unincorporated Areas).	Rice Creek	Approximately 0.6 mile upstream of U.S. Route 75.	*706	*707
			Approximately 50 feet downstream of the most upstream corporate limits.	*744	*745
Maps available for inspection at the Washington County Courthouse, 420 South Johnstone, Room 106, Bartlesville, Oklahoma.					
Send comments to Ms. Joanne Bennett, Chairwoman of the Washington County, Board of Commissioners, 205 E. Bulldogger Road, Dewey, Oklahoma 74029.					
Pennsylvania	Greene, Township, Franklin County.	Conococheague Creek	At the upstream side of Mount Pleasant Road (L.R. 28019).	*772	*774
			Approximately 150 feet downstream of Black Gap Road (State Route 997).	*835	*834
Maps available for inspection at the Township Building, 1145 Garver Lane, Scotland, Pennsylvania.					
Send comments to Mr. Richard P. Kramer, Chairman of the Township of Greene Board of Supervisors, Franklin County, P.O. Box 215, Scotland, Pennsylvania 17254.					
Pennsylvania	Monroe, Borough, Bradford County.	Towanda Creek	Approximately .60 mile downstream of U.S. Route 220 (Bridge Street).	*749	*753
			Approximately 1,225 feet upstream of the upstream corporate limits.	None	*787
Maps available for inspection at the Borough Hall, Church Street, Monroeton, Pennsylvania.					
Send comments to Mr. William S. Shaw, President of the Borough of Monroe Council, Bradford County, P.O. Box 193, Monroeton, Pennsylvania 18832.					
South Carolina	Mauldin (City) Greenville County.	Gilder Creek Tributary No. 3A	Approximately 1,400 feet upstream of Corn Road.	None	*838
			Approximately 200 feet upstream of Interstate Route 385 (northbound).	None	*890
		Gilder Creek	Approximately 200 feet downstream of Interstate Route 385.	None	*805

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 800 feet upstream of Interstate Route 385.	None	*810
			From a point approximately 200 feet upstream of the confluence of Gilder Creek Tributary No. 2.	None	*820
			To a point approximately 900 feet downstream of Old Mill Road.	None	*824
		Gilder Creek Tributary No. 3	At the confluence with Gilder Creek	None	*820
			To a point approximately 300 feet downstream of the confluence with Gilder Creek Tributary 3A.	None	*828
Maps available for inspection at the City of Mauldin Town Hall, 5 East Butler Street, Mauldin, South Carolina.					
Send comments to The Honorable Patricia Carlson, City Administrator, City of Mauldin, Greenville County, P.O. Box 249, Mauldin, South Carolina 29662.					
Tennessee	City of Lenoir City, Loudon County.	Tennessee River	About 1.1 miles downstream of confluence of Town Creek.	None	*759
			Just downstream of Fort Loudon Dam	None	*760
			About 0.6 mile upstream of Fort Loudon Dam	None	*815
		Muddy Creek	At mouth	None	*760
			About 0.5 mile upstream of U.S. Route 95	None	*760
		Town Creek	At mouth	*760	*759
			Just downstream of McGhee Boulevard	*776	*777
			Just upstream of McGhee Boulevard	*778	*782
			About 800 feet upstream of Shaw Ferry Road	None	*864
Maps available for inspection at the City Hall, 600 East Broadway, Lenoir City, Tennessee.					
Send comments to The Honorable Don Lane, Mayor, City of Lenoir City, 600 East Broadway, Lenoir City, Tennessee 37771.					
Tennessee	Unincorporated Areas of Loudon County.	Tennessee River	At county boundary	*748	*749
			Just downstream of Fort Loudon Dam	*761	*760
			Just upstream of Fort Loudon Dam	*815	*815
		Muddy Creek	At mouth	*761	*760
			About 3,000 feet downstream of Lakeview Road.	*761	*761
		Sweetwater Creek	At mouth	*751	*750
			About 420 feet upstream of River Road	*751	*751
		Little Tennessee River	At mouth	*760	*759
			Just downstream of Fort Loudon Dam	*760	*759
			Just upstream of Fort Loudon Dam	*815	*815
Maps available for inspection at the County Courthouse, Loudon, Tennessee.					
Send comments to The Honorable George Miller, County Executive, Loudon County, P.O. Box 246, Loudon, Tennessee 37774.					
Tennessee	Town of White Pine, Jefferson County.	Leadvale Creek	Just downstream of South Walnut Street	None	*1,084
			Just downstream of Main Street	None	*1,131
		Leadvale Creek Tributary	At mouth	None	*1,112
			About 480 feet upstream of Sheila Street	None	*1,112
Maps available for inspection at the Town Hall, 1824 Maple Street, White Pine, Tennessee.					
Send comments to The Honorable Stanley Wilder, Mayor, Town of White Pine, 1824 Maple Street, P.O. Box 66, White Pine, Tennessee 37890.					
Texas	Bartonville (Town) Denton County.	Whites Branch	At downstream corporate limits	None	*607
			At upstream corporate limits	None	*637
		Stream WB-1	At downstream corporate limits	None	*614
			3,250' upstream of Jetter Road	None	*666
Maps available for inspection at the Town Hall, 1941 East Jeter Road, Bartonville, Texas 76226.					
Send comments to The Honorable Tom Ott, Mayor of the City of Bartonville, Denton County, 1941 East Jeter Road, Bartonville, Texas 76226.					
Texas	Palo Pinto County, Unincorporated Areas.	Brazos River	At downstream county boundary	None	*768
			Approximately 2.7 miles upstream of downstream county boundary.	None	*773
Maps available for inspection at the Public Works Department, across from Courthouse, Palo Pinto, Texas.					
Send comments to The Honorable Harold Couch, Palo Pinto County Judge, P.O. Box 190, Palo Pinto, Texas 76072.					
U.S. Virgin Islands	Island of St. Thomas	Turpentine Run	At confluence with Mangrove Lagoon	*6	*6
			Approximately 0.6 mile upstream of Bovoni Road (State Route 30).	None	*37

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Department of Planning and Natural Resources, Nisky Center, Suite 231, #45A Estate Nisky, St. Thomas, Virgin Islands. Send comments to The Honorable Alexander Farrelly, Governor of the U.S. Virgin Islands, Office of the Governor, Government Office, Konges Gade 21-22, St. Thomas, Virgin Islands 00802.					
Virginia	Broadway, Town, Rockingham County.	Linville Creek	Approximately 500 feet downstream of the Lee Street Bridge.	*1,033	*1,034
			At State Route 1415	*1,051	*1,048
Maps available for inspection at the Town Hall, 116 Broadway Avenue, Broadway, Virginia. Send comments to Mr. Charles L. Lohr, Broadway Town Manager, Rockingham County, P.O. Box 156, Broadway, Virginia 22815.					
Virginia	Chesterfield County (Unincorporated Areas).	Redwater Creek	At CSX Transportation rail spur	*50	*49
			Approximately 775' downstream of Osborne Road.	*58	*59
Maps available for inspection at the Chesterfield County Environmental Engineering Department. Send comments to Mr. Maurice B. Sullivan, Chairman of the Chesterfield County Board of Supervisors, P.O. Box 40, Chesterfield, Virginia 23832.					
Virginia	Elkton (Town) Rockingham County.	Elk Run	Approximately 680' downstream of Fifth Street	*957	*956
			Approximately 0.5 mile upstream of U.S. Route 340.	*1,003	*1,002
		South Fork Shenandoah River	Approximately 100' downstream of U.S. Route 33.	None	*952
			Approximately 160' upstream of corporate limits.	None	*961
Maps available for inspection at the Town Hall, 173 West Spotswood Avenue, Elkton, Virginia. Send comments to The Honorable Charles E. Dean, Mayor of the Town of Elkton, Rockingham County, 115 North Stuart Avenue, Elkton, Virginia 22827.					
Virginia	Rockingham County (Unincorporated Areas).	Elk Run	Approximately 200 feet upstream of Stuart Avenue.	*980	*981
			At the confluence of Wolf Run	*1,095	*1,094
		Linville Creek	Approximately 500 feet downstream of State Route 1415.	*1,049	*1,048
			Approximately 95 feet upstream of State Route 1415.	*1,052	*1,051
		West Swift Run	At confluence with Elk Run	*1,069	*1,068
			Approximately 70 feet upstream of confluence with Elk Run.	*1,069	*1,068
		Wolf Run	At confluence with Elk Run	*1,093	*1,094
			Approximately 15 feet upstream of confluence with Elk Run.	*1,093	*1,094
Maps available for inspection at the Rockingham County Administration Building, P.O. Box 1252, Harrisonburg, Virginia. Send comments to Mr. William G. O'Brien, Rockingham County Chief Executive, Rockingham County Administration Building, P.O. Box 1252, Harrisonburg, Virginia 22801.					
Washington	City of Lynnwood, Snohomish County.	Scriber Creek	Just upstream of 44th Avenue West	None	*326
			Just upstream of Interstate 5	None	*333
			Approximately 50 feet downstream of 196th Street Southwest.	None	*336
			Approximately 1,000 feet upstream of 196th Street Southwest.	None	*343
Maps are available for review at the Public Works Department, 19100 44th Avenue West, Lynnwood, Washington. Send comments to The Honorable M. J. Hrdlicka, Mayor, City of Lynnwood, 19100 44th Avenue West, Lynnwood, Washington 98046-5008.					
West Virginia	Lewis County, Unincorporated Areas.	West Fork River	Approximately 1.5 miles downstream of Lightburn Road.	None	*996
			Approximately .9 mile upstream of U.S. Route 79.	None	*1,021
		Polk Creek	Approximately 330 feet upstream of U.S. Routes 33 & 19.	None	*1,018
			Approximately 1,000 feet upstream of Kuntz Avenue.	None	*1,022
Maps available for inspection at the Lewis County Courthouse, Weston, West Virginia. Send comments to Mr. Richard L. Bonnett, President of the Lewis County Commission, P.O. Box 510, Weston, West Virginia 26454.					
West Virginia	Ohio County (Unincorporated Areas).	Wheeling Creek	Downstream City of Wheeling corporate	*693	*684
			Upstream City of Wheeling corporate limits	*699	*691
		Little Wheeling Creek	Downstream at the City of Wheeling corporate limits.	*None	*702
			Upstream at the Town of Triadelphia corporate limits.	*None	*708

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATION—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground °Elevation in feet (NGVD)	
				Existing	Modified
		Middle Wheeling Creek	Downstream at the Town of Triadelphia corporate limits.	°None	°713
			Approximately 600'	°None	°758

Maps available for inspection at the County Courthouse, 1500 Chapline Street, Wheeling, West Virginia.
Send comments to Mr. Samuel Anthony, President of the Ohio County Commission, 1500 Chapline Street, Wheeling, West Virgin 26003.

West Virginia	Wheeling, City, Ohio and Marshall Counties.	Wheeling Creek	Approximately 2.0 miles upstream of confluence with Ohio River.	°660	°659
		Little Wheeling Creek	Confluence with Wheeling Creek	°665	°678
			Approximately 530 feet upstream of Shilling Street.	°691	°690

Maps available for inspection at the Department of Development Services, 1500 Chaplin Street, Wheeling, West Virginia.
Send comments to The Honorable Tom Ballerd, Mayor of the City of Wheeling, Ohio and Marshall Counties, 1500 Chaplin Street, Wheeling, West Virginia 26003.

West Virginia	Weston, City, Lewis County.	West Fork River	Approximately 0.70 mile downstream of CSX Transportation.	°1,016	°1,012
			Approximately 600 feet upstream of Coxdown Footbridge.	°1,022	°1,016
		Polk Creek	At confluence with West Fork River	°1,017	°1,013
			Approximately 500 feet downstream of Kuntz Avenue.	°1,020	°1,019
		Stone Coal Creek	At confluence with West Fork River	°1,018	°1,014
			Approximately 920 feet upstream of CSX Transportation.	°1,019	°1,014

Maps available for inspection at the City Building, 102 west Second Street, Weston, West Virginia.
Send comments to The Honorable John M. Rohrbough, Mayor of the City of Weston, Lewis County, 102 West Second Street, Weston, West Virginia 26452.

Wisconsin	City of Evansville, Rock County.	Allen Creek	About 0.66 mile downstream of Chicago and Northwestern Railroad.	°881	°880
			Just upstream of East Main Street	°990	°897
			Just downstream of Lake Leota Dam	°903	°902
			Just upstream of Lake Leota Dam	°909	°909

Maps available for inspection at the City Hall, 31 South Madison Street, Evansville, Wisconsin.
Send comments to The Honorable Christopher A. Eager, Mayor, City of Evansville, City Hall, 31 South Madison Street, Evansville, Wisconsin 53536.

Wisconsin	Unincorporated Areas of Sheboygan County.	Sheboygan River	About 700 feet downstream of Chicago and North Western railroad.	°589	°588
			Just downstream of Johnsonville Dam	°771	°764
			Just upstream of Johnsonville Dam	°777	°770
			At upstream county boundary	°847	°845
		North Branch Milwaukee River.	At downstream county boundary	°808	°807
			Just downstream of Gooseville Dam	°821	°817
		Batavia Creek	At mouth	°813	°812
			About 950 feet downstream of County Highway SS.	°815	°815
			At mouth	°809	°808
		Silver Creek	About 2,050 feet downstream of Camp Awana Road.	°809	°809
		Mullet River	At mouth	°677	°675
			About 3,600 feet upstream of County Highway PP.	°677	°677

Maps available for inspection at the Planning Department, 615 North 6th Street, Sheboygan, Wisconsin.
Send comments to The Honorable Mark J. Leider, Planning Director, Sheboygan County, 615 North 6th Street, Sheboygan, Wisconsin 53081.

C.M. "Bud" Schauerte,
Administrator, Federal Insurance Administration.

[FR Doc. 92-1407 Filed 1-23-92; 8:45 am]
BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-4, RM-7880]

Radio Broadcasting Services; Greenacres, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Double D Broadcasting Company, licensee of Station KRAB(FM), Channel 292A, Greenacres, California, seeking the substitution of Channel 291B1 for Channel 292A and modification of its license accordingly to specify operation on the higher powered channel. Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of

Channel 291B1 at Greenacres or require the petitioner to demonstrate the availability of an additional equivalent class channel. Coordinates for proposed Channel 291B1 at Greenacres are 35–29–02 and 118–44–12.

DATES: Comments must be filed on or before March 9, 1992, and reply comments on or before March 24, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Howard M. Liberman and Peter H. Doyle, Esqs., Arter & Hadden, 1801 K Street, NW., suite 400K, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–4, adopted January 8, 1992, and released January 21, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. see 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–1819 Filed 1–23–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–3, RM–7874]

Radio Broadcasting Services; Prineville, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Danjon, Inc., seeking the allotment of Channel 284A to Prineville, Oregon, as the community's first local FM service. Channel 284A can be allotted to Prineville in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.3 kilometers (7.6 miles) southeast to avoid short-spacings to Stations KMCQ, Channel 238C, The Dalles, Oregon, and KLCX, Channel 284C, Florence, Oregon, at coordinates North Latitude 44–15–20 and West Longitude 120–42–26.

DATES: Comments must be filed on or before March 9, 1992, and reply comments on or before March 24, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Sheldon M. Binstock, Esq., 1140 Connecticut Avenue, NW., suite 703, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No 92–3, adopted January 8, 1992, and released January 21, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–1818 Filed 1–23–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–5, RM–7878]

Radio Broadcasting Services; Oak Creek, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of KFMU, L.P, licensee of Station KFMU(FM), Channel 280A, Oak Creek, Colorado, seeking the substitution of Channel 281C3 for Channel 280A and modification of its license accordingly to specify operation on the higher powered channel. Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 281C3 at Oak Creek or require the petitioner to demonstrate the availability of an additional equivalent class channel. Coordinates for Channel 281C3 at Oak Creek are 40–15–20 and 106–57–21.

DATES: Comments must be filed on or before March 9, 1992, and reply comments on or before March 24, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William D. Freedman, Esq., Gurman, Kurtis, Blask & Freedman, 1400—16th Street, NW., suite 500, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No 92–5, adopted January 8, 1992, and released January 21, 1992. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st St., NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–1817 Filed 1–23–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 392

[FHWA Docket No. MC–90–14]

RIN 2125–AC69

Radar Detectors in Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments

SUMMARY: The FHWA proposes to ban radar detectors from all commercial motor vehicles (CMVs) as defined in the Federal Motor Carrier Safety Regulations in 49 CFR part 390. This proposal fulfills the Congressional mandate in section 342 of the Department of Transportation and Related Agencies Appropriations Act, 1992 (Pub. L. 102–143) and responds to a petition filed jointly on July 18, 1990, by the Insurance Institute for Highway Safety and seven other organizations.

DATES: Comments must be received on or before May 26, 1992.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–90–14, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All answers to questions should refer to the appropriate question number and all comments on specific provisions should refer to the appropriate section and paragraph number. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk in standard or high density formats containing data compatible with either WordPerfect or WordStar for IBM systems; or with Microsoft Word or WordPerfect for Apple Macintosh systems. Commenters should clearly label submitted disk with the software format used (e.g., WordPerfect 5.0 [IBM] or Microsoft Word 4.0 [Mac]). All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: The FHWA has established a special telephone number to receive inquiries regarding this NPRM. the number is 202–366–6816. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking responds to Public Law 102–143 (signed October 28, 1991) which states at section 342:

> The Secretary of Transportation shall publish by January 15, 1992, a notice of proposed rulemaking with regard to amending the Federal Motor Carrier Safety Regulations to prohibit the use of radar detectors in operating commercial motor vehicles. Such notice shall solicit testimony regarding the safety, economic, and operational aspects of prohibiting radar detectors in commercial operations.

This NPRM also responds to a July 18, 1990, petition jointly filed by the following organizations:

(1) Advocates for Highway and Auto Safety,
(2) American Automobile Association,
(3) American Trucking Associations,
(4) Insurance Institute for Highway Safety,
(5) International Association of Chiefs of Police,
(6) National Association of Governors' Highway Safety Representatives,
(7) National Safety Council, and
(8) Public Citizen.

The petition, reproduced as an appendix to the preamble, claims that radar detector use correlates with speeding; that drivers of tractor/semitrailers use radar detectors more frequently than drivers of any other vehicle types; and that tractor/semitrailers with radar detectors are two to three times more prone to be speeding than those without. The petitioners assert that the principal use of radar detectors is to evade law enforcement and, because technology now exists for enforcement officials to detect radar detectors, request a ban on radar detectors in commercial motor vehicles regulated by the FHWA. Supporting information accompanied the petition and is available for public inspection in the docket at the above address.

In acting on the Congressional mandate, the FHWA acknowledges that traffic engineering experts, various sectors of the transportation industry, enforcement authorities, other organizations, drivers of CMVs and automobiles, and the general public hold widely divergent views on the rationale for, and efficacy of, banning radar detectors from CMVs. Moreover, the FHWA recognizes that scientific proof establishing a direct causative linkage between radar detector use and CMV accidents may not exist. The draft regulatory evaluation for this proposal, which is contained in the public docket, summarizes data on the relationships between radar detector use and speeding, and between speeding and accidents. The FHWA encourages comments to provide additional statistical data on the safety issues posed by radar detector usage in CMVs.

Pursuant to the directive of the Congress, the FHWA invites commenters specifically to address the safety, economic, and operational aspects of prohibiting radar detectors in CMVs.

Commenters are also requested to specify, at or near the beginning of their docket responses, whether they: Support the proposed ban on radar detectors in CMVs without reservation; support the proposed ban, but with minor changes (please specify the changes); oppose the proposed ban unless major changes are made (please specify the changes); or oppose the proposed ban unequivocally.

Section-by-Section Analysis

Applicability. This NPRM would change portions of 49 CFR parts 390 and 392 to directly affect drivers of CMVs as defined in part 390, which generally include vehicles used in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds; or

(2) Is designed to transport 16 or more passengers, including the driver; or

(3) Is required to be placarded for hazardous materials.

However, vehicles that meet the above definitions and are used exclusively in intrastate commerce also may be indirectly affected. Under the Motor Carrier Safety Assistance Program (MCSAP), most States adopt the Federal Motor Carrier Safety Regulations and enforce the requirements with respect to both interstate and intrastate drivers and carriers. Section 390.5 would define "radar detector" as any device that detects radio microwaves used by enforcement officials to measure vehicular speeds on highways for enforcement purposes.

The definition would specifically exclude detectors that are:

(1) Transported outside the driver's compartment of the vehicle; and

(2) Completely inaccessible to, inoperable by, and imperceptible to the driver.

Under number (1) above, since the driver and passenger areas of a bus constitute a single compartment, the NPRM notes that the "driver's compartment" of a passenger-carrying CMV includes all space designed to accommodate the driver and passengers alike.

If both of the above conditions are met, a radar detection device would be excluded from the definition of "radar detectors" and its transportation in a CMV would be permitted.

Question (1): Should the definition of "radar detector" be expanded to anticipate and include devices that may allow drivers to detect advanced speed limit enforcement technology such as laser beams?

Question (2): (a) How widespread are permanently or semipermanently installed radar detectors in CMVs nationwide? (b) What would be the impacts of dealing with such installed devices as vehicle appurtenances under Parts 393 and/or 396? (c) Should discovery of such a device on inspection be grounds for a vehicle out-of-service order under § 396.9? (d) If not, what should the consequences of discovery of such a device be?

A new § 392.71 would be added to part 392, "driving of motor vehicles." It would prohibit drivers from using a radar detector in a CMV and from operating a CMV that contains or is equipped with a radar detector. Motor carriers would be responsible to assure compliance with this prohibition. Individuals who violate the provisions of part 392 may be subject to penalties under 49 U.S.C. 521.

Question (3): How would State enforcement programs and procedures be affected by the adoption of the proposal?

Key Issues

In addition to the specific provisions of this proposal, respondents are invited to provide comments regarding the following issues:

Issue: Legitimate uses of radar detectors. The FHWA does not now possess data which would convincingly demonstrate that radar detectors have purposes other than to enable drivers to evade enforcement of lawful speed limits.

Question (4): What evidence exists for any legitimate use of radar detectors?

Issue: Effectiveness of radar detector bans. A study by one of the petitioners suggests that Virginia, in which use of radar detectors is illegal, may have a higher incidence of radar detector use than Maryland, where it is legal.

Question (5): What statistical or other evidence exists, either in the United States, Canada, or elsewhere, to show that: (a) radar detector bans actually reduce detector use and (b) reduced use of radar detectors will reduce speeding, accidents, injuries, and/or fatalities?

Issue: Radar detector detection technology. The petitioners believe that enforcement of a radar detector ban would depend on cost-effective, accurate technology to detect radar detectors. The petitioners' reports suggest that only one such device is currently available, the "VG–2."

Question (6): (a) Do enforcement agencies in the United States and Canada have recent field experience with the VG–2 or comparable device? (b) What is the accuracy of such devices under field conditions? (c) What is known of their availability.

Question (7): (a) What are the capital, operating, and maintenance costs of the VG–2 or comparable devices? (b) Do enforcement agencies currently regard them as cost-effective? (c) If so, what evidence is available to support such an opinion?

Question (8): (a) What other devices for radar detector detection are available? (b) What accuracy, cost, and availability data pertain to them?

Question (9): Would a counter-device to detect the VG–2 or similar radar detector detectors be technically feasible at a reasonable cost and available immediately to drivers?

Question (10): What constitutional or other legal problems do States and other respondents foresee with a CMV ban on radar detectors, enforced by technology accomplishing the same purpose as the VG–2?

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. It is considered to be a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the anticipated substantial public interest and controversy involving the use of radar detectors. A draft regulatory evaluation addressing regulatory impacts has been prepared and is available for review in the public docket.

Regulatory Flexibility Act

Based on information available to the FHWA at this time and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), this action will not have a significant economic impact on a substantial number of small entities. However, due to the preliminary nature of this determination, all affected interests, including small entities, are encouraged to comment on the potential economic impacts this NPRM would generate.

Executive Order 12612 (Federalism Assessment)

The proposed rule would limit the policymaking discretion of the States. The FHWA has reviewed the proposed ban on radar detectors in light of the purposes of the underlying legislation and the Executive Order on Federalism (Executive Order 12612, October 26, 1987), which requires Executive departments and agencies to be guided by certain fundamental federalism principles while formulating and implementing policies. These policies have been taken fully into account in the development of this proposed regulation.

In 1988, FHWA received a similar petition from five of the organizations that signed the 1990 petition. On November 8, 1988, the FHWA denied that petition on the grounds that a Federal ban on radar detectors would violate the principles of federalism because the problem "is common to the States and not truly national in scope." The FWHA continues to believe that the enforcement of speed limit laws on the highways is a problem which is, in general, common to the States and not truly national in scope.

However, authority for the proposed ban on radar detector use and possession under 49 CFR part 392 is inherent in the broad, long-standing powers conferred on the Secretary to regulate the safety on interstate motor carriers of passengers and property under Title 49 of the United States Code. In particular, the Motor Carrier Safety Act of 1984 (1984 Act) (Pub. L. 98–554, 98 Stat. 2832) provides ample authority for this proposed rulemaking. In addition, Public Law 102–143 specifically directs the Department of Transportation to issue this proposal. The Senate Committee report on Public Law 102–143 stated that, "while the general prohibition of radar detectors is properly left to the States, the use of radar detectors in vehicles in interstate commerce is an appropriate arena for the Federal Government to regulate." [1]

As the FHWA has noted earlier in this document, there are serious questions about the safety justification for banning radar detectors. If safety justification is established, the FHWA must also decide whether a decision to ban such equipment is more appropriate for individual States to make, and specifically seeks comment on this issue. In this regard, the FHWA notes that three States and the District of Columbia have enacted legislation prohibiting the use of radar detectors. The FHWA specifically seeks comment on the relevance of other State's inaction concerning bans on radar detectors.

Since speed limits are generally established and enforced by the States, and since any State that so wished could adopt a ban on radar detectors if deemed necessary for effective enforcement and to promote safety, is it appropriate for the Federal Government to adopt such a ban? At the same time, given the FHWA's authority in this area, if there is a clear linkage between radar detectors and accidents, is it inappropriate for the Federal Government not to ban radar detectors from CMVs?

It is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order. Because this notice is being issued in response to a statutory mandate, the FHWA has determined that this action accords fully with the Federalism Executive Order.

[1] Senate Report Number 102–148, 102d Congress, First Session, page 90 (1991).

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 390 and 392

Commercial motor vehicles, Highways and roads, Motor vehicle safety, Radar detectors.

Issued on: January 17, 1992.

T.D. Larson,

Administrator.

Appendix to the Preamble

[Petition dated July 18, 1990 and sent under the letterhead of the Insurance Institute for Highway Safety, 1005 North Glebe Road, Arlington, Virginia 22201. The attachments to the petition, listed further below, are available for public inspection at the address and times contained in the "ADDRESSES" section of the Preamble.]

The Honorable Thomas D. Larson
Administrator
Federal Highway Administration
400 Seventh Street, SW.
Washington, DC 20590

Dear Mr. Larson:

The Advocates for Highway and Auto Safety, the American Automobile Association, the American Trucking Associations, the Insurance Institute for Highway Safety, the International Association of Chiefs of Police, the National Association of Governor's Highway Safety Representatives, the National Safety Council, and Public Citizen hereby petition the Federal Highway Administration (FHWA) to begin rulemaking to ban the possession and use of radar detectors by operators of commercial vehicles regulated by the agency. A ban on radar detectors is needed to improve the compliance of commercial vehicle drivers with speed limits and to reduce the number and severity of crashes.

A ban on radar detectors has also been actively sought by the nation's law enforcement community. In April 1990, the Department of Transportation held a Traffic Safety Summit in Chicago, Illinois, at which state and local law enforcement officials discussed national priorities for improving highway safety. One of the specific recommendations of the summit participants was that FHWA should ban the use of radar detectors in commercial vehicles.

This petition also represents a continuation of prior efforts by organizations concerned about highway safety to ban the use of radar detectors. In May 1988, the Insurance Institute for Highway Safety, joined by the American Automobile Association, the American Trucking Associations, the International Association of Chiefs of Police, and the National Safety Council filed a similar petition requesting FHWA to begin rulemaking to ban radar detectors (Attachment I). Since FHWA's denial of that petition, further research has demonstrated the link between radar detectors and excessive speeds. Also, a ban at this time promises to be more effective than in the past because of the availability of radar detector detectors as an enforcement tool for police departments (Attachment II).

Link Between Radar Detectors and Speed

The most recent research on the use of radar detectors and vehicle speed again confirms that drivers using radar detectors are much more likely to be traveling at excessive speed. Using a device to identify radar detector use, researchers from the Institute recently measured radar detector use and vehicle speeds in Maryland and Virginia. As described in the attached report, the researchers found that all categories of vehicles with radar detectors observed at the Maryland sites were generally at least twice as likely as those without radar detectors to be traveling at speeds more than 10 mph above the speed limit (Attachment III). Because of Virginia's 65 mph speed limit, passenger car and light truck speeds were higher than in Maryland, but the relationship between radar detector use and speed followed a similar pattern, especially among the fastest vehicles. Radar detector equipped vehicles in Virginia were three times as likely to exceed 75 mph (more than 10 mph above the speed limit) than vehicles not equipped with radar detectors. It is important that in both states tractor-trailers were most likely to use radar detectors.

A new survey just completed by the Institute in seven eastern states provides additional data on radar detector use and speeds of large trucks. The study found that at least 36 percent of the trucks observed were using radar detectors, and at least 40 percent of tractor-semitrailers were using radar detectors (Attachment IV). At least 46 percent of the trucks carrying hazardous

materials were using radar detectors. The trucks with radar detectors in use, including hazardous materials carriers, were more likely than those without to be traveling at excessive speeds.

It is also worth noting that Virginia and Connecticut—two states that ban radar detectors—were at the low end of the range of radar detector use, and these states had the fewest trucks for which radar detector use was possible but could not be determined with certainty. These data suggest that the Connecticut and Virginia bans reduce radar detector use even though enforcement has been difficult. The availability of radar detector detectors to police departments should make such bans much more effective in the future.

Federal Action Needed

In denying the May 1988 petition seeking a ban on radar detectors, FHWA said that it was the agency's view that "the enforcement of speed limit laws on the highway is a problem which is common to the states and not truly national in scope." Since that time the Department of Transportation has further recognized the importance of speed enforcement and the need for additional federal support for state efforts. Also, state officials have renewed their requests for more federal efforts to assist them in their speed enforcement programs.

Federal regulation of speed enforcement as a national issue has been acknowledged in several ways. In September 1989, Secretary of Transportation Samuel K. Skinner wrote the Governors of each state seeking their "support" and participation in a nationwide campaign to highlight speed as a highway safety issue—including the dangers of speeding, the safety basis for speed limits, the need for effective speed law enforcement, and the importance of complying with posted speed limits on all public roadways."

In its February 1990 Statement of National Transportation Policy Strategies for Action, the Department of Transportation said that safety is its top priority. The Department specifically identified the need to target additional federal support to promote effective enforcement of state speed limits as an essential part of the U.S. national transportation policy.

The seriousness of speeding as a traffic safety issue and the need for additional federal support was also highlighted at the April 1990 Traffic Law Summit convened by Secretary Skinner. In his message to the summit participants, President Bush said, "Your agencies are getting tougher on speeding, and you should. We need greater respect for speed limits and an increased awareness of the real dangers posed by speeders on highways and our city streets. Simply put, speeders kill."

Recognizing that one important impediment to effective enforcement of speed limits is the use of radar detectors, the state officials participating in the summit urged the Department to ban those devices in commercial vehicles. Specifically, they recommended that the "initial approach should be for the Federal Highway Administration (FHWA) to immediately prohibit the commercial-vehicle use of radar detectors through regulation."

Conclusion

Excessive travel speeds and the corresponding increase in traffic deaths and injuries continue to be a serious problem in the United States. Research has consistently demonstrated that use of radar detectors is linked to increased travel speeds. State law enforcement officials have called on the department to aid their enforcement efforts by banning radar detectors. For these reasons and for the reasons stated in the May 1988 petition, we urge FHWA to promptly grant this petition and to initiate rulemaking to ban the possession and use of radar detectors in commercial vehicles.

Sincerely,

[Petition signed by:]

Judith Lee Stone, Executive Director, Advocates for Highway and Auto Safety
John Archer, Managing Director, American Automobile Association
Charles A. Gruber, President, International Association of Chiefs of Police
Jane S. Roemer, Executive Director, Federal Affairs, National Safety Council
Brian O'Neill, President, Insurance Institute for Highway Safety
Thomas J. Donohue, President and CEO, American Trucking Associations
Peter O'Rourke, Chairman, National Association of Governors' Highway Safety Representatives
Joan Claybrook, President, Public Citizen

List of Attachments to the Petition [see Note at beginning of this Appendix]

Attachment I: Petition [dated May 16, 1988, under the letterhead of the Insurance Institute for Highway Safety] for rulemaking to ban radar detectors in commercial vehicles

Attachment II: "Performance under controlled conditions of the Interceptor VG–2 radar detector detector," Adrian K. Lund, *et al.*, for the Insurance Institute for Highway Safety, June 1990.

Attachment III: "Radar detector use and speeds in Maryland and Virginia," Mark Freedman, *et al.*, for the Insurance Institute for Highway Safety, May 1990.

Attachment IV: "Radar detector use in large trucks," Allan F. Williams, *et al.*, for the Insurance Institute for Highway Safety, July 1990.

In consideration of the foregoing, the FHWA hereby proposes to amend title 49, Code of Federal Regulations, chapter III, subchapter B, as set forth below.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

1. The authority citation for 49 CFR part 390 continues to read as follows:

Authority: 49 U.S.C. app. 2503 and 2506; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

2. Section 390.5 is amended by adding one definition, placing it in alphabetical order as follows:

§ 390.5 Definitions.

* * * * *

Radar detector means any device or mechanism to detect the emission of radio microwaves which are employed by enforcement personnel to measure the speed of motor vehicles upon public roads and highways for enforcement purposes. Excluded from this definition are radar detection devices that meet both of the following requirements:

(1) Transported outside the driver's compartment of the vehicle. For this purpose, the *driver's compartment* of a passenger-carrying CMV shall include all space designed to accommodate both the driver and the passengers; and

(2) Completely inaccessible to, inoperable by, and imperceptible to the driver while operating the vehicle.

* * * * *

PART 392—DRIVING OF MOTOR VEHICLES

3. The authority citation for 49 CFR part 392 continues to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

4. Section 392.71 is added to Subpart G, as follows:

§ 392.71 Radar detectors; use and/or possession.

(a) No driver shall use a radar detector in a commercial motor vehicle, or operate a commercial motor vehicle that is equipped with or contains any radar detector.

(b) No motor carrier shall require or permit a driver to violate paragraph (a) of this section.

[FR Doc. 92–1752 Filed 1–23–92; 8:45 am]
BILLING CODE 4910-22-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1244

[Ex Parte No. 385 (Sub-No. 3)]

Expansion of the ICC Waybill Sample Public Use File

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: On February 1, 1990, the Commission published for public comment in the **Federal Register** (55 FR 3416) proposed changes to the ICC Waybill Sample Public Use File (PUF) that we believed would increase the benefits of the PUF to users. The Association of American Railroads, in response to this notice, argues that the proposed changes would permit the identification of specific shippers or consignees and compromise the

confidentiality of sensitive movement and contract rate information. As a result, the proposed revisions are withdrawn and this proceeding is terminated.

DATES: This withdrawal is effective January 24, 1992.

FOR FURTHER INFORMATION CONTACT: James A. Nash (202) 927–6196; [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: January 15, 1992.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–1749 Filed 1–23–92; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 57, No. 16
Friday, January 24, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Financial Services; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the meeting of the Committee on Financial Services of the Administrative Conference of the United States.

Committee on Financial Services

Date: Friday, February 14, 1992.
Time: 10 a.m.
Location: Administrative Conference of the United States 2120 L Street, N.W., suite 500 Washington, DC 20037 (Library, 5th floor)

Agenda: The Committee has scheduled this meeting to discuss the pilot for a study by Professor Lawrence G. Baxter, of Duke University School of Law, of Judicial Responses to the Recent Enforcement Activities of the Federal Banking Regulators. The Special Committee may also discuss a proposed recommendation dealing with the administration of the Securities Exchange Act of 1934 by the federal bank regulatory agencies, based on a report by Professor Michael P. Malloy, of Fordham University School of Law. Copies of the reports and the draft recommendation may be obtained from the contract person named in this notice.

Contact: Brian C. Murphy, 202–254–7020.

Attendance at the committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during or after the meeting. Minutes of the meeting will be available on request.

The contact person's mailing address is: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: 202–254–7020.

Dated: January 15, 1992.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 92–1697 Filed 1–23–92; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 17, 1992.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• Agricultural Marketing Service, Regulating the Handling of Spearmint Oil Produced in the Far West—Marketing Order No. 985. Recordkeeping; On occasion; Annually. Businesses or other for-profit; 1,511 Responses; 239 hours. Christian D. Nissen (202) 720–1754.

• Rural Electrification Administration, REA Electric Loan Application. REA Forms 7, 7a, 325, 341, 345, 346, 740c, 740g. On occasion; Annually. Small businesses or organizations; 4,085 responses; 135,155 hours. Daphne L. Brown (202) 720–0810.

• Agricultural Marketing Service, Cranberries Grown in the State of MA, RI, CT, NJ, WI, MI, MN, OR, WA, and Long Island in the State of NY—Marketing Order No. 929. Recordkeeping; Annually. Farms; Businesses or other for-profit; 1684 responses; 849 hours. Maureen Pello (202) 720–2861.

• Cooperative State Research Service, Small Business Innovation Research Program. Form CSRS–667 for Form CSRS–668. Annually. Small Businesses or organizations; 330 responses; 1320 hours. Melvin J. Schlattman (202) 401–5058.

Extension

• Packers and Stockyards Administration, "Clear Title" Regulations to Implement Section 1324 of the Food Security Act of 1985. On occasion. State or local governments; 10 responses; 120 hours. Calvin W. Watkins (202) 720–7063.

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 92–1790 Filed 1–23–92; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Assistant Secretary for Food and Consumer Services

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Draft of the United States Country Paper for the International Conference on Nutrition (ICN); Opportunity to Provide Written Comments, Meeting

AGENCY: Office of the Assistant Secretary for Food and Consumer Services, USDA, Office of the Assistant Secretary for Health, DHHS.

ACTION: Notice.

SUMMARY: The Department of Agriculture (USDA) and the Department of Health and Human Services (DHHS) (a) announce the availability of a draft U.S. Country Paper for the International Conference on Nutrition (ICN); (b) invite written public comment by February 21, 1992; and (c) announce a public meeting to solicit comments on the paper and

provide information on conference preparations.

DATES: To be assured of consideration, written comments on the draft U.S. Country Paper should be postmarked no later than February 21, 1992. The public meeting will be held at the Department of Agriculture, 14th and Independence Ave., SW., Administration Bldg., room 107A, on February 24, 1992 from 10:00 am to noon.

ADDRESSES: Written comments on the draft paper should be sent to Amy Sellers, Food and Nutrition Service (USDA), room 206, 3101 Park Center Drive, Alexandria, VA. 22302.

FOR FURTHER INFORMATION CONTACT: (1) For a copy of the draft paper, write to Amy Sellers, Food and Nutrition Service (USDA), room 206, 3101 Park Center Drive, Alexandria, VA. 22302 or phone (703) 305–2115. (2) For other information regarding the International Conference on Nutrition: Neil Gallagher, Office of International Cooperation and Development, Department of Agriculture, room 3005 South Building, 14th and Independence Ave., SW., Washington, DC 20250–4300, (202) 690–1817, or Linda Meyers, Office of Disease Prevention and Health Promotion, U.S. Public Health Service, DHHS, 330 C Street, SW., room 2132 Switzer Bldg., Washington, DC 20201, (202) 472–5307.

SUPPLEMENTARY INFORMATION: The International Conference on Nutrition (ICN) will be held in Rome, Italy, in December 1992. It is jointly sponsored by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO). As many as 150 nations are likely to send delegations. Many nongovernment organizations and private business groups are also expected to participate. The Conference will look critically at the problems of hunger, malnutrition and diet-related diseases in both developing and developed nations and examine ways to foster added international cooperation in the field of nutrition.

The U.S. Country Paper is the major United States contribution to the principal background document for the Conference—"An Assessment and Analysis of Trends and Current Problems in Nutrition." The paper was prepared following an outline produced by the Joint FAO/WHO Secretariat for the ICN. This allows it to be used more readily to compare U.S. policies and programs with those of other nations. A supplement to the main paper outlines the many contributions that U.S. international programs are making toward the improvement of nutrition worldwide, especially among vulnerable groups and the poor in the developing world.

Since the content and focus of the U.S. country Paper were dictated by the needs of the conference organizers, the paper should not be viewed as a comprehensive statement of official U.S. Government policies. Sections were written by individuals outside the Government to reflect the important nutrition-related activities of the private sector, educational organizations and voluntary groups. However, a number of documents stating U.S. Government policy on nutrition, public health, and international assistance are cited in the text. Readers should refer to those documents for more detailed statements and information on public policies. This notice is not published pursuant to the Administrative Procedures Act.

Dated: January 15, 1992.

Catherine Bertini,

Assistant Secretary for Food and Consumer Services, U.S. Department of Agriculture.

Dated: January 15, 1992.

James O. Mason,

Assistant Secretary for Health, Department of Health and Human Services.

[FR Doc. 92–1789 Filed 1–23–92; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Big Mountain Ski and Summer Resort Expansion Flathead National Forest, Flathead County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The notice is hereby given that the Forest Service will prepare an environmental impact statement for a proposal to expand winter and summer recreation opportunities at the Big Mountain Ski and Summer Resort on the Tally Lake Ranger District. The Big Mountain is located approximately 6 miles north of Whitefish, Montana.

DATES: Comments concerning the scope of the analysis should be received in writing by March 15, 1992.

ADDRESSES: Send written comments to Bert Stout, District Ranger, Tally Lake Ranger District, 1335 Highway 93 North, Whitefish, Montana 59937.

FOR FURTHER INFORMATION CONTACT: Becky Smith, Big Mountain Expansion Interdisciplinary Team Leader, or Bert Stout, District Ranger.

SUPPLEMENTARY INFORMATION: The proposed action includes construction of 440 acres of low intermediate, intermediate and advanced ski terrain, two T-bars, three chairlifts, warming/eating hut, and access road to submit. Proposed development will raise the skier capacity from 6600 skiers at one time to 12,097 skiers at one time. Completion of the proposed development will occur over a long period of time in response to market demand and financial capabilities of Winter Sports, Inc. Proposed summer activities include construction of a mountain bike trail, horse trail, hiking trail, alpine slide and paragliding. These management activities would occur in an area encompassing approximately 3600 acres of National Forest Lands located in Management Area 20, as delineated in the Flathead National Forest Land and Resource Management Plan (Forest Plan), approved 1–22–86. Included in the area of analysis are all or portions of the following: sections 19, 20, 29, 30, 31, and 32, T32N, R21W and in sections 14, 23, 24, 25, 26, 35, and 36, T32N, R22W, Principal Montana Meridian.

This EIS will tier to the Forest Plan which provided the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area. The Forest Plan allocates Management Area 20 as the Big Mountain Winter Sports Area (3,574 acres). Currently, about 3,036 acres are managed under a special use permit. The remainder of lands within Management Area 20 provides opportunities for Big Mountain expansion according to the Forest Plan.

The purpose and need for the proposed action are to (1) increase safety by expanding avalanche protection; (2) reduce skier congestion through expanding ski terrain, additional lifts and or management activities; (3) reduce numbers of lost skiers; (4) provide opportunity for year round economic viability by expanding summer recreation activities; and (5) improve driving access to the summit by relocating a segment of road. The process used in preparing the Draft EIS will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential agencies and task assignments.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. For most effective use, comments should be sent to the agency with 45 days from the date of this publication in the **Federal Register**.

Issues identified from previous requests for comments on this proposal include but are not limited to: (1) Threatened and Endangered Species, the grizzly bear and gray wolf; (2) water quality; (3) safety; (4) quality of life.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which the ski area expansion or additional summer activities would not be implemented on National Forest Lands. Other alternatives will examine additional ski runs, lifts, trails, roads and summer activities in different locations and varied combinations to achieve the purpose of the proposed action.

The Forest will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation is especially important at several points of the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision. However, two periods of time are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process (now through March 15, 1992) and in the review of the Draft EIS (June–July, 1992). The Forest Service has previously sent informational letters and news releases on this proposal to area newspapers, radio and television stations, organizations and interested citizens. An open house was held in November 1991 to discuss issues and alternatives. At this time it has not yet determined whether any additional public meetings will be held.

The Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the Fish and Wildlife Service will review the EIS and biological evaluation and if necessary, render a formal Biological Opinion of the effects on the Threatened and Endangered Species including grizzly bear and gray wolf. An FG–124 permit may need to be issued by the State of Montana Department of Fish, Wildlife and Parks Department before any construction in and around streams can take place. Revision of the existing ski area permit will need to be completed if the proposed activities are allowed.

The draft environmental impact statement (DEIS) is expected to be available for public review in June, 1992. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by September, 1992. The Forest Service will respond to the comments received in the FEIS. The Flathead Forest Supervisor who is responsible official for this EIS will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notices of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: January 16, 1992.

Bert Stout,

District Ranger.

[FR Doc. 92–1782 Filed 1–23–92; 8:45 am]

BILLING CODE 3410–11–M

National Agricultural Statistics Service

Cattle Inventory and Cattle on Feed Survey Changes

Notice is hereby given that the National Agricultural Statistics Service (NASS) has modified sampling and data collection procedures for Cattle Inventory and Cattle on Feed surveys for 1992. The following changes have been made to improve survey reliability and minimize respondent burden:

(a) The Cattle Inventory questionnaire and the Cattle on Feed questionnaire will be combined into one instrument in January and July;

(b) The national sample sizes will be increased by nearly 13,000 operations in January and approximately 10,000 operations in July. These increases will be spread primarily throughout the "farmer feeder" States;

(c) NASS, in order to ensure greater response to the questionnaires sent to sample feedlots, will now contact nonrespondents either by telephone or in person.

For more information contact William L. Pratt, Chief, Livestock, Dairy and Poultry Branch, Estimates Division, room 5906–S, NASS/USDA, Washington, DC 20250.

(7 U.S.C. 2204)

Done in Washington, DC, this 21st day of January 1992.

Charles E. Caudill,

Administrator.

[FR Doc. 92–1808 Filed 1–23–92; 8:45 am]

BILLING CODE 3410–20–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Indiana Advisory Committee; Corrected

Pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, notice is hereby given that the meeting of the Indiana Advisory Committee to the Commission,

previously announced in the **Federal Register** on January 6, 1992, (57 FR 395), FR Doc. 92–150, to convene at 9 a.m. until 5 p.m. on Friday, February 7, 1992, at the University Place Hotel, 850 West Michigan Street, Indianapolis, Indiana has been rescheduled to convene on Friday, February 14, 1992 at the same location. The purpose of this meeting is for the Committee to discuss its report on hate crime and to plan a future project.

Persons desiring additional information should contact Hollis E. Hughes, Committee Chairperson at (219) 233–9305 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 17, 1992.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–1699 Filed 1–23–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government Owned Inventions Available for Licensing; Notice

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government Owned Inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

SN382,884
(4,954,722) Scanning Scattering Microscope
SN482,589
(4,962,275) Separator-Solubilizer for Supercritical Fluid Extraction
SN319,197
(4,968,908) Method and Apparatus for Wide Band Phase Modulation
SN452,439
(4,969,856) Transparent Thin Film Thermocouple
SN409,854
(4,972,720) Thermal Technique for Determining Interface and/or Interply Strength in Composites
SN411,984
(5,001,001) Process for the Fabrication of Ceramic Monoliths by Laser-Assisted Chemical Vapor Infiltration
SN292,601
(4,954,481) Superconductor-Polymer Composites
SN381,553
(4,963,826) Reference Standard Block for Use in Nondestructive Test Probe Calibration and Method of Manufacture Thereof
SN410,387
(4,965,529) High Current, Very Wide Band Transconductance Amplifier
SN388,420
(4,980,586) Ultrashort Pulse Multichannel Infrared Spectrometer Apparatus and Method for Obtaining Ultrafast Time Resolution Spectral Data
SN801,972
(4,638,257) Amplification By a Phase Locked Array of Josephson Junctions
SN745,309
(4,700,150) External Laser Frequency Stabilizer
SN419,164
(5,015,323) Multi-tiped Field-emission Tool for Parallel-process Nanostructure Fabrication
SN868,483
(4,672,851) Acoustic Evaluation of Thermal Insulation
SN747,486
(4,685,681) Method and Mechanism for Fixturing Objects
SN838,748
(4,694,230) Micromanipulator System
SN802,091
(4,705,949) Method and Apparatus Relating to Specimen Cells for Scanning Electron Microscope
SN868,485
(4,707,013) Split Rail Parallel Gripper
SN834,728
(4,714,339) Three and Five Axis Laser Tracking System
SN067,400
(4,765,668) Robot End Effector
SN031,716
(4,765,750) Method of Determining Subsurface Property Value Gradient
SN048,848
(4,765,754) Inclined Contact Recirculating Roller Bearing
SN015,557
(4,771,022) High Pressure Process for Producing Transformation Toughened Ceramics
SN851,607
(4,772,524) Fibrous Monolithic Ceramic and Method Production
SN897,227
(4,772,745) Polymer-reactive Photosensitive Anthracenes
SN909,433
(4,804,446) Electrodeposition of Chromium From a Trivalent Electrolyte
SN035,211
(4,789,779) Heat Pipe Oven Molecular Beam Source

Technical and licensing information, including a copy of the patent, on these inventions may be obtained by writing to: Bruce E. Mattson, National Institute of Standards and Technology, Office of Technology Commercialization, Division 222, room A343, Gaithersburg, Maryland 20899 or by telephoning (301) 975–3084.

Dated: January 17, 1992.

John W. Lyons,

Director.

[FR Doc. 92–1820 Filed 1–23–92; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by the Municipality of Barceloneta, Puerto Rico, From an Objection by the Commonwealth of Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On June 4, 1990, the Secretary of Commerce (Secretary) received a notice of appeal from counsel for the Municipality of Barceloneta, Puerto Rico (Appellant). The Appellant is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, (CZMA) and the Department of Commerce's implementing regulations at 15 CFR part 930, subpart H. The appeal is taken from an objection by the Commonwealth of Puerto Rico Planning Board (PRPB) to the Appellant's consistency certification that its proposal for U.S. Army Corps of Engineers permit to channelize a portion of the Rio Grande De Manati as part of a flood control project and dredge 6,233,607 cubic meters of material to create a marina within the river is consistent with the PRPB's coastal zone management program.

The CZMA provides that a timely objection by a state (including the PRPB) to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). (Section 307(c)(30(A).) To make such a determination, the Secretary must find

that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the PRPB's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution of the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with PRPB's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Stephanie S. Campbell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration [NOAA], U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington DC 20235. Copies of comments should also be sent to Ms. Ivette Dejesus, Puerto Rico Planning Board, De Diego Avenue, Stop 22, San Juan, Puerto Rico, 00940–9985.

All nonconfidential documents submitted in this appeal or available for public inspection during business hours at the offices of the Commonwealth of Puerto Rico Planning Board and the Office of the Assistance General Counsel for Ocean Services, NOAA.

FOR FURTHER INFORMATION CONTACT: Stephanie S. Campbell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606–4200.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

Dated: January 21, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92–1757 Filed 1–23–92; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Modification of Scientific Research Permit No. 580 (P77#22)

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification of Scientific Research Permit No. 580 (P77#22).

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 684 (P77#35) issued to NMFS, National Marine Mammal Laboratory, Alaska Fisheries Center, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115, on April 1, 1987, is modified to extend the effective date through April 30, 1992.

This modification is effective January 1, 1992.

Documents pertaining to this Modification and Permit are available for review in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, Maryland 20910, (301–713–2289); and:

Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700—Building 1, Seattle, WA 98115–0070, (206–526–6150).

Dated: January 16, 1992.

Nancy Foster,

Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–1730 Filed 1–23–92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Additions to and deletion from Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: February 24, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 16, November 11, December 2 and 6, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 40872, 58051, 61234 and 63937) of proposed additions to and deletion from the Procurement List:.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Cutlery, Plastic, Medium Weight
7340–00–NIB–0009 (Knife)
7340–00–NIB–0010 (Fork)
7340–00–NIB–0011 (Teaspoon)
7340–00–NIB–0012 (Soup Spoon)
(Requirements of the Navy Exchange Service Command)

Clip System, Paper
7510–01–317–4219 (Desk Dispenser)
7510–01–317–4220 (Hand Dispenser)
7510–01–317–4228 (Metal Clip refill)

Services

Grounds Maintenance, Naval Weapons Station, Concord, California.

Janitorial/Custodial, U.S. Army Reserve Center, 950 New Castle Road, Farrell, Pennsylvania.

Janitorial/Custodial, U.S. Army Reserve Center, 1545 Airport Road, Franklin, Pennsylvania.

Mail and Messenger Service, U.S. Army Corps of Engineers, Portland, Oregon.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following service is hereby deleted from the Procurement List: Grounds Maintenance, Naval Weapons Center, China Lake, California.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–1804 Filed 1–23–92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 24, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action. If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing the blind or other severely disabled individuals.

It is proposed to add the following commodities to the Procurement List:

Cover, Protective, Life Preserver
4220–00–926–9459 thru 4220–00–926–9479
Pail, Utility
7240–00–060–6006
7240–00–061–1163
7240–00–246–1097
7240–00–889–3785
Container, Shipping
8115–00–NSH–0204 thru 8115–00–NSH–0213
(Requirements of the U.S. Mint, Washington, DC)
Cake Mix
8920–00–823–7221
8920–00–823–7223
8920–01–250–6360

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–1805 Filed 1–23–92; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology to Support Force Projection: Global Reach—Global Power will meet on 30–31 January 1992, at the RAND Corporation, 1700 Main Street, Santa Monica, CA from 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information for the study.

The meeting will be closed to the public in accordance with Section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–1693 Filed 1–23–92; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee Global Reach—Global Power will meet on 12–13 February 1992, at The ANSER Corporation, Crystal Gateway 3, 1215 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 5 p.m.

The purpose of this meeting is to review the tasking, receive briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 92–1781 Filed 1–23–92; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

January 16, 1992.

The USAF Scientific Advisory Board Arnold Engineering Development Center (AEDC) Advisory Group will meet on March 16–17, 1992 from 8 a.m. to 4 p.m. Central Time at Arnold Air Force Base, Tennessee. This meeting was originally scheduled for January 22–23, 1992.

The purposes of this meeting will be to acquaint the new AEDC Advisory Group members with the mission and test facilities of AEDC and to receive feedback from the AEDC Advisory Group on the planning process that is used to identify/select/fund/build AEDC's technical facilities. This meeting will be closed to the public, in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 92–1780 Filed 1–23–92; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Government-owned Inventions; Availability for Licensing

AGENCY: Department of the Navy

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161, for $6.95 each ($10.95 outside North American Continent). Request for copies of patent application must include the patent application serial number. Claims are deleted from the patent applications copies sold to avoid premature disclosure.

FOR FURTHER INFOMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000, telephone (703) 696-4001.

Patent 4,711,088: TRIDENT II FIRST AND SECOND STAGE INTERNAL INSULATION; filed 24 October 1986; patented 8 December 1987.
Patent 4,741,154: ROTARY DETONATION ENGINE; filed 26 March 1982; patented 3 May 1988.
Patent 4,784,350: PASSIVE STEP TRIMMER FOR MANEUVERING RE-ENTRY BODY; filed 19 February 1979; patented 15 November 1988.
Patent 4,973,252: SONAR SIMULATION SYSTEM USING ADVANCED DIGITAL TO VIDEO CONVERSION TECHNIQUES; filed 12 November 1971; patented 27 November 1990.
Patent 4,976,036: PROFILE TRANSFER JIG; filed 31 October 1989; patented 11 December 1990.
Patent 4,982,384: SPLIT BEAM SONAR; filed 27 September 1971; patented 1 January 1991.
Patent 5,003,779: GEOTHERMAL ENERGY CONVERSION SYSTEM; filed 18 June 1990; patented 2 April 1991.
Patent 5,004,183: SWITCHED COMPARATOR SYSTEM FOR OBTAINING DYNAMIC RANGE; filed 23 May 1975; patented 2 April 1991.
Patent 5,004,185: AIR-SURFACE-MISSILE DATA LINK SYSTEM; filed 31 August 1964; patented 2 April 1991.
Patent 5,004,801: POLYMER OF DITHIOETHER-LINKED PHTHALONITRILE; filed 21 November 1988; patented 2 April 1991.
Patent 5,004,993: CONSTRICTED SPLIT BLOCK WAVEGUIDE LOW PASS FILTER WITH PRINTED CIRCUIT FILTER SUBSTRATE; filed 19 September 1989; patented 2 April 1991.
Patent 5,005,018: MODULATOR TO PROVIDE A CONTINUOUS STEPPED FREQUENCY SIGNAL FORMAT; filed 6 October 1982; patented 2 April 1991.
Patent 5,005,482: COMBINED MINE SAFETY DEPLOYMENT AND ACTIVATION SYSTEM; filed 21 May 1984; patented 9 April 1991.
Patent 5,006,429: EXTERNALLY HEATED THERMAL BATTERY; filed 24 August 1989; patented 9 April 1991.
Patent 5,007,155: LATCH PIN INSTALLATION APPARATUS AND METHOD; filed 30 April 1990; patented 6 April 1991.
Patent 5,007,700: EDGE-EMITTING DIODE-TO-OPTICAL-FIBER COUPLING TECHNIQUE; filed 13 April 1990; patented 16 April 1991.
Patent 5,008,551: LOW NOISE SONAR SUPPORT SYSTEM; filed 4 June 1979; patented 16 April 1991.
Patent 5,008,680: PROGRAMMABLE BEAM TRANSFORM AND BEAM STEERING CONTROL SYSTEM FOR A PHASED ARRAY RADAR ANTENNA; filed 20 April 1988; patented 16 April 1991.
Patent 5,008,859: ACOUSTIC TRANSPONDER RECEIVER CIRCUIT; filed 7 December 1988; patented 16 April 1991.
Patent 5,008,860: POSITION AND VELOCITY DETERMINING SYSTEM; filed 16 March 1989; patented 16 April 1991.
Patent 5,010,342: RADAR SIMULATOR; filed 14 May 1973; patented 23 April 1991.
Patent 5,010,385: RESISTIVE ELEMENT USING DEPLETION-MODE MOSFETS; filed 30 March 1990; patented 23 April 1991.
Patent 5,010,804: LAUNCHING PROJECTILES WITH HYDROGEN GAS GENERATED FROM TITANIUM-WATER REACTIONS; filed 7 August 1990; patented 30 April 1991.
Patent 5,010,823: LINEAR PROPELLING SEPARATOR; filed 13 July 1990; patented 30 April 1991.
Patent 5,011,097: VEHICLE STEERING DEVICE; filed 3 August 1990; patented 30 April 1991.
Patent 5,011,785: INSULATOR ASSISTED SELF-ALIGNED GATE JUNCTION; filed 30 October 1990; patented 30 April 1991.
Patent 5,012,083: LONG WAVELENGTH INFRARED DETECTOR WITH HETEROJUNCTION; filed 18 June 1990; patented 30 April 1991.
Patent 5,012,121: ENERGY STORAGE CIRCUIT FOR SHORT TERM POWER INTERRUPTIONS; filed 22 March 1990; patented 30 April 1991.
Patent 5,012,452: PULSE TRANSFORMATION SONAR; filed 1 May 1972; patented 30 April 1991.
Patent 5,012,482: IMPROVED GAS LASER AND PUMPING METHOD THEREFOR USING A FIELD EMMITTER ARRAY; filed 12 September 1990; patented 30 April 1991.
Patent 5,012,483: A NARROW-BANDWIDTH DIFFRACTION-LIMITED, COUPLED STABLE-UNSTABLE RESONATOR LASER CAVITY; filed 27 September 1990; patented 30 April 1991.
Patent 5,012,740: ELECTRORHEOLOGICALLY DAMPED IMPACT SWITCH; filed 5 January 1990; patented 7 May 1991.
Patent 5,013,681: METHOD OF PRODUCING A THIN SILICON-ON-INSULATOR LAYER; filed 29 September 1989; patented 7 May 1991.
Patent 5,014,068: TRANSMISSION COUPLER ANTENNA; filed 19 January 1990; patented 7 May 1991.
Patent 5,014,279: LASER DIODE PUMPED, ERBIUM-DOPED, SOLID STATE LASER WITH HIGH SLOPE EFFICIENCY; filed 31 October 1989; patented 7 May 1991.
Patent 5,015,353: METHOD FOR PRODUCING SUBSTROICHIOMETRIC SILICON NITRIDE OF PRESELECTED PROPORTIONS; filed 30 September 1987; patented 14 May 1991.
Patent 5,015,603: TIW DIFFUSION BARRIER FOR AUZN OHMIC CONTACTS TO P-TYPE INP; filed 27 December 1988; patented 14 May 1991.
Patent 5,015,943: HIGH POWER, HIGH SENSITIVITY MICROWAVE CALORIMETER; filed 22 May 1989; patented 14 May 1991.
Patent 5,016,022: MONOPOLE INDUCTIVETY LOADED ANTENNA TUNING SYSTEM; filed 14 September 1981; patented 14 May 1991.
Patent 5,017,142: INTERACTIVE METHOD FOR TESTING WORKING MEMORY; filed 7 November 1989; patented 21 May 1991.
Patent 5,018,685: DATA LINK AND RETURN LINK; filed 27 May 1964; patented 28 May 1991.
Patent 5,020,032: SONOBOUY SUSPENSION SYSTEM; filed 5 December 1983; patented 28 May 1991.
Patent 5,020,400: WING FOLDING TOOL; filed 26 March 1990; patented 4 June 1991.
Patent 5,021,489: CORROSION-INHIBITING COATING COMPOSITION; filed 1 March 1990; patented 4 June 1991.
Patent 5,022,027: COMMUNICATIONS INTERFACE AND SYSTEM FOR RADIATION RECOVERY OF A MICROPROCESSOR PORTION THEREOF; filed 27 May 1982; patented 4 June 1991.
Patent 5,022,326: SYNCHRONOUS EXPLOSIVE LOGIC SAFING DEVICE; filed 20 May 1982; patented 11 June 1991.
Patent 5,023,056: THIN FILM FORMING DEVICE; filed 27 December 1989; patented 11 June 1991.
Patent 5,023,545: CIRCUIT PROBING SYSTEM; filed 4 June 1990; patented 11 June 1991.
Patent 5,025,143: AN ENHANCED CLUTTER SUPPRESSION APPARATUS FOR USE WITH AN INFRARED SEARCH AND SURVEILLANCE SYSTEM; filed 6 July 1982; patented 18 June 1991.
Patent 5,025,218: ACTIVE SEARCH TECHNIQUE FOR SUBSURFACE OBJECTS; filed 23 April 1979; patented 18 June 1991.
Patent 5,025,416: THIN FILM MAGNETIC MEMORY ELEMENT; filed 1 June 1989; patented 18 June 1991.

Patent 5,025,425: SONIC DETECTION AND TRACKING SYSTEM; filed 30 April 1970; patented 18 June 1991.
Patent 5,025,464: PSEUDO-RANDOM SUPPORT STRUCTURE FOR TRANSMISSION GRATINGS; filed 15 March 1990; patented 18 June 1991.
Patent 5,025,556: ENGINE BLOCK CYLINDER HEAD BOLT HOLE REPAIR; filed 19 July 1990; patented 18 June 1991.
Patent 5,025,728: SELECTIVE POINT DETONATION/DELAY EXPLOSIVE TRAIN DEVICE; filed 14 February 1983; patented 25 June 1991.
Patent 5,025,849: CENTRIFUGAL CASTING OF COMPOSITE; filed 15 November 1989; patented 25 June 1991.
Patent 5,027,055: COMPACT OPTICAL RF SPECTRUM ANALYZER; filed 10 January 1990; patented 25 June 1991.
Patent 5,027,121: VIDEO PROCESSOR FOR A COUNTER-COUNTERMEASURER SYSTEM; filed 9 July 1968; patented 25 June 1991.
Patent 5,027,333: ACOUSTIC LOCATOR FOR ELEMENTS OF A FLEXIBLE SONAR ARRAY; filed 26 November 1979; patented 25 June 1991.
Patent 5,030,913: MULTIPLE SENSOR MAGNETOMETER WITH TEMPORAL NOISE REJECTION AND CONTROLLABLE SPATIAL RESPONSE ON A MOVING PLATFORM; filed 21 June 1981; patented 9 July 1991.
Patent 5,030,957: METHOD OF SIMULTANEOUSLY MEASURING ORTHOMETRIC AND GEOMETRIC HEIGHTS; filed 26 February 1990; patented 9 July 1991.
Patent 5,033,034: ONBOARD ACOUSTIC TRACKING SYSTEM; filed 13 May 1980; patented 16 July 1991.
Patent 5,033,270: ROTARY BELLOWS; filed 1 October 1990; patented 23 July 1991.
Patent 5,033,354: DEEP OPERATING MONITOR AND DESTRUCT DEVICE; filed 21 November 1973; patented 23 July 1991.
Patent 5,034,817: REAL-TIME OPTICAL MOTION DETECTOR; filed 28 February 1990; patented 23 July 1991.
Patent 5,035,112: NON-CONTINUOUS IGNITION TRAIN; filed 3 December 1982; patented 30 July 1991.
Patent 5,035,180: SHEARING TYPE ORDANCE VENTING DEVICE; filed 28 March 1984; patented 30 July 1991.
Patent 5,035,756: BONDING AGENTS FOR THERMITE COMPOSITIONS; filed 10 January 1989; patented 30 July 1991.
Patent 5,035,874: DIALLYL TELLURIDE AND SYNTHESIS OF DIORGANO TELLURIDES; filed 29 April 1991; patented 30 July 1991.
Patent 5,036,323: ACTIVE RADAR STEALTH DEVICE; filed 17 September 1990; patented 30 July 1991.
Patent 5,036,371: MULTIPLE QUANTUM WELL DEVICE; filed 27 September 1989; patented 30 July 1991.
Patent 5,036,588: NONVOLATILE, FAST RESPONSE WIRE CUTTER; filed 2 October 1989; patented 6 August 1991.
Patent 5,036,769: PYROFUSE PIN FOR ORDNANCE DEVICE ACTIVATION; filed 9 March 1990; patented 6 August 1991.
Patent 5,037,042: STABILIZED SQUARE PARACHUTE; filed 19 April 1990; patented 6 August 1991.
Patent 5,039,228: FIXTURELESS ENVIRONMENTAL STRESS SCREENING FACILITY; filed 2 November 1989; patented 13 August 1991.
Patent 5,039,812: INSENSITIVE HIGH DENSITY EXPLOSIVE; filed 13 April 1981; patented 13 August 1991.
Patent 5,042,357: PYROFUZE AIRCRAFT ORDNANCE ARMING SYSTEM; filed 29 March 1990; patented 27 August 1991.
Patent 5,042,385: INHIBITOR AND BARRIER FOR USE WITH HIGH ENERGY ROCKET PROPELLANTS; filed 24 January 1983; patented 27 August 1991.
Patent 5,043,476: DIALLYL TELLURIDE; filed 26 June 1987; patented 27 August 1991.
Patent 5,043,477: METHYL ALLYL TELLURIDE; filed 13 July 1987; patented 27 August 1991.
Patent Application 471,314: HIGH SPEED PARALLEL BACKPLANE; filed 29 January 1990.
Patent Application 524,414: PHASE CANCELLATION ENHANCEMENT OF ULTRASONIC EVALUATION OF BONDS; filed 17 May 1990.
Patent Application 543,132: MACHINE OXIDE CERAMIC; filed 25 June 1990.
Patent Application 548,818: SENSE AMPLIFIER CONTROL SYSTEM FOR FERROELECTRIC MEMORIES; filed 18 September 1990.
Patent Application 548,852: EMITTANCE MEASURING DEVICE FOR CHARGED PARTICLE BEAMS; filed 5 July 1990.
Patent Application 551,104: METHOD FOR DESIGNING RELATIONAL DATABASE SCHEMES WITH THE AID OF A DIGITAL COMPUTER; filed 9 July 1990.
Patent Application 553,835: BIS(2-FLUORO-2.2-DINITROETHYL) CARBONATE, PENTAFLUOROSULFANYLIMINE; filed 18 July 1990.
Patent Application 554,051: ELECTRO-OPTIC DEVICES; filed 16 July 1990.
Patent Application 556,606: ALL WEATHER PRECISION LANDING SYSTEM FOR AIRCRAFT IN REMOTE AREAS; filed 24 July 1990.
Patent Application 557,059: APPARATUS FOR DESIGNING A SPECIALLY PORTED TORPEDO LAUNCHING SYSTEM; filed 25 July 1990.
Patent Application 560,702: BI-DIRECTIONAL PHASE STABLE MICROWAVE TRANSMITTER/RECEIVER; filed 28 July 1990.
Patent Application 568,304: SUBMARINE TORPEDO TUBE SHUTTERWAY LAUNCH MODE ADAPTER; filed 15 August 1990.
Patent Application 573,925: O-RING INSERTATION TOOL; filed 27 August 1990.
Patent Application 573,966: CAPACITATIVE TEST FIXTURE FOR WATER DETECTION IN FAULTY SUBMARINE BUOYANT CABLE ANTENNAS; filed 22 August 1990.
Patent Application 573,971: IN-LINE LOAD CELL FOR FLEXIBLE STRENGTH MEMBERS; filed 27 August 1990.
Patent Application 575,749: METALLIZED TUBULE-BASED ARTIFICIAL DIELECTRIC; filed 31 August 1990.
Patent Application 581,620: IMPROVED GAS LASER AND PUMPING METHOD THEREFOR USING A FIELD EMITTER ARRAY; filed 12 September 1990.
Patent Application 582,274: ALL-OPTICAL-FIBER FARADAY ROTATION CURRENT SENSOR WITH HETERODYNE DETECTION TECHNIQUE; filed 14 September 1990.
Patent Application 589,102: LOW CAPCITANCE FIELD EMITTER ARRAY AND METHOD OF MANUFACTURE THEREFOR; filed 27 September 1990.
Patent Application 589,703: PIVOTING SEAT FOR FIGHTER AIRCRAFT; filed 28 September 1990.
Patent Application 589,758: METHOD OF NANOMETER LITHOGRAPHY; filed 28 September 1990.
Patent Application 607,350: MAGNETOSTRICTIVE LINEAR MOTOR; filed 11 October 1990.

Dated: January 13, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-1698 Filed 1-23-92; 8:45 am]

BILLING CODE 3810-AE-F

Privacy Act of 1974; Amend Record System Notices

AGENCY: Department of the Navy, DOD.

ACTION: Amendment and deletion of record system notices.

SUMMARY: The Department of the Navy proposes to delete one and amend five existing systems of records to its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The specific changes are set forth below followed by the system notices as amended.

DATES: The deletion is effective January 24, 1992. The amendments will be effective February 24, 1992, unless comments are received that result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken, Head, PA/POIA Branch, Office of the Chief of Naval Operations (OP–09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000. Telephone (703) 614–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy record system notices for records systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) were published in the **Federal Register** as follows:

51 FR 12906, Apr. 16, 1986
51 FR 18088, May 16, 1986 (DON Compilation, changes follow)
51 FR 19884, Jun. 3, 1986
51 FR 30377, Aug. 26, 1986
51 FR 30393, Aug. 26, 1986
51 FR 45931, Dec. 23, 1986
52 FR 2147, Jan. 20, 1987
52 FR 2149, Jan. 20, 1987
52 FR 8500, Mar. 18, 1987
52 FR 15530, Apr. 29, 1987
52 FR 22871, Jun. 15, 1987
52 FR 45846, Dec. 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun. 8, 1988
53 FR 25363, Jul. 6, 1988
53 FR 39499, Oct. 7, 1988
53 FR 41224, Oct. 20, 1988
54 FR 8322, Feb. 28, 1989
54 FR 14378, Apr. 11, 1989
54 FR 32682, Aug. 9, 1989
54 FR 40160, Sep. 29, 1989
54 FR 41495, Oct. 10, 1989
54 FR 43453, Oct. 25, 1989
54 FR 45781, Oct. 31, 1989
54 FR 48131, Nov. 21, 1989
54 FR 51784, Dec. 18, 1989
54 FR 52976, Dec. 26, 1989
55 FR 21910, May 30, 1990 (Navy Mailing Addresses)
55 FR 37930, Sep. 14, 1990
55 FR 42758, Oct. 23, 1990
55 FR 47508, Nov. 14, 1990
55 FR 48678, Nov. 21, 1990
55 FR 53167, Dec. 27, 1990
56 FR 424, Jan. 4, 1991
56 FR 12721, Mar. 27, 1991
56 FR 27503, Jun. 14, 1991
56 FR 28144, Jun. 19, 1991
56 FR 31394, Jul. 10, 1991 (DOD Updated Indexes)
56 FR 40877, Aug. 16, 1991
56 FR 46167, Sep. 10, 1991
56 FR 59249, Nov. 25, 1991
56 FR 63503, Dec. 4, 1991

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), which requires the submission of altered systems reports.

Dated: January 20, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaision Officer, Department of Defense.

DELETION

N05210–2

System name:

PA/FOIA and Mandatory Declassification Review Case Files (56 FR 12721, March 27, 1991).

Reason:

System is no longer needed.

N01131–1

Sytem name:

Officer Selection and Appointment System (51 FR 18101, May 16, 1986).

Changes:

* * * * *

System location:

Delete entry and replace with "Primary System: For Active Duty Recruiting-Headquarters, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203–1991; For Reserve Recruiting: Naval Reserve Recruiting Command, 4400 Dauphine Street, New Orleans, LA 70146–5001.

Decentralized segments-Headquarters, Navy Recruiting Activities and subsidiary offices; Armed Forces Entrance and Examining Centers; Chief of Naval Personnel; Chief, Bureau of Medicine and Surgery; National Personnel Records Centers; Naval Reserve Units; Naval Education and Training Activities; NROTC Units; Naval Sea Systems Command Headquarters; Naval Intelligence Command and subsidiary activities; Department of Defense Medical Examination Review Board; Naval Reserve Recruiting Command detachments and reserve recruiting field offices."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries for active duty recruiting information to the Commander, Navy Recruiting Command (ATTN: Privacy Act Coordinator), 4015 Wilson Boulevard, Arlington, VA 22203–1991; or to the applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book. For reserve recruiting information to the Commander, Naval Reserve Recruiting Command (ATTN: Privacy Act Coordinator), 4400 Dauphine Street, New Orleans, LA 70146–5001, or to the applicable Naval Reserve Recruiting Detachment.

Letter should contain full name, address, Social Security Number and signature. The individual may visit any location. Proof of identification will consist of picture-bearing or other official identification."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries for active duty recruiting information to the Commander, Navy Recruiting Command (ATTN: Privacy Act Coordinator), 4015 Wilson Boulevard, Arlington, VA 22203–1991; or to the applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book. For reserve recruiting information to the Commander, Naval Reserve Recruiting Command (ATTN: Privacy Act Coordinator), 4400 Dauphine Street, New Orleans, LA 70146–5001, or to the applicable Naval Reserve Recruiting Detachment.

Letter should contain full name, address, Social Security Number and signature. The individual may visit any location. Proof of identification will consist of picture-bearing or other official identification."

Contesting record procedures:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

Exemptions claimed for the system:

Delete entry and replace with "Parts of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(1), (5), (6) and (7), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701. For additional information, contact the system manager.

N01131-1

SYSTEM NAME:

Officer Selection and Appointment System.

SYSTEM LOCATION:

Primary System: For Active Duty Recruiting-Headquarters, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203–1991; For Reserve Recruiting: Naval Reserve Recruiting Command, 4400 Dauphine Street, New Orleans, LA 70146–5001.

Decentralized segments-Headquarters, Navy Recruiting Activities and subsidiary offices; Armed Forces Entrance and Examining Centers; Chief of Naval Personnel; Chief, Bureau of Medicine and Surgery; National Personnel Records Centers; Naval Reserve Units; Naval Education and Training Activities; NROTC Units; Naval Sea Systems Command Headquarters; Naval Intelligence Command and subsidiary activities; Department of Defense Medical Examination Review Board; Naval Reserve Recruiting Command detachments and reserve recruiting field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have made application for direct appointment to commissioned grade in the Regular Navy or Naval Reserve, applied for officer candidate program leading to commissioned status in the U.S. Naval Reserve, applied for a Navy/Marine Corps sponsored NROTC scholarship program or preparatory school program, applied for interservice transfer to Regular Navy or Naval Reserve.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and correspondence in both automated and nonautomated form concerning any applicant's personal history, education, professional qualifications, physical qualifications, mental aptitude, character and interview appraisals, National Agency Checks and certifications of background investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations, 10 U.S.C. sections governing authority to appoint officers; 10 U.S.C. 591, 600, 716, 2107, 2122, 5579, 5600; Merchant Marine Act of 1939 (as amended); and Executive Orders 9397, 10450, and 11652.

PURPOSE(S):

To manage and contribute to the recruitment of qualified men and women for officer programs and the regular and reserve components of the Navy.

To ensure quality military recruitment and to maintain records pertaining to the applicant's personal profile for purposes of evaluation for fitness for commissioned service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Transportation in the performance of their official duties relating to the recruitment of Merchant Marine personnel.

To officials and employees of other departments agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management of quality military recruitment.

To officials and employees of the Veterans Administration and Selective Service Administration in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tape; paper records are stored in file folders.

RETRIEVABILITY:

Name and Social Security Number of applicant.

SAFEGUARDS:

Records kept in file cabinets and offices locked after working hours. Based on requirements of user activity, some buildings have 24-hour security guards.

RETENTION AND DISPOSAL:

Application records maintained six months; after six months, summary sheets maintained for five years at National Record Storage Center. NROTC application records kept for current year only. Correspondence files maintained for two years.

SYSTEM MANAGER(S) AND ADDRESS:

For Active Duty Recruiting: Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203–1991.

For Reserve Recruiting: Commander, Navy Reserve Recruiting Command, 4400 Dauphine Street, New Orleans, LA 70146–5001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries for active duty recruiting information to the Commander, Navy Recruiting Command (ATTN: Privacy Act Coordinator), 4015 Wilson Boulevard, Arlington, VA 22203–1991; or to the applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book. For reserve recruiting information to the Commander, Naval Reserve Recruiting Command (ATTN: Privacy Act Coordinator), 4400 Dauphine Street, New Orleans, LA 70146–5001, or to the applicable Naval Reserve Recruiting Detachment.

Letter should contain full name, address, Social Security Number and signature. The individual may visit any location. Proof of identification will consist of picture-bearing or other official identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries for active duty recruiting information to the Commander, Navy Recruiting Command (ATTN: Privacy Act Coordinator), 4015 Wilson Boulevard, Arlington, VA 22203–1991; or to the applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book. For reserve recruiting information to the Commander, Naval Reserve Recruiting Command (ATTN: Privacy Act Coordinator), 4400 Dauphine Street, New Orleans, LA 70146–5001, or to the applicable Naval Reserve Recruiting Detachment.

Letter should contain full name, address, Social Security Number and signature. The individual may visit any location. Proof of identification will consist of picture-bearing or other official identification.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Navy Recruiting personnel and employees processing applications; medical personnel conducting physical

examination and private physicians providing consultations or patient history; character and employer references named by applicants; educational institutions, staff and faculty members; Selective Service Commission; local, state, and federal law enforcement agencies; prior or current military service record; Members of Congress; Commanding Officer of Naval Unit, if active duty; Department of Navy offices charged with personnel security clearance functions. Other officials and employees of the Department of the Navy, Department of Defense, and components thereof, in the performance of their official duties and as specified by current instructions and regulations promulgated by competent authority.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(1), (5), (6) and (7), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701. For additional information, contact the system manager.

N01133-2

System name:

Recruiting Enlisted Selection System (51 FR 18104, may 16, 1986).

Changes:

* * * * *

System location:

Delete entry and replace with "Primary System (Active Duty Recruiting Issues)-Headquarters, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203–1991; (Reserve Recruiting Issues)-Commander, Naval Reserve Recruiting Command, 4400 Dauphine Street, New Orleans, LA 70146–5001, its detachments and reserve recruiting field offices.

Decentralized Segments-Navy Recruiting Area Commanders, Navy Recruiting District Headquarters, Navy Recruiting 'A' Stations, Navy Recruiting Branch Stations, MEPS, and Naval Reserve Recruiting Command detachments and reserve recruiting field offices."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries regarding active duty recruiting issues to the Commander, Navy Recruiting Command (ATTN: Privacy Act Coordinator), 4015 Wilson Boulevard, Arlington, VA 22203–1991 or to the applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book. For reserve recruiting issues: Commander, Naval Reserve Recruiting Command, 4400 Dauphine Street, New Orleans, LA 70146–5001, its detachments or reserve recruiting field offices.

Letter should contain full name, address, Social Security Number and signature. The individual may visit the activity with proof of identification, such as picture-bearing or other official identification."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Recruiting Command (ATTN: Privacy Act Coordinator), 4015 Wilson Boulevard, Arlington, VA 22203–1991; or, Chief of Naval Reserve (Code 111C), New Orleans, LA, 70146–7800, or, to applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book, or to the Commander, Naval Reserve Recruiting Command, 4400 Dauphine Street, New Orleans, LA 70146–5001, its detachments or reserve recruiting field offices.

Letter should contain full name, address, Social Security Number and signature. The individual may visit Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203–1991. Proof of identification will consist of picture-bearing or other official identification."

Contesting record procedures:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

Exemptions claimed for the system:

Delete entry and replace with "Parts of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(1), (5), (6), and (7) as applicable.

An exemptions rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701. For additional information contact the system manager."

N01133-2

SYSTEM NAME:

Recruiting Enlisted Selection System.

SYSTEM LOCATION:

Primary System (Active Duty Recruiting Issues)—Headquarters, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203–1991; (Reserve Recruiting Issues)—Commander, Naval Reserve Recruiting Command, 4400 Dauphine Street, New Orleans, LA 70146–5001, its detachments and reserve recruiting field offices.

Decentralized Segments—Navy Recruiting Area Commanders, Navy Recruiting District Headquarters, Navy Recruiting 'A' Stations, Navy Recruiting Branch Stations, MEPS, and Naval Reserve Recruiting Command detachments and reserve recruiting field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records and correspondence pertaining to prospective applicants, applicants for regular and reserve enlisted programs, and any other individuals who have initiated correspondence pertaining to enlistment in the U.S. Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and correspondence in both automated and nonautomated form concerning personal history, education, professional qualifications, mental aptitude, physical qualifications, character and interview appraisals, National Agency Checks and certifications, service performance and congressional or special interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 133, 275, 503, 504, 508, 510, 672, 1071–1087, 1168, 1169, 1475–1480, 1553, 5013; and Executive Order 9397.

PURPOSE(S):

To provide recruiters with information concerning personal history, education, professional qualifications, mental aptitude, and other individualized items which may influence the decision to select/non-select an individual for enlistment in the U.S. Navy.

To provide historical data for comparison of current applicants with those selected in the past.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Transportation in the

performance of their official duties relating to the recruitment of Merchant Marine personnel.

To officials and employees of the Veterans Administration and Selective Service Administration in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.

To officials and employees of other departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management of quality military recruitment.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tape; paper records are stored in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of subject.

SAFEGUARDS:

Records are accessible only to authorized Navy recruiting personnel within and are handled with security procedures appropriate for documents marked 'For Official Use Only'.

RETENTION AND DISPOSAL:

Records are normally maintained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Active Duty Recruiting Issues: Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203–1991.

Reserve Recruiting Issues: Commander, Naval Reserve Recruiting Command, 4400 Dauphine Street, New Orleans, LA 70146–5001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries regarding active duty recruiting issues to the Commander, Navy Recruiting Command (ATTN: Privacy Act Coordinator), 4015 Wilson Boulevard, Arlington, VA 22203–1991 or to the applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book. For reserve recruiting issues: Commander, Naval Reserve Recruiting Command, 4400 Dauphine Street, New Orleans, LA 70146–5001, its detachments or reserve recruiting field offices.

Letter should contain full name, address, Social Security Number and signature. The individual may visit the activity with proof of identification, such as picture-bearing or other official identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries regarding active duty recruiting issues to the Commander, Navy Recruiting Command (ATTN: Privacy Act Coordinator), 4015 Wilson Boulevard, Arlington, VA 22203–1991 or to the applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book. For reserve recruiting issues: Commander, Naval Reserve Recruiting Command, 4400 Dauphine Street, New Orleans, LA 70146–5001, its detachments or reserve recruiting field offices.

Letter should contain full name, address, Social Security Number and signature. The individual may visit the activity with proof of identification, such as picture-bearing or other official identification.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Navy recruiting and reserve recruiting personnel and administrative staff; medical personnel conducting physical examinations and/or private physicians providing consultations or patient history; character and employer references; educational institutions, staff and faculty members; Selective Service Commission; local, state and federal law enforcement agencies; prior or current military service records; Members of Congress.

Other officials and employees of the Department of the Navy, Department of Defense and components thereof, in the performance of their official duties and as specified by current instructions and regulations promulgated by competent authority.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(1), (5), (6), and (7) as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701. For additional information contact the system manager.

N01136–1

System name:

Navy Recruiting Support System (51 FR 18105, May 16, 1986).

Changes:

System name:

Delete "Recruiting Support" and replace with "Awareness."

* * * * *

Authority:

Add at end of entry "and Executive Order 9397."

* * * * *

Purpose(s):

In line two, delete the words "recruiting support" and replace with "awareness."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Recruiting Support Department, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203–1991, telephone (202) 692–4795.

Requester is required to supply full name, rank/rate (if applicable), address and Social Security Number."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Recruiting Support Department, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203–1991.

Requester is required to supply full name, rank/rate (if applicable), address and Social Security Number."

Contesting record procedures:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

N01136-1

SYSTEM NAME:

Navy Awareness System.

SYSTEM LOCATION:

Headquarters, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203-1991.

Decentralized Segments-Navy Recruiting Areas; Navy Recruiting Districts; Navy Recruiting 'A' Stations; Navy Recruiting Branch Stations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students who have taken the Armed Forces Vocational Aptitude Battery; Naval Reserve officers nominated by District Commanding Officers for a collateral duty assignment as Recruiting District Assistance Council Chairmen (RDAC); Enlisted Personnel selected by local Navy Recruiter for participation in local Navy Recruiting effort; Community leaders and individuals who provide assistance to Navy Recruiters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; address; pertinent family information; pertinent military information; professional and education affiliations and experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 133, 503, 504, 508, 510, and 5013; 44 U.S.C. 3101, 3702; and Executive Order 9397.

PURPOSE(S):

To provide field recruiters with various vehicles of Navy awareness; to familiarize Navy Recruiters with community leaders; to provide a thorough interface between the Navy and the community; to promote the Navy among the members of the civilian community; to provide educators with a measure of the vocational aptitude of their students through administration of the Armed Services Vocational Aptitude Battery; to cultivate community awareness; to assign inactive Reserve officers to recruiting support functions as Recruiting District Assistance Council Chairmen; to facilitate liaison with various business, social and education cultures in the community; to obtain media support for the Navy Recruiting Command; to assist the local recruiter in any way the recruiter feels necessary; and, to generate prospective applicants for the U.S. Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Transportation in the performance of their official duties relating to the recruitment of Merchant Marine personnel.

To officials and employees of the Veterans Administration and Selective Service Administration in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets and magnetic tape.

RETRIEVABILITY:

Information can be accessed by name and Social Security Number.

SAFEGUARDS:

Lists and files are handled with discretion and accessible only to those personnel having a need to know.

RETENTION AND DISPOSAL:

Records are retained for the tenure of the individual involved or in the case of high school Armed Services Vocational Aptitude Battery lists for a maximum two-year period or until information is no longer useful for recruiting support.

Magnetic tapes are demagnetized; other manual files are shredded or burned when discarded.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Recruiting Support Department, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203-1991.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Recruiting Support Department, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203-1991.

Requester is required to supply full name, rank/rate (if applicable), address and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquires to the Director, Recruiting Support Department, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203-1991.

Requester is required to supply full name, rank/rate (if applicable), address and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determination by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Subject of the information; Field Recruiters; Area Commanders/District Commanding Officers; Chief of Naval Personnel; Chief of Naval Reserve; District Commandants; Chief of Naval Education and Training; Vocational Testing Group; Recruit Training Commands; Service Schools Commands.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01770-2

System name:

Casualty Information Support System (51 FR 18122, May 16, 1986).

Changes:

* * * * *

System location:

Delete entry and replace with "Primary System-Bureau of Naval Personnel, Navy Department, Washington, DC 20370-5000; the local activity for which individual is assigned; and the Washington National Records Center, Suitland, MD. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices."

* * * * *

Authority for maintenance of the system:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; OPNAVINST 1770.1, "Casualty Assistance Calls and Funeral Honors Support Program Coordination"; and Executive order 9397."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purpose of such users:

In paragraph three, line one, after the word "of," insert "other federal," and delete paragraph three."

Storage:

Delete entry and replace with "Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper folders, microfiche or microfilm."

* * * * *

Safeguards:

In lines one and two, delete the phrase "and punched card processing."

Retention and disposal:

Delete entry and replace with "Records and maintained for seven years and then destroyed."

System manager(s) and address:

Delete entry and replace with "Chief of Naval Personnel, Navy Department, Washington, DC 20370-5000."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000; or to the local activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, military status, date of casualty and status at time of casualty, and signature of the requester. The individual may visit the Chief of Naval Personnel, Arlington Annex (FOB No. 2), Room 1066, Washington, DC for assistance with records located in that building; or the individual may visit the local activity for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries of the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000; or to the local activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, military status, date of casualty and status at time of casualty, and signature of the requester. The individual may visit the Chief of Naval Personnel, Arlington Annex (FBO #2), Room 1066, Washington, DC for assistance with records located in that building; or the individual may visit the local activity for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

N01770-2

SYSTEM NAME:

Casualty Information Support System.

SYSTEM LOCATION:

Primary System-Bureau of Naval Personnel, Navy Department, Washington, DC 20370–5000; the local activity for which individual is assigned; and the Washington National Records Center, Suitland, MD. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel who are reported missing, Missing in Action, Prisoner of War or otherwise detained by armed force; deceased in either an active or inactive duty status; reported ill/injured in either active duty, fleet reserve, or retired status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, reports, and records in both automated and nonautomated form concerning circumstances of casualty, next-of-kin data, survivor benefit information, personal and service data, and casualty program data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Department Regulations; OPNAVINST 1770.1, "Casualty Assistance Calls and Funeral Honors Support Program Coordination"; and Executive Order 9397.

PURPOSE(S):

To assist in the management of the casualty assistance program and to provide swift accurate responses to beneficiaries and survivors of Naval military personnel; to aid in the efficient settlement of the service member's estate and other affairs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of the Department of Health and Human Services in connection with eligibility, notification and assistance in obtaining benefits due.

To officials and employees of the Veterans Administration and the Selective Service Administration in connection with eligibility, notification and assistance in obtaining benefits due.

To officials of other federal, state, and local government agencies in connection with eligibility, notification and assistance in obtaining benefits due.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper files, microfiche or microfilm.

RETRIEVABILITY:

Records may be retrieved by name and/or Social Security Number.

SAFEGUARDS:

Computer and punch card processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, trained and cleared.

Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are maintained for seven years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel, Navy Department, Washington, DC 20370–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000; or to the local activity where

assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, military status, date of casualty and status at time of casualty, and signature of the requester. The individual may visit the Chief of Naval Personnel, Arlington Annex (FOB #2), Room 1066, Washington, DC for assistance with records located in that building; or the individual may visit the local activity for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000; or to the local activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, military status, date of casualty and status at time of casualty, and signature of the requester. The individual may visit the Chief of Naval Personnel, Arlington Annex (FOB #2), Room 1066, Washington, DC for assistance with records located in that building; or the individual may visit the local activity for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy, Department of Defense, Public Health Service, Veterans Administration and components, in performance of their official duties as specified by current instructions and regulations promulgated by competent authority; casualty reports may also be received from state and local agencies, hospitals and other agencies having knowledge of casualties to Navy personnel; general correspondence concerning member.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05354–1

System name:

Equal Opportunity Management Information and Support System (51 FR 18152, May 16, 1986).

Changes:

System name:

Delete entry and replace with "Equal Opportunity Management Information System."

System location:

In lines one and two, delete the words "Naval Military Personnel Command" and replace with "Bureau of Naval Personnel".

Categories of individuals covered by the system:

In line two, after the word "informal" insert the words "complaints or".

Categories of records in the system:

In line four, after the word, "informal" insert the words "complaints and".

* * * * *

Purpose(s):

In line three, before the word "investigations" insert the word "complaints,".

Routine uses of records maintained in the system, including categories of users and the purposes of such users:

Delete first paragraph.

Storage:

Delete entry and replace with "Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche or microfilm."

* * * * *

Safeguards:

Delete entry and replace with "Computer facilities are located in restricted areas accessible only to authorized persons that are properly screened, trained, and cleared. Manual records and computer printouts are available only to authorized personnel having a need to know."

System manager(s) and address:

Delete entry and replace with "Chief of Naval Personnel, Navy Department, Washington, DC 20370–5000."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000 or to the local activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel, Arlington Annex (FOB 2), Washington, DC, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370–5000 or to the local activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel (Pers 06), Arlington Annex (FOB 2), Washington, DC, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification."

Contesting record procedures:

Delete entry and replace with "The Department of the Navy rules for accessing records and contesting contents and appealing initial

determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

Record source categories:

Delete entry and replace with "Federal, state, and local court documents; military investigatory reports; general correspondence concerning individual."

Exemptions claimed for the system:

Delete entry and replace with "Parts of this system may be exempt under the provisions of 5 U.S.C. 552a(k) (1) and (5), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 701. For additional information contact the system manager."

N05354-1

SYSTEM NAME:

Equal Opportunity Management Information System.

SYSTEM LOCATION:

Primary System-Bureau of Naval Personnel, Navy Department, Washington, DC 20370-5000; and local activity to which individual is attached. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Secondary System-Department of the Navy activities in the chain of command between the local activity and the headquarters level. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy personnel who are involved in formal or informal complaints or investigations involving aspects of equal opportunity; and/or who have initiated, or were the subject of correspondence concerning aspects of equal opportunity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records concerning incident data, endorsements and recommendations, formal and informal complaints and investigations concerning aspects of equal opportunity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To assist in equal opportunity measures, including but not limited to, complaints, investigations, and correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper files, microfiche, or microform.

RETRIEVABILITY:

Filed alphabetically by last name of individual concerned.

SAFEGUARDS:

Computer facilities are located in restricted areas accessible only to authorized persons that are properly screened, trained and cleared. Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records maintained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 06), Navy Department, Washington, DC 20370-5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Washington, DC 20370-5000; or to the local activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name and signature of the requester. The individual may visit the Chief of Naval Personnel, Arlington Annex (FOB #2), Room 1066, Washington, DC for assistance with records located in that building; or the individual may visit the local activity to which attahced for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Washington, DC 20370-5000; or, in accordance with the Directory of Department of the Navy Mailing Addresses (i.e., local activities).

The letter should contain full name and signature of the requester. The individual may visit the Chief of Naval Personnel, Arlington Annex (FOB #2), Room 1066, Washington, DC for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Federal, state, and local court documents; military investigatory reports; general correspondence concerning individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under the provisions of 5 U.S.C. 552a(k) (1) and (5) as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701. For additional information contact the system manager.

[FR Doc. 92-1758 Filed 1-23-92; 8:45 am]
BILLING CODE 3810-01

DEPARTMENT OF ENERGY

Statement of Findings on Floodplain Assessment for South Plume Removal Action, Fernald Environmental Management Project, Fernald, OH

AGENCY: Department of Energy.

ACTION: Statement of findings on floodplain assessment.

SUMMARY: The U.S. Department of Energy (DOE) presents this Statement of Findings on Floodplain Assessment, prepared pursuant to Executive Orders

11988 and 11990, and 10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. By the authority granted under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Executive Order 12580, and based on consideration of the factors listed in 40 CFR 300.415(b)(2), DOE proposes to restrict access to and use of groundwater in an area south of the Fernald Environmental Management Project (FEMP) at Fernald, Ohio. This area, referred to as the South Plume, contains groundwater with uranium concentrations exceeding DOE's Derived Concentration Guide for uranium in drinking water. The proposed removal action, called the South Plume Removal Action, involves a five-part approach to eliminate the risks associated with the elevated uranium concentrations in the groundwater.

SUPPLEMENTARY INFORMATION: The proposed action involves activities within the 100-year floodplain of the Great Miami River. A map of the affected area is available from DOE at the address listed below, and is also contained in the Engineering Evaluation/Cost Analysis (EE/CA) for the South Plume Removal Action, available from the address below. On June 14, 1991, DOE published (56 FR 27505) a notice of floodplain involvement and opportunity to comment for the South Plume Removal Action. No comments were received, and DOE proceeded to assess the impacts of the proposed action during and after its implementation. On the basis of the floodplain assessment (available from the address below), DOE has determined that there is no practicable alternative to the proposed removal action and that this action has been designed to minimize potential harm to or within the floodplain of the Great Miami River. Several other alternatives, such as "no action," groundwater monitoring and institutional controls, and an alternate water supply, were considered and evaluated in making this determination.

The proposed removal action has the following three main objectives: (1) To protect public health by limiting access to and use of groundwater with uranium concentrations exceeding 30 μg/L, which is the limit set for the South Plume Removal Action in the EE/CA; (2) to protect the groundwater environment, which, in this case is a sensitive, sole source aquifer; and (3) to prevent further southward migration of the plume.

The South Plume Removal Action consists of 5 parts. Parts 1, 2, and 5 include activities within the 100-year floodplain of the Great Miami River. Parts 3 and 4 will not result in any activities in the floodplain.

Part 1 of the proposed removal action is the implementation of an alternate water supply for two industrial firms affected by the South Plume. This action would include the drilling of extraction wells west of the FEMP and transporting the water through 3300 feet of underground pipeline, partially in the 100-year floodplain, to the two affected firms. This construction activity would disturb about 1.8 acres in the floodplain, but there would be no permanent alterations. Any affected surface will be regraded to original elevation.

Part 2 of the removal action includes the installation of 4 extraction wells, a series of monitoring wells, a transfer pump station, an underground discharge pipeline, and an underground outfall pipeline. The four extraction wells would be located 1500 feet directly south of the FEMP site boundary and east of Paddy's Run Road. The wells would be located in the 100-year floodplain and would pump contaminated groundwater from the aquifer for discharge to the Great Miami River. The total area disturbed during the drilling of an extraction or monitoring well would be approximately 30 ft. by 30 ft., which includes the drilling rig placement and personnel work area. This would result in the disturbance of approximately 1.2 acres of the 100-year floodplain.

The construction of the transfer pump station, adjacent service road, and parking lot would require stockpiling activities, equipment operation, and some increased traffic in the area. These construction activities would temporarily disturb approximately 1 acre of the floodplain and result in its elevation. A culvert will be installed under the service road to mitigate downstream flooding impacts by providing for continuation of the existing drainage pattern.

The underground discharge pipeline running north would be about 9000 feet long, of which 730 feet would be in the 100-year floodplain, and would result in the temporary disturbance of approximately 0.8 acre of the floodplain. The outfall pipeline is approximately 4400 feet long, of which 2633 feet would be in the 100-year floodplain, and would result in the temporary disturbance of approximately 3.0 acres of the floodplain. The construction of a cofferdam to protect the outfall pipe would result in a minor intrusion to the 100-year floodplain; the riprap installed for erosion control would not change the flood elevation.

Part 3 of the removal action involves the installation of an Interim Advanced Wastewater Treatment (IAWWT) facility. The IAWWT facility would not treat contaminated groundwater from the South Plume, but would offset it, by treating an existing FEMP waste stream for the removal of uranium prior to its discharge to the Great Miami River. The installation of the IAWWT facility would not involve the 100-year floodplain.

Part 4 of the removal action includes the implementation of monitoring and institutional controls. This would involve regular sampling of existing wells to detect movement in the plume and regular communication with state and local officials. Part 4 would not involve the 100-year floodplain.

Part 5 of the removal action would consist of site characterization and groundwater monitoring activities, including hydropunch sampling, soil vapor surveys, the drilling and installation of groundwater monitoring wells, and groundwater modeling activities. Hydropunch sampling and soil vapor surveys would temporarily disturb approximately 1 acre of the floodplain; however, there would be no permanent structures installed in the 100-year floodplain as a result of these activities. The installation of groundwater monitoring wells would not involve the 100-year floodplain. Part 5 activities would not adversely affect the 100-year floodplain.

In summary, construction activities involved with Parts 1, 2, and 5 would result in the temporary disturbance of approximately 8.8 acres of the 1600 acres within the 100-year floodplain. This area is less than 0.6% of the total area of floodplain between miles 19 and 24 on the Great Miami River. The net effect of the removal action would be the permanent elevation of less than one acre in the floodplain. The culvert to be installed under part 2 of the proposed action would prevent modification of the existing drainage pattern, and thus mitigate potential downstream flooding impacts.

DOE examined three alternatives to the proposed removal action, i.e., the no-action alternative, the groundwater monitoring and institutional controls alternative, and the alternate water supply alternative.

The no-action alternative consists of routine groundwater monitoring and security activities, continued in accordance with DOE operational requirements. No additional remediation, monitoring, or security

activities would be provided. This alternative would not meet any of the removal action objectives; it is assessed to provide a baseline for comparison of other alternatives.

The second alternative considered is groundwater monitoring and institutional controls. This would include continued or additional groundwater monitoring of selected existing wells in the South Plume study area. The monitoring program would be designed to detect increases in uranium content which may indicate movement of the plume into or toward industrial, commercial, or residential wells. This alternative would not meet the removal action objectives as stated above.

The alternate water supply alternative consists of groundwater monitoring, institutional controls, and providing an alternate water supply to the two industrial firms using groundwater with uranium concentrations exceeding 30 µg/l. This alternative would not satisfy the objective of protecting the groundwater and controlling the plume migration.

There are no practicable alternatives to the proposed action; it is dictated by the location of the two industrial firms, pre-existing utilities, and the plume of contaminated groundwater. The removal action is mandated by CERCLA and the U.S. Environmental Protection Agency.

The temporary and long-term impacts to the soils in the floodplain would be minimal. A discussion of the impacts (i.e., sedimentation, erosion) is included in the EE/CA for the South Plume Removal Action. The riprap installed on each side of the cofferdam would be used to minimize erosion along the banks of the Great Miami River and any soil disturbed during the construction phase of the removal action would be regraded, reseeded with grass, and restored to near original condition. A culvert will be installed at the transfer pump station under the service road to mitigate downstream flooding impacts resulting from the elevation of approximately 1-acre of the 100-year floodplain.

The removal action has been designed to conform to applicable Federal and State regulations. Before construction begins, all applicable permits and approvals would be obtained from Federal and State agencies having jurisdiction.

FOR FURTHER INFORMATION CONTACT: For single copies of the floodplain assessment or for other information concerning the proposed action, contact: Jack R. Craig, Project Director, Fernald Remedial Action, U.S. Department of Energy, Post Office Box 398705, Cincinnati, Ohio 45239–8705.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92–1686 Filed 1–22–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF83–316–005]

Cogentrix Eastern Carolina Corp.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

January 16, 1992.

On December 26, 1992, Cogentrix Eastern Carolina Corporation (Applicant) of 9405 Arrowpoint Boulevard, Charlotte, North Carolina 28273–8110, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is presently certified for approximately 32 MW (33 FERC ¶ 62,348 (1985)). The instant recertification is requested to reflect the termination of a sale/leaseback arrangement and a change in the ownership structure of the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–1717 Filed 1–23–92; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 4244–001 New York]

Long Lake Energy Corp.; Availability of Environmental Assessment

January 16, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a major license for the proposed Northumberland Hydroelectric Project located on the Hudson River in the town of Saratoga, Saratoga County, New York, and the town of Northumberland, Washington County, New York, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92–1718 Filed 1–23–92; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1061–000 California]

Pacific Gas and Electric Co., Availability of Environmental Assessment

January 16, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for new license for the existing Phoenix Project, located near the town of Sonora on the South Fork of the Stanislaus River, Tuolumne County, California, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that relicensing the project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1716 Filed 1-23-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-86-000]

Pennsylvania Electric Co., Metropolitan Edison Co., Notice of Filing

January 16, 1992.

Take notice that on December 26, 1991, Pennsylvania Electric Company and Metropolitan Edison Company tendered for filing Supplemental information in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 27, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1715 Filed 1-23-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4095-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 6, 1992 Through January 10, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-FHW-G40149-AR Rating EC2, US 67 Construction, US 67/167 to I-40 West/I-430 Interchange around the North Little Rock Metropolitan Area, Funding, Pulaski County, AR.

Summary

EPA concurs with the selection of alternative 1 as the preferred option, but finds the assessments of potential impacts from secondary development and the discussion of mitigation measures for wetlands insufficient.

ERP No. D-NOA-L90023-WA Rating EC2, Olympic Coast National Marine Sanctuary, Management Plan, Site Designation, NPDES Permit and COE Permit, Olympic Peninsula, WA.

Summary

Final EISs

ERP No. F-FAA-G51024-TX, Stinson Municipal Airport Improvement, Airport Layout Plan, Approval and Funding, City of San Antonio, Bexar County, TX.

Summary

EPA has no objections to the proposed action as described.

Dated: January 21, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-1807 Filed 1-23-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL 4096-1]

Acid Rain Advisory Committee; "Opt-In" Subcommittee; Open Meeting

SUMMARY: In August of 1990, the U.S. Environmental Protection Agency gave notice of the establishment of an Acid Rain Advisory Committee (ARAC) which would provide advice to the Agency on issues related to the development and implementation of the requirements of the acid deposition control title of the Clean Air Act Amendments of 1990.

At its July 15-16 meeting, ARAC established an "Opt-In" Subcommittee to provide advice on issues related to the development of regulations under title IV, section 410 of the Clean Air Act Amendments of 1990. This section allows sources which are not affected units under title IV to participate in the allowance market by electing to become affected sources. These sources include certain utility units, industrial units, and process sources which generate sulfur dioxide emissions. Sources "opting-in" to the allowance system will be allocated allowances by EPA and, like utilities, will be able to bank or trade allowances if they make reductions.

OPEN MEETING DATES AND ADDITIONAL INFORMATION: Notice is hereby given that the ARAC "Opt-In" Subcommittee will hold its third open meeting on February 10 and 11 from 9 a.m. to 5 p.m. and on February 12 from 9 a.m. to 12 noon at the Washington Marriott Hotel, 1221 22nd St. NW., Washington, DC (202-872-1500). The meeting will include discussions on reduced utilization, permitting, monitoring, and other issues related to the development of an "opt-in" proposal.

INSPECTION OF COMMITTEE DOCUMENTS: All documents for this meeting including a more detailed meeting agenda will be publicly available in limited numbers at the meeting. Thereafter, these documents will be available in EPA Air Docket Number A-90-39 in room 1500 of EPA headquarters, 401 M Street SW., Washington, DC. Hours of inspection are 9:30 a.m. to 12 noon and 1:30 to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Concerning the "Opt-In" Subcommittee and its activities, contact the Acid Rain Program Hotline at 617-641-5377.

Dated: January 17, 1992.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 92-1787 Filed 1-23-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4095-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5073 OR (202) 260-5075.

Availability of Environmental Impact Statements Filed January 13, 1992 Through January 17, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920012, Final EIS, AFS, CA, Merced and South Fork Merced Wild and Scenic Rivers Management Plan, Implementation, Sierra and Stanislaus National Forests and Yosemite National Park, Mariposa and Madara Counties, CA, Due: February 24, 1992, Contact: Wallace McCray (209) 487-5155.

EIS No. 920013, Draft EIS, FHW, CT, I-95 at New Haven Harbor Crossing

(Quinnipiac River Bridge) Improvement, from Interchange 43 southwest to Interchange 53 northeast, Funding, COE Section 10 and 404 Permits, U.S. Coast Guard Bridge Permit, New Haven, East and West Haven, CT, Due: March 16, 1992, Contact: Edgar T. Hurle (203) 566–5704.

EIS No. 920014, Draft EIS, AFS, CA, South Fork of the Trinity Wild and Scenic River Management Plan, National Wild and Scenic Rivers, Implementation, Trinity River, Six Rivers and Shasta-Trinity National Forests, Trinity and Humboldt Counties, CA, Due: March 24, 1992, Contact: Roger Jaegel (916) 628–5227.

EIS No. 920015, Draft EIS, FHW, WI, US–53 (known as Hastings Way) Study Corridor Transportation Improvement, IH–94 to USH 53/STH–124 Interchange, Funding, Possible Section 404 Permit, Eau Claire and Chippewa Rivers, Eau Claire and Chippewa County, WI, Due: March 14, 1992, Contact: James Wenning (608) 264–5966.

EIS No. 920016, Final EIS, EPA, AL, South Baldwin County Wastewater Management Facilities, Construction Grant, South Baldwin County, AL, Due: February 24, 1992, Contact: Heinz J. Mueller (404) 347–7292.

EIS No. 920017, Final EIS, COE, WA, ID, OR, 1992 Columbia/Snake Rivers Salmon Flow Measures, Implementation, WA, OR and ID, Due: February 07, 1992, Contact: Greg Graham (509) 522–6596.

EIS No. 920018, Draft EIS, BOP, OK, Federal Transfer Center (FTC), Construction and Operation, Site Specific, Southeast corner of MacArthur and Southwest 74th Street, West of the Will Rogers World Airport, Oklahoma County, OK, Due: March 09, 1992, Contact: Patricia K. Sledge (202) 514–6470.

EIS No. 920019, Draft EIS, DOE, AK, Southeast Alaska Harbors Improvement, Construction of Offshore Breakwaters in Sitka Channel for Protection and Expansion of Thomsen Harbor, Funding, AK, Due: March 20, 1992, Contact: Guy McConnell (907) 753–2614.

EIS No. 920020, Draft EIS, DOT, Commercial Reentry Vehicles Launched into and from Space, Licensing, Due: March 09, 1992, Contact: Sharon D.W. Boddie (202) 366–4110.

Dated: January 21, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–1808 Filed 1–23–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 15, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0454.

Title: Regulation of International Accounting Rates, (Report and Order, CC Docket No. 90–337).

Action: Revised collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 110 responses; 2.18 hours average burden per response; 240 hours total annual burden.

Needs and Uses: The attached First R&O amends part 63 by adding a new reporting requirement. To determine whether equivalent resale opportunities exist with a particular country, an applicant seeking authorization under section 214 of the Communications Act to resell international private line for the purposes of providing a basic telecommunications service to a particular country must demonstrate that the country affords resale opportunities equivalent to those available under U.S. law. An applicant can satisfy this requirement by including in its section 214 application: (1) a statement that the FCC has publicly determined that equivalent resale opportunities exist between the U.S.A. and the subject country; or (2) other evidence demonstrating that equivalent resale opportunities exist between the U.S.A. and the foreign country, including any relevant bilateral agreements between the administrations involved. The First R&O also amends § 43.51 to require that carriers file with the FCC any agreement for the interconnection of private lines to the public switched network (PSN). Section 43.51 is currently approved under OMB control number 3060–0169. The information will be used by FCC staff to ensure that the Commission policies are being adhered to and to monitor the international accounting rates to ensure that the public interest is being served and also to enforce Commission policies.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–1687 Filed 1–23–92; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 13, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3225 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0447.

Title: Section 25.134, Licensing Provisions of Very Small Aperture Terminal (VSAT) Networks.

Action: Revised collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 10 responses; 120 hours average burden per response; 1,200 hours total annual burden.

Needs and Uses: Several applicants petitioned the Commission to increase the power density limits by varying amounts, up to ten times higher than currently licensed systems. As a result, the Commission initiated this rulemaking, in CC Docket No. 90–291, to consider, among other things, the petitioners requests and to standardize and codify the technical showings for applicants seeking high power operations. The FCC sought comment on whether a general increase in power density limits is warranted and recommended to bifurcate the universe

of possible VSAT applicants into Category 1 and Category 2 applicants. Essentially, Category 1 applicants would file applications for digital and analog VSAT facilities consistent with the VSAT Order and the Declaratory Order. Category 2 applicants would file applications for digital and analog facilities inconsistent with those Orders. The Notice proposed to impose additional requirements on Category 2 applicants. VSAT applicants seeking higher power densities (Category 2 applicants) are required to conduct an engineering analysis using the Sharp, Adjacent Satellite Interference Analysis (ASIA) program. Applicants must submit a complete description of the baseline parameters program's output detailing potential interference shortfalls. Category 2 applicants are also required to submit a narrative summary which must indicate whether there are margin shortfalls in any of the current baseline services as a result of the addition of the new applicant's high power service, and if so, how the applicant intends to resolve those margin shortfalls. A link budget analysis of the operations proposed along with detailed written explanation of how each uplink and each transmitted satellite carrier density figure is derived must be provided. Applicants must provide proof by affidavit that all potentially affected parties acknowledge and do not object the use of the applicant's higher power density. Category 2 licensees bear the burden for coordinating with future Category 1 applicants or licensees.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-1688 Filed 1-23-92; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 15, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0059.

Title: Statement Regarding the Importation of Radio Frequency Devices Capable of Causing Harmful Interference.

Form Number: FCC Form 740.

Action: Revised collection.

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 496,500 responses; .030 hours average burden per response; 15,102 hours total annual burden.

Needs and Uses: Radio frequency (RF) devices are frequently imported in the United States from other countries. RF devices are capable of causing harmful interference to radio systems in the U.S. (Examples of RF devices include: microwave ovens, virtually any product containing a computer microprocessor, computers and computer peripherals, telephones with memory or other advanced features, video cameras and recorders, transmitters and transceivers, most receivers including television receivers, electronic musical instruments, video games and radio remote control toys.) The FCC Form 740 declaration is submitted to the Commission and the U.S. Customs Service upon importation of RF devices. The information collected describes devices being imported that may be harmful to authorized radio frequency so that the FCC, with the assistance of Customs, can carry out this responsibility. Recently adopted rule changes reduce the number and types of devices for which the import declaration is required. The changes in the types of equipment requiring declarations along with full implementation of electronic filing will result in a decrease in the number of paper forms submitted by an estimated 80-90%. The purpose of this collection is to keep noncompliant devices from being distributed to the general public thereby reducing the potential for harmful interference being caused to authorized communications. When a violation is discovered, the FCC can issue a fine or request U.S. Customs Service to issue redelivery notice to importer. If the importer does not redeliver the radio frequency devices to Customs, the importer is subject to fines imposed by the U.S. Customs Service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-1689 Filed 1-23-92; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications, one for modification of the facilities of an existing noncommercial FM station and one for a new noncommercial FM station:

Applicant	City/state	File No.	MM docket No.
A. Dry Prong Educational Broadcasting Foundation	Dry Prong, LA	BPED-900305MF	92-2
B. Missionary Action Projects	Alexandria, LA	BPED-900905MK	

Issue heading	Applicants
1. Education Qualifications	B
2. Environmental Impact	A,B
3. 307(b)—Noncommercial Educational	A,B
4. Contingent Comparative—Noncommercial Education	A,B
5. Ultimate	A,B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for

inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The compleje text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202–452–1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 92–1814 Filed 1–23–92; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for renewal of license of Station WYLR(FM) (95.9 MHz), Glens Falls, New York; and for a construction permit for a new FM station on 95.9 MHz at Glens Falls, New York:

Applicant	City/State	File No.	MM Docket No.
A. Normandy Broadcasting Corp. (renewal of WYLR(FM))	Glens Falls, NY	BRH–910129UR	92–6
B. Lawrence N. Brandt (new FM station)	Glens Falls, NY	BPH–910430MB	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine whether there is a reasonable possibility that the tower height and location proposed by Brandt would constitute a hazard to air navigation.

(b) If a final decision is rendered in the Queensbury, New York, proceeding (MM Docket No. 90–181) in which it is determined that Normandy lacks the basic qualifications to be a Commission permittee or licensee, to determine the effect(s) thereof on Normandy's basic qualifications to remain the licensee of Station WYLR(FM), Glens Falls, New York.

(c) To determine which of the proposals would, on a comparative basis, best serve the public interest.

(d) To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

3. A copy of the complete Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 92–1815 Filed 1–23–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; South Europe/ U.S.A. Freight Conference et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 206–011200–002.

Title: Mediterranean Interconference Agreement.

Parties: South Europe/U.S.A. Freight Conference, U.S. Atlantic & Gulf/ Western Mediterranean Rate Agreement.

Synopsis: The proposed amendment would add a new provision to the agreement authority which will provide that the parties may meet, discuss, and agree with respect to the joint negotiation and execution of a contract for the purchase of a computer information system and services, including but not limited to the conversion of their respective tariffs to the ATFI format.

Agreement No.: 224–200011–002.

Title: Philadelphia Regional Port Authority/Seagate Corporation.

Parties: Philadelphia Regional Port Authority, Seagate Corporation.

Synopsis: This Agreement, filed January 13, 1991, amends and restates the original agreement to make changes in the lease payment calculations, the terms of the lease and other matters on a prospective basis.

Agreement No.: 224–200164–004.

Title: Port of Oakland/Compagnie Maritime Belge Terminal Use Agreement.

Parties: Port of Oakland, Compagnie Maritime Belge ("CMB N.V.").

Synopsis: The Agreement, filed January 13, 1991, provides that the Board of Port Commissioners of the City of Oakland consents to the transfer by CMB N.V. of its interest in the original agreement to its subsidiary CMB TRANSPORT N.V.

Agreement No.: 224–200429–002.

Title: Port of Seattle/Stevedoring Services of America Lease Agreement.

Parties: Port of Seattle, Stevedoring Services of America.

Synopsis: This agreement, filed January 13, 1991, terminates the Lease at Terminal 42 effective November 30, 1991 pursuant to conditions appearing in the Basic Lease.

Agreement No.: 224–200602.

Title: Port of Portland/Neptune Orient Line/Nippon Yusen Kaisha Preferential Use Agreement.

Parties: Port of Portland ("Port"), Neptune Orient Line, Ltd. ("NOL"), Nippon Yusen Kaisha, Ltd. ("NYK").

Synopsis: This Agreement, filed January 13, 1991, provides that in return for NOL and NYK agreeing to call at the Port for a minimum of 66 vessel calls per year and provide a minimum number of containers per year, the Port will provide preferential use of a container yard area, a vessel berth and two container cranes.

Agreement No.: 224–200604.

Title: Port of Portland/Star Shipping Terminal Agreement.

Parties: Port of Portland, Star Shipping A/S.

Synopsis: This Agreement, filed January 13, 1991, provides that in consideration of Star Shipping's agreeing to use the Port of Portland as its designated Pacific Northwest port for specific services and for a minimum revenue guarantee of $600,000 per year, the Port of Portland will share wharfage and dockage revenue with Star Shipping.

By Order of the Federal Maritime Commission.

Dated: January 17, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-1700 Filed 1-23-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Heritage Financial Services, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 13, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Heritage Financial Services, Inc., Clarksville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Bank, Clarksville, Tennessee.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Hinsbrook Bancshares, Inc., Willowbrook, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Hinsbrook Bank and Trust, Willowbrook, Illinois.

2. Swisher Bankshares, Inc., Swisher, Iowa; to become a bank holding company by acquiring 82.6 percent of the voting shares of Swisher Trust and Savings Bank, Swisher, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Ohio County Community Bancshares, Inc., Hartford, Kentucky; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Hartford Bank and Trust Company, Hartford, Kentucky.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Rio Blanco Holding Company, Rangely, Colorado; to become a bank holding company by acquiring 90.4 percent of the voting shares of Rio Blanco State Bank, Rangely, Colorado.

Board of Governors of the Federal Reserve System, January 17, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1702 Filed 1-23-92; 8:45 am]

BILLING CODE 6210-01-F

Lowell Moen, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 13, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Lowell Moen, Gaty, Minnesota; to acquire an additional 33.94 percent of the voting shares of Oppegard Agency, Inc., Moorhead, Minnesota, for a total of 44.75 percent.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Phillip C. Light, co-trustee of the C.M. Light Testamentary Trust, Turpin, Oklahoma; to acquire 38.7 percent of the voting shares of United Bank of Kansas, Inc., Liberal, Kansas, and thereby indirectly acquire Peoples National Bank, Liberal, Kansas.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Chesley Pruet, El Dorado, Arkansas; to acquire an additional 12.43 percent of the voting shares of Continental National Bancshares, Inc., El Paso, Texas, for a total of 24.85 percent, and thereby indirectly acquire Continental National Bank, El Paso, Texas.

Board of Governors of the Federal Reserve System, January 17, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1703 Filed 1-23-92; 8:45 am]

BILLING CODE 6210-01-F

USBANCORP, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 13, 1992.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. USBANCORP, Inc., Johnstown, Pennsylvania; to acquire Community Bancorp, Inc., Monroeville, Pennsylvania, and thereby engage in operating a savings association pursuant to § 225.25(b)(9); and making consumer loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the Commonwealth of Pennsylvania.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to acquire Peoples Federal Savings Bank of Thomasville, Thomasville, North Carolina, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 17, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1704 Filed 1-23-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C-3358]

First Brands Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Connecticut manufacturer of Glad plastic bags from representing that any of its plastic bags offer any environmental benefits when disposed of as trash in a sanitary landfill, unless the respondent has a reasonable basis consisting of competent and reliable scientific evidence that substantiates such representations.

DATES: Complaint and Order issued January 3, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S-4002, Washington, DC 20580. (202) 326-3158.

SUPPLEMENTARY INFORMATION: On Wednesday, October 23, 1991, there was published in the **Federal Register**, 56 FR 54863, a proposed consent agreement with analysis In the Matter of First Brands Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 91-1744 Filed 1-23-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3355]

Southbank IPA, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Florida association and its 23 obstetrician/gynecologist members to dissolve Southbank IPA and Southbank Health Care Corp.; prohibits each physician respondent from entering into any agreement with any other physician respondent or any competing physician to fix, stabilize, or tamper with any fee, price, or other aspect or term associated with any physician's services; and prohibits the physician respondents from dealing with any third-party payor on collectively determined terms.

DATES: Complaint and Order issued December 20, 1991.[1]

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580

FOR FURTHER INFORMATION CONTACT: David Narrow, Linda Blumenreich, or Kathleen Kenyon, FTC/S-3115, Washington, DC 20580. (202) 326-2744, 326-2751, or 326-2429.

SUPPLEMENTARY INFORMATION: On Wednesday, October 9, 1991, there was published in the **Federal Register**, 56 FR 50912, a proposed consent agreement with analysis In the Matter of Southbank IPA, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments have been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92-1745 Filed 1-23-92; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

[G-91-4]

Delegation of Authority to the Secretary of the Treasury

Pursuant to the authority vested in me by section 3726 of title 31, United States Code, I have determined that it is both cost-effective and in the public interest to delegate expanded authority to the Secretary of the Treasury to enable regional fiscal offices to conduct prepayment audits of transportation vouchers relating to the movement of freight and passengers. The prepayment audits are subject to the provisions of the Federal Property Management Regulations, Title 41, Code of Federal Regulations, Subpart 101-41, and amendments thereto. The prepayment audits will be conducted by a General Services Administration (GSA) contractor, at the contractor's site. Any of the Department of the Treasury, Internal Revenue Service's regional fiscal offices, in addition to the Headquarters payment office in Washington, DC, may participate in this program. The Department of the

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Treasury has identified the following offices to conduct such audits:

Regional Fiscal Offices:

Internal Revenue Service, Regional Fiscal Management Branch, 90 Church Street, New York, NY 10007.
Internal Revenue Service, Regional Fiscal Management Branch, 841 Chestnut Street, 2nd Floor, Philadelphia, PA 19107.
Internal Revenue Service, Regional Fiscal Management Branch, 401 W. Peachtree Street, Stop 162–R, Atlanta, GA 30365.
Internal Revenue Service, Regional Fiscal Management Branch, 1650 Mission Street, Rm 402, San Francisco, CA 94103.
Internal Revenue Service, Regional Fiscal Management Branch, 4050 Alpha Road, Stop 1320 SWRO, Dallas TX 74244–4121.
Internal Revenue Service, Regional Fiscal Management Branch, 300 S. Riverside Drive, Chicago, IL 60606–6683.

Headquarters:

Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

The Secretary of the Treasury may redelegate this authority to any officer, official, or employee of the Internal Revenue Service.

The Secretary of the Treasury shall notify GSA in writing of these additional delegations and their basis. This delegation is effective upon publication in the **Federal Register**.

Dated: December 27, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92–1778 Filed 1–23–92; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 123]

National Institute for Occupational Safety and Health; Grants for Education Programs in Occupational Safety and Health; Availability of Funds for Fiscal Year 1993

Introduction

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces the expected availability of funds in Fiscal Year 1993 for training grants in occupational safety and health. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under section 21(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670[a][1]). Regulations applicable to this program are in 42 CFR part 86, "Grants for Education Programs in Occupational Safety and Health."

Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and is located in a state, the District of Columbia, or U.S Territory is eligible to apply for a training grant.

Availability of Funds and Recipient Activities

Funds in the total approximate amount of $11,500,000 are expected to be available in Fiscal Year 1993.

Approximately $10,600,000 of the total funds available are expected to be utilized as follows:

1. To award approximately 12 non-competing continuation and two competing continuation Educational Resource Center (ERC) training grants totaling approximately $8,400,000 and ranging from approximately $400,000 to $800,000 with the average award being approximately $600,000 (for specific activities refer to **Federal Register** Announcement, 51 FR 32963, September 17, 1986);

2. To award approximately 22 non-competing continuation and eight competing continuation long-term training project grants (TPG) totaling $2,200,000 and ranging from approximately $10,000 to $500,000, with the average award being $60,000, to support academic programs in the fields of industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety (for specific activities refer to **Federal Register** Announcement, 52 FR 3172, February 2, 1987); and

3. To conduct the peer review and evaluations of all new, competing, continuation, and supplemental applications received.

Awards will be made for a 1- to 5-year project period with an annual budget period. Funding estimates may vary and are subject to change. Non-competing continuation awards within the approved project periods will be made on the basis of satisfactory progress and the availability of funds.

In addition, approximately $600,000 of the total funds available will be awarded to ERCs to support the development and presentation of continuing education and short courses for professionals engaged in the management of hazardous substances. These funds were provided to NIOSH through an Interagency Agreement with the National Institute for Environmental Health Sciences as authorized by section 209(b) of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (100 STAT. 1708–1710). The hazardous substance training funds are being used to supplement previous hazardous substance continuing education grant support provided to the ERCs in FY 1984 and 1985 under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 for the ERC continuing education program (for specific activities refer to the **Federal Register** Announcement, 51 FR 32963, September 17, 1986). Program support is available for faculty and staff salaries, and other costs to provide occupational safety and health training to practicing professionals in state and local health and environmental agencies and other professional personnel engaged in the evaluation, management, and handling of hazardous substances. The policies regarding project periods also apply to these activities.

Approximately $247,000 of the total funds available will be awarded to ERCs to support the development of specialized educational programs in agricultural safety and health within the existing core disciplines of industrial hygiene, occupational medicine, occupational health nursing, and occupational safety (for specific activities refer to **Federal Register** Announcement, 51 FR 32963, September 17, 1986). Program support is available for faculty and staff salaries, trainee costs, and other costs to educate professionals in agricultural safety and health.

Purpose

The objective of this grant program is to award funds to eligible institutions or agencies to assist in providing an adequate supply of qualified professional and para-professional occupational safety and health

personnel to carry out the purposes of the Occupational Safety and Health Act.

Review and Evaluation Criteria

In reviewing ERC grant applications, consideration will be given to:

1. Needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970. The needs assessment should consider the regional requirements for outreach, continuing education, information dissemination, and special industrial or community training needs that may be peculiar to the region.

2. Plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

3. The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve Characteristics of an Educational Resource Center (Federal Register Announcement, 51 FR 32963, September 17, 1986).

4. The extent which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

5. Academic training including the number of full-time and part-time students and graduates for each core program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous continuing education training in each discipline and outreach activity and assistance to groups within the ERC region.

6. Methods in use or proposed methods for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

7. The competence, experience, and training of the Center Director, the Deputy Center Director, the Program Directors, and other professional staff in relation to the type and scope of training and education involved.

8. Institutional commitment to Center goals.

9. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

10. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the academic staff's time and effort in continuing education and outreach.

11. Evidence of a plan describing the research and research training the Center proposes including goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

12. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

In reviewing long-term TPG applications, consideration will be given to:

1. The need for training in the program area outlined by the application. This should include documentation of ability and a plan for student recruitment, projected enrollment, job opportunities, regional/national need both in quality and quantity, and similar programs, if any, within the geographic area.

2. The potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

3. Curriculum content and design which should include formalized program objectives, minimal course content to achieve certificate or degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches.

4. Previous records of training in this or related areas, including placement of graduates.

5. Methods proposed to evaluate effectiveness of the training.

6. Degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?

7. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

8. The competence, experience, training, time commitment to the program and availability of faculty to advise students, faculty/student ratio, and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved.

9. Admission Requirements: Student selection standards and procedures, student performance standards, and student counseling services.

10. Advisory Committee (if established): Membership, industries, and labor groups represented; how often they meet; whom they advise; and role in designing curriculum and establishing program need.

Funding Allocation Criteria

For Educational Resource Center grants, the following criteria will be considered in determining funding allocations:

1. Academic core programs.

a. Budget to support programs primarily for personnel and other personnel-related costs. Advanced (doctoral and post-doctoral) and specialty (master's) programs will be considered.

b. Budget to support programs based on program quality and need. Factors considered include faculty commitment/breadth, faculty reputation/strength, national/regional manpower needs, unique program contribution, interdisciplinary interaction, and technical merit.

c. Budget to support students based on the program level and the number of students supported.

2. Center administration. Budget to support Center administration to assure coordination and promotion of academic programs.

3. Continuing education/outreach program. Budget to support outreach and continuing education activities to prepare, distribute, and conduct short courses, seminars, and workshops.

4. Research training programs. Budget to support research training programs to establish a research base within the core disciplines and for the training of researchers in occupational safety and health.

5. Hazardous substance training programs. Budget to support the development and presentation of continuing education courses for

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professionals engaged in the management of hazardous substances.

6. Agricultural safety and health academic programs. Budget to support the development and presentation of specialized academic programs and continuing education courses in agricultural safety and health.

For Long-Term Training Project grants, the following factors will be considered in determining funding allocations:

Academic core programs.

1. Budget to support programs primarily for personnel and other personnel-related costs. Advanced (doctoral and post-doctoral), specialty (master's), and baccalaureate/associate programs will be considered.

2. Budget to support programs based on program quality and need. Factors considered include faculty commitment/breadth, faculty reputation/strength, national/regional manpower needs, unique program contribution, interdisciplinary interaction, and technical merit.

3. Budget to support students based on the program level and the number of students supported.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number is 93.263.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Application Submission and Deadline

Applications should be clearly identified as an application for an Occupational Safety and Health Long-Term Training Project Grant or ERC Training Grant. The submission schedule is as follows:

New, Competing Continuation & Supplemental Receipt Date: July 1, 1992.

An original and two copies of new, competing continuation and supplemental applications (Form CDC 2.145A ERC or TPG) should be submitted to: Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on/or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Non-Competing Continuation Receipt Date: November 15, 1992.

An original and two copies of non-competing continuation applications (Form CDC 2.145B ERC to TPG) should be submitted to: Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

Where to Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address, and phone number, and will need to refer to Announcement Number 123. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Adrienne McCloud, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842-6630. Programmatic technical assistance may be obtained from John T. Talty, Chief, Educational Resource Development Branch, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Cincinnati, Ohio 45226, (513) 533-8253.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9325 (Telephone (202) 783-3238).

Dated: January 17, 1992.

Larry W. Sparks,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control.

[FR Doc. 92-1735 Filed 1-23-92; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 92N-0023]

Drug Export; Fentanyl Citrate Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Lyphomed, Division of Fujisawa USA, Inc., has filed an application requesting approval for the export of the human drug Fentanyl Citrate Injection to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Lyphomed, Division of Fujisawa USA, Inc., 2045 North Cornell Ave., Melrose Park, IL 60160-1002, has filed an application requesting approval for the export of the drug Fentanyl Citrate Injection to Canada. The drug is used as a narcotic analgesic adjunct to anaesthesia. The application was received and filed in the Center for Drug Evaluation and Research on December

11, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 3, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 17, 1992.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 92-1824 Filed 1-23-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92N-0029]

Drug Export; Bulk Drug Substance Code 5032 (Silicone-Coated Superparamagnetic Iron Oxide)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Advanced Magnetics, Inc., has filed an application requesting approval for the export of the human bulk drug substance Code 5032 (silicone-coated superparamagnetic iron oxide) to France.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Advanced Magnetics, Inc., 61 Mooney St., Cambridge, MA 02138-1038, has filed an application requesting approval for the export of the bulk drug substance Code 5032 (silicone-coated superparamagnetic iron oxide) to France. This drug is used as an oral Magnetic Resonance Imaging contrast agent. The application was received and filed in the Center for Drug Evaluation and Research on December 23, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 3, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 17, 1992.

Sammie R. Young,

Deputy Director.

[FR Doc. 92-1823 Filed 1-23-92; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Fertility and Maternal Health Drugs Advisory Committee

Date, Time and Place

February 14, 1992, 9 a.m., Parklawn Bldg., Conference rms. D & E, 5600 Fishers Lane, Rockville, MD.

Type of Meeting and Contact Person

Open public hearing, February 14, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD-510), Food and Drug Administration, 5600 Fisher, Lane, Rockville, MD 20857, 301-443-3510.

General Function of the Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics and gynecology.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 31, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

The committee will discuss the acceptability and design of clinical trials of hormone replacement therapy in women who have been treated for breast cancer.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) and open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Docket Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 21, 1992

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92–1821 Filed 1–23–92; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Drug Abuse Advisory Committee

Date, Time, and Place

February 27 and 28, 1992, 9 a.m., Conference Rm. D, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

Type of Meeting and Contact Person

Open public hearing, February 27, 1992, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; closed committee deliberations February 28, 1992, 9 a.m. to 5 p.m.; Khairy W. Malek, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3610.

General Function of the Committee

The committee advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

Agenda—Open Public Hearing

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 21, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open Committee Discussion

On February 27, 1992, the committee will discuss: (1) Updated postmarketing surveillance related to drug abuse of new drug application (NDA) NDA 19–062, Dalgan (dezocine), Astra Pharmaceuticals, (2) abuse liability assessment of NDA 19–908, Ambien (zolpidem tartrate), Lorex Pharmaceuticals, and (3) current issues related to procedures and methodology for abuse liability assessment and evaluating medications for treatment of drug abuse (guidelines and memorandum of understanding).

Closed Committee Deliberations

On February 28, 1992, the committee will review trade secret or confidential commercial information relevant to current investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson

determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, as the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 21, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92–1622 Filed 1–23–92; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1992.

Name: National Advisory Council on the National Health Service Corps

Date and Time: February 16–18, 1992, 8:30 a.m.–5 p.m.

Place: Sheraton Hotel, 310 Padre Boulevard, South Padre Island, Texas 78597. The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The agenda will include a Bureau and Division update; issues pertaining to environmental, living conditions, low birth weights and infant mortality relevant to the area; health manpower, and malpractice issues. Tuesday, February 18, we will leave the hotel via bus at 7:30 a.m. to begin our site visits. The Council will visit the Brownsville Community Health Center, in Brownsville, Texas, the South Texas Allied Health Education Center and Su Clinica in Harlingen.

The meeting is open to the public, however, no transportation will be provided to the site visits.

Anyone requiring information regarding the subject Council should contact Anne Mae Voigt, National Advisory Council on the National Health Service Corps, Room 7A–38, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1470.

Agenda Items are subject to change as priorities dictate.

Dated: January 21, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–1625 Filed 1–23–92; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of

information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on January 17, 1992.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Government Pension Questionnaire—0960.0160. The information collected on the form SSA–3885 is used to determine whether an individual's Social Security benefit will be reduced. The respondents are individuals applying for Social Security benefits and, also, receiving or qualified to receive a Government pension.

Number of Respondents: 76,000.
Frequency of Response: 1.
Average Burden per Response: 5 minutes.
Estimated Annual Burden: 6,333 hours.

2. Student's Statement Regarding Resumption of School Attendance—0960.0143. The information collected on the form SSA–1386 is used to verify the full-time attendance of a student beneficiary. The respondents are student beneficiaries and educational institutions.

Number of Respondents: 133,000.
Frequency of Response: 1.
Average Burden per Response: 6 minutes.
Estimated Annual Burden: 13,300 hours.

3. Summary Evidence—0960.0430. The information collected on the form SSA–887 is used to provide a list of the medical/vocational reports pertaining to the claimant's disability. This list is critical to and used in the hearing process. The respondents are the State Disability Determination Staffs.

Number of Respondents: 54.
Frequency of Response: 201.
Average Burden per Response: 15 minutes.
Estimated Annual Burden: 2,714 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: January 17, 1992.

Ron Compston,

Social Security Administration Reports Clearance Officer.

[FR Doc. 92–1684 Filed 1–23–92; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–92–3378]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 16, 1992.

John T. Murphy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Energy Conservation Requirements of Chapter 12, Handbook 4350.1 Appendix 1, Energy Conservation.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Owners are to review, annually, the Energy Conservation Plan to effect energy conservation measures and to notify the Department that they are in compliance with the Plan.

Form Number: None.

Respondents: Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
First Year Survey and Plan	9,600		1		10		96,000
Subsequent Years Survey and Plan	9,600		1		3		28,800
Recordkeeping	9,600		1		.05		480

Total Estimated Burden Hours: 125,280.

Status: Reinstatement.

Contact: James J. Tahash, HUD, (202) 708–3944, Jennifer Main, OMB, (202) 395–6880.

Dated: January 16, 1992.

[FR Doc. 92–1719 Filed 1–23–92; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–92–3379]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 17, 1992.

John T. Murphy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Quarterly Survey of Mortgage-Related Security Investments (Pension Fund Survey).

Office: Housing.

Description of the Need for the Information and its Proposed Use: This survey provides the only source of information on the extent of the mortgage market by monitoring how institutions respond to changes in Federal Regulations. The data is used for Federal planning.

Form Number: None.

Respondents: State or Local Governments and Businesses or Other For-Profit.

Frequency of Submission: Quarterly.

Reporting Burden:

	Number of respondents x	Frequency of response x	Hours per response =	Burden hours
Survey	798	4	.25	798

Total Estimated Burden Hours: 798.

Status: Extension.

Contact: James B. Mitchell, HUD, (202) 708–4325, Henry C. Newan, HUD, (202) 708–4325, Jennifer Main, OMB, (202) 395–6880.

Dated: January 17, 1992.

[FR Doc. 92–1720 Filed 1–23–92; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–2934–N–62]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs,

or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the dte of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Bob Swieconek, Army Corps of Engineers, Civilian Facilities, room 5138, 20 Massachusetts Ave. NW., Washington, DC 20314–1000; (202) 272–1750; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; (These are not toll-free numbers).

Dated: January 17, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program, Federal Register Report for 01/24/92

Suitable/Available Properties

Buildings (by State)

Colorado

Kendall House, Bear Creek Lake
Hwy 8 or Morrison Rd.
Lakewood Co: Jefferson CO 80201–
Location: 2 mi. west of Kipling Intersection
Landholding Agency: COE
Property Number: 319140001
Status: Excess
Comment: 2400 sq. ft., 2 story with basement, needs rehab, presence of asbestos, off-site use only

Indiana

Bldg. 01, Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401–8772
Landholding Agency: COE
Property Number: 319140002
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only

Bldg. 02, Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401–8772
Landholding Agency: COE
Property Number: 319140003
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only

Land (by State)

Kentucky

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 319140009
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements

Tennessee

Tract A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Tracts A–20, A–21
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140008
Status: Underutilized
Comment: 821 acres, most recent use—recreation, subject to existing easements

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Landholding Agency: COE
Property Number: 319140010
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Texas

Parts of Tracts
B–143, B–144, B–146, B–148, B–179
Downstream of Lewisville Dam embankment
Lewisville Co: Denton TX 75067–
Location: Along State Hwy 121
Landholding Agency: COE
Property Number: 319140015
Status: Underutilized
Comment: approx. 92.81 acres in 3 parcels, most recent use—wildlife and low density recreation

Suitable/Available Properties

Buildings (by State)

Tennessee

Transiet Quarters
Dale Hollow Lake and Dam Project
Dale Hollow Resource Mgr Office, Rt 1, Box 64
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140005
Status: Unutilized
Comment: 1400 sq. ft., concrete block, possible security restrictions, subject to existing easements

Land (by State)

Oklahoma

45 acre parcel, Sardis Lake
SE¼ NE¼ Section 4, T 2 N, R 18 E
Co: Pushmataha OK 74521–
Landholding Agency: COE
Property Number: 319140004
Status: Excess
Comment: approx. 45 acres, most recent use—fish and wildlife conservation

Suitable/To Be Excessed

Land (by State)

Texas

Part of Tract 102 Segment 1
Bardwell Dam Road
Ennis Co.: Ellis, TX 75119–
Landholding Agency: COE
Property Number: 319140014
Status: Unutilized
Comment: approx. 4.5 acres

Unsuitable Properties

Buildings (by State)

California

4 Bldgs., Loran Station
Johnston Island
APO San Francisco, CA (Sand Island)
Johnston Atoll CA 96305–5000
Property Number: 879210004
Status: Excess
Reason: Secured Area

Hawaii

9 Bldgs., Loran Station
Kure Island
FPO San Fancisco, CA
Co: Honolulu HI 96619–0006
Landholding Agency: DOT
Property Number: 879210005
Status: Excess
Reason: Secured Area

Barracks/Recreation Bldg.
Loran Station Upolu Point
Box 2
Hawi Co: Hawaii HI 96719–0002
Landholding Agency: DOT
Property Number: 879210006
Status: Excess
Reason: Secured Area

Transmitter Bldg.
Loran Station Upolu Point
Hawi Co: Hawaii HI 96719–0002
Landholding Agency: DOT
Property Number: 879210007
Status: Excess
Reason: Secured Area

Tennessee

Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140011
Status: Excess
Reason: Other
Comment: Water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140012
Status: Excess
Reason: Other
Comment: Water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreation Area, Hwy No. 53
Livingston Co: Clay TN 38351
Landholding Agency: COE
Property Number: 319140013
Status: Excess
Reason: Other
Comment: Water treatment plant

Washington

Bldg. #1, USCG Support Center
1519 Alaskan Way South
Seattle Co: King WA 98134–
Landholding Agency: DOT
Property Number: 879210003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

[FR Doc. 92–1722 Filed 1–23–92; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–968–4230–15; AA–6704–B]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Ahtna, Incorporated for the village of Tazlina, for 13.3 acres. The lands involved are in the vicinity of Glennallen, Alaska in T. 4 N., R. 2 W., Copper River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 (907) 271–5690.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until February 24, 1992 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Janice Pruitz,

Acting Chief, Branch of Cook Inlet and Ahtna Adjudication.

[FR Doc. 92–1777 Filed 1–23–92; 8:45 am]
BILLING CODE 4310–84–M

California Desert District Grazing Advisory Board Meeting

AGENCY: United States Department of the Interior, Bureau of Land Management.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94–579, title IV, section 403, that a public meeting of the California Desert District Grazing Advisory Board will be held on Wednesday, February 19, 1992 from 10 a.m. to 4 p.m. in the Lake Mead conference room of the Flamingo Hilton, 1900 South Casino Drive, Laughlin, Nevada 89028.

The agenda for the meeting will include:

—Range management perspectives by Resource Area;
—Grazing management in riparian areas;
—Development of rangeland improvements;
—Review of the status of allotment management plans;
—Field review of sheep grazing operations;
—An update on sheep and cattle section 7 consultation packages.

The meeting is open to the public, with time allotted for public comment after each agenda subject has been presented.

Summary minutes of the meeting will be maintained in the California Desert District Office, 6221 Box Springs Boulevard, Riverside, California 92507, and will be available there for public inspection during regular business hours—7:45 a.m. to 4:30 p.m. (p.s.t.)—within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, California Desert District Office, Larry Morgan, 6221 Box Springs Boulevard, Riverside, California 92507, (714) 697–5370.

Dated: January 16, 1992.

Alan Stein,

Acting, District Manager.

[FR Doc. 92–1773 Filed 1–23–92; 8:45 am]
BILLING CODE 4310–40–M

[ID–010–02–4320–02–ADVB]

AGENCY: Boise District, Bureau of Land Management, Idaho.

ACTION: Notice of Meeting.

SUMMARY: The Boise District Grazing Advisory Board will meet on Wednesday, February 19, 1992, to discuss the proposed expenditure of Grazing Advisory Board (7121) funds for Fiscal Year 1992. The meeting is open to the public and a comment period will be held at 2 p.m..

DATES: The meeting will begin at 9 a.m. on Wednesday, February 19, 1992, in the district office conference room.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho, 83705.

FOR FURTHER INFORMATION CONTACT: Fred Schley, Boise District, BLM, (208)384–3457.

Dated: January 14, 1992.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 92–1775 Filed 1–23–92; 8:45 am]

BILLING CODE 4310–GG–M

[CO–010–02–4320–02]

Craig Colorado Advisory Council Meeting

Time and Date: 10 a.m., February 19, 1992.

Place: BLM—Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters to be Considered:

1. Recreation Permits and Carrying Capacity in the Yampa Valley.
2. Spring field trip.
3. Effectiveness of the Council.
4. Election of Officers.

Contact Person for More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129.

Dated: January 14, 1992.

William J. Pulford,

District Manager.

[FR Doc. 92–1784 Filed 1–23–92; 8:45 am]

BILLING CODE 4310–JB–M

Iditarod National Historical Trail Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 90–543 that a meeting of the Iditarod National Historic Trail Advisory Council will be held to discuss rights-way and trail administration and management issues.

DATES: Beginning 9 a.m. on February 20, 1992 and concluding February 21, 1992 at 5 p.m.

ADDRESSES: Bureau of Land Management, Anchorage District Office, 6881 Abbott Loop, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Danielle Allen, Public Affairs Specialist, Anchorage District, Bureau of Land Management, 6881 Abbott Loop, Anchorage, Alaska 99507, (907) 267–1258.

SUPPLEMENTARY INFORMATION: The agenda for the meeting is as follows:

1. Introductions and opening remarks.
2. Review of previous meetings' minutes.
3. Trail Management Issues.
4. Discussion.
5. Adjourn.

The meeting is open to the public, interested persons can make oral statements to the Council between 10 a.m.–11 a.m. on February 21, 1992.

Richard J. Vernimen,

Anchorage District Manager.

[FR Doc. 92–1731 Filed 1–23–92; 8:45 am]

BILLING CODE 4310–JA–M

[ES–040–02–4111–11–241A; MSES 43159]

Mississippi: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease MSES 43159, Smith County, Mississippi, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 1991, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16-⅔ percent, respectively. Payment of a $500 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective June 1, 1991 subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Gina Goodwin at (703) 461–1516.

Dated: January 16, 1992.

Larry Hamilton,

Acting State Director.

[FR Doc. 92–1770 Filed 1–23–92; 8:45 am]

BILLING CODE 4310–84–M

[AZ–020–02–4212–13; AZA–26359]

Realty Action; Exchange of Public Land; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange.

SUMMARY: The Bureau of Land Management proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership and the acquisition of unique natural resource lands. All or part of the following described federal lands are being considered for disposal via exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The final determination on disposal will be made upon completion of the environmental assessment.

Gila and Salt River Base and Meridian, Mohave County, Arizona

Township 20 North, Range 17 West

sec. 4, Lots 1, 5–10, S½;
sec. 5, Lots 3–6, 11, 12;
sec. 6,, Lots 1–5, 8, 11–14, 19–33, 36–46, SE¼;
sec. 8, Lots 1–4, E½, SE¼NW¼, E½SW¼;
sec. 9, NW¼NE¼, W½SW¼, SE¼SW¼;
sec. 17, E½E½, W½NE¼, W½;
sec. 18, Lots 21, 24, 25, 27, 30, SE¼SE¼;
sec. 20, all;
sec. 30, Lots 21, 24, 25, 28, E¼.

Comprising 4611.06 acres, more or less.

In accordance with the regulations of 43 CFR 2201.1, publication of this Notice will segregate the affected public land from appropriation under the public land laws, except exchange pursuant to section 206 of the Federal land Policy and Management Act of 1976. The segregative effect shall also exclude appropriation of the subject public land under the mining laws, subject to valid existing rights.

The segregation of the above-described land shall terminate upon issuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: January 14, 1992.

Henri R. Bisson,

District Manager.

[FR Doc. 92–1772 Filed 1–23–92; 8:45 am]

BILLING CODE 4310–32–M

[CA-010-01-4212-13, CACA-29421PT]

Realty Action: Exchange of Public and Private Lands in Sacramento County, California

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described private land is being considered for acquisition through exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

OFFERED PRIVATE LAND:

Private lands located within:
T.5N., R.5E., MDM
Sections 15,16, 21, 22, 23, 27
Sacramento County, California
Containing 1099.64 Acres, more or less.
APN: 146-0131-001
146-0200-008
146-0200-010
146-0210-011
146-0210-012
146-0210-013
146-0210-014
146-0330-003

The above described land lies contiguous to a portion of the northern boundary of the existing Cosumnes River Preserve in Sacramento County. The parcel will be acquired by the Nature Conservancy who will transfer title to the Bureau of Land Management in exchange for public lands of approximately equal value, found suitable for disposal.

The public lands being considered for exchange have been identified in Notices of Realty Action previously published in the **Federal Register**.

ADDRESS: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, Ca. 95630.

FOR ADDITIONAL INFORMATION: Contact Dean Decker, (916) 985-4474 or at the address above.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire non-Federal land adjacent to the Cosumnes River Preserve, currently jointly managed by the Nature Conservancy and Ducks Unlimited. These lands have been identified for acquisition and protection by the Joint Venture implementation Board to contribute to the objectives of the Central Valley Habitat Joint Venture, and through it the North American Waterfowl Management Plan. This acquisition will serve the public interest by providing the opportunity for the protection and development of seasonably and permanent wetlands and riparian forests, pursuant to BLM's Wildlife 2000 Program.

Dated: January 16, 1992.
David N. Harris,
Acting Area Manager.
[FR Doc. 92-1768 Filed 1-23-92; 8:45 am]
BILLING CODE 4310-40-M

[CA-010-4212-14; CACA 29457]

Realty Action (CACA 29457); Direct Sale of Public Land, Nevada County, CA

AGENCY: Department of Interior, Bureau of Land Management.

SUMMARY: The following described public land is being considered for direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

Mount Diablo Meridian, California

T. 16N., R. 9E.,
Sec. 18: lot 20.
Comprising .74 acres, more or less.

The above tract is a wedge-shaped remnant of public land that lacks public access. It is surrounded entirely by private property, most of which is owned by Mr. and Mrs. Richard Chapman. The .74-acre remnant would be sold as an inholding to the Chapmans at fair market value. An additional $50.00 non-returnable mineral conveyance processing fee is required.

The tract would be transferred subject to a reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945). All necessary clearances including clearances for archeology, rare plants and animals would be completed prior to any conveyance of title by the U.S. The proposal is consistent with the Bureau's land use plans which supports the disposal of small isolated tracts when practical.

The above described land is hereby segregated from settlement, location and entry under the public land laws and the mining laws for a period of 270 days from the date of publication of this notice in the **Federal Register**.

ADDRESSES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o Folsom Resource Area Manager, 63 Natoma Street, Folsom, California 95630.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley at (916) 985-4474 or at the address above.

David N. Harris,
Acting Area Manager.
[FR Doc. 92-1776 Filed 1-23-92; 8:45 am]
BILLING CODE 4310-40-M

[CO-050-4212-13]

Realty Action; COC-53540 Exchange of Private Lands in Park and Fremont Counties for Public Lands in Boulder, Fremont and Park Counties, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, COC-53540 Exchange of Private Lands in Park and Fremont Counties for Public Lands in Boulder, Fremont and Park Counties, Colorado.

SUMMARY: The following public land has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T.9S., R.75W., Sixth P.m.
Section 29: W½NE¼
Section 33: W½NW¼, NW¼SW¼
T.12S., R.73W.
Section 18: Lot 5
Section 19: Lots 1, 2, 3, and 4
T.12S., R.74W.
Section 24: SE¼NW¼, NW¼SE¼
T.12S., R.76W.
Section 18: E½SE¼
T.13S., R.73W.
Section 2: NW¼SE¼
Section 8: N½NE¼
Section 12: SE¼SE¼
T.13S., R.72W.
Section 19: Lots 1, 2 and 3, SE¼NW¼,
T.16S., R.72W.
Section 6: Lot 14
T.17S., R.73W.
Section 2: SW¼NE¼
T.1N., R.71W.
Section 18: Lots 72 & 79, NE¼SW¼(M&B)
Section 19: (M&B)
T.47N., R.12E., N.M.P.M.
Section 28: SW¼SW¼
T.49N., R.11E.
Section 1: Lot 6
Section 2: Lots 5 and 12
Section 4: Lots 12 and 15
T.49N., R.12E.
Section 4: Lot 5
Section 18: NW¼NE¼
T.50N., R.11E.
Section 34: SW¼SW¼
T.50N., R.12E.
Section 32: Tr. 119
Containing 1,221.78 acres.

In exchange for these lands, the United States will acquire the following private land from Shepard and Associates:

T.16S., R.72W., Sixth P.M.

Section 6: S½SE¼
Section 7: NE¼ and M&B Parcel
T.15S., R.73W.
Section 25: S½NW¼, SW¼
Section 26: NE¼SE¼, S½SE¼
Section 35: All
T.16S., R.73W.
Section 2: Lots 2 and 7
Containing 1,390.00 acres.

The purpose of the exchange is to obtain private land containing important riparian, wildlife, recreation and other public values, while disposing of scattered parcels of public land which are scattered, difficult to manage tracts without public access. The proposed exchange is consistent with the objectives of the land use plan for the affected lands.

Any differences in the appraised values of the offered and selected lands will be equalized through acreage adjustments or cash payment.

DATES: On or before March 9, 1992, interested parties may submit written comments to the Canon City District Manager.

ADDRESS: Bureau of Land Management, Canon City District, P.O. Box 2200, Canon City, CO 81215–2200.

FOR FURTHER INFORMATION CONTACT: Stu Parker, (719) 275–0631.

SUPPLEMENTARY INFORMATION: The exchange will involve both the surface and subsurface estates and will be subject to valid existing rights on both the offered and selected lands. This notice segregates the public lands described above from entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, for 2 years from publication or until patent issues. Any adverse comments will be evaluated by the District Manager who may vacate, modify, or continue this realty action and issue a final determination.

Stuart L. Freer,
Associate District Manager.

[FR Doc. 92–1769 Filed 1–23–92; 8:45 am]
BILLING CODE 4310–JB–M

[ES–030–2–4212–18; MIES–043236]

Realty Actions, Sales, Leases, Etc.; MI

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Sale of public land in Chippewa County, Michigan—modified competitive method; correction.

SUMMARY: This notice corrects the public notice previously published in the Federal Register on December 31, 1991 (56 FR 67628) for the sale of public land in Chippewa County, Michigan by the modified competitive method.

The following paragraph was erroneously omitted by BLM and is hereby added to that notice at the end of the second paragraph, column one, page 67627:

(2) There is no legal access to the parcel because it is landlocked by the adjacent parcel to the north. There is physical access to the parcel by boat.

As a result of this correction, the following corrections are made in the previously published notice:

1. The public land described in that notice will remain segregated from appropriation under the public lands laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this correction in the Federal Register, whichever occurs first.

2. The date of the public auction will be changed to April 20, 1992. The time and location of the public auction remain unchanged: 10 a.m. c.s.t. at the Reuss Federal Plaza, suite 225, West Tower, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.

3. All sealed bids must be submitted to BLM at the above address not later than 3 p.m. c.s.t. on April 17, 1992.

4. Bid envelopes must be marked on the lower left front corner with MIES–043236 and April 20, 1992.

5. The public comment period will be extended to March 9, 1992. Until that date, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

FOR FURTHER INFORMATION CONTACT: Duane Marti, Realty Specialist, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631; telephone number (414) 297–4429 or (FTS) 362–4429.

Gary D. Bauer,
District Manager.

[FR Doc. 92–1594 Filed 1–23–92; 8:45 am]
BILLING CODE 4310–GJ–M

[ID–943–4314–11; IDI–15557]

Notice of Proposed Continuation of Withdrawal; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that six withdrawals, consisting of 2,579.92 acres in the Minidoka Project, be continued for an additional 14 years. The land will remain closed to surface entry and mining but has been and will remain open to mineral leasing.

DATE: Comments should be received by April 23, 1992.

ADDRESS: Comments should be sent to State Director, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, (208) 384–3162.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, (208) 384–3162.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that portions of the existing land withdrawals made by the Secretarial Orders of January 22, 1907, July 3, 1907, September 27, 1909, February 14, 1910, May 4, 1910, and March 14, 1912, be continued for a period of 14 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Boise Meridian

T. 9 S., R. 23 E.,
sec. 23, S½NE¼, W½NW¼ and SE¼ – NW¼.
T. 9 S., R. 24 E.,
sec. 6, S½NE¼SE¼ and SE¼SE¼.
T. 8 S., R. 25 E.,
sec. 35, SW¼NE¼, SE¼NW¼ and SE¼.
T. 10 S., R. 25 E.,
sec. 30, N½NW¼SE¼NW¼.
T. 6 S., R. 26 E.,
sec. 7, lots 3 and 4 and E½SW¼;
sec. 9, E½;
sec. 10;
sec. 11;
sec. 12, S½.

The areas described aggregate 2,579.92 acres in Minidoka and Cassia Counties.

The purpose of the withdrawals is to protect the Minidoka Project. The withdrawals segregate the land from settlement, sale, location, and entry, including location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations, may present their views in writing to Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and, if

so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: January 14, 1992.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 92-1766 Filed 1-23-92; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-4214-10; IDI-26824]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 40 acres of National Forest System lands for protection of a dam, powerhouse and access road. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATE: Comments and requests for meeting should be received on or before April 23, 1992.

ADDRESS: Comments and meeting requests should be sent to the Idaho State Director, BLM, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION: Larry Lievsay, BLM, Idaho State Office, (208) 384-3166.

SUPPLEMENTARY INFORMATION: On January 8, 1992, the United States Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Boise Meridian

Boise National Forest
T. 5 N., R. 11 E.,
sec. 5, lot 8.

The area described contains 40 acres in Elmore County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Idaho State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are presently authorized leases, licenses, permits, rights-of-way, etc.

Dated: January 14, 1992.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 92-1767 Filed 1-23-92; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Caldwell Schools, Inc., PRT-764284, Tyler, TX

The applicant requests a permit to purchase one female captive-born ocelot (*Felis pardalis*) in interstate commerce from the Salisbury Zoo, Salisbury, Maryland, for breeding purposes.

Applicant: Stan P. Lukasik, PRT-764261, Lowell, IN

The applicant requests a permit to import two male and two female captive-hatched white-earned pheasants (*Crossoptilon crossoptilon*) from South View Aviaries, Burnaby B.C., Canada, for breeding purposes.

Applicant: Wayne Gross, PRT-764696, Danville, CA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by M. J. D'Alton, Kosiers Kraal, Bredasdrop, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Bucky Steele, PRT-763924, Jefferson, TX

The applicant requests a permit to import one captive born male Asian elephant (*Elephus maximus*) from the African Lion Safari, Cambridge, Ontario, Canada, for enhancement of survival through conservation education.

Applicant: San Diego Zoological Society, PRT-78955, San Diego, CA

The applicant requests a multiple import permit for blood and skin biopsy specimens collected from captive born Przewalski's horses (*Equus przewalskii*) at various institutions. The samples will be used for scientific research in conjunction with species conservation efforts.

Applicant: Willie's Wildlife Zoo, PRT-764952, Brandon, WI

The applicant requests an interstate commerce permit to purchase one captive born male leopard (*Panthera pardus*), from J. Witchey of Ohio, for breeding purposes.

Applicant: Gary Johnson, PRT-764195, Perris, CA

The applicant requests an interstate commerce permit to purchase one female Asian elephant (*Elephus maximus*), "Duchess", from International Animal Exchange of Ferndale, Michigan, for educational purposes.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: 17 January 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-1685 Filed 1-23-92; 8:45 am]

BILLING CODE 4310-55-M

VOL 57 ISS 16 JA 24 1992 UMI

National Park Service

City of Buena Vista, Glen Maury Park; Environmental Assessment

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare an Environmental Assessment for a proposed conversion pursuant to Section 6(f)(3) of the Land and Water Conservation Fund Act in Glen Maury Park—City of Buena Vista, VA.

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, Public Law 91–190, the National Park Service (NPS) is preparing an environmental assessment to determine the impacts of a coal conveyor system and related steam and water services for nearby industries. This proposed conveyor installation will traverse a wooded ravine through Glen Maury Park from the Maury River to the adjacent uplands. A range of alternatives will be formulated for protecting the various park natural and environmental resources, and recreation/activities.

Persons wishing to provide input to the environmental evaluation pertaining to this conversion request should address comments to the Regional Director, Mid-Atlantic Regional Office, National Park Service, 143 South Third Street, Phila., PA 19106. Comments should be received no later than 30 days from the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Earle D. Whitney, Planning and Grants Assistance Division at the above address, telephone (215) 597–2578.

Charles P. Clapper, Jr.,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 92–1811 Filed 1–23–92; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Land Management

Transfer of Administrative Jurisdiction, Chaco Culture National Historical Park

Certain lands and/or interests therein have been reconveyed to the Bureau of Land Management within the boundaries of Chaco Culture National Historical Park. Notice is hereby given that pursuant to the provisions of Public Law 96–550, sections 504 and 506, 94 Stat. 3228–3229, administrative jurisdiction is now in the National Park Service, subject to applicable laws and regulations.

The lands and/or interests affected by this notice include fee interests in 7,756.52 acres, more or less, reconveyed to the Bureau of Land Management. Of the lands and/or interests acquired, 4,697.01 acres were formerly owned by the Navajo Tribe as fee lands and 3,059.51 acres were held as Tribal trust lands.

Maps and legal descriptions of the specific tracts within the Chaco Culture National Historical Park may be reviewed at the Office of the Regional Director, National Park Service, Southwest Region, 1100 Old Santa Fe Trail, Santa FE, New Mexico 87501, and at the Office of the National Park Service, Land Resources Division, 1100 L Street, NW, Washington, DC 20004.

Dated: December 19, 1991.

John E. Cook,

Regional Director, National Park Service.

Dated: December 14, 1991.

Concurred with by:

Larry L. Woodard,

State Director, Bureau of Land Management.

[FR Doc. 92–1810 Filed 1–23–92; 8:45 am]

BILLING CODE 4310–10–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: January 21, 1992.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquires and correspondence should be addressed (4), are published here for interested person. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Harvest States Cooperatives.

(2) P.O. Box 64594, St. Paul, MN 55164.

(3) 1667 N. Snelling Ave., St. Paul, MN 55108.

(4) Allen J. Anderson, P.O. Box 64594, St. Paul, MN 55164.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–1750 Filed 1–23–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31986]

Notice of Exemption; SPCSL Corp.—Trackage Rights Exemption—the Belt Railway Co. of Chicago

The Belt Railway Company of Chicago (BRC) has agreed to grant SPCSL Corp. overhead trackage rights in Chicago, IL over the Elsdon Branch, between the 55th Street Interlocking Plant and Lawndale Avenue, so that BRC may access Consolidated Rail Corporation's Ashland Avenue Yard. The trackage rights were to become effective on or after January 25, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on Gary A. Laakso, SPCSL Corp., One Market Plaza, room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: January 16, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–1746 Filed 1–23–92; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 388 (Sub-No. 27)]

Intrastate Rail Rate Authority—Oregon

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional recertification.

SUMMARY: The State of Oregon has filed its application for recertification with the Commission. Pursuant to *State Intrastate Rail Rate Authority*, 5 I.C.C. 2d 680, 685 (1989), the Commission provisionally recertifies the State of Oregon to regulate intrastate rail rates, classifications, rules and practices. After completing its review, the Commission will issue a decision approving

recertification or taking other appropriate action.

DATES: This provisional recertification will be effective on January 24, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5660 (TDD for hearing impaired: (202) 927-5721).

Decided: January 16, 1992.

By the Commission, David K. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1748 Filed 1-23-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) how often the form must be filled out or the information is collected;

(4) who will be asked or required to respond, as well as a brief abstract;

(5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) an estimate of the total public burden (in hours) associated with the collection; and,

(7) an indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514-4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Import/Export Declaration: Precursor and Essential Chemicals.

(2) DEA Form 486, Drug Enforcement Administration.

(3) On occasion.

(4) Individuals or households, businesses or other for-profit, small businesses or organizations. The Chemical Diversion and Trafficking Act of 1988 requires those who import/export certain chemicals to notify the DEA 15 days prior to shipment. Information will be used to prevent shipments not intended for legitimate purposes.

(5) 1,800 annual responses at .20 hours per response.

(6) 360 annual burden hours.

(7) Not applicable under 3504(h).

(1) Report of Suspicious Orders or Theft/Loss of Listed Chemicals/Machines.

(2) None, Drug Enforcement Administration.

(3) On occasion.

(4) Individuals or households, business or other for-profit, small businesses or organizations. The Chemical Diversion and Trafficking Act of 1988 requires regulated persons to report suspicious orders or theft/loss of listed chemicals/tableting and encapsulating machines to the DEA in order to prevent clandestine manufacture of a controlled substance.

(5) 300 annual responses at .17 hours per response.

(6) 51 annual burden hours.

(7) Not applicable under 3504(h).

(1) Records and Reports of Registrants: Changes in Record Requirements for Individual Practitioners.

(2) None, Drug Enforcement Administration.

(3) On occasion.

(4) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations.

(5) 500 annual responses at .5 hours per response.

(6) 250 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 92-1795 Filed 1-23-92; 8:45 am]

BILLING CODE 4410-09-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(i), notice is hereby given that on December 30, 1991, a proposed consent decree in *United States of America* v. *Allied Signal Inc., et al.*, Civil Action No. 91-CV-1471 has been lodged with the United States District Court for the Northern District of New York. The United States' complaint, filed at the same time as the consent decree, sought recovery of response costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against Allied Signal and twenty-three other corporations responsible for hazardous wastes found at the Clothier site in Granby, New York, a National Priority List facility. The United States' complaint also sought recovery of civil penalties under section 106 of CERCLA against Shell Oil Company ("Shell") for noncompliance with a Unilateral Administrative Order.

The consent decree provides that the defendants will reimburse EPA for $2,525,000 in past response costs incurred by the United States in connection with the Clothier site and that Shell will pay a penalty in the amount of $25,000.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America* v. *Allied Signal Inc., et al.*, D.J. Ref. 90-11-3-273A.

The proposed consent decree may be examined at the office of the United States Attorney, 369 Federal Building Syracuse, New York 13260 and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A

copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $3.75 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environmental & Natural Resources Division.

[FR Doc. 92-1694 Filed 1-23-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, as set forth in 28 CFR 50.7, notice is hereby given that a proposed consent decree in *Township of Franklin Sewerage Authority* versus *Middlesex County Utilities Authority*, Civil Action No. 80-4041, has been lodged with the United States District Court for the District of New Jersey as of January 10, 1992. The proposed consent decree concerns violations by three municipalities, the Township of Woodbridge, Borough of Carteret and City of Perth Amboy, of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and prior orders of the Court requiring the connection of sewerage facilities operated by these municipalities to regional sewage treatment facilities operated by the Middlesex County Utilities Authority. In satisfaction of the United States' claims, the municipalities will pay civil penalties.

The United States Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *Township of Franklin Sewerage Authority* versus *Middlesex County Utilities Authority*, DJ No. 90-5-1-6-345A.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of New Jersey, 970 Broad Street, Newark, New Jersey 07102, and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, Fourth Floor, New York, New York 10278. A copy of the proposed consent decree and attachments can be obtained in person or by mail at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-2072. In requesting a copy, please enclose a check in the amount of $2.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Roger B. Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-1695 Filed 1-23-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on January 8, 1992, a proposed consent decree in partial settlement of *United States, et al.*, v. *Montrose Chemical Corporation of California, et al.*, Civil Action No. CV 90-3122-AAH (JRx), was lodged with the United States District Court for the Central District of California. In the First Claim for Relief in the Complaint in that action, the United States seeks damages for injury to natural resources, from several defendants alleged to have released hazardous substances into the marine environment off the coast of Los Angeles. The proposed settlement resolves the First Claim for Relief with respect to two of the named defendants only, Potlatch Corporation, and Simpson Paper Company. Under the terms of the settlement, Potlatch Corporation and Simpson Paper Company will pay a settlement amount of $12 million in three equal payments over a period of four years.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States, et al.* v. *Montrose Chemical Corporation of California, et al.*, D.J. Ref. No. 90-11-3-511.

The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, telephone (202) 347-2072, at the Office of the United States Attorney, Central District of California, 300 North Los Angeles Street, Los Angeles, CA 90012, and at the offices of the National Oceanic and Atmospheric Administration, 300 South Ferry Street, Terminal Island, CA 90731.

A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Document Center. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-1696 Filed 1-23-92; 8:45 am]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

[INS No. 1400K-92; AG Order No. 1557-92]

Termination of Designation of Kuwait Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of Termination of Designation of Kuwait Under Temporary Protected Status Program.

SUMMARY: Under section 244A of the Immigration and Nationality Act, as amended (8 U.S.C. 1254a) (the "Act"), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible nationals of designated foreign states (or parts thereof) upon a finding that such foreign states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. Pursuant to section 244A(b) of the Act, the designation of Kuwait became effective on March 27, 1991, to remain in effect for 12 months from that date. Attorney General Order No. 1484-91, 50 FR 12745. Section 244A(b)(3) of the Act requires the Attorney General at least 60 days before the end of the initial period of designation to review the conditions in a Temporary Protected Status designated state after consultation with appropriate agencies of the United States Government. In this order, the Attorney General, pursuant to section 244A(b)(3), determines that conditions in Kuwait no longer meet the standards for designation under the Temporary Protected Status program, and therefore gives notice that the designation of Kuwait will terminate on March 27, 1992.

EFFECTIVE DATES: The termination of Temporary Protected Status designation for Kuwait is effective March 27, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Charney, Senior Immigration Examiner, Immigration & Naturalization Service, 425 I Street, NW., room 5250,

Washington, DC 20536, telephone (202) 514–5014.

Notice of Termination of Temporary Protected Status Designation for Kuwait

By the authority vested in me under section 244A of the Immigration and Nationality Act, as amended, and as Attorney General, I find after consultation with the appropriate agencies of the United States Government, that the extraordinary and temporary conditions found to exist in Kuwait on March 27, 1991, are not presently in existence, in that substantial progress has been made toward the rebuilding of Kuwait society so that the temporary impediments to safe return posed on March 27, 1991, by the immediate aftermath of the Iraqi occupation and the subsequent military conflict no longer remain.

Accordingly, it is ordered that the designation of Kuwait for temporary protected status is terminated effective as indicated above.

Dated: January 20, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–1800 Filed 1–23–92; 8:45 am]

BILLING CODE 4410–01–M

Immigration And Naturalization Service

[INS No. 1400LEB–92; AG Order No. 1559–92]

Extension of Designation of Lebanon Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: Under section 244A of the Immigration and Nationality Act, as amended (8 U.S.C. 1254a) (the "Act"), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible nationals of designated foreign states (or parts thereof) upon a finding that such foreign states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. Under section 304(b)(1) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law 102–232, 105 Stat. 1733, December 12, 1991 ("the Technical Amendments"), an alien having no nationality is also eligible for benefits under the Temporary Protected Status Program if he or she last habitually resided in a designated state. On March 27, 1991, the Attorney General designated Lebanon for Temporary Protected Status for a period of 12 months. Order No. 1485–91, 50 FR 12746. This notice extends the designation of Lebanon under the Temporary Protected Status program for an additional 12 months, in accordance with section 244A(b)(3) (A) and (C) of the Act.

This notice also makes clear that eligibility for Temporary Protected Status is granted not only to nationals of Lebanon but also to persons having no nationality who last habitually resided in Lebanon, and provides a special additional 6 month registration period for aliens having no nationality who last habitually resided in Lebanon, who have continuously resided and been continuously present in the United States since March 27, 1991, and who have not applied for Temporary Protected Status during the original period of designation. This special registration period is provided in recognition of the fact that aliens having no nationality were ineligible for Temporary Protected Status prior to the effective date of the Technical Amendments, and therefore were unable to apply for such status during most of the original period of designation.

EFFECTIVE DATE: This designation is effective on March 28, 1992, and will remain in effect until March 28, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Charney, Senior Immigration Examiner, Immigration and Naturalization Service, room 5250, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–5014.

Notice of Extension of Designation of Lebanon Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Act, and pursuant to section 244A (b)(3) (A) and (C) of the Act, I find that there still exist extraordinary and temporary conditions in Lebanon that prevent aliens who are nationals of Lebanon, and aliens having no nationality who last habitually resided in Lebanon, from returning to Lebanon in safety, as a result of the continued armed conflict in that nation. The Attorney General further finds that permitting nationals of Lebanon, and aliens having no nationality who last habitually resided in Lebanon, to remain temporarily in the United States is not contrary to the national interest of the United States. Accordingly, it is ordered as follows:

(1) The designation of Lebanon under section 244A(b) of the Act is extended for an additional 12 month period from March 28, 1992, to March 28, 1993.

(2) I estimate that there are no more than 7500 Lebanese nationals, and aliens having no nationality who last habitually resided in Lebanon, who are currently in nonimmigrant or unlawful status, eligible for Temporary Protected Status.

(3) Except as specifically provided in this notice, an application for Temporary Protected Status during the extended period of designation provided by this notice must be filed pursuant to the provisions of 8 CFR part 240.

(4) A national of Lebanon, or an alien having no nationality who last habitually resided in Lebanon, who was granted Temporary Protected Status during the 12-month period of designation that began on March 27, 1991, must file a new Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, within the thirty (30) day period prior to the one-year anniversary of the original grant of Temporary Protected Status to such alien in order to be eligible for Temporary Protected Status during the period between such anniversary and March 28, 1993.

(5) An Application for Temporary Protected Status, Form I–821, filed during the period of extended designation by a national of Lebanon, or an alien having no nationality who last habitually resided in Lebanon, who has been granted Temporary Protected Status during the 12-month period of designation that began on March 27, 1991, will be without fee.

(6) Any alien having no nationality who last habitually resided in Lebanon, who has been continuously physically present and has continuously resided in the United States since March 27, 1991, and who did not apply for Temporary Protected Status within the 12-month period of designation that began on March 27, 1991, may apply for Temporary Protected Status at any time during the special registration period from March 28, 1992, to September 28, 1992, by filing an Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765.

(7) A fee of fifty dollars ($50.00) will be charged for each Application for Temporary Protected Status, Form I–821, filed during the special registration period by an alien who is eligible for registration during that period.

(8) The fee prescribed in 8 CFR 103.7(b)(1) will be charged for each Application for Employment Authorization, Form I–765, filed by an

alien requesting employment authorization pursuant to the provision of paragraph (4) or of paragraph (6) of this notice. An alien who does not request employment authorization must file Form I–765 together with Form I–821 for information purposes, but in such cases Form I–765 will be without fee.

(9) Pursuant to section 244A(b)(3) of the Act, the designation of Lebanon under the Temporary Protected Status Program shall be reviewed again at least 60 days before the end of this extended period of designation, and of any subsequent extended period of designation, to determine whether the conditions for such designation continue to exist. Notice of each such determination, including the basis for the determination, shall be published in the **Federal Register**.

(10) Information concerning Temporary Protected Status for nationals of Lebanon, and aliens having no nationality who last habitually resided in Lebanon, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: January 20, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–1798 Filed 1–23–92; 8:45 am]

BILLING CODE 4410–01–M

[INS No. 1400LIB–92; AG Order No. 1558–92]

Extension of Designation of Liberia Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: Under section 244A of the Immigration and Naturalization Act, as amended (8 U.S.C. 1254a) (the "Act"), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible nationals of designated foreign states (or parts thereof) upon a finding that such foreign states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. Under section 304(b)(1) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232, 105 Stat. 1733, December 12, 1991 ("the Technical Amendments"), an alien having no nationality is also eligible for benefits under the Temporary Protected Status Program if he or she last habitually resided in a designated state. On March 27, 1991, the Attorney General designated Liberia for Temporary Protected Status for a period of 12 months. Order No. 1483–91, 50 FR 12746. This notice extends the designation of Liberia under the Temporary Protected Status program for an additional 12 months, in accordance with section 244A(b)(3) (A) and (C) of the Act.

This notice also makes clear that eligibility for Temporary Protected Status is granted not only to nationals of Liberia but also to persons having no nationality who last habitually resided in Liberia, and provides a special additional 6 month registration period for aliens having no nationality who last habitually resided in Liberia, who have continuously resided and been continuously present in the United States since March 27, 1991, and who have not applied for Temporary Protected Status during the original period of designation. This special registration period is provided in recognition of the fact that aliens having no nationality were ineligible for Temporary Protected Status prior to the effective date of the Technical Amendments, and therefore were unable to apply for such status during most of the original period of designation.

EFFECTIVE DATES: This designation is effective on March 28, 1992, and will remain in effect until March 28, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Charney, Senior Immigration Examiner, Immigration and Naturalization Service, room 5250, 425 I Street NW., Washington, DC 20536, telephone (202) 514–5014.

Notice of Extension of Designation of Liberia Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Act and pursuant to section 244A(b)(3)(A) and (C) of the Act, I find that there still exist extraordinary and temporary conditions in Liberia that prevent aliens who are nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, from returning to Liberia in safety, as a result of the ongoing armed conflict in that nation. The Attorney General further finds that permitting nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, to remain temporarily in the United States is not contrary to the national interest of the United States. Accordingly, it is ordered as follows:

(1) The designation of Liberia under section 244A(b) of the Act is extended for an additional 12 month period from March 28, 1992, to March 28, 1993.

(2) I estimate that there are no more than 5,000 Liberian nationals, and aliens having no nationality who last habitually resided in Liberia, who are currently in nonimmigrant or unlawful status, eligible for Temporary Protected Status.

(3) Except as specifically provided in this notice, an application for Temporary Protected Status during the extended period of designation provided by this notice must be filed pursuant to the provisions of 8 CFR part 240.

(4) A national of Liberia, or an alien having no nationality who last habitually resided in Liberia, who was granted Temporary Protected Status during the 12 month period of designation that began on March 27, 1991, must file a new Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, within the thirty (30) day period prior to the one-year anniversary of the original grant of Temporary Protected Status to such alien in order to be eligible for Temporary Protected Status during the period between such anniversary and March 28, 1993.

(5) An Application for Temporary Protected Status, Form I–821, filed during the period of extended designation by a national of Liberia, or an alien having no nationality who last habitually resided in Liberia, who has been granted Temporary Protected Status during the 12 month period of designation that began on March 27, 1991, will be without fee.

(6) Any alien having no nationality who last habitually resided in Liberia, who has been continuously physically present and has continuously resided in the United States since March 27, 1991, and who did not apply for Temporary Protected Status within the 12 month period of designation that began on March 27, 1991, may apply for Temporary Protected Status at any time during the special registration period from March 28, 1992, to September 28, 1992, by filing an Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765.

(7) A fee of fifty dollars ($50.00) will be charged for each Application for Temporary Protected Status, Form I–821, filed during the special registration period by an alien who is eligible for registration during that period.

(8) The fee prescribed in 8 CFR 103.7(b)(1) will be charged for each

Application for Employment Authorization, Form I–765, filed by an alien requesting employment authorization pursuant to the provision of paragraph (4) or of paragraph (6) of this notice. An alien who does not request employment authorization must file Form I–765 together with Form I–821 for information purposes, but in such cases Form I–765 will be without fee.

(9) Pursuant to section 244A(b)(3) of the Act, the designation of Liberia under the Temporary Protected Status Program shall be reviewed again at least 60 days before the end of this extended period of designation, and of any subsequent extended period of designation, to determine whether the conditions for such designation continue to exist. Notice of each such determination, including the basis for the determination, shall be published in the **Federal Register**.

(10) Information concerning Temporary Protected Status for nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: January 20, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–1799 Filed 1–23–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 523–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Employment Standards Administration

Claim for Reimbursement—Assisted Reemployment.

CA–2231.

Quarterly.

State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

180 respondents; 360 total hours; 30 min. per response.

1 form.

To aid the vocational rehabilitation and reemployment of injured, disabled Federal employees. The CA–2231 is the form employers will submit to OWCP to claim reimbursement for wages paid under the Assisted Reemployment demonstration project. The form summarizes terms of employment of injured Federal workers and the amount of wages to be reimbursed to their new employer for a prompt decision on payment, and to expedite project.

Revision

Employment and Training Administration

Business Confidential Data Request: Oil and Gas Drilling and Exploration Oilfield Services.

1205–0272.

ETA 9018.

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 9018.	Businesses or other for-profit (current)	30	On occasion	45 minutes.
ETA 9018.	Business or other for-profit (current)	270	On occasion	2 hours.
Total hours.				563

Statutory requirements under the Trade Act of 1974 as amended require complete and accurate business confidential data in order to make determinations as to whether imports have contributed to worker separation. The Secretary of Labor's determinations decide if petitioning workers are eligible to apply for worker adjustment assistance.

Trade Adjustment Assistance (TAA Financial Status/Request for Funds Report).

1205–0275.

ETA 9023.

On request.

State or local governments.

50 respondents; 500 total hours; 2 hours per response.

1 Form.

The Department of Labor requires financial data for the Trade Adjustment Assistance (TAA) program administered by States which are not available from the Standard Form 269A. The required data are necessary in order to meet statutory requirements prescribed in Public Law 100–418, Omnibus Trade and Competitiveness Act of 1988.

Extension

Employment Standards Administration

Miner's Claim for Benefits Under the Black Lung Benefits Act; Employment History; Miner Reimbursement Form.

1215–0052.

CM 911; CM 911a; CM 915.

On Occasion.

Individuals or households.

52,700 respondents; 14,533 total hours.

10/40/45 minutes per response.

3 forms.

The CM 911 is the standard application form, filed by the miner, for benefits under the Black Lung Benefits Act. The CM 911a lists the coal miner's work history, and is completed by all applicants, miners and survivors. The CM 915 is used by the miner or survivor for requesting reimbursement of medical expenses incurred and paid by the miner beneficiary.

Signed at Washington, DC this 16th day of January, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92–1739 Filed 1–23–92; 8:45 am]

BILLING CODE 4510–27–M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of the Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" Being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I

Florida:
- FL91–35 (Feb. 22, 1991)..... p. 181, p. 182.
- FL91–36 (Feb. 22, 1991)..... p. p. 185, pp. 186–187.
- FL91–37 (Feb. 22, 1991)..... p. 189, pp. 190–191.
- FL91–38 (Feb. 22, 1991)..... p. 193, pp. 194–195.
- FL91–39 (Feb. 22, 1991)..... p. 197, pp. 198–199.
- FL91–40 (Feb. 22, 1991)..... p. 201, p. 202.
- FL91–42 (Feb. 22, 1991)..... p. 203, p. 204.
- FL91–43 (Feb. 22, 1991)..... p. 205, p. 206.
- FL91–44 (Feb. 22, 1991)..... p. 207, pp. 208–209.

GEORGIA:
- GA91–3 (Feb. 22, 1991)..... p. ALL.
- GA91–4 (Feb. 22, 1991)..... p. All.
- GA91–22 (Feb. 22, 1991).... p. ALL.
- GA91–33 (Feb. 22, 1991).... p. ALL.

KENTUCKY:
- KY91–1 (Feb. 22, 1991) ..... p. 309, p. 310.
- KY91–2 (Feb. 22, 1991) ..... p. 313, p. 314.
- KY91–3 (Feb. 22, 1991) ..... p. 319, 320.
- KY91–4 (Feb. 22, 1991) ..... p. 325, p. 326.
- KY91–6 (Feb. 22, 1991) ..... p. 337, p. 338.
- KY91–7 (Feb. 22, 1991) ..... p. 343, p. 344.
- KY91–29 (Feb. 22, 1991) .... p. 403, pp. 404, 409–410.

NEW HAMPSHIRE, NH91–4 (Feb. 22, 1991). p. ALL.

NEW JERSEY, NJ91–3 (Feb. 22, 1991). p. 721, p. 272.

NEW YORK:
- NY91–3 (Feb. 22, 1991)..... p. 797, pp. 798–806.
- NY91–18 (Feb. 22, 1991).... p. 931, pp. 932–934, pp. 936–937.

PENNSYLVANIA, PA91–4 (Feb. 22, 1991). p. 985, pp. 986–988.

TENNESSEE, TN91–1 (Feb. 22, 1991). p. 1189, pp. 1190.

VOLUME II

INDIANA, IN91–6 (Feb. 22, 1991). p. 315, p. 316.

NEBRASKA, NE91–9 (Feb. 22, 1991). p. ALL.

TEXAS:
- TX91–45 (Feb. 22, 1991)..... p. ALL.
- TX91–46 (Feb. 22, 1991)..... p. ALL.

VOLUME III

Arizona, AZ91-3 (Feb. 22, 1991). p. ALL.
CALIFORNIA:
CA91-2 (Feb. 22, 1991)..... p. 45, p. 48.
CA91-4 (Feb. 22, 1991)..... p. 75, pp. 77-112d.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents U.S. Government Printing Office Washington, DC 20402 (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 17th day of January, 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-1681 Filed 1-23-92; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

Appointment of Advisory Committee Members

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Appointment of Members to the Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Area at Underground Coal Mines.

This notice announces the appointment of members to the Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production Area at Underground Coal Mines, established pursuant to the authority contained in sections 101(a) and 102(c) of the Federal Mine Safety and Health Act of 1977, and the Federal Advisory Committee Act.

The membership of the committee and the categories of interest represented are as follows:

Dr. Ragula Bhaskar—Neutral
Ms. Shirley K. Clark—Labor
Mrs. Diane M. Doyle-Coombs—Neutral
Mr. Jack A. Holt—Industry
Dr. Mary Jo Jacobs—Neutral
Dr. Raja V. Ramani—Neutral
Dr. Lee W. Saperstein—Neutral
Mr. Robert Scaramozzino—Labor
Mr. John W. Stevenson—Industry

The members were selected on the basis of their experience and knowledge in mine safety and health. They will serve on the committee until August 1992. Dr. Mary Jo Jacobs will serve as chairperson of the committee.

Dated: January 17, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 92-1801 Filed 1-23-92; 8:45 am]

BILLING CODE 4510-43-M

LIBRARY OF CONGRESS

American Folklife Center Board of Trustees Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Public Law 94-463.

DATES: Friday, February 7, 1992, 9 a.m. to 1 p.m.

ADDRESSES: Dining Room A, Library of Congress, 101 Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

SUPPLEMENTAL INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader at (202) 707-6590.

The American Folklife Center was created by the U.S. Congress with passage of Public Law 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance and model projects for the field of American folklife.

Rhoda W. Canter,

Associate Librarian for Management.

[FR Doc. 92-1783 Filed 1-23-92; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice No. (92-04)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Life Sciences Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee.

DATES: January 28, 1992, 8:30 a.m. to 5 p.m.; and January 29, 1992, 8:30 a.m. to 12:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 226, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald J. White, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2128).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Life Sciences Subcommittee provides advice to the Life Sciences Division concerning all of its programs in the space life sciences.

The Subcommittee will meet to discuss the status of OSSA and life sciences, potential enhancements and initiatives for Fiscal Year 1994, and plans for Discipline Working Groups. The Subcommittee is chaired by Dr. Francis J. Haddy and is composed of 23 members. The meeting will be closed on Tuesday, January 28, 1992, from 8:45 a.m. to 10:45 a.m. to allow for a discussion on qualifications of individuals being considered for membership to the Subcommittee. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

TYPE OF MEETING: Open—except for a closed session as noted in the agenda below.

Agenda:

Tuesday, January 28

8:30 a.m.—Introduction and Chairman's Remarks.
8:45 a.m.—Closed Session.
10:45 a.m.—Life Sciences Status.
11:45 a.m.—Report on Other Advisory Committees.
1:15 p.m.—Office of Space Science and Applications Status.
3:15 p.m.—Preparation for February 12–14, 1992, SSAAC Meeting.
5 p.m.—Adjourn.

Wednesday, January 29

8:30 a.m.—Potential Enhancements and Initiatives for Fiscal Year 1994.
9:45 a.m.—Discussion of Short Version of "A Rationale for the Life Sciences."
10:30 a.m.—Discussion of Plans for Discipline Working Groups.
12:30 p.m.—Adjourn.

Dated: January 17, 1992.

John W. Gaff,

Director, Management Operations Division, National Aeronautics and Space Administration.

[FR Doc. 92–1756 Filed 1–23–92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on January 31, 1992 from 8:30 a.m. to 4:30 p.m. and February 1 from 9 a.m. to 1 p.m. in room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on January 31 from 8:30 a.m. to 4:30 p.m. and February 1 from 9:30 a.m.–1 p.m. The topics for discussion will include Opening Remarks; a report on the Council Retreat; reports from NASAA, NALAA and regional organizations; an update on Arts Education; a presentation on America 2000 by David T. Kearns, Deputy Secretary of Education; updates on the National Arts Service Organizations Round Table and Staff Working Groups; a report from the Council Agenda Committee; Program Reviews for the Folk Arts, Opera-Musical Theater and Visual Arts Programs; and Guidelines and/or Application Review for the Arts in Education, Dance, Design Arts, Folk Arts, Literature, Locals, Media Arts, Museum, Music, Opera-Musical Theater, Presenting and Commissioning, Policy, Planning, Research and Budget, Theater and Visual Arts Programs.

The remaining portion of this meeting on February 1 from 9 a.m.–9:30 a.m. is for the purpose of reviewing nominations for the National Medal of Arts to be awarded by President Bush sometime in 1992. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsections (6) and 9(B) of section 552b of title 5, United States Code.

Also, if in the course of application review it becomes necessary for the Council to discuss non-public financial information about individuals, such as salary information, submitted with grant applications, the council will go into closed session for that limited purpose pursuant to subsection (c)(4) of section 552b of title 5, United States Code. Such closure would be in accordance with the determination of the Chairman of November 20, 1991.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 17, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92–1713 Filed 1–23–92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Notice is hereby given that a meeting of the National Arts Service Organizations Round Table will be held on January 30, 1992, from 7:45 p.m.–9:45 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The purpose of this meeting is for information exchange among members of the National Council on the Arts and representatives of national arts service organizations.

Any person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 17, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92–1714 Filed 1–23–92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–20541–OM, ASLBP No. 92–658–04–OM]

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the

Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

In the Matter of Jose A. Ruiz Carlo

Byproduct Material License No. 52–21350–01

[EA 91–171]

This Board is being established pursuant to the request of Mr. Jose A. Ruiz Carlo, a radiographer who is named as the Assistant Radiation Safety Officer on Byproduct Material License No. 52–21350–01 issued by the Nuclear Regulatory Commission to Alonso & Carus Iron Works, Inc., the Licensee. Mr. Ruiz requests a hearing regarding an Order issued by the Director, Office of Enforcement, dated December 13, 1991, entitled "Order Modifying License (Effective Immediately)" (56 FR 66662, December 24, 1991). The Order modified the license to prohibit the utilization of Mr. Ruiz in certain licensed activities pending further action by the Commission.

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Administrative Law Judge Ivan W. Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 16th day of January 1992.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92–1682 Filed 1–23–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30257; File No. SR–Amex–91–34)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by American Stock Exchange, Inc. Relating to Precedence for Orders to Cross Blocks of 10,000 Shares or More Under Rule 126(g), Commentary .01

January 16, 1992.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1991, The American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On January 10, 1992, the Amex submitted to the Commission Amendment No. 1 to the proposed rule change replacing certain language to clarify the procedure for establishing the size precedence of orders to cross 10,000 or more shares.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to implement procedures under Rule 126(g), Commentary .01 to permit orders to cross blocks of 10,000 shares or more to have precedence over other bids and offers. The following is the text of the proposed rule change (italics denote proposed new language; brackets denote proposed deletions):

Rule 126(g)

* * * Commentary

.01. Orders to Cross *10,000* [25,000] shares or more will be permitted to establish precedence based on size so long as the orders are represented at the post when a sale removing all bids and offers from the Floor takes place. Once the precedence of such orders of 10,000 shares or more has been established, the broker handling the cross must then bid and offer the security in accordance with Rules 151 and 152. [without regard to priority of bids and offers.]

[1] *See* letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Mary Revell, Branch Chief, Commission, dated January 10, 1992, amending the text of Commentary .01 to Amex Rule 126(g) to clarify that orders to cross 10,000 shares or more would have size precedence only when no other bid or offer has price or time priority as well as to emphasize that the broker handling the order must execute the cross in accordance with Amex Rules 151 and 152.

II. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1989, the Commission approved on a permanent basis Amex Rule 126(g), Commentary .01, which provides that orders to cross 25,000 shares or more will be permitted to establish precedence over other bids and offers.[2] Procedures under Rule 126(g), Commentary .01 permit size precedence for crosses of 25,000 shares or more to be established when no other order has price or time priority. When an order has time priority, a sale removing all bids and offers from the floor must occur before the order to cross can establish parity and then be accorded precedence based on size. Thus, in order to obtain precedence, orders to cross 25,000 shares or more must have been presented at the specialist's post when the sale removing all bids and offers from the floor had taken place. Once size precedence has been established, the broker handling the cross must then bid and offer the security in accordance with Amex Rules 151 and 152.

The Exchange is proposing to reduce from 25,000 to 10,000 shares the minimum size block cross that will be permitted to establish size precedence. The block cross procedures under Rule 126(g) have succeeded in facilitating executions of large size orders on the Amex as one transaction at a single price, without such orders losing shares to other orders in the trading crowd or on the specialist's book due to Exchange priority rules. The Exchange believes it is appropriate to permit block size orders of 10,000 to 25,000 shares to

[2] See Securities Exchange Act Release No. 28550 (February 15, 1990), 54 FR 7055 (approving File No. SR–Amex–88–30).

establish size precedence. The proposal will bring Amex rules more in line with the New York Stock Exchange ("NYSE") size precedence rules,[3] but the Amex rules will continue to be more conservative than NYSE rules in that size precedence will be accorded only to crosses, and only when such orders involve 10,000 shares or more.[4] In addition, confining the Exchange's size precedence threshold to 10,000 shares will continue to limit the effects of the rule primarily to active, liquid issues.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-91-34 and should be submitted by February 14, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1706 Filed 1-23-92; 8:45 am]

BILLING CODE 8010-01-M

[3] NYSE Rule 72 affords precedence based on size to simultaneous bids at parity in two instances: (1) Bids equal to or exceeding the amount offered have precedence over bids for less than the size offered; and (2) the largest bids have precedence when all bids are less than the amount offered. This rule is made applicable to offers by Rule 72(ii).

[4] Under Amex rules, size precedence will be a factor in determining the sequence of execution only when no other bid or offer has price or time priority.

[Release No. 34-30259; File No. SR-MSRB-91-7]

Self Regulatory Organizations; Order Approving Proposed Rule Change of the Municipal Securities Rulemaking Board Relating to Customer Confirmation Disclosure

January 16, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), on September 6, 1991, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to amend rule G-15(a) to allow dealers, as an alternative to confirmation disclosure of the source and amount of remuneration received from a party other than the customer in agency transactions, to note on the customer's confirmation whether remuneration has been or will be received and that the source and amount of such remuneration is available upon written request by the customer.[1]

Notice of the proposed rule change was given in Securities Exchange Act Release No. 29740 (October 3, 1991), 56 FR 50146. The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

Currently, rule G-15(a)(ii) requires a dealer effecting a transaction as agent for the customer, or as agent for both the customer and another person, to note on the customer's confirmation (i) either the name of the person from whom the securities were purchased or to whom the securities were sold for the customer, or a statement that this information will be furnished upon the request of the customer, and (ii) the source and amount of any commission or other remuneration received or to be received by the dealer in connection with the transaction.

The proposed amendment to rule G-15(a)(ii) would allow dealers, as an alternative to confirmation disclosure of the source and amount of remuneration received from a party other than the customer in agency transactions, to note on the customer's confirmation whether remuneration has been or will be received and that the source and amount of such remuneration is available upon written request by the customer. The amendment would also require written requests by customers for information regarding the identity of the person from whom the securities were purchased or to whom the securities were sold. The MSRB believes that although Rule 10b-10 under the Act does not apply to municipal securities transactions, the amendment would make rule G-15(a)(ii) consistent with the requirements of that rule.

The Commission finds that approval of this proposed rule change is consistent with the Act and the applicable rules and regulations thereunder and, in particular, with the requirements of section 15(B)(b)(2)(C), in that it is designed to prevent fraudulent and manipulative acts and practices, and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the rule change be, and hereby is approved.

[1] On December 9, 1991, the Commission received a technical amendment from the MSRB that added the word "whether." The word was inadvertently omitted from the original filing. Letter from Jill C. Finder, Assistant General Counsel, Municipal Securities Rulemaking Board, to Richard Cohn, staff attorney, Division of Market Regulation, SEC (December 9, 1991).

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 92-1707 Filed 1-23-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30256; File No. SR-MSRB-91-6]

Self-Regulatory Organizations; Order Approving Proposed Rule Change of the Municipal Securities Rulemaking Board Relating to the Activities of Financial Advisors.

January 16, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), on September 4, 1991, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to require dealers acting as financial advisors for an issue and intending to act as placement agent for the same issue to meet the requirements set forth in rule G-23(d).

Notice of the proposed rule change was given in Securities Exchange Act Release No. 29736 (September 26, 1991), 56 FR 50145. The Commission received no comments on the proposal.[1] This order grants approval of the proposed rule change.

Currently, rule G-23 prohibits a broker or dealer acting as financial advisor for an issue from acquiring any portion of that issue as principal, either alone or in a syndicate, or arranging for such acquisition by a person controlling, controlled by, or under common control with such broker or dealer, unless the requirements of G-23(d) are met. If the issuer sells the issue on a negotiated basis, rule G-23(d)(i) requires the broker or dealer: (1) To terminate its relationship as financial advisor for that issue; (2) to disclose in writing to the issuer, at or before such termination, that there may be a conflict of interest in changing from the capacity of financial advisor to that of purchaser of the securities; (3) to disclose in writing, at or before such termination, the source and anticipated amount of all remuneration to the broker or dealer with respect to the issue; (4) at or after such termination, to obtain the express written consent of the issuer to the acquisition or participation in the purchase; and (5) to obtain from the issuer a written acknowledgement of receipt of these disclosures.

In its present form, rule G-23(d) does not apply to a broker or dealer that acts as both financial advisor and placement agent for a new negotiated issue. The proposed rule change requires a broker or dealer acting as financial advisor for a negotiated issue to meet the requirements set forth in rule G-23(d)(i) if it intends to become the placement agent for that issue.

The MSRB believes that a dealer acting as both financial advisor and placement agent with respect to the same issue faces similar conflicts of interest as a dealer acting as both financial advisor and underwriter for the same issue. The Board believes the same conflict exists because a dealer acting as placement agent performs many of the same functions as an underwriter and receives similar fees. The MSRB further believes that the existence of the conflict of interest is contrary to the fiduciary obligations of municipal securities professionals acting as financial advisors to issuers and is not consistent with the public interest.

The Commission finds that approval of this proposed rule change is consistent with the Act and the rules and regulations thereunder applicable and, in particular, the requirements of section 15B(b)(2)(C), because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and in general, protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1708 Filed 1-23-92; 8:45 am]

BILLING CODE 8010-01-M

[1] The MSRB solicited comments on the proposed rule change in an exposure draft published in October 1990. The MSRB received three comments on the proposal and addressed those comments in their submission. Exchange Act Release No. 29736 (September 26, 1991), 56 FR 50145.

[Rel. No. IC-18469; 811-3962]

Fenimore International Fund Inc.; Deregistration

January 16, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Fenimore International Fund Inc.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: The Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 12, 1991, and amended on January 13, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm on February 10, 1992, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate or service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, c/o Richard T. Prins, Esq., Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, N.Y. 10022.

FOR FURTHER INFORMATION CONTACT: John O'Hanlon, Staff Attorney, at (202) 272-3922, or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant is an open-end, diversified investment company organized as a corporation under Maryland law. On February 10, 1984, it registered under the Act and filed a registration statement on Form N-1A. The Applicant's registration statement became effective on February 26, 1985, and the Applicant's initial public offering commenced on or about that date. The Applicant originally was a money market fund named "The Benefactors Money Market Fund Inc." In December 1985 and January 1986, the Applicant's shareholders adopted the Applicant's present name and approved the adoption of the Applicant's current investment objective and investment restrictions.

2. On August 14, 1991, the Applicant's Board of Directors approved an

Agreement and Plan of Reorganization (the "Reorganization Plan") among the Applicant, Smith Barney World Funds, Inc. (the "World Fund") and Smith Barney, Harris Upham & Co. Inc. The Reorganization Plan provided for the sale of all of the Applicant's assets to the World Fund's International Equity Portfolio (the "International Portfolio"). The Board of Directors also approved a Plan of Complete Liquidation and Dissolution of the Fenimore Fund (the "Liquidation Plan").

3. At a Special Meeting of Stockholders held on October 31, 1991, the shareholders of the Equity Series and the Institutional Equity Series approved the Reorganization Plan and the Liquidation Plan.

4. Pursuant to the Reorganization Plan, on November 22, 1991 (the "Closing Date"), the Applicant sold all of the assets of its two outstanding series, the Equity Series and the Institutional Equity Series, to the International Portfolio. Each of the Applicant's shareholders received a number of shares of common stock of the International Portfolio equal in value to his or her pro rata ownership of the shares of the Applicant.

5. On the Closing Date, the Applicant had outstanding 2,814,853.086 shares of Equity Series Common Stock, with a par value of $.01 per share and a net asset value of $13.86 per share. The Equity Series had net assets of $39,009,945.29. The Applicant also had outstanding 527,138.962 shares of Institutional Equity Series Special Stock, with a par value of $.01 per share and a net asset value of $12.91 per share. The Institutional Equity Series had net assets of $6,806,381.61. On the Closing Date, holders of Equity Series Common Stock received 3,267,164.597 shares of the International Portfolio (with a net asset value of $11.94 per share), having an aggregate net asset value of $39,009,945.29. Holders of Institutional Equity Series Special Stock received 570,048.711 shares of the International Portfolio, having an aggregate net asset value of $6,806,381.61. Two shares of the International Portfolio were outstanding prior to that time. The Applicant's shareholders have received all distributions to be made pursuant to the Reorganization Plan and the Liquidation Plan.

6. The Applicant filed Articles of Transfer and Articles of Dissolution on November 22 and 25, 1991, respectively, with the State of Maryland in accordance with Maryland law.

7. The legal and accounting fees and the printing and mailing costs incurred in connection with the Reorganization and Liquidation Plans were borne by Smith Barney, Harris Upham & Co. Inc., the distributor of the Smith Barney Portfolio. The total costs to the Applicant were negligible.

8. The Applicant has not transferred any of its assets to a trust within the past 18 months.

9. The Applicant is current in its required filings, including N–SAR filings, and will make any final filings required by the Act.

10. At the time of the filing of the application, the Applicant had no shareholders, assets or liabilities. The Applicant is not a party to any litigation or administrative proceeding. The Applicant is not engaged in, and does not propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margert H. McFarland,

Deputy Secretary.

[FR Doc. 92–1705 Filed 1–23:92; 8:45 am]

BILLING CODE 8016–01–M

DEPARTMENT OF STATE

Shipping Coordinating Committee

[Public Notice 1558]

Subcommittee on Safety of Life at Sea; Working Group on Ship Design and Equipment; Meeting

The Working Group on Ship Design and Equipment of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on February 14, 1992 at 9:30 a.m. in room 2415 at United States Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC.

The purpose of the meeting will be to prepare for the 35th Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment (DE) scheduled for March 23 to 27, 1992. Items of discussion will include the following: Use on board ships of ozone-depleting substances other than halons; guidelines on standard calculations for anchor positioning systems for mobile offshore drilling units (MODUs); guidelines for dynamic positioning systems for MODUs and ships engaged in similar operations; materials other than steel for pipes; maneuverability of ships and maneuvering standards; helicopter facilities offshore; requirements for the carriage of irradicated nuclear fuel; extension of the code on alarms and indicators; ventilation of vehicle decks during loading and unloading; review of implementation status of Assembly resolutions related to the work of the Subcommittee; underpressure in cargo oil tanks due to oil outflow after damage; carriage of dangerous goods on vehicle decks of passenger ships; consideration of the introduction of the Harmonized System of Surveys and certification into the MODU Code; standards for shipboard incinerators for disposing of ship-generated waste; revision of the Code of Safety for Dynamically Supported Craft; hull cracking of ships; fuel line failures; bilge de-watering requirements in open-top container ships; reduction of secondary sources of pollution by minimizing the source of general flooding and by improving control of equipment vital to safe operation of the vessel; amendment of SOLAS regulations II–1/41 and V/19–1; review of implementation status of resolutions; development of safety standards for combined pusher tug-barges improved design and construction standards for bulk carriers; review of existing ships' safety standards; requirements for ships intended for operation in polar waters; guidelines for standardization of the layout of essential instrumentation on the bridge and in the engine room; feasibility study on voyage data recorders; coating requirements for ballast tanks; revision of towing requirements—resolution A.535(XIII); and, requirements for access openings in double hull tankers.

The IMO DE Subcommittee works to develop international agreements, guidelines, and standards for machinery, equipment, and systems as these relate to the marine industry. In most cases, these international agreements, guidelines, and standards form the basis for national standards/regulations and class society rules. The U.S. SOLAS Working Group supports the U.S. Representative to the IMO DE Subcommittee in developing the U.S. position on those issues raised at the IMO DE Subcommittee meetings. Because of the impact on domestic regulations through development of these international guidelines, standards, and regulations, the U.S. SOLAS Working Group serves as an excellent forum for the U.S. maritime industry to express their ideas. All shipping companies, shipyards, design firms, naval architects, marine engineers, and consultants are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within IMO DE. Since these meetings are open to the

public, anyone may attend up to the seating capacity of the room.

For further information contact Captain T.E. Thompson at (202) 267–6446, U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001.

Dated: January 15, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92–1765 Filed 1–23–92; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IACTA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 91–10–53 established the currently effective two-month SFFL applicable through November 30, 1991.

In establishing the SFFL for the two-month period beginning December 1, 1991, we have projected non-fuel costs based on the year ended September 30, 1991 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 92–1–31 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.6166
Latin America	1.3912
Pacific	1.9827
Canada	1.4711

FOR FURTHER INFORMATION CONTACT: Keith A. Shangraw, (202) 366–2439.

Dated: January 17, 1992.

By the Department of Transportation.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–1751 Filed 1–23–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement: Morgan and Limestone Counties

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Morgan and Limestone Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. W.R. Van Luchene, District Engineer, Federal Highway Administration, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117, Telephone: (205) 223–7370. Mr. Perry A. Hand, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone: (205) 242–6311.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Highway Department, will prepare an Environmental Impact Statement (EIS) for Alabama Project BRF–239(12). This project has previous approval as a Finding of No Significant Impact. However, the U.S. Coast Guard requires that the project be processed with an Environmental Impact Statement because the proposal includes the removal of a deteriorating historic bridge.

The proposed project will remove the Keller Bridge, which spans the Tennessee River in the City of Decatur, Alabama. This bridge was erected in 1926 and includes a movable bascule draw that affords the only opening available for the passage of river traffic. The new structure will be erected to a height sufficient to enable river traffic to move freely without disrupting roadway vehicles. The length of the proposed bridge and the approaches is approximately 1.5 miles.

Alternatives under consideration include: (1) Alternate route locations, (2) a no action alternative, and (3) postponing the action alternative.

The scoping process for the proposed project includes written coordination with affected and interested parties, a public involvement meeting and a public hearing. No formal scoping meeting is planned.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above. The comments should be forwarded within ten days of this notice.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projected supply to this program.)

James Daves,

Assistant Division Administrator.

[FR Doc. 92–1762 Filed 1–23–92; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 4–92]

Treasury Notes of January 31, 1997, Series H–1997

Washington, January 16, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of January 31, 1997, Series H–1997 (CUSIP No. 912827 D9 0), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated January 31, 1992, and will accrue interest from that date, payable on a semiannual basis on July 31, 1992, and each subsequent 6 months on January 31 and July 31 through the date that the principal becomes payable. They will mature January 31, 1997, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, and other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sales Procedures

3.1 Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Thursday, January 23, 1992, prior to 12 noon, Eastern Standard time, for noncompetitive tenders. Non-competitive tenders as defined below will be considered timely if postmarked no later than Wednesday, January 22, 1992, and received no later than Friday, January 31, 1992.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3 A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $5,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. The following institutions may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished: Depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)); and government securities broker/dealers, registered with the Securities and Exchange Commission that are registered or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities and Exchange Act of 1934, as amended by the Government Securities Act of 1986. Others are permitted to submit tenders only for their own account.

3.5. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, whenever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.5. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Friday, January 31, 1992. Payment in full must accompany tenders submitted by all other investors. payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, January 29, 1992. When payment has been submitted with the tender and the purchase price of the Noted allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an

amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Note allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Note allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Noted issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 92-1896 Filed 1-22-92; 2:00 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 3-92]

Treasury Notes of January 31, 1994, Series V-1994

Washington, January 16, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $13,750,000,000 of United States securities, designated Treasury Notes of January 31, 1994, Series V-1994 (CUSIP No. 912827 D8 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated January 31, 1992, and will accrue interest from that date, payable on a semiannual basis on July 31, 1992, and each subsequent 6 months on January 31 and July 31 through the date that the principal becomes payable. They will mature January 31, 1994, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, January 22, 1992, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, January 21, 1992, and received no later than Friday, January 31, 1992.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $5,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. The following institutions may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished: depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)); and government securities broker/dealers, registered with the Securities and Exchange Commission that are registered or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities and Exchange Act of 1934, as amended by the Government Securities Act of 1986. Others are permitted to submit tenders only for their own account.

3.5. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a

guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.5. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Friday, January 31, 1992. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, January 29, 1992. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the Untied States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 92-1897 Filed 1-22-92; 2:00 pm]

BILLING CODE 4810-40-M

Customs Service

[T.D.92-9]

Revocation of Corporate Broker Permit No. 11154; Universal Transportation Systems, Limited

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that on August 7, 1991, pursuant to section 641(b)(5), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(5)), the corporate permit for Universal Transportation Systems, Limited, to conduct Customs business in the Detroit District was revoked by operation of law.

DATES: January 14, 1992.

C. L. Brainard,

Director, Office of Trade Operations.

[FR Doc. 92-1736 Filed 1-23-92; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

International Exchange Program for Post-Secondary School Students

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) seeks applications from non-profit organizations to provide a mechanism to develop and facilitate exchanges between post-secondary school students from the United States and students from the other countries of the world, through a system of reciprocity or mutual exchange. USIA anticipates

awarding up to $350,000 to an organization to provide this program.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. EST on March 13, 1992. Faxed documents will not be accepted, nor will documents postmarked on March 13, 1992 but received at a later date.

It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin on July 1, 1992 and end on June 30, 1993.

ADDRESSES: The original and fifteen copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: International Exchange Program for Post-Secondary School Students, Office of the Executive Director, E/X, room 336, 301 4th St., SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Ms. Susan Borja at U.S. Information Agency, 301 4th St., SW., Office of Academic Programs, Advising and Student Services Branch, E/ASA, room 349, (202) 619–5434, to request detailed application packets, which include any award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION:

Overview

The Agency's overall goals for this project are to expand study abroad opportunities and increase the diversity of study abroad students, disciplines, and locations overseas. The Agency's immediate goals are to support a mechanism to develop and facilitate exchanges between post-secondary school students from the United States and students from the other countries of the world through a system of reciprocity or mutual exchange. The Agency's long term goals are to increase mutual understanding; strengthen international ties; promote international cooperation; and develop friendly, sympathetic, and peaceful relations between the people of the United States and the people of the other countries of the world.

Pursuant to the Bureau's authorizing legislation, programs shall maintain a non-political character and shall be balanced and representative of the diversity of American political, social, and cultural life. Academic and cultural programs shall maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement.

Guidelines

An ideal proposal should describe a mechanism capable of developing and facilitating exchanges between post-secondary school students from the United States and their counterparts from Europe, Latin America, the Middle East, South Asia, Africa, and East Asia (including Oceania).

Exchange students should be drawn from the broadest possible range of universities and colleges. These institutions should be diverse—representing both public and private institutions; offering the greatest possible choice of location, academic discipline, size, and cost; and allowing the use of financial aid for study abroad when at all possible.

The proposal should describe how the colleges and universities will be recruited to participate, the standards established for participation, and the means to evaluate compliance to those standards.

The proposal should describe the criteria for student participation, the obligations of the student (including financial), and the services provided to the student which should be adequate and acceptable.

The proposal should describe methods of evaluating the effectiveness of the exchange mechanism.

USIA's grant assistance, up to $350,000, is expected to constitute only a portion of the total project funding. Cost sharing is required and proposals should list other anticipated sources of support. Grant applications should demonstrate financial and in-kind support using a multicolumn budget format that clearly identifies the various sources of support.

Proposals should include names, titles, addresses, and telephone numbers of the executive officers of the organization and the staff person directly responsible for the project. Resumes of key personnel should be provided.

USIA recommends including brochures and general information about the organization, i.e., evidence of previous experience with international exchange programs, names of board members, number of employees, etc., in the proposal package. USIA suggests that the proposal not exceed ten typewritten, single-spaced pages.

Proposed Budget

The applicant is required to submit a comprehensive line item budget. A budget format will be included with the package of forms necessary to prepare a proposal. Grants will only be awarded to eligible organizations with more than four years experience in conducting international exchange programs.

Review Process

USIA will acknowledge receipt of all proposals and review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's geographic area offices, and the budget and contracts office and may be reviewed by the Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Demonstration of the ability to adhere to the guidelines described above.

2. Demonstration of an established reputation, or demonstrated potential, for excellence in the field of international education. Relevant evaluation results of previous projects are part of this assessment.

3. Evidence that the project represents current expert knowledge in the field and meets the highest professional qualitative standards of achievements.

4. Evidence of reasonable, flexible, and feasible project objectives and demonstration of the institution's ability to meet those objectives.

5. Evidence of adequate and appropriate personnel and institutional resources to achieve the project's goals.

6. Evidence of cost-effectiveness indicating the ability of the applicant to keep costs of overhead, administration, and salaries as low as possible. Applicant should keep all other items necessary and appropriate.

7. Evidence of cost-sharing through private sector support.

8. Ability to evaluate the project and make appropriate and timely adjustments.

9. Evidence of the ability to develop and facilitate at least one third of the exchange outside of Western Europe within a broad range of non-traditional study abroad countries.

10. Ability to develop and facilitate the maximum number of student exchanges.

11. Ability to recruit student populations currently underrepresented among those who study abroad.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated, and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 15, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: January 8, 1992.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-1754 Filed 1-23-92; 8:45 am]

BILLING CODE 8230-01-M

Municipal Management and Public Administration for Responsible Democracy in the Baltic States

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a request for proposals from public and private nonprofit organizations in support of projects that develop the public administration infra-structure at the municipal and regional levels in the newly independent Baltic States of Estonia, Latvia, and Lithuania. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals.

DATES: This action is effective from the publication date of this notice through March 13, 1992, for projects whose activities commence after August 1, 1992.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. EST on Friday, March 13, 1992. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked March 13, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline.

ADDRESSES: The original and 15 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency, Office of the Executive Director (E/X), ATTN: Citizen Exchanges—Baltic Exchange Program, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547. To facilitate the processing of your request, please include the name of the appropriate USIA Program Officer, as identified on each announcement, on all inquiries and correspondence.

SUPPLEMENTARY INFORMATION: The Office of Citizen Exchanges of the United States Information Agency (USIA) announces a program to encourage, through limited awards to nonprofit institutions, increased commitment to and involvement in international exchanges. Pursuant to the Bureau's authorizing legislation, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social and cultural life. Awarding of any and all grants is contingent upon the availability of funds.

Objectives of the Public Administration for Responsible Democracy Exchange Program in the Baltic States

Overview

Efforts at domination of Estonia, Latvia, and Lithuania by the Russian Empire in the 19th century were halted by the collapse of that Empire during World War I and each nation established its own form of independence in 1917. Prior to 1939, when Stalin annexed the Baltic States following the signing of the Molotov-Ribbentrop Pact and the outbreak of World War II, each of these states struggled to reform its own social, economic and political structures. Although all three nations adopted liberal democratic constitutions with unicameral legislatures, the political structure remained extremely unstable. Each country, however, had greater success maintaining its own cultural and educational institutions which continued their unique identities, even throughout the last half-century of Soviet domination. The Soviet form of government was imposed on all levels of government within the Baltic Republics with ultimate decision-making power given to Communist Party officials brought to the Baltic region from other parts of the USSR.

Public administration was controlled from Moscow and the fear of reprisals forced the local populations to become passive. Following the death of Stalin, administrative structures were relaxed a bit and some local controls were turned back to native Estonians, Latvians, and Lithuanians. The Republics began to write their own regional laws and establish regional economic councils, but the slowest changes were evident within the agricultural sector.

With the acceleration of the Baltic independence movements, beginning in 1988, Estonia, Latvia and Lithuania have gradually established systems of laws and institutions to facilitate the transition to a democratic and free market system. Now that independence is a reality, each nation is in a renewed position to draw upon traditions developed during their earlier periods of self-government. The half-century of imposed Soviet political structures, however, robbed the local populations of the opportunities to assume responsibility for management of their own governmental programs. Each nation now needs immediate and targeted assistance to develop and implement efficient public administration systems through systematic and thorough education and training programs.

Program Opportunities

To address some of the monumental needs facing the Baltic states of Estonia, Latvia, and Lithuania, the Office of Citizen Exchanges welcomes proposals which will encourage the development of long-term responsible democratic institutions, build an efficient and functional administrative network at the municipal and regional levels, and stress rapid implementation of project objectives. Proposals can focus upon one of the individual Baltic states or issues that transcend country boundaries.

This program will not support the following activities: the purchase or construction of buildings or other structures, the provision of long-term staff support, or computers and other hardware. Nor will it involve Americans in the decision-making process concerning foreign institutional leadership.

The Office of Citizen Exchanges has identified the following public administration issues, among others, which need to be addressed in Estonia, Latvia, and Lithuania. Applicants for this grant program are encouraged to

develop and justify their own areas of concern, but all proposals must be limited to the field of public administration at the municipal or regional levels.

The proposals to be considered should contribute to the development of an effective public administration system uniquely designed to meet the needs of the individual Baltic states. This development can occur at the municipal or regional levels and should recognize the need for coordination of activities with the national governmental structure. Public administrators should learn to implement policies created by political leaders but in a non-partisan style. Areas of need for this training and education program include, but are not limited to, the following:

—*Deliver of Public Services*—Creation of municipal and regional governmental structures to provide an efficient bureaucracy and deliver routine community and social services through effective police, fire, communication, transportation, recreation and leisure programs.
—*Establishment and Regulation of Financial Institutions*—assistance in creating stable credit and banking systems, tax and revenue structures, and necessary codes of commercial laws and regulations.
—*Control and Management of the Environment*—development of standards for the maintenance of a clean environment and regulations to maintain those standards.

Special training programs developed for public administrators will be the keys to the successful implementation of these program areas. Responsible managers of government public programs at the municipal and regional levels must receive training in critical issues such as ethics, conflict resolution, strategic planning, financial planning, public accountability, and responsiveness to various constituencies.

Additional Program Development Recommendations

Competing grantee applicants should not provide proposals which are overly ambitious or superficial. Rather, institutions should provide strong evidence of their ability to accomplish a few tasks exceptionally well.

Applicants must include a detailed description of why their project is important, what their objectives or goals are, and how they will achieve those objectives through a carefully developed plan.

Applicants are encouraged to provide confirmation that Estonian, Latvian, and/or Lithuanian cosponsors endorse their exchange program and can provide support in its implementation. A central objective of this solicitation is the creation of enduring institutional linkages.

Proposals should explain how the U.S. and Baltic cosponsors will generate other support (financial, social, and political) for their programs and how initial achievements could be expanded to other audiences and locations.

Applicants should clearly indicate the resources (financial, physical, organizational and personnel) that are available to them in Estonia, Latvia, and/or Lithuania for the implementation of their proposal. Applicants should not rely on assistance from USIS posts once a project is underway.

Institutions applying for assistance should not simply present a plan to replicate American institutions or structures, but clearly demonstrate an understanding of the individual needs of the Baltic states and how the U.S. experience is potentially relevant—if reconfigured—to meet those needs.

Applicants may also wish to use any of the following approaches to achieve their program objectives:

—The extension of American academic expertise and professional know-how through consultations in Estonia, Latvia, and/or Lithuania for periods of not less than one month;
—Maximum utilization and enhancement of indigenous institutions that can serve as magnet centers attracting leaders/professionals/teachers from other regions or countries for training purposes;
—The development of appropriate training materials;
—Attention not only to reaching leaders and potential leaders, but also developing an understanding of the responsibility of a responsible citizenship among the population as a whole;
—The development and dissemination (overseas only) of books, newsletters, on-line data systems, and other appropriate software technology (including desk-top publishing).
—The opportunity for Baltic participants not only to receive training in their home countries, but the development of a small number of hands-on study tours in the U.S. demonstrate how public administration programs are managed at local, state and national levels;
—The provision of a limited number of carefully crafted internships in the U.S. and extended learning programs (from six weeks to three months with considerable in-country cost-sharing);
—The development of consortia, associations and information networks in the United States and Estonia, Latvia, and/or Lithuania which are likely to endure.

Other Logistical Considerations

Program monitoring and oversight will be provided by appropriate Agency elements. Per Diem support from host institutions during an internship component is strongly encouraged. However, for all programs which include internships, a non-profit grantee institution which receives funds from corporate or other cosponsors should use these funds to cost-share the following items: food, lodging and pocket money for the participant. Internships should also have an American studies/values orientation component at the beginning of the exchange program in the U.S. Grantee institutions should try to maximum cost-sharing in all facets of their program design, and to stimulate U.S. private sector (foundation and corporate) support.

In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to accept or deny participants recommended by the program institution. The grantee institution should provide the names of American participants to the Office of Citizen Exchanges for information purposes.

The Government reserves the right to reject any or all applications received. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense.

Funding and Budget Requirements for All Submissions

Since USIA assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of support. Applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects. Those budgets including funds from other sources should provide firm evidence of the funds. The required format follows:

Line item	USIA support	Cost sharing	Total
Travel, per diem, etc.: Total.....	$	$	$

Funding assistance is limited to project costs as defined in the Project Proposal Information Requirements (OMB #3116–0175, provided in application packet) with modest contributions to defray total administrative costs (salaries, benefits, other direct and indirect costs). USIA-funded administrative costs are limited to 22 (twenty-two) per cent of the total funds requested for administrative costs incurred in the United States. For administrative costs required for strictly overseas activity, the grantee agency must clearly differentiate those costs from administrative costs incurred in the United States for U.S.-based activity. Failure to make these distinctions clearly in the budget presentation will result in all administrative costs restricted under the 22-percent rule. The recipient institution may wish to cost-share any of these expenses.

Organizations with less than four years experience in conducting international exchange programs are limited to $60,000 of USIA support, and their budget submissions should not exceed this amount. In most cases, grant proposals may not exceed $100,000 in the amount requested from USIA for any combination of countries and/or identified areas of need, for a one-year program. (Awarding of any and all grants is contingent upon the availability of funds.) USIA anticipates funding activities for one year, although applications should be structured so that a one year renewal is an option.

Application Requirements

Application materials may be obtained by writing to: The Office of Citizen Exchanges (E/P), United States Information Agency, Attn: Baltic Public Administration Exchange Program, room 216, 301 4th Street, SW., Washington, DC 20547. Attention: Program Officer—Katharine S. Guroff.

Inquiries concerning technical requirements are welcome.

Proposals must contain a narrative which includes a complete and detailed description of the proposed program activity as follows:

1. A brief statement (15 pages or less) of what the project is designed to accomplish; how it is consistent with the purposes of the USIA award program; and how it relates to USIA's mission.

2. A concise description of the project, spelling out complete program schedules, thematic agenda, and proposed itineraries, who the participants will be, where they will come from and how they will be selected.

3. A statement of what follow-up activities are proposed; how the project will be evaluated; what groups, beyond the direct participants, will benefit from the project and how they will benefit.

4. A detailed three-column budget.

5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Primary Covered and Lower Tier Covered Transactions, Forms IA–1279 and IA–1280.

6. Compliance with office of Citizen Exchanges Additional Guidelines for Conferences (if applicable).

7. Compliance with Travel Guidelines for Organizations Inside and Outside Washington, DC (if and as applicable).

8. For proposals requesting $100,000 or more, Certification for Contracts, Grants and Cooperative Agreements, Form M/KG–13.

9. For proposals requesting $100,000 or more, Disclosure of Lobbying Activities (OMB #0348–0046).

Note: All required forms will be provided with the application packet.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's appropriate georgraphic area office and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review criteria

USIA will consider proposals based on the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. *Institution Reputation/Ability/Evaluations:* Institutional receipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). Relevant evaluation results of previous projects are part of this assessment.

3. *Project Personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program. Resumes or C.V.s should be summaries relevant to the specific proposal and no longer than two pages each.

4. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. *Thematic Expertise:* Proposal should demonstrate expertise in the subject area which guarantees an effective sharing of information:

6. *Cross-Cultural Sensitivity/Area Expertise:* Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the institution will meet the program's objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Cost-Effectiveness:* The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which insures that USIA supported programs are not isolated events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about July 15, 1992. Awarded grants will be

subject to periodic reporting and evaluation requirements.

Dated: January 17, 1992.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-1755 Filed 1-23-92; 8:45 am]

BILLING CODE 8230-01-M

Group Projects for International Visitor Grantees

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

Cancellation

The U.S. Information Agency finds it necessary to cancel one of the Group Projects for which it issued a Request for Proposals, published in the **Federal Register** on September 23, 1991 (56 FR 47987). Because of a lack of response from the U.S. Embassies on which we rely to nominate participants for group projects, we will be unable to conduct the Multi-Regional Project entitled "U.S. Energy Resources for the Present and Future", scheduled for April 27–May 22, 1992. The deadline for submission of proposals was to have been February 10, 1992.

Dated: January 10, 1992.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-1753 Filed 1-23-92; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Records Management Service (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before February 24, 1992.

Dated: January 15, 1992.

By direction of the Secretary:

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Application for United States Flag for Burial Purposes, VA Form 90-2008.
2. The form is used to apply for a United States burial flag for a deceased veteran.
3. Individuals or households.
4. 126,500 hours.
5. 15 minutes.
6. On occasion.
7. 506,000 respondents.

[FR Doc. 92-1733 Filed 1-23-92; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Readjustment of Vietnam and Other War Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 that a meeting of the Advisory Committee on Readjustment of Vietnam and Other War Veterans will be held February 13 and 14, 1992. This is a regularly scheduled meeting for the purposes of reviewing VA and other relevant services for Vietnam and other war veterans, to review Committee work in progress and to formulate Committee recommendations and objectives. The meeting will be held at TechWorld in room 1105 located at 801 I Street, NW., Washington, DC. The meetings on February 13 and 14 will both begin at 8:30 a.m. and conclude at 4:30 p.m. The agenda for February 13 will consist of presentation, discussion and update of VA readjustment counseling for veterans returning from the Persian Gulf, and, separately, will address the Committee's work in progress. Major topics for the latter will include coordination of compensation and treatment for war-related post-traumatic stress disorder (PTSD) and system-wide coordination of PTSD services. The first day's agenda will also cover a review and finalization of recommendations from the Committee's February, 1991, field visit to VA facilities in San Francisco, California.

On February 14 the Committee will conduct a planning meeting to identify topics and objectives for the coming year. The second day's agenda will also entail Committee review of the Readjustment Counseling Service and vet center operations.

Both meetings will be open to the public up to the seating capacity of the room. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Department of Veterans Affairs (phone number: 202-535-7554).

Dated: January 13, 1992.

By direction of the Secretary:

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92-1732 Filed 1-23-92; 8:45 am]

BILLING CODE 8320-01-M

VOL 57 ISS 16 JA 24 1992 UMI

Sunshine Act Meetings

Federal Register
Vol. 57, No. 16
Friday, January 24, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, January 29, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–1909 Filed 1–22–92; 2:14 pm]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:09 a.m. on Tuesday, January 21, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of a certain insured bank.

Recommendations concerning administrative enforcement proceedings.

Report with respect to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: January 22, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–1905 Filed 1–22–92; 1:40 pm]

BILLING CODE 6714-0-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, January 29, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–1864 Filed 1–22–92; 10:38 am]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 57, No. 16
Friday, January 24, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-807; A-570-814]

Postponement of Final Antidumping Duty Determinations and Rescheduling of Public Hearings: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China and Thailand

Correction

In notice document 92-794, appearing on page 1253, in the issue of Monday, January 13, 1992, make the following corrections:

1. In the first column, in the subject heading at the begining of the document, in the first line, "Financial" should read "Final", as set forth above.

2. In the same column, under **POSTPONEMENT OF FINAL DETERMINATION:**, in the 12th line, "9PRC)" should read "(PRC)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 92-1161 beginning on page 1915, in the issue of Thursday, January 16, 1992, make the following correction:

On page 1915, in the second column, under *Agenda-Open Public Hearing*, in the fifth line, "contract" should read "contact".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 92

[Docket No. R-91-1518; FR-2937-I-02]

RIN 2501-AB12

Home Investment Partnerships Program

Correction

In rule document 91-29094 beginning on page 65312 in the issue of Monday, December 16, 1991, make the following correction:

§ 92.217 [Corrected]

On page 65351, in the first and second columns, § 92.217 was printed twice, it should be removed the second time it appears.

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 901

[Docket No. R-92-1520; FR-2897-I-02]

RIN 2577-AA89

Public Housing Management Assessment Program

Correction

In rule document 92-1213 beginning on page 2160 in the issue of Friday, January 17, 1992, make the following corrections:

§ 901.100 [Corrected]

On page 2195, in § 901.100(b), in the table, in the third column, the first entry now reading "[Insert date 45 days after Federal Register Publication]." should read "03-02-92"; and in the fifth column, the first entry now reading "[Insert date 90 days after Federal Register Publication]." should read "04-16-92".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6916

[CO-930-4214-10; COC-24224]

Withdrawal of Public Lands for Browns Canyon Primitive and Recreation Area; Colorado

Correction

In rule document 92-29647 beginning on page 64713 in the issue of Thursday, December 12, 1991, make the following corrections:

On the same page, in the third column, in the land description, in T. 51 N., R. 8 E.:

1. In Sec. 11, insert: "NW¼SE¼," before "and E½SW¼SE¼;".

2. In Sec. 26, in the last line, "SE¼SE¼;" should read "SW¼SE¼;".

BILLING CODE 1505-01-D

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federal register

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January 24, 1992

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

Section 8 Assistance Under the Loan Management Set-Aside (LMSA) Program; Notice of Fund Availability

VOL 57 ISS 16 JA 24 1992 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-91-3343; FR-3137-N-01]

Section 8 Assistance Under the Loan Management Set-Aside (LMSA) Program; Fund Availability

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for Fiscal Year 1992.

SUMMARY: This Notice of Fund Availability (NOFA) announces the availability of up to $257 million in section 8 funds for Loan Management Set-Aside (LMSA) assistance. In the body of this document is information concerning the following:

(a) The purpose of the NOFA and information regarding eligibility, available LMSA assistance, and selection criteria;

(b) Application processing, including how to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

DATES: Application is due on or before February 24, 1992.

For consideration under the General LMSA Funding procedures set forth in this Notice, a completed LMSA application must be submitted within 30 days from the date of publication of this Notice. If submitted on the application deadline date, the completed application package must be received by the official close of business in the HUD Field Office receiving the application (Contact the respective HUD Field Office for the official close of business hour at that office.) To be acceptable, applications must conform to requirements set forth in this Notice and the Loan Management Set Aside program application requirements found in 24 CFR part 886.

An application received after the aforementioned due date will only be considered if it complies with "emergency" procedures described in this Notice and only to the extent that sufficient LMSA resources are available at the time of the application.

FOR FURTHER INFORMATION CONTACT: William Schick, Chief, Program Support Branch, Office of Multifamily Housing Management, Department of Housing and Urban Development, room 6164, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-2654. TDD number (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The Office of Management and Budget has approved the Loan Management Set-Aside Program under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) and has assigned it OMB control number 2502-0407.

I. Purpose and Substantive Description

(a) Authority

The Loan Management Set-Aside ("LMSA") program provides special allocations of Housing Assistance Payments ("HAP") under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f. Title 24 of the Code of Federal Regulations, part 886, subpart A sets forth rules for administration of the LMSA program. Matters addressed in the LMSA regulation include: (1) Application contents (§ 886.105), (2) requirements for HUD approval of applications (§ 886.107), (3) owner responsibilities under the program (§ 886.119), and (4) rules governing Federal preferences in the selection of tenants (§ 886.132). The primary purpose of the LMSA program is to reduce claims on the Department's insurance fund by aiding those FHA-insured or Secretary-held projects with presently or potentially serious financial difficulties. First priority is given to projects with presently serious financial problems which are likely to result in a claim on the insurance fund in the near future. To the extent that resources remain available, assistance also may be provided to projects with potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance fund within approximately the next five years.

(b) Allocation Amounts

This Notice of Funding Availability (NOFA) announces availability of up to $257 million from Fiscal Year 1992 Section 8 LMSA program funds for purposes of avoiding claims on the Department's insurance fund. Pursuant to this Notice, HUD is accepting applications for assistance under the LMSA program from owners of FHA-insured or Secretary-held multifamily projects with presently or potentially serious financial difficulties. All LMSA assistance awarded from these Fiscal Year 1992 program funds will have a term of five years, with no contractual provision for renewal of the contract at the end of the five-year term. This NOFA does not govern non-competitive assistance awards under the section 8 LMSA program pursuant to specific regulatory authority (e.g., LMSA assistance as a prepayment plan of action incentive under § 248.231(e) or such assistance under § 219.325(b)(4) to alleviate the effect of rent increases resulting from debt service on capital improvement loans).

(c) Eligibility

Projects eligible for LMSA assistance include: (1) Any existing subsidized or unsubsidized multifamily residential project subject to a mortgage insured under any section of the National Housing Act; (2) any such project subject to a mortgage that has been assigned to the Secretary; (3) any such mortgage acquired by the Secretary and thereafter sold under a Secretary-held purchase money mortgage; and (4) a project for the elderly financed under section 202 of the Housing Act of 1959 (except projects receiving assistance under 24 CFR part 885). References to HUD-Held or Secretary-Held projects throughout this Notice include any project which meets one of the descriptions in (2)-(4) above.

(d) Selection Criteria/Ranking Factors

(1) *Application review.* Each application for assistance under the LMSA program will be reviewed by the HUD Field Office having jurisdiction over the project in question. Within 10 days of receipt of each application, the HUD Field Office must notify the chief executive of the unit of general local government in which the proposed assistance is to be provided of the opportunity for comment on the application (see 24 CFR 886.106 and 24 CFR part 791). After providing the opportunity for local government review and comment, the HUD Field Office will decide whether the application meets regulatory approval requirements described in § 886.107. The Field Office's approval of the application will be based on the following determinations:

(i) HUD's Fair Housing requirements (24 CFR 886.107(a) and 886.114) are met;

(ii) The HUD-approved unit rents are approvable within the limitations described in § 886.110, which are based on HUD's Fair Market Rents;

(iii) The residential units meet the housing quality standards set forth in § 886.113, except for such variations as HUD may approve;

(iv) A significant number of residents, or potential residents in the case of projects having a vacancy rate over 10 percent, are eligible for and in need of section 8 assistance;

(v) The proposed section 8 assistance would not affect other HUD-related multifamily housing within the same neighborhood in a substantially adverse manner. Examples of such adverse effects are substantial move-outs from nearby HUD-related multifamily housing, or substantial diversion of prospective applicants from such projects to the subject project;

(vi) The project has serious current financial problems, which are likely to result in a claim on the insurance fund in the near future, or the project has potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance fund within approximately the next five years;

(vii) The proposed section 8 assistance for the project would solve an identifiable problem and provide a reasonable assurance of long-term project viability. A determination of long-term viability must be based on the following findings:

(A) The project is not subject to any serious problems that are non-economic in nature. Examples of such problems are poor location, structural deficiencies or disinterested ownership;

(B) The owner is in substantial compliance with the Regulatory Agreement. Owners have not or are not diverting project funds for personal use. No dividends have been paid during any period of financial difficulty;

(C) The current management agent has been approved by HUD, and the management agency is in substantial compliance with the HUD-approved management agreement. Financial records are adequately kept. Occupancy requirements are being met. Marketing and maintenance programs are being carried out in an adequate manner, based upon available financial resources;

(D) The project's problems are primarily the result of factors beyond the control of the present ownership and management;

(E) The major problems are traceable to an inadequate cash flow;

(F) The proposed section 8 assistance would solve the cash flow problem by: (1) Making it possible to grant needed rent increases; and (2) reducing turnover, vacancies and collection losses;

(G) The owner's plan for remedying any deferred maintenance, financial problems, or other problems is realistic and achievable; there is positive evidence that the owner will carry out the plan. Examples of such evidence are the owner's past performance in correcting problems and, in the case of profit-motivated owners, any cash contributions made to correct project problems.

(viii) For projects with a history of financial default, financial difficulties or deferred maintenance, any plan for remedying defaulted or deferred obligations submitted pursuant to § 886.105(d) must be adequate in HUD's determination.

In its review of an application, the HUD Field Office will consider recent physical inspections, management reviews, and tenant complaints and comments. If there is no detailed HUD physical inspection report dated within one year of the date an application for LMSA assistance is received in the reviewing office and containing a description and estimated cost of required repairs, or there is no comprehensive management review report within the same period, the HUD Field Office may schedule a comprehensive inspection and/or management review in conjunction with its review of the application for LMSA assistance. Execution of a subsidy contract in such case, will be contingent upon satisfactory modification of the owner's plan to include solutions for all additional problems discovered in the scheduled review(s).

After HUD Field Offices have determined which applications meet LMSA program requirements, the projects which are both eligible for, and in need of, additional LMSA assistance shall be reported to HUD Headquarters for further consideration under the competitive selection procedures outlined in this Notice. Projects awarded subsidy from Fiscal Year 1992 LMSA program funds shall be selected in accordance with "general" or "emergency" procedures as described below. If an application can be approved only on certain conditions, the HUD Field Office shall notify the owner of the conditions and specify a time limit by which those conditions must be met. A project with a conditional approval may be reported to Headquarters by the HUD Field Office for further processing under procedures set forth below; however, execution of an LMSA contract for any units which may be allocated to the project in the Headquarters process, will be contingent upon the owner's compliance with the approval conditions. Where the HUD Field Office concludes that an application will not meet LMSA program requirements, processing of the application is completed upon the Field Office's notification to the applicant of the reasons for disapproval.

(2) *General LMSA funding round*—(i.) *Annual needs survey.* Fiscal Year 1992 general funding awards will be selected from projects approved by HUD Field Offices and reported to HUD Headquarters in response to the Fiscal Year 1992 annual needs survey. The Field Offices' needs survey responses should be forwarded to HUD Headquarters after the due date announced in this Notice for program applications. HUD Field Office staff shall determine and report to Headquarters the minimum number of LMSA units needed to cure each project's vacancy and cash flow problems, subject to limitations as described below.

(ii.) *Limitations on units.* (A) An allocation may not exceed the difference between total units in the project and the number of units already assisted under project-based tenant subsidy contracts (project-based section 8 subprograms, Rent Supplement and Rental Assistance Payments).

(B) For both subsidized and unsubsidized projects, if the Field Office's recommendation exceeds the sum of vacant units plus the number of tenants paying more than 40 percent of income for rent, the respective HUD Regional Office must review and approve the number of LMSA units recommended.

(C) Total project-based section 8 assistance for projects with unsubsidized mortgages is limited to 40 percent of total units in the project. When the respective HUD Field Office determines that a project with an unsubsidized mortgage needs section 8 assistance above the 40 percent level, or when the project was developed as a retirement service center, a recommendation by the Field Office will be subject to further review similar to applications submitted under the emergency procedures described in paragraph (3) below. In all such cases, the Field Office's justification for LMSA units must document that project management has an aggressive and workable plan in place for leasing the market rate units in the project. A project is considered unsubsidized for the purpose of LMSA funding selections if the HUD mortgage is unsubsidized. The definition of subsidized project for purposes of section 203 of the Housing and Community Development Amendments of 1978, which includes projects with over 50 percent of total units assisted under certain section 8 subprograms, pertains to management and disposition of projects which have been acquired by HUD and is not applicable to projects eligible for LMSA assistance.

(iii) *Determination of priority category.* HUD Field Offices will include in their needs survey reports, data needed by HUD Headquarters to classify approved projects into six priority categories and to establish a funding score for each project.

Fiscal Year 1992 LMSA funds will be allocated in the following order of priority:

(A) Insured projects with presently serious financial problems likely to result in a mortgage insurance claim in the near future;

(B) Insured projects with potentially serious financial problems which appear to have a high probability of producing a mortgage insurance claim within approximately the next five years;

(C) HUD-held and section 202 projects with presently serious financial problems; and

(D) HUD-held and section 202 projects with potentially serious financial problems. The Department of Housing and Urban Development never intended to provide relief in the form of Loan Management Set Aside assistance for Retirement Service Centers (RESC) or formerly coinsured projects. However, recognizing that if LMSA assistance could be made available for those types of projects some additional claims on the FHA Fund might be avoided, the following additional priority categories of eligible projects are being added for FY 1992.

(E) Insured Retirement Service Centers and insured formerly coinsured projects (i.e., projects whose mortgages have been converted from coinsurance to full insurance), with presently serious financial problems likely to result in a mortgage insurance claim in the near future.

(F) HUD-held Retirement Service Centers and HUD-held formerly coinsured projects with presently serious financial problems.

(iv) *Determining "presently serious" projects:* For purposes of determining which projects will be classified in Category A, Category C and Category E, HUD will consider a project to have "presently serious financial problems" if either of the following two financial ratios is less than or equal to zero:

Income/Expense Ratio, defined as follows:
(Net Income or Loss Before Depreciation LESS Annual Debt Service and Reserve Payments) Times 100
Divided by:
Total Annual Cost of Operating the Project
or,

Ratio of Surplus Cash (or Deficiency) to Monthly Mortgage Payment, defined as follows:
Total Cash LESS Total Current Obligations
Divided by:
Total Monthly Mortgage Payment

A negative income/expense ratio occurs when there was a net loss during the period or when net income before depreciation was less than annual debt service plus reserve payments. The project did not generate sufficient cash flow from operations in the previous year to cover its cash requirements, suggesting cash flow difficulties which were possibly severe and, if left unresolved, are likely to result in financial problems in the current year. Comparison to the total cost of operating the project provides an indication of the seriousness of any negative cash throw-off, since the size of the problem generally varies directly with the absolute value of the ratio.

The second ratio approximates the project's Mortgage Payment Coverage Ratio and is negative when there is a cash deficiency, i.e., the surplus cash calculation is less than zero. A cash deficiency means that cash available to the project at the end of the period, including any subsidy vouchers due for the period, is less than the amount needed to cover current obligations. A cash deficiency points to a severe liquidity problem since the project cannot even meet its past obligations without some form of relief. Calculation of the ratio of surplus cash (deficiency) to the total mortgage payment provides an indication of the project's ability to made the next mortgage payment after past obligations are met, without depending upon the next month's rent collections.

The two ratios defined above will be calculated using financial data contained in the project's annual audited financial statement for calendar year 1990, except for projects with fiscal year end dates later than December 31, 1990 where the most recent annual audited financial statement for a fiscal year period ending in 1990 or later will be used.

A result of zero or less on either of the two ratios suggests that the project has a present financial problem. These ratios were selected because they provide a straightforward means of identifying projects with cash flow difficulties. Projects with both ratios in the positive range may be added to Category A for insured projects or Category C for HUD-held projects based on written justifications by HUD Field Offices documenting appropriate circumstances. For example, a substantial increase in vacancies in recent months may warrant elevating the project's priority category. The justifications will be reviewed by Headquarters staff in the Office of Multifamily Housing Management, who will resolve any issues with the respective HUD Regional and Field Offices and approve, or disapprove, the change in priority.

(v) *Determination of ranking within priority category.* The number of projects which can be funded from Fiscal Year 1992 resources will depend upon the units and budget authority designated in Field Office approvals. If LMSA program funds are available to fund some, but not all of the projects in a given priority category (after funding all projects in higher priority categories), any project selections from the given category will follow from a ranking of projects within that category using a funding score. A maximum score of 115 points (110 points for HUD-held projects) may be accumulated on the basis of the following project characteristics and maximum point potentials:

(A) Occupancy—25 points. Calculation: No. of occupied units Divided by Total units in the project. Lower values yield higher points.

(B) Owner advances or contributions since October 1, 1988—25 points. Calculation: Total of owner advances or contributions during the period Divided by Total Units in the project. Larger values yield higher points.

(C) Tenants paying in excess of 40 percent of their income for rent—15 points. Calculation: No. of units occupied by tenants paying over 40 percent of their income for rent Divided by Total units in the project. Larger values yield higher points.

(D) Income/Expense Ratio—15 points. Calculation: As defined above. Smaller values yield higher points.

(E) Ratio of Surplus Cash (Deficiency) to Total Monthly Mortgage Payment—15 points. Calculation: As defined above. Smaller values yield higher points.

(F) For HUD-insured projects only, Mortgage balance per dollar of additional subsidy—5 points. Calculation: Mortgage principal balance Divided By Proposed LMSA annual contract authority. Larger values yield higher points.

(G) Resident Initiatives—15 points. Evidence in the form of a contract, or other written commitment, to transfer title to the property to a resident organization, cooperative association, non-project entity, public body including an instrumentality thereof, public housing agency or Indian Housing Authority, for the purpose of resident ownership of the project.

(vi) *Funding for selected projects.* For all projects selected for funding in Fiscal Year 1992, the number of additional

section 8 units allocated will be the number of LMSA units recommended by the HUD Field Office in accordance with limitations previously set forth in paragraph (2)(ii), provided that HUD Headquarters confirms the Field Office's determination that the projects have met all program requirements.

If approved, notification of a general funding award will be made through the HUD Field Office. If an application can be approved only on certain conditions, HUD will notify the owner of the conditions and specify a time limit by which those conditions must be met. Disapproved applicants will also be notified with a statement of the grounds for disapproval.

(3) *Emergency LMSA Funding.* Up to five percent of the LMSA funds announced in this Notice may be made available to fund projects recommended to HUD Headquarters by the respective HUD Field Office subsequent to the Annual Needs Survey reporting deadline for the general funding round. After this deadline, only emergency requests will be accepted. In all cases governed by these emergency procedures, consideration will be given to the extent that sufficient resources are available.

To qualify for emergency LMSA assistance, the project must be Insured with presently serious financial problems (as described in paragraph (2)(iii) above), and must meet one of the conditions listed below:

(i) The applications (or corrections to the applications) were received too late by the Field Office to be included in the Annual Needs Survey.

(ii) Projects which were recommended by the Field Office during this general funding round, but were not approved in Headquarters or did not score a sufficient number of points in the ranking process.

All application and Field Office review procedures pertaining to the LMSA program will be followed for emergency recommendations. In addition, an emergency recommendation must have written concurrence from the Director of Housing in the appropriate HUD Regional Office. HUD Field Offices are required to demonstrate that provision of the proposed LMSA units is likely to avert a mortgage default or assignment in the near future, and the request to HUD Headquarters will explain why funds are needed on an emergency basis. Headquarters will not consider any emergency funding request which does not have written Regional Office concurrence.

HUD Headquarters will review Field Office justifications and will determine whether provision of LMSA units is an appropriate response to the circumstances documented by HUD Field staff. If an emergency request is approved, notification of the subsidy award will be made through the HUD Field Office.

II. Application Process

(a) Completed applications must be submitted to the HUD Field Office having jurisdiction over the multifamily property for which assistance is requested. Application kits containing copies of required HUD forms and Notices are available from HUD Field Offices.

(b) For consideration under the General LMSA Funding procedures set forth previously in this Notice, a completed LMSA application must be submitted within 30 days from the date of publication of this Notice. If submitted on the application deadline date, the completed application package must be received by the official close of business in the HUD Field Office receiving the application. (Contact the respective HUD Field Office for the official close of business hour at that office.)

Applications received after the due date specified in this NOFA will be considered for LMSA assistance only if the Secretary determines that such assistance is needed immediately in response to emergency circumstances and only to the extent that sufficient Fiscal Year 1992 LMSA budget authority remains to satisfy the subsidy requirement.

(c) A complete application must be submitted in an envelope, package, or binding which includes all parts of the application in their entirety as they are described in the next section of this NOFA.

(d) An owner who applied for LMSA assistance in a prior year and did not receive the desired number of units may re-apply in order to receive reconsideration of the request in Fiscal Year 1992. The Fiscal Year 1992 LMSA application must contain current information and conform to all requirements outlined in this Notice.

III. Checklist of Application Submission Requirement

(a) LMSA applications must meet the requirements for eligible projects set forth in § 886.105 of the LMSA regulations, and must include:

(1) Information on gross income, family size and amount of rent paid to the project by families currently in residence;

(2) Information on vacancies and turnover;

(3) Estimate of effect of the availability of the requested section 8 LMSA assistance on marketability of units in the project;

(4) For projects having a history of financial default, financial difficulties or deferred maintenance, a plan and a schedule for remedying such defaulted or deferred obligations.

To be credible, the owner's plan and schedule for remedying defaulted or deferred obligations, including deferred maintenance, must clearly state each problem being addressed and for each stated problem, the plan must enumerate proposed actions for curing the problem. Proposed actions must be presented in trackable form, with the specific dates that each action would begin and end if the requested LMSA subsidy were awarded. Further, the plan must include a statement of the sources and uses of all financial resources needed to complete the plan, including any cash contributions from the owner.

Since HUD's approval must be based in part on evidence that the plan will be carried out, the owner must incorporate in the proposed improvement plan a certification that the plan will be executed as presented and that sources of funds identified in the plan, other than the LMSA assistance applied for, will be available by the scheduled dates (any conditions must be stated, e.g. "subject to HUD approval of Flexible Subsidy"). The certification must include a statement that the owner has made every effort to secure funding from all possible funding sources and must be accompanied by supporting documentation of those efforts. Finally, the owner's certification must include a statement of the owner's agreement to modify the plan, prior to execution of an LMSA contract, for the purpose of including any changes which the HUD Field Office determines are necessary to address problems not identified or inadequately addressed in the plan, as indicated by recent HUD physical inspections, management reviews or records of tenant complaints and comments, or by HUD physical inspections and/or management reviews which may be scheduled in conjunction with review of the LMSA application. Changes required by HUD may also include requirements for carrying out Resident Initiatives activities where it is determined that it could be beneficial to the management of the project.

(5) Total number of units by unit size (by bedroom count) for which section 8 assistance is requested; and

(6) Affirmative Fair Housing Marketing Plan on Form HUD–935.2.

In addition to the application submission requirements cited in the LMSA regulation, the following items

must be included in the LMSA application package:

(7) All documentation required by HUD Notice 90–17, Combining Low-Income Housing Tax Credits (LIHTC) with HUD Programs, and by the Notice of administrative guidelines to be applied to assistance programs of the Office of Housing published on April 9, 1991 (56 FR 14436).

(8) Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

(9) Disclosures and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(10) Certification and disclosure according to HUD Notice H–90–27 entitled "OMB's Guidance on New Government-wide Restrictions on Lobbying" issued April 13, 1990.

(11) Form HUD–2530, Previous Participation Certificate(s) for all principals requiring clearance under those procedures.

(12) A written certification stating that the owner will comply with the provisions of the Fair Housing Act, title VI of the Civil Rights Act of 1964, Executive Orders 11063 and 11246, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, section 3 of the Housing and Urban Development Act of 1968, as well as with all regulations issued pursuant to these authorities.

(13) Certification that the applicant will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), implementing regulations at 49 CFR 24, and HUD Handbook 1378, Tenant Assistance Relocation and Real Property Acquisition.

IV. Corrections to Deficient Applications

(a) After the submission date for applications, no changes to application documents will be accepted, except for correction of technical deficiencies which do not alter the substance of the application materials. Examples include a missing certification, or missing signature. (Reasonable changes to the owner's corrective plan resulting from negotiations with the HUD Field Office during the application review period, are not governed by this section.)

(b) HUD will notify an applicant in writing, shortly after the application response deadline, of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency.

(c) The applicant must submit corrections to the same HUD Field Office at which the original application was filed, by the official close of business on the 14th calendar day following the date of the HUD letter notifying the applicant of the deficiency. The applicant must submit the corrected document(s) with a separate written summary of all changes from the original submission.

V. Other Matters

(a) HUD regulations in 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the activities set forth in this Notice are within the exclusion set forth in § 50.20(d), no environmental assessment is required, and no environmental finding has been prepared.

(b) Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

(c) Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA does not have potential significant impact on family, formation, maintenance, and general well-being.

(d) Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions regarding the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

(e) HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Authority: Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f.

Dated: January 15, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92–1721 Filed 1–23–92; 8:45 am]

BILLING CODE 4210–27–M

federal register

Friday
January 24, 1992

Part III

Equal Employment Opportunity Commission

29 CFR Part 1641

Department of Labor

Office of Federal Contract Compliance Programs
41 CFR Part 60–742

Procedures for Complaints/Charges of Employment Discrimination Based on Disability Filed Against Employers Holding Government Contracts or Subcontracts; Joint Final Rule

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1641

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–742

Procedures for Complaints/Charges of Employment Discrimination Based on Disability Filed Against Employers Holding Government Contracts or Subcontracts

AGENCY: Equal Employment Opportunity Commission; and Office of Federal Contract Compliance Programs, Department of Labor.

ACTION: Joint final rule.

SUMMARY: On July 26, 1990, the Americans with Disabilities Act of 1990 (ADA) was signed into law. Section 107(b) of the ADA requires that the Equal Employment Opportunity Commission (EEOC or Commission), the Attorney General, and the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) issue coordination regulations no later than January 26, 1992 setting forth procedures governing the processing of complaints that fall within the overlapping jurisdiction of both title I of the ADA and sections 503 and 504 of the Rehabilitation Act to ensure that such complaints are dealt with in a manner that avoids duplication of effort and prevents the imposition of inconsistent or conflicting standards. Pursuant to this mandate, the Commission and OFCCP are jointly publishing a new part implementing section 107(b) as it pertains to title I of the ADA and section 503 of the Rehabilitation Act of 1973. This part will be added to the rules of the Department of Labor at 41 CFR Chapter 60 as a new part 60–742, and to the rules of the Equal Employment Opportunity Commission at 29 CFR Chapter XIV as a new part 1641.

EFFECTIVE DATE: July 26, 1992.

ADDRESSES: Copies of this joint final rule are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Equal Employment Opportunity Commission, Office of Equal Employment Opportunity by calling (202) 663–4395 or 663–4398 (voice) or (202) 663–4399 (TDD).

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Thornton, Deputy Legal Counsel, Equal Employment Opportunity Commission, (202) 663–4638 (voice), (202) 663–7026 (TDD); or Annie Blackwell, Director of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, (202) 523–9430 (voice).

SUPPLEMENTARY INFORMATION:

Background

Title I of the ADA prohibits discrimination against qualified individuals with disabilities in all aspects of employment. 42 U.S.C. 12101 *et seq.* Title I of the ADA becomes effective on July 26, 1992, with respect to employers with 25 or more employees. On July 26, 1994, this coverage is extended to employers with 15 or more employees. EEOC is authorized to investigate and attempt to resolve charges of employment discrimination under the ADA.

Section 503 of the Rehabilitation Act of 1973, 29 U.S.C. 793, requires government contractors and subcontractors to apply a policy of nondiscrimination and affirmative action in their employment of qualified individuals with a handicap. OFCCP is authorized to investigate and attempt to resolve complaints of employment discrimination under section 503.

The substantive prohibitions and coverage of title I of the ADA overlap to a significant extent with the substantive prohibitions and coverage of section 503. There is, therefore, a potential for the imposition of inconsistent or conflicting legal standards, and duplicative efforts by EEOC and OFCCP in their processing of complaints under these laws.

Pursuant to the mandate of section 107(b) of the ADA, OFCCP and EEOC are therefore promulgating this joint final rule to establish procedures for coordinating the processing of complaints that fall within the overlapping jurisdiction of these statutes.

OFCCP Processing

In brief, complaints filed with OFCCP under section 503 of the Rehabilitation Act will also be considered charges, simultaneously dual filed under the ADA, whenever the complaints also fall within the jurisdiction of the ADA. Joint filing of complaints/charges received by OFCCP under both section 503 and the ADA ensures that the aggrieved individual's rights under the ADA are preserved, including the private right to file a lawsuit.

Acting as EEOC's agent and applying consistent legal standards, OFCCP will process and resolve the ADA component of the section 503 complaint/ADA charge, except where the complaint/charge raises an issue designated to be a Priority List issue, defined as a limited number of controversial topics on which there is not yet definitive guidance as to EEOC's position, or where the complaint/charge also raises certain allegations of discrimination on the basis of race, color, religion, sex, national origin or age. OFCCP will refer complaints/charges raising Priority List issues or certain allegations of discrimination on the basis of race, color, religion, sex, national origin or age in their entirety to EEOC for processing and final resolution, provided that such complaints/charges do not include allegations of violation of affirmative action requirements under section 503. In such a situation, OFCCP will bifurcate the complaints/charges and refer only the allegations regarding Priority List issues or discrimination on the basis of race, color, religion, sex, national origin or age. OFCCP will also refer to EEOC for litigation review under the ADA any compliant/charge where a violation has been found, conciliation fails, and OFCCP declines to pursue administrative enforcement.

EEOC Processing

In brief, EEOC will refer ADA charges that are also covered by section 503 to OFCCP under two circumstances. First, ADA cause charges that also fall within the jurisdiction of section 503 and that the Commission has investigated but declines to litigate after the failure of conciliation will be referred to OFCCP for review of the file and any administrative action deemed appropriate. Second, ADA charges filed with EEOC, in which both allegations of discrimination under the ADA and violation of affirmative action requirements under section 503 are made, will be referred in their entirety to OFCCP for processing and resolution under section 503 and the ADA, unless the charges also include certain allegations of discrimination on the basis of race, color, religion, sex, national origin or age, or include allegations involving Priority List issues, or the charges are otherwise deemed of particular importance to EEOC's enforcement of the ADA. In these three situations, EEOC will bifurcate the charges and retain the ADA component of the charges (and when applicable, the allegations pertaining to discrimination on the basis of race, color, religion, sex, national origin or age), referring the section 503 affirmative action component of the charges to OFCCP for

processing and resolution under section 503.

For the purposes stated in the preceding paragraph, ADA charges also falling within the jurisdiction of section 503 will be considered complaints, simultaneously dual filed, under section 503.

Analysis of Comments and Revisions

The Commission received eight comments in response to a notice of proposed rulemaking published jointly with OFCCP on October 28, 1991. 56 FR 55578. One commenter supported the joint proposed rule as published. The other commenters suggested that various revisions be made. Two commenters expressed concern about the use of the Priority List as a means by which to determine the agency that will process and resolve complaints/charges, and asked that the Priority List be periodically published. Another commenter asked that § _____.5(e) of the joint proposed rule be revised to provide for the bifurcation of complaints/charges containing allegations concerning Priority List issues and violation of affirmative action requirements under section 503. Other commenters asked that complaints/charges not be bifurcated under any circumstances, and expressed confusion about the deferral period referred to in § _____.5(c) of the joint proposed rule. Concern was also expressed by two commenters about the confidentiality of section 503 affirmative action plans that may be given to the Commission as part of an exchange of information, and about the protection of classified or certain unclassified information disclosed to EEOC or OFCCP during the course of an investigation of a Federal contractor.

One commenter asked that the joint final rule provide for the transfer to EEOC of all complaints/charges that include a request for damages pursuant to the Civil Rights Act of 1991, Public Law 102–166. This commenter also asked that EEOC and OFCCP adopt a substantial weight review process, similar to that used by the Commission to review the investigative files of State and local agencies designated as "FEP agencies" under title VII of the Civil Rights Act of 1964, when reviewing complaints/charges pursuant to §§ _____.5(e)(2)(ii) and _____.6(a) of the joint proposed rule.

The Commission and OFCCP have made a number of revisions in response to these comments. Section _____.5(c) has been revised to clarify that the deferral period that will be waived is the deferral period referred to in the work-sharing agreements between EEOC and State and local agencies designated as FEP agencies.

Section _____.5(e) has been revised to provide that OFCCP will bifurcate any complaints/charges it receives that contain both Priority List issues and allegations of violation of section 503 affirmative action requirements. In such a situation, OFCCP will retain, process and resolve the allegations of violation of affirmative action requirements, and refer to EEOC only the allegations raising Priority List issues.

Sections _____.5(e)(2)(i) and _____.5(e)(2)(ii) of the joint proposed rule have also been revised. Section _____.5(e)(2)(i) now provides that when engaging in conciliation as EEOC's agent, OFCCP shall attempt to obtain appropriate "full relief" for the complainant/charging party. EEOC and OFCCP intend that "full relief" be distinguished from "make whole relief," which historically has referred to remedies such as back pay, front pay and reinstatement, but did not include compensatory or punitive damages. Pursuant to the Civil Rights Act of 1991, Public Law 102–166, passed after the issuance of the joint proposed rule, compensatory and/or punitive damages may be available in cases of intentional discrimination under the ADA. EEOC and OFCCP intend that "full relief" encompass "make whole relief" and, where appropriate under the ADA, compensatory and/or punitive damages.

If OFCCP (acting as EEOC's agent under the ADA) is unable to conciliate for appropriate compensatory and/or punitive damages, the conciliation attempt will be considered unsuccessful, and thus § _____.5(e)(2)(ii) will apply. Since compensatory and punitive damages are unavailable under section 503, OFCCP will not be able to obtain such relief in the context of litigation under that statute, and thus will not pursue administrative litigation of complaints/charges where damages would be appropriate relief. OFCCP will thereupon, in accordance with § _____.5(e)(2)(ii) of this part, close the section 503 component of the complaint/charge and refer the ADA charge component to EEOC for litigation review under the ADA.

EEOC and OFCCP also have not accepted a number of suggested revisions proposed by commenters. First, the joint final rule retains the provisions of the joint proposed rule regarding the development and use of the Priority List as a means by which to determine the agency that will process and resolve complaints/charges. The Priority List will be a constantly evolving internal and informal catalog of difficult ADA issues on which the Commission has not yet taken a position. OFCCP and the Commission have determined that it is important to identify such issues in this manner, and that it is appropriate for the Commission, as the agency responsible for the enforcement of the ADA, to process and resolve complaints/charges that raise these issues. However, since the Priority List will neither establish nor implement substantive ADA policy, the publication of the Priority List would not be appropriate.

Second, like the joint proposed rule, the joint final rule provides for the bifurcation of certain complaints/charges. OFCCP and EEOC have determined that such bifurcation is necessary, in view of the agencies' differing enforcement powers and areas of expertise, to ensure that the rights of complainants/charging parties are fully protected in the most efficient manner possible.

It should also be noted that the joint final rule does not provide additional confidentiality protection for section 503 affirmative action plans, or for the handling of classified and unclassified information received from Federal contractor respondents, beyond that which may be available under other existing Federal laws. OFCCP and the Commission have determined that the inclusion of additional confidentiality provisions in this part is not necessary in order to ensure adequate protection of this information.

Finally, it should be noted that EEOC and OFCCP have not accepted the suggestion that a substantial weight review process be incorporated into this part. While such a process is appropriate in the context of the review of the investigative files of FEP agencies under title VII of the Civil Rights Act of 1964, the Commission and OFCCP have determined that that process would not be appropriate in the context of the coordination of the enforcement efforts of EEOC and OFCCP as set forth in this part.

In addition to the revisions made in response to the comments from the public, the Commission and OFCCP have made several technical revisions to the joint final rule to ensure that it is consistent with the pre-existing Memorandum of Understanding (MOU) between the two agencies (46 FR 7435 (January 23, 1981)) coordinating the enforcement of title VII of the Civil Rights Act of 1964 and Executive Order 11246. Accordingly, §§ _____.2(b) and _____.2(c) have been added to the joint final rule. Section _____.2(b) provides that requests by third parties for disclosure of information be coordinated

with the agency that initially compiled or collected the information. Section _____.2(c) exempts from the requirements of § _____.2(b) requests for data in EEOC files by FEP agencies. However, § _____.2(c) requires FEP agencies to obtain express written approval from OFCCP before disclosing to the public any information initially compiled by OFCCP.

Similarly, consistent with the MOU between OFCCP and EEOC, § _____.5(e) has been revised to clarify that OFCCP shall normally retain, investigate, process and resolve all allegations of discrimination of a systemic or class nature on the basis of race, color, religion, sex, or national origin that it receives. In appropriate cases, however, EEOC may request that it be referred such allegations to avoid duplication of effort and ensure effective law enforcement. Section _____.5(e) provides, further, that OFCCP will generally refer to EEOC complaints/charges including allegations of discrimination of an individual nature on the basis of race, color, religion, sex, or national origin, or allegations of discrimination based on age.

Other technical changes also have been made. Under revised § _____.5(e)(2)(ii), OFCCP will refer to EEOC, complaints/charges that it has pursued to administrative litigation, but that have been dismissed on procedural or jurisdictional grounds, or because the contractor/respondent fails to comply with an order to provide make whole relief. In these three situations, EEOC will either take further appropriate action, or issue a notice of right-to-sue. The joint proposed rule had provided that in such situations OFCCP would close the complaints/charges and issue a notice of right-to-sue.

A technical change has also been made to § _____.6(b). This change clarifies that EEOC will bifurcate complaints/changes it receives that are deemed "of particular importance" to the Commission's enforcement of the ADA, as well as those that include allegations of discrimination on the basis of race, color, religion, sex, national origin, or age, or allegations involving Priority List issues. Complaints/charges may be "of particular importance" for a variety of reasons. For example, a complaint/charge may raise a novel ADA issue not yet on the Priority List. The joint proposed rule had stated that EEOC would bifurcate complaints/charges that were "otherwise deemed important" to enforcement of the ADA.

Additionally, the Commission and OFCCP have revised § _____.7 to provide that this part shall be reviewed "periodically, and as appropriate" to determine whether it should be changed and whether it should remain in effect. The joint proposed rule had specified that such review would occur 24 months after the effective date of the final rule. This revision provides the Commission and OFCCP with greater flexibility to review this part whenever the Commission and OFCCP determine that such review is necessary or beneficial, rather than at the conclusion of a fixed time period.

The joint final rule is not a "major" rule as defined by section 1(b) of Executive Order 12291. The joint final rule simply coordinates EEOC and OFCCP investigation and enforcement of section 503 and ADA prohibitions of discrimination in employment on the basis of disability, and will not have a major or significant effect on the economy.

The text of the joint final rule is set out only once at the end of the joint preamble. The part heading, table of contents, and authority citation for the parts as they will appear in each CFR title follow the text of the joint final rule.

Text of Joint Final Rule

The text of the joint final rule, as adopted by the agencies specified in this document, appears below:

PART —PROCEDURES FOR COMPLAINTS/CHARGES OF EMPLOYMENT DISCRIMINATION BASED ON DISABILITY FILED AGAINST EMPLOYERS HOLDING GOVERNMENT CONTRACTS OR SUBCONTRACTS

Sec.

_____.1 Purpose and application.
_____.2 Exchange of information.
_____.3 Confidentiality.
_____.4 Standards for investigations, hearings, determinations and other proceedings.
_____.5 Processing of complaints filed with OFCCP.
_____.6 Processing of charges filed with EEOC.
_____.7 Review of this part.
_____.8 Definitions.

§ _____.1 Purpose and application.

The purpose of this part is to implement procedures for processing and resolving complaints/charges of employment discrimination filed against employers holding government contracts or subcontracts, where the complaints/charges fall within the jurisdiction of both section 503 of the Rehabilitation Act of 1973 (hereinafter "Section 503") and the Americans with Disabilities Act of 1990 (hereinafter "ADA"). The promulgation of this part is required pursuant to section 107(b) of the ADA. Nothing in this part should be deemed to affect the Department of Labor's (hereinafter "DOL") Office of Federal Contract Compliance Programs' (hereinafter "OFCCP") conduct of compliance reviews of government contractors and subcontractors under section 503. Nothing in this part is intended to create rights in any person.

§ _____.2 Exchange of information.

(a) EEOC and OFCCP shall share any information relating to the employment policies and practices of employers holding government contracts or subcontracts that may assist each office in carrying out its responsibilities. Such information shall include, but not necessarily be limited to, affirmative action programs, annual employment reports, complaints, charges, investigative files, and compliance review reports and files.

(b) All requests by third parties for disclosure of the information described in paragraph (a) of this section shall be coordinated with the agency which initially compiled or collected the information.

(c) Paragraph (b) of this section is not applicable to requests for data in EEOC files made by any state or local agency designated as a "FEP agency" with which EEOC has a charge resolution contract and a work-sharing agreement containing the confidentiality requirements of sections 706(b) and 709(e) of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*). However, such an agency shall not disclose any of the information, initially compiled by OFCCP, to the public without express written approval by the Director of OFCCP.

§ _____.3 Confidentiality.

When the Department of Labor receives information obtained by EEOC, the Department of Labor shall observe the confidentiality requirements of sections 706(b) and 709(e) of title VII of the Civil Rights Act of 1964, as incorporated by section 107(a) of the ADA, as would EEOC, except in cases where DOL receives the same information from a source independent of EEOC. Questions concerning confidentiality shall be directed to the Associate Legal Counsel for Legal Services, Office of Legal Counsel of EEOC.

§ _____.4 Standards for investigations, hearings, determinations and other proceedings.

In any OFCCP investigation, hearing, determination or other proceeding involving a complaint/charge that is dual filed under both section 503 and the

ADA, OFCCP will utilize legal standards consistent with those applied under the ADA in determining whether an employer has engaged in an unlawful employment practice. EEOC and OFCCP will coordinate the arrangement of any necessary training regarding the substantive or procedural provisions of the ADA, and of EEOC's implementing regulations (29 CFR part 1630 and 29 CFR part 1601).

§ _____.5 Processing of complaints filed with OFCCP.

(a) Complaints of employment discrimination filed with OFCCP will be considered charges, simultaneously dual filed, under the ADA whenever the complaints also fall within the jurisdiction of the ADA. OFCCP will act as EEOC's agent for the sole purposes of receiving, investigating and processing the ADA charge component of a section 503 complaint dual filed under the ADA, except as otherwise set forth in paragraph (e) of this section.

(b) Within ten days of receipt of a complaint of employment discrimination under section 503 (charge under the ADA), OFCCP shall notify the contractor/respondent that it has received a complaint of employment discrimination under section 503 (charge under the ADA). This notification shall state the date, place and circumstances of the alleged unlawful employment practice.

(c) Pursuant to work-sharing agreements between EEOC and state and local agencies designated as FEP agencies, the deferral period for section 503 complaints/ADA charges dual filed with OFCCP will be waived.

(d) OFCCP shall transfer promptly to EEOC a complaint of employment discrimination over which it does not have jurisdiction but over which EEOC may have jurisdiction. At the same time, OFCCP shall notify the complainant and the contractor/respondent of the transfer, the reason for the transfer, the location of the EEOC office to which the complaint was transferred and that the date OFCCP received the complaint will be deemed the date it was received by EEOC.

(e) OFCCP shall investigate and process as set forth in this section all section 503 complaints/ADA charges dual filed with OFCCP, except as specifically provided in this paragraph. Section 503 complaints/ADA charges raising Priority List issues, those which also include allegations of discrimination of an individual nature on the basis of race, color, religion, sex, or national origin, and those which also include an allegation of discrimination on the basis of age will be referred in their entirety by OFCCP to EEOC for investigation, processing and final resolution, provided that such complaints/charges do not include allegations of violation of affirmative action requirements under section 503. In such a situation, OFCCP will bifurcate the complaints/charges and refer to EEOC the Priority List issues or allegations of discrimination on the basis of race, color, religion, sex, national origin, or age. OFCCP shall normally retain, investigate, process and resolve all allegations of discrimination, over which it has jurisdiction, of a systemic or class nature on the basis of race, color, religion, sex, or national origin that it receives. However, in appropriate cases the EEOC may request that it be referred such allegations so as to avoid duplication of effort and assure effective law enforcement.

(1) *No cause section 503 complaints/ADA charges.* If the OFCCP investigation of the section 503 complaint/ADA charge results in a finding of no violation under section 503 (no cause under the ADA), OFCCP will issue a determination of no violation/no cause under both section 503 and the ADA, and issue a right-to-sue letter under the ADA, closing the complaint/charge.

(2) *Cause section 503 complaints/ADA charges*—(i) *Successful conciliation.* If the OFCCP investigation of the section 503 complaint/ADA charge results in a finding of violation under section 503 (cause under the ADA), OFCCP will issue a finding of violation/cause under both section 503 and ADA. OFCCP shall attempt conciliation to obtain appropriate full relief for the complainant (charging party), consistent with EEOC's standards for remedies. If conciliation is successful and the contractor/respondent agrees to provide full relief, the section 503 complaint/ADA charge will be closed and the conciliation agreement will state that the complainant (charging party) agrees to waive the right to pursue the subject issues further under section 503 and/or the ADA.

(ii) *Unsuccessful conciliation.* All section 503 complaints/ADA charges not successfully conciliated will be considered for OFCCP administrative litigation under section 503, consistent with OFCCP's usual procedures. (See 41 CFR part 60–741, subpart B.) If OFCCP pursues administrative litigation under section 503, OFCCP will close the complaint/charge at the conclusion of the litigation process (including the imposition of appropriate sanctions), unless the complaint/charge is dismissed on procedural grounds or because of a lack of jurisdiction, or the contractor/respondent fails to comply with an order to provide make whole relief. In these three cases, OFCCP will refer the matter to EEOC for any action it deems appropriate. If EEOC declines to pursue further action, it will issue a notice of right-to-sue. If OFCCP does not pursue administrative enforcement, it will close the section 503 component of the complaint/charge and refer the ADA charge component to EEOC for litigation review under the ADA. If EEOC declines to litigate, EEOC will close the ADA charge and issue a notice of right-to-sue.

(f) Consistent with the ADA procedures set forth at 29 CFR 1601.28, OFCCP shall promptly issue upon request a notice of right-to-sue after 180 days from the date the complaint/charge was filed. Issuance of a notice of right-to-sue shall terminate further OFCCP processing of any complaint/charge unless it is determined at that time or at a later time that it would effectuate the purposes of section 503 and/or the ADA to further process the complaint/charge.

(g) If an individual who has already filed a section 503 complaint with OFCCP subsequently attempts to file or files an ADA charge with EEOC covering the same facts and issues, EEOC will decline to accept the charge (or, alternatively, dismiss a charge that has been filed) on the grounds that such charge has already been filed under the ADA, simultaneous with the filing of the earlier section 503 complaint, and will be processed by OFCCP in accordance with the provisions of this section.

§ _____.6 Processing of charges filed with EEOC.

(a) *ADA cause charges falling within the jurisdiction of section 503 that the Commission has declined to litigate.* ADA cause charges that also fall within the jurisdiction of section 503 and that the Commission has declined to litigate will be referred to OFCCP for review of the file and any administrative action deemed appropriate under section 503. Such charges will be considered to be complaints, simultaneously dual filed under section 503, solely for the purposes of OFCCP review and administrative action described in this paragraph.

(b) *ADA charges which also include allegations of failure to comply with section 503 affirmative action requirements.* ADA charges filed with EEOC, in which both allegations of discrimination under the ADA and violation of affirmative action requirements under section 503 are made, will be referred in their entirety to

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OFCCP for processing and resolution under section 503 and the ADA, unless the charges also include allegations of discrimination on the basis of race, color, religion, sex, national origin or age, or include allegations involving Priority List issues, or the charges are otherwise deemed of particular importance to EEOC's enforcement of the ADA. In such situations, EEOC will bifurcate the charges and retain the ADA component of the charges (and when applicable, the allegations pertaining to discrimination on the basis of race, color, religion, sex, national origin or age), referring the section 503 affirmative action component of the charges to OFCCP for processing and resolution under section 503. ADA charges which raise both discrimination issues under the ADA and section 503 affirmative action issues will be considered complaints, simultaneously dual filed under section 503, solely for the purposes of referral to OFCCP for processing, as described in this paragraph.

(c) EEOC shall transfer promptly to OFCCP a charge of disability-related employment discrimination over which it does not have jurisdiction, but over which OFCCP may have jurisdiction. At the same time, EEOC shall notify the charging party and the contractor/respondent of the transfer, the reason for the transfer, the location of the OFCCP office to which the charge was transferred and that the date EEOC received the charge will be deemed the date it was received by OFCCP.

(d) Except as otherwise stated in paragraphs (a) and (b) of this section, individuals alleging violations of laws enforced by DOL and over which EEOC has no jurisdiction will be referred to DOL to file a complaint.

(e) If an individual who has already filed an ADA charge with EEOC subsequently attempts to file or files a section 503 complaint with OFCCP covering the same facts and issues, OFCCP will accept the complaint, but will adopt as a disposition of the complaint EEOC's resolution of the ADA charge (including EEOC's termination of proceedings upon its issuance of a notice of right-to-sue).

§_____.7 Review of this part.

This part shall be reviewed by the Chairman of the EEOC and the Director of OFCCP periodically, and as appropriate, to determine whether changes to the part are necessary or desirable, and whether the part should remain in effect.

§_____.8 Definitions.

As used in this part, the term:

ADA refers to title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

Affirmative action requirements refers to affirmative action requirements required by DOL pursuant to section 503 of the Rehabilitation Act of 1973, that go beyond the nondiscrimination requirements imposed by the ADA.

Chairman of the EEOC refers to the Chairman of the U.S. Equal Employment Opportunity Commission, or his or her designee.

Complaint/Charge means a section 503 complaint/ADA charge. The terms are used interchangeably.

Director of the Office of Federal Contract Compliance Programs refers to that individual or his or her designee.

DOL means the U.S. Department of Labor, and where appropriate, any of its headquarters or regional offices.

EEOC means the U.S. Equal Employment Opportunity Commission, and where appropriate, any of its headquarters, district, area, local, or field offices.

Government means the government of the United States of America.

Priority List refers to a document listing a limited number of controversial topics under the ADA on which there is not yet definitive guidance setting forth EEOC's position. The Priority List will be jointly developed and periodically reviewed by EEOC and DOL. Any policy documents involving Priority List issues will be coordinated between DOL and EEOC pursuant to Executive Order 12067 (3 CFR, 1978 Comp., p. 206) prior to final approval by EEOC.

OFCCP means the Office of Federal Contract Compliance Programs, and where appropriate, any of its regional or district offices.

Section 503 refers to section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793).

Section 503 complaint/ADA charge refers to a complaint that has been filed with OFCCP under section 503 of the Rehabilitation Act, and has been deemed to be simultaneously dual filed with EEOC under the ADA.

Adoption of the Joint Final Rule

The agency specific adoption of the joint final rule, which appears at the end of the joint preamble, appears below:

TITLE 29—LABOR

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1641

List of Subjects in 29 CFR Part 1641

Administrative practice and procedure, Americans with disabilities, Equal employment opportunity, Government contracts.

Accordingly, title 29, chapter XIV of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, D.C. this 17th day of January, 1992.

For the Commission:

Evan J. Kemp, Jr.,

Chairman.

Part 1641 is added to chapter XIV to read as set forth at the end of the joint preamble.

PART 1641—PROCEDURES FOR COMPLAINTS/CHARGES OF EMPLOYMENT DISCRIMINATION BASED ON DISABILITY FILED AGAINST EMPLOYERS HOLDING GOVERNMENT CONTRACTS OR SUBCONTRACTS

Sec.

1641.1 Purpose and application.
1641.2 Exchange of information.
1641.3 Confidentiality.
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1641.5 Processing of complaints filed with OFCCP.
1641.6 Processing of charges filed with EEOC.
1641.7 Review of this part.
1641.8 Definitions.

Authority: 42 U.S.C. 12117(b).

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–742

List of Subjects in 41 CFR Part 60–742

Administrative practice and procedure, Americans with disabilities, Equal employment opportunity, Government contracts.

Accordingly, title 41, chapter 60 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, D.C. this 21st day of January, 1992.

For the Department:

Lynn Martin,

Secretary of Labor.

Cari M. Dominguez,

Assistant Secretary for Employment Standards.

Part 60–742 is added to chapter 60 to read as set forth at the end of the joint preamble.

PART 60–742—PROCEDURES FOR COMPLAINTS/CHARGES OF EMPLOYMENT DISCRIMINATION BASED ON DISABILITY FILED AGAINST EMPLOYERS HOLDING GOVERNMENT CONTRACTS OR SUBCONTRACTS

Sec.

60–742.1 Purpose and application.
60–742.2 Exchange of information.
60–742.3 Confidentiality.
60–742.4 Standards for investigations, hearings, determinations and other proceedings.
60–742.5 Processing of complaints filed with OFCCP.
60–742.6 Processing of charges filed with EEOC.
60–742.7 Review of this part.
60–742.8 Definitions.

Authority: 42 U.S.C. 12117(b).

[FR Doc. 92–1798 Filed 1–23–92; 8:45 am]

BILLING CODE 6750–06–M, 4510–27–M

VOL
57

ISS
16

JA
24

1992

UMI

federal register

Friday
January 24, 1992

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Part 100

Criteria and Procedures for Proposed Assessment of Civil Penalties: Rule and Proposed Rule

VOL 57 ISS 16 JA 24 1992 UMI

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219–AA49

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the Mine Safety and Health Administration's (MSHA) procedures in 30 CFR part 100 for proposing civil penalties under the Federal Mine Safety and Health Act of 1977 (Mine Act). The rule is responsive to the Omnibus Budget Reconciliation Act that became effective on November 5, 1990, and to an Order from the United States Court of Appeals for the District of Columbia Circuit. It adjusts the existing penalties primarily for the inflation that has occurred since 1982, when the rule was last revised, by including across-the-board increases for all categories of penalties. These changes are intended to induce greater overall mine operator compliance with MSHA's safety and health standards, thereby improving safety and health for miners. This final rule also makes permanent the change introduced in the December 29, 1989 (54 FR 53609), interim action that included single penalty violations in an operator's history of violations for regular penalty assessments. Simultaneously with the publication of this final rule, MSHA is publishing a proposed rule specifically addressing the excessive history assessment program that was proposed on December 28, 1990, (55 FR 53482).

EFFECTIVE DATE: March 1, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The final rule contains no information collection paperwork requirements subject to the Paperwork Reduction Act of 1980.

II. Rulemaking History

MSHA initially had two types of assessments: regular assessments and special assessments. Regular assessments were, and continue to be, computer-generated using a formula system whereby penalty points are computed and then converted to a dollar amount. This computation is based on the criteria in the Mine Act for the assessment of penalties. The criteria include mine and company size, history of violations, negligence, gravity of the hazard, and good faith on the part of the operator to achieve compliance. Special assessments were, and continue to be, prepared manually for violations that are of such a nature or seriousness that an appropriate penalty cannot be determined under this regular assessment formula.

On May 21, 1992, MSHA revised its penalty regulations to include a $20 single penalty assessment for non-significant-and-substantial (non-S&S) violations that were timely abated (47 FR 22286). Non-S&S violations are violations that are not reasonably likely to result in a reasonably serious injury or illness. The regular formula system was used to address significant-and-substantial (S&S) violations. S&S violations are those that are reasonably likely to result in a reasonably serious injury or illness. The special assessment system continued to deal with the more serious violations.

On February 17, 1988, the Coal Employment Project and the United Mine Workers of America challenged the Secretary of Labor's authority to assess a $20 single penalty for non-S&S violations that are timely abated. On November 21, 1989, the United States Court of Appeals for the District of Columbia Circuit upheld MSHA's authority to assess the $20 single penalty, *Coal Employment Project et al.*, v. *Dole*, 889 F.2d 1127, but ordered the Agency to revise its civil penalty regulations: (1) To take a mine operator's history of violations specifically into account in determining whether a violation qualifies for a single penalty assessment; and (2) to include single penalty violations in the history of violations computation for regular assessments. The Court further ordered MSHA to take immediate interim steps to correct these defects in the assessment system and remanded the record to MSHA to revise its regulations to comply with the Court's order. The Court retained jurisdiction of the case to consider the issues after remand.

In response to the remand, MSHA published an interim final rule on December 29, 1989 (54 FR 53609), that temporarily suspended the sentence in 30 CFR 100.3(c) by which timely paid single penalty violations were excluded from an operator's history of violations for regular assessment purposes. Thus, in calculating penalties proposed for S&S violations, MSHA now includes all final violations, both S&S and non-S&S, in an operator's history. The Agency also revised its policies by instructing MSHA enforcement personnel to review non-S&S violations involving high negligence and an excessive history of the same type of violation for possible special assessment. While these interim provisions were is effect, the Agency would begin the rulemaking process to develop a final rule, thereby complying with the Court's order.

On April 12, 1990, the Court found MSHA's "high negligence" requirement in its new assessment policy concerning non-S&S violations to be inconsistent with the November 21, 1989, order. Accordingly, the Court gave MSHA 45 days to respond to the Court's expressed concerns. On May 29, 1990, MSHA issued a program policy letter implementing a program of increased penalties for a mine with an "excessive history" of violations including both S&S and non S&S-violations.

On November 5, 1990, the Omnibus Budget Reconciliation Act became effective and amended the Mine Act to increase the maximum civil penalty for a violation from $10,000 to $50,000. It also raised the maximum penalty for failure to correct a violation from $1,000 to $5,000 per day. Finally, it expected MSHA to increase all of its penalty assessment across-the-board.

On December 28, 1990, MSHA published a proposed revision to its civil penalty regulations (55 FR 53482) that included an across-the-board increase in

all of the Agency's penalties. The proposal would have provided for increases in penalty assessments when a mine has an excessive history of violations. The excessive history proposal was based on the May 29, 1990, program policy letter. The comment period on the proposal was initially scheduled to close on March 1, 1991, but was extended to March 18, 1991 (56 FR 8171) and then to April 2, 1991 (56 FR 11130), at which time it closed. MSHA received comments from all sectors of the mining industry.

III. Discussion and Summary of the Final Rule

A. General Discussion

With this final rule, MSHA accomplishes three basic objectives: (1) Increasing the overall penalty assessments in accordance with Congressional mandate and intent; (2) retaining an assessment system in which violations involving serious hazards receive greater penalties than violations involving non-serious hazards; and (3) including non-S&S violations in the history of violations for purposes of regular penalty assessments.

This final rule responds to both the Omnibus Budget Reconciliation Act and to the Court of Appeals. The former requires MSHA to adjust its penalty conversion table to incorporate the legislated increase in the maximum penalty assessment, and reflects the clear Congressional intent that civil penalties be increased across-the-board. The latter requires MSHA to revise its civil penalty regulations to include non-S&S violations in an operator's history of violations, and to consider an operator's history of violations in determining whether a non-S&S violation would be eligible for a single penalty assessment.

The final rule is generally responsive to these legislative and judicial concerns. However, issues related to the effect of history of violations on determining whether a non-S&S violation would be eligible for a single penalty assessment, that is, excessive history, are not addressed in this final rule. The excessive history program was proposed by the Agency in the December 1990 notice. MSHA received numerous and extensive comments on the excessive history proposal. In addition, some commenters took the opportunity to comment on the excessive history program criteria as contained in the May 29, 1990, program policy letter. MSHA has reviewed all comments on the excessive history program and believes that the comments raise many legitimate issues. For this reason, MSHA has developed a revised excessive history proposal which will be issued as a separate rulemaking. Therefore, this final rule will address all issues in the December 1990 proposal except for excessive history.

In addition to and simultaneously with the revised proposal, the Agency is issuing a revised program policy letter containing the specific criteria for implementing an excessive history program.

MSHA received a wide variety of comments on its proposal. However, several comments raised issues outside the scope of the proposal. All of these comments were carefully reviewed and evaluated. The issues addressed in this final rule are limited to those raised in the proposal.

B. Section-By-Section Analysis of the Final Rule

The following section-by-section analysis addresses the issues raised by the proposal and covered in the final rule.

Section 100.3 Determination of Penalty Amount; Regular Assessment

In this section, MSHA revises paragraphs (c) and (g).

Section 100.3(c) History of Previous Violations

The December 1989 interim action suspended the sentence in this paragraph that excluded violations that received a single penalty assessment and were paid in a timely manner from being counted as part of an operator's history of violations for penalty assessments. Several commenters opposed this revision. They contended that it unfairly punished those operators who, due to the nature of their mining operations, tend to receive many non-S&S violations and relatively few S&S violations. As a single penalty violation represents a minimal hazard, they stated that less hazardous mines will be assessed at a higher rate than more hazardous mines by counting single penalty assessments in history. Other commenters disagreed and contended that all violations have the potential for some risk to the miner and should be counted for history purposes. In this final rule, MSHA adopts the language in the December 1989 interim action which deleted the language that excluded timely paid single penalty assessments from the calculation of history of violations for assessment purposes. This action is consistent with the Court's holding in Coal Employment Project that Congress intended all violations to be counted in a mine's history.

Section 100.3(g) Penalty Conversion Table

MSHA received many comments concerning the proposed across-the-board increase in the civil penalty conversion table. Most commenters stated that the proposed five-fold increase in the maximum civil penalty and the general across-the-board increases at each penalty level were too great and would cause significant financial hardship for many mine operators. Several of these commenters noted that, although there has been general inflation in the economy since these penalties were first established, such has not been the case for the prices received by operators for many commodities, particularly coal. Some of these commenters further asserted that many operators could be driven out of business by such an increase in penalties. A few commenters expressed the opinion that this action was proposed in order for MSHA to enhance its revenues.

Other commenters, however, disagreed with the proposed penalty table on the grounds that Congress intended, through the Omnibus Budget Reconciliation Act, that MSHA levy a five-fold across-the-board increase for all its civil penalties.

In this final rule, MSHA adopts the penalty table contained in the proposal. This action is responsive to the Congressional mandate expressed in the Omnibus Budget Reconciliation Act. Further, an across-the-board increase in the final rule reflects inflationary changes that have occurred since penalties were last revised, and also reflects MSHA's philosophy that more serious hazards warrant higher penalty increases. MSHA is substantially increasing its dollar assessments so that the higher penalty points receive a higher percentage increase than do the lower penalty points. Thus, lower penalty point assessments are increased by 1.5 times the previous assessment and this percentage increase grows to a five-fold increase at the higher penalty points.

Finally, it should be noted that all MSHA civil penalty assessments are paid into the United States Treasury. None are deposited into MSHA's budget.

In the preamble to the proposed rule, MSHA requested public comments on whether the final rule should include an annual, automatic inflation increase for penalties. Several commenters opposed an automatic inflation adjustment because it would add a future burden to mine operators that could become

financially disastrous if the prices of mine commodities fell or did not keep pace with the economy's inflation rate. Some of these commenters also stated that each future increase in civil penalties must go through public rulemaking before it could be implemented. Other commenters were in favor of an annual, automatic inflation adjustment because it was the only practical way to ensure that the real dollar value of the civil penalties does not diminish over time.

After carefully reviewing these comments, MSHA determined that it is not appropriate for the final rule to contain an automatic inflation adjustment factor.

Section 100.4 Determination of Penalty; Single Penalty Assessment

MSHA received many widely varied comments concerning its proposals to increase the current single penalty from $20 to $50 for a timely abated non-S&S violation.

Some commenters objected to the proposed single penalty increase as being much higher than the level warranted by the inflation that has occurred since the $20 penalty was instituted in 1982. Other commenters objected to any increase at all because these non-S&S violations are violations for which there is no associated potential injury. Another commenter, however, suggested that these penalties be increased to $500 in order to provide a meaningful deterrent to operators. Some commenters suggested that MSHA abandon the single penalty assessment and assess all non-S&S penalties under the regular assessment formula.

MSHA has reviewed these comments and the Agency's enforcement records and has included a $50 single penalty in the final rule. This represents a substantial increase in the single penalty and the Agency continues to believe that the single penalty is warranted in certain circumstances. The single penalty assessment continues to serve its purpose of achieving improved miner safety and health by reducing the amount of time inspectors spend on conferencing violations that have a minimal impact on mine safety and health. This, in turn, has allowed inspectors to spend more time focusing on the S&S violations that have the greater potential to cause fatalities and injuries. MSHA believes that the increased single penalty will be a more effective deterrent to non-S&S violations.

Section 100.5 Special Assessments

Although there is no wording change in this section, there will be a change in the amount of penalties assessed to be consistent with the increase in single penalty and regular formula assessments.

IV. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires that a regulatory impact analysis (RIA) be performed for any regulation that would have a $100 million impact on the economy or a major impact on an industry. MSHA believes that this final rule will have a major impact on the mining industry, and therefore, a regulatory impact analysis (RIA) has been prepared and is available for public review.

Briefly summarizing the findings of that RIA, using the data from June 1, 1990, through May 31, 1991, MSHA estimates what would have been the amounts assessed under the new penalty conversion table and under the old penalty table that would have occurred in the absence of any excessive history program for regular assessments, special assessments, and single penalty assessments.

[In millions of dollars]

Assessment	Previous penalty table assessment	New penalty table assessment	Difference
Regular	10.9	20.3	9.4
Special	4.4	8.3	3.9
Single penalty	1.1	2.9	1.8
Total	16.4	31.5	15.1

The Agency also determined that the final rule will have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis has also been prepared and is available. Small operators generally are in the weakest financial position and an increase in penalty assessments will have a greater effect on them than it will have on large operators. Nevertheless, this greater effect on small operators does not mean that it will result in a substantial number of these operators going out of business solely because of the increased penalty assessments.

V. Paperwork Reduction Act

This proposal does not contain any information collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 100

Mine safety and health, Penalties.

Dated: January 17, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Therefore, part 100, subchapter P, chapter I, title 30 of the Code of Federal Regulations is amended as follows:

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

1. The authority citation for part 100 continues to read as follows:

Authority: 30 U.S.C. 815, 820, and 957.

2. Section 100.3 is amended by revising the text in paragraph (c) preceding the tables and paragraph (g) to read as follows:

§ 100.3 Determination of penalty amount; regular assessment.

* * * * *

(c) *History of previous violations.* History is based on the number of assessed violations in a preceding 24-month period. Only violations that have been paid or finally adjudicated will be included in determining history. The history of previous violations may account for a maximum of 20 penalty points. For mine operators, the penalty points will be calculated on the basis of the average number of assessed violations per inspection day (VPID) (Table VI). For independent contractors, penalty points will be calculated on the basis of the average number of violations assessed per year at all mines (Table VII).

* * * * *

(g) *Penalty conversion table.* The following penalty conversion table shall be used to convert the accumulation of penalty points to the appropriate proposed monetary assessment.

PENALTY CONVERSION TABLE

Points	Penalty
20 or fewer	60
21	66
22	72
23	78
24	84
25	90
26	99
27	108
28	117
29	126
30	135
31	147
32	159
33	171
34	183
35	195
36	210
37	225
38	240
39	255
40	270

PENALTY CONVERSION TABLE—Continued

Points	Penalty
41	292
42	315
43	337
44	360
45	382
46	412
47	442
48	516
49	617
50	724
51	851
52	987
53	1,134
54	1,290
55	1,457
56	1,650
57	1,855
58	2,072
59	2,301
60	2,542
61	2,816
62	3,105
63	3,407
64	3,724
65	4,000
66	4,200
67	4,400
68	4,600
69	4,800

PENALTY CONVERSION TABLE—Continued

Points	Penalty
70	5,000
71	5,250
72	5,500
73	5,750
74	6,000
75	6,250
76	6,500
77	7,000
78	7,500
79	8,000
80	8,500
81	9,500
82	10,500
83	11,500
84	12,500
85	13,500
86	15,000
87	17,000
88	19,000
89	21,000
90	23,000
91	25,000
92	27,500
93	30,000
94	32,500
95	35,000
96	37,500
97	40,000
98	42,500

PENALTY CONVERSION TABLE—Continued

Points	Penalty
99	45,000
100	50,000

* * * * *

3. Section 100.4 is revised to read as follows:

§ 100.4 Determination of penalty; single penalty assessment.

An assessment of $50 may be imposed as the civil penalty where the violation is not reasonably likely to result in a reasonably serious injury or illness, and is abated within the time set by the inspector. If the violation is not abated within the time set by the inspector, the violation will not be eligible for the $50 single penalty and will be processed through either the regular assessment provision (§ 100.3) or special assessment provision (§ 100.5).

[FR Doc. 92-1802 Filed 1-23-92; 8:45 am]
BILLING CODE 4510-43-M

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219-AA49

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Mine Safety and Health Administration's (MSHA) procedures in 30 CFR part 100 for proposing civil penalties under the Federal Mine Safety and Health Act of 1977 (Mine Act). The proposal is responsive to a November 21, 1989, Order of the United States Court of Appeals for the District of Columbia Circuit. It would include penalty increases for a mine with an excessive history of violations. This proposed change is intended to induce greater overall mine operator compliance with MSHA's safety and health standards, thereby improving miner safety and health. Simultaneously with the publication of this proposed rule, MSHA is issuing a program policy letter containing the specific criteria that are being proposed in this notice.

DATES: Written comments must be submitted on or before March 24, 1992.

ADDRESSES: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703)235-1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The proposed rule would contain no information collection requirements subject to the Paperwork Reduction Act of 1980.

II. Rulemaking History

MSHA initially had two types of assessments: regular assessments and special assessments. Regular assessments were, and continue to be, computer-generated using a formula system whereby penalty points are computed and then converted to a dollar amount. This computation is based on the criteria in the Mine Act for the assessment of penalties. The criteria include mine and company size, history of violations, negligence, gravity of the hazard, and good faith on the part of the operator to achieve compliance. Special assessments were, and continue to be, prepared manually for violations that are of such a nature or seriousness that an appropriate penalty cannot be determined under the regular assessment formula.

On May 21, 1982, MSHA revised its penalty regulations to include a $20 single penalty assessment for non-significant-and-substantial (non-S&S) violations that were timely abated (47 FR 22286). Non-S&S violations are violations that are not reasonably likely to result in a reasonably serious injury or illness. The regular formula system addressed significant-and-substantial (S&S) violations. S&S violations are those that are reasonably likely to result in a reasonably serious injury or illness. The special assessment system continued to deal with the most serious violations. For regular assessment purposes, the history of violations was defined as the average number of violations per inspection day (VPID) for mine operators and as the average number of violations assessed per year at all mines for independent contractors; i.e., contractor violation history points (CVHP). Single penalty violations that were timely paid were not included in the history computation.

On February 17, 1988, the Coal Employment Project and the United Mine Workers of America challenged the Secretary of Labor's authority to assess a $20 single penalty for non-S&S violations that are timely abated. On November 21, 1989, the United States Court of Appeals for the District of Columbia Circuit upheld MSHA's authority to assess the $20 single penalty, *Coal Employment Project et al.* v. *Dole*, 889 F.2d 1127, but ordered MSHA to revise its civil penalty regulations: (1) To take a mine operator's history of violations specifically into account in determining whether a non-S&S violation qualifies for a single penalty assessment; and (2) to include single penalty violations in the history of violations computation for regular assessments. The Court further ordered MSHA to take immediate interim steps to correct these defects in the assessment system and remanded the record to MSHA to revise part 100 to comply with the Court's order. The Court retained jurisdiction of the case.

In response to the remand, MSHA published an interim action on December 29, 1989 (54 FR 53609), that temporarily suspended the sentence in 30 CFR 100.3(c) by which timely paid single penalty violations were excluded from an operator's history of violations for regular assessment purposes. Thus, in calculating penalties proposed for S&S violations, MSHA now includes all final violations, both S&S and non-S&S, in an operator's history. The Agency also revised its policies by instructing MSHA enforcement personnel to review non-S&S violations involving high negligence and an excessive history of the same type of violation for possible special assessment. While these interim provisions were in effect, the Agency would begin the rulemaking process to develop a final rule, thereby complying with the Court's order.

On April 12, 1990, the Court found MSHA's "high negligence" requirement in its new assessment policy concerning non-S&S violations to be inconsistent with the November 21, 1989, order. Accordingly, the Court gave MSHA 45 days to respond to the Court's expressed concerns. On May 29, 1990, MSHA issued a program policy letter implementing a program of increased penalties for a mine with an "excessive history" of violations, including both S&S and non-S&S violations.

On December 28, 1990, MSHA published a proposed revision to its civil penalty regulations (55 FR 53482) that included an across-the-board increase in all of the Agency's penalties. The proposal provided for increases in penalty assessments when a mine has an excessive history of violations. The excessive history proposal was based on the May 29, 1990, program policy letter. The comment period on the proposal was initially scheduled to close on March 1, 1991, but it was extended to March 18, 1991 (56 FR 8171), and then to April 2, 1991 (56 FR 11130), at which time it closed. MSHA received comments from all sectors of the mining industry.

Subsequently, based on the volume and nature of the comments received on the December 1990 proposed rule, MSHA has separated the rulemaking into a final rule and a new proposal.

The final rule, published in today's **Federal Register**, revises the penalty table in accordance with the Omnibus Budget Reconciliation Act, increases the single penalty from $20 to $50, and includes single penalty violations in history.

This proposed rule only addresses the excessive history assessment program. In response to comments, the excessive history program, which was included in the December 1990 proposal, has been revised in this proposal.

Finally, MSHA is issuing a new program policy letter to replace the May 29, 1990, policy letter. This new program policy letter contains the revised specific criteria for implementing the

excessive history program contained in this proposal.

The final rule, the proposed rule, and the new program policy letter are being issued simultaneously, so that the new excessive history criteria will become effective at the same time as the new penalty table.

III. Discussion and Summary of the Proposed Rule

A. General Discussion

At the outset, MSHA would like to emphasize that the Agency is requesting comments on all aspects of this proposed rule. The comments submitted in response to the December 1990 proposal will be incorporated into this rulemaking record. The public will be given 60 days to comment on this proposal.

MSHA intends to accomplish four basic objectives with this proposal: (1) Encourage mine operators who have an excessive history of violations to improve compliance; (2) respond to the ruling of the Court of Appeals by incorporating the history of violations into determining whether a non-S&S violation is eligible for a single-penalty assessment; (3) retain a system in which violations involving serious hazards receive greater penalties than violations involving less serious hazards; and (4) respond to a recommendation by the Office of the Inspector General of the U.S. Department of Labor that progressive penalties be assessed for repeat violations of the same health or safety standard.

Although the December 1990 proposal included provisions for an excessive history program, MSHA is reproposing a substantially revised excessive history program. Several of the revised provisions result from comments MSHA received in response to the previous proposal. The Agency believes that as this revised proposal is significantly different from the previous proposal, a reproposal is appropriate.

MHSA received numerous and extensive comments on the excessive history proposal. In addition, some commenters took the opportunity to comment on the excessive history program criteria in the May 29, 1990, program policy letter. MSHA has reviewed all comments on the excessive history program and believes that the comments raise many legitimate issues. In addition, there were several other comments, such as requesting a general revision of part 100 or a review of enforcement policies, that were outside the scope of the proposal. However, this rulemaking is limited to the excessive history assessment program.

B. Section-By-Section Analysis of the Proposed Rule

The following section-by-section analysis addresses the public comments on the previous proposal and describes the resulting new proposal.

Section 100.3 Determination of Penalty Amount; Regular Assessment

In this section, MSHA proposes revisions to paragraphs (a) and (c).

Section 100.3(a) General

In this section, MSHA proposes an excessive history assessment program that would increase the amounts of certain proposed penalties. Increased assessments at mines with an excessive history of violations, including both S&S and non-S&S violations, would serve as a more effective deterrent and would help to reduce the number of violations at those mines, thereby providing a safer and more healthful work environment.

In reviewing the December 1990 proposal, several commenters noted that the use of the word "or" in the proposed § 100.3(a) could be interpreted as meaning that an excessive history assessment would make an operator ineligible for a "good faith" penalty reduction from a timely abatement. MSHA did not intend that interpretation. In fact, under the May 29, 1990, program policy letter, MSHA has continued to apply the good faith penalty reduction criterion to citations that are timely abated and that receive an excessive history assessment. For clarification, the word "or" that had been proposed for § 100.3(a) is changed to "and" in this proposal. The new program policy letter will continue the current policy concerning the applicability of the good faith criterion to citations that receive an excessive history assessment and are timely abated.

Section 100.3(c) History of Previous Violations

Consistent with current policy, MSHA proposes to formalize an excessive history assessment program. This excessive history program would be integrated into MSHA's overall enforcement strategy.

In selecting the criteria for an excessive history program, MSHA used the experience gained under the May 29, 1990, program policy letter, the most recent violation and enforcement data, and the public comments on the December 1990 proposal. The Agency intends for the excessive history program to address, as appropriate, hazards at both large and small mines, at both surface and underground mines, and at both coal and metal and nonmetal mines. The Agency believes that this proposal reflects that intent.

Under the proposal, excessive history would be based upon two criteria: (1) Under § 100.3(c)(1), the overall violation history for a preceding 24 month period as reported by VPID or CVHP; and (2) under § 100.3(c)(2), the number of repeat violations of the same safety or health standard per inspection day (RPID) in a preceding 12-month period. Only S&S violations would be subject to excessive history based on RPID. A mine would also need to have more than 10 violations in a preceding 24 month period to receive an excessive history assessment. The specific criteria and penalty assessment increases would be included in the final rule. Only citations and orders that are paid or finally adjudicated would be included in determining excessive history. Under the proposal, only citations and orders issued on or after January 1, 1991, would be used in determining excessive history. The Agency would use the available history and repeat data after January 1, 1991, when determining excessive history until the full 24 months of history and 12 months of repeat data are collected. Thereafter, the rule would be applied accordingly. MSHA requests comments on all aspects of this proposal.

During the last several months, the Agency has reviewed many options with respect to the precise numbers to be used to determine whether a mine has an excessive history of violations as well as the amount of the penalty assessment increases. Based on the Agency's experience with the May 29, 1990, program policy letter and the comments received in response to the December 1990 proposal, MSHA is proposing the following criteria and penalty assessment increases.

In order to receive an excessive history assessment under the VPID or CVHP criterion, a mine or contractor would need to have 20 penalty points for overall history (a VPID > 2.1 or a CVHP > 50) based on a previous 24 month period. Both S&S and non-S&S final violations would be included in this history computation. A mine or contractor meeting this criterion would receive a 40 percent increase in the base penalty assessment for all regular-assessed violations, a proportionate increase on special-assessed violations, and all non-S&S violations that would have received a single penalty would receive a regular penalty assessment.

In order to receive an excessive history assessment under the RPID criterion, a mine would need to have an

RPID greater than 0.20. An RPID of 0.21 through 0.30 would result in a 20 percent increase in the base penalty for all regular-assessed violations; an RPID of 0.30 through 0.40 would result in a 30 percent increase; and an RPID greater than 0.40 would result in a 40 percent increase. Both S&S and non-S&S violations would be included in the total number of repeat violations. However, the repeat violation excessive history criterion will apply only to S&S violations. Non-S&S violations that would have received a single penalty assessment would continue to receive a single penalty.

There are significant differences between these proposed criteria and the criteria in the May 29, 1990, program policy letter.

The first is that, with respect to the VPID criterion, the program policy letter imposed excessive history increases of 20 percent on violations at mines with VPID > 1.7 through 1.9 (or a CVHP > 40 through 45), a 30 percent increase on violations at mines with VPID > 1.9 through 2.1 (or a CVHP > 45 through 50), and a 40 percent increase on violations at mines with VPID > 2.1 (or a CVHP > 50).

The second is that, with respect to the criteria for repeat violations of the same standard, the program policy letter was based on total repeat violations (not repeat violations adjusted for inspection days) so that between 11 and 25 repeat violations resulted in a 20 percent increase, between 26 and 40 repeat violations resulted in a 30 percent increase, and 41 or more repeat violations resulted in a 40 percent increase.

The third is that the program policy letter imposed a regular formula assessment on non-S&S violations for excessive history based on repeat violations of the same standard.

In general, MSHA believes that mines with a VPID or CVHP that is the highest category in the penalty point table indicates a lesser concern for compliance with MSHA safety and health standards than does a lower overall history. Up to the highest penalty point category, there is a progressive increase in the number of penalty points for increasing VPID or CVHP. An excessive history assessment levied on those mines with the highest category of penalty points would continue the progressive penalty concept for increasing VPID and CVHP and would encourage these operators to devote additional effort and resources to comply with MSHA standards. Thus, this proposal would place the greatest penalties on mines that have the highest non-compliance levels.

Similarly, the proposed use of RPID as a criterion for an excessive history assessment is based on a determination that repeat violations of the same standard indicate a persistent compliance problem. MSHA also carefully reviewed and evaluated both the comments concerning the use of repeat violations as an excessive history criterion and the assessments generated by the program policy letter. In addition, MSHA reviewed the recommendation of the September 30, 1988, Inspector General Final Audit of MSHA entitled, "The Mine Plan Approval and Selected Enforcement Activities" (IG report) that progressive penalties be assessed for repeated violations of the same standard. MSHA continues to believe that repeated violations of the same standard is an appropriate criterion to trigger an excessive history assessment. The excessive history assessment based on repeat violations, unlike the excessive history assessment based on overall history, would apply only to S&S violations. An excessive history assessment based on repeat violations and levied only on S&S violations would focus the operator's attention on a specific, repetitive problem that has a higher potential for injury or illness. The initial penalty increase would give notice to a mine operator that this specific problem exists and the progressive penalties would provide further incentive for the operator to resolve the problem.

Unlike the May 29, 1990, program policy letter and the December 1990 proposal that based excessive history assessments on the total number of repeat violations, MSHA proposes to divide the total number of repeat violations by the number of inspection days and to use this RPID as the basis for the excessive history assessment. There may be a belief, as reflected in some comments, that a high number of repeat violations is, by itself, not necessarily indicative of a high hazard mining operation. For example, at large gassy underground coal mines where MSHA inspectors may be continuously present, it might not be unusual to receive 10 ventilation plan citations annually because the ventilation standard is the standard cited for many associated violations. Consequently, a high number of repeat violations of the same standard does not necessarily indicate a mine operator's lack of commitment to miner safety and health but rather the fact that it may have been a large mine that required more inspector presence. However, by using the number of repeat violations divided by the number of inspection days, all mines would be treated more equitably in that MSHA inspection time would be normalized.

The types of hazards for which MSHA typically issues many of its citations are those that can lead to fires, explosions, and other types of major accidents with the potential to cause multiple fatalities and injuries as well as serious individual injuries. Consequently, the values proposed for triggering an excessive history assessment were selected so that the excessive history penalty would focus on mines that have relatively high numbers of these types of violations.

In addition to the comments concerning the specific criteria and penalty amounts, commenters raised several issues concerning the excessive history program. First, the majority of commenters suggested that the specific criteria and the exact amount of the penalty increases for an excessive history assessment should be contained in part 100 so that the mine operator would have notice of the appropriate compliance responsibilities. MSHA agrees and included the specific excessive history assessment criteria and the penalty amounts in this proposed rule. MSHA believes that this will allow the public ample opportunity to comment on this important aspect of excessive history. MSHA is also issuing a revised program policy letter that continues the existing excessive history program, but under this new criteria.

The second issue was the date from which violations would begin to be counted for excessive history assessments. MSHA proposed a starting date of January 1, 1991. Until January 1, 1993, the VPID and CVHP calculations would be based on fewer than 2 years of data, and until January 1, 1992, the RPID would be based on less than 1 year of data. However, no excessive history assessment would be levied until a mine had accumulated more than 10 fully paid or finally adjudicated violations.

Comments concerning this issue varied. Some commenters criticized the date as imposing a retroactive penalty on mine operators; they contended that violations should not be counted for the purposes of excessive history assessments until a final rule is promulgated. Their justification is that mine operators need to be given fair and adequate notice of this change in assessments in order to avoid retroactive penalties. These commenters asserted that many mine operators would have contested certain citations had they known that these citations would be used in determining whether or not an operator received an excessive history assessment. It was further

asserted that mine operators do not now contest every citation that they believe to be improperly issued—particularly those involving the $20 single penalty assessment—because the time and labor cost of contesting the citation is substantially greater than the penalty itself. If, however, operators had known that these citations could result in a future excessive history assessment, then they would have contested many of these citations. In support of these assertions, one commenter noted that the contested citation rate went from an historical average of about 3 percent to about 6 percent after the publication of the pattern of violations rule and the program policy letter establishing the excessive history assessment program. Thus, in order for mine operators to receive adequate notice of this change in penalty assessments and to react accordingly, the violation history for an excessive history assessment must start no sooner than 30 days after the final rule is promulgated.

Other commenters criticized the January 1, 1991, date because the May 29 program policy letter had already established an excessive history assessment program with retroactive starting dates. Thus, these commenters stated that the issue of retroactive criteria is assessing penalties is not relevant because mine operators have received adequate notice, and, therefore, the final rule should continue the policy begun in the program policy letter. They contend that continuing the existing system would minimize industry confusion about the date at which violations will be counted for excessive history when the final rule becomes effective.

MSHA has decided to repropose January 1, 1991, as the effective date for including violations for excessive history assessments. The Agency seeks additional comments on this proposal.

The third issue concerned MSHA's proposal to base excessive history only on violations paid or finally adjudicated. One commenter noted that under certain circumstances, a mine operator may be able to avoid an excessive history assessment by virtue of having contested citations from previous inspections. This commenter suggested that in order to discourage widespread filing of notices of contest solely to minimize the length of time a violation would be included for excessive history assessments, all citations (including those contested) should be counted on the date they were issued. Further, according to this commenter, any contested citation would be eliminated from excessive history assessment only if it were vacated.

The primary reason that MSHA does not propose to adopt this suggestion is that the Agency does not believe that it is either appropriate or fair to include citations that are ultimately vacated in an excessive history assessment. In addition, MSHA does not believe that operators will file a notice of contest solely for the purpose of delaying a potential excessive history assessment. There are substantial economic costs associated with contesting citations and the average amount of time during which the contested citation is pending and not counted for history will generally be too brief for the potential financial gain to be greater than this cost.

The fourth issue concerned the overall equitableness of the proposed excessive history assessment program. Several commenters stated that the number of citations issued by an MSHA inspector was affected by several factors other than the actual safety and health conditions in a mine. Specifically, they stated that the inspection statistics demonstrated that different MSHA districts issued different numbers of citations per inspector visit and that underground mines received a disproportionate share of citations compared to surface mines. They also asserted that mines in which a miners' representative accompanied the inspector received more citations than mines where a miner's representative did not accompany the inspector. They concluded that in order for the excessive history assessment program to be equitable, the raw violation data need to be statistically corrected for these factors. Regardless of the validity of the statistical tendencies reported by these commenters, these comments relate to enforcement issues that are outside the scope of this proposal.

The fifth issue concerns whether the excessive history criteria should include non-S&S citations. Some commenters reported that although they are issued more non-S&S citations than S&S citations, they are receiving excessive history assessments under the May 29 program policy letter criteria in which non-S&S violations are counted for excessive history. They contend that because a non-S&S violation poses little, if any, threat of injury to a miner, it should not be counted equally with S&S violations that pose a threat of injury to a miner. However, other commenters supported the inclusion of non-S&S violations in the excessive history program because a non-S&S violation may have the potential to cause an injury and high numbers of these violations may indicate a low level of commitment to miner safety and health.

As the Court of Appeals in Coal Employment Project was concerned about the applicability of the history criterion in the Mine Act to non-S&S violations, the Agency is incorporating, through the final rule, non-S&S violations into the overall history computation. Therefore, as excessive history is based on overall history, the Agency proposes to incorporate non-S&S violations into the computation of total violations for the excessive history assessment program. However, the Agency recognizes that S&S and non-S&S violations represent different levels of hazards and, thus, should be addressed differently. Consequently, as discussed earlier, MSHA proposes that all non-S&S violations would receive a regular assessment if the mine's VPID or CVHP is 20 penalty points. However, non-S&S violations would not be subject to the RPID criterion. MSHA requests additional comments on this aspect of the proposal.

A few commenters had the mistaken impression that MSHA would impose two penalty increases for excessive history on violations at mines that qualified under both criteria. This is not MSHA's intent. Further, MSHA has not implemented the existing excessive history program in this manner. MSHA will impose only one penalty increase for excessive history on any individual violation. If a violation would qualify under both criteria but each criterion would assign a different percentage increase, MSHA proposes to use the greater percentage increase for the assessment. For example, if an operator had a VPID of 2.1 (a 40 percent excessive history assessment) and a RPID of 0.25 (a 20 percent excessive history assessment), MSHA would impose the 40 percent increase.

In evaluating the number of mines and number of citations that would be affected by the proposed excessive history criteria, MSHA used 1989 assessment data. On that basis, MSHA determined that 250 coal mines (about 5.9 percent of all active coal mines, including mines that are intermittently active, in 1989) would have received an excessive history assessment. Of these 250 coal mines, 76 would have been small mines (3.0 percent of all small coal mines), 115 would have been medium-sized mines (7.7 percent of all medium-sized coal mines), and 59 would have been large mines (25.7 percent of all large coal mines). On that same basis, MSHA also determined that 293 metal and nonmetal mines (about 2.5 percent

of all metal and nonmetal mines, including a substantial number of mines that are intermittently active, in 1989) would have received an excessive history assessment. Of these 293 metal and nonmetal mines, 172 would have been small mines (2.1 percent of all small metal and nonmetal mines), 116 would have been medium-sized mines (5.8 percent of all medium-sized metal and nonmetal mines), and 5 would have been large mines (6.0 percent of all large metal and nonmetal mines).

With respect to the number of violations in 1989 that would have received an excessive history assessment, MSHA determined that 5,157 coal mine violations (5.1 percent of all coal violations) would have received an excessive history assessment. On the basis of mine size, 1,044 of these violations would have occurred at small mines (3.6 percent of all small coal mine violations), 1,646 would have occurred at medium-sized mines (3.9 percent of all medium-sized coal mine violations), and 2,467 of these violations would have occurred at large mines (8.0 percent of all large coal mine violations). MSHA also determined that 3,005 metal and nonmetal mine violations (6.1 percent of all metal and nonmetal mine violations) would have received an excessive history assessment. On the basis of mine size, 1,325 of these metal and nonmetal mine violations would have occurred at small mines (5.2 percent of all small metal and nonmetal mine violations), 1,641 would have occurred at medium-sized mines (8.2 percent of all medium-sized metal and nonmetal mine violations), and 39 would have occurred at large mines (1.2 percent of all large metal and nonmetal mine violations).

The preamble to the December 1990 proposed rule presented some 1989 injury rate statistics for mines that would not have received an excessive history assessment compared to mines that would have received an excessive history assessment. Some commenters took issue with those statistics because they believed that MSHA was interpreting these statistics to mean that injury rates are directly related to the number of violations. MSHA did not intend to imply that, taken by itself, the number of violations at a mine reflects a mine's overall safety and health environment. Rather, MSHA presented these aggregate data to illustrate that the proposed excessive history program would have affected mines that, in the aggregate, had greater injury rates than those mines that would not have been affected by the proposed excessive history program. As the purpose of citations is to prevent conditions that may result in fatalities or injuries, a directly proportional relationship between the fatality and injury rates and the excessive history criteria is unlikely.

In response to commenters, MSHA reviewed its 1989 and 1990 assessment, injury, and fatality data, calculated the average injury and fatality rates for all mines that would have received an excessive history assessment under the program policy letter criteria, and compared them to the average fatality and injury rates for all mines that would not have received an excessive history assessment. These rates are reported per 100 fulltime equivalent employees (i.e., every 200,000 employee hours). Briefly summarizing the results that are found in greater detail in the Preliminary Regulatory Impact Analysis (PRIA), MSHA calculated that the aggregate 1989 and 1990 injury rates in coal mines that would have received an excessive history were 14.56 and 12.55, respectively, while the corresponding values for mines that would not have received an excessive history were 10.24 and 9.91. Similarly, the 1989 and 1990 injury rates for metal and nonmetal mines that would have received an excessive history were 9.95 and 9.04, respectively, while the corresponding values for metal and nonmetal mines that would not have received an excessive history were 7.91 and 6.74, respectively.

MSHA also calculated that the 1989 and 1990 fatality rates in coal mines that would have received an excessive history were 0.01 and 0.03, respectively, while the corresponding values for coal mines that would not have received an excessive history would have been 0.05 and 0.04. Similarly, the 1989 and 1990 fatality rates in metal and nonmetal mines that would have received an excessive history were 0.01 and 0.02, respectively, while the corresponding values for metal and nonmetal mines that would not have received an excessive history were 0.02 and 0.02.

These aggregate injury data reveal that mines that would have received excessive history had higher aggregate injury rates in both years than did mines that would not have received excessive history. These aggregate fatality data, however, do not present as clear a picture. For three of the four fatality rate comparisons, there is no statistical difference between the rates. Although the 1989 coal fatality data differ from the other data, it is difficult to draw conclusions from one year's data because fatalities are infrequent and unpredictable events. Typically, a ten year period of fatalities is necessary in order to draw conclusions.

However, the excessive history criteria in this proposal are not based on fatality and injury rates, although the Agency reviewed fatality and injury rates. Specific fatality and injury data are reported primarily to demonstrate that the evidence is consistent with a positive relationship between fatality and injury rates and higher VPID and higher RPID.

Section 100.4 Determination of Penalty; Single Penalty Assessment

MSHA received varied comments concerning its December 1990 proposal to require that a violation that would have received a single penalty assessment be given a regular formula assessment if it met the criteria for excessive history.

Many commenters stated that the single penalty should continue to be assessed as it has been assessed since its implementation in 1982. However, the Court of Appeals in Coal Employment Project directed MSHA to consider a mine operator's history of violations in determining whether a single penalty assessment is appropriate. The proposal is responsive to the Court's directive.

Other commenters suggested that MSHA abandon the single penalty assessment concept and assess all non-S&S penalties under the regular assessment formula. MSHA has not incorporated this suggestion into the proposal. The Agency believes that the single penalty assessment continues to serve a safety and health purpose by reducing the amount of time inspectors spend on conferencing violations that have a minimal impact on mine safety and health. This, in turn, has allowed inspectors to spend more time focusing on the S&S violations that have the greater potential to cause fatalities and injuries.

Nevertheless, MSHA believes that mines with a VPID > 2.1 may evidence a low level of commitment to compliance with MSHA safety and health standards. MSHA believes that compliance at these mines should be improved if non-S&S violations receive a higher penalty. Consequently, MSHA proposes that all non-S&S violations at mines with VPID a 2.1 would not be eligible for a single penalty but, rather, would receive a regular penalty assessment. However, the excessive history repeat violation criterion would not apply to non-S&S violations. Therefore, non-S&S violations that occur at mines with RPID greater than 0.20 would still be eligible for the single

penalty assessment. MSHA requests comment on this proposal.

Section 100.5 Special Assessments

Although there is no wording change in this section, it does reference § 100.3(a). Under the proposal, § 100.3(a) would incorporate an excessive history program. As a result, violations processed under the special assessment provision of Part 100 that meet the excessive history criteria would also receive an additional dollar penalty to reflect the excessive history. Commenters stated that there was no need for an excessive history program because there is a special assessment program. Under the proposal, district managers would still be able to request a special assessment based upon a determination that (1) the penalty derived from the computer-based program is not sufficient to encourage compliance or (2) a mine has a compliance problem even though it does not meet the excessive history criteria.

IV. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires that a preliminary regulatory impact analysis (PRIA) be performed for any proposed regulation that would have an impact of at least $100 million on the economy or would have a major impact on an industry sector. Although this proposed rule would not have a major impact on the economy or the industry, MSHA has prepared a PRIA that is available to the public.

Briefly summarizing the findings of that PRIA, using the data from June 1, 1990, through May 31, 1991, and the new penalty table, MSHA estimates the amounts that would have been assessed: (1) under no excessive history program; (2) under the excessive history program based on the May 29, 1990, program policy letter; and (3) under the proposed excessive history criteria.

NEW PENALTY TABLE ASSESSMENT

[In $ millions]

Baseline	Total	Increase
No Excessive History	31.5	
Excessive History (May 29 Policy)	36.1	4.6
Excessive History (Proposal)	32.9	1.4

Note: The amounts in the "Increase" column are based on a comparison with the baseline of "No Excessive History".

As can be seen in this table, the proposed excessive history criteria would generate a 4.4 percent increase in penalty assessments in comparison to the 14.6 percent increase that would have been generated under the May 29, 1990, program policy letter.

The Agency also determined that the proposal will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 30 CFR Part 100

Mine safety and health, Penalties.

Dated: January 17, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Therefore, it is proposed to amend part 100, subchapter P, chapter I, title 30 of the Code of Federal Regulations as follows:

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

1. The authority citation for part 100 continues to read as follows:

Authority: 30 U.S.C. 815, 820, and 957.

2. Section 100.3 is amended by revising the last sentence of the concluding text of paragraph (a) and the text in paragraph (c) preceding the table to read as follows:

§ 100.3 Determination of penalty amount; regular assessment.

(a) * * *

* * * Where appropriate, this penalty amount will be adjusted for demonstrated good faith in accordance with paragraph (f) of this section and for excessive history in accordance with paragraphs (c) (2) and (3) of this section.

* * * * * *

(c) *History of previous violations.* (1) Overall history is based on the number of assessed violations in a preceding 24-month period. Only violations that have been paid or finally adjudicated will be included in determining history. The history of previous violations may account for a maximum of 20 penalty points. For mine operators, the penalty points will be calculated on the basis of the average number of assessed violations per inspection day (VPID) (Table VI). For independent contractors, penalty points will be calculated on the basis of the average number of violations assessed per year at all mines (Table VII).

(2) Excessive history shall be based on overall history from paragraph (c)(1) of this section and the number of repeat violations of the same standard per inspection day (RPID) in a preceding 12-month period. Excessive history is defined as either 20 penalty points for overall history or 0.21 or more repeat violations of the same safety or health standard per inspection day. Only significant and substantial (S&S) violations will be subject to excessive history based on RPID. S&S violations are those that are reasonably likely to result in a reasonably serious injury or illness. Only violations that are paid or finally adjudicated will be included in determining excessive history. Mines having 10 or fewer assessed violations in a preceding 24-month period will be excluded from any excessive history determination. Only citations and orders issued on or after January 1, 1991, shall be considered in determining excessive history under this paragraph.

(3) The percentage increase for excessive history based on overall history is 40 percent. The percentage increase for excessive history based on repeat violations per inspection day is 20 percent for 0.21 through 0.30 repeat violations per inspection day, 30 percent for 0.31 through 0.40 violations per inspection day, and 40 percent for more than 0.40 violations per inspection day. Penalties for violations meeting both excessive history criteria will be increased by 40 percent.

* * * * * *

3. Section 100.4 is revised to read as follows:

§ 100.4 Determination of penalty; single penalty assessment.

An assessment of $50 may be imposed as the civil penalty where the violation is not reasonably likely to result in a reasonably serious injury or illness (non-S&S), and is abated within the time set by the inspector. If the violation is not abated within the time set by the inspector, the violation will not be eligible for the $50 single penalty and will be processed through either the regular assessment provision (§ 100.3) or special assessment provision (§ 100.5). If the violation meets the criteria for excessive history under § 100.3(c)(2) of this part, it will not be eligible for the $50 single penalty and will be processed through the regular assessment provision (§ 100.3) using only the overall history computation under § 100.3(c)(1).

[FR Doc. 92-1803 Filed 1-23-92; 8:45 am]

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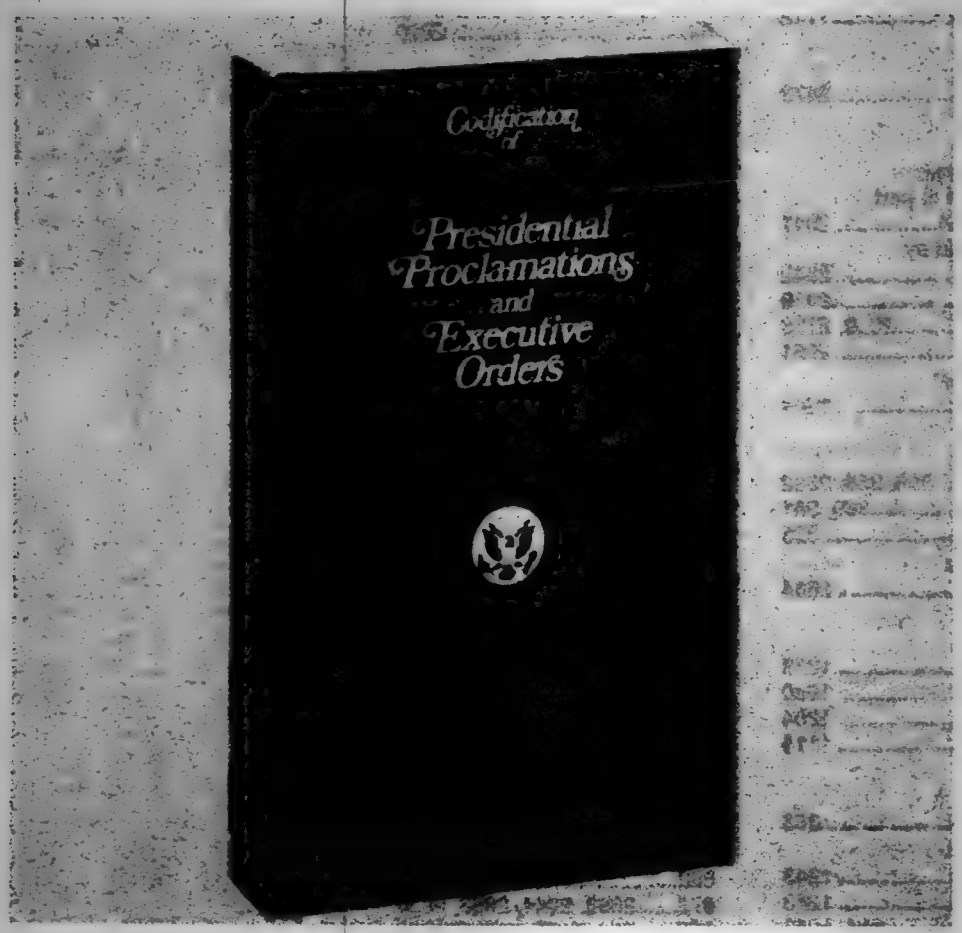

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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
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ACTION: Fi

SUMMARY: Manageme previously implement 303. This s annuitants premiums Health Ben their annui insurance annuitants Retirement to make di premiums.

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Monday, January 27, 1992

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AE08

Federal Employees Health Benefits Program: Direct Payment of FEHB Premiums for Annuitants

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its previously issued interim regulation that implements section 1 of Public Law 101–303. This section of law allows all annuitants to make direct payment of premiums for their Federal Employees Health Benefits (FEHB) coverage when their annuity is too low to cover the insurance premiums. Previously, only annuitants in the Federal Employees Retirement System (FERS) were allowed to make direct payment of their FEHB premiums.

EFFECTIVE DATE: February 26, 1992.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606–0191.

SUPPLEMENTARY INFORMATION: On June 6, 1991, OPM issued an interim regulation in the **Federal Register** (56 FR 25995) that implemented section 1 of (Pub. L. 101–303) by providing that annuitants whose immediate or survivor annuities, excluding annuities of the Thrift Savings Plan, are insufficient to cover the withholdings required for enrollment in a particular FEHB plan may enroll, or remain enrolled, in such a plan by paying the FEHB premiums directly to the retirement system.

The regulation provided that any annuitant whose enrollment has been terminated because his or her annuity was insufficient to cover the withholdings for the plan in which he or she was enrolled may apply to his or her retirement system to be reinstated in any available FEHB plan or option. In addition, any annuitant who can show evidence that he or she changed enrollment to a lower cost option or plan, or to a self-only enrollment because his or her annuity was insufficient to cover the withholdings for the plan in which he or she was enrolled, may apply to his or her retirement system to change his or her enrollment to any available FEHB plan or option in the FEHB Program in which the enrollee's share of the total premium exceeds his or her monthly annuity.

The regulation specified that the annuitant may choose the effective date of the reinstatement or the change of enrollment to be either the 1st day of the 1st pay period that begins after the health benefits registration form is received by the retirement system; or, the later of the date enrollment was terminated or changed, or May 29, 1990. Retroactive reinstatement or change of enrollment is contingent upon payment of appropriate premiums retroactive to the effective date of the reinstatement or the change of enrollment.

OPM received comments from one insurance carrier. The commenter expressed concern about the provision of the regulation which allows annuitants to choose the effective date of the reinstatement or change in enrollment. The commenter believes a potential exists for increased administrative costs resulting from adjusting enrollment records and retroactively paying claims if the annuitant elects a retroactive effective date.

We do not foresee the retroactive enrollment provision of the regulation resulting in significantly increased costs for two reasons. First, based on our experience to date, we do not expect a large number of individuals to choose to retroactively reinstate or change their enrollment. Second, any extra and appropriate administrative costs a carrier might incur would be chargeable to the Federal contract; therefore, the carrier itself would suffer no loss.

The commenter also suggested that specific guidelines be established to ensure that new enrollments are submitted to carriers in a timely manner. We appreciate the carrier's concern regarding prompt submission of new enrollments. Therefore, we are developing guidelines which will make more explicit to appropriate offices the procedures for ensuring the timely processing and reconciliation of enrollments.

The commenter also suggested that guidelines concerning termination of coverage for nonpayment of premiums should be established. Guidelines concerning termination of coverage for nonpayment of premiums are already established. These guidelines are located in paragraph 890.502(f)(4) of title 5 of the CFR. The guidelines were issued in interim and final regulations published in the Federal Register on October 22, 1987 (52 FR 39493) and August 25, 1988 (53 FR 32367), and applied solely to annuitants of the Federal Employees Retirement System. This final regulation amends 5 CFR 890.502 to extend the coverage of the guidelines concerning termination of coverage for nonpayment of premiums to all annuitants.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal annuitants and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is adopting its interim regulations under 5 CFR part 890 published on June 6, 1991 (56 FR 25995), as final rules without change.

[FR Doc. 92–1855 Filed 1–24–92; 8:45 am]
BILLING CODE 6325–01–M

VOL
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-89-204]

United States Standards for Grades of Tomato Catsup

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations and in response to a petition from the Indiana Food Processors Association, Incorporated (IFPA), the Agricultural Marketing Service (AMS) is revising the United States Standards for Grades of Tomato Catsup. This final rule changes the U.S. grade standards for tomato catsup by: (1) Revising the scoring for consistency; (2) replacing dual grade nomenclature with single letter grade designations; (3) providing for use of other methods or devices that are approved by USDA to determine catsup color; and (4) removing § 52.2112, score sheet for tomato catsup. The effect of this revision will be to improve the standards, encourage uniformity in commercial practices, and facilitate the marketing of tomato catsup. As most catsup available to consumers is sold at retail by brand name and not U.S. Grade, this revision is not expected to materially affect the ability of consumers to select from a wide range of catsup with varying consistencies. No significant changes in brand formulae are anticipated. State and Federal food buyers that incorporate U.S. grade standards for quality grades as part of their specifications will, however, be able to purchase somewhat thicker catsup than they now can. Under this revision catsup which flows more than 10.0 centimeters (low consistency) could be commercially marketed but would not be compatible in quality with the U.S. Grades.

EFFECTIVE DATE: February 26, 1992.

FOR FURTHER INFORMATION CONTACT: Harold A. Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 0709, South Building, P.O. Box 96456, Washington, DC 20090-6456, Telephone (202) 720-6247.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more.

There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, (5 U.S.C. 601 et seq.), because it reflects current marketing practices. In addition, use of these standards is voluntary. A small entity may avoid incurring additional economic impact by not employing the standards.

The United States Department of Agriculture (USDA) received a petition from the Indiana Food Processors Association, Incorporated (IFPA), requesting that the U.S. grade standards for tomato catsup be revised to reflect prevailing processing techniques, procedures, and tomato varieties that have provided processors with the ability to produce tomato catsup of a higher consistency (resistance of a fluid to deformation i.e., apparent viscosity). Consumers have demonstrated a preference for such tomato catsup, and IFPA believes that U.S. Grade A should include higher consistency requirements. In their petition, IFPA specified their recommendations for those requirements.

USDA reviewed their petition and contacted IFPA for further clarification regarding their recommended changes. Upon completion of the review, USDA determined that changes in the standards for catsup consistency, as well as other changes involving the grading nomenclature and score sheets, should be proposed.

Large core tomato varies were used for processing when the current U.S. grade standards were last amended in August 1953. These tomatoes are slightly higher in natural tomato solids (i.e., sucrose and other sugars, fruit acids, and mineral salts), but lack the consistency level of coreless tomatoes. Due to the development and increased use of coreless tomatoes by the industry, the texture and viscosity of tomato catsup on the market have changed to a higher consistency.

Tomato catsup consistency is determined by Bostwick consistometer readings, which measure the distance a specific volume of catsup flows in 30 seconds on a level plane. This method reflects the resistance of the catsup to flow and the tendency of the liquid portion of catsup to separate from the insoluble solids portion.

Graders are instructed to assign score points according to the consistometer readings, expressed in centimeters (cm), and the measurement of apparent free liquid. Low consistency catsup flows farther than high consistency catsup. Under the current system outlined in the grading manual, consistency readings ranging from 4.1 to 5.5 centimeters represent optimum consistency and are assigned 25 score points, the highest possible score assigned for U.S. Grade A catsup. Lower score points are assigned relative to how far catsup will flow as compared with this optimum range. For example, tomato catsup with a consistency range of 3.6 to 3.7 centimeters or 6.6 to 7.9 centimeters cannot be assigned a score of more then 23 points. In this example, higher consistency catsup (3.6 cm) scores the same as lower consistency catsup (7.9 cm), falling within the currently defined range.

To conform with the apparent industry practices and consumer preferences. USDA proposed to amend the standards so that higher consistency or "thicker" catsup could be assigned a higher score and lower consistency or "thinner" catsup assigned a lower score. Appropriate modifications to the "Grading Manual for Tomato Catsup" would be made once the grade standards revision became effective.

Under the proposed rule, catsup with "good consistency" ranging from 3.0 to 7.0 centimeters, would be graded U.S. Grade A or B. Within the "good consistency" range, the highest score points would be assigned to the highest consistency (3.0 centimeters) catsup. Catsup falling outside the range for "good consistency," but flowing not less than 2.0 centimeters nor more than 10 centimeters would be graded U.S. Grade C. Within this "fairly good consistency" range, the highest score points would be assigned to catsup approaching "good consistency." Most tomato catsup in the marketplace today would meet the proposed range for U.S. Grade A and B.

The proposed rule would also replace dual grade nomenclature with single letter designations in accordance with recent agency practices. "U.S. Grade A" (or "U.S. Fancy"), "U.S. Grade B" (or "U.S. Extra Standard"), and "U.S. Grade C" (or "U.S. Standard") would become "U.S. Grade A," "U.S. Grade B," and "U.S. Grade C," respectively.

The proposed rule would provide for the use of other methods or devices to determine catsup color. These methods or devices must be approved by USDA and must give results equivalent to the combinations of Munsell color discs for the respective grades.

Finally, the proposed rule would delete § 52.2112, "Score sheet for tomato catsup" from the U.S. grade standards. The score sheet imposes no requirements other than those found in the standards. Reformatting or amending the tomato catsup score sheet is a time-consuming process that can be facilitated by editing the score sheet as a document not incorporated in the grade standards. This change is consistent with the format for recently revised grade standards.

Proposed Rule

The proposal to revise the U.S. Standards for Grades of Tomato Catsup was published in the **Federal Register** on March 28, 1991 (56 FR 12855). The USDA press release announcing the proposed revision was carried by most major newswire services and generated a significant response. One hundred and thirty (130) comments were received regarding the proposal. One hundred and twenty-four (124) comments were from consumers, four comments were from industry members, one comment was from a food processing association, and one comment was from a government procurement agency. Consumers' input was very useful. They commented on the change in scoring consistency (thickness) in catsup and made other significant comments. For the most part, consumers expressed satisfaction with the consistency level of catsup in the marketplace at the present time.

Many consumers indicated that catsup doesn't need to be much thicker and further indicated there is an upper consistency limit after which extracting catsup from the bottle becomes very difficult. Many consumers made other comments indirectly related to the thickness of catsup. Twenty percent of consumers commenting specifically mentioned that the bottle or container should be designed differently, suggesting a wide-mouth opening or other design changes to facilitate removal of the food product from its container. Several consumers indicated that removing thick catsup from narrow neck bottles is difficult for elderly consumers, especially if they suffer from arthritis or similar conditions. A substantial number of consumers specifically indicated a preference for thicker catsup.

One major catsup producer, claiming 50 percent and 70 percent of the market share of retail and food service sales respectively, was fully supportive of all of the recommended changes, stating that the changes should be incorporated in the U.S. Standards for Grades of Tomato Catsup.

Another major catsup producer and a food processors' association supported all of the proposed changes but further recommended that catsup with a consistency lower than 3.0 centimeters not be graded lower than U.S. Grade B. Their comments, which were similarly worded, apparently recommend that high consistency catsup not be graded lower than U.S. Grade B for consistency.

USDA considered these comments and would be willing to consider such a change based on evidence showing that the marketplace would benefit. However, no data were provided to show that the marketplace would benefit from assigning U.S. Grade A & B consistency to all high consistency catsup (0.0–7.0 cm). The Department notes that consumer comments received in response to this Notice of Proposed Rulemaking suggest that there is a point where high consistency catsup is synonymous with excessively stiff catsup.

One tomato catsup producer citing fifty years of experience packing catsup, stated that thickness is not necessarily the result of better ingredients and further stated that catsup should have a good consistency but not be like (tomato) paste. USDA agrees that catsup consistency should not be so thick as to resemble the consistency of tomato paste.

One other tomato catsup manufacturer was concerned about the eliminating the term "U.S. Fancy," claiming that 30 percent of their private label customers use the term rather than "Grade A." This commenter also requested that the minimum Bostwick requirement for consistency be lowered to 2.0 cm or dropped entirely from the grade standards suggesting that catsup products with consistencies below 3.0 cm may suffer a potential economic penalty by not being considered as U.S. Grade A.

It has been USDA policy to simplify grade nomenclature by removing additional terms. This revision replaces dual grade nomenclature with single letter designations in accordance with recent agency practices. "U.S. Grade A" (or "U.S. Fancy"), "U.S. Grade B" (or "U.S. Extra Standard"), and "U.S. Grade C" (or "U.S. Standard") would become "U.S. Grade A," "U.S. Grade B," and "U.S. Grade C," respectively. The Department believes that this change makes U.S. grades clearer and easier to use.

With respect to the manufacturer's second concern, and as noted in earlier comments, while consumers prefer thicker catsup, there is an upper limit where catsup becomes unacceptably thick. We note the absence of any data in the record supporting the marketing utility of catsup with a consistency below 2.0 centimeters. Therefore, the request for this change will not be included in the final rule.

The Defense Personnel Support Center (DPSC), an agency of the Federal Government which buys food for the U.S. Armed Forces, commented on the ability of one major catsup producer to meet the Government agency buyers' existing specifications. DPSC purchase of tomato catsup historically cited U.S. Grade A. If their procurements continue to do so, they would be affected by this rule.

Final Rule

Upon review of all the background information and public comments collected during the rulemaking process, USDA determined that this final rule for the United States Standards for Grades of Tomato Catsup appearing after this preamble should be published in the **Federal Register** and become effective 30 days after publication.

List of subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For the reasons set forth in the preamble, subpart-United States Standards for Grades of Tomato Catsup (7 CFR part 52.2101–52.2112) is amended to read as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087 as amended, 1090 as amended; 7 U.S.C. 1622, 1624.

§§ 52.2101-52.2111 [Amended]

2. In Sections 52.2101–52.2111 all references to "U.S. Grade A or U.S. Fancy," "U.S. Grade B or U.S. Extra Standard," and "U.S. Grade C or U.S. Standard" throughout Sections 52.2101–52.2111 are revised to read "U.S. Grade A," "U.S. Grade B," and "U.S. Grade C," respectively.

3. In Section 52.2106, concluding text is added at the end of paragraph (a) and paragraphs (b), and (c) are revised to read as follows:

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§ 52.2106 Color

(a) * * * Any method or device approved by the USDA (including electric color meters) which gives equivalent results may be used.

(b)(A) and (B) classification. Tomato catsup that possesses a good color may be given a score of 21 to 25 points. "Good color" means that the color is typical of tomato catsup made from well-ripened red tomatoes and which has been properly prepared and properly processed. Such color contains as much or more red than that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color: 65 percent of the area of Disc 1; 21 percent of the area of Disc 2; 14 percent of the area of either Disc 3 or Disc 4, or 7 percent of the area of Disc 3 and 7 percent of the area of Disc 4, whichever most nearly matches the reflectance of the tomato catsup. To receive a score in this classification, tomato catsup, when packed in glass, shall show no discoloration in the "neck" of the bottle.

(c)(C) classification. If the tomato catsup possesses a fairly good color, a score of 17 to 20 points may be given. Tomato catsup that falls into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly good color" means that the color is typical of tomato catsup and contains as much or more red than that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color: 53 percent of the area of Disc 1; 28 percent of the area of Disc 2; 19 percent of the area of either Disc 3 or Disc 4, or 9.5 percent of the area of Disc 3 and 9.5 percent of the area of Disc 4, whichever most nearly matches the reflectance of the tomato catsup.

* * * * *

4. In Section 52.2107, paragraphs (b), (c), and (d) are revised to read as follows:

§ 52.2107 Consistency.

* * * * *

(b)(A) and (B) classification. Tomato catsup that possesses a good consistency may be given a score of 22 to 25 points. "Good consistency" means tomato catsup shows not more than slight separation of free liquid when poured on a flat grading tray, is not excessively stiff, and flows not less than 3.0 centimeters nor more than 7.0 centimeters in 30 seconds at 20 degrees Celsius in the Bostwick consistometer. Within this range, the higher consistency catsup will receive the higher score points.

(c)(C) classification. Tomato catsup that possesses a fairly good consistency may be given a score of 18 to 21 points. Tomato catsup that falls into this classification shall not be graded above U.S. Grade C regardless of the total score for the product. "Fairly good consistency" means tomato catsup may show a noticeable, but not excessive, separation of free liquid when poured on a flat grading tray, is not excessively stiff, and is outside the limits of flow for "good consistency," but flows not less than 2.0 centimeters nor more than 10.0 centimeters in 30 seconds at 20 degrees Celsius in the Bostwick consistometer. Within this range, catsup approaching "good consistency" would receive the higher score points.

(d) (SStd) classification. Tomato catsup that fails to meet the requirements of paragraph (c) of this section may be given a score of 0 to 17 points and shall not be graded above Substandard, regardless of the total score for the product.

* * * * *

§ 52.2112 [Removed and Reserved]

5. Section 52.2112 is removed and reserved.

Dated: January 17, 1992.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 92-1793 Filed 1-24-92; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 730]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from January 24 through January 30, 1992. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 730 (7 CFR part 907) is effective for the period from January 24 through January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in

District 1, Central California, which represented about 79 percent of the total production in 1990–91. District 2 is located in the southern coastal area of California and represented almost 18 percent of 1990–91 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 3 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's revised estimate of 1991–92 production is 64,600 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 32,895 cars during the 1990–91 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee has estimated that about 68 percent of the 1991–92 crop of 64,600 cars will be utilized in fresh domestic channels (43,650 cars), with the remainder being exported fresh (14 percent), processed (16 percent), or designated for other uses (2 percent). This compares with the 1990–91 total of 16, 675 cars shipped to fresh domestic markets, about 51 percent of that year's crop. In comparison to other seasons, 1990–91 production was low because of a devastating freeze that occurred during December 1990.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1991–92 season on June 25, 1991. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 24, 1991, in Visalia, California; and District 2 and 3 on October 1, 1991, in Ontario, California. The Committee subsequently revised its marketing policy at a meeting on October 15, 1991. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Mr. Nissen. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on January 21, 1992, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with 7 members voting in favor, 3 opposing, and 1 abstaining, that 1,700,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1991–92 marketing policy. The recommended amount of 1,700,000 cartons compares to the 1,500,000 cartons specified in the Committee's shipping schedule. Of the 1,700,000 cartons, 83.6 percent or 1,421,200 cartons are allotted for District 1, and 16.4 percent or 278,800 cartons are allotted for District 2. Districts 3 and 4 are not regulated since approximately 70 percent of both Districts' crop to date have been utilized, and handlers would not be able to utilize their allotments.

During the week ending on January 16, 1992, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,480,000 cartons compared with 514,000 cartons shipped during the week ending on January 17, 1991. Export shipments totaled 322,000 cartons compared with 140,000 cartons shipped during the week ending on January 17, 1991. Processing and other uses accounted for 285,000 cartons compared with 1,346,000 cartons shipped during the week ending on January 17, 1991.

Fresh domestic shipments to date this season total 12,287,000 cartons compared with 14,029,000 cartons shipped by this time last season. Export shipments total 1,948,000 cartons compared with 1,849,000 cartons shipped by this time last season. Processing and other use shipments total 2,524,000 cartons compared with 5,703,000 cartons shipped by this time last season.

For the week ending January 16, 1992, regulated shipments of navel oranges to the fresh domestic market were 1,393,000 cartons on an adjusted allotment of 1,252,000 cartons which resulted in net overshipments of 141,000 cartons. Regulated general maturity shipments for the current week (January 17 through January 23, 1992) are estimated at 1,475,000 cartons on an adjusted allotment of 1,468,000 cartons. Thus, overshipments of 7,000 cartons could be carried forward into the week ending on January 30, 1992.

The average f.o.b. shipping point price for the week ending on January 16, 1992, was $9.54 per carton based on a reported sales volume of 1,189,000 cartons. The season average f.o.b. shipping point price to date is $10.12 per carton. The average f.o.b. shipping point price for the week ending on January 17, 1991, was $13.58 per carton; the season average f.o.b. shipping point price at this time last year was $10.08.

The Department's Market News Service reported that, as of January 22, demand for first grade sizes 72–138 and choice fruit is good, with demand reported as moderate for other sizes. The market for first grade sizes 48–56 is lower, with sizes 88–113 slightly lower.

and all others reported as about steady. It was also reported that some harvesting was curtailed due to fog.

Committee members discussed implementing volume regulation at this time, as well as different levels of allotment. Several Committee members commented that they believe demand has improved, and two reported that the market has also improved. One member commented that the sale of small sizes is good. Two Committee members favored an allotment of 2,000 cars, and one favored open movement, while the majority of Committee members favored the issuance of general maturity allotment for Districts 1 and 2.

According to the National Agricultural Statistics Service, the 1990–91 season average fresh equivalent on-tree price for California-Arizona navel oranges was $7.75 per carton, 119 percent of the season average parity equivalent price of $6.52 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1991–92 season average fresh on-tree price is estimated at $6.33 per carton, about 85 percent of the estimated fresh on-tree parity equivalent price of $7.44 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from January 24 through January 30, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1991–92 season was published in the September 30, 1991, issue of the **Federal Register** (56 FR 49432). The Department is currently in the process of analyzing comments received in response to this proposal and, if warranted, may finalize that action this season. However, issuance of this final rule implementing volume regulation for the regulatory week ending on January 30, 1992, does not constitute a final decision on that proposal.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until January 22, 1992, and this action needs to be effective for the regulatory week which begins on January 24, 1992. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1030 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1030 Navel Orange Regulation 703.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from January 24 through January 30, 1992, is established as follows:

(a) District 1: 1,421,200 cartons;

(b) District 2: 278,800 cartons;

(c) District 3: unlimited cartons;

(d) District 4: unlimited cartons.

Dated: January 22, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–1965 Filed 1–23–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 981

[Docket No. FV–92–001FR]

Handling of Almonds Grown in California; Extension of Date for Satisfying Handler Reserve Disposition Obligations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule extends from January 20 to March 10, 1992, the date by which handlers of California almonds must satisfy their 1990–91 crop year reserve disposition obligations. This rule is being issued because of a recent court action that delayed a preliminary injunction hearing regarding the disposition of reserve almonds from January 13 to March 3, 1992.

EFFECTIVE DATE: January 20, 1992.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, MOAB, F&V, AMS, USDA, P.O. Box 96456, Room 2536–S, Washington, DC 20009–6456; telephone: (202) 205–2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), as amended, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,500 producers in the regulated area. Small

agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action relaxes restrictions on almond handlers and will not impose any additional burden or costs on handlers.

The salable, reserve, and export percentages for the 1990–91 almond crop were first established in a final rule published in the **Federal Register** on September 21, 1990 (55 FR 38793). The initial salable percentage was 65 percent, the reserve percentage was 35 percent, and the export percentage was 0 percent. The Board based its recommendations on the then current estimates of marketable supply and combined domestic and export trade demand for the 1990–91 crop year.

On December 3, 1990, the Board unanimously recommended revising the salable and reserve percentage. Subsequently, an interim final rule revising the salable percentage from 65 to 70 percent and revising the reserve percentage from 35 to 30 percent was published in the **Federal Register** on February 11, 1991 (56 FR 5307).

At its February 21, 1991, meeting the Board unanimously recommended to further revise the almond salable and reserve percentages for the 1990–91 crop year from 70 to 80 percent and 30 to 20 percent, respectively. A final rule was published in the **Federal Register** on May 31, 1991 (56 FR 24678).

The Board made its final review of the 1990–91 crop year salable and reserve percentages at its May 10, 1991, meeting. The Board unanimously recommended to increase the salable percentage from 80 percent to 93 percent and to decrease the reserve percentage from 20 percent to 7 percent. A final rule was published in the **Federal Register** on September 30, 1991 (56 FR 49392).

Section 981.66(e) of the order provides that all reserve almonds which remain unsold as of September 1 of the next crop year shall be disposed of by the Board as soon as practicable through the most readily available reserve outlets. The date of September 1 may be extended to a later date by the Secretary, upon recommendation of the Board or other information.

In a mail vote completed on October 19, 1990, the Board unanimously recommended to extend the reserve disposition date to December 31, 1991, for the 1990–91 crop year only. This action was an effort on the part of the Board to give handlers additional time to dispose of their reserve almonds. A final rule was published in the **Federal Register** on March 14, 1991 (56 FR 10793).

Effective December 31, 1991, a final rule extended the disposition obligation date to January 20, 1992 (57 FR 1858, January 16, 1992) to allow all handlers to continue disposing of their reserve almonds after the December 31 deadline. This action was taken because on December 19, 1991, a temporary restraining order (TRO) was granted in U.S. District Court in Fresno, California, preventing the Board from disposing a handler's remaining 1990–91 reserve almonds after the December 31 deadline.

At that time, a hearing for a preliminary injunction on the TRO was scheduled for January 13, 1992. However, that hearing recently was delayed until March 3, 1992. Thus, the January 20, 1992, disposition obligation date must be extended to March 10, 1992, to allow all handlers to continue disposing of their reserve almonds until a decision on the preliminary injunction is reached by the court.

This action also extends from March 31 to June 30, 1992, the date by which handlers are required to submit documentation to the Board verifying their disposition of reserve almonds to eligible outlets. Pursuant to § 981.67, the Board may authorize handlers to act as its agents in disposing of reserve almonds. The agency agreement in place for the 1990–91 crop year specifies the terms and conditions that handlers are required to meet when acting as the Board's agents. The extension of the document filing date to June 30, 1992, will provide handlers adequate time to prepare and submit the required documentation on their reserve dispositions.

Based on the above, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant matter presented and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes restrictions on handlers by extending until March 10, 1992, the date for disposing reserve almonds and (2) this action should be taken as soon as possible so that handlers may plan their operations accordingly.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Paragraph (d) of section 981.467 is revised to read as follows:

§ 981.467 Disposition in reserve outlets by handlers.

* * * * *

(d) For the 1990–91 crop year only, the reserve disposition obligation date is extended until March 10, 1992, and the date for submitting documentation verifying reserve dispositions is extended to June 30, 1992.

Dated: January 17, 1992.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 92–1889 Filed 1–24–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1212

[FV–90–155]

RIN 0581–AA48

Lime Research, Promotion, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Lime Research, Promotion, and Consumer Information Act (Act), approved November 28, 1990, as Subtitle D of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, authorizes the establishment of a national industry-funded lime research and promotion program. On January 30, 1991, the Agricultural Marketing Service (AMS) published an invitation to submit proposals for a Lime Research and Promotion Order. The AMS received an

industry proposal which was published for public comment at 56 FR 23239 in the May 21, 1991, issue of the **Federal Register**.

After evaluating written comments and other available material, the proposed Order is made final.

EFFECTIVE DATES: This final rule is effective January 27, 1992.

ADDRESSES: Jim Wendland, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2533–S, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Jim Wendland at the above address or telephone (202) 720–9916.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Invitation to submit proposals published January 30, 1991 (56 FR 3425).

Proposed Rule—Lime Research, Promotion, and Consumer Information Order published May 21, 1991 (56 FR 23239).

Regulatory Impact Analysis

This final rule was reviewed by the U.S. Department of Agriculture (USDA) in accordance with Departmental Regulation No. 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The most recent available census of agricultural producers indicates that there are 985 farms producing limes in the United States, an estimated 325 of whom will be subject to the Order. Of the latter number, the majority are classified as small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). There are approximately 25 first handlers and 5 importers of limes who are subject to the provisions of this order, the majority of whom are also classified as small entities. The Order requires each lime producer and importer who produces or imports 35,000 pounds or more of fresh limes per year to pay an assessment not to exceed one cent per pound of such fresh limes. The above mentioned first handlers will be required to collect and remit the producers' assessments. Although the maximum assessment collection is expected to total about $2 million annually, the economic impact of a one cent or less assessment per pound on each non-exempt producer or importer will not be significant.

The Order also imposes reporting and recordkeeping burdens on first handlers and importers. It is estimated that this burden will average six hours per year, so its economic impact will not be significant. In addition, the research and promotion program funded by the assessments is expected to benefit lime producers, handlers, and importers by expanding and maintaining new and existing domestic and foreign markets and promoting new uses for limes. Such benefits are expected to outweigh any costs. Therefore, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) the forms, reporting, and recordkeeping requirements included in this final rule were approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board member nominee information sheets that were previously assigned OMB No. 0505–0001. This final rule sets forth the provisions of an Order establishing a nationwide program for lime research and promotion funded by lime producers and importers. Information collection requirements as required by this action and necessary for the implementation of this Order include:

(1) A periodic report by each first handler and importer who handles or imports at least 35,000 pounds of fresh limes per year. The estimated number of respondents is 30, each submitting a maximum of 12 responses per year, with an estimated average reporting burden of one-half hour per handler response and .17 hour per importer response. However, these persons may alternatively prepay assessments annually, requiring only an initial report of anticipated assessments and a final annual report of actual handling;

(2) A refund application form for persons who desire a refund of their assessments. The estimated maximum number of respondents is 200, each submitting 2 responses per year, with an estimated average reporting burden of .25 hour per response;

(3) An exemption application for producers, handlers and importers of less than 35,000 pounds of limes annually to be exempt from assessments and recordkeeping requirements. The estimated maximum number of respondents for this form is 680, each submitting one response per year, with an estimated average burden of .08 hour per response;

(4) A referendum ballot to be used in 1993 and periodically thereafter to indicate whether producers and importers favor continuance of the Order. The estimated maximum number of respondents for this form is 350, each submitting one response approximately every five years or an annual average of 70, with an estimated average reporting burden of .10 hour per response;

(5) A nominee background statement form for Board member and alternate member nominees. The estimated number of respondents for this form is 44 during the first year of Order operations and approximately 16 annually thereafter. Each respondent will submit one response per year, with an estimated average reporting burden of .10 hour per response; and

(6) A requirement to maintain records sufficient to verify reports submitted under the Order. The estimated maximum number of recordkeepers necessary to comply with this requirement is 350, each of whom will have an estimated annual burden of .12 hour.

Background

The Lime Research, Promotion, and Consumer Information Act of 1990 (Subtitle D of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990; Pub. L. 101–624) approved November 28, 1990, hereinafter referred to as the Act, authorizes the Secretary of Agriculture (Secretary) to establish a national lime research and promotion program. The program will be funded by an assessment on producers and importers not to exceed one cent per pound of fresh limes.

The Act provides for the submission of proposals for a Lime Research and Promotion Order by industry organizations or any interested person. The Act requires that such Order provide for the establishment of a Lime Board. The Board will be composed of eleven members, including seven producers, three importers and one public member, with an alternate for each member.

The AMS issued an invitation to submit proposals for an initial Order in the January 30, 1991, issued of the **Federal Register** (56 FR 3425).

In response to the invitation to submit proposals for an Order, one proposal was received from Harold W. Furman, II, on behalf of the proponent industry group for a lime industry research and promotion program. As provided in the Act, on May 21, 1991, the AMS published the proposed Order, with modifications, for comment. The agency received two written comments concerning the proposed Lime Research, Promotion and Consumer Information Order.

One comment, filed by Mr. Furman, did not address any specific Order provisions but supported issuance of the proposed Order.

The other comment, filed by Mr. Thomas Y. Palmer, president of the California Association of Lime Growers, Fallbrook, California, objected primarily to (1) the implementation of the Order without prior hearings and a general vote of lime producers; (2) the inclusion of California in the Order; (3) the level of representation by California on the Board; (4) a portion of the Regulatory Flexibility Act statement in the proposed rule; (5) the estimate of the amount of paperwork that the proposed Order would require; (6) the absence of exporters on the Board; (7) the lack of an exemption for exported limes; (8) the lack of provisions for grades and standards; and (9) the assessment to be paid to the Lime Board, on the basis that California lime growers currently pay an assessment to the California Citrus Research Council.

The first point must be rejected as it is inconsistent with the requirements of the Act, which specifies that the Secretary shall issue an Order after notice and opportunity for public comment is given, which the Secretary has done. Also, the Act specifies that the initial referendum to determine whether issuance of the Order is favored by a majority of the eligible producers, producer-handlers and importers voting therein, shall be conducted within two years after the Secretary first issues such an Order.

Mr. Palmer contends that California should either be excluded from the Order or should have more members on the Board because it has more growers than Florida. This exclusion of California from the Order would be inconsistent with the requirements of the Act. District 2, which includes California, has less than 15 percent of U.S. fresh market lime production and thus representation by one member on the seven-member Lime Board is appropriate. Therefore, this exception is denied.

Mr. Palmer contends that under the Regulatory Flexibility Act statement, although most of the California lime producers and handlers may be considered to be comparatively small operations, many would exceed the minimum quantity of 35,000 pounds per year to be exempt under the Order and would therefore be affected by the Order provisions. Even if some of the producers and handlers are not exempt, the economic impact of such paperwork will not be significant and the benefits of the program are expected to outweigh any costs. Therefore, this exception is denied.

Mr. Palmer disagrees with the amount of paperwork estimated to be required under the Order. The proponents contend that much of the information needed under the Order is already being collected for normal business purposes. The time estimates are based on the time needed to transfer information from existing business records to the forms which will be required by the Order. Mr. Palmer's comment mentions one person's average of one bin per day or at least 200 per year, each requiring at least two pieces of paperwork. Actually no separate report would be required on each bin, rather a monthly report of the total quantity of fresh limes handled would be submitted by non-exempt first handlers or importers. Therefore, this exception is denied.

Mr. Palmer contends that exporters should not be excluded from the Board. This is inconsistent with the Act, which specifies that the only industry members on the Board shall be producers and importers who are not exempt from assessments. Therefore this exception is denied.

Mr. Palmer's complaint about the lack of an exemption for exported limes is also denied because the Act does not provide authority to exempt exported limes.

Mr. Palmer's objection to the lack of grades and standards in the proposed Order and a lack of credit for assessments currently being paid to a California research program are also denied because they are inconsistent with the Act. Section 1952(c) of the Act specifies "that nothing in this subtitle shall be construed to require quality standards for limes * * *." Similarly, on Mr. Palmer's exception regarding research, no exemption or reduction of the Order assessment is provided for in the Act simply because the limes may also have been assessed under some other program involving research.

Section Highlights

The provisions of this Order are the same as those of the proposed Order except for minor modifications for clarity and the removal of duplicative language.

Sections 1212.1–1212.20 of the Order define certain terms which are used in the Order. Sections 1212.30–1212.40 include provisions relating to the establishment, membership, nomination, appointment, term of office, procedure, reimbursement, powers and duties of the Lime Board, which is the body organized to administer the Order, subject to the oversight of the Secretary. Sections 1212.50–1212.51 concern research, promotion and consumer education. Section 1212.60 authorizes the Board to incur expenses necessary for the performance of its duties and recommend an annual budget. Section 1212.61 authorizes establishing an operating monetary reserve. Sections 1212.62–1212.68 authorize the collection of assessments, specify who pays them and how, and set forth procedures for the handling of a one-time refund of assessments. The maximum assessment rate is one cent per pound of non-exempt fresh limes produced domestically or imported into the United States. The assessment sections also outline the procedures to be followed by first handlers and importers for remitting assessments; establish a 10 percent late payment charge and also a one and one-half percent per month interest charge for late payments of assessments; and provide for refunds of assessments paid if the initial continuance referendum fails. Section 1212.69 authorizes reports of disposition of exempted limes. Sections 1212.70–1212.75 concern reporting and recordkeeping requirements for persons subject to the Order, and provide that all information obtained by the Board or the Department from records and reports required by the Order shall be kept confidential. Sections 1212.80–1212.89 are miscellaneous provisions including the right of the Secretary; personal liability of Board members and employees; influencing governmental actions; termination of the Order; separability of Order provisions; handling of intellectual property such as patents arising from funds collected by the Board; amendments to the Order; and a listing of OMB control numbers.

After consideration of all relevant material presented, it is found that the Order, and all the terms and conditions thereof, tends to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the Lime Board, the administrative agency provided for in the Order requires a lengthy time period to be nominated, selected, and start to function. The lime industry has requested that the program become operational as soon as possible so that promotional and other activities can be in place as soon as possible. Before the program can begin, it will be necessary for the Board to recommend a budget of anticipated expenses to the Department for review, modification or approval. Also, it will be necessary for the Board

to hire a staff and establish an office to carry out the needed administrative functions. Further, interested persons were afforded a 30-day comment period, and no useful purpose would be served in delaying the effective date. Therefore, this final rule is effective on the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1212

Administrative practice and procedure, Advertising, Limes, Marketing agreements, Reporting and recordkeeping requirements.

Chapter XI of title 7 is hereby amended by adding part 1212 to read as follows:

PART 1212—LIME RESEARCH, PROMOTION, AND CONSUMER INFORMATION

Subpart A—Lime Research, Promotion, and Consumer Information Order

Definitions

Secs.
1212.1 Secretary.
1212.2 Act.
1212.3 Order.
1212.4 Board.
1212.5 Lime.
1212.6 Fresh market.
1212.7 Producer.
1212.8 Handle.
1212.9 Handler.
1212.10 Importer.
1212.11 Producer-Handler.
1212.12 Person.
1212.13 Promotion.
1212.14 Research.
1212.15 Marketing.
1212.16 Consumer information.
1212.17 State and United States.
1212.18 District.
1212.19 Fiscal period and marketing year.
1212.20 Programs and projects.

Lime Board

1212.30 Establishment and membership.
1212.31 Nomination.
1212.32 Appointment of producer and importer members.
1212.33 Public member nominations and selection.
1212.34 Term of office.
1212.35 Acceptance.
1212.36 Vacancies.
1212.37 Procedure.
1212.38 Compensation and reimbursement.
1212.39 Powers.
1212.40 Duties.

Research, Promotion, and Consumer Information

1212.50 Policy and objective.
1212.51 Programs and projects.

Expenses and Assessments

1212.60 Budget and expenses.
1212.61 Operating reserve.
1212.62 Determination of handler.
1212.63 Importer.
1212.64 Assessments.
1212.65 Payment of assessments.
1212.66 Failure to report and remit.
1212.67 Refunds.
1212.68 Exemption from assessment.
1212.69 Reports of disposition of exempted limes.

Reports, Books, and Records

1212.70 Reports.
1212.71 Books and records.
1212.72 Retention period for records.
1212.73 Availability of records.
1212.74 Confidential treatment.
1212.75 Confidential books, records, and reports.

Miscellaneous

1212.80 Right of the Secretary.
1212.81 Personal liability.
1212.82 Influencing governmental actions.
1212.83 Suspension or termination.
1212.84 Proceedings after termination.
1212.85 Effect of termination or amendment.
1212.86 Separability.
1212.87 Patents, copyrights, inventions, product formulations, and publications.
1212.88 Amendments.
1212.89 OMB control numbers.

Authority: The Lime Research, Promotion, and Consumer Information Act of 1990; 7 U.S.C. 6201 *et seq.*

Subpart A—Lime Research, Promotion, and Consumer Information Order

Definitions

§ 1212.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1212.2 Act.

Act means the Lime Research, Promotion, and Consumer Information Act, Subtitle D of Title XIX, of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101–624, and any amendments thereto.

§ 1212.3 Order.

Order means this Lime Research, Promotion, and Consumer Information Order issued by the Secretary pursuant to the Act.

§ 1212.4 Board.

Board means the administrative body referred to as the Lime Board, hereinafter established pursuant to § 1212.30.

§ 1212.5 Lime.

Lime means the fruit of a *citrus aurantifolia* tree for the fresh market.

§ 1212.6 Fresh market.

Fresh market means the demand for whole limes not preserved by any recognized commercial process including canning, freezing, dehydration or fermentation, or converted into juice. It does not include the by-products of limes or products made with the by-products of limes.

§ 1212.7 Producer.

Producer means any person who produces limes in the United States for sale in commerce.

§ 1212.8 Handle.

Handle means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause limes to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of limes by the producer thereof to a handler for grading, sizing, packaging or processing.

§ 1212.9 Handler.

Handler means any person (except a common or contract carrier of limes owned by another person) who handles limes, including a producer-handler who handles limes of producer-handler's own production. For the purposes of this subpart, the term *handler* means the *first* person who performs the handling functions.

§ 1212.10 Importer.

Importer means any person who imports limes into the United States.

§ 1212.11 Producer-Handler.

Producer-Handler means any person who is both a producer and handler of limes.

§ 1212.12 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

§ 1212.13 Promotion.

Promotion means any action taken by the Board, pursuant to the Act, to present a favorable image for limes to the public with the express intent of improving the competitive position of limes in the marketplace and stimulating sales of limes, and shall include, but not be limited to, paid advertising.

§ 1212.14 Research.

Research means any type of systematic study or investigation, and/or the evaluation of any study or investigation relating to the use and nutritional value of limes, and designed to advance the image, desirability,

marketability, production, or quality of limes.

§ 1212.15 Marketing.

Marketing means the sale or other disposition of limes in commerce.

§ 1212.16 Consumer information.

Consumer information means any action taken to provide information to, and broaden the understanding of, the general public on the usage, nutritional attributes, and care of limes.

§ 1212.17 State and United States.

State and *United States* means any or all of the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1212.18 District.

District means the applicable one of the following described subdivisions of the production area, or other subdivisions as may be prescribed pursuant to § 1212.40(o):

(a) *District 1* shall include the States east of the Mississippi River, including Puerto Rico and the District of Columbia.

(b) *District 2* shall include the States west of the Mississippi River.

§ 1212.19 Fiscal period and marketing year.

Fiscal period and *marketing year* mean the 12-month period from April 1 to the following March 31 or such other period which may be recommended by the Board and approved by the Secretary.

§ 1212.20 Programs and projects.

Programs and *projects* mean those research, development, advertising, or promotion programs or projects developed by the Board pursuant to § 1212.51.

Lime Board

§ 1212.30 Establishment and membership.

(a) There is hereby established a Lime Board, hereinafter called the *Board*. The Board shall be composed of 11 members to administer the terms and provisions of this part. Seven of the members shall be producers not exempt from paying assessments under the Act, three of the members shall be importers not exempt from paying assessments under the Act, and one shall be a public member. Each member shall have an alternate who shall have the same qualifications as the member for whom such person is an alternate.

(b) Membership on the Board shall be determined according to production and import volumes as set forth in the USDA Crop Production Annual Summary Reports and data on imports as reported by the Bureau of the Census. Therefore, initially six of the seven producer members shall be producers of limes in District 1, and one producer member shall be a producer of limes in District 2. One of the three importer members shall be an importer of limes in District 1, and two importer members shall be importers of limes in District 2. The public member shall be selected at large.

(c) After two years, the Board shall review the districts to determine whether realignment of the districts or reapportionment of members among the districts is necessary and at least every five years thereafter the board shall make such a review. In making such review, it shall give consideration to:

(1) For the most recent three years, USDA production and import reports or Board assessment reports if USDA production reports are unavailable;

(2) Shifts and trends in quantities of limes produced and imported; and

(3) Other relevant factors.

As a result of this review, the Board may recommend realigning the districts or reapportioning membership among districts subject to the approval of the Secretary. Any such realignment or reapportionment shall be recommended by the Board to the Secretary at least six months prior to the date of the call for nominations and shall become effective at least 30 days prior to such date.

§ 1212.31 Nomination.

The Secretary shall appoint the members of the Board from nominations to be made in the following manner:

(a) Except for the member and alternate member who represent the general public, nominations of members to the Board shall be submitted to the Secretary for selection as soon as practicable after the effective date of this subpart. In subsequent years, nominations of members to the Board shall be submitted to the Secretary by the Board by August 1. Nominations may be made by means of group meetings of producers and importers: *Provided*, That nominations of producers and importers may be conducted by mail ballot.

(b) There shall be two individuals nominated for each vacant position who shall meet the qualifications as set forth in § 1212.30.

(c) In the event nominations for members and alternate members of the Board are not filed pursuant to, and within the time specified in, this section, the Secretary may select such members and alternate members without regard to nominations, but selection shall be on the basis of the representation provided for in § 1212.30.

(d) Any producer or importer who desires to be represented at a particular nomination meeting may authorize an agent and participate through such agent in the nomination and election of nominees for producer or importer members and alternate members to fill positions on the Board as provided in § 1212.30(a), shall submit to the Board, prior to such meeting but not later than seven days preceding the meeting, a written statement containing the following:

(1) Name of producer or importer;

(2) Mailing address;

(3) Place or location of business;

(4) Volume of business (how many pounds of limes produced or imported); and

(5) Authorization, including the name and address, of the person who is to represent said producer or importer at the nomination meeting.

(e) Producers or importers who have not filed a statement as prescribed in paragraph (d) of this section must be present at the nomination meeting and cast their own votes for them to be counted in connection with the nomination and election of nominees.

(f) Notwithstanding that a producer or importer has authorized an agent to cast his or her vote as specified in paragraph (d) of this section, such producer or importer may appear at the nomination meeting and cast his or her vote in person to the exclusion of such agent.

(g) Only producers may participate in the nomination and election of nominees for producer members and their alternates. Each producer shall be entitled to cast only one vote for each producer nominee. No producer shall participate in the election of nominees in more than one district in any one fiscal period.

(h) Only importers may participate in the nomination and election of nominees for importer members and their alternates. Each importer shall be entitled to cast only one vote for each importer nominee. No importer shall participate in the election of nominees in more than one district in any one fiscal period. If a person both produces and imports limes, such person shall elect the one group—either producer or importer—that individual will participate in for nominating purposes.

(i) A chairperson of each nomination meeting shall be elected by a majority vote of the eligible voters in attendance.

(j) A typed copy of the minutes of each nomination meeting shall be provided by the Board to the Secretary in a manner that will ensure receipt within 14 calendar days of such meeting's completion.

(k) In the event of a mail ballot, all qualified persons interested in serving on the Board or who are interested in nominating another person to serve on the Board shall submit to the Board in writing such information as name, mailing address, number of pounds produced, marketed, handled, or imported, or other information as may be required, in order to place that person on the ballot: *Provided*, That in the case of nominating the initial Board, the Secretary shall mail out the ballots and cause press releases concerning the distribution of ballots and pertinent information on balloting to be distributed to the media in the lime producing and importing areas. These nominations shall be sent directly to the Secretary.

Subsequently, nominations for Board positions must be received by the Board at least three months before the ballot is issued. The Board shall mail ballots to all producers and importers of record. Distribution of ballots shall be announced by press releases furnishing pertinent information on balloting, issued by the Board through the media, including newspapers and other publications having general circulation in the lime producing and importing areas.

§ 1212.32 Appointment of producer and importer members.

From the nominations made pursuant to § 1212.31, or from other qualified persons, the Secretary shall appoint the seven producer members of the Board, the three importer members of the Board, and an alternate for each such member.

§ 1212.33 Public member nominations and selection.

The public member shall be nominated by the producer members and importer members of the Board and appointed by the Secretary. In the event the Board fails to nominate a public representative, the Secretary may appoint such a member. The public member shall have no direct financial interest in the commercial production or marketing of limes except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall nominate two individuals for the public member position. Voting for public member nominees shall require a quorum of the Board and shall be on the basis of one vote per Board member. Election of nominees shall be on the basis of a simple majority of those present and voting.

§ 1212.34 Term of office.

(a) The members of the Board and their respective alternates shall serve concurrent terms of office and for terms of three years, except the members and their respective alternate members of the initial Board shall be designated for, and shall serve terms as follows: Two producer members from District 1 and one importer member from District 2 shall be appointed for a term of one year; two producer members from District 1, one importer member from District 1, and the public member shall be appointed for a term of two years; and two producer members from District 1, one producer member from District 2, and an importer member from District 2 shall be appointed for a term of three years.

(b) The term of office for the initial Board shall begin immediately following appointment by the Secretary. Time in the interim period, from appointment until the term begins pursuant to this section, shall not count toward the initial "term of office." In subsequent years, the term of office shall begin on January 1 or such other period which may be approved by the Secretary.

(c) Board members and alternates shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member shall serve more than two successive terms: *Provided*, That those members serving initial terms of one year may serve two additional consecutive three-year terms.

§ 1212.35 Acceptance.

Each person nominated to serve on the Board shall, prior to selection as a member or alternate member of the Board, qualify by filing with the Secretary a written acceptance indicating that person's willingness to serve.

§ 1212.36 Vacancies.

(a) In the event any member or alternate member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds that the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

(c) To fill any vacancy caused by the failure of producers and importers to nominate individuals for appointment, or if any person selected as a member of the Board fails to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1212.31 except that said nomination and replacement shall not be required if the unexpired term of office is less than six months. In the event of failure by the Board to provide nominees for such vacancies, the Secretary may appoint other eligible persons.

(d) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member until a successor for such member is selected and has qualified.

§ 1212.37 Procedure.

(a) Six members, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided*, That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may act upon the concurring votes of a majority of its members by mail, telephone, or by other means of communication: *Provided*, That each proposition is explained accurately, fully, and substantially identically to each member. All telephone votes shall be promptly confirmed in writing and recorded in the Board minutes.

(c) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with the By-Laws, when established by the Board.

§ 1212.38 Compensation and reimbursement.

Board members shall serve without compensation but shall be reimbursed for travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons employed intermittently in Government service under section 5703 of title 5, United States Code, which are incurred by them

in the performance of their duties as Board members.

§ 1212.39 Powers.

The Board shall have the following powers subject to § 1212.83:

(a) To administer the provisions of this Order in accordance with its terms and conditions;

(b) To recommend to the Secretary rules and regulations to effectuate the terms and conditions of this Order;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this Order;

(d) To recommend to the Secretary amendments to this Order; and

(e) To invest, pending disbursement under a program, plan, or project, funds collected only in: obligations of the United States or any agency thereof; any interest-bearing account or certificate of deposit of any bank that is a member of the Federal Reserve System; or obligations fully guaranteed as to principal and interest by the United States.

(1) All obligations must be fully guaranteed by the United States and must be less than one year.

(2) All interest-bearing accounts or Certificates of Deposit (CD) must be risk-free and short-term. *Risk-free* requires all accounts and CD's to be fully insured or collateralized with Federal Government securities. *Short-term* requires that all accounts and CD's be less than one year.

(3) In the absence of collateral, accounts and CDs shall be established at financial institutions insured by the Federal Deposit Insurance Corporation, and each account, in the aggregate, must be less than $100,000.

(4) Accounts and CD's exceeding the $100,000 insurance coverage level must be fully collateralized by the financial institution. Collateral must be pledged before funds are sent to the institution. Only those securities specified in Treasury Department Circular No. 176 are acceptable as collateral. Collateral must be pledged at face value. Collateral must be segregated in the Board's name to assure that collateral is not double pledged. Collateral may be held at the local Federal Reserve Bank or at another depository.

§ 1212.40 Duties.

The Board shall, among other things, have the following duties:

(a) To meet, organize, and select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of board members; to adopt such rules for the conduct of its business as it may deem advisable; and to establish working committees of persons other than Board members;

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handing of Board funds through fidelity bonds;

(c) To prepare and submit for the Secretary's approval, prior to the beginning of each fiscal period, a recommended rate of assessment and a fiscal period budget of the anticipated expenses in the administration of this Order, including the probable costs of all programs and projects;

(d) To develop programs and projects, which must be approved by the Secretary before becoming effective, and enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds collected pursuant to this Order;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(f) To prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board;

(g) To cause the books of the Board to be audited by an independent certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary or as the Secretary may request. The report of each such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers and importers;

(h) To investigate violations of the Order and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the Order;

(i) To periodically prepare, make public and make available to producers and importers reports of its activities;

(j) To provide the Secretary with the same notification, written or oral, as provided to Board members concerning all conference calls and meetings, including executive, advisory, subcommittee, and other meetings related to Board matters, and grant access to all such calls and meetings;

(k) To act as intermediary between the Secretary and any producer or importer;

(l) To furnish the Secretary such information as the Secretary may request;

(m) To notify lime producers, producer-handlers, and importers of all Board meetings through press releases or other means;

(n) To appoint and convene, from time to time, working committees drawn from producers, handlers, producer-handlers, importers, exporters and the public to assist in the development of research and promotion programs for limes;

(o) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the Board: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in lime production and/or importation within the districts and the production area;

(p) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of programs or projects to effectuate the declared purpose of the Act;

(q) To prepare and make public, monthly, a report of its activities conducted, and an accounting for funds received and expended. Financial statements for each month shall be submitted to the Secretary and shall include at least (1) a balance sheet and (2) an expense budget showing expenditures during the accounting period, year to date expenditures, and an unexpended budget. Upon request, a summary of checks issued by the Board is to be made available. Such financial statements should be submitted within 30 days after the end of each month. An annual report should be submitted within 90 days after the end of the fiscal year.

(r) To follow the Department's equal opportunity and civil rights policies.

Research, Promotion, and Consumer Education

§ 1212.50 Policy and objective.

It shall be the policy of the Board to carry out an effective and coordinated program of research, development, advertising, and promotion in order to:

(a) Strengthen the competitive position of limes in the marketplace;

(b) Maintain and expand existing domestic and foreign markets;

(c) Develop new or improved markets;

(d) Educate the general public; and

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(e) Insure equitable treatment of domestically produced and imported limes.

It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the lime industry.

§ 1212.51 Programs and projects.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for consumer education, advertising and other sales promotion of limes designed to strengthen the position of limes in the marketplace and to maintain, develop, and expand markets for limes;

(b) The establishment and carrying out of research and development projects and studies to the end that the acquisition of knowledge pertaining to limes or their consumption and use may be encouraged or expanded, or to the end that marketing or other utilization of limes may be encouraged, expanded, improved, or made more efficient: *Provided*, That quality control, grade standards, supply management programs or other programs that would limit the right of the individual lime producer to produce limes shall not be conducted under, or as a part of, this Order;

(c) The development and expansion of lime sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any reference to private brand names or use false or unwarranted claims on behalf of limes or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each program or project authorized under this Order to insure that each program or project contributes to an effective and coordinated program of research and promotion and submission of such evaluation to the Secretary. If the Board or the Secretary finds that a program or project does not further the purposes of the Act, then the Board or the Secretary shall terminate such program or project; and

(f) The Board may, with the approval of the Secretary, enter into contracts or make agreements for the development and carrying out of research and promotion and pay for the costs of such contracts or agreements with funds collected pursuant to § 1212.64. Contractors and subcontractors who receive funds allocated by the Board shall be subject to the provisions of this part. All records of such contractors and subcontractors applicable to contracts entered into by the Board are subject to audit by the Secretary.

Expenses and Assessments

§ 1212.60 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this Order. Each budget shall include a plan which shall include the probable costs of research, development, advertising, consumer information, and promotion of limes. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1212.61. The budget shall take effect on approval by the Secretary.

(b) Each budget shall include (1) a statement of objectives and strategy for each program, plan, and project, including reasons for significant changes from the preceding budget period, (2) a summary of anticipated revenue, with comparative data for at least one preceding year, (3) a summary of proposed expenditures by each program, plan, and project, with comparative data for at least one preceding year, and (4) staff and administrative expense breakdown, with comparative data for at least one preceding year. Comparative data reporting will not apply to the initial budget.

(c) The Board is authorized to incur such expenses for research, development, advertising, or promotion of limes, such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, and any referendum and administrative costs incurred by the Department of Agriculture. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1212.64 and from other funds available to the Board under this Order.

(d) The Board is hereby authorized to borrow money for the payment of administrative expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

(e) The Board shall reimburse the Department of Agriculture for referenda and administrative costs incurred by the Department with respect to the Order: *Provided*, That in the case of referenda, expenses shall not include the salaries of Government employees. The Board shall pay those costs incurred by the Department for the conduct of Departmental duties under the Order as determined periodically by the Secretary. The Department will bill the Board quarterly and payment shall be due promptly after the billing of such costs. Funds to cover such expenses shall be paid from assessments collected pursuant to § 1212.64 and from other funds available to the Board under this Order.

(f) The Board may accept voluntary contributions from any person not subject to assessments under this Order. Furthermore, such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use. Such contributions shall be subject to the same fiscal, budget and audit controls as other funds of the Board.

(g) Any amendment to an approved budget shall be subject to approval by the Secretary, including shifting of funds from one program, plan, or project to another, except such shifts that are consistent with governing By-laws need not have prior approval by the Secretary.

§ 1212.61 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided*, That the funds in the reserve shall not exceed approximately one fiscal period's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

§ 1212.62 Determination of handler.

Unless otherwise provided in this section, the assessments on domestic fresh market limes shall be paid by first handlers. The first handler is the person who initially performs a handling function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the limes in the current of commerce.

(a) The following examples are provided to aid in the identification of first handlers:

(1) A producer grades, packs, and sells limes of that producer's own production to a handler. In this instance, it is the handler, not the producer, who places the limes in the current of commerce. The handler is responsible for payment of the assessments.

(2) A producer packs and sells limes of that producer's own production from the orchard, or storage, to a trucker, retail or wholesale outlet, or other buyer who is not a handler of limes. The producer places the limes in the current of commerce and is the first handler.

(3) A producer delivers orchard-run limes of that producer's own production to a handler for preparation for market and entry into the current of commerce. The handler, in this instance, is the first handler, regardless of whether the handler subsequently handles such limes for the account of the handler or for the account of the producer.

(4) A producer delivers orchard-run limes of that producer's own production to a handler for preparation for market and return to the producer for sale. The producer in this instance, is the first handler, except when the producer subsequently sells such limes directly to a handler.

(5) A producer delivers orchard-run limes of that producer's own production to a handler who takes title to limes. The handler who purchases such limes from the producer is the first handler.

(6) A producer supplies limes to a cooperative marketing association which sells or markets the limes and makes an accounting to the producer, or pays the proceeds of the sales to the producer. In this instance, the cooperative marketing association becomes the first handler upon physical delivery of the limes to such cooperative.

(7) A handler purchases limes from a producer's orchard for the purpose of preparing such limes for market or for transporting such limes to storage for subsequent handling. The handler who purchases such limes from the producer is the first handler.

(8) A broker receives limes from a producer and sells such limes in the broker's company name. In this instance, the broker is the first handler, regardless of whether the broker took title to such limes.

(9) A broker, without taking title or possession of limes, sells such limes in the name of the producer. In this instance, the producer is the first handler.

(10) A processor purchases limes from the producer thereof, but sells them in the fresh market. In this instance, the processor is the first handler even though the producer may have graded, packed or otherwise handled such limes.

(b) In the event of a handler's death, bankruptcy, receivership, or incapacity to act, the representative of the handler or the handler's estate shall be considered the first handler of the limes for the purpose of this subpart.

(c) In no event shall a handler who first handles fresh limes going to the processed market be considered a first handler.

§ 1212.63 Importer.

Each shipment of limes imported into the United States for the fresh market is subject to assessment under this Order. Such assessment shall be paid by the importer of such limes at the time of entry into the United States. Any person who imports limes into the United States as principal, agent, broker, or consignee for limes produced outside the United States and imported into the United States shall be the importer.

§ 1212.64 Assessments.

(a) Each first handler and importer shall pay to the Board, upon demand, such assessments on fresh market limes as may be approved by the Secretary pursuant to § 1212.60. Such assessments shall be the amount established by the Secretary pursuant to paragraph (c) of this section.

(b) Except as provided in § 1212.68 and in paragraphs (d) and (e) of this section, the first handler shall be responsible for the collection of such assessment from the producer and payment thereof to the Board. The first handler shall maintain separate records for each producer's limes handled, including those limes produced by such handler.

(c) The assessment on fresh market limes shall be levied at a rate recommended by the Board and fixed by the Secretary: *Provided*, That the assessment shall not exceed $0.01 per pound of limes.

(d) The importer of imported limes for the fresh market shall pay the assessment to the Board at the time of entry of such limes into the United States.

(e) Producer-handlers shall pay to the Board the assessment on the limes for which they act as first handler.

(f) Assessments shall be paid to the Board as provided in § 1212.65(c).

(g) The Board is authorized to accept advance payments of assessments by handlers, importers, or producer-handlers that shall not be credited toward any amount for which the handlers, importers or producer-handlers may become liable. The Board shall not be obligated to pay interest on such advance payments.

(h) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

(i) The U.S. Customs Service (USCS) will collect assessments on all limes at the time of entry and forward such assessments as per an agreement between the USCS and the USDA. Any importer or agent who is exempt from payment of assessments pursuant to § 1212.68 (a) and (b) of the Order may apply to the Board for reimbursement of such assessments paid.

§ 1212.65 Payment of assessments.

(a) *Time of payment.* The assessment shall become due at the time the first handler handles the limes for non-exempt purposes.

(b) *Responsibility for payment.* (1) First handlers and importers are responsible for the prompt payment of assessments. A handler may collect a producer's assessment from the producer, or deduct such producer's assessment from the proceeds paid to the producer or whose limes the producer assessment is made. Any such collection or deduction of producer assessments shall be made not later than the time when the first handler handles the limes.

(2) Importers shall be responsible for prompt payment of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

(c) *Payment direct to the Board.* (1) Except as provided in paragraph (e) of this section, each handler shall remit the required assessments, pursuant to § 1212.64 of this part, directly to the Board not later than 20 days after the end of the month such assessments are due. Remittance shall be by check, draft, or money order payable to the Lime Board, and shall be accompanied by a report, preferably on Board forms, pursuant to § 1212.70. To avoid late payment charges, the assessments must be mailed to the Board and postmarked within 20 days after the end of the month such assessments are due.

(2) Each handler shall file with the Board a report pursuant to § 1212.70 for each month that assessable limes were handled. All handler reports shall contain at least the following information:

(i) The handler's name, address, and telephone number;

(ii) The date of the report (which is also the date of payment to the Board);

(iii) The period covered by the report;

(iv) The total quantity of limes handled during the reporting period;

(v) The date of the last report remitting assessments to the Board; and

(vi) A listing of all persons for whom the handler handled limes, their addresses, pounds handled, and total assessments remitted for each producer. In lieu of such a list, the handler may substitute copies of settlement sheets given to each person or computer

generated reports, provided such settlement sheets or computer reports contain all the information listed above.

(vii) The name, address, and pounds handled for each person claiming exemption from assessment.

(viii) If the handler handles limes for persons engaged in the production of less than 35,000 pounds of limes, the report shall indicate the name and address of each such person and the quantity of limes handled for each such person.

(3) Each importer shall file with the Board a monthly report containing at least the following information:

(i) The importer's name, address, and telephone number or facsimile machine number.

(ii) The quantity of limes entered or withdrawn for consumption into the United States.

(iii) The amount of assessments paid on limes entered or withdrawn for consumption into the United States to the U.S. Customs Service at the time of entry or withdrawal for consumption.

(iv) The amount of any limes on which the assessment was not paid to the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

(4) The words "final report" shall be shown on the last report at the end of each fiscal period.

(5) *Prepayment of assessments.* (i) In lieu of the monthly assessment and reporting requirements of paragraph (b) of this section, the Board may permit producer-handlers and handlers to make advance payments of their estimated assessments for the season to the Board prior to the actual determination of assessable limes. Producer-handlers or handlers shall provide an initial report estimating assessable limes. If any such estimate appears unreasonably low, the Board may request additional information to justify such estimate. If, after reviewing any additional information, the Board concludes that such estimate is not reasonable, it shall notify the producer-handler or handler that such individual may not prepay such assessments. The Board shall not be obligated to pay interest on any advance payment.

(ii) Producer-handlers or handlers using such procedures shall provide a final annual report of actual handling and remit any unpaid assessments not later than 20 days after the end of the last month of the such handler's fiscal period.

(iii) Producer-handlers or handlers using such procedures shall, after filing a final annual report, receive a reimbursement of any overpayment of assessment.

(iv) Producer-handlers or handlers using such procedures shall, at the request of the Board to verify a producer's refund claim under § 1212.67, provide the Board with a handling report on any and all producers for whom the handler has provided handling services but has not yet filed a handling report with the Board.

(v) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board on request.

(d) *Late payment charges and interest.* (1) A late payment charge shall be imposed on any importer who fails to make timely remittance of assessments due or any handler who fails to make timely remittance to the Board of the total producer and producer-handler assessments for which any such handler is liable. Such late payment charge shall be imposed on any assessments not received before the thirtieth day after the end of the month such assessments are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 20 days after the end of the month such assessments are due.

(2) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including the late payment charge and any accrued interest, will be added to any accounts delinquent beyond 30 days after the twentieth day after the end of the month such assessments are due. Such interest will continue monthly until the outstanding balance is paid to the Board.

(e) *Payment through cooperative agency.* The Board may enter into agreements, subject to approval of the Secretary, authorizing other organizations to collect assessments in its behalf. In any State or area in which the Board has entered into such an agreement, the designated handler shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such an agreement shall not provide any cooperating agency with authority to collect confidential information from handlers, importers, or producers. To qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidences of payment than provided by the cooperating agency, it may acquire such evidence from individual handlers. All such agreements are subject to the requirements of the Act, the Order, all applicable rules and regulation under the Act and the Order, and the approval of the Secretary.

§ 1212.66 Failure to report and remit.

Any producer-handler, handler, or importer who fails to submit reports and remittances according to the provisions of § 1212.65 shall be subject to appropriate action by the Board which may include one or more of the following actions:

(a) Audit of the producer-handler's, handler's, or importer's books and records to determine the amount owed the Board.

(b) Establishment of an escrow account for the deposit of assessments collected. The frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Board with the approval of the Secretary.

(c) Referral to the Secretary for appropriate enforcement action, which includes assessing a civil penalty for each violation as specified in section 1958(c)(1) of the Act.

§ 1212.67 Refunds.

(a) Subject to the provisions of this section any producer, producer-handler, or importer shall have the right to personally demand and receive from the Board a refund of assessments paid by or on behalf of such producer, producer-handler, or importer for any calendar month during the period beginning on the effective date of this Order and ending on the effective date of the referendum mandated by section 1960(a) of the Act; *Provided*, That:

(1) Such producer, producer-handler, or importer makes application and provides proof of payment as required in paragraphs (b) (1), (2), and (3) of this section;

(2) This order is not approved pursuant to the referendum conducted under section 1960(a) of the Act.

(b) Refunds from escrow account. A portion of the assessments collected from producers, producer-handlers, and importers prior to announcement of the results of the initial referendum provided for in this section shall be held in an escrow account established only until the results of the referendum are published by the Secretary. The amount in the escrow account shall be equal to the product obtained by multiplying the total amount of assessments collected during such period by 10 percent. Each lime producer, producer-handler, or importer against whose limes an assessment became payable and was paid pursuant to this subpart may obtain a refund of a pro rata share of the assessment amount if the Order is not

approved pursuant to the initial referendum, conducted to determine if an Order should be issued, by following the procedures prescribed in this section.

(1) *Application form.* A producer, producer-handler, or importer shall obtain a refund application form from the Board by written request which shall bear the producer's, producer-handler's, or importer's signature. For partnerships, corporation, associations, or other business entities, a partner or officer of the entity must sign the request and indicate such individual's title.

(2) *Submission of refund application to the Board.* Any producer, producer-handler, or importer requesting a refund shall mail an application on the prescribed form to the Board not later than 90 days after the date of publication of the results of the initial referendum. The refund application shall show the following:

(i) The producer's, producer-handler's, or importer's name and address;

(ii) The handler's or handler's name(s) and address(es);

(iii) The number of pounds of limes on which the refund is requested;

(iv) The total amount to be refunded;

(v) Proof of payment as described below; and

(vi) The producer's, producer-handler's, or importer's signature.

Where more than one producer, producer-handler, or importer shared in the assessment payment, the refund application shall show, in addition to other require information, the names, addresses and proportionate shares of such producers, producer-handlers, or importers and the signature of each. Requests may be filed for refunds of a part of the assessments paid.

(3) *Proof of payment of assessment.* Evidence of payment of assessments satisfactory to the Board, such as the receipt or a copy of the receipt given to the producer by the handler, or a copy of the handler's report, shall accompany the producer's, producer-handlers's, or importer's refund application. Evidence submitted with refund applications shall not be returned to the applicant.

(4) *Payment of refund.* (i) If the Order is disapproved in the initial referendum, the Board shall make remittance to the applicant based on the amount in an escrow account, and, as necessary, prorated among all eligible producers, producer-handlers, or importers who demand such refund. For joint applications, the remittance shall be made payable jointly.

(ii) If the referendum required by section 1960(a) of the Act shows that a majority of those voting do not favor continuation of this Order, the Board shall pay refund requests within the time specified by the Secretary. Should the amount in the escrow account required by § 1212.60(e) be insufficient to refund the total amount of assessments demanded by eligible producers, producer-handlers, or importers, the Board shall prorate the amount of such refunds among all eligible producer, producer-handlers, and importers who demand such refund. The names of individuals obtaining refunds shall be kept confidential and made available only to the Secretary and the Board employees essential to refund processing.

(iii) No refunds shall be paid to any producer, producer-handler, or importer making demand for such refund if this Order is approved by a majority of those voting in the referendum required by section 1960(a) of the Act, and all funds in the escrow account shall be returned to the Board for use by the Board in funding approved programs and projects.

§ 1212.68 Exemption from assessment.

(a) A producer who produces less than 35,000 pounds of limes per year, or a producer-handler who produces and handles less than 35,000 pounds of limes per year, or an importer who imports less than 35,000 pounds of limes per year shall be exempt from the assessment.

(b) To claim an exemption, a producer, producer-handler, or importer shall submit an application to the Board stating the basis on which the exemption is claimed, and certify that such person will not exceed the limitation required for exemption in such year.

(c) The Board may recommend to the Secretary that limes exported from the United States be exempted from the provisions of this Order, and procedures shall be established providing for the refund of assessments on such limes and such safeguards as may be necessary to prevent improper use of this exemption.

§ 1212.69 Reports of disposition of exempted limes.

The Board may require reports by handlers on the handling and disposition of exempted limes and/or on the handling of limes for persons engaged in producing less than 35,000 pounds of limes. Authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

Reports, Books, and Records

§ 1212.70 Reports.

Each handler, producer-handler, and importer who is subject to this part shall be required to report to the authorized employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to, the following:

(a) For handlers and producer-handlers: Total quantity of limes acquired during the reporting period; total quantity handled during such period; amount of limes acquired from each producer, giving the name and address of each producer, including those producers who claim an exemption from assessment; copy of statements claiming exemption from those who claim such exemption; assessments collected or collectible during the reporting period; quantity of limes processed for sale from producer-handler's own production; and a record of each transaction for limes on which assessment had already been paid, including statements from sellers that assessments had been paid.

(b) For importers: Total quantity of limes imported during the reporting period and a record of each importation of limes during such period, giving the quantity, date, and port of entry.

§ 1212.71 Books and records.

Each handler, producer-handler, and importer shall maintain and during normal business hours make available for inspection by employees of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this Order and the regulations issued thereunder, including such records as are necessary to verify any required reports.

§ 1212.72 Retention period for records.

Each handler, producer-handler, and importer required to make reports pursuant to this subpart shall maintain and retain for at least two years beyond the marketing year of their applicability:

(a) One copy of each report made to the Board; and

(b) Such records as are necessary to verify such reports.

§ 1212.73 Availability of records.

Each handler, producer-handler, and importer required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and

necessary to verify reports required under this subpart.

§ 1212.74 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1212.70 and 1212.71 shall be kept confidential and shall not be disclosed to the public by any individual. Any disclosure of any confidential information by any employee of the Board, except as required by the law, shall be considered willful misconduct. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers, producer-handlers, or importers subject to this Order if such statements do not identify the information furnished by any person;

(b) The publication by direction of the Secretary of the name of any person violating this Order, together with a statement of the particular provisions of this Order violated by such person.

§ 1212.75 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers, producer-handlers, or importers and all information with respect to refunds of assessments made to individual producers, handlers, and importers shall be kept confidential in the manner and to the extent provided for in § 1212.74.

Miscellaneous

§ 1212.80 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1212.81 Personal liability.

No member of employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission of omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1212.82 Influencing governmental actions.

No funds collected by the Board under this Order shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this subpart.

§ 1212.83 Suspension or termination.

(a) Whenever the Secretary finds that this Order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this Order or such provision thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or if 10 percent or more of the lime producers, producer-handlers, and importers subject to assessment under this Order submit a petition requesting such a referendum to determine if lime producers, producer-handlers, and importers favor termination or suspension of this Order. The Secretary shall suspend or terminate this Order at the end of the marketing year whenever the Secretary determines that suspension or termination is favored by a majority of the lime producers, producer-handlers, and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in producing or importing limes and who produced or imported more than 50 percent of the volume of limes produced or imported by those producers, producer-handlers, and importers voting in the referendum.

§ 1212.84 Proceedings after termination.

(a) Upon the termination of this Order, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees for all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1212.40;

(3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to person or persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to invest in such person or persons full title and right to all the funds, property, and claims vested in the Board or the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers, producer-handlers, and importers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers, producer-handlers, and importers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1212.85 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Order or any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this order or any regulation issued thereunder, or

(b) Release or extinguish any violation of this Order or any regulation issued thereunder, or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person with respect to any such violation.

§ 1212.86 Separability.

If any provision of this Order is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Order or applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1212.87 Patents, copyrights, inventions, product formulations and publications.

Any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this Order shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this part,

§ 1212.84 shall apply to determine the disposition of all such property.

§ 1212.88 Amendments.

The Secretary may from time to time amend provisions of this subpart. The Board or any interested person or organization affected by the provisions of the Act may propose amendments to the Secretary.

§ 1212.89 OMB Control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511, is OMB number 0581–0093, except Board member nominee information sheets are assigned OMB number 0505–0001.

Dated: January 22, 1992.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92–1915 Filed 1–24–92; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is comprised of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) represents foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to or deletions from the previous OTC List. There are no additions to or deletions from the previous Foreign List. Both Lists were last published on October 28, 1991 (56 FR 55442) and effective on November 12, 1991.

EFFECTIVE DATE: February 10, 1992.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are additions to or deletions from the OTC List. This supersedes the last OTC List which was effective November 12, 1991. Additions and deletions to the OTC List were last published on October 28, 1991 (56 FR 55442). A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the Board and the SEC and will be incorporated into the Board's next quarterly publication of the OTC List.

There are no new additions, deletions or changes to the Board's Foreign List, which was last published October 28, 1991 (56 FR 55442) and effective November 12, 1991. This notice serves as republication of that List with a new effective date of February 12, 1992. The Foreign List includes those securities that meet the criteria in Regulation T and are eligible for margin treatment at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6(a) and (b), 220.17(a), (b), (c) and (d), and 221.7(a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2(u) and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

Affiliated Banc Corporation
  $.10 par common
Alliant Computer Systems
  $.01 par common
  7¼% convertible subordinated debentures
Appian Technology Inc.
  $.01 par common
Autodie Corporation
  $.05 par common
Banker's Note, Inc., The

$.01 par common
Barry's Jewelers, Inc.
No par common
Cascade International, Inc.
$.001 par common
Centuri, Inc.
$.05 par common
Chancellor Corporation
$.01 par common
Country Lake Foods, Inc.
$.01 par common
Crownamerica, Inc.
No par common
CSC Industries, Inc.
$.10 par common
Dyansen Corporation
$.01 par common
DYNCORP
Class A, 17% redeemable preferred
Erie Lackawanna Inc.
No par capital stock, $1.00 stated value
Fairfield County Bancorp, Inc.
$.100 par common
Forest Oil Corporation
$2.125 par convertible preferred
Forum Group, Inc.
No par common
General Sciences Corporation
$.01 par common
Gold Company of America
Depositary units of limited partnership interest
GTE California Inc.
Series 1956, 4½% cumulative preferred
Highland Superstores, Inc.
$.01 par common
Home Centers, Inc.
No par common
IEH Corporation
$.50 par common
Image Bank, Inc.
$.01 par common
Information Science Incorporated
$.01 par common
Investors Financial Corporation
$1.25 par common
Jones Spacelink, Ltd.
Class A, $.01 par common
National Micronetics, Inc.
$.10 par common
Nestor, Inc.
$.01 par common
OHM Corporation
8% convertible subordinated debentures
P.A.M. Transportation Services, Inc.
$.01 par common
Pacific Agricultural Holdings, Inc.
No par common
Personal Computer Products, Inc.
$.005 par common
Pharmakinetics Laboratories, Inc.
$.001 par common
Pinnacle Bancorp, Inc.
$.01 par common
Selecterm, Inc.
$.05 par common
Tele-Communications, Inc.
Rights (expire 01–31–95)
Unitronix Corporation
No par common
Ventura Entertainment Group Ltd.
Class A, warrants (expire 05–31–93)
WTD Industries, Inc
No par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

Advanced Magnetics, Inc.
$.01 par common
Aegon N.V.
American registered certificates representing ordinary shares
Ashton-Tate Corporation
$.01 par common
Avantek, Inc.
No par common
Bangor Hydro-Electric Company
$5.00 par common
Bohemia Inc.
No par common
Carolina Financial Corporation
$1.00 par common
Cetus Corporation
$.01 par common
Cross & Trecker Corporation
$1.00 par common
Durham Corporation
$5.00 par common
Duty Free International, Inc.
$.01 par common
Employee Benefit Plans, Inc.
$.01 par common
Environmental Elements Corporation
$.01 par common
General Kinetics Incorporated
$.25 par common
Harold's Stores, Inc.
$.01 par common
Heist, C.H., Corporation
$.05 par common
Hickam, Dow B. Inc.
$.01 par common
International Shipholding Corp.
$1.00 par common
Jiffy Lube International, Inc.
$.25 par common
Kamenstein, M., Inc.
$.01 par common
Kasler Corporation
No par common
Marine Corporation
$.7812 par common
Metcalf & Eddy Companies, Inc.
$.01 par common
Novacare
$.01 par common
Oceaneering International, Inc.
$.25 par common
Office Depot, Inc.
$.01 par common
Petroleum Equipment Tools Company
$.50 par common
Regional Federal Bancorp, Inc.
No par common
South Carolina National Corporation
$5.00 par common
Spearhead Industries, Inc.
$.05 par common
St. Paul Companies, Inc., The
No par common
Tyco Toys, Inc.
$.01 par common
Warrants (expire 06–07–93)
United Artists Entertainment
Class A, $.001 par common
Class B, $.001 par common
Valid Logic Systems, Inc.
$.001 par common
Velobind, Incorporated
$.50 par common
Washington Federal Savings Bank (Oregon)
$1.00 par common
XL/Datacomp, Inc.
$.01 par common

Additions to the List of Marginable OTC Stocks

Aames Financial Corporation
$.001 par common
Advanced Interventional Systems, Inc.
No par common
Affymax N V.
Common stock (DFL. 06)
Alliance Imaging, Inc.
$.01 par common
Allied Healthcare Products, Inc.
$.01 par common
Alpha 1 Biomedicals, Inc.
Class B, warrants (expire 06–30–95)
Alpharel, Inc.
Warrants (expire 12–12–94)
Alteon, Inc.
$.01 par common
Ambar, Inc.
$.01 par common
America Service Group Inc.
$.01 par common
American International Petroleum Corporation
$.08 par common
American Superconductor Corporation
$.01 par common
Aortech, Inc.
$.01 par common
Apple South, Inc.
$.01 par common
Aramed, Inc.
Units (expire 09–30–93)
ARI Network Services, Inc.
$.001 par common
Athena Neurosciences, Inc.
$.01 par common
Atlantic Tele-Network, Inc.
$.01 par common
Atrix Laboratories, Inc.
$.001 par common
Autocam Corporation
No par common
Bachman Information Systems, Inc.
$.01 par common
Bally Gaming International, Inc.
$.01 par common
Barefoot Inc.
$.01 par common
Barra, Inc.
No par common
Bell Bancorp, Inc.
$.01 par common
Biomagnetic Technologies, Inc.
No par common
Biomira Inc.
No par common
Broderbund Software, Inc.
$.01 par common
Cenfed Financial Corporation
$.01 par common
Century Cellular Corporation
Class A, $.01 par common
Checkers Drive-In Restaurants, Inc.

$.001 par common
Choice Drug Systems, Inc.
$.01 par common
Warrants (expire 06–30–92)
Clinical Technologies Associates, Inc.
$.01 par common
Compusa Inc.
No par common
Cryomedical Sciences, Inc.
$.001 par common
Custom Chrome, Inc.
$.001 par common
Cyberoptics Corporation
No par common
Cytel Corporation
$.01 par common
Cytrx Corporation
$.001 par common
Class B, warrants (expire 11–09–92)
Digital Biometrics, Inc.
$.01 par common
Diversicare, Inc.
$.01 par common
DNX Corporation
$.01 par common
Electric & Gas Technology, Inc.
$.01 par common
Embrex, Inc.
No par common
Warrants (expire 11–07–96)
Enzon, Inc.
Warrants (expire 11–01–94)
F & C International, Inc.
No par common
Fidelity Medical, Inc.
$.01 par common
Forest Oil Corporation
$.75 par convertible preferred
Warrants (expire 10–01–96)
Frontier Adjusters of America, Inc.
$.01 par common
Future Communications Inc.
$.001 par common
Gencare Health Systems, Inc.
$.02 par common
Genta Incorporated
$.001 par common
Goody's Family Clothing, Inc.
No par common
Grancare, Inc.
No par common
Granite Broadcasting, Inc.
$.01 par common
Hamburger Hamlet Restaurants Inc.
$.01 par common
Hechinger Company
Convertible subordinated debentures due 2012
Hoenig Group, Inc.
$.01 par common
Class A, warrants (expire 10–29–93)
Imclone Systems Incorporated
$.001 par common
IMRS Inc.
$.01 par common
In Home Health, Inc.
$.01 par common
Indiana United Bancorp
No par common
Information America, Inc.
$.01 par common
Inforum, Inc.
$.01 par common
Insurance Auto Auctions, Inc.
$.001 par common
Interactive Network, Inc.
No par common
Interferon Sciences, Inc.
$.01 par common
International Airline Support Group, Inc.
$.001 par common
International Cablecasting Technologies Inc.
$.01 par common
IPSCO Inc.
No par common
Jimbo's Jumbos, Incorporated
$.001 par common
Lannet Data Communications Ltd.
Ordinary shares (NIS .1 par value)
Liberty Bancorp, Inc.
$.01 par common
Louisville Gas and Electric Company
7.45% cumulative preferred stock
Magainin Pharmaceuticals, Inc.
$.002 par common
Manhattan Life Insurance Company, The
$2.00 par common
Marquette Electronics, Inc.
Class A, $.10 par common
Matthews Studio Equipment Group
No par common
Medisys, Inc.
$.01 par common
Miami Subs Corporation
$.01 par common
Missimer & Associates, Inc.
$.01 par common
Mitek Surgical Products, Inc.
$.01 par common
MTC Electronic Technologies Co., Ltd.
No par common
Namic U.S.A. Corporation
$.01 par common
National City Bancshares, Inc.
$3.33⅓ par common
National Medical Waste, Inc.
$.01 par common
National Rehabilitation Centers, Inc.
$.01 par common
Newcor, Inc.
$1.00 par common
Noble Drilling Corporation
$1.00 par convertible exchangeable preferred
Old Dominion Freight Line, Inc.
$1.00 par common
Pacific Physician Services, Inc.
$.01 par common
Peer Review Analysis, Inc.
$.10 par common
Perfumania, Inc.
$.01 par common
Perrigo Company
No par common
Pharmaceutical Marketing Services Inc.
$.01 par common
Physician Computer Network, Inc.
$.01 par common
Price Company, The Convertible subordinated debentures due 2001
Price Reit, The
$.01 par common
Provident American Corporation
$1.00 par common
Qualcomm Incorporated
$.0001 par common
Read-Rite Corporation
$.0001 par common
Retix
$.01 par common
Rochester Medical Corporation
No par common
Ropak Laboratories
No par common
Sam & Libby, Inc.
$.001 par common
Sanfilippo, John B., & Son, Inc.
$.01 par common
SGI International
No par common
Sheffield Industries, Inc.
$.01 par common
SLM International, Inc.
$.01 par common
Softkey Software Products Inc.
No par common
Southern Electronics Corporation
$.01 par common
Sports/Leisure, Inc.
$.01 par common
Star Multi Care Services, Inc.
$.001 par common
Sterling Savings Association
$1.00 par common
Sulcus Computer Corporation
No par common
Series A, no par redeemable convertible preferred
Class B, warrants (expire 06–30–92)
Sungard Data Systems Inc.
6¼% convertible subordinated debentures
Supercuts, Inc.
$.01 par common
Synalloy Corporation
$1.00 par common
Syquest Technology, Inc.
$.001 par common
THQ, Inc.
$.001 par common
Tetra Tech, Inc.
$.01 par common
TRM Copy Centers Corporation
No par common
UF Bancorp, Inc.
$.01 par common
Ultra Pac, Inc.
$2.00 par common
United New Mexico Financial Corporation
Series A, no par preferred
United Wisconsin Services, Inc.
No par common
Vest, H.D., Inc.
$.05 par common
Class A, warrants (expire 06–15–93)
Class B, warrants (expire 11–26–94)
Viewlogic Systems, Inc.
$.01 par common
Vitesse Semiconductor Corporation
$.01 par common
Warehouse Club, Inc.
Warrants (expire 11–13–94)
World Acceptance Corporation
No par common

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), January 21, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–1865 Filed 1–24–92; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-185-AD; Amendment 39-8146; AD 92-02-10]

Airworthiness Directives; Aerospatiale Model ATR42-200, -300, and -320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42-200, -300, and -320 series airplanes, which requires a one-time inspection of the hinge pins on the nose landing gear (NLG) leg and drag braces to detect cracks, and replacement of the hinge pins, if necessary. This amendment is prompted by a recent report of two cracked hinge pins on the drag brace assembly of the NLG. The actions specified by this AD are intended to prevent collapse of the NLG.

DATES: Effective March 2, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42-200, -300, and -320 series airplanes, was published in the **Federal Register** on October 21, 1991 (56 FR 52485). That action proposed to require a one-time inspection of the hinge pins on the nose landing gear (NLG) leg and drag braces to detect cracks, and replacement of the hinge pins, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-02-10. **Aerospatiale:** Amendment 39-8146. Docket 91-NM-185-AD.

Applicability: Model ATR42-200, -300, and -320 series airplanes; Serial Numbers, 16, 17, 19, 20, 22 through 34, 36 through 39, 41 through 45, 47 through 49, 54, 59, and 107; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the nose landing gear (NLG), accomplish the following:

(a) Perform a dye penetrant inspection to detect cracks of the four hinge pins of the left-hand and right-hand NLG leg and drag braces, and accomplish emergency extension functional tests, in accordance with Aerospatiale Service Bulletin ATR42-32-0039, Revision 1, dated August 1, 1991, at the applicable time specified below:

(1) For airplane serial numbers 17, 19, 22, 23, 24, 26, 28, 30, 31, 33, 37, 39, 41, 44, 45, 47, 48, and 59: Within 30 days after the effective date of this AD, or prior to the accumulation of 250 hours time-in-service, whichever occurs first.

(2) For airplane serial numbers 16, 20, 25, 27, 29, 32, 34, 36, 38, 42, 43, 49, 54, and 107: Within 60 days after the effective date of this AD, or prior to the accumulation of 500 hours time-in-service, whichever occurs first.

(b) If a cracked hinge pin is found as a result of the inspection required by paragraph (a) of this AD, replace it with a new hinge pin or with a hinge pin that previously has been inspected and found to be free of cracks, in accordance with Aerospatiale Service Bulletin ATR42-32-0039, Revision 1, dated August 1, 1991.

(c) As of the effective date of this AD, no hinge pin shall be installed on any airplane unless that hinge pin is new or has been inspected in accordance with Aerospatiale Service Bulletin ATR42-32-0039, Revision 1, dated August 1, 1991, and found to be free of cracks.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement of hinge pins required by this AD shall be done in accordance with Aerospatiale Service Bulletin ATR42-32-0039, Revision 1, dated August 1, 1991, which incorporates the following list of effective pages:

Page No.	Revision No.	Date
1, 12, and 13–14	1	August 1, 1991.
2, 3, 4, 5–6, 7, 8, 10, 11, and 15.	Blank	July 18, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington; or at the Office of the Federal Register, 1100 L Street N.W., Room 8401, Washington, D.C.

(g) This amendment (39–8146), AD 92–02–10, becomes effective March 2, 1992.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1836 Filed 1–24–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–163–AD; Amendment 39–8147; AD 92–02–11]

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, and –320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Model ATR42–200, –300, and –320 series airplanes, which requires repetitive inspections to detect corrosion and cracks in the main landing gear (MLG) wheel axle, and replacement of the landing gear swinging lever assembly, if necessary. This amendment is prompted by a recent report of failure of the MLG wheel axle due to stress corrosion. The actions specified by this AD are intended to prevent loss of the wheel assembly.

DATES: Effective March 2, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113; telephone (206) 227–1112; fax 227–1320. Mailing address: FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Aerospatiale Model ATR42–200, –300, and –320 series airplanes, was published in the **Federal Register** on October 23, 1991 (56 FR 54804). That action proposed to require repetitive inspections to detect corrosion and cracks in the main landing gear (MLG) wheel axle, and replacement of the landing gear swinging lever assembly, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter agreed with the proposed requirements of this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 77 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,470.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–02–11. Aerospatiale: Amendment 39–8147. Docket 91–NM–163–AD.

Applicability: Model ATR42–200, –300, –320 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the wheel assembly, accomplish the following:

(a) Perform a boroscope inspection to detect corrosion of the main landing gear (MLG) wheel axles at the jacking dome hole level, in accordance with Aerospatiale Service Bulletin ATR42–32–0036, Revision 1, dated June 24, 1991, at the applicable time specified below:

Note: The Aerospatiale Service Bulletin references Messier-Bugatti Service Bulletin 631–32–071, Revision 1, dated July 5, 1991, as an additional information source.

(1) For airplanes on which an axle has accumulated 10,000 or more landings as of the effective date of this AD, within 30 days after the effective date of this AD.

(2) For airplanes on which an axle has accumulated 8,000 or more landings but less than 10,000 landings as of the effective date of this AD, within 90 days after the effective date of this AD.

(3) For airplanes on which an axle has accumulated 6,000 or more landings but less than 8,000 landings as of the effective date of this AD, within 120 days after the effective date of this AD.

(4) For airplanes on which an axle has accumulated less than 6,000 landings as of the effective date of this AD, prior to the accumulation of 6,000 landings or within 120 days after the effective date of this AD, whichever occurs later.

(b) If no corrosion is found, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 3,200 landings.

(c) If corrosion is found, prior to further flight, perform an eddy current inspection to

detect cracks in the wheel axle, in accordance with Aerospatiale Service Bulletin ATR42-32-0038, Revision 1, dated June 24, 1991.

(1) If no cracks are found, replace the swinger lever assembly prior to the accumulation of 50 additional landings, in accordance with the service bulletin.

(2) If cracks are found, prior to further flight, replace the swinger lever assembly, in accordance with the service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and replacement required by this AD shall be done in accordance with Aerospatiale Service Bulletin ATR42-32-0038, Revision 1, dated June 24, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment (39-8147), becomes effective March 2, 1992.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1835 Filed 1-24-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-142-AD; Amendment 39-8148; AD 92-02-12]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires removal of the bulk cargo compartment flapper valve. This amendment is prompted by a report of a cargo compartment flapper valve that did not close during a functional check of the bulk cargo compartment fire extinguishing system. This condition, if not corrected, could result in loss of the extinguishing agent (halon) through an open flapper valve, which will decrease the fire extinguishing capability in the bulk cargo compartment.

DATES: Effective March 2, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 1992.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Frey, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2673. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on August 14, 1991 (56 FR 40278). That action proposed to require the removal of the bulk cargo ventilation flapper valve.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter agreed with the proposal to remove the bulk cargo compartment flapper valve.

One commenter was concerned that the deletion of the flapper valve will affect cargo compartment ventilation. The FAA does not share this concern. Testing and analysis by the manufacturer showed that the flapper valve is not needed, and that leakage between liner panels and at cargo door seals is sufficient to accommodate exhaust from the bulk cargo compartment ventilation fan. Moreover, the valve has been deleted on later model airplanes.

One commenter noted that the flapper valve contains material that does not comply with the burn test requirements of FAR 121.314, Amendment 121-202. A Partial Grant of Exemption (Exemption No. 5288, Regulatory Docket No. 26400) was issued for Federal Aviation Regulation (FAR) 121.314 (Amendment 121-202) which extends the compliance time to March 20, 1993, for the required removal of Boeing Model 767 liner details. The commenter considers that the proposed AD is not necessary for assurance of the removal of the flapper valve, because the proposed AD would require removal of the flapper valve in the same time frame as FAR 121.314 (Amendment 121-202). The commenter believes that, if the proposed AD is issued, the removal of the bulk cargo flapper valve will be required by two separate mandatory regulatory actions, both of which require accomplishing the identical task in the same time period in accordance with the same service bulletin. The FAA does not agree. FAR 121.314 (Amendment 121-202) requires replacement of the ceiling and sidewall liner panel to meet new flammability safety standards for cargo compartments; it does not specifically require removal of the flapper valve. The FAA has identified an unsafe condition specifically with regard to the flapper valve, as was explained in the preamble to the notice. The FAA has determined that AD action is the appropriate vehicle for requiring the removal of the flapper valve and, thus, eliminating the unsafe condition.

One commenter, who had already deactivated the valve, requested an extension of the proposed compliance time to allow removal of the valve at a maintenance facility. The FAA does not concur that an extension of the proposed compliance time for this AD action is appropriate, since the compliance time is approximately the same as that of FAR 121.314 (Amendment 121.202).

Several commenters requested that deactivation of the bulk cargo ventilation valve be considered as an optional provision to removal of the valve. Several operators have already deactivated the valve in accordance with Boeing Alert Service Letter 767-SL-21-26, dated June 26, 1990, and claim that deactivation achieves the same prevention of loss of fire extinguishing agent as removal of the valve. The FAA has determined that it is not appropriate to allow deactivation as an option, since the valve contains materials which do not comply with FAR 121.314 (Amendment 121-202) flammability requirements.

One commenter requested deviation in the use of certain materials for sealing the cargo compartment. The FAA concurs that different materials may be

approved as alternative methods of compliance under the provisions of paragraph (b) of the AD, providing that the cargo liner materials meet the requirements of FAR 121.314 (Amendment 121–202).

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 301 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 82 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor cost will be $55 per work hour. The estimated cost of the parts required to accomplish the modification is $98 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $98,236.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–02–12. **Boeing:** Amendment 39–8148. Docket No. 91–NM–142–AD.

Applicability: Model 767 series airplanes, listed in Boeing Alert Service Bulletin 767–21A0098, dated May 9, 1991, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent halon from escaping through the bulk cargo ventilation flapper valve when the fire extinguishing system is activated, accomplish the following:

(a) Within 4,000 flight hours after the effective date of this AD, remove the bulk cargo ventilation flapper valve in accordance with Boeing Alert Service Bulletin 767–21A0098, dated May 9, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(d) The removal requirements of this AD shall be done in accordance with Boeing Alert Service Bulletin 767–21A0098, dated May 9, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment (39–8148), AD 92–02–12, becomes effective March 2, 1992.

Issued in Renton, Washington, on December 30, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1834 Filed 1–24–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–145–AD; Amendment 39–8154; AD 92–02–17]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires replacement of the main deck passenger door girt bar floor brackets with modified brackets. This amendment is prompted by reports of girt bar end fittings not properly or fully engaged with the floor brackets. This condition, if not corrected, could result in the escape slide detaching from the airplane during an evacuation.

DATES: Effective March 2, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2784. Mailing address: FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on August 30, 1991 (56 FR 42960). That action proposed to require the replacement of the girt bar floor brackets installed on these airplanes with modified brackets.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter expresses no objection to the proposed rule.

Another commenter requests that the modification of the fasteners, serrated plates and floor fitting, described in Boeing Alert Service Bulletin 747–25A2831, be considered as an alternative method of compliance with the proposed replacement that would be required to be accomplished in accordance with Boeing Service Bulletin 747–25–2754. The commenter believes

that the alert service bulletin encompasses the same work described by Boeing Service Bulletin 747–24–2754. The FAA does not concur. The FAA has reviewed the alert service bulletin that the commenter suggested and notes that it describes replacement of the fasteners, the serrated plates, and fitting, but not the girt bar fitting.

A third commenter suggests that the proposed rule be revised to require that modification of the floor fitting, as described in Boeing Alert Service Bulletin 747–25A2831, be done in conjunction with the proposed replacement action. The FAA does not concur. Although the alert service bulletin concerns the same general area that is the subject of this proposed rule, it contains additional procedures beyond those that were proposed in this rulemaking action. In order to add those additional procedures as requirements of this proposed rule, the FAA would be required, under the Administrative Procedure Act, to reopen the period for public comment and, thus, delay finalization of this rulemaking action. Additionally, the FAA has been advised that certain parts that are necessary to perform the modification described in the alert service bulletin will not be available until after the issuance and effective date of this rulemaking action. Although the FAA is currently considering separate, additional rulemaking to address the alert service bulletin, it does not consider any further delay of this rule to be warranted.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 675 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 125 airplanes of U.S. registry will be affected by this AD, that it will take approximately 25 work hours per airplane to accomplish the required actions, and that the average labor cost will be $55 per work hour. It is estimated that the required parts will cost $1,510 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $360,625.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–02–17. **Boeing:** Amendment 39–8154. Docket No. 91–NM–145–AD.

Applicability: Model 747 series airplanes, listed in Boeing Service Bulletin 747–25–2754, dated March 30, 1989, certificated in any category.

Compliance: Required within the next 24 months after the effective date of this AD, unless previously accomplished.

To prevent the girt bar end fittings from disengaging the girt bar floor brackets, accomplish the following:

(a) Replace the girt bar floor brackets with modified brackets, in accordance with Boeing Service Bulletin 747–25–2754, dated March 30, 1989.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(d) The replacement requirements of this AD shall be done in accordance with Boeing Service Bulletin 747–25–2754, dated March 30, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment (39–8154), AD 92–02–17, becomes effective March 2, 1992.

Issued in Renton, Washington, on January 3, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1877 Filed 1–24–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–282–AD; Amendment 39–8157; AD 92–03–03]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Boeing Model 767 series airplanes powered by Pratt and Whitney JT9D–7R4 series engines and by General Electric CF6–80A series engines. This action requires inspections, adjustments, and functional checks of the thrust reverser system. This amendment is prompted by an ongoing design review, resulting from an accident investigation from which it has been determined that, prior to the accident, the airplane apparently experienced an uncommanded in-flight deployment of a thrust reverser. Deployment of a thrust reverser during flight could result in reduced controllability of the airplane. The actions specified in this AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing the possible discrepancies in the thrust reverser control system that can result in the inadvertent deployment of a thrust reverser during flight.

DATES: Effective January 27, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 27, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–282–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lanny Pinkstaff, Aerospace Engineer, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2684; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: Recently, a Boeing Model 767 series airplane was involved in an accident in which a thrust reverser apparently deployed during flight. While the investigation of this accident has neither revealed the cause of that deployment nor determined that the deployment caused the accident, it has identified a number of possible discrepancies in the thrust reverser control system. Inadvertent deployment of a thrust reverser during flight could result in reduced controllability of the airplane. Boeing and the FAA have conducted a review of the thrust reverser design on airplanes powered by various engine models to determine which sequence of events could result in an uncommanded thrust reverser deployment. As a result of this review of the affected thrust reverser systems, Boeing and the FAA have identified a series of inspections, tests, and adjustments that, when performed on the thrust reverser system, will ensure that the level of safety inherent in the original type design has not deteriorated in service. The FAA has determined that the accomplishment of these inspections and tests is likely to prevent the possible discrepancies in the thrust reverser control system that can result in the inadvertent deployment of a thrust reverser during flight.

The FAA has reviewed and approved Boeing Service Bulletin 767–78–0054, dated December 13, 1991 (for airplanes powered by Pratt and Whitney JT9D–7R4 series engines), and Boeing Service Bulletin 767–78–0053, dated December 13, 1991 (for airplanes powered by General Electric CF6–80A series engines), which describe procedures for performing functional tests, inspections, and necessary adjustments of the thrust reverser control system.

Since the unsafe condition described is likely to exist or develop on other Boeing Model 767 series airplanes of the same type design, this AD is being issued to ensure the integrity of the fail safe features of the thrust reverser system by preventing the possible discrepancies in the thrust reverser control system that can result in the inadvertent deployment of a thrust reverser during flight. This AD requires repetitive inspections and tests of all Boeing Model 767 airplanes powered by Pratt and Whitney JT9D–7R4 series engines or General Electric CF6–80A series engines. The required actions are to be accomplished in accordance with the service bulletins previously described. In addition, operators are required to submit a report of their initial inspection findings to the FAA.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking to address it.

Note: This is one of a series of AD rulemaking actions related to the thrust reverser issue with regard to Boeing airplanes. Other recently issued AD's have required similar inspections and testing of thrust reverser systems on Boeing Model 757 series airplanes (reference AD 91–20–09, Amendment 39–8043, (56 FR 46725, September 16, 1991)); and on Model 767 series airplanes powered by Rolls Royce RB211–524 series engines and by General Electric CF6–80C2 series engines (reference AD 91–22–02, Amendment 39–8062, (56 FR 51638, October 15, 1991)). A review of the thrust reverser systems on transport category airplanes in general also has been initiated; additional rulemaking action may result from the findings of the review team.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES**." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–282–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-03-03. **Boeing** Amendment 39-8157. Docket 91-NM-282-AD.

Applicability: Model 767 series airplanes equipped with Pratt and Whitney JT9D-7R4 series engines, and Model 767 series airplanes equipped with General Electric CF6-80A series engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system, accomplish the following:

(a) For airplanes equipped with Pratt and Whitney JT9D-7R4 series engines: Within 60 days after the effective date of this AD, and thereafter, at intervals not to exceed 3,000 flight hours, perform the tests, inspections, and adjustments described in Boeing Service Bulletin 767-78-0054, dated December 13, 1991.

(1) Following any maintenance action which could affect the thrust reverser system, repeat all tests, inspections, and adjustments on the affected engine, prior to further flight, as required by paragraph (a) of this AD, in accordance with the service bulletin.

(2) Thereafter, following any maintenance action, continue to perform the repetitive tests, inspections, and adjustments on the affected engine, as required by paragraph (a) of this AD, at intervals not to exceed 3,000 flight hours.

(b) For airplanes equipped with General Electric CF6-80A series engines: Within 60 days after the effective date of this AD, and thereafter, at intervals not to exceed 3,000 flight hours, perform the tests, inspections, and adjustments described in Boeing Service Bulletin 767-78-0053, dated December 13, 1991.

(1) Following any maintenance action which could affect the thrust reverser system, repeat all tests, inspections, and adjustments on the affected engine, prior to further flight, as required by paragraph (b) of this AD, in accordance with the service bulletin.

(2) Thereafter, following any maintenance action, continue to perform the repetitive tests, inspections, and adjustments on the affected engine, as required by paragraph (b) of this AD, at intervals not to exceed 3,000 flight hours.

(c) If any of the tests, inspections, and/or adjustments required by paragraph (a) or (b) of this AD cannot be successfully performed, or if those tests, inspections, and/or adjustments result in findings that are unacceptable in accordance with Boeing Service Bulletin 767-78-0054, dated December 13, 1991, or Boeing Service Bulletin 767-78-0053, dated December 13, 1991, as applicable, accomplish the following:

(1) Prior to further flight, deactivate the associated thrust reverser in accordance with Section 78-31-1 of Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 9, dated May 1, 1991. No more than one reverser on any airplane may be deactivated under the provisions of this paragraph.

(2) Within 10 days after deactivation of any thrust reverser in accordance with this paragraph, the thrust reverser must be repaired in accordance with Boeing Service Bulletin 767-78-0054, dated December 13, 1991, or Boeing Service Bulletin 767-78-0053, dated December 13, 1991, as applicable; the tests and/or inspections required by paragraph (a) or (b) of this AD must be successfully accomplished; and the thrust reverser must then be reactivated.

(d) Within 75 days after the effective date of this AD, submit a report of the results of the initial tests, inspections, and adjustments required by paragraphs (a) and (b) of this AD (both positive and negative results, including component replacements, with exact tolerance variations (±) noted where applicable) to the FAA, Seattle Aircraft Certification Office, ANM-100S, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The tests, inspections, and adjustments required by this AD shall be done in accordance with Boeing Service Bulletin 767-78-0054, dated December 13, 1991, or Boeing Service Bulletin 767-78-0053, dated December 13, 1991, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

(h) This amendment (39-8157), AD 92-03-03, becomes effective January 27, 1992.

Issued in Renton, Washington, on January 7, 1992.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1878 Filed 1-24-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-242-AD; Amendment 39-8161; AD 92-03-06]

Airworthiness Directives; Canadair, Ltd., Model CL-600-1A11 (CL-600), CL-600-2A12 (CL-601), and CL-600-2B16 (CL-601-3A) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Canadair Model CL-600 series airplanes. This action requires inspections for potential crossed wiring in the engine fire extinguishing system and the engine fire detection and warning system, and correction of any discrepancies, if necessary. This amendment is prompted by a report indicating that any disconnection and subsequent reconnection of the wiring or warning system wiring harnesses may lead to inadvertent crossed wiring. The actions specified in this AD are intended to prevent severe damage to an airplane in the event of an engine fire.

DATES: Effective February 11, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 11, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 27, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-242-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A,

Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond O'Neill, Aerospace Engineer, Propulsion Branch, ANE-174; FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581-1145; telephone (516) 791-7421; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority of Canada, recently notified the FAA that an unsafe condition may exist on certain Canadair, Ltd., Model CL-600-1A11, CL-600-2A12, and CL-600-2B16 series airplanes. Transport Canada Aviation advises that there has been a recent report indicating that, following airplane delivery, any disconnection and subsequent reconnection of the engine fire extinguishing wiring harnesses or the engine fire detection and warning system wiring harnesses during airplane completion or maintenance services can lead to inadvertent cross connections of these harnesses. This could result in corrective action being directed to the wrong engine after an engine fire warning indication, or no fire warning being annunciated in the event of an engine fire. This condition, if not corrected, could result in severe damage to an airplane in the event of an engine fire.

Canadair, Ltd., has issued Alert Service Bulletins A600-0581 (for Model CL-600-1A11 series airplanes) and A601-0309 (for Model CL-600-2A12 and CL-600-2B16 series airplanes), both dated September 8, 1989, which describe procedures for:

a. A one-time inspection for potential crossed wiring in the engine fire extinguishing system and the engine fire detection and warning system, and correction of any discrepancies, if necessary;

b. A one-time inspection of the electrical connectors for unlocked or inoperative pins, and replacement of discrepant electrical connectors, if necessary.

Transport Canada Aviation has classified these service bulletins as mandatory and has issued Canadian Airworthiness Directive CF-91-24, dated July 19, 1991, in order to assure the airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to a bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA totally informed of the above situation. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent severe damage to an airplane in the event of an engine fire. This AD requires a one-time inspection for potential crossed wiring in the engine fire extinguishing system and the engine fire detection and warning system, and a one-time inspection of the electrical connectors for unlocked or inoperative pins; and correction of any discrepancies, if necessary. The required actions are to be accomplished in accordance with the service bulletins previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES**." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-242-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive.

92-03-06. Canadair, Ltd.: Amendment 39-8161. Docket 91-NM-242-AD.

Applicability: Model CL-600-1A11 series airplanes, serial numbers 1004 to 1085, except serial number 1037; Model CL-600-2A12 series airplanes, serial numbers 3001 to 3066; and Model CL-600-2B16 series airplanes, serial numbers 5001 to 5049; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the possibility of cross connection of engine fire detection and extinguishing systems, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the following:

(1) For Model CL-600-1A11 series airplanes: Perform an inspection for potential crossed wiring in the engine fire extinguishing system, and inspect the electrical connectors for unlocked or inoperative pins, in accordance with Canadair Alert Service Bulletin A600-0581, dated September 8, 1989.

(2) For Model CL-600-2A12 and CL-600-2B16 series airplanes: Perform an inspection for potential crossed wiring in both the engine fire detection and warning system and the engine fire extinguishing system, and inspect the electrical connectors for unlocked or inoperative pins, in accordance with Canadair Alert Service Bulletin A601-0309, dated September 8, 1989.

(b) If any wiring discrepancies are detected as a result of the inspections required by paragraph (a) of this AD, prior to further flight, correct the discrepancies and replace any discrepant electrical connectors found, in accordance with Canadair Alert Service Bulletin A600-0581 (for Model CL-600-1A11 series airplanes), or A601-0309 (for Model CL-600-2A12 and CL-600-2B16 series airplanes), both dated September 8, 1989, as applicable.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections required by this AD shall be done in accordance with Canadair Alert Service Bulletin A600-0581, dated September 8, 1989 (for Model CL-600-1A11 series airplanes), or A601-0309 (for Model CL-600-2A12 and CL-600-2B16 series airplanes), dated September 8, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(f) This amendment (39-8161), AD 92-03-06, becomes effective February 11, 1992.

Issued in Renton, Washington, on January 9, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1876 Filed 1-24-92; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 117

[CGD5-90-064d]

Drawbridge Operation Regulations; Potomac River, District of Columbia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: The Coast Guard has been petitioned by the Federal Highway Administration, the Maryland and Virginia Departments of Transportation, and the District of Columbia Department of Public Works to permanently amend the regulations governing operation of the Woodrow Wilson Memorial Bridge across the Potomac River, mile 103.8, at Alexandria, Virginia. As part of the rulemaking process, the Coast Guard is considering several alternative opening schedules as well as the schedule proposed by the petitioners. This temporary rule is being issued to evaluate a slight variation of another alternative being evaluated through January 27, 1992, for its impact on both marine and highway traffic.

DATES: This temporary rule is effective from January 28, 1992, through March 27, 1992, unless sooner terminated. Comments must be received on or before March 12, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments received will be available for inspection and copying at room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 804-398-6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Ann B. Deaton, Project Officer, and CAPT M.K. Cain, Project Attorney.

Discussion of Temporary Rule

This temporary rule is being issued to evaluate a slight variation of the alternative opening schedule being evaluated through January 27, 1992, by the Coast Guard in response to a request from the Federal Highway Administration, the Virginia and Maryland Departments of Transportation, and the District of Columbia Department of Public Works, to permanently change the regulations for the Woodrow Wilson Memorial Bridge by further restricting the hours during which the bridge may open for vessel traffic. This variation merely moves the noon opening for recreational vessels to 11 a.m. This change is being considered because vehicle traffic counts across the bridge are somewhat lower at 11 a.m. than at noon, and an opening at 11 a.m. still provides reasonable midday access to the river by recreational boaters. Otherwise, this rule is identical to the temporary rule that is in effect through January 27, 1992. The Coast Guard feels that because the temporary rule that is in effect through January 27, 1992, came during the winter holiday season, abnormalities in both vehicular and vessel traffic may have occurred. Also, because of this unusually busy time of year, people may not have taken the time to review and comment on the temporary rule. For these reasons, the Coast Guard will now evaluate this similar rule for a 60-day period during conditions which should be more "normal", and interested persons will have more time to evaluate its provisions and make comment.

This temporary rule is for evaluation purposes only and will be effective for a 60-day period beginning on January 28, 1992. The impact of this proposal on

highway and marine traffic during this period will be evaluated to determine if it will result in substantial improvements in vehicular traffic flow without unreasonably restricting marine traffic. Data will be collected during the period to document the time and duration of draw openings and length of any resulting vehicle backups. If this rule results in an unforeseen disruption of traffic, it may be withdrawn sooner than 60 days.

The Woodrow Wilson Bridge operated under temporary rules from August 2, 1990, through May 31, 1991, to facilitate repairs to the bridge. Repairs were completed by May 31, 1991. Normally, operation of the bridge would revert to the permanent rule in 33 CFR 117.255. However, it is apparent that this will not provide a satisfactory balance between the needs of today's vehicular traffic and the needs of vessels. Therefore, the Coast Guard issued a temporary deviation from the permanent rules under the provisions of 33 CFR 117.43. That temporary rule with request for comments was issued to evaluate one of the alternative opening schedules being considered for a permanent change in the regulations. The rule was published in the **Federal Register** (56 FR 25369) on June 4, 1991. It was effective from June 1, 1991, through July 30, 1991. Comments were accepted through July 15, 1991. On July 9, 1991, the Coast Guard issued a second temporary rule with request for comments under the provisions of 33 CFR 117.43 to evaluate another of the alternative opening schedules being considered for a permanent change in regulations. That rule was published in the **Federal Register** (56 FR 35816) on July 29, 1991. It was effective from July 31, 1991, through September 28, 1991. Comments were accepted through September 13, 1991. On September 23, 1991, the Coast Guard issued a third temporary rule with request for comments under the provisions of 33 CFR 117.43 to evaluate another alternative opening schedule being considered. That rule was published in the **Federal Register** (56 FR 49145) on September 27, 1991. It was effective from September 29, 1991, through November 27, 1991. Comments were accepted through November 12, 1991. On November 20, 1991, the Coast Guard issued a fourth temporary rule with request for comments under the provisions of 33 CFR 117.43 to evaluate a variation of one of the alternative opening schedules being considered. That rule was published in the **Federal Register** (56 FR 59880) on November 26, 1991. It was effective from November 28, 1991, through January 27, 1992. Comments were accepted through January 13, 1992.

In order to propose a permanent change in the operating rule for the Woodrow Wilson Bridge, a notice of proposed rulemaking was published on December 20, 1991 (56 FR 66326), and comments on all alternatives under consideration are being solicited.

Comments are also invited concerning any particular problems experienced with this temporary schedule. These comments will be evaluated and modifications may be made or an alternate temporary schedule of openings may be established for the purpose of further evaluation. All comments received will also be considered along with those received in connection with the permanent operating schedule rule change being considered. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary rule. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

This temporary rule serves the immediate interests of highway traffic with no expected significant adverse impacts on marine traffic. It is a variation of one of the alternative opening schedules previously evaluated and is the fifth in a series of temporary rules being evaluated to gather information for drafting a new permanent rule. For these reasons, pursuant to 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking. Further, because the Coast Guard agrees that it is not acceptable to revert to the existing permanent rule on the expiration of the current temporary deviation on January 27, 1992, it finds pursuant to 5 U.S.C. 553(b), that good cause exists for making this rule effective in less than 30 days after the date of publication in the **Federal Register**.

Regulatory Evaluation

This temporary rule is considered to be nonmajor under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are temporary and may be withdrawn earlier than scheduled. They are not expected to have any substantial effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard will accept comments on the economic impact on small entities, in connection with the proposal for permanent regulations, and consider them at that time.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not raise sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Section 117.255 is temporarily amended by revising paragraph (a)(2) to read as follows: (This is a temporary rule and will not appear in the Code of Federal Regulations.)

§ 117.255 Potomac River.

(a) * * *

(2) Need not open:

(i) Except as provided in paragraph (a)(1) of this section, for the passage of any vessel unless at least 2 hours advance notice is given to the bridgetender at (202) 727–5522.

(ii) For the passage of any vessel from 5 a.m. to 9 a.m. and from 2 p.m. to 6 p.m., on Mondays through Fridays other than Federal holidays.

(iii) For the passage of any vessel from 2 p.m. to 7 p.m. on Saturdays, Sundays, and Federal holidays.

(iv) For the passage of any vessel other than a commercial vessel with a draft of over 20 feet from 4 a.m. to 5 a.m., from 9 a.m. to 10 a.m., and from 6 p.m. to 8 p.m., on Mondays through Fridays other than Federal holidays.

(v) For the passage of recreational vessels from 4 a.m. to 12 midnight with the exception of one opening at 11 a.m., if requested, on Mondays through Fridays other than Federal holidays.

(vi) For the passage of recreational vessels from 6 a.m. to 12 midnight with the exception of one opening at 11 a.m., if requested, and one opening at 9 p.m., if requested, on Saturdays, Sundays, and Federal holidays.

(vii) This temporary rule is effective from January 28, 1992, through March 27, 1992.

* * * * *

Dated: January 16, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 92–1888 Filed 1–24–92; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA–1–1–5109; A–1–FRL–4095–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Deletion of Zero Emission Limitation for James River Paper

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision deletes the source-specific emission limitation for James River Paper Co. (now known as Custom Papers Group—Richmond, Inc.), located in Richmond, Virginia. Custom Papers Group emits volatile organic compounds (VOCs) from its operation. VOCs are precursors to ozone pollution. Richmond, Virginia is classified as a moderate ozone nonattainment area subject to the requirements of the 1990 Clean Air Act Amendments. As a result of this SIP revision approval, Custom Papers Group will be subject to the federally approved reasonably available control technology (RACT) regulations for paper coating in the Virginia State Implementation Plan (SIP). The intended effect of this action is to approve the deletion of the source-specific emission limitation for James River Paper Co. (now known as Custom Papers Group—Richmond, Inc.) and in doing so require it to meet the RACT requirements in the Virginia SIP. This action is being taken in accordance with section 110 of the Clean Air Act.

DATES: This action will become effective March 27, 1992 unless notice is received by February 26, 1992 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Virginia Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia 23240.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, U.S. EPA Region III, (215) 597–9337; FTS 597–9337.

SUPPLEMENTARY INFORMATION: On April 19, 1991, the Commonwealth of Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of deleting the source-specific emission limitation for James River Paper Co. (now known as Custom Papers Group—Richmond, Inc.).

The currently approved Virginia SIP contains a source-specific emission limitation of zero for James River Paper Co. At the time that this zero emission limitation was approved, the Company believed that it could meet the requirement even though the EPA-approved Virginia SIP contained paper coating regulations which would allow the other applicable sources to meet a limit of 2.9 pounds (lbs) VOC/gallon coating less water. In addition, EPA's guidance on RACT for paper coating sources such as James River Paper stated that an emission limit of 2.9 lbs VOC/gallon coating less water would be considered RACT. The Company subsequently determined that it could not meet the zero emission limitation but could meet the RACT limit of 2.9 lbs VOC/gal coating less water. Removal of the source-specific emission limitation for James River Paper does not require imposition of the 2.9 lbs VOC/gal coating less water standard because the Company is automatically subject to the Virginia paper coating regulations once this source-specific limitation is removed from the SIP. A more detailed discussion can be found in the technical support document accompanying this action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective March 27, 1992 unless, by February 26, 1992, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on March 27, 1992.

Final Action

EPA is approving the deletion of the source-specific zero emission limitation for James River Paper Co. (now known as Custom Papers Group—Richmond, Inc.) thereby requiring the Company to meet the applicable paper coating RACT regulations previously approved by EPA in the Virginia SIP (Virginia SIP regulation 4.55 (h) now recodified and amended as Virginia Rule 4–31, amended and effective on July 1, 1991).

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental

factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), the Regional Administrator certifies that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action, pertaining to the deletion of the source-specific zero emission limitation for James River Paper Co. (now known as Custom Papers Group—Richmond, Inc.), located in Richmond, Virginia, has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from date of publication]. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: December 6, 1991

Edwin B. Erickson,

Regional Administrator, Region III.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart VV—Virginia

§ 52.2420 [Amended]

2. In § 52.2420, paragraph (c)(77) is removed and reserved.

3. Section 52.2423 is amended by adding paragraph (h) to read as follows:

§ 52.2423 Approval status.

* * * * *

(h) In an April 19, 1991 request submitted by the Virginia Department of Air Pollution Control, the source-specific emission limitation for James River Paper which EPA had approved on August 18, 1983 is deleted. James River Paper Co. (now known as Custom Papers Group—Richmond, Inc.) located in Richmond, Virginia is now required to comply with the applicable Virginia SIP paper coating regulation.

[FR Doc. 92–1657 Filed 1–24–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3833–3]

Approval and Promulgation of Implementation Plans, OH

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule

SUMMARY: In the March 5, 1985 **Federal Register** (50 FR 8749), USEPA proposed to approve the Harrison Radiator, General Motors Corporation (Harrison Radiator) North and South Facilities State Implementation Plan (SIP) revision for an inter-facility alternative emission control program plan (bubble) between seven metal coating lines and eight degreasers under the April 7, 1982 (47 FR 15076), proposed "Emissions Trading Policy Statement" (bubble policy). These facilities are located in Montgomery County, Ohio. The March 5, 1985, public comment period was extended to April 26, 1985, at the request of Natural Resources Defense Council, Incorporated. No public comments were submitted on USEPA's proposed action.

In today's **Federal Register** final rule USEPA is approving this revision to the ozone portion of the Ohio SIP for Harrison Radiator because it meets the requirements of sections 110 and 172 of the Clean Air Act USEPA's December 4, 1986, bubble policy.

EFFECTIVE DATE: This final rule becomes effective on February 26, 1992.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V Office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

A copy of today's revisions to the Ohio SIP is available for inspection at: Public Information Reference Unit, Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20640.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION:

I. Background

On May 6, 1983, November 25, 1983, April 6, 1984, September 10, 1984, and January 8, 1987, the Ohio Environmental Protection Agency (OEPA) submitted materials constituting a proposed revision to Ohio's ozone SIP for Harrison Radiator. Harrison Radiator has two metal coating facilities; the North facility located in downtown Dayton and the South facility located in the City of Moraine. Both of these facilities are located in Montgomery County, Ohio, which is an urban nonattainment area for ozone which has an approved 1979 Ozone SIP.

In the March 5, 1985 **Federal Register** (50 FR 8749), USEPA proposed to approve the Harrison Radiator North and South Facilities SIP revision for an inter-facility bubble between seven metal coating lines and eight degreasers. The March 5, 1985, public comment period was extended to April 26, 1985, at the request of Natural Resources Defense Council, Incorporated. No public comments were submitted on USEPA's proposed action.

Under the existing federally approved SIP, each metal coating line is subject to the control requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U)(1)(a)(iii). Rule 3745–21–09(U)(1)(a)(iii) contains an emission limit of 3.5 pounds of volatile organic compounds (VOC) per gallon of coating, excluding water. USEPA approved these rules as meeting the Clean Air Act's reasonably available control technology (RACT) [1] requirements on June 29, 1982.

II. USEPA's Bubble Policies

A. Bubble Policies

On April 7, 1982 (47 FR 15077), the USEPA issued a proposed bubble policy which sets forth general principles for the creation, banking, and use of emission reduction credits. This statement indicated that it is the policy of USEPA to encourage use of emissions trades to achieve more flexible, rapid and efficient attainment of national ambient air quality standards. It describes emission trading, sets out general principles USEPA will use to evaluate emissions trade under the Clean Air Act, and expands

[1] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow former Assistant Administrator of Air and Waste Management. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

opportunities for States and industry to use less costly control approaches. The April 7, 1982, Federal Register notice, stated that, until USEPA takes final action on its policy statement, State actions involving emission trades will be evaluated under the provisions set forth in the proposed statement. On December 4, 1986 (51 FR 43814), USEPA issued its final bubble policy which contains the criteria by which emission trades are today being evaluated.

A source may secure emission reduction credits by meeting each of the applicable requirements of the final bubble policy. Generally, only reductions which are surplus, enforceable, permanent and qualifiable can qualify as emission reduction credits.

B. Bubble Evaluation

The proposed bubble VOC emission limitations are specified within the special terms and conditions of the variances and permits for coating lines and degreasers that OEPA issued to Harrison Radiator. These limitations are presented below:

Sources	Emissions (tons per year)					
	Actual 1977			Allowable		
	Before bubble	After bubble	Change	Before bubble	After bubble	Change
K001, Dayton [1]	74.70	74.70	0	29.88	74.70	+44.82
K002, Dayton [1]	49.80	49.80	0	19.92	49.80	+44.82
K001, Moraine [1]	14.50	14.50	0	5.80	14.50	+8.70
K002, Moraine [1]	79.76	79.76	0	51.90	79.76	+47.86
K003, Moraine [1]	137.76	137.76	0	55.10	137.76	+82.66
K004, Moraine [1]	4.86	4.86	0	1.93	4.86	+2.93
K005, Moraine [1]	4.86	4.86	0	1.93	4.86	+2.93
L002–L006 [2]	526.67	0	−526.67	263.330	0	−263.33
Total	892.67	365.94	−526.67	409.79	365.94	−43.55

[1] Surface coating lines.
[2] Combined total for degreasers.

The "after bubble" emissions for the coating lines are the limits contained in the variances. The reduction from sources L002–L006, L009, L010, and L014, are incorporated in a September 1, 1984, Order of the Director of the OEPA which states that organic material emissions from these sources must be zero pounds per year. Therefore, these reductions are permanent and allowable. Emissions from the sources involved in the revision will be 365.94 tons per year.

The criteria used for evaluation of this bubble are contained in USEPA's December 4, 1986, bubble policy. This policy states that bubbles in nonattainment areas with approved attainment demonstrations (such as Montgomery County) must show that applicable standards and increments will not be jeopardized and must meet all other requirements of USEPA's April 7, 1982, bubble policy. The 1982 bubble policy states that in nonattainment areas which used allowable emissions as the basis for their attainment strategy, sources can use their SIP allowable limits as the baseline for creating emission reduction credits.

The approved 1979 ozone attainment demonstration for Montgomery County is based on a RACT-allowable emission rate and actual values for capacity utilization and hours of operation. Harrison Radiator used the baseline calculation using the 1977 RACT-allowable emissions for the degreasers and the emission rate of 3.5 pounds of VOC per gallon of coating excluding water, contained in Ohio's SIP for the surface coating lines.

The emission trading policy requires that all emission and production limits in the trade be federally enforceable. The permits for the coating lines include limits for lb VOC/gallon coating employed excluding water, lb VOC/day and ton VOC/year as well as limits on hours/day and days/year of operation.

However, the emission limits are not enforceable on a daily as a practical matter, since records on quantities of coatings used are determined monthly. Additionally, since the permits do not include a requirement to record daily hours of operation, compliance with the operating restrictions cannot be determined. In November 8, 1989, December 18, 1989, and January 29, 1990, letters, USEPA issued a SIP call to Ohio to require, inter alia, that Ohio's VOC regulations specify the appropriate recordkeeping and test methods.[3]

The approved attainment demonstration for the area assumes VOC emissions from decreasing operations at Harrison Radiator's Dayton facility to be 883 tons per year and VOC emissions from the seven surface coating lines to be 64 tons per year. Since the total emissions allowed by the variances for the degreasers and coating lines (365.94 tons per year) are less than those assumed in the approved attainment demonstrations, the bubble will not jeopardize attainment.

Air Quality Considerations

There have been measured violations of the ozone NAAQS in both Montgomery and Clark (which is downwind of Montgomery) Counties in the 1982 through 1984 time periods. Two of the Montgomery County monitoring sites produce a (fourth high) design value of 0.127 parts per million (ppm) ozone.

USEPA's criteria for determining which SIPs need to be revised, due to post 1982 nonattainment, is contained in a July 25, 1984, memorandum from G.T. Helms, Chief, Control Programs Operations Branch. This policy memorandum states that calls for ozone SIP revisions should be made in all cases where the design value is greater than or equal to 0.140 ppm and the number of observed exceedances is greater than 1.0. An ozone SIP call was not made in Montgomery County because the 0.127 ppm design value is considerably under the 0.140 ppm cutpoint.

Additionally, these measured violations will not interfere with final approval of this bubble for the following reasons:

1. Montgomery County has an approved ozone SIP and has a downward trade in monitored ozone concentrations at the two

[3] In the interim, USEPA will enforce the Harrison Radiator daily emission limits through a section 114 Order, which requires the company to keep daily record of solvent usage, daily hour of operation, and determine compliance with the emission and production limits using the daily data.

Montgomery County monitors with measured violations.

2. Additionally Federal Motor Vehicle Control Program (FMVCP) VOC reductions will occur up to and beyond 1987. These FMVCP requirements will cause mobile source VOC reductions of about 5 percent per year.

3. There are VOC sources in Montgomery County which are not in compliance with the federally approved SIP. These sources contribute to the ozone standard exceedances.

Harrison Radiator's bubble meets the requirements of the 1982 proposed bubble policy. In addition, it meets the requirements of the final bubble policy. Its approval will not jeopardize attainment of the ozone standard in Montgomery County, Ohio.

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 27, 1992. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 12, 1990.

William K. Reilly,

Administrator.

Editorial Note: This document was received at the Office of the Federal Register January 17, 1992.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, chapter I, part 52 is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding new paragraph (c)(68) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(68) On May 6, 1983, the Ohio Environmental Protection Agency (OEPA) submitted materials constituting a proposed revision to Ohio's ozone SIP for Harrison Radiator. Harrison Radiator has two metal coating facilities; one is the North facility located in downtown Dayton and the other is the South facility located in the City of Moraine.

(i) Incorporation by reference.

(A) The Ohio Environmental Protection Director's final Findings and Orders, May 6, 1983.

(B) Letters of September 10, 1984, and September 4, 1984, to USEPA from OEPA.

(C) The Ohio Environmental Protection Director's final Findings and Orders, September 4, 1984.

* * * * *

[FR Doc. 92–1651 Filed 1–24–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR PART 81

[WI9–1–5269; FRL–4095–4]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: WI

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On September 8, 1988, (53 FR 34791), USEPA proposed to disapprove a request from the State of Wisconsin to redesignate a subcity portion of Green Bay, Wisconsin (Brown County) from primary nonattainment to attainment for sulfur dioxide (SO_2). USEPA's proposed action was based on the State's failure to provide sufficient evidence that: Certain necessary stack modifications at Wisconsin Public Service Company (WPS)-Pulliam, Nicolet Paper, and Green Bay Packaging had been completed; and all sources were in compliance with the emission limits in the recently submitted State rule. USEPA also stated that, even if these problems had not existed, final redesignation could not occur until USEPA had approved the State SO_2 plan for Green Bay. USEPA approved the State Implementation Plan for this subcity portion of Green Bay on November 5, 1991 (56 FR 56467).

In today's **Federal Register** final rule, USEPA is approving the State's request to redesignate Green Bay (Brown County), Wisconsin, from nonattainment to attainment for SO_2 because the Wisconsin Department of Natural Resources (WDNR) submitted comments containing sufficient data to support its request to redesignate Brown County from nonattainment to attainment for SO_2.

EFFECTIVE DATE: This final rule becomes effective on February 26, 1992.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air Toxics and Radiation Branch (5AT–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Pamela Blakley, (312) 886–6054.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (CAA), the Administrator of USEPA has promulgated the National Ambient Air Quality Standard (NAAQS) attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), and 43 FR 45993 (October 5, 1978), codified at 40 CFR 81.350. These area designations are subject to revision whenever sufficient data becomes available to warrant a redesignation. A portion of the City of Green Bay,[1] Wisconsin in Brown County, was designated as not attaining the primary SO_2 standards. For areas designated nonattainment for SO_2, and SO_2 State Implementation Plan (SIP) is required which satisfies the requirements of section 110(a) and part D of the CAA, including assuring the attainment and maintenance of the SO_2 NAAQS.

On May 7, 1987, pursuant to section 107(d)(5) of the CAA,[2] the WDNR requested that the City of Green Bay nonattainment area be redesignated to attainment of the SO_2 NAAQS.

Redesignation Requirements

Under the pre-amended Act, USEPA's SO_2 redesignation requirements

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[1] Brown County (City of Green Bay): Subcity primary SO_2 nonattainment area is defined as follows:

North: Green Bay.

West: W. Mason St. and Ashland Ave., along Ashland north to Matter St., west to Crocker St., north on Crocker St. to Bylsby, then to Green Bay.

South: W. Mason St. and Ashland Ave., east along Mason to Irwin Ave.

East: W. Mason St. and Irwin Ave., along Irwin Ave. north to Green Bay.

Remainder of Corporate Limits of Green Bay is designated "cannot be classified".

Remainder of Brown County is designated attainment.

[2] The Clean Air Act was amended on November 15, 1990, Pub. L. 101–549, codified at 42 U.S.C. 7401–7671q. References to the pre-amended Act are cited as CAA and references to the amended Act will be cited as CAAA.

implementing the CAA were found in two memoranda: Sheldon Meyers to Air and Waste Management Division Directors, "Section 107 Designation Policy Summary", April 21, 1983; and G.T. Helms to Air Branch Chiefs, "Section 107 Questions and Answers", December 23, 1983. USEPA based its proposed disapproval of the Green Bay SO_2 redesignation request for this subcity portion on the failure of Wisconsin to meet the CAA criteria for redesignation as interpreted in those memoranda. The rationale for the disapproval is discussed in greater detail in USEPA's September 8, 1988 proposal (53 FR 34791).

On November 15, 1990, the Clean Air Act Amendments (CAAA) of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q (1991). The amended Act added several new requirements for redesignation from nonattainment to attainment, most notably, the requirement for a maintenance plan that meets the requirements of section 175A of the CAAA. Section 107(d)(3)(E), 42 U.S.C. 7407(d)(3)(E). The effect of the amended Act is discussed more fully under "Requirements under the CAAA," below.

Proposal and Comments

On September 8, 1988, USEPA proposed to disapprove Wisconsin's request to redesignate the subcity portion of Green Bay from primary nonattainment/unclassifiable to attainment for SO_2. USEPA's proposed action was based on the State's failure to provide sufficient evidence that: (1) The necessary stack modifications at WPS-Pulliam, Nicolet Paper, and Green Bay Packaging had been completed, and (2) all major sources were in compliance with the emission limits in the recently submitted State rule. These stack modifications were requested as part of the Green Bay SO_2 SIP revision, and were found to be consistent with USEPA's Good Engineering Practice Stack Height Regulations. In addition, USEPA also noted that final redesignation could not occur until the State Green Bay SO_2 plan for this subcity portion had been approved. During the public comment period USEPA received comments from the Green Bay Industrial Coalition (GBIC) and from WDNR. Both commenters opposed the disapproval and supported redesignation of Green Bay. Summarized below is USEPA's evaluation of the public comments received.

The GBIC opposed USEPA's proposed disapproval action and urged WDNR and USEPA to work together to resolve the deficiencies cited in the Notice of Proposed Rulemaking. WDNR did, in fact, submit additional information which showed that the stacks in question had been constructed and stated that the major sources in Green Bay were in compliance with the new State rule. In addition, both commentors (GBIC and WDNR) also expressed the concern that USEPA had not acted in a timely fashion on the State rule for Green Bay.

Concerning the additional information submitted by WDNR, USEPA acknowledges that new stacks have been constructed at WPS-Pulliam, Nicolet Paper, and Green Bay Packaging.[3]

Requirements Under the CAAA

Since the CAAA were enacted prior to today's action, USEPA would generally be required to apply the new law to actions currently pending before the Agency. However, USEPA does not believe that Congress intended to impose new requirements on those redesignations that had substantially completed the redesignation process.[4] Furthermore, the Agency is not required to apply a new law where strict application of the new provisions would produce an irrational or unjust result. See 56 FR 37285, 37286–87 (Aug. 6, 1991).

Literal application of the new redesignation requirements would produce an irrational or unjust result in the present circumstances. In addition, it would be unreasonable to require both the State, which has completed all necessary action on its part, and USEPA, which had substantially completed all necessary action, to repeat these steps under the new provisions of the CAAA. USEPA initially proposed to disapprove the submission in September of 1988 but indicated required elements that would allow the Agency to approve the submittal. Wisconsin submitted responsive technical support during the public comment period. These submittals cured the two deficiencies and USEPA determined to approve the redesignation request. Moreover only one other comment was received and that commenter supported redesignation.

Because the action was substantially complete prior to enactment, and the only remaining action was for USEPA to publish its final approval of the redesignation, it would be unequitable to require Wisconsin to re-initiate the redesignation process by making a new and more complex submittal and to subject the Green Bay area to the new requirements for nonattainment areas during the period it takes to meet these new redesignation requirements.

Conclusion

USEPA is approving the redesignation request for the subcity portion of Green Bay, Wisconsin (Brown County) from nonattainment to attainment for the pollutant SO_2, because the WDNR has demonstrated that the area has attained the SO_2 NAAQS in accordance with the pre-amended CAA.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. Each request for a revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action is classified as a Table Two redesignation action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as its rules on USEPA's request.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate Circuit by March 27, 1992. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas, Sulfur dioxide.

Authority: 42 U.S.C. 7401–7671q.

[3] The State rule for Green Bay Packaging specifies one set of emission limits (ranging from 2.87–3.88 pounds of SO_2 per million British Thermal Units—lbs/MMBTU) for all boilers ducted to a new 65 meter (m) stack and a second emission limit (0.5 lbs/MMBTU) for all boilers ducted to their existing (less than 65m) stacks. Based on the information submitted by WDNR, Boiler 26 is now ducted to a 65m stack, but the other boilers (Boilers 21–25) are still ducted to their existing (less than 65m) stacks. Consequently, Boilers 21–25 must meet a 0.5 lbs/MMBTU emission limit until such time as they are connected to the 65m stack.

[4] EPA does not believe, however, that Congress clearly intended these new requirements to apply to newly submitted redesignation requests and those for which USEPA was just beginning the redesignation process.

Dated: December 24, 1991.

Valdas V. Adamkus,

Regional Administrator.

Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.350, in the "Wisconsin—SO_2" table, under AQCR 237, the entry for Brown County is revised to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * * * *				
AQCR 237:				
Brown County (city of Green Bay): Subcity area defined as follows				X
North: Green Bay				
West: W. Mason St. and Ashland Ave., along Ashland north to Matter St., west to Crocker St., north on Crocker St. to Bylsby St., then to Green Bay				
South: W. Mason St. and Ashland Ave., east along Mason to Irwin Ave.				
East: W. Mason St., and Irwin Ave., along Irwin Ave. north to Green Bay				
Remainder of corporate limits of Green Bay			X	
Remainder of Brown County				X
* * * * * * *				

[FR Doc. 92–1653 Filed 1–24–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412 and 413

[BPD–681–CN]

RIN 0938–AE59

Medicare Program; Prospective Payment System for Inpatient Hospital Capital-Related Costs; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; correction.

SUMMARY: In the August 30, 1991 issue of the **Federal Register** (FR Doc. 91–20779) (56 FR 43358), we revised the Medicare payment methodology for inpatient hospital capital-related costs for hospitals paid under the prospective payment system. We replaced the reasonable cost-based payment methodology with a prospective payment methodology for capital-related costs. This notice corrects errors made in that document.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (410) 966–4529.

List of Subjects

42 CFR Part 412

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

I. We are making the following corrections to the preamble of the August 30, 1991 final rule (56 FR 43358).

1. On page 43364, in the first column, in the tenth line from the bottom of the page, the word "transporation" is changed to "transition".

2. On page 43366, in the first column, in the fourth line of the second Response, the phrase "of excluded hospitals" is change to read "or excluded hospitals".

3. On page 43368, in the table "Comparison of Base Capital per Admission from the NPRM and the Final Rule", the column heading "Percent change from NPRM" is changed to read "Percent change from Previous Line".

4. On page 43370, in the chart in the third column, "Total Cost Regression Results and Associated t-Statistics", in the next to last line, the number of hospitals is changed from "4922" to "4,923".

5. On page 43383, in the third column, in the sixteenth line of the second Response, the word "reducing" is changed to "reduction".

6. On page 43384, in the second column under "Step 5-Exceptions Reduction Factor", in the third paragraph, in the second line, the word "until" is changed to "will".

7. On page 43384, in the third column, under "Step 6-Budget Neutrality Adjustment Factor", in the last paragraph, in the tenth line, the number "8.4" is changed to "8.7".

8. On page 43391, in the first column, in the paragraph following the Case-mix increase table, in the twelfth line, the year "1988" is changed to read "1990".

9. On page 43394, in the second column, in the last bullet, the phrase "and the asset is put into use" is inserted following the word "completed".

10. On page 43395, in the third column, in the first line, the phrase "or reasonable cost" is changed to read "of reasonable costs".

11. On page 43397, in the second column, under "b. Interest expense.", in the first paragraph, beginning in the third line, following the word "cost", the phrase "allowable capital-related cost" is deleted.

12. On page 43404, in the first column, in the tenth line of the first full Response, the word "maintaining" is changed to "causing".

13. On page 43406, in the third column, under "Step 6—Payment Under the Hold-Harmless Payment Methodology", in the fourth bullet, in the first line, a period is inserted after the word "rate". In the same line, the word "after" is changed to "After".

14. On page 43409, in the first column, in the first full paragraph, in the ninteenth line, a decimal point is inserted before the number "0892".

15. On page 43409, in the third column, in the second line, the word "or" is deleted.

16. On page 43409, in the third column, in the eighth line from the bottom of the page, the citation "§ 412.106(C)(2)" is changed to read "§ 412.106(c)(2)".

17. On page 43412, beginning in the last line of the first column, the phrase

"these inpatient services" is changed to read "these hospitals are to be paid the reasonable costs of their inpatient services".

18. On page 43412, in the second column, in the second full paragraph, in the fourth line, the citation "1886(9)(I)(A)" is changed to read "1886(g)(1)(A)".

19. On page 43417, in the first column, beginning in the third line of the second Comment, the phrase "are concerned" is changed to read "expressing concern".

20. On page 43419, in the first column, under the Hold-Harmless Payment Methodology, in 2., in the eighth line, the parentheses is closed after the word "percent" and the phrase "X (Budget Neutrality Adjustment Factor, if applicable)" is deleted.

21. On page 43419, in the second column, under "a. Hospital-specific rate calculation:", in the fourth line, the parentheses enclosing "1550.7" are deleted.

22. On page 43420, in the first column, under "ii. Payment including hold-harmless payments:", in the fourth line of the paragraph entitled "Old capital payment portion of hold-harmless payment methodology", the "multiply by" sign is removed after the number ".85".

23. On page 43420, in the second column, under "2. Exception Payment Process", beginning in the second line of the second bullet, the phrase "(or rural hospitals with 500 or more beds)" is deleted.

24. On page 43420, in the second column, under "2. Exception Payment Process", in the second paragraph, in lines five, eleven, and thirteen the word "would" is changed in all three places to "will".

25. On page 43420, in the third column, in the first full paragraph, in the second line, the word "would" is changed to "will".

26. On page 43422, in the third column, in the third line from the bottom of the page, the word "used" is inserted after the word "been".

27. On page 43429, in the first column, in the ninth line of the first paragraph under section i. Introduction. the word "grouping" is changed to "groupings".

28. On page 43429, in the second column, in the last sentence of the first partial paragraph, the word "Over" is changed to "About".

29. On page 43430, in the third column, in section iv., line 14, the phrase "For hospitals located in other urban areas" is inserted at the beginning of the sentence. In the same line, the word "The" is changed to "the".

30. On page 43431, in the second column, in section e., line 13, the word "considered" is changed to "consideration".

31. On page 43434, TABLE 4, in the third column, "PERCENT DIFFERENCE FROM NATIONAL AVERAGE", in the sixth line from the bottom of the page, the value for the East South Central region, "2.7" is changed to "12.7".

32. On page 43444, TABLE 6, in the seventh column, "ADJUSTED FEDERAL RATE", in the fourth line from the bottom of the page, the value for the West South Central region is changed from "10.4" to "−10.4".

33. On page 43445, TABLE 6, in the fifth column, "STANDARDIZED COST PER CASE", in the sixth line from the bottom of the page, the number "643" is changed to "642".

II. We are making the following correcting amendments to Part 412 and 413:

PART 412—[AMENDED]

33a. The Authority for Part 412 continues to read as follows:

Authority: Sections 1102, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395 ww).

§ 412.60 [Amended]

34. In § 412.60(a)(1)(ii)(B), the phrase "a fixed multiple of the" is added after "October 1, 1991,".

§ 412.113 [Amended]

35. In § 412.113(a)(3), the word "hospital" is changed to the phrase "a hospital with a hospital-specific rate above the Federal capital rate".

§ 412.116 [Amended]

36. In § 412.116(b)(3)(ii)(B), the phrase "and under § 412.308 for cost reporting periods beginning on or after October 1, 2001" is added after "applicable,". In the same paragraph, the term "case mix" is changed to "case-mix index".

§ 412.116 [Amended]

37. In § 412.116(b)(3)(ii)(C), after the term "operating costs," first appears the phrase "and, for cost reporting periods beginning on or after October 1, 1991, for inpatient capital-related costs," is added. In the same paragraph, after the term "operating costs" appears the second time the phrase "and capital-related costs" is added.

§ 412.302 [Amended]

38. In § 412.302(a), the phrase "when they are capital costs" is removed. In the same paragraph, the word "costs" is inserted after the word "capital".

§ 412.302 [Amended]

39. In § 412.302(c)(1)(i)(D), the word "the" is inserted before the word "lesser".

§ 412.302 [Amended]

40. In § 412.302(c)(1)(v), second sentence, the word "provide" is changed to "include", and the word "made" is changed to "prepared".

§ 412.302 [Amended]

41. In § 412.302(d)(2), first sentence, the word "was" is changed to "were".

§ 412.302 [Amended]

42. In § 412.302(d)(3), first sentence, the word "method" is changed to "methods".

§ 412.308 [Amended]

43. In § 412.308(c)(4)(ii), the word "factor" is changed to "factors".

§ 412.320 [Amended]

44. In § 412.320(a), paragraph designations are added as follows. The phrase "either of the following conditions is met" and the paragraph designation "(1)" are inserted after the first word "if", and the word "the" is changed to "The". A period and the paragraph designation "(2)" are inserted after "§ 412.106(b)", and the phrase "or if the hospital" is changed to read "The hospital".

§ 412.320 [Amended]

45. In § 412.320(b)(1), the reference to "paragraph (a)" is changed to "paragraph (a)(1)".

§ 412.324 [Amended]

46. In § 412.324(b)(2), the term "hold harmless payment methodology" is changed to "hold-harmless payment methodology". In that same paragraph, the citation "§ 412.328(a)(3)" is changed to "§ 412.328(a)(2)".

§ 412.324 [Amended]

47. In § 412.324(b)(3), the phrase "old capital described in § 412.344(a)(a)" is changed to "old capital costs described in § 412.344(a)(1)".

§ 412.328 [Amended]

48. In § 412.328(c)(1), in Step 2, the phrase "is divided by the transfer adjustment factor" is changed to "is divided by the adjusted discharges used to calculate the transfer adjustment factor".

§ 412.328 [Amended]

49. In § 412.328(f)(1)(iii), the word "first" is added between the words "the" and "cost". In the same paragraph, the phrase "beginning on or after October 1, 1991 or the cost reporting

period" is added after the words "reporting period". Also, in the same paragraph, the phrase ", whichever is later" is added after the words "base period".

§ 412.328 [Amended]

50. In § 412.328(f)(3)(iii), the term "and budget neutrality adjustment" is changed to "and a budget neutrality adjustment".

§ 412.336 [Amended]

51. In § 412.336(c)(1), the date "October 1, 1990" is changed to "October 1, 1991".

§ 412.344 [Amended]

52. In § 412.344(d)(1), the phrase "and make appropriate adjustments retroactively" is added after the last word "hospital".

§ 412.344 [Amended]

53. In § 412.344(d)(2), the phrase "and is effective retroactively to the beginning of that cost reporting period" is added after the term "cost reporting period".

§ 412.348 [Amended]

54. In § 412.348(b)(1)(ii), the word "a" before the word "urban" is changed to "an".

PART 413—[AMENDED]

§ 413.130 [Amended]

55. In § 413.130(a)(3), the word "fee" is changed to "fees".

§ 413.130 [Amended]

56. In § 413.130(a)(10), the phrase "for patient use" is changed to "used for patient care".

§ 413.130 [Amended]

57. In § 413.130(f), the phrase "A provider must apply debt premiums or debt discounts" is changed to "Debt premiums or debt discount are applied".

§ 413.134 [Amended]

58. In § 413.134(f)(2)(iii)(D), the citation "412.340(a)(1)" is changed to "§ 412.344(a)(1)". In the same paragraph, the word "costs" is inserted after the word "capital".

Table 2a. [Corrected]

59. In Table 2a, the Geographic adjustment factor value for Champaign-Urbana-Rantoul, IL is changed from .9131 to .9128.

Table 2c. [Corrected]

60. The heading for the table that contains the Geographic Adjustment Factors for Hospitals that are Reclassified is changed from Table 2 to Table 2c, wherever it appears.

Table 2c. [Corrected]

61. In Table 2c, the following changes are made in the Geographic adjustment factor values for hospitals that are reclassified:

Area reclassified to—	Geographic adjustment factor
Albany, GA	0.8413
Fayetteville, NC	0.8499
Little Rock-North Little Rock, AR	0.8766
Rockford, IL	0.9377
Sioux Falls, SD	0.9191
Tyler, TX	0.9507

62. **Appendix A**

On page 43522, in the first column, at the end of Appendix A, Figures 1 through 5 are added. These figures, which illustrate portions of the capital acquisition model, were inadvertently omitted.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: January 16, 1992.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

BILLING CODE 4120-01-M

Comparison of Fixed Capital per Bed Increase Distributions

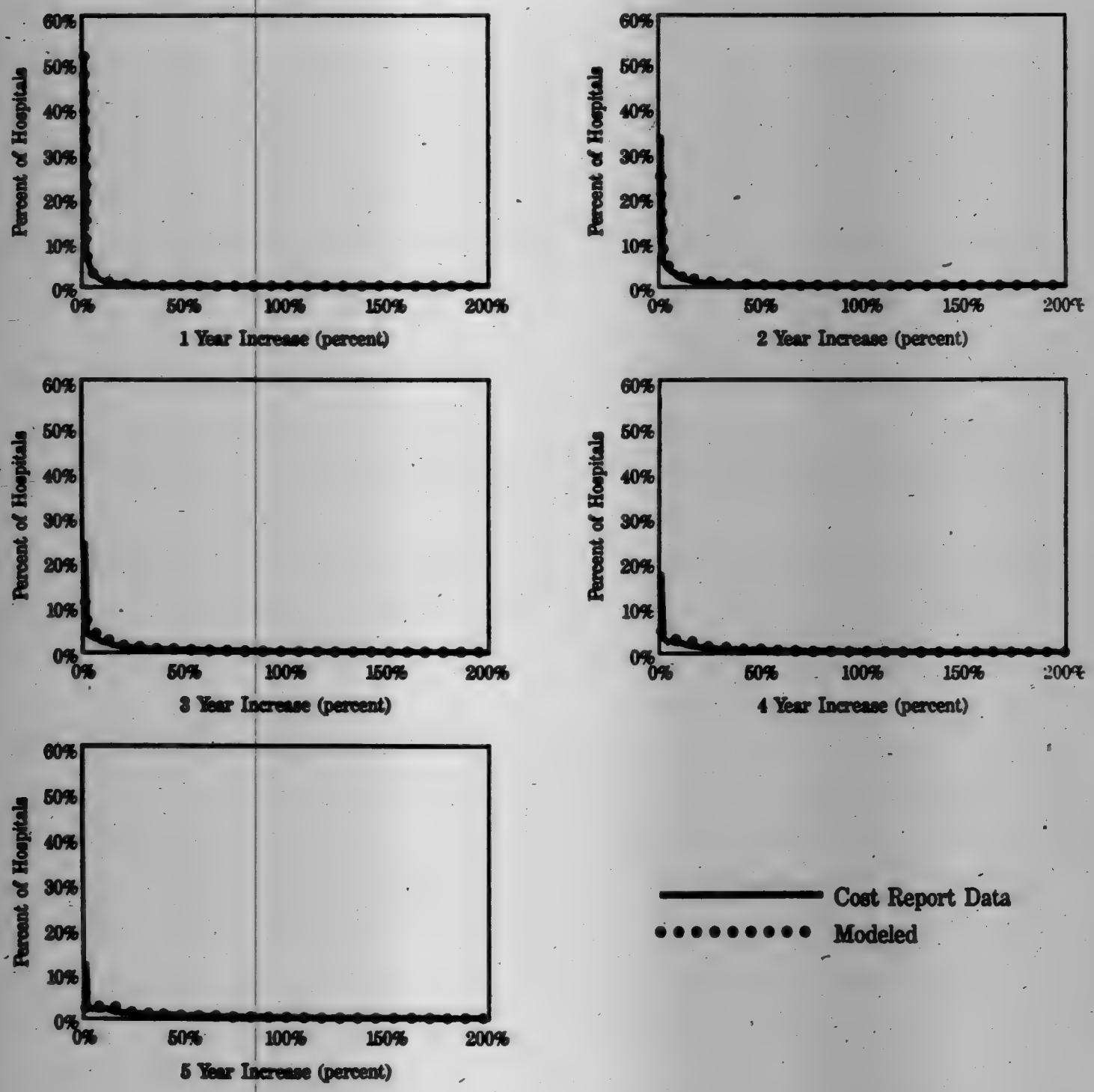

Figure 1

VOL 57 ISS 17 JA 27 1992 UMI

Comparison of Moveable Capital per Bed Increase Distributions

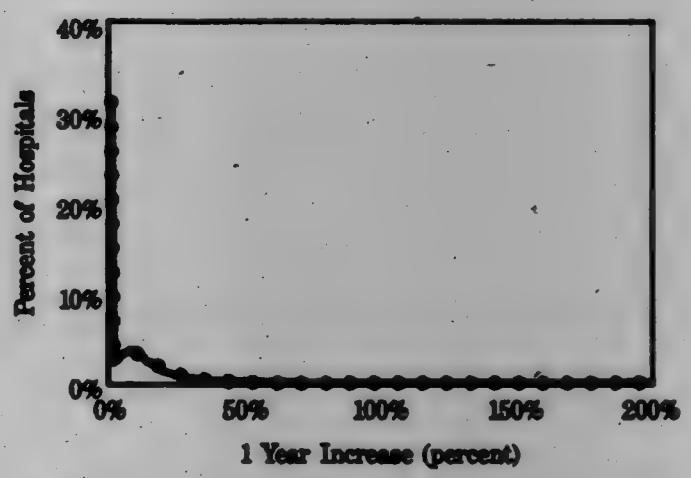

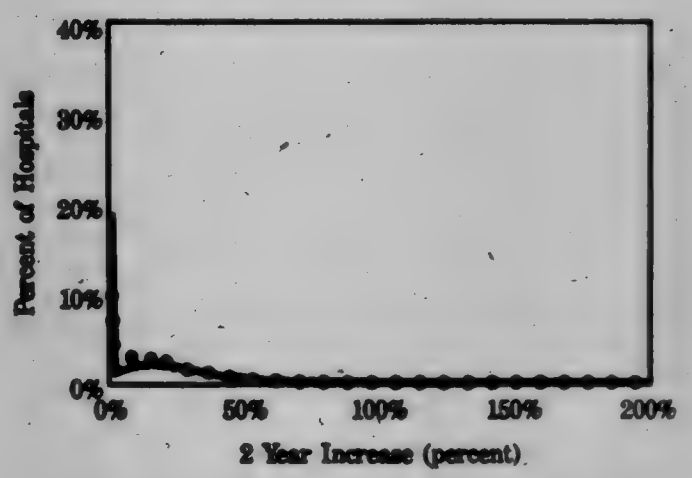

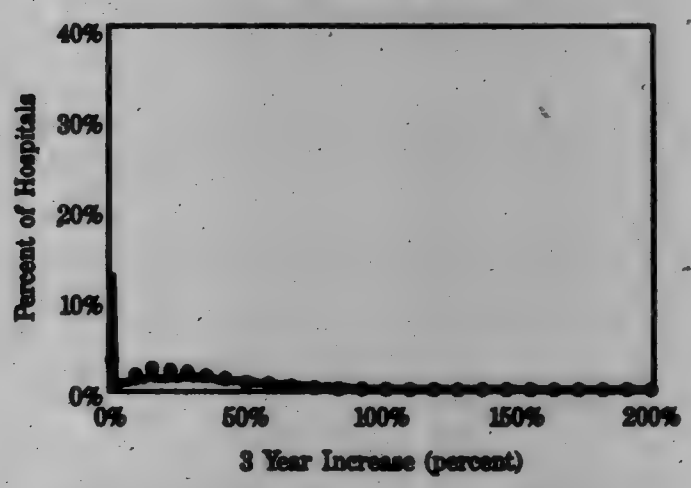

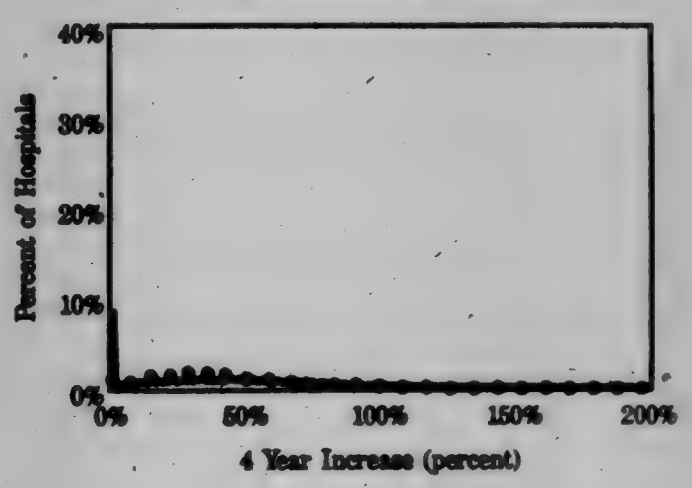

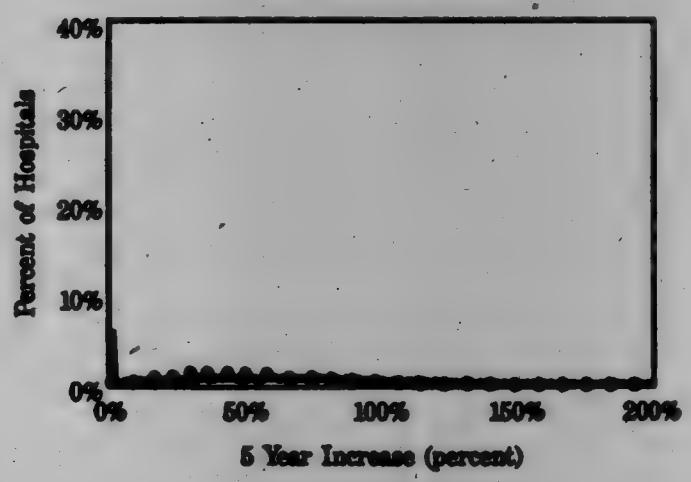

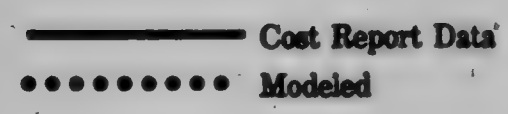

Figure 2

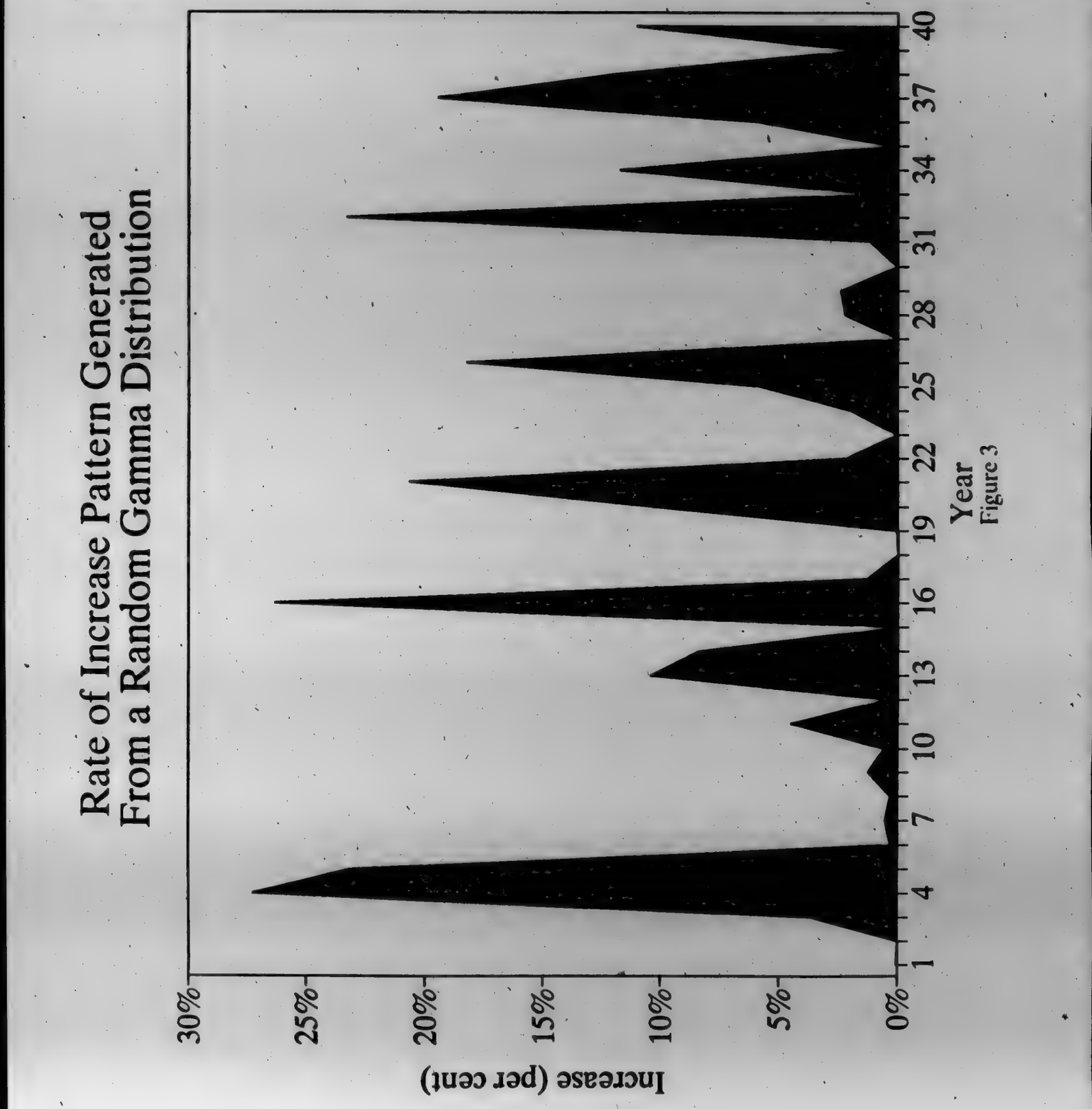
Rate of Increase Pattern Generated From a Random Gamma Distribution
Increase (per cent)
30%
25%
20%
15%
10%
5%
0%
1
4
7
10
13
16
19
22
25
28
31
34
37
40
Year

Figure 3

Splitting Normal Distribution for Bed Size Changes

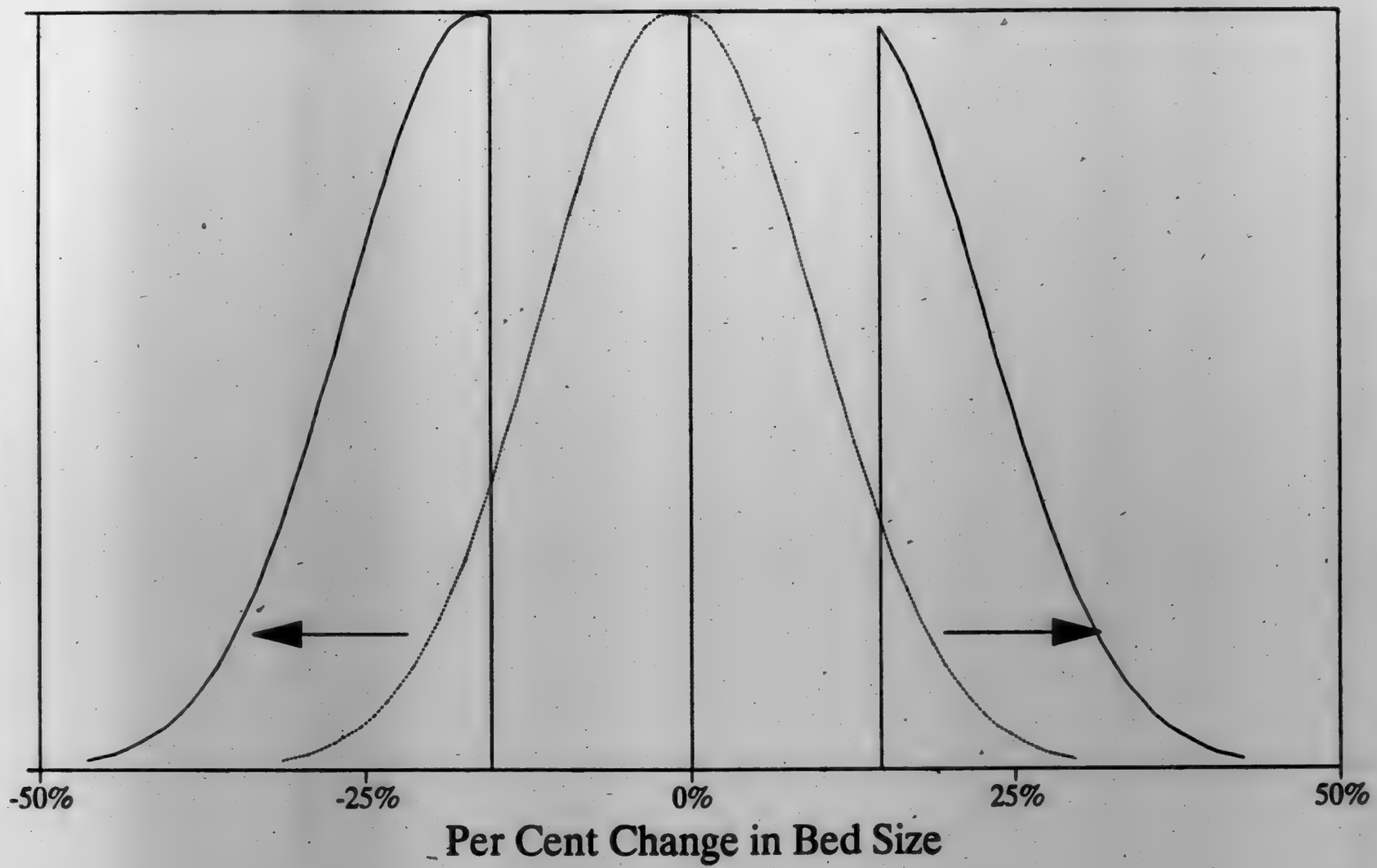

Figure 4

Distribution of Medicare Capital Cost per Case

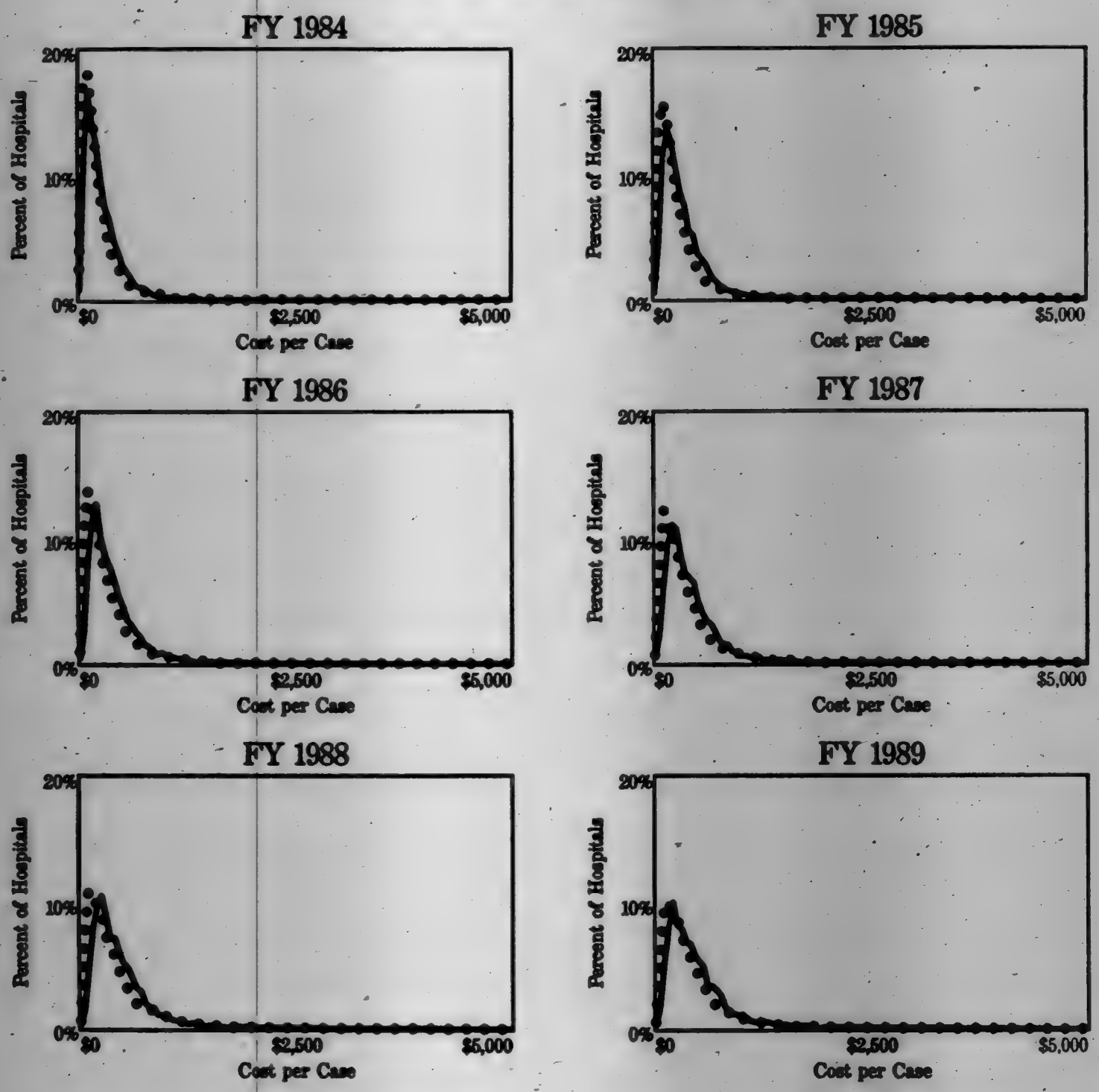

Figure 5

[FR Doc. 92-1623 Filed 1-24-92; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

RIN 1004-AB21

43 CFR Part 3160

[WO-610-4111-02-24 1A; Circular No. 2634]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2, Drilling Operations; Clarification

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends Onshore Oil and Gas Order No. 2—Drilling Operations to clarify certain well control, casing, mud program, and drilling abandonment requirements, and to specify the circumstances when used casing may be utilized.

EFFECTIVE DATE: February 26, 1992.

ADDRESSES: Inquiries or suggestions should be sent to Director (610), Bureau of Land Management, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Kent, (202) 653-2174, or Howard A. Lemm, (801) 539-4032.

SUPPLEMENTARY INFORMATION: Onshore Oil and Gas Order No. 2 (the Order) of the Bureau of Land Management (BLM) on Drilling Operations was published in the **Federal Register** on November 18, 1988 (53 FR 46798). Experience with and further consideration of the Order showed that certain provisions needed to be amended to improve their clarify and workability, and to elaborate on conditions for applying them. Accordingly, on January 18, 1991 (56 FR 1965), the BLM published a proposed rule to amend the Order and solicited public comment.

The comment period ended on March 19, 1991. In all, 163 comments were received, 160 from business entities or individuals identifying themselves with such entities, 1 from a trade association, and 2 from individuals not stating an affiliation with any business entity. All of the comments were carefully considered in the development of this final rule.

Several comments suggested changes in or clarifications of portions of the Order that were not proposed to be amended in the proposed rule. These suggestions cannot be considered at this time, or included in this final rule, because the public has not had an opportunity to review them. They may be addressed in a subsequent proposed rule.

One comment suggested additional language to make it clear that the fluid level referred to in paragraphs ii. and iii. of article III.A.2.c. is that of the level in the fluid reservoir of the accumulator system. This comment has been adopted in the final rule, and the section on the minimum standards and enforcement provisions for the pressure accumulator system has been amended to provide that the capacity of the fluid reservoir of the system is required to be double the usable fluid volume of the accumulator system as opposed to the total volume of the system. This change will clarify the intent of the Order and accommodate standard reservoir sizes now in use.

The majority of the comments addressed the proposed amendment of article III.B.1.a. that governed the use of used casing. Most of these comments opposed the limitation of used casing to wells of shallow depths and low pressures. At the same time, the comments tacitly accepted the need for reasonable assurance of wellbore integrity and protection of the subsurface environment, stating that used casing meeting or exceeding American Petroleum Institute standards is sufficient. The BLM is persuaded that, in probably the majority of cases, such used casing is sufficient to protect the subsurface environment. In the final rule, the provision has been amended to allow the use of used casing, subject to the approval of the authorized officer, without limitation to particular ranges of depths or pressures.

The casing requirements are, therefore, amended to provide that used casing may be employed only when it is verifiable to be at least 87½ percent of the nominal wall thickness of new casing. This will allow the authorized officer to eliminate the safety risk of used casing being used under circumstances posing a substantial risk of casing failure and resulting environmental degradation and loss of resources.

Article III.B.1.f. is also amended to state that centralizers shall be placed on the bottom 3 joints of surface casing rather than on every fourth joint, with a minimum of 1 centralizer per joint, starting with the shoe joint, in order to allow remedial cementing of the upper part of the casing string. A comment suggested requiring additional centralizers for the surface casing. Requirements in this section merely represent minimum standards, and the BLM encourages operators to exceed those standards. In addition, the authorized officer may require extra centralization for any casing string when necessary to promote cement isolation across usable quality aquifers or other mineral resources. The rule is thus only intended to provide a minimum standard, which can be applied in most ordinary circumstances, but which may be made more stringent in appropriate cases by the authorized officer. The comment is not adopted in the final rule.

The Order is also amended to include a reference to Onshore Oil and Gas Order No. 6—Hydrogen Sulfide Operations, for requirements as to the availability and use of hydrogen sulfide safety and monitoring equipment.

The definition for "Tagging the Plug" when abandoning drilling operations is amended to replace the requirement that the plug be tagged by placing the weight of the string of tubing or drill pipe, with a requirement of placing a weight on the plug sufficient to show that the plug is in place and properly set. This may be the entire unbuoyed weight of the drill string in many cases, but in some cases, due to plug setting depth and compressive strength, excessive weight may cause string fill-up and/or plug damage.

The principal author of this final rule is Howard Lemm of the Montana State Office, assisted by the staff of the Division of Legislation and Regulatory Management, all of the BLM.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the proposal would not significantly affect the ten criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1506.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely

to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The changes in the Order define and clarify the responsibilities of the lessees and operators with respect to drilling operations on Federally supervised leases. Affected parties should derive a benefit from the changes, which may reduce the overall economic burden. The actual impact of the changes would be difficult to quantify. However, they would not meet any of the criteria established by the Executive Order. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. The principal small entities affected by this rule will be the oil and gas lessees and operators known as "independents," as well as drilling equipment and pipe suppliers. However, the changes will have no significant economic effect on a substantial number of small entities, so long as there is compliance with the applicable requirements. The requirements are applied uniformly without regard to the size of entity affected. While this may be viewed as imposing a more severe burden on small operators and manufacturers, to do otherwise would be discriminatory on its face and could result in the large companies creating small subsidiaries to avoid compliance when operating on Federal and Indian leases.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. No real or personal property would be taken as a result of the rule. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirements contained in 43 CFR part 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0134 and 1004–0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Indian lands—mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, and for the reason stated in the preamble, part 3160, Group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: November 19, 1991.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:

Authority: 30 U.S.C. 183 et seq., 30 U.S.C. 351–359, 30 U.S.C. 301–306, 25 U.S.C. 396, 25 U.S.C. 396a–396q, 25 U.S.C. 397, 25 U.S.C. 398, 25 U.S.C. 398a–398c, 25 U.S.C. 399, 43 U.S.C. 1457. See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), 40 U.S.C. 471 et seq., 42 U.S.C. 4321 et seq., 42 U.S.C. 6508, Public Law 97–78, 30 U.S.C. 1701 et seq., 25 U.S.C. 2102 et seq.

2. Notes 1 and 2 at the beginning of part 3160 are removed.

§ 3160.0–9 [Added]

3. Section 3160.0–9 is added to read as follows:

§ 3160.0–9 Information collection.

(a) The information collection requirements contained in §§ 3162.3, 3162.3–1, 3162.3–2, 3162.3–3, 3162.3–4, 3162.4–1, 3162.4–2, 3162.5–1, 3162.5–2, 3162.5–3, 3162.6, 3162.7–1, 3162.7–2, 3162.7–3, 3162.7–5, 3164.3, 3165.1, and 3165.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance Number 1004–0134. The information may be collected from some operators either to provide data so that proposed operations may be approved or to enable the monitoring of compliance with granted approvals. The information will be used to grant approval to begin or alter operations or to allow operations to continue. The obligation to respond is required to obtain benefits under the lease.

(b) Public reporting burden for this information is estimated to average 0.4962 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0134, Washington, DC 20503.

(c)(1) The information collection requirements contained in part 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned the following Clearance Numbers:

OPERATING FORMS

Form No.	Name and filing date	OMB No.
3160–3	Application for Permit to Drill, Deepen, or Plug Back—Filed 30 days prior to planned action	1004–0136
3160–4	With Completion of Recompletion Report and Log—Due 30 days after well completion	1004–0137
3160–5	Sundry Notice and Reports on Wells—Subsequent report due 30 days after operations completed	1004–0135

The information will be used to manage Federal and Indian oil and gas leases. It will be used to allow evaluation of the technical, safety, and environmental factors involved with drilling and producing oil and gas on Federal and Indian oil and gas leases. Response is mandatory only if the operator elects to initiate drilling, completion, or subsequent operations on an oil and gas well, in accordance with 30 U.S.C. 181 *et seq.*

(2) Public reporting burden for this information is estimated to average 25 minutes per response for clearance number 1004–0135, 30 minutes per response for clearance number 1004–0136, and 1 hour per response for clearance number 1004–0137, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0135, 1004–0136, or 1004–0137, as appropriate, Washington, DC 20503.

(d) There are many leases and agreements currently in effect, and which will remain in effect, involving

both Federal and Indian oil and gas leases which specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, or Conservation Division. These leases and agreements also often specifically refer to various officers such as Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager, and Deputy Minerals Manager. In addition, many leases and agreements specifically refer to 30 CFR part 221 or specific sections thereof, which has been redesignated as 43 CFR part 3160. Those references shall now be read in the context of Secretarial Order 3087 and now mean either the Bureau of Land Management or Minerals Management Service, as appropriate.

Order No.	Subject	Effective Date	Federal Register reference	Supersedes
2	Drilling operations Amended	December 19, 1988	53 FR 46798	None.

Note.—Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

Note.—These amendments to the appendix published at 53 FR 46804, Nov. 18, 1988, for information only and will not appear in the Code of Federal Regulations.

Appendix—Text of Oil and Gas Order No. 2 [Amended]

5. Article II.V. is revised to read as follows:

* * * * *

V. Tagging the Plug means running in the hole with a string of tubing or drill pipe and placing sufficient weight on the plug to insure its integrity. Other methods of tagging the plug may be approved by the authorized officer.

6. Article III.A.2.b.ii. is amended by adding the following sentence at the end of the first paragraph thereof:

ii. * * * The configuration of the chokes may vary.

7. Article III.A.2.c. is amended by revising the third sentence of paragraph ii. and the second sentence of paragraph iii. thereof to read as follows, respectively:

ii. * * * The fluid reservoir capacity shall be double the usable fluid volume of the accumulator system capacity and the fluid level of the reservoir shall be maintained at the manufacturer's recommendations. * * *

* * * * *

iii. * * * The fluid reservoir capacity shall be double the usable fluid volume of the accumulator system capacity and the fluid level of the reservoir shall be maintained at the manufacturer's recommendations. * * *

8. Article III.B.1.a. is amended by adding at the end of the first paragraph thereof and before the paragraph "Violation: Major" the following sentence:

a. * * * All casing, except the conductor casing, shall be new or reconditioned and tested casing. All casing shall meet or exceed API standards for new casing. The use of reconditioned and tested used casing shall be subject to approval by the authorized officer; approval will be contingent upon the wall thickness of any such casing being verified to be at least 87½ percent of the nominal wall thickness of new casing.

9. Article III.B.1.f. is amended by revising the first paragraph thereof to read:

f. Surface casing shall have centralizers on the bottom 3 joints of the casing (a minimum of 1 centralizer per joint, starting with the shoe joint). * * *

10. Article III.C.6.b. is revised to read as follows:

b. Hydrogen sulfide safety and monitoring equipment requirements may be found in Onshore Oil and Gas Order No. 6—Hydrogen Sulfide Operations.

[FR Doc. 92-1763 Filed 1-24-92; 8:45 am]
BILLING CODE 4310-84-M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket 92-03]

Rules of Practice and Procedure; Special Docket Applications

AGENCY: Federal Maritime Commission.

ACTION: Interim rule with request for comments.

SUMMARY: The Commission is amending its rules regarding the processing of special docket applications to authorize the Secretary of the commission to assign such applications to Special Docket Officers for review and initial decision. The Secretary will retain discretion to assign particular applications to the Office of Administrative Law Judges as appropriate. This change will relieve much of the current workload burden experienced by the Office of Administrative Law Judges and allow the Commission to better utilize its limited resources.

DATES: Interim rule effective upon publication in the **Federal Register**; comments must be received on or before February 26, 1992.

ADDRESSES: Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC, 20573-0001.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Rule 92 (46 CFR 502.92) of the Commission's Rules of Practice and Procedure contains regulations outlining the procedures for the filing and processing of special docket applications. Such applications may be filed by a common carrier or shipper for permission to refund or waive collection of a portion of freight charges where it appears that there is an error in the carrier's tariff of a clerical or administrative nature or an error due to inadvertence in failing to file a new tariff. Under current Commission practice all such applications are referred by the Secretary of the Commission to the Commission's Office of Administrative Law Judges ("OALJ") for review and for issuance of an initial decision.

The number of special docket applications filed with the Commission has increased dramatically over the last year. This increase has occurred at a time when the number of formal docket proceedings assigned to OALJ also has increased significantly. These increases have created a significant workload burden for OALJ. In an effort to reduce this workload burden and to better utilize staff resources the Commission has determined to transfer the principal responsibility for review of special dockets to the Office of the Secretary of the Commission. Under this procedure the Secretary will have the authority to assign special docket applications to Special Dockets Officers, who will review each application and issue an initial determination, as the ALJs do currently. The process for filing of exceptions and/or review of initial determinations by the Commission will continue. The Secretary also will be given the discretion to continue to refer particular applications to OALJ for disposition when deemed appropriate.

Such discretion might be exercised, for example, when the application involves unique or complex legal issues.

Special Docket Officers to whom applications are assigned will be experienced Commission personnel, including at the outset the Commission's Assistant Secretary and the Director of the Office of Informal Inquiries, Complaints and Informal Dockets. Other personnel also will be utilized for this function. Transfer of the special docket function in this fashion will place this activity in a posture similar to the processing of service contract correction applications under 46 CFR 581.7, the responsibility for which has recently been delegated to the Director, Bureau of Tariffs, Certification and Licensing. This reassignment will not result in any change in the quality and carefulness of review of special docket applications.

A related change regarding the number of copies of special docket applications required to be filed is included in this document. The number is reduced from an original and three to an original and one.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) Annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

The proposed rule does not contain information collection requirements within the meaning of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501, *et seq.*, as implemented by regulations prescribed within 5 CFR part 1320. Accordingly, OMB approval of the proposed rule is not required.

Inasmuch as the implementation of this transfer of functions involves a change in agency organization, procedure and practice and addresses a current workload problem it is being implemented without either prior notice and opportunity for comment or delayed effective date, pursuant to the exceptions in 5 U.S.C. 553 (b) and (d). Although the rule is being effectuated immediately, it is published as an interim rule with opportunity for comment by interested persons.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure.

PART 502—[AMENDED]

Part 502 of title 46, Code of Federal Regulations is amended as follows:

1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 28 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; and E.O. 11222 of May 8, 1965 (30 FR 6469).

2. In § 502.92 paragraph (c) is revised to read as follows:

§ 502.92 Special docket applications and fee.

* * * * *

(c) Applications under paragraphs (a) and (b) of this section shall be submitted in an original and one (1) copy to the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573–0001. Each application shall be acknowledged with a reference to the assigned docket number and referred for decision, either to a Special Dockets Officer or to the Office of Administrative Law Judges, at the discretion of the Secretary. The deciding official may, in his or her discretion, require the submission of additional information. Formal proceedings as described in other rules of this part need not be conducted. The deciding official shall issue an initial determination to which the provisions of § 502.227 shall be applicable. If the application is granted, the initial determination or, as may otherwise be applicable, the final decision of the Commission shall describe the content of the appropriate notice if required to be published, and shall designate the tariff in which it is to appear, or other steps that are required to be taken which give notice of the rate on which such refund or waiver is to be based. [Rule 92].

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-1890 Filed 1-24-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90-358; FCC 91-400]

Establishment of standards for conducting comparative renewal proceedings in the Domestic Public Cellular Radio Telecommunications Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rulemaking proceeding establishes standards for conducting comparative renewal proceedings in the Domestic Public Cellular Radio Telecommunications Service (cellular radio service). Currently there are no specific rules governing the conduct of comparative cellular renewal proceedings. The new rules create: (1) Criteria for comparing a cellular radio renewal applicant and any challengers; (2) basic qualifications standards for challengers; and (3) procedures for preventing possible abuses of the comparative renewal process.

EFFECTIVE DATE: February 26, 1992.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mobile Services Division, Common Carrier Bureau (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket No. 90-358, adopted December 12, 1991, and released January 9, 1992.

The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this notice may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Paperwork Reduction

Public reporting burden for the collections of information is estimated as follows:

	No. of applicants	x	Hrs. per response	=	Total burden
Section 22.917(g)	20		2		40
Section 22.940	20		2		40
Section 22.941	20		10		200
Section 22.943	10		1		10
Section 22.944	10		1		10
Section 22.945	10		1		10
Total					310

Total Annual Burden: 310.

Frequency of Response: On occasion.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Information Resources Branch, room 416, Paperwork Reduction Project (3060–0457), Washington, DC. 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0457), Washington, DC 20503.

Summary of Report and Order

1. The Report and Order establishes standards for conducting comparative renewal proceedings between an applicant seeking renewal of its license in the Domestic Cellular Radio Telecommunications Service (cellular radio service) and challengers filing competing applications. The Report and Order provides criteria for granting renewal expectancies in the cellular radio service for the past performance of licenses. The Commission will grant a renewal expectancy to a licensee which (1) has substantially used its spectrum for its intended purpose; (2) has substantially complied with applicable Commission rules, policies and the Communications Act and (3) has not otherwise engaged in substantial relevant misconduct. A renewal expectancy would be more significant than any other preference awarded in comparative renewal proceedings.

2. The Report and Order also adopts certain criteria for comparing applicants in a cellular renewal proceeding. Thus, applicants would be compared with respect to (1) the areas and population to be served and the applicant's ability to meet the demand for cellular service; (2) the applicants' expansion proposals; (3) the nature and extent of the applicants' service proposals and (4) their experience in the cellular industry or other business of comparable type and size.

3. Given the Commission's continued concern over the filing of speculative applications for the cellular service, the Report and Order imposes strict basic qualifications requirements on challenging applicants to protect the integrity of the renewal process and the public from having to accept service from unqualified licensees. Thus, applicants filing applications which would compete with renewal applications are required to submit information, at the time they file their initial applications, to demonstrate the availability of their proposed transmitter-antenna sites and to demonstrate their financial qualifications.

4. The Report and Order imposes additional rules to prevent abuse of the comparative cellular renewal process by speculative applicants and petitioners who seek primarily to obtain payments from incumbent licensees. Thus, the Report and Order incorporates into the cellular renewal process the restrictions on payments made to petitioners, would-be petitioners and competing applicants which the Commission has previously adopted for comparative broadcast proceedings. An applicant filing a competing application against a cellular renewal application could only receive payment for withdrawing its application if it withdrew after the Initial Decision stage of the hearing and any payments would be limited to the legitimate and prudent expenses incurred in preparing, filing and prosecuting its application.

5. Further, to insure continuity of service and discourage speculators who would seek to acquire cellular licenses in cellular renewal proceedings for the purpose of selling them at a high price soon after acquisition, the Report and Order provides that if a challenger obtains a cellular authorization in a comparative renewal proceeding, the new licensee cannot sell its cellular system until it has operated the system for three years.

6. Lastly, the Report and Order adopts procedures which should streamline any comparative renewal proceedings which might occur. If the Commission determines, prior to designating any applications for a comparative renewal hearing, that a renewal applicant has made a *prima facie* case for a renewal expectancy, the hearing designation order will award the licensee a rebuttable presumption that the licensee is due a renewal expectancy.

Ordering Clauses

Accordingly, *It is ordered*, pursuant to sections 1, 4(i), 4(j) and 303(r) of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 154(j) and 303(r), That part 22 is amended as set forth below, effective February 26, 1992.

List of Subjects in 47 CFR Part 22

Communications common carriers, Domestic public cellular radio telecommunications service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22 [AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303).

2. Section 22.28 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 22.28 Dismissal and return of applications.

(a) Except as provided under §§ 22.29 and 22.943 (Dismissal of applications in renewal proceedings), any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Requests for dismissal shall comply with the

provisions of Section 22.29 as appropriate.

(b) Subject to the provisions of § 22.943 (Dismissal of applications in renewal proceedings), a request to dismiss an application without prejudice will be considered after designation for hearing only if:

* * * * *

3. Section 22.29 is amended by revising the introductory portion of paragraph (a) to read as follows:

§ 22.29 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) *Applicability.* Subject to the provisions of § 22.943 (Dismissal of applications in renewal proceedings), § 22.944 (Dismissal of petitions to deny in renewal proceedings), and § 22.945 (Threats to file petitions to deny or informal objections in renewal proceedings), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

* * * * *

4. Section 22.31 is amended by adding new paragraph (j) to read as follows:

§ 22.31 Mutually exclusive applications.

* * * * *

(j) Notwithstanding other provisions of this section, an application shall be entitled to comparative consideration with a cellular renewal application only if it is filed within the period specified in § 22.11(b) for the filing of cellular renewal applications and clearly indicates the call sign and frequency block of such renewal applicant.

5. Section 22.32 is amended by revising paragraph (e)(5) and adding new paragraph (e)(6) to read as follows:

§ 22.32 Consideration of applications.

* * * * *

(e) * * *

(5) Except as provided under paragraph (e)(6) of this section and § 22.942 (Procedures for comparative renewal proceedings), in the Domestic Public Cellular Radio Telecommunications Service the application is entitled to comparative consideration (pursuant to § 22.31) with another application (or applications); in such cases the hearing shall conform to the comparative evaluation procedure described in § 22.916.

(6) In the Domestic Public Cellular Radio Telecommunications Service, the application is entitled to comparative consideration (pursuant to § 22.31) with another application (or applications) in a comparative renewal proceeding; in such cases, the hearing shall conform to the comparative evaluation procedure described in § 22.942.

* * * * *

6. Section 22.40 is amended by revising paragraph (b) to read as follows:

§ 22.40 Considerations involving transfer or assignment applications.

* * * * *

(b) *Cellular systems.*

(1) Except in cases where paragraph (b)(2) of this section applies, the sale of a cellular construction permit will only be permitted after a showing that the transferor is not speculating in cellular licenses. The burden of proof is on the transferor. See also § 22.920.

(2) In situations where the first construction authorization or first license for a particular cellular system was awarded as the result of a comparative renewal proceeding, an assignment or transfer of control application will not be entertained for that cellular system for a period of three years from the date that service was initiated except if:

(i) The cellular system is to be transferred as part of a bona fide sale of an on-going business to which the cellular operation is incidental;

(ii) The transfer of control of a cellular system is required because of the death of the licensee; or

(iii) The transfer of control of a cellular system is *pro forma* and does not involve a change of ownership.

* * * * *

7. Section 22.917 is amended by adding new paragraph (g) to read as follows:

§ 22.917 Demonstration of financial qualifications.

* * * * *

(g) *Comparative Renewal Proceedings.* An applicant filing a competing application against the renewal application of an incumbent cellular licensee shall demonstrate, at the time it files its application, that it has either:

(1) A firm financial commitment, an irrevocable letter of credit or performance bond in the amount of its realistic and prudent estimated costs of construction and any other expenses to be incurred during the first year of operating its proposed system (the irrevocable letter of credit or performance bond must be from the type of financial institution described in paragraph (g)(4) of this section) or

(2) Available resources, as defined in paragraph (g)(5) of this section, necessary to construct and operate its proposed cellular system for one year.

(3) The firm financial commitment may be contingent on the applicant obtaining a construction permit. The applicant must also list all of its realistic and prudent estimated costs of construction and any other expenses to be incurred during the first year of operating its proposed system.

(4) The firm financial commitment required above shall be obtained from a state or federally chartered bank or savings and loan association, another recognized financial institution, or the financial arm of a capital equipment supplier; shall specify the terms of the loan or other form of credit arrangement, including the amount to be borrowed, the interest to be paid, the amount of the commitment fee and the fact that it has been paid, the terms of repayment and any collateral required; and shall contain a statement:

(i) That the lender has examined the financial condition of the applicant including audited financial statements where applicable, and has determined that the applicant is creditworthy;

(ii) That the lender has examined the financial viability of the proposal for which the applicant intends to use the commitment;

(iii) That the lender is committed to providing a sum certain to the particular applicant;

(iv) That the lender's willingness to enter into the commitment is based solely on its relationship with the applicant; and

(v) That the commitment is not in any way guaranteed by an entity other than the applicant.

(5) Applicants intending to rely on personal or internal resources must submit—

(i) Audited financial statements certified within one year of the date of the cellular application, indicating the availability of sufficient net current assets to construct and operate the proposed cellular system for one year;

(ii) A balance sheet current within 60 days of the date of filing its application that clearly shows the continued availability of sufficient net current assets to construct and operate the proposed cellular system for one year; and

(iii) A certification by the applicant or an officer of the applicant organization attesting to the validity of the unaudited balance sheet.

(6) Applicants intending to rely upon financing obtained through a parent corporation must submit the information

required by paragraph (g)(5) of this section, as the information pertains to the parent corporation.

(7) As an alternative to relying upon a firm financial commitment, an irrevocable letter of credit, or a performance bond from a financial institution as described in paragraph (g)(4) of this section, an applicant may state that it has placed in an escrow account sufficient cash to meet its construction and first-year operating expenses. Such a statement must specify the amount of cash, the escrow account number, and the financial institution where the escrow account is located.

(8) A competing application filed against the renewal application of an incumbent cellular licensee which does not demonstrate, at the time it is initially filed, that the competing applicant has sufficient funds to construct and operate for one year its proposed cellular system shall be dismissed as unacceptable for filing.

8. Section 22.940 is added to read as follows:

§ 22.940 Basic qualifications standards for applicants filing competing applications against cellular renewal applications.

(a) In addition to the other requirements set forth in part 22 for applications for initial cellular systems, an applicant filing a competing application against a cellular renewal application must provide, at the time it files its initial application, appropriate documentation demonstrating that its proposed antenna-transmitter site(s) will be available. Competing applications which do not include such documentation will be dismissed as unacceptable for filing. If the competing applicant does not own a particular site, it must, at a minimum, demonstrate that the site is available to him by providing a letter from the owner of the proposed antenna-transmitter site expressing the owner's intent to sell or lease the proposed site to the applicant. If any proposed antenna-transmitter site is under U.S. Government control, the applicant must submit written confirmation of the site's availability from the appropriate Government agency.

(b) Applicants which file competing applications against incumbent cellular licensees may not assume that an incumbent licensee's transmitter sites are available for their use.

9. Section 22.941 is added to read as follows:

§ 22.941 Criteria for comparative cellular renewal proceedings.

(a) A cellular renewal applicant involved in a comparative renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, which is the most important comparative factor to be considered in the proceeding, if its past record for the relevant license period demonstrates that the renewal applicant:

(1) Has substantially used its spectrum for its intended purpose;

(2) Has substantially complied with applicable Commission rules, policies and the Communications Act; and

(3) Has not otherwise engaged in substantial relevant misconduct.

(b) In order to establish its right to a renewal expectancy, a cellular renewal applicant involved in a comparative renewal proceeding must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing shall include the following:

(1) A description of its current service area in terms of geographic coverage and population served, as well as the system's ability to accommodate the needs of roamers;

(2) An explanation of its record of expansion, including a timetable of the construction of new cell sites to meet changes in demand for cellular radio service;

(3) A description of its investments in its cellular system; and

(4) Copies of all Commission orders finding the licensee to have violated the Communications Act or any Commission rule or policy; copies of any orders finding the licensee to be guilty of relevant non-FCC misconduct, including misconduct constituting a felony, fraudulent misrepresentations to governmental units, criminal misconduct involving false statements or dishonesty, or antitrust or anticompetitive violations involving communications services; and a list of any pending proceedings that relate to any matter described above.

(c) In making its showing of entitlement to a renewal expectancy, a renewal applicant may claim credit for any system modification applications which were pending on the date it filed its renewal application. Such credit will not be allowed if the modification application is dismissed or denied.

(d) The following additional comparative issues will be included in comparative renewal proceedings:

(1) To determine on a comparative basis the geographic areas and population that each applicant proposes to serve; to determine and compare the relative demand for the services proposed in said areas; and to determine and compare the ability of each applicant's cellular system to accommodate the anticipated demand for both local and roamer service;

(2) To determine on a comparative basis each applicant's proposal for expanding its system capacity in a coordinated manner within its proposed Cellular Geographic Service Area (CGSA) in order to meet anticipated increasing demand for local and roamer service;

(3) To determine on a comparative basis the nature and extent of the service proposed by each applicant, including each applicant's proposed rates, charges, maintenance, personnel, practices, classifications, regulations and facilities (including switching capabilities);

(4) To determine on a comparative basis each applicant's past performance in the cellular industry or another business of comparable type and size.

(e) With respect to evidence introduced pursuant to § 22.941(d)(3) of this section, an applicant filing a competing application against a cellular radio renewal applicant (competing applicant) who claims a preference for offering any service not currently offered by the incumbent licensee must demonstrate demand for that new service and also present a business plan showing that the competing applicant can operate the system economically. A competing applicant who proposes to replace analog technology with digital technology will receive no credit for its proposal unless it submits a business plan showing how it will operate its system economically and how it will provide more comprehensive service than does the incumbent licensee with existing and implemented cellular technology.

(f) The ultimate issue in comparative renewal proceedings will be: to determine, in light of the evidence adduced in this proceeding, what disposition of the referenced applications would best serve the public interest, convenience and necessity.

10. Section 22.942 is added to read as follows:

§ 22.942 Procedures for comparative renewal proceedings.

The following expedited hearing procedures shall apply to comparative renewal proceedings in the Domestic Public Cellular Radio Telecommunications service.

(a) An applicant for construction authority who files an application which is mutually exclusive with an application for renewal of a cellular radio system license must file its affirmative direct case, including all documentary evidence upon which the applicant intends to rely in a comparative context, with its initial

application. Each exhibit should be numbered and include the sponsoring witness affidavit. An original and four copies of the direct case must be filed: An original and two copies for the Mobile Services Division, Common Carrier Bureau and two copies for the Office of Administrative Law Judges. The burden will be on each applicant to obtain copies of its mutually exclusive opponent's exhibits in a timely manner, either from the opponents or by duplicating the Commission's copies. We expect all parties to cooperate in making available materials to each other upon request.

(b) Within thirty (30) days of the issuance of the Public Notice announcing the filing of a renewal application and applications competing with that renewal application, the renewal applicant must file its complete affirmative direct case, including its showing demonstrating any entitlement to a renewal expectancy. Four copies of the direct case must be filed with the Commission and a copy served on each other party to the proceeding.

(c) Interested parties have thirty (30) days from the date that the renewal applicant submits its direct case to submit petitions to deny that application. Applicants have fifteen (15) days to file replies; no further pleadings will be accepted.

(d) If, prior to a comparative renewal hearing, it appears that a renewal applicant's showing concerning its entitlement to a renewal expectancy meets the standards set forth in § 22.941(a) of the rules, the Commission will award a rebuttable presumption that the licensee is entitled to a renewal expectancy in its order designating the licensee and any competing applicants for a comparative hearing. If such a presumption is awarded, the applicants competing with the renewal applicant will have the burden of persuasion on the issue of the licensee's entitlement to a renewal expectancy in the comparative hearing.

(e) Parties have ten days after publication in the **Federal Register** of the hearing designation order to file notices of appearance.

(f) Rebuttal cases must be filed within thirty (30) days of the date of publication in the **Federal Register** of the order designating the applications for hearing. Four copies of the rebuttal case must be filed with the Commission and a copy served on each other party to the proceeding.

(g) The expedited hearing procedures delineated in §§ 22.916(b)(5) through (b)(8) of our rules shall be utilized in comparative cellular radio renewal proceedings.

11. Section 22.943 is added to read as follows:

§ 22.943 Dismissal of applications in renewal proceedings.

(a) Any applicant for construction authority, that has filed an application that is mutually exclusive with an application for the renewal of a license of a cellular radio system (hereinafter "competing applicant") and seeks to dismiss or withdraw its application and thereby remove a conflict between applications pending before the Commission, must obtain the approval of the Commission.

(b) If a competing applicant seeks to dismiss or withdraw its application prior to the Initial Decision stage of the hearing on its application, it must submit to the Commission a request for approval of the dismissal or withdrawal of its application, a copy of any written agreement related to the dismissal or withdrawal of its application, and an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has received or will receive any money or other consideration in exchange for dismissing or withdrawing its application:

(2) A statement that its application was not filed for the purpose of reaching or carrying out an agreement with any other applicant regarding the dismissal or withdrawal of its application; and

(3) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

(4) In addition, within 5 days of the filing date of the applicant's request for approval, each remaining competing applicant and the renewal applicant must submit an affidavit setting forth:

(i) A certification that neither the applicant nor its principals has paid or will pay any money or other consideration in exchange for the dismissal of its application; and

(ii) The terms of any oral agreement relating to the dismissal or withdrawal of the application.

(c) If a competing applicant seeks to dismiss or withdraw its application after the Initial Decision stage of the hearing on its application, it must submit to the Commission a request for approval of the dismissal or withdrawal of its application, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses of the applicant;

(2) The exact nature and amount of any consideration paid or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement;

(4) A statement that its application was not filed for the purpose of reaching or carrying out an agreement with any other applicant regarding the dismissal or withdrawal of its application; and

(5) The terms of any oral agreement relating to the dismissal or withdrawal of its application;

(6) In addition, within 5 days of the filing date of the applicant's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth;

(i) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the withdrawing applicant in exchange for the dismissal or withdrawal of the application; and

(ii) The terms of any oral agreement relating to the dismissal or withdrawal of the application.

(d) For the purposes of this section:

(1) Affidavits filed pursuant to this section shall be executed by the applicant, permittee or licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) An application shall be deemed to be pending before the Commission from the time an application is filed with Commission until an order of the Commission granting, denying, or dismissing the application is no longer subject to reconsideration by the Commission or to review by any court.

(3) "Legitimate and prudent expenses" are those expenses reasonably incurred by an applicant in preparing, filing, and prosecuting its application.

(4) "Other consideration" consists of financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

12. Section 22.944 is added to read as follows:

§ 22.944 Dismissal of petitions to deny in renewal proceedings.

(a) Whenever a petition to deny has been filed against any application for the renewal of a license for a cellular radio system or against an application for construction authority that is mutually exclusive with a renewal application, and the petitioner seeks to dismiss or withdraw the petition to deny, either unilaterally or in exchange

for financial consideration, the petitioner must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) A certification that neither the petitioner nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the petition to deny;

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the dismissal or withdrawal of the petition to deny.

(5) In addition, within 5 days of the filing date of the petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth;

(i) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for dismissing or withdrawing the petition to deny; and

(ii) The terms of any oral agreement relating to the dismissal or withdrawal of the petition to deny.

(b) For the purposes of this section:

(1) Affidavits filed pursuant to this section shall be executed by the applicant, permittee or licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) A petition shall be deemed to be pending before the Commission from the time a petition is filed with Commission until an order of the Commission granting, denying, or dismissing the petition is no longer subject to reconsideration by the Commission or to review by any court.

(3) "Legitimate and prudent expenses" are those expenses reasonably incurred by a petitioner in preparing, filing, and prosecuting its petition for which reimbursement is being sought.

(4) "Other consideration" consists of financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

13. Section 22.945 is added to read as follows:

§ 22.945 Threats to file petitions to deny or informal objections in renewal proceedings.

(a) No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny or an informal objection against any application for the renewal of a license for a cellular radio system or against an application for construction authority that is mutually exclusive with a renewal application. For the purposes of this section, reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector incurred reasonably and directly in preparing to file a petition to deny will not be considered to be payment for refraining from filing a petition to deny or informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement nonfinancial promises are prohibited unless specifically approved by the Commission.

(b) Whenever any payment is made in exchange for withdrawing a threat to file or refraining from filing a petition to deny or informal objection, the applicant must file with the Commission a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) Certification that neither the would-be petitioner, nor any person or organization related to the would-be petitioner, has received or will receive any money or other consideration in connection with the agreement other than legitimate and prudent expenses reasonably incurred in preparing to file the petition to deny;

(2) The terms of any oral agreement;

(c) For purposes of this section:

(1) Affidavits filed pursuant to this section shall be executed by the applicant, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) "Legitimate and prudent expenses" are those expenses reasonably incurred by a would-be petitioner in preparing to file its petition for which reimbursement is being sought.

(3) "Other consideration" consists of financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

[FR Doc. 92-1691 Filed 1-24-92; 8:45 am]
BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 57, No. 17
Monday, January 27, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is proposing to redefine the Devils Postpile National Monument (DPNM) portion of Madera County, California, from the Fresno, California, wage area to the Reno, Nevada, wage area. Due largely to geographic features of the area, the northeastern portion of Madera County is economically oriented to the Reno area rather than to the Fresno area. The proposed change would place the DPNM portion of Madera County in the wage area to which it is better aligned.

DATES: Comments must be received on or before February 26, 1992.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Allan K. Summers, (202) 606–2848, or (FTS) 266–2848.

SUPPLEMENTARY INFORMATION: DPNM is located in Madera County, California, which is an area of application in the Fresno, California, wage area. Although Madera County is part of the Fresno wage area, the far eastern portion of Madera County around DPNM is isolated from the remainder of the County and the wage area by the Sierra Nevada mountain range. Roads to the west of DPNM through the mountains are tortuous and are frequently closed during the winter months. Shipping, entertainment, etc., are located a few miles east of DPNM in Mammoth Lakes, which is in Mono County, California, and area of application in the Reno, Nevada, wage area. DPNM and Mammoth Lakes are also near State Route 395, which runs north and south through the Owens Valley and provides easy access to Carson City and Reno.

Because of DPNM's isolation from the Fresno area and its economic orientation to Mono County and the Reno area, it appears that the employees at DPNM should be paid from the Reno wage schedule. The proposed regulations make DPNM an area of application within the Reno, Nevada, wage area. The proposal has the consensus support of the Federal Prevailing Rate Advisory Committee.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for 5 CFR part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; [3] 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

Appendix C to Subpart B [Amended]

2. In appendix C to subpart B, renumber footnotes 3 through 26 as 4 through 27, respectively, and add a new footnote 3 to the county of Madera, California, in the Fresno, California, wage area to read as follows:

[3] Does not include Devils Postpile National Monument portion.

Appendix C to Subpart B [Amended]

3. In appendix C to subpart B, renumber footnotes 16 through 27 as 17 through 28, and add the county of Madera, California, and footnote 16 to the wage area of Reno, Nevada, to read as follows:

Nevada

* * * * *

Reno

* * * * *

Area of Application. Survey area plus:

* * * * *

California:

* * * * *

Madera [16]

[16] Includes only the Devils Postpile National Monument portion.

[FR Doc. 92–1854 Filed 1–24–92; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[FV–91–462PR]

Almonds Grown in California; Changes to Administrative Rules and Regulations Concerning Eligible Charitable Outlets for Disposition of California Almonds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a revision to the administrative rules and regulations, established under the Federal marketing order for California almonds, which describe conditions under which handlers may receive credit against their assessments for distributing sample packets of almonds to charitable outlets. This change would eliminate controversy over what constitutes a charitable outlet for purposes of the Almond Marketing Order's creditable advertising program. The action is based on an unanimous recommendation of the Almond Board of California (Board), which is responsible for local administration of the order, and other available information..

DATES: Comments must be received by February 26, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments

must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2830.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds who are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action would revise § 981.441 of Subpart—Administrative Rules and Regulations and is based on an unanimous recommendation of the Board and other available information.

Section 981.41 of the order provides authority for crediting a handler's direct expenditures for advertising against such handler's assessment obligation. Section 981.441(d)(1)(i) of the rules and regulations allows handlers credit for distributing generic packages of almonds to charitable or educational outlets. Handlers must file claims with the Board in order to receive credit for the distribution of such sample packages.

However, there is no reference or guideline as to what is considered a charitable outlet. In the past, Board policy has been to use those charitable organizations listed in the Internal Revenue Service Code, section 170(c) as a guideline in evaluating advertising claims.

At its December 5, 1991, meeting the Board recommended amending § 981.441 of the Administrative Rules and Regulations to specify that charitable outlets for which handlers may receive credit for distributing generic almond packets must be those charities listed in section 170(c) of the Internal Revenue Service Code. This action is expected to eliminate controversy over what constitutes a charitable outlet as it pertains to § 981.441(d)(1)(i) of the creditable advertising program. This action is not expected to impose any additional burden or costs on handlers.

Based on the above, the Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 981.441 is amended by revising the first sentence and adding a new sentence after the revised first sentence to read as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(d) * * *

(1) * * *

(i) For the distribution of sample packages containing one-half ounce or less of almonds to charitable or educational outlets. Charitable outlets must be listed in section 170(c) of the Internal Revenue Service Code. * * *

* * * * *

Dated: January 17, 1992.

Robert C. Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–1792 Filed 1–24–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–05–AD]

Airworthiness Directives; Piper Models PA–23, PA–23–150, and PA–23–160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would supersede AD 90–23–18, which required new preflight fuel system drainage procedures and required fuel system modifications on certain Piper PA–23 series airplanes until its effectiveness was suspended on December 13, 1990. Since its suspension, the Federal Aviation Administration (FAA) has issued an advance notice of proposed rulemaking (ANPRM) to seek comments from interested persons regarding the best action (if any) to be taken to correct potential water-in-the-fuel problems. The FAA has subsequently determined that the preflight fuel system drainage procedures required by AD 90–23–18 on the Piper Models PA–23, PA–23–150, and PA–23–160 airplanes are necessary if a new dual fuel drain has not been installed, but that the modifications should not be mandatory. The actions specified by the proposed AD are intended to prevent rough engine operation or complete power interruption caused by water contamination in the fuel.

DATES: Comments must be received on or before April 8, 1992.

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ADDRESSES: Information that is related to this AD may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–85–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Will H. Trammell, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–85–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

There have been 14 accidents since 1975 involving certain Piper PA–23 series airplanes where it was believed that water in the fuel caused engine stoppage on the affected airplanes. The FAA determined that it is possible to trap fluid, specifically water, in excess of the capacity of the fuel strainer because of a low spot in the aft inboard corner of the main fuel tanks.

A National Transportation Safety Board (NTSB) safety recommendation pertaining to the water-in-the-fuel problem on certain Piper PA–23 series airplanes prompted the FAA to more fully evaluate this condition and take rulemaking action. A notice of proposed rulemaking (NPRM) was published in the **Federal Register** on June 4, 1990 (55 FR 22802). The proposed AD would have provided new preflight fuel system drainage procedures on Piper Models PA–23, PA–23–150, and PA–23–160 airplanes and would have required fuel system modifications on Piper 23 series airplanes in accordance with Piper Service Bulletin (SB) No. 827A, dated November 4, 1988, and Piper SB No. 932, dated January 12, 1990.

Interested persons were afforded an opportunity to participate in the making of the amendment. Four comments were received on the proposed AD. The FAA evaluated each of the comments and determined that final AD action should be taken. Airworthiness Directive (AD) 90–23–18, Amendment 39–6782, was published in the **Federal Register** on November 7, 1990 (55 FR 46787) with an effective date of December 10, 1990. After issuing AD 90–23–18, the FAA discovered that there was an error in the AD in that it required both the installation of the dual fuel drain kits and a revised fuel system draining procedure in accordance with Piper SB No. 827A. The AD should only have required one of these two actions. In addition, the Aircraft Owners and Pilots Association (AOPA) petitioned the FAA to withdraw the fuel system modifications requirement from AD 90–23–18 because, in its judgment (and that of many of the airplane owners), the water-in-the-fuel problem was caused by poor maintenance rather than an inadequate design. From the evidence presented by the owners and the AOPA, the probable cause of large quantities of water entering the fuel cells is because of poorly maintained fuel filler caps and doors. The FAA has previously addressed this problem through AD 88–21–07 R1.

The FAA re-examined its position on this AD and suspended the effectiveness of AD 90–23–18 on December 13, 1990 (55 FR 51276). After this suspension, over 50 comments from the owners of Piper PA–23 series airplanes were received. The FAA issued an advance notice of proposed rulemaking (ANPRM) on April 24, 1991 (56 FR 18788), to provide an opportunity for the general public to participate in the decision whether to initiate further rulemaking. There were 186 responses to the ANPRM with the vast majority coming from the owners and operators of PA–23 series airplanes. Experience with the PA–23 series airplanes of the operators who responded ranged from 6 months to 38 years, with an average of approximately 12 years. A majority of the commenters feel that parts of AD 90–23–18 are unjustified and the AD should be removed or replaced. These commenters state that good preflight fuel draining procedures and maintenance are required to minimize water in the fuel. A synopsis of the comment is available by contracting the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–19–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

After careful review of the comments and all available information, the FAA has determined that the preflight fuel draining procedures that were required by suspended AD 90–23–18, Amendment 39–6782, on Piper Models PA–23, PA–23–150, and PA–23–160 airplanes and maintenance of the fuel caps and doors that is required by AD 88–21–07 R1, Amendment 39–6272 (54 FR 30719, July 24, 1989) on Piper PA–23 series airplanes will prevent water-in-the fuel problems. The FAA has determined that the modification requirements of suspended AD 90–23–18, Amendment 39–6782, are not necessary. The FAA has also determined that the preflight fuel draining procedures on the Piper Models PA–23, PA–23–150, and PA–23–160 airplanes should not be required if the airplanes have been modified by the installation of a dual fuel drain kit, part number 765–363, in accordance with the instructions of Part II of Piper SB No. 827A, dated March 4, 1988.

Since the condition described above is likely to exist or develop in other Piper Models PA–23, PA–23–150, and PA–23–160 airplanes of the same type design that have not been modified by the installation of a dual fuel drain kit, part number 765–363, the proposed AD would retain the preflight fuel draining procedures that were required by suspended AD 90–23–18. The proposed action would supersede AD 90–23–18 and would not include the fuel system modifications requirement that was part of that AD.

The FAA has no way of determining how many Piper Models PA–23, PA–23–150, and PA–23–160 airplanes have been modified by the installation of a dual drain kit, part number 765–363. The following cost information is based on none of the fleet having these kits installed. It is estimated that 1,107 airplanes in the U.S. registry would be

affected by the proposed AD, that it would take approximately .5 hours (at the most) per airplane to incorporate the preflight draining procedures into the Owner Handbook and Pilots Operating Manual, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $30,442.50.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 90–23–18, Amendment 39–6782 (55 FR 46787, November 7, 1990), and adding the following new AD:

Piper: Docket No. 91–CE–95–AD.
Applicability: Models PA–23, PA–23–150, and PA–23–160 airplanes (serial numbers 23–1 through 23–2046) that have not been modified by the installation of a dual fuel drain kit, part number 765–363, in accordance with the instructions in Part II of Piper Service Bulletin No. 827A, dated November 8, 1988, certificated in any category.

Compliance: Required within the next 180 calendar days after the effective date of this AD, unless already accomplished.

To prevent rough engine operation or complete power interruption caused by water contamination in the fuel, accomplish the following:

(a) Incorporate paragraphs 1 through 5 of the Aircraft Systems Operating Instructions that are contained in part I of Piper Service Bulletin (SB) No. 827A, dated November 4, 1988, into the Owner Handbook and Pilots Operating Manual.

Note: Paragraphs 6 and 7 of the Handling and Servicing instructions that are contained in part I of Piper SB No. 827A, dated November 4, 1988, are covered by AD 88–21–07 R1.

(b) Special flight permits may be issued in accordance with FAR 21 197 and 21 199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment supersedes AD 90–23–18, Amendment 39–6782.

Issued in Kansas City, Missouri, on January 14, 1992.

Barry D. Clements,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–1862 Filed 1–24–92; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part I

RIN 2900–AF18

Standards for Collection, Compromise, Suspension, or Termination of Collection Efforts

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend 38 CFR 1.912a to implement procedures for involuntary offset from VA compensation or pension benefit payments under authority of 38 U.S.C. 5301(c) in order to recoup debts owed by VA beneficiaries to the military services. VA also proposes to amend current VA regulations in order to implement recent legislation which expands the authority delegated by the U.S. General Accounting Office (GAO) and the Department of Justice (DOJ) for VA compromise, suspension, and termination of debt collection activity.

DATES: Comments must be received on or before February 26, 1992.

ADDRESSES: Interested persons are invited to send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Comments will be available for inspection at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, (202) 233–3405.

SUPPLEMENTARY INFORMATION: Public Law 99–576, the "Veterans' Benefits Improvement & Health-Care Authorization Act of 1986", amended 38 U.S.C. 3101 to authorize offset from a veteran's VA compensation or pension benefit payments to recoup debts owed to the military services resulting from the veteran's participation in the Survivor Benefit Plan (SBP) or the Retired Serviceman's Family Protection Plan (RSFPP).

VA is proposing to amend § 1.912a in order to implement its authority under 38 U.S.C. 5301(c), to recoup, by offset from VA compensation or pension, debts owed to the military services resulting from the veteran's participation in the SBP or the RSFPP. The amended regulation sets forth the procedures for withholding VA compensation or pension benefits of veterans once the military service requests VA to offset the debt amount from the veteran's compensation or pension. The military service owed the debt by the veteran must first determine the amount of the indebtedness and certify to VA that the due process procedures of 31 U.S.C. 3716 have been afforded the veteran. The amended regulation implements the procedures agreed to between the military services and VA in which the military services will afford the veteran the legal rights required by section 5301(c). Consequently, the amended regulation clarifies that VA is not required under section 3101(c) to afford veterans any

further legal rights under 38 CFR 1.911 or 1.912a, before offset under the authority of section 5301(c) may occur.

Although 38 U.S.C. 5301(c) authorizes VA to offset the entire amount of monthly compensation or pension benefit payments until the outstanding debt owed to the military service is recouped, the amended regulation sets a maximum offset amount of 15% of the net monthly compensation or pension benefit payment.

The proposed amended regulation also corrects technical errors in the regulation. VA believes that its procedures, as set forth in the amended regulation, will result in the avoidance of unnecessary delay and administrative expense, as well as, guarantee the full protection of the indebted veteran's statutory rights.

38 CFR 1.930 currently states that VA may exercise authority to compromise a debt when the debt does not exceed $20,000, exclusive of interest and administrative costs. When the debt exceeds $20,000, exclusive of interest and administrative costs, the authority to accept a compromise offer rests solely with the Department of Justice (DOJ). However, DOJ approval is not required if VA wishes to reject a compromise offer on a debt in excess of $20,000. 38 CFR 1.957(a)(2) authorizes the Committees on Waivers and Compromises to consider compromise offers in accordance with the limitations set forth in § 1.930.

38 CFR 1.940 currently states that if, after deducting the amount of any partial payments or collections, a claim exceeds $20,000, exclusive of interest and administrative costs, then the authority to suspend or terminate further collection action rests solely with DOJ. Debts of $20,000 or less, after deducting the items discussed above, can be suspended or terminated by VA. Section 1.957(b) authorizes the field station Chief of Fiscal Activity to suspend or terminate collection in accordance with Section 1.940.

The VA authority for compromise, suspension, and termination of debt collection, found in 38 CFR 1.930, 1.940, and 1.957, comes directly from 31 U.S.C. 3711(a) and GAO/DOJ regulations, 4 CFR 103.1 and 104.1. Public Law 101–552 (November 15, 1990) recently amended 31 U.S.C. 3711(a)(2) by raising the dollar limit discussed above from $20,000 to $100,000 or such higher amount as the Attorney General may prescribe.

31 U.S.C. 3711(e), which was not amended by the legislation, states that federal agencies compromise, suspend, and terminate collection action under the authority of their own regulations and also under the authority of the standards set by the Attorney General and the Comptroller General. These standards, known as the Federal Claims Collection Standards (FCCS), are incorporated in the GAO/DOJ regulations (4 CFR chapter II, parts 101–105). Although GAO/DOJ have not revised their regulations to comply with this new legislation, VA General Counsel has determined that our regulations must be changed in order to comply with the legislation. Thus, VA proposes to amend 38 CFR 1.930, 1.940, and 1.957 to comply with the revision of 31 U.S.C. 3711(a)(2) and the mandate of 31 U.S.C. 3711(e).

The Secretary hereby certifies that these proposed amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these proposed amended regulations are therefore exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that these proposed amended regulations primarily affect only individuals indebted to the U.S. Government as a result of participation in programs administered by the VA or military services.

These proposed regulations have also been reviewed under E.O. 12291, Federal Regulation, and have been determined to be nonmajor because they will not have a $100 million annual effect on the economy and will not have any adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 1

Claims, Administrative practice and procedures, Veterans.

Approved: December 24, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is proposed to be amended as set forth below:

PART 1—GENERAL

1. The authority citation for part 1 continues to read as follows:

Authority: Sections 1.910 to 1.921 issued under 38 U.S.C. 501.

2. In § 1.912a, paragraph (a) is revised, paragraph (d)(2) is removed, and paragraph (e) is added to read as follows:

§ 1.912a Collection by offset from VA benefit payments.

(a) *Authority and scope.* VA shall collect debts governed by section 1.911 of this part by offset against any current or future VA benefit payments to the debtor. Unless paragraphs (c) or (d) of this section apply, offset shall commence promptly after notification to the debtor as provided in paragraph (b) of this section. Certain military service debts shall be collected by offset against current or future compensation or pension benefit payments to the debtor under authority of 38 U.S.C. 5301(c), as provided in paragraph (e) of this section.

* * * * *

(e) *Offset of military service debts.* (1) In accordance with 38 U.S.C. 5301(c), VA shall collect by offset from any current or future compensation or pension benefits payable to a veteran under laws administered by VA, the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in subchapter I or II of 10 U.S.C. chapter 73.

(2) Offsets of a veteran's compensation or pension benefit payments to recoup indebtedness to the military services as described in paragraph (1) of this subsection shall only be made by VA when the military service owed the debt has:

(i) Determined the amount of the indebtedness of the veteran;

(ii) Certified to VA that due process in accordance with the procedures prescribed in 31 U.S.C. 3716 have been provided to the veteran; and

(iii) Requested collection of the total debt amount due.

(3) Offset from any compensation or pension benefits under the authority of 38 U.S.C. 5301(c) shall not exceed 15% of the net monthly compensation or pension benefit payment. The net monthly compensation or pension benefit payment is defined as the authorized monthly compensation or pension benefit payment less all current deductions.

(Authority: 38 U.S.C. 5301(c) & 5314)

3. Section 1.930 is revised to read as follows:

§ 1.930 Scope and application.

(a) The standards set forth in §§ 1.930 through 1.938 apply to the compromise of claims in accordance with 31 U.S.C. 3711. VA may exercise such compromise authority where the claim owed to VA does not exceed $100,000 exclusive of interest and other late payment charges. This $100,000 limit does not apply to debts which arise out of participation in

the loan program under Chapter 37 of title 38 of the United States Code. The Comptroller General or his/her designee may exercise compromise authority with respect to claims referred to the General Accounting Office (GAO). Only the Comptroller General or his/her designee may compromise a claim that arises out of an exception made by GAO on account of an accountable officer, including a claim against the payer, prior to its referral by GAO to the Department of Justice for litigation.

(b) When the claim exceeds $100,000, exclusive of interest and other late payment charges, the authority to accept a compromise offer rests solely with the Department of Justice. However, approval by the Department of Justice is not required if VA wishes to reject a compromise offer on a debt in excess of $100,000. If VA believes that the compromise offer on a debt in excess of $100,000 should be accepted, it shall refer the matter to the Department of Justice by using the Claims Collection Litigation Report (section 1.951). The referral should contain a written memorandum by the local Committee on Waivers and Compromises specifying the exact reason why it is believed that the compromise offer should be accepted. Both the Claims Collection Litigation Report and the Committee's memorandum should be sent to VA Central Office, Office of Financial Management, for subsequent referral to the Department of Justice.

(Authority: 31 U.S.C. 3711)

4. Section 1.936 is revised to read as follows:

§ 1.936 Settlement for a combination of reasons.

VA may compromise specific claims for any combination of reasons authorized by sections 1.930–1.938.

(Authority: 31 U.S.C. 3711)

5. Section 1.940, is revised to read as follows:

§ 1.940 Standards for suspending or terminating collection action-scope and application.

(a) The standards set forth in §§ 1.940 through 1.943 apply to the suspension and or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed $100,000, exclusive of interest and other late payment charges, after deducting the amount of partial payments or collections, if any. VA may suspend or terminate collection action under §§ 1.940 through 1.943 with respect to claims for money or property arising out of the Department's activities prior to the referral of such claims to GAO or the Department of Justice for litigation. The Comptroller General may authorize such authority with respect to such claims referred to GAO by VA prior to their further referral to the Department of Justice for litigation.

(b) If after deducting the amount of any partial payments or collections, a claim exceeds $100,000, exclusive of interest and other late payment charges, then the authority to suspend or terminate collection action rests solely with the Department of Justice. If VA determines that suspension or termination is appropriate for such a debt, after evaluation in accordance with the standards set forth in §§ 1.941 and 1.942, then the matter shall be referred to the Department of Justice, using the Claims Collection Litigation Report (see § 1.951). The referral shall contain a written recommendation, which specifies the reasons why suspension or termination is advantageous to the government. If VA determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection regardless of the amount involved, without the concurrence of the Department of Justice. If VA decides not to suspend or terminate collection action on the claim, Justice Department approval is not required.

(Authority: 31 U.S.C. 3711)

6. In § 1.955, paragraphs (a)(1) and (d) and the authority citation at the end of the section are revised to read as follows:

§ 1.955 Regional Office Committees on Waivers and Compromises.

(a) *Delegation of authority and establishment.* (1) Sections 1.955 et seq. are issued to implement the authority for waiver consideration found in 38 U.S.C. 5302 and 5 U.S.C. 5584 and the compromise authority found in 38 U.S.C. 3720(a) and 31 U.S.C. 3711. The duties, delegations of authority, and all actions required of the Committees on Waivers and Compromises are to be accomplished under the direction of, and authority vested in, the Director of the regional office.

* * * * *

(d) *Overall control.* The Assistant Secretary for Finance and Information Resources Management (IRM) is delegated complete management authority, including planning, policy formulation, control, coordination, supervision, and evaluation of Committee operations.

* * * * *

(Authority: 38 U.S.C. 5302, 38 U.S.C. 3720(a), 5 U.S.C. 5584, and 31 U.S.C. 3711.)

7. In § 1.957, paragraphs (a)(2)(i), (ii) (A), (B), (C) and (D) and (b) (1) and (2) are revised to read as follows:

§ 1.957 Committee authority.

(a) * * *

(2) *Compromises.* (i) *Loan program debts* (38 U.S.C. 3720(a)). Accept or reject a compromise offer irrespective of the amount of the debt (loan program matters under 38 U.S.C. chapter 37 are unlimited as to amount).

(ii) Other than loan program debts (31 U.S.C. 3711).

(A) Accept or reject a compromise offer on a debt which exceeds $1,000 but which is not over $100,000 (both amounts exclusive of interest and other late payment charges).

(B) Accept or reject a compromise offer on a debt of a $1,000 or less, exclusive of interest and other late payment charges, which is not disposed of by the Chief, Fiscal activity, pursuant to paragraph (b) of this section.

(C) Reject a compromise offer on a debt which exceeds $100,000, exclusive of interest and other late payment charges.

(D) Recommend approval of a compromise offer on a debt which exceeds $100,000, exclusive of interest and other late payment charges. The authority to accept a compromise offer on such a debt rests solely within the jurisdiction of the Department of Justice. The Committee should evaluate a compromise offer on a debt in excess of $100,000, using the factors set forth in §§ 1.930 through 1.938. If the Committee believes that the compromise offer is advantageous to the government, then the Committee members shall so state this conclusion in a written memorandum of recommendation of approval to the Chairperson. This recommendation, along with a Claims Collection Litigation Report (CCLR) completed in accordance with § 1.951, will be referred to VA Central Office, Office of Financial Management (047F5), for submission to the Department of Justice for final approval.

(b) *Chief of Fiscal activity.* The Chief of the Fiscal activity at both VBA and VHA offices has the authority, as to debts within his/her jurisdiction, to:

(1) On other than loan program debts under 38 U.S.C. chapter 37, accept compromise offers of 50% or more of a total debt not in excess of $1,000, exclusive of interest and other late payment charges, regardless of whether or not there has been a prior denial of waiver.

(2) On other than loan program debts under 38 U.S.C. chapter 37, reject any offer of compromise of a total debt not

in excess of $1,000, exclusive of interest and other late payment charges, regardless of whether or not there has been a prior denial of waiver.

(Authority: 31 U.S.C. 3711 and 38 U.S.C. 3720(a)).

[FR Doc. 92-1734 Filed 1-24-92; 8:45 am]

BILLING CODE 6320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 165

[OPP-250068; FRL 4009-9]

Notification to the Secretary of Agriculture of a Proposed Regulation on Pesticide Management and Disposal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a proposed regulation establishing procedures for mandatory and voluntary recall actions taken under section 19 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This action is required by section 25(a)(2)(A) of FIFRA.

FOR FURTHER INFORMATION CONTACT: By mail: David Stangel, Office of Compliance Monitoring (EN-342W), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (703) 308-8295.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, and if requested by the Secretary, the Administrator shall issue for publication in the **Federal Register** with the proposed regulation, the comments of the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime after the 30-day period.

This notice announces that the EPA has forwarded a proposed regulation proposing procedures for mandatory and voluntary recall actions taken under section 19 of FIFRA. The proposed regulations establishes criteria for acceptable storage and disposal plans which registrants may submit to the Agency to become eligible for reimbursement of storage costs, and procedures for the indemnification of owners of suspended and cancelled pesticides authorized by section 15 of FIFRA..

As required by FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

As required by FIFRA section 25(d), a copy of this proposed regulation has also been forwarded to the Scientific Advisory Panel.

Authority: 7 U.S.C. 136 et seq.

Dated: January 16, 1992.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 92-1896 Filed 1-24-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 63

[CC Docket No. 91-360; FCC 91-402]

International Common Carrier Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On December 12, 1991, the Commission adopted a Notice of Proposed Rulemaking seeking comment on its proposal to modify its 1985 International Competitive Carrier decision regarding regulation of "foreign-owned" U.S. common carriers in their provision of international services. The current policy, which treats "foreign-owned" U.S. common carriers as dominant in their provision of all international services to all foreign markets, would be replaced by a policy that regulates U.S. international carriers, whether U.S.-or foreign-owned, as dominant only on those routes where their foreign affiliates have the ability to discriminate against non-affiliated U.S. international carriers in the provision of access to bottleneck facilities and services.

DATES: Comments are due on or before February 26, 1992 and replies are due on or before March 17, 1992.

ADDRESSES: Federal Communications Commission, 1919 M St., N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen J. Collins, Assistant Director, Office of International Communications, (202) 632-0935, or Susan O' Connell, Attorney, Common Carrier Bureau, (202) 632-3214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted December 12, 1991, and released January 10, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St., NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st St., NW., Washington, DC 20036.

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of the submission may be purchased from the Commission's current copy contractor, Downtown Copy Center, (202) 452-1422 1114 21st Street NW., Washington, DC 20036. Persons wishing to comment on this information collection should direct their comments to Jonas Neihardt, (202) 395-4814, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503. For further information contact Judy Boley, Federal Communications Commission, (202) 632-7513.

OMB Number: None.

Title: Regulation of International Common Carrier Services.

Action: Proposed Revision and New Collection.

Respondents: Business or other for profit (including small businesses).

Frequency of Response: On occasion and one time requirement.

Estimated Annual Burden: 355 total annual hours; 285 responses; 1.25 average hours per response.

Needs and Uses: The proposed rules would govern the regulation of U.S. international common carriers, and require such carriers to submit ownership information permitting the FCC to determine their proper regulatory status. The proposed rules would assist the FCC in ensuring fair treatment among U.S. carriers in foreign markets.

Summary of Notice of Proposed Rulemaking

The Notice of Proposed Rulemaking proposes to replace the current policy that treats "foreign-owned" U.S. common carriers as dominant in their

provision of all international services to all foreign markets with a policy that regulates U.S. international carriers, whether U.S.-or foreign-owned, as dominant only on those routes where their foreign affiliates have the ability to discriminate against non-affiliated U.S. international carriers in the provision of access to bottleneck facilities and services. In modifying the international competitive carrier policy with regard to "foreign-owned" U.S. carriers, the Commission does not at this time propose to change other components of the 1985 decision.

Since adoption of the 1985 policy U.S. carriers have been increasingly successful in obtaining operating agreements for international message telephone service (IMTS). Additionally, some foreign administrations have begun to privatize their telecommunications properties, to open telecommunications services markets to entry by new providers and to take other steps to make their markets more competitive for the provision of telecommunications services. As a result of these market changes the Commission tentatively concludes that the current foreign-owned carrier policy is no longer appropriate. Although the Commission remains concerned about the potential for preferential treatment that may be accorded U.S. carriers by their affiliates in foreign markets, it tentatively concludes that the current policy can be modified in light of the progress that has been made to date by U.S. carriers in obtaining operating agreements and of its desire to encourage further market openings in other countries.

The ability to inhibit U.S. carrier competition to any particular foreign market or to treat U.S. carriers inequitably primarily arises from the ability of the affiliated correspondent in that foreign market to discriminate against non-affiliated U.S. carriers in terms of operating agreements and access to bottleneck facilities. The current policy of encompassing routes where the affiliated correspondent may not have this ability results in unnecessary application of Commission regulation, particularly now when the concerns that caused the Commission to adopt the foreign-owned carrier policy in 1985 have been addressed in many markets.

Moreover, the Commission is encouraged by the progress made by U.S. companies in making significant telecommunications investments in other countries over the past several years. These investments also have resulted in U.S. companies acquiring control of bottleneck facilities in foreign markets. To the extent that the Commission remains concerned with the ability of a foreign affiliate to deny IMTS operating agreements to non-affiliated U.S. carriers and to discriminate against such carriers in the terms of access, these same concerns apply when a U.S.-owned company acquires foreign bottleneck facilities and also is affiliated with a U.S. carrier in its provision of international services from the United States.

Emphasis on Discriminatory Use of Bottleneck Facilities

The Commission tentatively concludes that traditional title II rate and entry regulation of U.S. international carriers is warranted only for those routes where the U.S. international carrier's affiliate has the ability to discriminate through control of bottleneck services or facilities in a foreign market. The Notice proposes a two-step test to identify "bottleneck services and facilities."

First, the Commission must identify the types of services and facilities that a U.S. international carrier's affiliate potentially could use to discriminate among competing U.S. carriers in the foreign market. The Commission proposes to include only those types of facilities and services that it regulates as common carriage in the United States and that also are used to deliver U.S. international traffic into a foreign market. This would include international services and facilities, up to and including the international switch, that are required to deliver U.S. international traffic into the foreign market. The Commission also requests comment whether to extend the definition of bottleneck facilities and services beyond the international switch.

Second, the Commission must identify the circumstances that would warrant the conclusion that a U.S. carrier's affiliate has bottleneck control in a foreign market, *i.e.*, market power in the provision of services and facilities that could be used to discriminate among competing U.S. international carriers. The Commission tentatively concludes that the definition of "bottleneck control" should include the existence of a legally protected monopoly or a monopoly in fact for the provision of the facilities and services identified in step 1. The Commission also believes it is appropriate to recognize the efficacy of regulatory policy in controlling the ability of a carrier to engage in discrimination through control of bottleneck facilities and services.

Therefore, the Commission proposes to place the burden on the U.S. affiliate of a foreign provider of telecommunications facilities and services to demonstrate that the foreign market for such services and facilities is open and competitive; that is, that the foreign provider does not have market power in the relevant market segment. Alternatively, it may demonstrate the existence of a legal and regulatory structure that effectively prevents discrimination against non-affiliated U.S. carriers.

The proposal applies to U.S. facilities-based and resale carriers alike.

The proposal would define an affiliate as any entity that controls, is controlled by, or is under common control with a provider of telecommunications services or facilities in a foreign market. Rather than relying on a specific ownership percentage benchmark to define control, the proposal would rely in the first instance on the submission of certifications and ownership information by applicants seeking carrier authorization under section 214. The certification and information would be required of each section 214 applicant under part 63 of the rules. The certification would state that the applicant is not affiliated with a provider of telecommunications services or facilities in the country to which it seeks to provide service. Any applicant unable to make such a certification would be regulated as dominant for U.S. international service to that country unless it could demonstrate in its application that its affiliate does not have the ability to discriminate through control of bottleneck facilities or services against non-affiliated U.S. international carriers. The associated information required of each applicant would be the name, address, citizenship and principal businesses of it principal stockholders or other equity holders and interlocking directorates.

As an alternative, the Commission also requests comment on whether the public interest requires considering levels of ownership that may constitute the substantial ability to influence the affairs of a company. Under this proposal, the Commission would require that applicants certify that 50 percent or more of their equity is not owned of record by or for the benefit of one or more providers of foreign telecommunications services or facilities.

The Commission also requests comment on whether, where the ownership or management interest of a telecommunications provider in a foreign market reaches a given level that may fall short of control, it should nonetheless require the carrier to demonstrate the provider does not have

the ability to discriminate in its home market against non-affiliated U.S. carriers, and whether the current 15 percent ownership benchmark should be raised to a more relevant standard for the concerns addressed in the Notice.

The Commission additionally seeks comment on the potential for a telecommunications provider to leverage its foreign market bottleneck into other markets where it has no bottleneck control.

Public Benefits

The Commission believes the modified policy is consistent with its overall goals of encouraging competition. It also would avoid the appearance of unequal treatment of foreign-owned carriers because dominant status on specific routes would not be based on the foreign ownership of the U.S. carrier but on the bottleneck control of the carrier's affiliate in the foreign market. To the extent that the policy would allow streamlined regulation on certain routes, the benefits of streamlining would redound to U.S. consumers. Noting the Economic Report of the President about the benefits engendered by the global production and trade networks of modern multinational corporations and the undesirability of policies aimed at restricting foreign investment, the Commission asks for comment on whether the proposed policy would be more conducive to foreign capital investment in U.S. industry that might be in the public interest.

Filing Requirements

The Commission proposes to amend part 63 of its rules to require each applicant for section 214 authority to provide international common carrier services to certify that it is not affiliated with a telecommunications facilities or service provider in the country to which it seeks to provide service, and to provide the name, address, citizenship and principal businesses of its principal stockholders or other equity holders, and any interlocking directorates. The Commission also proposes to amend part 43 of its rules to require all authorized U.S. international carriers affiliated with providers of telecommunications facilities and services in a foreign market to provide a list of such affiliations within ninety days of the release date of the Report and Order adopted in this proceeding. Also, the Commission proposes to require any authorized international carrier that subsequently becomes affiliated with a facilities or service provider in a foreign market to notify the Commission within 90 days of the transaction.

Ordering Clauses

Accordingly, *It is ordered* That *Notice is hereby given* of the proposed regulatory action described above, and that *Comment is sought* on these proposals.

For further information on this item contact Kathleen J. Collins, Assistant Director, Office of International Communications, (202) 632–0935, or Susan O'Connell, Attorney, Common Carrier Bureau, (202) 632–3214.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Parts 43 and 63

Communications common carriers.

Rule Changes

Title 47 CFR, parts 43 and 63, are proposed to be amended as follows:

PART 63—EXTENSION OF LINES AND DISCONTINUANCE OF SERVICE BY CARRIERS AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority for part 63 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 214, 48 Stat. 1075, as amended; 47 U.S.C. 214.

2. Section 63.01 is amended by adding paragraph (r) to read as follows:

§ 63.01 Contents of applications.

* * * * *

(r) A certification that the applicant is not affiliated with a telecommunications provider in the countries to which it seeks to provide service, or a statement that the applicant is unable to make such a certification.

(1) The certification should state individually those countries in which the applicant does not have an affiliate.

(2) For purposes of this certification, an affiliated is any entity that controls, is controlled by, or is under common control with a provider of telecommunications services or facilities in a foreign market.

(3) In support of the required certification, each applicant shall also provide the name, address, citizenship and principal businesses of its principal shareholders or other equity holders and identify any interlocking directorates.

(4) Any applicant that cannot make the foregoing certification may provide information that demonstrates that its affiliate does not have the ability to discriminate against non-affiliated U.S. international carriers through control of bottleneck facilities and services in the foreign market as defined in the Report and Order in CC Docket No. 91–360 released _____.

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Section 43.91 is added to read as follows:

§ 43.91 Reports of international carriers affiliated with telecommunications providers in foreign markets.

(a) Every carrier authorized under section 214 to provide international common carrier services that is affiliated with providers of telecommunications facilities and services in foreign markets shall file a list of such affiliations with the Secretary.

(b) Any carrier authorized under section 214 to provide international common carrier services that subsequently becomes affiliated with a telecommunications provider in a foreign market shall notify the Secretary within ninety (90) days of the transaction.

[FR Doc. 92–1813 Filed 1–24–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 911009–1252]

Engangered Fish and Wildlife; Gray Whale

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing.

SUMMARY: NMFS announces the times, dates and locations for a public hearing under the Endangered Species Act (ESA) in order to receive comments from the general public on its proposal to remove the eastern North Pacific gray whale from the ESA's List of Endangered and Threatened Wildlife.

DATES: The public hearings are scheduled as follows:

1. February 14, 1992, 9:30 a.m.–4:30 p.m. Silver Spring, Maryland.
2. February 25, 1992, 6–10 p.m. Long Beach, California.

Written comments will be accepted through March 6, 1992.

ADDRESSES: The public hearings will be held in the following locations:

1. Silver Spring—Silver Spring Metro Center Building 2, Second Floor Conference Room, 1325 East-West Highway, Silver Spring, Maryland.
2. Long Beach—Ramada Renaissance Hotel, 111 East Ocean Blvd. Long Beach, California.

Comments should be mailed to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. A copy of the 1991 Proposed Determination and Rule is available upon request from this same address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, NMFS, at (301) 713–2322 or Mr. James Lecky (310) 980–4015.

SUPPLEMENTARY INFORMATION: On November 22, 1991 (56 FR 58869), NMFS published a proposed determination that the eastern North Pacific (California) stock of gray whale should be removed from the ESA's List of Endangered and Threatened Wildlife. This proposed change is based on evidence that this stock has recovered to near its estimated original pre-commercial exploitation population size and is neither in danger of extinction throughout all or a significant portion of its range, nor likely to again become endangered within the foreseeable future throughout all or a significant portion of its range. NMFS believes that the western Pacific gray whale stock, which is geographically isolated from the eastern stock, has not recovered and should remain listed as endangered.

Section 4(a)(1) of the ESA and the NMFS' listing regulations (50 CFR part 424) set forth procedures for listing, reclassifying or removing species. The Secretary of either the Interior or Commerce depending upon the species involved, must determine through the regulatory process if any species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or man-made factors affecting its continued existence.

The ESA requires that a determination to list (or delist) a species as endangered or threatened be made solely on the basis of the best available scientific and commercial information concerning that species relative to the factors discussed above. For that reason, participants are requested to direct their comments to one or more of the above factors.

The meetings will be open to the public. Interested parties may present data, information, or views, orally or in writing, on the proposed determination. Oral statements may be limited in length if the number of parties present at the meetings necessitates such a limitation. There are however, no limits to the length of written comments or materials presented at the meetings or mailed to NMFS (see "**ADDRESSES**").

In the November 22, 1991, proposed rule, NMFS gave notice that the comment period would close on January 21, 1992. However, as a result of the public hearing, the comment period on the proposed rule has been extended until March 6, 1992 (see 57 FR 2247, January 21, 1992), in order to allow the public sufficient time to attend hearings and complete their written comments.

Dated: January 21, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–1828 Filed 1–24–92; 8:45 am]

BILLING CODE 3510–22–M

VOL 57 ISS 17 JA 27 1992 UMI

Notices

Federal Register
Vol. 57, No. 17
Monday, January 27, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

OSI Implementors' Workshop; 1993 Meeting Dates

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The NIST announces four (4) workshop sessions to reach implementor agreements on Open Systems Interconnection (OSI) computer network protocols.

DATES: The 1993 meeting dates for the workshops have been established and are as follows:

March 8–12, 1993
June 7–11, 1993
September 13–17, 1993
December 6–10, 1993

The meetings will be hosted by NIST and current plans are to hold the meetings at Gaithersburg, Maryland.

ADDRESSES: To register for the workshops, companies may contact: OSI Workshop Series, Attn: Brenda Gray, National Institute of Standards and Technology, Building 225, room B–217, Gaithersburg, MD 20899, Telephone: (301) 975–3664.

The registration request must name the company representative(s) and specify the business address and telephone number for each participant.

FOR FURTHER INFORMATION CONTACT: For technical questions contact, Tim Boland, (301) 975–3608.

SUPPLEMENTARY INFORMATION: The workshops will cover protocols in seven layers of the ISO Reference Model. A registration fee will be charged for attending the workshops. Participants are expected to make their own travel arrangements and accommodations. NIST reserves the right to cancel any part of the workshops.

Dated: January 21, 1992.
John W. Lyons,
Director.
[FR Doc. 92–1906 Filed 1–24–92; 8:45 am]
BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Conoco, Inc., From an Objection by the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Dismissal of appeal.

On July 5, 1988, the Secretary of Commerce received a notice of appeal from Conoco, Inc. (Appellant). The Appellant is appealing to the Secretary under sections 307(c)(3) (A) and (B) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the California Coastal Commission to the Appellant's consistency certification for its proposed Plan of Exploration (POE) and an individual National Pollutant Discharge Elimination System (NPDES) permit for OCS Lease P–0522. OCS Lease P–0522 is located approximately nine miles south of the City of Santa Barbara.

At the Appellant's request, the General Counsel for the National Oceanic and Atmospheric Administration (NOAA) granted a stay of the consistency appeal, which was not opposed by the State. The Appellant has now requested that the appeal be withdrawn. The State concurs with that request. The appeal has therefore been dismissed, with prejudice. The Appellant is barred from filing another appeal from California's objection to its original consistency certification.

FOR ADDITIONAL INFORMATION CONTACT: Margo E. Jackson, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington, DC 20235, (202) 606–4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: January 17, 1992.
Thomas A. Campbell,
General Counsel.
[FR Doc. 92–1891 Filed 1–24–92; 8:45 am]
BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan; Correction

January 22, 1992.

In the letter to the Commissioner of Customs published in the Federal Register on November 20, 1991 (56 FR 58558), make the following corrections in the table under "Twelve-month restraint limit" for Group I and Categories 619/620, respectively:

1. In the first column, first line, change 542,631,617 square meters equivalent to 539,839,180 square meters equivalent.

2. In the second column, second line, change 9,397,879 square meters to 11,973,169 square meters.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 92–1904 Filed 1–24–92; 8:45 am]
BILLING CODE 3510–DR–F

Soliciting Public Comments on a Proposal for a New Outward Processing Program

January 21, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: The Chairman of CITA requests comments on a proposal for a new outward processing program for U.S. textiles which would be made into apparel in certain foreign countries.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the

Agricultural Act of 1956, as amended (7 U.S.C. 1854).

At the request of the Office of the United States Trade Representative, the Committee for the Implementation of Textile Agreements (CITA) is seeking public comment on a new outward processing program.

As part of the President's Trade Enhancement Initiative for Central and Eastern Europe, certain countries have requested that the U.S. negotiate an outward processing program that would liberalize U.S. quota treatment of apparel made in Central and Eastern Europe from U.S. fabric. If the U.S. negotiates a new program, the U.S. will consider extending it to beneficiaries of the Caribbean Basin Initiative and the Andean Initiative.

CITA is considering allowing preferential quota access for apparel that has been cut and sewn abroad in beneficiary countries from U.S.-formed fabric when imported by U.S. apparel producers. This program would differ from the current Guaranteed Access Level program in that(a) cutting could be done in the beneficiary country and (b) the importer and exporter would have to be a U.S. apparel producer certified to participate in the program. A preferential quota access can be put into place administratively. A duty reduction for apparel which has been cut and sewn outside the Customs Territory of the United States would have to be established legislatively. The European Community has an outward processing program that allows apparel producers to export fabric from member countries to be cut and sewn into apparel in a non-European Community country and to reimport the finished product into the Community with a duty reduction and preferential quota access. The European Community's duty and quota program limits the percentage of goods which can be imported under the program by the apparel company, although the percentage varies substantially among the countries of the European Community.

Key elements for consideration include: (1) The definition of "U.S. apparel producer," related issues and any criteria for the amount to be imported under a preferential quota program; (2) administrative concerns related to implementation, i.e., how the program can be enforced without burdensome requirements; and (3) issues related to certification for this program.

Anyone who wishes to comment or provide information regarding this issue is invited to submit such comments or information in 10 copies to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC, 20230; ATTN: Helen L. LeGrande. Determations regarding specific aspects of the program will be made in the context of our trade relations with other nations.

Comments will be accepted for a period of 30 days from the date of this notice. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreements or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-1872 Filed 1-24-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures option contract.

SUMMARY: The New York Cotton Exchange (NYCE or Exchange) has applied for designation as a contract market in options on European currency unit (ecu) futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before February 26, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the European currency unit futures option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the NYCE in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any persons interested in submitting written data, views, or arguments on the terms and conditions of the proposed contract, or with respect to other materials submitted by the NYCE in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 22, 1992.

Gerald Gay,

Director.

[FR Doc. 92-1912 Filed 1-24-92; 8:45 am]

BILLING CODE 6351-01-M

COUNCIL ON ENVIRONMENTAL QUALITY

Agency Information Collection Activities Under OMB Review

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Notice.

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SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that a request for approval of information collection is being forwarded to the Office of Management and Budget. Because CEQ is requesting expedited review, this notice includes the specific data items being collected.

DATES: Comments must be submitted on or before February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ben Jarratt or Marla Donahue, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC 20503, Telephone: (202) 395–5750, Telefax: (202) 395–3745.

SUPPLEMENTARY INFORMATION: Executive Order No. 12761 (1991) established the President's Environment and Conservation Challenge Awards as an annual program to recognize outstanding environmental achievements by United States citizens, enterprises, or programs and to provide an incentive for environmental accomplishment. CEQ is responsible for administering the program.

Up to three Presidential medals may be awarded in each of four categories: Partnership, Environmental Quality Management, Innovation, and Education and Communications. In addition, up to 20 Presidential citations will be presented to finalists who demonstrate achievements in any of the four award categories.

CEQ has developed an application form for potential awardees to complete in order to be considered for a Presidential medal or a citation. This information collected from the application form is also included in a CEQ database of successful, private sector environmental programs. Because this application form seeks information from respondents, CEQ is required to obtain OMB approval and an OMB control number in accordance with the Paperwork Reduction Act.

Abstract: The application form requests information from applicants for the President's Environment and Conservation Challenge Award. Applicants must complete the form in order to be considered for the award. The application form will contain the following data elements—

General Information

(1) The award category for which the applicant is competing;

(2) The name of the project or program described in the application;

(3) The name, title, organization, and address of the award applicant(s);

(4) The name, title, organization, and address of the program contact person who can answer questions regarding the application;

(5) The length of time the technology, program, project, or service has been operational;

Award Criteria

(6) A description of how the applicant(s) meets the award criteria for the particular category

(A) Partnership: Awarded to diverse organizations or groups that have fostered cooperative approaches to environmental needs at the local, regional, or national level.

- Who are the partnership's members? What are their roles? What resources do they bring to the partnership?
- What are the partnership's specific environmental or conservation objectives? Has a sustainable plan of concerted action for meeting these needs been established?
- How is the partnership distinctive or innovative? What obstacles, environmental or otherwise, does it overcome?
- What measurable environmental or conservation benefits has the partnership produced?
- What aspects of the partnership can be modeled by others and transferred to other settings?

(B) Environmental Quality Management: Awarded to organizations which have demonstrated that environmental values can be integrated into sound management decisions and objectives. (Note: This category reflects broad-based organizational approaches. Special programs or projects may be more appropriate for entry in one of the other three award categories.)

- What are the organization's environmental policies and objectives?
- How has the organization's top management demonstrated commitment to these policies and objectives (beyond legal compliance)?
- What are the organization's environmental standards for its product(s) and operations? (Explain how they go beyond legal constraints and how they relate to management control mechanisms.)
- How are these policies and objectives incorporated in the: (1) Day-to-day management of the organization; (2) Organization's decision-making about research and development, long-range planning, capital, and operating budgets?
- How are these policies and objectives reflected in the organization's relationships with employees, customers, suppliers, and the general public?
- What are the organization's control mechanisms that give decision makers objective data to measure continuous performance improvement toward its short- and long-term objectives?
- What quantifiable, sustained environmental quality results in products and processes have resulted from the organization's environmental approach?

(C) Innovation—Awarded to individuals, organizations and groups who have demonstrated exceptional creativity or pioneered new approaches in the development and/or execution of technologies, programs, projects, or services that are environmentally sound and economically sensible?

- What is the purpose of the technology, program, project or service?
- How is the technology, program, project, or service distinctive or innovative? What obstacles, environmentally or otherwise, does it overcome?
- How is the technology, program, project, or service superior to other approaches? Does it offer a viable alternative to a problem for which no solutions previously existed?
- Can the technology, program, project or service be replicated in an economically feasible manner?
- What are the measurable, net long-term environmental benefits or results of the technology, program, project, or service?

(D) Education and Communication—Awarded to individuals, organizations, or groups which have developed educational or informational programs that inspire respect for the environment and raise the public's environmental literacy.

- What is the program? What are its environmental or conservation objectives?
- Who is the program's audience? How large is the audience? How is the program's effect on the audience determined?
- What is original or distinctive about the program?
- What are the measurable results or benefits produced by the program? How does the program promote the development of an environmental ethic and make a positive contribution to environmental awareness?
- How can the program be used or modeled by others?

(7) A 500-word summary which provides an overview of the application;

Information for Use in Database

(8) A description in checklist form of the applicant (e.g., national business or industry, regional or local business,

national nonprofit organization, educational organization, etc.);

(9) A description in checklist form of the type of business or industry, if applicable (e.g., agriculture, aerospace, communications, construction, electronics, etc.)

(10) A description in checklist form of the environmental program under consideration (e.g., agriculture, conservation, education, energy, environmental quality management, forestry, etc.)

(11) The sources of the program's support;

(12) A cost estimate to develop the program or project;

(13) The annual cost of the program or project;

(14) The primary audiences, beneficiaries, or users of the program or service, and estimated number of persons served; and

(15) Whether the program has been honored with other environmental or conservation awards in the past five years.

Burden Statement:

The public reporting burden for this collection of information is estimated to average 10 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the application.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 1.

Frequency of Collection: Anually (previous medal winners are ineligible for the award program for a period of five years).

Estimated Total Annual Burden on Respondents: 1,000 hours.

Expedited Review: An expedited request is made under the regulations implementing the Paperwork Reduction Act (5 CFR 1320.18). To meet the schedule for distributing the applications in mid-February, to allow respondents sufficient time to review, complete, and submit the application; and to allow CEQ's selection committee and the President adequate time to assess the merits of the applications before the awards ceremony in the fall, CEQ has requested OMB clearance by early February.

Comments: Comments regarding the burden estimate, or any other aspects of this collection of information, including suggestions for reducing the burden, to:

Ben Jarratt or Maria Donahue, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC 20503, Telephone: (202) 395–5750, Telefax: (202) 395–3745

and

Timothy G. Hunt, CEQ Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503

David B. Struhs,

Chief of Staff.

[FR Doc. 92–1973 Filed 1–24–92; 8:45 am]

BILLING CODE 3125–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Hearings

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of schedule change for hearings.

SUMMARY: The Council of Chief State School Officers, under contract to the National Assessment Governing Board (NAGB), U.S. Department of Education, is announcing a change in its scheduling of one of four public hearings. The hearings have been conducted as part of the Council's contract for NAGB for the purpose of developing an assessment framework and specifications for the 1994 National Assessment of Educational Progress (NAEP) U.S. History Assessment Project. Public and private parties and organizations with an interest in the quality of U.S. history assessment and education are invited to present written and oral testimony to the Council.

Each hearing focuses on recommendations for the 1994 NAEP U.S. History Assessment to be conducted at grades 4, 8, and 12. The results of the hearings are particularly important because they will provide for broad public input in developing the U.S. history assessment framework to be used in the national NAEP in 1994. This assessment will likely be used to measure progress toward two of the National Education Goals, specifically those related to student achievement and history. These hearings are being conducted pursuant to Public Law 100–297, section 3(E), which states that "Each learning area assessment shall have goal statements devised through a national consensus approach, providing for active participation of teachers, curriculum specialists, local school administrators, parents and concerned members of the general public."

DATES: The date of the fourth public hearing, previously set for April 2–5, 1992 in Chicago, Illinois, has been changed to February 3, 1992 in Atlanta, Georgia. The other hearings were held: November 14, 1991 in San Diego, California, November 23, 1991 in Washington, DC, and December 29, 1991 in Chicago, Illinois.

Persons desiring to present oral statements at the hearing shall submit a notice of intent to appear, postmarked no fewer than ten (10) days prior to the scheduled meeting date. The scheduling of oral presentations cannot be guaranteed for notices of intent received less than 10 days prior to the hearing.

Notices of Intent to present oral statements shall be mailed to: Council of Chief State School Officers, 379 Hall of the States, 400 North Capitol Street, NW., Washington, DC 20001–1511, Attn: Bonnie Verrico—Public Hearings.

Locations

For the exact location of the final public hearing, please contact Council offices at (202) 624–8822.

Written Statements

Written Statements may be submitted for the public record in lieu of oral testimony up to 30 days after the hearing. These statements should be sent directly to the Council (see aforementioned address) in the following format:

I. Issues and Questions Addressed

Testimony should respond to the following questions:

1. How should U.S. history be conceived (in the last decade of the 20th Century) for elementary, middle, and high school?

2. How should U.S. history be organized in elementary, middle, and high school? What is the rationale for that organization?

3. What content should be included in U.S. history in elementary, middle, and high school?

What should be the major topics and ideas? What kinds of student knowledge should be emphasized?

4. What U.S. history content, ways of thinking about history, and specialized analysis and research skills should be assessed? In structuring the assessment, what is the proper balance among factual knowledge, ways of thinking about history, and specialized analysis and research skills?

5. What assessment issues should be considered in developing specifications for the tests?

6. What kinds of assessment strategies could be used to assess student mastery and thinking beyond the recall level? What advanced

technologies should be incorporated in assessment strategies?

7. What are some examples of good recall and higher-level thinking multiple choice test items? How can multiple choice questions be used to measure historical knowledge and thinking beyond the recall level?

II. Summary

Briefly summarize the major points and recommendations presented in the testimony.

III. Discussion

The narrative should provide information, points of view and recommendations that will enable the council to consider all factors relevant to the question(s) the testimony addresses. Respondents are encouraged to limit this section of their written statements to five (5) pages. The discussions may be appended with documents of any length providing further explanation.

Written statements presented at each hearing will be accepted and incorporated into the public record. All written statements should follow the above format, as much as it is possible.

Hearings Objectives and Procedures

The Council seeks participation in the hearings from a broad spectrum of individuals and organizations in the sharing of opinions and recommendations regarding U.S. history proficiencies, knowledge, and those skills and strategies to be assessed at grade levels 4, 8, and 12. The list of speakers shall, on the one hand, provide a wide range of viewpoints and interests, but also be organized to respect the time constraints of the hearing schedule.

The goal of the hearings is to provide the medium for maximum input and guidance from teachers, curriculum specialists, local school administrators, parents and concerned members of the general public. Following a brief introduction to the project by the Council of Chief State School Officers, the majority of the session will be devoted to presentations by scheduled speakers.

As listed in the "Dates" section above, speakers wishing to present statements shall file notices of intent. To assist the Council in appropriately scheduling speakers, the written notice of intent to present oral testimony should include the following information:

(1) Name, address and telephone number of each person to appear;

(2) Affiliation (if any);

(3) A brief statement of the issues and/or concerns that will be addressed; and

(4) Whether a written statement will be submitted for the record.

Individuals who do not register in advance will be permitted to register and speak at the meeting in order of registration, if time permits. Speakers should plan to limit their total remarks to no more than five (5) minutes. While it is anticipated that all persons will have an opportunity to speak, time limits may not allow this to occur. The Council will make the final determination on selection and scheduling of speakers.

All written statements presented at the hearings will be accepted and incorporated into the public record. Written statements submitted in lieu of oral testimony should be received no later than 30 days after each hearing in order to be included in the public record. However, while written statement received after this date will be accepted, inclusion in the public record cannot be guaranteed.

A staff member from the council of Chief State School Officers will preside at each of the four hearings. The proceedings will be audiotaped. The hearings will also be signed for the hearing-impaired and a bilingual speaker (Spanish-English) will be available at some sites.

Additional Information

Additional information is available from the Council offices for anyone wishing to obtain more specifics on the assessment project. The 1988 NAEP U.S. History Objectives, a draft framework outline for the 1994 assessment, and draft assessment guidelines will be made available to interested parties. Individuals wanting additional information on a specific hearing should contact Council offices at (202) 624–8822.

Steps After Hearing

The Council will review and analyze all comments and opinions received in response to this announcement. A report of the outcomes of these hearings will be made available to the public upon request after September 1992.

The results of this public testimony, along with the Council's U.S. History Consensus committee work, will be used to formulate recommendations on the 1994 NAEP U.S. History Assessment for the National Assessment Governing Board. The Board, charged with developing the assessment framework and specifications, will take final action on the Council's recommendations in the fall of 1992. The following documents will be forthcoming from these coordinated activities:

(1) A framework for the 1994 U.S. history assessment—including objectives to guide the 1994 assessment, specifications for the test content, and item specifications.

(2) Background variables and achievement data will be collected which culminate in a description of our nation's students, teachers and schools. These variables should stress factors presently known to be consistently associated with history achievement, factors that address distributional or equity issues, and matters of particular importance to policymakers.

(3) Recommendations and examples of the format to be used to report assessment and background data in history.

(4) A final report describing the consensus process.

A record of all Council proceedings will be kept at the Council of Chief State School Officers until September 1992 and at the National Assessment Governing Board following that date, and will be available for public inspection at that time.

Dated: January 22, 1992.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 92–1857 Filed 1–24–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Plans To Prepare an Environmental Assessment for Nonnuclear Consolidation Within the Nuclear Weapons Complex

AGENCY: Department of Energy.

ACTION: Notice of plans to prepare an environmental assessment for nonnuclear consolidation within the nuclear weapons complex.

SUMMARY: The Department of Energy (DOE) announces its plans to prepare an environmental assessment (EA) on its proposal to consolidate certain nonnuclear facilities in the nuclear weapons complex. This will allow DOE to accelerate the proposed consolidation of nonnuclear facilities in response to Presidential initiatives to reduce the Nation's nuclear weapons stockpile. The DOE sites involved in the nonnuclear consolidation proposal are the Kansas City Plant in Kansas City, Missouri; the Mound Plant in Miamisburg, Ohio; the Pantex Plant near Amarillo, Texas; the Pinellas Plant in Largo, Florida; the Rocky Flats Plant in Golden, Colorado;

Sandia National Laboratories in Albuquerque, New Mexico; the Savannah River Site near Aiken, South Carolina; and the Y–12 Plant near Oak Ridge, Tennessee. DOE proposes to consolidate certain nonnuclear activities at the Kansas City Plant, relocate others to the Pantex, Savannah River, Y–12 and Albuquerque sites, and phase out nonnuclear manufacturing activities at the Mound, Pinellas, and Rocky Flats plants. The proposed action was included in the broader DOE programmatic proposal to reconfigure the weapons complex to be smaller, less diverse, and more efficient to operate; DOE is preparing a programmatic environmental impact statement (PEIS) on the reconfiguration proposal. DOE has determined that the proposal to consolidate nonnuclear facilities can be analyzed in an EA prior to completion of the Reconfiguration PEIS.

DATES: DOE plans to complete the EA by the end of fiscal year 1992 (October 1992).

FOR FURTHER INFORMATION CONTACT: Requests for further information on the DOE nuclear weapons complex reconfiguration program should be directed to: Howard R. Canter, Deputy Assistant Secretary, Weapons Complex Reconfiguration Office, DP–40, room 4C–014, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2700.

SUPPLEMENTARY INFORMATION:

Nonnuclear Consolidation Proposal

DOE proposes to consolidate certain nonnuclear elements of the complex at one location, to relocate other nonnuclear aspects, and to phase out the weapons mission at certain locations. Specifically, DOE proposes to do the following:

- Collocate tritium activities now done at the Mound and Pinellas plants with the tritium activities now done at the Savannah River Site; all of these tritium activities would be done at the existing Replacement Tritium Facility at the Savannah River Site.
- Collocate high explosives work now done at the Mound Plant with the high explosives work now done at the Pantex Plant, which would result in a very small addition to the amount of high explosives already used at Pantex.
- Collocate the beryllium work now done at the Rocky Flats Plant with similar machining work now done at the Y–12 Plant.
- Relocate the manufacture of neutron generators from the Pinellas Plant to be collocated with Sandia National Laboratories at Albuquerque, where they are now designed.
- Retain the pit support functions now done at the Rocky Flats Plant with the pit fabrication work now done at Rocky Flats Plant, wherever this fabrication work will be located as a result of the Reconfiguration Record of Decision (ROD).
- Consolidate the remaining nonnuclear activities now done at the Mound, Pinellas, and Rocky Flats plants at the Kansas City Plant.
- Phase out the weapons mission at the Mound and Pinellas plants, together with certain nonnuclear work at the Rocky Flats Plant, and turn over the government-owned, contractor-operated weapons facilities at these locations to the DOE Office of Environmental Restoration and Waste Management for cleanup, restoration, or decontamination and decommissioning as appropriate.

In addition, DOE is now evaluating whether or not certain developmental work now done at the nonnuclear manufacturing sites should be reassigned to one or more of the DOE national laboratories. If DOE decides to pursue this option, it may become part of the proposed action for the nonnuclear consolidation EA.

The purpose of the proposed action is to effect better management of nonnuclear manufacturing activities within the complex, and to decrease the long-term operating costs of this aspect of the complex. Consolidation is preferred as soon as possible in order to achieve desired cost savings while maintaining the skill and technology base within the weapons complex. The products and services produced by this element of the complex are needed to manufacture nuclear weapons and test individual components. Although some of these components involve small amounts of tritium, these activities are collectively referred to as the nonnuclear functional element of the complex because they do not involve the production of nuclear materials, nor the manufacture of principal weapons components from uranium, plutonium, or tritium.

Many nonnuclear weapons components are manufactured and supplied by the private sector. This proposal does not include components currently manufactured by the private sector. Where practical and cost effective, DOE may transfer the manufacture of some additional selected products to the private sector under existing procurement procedures.

The Rocky Flats Plant currently performs some nonnuclear manufacturing work with depleted uranium. This work is not part of this proposal because it is scheduled to be phased out prior to consolidation.

DOE will analyze four alternatives to the proposed action in the EA: the "no action" alternative, consolidation at Mound, consolidation at Pinellas, and consolidation at Rocky Flats. For each of these alternatives, the functions now performed at the alternative consolidation site would not be relocated. If transferred, the tritium, high explosives, and beryllium work, and the manufacture of neutron generators, would be collocated as in the preferred alternative. Some beryllium work is now done at the Y–12 Plant; under a Rocky Flats consolidation alternative the Y–12 beryllium work would not be collocated with the Rocky Flats beryllium work because it is considered to be integral to other Y–12 operations which are not part of this proposal. The remainder of the nonnuclear activities, including those now performed at the Kansas City Plant, would be relocated to the alternative consolidation site.

Relationship to Reconfiguration PEIS

On February 11, 1991, DOE published a Notice of Intent (NOI) to prepare a PEIS on its proposal to reconfigure its existing nuclear weapons complex to create Complex-21: a smaller, less diverse, more effective complex at the present sites, or at relocated or consolidated sites [56 FR 5590]. The NOI made reference to the nonnuclear manufacturing function of the weapons complex, and indicated that the Secretary's preferred reconfiguration alternative would include maximizing consolidation of the nonnuclear manufacturing facilities with the goal of having only one dedicated nonnuclear manufacturing site within the reconfigured complex. DOE conducted a PEIS public scoping period from February 11, 1991, to September 30, 1991, and held fifteen public scoping meetings including meetings near each of the sites affected by the nonnuclear consolidation proposal. DOE received numerous public comments regarding nonnuclear manufacturing activities and other weapons complex activities at these sites. The PEIS is being prepared pursuant to the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508), and DOE Guidelines for compliance with NEPA (52 FR 47662), as amended (54 FR 12474 and 55 FR 37174).

On September 27, 1991, the President announced his initiative to continue to reduce the nuclear weapons stockpile. The Secretary has determined that this announcement provides an opportunity

to accelerate nonnuclear consolidation without impacting national defense or the remainder of the reconfiguration program. To help achieve early decisions regarding consolidation, the Secretary has decided to conduct the environmental analysis of nonnuclear consolidation separately from the programmatic review of the remainder of the complex.

DOE believes that the NEPA review of the nonnuclear consolidation proposal can be separated from the Reconfiguration PEIS because consolidating nonnuclear manufacturing is not expected to result in significant environmental impacts and any decision regarding nonnuclear consolidation would neither affect nor be affected by other reconfiguration decisions which may be made in the Reconfiguration ROD.

Accordingly, DOE will analyze nonnuclear consolidation aspects of Complex-21 in an EA prior to completion of the PEIS. If the EA analysis supports a finding of no significant impact (FONSI), DOE plans to proceed with nonnuclear consolidation and incorporate the nonnuclear consolidation decisions into the PEIS analysis as actions common to all alternatives. If the EA does not support a FONSI, then the assessment of environmental impacts for consolidating nonnuclear functions will be incorporated into the Reconfiguration PEIS and no actions would be taken to consolidate the nonnuclear manufacturing activities unless they were included in the Reconfiguration ROD.

This Notice concerns only nonnuclear consolidation activities and sites which will be analyzed in the separate EA. The possibility of consolidating or relocating other mission elements will be examined in the PEIS. The Reconfiguration PEIS will continue to analyze other weapons mission elements at the Pantex Plant, the Rocky Flats Plant, Sandia National Laboratories, the Savannah River Site, and the Y-12 Plant, as discussed in the Reconfiguration NOI and subsequent **Federal Register** notices related to the Reconfiguration effort.

When completed, the EA and its related FONSI will be placed in the fourteen DOE public reading rooms established for the Reconfiguration PEIS.

Issued in Washington, DC, this 21st day of January, 1992.

Richard A. Claytor,

Assistant Secretary, Defense Programs.

[FR Doc. 92-1892 Filed 1-24-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. IS92-3-000, IS92-4-000, IS92-5-000, IS92-6-000, IS92-7-000, IS92-8-000, IS92-9-000, OR92-2-000]

ARCO Alaska, Inc. v. Amerada Hess Pipeline Corp., et al.; Notice of Complaint

January 17, 1992.

Amerada Hess Pipeline Corporation, ARCO Transportation Alaska, Inc., BP Pipelines (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, Unocal Pipeline Company.

Take notice that on December 19, 1991, ARCO Alaska, Inc., pursuant to Rules 206, 211, 212, and 1403 of the Commission's Rules of Practice and Procedure (18 CFR 385.206, 385.211, 385.212, and 385.1403 (1991)) and sections 13(1), 15(1), and 15(7) of the Interstate Commerce Act (49 U.S.C. 13(1), 15(1) and 15(7)), filed a complaint concerning each of the captioned tariff filings. In its complaint, ARCO Alaska alleges that the current methodology used by the Trans Alaska Pipeline System (TAPS) to calculate the Pumpability Factor has no cost basis and imposes a punitive and unjustified surcharge on the shippers of heavier petroleum.

Complainant states that this surcharge is based on the estimates of the effects of the different petroleum streams on TAPS capacity, not operating costs. Complainant alleges that this methodology has no justification when, as at present, TAPS is not capacity constrained and transportation of tendered volumes of heavier petroleum has no effect on the ability of TAPS to transport tendered volumes of lighter petroleum. Therefore, complainant alleges, the current methodology is unjust and unreasonable in violation of section 1(15) of the Interstate Commerce Act and creates an undue preference against heavier petroleum in violation of section 3(1) of the Interstate Commerce Act.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protest should be filed on or before February 18, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint also shall be due on or before February 18, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1850 Filed 1-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-111-017]

East Tennessee Natural Gas Co.; Correction to Prior Filings

January 17, 1992.

Take notice that on January 9, 1992, East Tennessee Natural Gas Company (East Tennessee), filed with the Federal Energy Regulatory Commission a letter stating that in its filing made on December 18, 1992, East Tennessee filed Substitute Thirteenth Revised Sheet Nos. 4 and 5 which were designed to reflect the impact of the November 21, 1991 motion rates in Docket No. RP90-111 on East Tennessee's filing in Docket No. TA92-1-2 to be effective January 1, 1992.

East Tennessee's states that it has come to its attention that Substitute Thirteenth Revised Sheet Nos. 4 and 5 reflected incorrect purchase gas demand rates due to the use of incorrect jurisdictional D-1 billing determinants effective November 1, 1991 for CD customers.

East Tennessee states that it is submitting for filing Substitute Fourteenth Revised Sheets Nos. 4 and 5 which reflect the appropriate level of demand billing determinants in the purchase gas demand rates. East Tennessee notes that because the SG rate is derived from the CD rates, the SG rate has also changed. East Tennessee also submits Attachment A attached to the filing in support of the corrected billing determinants.

East Tennessee notes that in addition, the December 18, 1991 filing included Third Revised Sheet Nos. 6 and 7 which reflected a change to the GRI charge which was inadvertently omitted from East Tennessee's filing in Docket No. TA92-1-1. East Tennessee states that Third Revised Sheet Nos. 6 and 7 incorrectly listed First Revised Volume No. 1A as the FERC Gas Tariff volume to which they belong. East Tennessee notes that the correct volume is Original Volume No. 1A. East Tennessee states that it is resubmitting for filing Substitute Third Revised Sheet Nos. 6 and 7 which reflect the correct FERC Gas Tariff Volume.

East Tennessee states that copies of the filing has been served upon all authorized purchasers of natural gas from East Tennessee and all interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 27, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1844 Filed 1-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2327-002-New Hampshire

James River—New Hampshire Electric, Inc.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

January 17, 1992.

The license for the Cascade Project No. 2327, located on the Androscoggin River in Coos County, New Hampshire expires on December 31, 1993. The statutory deadline for filing an application for new license was December 31, 1991. On July 21, 1988, a competing license application was filed by Alpine Hydroelectric Company for the Alpine Project No. 9713-001. The application for new license and competing license application have been filed as follows:

Project No.	Applicant	Contact
P-2327-002	James River—New Hampshire Electric, Inc.	David Dunham, 650 Main Street, Berlin, NH 03570-2489, (603) 752-4600.
P-9713-001	Alpine Hydroelectric Company.	Harold Turner, P.O. Box 7191, Concord, NH 03301, (603) 497-3940.

The following is an approximate schedule and procedures that will be followed in processing these applications:

Date	Action
Jan. 30, 1989	Commission issued public notice of the accepted application of the competitor establishing dates for filing motions to intervene and protests.
Apr. 10, 1989	Commission issued public notice of the accepted application establishing dates for filing motions to intervene and protests.
Mar. 31, 1992	Commission's deadline for applicant for filing a final amendment, if any, to its application.
May 15, 1992	Commission notifies all parties and agencies that the application is ready for environmental analysis.

Upon receipt of all additional information and the information filed in responses to the public notices, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Ed Lee at (202) 219-2809.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1846 Filed 1-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2366-001 & 2367-001—Maine]

Maine Public Service Co., Notice Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

January 17, 1992.

The license for the Aroostook Project No will include the existing Millinocket Lake Storage Dam Project No. 2366 (expires June 30, 1992) and the existing Caribou Hydro Project No. 2367, located on the Aroostook River and Millinocket Stream, in Piscataquis and Aroostook Counties, Maine, and will expire on December 31, 1993. The statutory deadline for filing an application for new license was December 31, 1991. An application for license has been filed as follows:

Project No.	Applicant	Contact
P-2366-001 and 2367-001.	Maine Public Service Company.	Calvin D. Deschene, 209 State Street, P.O. Box 1209, Presque Isle, ME 04769, (207) 768-5811.

The following is an approximate schedule and procedures that will be followed in processing these applications:

Date	Action
Aug. 26, 1991	Commission notified applicant that its application has been accepted. The notification of acceptance will specify the need for additional information and the date information is due.
Sept. 19, 1991	Commission issued public notice of the accepted application establishing dates for filing motions to intervene and protests.
Feb. 26, 1992	Commission's deadline for applicant to file additional information.
Mar. 10, 1992	Commission's deadline for applicant for filing a final amendment, if any, to its application.
Mar. 31, 1992	Commission notifies all parties and agencies that the application is ready for environmental analysis.

Upon receipt of all additional information and the information filed in responses to the public notices, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Ed Lee at (202) 219-2809.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1847 Filed 1-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-203-004]

Tennessee Gas Pipeline Co.; Tariff Filing

January 17, 1992.

Take notice that on January 14, 1992, Tennessee Gas Pipeline Company (Tennessee) filed the following tariff sheet to Third Revised Volume No. 1 of its FERC Gas Tariff to be effective February 1, 1992:

Third Revised Volume No. 1

First Revised First Revised Sheet No. 30

Tennessee states that the purpose of the tariff filing is to correct Tennessee's inadvertent failure to file with its rate filing of August 1, 1991 in Docket No. RP91-203 a tariff sheet setting forth increased Rate Schedule NET-EU rates.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 27, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1849 Filed 1-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-119-007]

Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

January 17, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 10, 1992, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of April 16, 1991:

2nd Sub First Revised Sheet No. 222
Sub Second Revised Sheet No. 223

Texas Eastern states that the filing is being made in compliance with the Commission's Order on Rehearing and Compliance Filings issued December 27, 1991. Texas Eastern states that the order addresses; *inter alia*, Texas Eastern's October 31, 1991 and November 15, 1991 filings made in compliance with the Commission's October 1, 1991 and November 1, 1991 orders, respectively, in these dockets. By this filing, Texas Eastern states that it is revising and clarifying Rate Schedule ISS-1.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions. Texas Eastern also states that copies of the filing have also been served on all parties in Docket No. RP91-119 and to all parties on the restricted service list in Docket Nos. RP88-67, *et al.*, (Phase I).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before January 27, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1845 Filed 1-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-6-29-000]

Transcontinental Gas Pipe Line Corporation; Proposed Changes in FERC Gas Tariff

January 17, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on January 10, 1992, certain revised tariff sheets to Third Revised Volume No. 1 of its FERC Gas Tariff included in appendix A attached to the filing.

Transco states that the purpose of the filing is to track rate changes attributable to (1) storage services purchased from Consolidated Natural Gas (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS (2) storage services purchased from Penn-York Energy Corporation (Penn-York) under its Rate Schedule SS-1 the costs of which are included in the rates and charges payable under Transco's Rate Schedules LSS and SS-2 and (3) transportation services purchased from CNG under its Rate Schedule X-74 the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT-NT. The tracking filing is being made pursuant to section 4 of Transco's Rate Schedule LSS, section 4 of Transco's Rate Schedule SS-2 and section 4 of Transco's Rate Schedule FT-NT.

Included in appendices B through E attached to the filing are explanations of the tracking rate changes and details regarding the computation of the revised LSS, SS-2 and FT-NT rates.

Also included therein for filing are revised tariff sheets which incorporate the Rate Schedule LSS, SS-2 and FT-NT rate changes proposed therein into subsequent intervening rate filings which have been accepted or are currently pending Commission acceptance on the effective dates reflected thereon.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 27, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1848 Filed 1-24-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of December 9 Through December 13, 1991

During the week of December 9 through December 13, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

INEL Research Bureau, 12/11/91, LFA-0164

The INEL Research Bureau filed a Freedom of Information Act Appeal of a fee waiver determination issued by the Department of Energy's (DOE) Idaho Operations Office (Idaho). Idaho denied the fee waiver request, finding that the information released pursuant to the underlying FOIA request would not contribute significantly to the public understanding of the operations or activities of the government. In considering that Appeal, the DOE found that there were other factors which must be examined in considering a fee waiver request. The DOE concluded that Idaho did not adequately justify the rationale for withholding the requested information under the FOIA and DOE regulations. Accordingly, the matter was remanded to Idaho, which was directed to make new determinations regarding the fee waiver request.

Refund Applications

Atlantic Richfield Company/Petrolane, Inc., 12/11/91, RF304–4259

The DOE issued a Decision and Order concerning an Application for Refund filed by Petrolane, Inc., in the ARCO Subpart V special refund proceeding. In its Application, Petrolane requested a full volumetric refund for its purchases of 186,074,805 gallons of ARCO propane based on a showing of injury. The DOE found that although overall, Petrolane paid less than the average market price for the propane it purchased from ARCO during the refund period, it was still injured to a certain degree in the months in which it paid more than the market average prices. Accordingly, the amount of refund was limited to the percentage of the total gallons purchased at above market prices (47.71%) multiplied by the per gallon refund volumetric amount, or $85,251 (plus interest of $32,956).

B.J. McAdams Trucking, 12/9/91, RF272–74249, RD272–74249

The Department of Energy issued a Decision and Order concerning the Application for Refund filed by B.J. McAdams Trucking for a refund from crude oil monies available for disbursement by the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) pursuant to 10 CFR part 205, subpart V. The applicant purchased refined petroleum products for use in its trucking operations. However, the firm did not provide a sufficient explanation of the method by which it calculated its purchase estimate. Despite repeated requests by OHA, the firm failed to submit corroborative data. Accordingly, the Application for Refund was denied and a Motion for Discovery filed by a group of States was dismissed.

Texaco Inc./Robert E. Way, 12/10/91, RF321–18084

The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a Decision and Order granting a refund of $10,000 plus interest to Robert E. Way, based on his purchases of 10,181,108 gallons of Texaco refined petroleum products as a consignee and petroleum jobber. The OHA subsequently received a submission from the National Association of Texaco Wholesalers (NATW), on behalf of Way Oil Company (currently owned by John and Susan Van Allen). In support of its position that Way Oil Company is entitled to the refund, the NATW submitted notarized instruments of conveyance showing a sale of all of the stock of Way Oil Company from Robert E. and Marguerite D. Way to the Van Allens. In view of the NATW submission, the OHA found it necessary to obtain additional facts in order to determine if Mr. Way should have received the refund for Way Oil Company. Accordingly, the OHA rescinded the refund granted to Robert E. Way.

Texaco Inc./Stewart's Texaco, 12/12/91, RF321–18096

The Department of Energy (DOE) issued a Decision and Order rescinding a refund that had been granted to Collene Stewart in the Texaco special refund proceeding. The refund was based upon the premise that Ms. Stewart was the sole owner and operator of Stewart's Texaco. Subsequently, Ms. Stewart's ex-husband claimed that he owned and operated Stewart's Texaco during the refund period. Because the factual basis underlying the granting of the refund was incorrect, the DOE rescinded the refund until a determination as to the appropriate recipient can be made.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Buff's ARCO.	RF304–12523	12/10/91
Atlantic Richfield Company/Hancock Oil Company.	RF304–3451	12/09/91
Frank Ferguson	RF304–9983	
Frank Ferguson	RF304–9984	
Atlantic Richfield Company/Paul's ARCO.	RF304–12646	12/10/91
Atlantic Richfield Company/Smitty's ARCO Service.	RF304–3332	12/10/91
Johnsonbaugh ARCO	RF304–4617	
Venango Auto Service.	RF304–5581	
Ralph's ARCO Service.	RF304–7172	
Atlantic Richfield Company/Southern California Edison Company.	RF304–6898	12/10/91
Big Bend Resources Trust.	RF272–66396	12/12/91
El Paso Electric Company.	RF272–66397	
City of Camden *et al.*	RF272–63801	12/10/91
City of Stockton, Kansas.	RF272–42123	12/09/91
Enron Corporation/ Grant's T.V. & Appliance.	RF304–28	12/09/91
Enron Corporation/ Schreiner's, Inc.	RF304–15	12/11/91
Evergreen Local School District *et al.*	RF272–84201	12/10/91
Gulf Oil Corporation/ Bayshore Marine Basin, Inc.	RF300–12821	12/12/91
J.M. Tuten, Inc.	RF300–12934	
J.M. Tuten, Inc.	RF300–12982	
Lester C. Newton Trucking Co. *et al.*	RF272–78544	12/12/91
Lincoln Paper Company.	RF272–229	12/11/91
Lincoln Paper Company.	RD272–229	
Shell Oil Company/ Quality Oil Co. I (Quality Oil of W. End/So. Pines, Inc.).	RF315–10178	12/10/91
Texaco Inc./Bartow Oil Co. *et al.*	RF321–13184	12/12/91
Texaco Inc./ Berryman Texaco *et al.*	RF321–819	12/11/91
Texaco Inc./Bias Texaco *et al.*	RF321–10374	12/09/91
Texaco Inc./Bill Cook's Texaco *et al.*	RF321–825	12/11/91
Texaco Inc./Burke's Texaco *et al.*	RF321–12183	12/09/91
Texaco Inc./Gasre Oil Company *et al.*	RF321–8811	12/13/91
Texaco Inc./John Nash.	RF321–10808	12/09/91
John Nash	RF321–10809	
John Nash	RF321–10810	
John Nash	RF321–10811	
John Nash	RF321–10812	
John Nash	RF321–10813	
John Nash, Consignee.	RF321–12241	
Texaco Inc./Lund's Texaco.	RR321–101	12/12/91
Jack Lund Texaco		
Texaco Inc./Sid's Texaco *et al.*	RF321–10004	12/13/91
Unified School District #437 *et al.*	RF272–84057	12/10/91
Zoological Society of Buffalo *et al.*	RF272–84416	12/10/91

Dismissals

The following submissions were dismissed:

Name	Case No.
Automatic Lubrication Service, Inc	RF321–16355
Blackmon's Crystal USA	RF321–62
Bowers ARCO	RF304–5826
Caulder Truck Stop	RF300–14270
Dedham Oil Co	RF321–97
Frank's Texaco	RF321–17939
G.C. Mungo & Son Texaco	RF321–17861
Garden Homes Management	RF272–10429
General Aviation of New Orleans	RF300–14007
Inspiration Resources Corp	RF272–25445
John J. Meiler, Jr	RF307–10200
John J. Meiler, Jr	RF307–10201
Koenig Kwiki Kar Wash	RF321–11797
Lee's Texaco	RF321–17937
Medina Texaco	RF321–2931
Medina Texaco	RF321–11384
Nixon, Chapman Gulf	RF300–12514
Norbert Begick	RF329–10
Office of Energy Conservation & Alternative Energy.	RM3–242
Petroleum Funds, Inc	RF272–80290
Petroleum Funds, Inc	RF272–85181
Petroleum Funds, Inc	RF272–81237
Petroleum Funds, Inc	RF272–85629
Powell's ARCO	RF304–5033

Name	Case No.
Rector's Texaco	RF321-17921
Sigmund Wilkowski	RF304-3848
Smith Oil Co., Inc.	RF304-3769
Tom Allgood	RF321-12330
Wapinsky Brothers	RF300-13204

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 17, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-1894 Filed 1-24-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of December 16 Through December 20, 1991

During the week of December 16 through December 20, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Foundation for Fair Contracting, 12/16/91, LFA-0166

The Foundation for Fair Contracting (FFC) filed an Appeal from a partial denial by the Western Area Power Administration (WAPA) of a request for information submitted under the Freedom of Information Act (FOIA). In its determination, WAPA released a copy of the certified payroll records of Brinks Electric Company for the Tracy Switchyard Project, No. 91WNO7520, from which the names, addresses, and social security numbers of contractor employees were deleted. WAPA had determined, pursuant to Exemption 6 of the FOIA, that disclosure of this information would violate the privacy of the employees and would not be in the public interest. In considering the Appeal, the DOE found that the public interest in the disclosure of the withheld information was outweighed by the privacy interests of employees in preventing the unlimited disclosure of their names and addresses. The FFC's appeal was accordingly denied.

Leslie Vallie, 12/20/91, LFA-0168

Leslie Vallie filed an Appeal from a determination issued to him by the DOE's Western Area Power Administration (WAPA) on a request for information under the Freedom of Information Act (FOIA) Vallie had requested information concerning the recruitment efforts and evaluation of candidates for a Supervisory Contract Specialist position. In its determining, WAPA withheld an internal personnel document and the names of a Personnel Officer and three Panel Members from a Summary Rating and Ranking Sheet pursuant to Exemption 5 of the FOIA, and the names and scores of the candidates, under Exemption 6. In considering the Appeal, OHA determined that the internal personnel document appears to be a standard form which contained little or no information which could be considered deliberative. Consequently, OHA remanded that document to WAPA to consider whether it is exempt from mandatory disclosure under the FOIA. Regarding the Summary Rating and Ranking Sheet, OHA found that WAPA properly withheld the names of the Panel Members under Exemption 5, and the names of the candidates under Exemption 6. OHA also found that WAPA's determination to withhold the name of the Personnel Officer, under Exemption 5, and the candidates' scores, under Exemption 6, had not been adequately justified. OHA remanded these matters to WAPA to either release the information or issue a new determination explaining why it is exempt. Accordingly, OHA granted Vallie's Appeal in part and denied it in part.

Refund Applications

American Fiber & Finishing, Inc., The Kendall Company, 12/18/91, RF272-47516, RF272-47517, RD272-47517

The DOE issued a Decision and Order denying the refund application of American Fiber & Finishing, Inc., (AF&F) and granting the application of The Kendall Company (TKC) in the crude oil refund proceeding. AF&F based its claim on petroleum products consumed at a manufacturing plant which it had acquired from TKC after the decontrol of Federal petroleum prices. The DOE examined the specific terms of the assets sale agreement between the two firms, and determined that TKC had retained the right to receive an oil overcharge refund when it sold the plant to AF&F. The amount of the refund approved was $31,467. A consortium of states and territories filed a Motion for Discovery in connection with TKC's application, which was denied for reasons discussed in earlier subpart V crude oil Decisions. See, *e.g., Christian Hooland A/S*, 17 DOE ¶ 85,439 (1988).

Eli Lilly and Company, 12/16/91, RC272-151

The DOE issued a Decision and Order concerning an Application for Refund (RF272-23220) filed by Eli Lily & Company in the Subpart V crude oil refund proceeding. The DOE determined that the initial refund amount granted was incorrect. Therefore, this supplemental order specified the correct refund amount of $101,396.

Texaco Inc./ Cairo Texaco, 12/20/91 RF321-866, RF321-930

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning two Applications for Refund filed by separate individuals on behalf of a service station which purchased refined petroleum products directly from Texaco during the consent order period. Both of the applicants requested a refund based on purchases they claimed to have made for this station during the same time period. One of the applicants, J.C. Lyle of Lyle Gas Co. (RF321-866), submitted information which established that he operated the service station during the time period for which he claimed a refund. Wesley Van Brunt, the applicant in Cairo Texaco (Case No. RF321-930), failed to provide information which established that he purchased the product or owned the service station during the period. Therefore, the DOE determined that Lyle Gas Co. was eligible to receive a refund of $1,289 ($1,002 principal plus $287 interest) and denied the Application for Refund filed by Wesley Van Brunt on behalf of Cairo Texaco.

Texaco Inc./Santee Distributing Co. et al., 12/19/91, RF321-9108 et al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed in the Texaco Inc. special refund proceeding. Dennis L. Cross and James L. Cross, owners of Cross Petroleum (Case No. RF321-11764) (Cross), a consigneeship, submitted applications on behalf of Cross and three other retail outlets which they owned, Yreka Texaco (Case No. RF321-11652), Valley Gas (Case No. RF321-11653) and D & J Texaco (Case No. RF321-11654). These outlets obtained their Texaco products exclusively from Cross. The DOE approved the consignee refund claim. However, the DOE denied the refund applications of the affiliated retail outlets holding that petroleum products which are consigned to one firm then

sold to an affiliated firm may not only be included only once in calculating the appropriate refund amount. Cross' and the remaining applicants' allocable shares each exceeded $10,000. The DOE determined that since none of these applicants elected to make a showing of injury, each applicant was eligible to receive the larger of $10,000 or 50 percent of its allocable share up to $50,000. The sum of the refunds granted in this Decision is $179,380, representing $139,476 principal and $39,904 interest.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Citronelle-Mobile Gathering/Essex Chemical Corp.	RF336-11	12/17/91
Citronelle-Mobile Gathering/Hercules Inc., Aqualon Co., Hercules Inc.	RF336-18 RF336-19 RF336-24	12/20/91
Citronelle-Mobile Gathering/Orlando Utilities Commission.	RF336-30	12/18/91
City of Lawton *et al.*	RF272-74048	12/19/91
County of Orange, General Services Agency, California *et al.*	RF272-59754	12/17/91
Enron Corporation/ National Cooperative Refinery Association.	RF340-2	12/20/91
Exxon Corporation/ William E. Sullivan.	RF307-10205	12/18/91
General Dynamics Corporation, General Dynamics Corporation.	RF272-27790 RD272-27790	12/18/91
Gulf Oil Corporation/ Airland Gulf.	RF300-18672	12/16/91
Gulf Oil Corporation/ Emmet Oil Company *et al.*	RF300-13019	12/16/91
Gulf Oil Corporation/ Gulf Mart U-Haul *et al.*	RR300-111	12/19/91
Gulf Oil Corporation/ Hutchison Gulf *et al.*	RF300-14135	12/19/91
Gulf Oil Corporation/ J. Ray Hunter, Inc., F.S. Winters & Son, T.L. Baker, Daniels-Mclown Oil Company.	RF300-58 RR300-76 RR300-84 RR300-89	12/16/91
Gulf Oil Corporation/ Joseph A. Majka & Sons *et al.*	RR300-23	12/20/91
Las Vegas Paving Corp., Las Vegas Pavings Corp.	RF272-74755 RD272-74755	12/18/91
Tarkenton Brothers, Inc.	RF272-74793	12/16/91
Texaco Inc./B.M. Deligans *et al.*	RF321-12284	12/19/91
Texaco Inc./Bob's Hilltop Texaco.	RF321-18129	12/20/91
Texaco Inc./ Brookside Texaco *et al.*	RF321-7010	12/19/91
Texaco Inc./Highland Springs Texaco *et al.*	RF321-3714	12/20/91
Texaco Inc./JG's Texaco *et al.*	RF321-1671	12/19/91
Texaco Inc./Lee Paradise Texaco, Lee Paradise Texaco, Lee Paradise Texaco, Lee Paradise Texaco, Lee's Texaco Station.	RF321-589 RF321-598 RF321-600 RF321-601 RF321-605	12/17/91
Texaco Inc./Rupp Gasoline & Oil, Inc., Rupp Service Station.	RF321-12524 RF321-17743	12/20/91
Texaco Inc./Scheri Brothers, Inc. *et al.*	RF321-6551	12/17/91

Dismissals

The following submissions were dismissed:

Name	Case No.
Gorin & Lobb Oil Co., Inc	RF 324-18
Jerry Stevens	RF300-11875
Lowell Harris	RF300-12154
Patsy Jennings	RF300-11633
Robert J. Algeo	RF300-11871
Smitty's Arco Service	RF304-5076
Webbs Arco	RF304-4345

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 17, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-1883 Filed 1-24-92; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Salt Lake City Area Integrated Projects Proposed Firm Power Rate and Colorado River Storage Project - Proposed Firm Transmission Rate Adjustments

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Reopening of Comment Period on the Proposed Salt Lake City Area Integrated Project (SLCA/IP) Firm Power and Colorado River Storage Project (CRSP) Firm Transmission Rate Adjustments.

SUMMARY: Western Area Power Administration (Western) is announcing a second consultation and comment period on the rate increase for firm power from the SLCA/IP and for firm transmission from the CRSP. This rate action was originally announced in the **Federal Register** on September 16, 1991, at 56 FR 47203-47205.

This action is taken in response to public comment that additional time is needed for comments on some unresolved issues relative to the rate adjustment.

PROCEDURES: A revised power repayment study will be made available during the consultation and comment period. It will contain fiscal year (FY) 1991 actual financial data and the FY 1992 Congressional Budget data. An addendum to the brochure explaining the need for the proposed rate increases and the methodology used in developing the proposed rates will be distributed to SLCA/IP power and CRSP transmission customers and other interested parties following publication of this notice. Customers and interested parties are invited to comment on the proposed rates and the methodology used to develop the rates. Comments already submitted will be given full consideration in this second comment period and do not need to be resubmitted.

Following the close of the consultation and comment period, Western will prepare another power repayment study and another CRSP transmission rate study, which will include any changes due to consideration of public comments. Western will recommend the results of those studies as the final proposed rates to the Assistant Secretary for Conservation and Renewable Energy to be placed in effect on an interim basis prior to submission to the Federal Energy Regulatory Commission (FERC) for approval on a final basis.

EFFECTIVE DATES: The consultation and comment period will begin January 27, 1992, and will end on May 1, 1992.

Western will explain the methodology and information used in developing the revised proposed rates and answer questions at a public information forum, which will be held at the Salt Lake Hilton, 150 West 500 South, Salt Lake City, Utah, at 1:30 p.m. on March 30,

1992. Western will receive oral and written comments at a public comment forum at the Quality Inn City Center at 9:30 a.m. on April 14, 1992. Both forums will be transcribed by a court reporter. All questions raised at the information forum will be answered at the forum or at least 15 days before the end of the consultation and comment period. Written comments should be received by the end of the consultation and comment period to be assured consideration. Comments may be sent to:

Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493.

SUPPLEMENTARY INFORMATION: Power rates for the SLCA/IP and transmission rates CRSP are established pursuant to the Department of Energy Organization Act 42 U.S.C. 7101, *et seq.;* the Reclamation Act of 1902, 32 U.S.C. 388, *et seq.;* as amended and supplemented by subsequent enactments, particularly § 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the projects involved.

By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy of DOE; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to FERC.

The procedures for public participation in rate adjustments for power and transmission services marketed by Western which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums made or kept by Western for the purpose of developing the proposed rates are and will be available for inspection and copying at Western's Salt Lake City Area Office, 257 East 200 South, suite 475, Salt Lake City, Utah.

Issued at Golden, Colorado, January 17, 1992

William H. Clagett,

Administrator.

[FR Doc. 92–1895 Filed 1–24–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4096–4]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between July 1, 1991 and January 7, 1992, the United States Environmental Protection Agency (EPA), Region II Office, issued three final determinations, the New York State Department of Environmental Conservation (NYSDEC) issued eleven final determinations, and the New Jersey Department of Environmental Protection and Energy (NJDEPE) issued four final determinations pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR § 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart (See "**SUPPLEMENTARY INFORMATION**").

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Riva, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency Region II Office, 26 Federal Plaza, room 505, New York, New York 10278, (212) 264–4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region II, the NYSDEC, and the NJDEPE have made final determinations relative to the sources listed below:

Name	Location	Project	Agency	Final action	Date
Power City Powers, L.P	Massena, New York	79 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC	Non-applicability	July 3, 1991.
Onondaga Cogeneration Limited Partnership.	Syracuse, New York	79 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC	Non-applicability	July 12, 1991.
IBM Corporation	Fishkill, New York	Modification of operational conditions for an emergency diesel generator.	NYSDEC	Non-applicability	July 17, 1991.
Trenton District Energy Co	Trenton, New Jersey	Modification to existing State Permit for the installation of a catalytic oxidizer to reduce CO and UHC.	NJDEPE	Non-applicability	August 2, 1991.
Indeck Silver Springs Cogeneration Facility.	Silver Springs, New York	Modification of existing PSD Permit limits for CO, PM, & NO_x.	NYSDEC	Revised PSD Permit	September 3, 1991.
RSR Corporation	Wallkill, New York	Addition of 2 diesel-powered standby electrical generators.	NYSDEC	Non-applicability	September 4, 1991.
Algonquin Gas	Stony Point, New York	Addition of a Solar Mars Gas turbine firing natural gas.	NYSDEC	Non-applicability	October 2, 1991.
Camden Cogeneration Limited Partnership.	Camden, New Jersey	2 Turbines, combined cycle cogeneration facility.	NJDEPE	Non-applicability	October 15, 1991.
Oxbow Power	Tonowanda, New York	55 MW combined cycle gas turbine cogeneration project firing natural gas #2 oil as backup fuel.	NYSDEC	Non-applicability	October 16, 1991.
Ball Metal Container	Saratoga Springs, New York	Addition of a fourth coating line and thermal afterburner.	NYSDEC	Non-applicability	October 23, 1991.

Name	Location	Project	Agency	Final action	Date
AsoChem International, Inc	Ponce, Puerto Rico	Reactivation of the CPI-1 plant at CORCO's petrochemical complex.	EPA	Non-applicability	November 5, 1991.
Indeck Energy	Ilion, New York	79 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC	Non-applicability	November 13, 1991.
Kamine Syracuse	Solvay, New York	80 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC	PSD Permit	November 20, 1991.
Squibb Manufacturing, Inc	Humacao, Puerto Rico	Caloric hazardous waste incinerator with a maximum liquid feed rate of 20 gallons per minute.	EPA	Non-applicability	November 22, 1991.
Procter and Gamble	Staten Island, New York	Modification of wood fiber boiler #4 at the Port Ivory Plant.	EPA	PSD Permit Modification.	December 9, 1991.
General Motors Corporation	Linden, New Jersey	Paint shop modification	NJDEPE	Non-applicability	December 19, 1991.
East Syracuse Generating Company, L.P.	East Syracuse, New York	106 MW combined cycle gas turbine cogeneration project firing natural gas with #2 oil as backup fuel.	NYSDEC	Non-applicability	December 25, 1991.
Keyston Cogeneration Systems, Inc.	Logan Township, New Jersey	1 pulverized coal fired 2116 MM BTU/HR boiler cogeneration plant with auxiliary boiler and other related equipment.	NJDEPE	PSD Permit	January 7, 1991.

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

United States Environmental Protection Agency, Regional II Office, Permits Administration Branch—room 505, 26 Federal Plaza, New York, New York 10278.

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233-0001.

NJDEPE Actions

New Jersey Department of Environmental Protection and Energy, Division of Environmental Quality, Bureau of Engineering and Technology, 401 East State Street, Trenton, New Jersey 08625.

If available pursuant to the Consolidated Permit Regulations (40 CFR part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the Federal Register. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: January 17, 1992.

William Muszynski,

Acting Regional Administrator.

[FR Doc. 92-1899 Filed 1-24-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4096-2]

Science Advisory Board, Research Strategies Advisory Committee

February 12, 1992.

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB) will conduct a meeting on February 12, 1992. The purpose of the meeting will be to review the FY 1993 President's Budget Request for Research and Development activities in EPA. The meeting will be held at the Holiday Inn Old Towne, 480 King St. Alexandria, VA. 22314. The hotel telephone number is (703) 549-6080. The session will begin at 9 am, ending no later than 5 pm.

The meeting is open to the public, and seating is limited. Any member of the public wishing further information concerning the meeting should contact Mr. Randall C. Bond, Designated Federal Official, Research Strategies Advisory Committee at (202) 260-6552. Those individuals requiring a copy of the Agenda should contact Ms. Janice Jones at the same number. Members of the public wishing to make comments at the sessions should provide those comments to Mr. Bond no later than January 29, 1992. Comments will be limited to 5 minutes, and the Science Advisory Board expects that such items will not be repetitive of previously submitted materials.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 92-1900 Filed 1-24-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4096-3]

CERCLA Consent Decree Entered for Recovery of Response Costs, Interest, and Statutory Penalties—Resolve Manufacturing, Inc. Site, NY

AGENCY: Environmental Protection Agency.

ACTION: Information notice.

The Environmental Protection Agency ("EPA") Region II announces entry of a consent decree under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. 9601-9675. EPA has settled with five potentially responsible parties ("PRPs") for oversight, enforcement and indirect costs, as well as penalties for violation of an EPA order issued in connection with the Resolve Manufacturing, Inc. Site ("Site") located in Falconer, New York. The Consent Decree, between EPA and the Environmental Service Group (NY), Inc., Custom Muffler Service Center, Inc., Ethan Allen, Inc., Products Finishing, Inc., and Seco Corp., was entered by the United States District Court, Western District of New York, on October 31, 1991.

Under the settlement, EPA has recovered $128,000 with interest. This amount includes a $40,000 penalty for

violation of an administrative order ("AO") that directed five PRPs to participate in a drum removal action at the Site. The five PRPs failed to participate in the removal action which was performed by nearly 100 other cooperating PRPs at a response cost of approximately $150,000. In addition to penalties, EPA used its enforcement discretion to seek approximately $90,000 in response costs from the recalcitrant recipients of the AO rather than from the PRPs that consented to perform the cleanup. The value of the cost/penalty settlement reportedly represents over twenty times the amount that these parties would have paid to participate in the original settlement of this matter.

FOR FURTHER INFORMATION CONTACT: Virginia Capon, Assistant Regional Counsel, New York/Caribbean Superfund Branch, U.S. Environmental Protection Agency, 26 Federal Plaza, room 437, New York, New York, 10278, telephone: (212) 264–4471.

Dated: January 10, 1992.

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 92–1901 Filed 1–24–92; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–51783; FRL 4045–7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 16 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92–265, February 24, 1992.

P 92–282, March 1, 1992.

P 92–372, April 1, 1992.

P 92–373, 92–374, 92–375, April 4, 1992.

P 92–376, 92–377, 92–378, 92–379, 92–380, 92–381, 92–382, 92–383, 92–384, April 5, 1992.

P 92–385, April 6, 1992.

Written comments by:

P 92–265, January 25, 1992.

P 92–282, January 31, 1992.

P 92–372, March 2, 1992.

P 92–373, 92–374, 92–375, March 5, 1992.

P 92–376, 92–377, 92–378, 92–379, 92–380, 92–381, 92–382, 92–383, 92–384, March 6, 1992.

P 92–385, March 7, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS–51783)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. L–100, Washington, DC, 20460, (202) 260–3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92–265

Manufacturer. Rhone-Poulenc Inc.

Chemical. (G) UV curable silicone resin.

Use/Production. (G) Coating. Prod. range: Confidential.

P 92–282

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymers A, A1, and A2.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Acute dermal toxicity: LD50 > 2.0 g/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 92–372

Manufacturer. Confidential.

Chemical. (S) Cyclic resin formers; dicyclopentadione; para-tent-butylphenol resin; aromatic naptha; para-tent-butylphenol resin.

Use/Production. (S) Printing ink vehicles. Prod. range: 80,000–90,000 kg/yr.

P 92–373

Importer. Degussa Corporation.

Chemical. (S) 3-Chloro-2-hydroxypropyl-*N,N,N*-dimethyloctadecyclammoniumchloride.

Use/Import. (S) Production of catronic polymers. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 3784 mg/kg species (rat). Static acute toxicity: time LC50 0.34 mg/l species (brachydanio rerio). Eye irritation: strong species (rabbit). Skin irritation: slight species (rabbit).

P 92–374

Manufacturer. Confidential.

Chemical. (G) Partiaaly fluorinated diester.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92–375

Manufacturer. Confidential.

Chemical. (G) Partially fluorinated polyimide.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92–376

Manufacturer. Confidential.

Chemical. (G) Carboxylated styrene, butadiene polymer.

Use/Production. (G) Binder ingredient in non woven articles. Prod. range: Confidential.

P 92–377

Importer. Confidential.

Chemical. (G) Acetamide derivative.

Use/Import. (G) Coloring agent. Import range: Confidential.

P 92–378

Manufacturer. Confidential.

Chemical. (G) Modified glucosied.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 92–379

Manufacturer. Confidential.

Chemical. (G) Modified glucoside, alkoxylated.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 92–380

Manufacturer. PPG Industries, Inc.

Chemical. (G) Substituted polyethylenimide polyamide.

Use/Production. (G) Lubricant. Prod. range: Confidential.

P 92–381

Importer. Confidential.

Chemical. (G) Polyol ester.

Use/Import. (G) Lubricant. Import range: Confidential.

Toxicity Data. Eye irritation: moderate species (rabbit). Skin irritation: slight species (rabbit). Mutagenicity: negative.

P 92-382

Manufacturer. Monsanto Company.

Chemical. (G) Acrylonitrile-co-substituted ethane-co-substituted benzene sulfonic acid, sodium salt.

Use/Production. (S) Polymer used in fiber manufacturing. Prod. range: Confidential.

P 92-383

Manufacturer. Confidential.

Chemical. (G) Aliphatic phosphate ester salt.

Use/Production. (S) Asphalt antistripping additive. Prod. range: 56,818.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Static acute toxicity: time LC50 3.01 mg/l species (fathead minnow).

P 92-384

Manufacturer. Ricoh Corporation.

Chemical. (G) Quaternary ammonium salt of fluorinated alkyl-arylamide.

Use/Production. (G) Component of toner for copier. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Static acute toxicity: time LC50 96h1.91. mg/l species (carp). Eye irritation: strong species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 92-385

Importer. Confidential.

Chemical. (G) Aliphatic amine/epoxy adduct.

Use/Import. (S) Internal coating for storage tank. Import range: Confidential.

Dated: January 21, 1992.

Ruby N. Boyd,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-1903 Filed 1-24-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Compania Sud Americana de Vapores, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011298-001.

Title: FMG/CSAV Joint Service Agreement.

Parties:

Compania Sud Americana de Vapores ("CSAV"),

Flota Mercante Grancolombiana ("FMG"),

Naviera Interamericana Navicana S.A. ("NAV").

Synopsis: The proposed amendment (1) adds NAV as a party to the Agreement; (2) changes the name of the Agreement to FMG/CSA/NAV Cooperative Working Agreement; (3) expands the scope of the Agreement to include Mexico; and (4) makes other miscellaneous changes. The parties have requested a shortened review period.

Dated: January 21, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-1851 Filed 1-24-92; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 412
Name: Castelazo/Castelazo & Associates
Address: 5420 West 104th St., Los Angeles, CA 90045
Date: October 25, 1991
Reason: Failed to furnish a valid surety bond.

License Number: 467
Name: Carolina Shipping Company
Address: P.O. Box 874, Charleston, SC 29402
Date Revoked: December 18, 1991
Reason: Failed to furnish a valid surety bond.

License Number: 629
Name: John a. Conkey & Co., Inc.
Address: 67 Broad street, Boston, MA 02109
Date revoked: January 1, 1992
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 92-1832 Filed 1-24-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citco Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 18, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104

Marietta Street, NW., Atlanta, Georgia 30303:

1. Citco Bancshares, Inc., Elizabethton, Tennessee; to engage *de novo* through its subsidiary, Small Business Resources, Inc., Elizabethton, Tennessee, in soliciting and packaging loans, and underwriting and funding the packages pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1866 Filed 1-24-92; 8:45 am]

BILLING CODE 6210-01-F

Southern Banking Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 18, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Southern Banking Corporation, Altamonte Springs, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Southern Bank of Central Florida, Altamonte Springs, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CNB Bancshares, Inc., Evansville, Indiana, and CNB of Central Indiana, Inc., Evansville, Indiana; to acquire 100 percent of the voting shares of Indiana Bancshares, Inc., Greenwood, Indiana, and thereby indirectly acquire The Bargersville State Bank, Greenwood, Indiana, and Bloomington Bank & Trust, Bloomington, Indiana.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First National Agency of Bagley, Bagley, Minnesota, and First National Bank of Bagley, Bagley, Minnesota; to acquire 100 percent of the voting shares of Fosston Bancorporation, Inc., Fosston, Minnesota, and thereby indirectly acquire Farmers State Bank of Fosston, Fosston, Minnesota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Commerce Bancshares, Inc., Kansas City, Missouri; to acquire 100 percent of the voting shares of First Peoria Corp., Peoria, Illinois, and thereby indirectly acquire The First National Bank of Peoria, Peoria, Illinois; First National Bank of Woodford County, Metamora, Illinois; and The Tazewell County National Bank of Delavan, Delavan, Illinois. In connection with this application, CBI-Illinois, Inc., Kansas City, Missouri, a subsidiary of Commerce Bancshares, will become a bank holding company by merging with First Peoria.

2. Dawson Corporation, Lexington, Nebraska; to acquire 14.6 percent of the voting shares of Guaranty Corporation, Denver, Colorado, and thereby inidrectly acquire Guaranty Bank and Trust Company, Denver, Colorado.

Board of Governors of the Federal Reserve System, January 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1867 Filed 1-24-92; 8:45 am]

BILLING CODE 6210-01-F

Richard Spotswood Thomson, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 18, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Richard Spotswood Thomson, Hattiesburg, Mississippi; to acquire an additional 12.73 percent of the voting shares of First National Corporation of Picayune, Picayune, Mississippi, for a total of 25.07 percent, and thereby indirectly acquire First National Bank of Picayune, Picayune, Mississippi.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Charles D. and Lonne J. Carr, Hayward, California; to acquire at least 10.77 percent, but no more than 15.56 percent of the voting shares of Civic Bancorp, Oakland, California, and thereby indirectly acquire Civic Bank of Commerce, Oakland, California.

Board of Governors of the Federal Reserve System, January 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1868 Filed 1-24-92; 8:45 am]

BILLING CODE 6210-01-F

U.S. Bancorp; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 18, 1992.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. U.S. Bancorp, Portland, Oregon; to acquire Brokerage Information Systems, Inc., and Brokerage Information Systems, a limited partnership, Sacramento, California; and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1869 Filed 1-24-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Ambulatory and Hospital Care Statistics: Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following meeting.

Name: NCVHS Subcommittee on Ambulatory and Hospital Care Statistics.

Time and Date: 9 a.m.-5 p.m., February 12-13, 1992.

Place: Room 337A-339A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to continue a systematic review of the Uniform Hospital Discharge Data Set. The Subcommittee also will address other aspects of its charge, as time permits.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050 or FTS 436-7050.

Dated: July 21, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-1860 Filed 1-24-92; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics (NCVHS), Subcommittee on State and Community Health Statistics; Meeting

Pursunt to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following meeting.

Name: NCVHS Subcommittee on State and Community Health Statistics.

Time and Date: 1 p.m.-5 p.m., February 20, 1992, 9 a.m.-5 p.m., February 21, 1992.

Place: Room 303A-305A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to continue to explore issues and concerns about the availability of statistics to monitor the health of communities.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050 or FTS 436-7050.

Dated: January 21, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-1861 Filed 1-24-92; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Program Announcement and Proposed Funding Preference for Grants for Centers of Excellence in Minority Health Professions Education

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1992 for Grants for Centers of Excellence (COE) in Minority Health Professions Education are being accepted under the authority of section 782 of the Public Health Service Act (the Act), title VII as amended by the Disadvantaged Minority Health Improvement Act of 1990, Public Law 101-527. Comments are invited on the proposed funding preference stated below.

The FY 1992 appropriation for the Centers of Excellence program is $24.1 million. Total continuation support previously recommended is $14,544,957; for Historically Black Colleges and Universities, $12,092,527; for Hispanic COEs, $1,456,107; and for Native American COEs, $996,324. Approximately $9.6 million will be available to support about 45 competing awards averaging $210,000. As required by statute, a funding priority will be given applications requesting support for Hispanic, Native American, or Other Centers of Excellence.

Regulations at 42 CFR part 57, subpart V (54 FR 28067) govern this program.

Eligibility

Section 782, as amended by Public Law 101-527, authorizes the Secretary to make grants to schools of medicine, dentistry and pharmacy as defined in section 701(4) and as accredited in section 701(5) of the Act for the purpose of assisting the schools in supporting programs of excellence in health professions education for Black, Hispanic and Native American individuals, as well as for Historically Black Colleges and Universities as described in section 701(4) and which have received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for FY 1987.

To qualify as a COE, a school is required to:

1. Have a significant number of minority individuals enrolled in the school, including individuals accepted for enrollment in the school;

2. Demonstrate that it has been effective in assisting minority students of the school to complete the program of education and receive the degree involved;

3. Show that it has been effective in recruiting minority individuals to attend the school, including providing scholarships and other financial assistance to such individuals, and encouraging minority students of secondary educational institutions to attend the health professions school; and

4. Demonstrate that it has made significant recruitment efforts to increase the number of minority individuals serving in faculty or administrative positions at the school.

These entities must be located in any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

Historically Black College and University (HBCU) COES, may:

(1) Develop a plan to achieve institutional improvements, including financial independence, to enable the school to support programs of excellence in health professions education for minority individuals; and

(2) Provide improved access to the library and informational resources of the school.

For Hispanic Centers of Excellence, the health professions schools must agree to give priority to carrying out the duties with respect to Hispanic individuals.

Regarding Native American Centers of Excellence, the health professions school must agree to:

1. Give priority to carrying out duties with respect to Native Americans;

2. Establish a linkage with one or more public or nonprofit private institutions of higher education whose enrollment of students has traditionally included a significant number of Native Americans for purposes of identifying potential Native American health professions students of the institution who are interested in a health professions career and facilitating their entry into health professions schools; and

3. Make efforts to recruit Native American students, including those who have participated in the undergraduate program of the linkage school, and will assist them in completing the degree requirements of the health professions school.

To qualify as an "Other Minority Health Professions Education Center of Excellence" a health professions school (i.e., a school of medicine, dentistry, or pharmacy) must have an enrollment of underrepresented minorities above the national average for student enrollments in that health professions discipline.

Purposes

Grants for eligible HBCUs, Hispanic, Native American and Other Centers of Excellence may be used by the school for the following purposes:

1. To establish, strengthen, or expand programs to enhance the academic performance of minority students attending the school;

2. To establish, strengthen, or expand programs to increase the number and quality of minority applicants to the school;

3. To improve the capacity of such school to train, recruit, and retain minority faculty;

4. To carry out activities to improve the information resources and curricula of the school and clinical education at the school with respect to minority health issues; and

5. To facilitate faculty and student research on health issues particularly affecting minority groups.

In addition, grants for eligible HBCUs may also be used to develop a plan to achieve institutional improvements, including financial independence, and to improve library access.

Applicants must address at least three of the five legislative purposes.

Healthy People 2000 Objectives

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Centers of Excellence Program is related to the priority area of Educational and Community-Based programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

Statutory Requirements

Duration of Grants

Payments under grants for Centers of Excellence may not exceed 3 years, subject to annual approval by the Secretary and to the availability of appropriations for the fiscal year involved.

Maintenance of Effort

A health professionals school which is a public school receiving a grant will be required to maintain expenditures of non-Federal amounts for the specified activities at a level not less than the level maintained by the school for the fiscal year preceding the first fiscal year for which the school applies after fiscal year 1990 to receive a grant. Nonprofit private health professions schools that are grant recipients will be required to maintain non-Federal expenditures as described above but only to the extent of the level of non-Federal amounts available to the school for the activities.

Statutory Definitions

"Health professions schools" means schools of medicine, dentistry and pharmacy, as defined in section 701(4) and as accredited in section 701(5) of the Act. For purposes of the HBCUs, this definition means those schools described in section 701(4) of the Act and which received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for fiscal year 1987.

"Native Americans" means American Indians, Alaskan Natives, Aleuts and Native Hawaiians.

"Programs of Excellence" means any programs carried out by a health professions school with funding under section 782 Grants for Centers of Excellence in Minority Health Professions Education.

Other Definitions

The following definitions were established in fiscal year 1991 after public comment (56 FR 22440).

"A significant number of minority individuals enrolled in the school" means that to be eligible to apply for an Hispanic COE, a medical or dental school must at least 25 enrolled Hispanic students, and a school of pharmacy must have at least 20 enrolled Hispanic students. To apply as a Native American COE, an eligible medical or dental school must have at least 8 enrolled Native American students and a school of pharmacy must have at least 5 enrolled Native American students. To be eligible to apply for an Other Minority Health Professions Education COE, an eligible school must have above the national average of underrpresented minorities (medicine 13%, dentistry 15%, pharmacy 11%) enrolled in the school. These numbers

represent the critical mass necessary for a viable program. A viable program is one in which there is a sufficient number of students to warrant a Center of Excellence level educational program. Data from relevant professional associations indicate sharp differentiation in target group numbers among schools. Stated numerical levels are just above the median for schools reporting a critical mass necessary for a viable program. The requirement that schools applying for Other Minority Health Professions Education Centers have an enrollment of underrepresented students that is above the national average for that discipline is statutory.

"Effectiveness in Providing Financial Assistance" will be evaluated by examining the data on scholarships and other financial aid provided to the targeted group in relation to the scholarships and financial aid provided to the total school population.

"Effectiveness in Recruitment" will be evaluated by examining the first-year and total enrollments of targeted students in relation to the first-year and total enrollments for the entire school.

"Effectiveness in Retaining students" will be determined by retention rates for targeted group and academic and non-academic support systems operative for the target group of students at the school.

"Hispanic" means a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin.

"Minority" means an individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black, or Hispanic.

"Underrepresented Minority" means, for any given health profession, a racial or ethnic group whose percentage among the total supply of practitioners in that health profession is below that group's percentage in the total population. This definition has consistently encompassed Blacks, Hispanics, and Native Americans.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project meets the legislative intent;
2. The administrative and managerial ability of the applicant to carry out the project in a cost effective manner;
3. The adequacy of the staff and faculty to carry out the program;
4. The soundness of the budget for assuring effective utilization of grant funds, and the proportion of total program funds which come from non-Federal sources and the degree to which they are projected to increase over the grant period;
5. The technical merit of the project as determined by the following elements:

a. Delineation of specific objectives which are consistent with the legislative purposes, measurable, and outcome oriented.

b. Description of a methodology which corresponds to the objectives and provides specific details on the activities, projects, or services which will be implemented to achieve the objectives, time frames for implementing the activities, projects or services, target population, responsible staff, and facilities which will be used to accomplish the objectives.

c. Description of a comprehensive evaluation plan inclusive of all objectives and activities and program performance indicators.

6. The number of individuals who can be expected to benefit from the project;
7. The overall impact the project will have on strengthening the school's capacity to train the targeted minority health professionals and increase the supply of such minority health professionals available to serve minority populations in underserved areas; and
8. The degree to which the applicant can arrange to continue the proposed project beyond the federally-funded project period.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

Funding Priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

Funding Preferences—funding of a specific category or group of approved applications ahead of the other categories or groups of applications, such as new projects ahead of expansion supplementals.

Statutory Funding Priority

As required by statute, a funding priority will be given to applications requesting support for Hispanic, Native American, or Other Centers of Excellence.

Proposed Funding Preference for FY 1992

A funding preference will be given to approved applications scoring in the upper 40th percentile or better, submitted by schools located in states which do not currently have a Center of Excellence in that discipline.

This funding preference is designed to achieve an equitable distribution of resources, both geographically and by eligible discipline. The rationale for giving a funding preference only to those applications in the upper 40th percentile or better is based on experience with the quality of Centers of Excellence applications scoring above and below this percentile. It is also based on HRSA's intent to fund only those programs having the strongest potential for achieving the objectives of the Centers of Excellence.

The proposed funding preference does not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for or elect the proposed funding preference are encouraged to submit applications.

Additional Information

Interested persons are invited to comment on the proposed funding preference. Normally the comment period would be 60 days. However, due to the need to implement any changes for the FY 1992 award cycle, this comment period has been reduced to 30 days. All comments received on or before February 26, 1992 will be considered before the final funding preference is established. No funds will be allocated or final selections made until a final notice is published stating when the final funding preference will be applied.

Written comments should be addressed to: Clay E. Simpson, Jr., Ph.D., Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8A-09, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for grant application materials and questions regarding grants policy and business management aspects should be directed to: Ms. Diane Murray, Grants Management Specialist (D34), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C-26, Rockville, Maryland 20857, Telephone: (301) 443-6857.

Completed applications should be forwarded to the Grants Management Specialist at the above address.

To obtain specific information regarding programmatic aspects of this grant program, direct inquiries to: Ms. Cynthia Amis, Acting Chief, Program Coordination Branch, Division of

Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8A-09, Rockville, Maryland 20857, Telephone: (301) 443-4493.

To receive consideration, applications must meet the deadline of March 13, 1992 which means they must either be:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to an independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

The standard application form, PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and Supplement have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The Program, Grants for Centers of Excellence in Minority Health Professions Education is listed at 93.157 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: November 20, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 92-1913 Filed 1-24-92; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Consensus Development Conference on Diagnosis and Treatment of Early Melanoma

Notice is hereby given of the NIH Consensus Development Conference on "Diagnosis and Treatment of Early Melanoma" which will be held on January 27-29, 1992 in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Cancer Institute and the NHI Office of Medical Applications of Research and cosponsored by the National Institute of Arthritis and Musculoskeletal and Skin Diseases. The conference starts at 8:30 a.m. each day.

The incidence of melanoma is rising rapidly. This malignancy is often fatal if not diagnosed and treated promptly. However, it has become clear that the specific clinical and histologic criteria for such early diagnosis are not completely agreed upon. Similarly, recent studies have indicated that the treatment of early melanoma may be less aggressive than previously recommended without compromising cure rates.

There has been great public awareness of malignant melanoma and, in some cases, unnecessary fear of both the development of the disease and its treatment. At the same time, increased surveillance and early intervention has the potential of providing greatly improved cure rates in the treatment of this disease. However, for this potential to be recognized, it must be possible to identify melanoma at its earliest stages, clinically and histologically, and to educate the population to the necessity for early diagnosis and treatment.

The conference will bring together experts from dermatology and pathology as well as experts in epidemiology, public education, surveillance techniques, and potential new technologies along with representatives of the public to explore the data and evaluate the current technology for diagnosis and treatment of this disorder.

Following a day and a half of presentations by experts and discussion by the audience, a Consensus Panel will weigh the scientific evidence and write a draft statement in response to the following questions:

—What are the clinical and histological characteristics of early melanoma?
—What is the appropriate management of patients with early melanoma regarding its diagnosis and treatment?
—After treatment of early melanoma, should patients and family members be followed? Why and how?
—Do dysplastic nevi exist and what are their significance?
—What is the role of education and screening in preventing melanoma morbidity and mortality?
—What are the future directions for reseach including primary prevention?

On the third day of the conference, following deliberation of new findings or evidence that might have been presented during the meeting, the panel will present its final consensus statement.

Information on the program may be obtained from: Marla Hollander, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468-6555.

Dated: January 22, 1992.

Bernadine P. Healy,

Director.

[FR Doc. 92-1929 Filed 1-24-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-010-92-4370-08]

Wells Resource Management Plan; Environmental Assessment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent that the Bureau of Land Management (BLM) will prepare an amendment and associated environmental assessment (EA) to the Wells Resource Management Plan (RMP) for the management of wild horses on public lands in the Wells Resource Area, Elko County, Nevada. It is also a Notice of Scoping for the public to participate in the identification of planning issues, review of preliminary planning criteria, and formulation of alternatives for the amendment.

SUMMARY: The BLM will, pursuant to 43 CFR part 1610.5-5, prepare an amendment to the Wells RMP to: (1) Delineate wild horse herd management areas (HMAs); (2) identify wild horse habitat objectives; (3) establish wild horse management direction for: (a) Initial herd size, (b) criteria for adjusting initial herd size, and (c) constraints on other resources; and (4) combine part of the Cherry Creek Herd Area with the Maverick-Medicine Herd Area and remainder with the Antelope Valley Herd Area.

DATE: A 30-day public scoping period has been established to identify issues and concerns to be addressed in the amendment to the Wells RMP and to encourage public participation in the amendment and associated environmental process. Written comments on the scope of the amendment must be postmarked no later than March 5, 1992.

FOR FURTHER INFORMATION CONTACT: Bruce Portwood, Elko District Wild Horse Specialist, Bureau of Land Management, P.O. Box 831, Elko, NV 89801 or phone (702) 735-0200. Written comments may be sent to: District Manager, ATTN: Wild Horse Specialist, at the above address.

SUPPLEMENTARY INFORMATION: The Wells RMP encompasses over four million acres of public land in the Wells Resource Area of the Elko District and is

in the east end of Elko County, Nevada. The existing Wells RMP, approved in 1985, identified wild horse Herd Areas which would: (1) Continue to be monitored for wild horse populations and habitat conditions; (2) conduct gatherings as necessary and maintain populations within a range from 550 to 700 animals; (3) construct six water development projects; and (4) remove wild horses from private lands if required. However, it did not establish wild horse HMAs.

A major issue influencing this amendment focuses on the difficulties of managing wild horses on public lands intermixed with a high percentage of private lands, specifically on the checkerboard lands (areas with 50 percent or less public lands). This amendment will consider and analyze establishing HMAs in wild horse herd areas outside checkerboard lands. Wild Horse Herd areas that include checkerboard lands are the Spruce-Pequop, Goshute, and Toano Herd Areas.

The proposed issue to be addressed in this amendment is: Determine where and at what levels wild horses will be managed in wild horse herd areas in the Wells Resource Area.

The preliminary planning criteria that has been identified to be used in the development of this amendment is anticipated to be the same as that used for the development of the original Wells RMP.

A range of alternatives, stipulations, and mitigation measures, including but not limited to the No Action Alternative, will be considered to evaluate and minimize environmental impacts and to assure that the Preferred Alternative does not result in any significant impacts to the public lands in this area.

Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the BLM's decision on the amendment to the Wells RMP are invited to participate in the scoping process for this amendment. To be most helpful, comments should be as specific as possible.

Dated: January 21, 1992.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 92-1863 Filed 1-24-92; 8:45 am]

BILLING CODE 4310-HC-M

[CO-010-02-4320-02]

Craig District Grazing Advisory Board Meeting

Time and Date: February 27, 1992 at 10 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Status: Open to the public, interested persons may make oral statements between 10 a.m. and 11 a.m., or may file written statements.

Matters to be considered:

1. Riparian Task Force Update.
2. Little Snake Coordinated Management Plan.
3. Area Reports.
4. Expenditures of Grazing Advisory Board Funds.

Contact Person for More Information: John Denker, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

Dated: January 17, 1992.

William J. Pulford,

District Manager.

[FR Doc. 92-1870 Filed 1-24-92; 8:45 am]

BILLING CODE 4310-JB-M

[NV-940-02-4212-22]

Filing of Plats of Survey; Nevada

January 15, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing was effective at 10 a.m. on January 9, 1992.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management, (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-785-6543.

SUPPLEMENTARY INFORMATION:

1. The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on January 9, 1992:

Mount Diablo Meridian, Nevada

T. 24 N., R. 61 E.—Dependent Resurvey
T. 23 N., R. 60 E.—Dependent Resurvey

2. These surveys were accepted November 27, 1991, and were executed to meet certain administrative needs of the Bureau of Land Management.

3. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Robert G. Steele,

Deputy State Director, Nevada.

[FR Doc. 92-1829 Filed 1-24-92; 8:45 am]

BILLING CODE 4310-HC-M

[NV-940-02-4214-10; N-54955]

Notice of Proposed Withdrawal and Opportunity for Public Meeting, Nevada; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice corrects the legal description published on October 18, 1991, in Document 91-25189 on pages 52283-84.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 702-785-6526.

SUPPLEMENTARY INFORMATION: The following corrections are made to Federal Register Document 91-25189 published on October 18, 1991, on pages 52283-84:

1. Page 52284, Column 1, Line 36, should read: "Sec. 34, Lots 1-3, W½ NE¼, NW¼, N½SW¼, NW¼SE¼."

2. Page 52284, Column 1, Line 13 from the bottom, should read: "Tps. 12½ S., Rs. 60 to 62 E., inclusive."

3. Page 52284, Column 1, add between lines 3 and 4 from the bottom:

"Tps. 14 S., Rs. 56 to 62 E., inclusive.
T. 15 S., R. 54 E., that portion lying within Clark County.
T. 15 S., R. 55 E.
T. 15 S., R. 55½ E."

4. Page 52284, Column 2, Line 16, should read: "Secs. 22, 23, and 24;"

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 92-1830 Filed 1-24-92; 8:45 am]

BILLING CODE 4310-HC-M

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change in discount rate for water resources planning.

SUMMARY: This notice sets forth that the discount rate to be used in Federal water resources planning for fiscal year 1992 is 6½ percent.

DATES: This discount rate is to be used for the period October 1, 1991, through and including September 30, 1992

FOR FURTHER INFORMATION CONTACT: Mr. Kent Shuyler, Acting Chief, Economic Analysis Branch, U.S. Bureau of Reclamation, D–5440, Building 67, Denver Federal Center, Denver CO 80225–0007. Telephone 303/236–8388.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 8½ percent for fiscal year 1992.

This rate has been computed in accordance with section 80(a), Public Law 93–251 (88 Stat. 34) and 18 CFR 704.39, which (1) specify that the rate shall be based upon the average yield during the preceding fiscal year on interest bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average yield to be 8.52 percent. The rate of 8½ percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs, or otherwise converting benefits and costs to a common time basis.

Dated: December 17, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92–1859 Filed 1–24–92; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

Advisory Commission of the San Francisco Maritime National Historical Park; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Advisory Commission of the San Francisco Maritime National Historical Park will be held from 10 a.m. to 12 noon and 2 p.m. to 4 p.m. (PST) on Thursday, February 20, 1992 aboard the Liberty ship SS. *Jeremiah O'Brien*, which is moored at Pier 3, Fort Mason, San Francisco, California. The Advisory Commission was established for a period of ten years by Public Law 100–348 to provide advice on the management and development of the park.

The main agenda items at this public meeting will be the development of Commission goals, the maintenance of the historic ships, familiarization with the *Jeremiah O'Brien*, and the use of the Haslett Warehouse.

The meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval by the Commission. Upon approval, a transcript will be available by contacting the Superintendent, San Francisco Maritime National Historical Park, Fort Mason, Building E, Second Floor, San Francisco, California 94123.

Dated: January 17, 1992.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 92–1908 Filed 1–24–92; 8:45 am]

BILLING CODE 4310–70–M

Upper Delaware Scenic and Recreational River; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of Meeting

SUMMARY: This notice sets forth calendar year 1992 meeting dates of the Upper Delaware Citizens Advisory Council, as required under the Federal Advisory Committee Act.

Dates	Type of meeting	Inclement weather reschedule date
January 24, 1992	Organizational	February 14, 1992.
March 27, 1992	Educational	April 10, 1992.
April 24, 1992	Business	None.
May 29, 1992	Educational	None.
June 26, 1992	Business	None.
July 24, 1992	Educational	None.
August 28, 1992	Business	None.
September 25, 1992	Educational	None.
October 23, 1992	Business	None.
November 20, 1992	Educational	December 4, 1992.
December 11, 1992	Business	January 8, 1993.

Press Releases containing specific information regarding the subject of each monthly meeting will be published in the following area newspapers: The Sullivan County Democrat, The Times Herald Record, The River Reporter, The Tri-state Gazette, The Pike County Dispatch, The Wayne Independent, The Hawley News Eagle.

Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION, CONTACT: John T. Hutzky, Superintendent; Upeer Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, New York 12764–0159; 717–729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Public Law 95–625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region.

All meetings are open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Lorraine Mintzmyer,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 92–1907 Filed 1–24–92; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Directed Service Order No. 1511–A]

Chicago Central & Pacific Railroad Co.—Directed Service—Cedar Valley Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Directed Service Order No. 1511–A vacates Directed Service Order No. 1511, as supplemented.

SUMMARY: Directed Service Order No. 1511, as supplemented, authorized Chicago Central & Pacific Railroad Company (CCP) to operate, pursuant to 49 U.S.C. 11125(a) and without Federal subsidy or other Federal compensation, over tracks of the Cedar Valley Railroad Company (CVR) until 11:59 p.m., January 30, 1992. Directed Service Order No.

1511–A vacates Directed Service Order No. 1511, as supplemented.

EFFECTIVE DATE: This order shall become effective at 11:59 p.m., on January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Bernard Gaillard (202) 927–5500 or Melvin F. Clemens, Jr. (202) 927–5553. (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Directed Service Order No. 1511, as supplemented and pursuant to 49 U.S.C. 11125 without subsidy or other Federal compensation, authorized CCP to operate over lines of the CVR as a directed rail carrier until January 30, 1992. By letter dated January 2, 1992, CCP indicated that its subsidiary, Cedar River Railroad Company (CRR), has completed acquisition of CVR and has commenced operations as authorized by the Commission in Finance Docket Nos. 31958 and 31959.

The Commission has certified that the emergency which prompted entry of the original order in this proceeding no longer exists, and that the order may be vacated.

To purchase a copy of the decision, write to, call or pick up a copy in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359.

Decided: January 17, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–1881 Filed 1–24–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Existing Collection in Use Without an OMB Control Number

(1) Victims of Crime Act, Crime Victim Compensation Grant Program, Program Instruction and Application Kit: (1) Eligible State Payments Certification Form; (2) Eligibility Checklist; (3) and Certified Assurances.

(2) None. Office of Justice Programs.

(3) Annually.

(4) State or local governments. The information requested is necessary to confirm eligibility and to ensure compliance with statutory criteria for an annual compensation grant for the crime victims fund. The affected public includes up to 56 States and Territories administering the crime victim compensation provisions of the Victims of Crime Act.

(5) 56 annual responses at 2 hours per response.

(6) 112 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: January 22, 1992.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 92–1873 Filed 1–24–92; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 91–67; Exemption Application No. D–8603]

Individual Exemption Involving Merrill Lynch, Pierce, Fenner & Smith Inc.

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of technical corrections.

SUMMARY: This document contains a notice of technical corrections of PTE 91–67 (56 FR 57679, November 13, 1991). That exemption permits certain transactions in connection with purchases and sales of securities issued by a Merrill Lynch Mutual Fund if the conditions of the exemption are met. The technical corrections clarify: (1) The scope of the limitation on the relationship that a Merrill Lynch Distributor may have with respect to plan assets that are or could be invested in units of a qualified group trust within the meaning of Revenue Ruling 81–100, and (2) when the acknowledgement required under section III(b)(3) of the exemption must be executed.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Lyssa Hall of the Department, telephone (202) 523–8971 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On November 13, 1991, the Department published in the **Federal Register** (56 FR 57679) an individual exemption which, in general, permits certain transactions in connection with purchases and sales of securities issued by a Merrill Lynch Mutual Fund if certain conditions are met. In order to clarify the limitation on the relationship that the "Distributor" may have with respect to plan assets that are or could be invested in units of a qualified group trust within the meaning of Revenue Ruling 81–100 as described in section III(a)(3) of the exemption, the Department is adopting a technical correction to the exemption. This portion of the exemption could be interpreted to mean that the relief provided by the exemption is not available with respect to any transaction in which the Distributor has discretionary authority to acquire or dispose of the units of any Revenue Ruling 81–100 group trust. This was not the intent of the Department. As corrected, section III(a)(3) states that the Distributor can not be a fiduciary who is expressly authorized in writing to manage, acquire or dispose on a

discretionary basis of those assets of the plan that are or could be invested in securities issued by a Merrill Lynch Mutual Fund or in units of a qualified group trust within the meaning of Revenue Ruling 81–100 as to which the Distributor is a trustee.

In addition, the Department is adopting a technical correction to section III(b)(3) and (b)(4) of the exemption to clarify when the acknowledgement required by section III(b)(3) must be executed. Section III(b)(3) of the exemption could be interpreted to mean that the acknowledgement required by that section must be executed each time that the documents required to be provided pursuant to section III(b)(1) are received by the Independent Fiduciary. As corrected, section III(b)(3) states that the written acknowledgement is required to be executed following the initial receipt of documents which must be provided to the Independent Fiduciary as required in section III(b)(1). Section III(b)(4) has also been amended to accord with the correction to section III(b)(3). As corrected, section III(b)(4) clarifies that no change has been made to the requirement in that section that the Independent Fiduciary approve the specific transaction on behalf of the plan prior to the execution of the transaction.

Technical Correction

Section III(a)(3), (b)(3) & (b)(4) of PTE 91–67 (56 FR 57879) is hereby corrected to read as follows:

III. Specific Conditions

(a) The Distributor is not

* * * * *

[3] a fiduciary who is expressly authorized in writing to manage, acquire or dispose on a discretionary basis of those assets of the plan that are or could be invested in securities issued by a Merrill Lynch Mutual Fund or in units of a qualified group trust within the meaning of Revenue Ruling 81–100 as to which the Distributor is a trustee;

* * * * *

(b)(3) Following the initial receipt of the documents required to be provided to the Independent Fiduciary as described in paragraph (b)(1) of this section, and prior to the execution of the transaction, the Independent Fiduciary shall acknowledge in writing: * * *

(b)(4) Following execution of the acknowledgement required under paragraph (b)(3) of this section and prior to the execution of any transaction, the Independent Fiduciary approves the specific transaction on behalf of the Plan.

* * * * *

Signed at Washington, DC, this 22nd day of January, 1992.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–1879 Filed 1–24–92; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–8628, et al.]

Proposed Exemptions; The Wine Group Retirement Savings Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of the Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representatives.

The Wine Group Retirement Savings Plan (the Plan), Located in Ripon, California

[Exemption Application No. D–8628]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sales (the Sales) on January 9, 1991, and January 28, 1991, of interest in certain real estate partnerships (The Partnerships Interests) from the Plan to the Wine Group, Inc. (the Company), a party in interest with respect to the Plan; provided that the terms and conditions of the Sales were at least as favorable to the Plan as those obtainable in arm's

length transactions between unrelated parties, and further provided that the sales price was the greater of: (i) The Plan's aggregate cost of the acquisition and holding of the Partnership Interests or (ii) the fair market value of the Partnership Interests as determined by an independent evaluation at the time of the Sales.

EFFECTIVE DATE: This exemption, if granted, will be effective January 9, 1991.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing and 401(k) plan with approximately 120 participants and $3,227,516 in assets as of December 31, 1990. The Plan has three trustees (the Trustees), all of which are employees of the Company. Under the Plan and related Trust Agreement for the Plan, the Trustees are generally responsible for making investment decisions on behalf of the Plan.

2. In 1986, the Plan purchased interests in two real estate partnerships, the Liquidity Fund (the Liquidity Fund Interest) and Far West Savings CD Investors (the Far West Interest) (collectively, the Partnership Interests). The Plan paid $100,000 for the Liquidity Fund Interest and $108,000 for the Far West Interest.

3. In August 1990, the Plan committed to a changeover, effective January 1991, of its investment vehicle to Fidelity Investments (Fidelity). The applicant represents that the purpose of such changeover was to provide Plan participants with self directed accounts in which each participant will be able to choose from a variety of mutual funds offered by Fidelity. The applicant states the Partnership Interests are not publicly traded, are illiquid, and thus do not fit in with the new investment vehicle provided by Fidelity.

4. The applicant represents that, in order to comply with its commitment to change the Plan investments to Fidelity, the Plan sold the Partnership Interests to the Company in January of 1991. Specifically, on January 9, 1991, and January 28, 1991, the Plan sold the Liquidity Fund Interest and the Far West Interest to the Company for cash. In order to make the Plan whole, the company made additional payments to the Plan on June 6, 1991, with respect to the Liquidity Fund Sale and the Far West Interest Sale. The payments the Plan received from the Company with respect to the Liquidity Fund Sale and the Far West Interest Sale totaled $58,600 and $108,000, respectively. The applicant represents that during the time the Plan held the Partnership Interests, it received capital distributions totalling $41,400. The applicant represents that no commissions were paid with respect to the Sales. A summary of the above transaction is as follows:

	Liquidity Fund Interest	Far West Interest
Cost	$100,000	$108,000
Capital distributions	($41,400)	00
	$58,600	$108,000
Total company payment	($58,600)	($108,000)

5. The sale price of the Liquidity Fund Interest was at its fair market value, which at the time of the Sale was within a range of $55,000 to $59,000 based on a letter of evaluation dated December 31, 1990, from Sara M. Ronan, assistant vice president, Liquidity Fund Investment Corporation. The sale price of the Far West Interest was in excess of its fair market value, which at the time of the Sale was $105,265, based on a letter of evaluation dated January 15, 1991, from Tom M. McCue of Shearson Lehman Hutton. The Company further represents that the amount of any gain that may result from the eventual disposition of the Partnership Interests will be contributed back to the Plan.

6. In summary, the applicant represents that the transactions satisfy the terms and conditions of section 408(a) of the Act because: (a) The Plan received cash which represented the greater of the Plan's acquisition and holding costs with respect to the Partnership Interests or the fair market values, as determined by an independent third party, of the Partnership Interests at the time of the Sales; and (b) the Plan paid no commissions with respect to the Sales.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Anderson of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Englund Marine Supply Co. Employees' Profit Sharing Plan (the Plan), Located in Astoria, Oregon

[Application No. D–8727]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed provision of a line of credit (the Loans) by the Plan to Englund Marine Supply Company (the Employer), the sponsor of the Plan; provided that (a) the terms and conditions of such extension of credit are at least as favorable to the Plan as the Plan could obtain in dealing at arm's length with an unrelated party; (b) the Loans do not exceed the lesser of $400,000 or twenty five percent of the assets of the Plan at any time; (c) the Loans remain secured by a first lien on all of the Employer's inventory; (d) the value of the Loan security remains at least two hundred percent of the total outstanding balance of the Loans; (e) the Plan's interests for all purposes with respect to the Loan are represented by an independent fiduciary who will monitor and enforce all Loan terms on behalf of the Plan; and (f) the independent fiduciary must approve each Loan prior to the Loan being made.

Temporary Nature of Exemption: This exemption, if granted, shall be effective only for a period of seven years and shall apply only to loans which are originated and repaid within seven years commencing with the date on which the final exemption, if granted, is published in the **Federal Register**.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 33 participants and assets of $1,895,054 as of October 31, 1990. Investment discretion with respect to Plan assets is exercised exclusively by the Plan's sole trustee, John Englund (the Trustee), an officer and eighty percent shareholder of the Employer. The Employer is an Oregon private corporation engaged in sales of commercial and industrial marine supplies in Astoria, Oregon.

2. In the ordinary course of business the Employer has maintained a line of credit with the United States National Bank of Oregon (the Bank) in Astoria, Oregon, which the Employer has used primarily to obtain operating capital on an ongoing basis. For this line of credit, secured solely by the Employer's inventory, the Employer is charged a rate of interest at one percent above the Bank's prime lending rate. Because the Employer's ongoing need to borrow operating capital was considered a potential investment vehicle for the Plan's trust, the Trustee and the Employer obtained an individual administrative exemption in 1986 (PTE 86–71, 51 FR 21030, June 10, 1986) which permitted the provision of a line of credit by the Plan's trust to the Employer for a five-year period expiring June 10,

1991.[1] The Trustee and the Employer desire to renew the Plan's ability to make the Loans to the Employer. They are requesting an exemption to permit the renewal of the line of credit and its continuation for seven years under the terms and conditions described herein.

3. All terms of the Loans will be reflected in a credit agreement (the Agreement) which authorizes and governs the Loans over a seven-year period. The Loans will not exceed the lesser of $400,000 or twenty five percent of the Plan's assets at any time. All Loans will be fully repaid within seven years of the date this exemption, if granted, is published in the **Federal Register**. The Loans will bear interest at the rate of the Bank's prime lending rate plus two percent as of the date of each Loan. The interest rate will be adjusted annually to reflect the then-current prime lending rate of the Bank plus two percent. Additionally, the interest rate of any Loan may be set at a higher rate if such higher rate represents the prevailing fair market rate for such loans as determined by the Plan's independent fiduciary, described below. In no event will the interest rate of any Loan be less than 12 percent per annum. Each Loan will be repaid in equal quarterly payments of principal and interest, with outstanding principal amortized over the remainder of the Agreement's seven-year term, and all outstanding principal and interest to be repaid within 7 years of the date of grant of the exemption proposed herein. The Loans will be secured by a duly filed and perfected first security interest in all of the Employer's inventory (the Collateral). The Collateral located at the Employer's Astoria, Oregon facility, which is one of six Employer locations, was inspected and evaluated on October 16, 1991 by William Paschall (Paschall), president of the West-Line Marine Sales Co., Inc. Paschall represents that the Collateral at the Astoria location, constituting approximately 53 percent of the Employer's total inventory, was in marketable condition with a value of approximately $1,250,000. The Agreement requires that the value of the Collateral will remain at least two hundred percent of the outstanding balance of the Loans at all times during the seven-year period of the Loans.

4. The interests of the Plan with respect to the Loans will be represented by an independent fiduciary, Edward R. Hall, who has represented the Plan's interests over the past five years with respect to Loans under PTE 86–71. Hall is a tax attorney with substantial experience under the Act who represents that he is unrelated to an independent of the Employer. Hall represents that he has analyzed and evaluated the proposed renewal of the Plan's extension of credit to the Employer and has determined that the renewal and continuation of the Loans is in the best interests of the Plan's participants and beneficiaries for the following reasons: (a) The risk is minimal, due to the Employer's credit standing, its successful performance of Loan obligations under PTS 86–71 and the required loan-to-collateral ratio of 200 percent; (b) The Plan is assured a favorable and appropriate return by an interest rate of no less than the prevailing market rate; and (c) The potential total amount of the Loans will not threaten the liquidity of the Plan's assets, which are diversified among cash, stocks, bonds and notes. Hall's approval will be required of each individual Loan. Hall will represent the Plan for the duration of the Loans to monitor the Employer's compliance with all terms and conditions and to pursue appropriate remedies on behalf of the Plan in the event of default or deficiency of performance. Hall will periodically review and inspect the condition of the Collateral to ensure that the Plan's interests remain protected and to ensure that the value of the Collateral remains at least 200 percent of the outstanding balance of the Loans.

5. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The interests of the Plan are represented by Hall, an independent fiduciary who has determined that the Loans will be in the best interests of the participants and beneficiaries of the Plan; (2) Hall's approval will be required of each individual Loan; (3) The Loans will remain secured by the Collateral with a value of at least 200 percent of the assets of the Plan at any time and Hall has determined that in making the Loans the Plans will remain appropriately liquid and diversified; and (5) the Loans will be repaid within seven years from the date of publication of this exemption, if granted.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Ophthalmic Associates, P.A. Employees' Money Purchase Pension Plan (the Ophthalmic Money Purchase Plan), Located in Lansdale, PA

[Application No. D–8737]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) shall not apply to the proposed sale by the Ophthalmic Money Purchase Plan to TJS Realty (the Ophthalmic Partnership), a party in interest, of a 50 percent tenant-in-common interest in certain improved real property (the Property), for the total cash consideration of $555,250, provided that (1) the amount paid for the interest is not less than fair market value as determined by an independent appraisal of the Property at the time the sale is consummated; and (2) the designated independent fiduciary approves of the subject transaction.

Preamble

On June 25, 1982, the Department granted Prohibited Transaction Exemption (PTE) 82–103 at 47 FR 27645. PTE 82–103 permitted the Ophthalmic Associates, P.A. Employees' Pension Plan (the Ophthalmic Pension Plan) and the Pearlstine-Salkin Associates Employees Pension Plan (the Pearlstine-Salkin Associates Employees Pension Plan (the Pearlstine Pension Plan) [2] to purchase, as tenants in common, 50 percent interests in a two story office building located at 1000 N. Broad Street, Lansdale, Pennsylvania from Ophthalmic Investors Associates (Ophthalmic Investors), a partnership formed by certain principals of Ophthalmic Associates (Ophthalmic), a professional medical corporation engaged in the practice of ophthalmology, and Pearlstine, Salkin, Hardison and Robinson (Pearlstine-Salkin), a professional corporation of attorneys which provides legal services to Ophthalmic and to the plans it has

[1] The trust involved in the transactions exemption under PTE 86–71 included another plan maintained by the Employer, the England Marine Supply Co., Inc. Employees' Pension Plan (the Pension Plan). The Trustee represents that the Pension Plan was terminated in 1989, that its assets were distributed and that the proposed transactions in the instant application will involve only the assets of the Plan.

[2] It is represented that none of the plans described herein is a party in interest with respect to the other within the meaning of section 3(14) of the Act.

sponsored. The sales price for the Property, as based upon its independently appraised value, was $900,000. On July 1, 1982, the Ophthalmic Pension Plan and the Pearlstine Pension Plan each made a cash downpayment of $100,000 to Ophthalmic Investors. Both plans took the Property subject to an existing mortgage in the original principal amount of $550,000 and an additional loan of $75,000 (the First Mortgage and the Addendum) which had been entered into by Ophthalmic Investors and an unrelated party. The First Mortgage and the Addendum carried interest rates of 6½ percent and 9½ percent, respectively, and matured on February 1, 1989. Such loans, which were secured by the Property, had a combined outstanding balance of $401,074 as of July 1, 1982.

Although the Ophthalmic and Pearlstine Pension Plans were not required to assume the obligations of Ophthalmic Investors pursuant to the First Mortgage and the Addendum, they were required to make loan payments. Both plans also entered into a second mortgage (the Second Mortgage) in the original principal amount of $298,926 with Ophthalmic Investors for the balance of the sales price. The Second Mortgage was to be repaid over a ten year period commencing on July 1, 1982 and ending on June 30, 1992 at an annual interest rate of 10½ percent. The Second Mortgage was also secured by the Property.

PTE 82–103 also permitted the leasing of the Property (the Lease) by the plans to Pearlstine-Salkin Ophthalmic Associated Investors (PSO), a party in interest. The Lease is a triple-net lease providing for an initial term of ten years which coincides with the duration of the Second Mortgage. The lease is intended to amortize the plans' obligations under the First Mortgage, the Addendum and the Second Mortgage through rental payments received such that the plans would own the Property free of any encumbrance at the termination of these loan obligations. PSO currently subleases the Property to Pearlstine-Salkin, Ophthalmic and CBS Optical, a party in interest. In the event of a default in rental payments, PTE 82–103 allows the plans to sell the Property to Ophthalmic Investors for the greater of its fair market value or the original $900,000 sales price and be absolved from their outstanding mortgage obligations.

To effectuate Ophthalmic's desire to terminate the Ophthalmic Pension Plan because of benefit restrictions imposed by the Tax Reform Act of 1986, the Department granted PTE 89–94 on October 31, 1989 at 54 FR 45187. PTE 89–94 permitted the unilateral and gratuitous transfer by the Ophthalmic Pension Plan to the Ophthalmic Money Purchase Plan of a 50 percent interest in the Property plus cash and the assumption by the Ophthalmic Money Purchase Plan of the pre-existing loan, lease and sublease obligations of the Ophthalmic Pension Plan. The value of the transferred benefit was $1,083,144. This amount also represented the value of the accrued benefits of four participants in the Ophthalmic Pension Plan who elected to have their benefits transferred to the Ophthalmic Money Purchase Plan.[3]

The applicants represent that payments due under the First Mortgage, Addendum and Second Mortgage have been timely made by the parties. On February 1, 1989, the applicants state that the First Mortgage and the Addendum were repaid in full. In addition, the applicants state that all rental payments under the Lease and Subleases have been timely paid and rental adjustments have been in compliance with Lease/Sublease terms.

The transactions that are subject to PTEs 82–103 and 89–94 are being monitored by the National Bank of Boyerton (the Bank) located in Boyerton, Pennsylvania. The Bank presently serves as the independent fiduciary on behalf of the Ophthalmic Money Purchase Plan and the Pearlstine-Salkin Associates Profit Sharing and Salary Savings Plan and Trust (the Pearlstine 401(k) Plan) which replaced the Pearlstine Pension Plan in 1985 and became the other holder of the 50 percent tenant-in-common interest in the Property.

As described below, the Ophthalmic Money Purchase Plan requests administrative exemptive relief from the Department in order to sell its 50 percent interest in the Property to a party in interest.

Summary of Facts and Representations

1. The Ophthalmic Money Purchase Plan is a defined contribution plan covering participants of Ophthalmic and CBS Optical. As of December 31, 1990, the Ophthalmic Money Purchase Plan had 27 participants and total assets of $2,670,096. The Trustees of the Ophthalmic Money Purchase Plan are Drs. Robert V. Conner, Louis Schwartz and Thaddeus S. Nowinski. These individuals are the principal shareholders of Ophthalmic. Investment decisions for the Ophthalmic Money Purchase Plan are made by the Trustees who have full investment discretion over the plan's assets.

2. Tentatively called "TJS Realty," the Ophthalmic Partnership will be a real estate partnership comprised of Drs. Schwartz and Norwinski and Dr. Joseph J. Kesselring, a principal of Ophthalmic. The Ophthalmic Partnership, which will be formed upon the granting of the exemptive relief that is described herein, will have an indefinite duration and it will occupy space in the office building which comprises the Property.

3. On May 10, 1990, the Board of Governors of Ophthalmic and CBS Optical (the Board), by unanimous consent, adopted and approved an amendment to the Ophthalmic Money Purchase Plan which provided that no new participants would be admitted, all participants would be 100 percent vested in their accrued benefits and no additional benefits would accrue. Presently, the Board intends to terminate the Ophthalmic Money Purchase Plan because its maintenance does not comport with the revised business objectives of Ophthalmic or CBS Optical. Once terminated, the assets of such plan will be liquidated and the benefits will be distributed to the participants.[4]

4. Accordingly, the Trustees request an administrative exemption from the Department to permit the Ophthalmic Money Purchase Plan to sell its 50 percent interest in the Property to the Ophthalmic Partnership for the independently appraised value of the interest. The Ophthalmic Money Purchase Plan will not be required to pay any real estate fees or commissions in connection with the proposed sale.[5] In addition, at the time of closing, Ophthalmic Investors will release the Ophthalmic Money Purchase Plan from any and all obligations under the Second Mortgage upon such plan's payment of its share of the outstanding indebtedness under the Second

[3] The applicants state that six participants actually elected to have their benefits transferred to the Ophthalmic Money Purchase Plan. Thus, the total transferred benefit was $1,385,780 and not $1,083,144.

[4] In this regard, the applicants represent that if the Ophthalmic Money Purchase Plan is terminated, participants will have the election to have annuities purchased on their behalf or to receive a lump sum distribution.

[5] After the proposed transaction is entered into, the Ophthalmic Partnership and the Pearlstine 401(k) Plan will each own 50 percent tenant-in-common interests in the Property. The applicants represent that the Ophthalmic Partnership is not a party in interest with respect to the Pearlstine 401(k) Plan. The applicants state that the only connection between the Ophthalmic Partnership and the Pearlstine 401(k) Plan is that Pearlstine-Salkin, which sponsors the Pearlstine 401(k) Plan also represents the Ophthalmic Partnership.

Mortgage. With the proceeds of the sale, the Ophthalmic Money Purchase Plan will be responsible for satisfying its proportionate interest in the Second Mortgage. Such obligation in the Second Mortgage was $31,032 as of November 12, 1991.

5. The Property has been appraised by Mr. Ken L. Steigelman, C.C.I.M, S.I.O.R, S.R.S., an independent appraiser from Line Lexington, Pennsylvania. In an appraisal report dated December 31, 1990, Mr. Steigelman has placed the fair market value of the Property at $1,110,500. In addition, Mr. Steigelman states that the termination of the Ophthalmic Money Purchase Plan has no effect on the valuation of the Property. Thus, based upon Mr. Steigelman's appraisal of the Property, which will be updated just prior to the proposed sale, the Ophthalmic Partnership will purchase the Ophthalmic Money Purchase Plan's 50 percent interest in the Property for $555,250.

6. The Bank represents that other than serving as an independent fiduciary for the transactions exempted in PTEs 82–103 and 89–94, it has no ownership, debt, familial or business relationships with either the principals of Ophthalmic or Pearlstine-Salkin. The Bank states that it represents a variety of accounts as executor of estates, advises plan trustees regarding the investment and/or administration of plan assets and the preparation of reports to the Internal Revenue Service or the Department. The Bank also states that it acknowledges its duties, responsibilities and liabilities in acting as a fiduciary with respect to the Ophthalmic Money Purchase Plan.

7. The Bank believes that the proposed sale of the 50 percent interest in the Property is in the best interest of the Ophthalmic Money Purchase Plan and its participants and beneficiaries because the market price and conditions are favorable to such plan. The Bank notes that the proceeds of the sale will be adequate to provide for participant and beneficiary distribution. Moreover, the Bank states that it has been appraised through Mr. Steigelman's appraisal that the sales price for the 50 percent interest reflects its fair market value. In this regard, the Bank asserts that Mr. Steigelman's use of the income, market and comparable sales approaches to valuation constitutes a "fair" valuation of the subject Property.

In formulating its views on the proposed transaction, the Bank states that it has examined the most recent financial statement for the Ophthalmic Money Purchase Plan, considered the liquidity requirements of such plan and examined the diversification of the assets of the Ophthalmic Money Purchase Plan in light of the sale. On the basis of this analysis, the Bank represents that the proposed transaction complies with the investment objectives and policies of the Ophthalmic Money Purchase Plan.

As the independent fiduciary, the Bank states that it will monitor the proposed transaction on behalf of the Ophthalmic Money Purchase Plan and, if necessary, take any appropriate actions to safeguard such plan and its participants and beneficiaries. In addition, the Bank states that it will continue to represent the interests of the Pearlstine 401(k) Plan, the other owner of the 50 percent interest in the Property, with respect to honoring its loan obligations under the Second Mortgage.

8. In summary, it is represented that the proposed transaction will satisfy the criteria for an administrative exemption under section 408(a) of the Act because: (a) The sale of the 50 percent interest by the Ophthalmic Money Purchase Plan to the Ophthalmic Partnership will be a one-time transaction for cash and will not result in the payment of real estate fees or commissions by the Ophthalmic Money Purchase Plan; (b) the fair market value of the Property, of which the 50 percent interest is derived, has been determined by Mr. Steigelman, a qualified, independent appraiser; (c) the Bank, as independent fiduciary, approves of the transaction and believes the sale is the best interest of the Ophthalmic Money Purchase Plan and its participants and beneficiaries; and (d) the sale of the 50 percent interest in the Property will allow the Trustees to terminate the Ophthalmic Money Purchase Plan and liquidate its assets.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Time Warner, Inc. (Time Warner), Located in New York, New York

[Application Nos. D–8779 through D–8783]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the past receipt of certain stock rights (the Rights) by employee benefit plans (the Plans) sponsored by Time Warner and its affiliates, pursuant to a stock rights offering (the Offering) by Time Warner to shareholders of record as of July 22, 1991, of Time Warner common stock (the Common Stock); and (2) the holding of the Rights by the Plans during the subscription period; provided that: (1) The Plans' acquisition and holding of the Rights resulted from an independent act of Time Warner as a corporate entity, and all holders of Common Stock were treated in a like manner, including the Plans; (2) With respect to the Savings Plans (described below), the Rights were acquired, held, and controlled by individual Plan participant accounts pursuant to Plan provisions for individually-directed investment of such accounts; and (3) With respect to the ESOPs and the DB Plans (described below), the authority for all decisions regarding the acquisition, holding and control of the Rights by such Plans was exercised by independent fiduciaries which made determinations as to whether and how the plans should exercise or sell the Rights acquired through the Offering.

EFFECTIVE DATE: This exemption, if granted, will be effective as of July 15, 1991.

Summary of Facts and Representations

1. The Plans consist of twenty one employee benefit plans maintained by Time Warner and its affiliates. The following sixteen Plans are defined benefit pension plans (the DB Plans) of which the trustee is Bankers Trust Company of New York (Bankers Trust):

Allied Records Union Pension Plan
American Television and Communications Corporation Pension Plan
Atlantic Recording Corporation Pension Plan
Ivy Hill Teamsters Union Pension Plan
Progressive Hourly Retirement Plan
Retirement Income Plan for Employees of Book-of-the-Month Club, Inc.
Southern Progress Salaried Retirement Plan
Sunset Publishing Corporation Pension Plan
Time Warner Employees' Pension Plan
Warner Bros. Pension Plan
Warner Bros. Union Pension Plan
Warner Cable Communications Pension Plan
Warner Cable Communications Union Pension Plan
Warner Publishing Pension Plan
WEA Manufacturing Pension Plan

Three of the Plans are defined contribution savings plans (the Savings Plans):

The Time Warner Employees' Savings Plan, a profit-sharing plan of which the trustee is Fidelity Management Trust Company of Boston;

The Time Warner Thrift Plan, a profit-sharing plan of which the trustee is Manufacturers Hanover Trust Company; and

The American Television and Communications Corporation Employees Stock Savings Plan (the ATC Savings Plan), an employee stock ownership plan of which the trustee is First Interstate Bank of Denver;

Two of the Plans are non-contributory employees' stock ownership plans (the ESOPs):

The WCI Employee Stock Ownership Plan (the PAYSOP), of which the trustee is Manufacturers Hanover Trust Company (MHTC); and

The Time Warner Employees' Stock Ownership Plan (the TESOP), of which the trustee is Citibank, N.A.

2. Time Warner is a Delaware public corporation with its corporate headquarters in New York, New York. As of June 30, 1991, there were issued and outstanding approximately 57,862,000 shares of Time Warner common stock (the Common Stock), of which approximately 2,618,000 shares, or 4.5 percent, were owned by the Plans. Time Warner represents that as of June 30, 1991 approximately 820,000 shares of Common Stock, or approximately 1.44 percent, were beneficially owned by executive officers and directors of Time Warner and that the remaining 94.06 percent of the Common Stock was owned by unrelated persons.

3. On June 6, 1991, Time Warner announced that it intended to distribute certain stock subscription rights (the Rights) to the holders of Common Stock. On July 15, 1991, Time Warner amended its announced offering plan (the Offering) for distribution of Rights. A registration statement filed by Time Warner with the Securities and Exchange Commission (the SEC) with respect to the Rights and the Offering was declared effective on July 15, 1991, with an expiration date of August 5, 1991.

Pursuant to the Offering, Rights were distributed to holders of Common Stock at the rate of six-tenths of a Right per share of Common Stock held as of July 22, 1991. Approximately 34,500,000 Rights were distributed, and an equal number of new shares of Common Stock was issued in connection with the Offering. Time Warner represents that the Rights were separate securities under Federal securities laws and were traded on the New York Stock Exchange (NYSE) and the Pacific Stock Exchange (together, the Exchanges). Trading of the Rights on the Exchanges commenced on a "when issued" basis on July 15, 1991, upon issuance of the Rights, and regular trading of the Rights on the Exchanges commenced July 23, 1991 upon distribution of the Rights certificates. Unexercised Rights expired at 5 p.m. on August 5, 1991.

Each Right entitled the holder thereof to purchase one share of Common Stock at the stated exercise price of $80.00 per share (the Basic Privilege) and to subscribe, at the same price, for the shares underlying and unexercised Rights (the Oversubscription Privilege). The exercises of the Rights were irrevocable. The Offering specified that if the requests for exercise of Oversubscription Privileges exceeded the number of available shares of Common Stock, the available Common Stock would be allocated among the requesting oversubscribers in proportion to the number of Common Stock shares purchased by each requesting oversubscriber in exercise of the Basic Privilege. A Right holder exercising the Oversubscription Privilege was required, at the time of exercise, to pay the exercise price for the shares requested and if the oversubscription exercise could not be satisfied in full, the unapplied portion of the exercise payment was returned after the expiration of the Offering.

4. The responses of the Plans to the Offering, and the provisions in the Plans' documents addressing the acquisition or disposition of securities such as the Rights, are summarized as follows:

(a) The Savings Plans: Each of the Savings Plans permits participants to direct the investment of their Plan accounts into selected investment funds, including in all cases a Common Stock fund, except that amounts attributable to employer matching contributions must be invested in employer stock. Among the Savings Plans, only the Time Warner Thrift Plan has a provision specifically addressing the acquisition of distributed stock rights. The Time Warner Thrift Plan provisions required such rights to be sold and the proceeds reinvested in the Plan's Company Stock Fund and allocated to the respective Plan accounts. With respect to the other Savings Plans, Time Warner represents that the trustees permitted each affected participant to direct the relevant Plan trustee either to sell the Rights credited to his account on the open market or to exercise those Rights, and that all necessary Plan and trust amendments to enable this direction were made. Time Warner represents that participants of the Savings Plans, other than the Time Warner Thrift Plan, were able to direct the respective institutional trustees as to the manner of disposition of the Rights credited to their Plan accounts. For those participants who elected to exercise the Rights credited to their accounts, the exercise price was obtained by liquidating their interest in other Plan investment funds. Time Warner represents that participants of the Savings Plans, other than the Time Warner Thrift Plan, were permitted to make their elections during an election period commencing on the date the Rights were distributed and ending six business days before the expiration date of the Offering. The election forms permitted participants to direct the relevant trustee whether, and to what extent, to sell the Rights on the open market or to exercise the Rights. Failure to respond during the election period or an invalid response resulted in the Rights being sold on the open market. Time Warner represents that the participant-directed election with respect to the Rights was specifically offered in such manner as to ensure that participants should have the same rights as other Common Stock holders.

Time Warner represents that because of the ATC Savings Plan's particular investment funds and administrative capabilities, the proceeds of any directed investment liquidations in that Plan could be made available with sufficient certainty only if participant instructions to the trustee were received by July 24. Time Warner represents that in order to give the ATC Savings Plan participants additional time, until 5 p.m. on July 26, for directions to the trustee with respect to their Rights, Time Warner loaned the ATC Savings Plan (the ATC Loan) the amount of cash which was needed to enable timely exercise of the Rights by ATC Savings Plan participants, but was not available because previous investment liquidation transactions had not been settled. Time Warner represents that the ATC Loan satisfied the requirements of class exemption PTE 80-26 (45 FR 28545, April 29, 1980) and was therefore exempt from the prohibitions of section 406 of the Act.[6]

Because Rights were received with respect to the nonvested portions of participants' employer contribution accounts, Time Warner represents that the Savings Plans were amended as follows: If the Rights issued to a participant's employer contribution account were sold at the direction of the participant, the proceeds were reinvested in employer stock and, like the remainder of the employer contribution account, continued to be subject to the Plan's vesting schedule. If such Rights were exercised at the direction of the participant, the new

[6] In this proposed exemption, the Department expresses no opinion as to whether the ATC Loan satisfied the requirements of PTE 80-26.

shares of Common Stock received were credited to the participant's employee contribution account and were fully vested to the extent that the exercise price was drawn from the employee contribution account. Time Warner represents that these provisions were adopted to ensure full vesting for new Common Stock shares acquired by payment of an exercise price drawn from a participant's employee contribution account.

(b) The ESOPs:

(i) The PAYSOP had no provision specifically addressing the treatment of stock distributions such as the Rights. The Plan is frozen and 100 percent invested in Common Stock. Time Warner represents that the determination of how to deal with the PAYSOP's Rights was made solely by the PAYSOP's trustee, MHTC. MHTC represents that it acted as an independent, discretionary fiduciary on behalf of the PAYSOP in connection with the Offering, with sole authority to determine whether and how to exercise or sell the Rights acquired by the PAYSOP, and that MHTC is not in control of, controlled by, nor under common control with Time Warner. MHTC represents that at the time of the Offering the PAYSOP was almost fully invested in Common Stock and had insufficient cash with which to exercise the Rights. MHTC states that although it had the authority to raise cash by borrowing funds or selling Common Stock, it chose not to do so. MHTC represents that it determined that the interests of the participants and beneficiaries of the PAYSOP would be best served by selling the PAYSOP's Rights, and that such Rights were sold on the open market.

(ii) The TESOP provided for a trustee directed by an investment committee comprised of individuals appointed by Time Warner. Time Warner represents that the TESOP was amended to permit the decision with respect to the TESOP's Rights to be made by an independent fiduciary. Accordingly, State Street Bank and Trust Company of New York (State Street) was appointed as co-trustee of the TESOP solely responsible for making any decision with respect to the Rights issued to the TESOP. State Street represents that it had sole authority for determining whether to sell or to exercise the Rights and, if it deemed appropriate, whether to borrow funds for the purpose of exercising the Rights. After consideration of a report prepared by a professional evaluator, State Street represents that it determined that it was in the best interests of the participants and beneficiaries of the TESOP to exercise the Basic Privileges and, to the extent possible, the Oversubscription Privileges with respect to the Rights issued to the TESOP. Accordingly, State Street represents that it negotiated the terms of a "leveraged ESOP" loan from Time Warner (the TESOP Loan),[7] to enable the exercise of the Rights on behalf of the TESOP. The proceeds of such exercise were divided according to the following formula, which State Street negotiated and approved on behalf of the TESOP as part of the TESOP Loan agreement:

(i) Allocated shares: Existing accounts of TESOP participants were immediately allocated a number of Common Stock shares having a total value equal to the amount which the TESOP would have realized had it sold the Rights during the Offering. For this purpose, the price at which the Rights could have been sold was deemed to be the average trading price of Rights on the NYSE for the period beginning on July 15 and ending on July 31 and the Common Stock value was deemed to be the average trading price of Common Stock on the NYSE for the period beginning on July 16 and ending on August 5, 1991.

(ii) Unallocated shares: All remaining shares of Common Stock acquired by exercise of the Rights are held in a suspense account of the TESOP to be allocated to accounts of TESOP participants as the TESOP Loan is repaid.

(c) The DB Plans: The DB Plans participate in a master trust (the Trust) of which Bankers Trust is the master trustee. Bankers Trust represents that the determination of whether and how to sell or to exercise the Rights was directed by an independent registered investment advisor (the Advisor) retained specifically for that purpose by Bankers Trust. Bankers' Trust appointed the firm of Fayez Sarofim & Co. of Houston, Texas as the Advisor, which represents that it is not control of, controlled by, nor under common control with Time Warner. The Advisor represents that it had sole authority to determine whether and how to exercise or sell the Rights acquired by the Trust. The Advisor represents that it determined that it was in the best interests of the participants and beneficiaries of the DB Plans to exercise the Rights acquired by the Trust. Accordingly, the Advisor caused the Trust's Rights to be exercised and the Advisor represents that the exercise price for the Common Stock was paid with existing Trust assets.

5. In summary, the applicant represents that the transactions satisfied the statutory criteria of section 408(a) of the Act for the following reasons: (1) The Plans' acquisition and holding of the Rights resulted from an independent act of Time Warner as a corporate entity, and all holders of Common Stock were treated in a like manner, including the Plans; (2) With respect to the Savings Plans, the Rights were acquired, held, and controlled by individual Plan participant accounts pursuant to Plan provisions for individually-directed investment of such accounts; and (3) With respect to the ESOPs and the DB Plans, the authority for all decisions regarding the acquisition, holding and control of the Rights by such Plans was exercised by independent fiduciaries which made determinations as to whether and how the Plans should exercise or sell the Rights acquired through the Offering.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

McPheters and Richardson, P.C., Profit Sharing Plan (the Plan), Located in New York, NY

[Application No. D-8760]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to a proposed series of loans (the Loans) over a five year period to McPheters and Richardson, P.C. (the Employer) by the individually-directed accounts (the Accounts) in the Plan of Messrs. R. Douglas McPheters and Ambrose M. Richardson in the cumulative amount of: (1) The lesser of $50,000 of each Account; or (2) 25 percent of the assets of each Account. The proposed exemption is conditioned on the following requirements: (a) The terms

[7] The applicant represents that the TESOP Loan satisfied the requirements of section 408(b)(3) of the Act and applicable regulations relating to loans to ESOPs, and was exempt, therefore, from the prohibited transactions provisions of the Act and the Code. In this proposed exemption, the Department expresses no opinion as to whether the TESOP Loan satisfied the requirements of section 408(b)(3) of the Act, or whether such Loan resulted in any prohibited transactions.

and conditions of the Loans are not less favorable to the Accounts than those obtainable in arm's length transactions with an unrelated party; (b) the Loans are secured by first lien interests in all of the accounts receivable (the Receivables) of the Employer; (c) for purposes of securing each individual Loan, only those Receivables that are less than 120 days old are utilized as actual collateral; (d) the interest rate for the Loans is two percentage points greater than the rate charged the Employer by Citibank, N.A. (Citibank) for a similar lending arrangement; (e) before a Loan is made from their respective Account, Messrs. McPheters or Richardson must approve the disbursement; (f) at all times, the fair market value of the Receivables must represent at least 200 percent of the outstanding balance of the Loans made by each Account or Messrs. McPheters or Richardson will require that the Employer pledge additional collateral or prepay the Loans; and (g) the only accounts in the Plan that will be affected by the Loans are those of Messrs. McPheters and Richardson.

Temporary Nature of Exemption: This proposed exemption is temporary in nature and, if granted, will expire five years from the date of the grant. Subsequent to the expiration of the exemption, the Accounts may continue to hold any Loan provided such Loan is made during the five year period of the exemption.

Summary of Facts and Representations

1. The Plan is a profit sharing plan providing for participant-directed investments. As of June 28, 1991, the Plan had six participants, two of whom are Messrs. McPheters and Richardson. Also as of June 28, 1991, the Plan had total assets of $424,245. Of these total assets, the McPheters Account and the Richardson Account held assets of $333,245 and $56,409, respectively. The trustee of the Plan is Mr. McPheters. The Plan is maintained as a prototype plan by Smith, Barney Harris Upham and Company of New York, New York.

2. The Employer, a professional corporation incorporated under the laws of the State of New York, is engaged in the practice of corporate and securities law. Messrs. McPheters and Richardson are the sole shareholders of the Employer. They are also the Employer's only officers and directors. All matters relating to the operation, management and administration of the Employer are controlled exclusively by Messrs. McPheters and Richardson.

3. At present, the Employer has a line of credit arrangement with Citibank, an unrelated entity, which permits loans of up to $99,000. The interest rate for the line of credit is one percent above Citibank's base rate.[6] There is also a one percent loan origination fee which is payable to Citibank, annually. The line of credit is secured by the personal guarantees of Messrs. McPheters and Richardson.

4. Messrs. McPheters and Richardson request an administrative exemption from the Department in order to allow their Accounts in the Plan to make recurring loans to the Employer over a five year period. The Employer proposes to use the loaned funds for its general business purposes. Accordingly, it is proposed that no Loan will be made to the Employer which will cause the aggregate amount of all Loans from either the McPheters Account or the Richardson Account to exceed the lesser of: (a) $50,000, at any time outstanding, or (b) 25 percent of the balance of the Account.

5. The Loans will have durations of one, three or six months. Each Loan will be evidenced by a promissory note that will require the payment of principal and interest. Such payments will be made by the Employer on a monthly basis for Loans having durations of one month or three months and quarterly for Loans having durations of six months. The Loans will bear interest at the rate of 2 percent above the base rate of Citibank in effect on the date of their making. In addition, the Loans will require that the Employer pay a loan origination fee of one percent to the respective Account. Although the Employer may prepay the unpaid principal amount of a Loan prior to the maturity date, a prepayment penalty of 2 percent on the amount so prepaid will be assessed by either McPheters or Richardson on behalf of their respective Accounts.

Prior to the making of a Loan by either Account, Mr. McPheters or Mr. Richardson will verify that the interest rate to be charged is 2 percent above Citibank's base rate and certify that the terms of the Loan are arm's length and appropriate for the respective Account.

6. All of the Employer's accounts receivables will be pledged as security for the proposed Loans. However, for purposes of securing individual Loans made by either the McPheters Account or the Richardson Account, only those Receivables that are under 120 days old will by utilized as actual collateral. The Accounts will receive first priority interests in such collateral.

To document the Accounts' security interest in the Receivables, the Employer will file UCC financing statements with the appropriate state authority. At all times throughout the duration of the Loans, the fair market value of the Employer's Receivables will represent 200 percent of the outstanding principal balance of the Loans. In the event the fair market value of the Receivables should ever fall below the 200 percent level, Mr. McPheters, in the case of the McPheters Account or Mr. Richardson, in the case of the Richardson Account, will either require that the Employer pledge additional collateral or prepay the Loans.

7. Mahoney Cohen and Company, P.C. (MCC) of New York, New York has valued the Employer's Receivables. MCC represents that it has been engaged in the practice of public accounting since 1969 and that it serves a diverse clientele that includes law firms primarily in the New York metropolitan area. MCC represents that it offers a complete range of services to its clients which include auditing, accounting, tax, personal financial planning and management consulting. MCC further states that it derives less than one percent of its fees from accounting services rendered to the Employer.

MCC explains that the Employer's Receivables result from invoices rendered to clients of the law firm for the performance of legal services and from disbursements and other charges (e.g., copying, messenger, computerized legal research) associated with such services. MCC also asserts that the Employer maintains contemporaneous time and disbursement records and other charges which are accumulated and billed to the firm's clients typically on a monthly basis. MCC explains that invoices rendered to clients of the Employer are payable upon receipt.

In an audit report dated October 21, 1991, MCC represents that it has audited the Receivables of the Employer as of August 9, 1991. Using generally accepted auditing standards and accounting principles, MCC placed the fair market value of the Receivables, net of an allowance for doubtful accounts, at $166,320 as of August 9, 1991. Of the total Receivables, MCC determined that a balance of $134,679 represented Receivables that were not more than 120 days old and a balance of $31,641 represented Receivables that were over 120 days old.

8. In summary, it represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The Loans will represent the lesser of $50,000 but, in no event, more than 25

[6] According to the applicant, Citibank's base rate is the functional equivalent of its prime rate.

percent of the assets that are held in either the McPheters Account or the Richardson Account; (b) the Loans will be secured by first lien interests in all of the Employer's Receivables; (c) for purposes of securing each individual Loan, only those Receivables that are less than 120 days old will be utilized as actual collateral; (d) the interest rate for the Loans will be two percentage points greater than the rate charged the Employer by Citibank for a similar lending arrangement; (e) before a Loan is made from their respective Account, Messrs. McPheters or Richardson must approve the disbursement; (f) at all times, the fair market value of the Receivables will represent at least 200 percent of the outstanding balance of the Loans made by each Account, and if the fair market value of the Receivables should ever fall below this level, Messrs. McPheters or Richardson will require that the Employer pledge additional collateral or prepay the Loans; and (g) the only accounts in the Plan that will be affected by the Loans are those of Messrs. McPheters and Richardson who desire that the proposed transactions be consummated.

Notice to Interested Persons

Because Messrs. McPheters and Richardson are the sole participants in the Plan whose accounts will be affected by the proposed transactions, the Department has determined that there is no need to distribute the notice of pendency to interested persons. Therefore, comments and requests for a hearing must be received by the Department within 30 days of the date of publication in the Federal Register of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of January, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-1880 Filed 1-24-92; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-05]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

DATES: Febraury 6, 1992, 8:30 a.m. to 5:30 p.m. and February 7, 1992, 8:30 a.m. to 10:30 a.m. (to be held at Rocketdyne Facility); and February 7, 1992, 1 p.m. to 4 p.m. (to be held at McDonnell Douglas).

ADDRESSES: Rocketdyne, 8900 DeSoto Ave., Canoga Park, CA 91303; and McDonnell Douglas Space Systems Company, 5301 Bolsa Ave., Huntington Beach, CA 92647.

FOR FURTHER INFORMATION CONTACT: Dr. W. P. Raney, Code M-8, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

SUPPLEMENTARY INFORMATION: The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is chaired by Mr. John E. Miller and is composed of 10 members including individuals who also serve on other NASA advisory committees.

This meeting will be open to the public up to the seating capacity of the room (which is approximately 30 persons including committee members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda

February 6, 1992

8:30 a.m.—Chairman's Remarks.
9:30 a.m.—Office of Space Systems Development.
10 a.m.—Program Status.
11 a.m.—Discussion.
1 p.m.—Tour Space Power Electronics Laboratory (SPEL).
3 p.m.—Space Station Advisory Committee Panel Reports.
4 p.m.—Discussion.
5:30 p.m.—Adjourn.

February 7, 1992

8:30 a.m.—Space Station Advisory Committee Panel Reports.
9:30 a.m.—Work Plans.
10 a.m.—Membership Discussion.
10:30 a.m.—Travel to Huntington Beach, CA.
1 p.m.—Tour McDonnell Douglas Facility.
3 p.m.—Discussion.
4 p.m.—Adjourn.

Dated: January 21, 1992.

John W. Gaff,

Advisory Committee Management Officer.

[FR Doc. 92-1882 Filed 1-24-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice 92-06]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, (Pub. L. 92-463), as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee.

DATES: February 12, 1992, 8:30 a.m. to 5:30 p.m.; February 13, 1992, 8:30 a.m. to 5:30 p.m.; and February 14, 1992, 8:30 a.m. to 3 p.m.

ADDRESSES: The National Aeronautics and Space Administration, 600 Independence Avenue, SW., room 226, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph K. Alexander, Code S, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1430).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Committee will meet to discuss the OSSA program status, Fiscal Year 1993 budget overviews, the Committee's agenda for 1992-93, Research and Analysis (R&A) program, Earth Observing System status, and the 1992 OSSA Strategic Plan. The Committee is chaired by Dr. Berrien Moore and is composed of 25 members. The meeting will be open to the public up to the capacity of the room (approximately 50 persons including Committee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

Wednesday, February 12
- 8:30 a.m.—Committee Business.
- 8:45 a.m.—OSSA Status Report and FY 1993 Budget Overview.
- 1:15 p.m.—SSAAC Agenda for 1992-93 and the State of the R&A Program.
- 3:45 p.m.—Congressional Perspectives on FY 1993.
- 5:30 p.m.—Adjourn.

Thursday, February 13
- 8:30 a.m.—Committee Business.
- 8:45 a.m.—Office of Exploration Briefing.
- 9:45 a.m.—Earth Observing System Program Status.
- 11:05 a.m.—OSSA Implications of the Former Deputy Administrator's Recommendations.
- 11:35 a.m.—R&A Issues.
- 1:15 p.m.—1992 OSSA Strategic Plan.
- 1:45 p.m.—Subcommittee Reports.
- 3:45 p.m.—Congressional Perspectives on FY 1993.
- 5:30 p.m.—Adjourn.

Friday, February 14
- 8:30 a.m.—Writing Group Work Sessions.
- 11 a.m.—Committee Discussion of Writing Group Material.
- 1 p.m.—Committee Discussion with the Associate Administrator.
- 3 p.m.—Adjourn.

January 21, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-1883 Filed 1-24-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice 92-07]

NASA Advisory Council (NAC), Commercial Programs Advisory Committee (CPAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC, Commercial Programs Advisory Committee.

DATES: February 5, 1992, 8:30 a.m. to 2:30 p.m.

ADDRESSES: Orbital Sciences Corporation, Suite 350, The Board Room, 12500 Fair Lakes Circle, Fairfax, VA 22033.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Stone, Office of Commercial Programs, National Aeronautics and Space Administration, Washington, DC 20546, 703/271-5500.

SUPPLEMENTARY INFORMATION: The Commercial Programs Advisory Committee provides counsel on the overall NASA program supporting the commercial development of space, both relevant policies and program scope and content. The Committee is chaired by Mr. James K. Baker and is currently composed of 15 members.

The meeting will be closed to the public from 12:15 p.m. to 2:30 p.m. for a discussion of the qualifications of additional candidates for membership of the Committee. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this discussion will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. Prior to the closed session, the meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the Committee members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

TYPE OF MEETING: Open—except for a closed session as noted in the agenda below.

Agenda

February 5, 1992
- 8:30 a.m.—Welcome/Introduction of Members.
- 8:50 a.m.—Commercial Programs Update.
- 11 a.m.—Commercial Programs Advisory Committee, Centers for the Commercial Development of Space Report Status.
- 11:30 a.m.—Member Discussion.
- 12:15 p.m.—Closed Session.
- 2:30 p.m.—Adjourn.

Dated: January 21, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-1884 Filed 1-24-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Prescreening #3 Section)) to the National Council on the Arts will be held on February 12, 1992 from 9 a.m.-6:30 p.m. and February 13 from 9 a.m.-6 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by

grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92–1871 Filed 1–24–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Power Co., Palisades Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–20 issued to Consumers Power Company (the licensee) for operation of the Palisades Plant, located in Convert, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would change the maximum enrichment specified in new fuel storage Technical Specification (TS) 5.4.1 to an assembly planar average of 4.20 weight percent (w/o) U–235 for fuel assemblies with 216 UO_2, Gd_2O_3–UO_2 fuel rods or metal rods. In TS 5.4.2.c, the maximum enrichment for fuel stored in the Region I (NUS) spent fuel storage racks would be increased to an assembly planar average U–235 enrichment of 4.40 w/o. A sentence would also be added which requires spent fuel assemblies having enrichment above 3.27 w/o U–235 to contain 216 UO_2, Gd_2O_3–UO_2 or solid metal rods. TS 5.4.2.c, which specifies the maximum w/o U–235 in the spent fuel stored in the spent fuel pool without regard to the regions in the pool, would be deleted.

The proposed action is in accordance with the licensee's application for amendment dated October 28, 1991, as supplemented by letter dated January 20, 1992.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher fuel enrichment to provide the flexibility of extending the fuel irradiation and to permit operation for longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions allow the fresh fuel storage racks to accommodate fuel assemblies enriched to 4.20 w/o U–235 with 216 UO_2, Gd_2O_3–UO_2 fuel rods or metal rods. The Region I (NUS) spent fuel storage racks are approved to accommodate fuel assemblies enriched to 4.40 w/o U–235 provided that fuel assemblies having enrichment above 3.27 w/o U–235 contain 216 UO_2, Gd_2O_3–UO_2 or solid metal rods.

The licensee has made a commitment not to remove any spent fuel racks from the spent fuel pool until analyses confirm that the k-eff resulting from inadvertently dropping a 4.40 w/o fuel assembly into the space vacated by the rack does not exceed 0.95.

Although the Palisades TS have been modified to specify the above-mentioned fuel as acceptable for storage in the fresh or spent fuel racks, evaluations of reload core designs (using any enrichment) will, of course, be performed on a cycle by cycle basis as part of the reload safety evaluation process. Each reload design is evaluated to confirm that the cycle core design adheres to the limits that exist in the accident analyses and TS to ensure that reactor operation is acceptable. The higher enrichment may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the **Federal Register** (53 FR 30355) on August 11, 1988. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in table S–4 as set forth in 10 CFR 51.52(c).

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any other alternative would have equal or greater environmental impacts and need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impact of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Palisades Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the application for amendment dated October 28, 1991, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

For the Nuclear Regulatory Commission.

Edmund J. Sullivan, Jr.,

Acting Director, Project Directorate III–I, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–2019 Filed 1–24–92; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program; Final Amendments

January 14, 1992.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final amendments to the Columbia River Basin Fish and Wildlife Program (measures for anadromous fish, phase two).

SUMMARY: Pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, *et seq.*) the Pacific Northwest Electric Power and Conservation Planning Council (Council) has adopted final amendments to the Columbia River Basin Fish and Wildlife Program (program). The Amendments constitute major changes to the salmon and steelhead provisions of the program, emphasizing mainstream passage improvements, harvest management, a rebuilding schedule and biological objectives for Snake River fall chinook, and other matters. Copies of the amendments, the Council's responses to comments received in the amendment process, and findings on amendment recommendations that the Council did not adopt, are available on request. See "FOR FURTHER INFORMATION", below.

BACKGROUND: The final amendments are the culmination of the second phase of a four-phase process to amend the Columbia River Basin Fish and Wildlife Program (program). Phase one, in which priority habitat and production amendments and responses to comments were adopted, was completed in August, 1991. Phase two amendments were adopted on December 11, 1991, and a response to comments and findings on amendment recommendations that the Council did not adopt was approved. Phase three of the process, which addresses major production and habitat issues, system planning (including a framework for program planning, implementation, monitoring, evaluation, and research), biological objectives and rebuilding schedules for various stocks, and related issues, will be completed by mid-August 1992. Phase four, to address resident fish and wildlife, would begin in September, 1992.

The second phase of the process began on August 9, 1991, when the Council received recommendations from fish and wildlife agencies, Indian tribes, and others, for measures to protect, mitigate and enhance anadromous fish affected by the development and operation of hydroelectric facilities in the Columbia River Basin. On September 26, based on its review of the recommendations and comments received on them, the Council proposed a series of amendments to the program, to be circulated for public comment. The Council received written comment on the proposed amendments, and on the recommendations submitted on August 9, through October 25, 1991. Hearings were held on the proposed amendments, and on recommendations submitted on August 9, on October 15 in Kennewick, Washington; October 15, in Boise, Idaho; October 17, in Lewiston, Idaho; October 21, in Kalispell, Montana; October 21 in Longview, Washington; and on October 23, in Portland, Oregon. The Council adopted final amendments and approved responses to comments and findings on recommendations on December 11, 1991.

FOR FURTHER INFORMATION: For copies of the final amendments to the Columbia Basin Fish and Wildlife Program (Phase Two) (request document no. 91–31), the Columbia Basin Fish and Wildlife Program Salmon and Steelhead Amendments: Phase Two Response to Comments (which includes findings on amendment recommendations that the Council did not adopt) (request document no. 91–33), or other information, contract the Council's Public Affairs Division, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355.

Edward W. Sheets,

Executive Director.

[FR Doc. 92–1831 Filed 1–24–92; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30268; File No. SR–CBOE–91–47]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Submission of Certain Sale Transactions Reports to the Price Reporter

January 21, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE submits to the Commission, pursuant to rule 19b–4(e),[1] a proposed rule change clarifying that CBOE members are not obligated to report sell transactions in certain Standard & Poor's 500 ("S&P") stock index option classes to price reporters, pursuant to Interpretation .01 of CBOE Rule 6.51, in instances where the sale is executed by an Electronic Book ("EBook") [2] on the Exchange. The Exchange has codified this rule change in Regulatory Circular RG91–86 which has been distributed to Exchange members.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

[1] 17 CFR 240.19b–4(e) (1990).

[2] The Ebook automates all order book support and execution functions, *i.e.*, the filing, sorting, executing, fill reporting, price reporting, and inputting to trade-match of away from the market limit orders and pre-opening market orders placed with the Order Book Official. EBook lowers costs, reduces trade-match errors and improves service by automatically reporting both trade execution to the originating branch and price reporting to vendors

rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the CBOE submission is to notify the Commission of modifications to Exchange procedure with regard to the reporting of sale transactions to the price reporter. Commencing December 10, 1991, the Exchange is expanding the function of the Ebook in certain option classes to include automatic price reporting. Specifically, trades executed with the Ebook will be reported directly by the Ebook for transactions in the following Ebook eligible index options: The S&P 500 ("SPX"), Wrap Around S&P 500 ("SPZ"),[3] Long-Term S&P 500 ("SPL"), Reduced Value Long-Term S&P 500s ("LSW" and "LSX"), and Capped S&P 500 ("CPS"). In order to avoid duplicative reporting of transactions in these options because of the reporting made via the Ebook, the Exchange has determined that CBOE members are not obligated to report sell transactions in these options in instances where the sale is executed by Ebook. Initially, sale tickets will be collected by Exchange staff at the end of the day. Pursuant to Exchange Rule 6.51 and Interpretation .01 thereunder, members will continue to be required to submit immediately all reports of sale transactions not executed with the Ebook to price reporters.

(2) Basis

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

[3] The SPZ provides wrap-around strike prices for the SPX. If a large enough move occurs, such as October 1987, 200 points of different strike prices may occur. As a result of the large number of strike prices, the Exchange will run out of letters to bring up the SPX strikes necessitating the different symbol for certain SPX strikes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the CBOE, namely Interpretation .01 to CBOE Rule 6.51, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by February 18, 1992.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–1885 Filed 1–24–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18491; 812–7730]

Bull & Bear Overseas Fund Ltd. et al.; Notice of Application

January 17, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Bull & Bear Overseas Fund Ltd. ("Overseas"), Bull & Bear Equity-Income Fund (Equity-Income"), Bull & Bear International Advisers, Inc. ("International Advisers"), Bull & Bear Equity Advisers, Inc. ("Equity Advisers"), and Bull & Bear Group, Inc. ("Group") (collectively "Applicants").

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act exempting applicants from section 17(a) of the Act, and under section 17(d) of the Act of rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order under section 17(b) exempting them from section 17(a) and under section 17(d) of the Act and rule 17d–1 to permit Overseas to acquire substantially all of the assets of Equity-Income for shares of Overseas.

FILING DATE: The application was filed on May 17, 1991 and amended on December 13, 1991. By letter dated January 17, 1992, counsel for applicants stated that an amendment to the application would be filed during the notice period, the substance of which is reflected herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 14, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, 11 Hanover Square, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Senior Staff Attorney, at (202) 272–7324, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Overseas and Equity-Income each are open-end management investment companies incorporated in Maryland and Delaware, respectively, and registered under the Act. (Equity-Income and Overseas are referred to herein as the "Funds.")

2. International Advisers is the investment manager of Overseas and, as of January 10, 1992, beneficially owns 10.6% of the common stock of Overseas. Equity Advisers is the investment manager of Equity-Income. Group is a Delaware corporation which owns 100% of the outstanding stock of both International Advisers and Equity Advisers.

3. Subject to and contingent upon receipt of the affirmative vote of the holders of at least a majority of the outstanding common stock of Equity-Income, Overseas proposes to acquire substantially all of the assets of Equity-Income in exchange solely for shares of Overseas and the assumption by Overseas of the liabilities of Equity-Income.

4. Overseas and Equity-Income have entered into an Agreement and Plan of Reorganization and Liquidation (the "Plan") that was unanimously approved by the boards of directors of each Fund, including the disinterested directors of each Fund, on December 12, 1991. The board of directors of each Fund based its decision to approve the reorganization on a number of factors, including: (a) The relative past growth in assets and investment performance of both Funds; (b) the future prospects for each of the Funds, both under circumstances where they are not reorganized and if the reorganization is affected; (c) the compatibility of the objectives, policies and restrictions of Equity-Income and Overseas; (d) the effect of the reorganization on the expense ratios of the Funds; (e) the costs of the reorganization to the Funds; (f) whether any future cost savings could be achieved by combining the Funds; (g) the tax-free nature of the reorganization; (h) alternatives to the reorganization; and (i) the actual and potential benefits to the Funds' affiliates, including International Advisers and Equity Advisers and their parent, Group.

5. It is presently contemplated that the Plan will be submitted for approval to the shareholders of Equity-Income during a meeting to be held in the first quarter of 1992, and that a prospectus/proxy statement comparing the two Funds and describing the proposed reorganization and reasons therefor will be sent to shareholders of Equity-Income in January 1992. At the same time, a proxy statement will be sent to the shareholders of Overseas requesting their approval of, among other things, a change in Overseas' fundamental investment objective. Assuming that the required shareholder votes are obtained at the shareholders' meetings, the closing date is expected to occur shortly thereafter.

6. Under the Plan, the number of full and fractional shares of Overseas to be issued to shareholders of Equity-Income will be determined on the basis of net asset values, by dividing the net asset value of Equity-Income's assets and liabilities by the net asset value of a share of Overseas. The Plan is intended to be a plan of reorganization within the meaning of section 368(a)(1)(C) of the Internal Revenue Code under which no gain or loss would be recognized by Equity-Income, Overseas, or their shareholders. Applicants represent that except for the *status quo*, alternatives to the proposed reorganization, including liquidation, would not be tax-free.

7. Although the Plan provides that any of its provisions may be waived, amended, modified or supplemented by mutual written agreement of the parties, applicants agree (a) to not make any material changes to the Plan that affect the application without prior approval of SEC staff; and (b) to not waive, amend, or modify any provision of the Plan that is required by state or federal law to effect the reorganization.

8. Equity-Income and Overseas have identical distribution arrangements. Each Fund also has adopted a plan of distribution pursuant to rule 12b–1 under the Act. Under these distribution plans, each Fund may reimburse the Distributor in an amount up to one percent per annum of the Fund's average daily net assets for expenditures by the Distributor which are primarily intended to result in the sale of that Fund's shares. No change to Overseas' rule 12b–1 plan, the surviving plan in the reorganization, will be made in connection with the reorganization.

9. Under both Equity-Income's and Overseas' rule 12b–1 plans, the Distributor may from time to time incur expenses in distributing shares of the fund in excess of the amount currently reimbursed by the Fund pursuant to its plan, which expenses may be reimbursed in the future. As of November 30, 1991, the Distributor had incurred approximately $177,000 of such expenses not yet reimbursed by Equity-Income, amounting to 1.81% of that Fund's net assets. In view of the staff's position that carryover distribution expenses terminate for the acquired investment company in a reorganization as of the date of the reorganization, neither the Distributor nor any other party will seek recovery of these expenses after the reorganization. As of November 30, 1991, the Distributor also had incurred approximately $203,000 in expenses not yet reimbursed by Overseas, amounting to 16.14% of that Fund's net assets, and to 1.86% of the combined fund's net assets on a *pro forma* basis. Because there is no requirement under the rule 12b–1 plans that the Distributor be reimbursed for all its expenses or any requirement that the plans be continued from year to year, these amounts have not been treated as a liability of the Funds.

10. Applicants represent that the reorganization is expected to enhance the long-term viability and performance of both Funds. Each Fund's shareholders should benefit from the reorganization because the expected increase in size of the combined fund, both immediately after the reorganization and through improved potential for future growth, may permit the combined fund to invest more effectively, achieve certain economies of scale, increase operating efficiency, and facilitate portfolio management.

11. Overseas and Equity-Income will each bear its own expenses in connection with the reorganization, including any common expenses which may be allocated to Overseas and Equity-Income in proportion to their respective net assets. However, International Advisers and Equity Advisers will bear a portion of the reorganization expenses that would cause Overseas or Equity-Income, respectively to incur expenses in excess of the most restrictive expense limitation imposed by any state in which shares of the applicable Funds are qualified for sale. The expenses of Overseas currently exceed this state expense limit. The expenses of Equity-Income did not exceed the state expense limitation for the eleven months ending November 30, 1991, and the costs of the

reorganization are not presently expected to cause it to exceed this limit. Thus, it is estimated that the expenses of the reorganization, which are expected to total approximately $103,500, will be borne by International Advisers in the approximate amount of $20,900 (with Overseas bearing directly no expenses of the reorganization due to the state expense limitation), and Equity-Income in the approximate amount of $82,600. Equity Advisers is not expected to bear any of this amount unless the state expense limit for Equity-Income is exceeded.

12. Applicants represent that International Advisers and Group may receive some benefits from the reorganization. These include: (a) A higher effective investment management fee for Overseas as compared to Equity-Income; (b) the potential for the receipt of higher aggregate investment management fees if, as is hoped, the combined fund's assets grow faster than would be the case for the two Funds in the absence of the reorganization; (c) the likelihood that, after the reorganization and the resulting increase in Overseas' net assets, the investment manager would no longer be required to reimburse Overseas pursuant to state expense limitations; and (d) the possibility that economies with respect to distribution costs might be realized in the larger combined fund so that, to the extent that expenditures by the Distributor in a given year amount to less than 1.0% of the combined fund's net assets, the Distributor may be able to recover Overseas' unreimbursed rule 12b–1 expenses over a shorter period of time. Applicants further note, however, that the potential benefits to International Advisers and Group will be diminished because (a) the investment managers and Group will bear a substantial portion of the direct and indirect costs of the reorganization portion of the expenses of the reorganization; (b) any increase in the management fee payable to International Advisers will be offset by a proposed sub-advisory contract which requires International Advisers to pay Banque Worms Management Corporation 40% of its investment management fees; and (c) the Distributor, a subsidiary of Group and an affiliate of Investment Advisers, has agreed not to seek recovery of past distribution expenses, amounting to approximately $177,000 as of November 30, 1991.

13. In light of the foregoing, applicants consequently believe, and the directors of each Fund (including the disinterested directors) have found, that any potential benefits to the investment managers and to Group resulting from the reorganization are on balance outweighed by the commitments of the investment managers to bear a portion of the reorganization expenses and the potential benefits of the reorganization to Equity-Income and Overseas and their shareholders.

Applicants' Legal Analysis

1. Overseas and Equity-Income have investment advisers that are under "common control" within the meaning of section 2(a)(9) of the Act. In addition, Overseas is an "affiliated person" of International Advisers within the meaning of section 2(a)(3)(B) because International Advisers beneficially owns 5% or more of the shares of Overseas. Because of these relationships, the proposed reorganizations may be prohibited by section 17(a) of the Act, which generally prohibits the sale of securities or property to a registered investment company by an affiliated person of an affiliated person of such company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. The proposed reorganization would be exempt from the provisions of section 17(a) by virtue of rule 17a–8 but for the fact that International Advisers beneficially owns 5% or more of the outstanding shares of Overseas and Group wholly owns the investment advisers for both funds.

3. Section 17(b) of the Act provides that, notwithstanding section 17(a), any person may file an application for an order exempting a proposed transaction and the SEC shall grant such order if evidence establishes that (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicants submit that the Plan meets these standards for relief.

Condition to the Relief

Applicants agree to the grant of the order requested herein being specifically subject to the following condition:

The directors of each Fund, including a majority of the directors who are not interested persons of the Funds, have determined, after considering the relevant factors, that participation in the reorganization is in the best interests of each Fund and that the interests of existing shareholders of each Fund will not be diluted as a result of the reorganization. These findings and the bases therefor have been recorded fully in the minutes of both boards.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–1843 Filed 1–24–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25456]

Filings Under the Public Utility Holding Company Act of 1935 "(Act")

January 17, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 10, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corp., et al. (70–7918)

Central and South West Corporation ("CSW"), a registered holding company, and three of its nonutility subsidiaries, CSW Energy, Inc. ("Energy"), CSW

Development-I, Inc. "(Energy Sub"), each located at 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, and ARK/CSW Development Partnership (the "Joint Venture"), located at 23293 South Pointe Drive, Laguna Hills, California 92653 (collectively, "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 43, 45, 50(a)(5), 51, 86, 87, 90 and 91 thereunder.

The Applicants seek authority to acquire indirectly, through subsidiaries to be formed, a 122.2 megawatt, approximately $140 million, gas-fired cogeneration facility (the "Project"). Once operational, the Project, located near Bartow in Polk County, Florida, would be a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978.

The Applicants propose to create a new subsidiary, Polk Power Partners, L.P. (the "Partnership"), which would be a Delaware limited partnership, to own and operate the Project. The Applicants propose to organize and acquire for $1,000 all of the common stock, no par value, of a new subsidiary ("JV Sub"), which would be the sole general partner of the Partnership. JV Sub will be a wholly owned subsidiary of Joint Venture, a Delaware general partnership owned equally by Energy Sub and ARK Energy, Inc. ("ARK"), a nonassociate corporation. It will be a Delaware corporation and will have 1% interest in the Partnership. The two limited partners will be Energy Sub and ARK. They would each hold a 49.5% interest in the Partnership.

CSW, Energy, Energy Sub and Joint Venture seek the approval of the Commission to make capital contributions to Partnership in the amount of $2 million for Partnership to (i) pay $500,000 due to the seller of the Project at the closing of sale in order to acquire the seller's rights, title and interest in and to the Project and (ii) pay up $1.5 million to acquire the Project site and easements and for related real estate and title matters. CSW, Energy, Energy Sub and the Joint Venture seek the approval of the Commission to make capital contributions in the amount of $9 million for capital contributions to the Partnership. JV Sub, Energy Sub and ARK would each make an initial capital contribution of approximately $1,000 in relative proportion to their respective partnership interests. Energy Sub and ARK would then each make capital contributions of up to $9 million to the Partnership. JV Sub will contribute work product and management services for its interest.

The power from the Project will be sold to Tampa Electric Company ("TECO") and Florida Power Corporation ("FPC"). TECO and FPC are nonassociate Florida electric-utility corporations. It is anticipated that a small portion of the excess energy generated by the Project will be sold to the steam host and the balance will be sold to FPC on an "as available" basis.

The Applicants propose that the Partnership borrow approximately $120 million for use in constructing and developing the project by entering into a credit facility with a lending institution or a syndicate of lending institutions to be determined ("Construction Financing"). It is anticipated that the Construction Financing would include the issuance of letters of credit to transportation and fuel suppliers which would replace other letters of credit to these suppliers. The Construction Financing is to be converted to, or refinanced by, a term loan facility ("Term Loan Financing") with a lender or group of lenders upon the completion of the Project (expected to occur prior to April 12, 1994). It is anticipated that the terms of the Construction Financing and the Term Loan Financing would be up to 15 years. The interest cost to the Partnership for the Construction Financing and the Term Loan Financing will not exceed 12% per annum. Commitment fees payable to lenders under the Construction Financing and the Term Loan Financing will not exceed 1.5% of the loan amount. The Applicants request an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereof for the Construction Financing and the Term Loan Financing.

Lenders may require the Partnership and/or the partners to provide some assurance for the $18 million equity of the project in the form of an equity support agreement or letter of credit ("Equity LOC"). Fees payable to the issuer for Equity LOCs would not exceed 1% per annum of the face amount of the Equity Support LOC and the interest rate payable per annum on unreimbursed drawings under the Equity LOC would not exceed the prime rate plus four percentage points.

The Applications propose to procure an irrevocable standby letter of credit ("CFGC LOC") in favor of Central Florida Gas Company ("CFGC"), the Project's fuel transportation provider, in the amount of approximately $800,000, which would obligate one of the Applicants, or an associate to be named, to reimburse the bank issuing the CFGC LOC, on demand, for the amount drawn. The CFGC LOC would support payment obligations under the fuel transportation contract with CFGC (Fuel Services Contract"). The CFGC LOC would be issued for renewable, five year terms for the duration of the Fuel services Contract. The fees payable to the issuer of the CFGC LOC would not exceed 1% per annum of its face amount. The interest rate payable per annum on unreimbursed drawings under the CFGC LOC would not exceed the prime rate plus four percentage points.

The Partnership seeks authorization to enter into a construction agreement with Energy or Energy Sub for the purpose of developing and constructing the Project. It is expected that Energy or Energy Sub would provide general construction management and oversight services and would subcontract with other nonassociate construction and engineering firms and equipment vendors to provide the design, construction and engineering services and project equipment.

Entergy Corporation, et al. (70–7925)

Entergy Corporation ("Entergy"), a registered holding company, 225 Baronne Street, New Orleans, Louisiana 70112 and its wholly owned public-utility subsidiary company, Mississippi Power & Light Company ("MP&L"), P O Box 1640, Jackson, Mississippi 39215 have filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and Rule 43 thereunder.

MP&L proposes to issue and sell from time to time through December 31, 1993, and Entergy proposes to acquire, an aggregate of up to 2,173,914 additional shares of MP&L's common stock ("Additional Shares"), no par value, for an aggregate consideration not to exceed $50,000,022.

MP&L expects to use the proceeds from such sales for the redemption, prior to maturity, of all or a potion of MP&L's First Mortgage Bonds, 10⅞% Series due 2005, or for the repayment of short-term indebtedness incurred for that purpose Alternatively, all or a portion of such proceeds may be used by MP&L for the financing, in part, of the possible redemption, purchase, or other

acquisition of all or a portion of certain other outstanding series of MP&L's first mortgage bonds, general and refunding mortgage bonds, pollution control revenues bonds and preferred stock; for its construction program; and for other corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1842 Filed 1-24-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 91-10-57, the Department established the currently effective SFRL adjustments.

We will resume issuing SFRL updates on a two-month cycle as we did up until June 1985, rather than every six months as we have been doing since. In Order 85-6-43, June 13, 1985, we concluded that two-month updates were no longer warranted in light of a stabilization in overall cost trends. Recent experience suggests, however, that use of a bi-monthly cycle will be more reflective of current industry conditions. Of course, the bi-monthly SFRLs issued here supplant those issued earlier in Order 91-10-57.

In establishing the SFRL for the two-month period beginning December 1, 1991, we have projected non-fuel costs based on the year ended September 30, 1991 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 92-1-32 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic	1.3308
Western Hemisphere	1.1294
Pacific	1.4771

FOR FURTHER INFORMATION CONTACT: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: January 17, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-1853 Filed 1-24-92; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Advisory Commission on Conferences in Ocean Shipping; Open Meeting

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of open meeting of the Advisory Commission on Conferences in Ocean Shipping.

SUMMARY: The Commission will be holding a meeting in Washington, DC on Wednesday and Thursday, February 12-13, 1992; the meeting is open to the public. The Commission plans to determine the recommendations and conclusions to be included in its report to the President and Congress.

DATES: Meeting: Wednesday and Thursday, February 12-13, 1992; 9:30 a.m. to 5:30 p.m. EST.

ADDRESSES: The address for the public meeting is Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC, room 10234.

FOR FURTHER INFORMATION CONTACT: Florizelle B. Liser, Executive Director; telephone (202) 366-9781; FAX (202) 366-7870.

SUPPLEMENTARY INFORMATION: The Commission was created by the Shipping Act of 1984 to conduct an independent and comprehensive study of conferences in ocean shipping, particularly whether the Nation would be best served by prohibiting conferences, or by closed or open conferences. The Commission is to provide its report, including recommendations, to the President and the Congress by April 10, 1992. After holding five field hearings around the country during the summer, the Commission began the deliberative stage of its work in October. At this meeting, the Commissioners will on both days determine the recommendations and conclusions for inclusion in its report to the President and Congress.

Issued in Washington, DC on January 17, 1992.

Florizelle B. Liser,

Executive Director.

[FR Doc. 92-1839 Filed 1-24-92; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. 91-63; No. 2]

Blue Bird Body Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Blue Bird Body Company (Blue Bird) of Fort Valley, Georgia, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that its noncompliance with Safety Standard No. 106 is inconsequential as it relates to motor vehicle safety.

Notice of receipt of a petition was published on December 5, 1991, and an opportunity afforded for comment (56 FR 63755).

Based on information provided by the Weatherhead Division of Dana Corporation, Blue Bird determined that certain air brake hoses installed in approximately 11,150 buses do not comply with the adhesion requirements of S7.3.7 of Federal Motor Vehicle Safety Standard No. 106, "Brake Hoses." Section S7.3.7 requires that, except for hose reinforced by wire, an air brake hose shall withstand a tensile force of eight pounds per inch of length before separation of adjacent layers.

Blue Bird supported its petition with the following:

1. Blue Bird Body Company is not aware of any accidents, complaints or warranty issues related to the use of these hoses.

2. Its application of the hoses is non-vacuum in nature and the arguments set forth by Weatherhead, Navistar, Mack and White GMC Volvo are applicable to its products.

3. It is Blue Bird belief that the installation of the suspect Weatherhead hoses on its buses is consistent with industry standards and installations covered in the petitions filed by the previously mentioned component and truck manufacturers. Therefore, Blue Bird Body Company should be granted the same relief as the other petitioners.

No comments were received on the petition.

At the time the petitioner filed its petition, the petitions by two other users of the Dana Weatherhead hose, Navistar International and Mack Trucks, Inc., were still under consideration. These petitions were granted on October 11, 1991 (56 FR 51440) on the basis of the following arguments:

1. The end use of the hoses was such that they were subject to pressure, not vacuum applications.

2. If the hoses were used in vacuum applications, their crimped end fittings make it unlikely that air would become trapped between the layers of the hose.

3. If there is any permeation of air from the inner tube, the hoses are designed to release it through the pinpricked outer layer.

The petitioner uses the Weatherhead hoses in pressure applications. NHTSA understands the petitioner represents that the outer layer of the hoses is pinpricked and that the hoses are equipped with the same crimped end fittings as the Weatherhead hoses. Thus the same factors exist in this case as in the previous petitions which were granted.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: January 16, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-1875 Filed 1-24-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 17, 1992

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0205.

Form Number: IRS Form 5452.

Type of Review: Resubmission.

Title: Corporate Report of Nondividend Distributions.

Description: Form 5452 is used by corporations to report their nontaxable distributions as requested by Internal Revenue Code (IRC) section 6042(d)(2). The information is used by IRS to verify that the distributions are nontaxable as claimed.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 1,700.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—19 hours, 51 minutes
Learning about the law or the form—1 hour, 20 minutes
Preparing the form—3 hours, 35 minutes
Copying, assembling and sending the form to IRS—32 minutes

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 43,010 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-1838 Filed 1-24-92; 8:45 am]

BILLING CODE 4830-01-M

Customs Service

Statement of Position on Execution of New Powers of Attorney Due to Merger, Consolidation or Similar Transaction of Customs Broker, and Obtaining New Broker's License in Certain Situations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Statement of position.

SUMMARY: When Customs brokers merge, consolidate or engage in other transactions where the surviving broker is a different legal entity than the predecessor broker, the surviving broker must obtain powers of attorney in its name from the clients of the predecessor broker before conducting Customs business on their behalf; however, there is no such requirement if the power of attorney granted to the predecessor broker specifically provides that it is transferable to a Customs broker which is the predecessor broker's legal successor in interest. Customs will not take broker compliance action under 19 U.S.C. 1641, in connection with the execution of new powers of attorney, provided that the clients of the predecessor broker are notified of the proposed merger, consolidation or other transaction prior to its effective date, and the new powers of attorney are executed in favor of and are retained by the surviving broker within thirty (30) days of the effective date of the transaction, unless additional time is requested and is granted by Customs within the thirty (30) day period. In the case of mergers, consolidations or other transactions which occurred prior to the date of this Notice, the new powers of attorney must be executed and retained within thirty (30) days of the date of this Notice, unless additional time is requested and is granted by Customs within the thirty (30) day period.

When an entity which does not hold a Customs broker's license engages in a merger, consolidation or other transaction with a Customs broker and the surviving entity is a different legal entity than the broker, the surviving entity must obtain a Customs broker's license and powers of attorney in its name before conducting Customs business except on its own behalf.

EFFECTIVE DATE: January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Robert W. Page, Chief, Entry Compliance Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., room 1313, Washington, DC 20229, (202) 566-5307.

SUPPLEMENTARY INFORMATION: 19 U.S.C. 1641 provides that the Secretary of the Treasury may prescribe rules and regulations relating to the licensing of Customs brokers, the keeping of books, records, and other documents, and the imposition of penalties resulting from the violation of those rules and regulations. 19 CFR 141.46 requires that Customs brokers obtain powers of attorney from their principals before transacting Customs business on their behalf, and that the powers of attorney must be retained with the brokers' books and papers. Specific penalties for the failure to retain powers of attorney are provided for in 19 CFR 171, App. C, V, E.

In HQ Ruling 223119 (August 26, 1991), Customs held that the Customs broker's license and powers of attorney held by a wholly owned subsidiary were not transferable to its parent corporation when the subsidiary was absorbed by the parent corporation in a merger. Customs also held that the surviving corporate entity had to obtain a Customs broker's license in its name and new powers of attorney in its name from the clients of the subsidiary corporation. In Customs Legal Determination No. 82-0048, issued April 5, 1982, Customs held that when a parent Customs broker corporation dissolves a subsidiary Customs broker corporation, the powers of attorney

issued to the subsidiary are not transferable to the parent corporation. Customs maintains the same position when brokers which are not parent and subsidiary corporations merge, consolidate or engage in other transactions where the surviving broker is a different legal entity than the predecessor broker to whom the powers of attorney in question were issued.

Importers generally grant powers of attorney to Customs brokers on the basis of the importer's trust and confidence in the broker's skill, judgment and discretion. Mergers, consolidations and other transactions may result in changes of circumstances which affect the importer's intent to transact business through the successor to the broker. This change of intent can occur whether the broker to whom the power of attorney is issued is a corporation, partnership, individual or other legal person. (However, Customs held in HQ Ruling 730666 (August 18, 1987) that it is not necessary to obtain new powers of attorney where a corporate broker merely undergoes a name change and there is no change in the corporate entity itself).

Customs recognizes that mergers, consolidations and other transactions in the brokerage industry may occur rapidly and involve many parties, and that obtaining new powers of attorney by the effective date of the transaction may be difficult or impracticable. This Notice gives affected persons, whether they be corporations, partnerships, individuals or other legal persons, a reasonable period of time in which to comply with the power of attorney requirements.

Samuel H. Banks,

Assistant Commissioner, Office of Commercial Operations.

[FR Doc. 92-1737 Filed 1-24-92; 8:45 am]

BILLING CODE 4820-02-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-86]

Termination of Section 302 Investigation: Intellectual Property Laws and Practices of the People's Republic of China and Revocation of Priority Foreign Country Designation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of investigation under section 302 of the Trade Act of 1974, as amended, and revocation of priority foreign country identification under section 182(c)(1)(A) of the Omnibus Trade and Competitiveness Act of 1988.

SUMMARY: The United States Trade Representative (USTR) has decided to terminate an investigation initiated under section 302 of the Trade Act of 1974 as amended (Trade Act) with respect to the intellectual property laws and practices of the People's Republic of China, having reached a satisfactory resolution of the issues under investigation.

In addition, USTR has decided to revoke China's identification as a priority foreign country under section 182 of the Trade Act, as amended, by section 1303 of the Omnibus Trade and Competitiveness Act of 1988 (1988 Act).

DATES: This investigation was terminated and China's identification as a priority foreign country revoked effective January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Lee Sands, Director for China and Mongolia, at (202) 395-5050, or Catherine Field, Associate General Counsel, at (202) 395-3432, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On May 26, 1991, pursuant to section 302(b)(2)(A) of the Trade Act, the United States Trade Representative initiated an investigation of those acts, policies and practices of the Government of China that were the basis for identification of China as a priority foreign country under section 182 of the 1988 Act. These included: (1) Deficiencies in China's patent law, in particular, the failure to provide product patent protection for chemicals, including pharmaceuticals and agricultural chemicals, (2) lack of copyright protection for U.S. works not first published in China, (3) deficient levels of protection under the copyright law and regulations, (4) inadequate protection of trade secrets, and (5) deficient enforcement of intellectual property rights, including rights in trademarks.

On January 17, the U.S. Government reached an agreement with the Chinese Government in which China agreed to make significant improvements in the protection of patents, copyrights, and trade secrets and also agreed to effectively enforce intellectual property rights. On the basis of the commitments contained in this agreement and in the expectation that these commitments will be fully implemented, the USTR has decided to terminate this investigation. In addition, pursuant to section 182(c)(1)(A) of the Trade Act, the USTR has decided that this information warrants revocation of China's identification as a priority foreign country.

The USTR will monitor China's compliance with this trade agreement and if, on the basis of this monitoring, the USTR considers that the China is not satisfactorily implementing the agreement, the USTR shall determine what further action to take.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 92-1852 Filed 1-24-92; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 17
Monday, January 27, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION:

TIME AND DATE: 10:00 a.m., Wednesday, January 29, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Choking Hazards Associated with Small Balls.

The staff will brief the Commission on options for action with regard to a rulemaking proceeding to address choking hazards associated with small balls.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, (301) 504-0800.

Dated: January 22, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92-2057 Filed 1-23-92; 2:23 pm]

BILLING CODE 6355-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 30, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: Compliance Status Report.

The staff will brief the Commission on various compliance matters.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504-0800.

Dated: January 22, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92-2058 Filed 1-23-92; 8:45 am]

BILLING CODE 6355-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Notice

January 22, 1992.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: January 29, 1992, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not, include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 951st Meeting—January 29, 1992, Regular Meeting, (10:00 a.m.)

CAH-1.
Project No. 516-123, Lake Murray Docks, Inc. v. South Carolina Electric & Gas Company
CAH-2.
Project No. 10909-002, Kinderhook Hydro, Inc.
CAH-3.
Project No. 2368-002, Maine Public Service Company
CAH-4.
Project No. 11038-001, County of Arapahoe and Town of Parker, Colorado
CAH-5.
Project No. 596-004, Utah Power and Light Company
Project No. 4029-002, Utah Municipal Power Agency, *et al.*
Project No. 4040-001, Bountiful City, Utah
CAH-6.
Project No. 1984-045, Wisconsin River Power Company
CAH-7.
Project No. 3708-007, American Hydro Power Company
CAH-8.
Omitted
CAH-9.
Project No. 11007-001, Sullivan Island Associates
Project No. 11024-001, Robert and Barbara Sullivan
CAH-10.
Project No. 10846-001, Alpine Hydroelectric Company
CAH-11.
Omitted
CAH-12.
Omitted
CAH-13.
Project No. 4632-012, Clifton Power Corporation
CAH-14.
Project No. 10725-001, Little Horn Energy Wyoming, Inc.

Consent Agenda—Electric

CAE-1.
Docket No. ER92-218-000, Mississippi Power Company
CAE-2.
Docket No. ER92-33-000, Cincinnati Gas and Electric Company
CAE-3.
Docket No. EL91-44-000, Allegheny Electric Cooperative, Inc. v. Niagara Mohawk Power Corporation
Docket No. EL91-47-000, American Municipal Power-Ohio, Inc. and Connecticut Municipal Electric Energy Cooperative v. Niagara Mohawk Power Corporation
CAE-4.
Docket No. EL91-3-000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
CAE-5.
Docket No. ER88-562-004, Boston Edison Company
CAE-6.
Docket No. EL91-36-001, Massachusetts Municipal Wholesale Electric Company v. Northeast Utilities Service Company
CAE-7.
Docket No. AI92-1-001, Accounting Release No. AR-14
CAE-8.
Docket Nos. ER76-205-010 and ER79-150-016, Southern California Edison Company
CAE-9.
Docket Nos. ER90-527-000 and 005, Northern States Power Company

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP92-73-000, National Fuel Gas Supply Corporation
CAG-2.
Docket No. RP92-86-000, Mojave Pipeline Company
CAG-3.
Docket No. RP92-53-000, Kern River Gas Transmission Company
CAG-4.
Omitted
CAG-5.

Docket Nos. CP88-391-006, 007, and 008, Transcontinental Gas Pipe Line Corporation
CAG-6.
Docket No. RP92-76-000, National Fuel Gas Supply Corporation
CAG-7.
Docket Nos. TA92-1-17-000 and TM92-5-17-000, Texas Eastern Transmission Corporation
CAG-8.
Docket No. TA92-2-18-000, Texas Gas Transmission Corporation
CAG-9.
Docket No. TQ92-5-25-000, Mississippi River Transmission Corporation
CAG-10.
Docket Nos. TQ92-2-43-000 and TM92-5-43-000, Williams Natural Gas Company
CAG-11.
Docket Nos. RP90-137-001, 003 and RP91-56-000, Williston Basin Interstate Pipeline Company
CAG-12.
Docket Nos. RP92-16-001 and RP88-44-024, El Paso Natural Gas Company
CAG-13.
Omitted
CAG-14.
Docket Nos. TA92-1-32-000, 001, 002 and 003, Colorado Interstate Gas Company
CAG-15.
Docket Nos. TQ91-3-16-001, 003, TF91-11-16-001 and TQ92-3-16-000, National Fuel Gas Supply Corporation
CAG-16.
Docket Nos. RP83-137-030 and RP85-31-004, Transcontinental Gas Pipe Line Corporation
CAG-17.
Docket No. IS90-11-000, *et al.*, Amerada Hess Pipeline Corporation, *et al.*
CAG-18.
Docket No. RP91-141-000, Williston Basin Interstate Pipeline Company
CAG-19.
Docket No. RM87-5-009, Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines
CAG-20.
Docket No. RP91-128-002, Viking Gas Transmission Company
CAG-21.
Docket No. RP92-19-002, Transwestern Pipeline Company
CAG-22.
Docket No. RP85-202-008, Trunkline Gas Company
CAG-23.
Docket Nos. RP85-203-009 and RP88-203-008, Panhandle Eastern Pipe Line Company
CAG-24.
Docket No. CP82-487-037, Williston Basin Interstate Pipeline Company
CAG-25.
Docket Nos. RP92-25-002 and MT92-1-001, Iroquois Gas Transmission System, L.P.
CAG-26.
Docket Nos. RP92-3-001 and RP90-108-000, *et al.*, Columbia Gas Transmission Corporation
Docket Nos. RP92-2-001 and RP90-107-000, *et al.*, and RP91-161-003, *et al.*, Columbia Gulf Transmission Company
CAG-27.
Docket No. RP91-212-002, Stingray Pipeline Company
CAG-28.
Omitted
CAG-29.
Docket No. RP91-210-003, Tennessee Gas Pipeline Company
CAG-30.
Omitted
CAG-31.
Docket Nos. RP86-10-013 and 014, Williston Basin Interstate Pipeline Company
CAG-32.
Docket No. RP81-65-004, Truckline LNG Company
CAG-33.
Docket No. RP91-188-005, El Paso Natural Gas Company
CAG-34.
Docket No. RP92-16-001, El Paso Natural Gas Company
CAG-35.
Docket No. RP91-179-001, The Algonquin Customer Group v. Texas Eastern Transmission Corporation
Docket Nos. RP88-67-049, RP88-61-016, RP88-221-011, CP88-46-000, CP82-446-002, 003, 004, 005 and 007, Texas Eastern Transmission Corporation
CAG-36.
Docket No. TQ91-7-24-002, Equitrans, Inc.
CAG-37.
Omitted
CAG-38.
Docket No. CP91-2819-000, Transcontinental Gas Pipe Line Corporation
CAG-39.
Docket No. ST88-1-001, Arkansas Western Gas Company
CAG-40.
Omitted
CAG-41.
Docket No. RP90-143-006, CNG Transmission Corporation
CAG-42.
Docket No. PR91-6-000, KansOk Partnership
CAG-43.
Docket Nos. IS90-21-000, IS90-13-000, IS90-32-000, IS90-40-000, IS91-1-000, SP91-3-000, SP91-5-000, IS91-21-000, IS91-28-000, IS91-33-000 and IS92-19-000, Williams Pipeline Company
Docket Nos. IS90-39-000, IS91-3-000 and IS91-32-000, Enron Liquids Pipeline Company
CAG-44.
Docket No. SP92-9-000, Pre-Granted Special Permission for Oil Pipelines
CAG-45.
Omitted
CAG-46.
Docket No. ST92-1312-000, Seagull Shoreline System
CAG-47.
Docket No. GP92-4-000, Railroad Commission of Texas, Tight Formation Determination Texas-15 Addition 4, FERC No. JD92-02504T
CAG-48.
Docket No. GP91-9-000, Vernon E. Faulconer, Inc.
CAG-49.
Omitted
CAG-50.
Docket No. CI91-123-000, Omega Pipeline Company
Docket No. CI92-5-000, Westar Marketing Company
Docket No. CI92-6-000, HPL Gas Company
CAG-51.
Docket No. CP91-1796-001, Natural Gas Pipeline Company of America
CAG-52.
Docket No. CP88-34-001, Trunkline Gas Company
CAG-53.
Docket No. CP88-760-012, Transcontinental Gas Pipe Line Corporation
CAG-54.
Docket No. CP89-634-014, Iroquois Gas Transmission System, L.P.
CAG-55.
Docket Nos. CP88-171-010 and 012, Tennessee Gas Pipeline Company
CAG-56.
Docket No. CP81-428-001, Questar Pipeline Company
CAG-57.
Docket No. CP90-14-002, Transwestern Pipeline Company
CAG-58.
Docket No. CP89-2062-001, Overthrust Pipeline Company
CAG-59.
Docket No. CP92-280-000, Transcontinental Gas Pipe Line Corporation
CAG-60.
Docket No. CP92-287-000, Arkla Energy Resources, a division of Arkla, Inc.
CAG-61.
Docket No. CP91-2891-000, Granite State Gas Transmission, Inc.
CAG-62.
Docket No. CP91-501-000, Sabine Pipe Line Company
CAG-63.
Docket No. CP89-1-006, Mojave Pipeline Company
CAG-64.
Docket No. CP89-2048-006, Kern River Gas Transmission Company
CAG-65.
Docket No. CP87-146-001, West Lincoln Natural Gas District and Southern Natural Gas Company
CAG-66.
Docket No. CP91-1616-000, ANR Pipeline Company
Docket No. CP91-1634-000, Great Lakes Gas Transmission Limited Partnership
CAG-67.
Docket Nos. CP91-2340-000 and MG88-56-001, Ringwood Gathering Company
CAG-68.
Docket No. CP91-2938-000, National Fuel Gas Supply Corporation
CAG-69.
Docket Nos. CP88-171-011 and CP81-106-009, Tennessee Gas Pipeline Company
CAG-70.
Docket Nos. CP91-967-000 and 002, Northern Border Pipeline Company
Docket No. CP91-1071-000, Natural Gas Pipeline Company of America
CAG-71.
Docket Nos. CP91-2322-000, 002 and CP90-767-000, Paiute Pipeline Company

CAG–72.
Docket No. CP91–780–002, Northwest Pipeline Corporation
CAG–73.
Docket Nos. CP91–1580–000 and 001, Algonquin Gas Transmission Company and Texas Eastern Transmission Corporation
CAG–74.
Docket No. CP84–252–005, Trans-Appalachian Pipeline, Inc.
CAG–75.
Docket No. CP90–1478–000, Northern Border Pipeline Company
CAG–76.
Docket Nos. CP92–232–000 and MG88–18–003, Blue Dolphin Pipe Line Company
CAG–77.
Docket Nos. CP89–362–002 and CP89–363–002, North Country Gas Pipeline Corporation
CAG–78.
Docket Nos. RP92–81–000 and 001, Texas Eastern Transmission Corporation
CAG–79.
Docket No. RP92–84–000, Panhandle Eastern Pipe Line Company
Docket No. CP92–83–000, Trunkline Gas Company
CAG–80.
Docket No. RP92–72–000, Carnegie Natural Gas Company
CAG–81.
Docket No. RP92–75–000, Northern Natural Gas Company
CAG–82.
Docket Nos. CP92–240–001 and CP92–241–001, Mojave Pipeline Company and Kern River Gas Transmission Company

Hydro Agenda

H–1.
Omitted

Electric Agenda

E–1.
Docket Nos. ER90–373–002, ER90–374–002, and ER90–390–002, Northeast Utilities Service Company. Order on rehearing
E–2.
Docket Nos. EC90–10–004, ER90–143–004, ER90–144–004, ER90–145–004 and EL90–9–004, Northeast Utilities Service Company (Re Public Service of New Hampshire). Opinion on request for briefing.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
(A)
Docket No. MG88–02–004, Algonquin Gas Transmission Company
Docket No. MG88–44–003, ANR Pipeline Company
Docket Nos. MG88–20–003 and 004, Arkla Energy Resources, division of Arkla, Inc.
Docket No. MG90–06–002, Canyon Creek Compression Company
Docket Nos. MG89–04–004 and 005, Carnegie Natural Gas Company
Docket No. MG88–53–003, CNG Transmission Corporation
Docket No. MG88–45–003, Colorado Interstate Gas Company
Docket No. MG88–03–004, Florida Gas Transmission Company
Docket No. MG90–04–002, Midwestern Gas Transmission Corporation
Docket Nos. MG88–12–003 and 005, Mississippi River Transmission Corporation
Docket No. MG89–14–002, Moraine Pipeline Company
Docket No. MG88–31–003, Natural Gas Pipeline Company of America
Docket No. MG88–35–004, Northern Border Pipeline Company
Docket No. MG88–07–004, Northern Natural Gas Company
Docket No. MG88–55–004, Panhandle Eastern Pipeline Company
Docket No. MG88–15–003, Southern Natural Gas Company
Docket No. MG91–02–002, Southwest Gas Storage Company
Docket No. MG90–06–002, Stingray Pipeline Company
Docket No. MG88–19–004, Tennessee Gas Pipeline Company
Docket No. MG88–26–004, Texas Eastern Transmission Corporation
Docket No. MG88–47–003, Texas Gas Transmission Corporation
Docket No. MG90–07–002, Trailblazer Pipeline Company
Docket No. MG88–09–004, Transwestern Pipeline Company
Docket No. MG88–54–003, Trunkline Gas Company
Docket No. MG90–03–002, Trunkline LNG Company
Docket No. MG88–05–004, United Gas Pipe Line Company
Docket No. MG88–50–003, Williams Natural Gas Company. Order on rehearing and clarification concerning Order No. 497 filings.
(B)
Docket No. MG88–02–003, Algonquin Gas Transmission Company
Docket No. MG90–06–001, Canyon Creek Compression Company
Docket No. MG88–53–002, CNG Transmission Corporation
Docket No. MG89–11–004, Columbia Gas Transmission Corporation
Docket No. MG89–10–002, Columbia Gulf Transmission Company
Docket No. MG91–04–000, East Tennessee Natural Gas Company
Docket No. MG89–13–002, Green Canyon Pipe Line Company
Docket No. MG91–01–001, National Fuel Gas Supply Corporation
Docket No. MG90–02–001, Ohio River Pipeline Company
Docket No. MG88–55–003, Panhandle Eastern Pipeline Company
Docket No. MG88–11–001, Questar Pipeline Company
Docket No. MG88–06–003, Sea Robin Pipeline Company
Docket No. MG91–02–001, Southwest Gas Storage Company
Docket No. MG90–08–001, Stingray Pipeline Company
Docket No. MG88–19–003, Tennessee Gas Pipeline Company
Docket No. MG88–26–003, Texas Eastern Transmission Corporation
Docket No. MG90–07–001, Trailblazer Pipeline Company
Docket Nos. MG88–51–001 and 002, Transcontinental Gas Pipe Line Corporation
Docket No. MG88–54–002, Trunkline Gas Company
Docket No. MG90–03–001, Trunkline LNG Company
Docket No. MG88–05–003, United Gas Pipeline Company
Docket No. MG88–13–004, Valero Interstate Transmission Company
Docket No. MG90–11–002, Viking Gas Transmission Company. Order concerning Order No. 497 filings.
(C)
Docket No. MG89–16–001, Caprock Pipeline Company
Docket No. MG88–04–004, Mid Louisiana Gas Company
Docket No. MG88–08–003, MIGC, Inc.
Docket No. MG88–23–001, Superior Offshore Pipeline Company
Docket No. MG88–24–002, Texas Sea Rim Pipeline, Inc.
Docket No. MG88–33–003, Valley Gas Transmission Company. Order concerning Order No. 497 filings.
(D)
Docket No. MG92–1–000, Iroquois Gas Transmission System, L.P. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(E)
Docket No. MG92–2–000, Michigan Gas Storage Company. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(F)
Docket No. MG90–004–001, Midwestern Gas Transmission. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(G)
Docket No. MG91–05–000, Overthrust Pipeline Company. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(H)
Docket No. MG89–10–003, Seagull Interstate Corporation. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(I)
Docket No. MG88–47–002, Texas Gas Transmission Company. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(J)
Docket No. MG91–06–000, Wyoming Interstate Company, Ltd. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
PR–2.
Docket Nos. RP91–41–001, 002, RP91–90–000 and 001, Columbia Gas Transmission Corporation. Order on rehearing.
PR–3.
Docket Nos. TQ89–1–46–033, RP86–165–012, RP86–166–017 and CP90–1984–000, Kentucky West Virginia Gas Company.
Docket No. CP90–1985–000, Columbia Gas Transmission Corporation. Order on rehearing.

II. Producer Matters

PF-1.

Reserved

III. Pipeline Certificate Matters

PC-1.

Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 92-2067 Filed 1-23-92; 2:38 pm]

BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Matters To Be Added to the Agenda for Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matters will be added to the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m. on Tuesday, January 28, 1992, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.:

Memorandum re: FICO Industry Semi-Annual Assessment of Savings Association Insurance Fund Members.

Memorandum re: Definition of Highly Leveraged Transactions.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: January 23, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-2027 Filed 1-23-92; 2:20 pm]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of January 20, 1992.

A closed meeting will be held on Friday, January 24, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Friday, January 24, 1992, at 2:30 p.m., will be:

Regulatory matter regarding financial institution.

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jonathan Gottlieb at (202) 272-2200.

Dated: January 22, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-2028 Filed 1-23-92; 2:21 pm]

BILLING CODE 8010-01-M

UNITED STATES INSTITUTE OF PEACE

DATE: January 30, 1992.

TIME: 9:00 a.m. to 5:30 p.m.

LOCATION: 1550 M Street, N.W. (ground floor conference room), Washington, D.C.

STATUS: (Open session)—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub Law. (98-525).

AGENDA: (Tentative)—Consideration of the minutes of the fiftieth meeting of the Board of Directors; Chairman Report; President's Report; Board Committee Reports.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, telephone 202/457/1700.

Dated: January 22, 1992.

Ms. Bernice J. Carney,

Director, Office of Administration, United States Institute of Peace.

[FR Doc. 92-2055 Filed 1-23-92; 2:22 pm]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 58, No. 17
Monday, January 27, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN-91-002]

Amendment to the Cotton Board Rules and Regulations

Correction

In proposed rule document 91-30001 beginning on page 65450 in the issue of Tuesday, December 17, 1991, make the following corrections:

1. On page 65450, in the third column, in the third full paragraph, in the fourth line, "$43,075,853" should read "$41,075,853".

2. On page 65451, in the first column, in the fourth full paragraph, in the third line, insert "serve" after "would"; and in the second line from the bottom, insert the phrase "of compliance, or in cases when the importer seeks an exemption" after "evidence".

§ 1205.510 [Corrected]

3. On page 65456, in § 1205.510(b)(3), in the second column of the page:

a. In the 3rd column of the table (Cents/KG.), 13 lines from the bottom, "0.6465" should read "0.6454".

b. In the first column of the table (HTS classification), five lines from the bottom, "6100303045" should read "6110303045"

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Part 130

[Docket No. 91-135]

RIN 0579-AA43

User Fees--Agricultural Quarantine and Inspection Services, Phytosanitary Certificates, Animal Quarantine Services, Veterinary Diagnostics, Export Health Certificates

Correction

In rule document 92-536 beginning on page 755 in the issue of Thursday, January 9, 1992, make the following correction:

On page 766, in the first column, in the fourth full paragraph, in the eighth line, after "export" insert "health certificates might be such a potential situation. Many export health".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-194]

Importation of Apricots, Persimmons, and Pomegranates From Sonora, Mexico

Correction

In proposed rule document 92-535 beginning on page 846 in the issue of Thursday, January 9, 1992, make the following correction:

On page 846, in the second column, under **SUPPLEMENTARY INFORMATION:**, in the third full paragraph, in the ninth line, after "Empalme," insert "Guaymas".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Massachusetts Institute of Technology, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 91-30091 appearing on page 65466 in the issue of Tuesday, December 17, 1991, in the third column, in the eighth line from the top, "Co_2" should read "CO_2".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-4214-10; WYW 47613]

Termination of Segregative Effect of Withdrawal Application; Wyoming

Correction

In the issue of Tuesday, November 26, 1991, beginning on page 59979, in the correction of notice document 91-25383, on page 59980, in the first column, in fourth line, "63" should read "83".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60-250

RIN 1215-AA73

Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era; Amendment of the Definition of Vietnam Era Veteran

Correction

In rule document 91-31334 appearing on page 498 in the issue of Monday, January 6, 1992, in the first column, in the next to last line, "Public Law 201-16," should read "Public Law 102-16,".

BILLING CODE 1505-01-D

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 171

[Docket No. 24456; Amendment Nos. 71-14 and 171-16]

RIN 2120-AB95

Airspace Reclassification

Correction

In rule document 91-29869 beginning on page 65638 in the issue of Tuesday, December 17, 1991, make the following corrections:

§ 71.77 [Corrected]

1. On page 65658, in the third column, in § 71.77(b)(1), in the first line, insert "(b)" after "paragraph".

§ 171.271 [Corrected]

2. On page 65685, in the second column, in § 171.271, insert five stars above paragraph (e).

BILLING CODE 1505-01-D

federal register

Monday
January 27, 1992

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3610
Mineral Materials Disposal; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3610

[AA-650-01-4142-02]

RIN 1004-AB76

Mineral Materials Disposal

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the mineral materials sales regulations of the Bureau of Land Management (BLM) to provide longer terms for sales contracts and to allow extensions of such contracts for one additional term.

DATES: Comments should be submitted by March 27, 1992. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule. Comments should be sent to:

Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240.

Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Durga N. Rimal (202) 208-4147.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 43 CFR part 3610 in order to facilitate purchase and development of federal mineral materials, principally construction aggregates, by private industry. The existing regulations are unnecessarily restrictive and only allow a maximum 10-year term, with no renewal provisions, for mineral material sales. (Extension of one year may be granted for delays caused due to circumstances beyond the control of the permittee.) The proposed rule would provide that competitive contracts for the sale of mineral materials may be made for up to 15 years, and, upon payment of the full original contract amount, and upon reappraisal, could be extended for a maximum period of another 15 years to purchase additional amounts of material from the original contract site. Experience has demonstrated that 10 years is often insufficient to develop materials sites on a scale large enough to be economic. It is likely that 15 years is sufficient for complete development of most economic sites, but allowing an extension should guarantee such development.

A provision would be added to allow the BLM to segregate tracts of land from mining claim location for a period of 2 years if the tracts are offered for competitive mineral materials sales. The segregation is needed to prevent location of mining claims while sales are being processed. Existing regulations, which are not affected by this proposed rule, do not allow sale of mineral materials from lands encumbered with mining claims.

Other changes would be made as to bonding and installment payment requirements to reduce unnecessary financial burdens on the public, while assuring that the amount of bond required is not less than that needed to accomplish the projected reclamation work, and that the initial payment is not unreasonable for large scale and long term contracts. The regulations would be further amended to allow certificates of deposit issued by Federally insured financial institutions to be used as bonds. Such certificates of deposit would be held by the BLM. Accrued interest would be returned to the purchaser.

The principal author of this proposed rule is Dr. Durga N. Rimal of the Division of Mining Law and Salable Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, item 1.10, and that the proposal would not significantly affect the ten criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The proposed rule would have little effect on costs or prices for consumers, nor would there be a need for increasing Federal, State, or local agency budget or personnel requirements. Greater demand for the Federal mineral materials would occur as the purchasers would be able to obtain long-term tenure of the resources. However, the economic impact should be minor. There should be an indirect positive impact on mining and processing operations due to economy and productivity increases resulting from extended operations. The proposed rule will not have a gross annual effect on the economy of more than $100 million, nor will it cause major increases in costs or prices for any private or government sector of the economy.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. The BLM issues or manages an estimated 1,900 mineral material sales contracts per year, valued at $2.8 million. The percentage of small entities involved in these contracts is unknown; small entities such as subcontractors and local construction companies are well represented. The proposal favors no demographic group, imposes no direct or indirect costs on small entities, and does not change the application process and requirements for contract issuance, which do not favor or disfavor small entities.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule will result in no taking of private property. As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirement contained in this rule has been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be

required until it has been approved by the Office of Management and Budget.

List of Subjects for 43 CFR Part 3610

Government contracts, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Under the authorities cited below, part 3610, group 3600, subchapter C, chapter II, subtitle B, title 43 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3610—SALES [AMENDED]

1. The authority citation for 43 CFR part 3610 continues to read as follows:

Authority: Minerals Management Act of July 31, 1947, as amended (30 U.S.C. 601, 602).

1a. Section 3610.0–9 is added to read as follows:

§ 3610.0–9 Information collection.

(a) The collections of information contained in subpart 3610 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0103. The information will be used to determine whether mineral materials sales contracts should be issued or extended. Response is required to obtain a benefit in accordance with 30 U.S.C. 601, 602.

(b) Public reporting burden for this information is estimated to average 0.25 per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (783), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0103, Washington, DC 20503.

Subpart 3610—Mineral Material Sales [Amended]

2. Section 3610.1–3 is amended by revising the introductory text of paragraph (a)(3) to read as follows:

§ 3610.1–3 Payments and termination by agreement.

(a) * * *

(3) May, when the sale exceeds $2,000, make installment payments of not less than $500 or 5 percent of the total purchase price, whichever is greater, and shall: (i) * * *

3. Section 3610.1–5 is amended by redesignating paragraphs (c)(2) and (c)(3) as (c)(3) and (c)(4), respectively, and by revising paragraph (a) and adding paragraph (c)(2) to read as follows:

§ 3610.1–5 Performance and reclamation bonds.

(a) The authorized officer will require, for contracts of $2,000 or more, performance and reclamation bonds, as follows:

(1) A performance bond of no less than 5 percent of total contract value.

(2) A reclamation bond of no less than $500 or an amount adequate to accomplish reclamation to the standards provided for in the contract or permit, whichever is greater. Where contract sales or permits are made from a community pit and a reclamation fee is paid by the permittee, no reclamation bond is required.

* * * * *

(c) * * *

(2) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, not in excess of the maximum insurable amount as set by the Federal Deposit Insurance Corporation, made payable to or assigned to the United States, explicitly granting the authorized officer full authority to demand immediate payment in case of default in the performance of the terms and conditions of the contract or permit, and otherwise conforming to the instructions of the authorized officer. The certificate shall explicitly indicate on its face that the authorized officer's approval is required prior to redemption of the certificate of deposit by any party;

* * * * *

4. Section 3610.3–1 is amended by adding paragraph (c) to read as follows:

§ 3610.3–1 General.

* * * * *

(c) Tracts being considered for competitive sale of mineral materials, either through application or on the initiative of the authorized officer, may be segregated from sale, location, or entry under the public land laws, including the mining laws, upon publication of a notice of segregation in the **Federal Register**. Such segregation shall continue for 2 years from the date of publication, unless the segregative effect is terminated sooner by publication of a notice in the **Federal Register**.

§ 3610.3–6 [Amended]

5. Section 3610.3–6 is amended by removing the term "10 years" and inserting instead "15 years", and by adding at the end of the section a comma and the words "or contract renewal."

6. Section 3610.3–7 is added to read as follows:

§ 3610.3–7 Contract renewal.

When the United States has received the full contract price for the purchased mineral material, the permittee may apply for extension of the contract to purchase additional material that may be available at the contract site. The request for contract extension shall be submitted at least 90 days prior to the expiration of the contract. No specific form is required. So long as all of the requirements of this paragraph are met, a one-time extension of the initial contract shall be granted by the authorized officer for a maximum additional term of 15 years. No extension may be granted without reappraisal as provided in § 3610.1–2. Prior to the extension of the contract the permittee may be required to increase or decrease the amount of the reclamation and performance bond as prescribed in § 3610.1–5, and to adopt measures to insure the prevention of unnecessary or undue degradation of the land pursuant to § 3601.1–3 of this part.

Dated: November 19, 1991.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92–1764 Filed 1–24–92; 8:45 am]

BILLING CODE 4310–84–M

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January 27, 1992

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Indoor Air Pollutants; Request for Information; Proposed Rule

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–122]

RIN 1218–AB37

Occupational Exposure to Indoor Air Pollutants; Request for Information

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of extension of the comment period.

SUMMARY: The Occupational Safety and Health Administration (OSHA) published a Request for Information on Indoor Air Pollutants on September 20, 1991 (56 FR 47892). The comment period was 120 days, ending on January 21, 1992. A written request to extend the comment period 60 days was received on January 15, 1992. The comment period is being extended for this 60 day period.

DATES: Comments should be postmarked on or before March 20, 1992.

ADDRESSES: Comments should be submitted in quadruplicate to the Docket Officer, Docket No. H–122, room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 523–7894.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Office of Public Affairs, room N–3649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 523–8151.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1991 OSHA published a Request for Information (RFI) on indoor air quality issues. The issues on which comment is requested are organized into five broad categories: (1) Definition of and Health Effects Pertaining to Indoor Air Quality; (2) Monitoring and Exposure Assessment; (3) Controls; (4) Local Policies and Practices; and (5) Potential Content of Regulation. Specifically, information is requested on the definition of and the health effects attributable to poor indoor air quality; ventilation systems performance; protocols for assessing indoor air quality; mitigation methods; building maintenance programs; and the potential contents of a regulation should the Agency determine that such action is appropriate.

Extension of the Comment Period

OSHA received a written request to extend the comment period 60 days on its Request for Information (RFI) on Indoor Air Quality issues. The requestor found that the amount and complexity of information requested in the RFI could not be adequately addressed in the amount of time originally given (120 days). The Agency agreed to the request for additional time. Comments should be postmarked no later than March 20, 1992.

Authority and Signature

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 stat. 1593; 29 U.S.C. 655)

Signed at Washington, DC, this 21st day of January 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

[FR Doc. 92–1827 Filed 1–24–92; 8:45 am]

BILLING CODE 4510–26–M

federal register

Monday
January 27, 1992

Part IV

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for September 1991

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ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-53147; FRL 4044-4]

Premanufacture Notices; Monthly Status Report for September 1991

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for September 1991.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Docket Office NE-G004 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "(OPPTS-53147)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. EB-44, 401 M St., SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during September; (b) PMNs received previously and still under review at the end of September; (c) PMNs for which the notice review period has ended during September; (d) chemical substances for which EPA has received a notice of commencement to manufacture during September; and (e) PMNs for which the review period has been suspended. Therefore, the September 1991 PMN Status Report is being published.

Dated: January 21, 1992.

Ruby N. Boyd,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

Premanufacture Notice Monthly Status Report for SEPTEMBER 1991.

I. 125 Premanufacture notices and exemption requests received during the month:

PMN No.

P 91-1370	P 91-1371	P 91-1372	P 91-1373
P 91-1374	P 91-1375	P 91-1376	P 91-1377
P 91-1378	P 91-1379	P 91-1380	P 91-1381
P 91-1382	P 91-1383	P 91-1384	P 91-1385
P 91-1386	P 91-1387	P 91-1388	P 91-1389
P 91-1390	P 91-1391	P 91-1392	P 91-1393
P 91-1394	P 91-1395	P 91-1396	P 91-1397
P 91-1398	P 91-1399	P 91-1400	P 91-1401
P 91-1402	P 91-1403	P 91-1404	P 91-1405
P 91-1406	P 91-1407	P 91-1408	P 91-1409
P 91-1410	P 91-1411	P 91-1412	P 91-1413
P 91-1414	P 91-1415	P 91-1416	P 91-1417
P 91-1418	P 91-1419	P 91-1420	P 91-1421
P 91-1422	P 91-1423	P 91-1424	P 91-1425
P 91-1426	P 91-1427	P 91-1428	P 91-1429
P 91-1430	P 91-1431	P 91-1432	P 91-1433
P 91-1434	P 91-1435	P 91-1436	P 91-1437
P 91-1438	P 91-1439	P 91-1440	P 91-1441
P 91-1442	P 91-1443	P 91-1444	P 91-1445
P 91-1446	P 91-1447	P 91-1448	P 91-1449
P 91-1450	P 91-1451	P 91-1452	P 91-1453
P 91-1454	P 91-1455	P 91-1456	P 91-1457
P 91-1458	P 91-1459	P 91-1460	P 91-1461
P 91-1462	P 91-1463	P 91-1464	P 91-1465
Y 91-0214	Y 91-0215	Y 91-0216	Y 91-0217
Y 91-0218	Y 91-0219	Y 91-0220	Y 91-0221
Y 91-0222	Y 91-0223	Y 91-0224	Y 91-0225
Y 91-0226	Y 91-0227	Y 91-0228	Y 91-0229
Y 91-0230	Y 91-0231	Y 91-0232	Y 91-0233
Y 91-0234	Y 91-0235	Y 91-0236	Y 91-0237
Y 91-0238	Y 91-0239	Y 91-0240	Y 91-0241
Y 91-0242			

II. 313 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 83-0237	P 84-0660	P 85-0433	P 85-0619
P 85-1184	P 86-1489	P 86-1607	P 87-0105
P 87-0323	P 87-0502	P 87-1072	P 88-0031
P 88-0998	P 88-1271	P 88-1272	P 88-1273
P 88-1274	P 88-1682	P 88-1753	P 88-1807
P 88-1809	P 88-1811	P 88-1937	P 88-1938
P 88-1980	P 88-1982	P 88-1984	P 88-1985
P 88-1999	P 88-2000	P 88-2001	P 88-2100
P 88-2169	P 88-2196	P 88-2212	P 88-2213
P 88-2228	P 88-2229	P 88-2230	P 88-2236
P 88-2484	P 88-2518	P 88-2529	P 89-0089
P 89-0090	P 89-0091	P 89-0254	P 89-0321
P 89-0385	P 89-0386	P 89-0387	P 89-0396
P 89-0538	P 89-0676	P 89-0697	P 89-0721
P 89-0775	P 89-0836	P 89-0837	P 89-0867
P 89-0957	P 89-0958	P 89-0959	P 89-0963
P 89-1038	P 89-1058	P 90-0002	P 90-0009
P 90-0158	P 90-0159	P 90-0211	P 90-0237
P 90-0248	P 90-0249	P 90-0260	P 90-0261
P 90-0262	P 90-0263	P 90-0372	P 90-0441
P 90-0550	P 90-0564	P 90-0581	P 90-0603
P 90-0608	P 90-0707	P 90-1280	P 90-1311
P 90-1318	P 90-1319	P 90-1320	P 90-1321
P 90-1322	P 90-1358	P 90-1422	P 90-1464
P 90-1511	P 90-1527	P 90-1528	P 90-1529
P 90-1530	P 90-1531	P 90-1564	P 90-1592
P 90-1624	P 90-1687	P 90-1718	P 90-1720
P 90-1722	P 90-1723	P 90-1745	P 90-1797
P 90-1840	P 90-1893	P 90-1937	P 90-1965
P 90-1984	P 90-1985	P 91-0004	P 91-0051
P 91-0101	P 91-0102	P 91-0107	P 91-0108
P 91-0109	P 91-0110	P 91-0111	P 91-0112
P 91-0113	P 91-0118	P 91-0177	P 91-0178
P 91-0179	P 91-0180	P 91-0222	P 91-0228
P 91-0230	P 91-0231	P 91-0232	P 91-0233
P 91-0242	P 91-0243	P 91-0244	P 91-0245
P 91-0246	P 91-0247	P 91-0248	P 91-0288
P 91-0328	P 91-0358	P 91-0391	P 91-0442
P 91-0464	P 91-0465	P 91-0466	P 91-0467
P 91-0468	P 91-0469	P 91-0470	P 91-0471
P 91-0472	P 91-0487	P 91-0490	P 91-0501
P 91-0503	P 91-0514	P 91-0521	P 91-0532
P 91-0548	P 91-0572	P 91-0584	P 91-0600
P 91-0619	P 91-0659	P 91-0665	P 91-0666
P 91-0688	P 91-0689	P 91-0701	P 91-0732
P 91-0763	P 91-0818	P 91-0826	P 91-0827
P 91-0831	P 91-0853	P 91-0902	P 91-0903
P 91-0905	P 91-0912	P 91-0914	P 91-0915
P 91-0934	P 91-0939	P 91-0940	P 91-0941
P 91-0966	P 91-1000	P 91-1009	P 91-1010
P 91-1011	P 91-1012	P 91-1013	P 91-1014
P 91-1015	P 91-1016	P 91-1017	P 91-1018
P 91-1019	P 91-1020	P 91-1021	P 91-1022
P 91-1023	P 91-1024	P 91-1025	P 91-1026
P 91-1027	P 91-1028	P 91-1029	P 91-1030
P 91-1031	P 91-1032	P 91-1033	P 91-1034
P 91-1035	P 91-1036	P 91-1037	P 91-1038
P 91-1039	P 91-1040	P 91-1041	P 91-1042
P 91-1043	P 91-1044	P 91-1045	P 91-1046
P 91-1047	P 91-1048	P 91-1049	P 91-1050
P 91-1051	P 91-1052	P 91-1053	P 91-1054
P 91-1055	P 91-1056	P 91-1057	P 91-1058
P 91-1059	P 91-1060	P 91-1061	P 91-1062
P 91-1063	P 91-1064	P 91-1065	P 91-1066
P 91-1067	P 91-1068	P 91-1069	P 91-1070
P 91-1071	P 91-1072	P 91-1073	P 91-1074
P 91-1075	P 91-1077	P 91-1116	P 91-1117
P 91-1118	P 91-1131	P 91-1153	P 91-1161
P 91-1162	P 91-1163	P 91-1190	P 91-1191
P 91-1208	P 91-1210	P 91-1231	P 91-1232
P 91-1233	P 91-1234	P 91-1235	P 91-1239
P 91-1240	P 91-1243	P 91-1250	P 91-1269

P 91-1279 P 91-1280 P 91-1281 P 91-1282
P 91-1283 P 91-1288 P 91-1289 P 91-1296
P 91-1297 P 91-1298 P 91-1299 P 91-1305
P 91-1321 P 91-1322 P 91-1323 P 91-1324
P 91-1328 P 91-1338 P 91-1346 P 91-1347
P 91-1361 P 91-1364 P 91-1367 P 91-1368
P 91-1369

III. 137 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the inventory).

PMN No.

P 87-1555 P 89-0589 P 89-0977 P 89-0978
P 89-0979 P 89-0980 P 90-1731 P 90-1732
P 90-1973 P 91-0043 P 91-0085 P 91-0091
P 91-0145 P 91-0774 P 91-0775 P 91-0854
P 91-0855 P 91-0856 P 91-0857 P 91-0858
P 91-0859 P 91-0860 P 91-0861 P 91-0866
P 91-1080 P 91-1081 P 91-1082 P 91-1083
P 91-1084 P 91-1085 P 91-1087 P 91-1088
P 91-1089 P 91-1090 P 91-1091 P 91-1092
P 91-1093 P 91-1094 P 91-1095 P 91-1096
P 91-1097 P 91-1098 P 91-1099 P 91-1100
P 91-1103 P 91-1104 P 91-1105 P 91-1106
P 91-1107 P 91-1108 P 91-1109 P 91-1110
P 91-1111 P 91-1112 P 91-1113 P 91-1114
P 91-1115 P 91-1119 P 91-1120 P 91-1121
P 91-1130 P 91-1132 P 91-1133 P 91-1134
P 91-1135 P 91-1136 P 91-1137 P 91-1138
P 91-1139 P 91-1140 P 91-1141 P 91-1142
P 91-1144 P 91-1145 P 91-1146 P 91-1147
P 91-1148 P 91-1149 P 91-1150 P 91-1151
P 91-1152 P 91-1154 P 91-1155 P 91-1156
P 91-1157 P 91-1158 P 91-1159 P 91-1160
P 91-1165 P 91-1166 P 91-1167 P 91-1168
P 91-1169 P 91-1170 P 91-1171 P 91-1172
P 91-1174 P 91-1175 P 91-1176 P 91-1177
P 91-1178 P 91-1179 P 91-1180 P 91-1181
P 91-1182 P 91-1183 P 91-1184 P 91-1185
P 91-1186 P 91-1187 P 91-1188 P 91-1189
P 91-1192 P 91-1193 P 91-1194 P 91-1196
P 91-1201 P 91-1202 Y 91-0200 Y 91-0201
Y 91-0202 Y 91-0203 Y 91-0204 Y 91-0205
Y 91-0206 Y 91-0207 Y 91-0208 Y 91-0209
Y 91-0210 Y 91-0211 Y 91-0212 Y 91-0213
Y 91-0214 Y 91-0215 Y 91-0216 Y 91-0217
Y 91-0218

IV. 63 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/Generic Name	Date of Commencement
P 83-0835	G Substituted benzoate salt	February 8, 1984.
P 85-0783	G Chlorinated cyclic olefin/polydiene adduct	August 2, 1991.
P 86-0501	G Aromatic diamine	August 7, 1989.
P 86-1489	G 19 C_n (och2 ch2)yoch2och2ch-oh	August 23, 1988.
P 87-1122	G Substituted morpholine	March 6, 1989.
P 87-1553	G Substituted triphenylmethane	January 5, 1989.
P 88-0003	G Modified styrene copolymer	February 1, 1988.
P 88-0178	1,1-Bis (*P*-diethylaminophenyl)-4,4-diphenyl-1,3-butadiene	August 10, 1991.
P 88-1460	G 2,5-Dimercapto-1,3,4-thiadiazole reaction product	January 4, 1990.
P 88-1914	Methyl quaternary of oxyethylated triethylenetetramine	July 22, 1991.
P 88-2169	G Cationic terpolymer of acrylamide	July 10, 1990.
P 88-2179	G Aliphatic epoxy monomer	July 31, 1991.
P 88-2181	G Aliphatic epoxy monomer	July 23, 1991.
P 89-0236	4-Dibenzylamino-2-methyl benzidehyde-diphenyl hydrazone	August 10, 1991.
P 89-0680	G Polycycloaliphatic esters	September 14, 1991.
P 89-0788	G Heterocylic substituted alkyl amine	October 13, 1989.
P 89-1044	G Aromatic pyromellitic tetrapolymide	August 8, 1991.
P 90-0220	G Silicone glycol	July 27, 1991.
P 90-0670	G Modified diphenylmethane diisocyanate	August 4, 1991.
P 90-0691	G Salts of acrylate-aromatic polymers	November 2, 1990.
P 90-1289	2-Nitro-4-methoxyphenyl-1-(2-naphthoxy-3-benzo toluidide) azo	August 19, 1991.
P 90-1364	G Fatty acidamine-organic salt	July 9, 1991.
P 90-1609	2,5-Dibutoxy-4-(4-morpholinyl)benzenamine H2SO4)X	August 6, 1991.
P 90-1629	G Styrene acrylic latex	July 31, 1991.
P 90-1920	G Polyester	June 27, 1991.
P 90-1956	G Acrylic solution resin	August 5, 1991.
P 90-1992	G Butylene oxide/ethylene oxide copolymer	August 7, 1991.
P 91-0068	Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, methyl esters	March 8, 1991.
P 91-0141	G Copolyester	August 3, 1991.
P 91-0151	G Alcohol, alkali metal salt	February 26, 1991.
P 91-0204	G Disubstituted pyridinium bromide	July 10, 1991.
P 91-0223	G Aliphatic diamine	July 15, 1991.
P 91-0238	G Phenolic epoxide sulfonamide	July 14, 1991.
P 91-0318	G 2-(Hydroxymethyl)-2-methyl-1,3-propanediol triester	July 9, 1991.
P 91-0348	G Organometallic compound	July 8, 1991.
P 91-0361	G Styrenated amino acrylated copolymer	August 8, 1991.
P 91-0382	G Unsaturated, cyclic siloxane polymers	August 5, 1991.
P 91-0385	4-Hexennitrile, 2-methyl-2-benzyl	July 31, 1991.
P 91-0411	*N,N,N',*"N"-tetraglycidyl-4,4-methylene bis(2-ethylbenzenamine	August 8, 1991.
P 91-0487	G Carbamine derivative	July 22, 1991.
P 91-0496	G Poly-peridinyl siloxane	August 10, 1991.
P 91-0551	G Glycidyl azide polymer	July 15, 1991.
P 91-0553	G Condensation polymer, of an aromatic sulfonic acid, urea aliphatic aldehyde and a cyclic acid amine salt	July 31, 1991.
P 91-0605	G Hydroxy modified resin	July 2, 1991.
P 91-0608	G Alkyl chloride	July 9, 1991.
P 91-0646	G Polysubstituted acrylic copolymer latex	July 25, 1991.
P 91-0664	4,4'-Methylene bis benzene amine, polymer with (2-methylphenoxy)methyl oxirane and 4,4'-(methylethylidiene)bisphenol polymer with (choromethyl) oxirane	July 11, 1991.
P 91-0720	G Modified rosin ester amide	July 26, 1991.
P 91-0741	G Acrylic copolymer	July 12, 1991.
P 91-0758	G Epoxy adduct	July 31, 1991.
P 91-0761	G Reaction product of poly alkyl amines and alkyl substituted phenolic amines	August 6, 1991.
P 91-0787	G Acrylonitrile copolymer	August 1, 1991.

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IV. 63 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 91-0788	G Acrylonnitrile copolymer	August 1, 1991.
P 91-0808	G Modified alkyd resin	August 7, 1991.
P 91-0837	G Aromatic polyether polyurethane	August 2, 1991.
P 91-0884	G Polyester resin solution	August 13, 1991.
Y 89-0216	G Polyether block polyamide copolymer	July 25, 1991.
Y 89-0040	G Aralkyl polyester diol	April 3, 1991.
Y 89-0041	G Aromatic polyester urethane	January 12, 1990.
Y 89-0154	G Tall oil fatty acid modified polyester	August 1, 1991.
Y 90-0196	G Oxyalkylated resin ester	August 7, 1991.
Y 90-0239	G Polycycloaliphatic alkyl esters	August 19, 1991.
Y 91-0115	2,5-Furanediene/ethoxyethene copolymer	July 22, 1991.

V. 26 Premanufacture notices for which the period has been suspended.

PMN No.

P 89-1038 P 91-0831 P 91-0936 P 91-0937
P 91-1066 P 91-1101 P 91-1102 P 91-1116
P 91-1117 P 91-1118 P 91-1131 P 91-1141
P 91-1143 P 91-1153 P 91-1161 P 91-1162
P 91-1163 P 91-1164 P 91-1173 P 91-1190
P 91-1191 P 91-1270 P 91-1271 P 91-1272
P 91-1273 P 91-1274

[FR Doc. 92-1902 Filed 1-24-92; 8:45 am]
BILLING CODE 6560-50-F

federal register

Monday
January 27, 1992

Part V

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 256

Housing Improvement Program; Final Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 256

RIN 1076-AC22

Housing Improvement Program

October 25, 1991.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is issuing a final rule revising the regulations of the Housing Improvement Program (HIP) in accordance with the requirements of HIP as a construction program for the needy. These regulations also establish standard formulas to be applied in the selection and development of priority lists of eligible applicants.

EFFECTIVE DATE: February 26, 1992.

FOR FURTHER INFORMATION CONTACT: Marvin D. Morgan, Chief, Division of Housing Assistance, Bureau of Indian Affairs, Mailstop 4640-MIB, 1849 C Street, NW., Washington, DC 20240. Telephone (202) 208-5427.

SUPPLEMENTARY INFORMATION: The authority to issue these rules and regulations is vested in the Secretary of the Interior by 25 U.S.C. 2 and 9. This final rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in 209 DM 8. Congressional direction contained in the FY 1984 Department of the Interior and Related Agencies Appropriation Conference Report directed the Bureau to develop a program which is more cost-effective and which meets identified housing needs.

In response to the above directive, the Bureau developed a new system to achieve the results intended. The new system was developed by a team of Bureau and tribal personnel over an extended period of time. The system was presented and discussed with tribal officials across the country. Tribal input, comments and recommendations were considered for incorporation into the proposed system.

The system is consistent with the emphasis on the government-to-government relationship between the federally recognized tribes and the federal government. The tribes will develop and maintain an inventory of housing needs that will be certified by the tribal government. Funding distribution will be based on these inventories. Tribes are encouraged to contract the HIP under Pub. L. 93-638, the Indian Self-Determination and Education Assistance Act.

Prior to the redirect, many program administrators were not following the requirements to bring a house to a standard level when doing repairs. This resulted in a large number of homes being technically ineligible for second-time services while still remaining in a substandard condition. This condition is inconsistent with the intent of the program and the intent of the redirect. Therefore, the effective date prohibiting second-time service was changed to coincide with the date Congress proposed for the redirected program to be implemented.

A new distribution system for HIP funds was developed which is based upon a valid and consistent inventory of housing needs and planned program effort that addresses tribal housing needs on a long-range planned basis. The HIP Selection Criteria were developed as a corrective action to address the weakness identified by the Inspector General and the General Accounting Office in the tribal selection process of eligible applicants for HIP assistance. The Selection Criteria were reviewed and accepted by the Inspector General and the General Accounting Office.

Comments and Changes

A proposed rule to revise the regulations contained in 25 CFR part 256 was published for public comment in the **Federal Register** on Wednesday, September 12, 1990 (55 FR 37492). Interested persons were invited to submit comments by November 13, 1990. The period for commenting on the proposed rule to 25 CFR part 256 to implement the HIP as a construction program for needy Indians, and to establish standard formulas in the selection and the development of priority lists of eligible applicants, closed on November 13, 1990. Timely comments were received from 25 respondents.

Section 256.2 Definitions

One untimely response opposed the definition of "Indian". The definition in the proposed regulation is consistent with other programs, including the definition of Indian in the Indian Self-Determination and Education Assistance Act of 1975. Therefore, no change was made.

One respondent asked that the wording: "including participation in multiple ownership" be reinstated in the definition of ownership to permit the owner of an undivided interest in a tract to be able to participate in the program. This wording was deleted because it could be misleading, sometimes interpreted to mean an applicant with an undivided interest in a multiple ownership tract could use part of that tract for a house site. This is incorrect. The applicant must have documented sole possessory interest of the site on which the HIP house is to be constructed. Thus, the owner of an undivided interest would need to obtain sole interest, through partition, in a portion of the undivided ownership in order to participate in the HIP.

One comment suggested that under § 256.2 "standard housing", language should be added requiring all mechanical, electrical, and plumbing to be done by licensed technicians. The language contained in the proposed rule requires these systems to be installed and to meet the codes. Tribes have the flexibility to hire licensed technicians to perform the required work, but these professionals are often not available on Indian Reservations, particularly the more remote locations.

One comment under § 256.2(a) suggested that the word "General" should be changed to "All". "General construction" is a standard term used in the construction trade that includes all construction.

Section 256.3 Policy

One respondent recommended that § 256.3(c) include the language "a viable work plan and the tribe being in compliance with the intent of the program". The BIA finds the recommendation appropriate since distribution of HIP funds are not only based on a consistent, valid, and certified tribal inventory of housing needs, but on a reasonable and viable work plan based on the tribal priority list, and on the implementation of the program consistent with the rules and guidelines. Thus, § 256.3(c) is changed to reflect this recommendation. The sentence will read, "The general distribution of HIP funds among tribes is based on a consistent, valid, and certified inventory of tribal housing needs, a viable work plan, and the tribe being in compliance with the intent of the program".

One respondent felt the reference to the Indian Health Service (IHS) in § 256.4(a)(2) should be deleted since the IHS no longer provided services to Category A projects in their area. Since the BIA has an agreement with the IHS for provision of water and sanitation facilities for HIP housing, and this is the only reference in the regulations, language was added to § 256.3(c), which is applicable to all categories of HIP housing. The aforementioned reference

to § 256.4(a)(2) is therefore unnecessary and has been deleted.

Another respondent commented that the HIP funding distribution should be consistent with other Public Law 93–638 funding formulas, inventories should be updated continuously, and that housing needs will fluctuate during the contract period, allowing consistent funding from year to year. Unlike other BIA programs which base their funding allocation level on land base and/or population, the HIP cannot and should not use this method. The primary goal of HIP is to eliminate substandard housing conditions on Indian reservations and in Indian communities regardless of their size or population. Because HIP funds cannot be used for other purposes, it is most reasonable to distribute them on the basis of housing needs. No HIP funding should be distributed to any tribe that does not have a housing need, or if the housing need has been met.

At present, the tribal housing inventories of need are updated every two years. Based on these inventories, the HIP funds are distributed to each tribe depending on its proportion of those total needs. Because the components of a tribal housing inventory are constantly changing through birth, death, marriage, divorce, and other factors, tribes have the opportunity to update their housing inventories every two years to properly reflect their current housing needs. In addition, given the serious limitation of HIP funding compared to existing need, it would create an unnecessary administrative burden to change inventories and resultant funding levels on a continuous basis.

With regard to the consistent tribal funding from year to year, this is entirely dependent upon the funding amounts appropriated by Congress for HIP each fiscal year.

Section 256.3(d)

Several respondents pointed out the BIA funding responsibilities are different in Alaska. Because of the vast distance to isolated, remote sites, fewer resources are available, thus, the BIA recognizes that in Alaska 95% of repairs and 35% of new total housing needs should be considered for funding determination. Therefore, § 256.3(d) is changed to reflect this difference.

Section 256.4 Program Categories

Section 256.4(a)(1): One comment said that some tribes interpret "* * * until such time as standard housing is available", to mean that a Category A can be performed on a house; and then later, a Category B can also be performed to bring the house to standard condition. By using both cost limits, a total of $22,500 could be expended on one structure. This is a misunderstanding of the regulation. The paragraph heading clearly states, in italics, that this category is for "repairs that will remain nonstandard". The questioned part, "* * * until such time as standard housing is available", clearly indicates the intent of the category is to make the house" * * * safe, more sanitary and liverable * * * "until standard housing can be obtained through Category D, or another source such as an Indian housing authority. However, to further clarify this section, the words "needing replacement" have been added as suggested in the comment. The sentence should read: "Financial assistance will be granted to finance repairs and additions to existing substandard housing needing replacement so that it is safe, more sanitary, and livable until such time as other housing in standard condition is available".

Section 256.4(a)(2): Several comments requested that the category cost limit contained in § 256.4(a)(3) should be increased. With the emphasis of the HIP on Category B, Category A should be used very sparingly, if at all, and then it should be used properly. The language of this section is misleading and not consistent with the intent of the category. Therefore, the language has been changed to "weather tightening and the repair of doors, windows, roof, electrical wiring, plumbing, and chimney." The intent is to make essential repairs, not to replace or build new, as this structure should be demolished as soon as standard housing becomes available to replace it. Eliminating inflated costs from unnecessary or excessive repairs will allow repairs in this category to continue to be made within the current cost limitation. Therefore, no increase to this limit will be made.

Section 256.4(b): One comment states there should be square footage requirements for bedrooms and kitchens under this section. Square footage minimums for standard housing are given under § 256.2 (1) (2) and (3), which apply to categories B, C, and D. Section 256.4(b)(2) specifically states that HIP projects are to meet the requirements of standard housing as defined in § 256.2. However, judgement must be exercised in some cases of older houses with bedrooms not meeting the referenced minimum. It is generally impractical and unrealistic to expand a small bedroom of approximately 90 square feet with an addition which increases the room size to 100 square feet. There are no square footage requirements for kitchens, as building codes refer to cabinet space and work surface, but not the total kitchen size.

One comment states there should be a signed grant agreement for Category B requiring the grantee to repay the grant to the program if the house is sold after completion of the repairs. This concern is adequately addressed in § 256.4(b)(5).

The same respondent would like a similar grant agreement providing for maintenance responsibility by the grantee. A HIP grant is a onetime grant as described in § 256.6(b), precluding use of the HIP for maintenance of a house after the renovation/construction is completed. Maintenance is obviously the responsibility of the grantee. It would be better for the tribes to consider such an agreement with the grantee.

Several comments suggested that the cost limit in this category should be increased, due to inflationary effects on the cost of labor and material. A nationwide cost limit on a construction program is difficult to establish, because material and labor costs vary widely. Experience has indicated that a cost limit tends to become a target, thereby inflating the program costs, and reducing the number of needy Indians that can be helped by the very limited program funding. There is also a tendency to provide oversized houses, and/or amenities not appropriate for this program. Thus, a cost limit barely adequate to renovate a house to modest, standard condition in one area may be used to provide inappropriate and unnecessary amenities and luxuries in another area. While the inappropriate house may be within the national cost limit, the unnecessary expenditures would be better used to help needy Indians who must wait for another year or more. Since neither nationally recognized construction cost estimate guides nor BIA HIP cost averages indicate that an increase is warranted at this time, the cost limit for this category will not be increased.

One respondent proposed that the section allowing the repair of rented houses be restored to the regulation. This section was removed because of problems created by the reluctance of the owners to sign the required agreement, leading to abuse of the program, wasted HIP funding, and grantees not only losing their onetime grant, but often ending up in a worse situation. Applicants living in substandard rental housing should be considered for Category D units. This is a long-term solution instead of a temporary one.

One respondent spoke favorably of the payback requirement for the category, which is already used by some tribes. One respondent felt the payback should be prorated over the five-year period. The BIA disagrees, because the purpose of the payback is to prevent sale of the repaired house by the grantee for monetary gain.

Section 256.4(c): One respondent felt the statement, "Grants are only for standard housing" should be changed to "Grants are only for substandard housing". This change would violate the intent of the HIP. The intent of this category is to move people out of substandard housing into standard housing by providing grants to make them eligible for a loan to purchase or construct a standard house. The suggested change is not programmatically acceptable.

Several respondents felt this category cost limit should also be increased; however, the data indicates that the current limit is adequate.

Section 256.4(d)(1): One comment asked that manufactured housing be allowed under this section. Grants under this section are for the construction of new standard housing. The term "manufactured housing" is used to describe many different housing products; some meet the description of standard housing, but others do not. The term "manufactured housing" will not be used for purposes of this program, because of the potential misuse of the term. However, more latitude of delivery of standard housing may be provided by changing § 256.4(d)(1) as follows, "The HIP may provide a grant for the financing of the construction of a limited amount of new standard housing, either site-built or factory-built, when it is established that the applicant has been denied housing assistance from sources other than the HIP".

The term "manufactured housing" covers a wide range of housing units that can basically be placed into two groups: (1) Mobile or trailer, and (2) modular. For purposes of the HIP, all units with an integral frame to which axles and a hitch may be attached are considered to be mobile/trailer homes. As a group, units with this type of construction have proven unsatisfactory for low-income programs because of their fragile construction and difficulty of repair, which leads to high maintenance costs and a relatively short life. For these and other reasons, the BIA has determined that mobile/trailer units are not suitable for the HIP except under exceptional circumstances, which will be decided to be on a case-by-case basis.

For purposes of this program a modular house is a "stick-built" unit assembled in a factory in two or more sections. The sections are transported to the site and placed on a conventional foundation. The design and quality of these units varies widely, but they can be superior to on-site construction because of the controlled conditions in the factory setting. Units acceptable to the HIP are available, generally at a lower cost than on-site construction. These units are particularly advantageous in remote areas where skilled labor is virtually nonexistent and transportation costs of both labor and material are high. Because of the wide variance in design and construction, it is imperative that the plans and specifications be thoroughly examined, and construction methods be inspected before consideration of purchase.

Several respondents felt the cost limits for this category should also be increased. The BIA feels that neither nationally recognized construction cost estimate guides nor BIA HIP cost averages indicate that an increase is warranted at this time. The cost limit for this category will not be increased.

Section 256.4(d)(5): Paragraph (d)(5) of this section was placed in the proposed rule in an effort to prevent the abandonment of Category D houses. Funding is too short and the need too great to have new HIP houses standing vacant, to suffer vandalism, burst water pipes, and other hazards common to vacant structures. Questions arose as to the determination of abandonment or apparent abandonment, when the grantee might only be away seeking seasonal employment, or visiting away for extended periods. One respondent felt the provision was reasonable and good; another felt it was an intrusion into the grantee's private life. Because of difficulty in determining abandonment, the BIA feels it best to delete this paragraph at this time. Nonetheless, new or repaired HIP houses standing vacant raises the issue of wasted funds. Further study will be done to develop criteria for house abandonment.

Section 256.5 Application

One respondent felt that a declination from the tribe in which the applicant is enrolled should be required before determining eligibility for assistance by the tribe to which he/she applied. This is inconsistent with established policy of the HIP. Tribal HIP funding is based upon a valid, certified inventory of all Indian housing needs within a tribe's service area, regardless of tribal affiliations. To clarify the intent, the following sentence is added to this section: "Nonmember Indians apply for assistance through the tribe within whose jurisdiction his/her domicile is located".

Section 256.6 Eligibility

(b) Many respondents felt the date change should coincide with the date of implementation of the redirected HIP (October 1, 1986) instead of the date of notification to change the HIP (October 1, 1983). This is a logical argument, as many units assisted between those dates continued to be served in the same inadequate fashion that caused the redirected HIP to be implemented. However, many of the same respondents felt those served between July 1, 1975, and October 1, 1986, should be ranked lower than those eligible applicants who have never received any assistance through the HIP. It is recognized these houses were probably inadequately served, but applicants who were never served should have preference.

(c) It was felt that the language added to the last sentence of this paragraph to allow applicants who have not received any Federal housing assistance to be served before HUD participants get assistance a second-time, was excessively restrictive and became unnecessary upon inclusion of § 256.7(f) Factor No. 6 in the Selection Criteria. Thus, the words "* * * and only after housing needs identified on the HIP inventory of all eligible Indian have been met" have been deleted.

Section 256.8 Program Implementation

Respondents pointed out current implementation processes were excluded, and suggested that for clarify they be inserted (h) as follows:

(h) The HIP will serve those eligible applicants on an approved priority list. Design, construction, and repair of dwelling units may be accomplished through:

1. Direct grants to individual applicants,
2. Contracts with Indian tribes,
3. Contracts with private Indian or non-Indian contracting firms in accordance with normal BIA contract procedures, or
4. Programs administered directly by the BIA.

Waivers

Two respondents wanted waivers put back in these regulations. Waivers are adequately covered in 25 CFR 1.2.

Section 256.10 Appeals

One respondent wanted the term "Superintendent" put back in this section. However, not all locations are served by Superintendents. The change

reflects current situations in some locations.

Section 256.12

Some respondents pointed out that § 256.12 did not follow the language of §§ 256.3(a) and 256.5. This required a change to correct the error. The new language is, "Individuals who wish to participate in the HIP must contact the tribe in whose jurisdiction they reside, or the BIA office closest to applicant's residence".

The information collection requirements contained in § 256.5 HIP application, Form BIA 6407, have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq., and assigned clearance number 1076–0084. The information is being collected to obtain a benefit. Public reporting for this information collection is estimated to average 30 minutes per response which includes time reviewing instructions, gathering and maintaining data and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this form to Management Analyst, 1951 Constitution Avenue, NW., MS–357–SIB, Washington, DC 20245; and the Office of Management and Budget, Paperwork Reduction Project 1076–0084, Washington, DC 20503. The primary author of this document is A. Ronald Thurman, Housing Program Specialist, Division of Housing Assistance.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

Since this document does not constitute a major Federal action significantly affecting the quality of the human environment in accordance with the National Environmental Policy Act of 1969, no environmental assessment or impact statements are required.

List of Subjects in 25 CFR Part 256

Grant programs—home improvement, Indians, reporting, and recordkeeping requirements.

For the reasons set forth in the preamble, title 25, chapter I, subchapter K is amended by revising part 256, Housing Improvement Program, of the Code of Federal Regulations as follows:

PART 256—HOUSING IMPROVEMENT PROGRAM

Sec.

256.1 Purpose.
256.2 Definitions.
256.3 Policy.
256.4 Program categories.
256.5 HIP applications.
256.6 Eligibility.
256.7 HIP selection criteria.
256.8 Program implementation.
256.9 Inspections.
256.10 Appeals.
256.11 Flood disaster protection.
256.12 Information collection.
Appendix A, Summary of Selection Criteria—Point Schedule.
Appendix B, HIP Selection Criteria.

Authority: 42 Stat. 208. (25 U.S.C. 13).

§ 256.1 Purpose.

The purpose of this part is to prescribe the terms and conditions under which assistance is given to Indians under the Housing Improvement Program (HIP).

§ 256.2 Definitions.

As used in this part 256:

Area Director means the Officer in charge of one of the Bureau of Indian Affairs Area Offices, or his/her authorized delegate.

Assistant Secretary means the Assistant Secretary—Indian Affairs, or his/her authorized representative.

Dilapidated means a state of disrepair.

Family means one or more persons maintaining a household.

Handicapped means legally blind; legally deaf; lack of or inability to use one or more limbs; chair or bed bedbound; inability to walk without crutches or walker; mental disability in an adult of a severity that requires a companion to aid in basic needs, such as dressing, preparing food, etc., or severe heart and/or respiratory problems preventing even minor exertion.

Indian means any person who is a member of any of those tribes listed in the **Federal Register** pursuant to 25 CFR part 83 as recognized by and receiving services from the Bureau of Indian Affairs.

Nonmember Indian means any person who is a member of a Federally recognized tribe living in another tribe's approved service area.

Ownership means having fee title, trust title, leasehold interest, use permit, indefinite assignment or other exclusive possessory interest. In the case of Alaska, the term also includes one who the Superintendent determines has a reasonable prospect of becoming an owner, in accordance with the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688).

Secretary means the Secretary of the Interior.

Service area means reservations (former reservations in Oklahoma), and allotments, restricted lands, Indian-owned fee lands (including lands owned by Corporations established pursuant to the Alaska Native Claims Settlement Act) within a geographical area designated by the tribe, and approved by the Area Director to which equitable services can be delivered.

Standard Housing means a dwelling in a condition which is decent, safe, and sanitary so that it meets the following minimum standards;

(a) General construction conforms to applicable tribal, county, state or national codes and to appropriate building standards for the region.

(b) The heating system has the capacity to maintain a minimum temperature of 70 degrees in the dwelling during the coldest weather in the area. It must be safe to operate and maintain and deliver a uniform distribution of heat.

(c) The plumbing system includes a properly installed system of piping and fixtures.

(d) The electrical system includes wiring and equipment properly installed to safely supply electrical energy for lighting and for the operation of appliances.

(e) Occupants per dwelling do not exceed these limits:

(1) Two-bedroom dwelling: Up to four persons;

(2) Three-bedroom dwelling: Up to seven persons;

(3) Four-bedroom dwelling: Adequate for all but the very largest families;

(f) Bedroom size: The first bedroom must have at least 120 sq. ft. of floor space, additional bedrooms must have a minimum of 100 sq. ft. of floor space each.

(g) Two exceptions to standard housing will be permitted:

(1) Where one or more of the utilities are not available and there is no prospect of the utilities becoming available; and

(2) In areas of severe climate, house size may be reduced to meet applicable building standards of the region.

(g) The house site must be chosen so that access to utilities is most economical, the ingress and egress are adequate and aesthetics and proximity to school bus routes are considered.

Superintendent means the Officer in charge of the Agency or other local office of the Bureau of Indian Affairs.

Tribe means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, or Community, including any Alaska Native Village which is federally recognized as eligible by the United States Government for the special programs and services provided by the Secretary to Indian tribes because of their status as Indians.

§ 256.3 Policy.

(a) The Bureau of Indian Affairs' housing policy is consistent with the specific objectives of the national housing policy which declares that every American family should have the opportunity for a decent home and suitable living environment. To the maximum extent possible, tribes will be involved in the administration of the program.

(b) Every Indian, as defined in § 256.2 and eligible pursuant to § 256.6, is entitled to participate in this program irrespective of tribal affiliation, provided equitable services can be delivered to the geographic area within which they reside.

(c) The general distribution of HIP funds among tribes is based on a consistent, valid, and certified inventory of tribal housing needs, a viable work plan, and the tribe being in compliance with the intent of the program. Every effort will be made to use HIP funds in conjunction with other programs so that the result will be a greater amount of housing improvements than would otherwise be possible with the HIP funds alone. An example of this is the agreement with the Indian Health Services to provide water and sanitation facilities for HIP houses. In cases where training programs are used in conjunction with the HIP, funds are to be limited to the purchase of materials, and to the provision of inspection and skilled labor which are otherwise not available.

(d) Tribal allocation levels are determined on the basis of the HIP's responsibility of the total housing needs derived from the tribal inventories of need. The emphasis of the HIP will be on repair and renovation of existing housing while other federally-assisted programs are responsible for the bulk of the new house building effort. As such, the BIA's funding calculations are based on 90% of the repair need and up to 10% of the new construction need indicated by tribal housing inventories. (The exception is Alaska, where the percentage is 95% of repairs and 35% of new construction). The HIP may provide a grant for the financing of the construction of a limited amount of new standard housing when it is established that the applicant has been denied housing assistance from sources other than the HIP. Thus, each fiscal year, the BIA will allocate funds appropriated for HIP in proportion to the identified housing needs.

§ 256.4 Program categories.

The HIP will provide assistance in the following categories:

(a) *Repairs that will remain nonstandard.* Under this category:

(1) Financial assistance will be granted to finance repairs and additions to existing substandard housing needing replacement so that it is safe, more sanitary, and livable until such time as standard housing is available.

(2) The standard to be applied in deciding whether to provide assistance is improvement in the condition of the house, i.e., improved livability or reduced health and safety hazards, even though it may be obvious that such an undertaking will not improve the house to the extent that it will meet the standard of decent, safe, and sanitary. Examples of the improvement that may be undertaken are: Weather tightening and the repair of doors, windows, roof, electrical wiring, plumbing, and chimney.

(3) The cumulative total expenditure of the HIP funds shall not exceed $2,500 for any one dwelling.

(4) The funds shall be granted and no restrictions on the use of the home may be imposed.

(b) *Repairs to housing that will become standard.* Under this category:

(1) Financial assistance will be granted to finance repairs, renovation and/or enlargement of existing structurally sound, but deteriorated dwellings which can economically be placed in a standard condition.

(2) Upon completion of work, the dwelling shall fit the definition of standard housing as defined in § 256.2.

(3) The total expenditure of the HIP Program Funds shall not exceed $20,000 for any one dwelling. (In the case of Alaska, reasonable, substantiated freight costs in accordance with Federal Property Management Regulation (FPMR) 101–40, not to exceed 100% of the material cost, may be added).

(4) Undertakings under this category are for applicants who are living in their own homes.

(5) The applicant must sign a written agreement that if he/she sells the house within five years following the date of completion of the repairs, the grant will be voided and the grantee will repay the full amount of the grant at the time of settlement to the Bureau of Indian Affairs.

(c) *Down Payments.* Under this category:

(1) The HIP provides grants in order to make the applicant eligible to receive housing loans from tribal, Federal or other sources of credit. The applicant must establish that he/she has an inadequate income of limited financial resources to meet the full cost of the loan. Grants are only for standard housing.

(2) The grant shall not exceed the amount necessary to secure the loan plus the closing costs or ten percent (10%) of the purchase price of the house plus the closing costs or $5,000, whichever is less. (In the case of Alaska, the grant amount shall not exceed $6,000).

(3) The method of advancing the grant must ensure that the funds are used for the purpose intended. The applicant must sign a written agreement that if he/she sells the house within five years following the date of purchase, the grant is voided and the amount of the grant will be fully repaid by the grantee to the Bureau of Indian Affairs at time of settlement.

(d) *New housing.* Under this category:

(1) The HIP may provide a grant for the financing of the construction of a limited amount of new standard housing, either site-built or factory-built, when it is established that the applicant has been denied housing assistance from sources other than the HIP.

(2) The housing provided under this category must meet the housing standards of this Part. Mobile units with an integral frame are specifically excluded.

(3) The total expenditure of HIP funds shall not exceed $45,000 for a dwelling and equipment. (In the case of Alaska, the total expenditure of funds shall not exceed $55,000, plus reasonable, substantiated freight costs in accordance with FPMR 101–40, not to exceed 100% of the materials cost). The occupant will be responsible for all maintenance of the completed dwelling and all utility fees, deposits or costs required for service.

(4) The applicant must have ownership of the land on which the house is located. In the case of a leasehold interest, it must be for not less than 25 years. The applicant must sign a written agreement that if he/she sells the house within the first ten years from the date of ownership, the grant is voided and the full amount of the HIP grant will be repaid by the grantee to the Bureau of Indian Affairs at time of settlement. Subsequent to the first ten years, if the grantee sells the house, he/she may retain 10% of the original grant amount per year beginning in the eleventh year, with the remaining

amount to be repaid to the Bureau of Indian Affairs. If the sale occurs twenty years or more after the date of ownership, no repayment of any part of the grant will be due the Bureau of Indian Affairs.

(5) Adequate fire insurance, where determined feasible, must be carried.

§ 256.5 HIP application.

Individuals wishing to participate in the Housing Improvement Program must fill out BIA Form 6407. Application forms may be obtained from tribes or the nearest Bureau of Indian Affairs Office. Completed applications should be submitted to tribes or the nearest BIA office, where applicable. Each application for assistance should be approved by the tribe. Nonmember Indians apply for assistance through the tribe in whose jurisdiction they reside.

§ 256.6 Eligibility.

(a) To establish eligibility for selection to receive a grant under § 256.7, an applicant must show that:

(1) The applicant is an Indian.

(2) The present housing of the applicant is substandard or inadequate in terms of capacity to meet the physical needs of the family.

(3) The applicant has been denied, or is ineligible for, housing assistance from sources other than the HIP.

(4) The economic resources of the applicant are inadequate or factors exist which make the applicant unable to obtain housing from other local, state or Federal sources. Applicants whose annual income exceeds the Department of Health and Human Services Poverty Income Guidelines by 225% or more shall be ineligible for HIP assistance on the basis of need. Determination of eligibility will be made on a case-by-case basis.

(5) The applicant for assistance under one of the categories in § 256.4 meets the ownership requirements given under that category.

(b) After October 1, 1986, an applicant may only receive assistance once under categories given in paragraphs (b), (c), or (d) of § 256.4.

(c) The Department of Housing and Urban Development (HUD) financed houses under the administration of an Indian Housing Authority (IHA) will not be eligible for assistance until the end of the entire project indebtedness to the Federal Government.

§ 256.7 HIP selection criteria.

Once the eligibility requirements of § 256.6 are satisfied, development of priority lists of eligible applicants shall be accomplished by a ranking system based on six basic factors of need: Annual income, family size, overcrowded living conditions, age, handicap or disability, and HUD–IHA financed housing. Eligible applicants may receive points for any or all of these six factors. Priority will be given relative to the number of points received. Appendix A to this provides a summary of selection criteria.

(a) *Factor No. 1—Annual Household Income* (Up to 40 points available).

(1) The eligible applicant's total annual household income and other resources, if any, must be evaluated in order to determine priority in terms of degree of poverty. If an individual is counted as a family member for the purpose of determining Family Size (Factor No. 2), the annual income of that person must be included in the total annual household income on the HIP application. Examples of income which must be included are royalties and onetime income. A specific definition of the type of resources which must be included is set forth in 25 CFR part 20.

(2) In order to determine whether or not the applicant is entitled to points under Factor No. 1, it is necessary to compare the total combined annual household income against the Federal Poverty Income Guidelines which are published annually by the Department of Health and Human Services. The most current issue of the Guidelines published in the **Federal Register** by Health and Human Services (HHS) will be used during the selection process. A yardstick for determining applicant income priority is provided based upon 125% of the Poverty Income Guidelines. In addition, even greater point values are available for applicants whose annual income falls substantially (25% or more) below the poverty level. In order to facilitate calculations, a chart of the various income levels is provided to each tribe annually upon publication of new revised Poverty Guidelines by HHS each year.

(b) *Factor No. 2—Family Size* (5 points per dependent child). A dependent child for purposes of this subsection is a person meeting the definition of "child" in 25 CFR part 20.

(c) *Factor No. 3—Overcrowded Living Conditions* (Up to 10 points possible).

(1) The definition of "standard housing" identifies the acceptable limits for family size per dwelling (see § 256.2). In order to earn points under Factor No. 3, the applicant family must exceed the limits for its dwelling established in § 256.2. A family is overcrowded if:

(i) Three or more persons occupy a one-bedroom dwelling.

(ii) Five or more persons occupy a two-bedroom dwelling.

(iii) Eight or more persons occupy a three-bedroom dwelling.

(2) Depending upon the circumstances and the degree of overcrowding, as well as the family structure, the committee reviewing HIP applications can award as little as 1 point, or as many as 10 points, for the overcrowding factor.

(3) The preceding overcrowded living description is not feasible in Alaska where, because of the unique climatic conditions, a dwelling is frequently not divided into the conventional room arrangement customary in the contiguous 48 states. Recommended guidelines for Alaska only are therefore based upon gross square feet per occupant, ranging from 2 to 10 points for Factor No. 3. (See Appendix A to this part.)

(d) *Factor No. 4—Age*—(1) *Elderly couple.* (Up to 21 points per individual available.) Points are awarded based upon age, beginning at age 55, with a maximum of 21 points per elderly person available. Appendix B to this part is a schedule, by age, of the number of points to be awarded in this category. If an applicant family has an elderly relative who is a permanent household member, points are added to the application for this person.

(2) *Single, Elderly, Living Alone* (Up to 32 points). Special priority amounting to 150% of the Factor No. 4 standard schedule, as identified in paragraph (d)(1) of this section, is provided only for an elderly individual living alone and applying for a grant from HIP. An elderly widower/widow, age 70, living by him/herself plus 50% (8 points) adds up to a total of 24 points. In calculating allowable points using the schedule shown in appendix B, decimals should be eliminated by rounding to the next higher whole number.

(e) *Factor No. 5—Handicap or Disability* (Up to 20 points available per application).

(1) The many and varied degrees and types of disability present a complex ranking situation. A general definition of handicapped is provided as a guide. The selection committee evaluating HIP applications shall determine the number of points, up to the maximum of 20, merited by the applicant (or family member) based upon the degree of disability.

(2) Applicants should provide as much documentation as possible concerning the disabled person's condition. This could include a doctor's certification, Veteran's Administration determination, Social Security determination of degree of disability, or similar information which would assist the HIP committee in its point calculation.

(f) *Factor No. 6—HUD/IHA Financed Houses* (Deduct 30 points). A deduction of 30 points shall be applied to applicants who own HUD–IHA houses after the project indebtedness ends, as described in § 256.6(c). These houses represent new standard housing obtained with Federal housing assistance.

(g) *Tie Breaker.* If two applications are assigned the same number of points, two considerations will determine which application has priority.

(1) Tie Breaker No. 1—The applicant living in the most dilapidated conditions will receive priority.

(2) Tie Breaker No. 2—The family with the lower income will be served first.

§ 256.8 Program implementation.

The HIP will be implemented either by means of Public Law 93–638 contracts with the tribes, or administered directly by BIA, according to the HIP plans and priority of the tribe served. The HIP consists of two parts: Receipt, review, and screening of applications submitted by Indians for housing assistance, determination of eligibility, and development of applicant priority lists; and design, construction, and repair/renovation of dwelling units. The implementation of HIP will be accomplished as follows:

(a) Develop and maintain a consistent and valid tribal inventory of needs.

(b) Select families and/or individuals for assistance. To accomplish this task:

(1) A current inventory of HIP applicants shall be developed.

(2) All HIP applications shall be received, reviewed, and screened.

(3) The BIA will ensure that HIP applications contain adequate information to determine eligibility. At a minimum, each application must include the information required in § 256.6, i.e., name, family size, income, and financial status, condition of present housing, the type of housing assistance requested (Category A, B, C or D).

(4) A determination shall be made as to which HIP applicants are eligible to receive assistance and a priority list of applicants developed in accordance with the HIP Selection Criteria under § 256.7.

(5) The type of assistance to be provided each selected applicant, the estimated cost, and construction schedule thereof shall be determined.

(c) Applicant Case File. A case file shall be kept on each approved applicant. The case file shall contain at a minimum:

(1) Tribal enrollment information.

(2) The condition of existing housing.

(3) Family size and composition.

(4) Income.

(5) Evidence of the inability of the applicant to secure housing from other sources.

(6) Evidence that the applicant has not received HIP assistance after October 1, 1986.

The case file shall become a part of the record and must be retained for at least three years after the completion of the project.

(d) Construction Work Plan—Repair and renovation of existing housing or construction of new housing. A work plan shall be prepared specifying, by HIP Categories, the number of housing units to be repaired, renovated or built new. The repair, renovation, and new housing construction work shown on the plan must be consistent with the housing assistance work specified on the priority list for each applicant. The plan shall include the following:

(1) Category A Nonstandard Repairs. This category shall include a description of each repair to be performed, the cost estimate for each repair, the location of each unit to be repaired, a schedule, and the name of each applicant that is receiving this assistance.

(2) Category B Standard Repairs and Category D New Housing. This category shall include location of each unit to be repaired or built new, and the names of applicants to receive these units. In addition, for Category B repairs and Category D new housing, the plan shall also include preliminary drawings, specifications, cost estimates, and a phased construction schedule for each unit to be repaired, renovated, or built new. Drawings should fix and illustrate what is required to repair or build new houses by providing, when applicable: A design, elevations, unit and room total square feet, general construction, placement of heating mechanical, electrical, and utility systems, site layout for grading and utility distribution. Specifications should describe clearly the scope of work to repair or build a new house, the workmanship involved, and a statement describing the quality of materials.

(3) Category C Down Payments. This category shall include a description and location of the house to be purchased, verification of the applicant's intent to purchase a standard house, the sale price of the house, and a verification by the lender as to the amount of down payment and closing costs required for the applicant to qualify for the loan.

(e) Construction Start and Completion Dates. An anticipated construction start and completion date for each repair and new construction project to be performed shall be established. The construction start time should consider such factors as weather, location, family participation, availability of materials, and site preparation. All HIP recipients listed on the priority list must be notified of the work to be performed.

(f) Applicable Codes. Depending upon the type of construction involved, the appropriate local codes will be followed. If local codes are not available, applicable State or National codes will be followed.

(g) Reporting Requirements. Quarterly reports shall be prepared on construction work undertaken and expenditures related to that construction work. The quarterly reports are due on the 15th day after the end of each calendar quarter, and shall contain for each HIP grant, at a minimum:

(1) Name of Grantee.

(2) Date of Construction start.

(3) Date of Completion.

(4) Cost.

(h) The HIP will serve those eligible applicants on an approved priority list. Design, construction, and repair of dwelling units may be accomplished through:

(1) Direct grants to individual applicants.

(2) Contracts or grant agreements with Indian tribes.

(3) Contracts with private Indian or non-Indian contracting firms in accordance with normal BIA contract procedures; or

(4) Programs administered directly by the BIA.

§ 256.9 Inspections.

(a) The BIA is responsible for inspection or the assurance that there is adequate provision for inspection by BIA employees, contractors, or subcontractors during the course of construction. The BIA shall have access at all reasonable times to work under contract for monitoring and inspection.

(b) Final payment for work performed will not be made until a final inspection is conducted by the BIA, and a determination is made that the work complies with all contract requirements.

§ 256.10 Appeals.

Actions taken by BIA officials may be appealed pursuant to part 2 of this chapter.

§ 256.11 Flood Disaster Protection.

No HIP funds, under Categories in paragraphs (b), (c), and (d) of § 256.4, will be expended in areas designated as having special flood hazards under the Flood Disaster Protection Act of 1973 (Public Law 93–234, 87 Stat. 977), unless the requirements for suitable flood insurance are met.

§ 256.12 Information Collection.

The information collection requirements contained in § 256.5 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0084. The information will be used to determine eligibility to participate in the HIP. Individuals who wish to participate in the HIP must contact the tribe in whose jurisdiction they reside, or the BIA office closest to their residence. Eligibility is determined based upon the criteria listed in § 256.6. Response is required to obtain a benefit. Public reporting burden for this form is estimated to average thirty minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form.

APPENDIX A.—SUMMARY OF SELECTION CRITERIA—POINT SCHEDULE

If applicant is	Add
Factor No. 1: Income (Up to 40 points):	
At or below 125% of Poverty Income Guidelines	10
Between 100% and 76% of Poverty Income Guidelines	20
Between 75% and 51% of Poverty Income Guidelines	30
At or below 50% of Poverty Income Guidelines	40
If applicant is	**Deduct**
Deduction Schedule for Income in Excess of Poverty Income Guidelines (Maximum deduction of 40 points):	
Over 125% of Poverty Income Guidelines	0
At or over 150% of Poverty Income Guidelines	−10
At or over 175% of Poverty Income Guidelines	−20
At or over 200% of Poverty Income Guidelines	−30
201% to 224% of Poverty Income Guidelines	−40
	Add
Factor No. 2: Family Size (5 points per dependent child):	
Single applicant, no children	0
Single applicant, one child	5
Married couple, no children	0
Married couple, one child	5
Married or single, each additional child	5
Factor No. 3: Overcrowded Conditions (Add up to 10 Points): *Contiguous 48 States*—Depending upon the circumstances and the degree of overcrowding, as well as the family structure, the committee reviewing HIP applications can award as little as 1 point, or as many as 10 points, for overcrowding.	
Alternative Point System for Alaska only	**Add**
0–50 square feet per person	10
51–100 square feet per person	8
101–150 square feet per person	6
151–200 square feet per person	4
201–300 square feet per person	2
Factor No. 4: Age (Add up to 21 points) (See Appendix B):	
Age 55 and older, one point per year up to 75 years.	
Single Elderly, living alone = 150% of Elderly schedule.	
Factor No. 5: Handicapped and Disabled (Add up to 20 points):	
Points will be awarded based upon extent of disability.	
Factor No. 6: HUD/IHA Financed Houses (Deduct 30 Points).	

APPENDIX B—HIP SELECTION CRITERIA

[Factor No. 4—Age]

Age	Family member—100%; Add points	Living alone—150%; Add points
55	1	2
56	2	3
57	3	5
58	4	6
59	5	8
60	6	9
61	7	11
62	8	12
63	9	14
64	10	15
65	11	17
66	12	18
67	13	20
68	14	21
69	15	23
70	16	24
71	17	26
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74	20	30
75 & Over	21	32

Dated: October 25, 1991.

David J. Matheson,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92–1886 Filed 1–24–92; 8:45 am]

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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*1–99	(869–013–00190–7)	20.00	Oct 1, 1991
100–177	(869–011–00191–2)	27.00	Oct 1, 1990
178–199	(869–011–00192–1)	22.00	Oct 1, 1990
200–399	(869–011–00193–9)	21.00	Oct. 1, 1990
400–999	(869–013–00194–0)	27.00	Oct. 1, 1991
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1200–End	(869–013–00196–6)	19.00	Oct 1, 1991
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1–199	(869–011–00197–1)	20 00	Oct 1, 1990
*200–599	(869–013–00198–2)	17.00	Oct 1, 1991
600–End	(869–011–00199–8)	15 00	Oct 1, 1990
CFR Index and Findings Aids	(869–013–00053–6)	30.00	Jan. 1, 1991

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

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[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1991. The CFR volume issued July 1, 1989, should be retained.

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VOL
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federal register

Tuesday
January 28, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

VOL 57 ISS 18 JA 28 1992 UMI

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

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Presidential Documents

Title 3—

The President

Memorandum of January 21, 1992

Transportation of Humanitarian Assistance to the Former Soviet Union

Memorandum for the Secretary of Defense

Pursuant to the laws of the United States, including section 109 of the "Dire Emergency Supplemental Appropriations and Transfers for Relief From the Effects of Natural Disasters, for Other Urgent Needs, and for Incremental Cost of 'Operation Desert Shield/Desert Storm' Act of 1992" (Public Law 102–229):

1. I designate as emergency requirements, pursuant to the terms of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, the full amount for which section 109 provides.

2. Effective upon satisfaction of applicable congressional notification requirements, I direct the Secretary of Defense to transfer funds under section 109 as it incorporates by reference section 301(b) of H.R. 3807 as passed the Senate on November 25, 1991.

3. The authorities and duties of the President under section 301 of H.R. 3807 as passed the Senate on November 25, 1991, and referred to in section 109 (except the designation of emergency relating to funding addressed in paragraph 1 and the direction addressed in paragraph 2) are hereby delegated to the Secretary of Defense.

You are directed to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
January 21, 1992.

[FR Doc. 92–2211
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 530

RIN 3206-AE21

Aggregate Limitation on Pay

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing revised interim regulations governing the administration of the aggregate limitation on pay under the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509, November 5, 1990), as amended by section 2 of Public Law 102-77, July 28, 1991. These revisions clarify the types of payments that are subject to the Executive Level I aggregate limitation on pay for most Federal employees during any calendar year.

DATES: Interim rules effective January 28, 1992. Comments must be received on or before March 30, 1992.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Bernadette Christie, (202) 606-2858 or (FTS) 266-2858.

SUPPLEMENTARY INFORMATION: The Federal Employees Pay Comparability Act of 1990 (FEPCA) established an aggregate limitation on pay that applies to most Federal employees. The purpose of the aggregate limitation on pay is to limit the pay of any "allowance, differential, bonus, award, or other similar cash payment" under title 5, United States Code, so that such payment would not cause an employee's total annual compensation to exceed the rate payable for Executive Level I (currently 143,800). The amendments made by Public Law 102-77 clarify the coverage and applicability of the aggregate limitation.

These clarifying amendments became effective on July 28, 1991. However, the aggregate limitation on pay applies to payments that would otherwise cause an employee's total pay to exceed the annual rate of basic pay payable for Executive Level I as of the end of the calendar year. Therefore, payments made on or after February 3, 1991 (the effective date of the aggregate limitation, as enacted by FEPCA), are subject to the amended aggregate limitation law, regardless of whether the payments were made before or after July 28, 1991.

As clarified by Public Law 102-77, the aggregate limitation applies to the total of basic pay, plus (1) premium pay and most other payments made under chapter 55, except back pay for unjustified personnel actions, severance pay, and lump-sum payments for annual leave; (2) recruitment and relocation bonuses, supervisory and post differentials, retention allowances, danger pay allowances, physicians comparability allowances, and environmental allowances for employees outside the continental United States or in Alaska; and (3) continuation of pay under the Federal Employees' Compensation Act.

The amended law also specifies that employees of Executive agencies who are not covered by the General Schedule may receive lump-sum payments at the beginning of the following calendar year for performance-based cash awards under 5 U.S.C. 4505a(d), as well as recruitment and relocation bonuses and retention allowances under 5 U.S.C. 5753(e) and 5754(e), respectively, that otherwise would cause the employee's aggregate compensation to exceed the rate for Executive Level I during the calendar year in which they were awarded or authorized. Such lump-sum payments will be subject to the carryover provisions in 5 U.S.C. 5307(b)(2). Consequently, 5 CFR 530.204(d) has been removed. (Prior to this amendment, only General Schedule employees were entitled to receive, in a subsequent calendar year, lump-sum payments attributable to performance-based cash awards, recruitment and relocation bonuses, and retention allowances.)

The revised interim regulations amend the interim regulations published on March 28, 1991 (56 FR 12833), to prescribe how the aggregate limitation is to be applied during calendar year 1991. For calendar year 1991 only, the aggregate limitation applies to payments received on or after February 3, 1991, and before January 1, 1992. (See 5 CFR 530.208.)

Finally, a paragraph has been added to provide that, if the continuing and noncontinuing payments to which an employee is entitled, or has received, during a calendar year exceed the rate payable for Executive Level I, any discretionary continuing payments that would cause the employee's aggregate compensation to exceed the limitation must be discontinued. (See 5 CFR 530.203(g).) These discontinued discretionary payments normally will become payable at the beginning of the next calendar year and will be included in the computation of the employee's aggregate compensation for the year in which they were paid. Corresponding changes also have been made in 5 CFR 530.203(f).

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The delay in the effective date is being waived to give effect to the amended provisions of law at the earliest practicable date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 530

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending part 530 of title 5 of the Code of Federal Regulations as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for part 530 is revised to read as follows:

Authority: 5 U.S.C. 5305 and 5307; E.O. 12748; Subpart B also issued under sec. 302(c) and 404(c) of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively.

2. In § 530.202, the definitions of *Aggregate compensation* and *Continuing payment* are revised to read as follows: the definition of *Lump-sum payment* is removed; and a new definition of *Noncontinuing payment* is added to read as follows:

§ 530.202 Definitions.

* * * * *

Aggregate compensation means the total of—

(1) Basic pay received as an employee of the executive branch or as an employee outside the executive branch to whom chapter 51 of title 5, United States Code, applies;

(2) Locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments or special pay adjustments for law enforcement officers under sections 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively;

(3) Premium pay established by or under subchapter IV of chapter 53 of title 5, United States Code;

(4) Premium pay under subchapter V of chapter 55 of title 5;

(5) Incentive awards and performance-based cash awards under chapters 45, 53, and 54 of title 5, United States Code;

(6) Recruitment and relocation bonuses under 5 U.S.C. 5753;

(7) Retention allowances under 5 U.S.C. 5754;

(8) Supervisory differentials under 5 U.S.C. 5755;

(9) Post differentials under 5 U.S.C. 5925;

(10) Danger pay allowances under 5 U.S.C. 5928;

(11) Allowances based on environmental conditions for employees stationed outside the continental United States or in Alaska under 5 U.S.C. 5941(a)(2);

(12) Physicians comparability allowances under 5 U.S.C. 5948;

(13) Continuation of pay under 5 U.S.C. 8118; and

(14) Other similar payments authorized under title 5, United States Code, excluding back pay due to an unjustified personnel action under 5 U.S.C. 5596; overtime pay under the Fair Labor Standards Act of 1938, as amended, and part 551 of this chapter; severance pay under 5 U.S.C. 5595; and lump-sum payments for accumulated and accrued annual leave on separation under 5 U.S.C. 5551 or 5552.

* * * * *

Continuing payment means basic pay and any other form of pay included in an employee's aggregate compensation that is paid in the same manner and at the same time as basic pay, including, but not limited to, locality-based comparability payments, interim geographic adjustments, special pay adjustments for law enforcement officers, annual premium pay under 5 U.S.C. 5545(c), retention allowances, supervisory differentials, post differentials, danger pay allowances, allowances based on environmental conditions outside the continental United States or in Alaska, remote work site allowances, and physicians comparability allowances.

* * * * *

Noncontinuing payment means—

(1) An amount of pay included in an employee's aggregate compensation that is paid to an employee not in the same manner or at the same time as basic pay, including, but not limited to, incentive awards, performance awards, Senior Executive Service Presidential rank awards, recruitment and relocation bonuses, and excess amounts paid under § 530.205(a) of this part;

(2) Premium pay established by or under subchapter IV of chapter 53 of title 5, United States Code; and

(3) Premium pay under subchapter V of chapter 55 of title 5, United States Code, other than annual premium pay under 5 U.S.C. 5545(c).

3. In § 530.203, paragraphs (d), (e), and (f) are revised and a new paragraph (g) is added to read as follows:

§ 530.203 Administration of aggregate limitation on pay.

* * * * *

(d) At the time a noncontinuing payment is made to an employee, the employee may not receive any portion of such payment that, when added to the annual rate of any continuing payments to which the employee is then entitled and any noncontinuing payments the employee may have received earlier in the same calendar year, would exceed the rate then payable for level I of the Executive Schedule. Any portion of a noncontinuing payment not payable under this paragraph shall become available for payment as provided in § 530.204 of this part.

(e) Nondiscretionary continuing payments may not be discontinued or deferred for any period of time in order to make a noncontinuing payment or discretionary continuing payment that would otherwise cause an employee's pay to exceed any of the limitations described in or established by this section.

(f) If the annual rate of all nondiscretionary continuing payments to which an employee is entitled and any previously authorized physicians comparability allowance at any time exceeds the rate then in effect for level I of the Executive Schedule, the agency shall immediately discontinue any such payments (other than basic pay) that would cause the aggregate compensation actually received by the employee during the calendar year to exceed the limitation described in paragraph (a) of this section. To determine which payments shall be discontinued, the agency shall make such payments in the following order: Basic pay; locality-based comparability payments, interim geographic adjustments, or special pay adjustments for law enforcement officers; other nondiscretionary continuing payments, in chronological order of their authorization; and any previously authorized physicians comparability allowance. Any portion of a nondiscretionary continuing payment or physicians comparability allowance not payable under this paragraph shall become available for payment as provided in § 530.204 of this part.

(g) If the annual rate of all discretionary and nondiscretionary continuing payments to which an employee is entitled, plus any noncontinuing payments the employee may have received during the same calendar year, at any time exceeds the rate then payable for level I of the Executive Schedule, the agency shall immediately discontinue any discretionary continuing payments that would cause the aggregate compensation actually received by the employee during the calendar year to exceed the limitation described in paragraph (a) of this section. Any portion of a discretionary continuing payment not payable under this paragraph shall become available for payment as provided in § 530.204 of this part.

§ 530.204 [Amended]

4. In § 530.204, paragraph (d) is removed.

5. A new § 530.206 is added to read as follows:

§ 530.206 Application of aggregate limitation on pay in calendar year 1991.

In calendar year 1991, the aggregate limitation on pay shall be applied to aggregate compensation received by the employee on or after February 3, 1991, and before January 1, 1992.

[FR Doc. 92-2034 Filed 1-27-92; 8:45 am]
BILLING CODE 6325-01-M

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA14

Post-Employment Conflict of Interest; Exemption of Positions and Designation of Additional Agency Components for the Executive Branch

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing this rule (1) to exempt certain senior employee positions for purposes of 18 U.S.C. 207(c); and (2) to designate certain additional departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c) as authorized by 18 U.S.C. 207(h).

EFFECTIVE DATE: January 28, 1992.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Ms. Loring.

FOR FURTHER INFORMATION CONTACT: Julia S. Loring, Office of Government Ethics, telephone (202/FTS) 523-5757, FAX (202/FTS) 523-6325.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion of Exemption of Positions and Designation of Additional Agency Components

Exemption of Positions

The Director of the Office of Government Ethics (OGE) is authorized by 18 U.S.C. 207(c)(2)(C) to exempt eligible employee positions from 18 U.S.C. 207(c), the one-year post-employment restriction applicable to "senior" employees. Pursuant to the procedures prescribed in 5 CFR 2641.201(d) (56 FR 3984, February 1, 1991), the Designated Agency Ethics Official at the Securities and Exchange Commission forwarded a letter to OGE dated October 15, 1991, requesting that the Director exempt two senior employee positions: (1) The Office of General Counsel's Solicitor, and (2) the Division of Enforcement's Chief Litigation Counsel.

After carefully reviewing that letter and other relevant information, the Director determined to exempt the two positions from 18 U.S.C. 207(c) in light of the criteria set forth in 5 CFR 2641.201(d)(5). Although these exemptions became effective on October 29, 1991, the date of the Director's written response to the Securities and Exchange Commission, 5 CFR 2641.201(d)(3)(iii) provides that the Director "shall annually publish in appendix A to this part an updated compilation of all exempted positions * * *." Accordingly, appendix A of part 2641 is being amended by this rule to ensure publication of these two exemptions in the CFR.

Appendix A of this part includes parenthetical entries highlighting the effective dates of the exemptions. As indicated in 5 CFR 2641.201(d)(4), "[a]n exemption shall inure to the benefit of the individual who holds the position when the exemption takes effect, as well as to his successors, but shall not benefit individuals who terminated senior service prior to the effective date of the exemption."

Designation of Executive Agency Components

The Director of OGE is authorized by 18 U.S.C. 207(h) to designate separate departmental and agency components in the executive branch for purposes of 18 U.S.C. 207(c). The one-year representational bar of 18 U.S.C. 207(c) usually extends to any department or agency in which a former senior employee served in any capacity during the year prior to termination from senior service. However, eligible senior employees may be permitted to communicate to or appear before components of their former department or agency if those components have been designated as separate agencies or bureaus by OGE. Initial component designations applicable with respect to employees terminating senior service on or after January 1, 1991, were published in appendix B of 5 CFR part 2641 last year (56 FR 3965, February 1, 1991). Pursuant to the procedures prescribed in 5 CFR 2641.201(e), several departments have subsequently forwarded letters to OGE requesting the designation of additional distinct and separate components for purposes of that statutory provision.

By letter dated April 9, 1991, the Alternate Designated Agency Ethics Official at the Department of Justice requested that the Director clarify that the Office of Justice Programs (including its five previously-designated constituent bureaus) should be treated as one single distinct and separate component for purposes of 18 U.S.C. 207(c). The letter also requested that the Executive Office for United States Attorneys and the Executive Office for United States Trustees each be treated as distinct and separate from the rest of the Justice Department. In each case, however, the particular Executive Office would not be treated as separate from any of the district offices served by it. In a subsequent letter dated October 15, 1991, the Department's Alternate Designated Agency Ethics Official requested that the Office of the Pardon Attorney also be designated as a distinct and separate component.

By letter dated November 6, 1991, the Designated Agency Ethics Official at the Department of the Interior requested designation of ten components as distinct and separate from the rest of the Interior Department. The bureaus proposed for designation were the Bureau of Indian Affairs, the Bureau of Land Management, the Bureau of Mines, the Bureau of Reclamation, the Minerals Management Service, the National Park Service, the Office of Surface Mining, the Office of Territorial and International Affairs, the U.S. Fish and Wildlife Service, and the U.S. Geological Survey. The Department's Designated Agency Ethics Official noted that there are five Assistant Secretaries that have responsibility for one or more of the ten bureaus proposed for designation. These Assistant Secretaries are subject to 18 U.S.C. 207(c), but are not eligible to benefit from the narrowing effect of component designation. For purposes of determining the scope of the post-employment restriction in the case of an eligible senior employee serving on an Assistant Secretary's immediate staff, the Department's Designated Agency Ethics Official recommended that all bureaus under the jurisdiction of a particular Assistant Secretary should be treated as a single component.

By letter dated November 26, 1991, the Designated Agency Ethics Official at the Department of Commerce requested designation of three additional components as distinct and separate from the rest of the Commerce Department. The bureaus proposed for designation were the Bureau of Export Administration, the Technology Administration, and the United States Travel and Tourism Administration. Similarly, the Designated Agency Ethics Official at the Department of Health and Human Services forwarded a letter to

the Director of OGE dated November 29, 1991, requesting that the Administration for Children and Families be designated as an additional district and separate component of that Department.

After carefully reviewing the letters from the Department of Justice, the Department of the Interior, the Department of Commerce, and the Department of Health and Human Services in light of the criteria set forth in 5 CFR 2641.201(e)(6), the Director has determined to designate distinct and separate components as requested in that correspondence. As indicated in 5 CFR 2641.201(e)(4), a designation "shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date." The effective date of each designation is indicated in appendix B of this part. (Note that the effective date of the designation of the entire Office of Justice Programs—now listed as a single entity—is January 1, 1991.)

At the request of the Department of Defense, appendix B of this part has also been amended to indicate that the name of the Defense Communications Agency has been changed to the Defense Information Systems Agency.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, the Director of the Office of Government Ethics finds that good cause exists for waiving the general notice of proposed rulemaking and 30-day delayed effective date. It is important that the designation by OGE of exempted positions and separate agency components be published in the **Federal Register** as promptly as possible. Furthermore, since this rule is interpretive in nature, it is exempt from the notice and delayed effectiveness requirements of 5 U.S.C. 553.

E.O. 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2641

Conflicts of interests, Government employees.

Approved: January 8, 1992.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2641 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2641—[AMENDED]

1. The authority citation for part 2641 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978, secs. 402 and 404); 18 U.S.C. 207; E.O. 12674; 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Appendix A is amended by adding the text to read as follows:

Appendix A to 5 CFR Part 2641—Positions Exempted From 18 U.S.C. 207(c)

Pursuant to the provisions of 18 U.S.C. 207(c)(2)(C), each of the following positions is exempt from the provisions of 18 U.S.C. 207(c). All exemptions are effective as of the date indicated.

Agency: Securities and Exchange Commission.

Positions: Solicitor, Office of General Counsel (effective October 29, 1991); Chief Litigation Counsel, Division of Enforcement (effective October 29, 1991).

3. In appendix B, the introductory text is revised and the component listings are amended as set forth below:

A. Revising the listing for the Department of Commerce;

B. Revising the listing for the Department of Defense;

C. Revising the listing for the Department of Health and Human Services;

D. Adding in alphabetical order a listing for the Department of the Interior; and

E. Revising the listing (including the footnotes) for the Department of Justice:

The revisions and additions read as follows:

Appendix B to 5 CFR Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

Pursuant to the provisions of 18 U.S.C. 207(h), each of the following departments or agencies is determined, for purposes of 18 U.S.C. 207(c), to have within it distinct and separate components as set forth below. Except as otherwise indicated, all designations are effective as of January 1, 1991.

Parent: Department of Commerce
Components:
- Bureau of the Census
- Bureau of Export Administration (effective January 28, 1992)
- Economic Development Administration
- International Trade Administration
- Minority Business Development Administration
- National Oceanic and Atmospheric Administration
- National Telecommunications and Information Administration
- Patent and Trademark Office
- Technology Administration (effective January 28, 1992)
- United States Travel and Tourism Administration (effective January 28, 1992)

Parent: Department of Defense
Components:
- Department of the Air Force
- Department of the Army
- Department of the Navy
- Defense Information Systems Agency
- Defense Intelligence Agency
- Defense Logistics Agency
- Defense Mapping Agency
- Defense Nuclear Agency
- National Security Agency

* * * * *

Parent: Department of Health and Human Services
Components:
- Administration for Children and Families (effective January 28, 1992)
- Health Care Financing Administration
- Food and Drug Administration
- Public Health Service
- Social Security Administration

Parent: Department of the Interior
Components:[1]
- Bureau of Indian Affairs (effective January 28, 1992)
- Bureau of Land Management (effective January 28, 1992)
- Bureau of Mines (effective January 28, 1992)
- Bureau of Reclamation (effective January 28, 1992)
- Minerals Management Service (effective January 28, 1992)
- National Park Service (effective January 28, 1992)
- Office of Surface Mining (effective January 28, 1992)
- Office of Territorial and International Affairs (effective January 28, 1992)
- U.S. Fish and Wildlife Service (effective January 28, 1992)
- U.S. Geological Survey (effective January 28, 1992)

Parent: Department of Justice

[1] All designated components under the jurisdiction of a particular Assistant Secretary shall be considered a single component for purposes of determining the scope of 18 U.S.C. 207(c) as applied to senior employees serving on the immediate staff of that Assistant Secretary.

Components:
Antitrust Division
Bureau of Prisons (including Federal Prison Industries, Inc.)
Civil Division
Civil Rights Division
Community Relations Service
Criminal Division
Drug Enforcement Administration
Environment and Natural Resources Division
Executive Office for United States Attorneys [2] (effective January 28, 1992)
Executive Office for United States Trustees [3] (effective January 28, 1992)
Federal Bureau of Investigation
Foreign Claims Settlement Commission
Immigration and Naturalization Service
Independent Counsel
Office of Justice Programs
Office of the Pardons Attorney (effective January 28, 1992)
Offices of the United States Attorney (94) [4]
Offices of the United States Marshal (94) [5]
Offices of the United States Trustee (21) [6]
Tax Division
United States Parole Commission

* * * * *

[FR Doc. 92-1809 Filed 1-27-92; 8:45 am]
BILLING CODE 6345-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-156]

Black Stem Rust

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Final rule.

SUMMARY: We are amending the black stem rust quarantine and regulations to require that the seed of certain barberry plants be produced only at properties where it has been verified that no wild or domesticated rust-susceptible barberry plants are growing at or within one-half mile of the property. This action is necessary to help delay and minimize infestations of black stem rust. We are also allowing the issuance of compliance agreements by States that are not protected areas or that do not encompass protected areas. This action is warranted to remove unnecessary restrictions on the issuance of compliance agreements.

EFFECTIVE DATE: February 27, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 645, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of wheat, oat, barley, and rye crops by robbing host plants of food and water. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis, Mahoberberis,* and *Mahonia*. The fungus is spread from host to host by wind-borne spores.

The black stem rust quarantine and regulations in 7 CFR part 301.38 *et seq.* (referred to below as the regulations) quarantine the conterminous 48 States and the District of Columbia and govern the interstate movement of certain plants of the genera *Berberis, Mahoberberis,* and *Mahonia,* also known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of being infected by and spreading black stem rust; rust-susceptible plants do pose such a risk.

Currently, many small grain varieties are resistant to existing races of black stem rust. However, during the sexual stage of black stem rust organisms, spores from different black stem rust organisms can combine to produce entirely new hybrid races of black stem rust. Some of these hybrid races could successfully attack grain varieties that are not harmed by the "parent" black stem rust races. For this reason, an important factor in controlling infestations of black stem rust is the elimination of rust-susceptible host barberry plants. Additionally, the presence of rust-susceptible barberry plants can cause infestations to occur earlier in the year than if the plants were not present. These "early" infestations are especially damaging because they affect grains at a stage when the grains are most vulnerable to effects of black stem rust.

The regulations provide criteria for "protected areas." (Movement of regulated articles into or through protected areas is restricted.) Protected areas are those in which rust-susceptible plants of the genera *Berberis, Mahoberberis,* and *Mahonia* have been eradicated, and in which States conduct periodic inspections, as specified by the regulations, to ensure that rust-resistant nursery stock of those genera do not come into proximity to rust-susceptible plants that might become present in the area. The danger from rust-resistant barberry plants being in proximity to rust-susceptible plants is not that the rust-resistant plants will become hosts to black stem rust organisms capable of spreading. Rather, it is that the rust-susceptible plants could pollinate the rust-resistant plants, and the rust-resistant plants could then produce seeds that would be used to propagate rust-susceptible plants.

In a document published in the **Federal Register** on September 16, 1991 (56 FR 46737-46739, Docket Number 90-038), we proposed to revise the regulations to require that all seed used to propagate barberry plants in protected areas, and all seed used to propagate barberry plants that are certified rust-resistant for interstate movement into protected areas, be produced at properties where a State inspector has verified that no wild or domesticated rust-susceptible plants are growing at, or within one-half mile of, the property.

We also proposed to allow States that are not, or that do not encompass, protected areas to issue compliance agreements. Prior to the effective date of this final rule, the only States that may issue compliance agreements are those that are either protected areas or that encompass protected areas. In non-protected areas, we are responsible for issuing compliance agreements. However, this provision is unnecessarily restrictive, and there will be no increased risk of infestations of black stem rust if compliance agreements are issued by States that are not, or that do not encompass, protected areas.

The proposed rule as published contained two typographical errors. On September 25, 1991, a document was published in the **Federal Register** (FR 56 48611) to correct these errors.

[2] The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.

[3] The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.

[4] Each Office of the United States Attorney for a judicial district shall be considered a separate component from each other such office. However, the Office of the United States Attorney for a judicial district shall not be considered separate from the Office of United States Marshal for the same judicial district.

[5] Each Office of the United States Marshal for a judicial district shall be considered a separate component from each other such office. However, the Office of the United States Marshal for a judicial district shall not be considered separate from the Office of United States Attorney for the same judicial district.

[6] Each Office of the United States Trustee for a region shall be considered a separate component from each other such office.

Comments on our proposed rule were required to be received on or before October 16, 1991. We did not receive any comments. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as published, with the exception of several nonsubstantive editorial changes we are making for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federal restrictions on interstate movements of plants and plant parts of *Berberis*, *Mahoberberis*, and *Mahonia* are limited to protected areas, which include 15 States and part of a 16th State. The amendments to the regulations in this document require that all seed used to propagate barberry plants in protected areas, and all seed used to propagate barberry plants that are certified rust-resistant for interstate movement into protected areas, be produced at properties where a State inspector has verified that no wild or domesticated rust-susceptible plants are growing at, or within one-half mile of, the property. The principal group affected by this rule will be the seed growers producing seed to be used in the production of certified plants, and in the production of plants in protected areas. The effect will be to eliminate some markets for seed producers who continue to grow rust-susceptible plant varieties at their seed production facilities, and to eliminate some markets for seed producers who are located within one-half mile of rust-susceptible plants that for some reason cannot be destroyed.

Based on Small Business Administration (SBA) statistics and the 1982 Census of Agriculture statistics, the most recent statistics available to us, we estimate that 71 percent of the 13,217 growers of nursery products in the United States (9,394) are located in non-protected areas, and that 29 percent (3,833) are in protected areas. Our projections indicate that of all growers of nursery products, 96 percent are small businesses, as classified by the SBA in its Standards (those with $500,000 or less in annual receipts). We do not have statistics indicating the number of small nursery growers dealing in plants of the restricted genera and the proportion of their revenues derived from these plants. Nevertheless, we believe that most growers of nursery products grow rust-resistant varieties primarily, and will not be affected. Until 1989, the regulations prohibited the movement of rust-susceptible plants from quarantined areas. Because of this restriction, it was standard practice, and we believe that it continues to be standard practice, for growers to propagate rust-resistant varieties.

The provisions in this rule also allow persons who grow or handle regulated articles, including seed growers, to enter into a compliance agreement with State regulatory authorities in States that are not protected. Until the effective date of this rule, growers or other persons who handle regulated articles in States that are not protected who wish to enter into a compliance agreement must do so with the Animal and Plant Health Inspection Service. The change we are making will, in certain cases, make it easier for these persons to have their regulated articles certified. However, in States that are not protected, we have received relatively few requests for compliance agreements. We therefore do not expect the change we are making to affect a significant number of entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Black stem rust, Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Reporting and recordkeeping requirements.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.38–3 [Amended]

2. In § 301.38–3, paragraph (a), the last sentence, including the footnote reference, is removed.

3. In § 301.38–3, paragraph (b)(3), the last sentence, including the footnote reference, is removed.

4. In § 301.38–3, paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f), respectively.

5. In § 301.38–3, a new paragraph (c) is added and footnote 4 is revised to read as follows:

§ 301.38–3 Protected areas.

* * * * *

(c) All seed used to propagate plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* in protected areas, and all seed used to propagate plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* that are certified as rust-resistant for interstate movement into protected areas, must be produced at properties where a State inspector has verified that no wild or domesticated rust-susceptible plants are growing at or within one-half mile of the property.[4]

* * * * *

§ 301.38–6 [Amended]

6. In § 301.38–6, paragraph (a) is amended by removing the words "that is a protected area or that encompasses a

[4] Persons performing the inspections must be able to recognize rust-susceptible varieties of *Berberis*, *Mahoberberis*, and *Mahonia*. Inspectors must work side by side, 10 to 20 feet apart, and walk outward away from the property a distance of one-half mile measured from the edge of the property, and observe all plants growing in the half-mile band. The distance between the inspectors may vary within this range, depending upon the visibility of the plant growth. In areas with low brush and flat terrain, the inspectors may be the maximum distance of 20 feet apart if they can observe all plants growing within 10 feet of them. In areas of high plant growth or hilly terrain, the inspectors must be closer together due to limited or obstructed visibility. Inspectors must observe all plants growing between themselves and the mid-point of the distance between themselves and the next inspector. This process must be repeated so that the entire band, measured from the border of the property to the circumference of an imaginary circle having the property as its mid-point, is visually inspected in this manner.

protected area"; and by removing the words "the protected area" both times they appear and adding in their place the words "a protected area".

Done in Washington, DC, this 23rd day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-2012 Filed 1-27-92; 8:45 am]

BILLING CODE 3410-34-M

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7 CFR Part 319

[Docket No. 91-176]

Importation of Pummelo from Israel

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations to allow the importation of pummelo from Israel, subject to completion of the Animal and Plant Health Inspection Service prescribed cold treatment for the Mediterranean fruit fly. We believe this action is warranted because there appears to be no significant pest risk associated with the importation of pummelo from Israel under these circumstances.

EFFECTIVE DATE: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: James Petit de Mange, Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8645.

SUPPLEMENTARY INFORMATION: The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

On October 17, 1991 we published in the **Federal Register** (55 FR 52004-52005, Docket No. 91-126) a proposal to amend the regulations by allowing the importation of "pomelo" (*Citrus grandis*) from Israel, subject to completion of the Animal and Plant Health Inspection Service (APHIS) prescribed cold treatment for the Mediterranean fruit fly.

"Pomelo" and "pummelo" are both accepted common names for *Citrus grandis*. However, "pomelo" is also the Spanish word for grapefruit (*Citrus paradisi*). In order to avoid confusion, "pummelo" will be used to refer to *Citrus grandis* in this final rule.

Prior to the effective date of this final rule, the regulations in § 319.56 did not provide for the importation of pummelo from Israel. Both the Mediterranean fruit fly (*Ceratitis capitata*) and the Oriental red spider mite (*Eutetranychus orientalis*) are known to attack citrus in Israel. These are considered potentially destructive pests by APHIS, and neither is present nor widely distributed in the United States.

As explained in the proposed rule, the plant protection service of Israel requested that we consider allowing the entry of pummelo from Israel. Although both the Mediterranean fruit fly (Medfly) and the Oriental red spider mite (ORSM) are known to attack citrus in Israel, research done by the Israelis and accepted by APHIS demonstrates that the cold treatment specified in § 319.56-2d(a)(2)(i) for Medfly is also effective against the ORSM. Pest risk analyses conducted by APHIS have determined that any other injurious insects that might be carried by the pummelo would be readily detectable by a USDA inspector.

We therefore proposed to add a new § 319.56-2u to allow the importation of pummelo from Israel, subject to completion of the cold treatment in § 319.56-2d(a)(2)(i) and to all other applicable requirements of title 7 of the Code of Federal Regulations, "Subpart—Fruits and Vegetables."

Comments on the proposed rule were required to be received on or before November 18, 1991. We received one comment, from a State agency, by this date. The commenter supported the proposed rule as it addressed Medfly and ORSM, but had a reservation concerning the fungal disease mal secco (*Phoma tracheiphila*), which he said is not known to occur in the United States but is known to infect several citrus species and cultivars in many Mediterranean countries (including Israel). He was concerned that the fungus may be found in a sporulating condition on short stems which may be attached to the fruit being transported to the United States, thus entering this country. The commenter suggested that APHIS evaluate the pest introduction risk associated with this organism.

APHIS studies of scientific literature indicate that the mal secco organism causes a systemic infection in susceptible plants resulting in shedding of the leaves and eventual dieback of the infected branches. Rapid yellowing of the fruit and premature fruit fall result from the movement of the fungus through the branch toward the fruit. Dead or badly affected branches are not likely to retain fruit, and the occasional fruit which may remain on dead or badly affected branches is not of harvestable quality. The mal secco organism sporulates only after the branch has died and the fungus has invaded the bark.

The presence of healthy appearing fruit, even on affected limbs, indicates that the fungus is not yet near the fruit and definitely has not entered the stem of the fruit. Therefore, APHIS concludes that it is extremely unlikely that the fungus would be found in a sporulating condition on the stem of healthy fruit. This negligible risk does not justify a more restrictive position towards the importation of pummelo from Israel.

The commenter was also concerned that the fungus spores may be carried as contaminants on the surface of the fruit, including the calyces. APHIS recognizes that spores of the mal secco fungus (and many other organisms) may be present as surface contaminants on fruit and possibly under the calyces of fruit. The question becomes whether spore contamination is likely to result in the introduction of the organism and whether the risk justifies prohibiting or restricting fruit for spore contamination if the organism is not sporulating on the fruit. Experience and scientific evidence do not suggest that spore contamination provides a viable pathway for the introduction of fungus organisms.[1] As a result, APHIS believes that to regulate commercially harvested fruit for spore contamination is not reasonable or justified, and would result in a precedent with far reaching negative impacts.

Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for pummelos from Israel is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of APHIS has determined that this rule should be effective upon signature.

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[1] Information concerning the scientific evidence may be obtained from the individual listed under "FOR FURTHER INFORMATION CONTACT."

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We are changing the regulations to allow the importation of pummelo from Israel, subject to completion of an APHIS-prescribed cold treatment for the Medfly and the ORSM. Embassy officials anticipate that initial annual pummelo shipments from Israel to the United States will average between 200 and 300 metric tons and increase to approximately 1,000 metric tons within several years. The initial retail value of Israeli pummelo shipments will range from approximately $373,600 to $747,000. As Israel increases annual exports, the total retail value of pummelo shipments to the United States will be expected to increase to between $1.5 million and $2.1 million.

In the United States, pummelos represent an extremely small portion of the domestic citrus industry. There are only a handful of commercial pummelo producers in the United States—approximately two to three in Florida, with some additional production occurring in California. Current estimates indicate that there are fewer than 1,000 pummelo trees in the United States. Domestic producers grow pummelo as a small part of large-scale citrus operations, and it is expected that they will continue to grow pummelo at the same rate. Thus domestic production of pummelo is not expected to be affected by increased imports from Israel.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we are amending 7 CFR part 319 as follows:

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. In Subpart—Fruits and Vegetables, a new § 319.56–2u is added to read as follows:

§ 319.56–2u Conditions governing the entry of pummelo from Israel.

Pummelo from Israel may be imported into the United States only if cold treated in accordance with § 319.56–2d(a)(2)(i) of this subpart and if all other applicable requirements of this subpart are met. Entry is limited to North Atlantic ports north of and including Baltimore, MD, if treatment is to be completed in the United States. Entry may be through any port if treatment has been completed prior to arrival in the United States.

Done in Washington, DC, this 23rd day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–2014 Filed 1–27–92; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 89F–0451]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 12-hydroxystearic acid-polyethylene glycol block copolymers as surfactants for dispersions of polyacrylamide retention and drainage aids used in the manufacture of paper and paperboard. This action responds to a petition filed by ICI Americas, Inc.

DATES: Effective January 28, 1992. Written objections and requests for a hearing by February 27, 1992.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF–335), 200 C Street SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 17, 1989 (54 FR 47828), FDA announced that a petition (FAP OB4179) had been filed by ICI Americas, Inc., Concord Pike and Murphy Rd., Wilmington, DE 19803, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of polyethylene glycol (MW 1500–4000)/poly (12-hydroxystearic acid) copolymers as surfactants for dispersions of polyacrylamide retention and drainage aids used in the manufacture of paper and paperboard intended to contact aqueous and fatty foods.

The filing notice proposed that the molecular weight of the polyethylene glycol reactant be 1500 to 4000. FDA concludes, however, that it is unnecessary to specify an upper molecular weight range for the polyethylene glycol reactant because the safety of the additive prepared using polyethylene glycol with an average molecular weight of 1500 has been established by this petition and copolymers prepared using polyethylene glycol with higher average molecular weights are generally known, based on agency experience, to be less toxic than lower molecular weight compounds. Therefore, in this regulation, the agency is only specifying 1500 as the minimum molecular weight for the polyethylene glycol components. FDA also has determined that the additive is best described by the nomenclature 12-

hydroxystearic acid-polyethylene glycol block copolymers. The agency is therefore using this name for the additive in the regulation.

FDA, in its evaluation of the safety of 12-hydroxystearic acid-polyethylene glycol block copolymers, reviewed the safety of the additive, including impurities that might be present in the additive. The agency is not aware of any data that show that the additive, 12-hydroxystearic acid-polyethylene glycol block copolymers, is a cancer-causing chemical. However, ethylene oxide and 1,4-dioxane, which could be present as impurities in the polyethylene glycol, have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as ethylene oxide and 1,4-dioxane, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause," a food additive cannot be approved for a particular use unless a fair evaluation of the data establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958).) This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical, but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic constituent, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical, but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of the Petitioned Use

FDA estimates that the petitioned use of 12-hydroxystearic acid-polyethylene glycol block copolymers will result in extremely low levels of exposure to this additive. The agency calculated the estimated daily intake of 12-hydroxystearic acid-polyethylene glycol block copolymers based on several factors, including the migration of the additive under the most severe intended use conditions and the probable concentration of the additive in the daily diet from food-contact articles. The estimated daily intake for the additive is no greater than 39 micrograms per person per day.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing in this case. On the basis of available acute toxicity data and the low level of exposure to the 12-hydroxystearic acid-polyethylene glycol block copolymers, the agency concludes that there is an adequate margin of safety for the proposed use of this additive.

FDA has evaluated the safety of this additive under the general safety clause, using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic chemicals, ethylene oxide and 1,4-dioxane, that may be present as impurities in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see e.g., 49 FR 13018 at 13019, April 2, 1984). This risk evaluation of the carcinogenic impurities has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 1,4-Dioxane

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive and assuming that 1,4-dioxane is present in the finished polymer, FDA estimated the hypothetical worst-case exposure to 1,4-dioxane from the use of the additive to be no greater than 19 picograms (pg) per person per day (Ref. 3). The agency used data from a carcinogenesis bioassay conducted by the National Cancer Institute (Ref. 4) to estimate the upper-bound level of lifetime human risk from the proposed use of the additive. The results of the bioassay on 1,4-dioxane indicated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (the committee) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The committee further concluded that the 1,4-dioxane bioassay provided the appropriate basis on which to calculate an estimate of the upper-bound level of lifetime risk from potential exposure to 1,4-dioxane stemming from the proposed use of the additive.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the

extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine, to a reasonable certainty, whether any harm will result from the proposed conditions and levels of use of the food additives.

Based on a worst-case exposure of 19 pg per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from the potential exposure to 1,4-dioxane from the use of the subject additive is 6.7×10^{-13}, or 6.7 in 10 trillion (Ref. 5). Because of numerous conservatisms in the exposure estimate, actual lifetime averaged exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake and, therefore, the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to 1,4-dioxane that might result from the proposed use of the additive.

B. Ethylene Oxide

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive and assuming that ethylene oxide is present at the limit of detection (Ref. 3), FDA estimated the hypothetical worst-case exposure to ethylene oxide from the use of the additive to be no greater than 7.5 pg per person per day. The agency used data from a carcinogenesis bioassay on ethylene oxide performed by the Institute of Hygiene, University of Mainz, Germany (Ref. 6) to estimate the upper-bound level of lifetime human risk from the proposed use of the additive. The results of the bioassay on ethylene oxide indicated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas in situ of the forestomach and carcinoma in situ of the glandular stomach.

The committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on ethylene oxide. The committee further concluded that the ethylene oxide bioassay provided the appropriate basis on which to calculate an estimate of the upper-bound level of lifetime risk from potential exposure to ethylene oxide stemming from the proposed use of the additive.

Based on a worst-case exposure of 7.5 pg per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from the potential exposure to ethylene oxide from the use of the subject additive is 1.5×10^{-11}, or 1.5 in 100 billion (Ref. 5). Because of numerous conservatisms in the exposure estimate, actual lifetime averaged individual daily exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and therefore the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that might result from the proposed use of the additive.

III. Need for Specifications and Conclusion on Safety

The agency has also considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which ethylene oxide and 1,4-dioxane may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely low levels; and (2) the upper-bound limit of lifetime risk from exposure to either of these impurities, even under worst-case assumptions, is very low, 1.5 in 100 billion.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before February 27, 1992 file with the Dockets Management Branch (address above) written objections thereto.

Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G.M., "Carcinogen Testing Programs," in *Food Safety: Where Are We?*, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.
2. Kokoski, C.J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by Homburger, F., J.K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.
3. Memorandum from the Food and Color Additives Review Section to the Indirect Additives Branch, dated May 18, 1990.
4. "Bioassay of 1,4-dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.
5. Memorandum from the Quantitative Risk Assessment Committee, dated April 11, 1991, Re: FAP OB4179.
6. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 376).

2. Section 176.170 is amended in paragraph (a)(5) by alphabetically adding a new entry to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
12-Hydroxystearic acid-polyethylene glycol block copolymers (CAS Reg. No. 70142-34-6) produced by the reaction of polyethylene glycol (minimum molecular weight 1500) with 12-hydroxystearic acid.	For use only as a surfactant for dispersions of polyacrylamide retention and drainage aids employed prior to the sheet forming operation in the manufacture of paper and paperboard.
* * * * *	

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Dated: January 21, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-1990 Filed 1-27-92; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 177

[Docket No. 89F-0171]

Indirect Food Additives; Poly(Phenyleneterephthalamide) Resins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of poly(phenyleneterephthalamide) resins and various adjuvants used in the resin production, when used in repeated contact with food. The additive is the subject of a petition filed by E.I. du Pont de Nemours & Co.

DATES: Effective January 28, 1992; written objections and requests for a hearing by February 27, 1992.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 6, 1989 (54 FR 24264), FDA announced that a food additive petition (FAP 9B4101) had been filed by E.I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898, proposing that the food additive regulations be amended for the safe use of poly(p-phenyleneterephthalamide) resins intended to produce articles for repeated use in the processing and handling of food. The filing notice announced that the processing and finishing of the resins may include the following optional adjuvant substances:

Diundecylphthalate
Mono-and dipotassium salts of lauryl phosphate
o-Phenylphenol
Poly(oxyethylene/oxypropylene)monobutylether
Polyethylene glycol mono(nonylphenyl)ether
Polyvinylmethyl ether
Poly(oxyethylene) sorbitol monolaurate tetraoleate
Poly(oxyethylene) sorbitol hexaoleate
4,4'-Butylidenebis(6-*tert*-butyl-*m*-cresol)

To be consistent with current acceptable nomenclature, polyethylene glycol mono(nonylphenyl)ether has been changed to read poly(oxyethylene) mono(nonylphenyl)ether and poly(p-phenyleneterephthalamide) resin has been changed to read poly(phenyleneterephthalamide) resin.

I. The Additive

FDA has reviewed the safety of these additives, as well as the starting materials. Four of the additives reviewed, poly(oxyethylene/oxypropylene)monobutylether, poly(oxyethylene) mono(nonylphenyl)ether, poly(oxyethylene) sorbitol monolaurate tetraoleate, and poly(oxyethylene) sorbitol hexaoleate may contain minute amounts of ethylene oxide and 1,4-dioxane as impurities from their production. These chemical impurities have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as ethylene oxide and 1,4-dioxane, are commonly found as contaminants in chemical products, including some food additives.

II. Prior Action

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer, or Delaney clause, of the food additive amendment (section 409(c)(3)(A) of the act) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that development in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical, but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent. Since that decision, FDA has approved the use of other color additives and food additives on the same basis. An additive that has not been shown to cause cancer, but that contains a carcinogenic constituent, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will

result from the proposed use of the additive.

The agency's position is supported by *Scott v. FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical, but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

III. Safety of Petitioned Use

FDA estimates that the petitioned use of the additive poly(phenylene-terephthalamide) resins and its adjuvants diundecylphthalate, mono- and dipotassium salts of lauryl phosphate, *o*-phenylphenol, poly(oxyethylene/oxypropylene) monobutylether, poly(oxyethylene) mono(nonylphenyl)ether, polyvinyl methyl ether, poly(oxyethylene) sorbitol monolaurate tetraoleate, poly(oxyethylene) sorbitol hexaoleate, and 4,4'-butylidenebis (6-*tert*-butyl-*m*-cresol) will result in extremely low levels of exposure to these substances. FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. Because the additive has not been shown to cause cancer, the anticancer clause does not apply.

FDA has evaluated the safety of these additives under the general safety clause, using risk assessment procedures to estimate the upper bound limit of risk presented by the ethylene oxide and 1,4-dioxane that may be present as impurities in the additives. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities. (See, e.g., 49 FR 13019 at 13019, April 2, 1984.) This risk evaluation of the carcinogenic impurities has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 1,4-Dioxane

Based on the fraction of the daily diet that may be in contact with articles containing the four ethoxylated additives, as well as the level of 1,4-dioxane that may be present in these additives, FDA estimated the hypothetical worst-case exposure to 1,4-dioxane from the use of the ethoxylated additives in repeated-use articles would not exceed 7 nanograms (ng) per person per day (Ref. 3). The agency used data in a carcinogenesis bioassay on 1,4-dioxane, conducted for the National Cancer Institute (Ref. 4), to estimate the upper bound level of lifetime human risk from the proposed use of the additives. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (the Committee) has reviewed this bioassay and other relevant data available in the literature and concludes that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The Committee further concludes that an estimate of the upper bound level of lifetime risk from potential exposure to 1,4-dioxane stemming from the proposed use of the four ethoxylated additives in repeated-use articles could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine, to a reasonable certainty, whether any harm will result from the proposed conditions and levels of use of the four ethoxylated additives.

Based on a worst-case exposure of 7 ng per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to 1,4-dioxane from the use of these ethoxylated additives is 2.5×10^{-10}, or less than 2.5 in 10 billion (Ref. 5). Because of numerous conservations in the exposure estimate, lifetime average individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1,4-dioxane that might result from the proposed use of the four ethoxylated additives.

B. Ethylene Oxide

Based on the fraction of the daily diet that may be in contact with articles containing the four ethoxylated additives, as well as the level of ethylene oxide that may be present in the additives, FDA estimated the hypothetical worst-case exposure to ethylene oxide from the use of the ethoxylated additives in repeated-use articles would not exceed 7 ng per person per day (Ref. 3). The agency used data in a carcinogenesis bioassay on ethylene oxide conducted for the Institute of Hygiene, University of Mainz, Germany (Ref. 6), to estimate the upper bound level of lifetime human risk from the proposed use of the additives. The results of the bioassay on ethylene oxide demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinoma in situ of the glandular stomach.

The Committee has reviewed this bioassay and other relevant data available in the literature and concludes that the findings of carcinogenicity were supported by this information on ethylene oxide. The Committee further concludes that an estimate of the upper bound level of lifetime risk from potential exposure to ethylene oxide stemming from the proposed use of the four ethoxylated additives in repeated-use articles could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. As discussed above, this estimate can be used with the confidence to determine, to a reasonable certainty, whether any harm will result from the proposed conditions and levels of use of the ethoxylated additives.

Based on a worst-case exposure of 7 ng per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to ethylene oxide from the use of the four ethoxylated additives is 1.3×10^{-8}, or less than 1.3 in 100 million (Ref. 5). Because of numerous conservations in

the exposure estimate, lifetime averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to ethylene oxide that might result from the proposed use of these additives.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amounts of 1,4-dioxane and ethylene oxide in the four ethoxylated additives and in the finished poly(phenyleneterephthalamide) resins. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the ethoxylated additives and the finished resin, the agency would not expect these impurities to become components of food at other than extremely low levels; and (2) the upper bound limit of lifetime risk from exposure to these impurities, even under worst-case assumptions, is very low, less than 1.3 in 100 million and 2.5 in 10 billion for ethylene oxide and 1,4-dioxane, respectively.

D. Conclusion of Safety

FDA has evaluated the available toxicity data and the exposure calculations for the intended use of the poly(phenyleneterephthalamide) resin and its adjuvant additives and has determined that they are safe for their proposed use. Accordingly, FDA is amending Part 177 by adding new § 177.1632. In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G.M., "Carcinogen Testing Programs," in "Food Safety: Where are we?", Committee on Agriculture, Nutrition, and Forestry, United States Senate, p. 59, July 1979.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology," *Chemical Safety Regulation and Compliance*, edited by F. Hombruger and J.K. Marquis, *S. Karger*, New York, NY, pp. 24–33, 1985.

3. Memorandum dated December 30, 1988, from Food And Color Additives Review Section to Indirect Additives Branch "FAP 8B4101—DuPont. Polymer of Terephthaloyl Chloride and *p*-Phenylenediamine," submission of July 7, 1988.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

5. Memorandum dated October 31, 1990, "Report of the Quantitative Risk Assessment Committee."

6. Dunkelber, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before February 27, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. New § 177.1632 is added to subpart B to read as follows:

§ 177.1632 Poly (phenyleneterephthalamide) resins.

Poly(phenyleneterephthalamide) resins identified in paragraph (a) of this section may be safely used as articles or components of articles intended for repeated contact with food.

(a) *Identity.* For the purpose of this section, the poly(phenylene-terephthalamide) resins (CAS Reg. No. 26125–61–1) are produced by the polymerization of terephthaloyl chloride with *p*-phenylenediamine. The poly(phenyleneterephthalamide) resin fibers and yarns may contain optional adjuvant substances required in their preparation and finishing.

(b) *Optional adjuvant substances.* The poly(phenyleneterephthalamide) resins identified in paragraph (a) of this section may contain the following optional adjuvant substances, subject to any limitation on their use:

(1) Optional adjuvant substances authorized for this use in accordance with § 174.5 of this chapter.

(2) Optional finish components, total weight not to exceed 1 percent by weight of the base polymer, as follows:

List of substances	Limitations
Diundecylphthalate (CAS Reg. No. 3648–20–2). Mono- and dipotassium salts of lauryl phosphate (CAS Reg. No. 39322–78–6). *o*-Phenylphenol (CAS Reg. No. 90–43–7).	For use as a fungicide for finish coating materials. Not to exceed 0.01 percent by weight of the base polymer.

List of substances	Limitations
Poly(oxyethylene/oxypropylene)mono-butylether (CAS Reg. No. 9038-95-3).	
Poly(oxyethylene) mono(nonylphenyl)ether (CAS Reg. No. 9019-45-9).	
Polyvinyl methylether (CAS Reg. No. 9003-09-2).	
Poly(oxyethylene) sorbitol monolaurate tetraoleate (CAS Reg. No. 71243-28-2).	
Poly(oxyethylene) sorbitol hexaoleate (CAS Reg. No. 57171-56-8).	
4,4'-Butylidenebis (6-tert-butyl-*m*-cresol) (CAS Reg. No. 85-60-9).	For use only as an oxidation inhibitor for finish coating materials. Not to exceed 0.01 percent by weight of the base polymer.

(c) *Specifications.* (1) Poly(phenyleneterephthalamide) resins in the form of continuous filament yarns or fibers that have been scoured in accordance with paragraph (d)(1) of this section, when refluxed in a 50 percent ethanol/water mixture for 24 hours, yields total extractables not exceeding 0.5 percent by weight of the sample.

(2) Poly(phenyleneterephthalamide) resins in the form of pulp, when refluxed in a 50 percent ethanol/water mixture for 24 hours, yields total extractables not exceeding 0.85 percent by weight of the sample.

(d) *Conditions of use.* (1) Poly(phenyleneterephthalamide) resins in the form of continuous filament yarns and fibers may be used as components of articles intended for repeated use in contact with food at temperatures not to exceed 260 °C (500 °F). All items are scoured prior to use by agitation in a water bath containing 0.5 gram/liter of tetrasodium pyrophosphate and 0.5 percent detergent. The items are agitated at 80 °C (180 °F) for 20 minutes, and then subjected to a cold water rinse.

(2) Poly(phenyleneterephthalamide) resins in the form of pulp may be used as gaskets and packing for food processing equipment at temperatures not to exceed 260 °C (500 °F).

Dated: January 21, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 92-1987 Filed 1-27-92; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 177

[Docket No. 88F-0462]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyurethane resins derived from the reaction of diphenylmethane diisocyanate with 1,4-butanediol and polytetramethylene ether glycol as rubber articles intended for repeated use in contact with food. This action is in response to a petition filed by The Dow Chemical Co., E. I. du Pont de Nemours & Co., and B. F. Goodrich.

DATES: Effective January 28, 1992; written objections and requests for a hearing by February 27, 1992.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of November 17, 1989 (54 FR 47828), FDA announced that a food additive petition (FAP 0B4182) had been filed by The Dow Chemical Co., 1803 Bldg., Door 7, Midland, MI 48674, E. I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898, and B. F. Goodrich, 3925 Embassy Pkwy., Akron, OH 44313, proposing that § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) of the food additive regulations be amended to provide for the safe use of polyurethane resins derived from the reaction of diphenylmethane diisocyanate with 1,4-butanediol and polytetramethylene ether glycol, as rubber articles intended for repeated use in contact with food.

In its evaluation of the safety of these resins, FDA has reviewed the safety of the proposed additives themselves, their starting materials, and the byproducts of the starting materials used to manufacture the additives. Although polyurethane resins have not been found to cause cancer, some have been found to contain minute amounts of methylenedianiline (MDA) which has been shown to cause cancer in test animals. MDA is produced when diphenylmethane diisocyanate (MDI), a starting material used in the manufacture of polyurethane resins, is reacted with water. Residual amounts of reactants or their reaction products and manufacturing aids are commonly found as contaminants in chemical products, including food additives. Therefore, the agency has evaluated the safety of the use of polyurethane resins that may contain residual amounts of the carcinogenic reaction product MDA and that are intended for repeated use in contact with food.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2234, 85th Cong., 2d sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer, or Delaney provision of the general safety clause of the Food Additives Amendment of 1958 (section 409(c)(3)(A) of the act) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive itself has not been shown to cause cancer. The agency now believes however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the Federal Register of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use

of numerous color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

This position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984), a case that involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use of the Food Additives

FDA estimates that the petitioned use of the polyurethane resins will result in extremely low levels of exposure to these additives. The agency has calculated the estimated daily intake of the migrants from the additives (polyurethane oligomers and cylic polytetramethylene ether glycol oligomers) under the most severe conditions of the intended use of the additives and the probable concentrations of the migrants in the daily diet from the additives' use in contact with food. The agency estimated the potential daily intakes of the polyurethane oligomers and the cyclic polytetramethylene ether glycol oligomers to be 27 nanograms per person per day and 99 nanograms per person per day, respectively.

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2) and the agency has not required such testing here. However, the agency has reviewed available data from acute and subacute oral toxicity data in rats. Based on the very low level of exposure to the migrants from the use of these additives and the available toxicity data, the agency concludes that the food contact use of the additives is safe under the proposed conditions of use.

Because polyurethane resins, which may contain MDA, have not been shown to cause cancer, the Delaney anticancer provision of section 409(c)(3)(A) of the act does not apply to them. FDA, therefore, has evaluated the safety of these additives under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic impurity MDA, which may be present in the additives. Based on this evaluation, the agency has concluded that the polyurethane resins are safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see e.g., 49 FR 13018 at 13019, April 2, 1984). The risk evaluation of the carcinogenic impurity, MDA, has two aspects: (1) Assessment of the worst-case exposure to the impurity from the proposed use of the additives; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Methylenedianiline (MDA)

Based on the fraction of the daily diet that may be in contact with surfaces containing the polyurethane resins, and on the level of MDA resulting from the hydrolysis of MDI in the resins, FDA estimated the worst-case exposure to MDA from the use of the additive to be 20 picograms (pg) per person per day (Ref. 3). The agency used data in a National Toxicological Program technical report (No. 248; 1983) on a carcinogenesis bioassay on MDA (also referred to as 4,4'-diphenylmethane-diamine in this bioassay) to estimate the upper-bound limit of lifetime human risk stemming from the proposed use of the additives (Ref. 4). The results of the bioassay on MDA demonstrated that MDA was carcinogenic for rats and mice of both sexes. The test material caused a significantly increased incidence of follicular cell tumors of the thyroid in male rats, hepatocellular carcinomas in mice, follicular cell carcinomas in mice and female rats, pheocytochromo-cytomas in male mice, malignant lymphomas in female rats, and neoplastic nodules in the liver of male rats. In addition, several rare tumors (bile duct adenoma in male rats, and ovarian granulosa-cell tumors and urinary bladder transitional cell papillomas in female rats) were observed in this study.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on MDA. The Quantitative Risk Assessment Committee of the Center for Food Safety and Applied Nutrition further concluded that an estimate of the upper-bound human risk from exposure to MDA stemming from the proposed use of the polyurethane resins could be calculated from the MDA bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal study to the very low doses encountered under the proposed conditions of use of the polyurethane resins. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst-case exposure of less than 20 pg per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to MDA from the proposed use of the polyurethane resins is 1.6×10^{-11}, or less than 1.6 in 100 billion (Ref. 5). Because of the numerous conservatisms in the exposure estimate, actual lifetime averaged individual exposure to MDA is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to MDA that might result from the proposed use of the polyurethane resins.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of MDA in the polyurethane resins. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which MDA may be expected to remain as an impurity following production of the additives, the agency would not expect MDA to become a component of food at other than extremely small levels; and (2) the upper-bound limit of lifetime risk from exposure to this impurity, even under worst-case assumptions, is very low, less than 1.6 in 100 billion.

III. Conclusion on Safety

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the polyurethane resins as rubber articles intended for repeated use in

contact with food is safe. Based on this information the agency has also concluded that the additives will have their intended technical effect, and, therefore, that § 177.2600 should be amended in paragraph (c)(4) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m, Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before February 27, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogen Testing Programs," in "Food Safety: Where are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," *Chemical Safety Regulation and Compliance*, edited by Homburger F., J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum dated February 2, 1990, from the Food and Color Additives Review Section (HFF–415) to the Indirect Additives Branch (HFF–335), FAP OB4182—Dow DuPont, and B. F. Goodrich—Exposure to methylenedianiline.

4. Carcinogenesis bioassay of 4,4'-methylenedianiline dihydrochloride (CAS Reg. No. 1355–44–8) in F344/N Rats an $B6C3F_1$, Mice, National Toxicology Program Technical Report Series, No. NTP TR248, 1983.

5. Memorandum dated April 1, 1991, from the Quantitative Risk Assessment Committee; Upper-Bound Lifetime Risk for Methylenedianiline (MDA) in Polyurethane Resins Used as Rubber Articles, FAP OB4182 (Dow, DuPont, and B. F. Goodrich).

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 177.2600 is amended in paragraph (c)(4)(i) by alphabetically adding a new entry to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(i) * * *

Polyurethane resins (CAS Reg. Nos. 37383–28–1 or 9018–04–6) derived from the reaction of diphenylmethane diisocyanate with 1,4-butanediol and polytetramethylene ether glycol.

* * * * *

Dated: January 21, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–1986 Filed 1–27–92; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 720

[Docket No. 89P–0180]

Modification in Voluntary Filing of Cosmetic Product Ingredient and Cosmetic Raw Material Composition Statements

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is modifying the program it maintains for cosmetic companies to voluntarily file cosmetic product formulations and raw material compositions. FDA is eliminating the reporting of semiquantitative ingredient information, integrating information on raw materials into cosmetic product formulation statements, and discontinuing the forms for reporting raw material compositions. This action responds to a citizen petition filed by the Cosmetic, Toiletry and Fragrance Association (CTFA). The changes that are being made in the regulations are expected to facilitate participation in the cosmetic filing program.

EFFECTIVE DATE: Effective January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–444), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–245–1707.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 25, 1990 (55 FR 42993), FDA proposed to modify the program for voluntary filing of cosmetic product formulations and raw material compositions by eliminating the reporting of semiquantitative ingredient information (Forms FDA 2512 and 2512a), integrating raw material composition disclosures into cosmetic product formulation statements and discontinuing the forms for reporting raw material compositions (Forms FDA 2513 and 2513a). The proposal was in response to a citizen petition filed by the CTFA. FDA also proposed clarifying changes to update and to remove references from its regulations that would be obsolete if the proposal

became final. Interested persons were given until December 24, 1990, to comment on the proposal.

FDA received one comment in response to the proposal. That comment was from a trade association in support of the proposal. Accordingly, FDA is amending the voluntary filing of cosmetic product ingredient regulation (21 CFR part 720) to eliminate the reporting of semiquantitative ingredient information, to integrate raw material composition disclosures into cosmetic product formulation statements, and to discontinue the forms for reporting raw material compositions. FDA also is correcting the inadvertent omission in the proposal of the word "Product" in the heading for part 720.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as defined by the Order. The agency has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

Paperwork Reduction Act of 1980

Sections 720.4 and 720.6 of this final rule contain information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0030.

List of Subjects in 21 CFR Part 720

Confidential business information, Cosmetics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 720 is amended as follows:

1. The heading for part 720 is revised to read as follows:

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT STATEMENTS

2. The authority citation for 21 CFR part 720 continues to read as follows:

Authority: Secs. 201, 301, 601, 602, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 361, 362, 371, 374).

3. Sections 720.1, 720.2, and 720.3 are revised to read as follows:

§ 720.1 Who should file.

Either the manufacturer, packer, or distributor of a cosmetic product is requested to file Form FDA 2512 ("Cosmetic Product Ingredient Statement"), whether or not the cosmetic product enters interstate commerce. This request extends to any foreign manufacturer, packer, or distributor of a cosmetic product exported for sale in any State as defined in section 201(a)(1) of the Federal Food, Drug, and Cosmetic Act. No filing fee is required.

§ 720.2 Times for filing.

Within 180 days after forms are made available to the industry, Form FDA 2512 should be filed for each cosmetic product being commercially distributed as of the effective date of this part. Form FDA 2512 should be filed within 60 days after the beginning of commercial distribution of any product not covered within the 180-day period.

§ 720.3 How and where to file.

Forms FDA 2512 and FDA 2514 ("Discontinuance of Commercial Distribution of Cosmetic Product Formulation") are obtainable on request from the Food and Drug Administration, Department of Health and Human Services, Washington, DC 20204, or at any Food and Drug Administration district office. The completed form should be mailed or delivered to: Cosmetic Product Statement, Food and Drug Administration, Department of Health and Human Services, Washington, DC 20204, according to the instructions provided with the forms.

4. Section 720.4 is amended in the introductory texts of paragraphs (a) and (b) by removing "FD–2512" and replacing it with "FDA 2512"; by removing paragraph (b)(5); by revising paragraphs (c)(12)(iii) through (c)(12)(v), (c)(12)(ix), and (c)(12)(x); by removing paragraphs (c)(12)(xi) and (c)(12)(xii); by revising the paragraph heading in the introductory text of paragraph (c)(13); by revising paragraph (d); by removing in paragraph (e) "FD–2512" in the first and second sentences and replacing it with "FDA 2512"; and by adding a parenthetical statement at the end of the section to read as follows:

§ 720.4 Information requested about cosmetic products.

* * * * *

(c) * * *

(12) * * *

(iii) Face and neck (excluding shaving preparations).

(iv) Body and hand (excluding shaving preparations).

(v) Foot powders and sprays.

* * * * *

(ix) Skin fresheners.

(x) Other skin care preparations.

(13) *Suntan preparations.* * * *

* * * * *

(d) Ingredients in the product should be listed as follows:

(1) A list of each ingredient of the cosmetic product in descending order of predominance by weight (except that the fragrance and/or flavor may be designated as such without naming each individual ingredient when the manufacturer or supplier of the fragrance and/or flavor refuses to disclose ingredient data).

(2) An ingredient should be listed by the name adopted by the Food and Drug Administration (FDA) for the ingredient pursuant to § 701.3(c) of this chapter.

(3) In the absence of a name adopted by FDA pursuant to § 701.3(c) of this chapter, its common or usual name, if it has one, or its chemical or technical name should be listed.

(4) If an ingredient is a mixture, each ingredient of the mixture should be listed in accordance with paragraphs (d)(2) and (d)(3) of this section, unless such mixture is a formulation voluntarily registered on Form FDA 2512, in which case such mixture should be identified as "fragrance," "flavor," "fragrance and flavor" or "base formulation," as appropriate, and by stating its FDA-assigned cosmetic product ingredient statement number.

(5) When the manufacturer or supplier of a fragrance and/or flavor refuses to disclose ingredient data, the fragrance and/or flavor should be listed as such. The nonconfidential listing of the product name and/or trade name or name of the manufacturer or supplier of each proprietary fragrance and/or flavor mixture is optional.

* * * * *

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0030)

§ 720.5 [Removed]

5. Section 720.5 *Information requested about cosmetic raw materials* is removed and reserved.

6. Sections 720.6 and 720.7 are revised to read as follows:

§ 720.6 Amendments to statement.

Changes in the information requested under §§ 720.4 (a)(3) and (a)(5) on the ingredients or brand name of a cosmetic product should be submitted by filing an amended Form FDA 2512 within 60 days after the product is entered into commercial distribution. Other changes do not justify immediate amendment, but should be shown by filing an amended Form FDA 2512 within a year after such changes. Notice of discontinuance of commercial distribution of a cosmetic product formulation should be submitted by Form FDA 2514 within 180 days after discontinuance of commercial distribution becomes known to the person filing.

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0030)

§ 720.7 Notification of person submitting cosmetic product ingredient statement.

When Form FDA 2512 is received, FDA will either assign a permanent cosmetic product ingredient statement number or a Food and Drug Administration (FDA) reference number in those cases where a permanent number cannot be assigned. Receipt of the form will be acknowledged by sending the individual signing the statement an appropriate notice bearing either the FDA reference number or the permanent cosmetic product ingredient statement number. If the person submitting Form FDA 2512 has not complied with §§ 720.4 (b)(1) and (b)(2), the person will be notified as to the manner in which the statement is incomplete.

7. Section 720.8 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 720.8 Confidentiality of statements.

(a) Data and information contained in, attached to, or included with Forms FDA 2512 and FDA 2514, and amendments thereto are submitted voluntarily to the Food and Drug Administration (FDA). * * *

* * * * *

8. Section 720.9 is revised to read as follows:

§ 720.9 Misbranding by reference to filing or to statement number.

The filing of Form FDA 2512 or assignment of a number to the statement does not in any way denote approval by the Food and Drug Administration of the firm or the product. Any representation in labeling or advertising that creates an impression of official approval because of such filing or such number will be considered misleading.

Dated: January 21, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-1989 Filed 1-27-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8390]

RIN 1545-AP37

Tax Treatment of Salvage and Reinsurance

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the treatment of salvage and reinsurance in computing the deduction for losses incurred of insurance companies other than life insurance companies. Changes to the applicable law were made by the Revenue Reconciliation Act of 1990. The regulations are necessary to provide these insurance companies with guidance needed to comply with these changes.

EFFECTIVE DATE: The regulations apply to taxable years beginning after December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Katherine A. Hossofsky (202) 566-4336 (not a toll-free call) or Michael J. Douglass (202) 566-3603 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1227. The estimated average burden per respondent is 2 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time depending on their particular circumstances.

Comments regarding the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document sets forth final income tax regulations relating to the treatment of salvage and reinsurance under section 832(b)(5)(A) of the Internal Revenue Code. Section 832(b)(5)(A) was amended by section 11305 of the Revenue Reconciliation Act of 1990, 104 Stat. 1388 ("the 1990 Act"). Proposed regulations under section 832(b)(5)(A) were published in the **Federal Register** on March 15, 1991 (56 FR 11127) [FI-104-90]. Written comments were received from the public. No public hearing was held because there were no requests for a hearing. After consideration of all the written comments received, the proposed regulations under section 832(b)(5)(A) are adopted as modified by this Treasury decision.

Guidance regarding certain implementation issues under section 832(b)(5)(A) also is provided in Rev. Proc. 91-48, 1991-34 I.R.B. 12.

Explanation of Provisions

In General

Section 832(b)(3) of the Code defines the "underwriting income" of an insurance company subject to tax under section 831 as premiums earned less losses incurred and expenses incurred. Under section 832(b)(5)(A), "losses incurred" are computed by taking into account paid losses, unpaid losses, and salvage and reinsurance. For taxable years beginning before January 1, 1990, salvage and reinsurance recoverable was taken into account as a reduction to paid losses. For those taxable years, the regulations required salvage recoverable to be taken into account only to the extent that the salvage recoverable could be treated as an asset for state statutory accounting purposes.

For taxable years beginning after December 31, 1989, the 1990 Act amended section 832(b)(5)(A) to require

all estimated salvage recoverable (including that which cannot be treated as an asset for state statutory accounting purposes) to be taken into account in computing the deduction for losses incurred. Under section 832(b)(5)(A), paid losses are to be reduced by salvage and reinsurance recovered during the taxable year. This amount is adjusted to reflect changes in discounted unpaid losses on nonlife insurance contracts and in unpaid losses on life insurance contracts. An adjustment is then made to reflect any changes in discounted estimated salvage recoverable and in reinsurance recoverable.

The amendments to the regulations conform the regulations to the new treatment of estimated salvage recoverable required by the 1990 Act. The regulations clarify that estimated salvage recoverable includes estimates of salvage recoverable that may not be treated as assets for state statutory accounting purposes. See H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 1071 (1990). The regulations also make clear that the term "salvage recoverable" includes anticipated recoveries on account of subrogation claims arising with respect to paid or unpaid losses.

Under section 846(b)(1), the starting point for determining discounted unpaid losses for Federal income tax purposes is the amount of unpaid losses reported to state regulatory authorities on the annual statement. This conformity of tax and annual statement amounts discourages companies from overstating unpaid losses for Federal tax purposes because the claiming of excess unpaid losses may have adverse consequences for state regulatory purposes.

Commentators noted that certain companies had taken estimated salvage recoverable into account in determining the unpaid losses on their annual statements. For these companies, the requirement in the proposed regulations that estimated salvage recoverable be taken into account separately in computing losses incurred may result in a double counting of salvage. In response to these comments, the final regulations permit a limited exception to the conformity requirement if there is adequate disclosure to state regulatory authorities to assure that the purposes of conformity are achieved. Under the final regulations, a company that has taken estimated salvage recoverable into account in determining the amount of unpaid losses reported on the annual statement may increase its unpaid losses for tax purposes by the amount of estimated salvage recoverable taken into account in determining those unpaid losses provided this amount is disclosed to the state regulatory authorities.

The final regulations provide rules for making the disclosure. Under the final regulations, a company is allowed, for any taxable year, to adjust the amount of unpaid losses shown on its annual statement by estimated salvage recoverable only if the company either (i) discloses on its annual statement, by line of business and accident year, the extent to which estimated salvage recoverable was taken into account in determining the amount of unpaid losses shown on the annual statement, or (ii) files a statement with the state regulatory authority of each state to which the company is required to submit an annual statement. The statement must disclose, by line of business and accident year, the extent to which estimated salvage recoverable was taken into account in computing the unpaid losses shown on the annual statement. Rules also are provided concerning the form of the statement and the time it must be filed.

Transitional Rules

By requiring insurance companies to take estimated salvage recoverable into account in computing losses incurred, the 1990 Act changed the method by which companies compute losses incurred. Section 11305(c)(2)(A) of the 1990 Act treats this change as a change in method of accounting. Section 11305(c)(2)(B) of the 1990 Act provides that an insurance company must take into account only 13 percent of the section 481 adjustment that would otherwise have been required as a result of the change in method of accounting.

Section 11305(c)(4) of the 1990 Act provides a rule for overestimates of the section 481 adjustment. Under this rule, an insurance company subject to tax under section 831 is required to include in gross income 87 percent of any amount (adjusted for discounting) by which the section 481 adjustment is overestimated. The rule is applied by comparing the amount of the section 481 adjustment (determined without regard to section 11305(c)(2) of the 1990 Act and any discounting) to the sum of the actual salvage recoveries and the remaining undiscounted estimated salvage recoverable that are attributable to losses incurred in accident years beginning before 1990. For any taxable year beginning after December 31, 1989, any excess of the section 481 adjustment over this sum is an overestimate for purposes of section 11305(c)(4) of the 1990 Act. To determine the amount to be included in income, it is necessary to discount this excess and multiply the resulting amount by 87 percent.

In the case of an insurance company subject to tax under section 831, section 11305(c)(3) of the 1990 Act allows the insurance company to deduct 87 percent of the discounted amount of estimated salvage recoverable that the company took into account under its method of accounting for the last taxable year beginning before January 1, 1990 ("special deduction"). In response to comments requesting clarification of the proposed regulations, the final regulations make clear that a company that claims the special deduction may not also claim the benefit of section 11305(c)(2)(B) of the 1990 Act.

The proposed regulations provide that an insurance company claiming the special deduction must be able to establish to the satisfaction of the district director that it took estimated salvage recoverable into account for the last taxable year before January 1, 1990. Under the proposed regulations, a company may not satisfy this requirement merely by stating that estimated salvage recoverable is reflected in the company's loss reserves, but may satisfy this requirement by disclosing to the relevant state regulatory authority the extent to which the company took into account estimated salvage recoverable in computing paid or unpaid losses (whichever is applicable) on its 1989 annual statement.

In response to comments concerning the scope of this disclosure provision, the final regulations clarify the circumstances under which disclosure to state regulatory authorities will satisfy this requirement. The final regulations provide that the amount of a special deduction will be deemed to have been established to the satisfaction of the district director if (i) by September 16, 1991, the company filed with its state regulatory authority a statement disclosing the extent to which losses incurred for each line of business shown on the 1989 annual statement were reduced by estimated salvage recoverable, and (ii) the company agreed, on a statement attached to its return for its first taxable year beginning after December 31, 1989, to apply the special rule for overestimates to the amount of estimated salvage recoverable for which it has taken the special deduction. If the company is a member of a consolidated group, each property and casualty insurance company that is a member of the consolidated group must join in the agreement to apply the special rule for overestimates.

The special deduction was designed to create parity between those taxpayers that took estimated salvage recoverable into account for the last taxable year beginning before January 1, 1990, and those taxpayers that did not take estimated salvage recoverable into account. If the inclusion of estimated salvage recoverable did not increase a company's taxable income, no special deduction is needed. Accordingly, the final regulations provide that an insurance company that claimed a "fresh start" benefit with respect to estimated salvage recoverable under section 1023(e) of the Tax Reform Act of 1986 may not claim the special deduction under section 11305(c)(3) of the 1990 Act to the extent the company has previously claimed the benefit of a fresh start.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the rules was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these proposed regulations are Katherine A. Hossofsky and Michael J. Douglass of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.831–1 Through 1.832–7T

Income taxes, Insurance companies.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

For the reasons set out in the preamble, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by removing the citation for § 1.832–4T and by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * * Section 1.832–4 also issued under 26 U.S.C. 832(b)(5)(A).

§ 1.832–4T [Redesignated as § 1.832–4]

Par. 2. Section 1.832–4T is redesignated as § 1.832–4.

Par. 3. Newly redesignated § 1.832–4 is amended as follows:

1. The section heading is revised.
2. The last sentence of paragraph (a)(5) is removed.
3. Paragraphs (b) through (e) are revised.
4. Paragraphs (f) and (g) are added.
5. The revised and added provisions read as follows:

§ 1.832–4 Gross income.

* * * * *

(b) *Losses incurred.* Every insurance company to which this section applies must be prepared to establish to the satisfaction of the district director that the part of the deduction for "losses incurred" which represents unpaid losses at the close of the taxable year comprises only actual unpaid losses. See section 846 for rules relating to the determination of discounted unpaid losses. These losses must be stated in amounts which, based upon the facts in each case and the company's experience with similar cases, represent a fair and reasonable estimate of the amount the company will be required to pay. Amounts included in, or added to, the estimates of unpaid losses which, in the opinion of the district director, are in excess of a fair and reasonable estimate will be disallowed as a deduction. The district director may require any insurance company to submit such detailed information with respect to its actual experience as is deemed necessary to establish the reasonableness of the deduction for "losses incurred."

(c) *Losses incurred are reduced by salvage.* Under section 832(b)(5)(A), losses incurred are computed by taking into account losses paid reduced by salvage and reinsurance recovered, the change in discounted unpaid losses, and the change in estimated salvage and reinsurance recoverable. For purposes of section 832(b)(5)(A)(iii), estimated salvage recoverable includes all anticipated recoveries on account of salvage, whether or not the salvage is treated, or may be treated, as an asset for state statutory accounting purposes. Estimates of salvage recoverable must be based on the facts of each case and the company's experience with similar cases. Except as otherwise provided in guidance published by the Commissioner in the Internal Revenue Bulletin, estimated salvage recoverable must be discounted either—

(1) By using the applicable discount factors published by the Commissioner for estimated salvage recoverable; or

(2) By using the loss payment pattern for a line of business as the salvage recovery pattern for that line of business and by using the applicable interest rate for calculating unpaid losses under section 846(c). For purposes of section 832(b)(5)(A) and the regulations thereunder, the term "salvage recoverable" includes anticipated recoveries on account of subrogation claims arising with respect to paid or unpaid losses.

(d) *Increase in unpaid losses shown on annual statement in certain circumstances*—(1) *In general.* An insurance company that takes estimated salvage recoverable into account in determining the amount of its unpaid losses shown on its annual statement is allowed to increase its unpaid losses by the amount of estimated salvage recoverable taken into account if the company complies with the disclosure requirement of paragraph (d)(2) of this section. This adjustment shall not be used in determining under section 846(d) the loss payment pattern for a line of business.

(2) *Disclosure requirement.* (i) *In general.* A company described in paragraph (d)(1) of this section is allowed to increase the unpaid losses shown on its annual statement only if the company either—

(a) Discloses on its annual statement, by line of business and accident year, the extent to which estimated salvage recoverable is taken into account in computing the unpaid losses shown on the annual statement filed by the company for the calendar year ending with or within the taxable year of the company; or

(B) Files a statement on or before the due date of its Federal income tax return (determined without regard to extensions) with the appropriate state regulatory authority of each state to which the company is required to submit an annual statement. The statement must be contained in a separate document captioned "DISCLOSURE CONCERNING LOSS RESERVES" and must disclose, by line of business and accident year, the extent to which estimated salvage recoverable is taken

into account in computing the unpaid losses shown on the annual statement filed by the company for the calendar year ending with or within the taxable year of the company.

(ii) *Transitional rule.* For a taxable year ending before December 31, 1991, a taxpayer is deemed to satisfy the disclosure requirement of paragraph (d)(2)(i)(B) of this section if the taxpayer files the statement described in paragraph (d)(2)(i)(B) of this section before March 17, 1992.

(3) *Failure to disclose in a subsequent year.* If a company that claims the increase permitted by paragraph (d)(1) of this section fails in a subsequent taxable year to make the disclosure described in paragraph (d)(2) of this section, the company cannot claim an increase under paragraph (d)(1) of this section in any subsequent taxable year without the consent of the Commissioner.

(e) *Treatment of estimated salvage recoverable*—(1) *In general.* An insurance company is required to take estimated salvage recoverable (including that which cannot be treated as an asset for state statutory accounting purposes) into account in computing the deduction for losses incurred. Except as provided in paragraph (e)(2)(iii) of this section, an insurance company must apply this method of accounting to estimated salvage recoverable for all lines of business and for all accident years.

(2) *Change in method of accounting*—(i) If an insurance company did not take estimated salvage recoverable into account as required by paragraph (c) of this section for its last taxable year beginning before January 1, 1990, taking estimated salvage recoverable into account as required by paragraph (c) of this section is a change in method of accounting.

(ii) If a company does not claim the deduction under section 11305(c)(3) of the 1990 Act, the company must take into account 13 percent of the adjustment that would otherwise be required under section 481 for pre-1990 accident years as a result of the change in accounting method. This paragraph (e)(2)(ii) applies only to an insurance company subject to tax under section 831.

(iii) If a company claims the deduction under section 11305(c)(3) of the 1990 Act and paragraph (f) of this section, the company must implement the change in method of accounting for estimated salvage recoverable for post-1989 taxable years pursuant to a "cut-off" method.

(3) *Rule for overestimates.* An insurance company is required under section 11305(c)(4) of the 1990 Act to include in gross income 87 percent of any amount (adjusted for discounting) by which the section 481 adjustment is overestimated. The rule is applied by comparing the amount of the section 481 adjustment (determined without regard to paragraph (e)(2)(ii) of this section and any discounting) to the sum of the actual salvage recoveries and remaining undiscounted estimated salvage recoverable that are attributable to losses incurred in accident years beginning before 1990. For any taxable year beginning after December 31, 1989, any excess of the section 481 adjustment over this sum (reduced by amounts treated as overestimates in prior taxable years pursuant to this paragraph (e)(3)) is an overestimate. To determine the amount to be included in income, it is necessary to discount this excess and multiply the resulting amount by 87 percent.

(f) *Special deduction*—(1) *In general.* Under section 11305(c)(3) of the 1990 Act, an insurance company may deduct an amount equal to 87 percent of the discounted amount of estimated salvage recoverable that the company took into account in determining the deduction for losses incurred under section 832(b)(5) in the last taxable year beginning before January 1, 1990. A company that claims the special deduction must establish to the satisfaction of the district director that the deduction represents only the discounted amount of estimated salvage recoverable that was actually taken into account by the company in computing losses incurred for that taxable year.

(2) *Safe harbor.* The requirements of paragraph (f)(1) of this section are deemed satisfied and the amount that the company reports as bona fide estimated salvage recoverable is not subject to adjustment by the district director, if—

(i) The company files with the insurance regulatory authority of the company's state of domicile, on or before September 16, 1991, a statement disclosing the extent to which losses incurred for each line of business reported on its 1989 annual statement were reduced by estimated salvage recoverable,

(ii) The company attaches a statement to its Federal income tax return filed for the first taxable year beginning after December 31, 1989, agreeing to apply the special rule for overestimates under section 11305(c)(4) of the 1990 Act to the amount of estimated salvage recoverable for which it has taken the special deduction, and

(iii) In the case of a company that is a member of a consolidated group, each insurance company subject to tax under section 831 that is included in the consolidated group complies with paragraph (f)(2)(ii) of this section with respect to its special deduction, if any.

(3) *Limitations on special deduction*—(i) The special deduction under section 11305(c)(3) of the 1990 Act is available only to an insurance company subject to tax under section 831.

(ii) An insurance company that claimed the benefit of the "fresh start" with respect to estimated salvage recoverable under section 1023(e) of the Tax Reform Act of 1986 may not claim the special deduction allowed by section 11305(c)(3) of the 1990 Act to the extent of the estimated salvage recoverable for which a fresh start benefit was previously claimed.

(iii) A company that claims the special deduction is precluded from also claiming the section 481 adjustment provided in paragraph (e)(2)(ii) of this section for pre-1990 accident years.

(g) *Effective date.* Paragraphs (b) through (f) of this section are effective for taxable years beginning after December 31, 1989.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPER REDUCTION ACT

§ 602.101 [Amended]

Par. 4. The table of OMB Control Numbers in § 602.101 is amended by revising the entry for § 1.832–4 as follows:

"§ 1.832–4 . . . . 1545–1227".

December 24, 1991.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: December 24, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 92–1942 Filed 1–27–92; 8:45 am]

BILLING CODE 4830–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 87–313, FCC 91–344]

Policy and Rules Concerning Rates for Dominant Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissing petitions for further reconsideration as moot.

SUMMARY: On April 17, 1991, the Commission released the Price Cap Local Exchange Carrier Reconsideration Order in CC Docket No. 87–313, 56 FR 21612, which, *inter alia*, adopted new rules for evaluation of rates for new

services under price cap regulation. Petitions to Reconsider those rules were filed June 12, 1991. On June 13, 1991, the Commission adopted the part 69/Open Network Architecture Order in CC Docket Nos. 89-79 and 87-313, 56 FR 33879, which examined and modified the price caps new service rules. This action resolved the issues raised in the petitions for further reconsideration.

EFFECTIVE DATE: February 27, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Spaeth, tel: (202) 632-6917.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

Adopted: October 29, 1992; Released: December 20, 1991

By the Commission:

1. On April 17, 1991, this Commission released an Order on Reconsideration in the above-captioned proceeding, generally affirming and clarifying the previous order regarding price cap regulation for local exchange carriers (LECs).[1] Three parties petitioned for further reconsideration of that order on the single issue of the Commission's establishment of an interim approach for the evaluation of new services rates.[2]

2. In view of the subsequent adoption by the Commission of an Order resolving this issue and superseding the interim method,[3] these petitions for further reconsideration are moot.

3. Accordingly, *It Is Ordered*, That the petitions for further reconsideration submitted by BellSouth, Southwestern Bell, and the United States Telephone Association *Are Dismissed* As moot.

[1] Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Order on Reconsideration, 6 FCC Rcd 2637 (1991), 56 FR 21612, May 10, 1990 (*LEC Price Cap Order on Reconsideration*); Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990), 55 FR 42375, October 19, 1990 and Erratum, 5 FCC Rcd 7664 (1990), 55 FR 50558, December 7, 1990 (*LEC Price Cap Order*), *appeal docketed, D.C. PSC* v. *FCC*, No. 91-1279 (D.C. Cir. June 13, 1991).

[2] Petitions for Further Reconsideration filed by BellSouth Telephone (BellSouth), Southwestern Bell Corporation (SWB), and the United States Telephone Association (USTA).

[3] Amendments of part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-89, and Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, FCC 91-186, released July 11, 1991 (*ONA Order*), 56 FR 33891, July 24, 1991, paras. 36-44. The *ONA Order*, published in the Federal Register on July 24, 1991, became effective August 23, 1991.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-1988 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-306, RM-7824]

Radio Broadcasting Services; Safford, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 231C for Channel 231C1 in Safford, Arizona, and modifies the construction permit of Station KXKQ(FM) in Safford in response to a petition for rule making filed by P & M Broadcasting, Inc., licensee of Station KXKQ(FM), Channel 231C1, Safford, Arizona. *See* 56 FR 56181, October 1, 1991. The coordinates for Channel 231C are 32-49-30 and 109-45-30. With this action the proceeding is terminated.

EFFECTIVE DATE: March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beaty, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-306, adopted January 13, 1992, and released January 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 231C and removing Channel 231C1 at Safford.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-2060 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-441; RM-6813]

Television Broadcasting Services; Calipatria, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 54 to Calipatria, California, as that community's first local television broadcast service, in response to a petition for rule making filed on behalf of Calipatria Television. See 54 FR 42809, October 18, 1989. Coordinates used for Channel 54 at Calipatria are 33-04-37 and 115-19-46. Since Calipatria is located within 320 kilometers (199 miles) of the United States-Mexico border, concurrence of the Mexican government to this proposal was obtained.

Although the Commission has imposed a freeze on TV allotments or applications therefor in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-441, adopted January 10, 1992, and released January 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments under California, is amended by adding Calipatria, Channel 54.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-1924 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-315; RM-7830]

Radio Broadcasting Services; Perham, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 258A to Perham, Minnesota, in response to a petition filed by John A. Brush, Yvonne M. Brush and Amy C. Rutledge. *See* 56 FR 57302, November 8, 1991. The coordinates for Channel 258A are 46-35-42 and 95-34-24. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1992. The window period for filing applications for Channel 258A at Perham, Minnesota, will open on March 10, 1992, and close on April 9, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-315, adopted January 13, 1992, and released January 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 229A and adding Channel 229C3 at Oxford.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Channel 258A, Perham.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-2061 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-277; RM-7810]

Radio Broadcasting Services; Oxford, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 229C3 for Channel 229A at Oxford, Mississippi, and modifies the license for Station WKLJ-FM to specify operation on the higher class channel, in response to a petition filed by Oxford Radio, Inc. See 56 FR 50548, October 7, 1991. The coordinates for Channel 229C3 are 34-20-05 and 89-43-29. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-277, adopted January 13, 1992, and released January 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 285A and adding Channel 285C3 at Piedmont.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-1921 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-274; RM-7802]

Radio Broadcasting Services; Piedmont, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 285C3 for Channel 285A at Piedmont, Missouri, and modifies the license for Station KPWB-FM to specify operation on Channel 285C3, in response to a petition filed by Hunt Broadcasting Group, Inc. See 56 FR 50549, December 9, 1991. The coordinates for Channel 285C3 are 37-13-32 and 90-48-48. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-274, adopted January 13, 1992, and released January 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 285A and adding Channel 285C3 at Piedmont.

Federal Communications Commission.
Michael C. Ruger,
Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 92-1925 Filed 1-27-92; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-110; RM-7678]

Radio Broadcasting Services; Hastings and Milford, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Bott Communications, Inc., reallots Channel 251C from Hastings, Nebraska, to Milford, Nebraska, as the community's first local FM service, and modifies Station KUHG(FM)'s construction permit to specify Milford as its community of license. See 56 FR 16051, April 19, 1991. Channel 251C can be allotted to Milford in compliance with the Commission's minimum distance separation requirements with a site restriction of 46.5 kilometers (28.9 miles) west to accommodate petitioner's desired transmitter site, at coordinates North Latitude 40-48-00 and West Longitude 97-36-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-110, adopted January 13, 1992, and released January 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 251C at Hastings and adding Milford, Channel 251C.

Federal Communications Commission.
Michael C. Ruger,
Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 92-1923 Filed 1-27-92; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-234; RM-7745]

Radio Broadcasting Services; Hastings, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Heartland Radio, Inc., substitutes Channel 268C for Channel 268C2 at Hastings, Nebraska, and modifies its license for Station KEZH(FM) to specify operation on the higher class channel. See 56 FR 40843, August 16, 1991. Channel 268C is allotted at Hastings 41.5 kilometers (25.8 miles) west of the community at coordinates 40-39-28 and 98-52-04. With this action, this proceeding is terminated.

EFFECTIVE DATES: March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-234, adopted January 13, 1992, and released January 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nebraska is amended by removing Channel 268C2 and adding Channel 268C at Hastings.

Federal Communications Commission.
Michael C. Ruger,
Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 92-2062 Filed 1-27-92; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-31; RM-7535]

Radio Broadcasting Services; Kershaw, SC, and Waxhaw, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jeffrey C. Sigmon, substitutes Channel 291C3 for Channel 291A at Kershaw, South Carolina, reallots Channel 291C3 to Waxhaw, North Carolina, and modifies his construction permit for Station WLWN to specify operation on the higher class channel at Waxhaw. See 56 FR 8975, March 4, 1991. Channel 291C3 can be allotted to Waxhaw in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.1 kilometers (6.9 miles) southeast to avoid short-spacings to Station WRDX, Channel 293C, Salisbury, North Carolina, and the pending application of Station WZLI, Channel 291C1, Toccoa, Georgia (BPH-900301IE). With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-31, adopted January 13, 1992, and released January 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Waxhaw, Channel 291C3.

3. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Kershaw, Channel 291A.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-2063 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1853 and 1870

Change to NASA FAR Supplement Concerning Treatment of Performance Risk and Past Performance in Source Selection

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA)

ACTION: Final rule.

SUMMARY: This notice amends the NASA Federal Acquisition Regulation Supplement (NFS), chapter 18 of the Federal Acquisition Regulation System in title 48 of the Code of Federal Regulations. This rule requires that Source Evaluation Board (SEB) specifically consider proposal risk in their deliberations. In addition, this rule establishes a Contract Performance Summary to report contractor performance on award fee contracts to support SEB evaluations of past performance.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas L. Deback, Procurement Analyst, Competition and Program Operations Division (Code HS), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-2192.

SUPPLEMENTARY INFORMATION:

Background

NASA has recently re-evaluated its treatment of proposal risk in Source Evaluation Board procedures and has determined that it should be emphasized and strengthened. Further, the treatment of Relevant Experience and Past Performance should be strengthened by requiring that the Mission Suitability subfactors be specifically enumerated and evaluated under Relevant Experience and Past Performance.

A proposed rule was published in 56 FR 58985, November 22, 1991. In preparing the final rule, the public comments contained in seven letters, received during the comment period, have been considered.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This proposed regulation falls in this category. NASA certificates that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1804, 1853 and 1870

Government procurement.

Darlene A. Druyun,

Assistant Administrator for Procurement

1. The authority citation for 48 CFR parts 1804, 1853 and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Sections 1804.677, 1804.677-1, 1804.677-2, 1804.677-3, 1804.677-4, 1804.677-5, and 1804.677-6 are added to read as follows:

1804.677 Contractor Performance Summary Report (NASA Form 1651).

1804.677-1 Applicability and coverage.

(a) The purpose of the Contractor Performance Summary (CPS) system is to provide agency-wide contractor performance data for use in source selections. The CPS's will be used as an aid in evaluating contractors' past performance and awarding contracts to contractors that provide quality products or services that conform to requirements within contract schedule and cost.

(b) The CPS summarizes a contractor's performance on a contract during a specific period of time. Each assessment will reflect the evaluations performed by the Performance Evaluation Board during the previous calendar year.

(c) The CPS will be completed once annually for award fee contracts in excess of $25M (total contract value including options) for which at least one award fee evaluation has been completed during the year prior to January 1 of the year in which the report is due. CPS's may also be submitted for significant non-award fee contracts at the center's discretion.

1804.677-2 Submission due dates.

(a) by February 28 of each year, the cognizant contracting officer will provide to the center CPS focal point a CPS for each applicable contract.

(b) By March 31 of each year, the center CPS focal point will distribute to all other center focal points CPS's for all applicable contracts being administered by that focal point.

1804.677-3 Contractor Performance Summary (CPS) Focal Points.

(a) A CPS focal point is the administrative location within each named NASA center which maintains the file of each CPS by contractor. Each contractor file will contain separate files for each division and subsidiary of the firm for which there is a separate contract. The focal point will retain each CPS report for five years.

(b) The procurement activities at the following centers will establish and maintain CPS focal points:

Ames Research Center, Moffett Field, CA 94035 (Attn: Mail Code 241-1/CPS Focal Point)

Goddard Space Flight Center, Greenbelt, MD 20771 (Attn: Mail Code 200/CPS Focal Point)

Lyndon B. Johnson Space Center, Houston, TX 77058 (Attn: Mail Code BB/CPS Focal Point)

John F. Kennedy Space Center, Kennedy Space Center, FL 32899 (Attn: Mail Code OP-CPS/CPS Focal Point)

Langley Research Center, Hampton, VA 23665 (Attn: Mail Code 144/CPS Focal Point)

Lewis Research Center, 21000 Brookpark Road, Cleveland Ohio 44135 (Attn: Mail Code 500-306/CPS Focal Point)

George C. Marshall Space Flight Center, Huntsville, AL 35812 (Attn: AP12/CPS Focal Point)

John C. Stennis Space Center, Stennis Space Center, MS 39529-6000 (Attn: DA00/CPS Focal Point)

Headquarters Acquisition Division, National Aeronautics and Space Administration, Washington, DC 20546 (Attn: HWB/CPS Focal Point)

(c) Center CPS focal points are responsible for tracking and suspensing CPS's.

1804.677-4 Distribution of CPS's and interagency requests.

(a) Distribution of CPS's within the agency will only be made from one center focal point to another. Source Evaluation Board (SEB) members will contact their local CPS focal point for CPS's relevant to the selection in process.

(b) The Assistant Administrator for Procurement (Code HM) is the agency focal point for processing CPS requests from Government activities outside the agency. All such requests are to be forwarded to Code HM for action.

1804.677-5 CPS markings and protection.

The contracting officer is responsible for ensuring that CPS's are appropriately marked. All CPS forms, attachments and working papers must be marked "SOURCE SELECTION INFORMATION (SEE FAR 3.104)." CPS's have the unique characteristic of always being predecisional in nature. They will always be source selection information because they will be in constant use to support ongoing source selections. This predecisional nature of the CPS's is a basis for requiring that the CPS data be protected from unauthorized disclosure to personnel or entities outside the source selection process. Based on the nature of the CPS system, the following guidance applies to protection both internal and external to the Government.

(a) *Internal Government Protection.* CPS's must be treated as source selection information at all times. The flow of CPS's throughout the agency in support of source selections will be controlled by the CPS focal points and transmitted only from one CPS focal point to another. Outside of use in a source selection, information contained on the CPS's must be protected in the same manner as information contained in completed source selection files. The completed CPS forms shall not be used to support preaward surveys, debarment proceedings or other internal Government reviews.

(b) *External Government Protection.* Disclosure of completed CPS forms to other contractors or personnel outside the Government is not authorized. This information is considered pre-decisional pursuant to 5 U.S.C. 552(b)(5) of the Freedom of Information Act (FOIA). On those occasions when a FOIA request is received for CPS release, process the request through FOIA channels.

1804.677-6 Instructions for completing NASA Form 1651, Contractor Performance Summary Report—CPS.

(a) Type all information on the form.

(b) Item 1, Name/Address of Contractor. State the name and address of the division or subsidiary of the contractor performing the contract. Identify the parent corporation.

(c) Item 2, Location of Contract Performance. Indicate the primary place of contract performance if different from Item 1.

(d) Item 3, Initial, Intermediate, Final Report. Indicate whether it is an initial, intermediate, or final report. An initial report is the first report submitted on a contract. A final report is the last report submitted on a contract.

(e) Item 4, Reporting Period. State what period is covered by the report. Except at the beginning and end of the contract, this will be a calendar year.

(f) Item 5, Contract Number/Contract Type. Self-explanatory.

(g) Item 6, Center. Self-explanatory.

(h) Item 7, Contract Period of Performance. State period of performance including all options.

(i) Item 8, Contract Percent Complete. For hardware contracts, state the percent of the work that is completed. Otherwise, enter "N/A".

(j) Item 9, Current Contract Dollar Value. State the current value of contract including options.

(k) Item 10, Competitive/ Noncompetitive. Self-explanatory.

(l) Item 11, Program Title. Provide a short descriptive narrative of the program. Do not use abbreviations. Identify program phase, if applicable.

(m) Item 12, Program Description. Provide a short description of the contract effort that identifies key technologies, components, subsystems, requirements, services required, or task order areas. This section is of critical importance to SEBs to allow them to determine the relevancy of the contract being reviewed to their source selection. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort. A brief description of key milestone events that occurred in the review period may be beneficial (e.g., Preliminary Design Review, Critical Design Review).

(n) Item 13, Evaluate the Following Areas. (1) Each area assessment must accurately reflect the Performance Evaluation Board evaluations completed during the previous calendar year.

(2) Each applicable evaluation area will be evaluated as Excellent, Very Good, Good, Fair, Poor, or Unsatisfactory. The following definitions are provided as guidance in determining the appropriate rating:

Excellent: Of exceptional merit; exemplary performance in a timely, efficient, and economical manner—very minor deficiencies with no adverse effect on overall performance (Point Range: 93–100).

Very Good: Very effective performance, fully responsive to contract requirements accomplished in a timely, efficient, and economical manner for the most part. Only minor deficiencies (Point Range: 85–92).

Good: Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance (Point Range: 77–84).

Fair: Meets or slightly exceeds minimum acceptable standards; adequate results. Reportable deficiencies with identifiable, but not substantial, effects on overall performance (Point Range: 69–76).

Poor: Meets most minimum acceptable standards; useful levels of performance, but remedial action required. Reportable deficiencies which adversely affect overall performance (Point Range: 61–68).

Unsatisfactory: Below minimum acceptable standards; inadequate results; requires prompt remedial action. Significant deficiencies (Point Range: 60 and below).

"N/A" will be indicated for any area clearly not evaluated by the PEB.

(3) The areas which are to be rated on the form, with a brief description, are as follows:

Understanding Requirements/ Technical Performance. Evaluate the extent to which the contractor is meeting technical performance in terms of the contract requirements.

Technical Management Performance. Evaluate the contractor's management of the technical functions. This activity includes appropriate assignment of personnel, anticipating and resolving technical difficulties, and mitigating technical performance risks.

Excellence of Hardware Design. Evaluate the contractor's ability to develop a hardware design which meets all contractual requirements.

Corporate or Company Resources. Evaluate the contractor's ability to provide manpower, facilities, and materials to support the effort required under the contract.

Contract/Business Management. Evaluate the contractor's management of the business and contractual aspects of the effort. This activity includes timely and accurate reporting (including cost) and responsiveness to requests for information.

Subcontract Management. Evaluate the contractor's management of subcontracts. This includes efforts taken to identify subcontract problems and timely action to ensure that overall prime contract performance is not impacted.

Small and Disadvantaged Business Program. Evaluate the contractor's management of the small and disadvantaged business program. This includes efforts to identify and qualify small and disadvantaged businesses.

Key Personnel. Evaluate the contractor's ability to effectively staff key positions with qualified personnel. This activity includes promptly providing qualified replacements as required.

Cost Performance. Evaluate the contractor's ability to manage and control costs.

Adherence to Schedule. Evaluate the contractor's ability to meet contract schedules. This includes taking appropriate measures to regain on-schedule performance if delays occur.

Safety, Reliability, Maintainability, and Quality Assurance. Evaluate the contractor's ability to perform SRM&QA requirements of the contract. This includes providing adequate resources to these functions.

Other. The contracting officer may use the "Other" row to rate a critical area not included in Item 13. Specify the area being rated.

% Over (+) or Under (−) Target Cost. Specify the percentage of overrun or underrun currently being experienced on the contract.

% Available Award Fee Paid During Reporting Period. Specify the percentage of available award fee paid during the reporting period.

(4) If any area is rated "Good" or below, the contracting officer will provide a brief explanation of each such rating in Item 16.

(5) The completed form will be provided to the contractor. The contractor will be given 30 days to concur in the summary or provide any mitigating information. The mitigating information will be limited to the space permitted in Item 17 of the form. This opportunity to respond is not an opportunity to re-open the PEB evaluation.

(6) If as a result of contractor comments, ratings on the CPS are amended, pen and ink changes to the form may be made. The contractor will be provided a copy of the amended CPS rating for information only.

(7) The CPS will be approved by the Fee Determination Official or Project Manager.

(o) Item 14, Technical Point of Contact: Self-explanatory.

(p) Item 15, Contracting Point of Contact: Self-explanatory.

(q) Item 16, Contracting Officer Comments: The contracting officer will briefly discuss the causes and rationale for any ratings of "Fair" or below.

(r) Item 17, Contractor Comments: The contractor may provide any mitigating information. The comments will be limited to the Item 17 block.

(s) Item 18, Typed Name and Signature of Contractor Representative: Self-explanatory.

(t) Item 19, Typed Name and Signature of Contracting Officer: Self-explanatory.

(u) Item 20, Typed Name and Signature of Fee Determination Official or Project Manager: Self-explanatory.

PART 1853—FORMS

1853.204-70 [Amended]

3. In subpart 1853.2, section 1853.204-70, the section heading is revised and paragraph (o) is added to read as follows:

1853.204-70 General (NASA Forms 507, 507A, 507B, 507G, 507M, 533M, 533P, 533Q, 667, 1098, 1356, 1611, 1651, and 1612 and DD Form 1593).

* * * * *

(o) NASA Form 1651, Contractor Performance Summary. NASA Form 1651, prescribed at 1804.677, shall be used for reporting a summary of contractor performance.

* * * * *

PART 1870—NASA SUPPLEMENTARY REGULATIONS

Appendix I to 1870.303 [Amended]

4. Subpart 1870.3, Appendix I, to 1870.303 is amended as set forth below:

a. In chapter 3, section 301, paragraphs 1f. and 1g. are redesignated 1g. and 1h., respectively, and a new paragraph 1f. is added to read as follows:

* * * * *

301 Mission Suitability

1. Evaluation Subfactors

* * * * *

f. (1) Proposal risk will be carefully considered in evaluating proposals. The proposal risks to be assessed are those associated with cost, schedule, and performance or technical aspects of the program. These risks will be considered in the Mission Suitability subfactors and the Cost factor evaluation. Risks may be inherent in a program by virtue of the program objectives relative to the state of the art. Risks may occur as a result of a particular technical approach, manufacturing plan, the selection of certain materials, processes, equipment, etc., or as a result of the cost, schedule and economic impacts associated with these approaches. Risk may also occur from the impact that these will have on the offeror's ability to perform.

(2) As part of their proposal, offerors should be required to submit a risk analysis which identifies risk areas and the recommended approaches to minimize the impact of those risks on the overall success of the program.

(3) In evaluating risks, the evaluators must consider the offeror's assessment and make an independent judgment of the probability of success, the impact of failure, and the alternatives available to meet the requirements.

(4) Risk assessments shall be discussed in the SEB Report and be considered in determining the overall numerical and adjectival ratings and the strengths and weaknesses.

(5) It is the responsibility of the evaluation teams to inform the cost team of identified risk areas and the potential for cost impact.

* * * * *

b. In Chapter 3, section 303, paragraph 1. is revised to read as follows:

303 Relevant Experience and Past Performance

1. *Relevant Experience and Past Performance*

This factor indicates the relevant quantitative and qualitative aspects of each offeror's record of performing services or delivering products similar in size, content, and complexity to the requirements of the instant procurement.

a. The performance risks which must be assessed are those associated with cost, schedule, and performance or technical aspects of the program. These risks are those which arise as a result of the offeror's past or current experience with similar types of efforts.

b. Data on the offeror's performance (including that of major subcontractors or teaming contractors) will be obtained from a variety of sources. Information on programs and contracts is available from the Contractor Performance Summary (CPS) report system from the center CPS focal point. (If the information received from the CPS focal point is more than six months old, it is recommended that follow-up with the contracting officer be initiated to ensure that significant changes have not occurred.) Information on programs and contracts outside the CPS system and information on contractors not within the CPS data base may be obtained from questionnaires or interviews, or other past performance assessment systems established by contracting activities outside the agency. Questionnaires or interviews should be tailored to focus on information that demonstrates performance related to each evaluation factor or subfactor.

c. Performance data collection is not limited solely to the proposing prime contractor division. Corporate-wide data should be reviewed to determine if any corporate-wide trends are relevant to the source selection. If other divisions, corporate management, critical subcontractors, or teaming contractors perform a critical element or significantly influence the proposed effort, their performance record should be evaluated and the risk relative to the appropriate evaluation factor or subfactor should be assessed. All performance risk assessments that include such diverse data must separately identify and document the data.

d. Each performance evaluation and risk assessment will consider the number and severity of problems, the effectiveness of corrective actions taken, and the overall work record. The assessment of performance

risk is not intended to be a simple arithmetic function of an offeror's performance on a list of contracts; but rather the information deemed most relevant and significant will receive the greatest consideration.

* * * * *

[FR Doc. 92-1874 Filed 1-27-92; 8:45 am]
BILLING CODE 7510-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 390

[FHWA Docket No. MC-91-6]

RIN 2125-AC28

Federal Motor Carrier Safety Regulations; General; Commercial Motor Vehicle Marking

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its commercial motor vehicle marking requirements by making them applicable to every commercial motor vehicle subject to the Federal Motor Carrier Safety Regulations (FMCSRs). This action to include a broader range of vehicles will improve uniformity of identification of commercial motor vehicles operated on the nation's highways and aid enforcement officers in carrying out their duties.

EFFECTIVE DATE: July 27, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Paul L. Brennan, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Unique identification numbers provide a rapid and sure way to distinguish a particular motor carrier's vehicles. There are many companies with the same or similar name but which are located in different cities or states. As an example, there are twelve independent Arrow Trucking Companies, located in twelve different cities. Without the ability to quickly identify the city and State of domicile, the name of the motor carrier alone will be of little value to the average motorist.

A final rule published in the **Federal Register** on May 19, 1988 (53 FR 18042, Docket No. MC-114) (effective November 15, 1988), among other things amended part 390 of the FMCSRs by adding § 390.21, Marking of commercial motor vehicles. That rule generally required self-propelled motor vehicles operated by interstate private motor carriers of property and interstate motor carriers of migrant workers to be marked. The marking is to be located on both sides of the self-propelled vehicle and consists of the motor carrier's name or trade name, the city or community and State (name abbreviated) in which the carrier maintains its principal place of business or in which the vehicle is customarily based, and the motor carrier identification number, if issued by the FHWA, preceded by the letters "USDOT."

The ICC regulates the marking of commercial motor vehicles operated in interstate commerce by common and contract motor carriers of property or passengers. The ICC published a final rule, "Practice and Procedure: Miscellaneous Amendments; Revisions," including an amendment to § 49 CFR 1058, "Identification of Vehicles" in the **Federal Register** on March 27, 1990 (55 FR 11196). This rule extends the ICC's regulations to "govern all for-hire motor carriers except those providing (a) Joint, through, regular-route passenger service under continuing lease or interchange agreements, if the vehicle owner's name and "MC" number are displayed as prescribed at 49 CFR 1058.2, and if the carriers have filed with the Commission's appropriate Regional-Director(s) and posted in each terminal and ticket agency on the involved routes a published schedule showing the points between which each joint carrier assumes control and responsibility for the vehicle's operation; and (b) Nonscheduled, charter, luxury-type passenger service using limousine-type vehicles with a capacity of six or fewer passengers."

The ICC also discontinued a rulemaking in the **Federal Register** on July 11, 1990 (55 FR 28419), which would have eliminated the vehicle marking requirements of 49 CFR 1058 and adjusted the leasing regulations at 49 CFR 1057. The overwhelming majority of the comments received by the ICC indicated that the marking requirement is essential to public safety, because it allows immediate identification of vehicles in situations involving moving violations, stolen equipment, security, and unauthorized or uninsured operations.

The Authority Transferred in 1966

(Pub. L. 89-670, 80 Stat. 931, 940) to the Department of Transportation (codified at 49 U.S.C. 3104) had applied only to private motor carriers of property and motor carriers of migrant workers. Thus, four classes of for-hire motor carriers were not subject to the DOT's 1988 final rule. They included: (1) For-hire motor carriers transporting the U.S. mail in interstate commerce under contract to the United States Postal Service; (2) for-hire motor carriers of passengers transporting school children and/or school personnel in interstate commerce when such transportation is at the direction and/or under the control of a public school system and is not a "school bus operation" as defined in § 390.5; (3) for-hire motor carriers of property engaged in the emergency towing of disabled vehicles from the point of disablement to another location in interstate commerce; and (4) ICC "exempt" motor carriers (i.e., economically exempt, eg., agricultural commodity carriers). These carriers operate a significant number of commercial motor vehicles in interstate commerce.

The Motor Carrier Safety Act (MCSA) of 1984

(49 U.S.C. app. 2501-2520 (1988)) authorizes the FHWA to establish vehicle marking requirements for all commercial motor vehicles, as defined in the MCSA of 1984, if the FHWA determines that such a requirement will assist in ensuring that commercial motor vehicles are safely maintained, equipped, loaded, and operated. The FHWA has determined that requiring all commercial motor vehicles operated in interstate commerce to meet a single identification standard would create a needed nationwide uniformity. Such action would assist Federal and State enforcement personnel in properly identifying motor carriers during roadside vehicle inspections and accident investigations, thus assuring the submission of accurate inspection and accident results and other data into the FHWA and State management information systems. In addition, the general public would be able to identify and report to the motor carrier or an enforcement agency any operations being conducted in an unsafe manner by the operator of a commercial motor vehicle.

Private motor carriers of passengers are not now subject to the FMCSRs. 49 CFR 390.3(f)(6). The preamble to the DOT's 1988 final rule stated that, "The FHWA recognizes that the Congress provided the Secretary (of Transportation) with the authority to regulate the safety of the private carriage of passengers. Since this segment of the motor carrier industry has never been subject to Federal safety regulations, however, it was decided that this issue should be addressed in a

separate rulemaking action." Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States is not subject to the FMCSRs, except for the accident reporting requirements of 49 CFR 394 when these entities are engaged in interstate charter transportation of passengers. 49 CFR 390.3(f)(2).

Discussion of Comments

A notice of proposed rulemaking (NPRM) was published on June 19, 1991 at 56 FR 28130. The NPRM proposed to require marking for all commercial motor vehicles subject to the FMCSRs but not previously embraced in 49 CFR 390.21. Ten comments to the docket were received. Four were from associations representing the motor freight, bus transportation, and towing industries, four were from individual freight and passenger carriers, and two were from State law enforcement agencies. All comments generally favored the proposed amendment. One commenter questioned the proposed requirement for location information, and a second expressed concern over the appropriate marking requirements for for-hire motor carriers operating under ICC authority.

Several commenters favored the proposal to permit for-hire motor carriers operating under ICC authority to meet the requirements by complying with the marking requirements set forth in 49 CFR part 1058. Other commenters noted that the increased uniformity would lead to improved accuracy of motor carrier identification and greater public safety and security.

One commenter requested guidance on the application of the marking requirement. A motor carrier industry association suggested that the FHWA and the Commercial Vehicle Safety Alliance work together to improve guidelines for enforcement officers to help them distinguish between interstate and intrastate motor carriers. The association also suggested that the FHWA prepare an alphabetical list by State of Office of Motor Carriers field offices where motor carriers may obtain a MCS–150 form to request a USDOT identification number. The FHWA is considering preparing informational materials to respond to these suggestions. A motor carrier of freight suggested stronger language on size and legibility of markings. These requirements have not been at issue, and were therefore not addressed in the NPRM.

A school transportation industry association and a bus industry association supported the proposed amendment to require for-hire school buses in interstate commerce to comply with marking requirements. However, the bus association did not agree with the requirement that the city or community and State be shown. The association stated that the location information could be misleading, as school buses are frequently moved within a State based on the need for vehicles at different company locations. Under § 390.3(f), "General Applicability," school bus operations as defined in § 390.5 are not subject to the FMCSRs, except for part 394. Both of these organizations also commented that the FMCSRs should apply to other classes of passenger carriers operating in interstate commerce, regardless of ownership, including private carriers of passengers, State and local government vehicles, and district- and State-owned school buses. These other passenger carriers are specifically exempted under § 390.3(f) as a result of notice and comment rulemaking published in the Federal Register on May 19, 1988 (53 FR 18042).

A private motor carrier of freight expressed concern that the proposed wording does not address the situation of a private interstate motor carrier that operates under ICC common and contract authority. The carrier suggested adding a specific statement that compliance with ICC marking requirements by carriers holding ICC operating authority constitutes compliance with FHWA requirements without regard to whether a specific movement is for-hire or private carriage.

The intent of this marking requirement is to provide unique identification for motor carriers. The type of carriage involved at any given time is immaterial if one of the two required markings is present. This regulation will permit a motor carrier operating under ICC authority to satisfy the FHWA's requirement for marking by continuing to display its ICC–MC identification number. Displaying either the ICC–MC number or the USDOT number, or both, will enable these motor carriers to comply with the regulation.

In view of the foregoing, the FHWA is amending its marking requirement regulation to encompass all commercial motor vehicles operated in interstate commerce. Those commercial motor vehicles operated by for-hire motor carriers under authority issued by the ICC would be allowed to meet the FHWA's rules by complying with the compatible marking requirements of the ICC.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The action taken by the FHWA in this document will amend the commercial motor vehicle marking requirements to apply to every commercial motor vehicle subject to the FMCSRs. The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities. This rule requires motor carriers to mark commercial motor vehicles. The FHWA believes that the cost of this marking will be minimal. Therefore, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes

of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 390

Highway safety, Highways and roads, Motor carriers, Motor vehicle marking, Motor vehicle safety.

Issued on: January 21, 1992.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 390, as follows:

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. app. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

2. Paragraph (a) of § 390.21 is revised to read as follows:

§ 390.21 Marking of commercial motor vehicles.

(a) *General.* Every self-propelled commercial motor vehicle operated in interstate commerce and subject to the rules of subchapter B of this chapter must be marked as specified in paragraphs (b), (c) and (d) of this section. Self-propelled commercial motor vehicles operated by for-hire motor carriers under authority issued by the Interstate Commerce Commission (ICC) may meet the requirements of this section by complying with the marking requirements set forth in 49 CFR part 1058.

* * * * *

[FR Doc. 92-2049 Filed 1-27-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket Number 910919-1219]

Taking Marine Mammals Incidental to Commercial Fishing Operations; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Correction to the interim final rule.

SUMMARY: This document contains corrections to the interim final regulations (Docket No. 910919-1219), which were published on Tuesday, October 8, 1991 (55 FR 50672). The regulations relate to the importation of yellowfin tuna caught by purse seines in the eastern tropical Pacific Ocean.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Hollingshead, NMFS, at (301)-713-2055.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 1991, NMFS published an interim final rule revising the March 30, 1990, yellowfin tuna importation regulations. These revisions addressed (1) how to calculate a mortality rate for the U.S. fleet when there is little or no fishing effort on a particular species group in a particular area; (2) a new schedule for requesting and receiving findings; and (3) a requirement for submission of a minimum of 12 months of observer data from a fishing season for reconsideration of a negative finding if a nation has been denied an affirmative finding due to an unacceptable species composition test.

Need for Correction

As published, the interim regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on October 8, 1991, of the interim regulations (Docket No. 910919-1219), which were the subject of FR Doc. 91-24076, is corrected as follows:

§ 216.24 [Corrected]

1. On page 50676, in the second column, in the second line of amendatory instruction number 3, "(e)(5)(viii)" is corrected to read "(e)(5)(xiii)".

2. On page 50676, in the third column, the paragraph designation "(viii)" is corrected to read "(xiii)".

* * * * *

Dated: January 22, 1992.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 92-1972 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Parts 672 and 675

[Docket No. 911176-1276]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Pacific halibut and red king crab bycatch rate standards; dates of each fishing month.

SUMMARY: NMFS announces the dates of each fishing month during 1992 for calculating vessel bycatch rates of Pacific halibut and red king crab for purposes of the vessel incentive program. The intent of this action is to enhance prohibited species bycatch management and promote conservation of groundfish and other fishery resources.

DATES: Effective 12:01 a.m., Alaska local time (A.l.t.), January 27, 1992 through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fishery Management Biologist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Area (BSAI) are managed by the Secretary of Commerce according to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

Regulations at §§ 672.26 and 675.26 implement a vessel incentive program to reduce Pacific halibut and red king crab bycatch rates in specified groundfish fisheries. Under the incentive program,

operators of trawl vessels must comply with Pacific halibut bycatch rate standards specified for the BSAI and GOA Pacific cod trawl fisheries, the BSAI flatfish fishery, and the GOA "bottom rockfish" trawl fishery. Vessel operators must also comply with red king crab bycatch standards specified for the BSAI flatfish fishery in Zone 1, as defined in § 675.2. Definitions of the fisheries included under the incentive program are set forth in regulations at §§ 672.26(b) and 675.26(b).

Regulations implementing the vessel incentive program require NMFS to publish a notice in the Federal Register announcing the dates of each fishing month (§§ 672.26(a)(2)(iii) and 675.26(a)(2)(iii)). The fishing month refers to a time period calculated on the basis of weekly reporting periods so that each fishing month begins on the first day of the first weekly reporting period that has at least 4 days in the associated calendar month and ends on the last day of the last weekly reporting period that has at least 4 days in the same calendar month.

In accordance with §§ 672.26(a)(2)(iii) and 675.26(a)(2)(iii), the following 1992 fishing months are specified as the periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1—January 1 through February 2;
Month 2—February 3 through March 1;
Month 3—March 2 through March 29;
Month 4—March 30 through May 3;
Month 5—May 4 through May 31;
Month 6—June 1 through June 28;
Month 7—June 29 through August 2;
Month 8—August 3 through August 30;
Month 9—August 31 through September 27;
Month 10—September 28 through November 1;
Month 11—November 2 through November 29; and
Month 12—November 30 through December 31.

Classification

This action is taken under 50 CFR parts 672.26 and 675.26.26 and complies with Executive Order 12291.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 22, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-1947 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-22-M

VOL
57
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Proposed Rules

Federal Register
Vol. 57, No. 18
Tuesday, January 28, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91-170]

Specifically Approved States Authorized To Receive Mares and Stallions Imported From CEM-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to add New Jersey to the list of States approved to receive mares and stallions imported into the United States from countries affected with contagious equine metritis (CEM). We are taking this action because New Jersey has entered into an agreement with the Administrator of the Animal and Plant Health Inspection Service to enforce its State laws and regulations to control CEM and to require inspection, treatment, and testing of horses, as required by Federal regulations, to further ensure the horses' freedom from CEM. This action would relieve unnecessary restrictions on importers of mares and stallions from countries affected with CEM.

DATES: Consideration will be given to comments received on or before March 30, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 91-170. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Manuel A. Thomas, Jr., Senior Staff Veterinarian, Sheep, Goat, Equine and Poultry Diseases Staff, VS, APHIS, USDA, room 769, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6954.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, §§ 92.301(c)(2), 92.304(a)(4)(ii) and 92.304(a)(7)(ii), allow certain horses (mares and stallions over 731 days old) to be imported into the United States from certain countries where contagious equine metritis (CEM) exists if specific requirements to prevent their introducing CEM into the United States are met and the horses are consigned to approved States for further inspection, treatment, and testing.

Mares and stallions over 731 days old must be consigned to States which have been approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) as meeting conditions necessary to ensure that the horses are free of CEM. These conditions, which concern inspection, treatment, and testing of the horses, are contained in § 92.304(a)(5) of the regulations for stallions and in § 92.304(a)(8) for mares. New Jersey has agreed to abide by the regulations concerning horses imported from countries where CEM exists, and to enter into a written agreement with the Administrator, APHIS, to enforce its State laws and regulations, which meet the requirements of § 92.304(a)(5) and § 92.304(a)(8) of the regulations, to control CEM. Therefore, we propose to add New Jersey to the list of States approved to receive mares and stallions that are over 731 days old and imported into the United States from certain countries where CEM exists.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, States, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We anticipate that fewer than 30 mares and stallions over 731 days old will be imported into the State of New Jersey annually from countries where CEM exists. Approximately 200 mares and stallions over 731 days old and from countries where CEM exists were imported into the entire United States in fiscal year 1991. During this same period, approximately 31,407 horses of all classes were imported into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d,

134f, and 135, 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.304 [Amended]

2. In § 92.304, paragraphs (a)(4)(ii) and (a)(7)(ii) would be amended by adding "The State of New Jersey" in alphabetical order.

Done in Washington, DC, this 23rd day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-2013 Filed 1-27-92; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 92

[Docket No. 91-123]

Veterinarians Accredited by the Mexican Government

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow veterinarians accredited by the Mexican government to perform official functions in connection with animals being exported from Mexico for importation into the United States. This action would ensure that an adequate number of qualified and competent individuals are available to perform functions required by the regulations governing the importation of animals into the United States.

DATES: Consideration will be given only to comments received on or before March 30, 1992.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-123. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8590.

SUPPLEMENTARY INFORMATION:

Background

APHIS regulates the importation of certain animals into the United States. The requirements for importation, found in 9 CFR part 92, provide that a "salaried veterinarian of the national government of the country of origin," or the equivalent, conduct specific tests or examinations of animals, and issue certificates for animals intended for export to the United States.

The Ministry of Agriculture for Mexico has recently developed a system for accrediting veterinarians who are not salaried employees of the national government of Mexico to perform official work in connection with the export of animals from Mexico. This work includes testing, examining, and certifying animals for export to the United States. Veterinarians employed by the United States Department of Agriculture, Animal and Plant Health Inspection (APHIS), have formally reviewed the Mexican procedures and requirements for accrediting veterinarians. APHIS officials believe, based on this review, that Mexican accredited veterinarians will be able to perform certain necessary services, currently performed by salaried veterinarians of the Mexican government, that are required by our regulations to prevent the introduction of communicable animal disease into the United States through the entry of animals.

We are therefore proposing to amend 9 CFR part 92 to allow veterinarians accredited by the Mexican government to perform official work in connection with the export of animals from Mexico to the United States. Specifically, we propose to allow veterinarians accredited by the Mexican government to issue animal health certificates required by the regulations for the importation of animals from Mexico into the United States. However, we also propose that each certificate issued by a veterinarian accredited by the Mexican government must also be endorsed by a full-time salaried veterinary officer of the national government of Mexico. Under this system the accredited veterinarian would make the necessary determinations about the animal's health and issue the certificate, and the Mexican government veterinarian would endorse it, indicating that the issuing veterinarian is properly accredited and that the certificate is properly completed.

Currently, each section of the regulations which requires certificates for animals imported from Mexico contains language like the following example: "All pet birds . . . shall be accompanied by a certificate issued by a full-time salaried veterinary officer of the National Government of the country from which the birds are to be exported . . ." (9 CFR 92.104). We propose to change this language to read as follows, and to make changes of similar effect throughout the regulations: "All pet birds . . . shall be accompanied by a certificate issued by a full-time salaried veterinary officer of the National Government of the country from which the birds are to be exported, or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so . . ."

The effect of these changes would be to allow animals to be imported from Mexico if they meet all other requirements of the regulations and are accompanied by a certificate issued by a veterinarian accredited by the national government of Mexico and endorsed by a full-time salaried veterinary officer of the national government of Mexico.

Related sections of the regulations contain language that requires, for example, that an imported animal must be accompanied by a certificate that "is either signed by a salaried veterinarian of the National Veterinary Services of the country of origin or signed by a veterinarian authorized by the National Veterinary Services of the country of origin and endorsed by a salaried veterinarian of the National Veterinary Services of the country of origin . . .". In these sections, we propose to change "signed by a veterinarian authorized by the National Veterinary Services" to read "signed by a veterinarian authorized or accredited by the National Veterinary Services" in order to make it clear that accredited veterinarians may sign these certificates.

We propose to make these changes in the following sections of Part 92: §§ 92.101(c)(3)(i); 92.104(a); 92.205; 92.301(c)(2)(iv), (c)(2)(vi)(A)*(2)*, (c)(2)(vii)(B) and (C), and (c)(2)(xi)(C)*(4)*; 92.314; 92.326; 92.405(a) and (b)(i); 92.406(a) and (b); 92.427(b)(1), (b)(2)(i), (b)(2)(ii), (c)(1), (d)(1), and (e)(2); 92.428(a); 92.429, and 92.505(a).

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for

consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would have no effect on the economy of the United States or on any entities in the United States. It would allow the Mexican national government to make use of the services of accredited veterinarians to perform certain duties currently performed by salaried veterinarians of the Mexican national government.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, D.C. 20503. You should submit a duplicate copy of your comments to: 1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and 2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue, SW, Washington, DC 20250.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 92

Animal disease, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.101 [Amended]

2. In § 92.101, paragraph (c)(3)(i), in the first sentence, the phrase ", or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately following the phrase "country of export".

§ 92.104 [Amended]

3. In § 92.104, paragraph (a), in the first sentence, the phrase "or accredited" would be added immediately following "issued by a veterinarian authorized".

§ 92.205 [Amended]

4. In § 92.205, in both the first and last sentence, the phrase ", or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately preceding the phrase "stating that".

§ 92.301 [Amended]

5. In § 92.301, paragraph (c)(2)(iv) introductory text, the phrase "or accredited" would be added immediately following "signed by a veterinarian authorized".

6. In § 92.301, paragraph (c)(2)(vi)(A)*(2)*, the phrase "or accredited" would be added immediately following "signed by a veterinarian authorized".

7. In § 92.301, paragraphs (c)(2)(vii)(B) introductory text and (C), the phrase "or accredited" would be added immediately following "signed by a veterinarian authorized".

8. In § 92.301, paragraph (c)(2)(xi)(C)*(4)* introductory text, the phrase the phrase "or accredited" would be added immediately following "signed by a veterinarian authorized".

§ 92.314 [Amended]

9. In § 92.314, in the first sentence, the phrase ", or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately preceding the phrase "showing that".

§ 92.326 [Amended]

10. In § 92.326, in the first sentence, the phrase ", or by a certificate issued by a veterinarian accredited by the Mexican Government and endorsed by a salaried veterinarian of the Mexican Government, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately following the phrase "Mexican Government".

§ 92.405 [Amended]

11. In § 92.405, paragraph (a), the phrase ", or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately preceding the phrase "stating that".

12. In § 92.405, paragraph (b)(i), the phrase "or accredited veterinarian" would be added immediately following "said salaried veterinary officer".

§ 92.406 [Amended]

13. In § 92.406, paragraph (a), the phrase ", or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately preceding the phrase "showing that".

14. In § 92.406, paragraph (b), the phrase ", or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately preceding the phrase "showing that".

§ 92.427 [Amended]

15. In § 92.427, paragraphs (b)(1), (b)(2)(i), and (b)(2)(ii), the phrase "certificate of a salaried veterinarian of the Mexican Government" would be removed and the phrase "certificate issued by a full-time salaried veterinary officer of the National Government of Mexico, or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added in its place.

16. In § 92.427, in paragraph (c)(1), "has been tested with negative results by a salaried veterinarian of the National Government of Mexico" would be revised to read "has been tested with negative results either by a salaried veterinarian of the National Government of Mexico or by a veterinarian accredited by the National Government of Mexico,"; and "they are accompanied by a health certificate, issued by a salaried veterinarian of the Government of Mexico" would be revised to read "they are accompanied by a health certificate, issued by a salaried veterinarian of the Government of Mexico, or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so,".

17. In § 92.427, paragraphs (d)(1) introductory text and (e)(2), the phrase "certificate of a salaried veterinarian of the Mexican Government" would be removed and the phrase "certificate issued by a salaried veterinarian of the Government of Mexico, or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added in its place.

§ 92.428 [Amended]

18. In § 92.428, in paragraph (a), the phrase "certificate of a salaried veterinarian of the Mexican Government" would be removed and the phrase "certificate issued by a salaried veterinarian of the Government of Mexico, or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added in its place.

§ 92.429 [Amended]

19. In § 92.429, the phrase "certificate of a salaried veterinarian issued by a salaried veterinarian of the Government of Mexico, or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added in its place.

§ 92.505 [Amended]

20. In § 92.505, in paragraph (a), the phrase ", or if exported from Mexico, shall be accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so," would be added immediately preceding the phrase "stating that".

Done in Washington, DC, this 23rd day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-2011 Filed 1-27-92; 8:45 am]

BILLING CODE 3410-34-F

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1205

Regulatory Flexibility Act; Review of Existing Rules

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of review of existing rules.

SUMMARY: In accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 610), the Commission is reviewing performance requirements in the Safety Standard for Walk-Behind Power Mowers. The purpose of this review is to determine if those requirements should be continued without change, amended, or revoked, consistent with the objectives for which they were issued, in order to minimize any economic impact which they may have on small entities, including small businesses.

DATES: Interested persons are invited to submit written comments on the rule on or before March 30, 1992.

ADDRESSES: Comments and any accompanying material should be submitted to the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and captioned "Regulatory Flexibility Act Review of Power Mower Standard."

FOR ADDITIONAL INFORMATION CONTACT: Allen F. Brauninger, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492-6980.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) became effective January 1, 1981, and requires Federal agencies to evaluate and taken into consideration the economic impact of their rules on "small entities," a term which includes small businesses

Additionally, section 610 of the RFA (5 U.S.C. 610) requires agencies to review all rules which were in existence on January 1, 1981, and which have a significant economic impact on a substantial number of small entities, including small businesses. Section 610 of the RFA also requires agencies to review periodically those rules issued after the effective date of the RFA. The purpose of the review required by section 610 of the RFA is to determine whether the rules under consideration should be continued in effect without change, amended, or revoked, consistent with the objectives of the agency, to minimize any economic impact which they have on small entities.

Section 610(c) of the RFA requires agencies to publish notice in the **Federal Register** of those rules to be reviewed under provisions of the RFA for economic impact on small businesses and other small entities within the next 12 months. Section 610(c) specifies that the notice shall include a brief description of those rules, the need for

those rules, and their legal basis, and shall invite public comment on the rules under review. The following information is provided in accordance with provisions of section 610(c) of the RFA.

Review of CPSA Rules

In 1986, the Commission completed the review required by section 610 of 17 rules issued under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) which were in existence on January 1, 1981, and which have a significant economic impact on a substantial number of small businesses. The Commission published a notice in the **Federal Register** of February 19, 1987 (52 FR 5079) to announce the completion of that review and the availability of a report on the review of CPSA rules for economic impact on small businesses.

The CPSA rules reviewed in 1986 included the Safety Standard for Walk-Behind Power Mowers (16 CFR part 1205). That rule was issued in 1979 to eliminate or reduce risks of amputations of toes and fingers, avulsions (the tearing of flesh or a part of the body), lacerations, contusions, and other serious injuries resulting from contact of the body with the moving blade of a power lawn mower. The standard contains labeling and performance requirements. The labeling requirements are applicable to both rotary and reel-type power mowers and became effective on December 31, 1979.

Performance Requirements of Mower Standard

As issued in 1979, the mower standard included performance requirements applicable to rotary power mowers. Provisions of the standard applicable to rotary mowers require the blade to be shielded to prevent accidental contact of the operator's foot with a moving blade. The standard also requires that rotary mowers must be equipped with a blade control system which requires continuous contact of the control by the operator for the blade to be driven and which causes the blade to come to a complete stop within 3.0 seconds after the operator releases the control. When the Commission issued the standard, it established December 31, 1981, as the effective date for the performance requirements for rotary power mowers. However, in the Commission's appropriations legislation for 1980 (Pub. L. 96–526), Congress delayed the effective date of the performance requirements of the standard until June 30, 1982.

The mower standard was the subject of seven petitions for judicial review which were consolidated and heard by the U.S. Court of Appeals for the Fifth Circuit. In *Southland Mower Co. et al.* v. *CPSC*, 619 F.2d 499 (1980), the court upheld the major provisions of the standard, but vacated one requirement for shielding of the discharge chute. All other blade-shielding requirements were upheld by the Court of Appeals. In the **Federal Register** of December 31, 1980 (45 FR 86416), the Commission amended the standard by revoking the requirement which was vacated by the *Southland Mower* decision. In accordance with provisions of the 1980 appropriations legislation, the Commission also established June 30, 1982, as the effective date for the performance requirements of the standard.

Amendment of Performance Requirements

As issued by the Commission in 1979, provisions of the standard applicable to the blade control system of a rotary power mower included a requirement that if the mower was equipped only with manual starting controls, the blade control system must stop the blade without stopping the engine. In the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, 95 Stat. 357, August 13, 1981), Congress directed the Commission to amend the mower standard to permit the blade control system of a power mower with only manual starting controls to stop the engine when it stops the movement of the blade if the engine starting controls are located within 24 inches of the top of the handle of the mower, or if the mower has a protective shield which extends 360 degrees around the mower housing. The Omnibus Budget Reconciliation Act also required the Commission to conduct a study of the effect of that amendment on consumers and to report the results of the study within two years after the effective date of the amendment.

In the **Federal Register** of November 5, 1981 (46 FR 54932), the Commission issued the amendment specified by the Omnibus Budget Reconciliation Act, to become effective on June 30, 1982, with the other performance requirements of the standard. The Commission conducted the study required by the Omnibus Budget Reconciliation Act and published a report dated June 30, 1984, entitled "The Effect on Consumers of the Amendments to the Safety Standard for Walk-Behind Power Lawn Mowers." The report discussed whether the amendment directed by the 1981 legislation might lead to an increased number of instances in which consumers defeat the blade-control system required by the standard. The report also discussed the economic effect on consumers of the amendment directed by the 1981 legislation. A copy of the report is available without charge from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

When the Commission reviewed rules issued under the Consumer Product Safety Act which were in existence on January 1, 1981, it reviewed only the labeling requirements of the Safety Standard for Walk-Behind Power Mowers, because those were the only provisions of the standard which were in effect on that date. In the report on the review of CPSA rules, the Commission stated that it would review the performance requirements of the mower standard at a later date, but before June 30, 1992.

Review of Performance Requirements

In accordance with provisions of section 610(c) of the RFA (5 U.S.C. 610(c)), the Commission hereby gives notice that during the next 12 months it will review the performance requirements of the Safety Standard for Walk-Behind Power Mowers codified at 16 CFR 1205.4 and 1205.5 and invites all interested persons to submit comments on those provisions of the standard by March 30, 1992.

Dated: January 22, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92–2056 Filed 1–27–92; 8:45 am]

BILLING CODE 6355–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Exemption for Commodity Pool Operators and Commodity Trading Advisors for Offerings to Qualified Eligible Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing new Rule 4.7. Under this proposal, registered commodity pool operators ("CPOs") could, subject to certain conditions, claim relief from the specific disclosure, reporting and recordkeeping requirements of part 4 of the Commission's regulations,[1] for pools

[1] Commission rules referred to herein are found at 17 CFR ch. I (1991).

offered or sold to qualified eligible participants in a private offering which qualifies for exemption from the registration requirements of the Securities Act of 1933 ("Securities Act"), pursuant to section 4(2) of that Act. Rule 4.7 would exempt these CPOs, upon the filing of a notice of claim of exemption, from the specific disclosure requirements of Rule 4.21 (a) through (h) and would substitute abbreviated reporting and recordkeeping requirements for the requirements of Rules 4.22 and 4.23. The term "qualified eligible participant" ("QEP") would include registered futures commission merchants ("FCMs"), registered brokers and dealers, certain registered CPOs and commodity trading advisors ("CTAs") as well various other institutional and individual investors that meet the qualifications set forth in the rule.

In addition, CTAs who direct or guide the commodity interest accounts of clients that meet the requirements for QEPs set forth in Rule 4.7 and of commodity pools for which the CPO has obtained relief under the rule could claim exemption from the specific disclosure requirements of Rule 4.31 (a) through (g), and the recordkeeping requirements of Rule 4.32 with respect to such clients and commodity pools.

DATES: Comments on the proposed rule must be received on or before March 30, 1992.

ADDRESS: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Chief Counsel, or France M.T. Maca, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background

The Commodity Exchange Act (the "Act") [2] was amended in 1974 to require the registration of CPOs and CTAs with the Commission.[3] Section 4m(1) of the Act, as amended, requires each person who comes within the definition of the term "commodity pool operator" in section 2(a)(1)(A) of the Act [4] to register with the Commission as a CPO or to satisfy the requirements for an exemption from such registration. In addition, each person who comes within the definition of "commodity trading advisor" in section 2(a)(1)(A) of the Act [5] is required to register as such with the Commission or to satisfy the requirements for an exemption from such registration.

On January 8, 1979, the Commission published part 4 of its regulations [6] relating to the operations and activities of CPOs and CTAs. The Commission stated that it was seeking "to protect pool participants—particularly those who are unsophisticated in financial matters—by ensuring that they are informed about the material facts regarding the pool before they commit their funds." [7] Part 4 contains disclosure, reporting and recordkeeping requirements for CPOs (Rules 4.21, 4.22 and 4.23, respectively) and disclosure and recordkeeping requirements for CTAs (Rules 4.31 and 4.32, respectively). In addition, Rules 4.20 and 4.30 relate to the disposition of pool and customer funds by CPOs and CTAs, respectively.

The Disclosure Document for commodity pools [8] must contain business and disciplinary information with respect to the CPO, CTA and principals thereof, the pool's investment objectives and its past performance record, conflicts of interest with respect to the pool, a Risk Disclosure Statement and other prescribed information. CTAs are also required to deliver a Disclosure Document prior to or at the time of solicitation or entering into an agreement to direct or guide the commodity interest account of a prospective client.[9] In addition, CPOs are required to distribute to each participant periodic financial reports and a certified annual report,[10] and CPOs and CTAs are required to maintain and make available for inspection specified books and records.[11]

In implementing its statutory mandate to regulate the activities of CPOs and CTAs, the Commission has endeavored to construct a regulatory framework that avoids unnecessary burdens without reducing investor protection. Since the adoption of the Commission's original part 4 regulations, the Commission has refined that framework as appropriate to respond to changing market conditions and to simplify and streamline the regulatory structure without creating regulatory gaps. For example, Rules 4.5, 4.12(b) and 4.14(a)(8) provide exemptions from registration and/or other specified part 4 requirements based upon, among other things, the applicability of another federal regulatory framework to the CPO or CTA.[12]

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[2] 7 U.S.C. 2 (1988).

[3] Commodity Futures Trading Commission Act of 1974, Pub. L. 93–463, 88 Stat. 1389, 1397 (1974).

[4] Section 2(a)(1)(A) of the Act defines a "commodity pool operator" as:

Any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order.

Rule 4.13 provides an exemption from CPO registration for the operators of essentially family, club or small pools. See 44 FR 1918 at 1919 (Jan. 8, 1979).

[5] Section 2(a)(1)(A) of the Act defines a "commodity trading advisor" as:

Any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market, any commodity option authorized under section 4c, or any leverage transaction authorized under section 19, or who, for compensation or profit, and as a part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing.

[6] Rules 4.1–4.41.

[7] 44 FR 1918 at 1920 (January 8, 1979).

[8] Rule 4.21.

[9] Rule 4.31. The Disclosure Document for CTAs must contain, among other things, the name and business background of the CTA and of each principal thereof; a description of the trading program; and types of commodity interests the CTA intends to trade; the performance record of the CTA and its principals; a description of any conflict of interest regarding the trading program; disclosure with respect to material actions against the CTA, the FCM or their principals; and a Risk Disclosure Statement.

[10] Rule 4.22.

[11] Rules 4.23 and 4.32, respectively. A CPO's records must include (1) internal trading and operational reports, general accounting and financial records with respect to the pool and the CPO's and its principals' own accounts; and (2) participant information, confirmations from carrying FCMs, sales literature and the signed statements of prospective participants acknowledging receipt of the pool Disclosure Document with respect to the pool (Rule 4.23). A CTA must maintain records similar to those required for a CPO with respect to its clients, its trading program and its own account (Rule 4.32).

[12] Rule 4.5, adopted in 1985, makes available an exclusion from the definition of the term "commodity pool operator" to certain persons, such as registered investment companies and federally-chartered banks, that are regulated under another regulatory framework and that meet specified operating criteria. Similarly, in 1987 the Commission adopted Rule 4.14(a)(8), which makes available an exemption from CTA registration to certain investment advisers registered under the Investment Advisers Act of 1940. Rule 4.12(b), also adopted in 1987, provides an exemption pursuant to which certain registered CPOs of pools offered pursuant to the Securities Act, or an exemption therefrom, that meet certain operational criteria are relieved of many of the specific requirements otherwise applicable with respect to disclosure under Rule 4.21, to reporting under Rule 4.22 and to recordkeeping under Rule 4.23.

In addition, where appropriate, the Division of Trading and Markets has issued no-action letters to CPOs providing relief from part 4 requirements based upon, among other things, evidence of the financial sophistication and qualifications of pool participants, prior associations between the pool participants and the CPO, and the limited nature of the pool's contemplated use of futures and commodity options transactions.[13]

Part 4 of the Commission's regulations has not been extensively revised since the Commission's original CPO disclosure requirements were adopted in 1979. In the intervening years the number of registered CPOs has nearly doubled.[14] Assets held under management by CPOs have grown dramatically and the range of available futures and option contracts has increased substantially.[15] Many large money managers, in particular many managers for institutional investors, are now diversifying and hedging their portfolios by investing a portion of the assets under their management in the futures markets. As a result, the profile of commodity pool participants has evolved to include institutional participants and other highly capitalized and sophisticated participants.

In light of these developments, and consistent with the Commission's ongoing program for review of its rules and regulations, the Commission has undertaken a comprehensive review of the Part 5 regulations to ensure that the regulatory framework for CPOs and CTAs continues to provide adequate protection to pool participants and managed account customers without imposing unnecessary regulatory burdens upon CPO and CTA activities. The Commission's review is intended to identify areas in which the regulatory structure can be streamlined or simplified, while continuing to provide appropriate customer protection. This proposal constitutes the first phase of a broader review of part 4, which will also include consideration of the appropriateness of permitting the use of a two-part Disclosure Document.[16] In connection with this review, the Commission has solicited the views of representatives of the public and of the industry. On April 17, 1989, the Commission created the Regulatory Coordination Advisory Committee ("RCAC"), in accordance with the provisions of the Federal Advisory Committee Act.[17] The purpose of the RCAC is to advise the Commission concerning, among other things ways "to improve coordination among domestic * * * regulatory structures to enhance operational efficiency and capabilities of users" and to "enable the Commission to assess possible statutory, regulatory or policy alternatives and practical considerations in a rapidly growing and changing industry and global marketplace."[18] At its first meeting on September 26, 1990, the RCAC established a Working Group ("Working Group") to identify issues relating to CPOs and CTAs.

The Working Group suggested to the RCAC, among other things, that the Commission adopt an exemption from the registration, disclosure, recordkeeping and reporting requirements for CPOs with respect to commodity pools that only accept "accredited investors" meeting the standards set forth by the Securities and Exchange Commission ("SEC") in Regulation D[19] under the Securities Act. This suggestion was based upon the premise that accredited investors are "sophisticated investors" who are "capable of protecting their own financial interests and would benefit from reduction of the unnecessary costs currently associated with providing them with such investment opportunities."[20] The Working Group noted that neither the SEC nor most state Blue Sky law require any specific disclosure for Regulation D offerings that are made only to accredited investors and concluded that the reduction in regulatory offering costs that would result from such exemption would "provide accredited investors with an opportunity to invest in commodity pools more efficiently with less cost."

II. The Proposed Rule

Based upon its review of the part 4 regulations in light of more than a decade of experience in administering the existing framework, the evolution of commodity pools, the change in the pool participant profile during this period and the foregoing discussions with the RCAC and other interested parties, the Commission has determined to seek public comment on a revised regulatory framework that would be available to CPOs privately offering commodity pools solely to certain highly accredited investors and to CTAs providing commodity interest trading advice to such commodity pools and to highly accredited investors.

In particular, the Commission is seeking comment on proposed Rule 4.7. In proposing Rule 4.7, the Commission has the dual objective, consistent with its customer protection role, of: (1) Reducing unnecessary regulatory prescriptions for CPOs offering pool participations only to persons who, based upon the qualifying criteria in the proposed rule, do not appear to need the full protections offered by the part 4 framework; and (2) coordinating its rules with those of the SEC applicable to private offerings exempt from registration pursuant to section 4(2) of the Securities Act so that most qualifying offerings may operate under

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[13] *See, e.g.*, Division of Trading and Markets Interpretative Letter No. 87-6 (1987-1990 Transfer Binder), Comm. Fut. L. Rep. (CCH) ¶ 23,973 (November 9, 1987); Division of Trading and Markets Interpretative Letter No. 84-2 (1982-1984 Transfer Binder), Comm. Fut. L. Rep. (CCH) ¶ 21,963 (January 17, 1984); and Division of Trading and Markets Interpretative Letter No. 85-6 (1984-1986 Transfer Binder), Comm. Fut. L. Rep. (CCH) ¶ 22,728 (February 8, 1985).

[14] In April 1979 there were 619 persons registered as CPOs. As of October 1, 1991 there were approximately 1,081.

[15] *Managed Accounts Reports* estimates public pool assets at $15 million in 1975, $230 million in 1980 and $435 million in 1983. Figures compiled by the National Futures Association indicate that the assets of commodity pools (both public and private) have more than doubled from the end of 1989 to the end of the first quarter of 1991, from $7.7 billion to $16.4 billion. Futures and commodity option contracts trading on exchanges numbered 90 in 1978 and 212 in 1990.

[16] Such a document would have two parts, a summary Disclosure Document, provided to all prospective pool participants, containing the information necessary for prospective participants to decide whether to participate in the pool; and a second part, which would be made available upon request, containing additional and more detailed information of interest to some investors. The Commission will address this issue in a separate release.

[17] 5 U.S.C. App. 2, section 1, *et seq.*, as amended (1988).

[18] See Charter of the Commodity Futures Trading Commission Regulatory Coordination Advisory Committee. See also the notice of the establishment of the RCAC, 54 FR 15245 (April 17, 1989).

[19] 17 CFR 230.501-230.508 (1991). Regulation D was adopted in 1982 "to achieve uniformity between Federal and state exemptions in order to facilitate capital formation consistent with the protection of investors" (47 FR 11251 at 11252 (March 16, 1982)). On September 21, 1983, the North American Securities Administrators Association ("NASAA"), an association of securities commissioners from each of the states and jurisdictions of the United States and from several Canadian provinces, promulgated a model Uniform Limited Offering Exemption ("ULOE") intended to coordinate the regulation of limited and private offerings by the states with SEC Regulation D. Among other things, Regulation D provides a "safe harbor" exemption from the registration requirements of the Securities Act for certain private offerings sold primarily to accredited investors and to a specified number of non-accredited investors upon the filing of a notice.

Pursuant to CFTC Rule 13.2 a Chicago law firm, Vedder, Price, Kaufman & Kammholz also petitioned the Commission to establish such a rule in a Petition for Rulemaking dated December 18, 1990.

[20] See the Working Group "Issue Paper" presented at the November 28, 1990 meeting of the RCAC.

an exemption from otherwise applicable requirements of both the Commodity Exchange Act and the securities laws.[21] Establishment of a general exemption of this nature based upon the financial qualifications and investment sophistication of the offerees expands the reasoning of the case-by-case relief from CPO regulation previously extended to certain collective investment funds formed by persons with substantial prior associations with the funds' manager and evident financial sophistication by virtue of professional experience or financial resources.

In light of the differences between futures and securities investments and the Commission's historical approach to pool disclosure, the Commission is proposing to extend relief only to offerings made to persons who generally would qualify as accredited investors under SEC Regulation D and who also satisfy additional requirements relating to investment resources and expertise. The Commission believes that because of the unique characteristics of futures trading, participants in a commodity pool for which no specific disclosure is prescribed must demonstrate a higher level of qualification than do investors in a securities investment vehicle.

Proposed Rule 4.7 would provide a basis for exemption from the specific requirements of Rules 4.21, 4.22 and 4.23, the disclosure, reporting and recordkeeping requirements applicable to CPOs, for registered CPOs in connection with their operation of commodity pools offered and sold exclusively to qualified eligible participants in an offering which qualifies for exemption from registration under section 4(2) of the Securities Act ("qualified eligible pools"), subject to the terms and conditions stated in Rule 4.7. The exemption would include relief from all of the specific disclosure requirements of Rule 4.21. With respect to reporting and recordkeeping, the requirements would be streamlined.

Such CPOs would, however, remain subject to all other applicable requirements of the Act and the Commission's regulations thereunder. For example, they would remain subject to the anti-fraud provisions of sections 4b and 4*o* of the Act, 7 U.S.C. sections 6b and 6*o* (1988),[22] the prohibited activities and advertising provisions applicable to CPOs in Rules 4.20 [23] and 4.41,[24] respectively, the reporting requirements for traders set forth in parts 15, 18 and 19 of the Commission's regulations and other relevant regulations.[25] Moreover, any representations made in connection with the sale of participations in qualified eligible pools would be required to include any additional disclosures necessary to make such representations, in the context in which they are made, not misleading.

The Commission also believes that it is appropriate to provide relief from the specific disclosure and recordkeeping requirements of Rules 4.31 and 4.32 to the CTAs of clients who meet the QEP criteria ("qualified eligible clients") and of commodity pools whose CPOs have obtained the corresponding disclosure or recordkeeping relief under proposed Rule 4.7. The rationale for proposing relief for CTAs is analogous to that for proposing relief for CPOs, *i.e.*, that QEPs are sophisticated investors who have the financial ability and experience necessary to understand the risks of futures trading and to obtain the information they require. Accordingly, as more fully discussed *infra*, the Commission has included such relief for CTAs in proposed Rule 4.7.

In connection with the proposed rule, the Commission is also considering giving relief to CPOs and CTAs who have claimed exemption from disclosure under proposed Rule 4.7 from disclosing in the Disclosure Document for other pools and clients their performance records with respect to qualified eligible pools and clients for which an exemption has been claimed. However, the performance of qualified eligible pools or clients could not be selectively disclosed. CPOs and CTAs who elected to disclose performance records with respect to pools or clients for which a 4.7 exemption is applicable would be required to do so as to all of their qualified eligible pools and clients, as prescribed by Rules 4.21 and 4.31, respectively, and to maintain the records necessary to substantiate their performance computations. CPOs and CTAs electing not to make such disclosures would be required to include a legend in the Disclosure Documents for other pools and clients indicating that they operate or have operated pools or advised clients with respect to which an exemption from disclosure had been claimed pursuant to Rule 4.7 and that this Disclosure Document does not include the performance record with respect to such pools or clients.[26] The Commission requests comment on whether this exemption from disclosing the performance of qualified eligible pools and clients is appropriate. The Commission also requests comment on all aspects of the proposed rule and in particular on the proposed QEP definition.

III. Section by Section Analysis

A. Definition of "Qualified Eligible Participant"

As noted above, the proposed exemption would apply only to offerings of pool participations to "qualified eligible participants," as that term would be defined in proposed Rule 4.7(a)(1). The Commission is proposing a definition of QEP that is designed generally to include persons who qualify as accredited investors under Regulation D and who meet certain additional qualifications as set forth in the proposed rule. The term "accredited investor," defined in Regulation D, includes individuals with specified income or net worth, corporations, partnerships and trusts that, among other things, have total assets in excess of $5,000,000, and certain institutional investors.

Using the "accredited investor" definition as a foundation, proposed Rule 4.7 defines categories of QEPs [27]

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[21] Because many states have adopted a private offering exemption, the commission has no reason to believe that proposed Rule 4.7 would be inconsistent with the states' regulations governing such offerings.

[22] Generally, section 4b of the Act prohibits fraudulent transactions in connection with the sale of a commodity subject to the rules of a contract market or of a commodity for future delivery. Section 4*o* of the Act prohibits CPOs, CTAs and their associated persons from employing any device, scheme, or artifice to defraud a pool participant or prospective pool participant or from engaging in any transaction, practice or course of business which operates as a fraud or deceit upon such participant. In addition, CPOs, CTAs and their associated persons are precluded from representing or implying that they have been sponsored, recommended or approved by the United States or by any agency or officer thereof.

[23] Pursuant to Rule 4.20, a CPO is required to "operate its pool as an entity cognizable as a legal entity separate from that of the pool operator" and is prohibited from commingling the property of a pool it operates with the property of any other person.

[24] Rule 4.41 prohibits the use of any deceptive or fraudulent advertising and prescribes a specific legend that must be prominently displayed in a Disclosure Document that includes simulated or hypothetical performance information.

[25] *E.g.*, Rules 33.9 and 33.10.

[26] Pursuant to Rule 4.21(a)(4) the operator of a pool that has traded commodity interests for twelve months or more preceding the date of the Disclosure Document is not required to provide the performance record of its other pools. Accordingly, the legend requirement would not apply to the Disclosure Document of such pools.

[27] These categories include (1) investment professionals; (2) certain registered investment companies and business development companies, banks, savings and loans and other financial institutions, insurance companies, private business development companies, certain employee benefit plans, charitable organizations, corporations, business trusts, limited partnerships, pools, trusts, insurance company separate accounts, bank collective trusts and qualified natural persons; and (3) entities in which all beneficial owners are QEPs.

based upon objective indicia that such persons possess either the investment expertise and experience necessary to understand the risks involved, as evidenced by the registered status of certain investment professionals, or have an investment portfolio of a size sufficient to indicate that the participant has substantial investment experience and thus a high degree of sophistication with regard to investments as well as financial resources to withstand the risks of their investments.[28] The Commission considered alternative financial qualifications, such as certain levels of net worth or total assets, but concluded that investment experience as evidenced by portfolio holdings is a better gauge of financial sophistication for a commodity pool participant. To come within the QEP definition, investment professionals and entities such as banks, savings and loan associations, other financial institutions and insurance companies may either purchase interests in the pool for their own accounts, *i.e.*, for accounts of which they are the sole beneficial owner, or as fiduciaries for the account of a QEP. All other QEPs proposed in paragraph 4.7(a)(2) would be required to be purchasing units for their own accounts.

The first class of QEPs would reach more categories of investment professionals than does Regulation D. It would include, in addition to registered broker-dealers which are accredited investors under Regulation D, certain Commission registrants listed in Rule 4.7(a)(1), specifically, registered FCMs and registered CPOs and CTAs meeting specified standards concerning assets under management, and the CPOs of the pools being offered. These investment professionals may be presumed to have sufficient expertise to evaluate the risks and benefits of investing in a commodity pool. In addition, the Commission notes that registered FCMs and broker-dealers are subject to minimum financial requirements under the Commission's and SEC's respective rules.[29] The Commission has proposed that to constitute a QEP under proposed Rule 4.7, a registered CPO, unless it is the CPO of the pool being offered, must operate commodity pools which, in the aggregate, have total assets in excess of $10,000,000, and that a registered CTA must provide commodity interest trading advice to accounts that, in the aggregate, have total assets in excess of $10,000,000 actually deposited at FCM(s). As noted above, however, such CPOs and CTAs are QEPs only when acting for an account of which they are the sole beneficial owner or for the account of a QEP.

The second class of QEPs would consist of natural persons and entities, listed in proposed Rule 4.7(a)(2), who meet the financial requirements set forth therein. To promote the objective of harmonization of CFTC and SEC requirements, this class of QEPs also would include, among others, the categories of persons who are accredited investors under Regulation D, except as noted below. However, as discussed above, the proposed Rule 4.7 exemption would impose the added requirement that such accredited investors own and control at least $5,000,000 in securities (including pool participations) of issuers not affiliated with them or have deposited at least $1,000,000 initial margin and option premiums for commodity interest trading.[30] This requirement could be met with a portfolio containing a combination of securities and commodity interests provided that the sum of the amounts of securities held in and futures margin and option premiums deposited for a mixed portfolio, expressed as a percentage of the minimum amounts of securities required to be held and futures margin and option premiums required to be deposited by Rule 4.7, equals one hundred percent. For example, to be a QEP a person listed in Rule 4.7(a)(2) with a mixed portfolio who owned and invested $1,250,000 in securities—which is 25% of the required securities portfolio amount—would have to have deposited at least 75%—$750,000—of the futures margin and option premiums required to meet the total futures portfolio requirement. Of course, securities deposited as margin or option premium with a futures commission merchant for commodity interest trading and counted in the margin or option premium component of a mixed portfolio could not also be counted in the securities component of the portfolio. As an added protection, the Commission also proposes to establish the level of total assets required for corporations, trusts and other business enterprises at $10,000,000 rather than $5,000,000 as prescribed in Regulation D and to impose the same requirement on registered investment companies.

QEPs which meet the portfolio requirement may include certain entities that are not explicitly enumerated in Regulation D but are passive investment vehicles of the type Regulation D covers. For example, commodity pools, insurance company separate accounts, bank collective trusts as well as any governmental entities, whether domestic or foreign, or political subdivisions thereof, and multinational or supranational entities [31] and their instrumentalities, agencies or departments would qualify as QEPs if they had the prescribed financial resources and access to appropriate investment advice.

The participation of a pool, insurance company separate account or bank collective trust in a qualified eligible pool would be required to be directed by a QEP. In addition, unless all equity owners of such entities are QEPs, no more than ten percent of their assets could be used to purchase participations in a qualified eligible pool. This limitation is imposed because participants in these entities may not be QEPs and thus could not invest in a qualified eligible pool based on their own financial qualifications and investment sophistication.

Under Regulation D, corporations, business trusts, partnerships and trusts are not accredited investors if they were formed "for the specific purpose of acquiring the securities offered." The Commission would apply this limitation to those entities as well as to registered investment companies and business development companies to preclude unqualified participants from purchasing participations in a Rule 4.7 pool through a pooled investment vehicle.[32]

Business development companies ("BDCs") are accredited investors under Regulation D. It appears that BDCs are not prohibited from investing a small portion of their assets in commodity

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[28] The SEC has used this "portfolio concept" to define "qualified institutional buyers" for the purposes of Rule 144A (17 CFR 230.144A (1991)) which provides a safe harbor exemption from the registration requirements of the Securities Act for resales of restricted securities to "qualified institutional buyers." The portfolio value required of a QEP under proposed Rule 4.7 is much lower than that required by the SEC for a qualified institutional buyer under Rule 144A because, among other things, the Rule 4.7 exemption is not an exemption from CPO or CTA registration.

[29] 17 CFR 1.17 (1991) and 17 CFR 240.15c3–1 (1991), respectively.

[30] Of course, this portfolio must be a *bona fide* portfolio of a size customary for the participant. A portfolio created specifically to obtain QEP status would not comply with the intent of proposed Rule 4.7.

[31] Multinational and supranational entities include the International Bank for Reconstruction and Development, the International Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank and other multinational lending institutions or regional development institutions in which the United States government is a shareholder or contributing member.

[32] These limitations would preclude unqualified investors from using QEPs to gain access to participations in a pool designed for QEPs by using a QEP as intermediary for purposes of investing in a pool or establishing a managed account.

pools.[33] Accordingly, the Commission has included qualified BDCs in the QEP definition. However, the Commission requests comment on whether such inclusion is appropriate.

Although small business investment companies ("SBICs") are accredited investors under Regulation D, the Commission has not proposed to include them as QEPs. SBICs operate under the Small Business Investment Act ("SBIA") [34] with the primary function "to provide a source of needed equity capital for small concerns." [35] Because providing equity capital for small concerns is required to be the primary function of SBICs, rather than their exclusive function, it would appear that SBICs may be permitted to place a portion of their assets in commodity pools for investment purposes. The Commission is requesting comment as to whether SBICs should be given QEP status to allow them to invest in qualified eligible pools to the extent they may lawfully do so under the SBIA.

Entities in which all of the equity owners are QEPs would also be QEPs and would not be subject to the portfolio requirement. These QEPs would constitute the third class of QEPs. Under Rule 4.7, a pool could qualify as a QEP in one of two ways: (1) Under proposed § 4.7(a)(3), if all participants in the pool were QEPs; and (2) under proposed § 4.7(a)(2)(xi) if the pool had total assets in excess of $10,000,000, was not formed for the specific purpose of participating in the qualified eligible pool offered and its participation in such qualified eligible pool was directed by a QEP. In the latter case, as noted above, unless all pool participants were QEPs, the pool could not invest more than ten percent of its assets in the qualified eligible pool.[36]

As stated above, the Commission definition of QEP is broader than the Regulation D definition of accredited investor because it includes certain Commission registrants and specified entities which are not accredited investors under Regulation D. Nonetheless, offerings including such registrants should not necessarily be disqualified from the Regulation D safe harbor. For example, a registered FCM would be a QEP under proposed Rule 4.7 and, if the FCM were a corporation or partnership not formed for the specific purpose of acquiring the securities offered, and had total assets in excess of $5,000,000, it would also qualify as an accredited investor under Regulation D.[37]

The Commission requests comment on the various aspects of the QEP definition. In particular, comment is requested on the adequacy of the proposed financial standards for natural persons and entities.

B. Relief for CPOs

1. Relief From Disclosure

Pursuant to proposed Rule 4.7(b)(1)(i), a registered CPO who offers or sells participations in a qualified eligible pool could claim relief from the specific disclosure requirements of Rule 4.21 with respect to that pool by filing a notice of claim for exemption containing specific representations. Registered CPOs operating qualified eligible pools and filing the requisite notice would be exempt from providing to prospective participants and filing with the Commission a Disclosure Document for the qualified eligible pool and, if an offering memorandum were distributed to prospective participants in the pool, such offering memorandum would not be required to contain the information specified in Rule 4.21.[38] However, any Disclosure Document or offering memorandum distributed to prospective participants in the pool would be required to include all information necessary to make such offering memorandum not misleading and to prominently display on its cover page the legend prescribed in § 4.7(b)(1)(i) notifying such investors that such offering memorandum was not filed with the Commission and that the Commission did not review or approve it. The exemption from Rule 4.21 provided by proposed Rule 4.7 would not relieve the CPO from the antifraud proscriptions of sections 4b and 4*o* of the Act.[39]

2. Relief From Reporting

Rule 4.22(a) requires a CPO to distribute to each participant in a pool that it operates monthly or quarterly financial statements containing the information specified in the rule.[40] Pursuant to proposed Rule 4.7(b)(1)(ii), a registered CPO who offers or sells participations in a qualified eligible pool could claim relief from the specific periodic reporting requirements of Rule 4.22(a). The CPO would be required, however, to distribute no less than quarterly to each participant in a pool for which Rule 4.7 periodic reporting relief has been claimed an abbreviated account statement, signed and affirmed as required by paragraph Rule 4.22(h). This abbreviated account statement would be required to indicate only the net asset value of the pool as of the end of the reporting period; the change in net asset value from the end of the last reporting period; and the net asset value per outstanding unit of participation in the pool as of the end of the reporting period. This simplified reporting requirement is similar to the reduced reporting requirement provided under Rule 4.12(b) for commodity pools principally engaged in securities transactions and satisfying the other requirements of that rule.[41]

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[33] BDCs are required to invest 70 percent of their assets, in the case of BDCs as defined in section 2(a)(48) of the Investment Company Act of 1940 ("ICA"), or 60 percent of their assets, in the case of BDCs as defined in section 202(a) of the Investment Advisers Act of 1940 ("IAA"), in securities of "eligible portfolio companies" and to give significant managerial assistance to such companies. Pursuant to section 2(a)(46)(A) of the ICA, an eligible portfolio company may neither be an investment company as defined in section 3 of the ICA nor a company which is excluded from the definition of investment company solely by section 3(c) of the ICA. Thus, thirty percent of the company's assets in the case of BDCs defined in section 2(a)(48) of the ICA and forty percent of the company's assets in the case of BDCs defined in section 202(a) of the IAA are not subject to specified use requirements.

[34] 15 U.S.C. 681 *et seq.* (1988).

[35] 15 U.S.C. 304(a) (1988).

[36] As part of its overall review of part 4 disclosure requirements, the Commission may provide additional relief with respect to pools investing in other pools.

[37] In addition, persons who would be QEPs under proposed Rule 4.7 but not accredited investors under Regulation D could be counted among the non-accredited investors allowed to participate in a Regulation D offering. In this case, however, while the CPO could claim relief from making the specific disclosures set forth in Rule 4.21, it would be required to make any disclosures specified in Regulation D to any qualified eligible participant which is not an accredited investor under Regulation D.

[38] See n. 8 *supra* and accompanying text.

[39] This provision would be consistent with the exemption from disclosure provided to certain offerings made pursuant to Regulation D as well as with the requirement for such offerings to comply with the antifraud, civil liability, and other provisions of the federal securities laws. See Rule 10b–5, 17 CFR 240.10b–5 (1991).

[40] The account statement must be distributed at least monthly in the case of pools with net assets of more than $500,000 at the beginning of the pool's fiscal year, otherwise at least quarterly (Rule 4.22(b)).

[41] The operating criteria of Rule 4.12(b) pools include that they generally and routinely engage in buying and selling securities and securities-derived instruments, that they commit no more than ten percent of their assets to establish commodity interest positions and that they trade such commodity interests in a manner solely incidental to their securities trading activities. See n. 12 *supra*. The premise of the Rule 4.12(b) exemption is that the extent and nature of the commodity interest trading of the pool warrants relief from the specific requirements of Rules 4.21 and 4.22 in reliance upon substituted compliance in the form of compliance with existing requirements of the securities laws. Rule 4.7 relief is available, however, without regard to the scope of the pool's futures-related activities and is instead premised upon the sophistication and financial resources of QEPs.

Rule 4.22(c) requires a CPO to distribute to each participant in a pool that it operates and to file with the Commission a certified Annual Report containing the information specified in the rule. Pursuant to proposed paragraph 4.7(b)(1)(iii), the CPO could also claim relief from the specific annual report requirements of paragraph 4.22(c) with respect to the qualified eligible pool. An abbreviated annual report would be required to be filed with the Commission and the National Futures Association within 90 calendar days after the end of the pool's fiscal year. Such annual report would be required to contain, at a minimum, a Statement of Financial Condition as of the close of the pool's fiscal year, a Statement of Income (Loss) for that year and appropriate footnote disclosure and material information. The simplified reporting requirements are similar to those under Rule 4.12(b). While these statements would be required to be prepared according to generally accepted accounting principles, the Commission would not mandate certification of the annual report by an independent public accountant.[42] In addition, pursuant to proposed Rule 4.7(b)(iii)(E), if the CPO has claimed exemption from the reporting requirements of Rule 4.22(c) it must make a statement to that effect on the cover page of each annual report and, if the annual report is not certified by an independent public accountant, the CPO must also disclose that fact on the annual report's cover page.

3. Relief from Recordkeeping

Proposed Rule 4.7(b)(1)(iv) would make available relief from the specific recordkeeping requirements of Rule 4.23. Rule 4.23 requires a CPO to make and keep the books and records specified in the rule.[43] A CPO claiming relief under proposed Rule 4.7(b)(1)(iv) would be required to make and keep the account statements and annual reports referred to in proposed Rule 4.7(b)(1) (ii) and (iii) and all other books and records made in the normal course of business in connection with his operation of the pool and to make these books and records available to the Commission, the National Futures Association and the U.S. Department of Justice in accordance with Rule 1.31.[44] The proposed rule would provide essentially the same recordkeeping relief as is made available by Rule 4.13 to persons exempt from CPO registration because they operate a commodity pool that is essentially a club or family fund and receive no compensation for such activity [45] or because they operate specified small pools.[46] As the Commission noted in adopting Rule 4.13, the recordkeeping requirements contained therein are minimal recordkeeping requirements in that they essentially "only require the keeping of those books and records which are generated in the ordinary course of operating the pool." [47]

4. Notice of a Claim for Exemption

To claim the relief available under Rule 4.7, a CPO would be required to file a notice of claim for exemption. This notice requirement is patterned after the notice requirements of Rules 4.5 and 4.12(b). The notice would be required to contain, among other things, the names of the CPO claiming relief and of the pool(s) for which such relief was claimed.

The Commission has included a provision requiring CPOs claiming relief pursuant to Rule 4.7 to represent that neither the CPO nor any of its principals is subject to any statutory disqualification under sections 8a(2) or 8a(3) [48] of the Act.

In come cases, the Regulation D safe harbor is not available to issuers that are, or whose predecessors or affiliates are, subject to proceedings, convictions, orders or judgments described in Rule 230.252 (c), (d), (e) or (f) of the Securities Act regulations. In 1987, in response to a suggestion by representatives of the North American Securities Administrators Association, the SEC proposed an amendment to Regulation D that would expand the applicability of this disqualification.[49] The SEC determined not to adopt this amendment. However, most states apply disqualification provisions to private offerings.

The Commission believes that the proposed provision requiring CPOs seeking exemption pursuant to Rule 4.7 to represent that neither they nor their principals are subject to a statutory disqualification may permit the offer of these vehicles without implicating other regulators' requirements. The Commission invites comments on this provision.

Proposed paragraph 4.7(b)(2)(ix) would specify that the notice must be received by the Commission before the commodity pool first enters into any commodity interest transaction if relief from reporting or recordkeeping (pursuant to proposed Rules 4.7(b)(1) (ii) or (iii) or 4.7(b)(1)(iv)) were claimed or prior to any offer or sale of a participation in the pool if relief from disclosure were claimed (pursuant to proposed Rule 4.7(b)(1)(i)). Proposed Rule 4.7(b)(2)(ix) and (b)(2)(viii) would specify that a notice of exemption that does not include all required information will not be effective. As with Rules 4.5 and 4.12(b), proposed Rule 4.7(b)(2)(x) and (b)(3) respectively would make clear that relief claimed under Rule 4.7 would cease to be effective upon any change which would cause the CPO of the pool to be ineligible for relief and that any exemption claimed under Rule 4.7 will not affect the CPO's obligations to comply with all other applicable provisions of the Act and the Commission's regulations.

The notice of a claim for exemption required by proposed Rule 4.7 would be self-executing, *i.e.*, it would be effective upon receipt by the Commission, provided that it included all required information. However, if at the time of the Commission's receipt of the Notice, an enforcement proceeding brought by the Commission under the Act or the regulations thereunder were pending against the CPO, the exemption would not be effective until twenty-one calendar days after receipt of the notice and could be denied or made subject to such conditions as the Division of Trading and Markets may impose.

C. Relief for CTAs

Pursuant to proposed Rule 4.7(c) a commodity trading advisor could claim relief from the disclosure requirements

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[42] Of course, if the annual report were certified by an independent public accountant, it would have to be certified in accordance with § 1.16.

[43] See n. 11 *supra* and accompanying text.

[44] Among other things, § 1.31 requires that books and records required by the Act and the Commission's regulations be kept for five years from the date of their making and be readily accessible during the first two years of the five-year period.

[45] In addition, such persons are precluded from conducting any advertising in connection with the pool.

[46] The total gross capital contributions received by such persons for participations in all the pools they operate may not, in the aggregate, exceed $200,000 and none of the pools operated may have more than 15 participants at any time.

[47] 46 FR 26004 at 26007–08 (May 8, 1981). Of course, a CPO would be required to maintain the reports required by Rule 4.22 (a) and (c) unless it had claimed exemption from reporting pursuant to Rule 4.7(b)(1) (ii) or (iii), respectively.

[48] Sections 8a(2) and 8a(3) of the Act authorize the Commission to, among other things, register conditionally or suspend or place restrictions upon the registration of persons subject to the statutory disqualifications listed in those sections. Persons subject to statutory disqualifications include, among other, persons who have had a prior registration suspended, revoked or refused, persons who are subject to an injunction from acting in or who have been convicted of a felony, involving, certain investment-related activities, and persons who have been found to have violated specified investment-related statutes and regulations.

[49] 52 FR 3015 (January 16, 1987).

of Rule 4.31 with respect to the commodity interest account of a client who met the requirements for QEP in Rule 4.7(a) or of a commodity pool for which relief from disclosure was effective under Rule 4.7(b)(1). Under this exemption, the CTA would not be required to file a Disclosure Document with the Commission and if the CTA distributed a promotional brochure to such client or commodity pool, such brochure would not be required to contain the information specified in Rule 4.31.[50] However, as with respect to CPOs claiming exemption under the proposed rule, any promotional brochure distributed to such client or commodity pool would be required to include all information necessary to make the statements made in such brochure not misleading. In addition, the CTA must prominently display on the cover page of any such promotional brochure the legend prescribed in the rule alerting such client or pool that the promotional brochure has not been filed with or reviewed or approved by the Commission. The CTA would remain subject to the antifraud provisions of sections 4b and 4*o* of the Act.[51]

The CTA could also claim relief from the specific recordkeeping requirements of Rule 4.32 [52] with respect to clients who met the QEP requirements and with respect to commodity pools for which recordkeeping relief was effective under Rule 4.7(b)(1)(iv). Such exempted CTA would be required to make and keep all books and records made in connection with his providing commodity interest trading advice to such clients and commodity pools and to make them available to the Commission, the National Futures Association and the U.S. Department of Justice in accordance with Rule 1.31.[53]

Under Rule 4.7 as proposed, a CTA could not claim relief from disclosure or recordkeeping with respect to a qualified eligible pool unless the CPO for such pool had claimed the corresponding relief from disclosure and recordkeeping. The Commission is seeking comment on whether relief from disclosure and recordkeeping should be available for CTAs of qualified eligible pools without regard to whether the CPO has claimed disclosure and recordkeeping relief with respect to such pools.

The CTA would also be required to file a notice of claim for relief and such notice would be subject to the same requirements as the notice for relief required to be filed by CPOs claiming relief under proposed Rule 4.7. However, in contrast to the filing requirement for CPOs claiming exemption, which requires a notice as to each qualifying pool, the CTA would be required only to file a single notice. This notice would state that the CTA anticipates providing commodity interest trading advice to qualified eligible clients and pools, which need not be specified in the notice, and represent that the CTA will comply with the requirements of Rule 4.7 as to such clients and pools.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. Proposed Rule 4.7 would affect registered CPOs and CTAs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[54] The Commission previously determined that registered CPOs are not small entities for the purpose of the RFA.[55] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs should be considered to be small entities and, if so, that it would analyze the economic impact on them of any rule.[56]

The rule proposed herein would amend the Commission's rules currently applicable to CPOs and CTAs so as to reduce rather than increase those rule requirements. The exemptive relief provided under the proposed rules would be available to all CPOs and CTAs, regardless of size, with respect to qualified eligible participants and clients, and would reduce the disclosure, reporting and recordkeeping requirements applicable to the specified offerings. The Commission believes that the proposals, if adopted, would not have a significant economic impact on small entities.

Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605-(b)), the Chairman, on behalf of the Commission, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any registered CPO or CTA who believes that this rule would have a significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, (Act) 44 U.S.C. 3501 *et. seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission has submitted this proposed/amended rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including this proposed rule, is as follows:

Average Burden House per Response: 29.10
Number of Respondents: 2,965
Frequency of Response: On Occasion

The burden associated with this specific proposed rule, is as follows:

Average Burden Hours per Response: 1.00
Number of Respondents: 50.00
Frequency of Response: On Occasion

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 4

Commodity pool operators, commodity trading advisors.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(1), 4b, 4c, 4*l*, 4m, 4n, 4*o*, 8a and 19, 7 USC 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23, the Commission hereby proposes to amend part 4 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

Subpart A—Definitions and Exemptions

1. The authority citation for part 4 continues to read as follows:

Authority: Sections 2(a)(1)(A), 4b, 4c, 4*l*, 4m, 4n, 4*o*, 8a and 19 of the Act, 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12*f* and 23.

2. Section 4.7 is proposed to be added to read as follows:

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[50] See n. 9 *supra* and accompanying text.
[51] See n. 22 *supra*.
[52] See n. 11 *supra*.
[53] See n. 44 *supra*.
[54] 47 FR 18618–18621 (April 30, 1982).
[55] 47 FR 18619–18620.
[56] 47 FR 18618, 18620 (April 30, 1982).

§ 4.7 Exemption from Rules 4.21, 4.22, 4.23, 4.31 and 4.32 with respect to pools whose participants are limited to qualified eligible participants and with respect to commodity trading advisors' clients that meet the requirements for qualified eligible participants.

(a) The term *qualified eligible participant* shall mean:

(1) Any person acting for its own account or for the account of a qualified eligible participant and who comes within any of the following categories, or who the commodity pool operator reasonably believes comes within any of the following categories, at the time of the sale to that person of a pool participation:

(i) Any futures commission merchant registered pursuant to section 4d of the Act;

(ii) Any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934;

(iii) Any registered commodity pool operator who operates commodity pools which, in the aggregate, have total assets in excess of $10,000,000;

(iv) The commodity pool operator of the pool being offered or sold;

(v) any registered commodity trading advisor who provides commodity interest trading advice to commodity accounts which, in the aggregate, have total assets in excess of $10,000,000 deposited at one or more futures commission merchants;

(2) Any person who, acting for its own account, in the aggregate, owns and controls at least $5,000,000 in securities (including pool participations) or issuers not affiliated with such participant or who has deposited at least $1,000,000 initial margin and option premiums with a futures commission merchant for commodity interest trading and who comes within any of the following categories, or who the commodity pool operator reasonably believes comes within any of the following categories, at the time of the sale to that person of a pool participation;

(i) Any investment company registered under the Investment Company Act of 1940 that has total assets in excess of $10,000,000 or a business development company as defined in section 2(a)(48) of that Act not formed for the specific purpose of investing in the pool offered;

(ii) Any bank as defined in section 3(a)(2) of the Securities Act of 1933 (the "Securities Act"), or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act acting for its own account or for the account of a qualified eligible participant;

(iii) Any insurance company as defined in section 2(13) of the Securities Act acting for its own account or for the account of a qualified eligible participant;

(iv) Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

(v) Any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are qualified eligible participants;

(vi) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(vii) Any organization described in section 501(c)(3) of the Internal Revenue Code, with total assets in excess of $5,000,000;

(viii) Any corporation, Massachusetts or similar business trust, or partnership, other than a pool, which has total assets in excess of $10,000,000, and is not formed for the specific purpose of participating in the pool offered;

(ix) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000;

(x) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(xi) Any pool, trust, insurance company separate account or bank collective trust, with total assets in excess of $10,000,000, nor formed for the specific purpose of participating in the pool offered, and whose participation in the pool is directed by a QEP, *Provided*, that except where such pool, trust, insurance company separate account or bank collective trust would constitute a qualified eligible participant under paragraph (a)(3) of this section, no more than 10 percent of the assets of such entity are used to purchase units in commodity pools for which a claim of exemption has been filed pursuant to this section;

(xii) Except as otherwise provided in paragraph (a)(2)(iv) of this section, if otherwise authorized by law to engage in such transactions, any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing; and

(3) Any entity in which all of the equity owners are persons listed in paragraphs (a)(1) or (a)(2) of this section.

(b) Any person who is registered as a commodity pool operator under the Act, who offers or sells participations in a pool solely to qualified eligible participants in an offering which qualifies for exemption from the registration requirements of the Securities Act pursuant to section 4(2) of that Act will be exempt as provided in paragraph (b)(1) (i), (ii) or (iii) of this section for the offer and sale of participations in the pool, subject to the conditions specified therein, upon filing the notice required by paragraph (b)(2) of this section.

(1) A commodity pool operator that files a notice pursuant to this section may claim any or all of the following relief with respect to the commodity pool specified in such notice, hereafter referred to as "qualified eligible pool":

(i) *Disclosure.* Exemption from making the specific disclosures required by § 4.21 (a) through (h); *Provided*, That if an offering memorandum is distributed in connection with soliciting prospective participants in the qualified eligible pool, (A) such offering memorandum shall include any additional disclosures as may be necessary to make the information contained therein, in the context in which it is furnished, not misleading; and (B) the following statement must be prominently disclosed on the cover page: "PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION, THIS OFFERING MEMORANDUM IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A POOL OR UPON THE ADEQUACY OR ACCURACY OF AN OFFERING MEMORANDUM. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS OFFERING OR THIS OFFERING MEMORANDUM"; and *Provided further*, That the pool operator will not

be relieved from any obligation under the Act or the regulations thereunder.

(ii) *Periodic Reporting.* Exemption from the specific requirements of §§ 4.22(a) and 4.22(b); *Provided,* That a statement signed and affirmed in accordance with § 4.22(h) is prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. This statement must indicate:

(A) The net asset value of the pool as of the end of the reporting period;

(B) The change in net asset value from the end of the previous reporting period; and

(C) The net asset value per outstanding unit of participation in the qualified eligible pool as of the end of the reporting period.

(iii) *Annual Report.* (A) Exemption from the specific requirements of §§ 4.22 (c) and (d); *Provided,* That within 90 calendar days after the end of the qualified eligible pool's fiscal year, the commodity pool operator files with the Commission and with the National Futures Association and distributes to each participant in lieu of the financial information and statements in the annual report specified by those sections, an annual report for the qualified eligible pool, signed and affirmed in a manner consistent with § 4.22(h) which contains, at a minimum:

(*1*) A Statement of Financial Condition as of the close of the qualified eligible pool's fiscal year (elected in a manner consistent with § 4.22(g));

(*2*) A Statement of Income (Loss) for that year; and

(*3*) Appropriate footnote disclosure and any other material information.

(B) Such annual report shall be presented and computed in accordance with generally accepted accounting principles consistently applied and, if certified by an independent public accountant, so certified in accordance with § 1.16 as applicable.

(C) Legend. (*1*) If a claim for exemption has been made pursuant to this section, the commodity pool operator must make a statement to that effect on the cover page of each annual report.

(*2*) If the annual report is not certified in accordance with § 1.16, the pool operator must make a statement to that effect on the cover page of each annual report.

(iv) *Recordkeeping.* Exemption from the specific requirements of § 4.23; *Provided,* That the commodity pool operator shall maintain the reports referred to in paragraphs (b)(1)(ii) and (b)(1)(iii) of this § 4.7 and the books and records prepared in connection with his activities as the pool operator of the qualified eligible pool to which the exemption applies and shall make such reports and records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(2) The notice of a claim for exemption under this section must:

(i) Be in writing;

(ii) Provide the name, main business address, main business telephone number and the National Futures Association identification number of the person claiming the exemption;

(iii) Provide the name(s) of the qualified eligible pool(s) for which the request is being made;

(iv) Contain representations (A) that neither the commodity pool operator nor any of its principals is subject to any statutory disqualification under sections 8a(2) or 8a(3) of the Act, and (B) that the commodity pool operator will comply and the qualified eligible pool will be offered and operated in compliance with the requirements of §§ 4.7(b);

(v) Specify the relief claimed under this § 4.7;

(vi) State the closing date of the offering or that the offering will be continuous.

(vii) Be signed by the pool operator, as follows: If the pool operator is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer; and

(viii) Be filed in duplicate, with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department).

(ix) The notice of a claim for exemption under paragraph (b)(2) of this section must be received by the Commission before (A) the date the qualified eligible pool first enters into a commodity interest transaction, if the relief claimed is limited to that provided under § 4.7(b)(1) (ii), (iii) and (iv); or (B) if relief is claimed pursuant to § 4.7(i), prior to any offer or sale of any participation in the qualified eligible pool. The notice will be effective upon its receipt by the Commission with respect to each qualified eligible pool for which it was made, *Provided,* That any notice which does not include any of the required information shall not be effective, and that if at the time of the Commission's receipt of such claim for exemption, an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity pool operator or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and such exemption may be denied by the Division of Trading and Markets ("Division") or made subject to such conditions as the Division may impose.

(x) Any exemption claimed hereunder shall cease to be effective with respect to a particular pool upon any change which would cause the commodity pool operator for such pool to be ineligible for the relief specified in § 4.7(b)(1) with respect to such pool. A notice advising the Commission of such change shall be filed promptly.

(3) Any exemption from the requirements of §§ 4.21, 4.22 or 4.23 made hereunder with respect to a commodity pool shall not affect the obligation of the commodity pool operator to comply with all other applicable provisions of this part 4, the Act and the Commission's rules and regulations, with respect to the pool and with respect to any other pool such pool operator operates or intends to operate.

(c) Any registered commodity trading advisor who anticipates directing or guiding the commodity interest accounts of clients that meet the requirements for qualified eligible participant set forth in § 4.7(a) ("qualified eligible clients") and of commodity pools for which relief was claimed and is effective under § 4.7(b)(1) as specified in § 4.7(c)(1) (i) or (ii) of this section upon filing the notice required by paragraph (c)(2) for this section with respect to such clients or commodity pools.

(1) A commodity trading advisor that files a notice pursuant to paragraph (c)(2) of this section may claim any or all of the following relief with respect to qualified eligible clients or pools:

(i) *Disclosure.* Exemption from the specific requirements of § 4.31 (a) through (g) with respect to the qualified eligible clients or qualified eligible pools for which relief from disclosure was claimed pursuant to § 4.7(b)(1)(i) and is effective; *Provided,* That if a promotional brochure is delivered to such qualified eligible clients or pools, (A) such promotional brochure shall include any additional disclosure as may be necessary to make the information contained therein, in the context in which it is furnished, not misleading; and (B) the following statement must be prominently displayed on the cover page: "PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION, THIS

PROMOTIONAL BROCHURE IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A TRADING PROGRAM OR UPON THE ADEQUACY OR ACCURACY OF A PROMOTIONAL BROCHURE. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS TRADING PROGRAM OR THIS PROMOTIONAL BROCHURE"; and *Provided further,* That the commodity trading advisor will not be relieved from any obligation under the Act or the regulations thereunder.

(ii) *Recordkeeping.* Exemption from the specific requirements of § 4.32 with respect to qualified eligible clients or qualified eligible pools for which relief from recordkeeping was claimed pursuant to § 4.7(b)(1)(iv) and is effective; *Provided,* That the commodity trading advisor shall maintain the books and records prepared in connection with his activities as the commodity trading advisor of such qualified eligible clients or pools and shall make such records available to any representative of the Commission, the National Futures Association and the United States Department of Justice at its main business office in accordance with the provisions of § 1.31. If the commodity trading advisor's main business office is located outside the United States, its territories or possessions, upon the request of such representative the trading advisor must provide such books and records as requested at the place designated by the representative in the United States, its territories or possessions within 72 hours after receipt of the request.

(2) The notice of a claim for exemption under this section must:

(i) Be in writing;

(ii) Provide the name, main business address, main business telephone number and the National Futures Association identification number of the person claiming the exemption;

(iii) Contain a representation that the commodity trading advisor anticipates providing commodity interest trading advice to qualified eligible clients and pools and that it will comply with the requirements of Rule 4.7 with respect to such clients and pools;

(iv) Contain representations (A) that neither the commodity trading advisor nor any of its principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act, and (B) that the commodity trading advisor will comply with the requirements of §§ 4.7(c)(1);

(v) Specify the relief claimed under this § 4.7;

(vi) Be signed by a duly authorized representative; and

(vii) Be filed in duplicate, with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department).

(viii) The notice of a claim for exemption under paragraph (c)(2) of this section must be received by the Commission before the date the commodity trading advisor first enters into an agreement to direct or guide the commodity interest accounts of qualified eligible clients or pools. The notice will be effective upon its receipt by the Commission, *Provided,* That any notice which does not include any of the required information shall not be effective, and that if at the time of the Commission's receipt of such claim for exemption, an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity trading advisor or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and such exemption may be denied by the Division or made subject to such conditions as the Division may impose.

(ix) Any exemption claimed hereunder shall cease to be effective upon any change which would cause the commodity trading advisor to be ineligible for the relief specified in § 4.7(c)(1). A notice advising the Commission of such change shall be filed promptly.

(3) Any exemption from the requirements of Rules 4.31 or 4.32 made hereunder shall not affect the obligation of the commodity trading advisor to comply with all other applicable provisions of this part 4, the Act and the Commission's rules and regulations, with respect to any qualified eligible client or pool and with respect to any other client or pool to which the commodity trading advisor provides or intends to provide commodity interest trading advice.

Issued in Washington, DC, on January 22, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-1911 Filed 1-27-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 363

RIN 1820-AA86

State Supported Employment Services Program

AGENCY: Department of Education.

ACTION: Extension of comment period.

SUMMARY: On November 13, 1991, the Department of Education published in the Federal Register a notice of proposed rulemaking (NPRM) for the State Supported Employment Services Program (56 FR 57778). The comment period for the NPRM ended on December 30, 1991. In response to requests from the public, the Secretary extends the comment period from December 30, 1991 to February 14, 1992.

DATES: Comments must be received on or before February 14, 1992.

ADDRESSES: All comments concerning the proposed regulations should be addressed to Nell C. Carney, Commissioner, Rehabilitation Serviced Administration, 400 Maryland Avenue, SW. (Switzer Building, room 3225), Washington, DC 20202-2742.

FOR FURTHER INFORMATION CONTACT: Fred Isbister, Telephone (202) 732-1297.

Dated: January 22, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-1944 Filed 1-27-92; 8:45 am]

BILLING CODE 4000-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-8, RM-7713]

Radio Broadcasting Services; Stock Island, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by S-3 Communications Corporation seeking the allotment of Channel 248A to Stock Island, Florida, as that community's first local FM service. Channel 248A can be allotted to Stock Island in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.4 kilometers (2.1 miles) west, in order to avoid a short-spacing to the vacant allotment for Channel 249A at Marathon, Florida. The coordinates for the proposal are North

Latitude 24–33–40 and West Longitude 81–46–18.

DATES: Comments must be filed on or before March 16, 1992, and reply comments on or before March 31, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph A. Belisle, Leibowitz & Spencer AmeriFirst Building, suite 1450, One Southeast Third Avenue, Miami, Florida 33131 (Counsel for S–3 Communications Corporation).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No 92–8, adopted January 13, 1992, and released January 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 83

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–2064 Filed 1–27–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–7, RM–7679]

Radio Broadcasting Services; Scotland Neck and Pinetops, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by WYAL Radio, Inc., seeking the substitution of Channel 238C3 for Channel 238A at Scotland Neck, North Carolina, the reallotment of Channel 238C3 from Scotland Neck to Pinetops, North Carolina, as the community's first local aural transmission service, and the modification of Station WWRT(FM)'s construction permit to specify Pinetops as its community of license. Channel 238C3 can be allotted to Pinetops in compliance with the Commission's minimum distance separation requirements with a site restriction of 18 kilometers (11.1 miles) north to avoid short-spacings to Stations WRNS–FM, Channel 238C, Kinston, North Carolina, and Station WKML, Channel 239C, Lumberton, North Carolina, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 238C3 at Pinetops are North Latitude 35–55–54 and West Longitude 77–40–11. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 238C3 at Pinetops or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before March 16, 1992, and reply comments on or before March 31, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Esq., Daniel W. Clark, Esq., Tharrington, Smith & Hargrove, P.O. Box 1151, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–7, adopted January 13, 1992, and released January 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–1922 Filed 1–27–92; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 57, No. 18
Tuesday, January 28, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Drug Alliance; Availability of Funds

ACTION: Notice of availability of funds.

ACTION, the federal domestic volunteer agency, announces the availability of funds during fiscal year 1992 for Drug Alliance grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, part C). These grants are to address the particular need for illicit drug use prevention programs that focus on at-risk youth from low-income communities.

ACTION, historically a principal source of volunteer leadership in America, has been mandated by the President and Congress to confront the crisis of illegal drug use by youth by supporting innovative prevention programs that use volunteer resources at the local level to respond to this crisis. Volunteers of all ages and from every segment of the community can make vital contributions to illegal drug use prevention and education programs. Therefore, ACTION intends to support programs which encourage and sustain the spirit of voluntarism as a weapon in America's fight against illegal drugs.

The best strategy to combat illegal drug use by youth is to prevent it from starting. Effective prevention requires the involvement of every segment of the community in delivering and reinforcing clear and consistent "no use" messages. Because no single approach will work in every locale, ACTION has supported and promoted a wide range of models using volunteers of all ages to stop the use of illegal drugs by youth. The search continues for new approaches or models, as well as for strategies to adapt existing models to individual communities. There is continuing need for effective approaches that use volunteers to provide specific illicit drug use prevention information and refusal skills as well as to provide a wide range of positive activities for at-risk youth that can reinforce prevention efforts.

Local community and youth serving organizations are in a unique leadership position to provide meaningful structured volunteer programs which focus on preventing illegal drug use among youth. Such local organizations have demonstrated in the past that they are best able to address community problems such as illicit drug use among youth because they are closest to the problem and have the greatest stake in solving it. Also, they are most able to include both parents and youth in the planning and implementation of programs to combat illegal drug use—a strategy increasingly recognized as critical to the ultimate effectiveness of such community-based projects.

There is growing recognition of the importance of involving youth in illegal drug use prevention activities. In particular, youth volunteers have demonstrated that they are able to positively effect the lives and actions of at-risk youth. There is a critical need for communities to develop programs which will provide opportunities for drug-free youth to become leaders and role models to help counter peer pressure to use illegal drugs. As well as being of value to the community, youth volunteers themselves can receive a meaningful sense of involvement and accomplishment from providing service to others.

In addition, there is growing recognition of the importance of involving youth in illicit drug use prevention activities after school, on weekends and during the summer months when schools are not in session and school-related prevention information and support is unavailable. There is particular need for such illicit drug prevention programming in low-income neighborhoods. The needs in such communities that may be met through voluntary service are great, and the youth who live in these areas are generally considered at extremely high risk of becoming involved with illegal drugs. This announcement solicits innovative and creative proposals which respond to this need.

A. Eligible Strategy

Public and private non-profit agencies, including community-based organizations, which provide services to youth are encouraged to submit proposals to implement the following strategy by: (a) Expanding an existing project, (b) or developing a new project.

The proposed program must use non-stipended volunteers to provide illegal drug use prevention education and related activities for youth program participants. Such activity outside normal school hours, including after-school, weekends, and during the summer months, is encouraged. It must involve parents, make extensive use of non-stipended youth and/or adult volunteers in its operation, and target youth who reside in low-income communities, especially inner city neighborhoods, public housing developments, and rural areas. There should be special emphasis on the recruitment of volunteers who live in the community being served by the project.

The prevention education component must include information on the harmful consequences of illegal drug use as well as peer pressure resistance and refusal skills. The involvement of other drug prevention educational resources from the community is encouraged.

Additional positive activities to benefit or to involve youth which are designed to reinforce the prevention education process should be built into the program as well. Such activities may include (but are not limited to); mentoring, tutoring, community service, and other recreational/cultural/educational opportunities.

Finally, all proposals for $10,000 or more must include plans for detailed evaluation and documentation of "lessons learned" so as to measure the project's impact on the drug use problem in the community, to facilitate replication and adaptation of effective strategies in other communities, and to add to the body of knowledge about drug prevention.

B. Eligible Applicants

Only applications from private non-profit incorporated organizations and public agencies that provide services to youth will be eligible. Such organizations may include, but are not limited to, local coalitions or councils dedicated to the prevention of illegal drug use, community-based volunteer groups, religious organizations, local government agencies, service clubs, fraternities, sororities and youth-serving organizations.

Any applicant that does not adhere to a strict policy of the non-use of illegal drugs will not be eligible for consideration. Furthermore, an application will be deemed ineligible if it refers to philosophy, proposed activities, training or educational materials that advocate the tolerance of initial use or responsible use of any illegal drug, and/or the illegal use of any legal drug. This issue must be addressed in the application.

C. Available Funds and Scope of Grant

The amount of a grant will not exceed $40,000 each. Grant funding will be provided on a one-time, non-renewable basis for a budget period not to exceed 12 months.

All grants awarded under this announcement require a 50% non-federal match for the project director's salary and fringe benefits. The project director must serve on at least a half-time basis. Additional non-federal match is strongly encouraged, and will be considered in decision-making process.

Applicants should specify the sources and nature of in-kind and other non-federal contributions. These contributions must be deemed allowable costs in accordance with ACTION requirements and be supported by a detailed budget narrative detailing the source of the support and the formula used to compute these costs.

Publication of this announcement does not obligate ACTION to award any specific number of grants, or to obligate the entire amount of funds available, or any part thereof.

D. General Criteria for Grant Review and Selection

Grant applications will be reviewed and evaluated based on the criteria outlined below, as well as on conformance to the instructions included in the application.

1. Statement of need that includes both an analysis of the type and extent of the problem to be addressed by the project and an overview of the applicant's qualifications to meet that need.

2. Ability and plans to recruit, train, and retain non-stipended older youth or adult volunteers to assist youth in low-income communities.

3. Ability and plans for volunteers to provide appropriate illicit drug use prevention education (including information about harmful consequences to health from use and resistance training) for youth participants.

4. Ability and plans for volunteers to provide additional positive activities for youth participants (e.g., mentoring, tutoring, or recreational/cultural/educational opportunities.)

5. Plans to involve youth and parents in developing and/or implementing the program.

6. Plans to continue project activities beyond the end of the ACTION grant.

7. Thoroughness and feasibility of plans to work with other local agencies and organizations and existing illicit drug prevention coalitions to implement the program. At least three current letters from agencies or organizations which make a commitment to participate in the ACTION-funded project must be submitted.

8. Carefully formulated Work Plan which includes time-phased and quantifiable objectives, including objectives for continuation of the project, and the feasibility of proposed methods for meeting those objectives.

9. Potential for replication in other communities and plans to share project documentation or materials with other organizations.

10. Evidence of public and private sector support (financial and in-kind). Amount and type of non-federal support will be considered.

11. Detailed description of methods to be used in evaluating the impact of the program on the illegal drug abuse problem in the community. Failure to address this criteria will result in rejection of the application.

E. Applications Review Process

Applications submitted under this announcement will be reviewed and evaluated by their respective ACTION State and Regional Offices and ACTION's Program Demonstration and Development Division. ACTION's Associate Director for Domestic and Anti-Poverty Operations will make the final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

The Associate Director of Domestic and Anti-Poverty Operations may use additional factors in choosing among applicants which meet the minimum criteria specified above, such as:

1. Geographic distribution;

2. Applicant's access to alternate resources; and

3. Allocation of Drug Alliance resources in relation to other ACTION funds.

Pursuant to Public Law 101-204, priority will be given to applicants that have not previously received Drug Alliance funds.

F. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the appropriate ACTION State office no later than 5 p.m. local standard time on Friday, March 27, 1992. Only those applications that are received at the appropriate ACTION State Office by 5 p.m. local standard time on this date will be eligible.

All grant applications must consist of:

a. Application for Federal Assistance (ACTION Form 424-PDD) with narrative budget justification, a narrative of project goals and objectives, a detailed Work Plan, (submitted on the form included in the application), and Assurances.

b. Signed and dated Certification Regarding Drug Free Workplace Requirements.

c. Signed and dated Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions.

d. Current resume of the candidate for the position of project director, if available, or the current resume of the director of the applicant agency or project.

e. Organizational chart of the applicant showing how the project is related to the organization.

f. List of the current board of directors showing their names, addresses and organizational and professional affiliations.

g. Three letters of support attesting to the applicant's ability to meet the above criteria and evidencing intent to cooperate with applicant in development and implementation of the ACTION funded project.

h. Statement that identifies previous ACTION funding (type, year, and amount) or a statement that applicant has not previously received funding from ACTION.

i. CPA certification of accounting capability.

j. Articles of Incorporation including the page that contains the State seal.

k. Proof of non-profit status or an application for non-profit status, which should be made through documentation.

Items i, j and k above are not required for public agencies of state and local government.

Hearing-impaired individuals may contact ACTION's TDD number, (202) 606-5256. This announcement, application materials and guidance may be provided in alternative formats for the visually-impaired by calling (202) 606-4857.

To receive an application kit, please contact the appropriate ACTION State Program Office. Following is a list of ACTION Regional Offices, along with the addresses and telephone numbers of the ACTION State Program Offices under their jurisdiction.

Region I

ACTION Regional Director, 10 Causeway Street, Room 473, Boston, MA 02222–1039, 617/565–7001
ACTION State Program Director, Federal Post Office & Courthouse, 55 Pleasant Street, Room 223, Concord, NH 03301–3939, 603/225–1450
ACTION State Program Director, John O. Pastore Federal Bldg., Two Exchange Terr. Room 232, Providence, RI 02903–1758, 401/528–5424
ACTION State Program Director, 1 Commercial Plaza, 21st Floor, Hartford, CT 06103–3510, 203/240–3237
ACTION State Program Director, U.S. Courthouse, 76 Pearl Street, Room 305, Portland, ME 04101–4188, 207–780–3414
ACTION State Program Director, 10 Causeway Street, Room 473, Boston, MA 02222–1039, 617/565–7018

Region II

ACTION Regional Director, 6 World Trade Center, Room 758, New York, NY 10048–0206, 212/466–3481
ACTION State Program Director, 6 World Trade Center, Room 758, New York, NY 10048–0206, 212/466–4471
ACTION State Program Director, 44 South Clinton Avenue, Suite 702, Trenton, NJ 08609–1507, 609/989–2243
ACTION State Program Specialist, U.S. Courthouse & Federal Building, 445 Broadway, Room 103, Albany, NY 12207, 518/472–3664
ACTION State Program Director, U.S. Federal Building, 150 Carlos Chardon Avenue, Suite G49, Hato Rey, PR 00918–1737, 809/766–5314

Region III

ACTION State Program Director, 603 Morris Street, 2nd Floor, Charleston, WV 25301–1409, 304/347–5246
ACTION Regional Director, U.S. Customs House, 2nd & Chestnut Streets, Room 108, Philadelphia, PA 19106–2996, 215/597–9972
ACTION State Program Director, Federal Building, 600 Federal Place, Room 372–D, Louisville, KY 40202–2230, 502/582–6384
ACTION State Program Director, Federal Building, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201–2814, 301/962–4443
ACTION State Program Director, Leveque Tower, 50 W. Broad Street, Room 304A, Columbus, OH 43215–3301, 614/469–7441
ACTION State Program Director, Gateway Building, 3535 Market Street, Room 2460, Philadelphia, PA 19104–2996, 215/596–4077
ACTION State Program Director, 400 North 8th Street, P.O. Box 10066, Room 1119, Richmond, VA 23240–1832, 804/771–2197

Region IV

ACTION Regional Director, 101 Marietta Street, NW., Suite 1003, Atlanta, GA 30323–2301, 404/331–2860
ACTION State Program Director, 3165 McCrory Street, Suite 115, Orlando, FL 32803–3750, 407/648–6117
ACTION State Program Director, Federal Building/P.O. Century Station, 300 Fayetteville St. Mall, Room 131, Raleigh, NC 27601–1739, 919/856–4731
ACTION State Program Director, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 770, Birmingham, AL 35209–3120, 205/290–7186
ACTION State Program Director, 75 Piedmont Avenue, N.E., Suite 462, Atlanta, GA 30303–2587, 404/331–4646
ACTION State Program Director, Federal Building, 100 West Capitol Street, Room 1005–A, Jackson, MS 39269–1739, 601/905–5664
ACTION State Program Director, 265 Cumberland Bend Drive, Nashville, TN 37228–3889, 615/736–5561
ACTION State Program Director, Federal building, 1835 Assembly Street, Room 872, Columbia, SC 29201–2430, 803/765–5771

Region V

ACTION State Program Director, 431 South 7th Street, Room 2480, Minneapolis, MN 55415, 612/334–4083
ACTION Regional Director, 175 West Jackson Boulevard, Suite 1207, Chicago, IL 60604–2702 312/353–5107
ACTION State Program Director, 46 East Ohio Street, Room 457, Indianapolis, IN 46204–1922, 317/226–6724
ACTION State Program Director, 175 West Jackson Boulevard, Suite 1207, Chicago, IL 60604–2702, 312/353–3622
ACTION State Program Director, Federal Building, 210 Walnut Room 722, Des Moines, IA 50309–2195, 515/284–4816
ACTION State Program Director, Federal Building, 231 West Lafayette Boulevard Room 658, Detroit, MI 48226–2799, 313/226–7848
ACTION State Program Director, 517 East Wisconsin Avenue, Room 601, Milwaukee, WI 53202–4507, 414/291–1118

Region VI

ACTION Regional Director, 1100 Commerce, Room 6B11, Dallas, TX 75242–0696, 214/767–9494
ACTION State Program Director, 200 N.W. 5th, Suite 912, Oklahoma City, OK 73102–6093, 405/231–5201
ACTION State Program Director, 640 Main Street, Suite 102, Baton Rouge, LA 70801–1910, 504/389–0471
ACTION State Program Director, 611 East Sixth Street, Suite 404, Austin, TX 78701–3747, 512/482–5671
ACTION State Program Director, Federal Building, 700 West Capitol Street Room 2506, Little Rock, AR 72201–3291, 501/324–5234
ACTION State Program Director, Federal Building, 444 S.E. Quincy Room 248, Topeka, KS 66603–3501, 913/295–2540
ACTION State Program Director, Federal Office Building, 911 Walnut Room 1701, Kansas City, MO 64106–2009, 816/426–5256
ACTION State Program Director, First Interstate Plaza, 125 Lincoln Avenue Suite 214–B, Sante Fe, NM 87501–2026, 505/988–6577

Region VIII

ACTION State Program Director, Columbine Building, 1845 Sherman Street Room 301, Denver, CO 80203–1167, 303/866–1070
ACTION State Program Director, Federal Building, 2120 Capitol Avenue Suite 8009, Cheyenne, WY 82001–3649, 307/772–2385
ACTION State Program Director, Federal Office Bldg. Drawer 10051, 301 South Park Room 192, Helena, MT 59626–0101, 406/449–5404
ACTION State Program Director, Federal Building, 100 Centennial Mall North, Room 156, Lincoln, NE 68508–3896, 402/437-5493
ACTION State Program Director, Federal Building, 225 S. Pierre Street Suite 225, Pierre, SD 57501–2452, 605/224–5996
ACTION State Program Director, Frank E. Moss U.S. Courthouse, 350 South Main Street Room 484, Salt Lake City, UT 84101–2198, 801/524–5411
ACTION Regional Director, Executive Tower Building, 1405 Curtis Street Suite 2930, Denver, CO 80202–2349, 303/844–2671

Region IX

ACTION Regional Director, 211 Main Street, Room 530, San Francisco, CA 94105–1914, 415/744–3046
ACTION State Program Office, 211 Main Street, Room 534, San Francisco, CA 94105–1914, 415/744–3015
ACTION State Program Director, Federal Building, 11000 Wilshire Boulevard Room 11221, Los Angeles, CA 90024–3671, 213/575–7421
ACTION State Program Director, Federal Building/P.O. Box 50024, 300 Ala Moana Boulevard Room 6326, Honolulu, HI 96850–0001, 808/541–2832
ACTION State Program Director, 522 North Central, Room 205–A, Rhoenix, AZ 85004–2190, 602/379–4825
ACTION State Program Director, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–5033, 702/784–5314

Region X

ACTION Regional Director, 915 Second Avenue, Jackson Federal Office Bldg. Suite 3190, Seattle, WA 98174–1103, 206/553–1558
ACTION State Program Director, 304 North 8th Street, Room 344, Boise, ID 83702–5835, 208/334–1707
ACTION State Program Director, Federal Building, 511 N.W. Broadway Room 647, Portland, OR 97209–3416, 503/326–2261
ACTION State Program Director, Jackson Federal Office Building, 915 Second Avenue Suite 3190, Seattle, WA 98174–1103, 206/553–4975
ACTION State Program Director/Alaska, 915 Second Avenue, Jackson Federal Office Bldg. Suite 3190, Seattle, WA 98174–1103, 206/553–1558

Signed at Washington, DC, this 22nd day of January 1992.

Jane A. Kenny,
Director.

[FR Doc. 92–2059 Filed 1–27–92; 8:45 am]
BILLING CODE 6050–36–M

DEPARTMENT OF COMMERCE

Office of Administrative Law Judge

[Docket No. 251-008]

Peter E. Hess, Applicant; Order and Hearing Location

By agreement of the parties the informal hearing provided for in § 924.8(c) of the regulations (15 CFR 924.8(c)) relating to the denial of Applicant's request to conduct research related to the U.S.S. *MONITOR*, and within the Monitor National Marine Sanctuary, will be held in Hearing Room 2409 at 401 M Street, SW., Washington, DC at 9:30 a.m. on February 13, 1992.

Further, it is Ordered that not later than February 5, 1992, each of the parties shall file with this Tribunal and serve upon opposing counsel a memorandum setting forth their respective position and argument in this matter along with a list of witnesses and exhibits which are expected to be introduced at the hearing. Copies of such exhibits shall be provided and served on opposing counsel by February 5, 1992.

Dated: January 22, 1992.

William A. Ogden,

Administrative Judge.

[FR Doc. 92-1974 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-GB-M

Foreign-Trade Zones Board

[Docket 1-92]

Foreign-Trade Zone 119—Minneapolis-St. Paul, MN; Application for Subzone Davisco International, Inc., Dairy Products Processing Plants, St. Peter/ Nicollet, MN [1]

An applicaton has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Metropolitan Area Foreign-Trade Zone Commission, grantee of FTZ 119, requesting special-purpose subzone status for export activity at the intermediate dairy products manufacturing facilities of Davisco International, Inc. (Davisco), located in St. Peter and Nicollet, Minnesota. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 10, 1992.

The proposed subzone would consist of three manufacturing/warehousing facilities: Site 1 (30,100 sq. ft.)—drying/ blending facility located at 119 North Front Street in St. Peter, Minnesota; Site 2 (35,000 sq. ft.)—warehouse located at 1511 Gault Street, in St. Peter, approximately 65 miles southwest of Minneapolis-St. Paul; and, Site 3 (25,000 sq. ft.)—drying facility located 11 miles southwest of St. Peter at 734 Sixth Street in Nicollet, Minnesota.

The facilities are used to produce a variety of dairy products, but subzones status is being requested only for the production of intermediate dairy food products and by-products for export. The proposed activity involves the blending of foreign non-fat dry milk and casein with ingredients purchased domestically, such as milk minerals and proteins, lactose, sodium hydroxide, calcium hydroxide, and potassium hydroxide. The final products include: whey protein concentrate, delactosed whey, whey protein isolates, lactose, and various milk mineral by-products, which are sold to food product manufacturers. The application indicates that subzone status would help Davisco compete in its Asian markets.

Zone procedures would exempt the company from quota requirements and Customs duty payments on the foreign milk products used in the production for export. They would not be used in regard to the manufacture of products for the domestic market.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 25, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to 4–9–92).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 108 Federal Building, 110 S. Fourth Street, Minneapolis, MN 55401.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: January 21, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-1982 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DS-M

[1] This application is the first one filed under the FTZ Board's revised regulations (56 FR 50790–50808, 10–8–91), and all docket numbers that follow will involve applications similarly filed and processed.

International Trade Administration

[C-557-806; A-557-805]

Postponement of Preliminary Antidumping Duty Determination on Extruded Rubber Thread From Malaysia and Alignment of Final Countervailing Duty and Antidumping Duty Determinations of Extruded Rubber Thread from Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Gary Bettger, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–2815 or 377–2239.

Postponement and Alignment

On January 10, 1992, North American Rubber Thread Co. Inc., petitioner in these investigations, requested that the Department postpone the preliminary determination in the antidumping duty investigation in accordance with 19 CFR 353.15(c). Accordingly, we are postponing the date of the preliminary determination until not later than February 14, 1992. Unless extended, the date of the final antidumping duty determination will be April 29, 1992.

On December 30, 1991, we published a preliminary affirmative countervailing duty determination pertaining to extruded rubber thread from Malaysia (56 FR 67276). The final countervailing duty determination in this case was originally due not later than February 26, 1992.

Also on December 30, 1991, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1671d(a)(1)), petitioner requested an extension of the due date for the final countervailing duty determination to correspond to the date of the final antidumping duty determination with respect to the same produce and country. Accordingly, we are aligning the final determination in the countervailing duty investigation

with the final determination in the antidumping duty investigation of extruded rubber thread from Malaysia.

In accordance with section 705 of the Act and article 5, paragraph 3 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigation of extruded rubber thread from Malaysia on April 28, 1992, which is 120 days from the date of publication of the preliminary determination in the countervailing duty investigation. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters on or after April 28, 1992. The suspension of liquidation will not be resumed unless and until the Department publishes a countervailing duty order. We will also direct the U.S. Customs Service to hold any entries suspended between December 30, 1991, and April 27, 1992, until the conclusion of this investigation.

Public Comment

Because no parties requested a public hearing within ten days of the publication of our preliminary countervailing duty determination pertaining to extruded rubber thread from Malaysia, we will not hold a public hearing on the countervailing duty investigation.

Interested parties may, however, submit ten copies of the business proprietary version and five copies of the public version of case briefs in the countervailing duty investigation to the Assistant Secretary for Import Administration by March 31, 1992. Ten copies of the business proprietary version, and five copies of the public version, of rebuttal briefs must be submitted to the Assistant Secretary by April 6, 1992. Written arguments should be submitted in accordance with 19 CFR 355.38 and will be considered only if received within the time limits specified in this notice.

The U.S. International Trade Commission is being advised of this postponement and alignment, in accordance with section 705(d) of the Act. Furthermore, this notice is published pursuant to sections 705(d) and 733(c)(2) of the Act.

Dated: January 21, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1980 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-703]

Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain internal-combustion, industrial forklift trucks from Japan. The review covers two manufacturers/exporters of the subject merchandise to the United States during the period June 1, 1989 through May 31, 1990. The review indicates the existence of dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between the United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Marissa Rauch, Cherie Rusnak or Linda Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1990, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (55 FR 24916). Two respondents, Toyota Motor Corporation ("Toyota"), and Toyo Umpanki, Co., Ltd. ("TCM"), requested an administrative review. We initiated the review on July 26, 1990 (55 FR 30490) covering the period June 1, 1989 through May 31, 1990. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

The products covered by this review are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 lbs. The products covered by this review are further described as follows: Assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing or handling of articles. Less than complete forklift trucks are definded as imports which include a frame, by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order. During the review period such merchandise was classifiable under item numbers 692.4025, 692.4030, and 692.4070 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under the Harmonized System (HTS) item numbers 8427.20.00-0, 8427.90.00-0. and 8431.20.00-0. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers sales and entries by Toyota and TCM during the period June 1, 1989 through May 31, 1990

Such of Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C) of the Act, we established categories of "such or similar" merchandise on the basis of load (lifting) capacity of the forklift. Within these categories, we based our product comparisons on six primary characteristics, to which we assigned "points" indicating their relative importance. These characteristics and their point totals are as follows: Tire type, 6 points; upright style, 5 points; engine type, 4 points; transmission type, 3 points; maximum forklift height, 2 points; engine size, 1 point. Where there were no identical products sold in the home market, we selected the most similar product on the basis of the point totals resulting from the six characteristics listed above.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. For sales made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, the Department determined that purchase price was the appropriate basis for the calculation of United States price based on the following reasons:

(1) The merchandise in question was shipped directly from the manufacturer

to the unrelated buyer, without being introduced into the inventory of the related selling agent; (2) This was a customary commercial channel for sales of this merchandise between the parties involved; and, (3) The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all of the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs these functions. Whether these functions are performed in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act. The calculation of United States price for each respondent is detailed below.

Toyota: We calculated purchase price and ESP based on the packed, c & f, c.i.f., and delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for foreign inland freight, export brokerage, ocean freight, marine insurance, import brokerage, U.S. inland freight, and U.S. inland insurance, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for credit expenses, warranties, advertising, and indirect selling expenses (which include inventory carrying costs, product liability insurance, advertising, and selling expenses), pursuant to section 772(e) (1) and (2) of the Act. For ESP transactions involving further manufacturing prior to sale in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act. Also, in accordance with 772(d)(1)(C) of the Act, we added to the United States price the amount of the consumption tax that would have been collected on the export sale had it been subject to the tax. We computed the tax by multiplying the unit price, less discounts, foreign brokerage, foreign inland freight and insurance, ocean freight, marine insurance, import brokerage, U.S. inland freight and insurance, packing and value-added, by the tax rate. For purchase price sales, we multiplied the unit price, less foreing brokerage, foreign inland freight, ocean freight, marine insurance, and packing, by the tax rate.

In a supplemental questionnaire, dated May 23, 1991, Toyota was instructed to reallocate ocean freight on a shipment-by-shipment basis; allocate U.S. co-op advertising expenses on sale-by-sale basis by dealer; for value-added, delete any "offset" expense for income and profit from other business ventures and reallocate; and allocate a portion of the TAL indirect selling expenses incurred on behalf of the sales to the United States. Toyota did not comply. Therefore, we used best information available ("BIA"). For ocean freight and marine insurance, we used the expenses reported for one shipment to the East Coast as BIA for all sales, except for those sales that were shipped to the West Coast. For shipment to the West Coast we used Toyota's reported shipping expenses. For U.S. co-op and the TAL indirect selling expenses we used the amounts Toyota reported in the previous review. For the value-added, we used the highest reported amount for other U.S. expenses for each load capacity category.

Toyota calculated the credit expense on ESP transactions by offsetting the actual short-term rate of its related finance company with its intercorporate short-term rate. We disallowed the offset and recalculated Toyota's credit expense based on the short-term borrowing experience of its related finance company.

Toyota claimed a deduction from ESP for commissions paid to dealers for the sale of forklifts to end-users. Since these commissions are tantamount to post-sale rebates, we treated them as direct selling expenses.

TCM: We calculate purchase price and ESP based on the packed, c.i.f. and delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for foreign inland freight, export brokerage, ocean freight, marine insurance, containerization, import brokerage, U.S. Customs fees, U.S. freight to warehouse, commissions and trading company markups (which were treated as movement expenses), in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for credit expenses, warranties, U.S. inland freight, U.S. inland insurance, and indirect selling expenses (which includes inventory carrying costs and indirect selling expenses incurred in Japan on the sales to the United States), pursuant to sections 772(e) (1) and (2) of the Act. Also, we added credit revenue to the United States price and, in accordance with section 772(d)(1)(C) of the Act, we added the amount of the consumption tax that would have been collected on the export sale had it been subject to the tax. For ESP sales, we computed the tax by multiplying the unite price, less foreign inland freight, foreign brokerage, packing, discounts, ocean freight and insurance, containeriziaton, U.S. duty, U.S. brokerage, and U.S. value-added, by the tax rate. For purchase price sales, we multiplied the unit price, less packing and discounts, by the tax rate.

Prior to the final results of review, TCM must recalculate ocean freight expense on the cubic size of the forklift truck and report the expense on a shipment-by-shipment basis.

For ESP transactions involving further manufacturing prior to sale in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act. We have recalculated the profit or loss attributable to value added after importation to include a proportional amount of the profit or loss associated with selling expenses attributable to forklift tucks.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value ("FMV") on the basis of home market sales and, where appropriate, constructed value. The calculation of FMV for each respondent is detailed below.

Toyota: We calculated FMV based on the c & f and f.o.b. prices to unrelated and related customers in the home market. The related sales were determined to be arms-length transactions. Where appropriate, we made deductions from the home market price for inland freight and for rebates. Since no packing costs were claimed on home market sales, we added U.S. packing to the home market price.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses, warranties, and advertising. We had a circumstance of sale adjustment to FMV in the amount of the difference in the consumption tax between the two markets in order to ensure tax-neutrality.

For comparisons involving ESP transactions, we made deductions from the home market price, where appropriate, for credit expenses, warranties, and advertising. We made

an adjustment to FMV for indirect selling expenses (which includes various incentives and other selling expenses) in the home market to offset indirect selling expenses on ESP sales in the United States. We limited the indirect expense deduction on home market sales by the amount of the indirect selling expenses incurred in the United States in accordance with 19 CFR 353.56(b)(2). We made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise.

Petitioners alleged that Toyota sold forklift trucks in Japan at prices below the cost of producing the merchandise. In the calculation of cost of production ("COP"), the petitioners used Toyota's variable overhead, fixed factory overhead, and SG&A expenses. The Department conducted a separate cost test using the petitioners' cost data (accounting for 100 percent of sales) to determine if a cost investigation was warranted. Based on this comparison of COP to Toyota's home market prices, the Department determined that there were insufficient grounds to warrant a cost investigation.

TCM: The Department concluded that there were sufficient grounds to initiate a cost investigation for TCM. Therefore, for this review, we conducted the cost test for each load capacity category. We compared the home market prices, net of discounts and rebates, to the cost of production which included materials, fabrication costs, and general expenses. Where we found sufficient above-cost sales in the home market to form a basis for comparison, we calculated foreign market value based on delivered prices to unrelated and related customers (these sales were determined to be arms-length transactions) in the home market. We made deductions from the home market price, where appropriate, for inland freight and for rebates.

Although TCM reported its freight costs for sales to end users according to the actual freight costs per shipment, it used the ratio of the total freight expense on all dealer sales to total freight charged to all dealers to calculate inland freight for sales to dealers. Therefore, we recalculated inland freight for sales to dealers using the actual freight costs provided by TCM.

We made additional adjustments to the home market price, where appropriate, for commissions, discounts, net home market credit and warranties. For comparisons involving ESP transactions, we adjusted FMV for indirect selling expenses (which includes inventory carrying costs and other selling expenses) in the home market to offset indirect selling expenses on ESP sales in the United States. The indirect selling expense deduction on home market sales was limited by the amount of the indirect selling expenses incurred in the United States in accordance with 19 CFR 353.56(b)(2). We added packing expenses incurred in Japan for U.S. sales to FMV.

We made a circumstance of sale adjustment to FMV in the amount of the difference in the consumption tax between the two markets in order to ensure tax-neutrality. We did not deduct the consumption taxes from home market prices because they were already deducted by TCM. We made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise.

Where there were no, or insufficient, sales of such or similar merchandise in each of the load capacity categories at prices above the cost of production, we used constructed value as the basis for calculating FMV. Constructed value was based on the respondent's information. Since TCM's general expenses were not more than the statutory minimum of ten percent of the cost of materials and fabrication, we used the statutory minimum. Since TCM's reported home market profit was greater than the statutory minimum of eight percent of materials, fabrication, and general expenses, we used the actual profits.

Where constructed value was used in comparisons involving purchase price transactions, we adjusted for the differences in credit expenses, credit revenue, and warranty expenses. Where constructed value was used in comparisons involving ESP transactions, we deducted direct selling expenses and indirect selling expenses up to the amount of indirect selling expenses incurred on the U.S. sale.

For the preliminary results, we used the credit expenses and credit revenue TCM reported on installment sales. TCM claimed a deduction from home market price for commissions paid to other companies or individuals who play a role in the sale to end-users, under the following two situations: (1) Where TCM made a direct sale to an end-user in a dealer's territory; and, (2) where a dealer makes a sale in its own territory but another dealer has some relation to the customer. Since we determined that these commissions are post-sale rebates, we treated them as direct selling expenses.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period June 1, 1989 through May 31, 1990:

Manufacturer	Margin (Percent)
Toyota Motor Corporation	3.92
Toyo Umpanki Co., Ltd.	9.21

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the certain internal-combustion industrial forklift trucks from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or prior reviews, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the most recent review or, if

covered in this review or an earlier review, the rate from the less-than-fair-value investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firm will be 9.21 percent. This is the most current non-BIA rate for any firm in this proceeding.

This administrative review and notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 353.22.

Dated: January 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1977 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-703]

Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 23, 1991, the Department of Commerce published the preliminary results of its 1987–89 administrative review of the antidumping duty order on certain internal-combustion, industrial forklift trucks from Japan. The review covers four manufacturers/exporters of this merchandise to the United States during the period November 24, 1987 through May 31, 1989.

The Department gave interested parties the opportunity to comment on the preliminary results. Based on the analysis of the comments received, the Department adjusted the margins for some companies.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Marissa Rauch, Stephen Jacques, Cherie Rusnak or Linda Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1991, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order (53 FR 20683) on certain internal-combustion, industrial forklift trucks from Japan in the Federal Register (56 FR 23675). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 pounds. The products covered by this review are further described as follows: Assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order. During the review period such merchandise was classifiable under item numbers 692.4025, 692.4030, and 692.4070 of the Tariff Schedules of the United States Annotated (TSUSA). The merchandise is currently classifiable under the Harmonized Tariff System (HTS) item numbers 8427.20.00–0, 8427.90.00–0 and 8431.20.00–0. The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

The review covers sales and entries made by Toyota Motor Corporation (Toyota), Nissan Motor Company, Limited (Nissan), Toyo Umpanki Company, Limited (TCM), and Mitsubishi Heavy Industries, Limited (MHI) during the period November 24, 1987 through May 31, 1989.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C) of the Tariff Act, the Department established categories of "such or similar" merchandise on the basis of load (lifting) capacity of the forklift as imported. Within these categories, the product comparisons were based on six primary characteristics, to which points were assigned to indicate their relative importance. These characteristics and their point totals are as follows: Tire type, 6 points; upright style, 5 points; engine type, 4 points; transmission type, 3 points; maximum forklift height, 2 points; engine size, 1 point. The sum of these numbers, the "SSM Index Number", was used in the Model Match Test by linking U.S. sales to those home market sales with the same number, indicating an identical product was sold. Where there were no identical products sold in the home market, the Department selected the most similar product on the basis of the point totals resulting from the six characteristics listed above.

Data Changes Included in the Final Results of Review

In the preliminary results of review, the Department indicated that it would require very specific data change submissions from respondents to correct errors identified at verification and certain clerical errors contained in various data bases. On July 26, 1991, the Department sent its final requests for the corrected data and all relevant respondents submitted timely, corrected data.

In addition, the Department found that the imputed export consumption tax used in the preliminary analysis was incorrect where the basis of the tax was the transfer price or where the unit price included expenses which are not incurred on the forklift trucks sold in Japan. Therefore, for TCM's exporter's sales price (ESP) sales, the Department computed the tax for the final results of review by multiplying the unit price, less foreign inland freight, foreign brokerage, packing, discounts, ocean freight and insurance, containerization, U.S. duty, U.S. brokerage, and U.S. valued-added, by the tax rate. For purchase price sales, the unit price, less packing and discounts, was multiplied by the tax rate.

For Nissan, the consumption tax was computed by multiplying the unit price, less foreign brokerage and drayage, less ocean freight and insurance, U.S. Customs fees and port fees, U.S. inland freight, containerization, packing, and U.S. value-added, by the tax rate.

Toyota's consumption tax for ESP sales was computed by multiplying the unit price, less foreign inland freight, foreign brokerage, ocean freight and insurance, import brokerage, U.S. inland freight and insurance, and value-added, by the tax rate. For purchase price sales, the unit price, less discounts, foreign brokerage, foreign inland freight, and ocean freight and insurance, was multiplied by the tax rate.

Analysis of Comments Received

The Department gave interested parties the opportunity to comment on the preliminary results. At the request of the petitioners and two respondents, a

hearing was held on July 12, 1991. In response to a comment from petitioners indicating that they did not have sufficient time to thoroughly analyze the verification reports for Nissan and TCM, the Department allowed petitioners to submit a supplemental case brief limited to its analysis of the verification reports. Nissan and TCM had the opportunity to rebut the comments contained in the petitioners' supplemental case brief. Case and rebuttal briefs were received from petitioners, Toyota, Nissan, TCM, and MHI.

Interested Party Comments

Toyota

Comment 1: The petitioners contained that the Department's computer program failed to deduct U.S. value-added costs, indirect selling expenses, cash discounts, and credit expenses from ESP.

Toyota contends that petitioners are incorrect in stating that cash discounts should be deducted from U.S. price because the gross and unit prices on the ESP sales listing were reported net of cash discounts.

Department's Position: Due to programming errors, the Department inadvertently failed to deduct U.S. value-added costs, indirect selling expenses, and credit expenses from ESP. The Department has corrected these errors for the final results. In addition, the Department verified that Toyota's unit prices used in the calculation of U.S. price were net of cash discounts. Therefore, no further adjustment was necessary.

Comment 2: The petitioners contend that the Department should recalculate Toyota's U.S. value-added costs because Toyota understated the costs of materials installed by Toyota Industrial Equipment (TIE) and, as a result, understated its value-added labor costs, supervisory labor costs, and occupancy costs. Petitioners claim that the price of the materials purchased from Toyota Motor distributors, Inc. (TMD), a related supplier, was not the same as the price on arm's-length sales. Petitioners also claim that the related party transfer prices used by Toyota to calculate its reported value-added materials cost are significantly below the price charged by TMD on arm's-length sales to unrelated Toyota dealers. Therefore, the cost of materials that were obtained from a related supplier and installed in the United States should be based on the greater of the actual costs incurred to produce the materials or on the transfer price. At a minimum, the Department should increase the costs reported by Toyota.

Toyota argues that TIE is not in the business of further processing forklift trucks and that the practices that it characterizes as value-added are incidental to the sale of Toyota forklift trucks. Toyota further contends that all supervisory labor and occupancy costs are properly allocated to all products using the cost of sales because their primary function was to handle all industrial equipment. TIE paid the distributor price that was uniformly available to all three unrelated distributors during the period of review. Therefore, no adjustment to the material cost was warranted.

Department's Position: Petitioners' allegation is not supported by the Department's verification report. The verification report dated April 29, 1991, at page 10, stated that the Department looked at the material price list for dealers, and that TMD granted TIE a discount on the materials purchased from TMD. Since it is reasonable to expect that a distributor would not pay the same price as a dealer, the Department accepted TIE's reported material costs as reasonable. As a result, Toyota did not understate its value-added labor costs, supervisory labor costs, and occupancy costs.

Comment 3: The petitioners allege that the verification exhibits demonstrate that Toyota did not properly report its value-added labor costs because Toyota omitted from the value-added calculation benefits, taxes, and other payments paid with respect to its employees. Petitioners also contend that the actual hourly labor costs reported by Toyota, excluding the cost of fringe benefits, exceeds the total average hourly labor costs claimed by Toyota in its questionnaire response. As a result, the Department should reject Toyota's hourly cost data and use the best information available to calculate Toyota's average hourly labor costs. Additionally, petitioners urge the Department to recalculate Toyota's supervisory labor costs to include fringe benefits.

Toyota admits that these payments are not included in labor costs, but asserts that they are included in value-added overhead because the payments are not paid on behalf of the employees, but are incurred by Toyota like other overhead expenses. Toyota disagrees with petitioners' suggestion that Toyota's average hourly labor rate for the employees who worked in the processing centers was understated. Toyota claims that all of the points made with regard to its hourly employees also apply to its supervisory employees.

Department's Position: The Department agrees with Toyota. The Department verified Toyota's allocation of its value-added labor and supervisory labor costs and found that the allocation was reasonable because Toyota included fringe benefits in the value-added overhead (see Toyota Motor Sales (TMS) Cost of Production Verification Report, April 29, 1991, pg. 6).

Comment 4: Petitioners contend that by adding hours recorded for vacations, sick leave, personal business, absence without pay, and time off for bereavement, jury duty, and maternity leave to base hours, Toyota overstated total hours worked at the processing centers. Therefore, petitioners claim that Toyota reported a figure that represents hours paid rather than hours worked. Petitioners request that the Department reject Toyota's reported hourly labor cost and labor hour data, and use the best information available to calculate Toyota's value-added labor costs.

Toyota contends that the calculations in Toyota's Verification Exhibit 113 clearly show that Toyota added overtime hours to base hours and then subtracted hours for absences without pay to calculate the average rate for the hourly employees and supervisory labor in the processing centers. As a result, only hours worked were used in the calculation.

Department's Position: The Department verified in Exhibit 113 that the hours worked were in fact the hours paid. The overtime hours were added and all the absences were subtracted. Therefore, petitioners' assertion that Toyota did not properly report hourly labor cost and labor hours data is without merit.

Comment 5: Petitioners contend that the Department should reject Toyota's claimed occupancy costs because Toyota has two processing centers for value-added activities and Toyota has only allocated costs for the areas that are used to process forklift trucks. Toyota also claimed an allocation ratio for occupancy based on one of the facilities, but could not provide documentation to support the claim. Therefore, the Department should reallocate all occupancy expenses incurred by TIE at both processing centers for the products under review.

Department's Position: The Department identified at verification that Toyota incorrectly calculated occupancy costs. Toyota agreed and reallocated occupancy costs for the final results based on the proportion of space used for the value-added operations at both facilities. The Department used the

recalculated occupancy expense for the final results.

Comment 6: Petitioners contend that the comparison of total costs and sale-by-sale costs claimed by Toyota demonstrate that Toyota improperly allocated its supervisory labor and occupancy costs. Petitioners allege that these costs were understated because Toyota allocated supervisory labor and occupancy costs incurred in connection with the operation of the processing centers over the cost of all sales made during the period of review. Petitioners contend that value-added work should be allocated exclusively to those ESP sales that generated value-added processing costs.

Toyota contends that all practices characterized as value-added are incidental to the sale of forklift trucks. The processing centers process all industrial equipment, including covered and non-covered products. Therefore, all supervisory labor and occupancy costs are properly allocated to all products using cost of sales in the divisor because the processing center's primary function is to handle all industrial equipment.

Department's Position: The Department verified that Toyota's supervisory labor and occupancy cost allocations were reasonable. The Department verified that all practices characterized as value-added are related to the sale of covered and non-covered forklift trucks. Therefore, all value-added processing costs should be allocated across all sales, not just the covered sales that generated value-added costs (see TMS Cost of Production Verification Report, April 29, 1991, pgs. 5 & 6).

Comment 7: Petitioners contend that Toyota's U.S. value-added costs should include a portion of selling, general and administrative expenses (SG&A) incurred by TMS. Petitioners argue that the value-added costs are based solely on expenses recorded by TIE, not including any value-added expenses for TMS. Petitioners believe that the Department should add an amount for general and administrative expenses (G&A) of TMS to the value-added costs for sales by TIE.

Toyota states that the U.S. value-added costs include a portion of SG&A incurred by TMS. Toyota contends that an allocation for TMS' expenses is found in TIE's divisional financial statements. These expenses can be located in the TMC Verification Report ESP Sales, Exhibit 19.

Department's Position: The Department verified that the SG&A expenses incurred by TMS were included in the value-added costs (see TMS Cost of Production Verification Report, Exhibit 108, Income Statement).

Comment 8: Petitioners contend that servicing commissions should be included in U.S. value-added costs because the Department included rebates in the value-added costs and these commissions (like rebates) are reimbursements to the dealers from Toyota for servicing forklifts. Therefore, Toyota's servicing commission payments, along with a portion of profit and general and administrative (G&A) expenses associated with servicing commissions, should be included in Toyota's U.S. value-added costs.

Toyota claims that servicing commissions, unlike rebates, are not value-added costs. Toyota contends that this commission was paid to the dealer for vehicle preparation prior to customer delivery. These commissions also assure future dealer availability to provide after sale service to an end user. Toyota also contends that the commissions reported by Toyota on ESP sales should not be treated as rebates because they are paid to the dealer (not the end user) either for sales or servicing services connected with the sale of a forklift to a national account customer. Toyota argues that servicing commissions are reported only on sales to national account customers who purchase directly from TMS. These commissions are not paid to the buyer, the national account customer, so they cannot be considered rebates.

Department's Position: The Department agrees that servicing commissions should be included in U.S. value-added costs. Unlike Nissan's "service payment" (see Comment 46), the Department determined that Toyota incurs this expenses directly and did not separately charge the customer for these services. Therefore, the Department determined that Toyota's servicing "commissions" are payments to a third party, the dealer. As a result, these servicing commissions are considered a further cost of manufacturing because preparing, servicing, and delivering a forklift truck to the customer are all operations that add value to the forklift. Because these costs are incurred after a sale has been transacted by TMS, the Department included them in Toyota's U.S. value-added costs.

Comment 9: Petitioners claim that Toyota failed to report U.S. discounts granted under Toyota's introductory marketing campaign for at least nine sales during the period of review.

Toyota contends that the nine sales referred to by the petitioners were, in fact, made after the completion date of the campaign and, therefore, did not qualify for the introductory marketing campaign discount.

Department's Position: The Department verified the expenses associated with the Introductory Marketing Campaign and was satisfied that the discount was properly reported. The Department also verified that the nine sales in question were made after the completion date of the campaign and did not qualify for the introductory marketing campaign discount (see TMC Verification Report-ESP Sales dated April 29, 1991).

Comment 10: Petitioners claim that Toyota failed to report freight costs it incurred on sales to end users in the United States. Petitioners further contend that Toyota reimburses its dealers for costs incurred to ship forklifts to its national account customers and alleges that Toyota has included these shipping charges in its claimed servicing commissions. Petitioners contend that the Department should include amounts for these servicing commissions in Toyota's value-added costs or, at a minimum, the Department should classify the reimbursement of these delivery expenses as a U.S. movement charge.

Toyota contends that TMS sales prices are fob dealer's facility and that all delivery charges for the shipment of forklifts from Toyota's processing center to the unrelated dealers are paid for by the customer. Therefore, there should be no deduction for freight charges. Toyota also states that the dealer often prepares the vehicle for sales to Toyota's national account customer. The dealer is then reimbursed for these services by means of a servicing commission. Since these charges are paid for by the end user, these charges should not be included in value-added.

Department's Position: The Department verified that the TMS sales prices are fob dealer's facility. Therefore, no further deduction from U.S. price for this freight charge was warranted (see TMC Verification Report-ESP Sales, pg. 3). However, the Department included the servicing commission in the calculation of value-added (see Comment 8).

Comment 11: Petitioners claim that Toyota understated per unit costs for charges and expenses for its ESP sales because it used an inflated denominator to allocate total costs to individual sales. Toyota changed the number of sales at verification and, as a result, the per-unit U.S. charges and expenses on all ESP sales were understated. For the final, the Department should divide total costs reported by Toyota by the actual number of sales reported in its ESP sales

listing to calculate per-unit costs and expenses.

Toyota notes that the number of units reported in the verification exhibits is the number of trucks for which the relevant costs were incurred. Some of the sales reported in the ESP listing were sold during the period of review but were imported before the period of review and are not subject to this review.

Department's Position: The Department verified all sales quantities and values and found no discrepancies. Toyota's allocation of these expenses was reasonable, as shown in the TMC Verification Report-ESP Sales, April 29, 1991, Exhibit 19, Section B. This exhibit indicates that Toyota used the correct denominator in allocating selling and other expenses.

Comment 12: Petitioners argue that the Department should calculate Toyota's product liability expenses based on sales and expenses during the period of review on a per-unit basis. Petitioners contend that product liability costs should be treated the same as warranty costs and allocated across all forklift sales during the review period.

Toyota argues that product liability expenses are meant to cover any forklift currently in service so that this expense should be allocated over all forklifts in service as the Department has done. Therefore, no reallocation of the product liability expense is necessary.

Department's Position: The Department verified that the product liability expenses are reasonably allocated over all trucks currently in service by verifying all of Toyota's insurance documents for the period (see TAL Home Market Sales Verification Report, June 13, 1991, pg. 8).

Comment 13: Petitioners contend that Toyota has incurred direct advertising expenses on behalf of its U.S. sales of forklifts. Petitioners also contend that Toyota should not be allowed to claim the same types of advertisements as direct selling expenses in Japan and indirect selling expenses in the United States. Petitioners argue that all of Toyota's U.S. advertising costs are aimed at purchasers of forklifts and should be classified as direct selling expenses.

Toyota agrees with the petitioner that some of its U.S. advertising, mainly magazine advertising, are direct expenses.

Department's Position: The Department determined that only magazine advertisements are direct selling expenses. For the final result Toyota reclassified these expenses as direct selling expenses.

Comment 14: Petitioners claim that Toyota failed to report product demonstration expenses incurred in the United States in the calculation of direct advertising expenses.

Toyota argues that these U.S. demonstration expenses were incurred in demonstrating forklifts to Toyota's customers in the United States. Consequently, these U.S. demonstration expenses are properly categorized and allocated in the same manner as other indirect selling expenses.

Department's Position: The Department agrees that Toyota's U.S. demonstration expenses should be treated as direct selling expenses because they are directly related to sales of forklift trucks. However, the Department did not recalculate this expense for the final results because the recalculation would result in an insignificant adjustment (19 CFR 353.59(a)).

Comment 15: Petitioners argue that although TIE is basically a warehousing and processing operation, TMS incurs expenses to administer the operations of TIE and any other related subsidiary. Because Toyota omitted expenses incurred by TMS to run its TIE Division, its U.S. selling expenses are understated. Petitioners further contend that Toyota failed to include SG&A expenses incurred by TMS in Japan for U.S. sales in the reported U.S. indirect selling expenses.

Toyota asserts that TIE maintains all sales and marketing operations of industrial vehicles in the U.S., and it is not a warehousing and processing operation. Any administrative or general support provided by TMS has already been allocated to TIE in the divisional financial statements. Therefore, any TMS SG&A expenses incurred on U.S. sales are already included in the reported indirect selling expenses.

Department's Position: The Department verified Toyota's reported indirect selling expense incurred by TIE and determined that any TMS SG&A expenses incurred on U.S. sales are included in the reported indirect selling expenses (see TMC Verification Report-ESP sales, pg. 8).

Comment 16: Petitioners argue that the Department should include an allocated portion of TMC's selling and administrative costs in Toyota's U.S. indirect selling expenses.

Toyota notes that, in its November 20, 1989, questionnaire response, it had allocated a portion of TMC's SG&A expenses to U.S. indirect selling expenses.

Department's Position: The Department verified Toyota's reported U.S. indirect selling expenses. The Department was satisfied that the U.S. indirect selling expenses included a portion of TMC's indirect selling expenses (see TMC Verification Report-ESP Sales, Exhibit 19).

Comment 17: Petitioners contend that the Department inadvertently treated Toyota's home-market technical services as a direct selling expense. The home market equivalent of the reported U.S. technical service expense should be treated as an indirect selling expense. Petitioners further contend that for purchase price comparisons, these expenses should not be deducted in calculating the net U.S. price because they are indirect expenses.

Toyota notes that the variable subtracted as a direct expense always contains a zero value, thus rendering petitioners' argument moot. Toyota further notes that in its November 20, 1989, response, it included an amount for home market technical services in its indirect selling expenses claim.

Department's Position: The Department agrees with Toyota. Moreover, at verification the Department determined that technical service expenses had been appropriately included in the reported home market indirect selling expenses. With respect to purchase price comparisons, the Department does not allow indirect selling expense adjustments to either the U.S. price or foreign market value. Therefore, no such adjustment was made in the purchase price comparison (see Toyota Automatic Loom Works' (TAL) Home Market Sales Verification Report, pg. 6).

Comment 18: Petitioners argue that the Department should reject Toyota's claim for home market direct advertising expenses because these direct advertising expenses were not documented. The Department should instead treat all home market advertising as an indirect expense because Toyota could not substantiate its claim that this expense was directly related to the sale of the subject merchandise. On purchase price sales, these indirect expenses should not be deducted from home market price.

Toyota contends that the Department verified home market advertising expenses and should continue to treat these advertising costs as direct selling expenses because they are directed towards Toyota's customers' customer.

Department's Position: At verification, the Department found that the claim for direct advertising costs was overstated. Moreover, the Department was unable to tie advertising expenses to particular advertisements of forklift trucks (see TAL Home Market Sales Verification

Report, pg. 19). Because Toyota could not substantiate that these expenses were directly related to the forklifts under review, the Department has included them in indirect selling expenses. No adjustment was made to purchase price sales for indirect selling expenses (see Comment 17).

Comment 19: Petitioners argue that the Department should recalculate Toyota's overstatement of its direct home market warranty expenses because Toyota included a portion of TAL's Quality Research Section expenses in the home market warranty.

Toyota claims that Toyota did not include the above referenced TAL costs as a part of the reported home market warranty expense. Toyota contends that no adjustment to the reported home market warranty expenses is appropriate because expenses should be considered a direct, not an indirect, expense.

Department's Petition: The Department agrees with petitioners and has reallocated Toyota's direct home market warranty and included the indirect warranty expenses in the indirect selling expenses. TAL's Home Market Sales Verification Report, page 7, shows that TAL overstated the warranty expense by the amount of the TAL costs.

Comment 20: Toyota claims that the short-term borrowing rate it used to calculate its credit expense is accurate. The Department determined that the short-term borrowing rate for use in Toyota's credit calculation should be the rate Toyota Motor Credit Corporation (TMCC) charged TIE to finance the sales. However, Toyota claims the Department erroneously converted the actual short-term borrowing rate to an intercorporate rate. Toyota's recalculation of its credit expense will correct the Department's conversion for purposes of the final results.

Petitioners agree with the Department's determination and suggest that Toyota recalculate its U.S. credit expense based on the interest rate that TMCC charged to TIE.

Department's Position: The Department used the TIE short-term borrowing rate to calculate the credit expense because this rate reflects the actual borrowing experience of TMCC, Toyota's related finance company (see TMC Verification Report-ESP Sales). Toyota did not use this rate in the recalculation of its credit expense as requested by the Department in the preliminary results published on May 23, 1991 (56 FR 23675). Therefore, the Department recalculated the credit expense on ESP transactions to reflect the rate charged to TIE. Toyota also used its incorrect short-term borrowing rate in the calculation of inventory carrying expense. As a result, the Department recalculated inventory carrying cost to reflect the same TIE short-term borrowing rate as was used in the credit expense calculation.

Comment 21: Toyota contends that if the Department classifies Rebate #2 as value-added, no additional amounts should be allocated to value-added G&A and profit. Toyota claims that it neither incurs G&A nor makes a profit when it pays the dealer to perform value-added work. Toyota argues that a further allocation of profit and G&A is double-counting (Toyota's Case Brief, June 24, 1991, Page 3).

Petitioners argue that Toyota incurred G&A costs on sales that included value-added work performed by the dealer. Toyota must negotiate the terms and conditions of the value-added work and payment with the dealer, and order or pay for options that the dealer is to install on the forklift. Toyota must also coordinate with the dealer to ensure that the proper equipment is installed, the forklift is delivered to the customer, and the records of these activities are maintained. Thus, both Toyota and the dealer incur G&A costs and expect to make a profit on the sale of the forklift.

Department's Position: The Department agrees with Toyota to the extent that general and administrative expenses and profit are not incurred by Toyota on the value-added work performed by the dealer because the Department did not use the dealer's price to the end user as U.S. price. These rebates are part of the value-added calculation because the rebates are for modifications conducted after the sale of the forklift.

Comment 22: Toyota argues that the Department improperly reallocated warranty expenses over all units sold. Warranty expenses, like indirect selling expenses, should be allocated on a sales value basis per model as is the Department's usual practice. Toyota contests the Department's reallocation of warranty and Operating Restraint System (ORS) expenses over the quantity of units sold. Toyota requests that the Department use the expenses as reported for the final results.

Department's Position: The Department disagrees. Toyota's allocation of the warranty and ORS expenses on a sales value basis per model is inappropriate because Toyota did not accrue these expenses by model. Therefore, the Department determined that it was more appropriate to allocate the total expense across all sales of the subject forklift trucks. This is the same methodology Toyota used in allocating U.S. brokerage and handling expenses.

Comment 23: Toyota argues that it did not use the incorrect amount in its calculation of U.S. brokerage and handling and U.S. inland freight and that the Department verified these amounts. Therefore, the Department's changes made for the preliminary analysis were inappropriate.

Department's Position: The Department agrees with Toyota that the total expenses as reported in Verification Exhibit 19, pages F1 and F2, for U.S. brokerage and handling is correct and was verified. However, Toyota did not use these totals in its calculation of brokerage and freight (see TMC Verification Report-ESP Sales, Pre-Selected Sales, observation (1565). The Department used the total brokerage and handling expenses reported in Exhibit 19, pages F1 and F2, in the recalculation. The Department inadvertently used the wrong total for the inland freight expense, which resulted in an understatement, and has corrected this error using the total from Exhibit 19 for the final results.

Comment 24: The Department requested that Toyota calculate and report ocean freight on a shipment-by-shipment basis based on weight rather than cubic volume. Toyota argues that calculating separate east coast and west coast ocean freight rates based on cubic volume, rather than weight on a month-by-month basis, is the most appropriate way to calculate ocean freight costs. Toyota argues that this method will remove any distortion caused by the difference between the east coast and the west coast rates and will result in an allocation based on cubic size, which is the basis on which these charges are incurred.

Petitioners agree that Toyota should calculate ocean freight shipment-by-shipment based on weight. The per-unit costs incurred by Toyota will vary from shipment-to-shipment depending on the total quantity of each shipment, the international carrier used, the composition of the shipment (*e.g.*, forklift parts vs. complete forklifts), and the time the forklifts were shipped. Shipments that consist only of forklifts may generate per-unit costs that differ from shipments that consist of forklifts and forklift parts. Similarly, international carriers often impose bunker or fuel surcharges, destination and delivery fees, and other changes that may vary from shipment to shipment.

Department's Position: The Department agrees with petitioners that the per-unit costs, based on weight,

incurred by Toyota will vary from shipment-to-shipment. However, the Department disagrees with petitioners that Toyota included ocean freight expenses for folklift parts in its allocation. The Department verified that the reported expenses only included forklift trucks. The Department disagrees with Toyota that a monthly average is the most accurate allocation of ocean freight. The Department generally requires such expenses to be reported on a shipment-by-shipment basis and the Department found at verification that Toyota has the ability to report actual ocean freight expenses by shipment and by customer (see TMC Verification Report-ESP Sales, Pre-Selected Sales, observation 1585). Therefore, the Department recalculated ocean freight expenses for the East Coast based on information received at verification. We used Toyota's monthly averages for the shipments to the West Coast.

Comment 25: Toyota argues that co-op advertising should be allocated over all sales and not on a dealer-specific basis. The program is aimed at generating sales of all forklift trucks, regardless of the dealer. Because these advertisements are directed at the dealer's customer, the most appropriate method to calculate these co-op expenses is over all sales.

Petitioners argue that Toyota should allocate its co-op advertising expenses on a dealer-by-dealer basis because co-op advertising expenses are jointly paid by Toyota and the dealer to stimulate sales in the dealer's area.

Department's Position: The Department has determined that co-op advertising should be allocated by dealer because Toyota records the expense by dealer and because these expenses vary from dealer to dealer. Therefore, allocating the expense across all sales is not appropriate. Only certain dealers are involved in the co-op advertising program and the expenses should, therefore, be allocated to those dealers' sales. The Department asked Toyota in its May 23, 1991, letter requesting changes for the final, to allocate co-op advertising expenses on a dealer-by-dealer basis and Toyota complied with the Department's request. The Department used Toyota's revised data for the final results.

Comment 26: At verification, Toyota agreed to reallocate a portion of TAL's indirect selling expenses incurred on U.S. sales. Although Toyota did not originally report some of TAL's expenses, Toyota argues that TAL's sales expenses should also be allocated over all sales.

Department's Position: Toyota reallocated TAL's indirect selling expenses over all sales. For the final results, the Department did not request Toyota to reallocate a portion of TAL's indirect selling expenses related to home market sales. Therefore, the Department did not include these home market indirect selling expenses incurred by TAL.

Comment 27: Toyota contends that the Department has double counted certain value-added items in the ESP margin calculation.

Department's Position: The Department agrees and has made the corrections for the final results.

Comment 28: Toyota contends that the TMS offset expense should be included in the U.S. indirect selling expenses because it is directly related to the sale of new forklifts. The "offset" expense is a TIE "other (income) expense" which is mostly profit or loss generated from the sale of lease trucks.

Petitioners contend that the Department correctly instructed Toyota to eliminate any offset expenses to the U.S. indirect selling expenses that may be generated by income from other business ventures (non-operating expenses). Since this item is generated by sales of used forklifts, which are not subject to this review, the item is unrelated to the covered sales.

Department's Position: The Department concluded that the items included in this "offset" are unrelated to the sale of new forklifts covered by the review. For the final results, the Department directed Toyota to eliminate this "offset" to indirect selling expenses and Toyota complied.

Comment 29: Toyota argues that for purchase price sales, U.S. warranty expenses should be either subtracted from the U.S. price or added to the foreign market value, but not both. Toyota also argues that only one differences-in-merchandise (DIFMER) adjustment should be made to foreign market value (FMV). Toyota contends that the Department has applied two differences-in-merchandise values to the foreign unit price in dollars.

Department's Position: The Department agrees and has made the corrections for the final results.

Nissan

Comment 30: Petitioners contend that the Department failed to include two data sets of ESP sales in calculating the dumping margins. These sales include those ESP sales that entered the U.S. during, but were sold prior to, the period of review and those sales made from imported frames that were further manufactured by Barrett, a U.S. subsidiary of Nissan. Petitioners state that the Department has previously indicated the date of entry is the determining factor in deciding whether the transaction is to be included in the review.

Nissan argues that petitioners' comment is untimely. Nissan contends that petitioners should have included their comment in the case brief and that the inclusion of this comment violates the Department's instructions that petitioners limit their comments in the Supplemental Case Brief to issues raised in the verification reports and exhibits. In addition, Nissan states that the Department has the discretion to calculate dumping margins for the frames imported by Barrett. Finally, Nissan claims that the Department did not use, for the preliminary results, the most recent ESP data set that Nissan had submitted. Nissan requests that the Department use the ESP data set from April 1991 in its final determination.

Department's Position. The Department has included in the analysis the most recent ESP data set containing sales entered during, but sold prior to, the period of review. The Department has applied the dumping margin found on completed forklifts to the imported frames that entered the United States during the period because to do otherwise would require inordinately complicated calculations and the frames represent a small percent of the completed value of the truck. Also, the Department granted petitioners additional time to analyze the verification reports and exhibits. Petitioners' comment was formulated during this additional time and was based on the new information. Therefore, their comment was timely.

Comment 31: Nissan contends that the Department erred in adding U.S. containerization charges to FMV; in not adding the consumption tax to U.S. price where U.S. price is compared to constructed value; in not including seventeen home market sales in the calculation of FMV because the rebate data was missing; in not including the dealers free credit period in the calculation of home market credit and incorrectly calculating the number of days credit was extended to certain home market customers; in weight-averaging Nissan's cost of production and constructed value data; in not adjusting Nissan's FMVs for the difference in merchandise adjustment; in incorrectly calculating the direct cost of manufacture of trucks exported to the United States; and, in using the wrong home market data set.

Department's Position: The Department has made all the corrections to the computer programs for the final results with the exception of the consumption tax. The Department does not add the consumption tax to U.S. price where U.S. price is compared to constructed value (see 19 CFR 353.50).

Comment 32: Nissan claims that the Department should add Nissan Industrial Equipment Company's (NIEC) preparation charge to the U.S. price. Nissan stated that the preparation charge is an additional amount charged to the dealer when NIEC performs certain activities to prepare the truck for delivery.

Petitioners contend that in the original questionnaire response, Nissan's description of these charges was inadequate and that Nissan has not provided sufficient documentation which supports their claim that the preparation charge was added to the final U.S. selling price. In addition, the Department should not allow Nissan to claim a sale specific adjustment when Nissan's value-added costs were not reported on a sale-by-sale basis.

Department's Position: The Department agrees with petitioners. Nissan states in its case brief that the preparation fee involves "operations to prepare the truck for delivery." This fee is in addition to the invoiced amount of the forklift. The Department was not provided specific documentation concerning the services rendered or invoices directly related to the work performed. Therefore, the Department did not include this proposed change in the U.S. price calculation.

Comment 33: Nissan claims that the Department should use the short-term interest rates for the calculation of home market credit expense contained in its submission January 11, 1991. Nissan states that the Department verified these rates. Nissan noted that the latest revised computer tape includes the verified short-term interest rate.

Department's Position: The Department agrees with Nissan and used the rates from Nissan's January 1991 submission for the final results.

Comment 34: Nissan contends that the Department improperly converted Nissan's negative warranty expense into a positive amount. According to Nissan, the warranty expense amounts incurred for U.S. warranty expenses are negative because the warranty amounts are net of the reimbursement Nissan receives from its parts suppliers. Nissan argues that either the negative amount of warranty expenses should be subtracted from U.S. price or the converted positive amount should be added to U.S. price because the amount of the reimbursement does not exceed the amount of warranty expenses incurred by NIEC.

Petitioners argue that Nissan failed to specify whether the parts suppliers that reimbursed Nissan were related. Petitioners state that since Nissan had previously admitted it was related to some of its parts suppliers, the reimbursement is therefore merely an intercompany transfer of funds.

Department's Position: The Department agrees with petitioners. The claimed negative warranty expenses will be not be turned into positive values, but merely disallowed for the final results. The Department views the parts reimbursement for warranty expenses between Nissan, NIEC and Nissan's parts supplier as an intercompany transfer of funds.

Comment 35: Nissan contends that the Department improperly denied an adjustment for a certain home market rebate. Nissan noted that the Department did not make an adjustment for the rebate because it "included sales outside the review period." Although Nissan admits that one component of this rebate was based on data outside the review period, Nissan contends that it would be incorrect to totally deny an adjustment for this rebate. Nissan claims the purpose of the rebate was to stimulate sales of forklift trucks in the home market and, therefore, the Department should treat this rebate as either a direct or indirect selling expense (see Nissan's Case Brief, June 24, 1991, pg. 10).

Petitioners argue that because the rebate included sales outside the review period, the claimed adjustment should be rejected. Petitioners claim that the fact that the rebate was paid during the period of review is immaterial.

Department's Position: The Department verified the rebate and determined that it was directly related to the sales of forklift trucks. Therefore, the Department treated the rebate as a direct selling expense for the final results.

Comment 36: Nissan contends that the Department should treat the fifteen sales excluded from the preliminary results in a manner consistent with their payment histories. Nissan claims that these fifteen trucks have unusuable profit and U.S. price data because NIEC had not received payment for these trucks at the time the sales data was submitted to the Department. Nissan reports that NIEC subsequently received payments for four of the fifteen trucks and requests that the Department use the actual payment dates for the four trucks.

Nissan claims that NIEC has not yet received payment for the remaining eleven trucks. Nissan argues that the cost of these trucks is already accounted for as part of the company's bad debt expense, which is a part of U.S. indirect selling expense. Nissan contends that if the Department uses these sales, the Department should use the average credit expense for the other U.S. sales and calculate profit for the eleven sales based on an average of the credit expenses.

Because Nissan sold and shipped the eleven forklift trucks, petitioners argue that the Department should treat these trucks as U.S. sales and that the bad debt received by Nissan from the dealer should be allocated over the eleven sales. They claim the allocated amount should serve as the U.S. price for each of the forklifts. Petitioners alternatively propose that the Department treat the bad debt expense as a direct, rather than indirect, selling expense.

Department's Position: The Department will use the payment dates supplied by Nissan for four sales since NIEC subsequently received payment for these trucks. For the remaining eleven sales, the Department disagrees with Nissan's contention that, since final payment was not received, these entries should not be considered sales. The eleven trucks were covered merchandise under the antidumping duty order and were sold and shipped in the normal course of trade during the period of review. The Department will, therefore, include these forklift trucks as sales in the final results. Because the eleven sales are a *de minimis* percentage of Nissan's ESP sales and therefore the use of these sales would result in an insignificant adjustment to FMV, the Department will use the average credit expense of NIEC's other U.S. sales and base profit on these average credit amounts (see 19 CFR 353.59).

Comment 37: Petitioners contend that Nissan's cost of production data is unreliable because Nissan based the data on transfer prices rather than actual costs. Petitioners also contend Nissan did not supply the actual costs of production for parts purchased from related suppliers. Petitioners recommend conducting a cost verification of Nissan or use of the best information available which is the rate from the original investigation for the cost data.

Nissan contends that it would be almost impossible to use the actual cost of production for parts supplied by Nissan's related suppliers for each individual forklift truck because it does not have a bill of materials for each forklift truck and constructing one would be a time consuming task.

Furthermore, Nissan provided data showing that the standard costs used in the cost of production are above the related suppliers' cost of production. Nissan claims that its data uses averages and demonstrates that Nissan's related supplier transfer prices are in the aggregate higher than the unrelated suppliers' cost of production. Nissan therefore contends that the related suppliers' transfer prices reflect fair market value and are appropriately used to calculate Nissan's cost of production.

Department's Position: Because this is the first administrative review of this case, the Department was not required to conduct verification. The Department did, however, verify Nissan's home market sales, U.S. sales, and U.S. cost data. As a result of the verifications of this data, which included a cost verification of NIEC, the Department concluded that Nissan's responses were sound and reliable. The Department, therefore, has accepted Nissan's cost of production data.

Comment 38: Petitioners claim that the Department should conduct a cost test because Nissan changed its data, thus altering the results of the home market cost test. Petitioners point out differences between a cost test performed by Nissan in September 1990 and the cost test in the preliminary results. Petitioners claim that these differences warrant a cost verification of Nissan.

Nissan contends that the reason for the discrepancy is that the Department made a clerical error in the computer program and incorrectly weight-averaged Nissan's cost data on the basis of the truck serial number. Nissan claims that if the clerical error is corrected, the Department's results should be close to the cost test performed by Nissan in September 1990.

Department's Position: The Department agrees with Nissan that differences in the cost tests were largely due to a clerical error. The Department incorrectly weight averaged the cost of production data by the truck's serial number. The clerical error has been corrected for the final results (see Comment 31).

Comment 39: Petitioners contend that Nissan failed to include the cost of obsolete inventory in its reported costs. Petitioners argue that the parts inventory which was written off or disposed of at less than fair value during the period should be included as part of Nissan's material costs. Petitioners argue that the Department should increase Nissan's reported costs by the amount of "other" expenses in Nissan's income statements. Petitioners urge that the "other" expenses be calculated as a percentage of the cost of sales for each fiscal period and that the Department increase Nissan's reported production costs by that percentage for the relevant period.

Nissan states that the "Miscellaneous Losses" account of Nissan's Murayama factory income statements include losses on inventory write-offs at the factory. Nissan notes that the Murayama factory is the only facility that produces forklifts and therefore includes all losses on inventory write-offs incurred by Nissan. Nissan also contends that the "Miscellaneous Losses" account includes inventory write-offs of automobiles produced at the plant. Nissan, therefore, claims that the losses for inventory write-offs overstate, not understate, the losses incurred by Nissan.

Department's Position: The Department agrees with Nissan because Nissan's calculation for writing-off obsolete inventory was reasonable. Nissan obtained this data from the internal profit and loss statement of the Murayama factory. Therefore, the Department used the reported figures for inventory write-offs for the final results.

Comment 40: Petitioners contend that the Department should recalculate Nissan's research and development costs. Petitioners argue that Nissan's methodology is not in accordance with Generally Accepted Accounting Principles (GAAP) because Nissan did not expense Research and Development costs when incurred. Petitioners urge the Department to use best information available for research and development.

Nissan argues that its actual research and development costs were expensed as they were incurred in accordance with GAAP and the Department's practice.

Department's Position: The Department determined that Nissan properly accounted for research and development costs and that these costs are allocated in accordance with GAAP. Consistent with GAAP, Nissan expenses its actual research and development costs as they are incurred. The Department used Nissan's reported figures for these costs.

Comment 41: Petitioners contend that three of Nissan's home market rebates are neither directly nor indirectly related to the sales of forklift trucks but rather that these rebates promote the sale of spare parts for or services on forklifts and are not related to forklift sales. Petitioners ask that the Department not deduct these expenses from the home market price as direct or indirect selling expenses (see Petitioners' Case Brief, June 24, 1991, appendix B, pg. 10).

Nissan argues that these rebates are related to Nissan's sales efforts. Nissan contends that the ability of Nissan's dealers to service forklifts is of vital importance to product sales and is an important part of Nissan's sales strategy. Therefore, Nissan contends that these rebates are properly considered selling expenses (see Nissan's Case Brief, July 9, 1991, pg. 33).

Department's Position: The Department agrees with Nissan that these rebates are related to the forklift sales. The treatment of these rebates as indirect selling expenses will remain unchanged for the final results.

Comment 42: Petitioners contend that a certain home market rebate should be treated as a G&A expense rather than a selling expense because it is not related to the sale of forklift trucks (see Petitioners' Case Brief, June 24, 1991, appendix B, pg. 11).

Nissan contends that this rebate is directly related to the sales function of the dealers and should be treated as a selling expense (see Nissan's case brief, July 7, 1991, pg. 34).

Department's Position: The Department agrees with Nissan that this rebate is an indirect selling expense because it is related to the selling functions of the dealer, and not directly related to the sale of the forklift trucks. Therefore, the Department included this rebate as part of Nissan's home market indirect selling expenses.

Comment 43: Petitioners contend that the Department should reject or recalculate one of Nissan's home market rebates because Nissan incorrectly reported the amount for this rebate (see Petitioners' Case Brief, June 24, 1991, appendix B, pg. 11).

Nissan argues that it used the same methodology for this rebate as did the Department in its original investigation (see Nissan's Case Brief, July 7, 1991, pg. 35).

Department's Position: The Department agrees with Nissan. The Department verified this rebate and determined that the rebate was properly calculated and directly related to the sales of forklift trucks.

Comment 44: Petitioners assert that the Department should reject Nissan's claim for incidental expenses. Petitioners contend that these expenses are not related to the sales of forklift trucks but instead are servicing expenses. Petitioners also claim that Nissan failed to claim or to demonstrate that these expenses were incurred for the particular sales under review.

Nissan asserts that these incidental expenses are incurred for minor modifications performed by the dealer to meet the customer's specifications and are therefore directly related to the sale of the forklift. Nissan claims that the incidental charges were claimed only on the trucks to which the expense directly relates and that the verification exhibits tie the expenses to individual trucks.

Department's Position: The Department agrees with Nissan. The incidental expenses were verified and tied directly to individual trucks by the vehicles's model and serial number. The Department found that the incidental expenses are incurred when the forklift is modified to the customers' specifications and, therefore, are related to the sales of new forklifts. The full amount of the adjustment was allowed for the final results.

Comment 45: Petitioners contend that Nissan should recalculate its home market and U.S. inventory carrying costs on a sale-by-sale basis. Petitioners assert that Nissan's response indicates that inventory carrying periods may vary substantially from model to model and from sale to sale.

Department's Position: After the publication of the preliminary results, the Department requested that Nissan provide the inventory carrying costs on a sale-by-sale basis for all U.S. sales and for those home market sales used as foreign market value. Nissan complied with this request and the Department used the data.

Comment 46: Petitioners argue that Nissan's service payment represents a transfer of value-added activities from Nissan to its U.S. forklift dealers. Therefore, the Department should include these payments in Nissan's U.S. value-added. Petitioners also ask that the Department allocate the service payments portion of SG&A to U.S. value-added.

Nissan claims that its U.S. subsidiary charges a "ship-in" fee to certain customers for modifications performed on the truck. Nissan then reimburses that same amount to its dealers as a "service payment" for that work. Therefore, Nissan claims that the service payment is a direct pass-through from the customer to the dealer. Nissan contends that if the service payment is added, then the ship-in fee should also be deducted from U.S. value-added. Because the net effect on value-added would be zero, Nissan asks the that Department not add the service payment to value-added.

Department's Position: The Department agrees with Nissan. The payment is a pass-through from customer to dealer and thus there is no net transfer from Nissan to its U.S. forklift dealers. Allocating SG&A expenses to value-added would be inappropriate because the Department did not adjust value-added for this service payment.

Comment 47: Petitioners contend that Nissan based its materials cost used for further processing in the United States on transfer prices between Nissan and its U.S. subsidiaries. Petitioners state that Nissan's costs for these materials are not arm's length costs because these costs are based on transfer prices from related suppliers. Petitioners ask the Department to verify the cost of value-added materials obtained from Nissan's related suppliers.

Nissan contends that it has already established that its transfer prices were on average higher than the related suppliers' cost of production for those models and this data is reliable.

Department's Position: As stated in the Department's response to Comment 37, the results of the Department's other verifications of Nissan's data indicate that the data contained in Nissan's responses is generally reliable. Therefore, the Department determines that Nissan's data is valid.

Comment 48: Petitioners comment that Nissan's U.S. shop costs do not include warehousing and inventory storage expenses because these expenses are included in indirect selling expenses. They argue that Nissan's method of accounting is inappropriate because it increases indirect selling expenses and understates the calculation of profit for value-added in the United States. Petitioners urge the Department to move Nissan's value-added warehousing and inventory expenses from indirect selling expenses to Nissan's shop costs.

Nissan claims that it is inappropriate to include warehousing and inventory storage costs in NIEC's shop costs because forklift inventory costs are, for the most part, not related to further processing. The inventory costs are therefore incurred while NIEC holds the truck for sale. Consequently, Nissan contends that the warehousing and inventory storage expenses are indirect selling expenses.

Department's Position: The Department agrees with Nissan. NIEC's shop costs and accounting methods were examined by the Department during the U.S. sales cost verification. The Department verified their cost data and methodology and found that Nissan's treatment of NIEC's warehousing and inventory storage costs was appropriate.

Comment 49: Petitioners contend that Nissan failed to report all of its U.S. value-added costs associated with NIEC's facilities in Buena Park, Ca., Schaumberg, Ill., and Mansfield, Mass. Petitioners claim that Nissan may have incurred processing costs, rent and operating costs at its other facilities. Petitioners ask that the Department reallocate total shop costs as stated in petitioners case brief as the best information available for the allocation of total shop costs (see Petitioners' Supplement Case Brief, July 9, 1991, pg. 15).

Nissan argues that it has accurately reported the expenses in the manner the expenses were incurred. Nissan states that the Buena Park expenses are included in NIEC's shop costs. Nissan contends that its Mansfield facility is operated on a contract basis and that it is impossible to segregate the small amount of work done on further processing of forklifts. Nissan had included in Mansfield expenses as part of indirect selling expenses. Nissan asserts that the Schaumberg facility is a corporate office and that its expenses are included in NEIC's common expenses, including an appropriate percentage allocated to NIEC's shop costs.

Department's Position: The Department agrees with Nissan. NIEC's expenses and accounting methods were examined by the Department during the U.S. value-added verification. Their cost data and methodology were verified and the Department found that the costs for the Buena Park facility were included in NIEC's indirect selling expenses. The costs for the Mansfield facility were included in NIEC's shop costs. NIEC's corporate offices expenses were included in NIEC's common expenses. The Department found that Nissan's treatment of NIEC's expenses related to its other facilities was reasonable.

Comment 50: Petitioners argue that Nissan's value-added calculation methodology is improper because Nissan should have provided costs for each type of value-added activity and actual value-added cost for each sale. Petitioners ask that Nissan's total shop costs be reallocated only to sales that required value-added work in the U.S. as best information available.

Nissan contends that NIEC does not maintain accounting records that would permit accurate reports of value-added costs on a sale-by-sale basis. Nissan states that the direct labor and factory overhead are not accounted for on the basis of individual trucks or operations. Nissan explains that it reported total shop costs and that the only appropriate basis on which to allocate the shop

costs is over all the trucks on which the shop performed work.

Department's Position: The Department agrees with Nissan. NIEC's shop costs and value-added data were verified and the Department determined that NIEC's allocation of shop costs over trucks on which the shop perfomred work was reasonable (see NIEC Verification Report of U.S. Further Manufacturing Costs, pg. 4).

Comment 51: Petitioners contend that Nissan improperly allocated its total value-added shop costs because Nissan failed to properly report its U.S. value-added costs. Nissan did not include the parts storage costs and shop costs of the Memphis facility. Petitioners urge the Department to use best information available to calculate Nissan's actual value-added costs.

Nissan states that its reporting method of value-added costs is appropriate and properly allocated all expenses to shop costs. Nissan argues that its mentodology provides the most reasonable measure of value-added costs.

Department's Position: The Department agrees with Nissan. Nissan's value-added and total shop costs and accounting methodology were examined during the U.S. sales cost verification. In addition, the Department determined that NIEC properly accounted for parts storage expenses in its indirect selling expenses because NIEC is a sales and distribution organization, its classification of overhead expenses as an operating expense was reasonable. The Department found that Nissan's allocation of value-added expenses was resonable.

Comment 52: Petitioners contend that Nissan improperly allocated NIEC's common costs to forklifts because NIEC did not allocate these costs on a cost of sales basis.

Nissan states that NIEC's allocation ratio of common expenses is in the normal course of business and is consistent with the Department's methodology for selling expense allocations.

Department's Position: The Department verified NIEC's allocation ratio for common expenses and determined that it was reasonable. Therefore, the Department used NIEC's reported expenses for the final results (see NIEC Verification Report, pg. 6).

Comment 53: Petitioners contend that Nissan failed to explain certain negative labor and overhead expenses. Petitioners point out that NIEC has negative expenses for shop supplies and "Get Ready" expenses for individual months. Petitioners argue that it is not possible to have these negative expenses and they request that the Department add these expenses to NIEC's shop costs.

Nissan contends that each of the negative amounts cited by petitioners reflect a proper credit to shop expenses. Nissan states that the negative amount for shop supplies is a credit for miscellaneous parts returned to inventory. Likewise, the credit to the "Get Ready" account reflects a reimbursement for training expenses.

Department's Position: The Department agrees with Nissan. The Department verified a negative amount selected at random from Nissan's response and found it was reasonable. Therefore, Nissan's data from the response was used for the final results (see NIEC Verification Report, pg. 3).

Comment 54: Petitioners contend that Nissan has apparently included movement charges and value-added cost in its claimed indirect selling expenses. Petitioners believe that costs in two accounts refer to the sale and distribution of forklifts. Petitioners state that two of the costs should not be in indirect selling expenses but instead placed in movement charges. Petitioners also comment that the amount of a third account concerned with depreciation expense was incorrectly included in indirect selling expenses. Petitioners urge that this expense be included in Nissan's value-added costs (see Petitioners' Supplemental Case brief, appendix B, July 2, 1991, pg. 22).

Nissan states that the accounts in question refer to NIEC's Sales and Import/Distribution departments, not to the sale and distribution of the forklifts themselves. Nissan comments that the two accounts mentioned by petitioners are for postage and overnight courier services incurred by various departments. Nissan contends that these services are not related to the shipment of forklifts and are therefore not moving charges. Nissan also disagrees with petitioner about the third account concerning depreciation expenses. Nissan contends that it has excluded the depreciation expenses on NIEC's shop equipment from the indirect selling expenses. Nissan states that the depreciation expenses included in indirect selling expenses are for depreciation of office equipment and company automobiles used by salesmen (see Nissan's Case Brief, July 9, 1991, pg. 66).

Department's Position: The Department agrees with Nissan. The Department verified NIEC's indirect selling expenses at the U.S. verification. Specifically, the Department verified that the accounts were correctly included in indirect selling expenses.

Comment 55: Petitioners argue that the Department must reschedule the cost of production data verifications for Nissan and TCM. Petitioners note that due to the outbreak of war in the Middle East, the Department implemented travel restrictions for all employees and postponed the Nissan and TCM cost of production verifications. Petitioners state that nothing has changed in the context of this review that has altered the need to verify this information.

Further, petitioners argue that verification is needed because of the complexity of the case and because the plethora of forklift truck models creates a great likelihood of significant errors in the cost calculations. Verification is a "reasonable measure" that will significantly assist petitioners' meaningful participation in this review. Petitioners note that without cost verifications, there will be no cost verification reports or exhibits, review of which is an important check on the accuracy of respondent's information.

Petitioners further argue that a Nissan cost verification is necessary because Nissan's October 22, 1990, questionnaire response was deficient in at least two respects. This response indicated that Nissan's cost of materials is based on transfer prices between Nissan and its related suppliers and that Nissan failed to provide a complete, accurate, and timely response to the Secretary's request.

With respect to TCM, petitioners argue that verification of TCM's cost data is necessary because this data was not verified in the underlying investigation and has never been verified in an administrative review. Petitioners state that the Department should use best information otherwise available (BIA) because TCM's cost data is full of errors, omissions, and discrepancies. Petitioners suggest that if the Department chooses to conduct a cost verification or does not use BIA, it should correct the various deficiencies in the data. Petitioners conclude that failure to conduct cost verifications is an arbitrary and capricious use of the Department's power.

Department's Position: With respect to administrative reviews, the Department is required to verify information under section 776(b)(3) of the Act if the Secretary concludes that good cause for verification exists, or if a timely request for verification is received from an interested party, and the Department has not conducted a verification during either of the two immediately preceding administrative

reviews. The instant administrative review is the first review of the antidumping order in this case. Thus, verification was not required under section 776(b)(3) of the Act. The Department did conduct extensive verification of Nissan's home market sales, U.S. sales, and the value-added cost data from Nissan's related facilities in the United States. TCM's home market sales, U.S. sales and U.S. costs, including value-added cost data from TCM's related facilities in the United States, were verified. The Department determined that TCM's data reporting methodology was sound and reliable. The Department had scheduled cost of production verifications for Nissan and TCM, but was forced to reevaluate the utility of these verifications after hostilities in the Persian Gulf curtailed the Department's verification activities. Given that these verifications were not required, and in light of the successful verification of all other aspects of Nissan's and TCM's sales, the Department concluded that the cost information submitted by Nissan and TCM was satisfactory. See 19 U.S.C. 1677e(b).

TCM

Comment 56: TCM notes that, in certain further manufacturing situations, its operations conducted in the United States have reduced the value of particular forklift trucks as sold from the value of the trucks as imported. For example, TCM's response indicates that it may satisfy a particular customer by removing an unwanted feature, such as an overlarge mast, from an otherwise acceptable forklift truck, resulting in a "negative cost-increase."

TCM objects to the Department's allocation of loss to further manufacturing operations in the United States. According to TCM, the Department's preliminary results computer program multiplied all of TCM's negative profits for U.S. value-added by negative one to convert them into positive amounts. The result, in TCM's view, is a failure to allocate loss to U.S. value-added, while overstating profit.

Department's Position: The Department agrees with TCM that in cases where operations conducted in the United States have reduced the value of particular forklift trucks as sold from the value of the trucks as imported, a negative value-added adjustment is justified. Therefore, the Department corrected this error for the final results. The Department also agrees with TCM that losses were improperly accounted for by multiplying the losses by negative one. Following the methodology upheld by the Court of International Trade (CIT) in *The Timken Co.* v. *United States*, Slip Op. 90–117 (Nov. 2, 1990), the Department proportionally allocated losses, as well as profits, to value-added for the final results.

Comment 57: Petitioners claim that the Department mistakenly failed to include TCM's SG&A component in the U.S. value-added calculation. Petitioners also contend that the Department should use BIA in allocating SG&A attributable to certain TCM value-added sales because those sales feature negative SG&A expenses. Petitioners note that regardless of the possibility of a component "swap-down" (where an option is replaced with a less expensive one) resulting in a negative material cost, it is impossible to have negative SG&A because, among other things, orders have to be processed, instructions must be issued, and inventory records must be adjusted.

TCM notes it reported U.S. value-added SG&A expenses consistently across all appropriate ESP sales according to the same apportionment formula. TCM argues that the Department must apply a consistent allocation formula, regardless of "swap-downs" or "swap-ups," rather than the results-oriented approach favored by petitioners. In addition, TCM notes that its apportionment method does not reduce or increase the total amount of SG&A reported by TCM on a transaction, rather this method simply classifies part of SG&A as value-added. TCM further contends that in a swap-down situation, more SG&A would have been incurred on the truck as imported had it been sold without further assembly; a negative SG&A component of value-added is the technical means of reaching the value of the forklift truck as imported. Therefore, the apportionment of negative SG&A to U.S. value-added results not only in a decrease in U.S. value-added and an equal and offsetting increase in the various components of SG&A reported separately, but also allows the Department to arrive at the value of the forklift truck as imported.

Department's Position: The Department agrees with petitioners in that SG&A expenses, like labor, are either positive or are nonexistent; negative SG&A cannot exist. TCM is incorrect in its assertion that allocation of a negative amount of SG&A results in the value of the forklift truck as imported. As SG&A allocable to the forklift truck occurs after importation and in connection with value-added activities, an "as imported" value is achieved by subtracting SG&A from, not adding it to, the total value-added. Therefore, in instances where SG&A was reported as a negative by TCM, the Department used the absolute value of the expense to properly account for value-added SG&A expenses.

Comment 58: Petitioners argue that the Department should include TCM's product line research and development costs in the cost of manufacture rather than in G&A expenses, as TCM reported.

Department's Position: The Department agrees with petitioners and has included research and development costs in the cost of manufacture calculation.

Comment 59: TCM objects to the Department's inclusion of trucks in the preliminary results that were allegedly liquidated by the U.S. Customs Service and to the application of best information available to determine the U.S. price for those trucks. TCM contends that this action is contrary to the Department's prior pronouncements in this review, where the scope of the antidumping duty order for forklift trucks from Japan is defined as "all unliquidated entries," and is also contrary to Department precedent in Portable Electric Typewriters from Japan (PETs), 56 FR 14072, 14073 (April 5, 1991), in which the Department stated "it is our standard practice not to review liquidated entries."

Department's Position: The Department disagrees with TCM. TCM's citation to PETs from Japan is inapposite. In that case, the Department declined to incorporate the liquidated sales of automatic/calculating PETs because these entries were not within the scope of the antidumping duty order for the period under review. Thus, the Department concluded that it need not include the liquidated entries merely to calculate future deposit rates.

In this review, TCM declined to provide the Department with sufficient information on the liquidated sales. The Department determined that any weighted-average margin based solely on unliquidated sales may be unrepresentative of TCM's pricing practices during the period of review (see Color Picture Tubes from Japan, 55 FR 37915, 37918 (September 14, 1990)). Consequently, these sales have been included in the calculation of the weighted-average margin even though the entries of these forklifts may have already been liquidated. Because TCM declined to report information for these sales, we used best information available, in accordance with section 776(c) of the Act. As best information available, the Department used the rate applied to TCM in the less-than-fair-

value investigation to value the unreported liquidated sales.

Comment 60: TCM notes that the Department incorrectly subtracted U.S. packing from both purchase price and ESP sales that were matched to constructed value (CV), despite having correctly added U.S. packing to CV.

Department's Position: The Department agrees with TCM and has corrected this error for the final results.

Comment 61: TCM notes that the Department subtracted home market inland freight from home market net price, which was subsequently compared to the home market cost of production. However, TCM further notes that the home market inland freight expense was already included in the cost of production as part of the direct selling expense component of SG&A. TCM submits that the Department should not deduct inland freight from the home market price before comparing it to COP, which is inclusive of inland freight.

Department's Position: The Department agrees with TCM and has corrected this error for the final results.

Comment 62: Petitioners argue that TCM, for the first time in its case brief, claims that credit income associated with some of its reported U.S. transactions resulted from leasing arrangements. Petitioners contend that these transactions are leases, not sales, and should therefore be excluded from consideration in the final results. In support of this contention, petitioners note that several verification documents specifically refer to a sample transaction as a rental arrangement; that 19 U.S.C. 1677a stipulates that dumping calculations consider sales and not leases; and that the Department's questionnaire requests information only on sales.

TCM contends, however, that these transactions were installment sales in which dealers entered into a leasing arrangement with CIM or TAM for repayment of the sales price with interest over an extended period. In support of its contention, TCM noted that for Nissan's credit revenue in the antidumping investigation of forklift trucks, the Department "consider[ed] the interest revenue to be an increase in price agreed to by the customer at the time of sale." Certain Internal-Combustion, Industrial Forklift Trucks from Japan, 53 FR 12,552, 12,571 (April 15, 1988).

Department's Position: Petitioners are incorrect when they state that TCM's case brief is the first time they claim that credit income associated with certain U.S. transactions resulted from leasing arrangements. Because the Department refered to installment sales in the credit expense portion of the TAM verification report, the issue was, in fact, raised prior to TCM's rebuttal brief.

Secondly, the Department verified that these transactions were in fact installment sales rather than leasing arrangements and they were included for the final results of review.

Comment 63: Petitioners assert that TCM has not provided enough information on TCM's U.S. transactions allegedly resulting from leasing arrangements, and that as BIA, the Department should disregard TCM's credit income reported for all lease transactions. Finally, petitioners contend that if the Department decides to include TCM's reported credit income, it should reduce the interest payments to their present value.

TCM notes that the Department's purchase price margin calculation adds both U.S. credit expense and U.S. credit income to FMV as circumstance of sale adjustments. TCM explains, however, that its credit income results from leasing arrangements with forklift truck dealers in the United States, and therefore the U.S. credit income should be added to U.S. price.

In support of its contention, TCM cites the less than fair value investigation, in which the Department considered Nissan's credit revenue "to be an increase in price agreed to by the customer at the time of sale." Certain Internal-Combustion Forklift Trucks from Japan, 53 FR 12552, 12571 (April 15, 1988). TCM also cites Gray Portland Cement and Clinker from Japan, 56 FR 12164, 12165 (March 22, 1991) in which the Department treated after-sale revenue as credit revenue and added it to U.S. price for purchase price transactions.

Department's Position: The credit income submitted by TCM for all leasing arrangements with the U.S. dealers was used as reported. Also, rather than the offset, the addition of the credit expense and credit income to FMV in the Department's purchase price margin calculation was the result of a computer programming error. Therefore, the Department added credit income to U.S. price for the final results of review. Further, because the Department did not reduce projected credit expense for installment sales to their present value, the Department did not reduce credit income to its present value for the final results.

Comment 64: TCM contends that the Department should treat the related trading company markup as an indirect selling expense, not a commission, because such payments are an intracompany transfer of funds. In support of its claim, TCM cites Gray Portland Cement and Clinker from Japan, 56 FR 12156 (March 22, 1991), Gray Portland Cement and Clinker from Mexico, 55 FR 29244 (July 18, 1990), and Color Picture Tubes from Japan, 55 FR 37923 (September 14, 1990), in which the Department did not deduct related party commissions from U.S. price, because they were considered intracorporate transfers. Thus, TCM concludes that the Department's standard practice is to disregard payments between related parties, and should do so in this case as well.

Petitioners contend that the trading company fees are movement expenses and should therefore be deducted from the U.S. price. Petitioners note that the Department, in its C. Itoh Industrial Machinery Inc. (CIM) verification report listed the C. Itoh Japan markups at issue among the seven movement charges incurred by TCM. Petitioners further note that TAM incurs these expenses as well. Petitioners contend that the Department's treatment of the markups in the preliminary results should have recognized that the trading houses perform services in connection with the importation processes (e.g., documentation processing) which petitioners state are clearly movement charges.

Finally, petitioners note that in the underlying less than fair value investigation, fees paid to a trading company for services relating to the movement of the subject merchandise were treated as movement charges. Petitioners claim that because the trading companies do not function as an independent selling arm of TCM, and are not paid for finding new customers, the fees do not qualify as commissions because there is no selling function involved in the service provided by the trading companies. Therefore, the fees cannot be treated as indirect selling expenses. Petitioners speculate that, if anything, the amounts reported by TCM for this expense understate the actual expense incurred for document preparation, scheduling, etc., because there is some relationship between the trading companies, TAM and CIM.

Department's Position: The Department agrees with petitioners and has reconsidered the treatment of these expenses. Although the trading companies are directly related to CIM and TAM, and therefore indirectly related to TCM (within the meaning of section 771(13)(D) of the Act), the services they perform, and thus the fees they exact, are directly connected with the movement of forklift trucks from Japan to the United States. TCM has

misunderstood the Department's statement in Color Picture Tubes from Japan. The Department disallowed a markup in that case because it was "an intra-corporate transfer of funds and not an actual expense." (55 FR 37923). (See also Gray Portland Cement and Clinker from Japan, 56 FR 12156, 12167–68, and Gray Portland Cement and Clinker from Mexico, 55 FR 29244, 29251.) In this case, the trading company markups represent actual expenses relating to the movement of forklifts which would be incurred as an expense regardless of relationship of the party performing the service to TCM, TAM, or CIM. Furthermore, these expenses were verified by the Department. Therefore, to ensure an "apples-to-apples" comparison, the Department has deducted the trading company markups directly from U.S. price.

Comment 65: Petitioners contend that the Department should use best information available to rectify certain errors in TCM's exporter's sale price and purchase price data bases. Petitioners note errors for the following expenses: Fees paid to trading companies, U.S. brokerage and handling, containerization costs, ocean freight, marine insurance, U.S. duty, U.S. freight to warehouse, credit and warranty expenses.

TCM asserts that petitioners' contentions represent rebuttals to TCM's submission of factual information and as such should be disallowed under § 353.31(a)(2) of the Department's regulations which indicates that such allegations may be submitted "at any time prior to * * * 10 days after the date such factual information is served on the interested party." TCM then notes it submitted the information in dispute 18 and 15 months ago. TCM states that, since this is the first time the petitioners have made these factual allegations and as they affect only a few trucks, the Department should reject them as untimely and *de minimis*.

Department's Position: The Department agrees with TCM. The allegations were untimely submitted and have not been considered in these final results.

Comment 66: Petitioners claim that the value-added sales information provided by TCM should be rejected. Petitioners contend that the Department selected five value-added sales for examination during verification and that TCM was unable to support the costs reported in its response on four of the five sales. Petitioners conclude that under even the most lax verification standards, an eighty percent failure rate for the sample sales reviewed does not warrant reliance on the remainder of TCM's reported value-added data. In addition, petitioners claim TCM understated its value-added labor and overhead costs in its sales listing, that TCM failed to substantiate its value-added labor hours, that TCM improperly claimed value-added truck preparation services as indirect selling expenses, that TCM reported conflicting labor times for its value-added jobs, that TCM apparently understated the labor hours required to swap masts, and that TCM understated its hourly labor and overhead rates.

Department's Position: The Department verified the value-added information provided by TCM according to standard procedures, including examination of relevant accounting records and original source documents of TCM, CIM, and TAM. Petitioners exaggerate the extent of the errors discovered at verification. With the exception of minor clerical and methodological errors, which the Department required TCM to correct in its post-preliminary results submission of information, the Department found the value-added information submitted by TCM reliable, with no further discrepancies.

Comment 67: Petitioners note that at the TAM verification, the Department observed that some forklift trucks were stolen from inventory. Petitioners claim that since the verification report did not indicate whether TCM was fully reimbursed for the loss by TCM's insurance company, the losses from these thefts should be treated as direct selling expenses on the sales covered by the review.

Department's Position: As stated in the verification report, the Department reviewed the insurance claim concerning these forklift trucks. The fact that the insurance company had not reimbursed TCM during the period of review is not dispositive that reimbursement will not occur. In addition, the Department has no evidence on the record that the insurance company has rejected the claim or that TCM will not be reimbursed in part or in full. Therefore, it would be inappropriate to treat the expenses associated with the stolen trucks as direct selling expenses. Moreover, the Department does not consider stolen merchandise to be sales in the ordinary course of trade as defined in section 771(15) of the Tariff Act and, accordingly, have excluded the stolen forklift trucks from further consideration for the final results.

Mitsubishi

Comment 68: MHI contends that its home market sales to related MHI dealers are at prices reflective of arm's-length transactions and that it has provided both qualitative and quantitative analysis to support this claim. Concerning the qualitative analysis, MHI alleges that it has previously demonstrated that the prices, rebates, credit terms and discounts offered by MHI to Mitsubishi Motors Corporation (MMC) dealers and related MHI dealers are "essentially the same." MHI notes that the only significant difference in treatment between MHI and MMC dealers during the period of review was that MHI dealers received "special rebates." MHI contends that these special rebates are granted by MHI on a case-by-case basis based on a review of MHI by each MHI dealer's sales results and financial condition.

MHI states that it provided the Department with quantitative analysis showing that the average net prices charged to MHI dealers and MMC dealers were similar. MHI argues that since it has provided convincing evidence that sales to both related and unrelated dealers in the home market are arm's-length transactions, the Department can use either sales to unrelated dealers of all dealer sales (i.e., sales to both MMC and MHI dealers). Finally, MHI alleges that complete and accurate data on sales and costs of forklift trucks sold by MHI dealers to unrelated end users is not available to MHI because this information is kept by MHI dealers, who do not keep complete records on forklift sales.

Petitioners point out that MHI conceded in its initial questionnaire response that MHI's sales to MHI dealers are not arm's-length. Citing Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 FR 19090 (May 3, 1989), petitioners state that MHI clearly had the burden of showing that prices charged in the home market to related and unrelated parties are comparable. Petitioners argue that MHI failed to show that sales to MHI dealers were at arm's-length.

Department's Position: The Department made the decision in March 1990 that sales by MHI to related MHI dealers were not made at arm's-length. The Department's determination was based on the information on the record at that time, which was MHI's response dated November 20, 1989. In this submission MHI stated:

> There are two types of dealers in Japan: MHI dealers and MMC dealers. All dealers receive the same gross prices, but the dealer agreements differ in that MHI dealers have an article in their agreements concerning counseling by MHI on their operations. Also,

the net prices differ by dealer type because MHI dealers receive special discounts and rebates and special terms of payment.

MHI further argued in its questionnaire response that: "For purposes of this review, we submit that the Department should only consider sales to MMC dealers because all MMC dealers are treated equally and are treated differently than MHI dealers."

Because of the information contained in MHI's questionnaire response concerning the difference in treatment between MHI dealers and MMC dealers, the Department determined that the sales to MHI dealers were not arm's-length. In the supplemental questionnaire dated March 20, 1990, the Department requested MHI dealer sales to end users, which represent 75 percent of the home market. MHI did not provide any new data or compelling reasons that warranted reconsideration of the arm's-length decision. However, over the course of the review, MHI reversed its position regarding the MHI dealer sales without providing sufficient data to warrant reconsideration by the Department.

MHI's claims that it had previously demonstrated that the payment terms offered to MMC and MHI dealers were essentially identical. This directly conflicts with MHI's November 20, 1989, response. In this response, MHI stated that the payment terms were different. MHI dealers paid on the installment basis at a low rate. The MMC dealers, except for one related MMC dealer, paid in full within a short period of time after receipt of the invoice. Also, the interest free period for MHI dealer sales is longer than for MMC dealers. This is clear evidence that MHI dealers received more favorable payment terms.

The Department was unable to duplicate MHI's calculated "net prices" in MHI's July 12, 1990, submission using the explanation provided. According to this submission, the net prices were compared after making adjustments for (1) differences in merchandise (using variable costs) to compute the sales prices of a standard struck; and (2) for differences in circumstances of sale (i.e., credit, warranty and advertising). MHI's explanation of net prices in its brief is, however, different than that offered in the July 12, 1990, submission. MHI's brief states that the prices were adjusted for "MHI's level of trade claim." This is an inappropriate adjustment because the sales to dealers in Japan are at the same level of trade. MHI's quantitative analysis is inconclusive and without merit. Where the respondent cannot show that sales to related parties were at arm's-length, and the sales made through the related party are a significant percentage of all sales in the home market, the Department calculates foreign market value based on the sale price to the first unrelated party (see Roller Chain, Other than Bicycle, from Japan, 55 FR 42608 (October 22, 1990). Thus, because MHI did not provide the Department with data on MHI dealer sales to end users (accounting for 75% of the home market) or with new information showing that these sales were in fact made at arm's-length, the Department was forced to use the best information available.

The Department also disagrees that MHI had no information on sales by MHI dealers to end users. Based on MHI's initial response, the Department concluded that many MHI dealer sales are shipped direct to the end user by MHI. In the original response, MHI stated that "in many cases the dealer has MHI arrange delivery." Therefore, MHI should have data concerning these direct shipments. Furthermore, because of MHI's rebate and discount programs, the Department found that MHI directs the sales of certain forklift trucks to specific customers. In these instances, MHI would know which forklift truck was sold to the end user. Subsequently, the Department has found that few changes are made by the related dealers and, as MHI stated, approximately 20 out of the thousands of forklift trucks sold had a specification change made by the related dealer.

The Department also found evidence that MHI had knowledge of the options work performed by the MHI dealers. Based on the documents, obtained from three MHI dealers and reviewed at verification, the Department found that MHI had specific knowledge of the work performed by the dealers. During the course of the Department's visit, each dealer stated that purchase orders were completed and copies were forwarded to MHI. The purchase order indicates the work to be performed by MHI and the work to be performed by the dealer (see MHI Verification Report dated February 1, 1991). In addition, the Department obtained evidence at verification that the dealer cannot perform specification changes to the forklift truck without prior approval from MHI. The dealers explained that the work performed by them is generally minor. Some examples given were: The assembly or attachment of roofs, LPG tanks, drum clamps, roll clamps, push and pull devices, bars, rear view mirrors; electric welding; and the painting of customer names. The Department found that the dealers maintained profit and loss or cost data for each forklift truck sold. Therefore, the type of sales or cost data needed by the Department should have been available.

Throughout this review, MHI has tried to limit the Department's access to data and to dictate what the Department should use as foreign market value. MHI stated that it would provide end-user sales data for those sales that did not match MMC sales, but no end-user sales data was provided. By letters dated April 30, 1990, May 8, 1990, July 16, 1990, and September 27, 1990, and at numerous meetings, the Department informed MHI that all MHI dealer sales to end users must be provided. Additionally, the Department had every reason to believe that MHI could and would provide this sales data. MHI had asked for and had been granted extensions in order to obtain the end-user sales data. Because of MHI's failure to provide this repeatedly requested information, the Department was forced to rely on the best information available, in accordance with 19 U.S.C. section 1677e(c).

Comment 69: MHI argues that even assuming, *arguendo*, that MHI's sales to MHI dealers were not arm's-length transactions, the Department should not use best information available. MHI further argues that the use of best information available would only be necessary if the Department decides that the special rebates provided to MMC dealers are proper circumstance of sale deductions to prices and not intercompany transfers or equity infusions for which no adjustment to price is proper.

Petitioners argue that MHI has never established that its sales to related MHI dealers are comparable to its sales to unrelated MMC dealers and that MHI dealer sales to end users.

Department's Position: MHI has neither demonstrated that its sales to related MHI dealers are at arm's-length nor provided complete data on MHI dealer sales to end users, both of which were repeatedly requested by the Department. As a result, the Department could not properly conduct the cost test and thus had to rely on the best information available.

Comment 70: MHI asserts that the Department should calculate foreign market value (FMV) using sales to MMC dealers because MMC dealer sales exceed five percent of sales on a such or similar category basis to third countries. Regardless of what type of viability test the Department chooses to apply, MHI sales to MMC dealers represent a significant above-cost pool of home market sales upon which to base FMV should the Department decide that sales

to MHI dealers were not arm's-length. Therefore, there is no reason for the Department to look further than sales by MHI to MMC dealers to calculate FMV.

Department's Position: MHI is confusing the home market viability test with the below cost of production test. The viability test is not at issue. The issue is whether the Department had sufficient information on the record to determine whether MHI had sufficient sales in the home market at or above its cost of production. The Department determined that MHI failed to provide the cost of production for the forklift trucks sold by the MHI dealer to the end user and MHI did not provide the prices to the end user. Therefore, the Department was unable to perform the cost test.

Comment 71: MHI argues that the Department will not use sales by MHI to MHI dealers in the calculation of foreign market value because related party sales could result in artificially low antidumping margins. Therefore, the Department should either use the related party sales or disregard them and use the remaining sales. In particular, the Department should not use the MHI dealer sales to end-users because these sales are at a different level of trade than the sales to the United States.

Department's Position: Section 353.45 of the Department's regulations is very clear concerning use of sales to related parties. The fact that these sales to MHI dealers are at a different level of trade than the sales to the United States and that the use of these home market sales would result in artificially low dumping margins is irrelevant. Since MHI's sales to the related MHI dealers did not satisfy the requirements of § 353.45, the Department requested MHI dealer sales to end users.

Comment 72: MHI argues that the Department's statutory interpretation of the related party regulation is improper and creates an unreasonable administrative burden on the Department and respondents. MHI further argues that when the Department found sufficient sales to calculate foreign market value at the level of trade nearest to U.S. sales, it should use those sales. Finally, MHI claims that the Department should not go to a more distant level of trade to enlarge the pool of home market sales unless this is absolutely necessary.

Department's Position: The Department determined that MHI did not demonstrate that the prices to the MHI dealers were comparable to the prices at which MHI sold such or similar merchandise to the unrelated dealers. Therefore, in accordance with § 353.45, the Department properly determined that foreign market value should be based on the sales of the related party. However, as stated previously, the Department has been unable to conduct a cost test on all home market sales because MHI neither provided the cost data nor the sales data for the sales to the end users. Since the end-user sales constituted 75 percent of the total home market sales, the Department was unable to determine if there were sufficient sales at or above the cost of production which could be used in the calculation of foreign market value (refer to Comment 76). MHI's assertion that the Department found sufficient sales to calculate foreign market value is incorrect.

Comment 73: MHI asserts that even assuming, *arguendo*, that the Department could consider sales by MHI dealers equal with sales to MMC dealers, this action results in no better matches. MHI has calculated the weighted-average total points for model matches using sales by MHI to both MMC and MHI dealers (or by MHI dealers) and compared this number to the weighted average points for model matches to total sales by MHI to MMC dealers only. The results showed that MHI and MMC dealers' sales were within the same point range and that there was not a significant difference between them. In addition, the majority of the matched sales occurred within the same month as the U.S. sale whether sales to both MMC and MHI dealers or sales to MMC dealers alone were used.

Department's Position: Because MHI conducted its own tests and only provided the Department with the results, the Department had no information on the record concerning the actual MHI program used to perform the price comparisons. The Department was unable to duplicate this test and could not evaluate the merits of MHI's claim (see Such or Similar Comparisons).

Comment 74: MHI argues that sales by MHI dealers do not survive the model match test and do not provide the most similar matches. In its August 16, 1990 submission, MHI presented the model matching characteristics (created to compare such or similar merchandise) it was able to obtain on sales by MHI dealers to end users. MHI showed that these sales would not match any U.S. sales and thus failed the model match test.

Department's Position: MHI's argument contradicts its previous arguments. In the August submission, MHI argued that there is not a significant difference between the forklift trucks sold to MHI and MMC dealers. Now, MHI argues that these same trucks would not match to any U.S. sale. This is highly improbable. As MHI stated at the hearing, the only difference in the model matching characteristics that can change between the MHI sale to the MHI dealer and the dealer's sale to the end user is the mast. MHI also stated at the hearing that MHI found less than 20 trucks where the MHI dealer switched the mast. This represents less than 0.5 percent of the total sales to end users. These few sales should not have eliminated all the sales to end users as potential model matches for the U.S. sales.

Comment 75: MHI argues that if the Department must conduct a below cost test on a pool of sales consisting of MHI sales to MMC dealers and MHI dealer sales to end users, it should do this by making the adverse assumption that the sales by MHI dealers are below cost. While this is an adverse assumption under U.S. antidumping law, it is also a reasonable assumption given that, even after receipt of special rebates, these dealers were not profitable. By making this assumption, the Department is left with sales to MMC dealers in the home market which, even after application of the cost test, are sufficient in quantity to form a viable home market for calculation of foreign market value.

Department's Position: MHI has conducted an improper cost test because MHI only tested the MMC dealer sales. These sales represent approximately 25 percent of MHI's total home market sales. To perform the cost test properly, the Department needs the cost of the forklift truck the MHI dealer sold to the end user. This cost data was never provided and MHI did not use it in its cost test. Therefore, MHI's cost test is inconclusive. Moreover, MHI has never demonstrated that this cost data could not be provided (see Comment 72).

Section 773(b) of the Act clearly states that the Department shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. Therefore, MHI's suggestion that the Department assume that all MHI dealer sales to end users are below cost is not allowable under the law.

Comment 76: MHI argues that the Department is not authorized to collect data on MHI dealer sales because the Department is only allowed to obtain data to calculate foreign market value on sales "through" related parties rather than sales "to" related parties. Because MHI does not sell through dealers, it does not have records on these sales. Furthermore, the data on MHI sales to MHI dealers simply does not exist. MHI found that MHI dealers did not keep

complete, accurate and detailed records of the actual specifications or prices of each forklift truck sold. Further, while MHI dealers modified the trucks they purchased from MHI in almost every case before sale, the dealers kept their actual modification costs on a total monthly basis only, rather than on a per truck basis. The information required to respond to the Department antidumping questionnaire is not kept by MHI dealers in the ordinary course of their business; they only kept the records required for Japanese tax purposes and these are too general to be useful.

Petitioners state that the meaning of the Department's regulations concerning related party sales is clear and that MHI "tortures" the intent of 19 CFR 353.45(b) by assuming the word "through" triggers the same test that the Department applies when determining whether a U.S. sale should be examined on an exporter's sale price basis or a purchase price basis. Petitioners point out in the underlying investigation of forklift trucks the Department required both Komatsu and Sumitomo to report Japanese related dealer sales of forklift trucks to unrelated purchasers in lieu of sales not made at arm's-length to the related dealers.

Department's Position: The Department disagrees with MHI. Based on the verification of three of the six MHI dealers (see MHI Verification Report, March 25, 1991), the Department determined that these dealers (one large dealer and two smaller dealers) maintained sufficient records to report the pricing and difference in merchandise data necessary for the calculation of foreign market value and for performing the cost of production test. Specifically, the Department found: (a) One dealer had prepared "a sales report to president" (Exhibit 156) which contains "type of forklift truck, specific cost breakdown for the standard truck and the options, and the calculation for the profit realized on the sale of this truck;" (b) another dealer stated that salesmen are required to complete an "APPLICATION FOR APPROVAL FOR SALE" form or sales report form which contains complete cost or price breakdown for the sales manager including the profit or loss realized on the sale; and (c) the third dealer stated that salesmen maintain notebooks which provide the cost breakdown for the standard truck and the options. The third dealer also claimed that it was rare that a price change occurred after the purchase order had been forwarded to MHI.

In conformity with 19 CFR 353.45(b), it is the normal practice of the Department to disregard related party sales. Generally, the Department requires that respondents report the first sale to an unrelated party, unless the respondent makes arguments and provides sufficient information to enable us to analyze the comparability of related and unrelated sales. The burden of proof is on the respondent to show that the prices are comparable since it is the party making the claim.

To perform an analysis of the comparability of related and unrelated sales, the Department generally requires that a respondent provide sales-specific or customer-specific payment terms for credit expenses, as well as information on commission, rebate and discounts. MHI has failed to provide sales-specific information on discounts and rebates. In addition, MHI has provided contradictory information on "special rebates," first arguing that the rebates were granted on an equal basis to all MHI dealers and later arguing that they were granted to "varying degrees." In fact, MHI's case brief states: "Only if special rebates result in price adjustments could net prices to MHI dealers differ significantly from net prices to MMC dealers." The lack of reliable information on the special rebates has prevented any meaningful analysis of the sales to MHI dealers.

In situations where the transactions between related parties were not at arm's-length and a substantial percentage of home market sales were made through a related party, the Department may rely on the sales to the first unrelated purchasers in calculating foreign market value (see *Roller Chain from Japan*, 55 FR 42602 (October 22, 1990)).

Comment 77: MHI argues that it reported all sales to the United States subject to assessment of antidumping duties during the period. MHI contends that only unliquidated sales are subject to review under section 751 of the Act and, since liquidated entries are outside the scope of the order, they cannot be subject to review. MHI states that the Department's past practice has been to not review liquidated entries, citing Large Power Transformers from France, 46 FR 36889 (September 20, 1984).

MHI also cites Color Picture Tubes from Japan, 55 FR 37915 (September 14, 1990) and asserts that the Department ignores liquidated entries when the volume and type of sales of unliquidated entries is sufficient to be representative of the respondent's pricing practices during the review period. MHI notes that it had nine sales contracts during the review period and that the liquidations were random, including both early as well as late contracts and parts of others.

Petitioners argue that since the volume of these unreported sales is large in relation to the total volume of sales, the reported sales are not representative of MHI's pricing practices. Petitioners further argue that U.S. sales are used to assess antidumping duties on unliquidated entries and to calculate the cash deposit rate for future entries and therefore the respondent must produce the required information.

Department's Position: There is no evidence on the record which supports MHI's contention that these entries were liquidated. When asked for proof of liquidation, MHI merely stated that the Department could inquire with the Customs Service about the liquidated entries. However, the Customs Service cannot readily furnish this type of information to the Department. It was therefore, reasonable for the Department to require that MHI provide information on the allegedly liquidated sales. In an antidumping review, the burden of proof of any statement lies clearly with the party making that statement. Further, the Department clearly informed MHI that it was to report *all* of its U.S. sales that fell within the scope of the review during the period of investigation. The Department was unable to determine whether MHI's unliquidated entries were representative of MHI's pricing practices for the period under review due to MHI's failure to provide the requested information.

Comment 78: MHI argues that if the Department were to use best information available (BIA), it should use BIA only for foreign market value and in this case BIA would be sales to MMC dealers or constructed value. Furthermore, use of BIA is inappropriate in this case because MHI has made good faith efforts to respond to the Department's requests.

Department's Position: Throughout this review, MHI has tried to limit the Department's access to data and to dictate what the Department should use as foreign market value. Also, the Department can not rely on MHI's submissions in deciding issues because the submissions are inconsistent and incomplete or MHI failed to submit the required data. Therefore, the Department determined to use BIA, which was MHI's rate from the original investigation.

Furthermore, the use of constructed value as FMV would also be inappropriate. Section 773(A)(1) of the Act establishes a clear hierarchy for the calculation of FMV. The Act dictates

that foreign market value be based on home market sales unless there were no home market sales or the quantity of home market sales is so small as to form an inadequate basis for comparison. MHI's sales of forklift trucks in Japan were significant enough to form an adequate basis for comparison. Where the home market is the appropriate basis for foreign market value and where a respondent is unable or unwilling to report those sales, the Department must determine what is the best information available to value these sales.

General Issues

Comment 79: Petitioners assert that the Department's sales below cost methodology is flawed and produces understated margins of dumping. Petitioners contend that internal combustion forklift trucks are not a fungible product and are more like "job order" products such as mechanical transfer presses, offshore oil platforms, and large power transformers. Because forklifts are "job order" products, petitioners conclude that FMV often consists of just one home market sale compared to one U.S. sale. If the single home market sale is sold below cost, there likely will be no dumping margin. Petitioners suggest that the Department conduct its cost test on the model match concordance tape, not on the home market sales tape to correct this error.

Department's Position: The sales below cost of production test was conducted according to the Department's standard procedures. Despite petitioners' claim that forklifts are "job order" products, the information presented during the course of this review has revealed that forklifts are mass-produced. While the specifications and capabilities of the products petitioners cited are generally determined in advance of production, the record indicates that large numbers of various forklift models are mass-produced. Any customizing or "job order" activity occurs well after production and often well after importation into the United States (at Toyota's, Nissan's, or TCM's U.S. value-added facilities). The forklift trucks under review are clearly unlike the products mentioned by petitioners and are amenable to the Department's standard cost test procedures.

Finally, the Department notes that the only example petitioners cited regarding the alleged deleterious effects of the Department's cost test methodology was the direct result of a clerical error and has already been addressed (see Comment 31).

Comment 80: Petitioners state that the Department should revise its model match methodology because it gives insufficient weight to tire type and, therefore, results in more matches of merchandise, but not in matches that are the most similar. Petitioners aver that tire type is a crucial attribute of a forklift truck because the tire type determines the construction of the frame of the truck. As stated in the original less than fair value investigation, tire type "is the identifying feature and principle component of the product, and is solely dedicated for the manufacture of a complete internal-combustion forklift truck" (53 FR 12552). Petitioners argue that the Department's matching methodology does not require sufficient similarity between U.S. and home market sales because the Department considers forklifts with a point range of 7–9 on a 21-point scale similar (see Such or Similar Comparisons section for a listing of model match characteristics and their relative weight in "points").

Petitioners suggest three alternative methods for the such or similar comparisons and tire type matching. First, petitioners recommend that the Department return to the original less than fair value matching methodology. Second, petitioners propose increasing the weight for tire type from six to ten points. Finally, petitioners state that matches with less than fifteen points do not constitute similar merchandise because the predominant features of the home market comparator would be substantially different from the U.S. truck; therefore, the Department should omit all home market sales with less than fifteen points.

Department's Position: The Department clarified and refined the model match methodology used in the original less than fair value investigation by, among other improvements, devising a point-weighting scheme which simplified reporting requirements while according the greatest weight to tire type. Petitioners failed to provide any specific examples regarding widespread, or even episodic, matches of dissimilar merchandise. Without such evidentiary support for their position, the Department can neither evaluate petitioners' claim nor reasonably alter its existing matching procedure.

Comment 81: Petitioners claim that the Department improperly accounted for the consumption tax forgiven upon exportation of forklift trucks to the United States. Petitioners contend that each of the three steps the Department used in its treatment of the Japanese consumption tax was unjustified under the law. In support of their contention, petitioners cite *Zenith Electronics Corp.* v. *United States*, 755 F. Supp. 397 (CIT 1990) (*Zenith I*), *Daewoo Electronics Co.* v. *United States*, 712 F. Supp. 931 (CIT 1989) (*Daewoo*), and *Zenith Electronics Corp.* v. *United States*, 633 F. Supp. 1382 (CIT 1988) (*Zenith II*).

Petitioners note that Toyota, Nissan, and TCM neither claimed nor proved an entitlement to any adjustment to U.S. price resulting from treatment of the Japanese consumption tax, and that the Department's adjustment, which was based on an unproven assumption of one hundred percent "pass through," was therefore unlawful. Petitioners suggest that the Department not adjust U.S. price upward for any taxes. Similarly, petitioners claim that Congress did not legislate tax neutrality in the antidumping statute, and that the Department's regulations do not include rebate or forgiveness of foreign market tax upon exportation as a circumstance of sale triggering an adjustment. Petitioners conclude that the Department should eliminate this adjustment from U.S. price for Toyota, Nissan, and TCM because the adjustment has no basis in law and improperly reduces *ad valorem* dumping margins with respect to these producers.

Department's Position: The Department does not agree with the CIT in *Zenith I*, *Zenith II*, or *Daewoo* that the statute requires a measurement of home market tax incidence or precludes a circumstance of sale adjustment, but has not had the opportunity to appeal these issues. Because the Department believes that dumping margins should neither be inflated nor deflated by differences between Japanese taxes and constructed taxes applied to U.S. price, the Department does not agree with the CIT's decision on adjustments for differences in commodity taxes. After calculating the amount of commodity tax not collected on the export sales and adding it to U.S. price, the Department made a circumstance of sale adjustment to foreign market value for the difference in taxes in each market (Television Receivers, Monochrome and Color, from Japan, 56 FR 38417, 38418, Comment 2 (August 13, 1991)).

Final Results of Review

As a result of the comparison of United States price to foreign market value, the Department determined that the following margins exist for the period November 24, 1987 through May 31, 1989:

Manufacturer/exporter	Margin percent
Toyota Motor Corporation	12.22
Nissan Motor Co., Ltd	7.36
Toyo Umpanki Co., Ltd	7.71
Mitsubishi Heavy Industries, Ltd	39.15

The Department of Commerce shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of certain internal-combustion, industrial forklift trucks from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the review companies will be as outlined above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this or prior reviews, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or of the most recent review, or if not covered in this review or an earlier review, the rate from the less-than-fair-value-investigation; and (4) the cash deposit for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firm, will be 12.22 percent. This is the most current non-BIA rate for any firm in this proceeding.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1978 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-817, A-475-804, A-412-808]

Initiation of Antidumping Duty Investigations: Potassium Hydroxide, Liquid and Dry, From Canada, Italy, and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Stefanie Amadeo, Office of Antidumping Duty Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1174.

Initiation of Investigations

The Petition

On January 2, 1992, we received a petition filed in proper form by LinChem, Inc. (Petitioner), a producer of potassium hydroxide, liquid and dry, (KOH) in the United States. Petitioner submitted supplementary information on January 10, January 13, January 16, and January 22, 1992. In accordance with 19 CFR 353.12, the petitioner alleges that KOH from Canada, Italy, and the United Kingdom is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has standing to file the petition because it is an interested party, as defined under section 771(9)(D) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

Petitioner based United States Price (USP) on F.O.B. port of entry price quotations obtained from certain U.S. distributors and end-users of KOH produced in Canada, Italy, and the United Kingdom. Petitioner adjusted the USP quotations for movement expenses incurred for transportation from plant to port of entry. We recalculated the movement expenses for imports of the subject merchandise from Italy.

Petitioner based foreign market value (FMV) for Canada on F.O.B. delivery point price quotations from producers of KOH. Petitioner based FMV for the United Kingdom on delivered price quotations and for Italy on both F.O.B. plant and delivered price quotations. Petitioner adjusted the FMV price quotations for movement expenses to arrive at a F.O.B. plant price for Canada and the United Kingdom. Petitioner adjusted the liquid KOH price quotations to a KOH price quotation on a dry basis. We adjusted the FMV price quotation for Italy to account for the value-added tax incurred in Italy. We deducted inland freight in Italy to obtain an F.O.B. plant price.

Based on the supplements to the petition, the dumping margin for subject imports from Canada is 66.01 percent, and the dumping margins for subject imports from the United Kingdom range from 138.96 percent to 163.91 percent. Based on the supplements to the petition, the dumping margins calculated by the Department for subject merchandise from Italy range from 60.16 percent to 190.88 percent.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of KOH from Canada, Italy, and the United Kingdom. Petitioner alleges that producers of KOH in Canada, Italy, and the United Kingdom and their importers should have known that they were selling KOH into the United States at less than fair value, and that a massive increase in imports has occurred over a short period of time.

Initiation of Investigations

We have examined the petition on KOH from Canada, Italy and the United Kingdom and have found that the petition meets the requirements of section 732(b) of the Act. Therefore we are initiating antidumping duty investigations to determine whether imports of KOH from the above-referenced countries are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigations

The merchandise subject to these investigations is all grades of KOH, liquid and dry. Imports of this product are currently classifiable under the

Harmonized Tariff Schedule (HTS) subheading 2815.20.0000. The HTS subheading is provided for convenience and customs purposes. Our written description of the scope of these investigations is dispositive.

Preliminary Determinations by the International Trade Commission

The International Trade Commission (ITC) will determine by February 18, 1992, whether there is a reasonable indication that imports of KOH, liquid and dry, from Canada, Italy, and the United Kingdom are materially injuring, or threaten material injury to, a U.S. industry. If the ITC's determinations are negative, the investigations will be terminated. Otherwise, if the investigations proceed normally, the Department will make its preliminary determinations on or before June 10, 1992.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: January 22, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-2052 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-062]

Pig Iron From Brazil; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on pig iron from Brazil. We preliminarily determine the net subsidy to be 0.06 percent *ad valorem* for all firms for the period January 1, 1990 through December 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Dana S. Mermelstein or Maria P. MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (56 FR 14927) of the countervailing duty order on pig iron from Brazil (45 FR 23045; April 4, 1980). We received requests for review from Associated Metals and Minerals Corporation, Sumitomo Corporation of America, Considar, U.S.A., Inc., and SINDIFER, interested parties within the meaning of 355.2(i). We initiated the review covering the period January 1, 1990 through December 31, 1990, on May 21, 1991 (56 FR 23271). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The final results of the last administrative review of this order were published on May 30, 1991 (56 FR 24174).

Scope of Review

Imports covered by this review are shipments of pig iron of basic, malleable, and low phosphorous grades, from Brazil. During the review period, such merchandise was classifiable under item numbers 7201.10.00, 7201.30.00, and 7206.10.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through December 31, 1990, nineteen companies, and seven programs.

Hyperinflationary Economics

According to statistics published by the Brazilian government the annual inflation rate in Brazil during the review period was 1,285 percent. Under such circumstances, the clustering of nominal countervailable benefits either at the beginning or at the end of the review period would tend to distort the real value of the benefit bestowed on the firm. In this review, benefits from the Income Tax Reduction for Export Earnings program were received at the beginning of the review period. Therefore, we have made a downward adjustment to the nominal values of annual exports used as the denominator in the calculation of the benefit from this program. This adjustment is based on the price deflator index used by the Brazilian government during the period of review, the Bonus do Tesouro Nacional (BTN). For further explanation of this methodology see Final Negative Countervailing Duty Determination: Silicon Metal From Brazil (56 FR 26968; June 12, 1991).

Analysis of Programs

(1) Income Tax Reduction for Export Earnings

This program was previously named Income Tax Exemption for Export Earnings. Under this program, exporters of pig iron are eligible for a reduction in income tax on the portion of their profits attributable to exports. The exporter calculates the tax-reduction portion of profit based on the ratio of export revenue to total revenue. Because this program provides tax reductions that are limited to exporters, we preliminarily determine that it is countervailable.

The nominal corporate tax rate in Brazil in 1990 was 30 percent, while under this program profits from export sales were taxed at a rate of eighteen percent, pursuant to Decree-Law 7988 of December 28, 1989. Furthermore, Brazilian tax law permits all companies to reduce their income taxes by investing up to 24 percent of their tax liability in specified companies and funds. Eight pig iron exporters claimed this income tax reduction for export earnings on their tax returns filed in 1990 and invested in the specified companies and funds. Their effective tax rates were thus lowered below the nominal 30 percent rate during the period of review.

We calculated the effective tax rate for the firm by dividing the net tax liability by net taxable income. In order to adjust for hyperinflation, the reported figures were converted into BTN using the same BTN rate used in the tax returns. We determined the export profit by multiplying the exports to sales ratio by adjusted operating profits. We then determined the tax reduction by multiplying the export profit (converted into BTN) by the difference between the effective tax rate and the preferential tax rate of eighteen percent. We divided the tax benefit by the firm's total exports for 1990, which were deflated using the average BTN rate for 1990. We then weight-averaged each firm's benefit by its share of exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.06 percent for all firms for the period January 1, 1990 through December 31, 1990.

Decree Law 8034 of April 12, 1990 eliminated this tax reduction and established a prevailing tax rate of 30 percent for domestic and export earnings for tax year 1990 (the 1990 tax returns are filed in 1991). See, *e.g.*, Final Negative Countervailing Duty Determination: Silicon Metal From

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Brazil (56 FR 26988; June 12, 1991). We consider this elimination to be a program-wide change. Because it occurred prior to the issuance of these preliminary results and there are no residual benefits to the producers/exporters of pig iron, we have taken this program-wide change into account in setting our cash deposit rate. Therefore, for purposes of the cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero for all firms. See Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment (54 FR 23366; May 31, 1989) § 355.50(a) (1) and (2) at page 23385.

(2) Programs Not Used and Eliminated

We also examined the following programs and preliminarily determine that the respondents did not use them during review period and that they were terminated by the Government of Brazil:

A. CACEX Preferential Working Capital Financing for Exports. This program was terminated effective August 30, 1990, by Central Bank Resolution 1744.

B. FINEX preferential financing under Resolutions 68 and 509. This program was terminated on October 5, 1990 by constitutional provision.

C. Preferential financing from the Banco do Brasil under the EST and EGF. The EST financing was eliminated; EGF financing is not available to pig iron producers.

See, *e.g.*, Final Negative Countervailing Duty Determination: Silicon Metal From Brazil (56 FR 26988; June 12, 1991) and Final Affirmative Countervailing Duty Determination: Steel Wheels from Brazil (54 FR 15523; April 18, 1989).

(3) Other Programs

We also examined the BEFIEX Reduction of Taxes and Import Duties program, the Accelerated Depreciation on Brazilian-made Capital Equipment program, and the FINEP preferential financing program, and preliminarily determine that exporters of pig iron did not apply for or receive benefits under these programs during the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 0.06 percent *ad valorem* for all firms for the period January 1, 1990 through December 31, 1990. In accordance with 19 CFR 355.7, any rate less then 0.50 percent *ad valorem* is *de minimis*.

Upon completion of this review, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of pig iron from Brazil exported on or after January 1, 1990 and on or before December 31, 1990.

The Department will also instruct the customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Act, on all shipments of pig iron from Brazil entered, or withdrawn from the warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held within seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under section 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: January 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1979 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Equinomics, Inc.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 84-00013.

SUMMARY: The Department of Commerce had issued an export trade certificate of review to Equinomics, Inc. Because this certificate holder has failed to file an annual report as required by law, the Department is revoking the certificate. This notice summarizes the notification letter sent to Equinomics, Inc.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290, 15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing title III ("the Regulations") are found at 15 CFR 325 (1986). Pursuant to this authority, a certificate of review was issued on June 25, 1984 to Equinomics, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (section 308 of the Act, 15 U.S.C. 4018, § 235.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (section 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation. Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c).

On June 17, 1991, the Department of Commerce sent to Equinomics, Inc. a letter containing annual report questions with a reminder that its annual report was due on August 9, 1991. Additional reminders were sent on August 22, 1991 and on October 10, 1991. The Department has received no written response from Equinomics, Inc. to any of these letters.

On November 19, 1991, and in accordance with § 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department of Commerce sent a letter by certified mail to notify Equinomics, Inc. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Equinomics, Inc. thirty days to respond was published in the **Federal Register** on November 27, 1991

at 56 FR 60095. Pursuant to § 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Equinomics, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Equinomics, Inc. for its failure to file an annual report. The Department has sent a letter, dated January 21, 1992, to notify Equinomics, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (§§ 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11).

Dated: January 21, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-2053 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DR-M

Short Supply Determination: Certain Aluminum-Killed Cold-Rolled Steel Sheet

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain aluminum-killed cold-rolled steel sheet.

SHORT-SUPPLY REVIEW NUMBER: 63.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply request for 350 metric tons of certain aluminum-killed ("AK") cold-rolled steel sheet for the first quarter of 1992 under the U.S.-EC Steel Arrangement.

EFFECTIVE DATE: January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Mark Brechtl or Kathy McNamara, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377-1386 or (202) 377-1390.

SUPPLEMENTARY INFORMATION: On January 8, 1992, the Secretary received an adequate petition from Buckbee Mears Cortland, Inc. ("BMC") requesting short supply of 350 metric tons of certain AK cold-rolled steel sheet for the first quarter of 1992 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-EC Steel Arrangement"). BMC requests the following quantities of four different sizes of AK cold-rolled steel sheet: 45 metric tons that are 18.62 inches in width and 0.0060 inch in thickness, 70 metric tons that are 19 inches in width and 0.0068 inch in thickness, 190 metric tons that are 24 inches in width and 0.0068 in thickness, and 45 mertric tons that are 27 inches in width and 0.0060 inch in thickness. BMC claimed that the requested product, used to manufacture aperture masks for color television picture and data display tubes, is not produced domestically and that its potential European supplier does not have sufficient regular export licenses available. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures. (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

The requested product meets the following specifications:

Chemistry (in maximum values): Carbon (0.004 percent, aim 0.002 percent); Silicon (0.040 percent); Sulphur (0.030 percent); Aluminum (0.070 percent); Nitrogen (0.008 percent); Manganese (0.450 percent); and Iron (remainder); the total of these elements excluding iron not to exceed one percent;

Width Tolerance: +/−0.04 in.;

Thickness Tolerance: +0.00028 in., −0.00020 in.;

Coil Weight: 1.5 to 3.0 metric tons, with a maximum of 20 percent in 0.5 to 1.5 metric ton weights per single shipment.

Action

On January 8, 1992, the Secretary established an official record of this short-supply request (Case Number 63) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary authorized the importation of additional quantities of the requested product in 1990 and 1991. Therefore, in accordance with section 4(b)(4)(B)(i)(II) of the Act and § 357.106(b)(1)(ii) of Commerce's Short-Supply Procedures, the Secretary applied a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provided proof that they could and would produce the requested quantity of this product within the desired period of time, provided it represents a normal order-to-delivery period, the Secretary would issue a short-supply allowance not later than January 23, 1992.

On January 14, 1992, the Secretary published a notice in the **Federal Register** (57 FR 1455) announcing its review of this request and providing domestic steel producers an opportunity to rebut the presumption of short supply. All comments were to be submitted no later than January 21, 1992. No comments were received.

Conclusion

Because the Secretary received no comments to the **Federal Register** notice from potential domestic suppliers to rebut the Secretary's presumption of short supply for the requested product, the Secretary hereby grants, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Procedures, a short-supply allowance for 350 metric tons of the requested steel sheet for the first quarter of 1992 under article 8 of the U.S.-EC Steel Arrangement.

Dated: January 22, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-2054 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-DR-M

Short-Supply Review: Certain Standard Length Premium Curve Rails

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments: Certain standard length premium curve rails.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 13,000 net tons of certain standard length premium curve rails for the first quarter of 1992

under paragraph 8 of the Arrangement Between the Government Japan and the Government of the United States of America Concerning Trade in Certain Steel Products ("the U.S.-Japan Arrangement").

SHORT SUPPLY REVIEW NUMBER: 64.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain standard length premium curve rails used on railroad curves of over two degrees and in special uses such as switches. On January 15, 1992, the Secretary received an adequate petition from Union Pacific Railroad ("UP") requesting a short-supply allowance for 13,000 net tons of certain standard length premium curve rails for the first quarter of 1992 under paragraph 8 of the U.S.-Japan Arrangement. UP requests the following quantities of three different sizes of premium rail: 500 net tons of 39 feet long-115 lbs./yard, 500 net tons of 39 feet long-136 lbs/yard, and 12,000 net tons of 80 feet long-133 lbs./yard. UP states that the requested product is not produced domestically and that its potential Japanese suppliers do not have sufficient export licenses available during this period.

The requested product meets the following specifications:

Chemistry:
- Carbon: 0.72–0.82 percent,
- Manganese; 0.80–1.20 percent,
- Phosphorus: 0.030 percent maximum,
- Sulphur: 0.025 percent maximum,
- Silicon: 0.59 percent maximum,
- Chromium: 0.25 percent maximum,
- Molybdenum: 0.025 percent maximum.

Minimum Tensile Strength: 171,000 psi.

Minimum Yield Strength: 114,000 psi.

Minimum Elongation: 10 percent.

Minimum Brinell Hardness of the head must be 322 at 0.4 inches from the surface. Average surface hardness must be a minimum of 380.

The rails must be free of shatter crackers through at least one of the following processes: Controlled cooling of rails or blooms; vacuum treatment; or other such process.

The rails must be ultrasonically tested for internal imperfections to detect a minimum of $\frac{3}{32}$ inch diameter defect anywhere in the sound path of the head, a minimum of $\frac{1}{16}$ inch diameter defect in the web and longitudinal imperfections exceeding ½ inch length and greater than 1⅛ inch depth occurring in the base.

The rails must meet a figure of .001721 inch of gage face wear per million gross tons on the high rail, and a figure of .000296 inch of head height loss on the low rail, as measured by the American Association of Railroads.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than February 14, 1992.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than February 4, 1992, to the Secretary of Commerce, attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after February 4, 1992. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply number.

FOR FURTHER INFORMATION CONTACT: James Rice or Kathy McNamara, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377–2667 or (202) 377–1390.

Dated: January 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–1961 Filed 1–17–92; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Nationwide

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its American Indian Program to operate the American Indian Business Consultant (AIBC) for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $210,000 in Federal funds. The period of performance will be from May 1, 1992 to April 30, 1993. The AIBC will operate nationwide. The award number for this AIBC will be 98–10–92016–01.

The funding instrument for the AIBC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The American Indian Program is designed to provide business development services to the American Indian business community for the establishment and operation of viable American Indian businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of American Indian individuals and firms; offer a full range of management and technical assistance; and serve as a

conduit of information and assistance regarding American Indian business.

Applications will be evaluated initially by MBDA staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of American Indian businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the American Indian Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

The AIBC performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. The AIBC with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall the AIBC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the AIBC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with *OMB Circular A-129, "Managing Federal Credit Programs,"* applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the AIBC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of AIBC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF-LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with *section 319 of Public Law 101-121*, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is February 28, 1992. Applications must be postmarked on or before February 28, 1992.

ADDRESS: MBDA, American Indian Program, Office of Operations, Business Development Division, 14th & Constitution Avenue, NW., room 5099C, Washington, DC 20230, (202) 377-2366.

FOR FURTHER INFORMATION CONTACT: Luis G. Encinias, Chief, Business Development Division, MBDA American Indian Program Monitoring Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.801 American Indian Program
(Catalog of Federal Domestic Assistance)

Dated: January 22, 1992.

Luis G. Encinias,

Chief, Business Development Division.

[FR Doc. 92-1976 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Groundfish Management Team (G.M.T.), will hold a public meeting beginning at 1 p.m. on February 11, 1992, and ending at 4 p.m., on February 13, 1992. The meeting will be held in the Oregon Department of Fish and Wildlife Building, 2501 SW. First Avenue, suite 200, Portland, OR.

The GMT will review two industry reports on sablefish allocation and discuss the concept of individual fisherman's quotas for groundfish species. Other topics will include preliminary stock assessment guidelines, catch monitoring and allocation of Pacific whiting among U.S. fishermen. The GMT will also prepare recommendations to the Council on these and other issues pertaining to management of the West Coast groundfish fisheries.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: January 22, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-2022 Filed 1-27-92; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License; Tissue Engineering, Inc.

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of

an exclusive license in the United States and certain foreign countries to practice the inventions embodied in U.S. Patent Application Serial Number 7–487,894, "Human Olfactory Neuron Cultures," and its continuation-in-part, Serial Number 7–605,788, having the same title, to Tissue Engineering, Inc., having a place of business in Boston, MA. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The inventions relate to a culture of human olfactory neurons. The neurons may display a normal neuronal pathology or a pathology characteristic of a generalized central nervous system disease. The cultured neurons can be used for neurotoxicity tests, screening for therapeutic drugs and anti-viral agents, and diagnosing Alzheimer's disease.

The availability of SN 7–487,894 for licensing was published in the **Federal Register** vol. 56, no. 22, p. 4049 (February 1, 1991). The availability of SN 7–605,788 was published in the **Federal Register**, vol. 56, no. 99, p. 23553 (May 22, 1991). A copy of the above-identified patent applications may be purchased from the NTIS Sales Desk by telephoning 703/487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark (telephone 703/487–4738), Center for the Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NTIS within sixty (60) days of this notice will be considered.

Douglas J. Campion,

Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 92–1991 Filed 1–27–92; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

January 23, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated September 19, 1991, as amended, between the Governments of the United States and the People's Republic of Bangladesh, agreement was reached to establish limits for Categories 363 and 634 for the period beginning June 1, 1991 and extending through January 31, 1992, and for Category 237 for the period beginning October 1, 1991 and extending through January 31, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 23, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Memorandum of Understanding dated September 19, 1991, as amended, between the Governments of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 30, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the periods beginning on June 1, 1991 for Categories 363 and 634, and October 1, 1991 for Category 237, and extending through January 31, 1992, in excess of the following levels of restraint:

Category	Restraint Limit
237	85,595 dozen.
363	10,404,110 numbers.
634	184,580 dozen.

You are directed to charge to the above levels of restraint the following amounts for goods imported during the periods June 1, 1991 through October 31, 1991 for Categories 363 and 634, and October 1, 1991 through October 31, 1991 for Category 237. Additional charges will be supplied as they become available.

Category	Amount to be Charged
237	0 dozen.
363	1,241,484 numbers.
634	53,910 dozen.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–2051 Filed 1–27–92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Clearance No. 9000–0014]

OMB Clearance Request for Statement and Acknowledgement, SF 1413

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of a request for an extension to an existing OMB clearance (9000–0014).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for an extension of a currently approved information collection requirement concerning Statement and Acknowledgement, SF 1413.

DATES: Comments may be submitted on or before March 30, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 1413, Statement and Acknowledgement, will be used by all Executive Agencies, including the Department of Defense, to obtain a statement from contractors that the proper clauses have been included in subcontracts. The form includes a signed contractor acknowledgement of the inclusion of those clauses in the subcontract.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 2,000; responses per respondent, 1.5; total annual responses, 3,000; preparation hours per response, .15; and total response burden hours, 450.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Clearance Request for Statement and Acknowledgement, SF 1413, OMB Control No. 9000–0014, in all correspondence.

Dated: January 21, 1992.

Laurie Frazier,

FAR Secretariat.

[FR Doc. 92–1992 Filed 1–27–92; 8:45 am]

BILLING CODE 6820–JC–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Tuesday, February 4, 1992, at the offices of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre Pascal, Paris, France, beginning at 10:30 a.m. The purpose of this meeting is to permit representatives of U.S. company members of the IAB to participate in a meeting of the Working Group on Emergency Data Systems of the IEA's Standing Group on Emergency Questions (SEQ), scheduled to be held at the OECD on that date. This Working Group is considering the scope of the data requirements relating to the IEA's Emergency Sharing System, the benefits and burdens of the current data requirements and possible reforms to these data requirements. The agenda for the meeting, which is under the control of the IEA Secretariat, is as follows:

1. Approval of record of fourth meeting.
2. Results of surveys of the reporting burden imposed by Questionnaires A, B, and C.
3. Enhancement of role of Questionnaire C.
4. Working Group progress report to the SEQ.
5. Any other business.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting is open only to representatives of members of the IAB and their counsel, representatives of the Department of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, January 8, 1992.

John J. Easton, Jr.,

General Counsel.

[FR Doc. 92–2043 Filed 1–27–92; 8:45 am]

BILLING CODE 6450–01–M

Transmittal of Mined Geologic Disposal System (MGDS) Annotated Outline Planning Package for Preparation of a License Application and Monitored Retrievable Storage (MRS) Annotated Outline Planning Package for Preparation of a License Application to U.S. Nuclear Regulatory Commission (NRC)

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) transmitted the MGDS Annotated Outline Planning Package for Preparation of a License Application and the MRS Annotated Outline Planning Package for Preparation of a License Application to the NRC for comment and guidance on December 19, 1991, and December 20, 1991, respectively. The annotated outline process will be the basis for developing license applications, if any, for the MRS and MGDS programs. The annotated outline process will be iterative, with revisions to be developed in consultation with the NRC.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the annotated outlines, contact Priscilla Bunton, RW–311, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585, (202) 586–6365.

John W. Bartlett,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 92–2042 Filed 1–27–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. QF86–556–000, et al.]

Sunnyside Cogeneration Associates, et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Sunnyside Cogeneration Associates

[Docket No. QF86–556–003]

January 13, 1992.

On January 8, 1992, Sunnyside Cogeneration Associates tendered for filing an amendment to its filing in this

docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining primarily to the technical data and the ownership structure of the small power production facility.

Comment date: January 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Indiana Michigan Power Co.

[Docket No. ER92-216-000]

January 14, 1992.

Take notice that American Electric Power Service Corporation, on behalf of Indiana Michigan Power Company (I&M) on January 9, 1992, tendered for filing additional data requested by the staff of the Commission in support of the loss percentage contained in Modification No. 1 dated November 10, 1991 to the Settlement Agreement dated August 31, 1988 (1988 Agreement) between I&M and Wabash Valley Power Association, Inc. (Wabash Valley). I&M's Rate Schedule FERC No. 76.

Modification No. 1 decreases the cost to Wabast Valley for Dump Energy, gives Wabash Valley additional flexibility in scheduling transmission service, and adjusts the loss percentage as provided for in the 1988 Agreement.

A copy of the filing was served upon the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, and Wabash Valley.

Comment date: January 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Co.

[Docket No. ER92-264-000]

January 15, 1992.

Take notice that on January 7, 1992, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on November 14, 1991, by the respective parties:

Economy Energy Sale Agreement Between The Metropolitan Water District of Southern California (District) and Southern California Edison Company

The Agreement provides for the sale of economy energy from District to Edison and from Edison to District under one of the two rates agreed upon by the parties prior to delivery: (1) a ceiling rate based on incremental production costs (designated as the "Incremental Energy Rate"); or (2) a Share-the-Savings Rate.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Co.

[Docket No. ER92-263-000]

January 15, 1992.

Take notice that on January 7, 1992, Southern California Edison Company (Edison) tendered for filing the following amendment, executed on November 7, 1991, by the respective parties:

Amendment No. 1 (Amendment) To The Firm Transmission Service and Emergency Service Agreement Between Southern California Edison Company and San Diego Gas & Electric Company

The Agreement extends the term of service to December 31, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corp.

[Docket No. ER92-259-000]

January 15, 1992.

Take notice that Central Vermont Public Service Corporation ("Central Vermont") on January 3, 1992 tendered for filing an amendment reducing the amount of power to be sold to Enosburg Falls pursuant to an October 31, 1991 letter agreement for the sale of Central Vermont system incremental power and energy to the municipal utilities of Orleans, Enosburg Falls and Barton. The October 31, 1991 agreement was filed with the Commission in Docket No. ER92-145-000.

Central Vermont requests that the Commission waive its notice requirement in order to allow the amendment to become effective on December 1, 1991.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. The United Illuminating Co.

[Docket No. ER92-266-000]

January 15, 1992.

Take notice that on January 8, 1992, The United Illuminating Company ("UI") tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to Chicopee Municipal Lighting Plant ("CMLP"). The rate schedule corresponds to a letter agreement, dated December 24, 1991, between UI and CMLP. The commencement date for service under the agreement is January 1, 1992. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy from UI's New Haven Harbor Station.

Copies of the filing were mailed to CMLP.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Power Inc.

[Docket No. ER89-670-000]

January 15, 1992.

Take notice that on January 8, 1992, Iowa Power Inc. (Iowa Power) tendered for filing the first amendment to the original filing for this docket dated September 22, 1989, in connection with the Electric Interchange Agreement with the City of Ames.

Iowa Power states that the first amendment to the Interchange Agreement filing provides a revised service schedule for Service Schedule H—Scheduled Outage and Energy. The amended filing also includes requested cost support for Service Schedule G—Equalization Power and Energy.

Iowa Power requests an effective date of February 14, 1989, and therefore requests a waiver of the Commission's notice requirements.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corp.

[Docket No. ER92-262-000]

January 15, 1992

Take notice that on January 6, 1992, Niagara Mohawk Power Corporation ("Niagara Mohawk"), tendered for filing an amendment sent by Niagara Mohawk to Consolidated Edison Company of New York, Inc. ("Con Ed") dated November 27, 1991, providing for certain transmission services to Con Ed. This amendment is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 90. This amendment is being transmitted as a supplement to the existing agreement.

Under Rate Schedule No. 90, Niagara delivers Fitzpatrick power and energy between the New York Power Authority and Con Ed. Paragraph 2.3 of Rate Schedule No. 90, as amended on August 28, 1980, states that Niagara Mohawk will recalculate the annual fixed-charge rate effective September 1 of each year for the ensuing 12-month period using previous year-end data and cost of capital data as determined by the New York State Public Service Commission

in Niagara Mohawk's most recent retail electric rate proceeding. Niagara requests an effective date of September 1, 1991.

Copies of the filing were served upon Consolidated Edison and the Public Service Commission of New York.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Indiana Michigan Power Co.

[Docket No. ER92-270-000]

January 15, 1992

Take notice that American Electric Power Service Corporation, on behalf of Indiana Michigan Power Company (I&M), by letter dated January 9, 1992, tendered for filing as an initial Rate Schedule an Interconnection Agreement, dated December 30, 1991, between I&M and Louisville Gas & Electric Company (LG&E).

A copy of the filing was served upon the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, the Kentucky Public Service Commission, and LG&E.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. The United Illuminating Co.

[Docket No. ER92-267-000]

January 15, 1992

Take notice that on January 8, 1992, The United Illuminating Company ("UI") tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to Bangor Hydro-Electric Company ("BHE"). The rate schedule corresponds to a letter agreement, dated December 18, 1991, between UI and BHE. The commencement date for service under the agreement is February 1, 1992. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy from UI's New Haven Harbor Station.

Copies of the filing were mailed to BHE.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. The United Illuminating Co.

[Docket No. ER92-268-000]

January 15, 1992

Take notice that on January 8, 1992, The United Illuminating Company ("UI") tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to Central Vermont Public Service Corporation ("CVPS"). The rate schedule corresponds to a letter agreement, dated December 30, 1991, between UI and CVPS. The commencement date for service under the agreement is January 1, 1992. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy from UI's New Haven Harbor Station and a portion of UI's entitlement in Mystic Unit #7.

Copies of the filing were mailed to CVPS.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp Electric Operations

[Docket No. ER92-265-000]

January 15, 1992

Take notice that PacifiCorp Electric Operations (PacifiCorp), on January 8, 1992, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a compliance filing under this Docket.

This compliance filing is pursuant to the Commission's condition stipulated in the acceptance for filing of the Agreement for Mitigation of Major Loop Flow (Agreement) among PacifiCorp, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) under this Docket to file the derivation of the annual capital carrying charge to PG&E and SCE pursuant to Section 2.9 of the Agreement.

Copies of this compliance filing were supplied to PG&E, SCE, the Public Utilities Commission of the State of California.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. The United Illuminating Co.

[Docket No. ER92-269-000]

January 15, 1992

Take notice that on January 8, 1992, The United Illuminating Company ("UI") tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to UNITIL Power Corporation ("UPC"). The rate schedule corresponds to a letter agreement, dated December 24, 1991, between UI and UPC. The commencement date for service under the agreement is January 1, 1992. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity entitlements and associated energy UI's Bridgeport Harbor Station Unit #3.

Copies of the filing were mailed to UPC.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Montaup Electric Co.

[Docket No. ER92-202-000]

January 15, 1992

Take notice that on January 9, 1992, Montaup Electric Company ("Montaup"), at the request of Staff, filed and amendment to its original filing. The amendment contains the fuel forecasts used to support the negotiated energy charge of $20/MWh. Montaup continues to request that the agreement be allowed to become effective as of November 1, 1991.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp Electric Operations

[Docket No. ER92-110-000]

January 17, 1992

Take notice that PacifiCorp Electric Operations on January 13, 1992, tendered for filing an amendment to its October 8, 1991 filing of the Draft Lost Creek Transmission Service Agreement as previously amended on November 18, 1991 under this Docket.

The amended filing requests a waiver of the sixty (60) day filing period established pursuant to the Commission's Order under Central Maine Power Company Docket No. ER91-457-000 and forwards an additional filing fee both as directed by the Commission's staff.

Copies of this amended filing were supplied to Bonneville Power Administration and the Public Utility Commission of Oregon.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. The Washington Water Power Co.

[Docket No. ER92-66-000]

January 17, 1992

Take notice that on January 13, 1992, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an Amendment 3 to its FERC Electric Tariff Volume No. 4. WWP states that the purpose of the Amendment is to make changes requested by Commission staff. WWP also renewed its request for a waiver of the sixty (60) day filing requirement in order for the Tariff to have an effective date of November 1, 1991.

A copy of the filing was mailed to Portland General Electric.

Comment date: January 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Central Maine Power Co.

[Docket No. ER91-620-000]

January 17, 1992

Take notice that on January 13, 1992, Central Maine Power Company (CMP) tendered for filing its amended FERC Electric Tariff, 12th Revised Volume No. 1, Wholesale Electric Rates for Other Utilities. This filing is made in response to the Commission's Deficiency Letter dated October 29, 1991. Under the proposed tariff, CMP's wholesale rates will increase by $352,546.01 for Period I.

The proposed tariff will affect CMP's wholesale customers, Kennebunk Light and Power District, Inhabitants of the Town of Madison (Madison Electric Works), and Fox Island Electric Cooperative, Inc. Copies of the filing have been served on the representative of CMP's above-named wholesale customers, and on the Maine Public Utilities Commission and the Public Advocate.

The filing also requests renewal of the previously-granted waiver of Section 35.14, to allow the Company to recover, through the fuel clause, the total cost of power from qualifying facilities as defined in the Public Utility Regulatory Policies Act of 1978 (PURPA).

CMP states that the filing also includes a Request for Reconsideration of the Staff's refusal to accept the Company's attrition allowance as approved by the Maine Public Utilities Commission.

Comment date: January 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. St. Joseph Light & Power Co.

[Docket No. ER92-18-000]

January 17, 1992

Take notice that on January 13, 1992, St. Joseph Light & Power Company (SJLP), on January 13, 1992, tendered for filing an amendment to filing of SJLP-Iowa Power Interchange Agreement Amendment. In this amendment to filing, SJLP has provided a revised Service Schedule F, Term Energy.

Comment date: January 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Power Co.

[Docket No. ER92-274-000]

January 17, 1992

Take notice that on January 13, 1992, Consumers Power Company tendered for filing Supplement No. 2 to the Transmission Service Agreement dated December 18, 1968 (Rate Schedule No. 61) between Consumers Power Company and the Southeastern Michigan Rural Electric Cooperative, Inc. The filed Supplement provides for the extension of the transmission agreement through December 31, 1999 and limits unilateral filing for rate changes over that period.

Comment date: January 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Detroit Edison Co.

[Docket No. ER92-180-000]

January 17, 1992

Take notice that on January 13, 1992, Detroit Edison Company tendered for filing an amendment to its November 6, 1991, filing in the above-referenced docket.

Comment date: January 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Consumers Power Co.

[Docket No. ER92-273-000]

January 17, 1992

Take notice that on January 13, 1992, Consumers Power Company tendered for filing Supplement No. 7 to the Transmission Service Agreement dated December 20, 1985 (Rate Schedule FERC No. 60) between Consumers Power Company and the Michigan Public Power Agency. The filed Supplement provides for the extension of the transmission agreement through December 31, 1992.

Comment date: January 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Consumer Advocate Division of the Public Service Commission of West Virginia, Maryland People's Counsel and Pennsylvania Office of Consumer Advocate v. Allegheny Generation Corp.

[Docket No. EL92-10-000]

January 17, 1992

Take notice that on December 31, 1991, the Consumer Advocate Division of the Public Service Commission of West Virginia (WV Consumer Advocate), the Maryland People's Counsel (People's Counsel) and the Pennsylvania Office of Consumer Advocate tendered for filing a joint complaint against Allegheny Generating Corporation (AGC). In the complaint the three agencies assert that the current return on equity in the formula rate for sales by AGC to Monongahela Power Company, Potomac Edison Company and West Penn Power Company is unjust and unreasonable and should be reduced.

Comment date: February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. PacifiCorp Electric Operations

[Docket No. ER92-271-000]

January 17, 1992

Take notice that PacifiCorp Electric Operations (PacifiCorp), on January 13, 1992, tendered for filing in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, the Power and Transmission Services Agreement (PTSA) among Public Service Company of Colorado (PSCo), Tri-State Generation and Transmission Association, Inc. (Tri-State) and PacifiCorp and the Long-Term Power Sale Agreement (Sales Agreement) between PacifiCorp and PSCo.

Under the terms of the PTSA, PSCo will have an option to purchase energy from PacifiCorp; PSCo, Tri-State and PacifiCorp may make unused generating capacity available to the other parties; Tri-State and PacifiCorp will enter into a seasonable exchange of capacity; and PSCo will provide firm transmission service to PacifiCorp. Under the terms of the Sales Agreement PacifiCorp will sell to PSCo system firm capacity and energy from the effective date of the Sales Agreement through October 31, 2022.

Copies of this filing were supplied to PSCo, Tri-State, the Colorado Public Utilities Commission, the Public Utility Commission of Oregon, the Utah Public Service Commission, Public Utilities Commission of the State of California, the Washington Utilities and Transportation Commission, the Montana Public Service Commission, the Public Service Commission of Wyoming and the Idaho Public Utilities Commission.

Comment date: January 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Kansas Gas and Electric Co.

[Docket No. ER92-211-000]

January 17, 1992

Take notice that on January 2, 1992, Kansas Gas and Electric Company (KG&E) tendered for filing a Revised Exhibit to the Generating Municipal Electric Service Agreement between the City of Girard, Kansas and KG&E.

Comment date: January 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standards Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1964 Filed 1-27-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2423-001 New Hampshire]

James River-New Hampshire Electric, Inc.; Application Tendered for Filing With the Commission and Establishing a Deadline for Submission of Final Amendments

January 21, 1992.

The license for the Riverside Project No. 2423 located on the Androscoggin River in Coos County, New Hampshire, expires on December 31, 1993. The statutory deadline for filing an application for new license was December 31, 1991. The project consists of a 21-foot-high dam, a 7-acre reservoir and a powerhouse with an installed capacity of 7,900 kW. An application for new license has been filed as follows:

Project No. & filing date	Applicant	Contact
P-2423-001; 1/9/91.	James River-New Hampshire Electric, 650 Main Street, Berlin, NH 03570.	George W. Hill, 650 Main Street, Berlin, NH 03570, (603) 752-4600.

If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with section 4.32 of the Commission's regulations, must be filed no later than 60 days from the date of this notice.

The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
March 31, 1992	Commission's deadline for applicant for filing a final amendment, if any, to its application.

Upon receipt of all additional information and the information filed in response to the public notice deadline of the notice that the application is ready for environmental analysis, the Commission will evaluate the application in accordance with the applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Julie Bernt at (202) 219-2814.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1961 Filed 1-27-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2326-002 New Hampshire]

James River-New Hampshire Electric, Inc.; Application Tendered for Filing With the Commission and Establishing a Deadline for Submission of Final Amendments

January 21, 1992.

The license for the Cross Power Project No. 2326 located on the Androscoggin River in Coos County, New Hampshire, expires on December 31, 1993. The statutory deadline for filing an application for new license was December 31, 1991. The project consists of a 467-long dam, a 22-acre reservoir and a powerhouse with an installed capacity of 3,200 kW. An application for new license has been filed as follows:

Project No. and filing date	Applicant	Contact
P-2326-002; 9/27/91.	James River-New Hampshire Electric, 650 Main Street, Berlin, NH 03570.	George W. Hill, 650 Main Street, Berlin, NH 03570 (603) 752-4600.

If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, a request for the study, together with justification for such request in accordance with Section 4.32 of the Commission's regulations, must be filed no later than 60 days from the date of this notice.

The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
February 4, 1992	Commission notifies applicant that its application has been accepted. The notification of acceptance will specify the need for additional information and the date any information is due.
February 15, 1992	Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protests.

The Commission's deadline for the filing of a final amendment is March 31, 1992.

Upon receipt of all additional information and the information filed in response to the public notice deadline of the notice that the application is ready for environmental analysis, the Commission will evaluate the application in accordance with the applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Julie Bernt at (202) 219-2814.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1962 Filed 1-27-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES92-26-000]

MDU Resources Group, Inc., Application

January 21, 1992.

Take notice that on January 10, 1992, MDU Resources Group, Inc. (MDU) filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act requesting authority to guarantee the refinancing of certain pollution control refunding revenue bonds in the amount of $20,850,000. MDU also requests exemption from the Commission's competitive bidding regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or

protests should be filed on or before February 5, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1983 Filed 1-27-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Monday, February 17, 1992, 9 a.m.-5 p.m. Tuesday, February 18, 1992, 9 a.m.-3 p.m.

Place: National Science Foundation, Rm 540, 1800 G Street, NW., Washington, DC 20550.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy, Physics Advisory Panel, U.S. Department of Energy, ER-221, GTN, Washington, DC 20585, Telephone: (301) 903-4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Monday, February 17, 1992, and Tuesday, February 18, 1992

—Discussion of National Science Foundation (NSF) Elementary Particle Physics Programs
—Discussion of Department of Energy (DOE) High Energy Physics Programs
—Discussion of Department of Energy Superconducting Super Collider (SSC) Project Activities
—Presentation and discussion of NSF and DOE Budget Requests for Fiscal Year 1993
—Status Report on Activities of the 1992 HEPAP Subpanel on the U.S. Program of High Energy Physics Research
—Reports on and Discussions of Topics of General Interest in High Energy Physics
—Public Comment

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 23, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92-2044 Filed 1-27-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of December 13 Through December 20, 1991

During the Week of December 13 through December 20, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 13 through December 20, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 12, 1991	Gohmann Asphalt & Construction, Inc., Clarksville, IN.	RR272-84	Request for modification/rescission in the crude oil refund proceeding. If granted: The December 4, 1991 Dismissal Letter (Case No. RF272-73790) issued to Gohmann Asphalt & Construction, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Dec. 16, 1991	Roy P. Lessy, Jr. & Bradley W. Jones, Washington, DC.	LFA-0172	Appeal of an information request denial. If granted: Roy P. Lessy, Jr. and Bradley W. Jones would receive access to certain records involving leaking cesium capsules.
Dec. 16, 1991	Gulf/Dinkins Service, Inc., Atlantic Beach, FL	RR300-121	Request for modification/rescission in the Gulf refund proceeding. If granted: The September 12, 1991 Decision and Order (Case No. RF300-12258) issued to Dinkins Service, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Dec. 19, 1991	Arundel Corporation, Sparks, MD	RR272-85	Request for modification/rescission in the crude oil refund proceeding. If granted: The October 16, 1991 Decision and Order (Case No. RF272-72080) issued to Arundel Corporation would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Dec. 20, 1991	Gulf/Tom Owens Gulf, Woodbridge, VA	RR300-122	Request for modification/rescission in the Gulf refund proceeding. If granted: The October 25, 1991 Dismissal Letter (Case No. RF300-11040) issued to Tom Owens Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of December 13 to December 20, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/16/91	Midwest Products Supply	RF340-36
12/16/91	Progas, Inc.	RF340-37
12/17/91	City of Burlington	RC272-152
12/17/91	Delores H. Hamilton	RF335-54
12/17/91	Mrs. Roy G. Andes	RF335-55
12/18/91	James R. & Linda L. West	RF307-10206
12/19/91	Presidio Exploration, Inc.	RF340-38
12/19/91	Union Carbide Clement Company	RF340-39
12/20/91	Jack W. Trout	RF340-40
12/20/91	Hickory Company Commission	RF335-56
12/13/91 thru 12/20/91	Texaco refund, applications received	RF321-18121 thru RF321-18133
12/13/91 thru 12/20/91	Crude Oil, applications received	RF272-80877 thru RF272-80909
12/13/91 thru 12/20/91	Gulf Oil refund, applications received	RF300-19802 thru RF300-19829
12/13/91 thru 12/20/91	Apex/Clark refund, applications received	RF342-74 thru RF342-86
12/13/91 thru 12/20/91	Atlantic Richfield, applications received	RF304-12855 thru RF304-12867

[FR Doc. 92-2045 Filed 1-27-92; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $1,141,628.14, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with the Energy Corporation of America, Inc. (Case No. LEF-0036) and Fuel Oil Supply & Terminaling, Inc. and the Estate of Eddie E. "Bud" Hadsell (Case No. LEF-0037). The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 F.R. 27899 (August 4, 1986).

DATES AND ADDRESSES: Applications for Refund from the crude oil funds should be clearly labeled "Application for Crude Oil Refund" and should be mailed to Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Applications for Refund must be filed in duplicate no later than June 30, 1992. Any party who has previously filed an Application for Refund in crude oil proceedings should not file another Application for Refund from the present crude oil funds. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the procedures are finalized.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $1,141,628.14 that has been remitted by Energy Corporation of America, Inc. and Fuel Oil Supply & Terminaling, Inc. and the Estate of Eddie E. "Bud" Hadsell to the DOE. The DOE is currently holding the funds in an interest bearing account pending distribution.

The DOE will distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, federal government, and injured purchasers of refined products. Under the plan, refunds to the states will be in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for Refund should must be postmarked no later than June 30, 1992. As we stated in the Decision, any party who has previously submitted a refund application in the crude oil refund proceedings should not file another Application for Refund in the crude oil proceedings. That previous application will be deemed filed in all crude oil proceedings as the procedures are finalized.

Dated: January 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

January 22, 1992.

Implementation of Special Refund Procedures

Names of Firms: Energy Corporation of America, Inc., Fuel Oil Supply & Terminaling, Inc. and The Estate of Eddie E. "Bud" Hadsell.

Date of Filings: October 10, 1991.

Case Numbers: LEF-0036, LEF-0037.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

On October 10, 1991, the ERA filed two Petitions for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Energy Corporation of America, Inc. (ECA) (Case No. LEF-0036) and Fuel Oil Supply & Terminaling, Inc. and the Estate of Eddie E. "Bud" Hadsell (FOSTI) (Case No. LEF-0036). This Office issued a Remedial Order against ECA for violations of the crude oil price regulations during the period from September 1973 through July 1978. *Energy Corporation of America,* 9 DOE ¶ 83,030 (1982). ECA subsequently appealed the Remedial Order to the United States District Court for the Eastern District of Louisiana (the Court). On April 17, 1984, the Court approved an Agreed Final Judgement entered into by ECA and the DOE under which ECA agreed to remit $487,328, plus interest accruing on any unpaid amount beginning January 1, 1984, in various installments in settlement of the DOE's claims. The DOE collected a total of $650,868.54 from ECA. The Court subsequently approved a Modification of

Agreed Final Judgement on August 18, 1987 that extended the period of payment. On December 5, 1985, the DOE issued a Remedial Order which found that FOSTI committeed violations of the price regulations covering the resale of crude oil during the period July 1978 through September 1978. *Fuel Oil Supply and Terminaling, Inc.*, 13 DOE ¶ 83,054 (1985). FOSTI appealed the Remedial Order to the Federal Energy Regulatory Commission. In January 1990, the DOE and FOSTI entered into a Settlement Agreement which satisfied the DOE's claim against FOSTI. The DOE collected a total of $491,061.60 from FOSTI in settlement of this matter.

In sum, ECA and FOSTI remitted a total of $1,141,628.14 to the DOE. This Decision and Order establishes the OHA's procedures for distributing those funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from ECA and FOSTI and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986) (the Stripper Well Agreement), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved to satisfy valid claims by injured purchasers of petroluem products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA issued an Order that announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. On April 6, 1987, the OHA issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil monies under the subpart V regulations. 52 FR 11737 (April 10, 1987) (the April Notice).

The OHA has applied these procedures in numerous cases since the April Notice, i.e., *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988) (*NYP*); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell*); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals (TECA). In the case *In re: The Department of Energy Stripper Well Exemption Litigation*, various states filed a Motion with the Kansas District Court, claiming that the OHA violated the Stripper Well Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan. 1987), *aff'd*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988). On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. The court concluded that the Stripper Well Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges, *Id.* at 1323–24.

II. The Proposed Decision and Order

On November 7, 1991, the OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the alleged crude oil violation amount obtained from ECA and FOSTI. 56 FR 57887 (November 14, 1991). The OHA tentatively concluded that the funds should be distributed in accordance with the MSRP and the April Notice. Pursuant to the MSRP, the OHA proposed to reserve initially twenty percent of the crude oil violation funds for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining eighty percent of the funds would be distributed to the states and federal government for indirect restitution. After all valid claims have been paid, any remaining funds in the claim reserve would also be divided between the states and federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PDO, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PDO stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry are presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April Notice. The PDO provided a period of 30 days from the date of publication in the **Federal Register** in which comments could be filed regarding the tentative distribution process. More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the ECA and FOSTI settlement funds. Consequently, the procedures will be adopted as proposed.

III. The Refund Procedures

A. Refund Claims

The OHA has concluded that the $1,141,628.14 remitted by ECA and FOSTI, plus the interest that has accrued on that amount, should be distributed in accordance with the crude oil refund procedures discussed above. We have decided to reserve the full twenty percent of the alleged crude oil violation amount, or $228,325.62, plus interest, for direct refunds to claimants, in order to insure that sufficient funds will be available for refunds to injured parties.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *E.g., Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes of covered products and prove that they were injured as a result of the alleged violations. Generally, a covered product is any product that was covered by the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751–760, and was primarily produced from crude oil at a crude oil refinery, *E.g., Anchor Continental, Inc.*, 22 DOE ¶ _____, Case No. RF272–62992 (January 3, 1992). Following subpart V precedent, reasonable estimates of purchase volumes of covered products may be submitted. *E.g., Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volume of covered petroleum products purchased during the period of price controls. *E.g., A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). However, the end-user presumption of injury can be rebutted by evidence which establishes that the specific end-user in question was not injured by the crude oil overcharges. *E.g., Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. *E.g., NYP*, 18 DOE at 88,701–03. The United States District Court for the District of Kansas recently upheld the OHA's position that generalized evidence does not suffice to rebut the end-user presumption. If an interested party wishes to rebut the end-user presumption it must present evidence relevant to the specific factual situation of the applicant. *In re: The*

Department of Energy Stripper Well Exemption Litigation, 746 F. Supp. 1446 (D. Kan. 1990).

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. *Mid-America Dairyman, Inc.* v. *Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App. 1989); *accord*, Boise Cascade Corp., 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($1,141,628.14) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.00000056 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one Application for Refund from the crude oil overcharge funds. *E.g.*, Allerkamp, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. That previously filed application will be deemed to be filed in all crude oil proceedings as the procedures are finalized. The DOE has established June 30, 1992 as the current deadline for filing an Application for Refund from the crude oil funds. *Quintana Energy Corp.*, 21 DOE ¶ 85,032 (1991). It is the policy of the DOE to pay all crude oil refund claims at the rate of $.0006 per gallon. However, while we anticipate that applicants that filed their claims within the original June 30, 1988 deadline will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds. *E.g.*, *Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991). Notice of additional amounts available in the future will be published in the **Federal Register**.

To apply for a refund, a claimant should submit an Application for Refund. Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to: Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Each crude oil Application for Refund should contain the type of information specified by the OHA in past decisions. *See Texaco Inc.*, 19 DOE ¶ 85,200 at 88,347, *corrected*, 19 DOE ¶ 85,236 (1989); *Hood Goldsberry*, 18 DOE ¶ 85,902 at 89,477–78 (1989); *Wickett Refining Co.*, 18 DOE ¶ 85,659 at 89,061–62 (1989).

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision, or $913,302.52, plus interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate the $913,302.52, plus interest, available for disbursement to the states and federal government and transfer one-half of that amount, or $456,651.26, plus interest, into an interest-bearing subaccount for the states, and one-half, or $456,651.26, plus interest, to an interest bearing subaccount for the federal government. At an appropriate time in the future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share of ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Energy Corporation of America, Inc. and Fuel Oil Supply & Terminaling, Inc. and the Estate of Eddie E. "Bud" Hadsell may now be filed.

(2) All Applications submitted pursuant to paragraph (1) above must be filed in duplicate and postmarked no later than June 30, 1992.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $1,141,628.14 (plus interest) from the Energy Corporation of America, Inc. and Fuel Oil Supply & Terminaling, Inc. and the Estate of Eddie E. "Bud" Hadsell subaccounts, Account Numbers 640C00124W and 650X00284W, pursuant to Paragraphs (4), (5), and (6) of this decision.

(4) The Director of Special Accounts and Payroll shall transfer $456,651.26 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The director of Special Accounts and Payroll shall transfer $456,651.23 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The director of Special Accounts and Payroll shall transfer $228,325.62 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE 010Z.

Dated: January 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–2046 Filed 1–27–92; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $443,073.30, plus accrued interest, in alleged oil overcharge funds obtained from Strasburger Enterprises, Inc., Case No. LEF–0014. The OHA has determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATES AND ADDRESSES: Applications for Refund submitted pursuant to this Decision must be filed in duplicate, postmarked no later than January 29, 1993, and should be addressed to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Jodi Lox, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8018 (Tedrow), (202) 586–6602 (Lox).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute monies that have been remitted by Strasburger Enterprises, Inc. to the DOE to settle alleged pricing and allocation violations with respect to the firm's sales of motor gasoline. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

Applications for Refund may now be filed by injured purchasers of Strasburger motor gasoline. Applications from the Strasburger escrow fund must be filed in duplicate and received no later than January 29, 1993. All applications should be sent to the address set forth at the beginning of this notice. All applications received will be available for public inspection between the hours of 1 p.m. and 5 p.m.,

Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Ave, SW., Washington, DC 20585.

Dated: January 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

January 22, 1992.

Name of Firm: Strasburger Enterprises, Inc.
Date of Filing: February 23, 1990.
Case Number: LEF-0014.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the Mandatory Petroleum Price and Allocation Regulations. *See* 10 CFR part 205, subpart V. On February 23, 1990, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Strasburger Enterprises, Inc. (Strasburger).

I. Background

Strasburger was a "reseller-retailer" of motor gasoline, as that term was defined in 10 CFR 212.31, located in Temple, Texas. A DOE audit of Strasburger's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR part 212, subpart F. Specifically, the audit revealed that between August 19, 1973 and January 27, 1981, Strasburger may have violated the DOE's pricing regulations with respect to its sales of motor gasoline.

In order to resolve its potential civil liabilities arising from the ERA's audit, Strasburger entered into a Consent Order with the DOE on December 16, 1988. The Consent Order refers to ERA's allegations of overcharges, but does not find that any violations occurred. In addition, the Consent Order states that Strasburger does not admit any such violations. Under the terms of the Consent Order, Strasburger was required to deposit $395,000 into an escrow account for ultimate distribution by the DOE. On February 2, 1990, Strasburger made a full payment of $443,073.30 into this account. On September 12, 1991, the OHA issued a Proposed Decision and Order (PD & O) setting forth tentative procedures under which firms and individuals who purchased Strasburger refined petroleum products during the consent order period could apply for refunds from the Strasburger consent order fund. In order to give notice to all affected parties, a copy of the PD & O was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. 56 FR 181 (September 18, 1991). We received no comments concerning the proposed refund procedures for Strasburger. Therefore, we will adopt the procedures in the PD & O as final procedures for the distribution of the Strasburger escrow account.

II. Final Refund Procedures

A. Calculation of Refund Amounts

The first step in the refund process is the calculation of an applicant's potential refund. In order to determine the potential refunds for these purchasers, we propose to adopt a presumption that the alleged overcharges were dispersed equally in all of Strasburger's sales of refined petroleum products during the consent order period. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis. In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

The volumetric refund presumption is rebuttable. The impact on an individual claimant may have been greater than its potential refund calculated using the volumetric methodology. Accordingly, a claimant may submit evidence detailing the specific alleged overcharge that it incurred in order to be eligible for a larger refund. *See Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of motor gasoline that it purchased from Strasburger during the period August 19, 1973 through January 27, 1981, multiplied by a volumetric factor of $0.006801 per gallon.[1] In addition, each successful claimant will receive a pro-rata portion of the interest that has accrued on the Strasburger funds since the date of remittance.

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985); *see also* 10 CFR 205.286 (b). If an applicant's potential refund is calculated using the volumetric methodology, it must have purchased at least 2,206 gallons of Strasburger motor gasoline in order for its claim to be considered.

B. Determination of Injury

Once a claimant's potential refund has been calculated, we must determine whether it was injured by its purchases from Strasburger, *i.e.*, whether it was forced to absorb the alleged overcharges. Based on our experience in numerous subpart V proceedings, we propose to adopt certain presumptions concerning injury in this case. An applicant that is not covered by one of these presumptions must demonstrate injury in accordance with the non-presumption procedures outlined in the latter part of this Decision.

1. Presumptions Concerning Injury

The presumptions we plan to adopt in this case are designed to allow claimants to participate in the refund process without incurring inordinate expenses, and to enable OHA to consider the refund applications in the most efficient way possible. We will presume that end users of Strasburger motor gasoline, certain types of regulated firms, and cooperatives were injured by their purchases from Strasburger. In addition, we will presume that resellers and retailers of Strasburger gasoline submitting small claims were injured by their purchases. On the other hand, we will presume that resellers and retailers that made spot purchases of Strasburger motor gasoline and those who sold it on consignment were not injured by their purchases. Each of these presumptions is listed below, along with the rationale underlying its use.

a. *End users.* First, in accordance with prior subpart V proceedings, we will presume that end users, *i.e.*, ultimate consumers of Strasburger motor gasoline whose businesses are unrelated to the petroleum industry, were injured by the firm's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984) and cases cited therein. Therefore, end users need only document their purchase volumes of Strasburger motor gasoline to demonstrate that they were injured by the alleged overcharges.

b. *Regulated firms and cooperatives.* Second, public utilities, agricultural cooperatives, and other firms whose prices were regulated by government agencies or cooperative agreements do not have to submit detailed proof of injury. Such firms routinely would have passed through price increases to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982); *Office of Special Council*, 9 DOE ¶ 82,545 at 85,244 (1982). Such firms applying for refunds should certify that they will pass through any refund received to their customers and should explain how they will alert the appropriate regulatory body or membership group to monies received. Purchases by cooperatives that were subsequently resold to nonmembers will not be covered by this presumption.

c. *Reseller and retailer small claims.* Third, we will presume that a reseller or a retailer seeking a refund of $5,000 or less, excluding accrued interest, was injured by Strasburger. Without this presumption, such an applicant would have to gather records dating as far back as 1973 in order to demonstrate that it absorbed Strasburger's alleged overcharges.

[1] We computed the volumetric factor by dividing the $443,073.30 received from Strasburger by the total volume of covered products sold by the firm during the consent order period (65,147,743 gallons).

The cost to the applicant of gathering this information, and to OHA of analyzing it, could exceed the actual refund amount. Therefore, a small claimant must only document the volumes of products that it purchased from Strasburger in order to demonstrate injury. *See Texaco Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984).

d. *Resellers and retailers filing mid-level claims.* Fourth, in lieu of making a detailed showing of injury, a reseller claimant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000.[2] The use of this presumption reflects our conviction that these larger claimants were likely to have experienced some injury as a result of the alleged overcharges. *See Marathon*, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed economic analyses in order to determine product-specific levels of injury. *See e.g. Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). However, in *Gulf Oil Corp.*, 16 DOE ¶ 83,381 at 88,737 (1987), we determined that based upon the available data, it was accurate and efficient to adopt a single presumptive level of injury of 40 percent for all medium-range claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach to be sound in the absence of more detailed information for all medium-range claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Strasburger motor gasoline during the consent order period in order to be eligible to receive a refund of 40 percent of its total volumetric share, or $5,000, whichever is greater.

e. *Spot purchasers.* Fifth, resellers and retailers that were spot purchasers of Strasburger motor gasoline, *i.e.*, firms that made only sporadic, discretionary purchases, are presumed not to have been injured, and consequently, generally will be ineligible for refunds. The basis for this presumption is that a spot purchaser tended to have considerable discretion as to where and when to make a purchase, and therefore, would not have made a purchase unless it was able to recover the full amount of its purchase price from its customers, including any alleged overcharges included in its costs. *See Vickers* at 85,396–7. A spot purchaser can rebut this presumption by demonstrating that its base period supply obligation limited its discretion in making the purchases and that it resold the product at a loss that was not subsequently recouped. *See e.g., Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986).

f. *Consignees.* Finally, we will presume that consignees of Strasburger motor gasoline were not injured by the firm's alleged pricing violations. *See, e.g., Jay Oil Co.*, 16 DOE ¶ 85,147 (1987). A consignee agent is an entity that sold products pursuant to an agreement whereby its supplier established the prices to be charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products that it sold. A consignee may rebut the presumption of non-injury by demonstrating that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Strasburger's pricing practices. *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 at 88,962 (1986).

2. Allocation Claims

We may also receive claims based upon Strasburger's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations. *See* 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in cases such as *Standard Oil Company (Indiana)*, 10 DOE ¶ 85,048, and *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

3. Non-Presumption Demonstration of Injury

A reseller or retailer that claims a refund in excess of $5,000 will be required to demonstrate its injury. There are two aspects to such a demonstration. First, a firm is required to provide a monthly schedule of its banks of unrecouped increased products costs for each grade of motor gasoline that it purchased from Strasburger. Cost banks should cover the period August 19, 1973 through January 27, 1981.[3] If a firm no longer has records of contemporaneously calculated cost banks for a particular grade of motor gasoline, it may approximate those banks by submitting the following information regarding its purchases of that product from all of its suppliers.

(1) The weighted average gross profit margin that the firm received from the product on May 15, 1973.

(2) A monthly schedule of the weighted average gross profit margins that it received for the product during the period, August 19, 1973 through January 27, 1981; and

(3) A monthly schedule of the firm's purchase or sales volumes of the products during the period, August 19, 1973 through January 27, 1981.[4]

The existence of banks of unrecovered increased product costs that exceed an applicant's potential refund is only the first part of an injury demonstration. A firm must also show that market conditions forced it to absorb the alleged overcharges. Generally, we will infer this to be true if the prices the applicant paid Strasburger were higher than average market prices for the same level of distribution. Accordingly, a claimant attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Strasburger for each grade of motor gasoline during the period August 19, 1973 through January 27, 1981.

If a reseller or retailer that is eligible for a refund in excess of $5,000 does not submit cost bank and purchase price information described above, it can still apply for a refund of $5,000 plus accrued interest, using the small claims presumption. If, however, a firm provides the above mentioned data and we subsequently conclude that the firm should receive a refund of less than the $5,000 small claims threshold, the firm cannot opt for a fully $5,000 refund.

C. Distribution of Remaining Funds

In the event that money remains after all meritorious refund applications have been processed, the funds in the Strasburger escrow account will be disbursed in accordance with the provisions of the Petroleum Overcharge and Distribution Act of 1986 (PODRA). 15 U.S.C.A. 4501–4507 (West Supp. 1989).

III. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased Strasburger motor gasoline between August 19, 1973 and January 27, 1981. No "class claims" on behalf of groups of claimants will be permitted. There is no specific application form that must be used. All Applications for Refund should include the following information:

(1) A conspicuous reference to Case Number LEF–0014 and the name and address of the applicant during the period for which the claims is filed, as well as the name to whom the refund check should be made out and the address to which the check should be sent;

(2) The name, title, address and telephone number of a person who may be contacted by OHA for additional information concerning the application;

(3) The manner in which the applicant used the Strasburger product, *i.e.*, whether it was a reseller, retailer, consignee, end-user, etc.;

(4) A monthly schedule of the number of gallons that the applicant purchased from Strasburger during the August 19, 1973 through January 27, 1981 refund period. If the claimant elects to rely on the DOE's records of this purchases, it need not submit a monthly schedule of purchases. If a claimant was an indirect purchaser of Strasburger products, it must also submit the name of its immediate supplier;

(5) All relevant material necessary to support its claim in accordance with the

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[2] That is, claimants who purchased between 1,837,965 gallons and 18,379,650 gallons of Strasburger motor gasoline during the consent order period (mid-level claimants) may elect to utilize this presumption. Claimants who purchased more than 18,379,650 may elect to limit their claim to $50,000.

[3] We generally require applicants to submit cost banks that continue until a product's decontrol date. Retailers and resellers of motor gasoline, however, were only required to maintain banks through July 15, 1979 and April 30, 1980, respectively, rather than the January 27, 1981 date of product decontrol.

[4] For motor gasoline, retailers and resellers have to submit the information detailed in Parts (2) and (3) only through July 15, 1979 and April 30, 1980, respectively. *See supra* note 3.

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injury presumptions and requirements outlined above;

(6) If the applicant was or is in any way affiliated with Strasburger, an explanation of the nature of that affiliation;

(7) The form of the business, whether it was a corporation, a partnership or a sole proprietorship;

(8) The dates of ownership including the month and year. The applicant must also submit a statement as to whether there has been a change in ownership of the applicant's firm during or since the refund period. The applicant must inform the OHA of any change in status while its Application for Refund is pending. *See* CFR 205.9 (d);

(9) A statement as to whether the applicant is or has been involved in any DOE enforcement proceedings of private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d);

(10) A statement as to whether the applicant or a related firm has filed any other Application for Refund in the Strasburger proceeding;

(11) A statement as to whether the claimant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in the Strasburger proceeding; and

(12) The following statement signed by the applicant of a responsible official of the business or organization claiming the refund: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 10001."

Applications for Refund should be sent to: Strasburger Refund Proceeding, Case No. LEF-0014, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

All applications must be filed in duplicate and must be postmarked by January 29, 1993. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant that believes that its application contains confidential information must submit two additional copes of its application from which the confidential information has been deleted, together with a statement specifying why the information is confidential.

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Strasburger Enterprises, Inc. pursuant to a Consent Order finalized on December 16, 1988, may now be filed.

(2) All applications must be postmarked by January 29, 1993.

Dated: January 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-2047 Filed 1-27-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

(FRL-4097-1)

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces OMB responses to Agency PRA clearance requests.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests OMB Approvals

EPA ICR # 1135.04; New Source Performance Standards for Magnetic Tape Coating Facilities (Subpart SSS); was approved 11/15/91; OMB # 2060-0171; expires 11/30/94.

EPA ICR # 1487.03; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions; was approved 12/09/91; OMB # 2010-0020; expires 12/31/94.

EPA ICR # 1353.02; Hazardous Waste Management System: Land Disposal Restrictions "No-Migration" Variances; was approved 12/09/91; OMB # 2050-0062; expires 12/31/92.

EPA ICR # 1588.01; Final Regulatory Revisions to Expand State Identification of Point Sources Discharging Toxics into Impaired Waters (CWA Section 304(1)); was approved 12/16/91; OMB # 2040-0152; expires 06/30/92.

EPA ICR # 1391.01; Information Request for State Revolving Fund Program; was approved 12/30/91; OMB # 2040-0118; expires 12/31/94.

EPA ICR # 1361.03; Technical Amendments to the Final Rule to Regulate the Burning of Hazardous Waste in Boilers and Industrial Furnaces; was approved 12/31/91; OMB # 2050-0073; expires 01/31/94.

EPA ICR # 1442.03; Land Disposal Restrictions; was approved 01/06/92; OMB # 2050-0085; expires 01/31/95.

OMB Disapprovals

EPA ICR # 1286.02; Used Oil Management Standards; was not approved 12/03/91.

EPA ICR # 0229.06; NPRM—Notice of Draft General Permit for Storm Water Discharges Associated with Industrial Activity; was not approved 12/27/91.

EPA ICR # 1548.01; Reporting and Recordkeeping for Facilities Subject to Oil Pollution Prevention Regulations; was not approved 01/06/92.

OMB Extension of Expiration Date

EPA ICR # 0262.03; RCRA Hazardous Waste Permit Application Part A; OMB # 2050-0034; expiration date extended to 03/31/92.

Dated: January 22, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-2036 Filed 1-27-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4097-2]

Ecological Processes and Effects Committee; Great Lakes Water Quality Subcommittee, Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Great Lakes Water Quality Subcommittee of the Ecological Processes and Effects Committee (EPEC) of the Science Advisory Board (SAB) will be held on February 18-20, 1992. This meeting will be held at the Ramada Hotel-O'Hare Location, 6600 North Mannheim Road, Rosemont, Illinois.

The meeting will start at 8:30 a.m. on February 18 and will adjourn no later than 5 p.m. on February 20, and is open to the public. The main purpose of this meeting is to review guidance documents that the EPA and the states of the Great Lakes Basin have developed to meet the requirements of the Great Lakes Critical Programs Act. The documents were developed under the Great Lakes Water Quality Initiative and are intended to establish a consistent approach to water quality criteria for aquatic life, wildlife and human health for the states within the Great Lakes Basin. The SAB has been given a charge by EPA to review these documents and comment on the scientific validity of the proposed methods for water quality criteria, the calculations of wildlife criteria, the assumptions and databases used for risk assessments, and the development and use of bioaccumulation factors for the wildlife and human health criteria. The human health criteria may receive further review at the next meeting of the Drinking Water Committee of the Board which is being planned for April. Copies of background documents and the charge to the SAB for this review are available from Ms. Joan Karnauskas, U.S. EPA, Region V, 77 West Jackson

Boulevard, Chicago, IL 60604–3590 (Phone: (312) 886–6090).

For additional information concerning this meeting or to obtain an agenda, please contact Dr. Edward Bender, Designated Federal Official, Ecological Processes and Effects Committee (EPEC), Science Advisory Board (A–101–F), U.S.Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Phone: (202) 260–6552; Fax: (202) 260–7118). Anyone wishing to make a presentation at the meeting should forward a written statement to Dr. Bender no later than February 7, 1992. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of seven minutes. Seating at the meeting will be on a first come basis.

Dated: January 17, 1992.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 92–2037 Filed 1–27–92; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–44580; FRL–4044–6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on tributyl phosphate (TBP) (CAS No. 126–73–8), submitted pursuant to a final test rule. Test data were also received on 4-nonylphenol, branched (CAS No. 84852–15–3) pursuant to a testing consent order. All data were submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for TBP were submitted by the Tributyl Phosphate Task Force on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.4360. They were received by EPA on December 23, 1991. The submission describes the early life-stage toxicity of TBP to rainbow trout, *Oncorhynchus mykiss*, in a flow-through system. Environmental effects testing is required by this test rule. This chemical is used in aircraft hydraulic fluids; for extraction and separation processes in the Plutonium Uranium Reduction Extraction process; as a deformer in the paper industry; in textile sizers, inks, and lacquers; and as a plasticizer.

Test data for 4-nonylphenol, branched were submitted by the Chemical Manufacturers Association's Alkylphenol and Ethoxylates Panel pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on December 19, 1991. The submission describes a bioconcentration test with nonylphenol and the fathead minnow, *Pimephales promelas*. Environmental effects testing is required by this testing consent order. This chemical is used: (1) As an intermediate in the production of nonionic ethoxylated surfactants, (2) as a reactive intermediate in lube additives formaldehyde resins, polymeric stabilizers and epoxy resins, and (3) in the manufacture of phosphate antioxidant, oil additives, synthetic lubricants and corrosion inhibitors.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44580). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: January 16, 1992.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–2039 Filed 1–27–92; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140169; FRL–4009–7]

Access to Confidential Business Information by ICF International, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ICF International, Incorporated (ICF), of Fairfax, Virginia, and Washington, DC, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than February 11, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D1–0126, contractor ICF, of 9300 Lee Hwy., Fairfax, VA, and 1850 K St., NW., suite 1000, Washington, DC, will assist the Office of Pollution Prevention and Toxics, (OPPT) in the assessment of human health and ecological effects of new and existing chemicals under sections 4, 5, 6, and 8 of TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D1–0126, ICF will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. ICF personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide ICF access to these CBI

materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters, ICF's Fairfax, VA, and Washington, DC sites only.

ICF will be authorized access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA will approve ICF's security certification and perform the required inspection of its facilities and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, ICF will return all transferred materials to EPA.

Clearanfce for access to TSCA CBI under this contract may continue until September 30, 1994.

ICF personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: January 17, 1992.

Linda A. Travers,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-2038 Filed 1-27-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new noncommercial FM station:

Applicant, City and State	File No.	MM docket No.
A. North Carolina Central University; Durham, NC.	BPED-890313MY	91-291
B. Central Florida Educational Foundation, Inc.; Durham, NC.	BPED-900717MC	

Issue heading and applicants

1. Environmental impact, A, B.
2. 307(b)—Noncommercial Educational, A, B.
3. Ultimate, A, B.

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036 (telephone 202-452-1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media bureau.

[FR Doc. 92-2065 Filed 1-27-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act: Property Availability; 100 Acres, Lee County, Florida

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Homewood Subdivision, Blocks 1 through 25, according to the plat thereof as recorded in Plat Book 7, Page 52 of the Public Records of Lee County, Florida is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written Notices of Serious Interest to purchase or effect other transfer of the property may be mailed or faxed to the Federal Deposit Insurance Corporation until April 27, 1992.

ADDRESSES: All written Notices of Serious Interest must be submitted to Denise Langlois Brown, Legal Department, Federal Deposit Insurance Corporation, P.O. Box 725003, Orlando, Florida 32872-5003, (407) 249-5387, Fax (407) 282-0180.

SUPPLEMENTARY INFORMATION: The property is more fully described as Homewood Subdivision, Blocks 1 through 25, according to the plat thereof as recorded in Plat Book 7, Page 52 of the Public Records of Lee County, Florida. The property consists of 100 acres of unimproved land in Lee County, Florida. The property to the east of subject property is owned by the City of Fort Myers and is being used as a municipal golf course. The property is currently zoned low density residential.

Written Notices of Serious Interest to purchases or effect other transfer of the property must be submitted by April 27, 1992 to Denise Langlois Brown at the above address and in substantially the following form:

NOTICE OF SERIOUS INTEREST: RE: 100 Acres, Lee County, Florida. This Notice of Serious Interest is tendered in accordance with section 10 of the Coastal Barrier Improvement Act and publication in the Federal Register of a Notice of Availability on January 28, 1992 with respect to the 100 Acre property in Lee County, Florida.

The *(Name and Address of the Agency or Other Qualified Organization)* is eligible to submit this notice under criteria set forth Public Law 101-591, section 10(b)(2).

The *(Name of Agency or Other Qualified Organization)* intends to use this property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

The proposed terms of purchase or transfer are as follows: [Insert Terms of Purchase].

Dated: January 22, 1992.

Federal Deposit Insurance Corp.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-2050 Filed 1-27-92; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

Community Bankers, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 18, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Community Bankers, Inc., Granbury, Texas; to engage *de novo* in making and acquiring commercial loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in North Central Texas.

Board of Governors of the Federal Reserve System, January 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1983 Filed 1-27-92; 8:45 am]

BILLING CODE 6210-01-F

Northwest Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 18, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Northwest Financial Corp, Spencer, Iowa; to acquire Northwest Federal Savings Bank, Spencer, Iowa, and thereby engage in operating a savings association pursuant to § 225.25(b)(9); making, acquiring and servicing loans or other extensions of credit pursuant to § 225.25(b)(1); acting as agent in the sale of credit related insurance pursuant to § 225.25(b)(8)(i); and the sale of general insurance in towns with populations of less than 5,000 pursuant to § 225.25(b)(8)(iii); and acting as agent for the sale of load and no-load mutual funds and also providing discount brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1984 Filed 1-27-92; 8:45 am]

BILLING CODE 6210-01-F

Peoples Financial Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than February 18, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Peoples Financial Corporation, Paducah, Kentucky; to acquire 100 percent of the voting shares of Bank of Murray, Murray, Kentucky.

Board of Governors of the Federal Reserve System, January 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1985 Filed 1-27-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged

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by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633–7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, 6001 Montrose Road, room 702, Rockville, MD 20852, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a partial list of petitions received by PHS on September 28, 1990, and October 1, 1990.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading **"FOR FURTHER INFORMATION CONTACT"**), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Kristina Riffle on behalf of Lindsay Kiser, Charleston, West Virginia, Claims Court Number 90–2025 V
2. Ronald Mayfield on behalf of Josh Mayfield, Shawnee Mission, Kansas, Claims Court Number 90–2026 V
3. John Gasque on behalf of Jennifer Gasque, Dillon, South Carolina, Claims Court Number 90–2027 V
4. Patricia Greway on behalf of John Greway, Deceased, Philadelphia, Pennsylvania, Claims Court Number 90–2028 V
5. Chris Foster on behalf of David Foster, Deceased, North Hollywood, California, Claims Court Number 90–2029 V
6. Peggy Risso on behalf of Brian Risso, Bellevue, Washington, Claims Court Number 90–2030 V
7. Teresa Pratt on behalf of Michael Pratt, Tacoma, Washington, Claims Court Number 90–2031 V
8. Delores Williams on behalf of David Williams, Portsmouth, Virginia, Claims Court Number 90–2032 V
9. Roland Joseph on behalf of Tamara Joseph, Deceased, Lawrenceville, New Jersey, Claims Court Number 90–2033 V
10. Catherine Howett, South Bend, Indiana, Claims Court Number 90–2034 V
11. Karen Meyer on behalf of Joshua Banks, Deceased, Englewood, Colorado, Claims Court Number 90–2035 V
12. Mary Lassiter on behalf of Eric Lassiter, New York, New York, Claims Court Number 90–2036 V
13. John Brown on behalf of Billy Brown, Chattanooga, Tennessee, Claims Court Number 90–2037 V
14. Bonnie Ware on behalf of Christopher Bonniwell, Richmond, Virginia, Claims Court Number 90–2039 V
15. Robert and Adrienne Koon on behalf of Caroline Koon, Deceased, Delta Junction, Alaska, Claims Court Number 90–2040 V
16. Kathy Anderson on behalf of Devan Anderson, Bridgeport, Connecticut, Claims Court Number 90–2041 V
17. Lawrence Callahan on behalf of Rebecca Callahan, Fairfax, Virginia, Claims Court Number 90–2042 V
18. Howard Hansen, Jr., on behalf of Howard Hansen, III, Fort Gordon, Georgia, Claims Court Number 90–2043 V
19. Brian Berg on behalf of Teresa Berg, Collingswood, New Jersey, Claims Court Number 90–2044 V
20. Martha Ultimo on behalf of Dante Ultimo, Rutherford, New Jersey, Claims Court Number 90–2045 V
21. Clayton Lincoln on behalf of Erica Lincoln, Baton Rouge, Louisiana, Claims Court Number 90–2046 V
22. Lorenzo and Violet Silva on behalf of Gary Silva, Northern Mariana Islands, Guam, Claims Court Number 90–2047 V
23. Cynthia Hand on behalf of Dylan Gould, Palm Bay, Florida, Claims Court Number 90–2048 V
24. Deborah Farnsworth on behalf of Melissa Farnsworth, Commack, New York, Claims Court Number 90–2049 V
25. Mary Kunz on behalf of Edward Kunz, Midland Park, New Jersey, Claims Court Number 90–2050 V
26. Kathleen Fern on behalf of Kevin and Patrick Fern, Washington, D.C., Claims Court Number 90–2051 V
27. Edward Cousins on behalf of Shannon Cousins, Alexandria, Virginia, Claims Court Number 90–2052 V
28. Nostratollah Jadali on behalf of Maryam Jadali, Wheaton, Maryland, Claims Court Number 90–2053 V
29. Gwendolyn Babin on behalf of Lolita Babin, Alexandria, Virginia, Claims Court Number 90–2054 V
30. Dolores Balough on behalf of Joseph Balough, Deceased, Defiance, Ohio, Claims Court Number 90–2055 V
31. Linda Jordan, Burlington, Iowa, Claims Court Number 90–2056 V

32. Linda Pepe on behalf of Michael Pepe, Alexandria, Virginia, Claims Court Number 90–2057 V
33. Cynthia Brake on behalf of Christopher Brake, Pittsburgh, Pennsylvania, Claims Court Number 90–2058 V
34. Margaret Bride on behalf of Deborah Bride, Caparra Heights, Puerto Rico, Claims Court Number 90–2059 V
35. Richard Clark on behalf of Brandon Clark, Dequincy, Louisiana, Claims Court Number 90–2060 V
36. Terry McIver on behalf of Jason McIver, Tampa, Florida, Claims Court Number 90–2061 V
37. Robert and Judith Scutt on behalf of Christopher Scutt, Kingston, New York, Claims Court Number 90–2062 V
38. Kathleen Martin on behalf of Clifton Martin, Deceased, Lakehurst, New Jersey, Claims Court Number 90–2063 V
39. W. Allen Lee, III, on behalf of Mary Lee, Deceased, Trenton, New Jersey, Claims Court Number 90–2064 V
40. Bryan Rucker Sr., on behalf of Bryan Rucker, Jr., San Bernardino, California, Claims Court Number 90–2065 V
41. Brad Reger on behalf of Naomi Reger, Susanville, California, Claims Court Number 90–2066 V
42. Doris Knudsen on behalf of Debra Knudsen, Sioux City, Iowa, Claims Court Number 90–2067 V
43. Stephen Drumm on behalf of Matthew Drumm, Denver, Colorado, Claims Court Number 90–2068 V
44. Jennifer Rudinser, Huron, Ohio, Claims Court Number 90–2069 V
45. Janice and Virgil Hoffman on behalf of Mary Hoffman, Hickory, North Carolina, Claims Court Number 90–2070 V
46. Richard Chase, Baltimore, Maryland, Claims Court Number 90–2071 V
47. Daniel Harvey on behalf of Kirt Harvey, Peru, Indiana, Claims Court Number 90–2072 V
48. Michael Hewitt on behalf of Sean Hewitt, San Antonio, Texas, Claims Court Number 90–2073 V
49. Carolyn Busby on behalf of Wayne Batchan, Huntsville, Alabama, Claims Court Number 90-2074 V
50. Guillermo Paniagua on behalf of Kristina Paniagua, Santa Clara, California, Claims Court Number 90–2075 V
51. Haskell Hensley on behalf of Josh Hensley, Johnson City, Tennessee, Claims Court Number 90–2076 V
52. Tuomo Kanervikkoaho on behalf of Erkki Kanervikkoaho, Hopewell Junction, New York, Claims Court Number 90–2077 V
53. Frederic Kirkpatrick on behalf of Jeremy Kirkpatrick, Deceased, Pasadena, Texas, Claims Court Number 90–2078 V
54. Anthony Bloink on behalf of Ann Bloink, Deceased, Port Huron, Michigan, Claims Court Number 90–2079 V
55. Donald Benton, Jacksonville, Florida, Claims Court Number 90–2080 V
56. Rufus Cook on behalf of Jonathan Cook, Deceased, Monroe, Louisiana, Claims Court Number 90–2081 V
57. James Hawxwell on behalf of Jeffrey Hawxwell, Windham, Maine, Claims Court Number 90–2082 V
58. Roman Brunner on behalf of Charles Brunner, Mauston, Wisconsin, Claims Court Number 90–2083 V
59. Martha Yuhnke on behalf of Michael Yuhnke, Anaheim, California, Claims Court Number 90–2084 V
60. Mary Denning on behalf of William Denning, Jr., Dunn, North Carolina, Claims Court Number 90–2085 V
61. Walter Jonas on behalf of Kevin Jonas, Marshfield, Wisconsin, Claims Court Number 90–2086 V
62. Lisa La Rock on behalf of Nathan La Rock, Green Bay, Wisconsin, Claims Court Number 90–2087 V
63. Sara Knutson on behalf of Camden Hookstead, Janesville, Wisconsin, Claims Court Number 90–2088 V
64. Lucille Layne on behalf of Terence Layne, Oradell, New Jersey, Claims Court Number 90–2089 V
65. Jimmie Branam on behalf of Jeffrey Branam, Portland, Oregon, Claims Court Number 90–2090 V
66. Keane Kitzman on behalf of Jennifer Kitzman, Scottsdale, Arizona, Claims Court Number 90–2091 V
67. Wayne Stevenson on behalf of Nicole Stevenson, Fresno, California, Claims Court Number 90–2092 V
68. Sudhir Patel on behalf of Rupal Patel, Philadelphia, Pennsylvania, Claims Court Number 90–2093 V
69. Sherry Bryan on behalf of Misty Bryan, Tyler, Texas, Claims Court Number 90–2094 V
70. Kelly Peterson on behalf of Tucker Peterson, Helena, Montana, Claims Court Number 90–2095 V
71. Gregory LeMair on behalf of Brooke LeMair, Deceased, Sioux Falls, South Dakota, Claims Court Number 90–2096 V
72. Lynette Rupp, Xenia, Ohio, Claims Court Number 90–2097 V
73. Jamie Travis on behalf of Christy McCarthy, Bay City, Texas, Claims Court Number 90–2098 V
74. Thomas Harris on behalf of Stefani Harris, RAF Alconbury, United Kingdom, Claims Court Number 90–2099 V
75. Roderick Kulik, Pittsburgh, Pennsylvania, Claims Court Number 90–2100 V
76. Jolea Swann on behalf of Rebecca Swann, Cuyahoga Falls, Ohio, Claims Court Number 90–2101 V
77. Debbie Powers on behalf of Ryan Gray, Toledo, Ohio, Claims Court Number 90–2102 V
78. Michael Gabbard on behalf of Adam Gabbard, Bowling Green, Kentucky, Claims Court Number 90–2103 V
79. Cheri Gillespie on behalf of Megan Gillespie, Urbana, Illinois, Claims Court Number 90–2104 V
80. James Kitchin on behalf of James Kitchin, Jr., Deceased, Nuemberg, West Germany, Claims Court Number 90–2105 V
81. Lyle Koopman on behalf of Chad Koopman, Hendricks, Minnesota, Claims Court Number 90–2106 V
82. Ellen Dauchy, Berkeley, California, Claims Court Number 90–2107 V
83. Elizabeth Duhs, Cincinnati, Ohio, Claims Court Number 90–2108 V
84. Kenneth Orashan on behalf of Katherine Orashan, Aurora, Colorado, Claims Court Number 90–2109 V
85. Jerry Bissegger, Montpelier, Idaho, Claims Court Number 90–2110 V
86. Gary Levis on behalf of Ashley Levis, Chalmette, Louisiana, Claims Court Number 90–2111 V
87. Catherine Fiorenza, Beaumont, Texas, Claims Court Number 90–2112 V
88. Donald Bliss on behalf of David Bliss, Ann Arbor, Michigan, Claims Court Number 90–2113 V
89. Barbara Judd on behalf of Latosha Judd, Ft. Ritchie, Maryland, Claims Court Number 90–2114 V
90. Gerald Hartman on behalf of Shannon Hartman, St. Paul, Minnesota, Claims Court Number 90–2115 V
91. Melissa Lamar on behalf of Joshua Lamar, Starkville, Mississippi, Claims Court Number 90–2116 V
92. David Fennel on behalf of Sarah Fennel, Irving, Texas, Claims Court Number 90–2117 V
93. Redmond Hutchison, Jackson, Mississippi, Claims Court Number 90–2118 V
94. Lester Garner on behalf of Lenore Garner, Natchitoches, Louisiana, Claims Court Number 90–2119 V
95. Kalynn Unger, Akron, Ohio, Claims Court Number 90–2120 V
96. Maurine Brown on behalf of Cynthia Brown, Salem, Oregon, Claims Court Number 90–2121 V
97. Judy Pennywell on behalf of Antonio Pennywell, Shreveport, Louisiana, Claims Court Number 90–2122 V
98. Jack Nichols on behalf of Tristian Nichols, Bozeman, Montana, Claims Court Number 90–2123 V
99. Carol Lyman, Watertown, New York, Claims Court Number 90–2124 V
100. Deborah Brinson, Glencoe, Illinois, Claims Court Number 90–2125 V
101. Raymond Andews on behalf of Kristen Andrews, Chillicothe, Ohio, Claims Court Number 90–2126 V
102. William Stevenson on behalf of Chadrick Stevenson, Amory, Mississippi, Claims Court Number 90–2127 V
103. Robert W. Collins, New York, New York, Claims Court Number 90–2128 V
104. Daniel Lambert, Grand Junction, Colorado, Claims Court Number 90–2129 V
105. James and Carol Rein on behalf of Scott Rein, Hastings, Minnesota, Claims Court Number 90–2130 V
106. Philip Connell on behalf of Kristi Connell, Long Branch, New Jersey, Claims Court Number 90–2131 V
107. Beverly Lopez on behalf of Sally Lopez, Pueblo, Colorado, Claims Court Number 90–2132 V
108. Patrick Wertz on behalf of Amanda Wertz, Murrysville, Pennsylvania, Claims Court Number 90–2133 V
109. Rozelle Smith on behalf of Julie Owen, Canton, North Carolina, Claims Court Number 90–2134 V
110. Fred Newman on behalf of Mary Newman, North Miami Beach, Florida, Claims Court Number 90–2135 V

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111. James Golden on behalf of Alisha Golden, Decatur, Alabama, Claims Court Number 90–2136 V
112. Sharon Straw on behalf of Theresa Straw, Biloxi, Mississippi, Claims Court Number 90–2137 V
113. Kristan Clark on behalf of Brian Clark, Bakersfield, California, Claims Court Number 90–2138 V
114. Darrick Crouse, Eldora, Iowa, Claims Court Number 90–2139 V
115. George Johnson, Jr., Miami, Florida, Claims Court Number 90–2140 V
116. Greg Perkins on behalf of Jared Perkins, Deceased, Provo, Utah, Claims Court Number 90–2141 V
117. Chad Thornburg on behalf of Leslie Thornburg, Shelby, North Carolina, Claims Court Number 90–2142 V
118. Ruthann Evans on behalf of Kevin Evans, Fontana, California, Claims Court Number 90–2143 V
119. Mark Sese on behalf of Daniel Sese, Milwaukee, Wisconsin, Claims Court Number 90–2144 V
120. Larry Booker on behalf of Krista Booker, Belen, New Mexico, Claims Court Number 90–2145 V
121. Mary Ann McKavanagh, New York, New York, Claims Court Number 90–2146 V
122. James Schulte on behalf of Luke Schulte, Deceased, Manchester, Iowa, Claims Court Number 90–2147 V
123. Jan Benedict on behalf of Bryan Totterdale, St. Clairsville, Ohio, Claims Court Number 90–2148 V
124. David McLeod on behalf of Addie McLeod, Orlando, Florida, Claims Court Number 90–2149 V
125. Susan Fraenzl, Milwaukee, Wisconsin, Claims Court Number 90–2150 V
126. Kristi Fry on behalf of Justin Fry, Muskogee, Oklahoma, Claims Court Number 90–2151 V
127. Paul Ciaccio on behalf of Anita Ciaccio, Brooklyn, New York, Claims Court Number 90–2152 V
128. Rocky Rider, Ville Platte, Louisiana, Claims Court Number 90–2153 V
129. Sheila and Brad Kahler on behalf of Kirk Kahler, Winner, South Dakota, Claims Court Number 90–2154 V
130. George Kleinpeter, Houston, Texas, Claims Court Number 90–2155 V
131. Hal Smith on behalf on Laura Smith, Valley, Alabama, Claims Court Number 90–2156 V
132. Emerick Huber on behalf of Christopher Huber, Omaha, Nebraska, Claims Court Number 90–2157 V
133. Paula Schultz, Homewood, Illinois, Claims Court Number 90–2158 V
134. Anthony Marone on behalf of Stephen Marone, Deceased, New York, New York, Claims Court Number 90–2159 V
135. Robert Brieske on behalf of Amanda Brieske, La Crosse, Wisconsin, Claims Court Number 90–2160 V
136. Lonna Otis on behalf of Ron Otis, Portage, Indiana, Claims Court Number 90–2161 V
137. Opal Carr, Laurel, Mississippi, Claims Court Number 90–2162 V
138. Elizabeth Ward, Bronte, Texas, Claims Court Number 90–2163 V
139. Ilene Byrne on behalf of Lori Byrne, West New York, New Jersey, Claims Court Number 90–2164 V
140. Mary Pearce on behalf of Jenny Pearce, Abington, Pennsylvania, Claims Court Number 90–2165 V
141. Mark Huffman on behalf of Sarah Huffman, Santa Ana, California, Claims Court Number 90–2166 V
142. Kathleen Spitznagel on behalf of David Spitznagel, Covington, Louisiana, Claims Court Number 90–2167 V
143. Linda Smart on behalf of Johnathan Smart, Mobile, Alabama, Claims Court Number 90–2168 V
144. Mary Kelly, Houston, Texas, Claims Court Number 90–2169 V
145. Nancy Dingley on behalf of Rebecca Dingley, St. Matthews, South Carolina, Claims Court Number 90–2170 V
146. Cecil Butler on behalf of Bobby Butler, Augusta, Georgia, Claims Court Number 90–2171 V
147. Sondria Graham on behalf of James Graham, Deceased, Fort Worth, Texas, Claims Court Number 90–2172 V
148. Danna Mattson, Moreno Valley, California, Claims Court Number 90–2173 V
149. Antoinette Grewal, Westminster, California, Claims Court Number 90–2174 V
150. Ethel Baskin on behalf of Bobby Baskin, Chicago, Illinois, Claims Court Number 90–2175 V
151. Janice Perlman, Atlanta, Georgia, Claims Court Number 90–2176 V
152. David and Donna Quist on behalf of Michael Quist, Columbus, Ohio, Claims Court Number 90–2177 V
153. Richard Hill on behalf of Wendy Hill, Wichita, Kansas, Claims Court Number 90–2178 V
154. Joseph Dunn on behalf of Kendra Dunn, Deceased, Ventura, California, Claims Court Number 90–2179 V
155. Armando Torres on behalf of Armando Colon, Coamo, Puerto Rico, Claims Court Number 90–2180 V
156. Joyce Robertson, Birmingham, Alabama, Claims Court Number 90–2181 V
157. Herbert Scofield on behalf of Connie Scofield, Deceased, La Porte, Indiana, Claims Court Number 90–2182 V
158. Robert Nurin on behalf of Michael Nurin, Rutland, Vermont, Claims Court Number 90–2183 V
159. Judith Rizzo, on behalf of Ryan Rizzo, Youngtown, Ohio, Claims Court Number 90–2184 V
160. Margaret Lambert on behalf of Donald Lambert, Grand Rapids, Michigan, Claims Court Number 90–2185 V
161. Linda Peace on behalf of Desiree Peace, Scottsdale, Arizona, Claims Court Number 90–2186 V
162. Phyllis Volkens on behalf of Audrey Farr, Des Moines, Iowa, Claims Court Number 90–2187 V
163. Carol Jones on behalf of Richard Cave, Philadelphia, Pennsylvania, Claims Court Number 90–2188 V
164. Carolyn Hulbert on behalf of Travis Hulbert, Salt Lake City, Utah, Claims Court Number 90–2189 V
165. Steve and Mary Gaub on behalf of Chris Gaub, Plentywood, Montana, Claims Court Number 90–2190 V
166. Ruth Reed on behalf of Jonathan Reed, Chelmsford, Massachusetts, Claims Court Number 90–2191 V
167. Iris Martin on behalf of Margaret Aho, Deceased, Louisville, Kentucky, Claims Court Number 90–2192 V
168. Francisco Gomez on behalf of Marco Gomez, Dallas, Texas, Claims Court Number 90–2193 V
169. Joanne Coones on behalf of Susan Coones, Ilion, New York, Claims Court Number 90–2194 V
170. Mario Dominquez, Odessa, Texas, Claims Court Number 90–2195 V
171. Howard Grimes on behalf of Andrew Grimes, Atlanta, Georgia, Claims Court Number 90–212196 V
172. Lane Goff on behalf of Adam Goff, Mobile, Alabama, Claims Court Number 90–2197 V
173. Maria Skalka on behalf of Lisa Skalka, Deceased, Chicago, Illinois, Claims Court Number 90–2198 V
174. Peter Muserlian on behalf of Jane Muserlian, Syracuse, New York, Claims Court Number 90–2199 V
175. Charles Joines on behalf of Christopher Joines, Russellville, Kentucky, Claims Court Number 90–2200 V
176. Joseph Eanes on behalf of Rowdy Eanes, Hanau, Germany, Claims Court Number 90–2201 V
177. Jacqueline Brown on behalf of Michael Ligoci, Deceased, Syracuse, New York, Claims Court Number 90–2202 V
178. Marin Diaz on behalf of Carlin Diaz, West New York, New Jersey, Claims Court Number 90–2203 V
179. Cordelia Allen on behalf of Melissa Allen, Winston-Salem, North Carolina, Claims Court Number 90–2204 V
180. Randy Whewell on behalf of Rebecca Whewell, Jacksonville, Illinois, Claims Court Number 90–2205 V
181. Mary Jones on behalf of Tami Jones, Fort Carson, Colorado, Claims Court Number 90–2206 V
182. Kenneth Harris, Embudo, New Mexico, Claims Court Number 90–2207 V
183. Donna Wagner, Durham, North Carolina, Claims Court Number 90–2208 V
184. Cheryl Zaag, Ocean City, New Jersey, Claims Court Number 90–2209 V
185. Erik Larsen, Burbank, California, Claims Court Number 90–2210 V
186. Joseph and Rosemary Popp on behalf of Annette Popp, Deceased, Royalton, Minnesota, Claims Court Number 90–2211 V
187. Erika Cain on behalf of David Cain, Demotte, Indiana, Claims Court Number 90–2212 V
188. Catherine Vincuilla on behalf of Jamie Vincuilla, Waltham, Massachusetts, Claims Court Number 90–2213 V
189. Christopher Baggot, Union City, California, Claims Court Number 90–2214 V
190. Carol Pitczko on behalf of Tammie Petrozelle, Mercer, Pennsylvania, Claims Court Number 90–2215 V

191. Millicent Pierce on behalf of Vanessa Pierce, Deceased, Morgantown, West Virginia, Claims Court Number 90-2216 V
192. Bennie Pittman on behalf of Joe Pittman, Muskogee, Oklahoma, Claims Court Number 90-2217 V
193. Timothy McGuire on behalf of James McGuire, Omaha, Nebraska, Claims Court Number 90-2218 V
194. Robert Rosales on behalf of Robert Garcia, Huehuetenango, Guatemala, Claims Court Number 90-2219 V
195. Raymond G. Boyd on behalf of Raymond D. Boyd, Fairbanks, Alaska, Claims Court Number 90-2220 V
196. Donnie Hartmann on behalf of Jennifer Hartmann, Ashland, Kentucky, Claims Court Number 90-2221 V
197. Deborah Farley on behalf of Rebecca Farley, Los Gatos, California, Claims Court Number 90-2222 V
198. Terrance Murphy on behalf of David Murphy, Zanesville, Ohio, Claims Court Number 90-2223 V
199. Debra Kemppainen on behalf of Ryan Kemppainen, Boston, Massachusetts, Claims Court Number 90-2224 V
200. Rita Lachman on behalf of Maxine Lachman, Bridgeton, Missouri, Claims Court Number 90-2225 V

Dated: January 18, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-1914 Filed 1-27-92; 8:45 am]

BILLING CODE 4190-15-M

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Meeting of the Fogarty International Center Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the twentieth meeting of the Fogarty International Center (FIC) Advisory Board, February 11, 1992, in the Lawton Chiles International House (Building 16), at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 2:30 p.m. The morning agenda will include a report by the Director, FIC, a review of the AIDS International Research and Training Program, a report on the meeting of the Advisory Committee to the Director, NIH, and a report on the impact of global geopolitical changes on U.S. science and technology policy.

The afternoon agenda will include a presentation by the Director, NIH.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 2:30 p.m. to adjournment for the review of International Research Fellowship and Senior International Fellowship applications, Fogarty International Research Collaboration Awards, Scholars nominations, and proposals for Scholars' conferences and international studies.

Myra Halem, Committee Management Officer, Fogarty International Center, Building 31, room B2C08, National Institutes of Health, Bethesda, Maryland 20892 (301-496-1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Coralie Farlee, Assistant Director for International Legislation and Advisory Activities, Fogarty International Center (Executive Secretary), Building 31, room B2C08, telephone 301-496-1491, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome and No. 93.989, Senior International Awards Program).

Dated: January 13, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1935 Filed 1-27-92; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the notice of the National Cancer Advisory Board Subcommittee on Cancer Centers meeting which was published in the **Federal Register** (57 FR 1916) on January 16, 1992.

The meeting was originally scheduled to be held on January 26, 1992 at Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland. It will now be held on January 27 at the National Institutes of Health, Building 31C, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892. This meeting is being re-scheduled due to conflicts in schedules of subcommittee members.

The meeting will be open to the public on January 27 from 7 a.m. to adjournment. Attendance by the public will be limited to space available.

Dated: January 22, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1937 Filed 1-27-92; 8:45 am]

BILLING CODE 4140-01-M

National Center for Research Resources; Meeting of the General Clinical Research Centers Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, National Center for Research Resources (NCRR), National Institutes of Health.

The meeting will be open to the public as indicated below during which time there will be comments by the Director, NCRR; and an update on the GCRC Program by Dr. Judith L. Vaitukaitis, Acting Director, GCRC Program, NCRR. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public as indicated below for the review, discussion, and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: General Clinical Research Centers Committee.

Date of Meeting: February 25-27, 1992.

Place of Meeting: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: 8 a.m. until 9:30 a.m.

Closed:

February 25, 9:30 a.m. until recess.
February 26, 8 a.m. until recess.
February 27, 8 a.m. until adjournment.

Mr. James J. Doherty, Information Officer, NCRR, Westwood Building, room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting, and a roster of the Committee members upon request. Dr. Bela J. Gulyas, Scientific Review Administrator, GCRC Committee, NCRR, (301) 402-0627, will furnish information on the agenda upon request.

(Catalog of Federal Domestic Assistance Program No. 93.333, Clinical Research, National Institutes of Health).

Dated: January 13, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-1931 Filed 1-27-92; 8:45 am]

BILLING CODE 4140-01-M

National Center for Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health.

This meeting will be open to the public, as indicated below, during which

time there will be discussions on administrative matters such as previous meeting minutes; the report of the Director, NCRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date of Meeting: February 19–21, 1992.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open:

February 19, 6:45 p.m. until recess
Planning and Agenda Subcommittee, Building 12A, room 4007.
February 20, 9 a.m. until 3 p.m.
February 21, 8:30 a.m. until adjournment.
Conference Room 10, Building 31C.

Closed:

February 20, 3:15 p.m. until recess.
Conference Room 10, Building 31C.

Mr. James J. Doherty, Information Office, NCRR, Westwood Building, Room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of meeting and a roster of the Council members upon request. Dr. Judith L. Vaitukaitis, Deputy Director for Extramural Research Resources, NCRR, Building 12A, Room 4011, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389 Research Centers in Minority Institutions; 93.196, Biological Models and Material Resources; 93.167 Research Facilities Improvement Program; National Institutes of Health.)

Dated: January 13, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1933 Filed 1–27–92; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

National Eye Institute; Meeting of the National Advisory Eye Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on February 13 and 14, 1992, in Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

The NAEC meeting will be open to the public from 8:30 a.m. until approximately 3 p.m. on Thursday, February 13, 1992. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open sessions will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public from approximately 3 p.m. on Thursday, February 13 until adjournment on Friday, February 14 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, room 6A04, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 93.867, Retinal and Choroidal Diseases Research; 93.868, Anterior Segment Diseases Research; and 93.871, Strabismus, Amblyopia and Visual Processing; National Institutes of Health.)

Dated: January 13, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1934 Filed 1–27–92; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Trials Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, February 23–25, 1992, The Columbia Inn, Wincopin Circle, Columbia, Maryland, 21044.

The meeting will be open to the public on February 23, from 7 p.m. to approximately 8 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on February 23, from approximately 8 p.m. to 10 p.m., on February 24, from 8 a.m. to 6 p.m., and February 25, from 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. David M. Monsees, Jr., Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, room 5508, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 13, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1932 Filed 1–27–92; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, February 6–7, 1992, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on February 6 from 9 a.m. to 5 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., section 10(d) of Public Law 92–463, the Council meeting will be closed to the public on February 7 from approximately 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, room 7A–17, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7416, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institute of Health.)

Dated: January 13, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1936 Filed 1–27–92; 8:45 am]

BILLING CODE 4140–01–M

Consensus Development Conference On Triglyceride, High Density Lipoprotein, and Coronary Heart Disease

Notice is hereby given of the NIH Consensus Development Conference on "Triglyceride, High Density Lipoprotein, and Coronary Heart Disease," which will be held on February 26–28, 1992, in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Heart, Lung, and Blood Institute and the NIH Office of Medical Applications of Research. The conference will start at 8:30 a.m. each day.

Great progress has been made over the past 30 years in identifying cardiovascular risk factors and in developing and implementing measures to correct them. The guidelines developed by the Adult Treatment Panel of the National Cholesterol Education Program identified low-density lipoprotein (LDL) as the major atherogenic lipoprotein and high levels of LDL cholesterol as the primary target for cholesterol-lowering therapy. Low levels of high-density lipoprotein (HDL) cholesterol were recognized as a major risk factor for coronary heart disease and the Adult Treatment Panel made general recommendations to raise HDL concentrations by hygienic means. However, drug therapy was not advocated specifically to raise HDL in patients without high LDL cholesterol levels.

The Adult Treatment Panel also addressed hypertriglyceridemia, using definitions and recommendations of the 1983 National Institutes of Health Consensus Development Conference on Treatment of Hypertriglyceridemia. The panel regarded the relationship between plasma triglyceride levels and cardiovascular disease as controversial. Hygienic measures were recommended for all patients with hypertriglyceridemia; however, drug therapy was advocated only for those with marked hypertriglyceridemia that did not respond adequately to diet modification.

New scientific evidence, both laboratory and clinical, which has become available over the past few years, warrants a further look at the role of triglyceride and HDL cholesterol in atherogenesis and to what extent they should be the foci of treatment.

Following a day and a half of presentations by experts and discussion by the audience, a Consensus Panel will weight the scientific evidence and write a draft statement in response to the following questions:

—Is the relationship of high triglyceride and/or low HDL cholesterol with coronary heart disease causal?
—Will reduction of high triglyceride and/or elevation of HDL cholesterol help prevent coronary heart disease?
—Under what circumstances should triglycerides and HDL cholesterol be measured?
—Under what circumstances should active intervention to lower triglyceride and/or raise HDL cholesterol be considered in high risk individuals and the general population?
—What can be accomplished by dietary, other hygienic, and drug treatments?
—What are the significant questions for future research?

On the third day of the conference, following deliberation of new findings or evidence that might have been presented during the meeting, the panel will present its final consensus statement.

Information on the program may be obtained from: Carol Sadler, Prospect Associates, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 468–6555.

Dated: January 22, 1992.

Bernadine P. Healy,

Director.

[FR Doc. 92–1930 Filed 1–27–92; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research: Action Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Action Under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth an action to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Office of Science Policy and Legislation, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: Today an action is being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. This proposed action was published for comment in the **Federal Register** of April 29, 1991 (56 FR 19776), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) on May 30, 1991.

I. Background Information and Decision on Action Under the NIH Guidelines

A. Addition of Appendix D–XXIII to the NIH Guidelines

In a letter dated September 13, 1990, Dr. Michael T. Lotze of the University of Pittsburgh School of Medicine, Pittsburgh, Pennsylvania, indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"The Administration of Interleukin-2, Interleukin-4, and Tumor Infiltrating Lymphocytes to Patients with Melanoma."

The protocol was reviewed during the Human Gene Therapy Subcommittee meeting on November 30, 1990, and forwarded to the Recombinant DNA Advisory Committee on February 4, 1991, for its approval. The Recombinant DNA Advisory Committee deferred approval and sent the protocol back to the Human Gene Therapy Subcommittee for further deliberations on April 5, 1991.

On April 5, 1991, the Human Gene Therapy Subcommittee gave provisional approval with the stipulation that more information be provided about the quantitative assays of gene-marked tumor infiltrating lymphocytes. It was suggested that the consent form concerning the gene marking of tumor infiltrating lymphocytes be separated from the consent form regarding interleukin-2 and interleukin-4.

Tthe Human Gene Therapy Subcommittee forwarded the protocol to the Recombinant DNA Advisory Committee for consideration during the May 30–31, 1991, meeting.

The request was published for consent in the **Federal Register** on April 29, 1991 (56 FR 19776).

During the meeting on May 30–31, 1991, the Recombinant DNA Advisory Committee met to review the protocol and recommendations from the Human Gene Therapy Subcommittee.

Two additional modifications were made to the informed consent document. One involved the addition of a clarifying sentence concerning the minor risk of infection associated with the biopsy of subcutaneous tumor nodules. The second involved the addition of a sentence indicating that there was no requirement for patients undergoing interleukin therapy to take part in the gene marking study. Following a discussion of the data on the quantitative aspects of polymerase chain reaction (PCR), the Recombinant DNA Advisory Committee, by a vote of 18 in favor, 0 opposed, and no abstentions, approved the protocol pending receipt of additional data showing the detection of Neo-R-transduced cells by PCR at a dilution of 1 in 10^5 non-transduced cells. The review of this additional data can be conducted by the Office of Recombinant DNA Activities (ORDA) staff and the primary reviewer of the protocol.

On November 12, 1991, Dr. Lotze submitted to ORDA the PCR data from mixing experiments with Neo-R-transduced cells. To satisfy the Recombinant DNA Advisory Committee's request, ORDA requested additional experiments. On December 17 and December 27, 1991, additional data were supplied.

Following consultation between ORDA staff and the primary reviewer of the protocol, it was determined that the experimental results, submitted on December 27, 1991, showed the requested level of sensitivity, i.e., it was possible to detect Neo-R-transduced cells by PCR at a dilution of 1 in 10^5 non-transduced cells. Since this meets the request of the Recombinant DNA Advisory Committee, the following section may be added to Appendix D:

"Appendix D–XXIII

"Dr. Michael T. Lotze of the University of Pittsburgh School of Medicine, Pittsburgh, Pennsylvania, can conduct a series of experiments on 20 patients with metastatic melanoma who have failed conventional therapy. Tumor infiltrating lymphocytes (TILs) will be the targets for retroviral mediated gene transfer. This system will transfer a bacterial gene for neophotransferase activity (NEO–R) that confers resistance to the neomycin analogue G418. This marker gene is required to separately identify autologous TIL cells from the patient's endogenous cells. By using a tracer population of TIL cells, the following questions can be addressed: (1) How long can the TIL cells be detected in vivo in the peripheral blood of the patients? (2) How do combinations of interleukin-2 and interleukin-4 affect localization and survival of TIL in tumor sites?"

I accept this recommendation and Appendix D–XXIII of the NIH Guidelines will be added accordingly.

II. Summary of Action

The following section is added to Appendix D:

A. Addition of Appendix D–XXIII to the NIH Guidelines

"Appendix D–XXIII.

"Dr. Michael T. Lotze of the University of Pittsburgh School of Medicine, Pittsburgh, Pennsylvania, can conduct experiments on 20 patients with metastatic melanoma who have failed conventional therapy. A gene transfer experiment will be performed, transducing the patients' tumor infiltrating lymphocytes (TILs) with the gene for neomycin resistance. Through the use of this gene marking technique, it is proposed to determine how long TIL cells can be detected in vivo in the peripheral blood of the patients, and how the administration of interleukin-2 and interleukin-4 affects localization and survival of TIL cells in tumor sites."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Effective Date: January 17, 1992.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 92–2040 Filed 1–27–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-92-3280; FR3218-N-01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning January 1, 1992, is 7½ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning January 1, 1992, is 8 percent.

FOR FURTHER INFORMATION CONTACT: Fred E. McLaughlin, Financial Policy Division, room 9132, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-4325 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning January 1, 1992, is 8 percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 8 percent for the six-month period beginning January 1, 1992. This interest rate will be rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first six months of 1992.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11⅝	Jan. 1, 1981	July 1, 1981.
12⅛	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8½	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9½	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning January 1, 1992, is 7½ percent.

HUD expects to publish its next notice of change in debenture interest rates in July 1992.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 17151, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Ronald A. Rosenfeld,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 92-1946 Filed 1-27-92; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-964-4230-15; F-22834]

Alaska Native Claims Selection

January 22, 1992.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Doyon, Limited, for approximately 9 acres. The lands involved are in the vicinity of Toklat, Alaska, located within Sec. 6, T. 9 S., R. 12 W., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until February 27, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an

appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

G. Steve Flippen,

Lead Land Law Examiner, Branch of Dayon/Northwest Adjudication.

[FR Doc. 92-1975 Filed 1-27-92; 8:45 am]

BILLING CODE 4310-JA-M

Salmon District Grazing Advisory Board; Meeting

[ID-040-02-4320-10]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

DATES: The meeting will be held Tuesday, February 25, 1992, at 10 a.m.

ADDRESSES: The meeting will be held at the Salmon District Office, Salmon, Idaho.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92-463. The meeting is open to the public; public comments will be accepted from 1:00 to 1:30 p.m. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467 by February 23, 1992. The agenda items include discussion of the upcoming election, the Challis Resource Management Plan (RMP), funding of projects, the status of Lemhi grazing agreements, and any other issues dealing with grazing management in the Salmon District. Summary minutes of the meeting will be kept in the Salmon District Office and will be available for public inspection and reproduction during regular business hours (7:45 a.m. to 4:15 p.m.) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy Jackson, District Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467, phone (208) 756-5400.

Dated: January 14, 1992

Roy S. Jackson,

District Manager.

[FR Doc. 92-1993 Filed 1-27-92; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service (MMS)

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010-XXXX); Washington, DC 20503, telephone (202) 395-7340, with copies to the Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817.

Title: Alaska Outer Continental Shelf (OCS) Social Effects Survey.

OMB approval number: 1010-XXXX

Abstract: Respondents supply answers to a Social Effects Questionaire which will provide MMS with information on the long-term social, economic, and cultural consequences of the *EXXON Valdez* oil spill. The purpose of the questionnaire is to directly measure fundamental aspects of the well-being of populations potentiallly affected by OCS activities and to provide comprehensive baseline measures to be used in the preparation of environmental impact statements.

Bureau form number: None.

Frequency: Annually.

Description of respondents: Residents in rural Alaska potentially affected by OCS activity.

Estimated completion time: .9 hour.

Annual responses: 1,036.

Annual burden hours: 932.4.

Bureau clearance officer: Dorothy Christopher (703) 787-1239.

Dated: January 14, 1992.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 92-1997 Filed 1-27-92; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 18, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by February 12, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Clarke County

Gainestown Schoolhouse, W. side Gainestown—Suggsville Public Rd. N of Good Hope Church, Gainestown, 92000033

Elmore County

East Wetumpka Commercial Historic District, Roughly, Company St. from Spring St. to E. Bridge St. and E. Bridge and Commerce Sts. from Main to Hill Sts., Wetumpka, 92000055

Madison County

Urguhart House, 8402 Pulaski Pike, Huntsville vicinity, 92000034

ARKANSAS

Clark County

Clear Spring Tabernacle, Jct. of AR 26 and Bobo Rd., Okolona vicinity, 92000057

ILLINOIS

Cook County

Gibbs, William and Carolina, House, 515 N. 3rd Ave., Haywood, 92000048

Lynch, Timothy J., House (Maywood MPS), 416 N. 4th Ave., Maywood, 92000047

Nichols, Harry H., House (Maywood MPS), 216 S. 4th Ave., Maywood, 92000045

Robinson House (Maywood MPS), 602 N. 3rd Ave., Maywood, 92000046

Knox County

Knox County Courthouse and Hall of Records, Public Sq., Main St., Knoxville, 92000051

Knox County Jail, Public Sq., Market St., Knoxville, 92000050

White County

Gray, William H., House, 119 N. Court St., Grayville, 92000049

KANSAS

Atchison County

Glick-Orr House, 508 N. Second St., Atchison, 92000060

LOUISIANA

Beauregard Parish

DeRidder USO Building, jct. of Pine and 7th Sts., DeRidder, 92000037

Iberville Parish

Plaquemine High School, 600 Plaquemine St., Plaquemine, 92000041

St. James Parish

Lutcher United Methodist Church, 2347 Texas St., Lutcher, 92000042

West Baton Rouge Parish

Bank of Addis, 7843 Ray Rivet St., Addis, 92000038

West Feliciana Parish

Oak Grove Plantation Dependencies, US 61 S of jct. with LA 421, St. Francisville vicinity, 92000036

MASSACHUSETTS

Norfolk County

Central Square Historic District, Roughly, Broad St. from Middle to Putnam Sts. and Middle from Charles to Center Sts., Weymouth, 92000040

Worcester County

Bigelow Tavern Historic District, 60, 64 and 65 Worcester St., West Boylston, 92000043

Winchendon Village Historic District, Roughly, N side Central St. from Summer to Front Sts. and N side Front from Academy to Spring Sts., Winchendon, 92000056

MISSISSIPPI

George County

Bilbo Basin Shell Deposits Site, Address Restricted, Lucedale vicinity, 92000039

NORTH DAKOTA

Grand Forks County

Washington School, 422 N. Sixth St., Grand Forks, 92000035

OREGON

Josephine County

Oregon Caves Historic District, Caves Hwy., Oregon Caves NM, Siskiyou NF, Cave Junction vicinity, 92000058

SOUTH CAROLINA

Oconee County

Walhalla Graded School, 101 E. N. Broad St., Walhalla, 92000059

VIRGINIA

Albemarle County

Southwest Mountains Rural Historic District, Roughly bounded by I-64, VA 20, Orange Co. line and C & O RR tracks, Keswick vicinity, 92000054

Highland County

Cifax Rural Historic District, jct. of VA 644 and VA 643 and surrounding valley area, Cifax, 92000052

Northumberland County

Heathsville Historic District, US 360 at jct. with VA 634 and VA 201, Heathsville, 92000053

Orange County

Bloomsbury, Off VA 20 W of jct. with VA 600, Orange vicinity, 92000044

[FR Doc. 92-2008 Filed 1-27-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-30192]

Dart Transit Co.—Petition for Declaratory Order—Leasing Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of proceeding.

SUMMARY: In response to a request by Dart Transit Company, the commission has instituted this declaratory-order proceeding, under 5 U.S.C. 554(e), to interpret the Commission's regulations concerning leasing, in 49 CFR part 1057. An opportunity for interested persons to participate in the proceeding is provided, and their comments are invited.

DATES: Any person interested in participating in this proceeding as a party of record, by filing and receiving written comments, must file a notice of intent to do so by February 12, 1992. A copy of the notice should be sent to petitioner's representative. A service list of the parties will then be issued. Petitioner will have 10 days after the service of this list to provide each party with a copy of the petition and any additional material that it may file with the Commission in support of its position. Initial written comments (an original and 10 copies) must be filed within 30 days after service of the list. All parties will have 50 days after service of the list to reply. A copy of all comments and replies must be sent to each party of record.

ADDRESSES: Send written notices of intent to participate to: Office of the Secretary, Case Control Branch, room 1324, Attn: Docket No. MC-C-30192, Interstate Commerce Commission, Washington, DC 20423, and to petitioner's representative: James C. Hardman, P. O. Box 64110, St. Paul, MN 55164-0110.

FOR FURTHER INFORMATION CONTACT: James L. Brown, (202) 927-5303

or

Richard B. Felder, (202) 927-5610. (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Petitioner, an authorized motor common carrier of property, employs independent drivers to provide equipment for its operations. An affiliate of petitioner is a rental agency, which leases motor-vehicle equipment to such independent drivers, subject to a requirement that the equipment be used only in service for (*i.e.*, "leased" to) petitioner. The rental agency maintains a reserve fund for maintenance of the vehicles. Approximately half of petitioner's independent drivers use equipment leased from the rental agency under this arrangement, but petitioner does not treat any of its independent drivers differently if they obtain equipment from other sources.

The equipment rental contracts between the rental agency and these independent drivers require the drivers to request petitioner (the carrier) to remit rental payments and maintenance reserve funds to the rental agency. Petitioner asserts, accordingly, that these remittances are not made on the request of the rental agency or of any other third party, and thus that the leases between it and its independent drivers need not specify the terms of those equipment rental contracts. Petitioner argues that the Commission's regulations are specific and clear, applying only if the basis for the carrier's deduction is the third-party purchase or lease agreement, which must directly give the carrier the right to make the deductions.

The Commission's regional office has issued warning letters to petitioner, relying on No. MC-C-30050, Central Transportation, Inc.—Petition for Declaratory Order (not printed), served July 7, 1988. In these warning letters, the regional office maintains that petitioner's leases (a) violate the prohibition against requiring independent drivers to purchase or rent any products, equipment, or services from the carrier as a condition of entering into the lease agreement and (b) do not specify the terms of the equipment rental contracts between the drivers and the rental agency, which, it maintains, do give the carrier the right to make deductions from the drivers' compensation for purchase or rental payments.

Petitioner also argues that the maintenance reserve funds maintained by the rental agency is not a "carrier's escrow fund" under 49 CFR 1057.2(*l*). The maintenance reserve fund, it asserts, is solely an arrangement between the driver and the rental agency; petitioner does not assume responsibility for the fund and has no control over the purpose for which the money is spent.

Petitioner is requesting the Commission to issue a declaratory order determining, under the leasing regulations at 49 CFR part 1057, subpart B: (1) Whether a lease must specify the terms of a separate, independent, equipment purchase or rental contract between the lessor and a third party, which does not directly give the carrier (lessee) the right to make deductions from the lessor's compensation for purchase or rental payments; and (2) whether a motor carrier must treat money remitted to a third party's escrow fund as the carrier's own escrow fund, merely because the third party and the carrier are affiliated companies. The Commission has determined that the petition presents a controversy sufficient to warrant instituting a proceeding under 5 U.S.C. 554(e).

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. (Assistance for the hearing impaired is available through TDD services: (202) 927–5721.)

Decided: January 14, 1992.

By the Commission, David M. Konschnik Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 92–2005 Filed 1–27–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub. 318X)]

Burlington Northern Railroad Co.—Abandonment Exemption—In McKenzie County, North Dakota

On February 12, 1990, Burlington Northern Railroad Company (BN) filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon a 36.46-mile line of railroad between milepost 0.60, near East Fairview, and milepost 36.60, near Watford City, in McKenzie, ND.[1]

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of a complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of itnent to file an offer of financial assistance has been received, this exemption will be effective on February 27, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 7, 1992.[4] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by February 17, 1992 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) has prepared an environmental assessment (EA), which will be served concurrently with this notice. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248. Comments on environmental and energy concerns must be filed within 15 days after publication. SEE recommends that conditions be imposed: (1) Requiring BN to retain its interest in and take no steps to alter the historic integrity of the Truss Bridge over the Yellowstone River at milepost 3.2 and the tunnel at milepost 3.5 until completion of the section 106 process of the National Historic Preservation Act (16 U.S.C. 470); (2) prohibiting BN from removing and/or salvaging the bridge across the Yellowstone River until the requirements of section 7 of the Endangered Species Act (16 U.S.C. 1531, *et seq.*) are met; and (3) requiring that the removal of ties, rail or appurtenances be performed by BN in such a manner as to preserve the existing roadbed height and all existing water flows. The recommended conditions will be imposed.

Public use, trail use/rail banking, or any additional environmental conditions will be imposed, where appropriate, in a subsequent decision.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. Under 49 CFR 1152 Subpart F—Exempt Abandonments, the notice of exemption for the abandonment of the above described line is accepted, subject to: (1) The employee protective conditions in Oregon Short Line R. Co.—

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[1] In docket No. AB–6 (Sub-No. 318X), Brulington Northern R.R.—Abandonment Exempt.—In McKenzie County, ND (not printed), served March 12, 1990, the Commission concluded that it was barred from authorizing abandonment of the East Fairview-Watford City line due to the 350-mile limitation on BN abandonments in North Dakota imposed by section 402 of the Department of Transportation and Related Agencies Appropriation Act of 1982, Pub. L. No. 97–102, 95 Stat. 1442, 1465 (1981). Consequently, the agency rejected the notice of exemption. Subsequent to the Commission denying BN's petition for reconsideration (served November 9, 1990), the carrier challenged the rejection of its notice of exemption in the United States Court of Appeals, D.C. Circuit. After the Department of Transportation and Related Agencies Appropriations Act, 1992, Pub. L. No. 102–143, section 343 (Oct. 28, 1991), was signed into law, which amended section 402 by narrowing the restriction on processing BN abandonment applications so that it no longer applies to exemptions of out of service rail lines, the Commission jointly filed a motion with the Department of Justice and BN to remand the case for consideration of the notice of exemption in light of the amended statute. On November 15, 1991, the D.C. Circuit granted the motion to remand.

Under 49 U.S.C. 10327(g)(1), the Commission can "at any time on its own initiative" reopen, reconsider and change an earlier action based on substantially changed circumstances. The enactment of section 343 empowers the Commission to accept BN's notice for filing and the agency is required to apply the law in effect at the time of its decision if doing so is in accord with Congressional intent. *Kaiser Aluminum & Chemical Corp.* v. *Bonjorno*, 110 S.Ct. 1570, 1577 (1990).

[2] Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Abandonment—Goshen; 360 I.C.C. 91 (1979); (2) the condition that BN retain its interest in and take no steps to alter the historic integrity of the Truss Bridge over the Yellowstone River at milepost 3.2 and the tunnel at milepost 3.5 until completion of the section 106 process of the National Historic Preservation Act (16 U.S.C. 470); (3) the condition that BN cannot remove and/or salvage the bridge across the Yellowstone River until the requirements of section 7 of the Endangered Species Act (16 U.S.C. 1531, *et seq.*) are met; and (4) the condition that the removal of ties, rail or appurtenances is to be performed by BN in such a manner as to preserve the existing roadbed height and all existing water flows.

3. Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 27, 1992 (unless stayed pending reconsideration).

4. Comments on environmental and energy concerns must be filed within 15 days after publication.

5. Petitions to stay that do not involve environmental issues, formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2), and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 7, 1992. Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by February 17, 1992.

Decided: January 20, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-2006 Filed 1-27-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 404X)]

CSX Transportation, Inc.—Abandonment Exemption—in Hamilton County, IL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 2.16-mile line of railroad between mileposts M-382.39 and M-384.55, in McLeansboro, Hamilton County, IL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 27, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 7, 1992.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by February 18, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 31, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927-6248. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trade use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 22, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-2004 Filed 1-27-92; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Bureau of Prisons

Contract Health Care Services; Reimbursement and Medicare Allowable Rates

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: The Bureau of Prisons is issuing this Statement of Policy to inform the public that when it becomes necessary to supplement the direct delivery system of health care the Bureau provides to persons committed to its custody, the Bureau ordinarily will contract to purchase health services only with those hospitals, physicians and other health care providers which agree to accept, as payment in full, reimbursement at rates no higher than the prevailing Medicare allowable rates (including deductibles and co-payments). This encompasses those rates established by the Health Care Financing Administration as "sole community providers" or "regional referral centers". The Bureau will phase this policy into the administration of its contract health services program.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Dann, Health Services Division, Bureau of Prisons, 320 First Street NW., HOLC Room 1000, Washington, DC 20534. Telephone No.: (202) 307-3055.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons purchases health services from hospitals, physicians and other health care providers to supplement the Bureau's direct delivery system. Although the Bureau has obtained discounts from some providers through competitive contracting

processes, generally, the Bureau has paid full billed charges for contract health services. The billed charges which the Bureau pays substantially exceed allowable Medicare rates for the same services. This diminishes the purchasing power of the Bureau's contract health service dollars. In order to stay within limited program budgets, the Bureau has been forced to rely upon stringent medical priorities for use of contract health service funds.

It will be the policy of the Bureau of Prisons to contract only with those hospitals, physicians and other health care providers which agree to accept as payment in full, reimbursement at rates no higher than the prevailing Medicare allowable rates (including deductible and co-payments). This encompasses those rates established for hospitals designated by the Health Care Financing Administration as "sole community providers" or "regional referral centers." Non-contract providers will be used only in two situations: (1) In emergency situations for services necessary to stabilize a patient prior to transfer to a Bureau medical facility or to a contract provider, or (2) in situations when the patient's health requires that the services be rendered by a particular provider which does not have a contract with the Bureau. The Bureau will phase this policy into the administration of its contract health services programs.

The term "Medical allowable rate" in this notice means one hundred percent of the Medicare allowable rate for that service (including deductibles and co-payments) determined in accordance with Medicare methodologies in effect at the time the services were performed. Any contract entered into by the Bureau of Prisons would be premised upon Bureau payment being accepted by the provider as payment in full.

Under this policy, the Bureau will contract at or below the Medicare rate. The Medicare allowable rate will be a ceiling on the fee the Bureau will contract to pay for services that are covered by the Medicare schedule. The Bureau will use competitive processes to negotiate the most favorable rates available, up to that ceiling. This policy is not intended to restrict the Bureau to Medicare rates when more favorable rates may be negotiated.

J. Michael Quinlan,

Director, Federal Bureau of Prisons.

[FR Doc. 92-1966 Filed 1-27-92; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 7, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 7, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210.

Signed at Washington, DC this 13th day of January 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Adobe Resources Corp. (Wkrs)	Midland, TX	01/13/92	12/21/91	26,721	Oil and Gas.
Arco Oil and Gas Co. (Co)	Midland, TX	01/13/92	01/06/92	26,722	Oil and Gas.
Arco Oil and Gas Co. (Co)	Dallas, TX	01/13/92	01/06/92	26,723	Oil and Gas.
Arco Oil and Gas Co. (Co)	Lafayette, LA	01/13/92	01/06/92	26,724	Oil and Gas.
Ashland Leather Co. (Co)	Waynesville, NC	01/13/92	01/06/92	26,725	Shoulders and Bends.
Chicago Pneumatic Tool Co. (IAM)	Utica, NY	01/13/92	01/07/92	26,726	Industrial & Automotive Air Tools.
Halliburton Geodata (Co)	Houston, TX	01/13/92	01/06/92	26,727	Oil and Gas.
Halliburton Logging Serv. (Gulf) (Co)	New Orleans, LA	01/13/92	01/06/92	26,728	Oil and Gas.
Halliburton Logging Serv. (Vann) (Co)	Houston, TX	01/13/92	01/06/92	26,729	Oil and Gas.
Halliburton Logging Serv. (Hqts) (Co)	Houston, TX	01/13/92	12/17/91	26,730	Oil and Gas.
Halliburton Logging Serv. (Mid Cont) (Co)	Oklahoma City, OK	01/13/92	01/06/92	26,731	Oil and Gas.
Halliburton Logging Serv. (Research) (Co)	Houston, TX	01/13/92	01/06/92	26,732	Oil and Gas.
ICI Americas (Co)	Dighton, MA	01/13/92	12/31/91	26,733	Azo Dyes For Fabrics.
Jefferson Mills, Inc. (The) (Co)	Jefferson, GA	01/13/92	12/10/91	26,734	Corduroy Finished Fabrics.
Latrobe Die Casting Co. (UAW)	Latrobe, PA	01/13/92	01/03/92	26,735	Aluminum & Zinc Castings.
M. H. Rhodes, Inc, (IAM)	Avon, Ct	01/13/92	12/03/91	26,736	Electrical Switches, Light Timers etc.
M.K. Hotshot, Inc. (Co)	Casper, WY	01/13/92	01/02/92	26,737	Oil Transporting.
Molycorp, Inc. (Co)	Questa, NM	01/13/92	01/03/92	26,738	Molybdenum Mining.
Niagara Cutter, Inc. (NCIS)	North Tonawanda, NY	01/13/92	12/10/91	26,739	Milling Cutters.
Scott Paper Co. (UPIU)	Winslow, Me	01/13/92	12/26/91	26,740	Paper.
Sears, Roebuck & Co. (Wkrs)	Melrose Park, IL	01/13/92	11/10/91	26,741	Distribution of Repair Parts.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
United Penn Dress Co. (Wkrs)	York, PA	01/13/92	12/23/91	26,742	Ladies' Dresses.

[FR Doc. 92-2032 Filed 1-27-92; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of January 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,498; Workwear, Inc., Palestine, TX.

TA-W-26,379; Eagle Picher Industries, Inc., Eagle Picher Automotive Group, Willoughby, OH.

TA-W-26,401; Advanced Refractory Technology, Inc., Buffalo, NY.

TA-W-26,399; Wilson Automation, Warren, MI.

TA-W-26,495; Trak Microwave Corp., Tampa, FL.

TA-W-26,468; Kensington Knit Fashions, Long Island City, NY.

TA-W-26,426; Debbie-Jo Frocks, Inc., Shenandoah, PA.

TA-W-26,262; ACPC, Inc., Massena, NY.

TA-W-26,364; Huron St. Clair, Lake City, FL.

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-26,569; Hudson Tool & Die Co., Inc., Newark, NJ.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,528; Auto Plaza of Poughkeepsie/Duke Pontiac-GMC, Poughkeepsie, NY.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,306; Shell Oil Co., Shell Chemical, Houston, TX.

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,300; GTE Products Corp., Williamsort, PA.

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,532, and TA-W-26,533; Dual Drilling Co., Dallas, TX and Broussard, LA.

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,563; Co2, Inc., Denver City, TX.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,596; Epson Portland, Hillsboro, OR.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,553; Sundor Brands, Inc., Weslaco, TX.

U.S. imports of bottled and canned soft drinks are negligible.

TA-W-26,561; Brunswick Corp., Defense Div., Marion, VA.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,558; Woodstream Corp., Lititz, PA.

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-26,510; Emmes Investors, Limited, Carlstadt, NJ.

A certification was issued covering all workers separated on or after October 21, 1990.

TA-W-26,419; TRA Vehicle Safety Systems, Louisville, MS.

A certification was issued covering all workers separated on or after September 25, 1990.

TA-W-26,448; Al Kamen Coat Co., West Bergen, NJ.

A certification was issued covering all workers separated on or after October 2, 1990.

TA-W-26,493; Sparta Mosaics, Cast Sparta, OH.

A certification was issued covering all workers separated on or after October 1, 1990.

TA-W-26,490; Marianna Mills, Inc., Marianna, AR.

A certification was issued covering all workers separated on or after October 9, 1990.

TA-W-26,489; Grieco Brothers, Inc., Lawrence, MA.

A certification was issued covering all workers separated on or after October 15, 1990.

TA-W-26,521; Mars Gloves Co., Inc., LaFayette, GA.

A certification was issued covering all workers separated on or after October 23, 1991.

TA-W-26,467; Joshua Meier Corp., North Bergen, NJ.

A certification was issued covering all workers separated on or after October 1, 1991.

TA-W-26,514; Groshire Clothing, Inc., New York, NY.

A certification was issued covering all workers separated on or after October 11, 1990.

TA–W–26,515; Grossman Clothing, Inc., New York, NY.

A certification was issued covering all workers separated on or after October 11, 1990.

TA–W–26,576; Ohio Coil Service, Newcomerstown, OH.

A certification was issued covering all workers separated on or after November 1, 1990.

TA–W–26,518; Harry Irwin, Inc., New York, NY.

A certification was issued covering all workers separated on or after October 11, 1990.

I hereby certify that the aforementioned determinations were issued during the month of January, 1992. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: January 21, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–2031 Filed 1–27–92; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act, Title IV, Section 451, Part D—National Level Multi-State Programming to Train and Employ the Disabled

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice of availability of funds and of Solicitation for Grant Applications (SGA).

SUMMARY: The Employment and Training Administration, U.S. Department of Labor, announces the intent to award grant(s) on a competitive basis for the conduct of programs designed to train and employ the disabled. This notice provides a synopsis of the SGA. Grant awards will be made by July 1, 1992.

DATES: The applications will be available February 12, 1992. The requests must be made in writing to the address below. Telephone and telefacsimile (FAX) will not be honored. The request must cite SGA/DAA 92–001 and must include two (2) self-addressed labels. Requests will be honored on a first come, first served basis until the supply of 300 is exhausted. The closing date for receipt of proposals will be available March 13, 1992, 2 p.m. Eastern time.

Any applications not meeting the designated place, date, and time of delivery will not be considered.

ADDRESSES: Mail your request for Solicitation of Grant Application (SGA) to: U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, Division of Acquisition and Assistance, 200 Constitution Avenue NW. room C–4305, Washington, DC 20210, Attention: Gwendolyn Simms, Reference GSA/DAA 92–001.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Baron-Simms, Telephone: (202) 535–8702 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration, U.S. Department of Labor, will award approximately 8–10 grants under the Job Training Partnership Act (JTPA) for the conduct of programs designed to train and employ the disabled through national level, multi-State programs. Funding for the grants is authorized by section 451, part D of the Act. The Department anticipates that $3.9 million will be available for Program Year 1992 for the intended grant awards.

The period of performance will be 12 months from the date of execution. The general purpose of this program is to increase the number and quality of job opportunities for disabled individuals and assist in eliminating the barriers they face by providing specialized outreach services, tailored training, job development and unsubsidized employment.

Awards under this solicitation will be made to national level, multi-State, non-profit organizations that administer training and employment programs for the disabled. Therefore, only applications from those organizations meeting the above statutory requirements will be accepted. Individuals are not eligible to apply.

Based on the availability of funding, effective program operation and the needs of the Department, the grants may be extended for up to two (2) additional years.

Signed at Washington, DC on January 15, 1992.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 92–2030 Filed 1–27–92; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Sheep Fork Energy, Inc.

[Docket No. M–91–128–C]

Sheep Fork Energy, Inc., P.O. Box 262, Toler, Kentucky 41569 has filed a petition to modify the application of 30 CFR 75.1704–1(a) (escapeways and escape facilities) to its No. 2 Mine (I.D. No. 46–01939) located in Mingo County, West Virginia. The petitioner proposes to install a substantially constructed stairway with hand railing from the bottom of the slope to the surface and as wide as clearance will permit to facilitate safe exit of persons in the event of an emergency instead of a six foot wide escapeway.

2. Southern Ohio Coal Co.

[Docket No. M–91–129–C]

Southern Ohio Coal Company, Route 3, State Route 687, Albany, Ohio 45710 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Meigs No. 2 Mine (I.D. No. 33–01173) and its Meigs No. 31 Mine (I.D. No. 33–01172) both located in Meigs County, Ohio. The petitioner proposes to use an internal ground check conductor smaller than No. 10 (A.W.G.).

3. Eagle Run Coal Co., Inc.

[Docket No. M–91–130–C]

Eagle Run Coal Company, 416 Chestnut Street, Kulpmont, Pennsylvania 17834 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its 7 Vein Slope (I.D. No. 36–08246) located in Northumberland County, Pennsylvania. The petitioner proposes to operate gunboats to transport persons with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device.

4. Peabody Coal Co.

[Docket No. M–91–131–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420–1999 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Mine No. 10 (I.D. No. 11–00585) located in Christian

County, Illinois. The petitioner proposes to enclose electrical equipment in a monitored fireproof structure instead of ventilating directly into the return.

5. Gideon Coal Co.

[Docket No. M-91-132-C]

Gideon Coal Company, HC 81, Box 1532, Hinkle, Kentucky 40953 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.D. No. 15-17143) located in Knox County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen indicators instead of machine-mounted methane monitors on permissible three-wheel tractors with drag bottom buckets.

6. Eastern Association Coal Corp.

[Docket No. M-92-01-C]

6. Eastern Associated Coal Corporation, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Federal No. 2 Mine (I.D. No. 46-01456) located in Monongalia County, West Virginia. The petitioner proposes to use high-voltage cables to supply power in the 8 Right, 2 Left and 3 Left, 4 North Mains longwall sections of the mine.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 27, 1992. Copies of these petitions are available for inspection at that address.

Dated: January 21, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-2029 Filed 1-27-92; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before March 13, 1992. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of Commerce, National Fish and Seafood Promotional Council (N1-40-92-1). Comprehensive records schedule.

2. Department of Justice, Immigration and Naturalization Service (N1-85-91-5). United States citizens' identification cards, 1924-45.

3. Department of Justice, Immigration and Naturalization Service (N1-85-91-7). Applications, instructions, supplemental material and change of address forms for the Replenishment Agricultural Worker program.

4. Department of Labor, Bureau of Labor Statistics (N1-257-92-2). Consumer Price Index user survey questionnaires, 1988.

5. Department of the Treasury, Financial Management Service (N1-425-92-1). Bureau of Accounts Emergency Relief authorizations, 1935-42.

6. Federal Communications Commission, Mass Media Bureau (N1-173-91-5). Survey of horse racing results broadcast over radio stations, 1962-66.

7. Federal Emergency Management Agency (N1-304-91-1). Regional records of the Federal Civil Defense Administration relating to disaster relief and emergency preparedness.

8. National Archives and Records Administration (N1-GRS-92-5). General Records Schedule item for donated leave program records.

9. Tennessee Valley Authority, Resource Development (N1-142-90-9). Cost allocation records for multipurpose dams and reservoirs.

Dated: January 22, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92-1998 Filed 1-27-92; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

MEETING

AGENCY: National Commission on Judicial Discipline and Removal.

ACTION: Public meeting.

SUMMARY: Notice is hereby given pursuant to the Federal Advisory Committee Act that a public meeting of the National Commission on Judicial Discipline and Removal will be held on January 30–31, 1992, in St. Michaels, Maryland. The precise location of the meeting will be the St. Michaels Harbour Inn, 101 North Harbour Road, St. Michaels, Maryland 21663.

The January 30th meeting will convene at 1:30 p.m. and will adjourn at approximately 5:15 p.m.

The January 31st meeting will convene at 8:45 a.m. and will adjourn at approximately 4:30 p.m.

AUTHORITY: The meeting will be the first one for the National Commission, a body composed of thirteen members appointed by the Speaker of the House, the President *pro tem* of the Senate, the President, the Chief Justice of the United States and the Conference of Chief Justices. The National Commission was established by Public Law 101–650 (Title IV) and assigned three statutory duties. The first is to investigate and study the problems and issues involved in the tenure (including discipline and removal) of Article III (appointed to serve for life) judges. The second is to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for the discipline or removal of judges that would require constitutional amendments. Finally, the Commission is required to prepare and submit a report to the Congress, the Chief Justice and the President setting forth a detailed statement of its findings and conclusions together with any recommendations for legislative and administrative actions as are considered appropriate.

Ordinarily the provisions of the Federal Advisory Committee Act are not applicable to legislative or judicial agencies. Nonetheless, since the Commission is composed of representatives of all three branches of the Federal government, good faith attempts will be made to follow the spirit of the law.

FOR FURTHER INFORMATION CONTACT: Michael J. Remington or Victoria Y. Smith at the National Commission of Judicial Discipline and Tenure, Suite 690, 2100 Pennsylvania Avenue NW., Washington, DC 20007.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be available for public inspection during regular working hours at the Commission offices approximately thirty working days following the meeting.

Victoria V. Smith,

Administrative Officer.

[FR Doc. 92-2048 Filed 1-27-92; 8:45 am]

BILLING CODE 6820-DB-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by February 22, 1992, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by February 20, 1992.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h). Individuals with significant experience in the arts are used by the Endowment to serve on application or policy review panels. These individuals reflect diverse backgrounds and expertise in the arts and reside throughout the country. In order to identify and select qualified panelists, the Endowment is enhancing its computerization of information about qualified individuals by means of an automated panel bank system. Individuals who believe they are qualified to serve as a member of an Endowment panel will need to complete a twelve-item questionnaire and submit it, supplemented by a current resume, to the Endowment. This information will then be electronically scanned and stored in the automated system which will be used to identify potential members of application or review panels. Several of the questions require the respondent to pick the most appropriate response from coded listings accompanying the questionnaire and then transfer those codes to the spaces provided. The first five questions ask for items of identification: Social Security Number; name; form of address; mailing address; and telephone number(s). The next 6 questions ask: Is the respondent a lay person; what are their special characteristics; their areas(s) of work/type(s) of business; the type(s) of organization(s) they are with; their areas(s) of arts expertise; and the source of recommendation for possible panel service, if any. Responses to these questions will be made by entering the appropriate codes form listings provided with the form. The last question is a small (6 line) space for any additional optional narrative information the respondent may wish to provide.

Title: Automated Panel Bank System Data Collection Form.

Frequency of Collection: One time.

Respondents: Peer review panelist candidates.

Use: Panel Bank Data Collection Form elicits relevant information from individuals wishing to be considered for service as a panelist at the National Endowment for the Arts.

Estimated Number of Respondents: 4000.

Average Burden Hours Per Response: .5.

Total Estimated Burden: 2000.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92-1969 Filed 1-27-92; 8:45 am]

BILLING CODE 7537-01-M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is

hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions A Section) to the National Council on the Arts will be held on February 18–20, 1992 from 9:15 a.m.–5:30 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 18 from 9:15 a.m.–10 a.m. The topics will be opening remarks and general discussion.

The remaining portions of this meeting on February 18 from 10 a.m.–5:30 p.m. and February 19–20 from 9:15 a.m.–5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 22, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92–3060 Filed 1–27–92; 8:45 am]

BILLING CODE 7537–01–M

Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning (formerly Inter-Arts) Advisory Panel (Partnerships in Commissioning Section) to the National Council on the Arts will be held on February 18, 1992 from 9 a.m.–6 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 5 p.m.–6 p.m. The topics will be guidelines review and policy discussion.

The remaining portion of this meeting from 9 a.m.–5 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 22, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92–2010 Filed 1–27–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Consumers Power Co., Big Rock Point Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.62(c)(3) to the Consumers Power Company (the licensee) for the Big Rock Point Plant located in Charlevoix County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 50.62(c)(3). On December 29, 1986, the licensee requested an exemption from 10 CFR 50.62(c)(3), which requires that each boiling water reactor (BWR) must have an alternate rod injection (ARI) system that is diverse (from the reactor trip system) from sensor output to the final actuation device. Specifically, the licensee would not be required to install an ARI system.

The Need for the Proposed Action

Section 50.62 of 10 CFR part 50 imposes requirements for operating nuclear reactor facilities which are intended to reduce the chance of or mitigate the potential consequences of an anticipated transient without scram (ATWS) event. Section 50.62(c)(3) requires that each BWR licensee install a diverse and redundant system for inserting control rods into the reactor. In the Statements of Consideration for the ATWS rule (49 FR 26036), the Commission's staff states that older plants (those licensed for operation prior to August 22, 1969) may be granted exemptions from these requirements if they can demonstrate that their risk from ATWS is sufficiently low. A number of potential factors in the determination of low risk could include power level, unique design features that could prevent or mitigate the consequences of an ATWS event, remaining plant operating lifetime, or remote siting. The Commission's staff further stated that a reduction in the frequency of challenges to plant safety systems should be a prime goal of each licensee.

By letter dated October 1, 1986, the licensee submitted a plant-specific evaluation of the risks associated with ATWS events at Big Rock Point. The licensee concluded that the risk reduction from the installation was not significantly greater than the reduction provided by improving secondary system stability, and that the increased cost of the installation of ARI was not justified. The licensee has completed modifications to the plant (the installation of a single recirculation pump trip) to achieve greater stability in accordance with the October 1, 1986 submittal. Thus, the licensee has proposed an alternative action to that

required by 10 CFR 50.62(c)(3) and an exemption from the specific requirements of the rule is required.

Environmental Impacts of the Proposed Action

The proposed exemption would provide relief from the requirements of 10 CFR 50.62(c)(3) that an ARI system be installed at the Big Rock Point Plant. The licensee has performed a risk analysis to determine the efficacy of the implementation of ARI. This risk analysis included evaluations of alternatives to the installation of an ARI system, including (1) the installation of a simplified ARI, and (2) the improvement of secondary system stability following a load rejection event. The risk analysis determined that the installation of a full ARI system provided little benefit beyond the risk reduction associated with the improvement of secondary system response to transients from high power levels. The licensee has determined that the installation of an ARI would result in a core damage frequency (CDF) of 3.2E-5/RY (reactor year), while improvement of secondary system stability would result in a CDF of 3.6E-5/RY. The Commission's staff has previously reviewed this risk analysis and concurs with its findings.

Based on the above, the Commission's staff has determined that granting the proposed exemption would not significantly affect the ability of the Big Rock Point Plant to prevent or mitigate ATWS events. Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. Neither would the proposed exemption affect radiological plant effluents. Therefore, the Commission's staff concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption does effect a change in the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in an increased financial burden on the licensee.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Contacted

The Commission's staff did not consult other agencies in making its decision on this proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission's staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated December 29, 1986. This letter is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan.

Dated at Rockville, Maryland this 17th day of January 1992.

For the Nuclear Regulatory Commission.

Edmund J. Sullivan,

Acting Director, Project Directorate III-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-1919 Filed 1-27-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

Long Island Lighting Co.; Environmental Assessment and Finding of No Significant Environmental Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to the Long Island Lighting Company (LILCO, or the licensee), in connection with its Shoreham Nuclear Power Station, Unit 1 (SNPS), located in Suffolk County, New York. The exemption would grant relief from certain security requirements of 10 CFR 73.55 that are no longer necessary for a nuclear facility that is in a shutdown and permanently defueled condition such as SNPS.

Environmental Assessment

Identification of Proposed Action

The exemption will modify security requirements to eliminate certain vital areas and equipment, systems and procedures, and reduce the number of required armed responders, which are now unnecessary for SNPS, as it is a nuclear facility that is in a shutdown and permanently defueled condition. SNPS is a boiling water reactor that was licensed for commercial operation from April 21, 1989 to June 14, 1991.

Need for Proposed Action

The exemption is necessary to grant relief from physical security requirements that are inappropriate for a facility in a shutdown and permanently defueled condition.

Environmental Impact of the Proposed Action

The proposed action will have no environmental impact because (1) SNPS is shutdown and permanently defueled, (2) LILCO is not allowed to put fuel back into the reactor building without prior Commission approval, and (3) potential offsite exposures from accidents are reduced to less than Environmental Protection Agency (EPA) protective action guidelines (PAG). Thus, an act of sabotage that would result in a significant offsite radiological release is no longer a credible event at SNPS.

The licensee's analysis demonstrated that the potential risk to the public is significantly reduced and the range of credible accidents and accident consequences are limited after the shutdown and defueling of SNPS. The worst case accident for this facility is a fuel handling accident. The licensee's analysis shows that the offsite doses resulting from a fuel handling accident would not exceed the EPA PAGs offsite. For example, the lower level EPA guideline for protective action is 1 Rem whole/body dose. The licensee's analysis shows that, for a fuel handling accident, the integrated whole-body and skin doses are less than 0.00005 percent of the 10 CFR part 100 limits.

The staff has also determined that the proposed action involves no increase in the amounts, and no significant change in the types of radiological effluents that may be released offsite and that there would be no increase in individual or cumulative occupational radiation exposures.

With regard to nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes

that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed exemption, any alternatives with equal or greater impact need not be evaluated.

The principal alternative would be to deny the requested action. This would not reduce environmental impacts associated with present level of plant activities.

Alternative Use of Resource

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to the operation of the SNPS (NUREG–0285), dated October 1977.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request that supports the proposed action, and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed actions will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's application of October 9, 1990, as supplemented on November 4 and 8, 1991. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and the local public document room at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786–9697.

Dated at Rockville, Maryland, this 21st day of January 1992

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 92–1917 Filed 1–27–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards

Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 6–8, 1992, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on January 23, 1992.

Thursday, February 6, 1992

8:30 A.M.–8:45 A.M.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

8:45 A.M.–10:00 A.M.: Policies and Practices of Public Utility Commissions (Open)—The Committee will hear a briefing by and hold a discussion with an invited expert regarding the impact that policies and practices of Public Utility Commissions have on the safety of nuclear power plants.

10:15 A.M.–12:15 P.M.: Integral Systems Testing for the Westinghouse AP–600 Nuclear Plant (Open/Closed)—The Committee will review and report on integral systems testing requirements for the Westinghouse AP–600 standardized nuclear power plant.

Representatives of the NRC staff and the Westinghouse Electric Corporation will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

1:15 P.M.–3:15 P.M.: Meeting with Senior NRC Staff Managers (Open)—The Committee will hold a discussion regarding proposed reconciliation of ACRS comments and recommendations regarding several safety related and regulatory matters such as consistent use of PRA in the regulatory process, the NRC Regulatory Impact Survey, and criteria to accommodate severe accidents in containment design.

3:30 P.M.–5:00 P.M.: Reactors Operating Experience (Open)—The Committee will bear a briefing by and hold a discussion with representatives of the NRC staff regarding recent events and incidents at operating nuclear power plants, including the causes and consequences of a turbine overspeed failure at the Salem Nuclear Generating Station and a main coolant system leak at the Oconee Nuclear Station.

Representatives of the licensees and other elements of the nuclear industry will participate, as appropriate.

5 P.M.–6:45 P.M.: Key Technical Issues (Open)—The Committee will discuss proposed plans for resolution of key technical issues in need of early resolution with respect to future nuclear power plant designs.

6:45 P.M.–6:30 P.M.: Preparation of ACRS Report (Open)—The Committee will discuss issues to be addressed in reports related to matters considered during this meeting session.

Friday, February 7, 1992

8:30 A.M.–10:45 A.M.: Design Acceptance Criteria (Open)—The Committee will review and report on proposed use of Design Acceptance Criteria as a mechanism to define plant design features in the certification process for standardized nuclear plants in accordance with 10 CFR 52.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

10:45 A.M.–12 Noon: Accident Sequence Precursor Program (Open)—The Committee will hear a briefing by and hold a discussion with representatives of the NRC staff regarding the program to identify and evaluate accident precursors.

Representatives of the nuclear industry will participate, as appropriate.

1 P.M.–2:30 P.M.: Meeting with Director, NRC Office of Nuclear Regulatory Research (Open–Closed)—The Committee will hear a briefing by and hold a discussion with the Director, NRC Office of Nuclear Regulatory Research, regarding various aspects of the NRC safety research program, including matters such as the need for an NRC Office of Research, priorities assigned to various portions of the research program, and the NRC research budget and its management.

Portions of this meeting related to anticipated budget and programmatic changes will be closed to discuss information the premature release of which is likely to significantly frustrate the agency in the performance of its statutory function.

2:45 P.M.–3:45 P.M.: Proposed Revision of 10 CFR Part 100, Appendix A, Seismic and Geologic Siting Criteria for Nuclear Power Plants (Open)—The Committee will review and report on proposed revision of 10 CFR Part 100, Appendix A to update these regulatory criteria in accordance with developments in this field.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

3:45 P.M.–4:15 P.M.: Reactor Safety Research Program (Open)—The Committee will discuss the proposed annual ACRS report to the U.S.

Congress on the NRC safety research program and budget.

4:15 P.M.–4:45 P.M.: Federal Advisory Committee Act (Open)—The Committee will discuss proposed Committee comments to the U.S. Senate Committee on Government Affairs on the proposed 1991 amendment of the Federal Advisory Committee Act.

4:45 P.M.–5:45 P.M.: ACRS Subcommittee Activities (Open)—The Committee will hear and discuss reports regarding the status of assigned ACRS subcommittee activities including items proposed for consideration by full Committee (Planning and Procedures Subcommittee) and a proposed ACRS report to the NRC on its research program (Safety Research Program Subcommittee).

5:45 P.M.–6:30 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss issues to be addressed in reports related to matters considered during this meeting.

Saturday, February 8, 1992

8:30 A.M.–11:30 A.M.: Preparation of ACRS Reports (Open)—The Committee will complete preparation of ACRS reports regarding items considered during this meeting.

11:30 A.M.–12:30 P.M.: Miscellaneous (Open)—The Committee will complete discussion and related action regarding items considered during this meeting and items which were not completed at previous meeting as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 1, 1991 (56 FR 49800). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept and questions may be asked only by members of the Committee, it consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) P.L. 92–463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matters being considered in accordance with 5 U.S.C. 552b(c)(4) and information the premature release of which is likely to significantly frustrate the agency in the performance of its statutory function per 5 U.S.C. 552b(c)(9)(B).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8 a.m. and 4:30 p.m.

Dated: January 22, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–2021 Filed 1–27–92; 8:45 am]

BILLING CODE 7590–01–M

Local Public Document Room for Callaway Plant at the John M. Olin Library, Washington University, St. Louis, Missouri, to Close

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of closing of local public document room for Callaway Plant located at the John M. Olin Library, Washington University, St. Louis, Missouri.

SUMMARY: Notice is hereby given that the Nuclear Regulatory Commission (NRC) is closing the local public document room (LPDR) for records pertaining to Callaway Plant located at the John M. Olin Library, Washington University, St. Louis, Missouri.

DATES: The Callaway LPDR located at the John M. Olin Library, Washington University, St. Louis, Missouri, will close effective February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Jona Souder, LPDR Program Manager, Freedom of Information Act/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–4344, or Toll-Free 1–800–638–8081.

SUPPLEMENTARY INFORMATION: Since 1974 the NRC has maintained two LPDRs for Callaway Plan located in Fulton, Missouri. They are the Callaway County Library, Fulton, Missouri, which is about ten miles southeast of the site, and the John M. Olin Library, Washington University, St. Louis, Missouri, which is approximately eighty miles west of the site. The LPDR located in St. Louis, Missouri, was established as an exception to our usual practice of locating LPDRs in the immediate vicinity of nuclear power plants. We agreed to maintain this LPDR to serve the population center in St. Louis during the Agency's review of the proposed Callaway facility. The Callaway Plant was licensed and began commercial operation in 1984.

In a letter dated December 19, 1991, the Director, Industrial Contracts and Licensing, of the Washington University, St. Louis, Missouri, stated they will no longer continue as a LPDR after January 31, 1992. Therefore the Callaway LPDR located in St. Louis, Missouri, will be closed effective February 1, 1992.

Dated at Bethesda, Maryland, this 23rd of January, 1992.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 92–2020 Filed 1–27–92; 8:45 am]

BILLING CODE 7590–01–M

Cintichem, Inc.; Issuance of a License Amendment To Renew License No. SNM–639 and Approval of Decommissioning Plan

The Nuclear Regulatory Commission has issued an amendment under the provisions of title 10 of the Code of Federal Regulations, part 70 (10 CFR part 70) to Cintichem, Inc. authorizing the renewal of Special Nuclear Materials License SNM–639 for the purpose of decommissioning the Cintichem facility located in Tuxedo, New York. This amendment also approves the decommissioning plan submitted by the licensee.

The licensee requested this amendment in a letter dated April 17, 1991, which referenced a decommissioning plan, an environmental report and a radiological accident analysis that had previously been submitted to the Commission on October 19, 1990.

The amendment authorizes the licensee to perform decommissioning of the: (a) Laboratory/hot cell building (Building 2) and associated structures; (b) areas in the reactor building (Building 1) and associated structures subject to this license amendment; and (c) the waste storage building (Building 6) and associated structures in accordance with the licensee's decommissioning plan. The amendment also authorizes the renewal of SNM–639 for the possession, use and storage of special nuclear material as necessary to allow the decommissioning of the facility.

On May 22, 1991, (56 FR 23601) the Commission announced in the **Federal Register** that it was considering issuing this amendment to the licensee. At that time the Commission provided notice that it was proceeding to review an application for a license amendment falling within the scope of Subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR part 2.

On November 20, 1991, (56 FR 58589) the Commission announced in the **Federal Register** that it had reviewed the proposed decommissioning plan submitted to the Commission on October 19, 1990, as supplemented on January 11, 14, and 28, February 19, March 8, April 24, May 21, June 25, July 17, August 6, and October 2, 1991, and had prepared an Environmental Assessment and Safety Evaluation Report (the licensee has also requested, on January 8, 1992, to increase the timeframe for decommissioning from 26.5 to 36 months). Based on the Environmental Assessment the staff concluded that there are no significant environmental impacts associated with the proposed action and that the proposed action will not have a significant impact on the quality of the human environment. For further details with respect to this action see the licensee's request for amendment dated April 17, 1991, which is available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland this 17th day of January, 1992 for the U.S. Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Section, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 92–1920 Filed 1–27–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co., Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 148 to Facility Operating License No. DPR–61 issued to Connecticut Yankee Atomic Power Company, which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to reflect the conversion to a Zircaloy-clad fuel assembly design, prohibit three loop operation for Modes 1 and 2 for Cycle 17, and change the required boron shutdown margin concentration. The Technical Specification changes will allow for the use of Zircaloy-clad fuel assemblies in the core.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rule and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 31, 1991 (56 FR 36175). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated June 27, 1991, as supplemented December 10, 1991, (2) Amendment No. 148 to License No. DPR–61, (3) the Commission's related Safety Evaluation, (4) the Commission's related Environmental Assessment (56 FR 65920).

All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland this 17th day of January 1992.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–2017 Filed 1–27–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–602]

University of Texas at Austin; Notice of Issuance of Facility Operating License No. R–129

The U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. R–129 for the University of Texas at Austin (the licensee) to operate the TRIGA Mark II research reactor located on the licensee's site in Austin, Texas.

Facility Operating License No. R–129 authorizes a power level not in excess of 1100 kilowatts (thermal) and in the pulse mode, with pulse step reactivity insertion not in excess of 2.2 percent Δk/k. The license will expire twenty years from its date of issuance.

The license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I. Those findings are set forth in the license. Opportunity for hearing was afforded in the notice of the Proposed Issuance of Construction Permit and Facility Operating License in the **Federal Register** on March 29, 1985, at 50 FR 12669. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The facility has been inspected by representatives of the Commission who have determined that the facility was constructed in substantial conformity with the terms and conditions of the construction permit and the application, as amended.

The Commission has prepared a Safety Evaluation Report (NUREG–1135) and Supplement 1 to NUREG–1135

regarding the construction permit and operating license for the University of Texas and has, based on that report, concluded that the facility can be constructed and operated by the licensee without endangering the health and safety of the public.

The Commission also prepared a Finding of No Significant Environmental Impact which was published in the Federal Register on May 30, 1985 (50 FR 23088) for the construction and subsequent operation of the reactor and has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see (1) the application for construction permit and operating license of November 9, 1984, as supplemented; (2) Construction Permit No. CPRR-123; (3) Facility Operating License No. R-129; (4) the related Safety Evaluation Report (NUREG-1135); (5) Supplement 1 to NUREG-1135; and (6) the Finding of No Significant Environmental Impact of May 30, 1985. These items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Copies of NUREG-1135 and Supplement 1 to NUREG-1135 may be purchased by calling (202) 275-2060 or (202) 275-2171 or by writing the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982.

Dated at Rockville, Maryland, this 17th day of January 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 92-1918 Filed 1-27-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-338]

Correction to Federal Register Notice Virginia Electric and Power Company

On January 21, 1992, a Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing for the North Anna Power Station, Unit No. 1 was published. On page 2292, column 2, 3rd paragraph, the date "February 18, 1992" should be changed to "February 20, 1992."

For the Nuclear Regulatory Commission.

Leon B. Engle,

Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-2018 Filed 1-27-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Notice of Transmittal of Final Sequestration Report to the President and Congress

January 14, 1992.

Pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Final Sequestration Report for Fiscal Year 1992 to the President, the Speaker of the House of Representatives, and the President of the Senate.

Darrell A. Johnson,

Assistant Director for Administration.

[FR Doc. 92-1967 Filed 1-27-92; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Federal Salary Council agenda for this meeting includes further discussions on issues relating to the new locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting will be open.

DATES: February 11, 1992, beginning at 9:30 a.m..

ADDRESSES: Room 1350, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-0001.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth O'Donnell, Chief of Salary Systems Division, room 6H31, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-0001 Telephone number: (202) 606-2838.

FOR THE PRESIDENT'S PAY AGENT:

Constance Berry Newman,

Director.

[FR Doc. 92-1938 Filed 1-27-92; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Intergovernmental Policy Advisory Committee Schedule

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Intergovernmental Policy Advisory Committee meeting.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATES: The meeting of the Intergovernmental Policy Advisory Committee is scheduled for February 4, 1992, from 2-4 p.m.

ADDRESSES: The meeting will be held at the J.W. Marriott Hotel, Grand Ball Room, 1331 Pennsylvania Avenue, Washington, DC, 20004.

FOR FURTHER INFORMATION CONTACT: Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 92-2128 Filed 1-27-92; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30205; File No. SR-Amex-91-29]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Percentage Orders

January 17, 1992.

I. Introduction

On October 17, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to make permanent the amendments to Exchange Rules 131 and 154, as those rules relate to percentage orders, which

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

were temporarily approved by the Commission for a one-year pilot period due to expire on January 17, 1992.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 29969 (November 20, 1991), 56 FR 60134 (November 27, 1991). No comments were received on the proposal.

The proposal herein is intended to amend permanently the Exchange's percentage order procedures to conform them substantially to similar procedures currently in place at the New York Stock Exchange, Inc. ("NYSE").[4] The Exchange believes that the changes made to these rules for the one-year pilot period have contributed to the efficiency of the Exchange's market by providing specialists with the necessary flexibility to handle and service large-size orders.

In this regard, the Exchange submitted to the Commission a report detailing the Exchange's experience with the proposed amendments during the one-year pilot program which began on January 17, 1991 (see letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, to Mary Revell, Branch Chief, Division of Market Regulation, dated October 18, 1991). In addition, the Exchange submitted a subsequent report evaluating in a more detailed manner the proposed percentage order procedures during the pilot period (see letter from Claudia Crowley to Mary Revell, dated January 9, 1992, and note 33, *infra* and accompanying text).

Essentially, the proposed permanent amendments to Rules 131 and 154 will broaden a specialist's ability to represent percentage orders, which are defined by Amex Rule 131(n) as limited price orders to buy (or sell) 50% of the volume of a specified stock after its entry, and generally expand the types of percentage orders allowed to be effected on the Exchange. The proposed rule change is intended to broaden the ability of an Amex specialist to represent percentage orders by (1) permitting a specialist to accept "last sale" and "buy minus—sell plus" percentage orders; [5] (2) permitting the conversion of a percentage order into a limit order on a destabilizing tick; and (3) allowing conversions that would have the effect of bettering the market.[6] The Exchange is proposing that these new conversion opportunities be subject to certain limitations and conditions designed to prevent conversions of percentage orders from unduly influencing the market. The Amex believes that the permanent approval of this proposed rule change will contribute to the efficiency of the Exchange's market by providing the specialist with the necessary flexibility to handle and service large-size orders, thereby enhancing the overall quality of the Exchange's auction market system.

II. Background of Amex's Percentage Order Procedures

The Exchange developed Amex Rules 131 and 154 in order to free a floor broker from having to remain in the crowd to assure proper execution of a large order. The percentage order can be left by a broker with the specialist as a potential order on record that becomes an actual limit order on the specialist's "book" under certain circumstances. The Amex percentage order rules currently provide procedures by which the specialist mechanically introduces the order into the auction process without unduly influencing the market price. Prior to the implementation of the one-year percentage order pilot program, there existed two procedures by which percentage orders could be activated into live limit orders pursuant to Amex Rules: (1) Transaction elections and (2) stabilizing tick conversions.

(A) Transaction Elections

The basic provisions regarding percentage orders provide that trade occurring in the market "elect" portions of a percentage order to become regular limit orders. A portion of the percentage order is "elected" into a limit order in the following manner:

—As a certain number of shares of the stock that is the subject of the percentage order is traded on the Exchange ("triggering transaction"),

—an equal number of shares is entered on the specialist's book as a regular limit order at the price specified on the order, and

—the percentage order is reduced by the certain number of shares.

The portion "elected" is always equal in size to the triggering transaction. The elected portion, or course, may not be immediately filled because there may not be orders on the opposite side at the proper price. To that extent, the elected portion will be treated as a new limit order and take its place behind other limit orders at the same price on the book. The mechanics of the market, therefore, determine the time of execution and the number of shares executed at any given time. The specialist merely supervises and logs the orderly progression of the execution.[7]

At his or her option, the floor broker placing the percentage order (the "entering broker") may give the specialist written permission to be on parity with the order, thereby allowing the specialist to trade along with the order. At no time, however, may the specialist participate in an amount greater than that of any "elected" portion(s), except that the specialist may participate for his own account to an extent greater than any particular percentage order where the size specified on such order has been satisfied. Further, the specialist may never trade ahead of, or with, other orders on the book.

(B) Stabilizing Tick Conversions

Current Rule 154 was designed to provide for percentage order participation in large contra-side interest entering the market, and to permit a specialist, under specified conditions, to convert an unelected percentage order into a limit order without waiting for all or part of the order to be elected. The current rules permit the order to trade directly with contra-side interest as that interest enters the market. Any portion of the temporarily-converted order that does not participate in the trade reverts back to the percentage order.

Percentage orders accompanied by conversion instructions are designated "convert" orders. Furthermore, convert orders permitting the specialist to be on "parity" are commonly referred to as

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[3] See Securities Exchange Act Release No. 28792 (January 17, 1991), 56 FR 2985 (order temporarily approving File No. SR–Amex–90–11).

[4] See Securities Exchange Act Release No. 24505 (May 22, 1987), 52 FR 20484 (order approving File No. SR–NYSE–85–1); NYSE Rules 13 and 123A.30. Amex's proposed rule change in identical to the NYSE Rules governing percentage orders, with the following two exceptions: (1) Pursuant to the Amex proposal, a specialist is required to obtain Floor Official approval before converting percentage orders for consecutive or contemporaneous trades on destabilizing ticks (*see* text accompanying note 17, *infra*), while NYSE Rule 123A requires Floor Governor approval; and (2) the Amex proposal requires a 5,000 share minimum for plus and minus destabilizing transactions (see note 16, *infra* and accompanying text), rather than the 10,000 share minimum in effect at the NYSE.

[5] Pursuant to current Amex Rule 131, only so-called "straight limit" orders can be executed on the Exchange. For a definition of "straight limit," "buy minus-sell plus," and "last sale" percentage orders, see text accompanying note 19, *infra*.

[6] A transaction which betters the market either narrows the spread, adds depth to a prevailing bid or offer, or establishes a new bid or offer immediately after a transaction has cleared all bids and offers.

[7] When such an elected-portion/limit order is executed, it does not trigger other portions of the same or other percentage orders. Thus, execution of percentage orders have no influence on the same or other percentage orders (*i.e.*, there is no compounding or "snow-balling" effect).

"CAP" orders on the Floor.[8] Under current Amex Rule 154, however, a specialist can execute an unelected portion of a CAP order only if the transaction is stabilizing (*i.e.*, on a "minus" or "zero minus" tick in the case of a buy order, and on a "plus" or "zero plus" tick in the case of a sell order).[9] In addition, when accompanied by written instructions, a convert or CAP order may be executed on a zero plus or zero minus destabilizing tick provided the order causing the conversion is for at least 5,000 shares. The broker entering such an order may specify in writing that only half of the order may be converted.[10]

III. Description of the Proposal

(A) Proposed Amendments to Amex Rule 154 [11]

The proposal to amend permanently Amex Rule 154 adds two additional conversion events to the current conversion events described in Section II above: (1) Conversions on plus and minus destabilizing ticks, provided certain requirements are satisfied; and (2) conversions to better the market. Under the Exchange's proposal, however, the two new conversion events will be accompanied by limiting provisions that will assure that the increased opportunities for conversions of not come at the cost of disadvantaging other orders in the market or of unduly influencing overall market trends.

(1) Destabilizing Tick Conversions

Current Amex Rule 154 recognizes that allowing a specialist to make conversions on stabilizing and zero destabilizing ticks,[12] and to execute percentage orders in stabilizing and zero destabilizing transactions, is consistent with his market-making and agency obligations.[13] The current tick restrictions were designed to assure that the specialist, in converting percentage orders, would not unduly influence market prices or market trends. In order to maintain this assurance, the Exchange's proposal to permit conversions on plus and minus destabilizing ticks is accompanied by three limitations.

First, the specialist may convert percentage orders on plus and minus destabilizing ticks only for participation in trades of 5,000 shares or more.[14] Second, the specialist only may convert percentage orders for participation in trades at a price that is no more than ¼ point away from the last sale.[15] Third, a specialist cannot convert percentage orders for consecutive trades on destabilizing ticks, or for a series of contemporaneous trades on destabilizing ticks even if not consecutive, without the approval of a Floor Official.

The Exchange believes that the proposed rule change is modest in scope when viewed from the perspective of the circumstances when the tick restrictions will remain. The first two limitations (*i.e.*, 5,000 shares and ¼ point limitations) have the effect of continuing to preclude conversions on plus and minus destabilizing ticks to: Buy (sell) stock in trades of less than 5,000 share size at a price or prices higher (lower) than the last sale, and buy (sell) stock in trades of any size at a price that is more (less) than ¼ point above (below) the last sale.[16] The modification recognizes that large-size trades ordinarily can be anticipated to move the market as much as ¼ point, and that such a price movement would not be considered unusual or improper given the size of the trade. The proposed rule change, therefore, would permit the specialist, for the first time, to execute percentage orders along with the market trend, thereby servicing entering brokers in the way they and their customers desire.

The third limitation, which prohibits a series of trades on destabilizing ticks, prevents the specialist from "splitting" his conversions and executions among a series of trades. This prohibition precludes the specialist from creating a series of consecutive or contemporaneous trades which could work to create a market trend, even though each trade meets the ¼ point limitation.

When coupled with the percentage order's price limit and the interest of the customer in achieving executions of percentage orders at the most appropriate prices possible, the Exchange believes that the limitations governing conversions on destabilizing ticks will permit the specialist to service the auction market more efficiently, while still maintaining restrictions designed to prevent converted percentage orders from unduly influencing market prices or trends.

Allowing the specialist to convert percentage orders on destabilizing ticks, however, creates a potential problem in regard to cross transactions. This proposal substantially increases the potential for large orders left with the specialist to displace other large orders brought to the Floor by members for execution in cross transactions. In order to address this problem, the Amex has proposed to preclude the specialist from converting percentage orders on a destabilizing tick when a member wants to cross stock, unless the specialist can provide a better price to either side of the cross at or within the ¼ point price parameter. The specialist, therefore, cannot interfere with the proposed cross unless he is playing a positive market role by providing a more advantageous price to either the buyer or seller on the cross. The ability of the specialist to circumvent this limitation by effecting a proprietary trade that creates a new last sale price extending the ¼ point price parameter, thereby allowing the specialist to interfere with the proposed cross, would be prohibited.

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[8] "CAP" is an acronym for "convert on parity." The "parity" instruction on a CAP order permits the specialist to be on parity (able to trade along) with a percentage order. If the specialist holds more than one percentage order in the same stock, he may not be on parity with the orders unless each one of the entering brokers has permitted the specialist to be on parity with his individual order.

[9] More specifically, the buy (sell) transaction must be either lower (higher) than the last sale or it can be equal to the last sale if the last transaction at a changed price was at a lower (higher) price than the last preceding sale. Furthermore, note that a converted percentage order must go behind any limit orders in the specialist's possession at the same or a better price.

[10] As an example, assume that the market in XYZ is 29 ⅞ – 30⅛ with a last sale at 30, a plus tick. Further, assume that the specialist then accepts a CAP order to buy 10,000 shares of XYZ stock with a top limit of 30 and that, thereafter, a market order to sell 4,000 shares enters the market. The specialist can convert the unelected CAP order and execute it against the contra-side interest at 29⅞, since the execution will be a minus tick. If the sell order had been for 5,000 or more shares, however, the CAP order, coupled with appropriate written instructions, could have been executed at 30, a zero plus tick.

[11] It should be noted that this proposed rule change is concerned only with the conversion aspect of the percentage order rules; the election aspect is not proposed to be changed.

[12] A zero destabilizing tick occurs where a transaction is effected on a zero minus tick for sell orders or on a zero plus tick for buy orders.

[13] See generally Amex Rule 170.

[14] It should be noted that the Amex's proposed rule change differs from the existing NYSE percentage order rules with respect to the definition of block size trades. In this regard, in recognition of the generally lower volume and transaction size which exists on the Amex, the Amex determined to proposed a 5,000 share minimum to plus and minus destabilizing transactions, rather than the 10,000 share minimum in effect at the NYSE. In addition, unlike the NYSE Rules, the Amex has proposed that no volume limitations apply to zero destabilizing transactions, because the Amex believes that these transactions have a minimal, if any, effect on the market.

[15] With the approval of a Floor Official, however, the entering broker can waive the ¼ point limitation. See proposed Amex Rule 154, Comm. 15, fourth paragraph.

[16] Subject to waiver as described in note 17, *supra*.

(2) Bettering the Market

The Exchange believes that "quote conversions," under appropriate circumstances, will help the specialist to reflect more accurately the trading interest in the market. The proposal permits the specialist to convert a percentage order on a stabilizing tick to make a bid or offer in such size as he deems appropriate. The Exchange believes that this provision is appropriate because stabilizing transactions traditionally are viewed as being beneficial to the marketplace.

Furthermore, in order to add size to a prevailing bid or offer, the Amex proposal also permits the specialist to convert a percentage order on a destabilizing tick to increase the size of a bid or offer. The Exchange believes that this provision is appropriate because it will permit the specialist to reflect more accurately market interest at a price which is set by other market participants.

Additionally, the proposal permits the specialist to convert a percentage order on a destabilizing tick to make a bid or offer, in such size as he deems appropriate, (1) immediately following a transaction where such transaction has cleared the Floor of bids and offers or (2) to narrow the quotation spread. In these two situations, however, the specialist's destabilizing bid or offer may not be more than ⅛ point away from the last sale. Even though there may be times when it would be appropriate to allow a specialist to reflect large buying (selling) interest in the market at a price above (below) the last sale, the Exchange has imposed this ⅛ point restriction so that any price movement, which is the result of a destabilizing bid or offer, would be limited to only the minimum variation of trading on the Exchange.

Additionally, as noted above, the proposal restricts a specialist from effecting consecutive or contemporaneous destabilizing "active" conversions to participate in a trade of at least 5,000 shares, while also limiting the specialist's ability to take consecutive destabilizing actions that would move the stock's price in the absence of an established or confirmed price level by other market participants.

In this regard, when converting a percentage order to better the market, the specialist may not (1) make an active conversion to participate in a trade of at least 5,000 shares and then make a bid (offer) at a higher (lower) price; (2) make a bid (offer) at a price higher (lower) than the last sale, and then, if a sale occurs at the bid (offer) price, make an active destabilizing conversion; or (3) make a bid (offer) higher (lower) than the last sale, and then make a higher (lower) bid (offer). The Exchange believes that these three restrictions strike an appropriate balance between minimizing the specialist's ability to convert percentage orders to unduly influence market prices on the one hand, and permitting the specialist to accurately represent market interest, thereby strengthening the auction market, on the other hand.

(B) Proposed Amendments to Amex Rule 131

The proposal also provides for a revision of Amex Rule 131 in order to expand the types of percentage orders permitted to be entered on the Exchange, thereby corresponding to those permitted at the NYSE. Currently, Amex Rule 131 provides for straight limit percentage orders exclusively. Pursuant to the proposal, a straight limit percentage order would retain the current definition of a percentage order,[17] while last sale and buy minus—sell plus percentage orders would be added to Amex Rule 131.[18]

Pursuant to a last sale percentage order, the elected portion of the order would be executable only at the last sale or better, provided such price is at or better than the limit price specified in the order. Until it is executed, the elected portion of a last sale percentage order would remain on the book at the limit price at which it was elected. The elected portion of a buy minus—sell plus percentage order would become a limit order executable only on a stabilizing tick. The elected portion of such an order would be adjusted in price as the stock moves, as long as it is able to be executed on the correct tick.

With respect to these three types of percentage orders, all volume subsequent to the receipt of the order at the specialist's post would be applied in determining the elected portion of the new percentage orders.

(C) Other Amex Rules Affected

The proposed rule change contains three provisions designed to clarify the application of several other Exchange rules to the specialist's conversion of percentage orders. These three provisions clarify the following: (1) The specialist may be the contra party to a converted percentage order, but must permit the other party, in compliance with Exchange Rule 155, to reject the trade; (2) the specialist must remain fully subject to Exchange rules as to purchases for his own account on destabilizing ticks; and (3) the specialist must give priority to conventional limit orders already on his book when converting percentage orders.

Additional, current Amex Rule 154 prohibits a specialist who is on parity with one or more percentage orders from participating in a transaction for his own account in an amount larger than that received by each percentage order in the transaction.[19] The proposal would make clear, however, that this prohibition would not prevent a specialist from participating for his or her own account in an amount greater than the amount of any percentage order when the size specified in the percentage order has been satisfied in the transaction.

IV. Commission Findings

After careful review, the Commission has determined, based on the reasons set forth below, that the permanent approval of the Amex's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(5) and 11(b) of the Act.[20]

To begin, as the Commission noted in the order approving the Amex's percentage order proposal for a one-year pilot period, a substantially similar proposal submitted by the NYSE previously was approved by the Commission.[21] Consequently, percentage order procedures similar to those proposed by the Amex herein have been in effect on the Floor of the NYSE since their approval by the Commission in 1987. The Commission carefully and extensively reviewed the NYSE's percentage order proposal prior to its approval. Given the fact that the Amex has proposed procedures substantially identical to the NYSE's current percentage order procedures, the Commission believes that the Amex's proposal raises few new regulatory issues.[22]

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[17] See note 8, *supra*.

[18] The various types of percentage orders differ only in terms of execution, and not the process by which they are elected.

[19] Under Amex Rule 154, the specialist must obtain the entering broker's permission to be a parity with the percentage order. Further, when a specialist is handling more than one percentage order, he or she may not be on parity with any such order unless permission has been obtained from all brokers for whom he or she is holding percentage orders in the particular stock.

[20] 15 U.S.C. 78f and 78k(b) (1988).

[21] See note 4, *supra*.

[22] The Commission believes that the two differences between the Amex proposal and the NYSE Rules (see note 4, *supra*) are not substantively material differences, and are justified.

Continued

As discussed below, the Amex proposal, like the NYSE's, adequately addresses any regulatory concerns over the relaxation of percentage order restrictions. The Amex s proposal includes limiting and protective provisions designed to help ensure that the proposal's broadened conversion provisions are not inconsistent with the specialists' obligations to maintain fair and orderly markets. In particular, the portion of the proposal relating to block cross trades provides for a 5,000 share and ¼ point restriction designed to ensure that such a conversion is implemented only to respond to large contra-side interest, without disrupting price continuity. Moreover, the requirement that contemporaneous or consecutive trades occur only after the specialist secures Floor Official approval will act as a check against specialists using this technique to influence the market by splitting conversions and subsequent executions among a series of trades that, although satisfying separately the ¼ point requirement, as a whole create a disruptive market trend.

In determining to approve permanently the proposal, the Commission also has relied on the proposed provision which permits the conversion of an order for the purpose of interacting with an established cross transaction only if the specialist can provide a superior price to one side of the cross. The Commission believes that this provision should prevent specialists from interfering with normal crossing procedures, while ensuring that the block conversion procedures will be utilized solely for purposes of price improvement.

The proposal also provides for conversions in order to better the market. Such conversions, however, may only be effected at or within the existing quotation spread. The Commission remains confident that these limiting parameters should guard against specialist abuse of these conversion procedures. Furthermore, the Commission believes that the cancellation provision embodied in the proposed bettering the market rule (requiring a specialist to cancel a converted order and revert it back to a percentage order if subsequent interest enters the market and establishes a superior quote) should ensure that the conversion procedures will not impede the section 6(b)(5) requirement of maintaining a free and open market, while at the same time alleviating the potential for specialist manipulation of stock prices.

In addition, the proposal's restriction against consecutive quotation conversions without a "meaningful," "intervening" transaction should reduce substantially any potential manipulative concern.[23] The restriction should prevent the specialist from causing a rapid increase or decline in any particular security via quotation conversions. Further, the ⅛ point conversion limitation in connection with the restrictions on contemporaneous or consecutive block conversions, as well as the restrictions on connected block and quote conversions, make it difficult for a specialist to use the conversion mechanism to influence the price of market.

The Commission also believes that allowing the specialist to reflect unelected portions of percentage orders in the quote should make the quote more representative of the buy and sell interest present in the market, and may act to draw contra-side interest into the market that otherwise might not develop. This capability should complement effectively the specialist's negative and affirmative obligations in the marketplace.[24] In this regard, the necessity for specialist proprietary trading will be reduced to the extent that the conversion provisions create a quote which is more representative of the actual market for the security. The conversion provisions should, therefore, further assist the specialist in his duty of maintaining fair and orderly markets, consistent with sections 6(b)(5) and section 11(b) of the Act.

Further, the Commission believes that the proposal also is consistent with the prohibition in section 11(b) of the Act against providing discretion to a specialist in the holding of an order. When the Commission reviewed the NYSE's proposal to extend the percentage order conversion and quotation provisions, which is nearly identical to Amex's proposal being considered herein (see note 4, *supra*), it expressed a concern as to whether these extended provisions provide the specialist with "discretion" in violation of section 11(b).[25] Section 11(b) was designed, in part, to address potential conflicts of interest that may arise as a result of the specialist's dual role as agent and principal in executing stock transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialist's book and their handling of discretionary agency orders.[26] The Commission previously has stated that, pursuant to section 11(b), all orders other than market or limit orders are discretionary and therefore cannot be accepted by the specialist.[27] In the order approving the NYSE's percentage order proposal,[28] the Commission concluded, and again concludes with respect to the Amex proposal, that it is appropriate to treat percentage orders, even under the revised procedures, as equivalent to limit orders. While the Amex proposal permits the specialist to employ his judgment to a greater extent than under the current percentage order requirements, the Commission still believes that the requirements imposed on the specialist when converting a percentage order for execution or quotation purposes provide sufficiently stringent guidelines to ensure that the specialist will implement the conversion provisions only in a manner consistent with his or her market making duties and section 11(b).

The Commission notes that the concept of a limit order with conditions subsequent is not unique.[29] For example, a stop limit order is a limit order that is unexecutable prior to the satisfaction of a future event (a transaction at or better than the stop

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First, the Amex stated that it proposed to require Floor Official approval, as opposed to Floor Governor approval, due to the limited number of Floor Governors at the Amex (approximately three to four Governors). The Amex believes that the Governors would be over burdened if required to approve the designated transactions as provided for under the proposed procedures (telephone conversation on July 24, 1990 between Joseph Tietjen, Director, Rulings Department, Amex and Laurie Petrell, Staff Attorney, SEC). Second, the Amex chose a 5,000 share minimum to plus and minus destabilizing transactions due to the generally lower volume and transaction size which exists on the Amex as compared to that which exists on the NYSE.

[23] As a general matter, the Commission expects that such an "independent," "meaningful" transaction would, at a minimum, exceed an average-sized transaction for that security.

[24] See 17 CFR 240.11b–1(a)(2); NYSE Rule 104. Generally, pursuant to NYSE Rule 104, the specialist shall effect purchases or sales of any security in which he is registered only if such dealings are reasonably necessary to permit the specialist to maintain a fair and orderly market.

[25] 15 U.S.C. 78k(b). section 11(b) permits a specialist to accept only market or limit orders.

[26] See H. Rep. No. 1383, 73rd Cong. 2d Sess. 22, S. Rep. 792, 73d Cong. 2d Sess. 18 (1934).

[27] See *e.g.*, SEC, Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess., part 2, 72 (1963) (noting that "Section 11(b) * * * prohibits, without exception, a specialist's effecting any transaction except upon a market or limit order").

[28] See Securities Exchange Act Release No. 24505, *supra* note 4.

[29] See, *e.g.*, NYSE Rule 13, which defines "limit order" as "an order to buy or sell a stated amount of a security at a specified price, or at a better price, if obtainable after the order is represented in the Trading Crowd."

price). Similarly, in the stop limit order situation, as with a percentage order, the triggering transaction can be effected by the specialist through a proprietary trade.

Finally, in making its determination to grant permanent approval to the Amex's proposal, the Commission relied on the Exchange's report evaluating the effects of the proposed percentage order rules during the pilot period.[30] In order to review and evaluate the proposed procedures, the Exchange's Trading Analysis Division conducted a special study of all CAP.D percentage orders entered on October 9, 1991.[31] The special study revealed that six CAP.D orders were entered on this day, and out of the 30 executions effected, 29 were effected on stabilizing ticks.[32]

The Commission believes that the conclusions reached by the Amex during its evaluation of the pilot program support permanent approval of the proposed percentage order procedures. The Amex's report indicates that the proposed conversion procedures have enhanced the Amex specialists' ability to fulfill their obligation of maintaining a fair and orderly market by enabling them to convert percentage orders to establish new bids or offers as they deem appropriate, ultimately adding depth and liquidity to the market. Further, as noted in the Exchange's report, the CAP.D orders were, for the most part, properly handled in accordance with proposed Rules 131 and 154.[33] Moreover, the Amex states that its review did not disclose any abuses in the handling of CAP.D orders under the new conversion procedures, nor was there any evidence to suggest that these orders unduly influenced the market. Therefore, the Amex's review of the proposed procedures during the pilot program supports the Exchange's original belief that the noted benefits of the new conversion methods do not come at the cost of undue influence on the market or abuse of the auction market system.

In sum, relying on the reasons set forth above, the Commission remains confident that the limitations and conditions implemented in connection with the conversion provisions will continue to prevent the specialist from using the conversion provisions to influence the market, while providing him or her with increased opportunities to provide for efficient executions of large institutional orders and maintain a fair and orderly market. Thus, the Commission believes that the proposed amendments to Amex Rules 131 and 154 should be approved on a permanent basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[34] That the above mentioned proposed rule change be, and hereby is approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1954 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M

[30] Actually, the Amex filed two separate reports with the Commission (see note 5, *supra*). While both reports discuss the same six CAP.D orders reviewed by the Exchange, the most recently filed report provides a fuller description of the Exchange's method of review and actual results. For the remainder of this order, therefore, any reference to the Exchange's report will refer to the report submitted to the Commission on January 8, 1992.

[31] According to its report filed with the Commission on January 8, 1992 (see note 5, *supra*), the Amex needed to conduct a special study of the percentage order procedures because the Exchange's ordinary surveillance procedures, which rely on a semi-annual order ticket review for four randomly selected trading days, did not uncover any CAP.D percentage orders.

[32] The one instance in which an order was effected on a destabilizing tick involved an election of 300 shares to facilitate a buy order on a "zero minus" tick.

[33] The Amex's report does highlight two situations in which percentage orders were improperly handled due to the particular specialist's unfamiliarity with the new rules. Fortunately, according to the Amex, neither order was disadvantaged by its election, and in each case, the order received an equal or superior execution. The Amex has reminded the specialists to properly elect CAP.D orders in the future.

[34] 15 U.S.C. 78s(b)(2) (1988).

[35] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-30270; File No. SR-Amex-91-05]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to a Pilot Program for Stopping Stock

January 21, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 28, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change. On January 7, 1992, the Amex filed with the Commission and amendment to the proposal. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 109 to permit a specialist, upon request, to grant stops in a minimum fractional spread market under certain limited circumstances. The Exchange proposes to implement the amendments as a one year pilot program. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

An agreement to "stop" stock at a specified price constitutes a guarantee by the member who "grants the stop" that the order of the member who "accepts the stop" will be executed at the stop price or better. Exchange Rule 109 describes the circumstances under which a specialist is permitted to grant a stop. The Exchange proposes to amend Rule 109 to permit a specialist, upon request, to grant stops in a minimum fractional spread market, *i.e.*, when the quotation spread is already at its narrowest. Exchange Rule 127 currently provides that for securities trading at $1.00 or more, the minimum fractional change is ⅛ of a point. In such a market, the proposal would allow a specialist, subject to the conditions described below, to grant a stop to any order of not more than 2,900 shares, up to an aggregate of 5,000 shares for all such stops at any given time. In addition, with the approval of a Floor Official, a specialist could grant a stop to an order of larger size or have such stops in effect

for more than an aggregate of 5,000 shares.

The Exchange would place certain conditions on the granting of a stop in a minimum fractional market. In order for a specialist to grant a stop in such a market, there would have to be an imbalance on the opposite side of the order being stopped, and the imbalance would have to be of sufficient size, given the characteristics of the security, to suggest the likelihood of price improvement. In addition, the Exchange will require that a stop granted by a specialist be reflected in the quoted bid or offer size.

The Exchange believes that allowing a specialist to grant stops in a minimum fractional change market when there is a large imbalance on one side of the market will be beneficial to the market since it will increase the market's depth. For example, assume the market in XYZ stock is quoted 10 to 10⅛, with 500 shares bid for and 10,000 shares offered. If a specialist receives a market order to buy 2,000 shares, he could simply execute the order against the prevailing offer of 10⅛. However, in view of the large sell-side imbalance it is likely that subsequent transactions would be at a lower price. If the broker entering the market order to buy requests a stop, under the proposed rules the specialist would be permitted to grant the stop at 10⅛ and add the order to the bid of 10, thereby increasing the depth of the bid to 2,500 shares. The customer would be guaranteed a price of no higher than 10⅛ and would have a reasonable opportunity of paying only 10. The specialist could handle subsequent orders of 2,000 shares or less—up to an aggregate of 5,000 shares—in a similar fashion, adding additional depth to the market. If further warranted by market circumstances, the specialist could obtain Floor Official approval to grant stops to larger size orders and for a greater aggregate number of shares.

The Exchange proposes to implement this rule change on a one year pilot program basis and carefully monitor compliance with the program. The Exchange will monitor compliance with the pilot program by: (1) Using existing information from the Exchange's order system database and transaction quotation files to identify situations where the quotation is the minimum variation and the size of the order(s) stopped exceed the Rule's parameters; (2) examining records to determine if Floor Official approval was obtained by the specialist to exceed the Rule's limits; (3) reviewing executions of stopped orders to determine the percentage of time such orders are executed at the stop price and the percentage of time such orders receive a price that is better than the stop price; and (4) developing programs that compare the size of the stopped order to the existing quote size and quote size imbalance, if any, to review market depth in a stock when a stop is granted in a minimum variation market. In addition, if a Floor Official has granted new order size or aggregate share size parameters, the Exchange will review all subsequent stops against those new parameters. The Exchange will submit a report on its findings with respect to the pilot program to the Commission before expiration of the one year program. Based on these findings, the Exchange may determine to seek permanent approval of the proposed rule change. The current proposal will not apply to the trading of options contracts. In March 1991, the Commission approved similar amendments to the rules of the New York Stock Exchange.[1]

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The proposed amendments to Rule 109 are consistent with these objectives in that they provide a market mechanism which contributes to continuity and depth in the markets for exchange-traded securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-91-05 and should be submitted by February 18, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1956 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M.

[1] See Securities Exchange Act Release No. 28999 (March 21, 1991), 56 FR 12984 (March 28, 1991) (File No. SR-NYSE-90-46)

[Release No. 34-30267; File No. SR-91-50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Debit Put Spread Pilot Program

January 21, 1992.

Pursuant to section 19(b)(1) of the securities exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 26, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory

organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On November 26, 1991, the Commission approved proposals submitted by the CBOE and the American Stock Exchange, Inc., ("Amex") which established one year pilot programs allowing approved public customers with qualified portfolios of stock to effect and maintain in cash accounts debit put spread transactions in broad-based index options with European-style exercise.[1] The CBOE now proposes to clarify the definition of a qualified debit put spread by specifying that the strike price of the long leg of the spread must exceed the strike price of the short leg. The text of the proposed rule change is available at the office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.The self-rgulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

In November 1991, the Commission approved proposals submitted by the CBOE and Amex which established one year pilot programs allowing approved public customers with qualified portfolios of stock to effect and maintain in cash accounts debit put spread transactions in broad-based index options with European-style exercise.[2] The Debit Put Spread Approval Order defined a debit put spread as a long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) equals or exceeds the strike price of the short put(s). The CBOE now proposes to clarify the definition of a debit put spread under CBOE Rule 24.11A(f) to provide that the strike price of the long leg of the spread must exceed, not equal, the strike price of the short leg.

(2) Basis

The CBOE believes that the proposal is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning of an existing CBOE rule in that it clarifies the CBOE's policy with respect to eligibility to participate in the debit put spread pilot program. In addition, by clarifying the requirements applicable to eligible debit put spread, the proposal will facilitate the orderly administration of the pilot program. Accordingly, the proposal has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 18, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–1952 Filed 1–27–92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–30266; File No. SR–NASD–90–53 Amendment]

Self-Regulatory Organizations; Filing of Amendment to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Retention of Jurisdiction and Conforming Changes to the Rules of Fair Practice

January 17, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 1, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") an amendment to a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is

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[1] See Securities exchange Act Release No. 29982 (November 26, 1991), 56 FR 63528 (order approving File Nos. SR–Amex–91–14 and SR–CBOE–91–17 ("Debit Put Spread Approval Order").

[2] See Debit Put Spread Approval Order, *supra* note 1.

[1] The NASD, in response to comments from the Commission, has reconsidered and amended the proposed rule change originally filed with the Commission and published for comment in the Federal Register, 55 FR 50432 (December 6, 1990). In

Continued

publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article III, section 5 and Article IV, sections 3 and 4 of the NASD By-Laws, and Article IV, section 5 of the NASD Rules of Fair Practice [2] to retain jurisdiction over member firms and associated persons for two years from the date of resignation, cancellation or revocation of membership or the termination or revocation of an associated person's registration. Proposed new language is in italics; proposed deletions are in brackets.

Proposed Amendments to NASD By-Laws

Article III

Membership

Resignation of Members

Sec. 5 [(a)] Membership in the Association may be voluntarily terminated only by formal resignation. Resignations of members must be in writing and addressed to the Corporation which shall immediately notify the appropriate District Committee. Any member may resign from the Corporation at any time. Such resignation shall not take effect until thirty (30) days after receipt thereof by the Corporation and until all indebtedness due the Corporation from such member shall have been paid in full and so long as any complaint or action is pending against the member [and so long as any examination of such member is in process] *under the Code of Procedure.* The Corporation, however, may in its discretion declare a resignation effective at any time.

Retention of Jurisdiction

[Sec. 5(b)] *Sec. 6.* A resigned member *or a member that has had its membership canceled or revoked* shall continue to be subject to the filing of a complaint under the Code of Procedure based upon conduct which commenced prior to the effective date of the member's resignation from the Corporation *or the cancellation or revocation of its membership.* Any such complaint, however, shall be filed within [one] *two (2)* years after the effective date of the resignation, *cancellation or revocation.*

Current sections 6–9 renumbered as section 7–10, respectively.

ARTICLE IV

Registered Representatives and Associated Persons

Notification by Member to Corporation and Associated Person of Termination; Amendments to Notification

Sec. 3(a). Following the termination of the association with a member of a person who is registered with it, such member shall promptly, but in no event later than thirty (30) calendar days after such termination, give written notice to the Association on a form designated by the Board of Governors of the termination of such association, and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with the Association. A member [who] *which* does not submit such notification in writing, and provide a copy thereof to the person whose association has been terminated, within the time period prescribed shall be assessed a late filing fee as specified by the Board of Governors. Termination of registration of such person associated with a member shall not take effect so long as any complaint or action is pending against a member and to which complaint or action such person associated with a member is also a respondent, or so long as any complaint or action is pending against such person individually [or so long as any examination of the member or person associated with such member is in process] *under the Code of Procedure.* The Corporation, however, may in its discretion declare the termination effective at any time.

(b) The member shall notify the Association in writing by means of an amendment to the notice filed pursuant to paragraph (a) above in the event that the member learns of facts or circumstances causing any information set forth in said notice to become inaccurate or incomplete. Such amendment shall be filed with the Association and provided to the person whose association with the member has been terminated not later that thirty (30) calendar days after the member learns of the facts or circumstances giving rise to the amendment.

Retention of Jurisdiction

Sec. 4. A person whose association with a member has been terminated and is no longer associated with any member of the Corporation *or a person whose registration has been revoked* shall continue to be subject to the filing of a complaint under the Code of Procedure based upon conduct which commenced prior to the termination *or revocation or upon such person's failure, while subject to the Corporation's jurisdiction as provided herein, to provide information requested by the Corporation pursuant to Article IV, Section 5 of the NASD Rules of Fair Practice,* but any such complaint shall be filed within:

(a) [one (1)] *two (2)* years after the effective date of termination of registration pursuant to Section 3 above, *provided, however, that any amendment to a notice of termination filed pursuant to Section 3(b) that is filed within two years of the original notice which discloses that such person may have engaged in conduct actionable under any applicable statute, rule or regulation shall operate to recommence the running of the two-year period under this paragraph;*

(b) two (2) years after the effective date of revocation of registration pursuant to Article V, Section 2 of the Association's Rules of Fair Practice; or,

(c) in the case of an unregistered person, within [(one(1)] *two (2)* years after the date upon which such person ceased to be associated with the member.

Proposed Amendments to NASD Rules of Fair Practice

Article IV

Complaints

Report and Inspection of Books for Purposes of Investigating Complaints

Sec. 5. For the purpose of any investigation, or determination as to filing of a complaint or any hearing of any complaint against any member of the Corporation or any person associated with a member made or held in accordance with the Code of Procedure, any Local Business Conduct Committee, any District Business Conduct Committee, or the Board of Governors, or any duly authorized member or members of any such Committees or Board or any duly authorized agent or agents of any such Committee or Board shall have the right (1) to require any member of the Corporation, [or] person associated with a member, *or person no longer associated with a member when such*

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addition, the NASD submitted amendment No. 3 which set forth the member vote for the amended proposed rule change and Amendment No. 4 which makes technical changes to the amendment. These amendments are available for inspection and copying in the Public Reference Room.

[2] In response to a request for partial approval, the SEC approved the proposed amendments to Article V, Sections 1 and 3 of the Rules of Fair Practice originally filed with the SEC in SR-NASD-90-83. *See* Securities Exchange Act Release No. 29893 (November 1, 1991), 56 FR 57823 (November 7, 1991). Because there are no other changes proposed for those sections, the NASD is not including those sections in this amendment.

person is subject to the Corporation's jurisdiction to report, *either informally or on the record,* orally or in writing with regard to any matter involved in any such investigation or hearing, and (2) to investigate the books, records and accounts of any such member *or person* with relation to any matter involved in any such investigation or hearing. No *such* member or person [associated with a member,] shall [refuse] *fail* to make any report as required in this Section, or [refuse] *fail* to permit any inspection of books, records and accounts as may be validly called for under this section. *Any notice requiring an oral or written report or calling for an inspection of books, records and accounts pursuant to this section shall be deemed to have been received by the member or person to whom it is directed by the mailing thereof to the last known address of such member or person as reflected on the Corporation's records.*

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the amendment to the proposed rule change and discussed any comments it received on the proposed rule change as amended. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In October 1990, after approval by the Board of Governors and the membership, the NASD submitted SR–NASD–90–53 to the SEC proposing amendments to the NASD By-Laws and Rules of Fair Practice to, among other things, codify procedures currently employed by the NASD in processing terminations of associated persons and cancellations and revocations of member firms. The most significant aspect of the procedures currently employed and proposed to be codified by the NASD was the practice of "holding" the effectiveness of the resignation of the membership of a member firm or the termination of the registration of an associated person if the NASD is aware of or is investigating potential violations of the NASD's rules or the federal securities laws by the firm or person. The NASD also proposed to codify the practice of retroactively holding resignations of membership or terminations of registration if it becomes aware of matters which would have resulted in a hold after the termination has been allowed to take effect.

The rule filing also proposed amending the By-Laws to provide that the NASD would continue to retain jurisdiction over a member firm whose membership was cancelled or revoked and an associated person whose registration was revoked. The proposed rule change was intended to correct the situation under the current provisions where the NASD retains jurisdiction over a member who has resigned or an associated person who has terminated his registration, but loses jurisdiction over a member whose membership was cancelled or revoked and an associated person whose registration was revoked.

The NASD has determined to amend the proposed rule change to substitute a fixed two-year jurisdictional period for the proposal to codify the practice of holding the effectiveness of resignations and terminations. Under the current provisions of the By-Laws, the NASD has one year from the effective date of the filing of a resignation of membership [3] or a termination of registration [4] to file a complaint for any actionable misconduct prior to the resignation by the member or termination by the associated person. If the NASD is not aware of misconduct by an associated person at the time a termination takes effect, the time period for filing a complaint could run before action is taken. It is for this reason that the NASD currently retroactively holds resignations and terminations.

The NASD believes that in order to maintain the fairness and effectiveness of the NASD's disciplinary system, the NASD's current one-year time period for retaining jurisdiction to file a complaint should be extended to a fixed two years from the date a resignation or termination is filed or from the date of the NASD's revocation or cancellation of a member or associated person.[5] This proposed amendment will eliminate the need for the NASD to hold the effectiveness of resignations and terminations and to issue letter notices in connection therewith. The NASD believes such a fixed two-year time limit will be less intrusive than the current indefinite and potentially unlimited hold process, and will allow sufficient time to bring virtually all disciplinary actions.

With respect to associated persons, the NASD is also proposing that the two-year period commence from the date of the filing of the last amendment to a person's Form U–5 that is filed within the two-year period. This would provide for the situation where a routine Form U–5 is filed at the time of termination but a subsequent amendment discloses potential violations which would require an investigation. Running the two-year period from the time the last Form U–5 amendment is filed, so long as it is filed within the initial two-year period, will prevent a person from avoiding potential disciplinary action through his own active concealment or the dilatory conduct of others.[6] Moreover, because members are required to send any amended Form U–5s to the terminated person, he or she will have notice of the time from which the two-year period will run. The NASD also notes that the two-year limit would be consistent with current rules which permit a person to become associated with another member without the need to requalify by examination up to two years from his date of termination.

The NASD believes that the proposed rule change is consistent with the provisions of sections 15A(b)(6), (7) and (8) of the Act. In pertinent part, this section of the Act mandates that the rules of a national securities association be designed to protect investors and the public interest, provide for the disciplining of members and associated persons for violations of the securities laws, the rules and regulations thereunder, or the Association's rules, and that such rules provide a fair procedure for conducting disciplinary proceedings. By extending the jurisdictional period to a fixed two year period, the NASD is giving unambiguous notice to its members of the requirements of the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the

[3] A member is required to advise the NASD of its resignation of membership on a Form BDW.

[4] A member is required to advise the NASD of a termination of or resignation by an associated person on Form U–5.

[5] *See infra* footnote 6.

[6] If a person's Form U–5 is amended on the last day of the two year period, the NASD will, therefore, retain jurisdiction for a total of four years after the effective date of the person's termination.

proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 18, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1955 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30269; File No. SR-Phlx-91-49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to the Election of Chairman and Vice Chairmen of its Board

January 21, 1992.

Pursuant to section 19 (b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 9, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the election of the Chairman and Vice Chairmen of its Board as described in items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its By-Law article IV, section 4-2: Election of Chairman and Vice Chairmen of the Board as follows: (additions italicized)

SEC. 4-2.

First and Second Paragraph: No change.

After serving two consecutive two-year terms to which he has been elected by the membership, the Chairman shall be ineligible for further service in such office until after an interval of at least one year.

After serving four consecutive one-year terms to which he has been elected by the membership, a Vice Chairman shall be ineligible for further service in such office until after an interval of at least one year.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed By-Law amendment is to impose limitations on the number of terms that the Chairman or Vice Chairmen of the Board can be elected. In accordance with Exchange By-Law article XXII, section 22-2,[1] the proposed amendment to By-Law Article IV, section 4-2 was announced to the membership by circular #101-90 dated December 20, 1990. No written responses were filed with the Office of the Secretary requesting a special meeting respecting the proposed amendment. The Board of Governors of the Exchange tabled the consideration of ratification of the proposed By-Law amendment at its February 25 thru 26, 1991 conference. The matter was reconsidered by the Board at its December 18, 1991 meeting at which time it determined to adopt the proposed amendment.

The proposed rule change is consistent with section 6(b)(5) of the Act as it will permit new leadership in the governance of the Exchange, and thereby protect investors and promote the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

By circular #101-90, the Exchange membership was notified of the proposed By-Law amendment. No written comments were received pursuant to By-Law article XXII, section 22-2.

[1] In general, By-Law article XXII, section 22-2 states that any proposed amendment to the Exchange's By-Laws originating in the Board of Governors shall be proposed at a regular or special meeting of the Board, and if approved by twelve of the Governors, shall be announced to the members of the Exchange by sending copies of the proposal to such members. If, within ten days after notification of such proposal, at least seventeen members of the Exchange request, in writing, a special hearing on the proposal, the Chairman of the Board must call a special meeting at which each member of the Exchange in good standing will be entitled to vote. If no such request is made, the Board of Governors may consider the proposal at a regular or special meeting of the Board.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the Phlx. All submissions should refer to File No. SR–Phlx–91–49 and should be submitted by February 18, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–1953 Filed 1–27–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 21, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Agricultural Minerals Co. LP
Sr. Pref. Units, No Par Value (File No. 7–7821)
American Strategic Income Portfolio, Inc.
Common Stock, $0.01 Par Value (File No. 7–7822)
Banco Bilbao Vizcaya International (Gilbralter) Ltd.
American Depository Shares (Rep. one Non-Cum. Gtd. Pref. Share, Series A) (File No. 7–7823)
Bangor Hydro Electric Co.
Common Stock, $5.00 Par Value (File No. 7–7824)
Blackstone North American Government Income Trust
Common Stock, $0.01 Par Value (File No. 7–7825)
Duff & Phelps Utilities Tax-Free Income, Inc.
Common Stock, $0.01 Par Value (File No. 7–7826)
Duty Free International, Inc.
Common Stock, $0.01 Par Value (File No. 7–7827)
First Interstate Bancorp.
Depository Shares (Rep. 1/8th share of 9⅛% Series F pfd. stock, No Par Value) (File No. 7–7828)
Employee Benefit Plan, Inc.
Common Stock, $0.01 Par Value (File No. 7–7829)
Fisher Scientific International, Inc.
Common Stock, $0.01 Par Value (File No. 7–7830)
General Motors Corp.
Pfd. Q Stock, $0.10 Par Value (File No. 7–7831)
Greiner Engineering, Inc.
Common Stock, $0.50 Par Value (File No. 7–7832)
Guaranty National Corp.
Common Stock, $1.00 Par Value (File No. 7–7833)
Healthtrust Inc.—The Hospital Co.
Common Stock, $0.001 Par Value (File No. 7–7834)
Horace Mann Educators Corp.
Common Stock, $0.001 Par Value (File No. 7–7835)
Jundt Growth Fund
Common Stock, $0.01 Par Value (File No. 7–7836)
Lakehead Pipeline Partners LP
Pref. Units (Rep. LP Interests) (File No. 7–7837)
Marriott Corp.
Depository Shares (Rep. 1/1000th of Share Series A Cum. Conv. Pfd., No Par Value (File No. 7–7838)
MuniYield Fund, Inc.
Common Stock, $0.10 Par Value (File No. 7–7839)
Nuveen Premier Insured Municipal Income Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–7840)
Nuveen Premier Municipal Income Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–7841)
Oceaneering International, Inc.
Common Stock, $0.25 Par Value (File No. 7–7842)
Office Depot, Inc.
Common Stock, $0.01 Par Value (File No. 7–7843)
Old Republic International Corp.
Ser. H Cum. Pfd. Stock, No Par Value (File No. 7–7844)
Orbital Engine Corp. Ltd.
American Depository Shares (Rep. 8 Ord. Shares of A, $0.50 each) (File No. 7–7845)
Seligman Quality Municipal Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–7846)
Snyder Oil Corp.
$4.00 Conv. Exch. Pfd. Stock, $0.01 Par Value (File No. 7–7847)
Tenneco, Inc.
Depository Shares (Rep. ½ share Ser. A Cum. Pfd. Stock, No Par Value (File No. 7–7848)
TRC Companies, Inc.
Common Stock, $0.10 Par Value (File No. 7–7849)
Tyco Toys, Inc.
Common Stock, $0.01 Par Value (File No. 7–7850)
Van Kampen Merritt Municipal Trust
Common Shares of Benefit, Int., $0.01 Par Value (File No. 7–7851)
Vitro Sociedad Anonima
American Depository Shares (Rep. 1 Ord. Part. Ctf.) (File No. 7–7852)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 11, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

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[2] 17 CFR 200.30–3(a)(12) (1991).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-1959 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Midwest Stock Exchange, Inc.

January 21, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Bankers Trust New York Corporation
Put Warrants on the Nikkei Stock Average expiring 1/16/93 (File No. 7-7805)
Kingdom of Denmark
Put Warrants on the Nikkei Stock Average expiring 1/3/93 (File No. 7-7806)
A/S Eksportfinans
Put Warrants on the Nikkei Stock Average expiring 4/22/93 (File No. 7-7807)
Paine Webber Group
Call Warrants on the Nikkei Stock Average expiring 4/8/93 (File No. 7-7808)
Paine Webber Group
Put Warrants on the Nikkei Stock Average expiring 4/8/93 (File No. 7-7809)
Salomon, Inc.
Put Warrants on the Nikkei Stock Average expiring 1/19/93 (File No. 7-7810)
Salomon, Inc.
Put Warrants on the Nikkei Stock Average expiring 2/16/93 (File No. 7-7811)
Salomon, Inc.
Call Warrants on the Nikkei Stock Average expiring 4/6/93 (File No. 7-7812)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 11, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-1958 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

January 21, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

A/S Eksportfinans
Put Warrants on the Nikkei Stock Average expiring April 22, 1993 (File No. 7-7813)
Bankers Trust New York Corporation
Put Warrants on the Nikkei Stock Average expiring January 16, 1993 (File No. 7-7814)
Kingdom of Denmark
Put Warrants on the Nikkei Stock Average expiring January 3, 1993 (File No. 7-7815)
Paine Webber Group Incorporated
Put Warrants on the Nikkei Stock Average expiring April 8, 1993 (File No. 7-7816)
Paine Webber Group Incorporated
Call Warrants on the Nikkei Stock Average expiring April 8, 1993 (File No. 7-7817)
Salomon, Inc.
Put Warrants on the Nikkei Stock Average expiring January 19, 1993 (File No. 7-7818)
Salomon, Inc.
Put Warrants on the Nikkei Stock Average expiring February 16, 1993 (File No. 7-7819)
Salomon, Inc.
Call Warrants on the Nikkei Stock Average expiring April 6, 1993 (File No. 7-7820)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 11, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-1957 Filed 1-27-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 21, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Chrysler Corporation
13% Debs. due 97, 12% Debs. due 15, 9.60% Notes due 94 (File No. 7-7853)
Citicorp
8⅛% Notes due 07 (File No. 7-7854)
RJR Nabisco Holding
15% Debs. due 01, Disc. Debs. due 01, 10½ Sr. Notes due 98 17⅞ Sr. Debs. due 09 (File No. 7-7855)
Stone Container Corp.
11½% Notes due 99 (File No. 7-7856)
Unisys Corporation
10¾ Notes due 95, 13⅞ Notes due 92 (File No. 7-7857)
USG Corporation
10½ Pay in Kind Debs. due 08 (File No. 7-7858)
Salomon, Inc.
8% Notes due 96 (File No. 7-7859)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 11, 1992,

written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-1980 Filed 1-27-92, 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1559]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group B Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Friday, February 21, 1992, and Thursday, May 21, 1992 in room 1912 from 9:30 a.m. to 5 p.m., Department of State, 2201 C Street, NW., Washington, DC 20520.

The agenda for the February 21 meeting will be to:

1. Approve November 13, 1991, meeting minutes
2. Review results and activities of CCITT Study Group XVIII Meeting (December 2–13, 1991)
3. Consider contributions
   —CCITT Study Group XI (March 9–20, 1992)
   —Others appropriate for Study Group B
4. Consider nominations for U.S. delegation to Study Group XI Meeting
5. Other business

The agenda for the May 21 meeting will be to:

1. Approve February 21, 1992, meeting minutes
2. Review results and activities of CCITT Study Group XI Meeting (March 9–20, 1992)
3. Consider contributions
   —CCITT Study Group XVIII (June 9–19, 1992)
   —Others appropriate for Study Group B
4. Consider nominations for U.S. delegation to Study Group XVIII Meeting
5. Other business

Members of the general public may attend the meeting and join in the discussions, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting.

Please Note: Persons intending to attend the above meeting must announce this not later than five days before the meeting to the Department of State, 202-647-0201 (fax 202-647-7407). The announcement must include name, social security number, and date of birth, if you have not already provided this personal data to this office. The above includes government and non-government attendees. All attendees must use the C-Street entrance.

Please bring 60 copies of documents to be considered at this meeting. If document has been mailed, bring only 10 copies.

Dated: January 16, 1992.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 92-2000 Filed 1-27-92; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1560]

Overseas Security Advisory Council; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Tuesday, February 18, 1992 at 8:30 a.m. at the Crown Sterling Suites, Fort Lauderdale, Florida. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c) (1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, D. C. 202522-1003, phone: 703/204-6185.

Dated: January 15, 1992.

Clark Dittmer,

Director of the Diplomatic Security Service.

[FR Doc. 92-2003 Filed 1-27-92; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice 1561]

Shipping Coordinating Committee Subcommittee for the Prevention of Marine Pollution; Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting February 26, 1992, at 9:30 a.m. in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting will be to review the agenda items to be considered at the thirty-second session of the Marine Environment Protection Committee (MEPC 32) of the International Maritime Organization to be held March 2–6, 1992. Proposed U.S. positions on the agenda items for MEPC 32 will be discussed. The major items for discussion will be the following:

1. Measures for the prevention of pollution including further discussion of requirements for double hulls on new and existing tank vessels to be incorporated into the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, relating thereto (MARPOL 73/78).
2. Guidelines for development of oil spill responsive plans under Regulation 26 of Annex I of MARPOL 73/78. The proposed content of such plans will be discussed.
3. Amendments to the oil discharge criteria of Regulation 9 Annex I of MARPOL 73/78.
4. Development of a comprehensive manual for reception facilities for all annexes of MARPOL 73/78.
5. Prevention of air pollution from ships, including further discussion of emission limits on nitrogen oxides, sulfur oxides, chlorofluorocarbons, and volatile organic carbons from ships. This topic will also touch on fuel oil quality and the impact it has on air pollution.
6. Prevention of pollution by noxious solid substances in bulk and possible development of a new Annex VI of MARPOL 73/78.
7. Transboundary movement of hazardous wastes.
8. Implementation of the International Convention on Oil Pollution

Preparedness, Response and Co-Operation, 1990, (OPRC 90) and resolutions adopted by the International Conference on Oil Pollution Preparedness and Response.

9. Reports of the enforcement of International Maritime Organization conventions by the various signatory member states.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information or documentation pertaining to the SPMP meeting, contact either Commander W. St. J. Chubb or Lieutenant M.L. McEwen, U.S. Coast Guard Headquarters (G-MEP-3), 2100 Second Street, SW., Washington, DC 20593-0001, telephone: (202) 267-0419.

Dated: January 14, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92-2001 Filed 1-27-92; 8:45 am]

BILLING CODE 4710-7-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During Week Ended January 17, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47947
Date filed: January 14, 1992
Parties: Membrs of the International Air Tranport Association
Subject: TC31 Reso/P0906 dated November 8, 1991, North America-TC3 (except Japan), R-1 to R-12 TC31 Reso/P 0907 dated November 8, 1991, North & Central Pacific Areawide, R-13 To R-17 TC31 Reso/ 0908 dated November 8, 1991, Central/South America-TC3, R-18 To R-29 TC31 Reso/P 0910 dated November 8, 1991, Bermuda-Japan, R-30
Proposed Effective Date: April 1, 1992
Docket Number: 47951
Date filed: January 16, 1992
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1154 dated November 8, 1991, Within Europe Resos, R-1 To R-26 TC2 Reso/P 1155 dated November, 8, 1991, Within Europe Resos, R-27 To R-30 TC2 Reso/P 1156 dated November 8, 1991, Within Europe Resos, R-31 To R-42 TC2 Reso/P 1157 dated November 8, 1991, Within Europe Resos, R-43 To R-48
Proposed Effective Date: April 1, 1992
Docket Number: 47952
Date filed: January 16, 1992
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1158 dated November 8, 1991, Within Europe Resos, R-1 To R-116
Proposed Effective Date: April 1, 1992

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-1951 Filed 1-27-92; 8:45 am]

BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 17, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47950.
Date filed: January 16, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 13, 1992.
Description: Application of Caribbean Air Services, Ltd., pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests the issuance of a foreign air carrier permit authorizing nonstop service from Dominica to San Juan, Puerto Rico, nonstop from Dominica to St. Thomas, U.S. Virgin Islands and nonstop from Dominica to St. Croix.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-1950 Filed 1-27-92; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1991 Rev., Supp. No. 12]

Surety Companies Acceptable on Federal Bonds, Lincoln General Insurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1991 Revision, on page 30150 to reflect this addition:

Lincoln General Insurance Co. Business Address: 3350 Whiteford Road, York, Pennsylvania, 17402. Underwriting Limitation *b/*: $1,498,000. Surety Licenses *c/*: AL, GA, ID, IA, IN, KS, KY, LA, MD, MO, NE, NV, NM, ND, OH, OR, PA, SC, SD, TN, UT, VA, WV, WY. Incorporated In: Pennsylvania.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874-6850.

Dated: January 17, 1992.

Charles F. Schwan, III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 92-1926 Filed 1-27-92; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1991 Rev., Supp. No. 11]

Surety Companies Acceptable on Federal Bonds; Correction, Sorema North America Reinsurance CO.

A notice was published in 57 FR 1513, dated January 14, 1992, whereby a Certificate of Authority as an acceptable surety on Federal bonds was issued to Sorema North America Reinsurance Company, under sections 9304 to 9308, title 31, of the United States Code. The effective date of this action is hereby changed to December 31, 1991, from January 7, 1992.

Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1991 Revision, to reflect this correction.

Questions concerning this notice may be directed to the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874-6850.

Dated: January 17, 1992.

Charles F. Schwan, III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 92-1928 Filed 1-27-92; 8:45 am]

BILLING CODE 4810-35-M

Surety Companies Acceptable on Federal Bonds, Liquidation, Universal Security Insurance Co.

Universal Security Insurance Company, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 50 FR 27134, July 1, 1985. The Company's authority was terminated by the Department of the Treasury effective May 30, 1986. Notice of the termination was published in the **Federal Register** of June 9, 1986, on page 20919.

On October 28, 1991, upon a petition by the Insurance Commissioner of the State of Tennessee, the Court issued an Order of Liquidation with respect to Universal Security Insurance Company. The Insurance Commissioner of the Commonwealth of Tennessee was appointed as the Liquidator. All persons having claims against Universal Security Insurance Company must file their claims by October 19, 1992, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. It is recommended that Federal Agency claimants asserting priority status under 31 U.S.C. 3713 who have not yet filed their claim should do so, in writing, to:

Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044-0875.

Attn: Ms. Sandra P. Spooner, Deputy Director.

The above office will be consolidating any and all claims against Universal Security Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Ms. Spooner at (202/FTS) 724-7194.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, Telephone (202/FTS) 874-6905.

Dated: January 16, 1992.

Charles F. Schwan, III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 92-1927 Filed 1-27-92; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

Rechartering of the Art Advisory Panel of the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of determination of necessity for renewal of the Art Advisory Panel.

SUMMARY: It is in the public interest to continue the existence of the Art Advisory Panel.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS, 901 D Street, SW., room 224, Box 68, Washington, DC 20024, Telephone No. (202) 401-4128 (not a toll free number).

The Internal Revenue Service, Department of the Treasury, pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. I (1982) of October 6, and with approval of the Secretary of the Treasury, announces the renewal of the Charter of the Art Advisory Panel of the Commissioner of Internal Revenue. This determination follows consultation with the Committee Management Secretary, General Services Administration.

Purpose

The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by the taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2412 of the Internal Revenue Code of 1986.

In order for the panel to perform this function, Panel records and discussions must include tax information. Therefore, the Panel meetings will be closed to the public since all portions of the meeting will concern matters that are exempted from disclosure under the provisions of section 552b(c)(3), (4), (6) and (7) of title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of the Internal Revenue Code.

Statement of Public Interest

It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of the Treasury, with the concurrence of the General Services Administration, has also approved renewal of the Panel. The membership of the Panel is balanced between museum directors and art dealers to afford differing points of view in determining fair market value.

Authority for this Panel will expire two years from the date the charter is filed with the appropriate Congressional committees, unless prior to the expiration of its charter, the Panel is renewed.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5.U.S.C. chapter 6).

Dated: January 21, 1992.

David M. Nummy,

Assistant Secretary, (Management).

[FR Doc. 92-2002 Filed 1-27-92; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

American Civilization Workshop/ Seminar and Lectureship Programs in the People's Republic of China; Research Grants in the People's Republic of China.

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions and organizations to: A) conduct workshops and seminars in China, B) administer programs to provide lectureships on American Civilization in China, C) administer programs to conduct research in China in areas which contribute to mutual understanding between the United States and the People's Republic of China. Applications may request funds for one, two, or three of the above programs. All program support is subject to the availability of funding.

Support is offered for three categories of institutional programs: Category A, Workshops/Seminars; Category B, Lectureships; and Category C, Research.

Each category has separate conditions and requirements, which are stated in this announcement. Institutions and organizations may compete in any or all of the three categories. Institutions or organizations requesting funds for more than one category may submit one application comprising the total request. However, each category must be described in a separate narrative and must have a separate, detailed budget. Institutions and organizations applying under any or all categories must follow the requirements stipulated in this RFP, the application guidelines, and any additional material specific to a given category. Failure to do so may result in a proposal being deemed technically ineligible. Programs and projects must conform with all Agency requirements and guidelines as well, and are subject to final review by a USIA contracting officer.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. EST on Friday, March 20, 1992. Faxed documents will not be accepted, nor will document postmarked on the deadline date but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the appropriate deadline. Programs may not begin prior to October 1, 1992, or they will be deemed technically ineligible. No funds may be expended until the grant agreement is signed with USIA's Office of Contracts.

ADDRESSES: The original and 15 complete copies of the application, including required forms, should be addressed as follows: U.S. Information Agency, Ref: China Grants Competition, Office of Grants Management, E/XE, room 357, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION: Interested organizations and institutions should contact: William Shine, U.S. Information Agency, 301 4th Street SW., East Asian/Pacific Branch, Academic Exchanges Division, E/AEF room 238, Washington, DC 20547 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

Category A: Workshops and Seminars

Grant funding under this category is intended to enhance and expand the scope of social science and humanities programs in American Society and Culture in the People's Republic of China. Specific disciplines would include American history, government, literature, law, economics, etc. Individual participants must be citizens of the U.S. Both existing and new projects are eligible.

Duration: Applications will be accepted for projects from at least 15 days to no more than 30 days duration. Programs may not begin earlier than October 1, 1992 and should be completed by September 30, 1993.

Overview: The purpose of this program is to provide opportunities for U.S. institutions and organizations to conduct workshops/seminars in China in American Civilization fields such as history, literature, law, economics, music, political science, art, etc. and thereby give the opportunity for Chinese institutions to offer their members access to recent information and perspectives in American Civilization disciplines, as well as to allow for the substantive exchange of ideas. Workshops and seminars may take place in more than one Chinese city. American organizations are encouraged to propose programs that would include participants from a variety of Chinese institutions. A workshop on American judicial process, for example, could include law professors, students, as well as national and provincial legal officials. Applicants should specify the workshop length and venue(s), the intended audience, the audience's level of sophistication, e.g., faculty, graduate students, researchers, government officials, and whether there would be any co-sponsor.

Guidelines: Preference will be given to organizations with demonstrated expertise in the proposed workshop/seminar fields. Previous experience with conducting workshops in China and/or current working relations with Chinese institutions will be considered a plus. A substantive history of organizing subject-specific programs led by acknowledged experts in the field who also have considerable teaching experience is highly advantageous. Proposals should present a very clearly designed program plan that enunciates specific objectives and that demonstrates the likelihood of substantive follow-through. Be specific as to what issues the workshop/seminar will address and who the intended audience is. In the context of the intended audience(s), please describe clearly the proposed approach, e.g., didactic, participatory, etc.

An experienced staff with excellent Chinese language skills will be a preference factor for this category.

Proposed Budget Category A

Projects: Project awards to U.S. institutions and organizations for Category A can be made in a range of amounts but will not exceed $75,000. The Agency reserves the right to reduce, revise or increase proposal budgets (up to the $75,000 cap). For organizations with less than four years of experience in international exchange activities, total grants (Categories A, B, C) will be limited to a maximum of $60,000 from USIA, and total proposed budget should not exceed this amount. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

*Please Note: It is required that requested administrative funds not exceed 20 percent of the amount requested for travel and per diem expenses. This includes both direct and indirect administrative expenses; expenses both administrative and programmatic should be cost-shared to the maximum extent possible.

Category B: Lectureships

Grant funding under this category is intended to enhance the scope of U.S. academic activities with institutions in China which have established programs of instruction at the university level and which deal with American culture and political and social processes. The emphasis should be on graduate level instruction.

Duration: Applications will be accepted from institutions which can

provide lectureships for projects of at least one semester's duration. Grants generally will be made for lectureships occurring within a 12-month period.

Overview: The purpose of these grants is to provide discipline-specific American Civilization instruction at tertiary institutions in China with an established history of instruction in these disciplines and with graduate degree programs in these fields. Experience in curriculum and staff development will be considered a strong advantage. While the short-term goal of such lectureships is to give in-depth and up-to-date information in specific American Civilization disciplines, the longer-term intent is to substantively strengthen existing programs at Chinese institutions of higher education. There is no Chinese language requirement; lectures can be conducted in English.

Guidelines: Grantee organizations and institutions will be responsible for selecting individual participants who would receive funding. Such individuals must be at the Associate Professor level or above in a recognized American Civilization discipline at an American institution of higher education. While going to China to conduct courses or seminars in his or her discipline, an individual grant recipient would also evaluate and make suggestions for curriculum development at his or her host institution. U.S. faculty would be prepared to work closely with Chinese faculty regarding instructional approaches in the specific disciplines. The proposal should include specific topics for graduate-level courses. The proposal must include the criteria for and the mechanics of the actual selection process.

Allowable Costs for Category B

Projects: Project requests may not exceed $55,000 per faculty-participant. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

*Please Note: A modest amount of support for the organizational or institutional grantee to cover such expenses as participant recruitment, selection and orientation will be allowed.

Category C: Research

Grant funding under this category is intended to enhance and expand the scope of U.S. scholarly research with Chinese institutions such as the Chinese Academy of Social Sciences or similar provincial organizations or institutions involved in social science or humanities research. Such research should assist in promoting mutual understanding between the U.S. and China. Research focusing on comparative approaches in areas such as law, political science, history, sociology, etc. would be especially relevant. Research could include a study on recent translations of American literature, or works of history or economics, or Chinese-American political/cultural relations. Other examples could include research into how and what Chinese university students learn about the American legal or political systems, or comparative studies involving these disciplines. Other topics might concern the history of Sino-American relations or aspects of contemporary China which are of interest to the American scholarly community. An excellent working knowledge of Chinese is required for any work involving comparative studies or field research. The grantee institution is responsible for verifying knowledge of Chinese when required by the research project.

Overview: The short-term objective of a research grant would be to give institutionally-sponsored scholars the opportunity to explore current and recent trends in his or her area of expertise in China. The longer-term goal is to encourage and maintain a scholarly dialogue based upon active research and the exchange of research information.

Guidelines: A Category C grant will be for institutions or organizations which provide a publicly announced, open competition selection process for choosing the recipients of individual research grants. The proposal should include the criteria for and the mechanics of the actual selection process. Individual grantees should be experienced researchers holding a doctorate in his or her field of expertise. The successful individual recipient would present a careful thought-out research design, preferably related to an on-going research project in which the grantee is currently involved. Preference should given to candidates whose research would enhance the exchange of substantive knowledge in his or her discipline between scholars in China and the United States.

Duration: Research projects should be for a minimum of three months duration. Grants will generally be made for exchanges occurring within a 12-month period.

Allowable Costs for Category C

Projects: While grants are likely to involve a wide range of amounts depending on the duration of the stay, cost per participant may not exceed $50,000, including administrative costs. All institutions/organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

*Please Note: A modest amount of support for the organizational and institutional grantee to cover such expenses as participant recruitment, selection and orientation will be allowed where appropriate.

Review Process (All Categories)

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals may be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's Office of East Asian and Pacific Affairs, the Press and Culture section of the American Embassy in Beijing, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria (All Categories)

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of Program Plan—including academic rigor, thorough conception of project, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Feasibility of Program Plan—capacity of the organization to conduct the exchange; proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track Record—relevant Agency and outside assessments of the organization's experience with international exchanges; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier Effect/Impact—the impact of the exchange activity on the wider community and on the development of continuing ties, as well as the contribution of the proposed activity to promoting mutual understanding.

e. Value to U.S.-PRC Relations—the assessment of the need, potential impact, and significance of the project with the PRC.

f. Cost Effectiveness—the overhead and administrative components of grants, as well as salaries and

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honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

g. Institutional Capacity—proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

h. Follow-on Activities—proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

i. Evaluation Plan—proposals should provide a plan for evaluation by the grantee institution and by individual participants in categories B and C.

Application Disclaimer (All Categories)

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 15, 1992. All funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: January 21, 1992.

Carl Howard,

Acting Associate Director for Educational and Cultural Affairs.

[FR Doc. 92-2041 Filed 1-27-92; 8:45 am]

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Sunshine Act Meetings

Federal Register
Vol. 57, No. 18
Tuesday, January 28, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF DEFENSE

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Notice of Meeting

TIME AND DATE: Subcommittee meetings 8:00 a.m., February 3, 1992. Full Board 9:00 a.m., February 3, 1992.

PLACE: U.S. Naval Hospital, Portsmouth, Virginia—Commanders Conference Room.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:00 a.m., Subcommittee Meetings
9:00 a.m., Meeting—Board of Regents

(1) Approval of Minutes—October 28, 1991; (2) Faculty Matters; (3) Report—Admissions; (4) Financial Report; (5) Associate Dean for Graduate Medical Education; (6) Report—President, USUHS; (7) Comments—Members, Board of Regents; (8) Comments—Chairman, Board of Regents; (9) Reports of Subcommittees on Planning and Oversight; (10) Report of Dean's Search Committee.

New Business.

CONTACT PERSON FOR MORE INFORMATION: Charles R. Mannix, Executive Secretary of the Board of Regents, 301/295-3028.

Dated: January 24, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-2196 Filed 1-24-92; 3:59 pm]

BILLING CODE 3810-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 30, 1992, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. New Business

1. Prior Approval

a. Proposed Consolidation of the FCB of St. Louis and the FCB of the St. Paul to form Agribank, FCB.

Closed Session *

A. New Business

1. Enforcement Actions

* Session closed to the public—exempt pursuant to 5 U.S.C. § 552b(c) (8) and (9).

Dated: January 23, 1992.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 92-2130 Filed 1-24-92; 2:33 pm]

BILLING CODE 6705-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, February 3, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2174 Filed 1-24-92; 2:34 pm]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-92-2]

TIME AND DATE: February 13, 1992 at 10:30 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings.
2. Minutes.
3. Ratification List.
4. Petitions and complaints: Certain dynamic sequential gradient devices (Docket Number 1666).
5. Inv. 731-TA-542-544 (Preliminary) (Potassium hydroxide, Liquid and Dry from Canada, Italy, and the United Kingdom)—briefing and vote.
6. Any items over from the previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: January 23, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-2129 Filed 1-24-92; 2:32 pm]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 27, February 3, 10, and 17, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 27

Wednesday, January 29

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 3—Tentative

Wednesday, February 5

9:30 a.m.
Briefing on Pending Investigation (Closed—Ex. 5 and 7)

1:30 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

Thursday February 6

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 10—Tentative

Wednesday, February 12

1:30 p.m.
Briefing on Requirements for Integral System Testing of Westinghouse AP–600 (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 17—Tentative

Friday, February 21

10:00 a.m.
IG Briefing on Review of NRC Programs (Open/Closed to be determined)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: January 23, 1992.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 92–2182 Filed 1–24–92; 2:35 pm]

BILLING CODE 7590–01–M

VOL 57 ISS 18 JA 28 1992 UMI

federal register

Tuesday
January 28, 1992

Part II

Department of Education

Office of Special Education and Rehabilitative Services Proposed Funding Priorities—Fiscal Years 1992 and 1993; Notice

VOL 57 ISS 18 JA 28 1992 UMI

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Proposed Funding Priorities—Fiscal Years 1992 and 1993

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities.

SUMMARY: The Secretary proposes funding priorities for fiscal years 1992 and 1993 for the following:

Research in Education of Individuals with Disabilities Program, 84.023
- Initial Career Awards
- Research on Self-Determination in Individuals with Disabilities
- Including Children with Disabilities as a Part of Systemic Efforts to Restructure Schools
- Ombudsmen Projects for Children and Youth with Disabilities

Special Studies Program, 84.159
- State Agency—Federal Evaluation Studies Projects
- State Agency—Federal Evaluation Studies Projects—Feasibility Studies of Impact and Effectiveness
- The Center for Special Education Finance

Technology, Educational Media and Materials for Individuals with Disabilities Program, 84.180
- Innovative Applications of Technology to Enhance Experiences in the Arts for Children with Disabilities
- Studying How the Design of Software and Computer-Assisted Media and Materials Can Enhance the Instruction of Preschool Children with Disabilities
- Demonstrating and Evaluating the Benefits of Educational Innovations Using Technology

Program for Children and Youth with Serious Emotional Disturbance, 84.237
- School Preparedness for Developing Well Adjusted Students

These four programs are administered by the Office of Special Education Programs. To ensure wide and effective use of program funds, the Secretary proposes to select from among these program priorities in order to fund the areas of greatest need for fiscal years 1992 and 1993. A separate competition will be established for each priority that is selected.

DATES: Comments must be received on or before February 27, 1992 for the Technology, Educational Media, and Materials for Individuals with Disabilities Program; March 30, 1992 for the Research in Education of Individuals with Disabilities Program; and April 27, 1992 for the Special Studies Program.

ADDRESSES: Comments should be addressed to: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3095—M/S 2313–2640), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell. Telephone: (202) 732–1099. (TDD #: (202) 732–6153.)

SUPPLEMENTARY INFORMATION: This notice represents a consolidated notice for fiscal years (FY) 1992 and 1993 of proposed priorities for certain discretionary grant programs administered by the Office of Special Education Programs. Publication of these priorities does not preclude the Secretary from changing these priorities, or publishing additional priorities, nor is there any limitation on the Secretary to fund only these priorities, subject to meeting applicable rulemaking requirements. Closing dates for all fiscal year 1992 competitions will be announced with publication of the final priorities.

All of the proposed priorities will contribute in some way to including children with disabilities in the AMERICA 2000 strategy for achieving the National Education Goals agreed to by the President and the Governors. Four priorities are expected to be particularly important in supporting that strategy.

Priority 4 of the Research in Education of Individuals with Disabilities Program would support projects to develop and implement systemic changes at the school level that will incorporate effective practices for children with disabilities into broader educational reform and restructuring initiatives.

Under the Special Studies Program, priorities 1 and 2, the Secretary has especially invited applications for State agency—Federal Evaluation Studies Projects that address reform policies and practices or that deal with the measurement of student outcomes as indicators of program effectiveness.

Also, priority 4 under the Special Studies Program would support a Center for Special Education Finance that would identify accounting procedures that would support greater flexibility in the use of Federal, State, and local funds.

Paperwork Reduction Act of 1980

These priorities contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of the proposed priorities to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Public or private non-profit agencies, institutions, or organizations would be required to address the absolute priorities in order to be considered by the Secretary for grants under this program. The Secretary needs and uses this information to determine whether proposed projects are likely to meet identified national needs. The annual public reporting burden for the collection of information is estimated to average 42 hours per response for 30 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Title of Program: Research in Education of Individuals with Disabilities Program

CFDA No. 84.023.

Purpose: The Research in Education of Individuals with Disabilities Program, authorized by Part E of the Individuals with Disabilities Education Act (20 U.S.C. 1441–1443), provides: (1) Support to advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals in regular education environments, to provide children with disabilities effective instruction and enable them to learn successfully; and (2) research and related purposes, surveys or demonstrations relating to physical education or recreation, including therapeutic recreation, for infants, toddlers, children, and youth with disabilities.

Proposed Priorities: The secretary proposes to establish the following priorities for the Research in Education of Individuals with Disabilities Program, CFDA No. 84.023. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: Initial Career Awards (CFDA 84.023N)

This priority supports awards to eligible applicants for the support of individuals who have completed a

doctoral program and graduated no earlier than the 1987–88 academic year for fiscal year 1992 awards. For fiscal year 1993 awards, individuals must have completed a doctoral program and graduated no earlier than the 1988–1989 academic year. Applicants are encouraged to recruit individuals who are members of racial or ethnic minority groups. This priority supports projects to conduct research and related activities focusing on early intervention services and special education consistent with the purpose of the program as stated in 34 CFR 324.1. This support is intended to allow individuals in the initial phases of their careers to initiate and develop promising lines of research that will improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. A line of research refers to a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish parameters for designing future studies extending beyond the support of this award. However, the projects supported under this priority are not intended to represent all inquiry related to the particular theory or conceptual framework. Rather, they are expected to initiate a new line or advance an existing one.

The project must demonstrate promise that the potential contribution of the line of inquiry will substantially improve early intervention services and special education. The project must include sustained involvement with nationally recognized experts having substantive or methodological knowledge and techniques critical to conducting the proposed research. These experts do not have to be at the same institution or agency as the applicant. This interaction must be of sufficient frequency and duration for the researcher to develop the capacity to pursue effectively the research into mid-career activities. However, the experts' involvement must not usurp the project leadership role of the initial career researcher. An applicant may apply for up to three years of funding. At least 50 percent of the researcher's time must be devoted exclusively to the project.

Project procedures, findings, and conclusions must be prepared in a manner that is informative for other interested researchers, and is useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families. Project procedures, findings, and conclusion must be disseminated to appropriate research institutes, clearinghouses, and technical assistance providers.

Priority 2: Research on Self-Determination in Individuals With Disabilities (CFDA 84.023J)

Issue

Individuals with disabilities have identified self-determination, self-efficacy, self-advocacy, and maximum independence as major goals for the disability movement. These goals emphasize the need for individuals with disabilities to learn to make choices, set goals regarding their lives and the services they receive, and to initiate actions to achieve those goals. The ability of individuals to make choices may also be an important component in being perceived by others as independent and self-determining.

Self-determination has also been described as including one or more of the following: Goal setting, social interaction, communication, assertiveness, decision making, and self-advocacy. These behaviors (as well as others yet to be identified) and groups of behaviors overlap, making distinctions difficult. Comprehensive conceptual framework representing alternative perspectives are needed to advance the assessment of current school practices in relation to the development of self-determinated behavior. There is a need to identify the relationships and influences of the major sub-components of self-determination in order to provide a stronger conceptual base on which to develop improved assessment. Procedures for defining, identifying, and validating assessment approaches need advancement.

Background

The value of participation in society by individuals with disabilities has prompted professionals and advocates to provide them with previously unavailable opportunities to participate in normalized environments and integrated community settings. While legislation, litigation, and publicly supported programs have promoted the inclusion of individuals with disabilities into the mainstream, many of the barriers to successful inclusion remain beyond the remedy of legislatures, courts, and professional advocacy. An increasing consensus by individuals with disabilities is that full inclusion will require the individual to overcome the stereotypes of disability. These stereotypes are viewed as promoting passive acceptance, learned helplessness, and political inaction. The keys to change are programs, parents, and education or rehabilitation professionals that emphasize independence as more than the performance of basic social and vocational skills. The development of individuality, self-esteem, goal oriented behavior, assertive behavior, and decision making ability are also critical outcomes.

The development of self-determined behavior and attitudes in students with disabilities has been hampered by lack of a definition of self-determination, limited models of programs or methodologies for achieving self-determination, limited expectations of parents and professionals, and emphasis on the development of services as opposed to the development of the individual. Although all of these factors have impeded the development of self-determination in students, none is more critical than the development of valid and operational definitions of self-determination. It is essential to develop approaches for assessing its level in order to include it as a component in program design and service delivery.

Purpose

The purpose of this priority is to fund up to three cooperative agreements for up to two years to provide an operational definition for self-determination and assessment approaches for determining the level of self-determination. The assessment approaches must also provide methodologies for improving the operational definition of self-determination.

Project activities must also develop a better understanding of self-determination as an outcome of schooling. The nature and scope of traditional outcome measurement must be broadened to assess the degree to which individuals with disabilities set goals and initiate and sustain actions to achieve those goals. It is anticipated that the development of a validated assessment of self-determination will provide for a better balance between societal and individual outcomes as well as provide educators a vehicle for defining and measuring self-determination as an explicit educational goal. Finally, project activities will result in a conceptual model and tool for assessing a program's contribution to developing self-determining behaviors and attitudes of individuals with disabilities.

Activities

Projects must: (1) Develop a conceptual framework of self-

determination; (2) identify the individual characteristics and behaviors of self-determination; (3) develop, validate, and field test an assessment approach for operationally defining and measuring self-determination; (4) collaborate with other projects to maximize project benefits; and, (5) disseminate project findings to individuals with disabilities and professionals involved in service delivery planning or evaluation.

Develop a Conceptual Framework. Several activities are required in developing a conceptual framework of the constructs of self-determination. Information must be gathered from multiple sources and methodologies to produce a conceptual framework that is comprehensive, sensitive to individual differences, and can provide the framework for the project. Sources must include: (1) Professional research and theoretical literature from education, rehabilitation, and other relevant disciplines; (2) interviews with individuals with disabilities exhibiting self-determination; and (3) interviews with service providers and researchers. Projects must analyze this information and develop a conceptual framework comprised of the constructs identified as a result of these activities. The conceptual framework must identify hypothesized relationships that may be correlated with identified variables of self-determination. After the conceptual framework has been developed, each project must convene a panel consisting of individuals with disabilities, parents of individuals with disabilities, instructional personnel, and other persons providing services in the area of disabilities. These panels must provide input as to the validity of the conceptual framework in delineating the diverse concept of self-determination.

Identify the Individual Variables of Self-Determination. Once the conceptual framework has been developed, the project must develop procedures for identifying the variables for each construct. These variables will serve as the basis for the development of an assessment approach to provide information regarding the individual relevant to self-determination. The approach may represent self-determination as developmental in nature or as demonstrated at particular points in time. From a developmental perspective self-determination might include the progressive stages of skills, attitudes, and knowledge representing identified constructs. These stages may be grade referenced (e.g., K–3, 4–6, etc.) or age referenced. For the latter approach, the individual's level of self-determination would be considered at a particular point in time for a specific purpose (e.g., choosing a roommate). The level could be determined by observation or a rating provided by an individual familiar with the individual's abilities and limitations. Regardless of the approach, the variable must be sensitive to individual characteristics affecting self-determination such as: age, level of functioning, cultural differences, and nature of disability; and sample the domains of school, home, work, and community. The development of the assessment approach must include the active participation of the above mentioned panel of individuals with disabilities in the identification and validation of variables associated with self-determined behavior. The participation of professionals (advcates, researchers, teachers, etc.) and parents must be included so as to ensure both the acceptance and usability of the assessment approach.

Validate and Field Test Assessment Approach. Projects must develop, validate, and field test an assessment approach to self-determination. An assessment approach must include the identification, definition, measurement, and validation of key constructs related to self-determination. The assessment approach must include a rationale and activities required to operationally define and measure self-determination. Projects must employ methodologies for deriving the self-determination variables that are consistent with the development of an assessment approach that will be sensitive to a range of individual student abilities, backgrounds, and situations. Field testing must provide a clear indication of the utility of the approach in school settings. The assessment approach must produce descriptions of student behaviors and characteristics that are useful in designing instructional units for the development of self-determination.

First, projects must pilot the assessment with individuals with disabilities. The pilot must include individuals representative of the age, functioning level, and environments of its intended consumers. The pilot must guide the revision of the approach prior to a full scale field test.

Following the pilot procedures, a larger scale field test of the assessment must be conducted. The sample for this activity must be large enough to allow the determination of the technical adequacy of the assessment, including reliability and validity.

Collaboration Activities. Projects must budget for a meeting to establish a collaborative relationship with other projects funded under this priority. This meeting serves as a forum for refining the self-determination variables proposed by each project and arranging a process for the exchange of project information and materials. It is anticipated that the collaboration activities will enhance conceptualization of self-determination by incorporating varying perspectives and methods of validation.

Dissemination. Projects must disseminate the project's findings and products, and provide opportunities for input by groups regarding the educational and programmatic implications of the findings of the projects and the continued refinement of the concept of self-determination. Input must be sought, at a minimum, from representatives of the following groups: individuals with disabilities, parents of students with disabilities, professionals involved in instruction and planning for individuals with disabilities, and other individuals relevant at a given stage of the individual with disabilities life (e.g. residential providers, rehabilitation counselors, employers, etc.).

Additional Federal Requirements. Projects must budget to attend the annual Project Directors' Meeting to be held in Washington, DC.

Priority 3: Including Children With Disabilities as a Part of Systemic Efforts To Restructure Schools (CFDA 84.023R)

Issue

Educational reform and restructuring initiatives intended to improve the educational outcomes of our Nation's children must be designed to accommodate the diverse characteristics and learning needs of children with disabilities. Educational reform and restructuring activities are stimulating changes in schools across the Nation. Restructuring represents systemic efforts to alter the policy, organizational, and belief frameworks of administrators, teachers, parents, and students to improve the learning and educational outcomes of students. The nature and focus of restructuring varies from school to school. Restructuring may occur on a State, district or building level. It may include site-based management approaches which emphasize the decentralization of control and decision making. In some schools, site-based management is being implemented in conjunction with modifications in curricular approaches, instructional patterns, and assessment. Current experimentation with providing parents and their children with greater "choice in education" represents, in

some cases, another example of restructuring.

Background

The Division of Innovation and Development, Office of Special Education Programs (DID/OSEP), has focused previously upon identifying and implementing specific educational interventions and strategies in classrooms and schools. Since 1985 DID/OSEP has invested systematically in a program of research and development to improve the instruction, curricula, classroom management, and assessment of children with disabilities who are being educated in general classroom environments. Eight research competitions, comprising 41 projects, have been conducted in the past five years. These projects, however, have not addressed the question of how innovations that achieve meaningful participation and better results for children with disabilities in general school environments can become part of broader efforts to systemically restructure schools.

These projects provide direction, define practices, and chart implementation requirements for adopting specific innovations. Predominantly, these funded projects have relied on external researchers rather than administrators and teachers to stimulate and support ongoing implementation of school innovation. Such externally oriented models have not focused on the basic systemic changes required to incorporate these effective practices into broader system-wide; school-based educational reform and restructuring initiatives.

Innovations must be incorporated into the complex organizational system of the school. The processes required for generating innovations, developing effective applications, and determining implementation requirements are different from those needed to achieve broader systemic change in order to implement innovations. Too often, innovation activities have been supported, and dissemination activities encouraged, but little attention has been provided to the developmental stages and levels of implementation support required to achieve effective adoption of innovations.

Purpose

This priority will support up to 7 projects for up to 48 months to develop and implement systemic changes at the school level required to incorporate effective practices for children with disabilities into broader school based educational reform and restructuring initiatives. Projects must identify the critical policy, organizational, administrative and operating features for transforming schools into learning organizations and systems that are capable of continually monitoring their activities and performance in order to achieve better educational outcomes for children with disabilities. Systemic variables must be identified and addressed. These include, for example, continuity of services for individual students (e.g., communication between multiple service providers), linkages among systems, fluidity of a system for facilitating movement of services and individuals between components (e.g., so that services can be provided regardless of setting), and preparedness of a system for effectively meeting the diverse characteristics that students present to schools. These features embody the dynamic, generative thinking and creative experimentation of organizations. These projects must identify essential systemic design features, specifications, and choices for schools engaged in educational reform and restructuring necessary for achieving better education outcomes for all children, including those with disabilities.

Educational outcomes must be broadly stated and must be valued by society for children with disabilities. The attainment of an educational outcome must reflect more than an incremental change in performance and be an accomplishment generally valued by society. Illustrations of such outcomes might include: personal adjustment, social or communicative competence, productivity, physical or motoric achievements, quantitative thinking, reasoning, and achievements in the visual and performing arts.

Projects must: (a) Establish basic orienting premises to guide the systemic design for school sites to meet the needs of children with disabilities in the context of addressing the diverse conditions and complex learning needs of all children; (b) specify broad educational outcomes that are valued by society and reflect accumulated learning and accomplishments in diverse areas; (c) identify systemic design features required for all children including those with disabilities to achieve these educational outcomes; (d) develop a multi-year plan for effecting systemic changes; and (e) conduct case studies on the change processes, effects and impact of implementing these systemic changes.

Activities

Site Selection. Projects must occur in schools that already are planning for or engaged in some substantive or procedural restructuring initiative. An individual school must demonstrate a commitment to both systemic changes as well as adoption of effective professional practices that will address the diversity and complexity of learning needs of children with disabilities. Projects must indicate the systemic changes and activities that funds from this grant will support in relation to their ongoing restructuring initiative. Schools must already have a number of children with disabilities integrated into regular classroom activities. Children with disabilities must represent a range in types of disability as well as severity.

Project Planning. An initial planning phase of up to one year is anticipated. Extensive efforts must be made during this time to involve faculty, parents, individuals with disabilities, regular and special education research experts, other community agencies, innovative practitioners, and others as appropriate. The plan must include systemic planning, change, and feedback activities that develop and maintain ongoing school administrative and faculty commitment to implementing their reform and restructuring initiatives. The reform and restructuring activities must reflect principles for effecting systemic change as well as systemic features that facilitate the participation and achieve better educational outcomes for children with disabilities. Initial planning activities must include:

(1) *Clarification and specification of the premises, goals, and outcomes of the project in relation to the school's current or planned reform and restructuring initiatives.* The project must refine its initial statements of basic orienting premises to guide the project. Goals of the project must specify systemic features, action required, and aim. Projects must specify the diverse educational outcomes that the school is committed to achieving for all children, including those with disabilities. Each site must demonstrate that the school's educational outcomes will reflect a diversity of areas and levels of potential accomplishment for children with disabilities.

(2) *Specification of the ongoing planning processes, procedures, and participants needed to govern, design, implement and assess the project.* The project must develop and implement an operational plan that includes a planning process and procedures that provide for the participation of a substantial number or proportion of general education and special education teachers in the school, building and district administrators, school board representatives, support staff, parents, individuals with disabilities, community

agency representatives, and regular and special education researchers. The operational plan must reflect the project's vision of the school district and the community (e.g., regional health, mental, social, and correction agencies; voluntary organizations; business; institutions of higher education; and families). Ongoing planning procedures must be related to: project premises, goals, systemic targets for change, systemic design features, systemic change, feedback on project progress, and evaluation of project effects and impact.

(3) *Refine operational plan and schedule of activities to be undertaken in order to achieve project goals.* This plan of operation must address, but is not limited to, the following restructuring activities: Planning, organizational development, clarification of project basic orienting premises, project goals, specification of educational outcomes, system design activities, systemic change and project evaluation. For each of these restructuring activities the project must develop objectives, establish timelines, identify resources needed, identify barriers to be overcome, assign responsibilities for these activities, and establish performance measures to determine progress and problems related to implementation of each activity. The plan of operation must give particular attention to the dynamic nature of systemic change as the plan develops and progresses through levels of implementation.

(4) *Procedures to determine the effectiveness and impact of the project.* Procedures should include assessing all project activities, the effectiveness and impact of systemic design features, extent of attainment of project goals. Each project must develop and conduct rigorously designed evaluation activities that document or validate project findings, and provide new insights related to the varied aspects of designing and implementing systemic change.

Implement and Evaluate Project Plans. Projects must implement their operational plan and schedule of activities in a manner to achieve their goals within a 48 month period. It is expected that activities will be phased in over the years. Project progress, effectiveness, and impact will be assessed consistent with the design and measures developed and refined during the planning and implementation phases of the project.

Collaboration. Projects must budget for one meeting per year with other grantees from this competition, as well as funds to attend the annual meeting of project directors for the Division of Innovation and Development. Projects must collaborate with other projects from the competition on an ongoing basis to determine joint products and activities that would be useful to other schools considering or engaged in educational reform and restructuring initiatives.

Dissemination. Projects must disseminate information about the project on an ongoing basis to other schools in their area, State or region. Projects must also develop plans to disseminate findings of the project. Project dissemination must focus on basic orienting premises, systemic design features and their effectiveness and impact, and implications for school-based reform and restructuring initiatives in a form usable by such audiences as teachers and administrators.

Priority 4: Ombudsperson Services for Children and Youth With Disabilities (CFDA 84.023M)

Issue

The determination of the appropriateness of an educational program for students with disabilities is often a complex and emotional process involving students with disabilities, their parents, and an increasing number of professionals. It is not surprising that in some instances the process breaks down due to an inability to communicate and resolve issues; barriers consisting of lack of access, availability or appropriateness of services; or a host of other systemic reasons.

Currently, several State and local educational agencies have enacted mediation programs as part of the administrative remedy requirement under due process requirements. Although reactive mediation services may help to prevent formal due process reviews, they begin only after a conflict has arisen. Reactive programs tend to focus on individual problem resolution, often adding little to resolving or preventing underlying systemic issues.

Ombudsperson services represent the ability to proactively identify systemic problems and to initiate actions to prevent and/or lessen the impact on individuals with disabilities and their families. This priority would require that the ombudsperson identify the various key integrating systems in their community or region. These integrating entities would serve to refer individuals or identify recurrent problems that relate to individuals with disabilities and their families. This type of proactive impartial mediation would enable the ombudsperson to proactively identify systemic problems and issues.

Background

A variety of regulatory and organizational factors have often resulted in the service delivery system for individuals with disabilities lacking the capacity to be fully responsive to the needs of these individuals. One approach for addressing this unresponsiveness has been the ombudsperson model. This model was developed in Scandinavian countries and refers to individuals, often employed by a government entity such as the legislature, who assist citizens by investigating complaints against the government. For the purposes of this priority, an ombudsperson refers to any individual who acts as a liaison, to assist in and mediate interactions with a service system. Ombudspersons do not perform individual advocacy in a traditional sense. The intent of the relationship with beneficiaries is not intended to be personalized nor long-term as in advocacy relationships.

Ombudspersons operate externally to the system, thereby avoiding apparent conflict of interest, partiality, or other susceptibility to system influence. Consistent with the concept of an ombudsperson program, this role must be perceived and performed by persons who maintain a problem solving meditational position, not an advocacy position. They participate in a variety of activities designed to "personalize" a service system by making it more responsive to individuals. Ombudspersons are not responsible for enforcing laws or regulations, but are intended to secure fairness in the government's interactions with citizens. They have no legal authority to enforce a decision or force action on the part of any party, however they may exercise great systemic pressure by identifying service inequities and inadequacies and bringing these to the public's attention. Ombudspersons' power is that of impartiality, mediation, and social pressure derived, frequently, by focusing attention on a problem. While they are not considered responsible for solving problems between citizens and government, they can make recommendations to appropriate policy making entities.

Purpose

The purpose of this priority is to support and assess projects that will provide ombudsperson services to assist in resolving problems that are systemic barriers to appropriate educational, related services, or other services for

children and youth with disabilities. Assistance is to be provided to children and youth with disabilities, their parents or guardians, special and regular education teachers, State and local education administrators, and related services personnel to resolve systemic problems in a timely manner. Participation in this ombudsperson program does not preclude or delay due process under Part B of IDEA.

Specific objectives of the projects are to: (a) Design an ombudsperson program within a local, regional, or State system; (b) develop and complete all preparation necessary to fully implement the ombudsperson program; (c) determine the feasibility of the ombudsperson role, function, and procedures; and (d) fully implement and evaluate the impact of the ombudsperson program for resolving problems that are related to the delivery of special education and related services, and mediating systemic conflicts involving students with disabilities and their families. This priority will be implemented in two phases.

Phase 1

This phase will support from five to seven projects for up to eighteen months to design, develop and prepare for full implementation, and assess the feasibility of an ombudsperson program at the local, regional, or State level. Each project must provide letters of commitment from relevant agencies, including schools, to participate in the Phase 1 design and development, and the Phase 2 full implementation and evaluation activities.

Projects must focus on designing proactive systems oriented strategies. In this approach, an ombudsperson serves as a catalyst for change on a system, agency, or institutional level. By focusing on a proactive approach, the ombudsperson program must anticipate and prevent problems in service delivery by identifying problem antecedents and consequences. The contributions of this program include identifying, defining, and resolving systemic issues related to the responsiveness and appropriateness of the service system to address the needs of students with disabilities. For example, the initial response to the identification of a systemic problem would be the clarification and communication of the problem to the affected parties. In many cases, this may be sufficient to make resolution or additional options possible. If this is unsuccessful, the ombudsperson may attempt to provide linkages between the interested parties, to provide additional support, or provide technical assistance. If this is ineffective, the ombudsperson may work with a State level representative, whose primary responsibilities are complain management. Finally the ombudsperson could work with the State Advisory Committee established under Part B of IDEA, local interagency coordination councils, local/ State Developmental Disabilities Councils, and/or Governor's councils or commissions on disability issues.

Phase 1 Activities

Site Description. During Phase 1, projects must prepare an indepth description of the project. These descriptions must include: (a) The current organizational framework for the unit with which the ombudsperson will work (e.g. school, local educational agency, intermediate educational unit); (b) an overview of currently available services for students with disabilities in addition to those provided by the schools; (c) a description of current formal and informal patterns of interaction of the school with other service providers; (d) measures of consumer satisfaction with current services; (e) other information that documents the current system improvement needs of the schools and their potential for pursuing innovative approaches to address those needs.

Each project must also identify the level(s) (local, regional or State) for which the program will be fully implemented. The level selected must be appropriate for establishing an effective relationship with the organizational structure of current or potential service providers for children and youth with disabilities and their families (e.g., schools, social service providers, juvenile justice systems). Project sites must be selected where the fiscal and administrative experience would support the Phase 2 full implementation of the ombudsperson innovative program.

Program Design and Development. The ombudsperson service must not replace or replicate existing advocacy services or informational programs currently provided for under the Developmental Disabilities Act or provided by professional or parent organizations or associations. Under no circumstances should the activities of these projects alter access to redress under the due process requirements of the Individuals with Disabilities Education Act (IDEA).

Each project's design must include the following components. A detailed process by which the ombudsperson roles, functions, and procedures will be defined and developed within the current service system. The process must include the participation of potential service providers for children and youth with disabilities and their families in addition to the school system (e.g., mental health, social services, child welfare, court system, and juvenile corrections providers).

Each project must identify and develop strategies to address the potential barriers and issues for implementing ombudsperson services. In addition, each project must design and develop strategies for how ombudsperson services will be made available and known to consumers and training ombudspersons. Projects must describe the process and procedures for gaining acceptance of the various service providers, including schools and parents, for the role, function, and procedures of the ombudsperson. Further, the design must include a procedure by which the activities of the ombudsperson may be supervised and the program held accountable. This might entail direct reporting to State department level officials via a public annual report or some other method for monitoring the program activities.

Potential ombudspersons must be identified from the following groups: Parent advocates, social workers, special education personnel, or psychologists. Selected individuals may not be employees of a governmental entity that directly or indirectly provides services for students with disabilities or their families. Consistent with the concept of ombudsperson services, this role must be perceived and performed by persons who maintain a problem solving mediational position, not an advocacy position. Each project must identify individuals who: (a) Are external to the existing system of service delivery; (b) possess or will be trained in problem solving skills, mediational skills, and systemic change processes; (c) are knowledgeable of issues related to the provision of an appropriate education program for students with disabilities, including issues related to the coordination and collaboration of services external to the school system.

Phase 1 activities must include obtaining information on available services, and current service eligibility requirements. This information must be made accessible and available to children and youth with disabilities and their families.

These ombudsperson services must be integrated within the prior scheme of service delivery so that they may be continued following the period of the award. Each project must provide

evidence of support for obtaining resources following the Phase 1 funding period.

Determining Feasibility of the Ombudsperson Program Design. In Phase 1, each project must develop and implement procedures for (a) assessing the feasibility of the design and implementation requirements of the ombudsperson role, function, and procedures at the level (local, regional, or State) of the project; (b) determining the potential for the ombudsperson program to proactively resolve systemic improvement issues that are related to the delivery of special education and related services; and (c) determining the likelihood that they can successfully complete Phase II activities. Criteria for determining the feasibility of the program must include, but are not limited to: policy, fiscal, administrative, procedural, personnel, attitudes, and participant support for ombudsperson services; and must include quantitative as well as qualitative methods such as simulation, case studies, or piloting of program features.

Collaboration. The Department has substantial interest in these projects being able to collectively contribute to advancing an understanding of the design features and implementation issues and solutions to developing ombudsperson services. All projects must collaborate with each other and with the Department to: (a) synthesize their individual designs for ombudsperson roles, functions, and procedures; (b) identify issues, barriers, and solutions to fully implement the ombudsperson services; and (c) describe their feasibility findings for fully implementing ombudsperson services. Projects must budget three trips to Washington, DC for the purpose of developing a cross-project dissemination product.

Phase 2

This phase will provide continued support for between two to three projects from Phase 1 for an additional two years. The purpose of this phase is to fully implement and evaluate the effectiveness of ombudsperson services for proactively resolving systemic problems related to the delivery of special education and related services.

Phase 2 projects will be selected based on: (a) The potential that the different project designs offer for contributing to the understanding of ombudsperson roles, functions, and procedures; (b) the increase in understanding of the implementation requirements for differing contexts; (c) evidence gathered during Phase 1 regarding the feasibility of ombudsperson designs and full implementation for proactively identifying systemic issues and responding to needs for system improvements; and (d) the ability of projects to obtain funding from local, regional, or State sources to continue activities following the Phase 2 funding period.

Phase 2 Activities

Procedures for Assuring the Integrity of Implementation. Each project selected for Phase 2 must have a schedule for full implementation of ombudsperson services. This schedule must reflect a sequence and progression of activities consistent with the extensive literature on achieving the full implementation and change associated with adoption of innovations. Critical commitments and participation for fully implementing ombudsperson services must be obtained. Procedures for assuring the integrity of implementation must be operative. The full implementation of the ombudsperson program must be achieved, and the documentation maintained that describes the participation of relevant parties as well as the process and stages of change.

Evaluating Ombudsperson Services. Projects must rigorously test the overall effectiveness of ombudsperson series. Key program designs and overall features must also be documented so that others interested in utilizing these designs and features could evaluate their applicability and potential for implementation in their school district and community.

The evaluation process must be multi-dimensional using quantitative and qualitative information to provide a detailed account of the project from a service providers perspective, consumer perspective, parent perspective, and policy makers perspective.

The evaluation plan must assess the effectiveness of proactive systems oriented ombudsperson services as a means for identifying and addressing needed systemic improvement, and which enhances the responsiveness and appropriateness of services to meet the needs of children with disabilities.

Collaboration. The Department has substantial interest in projects awarded under this priority. This interest includes capturing across projects the effectiveness of solutions to the full range, nature, and context of implementation requirements for providing ombudsperson services. Projects must collaborate with each other and with the Department in designing their Phase 2 activities to permit across project summary of findings and lessons learned. Projects must also cooperate with the Department in working with coalitions of professional and parent organizations to develop cross-project dissemination materials for their respective membership.

Project Dissemination. Dissemination of project information is a significant aspect of Phase 2 activities. Each project must plan to disseminate information through existing professional and parent organizations, technical assistance providers, and other relevant information providers that disseminate to local, State, and national levels. These dissemination activities must also be incorporated with the project design to facilitate public awareness on the local and regional level.

Project Directors must plan to attend the two day Project Directors meeting to be held in Washington, D.C. each year of the project. In addition, two meetings will be scheduled with all Phase 2 projects prior to the end of their award period for the purpose of developing a cross-project dissemination product. This meeting will last for two days and be held in Washington, DC.

Selection Criteria: The following selection criteria will be used to evaluate applications for projects submitted under this priority. The maximum score for all of the criteria is 100 points.

(a) *Innovativeness.* (10 points)

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides innovative design features in developing ombudsperson services for proactively resolving systemic problems involving students with disabilities and their families.

(b) *Importance and impact.* (10 points) The Secretary reviews each application to determine—

(1) The extend to which the focus of ombudsperson services addressed by the proposed project is of significance to others in the Nation;

(2) The importance of the project in addressing the problem or issue; and

(3) The probable impact of ombudsperson services for proactively resolving systemic problems involving students with disabilities and their families (e.g. evidence of responsiveness and appropriations of services, reduced legal costs, or reduced tension or conflict between schools and families).

(c) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) An effective plan of management that insures proper and efficient administration of the project;

(ii) A clear description of how the objectives of the project relate to the purpose of the program;

(iii) The way the applicant plans to use its resources and personnel to achieve each objective;

(iv) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition; and

(v) An effective performance measurement system for assessing project progress and implementation.

(d) *Technical soundness.* (20 points)

(1) The Secretary reviews each application to determine the procedural and methodological soundness of the plan for the development, and feasibility of full implementation of the project with respect to such matters as—

(i) The design and development process;

(ii) Procedures for establishing the integrity of project activity implementation in Phase 1 and 2;

(iii) Coordination with other service providers;

(iv) The design and measurement of Phase 1 system feasibility for resolving service delivery and systemic problems;

(v) The proposed site sample; and

(vi) The data analysis procedures for determining Phase 1 feasibility.

(e) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project—

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The qualifications of each of the other key personnel to be used in the project;

(iii) the time that each person referred to in paragraphs (e)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling conditions.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project and other evidence that the applicant provides.

(f) *Organizational capability.* (10 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate;

(ii) The equipment and supplies that the applicant plans to use are adequate;

(iii) The applicant's experience in special education or early intervention services;

(iv) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively; and

(v) the strength of the commitment to fully implement ombudsperson services.

(g) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(h) *Evaluation of Ombudsperson Services.* (15 points)

(1) The Secretary reviews each application to determine the quality of the Phase 2 evaluation plan.

(2) The Secretary looks for—

(i) Rigor of evaluation design and measurement for addressing implementation requirements and barriers;

(ii) Rigor of evaluation design and measurement for studying effectiveness of key features of ombudsperson services;

(iii) Analysis procedures for determining overall ombudsperson service effectiveness; and

(iv) Rigor of evaluation design and measurement for determining impact of ombudsperson services as a proactive systems oriented approach.

Title of Program: Special Studies Program

CFDA No: 84.159.

Purpose: To support studies to evaluate the impact of the Individuals with Disabilities Education Act (IDEA), including efforts to provide a free appropriate public education to children and youth with disabilities, and early intervention services to infants and toddlers with disabilities.

Proposed Priorities: The Secretary proposes to establish the following priorities under the Special Studies Program, CFDA No. 84.159. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: State Agency—Federal Evaluation Studies Projects (CFDA 84.159A)

This priority supports cooperative agreements with State agencies for evaluation studies to assess the impact and effectiveness of activities provided for under the Individuals with Disabilities Education Act (IDEA). With this priority, the Secretary particularly invites studies that: (1) Assess State and local educational reform policies and practices such as the impact of restructuring initiatives (e.g. site-based management, or accountability systems accompanying greater administrative and regulatory flexibility); and (2) measure student outcomes as indicators of effectiveness, and the impact of secondary programming options on student outcomes.

However, in accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), applications for studies described in items (1), and (2) will not receive a competitive or absolute preference over other applications that propose evaluation studies to assess the impact and effectiveness of activities assisted under the Individuals with Disabilities Education Act.

Eligible applicants are State educational agencies, and other State agencies that administer early intervention programs for infants and toddlers with disabilities under part H of the Individuals with Disabilities Education Act. An award under this competition provides not more than sixty percent (60%) of the total cost of the studies project, and the State agency provides an amount not less than 40 percent (40%) of the total cost of the studies project. Awards will be made for a period of up to, but not more than, 24 months.

Priority 2: State Agency—Federal Evaluation Studies Projects—Feasibility Studies of Impact and Effectiveness (CFDA 84.159F)

This priority supports cooperative agreements with State agencies to perform feasibility studies. The purpose of the feasibility study is to develop the conceptual framework for an evaluation study about a specific issue or question concerning the impact and effectiveness of special education and related services, and to determine if the conceptual framework is workable. This priority is for topics having significant potential, but that require preliminary study to determine feasibility related to identification of the issue, study designs, measurement, and analysis. Within this priority, the Secretary particularly invites studies that: (1) Assess State and local educational reform policies and practices such as the impact of restructuring initiatives (e.g. site-based management, or accountability systems accompanying greater administrative and regulatory flexibility); and (2) measure student outcomes as indicators of effectiveness, and the impact of secondary programming options on student outcomes.

However, in accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), applications for studies described in items (1) and (2) will not receive a competitive or absolute preference over other applications that propose evaluation studies to assess the impact and effectiveness of activities assisted under the Individuals with Disabilities Education Act (IDEA).

Projects must: (1) Conduct a literature review of the issue for study; (2) develop of one or more conceptual frameworks which identify key dependent and independent variables (influencing factors) and their interrelationships; (3) identify project participants; (4) assess access to the project sample; (5) identify the availability and the quality of data sources for the variables identified in the conceptual framework; (6) develop a list of evaluation questions that can be addressed with these data; (7) identify the form in which data must be analyzed, displayed, and disseminated; (8) determine all of the relevant data found for the variables; and (9) identify the specific data collection strategies to gather the required data for variables that cannot be measured adequately with existing data. While collection and reporting of generalizable impact and effectiveness data are not expected for feasibility studies, pilot tests of data collection instruments and procedures are required. At the conclusion of the feasibility study, each project must determine the results of the pilot test and the implication of these results for the study design, measurement and analysis.

Eligible applicants are State educational agencies, and other State agencies that administer early intervention programs for infants and toddlers with disabilities under Part H of the Individuals with Disabilities Education Act. An award under this competition provides not more than sixty percent (60%) of the total cost of the studies project, and the State agency provides an amount not less than 40 percent (40%) of the total cost of the studies project. Awards will be made for a period of up to, but not more than, 18 months.

Priority 3: The Center For Special Education Finance (CFDA 84.159G)

Issue and Background

Policy makers at the Federal, State, and local levels need financial and fiscal information as decisions are made regarding the provision of special education services to children with disabilities. The Individuals with Disabilities Education Act (IDEA), as amended, embodies broad mandates including the provision of a free appropriate public education to children with disabilities within the least restrictive environment. The expense of fulfilling these mandates continues to interest policy makers. As the number of children receiving special education has increased, there is concern that scarce education dollars be allocated in the most beneficial and equitable manner. Therefore, there continues to be a demand for timely and comprehensive estimates of educational expenditures for students with disabilities. Readily available and usable financial information is needed to provide Federal, State and local administrators with a means to assess their respective agencies program expenditures.

Knowledge of special education finance is needed in planning and improving programs that affect all school-aged children. Many schools are being restructured, seeking greater regulatory and financial flexibility, and implementing initiatives such as school choice. Implementation of these ventures affects children with disabilities and the costs associated with providing them a free appropriate public education. Policy makers at all levels, who must be responsive to increasing concerns over education expenditures, need to know special education costs and other financial information as they make funding decisions related to these initiatives and other programs intended to benefit all children. It is also critical to understand the impact of particular relationships between general and special education finance systems with respect to the programs, services, and outcomes of children with disabilities associated with implementation of the IDEA.

Policy makers are confronted with a number of finance issues for which potential alternatives are needed. Among these issues is the need to understand the way in which funding acts as an incentive or disincentive in the implementation of Federal, State and local policies. Policy makers and administrators repeatedly request findings about the ways in which funds from multiple sources or programs at the Federal and State level can be used in combination to support services. In addition, recent litigation concerning funding formulas and the financing of education has generated increased interest in legal issues associated with financing special education services. In the previous seven years, one half of all States had revised their special education formula. Responding to policy makers need for current, comparative information, the National Association of State Directors of Special Education recently updated and expanded a directory of State special education funding formulas. The 1989 edition describes relationships between State general and special education and finance systems. However, because funding formulas change, the need to periodically update directories of State formulas is expected to continue indefinitely.

Over the past decade, the Office of Special Education Programs (OSEP) and others have carried out projects relating to special education finance. In 1981, for example, with OSEP funding, the Rand Corporation (Kakalik, Furry, Thomas & Carney, 1981) conducted a large scale survey of expenditures for students with disabilities in a study known as "The Cost of Special Education." Because data was collected for the 1977–78 school year, unfortunately, the estimates reflected only a partial implementation of the provisions and mandates of IDEA, since full implementation did not occur until 1980. In 1984 OSEP funded a Congressionally mandated study, known as the Expenditure Survey, to determine the costs of special education and related services (Moore, Strang, Schwartz, & Braddock, 1988). Both the Rand Corporation and the Expenditure Survey were based on a resource allocation approach. The Expenditure

Survey utilized a refinement of the approach known as the Resource Cost Model and provided administrators and policy makers with needed information regarding the average per pupil expenditures for special education and related services, the specific programs and services provided by districts to students with disabilities, and the percentage of costs paid for with Federal funds under Part B of IDEA. Other cost studies have been conducted as well. Utilizing individual child data, the Collaborative Study of Children with Special Needs (Singer and Raphael, 1988), jointly funded by OSEP and the Robert Wood Johnson Foundation, reported on health and educational expenditures received by children with disabilities in five large, diverse urban school systems.

University researchers and State level policy analysts have also conducted cost studies and other investigations of such related topics as the cost/benefit of special education services. In a recent policy study funded by OSEP of the special education delivery system (Research Triangle Institute), the relationships between expenditures and service delivery patterns were investigated. Such individual projects provide important information, but individually they do not have the capacity to report and interpretively describe special education finance and expenditure data and related issues in a timely manner. In addition, one-time projects are unable to respond to emerging financial trends and issues related to the availability and delivery of special education and related services to individuals with disabilities. Therefore, policy makers must often rely on limited finance policy alternatives in the face of changing educational, legal and economic events.

Finally, dissemination and utilization of the results of the finance studies, particularly expenditure surveys, is often problematic. Studies end; results are distributed. However, there is currently no ongoing resource available that a State or local official could access to help solve an ongoing or emerging finance issue even though considerable information currently exists and an outstanding level of expertise in finance issues is available from universities, government agencies, and private or public organizations.

Purpose

The purpose of this priority is to support one cooperative agreement to establish a Special Education Finance Center to provide policy-makers and administrators at the Federal, State, and local levels with data, analyses, expertise, and opportunities for information sharing regarding complex and critical finance issues. The Center must provide continuity and an ongoing capacity to respond as well as anticipate the needs for special education finance information as they change over time. The Center must develop and model methodologies that could be used by State or local agencies to study finance issues. The approach must use previous and current finance studies and utilize the expertise of some of the Nation's most knowledgeable people to address the challenging and complex issues related to financing services for children with disabilities. Specific purposes of the Center are to:

(1) Provide estimates and financing sources of educational expenditures responsive to the information needs of Federal, State and local representatives, regarding: (a) children with disabilities ages 3 through 21, and (b) special education programs, including related services (see Activity 1–1a);

(2) Conduct policy studies and develop policy alternatives for addressing critical and emerging finance policy issues including interagency cost sharing and the relationship between finance alternatives and implementation of IDEA (see Activity 1–1b(1)(2) and (3)); and

(3) Obtain, maintain, and exchange up to date information on State special education funding formulas, and the relationship between these and general education finance systems (see Activity 1–1b(4)).

Activities

1. *Develop an Agenda Responsive to Federal, State, and Local Needs for Special Education Finance Data.* The Center must develop and implement an agenda for responding to Federal, State and local needs for special education finance data. For the purpose of identifying emerging areas for which cost data are needed, a network of participating local and State educational agencies must be formed. The Center must implement strategies and studies to obtain information that is needed by State and local educational agencies, and that are consistent with the activities contained in this priority announcement.

1a. *Compile Expenditure Statistics—Analyses of per pupil expenditure and program/service costs.* Valid and comparable data is needed to meet administrators' needs for accurate, useable information. The Center must carry out empirical, cost analyses that use data from a network of local educational agencies (LEAs) and extant data from cost studies (at the national, State or other levels). Topics must be selected that are responsive to the finance information needs of Federal, State and local policy makers and administrators. The Center must review the information and methodologies used by previous finance studies, and in consultation with a network of local educational agencies and the OSEP Project Officer, develop and implement an approach for identifying the finance questions and analyses to be performed.

A cost approach must be used that is capable of providing several types of estimates of expenditures for children with disabilities ages 3 through 21. The analyses must include cost estimates for average per pupil expenditures for special education and related services, the specific program and services provided by districts to students with disabilities, and the percentage of costs born by the Federal, State and local education agencies. Where appropriate, this information must be available for all the federally recognized categories of disabling conditions and all conditions combined (20 U.S.C. 1401(a)(1)). The approach and data base must be configured to allow States seeking to collect representative data at the local level to adapt and model the analytic approach. The Center must work with OSEP to identify problems that affect the quality of data and to propose strategies for collecting the required data in a manner that is minimally burdensome and produces valid expenditure data.

1b. *Conduct Special Education Finance Policy Studies.* Using available information and experts in finance and policy issues, the Center must conduct policy studies to examine critical and emerging finance issues. The Center must develop policy options for addressing important finance policy issues by providing a forum for the Nation's finance experts to consider specific finance issues. Finance issues for which a better understanding or alternatives are needed must be identified and examined. Policy studies must use methodologies (e.g., simulation, quantitative and qualitative) and samples appropriate to the specific inquiry. Reports must be prepared in a manner that is useful to administrators and policymakers. Development of finance policy options at the Federal, State, and local levels must be addressed. Types of policy studies to be conducted are:

(1) *Policy Studies of Cost Sharing and Other Alternative Financing Approaches.* Interagency cost sharing and other alternative approaches to financing education at the Federal,

State, and local levels must be identified or developed. Various topical areas covering a variety of approaches must be selected for which information and options are needed. Studies of these approaches must be conducted, and options shared with appropriate audiences.

(2) *Studies of the Relationship Between Finance Alternatives and Services Provided to Children with Disabilities.* Studies of the relationships between finance options and the delivery of services to children with disabilities must be conducted. For example, a study might address the manner in which specific finance systems act as an incentive or disincentive in the implementation of key provisions of IDEA (e.g., identification, assessment, placement, provision of services in the least restrictive environment, specially designed instruction, and use of personnel or related services.) Analyses must investigate the extent to which finance systems may affect children with varying disabling conditions differently.

(3) *Other Special Topics.* Of particular concern to policymakers and program administrators is the issue of flexibility related to Federal streams of categorical funding. Inadequate attention has been given to the accounting procedures needed to support greater flexibility in the use of Federal, State, and local funds. Another issue is the extent to which finance systems affect the relationships of the learning disabled students under the Individuals with Disabilities Education Act and disadvantaged students under Chapter 1 of the Elementary and Secondary Education Act. Special analyses examining alternative accounting approaches that either have or could potentially satisfy audit requirements while achieving greater flexibility in the use of funds need to be identified, documented, and disseminated. Other areas that should be considered for study and development of options include the impact of various school reforms on special education finance, and legal issues related to specific finance options (e.g., legal aspects of funding formulas).

(4) *Aggregate and Exchange Information Regarding State Special Education Finance Systems.* The Center must also develop and maintain information about State special education finance systems, including funding formulas. The Center must review previous compilations and develop a system for maintaining updated abstracts of special education finance systems. The system must also contain descriptive profiles of the relationship between State special and general education finance systems and narratives describing potential policy implications of the specific finance systems.

A Special Education Finance Center Study Agenda must be submitted by the end of the sixth month after award and thereafter annually, at the beginning of each successive year of the cooperative agreement. The agenda must include a list and description of Proposed Expenditure Studies (1a) and proposed policy studies of finance issues and alternatives (1b/1–4). The description must provide a detailed abstract of the finance and policy studies to be carried out in that year, and a general proposal of potential topics in the subsequent years of the project.

2. *Exchange and Dissemination.* The second major activity of the Center is to exchange and disseminate both the finance and cost data analyzed by the Center (Activity 1a), and the results of the finance policy studies (Activity 1b). The Center must develop and maintain the data bases used to analyze cost and finance information under Activity 1a. The data bases and the reports describing the results of the cost and finance studies must be exchanged and disseminated to relevant audiences. The results of the policy studies (Purpose 2) must be shared with and distributed to relevant audiences. Through Activity 2 the Center must establish and maintain linkages with relevant policy, finance, and (regular and special) educational entities to exchange and disseminate findings.

The audiences for Center products are diverse, necessitating exchange and dissemination that is tailored to the needs of various users. Products must be designed, and if necessary prepared in various forms to accommodate the information needs of the research community, policy makers, administrators, advocacy groups and other interested individuals. Charts, digests, scenarios, methodological tools, access to data bases, analyses and case studies are potential products to be developed by the Center. During year one, the project must include a plan for dissemination of products that describes the target audiences, how findings will be shared, formatting of products, and timelines for dissemination. The plan must be updated annually, as necessary, to reflect modifications in the Center agenda prepared under Activity 1.

Phasing

The Secretary will approve one cooperative agreement with a project period of sixty months subject to the requirements of 34 CFR 75.253(a) for annual continuation awards. The continuation project for year four must include a detailed analysis of the first three years progress and accomplishments, plus an assessment of the benefits to be derived from continuing the project, and if needed, any adjustments to the original work plan.

Products

During the five year period of award the Center must produce and disseminate: (1) Cost studies utilizing the network of participating State and local educational agencies and extant data sources; (2) a plan for improving the quality of expenditure data; (3) policy studies of finance issues and alternatives; and (4) updated profiles of State special education finance systems.

Title of Program: Technology, Educational Media, and Materials for Individuals with Disabilities Program

CFDA NO.: 84.180

Purpose: The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities. In creating Part G, Congress expressed the intent that the projects and centers funded under that part should be primarily for the purpose of enhancing research and development advances and efforts being undertaken by the public or private sector, and to provide necessary linkages to make more efficient and effective the flow from research and development to application.

Proposed Priorities: The Secretary proposes to establish the following funding priorities for the Technology, Educational Media, and Materials for Individuals with Disabilities Program, CFDA No. 84.180. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priorities; that it, the Secretary proposes to select for funding only those applications proposing projects that meet one of these priorities.

Priority 1: Innovative Applications of Technology to Enhance experiences in the Arts for Children with Disabilities (CFDA 84.180D)

Issue

The quality of life is based on more than the acquisition of factual knowledge and the development of vocational skills; it includes experiences that maximize human potential and provide self-fulfillment. One important avenue to this enrichment can be found in the arts. Through artistic expression and appreciation, students gain a broader and deeper understanding of human culture and the significance of their own imagination.

In the past, the creativity and self-expression of individuals with disabilities have often been untapped due to sensory, motor, or cognitive barriers. Alternatively, new technologies offer the potential to enable and enhance artistic experiences, and related learning and development, for children with disabilities. However, these technologies have neither been sufficiently adapted to special needs, nor made readily available, to adequately provide opportunities for artistic enrichment.

For example, specialized input and output devices have become available to enable access to computers by individuals with various disabilities. Such products could be integrated with other hardware, software, and peripheral devices (e.g., braille printers, speech synthesizers, and touch pads) to produce graphic or musical output. Translation of acoustic signals into visual stimuli, or visual images into sound, offer exciting possibilities in the arts for individuals with sensory impairment. Artificial intelligence, robotics, expert systems, multi-media controllers, speech recognition and synthesis, alternative input or output mechanisms, and other emerging technologies present a seemingly limitless palette for creative solutions to previously limiting conditions. Innovative technologies can be developed, modified, or adapted to encourage the creativity, self-expression, and participation in artistic experiences by children with disabilities.

The school, home, and community experiences of children with disabilities would be greatly enriched by improving technologies to support learning and expression through the arts and increasing their accessibility to students, parents, teachers, and related services personnel. Expanding artistic opportunities would contribute to healthy development and learning in childhood, and strengthen the foundation for transition to adult life and experiences.

Purpose

Section 661 of the Individuals with Disabilities Education Act (IDEA) supports projects to advance the availability, quality, and use of technology, media, and materials in the education of children with disabilities. The purpose of this priority is to fund four grants for up to 24 months for the development, modification, or adaptation of innovative technologies to enhance experiences in the arts for children with disabilities. For this competition, the arts are defined a synonymous with what are generally called the fine arts, and include but are not limited to the following: music, painting, drawing, graphics, photography (including film and video), sculpture, dance, and drama.

Activities

Each project must engage in multiple activities to develop, evaluate, refine, and disseminate a prototype application of innovative technology in the arts that addresses particular needs of children with disabilities. The planned activities must also include production of supplemental materials to foster effective implementation by teachers, related services staff, and parents, in school, home, or community settings. The outcome of each project must be a marketable prototype, including supplemental materials, along with active exchange, dissemination, and use of findings from the project.

(1) *Specific Objectives.* Each project must provide for the development, modification, or adaptation of innovative technology, and address the specific needs of particular groups of children with disabilities to enhance their experiences in the arts. The application of technology must provide a means for expression through the arts, and must also provide an opportunity for learning and appreciation. The project must reflect the judgment and knowledge of specialists in the arts and special education service providers and recipients. Benefits and outcomes in other areas of learning, development, and socialization must also be provided for.

(2) *Develop Prototype Application and Supplemental Materials.* Each project must develop, modify, or adapt innovative technology to enhance the child's direct experience in artistic expression. The technological application must include an implementation package that incorporates guidelines, related materials, and training to support its integration into artistic activities in school, home, or community settings.

(3) *Evaluation.* Field tests must be designed and conducted to both: (a) Measure and document outcomes and benefits, including solutions to specific needs, with groups of children with particular disabilities; and (b) formatively evaluate the prototype application, guidelines, related materials, and training provided to foster effective use.

(4) *Refinement of the Final Product.* Results of the evaluations must be utilized to refine the prototype and supplemental materials, in order to produce a marketable prototype with needed guidelines, training approaches, and related materials.

(5) *Dissemination.* Dissemination must be designed and conducted to publicize the findings from the evaluations; to stimulate interest in the product from teachers, administrators, arts education specialists and associations, and other program providers; to encourage investment from the private sector; and to draw attention to the arts as an important area for the development of the full human potential of children with disabilities.

Time Frame

The Secretary will approve grants with a project period of 24 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. Activities in the first year must include prototype and supplemental material development, and design of field tests and dissemination. Evaluation may begin in the first year, if that is feasible. Activities in the second year must include training and completion of evaluation, product refinement (prototype and materials), and dissemination.

Product

The outcome of each project must be a marketable prototype of an application of innovative technology to enhance experiences in the arts for children with disabilities, along with supplemental materials to support its implementation, and active exchange, dissemination, and use of findings from the project encourage adoption of the technology.

Priority 2: Studying How The Design of Software and Computer-Assisted Media and Materials Can Enhance The Instruction of Preschool Children With Disabilities (CFDA 84.180F)

Issue

Instructional technology seems a promising tool to enhance the learning

processes of young children (ages three through five) with disabilities.

Preliminary evidence indicates that the use of software and computer-assisted media and materials based on sound developmental and educational principles has the potential to provide young children with disabilities early opportunities and experiences in thinking and problem solving strategies that are the foundation and building blocks that enable future learning. The use of the phrase "software and computer-assisted media and materials" is used broadly to refer not only to traditional software but also to the use of newer technologies such as videodisc and multimedia. Effectively designed software and computer-assisted media and materials also have potential to aid preschool teachers and related service professionals and to enhance the development and learning of preschool children with disabilities. Yet, while there is a body of research regarding micro-computer-based instruction in schools, little of it has been implemented with preschool children. The recent application of microcomputers with preschool children has not yet produced a body of literature on development and learning gains by preschoolers as a result of technology use.

Instructional technology is most effective when it is both age- and content-appropriate. Finding and selecting appropriate software and computer-assisted media and materials for young children presents a dilemma. Despite advances in our knowledge about how young students with disabilities in early stages of development process information, finding a match between those elements and currently available software and computer-assisted media and materials is problematic. Developmental, cultural, and learning differences among children, readiness to learn new concepts, and the appropriate sequencing of concepts all require consideration in selection of software and computer-assisted media and materials.

Even if teachers did have ready access to age-appropriate material, they still face the problem of how to integrate available software and computer-assisted media and materials into their instruction and interventions. Some computer-assisted media and materials may be difficult to use or have no accompanying materials to serve as a guide. Therefore, potentially effective designs need to maximize the learning capabilities of children, and the instructional goals of teachers by making the technology relevant to their instructional approach, easy to use, and adaptable to individual children's needs.

Purpose

This priority will provide support for up to five projects for up to 24 months to study the potential of the design of software and computer-assisted media and materials to enhance the development, learning, and instruction of young (3–5) children with disabilities. Projects must study design elements of existing software and computer-assisted media and materials that could be adapted to the special developmental, learning, and instructional needs of young children with disabilities, and must document evidence of its effectiveness in meeting these needs.

Activities

Analyze Needs of Children and Preschool or Day Care Professionals. The projects first must identify and conduct a comprehensive analysis of the learner characteristics (sensory, cognitive, and physical) of a disability. The projects then must analyze the developmental, learning, and instructional needs of young children with disabilities and the diversity of instructional approaches used by teachers and related services personnel. Each project must develop, pilot, and implement reliable and valid methods for determining needs and translating them into design specifications. The projects must also analyze the context of the setting in which the technology is to be used and the design features and components that should be present to meet the needs.

Analyze Existing Software and Computer-Assisted Media and Materials. Based on the documented needs and learning characteristics of young children, the instructional approaches of teachers and related service professionals, and the contextual features of the setting, the projects will analyze features of existing software and computer-assisted media and materials that have potential for being adapted to enhance the development, learning, and instruction of young children with disabilities. The projects must develop and test their criteria for assessing the feasibility and utility of the design features of existing software and computer-assisted media and materials. Each project must develop a methodology for identifying existing software design features to analyze their feasibility and potential. Based on these analyses, an initial list of design specifications must be developed and mapped against current designs of software and computer-assisted media and materials.

Evaluate The Design Features of Software and Computer-Assisted Media and Materials. Field tests must be conducted to measure and document the contribution of the design features of the software and computer-assisted media and materials to the development, learning, and instruction of young children with disabilities. In testing various design features, the projects will study how well the software and computer-assisted media and materials enhance the development, learning, and instruction of young children of the specified disability group; how the features enhance teacher effectiveness and meaningful instruction; how effectively and smoothly these features can be integrated into existing interventions or instruction; any specific training necessary to foster their effective use; and the potential for such design features to be incorporated into future publisher products. In evaluating the existing software, or computer-assisted media and materials, multiple methodologies must be used to address the evaluation questions.

Guidelines. The projects will develop and field test guidelines for practitioners and guidelines for developers and publishers. Guidelines for practitioners must assist them in selecting software and computer-related media and materials by specifying design features of software and computer-assisted media and materials having the potential to enhance the instruction, development, and learning of young children with disabilities. Identifying design features will provide guidance to practitioners in selecting software and computer-assisted media and materials to meet the needs of young children with disabilities. These guidelines must also include project findings regarding the development and learning needs of children with disabilities, the design specifications needed to address these needs, the intervention and instructiona needs of teachers, and the enhancements such designs would make. Guidelines for developers and publishers of software and computer-assisted media and materials must specify the design features that align with the needs of young children with disabilities. These guidelines also must provide needed design guidance for future efforts to develop software and other computer-assisted media and materials.

To ensure that the guidelines are consistent with the developmental, learning, and instructional needs of the children with disabilities and with instructional and intervention needs, teachers and related service

professionals must be involved throughout the analysis and guideline development process. In addition, persons with publishing and developing experience must be involved from the beginning in identifying instructional design features as well as providing feedback on potential market feasibility of various design configurations.

Collaboration. Projects must collaborate with one another in order to achieve a cumulative advancement in knowledge and practice potentially greater than that achieved by any single project. Projects must budget for two trips each year to Washington, DC, one of them to be at the time of the annual Research Project Directors' meeting in July and the other to be scheduled during the remainder of the year for this purpose.

Products and Dissemination. Projects must develop: (1) A set of guidelines to assist practitioners; and (2) a set of guidelines for developers and publishers of software and computer-assisted media and materials. Projects must also collaborate and participate in the development and dissemination of joint findings across projects.

Priority 3: Demonstrating and Evaluating the Benefits of Educational Innovations Using Technology (CFDA 84.180E)

This priority will fund up to four cooperative agreements that demonstrate and evaluate the benefits from innovative uses of technology in optimally supportive settings to improve the education and expand the learning potentials of children with disabilities.

Issue

Advocates for technological innovation want to challenge preconceptions about the potential functioning of children with disabilities, both in the classroom and in the world beyond. Numerous studies in the research literature, as well as accounts in the popular press, have described the apparent utility of various innovative technologies for the instruction of children, in both special and general education. Some examples include word processing and desk-top publishing, computer-assisted instruction and assessment, hypermedia (i.e., computer control of multiple media), local area networks and networked instructional management systems, telecommunications and distance learning, and various video-based systems (e.g., VCR's, cam-corders, interactive laser-disc or cd-rom).

Simultaneously, other reports have identified and examined an array of organizational, professional, and material factors that promote or impede the optimal use and impact of technological innovations in education. These factors include, for example: the availability of special training and ongoing technical assistance for staff; administrative support and staff involvement in planning and implementing innovations; availability, accessibility, and suitability of equipment and materials; and congruence between the nature of the innovative application and the curricular and instructional needs of the students.

Related studies have shown that the needs of students with disabilities are sometimes ignored during school or district planning for technology acquisition. Equipment and resources are often unavailable or inadequate to meet the special needs of these students. Typically, special and general education staff have neither collaborated in decision making, nor been offered the particular guidance, training, or technical support necessary to make the most efficient or appropriate use of innovative educational technologies.

These conditions do not provide fair examinations or demonstrations of the potential benefits of new approaches for children with disabilities in the full range of educational settings. Lacking compelling and convincing examples of the potential value of technological enhancements in education, many administrators and teachers are understandably reluctant about adopting these new approaches. There is growing concern that the schools could pull back and lose interest in technological innovations before their full potential can be realized.

Even where successful examples of technology-assisted education have been conducted in particular classrooms, schools, or districts, additional evaluation is necessary to examine and document the features that contribute to effective use of innovative technologies. Refinement and modeling of such innovations are needed to provide compelling and convincing evidence of the benefits to be derived from these technology innovations.

Purpose

The purpose of the projects is to demonstrate, evaluate, and document innovative uses of technology, under optimal conditions, to improve the education of children with disabilities. Each project must concentrate on a specific application of technology, or combination of applications, that special educators and researchers believe can expand the learning accomplishments of children with disabilities, the targeted skill must be clearly defined and the evaluation must document: (1) The relative impact on educational improvement resulting from use of the technology; and (2) the methods and materials required for successful implementation of the innovative approach. Study sites must be schools or school districts where administrators and teachers have committed themselves to improving education through exploration of innovative approaches, and to a planned effort that incorporates staff development, material resources, monitoring, and evaluation. Projects must determine the benefits of technology use, as well as the observed limitations or areas where technological approaches show marginal utility.

Project Design

The grantees must design a full-scale implementation, or expand an existing implementation, of particular instructional applications of innovative technology, incorporating material and human resources that are expected to demonstrably enhance the learning of children with disabilities. Planning and management of the innovation must involve participation by both administrators and teachers. Staff must receive appropriate training and technical support. Materials and equipment must not only be sufficiently available and accessible but, to the degree possible, they must be state-of-the-art so that the impact of the technological innovation can be heightened. Over the course of each project, some of these resources must be varied (or timed)—across groups of participants—to provide comparison measures for various implementation features.

The particular procedures, features, resources, and practices that contribute to effective implementation of specific applications of technology and media must be determined. Projects must address some or all of the following questions:

- What are the skills, competencies, knowledge, behaviors, or concepts that are addressed and affected through this application of technology?
- What is the learning benefit for children with disabilities that is associated with the innovative approach?
- What other benefits can be attributed to use of the innovative approach, e.g., in student motivation, enrichment, self-concept, socialization?
- What is the impact on teachers and classroom management (i.e., do technologies enhance the individualized

tailoring of instruction for students with disabilities in integrated settings)?

• Under what implementation conditions (amount of staff preparation, adequacy of resources, etc.) can different outcomes be anticipated?

• With what types or levels of disability, age, grade, and particular instructional needs, is a particular application most appropriately used?

• What are the particular features of material resources (hardware, software, peripherals, supplies, etc.) that enhance/inhibit the success of the approach?

Methods. The project must conduct qualitative or quantitative evaluations, or both, to establish the benefits, as well as identify the limitations of the technological innovations. The evaluations must be used to refine approaches and document benefits and limitations.

Each project must conduct three stages of operation:

(1) Planning of the implementation, including collaboration among staff; design of evaluation activities; acquisition of necessary equipment; initial training; baseline measures (pre-implementation).

(2) Full-scale implementation (may be in stages); technical assistance; monitoring; documentation, and initial analyses; formative evaluation and refinement of approaches.

(3) Continued implementation; final evaluations and refinements; documentation of visibly compelling demonstrations of the utility and effectiveness of technological innovations in instruction; dissemination of video, materials, implementation guidelines, and reports.

An additional six-month option, to be funded at the Department's discretion, must be included in the proposed project. This option period, if funded, would be used to provide for collaboration, and dissemination activities, including a meeting of the grantees in Washington, DC.

Collaboration. Applicants may form teams, e.g., of researchers and practitioners, to address the requirement that the project be conducted in the context of ongoing instructional programs in school district settings. "Challenge grants" including matching or in-kind contribution of state-of-the-art equipment or materials from, for example, vendor groups or associations are encouraged.

Four cooperative agreements are planned, each targeting one or more specific applications of innovative technology for instruction of children with disabilities. Projects must cooperate in sharing conceptual frameworks and developing similar understandings of outcomes. In order to facilitate such cooperation, projects must budget for one group meeting each year. In addition, projects must budget to attend the annual two-day research project directors meeting held in Washington, DC each year. These meetings will allow the projects to develop coherent conceptions of optimal implementations of instructional technology, to be communicated to practitioners, researchers, and decision makers.

Products and Dissemination. These projects must provide in-depth documentation of effective innovative uses of technology for educating children with disabilities. By focusing on particular technology uses, and by providing the human and material resources that would optimize effects, the projects are intended to provide compelling and convincing evidence of the educational value of technology. Documentation must clearly define and scrutinize the benefits of particular approaches and conditions, as well as their limitations. To ensure that the information obtained in this project is shared with practitioners, dissemination plans and products must target administrators and teachers. To make the information directly useful and usable, dissemination materials must present concrete examples, specific procedures, and instructions for adaptation to other settings. To heighten the visibility of specific applications of technology, video-recording must provide additional documentation and supplement the other cogent, concise, and highly usable materials for dissemination. Copies of all dissemination products must be provided to the two centers on technology sponsored by the Office of Special Education Programs (Center to Advance the Use of Technology, Media, and Materials in Specially Designed Instruction for Children with Disabilities and the Center to Advance the Quality of Technology, Media, and Materials for Providing Special Education and Related Services to Children with Disabilities).

Title of Program: Program for Children and Youth With Serious Emotional Disturbance

CFDA No: 84.237

Purpose: The purpose of this program is to support projects designed to improve special education and related services to children and youth with serious emotional disturbance. Types of projects that may be supported under this program include, but are not limited to: research, development, and demonstration projects.

Proposed Priority: The Secretary proposes to establish the following priority for the Program for Children and Youth with Serious Emotional Disturbance, CFDA No. 84.237. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary proposes to give an absolute preference under this program to applications that respond to the following priority; that is, the Secretary proposes to select for funding only those applications proposing projects that meet this priority.

Priority: School Preparedness for Promoting the Personal and Social Development of Students With Emotional and Behavioral Problems Including Those With Serious Emotional Disturbance (CFDA 84.237)

Issue

A reorientation by our Nation's schools is needed in their fundamental approach to addressing the diverse and complex patterns of psychological and social behavior presented by children, including those with serious emotional disturbance. This reorientation must include reform initiatives that promote the personal and social development of children through the systematic and proactive design and delivery of curricula, instruction, and support services including services provided by other agencies.

A major focus of the educational reform movement has been the critical need to improve the academic performance of our Nation's students. In doing so, reform initiatives have addressed the improvement of curricula, instruction, classroom management, and accountability in the education system. Other initiatives have focused on removing barriers to improved academic performance such as the lack of school discipline. The breadth of educational reforms being considered and implemented by our Nation's schools reflect their diversity in student bodies, educational practices, professional beliefs, organizational history, community values, financial resources and foremost, their self-assessment of need. However, a potential unintended side effect of these reform initiatives may be to divert, not strengthen, the preparedness and capacity of schools to effectively meet the unique and diverse psychological and social behavioral needs of students.

Although academic performance remains a primary goal of education, schools also have a role to play along with other community agencies, in the

development of students who are psychologically and socially ready to participate as productive citizens in society. There is little evidence to suggest, however, that personal and social development is an automatic by-product of students' educational experiences. Chronic depression is experienced by increasing numbers of students, suicide rates among teenage students are increasing, and many students exhibit difficulties in building and maintaining family and peer relations. Schools, families, communities, and mental health and other support service providers, as a part of educational reform, have not developed a proactive approach towards these and other psychological and social needs of our Nation's children and youth.

Background

Traditionally, the orientation of schools has been that the personal and social development of children lay outside their scope of responsibility, residing with other agencies or parents. Predominately, schools' role with respect to adjustment has been that of the control and management of chronic, problem behavior.

The orientation results in the provision or modification of curricula, instruction and support services that will reduce the anti-social or maladaptive behavior. Disturbed or disturbing behaviors are interpreted as a disciplinary problem. Concomitantly, school interventions emphasize clarification of rules, establishing consequences, and/or removing the student from the instructional setting.

In some instances, schools provide counseling and involve parents to assist in managing or controlling their child's behavior. Yet, these efforts tend to be limited and reactive in nature and are implemented only following chronic reoccurrences of problems. (e.g., course failure, truancy, and behavioral incidents). It has been estimated, for example, that only 43 percent of our Nation's schools provide psychological services. Too often, schools do not provide specific educational experiences (through curricula, instructional strategies and other support services) that explicitly promote the personal and social development of youth, complemented, where necessary, with programs and services that prevent or treat significant emotional or behavioral problems.

Special education programs and services for children with serious emotional disturbance have been one of the ways in which schools provide systematic, but reactive intervention. These interventions predominantly entail cognitive and social-behavioral programs emphasizing self-management skills. The special education program itself represents one of the few strategies schools employ as an "intervention" to change or manage maladaptive behavior.

To achieve better outcomes for all students, schools, families, communities, and mental health and other support service providers must develop a basic orientation that goes beyond stating as a goal that children should exit school as participating young adults. Schools and communities must be prepared to proactively address the emotional and behavioral diversity of all students. A proactive approach requires schools to accept responsibility and accountability for students who are academically and culturally literate, and personally and socially developed. The active participation of parents, teachers, administrators and community agencies will be required to deliver proactive, positively oriented curricula, and support services to all children, including those with serious emotional disturbance. This reorientation to focus on what positive outcomes are wanted rather than what negative outcomes are to be eliminated would significantly affect the nature of curricula, instruction, and support services needed to foster personal and social development of students. Educational reform initiatives designed to effect such a reorientation in their current fundamental approach must embody: a) general education's commitment to the goal that schools will embrace the outcome that youth, including those with serious emotional disturbance, will exit prepared to meet the personal and social demands of post-school environments; and b) schools' preparedness in collaboration with families and other support service providers to deliver the necessary curricula, instruction, and services to achieve this goal.

Although provided as a reactive intervention, special education may be considered as a bottom-up change agent for focusing general education on the need for establishing a broader array of outcomes than academic performance. Individualized goals and desired outcomes for children with disabilities often include personal and social development, and life skills for adult life. As a bottom-up change agent, special education should function to influence the expansion of general education services and the incorporation of a broader array of outcomes as evidenced in special education programs. However, experience has demonstrated that the provision of special education programs and services to children with serious emotional disturbance has not significantly broadened schools' commitment or preparedness to proactively plan and deliver positively oriented curricula, instruction and other support services needed to achieve the personal and social adjustment of children.

Purpose

The purpose of this priority is to support up to 4 projects for up to 36 months to reorient and prepare schools in collaboration with families and other support service providers to provide schoolwide, proactive, positively oriented curriculum, instruction, and support services needed to assist students with emotional and behavioral problems, including serious emotional disturbance, to exit schools prepared to meet the personal and social demands of post-school environments. The priority represents a top-down change strategy in which the special education and related needs of children with emotional and behavioral problems, including serious emotional disturbance, are addressed by changing schools' basic orientation in terms of commitment, responsibility, and collaboration with other support service providers, to promote the personal and social development of children with emotional and behavioral problems, including serious emotional disturbance.

Projects must not represent piecemeal, reactive interventions for children presenting challenging behaviors, but rather a comprehensive restructuring of school curricula, instruction, and support services based on a broader conceptualization of educational goals and outcomes. The delivery of the curricula, instruction, and support services must be designed to meet the needs of children with diverse needs and conditions within the school building. These projects are to provide the broader curricula, instructional, and support service context within which services to children with emotional and behavior problems, including serious emotional disturbance, are a logical extension of educational experiences and support designed to promote the personal and social development of children.

These projects must be driven by operational definitions of outcomes associated with children's personal and social development. Personal and social development are characteristics of an individual who is mentally healthy, socially competent, responsible, and

adaptive within an ever changing environment. Projects may include other outcomes considered by society to indicate that an individual is personally and socially developed such as caring. These educational outcomes must provide the anchor for designing, developing and providing school-wide, proactive, positively-oriented, curricula, instruction, and support services needed for children with emotional and behavioral problems, including those with serious emotional disturbance.

The projects must use research and practice validated interventions and strategies for promoting the personal and social development of children with emotional and behavioral problems, including emotional disturbance. These projects must focus on designing and developing the broad developmental curricular design with in which the more micro or targeted interventions, strategies, and program features that have proven successful for fostering positive personal and social development can be incorporated. For example, the socio-emotional outcome of responsibility must be conceptualized as having a self and other component. It may also include a community or national component. Specific curricula, instructional strategies, and other support services must be designed, developed and provided through the project within the general education environment.

The project must determine and address the feasibility of designs for schools to implement and coordinate with other community agencies and families the delivery of a school-wide, proactive, positively oriented array of educational experiences and support services. These educational experiences and support services must collectively address the challenge and diversity of mental health, psychological, and social characteristics that children with emotional and behavioral problems, including emotional disturbance, present to schools.

Activities

1. *Identifying and Defining Outcomes.* Each project must identify and define outcomes related to personal and social development. Personal and social development are characteristics of an individual who is mentally healthy, socially competent, responsible, and adaptive within an ever changing environment. In addition, other outcomes such as: social perceptiveness, social relationships, social interactions, or caring might be considered. The identification and definition of these outcomes must involve the participation of school policymakers, administrators, faculty, parents, individuals with disabilities, community agency representatives, students, and researchers. This activity must be the basis for designing of curricula content, instruction, and support services. Each project must document the rationale and issues raised related to each outcome construct identified. In addition, each project must develop means for measuring these outcomes.

2. *Designs for Reorienting and Developing School Capacity.* School administrators, faculty, bargaining unit representatives, parents, community agency representatives, and researchers must be involved in identifying how school capacity must be reoriented to proactively promote the personal and social development of children with emotional and behavioral problems, including those with serious emotional disturbance. Enhancing the preparedness and capacity of schools requires the design and development of comprehensive curricula, instruction, and support services to achieve the desired outcomes. In addition, reorienting schools will require changes in school climate, faculty attitudes, teacher skills, staff and student support services, parent participation, and collaboration with other community agencies.

A synthesis of the research literature related to each outcome must be conducted to identify support for the types of educational experiences and support services likely to be required in school, at home, and in the community to achieve the desired personal and social development outcomes. A conceptual framework for curricula design must be developed to accompany the establishment of personal and social development outcomes. The synthesis and framework will provide the direction and parameters for guiding this curriculum development initiative.

3. *Developing Curricula.* Each project must develop a comprehensive curriculum spanning all grades within a building. It must encompass a comprehensive array of positively-oriented learning experiences with provision for the varied levels of practice intensity for acquisition, transfer, and generalization needed for children with emotional and behavioral problems, including children with serious emotional disturbance, to achieve the desired outcomes. The curriculum development initiatives undertaken by these projects must address the needs of the full diversity of student needs, including those with serious emotional disturbance.

4. *Implementing School Capacity Building Initiatives.* Each project must implement the curricula, instruction, and support service initiatives.The school reorientation and capacity-building initiatives must be implemented to support the delivery of the curriculum. The development of school capacity to deliver the curriculum must be designed to foster the education of children with emotional and behavioral problems, including those with serious emotional disturbance, in general education environments. In addition, schools must develop the capacity and provide support to achieve desired outcomes for children with emotional and behavioral problems, including those with serious emotional disturbance. This includes, but is not limited to: staff, family and student support; developing required teacher skills for implementing the curricula and instructional strategies; providing needed support services; achieving parent participation; and obtaining community agency support. The implementation of these educational reforms to address the personal and social development of children with emotional and behavioral problems, including those with serious emotional disturbance, needs to be implemented as part of a school-wide initiative.

5. *Assessing the feasibility of design and the effectiveness of implementation for enhancing school capacity.* Each project must determine the feasibility of design and effectiveness of implementation for enhancing school capacity to develop the personal and social development of children with emotional and behavioral problems, including those with serious emotional disturbance. The evaluation design of projects must assess the implementation feasibility and effectiveness of each component of the project, as well as, the overall impact on the school. Evaluation activities must develop measures of personal and social development as a means for determining curricula, instruction, and support service design and implementation effectiveness. Multiple perspectives must be obtained from school administrators and faculty, parents, and community agency representatives.

6. *Project Dissemination.* Dissemination of project information is considered a significant activity of the project. Each project must plan to disseminate information to relevant audiences on local, State, and national levels. Project design features and findings need to be prepared in a manner which is useful to others considering such reform initiatives. Each

project needs to have developed and made available their educational outcomes, measures, and curriculum design(s). These materials need to be made available to appropriate professional associations for inclusion in their communication systems.

Project Directors must budget and plan to attend the two day Project Directors' meeting to be held in Washington, D.C. each year of the project. In addition, a second meeting will be scheduled at the end of year 1 for each project to share their approach, designs, and initial experiences.

(Catalog of Federal Domestic Assistance Numbers: 84.023, Research in Education of Individuals with Disabilities Program; 85.159, Special Studies Program; 84.180, Technology, Educational Media, and Materials for Individuals with Disabilities Program; and 84.237, Program for Children and Youth with Serious Emotional Disturbance)

Dated: October 8, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-1945 Filed 1-27-92; 8:45 am]

BILLING CODE 4000-01-M

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federal register

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Part III

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 11

Law and Order on Indian Reservations; Final Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076-AC84

Law and Order on Indian Reservations

November 18, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) amends the regulations contained in 25 CFR part 11 to add the Muskogee Area Tribes (Eastern Oklahoma) to the list of "Indian reservations" in § 11.1(a) where Courts of Indian Offenses are established to render law and order over "Indian Country", within the meaning of 18 U.S.C. 1151, outside the jurisdiction of state courts insofar as offenses committed by Indians are concerned. It is necessary to establish a Court of Indian Offenses for the Muskogee Area in order to protect lives and property until the question of state jurisdiction is resolved.

EFFECTIVE DATE: January 28, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis Springwater, Assistant Area Director, Muskogee Area Office, Bureau of Indian Affairs, Old Federal Building and Courthouse, Muskogee, OK 74401; Telephone (918) 687-2381, or FTS 736-1281; or Hilda A. Manuel, Chief, Division of Tribal Government Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C St., NW., MS 2612-MIB, Washington, DC, 200240-4001, at (202) 208-7446 or FTS 268-7446.

SUPPLEMENTARY INFORMATION: The authority to issue this amendment is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." See *Tillet* v. *Hodel*, 730 F. Supp. 381 (W.D. Okla. 1990) *aff'd* 931 F.2d 636 (10th Cir. 1991). This final rule is published in exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

Proposed amendments were published May 16, 1991, for public comment. One comment was received that pertained strictly to the Muskogee (Creek) Nation's tribal court jurisdiction and development of a court system using Indian standards that rely on tribal customs and traditions and allow for translators and expert interpreters for tribal members with limited English-speaking abilities. This comment should be more appropriately addressed when 25 CFR part 11 regulations are amended in their entirety.

Recent decisions by both federal and state courts have raised serious questions whether the State of Oklahoma possesses criminal jurisdiction over offenses committed by Indians on certain Indian lands in the former Indian Territory, the historic realm of the five Civilized Tribes, and what now constitutes 40 counties in eastern Oklahoma, within the jurisdiction of the Muskogee Area Office of the Bureau of Indian Affairs (BIA). For example, a recent decision of the U.S. Court of Appeals for the 10th Circuit, *Ross* v. *Neff*, 905 F.2d 1349 (June 4, 1990), held that state law enforcement officers had no authority to arrest an Indian for an offense committed on Indian tribal lands in Adair County, Oklahoma. Consequently, some state officials have been reluctant or unwilling to prosecute Indian crimes committed on Indian lands. Furthermore, none of the Indian tribes in the Muskogee Area have a tribal court currently exercising criminal jurisdiction over misdemeanors committed by Indians on Indian lands. In addition to the 40 counties of the former Indian Territory, Osage County is also under the jurisdiction of the Muskogee Area, and the State of Oklahoma has been held to lack criminal jurisdiction over Indians committing crimes in Indian Country in that county as well. (*State* v. *Burnett*, 671 P.2d 1165 (Ok. Crim. app. 1983)).

Thus, it is immediately necessary for the BIA to establish a court of Indian Offenses for the Muskogee Area to protect the lives, persons, and property of people residing on Indian country lands, until the question of state jurisdiction is finally resolved or until the local Indian tribes establish tribal courts to exercise criminal jurisdiction over their own members. Judges of the Court of Indian Offenses shall be authorized to exercise all the authority provided under 25 CFR part 11, including issuance of arrest and search warrants pursuant to 25 CFR 11.14 and 11.16 and section 4(2)(A) of the Indian Law Enforcement Reform Act of 1990, Public Law 101-379, 104 Stat. 473 (August 18, 1990). Officials of the BIA have established a provisional Court of Indian Offenses pursuant to 25 CFR 11.3(f) for the Muskogee Area to address this law enforcement need.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

The Department of the Interior has determined that this final rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

This final rule does not contain information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary author of this document is Tim Vollmann, Regional Solicitor, Southwest Region, U.S. Department of the Interior, 333 W. 4th Street, room 3068, Tulsa, OK 74103; Telephone (918) 581-7502; FTS 745-7502.

List of Subjects in 25 CFR Part 11

Courts, Indians—law, Law enforcement, Penalties.

For reasons set out in the preamble, part 11 of title 25, Chapter I of the Code of the Federal Regulations is amended as set forth below.

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS [AMENDED]

1. The authority citation for 25 CFR part 11 continues to read as follows:

Authority: R.S. 463; 25 U.S.C. 2. Interpret or apply sec. 1, 38 Stat. 586; 25 U.S.C. 200, unless otherwise noted.

2. Section 11.1(a) is amended by adding paragraph (a)(23) to read as follows:

§ 11.1 Application of regulations and information collection.

(a) * * *

(23) Muskogee Area Tribes (Oklahoma).

Patrick A. Hayes,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 92-2015 Filed 1-27-92; 8:45 am]

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LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992.

A cumulative list of Public Laws for the first session was published in Part II of the Federal Register on January 2, 1992.

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Public Laws

102d Congress, 2nd Session, 1992

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 2nd Session, 1992.

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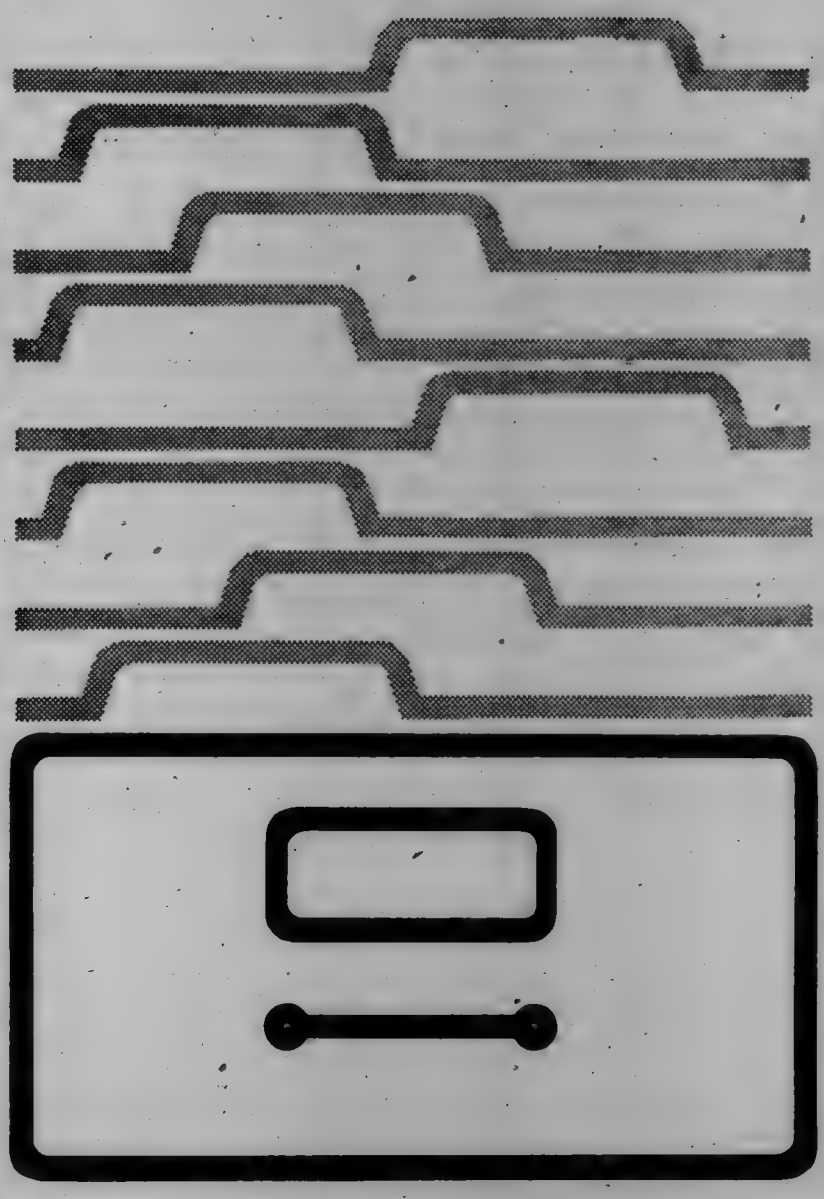

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in the Code of Federal Regulations (CFR)

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SUPPLEMENT: Revised January 1, 1991

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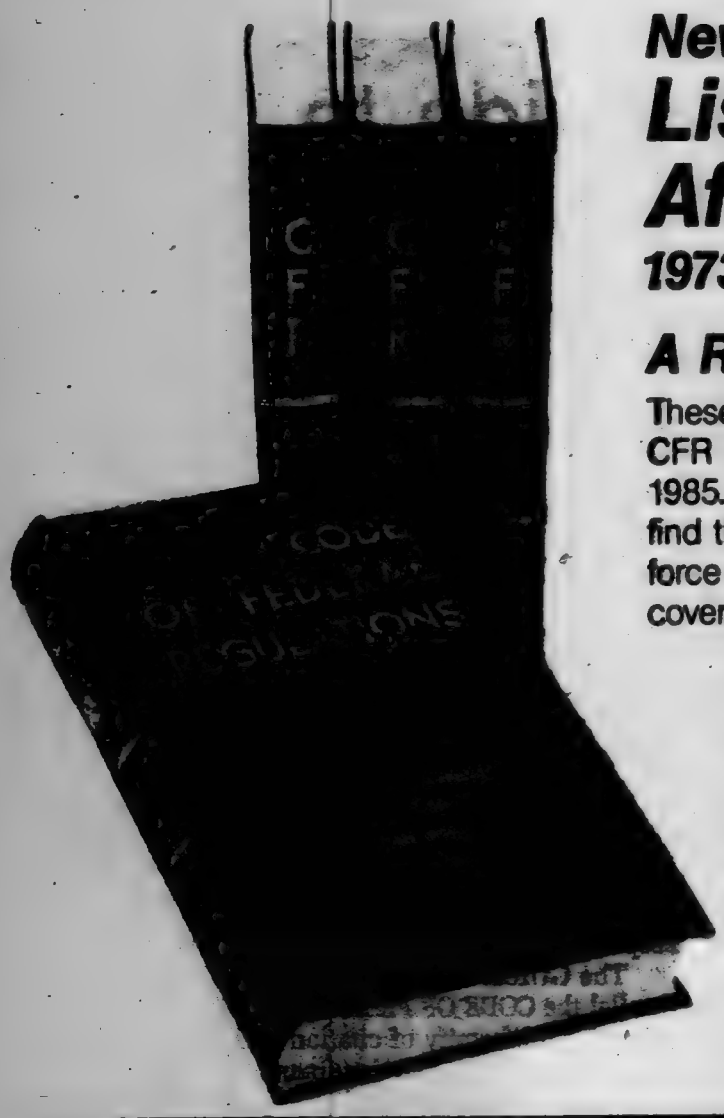

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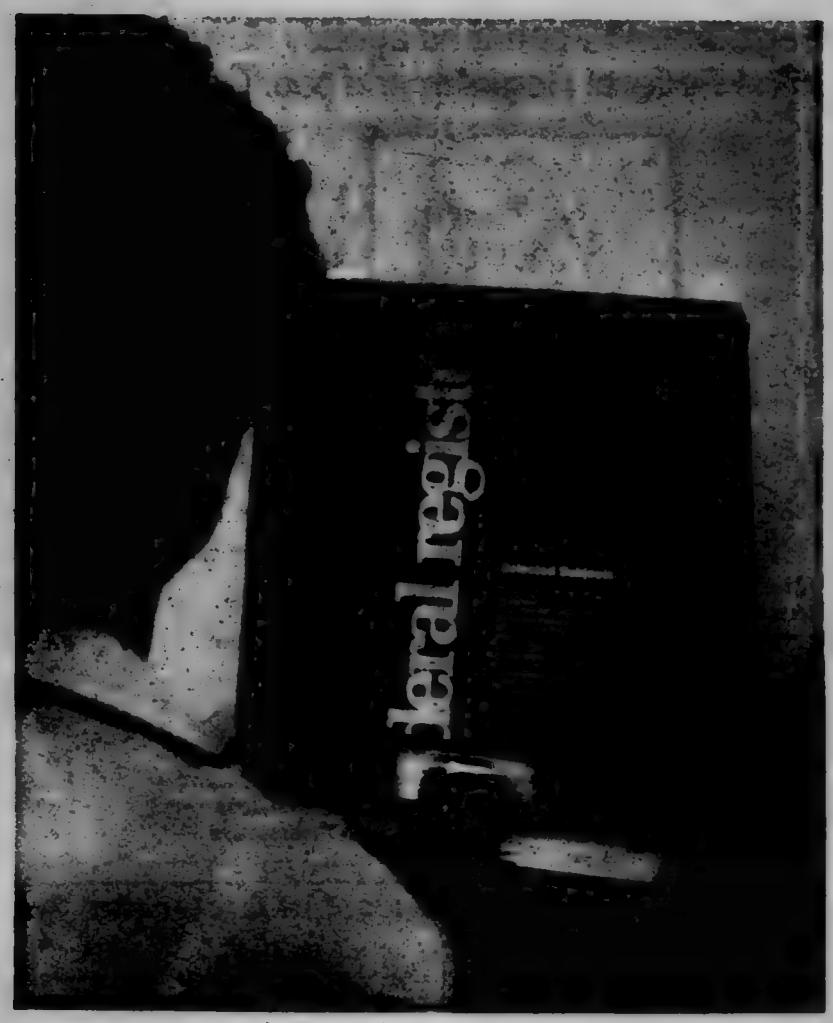

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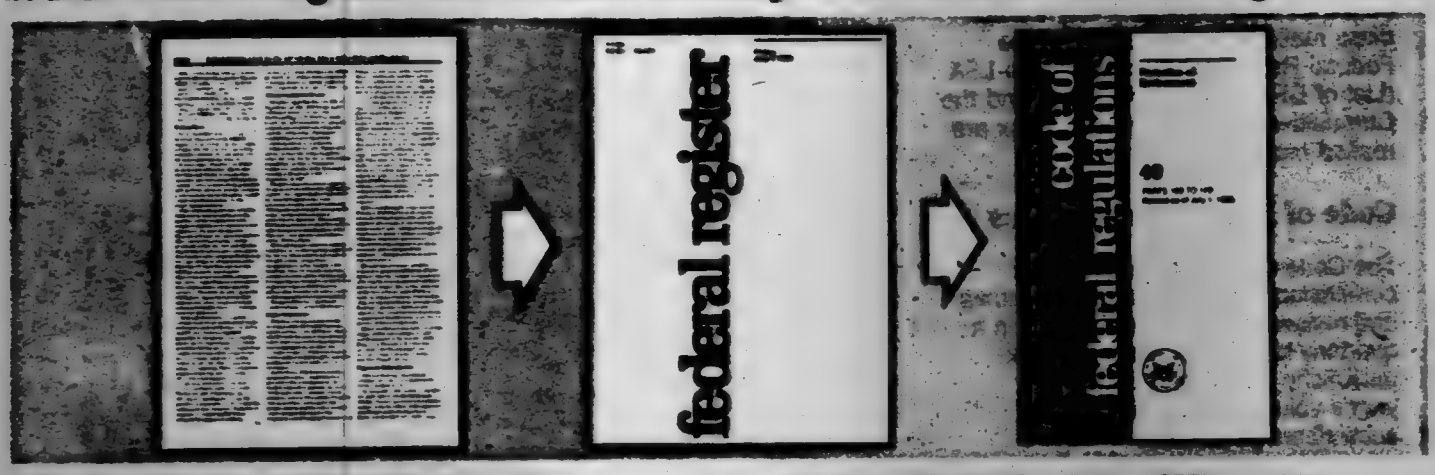

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WHAT: Free public briefings (approximately 3 hours) to present:
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Parts 800 and 810

RIN 0580-AA12

U.S. Standards for Canola

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is establishing U.S. Standards for Canola under the authority of the U.S. Grain Standards Act, as amended (USGSA). This action will result in canola shipped outside the United States being officially inspected and weighed, except under certain provisions. Official inspection and weighing will be available, upon request, for domestic shipments. This action will provide uniform Federal inspection procedures and will facilitate marketing of the canola crop.

EFFECTIVE DATE: February 28, 1992.

FOR FURTHER INFORMATION CONTACT: George Wollam, Federal Grain Inspection Service, USDA, room 0632-S, Box 96454, Washington, DC 20090-6454. Telephone (202) 720-0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 610 *et seq.*). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) and section 3502 (h) of that Act, the information collection and recordkeeping requirements contained in this rule have been approved by OMB and assigned OMB No. 0580-0013.

Background

Production of canola in the United States is increasing. In 1989 and 1990, U.S. producers planted approximately 75,000 and 100,000 acres of canola, respectively (Ref. 1). This year production may reach 200,000 acres (Ref. 2).

Consumer interest in canola oil has grown due to its nutritional characteristics. It is low in saturated fat (6 percent) compared to corn oil (13 percent), olive oil (14 percent), soybean oil (15 percent), and palm oil (51 percent) (Ref. 3). Canola oil is also characterized by a relatively high level of a monounsaturated fatty acid, oleic acid, and an intermediate level of the polyunsaturated fatty acids, linoleic and linolenic acids.

The use of canola meal has also increased in the United States. In 1989, canola meal usage exceeded 270 thousand metric tons versus 140 thousand metric tons in 1985 (Ref. 4). By the end of the century, forecasters predict that the United States will use 600 thousand metric tons of canola meal per year (Ref. 5). Canola meal is used as a component of livestock, swine, and poultry rations. Based on nutrient content and a unit weight basis, canola meal is worth 70 to 75 percent of the value of 44 percent soybean meal for feeding poultry and approximately 75 to 80 percent of the same for feeding swine and ruminants (Ref. 6).

Comment Review

As a result of growing interest in canola varieties of rapeseed in the United States, FGIS requested public comments on the need for official U.S. Standards for Canola in the May 3, 1991, **Federal Register** (56 FR 20374). FGIS received a total of 16 comments during a 60-day comment period. The comments were submitted from all segments of the canola/rapeseed industry including producer and trade associations, foreign associations and commissions, processors, producers, grain handlers, seed/biotechnological companies, a U.S. senator, and an official grain inspection agency.

All commentors expressed strong support for the development of standards as reflected by the following statement of the U.S. Canola Association:

> The adoption of appropriate U.S. grading standards is an important step toward creating the conditions necessary to further the establishment of canola as a viable commercial crop. Setting standards that reflect consistency with foreign grading factors and tolerances, particularly those used in Canada, will encourage the acceptance of U.S.-produced canola in international trade.

On the basis of the comments and other available information, FGIS is establishing U.S. Standards for Canola under the authority of the USGSA, as amended, to provide uniform Federal inspection procedures and to facilitate marketing of the crop. Under the USGSA, canola shipped outside the United States must be officially inspected and weighed, except under certain provisions of the USGSA and § 800.18 of the regulations. Official inspection and weighing will be available, upon request, for domestic shipments.

Dockage

Of the 16 commentors, 5 commentors supported the inclusion of dockage as a grading factor at export.

Further, four commentors supported the proposed standards in general. Three commentors opposed and two commentors did not address the dockage provision.

The five supporting commentors stated that the inclusion of dockage as a grading factor at export would send a clear message to international buyers that U.S. canola is of the highest quality. The three commentors who opposed this provision, however, stated that a grade limit on export canola could disrupt the movement of canola between domestic

and export markets. One commentor, the National Grain and Feed Association, specifically stated:

> We believe this will effectively create a two-tiered market for canola in the United States that will inhibit the acceptance and marketing of that commodity in this country. The U.S. marketing system does not and should not distinguish between domestic and export markets without clear and convincing justification. In our judgment, justification for neither has been established in the proposal.

Based upon available information, including the comments received, FGIS will not establish dockage grading limits for exported canola at this time because this could potentially increase unnecessarily the handling costs in the export market. FGIS believes, however, that information about the percentage of dockage conveys important quality information to both buyers and sellers of canola. As a result, FGIS will report the percentage of dockage, to the nearest tenth of a percent, as part of the overall grade designation in accordance with § 810.106 of the Official United States Standards for Grain.

Glucosinolate and Erucic Acid Monitoring

Five commentors supported FGIS' proposal to require that each canola inspection for grade include screening for glucosinolates. Furthermore, they supported FGIS' proposal to monitor a percentage of all canola inspections for glucosinolate and erucic acid levels to identify any specific incidence where non-canola varieties of rapeseed are represented as canola. Five commentors generally supported the proposed standards. One commentor did not oppose screening for glucosinolates but questioned whether a rapid, inexpensive screening method exists.

FGIS will use the 00-Dip-Test developed at the Institute for Plant Breeding, University of Gottingen, Germany, to screen each canola sample for glucosinolates. The test is both rapid, requiring only several minutes to perform, and inexpensive. Those lots which test high for glucosinolates will be graded as not standardized grain.

Due to the current absence of a rapid screening method, FGIS will not routinely test canola lots for erucic acid content as part of the inspection for grade. Except in those instances where an applicant requests a test for erucic acid content, inspectors will issue a statement in the "Remarks" section of official certificates indicating that each lot was not tested for erucic acid content.

However, FGIS will monitor a percentage of all canola inspections for glucosinolate and erucic acid levels. FGIS will use this monitoring program to identify any specific incidence where non-canola varieties of rapeseed are represented as canola.

Definition of Canola

Two commenters stated that the definition of canola as proposed was incomplete. They proposed that instead of stating that, "* * * the air-dried, oil free meal shall contain less than 30.0 micromoles per gram of glucosinolates," the definition should include the specific glucosinolates which are measured. One of these commentors also stated that to be botanically correct, the definition should refer to the genus "Brassica" and not to the Brassica species. The definition was originally proposed as follows:

> Seeds of the Brassica species from which the oil shall contain less than two percent erucic acid in its fatty acid profile and the air-dried, oil free meal shall contain less than 30.0 micromoles per gram of glucosinolates. Before the removal of dockage, the seed shall contain not more than 10.0% of other grains for which standards have been established under the United States Grain Standards Act.

FGIS agrees with the comments received. Accordingly, FGIS will revise the definition of canola to read as follows:

> Seeds of the genus *Brassica* from which the oil shall contain less than two percent erucic acid in its fatty acid profile, and the solid component shall contain less than 30.0 micromoles of any one or any mixture of 3-butenyl glucosinolate, 4-pentenyl glucosinolate, 2-hydroxy-3-butenyl glucosinolate, or 2-hydroxy-4-pentenyl glucosinolate per gram of air-dried, oil free solid. Before the removal of dockage, the seed shall contain not more than 10.0% of other grains for which standards have been established under the United States Grain Standards Act.

Stones, Ergot, Sclerotinia, and Garlicky Canola

One commentor voiced specific approval for the proposed grade limits for ergot (0.05% for U.S. Nos. 1, 2, and 3) and sclerotinia (0.05%, 0.10%, and 0.15% for U.S. Nos. 1, 2, and 3, respectively). Another commentor stated that the grade limits for sclerotinia may be too low and are not consistent with the Canadian grade limits. The limits for sclerotinia and ergot as proposed and made final here are consistent with the Canadian export grade requirements for canola/rapeseed.

Two commentors stated that the proposed limit of 0.10% on stones for all grades is inconsistent with the Canadian limit of 0.05% for all grades. FGIS agrees; and, to promote consistency between the U.S. and Canadian standards, FGIS will use the Canadian limit of 0.05% for all grades.

One commentor indicated that the inclusion of a special grade for garlicky canola is inconsistent with the Canadian standards. FGIS agrees but also realizes that garlic infestation of canola fields may occur in particular regions of the United States. Garlic bulblets impart an off-flavor and odor to canola oil and meal. Therefore, to better describe the quality of U.S. canola products, FGIS believes it is necessary to provide information on garlic in the form of a special grade.

Also, FGIS has determined that the portion size indicated in the definition, 1,000 grams, is inaccurate. Accordingly, FGIS will revise the definition of garlicky canola to read as follows:

> Canola that contains more than two green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in approximately a 500 gram portion.

Conspicuous Admixture, Damaged Kernels and Ergot

FGIS has determined that the definition of conspicuous admixture as originally proposed in § 810.302(a) was too brief and, as a result, unclear. The definition of conspicuous admixture was originally proposed as follows:

> All matter other than canola which is conspicuous and readily distinguishable from canola and which remains in the sample after the removal of dockage.

For the sake of clarity, FGIS will revise the definition of conspicuous admixture to read as follows:

> All matter other than canola, including but not limited to ergot, sclerotinia, and stones, which is conspicuous and readily distinguishable from canola and which remains in the sample after the removal of machine separated dockage. Conspicuous admixture is added to machine separated dockage in the computation of total dockage.

FGIS has also determined that several terms, as proposed in § 810.302(b), sprout-damaged, mold-damaged, and otherwise materially damaged, were inadvertently omitted from the definition of damaged kernels as originally proposed. Accordingly, FGIS will revise the definition of damaged kernels to read as follows:

> Canola and pieces of canola that are heat-damaged, sprout-damaged, mold-damaged, distinctly green-damaged, frost-damaged, rime-damaged, or otherwise materially damaged.

FGIS will also revise the definition of ergot as proposed in § 810.302(e) for clarity. The definition of ergot is revised to read as follows:

Sclerotia (sclerotium, sing.) of the fungus, *Claviceps* species, which are associated with some seeds other than canola where the fungal organism has replaced the seed.

FGIS is also making minor revisions to § 810.303 for clarity.

Final Action

FGIS is establishing U.S. Standards for Canola under the USGSA as authorized pursuant to section 4 of the USGSA (7 U.S.C. 76). The format and structure of the standards are uniform with other standards under the USGSA.

Specifically, the standards are divided into five parts and into sections which are generally the same or similar to sections in other U.S. Standards for Grain. Part I, Terms Defined, consists of § 810.301, Definition of canola, and § 810.302, Definition of other terms, which includes the terms conspicuous admixture, damaged kernels, distinctly green kernels, dockage, ergot, heat-damaged kernels, inconspicuous admixture, sclerotia, and sclerotinia. Part II, Principles Governing the Application of Standards, consists of § 810.303, Basis of determination, which references certain quality determinations together with all other determinations. Part III, Grades and Grade Requirements, consists of § 810.304, Grades and grade requirements for canola, which gives the actual grading chart. Part IV, Special Grades and Special Grade Requirements, consists of § 810.305, Special grades and special grade requirements, which includes the special grade of garlicky canola. Part V, Nongrade Requirements, consists of § 810.306, Nongrade requirements, which includes the nongrade requirement of glucosinolates.

In § 810.303, Basis of determination, determinations of total damaged kernels, heat-damaged kernels, distinctly green kernels, total conspicuous admixture, ergot, sclerotinia, stones, and inconspicuous admixture are made on the basis of the canola sample when free from dockage. Other determinations are made on the basis of the oilseed as a whole. However, the determination of odor is made on either the basis of the oilseed as a whole or the oilseed when free from dockage. Additionally, determinations of erucic acid, when requested, and glucosinolates are made on the basis of the canola sample according to procedures prescribed in FGIS instructions.

Except for ergot, sclerotinia, and stones, all percentages are stated to the nearest tenth of a percent. Ergot, sclerotinia, and stones are stated to the nearest hundredth of a percent. Percentages on the basis of count are calculated by dividing the number of unsound kernels by the total number of seeds in the representative portion and multiplying by 100. Percentages on the basis of weight are calculated by dividing the weight of the material removed by the weight of the representative portion and multiplying by 100.

Section 810.304 includes three numerical grades and a Sample grade. The grading factors are heat-damaged kernels, distinctly green kernels, total damaged kernels, ergot, sclerotinia, stones, total conspicuous admixture, and inconspicuous admixture.

Section 810.305 includes one special grade, garlicky canola. Section 810.306 includes the nongrade requirement of glucosinolates which is ascertained during the inspection process and shown on the official inspection certificate for grade.

Furthermore, FGIS is revising § 800.162(a)(2) of the regulations under the USGSA, as amended, and § 810.102(d) of the Official United States Standards for Grain to indicate that test weight is not an official factor in the canola standards. Test weight is extremely variable in canola and has not been shown to be correlated to the end-use value of the seed.

Additionally, FGIS is revising § 800.0(b)(42) of the regulations under the USGSA, as amended, to include canola and sunflower seed in the definition of grain. The United States Standards for Sunflower Seed were established in 1984 (49 FR 22761). The authority citation for part 810 would be amended for clarity. In addition, § 810.101 is amended to include canola as an oilseed for which standards are established.

It should be noted that pursuant to section 4(b) of the USGSA, no standards established or amendments or revocations of standards under the USGSA are to become effective less than 1 calendar year after promulgation unless, in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. Pursuant to section 4(b)(1) of the USGSA, the Administrator has determined that, in the public interest, an effective date of less than 1 calendar year after promulgation is warranted. An early effective date will facilitate domestic and export marketing and allow implementation during this crop year of the standards that are adopted. Therefore, the standards will be effective 30 days after publication.

References

(1) Kohn, F., "Is Canola Coming," Soybean Digest, March 1989, 8–10.

(2) ———, "Agriculture: A New Season," Wall Street Journal, April 18, 1991.

(3) United States Department of Agriculture, Agricultural Handbook No. 8–4 and Human Nutrition Information Service, 1979.

(4) Dixon, P., "U.S. Production—What's the Potential," presentation to the Canola Council of Canada's Annual Convention on March 20–22, 1989.

(5) Canola Council of Canada, "U.S. Canola Oil Demand Projected at 1.5 Million Tonnes by 2003," Canola Digest, April 1990.

(6) Canola Council of Canada, "Canola: The Specifics," Canada's Canola, 19–21.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Grain.

7 CFR Part 810

Exports, Grain.

For reasons set out in the preamble, 7 CFR parts 800 and 810 are amended as follows:

PART 800—GENERAL REGULATIONS

1. The Authority Citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.0(b)(42) is revised to read as follows:

§ 800.0 Meaning of terms.

* * * * *

(b) * * *

(42) *Grain.* Corn, wheat, rye, oats, barley, flaxseed, sorghum, soybeans, triticale, mixed grain, sunflower seed, canola, and any other food grains, feed grains, and oilseeds for which standards are established under section 4 of the Act.[1]

* * * * *

3. Section 800.162(a)(2) is revised to read as follows:

§ 800.162 Certification of grade; special requirements.

(a) * * *

(2) The test weight of the grain, if applicable; * * *

* * * * *

[1] A definition taken from the U.S. Grain Standards Act, as amended, with certain modifications which do not change the meanings.

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

4. The Authority Citation for Part 810 is revised to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

5. Section 810.101 is revised to read as follows:

§ 810.101 Grains for which standards are established.

Grain refers to barley, canola, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, sunflower seed, triticale, and wheat. Standards for these food grains, feed grains, and oilseeds are established under the United States Grain Standards Act.

6. Section 810.102(d) is amended by revising the last sentence and adding a new sentence following the last sentence to read as follows:

§ 810.102 Definition of other terms.

* * * * *

(d) * * * Test weight per bushel for all other grains, if applicable, is recorded in whole and half pounds, with a fraction of a half pound disregarded. Test weight per bushel is not an official factor for canola.

* * * * *

7. Section 810.104(b) is amended by revising the seventh sentence to read as follows:

§ 810.104 Percentages.

* * * * *

(b) * * * The percentage of smut in barley, sclerotinia and stones in canola, and ergot in all grains is reported to the nearest hundredth percent.

* * * * *

8. Section 810.107(b) introductory text is revised to read as follows:

§ 810.107 Special grades and special grade requirements.

* * * * *

(b) *Infested barley, canola, corn, oats, sorghum, soybeans, sunflower seed, and mixed grain.* Tolerances for live insects responsible for infested barley, canola, corn, oats, sorghum, soybeans, sunflower seed, and mixed grain are defined according to sampling designations as follows:

* * * * *

9. Subparts C through L are redesignated as subparts D through M.

10. New subpart C is added to read as follows:

Subpart C—United States Standards for Canola—Terms Defined

§ 810.301 *Definition of canola.*

§ 810.302 *Definition of other terms.*

Principles Governing the Application of Standards

§ 810.303 *Basis of determination.*

Grades and Grade Requirements

§ 810.304 *Grades and grade requirements for canola.*

Special Grades and Special Grade Requirements.

§ 810.305 *Special grades and special grade requirements*

Nongrade Requirements

§ 810.306 *Nongrade requirements.*

Subpart C—United States Standards for Canola—Terms Defined

§ 810.301 Definition of canola.

Seeds of the genus *Brassica* from which the oil shall contain less than 2 percent erucic acid in its fatty acid profile and the solid component shall contain less than 30.0 micromoles of any one or any mixture of 3-butenyl glucosinolate, 4-pentenyl glucosinolate, 2-hydroxy-3-butenyl, or 2-hydroxy-4-pentenyl glucosinolate, per gram of air-dried, oil free solid. Before the removal of dockage, the seed shall contain not more than 10.0% of other grains for which standards have been established under the United States Grain Standards Act.

§ 810.302 Definitions of other terms.

(a) *Conspicuous Admixture.* All matter other than canola, including but not limited to ergot, sclerotinia, and stones, which is conspicuous and readily distinguishable from canola and which remains in the sample after the removal of machine separated dockage. Conspicuous admixture is added to machine separated dockage in the computation of total dockage.

(b) *Damaged kernels.* Canola and pieces of canola that are heat-damaged, sprout-damaged, mold-damaged, distinctly green damaged, frost damaged, rimed damaged, or otherwise materially damaged.

(c) *Distinctly green kernels.* Canola and pieces of canola which, after being crushed, exhibit a distinctly green color.

(d) *Dockage.* All matter other than canola that can be removed from the original sample by use of an approved device according to procedures prescribed in FGIS instructions. Also, underdeveloped, shriveled, and small pieces of canola kernels that cannot be recovered by properly rescreening or recleaning. Machine separated dockage is added to conspicuous admixture in the computation of total dockage.

(e) *Ergot.* Sclerotia (sclerotium, sing.) of the fungus, *Claviceps* species, which are associated with some seeds other than canola where the fungal organism has replaced the seed.

(f) *Heat-damaged kernels.* Canola and pieces of canola which, after being crushed, exhibit that they are discolored and damaged by heat.

(g) *Inconspicuous admixture.* Any seed which is difficult to distinguish from canola. This includes, but is not limited to, common wild mustard (*Brassica kaber* and *B. juncea*), domestic brown mustard (*Brassica juncea*), yellow mustard (*B. hirta*), and seed other than the mustard group.

(h) *Sclerotia (Sclerotium, sing.).* Dark colored or black resting bodies of the fungi *Sclerotinia* and *Claviceps.*

(i) *Sclerotinia.* Genus name which includes the fungus *Sclerotinia sclerotiorum* which produces sclerotia. Canola is only infrequently infected, and the sclerotia, unlike sclerotia of ergot, are usually associated within the stem of the plants.

Principles Governing the Application of Standards

§ 810.303 Basis of determination.

Each determination of conspicuous admixture, ergot, sclerotinia, stones, damaged kernels, heat-damaged kernels, distinctly green kernels, and inconspicuous admixture is made on the basis of the sample when free from dockage. Other determinations not specifically provided for under the general provisions are made on the basis of the sample as a whole, except the determination of odor is made on either the basis of the sample as a whole or the sample when free from dockage. The content of glucosinolates and erucic acid is determined on the basis of the sample according to procedures prescribed in FGIS instructions.

Grades and Grade Requirements

§ 810.304 Grades and grade requirements for canola.

Grading factors	Grades, U.S. Nos.		
	1	2	3
	Maximum percent limits of:		
Damaged kernels:			
Heat damaged	0.1	0.5	2.0
Distinctly green	2.0	8.0	20.0
Total	3.0	10.0	20.0
Conspicuous admixture:			
Ergot	0.05	0.05	0.05
Sclerotinia	0.05	0.10	0.15
Stones	0.05	0.05	0.05
Total	1.0	1.5	2.0
Inconspicuous admixture	5.0	5.0	5.0

Grading factors	Grades, U.S. Nos.		
	1	2	3
	Maximum count limits of:		
Other material:			
Animal filth	3	3	3
Glass	0	0	0
Unknown foreign substance	1	1	1

U.S. Sample grade Canola that:
(a) Does not meet the requirements for U.S. Nos. 1, 2, 3; or
(b) Has a musty, sour, or commercially objectionable foreign odor; or
(c) Is heating or otherwise of distinctly low quality.

Special Grades and Special Grade Requirements

§ 810.305 Special grades and special grade requirements.

Garlicky canola. Canola that contains more than two green garlic bulblets or an equivalent quantity of dry or partly dry bulblets in approximately a 500 gram portion.

Nongrade Requirements

§ 810.306 Nongrade requirements.

Glucosinolates. Content of glucosinolates in canola is determined according to procedures prescribed in FGIS instructions.

Dated: January 2, 1992.

John C. Foltz,

Administrator.

[FR Doc. 92-2016 Filed 1-28-92; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 1106

[DA-91-024]

Milk in the Southwest Plains Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends from the Southwest Plains milk order for the months of February through August 1992, the shipping standards for supply plants that were pooled during the preceding September through January and the monthly requirements that a producer's milk be received at a pool plant in order to be eligible for diversion to non-pool plants. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. The action is essential to insure the efficient disposition of an increasing supply of milk from dairy farmers who have historically supplied the market's fluid milk requirements.

EFFECTIVE DATE: February 1, 1992 through August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued December 27, 1991; published January 3, 1992 (57 FR 221).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Southwest Plains marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on January 3, 1992 (57 FR 221) concerning a proposed suspension of certain provisions of the order. The notice indicated that suspension was being requested for January through August for two provisions and for February through August for a third provision. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Mid-America Dairymen, Inc. (Mid-Am) requested that we modify the time period of the suspension to February through August 1992 for all three provisions for which suspension was requested. The sections for which the suspension was requested pertain to milk produced in February through August. Accordingly, the suspension will be in effect for the months of February through August 1992. Mid-Am supplied additional written materials supporting their view. Kraft General Foods also filed a written statement in support of the suspension of the requested provisions of the order.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of February through August 1992 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1106.6, the words "during the month".

2. In § 1106.7(b)(1), the words "of February through August until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) or (e) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section are not less than 50 percent of receipts or diversions, as previously specified".

3. In § 1106.13, paragraph (d)(1) in its entirety.

Statement of Consideration

This action suspends for February through August 1992 the shipping standard for supply plants that were previously associated with the market. The order defines a supply plant as a plant from which fluid milk products are transferred or diverted to distributing plants during the month. It also provides that in order to be pooled under the order during the months of September through January, 50 percent of a supply plant's receipts must be shipped to distributing plants each month. A supply plant that was pooled during each of the immediately preceding months of September through January shall continue to be pooled during the following months of February through August if 20 percent of its receipts are shipped to distributing plants. That action would eliminate during the months of February through August 1992 the shipping standard for supply plants that were pooled under the order during

the immediately preceding September through January period.

This action also suspends, for February through August 1992, the monthly requisite that a producer's milk be received at a pool plant in order to be eligible for diversion to nonpool plants. The order provides that a dairy farmer's milk may be diverted to nonpool plants and still be priced under the order if at least one day's production of such person is physically received at a pool plant during the month.

This suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents a substantial number of producers who supply the market.

The action is warranted because analysis of market data for 1990 and 1991 establishes that the market's production is escalating at a rate faster than fluid milk sales. Based on the expectation that this situation will continue for the next several months, it appears that there will be sufficient supplies of milk available in the vicinity of the market's distributing plants to supply the fluid milk requirements of such plants during the months of February through August 1992. Therefore supplemental supply plant milk will not be required to supply fluid milk needs. The milk of producers can be marketed more economically during this seven month period by supplying the needs of distributing plants with nearby milk and by moving the milk of more distant producers directly from the farms to manufacturing plants in the production area. Absent a suspension action, the requirement that each producer's milk be received at a pool plant one time each month likely would result in uneconomical and inefficient movements of milk to preserve the pool status of producers who have historically been associated with the Southwest Plains market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that such action will eliminate unnecessary milk movements and will guarantee that dairy farmers who regularly have supplied the market's fluid milk requirements will continue to have their milk priced under the order and thereby receive the benefits that accumulate from such pricing.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views of arguments concerning this suspension. Mid-Am and Kraft General Foods filed information supporting the suspension request. No comments were filed in opposition to this action.

Therefore, good case exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

It is therefore ordered, that the following provisions in §§ 1106.6, 1106.7, and 1106.13 of the Southwest Plains marketing order are hereby suspended for February through August 1992.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1106.6 [Suspended in part].

2. In § 1106.6, the words "during the month" are suspended.

§ 1106.7(b)(1) [Suspended in part].

3. In § 1106.7(b)(1), the words "of February through August until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) or (e) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and diversion pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section are not less than 50 percent of receipts or diversions, as previously specified" are suspended.

§ 1106.13 [Temporarily suspended in part].

4. In § 1106.13, paragraph (d)(1) is suspended in its entirety.

Signed at Washington, DC, on January 24, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92–2137 Filed 1–28–92; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1807, 1822, 1823, 1890t, 1927, 1941, 1943, 1944, 1945, 1951, 1955, and 1965

Real Estate Title Clearance and Loan Closing; Deferral of Effective Date

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; deferral of effective date.

SUMMARY: The Farmers Home Administration (FmHA) defers the effective date of its Final Rule on Real Estate Title Clearance and Loan Closing published on Tuesday, December 31, 1991, in 56 FR 67470. The effective date is being deferred to:

(1) Allow a reasonable time period for each State Office to notify designated attorneys and title companies of the new procedural requirements;

(2) Allow sufficient time for interested parties to obtain liability and fidelity coverage in the required amounts;

(3) Avoid delays in closures of FmHA loans; and

(4) Receive and disseminate the forms associated with the new procedure.

EFFECTIVE DATE: March 31, 1992. The effective date of the Final Rule published at 56 FR 67470 on December 31, 1991 is deferred from January 30, 1992, until March 31, 1992.

FOR FURTHER INFORMATION CONTACT: James W. Craun, Branch Chief, Home Ownership Branch, Single Family Housing Processing Division, Farmers Home Administration, USDA, room 5334, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 720–1482.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration defers the effective date of its final rule on Real Estate Title Clearance and Loan Closing published at 56 FR 67470 on December 31, 1991, until March 31, 1992.

Dated: January 22, 1992.

LaVerne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–2139 Filed 1–28–92; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0744]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comment.

SUMMARY: The Board is amendment regulation CC to conform to recent amendments to the Expedited Funds Availability Act. The amendments allow banks to extend holds, on an exception basis, to "next-day" and "second-day" availability checks and allow one-time notices of exception holds in certain cases. The Board has adopted conforming changes to regulation CC on an interim basis. The Board is requesting comment on the interim rule pending adoption of a final rule and on whether there are classes of consumer accounts for which one-time notice should be permitted.

DATES: *Effective date:* January 15, 1992.

Comment date: Comments must be submitted on or before March 27, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0744, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, attention: Mr. William W. Wiles, Secretary; or may be delivered to the Board's mail room between 9 a.m. and 5 p.m. All comments received at the above address will be included in the public file and may be inspected at room B-1122 between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director, Division of Reserve Bank Operations and Payment Systems (202/452-3874); Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Senior Attorney (202/452-3198), Legal Division. For information regarding modifications to Model Forms or appendix C, contact Jane E. Ahrens, Staff Attorney (202/452-3667), or Dale I. Nishimura, Staff Attorney (202/452-2412), Division of Consumer and Community Affairs. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA," Pub. L. No. 102-242, section 225, 105 Stat. 2236 (1991)) amends the provisions in section 604 of the Expedited Funds Availability Act ("Act") (12 U.S.C. 4003) regarding safeguard exceptions to the availability schedules, effective December 19, 1991. The Board has adopted interim amendments to regulation CC (12 CFR part 229), effective January 15, 1992, to conform the regulation to the amendments to the Act. The Board is requesting comment on the interim amendments and Commentary revisions, which are described below.[1]

Background

The Board adopted regulation CC to implement the Act, which was effective September 1, 1988. Among other things, the regulation establishes availability schedules to limit the holds banks [2] can place on deposits to transaction accounts and requires banks to disclose their funds availability policy to their customers.

As a general matter, the availability of a deposit is linked to the degree of risk associated with the deposit and the amount of time necessary for a bank to learn whether a deposited check will be returned unpaid. Accordingly, nonlocal [3] checks must generally be made available for withdrawal on the fifth business day after deposit, local checks on the second business day, and certain "low-risk" checks, such as government, cashier's, certified, and teller's checks, on the next business day. (Most "next-day" checks, if not deposited in person at a staffed teller facility, must be made available for withdrawal on the second business day after deposit.)

The Act (section 604) and the regulation (§ 229.13) provide for certain safeguard exceptions to the availability schedules. Under these exceptions, the depositary bank can extend the hold on a deposit for a reasonable period of time. The exception holds apply to deposits to new accounts, daily aggregate deposits in excess of $5,000, checks that have returned unpaid and redeposited, checks deposited into an account that has been repeatedly overdrawn, checks the depositary bank may reasonably expect to be uncollectible, and checks deposited during emergency conditions, such as a computer failure, natural disaster, or other emergency beyond the bank's control.

Applicability of Exception Holds to "Next-Day" and "Second-Day" Checks

Prior to the enactment of the FDICIA, most of the exception holds did not apply to checks that must be accorded next-day or second-day availability under section 603(a)(2) of the Act and § 229.10(c) of the regulation, such as government, cashier's, certified, and teller's checks. In three reports to Congress on the implementation of the Act, the Board expressed concern that the inapplicability of the exception holds to next-day and second-day checks exposed depositary banks to substantial risk that such checks would be returned after the proceeds had been made available for withdrawal.[4] The Board noted that fraud loss reduction would benefit depository institutions as well as their customers, who otherwise may face increased service fees or decreased service levels.

Section 225 of the FDICIA amends section 604 of the Act to authorize the Board to prescribe regulations to apply most of the safeguard exception holds to checks that would otherwise receive next-day or second-day availability under section 603(a)(2) of the Act and § 229.10(c) of Regulation CC. The Board is adopting amendments to the regulation that will make the exceptions for large deposits (§ 229.13(b)), redeposited checks (§ 229.13(c)), accounts with repeated overdrafts (§ 229.13(d)), and emergency conditions (§ 229.13(f)) available for checks otherwise covered by § 229.10(c). In addition, the amendment will make the reasonable cause exception (§ 229.13(e)), which previously had applied to local and nonlocal checks and only certain next-day or second-day checks (i.e., checks drawn on Federal Reserve Banks or Federal Home Loan Banks and cashier's, certified, and teller's checks), available for all checks covered by § 229.10(c). The Board is revising the corresponding Commentary to reflect the broader scope of the exception holds.

The Board is also amending § 229.13(h), which governs the

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[1] Section 227 of the FDICIA amends section 603(e) of the Act to eliminate the shorter availability schedules for deposits at nonproprietary ATMs that were to be effective November 28, 1992. Section 212(h) of the FDICIA amends the administrative enforcement provisions in section 610(a) of the Act. The Board is requesting comment on amendments to regulation CC to implement these changes (see Docket R-0745, elsewhere in today's Federal Register). The proposed amendments regarding nonproprietary ATM deposits and administrative enforcement are not part of the interim rule adopted by the Board in this docket.

[2] For purposes of regulation CC, the term "bank" includes commercial banks, savings institutions, and credit unions.

[3] A check generally is "local" if the bank by which it is payable and to which it is sent for collection ("paying bank") is in the same Federal Reserve check processing region as the bank that receives the check for deposit ("depositary bank").

[4] See, Board of Governors of the Federal Reserve System, Report to Congress Under the Expedited Funds Availability Act, September 1991, March 1990, and June 1989.

availability of deposits subject to the exception holds. The Board's amendments provide that, with respect to Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, state and local government checks, and cashier's, certified, and teller's checks subject to the next-day (or second-day) availability requirement, the depositary bank may extend the time funds must be made available for withdrawal under the large deposit, redeposited check, repeated overdraft, or reasonable cause exception by a reasonable period beyond the delay that would have been permitted under the regulation had the checks not been subject to the next-day (or second-day) availability requirement. The additional hold is added to the local or nonlocal schedule that would apply based on the location of the paying bank. For on us checks that must be available on the next business day after the banking day of deposit under § 229.10(c)(1)(vi), the additional hold of one business day is added to the next-day requirement.

One-Time Hold Notices

Prior to the enactment of the FDICIA, section 604(f) of the Act and § 229.13(g) of the regulation provided that each time a depositary bank invoked an exception of the availability schedules under § 229.13 (b) through (f) of the regulation (the large deposit, redeposited check, repeated overdraft, reasonable cause, and emergency conditions exceptions, respectively), it had to notify the customer of the exception hold. Section 229.13(g) required that the exception hold notice be given at the time of the deposit or by the first business day following the day the facts upon which the exception hold is based become known to the depositary bank.

Although individual notices may be appropriate in the case of the reasonable cause or emergency conditions exceptions, which must be invoked on a case-by-case basis, they are less appropriate for the large deposit, redeposited check, or repeated overdraft exceptions. In these latter cases, it would be more efficient and less costly to depositary banks if the notice requirement could be tailored to the exception invoked. Customers would also benefit from receiving advance notice of any exception holds that will be in effect under certain conditions or for a certain period of time, rather than receiving on-the-spot or after-the-fact notices upon each deposit. In its three reports to Congress regarding implementation of the Act, cited above, the Board recommended that the Act be amended to provide banks with greater flexibility in giving notices of exception holds.

Section 225 of the FDICIA amends section 604(f) of the Act to authorize the Board to prescribe regulations to allow the depositary bank, in certain cases, to send one notice of an exception hold applicable to a customer's future deposits rather than sending a separate notice for each deposit. The amendments to section 604(f) set out two types of one-time notices and the circumstances under which they apply, as follows:

1. Large Deposit and Redeposited Check Exception Hold Notices

Sections 229.13(b) and (c) of the regulation provide that a depositary bank may apply exception holds to aggregate daily deposits of checks in excess of $5,000 and to deposits of checks that have been returned unpaid and redeposited. Under the amendments to section 604(f) of the Act, if a depositary bank applies the large deposit or redeposited check exception to nonconsumer accounts, it may give its nonconsumer customers a single notice at or prior to the time notice must otherwise be given. The Board has adopted interim amendments to § 229.13(g) and revisions to the Commentary to implement these amendments to the Act.

As provided in the interim amendments to § 229.13(g)(2) adopted by the Board, the one-time notice for the large deposit and redeposited check exceptions must explain the reason the exception(s) may be invoked and the time period within which deposits subject to the exception(s) would be available for withdrawal. The notice should reflect the bank's priorities in placing exception holds on deposits consisting of different types of checks, such as next-day, local, and nonlocal checks.

A depositary bank may provide a one-time notice to a nonconsumer customer under § 229.13(g)(2) only if each exception cited in the notice (the large deposit and/or the redeposited check exception) will be invoked for most check deposits to the customer's account to which the exception could apply. The Board has adopted Model Notice C–13B, which may be used by those banks that want to provide a one-time notice of these exception holds to their nonconsumer customers. A depositary bank may continue to send hold notices for each deposit subject to the large deposit or redeposited check exception in accordance with § 229.13(g)(1) (see Model Notice C–13).

Under the Board's interim amendment, consumer account-holders must continue to receive large deposit and redeposited check exception hold notices upon each deposit to which the exception is applied. The amendment to section 604(f) of the Act authorizes the Board to apply the one-time notice provision for the large deposit and redeposited check exceptions to classes of consumer accounts that generally have a large number of such deposits. The Board requests comment on whether the one-time notice provision for these types of exceptions should be extended to certain classes of consumer accounts, and if so, how those classes of accounts should be categorized. Specifically, the Board requests comment on the following questions:

i. Are there classes of consumer accounts, such as high balance accounts, that would generally have a large number of daily aggregate deposits of checks in excess of $5,000?

ii. What is a proper measurement of a "large number" of large deposits or redeposited checks, and over what period of time should such a measurement be taken?

iii. Would it be operationally feasible for depositary banks to monitor deposits to consumer accounts to determine which accounts have a large number of daily aggregate deposits of checks in excess of $5,000 or a large number of deposits of redeposited checks?

2. Repeated Overdraft Exception Hold Notice

Section 229.13(d) of the regulation provides that a depositary bank may, for a six-month period, apply longer holds to deposits to an account that has been repeatedly overdrawn. Under § 229.13(d), an account is repeatedly overdrawn if it is overdrawn on six or more banking days within the preceding six months or is overdrawn by $5,000 or more on two or more banking days within the preceding six months.

Section 229.13(g) of the regulation provides that, when invoking the repeated overdraft exception, a depositary bank must provide a notice to the customer upon each deposit. Under the amendments to section 604(f) of the Act, if an account (either consumer or nonconsumer) is subject to the repeated overdraft exception, the depositary bank may provide one notice to its customer for each time period during which the exception will apply, rather than giving a notice upon each deposit during that time period. The Board has adopted interim amendments to § 229.13(g) and revisions to the

Commentary to implement the amendments to the Act.

Section 229.13(g)(3) of the interim amendment provides that the one-time repeated overdraft notice must state the customer's account number, the fact that the exception was invoked under the repeated overdraft exception, the time period within which deposits subject to the exception will be made available for withdrawal, and the time period during which the exception will apply. A depositary bank may provide a one-time notice to a customer under § 229.13(g)(3) only if the repeated overdraft exception will be invoked for most check deposits to the customer's account. A depositary bank may send a notice, such as that contained in Model Notice C–13C, to its customer at the start of each period for which the repeated overdraft exception will be in effect.

Need for Interim Amendment

The Board believes that it is necessary to amend the regulation with an interim amendment, so that depositary banks may take immediate advantage of the new provisions regarding exception holds and hold notices without violating the regulation. The provisions of the FDICIA reflect the intent of the Congress to reduce risk and cost for banks by broadening the scope of the exception holds and providing the one-time notice requirement in certain cases. If the Board's rule is not effective immediately, banks would not be able to take advantage of the FDICIA amendments because attempting to apply the broader statutory hold provisions would result in violation of Regulation CC and attendant potential civil liability.

There was no opportunity for the Board to publish proposed regulations for comment prior to the enactment of the FDICIA amendments to the Act, which were effective December 19, 1991. Accordingly, the Board, for good cause, finds that the notice and public comment procedure normally required is impractical and contrary to the public interest under 5 U.S.C. 553(b)(B). The Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the interim amendment effective on January 15, 1992 without regard for the 30-day period provided for in U.S.C. 553(d).

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b))—a description of the reasons why the action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule—are contained in the supplementary information above. The Board's interim rule requires no additional reporting or recordkeeping requirements, nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

Another requirement for the initial regulatory flexibility analysis is a description of, and where feasible, an estimate of the number of small entities to which the proposed rule shall apply. The interim rule will apply to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a negative economic impact on small institutions, but rather will decrease the risk and cost for all depositary banks by broadening the scope of the exception holds and providing the one-time notice requirement in certain cases.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100–86, 101 Stat. 552, 635, 12 U.S.C. 4001 *et seq.*

2. In § 229.13, the term "229.10(c)," is added immediately preceding the term "229.11" in paragraphs (b), (c) introductory text, (d) introductory text, (f) introductory text, (h)(1), and (h)(3); the first sentence of paragraph (e)(1), paragraph (g)(1) introductory text and (i), paragraph (h)(2), and the first sentence of paragraph (h)(4) are revised; paragraphs (g)(1) (ii) through (v) are removed; paragraphs (g)(2) heading, (g)(2)(i), (g)(2)(ii), and (g)(3) are redesignated as paragraphs (g)(1)(ii) heading, (g)(1)(ii)(A), (g)(1)(ii)(B), and (g)(4), respectively; in newly designated paragraph (g)(1)(ii)(B), the reference "paragraph (g)(2)(i)" is revised to read "paragraph (g)(1)(ii)(A)"; and new paragraphs (g)(2) and (g)(3) are added to read as follows:

§ 229.13 Exceptions.

* * * * *

(e) *Reasonable cause to doubt collectibility*—(1) *In general.* Sections 229.10(c), 229.11, and 229.12 do not apply to a check deposited in an account at a depositary bank if the depositary bank has reasonable cause to believe that the check is uncollectible from the paying bank. * * *

* * * * *

(g) *Notice of exception*—(1) *In general.* Subject to paragraphs (g)(2) and (g)(3) of this section, when a depositary bank extends the time when funds will be available for withdrawal based on the application of an exception contained in paragraphs (b) through (f) of this section, it must provide the depositor with a written notice.

(i) The notice shall include the following information—

(A) The account number of the customer;

(B) The date and amount of the deposit;

(C) The amount of the deposit that is being delayed;

(D) The reason the exception was invoked; and

(E) The time period within which the funds will be available for withdrawal, unless the emergency conditions exception in paragraph (f) of this section has been invoked, and the depositary bank, in good faith, does not know the duration of the emergency and, consequently, when the funds must be made available at the time the notice must be given.

* * * * *

(2) *One-time exception notice.* In lieu of providing notice pursuant to paragraph (g)(1) of this section, a depositary bank that extends the time when the funds deposited in a nonconsumer account will be available for withdrawal based on an exception contained in paragraph (b) or (c) of this section may provide a single notice to the customer that includes the following information—

(i) The reason(s) the exception may be invoked; and

(ii) The time period within which deposits subject to the exception will be available for withdrawal.

This one-time notice shall be provided only if each type of exception cited in the notice will be invoked for most check deposits in the account to which the exception could apply. This notice shall be provided at or prior to the time notice must be provided under paragraph (g)(1)(ii) of this section.

(3) *Notice of repeated overdrafts exception.* In lieu of providing notice pursuant to paragraph (g)(1) of this section, a depositary bank that extends the time when funds deposited in an account will be available for withdrawal based on the exception contained in paragraph (d) of this section may provide a notice to the customer for each time period during which the

exception will be in effect. The notice shall include the following information—

(i) The account number of the customer;

(ii) The fact that the availability of funds deposited in the customer's account will be delayed because the repeated overdrafts exception will be invoked;

(iii) The time period within which deposits subject to the exception will be available for withdrawal; and

(iv) The time period during which the exception will apply.

This notice shall be provided at or prior to the time notice must be provided under paragraph (g)(1)(ii) of this section and only if the exception cited in the notice will be invoked for most check deposits in the account.

* * * * *

(h) *Availability of deposits subject to exceptions.*

* * * * *

(2) If a depositary bank invokes an exception contained in paragraphs (b) through (e) of this section with respect to a check described in § 229.10(c)(1) (i) through (v) or § 229.10(c)(2), it shall make the funds available for withdrawal not later than a reasonable period after the day the funds would have been required to be made available had the check been subject to §§ 229.11 or 229.12.

* * * * *

(4) For the purposes of paragraphs (h)(1), (h)(2), and (h)(3) of this section, a reasonable period is an extension of up to one business day for checks subject to § 229.10(c)(1)(vi), five business days for checks subject to § 229.12(b) and checks that would be subject to § 229.12(b) under in paragraph (h)(2) of this section, and six business days for checks subject to § 229.12(c) and checks that would be subject to § 229.12(c) under paragraph (h)(2) of this section.

* * *

Appendix C to Part 229—[Amended]

3. Appendix C is amended as set forth below:

a. In the introductory text, two new headings are added in numerical order under the heading "Model Notices"; and

b. New model notices C–13B and C–13C are added in numerical order to read as follows:

Appendix C–Model Forms, Clauses, and Notices

* * * * *

Model Notices

* * * * *

C–13B One-time notice for large deposit and redeposited check exception holds
C–13C One-time notice for repeated overdraft exception holds

* * * * *

Model Notices

* * * * *

C–13B—One-Time Notice for Large Deposit and Redeposited Check Exception Holds

Notice of Hold

If you deposit into your account:

• Checks totaling more than $5,000 on any one day, the first $5,000 deposited on any one banking day will be available to you according to our general policy. The amount in excess of $5,000 will generally be available on the [*number*] business day for checks drawn on [*bank*], the [*number*] business day for local checks and [*number*] business day for nonlocal checks after the day of your deposit. If checks (not drawn on us) that otherwise would receive next-day availability exceed $5,000, the excess will be treated as either local or nonlocal checks depending on the location of the paying bank. If your check deposit, exceeding $5,000 on any one day, is a mix of local checks, nonlocal checks, checks drawn on [*bank*], or checks that generally receive next-day availability, the excess will be calculated by first adding together the [ ], then the [ ], then the [ ], then the [ ].

• A check that has been returned unpaid, the funds will generally be available on the [*number*] business day for checks drawn on [*bank*], the [*number*] business day for local checks and the [*number*] business day for nonlocal checks after the day of your deposit. Checks (not drawn on us) that otherwise would receive next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

C–13C—One-time notice for repeated overdraft exception hold

Notice of Hold

Account Number: [*Number*]
Date of Notice: [*Date*]

We are delaying the availability of checks deposited into your account due to repeated overdrafts of your account. For the next six months, deposits will generally be available on the [*number*] business day for checks drawn on [*bank*], the [*number*] business day for local checks, the [*number*] business day for nonlocal checks after the day of your deposit. Checks (not drawn on us) that otherwise would have received next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

* * * * *

Appendix E to Part 229—[Amended]

4. Appendix E to part 229 is amended as set forth below:

a. In appendix E, in the Commentary under section 229.13, in the introductory text, the last sentence of the first paragraph and the first sentence of the second paragraph are revised, and the last sentence of the second paragraph is removed; in paragraph (b), the first two paragraphs are revised; in paragraph (c) a new sentence is added to the end of the first paragraph and the last sentence of the last paragraph is revised; in paragraph (d), two new sentences are added to the end of the last paragraph; in paragraph (e), the second sentence of the first paragraph is revised and a new sentence is added immediately following the second sentence of the first paragraph; in paragraph (f), two new sentences are added immediately preceding the last sentence, and the second and last sentences are revised; in paragraph (g), the first paragraph and the first sentence of the second paragraph are revised, and four new paragraphs are added immediately preceding the last paragraph; and in paragraph (h), the second sentence of the first paragraph, and the third, fourth, and fifth paragraphs are revised; and

b. In Appendix E, in the Commentary under appendix C, two new paragraphs are added in numerical order to read as follows:

Appendix E—Commentary

* * * * *

§ 229.13 Exceptions.

* * * These exceptions apply to local and nonlocal checks as well as to checks that must otherwise be accorded next-day (or second-day) availability under § 229.10(c).

Many checks will not be returned to the depositary bank by the time funds must be made available for withdrawal under the next-day (or second-day), local, and nonlocal schedules. * * *

* * * * *

(b) *Large deposits.* Under the large deposit exception, a depositary bank may extend the hold placed on check deposits to the extent that the amount of the aggregate deposit on any banking day exceeds $5,000. This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c). Although the first $5,000 of a day's deposit is subject to the availability otherwise provided for checks, the amount in excess of $5,000 may be held for an additional period of time as provided in § 229.13(h). When the large deposit exception is applied to deposits composed of a mix of checks that would otherwise be subject to differing availability schedules, the depositary bank has the discretion to choose the portion of the deposit to which it applies the exception. Deposits by cash or electronic payment are not subject to this exception for large deposits.

The following example illustrates the operation of the large deposit exception. If a customer deposits $2,000 in cash and a $9,000 local check on a Monday, $2,100 (the proceeds of the cash deposit and $100 from the local check deposit) must be made

available for withdrawal on Tuesday. An additional $4,900 of the proceeds of the local check must be available for withdrawal in accordance with the local schedule (i.e. Wednesday under the permanent schedule), and the remaining $4,000 may be held for an additional period of time under the large deposit exception.

* * * * *

(c) *Redeposited checks.* * * * This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c).

* * * * *

* * * A depositary bank that made $100 of a check available for withdrawal under § 229.10(c)(1)(vii) can charge back the full amount of the check, including the $100, if the check is returned unpaid, and the $100 need not be made available again if the check is redeposited.

(d) *Repeated Overdrafts.* * * *

* * * * *

* * * This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as would otherwise be required by § 229.10(c)(1)(vii).

(e) *Reasonable cause to doubt collectibility.* * * * This exception applies to local and nonlocal checks, as well as to checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as would otherwise be required by § 229.10(c)(1)(vii). * * *

* * * * *

(f) *Emergency conditions.* * * * In the circumstances specified in this paragraph, the depositary bank may extend the holds that are placed on deposits of checks that are affected by such delays, if the bank exercises such diligence as the circumstances require. * * * This exception applies to local and nonlocal checks, as well as checks that would otherwise be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as would otherwise be required by § 229.10(c)(1)(vii). In cases where the emergency conditions exception does not apply, as in the case of deposits of cash or electronic payments under § 229.10 (a) and (b), the depositary bank may not be liable for a delay in making funds available for withdrawal if the delay is due to a bona fide error such as an unavoidable computer malfunction.

(g) *Notice of exception.* If a depositary bank invokes any of the safeguard exceptions to the schedules listed above, other than the new account exception, and extends the hold on a deposit beyond the time periods permitted in §§ 229.10(c), 229.11, and 229.12, it must provide a notice to its customer. Except in the cases described in paragraphs (g)(2) and (g)(3) of the regulation, notices must be given each time an exception hold is invoked and must state the customer's account number, the date of deposit, the reason the exception was invoked, and the time period within which funds will be available for withdrawal.

With respect to paragraph (g)(1), the requirement that the notice state the time period within which the funds shall be made available may be satisfied if the notice identifies the date the deposit is received and information sufficient to indicate when funds will be available and the amounts that will be available at those times. * * *

* * * * *

In those cases described in paragraphs (g)(2) and (g)(3), the depositary bank need not provide a notice every time an exception hold is applied to a deposit. When paragraph (g)(2) or (g)(3) requires disclosure of the time period within which deposits subject to the exception will be available for withdrawal, the requirement may be satisfied if the one-time notice states when on us, local, and nonlocal checks will be available for withdrawal if an exception is invoked.

Under paragraph (g)(2), if a nonconsumer account is subject to the large deposit or redeposited check exception, the depositary bank may give its customer a single notice at or prior to the time notice must be provided under paragraph (g)(1). Notices provided under paragraph (g)(2) must contain the reason the exception may be invoked and the time period within which deposits subject to the exception will be available for withdrawal (see Model Notice C–13B). A depositary bank may provide a one-time notice to nonconsumer customer under paragraph (g)(2) only if each exception cited in the notice (the large deposit and/or the redeposited check exception) will be invoked for most check deposits to the customer's account to which the exception could apply. A depositary bank may to continue send hold notices for each deposit subject to the large deposit or redeposited check exception in accordance with § 229.13(g)(1) (see Model Notice C–13).

In the case of a deposit of multiple checks, the depositary bank has the discretion to place an exception hold on any combination of checks in excess of $5,000. The notice should enable a customer to determine the availability of the deposit in the case of a deposit of multiple checks. For example, if a customer deposits a $5,000 local check and a $5,000 nonlocal check, under the large deposit exception, the depositary bank may make funds available in the amount of (1) $100 on the business day after deposit, $4,900 on the second business day after deposit (local check), and $5,000 on the eleventh business day after deposit (nonlocal check with 6-day exception hold), or (2) $100 on the first business day after deposit, $4,900 on the fifth business day after deposit (nonlocal check), and $5,000 on the seventh business day after deposit (local check with 5-day exception hold).The notice should reflect the bank's priorities in placing exception holds on next-day (or second-day), local, and nonlocal checks.

Under paragraph (g)(3), if an account is subject to the repeated overdraft exception, the depositary bank may provide one notice to its customer for each time period during which the exception will apply. Notices sent pursuant to paragraph (g)(3) must state the customer's account number, the fact the exception was invoked under the repeated overdraft exception, the time period within which deposits subject to the exception funds will be made available for withdrawal, and the time period during which the exception will apply (see Model Form C–13C). A depositary bank may provide a one-time notice to a customer under paragraph (g)(3) only if the repeated overdraft exception will be invoked for most check deposits to the customer's account.

* * * * *

(h) *Availability of deposits subject to exceptions.* * * * This provision establishes that an extension of up to one business day for on us checks, five business days for local checks, and six business days for nonlocal checks is reasonable. * * *

* * * * *

With respect to Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, state and local government checks, and cashier's, certified, and teller's checks subject to the next-day (or second-day) availability requirement, the depositary bank may extend the time funds must be made available for withdrawal under the large deposit, redeposited check, repeated overdraft, or reasonable cause exception by a reasonable period beyond the delay that would have been permitted under the regulation had the checks not been subject to the next-day (or second-day) availability requirement. The additional hold is added to the local or nonlocal schedule that would apply based on the location of the paying bank.

One business day for on us checks, five business days for local checks, and six business days for nonlocal checks, in addition to the time period provided in the schedule, should provide adequate time for the depositary bank to learn of the nonpayment of virtually all checks that are returned.

In the case of the application of the emergency conditions exception, the depositary bank may extend the hold placed on a check by not more than a reasonable period following the end of the emergency or the time funds must be available for withdrawal under §§ 229.10(c), 229.11 or 229.12, whichever is later.

* * * * *

Appendix C—Model Forms, Clauses, and Notices

* * * * *

Model C–13B. This form satisfies the notice requirements of § 229.13(g)(2).

Model C–13C. This form satisfies the notice requirements of § 229.13(g)(3).

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 15, 1992.
William W. Wiles,
Secretary of the Board.
[FR Doc. 92-1474 Filed 1-28-92; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 51

[Public Notice 1564]

Cancellation of All Passports To Facilitate the Foreign Travel of United States Citizens and Nationals Which Are Designated as Valid Only for Travel to Israel

AGENCY: Department of State.
ACTION: Final rule.

SUMMARY: This final rule revises the passport regulations of the Department to cancel all valid or potentially valid passports that are designated as valid only for travel to Israel. Such passports were issued by the Secretary, as an exception to the prohibition on the issuance and use of more than one passport at any one time, to facilitate the travel of United States citizens and nationals in the Middle East. The revisions are required by provisions of recently enacted statutes which prohibit the issuance of any passport designated as valid only for travel to Israel and direct the Secretary to cancel all current passports designated as valid only for travel to Israel. For information concerning the availability of replacement passports for bearers of passports cancelled by this revision to the regulations, see the notice published elsewhere in this issue.

EFFECTIVE DATE: April 25, 1992.

FOR FURTHER INFORMATION CONTACT: William B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, Telephone (202) 326-6172.

SUPPLEMENTARY INFORMATION: Current regulations reflect the long standing policy of the Department that no person should be in possession of more than one valid or potentially valid passport at any one time unless specifically authorized by the Secretary of State. At present, however, a number of countries, including the majority of Arab League nations, may reject passports and deny entrance visas to persons whose passports or other travel documents reflect their travel to Israel. As one of the exceptions to the prohibition on possession of more than one passport, and for the purpose of facilitating travel of United States citizens and nationals to both Israel and countries following Arab League policy, the Secretary therefore previously authorized issuance of an additional passport. The majority of such passports have been designated as valid only for travel to Israel. Issuance of such second passports also has been authorized in other limited circumstances.

For the purpose of seeking an end to the Arab League policy, section 129 of Public Law 102-138, as enacted into law on October 28, 1991, prohibits the Secretary of State from issuing any passport that is designated as valid only for travel to Israel and requires the Secretary to promulgate regulations by January 26, 1992 that will cancel by April 25, 1992 all currently or potentially valid Israel-only passports. To the same end, section 503 of Public Law 102-140, also enacted into law on October 28, 1991, prohibits the Secretary from using any funds appropriated by that law to issue any passport designated as valid only for travel to Israel.

Effective with enactment of the new laws, the Department ceased issuance of any passport designated as valid only for travel to Israel. Regardless of the purpose for which they are issued, all passports issued as an exception to the prohibition on possession of more than one passport at any one time, now are being issued valid without geographic restriction for an initial period of two-years from date of issue. Upon application, and a showing of continued need, the validity of such passports may be extended for additional two-year periods as long as such periods do not extend beyond the normal period of validity prescribed for such passports in the regulations.

Because these amendments are mandated by statute and involve a foreign affairs function of the United States, the provisions of 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date do not apply; and, because no notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) also does not apply. Because the amendments involve a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981. The provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35) do not apply.

List of Subjects in 22 CFR Part 51

Passports.

For reasons set forth in the preamble, 22 CFR part 51 is amended as follows:

1. The authority citation for part 51 is revised to read as follows:

Authority: 22 U.S.C. 211a, as amended, 22 U.S.C. 2658, 3926; sec. 122(d)(3), Pub. L. 96-164, 97 Stat. 1017; E.O. 11295, 36 FR 10603; 3 CFR 1966-70 Comp. p. 507; Pub. L. 100-690; sec. 129, Pub. L. 102-138, 105 Stat. 661; sec. 503, Pub. L. 102-140, 105 Stat. 820.

2. Section 51.4 is amended to add a new paragraph (g) to read as follows:

§ 51.4 Validity of passports.

* * * * *

(g) Cancellation of passport endorsed as valid only for travel to Israel. The validity of any passport which has been issued and endorsed as valid only for travel to Israel is cancelled effective April 25, 1992. Where it is determined that its continued use is warranted, the validity of such passport may be renewed or extended for additional periods of two years upon cancellation of the Israel-only endorsement. In no event may the validity of such passport be extended beyond the normal period of validity prescribed for such passport by paragraphs (b) through (e) of this section.

Dated: January 22, 1992.
James L. Ward,
Acting Assistant Secretary for Consular Affairs.
[FR Doc. 92-1949 Filed 1-28-92; 8:45 am]
BILLING CODE 4710-06-M

22 CFR Part 193

[Public Notice 1565]

Benefits for Hostages in Iraq, Kuwait, and Lebanon

AGENCY: Bureau of Consular Affairs, State.
ACTION: Interim final rule.

SUMMARY: The Bureau of Consular Affairs, Department of State is amending regulations which implemented section 599C of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 1991 (Public Law 101-513) ("the Hostage Relief Act of 1990"). The Foreign Relations Authorization Act, Fiscal Years 1992-1993 (Public Law 102-138) makes certain changes to the Hostage Relief Act of 1990, and these amendments implement those changes. The Hostage Relief Act of 1990 made up to $10,000,000 available for monetary, health, and life insurance benefits to be paid to U.S. hostages in Iraq, Kuwait, and Lebanon, and/or their family members. Some of these funds remain available and the current Foreign Relations Authorization Act amends the Hostage Relief Act of 1990 to extend both the period of time during which the

benefits are available, and the eligibility criteria.

DATES: Effective January 29, 1992.

Comments on this interim final rule must be received on or before February 28, 1992.

ADDRESSES: Written comments should be addressed to: Director, Office of Citizens Consular Services, Bureau of Consular Affairs, room 4817, Department of State, Washington, DC 20520–4818.

FOR FURTHER INFORMATION CONTACT: Carmen A. Diplacido, Director, Office of Citizens Consular Services. Telephone (202) 647–3666.

SUPPLEMENTARY INFORMATION: Section 302 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, amends the Hostage Relief Act of 1990 in the following ways:

With respect to all persons covered by the Hostage Relief Act of 1990 (i.e., hostages held in Iraq, Kuwait, and Lebanon, and/or their family members), the new legislation extends availability of benefits. Under the prior law, the authorization to obligate funds expired on May 5, 1991: Thus, otherwise eligible persons who had not applied for benefits by that date were ineligible for benefits, and certain benefits terminated as of that date persons whose eligibility had been established. This change is accomplished by sections 302(a)(1) and 302(a)(5), which amend section 599C of the Hostage Relief Act so that benefits are available "during fiscal year 1991 and hereafter", so that the prior six month limitation on obligation is removed.

Section 302 contains two additional changes with respect to hostages captured in Lebanon. Section 302(a)(3) provides that health and life insurance benefits are available under certain circumstances for the period of the individual's hostage status, plus a 60-month period following the termination of hostage status. Previously, these benefits expired 12 months after the termination of hostage status, which remains the law with respect to hostages held in Iraq and Kuwait.

Section 302(a)(4) amends the definition of the term "United States hostages captured in Lebanon" to mean "United States nationals, including lawful permanent residents of the United States, who have been forcibly detained" * * * "for any period of time after June 1, 1982" in Lebanon. The prior definition did not include lawful permanent residents, and only covered persons who had been detained since January 1, 1990.

Finally section 302(b) provides that the amendments made by section 302(a) are retroactive to the date of enactment of the Hostage Relief Act of 1990, which was November 5, 1990. Waiver of Proposed Rulemaking, Executive Order 12291, Federal Regulations, Regulatory Flexibility Act, and Paperwork Reduction Act.

Compliance with 5 U.S.C. 553 of the Administrative Procedures Act relative to notice of proposed rule making and delayed effective date is impracticable and contrary to the public interest in this instance since expeditious implementation of this rule is mandated by the Congress in accordance with Public Law 101–513 effective November 5, 1990. This is not a major rule as defined under section 1(b) of Executive Order 12291 Federal Regulations, nor is it expected to have a significant economic impact on a substantial number of small entities because the regulations primarily affect United States hostages in Iraq, Kuwait, and Lebanon (Regulatory Flexibility Act). This amendment involves the collection of information subject to the Paperwork Reduction Act of 1980. This collection has been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act and 5 CFR part 1320.

List of Subjects in 22 CFR Part 193

Claims, Health insurance, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Wages.

Accordingly, for the reasons set forth in the preamble, 22 CFR part 193 is amended as follows.

PART 193—BENEFITS FOR HOSTAGES IN IRAQ, KUWAIT, OR LEBANON

1. The authority citation for part 193 is revised to read as follows:

Authority: Section 599C, Pub. L. No. 101–513, 104 Stat. 2064.

2. In § 193.1, paragraph (c) is revised to read as follows:

§ 193.1 Determination of hostage status.

* * * * *

(c) In the case of Lebanon, hostage status may be accorded to United States nationals, which, for purposes of this paragraph, includes lawful permanent residents of the United States, who have been forcibly detained, held hostage, or interned for any period of time after June 1, 1982, by any government (including the agents thereof) or group in Lebanon for the purpose of coercing the United States or any other government.

* * * * *

3. In § 193.2, paragraph (d) is added to read as follows:

§ 193.2 Definitions.

* * * * *

(d) The term *lawful permanent resident* means any individual who has been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

4. In § 193.3, paragraph (e) is revised to read as follows:

§ 193.3 Applications.

* * * * *

(e) Applications should be filed as quickly as possible, because benefits are available only until the funds allocated under the Act have been spent. When funds have been expended, the Department will publish a notice in the **Federal Register** so stating.

* * * * *

5. In § 193.4, paragraph (b) is revised to read as follows:

§ 193.4 Consideration and denial of claims: Notification of determinations.

* * * * *

(b) All applications shall be considered, evaluated, and/or prepared by the Federal Benefits Section of the Office of Overseas Citizens Consular Services. All federal agencies or other interested persons should contact the office at the address listed in § 193.3(d).

* * * * *

Dated: January 16, 1992.

Elizabeth M. Tamposi,

Assistant Secretary, Bureau of Consular Affairs.

[FR Doc. 92–2144 Filed 1–28–92; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 61–92]

Exemption of Records System Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a Privacy Act system of records entitled "U.S. Marshals Service Prisoner Transportation System, JUSTICE/USM–003," from the provisions of 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2), (5) and (g). The exemptions are necessary to protect the security of prisoners, informants, and law enforcement personnel; and to prevent a serious threat to law enforcement communications systems.

EFFECTIVE DATE: This rule will be effective January 29, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely (202) 514–6329.

SUPPLEMENTARY INFORMATION: A proposed rule with invitation to comment was published in the Federal Register on September 6, 1991 (56 FR 44049). The public was given 30 days in which to comment. One public comment favoring the exemptions was received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have a "significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative Practice and Procedure, Courts, Freedom of Information, Privacy, and the Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, 28 CFR 16.101 is amended as set forth below.

Dated: January 7, 1992.

Harry H. Flickinger,

Assistant Attorney General for Administration.

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR 16.101 is amended by redesignating paragraph (o) as paragraph (q) and by adding new paragraphs (o) and (p).

§ 16.101 Exemption of U.S. Marshals Service (USMS) Systems—limited access, as indicated.

* * * * *

(o) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2), (5) and (g):

(1) U.S. Marshals Service Prisoner Transportation System (JUSTICE/USM–003).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(p) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) where the release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act would reveal a source who furnished information to the Government in confidence.

(2) From subsection (c)(4) to the extent that the system is exempt from subsection (d).

(3) From subsection (d) because access to records would reveal the names and other information pertaining to prisoners, including sensitive security information such as the identities and locations of confidential sources, *e.g.*, informants and protected witnesses; and disclose access codes, data entry codes and message routing symbols used in law enforcement communications systems to schedule and effect prisoner movements. Thus, such a compromise of law enforcement communications systems would subject law enforcement personnel and other prisoners to harassment and possible danger, and present a serious threat to law enforcement activities. To permit amendment of the records would interfere with ongoing criminal law enforcement and impose an impossible administrative burden by requiring that information affecting the prisoner's security classification be continuously reinvestigated when contested by the prisoner, or by anyone on his behalf.

(4) From subsections (e) (1) and (5) because the security classification of prisoners is based upon information collected during official criminal investigations; and, in the interest of ensuring safe and secure prisoner movements it may be necessary to retain information the relevance, necessity, accuracy, timeliness, and completeness of which cannot be readily established, but which may subsequently prove useful in establishing patterns of criminal activity or avoidance, and thus be essential to assigning an appropriate security classification to the prisoner. The restrictions of subsection (e) (1) and (5) would impede the information collection responsibilities of the USMS, and the lack of all available information could result in death or serious injury to USMS and other law enforcement personnel, prisoners in custody, and members of the public.

(5) From subsection (e)(2) because the requirement to collect information from the subject individual would impede the information collection responsibilities of the USMS in that the USMS is often dependent upon sources other than the subject individual for verification of information pertaining to security risks posed by the individual prisoner.

(6) From subsection (g) to the extent that the system is exempt from subsection (d)

* * * * *

[FR Doc. 92–2070 Filed 1–28–92, 8:45 am]

BILLING CODE 4410–01–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 86–7B]

Cable Compulsory License; Definition of Cable System

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: The Copyright Office affirms its decision, announced at 56 FR 31580 (1991), that satellite carriers are not cable systems within the meaning of 17 U.S.C. 111 (the Copyright Act of 1976) notwithstanding the decision in *National Broadcasting Company, Inc.* v. *Satellite Broadcast Networks, Inc.*, 940 F.2d 1467 (11th Cir. 1991). The Office also confirms that multipoint distribution service (MDS) and multichannel multipoint distribution service (MMDS) are not cable systems within the meaning of 111. The status of satellite master antenna television facilities (SMATV) is not part of this final regulation and will be addressed separately at a later date.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559; telephone (202) 707–8380.

SUPPLEMENTARY INFORMATION:

I. Background

Today's announcement marks another step in the Copyright Office's rulemaking proceeding regarding the definition of a cable system under the cable compulsory licensing mechanism in 17 U.S.C. 111, (the Copyright Act of 1976.) On October 15, 1986, the Office opened this proceeding with a Notice of Inquiry (51 FR 36705) inviting public comment on whether satellite master antenna television (SMATV) and multichannel multipoint distribution service (MMDS) operations qualify as cable systems under section 111(f) of the Copyright Act. The Office received numerous comments and reply comments and reopened the comment period from August 3, 1987 until September 2, 1987 (52 FR 28731) so that the public might respond to four comments received by the Office after the closing of the initial comment and reply period.

On May 19, 1988, the Copyright Office again reopened this proceeding (53 FR 17962) to broaden the scope of the inquiry to include issues relating to the

eligibility of satellite carriers to operate under the section 111 compulsory license. The Office also sought comments as to whether satellite carriers may qualify for the passive carrier exemption of section 111(a) with respect to certain transmissions and also qualify as a cable system with respect to other transmissions. The Office received fifteen additional comments regarding satellite carriers.

On July 11, 1991, the Copyright Office issued a Notice of Proposed Rulemaking (NPRM) in this proceeding (56 FR 31580).

II. Notice of Proposed Rulemaking (NPRM)

The NPRM represented the Copyright Office's thorough consideration of the public comments and its findings and preliminary findings with respect to SMATV, MMDS, and satellite carrier eligibility for the cable compulsory license. The Office interpreted the terms and purpose of the section 111 license and proposed new regulations to govern the conditions under which SMATV systems would qualify for the cable license. The Office, however, made a preliminary finding that MMDS systems do not qualify for the cable license and announced a policy decision that satellite carriers were not eligible for the license.

The comments received in response to the 1986 and 1988 Notices of Inquiry played a significant role in fleshing out the issues concerning the eligibility of SMATV's, MMDS's and satellite carriers' eligibility for compulsory licensing. The Copyright Office has the administrative task of interpreting the terms of the statute. See *Cablevision Systems Development Co.* v. *Motion Picture Association of America. Inc.*, 836 F.2d 599, 609–10 (DC Cir.), cert. denied, 487 U.S. 1235 (1988).

With respect to satellite carriers, the Office concluded that they did not satisfy the conditions of the definition of a cable system found in section 111(f) and therefore did not qualify for compulsory licensing. Starting with the premise that the cable compulsory license should be construed according to its terms, and should not be given a wide scale interpretation which could, or will, encompass any and all new forms of retransmission technology, the Office applied the literal terms of the section 111(f) definition to the operations of satellite carriers. 56 FR 31590 (1991). The Office found that satellite carriers did not meet the definitional requirements because, among other reasons, they provide a national retransmission service rather than the localized, community based service contemplated by the Copyright Act. The concept of localism is evidenced by "provisions of the license which discuss such items as the 'local service' area of a primary transmitter and other language sensitive to locality." *Id.* at 31590–91. The Office did not reach the question of whether satellite carriers made use of "other communications channels," as described in 111(f), since they were "national retransmission service(s) and, as such, do not have any one facility located in a state which both receives and retransmits signals or programming." *Id.* The Copyright Office's conclusion was affirmed by "an extensive examination of the legislative history of the compulsory license (which) fails to reveal any evidence suggesting that Congress intended the compulsory license to extend to such types of retransmission service." *Id.*

After providing a refund mechanism for satellite carriers who had made royalty filings with the Copyright Office claiming compulsory licensing, the NPRM turned to the issue of MMDS eligibility under section 111(f). The Office once again began its analysis with a consideration of the definitional requirements of section 111(f) and found that while MMDS and MDS operations meet most of the requirements, "such facilities (are) wanting regarding the requirement that retransmission of signals be accomplished via wires, cables, or other communications channels." *Id.* at 31592. Unlike its conclusion with respect to satellite carriers, however, the NPRM stated that the conclusion with respect to MMDS facilities was preliminary only. *Id.* at 31593.

In preliminarily deciding that MDS and MMDS facilities did not meet the requirements of a cable system as envisioned by section 111, the Office drew upon "(t)he legislative history to section 111 (which) makes it clear that there is a significant 'interplay between copyright and the communications law elements' of section 111, requiring the Office to consider the qualifications of MDS and MMDS as cable systems with an eye towards how those systems were treated as a matter of communications policy at the time of passage of the Copyright Act." *Id.* at 31592 (citation omitted). In determining how these systems were regulated in 1976 and thereafter, the Office studied the FCC Report and Order in Docket No. 80–35, Definition of a Cable Television System, in which the FCC interpreted the statutory term "cable system" as it appeared in the Cable Communications Policy Act of 1984.

The Office was not as concerned with how the FCC interpreted the 1984 Cable Act definition, since the Cable Act and Copyright Act definitions are not identical, as it was with the Commission's discussion of how it regulated cable systems in 1976. *Id.* at 31591 ("(T)he FCC's discussion and conclusions are still of significant value, since entities regulated as cable systems by the FCC are presumptively cable systems under the Copyright Act's definition, which generally encompasses the FCC's concept of cable system in 1976.") The NPRM therefore provided a lengthy discussion of the FCC Cable Report, see *id.* at 31591–31592, where the Commission held, *inter alia*, that those systems that did not make use of closed transmission paths, such as MDS and MMDS, were not considered cable systems.

The Copyright Office preliminarily concluded that MDS and MMDS facilities did not meet the section 111(f) cable definition because they do not make secondary transmissions via "wires, cables, or other communications channels." The Office interpreted this phrase to require retransmission by closed transmission paths primarily, which excluded MDS' and MMDS' wireless retransmission. The NPRM stated that this restricted reading comported with the Copyright Office position that Congress did not intend to extend compulsory licensing to every video retransmission service, and with the congressional understanding of cable systems in 1976:

> When Congress passed the Copyright Act in 1976, its understanding of the regulation of the cable industry was naturally based on FCC policy and precedent. The FCC's 1966 definition of a cable system, in effect while the Copyright Act was passed, defined a cable system as "redistribut(ing) * * * signals by wire or cable. * * *" While the reference to "by wire or cable" was dropped by the FCC in 1977, the Commission specifically stated that the change was not to be "interpreted to include such non-cable television broadcast station services as Multipoint Distribution Systems. * * *" (citation omitted). Regulation of cable systems from a communications standpoint, therefore, was limited to traditional, wire-based, closed path transmission services. It is therefore reasonable to conclude that the copyright compulsory license was adopted to apply to those same types of services then regulated by the FCC as cable systems. A broad reading of the phrase "other communications channels" in section 111(f) to include systems, such as MDS and MMDS, which were not regulated by the FCC as cable systems would be contrary to the express congressional purpose of adopting a compulsory license for the cable industry.

Id. at 31593.

The Copyright Office's preliminary conclusion regarding MDS and MMDS

was bolstered by two specific elements. First, the 1984 Cable Act's definition of a cable system as consisting of "a set of closed transmission paths" reflected Congress's understanding of years of FCC regulation in the cable area and what was generally known and regulated as a cable system. *Id.* While neither FCC precedent nor the definition of a cable system appearing in the Cable Act was binding on the Office's interpretation of section 111(f), this background reflected that "Congress did not act within a vacuum when it drafted section 111, but rather adopted a compulsory licensing scheme for an industry which was already defined and regulated by the FCC." *Id.*

Second, the very specific and direct tie-in between the compulsory license and the FCC's rules and regulations governing the cable industry belied MDS' and MMDS' eligibility. For example, the concept of a distant signal equivalent, crucial to the computation of royalties and operation of the license, was fixed by the rules of the FCC in effect on the date of enactment of the Copyright Act. The statute's heavy reliance on FCC regulation, which applied only to the cable industry and not MDS or MMDS operations, "unmistakably reflects [the] interplay between copyright and communications policies." *Id.* Congress was providing a copyright licensing scheme for an industry already defined and regulated by the FCC—an industry which did not include the operations of MDS or MMDS. The Copyright Office therefore proposed a refund mechanism for MDS and MMDS operators who had made royalty filings with the Office on the assumption that they qualified for compulsory licensing. *Id.*

The NPRM concluded with a discussion of the eligibility of SMATV systems and a preliminary finding that some SMATV's did meet the requirements of section 111(f). *Id.* at 31593–31594. The NPRM proposed a series of amendments to the Copyright Office regulations to include some SMATV's within the definition of a cable system and provided specific royalty and filing requirements for those operators. These issues will be addressed later in a separate document.

The Copyright Office invited public comment on the NPRM. Initial comments were due September 9, 1991, and reply comments were due October 9, 1991.

III. National Broadcasting Company, Inc. v. Satellite Broadcast Networks, Inc.

Subsequent to the publication of the NPRM, the Eleventh Circuit issued its opinion in *National Broadcasting Company, Inc.* v. *Satellite Broadcast Networks, Inc.*, 940 F.2d 1467 (11th Cir. 1991) (hereinafter referred to as "*SBN*"), reversing the decision of the District Court in *Pacific & Southern Co., Inc.* v. *Satellite Broadcast Networks, Inc.*, 694 F. Supp. 1565 (N.D. Ga. 1988). The District Court, which considered whether satellite carriers serving home dish owners qualified for section 111 compulsory licensing, held that satellite carriers were not cable systems within the section 111(f) definition because their receiving and retransmitting facilities were not located in the same state.

The Copyright Office addresses the Eleventh Circuit decision because it cited the District Court opinion favorably in the NPRM. At the outset, the Copyright Office notes that, while it has carefully analyzed the *SBN* decision, the Office is not bound by the decision of the Eleventh Circuit, just as it was not bound by the decision of the District Court. See 56 FR at 31590. As the Court of Appeals for the District of Columbia Circuit pointed out in *Cablevision Systems Development Co.* v. *Motion Picture Association of America, Inc.*, 836 F.2d 599, 610 (DC Cir.), *cert. denied*, 487 U.S. 1235 (1988), the Copyright Office, through its rulemaking authority in 17 U.S.C. 702, is given the express authority to interpret the provisions of section 111 relating to the operation of the cable compulsory licensing system.

The *SBN* case involved a satellite carrier that collected the network affiliate broadcast signals of NBC in Georgia, CBS in New Jersey, and ABC in Illinois, and made those signals available to home satellite dish owners across the country on a subscriber basis. SBN claimed that it was entitled to retransmit those signals in accordance with section 111, although such carriage is now covered by the terms of section 119, the Satellite Home Viewer Act of 1988. As noted above, the District Court held that SBN did not qualify for compulsory licensing because it did not meet all of the definitional requirements of section 111(f); specifically it found that SBN failed to meet the "located in any State requirement" because its retransmission facilities were not located in the same state as its receiving facilities.

The Eleventh Circuit disagreed with this analysis, stating that it was "unpersuaded that 'located in any State' means located entirely within a single state." *SBN*, 940 F.2d at 1470. Instead, the Court focused on the definition of a secondary transmission in section 111(f), which provides that a nonsimultaneous broadcast is not a secondary transmission if made by a cable system located partly in Alaska and partly in some other state. This language, according to the Court, "suggests that Congress understood it would be possible for a cable system to exist 'in part' within Alaska and 'in part' elsewhere." *Id.*

The *SBN* court concluded that "there is no good reason why a satellite broadcasting company such as SBN should not be a cable system." *Id.* Noting that SBN could have delivered its signal to cable operators across the country without incurring copyright liability as a passive carrier, "SBN has simply eliminated the middleman." *Id.* at 1471. Furthermore, "to conclude that SBN cannot be a cable system because of its geographic reach would be to prevent those in sparsely populated areas from receiving the quality television reception technology can provide." *Id.* In the interest of widespread dissemination of signals, the court summarized "(i)n short, there is no good reason to read 'cable system' narrowly to deny SBN its license, and to do so will do an injustice to those who live in rural areas. SBN is a cable system." *Id.*

The *SBN* court addressed two other aspects of the definition of a cable system: Whether the carriage of the broadcast signals was "permissible under the rules, regulations, or authorizations" of the FCC, and whether secondary transmissions by satellite carriers are made by "wires, cables or other communications channels." As to permissibility of carriage, the court held that "the rebroadcast was permissible because no rule or regulation forbade it," noting that the FCC had expressly stated it would not consider regulation of satellite carriers until the courts had resolved the copyright infringement issue. *Id.* And in a footnote, the Court expressed in dicta that it thought that satellite retransmission services were made through "other communications channels" in satisfaction of the statute. *Id.* at 1469 n. 3. The court stated that "(t)he legislative history shows that in considering the Copyrights (sic) Act, Congress understood that the development of satellites promised a new channel for communicating in the future," and that "both the Second and Eighth Circuits have concluded that transmission by 'wires, cables or other communications channels' includes satellite broadcasts." *Id.* (citing *Hubbard Broadcasting* v. *Southern Satellite*, 777 F.2d 393 (8th Cir. 1985), *cert. denied*, 479 U.S. 1005 (1986) and *Eastern Microwave, Inc.* v. *Doubleday Sports, Inc.*, 691 F.2d

125 (2d Cir. 1982), *cert. denied*, 459 U.S. 1226 (1983)).

Finally, in another footnote, the court noted the issuance of the NPRM and the Copyright Office's decision that satellite carriers did not satisfy the definitional requirements of a cable system. The court dwelled on the possible retroactive application of the Office's policy decisions announced in the NPRM, noting that "(i)f this recent promulgation applied retroactively to this case, it might be entitled to deferential review under *Chevron*," but concluded that the "language of the notice does not require that it apply retroactively." *Id.* at 1469 n. 4. The court considered the Office's position on satellite carriers as expressed in the NPRM, and concluded:

> In any event, we have considered the views of the Copyright Office on the language and legislative history of section 111, but we find those views unpersuasive. We of course express no opinion on the new rule's validity as applied prospectively.

Id. at 1470 n. 4.

IV. Discussion of Comments

The Copyright Office received a large number of comments responding to the positions expressed in the NPRM. Although the majority of comments came from MMDS operators and their affiliates, the Office also heard from satellite carriers, broadcasters, the FCC, copyright owners, the cable television industry, and members of Congress. A summary of the major issues brought out in the comments follows.

A. MMDS Operations

The question of the eligibility of MMDS operations for compulsory licensing drew the lion's share of comments. The majority of commentators favored inclusion of MMDS and MDS within the definition of a cable system. However, several parties did object to inclusion of MMDS services.

Commentators arguing for inclusion of MDS and MMDS operations within the section 111 definition of a cable system took issue with the tentative decision announced in the NPRM on several grounds: statutory construction, legislative intent, judicial interpretation, and public policy. They argued that the Copyright Office should confine its analysis to a plain reading of the statutory language contained in section 111(f)'s definition of a cable system, and that the legislative history suggests the compulsory license is broad enough to encompass new video retransmission services such as MMDS. Further, judicial interpretations of section 111 and the Copyright Act mandate that a flexible approach be taken to its provisions to embrace new forms of technology, and public policy requires that the MMDS industry be fostered to provide competition and widespread dissemination of video programming.

One of the principal arguments advanced by the pro-MMDS commentators involves the rules of statutory construction. They argue that the preliminary decision announced in the NPRM violates the plain meaning of the definition of a cable system appearing in section 111(f), and requires immediate reversal by the Office. The 111(f) definition has five requirements: (1) Facilities located in a state, territory, trust territory or possession, that (2) in whole or in part receives television broadcast signal licensed by the FCC, and (3) make secondary transmissions of those signal, by (4) wires, cables or other communications channels, to (5) subscribing members of the public who pay for such service. MMDS operators argued they satisfy all of these definitional requirements, including retransmission by "wires, cables or other communications channels," and therefore the Office inquiry must end there. MMDS operators, it is argued, do make use of wires and cables in their operations, as well as "other communications channels," thereby satisfying all the requirements. Technivision, Inc. comments at 6. They assert that the Copyright Office erred in looking to legislative history and other outside sources when the statutory language was clear: "(E)vident legislative intent is required to override clear statutory language, not to enforce it." Turner Broadcasting Inc. comments at 4, citing to *American Tobacco Co.* v. *Patterson*, 456 U.S. 63 (1982).

MMDS commentators also argued that MMDS operations satisfy the plain meaning of section 111(c)(1), which permits compulsory licensing for only broadcast signals whose carriage "is permissible under the rules, regulations, or authorizations of the Federal Communications Commission." Although the NPRM did not discuss the meaning of the phrase "permissible under FCC rules," several commentators argue that the requirement is satisfied in the case of MMDS because there are no FCC rules prohibiting carriage. See, e.g., Technivision, Inc., comments at 10. The FCC confirms that it has never expressly restricted the carriage of broadcast signals by "wireless" cable systems, and notes that its regulations permit an ITFS licensee (most MMDS operations consist of channel capacity licensed in whole or in part from ITFS licensees) to "transmit material other than the ITFS subject matter" i.e., broadcast signals. Federal Communications Commission, comments at 7 (citing 47 CFR 74.931(e)).

Several commentators argued the Copyright Office has relied incorrectly on legislative history in interpreting the definitional phrase "or other communications channels." The Office is charged with, in effect, substituting the word "and" for the word "or," requiring cable systems to use cables, wires and other communications channels.[1] See Turner Broadcasting System, Inc., comments at 4; Senators DeConcini, Metzenbaum, Inouye, Leahy, Simon, comments at 2; Representatives Boucher, Moorhead, comments at 1. Congress did not intend such a requirement, according to these commentators, and the Office's interpretation is contrary to standard rules of statutory construction. Turner Broadcasting Systems, Inc., comments at 4 (citing *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979)). Rather, Congress' deliberate use of the word "or" demonstrates, they say, that Congress did not intend to confine the definition to those systems which use wires and cables, but rather reflected a "technology neutral" approach to encompass new forms of video delivery. Wireless Cable Association, Inc., comments at 15–18; Ad Hoc Committee of Wireless Cable System Operators, comments at 5–6.

A number of commentators contend that the NPRM erroneously interpreted the legislative history of section 111 and the Copyright Act, and improperly relied on communications law history and the Cable Act of 1984. They say the Office's approach of defining cable systems on the basis of technological distinctions unnecessarily confines the compulsory license's operation, and limits the future applicability of the cable license.

Certain commentators argue that the only relevant legislative history of significance relates to the definition of cable system. They read the legislative history to suggest that the language "or other communications channels" is broad enough to encompass the operations of MMDS because (1) the Congress was aware of the existence and potential of wireless systems, and (2) the legislative history shows that a flexible approach should be taken *vis-a-vis* new technologies. To demonstrate Congress' awareness of wireless-based operations in the context of the definition of a cable system, they cite

[1] In fact the Office has not interpreted this phrase as though "and" replaced "or." Such a reading would require qualifying wired systems to use "other communications channels" in addition to wire. The Office instead has interpreted the phrase in the context of the whole of section 111.

Barbara Ringer, Register of Copyrights, in testimony during hearings on the Copyright Act:

> First, as to the scope of the provision: it deals with all kinds of secondary transmissions, which usually means picking up electrical energy signals, broadcast signals, off the air and retransmitting them simultaneously by one means or the other—usually cable but sometimes other communication channels, like microwave and apparently laser beam transmissions that are on the drawing boards if not in actual operation.

Hearings on H.R. 2223 before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary, 94th Cong., 1st Sess. 1820 (1975)(part 3). Congress was therefore aware that wireless operations would likely soon be providing secondary transmissions, and the phrase "or other communications channels" was likely inserted to cover that eventuality. Cross Country Telecommunications, Inc., comments at 6.

Further, the comments supporting MMDS eligibility for the section 111 compulsory license argue there is nothing in the legislative history to suggest that Congress desired a technology-based limit on the compulsory license. Rather, they say the history shows that Congress desired the definitional provisions of the Copyright Act to be interpreted flexibly, so that it would not have continually to amend the statute as new technologies emerged. Turner Broadcasting Systems, Inc., comments at 10 (citing H.R. Rep: No. 1476, 94th Cong., 2d Sess. 51 (1976).

The NPRM's reliance on communications policy and the 1984 Cable Act were also erroneous, according to these commentators. First, they contend that, consideration of FCC regulations and its definition of a cable system in 1976 ignores Congress's actions. In fact, they say, comparing FCC regulations in effect in 1976 with the language of section 111 demonstrates Congress's desire to make the copyright definition broader. Turner Broadcast Systems, Inc., comments at 7–8. The FCC definition, found at 47 CFR 74.1101(a)(1977), defines a cable system as only consisting of "wires and cables" as opposed to "wires, cables and other communications channels." If Congress had desired to limit the copyright definition of a cable system to those systems regulated as such by the FCC, it is argued, Congress simply could have adopted the FCC definition. The fact that it included the much broader "or other communications channels" language reflects an intention to embrace a wider range of retransmission services than those regulated as cable systems by the FCC. *Id*, comments at 9.

Second, the NPRM is said to have relied incorrectly upon the 1984 Cable Act and its definition of a cable system as including only closed transmission path services. The Cable Act, which originated from the Senate Commerce and House Energy and Commerce Committees, and not the Senate and House Judiciary Committees, was enacted for communications policy and not copyright reasons. The Cable Act was designed to regulate services subject to local franchising authorities, which excludes MMDS operations. It is perfectly consistent that MMDS should be considered a cable system for copyright purposes, but not for Cable Act purposes. Wireless Cable Association, Inc., comments at 21. The purpose of the copyright system is to allow the public to benefit by the wider dissemination of works carried on television broadcast signals," it is argued, whereas the Cable Act addressed relationships between municipal governments and wired cable systems. Id. (citing *Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691, 709–711 (1984)). The Cable Act, therefore, and its requirement that cable systems consist of closed transmission paths, has no application to the compulsory license.

Several commentators contend that the position expressed in the NPRM cannot withstand judicial scrutiny. They argue that the Copyright Office is bound by the Eleventh Circuit's interpretation of section 111 in *National Broadcasting Company, Inc.* v. *Satellite Broadcast Networks, Inc.*, 940 F.2d 1467 (11th Cir. 1991) and its footnote regarding the meaning of "other communications channels." See e.g., Wireless Cable Association, comments at 11. "For (a governmental agency) to predicate an order on its disagreement with (a) court's interpretation of a statute is for it to operate outside the law." *Allegheny General Hospital* v. *NLRB*, 608 F.2d 965, 970 (3d Cir. 1979). Of particular note is footnote 3 of the *SBN* decision where the Court thought that transmission via satellite was through "other communications channels" within the meaning of section 111(f). If satellite transmissions are within the reach of "other communications channels," then certainly the terrestrial operations of MMDS satisfy the requirement, according to these commentators.[2]

It is argued that other judicial decisions require a finding of compulsory license eligibility for MMDS because of their interpretation of other provisions of section 111 and their conclusions about the thrust and purpose of compulsory licensing. In *Hubbard Broadcasting* v. *Southern Satellite*, 777 F.2d 393 (8th Cir. 1985), *cert. denied*, 479 U.S. 1005 (1986), and *Eastern Microwave, Inc.* v. *Doubleday Sports, Inc.*, 691 F.2d 125 (2d Cir. 1982), cert. denied, 459 U.S. 1226 (1983), it was held that the passive carrier exemption of section 111(a)(3) applied to satellite carriers who delivered broadcast programming to cable headends without any intermediary performance to the public. Section 111(a)(3), which insulates passive carriers from copyright liability, applies solely to systems which provide secondary transmissions via "wires, cables or other communications channels," the same phrase used in section 111(f). According to pro-MMDS commentators, the use of the same phrase in two different parts of the same section of the Copyright Act creates the presumption that Congress intended both phrases to have the same meaning. Wireless Cable Association, Inc., comments at 17. Since more than one court has found that satellite carriers meet all the definitional requirements of the section 111(a)(3) passive carrier exemption, including transmission via "other communications channels," it is argued that the same reasoning must apply to section 111(f).

According to these commentators, not only have the courts established that wireless video providers meet the definition of transmission via "other communications channels, contrary to the assertions in the NPRM, but they also support the position that the license must be construed in such a way as to provide for the greatest dissemination of works. The purpose of the copyright system is to "allow the public to benefit by the wider dissemination of works carried on television broadcast signals." *Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691, 709–711 (1984). Further, "(w)hen technological change has rendered its literal terms ambiguous, the Copyright Act must be construed in light of this basic purpose"—the promotion of "broad public availability of literature, music and other arts." *Sony Corporation* v. *Universal City Studios, Inc.*, 464 U.S. 417, 432 (1984). These commentators assert that section 111 should, therefore, be interpreted in a technologically neutral manner to assure that the greatest amount of copyrighted broadcast programming is made available to the public.

[2] One commentator even argued that failure to include wireless cable within the definition of a cable system, when the courts have recognized satellite carriers' eligibility, would amount to an unconstitutional violation of due process. See Wireless Cable Association, Inc., comments at 13.

Finally, the critics of the NPRM argue that public policy requires a finding of compulsory license eligibility. They note that without the license, MMDS operators will be unable to clear copyrights in the broadcast programming which they retransmit, putting them at a severe disadvantage to their competitors, the wired cable industry. The FCC emphasized that the Copyright Office's interpretation of the copyright definition of a cable system would have significant implications for the nation's communications policy. Inclusion of MMDS in the copyright compulsory license would foster competition in the marketplace, assure the widest dissemination of information in line with the goals of the Communications Act, and result in significant public benefits from the equal treatment of MMDS and cable operators. Chief, Mass Media Bureau, Federal Communications Commission, comments at 3–4. The FCC also felt that "the threat of expansion of coverage of the compulsory license provisions through an 'open-ended' interpretation of the law's coverage appears limited." since the license does not apply to broadcasters and satellite carriers are covered by the provisions of the Satellite Home Viewer Act. Id., comments at 6. "The compulsory license will remain available only to traditional cable systems and other highly localized nonbroadcast, non-common carrier media of limited availability." *Id.*, comments at 7.

Several other commentators supported the tentative conclusions expressed in the NPRM and opposed inclusion of MMDS within the compulsory licensing scheme. The Motion Picture Association of America, Inc. ("MPAA"), which originally supported inclusion of MMDS in 1986 when this proceeding commenced, now opposes inclusion because of certain recent developments with respect to reinstatement of the syndicated exclusivity rules. The new syndex rules do not apply to MMDS, because the FCC does not regulate them as cable systems, and "this * * * gives MMDS operators a major advantage over cable operators, at the expense of copyright owners." MPAA, comments at 3. Because broadcasters could not enforce exclusivity against MMDS operators, they will be unable to enter into exclusivity arrangements with copyright owners, reducing copyright owners' income stream. Further, cable systems are subject to title III and title VI regulation under the Communication Act of 1934, which includes significant structural and content related limitations; MMDS operators are subject to title II regulation which lacks such limitations. *Id.*, reply comments at 7. "(A)ny statutory scheme that imposes copyright liability on cable television systems must take account of the intricate and complicated rules and regulations adopted by the Federal Communications Commission to govern the cable television industry." *Id.*, comments at 5 (quoting H.R. Rep. No. 1476, 94th Cong., 2d Sess. 89 (1976)). According to the MPAA, the delicate balance struck in 1976 would be destroyed if MMDS operators were included in the section 111 compulsory licensing scheme.[3]

The Professional Sports Leagues ("Sports") also argued against inclusion of MMDS, emphasizing that the question of a compulsory licensing scheme for wireless cable is for Congressional resolution. Echoing the MPAA's position that MMDS operations are not regulated as cable systems, Sports argue that the language of section 111(f) is limiting, not encompassing. In contrast, the term "transmit," found in section 101 of the Copyright Act, is very broad and includes "all conceivable forms and combinations of wired or wireless communications media." Professional Sports Leagues, comments at 10. "Had Congress intended to extend compulsory licensing to every facility which retransmits broadcast signals, it would have defined a 'cable system' as a facility which simply makes 'secondary transmissions.'" *Id.*, comments at 11. The requirement that a facility making secondary transmissions must do so via "wires, cables or other communications channels" demonstrates Congress's intent to limit the compulsory license to traditional wired cable systems.

Finally, Fox, Inc. ("Fox") favors the preliminary position announced in the NPRM. Fox agrees with the Office's position that the compulsory license, as a derogation of the property rights of copyright owners, must be narrowly construed. Fox, Inc., comments at 2 (citing *Duchess Music Corp.* v. *Stern*, 458 F.2d 1305 (9th Cir. 1972)). Fox also posits that the phrase "or other communications channels," so much the focus of this proceeding, "is just as consistently, if not more consistently, interpreted as a reference to non-wire elements within a traditional cable system using no wire or cable transmission capacity whatsoever." *Id.*, comments at 4.

[3] The MPAA also argues that those, like the FCC, who believe that choice and diversity in communications services are fostered by extension of the compulsory licenses, run headlong into the FCC's pronouncement in its 1989 report on the compulsory license, Gen. Docket No. 87–25, 4 FCC Rcd 6711 (1989), that compulsory licensing is inimical to First Amendment principles. MPAA, reply comments at 9, n.10.

B. Satellite Carriers

The Copyright Office received a handful of comments, mostly from satellite carrier interests, regarding the announced ineligibility of satellite carriers for section 111 compulsory licensing. Those commentators favoring satellite carrier inclusion centered their arguments essentially around two points: The *SBN* decision and the argument that section 111 is a technology neutral, universal compulsory license.

Comments from satellite carrier interests stressed that the *SBN* decision should be dispositive of the issue of satellite carrier eligibility for section 111 licensing, and requires immediate reversal of the position announced in the NPRM. See, e.g., Hughes Communications Galaxy, Inc., reply comments; Prime Time 24, comments. The Eleventh Circuit rejected the district court's holding with respect to a satellite carrier not being located in a single State, and rejected the reasoning of the NPRM: "(W)e have considered the views of the Copyright Office on the language and legislative history of section 111, but we find those views unpersuasive." *SBN*, 940 F.2d at 1470, n. 4. As the MMDS commentators argued, these commentators argue that the Copyright Office interpretation of section 111 cannot stand in the face of judicial authority.

The *SBN* decision is controlling regarding the requirement that a cable system be located in "any State," according to Hughes Communications Galaxy Inc. ("Hughes"). They charge that the NPRM, in basing its decision on the finding that satellite carriers were not located in a single state, ignored that carriers have significant ground contact. Satellite carriers collect signals in a state, and they retransmit those signals to subscribers located in states, thereby satisfying the definitional requirement. Hughes Communications Galaxy, Inc., reply comments at 5–6. Hughes also notes that its carriage of signals is permissible under the rules of the FCC, in accordance with section 111(c)(1), because there are no FCC rules which forbid it. *Id.*, reply comments at 6.

Satellite carrier interests also argue that the *SBN* decision further proves that section 111 must be interpreted in a technologically neutral manner. They say it does not make sense to hinge the operation of the license on technological distinctions, when those distinctions between different types of video

providers are blurring and rapidly changing. "It is fully consistent with the balance and structure of the Copyright Act to recognize section 111 as a 'universal' compulsory license," which, "by its very nature, (is) technology neutral." Satellite Broadcasting & Communications Association of America, comments at 8, 10. The license should therefore apply to DBS and all types of video retransmission services. Hughes Communications Galaxy, Inc., reply comments at 2.

In opposition to the above commentators, the Network Affiliated Stations Initiative ("Network") supports the decision of the NPRM and argues that the Copyright Office is not bound by the *SBN* case. Network points out that the NPRM also concluded that satellite carriers are not located in *any* state, rather than solely the district court's opinion that they must be located within a single state, a position not addressed by the Eleventh Circuit. Network Affiliated Stations Initiative, reply comments at 3. Further, Network argues that the terms of section 111, when considered as a whole, make it obvious that the license is directed to localized transmission services. Satellite carriers have no headends, cannot operate in contiguous communities, and do not relate to the concept of the distant signal equivalent, which makes reference to the local service area wherein the cable system is located. The Copyright Office should, therefore, not fashion what would essentially be a new license for satellite carriers. *Id.*, reply comments at 5.

V. Policy Decision

As announced in the NPRM, the Copyright Office reached a preliminary decision with respect to MMDS operators' eligibility for section 111 compulsory licensing, and a final decision with respect to the eligibility of satellite carriers. Since the publication of the NPRM, the Eleventh Circuit announced its decision in the *SBN* case, and satellite carrier commentators urged a reconsideration and reversal of the Office's position with respect to the eligibility of satellite carriers for section 111 licensing. The Office has therefore reconsidered the position announced in the NPRM, and issues today a final decision that satellite carriers are not eligible for the cable compulsory license. SMATV facilities are not a part of this policy decision, and shall be addressed in a final rulemaking at a future date. The Copyright Office does reach today a final decision with respect to MMDS facilities, discussed fully below.

A. Satellite Carriers

Shortly after publication of the NPRM, the Eleventh Circuit announced its decision in *National Broadcasting Company, Inc.* v. *Satellite Broadcast Networks, Inc.*, 940 F.2d 1467 (11th Cir. 1991), reversing the district court and holding that SBN, a satellite carrier which provided broadcast signals to home dish owners, was a cable system under 17 U.S.C. 111. (See *supra*, for full discussion of the case). Because the *SBN* decision is at odds with the interpretation of section 111 with respect to satellite carriers announced in the NPRM, the Office analyzes the case and the arguments offered by the commentators who urged a reconsideration of the Office's position.

As noted in the discussion of the comments, the principal argument surrounding the *SBN* decision is that its interpretation of section 111 and conclusion with respect to satellite carriers is binding on the Copyright Office, requiring a reversal of the decision announced in the NPRM. The Copyright Office cannot accept this argument. First, the Eleventh Circuit was not reviewing an agency action in passing on one specific satellite carrier's circumstances and eligibility for compulsory licensing. The Copyright Act makes it plain that the Copyright Office is vested with authority to interpret provisions of the Act, 17 U.S.C. 702, and the Court of Appeals for the District of Columbia Circuit has specifically endorsed the Office's authority to interpret the terms of section 111. See *Cablevision Systems Development Corporation* v. *Motion Picture Association of America, Inc.*, 836 F.2d 599 (D.C. Cir.), *cert. denied*, 487 U.S. 1235 (1988). The Office was not a party to the case, and the Court unequivocably explained that it was not passing on the validity of the position expressed in the NPRM. See *National Broadcasting Company, Inc.*, 940 F.2d 1467, 1470 n. 4 (11th Cir. 1991) ("We of course express no opinion on the new rule's validity as applied prospectively.").

The *SBN* decision, although not binding on the Copyright Office, has been analyzed for its persuasive value. The Office, however, affirms the position announced in the NPRM for the following reasons.

The decision of the Eleventh Circuit rests on its disagreement with the district court's interpretation of the phrase "a facility located in any State" appearing in the definition of a cable system in section 111(f). The district court read the requirement to mean that a cable system must be located entirely within a single state, and that SBN's inability to meet the requirement meant that it was not a cable system. The Eleventh Circuit was "unpersuaded that 'located in any State' means located entirely within a single state," thereby reversing the district court's ruling. *SBN*, 940 F.2d at 1470. As the Copyright Office noted in the NPRM, however, the facilities of a satellite carrier, specifically the facilities which make the secondary transmission, are not located in any state, let alone the same state. 56 FR at 31590. This is a critical requirement in the definition which is evident from a plain reading: a facility located in any State which (1) receives broadcast signals, and (2) makes secondary transmissions of those signals. While satellite carriers arguably receive signals in one or more states (in the case of SBN, it placed receiving dishes in Illinois, Georgia, and New Jersey), the secondary transmissions are not likewise made in any state, but rather from geostationary orbit above the earth. Therefore, the Office respectfully does not agree that satellite carriers satisfy all of the definitional requirements of a cable system.

The Eleventh Circuit also failed to address the fact that section 111 is clearly directed at localized transmission services. The second part of the section 111(f) definition of a cable system refers to "headends" and "contiguous communities," two concepts which do not have any application to a nationwide retransmission service such as satellite carriers. Further, section 111(f) defines a "distant signal equivalent" with reference to television stations "within whose local service area the cable system is located(.)" Satellite carriers may argue that they have subscribers located in the service area of a primary transmitter, but they cannot argue that their "cable system" is located in that same area as required by the definition. The Eleventh Circuit also did not address the fact that FCC signal carriage regulations, particularly they must carry rules embodied in section 111 which form the critical distinction of local vs. distant signals, have no application whatsoever to satellite carriers. In sum, all the evidence points to the conclusion that Congress intended the compulsory license to apply to localized retransmission services regulated by the FCC as cable systems. The Eleventh Circuit's failure to address these telling points undermines the persuasive value of the opinion.

The *SBN* case also contains some other observations about the definitional requirements of section 111, including whether satellite carriers

retransmit via "other communications channels" and whether their carriage of signals is permissible under the rules and regulations of the FCC. In a footnote the Court stated:

> Section 111(f) goes on to require that the secondary transmission be made through "wires, cables, or other communications channels." A question arises whether a transmission via satellite is one through "other communications channels." We think so. The legislative history shows that in considering the Copyrights [sic] Act, Congress understood that the development of satellites promised a new channel for communicating in the future. See H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 47 * * * (1976), * * * Moreover, in interpreting another provision of § 111, both the Second and the Eighth Circuits have concluded that transmission by "wires, cables or other communications channels," includes satellite broadcasts. See *Hubbard Broadcasting* v. *Southern Satellite*, 777 F.2d 393, 401-02 (8th Cir. 1985), *cert. denied*, 479 U.S. 1005 * * * (1986); *Eastern Microwave, Inc.* v. *Doubleday Sports, Inc.*, 691 F.2d 125, 131 (2d Cir. 1982), *cert. denied*, 459 U.S. 1226 * * * (1983).

SBN 940 F.2d at 1469, n. 3. Since the appellate court held that the district court erred in limiting the definition of a cable system to facilities located entirely within a single state, footnote 3 is merely dictum. However, in any event, the Copyright Office respectfully disagrees with the court's conclusion and its analysis of the House Report and the *Southern Satellite* and *Eastern Microwave* cases.

The Copyright Office does not agree with the court's conclusion that the Copyright Act's legislative history demonstrates that Congress intended satellite carriers to be covered by the cable compulsory license. The court cites a portion of the House Report that indicates why a general revision of the copyright law was necessary, and provides a history of developments after passage of the 1909 Copyright Act. The only reference to a "satellite" appears in the following passage.

> Since that time (1909) significant changes in technology have affected the operation of the copyright law. Motion pictures and sound recordings had just made their appearance in 1909, and radio and television were still in the early stages of their development. During the past half century a wide range of new techniques for capturing and communicating printed matter, visual images, and recorded sounds have come into use, and the increasing use of information storage and retrieval devices, *communications satellites*, and laser technology promises even greater changes in the near future. The technical advances have generated new industries and new methods for the reproduction and dissemination of copyrighted works, and the business relations between authors and users have evolved new patterns.

H.R. Rep. No. 1476, 94th Cong., 2d Sess. 47 (1976) (emphasis added). The Copyright Office concludes that this passage does not support an interpretation that Congress intended the cable license to apply to satellite carriers. At best, this passage is a recognition by Congress that "communications satellites" (not satellite carriers) existed and might have an impact on the reproduction and dissemination of copyrighted works, but the Copyright Office is unwilling to stretch this passage to support a conclusion that satellite carriers are cable systems. As stated in the NPRM, 56 FR 31580, 31590, the Office has always maintained that compulsory licenses are to be construed narrowly, and using the above passage from the House Report to embrace satellite carriers within the license would flout that principle.

The Copyright Office also respectfully disagrees with the *SBN* court's analysis of the *Southern Satellite* and *Eastern Microwave* decisions. Both cases involved interpretation and application of section 111(a)(3), better known as the passive carrier exemption. Section 111(a)(3) provides:

> The secondary transmission of a primary transmission embodying a performance or display of a work is not an infringement of copyright if—* * * (3) the secondary transmission is made by any carrier who has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of other, * * *

17 U.S.C. 111(a)(3). Neither *Southern Satellite* nor *Eastern Microwave* interpreted the phrase "wires, cables or other communications channels" in the context of section 111(f), nor did either court conclude that the phrases had identical meanings in both sections of the statute. This is not surprising, considering that section 111(a)(3) is explicitly describing what is not a cable system, and not subject to copyright liability or compulsory licensing. See the analyses of section 111(a) by then Register of Copyrights Barbara Ringer at the last hearings held on the copyright revision bill, explaining that "commercial cable systems are not exempted" by section 111(a). Hearings (on H.R. 2223) Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, 94th Cong., 1st Sess. 1820 (1975) (part 3).

The phrase "wires, cables, or other communications channels" was first used in the 1966 bill, H.R. 4347, 89th Congress, 2d Session, which was reported favorably by the House Judiciary Committee. The phrase was not then part of the definition of cable system, however; it appeared in the common or passive carrier exemption, which is now section 111(a)(3). The text is virtually identical except for the omission of the adjective "common" before the word "carrier," and the addition of the proviso. The 1966 House Report accompanying the bill starkly states that this provision would in no case apply to community antenna systems, as cable systems were called at the time, since such systems "necessarily select the primary transmissions to retransmit, and control the recipients of the secondary transmission * * *" H.R. Rep. No. 2237, 89th Cong., 2d Sess. 82 (1966).

It is incongruous to argue that authority which supports a finding that satellite carriers are not cable systems under section 111(a)(3) also supports a finding that they are cable systems under section 111(f). *Southern Satellite* and *Eastern Microwave*, therefore, are not authority for the proposition that the phrase "other communications channels" in section 111(f) includes satellite carriers.

The *SBN* court concluded that carriage of broadcast signals was permissible under the rules of the FCC in accordance with section 111(c)(1) because no FCC regulations forbid it. *SBN*, 940 F.2d at 1471. This position is corroborated by the comments of the FCC submitted in this proceeding. Federal Communications Commission, comments at 7. The Copyright Office expressly stated in the NPRM that it was not ruling on satellite carriers' sufficiency under section 111(c)(1), and it does not do so now. 56 FR at 31,590 ("(I)t is not necessary to rule on whether the retransmissions of satellite carriers are permissible under the rules and regulations of the FCC"). The Office therefore neither endorses nor disputes the *SBN* Court's conclusion that carriage of broadcast signals by satellite carriers is permissible under FCC rules.

Finally, the *SBN* court held that public policy reasons required an extension of the compulsory license to include satellite carriers, stating "there is no good reason to read 'cable system' narrowly to deny *SBN* its license, and to do so will do an injustice to those who live in rural areas." *SBN*, 940 F.2d at 1471. The court was concerned that if satellite carriers like *SBN* did not have access to a compulsory licensing

scheme, they would be unable to continue functioning, thereby denying "those in sparsely populated areas from receiving the quality television reception technology can provide." *Id.* The Copyright Office is not imbued with authority to expand the compulsory license according to public policy objectives. That matter is for the Congress. Rather, the Office is charged with the duty to interpret the statute in accordance with Congress' intentions and framework and, where Congress is silent, to provide reasonable and permissible interpretations of the statute. See *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Satellite carriers are not cable systems under section 111 because they simply do not satisfy the definitional requirements, and do not fit within the constraints Congress has placed on the cable compulsory license.

In support of this conclusion, the Copyright Office also finds there are other reasons, not addressed or discussed in the *SBN* case. Consideration of section 111 as a whole, and indeed the second part of the definition of a cable system in section 111(f), demonstrates that Congress intended the compulsory license to apply to localized retransmission services, and not nationwide retransmission services such as satellite carriers.

Examination of the overall operation of section 111 proves that the compulsory license applies only to localized retransmission services regulated as cable systems by the FCC. For example, the second part of the section 111(f) definition of a cable system refers to cable systems operating in "contiguous communities and from a single headend." Neither concept has any application for satellite carrier operations. Further, section 111(f) defines a "distant signal equivalent" with reference to broadcast television stations "within whose local service area the cable system is located." While it may be that satellite carriers have subscribers located within the service area of a broadcast station, it is obvious that the satellite carrier as a "cable system," is not so located, which is required by the definition.

Furthermore, it is apparent that the operation of section 111 is hinged on the FCC rules regulating the cable industry. The whole concept of distant versus local signals, which forms the foundation of the royalty scheme, is tied to the concept of the must carry rules and the "rules, regulations and authorizations of the Federal Communications Commission in effect on April 15, 1976." 17 U.S.C. 111(f). Satellite carriers were not, and are not, regulated by the FCC as cable systems, and the whole concept of must carry and the 1976 FCC rules have no application to them whatsoever. Nothing in the statute or its legislative history suggests that Congress intended section 111 to apply to nationwide retransmission services such as satellite carriers, or would explain how if Congress had intended the result advanced by satellite carrier commentators, the FCC rules regulating localized wired cable systems would apply to satellite operations.

In summary, the Copyright Office has reconsidered its decision announced in the NPRM with respect to satellite carriers, and reaches a final conclusion today that they are not cable systems within the meaning of section 111 and thus do not qualify for the cable compulsory license.

Refunds

As discussed in the NPRM, 56 FR at 31591, satellite carriers who have made filings with the Copyright Office claiming the section 111 license may request a refund. The Office reaffirms the NPRM refund statement, and notifies satellite carriers that refunds of monies submitted may be obtained by contacting the Licensing Division. Refunds will only be made on a requested basis, and requests must be received by the Office no later than March 1, 1994. Requests for refund should be sent to the Licensing Division, Copyright Office, Library of Congress, Washington, D.C. 20557.

B. MMDS Operations

(1) Eligibility Under Section 111

Unlike its conclusion with respect to satellite carriers, the Copyright Office made only a preliminary finding regarding the eligibility of MMDS operations for section 111 compulsory licensing and requested public comment. The Office has carefully considered and analyzed the comments, reviewed its position expressed in the NPRM, and reexamined the language and legislative history of section 111. The Office now reaches its final decision that MMDS facilities are not cable systems within the meaning of section 111, and therefore are not eligible for compulsory licensing.

The question of MMDS' eligibility for compulsory licensing created a vigorous debate as the commenting parties expressed what in their view was Congress's vision and intention in 1976. As noted in the discussion of the comments, the debate proceeded along four lines of analysis: Statutory construction, legislative history, judicial interpretation, and public policy. Although the first two are of ultimate primacy, the Copyright Office believes that its decision that MMDS facilities are not cable systems is not only supportable, but required under all four lines of inquiry.

Throughout this proceeding, the commentators supporting MMDS' eligibility for the compulsory license have criticized the Office's analytical approach, charging that it has violated the canons of statutory construction. They argue that the Office has ignored the plain meaning of the definition of a cable system appearing in section 111(f) and has construed its terms far too narrowly so as to constrict the license to unnecessary technological distinctions. See part IV, Discussion of the Comments, *supra*. They charge that the Office has also ignored the plain meaning of the phrase "other communications channels" appearing in section 111(f), and attached unwarranted technical requirements to its meaning. MMDS operations do make secondary transmissions via "other communications channels," they say, and the Office inquiry should have properly concluded with that finding.

Contrary to the assertions of these commentators, the Copyright Office believes it has followed the rules of statutory construction. The proper application of those rules affirms our conclusion that MMDS facilities are not cable systems. Much has been made of the phrase "other communications channels," and the pro-MMDS commentators have argued that the Office's interpretation of the statute is limited to the language of the definition of a cable system in section 111(f). If MMDS can be fit into the meaning of "other communications channels," then the matter is resolved and MMDS operators are cable systems. This view of section 111, however, ignores a cardinal rule of statutory construction: a statutory provision must be interpreted as a whole. "(E)ach part of a section should be construed in connection with every other part or section so as to produce a harmonious whole. Thus, it is not proper to confine interpretation to the one section to be construed." 2A Sutherland, *Stat. Const.* 46.05 (5th ed. 1992). Does inclusion of MMDS make sense with the terms and operation of section 111 as a whole? A plain reading of section 111 as a whole confirms the plain meaning of "other communications channels." If inclusion of MMDS conflicts with other provisions of section

111, or causes language in the statute to become superfluous or inoperative, then clearly the "plain meaning" of "other communications channels" cannot be said to include the operations of MMDS.

The other tenet of statutory construction for which the Office has been criticized is in construing the compulsory license narrowly. The Copyright Office has followed the principle of narrow interpretation of the compulsory license since inception of the Copyright Act in 1976, see *Compulsory License for Cable Systems*, 49 FR 14944, 14950 (1984), and this approach is fully consistent with the provisions of the Act, and the rules of statutory construction. See 73 Am. Jur. 2d 313 (1991) (stating that "statutes granting exemptions from their general operation must be strictly construed, and any doubt must be resolved against the one asserting the exemption.") Section 106 is a broad grant of exclusive rights to the owner of a copyrighted work, and the limitations to those rights are spelled out in the statute with specificity and precision. See 17 U.S.C. 107–115, 119; see also, 1976 House Report at 61 ("The approach of the bill is to set forth the copyright owner's exclusive rights in broad terms in section 106, and then to provide various limitations, qualifications, or exemptions in the 12 sections that follow."), adopting the recommendation of the Staff of House Committee on the Judiciary, 89th Cong., 1st Sess., Copyright Law Revision part 6, 1965 Supplementary Report of the Register at 14. (Comm. Print 1965). ("We believe that the author's rights should be stated in the statute in broad terms, and that the specific limitations on them should not go any further than is shown to be necessary in the public interest.")

Congress's treatment of the public performance right, which is the right impacted by secondary transmissions, confirms this principle of the Copyright Act. The Copyright Act of 1909 exempted nonprofit public performance of nondramatic music and literary works. The 1976 Copyright Act modifies this exemption. Not only are the key terms "perform" ("by means of any device or process"), "publicly" ("to transmit * * * by means by any device or process"), and "transmit" ("to communicate by any device or process") defined broadly, see 1976 House Report at 62–65, but the exceptions and limitations on the public performance right are specific and narrowly drawn. As one example, the general nonprofit exemption of the 1909 Act became a series of narrower exemptions of limitations in sections 110, 111, 116, and 118. The provision that most closely approximates the 1909 Act's nonprofit exemption, 17 U.S.C. 110(4), is hedged with qualifying language: it does not apply to transmissions to the public; there must be no purpose of direct or indirect commercial advantage; there must be no fee or other compensation to the performers, promoters, or organizers; there can be no direct or indirect admission charge unless the proceeds are used exclusively for educational, religious, or charitable purposes, and in those cases the author has the right to object in writing to the public performance.

As the owners of exclusive rights in a work, copyright holders possess a property grant which entitles them to negotiate and bargain for use of the work. This property right is limited only in well articulated exceptions appearing in the statute. The cable compulsory license is one of those exceptions, and the Copyright Office will not dilute the property right of copyright holders beyond what is expressed in the statutory exception.

In applying the principles of statutory construction and embracing a view that section 111 should be construed narrowly,[4] the Copyright Office has also examined the legislative history. Several commentators argued that it is improper for the Office to consult legislative history since, in their opinion, the language contained in the definition of a cable system is evident on its face and Congressional intent is therefore proved. The Copyright Office rejects this position, since the precise meaning of "other communications channels" is far from obvious. The Office also does not believe that failure to examine the legislative history of the Copyright Act when the meaning is not evident on its face would be consistent with its statutory obligation to interpret the Act. The true purpose of statutory interpretation is to determine and understand how Congress intended the law to operate, and a crucial element to achieving that understanding is examining the circumstances surrounding its passage, and what was said regarding its provisions. Consequently, the Copyright Office carefully examined the legislative history in order to answer the ultimate question: Did Congress intend the cable compulsory license to apply to non-wire secondary transmission services such as MMDS?

The third and fourth interpretory principles—judicial interpretation and public policy—played lesser to nonexistent roles. As noted *supra*, the Copyright Office is not technically bound by judicial decisions concerning interpretation of section 111 (unless, of course, the decision is a review of an Office rule or interpretation under the APA), but looks to those cases for guidance and helpful insight. The Office has already discussed that it did not find the decision in *SBN* persuasive with respect to satellite carriers' eligibility for compulsory licensing, and the reasoning expressed in the case is not helpful to the issue of MMDS. The series of cases dealing with the passive carrier exemption were also not enlightening on the question of what is a cable system, and therefore have limited application. As discussed, *supra*, general public policy issues are for Congress to resolve,[5] and the question of whether it is sound policy to create a compulsory license for MMDS operations is for future legislation. The statutory language and legislative history therefore form the basis for today's policy decision.

The Copyright Office begins its analysis with an examination of the requirements of a cable system in section 111(f), and then expands its consideration to the whole of section 111 to determine if MMDS inclusion is consistent with the operation of the compulsory licensing scheme. As discussed *supra*, a cable system is defined as: (1) A facility located in any State, Territory, Trust Territory or

[4] Congressional support for a narrow interpretation of section 111 can be found in the numerous references to FCC regulations on a certain date. Congress chose not to allow the cable license to expand by changes in FCC regulatory policy. Since low power stations were not "local" signals by application of the FCC's 1976 must-carry rules, Congress amended the definition of "local service area" in 1988 to create a statutory standard for determining when the signal of a low power station qualifies as a local signal.

[5] The Copyright Office must respectfully disagree with the comments of the Chief of the FCC's Mass Media Bureau, who urged that public policy considerations favor interpretation of the cable compulsory license to cover MMDS. We do not agree that once extended to MMDS the "license would remain available only to traditional cable systems and other highly localized nonbroadcast, noncommon carrier media of limited availability." FCC comments at 7. Many of the arguments now made by MMDS would be made by direct broadcasting services, by satellite carriers, by the telephone companies, and future unknown services. Since the 1976 Congress did not consider the public policy implications of extending a compulsory license to these non-cable services, the Copyright Office should not assert the authority to interpret the Copyright Act in this way. Unlike the FCC, which has recommended elimination of the cable compulsory license, Report in Gen. Docket 87–25, 4 FCC Rcd 6711 (1989), the Copyright Office in this proceeding takes no position on the legislative policy issues of eliminating or extending the cable compulsory license by amendment of the Copyright Act.

Possession, that (2) receives the signals of FCC licensed broadcast stations, and (3) makes secondary transmission of those signals, (4) by "wires, cables or other communications channels," to (5) subscribing members of the public who pay for such service. 17 U.S.C. 111(f). MMDS operators ostensibly satisfy requirements 1 through 3 and 5 in that they are some type of facility, located in a State, which receives television broadcast signals and charges subscribers for their receipt. It is also apparent that MMDS operators do make secondary transmissions, but the question remains whether they do so by "wires, cables or other communications channels" within the contemplation of the statute, and can satisfy the other relevant definitions and conditions of the cable compulsory license.

The House Report to the 1976 Copyright Act discusses the section 111(f) definition of a cable system, and states:

> The definition of a "cable system" establishes that it is a facility that in whole or in part receives signals of one or more television broadcast stations licensed by the FCC and makes secondary transmissions of such signals to subscribing members of the public who pay for such service. *A closed circuit wire system that only originates programs and does not carry television broadcast signals would not come within the definition.*

H.R. Rep. No. 1476 94th Cong., 2d Sess. 99 (1976) (emphasis added). The Copyright Office reads the highlighted passage as contemplating a cable system to be a "closed circuit wire system" that carries broadcast signals, since the language makes it clear that a closed circuit wire system which did not carry broadcast signals would not be a cable system within the meaning of section 111. This reading is confirmed by an earlier passage in the House Report which describes a typical cable system: "A typical system consists of a central antenna which receives and amplifies television signals *and a network of cables* through which the signals are transmitted to the receiving sets of individual subscribers." *Id.* at 88 (emphasis added). The House Report's use of the terms "closed circuit wire system" and "network of cables" suggests that the phrase "other communications channels" appearing in the statutory definition was not intended to include open transmission path services such as MMDS.

The idea of a closed circuit wire system is further supported through consideration of that history behind enactment of section 111. The problems presented by cable television during the general revision of the copyright law are well documented. The effort to work out the final compromise embodied in section 111 delayed passage of the Copyright Act for almost 10 years. See H.R. Rep. No. 1476, 94th Cong., 2d Sess. 89 (1976). Numerous private and governmental meetings were held by or with the interested parties in an effort to work out an agreement. At that time, there was a very clear picture of who and what the cable industry was and how it was regulated. The two watershed cable copyright cases, which prompted Congress to impose copyright liability on cable systems and led to the creation of section 111, *Fortnightly Corp.* v. *United Artists Television, Inc.*, 392 U.S. 390 (1968) and *Telepromter Corp.* v. *CBS, Inc.*, 415 U.S. 394 (1974), involved traditional wired, closed transmission path cable systems. Indeed, throughout the series of congressional hearings involving cable television there was constant reference to "wire television," and the terms "cable television" and "wire television" were used interchangeably. See, e.g., Copyright Law Revision, Hearings Before Subcomm. 3 of the House Committee on the Judiciary, 89th Cong. 1st Sess. 1342 (1966) (statement of Frederick Ford, FCC Commissioner). It is therefore apparent that Congress had a firm understanding of what a cable system was: a wired, closed transmission path service that carried broadcast signals. This is not surprising since throughout the debate period from the late 1960's through the early 1970's, wired cable television was the only kind of cable television that there was. See, *infra*, discussion regarding the emergence of non-wire multichannel video transmission services.

Congress's understanding of the cable industry and what it sought to regulate is confirmed by the manner in which it structured the compulsory license around the system of FCC regulation of cable. The 1976 House Report plainly states that section 111 creates a significant "interplay" between copyright and communications regulation:

> [A]ny statutory scheme that imposes copyright liability on cable television systems must take account of the intricate and complicated rules and regulations adopted by the Federal Communications Commission to govern the cable television industry. While the Committee has carefully avoided including in the bill any provisions which would interfere with the FCC's rules or which might be characterized as affecting "communications policy", the Committee has been cognizant of the interplay between the copyright and the communications elements of the legislation.

H.R. Rep. No. 1476, 94th Cong., 2d Sess. 89 (1976). The recognized "interplay" and reliance on FCC regulation is embodied directly in the statute. The "rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976," 17 U.S.C. 111(f) are the key to determining local versus distant status of broadcast signals, and are a crucial factor in computing copyright royalties. Further, the license only covers those broadcast signals whose carriage by a cable system is "permissible under the rules, regulations, or authorizations of the Federal Communications Commission," 17 U.S.C. 111(c)(1), invoking a whole body of FCC regulations governing wired closed transmission path systems and their permitted and nonpermitted signal carriage. In short, copyright liability and royalty compensation are entirely predicated on a system of regulation imposed on the wired cable television industry by the FCC in 1976. MMDS systems have never been regulated by the FCC as cable systems; consequently, it is difficult to imagine how Congress could have ever intended the compulsory license to extend to operations like MMDS when it hinged the very principle and function of the license on FCC regulation of the industry.

The only piece of legislative history offered by commentators supporting inclusion of MMDS within the concept of a cable system was a statement at the 1975 hearings on the revision bill. In summarizing the operation of section 111, Register of Copyrights Barbara Ringer stated:

> First, as to the scope of the provision: it deals with all kinds of secondary transmissions, which usually means picking up electrical energy signals, broadcast signals, off the air and retransmitting them simultaneously by one means or the other—usually cable but sometimes other communications channels, like microwave and apparent laser beam transmissions that are on the drawing boards if not in actual operation.

Hearings on H.R. 2223 before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary, 94th Cong., 1st Sess. 1820 (1976). Pro-MMDS commentators argue that this passage amounts to a recognition by the Congress that other types of non-wired transmission services existed or were contemplated in the near future, and that the section 111 definition of a cable system would be broad enough to encompass those new systems. This argument is faulty for several reasons.

First, the argument fails to place Ringer's quote in proper context. As discussed earlier, the ten plus years of legislative process demonstrates that Congress had an understanding of cable systems as wired, closed transmission path services regulated by the FCC. It is therefore unlikely that Congress would abruptly change this perception and desire to include all types of new retransmission services, not regulated by the FCC, without noting the change in either the statute or the legislative history. The phrase "other communications channels" was not new to the 1976 revision bill, and in fact had appeared in bills as far back as 1966. See, H.R. Rep. No. 2237, 89th Cong., 2d Sess. 7 (1966). Ringer's passage does not offer a description of "other communications channels," because she was describing section 111 overall and not discussing the definition of a cable system. It is clear that section 111 as a whole deals with various kinds of secondary transmissions, subjecting some secondary transmissions to full liability in paragraph (b) and exempting others in paragraph (a). Only cable system secondary transmissions, however, are eligible for the compulsory license of paragraphs (c), (d), and (e). Moreover, Ringer was simply referring to the obvious fact that microwave transmissions were used by traditional wired cable systems, and she observed that wired systems might use laser beams in the future. Cable operators used microwave to distribute distant broadcast signals and, in some cases, retransmit signals from one headend to another.[6]

Second, the argument that the Ringer passage supports the position that Congress recognized new types of non-wired retransmission services and sought to include them within the compulsory licensing scheme directly conflicts with another provision of section 111. Section 111(b) imposes liability on those who make secondary transmissions of copyrighted works where the primary transmission is not made to the public at large but is controlled and limited to reception by certain members of the public. The House Report gives examples of such services: "Examples of transmissions not intended for the general public are background music services such as MUZAK, closed circuit broadcasts to theatres, *pay television (STV)* or pay cable." H.R. Rep. No. 1476, 94th Cong., 2d Sess. 92 (1976) (emphasis added). Thus, "closed circuit wire systems" which are not subject to compulsory licensing because they do not carry broadcast signals, see *id.* at 99 (definition of a cable system), along with pay cable and subscription television are clearly subject to full copyright liability. The pro-MMDS commentators fully described how, in its initial incarnation as MDS, MMDS was a pay television (STV) service:

> At the time the Copyright Act ("Act") was promulgated, channels known as MDS–1 and MDS–2 were the only channels authorized for commercial,cable-type service. These frequencies were used in most major markets for the *distribution of a single channel pay TV service* and were in use at the time of passage of the Act.

Technivision, Inc., comments at 4 (emphasis added). Congress was therefore very much aware of MDS in 1976,[7] and specifically chose to subject it to full copyright liability through section 111(b). There is nothing in the Copyright Act or its legislative history even suggesting that Congress contemplated that one day MDS might become something other than STV, and that at that time it should receive the benefits of section 111. To create such a presumption reads far too much into the statute, and violates the principle that compulsory licenses should be construed narrowly.

Finally, it cannot be denied that Congress intended the compulsory license to be tied to a cable industry which was highly regulated by the FCC. See *supra*. The FCC's definition of a cable system, in effect while the Copyright Act was passed, defined a cable system as "redistribut(ing) * * * signals by wire or cable * * *."[8] While the reference to "by wire or cable" was dropped by the FCC in 1977, the Commission specifically stated that the change was not to be "interpreted to include such non-cable television broadcast station services as Multipoint Distribution Systems * * *." First Report and Order in Docket 20561, 63 FCC 2d 956, 966 (1977). Regulation of cable systems from a communications standpoint, therefore, was limited to traditional, wire-based, closed path transmission services. Congress chose to freeze several key definitions to the FCC rules in effect on April 15, 1976 or on the date of enactment (October 19, 1976). The whole structure of the cable compulsory license and the amount of royalties payable depends on the 1976 FCC regulations. This highly complicated body of rules, which was critical to the balancing of copyright and cable user interests, did not and does not apply to MMDS facilities.[9] As the Motion Picture Association of America, Inc. correctly points out, including a video provider in the compulsory license which is not subject to FCC regulation would ruin the critical balance established in 1976. Motion Picture Association of America, Inc., comments at 5. For example, the syndicated exclusivity rules, very much a part of cable regulation in 1976 and now recently reinstituted in a different form by the FCC, do not apply to MMDS operators, thereby allowing them to import as much distant signal programming as desired, notwithstanding the exclusive contracts entered into by broadcast stations. It is therefore counter-intuitive to assert that Congress intended a technology neutral compulsory license in 1976 applicable to

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[6] Pro-MMDS commentators assert that they, like wired systems, make use of cables and wires in addition to microwave in the distribution of broadcast signals. This argument ignores the fundamental nature of wired systems in contrast to non-wired distribution services: Traditional wired systems use a network of cables as the primary method of retransmitting the broadcast signals; wireless systems like MMDS may use wire in part of their operations (e.g., to effect the reception of an electronic signal in the subscribers' television set) but the primary method of retransmitting the signals is through the broadcast spectrum by wireless means.

[7] MDS, which was authorized in 1974, subsequently became MMDS in 1983 when the FCC reallocated eight of the ITFS channels for commercial use, and made them available for video distribution. 94 FCC 2d 1203 (1983).

[8] The FCC, notwithstanding its use of the phrase "by wire or cable," certainly understood that microwave was used by traditional cable systems to retransmit distant signals. In fact, the FCC first indirectly regulated the cable industry by regulating issuance of microwave licenses to those who serviced the cable systems. In 1962, the FCC initially refused to grant a microwave license, but in 1965 it issued rules governing microwave carriers serving the cable industry.

[9] Pro-MMDS commentators argue that the Copyright Office in its cable regulations provides that entities not regulated as "cable systems" by the FCC may nevertheless satisfy the Copyright Act's definition and qualify for the compulsory license. The Copyright Office, however, has never interpreted its regulation affirmatively to allow wireless services, which have always been excluded by the FCC as an entire industry from regulation as a cable system, to qualify for the compulsory license. The Copyright Office regulation at 37 CFR 201.17(b)(2) has been interpreted and applied by the Office to mean that a wired system qualifies under the Copyright Act's definition even if the wired system is not regulated by the FCC as a cable system "because of the number or nature of its subscribers or the nature of its secondary transmissions." FCC regulations have sometimes excluded wired systems with fewer than 1000 or 3000 subscribers. The Copyright Office regulations also provide that "an 'individual' cable system is each cable system recognized as a distinct entity under the rules, regulations, and practices of the Federal Communications Commission." Therefore, the cable system must be recognized as such under the rules of the FCC even if the FCC elects not to subject the system to certain rules applied to other wired cable systems. *Id.*

all types and forms of video delivery systems, regulated or unregulated, against a legislative and historical backdrop of a dominant industry distributing signals to its subscribers by wired closed transmission paths, which was highly regulated by the FCC.

In summary, the Copyright Office formally concludes that MDS and MMDS operations do not satisfy the definition of a cable system appearing in section 111, and therefore do no qualify for cable compulsory licensing.

(2) Refunds

The Copyright Office has had a practice of accepting and will continue to accept statements of account and royalty payments from MMDS operators without pronouncing whether MMDS facilities qualified for compulsory licensing. The Office has also received a number of filings from MMDS operators without knowledge of them as such, since the Statement of Account do not require such identification. Given the Office's final decision, effective January 1, 1994, that MDS and MMDS facilities are not cable systems and do not qualify for section 111 compulsory licensing, refunds of monies submitted may be obtained by contacting the Licensing Division of the Copyright Office. Refunds will only be made on a requested basis, and requests must be made in writing no later than March 1, 1994. Refund requests should be sent to Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

* * * * *

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since the Act affects only those entitles of the Federal Government that are agencies as defined in the Administrative Procedure Act.[10]

[10] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (*i.e.*, "all actions taken by the Register of Copyrights under this title (17)," except with respect to the making of copies of copyright deposits) (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

List of Subjects in 37 CFR Part 201

Cable systems; Cable compulsory license.

Final Regulation

In consideration of the foregoing, part 201 of 37 CFR chapter II is amended in the manner set forth below.

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; 201.7 is also issued under 17 U.S.C. 408, 409, and 410; 201.16 is also issued under 17 U.S.C. 116; 201.17 is also issued under 17 U.S.C. 111.

2. Section 201.17 is revised by adding paragraph (k) to read as follows:

§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(k) *Satellite carriers and MMDS not eligible.* Satellite carriers, satellite resale carriers, multipoint distribution services, and multichannel multipoint distribution services are not eligible for the cable compulsory license based upon an interpretation of the whole of section 111 of title 17 of the United States Code. At its election, any such entity who paid copyright royalties into the Copyright Office in an attempt to comply with 17 U.S.C. 111 may obtain a refund of the royalties paid by submitting a written request no later than March 1, 1994, addressed to the Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress

[FR Doc. 92–1858 Filed 1–28–92; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 186

[PP 9F3743 and FAP 1H5614/R1137; FRL–4008–2]

RIN 2070–AB78

Pesticide Tolerances and Food Additive Regulation for Clethodim

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These regulations establish tolerances with an expiration date for the residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) in or on the following raw agricultural commodities (RACs): soybeans at 10 parts per million (ppm); cottonseed at 1 ppm; meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.2 ppm; milk at 0.05 ppm; eggs at 0.2 ppm; also, the following food additive regulation for the feed additive commodities soybean soapstock at 15 ppm and cottonseed meal at 2 ppm. These regulations were requested by Valent U.S.A. Corp. and establish maximum permissible levels for residues of the herbicide in or on these RACs and the feed commodities. The tolerances expire on January 31, 1994.

EFFECTIVE DATE: These regulations become effective on January 29, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3743 and FAP 1H5614/R1137], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 19, 1989 (54 FR 21664), EPA issued a notice announcing that Valent U.S.A. Corp., 1333 North California Blvd., Walnut Creek, CA, had submitted pesticide petition 9F3743 to EPA under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing to amend 40 CFR part 180 by establishing tolerances for residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on soybeans at 10 ppm; cottonseed at 5 ppm; meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.2 ppm; milk at 0.05 ppm; and eggs at 0.5 ppm.

On September 5, 1990, Valent subsequently submitted a revision to PP 9F3743 to amend the proposed tolerances on cottonseed from 5 ppm to 1 ppm and eggs from 0.5 ppm to 0.2 ppm.

On September 9, 1991, Valent submitted a feed additve petition (FAP

1H5614) to EPA under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 348), proposing to amend 40 CFR part 186 by establishing a regulation to permit the residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety on the feed commodities soybean soapstock at 15 ppm and cottonseed meal at 2 ppm. In the Federal Register of September 18, 1991 (56 FR 47210), EPA issued a notice of a feed additive petition (FAP 1H5614) proposing to amend 40 CFR part 186 by establishing a regulation to permit the residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on soybean soapstock at 15.0 ppm and cottonseed meal at 2 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data described below were considered in support of these tolerances and food additive regulations.

1. Several acute toxicology studies placing the technical-grade herbicide in Toxicity Category III.

2. A 2-year rat chronic toxicity/carcinogenicity study found the compound to be noncarcinogenic to rats under the conditions of the study. The systemic no- observed-effect level (NOEL) was 500 ppm (approximately 19 mg/kg/day), and the systemic lowest-observed-effect level (LOEL) was 2,500 ppm (approximately 100 mg/kg/day) based on the observed body weight gain, the increases in liver weights, and the presence of centrilobular hepatic hypertrophy.

3. An 18-month mouse carcinogenicity study which showed the compound to be noncarcinogenic to mice under the conditions of the study. The systemic NOEL was 200 ppm (8 mg/kg/day), and the systemic LOEL was 1,000 ppm (50 mg/kg/day) based on treatment-related effects on survival, red cell mass, absolute and relative liver weights, and microscopic findings in liver and lung.

4. A 1-year feeding study in dogs with a systemic NOEL of 1 mg/kg/day in both sexes and an LOEL of 75 mg/kg/day based on increased absolute and relative liver weights, and alteration and clinical chemistry.

5. A developmental toxicity study in rats with a developmental and maternal NOEL and LOEL of 100 and 350 mg/kg/day, respectively. The NOEL and LOEL for developmental toxicity were based on reductions in fetal body weight and increases in skeletal anomalies.

6. A developmental toxicity study in rabbits with a maternal toxicity NOEL and LOEL of 25 and 100 mg/kg/day, respectively. Maternal toxicity was manifested as clinical signs of toxicity and reduced weight gain and food consumption during treatment. Developmental toxicity was not observed, and therefore the developmental toxicity NOEL was 300 mg/kg/day (HDT).

7. A two-generation reproduction study in the rat with a parental toxicity NOEL and LOEL of 500 and 2,500 ppm (51 and 263 mg/kg/day), respectively, based on reductions in body weight in males, and decreased food consumption in both generations. The NOEL for reproductive toxicity was 2,500 ppm (263 mg/kg/day, HDT).

8. A mutagenicity test with *Salmonella* Ames assay showed nonmutagenicity in three strains. Clethodim imine sulfone was negative for reverse gene mutation in *Salmonella* and *E. coli* exposed up to 10,000 ug/plate with or without activation. Clethodim was negative for chromosomal damage in bone marrow cells of rats treated orally up to toxic doses (1,500 mg/kg).

The dietary risk exposure analysis used a RfD of 0.01 mg/kg body weight (bw)/day based on a NOEL of 1.0 mg/kg/bw/day and a safety factor of 100. Using anticipated residues and 100 percent crop treated, the results for the overall U.S. population were 0.000211 mg/kg/bw/day, representing 2.1 percent of the RfD and 15.8 percent of the RfD for nonnursing infants. There are no other published tolerances for this chemical. The pesticide is useful for the purpose of this rule. The Agency does not believe that these tolerances and food additive regulations pose significant risks.

A common moiety analytical method for tolerance enforcement (gas chromatography with a flame photometric detector in the sulfur mode) was satisfactorily tested and is available. This method, however, cannot distinguish between clethodim and sethoxydim, a closely related herbicide with tolerances established under 40 CFR 180.412. A compound-specific confirmatory method (HPLC with a UV detector) that can distinguish between derivatives of clethodim and sethoxydim was tested in the Agency laboratory. Considerable revisions were made by the laboratory in order to obtain satisfactory analytical results. EPA's revisions to the method will be made available for enforcement purposes. The revised specific method has been returned to Valent to be rewritten and subsequently validated by an independent laboratory. Subsequent validation is generally required prior to EPA validation of the method, but in this case EPA has already validated the method. Nevertheless, an independent validation is deemed useful to confirm that the revisions made by EPA are adequately explained. These tolerances and food additive regulations are being established with an expiration date to assure timely submission of the rewritten method and subsequent validation.

The nature of the residue is adequately understood, and a common moiety analytical method (gas chromatograph with a flame photometric detector in the sulfur mode) and a compound-specific confirmatory method are available for enforcement purposes. Prior to publication in the Pesticide Analytical Manual, Vol. II, both methods are available in the interim to anyone interested in pesticide enforcement. They can be requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

There are currently no actions pending against the registration of this chemical. Based on the above information, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances and food additive regulation are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the

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requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180

Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 23, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 is revised to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By adding new § 180.458, to read as follows:

§ 180.458 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

Interim tolerances that expire on January 31, 1994 are established for the combined residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the following raw agricultural commodities.

Commodity	Parts per million
Cattle, fat	0.2
Cattle, meat	0.2
Cattle, mbyp	0.2
Cottonseed	1.0
Eggs	0.2
Goats, fat	0.2
Goats, meat	0.2
Goats, mbyp	0.2
Hogs, fat	0.2
Hogs, meat	0.2
Hogs, mbyp	0.2
Horses, fat	0.2
Horses, meat	0.2
Horses, mbyp	0.2
Milk	0.05
Poultry, fat	0.2
Poultry, meat	0.2
Poultry, mbyp	0.2
Sheep, fat	0.2
Sheep, meat	0.2
Sheep, mbyp	0.2
Soybeans	10.0

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 186.1075, to read as follows:

§ 186.1075 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

Interim tolerances that expire on January 31, 1994 are established for residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)-propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the following feeds.

Feed	Parts per million
Cottonseed meal	2.0
Soybean soapstock	15.0

[FR Doc. 92-2165 Filed 1-28-92; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Parts 1001, 1002, 1003, 1004, 1005, 1006 and 1007

RIN 0991-AA47

Health Care Programs: Fraud and Abuse; Amendments to OIG Exclusion and CMP Authorities Resulting From Public Law 100-93

AGENCY: Office of Inspector General, HHS.

ACTION: Final rule.

SUMMARY: This final rule implements the OIG sanction and civil money penalty provisions established through section 2 and other conforming amendments in the Medicare and Medicaid Patient and Program Protection Act of 1987, along with certain additional provisions contained in the Consolidated Omnibus Budget Reconciliation Act of 1985, the Omnibus Budget Reconciliation Act (OBRA) of 1987, the Medicare Catastrophic Coverage Act of 1988, OBRA of 1989, and OBRA of 1990. Specifically, these regulations are designed to protect program beneficiaries from unfit health care practitioners, and otherwise to improve the anti-fraud provisions of the Department's health care programs under titles V, XVIII, XIX and XX of the Social Security Act.

EFFECTIVE DATE: These regulations are effective on January 29, 1992.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Medicare and Medicaid Patient and Program Protection Act (MMPPPA) of 1987, Public Law 100-93, enacted on August 18, 1987 and effective on September 1, 1987, recodified and expanded the Secretary's authority to exclude various individuals and entities from receiving payment for services that would otherwise be reimbursable under Medicare (title 18), Medicaid (title 19), the Maternal and Child Health Block Grant Program (title 5) and the Social Services Block Grant (title 20). In addition, new civil money penalty (CMP) authorities, and technical amendments to existing CMP provisions, were established under MMPPPA.

MMPPPA both consolidated many of the Secretary's pre-existing exclusion authorities into section 1128 of the Social Security Act, and added significant new grounds for exclusion under those authorities. The Secretary's authority under this section of the Act has been delegated to the Department's Office of Inspector General (OIG). (53 FR 12999, April 20, 1988).

A. Expanded Exclusion Authorities

MMPPPA gives the OIG added authority to control who may obtain payment for services furnished to program beneficiaries. Section 1128 of the Act provides for both mandatory and permissive exclusions. The mandatory exclusions (section 1128(a) of

the Act) require that an individual or entity that has been convicted of certain types of crimes be excluded, and that the exclusion be for a period of not less than five years. Under authorities set forth in section 1128(b) of the Act, the OIG has the discretion to determine whether, and for how long, to impose the permissive exclusions.

MMPPPA establishes two categories of permissive exclusions: (1) Derivative exclusions, i.e., ones involving the authority to exclude an individual or entity from Medicare and the State health care programs based on an action previously taken by a court, licensing board or other agency; and (2) non-derivative exclusions, based on determinations of misconduct that originate with the OIG. For derivative exclusions, the OIG would not be required to re-establish the factual or legal basis for such underlying sanction; for non-derivative exclusions, the OIG would be required, if the case is appealed to an administrative law judge (ALJ), to make a prima facie showing that the improper behavior did occur.

B. State Health Care Programs: Exclusions and Waivers

The Act provides for exclusion not only from the Medicare program, but also from State health care programs, including those programs covered under titles V, XIX, and XX of the Act. The statute makes clear that, in most cases, an individual or entity excluded from Medicare is to be excluded from all of these programs, and the exclusion is to be for the same period of time. The OIG is to consider requests for a waiver from exclusion from one or more of the State health care programs in limited situations.

II. Provisions of the Proposed Regulations

Proposed regulations intended to implement section 2 of MMPPPA and certain conforming amendments found elsewhere in that statute were published in the **Federal Register** on April 2, 1990 (55 FR 12205) for public comment and consideration. Certain relevant provisions contained in the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99–272, and the Medicare Catastrophic Coverage Act of 1988, Public Law 100–360, were also contained in that proposed rulemaking. Set forth below is a brief summary of that rulemaking and the proposed revisions to 42 CFR chapter V.

Part 1001

The basic structure of the proposed regulations in this part set forth for each type of exclusion the basis or activity that would justify the exclusion, and the considerations the OIG would use in determining the period of exclusion.

The proposed regulations set forth mandatory exclusions for any individual or entity that was convicted of (1) a criminal offense related to the delivery of an item or service under Medicare or a State health care program, or (2) patient abuse or neglect. In accordance with the statute, there is to be a minimum 5 year exclusion. The regulations proposed that the exclusion could be for a longer period if aggravating circumstances existed with respect to the individual or entity.

The proposed regulations also addressed two categories of permissive exclusions to be set forth in part 1001. The first category—derivative exclusions—was designed to address exclusions based on an action previously taken by a court, licensing board or other agency. These include convictions for certain types of fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, obstruction of investigations and certain types of offenses related to controlled substances. While Congress did not set a mandatory minimum period for these types of exclusions, we proposed that exclusions derived from such prior convictions be for a period of 5 years, with some flexibility to decrease or increase the period.

The second category of permissive exclusions—non-derivative exclusions—is to be based on OIG-initiated determinations of misconduct. Several of these non-derivative exclusions were essentially recodifications of the existing regulations, while others reflected the newly enacted authorities. With respect to the non-derivative exclusions, the proposed regulations were designed to:

- Permit the exclusion of those individuals and entities who provide unnecessary or substandard care not only to Medicare and State health care program beneficiaries, but to any person. We proposed to use a 5-year exclusion period as a benchmark for these exclusions. Similarly, the regulations proposed a 5-year exclusion period for health maintenance organizations and similar entities subject to exclusion for failure to provide medically necessary items and services where such failure has adversely affected, or has a substantial likelihood of adversely affecting, program beneficiaries.
- Expand the bases for exclusion to include any act that is described in sections 1128A or 1128B of the Social Security Act. No benchmark was set in the proposed regulations for the exclusion period; a list of factors that the OIG would consider in setting the length of an exclusion was included.
- Provide for the exclusion of entities when they are owned or controlled by individuals who have been convicted, excluded or have had CMPs or assessments imposed against them. The rulemaking proposed that an entity excluded under this provision be excluded for a period corresponding to the exclusion period established for the individual whose relationship with the entity was the basis for the exclusion.
- Address new exclusion authorities relating to the failure to provide information to the Department or its agents. Exclusions were set forth for failure to grant immediate access upon reasonable requests to certain agency representatives. In the context of this provision, we proposed to define "immediate access" and "reasonable request" to ensure access on the spot in certain defined circumstances. Exclusions were also proposed where individuals or entities failed to provide immediate access to investigators or agents of the OIG or the State Medicaid Fraud Control Units (MFCUs) in conjunction with the investigators' or agents' review of documents related to the control of fraud and abuse in the Department's programs. Except in unusual situations, we proposed 24 hours to be a sufficient period to gain access to the information.
- Provide for the exclusion of a hospital that has failed to comply substantially with a corrective action plan that has been required under section 1866(f)(2)(B) of the Act. The rulemaking proposed that exclusions would be based on the Health Care Financing Administration's (HCFA's) determination that the hospital substantially failed to comply with such corrective action.
- Provide exclusions based on a determination by the Public Health Service (PHS) that an individual failed to pay back covered obligations and loans.

Part 1002

Since the new requirements of Public Law 100–93 are being incorporated into part 1001 (which would require State health care programs, including Medicaid, to exclude those whom the OIG has excluded under Medicare), the proposed new part 1002 was designed to set forth provisions pertaining only to State agency-initiated exclusions. The rulemaking proposed certain minimal requirements on State agencies when they undertake such exclusions—

requirements that are substantially consistent with OIG procedures and ensure adequate due process.

Part 1003

The proposed revisions to part 1003, addressing CMPs, were designed to implement the statutory changes affecting section 1128A of the Act, and incorporate a number of statutory revisions made as a result of Public Laws 100–203, 100–360 and 100–485.

Parts 1004 and 1005

Revisions to part 1004 were proposed consistent with the proposed establishment of the new part 1005. Through the revising and recodification of existing regulations, a new part 1005 was proposed to address various OIG hearing procedures. Specifically, proposed part 1005 was designed to govern ALJ hearings and subsequent appeals to the Secretary for all OIG sanction cases.

Part 1006

A new part 1006 was proposed to address the implementation of the OIG's testimonial subpoena authority for investigations of cases under the CMP law.

Part 1007

Regulations addressing State MFCUs, previously set forth in part 1002, subpart C, were proposed to be recodified into a new part 1007.

In response to the proposed rulemaking, we received a total of 61 timely-filed public comments from various provider groups, medical facilities, professional and business organizations and associations, medical societies, State and local government entities, private practitioners and concerned citizens. The comments included both general concerns regarding the impact of these regulations, and specific comments on those areas about which we requested public input. A summary of the comments received and our responses to those comments follows.

III. General Comments on the Proposed Rule

A. Definition of "Furnished"

In the proposed rule, we invited comments on whether the definition of the term "furnished" set forth in § 1001.2 should be revised to explicitly encompass health care manufacturers and other entities who do not receive payments for items or services directly from Medicare or State health care programs, but rather supply items or services to providers, practitioners or suppliers who *do* receive payments from these programs. We explained that if the term "furnished" is defined narrowly, it may inappropriately limit the effect of an exclusion from Medicare and State health care programs.

We received numerous comments on this issue—some supporting and some challenging our authority to revise the definition of "furnished." While we believe that the statute permits us to include entities that "furnish" items covered by the Medicare program but do not receive program payment directly, we have decided not to provide for this in regulations. Because the effect of exclusion is denial of payment for items or services furnished by an excluded individual or entity, it would be difficult to administer exclusions against entities which the Secretary does not directly reimburse. Thus, for the present time, to the extent that manufacturers, suppliers and distributors do not receive payment directly from the Medicare and State health care programs for the items they supply, these regulations will not affect them.

This clarification is in no way intended to limit our exclusion authority under section 1128(b)(8) of the Act. When this statutory provision is applicable, we can assure that no payment is made for items or services furnished by sanctioned persons whether or not they directly receive payments from Medicare and State health care programs, since we can exclude the entities they manage or control which *do* receive such payments.

In this final rule, we are retaining the definition of "furnished" currently found in § 1001.2 of the regulations with one modification, and placing the definition in § 1001.2 under General Definitions. We have deleted the parenthetical statement in the existing definition which we believe is unnecessary in light of the changes made in section 1862(e) of the Act and reflected in § 1001.1901 of these regulations. These provisions, which explicitly incorporate the concept that payment may not be made for items and services provided under the direction of or by prescription of an excluded individual, render the parenthetical statement redundant.

B. Constitutionality of Administrative Exclusions Based on Criminal Convictions

Comment: Several comments expressed concern that exclusions imposed by the Federal Government based upon prior Federal or State criminal convictions may constitute a second "punishment" for a single offense in violation of the double jeopardy clause of the Fifth Amendment of the Constitution.

Response: Exclusions based upon criminal convictions do not constitute an impermissible second punishment under the double jeopardy clause. Exclusions are civil sanctions, not criminal. Only in rare cases will a civil sanction imposed after a criminal sanction violate the double jeopardy clause, and even in those rare cases, only where the sanction may not fairly be characterized as remedial, but only as a deterrent or retribution (see *United States* v. *Halper*, 109 S.Ct. 1892, 1902 (1989)). Thus, under *Halper*, whether a civil sanction constitutes punishment depends in large part upon the goal served by the sanction—if the second civil sanction can be said to serve a remedial purpose, its imposition does not violate the double jeopardy clause (*Halper*, 109 S.Ct. at 1902).

The primary purpose of an exclusionary sanction is remedial, not punitive. When the OIG imposes an exclusion under section 1128 of the Act, it is simply carrying out Congress' intent to protect the Medicare and Medicaid programs from individuals or entities who have already been tried and convicted of a criminal offense (see *Dewayne Franzen* v. *The Inspector General*, Departmental Appeals Board (DAB) decision, Docket No. 90–37 (June 13, 1990), page 11). Further, Congress has made clear that the Department's exclusionary authority was expanded by MMPPPA in 1987 to provide HHS with sufficient authority to better protect the integrity of the Medicare and Medicaid programs and program beneficiaries from providers who have pled guilty to criminal charges. (see Report of Committee on Energy and Commerce, reprinted in 1986 U.S. Cong. and Ad. News, pg. 3665; and 133 Cong. Rec. S 10537 (daily ed. July 23, 1987)). Thus, exclusions serve a remedial purpose and therefore do not constitute a second punishment under *Halper*.

Consistent with the above, courts have held that exclusions do not amount to a second punishment under *Halper*, since "the Inspector General's goals are clearly remedial and include protecting beneficiaries, maintaining program integrity, fostering public confidence in the program, etc." (see *Greene* v. *Sullivan*, No. CIV–3–89–758 (E.D. Tenn. Feb. 8, 1990), page 3; *Matter of David Cooper, R.Ph.*, ALJ Decision, Docket No. C–51 (July 24, 1990); *Matter of Joyce Faye Hughey*), ALJ Decision, Docket No. C–201 (August 9, 1990)). In a number of these cases, exclusions have been compared to professional license revocations for criminal convictions, "which have the function of protecting the public" (see *DeWayne Franzen* v.

The Inspector General, Id. at page 11; *Greene* v. *Sullivan, Id.* at 3). Further, it has been held that remedial sanctions that involve the revocation of a privilege voluntarily granted are civil in nature and do not invoke the double jeopardy clause (see *Helvering* v. *Mitchell*, 303 U.S. 399 (1938)). Thus, Medicare and Medicaid exclusions do not amount to "punishment" for purposes of the double jeopardy clause.

Further, even assuming, that exclusions were penal in nature, the double jeopardy clause would not be implicated where the Federal government imposes an exclusion based upon a *State* conviction. Under the "dual sovereignty doctrine," double jeopardy does not attach to a subsequent Federal prosecution based on facts which led to a State conviction (see *United States* v. *Anthony*, 727 F. Supp. 792 (E.D.N.Y. 1989); *Abbate* v. *United States*, 359 U.S. 187 (1959); *Chapman* v. *United States Department of Health and Human Services*, 821 F.2d 523 (10th Cir. 1987); and *United States* v. *Lanza*, 260 U.S. 377, 382 (1922)). Under this doctrine, States are considered to be a "separate sovereign" from the Federal government, because a State's power to prosecute is derived from its own inherent sovereignty, and not from the powers of the Federal government (see *United States* v. *Wheeler*, 435 U.S. 313, 320 (1978)). Thus, under the dual sovereignty doctrine, exclusions based upon prior State convictions do not violate the double jeopardy clause. In light of the foregoing, we do not agree with the comments on the question of the constitutionality of our exclusion authorities.

IV. Specific Comments on the Proposed Regulations

A. Part 1001, Subpart A—Definitions

1. Professionally Recognized Standards of Health Care

Comment: A few commenters expressed the view that the proposed definition of "professionally recognized standards of health care" inadequately defines the term, that is, it does not (i) adopt traditional malpractice standards, (ii) define "peer," and (iii) take into account differences of opinion among physicians regarding practice standards. Some commenters also felt that the definition should specifically recognize and make allowances for variations in regional or local community standards of care, that is, different standards for rural and urban areas.

Response: We recognize that the proposed definition of "professionally recognized standards of health care" does not provide a litmus test which can be easily applied in every case. It would be very difficult to formulate a wholly objective standard in the area of medical practice, where a certain amount of subjectivity in judgment is inevitable. The OIG relies upon the Utilization and Quality Control Peer Review Organizations (PROs) and the Medicare carriers to determine on a case-by-case basis whether the quality of items or services provided has failed to meet professionally recognized standards of health care. (PROs are also required to take interventions other than sanctions for confirmed quality problems.) We do not feel that it is necessary to define the term "peer," but would note that the dictionary defines a peer as one's "equal," and our assessment of who qualifies as a "professional peer" would be consistent with that definition and with the view expressed by Congress in enacting the PRO statute that licensed physicians "practicing in the area" are peers (see House Conf. Rpt. 97–760).

Note: HCFA published a final rule on February 27, 1984 (49 FR 7202) which defined a PRO area to be a State.

With respect to the request that the regulations specifically provide for variations in standards for individual localities and service areas, we have decided not to modify the definition. However, while the definition will continue to provide that the standards will be state or national ones, that does not mean that those health care facilities with minimal technical capability and expertise will be evaluated as if they were high-tech facilities. The quality of the care provided will be assessed in light of all of the surrounding circumstances, including the capabilities of the facility. For example, in a facility with limited technical equipment or expertise, we would assess whether a patient who required more sophisticated treatment than was available at that facility should have been transferred to another facility, and whether professionally recognized standards were met in determining whether transfer was appropriate and that appropriate care was rendered to facilitate the transfer.

Comment: One commenter pointed out that the definition of "professionally recognized standards of health care" is too narrowly drafted and should be modified to encompass "professional peers of the individual and entity." This commenter also raised a number of related questions about the interpretations and use of this definition in evaluating the quality of care provided by nursing homes where, according to the commenter, the standards governing the industry are primarily regulatory, not peer-based. The commenter asked, for example, whether this definition meant to encompass citations for "substandard care" issued against nursing homes under State and Federal survey and certification guidelines. The commenter states that citations by regulatory agencies which require corrective actions on the part of nursing homes are extremely common and do not normally result in exclusion. The commenter further suggested that nursing homes could be deterred from seeking voluntary accreditation from the Joint Commission for Accreditation of Healthcare Organizations (JCAHO) if failure on the part of an accredited nursing home to meet any of JCAHO's standards, which differ in some respects from state and federal regulatory standards, could be taken as failure to meet "professionally recognized" standards.

Response: We agree that the definition should be modified to include the word "entity," and we have amended the regulations accordingly. With respect to the commenter's concerns about the application of this definition to nursing homes and the potential liability of nursing homes under § 1001.701 of these regulations, the following explanation may be helpful. The Inspector General has the legal authority to exclude all kinds of health care providers, including nursing homes, if they fail to furnish items or services which meet "professionally recognized standards of health care." However, in the case of nursing homes, we anticipate that problems related to quality of care would ordinarily be investigated by HCFA which could, if necessary, take action under its authority to terminate provider agreements. We would expect that the vast majority of citations against nursing homes for violations of quality of care would be handled by the State survey and certification agencies or by HCFA, and the Inspector General would not normally be involved. When the OIG chooses to investigate quality of care problems in a nursing home, hospital, laboratory, or other entity, however, it first needs to determine whether the entity has failed to comply with professionally recognized standards of health care. In making such a determination, the OIG would look to Federal and State statutory and regulatory standards and to those standards established by voluntary accrediting organizations such as JCAHO. (The OIG would look to these standards to determine whether the

entity in question was accredited by such an organization.) Previous citations against the entity for violation of any of these established standards, if serious and substantial, could be evidence that the entity has violated professionally recognized standards of health care. However, consistent with our practice in developing cases under section 1128(b)(6)(B) of the Act, the OIG would normally not propose an exclusion based on an isolated instance, but would look for a pattern of poor quality care which might be evidenced by a series of citations by standard-setting agencies and monitoring organizations. The OIG's exclusion authority under section 1128(b)(6)(B) of the Act is a permissive authority, and before the Inspector General decides to exercise it, the OIG would do an independent evaluation of the care provided by the entity rather than rely solely on prior citations. (For further discussion of OIG's practice in such cases, see comment and response section in section IV.C.2. of this preamble regarding § 1001.701.)

Comment: One commenter objected to what it termed a "conclusive presumption" set forth in this definition, that is, when the Food and Drug Administration (FDA), PHS or HCFA have declared a treatment modality not to be safe and effective, those who employ it will be deemed not to meet professionally recognized standards of health care. The commenter suggested that this might unfairly restrict practitioners from using a treatment modality which has been declared not safe and effective for one purpose, even though the practitioner might want to use it for a different purpose about which FDA, PHS and HCFA have taken no position.

Response: We disagree with the comment and have retained this portion of the definition intact. If a practitioner can show that none of the specified agencies found the treatment modality in question to be unsafe or ineffective for the purpose for which the practitioner used it, the usage of the treatment modality would not cause the practitioner to be deemed to have violated professionally recognized standards of health care.

2. Convicted

Comment: Several commenters questioned the use of the word "dismissed" in paragraph (a)(2) of the definition of "convicted" as an unwarranted diversion from the statutory definition, and because dismissal of charges typically occurs either before judgment or upon acquittal, not subsequent to a conviction. These commenters also objected to defining a judgment as a conviction when a post-trial motion is pending, since the motion could result in the overturning of the judgment.

Response: We agree that the term "dismissed" was not the appropriate term, and have changed the regulatory language to "otherwise removed" to clarify that this is meant to apply only to actions that are equivalent in effect to expungement, but called something different. With respect to applying the definition even when a post-trial motion is pending, we disagree with the comment. Just as Congress did not intend to tie our hands postponing exclusions while appeals are pending, we are similarly not constrained to delay exclusions while post-trial motions are pending. Any post-trial motion which is resolved quickly will, as a practical matter, be resolved prior to any exclusion, since there is some lag time before the OIG is made aware of convictions and can take action to impose an exclusion. If the post-trial motion is not able to be resolved quickly, then the exclusion will be imposed, but the individual or entity will be retroactively reinstated if the motion results in the conviction being vacated or reversed. (See § 1001.3005 of these regulations for further discussion.)

3. Entity

Comment: Several commenters requested that we add a definition of the term "entity" to the regulations that would limit the scope of the term to the "actual offender" who holds the provider number, and would specifically exclude from the definition a parent corporation when one of its subsidiary facilities (such as a laboratory, nursing home, or dialysis center) is excluded.

Response: We have decided not to define "entity" in these regulations. In our view, the OIG has the discretion to exclude any offender, and the corporate structure of an entity or group of entities will be one factor to consider when determining who or what the offender is. Depending upon the nature of the offense and the scope of involvement by various parties, the OIG could elect to exclude the parent corporation, the subsidiary, or both. Even if the offense itself was committed by just one of the facilities owned by a parent corporation, if the parent corporation was convicted of the offense along with its subsidiary, and if it was aware of the practices of its subsidiary, or encouraged them, the OIG might elect to exclude both the parent and the subsidiary. However, absent some evidence of involvement or knowledge on the parent of the parent corporation, the OIG would normally exclude only the offending facility rather than an entire chain of facilities. (See discussion of § 1001.1001 below in section IV.C.2. of this preamble.) Of course, with respect to all of the OIG's derivative exclusion authorities (§§ 1001.101, 1001.201, 1001.301, 1001.401, 1001.501, 1001.601, 1001.1401, and 1001.1501), the OIG has authority to exclude *only* those entities against whom action has previously been taken by a court, licensing board, or other agency.

4. Sole Community Physician

Comment: Some commenters suggested that the proposed definition was unnecessarily limited to designated health manpower shortage areas, and failed to address the specific need for access by Medicare and Medicaid beneficiaries to providers and practitioners who will accept such beneficiaries.

Response: We agree with these comments. Accordingly, we have revised the definition to eliminate the health manpower shortage area limitation, and to ensure that even if other physicians or providers in the community provide the same services as an excluded physician or provider, if the excluded party is the only one practicing in a recognized service area who participates in either Medicare or Medicaid, that individual will meet the terms of the definition and be eligible for waiver on those grounds.

For purposes of both this definition and the definition of "sole source of essential specialized services in the community," the OIG will look at the services offered by providers and physicians in a recognized service area to determine whether other individuals or entities are providing the same services. The OIG will consider any relevant information regarding the scope of the service area, which in some cases may be comprised of an entire town and in other cases may only consist of a small community within a much larger city. In determining what constitutes the service area, the OIG will give a great weight to objective measures where available, such as a breakdown by zip code area of patients served or a demonstration of geographic boundaries that self-define a service area. Where the service area is in dispute, the OIG will also seek advice from the State health agency in making its final determination.

5. Criminal Offense Related to the Delivery of an Item or Service

Comment: One commenter requested that we define by regulation the phrase

"criminal offense related to the delivery of an item or service" as used in § 1001.101 of these regulations. The commenter expressed the view that the phrase, which serves as the basis for mandatory exclusions, is too ambiguous, particularly in light of the mandatory 5-year exclusion.

Response: We have decided not to define this term. This term has served as the basis for exclusions from Medicare and Medicaid for many years and the absence of a definition of the term has not posed any serious problems. The OIG assesses each conviction on a case-by-case basis to determine whether it falls within the ambit of the statutory language—that is, whether it is related to the delivery of an item or service under one of the programs—and each of those determinations is quite fact-specific. We believe that it will continue to be more effective to make these determinations on a case-by-case basis than to attempt to define the phrase further.

B. Part 1001, Subpart B—Mandatory Exclusions

Comment: Some commenters believe that mandatory minimum five-year exclusions may violate the Eighth Amendment bar against cruel and unusual punishment because they may be disproportionate to the underlying crimes committed.

Response: We do not agree. Exclusions, whether mandatory or permissive, do not invoke the Eighth Amendment prohibition against "excessive bail, excessive fines, and cruel and unusual punishment." As discussed earlier in this preamble, it is well-established that exclusions are remedial sanctions that serve a remedial purpose. The Eighth Amendment applies only to criminal punishments and not to civil sanctions (see *Ingraham* v. *Wright*, 430 U.S. 651 (1977); *Bell* v. *Wolfish*, 441 U.S. 520, 99 S. Ct. 1861 (1979); *Stamp* v. *Commissioner of Internal Revenue*, 579 F.Supp. 168, 171 (N.D. Ill. 1984); *Popow* v. *City of Margate*, 476 F.Supp. 1237 (1979)). Further, at least one court has held that civil sanctions disqualifying individuals from receiving certain benefits based on prior convictions do not violate the Eighth Amendment, even when they apply automatically to all offenders without regard to the circumstances of the offense (see *Blout* v. *Smith*, 440 F.Supp. 528 (M.D. Pa. 1977)). Finally, in enacting section 1128(a) of the Act, Congress has required the OIG to exclude individuals or entities convicted of certain offenses for at least five years, and § 1001.101 merely implements that provision. For all of the foregoing reasons, the OIG is not accepting this comment.

Comment: One commenter expressed concern that the language of § 1001.101 gives the OIG independent authority to review criminal convictions to determine whether such convictions resulted in patient abuse or neglect. This commenter believes that a body such as a licensing board or a peer review organization, rather than the OIG, should conduct a medical-type review to determine whether a conviction entailed patient abuse or neglect.

Response: Section 1001.101 simply parrots the language of section 1128(a)(2) of the Act. As is evidenced by its legislative history, Congress intended for section 1128(a)(2) to give the Secretary the authority to protect Medicare and the State health care program beneficiaries from individuals or entities that have already been tried and convicted of offenses "which the *Secretary* concludes entailed or resulted in neglect or abuse of other patients * * *." (emphasis added) (see S. Rep. No. 100-109, 100th cong., 1st Sess. 6). Thus, whether or not an individual or entity has been convicted of a criminal offense "relating to neglect or abuse of patients in connection with the delivery of a health care item or service" is a legal determination to be made by the Secretary based on the facts underlying the conviction. Further, the offense that is the basis for the exclusion need not be couched in terms of patient abuse or neglect. For example, an individual convicted of embezzling a nursing home's funds may be excluded if the OIG determines that the offense resulted in the abuse or neglect of patients, i.e., that as a result of the offense, the facility was underfinanced to the point that the residents could not be properly cared for. Further, it is clear from the language of the statute and its legislative history that the OIG may exclude an individual convicted of an offense related to patient abuse or neglect irrespective of whether the individual intended to harm patients.

Comment: Several commenters were confused as to what offenses are included in the phrase "criminal offenses related to the neglect or abuse of a patient" within the meaning of § 1001.101, and requested that we define the phrase or give examples. These commenters said their confusion was compounded by additional language in § 1001.101 requiring an exclusion where a conviction "entailed, or resulted in, neglect or abuse of patients."

Response: Section 1128(a)(2) of the Act authorizes the Secretary to exclude "any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service." Section 1001.101 states that an offense "related to the neglect or abuse of patients" includes "any offense that the OIG concludes entailed, or resulted in, neglect or abuse of patients." This language is the same language used by Congress in the legislative history of section 1128(a)(2) of the Act. We have chosen to put this language in the regulation because we believe it makes it clear that it is in the OIG's discretion to determine whether a conviction is related to patient abuse or neglect, as discussed above. We also believe that Congress used this language in the legislative history to expand upon the types of offenses it meant to include in enacting section 1128(a)(2).

We have chosen not to define which offenses "relate to" or "entail or result in" neglect or abuse of patients. Since a determination as to whether an offense related to patient abuse or neglect is fact-intensive, we feel it is most appropriate for the OIG to exercise its authority to make such determinations on a case-by-case basis.

C. Part 1001, Subpart C—Permissive Exclusions

1. General Comments

Comment: Commenters indicated that the regulations should include a list of factors that the OIG will use in determining whether to impose a permissive exclusion.

Response: Our experience has shown that situations which could result in the imposition of a permissive exclusion are extremely varied and must be evaluated on a case-by-case basis. Some of these factors include controlled substance abuse history, criminal history, and prior experience with the programs. However, the statute vests the Secretary with complete discretion, and does not require us to set forth the precise criteria which will be used in determining whether to impose a permissive exclusion.

Comment: Several commenters stated that, prior to imposing a permissive exclusion, the OIG should have to prove that allowing continued program participation would harm beneficiaries.

Response: The purpose of these permissive authorities is to protect Federal and State health care programs and their beneficiaries. The OIG always considers whether continued participation presents a risk to the programs or their beneficiaries in deciding whether an exclusion is

warranted. However, this determination is within the OIG's discretion. Further, it is not necessary for the OIG to prove that allowing continued program participation would harm beneficiaries since that is not the only basis for the imposition of an exclusion.

Comment: A number of commenters stated that §§ 1001.201, 1001.301, 1001.401, 1001.701 and 1001.801 should not include a 5-year "benchmark" length for an exclusion. In contrast to the mandatory exclusions, where Congress expressly set forth a minimum 5-year term, Congress did not set a minimum exclusion length for the permissive authorities. The commenters argued that Congress indicated that these kinds of offenses should not be treated as harshly as the mandatories since Congress did not require the Secretary to exclude providers in these circumstances.

Response: Upon careful consideration of the comments and further research, we have decided that a 3-year benchmark for permissive exclusions is more appropriate than the proposed 5-year benchmark. A 3-year benchmark is consistent with the period established by regulation for government-wide debarments and suspensions from nonprocurement contracts, grants and the like, including those debarments and suspensions imposed by HHS (see 45 CFR 76.320). (It is also consistent with longstanding regulations governing the period of debarments in the government procurement context (see 48 CFR 9.406–4)).

Periods of debarment and suspension from HHS programs under 45 CFR 76.320 are determined much the way exclusion periods for permissive exclusions will be determined under these final regulations. Section 76.320 provides the "[d]ebarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed * * *." Similarly, the 3-year benchmark concept established in these exclusion regulations requires the Secretary to evaluate the seriousness of the violation upon which the exclusion is based by considering whether there are mitigating or aggravating circumstances which should serve to shorten or lengthen the exclusion period and permitting the Secretary to adjust the period accordingly. In practice, this means that no permissive exclusion period will exceed 3 years unless aggravating circumstances exist to justify a longer exclusion period.

Both the 3-year benchmark and the process for adjusting it are consistent with the methods already in use by the Department for determining debarment and suspension periods, and we believe that it is reasonable for our regulations to take the same approach. We have, therefore, modified these regulations accordingly.

Comment: Some commenters expressed the opinion that the OIG will never use these authorities to exclude a hospital, thus making the regulations applicable only to certain types of providers.

Response: A hospital can and will be excluded if the circumstances warrant that exclusion. However, the OIG must consider all the circumstances in determining whether an exclusion is appropriate in any case, including cases involving hospitals. Certain factors, such as access of program beneficiaries to services, may weigh against imposing an exclusion on hospitals but may be less significant in evaluating possible exclusions of other types of providers.

Comment: A number of commenters indicated that exclusions which relate to Medicare billing violations should be withdrawn because Medicare billing rules are so complex.

Response: It is the obligation of anyone doing business with the Medicare program to understand relevant Medicare rules of reimbursement. However, these authorities are permissive, and OIG does not intend to impose exclusions in cases involving isolated, legitimate confusion with the Medicare rules.

2. Permissive Exclusions

- *Section 1001.201*

Section 1001.201 implements the OIG's authority to exclude an individual or entity convicted of, among other things, a criminal offense in connection with the delivery of any health care item or service. We have clarified that this authority allows the OIG to exclude a person who was convicted of an offense involving the performance of management or administrative services relating to the delivery of such items or services.

Comment: Commenters indicated that the regulations should state that the OIG may exclude anyone who enters a pre-trial diversion program, regardless of whether there was an admission of guilt.

Response: The statute permits the imposition of an exclusion on any individual or entity that has been "convicted." Section 1128(i) of the Act contains a broad definition of "convicted," and we are bound by this definition. (See discussion regarding § 1001.102 in section IV.C.1. of this preamble.) "Pre-trial diversion" is defined differently in different States. If a "pre-trial diversion program" satisfies the statutory definition of "convicted", then a party who enters into a pre-trial diversion program may be excluded.

- *Section 1001.301*

No comments specific to this provision were received.

- *Section 1001.401*

This section permits the OIG to exclude anyone who has been convicted of a criminal offense relating to a controlled substance. We have modified this regulation to clarify that the operative definition of the term "controlled substance" will be the definition that applies to the law that forms the basis for the conviction. For example, if an individual is convicted of a Federal offense, the operative definition would be the definition of a controlled substance under Federal law. If the individual was convicted, for example, of a criminal offense under New York State law, the determination of whether the conviction related to a controlled substance will be determined by whether the substance is defined as controlled under the New York criminal code.

Comment: Some commenters stated that the regulations should be expanded to permit the OIG to exclude someone for illegal possession of a controlled substance.

Response: Section 1128(b)(3) of the Act sets forth the types of convictions relating to controlled substances that may serve as the grounds for an exclusion. Since section 1128(b)(3) of the Act does not state that the OIG may exclude someone based on a conviction for possession, expanding the regulation as suggested is beyond the scope of our statutory authority.

- *Sections 1001.501 and 1001.601*

These regulations implement sections 1128 (b)(4) and (b)(5) of the Act. Both of these authorities permit exclusion of an individual or entity on the basis of the actions of another agency, e.g., where a State medical society revoked a practitioner's license, or where a provider was suspended from a State health care program. We consider these agencies to be "derivative agencies," since we derive the right to impose an exclusion from their actions. We have modified § 1001.501 to provide that exclusions may be imposed for periods of time shorter than the period for which the license was lost and to allow for early reinstatement, in cases where another State, fully apprised of the circumstances surrounding the loss of

the license, grants the practitioner a new license or takes no significant adverse action as to a current license. We have also revised § 1001.501 to state that loss of a license includes the loss of the right to apply for or renew a license, as provided in section 6411(d) of the Omnibus Budget Reconciliation Act of 1989. We have modified § 1001.601 to provide that exclusions will be for a period of 3 years unless specified aggravating or mitigating factors form a basis for lengthening or shortening that period. We have also clarified § 1001.601 to state that the OIG will normally not consider a request for reinstatement until the period of exclusion imposed by the OIG has expired. Once the OIG has reinstated the party, the Federal or State health care program that originally imposed the sanction will be free to reinstate the party.

Comment: Commenters stated that the regulations provide that the OIG may impose an exclusion for a longer length of time than the penalty imposed by the derivative agency. One commenter argued that it is inappropriate to allow for an exclusion to be longer than that imposed by the original sanctioning body, especially since a provider cannot collaterally attack the basis for the first action.

Response: We anticipate that in the vast majority of cases, the length of the exclusion imposed by the OIG will parallel the length of time imposed by the original sanctioning body. However, there may be circumstances where the OIG finds that the derivative body did not adequately consider the potential harm that the individual's or entity's actions could have on Medicare or the State health care programs. In those cases, the OIG must have the discretion to extend an exclusion so as to adequately protect the programs and their beneficiaries. Section 1128(c) of the Act, which governs the length of exclusions, does not restrict exclusions imposed under sections 1128 (b)(4) or (b)(5) to the length imposed by the derivative body.

Comment: Several commenters stated that §§ 1001.501 and 1001.601 should provide that someone who suffers a license revocation, exclusion, or other action covered by these provisions will automatically be excluded from Medicare and the State health care program.

Response. In contrast to the mandatory exclusions, Congress vested the Secretary with the discretion and the responsibility to determine whether it is appropriate, based on the particular circumstances, to exclude the sanctioned individual or entity from Medicare and the State health care programs. To treat these exclusions as automatic, i.e., as mandatory exclusions, would be inconsistent with that authority.

Comment: A number of commenters indicated that § 1001.501 should allow for an exclusion where restrictions are imposed that curtail use but do not result in the license being lost entirely, such as prohibiting a physician from performing surgery except under supervision.

Response: Section 1128(b)(4) of the Act specifies that someone may be excluded because a license has been suspended, revoked, surrendered or otherwise lost. We do not have the statutory authority to expand this regulation as suggested by this comment.

Comment: Commenters pointed out that it is not necessary to provide for an exclusion where someone has surrendered his or her license since the individual or entity would automatically be precluded from rendering services.

Response: An individual or entity may lose a license in one State, but that alone would not preclude that individual or entity from rendering services in another State, if licensed there. An exclusion from Medicare or Medicaid, for example, would have nationwide applicability, so that individual or entity could not receive payment from Medicare or Medicaid for rendering services to any program beneficiary, regardless of where that beneficiary is located.

Comment: One commenter stated that an individual or entity that surrenders a license should not have to go through the procedures of requesting reinstatement if and when the license is regained.

Response: In granting the Secretary the authority to exclude based on surrender of a license, Congress recognized that licenses are often surrendered because of serious underlying problems. Surrender does not mean that the basis for the loss of the license is any less serious than if the license was revoked. Consequently, we do not believe that cases of surrender should be treated any differently than other cases where a license was lost.

Comment: Several commenters indicated that in cases of surrender, the regulations exceed congressional intent by allowing for exclusion where someone surrenders a license for a minor infraction while not allowing the practitioner to challenge the reasonableness of the disciplinary action. Congressional intent shows that the critical factor in determining whether to exclude someone is not merely surrender, but whether the practitioner intended to evade scrutiny by surrender. These commenters felt that the regulations should set forth the factors that will be used to determine whether exclusion in surrender cases is appropriate.

Response: These regulations consistent with the statute, do not permit exclusion in all cases of surrender, but only in those cases where surrender occurs while a disciplinary proceeding concerning professional competence, professional performance or financial integrity is pending. Thus, exclusions will not be imposed in cases where licenses are surrendered for violations which do not fall in these categories. To the extent a ministerial violation arguably fall within these categories—for example, one could argue that failure to pay annual dues relates to financial integrity—the OIG will exercise its discretion as to whether an exclusion is appropriate. We decline to include a list of factors to be considered in determining whether to impose an exclusion in licensure cases as this will vary depending on the unique circumstances of a particular case.

Comment: One commenter stated that exclusions should not be imposed in cases where a license is lost until the practitioner has the opportunity for judicial review of the underlying action which caused the loss of license.

Response: We disagree. The regulations are consistent with statutory authority. Often, judicial review occurs a substantial period of time after the original action. Since an independent body has made a determination regarding this practitioner, we believe it is preferable to give controlling weight to the derivative body's conclusions and exclude the practitioner, to protect the program and beneficiaries, consistent with the purposes of the exclusion authorities.

Comment: According to some comments received, the definition of "or otherwise sanctioned" that was included in the preamble to the proposed regulations should be incorporated in § 1001.601.

Response: We agree and have included a definition of this term in the regulations to explain that it includes any actions that limits the ability of a person to participate in the program at issue. We have also clarified that this includes situations where an individual or entity voluntarily withdraws from program participation solely to avoid a formal sanction, for example, by agreeing to withdraw in order to avoid prosecution or exclusion

Comment: Commenters stated that the OIG should not exclude an individual or entity under § 1001.601 when the original sanctioning agency did not itself exclude the individual or entity. These commenters indicated that the regulations wrongly assume that the basis of the derivative sanction was serious when in reality a provider may choose not to contest a minor sanction simply to avoid further confrontation.

Response: We have clarified the scope of § 1001.601 by incorporating in the regulations a definition for the term "or otherwise sanctioned" to cover all actions that limit the ability of a person to participate in the program. This definition will ensure that OIG exclusions will be based only on prior sanctions that were significant in nature.

Comment: A number of individuals indicated that the terms "professional competence," "professional performance" and "financial integrity" are too vague. Commenters questioned whether these terms would include, for example, a deficiency in a facility's conditions of participation.

Response: We decline to further define these terms, and believe that whether someone's professional competence, professional performance or financial integrity are implicated must be determined based on all the circumstances. However, the fact that this authority can only be used in cases where someone's program participation has been curtailed militates against the concern that someone would be excluded for insignificant violations. In addition, this authority is permissive, and the OIG can and will exercise its discretion in determining whether a particular violation warrants the severe penalty of exclusion.

Comment: Commenters felt that the OIG should consult with a sanctioning agency before imposing an exclusion, rather than providing notice after the fact.

Response: By its delegated statutory authority, the OIG has full discretion to decide whether to impose a permissive exclusion, and need not consult with third parties including the original sanctioning bodies. However, we would note that in specific cases, the OIG may decide to contact the original sanctioning body to obtain relevant information or guidance in deciding whether to impose an exclusion.

● *Section 1001.701*

Comment: Several commenters pointed out that the proposed regulatory language in § 1001.701(a)(1) did not comport with the statutory language which specifies that the point of reference is "such individual's or entity's usual charges or costs."

Response: We agree with these concerns, and have amended the regulatory provision accordingly.

Comment: A number of commenters suggested that the exception in § 1001.701(b)(2), permitting the furnishing of items or services in excess of the needs of individuals under certain circumstances when such items or services were ordered by a physician, is too narrow and should be expanded to include those situations where the item or service was ordered by a health care professional other than a physician, such as a nurse practitioner or a clinical psychologist.

Response: We agree, and have amended the regulation to include a physician or other authorized individual.

Comment: One commenter pointed out that although current regulations specify the sources of information that the OIG will look to in making a determination that items or services provided were in excess of the needs of individuals or of a quality that fails to meet professionally recognized standards of health care (§ 1001.101(b)), the proposed rule did not include such a provision. This commenter suggested that the final regulations should contain a similar list of information sources.

Response: We agree. This provision was inadvertently omitted from both §§ 1001.701 and 1001.801 of the proposed regulations. We have added provisions specifying sources of information to both sections in this final rule.

Comment: A number of commenters asked that we define the phrase "substantially in excess of the patient's needs," and one commenter suggested that we adopt a definition from the Home Health Agency manual. Along the same line, some commenters suggested that we amend the regulations to state that liability under this section requires a pattern of abuse, or a showing of repetitive violations. One commenter expressed the view that § 1001.701(a)(2) should never be a basis for exclusion since no standards exist for determining whether care is substandard or unnecessary.

Response: Section 1001.701(a)(2) implements section 1128(b)(6)(B) of the Act, which is a recodification of an authority which the Department has had for many years (section 1862(d)(1)(C) of the Act). We have initiated a number of cases under this authority and can therefore speak from some experience. In our opinion, it is unnecessary to define the phrase "substantially in excess of the patient's needs" or to limit by regulations the OIG's discretion to initiate cases that are not based on a pattern of violations. Before we initiate a case under this authority, the Inspector General makes a determination of liability based on all of the facts available. This determination is always made on the basis of expert medical opinion, usually that of medical reviewers from the Medicare carrier or from the local PRO, and followed up by a review by one of our own medical officers. In fact, cases under this section almost always originate with Medicare carriers or other medical sources who refer the case to the OIG. Thus, on a case-by-case basis, we are in a position to determine whether the care provided was substantially in excess of the needs of the patient.

As evidenced by the legislative history to this section, Congress did not intend that the OIG automatically exclude an individual or entity where the violation was "an isolated or inadvertent instance," but to seek corrective action in such cases. Consistent with this intent, we would rarely propose an exclusion for an isolated and inadvertent instance.

However, if only one or two life-threatening violations were brought to our attention and we determined that imposition of an exclusion under § 1001.701 was the most appropriate remedy, we believe that it is consistent with the intent of the statute for the OIG to retain the discretion under these regulations to initiate an exclusion action, even absent a full-fledged pattern of abuse.

Comment: A number of commenters sought specific clarification of the scope of § 1001.701(a)(2). Their concern related to whether entities such as nursing homes and home health agencies would violate this section if they provided an increased level of services to a patient at the specific request of the patient and at the patient's own expense, e.g., private duty nurses, extra home health services not reimbursable by Medicare, or private rooms.

Response: Section 1001.701(a)(1) is not intended to subject to liability those who furnish an increased level of care to a patient who has been informed that such care is not medically necessary and that neither Medicare nor a State health care program will reimburse such services, but who chooses to purchase such services at his or her own expense. For purposes of determining liability under this provision, such services would not be viewed as "substantially in excess of the patient's needs."

Comment: Some commenters requested clarification of the breadth of the exception set forth § 1001.701(c)(2). Specifically, they expressed concern

about liability of laboratories and of suppliers for items or services that are provided and later determined to be unnecessary or excessive.

Response: In general, the exception in paragraph (c)(2) of this section will protect such laboratories and suppliers from liability. However, we are aware that some suppliers have conspired with physicians to obtain certificates of necessity for items or services in order to defraud the Medicare program. If, as in that sort of situation, a supplier was in a position to know that the items or services were not necessary, § 1001.701(c)(2) would provide no protection from liability. With respect to laboratories, although the exception would normally protect a laboratory from being subject to exclusion for providing unnecessary tests ordered by a physician or other authorized individual, we want to make clear that this does not mean that the laboratory is entitled to be paid by Medicare or State health care programs for such tests. Notwithstanding the paragraph (b)(2) exception, payments made to laboratories for services later deemed to be unnecessary may constitute overpayments under HCFA regulations.

Comment: In the preamble to the proposed rule, we requested comments on whether to define by regulations the terms "substantially in excess" and "usual costs or charges" which are used in § 1001.701(a). That provision authorizes the exclusion of individuals and entities that submit, or cause to be submitted, bills or requests for payment containing charges or costs that are "substantially in excess of" the "usual charges or costs" for such items or services.

We received a number of comments in response to our request, many from the clinical laboratory industry. While most commenters agreed that definitions would be helpful, none were able to suggest feasible ones. One commenter suggested that any definition should take account of the fact that it costs laboratories more to deal with Medicare than to deal with physicians, and should permit Medicare to be charged more. Another commenter suggested that we consider such factors as the geographic area in which the provider operates (cost of overhead) and whether there is a scarcity of practitioners in the area in determining whether to permit higher charges. One commenter felt that the OIG should have to prove intent to overbill Medicare in order to show liability under this provision. Two commenters noted that third-party payors other than Medicare normally allow the highest costs for laboratory services, and suggested that the appropriate comparison in charges is between Medicare and other third-party payors, not between Medicare and physicians. One commenter objected to the application of this provision to laboratories at all.

Response: Upon review of all the comments and further consideration of this issue, we have decided not to define the terms "substantially in excess" and "usual charges or costs" at this time. We recognize that it would be helpful to the public to have some additional guidance on what standards the OIG intends to apply in cases brought under § 1001.701(a)(1). However, in light of the many different factors and variables that may exist in the wide variety of cases which could be investigated under this provision, we have determined that it is not feasible to define the terms by regulation. Instead, the OIG will continue to evaluate the billing patterns of individuals and entities, including clinical laboratories, on a case-by-case basis.

- *Section 1001.801*

Comment: According to some commenters, it was unclear what would be considered a "substantial" failure to provide medically necessary items or services. These commenters indicated that health maintenance organizations (HMOs) should not be sanctioned for denials because an enrollee did not seek required prior approval or where the HMO denies coverage for services provided by a non-plan provider where the HMO determines the services did not meet "emergency" standards, or where medical judgment to not provide the services is made in accordance with the HMO's standard operating policies. A commenter questioned whether this would apply if there was a delay in providing routine services.

Response: In determining whether an exclusion should be imposed, legitimate reasons for denying services will be considered. However, HMOs may use "procedures" as a pretext justification, and it is the OIG's responsibility to evaluate all circumstances to determine whether the HMO properly or improperly failed to provide medically necessary items or services.

Comment: Some commenters believed that the OIG lacks the expertise to determine whether there is a substantial failure to provide medically necessary items or services, and stated that the OIG's decision should be based on medical review by the carrier or the PRO. The comments indicated that the OIG should defer to HCFA and the States, which are primarily responsible for regulation of HMOs, in determining whether an exclusion is appropriate.

Response: We have included in the final regulations the sources on which the OIG's decision to exclude under this authority will be based. These are PROs, State or local licensing or certification authorities, fiscal agents or contractors, private insurance companies, State or local professional societies or other sources deemed appropriate by the OIG. Although the OIG may consider the views of HCFA or a State, or any other entity, the OIG has the delegated authority to impose an exclusion under these circumstances and it is the OIG that must ultimately evaluate the facts to determine if an exclusion is appropriate.

Comment: One commenter asked whether an HMO could be excluded if an independent contractor failed to provide medically necessary services.

Response: Section 1128(b)(6)(C) of the Social Security Act provides that an HMO can be excluded under these circumstances. As a practical matter, we intend to use this authority only where the HMO had sufficient responsibility for this act, e.g., if problems concerning a physician's professional competence had been brought to the attention of the HMO, but it failed to take any appropriate action. Since the HMOs are selecting the service providers, and beneficiaries place their trust in the HMO's ability to select qualified providers, the HMOs must and should take responsibility for their selection. This provision will help assure that this occurs.

Comment: A commenter pointed out that these regulations should state that an exclusion may occur for failure to provide medically necessary services to any persons regardless of whether those persons are covered by Medicare or Medicaid.

Response: Section 1128(b)(6)(C) of the Act provides that this exclusion only applies to a failure to provide medically necessary items or services to individuals who are covered under a Medicaid plan, or a waiver under the Medicaid program under section 1915(b)(1) of the Act, or to individuals covered under a risk-sharing contract under section 1876 of the Act. Thus, it would be beyond our statutory authority to expand this regulation as suggested.

- *Section 1001.901*

Comment: Commenters believed that the statute does not authorize an exclusion where a CMP is not imposed or where a CMP proceeding is not commenced.

Response: Imposition of a CMP is not a predicate to imposing an exclusion under this authority; rather, exclusion is an alternative remedy, to be used instead of or in conjunction with a CMP or criminal proceeding depending on the circumstances. The legislative history to section 1128(b)(7) of the Act states that "[t]he Secretary could exercise this authority to exclude an individual or entity without the necessity of imposing a civil money penalty or obtaining a criminal penalty or obtaining a criminal conviction." (House Report No. 100–85, 100th Cong., 1st sess., 9.)

Comment: Some commenters indicated that if someone successfully defended against imposition of a CMP, those same defenses should apply to bar the imposition of an exclusion.

Response: We agree. If a respondent successfully defends against imposition of a CMP, we would not then impose an exclusion under § 1001.901 based on the conduct at issue in the CMP case.

Comment: One commenter felt that a CMP, rather than an exclusion, should be imposed for a first offense, since a CMP gives the programs a chance to see if corrective action will be taken.

Response: We reject this comment since the OIG has the right and responsibility to exercise its discretion in all cases, including first offenses, to determine whether an exclusion is appropriate.

- *Section 1001.951*

Comment: One commenter urged that the Inspector General recommend that the exemption under section 1128B of the Act for payments to employees be revoked because outsiders cannot compete for the services employees of referring physicians provide.

Response: This issue was addressed at length in the preamble to the OIG "safe harbor" regulations. (See 56 FR 35952, July 29, 1991.)

Comment: One commenter questioned whether violations of the anti-kickback statute would depend on the kind of health care provider involved in the remuneration scheme.

Response: By its term, section 1128B of the Act applies to "whoever" engages in a kickback. The term "whoever" means any individual or entity, regardless of the kind of items or services they provide.

Comment: One commenter proposed that consideration of "[a]ny other facts bearing on the nature and seriousness of the individual's or entity's misconduct" for purposes of determining the period of exclusion was too vague to be evenly applied and, therefore, should be deleted throughout the regulations.

Response: The purpose of such a "catch-all" provision is to afford the decisionmaker some leeway to consider certain highly relevant facts which relate to that particular exclusion. Exactly what these facts might be, other than the fact that they must relate to the "nature and seriousness" of the excluded party's conduct, depends entirely on the particular circumstances of the case. We believe that justice is best served if such leeway is afforded the decisionmaker.

Comment: One commenter suggested that the financial condition of the excluded party should be considered when determining the length of exclusion under §§ 1001.901 and 1001.951.

Response: As we stated in the proposed rule, financial condition is relevant only to the *amount* of a penalty or assessment and not to the *length* of an exclusion. For further discussion, see section IV.D. of this preamble.

Comment: One commenter inquired as to the reason why the aggravating and mitigating factors present in other exclusion authorities were not incorporated in this authority.

Response: Generally, aggravating and mitigating factors are applied to situations where there is either a benchmark period of exclusion or some other specific period of time that would otherwise set the exclusion period. Here, as with § 1001.901, there are no such periods so that it is appropriate to look only at factors that would help determine an appropriate period of exclusion given the particular facts of each case.

Comment: Many commenters objected to § 1001.951(a)(2)(i) which provides that any individual or entity that has offered, paid, solicited or received remuneration as described in section 1128B(b) of the Act is subject to exclusion so long as *one* of the purposes of such remuneration is unlawful under the statute—the so-called "one-purpose" rule. That is, liability could not be avoided by the fact that there may also have been some additional, lawful purpose for the remuneration. Some commenters also asserted that the one-purpose rule is unfairly broad because it would include activities that are nonabusive or beneficial to the Medicare program.

Response: The focus of the inquiry is whether an individual or entity has deliberately and intentionally paid or received remuneration to induce the referral of program-related business. We believe it, if the OIG has demonstrated this conduct, the statute does not require the OIG to further prove that the illegal purpose was the primary factor motivating the conduct. We believe that this broad interpretation of the statute is supported by the courts (see *United States* v. *Greber*, 760 F.2d 68 (3d Cir.) *cert. denied*, 474 U.S. 988 (1985); *United States* v. *Bay State Ambulance and Hospital Rental Service, Inc.*, 874 F. 2d 20 (1st Cir. 1989); and *United States* v. *Kats*, 871 f.2d 105 (9th Cir. 1989)).

With respect to conduct that may technically constitute a violation but that should nevertheless be protected, Congress, in recognition of the broad reach of the anti-kickback statute, provided for the development of "safe harbors." These regulations describe various business and payment practices that, although they violate the anti-kickback statute, will not be treated as criminal offenses under section 1128B(b) of the Act and will not serve as a basis for a program exclusion under section 1128(b)(7) of the Act. (See section 14 of Public Law 100–93.) For further discussion on the reach of the anti-kickback statute, we recommend that individuals refer to the "safe harbor" regulations (56 FR 35952, July 29, 1991).

Comment: One commenter recommended that we include in § 1001.951 a provision that proof that a lawful purpose existed for an otherwise unlawful kickback could provide a basis for decreasing the length of exclusion.

Response: Although we suggested in the preamble of the proposed rule that there are circumstances where a lawful purpose for the remuneration may lead to a reduction in the proposed period of exclusion, in most cases we believe that it would not and should not. Consequently, we believe that such arguments are best considered under § 1001.951(b)(iv) which provides for consideration of "[a]ny other facts bearing on the nature and seriousness of the individual's or entity's misconduct."

- *Section 1001.1001*

This section permits the exclusion of entities that are owned or controlled by an individual who has been criminally convicted, has had CMPs imposed on him or her, or who has been excluded from Medicare or a State health care program.

Comment: One commenter suggested that this provision violates the due process requirements because there is no rational relationship between the acts of the individual and the entity. One commenter expressed concern that an entity could be excluded when it did not even know that an individual was sanctioned. Another commenter stated that the entity should have an opportunity to cure the problem prior to exclusion, and one commenter

questioned whether an entity could do this based on §§ 1001.3002(c) (1) and (2), which provide that an entity will be reinstated when it shows that it has terminated its relationship with the sanctioned individual. Another commenter argued that if the individual has not been excluded from Medicare or the State health care programs, that the entity should not be excluded either.

Response: In accordance with section 1128(b)(8) of the Act, the Secretary is authorized to exclude any entity in which a person with an ownership or controlling interest, or an officer, director, agent or managing employee, has been sanctioned for certain program-related offenses. The regulations merely implement the OIG's authority in accordance with section 1128(b)(8). The purpose of this provision is to ensure that the programs do not indirectly reimburse excluded individuals through payments to entities that they control or own or with which they have any significant relationship. Further, section 1128(b)(8) of the Act should encourage entities to scrutinize the background of individuals with whom they plan to embark on a significant relationship before they hire the individual or grant him or her a controlling interest. Thus, excluding an employer who has a significant relationship with any individual who has been sanctioned for program-related offenses is rationally related to the goal of protecting the Medicare and Medicaid programs.

Moreover, in these cases, the OIG will always issue a letter prior to imposing the exclusion that notifies an entity of the OIG's intention to exclude it because of its relationship with a sanctioned individual. This letter states that the entity may supply the OIG with any mitigating information. Thus, the entity is always given an opportunity to cure the situation, such as by terminating its relationship with the sanctioned individual, and notifying the OIG of that fact before the OIG makes a final decision as to whether to exclude the entity.

If an entity, after receiving the OIG's notice of intent to exclude under § 1001.2001, can prove that it has terminated or modified its relationship with the sanctioned individual in accordance with the conditions of §§ 1001.1001(c) (1) or (2), that individual would not be excluded by the OIG. Similarly, the OIG will reinstate an entity as soon as it determines that the sanctioned individual no longer has the proscribed relationship with the entity (§§ 1001.3001(c) (1) and (2)). Thus, it would be extremely unlikely that the OIG would exclude an entity which, when notified of its problematic relationship with a sanctioned individual, promptly severed it.

Comment: Commenters expressed concern about how the term "entity" would apply to a corporation with many subsidiaries. In a case where one subsidiary had a relationship with a sanctioned individual, commenters questioned whether only the subsidiary would be excluded, or whether all parent and related corporations could be excluded. Commenters argued that this broad interpretation would simply lead to unnecessary restructuring of entire organizations to insulate the entire entity. Commenters further recommended that the exclusion be limited to the corporate site involved, or that the OIG should have to prove that the entire entity actively encouraged or knowingly tolerated the offending behavior.

Response: The statute contemplates excluding an entity that has a substantial relationship with a sanctioned individual. While it may often be possible to target only one offending subsidiary or site for exclusion, we believe that there are situations where an entire corporate entity may be found to have a substantial relationship with one individual who deals primarily with one of its subsidiaries. In deciding whether to exclude an entire corporate network or one isolated subsidiary, we intend to evaluate the nature and extent of the relationship and determine what parties were actually at fault for engaging in a relationship with a sanctioned individual, as well as which entities the sanctioned individual actually controls. The OIG will always consider whether the interests of the programs and their beneficiaries are furthered by excluding an entire corporate network.

Comment: The statute and regulations provide for the exclusion of an entity whose agent is a sanctioned individual. Commenters expressed concern as to whether "agent" includes even low-level employees or independent contractors and argued that, to trigger an exclusion, the "agent" should have a substantial relationship with the entity.

Response: We agree that the term "agent" is vague and therefore have included in the final regulations a definition of "agent" essentially modeled after a definition set forth in HCFA regulations (42 CFR 455.100) which implement section 1128 of the Act, which is referenced in section 1128(b)(8)(A)(ii) of the Act. We are defining "agent" as anyone who has the express or implied authority to obligate or act on behalf of an entity. We intend for this to apply to agency relationships where the agent has, or is able to have, a significant role in the entity. For example, this definition includes a situation where an excluded individual transferred control of an entity to his or her spouse, but still, in fact, acts on behalf of the entity or exercises some control over the entity. In such a case, the excluded individual would be an agent because he or she would have, at a minimum, the implied authority to act on behalf of the entity. Of course, it is not necessary to prove that someone is an agent if that person falls into another category of enumerated relationships. Thus, in the example cited above, if a State has community property laws, it may be possible to exclude the entity because the excluded spouse still has a legal ownership interest in the business, regardless of whether that spouse meets the definition of "agent."

Comment: Some commenters stated that this provision is overly broad and should be restricted to only those cases where the sanctioned individual exercises control over the day-to-day operations of the entity.

Response: We disagree with this comment. The regulations are a proper interpretation of statutory authority, and the legislative history establishes that Congress thought ownership alone, or one of the other relationships alone, was enough of a substantial relationship to warrant exclusion. (House Report 100–85, *supra* at 10.)

Comment: One commenter expressed concern that an entity could be excluded because of its relationship with an individual who had to pay a minimal monetary penalty, and suggested that the regulations set forth a minimum penalty that would have to have been imposed before the entity could be excluded.

Response: We take into account the amount of the penalty in determining whether an exclusion is appropriate. However, we believe the most important factor to consider in determining whether to exclude an entity because of its relationship with a sanctioned individual is the circumstances surrounding, rather than merely the amount of, the penalty.

Comment: One commenter questioned whether prohibitions on the various ownership or control relationships set forth in proposed paragraphs (a)(1)(iii)(A)–(F) of § 1001.1001 apply only to individuals who were excluded, or to all sanctioned individuals who were criminally convicted or subject to a CMP, as defined in proposed §§ 1001.1001(a)(1) (i) through (iii).

Response: We have revised the final regulations to make it clear that entities may be excluded for having any of the specified relationships with any sanctioned individual as defined in §§ 1001.1001(a)(1) (i) through (iii). We are also adding the word "ownership" to the first factor in this list of relationships. That term was inadvertently omitted from the proposed regulations and is consistent with section 1124(a)(3) of the Act.

Comment: One commenter questioned our definition of "indirect ownership interest." The commenter stated that since the proposed regulations provide that indirect ownership interest includes an ownership interest through any other entities, use of the term "includes" suggests that the term "indirect ownership interest" covers other relationships that are not specified in the regulations. In addition, the commenter questioned the example given in the proposed regulation that stated that an individual has a 10 percent ownership interest in the entity at issue if he or she has a 20 percent ownership interest in a corporation that wholly owns a subsidiary that is a 50 percent owner of the entity in issue. The commenter argued that the indirect owner may have no control over the actions of the target entity, and stated that it is unclear how ownership would be calculated in a situation which is more complex.

Response: We have modified the final regulations to replace the word "includes" with "means." The example used in the proposed rule was merely illustrative to show that an entity may be excluded if a sanctioned individual has even an indirect ownership relationship, which is consistent with the statute. We recognize that complex situations will require an analysis of the extent of the ownership interest, but this must be determined on a case-by-case basis.

- *Sections 1001.1101 and 1001.1201*

These provisions implement sections 1128(b) (9), (10) and (11) of the Act which permit the exclusion of an individual or entity that fails to disclose certain information, including payment information.

Comment: One commenter argued that exclusions should be imposed only after the subject individual or entity has an opportunity for a hearing before an ALJ.

Response: We do not believe that due process requires a hearing before an ALJ before an exclusion under these regulations is imposed, for the reasons discussed in section IV.F.1. of this preamble. However, § 1001.2001 provides that, prior to exclusion, an individual will receive notice of intent to exclude describing the payment or other information that was not disclosed as requested by the Department, and gives the individual 30 days to comply with the request before the exclusion is implemented. In this way, exclusions will not be imposed for inadvertent failures to comply with statutory or regulatory disclosure requirements, since the subject individual or entity will have an opportunity to cure the problem prior to imposition of exclusion.

Comment; One commenter contended that the regulations give no criteria as to what constitutes a failure to provide information, and that there is no requirement that the request for the information be reasonable, relevant, or that specific information requested be identified. The commenter argued that these regulations violate constitutional rights, and that the regulations should state that the exclusion is applicable only if there is some probable cause or reasonable basis for the disclosure through the OIG's subpoena power.

Response: These regulations provide for exclusion where information is not provided which is already required by statute or regulation, or information which is necessary to determine appropriate program reimbursement. The successful operation of the programs is based, in large part, on the government having access to information. As noted above, an individual will have 30 days to respond before an exclusion is imposed.

Comment: Several commenters expressed concern that an individual or entity would be excluded for declining to provide the information for legitimate reasons, such as the physician-patient privilege.

Response: Much of the information required to be provided in §§ 1001.1101 and 1001.1201 relates to ownership interests or significant business transactions which will not implicate patient records. Moreover, to the extent that patient records are sought, the Federal government's interest in such records supercedes State confidentiality privileges, as discussed later in this preamble. With respect to § 1001.1201, the information being requested is limited to that necessary to determine whether payments should be made and the amount thereof, information that is fundamental to the proper administration of the programs. However, as stated above, an individual will have 30 days to comply prior to imposition of an exclusion (§ 1001.2001(a)). If an individual or entity believes it is unable to provide the requested information, whether on the basis of privilege or other reason, it should notify the OIG of that fact during this 30 day period, and the OIG will consider this information in determining whether an exclusion is appropriate.

Comment: One commenter expressed concern that excluding an individual in accordance with § 1001.1101 for giving a government representative incorrect information is an extraordinary punishment when the individual was unaware that the information was incorrect. Another commenter suggested that the regulations should include a statement made in the preamble to the proposed regulations that the OIG does not intend to take action based on isolated or unintentional failures unless such failures have a significant impact on the program or beneficiaries.

Response: As stated in the preamble to the proposed regulations, the proper administration of the programs depends upon the Department having access to information that is required by statute. However, the OIG does not expect to take action based on isolated or unintentional failures to supply information unless such failures have a significant impact on the programs or their beneficiaries. We believe it is unnecessary to include a statement in the regulations as to the circumstances when the exclusion would be imposed, because it is within the OIG's discretion to determine what failures will have a significant impact on the program or beneficiaries, and when an exclusion is appropriate.

- *Section 1001.1301*

This authority permits the exclusion of individuals or entities who fail, when a proper request has been made, to grant immediate access to the Secretary, State survey agency or other entity for the purpose of conducting surveys and other reviews, or who fail to grant immediate access to the OIG or State MFCUs for the purpose of reviewing documents to determine if a statutory or regulatory violation has occurred.

Comment: Commenters contended that the searches authorized by the regulations are unconstitutional. They argued that warrants should be required, and that the regulations should require that the OIG and MFCUs have probable cause to believe that there is a violation of statutory or regulatory requirements, rather than "information to suggest" a violation.

Response: This Department can request through appropriate channels that a search warrant be obtained. In granting survey agencies, the OIG and MFCUs the authority to gain immediate access to documents or to an institution

by threatening exclusion, Congress plainly intended to grant these entities broader and additional authority that is not subject to the restrictions suggested in the comments. Administrative warrantless searches have been upheld by the Supreme Court (see *New York* v. *Burger*, 482 U.S. 691 (1987); *United States* v. *Biswell*, 406 U.S. 311 (1972)). In *Burger*, the Court set forth the three criteria that must be met in order for such searches to be constitutional: (1) There must be a substantial government interest that informs the regulatory scheme in accordance with the inspection made; (2) the warrantless searches must be necessary to further that scheme; and (3) the statutory scheme must provide an adequate substitute for a warrant. To meet this third criterion, the statutory scheme must be sufficiently comprehensive and defined so that the subject cannot help but know that his or her property will be subject to periodic inspections undertaken for specific purposes, and the statutory scheme must limit the discretion of the government inspectors in terms of time, place and scope. We believe each of these criteria is met through the statute and implementing regulations that are published today.

First, the government interest in the administration of its health care programs is obvious. The government must be able to protect the health and welfare of the beneficiaries of its programs, and must be able to assure that government payments are lawful and appropriate. Quality of care is critical to every program beneficiary, and proper government reimbursement is essential given the escalation of health care costs in our nation and the need for the proper distribution of limited public funds.

Second, warrantless searches are necessary to further the statutory schemes of Medicare and State health care programs. With regard to searches by survey facilities, it is critical that the programs have the ability to evaluate conditions of these facilities to be certain that appropriate care is given. With regard to searches by the OIG and MFCUs, these searches are limited to review of documents necessary to determine if good care is being provided and if government payments are proper. In all of these situations, the process of getting a warrant might alert health care providers of the investigation, and thwart the investigation's goals.

Third, the statutory schemes of Medicare, Medicaid and other programs covered by these regulations are sufficiently comprehensive such that providers can reasonably expect administrative searches, and the restrictions on the discretion of those seeking immediate access in terms of time, place and scope are also reasonable. With regard to searches by survey agencies, all facilities subject to such searches have, by their participation, consented to such surveys, and should reasonably be aware that surveys are part of the statutory scheme. We agree that it is reasonable to limit the scope of a survey to ordinary business hours, but facilities such as hospitals and nursing facilities are open, and are caring for beneficiaries, 24 hours a day, and therefore, must be subject to searches at any time. For example, it may be necessary to conduct a survey in the middle of the night to determine if nighttime staffing is truly adequate.

The places of such inspections are also specified. Inspections may only be made of entities that represent themselves to be specific types of institutions—such as a hospital, home health agency or laboratory—and the types of institutions subject to inspection are clearly delineated in the regulations. Finally, the scope of such searches are also defined, that is, the inspectors may examine the premises and documents that are necessary to allow a survey agency to determine whether that facility meets statutory standards that are specified in the regulations.

With regard to searches by the OIG or MFCUs, by regulation the scope of the searches are narrowly tailored in that they are limited to searches for documents. Everyone who participates in the government health care programs is, or should be, aware by the nature of the detailed statutory and regulatory schemes governing such programs, and the fact that they are entering into a business arrangement with the government, that the government can and must review records relating to their participation in the health care programs. In some cases, this will involve review of records for patients not covered by government programs, but those who participate are aware of the need for government review of the provider's quality of care. Further, the regulatory scheme imposes proper limitations. The regulations provide that the request must be made during reasonable business hours. The searches are limited in place, since they only involve review of records rather than inspections of premises, and they are limited in scope as only involving searches which are necessary for the OIG or MFCUs to fulfill their statutory and regulatory functions.

Requiring access in cases where the OIG or a MFCU has reason to suggest there is a statutory or regulatory violation is a proper implementation of the statute. As the legislative history states, Congress intended that requests for immediate access by the OIG MFCUs "only apply to situations where there is information to suggest that the individual or entity has violated statutory or regulatory requirements under titles V, XI, XVIII, XIX or XX." (House Report 100–85, *supra* at 10.) Moreover, searches where there are "reasonable grounds" to believe a violation of law has occurred have been upheld where they meet reasonable legislative or administrative standards, as is the case here (see *Griffin* v. *Wisconsin*, 483 U.S. 868 (1986)).

Comment: A number of commenters believed that the regulations should state that individuals or entities will not be excluded under § 1001.1301 due to clerical errors in failing to provide information.

Response: Whether exclusion is appropriate will depend on the circumstances surrounding the failure to provide information, and there may be differing views on whether a failure to provide information was truly inadvertent. We decline to include the limitation suggested by the comments in the regulations, but, as a practical matter, the OIG does not intend to use this authority in cases where the failure to provide information was inadvertent. Moreover, a provider can avoid this problem by simply giving the information that was erroneously not provided to the requesting agency at the time the request for immediate access is made.

Comment: Commenters pointed out that any request for immediate access should be based on information that suggests a serious violation of sections 1128A or 1128B of the Act.

Response: Section 1128(b)(12) of the Act does not limit this authority to use only in cases of suspected violations of sections 1128A or 1128B.

Comment: One commenter questioned the Secretary's authority to authorize searches by MFCUs.

Response: The commenter is mistaken. Section 1128(b)(12)(D) of the Act specifically authorizes immediate access to MFCUs. However, by regulation we are requiring that written requests for documents made by MFCUs be signed by the IG or his or her designee.

Comment: Commenters felt that MFCUs should be given immediate access in the same way State survey agencies are.

Response: State survey agencies are not only reviewing documents, but need access to a facility to determine current conditions. Although there is always a risk that documents will be destroyed or altered, the regulations provide that in cases where the MFCU has reason to believe that such destruction or alteration will occur, the MFCU can have on the spot access. Otherwise, we believe it is reasonable to allow providers some period of time to compile and review records. Of course, if it is later determined that a provider altered or destroyed records, the provider may be subject to sanctions, for example, for obstruction of an investigation.

Comment: Commenters stated that while the regulations require access to determine if laboratories meet the requirements of sections 1861(s) (12) and (13) of the Act, these sections do not relate to laboratories.

Response: We have corrected these statutory references in the final regulations.

Comment: According to several commenters, when requesting immediate access, the OIG should provide the individual or entity with a written statement of the subject's rights, and obligations, and this statement should include the definitions of "reasonable request" and "immediate access."

Response: We agree, and have incorporated this in the final regulations. This statement, which will be in the form of a letter requesting immediate access, will set forth the nature of the request such as the documents sought, the authority for it, and will also serve as the notice of intent to exclude and opportunity to response (in lieu of any such notice and opportunity under § 1001.2001), explaining the potential exclusion sanction and the length of the potential exclusion.

Comment: A number of commenters indicated that the regulations should set forth the OIG's statutory functions that can be the basis for a request for immediate access.

Response: The OIG's authority is derived from 5 U.S.C. App. 3. We do not believe it is necessary to include this in the regulations, but the authority for the request for immediate access will be included in the letter requesting access.

Comment: Commenters pointed out that a party should be allowed to know what information the OIG or a MFCU has that leads the OIG or the MFCU to believe the party has violated a statutory and regulatory requirement at the time access is requested, rather than having this information told only to an ALJ at an exclusion hearing.

Response: In advising a party of the documents requested, the statutory authority for the request, and the name of the official authorizing the request, a party has enough protections by which to verify the legitimacy of the request. A party has no right to know the nature of the underlying investigation. It is not appropriate for the OIG or a MFCU to reveal sources of information or the nature of the investigation, since a party is obligated to comply regardless of the nature of the investigation, and since providing such knowledge could impede the investigation.

Comment: In requests for immediate access by survey agencies under §§ 1001.1301(a)(1) (i) and (ii), some commenters believed that it is unclear whether access to documents or to the physical premises is permitted. Where access to the physical plant is sought, commenters felt that the regulations should provide for access that will not unduly interfere with patient privacy and treatment.

Response: Survey agencies have the right to review both the physical plant and documents. Congress intended for this provisions to grant survey agencies the ability to determine the extent of compliance with relevant requirements; both the physical plant and documents are important sources of information. Survey agencies need the flexibility to be able to conduct surprise surveys, but it is expected that any interference with patient privacy or treatment would be only that which is necessary to enable the survey agencies to fulfill their statutory functions.

Comment: Several commenters stated that the regulations provide that a party will not be considered to have failed to provide immediate access if, in response to a request by the OIG or a MFCU, a party can provide a compelling reason why documents cannot be produced. According to the comments received, this exception should also be included in the regulations applicable to requests for access by survey agencies under §§ 1001.1301(a)(1) (i) and (ii).

Response: We agree and have modified the final regulations accordingly.

Comment: One commenter indicated that the regulations should require that the request be made to a person with authority.

Response: We intend to make the request to someone in control. With respect to requests for documents, the request will be addressed to the custodian of records. With respect to requests for access by survey agencies, the request will be made to the owner, administrator or other person functioning in that capacity, or his or her delegatee.

Comment: Numerous commenters criticized the definition of "failure to grant immediate access" in the context of requests by the OIG or MFCUs. Many commenters argued that a 24 hour period is too short and would not give the subject enough time to verify that the request is genuine or to determine whether it had custody of the requested documents. Commenters suggested that the time for compliance should be tolled while the subject is verifying the legitimacy of the request. Further, some commenters felt that providing 24 hours was too long a period of time and that the information should be required on the spot in all situations.

Response: We believe that 24 hours is enough time for subjects to verify the legitimacy of the request. We believe that problems with identifying the appropriate person to be called will be alleviated because this information will be included in the statement of rights that will be provided to the subject. The subject can compile the documents while verifying the legitimacy of the request at the same time. Moreover, the regulations do not require that any copies be made, but only that the records be made available. Finally, subjects will not be excluded if they can provide a compelling reason why the request cannot be satisfied.

Comment: Commenters believed that it is not clear how the OIG can determine that there are exigent circumstances, i.e., risk of destruction, that justify on the spot access in the absence of probable cause. Commenters argued that exigency must be determined from an objective perspective. Exigent circumstances could always be deemed to occur in a case involving fraud.

Response: We do not intend to use this authority in every case, but we must have an ability to obtain documents immediately if there is a legitimate concern that the documents will be altered. We believe this will be resolved by looking at the circumstances surrounding a case. For example, if a subject has been extremely recalcitrant in providing information, or if the OIG had previously been provided with information from this subject that included altered documents, that would be reason to believe that this act may occur again. We have revised the regulations to clarify that exigent circumstances apply where the OIG or the MFCU reasonably believes that the documents will be altered or destroyed.

Comment: Some commenters argued that the regulations exceeded statutory

authority in providing for an exclusion longer than the length of time access was denied up to 90 days. One commenter suggested that the exclusion should last at least one year from the date access was denied.

Response: Section 1128(c)(3)(C) of the Act expressly limits the length of the exclusion for an individual, but does not impose any limitation on the length of the exclusion for an entity. The regulations, in setting an upper limit for individuals but not for entities, properly implement the statute. Moreover, we believe that the circumstances surrounding the failure to provide information can so vary that it would be inappropriate to set forth a minimum length of exclusion period.

Comment: Some commenters felt that the proposed regulations did not sufficiently protect individual privacy rights or the confidentiality of medical records. Some commenters felt that only the records of program beneficiaries should be made available to the government. One commenter believed that the final rule should affirmatively state that patients do not waive their privacy rights by participating in a government health care program.

Response: We disagree with these comments. All health care providers, as a condition of their participation in the Medicare and Medicaid programs, are obligated to furnish to the government any records or other confidential information necessary to determine appropriate reimbursement (see, for example, sections 1815(a) and 1833(e) of the Act). Thus, under Federal law, the government's interests in ensuring the integrity of its health care programs supercedes patients' privacy rights under certain conditions. As part of the mandate to investigate fraud and abuse in the Medicare and State health care programs (5 U.S.C. App. 3, 6(a)(2)), the Inspector General may need to review health care providers' medical records in order to determine whether there has been a violation of one or more authorities implemented under these regulations. In deciding whether to seek access to confidential information during the course of an investigation, the IG attempts, on a case by case basis, to strike a fair balance between the privacy rights of patients and the Federal interest in obtaining and safeguarding evidence. Whenever confidential information is material to an investigation, the IG's policy is to assess whether the Federal interest in the information outweighs the privacy concerns of individuals involved. For example, if there is evidence that a psychiatrist sought Medicaid reimbursement for individual therapy sessions when he or she actually provided group therapy (which is reimbursed at a lesser rate), obtaining access to the psychiatrist's appointment book may be essential to determine whether the psychiatrist committed fraud.

The IG's approach fully accords with established legal precedent in this area. When the government seeks confidential records in order to enforce a statutory scheme enacted to protect the public health or safety, the public interest prevails over individual claims of privacy (see *United States* v. *Westinghouse Electric Corporation*, 638 F. 2d 570 (3d Cir. 1970)). In particular, there is a compelling public interest in investigating fraud committed against government health care programs, and privacy protections afforded under State law must succumb to that interest (see *St. Lukes Regional Medical Center, Inc.* v. *United States*, 717 F. Supp. 665, 666 (N.D. Iowa 1989)). We believe that these regulations allow for lawful and appropriate disclosure of confidential information that is material to Medicare and Medicaid fraud investigations. They are not intended to protect unnecessary invasions of privacy.

• *Section 1001.1401*

This provision permits the exclusion of hospitals that fail to comply substantially with corrective action plans required by HCFA in accordance with section 1886(f)(2)(B) of the Act, which are imposed to correct practices that circumvent the prospective payment system.

Comment: One commenter questioned that part of the preamble to the proposed regulations that stated that issues relating to the underlying inappropriate admissions or practice patterns may not be contested in an exclusion hearing. The commenter was concerned that there be an appeals mechanism for the underlying issues.

Response: The OIG has the authority to exclude a hospital that has failed to comply substantially with a corrective action plan under section 1886(f)(2) of the Act. Section 1886(f)(2) provides that the provisions of sections 1128(c)–(g) apply to determinations made under section 1886(f)(2). Sections 1128(c)–(g) set forth procedures relating to implementation of exclusions, including rights to appeal. A provider will, therefore, have the rights to appeal provided for in sections 1128(c)–(g) to appeal the merits of the determination that it has failed to comply substantially with a corrective action plan.

• *Section 1001.1501*

This provision permits the exclusion of individuals who default on health education loans or scholarship obligations.

Comment: Commenters stated that there is little relationship between failure to pay one's scholarship obligations and the right to participate in Medicare. Moreover, these commenters indicated that this section seems extremely unfair to an entity, which could be excluded under § 1001.1001 based on the actions of a single individual who failed to pay student loans.

Response: A physician reaps financial benefits from participating in Medicare and Medicaid. There is plainly a connection between requiring a physician who is benefitting from government programs to meet his or her financial obligations to the government, by repayment of loans. These regulations are a proper interpretation of statutory authority (section 1128(b)(14) of the Act). An entity will always have an opportunity to terminate its relationship with a sanctioned individual before an exclusion will be imposed.

Comment: Section 1128(b)(14)(B) of the Act requires that the Secretary take into account access of beneficiaries to physician services in determining whether to impose an exclusion, and this should be included in the regulations.

Response: We agree, and have changed the final rule accordingly. We have also included in the regulations the other limitation set forth in section 1128(b)(14)(A), which mandates that the Secretary may not exclude a physician who is the sole community physician or the sole source of essential specialized services in a community if a State requests that the physician not be excluded.

Comment: Some commenters stated that although the regulation provides that the OIG must determine that the PHS has taken all reasonable administrative steps to obtain payment of the loans or other obligations before imposing an exclusion, it fails to state what steps are reasonable.

Response: The Secretary is expected to use alternative administrative tools whenever feasible. Whether it is feasible or reasonable to use alternative administrative means will depend on the circumstances surrounding a particular case.

We are, however, clarifying § 1003.1501(a)(2) to indicate that whenever PHS has complied with the

Medicare offset provisions of section 1892 of the Act, the OIG will find that "all reasonable steps" have been taken and that no other administrative steps are necessary. The basis for this policy is that, in enacting an almost identical exclusion authority in section 1892(a)(3)(B) shortly after it enacted the exclusion authority in section 1128(b)(14), Congress effectively defined the term "all reasonable steps" as used in section 1128(b)(14). Since section 1892 makes clear that no more is required of the Secretary prior to excluding a defaulter than to offer an offset agreement, we believe that it would be illogical to interpret section 1128(b)(14) as requiring more, especially in light of the fact that section 1892 is (1) the more recently enacted statute and (2) an even stricter statute in that it makes exclusions mandatory and not permissive.

• *Section 1001.1601*

This provision permits the exclusion of physicians who violate the limitations on physician charges under Medicare. For services furnished during the period January 1, 1987 to December 31, 1990, the issue is whether the physician billed in excess of the maximum allowable charge determined in accordance with section 1842(j)(1)(c) of the Act. Since January 1, 1991, the issue is whether the physician billed in excess of the limiting charge determined in accordance with section 1848(g)(2) of the Act. Based on comments and our review of this section, we have deleted the limitation that was erroneously included in the proposed regulations which stated that an exclusion under this authority is limited to the Medicare program. As stated in the preamble to the proposed regulations, Public Law 100-360 extended this exclusion to all programs.

Comment: According to several comments received, beneficiary access to alternative services should be considered in determining whether to impose an exclusion, rather than only being a factor in determining the length of the exclusion.

Response: We agree and have modified the final rule accordingly. This authority implements section 1842(j) of the Act, and paragraph (j)(3)(B) of that section of the law mandates that the Secretary take into account access of beneficiaries to physicians' services in determining whether to impose an exclusion. We have also included in the final regulations the requirement, set forth in section 1842(j)(3)(A) of the Act, that the Secretary may not exclude a physician if that physician is a sole community physician or the sole source of essential specialized services in a community.

Comment: Section 1842(j)(1)(B) of the Act provides that an exclusion may only be imposed in cases where a physician knowingly and willfully bills on a repeated basis in excess of the maximum allowable charge. One commenter felt that the regulations should include the qualification that the exclusion may only be imposed if the act occurred repeatedly.

Response: We agree and have modified this provision accordingly.

Comment: Some commenters indicated that the regulations should set forth a minimum monetary level justifying the imposition of an exclusion.

Response: The decision of whether to exclude someone is not based solely on monetary consequences to the program. The requirement that the excessive billing be made on a repeated basis before an exclusion will be imposed counters any concern that an exclusion will be imposed for a single or de minimis violation.

Comment: Commenters pointed out that the final regulations would clearly define the term "knowingly and willfully" as used in § 1001.1601 of the regulations.

Response: We intend for these terms to be interpreted according to their accepted legal meaning in Federal law.

Comment: Some commenters questioned why section 1842(j)(1)(B)(ii) of the Act contains a sunset provision on this authority, but that the regulations does not.

Response: We have modified these regulations to clarify that an exclusion under section 1842(j)(1)(B) of the Act only applies to services furnished between the period January 1, 1987 and December 31, 1990.

Comment: A number of commenters felt that physicians excluded under this authority should have a hearing prior to imposition of the exclusion, since safety of beneficiaries is not a concern.

Response: Because a CMP may also be imposed for conduct sanctionable under § 1001.1601, and because prior hearings are available for all CMP authorities, we are providing for a hearing prior to an exclusion under this section. This issue is discussed more fully in section IV.F.1. of this preamble.

• *Section 1001.170*

This provision permits the exclusion of physicians who bill for services of assistants at surgery during cataract operations.

Comment: Commenters specifically pointed out that, although not cited in the proposed rule, section 1842(k) of the Act requires the Secretary to take into account access of beneficiaries to physicians' services in determining whether to impose an exclusion.

Response: We agree and have modified the final regulations accordingly. We have also included in the regulations the statutory mandate that the OIG may not exclude a physician who is the sole community physician or the sole source of essential specialized services in the community (section 1842(j)(3) of the Act).

Comment: One commenter argued that a physician should have a hearing before an ALJ prior to imposition of the exclusion.

Response: We agree and have modified the final regulations accordingly.

Comment: One commenter stated that exclusion for providing an assistant at cataract surgery is too severe a penalty, and stated that the PRO prior approval program is adequate.

Response: Congress determined that exclusion is an appropriate remedy for this conduct. The OIG will exercise its discretion to impose exclusions only in those cases where it is the appropriate remedy.

D. Part 1001, Subparts B and C—Aggravating and Mitigating Circumstances

Comment: Commenters stated that an ALJ should be free to consider any factors whatsoever in determining whether the length of an exclusion should be reduced, and that the mitigating factors included in the regulations should be examples rather than an exhaustive list.

Response: The legislative history directs the Secretary to consider any mitigating circumstances in setting the period of exclusion. The Secretary has the authority to determine what circumstances are mitigating. Moreover, these factors only relate to the length of the exclusion. The OIG considers many factors in deciding whether to impose an exclusion in the first place.

Comment: Some commenters felt that the regulations should give specific guidance as to how aggravating and mitigating factors will be weighted.

Response: We do not intend for the aggravating and mitigating factors to have specific values; rather, these factors must be evaluated based on the circumstances of a particular case. For example, in one case many aggravating factors may exist, but the subject's cooperation with the OIG may be so significant that it is appropriate to give that one mitigating factor more weight than all of the aggravating. Similarly, many mitigating factors may exist in a

case, but the acts could have had such a significant physical impact on program beneficiaries that the existence of that one aggravating factor must be given more weight than all of the mitigating. The weight accorded to each mitigating and aggravating factor cannot be established according to a rigid formula, but must be determined in the context of the particular case at issue.

Comment: Several commenters expressed concern that certain provisions, such as § 1001.102, provide that it will be an aggravating factor if the acts underlying the exclusion had an impact on programs or individuals, while other sections, such as § 1001.201, provide that only if the acts had a significant adverse impact will the impact be considered aggravating. Commenters believed that this factor should be consistently stated in the regulations. In addition, commenters indicated that the mitigating factor in § 1001.701, stating that it will be mitigating if the violations had no adverse impact on individuals or the programs, should be changed to make it mitigating if the violations had no significant adverse impact.

Response: An aggravating factor is one that does not automatically exist in every case, but when it does exist, justifies a longer period of exclusion. Every case resulting in an exclusion will involve circumstances that had an impact on the program or beneficiaries. To be an aggravating factor, we agree that the impact must be more than minimal, that is, it must have been significant, and we have modified the regulations accordingly. With regard to the mitigating factor set forth in § 1001.701, we have deleted that factor since, on review, we do not think this mitigating factor would ever apply; we believe that there will be no case where there is absolutely no adverse impact on individuals or the programs. We believe that the issue of the extent of the harm caused by a violation under § 1001.701 is addressed by the fact that it will be considered mitigating if there were few violations and they occurred over a short period of time.

Comment: Sections 1001.102, 1001.201, and 1001.301 provide that it will be considered mitigating if someone had a mental, emotional or physical condition, before or during commission of the offense, that reduced the individual's culpability. A commenter questioned whether it would be mitigating if such a condition developed after commission of the offense.

Response: This factor was intended to take into account the factors that might reduce the offender's culpability in committing the offense, and development of a condition after the commission of the offense would not be relevant. We have also clarified that such a condition will only be considered if the court reached the conclusion that such a factor existed which reduced the offender's culpability; the mere appearance of such an allegation in the pre-sentencing report would not be enough. Moreover, this factor will not be considered as mitigating if there is an ongoing problem that has not been resolved, such that the program and their beneficiaries continue to be at risk.

Comment: Sections 1001.102, 1001.201, 1001.301, and 1001.401 state that an individual's or entity's cooperation is a mitigating factor if the cooperation resulted in others being convicted or excluded from Medicare or a State health care program. Commenters contended that cooperation itself should be considered mitigating, regardless of whether another individual or entity was sanctioned.

Response: As a practical matter, we generally consider cooperation in determining whether to impose a permissive exclusion at all. We believe, however, that only significant cooperation should be considered mitigating, and the imposition of a sanction as a result of cooperation establishes that the cooperation was significant. We believe the significance of cooperation is more properly evaluated by those in a position to utilize the information, rather than by an ALJ. We have, however, modified the regulations to provide that cooperation shall be a mitigating factor if it led to imposition of a CMP, in addition to whether it led to a conviction or exclusion.

Comment: Commenters stated that some aggravating factors, such as that the acts resulted in loss of $1,500 or more, were committed over a period of 1 or more years, and had a significant impact on the programs or individuals, will likely exist in every case, and thus serve no purpose but to allow the OIG to routinely increase the length of the exclusion. Similarly, commenters indicated that certain mitigating factors, such as an individual or entity being convicted of three or fewer misdemeanors, and the loss to the government or other individuals or entities being less than $1,500 (§§ 1001.102 and 1001.201), will never exist. These individuals felt that the existence of 3 or fewer misdemeanors should be mitigating by itself.

Response: We disagree with these comments. Our experience has shown that none of the aggravating factors included in these final regulations are present in every case. Moreover, we believe the amount of the loss relates to the degree of risk to the programs, and we believe $1,500 is a reasonable benchmark for distinguishing between significant and less significant risk.

Comment: Proposed §§ 1001.102 and 1001.201 provided that it will be considered aggravating if the total loss exceeds $1,500, and stated that the total amount of financial loss would be considered, including any amounts resulting from similar acts not adjudicated. Commenters stated that this factor should not be used since the excluded party has not been given an opportunity to contest these acts.

Response: Acts that have not been adjudicated are not considered in determining whether an exclusion must or should be imposed. Other acts are considered only in determining the length of the exclusion. We are aware of numerous cases where there is evidence that an individual or entity committed many similar acts but, as a condition for entering into a plea agreement, only pled guilty to one charge. It is part of the OIG's responsibility to review all factors surrounding a case to determine the reasonable length of an exclusion. The approach we have taken is not unlike sentencing in the criminal context, where a judge may consider many different acts of the defendant in setting the appropriate sentence, not just the ones that form the basis for the conviction. We have also modified this factor so that, although $1,500 will be the benchmark of significant loss to the government, no specific monetary figure is included for impact to program beneficiaries or other individuals, since, to those persons, a loss much less than $1,500 may be significant. We have also deleted "financial" from § 1001.201(b)(2)(iii) since the financial impact is dealt with in paragraph (b)(2)(i) of that section.

Comment: Some commenters questioned whether the mitigating factor relating to the loss to the programs being less than $1,500 could apply if someone pleads guilty to one offense which is less than $1,500, where there is evidence that the individual committed offenses that total greater than $1,500.

Response: We are not concerned about the applicability of this factor to plea bargains, because the factor states that it requires the consideration of not only the acts that resulted in the conviction, but also similar acts.

Comment: Proposed §§ 1001.201 through 1001.801 provided that it will be a mitigating factor if alternative sources of the type of health care items or services furnished by the excluded individual or entity are not available. A

number of commenters believe that the regulations should be modified to state that it will be mitigating if alternative sources are not reasonably available.

Response: We believe this is implicit in the regulations. The purpose of this mitigating factor is to protect program beneficiaries, and if services are not reasonably available to them then, as a practical matter, they are not available. Of course, in evaluating the factor, we will look to whether there are service providers who accept Medicare and Medicaid patients, rather than merely whether services are available generally.

Comment: Several commenters pointed out that the unavailability of alternative sources of the type of health care items or services furnished by the entity will never be a mitigating factor for HMOs sanctioned under § 1001.801 if non-plan providers are considered alternative.

Response: An exclusion is remedial and is designed to protect the program and its beneficiaries. It is not in the interests of the beneficiaries to include in the program an HMO that substantially fails to provide necessary services. Thus, if another entity can provide these services, the medical needs of the beneficiaries are met and there is no need to keep the HMO in the program. There may be circumstances, however, where unique services will only be provided by physicians who are part of the HMO, and this factor will, in those situations, apply.

Comment: Commenters stated that the regulations should be consistent in identifying the parties on whom the impact of the action will be evaluated for purposes of determining the existence of aggravating and mitigating factors. For example, proposed § 1001.102 provided that it would be aggravating if there was an adverse impact on individuals, and § 1001.201 provided that it would be aggravating if there was a significant adverse impact on individuals or the program. One commenter stated that these regulations should be consistent, and that considering effect on anyone besides program beneficiaries is overly broad.

Response: We have modified the regulations to provide that under all of these provisions we will evaluate the impact on the programs, program beneficiaries and other individuals. It is reasonable to consider the impact conduct had on any and all persons in determining whether program beneficiaries are at risk.

Comment: According to the concerns of some commenters, a prior sanction record should serve as an aggravating factor only if there was a pattern of wrongdoing with respect to Medicare or a State health care program.

Response: We believe that a prior sanction record is an aggravating factor because it shows an unwillingness to comply with the law.

Comment: A number of commenters indicated that the absence of a prior record of convictions or other sanctions should be a mitigating factor.

Response: We disagree. We do not believe anyone deserves special credit (in the form of a reduced period of exclusion) for doing what is expected, that is, obeying the law.

Comment: Proposed §§ 1001.501 and 1001.601 provided that it would be aggravating if the period of license loss or exclusion from participation set by the derivative agency does not take into account the impact that the sanctioned party's conduct had or could have had on Federal or State health care programs. One commenter believed that this factor is too speculative.

Response: It is the OIG's responsibility to assess all circumstances that relate to the risk of future participation in the health care programs.

Comment: Proposed §§ 1001.501 and 1001.601 provided that mitigating factors would only be considered if aggravating factors justify lengthening the exclusion beyond the time imposed by the derivative agencies. Some commenters felt that the regulations should allow for consideration of mitigating circumstances even in the absence of aggravating circumstances.

Response: These exclusions rely on the determination of another agency that has had the opportunity to fully evaluate a situation. In most cases, we will accept the derivative agency's length of exclusion as controlling for Medicare purposes, and we do not believe it is appropriate to focus on issues that have already been considered in that other forum. In cases where we exercise our independent discretion to extend the length of the exclusion, it is then appropriate to allow new information to be considered both in favor of lengthening and reducing the period of exclusion.

Comment: According to some commenters' concerns, an individual's financial condition is relevant and should be considered mitigating in determining the length of the exclusion imposed under §§ 1001.901 or 1001.951.

Response: CMPs and exclusions serve different functions. In setting a CMP, the purpose is to make an individual or entity pay for bad conduct both to compensate the government and deter future similar conduct. In cases where the OIG imposes a CMP only, the OIG has determined that the program is not at risk by allowing the sanctioned party to continue to participate, and it is not in the interest of the program and their beneficiaries to make the penalties so extreme that they are either uncollectible or act to prevent the sanctioned party from being able to afford to continue participating in the programs. If it is determined that someone should be excluded from the programs because continued participation puts the program at risk, the fact that the exclusion may affect his or her financial condition is not our concern; our concern is in protecting the programs.

E. Part 1001, Subpart D—Waivers and Effect of Exclusion

1. Waiver of Exclusions

Comment: One commenter stated that in addition to waiving State health care program exclusions on behalf of individuals or entities excluded from participation in Medicare, the OIG should permit State licensure authorities to waive imposition of sanctions.

Response: Nothing in these regulations requires States to take particular licensing or disciplinary action against excluded providers. When the OIG excludes an individual or entity from participation in Medicare, it is obligated by statute to notify State licensing agencies of the exclusion, and to request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy (section 1128(e) of the Act). These regulations implement that statutory provision, but do not require State licensing agencies to take any specific action against excluded providers (§ 1001.2005). Thus, State licensing agencies may refrain from sanctioning individuals or entities excluded from Medicare so long as the law and policy within a particular State authorizes the waiver of licensure or disciplinary sanctions.

Comment: A few commenters requested that we broaden the circumstances under § 1001.1801(b) by which a request to waive a permissive exclusion may be granted to State health care programs. The proposed regulation limited waiver requests in the case of permissive exclusions to the same conditions that waiver requests are statutorily authorized in the case of mandatory exclusions; that is, where the excluded party is the sole community physician or the sole source of essential specialized services in a community. One commenter stated that these conditions for considering waiver

requests would not ensure community access to long term care services, such as nursing home placement, because the existence of other sources of long term care may not reflect the actual availability of beds. Another commenter felt that the criteria for assessing waiver requests should be expanded to include consideration of whether an exclusion would compromise beneficiary access to needed services. A third commenter suggested that the OIG should agree to consider a waiver request whenever a State health care program can demonstrate that waiver would be in the public interest.

Response: We have considered the above comments, and we agree that the conditions for OIG consideration of State health program waiver requests under proposed § 1001.1801 may not protect beneficiary or other program needs in some instances. For example, when a cardiologist is excluded from the State health care programs, while there may be several other physicians in the community that provide cardiology services, it may be that none of these physicians participate in Medicaid. In this type of situation, imposing a Medicaid exclusion would deprive Medicaid beneficiaries of needed services, although the excluded party was not a sole community physician or sole source of essential specialized services.

In order to provide the OIG with greater flexibility to protect program interests when the imposition of an exclusion would threaten such interests, we are amending this provision in two ways. First, as discussed earlier in this preamble, we are modifying the definition of "sole community physician" by removing the language restricting this definition to providers practicing in health manpower shortage areas under 42 CFR part 5. Second, we are adding a new paragraph (c) to § 1001.1801, to allow the OIG, at its discretion, to waive imposition of a permissive exclusion when such waiver would be in the public interest.

Comment: One commenter stated that the language in § 1001.1801(d) should be changed to clarify that waiver would apply only with respect to those programs for which waiver is specifically requested. For example, if a State agency requests waiver from the Medicaid program, waiver should be granted for that program alone, and not for the Maternal and Child Health Care program (title V) or the Block Grants program to States (title XX).

Response: We agree with this comment, and have modified the proposed § 1001.1801(d), codified now as paragraph (e) in these final regulations, to clarify that if a waiver request is made with respect to certain State health care programs, it will only apply to those State programs. However, under § 1001.1801(g) of this final rule, if in the course of considering a waiver request with respect to one or more State health care programs, the OIG determines that imposition of a Medicare exclusion will deprive Medicare beneficiaries of access to needed services, the OIG may waive the Medicare exclusion in conjunction with granting the State program waiver request.

2. Scope and Effect of Exclusion

In the proposed rule, we requested comments on a number of possible approaches to implementing Executive Orders 12549 and 12689, which provide that debarments, suspensions, and other exclusion actions taken by any Federal agency will have government-wide effect. The language that was proposed would have expanded the scope of these exclusions to all Federal nonprocurement health programs.

Comment: There were only two commenters on the issue of the government-wide effect of the regulations. One agreed with the expanded scope and the other expressed the opinion that there was no legal authority for giving government-wide effect to these sanction authorities which relate only to Medicare and State health programs. Neither commenter specifically discussed the alternate approaches set forth in the preamble to the proposed rule, one of which was to provide, by regulation, that the exclusions will apply to all Federal nonprocurement programs.

Response: We have decided to adopt this latter approach. With respect to our legal authority for this provision, we have concluded, in consultation with the Department of Justice, that Executive Order 12549 requires us to give government-wide effect to all exclusions imposed under these regulations. However, since the scope of this Executive Order is limited to Federal nonprocurement programs and activities, it does not authorize us to extend the government-wide effect of our exclusions to procurement programs and activities.

We have also concluded that to limit the scope of the government-wide effect to nonprocurement health programs is not authorized by the Executive Order, nor does it comport with the intent of the order. Such an interpretation would have anomalous results. For example, under such a limited interpretation, an individual who was convicted of Medicare fraud, and thus excluded from participation in Medicare and State health care programs, would still be eligible to run a Head Start Program or receive a grant from the Department of Housing and Urban Development to build low-income housing, notwithstanding his or her history of defrauding the government. This is exactly the sort of result that the Executive Order was designed to prevent.

We recognize that in some situations the government-wide effect of a Medicare exclusion may pose an undue hardship and may be unnecessary to project the integrity of government programs. For example, if an exclusion from Medicare is based on a license revocation by a State licensure board, and the sole basis for the revocation is the incompetence of the physician or other health care professional, it might be unfair to bar that individual from participating in Federal programs unrelated to the practice of medicine. Any unfairness in a specific case may be remedied, however, since paragraph 2(c) of the Executive Order authorizes an agency head to grant an exception permitting an excluded party to participate in a particular transaction.

Comment: Some commenters felt that the proposed regulations unfairly penalized institutional providers who employ excluded individuals or entities. For example, one commoner objected to the provisions of proposed § 1001.1001, authorizing the exclusion of entities owned or controlled in whole or in part by individuals sanctioned under section 1128 or 1128A of the Act. Another commenter felt that proposed regulation § 1001.1901(b), prohibiting Medicare and State health care program reimbursement for items or services furnished by, at the medical direction of, or on the prescription of an excluded physician, unfairly penalized institutional providers who employ excluded physicians in accordance with contracts that cannot be terminated upon notice of the exclusion. The commenter stated that the risk of legal action by excluded providers or by their patients if ordered items or services were not furnished would make the providers feel constrained to provide such items or services. The commenter also believed that § 1001.1901(b) discriminated against institutional providers by denying payment to these facilities for items or services ordered by excluded providers, but not denying payment to provider-based physicians who perform services in conjunction with or related to those performed by excluded physicians, e.g., an

anesthesiologist working with an excluded surgeon.

Response: Both proposed §§ 1001.1001 and 1001.1901(b) were based on statutory mandate (sections 1128(b)(8) and 1862(e)(1)(B) of the Act). To the extent that these provisions impose sanctions against, or deny reimbursement to, institutional providers that employ excluded individuals, the Department has simply implemented what Congress required. Moreover, with respect to the comments that § 1001.1901(b) unfairly penalizes institutional providers, we believe that providers can structure their contracts with physician employees so as to protect themselves from having to continue an employment relationship once they become aware that a physician has been excluded. Because, under § 1001.1901, any person furnishing items or services ordered or prescribed by an excluded physician must know or have reasons to know of the physician's exclusion, the provision justly avoids penalizing facilities that employ excluded physicians unknowingly. Under § 1001.2006(a)(1), the Department would give notice of a physician's exclusion to any provider known to be employing the physician.

With respect to the comment that failure to provide services ordered by excluded physicians might entail legal risk, we point out that § 1001.1901 does not prohibit providers from continuing to provide services for legal or any other reasons. The provision, which tracks the statutory language of section 1863(e)(1)(B) of the Act, denies payment for services furnished at the medical direction or on the prescription of an excluded physician. The provision reflects the intent of Congress and the Secretary that the government not pay—directly or indirectly—for the services of untrustworthy individuals or entities with whom the Department has determined it should cease doing business.

Finally, with respect to the comment that § 1001.1901(b) discriminates against institutional providers in contrast to other hospital based physicians, we disagree. Other hospital based physicians who perform services ordered by an excluded physician (such as a radiologist who does X-rays at the request of an excluded cardiologist) will be reimbursed for their own services, not those of the excluded physician. By contrast, institutional providers that bill for items or services furnished by or at the medical direction or on the prescription of an excluded physician, seek reimbursement for items or services used or performed by, or at the direction of, the excluded physician.

Furthermore, institutional providers control and influence the excluded physician's ability to continue serving program beneficiaries in ways that other individual physicians simply cannot. Individual physicians influence the referral of services in particular cases; however, institutional providers are in a position to determine whether an excluded physician can continue treating beneficiaries at all. Therefore, because their control over the ability of excluded physicians to treat beneficiaries is far greater, we believe it is reasonable to deny payment to institutional providers who seek reimbursement for items or services furnished by excluded providers.

Comment: A few commenters were concerned that both the proposed regulatory provisions governing the effect of exclusions and exceptions to the nonpayment of claims for services of excluded parties were unclear. For example, one commenter pointed out that the proposed rule should have expressly stated that an excluded individual or entity does not automatically become eligible to participate in Medicare or State health care programs once the exclusion period ends. Other commenters were confused about the exception specified under proposed § 1001.1901(d)(1)—now being codified as § 1001.1901(c)(1) in these final regulations—for payment of the first claims of part B enrollees who are without notice of an exclusion. These commenters were concerned that excluded practitioners could, under this provision, avoid the impact of an exclusion by continuing to furnish services to program beneficiaries, and having those beneficiaries then submit claims to Medicare for reimbursement.

Response: We agree that these regulations should clarify that excluded individuals or entities must be reinstated into Medicare or the State health care programs in order to begin participating in these programs after a period of exclusion has lapsed. Therefore, we are amending § 1001.1901(b) to clarify that the effect of an exclusion lasts unless and until an individual is reinstated in accordance with the procedures set forth under part 1001, subpart F.

With respect to the payment of enrollees' first claims for services furnished by excluded providers, it should be noted that under section 1848(g)(4) of the Act, physicians and suppliers are required to complete and submit all claims forms for services provided to beneficiaries on or after September 1, 1990.

We are adding a new paragraph (b)(3) to § 1001.1901 to clarify that an excluded individual or entity who submits or causes the submission of claims for items or services furnished during the exclusion period is liable under the CMP law and criminal law. The Secretary's intent in paying the first claim of beneficiaries under § 1001.1901(c)(1) is not to legitimize excluded parties causing their patients to submit claims during the exclusion period (see *The Inspector General* v. *Berney R. Keszler, M.D., P.A.*, Docket No. C-167 (Departmental Appeals Board/Civil Remedies Division) (November 1, 1990), at 28)). Rather, the intent is that beneficiaries not be forced to pay for services provided by someone whom the beneficiaries did not know was excluded. Hence, we will pay the first claim, and then notify the beneficiaries of the excluded status of the individual or entity and that further claims for items or services furnished by such individual or entity will not be paid.

F. Part 1001, Subpart E—Notice and Appeals

1. Statutory Authority and Constitutional Issues

Comment: Several commenters expressed concern that the proposed rule did not afford constitutionally adequate due process to individuals and entities who are excluded from participation in Medicare and the State health care programs. These commenters stated that, because the inability to participate in government health care programs can be professionally and financially devastating, it would violate due process to exclude an individual or entity from program participation without a prior opportunity to contest the exclusion. Some commenters felt that parties excluded for *any* reason authorized under MMPPPA should be permitted to request a hearing prior to imposition of the exclusion. Other commenters believed that the OIG should provide for such a hearing prior to imposing any of the non-derivative exclusions, or any exclusions necessary to safeguard the health or safety of program beneficiaries.

Response: In accordance with section 1128(f)(2) of the Act, we provided for a prior hearing in the case of exclusions imposed under section 1128(b)(7) for violations of the CMP law (§ 1001.901) and for kickbacks and other illegal activities under section 1128B of the Act (§ 1001.951), unless the health and safety

of individuals receiving services warranted otherwise. We have also provided for a prior hearing in the case of exclusions imposed for violations of Medicare physician charge limitations under § 1001.1601, and exclusions imposed for fraudulent billing for services of an assistant during cataract surgery under § 1001.1701. We have done this because the conduct involved in these two exclusion authorities subjects an individual or entity to a CMP in addition to, or in lieu of, the exclusion authority authorized here, and the CMP may only be imposed after an ALJ hearing. We believe that fundamental fairness, as well as economy of resources, make a single unified proceeding the appropriate mechanism for imposing sanctions under §§ 1001.1601 and 1001.1701.

However, we do not believe that prior hearings would be appropriate for any other exclusion authorities implemented in these regulations, and have therefore provided for post-exclusion hearings for all exclusion authorities except §§ 1001.901, 1001.951, 1001.1601 and 1001.1701. As we stated in the preamble to the proposed regulations, case law makes clear that due process does not require a hearing prior to the imposition of an exclusion from Medicare or State health care programs (see *Mathews* v. *Eldridge*, 424 U.S. 319 (1976); *Ram* v. *Heckler*, 792 F.2d 444 (4th Cir. 1986)). When an agency exercises discretionary authority, due process is satisfied so long as the affected party is given "notice and an opportunity to respond * * * (t)he opportunity to present reasons, either in person or in writing, why proposed action should not be taken" (see *Cleveland Bd. of Education* v. *Loudermill*, 470 U.S. 532, 105 S.Ct. 1487, 1495 (1985)). This final rule reflects this constitutional principle. Under § 1001.2001, we have provided for notice and an opportunity to respond, in writing, as well as in person for certain exclusion authorities, in cases in which the OIG's exercise of authority to exclude individuals or entities is not mandated by law. Thus, § 1001.2001(a) provides for issuance of a "notice of intent to exclude" granting 30 days to provide "documentary evidence and written argument in response" prior to imposition of (1) a permissive exclusion (except those imposed under §§ 1001.1301 through 1001.1501 for reasons stated below) and (2) a mandatory exclusion imposed for more than the minimum 5 year period required by law. With respect to exclusions imposed under §§ 1001.701 and 1001.801 for submitting excessive claims or for furnishing unnecessary items or services, as these cases typically involve complicated issues, we have maintained proposed § 1001.2001(b), allowing for the opportunity to present oral as well as written evidence.

With respect to the exclusion authorities implemented in §§ 1001.1301 through 1001.1501, we have determined that the procedures provided in § 1001.2001(a) for notice and opportunity to respond should not apply. Sections 1001.1401 and 1001.1501 each involve exclusions based on conduct determined to violate statutes regulated by other divisions of the Department. Under § 1001.1401, the OIG may exclude any hospital that HCFA determines has substantially failed to comply with a corrective action required by HCFA under section 1886(f)(2)(B) of the Act. Under § 1001.1501, the OIG may exclude individuals whom PHS determines are in default on health education scholarship or loan obligations. The exclusion remains in effect until PHS notifies the OIG that the default was cured. Because the OIG would impose sanctions under §§ 1001.1401 and 1001.1501 only after HCFA or PHS determined such action to be appropriate, providing excluded parties an opportunity to respond to the OIG would not be meaningful. Thus, we have not included §§ 1001.1401 and 1001.1501 within the ambit of exclusion authorities covered under § 1001.2001(a).

We also do not provide for issuance of a notice of intent to exclude and the opportunity to respond under § 1001.2001(a), in the case of exclusions imposed under § 1001.1301. These exclusions allow the OIG to exclude any individual or entity that fails to grant immediate access upon reasonable request under (1) §§ 1001.1301(a)(1) (i) and (ii) to survey agencies or other entities attempting to inspect health care facilities in accordance with Medicare and Medicaid statutory requirements, and (2) §§ 1001.1301(a)(1) (iii) and (iv), to Federal or State investigators seeking to review the individual's or entity's records to determine whether fraud has been committed under a Federal or State health care program. Under proposed §§ 1001.1301(a)(1) (iii) and (iv), we granted individuals and entities from whom immediate access to documents is requested the opportunity to "provide a compelling reason" why such records cannot be produced. In the final rule, we also apply this provision in the case of facilities from whom immediate access is requested in order to conduct surveys or reviews under §§ 1001.1301(a)(1) (i) and (ii). Thus, these facilities will also have opportunity to explain to OIG officials why immediate access should be denied, and therefore do not need additional opportunity to respond under § 1001.2001 (see § 1001.1301(a)(2)).

Proposed § 1001.2001(a) did not apply to mandatory exclusions imposed for a period exceeding 5 years. However, the OIG's authority under section 1128(a) of the Act to exclude a party for more than 5 years is discretionary, much like the OIG's permissive exclusion authorities under section 1128(b) of the Act. For that reason, we have modified § 1001.2001(a) to extend its application to mandatory exclusions imposed for periods exceeding 5 years. Consistent with our longstanding practice, for mandatory exclusions imposed for not more than five years, § 1001.2002(a) provides for issuance of a written notice 20 days prior to the effective date of the exclusion.

2. Notice of Intent to Exclude

Comment: We received a number of comments regarding the provision governing notice of intent to exclude under § 1001.2001. Some commenters felt that the notice of intent to exclude under § 1001.2001(a) should be by certified mail, and that the notice should be deemed received on the return receipt date, rather than a presumed date of 5 days after the date on the notice. One commenter requested that we set forth standards in these regulations for how the OIG would evaluate documentary evidence and written argument in response to a notice of intent to exclude, and when a hearing would be granted.

Response: When the OIG receives information in response to a notice of intent to exclude, it evaluates the information supplied in order to determine whether, in light of exigent or mitigating circumstances surrounding the conduct authorizing the exclusion, justice requires permitting the individual or entity to remain a participating Medicare provider. We have modified the language in § 1001.2001 to clarify that, in making these determinations, we will consider any evidence concerning whether the exclusion is warranted and any related issues, such as argument pertaining to the proper length of exclusion. The OIG's determinations in each case depend on the unique information supplied, and we cannot reduce that process to a uniform set of standards.

With respect to the OIG's policy on granting requests for a hearing under § 1001.2001(b), whenever a hearing request is made in conjunction with the submission of documentary evidence and written argument, the request is always granted.

With respect to the comments that we send these notices by certified mail, the OIG currently sends by certified mail all notices relating to the imposition of exclusions, including notices of intent to exclude under § 1001.2001, notices of exclusion under § 1001.2002, and notices of proposals to exclude under § 1001.2003. However, it is not administratively feasible for the OIG to await the return of certified mail receipt forms before proceeding to impose exclusions. We believe that a presumption that notices are received within 5 days after the date on the notice is both reasonable and legally sound. The courts customarily use presumptions of this nature so that parties may consider particular documents sent in the course of litigation to have been received by a date certain. In fact, the Federal Rules of Civil Procedure (FRCP) provide parties with only 3 extra days of time, not 5, when notice is by mail (see FRCP, section 6(e)). For these reasons, we are retaining in the final rule the presumption that notice is received within 5 days of the date on the notice.

3. Notice of Exclusion

Comment: One commenter objected to the fact that, under these regulations, individuals or entities excluded for 5 years under a mandatory exclusion authority are notified of the exclusion only 20 days prior to its effect, and do not have the opportunity to present evidence in their defense prior to the imposition of the exclusion. This commenter suggested that even in situations when the OIG believed it was statutorily obligated to impose an exclusion under section 1128(a) of the Act, there could be a mistake of identity or some other reason why imposing an exclusion would be improper.

Response: Under this rule, no exclusion takes effect immediately upon notice to the provider. Under § 1001.2002, mandatorily excluded individuals or entities are always notified by the OIG 20 days prior to the effective date of the sanction. This period of 20 days provides ample time for rectifying any mistakes of identity or similar errors before the exclusion takes effect. Furthermore, if the OIG were to implement an exclusion in error, the excluded party would be reinstated retroactively.

4. Notice of Proposal to Exclude

Comment: A few commenters expressed concern about the OIG's responsibility under § 1001.2003(c) to determine whether a threat to the health and safety of Medicare or State health care program beneficiaries warranted imposition of an exclusion prior to the completion an ALJ hearing. One commenter felt that the ALJ, not the OIG, should make this determination. Another commenter felt that the requirement under § 1001.2003(a)(5) that petitioners notify the OIG of any reasons why the health and safety of individuals do not warrant a pre-hearing exclusion unfairly shifted the burden of proof on this issue to the health care provider.

Response: We disagree that § 1001.2003(a)(5) shifts the burden of proof. It merely requires providers to supply relevant information and any defenses to assist the OIG in determining whether an exclusion should be imposed prior to a full ALJ hearing. We also disagree with the comment that an ALJ, rather than the OIG, should make this determination. The Department has a responsibility to protect the integrity of its programs and to ensure that program dollars are not being paid to health care providers who pose a danger to the health or safety of program beneficiaries. In order to carry out that responsibility, the Department must be able to sever its relationships with such providers immediately. Under §§ 1001.2001 and 1001.2003, the OIG would already have solicited and received relevant medical and other information regarding a provider it determined posed a danger to the programs. Therefore, the OIG, rather than an ALJ, is in the best position to evaluate all material evidence in a prompt manner.

5. Notice to Third Parties Regarding Exclusion

Comment: We received a number of comments on the regulatory provisions governing notice to third parties of exclusions. Several commenters stated that, in light of the probable damaging effect of an exclusion on the professional reputation of health care providers, the OIG should not notify third parties of exclusions under §§ 1001.2004 through 1001.2006 until all avenues of appellate review were exhausted. One commenter felt that OIG should be required under § 1001.2006 to notify the National Practitioner Data Bank of exclusions imposed under these authorities, so that this information would be available to all government and private agencies networked to this health care sanctions data collection organization.

Response: The OIG has an agreement with the National Practitioner Data Bank to provide it with notices of all exclusions. With respect to the comment that we should forego notification of exclusions to third parties until exclusions imposed by ALJs are upheld on appeal, we believe this would contravene legislative intent. Under section1128(e)(1) of the Act, prompt notification of these parties is required. It should be noted that under § 1001.3003(a)(3), prompt notification of reinstatement will be made to those agencies and organizations originally informed about the exclusion. We have modified the language in this provision to clarify that notification will be to the extent applicable; that is, it will be made to all entities originally notified about the exclusion that are still in business or, with respect to government contractors, still operating as a contractor for a government health care program.

6. Appeal of Exclusions

Comment: A few commenters felt that the "preponderance of the evidence" standard set forth in § 1001.2007(c) was improper given the potential harm exclusions cause providers' professional careers. One commenter was especially concerned about the use of this standard in cases involving exclusions imposed under § 1001.951 for conduct violating the criminal anti-kickback statute. One commenter stated that the standard was inconsistent with legislative intent.

Response: The preponderance of the evidence standard is the traditional standard of proof in administrative hearings, and, as such, ought to be applied in these administrative proceedings (see *Delikosta* v. *Califano*, 478 F. Supp. 640, 643 n. 4 (S.D.N.Y. 1979)).

Moreover, as we pointed out in the proposed regulations, the legislative history of MMPPPA reflects Congress' intent that the preponderance of the evidence standard be applied in kickback exclusion appeals (see H.R. Rep. No. 85, Part 1 at 10 (1987); H.R. Rep. Part 2, No. 85 at 9 (1987); S. Rep. No. 109, at 10 (1987)).

Comment: Several commenters felt that § 1001.2007(a) improperly limited the issues upon which parties could appeal an exclusion before an ALJ. Section 1001.2007 limits the issues on appeal to whether (1) the statutory basis for imposing the exclusion exists and (2) the length of the sanction is unreasonable. One commenter felt that if OIG failed to meet its notice requirements under part 1001, subpart E, this should be a basis for appeal of the exclusion. Another party felt that providers convicted of program related convictions in States affording fewer due process protections than those granted under Federal law should be

able to attack the underlying conviction at their hearing to contest the exclusion.

Response: We have deliberately limited the issues that may be appealed under § 1001.2007, in keeping with the authority under section 1128 of the Act delegated to the OIG. Under section 1128(a), Congress mandated that the Secretary exclude individuals and entities convicted by States of program related crimes, or of crimes involving patient abuse. The OIG, to whom this authority has been delegated, is statutorily obligated to implement exclusions whenever such convictions have occurred. The due process afforded by States in convicting their citizens is not a factor we are authorized to consider.

In section 1128(b) of the Act, Congress authorized the Secretary to impose exclusions at its discretion under the various circumstances described in that section. As the Secretary's delegatee under section 1128, the OIG has been vested with that discretionary authority. Because the decision whether to exclude an individual or entity under section 1128(b) is the OIG's alone, the ALJ does not have authority to review the exercise of discretion by the OIG to exclude someone under section 1128(b), or to determine the scope or effect of the exclusion. In addition, the OIG's decision to exclude may not be appealed under § 1001.2007.

The OIG's broad discretion is also reflected in the language of § 1001.2007(a)(2), restricting the ALJ's authority to review the length of an exclusion imposed by the OIG. Under that section, the ALJ's authority is limited to reviewing whether the length is unreasonable. So long as the amount of time chosen by the OIG is within a reasonable range, based on demonstrated criteria, the ALJ has no authority to change it under this rule. We believe that the deference § 1001.2007(a)(2) grants to the OIG is appropriate, given the OIG's vast experience in implementing exclusions under these authorities.

With respect to the comment that failure to provide adequate notice should be a basis for appeal of an exclusion, we disagree. At most, it could be the basis for recalculating the effective date of the exclusion. Moreover, under these regulations, all excluded individuals and entities are notified at least 20 days before the effect of an exclusion. To date, no individuals or entities have ever been excluded without proper notice. In the unlikely event that an individual or entity was excluded without proper notice, the OIG, if informed of the error, will take the steps necessary to ensure protection of the excluded party's opportunity to be heard, and appeal rights.

G. Part 1001, Subpart F—Reinstatement Into the Programs

Comment: Various commenters believed that the reinstatement procedures set forth in the proposed regulations are unconstitutional. Some of these commenters felt that the provision authorizing the OIG to deny reinstatement without the possibility of review is a denial of due process in violation of the Fifth Amendment. Others felt that the provisions authorizing the OIG to consider evidence of conduct occurring before the date of the exclusion violates an individual's First Amendment right to privacy.

Response: The provisions of the proposed regulations setting forth the reinstatement procedures merely implement the authority given to the Department by Congress. Section 1128(g) of the Act specifically provides that termination of an exclusion is not automatic, and grants the Secretary the authority to promulgate regulations setting forth the procedures for applying to the Department for reinstatement.

Further, the legislative history to MMPPPA makes it clear that the Secretary has the discretion to grant or deny a request for reinstatement, and provides that the decision is not subject to administrative or judicial review:

> The Committee bill maintains current law by providing that the decision of whether or not to grant an applicant's request for reinstatement is vested by law in the Secretary's discretion and thus is not subject to judicial review. (House Report 100–85, *supra* at 13.)

Concerning the OIG's consideration of an excluded individual's conduct prior to the date of the notice of exclusion, section 1128(g) of the Act states that:

> the Secretary may terminate the exclusion if the Secretary determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or *which was unknown to the Secretary at the time of the exclusion* * * * (emphasis added)

Thus, consistent with the statute and its legislative history, the OIG is authorized to consider conduct of the individual or entity occurring prior to the date of the notice of exclusion, provided the OIG was not aware of such conduct at the time of the exclusion, as provided in § 1001.3002 of the proposed regulations.

Under section 1128(g), the decision whether to reinstate individuals excluded from the Medicare and State health care programs is vested by law in the Secretary's discretion and is not subject to judicial review. Prior to the passage of MMPPPA, reinstatement decisions were not subject to administrative or judicial review. When it enacted MMPPPA, Congress indicated that it did not expect the Department to change current legal procedures for reinstatement (see H.R. Rep. No. 85, Part 1, at 13, H.R. Rep. No. 85, Part 2, at 13). Thus, we believe that Congress, in section 1128(g) of the Act, did not intend to provide for administrative or judicial review for reinstatement decisions. Under section 1128(g), the Department is authorized to determine whether a previously excluded individual or entity can now be trusted to do business with the Government honestly and fairly. Because of its vast experience administering sanctions against health care providers, the OIG is in a better position than the ALJs to make these determinations. We have added paragraph (f) to § 1001.3002 to clarify that ALJs are not authorized to reinstate excluded individuals or entities under these regulations.

Comment: One commenter expressed concern about the provision in § 1001.3004(b) that subsequent requests for reinstatement following an initial denial will not be considered for one year. This commenter felt that there may be instances when a year is not sufficient time for the OIG to determine whether the criteria governing reinstatement under § 1001.3002(a) have been met.

Response: We agree that a year may be insufficient for purposes of assessing whether the conduct for which the provider was excluded is likely to recur, or whether the provider meets the other criteria set forth under § 1001.3002(b). For example, a physician excluded under section 1128(b)(4) of the Act for reasons bearing upon his or her professional competence may have moved to a different jurisdiction to begin practicing again just prior to his or her initial request for reinstatement. In that case, if the OIG were required to consider a new request within a year following the denial of the initial request, that might be insufficient for purposes of determining whether the provider had remained incompetent or was deserving of reinstatement. For that reason, we are modifying § 1001.3004(b) to state that after a denial of reinstatement, a subsequent request will not be considered for at least one year.

H. Part 1002—State-Initiated Exclusions From Medicaid

Comment: One commenter was concerned that the regulations violate the Social Security Act and the Fifth

amendment right to due process, because they invite States to add punishments beyond those authorized by Federal law.

Response: This comment appears to refer to § 1002.2(b), which simply states that nothing in the regulations limit a State's own authority to exclude an individual or entity from Medicaid for any reason or period authorized by State law. State agencies may prosecute and sanction providers on their own initiative when State law authorizes them to do so. Nothing in section 1128(d) of the Act or its legislative history indicates that the Federal statutory provisions governing the length of exclusions were intended to supplant State law provisions governing exclusions from State health care programs. In fact, section 1128(d)(3)(B)(ii) provides that "a State health care program may provide for a period of exclusion which is longer than the period of exclusion under title XVIII (Medicare)."

Comment: Several commenters expressed their opposition to §§ 1002.210, 1002.212, and 1002.213 through 1002.215 of the proposed regulations. These provisions set forth procedural safeguards to be followed by the States when excluding an individual. The commenters believed that a Federal agency should not promulgate regulations that require a State to carry out administrative tasks that are not specifically set out in the underlying statute.

Response: In accordance with section 1902(p)(1) of the Act, State Medicaid agencies have the authority to initiate exclusions of individuals or entities who could be excluded from Medicare by the Federal government under sections 1128, 1128A or 1866(b)(2) of the Act. The Department is authorized to require State agencies to develop mechanisms for implementing and terminating exclusions imposed under these authorities. Under section 1902(a)(39) of the Act, which sets forth the requirements for State Medicaid plans, the State programs are obligated to "provide that the State agency shall exclude any specified individual or entity from participation * * * when required to do so pursuant to section 1128 or section 1128A." In addition, section 1902(a)(4) of the Act states that plans must provide "such methods of administration * * * as are found by the Secretary to be necessary for the proper and efficient operation of the plan." These provisions clarify, by statute, that we may require States to adopt certain administrative procedures when they impose exclusions at the direction of the Secretary under the Secretary's exclusion or CMP authorities.

Furthermore, when an individual or entity has been excluded, suspended, or otherwise sanctioned by a State Medicaid agency, the OIG is authorized to exclude that individual or entity from Medicare and all State health care programs in accordance with section 1128(b)(5) of the Act, that is, to "piggyback" onto the State-initiated exclusion an additional nationwide exclusion from Medicare and *all* State health care programs. Thus, the OIG's exclusion is based upon a State agency's determination that a provider is unfit to participate in their State Medicaid program. In making that determination, the agency must afford the provider certain minimum due process safeguards before effectuating the exclusion, such as notifying the provider of the proposed exclusion and the basis therefore, and giving the provider a chance to respond to the allegations against them either in person or in writing. We received comments from one State agency stating that many or most States already have due process safeguards built into their exclusion process. However, as discussed above, because the administrative procedures followed in State-initiated exclusions may impact upon the OIG's authority to initiate exclusions under section 1128(b)(5), we believe it is important to insure that *all* States have minimum due process safeguards in effect when initiating exclusions from State Medicaid programs. We believe the administrative procedures set forth in the regulations provide such safeguards. In fact, they are based on the OIG's own procedures for initiating exclusions. Finally, in addition to the reasons set forth above, we believe the fact that Medicaid is a joint State and Federally-funded program supports the OIG's authority to set forth in regulations administrative procedures to be followed in State-initiated exclusions. Accordingly, we are not adopting the comments on this issue.

Comment: In accordance with § 1002.230(a) of the proposed regulations, the State Medicaid agency is required to notify the OIG "whenever a State or local court has convicted an individual who is receiving reimbursement under Medicaid of a criminal offense related to participation in the delivery of health care items or services of the Medicaid program." One MFCU pointed out that they routinely notify the OIG when they obtain State convictions. The comment from the MFCU stated that in order to avoid having both the MFCU and the State agency report to the OIG on the same convictions, proposed § 1002.230 should be revised to add the following language at the end of the last sentence in paragraph (a): "* * * except when the State MFCU has so notified the OIG."

Response: We have adopted the MFCU's comment, and have revised § 1002.230(a) accordingly.

Comment: One commenter stated that the different definitions of the term "exclusion" in §§ 1002.203(b) and 1002.211 is confusing because it implies that an exclusion under subpart B—Mandatory Exclusions—is different than an exclusion under subpart C—Permissive Exclusions. This commenter suggested putting a general definition of "exclusion" in § 1001.2, Definitions.

Response: The definition of the term "exclusion" set forth in § 1002.203(b) pertains to subpart B of the regulations, which implements section 7 of Public Law 100–93 governing mandatory exclusions by State agencies. Section 7 of Public Law 100–93 provides that in order for a State to receive payments for medical assistance under section 1903(a) of the Act, with respect to payments the State makes to a HMO or to an entity furnishing services under a waiver approved under section 1915(b)(1), the State must exclude from participation such an entity if it could be excluded under section 1128(b)(8) of the Act, or if it had a substantial contractual relationship with an individual or entity that could be excluded under section 1128(b)(8). For the narrow purpose of implementing an exclusion under section 7 of Public Law 100–93, § 1002.203 points out that an exclusion includes the refusal to enter into or renew a participation agreement, or the termination of such an agreement, with the excluded entity. In part 1002, subpart B is entirely separate from subpart C, which pertains to permissive exclusions. Section 1002.211 defines the term "exclusion" for purposes of subpart C. In contrast to § 1002.203(b) of subpart B, in which the definition of "exclusion" focuses on a contract agreement between a State and an HMO or an entity furnishing services under a waiver by way of contract, § 1002.211 is broader in that it applies to all individual and entities, and focuses on the withhold of payments rather than the status of an agreement. Since the two different definitions are unique to the subparts in which they are set forth, we have chosen not to adopt the commenter's recommendation to consolidate them under one definitional section.

Comment: One commenter suggested changing § 1002.2(b) to read: "Nothing

contained in this part should be construed to limit a State's own authority to exclude an individual or entity from Medicaid for cause for any period authorized by State law."

Response: We are not adopting this comment. Section 1002.2(b) as it is written simply provides that nothing contained in part 1002 implementing the Federal statute limits the State's authority under State law to exclude an individual or entity. It is up to the various courts and legislative bodies to interpret how the individual States may apply the authority given to them under State law, not the OIG. Further, it would be inappropriate for the OIG to define on behalf of State agencies the terms of their agreements with health care providers.

Comment: One commenter expressed concern that the term "agent" as used in § 1002.3(c) is very broad and may allow Medicaid agencies to unfairly exclude certain providers.

Response: The final regulations include a definition of the term "agent" modeled after the definition set forth in the HCFA regulations (42 CFR 455.100), implementing sections 1124(a)(3) and 1126 of the Act and which ties into the OIG's exclusionary authority under section 1128(b)(8) of the Act. Section 1002.3(c) parallels section 1128(b)(8) of the Act, giving State agencies the same authority as the Federal government to exclude an entity controlled by a sanctioned individual. The final regulations define "agent" as anyone who has the express or implied authority to obligate or act on behalf of an entity. As discussed above, we intend for this definition to mainly cover agency relationships where the agent has, or is able to have, a significant role in the entity.

I. Part 1003—Civil Money Penalties and Exclusions

1. General Comments

Comment: Several commenters expressed concern about the application of § 1003.114, which relates to the applicability of the doctrine of collateral estoppel to CMP proceedings. One commenter believed that there cannot be a "final determination" for purposes of collateral estoppel until a party has exhausted all of his or her available appeal rights. Another commenter felt that the collateral estoppel doctrine should only apply when the prior proceeding was a judicial or administrative proceeding with sufficient safeguards to protect against bias or error. A third commenter stated that the regulations should require that the issue decided in the prior proceeding must be identical to the one at issue in order for collateral estoppel to apply.

Response: Section 1003.114 sets forth the basic doctrine of collateral estoppel. In order to safeguard the due process rights of respondents in CMP proceedings, we intend to apply § 1003.114 in full accordance with recognized legal standards. However, we do not feel this is the appropriate forum to address discrete legal issues relating to the application of the collateral estoppel doctrine. Rather, we believe that the legal issues raised by the commenters may be best addressed on a case-by-case basis as they arise, so that the ALJs can objectively dispose of them in accordance with the governing law and the facts of each case. Thus, we have chosen not to revise § 1003.114 as the commenters had requested.

Comment: One commenter felt that § 1003.109(a)(5) should be expanded to include the right to request an extension of time to respond to the OIG's notice of proposed determination beyond the 60 days set forth in that provision.

Response: In § 1005.2 of this final rule, we have provided a 60-day period in which a petitioner or respondent in any exclusion or CMP proceeding may request a hearing. This is a change from the rules that previously applied to CMP cases. Under § 1003.109 of the prior regulations, respondents were entitled to only 30 days in which to request a hearing, but also in which they could request an extension of that 30-day period for "good cause." In practice, the OIG never granted an extension of more than 30 additional days. Thus, the maximum period in which to respond never exceeded 60 days.

We have decided to simplify the process for all concerned by entitling all respondents to 60 days in which to request a hearing. We are thereby doubling the usual period of time previously available to respondents, while eliminating the labor involved in generating "good cause" requests and responding to them. Section 1003.109(a)(5) of this rule now merely requires the notice of proposed determination for CMP cases to include the 60-day timeframe set forth in § 1005.2. Therefore, no change in this section is appropriate.

Comment: We received comments to the effect that the OIG should not be limited to considering the mitigating factors set forth in §§ 1003.106 (b)(1) and (b)(2), but rather, the OIG and the ALJ should be able to consider any factors that may be mitigating.

Response: In accordance with § 1003.106(a)(5), in determining the amount of any CMP or assessment, the Department must take into account "such other matters as justice may require." This catch-all phrase already allows the OIG and the ALJ to consider any other mitigating factors that may exist.

Comment: Some commenters expressed confusion regarding the effect of the Supreme Court's decision in *United States* v. *Halper* on the scope of damages that the Inspector General may recover in CMP cases.

Response: The courts have recognized that civil penalty statutes entitle the government to recover full compensation for its damages, and that ordinarily, application of a statutory "fixed penalty plus double damages" provision does no more than make the government whole (*United States* v. *Halper*, 109 S.Ct. 1892, 1900, 1902 (1989); *Rex Trailer Co.* v. *United States*, 350 U.S. 148, 152–154, 76 S.Ct. 219, 222 (1956)). This is due, in part, to the fact that the government's losses involve more than merely the amount disbursed on account of false or improper Medicare or Medicaid claims (*Mayers* v. *United States Department of Health and Human Services*, 806 F. 2d 995, 999 (11th Cir. 1986)). In CMP cases, the government's damages typically include, in addition to actual improper payments made, (1) costs of detection, investigation and prosecution of fraud, (2) diversion of scarce resources from the direct provision of health services, and (3) loss of public confidence in the integrity of Medicare or State health care programs, and in the government's ability to properly manage them (*The Inspector General* v. *Harold Chapman and Autumn Manor, Inc.*, No. C–5 (1985), *aff'd, Chapman* v. *Department of Health and Human Services*, 821 F. 2d 523, 528 (10th Cir. 1987); *Mayers, supra* at 999).

We have modified the guidelines under §§ 1003.106 (c) and (d) for determining appropriate monetary sanctions in order to codify existing case law governing the process of determining penalties and assessments under the CMP law. We have clarified that the United States or any State government is entitled to full compensation for any damages and costs arising from CMP violations. We have specifically identified the costs of investigation, prosecution and administrative review as amounts to be taken into account in determining appropriate monetary sanctions. Finally, we have converted the guidelines under § 1003.106 to binding rules, except to the extent that their application in a particular case could result in an amount that exceeds constitutional limitations. This final modification reflects the intent of the original

regulations that the latitude inherent in the non-binding guidelines is meant only to "provide for the exceptional case" (48 FR 38827, August 26, 1983).

Under this approach, the ALJ must compute the amount of the penalty and assessment in accordance with the guidelines set forth in § 1003.106, and then make a determination as to whether that amount exceeds constitutional limits. Should the ALJ determine that the prescribed amount is excessive and violative of the constitution, the ALJ would be required to explain the reasons for that conclusion. The ALJ would then be authorized to reduce the amount, but only to the point where the amount was no longer constitutionally impermissible. Both the determination that the amount computed under the regulations was constitutionally infirm and the amount of the required reduction would be subject to administrative and judicial review.

Comment: With regard to § 1003.102 of the proposed regulations, one commenter wished to know under what circumstances a person "should have known" that a claim was false or fraudulent, or not provided as claimed.

Response: Congress has indicated that the "should know" standard of knowledge under section 1128A of the Act places upon Medicare and Medicaid providers the duty to ascertain the truth and accuracy of claims submitted by them:

> Providers who bill the Medicare, Medicaid and MCH programs have an affirmative duty to ensure that the claims for payment which they submit, or which are submitted on their behalf by billing clerks or other employees, are true and accurate representations of the items or services actually provided. (H. Rep. No. 100–391, 100 Cong., 2d Sess., pp. 533–535 (1987))

Thus, under the "should know" standard of liability, the duty to ascertain the truth and accuracy of a claim exists at all times. Further, the "should have known" standard has been interpreted as subsuming reckless disregard for the consequences of a person's acts, as well as negligence in preparing and submitting or in directing the preparing and submitting of claims (see *Mayers* v. *U.S. Department of Health and Human Services*, 806 F.2d 995 (11th cir. 1986), *cert. denied*, 484 U.S. 822 (1987); *The Inspector General* v. *Edward J. Petrus, Jr., M.D., and the Eye Center of Austin*, Docket No. C–147 (Oct. 10, 1990), pg. 42)).

Further guidance as to the meaning of "should have known" can be found in the *Restatement of Torts (2d)* at section 12 (1965):

> The words "should know" are used throughout the Restatement * * * to denote the fact that a person of reasonable prudence and intelligence or of the superior intelligence of the actor would ascertain the fact in question in the performance of this duty to another, or would govern his conduct upon the assumption that such fact exists. (See *In the Case of the Inspector General* v. *Corazon C. Hobbe, M.D.*, Decision of ALJ Charles E. Stratton, Docket No. C–55 (December 5, 1989), pg. 27, citing the restatement.)

Whether a health care provider or practitioner "should have known" that an item or service has not been provided as claimed or that a claim is false or fraudulent is fact intensive, and will therefore be determined on a case-by-case basis.

2. Other Crimes, Wrongs, or Acts as an Aggravating Circumstance

As mentioned in the preamble to the proposed regulations, we solicited comments on whether it would be appropriate to include a provision in the regulations stating that proof of "other crimes, wrongs, or acts" is an aggravating circumstance in OIG sanction cases.

Comment: We received one comment objecting to the inclusion of such a provision. The commenter believed that the mere existence of a prior wrongful act should not serve as an aggravating factor if that act were unrelated to the Medicare or Medicaid program.

Response: We have decided to add into the final regulations a new § 1003.106(b)(4), "Other Wrongful Conduct." This provision makes it an aggravating factor if the OIG proves that a respondent engaged in wrongful conduct, other than the conduct at issue, relating to government programs or in connection with the delivery of a health care item or service. Although the OIG anticipates that the wrongful conduct raised for purposes of this provision will be Medicare and Medicaid-related, there may be wrongful conduct that is unrelated to Medicare and Medicaid that is considered to be aggravating, such as where a respondent has proved himself or herself to be untrustworthy in dealing with other government programs. The OIG may present evidence of "other wrongful conduct" as an aggravating factor even if such conduct was not specifically mentioned in the notice of proposed determination initiating the CMP proceeding.

In accordance with § 1003.106(b)(4), "other wrongful conduct" includes but is not limited to, evidence that the conduct for which the OIG is seeking civil sanctions is part of a larger pattern or scheme of the same or similar wrongful conduct. For example, the OIG has evidence to show that an individual submitted 200 false claims. The OIG only initiates an CMP action based on 100 of those claims because the statute of limitations has run on the 100 claims remaining. In accordance with § 1003.106(b)(4), the OIG may present evidence of the remaining claims as an aggravating factor.

Finally, it is important to note that the absence of "other wrongful conduct" is not a mitigating factor.

3. Effect of Regulations on Other CMP Provisions

Comment: Several commenters expressed concern that § 1003.102 does not incorporate the provisions of section 1128A(b) of the Act, which prohibits incentives to physicians in order to reduce or limit services to Medicare or Medicaid patients. The commenters believed that the regulations fail to provide substantive guidance or place procedural restrictions on the Department's implementation of section 1128A(b) of the Act, effective on April 1, 1991.

Response: With respect to the procedural guidelines for the implementation of section 1128A(b) of the Act, the OIG currently intends for the administrative procedures set forth at part 1003 of these regulations to govern proceedings initiated for alleged violations of section 1128A(b). In fact, the OIG currently intends for the administrative procedures set forth at part 1003 to govern all proceedings initiated under the CMP authorities contained in the Social Security Act, even those not specifically mentioned in the regulations, e.g., section 1867 of the Act. We acknowledge that the various CMP authorities set forth in the Act and the sanctions that accompany them may vary from those specifically described in the regulations in such a way that certain procedures set forth at part 1003 do not make sense when they are applied to them. Where that is the case, the regulations will be used as a framework for the proceedings, and will govern to the extent they are applicable.

Whenever the OIG initiates a CMP proceeding, it will notify each respondent that the procedural regulations set forth at part 1003 will govern. It is well-established that if a party is notified of the standards and procedures that will be applied in a particular case, an agency can bring an action against that party even in the absence of regulations (see *Patchogue Nursing Center* v. *Bowen*, 797 F.2d 1137, 1143 (2d Cir. 1986), *cert. denied*, 479 U.S. 1030 (1987); *Central Arkansas Auction Sale, Inc.* v. *Bergland*, 570 F.2d 724, 727 (8th Cir. 1977), *cert. denied*, 436 U.S. 957

(1978)). With respect to the implementation of the substantive provisions of section 1128A(b) of the Act, the Department is currently working on separate regulations. However, it is not necessary for such regulations to be in place before the OIG may exercise its authority under that provision once it takes effect on April 1, 1991. An agency may exercise its statutory functions even in the absence of specific implementing regulations (see *Securities and Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194 (1947); *Abbott-Northwestern Hospital, Inc.* v. *Schweiker*, 698 F.2d 336 (8th Cir. 1983)). Thus, once the OIG gives such notice regarding section 1128A(b) of the Act, there is legal support for using the administrative procedures set forth at part 1003 to implement CMP authorities not specifically mentioned in the regulations.

J. Part 1005—Appeals of Exclusions and CMPs

General Comments

Comment: We received a number of comments concerning the authority of ALJs. One commenter suggested that we amend § 1005.2 to permit ALJs to dismiss requests for hearing that fail to meet the requirements of paragraph (d). This commenter pointed out that if no factual or legal basis for a hearing was identified by the requesting party, the ALJ should dismiss the request for hearing. Another commenter objected to the provision under § 1005.4(c) that the ALJ may not enjoin an act of the Secretary. Finally, one commenter suggested that ALJs should be able to render directed verdicts in these cases.

Response: With respect to the comment that ALJs should be able to dismiss requests for hearing if there is no factual or legal dispute, we agree, and have revised § 1005.2(e) accordingly. It should also be noted that under § 1005.4(b)(12) an ALJ may dismiss a case, in whole or in part, by summary judgment, where there is no disputed issue of material fact. With respect to the objection to § 1005.4(c), we note that the ALJ's own authority in these proceedings is derived from the Secretary by delegation (sections 1128A(f) and 205(b) of the Act). Since the ALJ's authority to hear cases comes from the Secretary, the ALJ cannot overrule acts of the Secretary which may have an impact on these cases. The full scope of the ALJ's limited authorities in these proceedings is contained in § 1005.2.

We have also clarified under §§ 1005.4(c) (5) and (7) that ALJs may not review the OIG's exercise of discretion to impose a penalty, assessment or exclusion under these authorities. It should also be noted that in a case where the ALJ upholds the OIG's exclusion determination, the ALJ is not authorized under these regulations to modify the date of commencement of the exclusion identified in the OIG's notice of exclusion.

We have also provided in § 1005.4(c)(6) that in any case where an ALJ finds that an individual or entity has committed an act described in section 1128(b) of the Act, the ALJ is not authorized to reduce to zero the exclusion period proposed by the Inspector General. In other words, when the ALJ finds a violation, he or she must remedy it with some period of exclusion. We believe that this requirement is consistent with congressional intent in enacting section 1128 which explicitly provides for exclusion as the appropriate remedy for the commission of any of the acts specified in the statute. Thus, in every case where the Inspector General has exercised his or her discretion to impose an exclusion, and where the ALJ concurs that violation did occur, some period of exclusion is necessary to remedy the violation.

Although circumstances such as the absence of proof of harm to beneficiaries or the programs may mitigate the length of exclusion, they do not eliminate the need for some remedial period of exclusion. Inherent in the structure and far-reaching effect of section 1128 is the notion that any violation compromises the integrity of the programs and thereby places the programs and its beneficiaries at risk.

We do not agree with the comment that ALJs should be authorized to impose directed verdicts in these cases. If a directed verdict is rendered prior to the presentation of both parties' cases, the record will be incomplete in the event that the initial decision were subsequently reversed on appeal. We have encountered this situation in the past, and the only remedy in such a case is a new trial. Thus, it can be less efficient in the long run, and can delay and frustrate justice, to authorize directed verdicts in these proceedings.

Comment: One commenter suggested that these regulations should require a pre-hearing conference before the ALJ to attempt settlement of the case.

Response: We agree that ALJs should encourage parties to settle their cases prior to hearing. We are therefore adding a provision to § 1005.6 to clarify that ALJs should investigate the possibility of settlement during pre-hearing conferences.

Comment: Several commenters were concerned that the type of discovery provided for under § 1005.7 was too limited. One commenter suggested that the Administrative Procedure Act (APA) mandates broader discovery rights in exclusion appeals under these authorities. Some commenters felt that the prohibition against discovery other than documentary requests was unfair, particularly in light of the OIG's testimonial subpoena authority under part 1006. One commenter felt it was inappropriate to place the burden of showing that discovery should be allowed on the party *seeking* discovery, rather than having the other party show cause why discovery should not be conducted.

Some commenters felt that this provision left unanswered important questions regarding discovery procedure. One commenter wanted to know if data stored in computers could be discoverable. Another commenter was concerned over whether the OIG, in response to a discovery request, was required to seek or obtain material in the possession of other branches or divisions of the agency.

Response: Generally, discovery is not required to be made available in administrative proceedings. Under the APA, agencies are free to decide the extent of discovery to which parties to administrative proceedings will be entitled (see *Pacific Gas & Electric Co.* v. *FERC*, 746 F. 2d 1383, 1387 (9th Cir. 1984); *National Labor Relations Board* v. *Valley Mold Co.*, 530 F. 2d 693, 695 (6th Cir. 1976); *Frilette* v. *Kimverlin*, 506 F. 2d 205, 208 (3d Cir. 1974); *Silverman* v. *Commodity Futures Trading Commission*, 549 F. 2d 28 (7th Cir. 1977)).

With respect to exclusion and CMP proceedings, we have determined that discovery should be limited to documentary exchanges in order to avoid the time-consuming discovery fights that commonly beset civil litigation. Since discovery is to be as limited as possible, we believe it is appropriate to place the burden of showing why it is needed on the party seeking discovery under § 1005.7(c)(3). Further, we have clarified in § 1005.7(a) that discovery requests may only be made from one party to "another party." Therefore, the OIG may only be requested to produce documents in the possession of the OIG, as a party to the proceeding under § 1005.2(b), and not documents potentially in the possession of other branches or divisions of the Department, such as HCFA.

We have also inserted a provision that protects against the disclosure of interview reports or statements obtained

by any party of persons who will not be called as witnesses, and analyses and summaries prepared in conjunction with the investigation or litigation of the case (§ 1005.7(d)). This protection extends to respondents as well as the government, and thus is broader than the provision included in the proposed rule that would have protected only "internal government documents."

While limited discovery is necessary to ensure timely and efficient disposition of these proceedings, it does not operate unfairly against petitioners and respondents. In exclusion and CMP cases, it is usually the petitioner and respondent, rather than the OIG, who possess the vast bulk of discoverable evidence. With respect to the comment that the OIG is favored because it can subpoena witnesses under part 1006, it should be clarified that the investigative subpoena provisions under part 1006 apply only to CMP investigations. That is, the subpoena is not available to the OIG once litigation has begun. The authority enables the OIG to obtain evidence from otherwise uncooperative witnesses during the course of investigations. It is not a litigation discovery provision.

In response to the comment concerning the discoverability of computer data we have added a provision to § 1005.7(c) dealing with information stored in computers. Although that section prohibits "the creation of a document," we have added language indicating that where requested data is stored in a computer, a party has the right to request that the information be provided in a form that can be used by the requesting party, i.e., a "hard copy" or print out of the data, or a computerized version of the data, such as a computer disk. It is anticipated that the parties will cooperate with one another by providing information in a format that is useful to the other party.

2. Exchange of Witness Lists, Statements and Exhibits

Comment: A few commenters felt that we should clarify the procedures under § 1005.8(b) with respect to evidence that was not exchanged at least 15 days prior to the hearing as required by § 1005.8(a).

Response: The 15-day rule set forth in § 1005.8(a) requires opposing parties to disclose the documents that will be presented at the hearing and, in addition, information concerning witnesses who will testify. One purpose of the rule is to provide parties the opportunity to subpoena any individuals for whom the opposing party has submitted statements in lieu of live testimony. Thus, the right to cross-examination of witnesses under § 1005.16(d) extends only to individuals subpoenaed to testify, and does not include declarants or interviewees. However, the chief purpose of the provision is to grant both parties adequate time to prepare to contest the other side's case. This purpose is defeated if one party fails to comply with the exchange provisions of § 1005.8(a). Therefore, if a party objects to the admission of evidence not disclosed in compliance with § 1005.8(a), the ALJ normally should not admit the evidence.

However, in extraordinary situations, a party may be unable to disclose evidence at least 15 days prior to the hearing. For example, a relevant document may have been created only 5 days before the hearing. Under such circumstances, the ALJ may admit evidence not exchanged in accordance with § 1005.8(a), unless its admission would substantially prejudice the objecting party. If admission of evidence not disclosed in compliance with § 1005.8(a) would cause substantial prejudice, the ALJ may do one of two things. The ALJ may exclude the evidence and go forward with the hearing, or the ALJ may, at his or her discretion, recess the hearing to allow the objecting party the opportunity to prepare and respond to the evidence.

Thus, under § 1005.8(b), the ALJ should only consider the issue of prejudice once a determination has been made that there were extraordinary grounds for the failure to comply with § 1005.8(a). If no such grounds exist, the evidence should always be excluded and the hearing should go forward.

With respect to § 1005.8(c), we believe that, prior to the hearing, ALJs should resolve objections to the authenticity of documents exchanged in accordance with § 1005.8(a). In presenting their cases, parties should be able to rely on the authenticity of documents provided to opposing counsel, unless a specific objection has been made before hand. We have modified § 1005.8(c) accordingly.

3. Witnesses

Comment: One commenter objected to the admission of statements in lieu of live testimony unless both sides consented to admission of the statement. This commenter felt it was unfair for petitioners and respondents to bear the burden of subpoenaing witnesses to contradict any such statements submitted by the OIG.

Response: We disagree. Written statements in lieu of live testimony have always been admissible in CMP proceedings, and have served a valuable purpose in cases where live witnesses were unavailable. For example, the statement of a now deceased Medicare beneficiary describing his or her knowledge of a physician's conduct could be relevant and material in a CMP case against that physician. Since both parties have the right to submit statements in lieu of testimony, each party bears the burden of subpoenaing witnesses whose statements are proposed as exhibits by the opposing party. The courts have held such statements admissible in administrative proceedings, despite their heresay character and absent any cross-examination of the witness who gave the statement (see *Richardson* v. *Perales*, 402 U.S. 389, 91 S.Ct. 1420 (1971)).

4. Burden of Proof

Comment: One commenter stated that the burden of proof for exclusions based on kickbacks should be the same as for CMP cases.

Response: We agree, and have revised § 1001.15 to provide that the burden of going forward and the burden of persuasion are the same for exclusions initiated under § 1001.951 as for CMP cases initiated under part 1003.

Comment: Many commenters asserted that the APA requires that the burden of persuasion always rests with the government in exclusion cases.

Response: These commenters are mistaken as a matter of law. As we discussed in some detail in the preamble to the proposed rule, the APA requires the government—in this case, the OIG—to have the burden of going forward with evidence sufficient to make a *prima facie* case to support an exclusion; it does not require the OIG to bear the burden of persuasion in such cases.

Comment: Many commenters asserted that it is fundamentally unfair for the government not to bear the burden of persuasion in exclusion cases.

Response: As discussed above, with respect to kickback and CMP exclusions we have placed the burden of persuasion on the government because Congress intended "special due process protections" to accompany such exclusions (see Senate Report 100–109, *supra*, at 12–13). We have also decided to place the burden of proof on the government for PRO exclusions under part 1004 of this regulation.

With respect to all of the OIG's other exclusion authorities, however, we have decided not to specify by regulation which party bears the burden of going forward or which party bears the burden of persuasion. Instead, we have opted to continue to rely on the ALJs to allocate

the burden of proof as they deem appropriate.

Comment: Several commenters argued that it would be unfair to allow a party to raise new facts during its case-in-chief when the opposing party had no adequate notice and opportunity to respond.

Response: To ensure that no party is unfairly prejudiced by items or information raised at the hearing which were not set forth in the original notice letter, we have revised § 1005.15(f) to clarify that admission of such new evidence at a hearing is subject to the restrictions set forth in §§ 1005.8 and 1005.17.

5. Evidence

Comment: One commenter felt that the ALJ should not be given discretion in § 1005.17(b) to decide whether to apply any rules of evidence. The commenter felt that inconsistent application of the evidentiary rules would frustrate the ability of parties to prepare for hearing, and could result in arbitrary determinations by ALJs.

Response: The discretion we have provided in § 1005.17(b) is not unbridled. We expect the ALJs to continue their current practice of admitting evidence that may be barred by the rules of evidence, such as hearsay, if a determination is made that the evidence is reliable. However, if an ALJ believes that proffered evidence inadmissible under the rules of evidence is wholly unreliable, the ALJ should exclude the evidence.

Comment: In the proposed regulations, we solicited comments as to whether we should recognize and include Rule 404(b) of the Federal Rules of Evidence in the hearing procedures under part 1005. Rule 404(b) allows for the introduction of evidence of other crimes, wrongs or acts under certain circumstances, such as to prove knowledge, lack of mistake, or existence of a scheme. We also solicited comments on whether the rules should clarify that proof of "other crimes, wrongs or acts" is an aggravating circumstance in OIG sanction cases. Two-thirds of the comments we received supported the inclusion of Rule 404(b) in these regulations. On the other hand, one commenter said that such a rule would be unfair to petitioners and respondents because of the difficulty of challenging the accuracy of prior wrongful acts given the limited discovery available under this part.

Response: We agree with the majority of commenters that evidence of prior bad acts, including prior false claims, admitted for the purposes listed in Federal Rule of Evidence 404(b) is relevant and material and should be admitted. Such evidence should be considered proof of aggravating circumstances affecting the amount of damages awarded in CMP cases. Because the evidence provides proof of aggravating circumstances, and does not demonstrate facts relevant to the actual counts at issue, the evidence should be admitted even if the acts occurred prior to the statute of limitations period applicable to the claims at issue. Because evidence of aggravating circumstances bears only upon the amount of damages that should be imposed, and not a party's liability, evidence of prior bad acts should be admissible even if the prior bad acts were not mentioned in the IG's letter of notice to the petitioner or respondent. We have added a new paragraph (g) to § 1005.17 in accordance with these views.

We do not agree that discovery of the relevant facts concerning prior wrongful acts will be hampered by the limited discovery available under this part. Petitioners and respondents can seek any and all documents the OIG would use as exhibits to prove prior acts, such as plea agreements or judgments of conviction. Furthermore, at least 15 days prior to the hearing the petitioner or respondent is entitled to a list of any and all witnesses who might testify about the party's prior bad acts (§ 1005.8).

6. Initial Decision

Comment: A few commenters pointed out that, although parties are afforded 30 days within which to appeal the initial decision of an ALJ under § 1005.21(a), under proposed § 1005.20(d), the initial decision is not binding until 60 days after it is issued. This situation creates a gap of 30 days within which the ALJ decision will not be binding even if neither party decides to appeal it.

Response: We agree that the ALJ decisions should take effect immediately upon termination of the period within which the parties may appeal, when neither party appeals the decision. Therefore, we are modifying § 1002.20(d) to make initial decisions binding 30 days after they are issued by an ALJ, unless the decisions are timely appealed.

7. Appeal to the Secretary and Stay of Initial Decision

Comment: One commenter was concerned that the standards for internal agency review of ALJ decisions set forth in § 1005.21(h), and the authority of the Secretary to decline review of ALJ decisions under § 1005.21(g), violate due process.

Response: Under the APA, the Department is not required to provide for internal agency review of ALJ decisions imposing or upholding CMP or exclusion sanctions (5 U.S.C. 557). Moreover, a Federal agency may either adopt or reject the decision of an ALJ, and if it is fully satisfied with the ALJ's findings, it need not render a separate opinion (see *Starrett* v. *Special Counsel*, 792 F. 2d 1246, 1252 (4th Cir. 1986); *Braswell Motor Freight Lines, Inc.* v. *United States*, 275 F. Supp. 98, 103 (D.C. Tex. 1967) *aff'd* 389 U.S. 569, 88 S.Ct. 692 (1968); *Younger Bros., Inc.* v. *United States*, 238 F. Supp. 859, 860–61 (D.C. Tex. 1965)). Despite the fact that there is no legal requirement for internal agency review of ALJ decisions, we have chosen to provide such review in order to improve the administration and consistency of Department decisions imposing or implementing sanctions under the authorities set forth in Public Law 100–93. We have limited internal agency review to whether the decision is supported by substantial evidence, in the parallel manner that Congress, under sections 1128(f) and 205(g) of the Act, limited judicial review of agency decisions. We believe that this review process will eliminate erroneous sanctions decisions by the Department while, at the same time, granting appropriate deference to the credibility and other factual determinations of the ALJ.

Comment: A few commenters felt that the final rule should contain a provision stating when decisions by the DAB become final and binding on the parties.

Response: We agree that some clarification as to when agency action becomes final is needed, particularly in light of the provisions governing requests for stay of CMP decisions under § 1005.22. Accordingly, we are making several modifications to the proposed rules. First, we are revising § 1005.21(j) to clarify that a ruling by the DAB, including a decision to decline review of an ALJ's decision, becomes final and binding on the parties 60 days after the date on which the DAB serves the parties with a copy of the Secretary's decision.

This 60-day rule regarding finality reflects the Secretary's fundamental position that imposition of sanctions in CMP cases not be affected by the pendency of any appeals (see preamble to 1983 CMP regulations at 48 FR 38836, August 26, 1983). The procedure set forth in proposed § 1005.22 for filing with the ALJ a request for stay of a final CMP decision would appear to conflict with the Secretary's position that final

agency action in CMP cases is binding on the parties.

Accordingly, we have restricted the provision for stay pending judicial review in CMP cases. Under § 1005.22(b), following the DAB's decision, a respondent may seek a stay of any penalty or assessment imposed, but there is no authority providing for the stay of an exclusion. Furthermore, a stay of a penalty or assessment pending judicial review will only be granted if the respondent posts a bond or provides other adequate security.

Comment: One commenter objected to the fact that the provision for stay in § 1005.22 applies only to CMP cases and not to exclusion cases.

Response: The language and history of sections 1128(c) and 1128(f) of the Act indicate that Congress intended exclusions to take effect upon reasonable notice to the affected individual, and prior to the exhaustion of administrative and judicial remedies. In fact, section 1128(f) of the Act states that any individual or entity "that is excluded," that is, against whom the exclusion has already been made effective, is entitled to a hearing. Even in the exception carved out by Congress for exclusions under section 1128(b)(7), for which the statute affords extra due process protections, Congress still provided that such exclusions would become effective after an ALJ hearing (see Senate Report 100–109, *supra*, at 12–13). Clearly, Congress intended that exclusions would be imposed and effective pending appeals beyond the ALJ hearing.

K. Part 1006—Investigational Inquiries

Comment: One commenter was concerned about the provision in § 1006.4(g)(3)(iv), allowing the OIG to propose revisions to the transcript of a witness' testimonial interview. The commenter suggested that the testimony of an independent witness should not be susceptible to government revisions.

Response: By this provision, we meant to indicate that the OIG could propose corrections to the record transcribing the interview with the witness, if the record was incorrect. We did not mean to suggest that the OIG could propose substantive changes to the witness' testimony. We are revising the language of § 1006.4(g)(3)(iv) to clarify our intent.

Comment: One commenter felt that the targets of CMP investigations should be permitted to review the transcripts of investigative interviews of witnesses obtained under part 1006.

Response: We disagree. Targets of investigations have no legal right to review witness interview transcripts during the investigative phase of a case. These interviews are taken for investigative purposes prior to any litigation, often in order to determine whether there is *prima facie* evidence to pursue a CMP action. If the OIG subsequently determines that litigation is warranted, the transcript would become available in discovery. Furthermore, under § 1005.8, if the OIG planned to introduce the transcript into evidence at the hearing, it would provide a copy to the respondent at least 15 days prior to the hearing.

V. Technical Revisions

A. Subpoenas Directed at OIG Officials

Respondents or petitioners have occasionally sought the presence at a hearing of senior OIG officials. Requiring such individuals to appear and testify is extremely burdensome and detrimental to the proper functioning of the OIG. These officials could not perform their professional duties if they were forced to appear whenever any individual charged with a violation of an exclusion or CMP authority requested it. For that reason, under § 1005.9(c) of these regulations, we have provided that the OIG may comply with a subpoena to an OIG official by designating any OIG representative to appear and testify.

There is ample support in case law for this public policy. For example, courts have refused to allow parties to depose or subpoena the testimony of high level agency officials regarding administrative decisions committed to their discretion (see *Cornejo* v. *Landon*, 524 F. Supp. 118, 122 (E.D. Ill. 1981); *Simplex Time Recorder Co.* v. *Secretary of Labor*, 766 F.2d 575, 586 (D.C. Cir. 1985); *U.S.* v. *Morgan*, 313 U.S. 409, 421–22 (1940)). Agency officials cannot be compelled to provide information orally in an administrative proceeding unless the information "is not available from depositions of * * * other persons * * * or * * * through interrogatories or other discovery methods" (see *Cornejo* v. *Landon*, 524 F. Supp. at 122). The purpose of that rule is "to relieve agency decision-makers from the burdensomeness of discovery, allowing them to spend their valuable time on the performance of official functions and to protect them from inquiries into the mental processes of agency decisionmaking." *Id.*

B. Substitution of the Term "Exclusion" for "Suspension"

The term "suspension" has been changed to the term "exclusion" in part 1003 in the interests of uniformity and in order to clear up any confusion caused by the fact that both Congress and the Department have used the terms interchangeably. "Suspension" was the term Congress used in section 1128(a) of the Act prior to the passage of MMPPPA when it referred to the Secretary's authority or obligation to bar a provider from participation in government health care programs. In 1987, MMPPPA changed the term in the law to "exclusion." It is clear from the legislative history that changing the language did not change the meaning or effect of the Secretary's authority. In fact, in House and Senate Reports preceding the passage of MMPPPA, Congress used the term "exclusion" to refer to the Department's sanctioning authority although section 1128A did not contain the term at that time (see H.R. Rep. No. 85, 100th Cong. 1st Sess. 5 (1987)). Moreover, the Department's regulations make it clear that the effect of a suspension and the effect of an exclusion are identical (compare § 1001.115, Effect of Exclusion, and § 1001.126, Effect of Suspension). Under both regulations, payment will not be made to health care providers (including practitioners) for items or services furnished on or after the effective date of the sanction. Further, the same exceptions to the payment prohibition apply in both cases. (Compare §§ 1001.115 (b) and (c), and §§ 1001.126 (d) and (e).)

C. Definition of "Claim" Under Part 1003

We are revising § 1003.102(b) to reflect a 1987 technical statutory amendment to the definition of "claim" in the CMP law (section 1128A(i)(2) of the Act). Prior to 1987, the definition of "claim" in the CMP law was limited to applications for payment submitted by a provider of services to Medicare or a State health care program. Effective December 22, 1987, section 4118(e)(10)(B) of Pub.L. 100–203, as added by Public Law 100–360, section 411(k)(10)(D), substituted a new definition of "claim" that does not require submission by a health care provider to a health care program. Section 1128A(i)(2) of the Act now defines "claim" as simply "an application for payments for items and services under titles V, XVIII, XIX or XX of this Act."

Under this former definition of "claim," an assessment "of not more than twice the amount claimed," as provided for in section 1128A(a), could not be imposed for CMP violations that did not involve the submission of a claim by a health care provider to a health care program. Therefore, the current CMP regulations did not authorize imposition of an assessment for CMP violations that might not

involve a provider submitting a claim to a health care program (i.e., the violation of an assignment agreement under section 1842(b)(3)(B)(ii) of the Act). However, the definition of "claim" under section 1128A(i)(2) permits imposition of an assessment for CMP violations whenever an application for payment is made, even if it is not submitted by a provider to a health care program. Accordingly, we have modified § 1003.102(b) to clarify that an assessment may be imposed, as authorized, for CMP violations that are not based on the submission of a claim by a provider of services to a health care program.

D. Inclusion of the Omnibus Budget Reconciliation Act of 1990 Provisions Relating to PROS

We are also incorporating into part 1004 of these regulations conforming changes consistent with the new statutory authority set forth in section 4205 of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990. The amendment requires PROs, if appropriate, to offer a corrective action plan to practitioners prior to making a finding under section 1156 of the Act; and requires the Secretary to consider in determining whether a practitioner is willing and able to comply with his or her obligations, whether the practitioner entered into and successfully completed a corrective action plan prior to the PRO's submission of its recommendation and report to the Secretary.

Please note that these revisions to part 1004 are meant only to conform these regulations to new statutory changes resulting from OBRA 1990, and are not meant to be a comprehensive rewrite of this part. A more complete and comprehensive rewrite of the part 1004 regulations is currently under development within the OIG. We hope to issue those revised regulations through a separate notice of proposed rulemaking sometime in the near future.

VI. Regulatory Impact Analysis

Executive Order 12291 requires us to prepare and publish a final regulatory impact analysis for any regulation that meets one of the Executive Order criteria for a "major rule," that is, that which would be likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies or geographic areas; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612), unless the Secretary certifies that a final regulation would not have a significant economic impact on a substantial number of small entities.

We have determined that these final regulations are not classified as a "major rule" under Executive Order 12291 as these regulations are not likely to meet the criteria for having a significant economic impact. As indicated throughout this preamble, the final provisions in this rulemaking are intended to provide new authorities to the OIG to exclude an individual or entity from Medicare and State health care programs, and to levy CMPs and assessments, if they are engaged in a prohibited activity or practice proscribed by statute. These provisions serve to clarify departmental policy with respect to the imposition of exclusions, CMPs and assessments upon individuals and entities who violate the statute. We believe that the great majority of providers and practitioners do not engage in such prohibited activities and practices discussed in these regulations, and that the aggregate economic impact of these provisions should, in effect, be minimal, affecting only those who have engaged in prohibited behavior in violation of statutory intent. As such, this final rule should have no direct effect on the economy or on Federal or State expenditures.

For these reasons, we have determined that no regulatory impact analysis is required. In addition, while some penalties and assessments the Department could impose as a result of these regulations might have an impact on small entities, we do not anticipate that a substantial number of these small entities will be significantly affected by this rulemaking. Therefore, since we have determined, and the Secretary certifies, that this final rule would not have a significant economic impact on a number of small business entities, we have not prepared a regulatory flexibility analysis.

List of Subjects

42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

42 CFR Part 1002

Fraud, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

42 CFR Part 1004

Administrative practice and procedure, Health facilities, Health professions, Medicare, Peer Review Organizations, Penalties, Reporting and recordkeeping requirements.

42 CFR Part 1005

Administrative practice and procedure, Fraud, Penalties.

42 CFR Part 1006

Administrative practice and procedure, Fraud, Investigations, Penalties.

42 CFR Part 1007

Administrative practice and procedure, Fraud, Medicaid, Reporting and recordkeeping requirements.

TITLE 42—PUBLIC HEALTH

CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Chapter V is amended as set forth below:

PART 1000—INTRODUCTION; GENERAL DEFINITIONS

A. Part 1000 is amended as follows:

1. The authority citation for part 1000 is revised to read as follows:

Authority: 42 U.S.C. 1320 and 1395hh.

2. In subpart B, the introductory text of § 1000.10 is republished and § 1000.10 is amended by adding new definitions for the terms *beneficiary* and *furnished* to read as follows:

§ 1000.10 General definitions.

In this chapter, unless the context indicates otherwise—

* * * * *

Beneficiary means any individual eligible to have benefits paid to him or her, or on his or her behalf, under Medicare or any State health care program.

* * * * *

Furnished refers to items and services provided directly by, or under the direct supervision of, or ordered by, a practitioner or other individual, or ordered or prescribed by a physician, (either as an employee or in his or her

own capacity), a provider, or other supplier of services.

§ 1000.20 [Amended]

3. Section 1000.20 is amended by removing the existing definition for the term *beneficiary*.

B. Part 1001 is revised to read as follows:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

Subpart A—General Provisions

Sec.
1001.1 Scope and purpose.
1001.2 Definitions.

Subpart B—Mandatory Exclusions

1001.101 Basis for liability.
1001.102 Length of exclusion.

Subpart C—Permissive Exclusions

1001.201 Conviction relating to program or health care fraud.
1001.301 Conviction relating to obstruction of an investigation.
1001.401 Conviction relating to controlled substances.
1001.501 License revocation or suspension.
1001.601 Exclusion or suspension under a Federal or State health care program.
1001.701 Excessive claims or furnishing of unnecessary or substandard items and services.
1001.801 Failure of HMOs and CMPs to furnish medically necessary items and services.
1001.901 False or improper claims.
1001.951 Fraud and kickbacks and other prohibited activities.
1001.952 Exceptions.
1001.953 OIG report on compliance with investment interest safe harbor.
1001.1001 Exclusion of entities owned or controlled by a sanctioned person.
1001.1101 Failure to disclose certain information.
1001.1201 Failure to provide payment information.
1001.1301 Failure to grant immediate access.
1001.1401 Violations of PPS corrective action.
1001.1501 Default of health education loan or scholarship obligations.
1001.1601 Violations of the limitations on physician charges.
1001.1701 Billing for services of assistant at surgery during cataract operations.

Subpart D—Waivers and Effect of Exclusion

1001.1801 Waivers of exclusions.
1001.1901 Scope and effect of exclusion.

Subpart E—Notice and Appeals

1001.2001 Notice of intent to exclude.
1001.2002 Notice of exclusion.
1001.2003 Notice of proposal to exclude.
1001.2004 Notice to State agencies.
1001.2005 Notice to State licensing agencies.
1001.2006 Notice to others regarding exclusion.
1001.2007 Appeal of exclusions.

Subpart F—Reinstatement into the Programs

1001.3001 Timing and method of request for reinstatement.
1001.3002 Basis for reinstatement.
1001.3003 Approval of request for reinstatement.
1001.3004 Denial of request for reinstatement.
1001.3005 Reversed or vacated decisions.

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E) and (F), and 1395hh, and section 14 of Public Law 100–93 (101 Stat. 697).

Subpart A—General Provisions

§ 1001.1 Scope and purpose.

The regulations in this part specify certain bases upon which individuals and entities may, or in some cases must, be excluded from participation in the Medicare and certain State health care programs. They also state the effect of exclusion, the factors that will be considered in determining the length of any exclusion, the provisions governing notices of exclusions, and the process by which an excluded individual or entity may seek reinstatement into the programs.

§ 1001.2 Definitions.

Controlled substance means a drug or other substance, or immediate precursor:

(a) Included in schedules I, II, III, IV or V of part B of subchapter I in 21 U.S.C. chapter 13, or

(b) That is deemed a controlled substance by the law of any State.

Convicted means that—

(a) A judgment of conviction has been entered against an individual or entity by a Federal, State or local court, regardless of whether:

(1) There is a post-trial motion or an appeal pending, or

(2) The judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed;

(b) A Federal, State or local court has made a finding of guilt against an individual or entity;

(c) A Federal, State or local court has accepted a plea of guilty or *nolo contendere* by an individual or entity; or

(d) An individual or entity has entered into participation in a first offender, deferred adjudication or other program or arrangement where judgment of conviction has been withheld.

Exclusion means that items and services furnished by a specified individual or entity will not be reimbursed under Medicare or the State health care programs.

HHS means Department of Health and Human Services.

OIG means Office of Inspector General of the Department of Health and Human Services.

PRO means Utilization and Quality Control Peer Review Organization as created by the Tax Equity and Fiscal Responsibility Act of 1982 (42 U.S.C. 1320c–3).

Professionally recognized standards of health care are Statewide or national standards of care, whether in writing or not, that professional peers of the individual or entity whose provision of care is an issue, recognize as applying to those peers practicing or providing care within a State. Where the Food and Drug Administration (FDA), the Health Care Financing Administration (HCFA) or the Public Health Service (PHS) has declared a treatment modality not to be safe and effective, practitioners who employ such a treatment modality will be deemed not to meet professionally recognized standards of health care. This definition shall not be construed to mean that all other treatments meet professionally recognized standards.

Sole community physician means a physician who is the only physician who provides primary care services to Federal or State health care program beneficiaries within a defined service area.

Sole source of essential specialized services in the community means that an individual or entity—

(a) Is the only practitioner, supplier or provider furnishing specialized services in an area designated by the Public Health Service as a health manpower shortage area for that medical specialty, as listed in 42 CFR part 5, Appendices B–F;

(b) Is a sole community hospital, as defined in § 412.92 of this title; or

(c) Is the only source for specialized services in a defined service area where services by a non-specialist could not be substituted for the source without jeopardizing the health or safety of beneficiaries.

State health care program means:

(a) A State plan approved under title XIX of the Act (Medicaid),

(b) Any program receiving funds under title V of the Act or from an allotment to a State under such title (Maternal and Child Health Services Block Grant program), or

(c) Any program receiving funds under title XX of the Act or from any allotment to a State under such title (Block Grants to States for Social Services).

State Medicaid Fraud Control Unit means a unit certified by the Secretary

as meeting the criteria of 42 U.S.C. 1396b(q) and § 1002.305 of this chapter.

Subpart B—Mandatory Exclusions

§ 1001.101 Basis for liability.

The OIG will exclude any individual or entity that—

(a) Has been convicted of a criminal offense related to the delivery of an item or service under Medicare or a State health care program, including the performance of management or administrative services relating to the delivery of items or services under any such program, or

(b) Has been convicted, under Federal or State law, of a criminal offense related to the neglect or abuse of a patient, in connection with the delivery of a health care item or service, including any offense that the OIG concludes entailed, or resulted in, neglect or abuse of patients. The conviction need not relate to a patient who is a program beneficiary.

§ 1001.102 Length of exclusion.

(a) No exclusion imposed in accordance with § 1001.101 will be for less than 5 years.

(b) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

(1) The acts resulting in the conviction, or similar acts, resulted in financial loss to Medicare and the State health care programs of $1,500 or more. (The entire amount of financial loss to such programs will be considered, including any amounts resulting from similar acts not adjudicated, regardless of whether full or partial restitution has been made to the programs);

(2) The acts that resulted in the conviction, or similar acts, were committed over a period of one year or more;

(3) The acts that resulted in the conviction, or similar acts, had a significant adverse physical, mental or financial impact on one or more program beneficiaries or other individuals;

(4) The sentence imposed by the court included incarceration;

(5) The convicted individual or entity has a prior criminal, civil or administrative sanction record; or

(6) The individual or entity has at any time been overpaid a total of $1,500 or more by Medicare or State health care programs as a result of improper billings.

(c) Only if any of the aggravating factors set forth in paragraph (b) of this section justifies an exclusion longer than 5 years, may mitigating factors be considered as a basis for reducing the period of exclusion to no less than 5 years. Only the following factors may be considered mitigating—

(1) The individual or entity was convicted of 3 or fewer misdemeanor offenses, and the entire amount of financial loss to Medicare and the State health care programs due to the acts that resulted in the conviction, and similar acts, is less than $1,500;

(2) The record in the criminal proceedings, including sentencing documents, demonstrates that the court determined that the individual had a mental, emotional or physical condition before or during the commission of the offense that reduced the individual's culpability; or

(3) The individual's or entity's cooperation with Federal or State officials resulted in—

(i) Others being convicted or excluded from Medicare or any of the State health care programs, or

(ii) The imposition against anyone of a civil money penalty or assessment under part 1003 of this chapter.

Subpart C—Permissive Exclusions

§ 1001.201 Conviction relating to program or health care fraud.

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity convicted under Federal or State law of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—

(1) In connection with the delivery of any health care item or service, including the performance of management or administrative services relating to the delivery of such items or services, or

(2) With respect to any act or omission in a program operated by, or financed in whole or in part by, any Federal, State or local government agency.

(b) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will be for a period of 3 years, unless aggravating or mitigating factors listed in paragraphs (b)(2) and (b)(3) of this section form a basis for lengthening or shortening that period.

(2) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

(i) The acts resulting in the conviction, or similar acts, resulted in financial loss of $1,500 or more to a government program or to one or more other entities, or had a significant financial impact on program beneficiaries or other individuals. (The total amount of financial loss will be considered, including any amounts resulting from similar acts not adjudicated, regardless of whether full or partial restitution has been made.);

(ii) The acts that resulted in the conviction, or similar acts, were committed over a period of one year or more;

(iii) The acts that resulted in the conviction, or similar acts, had a significant adverse physical or mental impact on one or more program beneficiaries or other individuals;

(iv) The sentence imposed by the court included incarceration; or

(v) The convicted individual or entity has a prior criminal, civil or administrative sanction record.

(3) Only the following factors may be considered as mitigating and a basis for reducing the period of exclusion—

(i) The individual or entity was convicted of 3 or fewer misdemeanor offenses, and the entire amount of financial loss to a government program or to other individuals or entities due to the acts that resulted in the conviction and similar acts is less than $1,500;

(ii) The record in the criminal proceedings, including sentencing documents, demonstrates that the court determined that the individual had a mental, emotional or physical condition, before or during the commission of the offense, that reduced the individual's culpability;

(iii) The individual's or entity's cooperation with Federal or State officials resulted in—

(A) Others being convicted or excluded from Medicare or any of the State health care programs, or

(B) The imposition of a civil money penalty against others; or

(iv) Alternative sources of the type of health care items or services furnished by the individual or entity are not available.

§ 1001.301 Conviction relating to obstruction of an investigation.

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity convicted under Federal or State law of interference with, or obstruction of, any investigation into a criminal offense described in §§ 1001.101 or 1001.201.

(b) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will be for a period of 3 years, unless aggravating or mitigating factors listed in paragraphs (b)(2) and (b)(3) of this section form the basis for lengthening or shortening that period.

(2) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

(i) The interference with, or obstruction of, the criminal investigation caused the expenditure of significant additional time or resources;

(ii) The interference or obstruction had a significant adverse mental, physical or financial impact on program beneficiaries or other individuals or on the Medicare or State health care programs;

(iii) The interference or obstruction also affected a civil or administrative investigation;

(iv) The sentence imposed by the court included incarceration; or

(v) The convicted individual or entity has a prior criminal, civil or administrative sanction record.

(3) Only the following factors may be considered as mitigating and a basis for reducing the period of exclusion—

(i) The record of the criminal proceedings, including sentencing documents, demonstrates that the court determined that the individual had a mental, emotional or physical condition, before or during the commission of the offense, that reduced the individual's culpability;

(ii) The individual's or entity's cooperation with Federal or State officials resulted in—

(A) Others being convicted or excluded from Medicare or any of the State health care programs, or

(B) The imposition of a civil money penalty against others; or

(iii) Alternative sources of the type of health care items or services furnished by the individual or entity are not available.

§ 1001.401 Conviction relating to controlled substances.

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity convicted under Federal or State law of a criminal offense relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance, as defined under Federal or State law.

(b) For purposes of this section, the definition of *controlled substance* will be the definition that applies to the law forming the basis for the conviction.

(c) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will be for a period of 3 years, unless aggravating or mitigating factors listed in paragraphs (b)(2) and (b)(3) of this section form a basis for lengthening or shortening that period.

(2) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

(i) The acts that resulted in the conviction or similar acts were committed over a period of one year or more;

(ii) The acts that resulted in the conviction or similar acts had a significant adverse physical, mental or financial impact on program beneficiaries or other individuals or the Medicare or State health care programs;

(iii) The sentence imposed by the court included incarceration; or

(iv) The convicted individual or entity has a prior criminal, civil or administrative sanction record.

(3) Only the following factors may be considered as mitigating and a basis for shortening the period of exclusion—

(i) The individual's or entity's cooperation with Federal or State officials resulted in—

(A) Others being convicted or excluded from Medicare or any of the State health care programs, or

(B) The imposition of a civil money penalty against others; or

(ii) Alternative sources of the type of health care items or services furnished by the individual or entity are not available.

§ 1001.501 License revocation or suspension.

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity that has—

(1) Had a license to provide health care revoked or suspended by any State licensing authority, or has otherwise lost such a license (including the right to apply for or renew such a license), for reasons bearing on the individual's or entity's professional competence, professional performance or financial integrity; or

(2) Has surrendered such a license while a formal disciplinary proceeding concerning the individual's or entity's professional competence, professional performance or financial integrity was pending before a State licensing authority.

(b) *Length of exclusion.* (1) Except as provided in paragraph (c) of this section, an exclusion imposed in accordance with this section will never be for a period of time less than the period during which an individual's or entity's license is revoked, suspended or otherwise not in effect as a result of, or in connection with, a State licensing agency action.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period of exclusion—

(i) The acts that resulted in the revocation, suspension or loss of the individual's or entity's license to provide health care had or could have had a significant adverse physical, emotional or financial impact on one or more program beneficiaries or other individuals;

(ii) The individual or entity has a prior criminal, civil or administrative sanction record; or

(iii) The acts (or similar acts) had or could have had a significant adverse impact on the financial integrity of the programs.

(3) Only if any of the aggravating factors listed in paragraph (b)(2) of this section justifies a longer exclusion may mitigating factors be considered as a basis for reducing the period of exclusion to a period not less than that set forth in paragraph (b)(1) of this section. Only the following factors may be considered mitigating—

(i) The individual's or entity's cooperation with a State licensing authority resulted in the sanctioning of other individuals or entities; or

(ii) Alternative sources of the type of health care items or services furnished by the individual or entity are not available.

(4) When an individual or entity has been excluded under this section, the OIG will consider a request for reinstatement in accordance with § 1001.3001 if the individual or entity obtains a valid license in the State where the license was originally revoked, suspended, surrendered or otherwise lost.

(c) *Exceptions.* (1) *Length of exclusion.* If, prior to the notice of exclusion by the OIG, the licensing authority of a State (other than the one in which the individual's or entity's license had been revoked, suspended, surrendered or otherwise lost), being fully apprised of all of the circumstances surrounding the prior action by the licensing board of the first State, grants the individual or entity a license or takes no significant adverse action as to a currently held license, an exclusion imposed in accordance with this section may be for a period of time less than that prescribed by paragraph (b)(1) of this section.

(2) *Consideration of early reinstatement.* If an individual or entity that has been excluded in accordance with this section fully and accurately discloses the circumstances surrounding this action to a licensing authority of a different State, and that State grants the individual or entity a new license or takes no significant adverse action as to a currently held license, the OIG will consider a request for early reinstatement.

§ 1001.601 Exclusion or suspension under a Federal or State health care program.

(a) *Circumstance for exclusion.* (1) The OIG may exclude an individual or entity suspended or excluded from participation, or otherwise sanctioned, under—

(i) Any Federal program involving the provision of health care, or

(ii) A State health care program, for reasons bearing on the individual's or entity's professional competence, professional performance or financial integrity.

(2) The term "or otherwise sanctioned" in paragraph (a)(1) of this section is intended to cover all actions that limit the ability of a person to participate in the program at issue regardless of what such an action is called, and includes situations where an individual or entity voluntarily withdraws from a program to avoid a formal sanction.

(b) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will be for a period of 3 years, unless aggravating or mitigating factors set forth in paragraphs (b)(2) and (b)(3) of this section form the basis for lengthening or shortening that period.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period of exclusion—

(i) The acts that resulted in the exclusion, suspension or other sanction under the Federal or State health care program had, or could have had, a significant adverse impact on Federal or State health care programs or the beneficiaries of those programs or other individuals;

(ii) The period of exclusion, suspension or other sanction imposed under the Federal or State health care program is greater than 3 years; or

(iii) The individual or entity has a prior criminal, civil or administrative record.

(3) Only the following factors may be considered mitigating and a basis for shortening the period of exclusion—

(i) The period of exclusion, suspension or other sanction imposed under the Federal or State health care program is less than 3 years;

(ii) The individual's or entity's cooperation with Federal or State officials resulted in the sanctioning of other individuals or entities; or

(iii) Alternative sources of the types of health care items or services furnished by the individual or entity are not available.

(4) The OIG will normally not consider a request for reinstatement in accordance with § 1001.3001 until the period of exclusion imposed by the OIG has expired.

§ 1001.701 Excessive claims or furnishing of unnecessary or substandard items and services.

(a) Circumstance for exclusion. The OIG may exclude an individual or entity that has—

(1) Submitted, or caused to be submitted, bills or requests for payments under Medicare or any of the State health care programs containing charges or costs for items or services furnished that are substantially in excess of such individual's or entity's usual charges or costs for such items or services; or

(2) Furnished, or caused to be furnished, to patients (whether or not covered by Medicare or any of the State health care programs) any items or services substantially in excess of the patient's needs, or of a quality that fails to meet professionally recognized standards of health care.

(b) The OIG's determination under paragraph (a)(2) of this section—that the items or services furnished were excessive or of unacceptable quality—will be made on the basis of information, including sanction reports, from the following sources:

(1) The PRO for the area served by the individual or entity;

(2) State or local licensing or certification authorities;

(3) Fiscal agents or contractors, or private insurance companies;

(4) State or local professional societies; or

(5) Any other sources deemed appropriate by the OIG.

(c) Exceptions. An individual or entity will not be excluded for—

(1) Submitting, or causing to be submitted, bills or requests for payment that contain charges or costs substantially in excess of usual charges or costs when such charges or costs are due to unusual circumstances or medical complications requiring additional time, effort, expense or other good cause; or

(2) Furnishing, or causing to be furnished, items or services in excess of the needs of patients, when the items or services were ordered by a physician or other authorized individual, and the individual or entity furnishing the items or services was not in a position to determine medical necessity or to refuse to comply with the order of the physician or other authorized individual.

(d) Length of exclusion. (1) An exclusion imposed in accordance with this section will be for a period of 3 years, unless aggravating or mitigating factors listed in paragraphs (d)(2) and (d)(3) of this section form a basis for lengthening or shortening the period.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period of exclusion—

(i) The violations were serious in nature, and occurred over a period of one year or more;

(ii) The violations had a significant adverse physical, mental or financial impact on program beneficiaries or other individuals;

(iii) The individual or entity has a prior criminal, civil or administrative sanction record; or

(iv) The violation resulted in financial loss to Medicare or the State health care programs of $1,500 or more.

(3) Only the following factors may be considered mitigating and a basis for reducing the period of exclusion—

(i) There were few violations and they occurred over a short period of time; or

(ii) Alternative sources of the type of health care items or services furnished by the individual or entity are not available.

§ 1001.801 Failure of HMOs and CMPs to furnish medically necessary items and services.

(a) Circumstances for exclusion. The OIG may exclude an entity—

(1) That is a—

(i) Health maintenance organization (HMO), as defined in section 1903(m) of the Act, providing items or services under a State Medicaid Plan;

(ii) Primary care case management system providing services, in accordance with a waiver approved under section 1915(b)(1) of the Act; or

(iii) HMO or competitive medical plan providing items or services in accordance with a risk-sharing contract under section 1876 of the Act;

(2) That has failed substantially to provide medically necessary items and services that are required under a plan, waiver or contract described in paragraph (a)(1) of this section to be provided to individuals covered by such plan, waiver or contract; and

(3) Where such failure has adversely affected or has a substantial likelihood of adversely affecting covered individuals.

(b) The OIG's determination under paragraph (a)(2) of this section—that the medically necessary items and services required under law or contract were not provided—will be made on the basis of information, including sanction reports, from the following sources:

(1) The PRO or other quality assurance organization under contract with a State Medicaid plan for the area served by the HMO or competitive medical plan;

(2) State or local licensing or certification authorities;

(3) Fiscal agents or contractors, or private insurance companies;

(4) State or local professional societies;

(5) HCFA's HMO compliance office; or

(6) Any other sources deemed appropriate by the OIG.

(c) Length of exclusion. (1) An exclusion imposed in accordance with this section will be for a period of 3 years, unless aggravating or mitigating factors listed in paragraphs (c)(2) and (c)(3) of this section form a basis for lengthening or shortening the period.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period of exclusion—

(i) The entity failed to provide a large number or a variety of items or services;

(ii) The failures occurred over a lengthy period of time;

(iii) The entity's failure to provide a necessary item or service had or could have had a serious adverse effect; or

(iv) The entity has a criminal, civil or administrative sanction record.

(3) Only the following factors may be considered as mitigating and a basis for reducing the period of exclusion—

(i) There were few violations and they occurred over a short period of time; or

(ii) Alternative sources of the type of health care items or services furnished by the entity are not available.

(iii) The entity took corrective action upon learning of impermissible activities by an employee or contractor.

§ 1001.901 False or improper claims.

(a) *Circumstance for exclusion.* The OIG may exclude any individual or entity that it determines has committed an act described in section 1128A of the Act. The imposition of a civil money penalty or assessment is not a prerequisite for an exclusion under this section.

(b) *Length of exclusion.* In determining the length of an exclusion imposed in accordance with this section, the OIG will consider the following factors—

(1) The nature and circumstances surrounding the actions that are the basis for liability, including the period of time over which the acts occurred, the number of acts, whether there is evidence of a pattern and the amount claimed;

(2) The degree of culpability;

(3) The individual's or entity's prior criminal, civil or administrative sanction record (The lack of any prior record is to be considered neutral); and

(4) Other matters as justice may require.

§ 1001.951 Fraud and kickbacks and other prohibited activities.

(a) *Circumstance for exclusion.* (1) Except as provided for in paragraph (a)(2)(ii) of this section, the OIG may exclude any individual or entity that it determines has committed an act described in section 1128B(b) of the Act.

(2) With respect to acts described in section 1128B of the Act, the OIG—

(i) May exclude any individual or entity that it determines has knowingly and willfully solicited, received, offered or paid any remuneration in the manner and for the purposes described therein, irrespective of whether the individual or entity may be able to prove that the remuneration was also intended for some other purpose; and

(ii) Will not exclude any individual or entity if that individual or entity can prove that the remuneration that is the subject of the exclusion is exempted from serving as the basis for an exclusion.

(b) *Length of exclusion.* (1) The following factors will be considered in determining the length of exclusion in accordance with this section—

(i) The nature and circumstances of the acts and other similar acts;

(ii) The nature and extent of any adverse physical, mental, financial or other impact the conduct had on program beneficiaries or other individuals or the Medicare or State health programs;

(iii) The excluded individual's or entity's prior criminal, civil or administrative sanction record (The lack of any prior record is to be considered neutral); and

(iv) Any other facts bearing on the nature and seriousness of the individual's or entity's misconduct.

(2) It will be considered a mitigating factor if—

(i) The individual had a documented mental, emotional, or physical condition before or during the commission of the prohibited act(s) that reduced the individual's culpability for the acts in question;

(ii) The individual's or entity's cooperation with Federal or State officials resulted in the—

(A) Sanctioning of other individuals or entities, or

(B) Imposition of a civil money penalty against others; or

(iii) Alternative sources of the type of health care items or services provided by the individual or entity are not available.

§ 1001.952 Exceptions.

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

(a) *Investment Interests.* As used in section 1128B of the Act, "remuneration" does not include any payment that is a return on an investment interest, such as a dividend or interest income, made to an investor as long as all of the applicable standards are met within one of the following two categories of entities:

(1) If, within the previous fiscal year or previous 12 month period, the entity possesses more than $50,000,000 in undepreciated net tangible assets (based on the net acquisition cost of purchasing such assets from an unrelated entity) related to the furnishing of items and services, all of the following five applicable standards must be met—

(i) With respect to an investment interest that is an equity security, the equity security must be registered with the Securities and Exchange Commission under 15 U.S.C. 781 (b) or (g).

(ii) The investment interest of an investor in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity must be obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System.

(iii) The entity or any investor must not market or furnish the entity's items or services (or those of another entity as part of a cross referral agreement) to passive investors differently than to non-investors.

(iv) The entity must not loan funds to or guarantee a loan for an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity if the investor uses any part of such loan to obtain the investment interest.

(v) The amount of payment to an investor in return for the investment interest must be directly proportional to the amount of the capital investment of that investor.

(2) If the entity possesses investment interests that are held by either active or passive investors, all of the following eight applicable standards must be met—

(i) No more than 40 percent of the value of the investment interests of each class of investments may be held in the previous fiscal year or previous 12 month period by investors who are in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity.

(ii) The terms on which an investment interest is offered to a passive investor,

if any, who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity must be no different from the terms offered to other passive investors.

(iii) The terms on which an investment interest is offered to an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity must not be related to the previous or expected volume of referrals, items or services furnished, or the amount of business otherwise generated from that investor to the entity.

(iv) There is no requirement that a passive investor, if any, make referrals to, be in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity as a condition for remaining as an investor.

(v) The entity or any investor must not market or furnish the entity's items or services (or those of another entity as part of a cross referral agreement) to passive investors differently than to non-investors.

(vi) No more than 40 percent of the gross revenue of the entity in the previous fiscal year or previous 12 month period may come from referrals, items or services furnished, or business otherwise generated from investors.

(vii) The entity must not loan funds to or guarantee a loan for an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity if the investor uses any part of such loan to obtain the investment interest.

(viii) The amount of payment to an investor in return for the investment interest must be directly proportional to the amount of the capital investment (including the fair market value of any pre-operational services rendered) of that investor.

For purposes of paragraph (a) of this section, the following terms apply. *Active investor* means an investor either who is responsible for the day-to-day management of the entity and is a bona fide general partner in a partnership under the Uniform Partnership Act or who agrees in writing to undertake liability for the actions of the entity's agents acting within the scope of their agency. *Investment interest* means a security issued by an entity, and may include the following classes of investments: shares in a corporation, interests or units of a partnership, bonds, debentures, notes, or other debt instruments. *Investor* means an individual or entity either who directly holds an investment interest in an entity, or who holds such investment interest indirectly by, including but not limited to, such means as having a family member hold such investment interest or holding a legal or beneficial interest in another entity (such as a trust or holding company) that holds such investment interest. *Passive investor* means an investor who is not an active investor, such as a limited partner in a partnership under the Uniform Partnership Act, a shareholder in a corporation, or a holder of a debt security

(b) *Space Rental.* As used in section 1128B of the Act, "remuneration" does not include any payment made by a lessee to a lessor for the use of premises, as long as all of the following five standards are met—

(1) The lease agreement is set out in writing and signed by the parties.

(2) The lease specifies the premises covered by the lease.

(3) If the lease is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, and the exact rent for such intervals.

(4) The term of the lease is for not less than one year.

(5) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

For purposes of paragraph (b) of this section, the term *fair market value* means the value of the rental property for general commercial purposes, but shall not be adjusted to reflect the additional value that one party (either the prospective lessee or lessor) would attribute to the property as a result of its proximity or convenience to sources of referrals or business otherwise generated for which payment may be made in whole or in part under Medicare or a State health care program.

(c) *Equipment rental.* As used in section 1128B of the Act, "remuneration" does not include any payment made by a lessee of equipment to the lessor of the equipment for the use of the equipment, as long as all of the following five standards are met—

(1) The lease agreement is set out in writing and signed by the parties.

(2) The lease specifies the equipment covered by the lease.

(3) If the lease is intended to provide the lessee with use of the equipment for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, and the exact rent for such interval.

(4) The term of the lease is for not less than one year.

(5) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

For purposes of paragraph (c) of this section, the term *fair market value* means the value of the equipment when obtained from a manufacturer or professional distributor, but shall not be adjusted to reflect the additional value one party (either the prospective lessee or lessor) would attribute to the equipment as a result of its proximity or convenience to sources of referrals or business otherwise generated for which payment may be made in whole or in part under Medicare or a State health care program.

(d) *Personal services and management contracts.* As used in section 1128B of the Act, "remuneration" does not include any payment made by a principal to an agent as compensation for the services of the agent, as long as all of the following six standards are met—

(1) The agency agreement is set out in writing and signed by the parties.

(2) The agency agreement specifies the services to be provided by the agent.

(3) If the agency agreement is intended to provide for the services of the agent on a periodic, sporadic or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement specifies exactly the schedule of such intervals, their precise length, and the exact charge for such intervals.

(4) The term of the agreement is for not less than one year.

(5) The aggregate compensation paid to the agent over the term of the agreement is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise

generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

(6) The services performed under the agreement do not involve the counselling or promotion of a business arrangement or other activity that violates any State or Federal law.

For purposes of paragraph (d) of this section, an agent of a principal is any person, other than a bona fide employee of the principal, who has an agreement to perform services for, or on behalf of, the principal.

(e) *Sale of practice.* As used in section 1128B of the Act, "remuneration" does not include any payment made to a practitioner by another practitioner where the former practitioner is selling his or her practice to the latter practitioner, as long as both of the following two standards are met—

(1) The period from the date of the first agreement pertaining to the sale to the completion of the sale is not more than one year.

(2) The practitioner who is selling his or her practice will not be in a professional position to make referrals to, or otherwise generate business for, the purchasing practitioner for which payment may be made in whole or in part under Medicare or a State health care program after one year from the date of the first agreement pertaining to the sale.

(f) *Referral services.* As used in section 1128B of the Act, "remuneration" does not include any payment or exchange of anything of value between an individual or entity ("participant") and another entity serving as a referral service ("referral service"), as long as all of the following four standards are met—

(1) The referral service does not exclude as a participant in the referral service any individual or entity who meets the qualifications for participation.

(2) Any payment the participant makes to the referral service is assessed equally against and collected equally from all participants, and is only based on the cost of operating the referral service, and not on the volume or value of any referrals to or business otherwise generated by the participants for the referral service for which payment may be made in whole or in part under Medicare or a State health care program.

(3) The referral service imposes no requirements on the manner in which the participant provides services to a referred person, except that the referral service may require that the participant charge the person referred at the same rate as it charges other persons not referred by the referral service, or that these services be furnished free of charge or at reduced charge.

(4) The referral service makes the following five disclosures to each person seeking a referral, with each such disclosure maintained by the referral service in a written record certifying such disclosure and signed by either such person seeking a referral or by the individual making the disclosure on behalf of the referral service—

(i) The manner in which it selects the group of participants in the referral service to which it could make a referral;

(ii) Whether the participant has paid a fee to the referral service;

(iii) The manner in which it selects a particular participant from this group for that person;

(iv) The nature of the relationship between the referral service and the group of participants to whom it could make the referral; and

(v) The nature of any restrictions that would exclude such an individual or entity from continuing as a participant.

(g) *Warranties.* As used in section 1128B of the Act, "remuneration" does not include any payment or exchange of anything of value under a warranty provided by a manufacturer or supplier of an item to the buyer (such as a health care provider or beneficiary) of the item, as long as the buyer complies with all of the following standards in paragraphs (g)(1) and (g)(2) of this section and the manufacturer or supplier complies with all of the following standards in paragraphs (g)(3) and (g)(4) of this section—

(1) The buyer must fully and accurately report any price reduction of the item (including a free item), which was obtained as part of the warranty, in the applicable cost reporting mechanism or claim for payment filed with the Department or a State agency.

(2) The buyer must provide, upon request by the Secretary or a State agency, information provided by the manufacturer or supplier as specified in paragraph (g)(3) of this section.

(3) The manufacturer or supplier must comply with either of the following two standards—

(i) The manufacturer or supplier must fully and accurately report the price reduction of the item (including a free item), which was obtained as part of the warranty, on the invoice or statement submitted to the buyer, and inform the buyer of its obligations under paragraphs (a)(1) and (a)(2) of this section.

(ii) Where the amount of the price reduction is not known at the time of sale, the manufacturer or supplier must fully and accurately report the existence of a warranty on the invoice or statement, inform the buyer of its obligations under paragraphs (g)(1) and (g)(2) of this section, and, when the price reduction becomes known, provide the buyer with documentation of the calculation of the price reduction resulting from the warranty.

(4) The manufacturer or supplier must not pay any remuneration to any individual (other than a beneficiary) or entity for any medical, surgical, or hospital expense incurred by a beneficiary other than for the cost of the item itself.

For purposes of paragraph (g) of this section, the term *warranty* means either an agreement made in accordance with the provisions of 15 U.S.C. 2301(6), or a manufacturer's or supplier's agreement to replace another manufacturer's or supplier's defective item (which is covered by an agreement made in accordance with this statutory provision), on terms equal to the agreement that it replaces.

(h) *Discounts.* As used in section 1128B of the Act, "remuneration" does not include a discount, as defined in paragraph (h)(3) of this section, on a good or service received by a buyer, which submits a claim or request for payment for the good or service for which payment may be made in whole or in part under Medicare or a State health care program, from a seller as long as the buyer complies with the applicable standards of paragraph (h)(1) of this section and the seller complies with the applicable standards of paragraph (h)(2) of this section:

(1) With respect to the following three categories of buyers, the buyer must comply with all of the applicable standards within each category—

(i) If the buyer is an entity which reports its costs on a cost report required by the Department or a State agency, it must comply with all of the following four standards—

(A) The discount must be earned based on purchases of that same good or service bought within a single fiscal year of the buyer;

(B) The buyer must claim the benefit of the discount in the fiscal year in which the discount is earned or the following year;

(C) The buyer must fully and accurately report the discount in the applicable cost report; and

(D) The buyer must provide, upon request by the Secretary or a State agency, information provided by the seller as specified in paragraph (h)(2)(ii) of this section.

(ii) If the buyer is an entity which is a health maintenance organization or competitive medical plan acting in accordance with a risk contract under section 1876(g) or 1903(m) of the Act, or under another State health care program, it need not report the discount except as otherwise may be required under the risk contract.

(iii) If the buyer is not an entity described in paragraphs (h)(1)(i) or (h)(1)(ii) of this section, it must comply with all of the following three standards—

(A) The discount must be made at the time of the original sale of the good or service;

(B) Where an item or service is separately claimed for payment with the Department or a State agency, the buyer must fully and accurately report the discount on that item or service; and

(C) The buyer must provide, upon request by the Secretary or a State agency, information provided by the seller as specified in paragraph (h)(2)(ii)(A) of this section.

(2) With respect to either of the following two categories of buyers, the seller must comply with all of the applicable standards within each category—

(i) If the buyer is an entity described in paragraph (h)(1)(ii) of this section, the seller need not report the discount to the buyer for purposes of this provision.

(ii) If the buyer is any other individual or entity, the seller must comply with either of the following two standards—

(A) Where a discount is required to be reported to the Department or a State agency under paragraph (h)(1) of this section, the seller must fully and accurately report such discount on the invoice or statement submitted to the buyer, and inform the buyer of its obligations to report such discount; or

(B) Where the value of the discount is not known at the time of sale, the seller must fully and accurately report the existence of a discount program on the invoice or statement submitted to the buyer, inform the buyer of its obligations under paragraph (h)(1) of this section and, when the value of the discount becomes known, provide the buyer with documentation of the calculation of the discount identifying the specific goods or services purchased to which the discount will be applied.

(3) For purposes of this paragraph, the term *discount* means a reduction in the amount a seller charges a buyer (who buys either directly or through a wholesaler or a group purchasing organization) for a good or service based on an arms length transaction. The term *discount* may include a rebate check, credit or coupon directly redeemable from the seller only to the extent that such reductions in price are attributable to the original good or service that was purchased or furnished. The term *discount* does not include—

(i) Cash payment;

(ii) Furnishing one good or service without charge or at a reduced charge in exchange for any agreement to buy a different good or service;

(iii) A reduction in price applicable to one payor but not to Medicare or a State health care program;

(iv) A reduction in price offered to a beneficiary (such as a routine reduction or waiver of any coinsurance or deductible amount owed by a program beneficiary);

(v) Warranties;

(vi) Services provided in accordance with a personal or management services contract; or

(vii) Other remuneration in cash or in kind not explicitly described in this paragraph.

(i) *Employees.* As used in section 1128B of the Act, "remuneration" does not include any amount paid by an employer to an employee, who has a bona fide employment relationship with the employer, for employment in the furnishing of any item or service for which payment may be made in whole or in part under Medicare or a State health care program. For purposes of paragraph (i) of this section, the term *employee* has the same meaning as it does for purposes of 26 U.S.C. 3121(d)(2).

(j) *Group purchasing organizations.* As used in section 1128B of the Act, "remuneration" does not include any payment by a vendor of goods or services to a group purchasing organization (GPO), as part of an agreement to furnish such goods or services to an individual or entity as long as both of the following two standards are met—

(1) The GPO must have a written agreement with each individual or entity, for which items or services are furnished, that provides for either of the following—

(i) The agreement states that participating vendors from which the individual or entity will purchase goods or services will pay a fee to the GPO of 3 percent or less of the purchase price of the goods or services provided by that vendor.

(ii) In the event the fee paid to the GPO is not fixed at 3 percent or less of the purchase price of the goods or services, the agreement specifies the amount (or if not known, the maximum amount) the GPO will be paid by each vendor (where such amount may be a fixed sum or a fixed percentage of the value of purchases made from the vendor by the members of the group under the contract between the vendor and the GPO).

(2) Where the entity which receives the goods or service from the vendor is a health care provider of services, the GPO must disclose in writing to the entity at least annually, and to the Secretary upon request, the amount received from each vendor with respect to purchases made by or on behalf of the entity.

For purposes of paragraph (j) of this section, the term *group purchasing organization* (GPO) means an entity authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services for which payment may be made in whole or in part under Medicare or a State health care program, and who are neither wholly-owned by the GPO nor subsidiaries of a parent corporation that wholly owns the GPO (either directly or through another wholly-owned entity).

(k) *Waiver of beneficiary coinsurance and deductible amounts.* As used in section 1128B of the Act, "remuneration" does not include any reduction or waiver of a Medicare or a State health care program beneficiary's obligation to pay coinsurance or deductible amounts as long as all of the standards are met within either of the following two categories of health care providers:

(1) If the coinsurance or deductible amounts are owed to a hospital for inpatient hospital services for which Medicare pays under the prospective payment system, the hospital must comply with all of the following three standards—

(i) The hospital must not later claim the amount reduced or waived as a bad debt for payment purposes under Medicare or otherwise shift the burden of the reduction or waiver onto Medicare, a State health care program, other payers, or individuals.

(ii) The hospital must offer to reduce or waive the coinsurance or deductible amounts without regard to the reason for admission, the length of stay of the beneficiary, or the diagnostic related group for which the claim for Medicare reimbursement is filed.

(iii) The hospital's offer to reduce or waive the coinsurance or deductible amounts must not be made as part of a price reduction agreement between a hospital and a third-party payor.

(2) If the coinsurance or deductible amounts are owed by an individual who qualifies for subsidized services under a provision of the Public Health Services Act or under titles V or XIX of the Act to a federally qualified health care center or other health care facility under any

Public Health Services Act grant program or under title V of the Act, the health care center or facility may reduce or waive the coinsurance or deductible amounts for items or services for which payment may be made in whole or in part under part B of Medicare or a State health care program.

§ 1001.953 OIG report on compliance with investment interest safe harbor.

Within 180 days of the effective date of this subpart, the OIG will report to the Secretary on the compliance with §§ 1001.952(a)(2)(i) and 1001.952(a)(2)(vi).

§ 1001.1001 Exclusion of entities owned or controlled by a sanctioned person.

(a) *Circumstance for exclusion.* (1) The OIG may exclude an entity if:

(i) A person with a relationship with such entity—

(A) Has been convicted of a criminal offense as described in sections 1128(a) and 1128(b) (1), (2) or (3) of the Act;

(B) Has had civil money penalties or assessments imposed under section 1128A of the Act; or

(C) Has been excluded from participation in Medicare or any of the State health care programs, and

(ii) Such a person—

(A) Has a direct or indirect ownership interest (or any combination thereof) of 5 percent or more in the entity;

(B) Is the owner of a whole or part interest in any mortgage, deed of trust, note or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, in which whole or part interest is equal to or exceeds 5 percent of the total property and assets of the entity;

(C) Is an officer or director of the entity, if the entity is organized as a corporation;

(D) Is a partner in the entity, if the entity is organized as a partnership;

(E) Is an agent of the entity; or

(F) Is a managing employee, that is, an individual (including a general manager, business manager, administrator or director) who exercises operational or managerial control over the entity or part thereof, or directly or indirectly conducts the day-to-day operations of the entity or part thereof.

(2) For purposes of this section, the term:

Agent means any person who has express or implied authority to obligate or act on behalf of an entity.

Indirect ownership interest includes an ownership interest through any other entities that ultimately have an ownership interest in the entity in issue. (For example, an individual has a 10 percent ownership interest in the entity at issue if he or she has a 20 percent ownership interest in a corporation that wholly owns a subsidiary that is a 50 percent owner of the entity in issue.)

Ownership interest means an interest in:

(i) The capital, the stock or the profits of the entity, or

(ii) Any mortgage, deed, trust or note, or other obligation secured in whole or in part by the property or assets of the entity.

(b) *Length of exclusion.* (1) Except as provided in § 1001.3002(c), exclusions under this section will be for the same period as that of the individual whose relationship with the entity is the basis for this exclusion, if the individual has been or is being excluded.

(2) If the individual was not excluded, the length of the entity's exclusion will be determined by considering the factors that would have been considered if the individual had been excluded.

(3) An entity excluded under this section may apply for reinstatement at any time in accordance with the procedures set forth in § 1001.3001(a)(2).

§ 1001.1101 Failure to disclose certain information.

(a) *Circumstance for exclusion.* The OIG may exclude any entity that did not fully and accurately, or completely, make disclosures as required by section 1124, 1124A or 1126 of the Act, and by part 455, subpart B and part 420, subpart C of this title.

(b) *Length of exclusion.* The following factors will be considered in determining the length of an exclusion under this section—

(1) The number of instances where full and accurate, or complete, disclosure was not made;

(2) The significance of the undisclosed information;

(3) The entity's prior criminal, civil and administrative sanction record (The lack of any prior record is to be considered neutral);

(4) Any other facts that bear on the nature or seriousness of the conduct;

(5) The availability of alternative sources of the type of health care services provided by the entity; and

(6) The extent to which the entity knew that the disclosures made were not full or accurate.

§ 1001.1201 Failure to provide payment information.

(a) *Circumstance for exclusion.* The OIG may exclude any individual or entity that furnishes items or services for which payment may be made under Medicare or any of the State health care programs and that:

(1) Fails to provide such information as is necessary to determine whether such payments are or were due and the amounts thereof, or

(2) Has refused to permit such examination and duplication of its records as may be necessary to verify such information.

(b) *Length of exclusion.* The following factors will be considered in determining the length of an exclusion under this section—

(1) The number of instances where information was not provided;

(2) The circumstances under which such information was not provided;

(3) The amount of the payments at issue;

(4) The individual's or entity's criminal, civil or administrative sanction record (The lack of any prior record is to be considered neutral); and

(5) The availability of alternative sources of the type of health care items or services provided by the individual or entity.

§ 1001.1301 Failure to grant immediate access.

(a) *Circumstance for exclusion.* (1) The OIG may exclude any individual or entity that fails to grant immediate access upon reasonable request to—

(i) The Secretary, a State survey agency or other authorized entity for the purpose of determining, in accordance with section 1864(a) of the Act, whether—

(A) An institution is a hospital or skilled nursing facility;

(B) An agency is a home health agency;

(C) An agency is a hospice program;

(D) A facility is a rural health clinic as defined in section 1861(aa)(2) of the Act, or a comprehensive outpatient rehabilitation facility as defined in section 1861(cc)(2) of the Act;

(E) A laboratory is meeting the requirements of section 1861(s) (15) and (16) of the Act, and section 353(f) of the Public Health Service Act;

(F) A clinic, rehabilitation agency or public health agency is meeting the requirements of section 1861(p)(4) (A) or (B) of the Act;

(G) An ambulatory surgical center is meeting the standards specified under section 1832(a)(2)(F)(i) of the Act;

(H) A portable x-ray unit is meeting the requirements of section 1861(s)(3) of the Act;

(I) A screening mammography service is meeting the requirements of section 1834(c)(3) of the Act;

(J) An end-stage renal disease facility is meeting the requirements of section 1881(b) of the Act;

(K) A physical therapist in independent practice is meeting the requirements of section 1861(p) of the Act;

(L) An occupational therapist in independent practice is meeting the requirements of section 1861(g) of the Act;

(M) An organ procurement organization meets the requirements of section 1138(b) of the Act; or.

(N) A rural primary care hospital meets the requirements of section 1820(i)(2) of the Act;

(ii) The Secretary, a State survey agency or other authorized entity to perform the reviews and surveys required under State plans in accordance with sections 1902(a)(26) (relating to inpatient mental hospital services), 1902(a)(31) (relating to intermediate care facilities for the mentally retarded), 1919(g) (relating to nursing facilities), 1929(i) (relating to providers of home and community care and community care settings), 1902(a)(33) and 1903(g) of the Act;

(iii) The OIG for the purposes of reviewing records, documents and other data necessary to the performance of the Inspector General's statutory functions; or

(iv) A State Medicaid fraud control unit for the purpose of conducting its activities.

(2) For purposes of paragraphs (a)(1)(i) and (a)(1)(ii) of this section, the term—

Failure to grant immediate access means the failure to grant access at the time of a reasonable request or to provide a compelling reason why access may not be granted.

Reasonable request means a written request made by a properly identified agent of the Secretary, of a State survey agency or of another authorized entity, during hours that the facility, agency or institution is open for business.

The request will include a statement of the authority for the request, the rights of the entity in responding to the request, the definition of *reasonable request* and *immediate access*, and the penalties for failure to comply, including when the exclusion will take effect.

(3) For purposes of paragraphs (a)(1)(iii) and (a)(1)(iv) of this section, the term—

Failure to grant immediate access means:

(i) Except where the OIG or State Medicaid fraud control unit reasonably believes that requested documents are about to be altered or destroyed, the failure to produce or make available for inspection and copying requested records upon reasonable request, or to provide a compelling reason why they cannot be produced, within 24 hours of such request;

(ii) Where the OIG or State Medicaid fraud control unit has reason to believe that requested documents are about to be altered or destroyed, the failure to provide access to requested records at the time the request is made.

Reasonable request means a written request for documents, signed by the IG or a delegatee, and made by a properly identified agent of the OIG or a State Medicaid fraud control unit during reasonable business hours, where there is information to suggest that the individual or entity has violated statutory or regulatory requirements under titles V, XI, XVIII, XIX or XX of the Act. The request will include a statement of the authority for the request, the rights of the individual or entity in responding to the request, the definition of *reasonable request* and *immediate access*, and the effective date, length, and scope and effect of the exclusion that would be imposed for failure to comply with the request, and the earliest date that a request for reinstatement would be considered.

(4) Nothing in this section shall in any way limit access otherwise authorized under State or Federal law.

(b) *Length of exclusion.* (1) An exclusion of an individual under this section may be for a period equal to the sum of:

(i) The length of the period during which the immediate access was not granted, and

(ii) An additional period of up to 90 days.

(2) The exclusion of an entity may be for a longer period than the period in which immediate access was not granted based on consideration of the following factors—

(i) The impact of the failure to grant the requested immediate access on Medicare or any of the State health care programs, beneficiaries or the public;

(ii) The circumstances under which such access was refused;

(iii) The impact of the exclusion on Medicare or any of the State health care programs, beneficiaries or the public; and

(iv) The entity's prior criminal, civil or administrative sanction record (the lack of any prior record is to be considered neutral).

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, the length of the period in which immediate access was not granted will be measured from the time the request is made, or from the time by which access was required to be granted, whichever is later.

(c) The exclusion will be effective as of the date immediate access was not granted.

§ 1001.1401 Violations of PPS corrective action.

(a) *Circumstance for exclusion.* The OIG may exclude any hospital that HCFA determines has failed substantially to comply with a corrective action plan required by HCFA under section 1886(f)(2)(B) of the Act.

(b) *Length of exclusion.* The following factors will be considered in determining the length of exclusion under this section—

(1) The impact of the hospital's failure to comply on Medicare or any of the State health care programs, program beneficiaries or other individuals;

(2) The circumstances under which the failure occurred;

(3) The nature of the failure to comply;

(4) The impact of the exclusion on Medicare or any of the State health care programs, beneficiaries or the public; and

(5) The hospital's prior criminal, civil or administrative sanction record (The lack of any prior record is to be considered neutral).

§ 1001.1501 Default of health education loan or scholarship obligations.

(a) *Circumstance for exclusion.* (1) Except as provided in paragraph (a)(4) of this section, the OIG may exclude any individual that the Public Health Service (PHS) determines is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured in whole or in part by the Secretary.

(2) Before imposing an exclusion in accordance with paragraph (a)(1) of this section, the OIG must determine that PHS has taken all reasonable administrative steps to secure repayment of the loans or obligations. If PHS has offered a Medicare offset arrangement as required by section 1892 of the Act, the OIG will find that all reasonable steps have been taken.

(3) The OIG will take into account access of beneficiaries to physicians' services for which payment may be made under Medicare or State health care programs in determining whether to impose an exclusion.

(4) The OIG will not exclude a physician who is the sole community physician or the sole source of essential specialized services in a community if a State requests that the physician not be excluded.

(b) *Length of exclusion.* The individual will be excluded until such

time as PHS notifies the OIG that the default has been cured or the obligations have been resolved to the PHS's satisfaction. Upon such notice, the OIG will inform the individual of his or her right to request reinstatement.

§ 1001.1601 Violations of the limitations on physician charges.

(a) *Circumstance for exclusion.* (1) The OIG may exclude a physician whom it determines, for any period beginning on or after January 1, 1987—

(i) Is a non-participating physician under section 1842(i) of the Act;

(ii) Furnished services to a beneficiary;

(iii) Knowingly and willfully billed on a repeated basis for such services actual charges in excess of—

(A) The maximum allowable actual charge determined in accordance with section 1842(j)(1)(C) of the Act for the period January 1, 1987 through December 31, 1990, or

(B) The limiting charges determined in accordance with section 1848(g)(2) of the Act for the period beginning January 1, 1991; and

(iv) Is not the sole community physician or sole source of essential specialized services in the community.

(2) The OIG will take into account access of beneficiaries to physicians' services for which Medicare payment may be made in determining whether to impose an exclusion.

(b) *Length of exclusion.* (1) In determining the length of an exclusion in accordance with this section, the OIG will consider the following factors—

(i) The number of services for which the physician billed in excess of the maximum allowable charges;

(ii) The number of beneficiaries for whom services were billed in excess of the maximum allowable charges;

(iii) The amount of the charges that were in excess of the maximum allowable charges;

(iv) The physician's prior criminal, civil or administrative sanction record (the lack of any prior record is to be considered neutral); and

(v) The availability of alternative sources of the type of health care items or services furnished by the physician.

(2) The period of exclusion may not exceed 5 years.

§ 1001.1701 Billing for services of assistant at surgery during cataract operations.

(a) Circumstance for exclusion. The OIG may exclude a physician whom it determines—

(1) Has knowingly and willfully presented or caused to be presented a claim, or billed an individual enrolled under Part B of the Medicare program (or his or her representative) for:

(i) Services of an assistant at surgery during a cataract operation, or

(ii) Charges that include a charge for an assistant at surgery during a cataract operation;

(2) Has not obtained prior approval for the use of such assistant from the appropriate Utilization and Quality Control Peer Review Organization (PRO) or Medicare carrier; and

(3) Is not the sole community physician or sole source of essential specialized services in the community.

(b) The OIG will take into account access of beneficiaries to physicians' services for which Medicare payment may be made in determining whether to impose an exclusion.

(c) Length of exclusion. (1) In determining the length of an exclusion in accordance with this section, the OIG will consider the following factors—

(i) The number of instances for which claims were submitted or beneficiaries were billed for unapproved use of assistants during cataract operations;

(ii) The amount of the claims or bills presented;

(iii) The circumstances under which the claims or bills were made, including whether the services were medically necessary;

(iv) Whether approval for the use of an assistant was requested from the PRO or carrier;

(v) The physician's criminal, civil or administrative sanction record (the lack of any prior record is to be considered neutral); and

(vi) The availability of alternative sources of the type of health care items or services furnished by the physician.

(2) The period of exclusion may not exceed 5 years.

Subpart D—Waivers and Effect of Exclusion

§ 1001.1801 Waivers of exclusions.

(a) The OIG has the authority to grant or deny a request from a State health care program that an exclusion from that program be waived with respect to an individual or entity, except that no waiver may be granted with respect to an exclusion under § 1001.101(b). The request must be in writing and from an individual directly responsible for administering the State health care program.

(b) With respect to exclusions under § 1001.101(a), a request from a State health care program for a waiver of the exclusion will only be considered if the individual or entity is the sole community physician or the sole source of essential specialized services in a community.

(c) With respect to exclusions imposed under subpart C of this part, a request for waiver will only be granted if the OIG determines that imposition of the exclusion would not be in the public interest.

(d) If the basis for the waiver ceases to exist, the waiver will be rescinded, and the individual or entity will be excluded for the period remaining on the exclusion, measured from the time the exclusion would have been imposed if the waiver had not been granted.

(e) In the event a waiver is granted, it is applicable only to the program(s) for which waiver is requested.

(f) The decision to grant, deny or rescind a request for a waiver is not subject to administrative or judicial review.

(g) The Inspector General may waive the exclusion of an individual or entity from participation in the Medicare program in conjunction with granting a waiver requested by a State health care program. If a State program waiver is rescinded, the derivative waiver of the exclusion from Medicare is automatically rescinded.

§ 1001.1901 Scope and effect of exclusion.

(a) *Scope of exclusion.* Exclusions of individuals and entities under this title will be from Medicare, State health care programs, and all other Federal non-procurement programs. The OIG will exclude the individual or entity from the Medicare program and direct each State agency administering a State health care program to exclude the individual or entity for the same period. In the case of an individual or entity not eligible to participate in Medicare, the exclusion will still be effective on the date, and for the period, established by the OIG.

(b) *Effect of exclusion on excluded individuals and entities.* (1) Unless and until an individual or entity is reinstated into the Medicare program in accordance with subpart F of this part, no payment will be made by Medicare or any of the State health care programs for any item or service furnished, on or after the effective date specified in the notice period, by an excluded individual or entity, or at the medical direction or on the prescription of a physician or other authorized individual who is excluded when the person furnishing such item or service knew or had reason to know of the exclusion.

(2) An excluded individual or entity may not take assignment of an enrollee's claim on or after the effective date of exclusion.

(3) An excluded individual or entity that submits, or causes to be submitted, claims for items or services furnished during the exclusion period is subject to civil money penalty liability under section 1128A(a)(1)(D) of the Act, and criminal liability under section 1128B(a)(3) of the Act.

(c) *Exceptions to paragraph (b)(1) of this section.* (1) If an enrollee of Part B of Medicare submits an otherwise payable claim for items or services furnished by an excluded individual or entity, or under the medical direction or on the prescription of an excluded physician or other authorized individual after the effective date of exclusion, HCFA will pay the first claim submitted by the enrollee and immediately notify the enrollee of the exclusion.

(2) HCFA will not pay an enrollee for items or services furnished by an excluded individual or entity, or under the medical direction or on the prescription of an excluded physician or other authorized individual more than 15 days after the date on the notice to the enrollee, or after the effective date of the exclusion, whichever is later.

(3) Unless the Secretary determines that the health and safety of beneficiaries receiving services under Medicare or a State health care program warrants the exclusion taking effect earlier, payment may be made under such program for up to 30 days after the effective date of the exclusion for—

(i) Inpatient institutional services furnished to an individual who was admitted to an excluded institution before the date of the exclusion, and

(ii) Home health services and hospice care furnished to an individual under a plan of care established before the effective date of exclusion.

(4) (i) Notwithstanding the other provisions of this section, payment may be made under Medicare or a State health care program for certain emergency items or services furnished by an excluded individual or entity, or at the medical direction or on the prescription of an excluded physician or other authorized individual during the period of exclusion. To be payable, a claim for such emergency items or services must be accompanied by a sworn statement of the person furnishing the items or services specifying the nature of the emergency and why the items or services could not have been furnished by an individual or entity eligible to furnish or order such items or services.

(ii) Notwithstanding paragraph (c)(4)(i) of this section, no claim for emergency items or services will be payable if such items or services were provided by an excluded individual who, through an employment, contractual or any other arrangement, routinely provides emergency health care items or services.

Subpart E—Notice and Appeals

§ 1001.2001 Notice of intent to exclude.

(a) Except as provided in paragraph (c) of this section, if the OIG proposes to exclude an individual or entity in accordance with subpart C of this part or in accordance with subpart B of this part where the exclusion is for a period exceeding 5 years, it will send written notice of its intent, the basis for the proposed exclusion, and the potential effect of an exclusion. Within 30 days of receipt of notice, which will be deemed to be 5 days after the date on the notice, the individual or entity may submit documentary evidence and written argument concerning whether the exclusion is warranted and any related issues.

(b) If the OIG proposes to exclude an individual or entity in accordance with §§ 1001.701 or 1001.801, the individual or entity may submit, in addition to the information described in paragraph (a) of this section, a written request to present evidence or argument orally to an OIG official,

(c) Exception. If the OIG proposes to exclude an individual or entity under the provisions of §§ 1001.1301, 1001.1401 or 1101.1501, paragraph (a) of this section will not apply.

(d) If an entity has a provider agreement under section 1866 of the Act, and the OIG proposes to terminate that agreement in accordance with section 1866(b)(2)(C) of the Act, the notice provided for in paragraphs (a) and (b) of this section will so state.

§ 1001.2002 Notice of exclusion.

(a) Except as provided in § 1001.2003, if the OIG determines that exclusion is warranted, it will send a written notice of this decision to the affected individual or entity.

(b) The exclusion will be effective 20 days from the date of the notice.

(c) The written notice will state—

(1) The basis for the exclusion;

(2) The length of the exclusion and, where applicable, the factors considered in setting the length;

(3) The effect of the exclusion;

(4) The earliest date on which the OIG will consider a request for reinstatement;

(5) The requirements and procedures for reinstatement; and

(6) The appeal rights available to the excluded individual or entity.

(d) Paragraph (b) of this section does not apply to exclusions imposed in accordance with § 1001.1301.

§ 1001.2003 Notice of proposal to exclude.

(a) Except as provided in paragraph (c) of this section, if the OIG proposes to exclude an individual or entity in accordance with §§ 1001.901, 1001.951, 1001.1601 or 1001.1701, it will send written notice of this decision to the affected individual or entity. The written notice will provide the same information set forth in § 1001.2002(c). If an entity has a provider agreement under section 1866 of the Act, and the OIG also proposes to terminate that agreement in accordance with section 1866(b)(2)(C) of the Act, the notice will so indicate. The exclusion will be effective 60 days after the date of the notice unless, within that period, the individual or entity files a written request for a hearing in accordance with part 1005 of this chapter. Such request must set forth—

(1) The specific issues or statements in the notice with which the individual or entity disagrees;

(2) The basis for that disagreement;

(3) The defenses on which reliance is intended;

(4) Any reasons why the proposed length of exclusion should be modified; and

(5) Reasons why the health or safety of individuals receiving services under Medicare or any of the State health care programs does not warrant the exclusion going into effect prior to the completion of an administrative law judge (ALJ) proceeding in accordance with part 1005 of this chapter.

(b) (1) If the individual or entity does not make a written request for a hearing as provided for in paragraph (a) of this section, the OIG will send a notice of exclusion as described in § 1001.2002.

(2) If the individual or entity makes a timely written request for a hearing and the OIG determines that the health or safety of individuals receiving services under Medicare or any of the State health care programs does not warrant an immediate exclusion, an exclusion will not go into effect unless an ALJ upholds the decision to exclude.

(c) If, prior to issuing a notice of proposal to exclude under paragraph (a) of this section, the OIG determines that the health or safety of individuals receiving services under Medicare or any of the State health care programs warrants the exclusion taking place prior to the completion of an ALJ proceeding in accordance with part 1005 of this chapter, the OIG will proceed under §§ 1001.2001 and 1001.2002.

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§ 1001.2004 Notice to State agencies.

HHS will promptly notify each appropriate State agency administering or supervising the administration of each State health care program of:

(a) The facts and circumstances of each exclusion, and

(b) The period for which the State agency is being directed to exclude the individual or entity.

§ 1001.2005 Notice to State licensing agencies.

(a) HHS will promptly notify the appropriate State(s) or local agencies or authorities having responsibility for the licensing or certification of an individual or entity excluded (or directed to be excluded) from participation of the facts and circumstances of the exclusion.

(b) HHS will request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and will request that the State or local agency or authority keep the Secretary and the OIG fully and currently informed with respect to any actions taken in response to the request.

§ 1001.2006 Notice to others regarding exclusion.

(a) HHS will give notice of the exclusion and the effective date to the public, to beneficiaries (in accordance with § 1001.1901(c)), and, as appropriate, to—

(1) Any entity in which the excluded individual or entity is known to be serving as an employee, administrator, operator, or in which the individual or entity is serving in any other capacity and is receiving payment for providing services (The lack of this notice will not affect HCFA's ability to deny payment for services);

(2) State Medicaid Fraud Control Units;

(3) Utilization and Quality Control Peer Review Organizations;

(4) Hospitals, skilled nursing facilities, home health agencies and health maintenance organizations;

(5) Medical societies and other professional organizations;

(6) Contractors, health care prepayment plans, private insurance companies and other affected agencies and organizations;

(7) The State and Area Agencies on Aging established under title III of the Older Americans Act; and

(8) Other Departmental operating divisions, Federal agencies, and other agencies or organizations, as appropriate.

(b) In the case of an exclusion under § 1001.101 of this chapter, if section 304(a)(5) of the Controlled Substances Act (21 U.S.C. 824(a)(5)) applies, HHS will give notice to the Attorney General of the United States of the facts and circumstances of the exclusion and the length of the exclusion.

§ 1001.2007 Appeal of exclusions.

(a)(1) Except as provided in § 1001.2003, an individual or entity excluded under this Part may file a request for a hearing before an ALJ only on the issues of whether:

(i) The basis for the imposition of the sanction exists, and

(ii) The length of exclusion is unreasonable.

(2) When the OIG imposes an exclusion under subpart B of this part for a period of 5 years, paragraph (a)(1)(ii) of this section will not apply.

(3) The request for a hearing should contain the information set forth in § 1005.2(d) of this chapter.

(b) The excluded individual or entity has 60 days from the receipt of notice of exclusion provided for in § 1001.2002 to file a request for such a hearing.

(c) The standard of proof at a hearing is preponderance of the evidence.

(d) When the exclusion is based on the existence of a conviction, a determination by another government agency or any other prior determination, the basis for the underlying determination is not reviewable and the individual or entity may not collaterally attack the underlying determination, either on substantive or procedural grounds, in this appeal.

(e) The procedures in part 1005 of this chapter will apply to the appeal.

Subpart F—Reinstatement into the Programs

§ 1001.3001 Timing and method of request for reinstatement.

(a) (1) Except as provided in paragraph (a)(2) of this section or in §§ 1001.501(b)(4) and (c) and 1001.601(b)(4), an excluded individual or entity (other than those excluded in accordance with §§ 1001.1001 and 1001.1501) may submit a written request for reinstatement to the OIG only after the date specified in the notice of exclusion.

(2) An entity under § 1001.1001 may apply for reinstatement prior to the date specified in the notice of exclusion by submitting a written request for reinstatement that includes documentation demonstrating that the standards set forth in § 1001.3002(c) have been met.

(3) Upon receipt of a written request, the OIG will require the requestor to furnish specific information and authorization to obtain information from private health insurers, peer review bodies, probation officers, professional associates, investigative agencies and such others as may be necessary to determine whether reinstatement should be granted.

(4) Failure to furnish the required information or authorization will result in the continuation of the exclusion.

(b) If a period of exclusion is reduced on appeal (regardless of whether further appeal is pending), the individual or entity may request reinstatement once the reduced exclusion period expires.

§ 1001.3002 Basis for reinstatement.

(a) The OIG will authorize reinstatement if it determines that—

(1) The period of exclusion has expired;

(2) There are reasonable assurances that the types of actions that formed the basis for the original exclusion have not recurred and will not recur; and

(3) There is no additional basis under sections 1128 (a) or (b) or 1128A of the Act for continuation of the exclusion.

(b) In making the reinstatement determination, the OIG will consider—

(1) Conduct of the individual or entity occurring prior to the date of the notice of exclusion, if not known to the OIG at the time of the exclusion;

(2) Conduct of the individual or entity after the date of the notice of exclusion;

(3) Whether all fines, and all debts due and owing (including overpayments) to any Federal, State or local government that relate to Medicare or any of the State health care programs, have been paid or satisfactory arrangements have been made to fulfill these obligations;

(4) Whether HCFA has determined that the individual or entity complies with, or has made satisfactory arrangements to fulfill, all of the applicable conditions of participation or supplier conditions for coverage under the statutes and regulations; and

(5) For purposes of individuals or entities excluded under part 1004 of this chapter only, the individual's or entity's willingness and ability to provide health care that meets professionally recognized standards.

(c) If the OIG determines that the criteria in paragraphs (a)(2) and (a)(3) of this section have been met, an entity excluded in accordance with § 1001.1001 will be reinstated upon a determination by the OIG that the individual whose conviction, exclusion or civil money penalty was the basis for the entity's exclusion—

(1) Has reduced his or her ownership or control interest in the entity below 5 percent;

(2) Is no longer an officer, director, agent or managing employee of the entity; or

(3) Has been reinstated in accordance with paragraph (a) of this section or § 1001.3005.

(d) Reinstatement will not be effective until OIG grants the request and provides notice under § 1001.3003(a)(1). Reinstatement will be effective as provided in the notice.

(e) A determination with respect to reinstatement is not appealable or reviewable except as provided in § 1001.3004.

(f) An ALJ may not require reinstatement of an individual or entity in accordance with this chapter.

§ 1001.3003 Approval of request for reinstatement.

(a) If the OIG grants a request for reinstatement, the OIG will—

(1) Notify HCFA of the date of the individual's or entity's reinstatement in the Medicare program;

(2) Give written notice to the excluded individual or entity specifying the date when Medicare participation may resume;

(3) Notify State agencies that administer the State health care programs that the individual or entity has been reinstated into the Medicare program; and

(4) To the extent applicable, give notice to those agencies, groups, individuals and others that were originally notified of the exclusion.

(b) If the OIG makes a determination to reinstate an individual or entity under Medicare, the State health care program upon notification from the OIG must automatically reinstate the individual or entity under such program, effective on the date of reinstatement under Medicare, unless—

(1) Reinstatement is not available to such excluded party under State law, or

(2) A longer exclusion period was established in accordance with the State's own authorities and procedures.

§ 1001.3004 Denial of request for reinstatement.

(a) If a request for reinstatement is denied, OIG will give written notice to the requesting individual or entity. Within 30 days of the date on the notice, the excluded individual or entity may submit:

(1) Documentary evidence and written argument against the continued exclusion,

(2) A written request to present written evidence and oral argument to an OIG official, or

(3) Both documentary evidence and a written request.

(b) After evaluating any additional evidence submitted by the excluded individual or entity (or at the end of the 30-day period, if none is submitted), the OIG will send written notice either confirming the denial, and indicating that a subsequent request for reinstatement will not be considered until at least one year after the date of denial, or approving the request consistent with the procedures set forth in § 1001.3003(a).

(c) The decision to deny reinstatement will not be subject to administrative or judicial review.

§ 1001.3005 Reversed or vacated decisions.

(a) An individual or entity will be reinstated into the Medicare program retroactive to the effective date of the exclusion when such exclusion is based on—

(1) A conviction that is reversed or vacated on appeal; or

(2) An action by another agency, such as a State agency or licensing board, that is reversed or vacated on appeal.

(b) If an individual or entity is reinstated in accordance with paragraph (a) of this section, HCFA will make payment for services covered under Medicare that were furnished or performed during the period of exclusion.

(c) The OIG will give notice of a reinstatement under this section in accordance with § 1001.3003(a).

(d) An action taken by OIG under this section will not require any State health care program to reinstate the individual or entity if it has imposed an exclusion under its own authority.

C. Part 1002 is revised to read as follows:

PART 1002—PROGRAM INTEGRITY—STATE-INITIATED EXCLUSIONS FROM MEDICAID

Subpart A—General Provisions

Sec.

1002.1 Scope and purpose.
1002.2 General authority.
1002.3 Disclosure by providers; information on persons convicted of crimes.
1002.100 State plan requirement.

Subpart B—Mandatory Exclusion

1002.203 Mandatory exclusion.

Subpart C—Permissive Exclusions

1002.210 Permissive exclusions; general authority.
1002.211 Effect of exclusion.
1002.212 State agency notifications.
1002.213 Appeals of exclusions.
1002.214 Basis for reinstatement after State agency-initiated exclusion.
1002.215 Action on request for reinstatement.

Subpart D—Notification to OIG of State or Local Convictions of Crimes Against Medicaid

1002.230 Notification of State or local convictions of crimes against Medicaid.

Authority: 42 U.S.C. 1302, 1320a–3, 1320a–5, 1320a–7, 1396(a)(4)(A), 1396(p)(1), 1396a(30), 1396a(39), 1396b(a)(6), 1396b(b)(3), 1396b(l)(2) and 1396b(q).

Subpart A—General Provisions

§ 1002.1 Scope and purpose.

The regulations in this part specify certain bases upon which individuals and entities may, or in some cases must, be excluded from participation in the Medicaid program. These regulations specifically address the authority of State agencies to exclude on their own initiative, regardless of whether the OIG has excluded an individual or entity under part 1001 of this chapter. These regulations also delineate the States' obligation to inform the OIG of certain Medicaid-related convictions.

§ 1002.2 General authority.

(a) In addition to any other authority it may have, a State may exclude an individual or entity from participation in the Medicaid program for any reason for which the Secretary could exclude that individual or entity from participation in the Medicare program under sections 1128, 1128A or 1866(b)(2) of the Social Security Act.

(b) Nothing contained in this part should be construed to limit a State's own authority to exclude an individual or entity from Medicaid for any reason or period authorized by State law.

§ 1002.3 Disclosure by providers; information on persons convicted of crimes.

(a) *Information that must be disclosed.* Before the Medicaid agency enters into or renews a provider agreement, or at any time upon written request by the Medicaid agency, the provider must disclose to the Medicaid agency the identity of any person described in § 1001.1001(a)(1) of this chapter.

(b) *Notification to Inspector General.* (1) The Medicaid agency must notify the Inspector General of any disclosures made under paragraph (a) of this section within 20 working days from the date it receives the information.

(2) The agency must also promptly notify the Inspector General of any action it takes on the provider's application for participation in the program.

(c) *Denial or termination of provider participation.* (1) The Medicaid agency may refuse to enter into or renew an

agreement with a provider if any person who has ownership or control interest in the provider, or who is an agent or managing employee of the provider, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid or the title XX Services program.

(2) The Medicaid agency may refuse to enter into, or terminate, a provider agreement if it determines that the provider did not fully and accurately make any disclosure required under paragraph (a) of this section.

§ 1002.100 State plan requirement.

The plan must provide that the requirements of this subpart are met. However, the provisions of these regulations are minimum requirements. The agency may impose broader sanctions if it has the authority to do so under State law.

Subpart B—Mandatory Exclusion

§ 1002.203 Mandatory exclusion.

(a) The State agency, in order to receive Federal financial participation (FFP), must provide that it will exclude from participation any HMO, or entity furnishing services under a Waiver approved under section 1915(b)(1) of the Act, if such organization or entity—

(1) Could be excluded under § 1001.1001 of this chapter, or

(2) Has, directly or indirectly, a substantial contractual relationship with an individual or entity that could be excluded under § 1001.1001 of this chapter.

(b) As used in this section, the term—

Exclude includes the refusal to enter into or renew a participation agreement or the termination of such an agreement.

Substantial contractual relationship is one in which the sanctioned individual described in § 1001.1001 of this chapter has direct or indirect business transactions with the organization or entity that, in any fiscal year, amount to more than $25,000 or 5 percent of the organization's or entity's total operating expenses, whichever is less. Business transactions include, but are not limited to, contracts, agreements, purchase orders, or leases to obtain services, supplies, equipment, space or salaried employment.

Subpart C—Permissive Exclusions

§ 1002.210 Permissive exclusions; general authority.

The State agency must have administrative procedures in place that enable it to exclude an individual or entity for any reason for which the Secretary could exclude such individual or entity under parts 1001 or 1003 of this chapter. The period of such exclusion is at the discretion of the State agency.

§ 1002.211 Effect of exclusion.

(a) *Denial of payment.* Except as provided for in § 1001.1901 (c)(3) and (c)(4)(i) of this chapter, no payment may be made by the State agency for any item or service furnished on or after the effective date specified in the notice by an excluded individual or entity, or at the medical direction or on the prescription of a physician who is excluded when a person furnishing such item or service knew, or had reason to know, of the exclusion.

(b) *Denial of FFP.* FFP is not available where the State agency is required to deny payment under paragraph (a) of this section. FFP will be reinstated at such time as the excluded individual or entity is reinstated in the Medicaid program.

§ 1002.212 State agency notifications.

When the State agency initiates an exclusion under § 1002.210, it must provide to the individual or entity subject to the exclusion notification consistent with that required in subpart E of part 1001 of this chapter, and must notify other State agencies, the State medical licensing board (where applicable), the public, beneficiaries, and others as provided in §§ 1001.2005 and 1001.2006 of this chapter.

§ 1002.213 Appeals of exclusions.

Before imposing an exclusion under § 1002.210, the State agency must give the individual or entity the opportunity to submit documents and written argument against the exclusion. The individual or entity must also be given any additional appeals rights that would otherwise be available under procedures established by the State.

§ 1002.214 Basis for reinstatement after State agency-initiated exclusion.

(a) The provisions of this section and § 1002.215 apply to the reinstatement in the Medicaid program of all individuals or entities excluded in accordance with § 1002.210, if a State affords reinstatement opportunity to those excluded parties.

(b) An individual or entity who has been excluded from Medicaid may be reinstated only by the Medicaid agency that imposed the exclusion.

(c) An individual or entity may submit to the State agency a request for reinstatement at any time after the date specified in the notice of exclusion.

§ 1002.215 Action on request for reinstatement.

(a) The State agency may grant reinstatement only if it is reasonably certain that the types of actions that formed the basis for the original exclusion have not recurred and will not recur. In making this determination, the agency will consider, in addition to any factors set forth in State law—

(1) The conduct of the individual or entity occurring prior to the date of the notice of exclusion, if not known to the agency at the time of the exclusion;

(2) The conduct of the individual or entity after the date of the notice of exclusion; and

(3) Whether all fines, and all debts due and owing (including overpayments) to any Federal, State or local government that relate to Medicare or any of the State health care programs, have been paid, or satisfactory arrangements have been made, that fulfill these obligations.

(b) Notice of action on request for reinstatement. (1) If the State agency approves the request for reinstatement, it must give written notice to the excluded party, and to all others who were informed of the exclusion in accordance with § 1002.212, specifying the date on which Medicaid program participation may resume.

(2) If the State agency does not approve the request for reinstatement, it will notify the excluded party of its decision. Any appeal of a denial of reinstatement will be in accordance with State procedures and need not be subject to administrative or judicial review, unless required by State law.

Subpart D—Notification to OIG of State or Local Convictions of Crimes Against Medicaid

§ 1002.230 Notification of State or local convictions of crimes against Medicaid.

(a) The State agency must notify the OIG whenever a State or local court has convicted an individual who is receiving reimbursement under Medicaid of a criminal offense related to participation in the delivery of health care items or services under the Medicaid program, except where the State Medicaid Fraud Control Unit (MFCU) has so notified the OIG.

(b) If the State agency was involved in the investigation or prosecution of the case, it must send notice within 15 days after the conviction.

(c) If the State agency was not so involved, it must give notice within 15 days after it learns of the conviction.

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

D. Part 1003 is amended as follows:

1. The authority citation for part 1003 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 11131(c) and 11137(b)(2).

2. The heading for part 1003 is revised to read as set forth above.

3. Section 1003.100 is revised to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128, 1128A, 1140, 1842(j) and 1842(k) of the Social Security Act, and sections 421(c) and 427(b)(2) of Public Law 99–660 (42 U.S.C. 1320a–7, 1320a–7a, 1320b–10, 1395u(j) and 1395u(k), 11131(c) and 11137(b)(2)).

(b) *Purpose.* This part—

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—

(i) Have submitted certain prohibited claims under the Medicare, Medicaid, or the Maternal and Child Health Services or Social Services Block Grant programs;

(ii) Seek payment in violation of the terms of an assignment agreement or a limitation on charges or payments under the Medicare program, or a requirement not to charge in excess of the amount permitted under the Medicaid program;

(iii) Give false or misleading information that might affect the decision to discharge a Medicare patient from the hospital;

(iv) Fail to report information concerning medical malpractice payments or who improperly disclose, use or permit access to information reported under part B of title IV of Pub.L. 99–660, and regulations specified in 45 CFR part 60; or

(v) Misuse certain Medicare and Social Security program words, letters, symbols and emblems;

(2) Provides for the exclusion of persons from the Medicare or State health care programs against whom a civil money penalty or assessment has been imposed, and the basis for reinstatement of persons who have been excluded; and

(3) Sets forth the appeal rights of persons subject to a penalty, assessment and exclusion.

4. Section 1003.101 is amended by removing the definitions *Agent* and *Suspension;* by revising the definitions *Claims, Program* and *Request for payment;* and by adding the definitions *Exclusion, Social Services Block Grant program* and *State health care program* to read as follows:

§ 1003.101 Definitions.

* * * * *

Claim means an application for payment for an item or service for which payment may be made under the Medicare, Medicaid, Maternal and Child Health Services Block Grant, or Social Services Block Grant programs.

* * * * *

Exclusion means the temporary or permanent barring of a person from participation in the Medicare program or in a State health care program, and that items or services furnished or ordered by such person are not reimbursed under such programs.

* * * * *

Program means the Medicare, Medicaid, Maternal and Child Health Services Block Grant, and Social Services Block Grant programs.

Request for payment means an application submitted by a person to any person for payment for an item or service.

* * * * *

Social Services Block Grant program means the program authorized under title XX of the Social Security Act.

* * * * *

State health care program means a State plan approved under title XIX of the Act, any program receiving funds under title V of the Act or from an allotment to a State under such title, or any program receiving funds under title XX of the Act or from an allotment to a State under such title.

* * * * *

5. Section 1003.102 is revised to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

(a) The OIG may impose a penalty and assessment against any person whom it determines in accordance with this part has presented, or caused to be presented, a claim which is for—

(1) An item or service that the person knew, or should have known, was not provided as claimed;

(2) An item or service for which the person knew, or should have known, that the claim was false or fraudulent;

(3) An item or service furnished during a period in which the person was excluded from participation in the program to which the claim was made in accordance with a determination made under sections 1128 (42 U.S.C. 1320a–7), 1128A (42 U.S.C. 1320a–7a), 1156 (42 U.S.C. 1320c–5), 1160(b) as in effect on September 2, 1982 (42 U.S.C. 1320c–9(b)),1842(j)(2) (42 U.S.C. 1395u(j), 1862(d) as in effect on August 18, 1987 (42 U.S.C. 1395y(d)), or 1866(b) (42 U.S.C. 1395cc(b)); or

(4) For a physician's service (or an item or service incident to a physician's service) for which the person knew, or should have known, that the individual who furnished (or supervised the furnishing of) the service—

(i) Was not licensed as a physician;

(ii) Was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing); or

(iii) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty board when he or she was not so certified.

(b) The OIG may impose a penalty, and where authorized, an assessment against any person (including an insurance company in the case of paragraphs (b)(5) and (b)(6) of this section) whom it determines in accordance with this part—

(1) Has presented or caused to be presented a request for payment in violation of the terms of—

(i) An agreement to accept payments on the basis of an assignment under section 1842(b)(3)(B)(ii) of the Act;

(ii) An agreement with a State agency or other requirement of a State Medicaid plan not to charge a person for an item or service in excess of the amount permitted to be charged;

(iii) An agreement to be a participating physician or supplier under section 1842(h)(1); or

(iv) An agreement in accordance with section 1866(a)(1)(G) of the Act not to charge any person for inpatient hospital services for which payment had been denied or reduced under section 1886(f)(2) of the Act.

(2) Is a non-participating physician under section 1842(j) of the Act and has knowingly and willfully billed individuals enrolled under part B of title XVIII of the Act during the statutory freeze for actual charges in excess of such physician's actual charges for the calendar quarter beginning April 1, 1984;

(3) Is a physician who has knowingly and willfully—

(i) Billed for services as an assistant at surgery during a routine cataract operation, or

(ii) Included in his or her bill the services of an assistant at surgery during a routine cataract operation, and has not received prior approval from the appropriate Peer Review Organization or Medicare carrier for such services based on the existence of a complicating medical condition; or

(4) Has given to any person, in the case of inpatient hospital services subject to the provisions of section 1886 of the Act, information that he or she knew, or should have known, was false or misleading and that could reasonably have been expected to influence the decision when to discharge such person or another person from the hospital.

(5) Fails to report information concerning a payment made under an insurance policy, self-insurance or otherwise, for the benefit of a physician, dentist or other health care practitioner in settlement of, or in satisfaction in whole or in part of, a medical malpractice claim or action or a judgment against such a physician, dentist or other health care practitioner in accordance with section 421 of Pub. L. 99-660 (42 U.S.C. 11131) and as required by regulations at 45 CFR part 60.

(6) Improperly discloses, uses or permits access to information reported in accordance with part B of title IV of Pub. L. 99-660, in violation of section 427 of Pub. L. 99-660 (42 U.S.C. 11137) or regulations at 45 CFR part 60. [The disclosure of information reported in accordance with part B of title IV in response to a subpoena or a discovery request is considered to be an improper disclosure in violation of section 427 of Pub. L. 99-660. However, disclosure or release by an entity of original documents or underlying records from which the reported information is obtained or derived is not considered to be an improper disclosure in violation of section 427 of Pub. L. 99-660.)

(7) Has made use of certain words, letters, symbols or emblems in such a manner that they knew, or should have known, would convey the false impression that an advertisement or other item was authorized, approved or endorsed by the Department, the Social Security Administration (SSA) or HCFA, or that such person or organization has some connection with, or authorization from, the Department, SSA or HCFA. Civil money penalties may be imposed for misuse of—

(i) The words "Social Security," "Social Security Account," "Social Security Administration," "Social Security System," "Medicare," and "Health Care Financing Administration," or any other combination or variation of such words;

(ii) The letters "SSA" or "HCFA," or any other combination or variation of such letters; or

(iii) A symbol or emblem of the Social Security Administration (including the design of, or a reasonable facsimile of the design of, the Social Security card, the check used for payment of benefits under title II, or envelopes or other stationery used by SSA) or of the Health Care Financing Administration, or any combination or variation of such symbols or emblems.

(c) (1) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a claim as described in paragraph (a) of this section, each such person may be held liable for the penalty prescribed by this part, and an assessment may be imposed against any one such person or jointly and severally against two or more such persons, but the aggregate amount of the assessments collected may not exceed the amount that could be assessed if only one person was responsible.

(2) In any case in which it is determined that more than one person was responsible for presenting, or causing to be presented, a request for payment or for giving false or misleading information as described in paragraph (b) of this section, each such person may be held liable for the penalty prescribed by this part.

(3) In any case in which it is determined that more than one person was responsible for failing to report information that is required to be reported on a medical malpractice payment, or for improperly disclosing, using or permitting access to information, as described in paragraphs (b)(5) and (b)(6) of this section, each such person may be held liable for the penalty prescribed by this part.

(4) Under this section, a principal is liable for penalties and assessments for the actions of his or her agent acting within the scope of the agency.

6. Section 1003.103 is revised to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, the OIG may impose a penalty of not more than $2,000 for each item or service that is subject to a determination under § 1003.102.

(b) The OIG may impose a penalty of not more than $15,000 for each person with respect to whom a determination was made that false or misleading information was given under § 1003.102(b)(4).

(c) The OIG may impose a penalty of not more than $10,000 for each payment for which there was a failure to report required information in accordance with § 1003.102(b)(5), or for each improper disclosure, use or access to information that is subject to a determination under § 1003.102(b)(6).

(d) (1) The OIG may impose a penalty of not more than $5,000 for each violation resulting from the misuse of Departmental or program words, letters, symbols or emblems relating to printed media, and a penalty of not more than $25,000 in the case of such misuse relating to a broadcast or telecast, that is subject to a determination under § 1003.102(b)(7) of this part. With respect to multiple violations consisting of substantially identical communications or productions, total penalties may not exceed $100,000 per year.

(2) For purposes of this paragraph, a violation is defined as—

(i) In the case of a direct mailing solicitation, each group mailing of an identical, non-personalized, generic letter or solicitation sent at the same time on the same day. Each unique or personalized letter or solicitation, such as with the individual's name and address appearing in the body of the advertisement or on the mailing envelope or covering, will be treated as a separate and single violation;

(ii) In the case of a printed advertisement, each advertisement or solicitation in each publication or issue of a publication in which it appears. Multiple or separate advertisements will be treated as separate violations; and

(iii) In the case of a broadcast or telecast, the airing of a single commercial or solicitation. Each airing will be a separate violation.

7. Section 1003.105 is revised to read as follows:

§ 1003.105 Exclusion from participation in Medicare or a State health care program.

(a) A person subject to a penalty or assessment determined under § 1003.102 may, in addition, be excluded from participation in Medicare for a period of time determined under § 1003.107. The OIG will also direct each appropriate State agency to exclude the person from each State health care program for the same period of time. The OIG may waive an exclusion from a State health care program upon request of the State agency in accordance with the following provisions:

(1) The OIG will consider an application from a State agency for a waiver if the person is—

(i) The sole community physician; or

(ii) The sole source of essential specialized services in a community.

(2) If a waiver is granted, it is applicable only to the State health care program for which the State agency requested the waiver.

(3) If the OIG subsequently obtains information that the basis for a waiver no longer exists, or the State agency submits evidence that the basis for the

waiver no longer exists, the waiver will cease and the person will be excluded from the State health care program for the remainder of the period that such person is excluded from Medicare.

(4) The OIG will notify the State agency whether its request for a waiver has been granted or denied.

(5) The decision to deny a waiver is not subject to administrative or judicial review.

(b) When the Inspector General proposes to exclude a long-term care facility from the Medicare and Medicaid programs, he or she will at the same time he or she notifies the respondent, notify the appropriate State licensing authority, State Office of Aging, the long-term care ombudsman, and the State Medicaid agency of the Inspector General's intention to exclude the facility.

8. Section 1003.106 is revised to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) (1) In determining the amount of any penalty or assessment in §§ 1003.102 (a) and (b)(1) to (b)(4), the Department will take into account—

(i) The nature of the claim, request for payment or information given, and the circumstances under which it was presented or given;

(ii) The degree of culpability of the person submitting the claim or request for payment, or giving the information;

(iii) The history of prior offenses of the person submitting the claim or request for payment, or giving the information;

(iv) The financial condition of the person presenting the claim or request for payment, or giving the information; and

(v) Such other matters as justice may require.

(2) In determining the amount of any penalty in accordance with §§ 1003.102 (b)(5) and (b)(6), the Department will take into account—

(i) The nature and circumstances resulting in the failure to report medical malpractice payments or the improper disclosure of information;

(ii) The degree of culpability of the person in failing to provide timely and complete malpractice payment data or in improperly disclosing, using or permitting access to information;

(iii) The materiality, or significance of omission, of the information to be reported with regard to medical malpractice judgments or settlements, or the materiality of the improper disclosure of, or use of, or access to information;

(iv) Any prior history of the person with respect to violations of these provisions; and

(v) Such other matters as justice may require.

(3) In determining the amount of any penalty in accordance with § 1003.102(b)(7), the OIG will take into account—

(i) The nature and objective of the solicitation or other communication, and the degree to which the communication has the capacity to deceive members of the public;

(ii) The frequency and scope of the violation, and whether a specific segment of the population was targeted;

(iii) The degree to which any misrepresentation or deception may have been mitigated by a clear, prominent and conspicuously-placed disclaimer of association with the Government;

(iv) The prior history of the organization in its willingness or refusal to comply with informal requests to correct violations;

(v) The history of prior offenses of the individual or entity in their misuse of Departmental and program words, letters, symbols and emblems; and

(vi) Such other matters as justice may require.

(b) Determining the amount of the penalty or assessment. In taking into account the factors listed in paragraph (a)(1) of this section, the following circumstances are to be considered—

(1) *Nature and circumstances of the incident.* It should be considered a mitigating circumstance if all the items or services or incidents subject to a determination under § 1003.102 included in the action brought under this part were of the same type and occurred within a short period of time, there were few such items or services or incidents, and the total amount claimed or requested for such items or services was less than $1,000. It should be considered an aggravating circumstance if—

(i) Such items or services or incidents were of several types, occurred over a lengthy period of time;

(ii) There were many such items or services or incidents (or the nature and circumstances indicate a pattern of claims or requests for payment for such items or services or a pattern of incidents);

(iii) The amount claimed or requested for such items or services was substantial; or

(iv) The false or misleading information given resulted in harm to the patient, a premature discharge or a need for additional services or subsequent hospital admission.

(2) *Degree of culpability.* It should be considered a mitigating circumstance if the claim or request for payment for the item or service was the result of an unintentional and unrecognized error in the process respondent followed in presenting claims or requesting payment, and corrective steps were taken promptly after the error was discovered. It should be considered an aggravating circumstance if—

(i) The respondent knew the item or service was not provided as claimed or if the respondent knew that the claim was false or fraudulent;

(ii) The respondent knew that the items or services were furnished during a period that he or she had been excluded from participation and that no payment could be made as specified in § 1003.102(a)(3) or because payment would violate the terms of an assignment or an agreement with a State agency or other agreement or limitation on payment under § 1003.102(b); or

(iii) The respondent knew that the information could reasonably be expected to influence the decision of when to discharge a patient from a hospital.

(3) *Prior offenses.* It should be considered an aggravating circumstance if at any time prior to the incident or presentation of any claim or request for payment which included an item or service subject to a determination under § 1003.102, the respondent was held liable for criminal, civil or administrative sanctions in connection with a program covered by this part or any other public or private program of reimbursement for medical services.

(4) *Other wrongful conduct.* It should be considered an aggravating circumstance if there is proof that a respondent engaged in wrongful conduct, other than the specific conduct upon which liability is based, relating to government programs or in connection with the delivery of a health care item or service. The statute of limitations governing civil money penalty proceedings will not apply to proof of other wrongful conduct as an aggravating circumstance.

(5) *Financial condition.* It should be considered a mitigating circumstance if imposition of the penalty or assessment without reduction will jeopardize the ability of the respondent to continue as a health care provider. In all cases, the resources available to the respondent will be considered when determining the amount of the penalty and assessment.

(6) *Other matters as justice may require.* Other circumstances of an aggravating or mitigating nature should be taken into account if, in the interests

of justice, they require either a reduction of the penalty or assessment or an increase in order to assure the achievement of the purposes of this part.

(c) In determining the amount of the penalty and assessment to be imposed for every item or service or incident subject to a determination under §§ 1003.102(a) and (b)(1) through (b)(4)—

(1) If there are substantial or several mitigating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently below the maximum permitted by §§ 1003.103(a) and 1003.104, to reflect that fact.

(2) If there are substantial or several aggravating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently close or at the maximum permitted by §§ 1003.103(a) and 1003.104, to reflect that fact.

(3) Unless there are extraordinary mitigating circumstances, the aggregate amount of the penalty and assessment should never be less than double the approximate amount of damages and costs (as defined in paragraph (d) of this section) sustained by the United States, or any State, as a result of claims or incidents subject to a determination under §§ 1003.102(a) and (b)(1) through (b)(4).

(d) (1) The standards set forth in this section are binding, except to the extent that their application would result in imposition of an amount that would exceed limits imposed by the United States Constitution.

(2) The amount imposed will not be less than the approximate amount required to fully compensate the United States, or any State, for its damages and costs, tangible and intangible, including but not limited to the costs attributable to the investigation, prosecution and administrative review of the case.

(3) Nothing in this section will limit the authority of the Department to settle any issue or case as provided by § 1003.126, or to compromise any penalty and assessment as provided by § 1003.128.

9. Section 1003.107 is revised to read as follows:

§ 1003.107 Determinations regarding exclusion.

(a) In determining whether to exclude a person and the duration of an exclusion, the Department will take into account the factors set forth in § 1003.106. Where there are aggravating circumstances as described in § 1003.106(b), the person should be excluded. In the case of an exclusion based on a determination under § 1003.102(b) (2) or (3), the length of the exclusion may not exceed 5 years.

(b) Nothing in this section will limit the authority of the Department to settle any issue or case as provided by § 1003.126 or to compromise any exclusion as provided by § 1003.128.

10. Section 1003.109 is revised to read as follows:

§ 1003.109 Notice of proposed determination.

(a) If the Inspector General proposes to impose a penalty and assessment, or to exclude a respondent from participation in Medicare or a State health care program in accordance with this part, he or she must serve notice of the action by any manner authorized by Rule 4 of the Federal Rules of Civil Procedure. The notice will include—

(1) Reference to the statutory basis for the penalty, assessment and exclusion;

(2) A description of the claims, requests for payment, or incidents with respect to which the penalty, assessment and exclusion are proposed (except in cases where the Inspector General is relying upon statistical sampling in accordance with § 1003.133 in which case the notice shall describe those claims and requests for payment comprising the sample upon which the Inspector General is relying and will also briefly describe the statistical sampling technique utilized by the Inspector General);

(3) The reason why such claims, requests for payment or incidents subject the respondent to a penalty, assessment and exclusion; the amount of the proposed penalty, assessment and the period of proposed exclusion (where applicable);

(4) Any circumstances described in § 1003.106 which were considered when determining the amount of the proposed penalty and assessment and the period of exclusion;

(5) Instructions for responding to the notice, including—

(i) a specific statement of respondent's right to a hearing, and

(ii) a statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty, assessment and exclusion without right of appeal; and

(6) In the case of a notice sent to a respondent who has an agreement under section 1866 of the Act, the notice will also indicate that the imposition of an exclusion may result in the termination of the provider's agreement in accordance with section 1866(b)(2)(C) of the Act.

(b) Any person upon whom the Inspector General has proposed the imposition of a penalty, assessment or exclusion may appeal such proposed penalty, assessment or exclusion in accordance with § 1005.2 of this chapter. The provisions of part 1005 of this chapter govern such appeals.

§ 1003.110 [Amended]

11. Section 1003.110 is amended by removing the word "suspension" and adding in its place the word "exclusion" the three times it appears; and by revising the citation in the first sentence to read as "§ 1003.109(a)".

§§ 1003.111 through 1003.113 [Removed]

12. Sections 1003.111 Through 1003.113 are removed.

13. Section 1003.114 is revised to read as follows:

§ 1003.114 Collateral estoppel.

(a) Where a final determination that the respondent presented or caused to be presented a claim or request for payment falling within the scope of § 1003.102 has been rendered in any proceeding in which the respondent was a party and had an opportunity to be heard, the respondent shall be bound by such determination in any proceeding under this part.

(b) In a proceeding under this part that—

(1) Is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

(2) Involves the same transactions as in the criminal action, the person is estopped from denying the essential elements of the criminal offense.

§§ 1003.115 Through 1003.125 [Removed]

14. Sections 1003.115 through 1003.125 are removed.

15. Section 1003.127 is revised to read as follows:

§ 1003.127 Judicial review.

Section 1128A(e) of the Act authorizes judicial review of a penalty, assessment or exclusion that has become final. Judicial review may be sought by a respondent only with respect to a penalty, assessment or exclusion with respect to which the respondent filed an exception under § 1005.21(c) of this chapter unless the failure or neglect to urge such exception will be excused by the court in accordance with section 1128A(e) of the Act because of extraordinary circumstances.

16. Section 1003.128 is amended by revising paragraphs (a) and (d) to read as follows:

§ 1003.128 Collection of penalty and assessment.

(a) Once a determination by the Secretary has become final, collection of any penalty and assessment will be the responsibility of HCFA, except in the case of the Maternal and Child Health Services Block Grant program, where the collection will be the responsibility of the PHS, and in the case of the Social Services Block Grant program, where the collection will be the responsibility of the Office of Human Development Services.

* * * * *

(d) Matters that were raised or that could have been raised in a hearing before an ALJ or in an appeal under section 1128A(e) of the Act may not be raised as a defense in a civil action by the United States to collect a penalty under this part.

17. Section 1003.129 is revised to read as follows:

§ 1003.129 Notice to other agencies.

Whenever a penalty, assessment or exclusion become final, the following organizations and entities will be notified about such action and the reasons for it—the appropriate State or local medical or professional association; the appropriate Peer Review Organization; as appropriate, the State agency responsible or the administration of each State health care program; the appropriate Medicare carrier or intermediary; the appropriate State or local licensing agency or organization (including the Medicare and Medicaid State survey agencies); and the long-term care ombudsman. In cases involving exclusions, notice will also be given to the public of the exclusion and its effective date.

§§ 1003.130 and 1003.131 [Removed]

18. Sections 1003.130 and 1003.131 are removed.

19. Section 1003.132 is revised to read as follows:

§ 1003.132 Limitations.

No action under this part will be entertained unless commenced, in accordance with § 1003.109(a) of this part, within 6 years from the date on which the claim was presented, the request for payment was made, or the incident occurred.

§ 1003.133 [Amended]

20. Section 1003.133 is amended by revising the citation in the introductory clause of the first sentence of paragraph (a) from "§ 1003.114" to "§ 1005.15 of this chapter".

21. New sections 1003.134 and 1003.135 are added to read as follows:

§ 1003.134 Effect of exclusion.

The effect of an exclusion will be as set forth in § 1001.1901 of this chapter.

§ 1003.135 Reinstatement.

A person who has been excluded in accordance with this part may apply for reinstatement at the end of the period of exclusion. The OIG will consider any request for reinstatement in accordance with the provisions of §§ 1001.3001 through 1001.3004 of this chapter.

PART 1004—IMPOSITION OF SANCTIONS ON HEALTH CARE PRACTITIONERS AND PROVIDERS OF HEALTH CARE SERVICES BY A PEER REVIEW ORGANIZATION

E. Part 1004 is amended to read as follows:

1. The authority citation for part 1004 is revised to read as follows:

Authority: 42 U.S.C. 1302 and 1320c–5.

2. Section 1004.30 is amended by revising paragraph (b) and the introductory text to paragraph (c) to read as follows:

§ 1004.30 Basic responsibilities.

* * * * *

(b) When the PRO identifies situations where the obligations specified in § 1004.10 are violated, it will afford the practitioner or other person reasonable notice and opportunity for discussion and, if appropriate, a suggested method for correcting the situation and a time period for a corrective action in accordance with §§ 1004.40 and 1004.50.

(c) The PRO must submit a report to the OIG after the notice and opportunity provided under paragraph (b) of this section (and corrective action, if appropriate), if the PRO determines that the practitioner or other person has—

* * * * *

3. Section 1004.40 is revised to read as follows:

§ 1004.40 Action on identification of a violation.

(a) When a PRO identifies a violation, it must determine the source and the nature of the violation.

(b) If the PRO determines that the violation is gross and flagrant, it must proceed in accordance with § 1004.50.

(c) If the PRO determines that the violation is a substantial violation in a substantial number of cases, it must send the practitioner or other person a written initial notice of the identification of a violation containing all of the following information:

(1) The obligation involved.

(2) The situation, circumstances or activity that resulted in a violation.

(3) The authority and responsibility of the PRO to report violations of obligations.

(4) A suggested method for correcting the situation and a time period for corrective action, if appropriate.

(5) The sanction that the PRO could recommend to the OIG.

(6) An invitation to submit additional information to or discuss the problem with representatives of the PRO within 20 days of receipt of the notice. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary.

(7) A summary of the information used by the PRO in arriving at its determination of a violation of an obligation and a synopsis of its conclusions.

4. Section 1004.50 is amended by revising paragraphs (b) and (c)(1) to read as follows:

§ 1004.50 Action on determination of a violation.

* * * * *

(b) *Contents.* The notice must contain the following information:

(1) The determination of a violation.

(2) The obligation violated.

(3) The basis for the determination.

(4) A suggested method for correcting the situation and a time period for corrective action, if appropriate.

(5) The sanction the PRO will recommend to the OIG.

(6) The right of the practitioner or other person to submit to the PRO within 30 days of receipt of the notice, additional information or a written request for a meeting with the PRO to review and discuss the determination, or both. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary.

(7) A copy of the material used by the PRO in arriving at its determination.

(c) *Further review by PRO.* (1) On the basis of additional information received, the PRO shall affirm or modify its determination. If the PRO affirms its determination, it may suggest a method for correcting the situation and a time period for corrective action. If the issue is resolved to the PRO's satisfaction, the PRO shall close the case.

* * * * *

5. Section 1004.60 is amended by adding a new paragraph (c) to read as follows:

§ 1004.60 Final PRO determination of a violation.

* * * * *

(c) Provide notice to the State medical board when it submits a report and

recommendation to the OIG with respect to a physician or other authorized individual whom the board is responsible for licensing.

6. Section 1004.90 is amended by revising paragraph (d)(7) to read as follows:

§ 1004.90 Acknowledgement and review of report.

* * * * *

(d) *Decision of sanction.* * * *

* * * * *

(7) Whether the practitioner or other person is unable or unwilling to comply substantially with the obligations, including whether, prior to the PRO's recommendation, he or she entered into a corrective action plan and, if so, whether he or she successfully completed such corrective action plan.

* * * * *

§ 1004.100 [Amended]

7. Section 1004.100 is amended by removing paragraph (g).

8. Section 1004.110 is revised to read as follows:

§ 1004.110 Effect of an exclusion on Medicare payments and services.

The effect of an exclusion will be as set forth in § 1001.1901 of this chapter.

9. Section 1004.120 is revised to read as follows:

§ 1004.120 Reinstatement after exclusion.

A person who has been excluded in accordance with this part may apply for reinstatement at the end of the period of exclusion. The OIG will consider any request for reinstatement in accordance with the provisions of §§ 1001.3001 through 1001.3005 of this chapter.

10. Section 1004.130 is revised to read as follows:

§ 1004.130 Appeal rights.

(a) *Right to administrative review.* (1) A practitioner or other person dissatisfied with an OIG determination, or an exclusion that results from a determination not being made within 120 days, is entitled to appeal such sanction in accordance with part 1005 of this chapter.

(2) Due to the 120-day statutory requirement specified in § 1004.90(e), the following limitations apply—

(i) The period of time for submitting additional information will not be extended.

(ii) Any material received by the HHS after the 30-day period allowed, will not be considered by the ALJ or the Departmental Appeals Board (DAB).

(3) The OIG's determination continues in effect unless reversed by a hearing.

(b) *Right to judicial review.* Any practitioner or other person dissatisfied with a final decision of the Secretary may file a civil action in accordance with the provisions of section 205(g) of the Act.

F. A new part 1005 is added to read as follows:

PART 1005—APPEALS OF EXCLUSIONS, CIVIL MONEY PENALTIES AND ASSESSMENTS

Sec.

1005.1 Definitions.
1005.2 Hearing before an administrative law judge.
1005.3 Rights of parties.
1005.4 Authority of the ALJ.
1005.5 Ex parte contacts.
1005.6 Prehearing conferences.
1005.7 Discovery.
1005.8 Exchange of witness lists, witness statements and exhibits.
1005.9 Subpoenas for attendance at hearing.
1005.10 Fees.
1005.11 Form, filing and service of papers.
1005.12 Computation of time.
1005.13 Motions.
1005.14 Sanctions.
1005.15 The hearing and burden of proof.
1005.16 Witnesses.
1005.17 Evidence.
1005.18 The record.
1005.19 Post-hearing briefs.
1005.20 Initial decision.
1005.21 Appeal to DAB.
1005.22 Stay of initial decision.
1005.23 Harmless error.

Authority: 42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a and 1320c–5.

§ 1005.1 Definitions.

Civil money penalty cases refer to all proceedings arising under any of the statutory bases for which the OIG has been delegated authority to impose civil money penalties under Medicare or the State health care programs.

DAB refers to the Departmental Appeals Board or its delegatee.

Exclusion cases refer to all proceedings arising under any of the statutory bases for which the OIG has been delegated authority to impose exclusions under Medicare or the State health care programs.

§ 1005.2 Hearing before an administrative law judge.

(a) A party sanctioned under any criteria specified in parts 1001, 1003 and 1004 of this chapter may request a hearing before an ALJ.

(b) In exclusion cases, the parties to the proceeding will consist of the petitioner and the IG. In civil money penalty cases, the parties to the proceeding will consist of the respondent and the IG.

(c) The request for a hearing will be made in writing, signed by the petitioner or respondent or by his or her attorney. The request must be filed within 60 days after the notice, provided in accordance with §§ 1001.2002, 1001.2003 or 1003.109, is received by the petitioner or respondent. For purposes of this section, the date of receipt of the notice letter will be presumed to be 5 days after the date of such notice unless there is a reasonable showing to the contrary.

(d) The request for a hearing will contain a statement as to the specific issues or findings of fact and conclusions of law in the notice letter with which the petitioner or respondent disagrees, and the basis for his or her contention that the specific issues or findings and conclusions were incorrect.

(e) The ALJ will dismiss a hearing request where—

(1) The petitioner's or the respondent's hearing request is not filed in a timely manner;

(2) The petitioner or respondent withdraws his or her request for a hearing;

(3) The petitioner or respondent abandons his or her request for a hearing; or

(4) The petitioner's or respondent's hearing request fails to raise any issue which may properly be addressed in a hearing.

§ 1005.3 Rights of parties.

(a) Except as otherwise limited by this part, all parties may—

(1) Be accompanied, represented and advised by an attorney;

(2) Participate in any conference held by the ALJ;

(3) Conduct discovery of documents as permitted by this part;

(4) Agree to stipulations of fact or law which will be made part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

(7) Present oral arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

(b) Fees for any services performed on behalf of a party by an attorney are not subject to the provisions of section 206 of title II of the Act, which authorizes the Secretary to specify or limit these fees.

§ 1005.4 Authority of the ALJ.

(a) The ALJ will conduct a fair and impartial hearing, avoid delay, maintain order and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses at hearings and the production of documents at or in relation to hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of documentary discovery as permitted by this part;

(8) Regulate the course of the hearing and the conduct of representatives, parties, and witnesses;

(9) Examine witnesses;

(10) Receive, rule on, exclude or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact; and

(13) Conduct any conference, argument or hearing in person or, upon agreement of the parties, by telephone.

(c) The ALJ does not have the authority to—

(1) Find invalid Federal statutes or regulations or Secretarial delegations of authority;

(2) Enter an order in the nature of a directed verdict;

(3) Compel settlement negotiations;

(4) Enjoin any act of the Secretary;

(5) Review the exercise of discretion by the OIG to exclude an individual or entity under section 1128(b) of the Act, or determine the scope or effect of the exclusion,

(6) Set a period of exclusion at zero, or reduce a period of exclusion to zero, in any case where the ALJ finds that an individual or entity committed an act described in section 1128(b) of the Act, or

(7) Review the exercise of discretion by the OIG to impose a CMP, assessment or exclusion under part 1003 of this chapter.

§ 1005.5 Ex parte contacts.

No party or person (except employees of the ALJ's office) will communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 1005.6 Prehearing conferences.

(a) The ALJ will schedule at least one prehearing conference, and may schedule additional prehearing conferences as appropriate, upon reasonable notice to the parties.

(b) The ALJ may use prehearing conferences to discuss the following—

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery of documents as permitted by this part;

(9) The time and place for the hearing;

(10) Such other matters as may tend to encourage the fair, just and expeditious disposition of the proceedings; and

(11) Potential settlement of the case.

(c) The ALJ will issue an order containing the matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 1005.7 Discovery.

(a) A party may make a request to another party for production of documents for inspection and copying which are relevant and material to the issues before the ALJ.

(b) For the purpose of this section, the term documents includes information, reports, answers, records, accounts, papers and other data and documentary evidence. Nothing contained in this section will be interpreted to require the creation of a document, except that requested data stored in an electronic data storage system will be produced in a form accessible to the requesting party.

(c) Requests for documents, requests for admissions, written interrogatories, depositions and any forms of discovery, other than those permitted under paragraph (a) of this section, are not authorized.

(d) This section will not be construed to require the disclosure of interview reports or statements obtained by any party, or on behalf of any party, of persons who will not be called as witnesses by that party, or analyses and summaries prepared in conjunction with the investigation or litigation of the case, or any otherwise privileged documents.

(e) (1) Within 10 days of service of a request for production of documents, a party may file a motion for a protective order.

(2) The ALJ may grant a motion for a protective order if he or she finds that the discovery sought—

(i) Is unduly costly or burdensome,

(ii) Will unduly delay the proceeding, or

(iii) Seeks privileged information.

(3) The burden of showing that discovery should be allowed is on the party seeking discovery.

§ 1005.8 Exchange of witness lists, witness statements and exhibits.

(a) At least 15 days before the hearing, the ALJ will order the parties to exchange witness lists, copies of prior written statements of proposed witnesses and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 1005.16.

(b) (1) If at any time a party objects to the proposed admission of evidence not exchanged in accordance with paragraph (a) of this section, the ALJ will determine whether the failure to comply with paragraph (a) of this section should result in the exclusion of such evidence.

(2) Unless the ALJ finds that extraordinary circumstances justified the failure to timely exchange the information listed under paragraph (a) of this section, the ALJ must exclude from the party's case-in-chief:

(i) The testimony of any witness whose name does not appear on the witness list, and

(ii) Any exhibit not provided to the opposing party as specified in paragraph (a) of this section.

(3) If the ALJ finds that extraordinary circumstances existed, the ALJ must then determine whether the admission of such evidence would cause substantial prejudice to the objecting party. If the ALJ finds that there is no substantial prejudice, the evidence may be admitted. If the ALJ finds that there is substantial prejudice, the ALJ may exclude the evidence, or at his or her discretion, may postpone the hearing for such time as is necessary for the objecting party to prepare and respond to the evidence.

(c) Unless another party objects within a reasonable period of time prior to the hearing, documents exchanged in accordance with paragraph (a) of this section will be deemed to be authentic

for the purpose of admissibility at the hearing.

§ 1005.9 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may make a motion requesting the ALJ to issue a subpoena if the appearance and testimony are reasonably necessary for the presentation of a party's case.

(b) A subpoena requiring the attendance of an individual may also require the individual to produce evidence at the hearing in accordance with § 1005.7.

(c) When a subpoena is served by a respondent or petitioner on a particular individual or particular office of the OIG, the OIG may comply by designating any of its representatives to appear and testify.

(d) A party seeking a subpoena will file a written motion not less than 30 days before the date fixed for the hearing, unless otherwise allowed by the ALJ for good cause shown. Such request will:

(1) Specify any evidence to be produced,

(2) Designate the witnesses, and

(3) Describe the address and location with sufficient particularity to permit such witnesses to be found.

(e) The subpoena will specify the time and place at which the witness is to appear and any evidence the witness is to produce.

(f) Within 15 days after the written motion requesting issuance of a subpoena is served, any party may file an opposition or other response.

(g) If the motion requesting issuance of a subpoena is granted, the party seeking the subpoena will serve it by delivery to the individual named, or by certified mail addressed to such individual at his or her last dwelling place or principal place of business.

(h) The individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within 10 days after service.

(i) The exclusive remedy for contumacy by, or refusal to obey a subpoena duly served upon, any person is specified in section 205(e) of the Social Security Act (42 U.S.C. 405(e)).

§ 1005.10 Fees.

The party requesting a subpoena will pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage will accompany the subpoena when served, except that when a subpoena is issued on behalf of the IG, a check for witness fees and mileage need not accompany the subpoena.

§ 1005.11 Form, filing and service of papers.

(a) *Forms.* (1) Unless the ALJ directs the parties to do otherwise, documents filed with the ALJ will include an original and two copies.

(2) Every pleading and paper filed in the proceeding will contain a caption setting forth the title of the action, the case number, and a designation of the paper, such as motion to quash subpoena.

(3) Every pleading and paper will be signed by, and will contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed.

(b) *Service.* A party filing a document with the ALJ or the Secretary will, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document will be made by delivering a copy, or placing a copy of the document in the United States mail, postage prepaid and addressed, or with a private delivery service, to the party's last known address. When a party is represented by an attorney, service will be made upon such attorney in lieu of the party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, will be proof of service.

§ 1005.12 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event or default, and includes the last day of the period unless it is a Saturday, Sunday or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays observed by the Federal Government will be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response. This paragraph does not apply to requests for hearing under § 1005.2.

§ 1005.13 Motions.

(a) An application to the ALJ for an order or ruling will be by motion. Motions will state the relief sought, the authority relied upon and the facts alleged, and will be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions will be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 10 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ will make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 1005.14 Sanctions.

(a) The ALJ may sanction a person, including any party or attorney, for failing to comply with an order or procedure, for failing to defend an action or for other misconduct that interferes with the speedy, orderly or fair conduct of the hearing. Such sanctions will reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(1) In the case of refusal to provide or permit discovery under the terms of this part, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established;

(2) Prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(3) Striking pleadings, in whole or in part;

(4) Staying the proceedings;

(5) Dismissal of the action;

(6) Entering a decision by default; and

(7) Refusing to consider any motion or other action that is not filed in a timely manner.

(b) In civil money penalty cases commenced under section 1128A of the Act or under any provision which incorporates section 1128A(c)(4) of the Act, the ALJ may also order the party or attorney who has engaged in any of the acts described in paragraph (a) of this section to pay attorney's fees and other costs caused by the failure or misconduct.

§ 1005.15 The hearing and burden of proof.

(a) The ALJ will conduct a hearing on the record in order to determine whether

the petitioner or respondent should be found liable under this part.

(b) Burden of proof in civil money penalty cases under part 1003, in Peer Review Organization exclusion cases under part 1004, and in exclusion cases under §§ 1001.701, 1001.901 and 1001.951. In civil money penalty cases under part 1003, in Peer Review Organization exclusion cases under part 1004, and in exclusion cases under §§ 1001.701, 1001.901 and 1001.951 of this chapter—

(1) The respondent bears the burden of going forward and the burden of persuasion with respect to affirmative defenses and any mitigating circumstances; and

(2) The IG bears the burden of going forward and the burden of persuasion with respect to all other issues.

(c) Burden of proof in all other exclusion cases. In all exclusion cases except those governed by paragraph (b) of this section, the ALJ will allocate the burden of proof as the ALJ deems appropriate

(d) The burden of persuasion will be judged by a preponderance of the evidence

(e) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause shown.

(f) (1) A hearing under this part is not limited to specific items and information set forth in the notice letter to the petitioner or respondent. Subject to the 15-day requirement under § 1005.8, additional items or information may be introduced by either party during its case-in-chief unless such information or items are—

(i) Privileged;

(ii) Disqualified from consideration due to untimeliness in accordance with § 1004.130(a)(2)(ii); or

(iii) Deemed otherwise inadmissible under § 1005.17.

(2) After both parties have presented their cases, evidence may be admitted on rebuttal even if not previously exchanged in accordance with § 1005.8.

§ 1005.16 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing will be given orally by witnesses under oath or affirmation

(b) At the discretion of the ALJ, testimony (other than expert testimony) may be admitted in the form of a written statement. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner that allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing will be exchanged as provided in § 1005.8.

(c) The ALJ will exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid repetition or needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ will permit the parties to conduct such cross-examination of witnesses as may be required for a full and true disclosure of the facts.

(e) The ALJ may order witnesses excluded so that they cannot hear the testimony of other witnesses. This does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated as the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual engaged in assisting the attorney for the IG.

§ 1005.17 Evidence.

(a) The ALJ will determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ will not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, for example, to exclude unreliable evidence.

(c) The ALJ must exclude irrelevant or immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence must be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement made in this action will be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) Evidence of crimes, wrongs or acts other than those at issue in the instant case is admissible in order to show motive, opportunity, intent, knowledge, preparation, identity, lack of mistake, or existence of a scheme. Such evidence is admissible regardless of whether the crimes, wrongs or acts occurred during the statute of limitations period applicable to the acts which constitute the basis for liability in the case, and regardless of whether they were referenced in the IG's notice sent in accordance with §§ 1001.2002, 1001.2003 or 1003.109.

(h) The ALJ will permit the parties to introduce rebuttal witnesses and evidence.

(i) All documents and other evidence offered or taken for the record will be open to examination by all parties, unless otherwise ordered by the ALJ for good cause shown.

(j) The ALJ may not consider evidence regarding the issue of willingness and ability to enter into and successfully complete a corrective action plan when such evidence pertains to matters occurring after the submittal of the case to the Secretary. The determination regarding the appropriateness of any corrective action plan is not reviewable.

§ 1005.18 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Secretary.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by any person, unless otherwise ordered by the ALJ for good cause shown.

(d) For good cause, the ALJ may order appropriate redactions made to the record.

§ 1005.19 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ will fix the time for filing such briefs which are not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 1005.20 Initial decision.

(a) The ALJ will issue an initial decision, based only on the record, which will contain findings of fact and conclusions of law.

(b) The ALJ may affirm, increase or reduce the penalties, assessment or exclusion proposed or imposed by the IG, or reverse the imposition of the exclusion. In exclusion cases where the period of exclusion commenced prior to

the hearing, any period of exclusion imposed by the ALJ will be deemed to commence on the date such exclusion originally went into effect.

(c) The ALJ will issue the initial decision to all parties within 60 days after the time for submission of post-hearing briefs and reply briefs, if permitted, has expired. The decision will be accompanied by a statement describing the right of any party to file a notice of appeal with the DAB and instructions for how to file such appeal. If the ALJ fails to meet the deadline contained in this paragraph, he or she will notify the parties of the reason for the delay and will set a new deadline.

(d) Except as provided in paragraph (e) of this section, unless the initial decision is appealed to the DAB, it will be final and binding on the parties 30 days after the ALJ serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(e) If an extension of time within which to appeal the initial decision is granted under § 1005.21(a), except as provided in § 1005.22(a), the initial decision will become final and binding on the day following the end of the extension period.

§ 1005.21 Appeal to DAB.

(a) Any party may appeal the initial decision of the ALJ to the DAB by filing a notice of appeal with the DAB within 30 days of the date of service of the initial decision. The DAB may extend the initial 30 day period for a period of time not to exceed 30 days if a party files with the DAB a request for an extension within the initial 30 day period and shows good cause.

(b) If a party files a timely notice of appeal with the DAB, the ALJ will forward the record of the proceeding to the DAB.

(c) A notice of appeal will be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions. Any party may file a brief in opposition to exceptions, which may raise any relevant issue not addressed in the exceptions, within 30 days of receiving the notice of appeal and accompanying brief. The DAB may permit the parties to file reply briefs.

(d) There is no right to appear personally before the DAB, or to appeal to the DAB any interlocutory ruling by the ALJ.

(e) The DAB will not consider any issue not raised in the parties' briefs, nor any issue in the briefs that could have been raised before the ALJ but was not.

(f) If any party demonstrates to the satisfaction of the DAB that additional evidence not presented at such hearing is relevant and material and that there were reasonable grounds for the failure to adduce such evidence at such hearing, the DAB may remand the matter to the ALJ for consideration of such additional evidence.

(g) The DAB may decline to review the case, or may affirm, increase, reduce, reverse or remand any penalty, assessment or exclusion determined by the ALJ.

(h) The standard of review on a disputed issue of fact is whether the initial decision is supported by substantial evidence on the whole record. The standard of review on a disputed issue of law is whether the initial decision is erroneous.

(i) Within 60 days after the time for submission of briefs and reply briefs, if permitted, has expired, the DAB will issue to each party to the appeal a copy of the DAB's decision and a statement describing the right of any petitioner or respondent who is found liable to seek judicial review.

(j) Except with respect to any penalty, assessment or exclusion remanded by the ALJ, the DAB's decision, including a decision to decline review of the initial decision, becomes final and binding 60 days after the date on which the DAB serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(k) (1) Any petition for judicial review must be filed within 60 days after the DAB serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(2) In compliance with 28 U.S.C. 2112(a), a copy of any petition for judicial review filed in any U.S. Court of Appeals challenging a final action of the DAB will be sent by certified mail, return receipt requested, to the Associate General Counsel, Inspector General Division, HHS. The petition copy will be time-stamped by the clerk of the court when the original is filed with the court.

(3) If the Associate General Counsel receives two or more petitions within 10 days after the DAB issues its decision, the Associate General Counsel will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10-day period.

§ 1005.22 Stay of initial decision.

(a) In a CMP case under section 1128A of the Act, the filing of a respondent's request for review by the DAB will automatically stay the effective date of the ALJ's decision.

(b) (1) After the DAB renders a decision in a CMP case, pending judicial review, the respondent may file a request for stay of the effective date of any penalty or assessment with the ALJ. The request must be accompanied by a copy of the notice of appeal filed with the Federal court. The filing of such a request will automatically act to stay the effective date of the penalty or assessment until such time as the ALJ rules upon the request.

(2) The ALJ may not grant a respondent's request for stay of any penalty or assessment unless the respondent posts a bond or provides other adequate security.

(3) The ALJ will rule upon a respondent's request for stay within 10 days of receipt.

§ 1005.23 Harmless error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in any act done or omitted by the ALJ or by any of the parties, including Federal representatives such as Medicare carriers and intermediaries and Peer Review Organizations, is ground for vacating, modifying or otherwise disturbing an otherwise appropriate ruling or order or act, unless refusal to take such action appears to the ALJ or the DAB inconsistent with substantial justice. The ALJ and the DAB at every stage of the proceeding will disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

G. A new Part 1006 is added to read as follows:

PART 1006—INVESTIGATIONAL INQUIRIES

Sec.
1006.1 Scope.
1006.2 Contents of subpoena.
1006.3 Service and fees.
1006.4 Procedures for investigational inquiries.
1006.5 Enforcement of a subpoena.

Authority: 42 U.S.C. 405(d), 405(e), 1302 and 1320a–7a.

§ 1006.1 Scope.

(a) The provisions in this part govern subpoenas issued by the Inspector General, or his or her delegates, in accordance with sections 205(d) and 1128A(j) of the Act, and require the attendance and testimony of witnesses and the production of any other evidence at an investigational inquiry.

(b) Such subpoenas may be issued in investigations under section 1128A of

the Act or under any other section of the Act that incorporates the provisions of section 1128A(j).

(c) Nothing in this part is intended to apply to or limit the authority of the Inspector General, or his or her delegates, to issue subpoenas for the production of documents in accordance with 5 U.S.C. 6(a)(4), App. 3.

§ 1006.2 Contents of subpoena.

A subpoena issued under this part will—

(a) State the name of the individual or entity to whom the subpoena is addressed;

(b) State the statutory authority for the subpoena;

(c) Indicate the date, time and place that the investigational inquiry at which the witness is to testify will take place;

(d) Include a reasonably specific description of any documents or items required to be produced; and

(e) If the subpoena is addressed to an entity, describe with reasonable particularity the subject matter on which testimony is required. In such event, the named entity will designate one or more individuals who will testify on its behalf, and will state as to each individual so designated that individual's name and address and the matters on which he or she will testify. The individual so designated will testify as to matters known or reasonably available to the entity.

§ 1006.3 Service and fees.

(a) A subpoena under this part will be served by—

(1) Delivering a copy to the individual named in the subpoena;

(2) Delivering a copy to the entity named in the subpoena at its last principal place of business; or

(3) Registered or certified mail addressed to such individual or entity at its last known dwelling place or principal place of business.

(b) A verified return by the individual serving the subpoena setting forth the manner of service or, in the case of service by registered or certified mail, the signed return post office receipt, will be proof of service.

(c) Witnesses will be entitled to the same fees and mileage as witnesses in the district courts of the United States (28 U.S.C. 1821 and 1825). Such fees need not be paid at the time the subpoena is served.

§ 1006.4 Procedures for investigational inquiries.

(a) Testimony at investigational inquiries will be taken under oath or affirmation.

(b) Investigational inquiries are non-public investigatory proceedings. Attendance of non-witnesses is within the discretion of the OIG, except that—

(1) A witness is entitled to be accompanied, represented and advised by an attorney; and

(2) Representatives of the OIG and the Office of the General Counsel are entitled to attend and ask questions.

(c) A witness will have an opportunity to clarify his or her answers on the record following the questions by the OIG.

(d) Any claim of privilege must be asserted by the witness on the record.

(e) Objections must be asserted on the record. Errors of any kind that might be corrected if promptly presented will be deemed to be waived unless reasonable objection is made at the investigational inquiry. Except where the objection is on the grounds of privilege, the question will be answered on the record, subject to the objection.

(f) If a witness refuses to answer any question not privileged or to produce requested documents or items, or engages in conduct likely to delay or obstruct the investigational inquiry, the OIG may seek enforcement of the subpoena under § 1006.5.

(g) (1) The proceedings will be recorded and transcribed.

(2) The witness is entitled to a copy of the transcript, upon payment of prescribed costs, except that, for good cause, the witness may be limited to inspection of the official transcript of his or her testimony.

(3) (i) The transcript will be submitted to the witness for signature.

(ii) Where the witness will be provided a copy of the transcript, the transcript will be submitted to the witness for signature. The witness may submit to the OIG written proposed corrections to the transcript, with such corrections attached to the transcript. If the witness does not return a signed copy of the transcript or proposed corrections within 30 days of its being submitted to him or her for signature, the witness will be deemed to have agreed that the transcript is true and accurate.

(iii) Where, as provided in paragraph (g)(2) of this section, the witness is limited to inspecting the transcript, the witness will have the opportunity at the time of inspection to propose corrections to the transcript, with corrections attached to the transcript. The witness will also have the opportunity to sign the transcript. If the witness does not sign the transcript or offer corrections within 30 days of receipt of notice of the opportunity to inspect the transcript, the witness will be deemed to have agreed that the transcript is true and accurate.

(iv) The OIG's proposed corrections the record of transcript will be attached to the transcript.

(h) Testimony and other evidence obtained in an investigational inquiry may be used by the OIG or DHHS in any of its activities, and may be used or offered into evidence in any administrative or judicial proceeding.

§ 1006.5 Enforcement of a subpoena.

A subpoena to appear at an investigational inquiry is enforceable through the District Court of the United States and the district where the subpoenaed person is found, resides or transacts business.

H. A new Part 1007 is added to read as follows:

PART 1007—STATE MEDICAID FRAUD CONTROL UNITS

Sec.

1007.1 Definitions.
1007.3 Scope and purpose.
1007.5 Basic requirement.
1007.7 Organization and location requirements.
1007.9 Relationship to, and agreement with, the Medicaid agency.
1007.11 Duties and responsibilities of the unit.
1007.13 Staffing requirements.
1007.15 Applications, certification and recertification.
1007.17 Annual report.
1007.19 Federal financial participation (FFP).
1007.21 Other applicable HHS regulations.

Authority: 42 U.S.C. 1396b(a)(6), 1396b(b)(3) and 1396b(q).

§ 1007.1 Definitions.

As used in this part, unless otherwise indicated by the context:

Employ or *employee*, as the context requires, means full-time duty intended to last at least a year. It includes an arrangement whereby an individual is on full-time detail or assignment to the unit from another government agency, if the detail or assignment is for a period of at least 1 year and involves supervision by the unit.

Provider means an individual or entity that furnishes items or services for which payment is claimed under Medicaid.

Unit means the State Medicaid fraud control unit.

§ 1007.3 Scope and purpose.

This part implements sections 1903(a)(6), 1903(b)(3), and 1903(q) of the Social Security Act, as amended by the Medicare-Medicaid Anti-Fraud and Abuse Amendments (Pub. L. 95–142). The statute authorizes the Secretary to pay a State 90 percent of the costs of establishing and operating a State

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Medicaid fraud control unit, as defined by the statute, for the purpose of eliminating fraud in the State Medicaid program.

§ 1007.5 Basic requirement.

A State Medicaid fraud control unit must be a single identifiable entity of the State government certified by the Secretary as meeting the requirements of §§ 1007.7 through 1007.13 of this part.

§ 1007.7 Organization and location requirements.

Any of the following three alternatives is acceptable:

(a) The unit is located in the office of the State Attorney General or another department of State government which has Statewide authority to prosecute individuals for violations of criminal laws with respect to fraud in the provision or administration of medical assistance under a State plan implementing title XIX of the Act;

(b) If there is no State agency with Statewide authority and capability for criminal fraud prosecutions, the unit has established formal procedures that assure that the unit refers suspected cases of criminal fraud in the State Medicaid program to the appropriate State prosecuting authority or authorities, and provides assistance and coordination to such authority or authorities in the prosecution of such cases; or

(c) The unit has a formal working relationship with the office of the State Attorney General and has formal procedures for referring to the Attorney General suspected criminal violations occurring in the State Medicaid program and for effective coordination of the activities of both entities relating to the detection, investigation and prosecution of those violations. Under this requirement, the office of the State Attorney General must agree to assume responsibility for prosecuting alleged criminal violations referred to it by the unit. However, if the Attorney General finds that another prosecuting authority has the demonstrated capacity, experience and willingness to prosecute an alleged violation, he or she may refer a case to that prosecuting authority, as long as the Attorney General's Office maintains oversight responsibility for the prosecution and for coordination between the unit and the prosecuting authority.

§ 1007.9 Relationship to, and agreement with, the Medicaid agency.

(a) The unit must be separate and distinct from the Medicaid agency.

(b) No official of the Medicaid agency will have authority to review the activities of the unit or to review or overrule the referral of a suspected criminal violation to an appropriate prosecuting authority.

(c) The unit will not receive funds paid under this part either from or through the Medicaid agency.

(d) The unit will enter into an agreement with the Medicaid agency under which the Medicaid agency will agree to comply with all requirements of § 455.21(a)(2) of this title.

§ 1007.11 Duties and responsibilities of the unit.

(a) The unit will conduct a Statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws pertaining to fraud in the administration of the Medicaid program, the provision of medical assistance, or the activities of providers of medical assistance under the State Medicaid plan.

(b) (1) The unit will also review complaints alleging abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan and may review complaints of the misappropriation of patient's private funds in such facilities.

(2) If the initial review indicates substantial potential for criminal prosecution, the unit will investigate the complaint or refer it to an appropriate criminal investigative or prosecutive authority.

(3) If the initial review does not indicate a substantial potential for criminal prosecution, the unit will refer the complaint to an appropriate State agency.

(c) If the unit, in carrying out its duties and responsibilities under paragraphs (a) and (b) of this section, discovers that overpayments have been made to a health care facility or other provider of medical assistance under the State Medicaid plan, the unit will either attempt to collect such overpayment or refer the matter to an appropriate State agency for collection.

(d) Where a prosecuting authority other than the unit is to assume responsibility for the prosecution of a case investigated by the unit, the unit will insure that those responsible for the prosecutive decision and the preparation of the case for trial have the fullest possible opportunity to participate in the investigation from its inception and will provide all necessary assistance to the prosecuting authority throughout all resulting prosecutions.

(e) The unit will make available to Federal investigators or prosecutors all information in its possession concerning fraud in the provision or administration of medical assistance under the State plan and will cooperate with such officials in coordinating any Federal and State investigations or prosecutions involving the same suspects or allegations.

(f) The unit will safeguard the privacy rights of all individuals and will provide safeguards to prevent the misuse of information under the unit's control.

§ 1007.13 Staffing requirements.

(a) The unit will employ sufficient professional, administrative, and support staff to carry out its duties and responsibilities in an effective and efficient manner. The staff must include:

(1) One or more attorneys experienced in the investigation or prosecution of civil fraud or criminal cases, who are capable of giving informed advice on applicable law and procedures and providing effective prosecution or liaison with other prosecutors;

(2) One or more experienced auditors capable of supervising the review of financial records and advising or assisting in the investigation of alleged fraud; and

(3) A senior investigator with substantial experience in commercial or financial investigations who is capable of supervising and directing the investigative activities of the unit.

(b) The unit will employ, or have available to it, professional staff who are knowledgeable about the provision of medical assistance under title XIX and about the operation of health care providers.

§ 1007.15 Applications, certification, and recertification.

(a) *Initial application.* In order to receive FFP under this part, the unit must submit to the Secretary, an application approved by the Governor, containing the following information and documentation—

(1) A description of the applicant's organization, structure, and location within State government, and an indication of whether it seeks certification under § 1007.7 (a), (b), or (c);

(2) A statement from the State Attorney General that the applicant has authority to carry out the functions and responsibilities set forth in this part. If the applicant seeks certification under § 1007.7(b), the statement must also specify either that—

(i) There is no State agency with the authority to exercise Statewide prosecuting authority for the violations with which the unit is concerned, or

(ii) Although the State Attorney General may have common law authority for Statewide criminal

prosecutions, he or she has not exercised that authority;

(3) A copy of whatever memorandum of agreement, regulation, or other document sets forth the formal procedures required under § 1007.7(b), or the formal working relationship and procedures required under § 1007.7(c);

(4) A copy of the agreement with the Medicaid agency required under § 1007.9;

(5) A statement of the procedures to be followed in carrying out the functions and responsibilities of this part;

(6) A projection of the caseload and a proposed budget for the 12-month period for which certification is sought; and

(7) Current and projected staffing, including the names, education, and experience of all senior professional staff already employed and job descriptions, with minimum qualifications, for all professional positions.

(b) *Conditions for, and notification of certification.* (1) The Secretary will approve an application only if he or she has specifically approved the applicant's formal procedures under § 1007.7 (b) or (c), if either of those provisions is applicable, and has specifically certified that the applicant meets the requirements of § 1007.7;

(2) The Secretary will promptly notify the applicant whether the application meets the requirements of this part and is approved. If the application is not approved, the applicant may submit an amended application at any time. Approval and certification will be for a period of 1 year.

(c) *Conditions for recertification.* In order to continue receiving payments under this part, a unit must submit a reapplication to the Secretary at least 60 days prior to the expiration of the 12-month certification period. A reapplication must—

(1) Advise the Secretary of any changes in the information or documentation required under paragraphs (a) (1) through (5) of this section;

(2) Provide projected caseload and proposed budget for the recertification period; and

(3) Include or reference the annual report required under § 1007.17.

(d) *Basis for recertification.* (1) The Secretary will consider the unit's reapplication, the reports required under § 1007.17, and any other reviews or information he or she deems necessary or warranted, and will promptly notify the unit whether he or she has approved the reapplication and recertified the unit.

(2) In reviewing the reapplication, the Secretary will give special attention to whether the unit has used its resources effectively in investigating cases of possible fraud, in preparing cases for prosecution, and in prosecuting cases or cooperating with the prosecuting authorities.

(Approved by the Office of Management and Budget under control number 0990–0162)

§ 1007.17 Annual report.

At least 60 days prior to the expiration of the certification period, the unit will submit to the Secretary a report covering the last 12 months (the first 9 months of the certification period for the first annual report), and containing the following information—

(a) The number of investigations initiated and the number completed or closed, categorized by type of provider;

(b) The number of cases prosecuted or referred for prosecution; the number of cases finally resolved and their outcomes; and the number of cases investigated but not prosecuted or referred for prosecution because of insufficient evidence;

(c) The number of complaints received regarding abuse and neglect of patients in health care facilities; the number of such complaints investigated by the unit; and the number referred to other identified State agencies;

(d) The number of recovery actions initiated by the unit; the number of recovery actions referred to another agency; the total amount of overpayments identified by the unit; and the total amount of overpayments actually collected by the unit;

(e) The number of recovery actions initiated by the Medicaid agency under its agreement with the unit, and the total amount of overpayments actually collected by the Medicaid agency under this agreement;

(f) Projections for the succeeding 12 months for items listed in paragraphs (a) through (e) of this section;

(g) The costs incurred by the unit; and

(h) A narrative that evaluates the unit's performance; describes any specific problems it has had in connection with the procedures and agreements required under this part; and discusses any other matters that have impaired its effectiveness.

(Approved by the Office of Management and Budget under control number 0990–0162)

§ 1007.19 Federal financial participation (FFP).

(a) *Rate of FFP.* Subject to the limitation of this section, the Secretary will reimburse each State by an amount equal to 90 percent of the costs incurred by a certified unit which are attributable to carrying out its functions and responsibilities under this part.

(b) *Retroactive certification.* The Secretary may grant certification retroactive to the date on which the unit first met all the requirements of the statute and of this part. For any quarter with respect to which the unit is certified, the Secretary will provide reimbursement for the entire quarter.

(c) *Amount of FFP.* FFP for any quarter will not exceed the higher of $125,000 or one-quarter of 1 percent of the sums expended by the Federal, State, and local governments during the previous quarter in carrying out the State Medicaid program.

(d) *Costs subject to FFP.* (1) FFP is available under this part for the expenditures attributable to the establishment and operation of the unit, including the cost of training personnel employed by the unit. Reimbursement will be limited to costs attributable to the specific responsibilities and functions set forth in this part in connection with the investigation and prosecution of suspected fraudulent activities and the review of complaints of alleged abuse or neglect of patients in health care facilities.

(2) (i) Establishment costs are limited to clearly identifiable costs of personnel that—

(A) Devote full time to the establishment of the unit which does achieve certification; and

(B) Continue as full-time employees after the unit is certified.

(ii) All establishment costs will be deemed made in the first quarter of certification.

(e) *Costs not subject to FFP.* FFP is not available under this part for expenditures attributable to—

(1) The investigation of cases involving program abuse or other failures to comply with applicable laws and regulations, if these cases do not involve substantial allegations or other indications of fraud;

(2) Efforts to identify situations in which a question of fraud may exist, including the screening of claims, analysis of patterns of practice, or routine verification with recipients of whether services billed by providers were actually received;

(3) The routine notification of providers that fraudulent claims may be punished under Federal or State law;

(4) The performance by a person other than a full-time employee of the unit of any management function for the unit, any audit or investigation, any professional legal function, or any criminal, civil or administrative prosecution of suspected providers;

(5) The investigation or prosecution of cases of suspected recipient fraud not

involving suspected conspiracy with a provider; or

(6) Any payment, direct or indirect, from the unit to the Medicaid agency, other than payments for the salaries of employees on detail to the unit.

§ 1007.21 Other applicable HHS regulations.

Except as otherwise provided in this part, the following regulations from 45 CFR subtitle A apply to grants under this part:

Part 16, subpart C—Department Grant Appeals Process—Special Provisions Applicable To Reconsideration of Disallowances [Note that this applies only to disallowance determinations and not to any other determinations, e.g., over certification or recertification];

Part 74—Administration of Grants;

Part 75—Informal Grant Appeals Procedures;

Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services, Effectuation of Title VI of the Civil Rights Act of 1964;

Part 81—Practice and Procedure for Hearings Under 45 CFR Part 80;

Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance;

Part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance.

Dated: June 6, 1991.

Richard P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: October 7, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-1939 Filed 1-23-92; 11:42 am]

BILLING CODE 4150-04-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Department of Defense Federal Acquisition Regulation Supplement; Fraud Payment Reductions

AGENCY: Department of Defense (DOD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to establish policy and procedures for reducing or suspending payments to a contractor when the agency head determines that the contractor's request for advance, partial, or progress payment is based on fraud.

DATES: *Effective Date:* January 15, 1992.

Comment Date: Comments on the interim rule should be submitted in writing at the address shown below on or before February 28, 1992, to be considered in the formulation of the final rule. Please cite DAR Case 90-318 in all correspondence.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric Mens, OUSD(A)DP, The Pentagon, Washington, DC 20301-3000. Telefax Number (703) 697-9845.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

These revisions implement section 836 of the FY 1991 DoD Authorization Act (Public Law 101-510), as amended, which added a subsection (e) to 10 U.S.C. 2307. The statute permits agencies to reduce or suspend payments to a contractor when the agency head determines that the contractor's request for advance, partial, or progress payment is based on fraud.

This DFARS interim rule provides a clause prescription at 232.111-70, establishes agency procedures at a new section 232.173, and establishes a new clause at 252.232-7006, Reduction or Suspension of Contract Payments Upon Finding of Fraud.

B. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this regulation as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment because section 836 of the FY 1991 DoD Authorization Act applies to all contracts awarded on or after May 6, 1991. Therefore, it is essential that guidance be issued as expeditiously as possible.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies but the interim rule is not expected to have a significant economic impact on a substantial number of small entities because the rule is not expected to impact 20 percent or more of those small businesses who contract with the Department of Defense. Based on an analysis of data for fiscal year 1990, 4,335 out of a total of 16,689 small businesses (or 20 percent of the total number of small businesses) were awarded contracts with advance or progress payment provisions. A small percentage of these (certainly less than 100 percent) can be expected to submit fraudulent payment requests. The rule will have a significant economic impact on only those small businesses who submit requests for advance, partial, or progress payments which may be based on fraud. Moreover, for those affected entities, the economic impact of the DFARS rule flows directly from 10 U.S.C. 2307(e)(5) which states that the contractor must be afforded an opportunity to "submit matters to the head of the agency" in response to the proposed reduction or suspension of payment (see DFARS 232.173-4(e)). An initial regulatory flexibility analysis has therefore not been performed. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 610 (DAR Case 91-610D) in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the interim rule falls within the exception provided under 5 CFR 1320.3(c), i.e., matters pertaining to the conduct of a federal criminal investigation or prosecution, or during the disposition of a particular criminal matter.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 232 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, and Defense FAR Supplement 201.301.

PART 232—CONTRACT FINANCING

2. Sections 232.111 and 232.111-70 are added to read as follows:

232.111 Contract clauses.

232.111-70 Additional clause.

Use the clause at 252.232-7006, Reduction or Suspension of Contract Payments Upon Finding of Fraud, in all solicitations and contracts.

3. Sections 232.173 through 232.173-5 are added to read as follows:

232.173 Reduction or suspension of contract payments upon finding of fraud.

232.173–1 General.

(a) 10 U.S.C. 2307(e)(2) provides for a reduction or suspension of payments to a contractor when the agency head determines there is substantial evidence that the contractor's request for advance, partial, or progress payments is based on fraud.

(b) The agency head may not delegate his or her responsibilities under 10 U.S.C. 2307(e) below level IV of the Executive Schedule. For purposes of this section, the Under Secretary of Defense (Acquisition) is the agency head for the defense agencies.

(c) Authority to reduce or suspend payments under 10 U.S.C. 2307(e) is in addition to other Government rights, remedies, and procedures.

(d) In accordance with 10 U.S.C. 2310(a), agency head determinations and decisions under this section may be made for an individual contract or any group of contracts affected by the fraud.

232.173–2 Definitions.

As used in this section—

(a) *Remedy coordination official* means the person or entity in the agency who coordinates within that agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.

(b) *Substantial evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

232.173–3 Responsibilities.

(a) Agencies shall establish appropriate procedures to implement the policies and procedures of this section.

(b) Government personnel shall report suspected fraud related to advance, partial, or progress payments in accordance with agency regulations.

232.173–4 Procedures.

(a) In any case in which an agency's remedy coordination official finds substantial evidence that a contractor's request for advance, partial, or progress payment under a contract awarded by that agency is based on fraud, the remedy coordination official shall recommend that the agency head reduce or suspend payments to the contractor. The remedy coordination official shall submit to the agency head a written report setting forth the remedy coordination official's findings that support each recommendation.

(b) Upon receiving a recommendation from the remedy coordination official under paragraph (a) of this subsection, the agency head shall determine whether substantial evidence exists that the request for payment under a contract is based on fraud.

(c) If the agency head determines that substantial evidence exists, the agency head may reduce or suspend payments to the contractor under the affected contract(s). Such reduction or suspension shall be reasonably commensurate with the anticipated loss to the Government resulting from the fraud.

(d) In determining whether to reduce or suspend payment(s), as a minimum, the agency head shall consider:

(1) A recommendation from investigating officers that disclosure of the allegations of fraud to the contractor may compromise an ongoing investigation;

(2) The anticipated loss to the Government as a result of the fraud;

(3) The contractor's overall financial condition and ability to continue performance if payments are reduced or suspended;

(4) The contractor's essentiality to the national defense;

(5) Assessment of all documentation concerning the alleged fraud, including documentation submitted by the contractor in its response to the notice required by paragraph (e) of this subsection.

(e) Before making a decision to reduce or suspend payments, the agency head shall, in accordance with the agency procedures—

(1) Notify the contractor of the proposed action and the reasons therefor; and

(2) Provide the contractor an opportunity to submit information and argument, within a reasonable time, in response to the proposed action.

(f) When more than one agency has contracts affected by the fraud, the agencies shall consider designating one agency as the lead agency for making the determination and decision.

(g) The agency shall retain in its files the written justification for each—

(1) Decision of the agency head whether to reduce or suspend payments; and

(2) Recommendation received by an agency head in connection with such decision.

(h) Not later than 180 calendar days after the date of the reduction or suspension action, the remedy coordination official shall—

(1) Review the agency head's determination on which the reduction or suspension decision is based; and

(2) Transmit a recommendation to the agency head as to whether the reduction or suspension should continue.

232.173–5 Reporting.

Departments and agencies, in accordance with department/agency procedures, shall prepare and submit to the Under Secretary of Defense (Acquisition), through the Director of Defense Procurement, annual reports containing—

(a) Each recommendation made by the remedy coordination official for payments reduction or suspension;

(b) The actions taken on the recommendation(s), with the reasons for such actions; and

(c) An assessment of the effects of each action on the Government.

4. Section 252.232–7006 is added to read as follows:

252.232–7006 Reduction or Suspension of Contract Payments Upon Finding of Fraud.

As prescribed in 232.111–70, use the following clause.

Reduction or Suspension of Contract Payments Upon Finding of Fraud (Jan. 1992)

(a) 10 U.S.C. 2307(e) permits the head of the agency to reduce or suspend advance, partial, or progress payments upon a written determination by the agency head that substantial evidence exists that the Contractor's request for payment is based on fraud. The provisions of 10 U.S.C. 2307(e) are in addition to any other rights or remedies provided the Government by law or under contract.

(b) Actions taken by the Government under 10 U.S.C. 2307(e) shall not constitute an excusable delay under the Default clause of this contract or otherwise relieve the Contractor of its obligations to perform under this contract.

(End of Clause)

[FR Doc. 92–2105 Filed 1–28–92; 8:45 am]

BILLING CODE 3810–01–M

Proposed Rules

Federal Register
Vol. 57, No. 19
Wednesday, January 29, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

[FV-91-404]

RIN 0581-AA49

Procedures for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order and for Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Such Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Mushroom Promotion, Research, and Consumer Information Act of 1990 authorizes a program of promotion, research, and consumer information to be developed through the promulgation of an order. Based on two proposals submitted by interested persons, the U.S. Department of Agriculture recently proposed the issuance of an order. The term "mushrooms" applies only to those mushrooms marketed or imported for use as fresh mushrooms and not exempted from assessment under the order. To become effective, however, the proposed order must be approved by mushroom producers and importers in a referendum. This rule specifies procedures for the conduct of the initial referendum to determine if producers and importers favor implementation of the proposed order. These procedures would also apply to any subsequent referenda to amend, continue, suspend, or terminate the order. In addition to referenda procedures, this rule contains rules of practice governing proceedings on petitions to modify or to be exempted from the proposed order.

DATES: Comments must be received by February 28, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, room 2533–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular working hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for the Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2533–S, Washington, DC 20090–6456, telephone (202) 720–5976.

SUPPLEMENTARY INFORMATION: This proposed rule is authorized under the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112) hereinafter referred to as the Act.

The proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order No. 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The most recent available census of agricultural producers indicates that there are 460 mushroom producers in the United States, an estimated 200 of whom would be subject to a proposed Mushroom Promotion, Research, and Consumer Information Order (order). Of these 200 estimated producers, a minority would be classified as small businesses. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms, which include mushroom handlers and importers, have been defined as those having annual receipts of less than $3,500,000. There are approximately 100 handlers, including producers who are also handlers, and not more than 3 importers, out of approximately 30 importers, who would be subject to the provisions of the proposed order, a majority of whom would be classified as small entities. During the 1990–91 crop year, 756 million pounds were produced in the United States; 512 million pounds of this production were for fresh use. Department statistics for 1990 indicate that total imports of fresh mushrooms into the United States were approximately 2.3 million pounds. Major exporting countries, as a percentage of total U.S. fresh mushroom imports, were Canada (92.1%), Japan (3.7%), Taiwan (1.4%), and France (0.9%). The proposed order would require each mushroom producer and importer who produces or imports more than 500,00 pounds of fresh mushrooms per year to pay an assessment not to exceed one percent per pound. In addition, an estimated 100 first handlers of fresh mushrooms, a majority of whom would be classified as small firms, would be required to collect and remit the assessments.

This rule proposes the establishment of procedures for the conduct of a referendum to determine whether a proposed order should be issued. Such procedures would permit all eligible producers and importers of mushrooms to vote. Participation in the referendum would be voluntary. Votes may be cast by mail ballots, at polling places, or by any combination of the foregoing. These procedures would also apply to any subsequent referenda to amend, suspend, or terminate the order, or any provision thereof, should the proposed order be implemented.

This rule also proposes the establishment of rules of practice to govern proceedings on petitions to modify or be exempted from the proposed order. Such petitions could be made by any person subject to the order based on the belief that the order, or a provision of such order, or any obligation imposed in connection with the order, is not in accordance with law.

The Administrator of the Agricultural Marketing Service has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The Act authorizes the development of a nationally coordinated program of promotion, research, consumer information, and industry information designed to strengthen the mushroom industry's position in the marketplace; maintain and expand existing markets and uses for mushrooms; and develop new markets and uses for mushrooms.

In response to an invitation to submit proposals in the January 30, 1991, issue of the **Federal Register** (56 FR 3425), one proposal for a complete promotion, research, and consumer information order was received from the American Mushroom Institute (AMI), a national trade association. In addition, several provisions to be incorporated into a proposed promotion, research, and consumer information order were received from United Food, Inc. (United), a mushroom producer. The Department reviewed the submissions and issued a proposed rule containing them in the October 4, 1991, issue of the **Federal Register** (56 FR 50283). The Department, after reviewing and considering comments received on the proposed rule, issued a proposed order incorporating those provisions submitted by AMI and United, insofar as they were practicable and in accordance with the Act. After receiving and considering comments on the proposed order, as well as holding a public meeting, the Department will issue a final order. The Act requires that a referendum be conducted among eligible producers and importers before an order can become effective. The Act further requires that a referendum be held within the 60-day period immediately preceding the effective date of the order as to determine whether persons subject to the order favor issuance of the order.

This rule would establish procedures to be followed by the Department in conducting a referendum to determine whether mushroom producers and importers favor issuance of a proposed order. In addition, referenda may be conducted at the request of a representative group comprising 30 percent or more of eligible producers and importers to determine if producers and importers favor termination or suspension of an order. The proposed provisions include sections on definitions, voting, instructions for referendum agents and subagents, ballots, the referendum report and the confidentiality of information.

Persons voting in such referenda would certify their eligibility to vote, and would designate their status as either a mushroom producer or importer. Only producers or importers who either produced or imported over 500,000 pounds of mushrooms annually during the representative period would be eligible to vote in such referenda. Producers and importers would certify the pounds of mushrooms they either produced or imported during the representative period. These figures would be used to determine the results of the voting based on the volume of mushrooms produced and imported by those eligible and voting.

In addition to referenda procedures, this rule contains rules for proceedings on petitions to modify or be exempted from a proposed order. Section 1927 of the Act provides that any person subject to an order may file a written petition with the Secretary stating that such order or any provision of such order is not in accordance with law. The person may request a modification of such order or an exemption from certain provisions or obligations of such order. The person shall be given an opportunity for a hearing on the petition, in accordance with regulations prescribed by the Secretary.

In accordance with the Paperwork Reduction Act of 1980, the information collection requirements contained in this action have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581–0093, except for the Council nominee background statement form which is assigned OMB control number 0505–0001. It is estimated that approximately 203 mushroom producers and importers would be eligible to vote in the initial referendum, and that it would take an average of 6 minutes for each producer and importer to complete the referendum ballot. Comments concerning the information collection requirements of this action should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attention: Desk Officer for the Agricultural Marketing Service, USDA.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that chapter XI of title 7 be amended as follows:

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

1. The authority citation for 7 CFR part 1209 continues reads as follows:

Authority: The Mushroom Promotion, Research, and Consumer Information Act of 1990; 7 U.S.C. 6101 *et seq.*

2. Part 1209 is amended by reserving subpart B and adding subparts C and D to read as follows:

Subpart B—[Reserved]

Subpart C—Procedure for the Conduct of Referenda in Connection with the Mushroom Promotion, Research, and Consumer Information Order

Sec.
1209.300 General.
1209.301 Definitions.
1209.302 Voting.
1209.303 Instructions.
1209.304 Subagents.
1209.305 Ballots.
1209.306 Referendum report.
1209.307 Confidential information.

Subpart D—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from the Mushroom Promotion, Research, and Consumer Information Order

1209.400 Words in the singular form.
1209.401 Definitions.
1209.402 Institution of proceeding.

Subpart B—[Reserved]

Subpart C—Procedure for the Conduct of Referenda in Connection with the Mushroom Promotion, Research, and Consumer Information Order

§ 1209.300 General.

Referenda to determine whether eligible producers and importers favor the issuance, continuance, termination, or suspension of a Mushroom Promotion, Research, and Consumer Information Order shall be conducted in accordance with this subpart.

§ 1209.301 Definitions.

Unless otherwise defined in the subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions in subpart A—Mushroom Promotion, Research, and Consumer Information Order.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Mushroom Promotion, Research, and Consumer Information Order, subpart A: §§ 1209.1

through 1209.77, including an amendment to the Order, with respect to which the Secretary has directed that a referendum be conducted.

(c) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and wife who has title to, or leasehold interest in, mushroom production facilities and equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called "joint ventures" wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the production or importation of mushrooms and the authority to transfer title to the mushrooms so produced or imported.

(f) *Eligible producer* means any person defined as a producer in the Order who produces over 500,000 pounds of mushrooms annually during the representative period and who:

(1) Owns or shares in the ownership of mushroom production facilities and equipment resulting in the ownership of the mushrooms produced;

(2) Rents mushroom production facilities and equipment resulting in the ownership of all or a portion of the mushrooms produced; or

(3) Owns mushroom production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the mushrooms produced;

(4) Is a party in a lessor-lessee relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms who share the risk of loss and receive a share of the mushrooms produced. No other acquisition of legal title to mushrooms shall be deemed to result in persons becoming eligible producers.

(g) *Eligible importer* means any person defined as an importer in the Order who engages in the importation of mushrooms, with total importation over 500,000 pounds annually, during the representative period. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced mushrooms immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mushrooms from the U.S. Customs Service when such mushrooms are entered or withdrawn for consumption in the United States.

§ 1209.302 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate may cast a ballot on behalf of such producer, importer or estate. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing estate, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

§ 1209.303 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time when all ballots may be cast.

(b) Determine whether ballots may be cast by mail, at polling places, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(2) The total volume of mushrooms produced by the voting producer during the representative period.

(3) The total volume of mushrooms imported by the voting importer during the representative period, and

(4) In a joint venture, names of the parties and each party's share of ownership.

(d) Give reasonable advance public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, methods of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and.

(2) By such other means as the agent may deem advisable.

(e) Make available to eligible producers and importers the instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of the Order, a summary of the terms and conditions of the Order. No person who claims to be eligible to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer and importer whose name and address is known to the referendum agent.

(g) If ballots are to be cast at pollings places, determine the necessary number of polling places, designate them, announce the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointed subagents, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such agent or subagents during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving

publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 1209.304 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform, in accordance with the requirements herein set forth, any or all of the following functions which, in the absence of such appointment, shall be performed by the agent:

(a) Give public notice of the referendum in the manner specified herein;

(b) Serve as poll officer at a polling place;

(c) Distribute ballots and provide the material specified in § 1209.303(e) of this subpart to producers and importers and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with, the subagent and inquire into the eligibility of such person to vote in the referendum, indicating all challenged ballots deemed to be invalid.

§ 1209.305 Ballots.

The referendum agent and subagent shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1209.306 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1209.307 Confidential information.

All ballots cast and the contents thereof, whether or not relating to the identity of any person who voted or the manner in which any person voted, and all information furnished to; compiled by, or in possession of the referendum agent or subagents shall be treated as confidential.

Subpart D—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Mushroom Promotion, Research, and Consumer Information Order

§ 1209.400 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1209.401 Definitions.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions in subpart A—Mushroom Promotion, Research, and Consumer Information Order; and Subpart C—Procedures for the Conduct of Referenda in Connection with the Mushroom Promotion, Research, and Consumer Information Order.

(a) *Administrative law judge* or *judge* means any administrative law judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(b) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order.

(c) *Proceeding* means a proceeding before the Secretary arising under section 1927 of the Act;

(d) *Hearing* means that part of the proceedings which involves the submission of evidence;

(e) *Party* includes the Department of Agriculture;

(f) *Hearing clerk* means the Hearing Clerk, U.S. Department of Agriculture, Washington, DC;

(g) *Decision* means the judge's report to the Secretary and includes the judge's proposed:

(1) Findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis thereof,

(2) Order, and

(3) Rulings on findings, conclusions and orders submitted by the parties; and

(h) *Petition* includes an amended petition.

§ 1209.402 Institution of proceeding.

(a) *Filing and service of petitions.* Any person subject to the Order desiring to complain that such Order or any provision of such Order or any obligation imposed in connection with the Order is not in accordance with law shall file with the hearing clerk, in quintuplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition in writing the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the Order, or the interpretation or application of such terms or provisions, which are complained of;

(3) A full statement of the facts, avoiding a mere repetition of detailed evidence, upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the Order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the Order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Requests for the specific relief which the petitioner desires the Secretary to grant; and

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) *A motion to dismiss a petitioner: Filing, contents, and responses to a petition.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk a motion to dismiss the petition, or any portion of the petition, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds for objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition,

shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the judge for the judge's consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from the Order shall be governed by paragraph (c)(2) of §§ 900.52 through 900.71 of the Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From Marketing Orders and as may hereafter be amended, and the same are incorporated herein and made a part hereof by reference. However, each reference to *marketing order* in the title shall mean *Order*.

Dated: January 22, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-1916 Filed 1-28-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Financial Assistance Appeals Board

10 CFR Part 1024

Procedures for Financial Assistance Appeals

AGENCY: Department of Energy Financial Assistance Appeals Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy Financial Assistance Appeals Board proposes to amend its Rules of Procedure codified at 10 CFR part 1024. The proposed rule would correct an inconsistence in the time specified for filing notices of appeal by conforming the language in 10 CFR 1024.3(c) with that of 1024.4 Rule 1(a).

DATES: Comments must be received February 28, 1992.

ADDRESSES: Interested persons may submit written comments to: E. Barclay Van Doren, Chairman, Department of Energy, Financial Assistance Appeals Board, room 1006, Webb Building, 4040 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: C. Joseph Carroll, Department of Energy, Financial Assistance Appeals Board, (703) 235-2700.

SUPPLEMENTARY INFORMATION: The proposed rule is a technical amendment which would correct an inconsistency between two provisions of the rules of procedure governing the filing of notices of appeal before the Energy Financial Assistance Appeals Board. One provision, 10 CFR 1024.3(c), provides that a financial assistance recipient must appeal within 60 days after "issuance" of a final decision. The other provision, 10 CFR 1024.4 Rule 1(a), requires that a notice of appeal be filed with the Board within 60 days after "receipt" of a final decision. The proposed rule would resolve the inconsistency by conforming 10 CFR 1024.3(c) with 10 CFR 1024.4 Rule 1(a), thus providing in both sections that a notice of appeal must be filed within 60 days after receipt of a final decision.

Review Under Executive Order 12291

The proposed rule has been reviewed under Executive Order 12291 and has been determined not to be a "major rule" since it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based industries to compete in domestic export markets.

Review Under the Paperwork Reduction Act

The proposed rule has been reviewed under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) and has been determined to be exempt from its requirements by virtue of 44 U.S.C. 3518(c)(1)(B), which provides that the Paperwork Reduction Act does not apply to the collection of information during the conduct of an administrative action involving an agency against specific individuals or entities.

Review Under the Regulatory Flexibility Act

The proposed rule has been reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small business, small government jurisdictions. It has been determined that the proposed rule will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not required.

Review Under the National Environmental Policy Act

The proposed rule has been reviewed under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*), Council on Environmental Quality Regulations (40 CFR parts 1500-08), and the Department of Energy environmental guidelines (10 CFR part 1021) and has been determined not to represent a major Federal action having a significant impact on the human environment. Therefore, no environmental impact statement has been prepared.

Review Under Executive Order 12612

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires the preparation of a federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation. The proposed rule will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Therefore, the preparation of a federalism assessment is not required.

Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed rule set forth in this Notice. Comments should be submitted to the address for the Financial Assistance Appeals Board given at the beginning of this Notice. All comments received on or before the date specified in the beginning of this Notice, and all other relevant information, will be considered by the Board before taking final action on the proposed rule.

Public Hearing

This notice of proposed rulemaking does not involve any significant issues of law or fact and the rule is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Accordingly, pursuant to 42 U.S.C. 7191(c) and 5

U.S.C. 553, the Department of Energy is not scheduling a public hearing.

List of Subjects in 10 CFR Part 1024

Administrative practice and procedure, Financial assistance appeals.

E. Barclay Van Doren,

Chairman, Financial Assistance Appeals Board.

For the reasons set forth in the Preamble, part 1024 or title 10 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 1024—PROCEDURES FOR FINANCIAL ASSISTANCE APPEALS

1. The authority citation for part 1024 continues to read as follows:

Authority: Dept. of Energy Organization Act, Pub. L. 95–91, 91 Stat. 577 (42 U.S.C. 7101, et seq.); E.O. 10789; Pub. L. 95–224, 92 Stat. 3 (41 U.S.C. 501–509).

2. In § 1024.3, paragraph (c) is revised to read as follows:

§ 1024.3 General.

* * * * *

(c) In order that a right to appeal may be exercised in a timely manner, a financial assistance recipient must appeal, in writing, within 60 days after receipt of a "final decision" on the matter by a financial assistance or contracting officer.

* * * * *

[FR Doc. 92–2152 Filed 1–28–92; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–0745]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation CC to conform to recent amendments to the Expedited Funds Availability Act. The proposed amendments make permanent the current availability schedules for deposits at nonproprietary automated teller machines and expand administrative enforcement to cover U.S. offices and branches of foreign banks.

DATES: Comments must be submitted on or before March 27, 1992.

ADDRESSES: Comments, which should refer to Docket No. R–0745, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to the Board's mail room between 9 a.m. and 5 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B–1122 between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director, Division of Reserve Bank Operations and Payment Systems (202/452–3874); Oliver Ireland, Associate General Counsel (202/452–3625), or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA," Public Law 102–242, 105 Stat. 2236 (1991)) amends the Expedited Funds Availability Act ("Act") (12 U.S.C. 4001 *et seq.*), effective December 19, 1991. Section 227 of the FDICIA amends section 603(e) of the Act regarding deposits at nonproprietary automated teller machines ("ATMs"). Section 212(h) of the FDICIA amends section 610(a) of the Act to provide for administrative enforcement over U.S. branches and agencies of foreign banks. The Board is requesting comment on proposed amendments to Regulation CC (12 CFR part 229) and revisions to the Commentary to implement the amendments to the Act, as described below.[1]

Deposits at Nonproprietary ATMs

Currently, under § 229.12(f)(1) of Regulation CC, a depository bank may treat all deposits made by its customers at a nonproprietary ATM [2] as though the deposits were nonlocal checks under the permanent schedule, i.e., make them available by the fifth business day after the day of deposit. This special treatment was accorded deposits made at nonproprietary ATMs because the depository bank cannot ascertain the composition of these deposits (i.e., whether the deposit consists of cash, checks generally subject to next-day availability, or local or nonlocal checks). Effective November 28, 1992, however, § 229.12(f)(2) requires deposits of cash, "next-day" (as described in § 229.10(c)(1)(i) through (v) and (vii)), and local and other checks (as described in § 229.12(b)) at a nonproprietary ATM to be made available by the second business day following the banking day of deposit. Nonlocal checks deposited at a nonproprietary ATM would continue to be made available by the fifth business day following the banking day of deposit.[3]

Depository institutions and ATM operators have raised concerns with Congress and the Board about the operational problems and potential for fraud under the shorter schedules for nonproprietary ATM deposits. In two reports to Congress on the implementation of the Act and two reports specifically discussing deposits to nonproprietary ATMs,[4] the Board summarized these concerns and recommended that Congress amend the Act to provide fifth-day availability for all deposits at nonproprietary ATMs on a permanent basis.

The FDICIA amendments to section 603(e) of the Act eliminate the shorter holds for deposits at nonproprietary ATMs that were scheduled to take effect in November 1992 and extend the current 5-day hold permanently. The Board is proposing amendments to §§ 229.12 (a) and (f) of the regulation and revisions to the Commentary to reflect these changes.

Administrative Enforcement

Title II, Subtitle A of the FDICIA increases the supervisory responsibilities of U.S. banking regulatory agencies over U.S. offices and branches of foreign banks. Section 212(h) of the FDICIA makes conforming changes to the administrative enforcement provisions in section 610(a) of the Act. These amendments were effective December 19, 1991. The Board is proposing conforming amendments to § 229.3(a) of Regulation CC. (U.S. branches and agencies of foreign banks are already subject to the substantive

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[1] Section 225 of the FDICIA amends section 604 of the Act regarding exception holds for "next day" and "second-day" availability checks and one-time exception hold notices. To allow depository institutions to avail themselves of these changes immediately, the Board has adopted interim amendments to Regulation CC and has requested comment pending a final rule. See Docket R–0744, elsewhere in today's **Federal Register**.

[2] A nonproprietary ATM generally is an ATM that is not owned or operated by the depository bank.

[3] The effective date for the shorter schedules for nonproprietary ATM deposits was extended from August 31, 1990, to November 28,1992, by the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. No. 101–625; § 1001). The Board adopted conforming amendments to Regulation CC at that time. *See* 55 FR 50616, December 11, 1990, (interim rule) and 56 FR 7799, February 28, 1991 (final rule).

[4] *See*, Board of Governors of the Federal Reserve System, *Report to Congress Under the Expedited Funds Availability Act*, September 1991 and March 1990, and *Deposits at Nonproprietary Automated Teller Machines: Report to Congress Pursuant to the Expedited Funds Availability Act*, October 1990 and July 1990.

requirements of the Act and Regulation CC.)

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposing rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b))—a description of the reasons why the action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule—are contained in the supplementary information above. The Board's proposed rule requires no additional reporting or recordkeeping requirements, nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

Another requirement for the initial regulatory flexibility analysis is a description of, and where feasible, an estimate of the number of small entities to which the proposed rule shall apply. The proposed rule will apply to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a negative economic impact on small institutions, but rather will decrease the risk and cost for all depositary banks by eliminating the requirement for shorter holds on deposits made to nonproprietary ATMs after November 27, 1992.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve Systems.

For the reasons set out in the preamble, 12 CFR part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: Title VI of Public Law 100–86, 101 Stat. 552, 635, 12 U.S.C. 4001 *et seq.*

2. In § 229.3, paragraph (a)(1) is revised and concluding text to paragraph (a) is added after paragraph (a)(3) to read as follows:

§ 229.3 Administrative enforcement.

(a) * * *

(1) Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818 *et seq.*) in the case of—

(i) National banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) Member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board; and

(iii) Banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

* * * * *

The terms used in paragraph (a)(1) of this section that are not defined in this part or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

* * * * *

3. In § 229.12, paragraph (a) is revised as follows, paragraphs (f)(1)(ii) and (f)(2) are removed, and the designation "(1)(i)" in paragraph (f) is removed:

§ 229.12 Permanent availability schedule.

(a) *Effective date.* The permanent availability schedule contained in this section is effective September 1, 1990.

* * * * *

Appendix E to Part 229—[Amended]

4. Appendix E to part 229 is amended, in the Commentary under § 229.12, by removing the last sentence of paragraph (a) and revising paragraph (f) to read as follows:

Appendix E—Commentary

* * * * *

§ 229.12 Permanent Availability Schedule

* * * * *

(f) *Deposits at nonproprietary ATMs.* The Act and regulation provide a special rule for deposits made at nonproprietary ATMs. This paragraph does not apply to deposits made at proprietary ATMs. All deposits at a nonproprietary ATM must be made available for withdrawal by the fifth business day following the banking day of deposit (i.e., such deposits may be treated in the same manner as deposits of nonlocal checks under the permanent schedule). For example, a deposit made at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than Monday of the following week. The provisions of § 229.10(c)(1)(vii) requiring a depositary bank to make up to $100 of an aggregate daily deposit available for withdrawal on the next business day after the banking day of deposit do not apply to deposits to a nonproprietary ATM.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 15, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–1475 Filed 1–28–92; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 200, 203, 205, 206, 231, 232, 235, 263, 288, 292, 294, 296, 297, 298, 302, 372, 380, 384, 387, and 399

[Docket No. 47939]

RIN 2105–AB84

Aviation Economic Rules

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is amending parts 200, 203, 205, 206, 231, 232, 235, 263, 288, 292, 294, 296, 297, 298, 302, 372, 380, 384, 387, and 399 in order to make technical corrections, eliminate obsolete terms and provisions, and to provide better organization. Of particular note, the U.S. air taxi liability insurance requirements contained in subpart E of part 298 would be relocated to part 205, which contains the liability insurance rules applicable to all other types of direct air carriers, and the allowed liability exclusions set forth in § 298.44 would be eliminated. In addition, the rules governing exemptions for certificated carriers when operating small aircraft, presently contained in subpart I of part 298, would be transferred to part 206 along with various other special authorizations and exemptions applicable to certificated air carriers.

DATES: Comments must be received on or before March 30, 1992.

ADDRESSES: Comments should be directed to the Documentary Services Division, Docket 47939, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Comments Invited

Interested persons are invited to participate in this rulemaking action by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis

supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket No. 47939. The postcard will be date/time stamped and returned to the commenter. All communications on or before the specified closing date will be considered by the Assistant Secretary for Policy and International Affairs before taking action on any further rulemaking. Also, this proposal may be changed in light of comments received. All comments submitted will be available for examination in Docket 47939. A report summarizing each substantive public contact with DOT personnel concerned with this rulemaking will be filed in the docket.

Background

Introduction

Section 204 of the Federal Aviation Act (72 Stat. 743, 49 U.S.C. 1324) ("Act") empowers the Department, in part, to make rules and establish procedures to enable it to carry out its functions under the Act. Pursuant to that authority, the Department has undertaken a review of the aviation economic regulations promulgated by the Civil Aeronautics Board ("CAB"), as contained in 14 CFR chapter II, with a view to eliminating obsolete terms and provisions, and making changes to bring the rules into conformance with the Department's current needs and to facilitate their use by the public. This Notice of Proposed Rulemaking is one of a series of such efforts designed to accomplish these ends.

The particular regulations proposed to be eliminated, relocated, or revised, and the reasons therefor, are discussed in the following paragraphs. Throughout, references to the Civil Aeronautics Board, its offices and forms would be replaced, where appropriate, with references to the Department, its offices and forms.

In Part 200—Definitions and Instructions, new § 200.1—Terms and Definitions would contain the provisions of current §§ 200.1, 200.2, 200.3, 200.4, 200.5, and 200.6, which would be revised and restructured as paragraphs (a) through (f) of new § 200.1. Current § 200.1—Board would become new § 200.1(a). New § 200.1(b) would state that the term "Department" means the Department of Transportation. Paragraph (c) would contain the first sentence of current § 200.2—Act, revised to add the words "as amended" after the reference to the Federal Aviation Act of 1958. The second sentence of § 200.2, containing an obsolete reference to the Civil Aeronautics Act of 1938, would be removed. The discussions in §§ 200.3—Section and 200.5—Other terms would be combined in new § 200.1(d). Sections 200.4—Rule, regulation, and order and 200.6—Terms defined by Act would become §§ 200.1(e) and (f), respectively.

Section 200.7—Instructions would be redesignated § 200.2, and the last sentence, which refers to an obsolete section numbering system, would be removed. Section 200.8—Supplemental air carrier also would be removed. The classification "supplemental air carrier" was redesignated "charter air carrier" in the Airline Deregulation Act of 1978.

Part 203—Waiver of Warsaw Convention Liability Limits and Defenses would be revised by replacing obsolete references to CAB Agreement 18900 and CAB Forms 263 and 298–A with appropriate DOT references.

To Part 205—Aircraft Accident Liability Insurance would be added the provisions of Subpart E—Liability Insurance Requirements of Part 298—Exemption for Air Taxi Operations so that all of the Department's rules relating to aircraft liability insurance could be found in one part. Two new insurance certificates (OST Forms 6410 and 6411) would be created to replace current forms, one to be filed for all U.S. direct air carriers (air taxi operators, commuter air carriers, and certificated carriers operating either large or small aircraft), and one for all foreign direct air carriers (Canadian charter air taxis operating either large or small aircraft and all other foreign air carriers operating either large or small aircraft). The current forms (OST Forms 4520 and 4521, and DOT Form 4522) are confusing and burdensome for air carriers, insurance companies and Department staff, as evidenced by the number of instances in which insurers file incorrect forms, which the Department must return for correction. We believe that use of the newly redesigned and consolidated forms will significantly reduce these filing errors.

The only substantive changes to be made in the insurance requirements would be (1) to eliminate the exclusions contained in § 298.44 and the Standard Endorsement (DOT Form 4522) to air taxi operators' aircraft accident insurance policies, and (2) to make air taxi operators subject to the cargo liability disclosure provisions of § 205.8. Such changes would conform the air taxi operator liability insurance requirements (except for the specific liability limits) to the rules applicable to other air carriers.

The Department's objective in eliminating specifically allowed exclusions is twofold. Our first concern is to ensure that the public is not denied insurance protection because of an excludable action on the part of an air carrier. For example, § 298.44(l) presently allows an insurer to deny liability in the case of the failure by an air taxi operator to perform a certain FAA-required preventive maintenance procedure which failure is later determined to be a contributing cause of an accident. Another example of an excludable action (allowed by § 298.44(h)) is the operation of an air taxi flight piloted by an airman who does not meet the minimum flight time requirements for the particular type of operation being conducted. In this case, the insurer would be able to deny liability for injuries in an accident brought about by the pilot's lack of experience. Such exclusions have the effect of denying an injured person a recovery if the airline's assets are not sufficient to pay the damages.

In the final rule establishing the insurance regulations for air taxi operators (33 FR 18231, effective March 7, 1969), the CAB explained its position on allowing exclusions:

> For an interim period, the Board will accept policies which continue to contain the insurance companies' standard "safety" exclusions, though in modified form. According to insurers, those policy exclusions are customary in the industry and form the keystone of the insurance contracts. * * * While the industry seeks to adjust itself to the rule that air transportation must be covered by insurance, the insurers' ability to retain traditional policy provisions will enhance the likelihood that all Board-authorized air taxi operators will be able to obtain adequate insurance at the lowest possible rates. The Board is aware that air taxi operators will gain increased insurance coverage if the customary exclusions * * * are eliminated * * *. Once the air taxi insurance program is safely on the road to success, the Board intends to reexamine the need for the customary exclusions."

Thus, the CAB agreed to retain the safety exclusions temporarily in the interests of facilitating compliance with the new rule. However, in adopting insurance regulations for Canadian charter air taxi operators in part 294, all-cargo carriers in part 291, and charter carriers in part 208, no exclusions were authorized. Part 205, the insurance regulation adopted in 1961 to cover operations by all types of direct air

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carriers except U.S. air taxi operators, states in § 205.6 that no exclusion in the policy nor any violation by the insured of any safety-related requirement imposed by statute or regulation, will relieve the insurer from the liability coverage required by this part.

Between 1980 and 1983, the CAB proposed a series of revisions to the air taxi insurance rules (EDR–395 through EDR–395C), including the elimination of the safety exclusions. However, no agreement was reached among the carriers, insurers and the government as to proposed new minimum limits of liability, and the rulemaking was finally withdrawn by the Department in 1989.

We believe that passengers should be afforded minimum protection for injuries sustained while riding on aircraft engaged in air transportation, and we do not see a meaningful basis for allowing such protection to be denied because an aircraft, operated by an air taxi operator, did not meet safety standards when an accident occurred.

Our other objective in deleting authorized exclusions is to eliminate government interference, except where safety is a factor, from what is a purely contractual matter between a businessperson and an insurance provider. For example, § 298.44(a) states under what circumstances one insurer would be liable if the air taxi operator also has valid and collectible insurance under another policy. Section 298.44(c) states that an insurer is not liable for illness or injuries suffered by air taxi employees if such misfortunes are covered by the operator's workers' compensation insurance. Insurers and insureds commonly negotiate between themselves these purely economic aspects of the insurance policy and should not be expected to look to the government for authorization before deciding whether and how to include such terms. In deciding not to list specifically allowable exclusions in part 205, the CAB stated:

> This type of regulation gives the airlines and the insurance companies a flexible performance standard, instead of having the policy designed in detail by regulation. Bargaining can thus take place to fashion policies to meet airlines' needs at the least possible cost. (ER–1253, 46 FR 52577, October 27, 1981)

Therefore, insurers and carriers would be free to design policies which include deductibles and combinations of self-insurance and commercial insurance to provide catastrophic coverage.

We have seen no evidence that carriers subject to part 205 have been unable to obtain affordable liability insurance because that rule does not authorize exclusions, and we do not believe that the elimination of exclusions for air taxi operators would result in unaffordable coverage. Based on discussions with insurance representatives, it is our understanding that insurance costing decisions are based on an overall assessment of the risk and on claim experience. Insurers of carriers subject to part 205 report that if, because of that rule's prohibition on exclusions, they are required to pay amounts they otherwise would not have paid, they have the right (as provided in § 205.6(a)) to try to recover from carriers for any such amounts paid. Thus, carriers have an added incentive to avoid accidents—to prevent an increase in insurance premiums or a payout of assets to the insurer for claims paid. We welcome the comments of air taxi operators and insurers on these matters.

The other substantive change proposed to be made to the part 298 insurance regulations—to make air taxi operators subject to the cargo liability disclosure provisions of § 205.6—would mean that an air taxi operator engaged in cargo transport would, like other direct air cargo carriers, be required to disclose to shippers whether it has cargo liability insurance, and any limit on its liability, such as a per-pound amount, that it imposes on the shippers. Such disclosure would be required to be made on airwaybills and rate sheets, the documents most likely looked at by shippers either before the shipping decision is made or when the shipment is given to the carrier. Such information is critical to enable a shipper to make an informed decision on whether to ship on a certain carrier and whether to purchase additional insurance. The need for requiring disclosure of this information is heightened by the fact that cargo carriers are not required by the Department to have cargo insurance.

Part 205 would also be revised by replacing obsolete references to CAB organizations and forms with corresponding references to Department offices and forms. In addition, the instruction in §§ 205.4(c) and 205.7(a) that commuter air carriers operating in Alaska should file insurance certificates with the Department's Alaska Field Office would be eliminated. The insurance records for commuter carriers should be located in the Department's Office of Aviation Analysis, where commuter fitness and registration files are maintained. However, the two sections would direct air taxi operators conducting business in Alaska to file their insurance certificates with the Department's Alaska Field Office, where air taxi registration files are located.

In Part 206—Certificates of Public Convenience and Necessity: Special Authorizations, the words "and Exemptions" would be added at the end of the title of the Part. Section 206.2—Omission of stop at route junction points would be removed. This rule was made obsolete by the Airline Deregulation Act's elimination of domestic airline route regulation. In its place, redesignated as § 206.2, we propose relocating the provision contained in Part 231—Exemption from Schedule Filing, which relieves all air carriers from the need to comply with the statutory requirement contained in section 405(b) of the Act to periodically file copies of their flight schedules. Since part 231 contains no other provisions, that part would then be removed.

Section 206.3—Transportation of newspersons by all-cargo carriers would be revised by combining into one paragraph the introductory text and paragraph (a) and removing current paragraphs (b) and (c). The latter two paragraphs stipulate the fair level to be charged newspersons transported by all-cargo carriers and direct such carriers to file information concerning the identity of such newspersons, the routes over which they were transported, and the fares charged. The Department no longer has a regulatory need for this information; however, if the carrier so desires, it may include such fare data in the unpublished fares portion of its tariff filing.

We propose relocating, to new § 206.4, and restructuring the provisions contained in Part 288—Exemption of Air Carriers for Military Transportation, which exempts air carriers providing charter or scheduled air service under contract to the Department of Defense from the tariff filing and certain charter payments requirements of the Act and the Department's regulations.

In the years since Subpart I—Air Taxi Operations by Certificated Carriers of Part 298—Exemption for Air Taxi Operations was adopted in 1982, various of its provisions have been made obsolete by legislative and regulatory changes. We propose to bring these rules up to date and to transfer them to part 206 where other rules on exemptions applicable to certificated carriers are located.

A new section, § 206.5—Small aircraft operations by certificated carriers, would replace subpart I of part 298. The current language in § 298.90 describing under what conditions a certificated carrier is operating under part 298 or pursuant to its certificate is confusing and would be revised in new § 206.5 to state that certificated carriers, when operating with small aircraft, are exempt from the requirements of the Act

as set forth in that section, as if their operations were air taxi operations.

More specifically, when operating small aircraft, certificated carriers are exempt from the sections of the Act that are set forth in part 298 Subpart B—Exemptions, except section 407, which authorizes the Department to require carriers to file reports and submit to inspection of their accounts and property. Section 206.5 would also provide that certificated carriers operating small aircraft would continue to be subject to the following rules:

—Section 298.30, requiring public notification of the carrier's policy regarding baggage liability and denied boarding compensation in accordance with the terms of § 254.5;
—Section 298.38, concerning the bonding or escrow requirements to be met in connection with Public Charter operations under part 380;
—Subpart F of part 298, which sets forth the reporting requirements for small certificated carriers and commuter air carriers (however, any certificated carrier that conducts operations with at least one large aircraft is subject to the reporting requirements of part 241 for all of its aircraft operations); and
—Subpart H of part 298, which provides that violations of any provisions of the Act or any rules or orders issued pursuant to the Act may subject the violator to enforcement proceedings.

New § 206.5 would also state that certificated operators of small aircraft are subject to the rules in part 215 on the use and change of air carrier names instead of the rules pertaining to this subject in § 298.36, and to certain tariff filing requirements for operations conducted in foreign air transportation.

Since the rules concerning air taxi liability insurance are being relocated to part 205, subpart E of part 298 is being removed.

The provisions of subpart I not transferred to part 206 are also being removed; specifically,

—Section 298.90(a) and (c), which contain obsolete provisions;
—Section 298.93(a), regarding tariff filing requirements for interstate and overseas air transportation. Tariffs are no longer required to be filed such air transportation;
—Section 298.94, requiring a 90-day advance notice to be filed by a commuter carrier that is proposing to modify, suspend, or terminate its portion of a joint service agreement with a certificated carrier. With the deregulation of domestic air transportation, this provision is unnecessary;
—Section 298.97, stating that the limitations on the carriage of mail by air taxi operators in § 298.35 are applicable to certificated carriers only when operating small aircraft, is outdated; and
—Section 298.100, which contains an obsolete provision authorizing certificated carrier operating small aircraft to comply with the insurance requirements of subpart E of part 298 until the newly adopted part 205 insurance rules became effective.

(Note: Additional changes being proposed in part 298, which are not specifically stated to certificated carriers conducting operations with small aircraft, are discussed below.)

The changes proposed to Part 232—Transportation of Mail, Review of Orders of Postmaster General are only to eliminate references to the Civil Aeronautics Board.

Part 235—Reinvestment of Gains Derived from the Sale or Other Disposition of Flight Equipment would be removed. This part provides, pursuant to section 408(d) of the Act, that if gains derived by an air carrier from the sale or other disposition of flight equipment are reinvested in flight equipment, such gains will not be considered by the Board in determining he carrier's need for compensation for the carriage of U.S. mail. Section 408(d) ceased to be effective with the sunset of the CAB on December 31, 1984; therefore, part 235 is now moot.

We propose relocating and restructuring the provisions contained in Part 263—Participation of Air Carrier Associations in Board Proceedings, which sets forth the conditions under which air carrier associations may participate in aviation proceedings. This rule, to be redesignated § 302.10a, would be placed amid other rules relating to parties to aviation proceedings.

Part 292—Classification and Exemption of Alaskan Air Carriers would be removed. In conjunction with the elimination of domestic route regulation, the separate classification of Alaskan Air carriers was abolished. Therefore, the provisions of part 292 are now moot.

In § 294.2(j) of Part 294—Canadian Charter Air Taxi Operators, the definitions of "small aircraft" would be amended to eliminate the word "both"and change the word "and" to "and/or" in order to make the definition consistent with the 1974 U.S.-Canada Non-scheduled Air Services Agreement.

Section 296.3 of Part 296—Indirect Air Transportation of Property would be amended by correcting references to the CAB.

In Part 297—Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations, the typographical error in § 297.10(a)(5) "interstate" would be corrected to "interstate". Also, in § § 297.3 (a) and (b), the definitions of a "foreign air freight forwarder" and a "foreign cooperative shippers association" would be amended to eliminate the reference to registration under part 296. Part 298 does not require U.S. indirect cargo carriers to register with the Department.

Part 298—Exemptions for Air Taxi Operators (§ 298.2(f)) classifies a commuter air carrier as an air taxi operator that performs scheduled passenger service. In order to make it more apparent that the part 298 exemptions apply to commuter air carriers, we propose to add the phrase "commuter air carriers" each time the term "air tax operators" appears in part 298, except for those few instances which clearly do not refer to scheduled passenger carriers.

The typographical error in § 298.2(f) "tips" would be corrected to "trips".

Section § 298.21(d) would be revised to eliminate the provision allowing commuter air carriers that had been providing scheduled passenger service to an eligible point prior to February 25, 1981, to continue to provide such service until their fitness has been determined; all such commuter carriers have now undergone fitness determinations.

Section 298.34 prohibits an air taxi operator from offering air transportation in Alaska or between Alaska and Canada unless it also holds authority from the State of Alaska. However, Alaska State regulation of transportation ended in March 1985 with the sunset of the Alaska Transportation Commission pursuant to a State referendum; thus, § 298.34 is no longer pertinent.

In § 298.35, which prohibits the carriage of mail by air taxi operators except under a contract with the Postal Service, the sections of the Postal Reorganization Act cited are outdated and are being changed; and paragraphs (a) and (b) of the section, which make a distinction between air taxi operators that in 1973 were authorized to carry mail under temporary of final mail rates, are obsolete and are being removed.

In § 298.36, the term "air carrier operating certificate," referring to the FAA-issued document authorizing a company to engage in air carrier operations, is being revised to "air carrier certificate," to reflect current FAA terminology. Also, a new paragraph (c) would be added to

§ 298.36 stating that commuter air carriers are subject to the requirements of part 215 with regard to the use and change of air carrier names. (Current paragraph (c) of § 298.36 would be redesignated as paragraph (d).)

In addition, a majority of sections in part 298 would be revised by replacing obsolete references to CAB organizations and forms with references to Department organizations and forms.

In Part 372—Overseas Military Personnel Charters, §§ 372.20 and 372.30(a) footnote 3 would be revised by deleting obsolete references to air carriers that were engaging in overseas military personnel charter operations on August 27, 1971, but whose applications for operating authorization had not been acted upon.

The reference to appendix B contained in § 372.24(c) and footnote 1 thereto, would be replaced with a reference to appendix A. The footnote sequence would then be corrected in §§ 372.28 and 372.30(a)(13).

At the end of part 372, a new appendix A, overseas military personnel charter operator surety bond, would be added, as shown in the amended rule below.

In Part 380—Public Charters, in order to make it more apparent that the "direct air carrier" classification includes commuter air carriers, we propose to add the phrase "commuter air carrier" after "air taxi operator" in both § 380.2 and § 380.11.

Paragraph (b) of § 380.10(b)—Public Charter general requirements would be amended to make the Public Charter rules applicable to whole plane charters where the aircraft has less than 20 seats.

Section 380.19—Old-rule charters is being deleted. This section refers to charter rules that were revoked in 1979.

Section 380.28(a) would be revised to require charter operators to file an original plus two copies of each charter prospectus with the Department, instead of an original plus one copy as the rule currently states. The additional copy is needed by staff for computerizing charter operator data.

The text of appendix A to part 380, statement of Public Charter operator surety bond, would be revised as shown in the amended rule below. Appendices B, C, D, and F would be replaced by OST Forms 4532, 4533, 4534, and 4535, respectively. Appendix E, Public Charter Operator's Surety Trust Agreement, would be redesignated appendix B. In addition, under the present wording of the Agreement, charter participants who had not signed an operator-participant contract could be considered as not contractually bound to participate in the charter. They could, consequently, not be considered as beneficiaries of the trust created by the agreement. To correct this possible loophole, the wording of the first requirement for "Beneficiaries" is being revised.

Part 384—Statement of Organization, Delegation of Authority, and Availability of Records and Information, which contains a general description of the CAB, is obsolete and may be removed. Information concerning availability of Department records and information and delegation of authority to Department staff is treated in parts 310 and 385, respectively. Similarly, the material describing the functioning of the Board during the national emergency in Part 387—Organization and Operation during Emergency Conditions is obsolete and would be removed.

In Part 399—Statements of General Policy, § 399.110(e), which was adopted in 1979, states that the Board was then adopting existing state insurance and bonding requirements for air carriers until it had determined the need for federal regulation in those areas. Since the Board developed regulations for air carrier insurance and bonding several years ago, and since these rules were subsequently adopted by the Department, there is no longer a need for this section and it is being removed.

Economic Impacts

This proposed rulemaking has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, the proposed amendments would not adversely affect employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. No regulatory evaluation is required because adoption of the amendments would result in minimal economic costs. The proposed amendments are not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because they do not involve important Departmental policies; rather, they are being made solely for the purposes of eliminating or correcting obsolete requirements and reorganizing the presentation of the regulations used by the Department to administer its air carrier economic regulatory functions.

For purposes of its aviation economic regulations, Departmental policy categorizes air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. The ability of such entities to engage in air carrier operations essentially will be unaffected by the proposed regulation amendments.

The Department has considered the implications of this proposed action under the requirements of Executive Order 12612, Federalism, and has determined that the preparation of a Federalism Assessment is not warranted. The rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibility among the various levels of government.

The reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under *DOT No.:* 3564; *OMB No.:* 2106–0030; *Administration:* Department of Transportation, Office of the Secretary; *Title:* Aviation Economic Rules; *Proposed Use of Information:* To determine that air carriers possess appropriate levels of aircraft accident liability insurance; *Frequency:* On occasion; *Burden Estimate:* 2,809 hours; *Respondents:* U.S. air carriers, and charter operators; *Form(s):* OST Forms 6410 and 6411; *Average Burden Hours per Respondent:* 0.65 hours. For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for OST. It is requested that comments sent to OMB also be sent to the OST rulemaking docket for this proposed action.

List of Subjects

14 CFR Part 200

Air transportation.

14 CFR Part 203

Air carriers, Air transportation, Foreign relations, Insurance, Reporting and recordkeeping requirements.

14 CFR Part 205

Air carriers, Freight, Insurance, Reporting and recordkeeping requirements.

14 CFR Part 206

Air carriers, Emergency medical services, News media.

14 CFR Part 231

Air carriers, Postal Service.

14 CFR Part 232

Administrative practice and procedure, Air carriers, Postal Service.

14 CFR Part 235

Air carriers, Aircraft, Income taxes.

14 CFR Part 263

Administrative practice and procedure, Air carriers.

14 CFR Part 288

Charter flights, Military air transportation.

14 CFR Part 292

Air carriers, Alaska.

14 CFR Part 294

Air taxis, Canada, Charter flights, Reporting and recordkeeping requirements.

14 CFR Parts 296 and 297

Air carriers, Freight forwarders.

14 CFR Part 298

Air taxis, Alaska, Canada, Insurance, Reporting and recordkeeping requirements.

14 CFR Part 302

Administrative practice and procedure, Air carriers, Postal Service.

14 CFR Part 372

Charter flights, Military air transportation, Reporting and recordkeeping requirements, Surety bonds.

14 CFR Part 380

Charter flights, Reporting and recordkeeping requirements, Surety bonds.

14 CFR Part 384

Freedom of information, Organization and functions (Government agencies).

14 CFR Part 387

Civil defense, Organization and functions (Government agencies).

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

Proposed Rule

For the reasons set out in the preamble, title 14, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 200 is revised to read as follows:

PART 200—DEFINITIONS AND INSTRUCTIONS

Sec.
200.1 Terms and Definitions.
200.2 Instructions.

Authority: 49 U.S.C. 1324, 1371, 1373, 1374, 1377, 1378, 1379, 1381, 1382, 1383, 1384, 1385, 1387, 1482.

§ 200.1 Terms and definitions.

Unless otherwise specifically stated, words and phrases other than those listed in this section have the meaning defined in the Act.

(a) *Board* or *CAB* means the Civil Aeronautics Board.

(b) *Department* or *DOT* means the Department of Transportation.

(c) *Act* means the Federal Aviation Act of 1958, as amended.

(d) *Section* refers to a section of the Act or a section of the regulations in this chapter, as indicated by the context. The terms *this section, pursuant to this section, in accordance with the provisions of this section,* and words of similar import when used in this chapter refer to the section of this subchapter in which such terms appear.

(e) *Rule, regulation,* and *order* refer to the rules, regulations, and orders prescribed by the Board or the Department pursuant to the Act.

§ 200.2 Instructions.

The regulations of the Department may be cited by section numbers. For example, this regulation may be cited as "§ 200.2 of the Aviation Economic Regulations." The sections contained in the Rules of Practices may also be cited by appropriate rule numbers. (See § 302.2 of this chapter.) For example, 14 CFR 302.10 may be cited as "rule 10 of the Rules of Practice."

PART 203—[AMENDED]

2. The authority citation for part 203 is revised to read as follows:

Authority: 49 U.S.C. 1301, 1324, 1371, 1372, 1373, 1374, 1377, 1378, 1381, 1386, 1387, 1388, 1389.

§§ 203.1, 203.4, 203.5 [Amended]

3. In §§ 203.1, 203.4(a), and 203.5, remove the word "CAB".

4. Section 203.3 is revised to read as follows:

§ 203.3 Filing requirements for adherence to Montreal Agreement.

All direct U.S. and foreign air carriers shall have and maintain in effect and on file in the Department's Documentary Services Division (Docket 17325) on OST Form 4523 a signed counterpart to Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and Hague Protocol approved by CAB Order E–23680, dated May 13, 1966 (the Montreal Agreement), and a signed counterpart of any amendment or amendments to such Agreement that may be approved by the Department and to which the air carrier or foreign air carrier becomes a party. U.S. air taxi operators registering under part 298 of this chapter and Canadian charter air taxi operators registering under part 294 of this chapter may comply with this requirement by filing completed OST Forms 4507 and 4523, respectively, with the Department's Office of Aviation Analysis. Copies of these forms can be obtained from the Office of Aviation Analysis, Regulatory Analysis Division. (Approved by the Office of Management and Budget under control number 3024–0064).

§ 203.4 [Amended]

5. In § 203.4(a), remove the words "Board's Tariff" and add, in their place, the words "Department's Tariffs".

§ 203.5 [Amended]

6. In § 203.5, remove the word "Board" and add, in its place, the word "Department".

PART 205—[AMENDED]

7. The authority citation for part 205 is revised to read as follows:

Authority: 49 U.S.C. 1324, 1371, 1372, 1386, 1388, 1389.

§§ 205.1, 205.3, 205.6, 205.7 [Amended]

8. In §§ 205.1, 205.3(a), 205.3(e), 205.6(a), 205.6(b)(2)—only where it appears the second time, 205.7(a), and 205.7(b), remove the word "Board" and add, in its place, the word "Department".

§ 205.1 [Amended]

9. In § 205.1, remove the word "certain"; and, after the word "foreign" where it appears the second time in the section, add the word "direct".

10. Section 205.2 is revised to read as follows:

§ 205.2 Applicability.

These rules apply to all U.S. direct air carriers, including commuter air carriers and air taxi operators as defined in § 298.2 of this chapter, and foreign direct

air carriers, including Canadian charter air taxi operators as defined in § 294.2(c) of this chapter.

§ 205.3 [Amended]

11. In the third sentence of § 205.3(a), remove the words "self-insurance plan" and add, in their place, the words "complete plan for self-insurance"; in the fourth sentence of § 205.3(a), remove the words "summary of" and add, in their place, the words "a summary of the complete".

12. Sections 205.4 and 205.5 are revised to read as follows:

§ 205.4 Filing of evidence of insurance.

(a) A U.S. or foreign air carrier shall file a certificate of insurance or a complete plan for self-insurance with the Department's Office of Aviation Analysis. Each carrier shall ensure that the evidence of aircraft accident liability coverage filed with the Department is correct at all times. The Department will normally notify the carrier within 20 days of receipt if the certificate or plan does not meet the requirements of this part. The two Certificates of Insurance (OST Form 6410 for U.S. air carriers, including commuter air carriers and air taxi operators, and OST Form 6411 for foreign air carriers, including Canadian charter air taxi operators) are available from the Office of Aviation Analysis. The Department may return the certificate or self-insurance plan to the carrier if it finds for good cause that such plan or certificate does not show adequate evidence of insurance coverage under its part.

(b) If the coverage is by type or class of aircraft or by specific aircraft, endorsements that add previously unlisted aircraft or aircraft types or classes to coverage, or that delete listed aircraft, types, or classes from coverage, shall be filed with the Department's Office of Aviation Analysis not more than 30 days after the effective date of the endorsements. Aircraft shall not be listed in the carrier's operations specifications with the FAA and shall not be operated unless liability insurance coverage is in force.

(c) When the insured air carrier is a U.S. air taxi operator operating in the State of Alaska, certificates and endorsements shall be filed with the Department's Alaska Field Office, 222 West Seventh Street, Box 27, Anchorage, Alaska 99513.

§ 205.5 Minimum coverage.

(a) Insurance contracts and self-insurance plans shall provide for payment on behalf of the carrier, within the specific limits of liability in this section, of all sums that the carrier shall become legally obligated to pay as damages, excluding any deductible in the policy, for bodily injury to or death of a person, or for damage to the property of others, resulting from the carrier's operation or maintenance of aircraft in air transportation provided under its authority from the Department.

(b) U.S. and foreign direct air carriers, including commuter air carriers but excluding U.S. air taxi operators and Canadian charter air taxi operators, shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, and for damage to property, with minimum limits of $300,000 for any one person in any one occurrence, and a total of $20,000,000 per involved aircraft for each occurrence, except that for aircraft of not more than 60 seats or 18,000 pounds maximum payload capacity, carriers need only maintain coverage of $2,000,000 per involved aircraft for each occurrence.

(2) Any such carrier providing air transportation for passengers shall, in addition to the coverage required in paragraph (b)(1) of this section, maintain aircraft accident liability insurance coverage for bodily injury to or death of aircraft passengers, with minimum limits of $300,000 for any one passenger, and a total per involved aircraft for each occurrence of $300,000 times 75 percent of the number of passenger seats installed in the aircraft.

(c) U.S. air taxi operators registered under Part 298 shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, with minimum limits of:

(i) $75,000 for any one person in any one occurence, and a total of $300,000 per involved aircraft for each occurrence, and

(ii) A limit of at least $100,000 for each occurrence for loss of or damage to property.

(2) U.S. air taxi operators carrying passengers in air transportation shall, in addition to the coverage required in paragraph (c)(1) of this section, maintain aircraft accident liability insurance coverage for bodily injury to or death of aircraft passengers, with minimum limits of $75,000 for any one passenger, and a total per involved aircraft for each occurrence of $300,000 times 75 percent of the number of passenger seats installed in the aircraft.

(d) Canadian charter air taxi operators registered under part 294 of this chapter shall maintain the following coverage:

(1) Third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, and for damage to property, with a minimum coverage of $75,000 for any one person in any one occurrence, and a total of $2,000,000 per involved aircraft for each occurrence, except that Canadian charter air taxi operators operating aircraft of more than 30 seats or 7,500 pounds maximum cargo payload capacity, and a maximum authorized takeoff weight on wheels not greater than 35,000 pounds shall maintain coverage for those aircraft of $20,000,000 per involved aircraft for each occurrence.

(2) Canadian charter air taxi operators engaging in passenger charter air service under part 294 of this chapter shall, in addition to the coverage required in paragraph (d)(1) of this section, maintain aircraft accident liability coverage for bodily injury to or death of aircraft passengers, with a minimum coverage of $75,000 for any one passenger and a total per involved aircraft for each occurrence of $75,000 times 75 percent of the total number of passenger seats installed in the aircraft.

(e) Notwithstanding paragraphs (b), (c) and (d) of this section, the carrier may be insured for a combined single limit of liability for each occurrence. The combined single-limit coverage must be not less than the combined required minimums for bodily injury and property damage coverage plus, if the aircraft is used in passenger service, the required total passenger coverages stipulated in paragraph (b) of this section for U.S. and foreign direct air carriers and commuter carriers, paragraph (c) of this section for U.S. air taxi operators, or paragraph (d) of this section for Canadian charter air taxi operators.[1] The single-limit liability policy for the required aircraft accident liability coverage may be provided by a single policy or by a combination of primary and excess policies.

(f) The liability coverage shall not be contingent upon the financial condition, solvency, or freedom from bankruptcy of

[1] For example: The minimum single limit of liability acceptable for an aircraft in air taxi passenger service with 16 passenger seats would be computed on the basis of limits set forth in paragraph (c) as follows: 16 × .75 equals 12; 12 × $75,000 equals $900,000; $900,000 plus $300,000 (nonpassenger liability per occurrence) plus $100,000 (property damage per occurrence) equals $1,300,000. The latter amount is the minimum in which a single-limit liability policy may be written.

the carrier. The limits of the liability for the amounts required by this part shall apply separately to each occurrence. Any payment made under the policy or plan because of any one occurrence shall not reduce the coverage for payment of other damages resulting from any other occurrence.

§ 205.6 [Amended]

13. In § 205.6(b)(2), remove the word "CAB".

§ 205.7 [Amended]

14. In § 205.7(a), remove the words beginning with "the Board's Special Authorities Division" through the end of the first sentence, and add, in their place, the words "the Department's Office of Aviation Analysis (or, for Alaskan air taxi operators, to the Department's Alaska Field Office), which 10-day notice period shall start to run from the date such notice is actually received at the Department".

15. The heading of part 206 is revised to read as follows:

PART 206—CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; SPECIAL AUTHORIZATIONS AND EXEMPTIONS

16. The authority citation for part 206 is revised to read as follows:

Authority: 49 U.S.C. 1324, 1373, 1375, 1386, 1398, 1551.

17. Section 206.2 is revised to read as follows:

§ 206.2 Exemption from schedule filing.

All air carriers are hereby exempted from the requirements of the first sentence of section 405(b) of the Act, which provides that each air carrier must periodically provide the Department and the U.S. Postal Service a listing of all of its regularly operated aircraft schedules and schedule changes, showing for each schedule the points served and the departure and arrival times.

18. Section 206.3 is revised to read as follows:

§ 206.3 Transportation of newspersons by all-cargo carriers.

Notwithstanding the provisions of sections 401(a) and 403 of the Act and part 221 of this chapter, an air carrier holding a certificate of public convenience and necessity for the transportation of only property and mail may provide transportation to persons on regularly scheduled cargo flights for the purpose of collecting data for preparation of feature news, pictorial or like articles provided that the transportation is limited to the writer, journalist, or photographer engaged in the preparation of data for use in feature news, pictorial, or like articles which are to appear in newspapers or magazines, or on radio or television programs and which will publicize the regularly scheduled cargo operations of the carrier.

19. Section 206.4 is added to read as follows:

§ 206.4 Exemption of air carriers for military transportation.

Air carriers providing air transportation pursuant to a contract with the Department of Defense are hereby exempted from section 403 of the Act, and from part 221, §§ 207.4 and 208.32, of this chapter, with respect to those services.

20. Section 206.5 is added to read as follows:

§ 206.5 Small aircraft operations by certificated carriers.

(a) A carrier holding an effective certificate issued under section 401 of the Act, when conducting operations with small aircraft, is exempt from the requirements of the Act as set forth in subpart B of part 298 of this chapter, except section 407 of the Act, and is subject to the requirements set forth in the following provisions of this chapter:

(1) Part 205, with the minimum coverage requirements of § 205.5(b),

(2) Part 215, and

(3) Part 298, subpart D, §§ 298.30, and 298.38; subpart F; and subpart H.

(b) If a certificated carrier, when conducting operations with small aircraft, provides foreign air transportation that includes a segment for which tariff filing is required and another segment for which tariff filing is not required, then for through service over that routing the carrier has the option of filing a tariff or charging the sum of the applicable local rates, fares, or charges. If the carrier files a tariff for through service, it is not exempt from section 403 or section 404(b) of the Act for that air transportation.

PART 231—[REMOVED]

21. Part 231 is removed.

PART 232—[AMENDED]

22. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. 1324, 1375.

§§ 232.1, 232.2, 232.3, 232.4, 232.5 [Amended]

23. In §§ 232.1(a), 232.1(b)(4), 232.2(a), 232.3, 232.4(a), 232.4(c), and 232.5(a), remove the word "Board" and add, in its place, the word "Department", and in § 232.1(b)(10, remove the work "CAB" and add, in its place, the word "DOT".

PART 235—[REMOVED]

24. Part 235 is removed.

PART 263—[REMOVED]

25. Part 236 is removed.

PART 288—[REMOVED]

26. Part 288 is removed.

PART 292—[REMOVED]

27. Part 292 is removed.

PART 294—[AMENDED]

28. The authority citation for part 294 is revised to read as follows:

Authority: 49 U.S.C. 1324, 1386.

29. Throughout part 294, remove the word "Board" and add, in its place, the word "Department"; remove the work "Board's" and add in its place, the word "Department's; remove the words "Civil Aeronautics Board" and add, in their place, the words "Department of Transportation"; and remove the words "Civil Aeronautics Board's and add, in their place, the words "Department of Transportation's.".

30. Section 294.2(j) is revised to read as follows:

§ 294.2 Definitions.

* * * * *

(j) *Small aircraft* means any aircraft designed to have: (1) A maximum passenger capacity of not more than 30 seats or a maximum payload capacity of not more than 7,500 pounds, and/or (2) A maximum authorized takeoff weight on wheels not greater than 35,000 pounds.

§§ 294.3, 294.20, 294.22 [Amended]

31. In §§ 294.3(d), 294.20(b), and 294.22(a)(2), remove the words "CAB Form 263" and add, in its place, the words "OST Form 4523".

§§ 294.3, 294.22 [Amended]

32. In §§ 294.3(d) and 294.22(a)(2), remove the word "CAB".

§§ 294.20, 294.21, 294.22 [Amended]

33. In § 294.20(b) 294.21.(d), 294.21(e)(1), 294.22 introductory text, and 294.22(a) introductory text, remove the words "CAB Form 294–A" or "Form 294–A" and add, in their place, the words "OST Form 4505" or "Form 4505".

§ 294.20 [Amended]

34. In § 294.20(b), remove the words "Publications Services Division,

Washington, DC 20428" and add, in their place, the words "Office of Aviation Analysis, Regulatory Analysis Division".

§ 294.20, 294.21, 294.22 [Amended]

35. In the introductory text of §§ 294.20 and 294.22, and in §§ 294.21(b), and 294.40, remove the words "Bureau of International Aviation, Regulatory Affairs Division" and add, in their place, the words "Office of Aviation Analysis, Regulatory Analysis Division".

§ 294.21 [Amended]

36. In § 294.21(e)(1), remove the words "Regulatory Affairs Division, Bureau of International Aviation", and add, in their place, the words "Office of Aviation Analysis, Regulatory Analysis Division".

37. In § 294.30, remove the word "both" in paragraph (b) introductory text, and revise paragraph (b)(1) and (b)(2) to read as follows:

§ 294.30 Scope of service and equipment authorized.

* * * * *

(b) * * *

(1) a maximum passenger capacity of no more than 30 seats or a maximum payload capacity of no more than 7,500 pounds, and/or

(2) a maximum authorized takeoff weight on wheels not greater than 35,000 pounds.

§ 294.33 [Amended]

38. In § 294.33, third paragraph, remove the words "Rochester General Aviation District Office, Rochester-Monroe County Airport" and add, in their place, the words "Flight Standards District Office, 1 Airport Way"; and, in the fourth paragraph, remove the words beginning with "Chief, Flight Standards," through the end of the sentence and add, in their place, the words "Federal Aviation Administration, General Aviation District Office, 1601 Lind Avenue SW., Renton, Washington 98055.".

§ 294.60 [Amended]

39. In § 294.60(a), remove the words "by filing three copies" through the end of the sentence and add, in their place, the words "in writing to the Office of Aviation Analysis, Regulatory Analysis Division."

PART 296—[AMENDED]

40. The authority citation for part 296 is revised to read as follows:

Authority: 49 U.S.C. 1301, 1302, 1324, 1378, 1379, 1386.

41. In § 296.3, remove the word "Board" and add, in its place, the words "Department of Transportation or the Civil Aeronautics Board".

§ 296.20 [Amended]

42. In § 296.20, remove the word "Board" and add, in its place, the word "Department".

PART 297—[AMENDED]

43. The authority citation for part 297 is revised to read as follows:

Authority: 49 U.S.C. 1324, 1386.

44. Throughout part 297, remove the word "Board" and add, in its place, the word "Department"; remove the word "Board's" and add, in its place, the word "Department's; remove the words "Civil Aeronautics Board" and add, in their place, the words "Department of Transportation"; and remove the words "Civil Aeronautics Board's" and add, in their place, the words "Department of Transportation's".

§ 297.3 [Amended]

45. In § 297.3(a) and 297.3(b), remove the words "air freight forwarder registered under part 296" and add, in their place, the words "indirect cargo air carrier as defined in part 296 of this chapter".

46. In § 297.3(c), remove the word "Board" and add, in its place, the words "Department of Transportation or the Civil Aeronautics Board".

§ 297.10 [Amended]

47. In § 297.10(a)(5), the word "interstate" is revised to read "interstate".

§ 297.20 [Amended]

48. In § 297.20(a), remove the words "Director, Bureau of International Aviation" and add, in their place, the words "Director, Office of Aviation Analysis".

§§ 297.20, 297.22, 297.24 [Amended]

49. In §§ 297.20(b), 297.22(a), 297.24(a), and 297.24(b), remove the words "CAB Form 297A" or "Form 297A" and add, in their place, the words "OST Form 4506" or Form 4506".

§§ 297.20, 297, 21, 297.24 [Amended]

50. In §§ 294.20(b), 297.21, and 297.24(a), remove the words "Bureau of International Aviation, Regulatory Affairs Division" and add, in their place, the words "Office of Aviation Analysis, Regulatory Analysis Division".

§ 297.20 [Amended]

51. In § 297.20(b), remove the words "Civil Aeronautics Board, Publications Services Division, Washington, DC 20428" and add, in their place, the words "Regulatory Analysis Division".

PART 298—[AMENDED]

52. The authority citation for part 298 is revised to read as follows:

Authority: 49 U.S.C. 1301, 1324, 1371, 1374, 1377, 1386, 1388, 1389.

53. Throughout part 298, remove the word "Board" (except in § 298.3(a)(2)) and add, in its place, the word "Department"; remove the word "Board's" and add, in its place, the word "Department's"; remove the words "Civil Aeronautics Board" (except where they occur in § 298.60(a)) and add, in their place, the words "Department of Transportation"; and remove the words "Civil Aeronautics Board's" (except where they occur in § 298.64(e)) and add, in their place, the words "Department of Transportation's".

§§ 298.11, 298.21, 298.31 [Amended]

54. In the heading for part 298, the heading for § 298.21, and §§ 298.11 introductory text, 298.11(c) introductory text, 298.30(a), and 298.31, after the words "air taxi" or "air taxi operators", add the words "and commuter air carrier" or "and commuter air carriers".

§§ 298.3, 298.4, 298.5, 298.11, 298.21, 298.23, 298.24, 298.30, 298.35, 298.37, 298.38 [Amended]

55. In the heading for § 298.5 and §§ 298.3.(b), 298.4, 298.5, 298.11(b), 298.11(c)(3), 298.11(d), 298.21(b), 298.21(c)(1)(v), 298.21(c)(1)(vi), 298.23(a) introductory text, 298.24 introductory text, 298.30(b), 298.35, 298.37, and 298.38, after the words "air taxi operator", "air taxi operators", or "air taxi", add the words "or commuter air carrier" or "or commuter air carriers".

56. In § 298.1, the last sentence is revised to read as follows:

§ 298.1 Applicability of part.

* * * This part also establishes reporting requirements for commuter air carriers and small certificated air carriers.

§ 298.2 [Amended]

57. In § 298.2(e–1), remove the number "413" and add, in its place, the number "418".

58. In § 298.2(f), the word "tips" is revised to read "trips".

§ 298.3 [Amended]

59. In § 298.3(a)(2), remove the word "Board" and add, in its place, the words "the Department or the CAB".

60. In § 298.3(a)(4), remove the words "Subpart E of this part" and add, in their

place, the words "Part 205 of this chapter".

§§ 298.3, 298.11, 298.21 [Amended]

61. In §§ 298.3(a)(5), 298.11(b)(2), and 298.21(c)(4)(iii), remove the word "CAB" where it occurs in "CAB Agreement 18900"; and remove the words "CAB Form 263" and add, in their place, the words "OST Form 4523".

§§ 298.3, 298.21, 298.23 [Amended]

62. In §§ 298.3(a)(5), 298.21(c)(1) introductory text and footnote 6, 298.21(c)(4), and 298.23(b), remove the words "CAB Form 298–A" or "CAB Form 298–A (Rev.)", and add, in their place, the words "OST Form 4507".

§ 298.4 [Amended]

63. In § 298.4, remove the words "Secretary of the Board" and add, in their place, the words "Director, Office of Aviation Analysis".

§ 298.5 [Amended]

64. In § 298.5, remove the words "On or after January 9, 1978, any" and add, in their place the word "Any".

§ 298.11 [Amended]

65. In § 298.11(b)(2), remove the words "Subpart G of this part" and add, in their place, the words "part 203 of this chapter".

66. In § 298.11(d), before the words "air carriers" where they appear for the first time in the paragraph, add the word "certificated".

§ 298.2 [Amended]

67. In § 298.21(a), remove the words "Director of the Bureau of Pricing and Domestic Aviation" and add, in their place, the words "Director, Office of Aviation Analysis".

68. The introductory text of § 298.21(c) is revised to read as follows:

§ 298.21 Filing for registration by air taxi operators and commuter air carriers.

* * * * *

(c) Registration by all commuter air carriers, and by those air taxi operators with a mailing address in any U.S. State or Territory except Alaska, shall be accomplished by filing with the Department's Office of Aviation Analysis (or with the Department's Alaska Aviation Field Office, 222 West Seventh Street, Box 27, Anchorage, Alaska 99513, for air taxi operators that are not also commuter air carriers and that have a mailing address in the State of Alaska) the following:

* * * * *

§ 298.21 [Amended]

69. In § 298.21(c)(1) introductory text, remove the words " "Air Taxi Operator and Commuter Air Carrier Registration and Amendments Under Part 298 of the Economic Regulations of the Civil Aeronautics Board" ".

70. In §§ 298.21(c)(1) footnote 6 and 298.21(c)(4), remove the words "Publications Services Section, Civil Aeronautics Board, Washington, DC 20428" or "Publications Services Division, Civil Aeronautics Board, Washington, DC 20428" and add, in their place, the words, "Office of Aviation Analysis, Regulatory Analysis Division".

71. In § 298.21(c)(2), remove the word "§ 298.41(b)" and add, in its place, the words "part 205 of this chapter".

72. Section 298.21(d) is revised to read as follows:

§ 298.21 Filing for registration by air taxi operators and commuter air carriers.

* * * * *

(d) No air taxi operator shall provide scheduled passenger service at an eligible point unless it has registered with the Department as a commuter air carrier and has been found by the Department to be fit, willing, and able to conduct such service.

* * * * *

§ 298.22 [Amended]

73. In § 298.22, the word "retrun" is revised to read "return".

§ 298.23 [Amended]

74. In § 298.23(b), remove the words "Bureau of Domestic Aviation" and add, in their place, the words "Office of Aviation Analysis".

75. In § 298.23(b), remove the words "Board's Field Office," and add, in their place, the words "Department's Alaska Aviation Field Office, 222 West Seventh Avenue,".

§ 298.34 [Removed]

76. Section 298.34 is removed and reserved.

§ 298.35 [Revised]

77. Section 298.35 is revised to read as follows:

§ 298.35 Limitations on carriage of mail.

An air taxi operator or commuter air carrier is not authorized to carry mail except pursuant to contract with the Postal Service entered into pursuant to section 5402 of the Postal Reorganization Act (39 U.S.C. 5402).

§ 298.36 [Amended]

78. In § 298.36(a), remove the word "operating".

79. In § 298.36, paragraph (c) is redesignated paragraph (d), and a new paragraph (c) is added to read as follows:

§ 298.36 Limitation on use of business name.

* * * * *

(c) Commuter air carriers are subject to the provisions of part 215 of this chapter with regard to the use and change of air carrier names.

* * * * *

§ 298.37 [Amended]

80. In § 298.37, remove the words "Subpart E" and add, in their place, the words "part 205 of this chapter".

§ 298.41–298.45 [Removed]

81. In part 298, subpart E consisting of §§ 298.41–298.45 is removed and reserved.

§ 298.60 [Amended]

82. In § 298.60(a), remove the words "Civil Aeronautics Board" and add, in their place, the words "Department's Research and Special Programs Administration (RSPA)".

§§ 298.60, 298.61, 298.63, 298.64, 298.65 [Amended]

83. In §§ 298.60(a), 298.60(b), 298.60(d), 298.60(e), 298.61(a), 298.61(g), 298.63(a), 298.64(a), and 298.65(a), remove the word "CAB" and add, in its place, the word "RSPA".

§§ 298.60, 298.65, 298.66 [Amended]

84. In §§ 298.60(b), and 298.65(b) introductory text, 298.66(a), and 298.66(b), remove the word "Comptroller" and add, in its place, the words "Airline Statistics".

§ 298.60 [Amended]

85. In § 298.60(c), remove the number "4123" and add, in its place, the number "4125"; and remove the words "Aviation Information Management" and add, in their place, the words "Airline Statistics".

86. In § 298.60(e), remove the number "426–6847" and add, in its place, the number "366–9847".

§ 298.61 [Amended]

87. In § 298.61(g), remove the words "Comptroller, Civil Aeronautics Board, Washington, DC 20428" and add, in their place, the words, "Director, Office of Airline Statistics, Department of Transportation, Washington, DC 20590".

88. At the end of § 298.61, remove the OMB control number "3024–0009" and add, in its place, the number "2138–0009".

§§ 298.64, 298.65 [Amended]

89. In §§ 298.63(c), 298.64(e) and 298.65(a), remove the words "the Board's Information Management Division" or "the Civil Aeronautics Board's

Information management Division" or "the Board's Office of Comptroller" and add, in their place, the words "RSPA's Office of Airline Statistics".

§§ 298.90–298.100 [Removed]

90. In part 298, subpart I consisting of §§ 298.90–298.100 is removed.

PART 302—[AMENDED]

91. The authority citation for part 302 is revised to read as follows:

Authority: 5 U.S.C. 551 *et seq.*, 39 U.S.C 5402; 42 U.S.C. 4321, 49 U.S.C. Subtitle I. 1301, 1302, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1471, 1481, 1482, 1485; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989.

92. Section 302.10a is added to read as follows:

§ 302.10a Participation of air carrier associations in Department proceedings.

(a) An association composed entirely or in part of direct air carriers may participate in any proceedings of the Department to which the Department's procedural regulations apply only if:

(1) The issues substantially affect the property or financial interests of the association as opposed to an interest derivative from its members;

(2) The association acts as a conduit to the Department of factual information gathered from the members, as distinguished from presentation of opinons or positions on issues; or

(3) The association represents members that are identified in any documents filed with the Department, and that have specifically authorized the positions taken by the association in that proceedings. The specific authorizations may be informal and evidence of them shall be provided only upon request of the Department.

(b) Upon motion of any interested person or upon its own initiative, the Department may issue an order requiring an association to withdraw from a case on the ground of significant divergence of interest or position within the association.

93. In part 302 Appendix A—Index to Rules of Practice, under the heading "PARTIES", a new listing is added to read as follows:

"Participation by Air Carrier Associations—§ 302.10(a)"

PART 372—[AMENDED]

94. The authority citation for part 372 is revised to read as follows:

Authority: 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386.

95. Throughout Part 372, remove the word "Board" and add, in its place, the word "Department"; remove the word "Board's" and add, in its place, the word "Department's"; remove the words "Civil Aeronautics Board" (except where they occur in § 372.30(a) (8) and (9)) and add, in their place, the words "Department of Transportation"; and remove the words "Civil Aeronautics Board's" and add, in their place, the words "Department of Transportation's."

96. Section 372.20 is revised to read as follows:

§ 372.20 Requirement of operating authorization.

No person shall engage in air transportation as an overseas military personnel charter operator by organizing, providing, selling, or offering to sell, soliciting, or advertising an overseas military personnel charter or charters unless there is in force an operating authorization issued pursuant to § 372.31 authorizing such person to engage in such transportation.

97. Section 372.24(b) is revised to read as follows:

§ 372.24 Surety bond, depository agreement, escrow agreement.

* * * * *

(b) As used in this section, the term *bank* means a bank insured by the Federal Deposit Insurance Corporation.

* * * * *

§ 372.24 [Amended]

98. In § 372.24(c), remove the words "Appendix B[1] attached to this Part 372" and add, in their place, the words "Appendix A to this part"; and remove footnote 1.

§ 372.28 [Amended]

99. In § 372.28, footnote 2 is redesignated footnote 1.

§ 372.30 [Revised]

100. The introductory text of § 372.30(a) is revised to read as follows:

§ 372.30 Application.

(a) *Application.* Any person desiring to operate as an overseas military personnel charter operator may apply to the Department for an appropriate operating authorization. Contact the Office of Aviation Analysis, Regulatory Analysis Division, for filing instructions. The application shall be certified by a responsible official of such person and shall contain the following information:

* * * * *

§ 372.30 [Amended]

101. In § 372.30(a), footnote 3 is removed.

102. In §§ 372.30(a)(8) and 372.30(a)(9), after the words "Civil Aeronautics Board" add the words "or the Department of Transportation."

103. In § 372.30(a)(13), footnote 4 is redesignated footnote 2; and, in newly redesignated footnote 2, the last sentence is removed.

104. A new Appendix A is added to part 372 to read as follows:

Appendix A to Part 372—Overseas Military Personnel Charter Operator's Surety Bond Under Part 372 of the Special Regulations of the Department of Transportation (14 CFR Part 372)

Appendix A—Overseas Military Personnel Charter Operator's Surety Bond Under Part 372 of the Special Regulations of the United States Department of Transportation

Know all men by these presents, that we _____ (name of charter operator) of _____ (address) as Principal (hereinafter called "Principal"), and _____ (name of surety) a corporation created and existing under the laws of the State of _____ (State) as Surety (hereinafter called "Surety") are held and firmly bound unto the United States of America in the sum of _____ (see) § 372.24(a), 14 CFR part 372) for which payment, well and truly to be made, we bind outselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas Principal is an overseas military personnel charter operator pursuant to the provisions of part 372 of the Department's Special Regulations and other rules and regulations of the Department relating to security for the protection of charter participants, and has elected to file with the Department of Transportation such a bond as will insure financial responsibility with respect to all monies received from charter participants for services in connection with overseas military personnel charters to be operated subject to part 372 of the Department's Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

Whereas this bond is written to assure compliance by Principal as an authorized charter operator with part 372 of the Department's Special Regulations, and other rules and regulations of the Department relating to security for the protection of charter participants, and shall inur to the benefit of any and all charter participants to whom Principal may be held legally liable for any damages herein described.

Now, therefore, the condition of this obligation is such that if Principal shall pay or cause to be paid to charter participants any sum or sums for which Principal may be held legally liable by reason of Principal's failure faithfully to perform, fulfill and carry out all contracts, agreements, and arrangements made by Principal while this bond is in effect with respect to the receipt of moneys from charter participants, and proper disbursement thereof pursuant to and in accordance with the provisions of part 372 of the Department's Special Regulations, then

this obligation shall be void, otherwise to remain in full force and effect.

The liability of Surety with respect to any charter participant shall not exceed the charter price paid by or on behalf of such participant.

The liability of Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty (face amount) of the bond, but in no event shall Surety's obligation hereunder exceed the amount of said penalty.

Surety agrees to furnish written notice to the Office of Aviation Analysis, Department of Transportation, forthwith of all suits or claims made and judgments rendered, and payments made by Surety under this bond.

This bond shall cover the following Charters:[1]

Surety company's bond No. _____

Date of flight departure _____

Place of flight departure _____

This bond is effective on the ____ day of _____, 1999 _____, 12:01 a.m., standard time at the address of Principal as stated herein and as hereinafter provided. Principal or Surety may at any time terminate this bond by written notice to: "Regulatory Analysis Division (P-57), Office of Aviation Analysis, U.S. Department of Transportation, Washington, DC 20590, such termination to become effective thirty (30) days after the actual receipt of said notice by the Department. Surety shall not be liable hereunder for the payment of any damages hereinbefore described which arise as a result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by Principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the bond hereunder for the payment of any damages arising as a result of contracts, agreements, or arrangements for the supplying of transportation and other services made by Principal prior to the date that such termination becomes effective. Liability of Surety under this bond shall in all events be limited only to a charter participant or charter participants who shall within sixty (60) days after the termination of the particular charter described herein give written notice of claim to the charter operator or, if it is unavailable, to Surety, and all liability on this bond shall automatically terminate sixty (60) days after the termination date of each particular charter covered by this bond except for claims made in the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument of the ____ day of _____, 199__.

Name _____

PRINCIPAL

By: Signature and title _____

Witness _____

SURETY

Name _____

[1]These data may be supplied in an addendum attached to the bond; however, all pages are to bear the Surety's seal.

By: Signature and title _____

Witness _____

Only corporations may qualify to act as surety and they must meet the requirements set forth in § 372.24(c) of part 372.

PART 308—[AMENDED]

105. The authority citation for part 380 is revised to read as follows:

Authority: 49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386, 1502.

106. Throughout Part 380, remove the word "Board" (except in § 380.1) and add, in its place, the word "Department"; remove the word "Board's" and add, in its place, the word "Department's"; remove the words "Civil Aeronautics Board" and add, in their place, the words "Department of Transportation"; and remove the words "Civil Aeronautics Board's" and add, in their place, the words "Department of Transportation's".

§ 380.1 [Amended]

107. In § 3801, before the word "Board", add the words "Department or the Civil Aeronautics"; and the last sentence is removed.

§ 380.2 [Amended]

108. In § 380.2 paragraph (1) of the definition "Direct air carrier" is amended to add the words "or commuter air carrier" after "air taxi operator".

§ 380.5 [Amended]

109. In § 380.5 the fourth sentence of paragraph (b) is revised to read as follows:

§ 380.5 Procedures for imposition of limitations and restrictions on Public Charter operations.

* * * * *

(b) * * * Copies of such petitions and answers shall be served on the Director, Office of Aviation Analysis.

* * * * *

§ 380.10 [Amended]

110. In § 380.10(b) after the word "seats" add the words "or an entire aircraft's capacity".

§ 380.11 [Amended]

111. In § 380.11, remove the word "taxis" and add, in its place, the words "taxi operators and commuter air carriers".

§§ 380.17, 380.25, 380.42, 380.50 [Amended]

112. In §§ 380.17(b), 380.25(a), 380.25(e), 380.42 introductory text, and 380.50(a), remove the words "Board (Special Authorities Division, Bureau of Pricing and Domestic Aviation)" and add, in their place, the words "Office of Aviation Analysis, Regulatory Analysis Division.".

§ 380.19 [Removed]

113. Section 380.19 is removed.

§ 380.28 [Amended]

114. In § 380.28(a) introductory text, remove the words "one copy" and add, in their place, the words "two copies".

115. In § 380.28(a)(1), the last sentence, remove the words "in the form set out in Appendix B to this part" and add, in their place, the words "filed on OST Form 4532".

116. In § 380.28(a)(2), the last sentence, remove the words "in the form set out in Appendix C to this part" and add, in their place, the words "filed on OST Form 4533".

117. In § 380.28(a)(3), the last sentence, remove the words "in the form set out in Appendix D to this part" and add, in their place, the words "filed on OST Form 4534".

§ 380.34 [Revised]

118. Sections 380.34(b)(2)(vi), (c)(2)(ii), and (c)(7) are revised to read as follows:

§ 380.34 Security and depository agreements.

* * * * *

(b) * * *

(2) * * *

(vi) As used in this section, the term "bank" means a bank insured by the Federal Deposit Insurance Corporation.

* * * * *

(c) * * *

(2) * * *

(ii) A surety trust agreement in the form set forth as Appendix B to this part; or

* * * * *

(7) * * *, and all such banks must be insured by the Federal Deposit Insurance Corporation.

* * * * *

§ 380.34a [Amended]

119. In § 380.34a(c)(1), remove the words "in the form set out in Appendix F of this part by the direct air carrier" and add, in their place, the words "by the direct air carrier on OST Form 4535".

120. In § 380.34a(c)(2), remove the words "in the form set out in Appendix C of this part" and add, in their place, the words "OST Form 4533".

§ 380.50 [Amended]

121. In § 380.50(a), the paragraph designator "(a)" is removed.

§ 380.62 [Amended]

122. In §§ 380.62(a), 380.63, and 380.65(a), remove the words "Board's Bureau of International Aviation,

Regulatory Affairs Division" or "Bureau of International Aviation, Regulatory Affairs Division" and add, in their place, the words "Office of Aviation Analysis, Regulatory Analysis Division".

§ 380.62, 380.64, 380.65 [Amended]

123. In §§ 380.62(b), 380.64(a)(1), 380.65(a), and 380.65(c), remove the words "Form 300" or "CAB Form 300" and add, in their place, the words "OST Form 4530".

§ 380.62 [Amended]

124. In § 380.62(b), remove the words "CAB's Publications Services Division, Washington, D.C. 20428" and add, in their place, the words "Regulatory Analysis Division".

125. Appendix A to part 380 is revised to read as follows:

Appendix A to Part 380—Public Charter Operator's Surety Bond Under Part 380 of the Special Regulations of the Department of Transportation

Public Charter Operator's Surety Bond Under Part 380 of the Special Regulations of the Department of Transportation, 14 CFR Part 380

Know all men by these presents, that we _____ (name of charter operator) of _____, (city) _____ (state) as Principal (hereinafter called Principal), and _____ (name of surety) a corporation created and existing under the laws of the State of _____ (State) as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of $____ (see 14 CFR 380.34) for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas Principal intends to become a Public Charter operator pursuant to the provisions of 14 CFR Part 380 and other rules and regulations of the Department relating to insurance or other security for the protection of charter participants, and has elected to file with the Department of Transportation such a bond as will insure financial responsibility with respect to all monies received from charter participants for services in connection with a Public Charter to be operated subject to Part 380 of the Department's Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

Whereas this bond is written to assure compliance by Principal as an authorized charter operator with 14 CFR Part 380 and other rules and regulations of the Department relating to insurance and other security for the protection of charter participants, and shall inure to the benefit of any and all charter participants to whom Principal may be held legally liable for any damages herein described.

Now, therefore, the condition of this obligation is such that if Principal shall pay or cause to be paid to charter participants any sum or sums for which Principal may be held legally liable by reason of Principal's failure faithfully to perform, fulfill and carry out all contracts, agreements, and arrangements made by Principal while this bond is in effect with respect to the receipt of moneys from charter participants, and proper disbursement thereof pursuant to and in accordance with the provisions of 14 CFR Part 380, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of Surety with respect to any charter participant shall not exceed the charter price paid by or on behalf of such participant.

The liability of Surety shall not be discouraged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall Surety's obligation hereunder exceed the amount of said penalty.

Surety agrees to furnish written notice to the Office of Aviation Analysis, Department of Transportation, forthwith of all suits or claims filed and judgments rendered, and payments made by Surety under this bond.

The bond shall cover the following charters: [1]

Surety company's bond No. _____
Date of flight departure _____
Place of flight departure _____

This bond is effective on the ____ day of _____, 199__, 12:01 a.m., standard time at the address of Principal as stated herein and as hereinafter provided. Principal or Surety may at any time terminate this bond by written notice to: "Regulatory Analysis Division (P-57), Office of Aviation Analysis, U.S. Department of Transportation, Washington, DC 20590," such determination to become effective thirty (30) days after the actual receipt of said notice by the Department. Surety shall not be liable hereunder for the payment of any damages hereinbefore described which arise as a result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by Principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the bond hereunder for the payment of any damages arising as a result of contracts, agreements, or arrangements for the supplying of transportation and other services made by Principal prior to the date that such termination becomes effective. Liability of Surety under this bond shall in all events be limited only to a charter participant or charter participants who shall within sixty (60) days after the termination of the particular charter described herein give written notice of claim to the charter operator or, if it is unavailable, to Surety, and all liability on this bond shall automatically terminate sixty (60) days after the termination date of each particular charter covered by this bond except for claims made in the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the ____ day of _____, 199__.

PRINCIPAL

Name _____
By: Signature and title _____
Witness _____

SURETY

Name _____
By: Signature and title _____
Witness _____

Only corporations may qualify to act as surety and they must meet the requirements set forth in § 380.34(c)(6) of Part 380.

[1] These data may be supplied in an addendum attached to the bond.

126. At the end of part 380, appendix B, appendix C, appendix D, and appendix F are removed, and appendix E is redesignated appendix B and revised to read as follows:

Appendix B to Part 380—Public Charter Operator's Surety Trust Agreement

Appendix B—Public Charter Operator's Surety Trust Agreement

This Trust Agreement is entered into between _____ (charter operator) incorporated under the laws of _____ with its principal place of business being _____ (hereinafter called "Operator"), and _____ (Bank) with its principal place of business being _____ (hereinafter called "Trustee"), for the purpose of creating a trust to become effective as of the _____ day of _____, 199__, which trust shall continue until terminated as hereinafter provided.

Operator intends to become a Public Carter operator pursuant to the provisions of Part 380 of the Department's Special Regulations (14 CFR Part 380) and other rules and regulations of the Department relating to insurance or other security for the protection of charter participants, and has elected to file with the Department of Transportation such a Surety Trust Agreement as will insure financial responsibility with respect to all monies received from chapter participants for services in connection with a Public Charter to be operated subject to Part 380 of the Department's Special Regulations in accordance with contracts, agreements, or arrangements therefor.

This Surety Trust Agreement is written to assure compliance by Operator with the provisions of Part 380 of the Department's Special Regulations and other rules and regulations of the Department relating to insurance or other security for the protection of charter participants. It shall inure to the benefit of any and all charter participants to whom Operator may be held legally liable for any of the damages herein described.

It is mutually agreed by and between Operator and Trustee that Trustee shall manage the corpus of the trust and carry out the purposes of the trust as hereinafter set forth during the term of the trust for benefit of chapter participants (who are hereinafter referred to as "Beneficiaries.")

Beneficiaries of the trust created by this Agreement shall be limited to those charter participants who meet the following requirements:

1. Those for whom Operator or Operator's agent has received payment toward participation in one or more charters operated by or proposed to be operated by Operator.

2. Who have legal claim or claims for money damages against Operator by reason of Operator's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by Operator while this trust is in effect with respect to the receipt of monies and proper disbursement thereof pursuant to Part 380 of the Department's Special Regulations; and

3. Who have given notice of such claim or claims in accordance with this Trust Agreement, but who have not been paid by Operator.

Operator shall convey to Trustee legal title to the trust corpus, which has a value of $_____ by the time of the execution of this Agreement.

Trustee shall assume the responsibilities of Trustee over the said trust corpus and shall distribute from the trust corpus to any and all Beneficiaries to whom Operator, in its capacity as a Public Charter operator, may be held legally liable by reason of Operator's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by Operator, while this trust is in effect with respect to the receipt of monies and proper disbursement thereof pursuant to Part 380 of the Department's Special Regulations in connection with said charters, such damages as will discharge such liability while this trust is in effect; *Provided, however,* That the liability of the trust to any Beneficiary shall not exceed the charter price (as defined in Part 380 of the Department's Special Regulations) paid by or on behalf of any such Beneficiary; *Provided, further,* That there shall be no obligation of the trust to any Beneficiary if Operator shall pay or cause to be paid to any Beneficiary any sum or sums for which Operator may be held legally liable by reasons of its failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by Operator in its capacity as charter operator while this trust is in effect with respect to the receipt of monies and proper disbursement thereof pursuant to Part 380 of the Department's Special Regulations; *And provided still further,* That the liability of the trust as administered by Trustee shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments, shall amount in the aggregate to $_____. Notwithstanding anything herein to the contrary, in no event shall the obligation of the trust or Trustee hereunder exceed the aggregate amount of $_____.

Trustee agrees to furnish written notice to the Office of Aviation Analysis, Department of Transportation, forthwith of all suits or claims filed and judgments rendered (of which it has knowledge), and of payments made by Trustee under the terms of this trust.

The trust shall not be liable hereunder for the payment of any damages hereinbefore described which arise as a result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by Operator after the termination of this trust as herein provided, but such termination shall not affect the liability of the trust hereunder for the payment of any damages arising as a result of contracts, agreements, or arrangements for the supplying of transportation and other services made by Operator prior to the date that such termination becomes effective.

Liability of the trust shall in all events be limited only to a Beneficiary or Beneficiaries who shall within sixty days after the termination of the particular charter give written notice of claim to Operator or, if it is unavailable, to Trustee, and all liability of the trust with respect to participants in a charter shall automatically terminate sixty days after the termination date of each particular charter covered by this trust except for claims made in the time provided herein.

Sixty-one days after the completion of the last charter covered by this Trust Agreement, the trust shall automatically terminate except for claims of any Beneficiary or Beneficiaries previously made in accordance with this Agreement still pending on and after said sixty-first day. To the extent of such claims, the trust shall continue until those claims are discharged, dismissed, dropped, or otherwise terminated; the remainder of the trust corpus shall be conveyed forthwith to Operator. After all remaining claims which are covered by this Trust Agreement pending on and after the said sixty-first day have been discharged, dismissed, dropped, or otherwise terminated, Trustee shall convey forthwith the remainder of the trust corpus, if any, to Operator.

Either Operator or Trustee may at any time terminate this trust by written notice to: "Regulatory Analysis Division (P–57), Office of Aviation Analysis, U.S. Department of Transportation, Washington, DC 20590," such termination becomes effective thirty days after the actual receipt of said notice by the Department.

In the event of any controversy or claim arising hereunder, Trustee shall not be required to determine same or take any other action with respect thereto, but may await the settlement of such controversy or claim by final appropriate legal proceedings, and in such event shall not be liable for interest or damages of any kind.

Any Successor to Trustee by merger, consolidation, or otherwise, shall succeed to this trusteeship and shall have the powers and obligations set forth in this Agreement.

The trust created under this Agreement shall be operated and administered under the laws of the State of _____.

IN WITNESS WHEREOF, Operator and Trustee have executed this instrument on the date(s) shown below.

Operator _____ (signature).
Date _____.
Name _____ (typed or printed).
Title _____.
Trustee _____ (signature).
Date _____.
Name _____ (typed or printed).
Title _____

PART 384—[REMOVED]

127. Part 384 is removed.

PART 387—[REMOVED]

128. Part 387 is removed.

PART 399—[AMENDED]

129. The authority citation for part 399 continues to read as follows:

Authority: 49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1381, 1382, 1384, 1386, 1461, 1481, 1482, 1502 and 1504, unless otherwise noted.

§ 399.110 [Removed]

130. Section 399.110(e) is removed and reserved.

Issued in Washington, DC, on January 3, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

Note: The following forms will not appear in the Code of Federal Regulations.

BILLING CODE 4910-62-M

VOL 57 ISS 19 JA 29 1992 UMI

OMB No. 2106-0005
Expires 1-31-94

AGENCY DISPLAY OF ESTIMATED BURDEN

The public reporting burden for this collection of information is estimated to average 30 minutes per response. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to DOT and OMB at the following addresses:

U.S. Department of Transportation
Office of Aviation Analysis, P-57
400 7th Street, SW
Washington, DC 20590

and

Office of Management and Budget
Office of Information and Regulatory Affairs
Paperwork Reduction Project 2106-0005
Washington, DC 20503

U.S. Department of Transportation
Office of the Secretary of Transportation

REGISTRATION AND AMENDMENTS OF FOREIGN CHARTER OPERATORS UNDER PART 380 OF THE REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION

FOR USE BY DOT ONLY

INSTRUCTIONS: Submit this form in duplicate to Department of Transportation, Regulatory Analysis Division, P-57, Office of Aviation Analysis, 400 7th Street, S.W., Washington, D.C. 20590. Date of filing for purposes of DOT regulations is the date properly completed forms are received by DOT.

1a. Current Name *(and DBA, if applicable)* and Mailing Address of Applicant in the United States:

1b. Telephone No. _____ Fax No. _____

☐ Foreign Air Transportation
☐ Interstate Air Transportation
☐ Overseas Air Transportation

_____
Effective date of registration / amendments

2a. Address of principal place of business in the United States *(if different from above)*:

2b. Telephone No _____ Fax No _____

3. This filing is the registrant's:

☐ Initial Registration

☐ Amendment to reflect changes since previous filing (complete Item 5)

4a. Name and address of designated agent in the United States for service of process

4b. Telephone No. _____ Fax No. _____

5. If this is an initial registration, give proposed date of commencement of operations

6. Indicate country of citizenship. List below the names of each person, their country of citizenship, and the percentage of their ownership or voting interest of 10% or more of the applicant's stock: *(use additional page if necessary)*

_____
Applicant's Country of Citizenship

Name	*Citizenship*	*% of Holdings*

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1992
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7. Names, Addresses and Citizenship of Applicant's President and Directors *(use additional page, if necessary)*

President: _____ *(Name in Print)* _____ *(Address)* _____ *(Citizenship)*

Director(s): _____ *(Name in Print)* _____ *(Address)* _____ *(Citizenship)*

_____ *(Name in Print)* _____ *(Address)* _____ *(Citizenship)*

_____ *(Name in Print)* _____ *(Address)* _____ *(Citizenship)*

_____ *(Name in Print)* _____ *(Address)* _____ *(Citizenship)*

_____ *(Name in Print)* _____ *(Address)* _____ *(Citizenship)*

_____ *(Name in Print)* _____ *(Address)* _____ *(Citizenship)*

8. Check type or types of services applicant intends to perform upon commencement of operations:

- ☐ Foreign air transportation
- ☐ Interstate air transportation
- ☐ Overseas air transportation

9. FOR USE IN REPORTING CHANGES OR AMENDMENTS TO INFORMATION PREVIOUSLY FILED.

(a) Previously registered name and address:

(b) Description of any other changes/amendments which are required to be reported by Section 380.65:

10. Certification

I certify that the information contained in this application, and in the attachments hereto, is complete and accurate to the best of my knowledge. Furthermore, I certify that all public charter operations performed by the registrant will be conducted in accordance with the provisions of Part 380 of DOT's Regulations (14 CFR 380) and that no flights will be advertized, sold, or operated unless and until the registrant has entered into financial security arrangements as prescribed in Part 380.

_____ *(Name in Print)* _____ *(Signature of Officer)*

_____ *(Title)* _____ *(Date)*

NOTE: Application must be signed by a responsible officer, such as the President, Vice President, Secretary, or Treasurer or Partner or Owner of the applicant operator.

This document not acceptable if not dated.

The Department's approval of this registration application is based in part on effective reciprocity between the United States and the Registrant's country of citizenship. If and when the Department of Transportation determines that effective reciprocity no longer exits, this registration is null and void.

OMB No. 2106-0005
Expires 1-31-94

AGENCY DISPLAY OF ESTIMATED BURDEN

The public reporting burden for this collection of information is estimated to average 25 minutes per response. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to DOT and OMB at the following addresses:

U.S. Department of Transportation
Office of Aviation Analysis, P-57
400 7th Street, SW
Washington, DC 20590

and

Office of Management and Budget
Office of Information and Regulatory Affairs
Paperwork Reduction Project 2106-0005
Washington, DC 20503

U.S. Department of Transportation
Office of the Secretary of Transportation

For DOT Use Only—PC No. _____ Waiver No. _____

STATEMENT OF CHARTER OPERATOR AND DIRECT AIR CARRIER FLIGHT SCHEDULE NUMBER _____

INSTRUCTIONS: Submit this form **in triplicate** to Department of Transportation, Regulatory Analysis Division, P-57, Office of Aviation Analysis, 400 7th Street, S.W., Washington, D.C. 20590. Date of filing for purposes of DOT regulations is the date properly completed forms are received by DOT.

1a. Name *(and DBA, if applicable)* and Mailing Address of Charter Operator:

1b. Telephone Number ( )_____

Fax Number ( )_____

2a. Name *(and DBA, if applicable)* and Mailing Address of Direct Air Carrier:

2b. Telephone Number ( )_____

Fax Number ( )_____

3. Proposed date and routing of each flight:
(use additional pages, if necessary)

4. Type of aircraft and number of seats engaged:

5. Charter price for each flight:*

$_____

6. Tour itinerary *(if any)* including hotels *(names and length of stay at each)*, and other accommodations and services:

* If confidentiality is desired, please state charter price in separate correspondence.

OST Form 4632

We, _____
(Charter Operator)

and _____
(Direct Air Carrier)

certify that we have entered into a charter contract on _____ (Date) that covers the flight schedule described above. The contract complies with all applicable DOT regulations.

7. A copy of the flight schedule has been sent to *(complete applicable blanks and write "N.A." in those not applicable)*:

_____
(Charter Operator's Securer)

_____
(Charter Operator's Depository Bank)

_____
(Direct Carrier's Securer)

_____
(Direct Carrier's Depository Bank)

8. Applicant Charter Operator is a citizen of the United States as defined in Section 380.2 of the Department's regulations:

_____ (Signature of Officer) _____ (Name in print) _____ (Title)

9.

CHARTER OPERATOR	DIRECT AIR CARRIER
By: _____ (Signature)	By: _____ (Signature)
_____ (Name in print)	_____ (Name in print)
_____ (Title)	_____ (Title)
_____ (Date)*	_____ (Date)*

* This document is not acceptable if not dated.

OMB No. 2106-0005
Expires 1-31-94

AGENCY DISPLAY OF ESTIMATED BURDEN

The public reporting burden for this collection of information is estimated to average 15 minutes per response. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to DOT and OMB at the following addresses:

U.S. Department of Transportation
Office of Aviation Analysis, P-57
400 7th Street, SW
Washington, DC 20590

and

Office of Management and Budget
Office of Information and Regulatory Affairs
Paperwork Reduction Project 2106-0005
Washington, DC 20503

U.S. Department of Transportation
Office of the Secretary of Transportation

STATEMENT OF CHARTER OPERATOR OR DIRECT AIR CARRIER AND SECURER

INSTRUCTIONS: Submit this form in triplicate to Department of Transportation, Regulatory Analysis Division, P-57, Office of Aviation Analysis, 400 7th Street, S.W., Washington, D.C. 20590. Date of filing for purposes of DOT regulations is the date properly completed forms are received by DOT.

We, _____
(Charter Operator or Director Air Carrier)

and _____
(Securer)

certify that we have entered into a security agreement number _____, in the
(Security Agreement Number)

amount of $ _____, on _____. This agreement covers
(Amount) *(Date)*

proposed flight schedule number _____, a copy of which has been received by
(Flight Schedule Number)

_____. This agreement complies with
(Securer)

(§380.34) (§380.34a) of DOT's Regulations (14 CFR §380.34 or §380.34a).

This agreement is a *(Check one)*:

- ☐ Surety Bond
- ☐ Surety Trust Agreement
- ☐ Letter of Credit *(for participants of flight schedule number _____)*

Check one of the following:

- ☐ This agreement is in an unlimited amount.
- ☐ There are no outstanding claims against this agreement.
- ☐ There are outstanding claims against this agreement in the amount of $_____. We have executed a rider to the agreement on _____, increasing the coverage by this amount.*
  (Date)

* In place of this sentence, the following statement may be used: "_____ will separately
(Securer)
pay any claims for which it may be liable without impairing the security agreement or reducing the amount of coverage."

CHARTER OPERATOR OR DIRECT AIR CARRIER	SECURER
By: _____ *(Signature)*	By: _____ *(Signature)*
_____ *(Name in print)*	_____ *(Name in print)*
_____ *(Title)*	_____ *(Title)*
_____ / _____ *(Phone Number)* *(Fax Number)*	_____ / _____ *(Phone Number)* *(Fax Number)*
_____ *(Street, Box Number)*	_____ *(Street, Box Number)*
_____ *(City, State, Zip Code)*	_____ *(City, State Zip Code)*
_____ *(Date)* **	_____ *(Date)* **

** This document is not acceptable if not dated.

OST Form 4523

VOL 57 ISS 19 JA 29 1992 UMI

OMB No. 2106-0005
Expires 1-31-94

AGENCY DISPLAY OF ESTIMATED BURDEN

The public reporting burden for this collection of information is estimated to average 15 minutes per response. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to DOT and OMB at the following addresses:

U.S. Department of Transportation
Office of Aviation Analysis, P-57
400 7th Street, SW
Washington, DC 20590

and

Office of Management and Budget
Office of Information and Regulatory Affairs
Paperwork Reduction Project 2106-0005
Washington, DC 20503

U.S. Department of Transportation
Office of the Secretary of Transportation

STATEMENT OF CHARTER OPERATOR, DIRECT AIR CARRIER AND DEPOSITORY BANK

INSTRUCTIONS: Submit this form **in triplicate** to Department of Transportation, Regulatory Analysis Division, P-57, Office of Aviation Analysis, 400 7th Street, S.W., Washington, D.C. 20590. Date of filing for purposes of DOT regulations is the date properly completed forms are received by DOT.

We, _____ (Charter Operator)*, _____ (Direct Air Carrier)

and _____ (Depository Bank), certify that we have entered into a depository agreement on _____ (Date). This agreement covers proposed flight schedule number _____ (Flight Schedule Number), a copy of which has been received by _____ (Depository Bank). This agreement complies with (§380.34) (§380.34a) of DOT's Regulations (14 CFR §380.34 or §380.34a). The depository bank is insured by the Federal Deposit Insurance Corporation.

As signatories to this agreement, we fully understand, and will completely fulfill our respective obligations outlined in the agreement and the above-stated DOT regulations.

CHARTER OPERATOR

By: _____ (Signature)*
_____ (Name in print)
_____ (Title)
_____ (Phone Number) _____ (Fax Number)
_____ (Street, Box Number)
_____ (City, State, Zip Code)
_____ (Date)**

DIRECT AIR CARRIER

By: _____ (Signature)
_____ (Name in print)
_____ (Title)
_____ (Phone Number) _____ (Fax Number)
_____ (Street Box Number)
_____ (City, State, Zip Code)
_____ (Date)**

DEPOSITORY BANK

By: _____ (Signature)
_____ (Name in print)
_____ (Title)
_____ (Phone Number) _____ (Fax Number)
_____ (Street, Box Number)
_____ (City, State, Zip Code)
_____ (Date)**

* Write "N.A." if there is no charter operator.
** This document not acceptable, if not dated.

OST Form 4634

OMB No. 2106-0005
Expires 1-31-94

AGENCY DISPLAY OF ESTIMATED BURDEN

The public reporting burden for this collection of information is estimated to average 5 minutes per response. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to DOT and OMB at the following addresses:

U.S. Department of Transportation
Office of Aviation Analysis, P-57
400 7th Street, SW
Washington, DC 20590

and

Office of Management and Budget
Office of Information and Regulatory Affairs
Paperwork Reduction Project 2106-0005
Washington, DC 20503

U.S. Department of Transportation
Office of the Secretary of Transportation

STATEMENT OF DIRECT AIR CARRIER

INSTRUCTIONS: Submit this form in triplicate to Department of Transportation, Regulatory Analysis Division, P-57, Office of Aviation Analysis, 400 7th Street, S.W., Washington, D.C. 20590. Date of filing for purposes of DOT regulations is the date properly completed forms are received by DOT.

_____ hereby promises that it will take responsibility for all
(Direct Air Carrier)

obligations owed by _____ to participants on charter
(Charter Operator)

flight schedule number _____ (or other designation of charter trip), including
(Flight Schedule Number

obligations for ground services and accommodations.

DIRECT AIR CARRIER

By: _____
(Signature)

_____
(Name in print)

_____
(Title)

_____
(Phone Number) *(Fax Number)*

_____
(Street, Box Number)

_____
(City, State, Zip Code)

_____
(Date) *

* *This document not acceptable if not dated.*

OST Form 4536

VOL 57 ISS 19 JA 29 1992 UMI

U.S. Department of Transportation

Office of the Secretary of Transportation

AGENCY DISPLAY OF ESTIMATED BURDEN

The public reporting burden for this collection of information is estimated to average 30 minutes per response. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to DOT and OMB at the following addresses:

U.S. Department of Transportation
Office of Aviation Analysis, P-57
400 7th Street, SW
Washington, DC 20590

and

Office of Management and Budget
Office of Information and Regulatory Affairs
Paperwork Reduction Project 2106-0030
Washington, DC 20503

OMB No. 2106-0030 Expires 12-31-94

U.S. AIR CARRIERS CERTIFICATE OF INSURANCE

POLICIES OF INSURANCE FOR AIRCRAFT ACCIDENT BODILY INJURY AND PROPERTY DAMAGE LIABILITY

FILING INSTRUCTIONS: File an original of this form with the Regulatory Analysis Division, P-57, Office of Aviation Analysis, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590.

(Please type information, except signatures.)

THIS CERTIFIES THAT: _____
(Name of Insurer)

has issued a policy or policies of Aircraft Liability Insurance to _____

_____
(Name and address of insured U.S. Air Carrier)

effective from _____ until ten (10) days after written notice from the insurer or carrier of the intent to terminate coverage is received by the Department of Transportation.

NOTE: Part 205 of the Department's Regulations does not allow for a predetermined termination date, and a certificate showing such a date is unacceptable.

1. The Insurer *(Check One)*:

☐ is licensed to issue aircraft insurance policies in the United States;

☐ is licensed or approved by the government of _____ to issue aircraft insurance policies; or

☐ is an approved surplus line insurer in the State(s) of _____

2. The insurer assumes, under the policy or policies listed below, aircraft accident liability insured to minimums at least equal to the following during operation, maintenance, or use of aircraft in "air transportation" as that term is defined in the Federal Aviation Act *(Complete applicable section(s) below)*:

A. **U.S. AIR TAXI OPERATORS WITH PART 298 AUTHORITY ONLY**
The aircraft covered by this policy are SMALL AIRCRAFT (i.e., with 60 or fewer passenger seats or with a maximum payload capacity of 18,000 pounds or less). *(Check separate or combined coverage as appropriate)*:

☐ Separate Coverages:

Policy No.	*Type of Liability*	*Minimum Limit* — *Each Person*	*Minimum Limit* — *Each Occurrence*
_____	Bodily Injury Liability (Excluding Passengers)	$ 75,000	$300,000
_____	Passenger Bodily Injury Liability	$ 75,000	$75,000 x 75% of total number of passenger seats installed in the aircraft.
_____	Property Damage		$100,000

☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. _____ *Amount of Coverage* _____

☐ This policy covers CARGO operations *only* and *excludes* passenger liability insurance.

OST Form 6410

B. U.S. COMMUTER AND CERTIFICATED AIR CARRIERS OPERATING SMALL AIRCRAFT

The aircraft covered by this policy are SMALL AIRCRAFT (i.e., with 60 or fewer passenger seats or with a maximum payload capacity of 18,000 pounds or less). *(Check separate or combined coverage as appropriate):*

☐ Separate Coverages:

Policy No.	Type of Liability	Minimum Limit: Each Person	Minimum Limit: Each Occurrence
_____	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	$300,000	$2,000,000
_____	Passenger Bodily Injury Liability	$300,000	$300,000 x 75% of total number of passenger seats installed in the aircraft.

☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. _____ *Amount of Coverage* _____

☐ This policy covers CARGO operations *only* and *excludes* passenger liability insurance.

C. U.S. CERTIFICATED AIR CARRIERS OPERATING LARGE AIRCRAFT

The aircraft covered by this policy are LARGE AIRCRAFT (i.e., with more than 60 passenger seats or with a maximum payload capacity of more than 18,000 pounds). *(Check separate or combined coverage as appropriate):*

☐ Separate Coverages:

Policy No.	Type of Liability	Minimum Limit: Each Person	Minimum Limit: Each Occurrence
_____	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	$300,000	$20,000,000
_____	Passenger Bodily Injury Liability	$300,000	$300,000 x 75% of total number of passenger seats installed in the aircraft.

☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. _____ *Amount of Coverage* _____

☐ This policy covers CARGO operations *only* and *excludes* passenger liability insurance.

3. The policy or policies listed in this certificate insure(s) *(Check One):*

	Make and Model	FAA or Foreign Flag Registration No.
☐ Operations conducted with all aircraft operated by the insured		
☐ Operations conducted with the following types of aircraft:		
☐ Operations with the following aircraft: (Use additional page if necessary)		

4. Each policy listed in this certificate meets or exceeds the requirements in 14 CFR Part 205.

_____ (Name of Insurer)	_____ (Name of Broker, if applicable)
_____ (Address)	_____ (Address)
_____ (City, State, Zip Code)	_____ (City, State, Zip Code)
_____ Contact (person who can verify the effectiveness of the coverage)	_____ (Officer or authorized representative)
_____ / _____ (Area Code, Phone Number) (Area Code, FAX Number)	_____ / _____ (Area Code, Phone Number) (Area Code, FAX Number)
_____ (Signature, if applicable)	_____ (Signature)
_____ (Date)	_____ (Date)

U.S. Department of Transportation

Office of the Secretary of Transportation

AGENCY DISPLAY OF ESTIMATED BURDEN

The public reporting burden for this collection of information is estimated to average 30 minutes per response. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to DOT and OMB at the following addresses:

U.S. Department of Transportation
Office of Aviation Analysis, P-57
400 7th Street, SW
Washington, DC 20590

and

Office of Management and Budget
Office of Information and Regulatory Affairs
Paperwork Reduction Project 2106-0030
Washington, DC 20503

OMB No. 2106-0030 Expires 12-31-94

FOREIGN AIR CARRIERS CERTIFICATE OF INSURANCE

POLICIES OF INSURANCE FOR AIRCRAFT ACCIDENT BODILY INJURY AND PROPERTY DAMAGE LIABILITY

FILING INSTRUCTIONS: File an original of this form with the Regulatory Analysis Division, P-57, Office of Aviation Analysis, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590.

(Please type information, except signatures.)

THIS CERTIFIES THAT: _____
(Name of Insurer)

has issued a policy or policies of Aircraft Liability Insurance to _____

_____
(Name and address of insured Foreign Air Carrier)

effective from _____ until ten (10) days after written notice from the insurer or carrier of the intent to terminate coverage is received by the Department of Transportation.

NOTE: Part 205 of the Department's Regulations does not allow for a predetermined termination date, and a certificate showing such a date is unacceptable

1. The Insurer *(Check One)*:
   - ☐ is licensed to issue aircraft insurance policies in the United States;
   - ☐ is licensed or approved by the government of _____ to issue aircraft insurance policies; or
   - ☐ is an approved surplus line insurer in the State(s) of _____

2. The insurer assumes, under the policy or policies listed below, aircraft accident liability insured to minimums at least equal to the following during operation, maintenance, or use of aircraft in "foreign air transportation" as that term is defined in the Federal Aviation Act *(Complete applicable section(s) below)*:

A. CANADIAN CHARTER AIR TAXI OPERATORS WITH PART 294 AUTHORITY ONLY-SMALL AIRCRAFT

The aircraft covered by this policy have 30 or fewer passenger seats or a maximum payload capacity of 7,500 pounds or less and a maximum authorized takeoff weight on wheels of no more than 35,000 pounds. *(Check separate or combined coverage as appropriate)*.

☐ Separate Coverages:

Policy No.	Type of Liability	Minimum Limit: Each Person	Minimum Limit: Each Occurrence
_____	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	$75,000	$2,000,000
_____	Passenger Bodily Injury Liability	$75,000	$75,000 x 75% of total number of passenger seats installed in the aircraft.

☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. _____ *Amount of Coverage* _____

☐ This policy covers CARGO operations *only* and *excludes* passenger liability insurance.

B. CANADIAN CHARTER AIR TAXI OPERATORS WITH PART 294 AUTHORITY ONLY-LARGE AIRCRAFT

The aircraft covered by this policy have more than 30 passengers seats or more than a maximum payload capacity of 7,500 pounds and a maximum authorized takeoff weight on wheels of no more than 35,000 pounds. *(Check separate or combined coverage as appropriate)*.

☐ Separate Coverages:

Policy No.	Type of Liability	Minimum Limit: Each Person	Minimum Limit: Each Occurrence
_____	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	$75,000	$20,000,000
_____	Passenger Bodily Injury Liability	$75,000	$75,000 x 75% of total number of passenger seats installed in the aircraft.

☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. _____ *Amount of Coverage* _____

☐ This policy covers CARGO operations *only* and *excludes* passenger liability insurance.

DOT Form 6411

C. FOREIGN AIR CARRIERS OPERATING SMALL AIRCRAFT

The aircraft covered by this policy are SMALL AIRCRAFT (i.e., with 60 or fewer passenger seats or with a maximum payload capacity of 18,000 pounds or less). *(Check separate or combined coverage as appropriate):*

☐ Separate Coverages:

Policy No.	Type of Liability	Minimum Limit: Each Person	Minimum Limit: Each Occurrence
_____	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	$300,000	$[illegible],000
_____	Passenger Bodily Injury Liability	$300,000	$300,000 x 75% of total number of passenger seats installed in the aircraft.

☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. _____ *Amount of Coverage* _____

☐ This policy covers CARGO operations *only* and *excludes* passenger liability insurance.

D. FOREIGN AIR CARRIERS OPERATING LARGE AIRCRAFT

The aircraft covered by this policy are LARGE AIRCRAFT (i.e., with more than 60 passenger seats or with a maximum payload capacity of more than 18,000 pounds). *(Check separate or combined coverage as appropriate):*

☐ Separate Coverages:

Policy No.	Type of Liability	Minimum Limit: Each Person	Minimum Limit: Each Occurrence
_____	Combined Bodily Injury (Excluding Passengers other than cargo attendants) and Property Damage Liability	$300,000	$20,000,000
_____	Passenger Bodily Injury Liability	$300,000	$300,000 x 75% of total number of passenger seats installed in the aircraft.

☐ Combined Coverage: This combined coverage is a single limit of liability for each occurrence at least equal to the required minimums stated above for bodily injury (excluding passengers), property damage, and passenger bodily injury.

Policy No. _____ *Amount of Coverage* _____

☐ This policy covers CARGO operations *only* and *excludes* passenger liability insurance.

3. The policy or policies listed in this certificate insure(s) *(Check One)*:

	Make and Model	FAA or Foreign Flag Registration No.
☐ Operations conducted with all aircraft operated by the insured		
☐ Operations conducted with the following types of aircraft:		
☐ Operations with the following aircraft: (Use additional page if necessary)		

4. Each policy listed in this certificate meets or exceeds the requirements in 14 CFR Part 205.

_____ (Name of Insurer)	_____ (Name of Broker, if applicable)
_____ (Address)	_____ (Address)
_____ (City, State, Zip Code)	_____ (City, State, Zip Code)
_____ Contact (person who can verify the effectiveness of the coverage)	_____ (Officer or authorized representative)
_____ / _____ (Area Code, Phone Number) (Area Code, FAX Number)	_____ / _____ (Area Code, Phone Number) (Area Code, FAX Number)
_____ (Signature, if applicable)	_____ (Signature)
_____ (Date)	_____ (Date)

[FR Doc. 92-2007 Filed 1-28-92; 8:45 am]

BILLING CODE 4910-62-C

VOL 57 ISS 19 JA 29 1992 UMI

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 101 and 201

[Docket No. RM92-1-000]

Revisions to Uniform Systems of Accounts to Account for Allowances Under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2-A; Extension of Time for Comments

January 22, 1992.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking; extension of time for initial and reply comments.

SUMMARY: On December 2, 1991, the Commission issued a proposed rule to amend its Uniform Systems of Accounts for public utilities, licenses and natural gas companies (56 FR 64567, December 11, 1991). The dates for filing initial and reply comments are being extended at the request of the Edison Electric Institute.

DATES: The date for filing initial comments is extended to April 10, 1992. The date for filing reply comments is extended to May 11, 1992.

ADDRESSES: Office of the Secretary, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary, (202) 208-0400.

Lois D. Cashell,

Secretary.

On January 14, 1992, Edison Electric Institute (EEI) filed a motion for an extension of time to file comments in response to the Commission's Notice of Proposed Rulemaking issued December 2, 1991, in the above-docketed proceeding. On January 17, 1992, the National Association of Regulatory Utility Commissioners filed an answer supporting EEI's motion.

Upon consideration, notice is hereby given that an extension of time for filing comments is granted to and including April 10, 1992. Reply comments shall be filed on or before May 11, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2093 Filed 1-28-92; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AC04

Golden Gate National Recreation Area Designated Bicycle Routes

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The purpose of this rulemaking is to designate certain routes within the nondeveloped area of Golden Gate National Recreation Area as open to bicycle use, and to regulate their use in these areas. This designation is proposed because bicycle use has been determined by the Superintendent to be a desirable recreational use of certain areas of the park and because such use is consistent with the protection of the park's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources.

DATES: Written comments will be accepted through March 30, 1991.

ADDRESSES: Comments should be addressed to: General Superintendent, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

FOR FURTHER INFORMATION CONTACT: Gil Soper, Chief Ranger, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123, Telephone: 415-556-4283.

SUPPLEMENTARY INFORMATION:

Background

The purpose of these proposed special regulations is to designate certain trails (former military, ranch, and fire protection roads) within Golden Gate National Recreation Area as open for bicycle use.

On April 2, 1987, the National Park Service published revised regulations in the **Federal Register** amending 36 CFR part 4 which, among other things, prohibits bicycle use except on park roads, in parking areas and on routes designated for bicycle use (52 FR 10670). These regulations, at 36 CFR 4.30, require that such designation be made only after "a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety consideration and management objectives and will not disturb wildlife or park resources" (36 CFR 4.30(a)). The regulations further require that, except for routes designated in developed areas and special use zones, routes designated for bicycle use shall be promulgated as special regulations.

After extensive consultations with bicyclists, equestrians, hikers, and environmental groups, a "Marin Trail Use Designation Environmental Assessment" was prepared to consider four alternatives for bicycle use of park trails. The result was the development of a "Trail Use Designation Plan" (Plan). In developing the Plan, the park held four public hearings over a three year period through the Golden Gate National Recreation Advisory Commission, as well as three user group workshops and numerous consultations with interested groups and individuals, and considered over 700 written and verbal comments.

The final Plan recommends that certain trails be designated for hiker use only; certain other trails for equestrian and hiker use; certain other trails for bicycle an hiker use; and certain trails for multiple use. Consideration was given to environmental factors, safety, visitor use patterns, management considerations, and special park values. All trails were considered; however, only roads and former roads were determined to be suitable for bicycle use.

The following listed trails or sections of trails are proposed for designation as open to bicycle use:

—Kirby Cove Road, between Conzelman Road and Kirby Cove Campground.
—Coastal/Slacker Road between McCullough Road and Slacker Hill.
—Coastal Trail between Conzelman Road at McCullough Road and the Fort Barry Rifle Range at Bunker Road.
—Coastal Trail between Rodeo Beach parking area and Hill 88.
—Coastal Trail between Tennessee Valley Trail and Coyote Ridge Trail.
—Coyote Ridge Trail between the Coastal Trail and Miwok Trail.
—Coyote Ridge Trail between Fox Trail and the Coastal Trail at the Hack Site.
—Coastal Trail between Coyote Ridge Trail at the Hack Site and Muir Beach.
—Miwok Trail between Rodeo Lagoon and Old Springs Trail.
—Old Springs Trail between Miwok Trail and Miwok Stable.
—Miwok Trail between Miwok Stable and Highway 1.

—Tennessee Valley Trail between Tennessee Beach and Tennessee Valley Road parking area.
—Bobcat Trail between Miwok Trail and Marincello Road.
—Alta Avenue between Wolf Back Ridge Road and Marin City.
—Hawk Camp Trail between Bobcat Trail and Hawk Camp.
—Rodeo Avenue between US Highway 101 and Alta Avenue.
—Marincello Road between Tennessee Valley Parking Area and Bobcat Trail.
—Haypress Road between Tennessee Valley Road and Haypress Campground.
—Smith Road between Marinview and Miwok Trail.
—Bay Trail between Golden Gate Bridge and Sausalito.
—Oakwood Valley Road between Tennessee Valley Road and Oakwood Valley Pond. (Does not include Oakwood Valley Trail between Pond and Alta Avenue)
—Diaz Ridge Trail between Mt. Tamalpais State Park boundary and Highway 1 near Muir Beach.
—Deer Park Fire Road between Frank's Valley Road and Coastal Trail near Pan Toll (Major portion is in Mt. Tamalpais State Park.)
—Willow Camp Fire Road between Stinson Beach and Ridgecrest Boulevard. (Major Portion is in Mt. Tamalpais State Park.)
—Bolinas Ridge Trail between Bolinas-Fairfax Road and Sir Francis Drake Highway near Olema.
—McCurdy Trail between Highway 1 and Bolinas Ridge Trail.
—Randall Trail between Highway 1 and Bolinas Ridge Trail.
—Shafter Trail between Bolinas Ridge Trail and Shafter Bridge. (Portion is in Samuel P. Taylor State Park.)

All of the trails which have been proposed as open for bicycle use are former ranch or military roads or maintained fire roads. Currently, 46.9 miles of former ranch, military and fire roads are recommended for bicycle use. All have adequate width and visibility for passing, and can be adequately maintained for multiple uses including bicycles.

The Plan requires the monitoring and management of these trails in such a manner as to ensure that designation for bicycle use will not adversely impact other park users or the environment. An erosion assessment survey in concert with The Plan will guide the reconstruction, maintenance and use of this trail system over the next several years.

Because the Plan is dynamic and subject to change as trails maintenance and construction activities occur, specific trails or routes are not listed in the regulation text. Any additional trails other than those mentioned in this preamble may be designated by the Superintendent in writing after holding public meetings through the Golden Gate National Recreation Area's Advisory Commission, by marking on maps which will be available in the office of the superintendent and at other places convenient to the public, and through the posting of trails which are open to bicycle use. Further, the authority of the Superintendent to "impose public use limits, or close all or a portion" of a designated trail according to the criteria in 36 CFR 1.5 is not restricted by this proposed regulation.

The Superintendent has made a determination in writing that these routes proposed for designation as bicycle routes are consistent with the protection of Golden Gate National Recreation Area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources, as required in § 4.30(b) of title 36, Code of Federal Regulations.

Section Analysis

The proposed rule will add a new paragraph (c) to the existing regulations at 36 CFR 7.97, "Designated bicycle routes", specific to the use of bicycles. This new paragraph permits the use of bicycles in accordance with existing regulations at 36 CFR 4.30 and specifics regulations for bicycle use on designated routes in non-developed areas of Golden Gate National Recreation Area.

Paragraph (c)(1) designates, pursuant to 36 CFR 4.30(b), certain roads and trails that were former military and ranch roads, and existing fire management roads as open to bicycle use. Such designated routes shall be identified by the posting of signs and by the identification on maps made available to the public.

Paragraph (c)(2) identifies maximum speed limits for bicycles on designated routes. These trails are not for the exclusive use of bicyclists, and are open to hikers and, in some areas, to horses. Speed limits will assist in preventing conflicts with these users.

Paragraph (c)(3) prohibits the possession of a bicycle in all non-developed areas not designated as open to bicycle use. This prohibition is to discourage the pushing or carrying of bicycles into non-designated areas, thus facilitating the fair enforcement of these proposed regulations.

This paragraph also requires the use of an activated white headlight between sunset and sunrise instead of a white reflector, which is currently prescribed by § 4.30(d). Forward reflectors alone would not be safe on trails in non-developed areas where there is a lack of activated lights that make reflectors useful.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed route designations and proposed additional off-road bicycle regulations to the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, California 94123, within 30 days of the publication of this notice in the Federal Register.

Drafting Information

The primary author of this rulemaking is Richard B. Hardin, Ranger Activities Specialist, Golden Gate National Recreation Area.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*).

In compliance with the National Environmental Policy Act (NEPA) an Environmental Assessment was prepared to review the impacts of this action. A Finding of No Significant Impact was signed on May 14, 1991.

In accordance with section 7 of the Endangered Species Act of 1973 formal consultation with the U.S. Fish and Wildlife Service was initiated for trails where use was impacting endangered species habitat. Bicycle use is not proposed for these trails.

The NPS has reviewed this rule as directed by Executive Order 12630, "Government Actions and Interference with Constitutionally Protected Rights", to determine if this rule has "policies that have taking implications." The NPS has determined that this rule does not have takings implications because the

regulations apply only to park lands, and open certain of these lands to bicycle users.

List of Subjects in 36 CFR Part 7

National Parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460*bb*–3, 462(k).

2. Section 7.97 is amended by adding paragraph (c) to read as follows:

§ 7.97 Golden Gate National Recreation Area.

* * * * *

(c) *Designated bicycle routes.* The use of a bicycle is permitted according to § 4.30 of this Chapter and, in non-developed areas, as follows:

(1) Bicycle use is permitted on former military roads, former ranch roads, and fire management roads which have been designated by the Superintendent as bicycle routes by the posting of signs, and as designated on maps which are available in the office of the superintendent and other places convenient to the public.

(2) Bicycle speed limits are as follows:

(i) 15 miles per hour: Upon all designated routes in Golden Gate National Recreation Area.

(ii) 5 miles per hour. On blind curves and when passing other route users.

(3) The following are prohibited:

(i) The possession of a bicycle on routes not designated as open to bicycle use.

(ii) Operating a bicycle on designated bicycle routes between sunset and sunrise without exhibiting on the bicycle or on the operator an activated white light that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

Dated: December 6, 1991.

Jennifer A. Salisbury,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 92–2142 Filed 1–28–92; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1303

RIN 0970–AB00

Head Start Program

AGENCY: Department of Health and Human Services (HHS), Administration for Children and Families (ACF).

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) requests comments from the public on proposed changes to 45 CFR part 1303 entitled "Procedures for Appeals for Head Start Delegate Agencies, and for Opportunities to Show Cause and Hearings for Head Start Grantees."

The proposed new procedures will reduce reporting and paperwork requirements. The changes also remove unnecessary and duplicative provisions and revise the language of the current regulation for clarity.

The most significant proposed change is to improve the show cause and hearings process for Head Start grantees by abolishing the current complex and costly procedures and utilizing the Departmental Appeals Board.

DATES: In order to be considered, comments on this proposed rule must be received on or before March 30, 1992.

ADDRESSES: Please address comments to: Wade F. Horn, Ph.D., Commissioner, Administration for Children, Youth and Families; PO Box 1182; Washington, DC 20013.

Beginning 14 days after close of the comment period, comments will be available for public inspection in room 2219, 330 C Street, SW., Washington, DC 20201, Monday through Friday between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Clayton D. Roth, Jr. (202) 245–0504.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to preschool children, aged three to the age of compulsory school attendance, and their low-income families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. In FY 1990, Head Start served 548,470 children through a network of 1,300 grantees and 620 delegate agencies which have approved written agreements with grantees to operate Head Start programs.

II. Purpose of the NPRM

The Administration for Children, Youth and Families (ACYF) is proposing to amend the current rule governing Head Start grantee and delegate agency appeals at 45 CFR part 1303. The purpose of this revision is to eliminate duplication and increase efficiency in governmental operations by reducing the time expended in preparing and holding an appeal, conducting a hearing and reaching a final decision. We believe this revision will reduce the cost of an appeal and the total time required for an appeal from the initial request for a review or a hearing on the proposed action to a final decision.

III. Summary of the Major Provisions of the NPRM

The proposed regulation significantly revises, clarifies, and simplifies the appeals process for Head Start grantees and/or current and prospective delegate agencies. The proposed changes are in response to a review and analysis of data on actual appeals filed by Head Start grantees and delegate agencies.

The following is a summary of the major provisions of the NPRM:

(1) Currently, grantees may appeal three types of actions by the Administration for Children and Families (ACF): A termination of financial assistance; a denial of refunding; and a suspension. This NPRM proposes to require that all allowable grantee appeals will be heard by the Departmental Appeals Board rather than by ACF staff.

(2) The NPRM continues to permit current and prospective delegate agencies to appeal to the grantee agency the rejection of an application and failure of a grantee to act on an application within a timely period. In addition, we propose to permit delegate agencies, for the first time, to appeal the termination of a grant or contract.

(3) We propose to raise attorney fees from $100.00 per day to the usual and customary fees for the locality in which the grantee or delegate agency is located but no higher than $250.00 per day. This figure will be adjusted annually for inflation.

(4) If a current or prospective delegate agency is dissatisfied with the grantee's decision, it may appeal that decision to ACF. The NPRM proposes to apply the "arbitrary and capricious" standard of

review for appeals to ACF by current or prospective delegate agencies.

(5) Finally, the NPRM proposes to allow the ACF reviewing official to direct a remedy where a specific resolution of the dispute is appropriate.

Section by Section Discussion of the NPRM

We are proposing to retitle 45 CFR part 1303 from "Procedures for Appeals for Head Start Delegate Agencies, and for Opportunities to Show Cause and Hearings for Head Start Grantees" to "Appeal Procedures for Head Start Grantees and Current or Prospective Delegate Agencies." We believe the new title provides a clearer understanding of the intent of 45 CFR part 1303 and conveys the newly reordered sequence of delegate appeals discussion which occurs before the current or prospective delegate agency appeals.

Subpart A

Subpart A, General, of the NPRM sets forth the purpose and application of the proposed rule, provides definitions of terms in the regulation, provides the right to an attorney, attorney fees and travel expenses and allows any other remedies authorized by law. In addition, it deals with certain administrative concerns, such as how documents must be served on parties and the agency, and the continued applicability of this part in the event of organizational changes, reduction of program appropriation levels or changes in agency nomenclature.

Section 1303.1

Purpose and Application. In this section we propose to correct the statutory citation and make editorial changes for clarification purposes.

Section 1303.2

Definitions. This section proposes to add definitions for "agreement," "denial of refunding," "day," "funding agency," "interim grantee," and "submittal"; revises definitions for "prospective delegate agency," "substantial rejection," and "termination"; and deletes definitions for "current delegate agency" and "program account."

A major purpose of the inclusion of a definition for the term "denial of refunding" is to make clear that the appeal rights from such a decision pertain only to situations in which a decision is made not to refund a grant after the end of an existing budget or project period based on findings that the grantee is unfit to continue operating the program.

Section 1303.3

Right to an attorney, attorney fees, and travel costs. This section proposes a number of significant changes, some of which are proposed in order to clarify agency policy. First, the limit on attorney's fees would be raised from $100.00 per day to the usual and customary fees for the locality in which the grantee or delegate agency is located. There is a proposed limitation of $250.00 per day, which shall be adjusted annually for inflation from the effective date of the regulations. This limitation may not be exceeded. The reason for these changes is to update the amounts payable and to keep them current with rises in the Consumer Price Index (CPI) without the necessity for constant amendment of the regulations, and to place a consistent limit on such fees. Actual notice of the current limitations will be provided to each grantee at the time it is notified of an appealable action. ACF officials are mindful of the fact that there are attorneys who charge in excess of the limitation proposed in this regulation. We are also mindful of the fact that the funds involved are scarce social service funds appropriated by Congress to provide valuable services to a population in need of them. Therefore, we believe that limitations on these costs are necessary and in the public interest. We urge the private bar to be similarly mindful of the nature of the programs involved and of the limited funds available for these programs.

We are proposing to remove the existing authority to waive the fee limitation because it has generated excessive disputes. It is believed that limiting the fees to the usual and customary charges, not to exceed $250.00 per day, and indexing that limitation to the national inflation index, or CPI, is reasonable. Moreover, this will result in a uniform and equitable application of the provision throughout the country.

We also have considered a change in current regulations proposing that grantees be allowed to charge the attorney fees discussed above as well as the attorney's travel and per diem costs to the grantee's current operating program funds only in those cases where the grantee is successful in the final outcome of its appeal. This change would result in the grantee not being able to utilize Federal grant funds to pay attorney fees and costs if the appeal was unsuccessful. The revised method of paying for grantee appeals would have resulted in this portion of the Head Start appeals process being compatible with the current fee payment practice of a number of other similar Departmental grant programs. We have decided not to propose such a change at this time. Nevertheless, we are interested in receiving comments concerning whether such a change would be advisable.

Similarly, it is proposed that fees be limited to only one attorney in connection with any one dispute or proceeding. ACF believes that this policy is already embodied in the current regulation which refers to "an attorney" and "such attorney." This is proposed to be clarified since attempts have been made to charge multiple attorneys' fees which would result in excessive costs being charged to programs.

Section 1303.4

Remedies. We propose a technical change to the title of this section by removing the word "other." The content of this section would remain the same.

Section 1303.5

Service of process. This new proposed section would spell out how documents must be filed and served and how notices must be served in any appeal. It also spells out the consequences of failing to use the required methods if an opposing party, or the deciding official or agency, maintains it never received documents. Basically, if the required method is not used, a rebuttable presumption is sent in a timely manner. It is proposed that this presumption may only be overcome by a preponderance of evidence showing they were sent in a timely manner.

Section 1303.6

Successor agencies and officials. This proposed section makes clear that any references to particular officials or agencies that currently have authority over Head Start include any successors to them.

Section 1303.7

Effect of failure to file or serve documents in a timely manner. This proposed section requires strict adherence to the various filing deadlines imposed by the regulations. We believe this is necessary to ensure the expeditious conduct of proceedings which is essential to prompt resolution of disputes. Since we believe prompt resolution of disputes is important for stability and continuity in providing quality Head Start services, we are proposing more stringent requirements than are typical. We believe that the provisions allowing waiver will provide the necessary flexibility in appropriate circumstances.

Section 1303.8

Waiver of requirements. The purpose of this proposed section is to make clear that, while procedural requirements may be waived for good cause, this is not to occur frequently or routinely. It is considered important by ACYF that appeals be concluded as rapidly as possible consistent with basic fairness to all concerned. Rapid resolution of disputes will, in our view, help ensure stability in Head Start programs and allow all concerned to focus on the provision of services rather than on the disputes themselves. Therefore, while discretion is provided to the responsible HHS official to waive procedural requirements when appropriate, this discretion is to be exercised with restraint. Similarly, it is ACYF's intent that the Departmental Appeals Board will apply the same restraint in those cases within its jurisdiction and to which these regulations also apply.

Subpart B

Subpart B, Appeals by Grantees, would replace current § 1303.20 through § 1303.37 (subparts C and D). The purpose of these proposed changes is to eliminate duplication and increase efficiencies in governmental operations by reducing the time spent in preparing and holding an appeal and making a final decision. This new Subpart B provides for a grantee whose financial assistance has been terminated, or whose non-competing continuation application for refunding has been denied, or who has been suspended for a period exceeding 30 days, to appeal such decisions to the Departmental Appeals Board using the procedures described in 45 CFR part 16, except as otherwise provided by Head Start appeals regulations.

Included in this consolidation and change of venue is the elimination of a final review and decision by the Commissioner, ACYF. However, the Commissioner must be consulted about the proposed action in advance and, in writing, must signify concurrence with the proposed action prior to its implementation by the appropriate responsible HHS official.

Section 1303.10

Purpose.—This section proposes to specify the purpose of the new subpart B.

Section 1303.11

Suspension on notice and opportunity to show cause. This proposed section would recodify the procedures which are found in current § 1303.31. Section 1303.31 specifies the appeals procedures regarding non-summary suspensions with opportunity to show cause.

Section 1303.11 contains appeals procedures for non-summary suspensions. In non-summary suspensions, funding in whole or in part is not suspended until after the time for an appeal has expired, or until a decision has been made on an appeal upholding the suspension.

Section 1303.12

Summary suspension and opportunity to show cause. This proposed section would modify and recodify the procedures which are found in current § 1303.32. Section 1303.32 specifies the appeals procedures available to the grantee regarding a summary suspension and opportunity to show cause.

Section 1303.12 continues and modifies appeals procedures for summary suspensions. In order to codify existing agency practice we are proposing to allow the appointment of an interim grantee if termination proceedings are initiated within 30 days of summary suspensions. The purpose of this revision is to avoid financial cost being incurred by a grantee that has been suspended when that suspension is serious enough to cause the initiation of termination proceedings.

In summary suspensions, funding in whole or in part ceases immediately.

Section 1303.13

Appeal by a grantee of a suspension continuing for more than 30 days. This proposed new section applies to summary suspensions that are initially issued for more than 30 days and summary suspensions continued for more than 30 days. It also proposes to allow the responsible HHS official to appoint an interim grantee to operate the program until either the grantee's suspension is lifted or a new grantee is selected.

Section 1303.14

Appeal by grantee from a Termination of Financial Assistance. This proposed regulation separately states the grounds for terminating a grant, the required contents of a notice of termination, and provisions with respect to funding during termination proceedings. We propose to consolidate two current appeal procedures (§ 1303.20 through 26 and § 1303.33 through 37) available to the grantee depending upon whether a denial of refunding or termination action was taken against the grantee. In an effort to provide a uniform, fair and consistent appeal procedure, we propose that an appeal from both actions be to the responsible HHS official who will then notify the Commissioner, ACYF. The Commissioner, ACYF, will promptly send the appeal to the Departmental Appeals Board as provided in 45 CFR part 16.

The only deviation from the procedures in 45 CFR part 16 pertains to whether a hearing is provided. Consistent with 42 U.S.C. 9841, proposed § 1303.12(d) would require that any grantee that requests a hearing from a suspension in excess of 30 days, or from a denial of refunding, or from a decision to terminate a grant shall be afforded a hearing before the Departmental Appeals Board. The appeal provisions of proposed § 1303.12 apply to suspensions in excess of 30 days, including a summary suspension which is continued in effect for more than 30 days, unless the continuance of it is agreed to by the grantee pursuant to proposed paragraph (f)(2) of proposed § 1303.11.

Section 1303.15

Appeal by a grantee from a denial of refunding. The proposed regulation is similar to proposed § 1303.14, except that it pertains to denials of refunding.

Section 1303.16

Conduct of hearing. The proposed regulation is similar to current § 1303.35 paragraphs (a) through (f) and (i), except that it pertains to denials of refunding, suspensions as well as terminations.

Subpart C

Subpart C of the NPRM, Appeals by Current or Prospective Delegate Agencies, sets forth the appeals procedures available to all current or prospective delegate agencies. This subpart consolidates and clarifies appeal rights of delegate agencies if a grantee initiates a termination action, rejects a refunding application or fails to act on an application from a current or prospective delegate agency. It proposes a two step process with the initial appeal at the grantee level and a final decision by the responsible HHS official at the Regional Office level.

Section 1303.20

Appeals to grantees by current or prospective delegate agencies on rejection of an application, failure to act on an application, or termination of a grant or contract. We propose to add in this section the right of a delegate agency to appeal a grantee's decision to terminate an agreement with a delegate agency. Current regulations at 45 CFR 1303.10 provide a current or prospective delegate agency the right to appeal on notice of the grantee agency's rejection

or failure to act on the delegate's funding application. The proposed change would also allow a delegate agency the right to appeal if terminated by a grantee. ACYF has proposed this additional appeal right to protect a delegate agency from a possible arbitrary and capricious action affecting its right to operate a Head Start program. There should be reasonable opportunity to have that action reviewed and, when appropriate, rescinded. We propose to add the word "termination" to the section title.

However, prior to an appeal to the responsible HHS official, there must be an appeal to the grantee. This new requirement also sets forth the procedures and the time frames that apply to those appeals. This is proposed because we believe it will ensure that both parties thoroughly review the situation and that a more complete record is made before the responsible HHS official is called on to review the matter. We believe this will result in the resolution of more problems before they reach HHS. Further, we believe it will lead to a more effective and efficient procedure to resolve such disputes once they reach HHS.

An additional change would be that a delegate agency may have a responsible HHS official review a grantee's action prior to its implementation. The responsible HHS official's decison may not be appealed.

Section 1303.21

Procedures for appeal by current or prospective delegate agencies to the responsible HHS official from denials by grantees of an application or failure to act on an application. This section proposes to consolidate the requirements of the current § 1303.11 and § 1303.14 in order to provide the same appeal process to both current delegate agencies and any agency seeking to become a delegate. The purpose is to simplify the process and increase efficiency by providing a single, consistent appeal process for both current and prospective delegate agencies.

Section 1303.22

Decision on appeal in favor of grantee. This proposed section contains the procedures and options that would apply when the responsible HHS official finds in favor of the grantee. It also sets out the proposed standard of review. The "arbitrary and capricious" standard of review is proposed since there is a large body of law defining and applying it. ACYF officials believe this standard will provide guidance, objectivity, and consistency in the review of grantee decisions.

Section 1303.23

Decision on appeal in favor of current or prospective delegate agency. This proposed section would replace § 1303.13 and § 1303.15 through § 1303.19. The purpose is to simplify the regulations and to broaden the scope of remedies available to the responsible HHS official. Under the proposed regulations the responsible HHS official may direct a remedy. Alternatively, the responsible HHS official may remand the rejection of an application, or the termination of a delegate agency's agreement, to the grantee for further consideration. We believe that providing the responsible HHS official with authority to direct a specific resolution of the dispute is appropriate in those cases where the proper outcome is clear. This alternative will speed resolution of disputes and save costs for all parties.

In addition, this proposed regulation would establish deadlines for certain actions to be taken by the responsible HHS official as well as by grantees when there is a decision adverse to grantees.

Redesignation and Consolidation Table

Current section	New section
1303.1	No redesignation.
1303.2	No redesignation.
1303.3	No redesignation.
1303.4	No redesignation.
None	1303.5.
None	1303.6.
None	1303.7.
None	1303.8.
1303.10	1303.20.
1303.11 and 1303.14	1303.201.
1303.12	1303.22.
1303.13 and 1303.15–19	1303.23.
1303.20	1303.15.
1303.21	1303.15.
1303.22	1303.15.
1303.23	1303.15.
1303.24	1303.15.
1303.25	1303.15.
1303.26	None.
1303.30	1303.10.
1303.31	1303.11.
1303.32	1303.12.
None	1303.13.
1303.33	1303.14.
1303.34	None.
1303.35	1303.16.
1303.36	None.
1303.37	None.

V. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department concluded that these regulations are not major rules within the meaning of the Executive Order because they do not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria. In fact, it is our estimation that this revision of the appeals process will be a direct benefit to the government since one level of review is eliminated.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 6) we have tried to anticipate and reduce the impact of rules and paperwork requirements on small businesses. The public burden is estimated to be 45 hours of work load per response. This is a reduction in the paperwork burden placed on grantees because there will be less duplication of documents given the reduction in appeal levels. For each rule with a "significant economic impact on a substantial number of small entities" we must analyze the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities. While this proposed rule would affect small entities, it will not have a significant economic impact on a substantial number of small entities. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Sections 1303.10 through 1303.23 of this proposed rule contain information collection requirements which are subject to review by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The public burden is estimated to be 45 hours per response. Organizations and individuals desiring to submit comments on this information collection requirement should direct them to the agency official designated for this purpose whose name appears in the preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3002), Washington, DC 20503, Attention: Desk Officer for DHHS, ACF/Head Start Program.

List of Subjects in 45 CFR Part 1303

Administrative practice and procedures, Education of disadvantaged, Grant programs—social programs.

For the reasons set forth in the Preamble, chapter XIII, subchapter B,

part 1303, of title 45 of the Code of Federal Regulations is proposed to be revised as follows:

PART 1303—APPEAL PROCEDURES FOR HEAD START GRANTEES AND CURRENT OR PROSPECTIVE DELEGATE AGENCIES

Subpart A—General

Sec.

1303.1 Purpose and application.
1303.2 Definitions.
1303.3 Right to attorney, attorney fees, and travel costs.
1303.4 Remedies.
1303.5 Service of process.
1303.6 Successor agencies and officials.
1303.7 Effect of failure to file or serve documents in a timely manner.
1303.8 Waiver of requirements.

Subpart B—Appeals by Grantees

1303.10 Purpose.
1303.11 Suspension on notice and opportunity to show cause.
1303.12 Summary suspension and opportunity to show cause.
1303.13 Appeal by a grantee of a suspension continuing for more than 30 days.
1303.14 Appeal by a grantee from a termination of financial assistance.
1303.15 Appeal by a grantee from a denial of refunding.
1303.16 Conduct of hearing.

Subpart C—Appeals by Current or Prospective Delegate Agencies

1303.20 Appeals to grantees by current or prospective delegate agencies of rejection of an application, failure to act on an application, or termination of a grant or contract..
1303.21 Procedures for appeal by current or prospective delegate agencies to the responsible HHS official from denials by grantees of an application or failure to act on an application.
1303.22 Decision on appeal in favor of grantee.
1303.23 Decision on appeal in favor of the current or prospective delegate agency.

Authority: 42 U.S.C. 9801 et seq.

Subpart A—General

§ 1303.1 Purpose and application.

This part prescribes regulations based on section 646 of the Head Start Act, 42 U.S.C. subsection 9841, as it applies to grantees and current or prospective delegate agencies engaged in or wanting to engage in the operation of Head Start programs under the Act. It prescribes the procedures for appeals by current and prospective delegate agencies from specified actions or inaction by grantees. It also provides procedures for reasonable notice and opportunity to show cause in cases of suspension of financial assistance by the responsible HHS official and for an appeal to the Departmental Appeals Board by grantees in cases of denial of refunding, termination of financial assistance, and suspension of financial assistance where provided under this part 1303.

§ 1303.2 Definitions.

As used in this part:

Act means the Head Start Act, 42 U.S.C. section 9831, et seq.

ACYF means the Administration for Children, Youth and Families in the Department of Health and Human Services, and includes Regional staff.

Agreement means either a grant or a contract between a grantee and a delegate agency for the conduct of all or part of the grantee's Head Start program.

Day means the 24 hour period beginning at 12 a.m. local time and continuing for the next 24 hour period. It includes all calendar days unless otherwise expressly noted.

Delegate Agency means a public or private non-profit organization or agency to which a grantee has delegated by written agreement the carrying out of all or part of its Head Start program.

Denial of Refunding means the refusal of a funding agency to fund an application for a continuation of a Head Start program for a subsequent program year when the decision is based on a determination that the grantee has improperly conducted its program, or is incapable of doing so properly in the future, or otherwise is in violation of applicable law, regulations, or other policies.

Funding Agency means the agency that provides funds directly to either a grantee or a delegate agency. ACYF is the funding agency for a grantee, and a grantee is the funding agency for a delegate agency.

Grantee means the local public or private non-profit agency which has been designated as a Head Start agency under 42 U.S.C. 9836 and which has been granted financial assistance by the responsible HHS official to operate a Head Start program.

Interim Grantee means an agency which has been appointed to operate a Head Start program for a period of time not to exceed one year while an appeal of a denial of refunding, termination or suspension action is pending.

Prospective Delegate Agency means a public or private non-profit agency or organization which has applied to a grantee to serve as a delegate agency.

Responsible HHS Official means the official who is authorized to make the grant of financial assistance to operate a Head Start program or his or her designee.

Submittal means the date of actual receipt or the date the material was served in accordance with § 1303.5 of this part for providing documents or notices of appeals, and similar matters, to either grantees, delegate agencies, prospective delegate agencies, or ACYF.

Substantial Rejection means that a funding agency requires that the funding of a current delegate agency be reduced to 80 percent or less of the current level of operations for any reason other than a determination that the delegate agency does not need the funds to serve all the eligible persons it proposes to serve.

Suspension of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee.

Termination of a grant or delegate agency agreement means permanent withdrawal of the grantee's or delegate agency's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or delegate agency. Termination does not include:

(a) Withdrawal of funds awarded on the basis of the grantee's or delegate agency's underestimate of the unobligated balance in a prior period;

(b) Refusal by the funding agency to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation renewal, extension or supplemental award);

(c) Withdrawal of the unobligated balance as of the expiration of a grant;

(d) Annulment, i.e., voiding of a grant upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Work day means any 24 hour period beginning at 12 a.m. local time and continuing for 24 hours. It excludes Saturdays, Sundays, and legal holidays. Any time ending on one of the excluded days shall extend to 5 p.m. of the next full work day.

§ 1303.3 Right to attorney, attorney fees, and travel costs.

(a) All parties to proceedings under this part including informal proceedings, have the right to be represented by an attorney.

(1) Attorney fees may be charged to the program grant in an amount equal to the usual and customary fees charged in the locality. However, such fees may not exceed $250.00 per day, adjusted for inflation beginning one year after the effective date of these regulations. The grantee or delegate agency may use current operating funds to pay these costs. The fees of only one attorney may be charged to the program grant with respect to a particular dispute. Such fees

may not be charged if the grantee or delegate agency has an attorney on its staff, or if it has a retainer agreement with an attorney which fully covers fees connected with litigation. The grantee or delegate agency shall have the burden of establishing the usual and customary fees and shall furnish documentation to support that determination that is satisfactory to the responsible HHS official.

(2) A grantee or delegate agency may designate up to two persons to attend and participate in proceedings held under this part. Travel and per diem costs of such persons, and of an attorney representing the grantee or delegate agency, shall not exceed those allowable under Standard Governmental Travel Regulations in effect at the time of the travel.

(b) In the event that use of program funds under this section would result in curtailment of program operations or inability to liquidate prior obligations, the party so affected may apply to the responsible HHS official for payment of these expenses.

(c) The responsible HHS official, upon being satisfied that these expenditures would result in curtailment of program operations or inability to liquidate prior obligations, must make payment therefore to the affected party by way of reimbursement from currently available funds.

§ 1303.4 Remedies.

The procedures established by subparts B and C of this part shall not be construed as precluding ACYF from pursuing any other remedies authorized by law.

§ 1303.5 Service of process.

Whenever documents are required to be filed or served under this part, or notice provided under this part, certified mail shall be used with a return receipt requested. Alternatively, any other system may be used that provides proof of the date of receipt of the documents by the addressee. If this regulation is not complied with, and if a party alleges that failed to receive documents allegedly sent to it, there will be a rebuttable presumption that the documents or notices were not sent as required by this part, or as alleged by the party that failed to use the required mode of service. The presumption may be rebutted only by a showing supported by a preponderance of evidence that the material was in fact submitted in a timely manner.

§ 1303.6 Successor agencies and officials.

Wherever reference is made to a particular Federal agency, office, or official it shall be deemed to apply to any other agency, office, or official which subsequently becomes responsible for administration of the program or any portion of it.

§ 1303.7 Effect of failure to file or serve documents in a timely manner.

(a) Whenever an appeal is not filed within the time specified in these or related regulations, the potential appellant shall be deemed to have consented to the proposed action and to have waived all rights of appeal.

(b) Whenever a party has failed to file a response or other submission within the time required in these regulations, or by order of an appropriate HHS responsible official, the party shall be deemed to have waived the right to file such response or submission.

(c) A party fails to comply with the requisite deadlines or time frames if it exceeds them by any amount.

(d) The time to file an appeal, response, or other submission may be waived in accordance with § 1303.8 of this part.

§ 1303.8 Waiver of requirements.

(a) Any procedural requirements required by these regulations may be waived by the responsible HHS official or such waiver requests may be granted by the Departmental Appeals Board in those cases where the Board has jurisdiction. Requests for waivers must be in writing and based on good cause.

(b) Approvals of waivers must be in writing and signed by the responsible HHS official or by the Departmental Appeals Board when it has jurisdiction. The requirements of this paragraph may not be waived.

(c) "Good cause" consists of the following:

(1) Litigation dates that cannot be changed;

(2) Personal emergencies pertaining to the health of a person involved in and essential to the proceeding or to a member of that person's immediate family, spouse, parents, or siblings;

(3) The complexity of the case is such that preparation of the necessary documents cannot reasonably be expected to be completed within the standard time frames;

(4) Other matters beyond the control of the moving party, such as strikes and natural disasters.

(d) Under no circumstances may "good cause" consist of a failure to meet a deadline due to the oversight of either a party or its representative.

(e) Waivers of timely filing or service shall be granted only when necessary in the interest of fairness to all parties, including the Federal agency. They will be granted sparingly as prompt resolution of disputes is a major goal of these regulations. The responsible HHS official shall have the right, on his or her own motion or on motion of a party, to require such documentation as he or she deems necessary in support of a request for a waiver.

(f) A request for an informal meeting by a delegate agency, including a prospective delegate agency, may be denied by the responsible HHS official, on motion of the grantee or on his or her own motion, if the official concludes that the written appeal fails to state plausible grounds for reversing the grantee's decision or the grantee's failure to act on an application.

Subpart B—Appeals by Grantees

§ 1303.10 Purpose.

(a) This subpart establishes rules and procedures for the suspension of a grantee, denial of a grantee's application for refunding, or termination of assistance under the Act for circumstances related to the particular grant, such as ineffective or improper use of Federal funds or for failure to comply with applicable laws, regulations, policies, instructions, assurances, terms and conditions or, in accordance with part 1302 of this chapter, upon loss by the grantee of legal status or financial viability.

(b) This subpart does not apply to any administrative action based upon any violation, or alleged violation, of Title VI of the Civil Rights Act of 1964.

§ 1303.11 Suspension on notice and opportunity to show cause.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend financial assistance to a grantee in whole or in part for breach or threatened breach of any requirement stated in § 1303.10 pursuant to notice and opportunity to show cause why assistance should not be suspended.

(b) The responsible HHS official will notify the grantee as required by § 1303.5 or by telegram that ACF intends to suspend financial assistance, in whole or in part, unless good cause is shown why such action should not be taken. The notice will include:

(1) The grounds for the proposed suspension;

(2) The effective date of the proposed suspension;

(3) Information that the grantee has the opportunity to submit written material in opposition to the intended suspension and to meet informally with

the responsible HHS official regarding the intended suspension;

(4) Information that the written material must be submitted to the responsible HHS official at least seven days prior to the effective date of the proposed suspension and that a request for an informal meeting must be made in writing to the responsible HHS official no later than seven days after the day the notice of intention to suspend was mailed to the grantee;

(5) Invitation to correct the deficiency by voluntary action; and

(6) A copy of this subpart.

(c) If the grantee requests an informal meeting, the responsible HHS official will fix a time and place for the meeting. In no event will such meeting be scheduled less than seven days after the notice of intention to suspend was sent to the grantee.

(d) The responsible HHS official may in his discretion extend the period of time or date for making requests or submitting material by the grantee and will notify the grantee of any such extension.

(e) At the time the responsible HHS official sends the notice of intention to suspend financial assistance to the grantee, he will send a copy of it to any delegate agency whose activities or failures to act are a substantial cause of the proposed suspension, and will inform such delegate agency that it is entitled to submit written material in opposition and to participate in the informal meeting with the responsible HHS official if one is held. In addition, the responsible HHS official may give such notice to any other Head Start delegate agency of the grantee.

(f) Within three days of receipt of the notice of intention to suspend financial assistance, the grantee shall send a copy of such notice and a copy of this subpart to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency that wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting regarding the intended suspension, if not otherwise afforded a right to participate, may request permission to do so from the responsible HHS official, who may grant or deny such permission. In acting upon any such request from a delegate agency, the responsible HHS official will take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the delegate agency requesting such permission appear to be adequately represented by other participants.

(g) The responsible HHS official will consider any timely material presented in writing, any material presented during the course of the informal meeting as well as any showing that the grantee has adequately corrected the deficiency which led to the suspension proceedings. The decision of the responsible HHS official will be made within five days after the conclusion of the informal meeting. If the responsible HHS official concludes that the grantee has failed to show cause why financial assistance should not be suspended, he may suspend financial assistance in whole or in part and under such terms and conditions as he specifies.

(h) Notice of such suspension will be promptly transmitted to the grantee as required in § 1303.5 of this part or by some other means showing the date of receipt, and shall become effective upon delivery or on the date delivery is refused or the material is returned. Suspension shall not exceed 30 days unless the responsible HHS official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated in accordance with § 1303.14, the suspension of financial assistance will be rescinded.

(i) New obligations incurred by the grantee during the suspension period will not be allowed unless the granting agency expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of the granting agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(j) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until the grantee's non-summary suspension is lifted.

(k) The responsible HHS official may modify the terms, condition and nature of the suspension or rescind the suspension action at any time on his own initiative or upon a showing satisfactory to him that the grantee has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspension partly or fully rescinded may, at the discretion of the responsible HHS official, be reimposed with or without further proceedings, except that the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with § 1303.14 or unless the responsible HHS official and the grantee agree to continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of financial assistance will be rescinded.

§ 1303.12 Summary suspension and opportunity to show cause.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend financial assistance in whole or in part without prior notice and an opportunity to show cause if it is determined that immediate suspension is necessary because of a serious risk of:

(1) Substantial injury to property or loss of project funds; or

(2) Violation of a Federal, State, or local criminal statute; or

(3) If staff or participants' health and safety are at risk.

(b) The notice of summary suspension will be given to the grantee as required by § 1303.5 of this part, or by some other means showing the date of receipt, and shall become effective on delivery or on the date delivery is refused or the material is returned unclaimed.

(c) the notice must include the following items:

(1) The effective date of the suspension;

(2) The grounds for the suspension;

(3) The extent of terms and conditions of any full or partial suspension;

(4) A statement prohibiting the grantee from making any new expenditures or incurring any new obligations in connection with the suspended portion of the program; and

(5) A statement advising the grantee that it has an opportunity to show cause at an informal meeting why the suspension should be rescinded. The request for an informal meeting must be made by the grantee in writing to the responsible HHS official no later than five work days after the effective date of the notice of summary suspension as described in paragraph (b) of this section.

(d) If the grantee requests in writing the opportunity to show cause why the suspension should be rescinded, the responsible HHS official will fix a time and place for an informal meeting for this purpose. This meeting will be held within five work days after the grantees request is received by the responsible HHS official. Notwithstanding the provisions of this paragraph, the

responsible HHS official may proceed to deny refunding or initiate termination proceedings at any time even though financial assistance of the grantee has been suspended in whole or in part.

(e) Notice of summary suspension must also be furnished by the grantee to its delegate agencies within two work days of its receipt of the notice from ACYF by certified mail, return receipt requested, or by any other means showing dates of transmittal and receipt or return as undeliverable or unclaimed. Delegate agencies affected by the summary suspension have the right to participate in the informal meeting as set forth in paragraph (d) of this section.

(f) The effective period of a summary suspension of financial assistance may not exceed 30 days unless:

(1) The conditions creating the summary suspension have not been corrected; or

(2) The parties agree to a continuation of the summary suspension for an additional period of time; or

(3) The grantee, in accordance with paragraph (d) of this section, requests an opportunity to show cause why the summary suspension should be rescinded, in which case it may remain in effect in accordance with paragraph (h) of this section; or

(4) Termination or denial of refunding proceedings are initiated in accordance with § 1303.14 or § 1303.15.

(g) Any summary suspension that remains in effect for more than 30 days is subject to the requirements of § 1303.12 of this part. The only exceptions are where there is an agreement under paragraph (f)(2) of this section, or the circumstances described in paragraphs (f)(4) or (h)(1) of this section exist.

(h)(1) If the grantee requests an opportunity to show cause why a summary suspension should be rescinded, the suspension of financial assistance will continue in effect until the grantee has been afforded such opportunity and a decision has been made by the responsible HHS official.

(2) If the suspension continues for more than 30 days, the suspension remains in effect even if it is appealed to the Departmental Appeals Board.

(3) Notwithstanding any other provisions of these or other regulations, if a denial of refunding occurs or a termination action is instituted while the summary suspension is in effect, the suspension shall merge into the later action and function shall not be available until the action is rescinded or a decision favorable to the grantee is rendered.

(i) The responsible HHS official must consider any timely material presented in writing, any material presented during the course of the informal meeting, as well as any other evidence that the grantee has adequately corrected the deficiency which led to the summary suspension.

(j) A decision must be made within five work days after the conclusion of the informal meeting with the responsible HHS official. If the responsible HHS official concludes, after considering the information provided at the informal meeting, that the grantee has failed to show cause why the suspension should be rescinded, the responsible HHS official may continue the suspension, in whole or in part and under the terms and conditions specified in the notice of suspension.

(k) New obligations incurred by the grantee during the suspension period will not be allowed unless the granting agency expressly authorizes them in the notice of suspension or by an amendment to the notice. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension, denial of refunding or termination.

(l) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's summary suspension is lifted or a new grantee is selected in accordance with subpart B of this part.

(m) At the discretion of the funding agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(n) The responsible HHS official may modify the terms, conditions and nature of the summary suspension or rescind the suspension action at any time upon receiving satisfactory evidence that the grantee has adequately corrected the deficiency which led to the suspension and that the deficiency will not occur again. Suspension partly or fully rescinded may, at the discretion of the responsible HHS official, be reimposed with or without further proceedings.

§ 1303.13 Appeal by a grantee of a suspension continuing for more than 30 days.

(a) This section applies to summary suspensions that are initially issued for more than 30 days and summary suspensions continued for more than 30 days except those identified in § 1303.11(g) of this part.

(b) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may suspend a grant for more than 30 days. A suspension may, among other bases, be imposed for the same reasons that justify termination of financial assistance or which justify a denial of refunding of a grant.

(c) A notice of a suspension under this section shall set forth:

(1) The reasons for the action;

(2) The duration of the suspension, which may be indefinite;

(3) The fact that the action may be appealed to the Departmental Appeals Board and the time within which it must be appealed.

(d) During the period of suspension a grantee may not incur any valid obligations against Federal Head Start grant funds, nor may any grantee expenditure or provision of in-kind services or items of value made during the period be counted as applying toward any required matching contribution required of a grantee, except as otherwise provided in this Part.

(e) The responsible HHS official may appoint an agency to serve as an interim grantee to operate the program until either the grantee's suspension is lifted or a new grantee is selected in accordance with subpart B and C of 45 CFR part 1302.

(f) Any appeal to the responsible HHS official must be made within five days of the grantee's receipt of notice of suspension or return of the notice as undeliverable, refused, unclaimed, or for like reasons. All such appeals will be immediately transmitted to the Commissioner, ACYF, who will send the appeal to the Departmental Appeals Board. Appeals will be governed by the Departmental Appeals Board's regulations at 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee requesting a hearing as part of its appeal shall be afforded one by the Departmental Appeals Board.

(g) If a grantee is successful on its appeal any costs incurred during the period of suspension that are otherwise allowable may be paid with Federal grant funds. Moreover, any cash or in-kind contributions of the grantee during the suspension period that are otherwise allowable may be counted toward meeting the grantee's non-Federal share requirement.

(h) If a grantee's appeal is denied by the Departmental Appeals Board, but the grantee is subsequently restored to the program because it has corrected those conditions which warranted the suspension, its activities during the period of the suspension remain outside

the scope of the program. Federal funds may not be used to offset any cost during the period, nor may any cash or in-kind contributions received during the period be used to meet non-Federal share requirements.

(i) If the Federal agency institutes termination proceedings during a suspension, or denies refunding, the two actions shall merge and the grantee need not file a new appeal. Rather, the Departmental Appeals Board will automatically be vested with jurisdiction over the termination action or the denial or refunding and will, pursuant to its rules and procedures, permit the grantee to respond to the notice of termination. In a situation where a suspension action is merged into a termination action in accordance with this section, the suspension continues until there is an administration decision by the Departmental Appeals Board on the grantee's appeal.

§ 1303.14 Appeal by a grantee from a termination of financial assistance.

(a) After receiving concurrence from the Commissioner, ACYF, the responsible HHS official may terminate financial assistance to a grantee. Financial assistance may be terminated in whole or in part.

(b) Financial assistance may be terminated for any or all of the following reasons:

(1) The grantee is no longer financially viable;

(2) The grantee has lost the requisite legal status or permits;

(3) The grantee has failed to comply with the required fiscal or program reporting requirements applicable to grantees in the Head Start program;

(4) The grantee has failed to meet the performance standards for operation of Head Start programs that are applicable to grantees;

(5) The grantee has failed to comply with the eligibility requirements and limitations on enrollment in the Head Start programs, or both;

(6) The grantee has failed to comply with the Head Start grants administration requirements set forth in 45 CFR part 1301;

(7) The grantee has failed to comply with the requirements of the Head Start Act;

(8) The grantee is debarred from receiving Federal grants or contracts;

(9) The grantee fails to abide by any other terms and conditions of its award of financial assistance, or any other applicable laws, regulations, or other applicable Federal or State requirements or policies.

(c) A notice of termination shall set forth:

(1) The violations or actions justifying the termination.

(2) The fact that the termination may be appealed within 10 days to the responsible HHS official and that such appeals shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, and that any grantee which represents a hearing shall be afforded one, as mandated by 42 U.S.C. 9841.

(3) That the appeal may be made only by the Board of Directors of the grantee or an official acting on behalf of such Board.

(4) That if the activities of a delegate agency are the basis, in whole or in part, for the reasons for the proposed termination, the identity of the delegate agency.

(5) Information that the matter has been set down for hearing at a stated time and place or that the grantee has a right to request a hearing in writing within a period of time, specified in the notice which is not later than 10 days from the date of sending the notice.

(d) The responsible HHS official will immediately transmit a copy of the grantee's request for a hearing to the Commissioner, ACYF. The Commissioner, ACYF, will send the request for a hearing to the Departmental Appeals Board.

(e)(1) During a grantee's appeal of a termination decision, funding will continue until an adverse decision is rendered or until expiration of the then current budget period. At the end of the current budget period, if a decision has not been rendered, the responsible HHS official may either award an interim grant to the grantee until a decision is made or, at his or her discretion, may award an interim grant to another organization to operate the program quarterly until a decision is rendered. In the latter circumstance, if the grantee prevails its grant will be restored beginning with the first full quarter starting after the decision is rendered.

(2) If a grantee's funding has been suspended, no funding is available during the termination proceedings, or at any other time, unless the action is rescinded or the grantee's appeal is successful.

(f) If a grantee requests a hearing, it shall send a copy of its request to all delegate agencies which would be financially affected by the termination of assistance and to each delegate agency identified in the notice. The copies of the request shall be sent to these delegate agencies at the same time the grantee's request is made to ACYF. The grantee shall promptly send ACYF a list of the delegate agencies to which it has sent the copies and the date on which they were sent.

(g) If the Departmental Appeals Board informs a grantee that a proposed termination action has been set down for hearing, the grantee shall within five days of its receipt of this notice send a copy of it to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice. The grantee shall send the Departmental Appeals Board and the responsible HHS official a list of all delegate agencies notified and the date of notification.

(h) If the responsible HHS official has initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of ACYF and the grantee, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(i) The results of the proceeding and any measure taken thereafter by ACYF pursuant to this part shall be fully binding upon the grantee and all its delegate agencies whether or not they actually participated in the hearing.

(j) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted to the responsible HHS official within a reasonable period of time to be fixed by him upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date had been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of ACYF, including the allegations contained in the notice of termination.

(k) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

§ 1303.15 Appeal by a grantee from a denial of refunding.

(a) After receiving concurrence from the Commissioner, ACYF, a grantee's application for refunding may be denied by the responsible HHS official for circumstances described in paragraph (c) of this section.

(b) When an intention to deny a grantee's application for refunding is arrived at on the basis to which this subpart applies, the responsible HHS official will provide the grantee as much advance notice thereof as is reasonably possible, in no event later than 30 days after the receipt by ACYF of the application. The notice will inform the grantee that it has the opportunity for a full and fair hearing on whether refunding should be denied.

(1) Such appeals shall be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations. Any grantee which requests a hearing shall be afforded one, as mandated by 42 U.S.C. 9841.

(2) Any such appeals must be filed within ten work days after the grantee receives notice of the decision to deny refunding.

(c) Refunding of a grant may be denied for any or all of the reasons for which a grant may be terminated, as set forth in § 1303.14(b) of this part. Refunding may also be denied if it is concluded that continuing a particular program is no longer in the public interest.

(d) Decisions to deny refunding shall be in writing, signed by the responsible HHS official, dated, and set in compliance with § 1303.5 of this part or by telegram, or by any other mode establishing the date sent and received by the addressee, or the date it was determined delivery could not be made, or the date delivery was refused. A Notice of Decision shall contain:

(1) A statement that indicates the grounds which justify the proposed denial of refunding;

(2) The identity of the delegate agency, if the activities of that delegate agency are the basis, in whole or in part, for the proposed denial of refunding; and

(3) A statement that if the grantee wishes to appeal the denial of refunding of financial assistance it must appeal directly to the responsible HHS official.

(e) The responsible HHS official will notify the Commissioner, ACYF of the grantee's appeal and request for a hearing. The Commissioner, ACYF, will promptly send the appeal to the Departmental Appeals Board, complying with the procedures provided in 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations.

(f) The appeal may be made only by the Board of Directors of the grantee or an official acting on behalf of such Board.

§ 1303.16 Conduct of hearing.

(a) The presiding officer shall conduct a full and friar hearing, avoid delay, maintain order, and make a sufficient record of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown otherwise determines.

(b) After the notice described in paragraph (g) of this section is filed with the presiding officer, he or she shall not consult with any person or party on a fact in issue unless on notice and opportunity for all parties to participate. However, in performing his or her functions under this part, the presiding officer may use the assistance and advice of an attorney, designated by the General Counsel of the Department of Health and Human Services who has not represented ACYF or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(c) Both ACYF and the grantee are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (g) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) In addition to ACYF, the grantee, and any delegate agencies which have a right to appear, the presiding officer may permit the participation in the proceedings of such persons or organizations as deemed necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(e) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of termination, denial of refunding or suspension has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(f) The presiding officer shall permit or deny such participation and shall give notice of his or her decision to the applicant, the grantee, and ACYF, and, in the case of denial, a brief statement of the reasons therefor. Even if previously denied, the presiding officer may subsequently permit such participation if, in his or her opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(g) The Departmental Appeals Board will send the responsible HHS official, the grantee and any other party a notice which states the time, place, nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice will also identify with reasonable specificity the ACYF requirements which the grantee is alleged to have violated. The notice will be served and filed not later than ten work days prior to the hearing.

Subpart C—Appeals by Current or Prospective Delegate Agencies

§ 1303.20 Appeals to grantees by current or prospective delegate agencies of rejection of an application, failure to act on an application or termination of a grant or contract.

(a) A grantee must give prompt, fair and adequate consideration to applications submitted by current or prospective delegate agencies to operate Head Start programs. The failure of the grantee to act within 30 days after receiving the application is deemed to be a rejection of the application.

(b) A grantee must notify an applicant in writing within 30 days after receiving the application of its decision to either accept or to wholly or substantially reject it. If the decision is to wholly or substantially reject the application, the notice shall contain a statement of the reasons for the decision and a statement that the applicant has a right to appeal the decision within ten work days after receipt of the notice. If a grantee fails to act on the application by the end of the 30 days period which grantees have to review applications, the current or prospective delegate agency may appeal to the grantee, in writing, within 15 work days of the end of the 30 day grantee review period.

(c) A grantee must notify a delegate agency in writing of its decision to terminate its agreement with the delegate agency, explaining the reasons for its decision and that the delegate agency has the right to appeal the decision to the grantee within ten work days after receipt of the notice.

(d) The grantee has 20 days to review the written appeal and issue its decision. If the grantee sustains its

earlier termination of an award or its rejection of an application, the current or prospective delegate agency then may appeal, in writing to the responsible HHS official. The appeal must be submitted to the responsible HHS official within ten work days after the receipt of the grantee's final decision. The appeal must fully set forth the grounds for the appeal.

(e) A grantee may not reject the application or terminate the operations of a delegate agency on the basis of defects or deficiencies in the application or in the operation of the program without first:

(1) Notifying the delegate agency of the defects and deficiencies;

(2) Providing, or providing for, technical assistance so that defects and deficiencies can be corrected by the delegate agency; and

(3) Giving the delegate agency the opportunity to make appropriate corrections.

(f) An appeal filed pursuant to a grantee failing to act on a current or prospective delegate agency's application within a 30 day period need only contain a copy of the application, the date filed, and any proof of the date the grantee received the application. The grantee shall have five days in which to respond to the appeal.

(g) Failure to appeal to the grantee regarding its decision to reject an application, terminate an agreement, or failure to act on an application shall bar any appeal to the responsible HHS official.

§ 1303.21 Procedures for appeal by current or prospective delegate agencies to the responsible HHS official from denials by grantees of an application or failure to act on an application.

(a) Any current or prospective delegate agency that is dissatisfied with the decision of a grantee rendered under § 1303.20 may appeal to the responsible HHS official whose decision is final and not appealable to the Commissioner, ACYF. Such an appeal must be in writing and it must fully set forth the grounds for the appeal and be accompanied by all documentation that the current or prospective delegate agency believes is relevant and supportive of its position, including all written material or documentation submitted to the grantee under the procedures set forth in § 1303.20, as well as a copy of any decision rendered by the grantee. A copy of the appeal and all material filed with the responsible HHS official must be simultaneously served on the grantee.

(b) In providing the information required by paragraph (a) of this section, delegate agencies must set forth:

(1) Whether, when and how the grantee advised the delegate agency of alleged defects and deficiencies in the delegate agency's application or in the operation of its program prior to the grantee's rejection or termination notice;

(2) Whether the grantee provided the delegate agency reasonable opportunity to correct the defects and deficiencies, the details of the opportunity that was given and whether or not the grantee provided or provided for technical advice, consultation, or assistance to the current delegate agency concerning the correction of the defects and deficiencies;

(3) What steps or measures, if any, were undertaken by the delegate agency to correct any defects or deficiencies;

(4) When and how the grantee notified the delegate agency of its decision;

(5) Whether the grantee told the delegate agency the reasons for its decision and, if so, how such reasons were communicated to the delegate agency and what they were;

(6) If it is the delegate agency's position that the grantee acted arbitrarily or capriciously, the reasons why the delegate agency takes this position; and

(7) Any other facts and circumstances which the delegate agency believes supports its appeal.

(c) The grantee may submit a written response to the appeal of a prospective delegate agency. It may also submit additional information which it believes is relevant and supportive of its position.

(d) In the case of an appeal by a delegate agency, the grantee must submit a written statement to the responsible HHS official responding to the items specified in paragraph (b) of this section. The grantee must include information that explains why it acted properly in arriving at its decision or in failing to act, and any other facts and circumstances which the grantee believes supports its position.

(e)(1) The responsible HHS official may meet informally with the current or prospective delegate agency if such official determines that such a meeting would be beneficial to the proper resolution of the appeal. Such meetings may be conducted by conference call.

(2) An informal meeting must be requested by the current or prospective delegate agency at the time of the appeal. In addition, the grantee may request an informal meeting with the responsible HHS official. If none of the parties request an informal meeting, the responsible HHS official may hold such a meeting if he or she believes it would be beneficial for a proper resolution of the dispute. Both the grantee and the current or prospective delegate agency may attend any informal meeting concerning the appeal. If a party wishes to oppose a request for a meeting it must serve its opposition on the responsible HHS official and any other party within five work days of its receipt of the request.

(f) A grantee's response to appeals by current or prospective delegate agencies must be submitted to the responsible HHS official within ten work days of receipt of the materials served on it by the current or prospective delegate agency in accordance with paragraph (a) of this section. The grantee must serve a copy of its response on the current or prospective delegate agency.

(g) The responsible HHS official shall notify the current or prospective delegate agency and the grantee whether or not an informal meeting will be held. If an informal meeting is held, it must be held within ten work days after the notice by the responsible HHS official is mailed. The responsible HHS official must designate either the Regional Office or the place where the current or prospective delegate agency or grantee is located for holding the informal meeting.

(h) If an informal meeting is not held, each party shall have an opportunity to reply in writing to the written statement submitted by the other party. The written reply must be submitted to the responsible HHS official within five work days after the notification required by paragraph (g) of this section. If a meeting is not to be held, notice of that fact shall be served on the parties within five work days of the receipt of a timely response to such a request, or the expiration of the time for submitting a response to such a request.

(i) In deciding an appeal under this section, the responsible HHS official will arrive at his or her decision by considering:

(1) The material submitted in writing and the information presented at any informal meeting;

(2) The application of the current or prospective delegate agency;

(3) His or her knowledge of the grantee's program as well as any evaluations of his or her staff about the grantee's program and current or prospective delegate agency's application and prior performance;

(4) Any other evidence deemed relevant by the responsible HHS official.

§ 1303.22 Decision on appeal in favor of grantee.

(a) If the responsible HHS official finds in favor of the grantee, the appeal will be dismissed unless there is cause to remand the matter back to the grantee.

(b) The grantee's decision will be sustained unless it is determined by the responsible HHS official that the grantee acted arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements.

(c) The decision will be made within ten work days after the informal meeting. The decision, including a statement of the reasons therefore, will be in writing, and will be served on the parties within five work days from the date of the decision by the responsible HHS official.

(d) If the decision is made on the basis of written materials only, the decision will be made within five work days of the receipt of the materials. The decision will be served on the parties no more than five days after it is made.

§ 1303.23 Decision on appeal in favor of the current or prospective delegate agency.

(a) The responsible HHS official will remand the rejection of an application or termination of a current or prospective delegate agency's agreement to the grantee for prompt reconsideration and decision if the responsible HHS official's decision does not sustain the grantee's decision, and if there are issues which require further development before a final decision can be made. The grantee's reconsideration and decision must be made in accordance with all applicable requirements of this part as well as other relevant regulations, statutory provisions, and program issuances. The grantee must issue its decision on remand in writing to both the current or prospective delegate agency and the responsible HHS official within 15 work days after the date of receipt of the remand.

(b) If the current or prospective delegate agency is dissatisfied with the grantee's decision on remand, it may appeal to the responsible HHS official within five work days of its receipt of that decision. Any such appeal must comply with the requirements of § 1303.21 of this part.

(c) If the responsible HHS official finds that the grantee's decision on remand is incorrect or if the grantee fails to issue its decision within 15 work days, the responsible HHS official will entertain an application by the current or prospective delegate agency for a direct grant.

(1) If such an application is approved, there will be a commensurate reduction in the level of funding of the grantee and whatever other action is deemed appropriate in the circumstances. Such reduction in funding shall not be considered a termination or denial of refunding and may not be appealed under this part.

(2) If such an application is not approved, the responsible HHS official will take whatever action he or she deems appropriate under the circumstances.

(d) If, without fault on the part of a delegate agency, its operating funds are exhausted before its appeal has been decided, the grantee will furnish sufficient funds for the maintenance of the delegate agency's current level of operations until a final administrative decision has been reached.

(e) If the responsible HHS official sustains the decision of the grantee following remand, he or she shall notify the parties of that fact within 15 work days of the receipt of final submittal of documents, or of the conclusion of any meeting between the official and the parties, whichever is later.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: September 3, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: October 22, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-1940 Filed 1-28-92; 8:45 am]

BILLING CODE 4130-01-M

VOL 57 ISS 19 JA 29 1992 UMI

Notices

Federal Register
Vol. 57, No. 19
Wednesday, January 29, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 90-019N]

Policy Change; Oversight of Poultry Custom Exempt Establishments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of policy change.

SUMMARY: The Food Safety and Inspection Service (FSIS) is changing its policy regarding the oversight, in designated States, of poultry custom exempt establishments, i.e., establishments that only conduct poultry custom exempt activities and are not subject to the routine inspection requirements of the Poultry Products Inspection Act (PPIA). The change in policy will result in the discontinuance of the current quarterly reviews of such establishments. Instead, FSIS will vary the frequency of reviews of such establishments and will intensify its review efforts on those custom exempt poultry establishments with a history of noncompliance with the custom exempt requirements of the PPIA, as well as the adulteration and misbranding provisions of the PPIA. FSIS is not, however, changing its review process for custom exempt operations which are conducted at federally inspected establishments.

EFFECTIVE DATE: February 28, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Lester Nordyke, Director, Federal-State Relations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-6313.

SUPPLEMENTARY INFORMATION:

Background

Section 15 of the PPIA (21 U.S.C. 464) provides that certain specified slaughtering and preparation operations, referred to herein as custom exempt activities, that are conducted at establishments that conduct such operations for commerce, are not subject to the routine inspection requirements of the PPIA, provided that the specified slaughtering and preparation operations meet the requirements set forth in section 15 of the PPIA and the regulations promulgated thereunder. When these custom exempt activities comprise the total business of an establishment, the establishment is not subject to the routine inspection requirements of the PPIA. However, although these custom exempt activities are not subject to the routine inspection requirements of the PPIA, they are subject to the adulteration and misbranding provisions of the PPIA.

In particular, section 15(c) of the PPIA (21 U.S.C. 464(c)) provides that custom operations conducted at an establishment that conducts such operations for commerce are not subject to the routine inspection requirements of the PPIA, if the establishment complies with the regulations promulgated under that section (9 CFR 381.10(a)(4)), which provide, among other things, that: (1) Custom-exempt activities must be conducted under sanitary conditions; (2) custom prepared product must bear the owner's name and address and the statement "Exempted—Public Law 90-492"; (3) the custom slaughter by any person must be of poultry delivered by the owner thereof for such slaughter, and the processing by such slaughterer and transportation in commerce of the poultry products must be exclusively for use, in the household of such owner, by him and members of his household and his nonpaying guests and employees, and (4) the custom slaughterer does not engage in the business of buying or selling any poultry products capable of use as human food.

The custom exempt provisions of section 15(c) of the PPIA (21 U.S.C. 464(c)) also apply to custom exempt activities conducted at establishments that conduct their operations solely within a State designated for Federal inspection, either because it does not have or is not effectively enforcing an inspection program which imposes requirements at least equal to those of the PPIA. In nondesignated States, i.e., States that operate their own inspection programs, custom exempt activities conducted at establishments that operate solely within that State are governed by the laws of the nondesignated State. However, such States must provide for and effectively enforce State inspection programs that impose requirements which are at least equal to those of the PPIA.

FSIS conducted an in-depth study of its custom exempt activities in red meat custom exempt establishments and in February 1988, issued a report titled "Oversight of Custom Exempt Activities".[1] The study was conducted to assess the effectiveness and uniformity of procedures utilized in regard to red meat custom exempt activities and to develop options and recommendations for improving the oversight of red meat custom exempt activities. As a result of this study, the Agency concluded that the practice of conducting quarterly reviews of red meat custom exempt establishments, referred to in the study as custom exempt plants, was an inefficient use of Agency resources. With rapidly escalating inspection costs and severe budget constraints, FSIS is compelled to make the most efficient use possible of its limited resources, while at the same time continuing to protect the health and welfare of consumers. Therefore, on December 14, 1988, FSIS published a notice in the Federal Register (53 FR 50273) which announced that, instead of quarterly reviews, red meat custom exempt establishments would be reviewed on a risk basis. That is, Agency resources would be allocated to focus more frequently upon those red meat custom exempt establishments that present the greatest possible amount of potential risk to consumers in regard to violating the adulteration, misbranding, or custom exempt provisions of the FMIA (21 U.S.C. 623).

The Agency has determined that custom exempt poultry establishments will also be reviewed on the same risk basis as red meat custom exempt establishments. Since poultry custom exempt establishments are subject to sanitation, adulteration, and misbranding provisions which are similar to those applicable to red meat custom exempt establishments, the Agency is convinced that a similar risk based review system, which has proven

[1] A copy of the study is on display with the FSIS Hearing Clerk, Policy Office, room 3171, South Building, U.S. Department of Agriculture, Washington, DC 20250. Upon request, a copy of the study will be provided free of charge.

to be effective in red meat custom exempt establishments, will be equally effective for reviewing custom exempt poultry establishments.

FSIS will institute an oversight program that will provide for reviews to be scheduled on the basis of a risk assessment of each poultry custom exempt establishment. The frequency of the reviews will be based on the establishment's history of compliance with the custom exemption, adulteration and misbranding provisions of the PPIA, prior reviews, and other information which may be available to FSIS on the establishment's activities. Based on this information, poultry custom exempt establishments will be assigned one of four risk categories. The number of reviews of each establishment will range from a minimum of once a year to once every quarter of a year, with follow-up reviews as necessary depending on the risk category of the establishment.

The four risk categories are differentiated on the basis of risk to public health and/or failure on the part of poultry custom exempt establishments to comply with adulteration and misbranding provisions of the PPIA and the sanitation requirements of the Federal poultry products inspection regulations.

Establishments will receive a Risk Category 1 designation if, upon review, at least one critical deficiency is found, or the owner/operator continuously fails to correct deficiencies. Critical deficiencies are those that are certain to result in adulterated product entering commerce. Risk Category 1 establishments will be reviewed at least quarterly with a follow-up review within 5 days to determine the acceptability of the corrective action. Additional follow-up review may be made if FSIS determines it is necessary.

Establishments will be designated as Risk Category 2 if, upon review, at least one major deficiency is found. Major deficiencies are those that are likely to result in adulterated product entering commerce. Establishments designated as Risk Category 2 will be reviewed quarterly, with a follow-up on required corrective actions during the next quarterly review to determine that corrective action has been taken.

Establishments designated as Risk Category 3 will be reviewed biannually. These establishments have been found, upon review, to have only minor deficiencies. Minor deficiencies are those that are not likely to result in adulterated product entering commerce.

Establishments designated as Risk Category 4 have been found, upon review, to have no deficiencies. Such establishments will be reviewed annually.

By using a risk-based assessment of poultry custom exempt establishments, the Agency will be able to conduct more frequent reviews of those establishments with a history of noncompliance with the requirements for custom exempt establishments under the PPIA, as well as the adulteration and misbranding provisions of the PPIA.

Under Section 5 of the PPIA (21 U.S.C. 454), the Secretary of Agriculture is authorized, whenever he determines that it would effectuate the purposes of the PPIA, to cooperate with the appropriate State agencies in developing and administering State poultry inspection programs that have requirements that are at least equal to those under the PPIA. Under such cooperative agreements, the Federal Government is authorized to contribute up to 50 percent of the estimated total cost of the State program. States that are approved to participate in such a cooperative program maintain a State poultry inspection program and as part of this program conduct reviews of State establishments that are exempt from inspection under the State laws and regulations. Such reviews are conducted in a manner that is at least "equal to" reviews conducted under the Federal inspection program.

States with their own poultry inspection program will continue their review of poultry custom exempt establishments under the existing cooperative agreements with the Department.

California and Minnesota, which do not operate State inspection programs, and are therefore designated States, presently are conducting compliance reviews of custom exempt establishments in those States under a cooperative agreement with FSIS in accordance with the provisions of 7 U.S.C. 450. Under these cooperative agreements, FSIS reimburses the States for the expenses of reviews. These agreements will be revised to incorporate a risk-based approach to review of poultry custom exempt establishments. FSIS encourages the Governors of any States who desire to enter into a cooperative agreement for conducting compliance reviews of poultry custom exempt establishments that distribute product solely within their borders to contact the appropriate FSIS regional office reviewing custom exempt establishments in their States.

Implementation of this alternate approach to determining the frequency of reviews of custom exempt poultry establishments will not in any way relieve poultry custom exempt establishments of the responsibility to comply with currently applicable provisions of the PPIA and regulations thereunder. The Agency intends to use all its available enforcement tools, where appropriate, to assure that poultry custom exempt establishments comply with all of the applicable provisions of the PPIA and regulations. Such enforcement actions can include, under appropriate circumstances: The detention of poultry and poultry products; the retention of poultry and poultry products and their condemnations, the seizing and condemnation of poultry and poultry products pursuant to judicial procedure; the use of injunctions to prevent establishments from operating in violation of the PPIA and regulations issued thereunder; the institution of criminal action against establishments, their operators and other persons responsibly connected to the establishment; and the removal of exempt status from the establishment.

FSIS would also like to make it clear at this time that when custom exempt establishments that operate in commerce or within a designated State violate the provisions of section 15(c) of the PPIA, they lose their exempt status and can no longer produce product without inspection.

Done at Washington, DC, on: November 25, 1991.

Ronald J. Prucha,

Acting Administrator.

[FR Doc. 92-2091 Filed 1-28-92; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Service Supply Procedure.

Form Numbers(s): BXA-6028P and EAR Section 773.3.

OMB Approval Number: 0694-0002.

Type of Request: Revision of a currently approved collection.

Burden: 344 hours.

Number of Respondents: 190.

Avg Hours Per Response: Varies between 25 minutes and 3 hours.

Needs and Uses: The Service Supply License Procedure provides U.S. firms with a means to render prompt service

for equipment a) previously exported from the U.S., b) produced abroad by a subsidiary, affiliate or branch of a U.S. firm, or c) produced with U.S. parts included in the manufactured product.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 23, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–2099 Filed 1–28–92; 8:45 am]

BILLING CODE 3510-CW-F

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Department of State, the National Marine Fisheries Service, on behalf of the Secretary of State, publishes for public review and comment a summary of applications received by the Secretary of State requesting permits for foreign fishing vessels to operate in the Exclusive Economic Zone (EEZ) under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). Specifically, the Russian Federation has amended an earlier application (reported at 57 FR 2711; 01/23/92) to additionally request 3,000 metric tons of Atlantic mackerel for directed fishing in the Northwest Atlantic Ocean (NWA). The Russian Federation has also requested authorization for the factory ship SERGEY VASILISIN to conduct transshipment and bunkering operations in the NWA area with other Russian Federation support vessels (the SERGEY VASILISIN intends to process fish in internal waters when not transshipping or bunkering in the EEZ). Send comments on these applications to: NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1335 East West Highway, Silver Spring, MD 20910, and/or, to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906; 617/231–0422;

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, room 2115, 320 South New Street, Dover, DE 19901, 302/674–2331.

For further information contact John D. Kelly or Robert A. Dickinson (Office of Fisheries Conservation and Management, 301–713–2337).

Dated: January 23, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–2146 Filed 1–28–92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau; Correction

January 23, 1992.

In the letter to the Commissioner of Customs published in the **Federal Register** on November 5, 1991 (56 FR 56506), third column, make the following corrections in the table under "Twelve-month restraint limit" for the following categories:

Category	Correction
239	Change 93,387 kilograms to 92,903 kilograms.
342	Change 39,326 dozen to 39,281 dozen.
349	Change 145,833 dozen to 146,322 dozen.
352	Change 66,636 dozen to 63,618 dozen.
636	Change 15,453 dozen to 15,443 dozen.
649	Change 145,833 dozen to 146,322 dozen.
651	Change 13,462 dozen to 13,455 dozen.
434	Change 1,852 dozen to 1,854 dozen.
438	Change 6,667 dozen to 6,689 dozen.
442	Change 5,556 dozen to 5,574 dozen.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–2098 Filed 1–28–92; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 92-C0001]

Hamilton Beach/Proctor-Silex, Inc., a Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR part 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Hamilton Beach/Proctor-Silex, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 13, 1992.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 92–C0001, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Melvin Kramer, Trial Attorney, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: See Settlement Agreement and Order which follow.

Dated: January 23, 1992.

Sheldon D. Butts,

Deputy Secretary.

1. This Settlement Agreement, made by and between Hamilton Beach/Proctor-Silex, Inc. a corporation, (hereinafter "Hamilton Beach" or "the Company") as successor in interest to Hamilton Beach, Inc., and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the staff allegations described herein, without a

hearing or determination of issues of law and fact.

2. The provisions of this Settlement Agreement and Order shall apply to Hamilton Beach and to each of its successors and assigns.

I. The Parties

3. Hamilton Beach is a corporation organized and existing under the laws of the State of Delaware with its principal corporate offices located at 4421 Waterfront Driver, Glen Allen, VA 23060. Hamilton Peach, Inc. was merged into and became part of Hamilton Beach/Proctor-Silex, Inc. on October 11, 1990, after the alleged reporting violation which is the subject of this Settlement Agreement.

4. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory Commission of the United States of America (hereinafter "Commission") created pursuant to section 4 of the Consumer Product Safety Act (hereinafter, "CPSA"), as amended, 15 U.S.C. 2053.

II. Jurisdiction

5. Hamilton Beach manufactured certain drip coffee makers identified further in paragraph 7 below (hereinafter, "coffee makers"), (a) for sale to a consumer for use in or around a permanent or temporary household or residence, or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence. These coffee makers are "consumer products" within the meaning of section 3(a)(1), of the CPSA, 15 U.S.C. 2052(a)(1).

6. Hamilton Beach manufactured and sold these coffee makers to a variety of retailers throughout the United States. Hamilton Beach, therefore, is a "manufacturer" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a)(1), (4) and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (4) and (11).

III. The Product

7. From November 1987—November 1988, Hamilton Beach manufactured and distributed in commerce approximately 42,000 coffee makers, model numbers 816–2 and 816–3.

IV. Staff Allegations Regarding Hamilton Beach's Failure To Comply with the Reporting Requirements of Section 15(b) of the CPSA

8. On February 23, 1990, the Company reported to the Commission, pursuant to section 15(b) of the CPSA, a defect in the analog clock, made by another manufacturer and installed in each of its model number 816–2 and 816–3 coffee makers manufactured between November 1987 and November 1988. It reported that the contacts in the clock switches could overheat and ignite possibly resulting in ignition of the switch's plastic housing and ultimately the coffee maker's housing. Such ignition could spread to the adjacent cabinet or counter top.

9. Before reporting to the staff, the staff alleges that Hamilton Beach was aware of approximately 24 incidents of product failure, beginning in May of 1988. One incident reportedly resulted in a burn injury to the hands. The rest caused only property damage.

10. The staff is presently aware of a total of 35–38 incidents.

11. In addition, the staff alleges that Hamilton Beach had conducted an investigation in September of 1988 in an attempt to ascertain the causes of a substantial rate of failures of the analog clocks which were evidencing signs of scorching.

12. The staff further alleges that Hamilton Beach possessed sufficient information well in advance of the February 23, 1990, reporting date to reasonably support the conclusion that these coffee makers contained a defect which could create a substantial product hazard but failed to report that information to the Commission in a timely manner as required by Section 15(b) of the CPSA, 15 U.S.C. 2064(b).

V. Response of Hamilton Beach

13. Hamilton Beach specifically denies the staff allegations. Hamilton Beach further denies that its models 816–2 and 816–3 coffee makers contain a defect and denies that a substantial product hazard exists in these coffee makers.

VI. Agreement of the Parties

14. Hamilton Beach and the staff agree that the Commission has jurisdiction in this matter over Hamilton Beach and over the coffee makers.

15. Without admitting the existence of a product defect, substantial product hazard, or a violation of any reporting requirements under section 15(b) of the CPSA, 15 U.S.C. 2064(b), Hamilton Beach agrees to pay to the Commission, in accordance with the attached order, a civil penalty sum of $50,000 within 20 days of the final acceptance of this Settlement Agreement and service of the Commission's Order on Hamilton Beach. This Settlement Agreement is based on the staff's allegations set forth in paragraphs 8–12 above and on Hamilton Beach's denials set forth in paragraph 13 above, on the basis of the information that the Commission staff currently possess concerning these coffee makers.

16. Upon final acceptance of this Settlement Agreement by the Commission, Hamilton Beach knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission whether a violation has occurred, and (4) to a statement of findings of fact and conclusions of law. Should the Commission decide not to accept and adopt this Settlement Agreement and Order, the Settlement Agreement and Order shall have no force and effect.

17. Solely for purposes of disclosure pursuant to section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a Complaint had been issued and the Settlement Agreement and Order will be made available to the public.

18. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and the provisional acceptance of the Agreement shall be announced in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date of the announcement in the **Federal Register** in accordance with 16 CFR 1118.20(f).

19. Upon final Commission acceptance of this Settlement Agreement and Order, the Commission shall enter the incorporated Order and make the Settlement Agreement and Order available for public review at the Office of Secretary, Consumer Product Safety Commission. This Settlement Agreement and Order becomes effective only upon such final acceptance by the Commission and service upon Hamilton Beach.

20. The Settlement Agreement and the Order resolve all issues that have arisen or could arise under section 15(b) of the Consumer Product Safety Act, with respect to the allegations contained in Paragraphs 7–12, *supra*, the denials of Hamilton Beach in paragraph 13, *supra*, and are in addition to and not to the exclusion of other remedies under the Consumer Produce Safety Act.

21. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Hamilton Beach to appropriate legal action.

22. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

23. Nothing in this Agreement should be construed as limiting Hamilton Beach's obligation to report pursuant to Section 15(b) of the CPSA.

Hamilton Beach/Proctor-Silex, Inc.

Dated November 18, 1991.

A. H. Dreyfuss,

Chief Executive Officer, Hamilton Beach/Proctor-Silex, Inc.

The Consumer Product Safety Commission.

Dated: November 25, 1991.

Melvin I. Kramer,

Trail Attorney, Office of Compliance and Enforcement.

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Alan H. Schoem,

Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Upon consideration of the Settlement Agreement; and the Commission having jurisdiction over the subject matter and the respondents to the Settlement Agreement; and it appearing the Settlement Agreement is in the public interest, it is

Ordered, That the Settlement Agreement be and hereby is accepted, as indicated below; and it is

Further Ordered, That upon final acceptance of the Settlement Agreement, Hamilton Beach/Proctor-Silex, Inc. (hereinafter, "Hamilton Beach") shall pay to the Order of the Consumer Product Safety Commission a civil penalty in the amount of $50,000, within twenty (20) days after receipt of the Final Order and Decision in this matter.

Provisionally accepted and Provisional Order issued on the 23d day of January, 1992.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92-2097 Filed 1-28-92; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem Travel and Transportation Allowance Committee.

ACTION: Publication of changes in Per Diem Rates: Correction, Bulletin Number 159.

SUMMARY: This notice corrects the previous publication of per diem rate changes of the Per Diem, Travel and Transportation Allowances Committee that appeared in the **Federal Register** on Friday, January 10, 1992 (57 FR 1149).

The rate for American Samoa, appearing on page 1152, was incorrectly printed in Civiliam Personnel Per Diem Bulletin 159. The correct rate is $85 for maximum lodging and $132 for total maximum per diem rate. All other information remains unchanged.

Dated: January 24, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-2108 Filed 1-28-92; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement, Part 237, Service Contracts, and the clause at 252.237-7011; OMB Control Number 0704-0231.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 1 hour.

Responses per Respondent: 1.

Number of Respondents: 500.

Annual Burden Hours: 500.

Annual Responses: 500.

Needs and Uses: Defense FAR Supplement (DFARS) part 237 concerns information collection requirements associated with acquiring Mortuary Services.

Affected Public: Businesses or other for-profit and Small Businesses or Organizations.

Frequency: On Occasion.

Responsents Obligation: Required to obtain or retain a benefit.

Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposes information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Davis Highway, suite 1204, Arlington, Virginia, 22202-4302.

Dated: January 24, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-2107 Filed 1-28-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology to Support Force Projection: Global Reach—Global Power will meet on 3-4 February 1992, at The Pentagon, room 5D982, Washington, DC, from 8 a.m. to 5 p.m.

The purpose of this meeting is to review the tasking, deliberate findings and develop a study plan for the remainder of the study.

The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 92-2110 Filed 1-28-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-126-000, et al]

Pennsylvania Power Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Power Co.

[Docket No. ER92-126-000]

January 21, 1992.

Take notice that on January 15, 1992, Pennsylvania Power Company (Penn Power) filed supplemental Information In Support of Rate Filing of October 18, 1991. This filing does not seek to change the level or application of proposed October 18, 1991 rates, but only provides additional cost support for the prior submittal.

On October 18, 1991, Penn Power pursuant to 18 CFR 35.13 tendered for filing proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania Boroughs (Boroughs) of New Wilmington, Wampum, Zelienople, Ellwood City and Grove City, respectively. The filing proposed an increase in the State Tax Adjustment Surcharge (Rider 1) to 3.21% effective August 24, 1991. The revenue effect of this change is to increase revenues from the municipal resale class by $262,401 or 3.15% for the test year ending July 31, 1992.

The five municipal resale customers served by Penn Power entered into settlement agreements effective as of September 1, 1984. These settlement agreements were approved by the Federal Energy Regulatory Commission through a Secretarial Letter dated December 14, 1984 in Docket Nos. ER77-277-007 and ER81-779-000. The customers have consented to the Supplemental Information through the provisions of the settlement agreements. The Company in submitting the Supplemental Information has renewed its requests for waiver of certain filing requirements originally requested in its October 18, 1991 filing.

Copies of the filing were served upon Penn Power's jurisdictional customers.

Comment date: February 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power & Light Co.

[Docket No. ER92-277-000]

January 21, 1992.

Take notice that on January 16, 1992, Arkansas Power & Light Company (AP&L) submitted for filing the Second Amendment to the Power Agreement Between the City of North Little Rock, Arkansas and AP&L and the First Amendment to the Agreement for Hydroelectric Power Transmission and Distribution Service Between AP&L and the City of North Little Rock, Arkansas. The Amendments provide for the addition of one point of delivery.

AP&L requests that the Commission waive any requirements with which AP&L has not already complied.

Comment date: February 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. The Detroit Edison Co.

[Docket No. ER92-180-000]

January 21, 1992.

Take notice that on January 13, 1992, The Detroit Edison Company (Detroit Edison) submitted additional information requested by the Commission Staff concerning Original Sheet No. 10a to Detroit Edison's FERC Electric Tariff, Volume No. 1, which is a rate scheduling providing for the sale of capacity and energy on a firm and interruptible basis to the City of Detroit, Michigan. Detroit Edison requests an effective date of January 1, 1992, for the proposed service under Original Sheet No. 10a and accordingly, has requested waiver of the Commission's notice requirements.

Comment date: February 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Oklahoma Gas and Electric Co.

[Docket No. ER92-276-000]

January 21, 1992.

Take notice that on January 15, 1992, Oklahoma Gas and Electric Company (OG&E) tendered for filing a set of two Amended Appendices between (OG&E) and the Oklahoma Municipal Power Authority (OMPA).

The Amendments modify the Transmission Service Agreement Appendix "A", and Appendix "D".

Copies of this filing have been served on OMPA, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: February 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp Electric Operations

[Docket No. ER92-275-000]

January 21, 1992.

Take notice that PacifiCorp Electric Operations (PacifiCorp), on January 14, 1992, tendered for filing Amendment No. 1, dated January 3, 1992, (Amendment) to Firm Transmission Service Agreement dated November 9, 1989 with Montana Power Company (Montana).

The Amendment changes the date of Contract Demand of 30 MW.

PacifiCorp requests that an effective date of April 1, 1992 be assigned to the Amendment. This date is consistent with the change in date of Contract Demand of 30 MW.

Copies of this filing were supplied to Montana, Black Hills Power and Light Company, the Montana Public Service Commission, the Public Utility Commission of Oregon and the Public Service Commission of Wyoming.

Comment date: February 4, 1992, in accordance with Standard Paragraph E end of this notice.

6. Mississippi Power Co.

[Docket No. ER92-122-000]

January 21, 1992.

Take notice that Mississippi Power Company, on January 15, 1992, tendered for filing a request waiver of the notice and filing requirement under Commission Rule 35.3(a).

The reason for the proposed changes are to permit the Company to serve all wholesale, all-requirements customers under its all requirements, wholesale tariff to Peal River Valley Electric Power Association.

Copies of this filing were served upon the public utility's jurisdictional customers and upon the Mississippi Public Service Commission.

Comment date: February 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Union Electric Co.

[Docket No. ER92-125-000]

January 21, 1992.

Take notice that Union Electric Company (Union) on January 10, 1992, tendered for filing an Amended Filing which included a Substitute Power Agreement dated June 14, 1991, with the City of Linneus, Missouri, providing for the sale of substitute electric service.

Union requests an effective date of June 14, 1991, and has included a Request for Waiver as part of its Amended Filing.

Comment date: February 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2079 Filed 1-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST92-1048-000 Through ST92-1628-000]

Natural Gas Pipeline Co. of America; Notice of Self-Implementing Transactions

January 22, 1992.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to section 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under section 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[2]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity[3]	Aff. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-1048	Natural Gas P/L Co. of America	Midwest Gas, Div. of Iowa Pub. Ser.	12-02-91	B	40,000	N	F	11-01-91	07-01-00
ST92-1049	Natural Gas P/L Co. of America	Access Energy Corp	12-02-91	G-S	20,000	N	F	11-01-91	03-31-92
ST92-1050	Natural Gas P/L Co. of America	Midcon Marketing Corp	12-02-91	G-S	1,000	N	F	11-01-91	03-31-92
ST92-1051	Natural Gas P/L Co. of America	Tex/Con Gas Marketing Co	12-02-91	G-S	25,487	N	F	11-01-91	02-29-92
ST92-1052	Natural Gas P/L Co. of America	Enron Gas Marketing, Inc	12-02-91	G-S	60,000	N	F	11-01-91	10-31-03
ST92-1053	Natural Gas P/L Co. of America	Shell Gas Trading Co	12-02-91	G-S	10,000	N	F	11-01-91	12-31-96
ST92-1054	Natural Gas P/L Co. of America	Enron Gas Marketing, Inc	12-02-91	G-S	20,000	N	F	11-01-91	03-31-92
ST92-1055	Panhandle Eastern Pipe Line Co	Semco Energy Services, Inc	12-02-91	G-S	9,218	N	F	11-01-91	Indef.
ST92-1056	Superior Offshore Pipeline Co	Louisiana Gas System, Inc	12-02-91	B	10,000	N	I	11-01-91	Indef.
ST92-1057	Mississippi River Trans. Corp	Amoco Petroleum Additives Co	12-02-91	G-S	2,500	N	F	11-01-91	2-29-92
ST92-1058	Mississippi River Trans. Corp	Texarkoma Transportation Co	12-02-91	G-S	5,000	N	I	11-01-91	2-29-92
ST92-1059	Texas Gas Gathering Co	Mississippi River Trans. Corp	12-02-91	C	5,086	N	I	11-01-91	Indef.
ST92-1061	Williams Natural Gas Co	City of Orlando	12-02-91	B	14	N	F	11-01-91	Indef.
ST92-1062	Williams Natural Gas Co	Mannford Public Works Authority	12-02-91	B	54	N	F	11-01-91	Indef.
ST92-1063	Williams Natural Gas Co	Reliance Gas Marketing Co	12-02-91	G-S	10,416	N	F	11-01-91	Indef.
ST92-1064	Transcontinental Gas P/L Corp	Philadelphia Electric Co	12-02-91	B	155,000	N	I	05-07-90	10-09-90
ST92-1065	Transcontinental Gas P/L Corp	Traneco Energy Marketing Co	12-02-91	B	1,000,000	Y	I	08-24-90	10-09-90
ST92-1066	Transcontinental Gas P/L Corp	Polaris Pipeline Corp	12-02-91	B	1,750,000	N	I	06-29-90	10-09-90
ST92-1067	Transcontinental Gas P/L Corp	Phoenix Diversified Ventures, Inc.	12-02-91	G-S	20,000	N	I	11-02-91	Indef.
ST92-1068	Transcontinental Gas P/L Corp	TXO Gas Marketing Corp	12-02-91	G-S	50,000	N	I	11-01-91	Indef.
ST92-1069	Transcontinental Gas P/L Corp	Gasmark, Inc	12-02-91	G-S	1,093,000	N	I	11-01-91	Indef.
ST92-1070	Texas Gas Transmission Corp	Memphis Light, Gas and Water Div.	12-02-91	G-S	125,000	N	F	11-03-91	Indef.
ST92-1071	Texas Gas Transmission Corp	Energy Marketing Exchange, Inc	12-02-91	G-S	100,000	N	I	11-15-91	Indef.
ST92-1072	Texas Gas Transmission Corp	Chevron U.S.A., Inc	12-02-91	G-S	50,000	N	I	11-09-91	Indef.
ST92-1073	Texas Gas Transmission Corp	Aquila Energy Marketing Corp	12-02-91	G-S	100,000	N	I	11-05-91	Indef.
ST92-1074	Texas Gas Transmission Corp	Arcadian Corp	12-02-91	G-S	50,000	N	I	11-06-91	Indef.
ST92-1075	Texas Gas Transmission Corp	TXG Gas Marketing Co	12-02-91	G-S	100,000	N	I	11-21-91	Indef.
ST92-1076	Tennessee Gas Pipeline Co	Chatanooga Gas Co	12-03-91	B	26,000	N	I	11-06-91	Indef.
ST92-1077	Colorado Interstate Gas Co	K N Energy, Inc	12-03-91	G-S	45,000	N	I	09-09-91	12-31-96

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Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-1078	Mississippi River Trans. Corp	Flat River Glass Co	12-03-91	G-S	1,600	N	F	11-01-91	11-29-92
ST92-1079	Mississippi River Trans. Corp	Texas Gas Transmission Corp	12-03-91	G-S	150,000	N	I	11-15-91	03-14-92
ST92-1080	Tennessee Gas Pipeline Co	Paragon Gas Corp	12-04-91	G-S	40,000	N	I	11-08-91	Indef.
ST92-1081	Tennessee Gas Pipeline Co	Pennsylvania Gas & Water Co	12-04-91	B	10,000	N	I	11-05-91	Indef.
ST92-1082	Tennessee Gas Pipeline Co	Entrade Corp	12-04-91	G-S	1,310,000	N	I	11-07-91	Indef.
ST92-1083	ANR Pipline Co	Northern States Power Co.—Minn.	12-04-91	B	4,829	N	F	11-01-91	Indef.
ST92-1084	ANR Pipline Co	Gas Energy Development Co	12-04-91	G-S	20,000	N	I	11-04-91	Indef.
ST92-1085	ANR Pipline Co	Michigan Gas Utilities	12-04-91	B	200	N	F	11-01-91	Indef.
ST92-1086	ANR Pipline Co	Hadson Gas Systems, Inc	12-04-91	G-S	50,000	N	I	11-04-91	Indef.
ST92-1087	United Gas Pipeline Co	Arkla Energy Marketing Co	12-04-91	G-S	209,600	N	I	11-26-91	03-25-92
ST92-1088	United Gas Pipeline Co	Arkla Energy Marketing Co	12-04-91	G-S	209,600	N	I	11-19-91	03-18-92
ST92-1089	United Gas Pipeline Co	Ledco Inc	12-04-91	G-S	488,629	N	I	11-26-91	03-25-92
ST92-1090	United Gas Pipeline Co	Cedar Gas Co	12-04-91	G-S	116,747	N	I	11-10-91	03-09-92
ST92-1091	United Gas Pipeline Co	Oryx Gas Marketing Ltd., Part	12-04-91	G-S	62,880	N	I	11-19-91	03-18-92
ST92-1092	Seagull Shoreline System	Texas Eastern Transmission Corp.	12-04-91	C	20,000	N	I	11-01-91	Indef.
ST92-1093	Panhandle Eastern Pipe Line Co	National Steel Corp	12-04-91	G-S	8,000	N	F	11-01-91	Indef.
ST92-1094	Trunkline Gas Co	SJR Resources, Inc	12-04-91	G-S	10,000	N	I	11-21-91	Indef.
ST92-1095	Texas Gas Transmission Corp	Superior Natural Gas Corp	12-04-91	G-S	30,000	N	I	11-13-91	Indef.
ST92-1096	Texas Gas Transmission Corp	Aquila Energy Marketing Corp	12-04-91	G-S	100,000	N	I	11-06-91	Indef.
ST92-1097	Arkla Energy Resources	Can-Am Absorbents Co., Inc	12-04-91	G-S	984	N	I	11-01-91	Indef.
ST92-1098	Arkla Energy Resources	Panda Resources, Inc	12-04-91	G-S	20,000	N	I	11-01-91	Indef.
ST92-1099	Arkla Energy Resources	Enserch Gas Co	12-04-91	G-S	50,000	N	I	11-16-91	Indef.
ST92-1100	Transcontinental Gas P/L Corp	Channel Industries Gas Co	12-04-91	B	500,000	Y	I	11-05-91	Indef.
ST92-1101	Transcontinental Gas P/L Corp	Amerada Hess Corp	12-04-91	G-S	600,000	N	I	11-14-91	Indef.
ST92-1102	Transcontinental Gas P/L Corp	Baltimore Gas & Electric Co	12-04-91	B	250,000	N	I	11-06-91	Indef.
ST92-1103	Transcontinental Gas P/L Corp	Samedan Oil Corp	12-04-91	G-S	2,000,000	N	I	11-20-91	Indef.
ST92-1104	Transcontinental Gas P/L Corp	Corpus Christi Industrial P/L Co	12-04-91	B	286,000	N	I	11-06-91	Indef.
ST92-1105	Tranewestern Pipeline Co	Hadson Gas Systems, Inc	12-05-91	G-S	100,000	N	I	11-06-91	Indef.
ST92-1106	Tranewestern Pipeline Co	Gasmark, Inc	12-05-91	G-S	100,000	N	I	11-05-91	Indef.
ST92-1107	Williston Basin Inter. P/L Co	Rainbow Gas Co	12-05-91	G-S	97,190	N	I	11-07-91	06-31-92
ST92-1108	Williston Basin Inter. P/L Co	Amerada Hess Corp	12-05-91	G-S	10,000	N	F	11-08-91	03-07-92
ST92-1109	Natural Gas P/L Co. of America	Midcon Marketing Corp	12-05-91	G-S	50,000	N	F	11-01-91	03-31-92
ST92-1110	Natural Gas P/L Co. of America	U.S. Steel Group	12-05-91	G-S	10,000	N	F	10-01-91	05-31-94
ST92-1111	Natural Gas P/L Co. of America	U.S. Steel Group	12-05-91	G-S	60,000	N	F	10-01-91	05-31-94
ST92-1112	Natural Gas P/L Co. of America	Aquila Energy Marketing Corp	12-05-91	G-S	25,000	N	F	11-01-91	10-31-92
ST92-1113	ONG Transmission Co	Ozark Pipeline Co	12-05-91	C	75,000	N	I	11-06-91	Indef.
ST92-1114	ONG Transmission Co	Northern Natural Gas Co	12-05-91	C	50,000	N	I	11-09-91	Indef.
ST92-1115	ONG Transmission Co	Natural Gas P/L Co. of America	12-05-91	C	50,000	N	I	11-09-91	Indef.
ST92-1116	ONG Transmission Co	Northern Natural Gas Co	12-05-91	C	20,000	N	I	11-06-91	Indef.
ST92-1117	ONG Transmission Co	Northern Natural Gas Co	12-05-91	C	5,840,000	N	I	11-09-91	Indef.
ST92-1118	Transcontinental Gas P/L Corp	Corpus Christi Industrial P/L Co	12-05-91	B	1,400,000	N	I	11-21-91	Indef.
ST92-1119	Transcontinental Gas P/L Corp	Arco Natural Gas Marketing, Inc	12-05-91	B	100,000	N	I	11-06-91	Indef.
ST92-1120	Transcontinental Gas P/L Corp	Mobil Natural Gas, Inc	12-05-91	B	30,000	N	I	11-17-91	Indef.
ST92-1121	Williams Natural Gas Co	Williams Gas Marketing Co	12-05-91	B	5,000	Y	I	11-05-91	Indef.
ST92-1122	Panhandle Eastern Pipe Line Co	Citizens Gas Fuel Co	12-05-91	G-S	4,186	N	F	11-01-91	Indef.
ST92-1124	Delhi Gas Pipeline Co	Northern Indiana Public Service Co.	12-06-91	D	5,000	N	N/A	10-11-91	04-01-92
ST92-1125	Lone Star Gas Co	El Paso Natural Gas Co	12-06-91	C	50,000	N	I	11-01-91	Indef.
ST92-1126	Lone Star Gas Co	Natural Gas P/L Co. of America	12-06-91	C	10,000	N	I	11-09-91	Indef.
ST92-1127	Valero Transmission, L.P	Northern Natural Gas Co	12-06-91	C	12,500	N	I	11-07-91	01-01-99
ST92-1128	Transtexas Pipeline	Northern Natural Gas Co	12-06-91	C	12,500	N	I	11-07-91	01-01-99
ST92-1129	Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	12-06-91	B	15,000	N	I	11-06-91	Indef.
ST92-1130	Tennessee Gas Pipeline Co	East Ohio Gas Co	12-06-91	B	3,000	N	I	11-19-91	Indef.
ST92-1131	Tennessee Gas Pipeline Co	Texas-Ohio Gas, Inc	12-06-91	G-S	75,000	N	I	11-07-91	Indef.
ST92-1132	K N Energy, Inc	BHP Petroleum, Inc	12-06-91	G-S	5,500	N	I	11-01-91	09-01-92
ST92-1133	K N Energy, Inc	Anthem Energy Co	12-06-91	G-S	100,000	N	F/I	10-01-91	09-01-01
ST92-1134	K N Energy, Inc	Anthem Energy Co	12-06-91	G-S	100,000	N	F/I	10-01-91	09-01-01
ST92-1135	K N Energy, Inc	K N Gas Marketing, Inc	12-06-91	G-S	1,906	Y	F/I	11-05-91	03-31-92
ST92-1136	K N Energy, Inc	Hiland Partners (Interenergy Corp.).	12-06-91	G-S	2,800	N	F/I	11-01-91	03-31-92
ST92-1137	Transcontinental Gas P/L Corp	Corpus Christi Industrial P/L Co	12-06-91	B	250,000	N	I	11-06-91	Indef.
ST92-1138	Transcontinental Gas P/L Corp	Alabama Gas Corp	12-06-91	B	425,000	N	I	11-06-91	Indef.
ST92-1139	Transcontinental Gas P/L Corp	NGC Transportation, Inc	12-06-91	B	300,000	N	I	11-06-91	Indef.
ST92-1140	Arkla Energy Resources	Aquila Energy Marketing Corp	12-06-91	G-S	10,000	N	I	11-11-91	Indef.
ST92-1141	Arkla Energy Resources	Arkla Energy Marketing Co	12-06-91	G-S	400,000	Y	I	10-29-91	Indef.
ST92-1142	Arkla Energy Resources	Equitable Resources Marketing Co.	12-06-91	G-S	100,000	N	I	11-01-91	Indef.
ST92-1143	Questar Pipeline Co	ANR Pipeline Co	12-06-91	G-S	115,000	N	I	11-19-91	Indef.
ST92-1144	Questar Pipeline Co	Western Natural Gas & Trans. Corp.	12-06-91	G-S	800	N	I	11-06-91	Indef.
ST92-1145	Questar Pipeline Co	KPL Gas Services	12-06-91	B	40,000	N	I	12-01-91	Indef.
ST92-1146	Overthrust Pipeline Co	Wyoming Interstate Co., Ltd	12-06-91	G	30,000	N	I	12-01-91	Indef.
ST92-1147	Overthrust Pipeline Co	Coastal Gas Marketing Co	12-06-91	G-S	100,000	N	I	12-01-91	Indef.
ST92-1148	Overthrust Pipeline Co	Wyoming Interstate Co., Ltd	12-06-91	G	40,000	N	I	11-21-91	Indef.
ST92-1149	Overthrust Pipeline Co	Universal Resources Corp	12-06-91	G-S	100,000	N	I	12-01-91	Indef.
ST92-1150	ANR Pipeline Co	Phillips Petroleum Co	12-06-91	G-S	30,000	N	I	11-08-91	Indef.
ST92-1151	ANR Pipeline Co	East Ohio Gas Co	12-06-91	B	3,600	N	F	11-16-91	Indef.

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Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-1152	ANR Pipeline Co	Texpar Energy, Inc	12-06-91	G-S	100,000	N	I	11-17-91	Indef.
ST92-1153	ANR Pipeline Co	Unigas Energy, Inc	12-06-91	G-S	50,000	N	I	11-14-91	Indef.
ST92-1154	ANR Pipeline Co	Enron Gas Marketing, Inc	12-06-91	G-S	100,000	N	I	11-09-91	Indef.
ST92-1155	Trunkline Gas Co	Texas Eastern Transmission Corp.	12-06-91	G	150,000	Y	F	11-01-91	Indef.
ST92-1156	Texas Eastern Transmission Corp.	Calcasieu Gas Gathering System.	12-06-91	G-S	150,000	N	I	10-31-91	Indef.
ST92-1157	Texas Eastern Transmission Corp.	City of Lawrenceburg	12-06-91	B	19,750	N	I	10-02-91	Indef.
ST92-1158	Texas Eastern Transmission Corp.	City of Lebanon	12-06-91	B	19,750	N	I	10-02-91	Indef.
ST92-1159	Texas Eastern Transmission Corp.	Fall River Gas Co	12-06-91	B	200,000	N	I	10-04-91	Indef.
ST92-1160	Texas Eastern Transmission Corp.	Phoenix Diversified Ventures, Inc.	12-06-91	G-S	10,000	N	I	11-01-91	Indef.
ST92-1161	Northern Border Pipeline Co	Wes Cana Energy Marketing, Inc	12-06-91	G-S	50,000	Y	I	11-01-91	Indef.
ST92-1164	Northern Natural Gas Co	Sioux Center Municipal Natural Gas.	12-06-91	B	400	N	F	11-01-91	Indef.
ST92-1165	Northern Natural Gas Co	City of Duluth	12-06-91	B	3,000	N	F	11-01-91	03-31-92
ST92-1166	Northern Natural Gas Co	Midwest Natural Gas Co	12-06-91	B	20,000	N	I	10-31-91	Indef.
ST92-1167	Northern Natural Gas Co	Midwest Gas, Div. Iowa Pub. Ser. Co.	12-06-91	B	1,000	N	F	11-01-91	03-31-92
ST92-1168	Northern Natural Gas Co	Preston Municipal Natural Gas Dept.	12-06-91	B	128	N	F	11-01-91	03-31-92
ST92-1169	Northern Natural Gas Co	Iowa-Illinois Gas and Electric Co	12-06-91	B	50,000	N	F	11-01-91	10-31-02
ST92-1170	El Paso Natural Gas Co	Fina Oil and Chemical Co	12-09-91	G-S	103,000	Y	I	11-14-91	Indef.
ST92-1171	El Paso Natural Gas Co	Exoko Golden T, Inc	12-09-91	B	10,300	Y	I	11-14-91	Indef.
ST92-1172	Ozark Gas Transmission System	Amoco Energy Trading Corp	12-09-91	G-S	50,000	N	I	11-22-91	Indef.
ST92-1173	Ozark Gas Transmission System	Columbia Gas Development Corp.	12-09-91	G-S	25,000	N	I	11-22-91	Indef.
ST92-1174	Ozark Gas Transmission System	Associated Natural Gas, Inc	12-09-91	G-S	100,000	N	I	11-19-91	Indef.
ST92-1175	ANR Pipeline Co	Philadelphia Gas Works	12-09-91	B	250,000	Y	I	11-07-91	Indef.
ST92-1176	Northern Natural Gas Co	Amoco Energy Trading Corp	12-09-91	G-S	20,835	N	F	11-13-91	Indef.
ST92-1177	Northern Natural Gas Co	Cibola Corp	12-09-91	G-S	100,000	N	I	11-13-91	Indef.
ST92-1178	Northern Natural Gas Co	Continental Natural Gas, Inc	12-09-91	G-S	75,000	N	I	11-13-91	Indef.
ST92-1179	Northern Natural Gas Co	Midwest Gas Co	12-09-91	B	300,000	N	I	11-09-91	Indef.
ST92-1180	Sea Robin Pipeline Co	Tejas Power Corp	12-09-91	G-S	70,000	N	I	11-05-91	Indef.
ST92-1181	Tennessee Gas Pipeline Co	Energy Development Corp	12-09-91	G-S	15,000	N	I	11-08-91	Indef.
ST92-1182	Tennessee Gas Pipeline Co	Santa Fe International Corp	12-09-91	G-S	100,000	N	I	11-08-91	Indef.
ST92-1183	South Georgia Natural Gas Co	Municipal Gas Authority of Georgia.	12-09-91	G-S	19,116	N	I	12-01-91	12-31-05
ST92-1184	South Georgia Natural Gas Co	Texican Natural Gas Co	12-09-91	G-S	500	N	I	11-14-91	Indef.
ST92-1185	Southern Natural Gas Co	Municipal Gas Authority of Georgia.	12-09-91	G-S	9,856	N	I	12-01-91	12-31-05
ST92-1186	Texas Eastern Transmission Corp.	Central Illinois Public Service Co	12-09-91	B	3,000	N	I	11-01-91	Indef.
ST92-1187	Texas Eastern Transmission Corp.	Yuma Gas Corp	12-09-91	G-S	25,000	N	I	11-01-91	Indef.
ST92-1188	Panhandle Eastern Pipe Line Co	Citizens Gas Fuel Co	12-09-91	G-S	1,912	N	I	11-01-91	Indef.
ST92-1189	Panhandle Eastern Pipe Line Co	City of Bainbridge	12-09-91	G-S	364	N	I	11-01-91	Indef.
ST92-1190	Louisiana Resources Co	Chevron Chemical Co	12-09-91	C	7,500	N	I	12-09-91	Indef.
ST92-1191	Columbia Gulf Transmission Co	O & R Energy, Inc	12-09-91	G-S	80,000	N	I	11-16-91	Indef.
ST92-1192	Transcontinental Gas P/L Corp	Consolidated Edison Co. of NY, Inc.	12-09-91	B	200,000	N	I	11-07-91	Indef.
ST92-1193	Transcontinental Gas P/L Corp	UGI Corp	12-09-91	B	48,000	Y	I	11-05-91	Indef.
ST92-1194	Valley Gas Transmission, Inc	Bishop Pipeline Corp	12-09-91	G-S	4,000	N	I	10-01-91	01-28-92
ST92-1195	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America	12-10-91	C	10,000	N	I	12-01-91	Indef.
ST92-1196	Tennessee Gas Pipeline Co	Stellar Gas Co	12-10-91	G-S	50,000	N	I	11-16-91	Indef.
ST92-1197	Natural Gas P/L Co. of America	Transco Energy Marketing Co	12-10-91	G-S	50,000	N	I	11-12-91	Indef.
ST92-1198	Natural Gas P/L Co. of America	Richardson Products Co	12-10-91	G-S	75,000	N	I	11-10-91	Indef.
ST92-1199	Natural Gas P/L Co. of America	Enron Gas Marketing, Inc	12-10-91	B	150,000	N	I	11-03-91	Indef.
ST92-1200	Panola/Rusk Gatherers	Natural Gas P/L Co. of America	12-11-91	C	10,000	N	I	03-01-91	Indef.
ST92-1201	Natural Gas P/L Co. of America	Interstate Power Co	12-11-91	B	5,000	N	F	03-01-91	11-30-96
ST92-1202	Natural Gas P/L Co. of America	Iowa Southern Utilities Co	12-11-91	B	900	N	F	12-01-91	11-30-95
ST92-1203	Natural Gas P/L Co. of America	Midcon Marketing Corp	12-11-91	G-S	35,000	N	F	11-15-91	03-15-92
ST92-1204	Natural Gas P/L Co. of America	Northern Illinois Gas Co	12-11-91	B	35,000	N	F	12-01-91	11-30-95
ST92-1205	Natural Gas P/L Co. of America	Northern Illinois Gas Co	12-11-91	B	25,000	N	F	12-01-91	11-30-95
ST92-1206	Natural Gas P/L Co. of America	Ball-Icon Glass Packaging Corp	12-11-91	G-S	2,500	N	F	09-01-91	08-31-92
ST92-1207	Natural Gas P/L Co. of America	Associated Natural Gas, Inc	12-11-91	G-S	930	N	F	12-01-91	02-28-92
ST92-1208	Natural Gas P/L Co. of America	City of Findlay	12-11-91	B	750	N	F	12-01-91	11-30-95
ST92-1209	Natural Gas P/L Co. of America	City of Nashville	12-11-91	B	500	N	F	12-01-91	02-28-97
ST92-1210	Rocky Mountain Natural Gas Co	Northwest Pipeline Corp	12-11-91	G-HT	500	N	I	11-01-91	Indef.
ST92-1211	Enogex Inc	El Paso Natural Gas Co	12-11-91	C	15,000	N	I	10-26-91	Indef.
ST92-1212	Enogex Inc	Panhandle Eastern Pipeline Co	12-11-91	C	50,000	N	I	11-22-91	Indef.
ST92-1213	Northern Natural Gas Co	City of Round Lake	12-11-91	B	250	N	F	11-14-91	Indef.
ST92-1214	Northern Natural Gas Co	Peoples Natural Gas Co	12-11-91	B	204,807	N	F	11-30-91	Indef.
ST92-1215	ANR Pipeline Co	Northern Gas Co	12-12-91	B	250,000	N	I	11-13-91	Indef.
ST92-1216	Williston Basin Inter. P/L Co	Inland Oil & Gas Corp	12-12-91	G-S	7,714	N	I	11-12-91	03-21-93
ST92-1217	Williston Basin Inter. P/L Co	Petro-Hunt Corp	12-12-91	G-S	1,000	N	I	11-13-91	10-17-93

Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-1218	Williston Basin Inter. P/L Co	Amerada Hess Corp	12-12-91	G-S	15,000	N	I	11-15-91	03-07-92
ST92-1219	Northern Natural Gas Co	Western Gas Resources, Inc	12-12-91	G-S	40,000	N	I	11-20-91	11-19-96
ST92-1220	Northern Natural Gas Co	Wisconsin Gas Co	12-12-91	B	3,000	N	I	11-18-91	Indef.
ST92-1221	Florida Gas Transmission Co	Cargill Fertilizer, Inc	12-12-91	G-S	765	N	F	11-16-91	Indef.
ST92-1222	Colorado Interstate Gas Co	Coastal Gas Marketing Co	12-12-91	G-S	50,000	Y	I	11-11-91	Indef.
ST92-1223	Colorado Interstate Gas Co	Snyder Oil Corp	12-12-91	G-S	30,000	N	I	11-19-91	Indef.
ST92-1224	Colorado Interstate Gas Co	Coastal Chem, Inc	12-12-91	G-S	14,000	Y	I	09-01-91	08-31-95
ST92-1225	Colorado Interstate Gas Co	Texaco Gas Marketing, Inc	12-12-91	G-S	300	N	I	11-15-91	Indef.
ST92-1226	El Paso Natural Gas Co	Conoco Inc	12-12-91	G-S	51,500	Y	I	11-28-91	Indef.
ST92-1227	El Paso Natural Gas Co	City of Ignacio	12-12-91	G-S	648	Y	F	11-27-91	Indef.
ST92-1228	El Paso Natural Gas Co	City of Socorro	12-12-91	G-S	2,158	Y	F	11-27-91	Indef.
ST92-1229	El Paso Natural Gas Co	Westar Transmission Co	12-12-91	B	1,545	Y	I	11-24-91	Indef.
ST92-1230	Arkansas Oklahoma Gas Corp	Ozark Gas Transmission System	12-11-91	G-HT	150	N	I	11-01-91	Indef.
ST92-1231	Arkansas Oklahoma Gas Corp	Ozark Gas Transmission System	12-11-91	G-HT	200	N	I	12-01-91	Indef.
ST92-1232	Arkansas Oklahoma Gas Corp	Ozark Gas Transmission System	12-11-91	G-HT	19,882	N	I	12-01-91	Indef.
ST92-1233	Arkansas Oklahoma Gas Corp	Ozark Gas Transmission System	12-11-91	G-HT	1,550	N	I	12-05-91	Indef.
ST92-1234	Stingray Pipeline Co	Nomeco Oil and Gas Co	12-12-91	G-S	4,000	N	I	12-01-91	Indef.
ST92-1235	Stingray Pipeline Co	Vesta Energy Co	12-12-91	G-S	21,344	N	F	12-01-91	Indef.
ST92-1236	Northwest Pipeline Corp	Mountain Fuel Supply Co	12-12-91	G-S	80,000	N	I	11-28-91	Indef.
ST92-1237 [3]	Transcontinental Gas P/L Corp	Apache Marketing, Inc	12-12-91	G-S	300,000	N	I	12-30-91	Indef.
ST92-1238	Transcontinental Gas P/L Corp	End-Users Supply System	12-12-91	B	274,500	N	I	01-01-91	Indef.
ST92-1239	Transcontinental Gas P/L Corp	Transco Energy Marketing Co	12-12-91	B	250,000	Y	I	11-06-91	Indef.
ST92-1240	Transcontinental Gas P/L Corp	Seagull Marketing Services, Inc	12-12-91	B	150,000	N	I	11-25-91	Indef.
ST92-1241	Transcontinental Gas P/L Corp	Republic Refining, Limited	12-12-91	G-S	5,000	N	I	11-14-91	Indef.
ST92-1242	Ozark Gas Transmission System	Natural Gas P/L Co. of America	12-13-91	G	100,000	N	I	11-11-91	Indef.
ST92-1243	Texas Gas Transmission Corp	Bishop Pipeline Corp	12-13-91	G-S	255	N	F	12-01-91	12-01-92
ST92-1244	Texas Gas Transmission Corp	Access Energy Corp	12-13-91	G-S	100,000	N	I	12-01-91	Indef.
ST92-1245	Texas Gas Transmission Corp	Illinois Gas Co	12-13-91	B	5,184	N	F	12-01-91	Indef.
ST92-1246	Texas Gas Transmission Corp	Indiana Gas Co., Inc	12-13-91	G-S	15,000	N	F	12-01-91	02-29-92
ST92-1247	Texas Gas Transmission Corp	Indiana Gas Co., Inc	12-13-91	G-S	5,000	N	F	12-04-91	02-29-92
ST92-1248	Northern Natural Gas Co	Manning Municipal Gas Department.	12-13-91	B	5,000	N	I	11-18-91	Indef.
ST92-1249	Northern Natural Gas Co	Boyd Rosene and Associates, Inc.	12-13-91	G-S	30,000	N	I	11-15-91	Indef.
ST92-1250	United Gas Pipe Line Co	Entex	12-13-91	G-S	75,000	N	F	11-20-91	03-19-92
ST92-1251	United Gas Pipe Line Co	Shell Gas Trading Co	12-13-91	G-S	209,600	N	I	12-02-91	03-31-92
ST92-1252	United Gas Pipe Line Co	Louisiana Operating Co., Inc	12-13-91	G-S	10,480	N	I	11-20-91	03-19-92
ST92-1253	United Gas Pipe Line Co	FMI Hydrocarbon Co	12-13-91	G-S	1,500	N	I	11-20-91	03-19-92
ST92-1254	Mississippi River Trans. Corp	Harcros Pigments, Inc	12-13-91	G-S	1,850	N	F	11-21-91	Indef.
ST92-1255	Transcontinental Gas P/L Corp	Baltimore Gas & Electric Co	12-13-91	B	975,000	N	I	06-20-90	Indef.
ST92-1256	Arkla Energy Resources	Usagas Pipeline Co	12-13-91	B	8,000	N	I	09-01-91	Indef.
ST92-1257	Arkla Energy Resources	Associated Natural Gas, Inc	12-13-91	G-S	150,000	N	I	10-01-91	Indef.
ST92-1258	CNG Transmission Corp	Hadson Gas System, Inc	12-13-91	G-S	50,000	N	I	11-06-91	Indef.
ST92-1259	CNG Transmission Corp	Aquila Energy	12-13-91	G-S	100,000	N	I	11-06-91	Indef.
ST92-1260	CNG Transmission Corp	Graham Energy Marketing	12-13-91	G-S	100,000	N	I	11-06-91	Indef.
ST92-1261	Oasis Pile Line Co	Northern Natural Gas, Co	12-13-91	C	100,000	N	I	02-01-91	Indef.
ST92-1262	Oasis Pile Line Co	Natural Gas P/L Co. of America	12-13-91	C	100,000	N	I	10-01-91	Indef.
ST92-1263	Oasis Pile Line Co	Natural Gas P/L Co. of America	12-13-91	C	10,000	N	I	10-18-91	Indef.
ST92-1264	Oasis Pile Line Co	Transwestern Pipeline Co	12-13-91	C	150,000	N	I	10-24-91	Indef.
ST92-1265	Oasis Pile Line Co	Transwestern Pipeline Co	12-13-91	C	100,000	N	I	01-01-91	Indef.
ST92-1266	Oasis Pile Line Co	El Paso Natural Gas Co	12-13-91	C	100,000	N	I	01-01-91	Indef.
ST92-1267	Oasis Pile Line Co	Transwestern Pipeline Co	12-13-91	C	7,300	N	I	09-01-91	Indef.
ST92-1268	Oasis Pile Line Co	Northern Natural Gas, Co	12-13-91	C	50,000	N	I	12-23-91	Indef.
ST92-1269	Oasis Pile Line Co	Northern Natural Gas, Co	12-13-91	C	50,000	N	I	10-12-91	Indef.
ST92-1270	Colorado Interstate Gas Co	Coastal Gas Marketing Co	12-16-91	G-S	25,000	N	I	12-01-91	Indef.
ST92-1271	Tennessee Gas Pipeline Co	Gulf Energy Marketing Co	12-16-91	G-S	310,000	N	I	11-28-91	Indef.
ST92-1272	Tennessee Gas Pipeline Co	CNG Gas Transmission Corp	12-16-91	B	3,600	N	F	12-01-91	09-30-92
ST92-1273	Tennessee Gas Pipeline Co	United Texas Transmission Co	12-16-91	B	80,000	N	I	11-05-91	Indef.
ST92-1274	Tennessee Gas Pipeline Co	Destoto Pipeline Co., Inc	12-16-91	G-S	1,400	N	I	11-01-91	Indef.
ST92-1275	Williams Natural Gas Co	Rangeline Corp	12-16-91	G-S	1,500	N	F	11-15-91	Indef.
ST92-1276	Transcontinental Gas P/L Corp	Brooklyn Union Gas Co	12-16-91	B	900,000	N	I	09-18-87	Indef.
ST92-1277	Trunkline Gas Co	Polaris Pipeline Corp	12-16-91	G-S	30,000	N	I	12-02-91	Indef.
ST92-1278	Trunkline Gas Co	Coastal Gas Marketing Co	12-16-91	G-S	100,000	N	I	12-01-91	Indef.
ST92-1279	Trunkline Gas Co	Bishop Pipeline Corp	12-16-91	G-S	50,000	N	I	12-03-91	Indef.
ST92-1280	Northern Natural Gas Co	Peoples Natural Gas Co	12-16-91	B	1,900	N	F	11-21-91	Indef.
ST92-1281	Northern Natural Gas Co	Iowa Electric Light & Power Co	12-16-91	B	7,298	N	F	12-01-91	09-30-92
ST92-1282	Equitrans, Inc	Energy Sales Co	12-16-91	G-S	10,121	N	I	12-01-91	Indef.
ST92-1283	Delhi Gas Pipeline Corp	United Gas Pipeline Co	12-17-91	C	10,000	N	I	12-01-91	Indef.
ST92-1284	Delhi Gas Pipeline Corp	Northern Natural Gas Co	12-17-91	C	5,000	N	I	12-04-91	Indef.
ST92-1285	DNG Transmission Co	Northern Natural Gas Co	12-17-91	C	75,000	N	I	11-23-91	Indef.
ST92-1286	El Paso Natural Gas Co	Mobil Natural Gas, Inc	12-17-91	G-S	200,000	Y	I	12-01-91	Indef.
ST92-1287	El Paso Natural Gas Co	City of Lordsburg	12-17-91	G-S	3,613	Y	F	12-05-91	Indef.
ST92-1288	El Paso Natural Gas Co	City of Safford	12-17-91	G-S	2,308	Y	F	12-01-91	Indef.
ST92-1289	El Paso Natural Gas Co	City of Mountainair	12-17-91	G-S	385	Y	F	12-01-91	Indef.
ST92-1290	Valero Transmission, L.P	El Paso Natural Gas Pipeline	12-17-91	C	8,000	N	I	12-01-91	Indef.
ST92-1291	Valero Transmission, L.P	United Gas Pipe Line Co	12-17-91	C	15,000	N	I	12-01-91	Indef.
ST92-1292	Williston Basin Inter. P/L Co	Koch Hydrocarbon Co	12-17-91	G-S	170,100	Y	I	12-13-91	05-01-93
ST92-1293	Williston Basin Inter. P/L Co	Koch Hydrocarbon Co	12-17-91	G-S	183,365	Y	I	12-13-91	09-30-92

Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-1294	Trunkline Gas Co	City of Hamilton	12-17-91	G-S	15,210	N	I	11-27-91	11-01-98
ST92-1295	Trunkline Gas Co	Unocal Exploration Corp	12-17-91	G-S	20,000	N	F	11-01-91	02-29-92
ST92-1296	Trunkline Gas Co	TPC Pipeline, Inc	12-17-91	B	100,000	N	I	12-01-91	Indef.
ST92-1297	Northern Natural Gas Co	Western Gas Market (U.S.A.), Ltd.	12-17-91	G-S	200,000	N	I	12-01-91	Indef.
ST92-1298	Northern Natural Gas Co	City of Duluth	12-17-91	B	1,000	N	F	12-01-91	03-01-92
ST92-1299	Northern Natural Gas Co	City of Two Harbors	12-17-91	B	250	N	F	12-01-91	04-15-92
ST92-1300	Northern Natural Gas Co	Northern States Power Co.—Wisc.	12-17-91	B	10,000	N	F	12-01-91	03-31-92
ST92-1301	Northern Natural Gas Co	Northern States Power Co	12-17-91	B	26,465	N	F	12-01-91	02-29-92
ST92-1302	Northern Natural Gas Co	Great Plains Natural Gas Co	12-17-91	B	3,200	N	F	12-01-91	02-29-92
ST92-1303	Northern Natural Gas Co	City of Duluth	12-17-91	B	2,000	N	F	12-01-91	03-31-92
ST92-1304	Northern Natural Gas Co	Northern Minnesota Utilities	12-17-91	B	2,000	N	F	12-01-91	Indef.
ST92-1305	Northern Natural Gas Co	Semco Energy Services, Inc	12-17-91	G-S	50,000	N	I	11-20-91	Indef.
ST92-1306	Tennessee Gas Pipeline Co	Catex Energy, Inc	12-17-91	G-S	102,600	N	I	12-01-91	Indef.
ST92-1307	Viking Gas Transmission Co	Victoria Gas Corp	12-17-91	G-S	110,000	N	I	11-13-91	Indef.
ST92-1308	Transcontinental Gas P/L Corp	Atlanta Gas Light Co	12-17-91	B	420,000	N	I	09-12-90	Indef.
ST92-1309	Transcontinental Gas P/L Corp	Transco Energy Marketing Co	12-17-91	G-S	500,000	N	I	11-14-91	Indef.
ST92-1310	Transcontinental Gas P/L Corp	Access Energy Corp	12-17-91	G-S	180,000	N	I	11-21-91	Indef.
ST92-1311	Transcontinental Gas P/L Corp	Arco Oil and Gas Co	12-17-91	B	600,000	N	I	05-04-89	Indef.
ST92-1312	Transcontinental Gas P/L Corp	Arco Oil and Gas Co	12-17-91	B	600,000	N	I	05-04-89	Indef.
ST92-1313	Transcontinental Gas P/L Corp	Commonwealth Gas Pipeline Corp.	12-18-91	B	10,000	N	I	04-03-89	10-09-90
ST92-1314	Wyoming Interstate Co., Ltd	Northern Illinois Gas Co	12-18-91	B	30,000	N	I	12-01-91	Indef.
ST92-1315	Wyoming Interstate Co., Ltd	Peoples Natural Gas Co	12-18-91	B	100,000	N	I	12-01-91	Indef.
ST92-1316	Wyoming Interstate Co., Ltd	Northern Illinois Gas Co	12-18-91	B	40,000	N	I	12-01-91	Indef.
ST92-1317	Panhandle Eastern Pipe Line Co	Tenaska Marketing Ventures	12-18-91	G-S	250,000	N	I	11-16-91	Indef.
ST92-1318	Texas Gas Transmission Corp	Western Kentucky Gas Co	12-18-91	B	6,750	N	F	12-06-91	Indef.
ST92-1319	Tennessee Gas Pipeline Co	Consolidated Fuel GS Supply, Inc.	12-18-91	G-S	100,000	N	I	11-24-91	Indef.
ST92-1320	Tennessee Gas Pipeline Co	Tenngasco Corp	12-18-91	G-S	10,100	N	F	12-01-91	12-01-92
ST92-1321	ONG Transmission Co	ANR Pipeline Co	12-18-91	C	20,000	N	I	12-01-91	Indef.
ST92-1322	ONG Transmission Co	Williams Natural Gas Co	12-18-91	C	20,000	N	I	11-26-91	Indef.
ST92-1323	ONG Transmission Co	Ozark Pipeline Co	12-18-91	C	25,000	N	I	12-03-91	Indef.
ST92-1324	ONG Transmission Co	ANR Pipeline Co	12-18-91	C	10,000	N	I	12-01-91	Indef.
ST92-1325	Columbia Gas Transmission Corp.	Northeast Ohio Natural Gas Corp.	12-18-91	B	100	N	F	12-01-91	03-31-92
ST92-1326	Columbia Gas Transmission Corp.	Suburban Natural Gas Co	12-18-91	B	1,464	N	F	12-01-91	03-31-92
ST92-1327	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	12-18-91	B	43,000	Y	F	12-02-91	Indef.
ST92-1328	Columbia Gas Transmission Corp.	Columbia Gas of Maryland, Inc	12-18-91	G-S	3,500	Y	F	12-01-91	02-29-92
ST92-1329	Columbia Gas Transmission Corp.	Interstate Gas Supply, Inc	12-18-91	G-S	5,000	N	I	12-10-91	Indef.
ST92-1330	Columbia Gas Transmission Corp.	Public Service Electric & Gas Co	12-18-91	G-S	12,500	N	F	12-03-91	11-01-11
ST92-1331	Columbia Gas Transmission Corp.	O & R Energy, Inc	12-18-91	G-S	236	N	F	12-02-91	Indef.
ST92-1332	Columbia Gas Transmission Corp.	Gas Transport, Inc	12-18-91	G-S	50,000	N	I	12-01-91	Indef.
ST92-1333	Columbia Gas Transmission Corp.	Southern Tier Transmission Corp.	12-18-91	G-S	5,000	N	I	12-10-91	Indef.
ST92-1334	Columbia Gas Transmission Corp.	Stand Energy Corp	12-18-91	G-S	90	Y	F	12-01-91	03-31-92
ST92-1335	Columbia Gas Transmission Corp.	Columbia Gas of Kentucky, Inc	12-18-91	B	14,190	Y	F	12-01-91	02-29-92
ST92-1336	Lone Star Gas Co	El Paso Natural Gas Co	12-19-91	C	100,000	N	I	11-20-91	Indef.
ST92-1337	Red River Pipeline	KN Energy, Inc	12-19-91	C	175,000	N	I	11-23-91	Indef.
ST92-1338	Ozark Gas Transmission System	Enserch Gas Co	12-19-91	G-S	50,000	N	F/I	12-06-91	Indef.
ST92-1339	Ozark Gas Transmission System	Arkansas Electric Cooperative Corp.	12-19-91	G-S	16,560	N	F/I	12-04-91	Indef.
ST92-1340	Ozark Gas Transmission System	O & R Energy, Inc	12-19-91	G-S	50,000	N	F/I	12-05-91	Indef.
ST92-1341	Viking Gas Transmission Co	Iowa Public Service Co	12-19-91	B	950	N	F	11-25-91	03-31-92
ST92-1342	Midwestern Gas Transmission Co.	Northern Illinois Gas Co	12-19-91	B	7,800	N	F	12-01-91	01-01-93
ST92-1343	Northern Natural Gas Co	Elf Exploration, Inc	12-19-91	G-S	86,457	N	I	12-01-91	Indef.
ST92-1344	Northern Natural Gas Co	Wisconsin Gas Co	12-19-91	B	2,300	N	F	12-03-91	Indef.
ST92-1345	Northern Natural Gas Co	Wisconsin Power & Light Co	12-19-91	B	1,000	N	F	12-03-91	Indef.
ST92-1346	Northern Natural Gas Co	Alliance Natural Gas, Inc	12-19-91	G-S	30,000	N	I	12-05-91	Indef.
ST92-1347	Northern Natural Gas Co	Arkla Energy Marketing Co	12-19-91	G-S	130,000	N	I	12-01-91	Indef.
ST92-1348	Northern Natural Gas Co	Great Plains Natural Gas Co	12-19-91	B	15,000	N	I	11-25-91	Indef.
ST92-1349	Columbia Gas Transmission Corp.	Honda of America Mgf., Inc	12-19-91	G-S	2,500	Y	F	12-01-91	03-31-92
ST92-1350	Columbia Gas Transmission Corp.	Access Energy Corp	12-19-91	G-S	53	Y	F	12-12-91	Indef.
ST92-1351	Columbia Gas Transmission Corp.	Access Energy Corp	12-19-91	G-S	194	Y	F	12-12-91	3-31-92
ST92-1352	East Tennessee Natural Gas Co	Polaris Pipeline Corp	12-20-91	G-S	50,000	N	I	12-01-91	Indef.

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Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-1353	East Tennessee Natural Gas Co..	Coastal Marketing Co	12-20-91	G-S	200,000	N	I	12-01-91	Indef.
ST92-1354	East Tennessee Natural Gas Co..	Knoxville Utilities Board	12-20-91	G-S	150,000	N	I	12-01-91	Indef.
ST92-1355	East Tennessee Natural Gas Co..	Tenngasco Corp	12-20-91	G-S	400,000	N	I	12-01-91	Indef.
ST92-1356	East Tennessee Natural Gas Co..	A.E. Staley Manufacturing Co	12-20-91	G-S	5,464	N	I	12-01-91	Indef.
ST92-1357	East Tennessee Natural Gas Co..	City of Loudon-Loudon Utilities Gas.	12-20-91	G-S	8,800	N	I	12-01-91	Indef.
ST92-1358	East Tennessee Natural Gas Co..	Woodward Marketing, Inc	12-20-91	G-S	28,280	N	I	12-01-91	Indef.
ST92-1359	East Tennessee Natural Gas Co..	United Cities Gas Co	12-20-91	G-S	127,000	N	I	12-01-91	Indef.
ST92-1360	East Tennessee Natural Gas Co..	UCG Energy Corp	12-20-91	G-S	75,269	N	I	12-01-91	Indef.
ST92-1361	East Tennessee Natural Gas Co..	Manville Sales Corp	12-20-91	G-S	4,000	N	I	12-01-91	Indef.
ST92-1362	East Tennessee Natural Gas Co..	Oryx Gas Marketing L.P.	12-20-91	G-S	200,000	N	I	12-01-91	Indef.
ST92-1363	East Tennessee Natural Gas Co..	Heath Petra Resources, Inc	12-20-91	G-S	3,500	N	I	12-01-91	Indef.
ST92-1364	East Tennessee Natural Gas Co..	Atlanta Gas Light Co	12-20-91	G-S	200,000	N	I	12-01-91	Indef.
ST92-1365	East Tennessee Natural Gas Co..	Powell-Clinch Utility District	12-20-91	G-S	15,000	N	I	12-01-91	Indef.
ST92-1366	East Tennessee Natural Gas Co..	Chattanooga Gas Co	12-20-91	G-S	45,000	N	I	12-01-91	Indef.
ST92-1367	East Tennessee Natural Gas Co..	Conoco Inc	12-20-91	G-S	25,000	N	I	12-01-91	Indef.
ST92-1368	East Tennessee Natural Gas Co..	Corning Inc	12-20-91	G-S	1,400	N	I	12-01-91	Indef.
ST92-1369	East Tennessee Natural Gas Co..	Entrade Corp	12-20-91	G-S	500,000	N	I	12-01-91	Indef.
ST92-1370	East Tennessee Natural Gas Co..	City of Etowah	12-20-91	G-S	10,367	N	I	12-01-91	Indef.
ST92-1371	East Tennessee Natural Gas Co..	Gulf Ohio Corp	12-20-91	G-S	25,000	N	I	12-01-91	Indef.
ST92-1372	East Tennessee Natural Gas Co..	Kogas, Inc	12-20-91	G-S	200,000	N	I	12-01-91	Indef.
ST92-1373	East Tennessee Natural Gas Co..	Middle Tennessee Utility District	12-20-91	G-S	250,000	N	I	12-01-91	Indef.
ST92-1374	East Tennessee Natural Gas Co..	Petroleum Source Systems Group, Inc.	12-20-91	G-S	4,000	N	I	12-01-91	Indef.
ST92-1375	East Tennessee Natural Gas Co..	Texaco Gas Marketing, Inc	12-20-91	G-S	100,000	N	I	12-01-91	Indef.
ST92-1376	East Tennessee Natural Gas Co..	Velsicol Chemical Corp	12-20-91	G-S	3,000	N	I	12-01-91	Indef.
ST92-1377	East Tennessee Natural Gas Co..	Centran Corp	12-20-91	G-S	250,000	N	I	12-01-91	Indef.
ST92-1378	East Tennessee Natural Gas Co..	Sonat Marketing Co	12-20-91	G-S	100,000	N	I	12-01-91	Indef.
ST92-1379	East Tennessee Natural Gas Co..	Southern Gas Co	12-20-91	G-S	12,000	N	I	12-01-91	Indef.
ST92-1380	East Tennessee Natural Gas Co..	Ucar Carbon Co., Inc	12-20-91	G-S	7,650	N	I	12-01-91	Indef.
ST92-1381	East Tennessee Natural Gas Co..	NGC Transportation, Inc	12-20-91	G-S	500,000	N	I	12-01-91	Indef.
ST92-1382	East Tennessee Natural Gas Co..	Phillips Petroleum Co	12-20-91	G-S	50,000	N	I	12-01-91	Indef.
ST92-1383	East Tennessee Natural Gas Co..	Kimball Resources, Inc	12-20-91	G-S	25,000	N	I	12-01-91	Indef.
ST92-1384	East Tennessee Natural Gas Co..	Petroleum Source & Systems Group.	12-20-91	G-S	4,000	N	I	12-01-91	Indef.
ST92-1385	Questar Pipeline Co	Amoco Production Co	12-20-91	G-S	80,000	N	I	11-10-91	11-09-92
ST92-1386	Questar Pipeline Co	City Utilities of Springfield	12-20-91	B	10,000	N	I	10-30-91	04-30-92
ST92-1387	Questar Pipeline Co	Texaco Gas Marketing, Inc	12-20-91	G-S	1,000	N	I	12-14-91	07-31-96
ST92-1388	Questar Pipeline Co	CNG Producing Co	12-20-91	G-S	9,000	N	I	12-01-91	02-29-92
ST92-1389	Questar Pipeline Co	Nephi City Corp	12-20-91	[illegible]	750	N	I	12-17-91	11-30-11
ST92-1390	Natural Gas P/L Co. of America	Northern Indiana Public Service Co.	12-20-91	B	29,700	N	F	12-01-91	11-30-95
ST92-1391	Natural Gas P/L Co. of America	Peoples Gas Light & Coke Co	12-20-91	G-S	15,000	N	F	12-01-91	11-30-95
ST92-1392	Natural Gas P/L Co. of America	Interstate Power Co	12-20-91	B	2,000	N	F	12-01-91	11-30-96
ST92-1393	Natural Gas P/L Co. of America	Vesta Energy Co	12-20-91	G-S	15,000	N	F	12-01-91	03-31-92
ST92-1394	Natural Gas P/L Co. of America	Utrade Gas Co	12-20-91	G-S	40,000	Y	F	12-01-91	01-31-92
ST92-1395	Natural Gas P/L Co. of America	Torch Energy Marketing, Inc	12-20-91	B	3,000	N	F	12-03-91	02-29-92
ST92-1396	Natural Gas P/L Co. of America	North Shore Gas Co	12-20-91	G-S	8,283	N	F	12-01-91	11-30-92
ST92-1397	Natural Gas P/L Co. of America	Pan-Alberta Gas (U.S.) Inc	12-20-91	G-S	5,099	N	F	12-01-91	03-31-92
ST92-1398	Natural Gas P/L Co. of America	North Shore Gas Co	12-20-91	G-S	20,000	N	F	12-01-91	11-30-95
ST92-1399	Equitrans, Inc	Entrade Corp	12-20-91	G-S	101,208	N	I	11-20-91	Indef.
ST92-1400	Equitrans, Inc	Texas-Ohio Gas, Inc	12-20-91	G-S	30,362	N	I	11-18-91	Indef.
ST92-1401	Equitrans, Inc	CNG Trading Co	12-20-91	G-S	50,604	N	I	11-01-91	Indef.
ST92-1402	United Gas Pipe Line Co	Highland Energy Corp	12-20-91	G-S	27,851	N	I	11-20-91	03-19-92
ST92-1403	United Gas Pipe Line Co	Arkla Energy Marketing Co	12-20-91	G-S	209,600	N	I	12-06-91	04-04-92
ST92-1404	United Gas Pipe Line Co	NGC Transportation, Inc	12-20-91	G-S	157,200	N	I	12-06-91	04-04-92
ST92-1405	Transcontinental Gas P/L Corp	Fort Hill Natural Gas Authority	12-20-91	B	973,200	N	F	12-01-91	03-31-05
ST92-1406	Transcontinental Gas P/L Corp	Pennsylvania Gas & Water Co	12-20-91	B	3,300	N	F	12-01-91	07-31-01
ST92-1407	Transcontinental Gas P/L Corp	Arco Oil and Gas Co	12-20-91	B	420,000	N	I	05-04-89	Indef.
ST92-1408	Transcontinental Gas P/L Corp	South Jersey Gas Co	12-20-91	B	2,900	N	F	12-01-91	07-31-11
ST92-1409	Transcontinental Gas P/L Corp	City of Buford	12-20-91	B	300	N	F	12-03-91	07-31-01
ST92-1410	Transcontinental Gas P/L Corp	Atlanta Gas Light Co	12-20-91	B	4,500	N	F	12-03-91	10-31-09
ST92-1411	Transcontinental Gas P/L Corp	Philadelphia Electric Co	12-20-91	B	4,400	N	F	12-01-91	07-31-08
ST92-1412	Viking Gas Transmission Co	Northern States Power Co	12-20-91	B	117,300	N	I	11-06-91	Indef.
ST92-1413	Viking Gas Transmission Co	City of Perham	12-20-91	B	393	N	F	12-01-91	11-01-92
ST92-1414	Transcontinental Gas P/L Corp	Philadelphia Gas Works	12-20-91	B	1,900	N	F	12-01-91	07-31-11
ST92-1415	Transcontinental Gas P/L Corp	City of Monroe	12-20-91	B	200	N	F	12-01-91	07-31-01
ST92-1416	Transcontinental Gas P/L Corp	City of Lexington	12-20-91	B	300	N	F	12-01-91	07-31-06
ST92-1417	Transcontinental Gas P/L Corp	UGI Corp	12-20-91	B	1,300	N	F	12-01-91	07-31-01
ST92-1418	Transcontinental Gas P/L Corp	United Cities Gas Co	12-20-91	B	200	N	F	12-01-91	07-31-01
ST92-1419	Transcontinental Gas P/L Corp	North Carolina Gas Service	12-20-91	B	200	N	F	12-01-91	03-31-05
ST92-1420	Transcontinental Gas P/L Corp	Piedmont Natural Gas Co	12-20-91	B	5,900	N	F	12-01-91	07-31-11
ST92-1421	Midwestern Gas Transmission Co.	Northern Indiana Public Service Co.	12-20-91	B	131,630	N	F	12-01-91	11-01-00
ST92-1422	Tennessee Gas Pipeline Co	Wes Cana Energy Marketing, Inc	12-20-91	G-S	22,500	N	F	12-01-91	01-01-92
ST92-1423	Tennessee Gas Pipeline Co	JMC Fuel Services, Inc	12-20-91	G-S	1,000	N	F	12-01-91	04-01-92
ST92-1424	Tennessee Gas Pipeline Co	Northern Indiana Public Service Co.	12-20-91	B	131,961	N	F	12-01-91	11-01-00
ST92-1425	Tennessee Gas Pipeline Co	Valley Gas Co	12-20-91	B	1,000	N	F	12-01-91	12-31-91

Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-1426	Tennessee Gas Pipeline Co	Tenngasco Corp	12-20-91	G-S	1,000,000	Y	I	11-22-91	Indef.
ST92-1427	Tennessee Gas Pipeline Co	Boston Gas Co	12-20-91	B	8,600	N	F	12-01-91	12-31-91
ST92-1428	Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp	12-20-91	B	3,200	N	F	12-01-91	10-30-92
ST92-1429	Florida Gas Transmission Co	Florida Gas Utility	12-20-91	G-S	34,465	N	F	12-01-91	Indef.
ST92-1430	Florida Gas Transmission Co	Escambia Partners, Ltd	12-20-91	G-S	4,000	N	I	11-21-91	Indef.
ST92-1431	Northern Natural Gas Co	Texaco Gas Marketing, Inc	12-20-91	G-S	50,000	N	I	12-02-91	Indef.
ST92-1432	Northern Natural Gas Co	Gas Energy Development Co	12-20-91	G-S	50,000	N	I	12-01-91	Indef.
ST92-1433	Northern Natural Gas Co	Wisconsin Power and Light Co	12-20-91	B	54	N	F	12-02-91	03-31-92
ST92-1434	Northern Natural Gas Co	Anadarko Trading Co	12-20-91	G-S	50,000	N	I	12-04-91	Indef.
ST92-1435	Northern Natural Gas Co	K N Energy, Inc	12-20-91	G	310	N	F	12-01-91	Indef.
ST92-1436	Northern Natural Gas Co	Wisconsin Power and Light Co	12-20-91	B	1,500	N	F	12-02-91	03-31-92
ST92-1437	Lone Star Gas Co	El Paso Natural Gas Co	12-23-91	C	5,000	N	I	08-01-91	Indef.
ST92-1438	Delhi Gas Pipeline Corp	K N Energy, Inc	12-23-91	C	65,000	N	I	11-23-91	Indef.
ST92-1439	Natural Gas P/L Co. of America	Midcon Marketing Corp	12-23-91	G-S	200,000	Y	I	12-01-91	Indef.
ST92-1440	Natural Gas P/L Co. of America	Midcon Marketing Corp	12-23-91	G-S	50,000	Y	I	12-01-91	Indef.
ST92-1441	Natural Gas P/L Co. of America	Midcon Marketing Corp	12-23-91	G-S	100,000	Y	I	12-01-91	Indef.
ST92-1442	Natural Gas P/L Co. of America	Aquila Energy Marketing Corp	12-23-91	G-S	50,000	N	F	11-01-91	11-30-91
ST92-1443	Natural Gas P/L Co. of America	Iowa Electric Light & Power Co	12-23-91	G-S	5,000	N	F	09-01-91	08-30-96
ST92-1444	Tennessee Gas Pipeline Co	Amoco Energy Trading Corp	12-23-91	G-S	3,000	N	F	12-01-91	04-01-92
ST92-1445	Tennessee Gas Pipeline Co	Equitrans, Inc	12-23-91	G	40,00	N	I	12-01-91	Indef.
ST92-1446	Tennessee Gas Pipeline Co	National Fuel Gas Supply Corp	12-23-91	G	9,363	N	F	12-01-91	03-31-92
ST92-1447	Tennessee Gas Pipeline Co	NGC Transportation, Inc	12-23-91	G-S	30,000	N	F	12-01-91	12-01-92
ST92-1448	Tennessee Gas Pipeline Co	Mississippi Valley Gas Co	12-23-91	B	100,000	N	I	11-23-91	Indef.
ST92-1449	Tennessee Gas Pipeline Co	Access Energy Corp	12-23-91	G-S	500,000	N	I	12-01-91	Indef.
ST92-1450	Tennessee Gas Pipeline Co	Colonial Gas Co	12-23-91	B	6,000	N	F	12-01-91	12-31-91
ST92-1451	ANR Pipeline Co	Access Energy Corp	12-23-91	G-S	150,000	N	I	11-23-91	Indef.
ST92-1452	ANR Pipeline Co	Seagull Marketing Services, Inc	12-23-91	G-S	35,000	N	I	11-22-91	Indef.
ST92-1453	ANR Pipeline Co	Colinos Natural Gas Co	12-23-91	G-S	1,000	N	I	11-18-91	Indef.
ST92-1454	ANR Pipeline Co	Triumph Gas Marketing Co	12-23-91	G-S	50,000	N	I	11-21-91	Indef.
ST92-1455	ANR Pipeline Co	Northern States Power Co. Wisc	12-23-91	BB	7,271	N	F	11-26-91	Indef.
ST92-1456	Enogex Inc	Northern Natural Gas Co	12-23-91	C	75,000	N	I	11-01-91	Indef.
ST92-1457	Enogex Inc	ANR Pipeline Co	12-23-91	C	50,000	N	I	12-01-91	Indef.
ST92-1458	Enogex Inc	Phillips Gas Pipeline Co	12-23-91	C	150,000	N	I	12-01-91	Indef.
ST92-1459	Montana Power Co	Colorado Interstate Gas Co	12-23-91	G-HT	10,000	N	I	12-01-91	10-31-92
ST92-1460	Montana Power Co	Colorado Interstate Gas Co	12-23-91	G-HT	15,000	N	I	12-01-91	11-30-92
ST92-1461	Southeastern Natural Gas Co	Texas Eastern Transmission	12-23-91	G-HT	40,000	N	F	11-22-91	11-22-92
ST92-1462	Sonat Intrastate-Alabama Inc	Tennessee Gas Pipeline Co	12-23-91	C	1,000	N	I	12-03-91	Indef.
ST92-1463	Transok, Inc	Arkla Energy Resources Co	12-23-91	C	50,000	N	I	11-21-91	Indef.
ST92-1464	Transok, Inc	Riverside Pipeline Co	12-23-91	C	15,000	N	I	12-01-91	Indef.
ST92-1465	Northern Natural Gas Co	Peoples Natural Gas Co	12-23-91	B	7,500	N	I	12-01-91	11-30-92
ST92-1466	Northern Natural Gas Co	Peoples Natural Gas Co	12-23-91	B	23,500	N	F	12-01-91	02-29-92
ST92-1467	Transwestern Pipeline Co	Northern Canadian Marketing Corp.	12-23-91	G-S	100,000	N	I	12-06-91	Indef.
ST92-1468	Transwestern Pipeline Co	Gasmark, Inc	12-23-91	G-S	100,000	N	I	12-05-91	Indef.
ST92-1469	Transwestern Pipeline Co	Enron Gas Marketing, Inc	12-23-91	G-S	500,000	N	I	12-05-91	Indef.
ST92-1470	Transwestern Pipeline Co	Continental Natural Gas, Co	12-23-91	G-S	15,000	N	I	12-01-91	Indef.
ST92-1471	Transwestern Pipeline Co	NGC Transportation, Inc	12-23-91	G-S	500,000	N	I	12-05-91	Indef.
ST92-1472	Transwestern Pipeline Co	Chevron U.S.A., Inc	12-23-91	G-S	100,000	N	I	11-23-91	Indef.
ST92-1473	National Fuel Gas Supply Corp	NGC Transportation, Inc	12-23-91	G-S	16,500	N	I	12-01-91	03-30-92
ST92-1474	National Fuel Gas Supply Corp	NGC Transportation, Inc	12-23-91	G-S	12,500	N	I	12-01-91	03-30-92
ST92-1475	Transcontinental Gas P/L Corp	Stellar Gas Co	12-23-91	B	100,000	N	I	12-06-91	Indef.
ST92-1476	Transcontinental Gas P/L Corp	United Texas Transmission Co	12-23-91	B	100,000	N	I	12-01-91	Indef.
ST92-1477	Transcontinental Gas P/L Corp	Dow Pipeline Co	12-23-91	B	60,000	N	I	12-02-91	Indef.
ST92-1478	Transcontinental Gas P/L Corp	Baltimore Gas and Electric Co	12-23-91	B	20,000	N	I	12-06-91	Indef.
ST92-1479	Transcontinental Gas P/L Corp	Philadelphia Electric Co	12-23-91	B	40,000	N	I	01-10-91	Indef.
ST92-1480	Transcontinental Gas P/L Corp	United Texas Transmission Co	12-23-91	B	100,000	N	I	12-05-91	Indef.
ST92-1481	Transcontinental Gas P/L Corp	City of Greenwood	12-23-91	B	100	N	F	12-04-91	07-31-06
ST92-1482	Transcontinental Gas P/L Corp	City of Shelby	12-23-91	B	200	N	F	12-01-91	07-31-06
ST92-1483	Panhandle Eastern Pipe Line Co	Eli Lilly and Co	12-23-91	G-S	3,000	N	F	12-01-91	Indef.
ST92-1484	Panhandle Eastern Pipe Line Co	Angas, Inc	12-23-91	G-S	200	N	I	12-01-91	Indef.
ST92-1485	Panhandle Eastern Pipe Line Co	Louis Dreyfus Energy Corp	12-23-91	G-S	100,000	N	I	12-03-91	Indef.
ST92-1486	Panhandle Eastern Pipe Line Co	Western Gas Processors, Ltd	12-23-91	G-S	20,000	N	I	12-05-91	Indef.
ST92-1487	Panhandle Eastern Pipe Line Co	Amgas, Inc	12-23-91	G-S	130	N	I	12-01-91	Indef.
ST92-1488	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	12-23-91	B	20,000	N	I	12-03-91	Indef.
ST92-1489	Panhandle Eastern Pipe Line Co	Vesta Energy Co	12-23-91	G-S	110,000	N	I	12-01-91	Indef.
ST92-1490	Houston Pipe Line Co	Texas Eastern Transmission Corp.	12-23-91	C	60,000	N	I	10-23-91	Indef.
ST92-1491	Houston Pipe Line Co	Seagull Interstate Corp	12-23-91	C	100,000	N	I	08-08-91	Indef.
ST92-1492	Houston Pipe Line Co	Black Marlin Pipeline Co	12-23-91	C	100,000	N	I	11-01-91	Indef.
ST92-1493	Houston Pipe Line Co	Natural Gas P/L Co. of America	12-23-91	C	100,000	N	I	11-01-91	Indef.
ST92-1494	Houston Pipe Line Co	United Gas Pipe Line Co	12-23-91	C	100,000	N	I	11-05-91	Indef.
ST92-1495	Houston Pipe Line Co	Transcontinental Gas P/L Corp	12-23-91	C	100,000	N	I	11-07-91	Indef.
ST92-1496	Houston Pipe Line Co	Texas Eastern Transmission Corp.	12-23-91	C	100,000	N	I	09-03-91	Indef.
ST92-1497	Houston Pipe Line Co	Natural Gas P/L Co. of America	12-23-91	C	30,000	N	I	11-01-91	Indef.
ST92-1498	Houston Pipe Line Co	Black Marlin Pipeline Co	12-23-91	C	100,000	N	I	09-01-91	Indef.
ST92-1499	Houston Pipe Line Co	Northern Natural Gas Co	12-23-91	C	100,000	N	I	10-25-91	Indef.
ST92-1500	Houston Pipe Line Co	Seagull Interstate Corp	12-23-91	C	100,000	N	I	10-01-91	Indef.
ST92-1501	Houston Pipe Line Co	Tennessee Gas Pipeline Co	12-23-91	C	100,000	N	I	09-19-91	Indef.

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ST92-1502
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Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-1502	Houston Pipe Line Co	United Gas Pipe Line Co	12-23-91	C	100,000	N	I	09-05-91	Indef.
ST92-1503	Houston Pipe Line Co	Natural Gas P/L Co of America	12-23-91	C	50,000	N	I	10-03-91	Indef.
ST92-1504	Houston Pipe Line Co	Black Marlin Pipeline Co	12-23-91	C	100,000	N	I	10-15-91	Indef.
ST92-1505	Houston Pipe Line Co	Northern Natural Gas Co	12-23-91	C	50,000	N	I	09-02-91	Indef.
ST92-1506	Houston Pipe Line Co	Transcontinental Gas P/L Corp	12-23-91	C	50,000	N	I	09-26-91	Indef.
ST92-1507	Houston Pipe Line Co	Northern Natural Gas Co	12-23-91	C	50,000	N	I	09-25-91	Indef.
ST92-1508	Houston Pipe Line Co	Sabine Pipeline Co	12-23-91	C	50,000	N	I	09-01-91	Indef.
ST92-1509	Houston Pipe Line Co	Texas Eastern Transmission Corp.	12-23-91	C	100,000	N	I	09-01-91	Indef.
ST92-1510	Houston Pipe Line Co	United Gas Pipe Line Co	12-23-91	C	100,000	N	I	10-10-91	Indef.
ST92-1511	Houston Pipe Line Co	Natural Gas P/L Co. of America	12-23-91	C	100,000	N	I	10-01-91	Indef.
ST92-1512	Houston Pipe Line Co	Tennessee Gas Pipeline Co	12-23-91	C	100,000	N	I	11-01-91	Indef.
ST92-1513	ONG Transmission Co	Caprock Pipeline Co	12-24-91	C	150,000	N	I	12-01-91	Indef.
ST92-1514	ONG Transmission Co	ANR Pipeline Co	12-24-91	C	100,000	N	I	11-13-91	Indef.
ST92-1515	ONG Transmission Co	Northern Natural Gas Co	12-24-91	C	50,000	N	I	12-04-91	Indef.
ST92-1516	Questar Pipeline Co	Grand Valley Gas Co	12-24-91	G-S	30,000	N	I	11-13-91	11-12-92
ST92-1517	Tennessee Gas Pipeline Co	Wes Cana Energy Market. (U.S.) Inc.	12-24-91	G-S	1,500	N	I	12-09-91	04-01-92
ST92-1518	Tennessee Gas Pipeline Co	Citizens Gas Supply Corp	12-24-91	G-S	3,200,000	N	I	12-01-91	Indef.
ST92-1519	Viking Gas Transmission Co	ANR Pipeline Co	12-24-91	B	106,044	N	F	12-01-91	10-31-00
ST92-1520	CNG Transmission Corp	American Central Gas Co	12-26-91	G-S	75,000	N	I	10-18-91	02-15-92
ST92-1521	CNG Transmission Corp	Energy Marketing Exchange	12-26-91	G-S	10,000	N	I	11-27-91	03-26-92
ST92-1522	CNG Transmission Corp	O & R Energy, Inc	12-26-91	G-S	100,000	N	I	12-03-91	04-01-92
ST92-1523	CNG Transmission Corp	Niagara Mahawk Power Corp	12-26-91	B	35,000	N	F	12-01-91	Indef.
ST92-1524	CNG Transmission Corp	Indeck-Oswego L.P	12-26-91	G-S	12,000	N	F	12-06-91	04-04-92
ST92-1525	CNG Transmission Corp	Kamine/Besicorp Carthage L.P	12-26-91	G-S	14,200	N	I	12-01-91	03-30-92
ST92-1526	CNG Transmission Corp	Meridian Marketing and Trans. Corp.	12-26-91	G-S	1,800	N	I	10-22-91	02-19-92
ST92-1527	CNG Transmission Corp	W.R. Grace & Co	12-26-91	G-S	6,000	N	I	10-11-91	02-09-92
ST92-1528	CNG Transmission Corp	River Gas Co	12-26-91	G-S	25,000	N	I	10-18-91	02-15-92
ST92-1529	CNG Transmission Corp	North Penn Gas Co	12-26-91	G-S	25,000	N	I	10-18-91	02-15-92
ST92-1530	CNG Transmission Corp	Niagara Mohawk	12-26-91	G-S	25,000	N	I	10-18-91	02-15-92
ST92-1531	CNG Transmission Corp	Hope Gas Inc	12-26-91	G-S	25,000	N	I	10-18-91	02-15-92
ST92-1532	CNG Transmission Corp	American Central Gas Co	12-26-91	G-S	75,000	N	I	10-18-91	02-15-92
ST92-1533	CNG Transmission Corp	Corning Natural Gas Co	12-26-91	G-S	25,000	N	I	10-18-91	02-15-92
ST92-1534	CNG Transmission Corp	American Central Gas Co	12-26-91	G-S	75,000	N	I	10-18-91	02-15-92
ST92-1535	Enogex Inc	Natural Gas P/L Co. of America	12-26-91	C	50,000	N	I	11-30-91	Indef.
ST92-1536	Williston Basin Inter. P/L Co	Western Gas Resources, Inc	12-26-91	G-S	261,525	N	I	12-09-91	09-31-93
ST92-1537	Williston Basin Inter. P/L Co	Prairielands Energy Marketing, Inc.	12-26-91	G-S	117,500	N	I	11-27-91	10-14-92
ST92-1538	Panhandle Eastern Pipe Line Co	Aquila Energy Marketing Corp	12-26-91	G-S	100,000	N	I	12-01-91	Indef.
ST92-1539	Panhandle Eastern Pipe Line Co	Alsey Refractories Co	12-26-91	G-S	385	N	F	12-01-91	Indef.
ST92-1540	Panhandle Eastern Pipe Line Co	Quantum Chemical Corp	12-26-91	G-S	5,000	N	F	12-01-91	Indef.
ST92-1541	Panhandle Eastern Pipe Line Co	NGC Transportation Inc	12-26-91	G-S	200,000	N	I	12-01-91	01-01-92
ST92-1542	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co.	12-26-91	G-S	30,000	N	I	12-01-91	01-01-92
ST92-1543	Natural Gas P/L Co. of America	Unified Natural Gas Group, L.P	12-26-91	G-S	100,000	N	I	12-01-91	Indef.
ST92-1544	Natural Gas P/L Co. of America	Arcadian Corp	12-26-91	G-S	1,000	N	F	12-01-91	12-31-95
ST92-1545	Natural Gas P/L Co. of America	Seagull Marketing Services, Inc	12-26-91	G-S	200,000	N	I	12-01-91	Indef.
ST92-1546	Natural Gas P/L Co. of America	Wisconsin Southern Gas Co., Inc.	12-26-91	B	5,342	N	F	12-01-91	11-30-95
ST92-1547	Natural Gas P/L Co. of America	Midcon Marketing Corp	12-26-91	G-S	300,000	Y	I	12-01-91	Indef.
ST92-1548	Natural Gas P/L Co. of America	Arkla Energy Marketing Co	12-26-91	G-S	10,000	N	F	11-01-91	05-31-97
ST92-1549	Natural Gas P/L Co. of America	Union Carbide Industrial Gases Inc.	12-26-91	G-S	2,000	N	F	10-01-91	09-30-93
ST92-1550	Natural Gas P/L Co. of America	Arcadian Corp	12-26-91	G-S	18,000	N	F	12-01-91	12-31-95
ST92-1551	Houston Pipe Line Co	El Paso Natural Gas Co	12-26-91	C	350,000	N	I	01-01-91	Indef.
ST92-1552	Houston Pipe Line Co	Transwestern Pipeline Co	12-26-91	C	350,000	N	I	01-01-91	Indef.
ST92-1553	Houston Pipe Line Co	Sabine Pipeline Co	12-26-91	C	350,000	N	I	01-01-91	Indef.
ST92-1554	Houston Pipe Line Co	Transcontinental Gas P/L Corp	12-26-91	C	350,000	N	I	01-01-91	Indef.
ST92-1555	Houston Pipe Line Co	Trunkline Gas Co	12-26-91	C	350,000	N	I	01-01-91	Indef.
ST92-1556	Houston Pipe Line Co	United Gas Pipe Line Co	12-26-91	C	350,000	N	I	01-01-91	Indef.
ST92-1557	Houston Pipe Line Co	Texas Eastern Transmission Corp.	12-26-91	C	350,000	N	I	01-01-91	Indef.
ST92-1558	Houston Pipe Line Co	Florida Gas Transmission Co	12-26-91	C	350,000	N	I	01-01-91	Indef.
ST92-1559	Houston Pipe Line Co	Northern Natural Gas Co	12-26-91	C	350,000	N	I	01-01-91	Indef.
ST92-1560	Houston Pipe Line Co	Tennessee Gas Pipeline Co	12-26-91	C	350,000	N	I	01-01-91	Indef.
ST92-1561	Houston Pipe Line Co	Natural Gas P/L Co. of America	12-26-91	C	350,000	N	I	01-01-91	Indef.
ST92-1562	Red River Pipeline Co	El Paso Natural Gas Co	12-26-91	C	50,000	N	I	11-26-91	Indef.
ST92-1563	Arkla Energy Resources	Laclede Gas Co	12-26-91	B	100,000	Y	I	12-01-91	Indef.
ST92-1564	Trunkline Gas Co	Eagle Natural Gas Co	12-27-91	G-S	20,000	N	I	12-03-91	Indef.
ST92-1565	Trunkline Gas Co	Unocal Exploration Corp	12-27-91	G-S	70,000	N	I	12-01-91	Indef.
ST92-1566	Trunkline Gas Co	Vesta Energy Co	12-27-91	G-S	1,200	N	I	12-01-91	Indef.
ST92-1567	Natural Gas P/L Co. of America	Midcon Marketing Corp	12-30-91	G-S	50,000	Y	I	12-01-91	12-31-91
ST92-1568	Natural Gas P/L Co. of America	Phillips 66 Natural Gas Co	12-30-91	G-S	30,000	N	I	12-01-91	Indef.
ST92-1569	Natural Gas P/L Co. of America	Enserch Gas Co	12-30-91	G-S	30,000	N	I	12-01-91	Indef.
ST92-1570	Natural Gas P/L Co. of America	Midcon Marketing Corp	12-30-91	G-S	100,000	Y	I	12-06-91	Indef.
ST92-1571	Natural Gas P/L Co. of America	Exxon Co., U.S.A	12-30-91	G-S	50,000	N	I	12-01-91	Indef.
ST92-1572	Natural Gas P/L Co. of America	Transco Energy Marketing Co	12-30-91	G-S	10,000	N	I	12-03-91	Indef.

Docket No. [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimated maximum daily quantity [2]	Aff. Y/N	Rate schedule	Date commenced	Projected termination date
ST92-1573	Natural Gas P/L Co. of America	Midcon Marketing Corp	12-30-91	G-S	10,000	Y	F	12-01-91	02-29-92
ST92-1574	Natural Gas P/L Co. of America	City of Frohna	12-30-91	B	75	N	F	12-01-91	11-30-95
ST92-1575	Valero Transmission, L.P	El Paso Natural Gas Co	12-30-91	C	10,000	N	I	12-01-91	Indef.
ST92-1576	Williston Basin Inter. P/L Co	Exxon Corp	12-30-91	G-S	310	Y	F	12-01-91	02-29-92
ST92-1577	Williston Basin Inter. P/L Co	Koch Hydrocarbon Co	12-30-91	G-S	227	Y	F	12-01-91	03-31-92
ST92-1578	Williston Basin Inter. P/L Co	Koch Hydrocarbon Co	12-30-91	G-S	2,131	Y	F	12-01-91	02-29-92
ST92-1579	Valero Transmission, L.P	Transwestern Pipeline Co	12-30-91	C	20,000	N	I	12-01-91	Indef.
ST92-1580	ANR Pipeline Co	West Tennessee Public Utility Dist.	12-30-91	B	1,700	N	F	12-01-91	Indef.
ST92-1581	ANR Pipeline Co	Petro Source Gas Ventures	12-30-91	G-S	5,000	N	F	12-03-91	Indef.
ST92-1582	ANR Pipeline Co	Coastal Gas Marketing Co	12-30-91	B	150,000	Y	I	12-04-91	Indef.
ST92-1583	ANR Pipeline Co	Public Service Electric & Gas Co	12-30-91	B	12,850	Y	F	12-05-91	Indef.
ST92-1584	ANR Pipeline Co	Northern Illinois Gas Co	12-30-91	B	50,000	Y	I	12-01-91	Indef.
ST92-1585	ANR Pipeline Co	Ohio Gas Co	12-30-91	B	30,000	N	I	12-01-91	Indef.
ST92-1586	ANR Pipeline Co	Aquila Gas Processing Corp	12-30-91	G-S	50,000	N	I	12-01-91	Indef.
ST92-1587	ANR Pipeline Co	East Ohio Gas Co	12-30-91	B	71,602	N	F	12-01-91	Indef.
ST92-1588	ANR Pipeline Co	Aquila Gas Processing Corp	12-30-91	G-S	50,000	N	I	12-01-91	Indef.
ST92-1589	ANR Pipeline Co	Northern Indiana Public Service Co.	12-30-91	B	150,000	N	I	12-05-91	Indef.
ST92-1590	Columbia Gulf Transmission Co	Hadson Gas Systems, Inc	12-30-91	G-S	121,500	N	I	12-04-91	Indef.
ST92-1591	Columbia Gulf Transmission Co	Honda of America Manufacturing, Inc.	12-30-91	G-S	4,500	N	F	12-01-91	Indef.
ST92-1592	Columbia Gulf Transmission Co	Enmark Gas Corp	12-30-91	G-S	50,000	N	I	12-02-91	Indef.
ST92-1593	Enogex Inc	El Paso Natural Gas Co	12-30-91	C	100,000	N	I	12-01-91	Indef.
ST92-1594	Enogex Inc	Arkla Energy Resources	12-30-91	C	10,000	N	I	12-01-91	Indef.
ST92-1595	Pacific Gas Transmission Co	Eastex Gas Transmission Co	12-30-91	B	103,520	N	I	01-01-90	09-23-90
ST92-1596	Northern Border Pipeline Co	Petrorep (Canada) Ltd	12-30-91	G-S	25,000	Y	I	11-30-91	11-30-93
ST92-1597	Pacific Gas Transmission Co	Southern California Gas Co	12-31-91	B	158,310	N	I	08-01-89	09-27-90
ST92-1598	Pacific Gas Transmission Co	American Natural Gas Co., Ltd	12-31-91	G-S	103,520	N	I	12-11-91	12-31-92
ST92-1599	Pacific Gas Transmission Co	Trigen Resources	12-31-91	G-S	158,310	N	I	12-01-91	06-01-92
ST92-1600	Pacific Gas Transmission Co	IGI Resources, Inc	12-31-91	G-S	276,379	N	I	12-06-91	11-01-96
ST92-1601	Viking Gas Transmission Co	Great Plains Natural Gas Co	12-31-91	B	2,200	N	F	12-01-91	03-31-92
ST92-1602	Viking Gas Transmission Co	Peoples Natural Gas Co	12-31-91	B	1,900	N	F	12-01-91	02-29-92
ST92-1603	National Fuel Gas Dist. Corp Co	Tennessee Gas Pipeline Co	12-31-91	C	2,500	N	I	12-01-91	11-30-91
ST92-1604	Mississippi River Trans. Corp	National Steel Corp	12-31-91	G-S	7,500	N	F	12-01-91	12-29-92
ST92-1605	Trunkline Gas Co	City of Hamilton	12-31-91	G-S	20,000	N	I	12-04-91	Indef.
ST92-1606	Trunkline Gas Co	Arkla Energy Marketing Co	12-31-91	G-S	50,000	N	I	12-03-91	Indef.
ST92-1607	Trunkline Gas Co	Vesta Energy Co	12-31-91	G-S	30,000	N	I	12-04-91	Indef.
ST92-1608	Williams Natural Gas Co	Brock Gas Systems & Equipment.	12-31-91	G	600	N	I	12-01-91	03-01-92
ST92-1609	Williams Natural Gas Co	Energy Dynamics, Inc	12-31-91	G-S	1,500	N	F	12-01-91	03-01-92
ST92-1610	Williams Natural Gas Co	EMC Gas Transmission Co	12-31-91	G-S	500	N	I	12-01-91	Indef.
ST92-1611	Williams Natural Gas Co	Rangeline Corp	12-31-91	G-S	3,190	N	I	12-01-91	04-01-92
ST92-1612	Williams Natural Gas Co	AG Processing, Inc	12-31-91	G-S	600	N	I	12-01-91	Indef.
ST92-1613	Williams Natural Gas Co	Vesta Energy Co	12-31-91	G-S	9,499	N	I	12-01-91	03-01-92
ST92-1614	Tennessee Gas Pipeline Co	Gasmark, Inc	12-31-91	G-S	10,000	N	I	12-02-91	Indef.
ST92-1615	Iroquis Gas Trans. System, L.P	Citizens Gas Supply Corp	12-31-91	G-S	576,000	N	I	12-01-91	10-31-92
ST92-1616	Iroquis Gas Trans. System, L.P	Niagara Mohawk Power Corp	12-31-91	B	35,000	N	F	12-01-91	10-31-92
ST92-1617	Iroquis Gas Trans. System, L.P	Hadson Gas Systems, Inc	12-31-91	G-S	6,500	N	F	12-01-91	03-31-92
ST92-1618	Iroquis Gas Trans. System, L.P	Boston Gas Co	12-31-91	B	4,500	N	F	12-01-91	10-31-92
ST92-1619	Iroquis Gas Trans. System, L.P	Canstates Petroleum Marketing	12-31-91	G-S	576,000	N	I	12-17-91	10-31-92
ST92-1620	Iroquis Gas Trans. System, L.P	NGC Transportation, Inc	12-31-91	G-S	576,000	N	I	12-01-91	10-31-92
ST92-1621	Iroquis Gas Trans. System, L.P	New York State Elect. & Gas Corp.	12-31-91	B	6,000	N	F	12-01-91	10-31-92
ST92-1622	Iroquis Gas Trans. System, L.P	Santanna Natural Gas Corp	12-31-91	G-S	300,000	N	I	12-11-91	10-31-92
ST92-1623	Iroquis Gas Trans. System, L.P	Altresco Pittsfield, L.P	12-31-91	G-S	250,000	N	I	12-11-91	10-31-92
ST92-1624	Iroquis Gas Trans. System, L.P	Colonial Gas Co	12-31-91	B	4,000	N	F	12-01-91	10-31-92
ST92-1625	Iroquis Gas Trans. System, L.P	Western Gas Marketing U.S.A., Ltd.	12-31-91	G-S	576,000	Y	I	12-01-91	10-31-92
ST92-1626	Iroquis Gas Trans. System, L.P	Texas-Ohio Gas, Inc	12-31-91	G-S	60,000	N	I	12-11-91	10-31-92
ST92-1627	Iroquis Gas Trans. System, L.P	CNG Transmission Corp	12-31-91	G	60,000	Y	F	12-01-91	01-31-92
ST92-1628	Iroquis Gas Trans. System, L.P	JMC Fuel Services, Inc	12-31-91	G-S	1,000	Y	F	12-01-91	03-31-92

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order no. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated maximum daily volumes includes volumes reported by the filing company in mmbtu, mcf and dt.
[3] Transportation service converted from authority under 18 C.F.R. section 284.106, subpart B, to authority under 18 C.F.R. section 284.223(f)(1), subpart G-S.

[FR Doc. 92-2061 Filed 1-28-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CI88-648-005, et al.]

Western Gas Marketing Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Western Gas Marketing Inc.

[Docket No. CI88-648-005]

January 16, 1992.

Take notice that on December 31, 1991, Western Gas Marketing Inc. (WMG) of 11 Greenway Plaza, suite 1120, Houston, Texas 77046, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend the blanket limited-term certificate with pregranted abandonment previously issued to Western Gas Marketing USA Limited (Western Gas USA) in Docket No. CI88-

Projected termination date
02-29-92
11-30-95
Indef.
02-29-92
03-31-92
02-29-92
Indef.
Indef.
Indef.
Indef.
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648-003 for a term expiring March 31, 1991, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

WGM requests extension for an unlimited term or, in the alternative, for a one year period. WGM also requests that the Commission amend the certificate to reflect Western Gas USA's name change to Western Gas Marketing Inc.

Comment date: February 5, 1992, in accordance with Standard Paragraph J at the end of this notice.

2. Amoco Production Co

[Docket no. CI92-16-000]

January 16, 1992.

Take notice that on December 5, 1991, Amoco Production Company (Amoco) of P.O. Box 3092, Houston, Texas 77253, filed an application pursuant to section 7(b) of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for authorization and permission to abandon permanently a natural gas compressor facility located in Calcasieu Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

The Commission by order of April 24, 1981, in docket No. CI81-47-000, issued a certificate authorizing Amoco to construct and operate the subject compression facility for the purpose of delivering gas to Florida Gas Transmission Company (FGT) in partial satisfaction of its warranty obligation to FGT under its FERC Gas Rate Schedule No. 439 and related certificate in Docket No. CI65-584. The source of the gas was South Timbalier Block 156 and Ship Shoal Block 292. The gas was delivered onshore to FGT by Trunkline Gas Company for the account of Amoco. Amoco states that its warranty obligations have been satisfied and compression is no longer necessary.

Coment date: February 7, 1992, in accordance with Standard Paragraph J at the end of this notice.

3. Masspower

[Docket No. CI92-20-000]

January 16, 1992.

Take notice that on December 31, 1991, MASSPOWER of One Bowdoin Square, Boston, Massachusetts 02114, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction, including imported gas, without rate restrictions, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: February 5, 1992, in accordance with Standard Paragraph J at the end of this notice.

4. Destec Gas Services, Inc.

[Docket No. CI92-21-000]

January 16, 1992.

Take notice that on January 3, 1992, Destec Gas Services, Inc. (Destec) of P.O. Box 4411, Houston, Texas 77042-4411, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction, imported natural gas, liquefied natural gas, gas purchased under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales for resale of surplus system supply gas and gas purchased from non-first sellers such as interstate pipelines, intrastate pipelines and local distribution companies, without rate restrictions, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: February 5, 1992, in accordance with Standard Paragraph J at the end of this notice.

5. Algonquin Gas Transmission Co.

[Docket No. CP92-305-000]

January 16, 1992.

Take notice that on January 16, 1992, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP92-305-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a sales tap to provide for the delivery of natural gas to Dartmouth Power Associates (Dartmouth Power), an end-user, under Algonquin's blanket certificate issued in Docket No. CP87-317-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Algonquin proposes to construct and operate a sales tap in Dartmouth, Massachusetts, to provide an interconnect with a meter station (estimated to cost approximately $760,000) to be built by Dartmouth Power on its property at its electric generating facility, and to be purchased by Algonquin as soon as Federal Energy Regulatory Commission permits the cost recovery in Algonquin's rate schedule. Algonquin states that the sales tap would facilitate the delivery to Dartmouth Power of 14,010 MMBtu equivalent of natural gas per day. Algonquin also states that, as an end-user, Dartmouth Power would consume the delivered volumes in its independent power production activities. Algonquin explains that Dartmouth Power currently is in the final stages of completing a 67 Megawatt electric generating station and that Dartmouth Power needs the gas to conduct test operations of the plant.

Algonquin states that it originally sought authorization to construct facilities and provide service to Dartmouth Power under its application in its Open Season Project in Docket No. CP89-661-005. However, according to Algonquin, because of an unresolved cost recovery issue in the Open Season dockets, Algonquin is uncertain whether authorization would be issued in satisfactory form in time to construct facilities to provide service to Dartmouth Power to meet its test gas needs commencing March 1, 1992. Thus, Algonquin states, as a contingency to its application in Docket No. CP89-661-005, it is filing the request for authority under its blanket certificate submitted herein.

Comment date: March 2, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP92-296-000]

January 16, 1992.

Take notice that on January 10, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed an application with the Commission in Docket No. CP92-296-000 pursuant to section 7 of the Natural Gas Act (NGA) for permission and approval to abandon a gathering and exchange service with El Paso Natural Gas Company (El Paso), all as more fully set forth in the application which is open to public inspection.

Northwest and El Paso currently gather and exchange interruptible natural gas volumes under the San Juan Gathering Agreement, authorized in the

Commission order issued January 22, 1974, in Docket No. CP73–331, *et al.* (51 FPC 329). The San Juan Gathering Agreement allows Northwest and El Paso to use their respective gathering systems in the San Juan Basin area of Colorado and New Mexico to gather natural gas from those wells owned by one of the parties but connected to the other party's gathering system. Northwest and El Paso gather and exchange gas under their respective FERC Rate Schedules X–24 and X–31. Northwest states that it signed a termination agreement with El Paso by which they agreed to a May 31, 1991, effective termination date for service under Northwest's Rate Schedule X–24, subject to FERC approval. Both parties have generally terminated their system supply purchase commitments in the San Juan Basin and no longer have a need for the historic exchange services provided under the agreement. No abandonment of facilities is proposed.

Northwest also requests a waiver of its first-come, first-served tariff provisions to allow the January 31, 1974, priority of service date under Rate Schedule X–24 to be the initial priority of service date for a replacement open-access transportation agreement with El Paso.

Comment date: February 6, 1992, in accordance with Standard Paragraph F at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP92–303–000]

January 16, 1992.

Take notice that on January 13, 1991, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP92–303–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain pipeline compression facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it proposes to abandon its Compressor Station 191 located in Hutchinson County, Texas which, among other things, includes one 9,100 HP compressor unit and one 9,300 HP compressor unit. Natural states that it would sell the two compressor units to El Paso Natural Gas Company (El Paso) for salvage value of $630,000. Natural further indicates that, after El Paso completes the removal of the salvaged materials, Natural would remove all remaining compressor station facilities except for small diameter below grade piping which would be retired in place. The cost of abandonment of these facilities is estimated to be $25,000, it is indicated.

Natural indicates that these facilities are no longer required to facilitate its movement of natural gas since its ability to meet current demands would be unaffected due to a gradual and fundamental shift in gas receipts from the Oklahoma-Texas area to downstream areas on Natural's system. Natural states that the decline in these traditional supply basins combined with increased supplies from the Rocky Mountain area and Canada have resulted in a change in the operating profile of this part of Natural's system.

Comment date: February 6, 1992, in accordance with Standard paragraph F at the end of this notice.

8. Natural Gas Pipeline Company of America

[Docket No. CP92–294–000]

Janaury 16, 1992.

Take notice that on January 10, 1992, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP92–294–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain storage field pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Natural proposes to construct and operate approximately 1,500 feet of 12-inch pipeline in the Herscher storage field complex in Kankakee County, Illinois, to connect the Herscher-Northwest storage field to the Herscher-Galesville storage field. Natural states that the proposed facilities would allow it to transfer natural gas from Herscher-Northwest to Herscher-Galesville on off peak days. Natural asserts that this transfer of natural gas would allow it to more effectively utilize the higher deliverability from Herscher-Galesville on peak days. Natural further states that the proposal would not affect the present design day and peak day capacities of the Herscher storage complex.

Natural estimates the cost of the facilities to be $282,000.

Comment date: February 6, 1992, in accordance with Standard paragraph F at the end of this notice.

9. Texas Eastern Transmission Corporation and CNG Transmission Corporation

[Docket No. CP92–226–000]

January 16, 1992.

Take notice that on December 9, 1991, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, and CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301 (jointly referred to as Applicants) filed in Docket No. CP92–226–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity requesting amendment of the June 5, 1990 order in Docket Nos. CP87–312–006 and CP87–5–002 by authorizing: (1) CNG to abandon its storage service to Texas Eastern and assigning such service to Elizabethtown Gas Company (Elizabethtown), The Southern Connecticut Gas Company (Southern Connecticut), and UGI Corporation (UGI); (2) Texas Eastern to render a firm transportation for such storage service; and (3) the elimination of the "at-risk" language included in the June 5, 1990 order, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicants state that the Commission, in its order of June 5, 1990, authorized, as part of the APEC IV Project, CNG's request to provide 20,000 Dth equivalent per day of storage service to Texas Eastern for further resale by Texas Eastern to future customers, and authorized Texas Eastern to construct and operate facilities on its system. Applicants further state that the Commission, because of the uncertainty of Texas Eastern's ability to resell this storage service, determined that Texas Eastern should be held at risk for the costs associated with CNG's storage service and Texas Eastern's facilities required to transport the 20,000 Dth equivalent per day of gas until Texas Eastern enters into precedent agreements with customers for this service and receives Commission authorization to resell this storage service to future customers.

Applicants request authorization to amend the certificate issued on June 5, 1990 in order to allow CNG to abandon the 20,000 Dth per day of storage service currently assigned to Texas Eastern and to allow the assignment of Texas Eastern's rights and obligations to Rate Schedule GSS–II storage service from CNG of 20,000 Dth per day of Elizabethtown, Southern Connecticut and UGI. Applicants indicate that the

proposed volumes by customers is as follows:

Company name	Proposed commencement date	Maximum storage quantity (Dth)	Maximum withdrawal quantity (Dth/d)
Elizabethtown	4/01/92	666,600	6,666
Southern Connecticut	4/01/92	666,700	6,667
UGI	4/01/92	666,700	6,667
Aggregate total		2,000,000	20,000

Applicants submit that the storage service to be rendered by CNG is proposed to commence on April 1, 1992. It is indicated that CNG will receive or deliver the gas for storage under Rate Schedule GSS–II from Texas Eastern for the account of Buyer, at the interconnection of CNG's proposed North Summit storage field pipeline and Texas Eastern's existing system.

Applicants further request that the order be amended to allow Texas Eastern to provide a firm transportation service for Elizabethtown, Southern Connecticut and UGI under Texas Eastern's existing Rate Schedule FTS–5, in the following volumes by customer:

Company name	Proposed commencement date	Maximum daily obligation (Dth/d)
Elizabethtown	11/15/92	6,666
Southern Connecticut	11/15/92	6,667
UGI	11/15/92	6,667
Aggregate total		20,000

Applicants state that Texas Eastern would commence firm transportation service upon the later of November 15, 1992 or the completion of all the necessary facilities. Applicants indicate that Texas Eastern would receive the gas for transportation under Rate Schedule FTS–5 from CNG, or deliver gas to CNG for storage for the account of the customer, at the interconnection of CNG's proposed North Summit storage field pipeline and Texas Eastern's existing system. Applicants further indicate that Texas Eastern would deliver gas received from CNG to points of delivery with the customer, or in the case of Southern Connecticut's volumes, to Algonquin Gas Transmission Company (Algonquin) at Measuring Station 067 near Lambertville, Pennsylvania. Applicants state that Texas Eastern would receive the gas from the customers for storage injection at their existing delivery points with Texas Eastern by displacement of quantities otherwise delivered and would redeliver such quantities to CNG at the CNG North Summit facility.

Applicants state that Algonquin is concurrently filing an application to construct the necessary facilities and to provide a transportation service for Southern Connecticut.

Applicants state that Texas Eastern has provided precedent agreements reflecting the addition of the three new customers. Precedent agreements between CNG and the three new customers were filed as supplements to the application on January 6, 1992, January 7, 1992, and January 13, 1992.

Applicants submit that, for all gas transported by Texas Eastern for the customers, commencing November 15, 1992, Texas Eastern would charge the applicable rate under Rate Schedule FTS–5, as conditioned by the Commission's order on rehearing of June 21, 1991 in Docket No. CP87–312–007. Applicants further submit that CNG would charge the customers the Rate Schedule GSS–II rates on file as part of CNG's FERC Gas Tariff.

Applicants request that the Commission amend the June 5, 1990 order by eliminating the "at-risk" language included in the June 5, 1990 order referring to the 20,000 Dth per day of storage and that the Commission grant any such other authorizations as may be necessary to effectuate the assignment.

Comment date: February 6, 1992, in accordance with Standard Paragraph F at the end of this notice.

Northwest Pipeline Corporation

[Docket No. CP92–297–000]

January 16, 1992.

Take notice that on January 10, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158–0900, filed in Docket No. CP92–297–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange of natural gas with Questar Pipeline Company (Questar), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that the exchange was authorized by the Commission in Docket No. CP79–115, as amended, and was carried out under the terms of a gathering and exchange agreement on file as Rate Schedule X–63 in Northwest's FERC Gas Tariff, Original Volume No. 2. It is asserted that Northwest was authorized to exchange gas on an interruptible basis with Mountain Fuel Supply Company, Questar's predecessor, from the two companies' respective gathering areas in the Moxa Arch area of Lincoln County, Wyoming. It is asserted that Northwest no longer has any gas supply in the Moxa Arch area and has not gathered any gas for Quester since December 1990. It is explained that Northwest and Quester have mutually agreed to terminate the gathering and exchange service, effective June 1, 1991, by signing a Termination Agreement dated April 1, 1991. It is explained that Northwest and Questar have entered into a non-jurisdictional gathering agreement dated May 6, 1991, under which Northwest would gather Questar's gas in the Moxa Arch area. It is further explained that no facilities would be abandoned in conjunction with the proposed abandonment of service.

Comment date: February 6, 1992, in accordance with Standard Paragraph F at the end of this notice.

10. Tennessee Gas Pipeline Co.

[Docket No. CP92–301–000]

January 16, 1992.

Take notice that on January 13, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92–301–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate 27 existing delivery points as jurisdictional facilities to deliver natural gas to various customers under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to pubic inspection.

Tennessee states that the delivery points were constructed and operated under NGPA section 311 authority to deliver natural gas transported under subpart B of part 284 of the Commission's Regulations. Tennessee asserts that it now provides significant transportation service under subpart G of part 284 of the Commission's Regulations. Tennessee further states that granting the requested authorization would allow it to utilize these facilities for all transportation services, thereby maximizing its system flexibility.

The facilities are located in Alabama, Kentucky, Louisiana, Massachusetts, Mississippi, New York, Ohio, Texas and West Virginia, it is stated.

Comment date: March 2, 1992, in accordance with Standard Paragraph G at the end of this notice.

11. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP92-286-000]

January 21, 1992.

Take notice that on January 7, 1992, Arkla Energy Resources, a Division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 77151, filed in Docket No. CP92-286-000 a request, as supplemented on January 16, 1992, pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon certain sales facilities, under its blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001, pursuant to section 7(b) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER requests authorization to abandon four domestic sales taps located on its Line FS-1 in Comanche County, Oklahoma. Specifically, AER proposes to abandon the following facilities:

(1) A 1-inch tap used for delivery of gas to Randy Wayne Harrell,

(2) A 1-inch tap used for delivery of gas to Wayne Harrell,

(3) A 1-inch tap used for delivery of gas to Carol R. Austin,

(4) A 1-inch tap used for delivery of gas to Beluah F. Evans.

AER indicates that it has included in its filing letters from each of the affected customers agreeing to the abandonment of service.

AER states that, following the receipt of the requested authorization in this proceeding, it plans to sell Line FS-1 and all appurtenant facilities to Ford Energy Company which would install at its own expense as part of the sales agreement facilities necessary to convert each of the four customers to propane service. AER alleges that authorization for the abandonment by sale of Line FS-1 is not required because the line performs a non-jurisdictional gathering function.

Comment date: March 6, 1992, in accordance with Standard Paragraph G at the end of this notice.

12. Indiana Utilities Corporation

[Docket No. CP92-299-000]

January 21, 1992.

Take notice that on January 13, 1992, Indiana Utilities Corporation (IUC), 123 West Chestnut Street, P.O. Box 188, Corydon, Indiana 47112, filed in Docket No. CP92-299-000 pursuant to section 7(f) of the Natural Gas Act (NGA) requesting that the Commission make a service area determination for the area in which IUC currently operates and would operate in the future, issue a waiver of regulatory requirements ordinarily applicable to natural gas companies under the NGA and the Natural Gas Policy Act of 1978 (NGPA), and find that IUC qualifies as a local distribution company (LDC) for purposes of section 311 of the NGPA, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

IUC states that it is engaged in the retail distribution of natural gas for residential, commercial and industrial use in the towns of Corydon, Elizabeth and New Middletown and environs in Harrison County, Indiana. IUC further states that it has 1,850 customers located within the State of Indiana and is regulated by the Indiana Regulatory Commission (Indiana Commission).

IUC submits that it receives all of its gas supply from or through Texas Gas Transmission Corporation (Texas Gas), with which IUC has a gas supply contract dated November 1, 1991, and authorized in Docket Nos. CP68-243, 40 FPC 19 (1968), CP70-287, 44 FPC 233 (1970) and CP91-1991-000, 56 FERC ¶ 61,392 (1991). It is stated that all of IUC gas supply is received through a single Texas Gas delivery point in Jefferson County, Kentucky, and is transported from this delivery point by IUC though a 4½-inch pipeline, across the Ohio River to IUC's distribution area.

Since it acquires gas in a state other than that in which the gas is consumed, IUC states that it does not qualify for an exemption as a Hinshaw pipeline under Section 1(c) of the NGA. According to IUC, the pipeline from the Texas Gas delivery point to IUC's distribution area was acquired and is operated pursuant to a certificate issued in Docket No. G-19178, 23 FPC 55 (1960).

It is stated that IUC operates 45.27 miles of distribution lines of sizes varying from 1½ to 6-inches, 5.23 miles of 4-inch transmission lines and 15-miles of 6-inch transmission line. IUC submits that, while it is technically a natural gas company as defined in Section 1 of the NGA, it is in essence a small LDC and should be exempt from Commission jurisdiction. IUC states that the fact that it is subject to Commission regulation for certain purposes imposes economic burdens on both IUC and the Commission, and is unnecessary and duplicative because IUC is regulated by the Indiana Commission. It is stated that the Commission's electric reporting requirements, for example, are economically infeasible for IUC because of its small size and lack of technological capability.

Therefore, IUC proposes that the Commission determine a sevice area for IUC to consist of the right-of-way of the 4½-inch pipeline from the Texas Gas delivery point to the Indiana border and Harrison County, Indiana. IUC states that it will not use the Kentucky portion of the service area to provide natural gas service to the public directly or indirectly within Kentucky. According to IUC, the service area determination would relieve it of Commission regulation otherwise applicable to the transportation of gas in interstate commerce and the enlargement or extension of its facilities within the service area. It is stated that these activities would instead be within the exclusive jurisdiction of the Indiana Commission.

According to IUC, its proposal satisfies the key factors which the Commission has in the past considered in Section 7(f) proceedings. First, IUC states that it does not make any sales for resale in the proposed service area and has no plans to do so. Second, IUC states that the rates applicable to service it will render are regulated by the Indiana Commission. Third, IUC states that it does not have an extensive transportation system inasmuch as the Kentucky pipeline extends only 4.9 miles from the Texas Gas delivery point to the Ohio River. IUC's other tansportation facilities consist of 15 miles of 6-inch pipeline from the Ohio River to Corydon, Indiana, and 45 miles of various size pipeline in its destribution system. Fourth, it is stated that other companies providing gas service in the vicinity should have no concern about the proposal since IUC will not supply consumers in Kentucky and will supply Indiana consumers pursuant to Indiana law and regulation.

IUC also seeks an express waiver by the Commission of all reporting and accounting requirements and rules and regulations which are ordinarily applicable to natural gas companies, including by not necessarily limited to those set forth in title 18 of the Code of Federal Regulations, so that IUC will be treated the same as a non-federally regulated LDC. IUC avers that no regulatory gap will exist because it will remain subject to the accounting, reporting and other rules and regulations of the Indiana Commission.

In addition, IUC requests that the Commission find that it should be a LDC for purposes of determining the applicability of other Commission regulations. IUC submits that this will ensure that IUC has access to the

transportation of gas by interstate pipelines under Section 311 of the NGPA, and this finding would be consistent with other orders of the Commission under section 7(f).

Comment date: February 11, 1992, in accordance with Standard Paragraph F at the end of the notice.

13. Tennessee Gas Pipeline Co.

[Docket No. CP92-300-000]

January 21, 1992.

Take notice that on January 13, 1992, Tennessee Gas Pipeline Company (Tennessee), filed in Docket No. CP92-300-000, as supplemented January 17, 1992, a prior notice request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to operate a jurisdictional receipt point as a delivery point for Conoco, Inc., under the blanket certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that it currently transports natural gas for Conoco, Inc. pursuant to § 284.223 of the Regulations and pursuant to a contract dated June 26, 1987. Tennessee further states that Conoco, Inc. has requested that an existing jurisdictional receipt point located at Tennessee's Side Valve 526C-1202, West Delta Block 40, offshore Louisiana, be modified as a delivery point in order to deliver up to 1,000 dekatherms of natural gas per day to Conoco, Inc. for gas lift purposes. Tennessee states that other than slight modifications to a check value at the existing tie-in assembly,[1] no construction is involved.

Comment date: March 6, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or to be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2060 Filed 1-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA92-2-20-000, TM92-12-20-000 and RP92-92-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 22, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 14, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed To Be Effective March 1, 1992

Primary Tariff Sheets

Sub 11 Rev Sheet No. 21
Sub 11 Rev Sheet No. 22
Sub 7 Rev Sheet No. 25
Sub 11 Rev Sheet No. 26
Sub 11 Rev Sheet No. 27
Sub 11 Rev Sheet No. 28
Sub 11 Rev Sheet No. 29

Alternate Tariff Sheets

Sub Alt 11 Rev Sheet No. 21
Sub Alt 11 Rev Sheet No. 22
Sub Alt 11 Rev Sheet No. 25
Sub Alt 11 Rev Sheet No. 26
Sub Alt 11 Rev Sheet No. 27
Sub Alt 11 Rev Sheet No. 28
Sub Alt 11 Rev Sheet No. 29
Sub First Revised Sheet No. 636
Sub First Revised Sheet No. 637
Sub First Revised Sheet No. 638
Sub First Revised Sheet No. 639
Sub First Revised Sheet No. 640

Alquonquin states that the instant filing is being made to comform the electronic portion of Algonquin's Annual Purchased Gas Adjustment ("PTA") with the required regulations as cited in the Commission Letter Order of January 7, 1992 ("January 7 Letter") rejecting Algonquin's Annual PTA and Transportation Cost Adjustment ("TCA") filed on December 31, 1991 in Docket Nos. TA92-1-20-000 and TM92-10-20-000. In the January 7 Letter the Commission stated that the filing was being rejected because "Algonquin's Schedule D1, Record Type 01 exceeds the 132 space character positions provided for entering textual information in this schedule." The Commission also instructed Algonquin to modify the tariff sheets so that the

[1] Tennessee states that it considers these activities as involving auxiliary installation under § 2.55(a) of the Regulations.

pagination is not the same as in the original filing.

Algonquin also states that the revised tariff Sheet Nos. 21 through 29, listed above, are being filed as part of Algonquin's regularly scheduled Annual PGA and TCA to reflect the standby service costs to be charged by Texas Eastern Transmission Corporation, Transportation and Compression by Others Costs from Texas Eastern and Transcontinental Gas Pipe Line Corporation and purchased gas costs to be charged by its various suppliers.

Algonquin states that the effect of the change in rates in the primary sheets listed above is to increase the demand charges by 0.0320 per MMBtu and to decrease the commodity charges by $0.1274 per MMBtu under all of Algonguin's firm sales rate schedules from those rates contained in Algonquin's last quarterly PGA and TCA filing, made November 1, 1991 in Docket Nos. TQ92–2–20–000 and TM92–6–20–000 and revised per Commission Letter Order of October 31, 1991 in Docket Nos. TQ92–1–20–001 and TM92–3–20–001.

Algonquin further states that the alternate sheets listed above are being filed to incorporate its request for the annualization of projected GSIR Charges to be paid to Texas Eastern during the contract year ending October 31, 1992. The effect is to increase the demand rate by $2.8830 over the rate found in the primary tariff sheets.

Algonquin states that the proposed effective date for the listed tariff sheets is March 1, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 6, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–2082 Filed 1–28–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–11–20–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 22, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 14, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheet:

Proposed to be effective February 1, 1992

Sub 3 Rev Sheet No. 63

Algonquin states that it is filing Sub 3 Rev Sheet No. 63 to comply with the Commission Letter order of January 7, 1992 rejecting the filing made on December 31, 1991 in Docket No. TA92–1–20–000 and TM92–10–000 and directing Algonquin to refile, using different pagination from that used in the rejected filing. Algonquin also states that the instant filing concurrently tracks the change made by Texas Eastern in the underlying rates. Pursuant to section 4.2(c) of Rate Schedule ATAP, the proposed effective date of Sheet No. 63 is February 1, 1992, to coincide with the effective date of Texas Eastern's filing. The effect of the revision in rates in Rate Schedule ATAP is to decrease the Commodity (Maximum, Minimum and Interruptible) rates by .06¢ per MMBtu.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 29, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–2083 Filed 1–28–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–91–000]

Columbia Gas Transmission Corp.; Tariff Filing

January 22, 1992.

Take notice that on January 16, 1992, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Third Revised Sheet No. 224

The proposed effective date of the revised tariff sheet is February 5, 1992. Columbia states that the purpose of this filing is to revise the Request for Transportation form which shippers use in requesting transportation service from Columbia to require certification and sufficient information to Columbia to verify that, for transportation provided pursuant to section 311 of the Natural Gas Policy Act (NGPA) and § 284.102 of the Commission's Regulations, such services qualify as section 311 transportation.

Columbia states that on September 20, 1991, the Commission issued a Final Rule in Order 537 regarding revisions to the Commission's Regulations governing transportation pursuant to section 311 of the Natural Gas Policy Act and blanket transportation certificates. Columbia states that such Order, *inter alia*, requires interstate pipelines to obtain from its shippers certification, including sufficient information, to verify that service is provided to them under section 311 of the Natural Gas Policy Act and § 284.102 of the Commission's Regulations qualify as section 311 transportation and to file by January 6, 1991 any tariff revisions or additions necessary to clarify that an interstate pipeline may require such certifications.

Columbia states that copies of the filing been served upon its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 29, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–2084 Filed 1–28–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92-90-000]

Columbia Gulf Transmission Co.; Tariff Filing

January 22, 1992

Take notice that on January 16, 1992, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet No. 000
and
Third Revised Sheet No. 211

The proposed effective date of the revised tariff sheets is February 5, 1992. Columbia Gulf states that the purpose of this filing is to revise the Request for Transportation form which shippers use in requesting transportation service from Columbia Gulf to require certification and sufficient information to Columbia Gulf to verify that, for transportation provided pursuant to section 311 of the Natural Gas Policy Act (NGPA) and § 284.102 of the Commission's Regulations, such services qualify as section 311 transportation. Also, the tariff is being updated to refer to the appropriate Vice President to whom communication concerning the tariff be addressed.

Columbia Gulf states that on September 20, 1991, the Commission issued a Final Rule in Order 537 regarding revisions to the Commission's Regulations governing transportation pursuant to section 311 of the Natural Gas Policy Act and blanket transportation certificates. Columbia Gulf states that such Order, *inter alia*, requires interstate pipelines to obtain from its shippers certification, including sufficient information, to verify that service is provided to them under section 311 of the Natural Gas Policy Act and § 284.102 of the Commission's Regulations qualify as section 311 transportation and to file by January 6, 1991 any tariff revisions or additions necessary to clarify that an interstate pipeline may require such certifications.

Columbia Gulf states that copies of the filing have been served upon its customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 29, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2085 Filed 1-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-309-000]

Northern Natural Gas Co.; Request Under Blanket Authorization

January 22, 1992.

Take notice that on January 17, 1992, Northern Natural Gas Company (Northern) 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP92-309-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon the industrial setting at the Dakota City No. 2 town border station (TBS), located in Dakota County, Nebraska, under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that the equipment proposed to be abandoned was originally installed in 1948 to provide natural gas service to Nebraska Public Service Company for resale to the Beerman Estate Alfalfa Dehydration Plant. Northern also states that residential customers are served from the Dakota City No. 2 TBS. Northern advises that the Beerman industrial operations were discontinued in 1985. Northern explains that a fire destroyed the alfalfa plant in 1988 eliminating any future possibly for natural gas service for the plant. Northern states that it installed a smaller meter and reduced the delivery pressure from 50 psi to 10 psi, to provide more accurate gas measurement for the reduced service obligations at the Dakota City No. 2 TBS in 1988. Northern avers that the smaller facilities are adequate to provide reduced service obligations at the Dakota City No. 2 TBS, and that removal of the old valves, piping, metering and regulating equipment that was used to provide service for the industrial load would not result in abandonment of service to any of Northern's existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2084 Filed 1-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-304-000]

Northwest Pipeline Corp.; Application

January 22, 1992

Take notice that on January 13, 1992, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84158-0900, filed in Docket No. CP92-304-000 an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon an interruptible transportation service provided for Questar Pipeline Company (Questar), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that by Commission order issued December 28, 1978 in Docket No. CP78-449 (5 FERC ¶ 61,302) it was authorized to transport up to 50,000 Mcf of the natural gas per day for the account of Questar (successor to Mountain Fuel Supply Company) pursuant to a Gas Transportation and Exchange Agreement (Agreement) dated June 1, 1978 and designated as Rate Schedule X-50 in Northwest's FERC Gas Tariff, Original Volume No. 2. Northwest further states that in accordance with this Agreement it transports Questar's gas from the Hogback Ridge #20-1 well through its South Lake supply lateral in Rich County, Utah for ultimate redelivery at a point of interconnection with Questar's pipeline in Sweetwater County, Wyoming.

Nortwest states that the Hogback Ridge #20-1 well was plugged and abandoned in 1985 and that Northwest received approval in Docket No. CP86-516-000, effective August 2, 1986, to abandon its South Lake supply lateral

facilities by sale to Questar. Accordingly, no gas supplies have been available to move under Rate Schedule X-50 since that time.

Northwest states that by a Termination Agreement dated January 16, 1991, Northwest and Questar agreed to terminate the Transportation and Exchange Agreement effective January 1, 1991. Northwest further states that no abandonment of facilities is proposed in conjunction with the abandonment of this service.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 12, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2092 Filed 1-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-3-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 22, 1992.

Take notice that on January 16, 1992, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, with a proposed effective date of February 1, 1992:

Fifteenth Revised Sheet No. 12
Twelfth Revised Sheet No. 12A
Sixth Revised Sheet No. 12B
Sixth Revised Sheet No. 12C

Texas Gas states that the proposed tariff sheets are being filed as part of Texas Gas's Annual Reconciliation of Take-or-Pay Settlement Payments contained in Docket No. RP91-61. Texas Gas states that the filing restates only the Fixed Monthly TOP Charge to be collected during the final Annual Recovery Period beginning February 1, 1992, and ending January 31, 1993.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 29, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2086 Filed 1-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-487-036]

Williston Basin Interstate Pipeline Co.; Compliance Filing

January 22, 1992.

Take notice that on January 6, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), suite 300, 200 North Third Street, Bismarck, North Dakota 58501, tendered for filing certain revised tariff sheets to original Volume No. 1, First Revised Volume No. 1, Original Volume No. 1-A, Original Volume No. 1-B and Original Volume No. 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets were filed in compliance with the Commission's December 5, 1991 Opinion and Order directing Williston Basin to file revised tariff sheets for the period January 1, 1985 to the present reflecting the inclusion of its 1983 net injection volumes in rate base. Upon Commission acceptance of these revised tariff sheets, Williston Basin will submit revised bills to its customers consistent with the revised rates reflected in the filing.

Williston Basin also noted that, consistent with Ordering Paragraph B of the Commission's December 5, 1991 Order, on December 18, 1991 it filed in Docket Nos. CP82-487-014 and CP82-487-034 its proposed plan for the removal of excess storage inventory and that such plan will resolve the question of the recovery of the costs of the 1983 net injections.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 29, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2087 Filed 1-28-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-90-NG]

Poco Petroleum, Inc.; Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Issuance of Order Granting Blanket Authorization To Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to Poco Petroleum, Inc. to import up to 200 Bcf of natural gas from Canada over a two-year period beginning on the date of first delivery after January 20, 1992, the date

Poco's existing blanket import authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 17, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–2153 Filed 1–28–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

Office of Research and Development

[FRL–4096–1]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for an Equivalent Method Determination

Notice is hereby given that on December 27, 1991, the Environmental Protection Agency received an application from OPSIS AB, P. O. Box 244, S–24402 Furulund, Sweden, to determine if their opto-analyzer Model AR 500 long-path O_3 analyzer should be designated by the Administrator of the EPA as an equivalent method under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register.**

Erich W. Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 92–2162 Filed 1–28–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4097–8]

Science Advisory Board Drinking Water Committee; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Drinking Water Committee (DWC) will meet on February 11–12, 1992 at the Days Inn Crystal City Hotel, 2000 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting will begin both days at 9 a.m., ending no later than 2 p.m. on February 12. The meeting is open to the public and seating is on a first-come basis.

The purpose of the meeting is for the Committee to review the Agency's Drinking Water Criteria Documents for the following issues: Chlorine Dioxide, Ozone and its By-Products, and Cryptosporidium. The Committee will also receive a presentation on a chemical and microbial risk comparison model. Copies of these documents are NOT available from the Science Advisory Board. For more information concerning these documents and their availability, please contact: Ms. Jennifer Orme Zavaleta, U.S. EPA, Office of Water, Office of Science and Technology (WH–856), 401 M Street SW., Washington, DC 20460, Telephone: (202) 260–7571. The tentative charge to the Committee is to: (1) Provide comments on the technical merit of the Criteria Documents and the proposed risk assessments for the compounds addressed in the documents; (2) provide comment on the draft model and the assumptions for comparing microbial risk with chemical risk; and (3) comment on the tentative maximum contaminant level goals (MCLG) for chlorine dioxide, chlorite, chlorate, cryptosporidium and bromate and issues associated with the MCLG's.

For details concerning this meeting, including a draft agenda, please contact Mr. Robert Flaak, Assistant Staff Director, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 260–6552 and FAX: (202) 260–7118. Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Flaak no later than Tuesday, February 4, 1992 in order to be included on the Agenda. Written statements of any length (at least 15 copies) may be provided to the Committee up until the meeting. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes.

Dated: January 22, 1992.

Samuel Rondberg,

Acting Staff Director, Science Advisory Board.

[FR Doc. 92–2163 Filed 1–28–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4097–9]

Science Advisory Board, Radiation Advisory Committee; Open Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Radiation Advisory Committee (RAC) of the Science Advisory Board will meet February 10–12, 1992, Capitol Holiday Inn, Gemini Conference Room, 550 C Street SW., Washington, DC Telephone 202/479–4000. The meeting will begin at 12:30 on Monday and adjourn no later than 4 p.m. on Wednesday.

PURPOSE: (1) The Committee will consider, and possibly reach final agreement on, a revised RAC commentary, "Harmonizing Chemical and Radiation Risk Reduction Strategies". The draft commentary is available from Mrs. Joanna Foellmer (202/260–4126).

(2) The Committee expects to review the Homebuyer's and Seller's Guide to Radon. Copies can be obtained by calling Ms. Sarita Hoyt at (202/260–5879). The preliminary charge for this review is to review the scientific basis for the real estate radon testing protocols.

(3) The Committee will begin its review of the Office of Radiation Programs' Reevaluation of EPA's Methodology for Estimating Radiogenic Cancer Risks. Copies of the Agency's reevaluation can be obtained by calling Dr. Jerry Puskin (202/260–9833). The Agency's analysis relies upon a number of technical consensus documents produced by other organizations. These include: The 1990 Recommendations of the International Commission on Radiological Protection, Annals of the ICRP 21, No.1–3, 1991; The National Research Council's 1990 Health Effects of Exposure to Low Levels of Ionizing Radiation (BEIR V), National Academy of Sciences, Washington, DC.; the 1980 NCRP Report 64, Influence of Dose and Its Distribution in Time on Dose-Response Relationships for Low-LET Radiations and the 1985 NCRP Report 80, Induction of Thyroid Cancer by Ionizing Radiation, National Council on Radiation Protection and Measurements, Bethesda, Md.; the 1988 NRPB–R226 Health Effects Models Developed from the 1988 UNSCEAR Report, National Radiological Protection Board, Chilton, Didcot, Oxon OX11 ORQ, United Kingdom; the 1985 Health Effects Model for Nuclear Power Plant Accident Consequence Analysis, NUREG/CR–4213 and the 1991 Revision 1, Part II, Addendum 1, LMF–132, Chapter 3: Late Somatic Effects, Nuclear Regulatory Commission, Washington, DC; and the UNSCEAR's United Nations, N.Y. These reference documents are *not* available from the Office of Radiation Programs or the Science Advisory Board.

The charge for this review is:

(a) Has the Agency analysis considered the most relevant risk estimates of low-LET radiation?

(b) Does the Agency analysis accurately compare the most relevant features and assumptions of the various models?

(c) Is the Agency's analysis technically sound?

(d) Are the conclusions of the analysis scientifically defensible?

(e) Are the recommended methods for estimating the cancer risks appropriate and supportable in light of the current scientific evidence?

(4) The Committee will consider whether to undertake Committee-initiated activities concerning (a) Development of a better radon measurement protocol and (b) Radon Science—status and research priorities.

(5) The Committee expects to be briefed on how EPA treats sites containing radioactive materials, the results of OPPE study of EPA's radon programs, and a preliminary analysis by a committee member of uncertainty associated with the risks of radon in drinking water.

FOR FURTHER INFORMATION: The meeting is open to the public; however, seating is limited. Members of the public wishing to attend, provide oral public comment, or have written comment sent to the Committee in advance of the meeting should contact Mrs. Kathleen Conway, Designated Federal Official, of Mrs. Dorothy Clark, Staff Secretary at (202) 260–6552 by COB February 3.

Dated: January 17, 1992.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 92–2164 Filed 1–28–92; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–140171; FRL–4042–2]

Access to Confidential Business Information by ICF International, Incorporated, The Bruce Company, and Radian Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ICF International, Incorporated (ICF), of Fairfax, Virginia, and Washington, DC, and its subcontractors: The Bruce Company (BRU), of Washington, DC, and Radian Corporation (RAD), of Herndon, Virginia, for access to information which has been submitted to EPA under sections 4, 5, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than February 12, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D9–0068, contractor ICF, Incorporated, of 9300 Lee Hwy., Fairfax, VA, and 1850 K St., NW., Suite 1000, Washington, DC, and its subcontractors: The Bruce Company, of 1100 Sixth St., SW., Suite. 515, Washington, DC, and Radian Corporation, of 2455 Horsepen Rd., Herndon, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in conducting exposure and risk assessments of chemicals subject to review and approval under TSCA and the Clean Air Act Amendments of 1990.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D9–0068, ICF, BRU, and RAD will require access to CBI submitted to EPA under sections 4, 5, and 8 of TSCA to perform successfully the duties specified under the contract. ICF, BRU, and RAD personnel will be given access to information submitted to EPA under sections 4, 5, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, and 8 of TSCA that EPA may provide ICF, BRU, and RAD access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters, ICF's Fairfax, VA and Washington, DC, facilities, and RAD's Herndon, VA facility only.

ICF and RAD will be authorized access to TSCA CBI at their facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Before access to TSCA CBI is authorized at ICF's and RAD's sites, EPA will approve ICF and RAD's security certification statement, perform the required inspection of their facilities, and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, ICF and RAD will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1992.

ICF, BRU, and RAD personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: January 17, 1992.

Linda A. Travers,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–2166 Filed 1–28–92; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140170; FRL–4009–8]

Access to Confidential Business Information by Technical Resources, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Technical Resources, Incorporated (TRI), of Rockville, Maryland, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than February 12, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D1–0161, contractor TRI, of 3202 Tower Oaks Blvd., Rockville, MD, will assist the Office of Pollution Prevention and Toxics, (OPPT) in reviewing and evaluating new chemical submissions under TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D1–0161, TRI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. TRI personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide TRI access to these CBI materials on a need-to-know basis only. All access to

TSCA CBI under this contract will take place at EPA Headquarters and TRI's 1000 6th St., SW., Washington, DC facility only.

TRI will be authorized access to TSCA CBI at its Washington, DC facility under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Before access to TSCA CBI is authorized at TRI's site, EPA will approve TRI's security certification, perform the required inspection of its facility, and ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, TRI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1994.

TRI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: January 17, 1992.

Linda A. Travers,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-2167 Filed 1-28-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-59931; FRL 4046-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 2 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92-85, 92-86, January 30, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-85

Manufacturer. Seydel Co.

Chemical. (G) Sodium sulfosuccinated polyester resin.

Use/Production. (S) Textile sizing. Prod. range: Confidential.

Y 92-86

Manufacturer. Himont USA., Inc.

Chemical. (G) Thermoplastic olefin elastomer.

Use/Production. (S) Hoses, tubing gasket seal. Prod. range: 4,000,000-30,000,000 kg/yr.

Dated: January 23, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-2168 Filed 1-28-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-51784; FRL 4046-5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 25 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92-386, 92-387, April 8, 1992.

P 92-388, 92-389, 92-390, 92-391, 92-392, 92-393, 92-394, 92-395, 92-396, April 11, 1992.

P 92-397, 92-398, April 12, 1992.

P 92-404, 92-405, 92-406, 92-407, 92-408, 92-409, 92-410, 92-411, April 13, 1992.

P 92-412, April 14, 1992.

P 92-413, April 15, 1992.

P 92-414, 92-415, April 19, 1992.

Written comments by:

P 92-386, 92-387, March 9, 1992.

P 92-388, 92-389, 92-390, 92-391, 92-392, 92-393, 92-394, 92-395, 92-396, March 12, 1992.

P 92-397, 92-398, March 13, 1992.

P 92-404, 92-405, 92-406, 92-407, 92-408, 92-409, 92-410, 92-411, March 14, 1992.

P 92-412, March 15, 1992.

P 92-413, March 16, 1992.

P 92-414, 92-415, March 20, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS-51784)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. L-100, Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92-386

Importer. Hoechst Celanese Corporation.

Chemical. (G) Substituted azo compound.

Use/Import. (S) Pigment additive. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: none species (rabbit). Static acute toxicity: time LC50 96h22-50 mg/l species (zebra fish). Skin irritation: negligible species (rabbit). Skin sensitization: positive species (guinea pig).

P 92-387

Manufacturer. Confidential.

Chemical. (G) Silicone modified polyester resin.

Use/Production. (S) Processing aid for manufacture of polymer lenses. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Skin irritation: negligible species (rabbit).

P 92-388

Importer. Xerox Corporation.

Chemical. (G) Graft acrylate copolymer.

Use/Import. (G) Component in reprographic developer. Import range: Confidential.

P 92-389

Manufacturer. The P.D. George Company.

Chemical. (S) Tall oil fatty acid polymer with phthalic anhydride, and glycerine, and neopentyl glycol.

Use/Production. (S) Paint vehicle. Prod. range: 47,740 kg/yr.

P 92-390

Manufacturer. Ashland Chemical, Inc.

Chemical. (G) Modified acrylatic polymer.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 92-391

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) Substituted-aryl amino aromatic.

Use/Production. (G) Lubricant additive. Prod. range: Confidential.

P 92-392

Importer. Ausimont USA, Inc.

Chemical. (G) Modified perfluoro polyether salt.

Use/Import. (S) Fiber surface treatment coating. Import range: Confidential.

P 92-393

Importer. Ausimont USA, Inc.

Chemical. (G) Modified perfluoeo polyether salt.

Use/Import. (S) Fiber surface treatment coating. Import range: Confidential.

P 92-394

Importer. Ausimont USA., Inc.

Chemical. (G) Modified perfluoro polyether salt.

Use/Import. (S) Fiber surface treatment coating. Import range: Confidential.

P 92-395

Manufacturer. Ausimont USA., Inc.

Chemical. (G) Modified perfluoro polyether salt.

Use/Import. (S) Fiber surface treatment coating. Import range: Confidential.

P 92-396

Manufacturer. Stepan Company.

Chemical. (G) Alkyl phenoxy poly(oxyethylene)sulfuric acid ester, substituted amine salt.

Use/Production. (G) Additive for fiber and pesticide formulation. Prod. range: Confidential.

Toxicity Data. Static acute toxicity: time LC50 96h0.27 mg/l species (rainbow trout).

P 92-397

Importer. Confidential.

Chemical. (S) Poly acatal poly oxy methylene.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 92-398

Importer. Confidential.

Chemical. (G) Adipic acid polyester.

Use/Import. (S) Plasticizer. Import range: Confidential.

Toxicity Data. Mutagenicity: negative.

P 92-404

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional styrenated acrylate methacrylate polymer.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 66,000–100,000 kg/yr.

P 92-405

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional styrenated acrylate methacrylate polymer.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 66,000–100,000 kg/yr.

P 92-406

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional styrenated acrylate methacrylate polymer.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 66,000–100,000 kg/yr.

P 92-407

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional styrenated methacrylated polymer.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 66,000–100,000 kg/yr.

P 92-408

Manufacturer. Daicolor-Pope Inc.

Chemical. (G) Azoic coupling product of a substituted aniline sulfonic acid and a substituted hydroxy naphthalenecarboxamide.

Use/Production. (G) Azoic pigment modifier. Prod. range: Confidential.

P 92-409

Importer. Confidential.

Chemical. (G) Alkyl benzimidazole derivative.

Use/Import. (S) Ingredient in pre-flex agent. Import range: Confidential.

P 92-410

Importer. Confidential.

Chemical. (G) Polyisobutylene amine.

Use/Import. (S) Detergent additive for gasoline. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,200 mg/kg species (rat). Static acute toxicity: time LC50 96h4.6–10 mg/l species (rainbow trout).

P 92-411

Importer. Huls America, Inc.

Chemical. (G) Polymer of aliphatic polybasic acid, anhydride of aminocarboxylic acid and hetero cyclic aliphatic compound.

Use/Import. (S) Hot-melt adhesive application. Import range: Confidential.

P 92-412

Importer. Ciba-Geigy Corporation.

Chemical. (G) Substituted triphenyl triazine.

Use/Import. (G) Textile chemical. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (rabbit). Eye irritation: none species (rabbit). Mutagenicity: negative. Skin irritation: negligible species (rabbit). Skin sensitization: negative species (guinea pig).

P 92-413

Manufacturer. Henkel Corporation.

Chemical. (G) Trialkylguanidine.

Use/Import. (S) Metal extractant. Import range: Confidential.

P 92-414

Importer. Confidential.

Chemical. (G) Poly-styrene-acrylic resin.

Use/Import. (G) Polymer additive. Import range: Confidential.

P 92-415

Manufacturer. Confidential.

Chemical. (G) Poly(styrene-co-arylonitrile.

Use/Production. (G) Coating. Prod. range: Confidential.

Dated: January 23, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-2169 Filed 1-28-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1871]

Petitions for Reconsideration of Actions in Rule Making Proceedings

January 22, 1992.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed on or before February 13, 1992. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Lancaster, Wisconsin, Clinton, Manchester, Iowa; and Morrison, Illinois) (MM Docket No. 89-521; RM No. 6606 and 7254)
Number of Petitions Received: 1.

Subject: Amendment of part 74 of the Commission Rules Regarding FM Booster Stations. (FFC 91-317)
Number of Petitions Received: 2.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR. Doc. 92-2106 Filed 1-28-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-928-DR]

Iowa; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA-928-DR), dated December 26, 1991, and related determinations.

DATED: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3606.

NOTICE: The notice of a major disaster for the State of Iowa, dated December 26, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 26, 1991:

The counties of O'Brien, Woodbury, Union, and Ida for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92-2147 Filed 1-28-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-930-DR]

Texas; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-930-DR), dated December 26, 1991, and related determinations.

DATES: January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3606.

NOTICE: The notice of a major disaster for the State of Texas, dated December 26, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 26, 1991:

The counties of Anderson, Calhoun, Comanche, DeWitt, Eastland, Hays, Hill, Hood, Jones, Lampasas, Leon, Milam, Palo Pinto, and Victoria for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92-2148 Filed 1-28-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants; Tampa International Forwarding, Inc. et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Tampa International Forwarding, Inc., 4611 North Hale Avenue, Tampa, FL 33614, Officers: Edward J. Henderson, Director of Operations, Dominique W. Root, Director of Sales

Pacific Freight Group International, 105 Embarcadero, Oakland, CA 94606, Officers: John McNulty, President, Paul G. Falk, Vice President

Carpe Air & Sea Shipping Inc., 321 Commercial Ave., Palisades, NJ 07650, Officer: Barbara A. Carpe, President

John M. Hickman, 6729 Bonner Drive, W. Hollywood, CA 90048, Sole Proprietor

Gemini Freight Forwarding Company, 22 El Dorado St., #4, Arcadia, CA 91006, Yihong Wu, Sole Proprietor

Asian Pacific Express, Inc., 1928 Tyler Ave., suite K-168, S. El Monte, CA 91733, Officer: John Nai-Chuang Ngai, President.

Dated: January 23, 1992.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-2066 Filed 1-28-92; 8:45 am]

BILLING CODE 6730-01-M

[Petition No. P2-92]

Direct Container Line-Conditions Unfavorable to Shipping in the United States-Korea Trade; Filing of Petition for Relief

Notice is given that a petition for relief from conditions unfavorable to shipping in the United States-Korea trade ("Trade") has been filed by Direct Container Line, Inc. ("Petitioner"), requesting relief under section 19(1)(b) of the Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. 876(1)(b). Petitioner requests Commission assistance in its attempts to establish a branch office in Korea, which is alleged to be prohibited by Korean Nationality requirements as to ownership and

composition of officers. Petitioner suggested counter-measures could include suspension of Korean-owned, U.S.-resident NVOCCs' tariffs, or that the Commission might fashion any appropriate remedy. Under Section 19, the Commission is authorized to make rules and regulations affecting shipping in the foreign trade in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade. In this instance, the Petitioner is asking the Commission to remedy a condition or conditions which it alleges precludes U.S.-owned NVOCCs or freight forwarding businesses from operating in Korea although Petitioner maintains that the U.S. has no similar restrictions on foreign-owned NVOCC or freight forwarding enterprises from operating in the U.S.

Because this petition presents the Commission with its first request for relief under Section 19 on behalf of a transportation intermediary—that is, a NVOCC of a freight forwarder—rather than an ocean common carrier, the Commission would be particularly interested in comments suggesting appropriate actions should a rulemaking be initiated. For example, Petitioner alleges that Korean law treats NVOCC's and forwarders identically, and therefore urges the Commission to consider counter-measures that would apply with equal force to Korean owned NVOCC's and forwarders operating in the United States. Petitioner notes that countervailing voyage fees against Korean ocean carriers might not be an appropriate remedy, even though it may be within the range of options available to the Commission in a Section 19 rulemaking.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than March 13, 1992. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001, shall consist of an original and 15 copies, and shall be served on F. Conger Fawcett, esq., Fawcett & Fawcett, 101 Larkspur Landing Circle, suite 321, Larkspur, California 94939.

Copies of the petition are available for examination at the Washington, DC office of the Commission, 1100 L Street NW., room 11101.

Joseph C. Polking,

Secretary

[FR Doc. 92-2095 Filed 1-28-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation.

Time and Date: Executive Committee Meeting, Monday, March 2, 1992, 8 a.m.-9 a.m.; Full Committee Meeting, March 2-3, 1992, 9:30 a.m.-5 p.m.

Place: Ritz-Carlton Hotel, 1250 South Hayes Street, Arlington, Virginia.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters To Be Considered: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons with mental retardation; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect persons with metal retardation.

Contact Person for More Information: Sambhu N. Banik, Ph.D., Wilbur J. Cohen Building, room 5325, 330 Independence Avenue, SW., Washington, DC 20201-0001, (202) 619-0634.

Dated: January 10, 1992.

Sambhu N. Banik,

Executive Director, PCMR.

[FR Doc. 92-2101 Filed 1-28-92; 8:45 am]

BILLING CODE 4130-01-M

Centers for Disease Control

Ergonomic Interventions for the Beverage Delivery Industry; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting.

Name: Ergonomic Interventions for the Beverage Delivery Industry.

Time and Date: 9 a.m.-3 p.m., February 13, 1992.

Place: Alice Hamilton Laboratory, Conference Room C, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for the review of a NIOSH project entitled, "Ergonomic Interventions for the Benverage Delivery Industry." This project involves the development of ergonomic interventions to reduce musculoskeletal stress during soft-drink container delivery in the beverage delivery industry.

Contact Person for Additional Information: James D. McGlothlin, NIOSH, CDC, 4676 Columbia Parkway, Mailstop R-5, Cincinnati, Ohio 45226, telephone 513/841-4221 or FTS 684-4221.

Dated: January 23, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-2100 Filed 1-28-92; 8:45 am]

BILLING CODE 4160-19-M

Public Health Service

Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HK (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 56 FR 50126, October 3, 1991), is amended to change the standard administrative code designator for the chapter and all of its sections from HK to HF (35 FR 3685, February 25, 1970.)

The HF designator (35 FR 3685, February 25, 1970) was used for the Food and Drug Administration (FDA) before its realignment (56 FR 29484, June 27, 1991). When the realignment was published, HK was the organizational designator for FDA. However, because of the wide range of organization and management systems that support the FDA, it is more practical and efficient to maintain the HF designator for FDA.

Reentry of the HF designator for the organizations listed below reflect: (1) The June 7, 1991 FDA realignment); (2) the Office of Management, and Center for Veterinary Medicine functional statement revisions (56 FR 50126), October 3, 1991); and (3) the Office of Policy substructure (56 FR 47098, September 17, 1991):

HFA6—Office of Management and Systems.

HFA9—Office of Operations.

HFAQ—Office of External Affairs.
HFAH—Office of Science.
HFAP—Office of Policy.
HFAPA—Regulations Policy and Management Staff.
HFAPB—Policy Development and Coordination Staff.
HFAPC—Policy Research Staff.

Dated: January 22, 1992.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 92-2121 Filed 1-28-92; 8:45 am]

BILLING CODE 4160-10-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. comments and suggestions on the requirement should be made directly to the Bureau clearance office and to the Office of Management and Budget, Paperwork Reduction Project 1076-0094, Washington, DC 20503, telephone number (202) 395-7340.

Title: 25 CFR Part 11, Law and Order on Indian Reservations.

OMB Approval Number: 1076-0094.

Abstract: Courts of Indian Offenses have jurisdiction over domestic relations, including issuance of marriage licenses and divorce decrees. The general information collected on a marriage license application or a petition for dissolution is essential to enable the court to issue the proper documents. Respondents are persons who are seeking a marriage license or who wants to petition for divorce.

Frequency: On occasion.

Description of Respondents: Persons seeking marriage decrees or divorce proceedings.

Annual Responses: 300.

Annual Burden Hours: 75.

Bureau Clearance Office: Gail Sheridan (202) 208-2685.

Dated: April 18, 1991.

Carol A. Bacon,

Director, Office of Tribal Services.

Editorial Note: This document was received at the Office of the Federal Register on January 24, 1992.

[FR Doc. 92-2111 Filed 1-28-92; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[YA-324-4550-241A]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (not yet assigned), Washington, DC 20503, telephone 202-395-7340.

Title: Survey—Public Room Customer Satisfaction.

OMB Approval Number: (Not yet assigned).

Abstract: Respondents provide information on the quality of Bureau public room/reception area service received, either by telephone, in writing, or in person. This information allows the Bureau to determine if changes to service are necessary to improve assistance, timeliness, or better meet information needs of members of the public.

Bureau Form Number: 1120-6.

Frequency: Annually.

Description of Respondents: Individuals, or organizations using BLM public rooms/reception areas, or any other means of inquiries from the public to acquire information or assistance from BLM.

Estimated Completion Time: Five minutes.

Annual Responses: 400.

Annual Burden Hours: 32.

Bureau Clearance Officer (Alternate): Gerri Jenkins 202-653-6105.

Dated: January 8, 1992.

John J. Moeller,

Assistant Director, Support Services.

[FR Doc. 92-2068 Filed 1-28-92; 8:45 am]

BILLING CODE 4310-84-M

[NV-030-02-4320-02]

Carson City District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation and notice of rescheduling of a meeting.

SUMMARY: The Carson City District Grazing Advisory Board scheduled meeting for 10 a.m., on Thursday, November 21, 1991, was cancelled for lack of a quorum. The meeting is now rescheduled for Thursday, February 27, 1992 at 10 a.m. in the Carson City District Office Conference Room, 1535 Hot Springs Road, suite 300, Carson City, Nevada. The primary topics will be the FY 1992 Rangeland Improvement Projects, Allotment Management Plans, and the status of the Land Use Plans. The meeting is open to the public. Interested persons may make oral statements at 1 p.m. or file written statements for the Board's consideration.

FOR FURTHER INFORMATION CONTACT: Andy Anderson, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada, 89706, phone: (702) 885-6141.

Dated: January 15, 1992.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 92-2069 Filed 1-28-92; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Accounting Procedure for Determining the Sufficiency of Estimate Payment Balances Established by Payors on Federal and Indian Oil and Gas Leases

January 22, 1992.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: The Minerals Management Service (MMS) published a Notice in the Federal Register on July 18, 1991, (56 FR 33040) of its accounting procedure for determining the sufficiency of estimate royalty payment balances. It established December 2, 1991, as the effective date. The Notice was a summary of a Dear Payor letter dated July 8, 1991, that was mailed to all royalty payors on Federal and Indian oil and gas leases. Because the Dear Payor letter was not printed in its entirety, minor differences were noted. Even though we have not received any concern on the differences, we have reprinted the letter to assure

consistent guidance on the accounting procedure for determining the sufficiency of estimated payment balances established by payors on Federal and Indian Oil and gas leases.

EFFECTIVE DATE: December 2, 1991.

FOR FURTHER INFORMATION CONTACT: Betty A. Middle, Chief, Automated Exception Processing Section, Minerals Management Service, P.O. Box 25165, MS 3212, Denver, Colorado 80225-0165, at (303) 231-3582 or (FTS) 326-3582.

SUPPLEMENTARY INFORMATION: By letter of July 8, 1991, MMS notified payors of the accounting procedure for determining the sufficiency of estimate payment balances on both Federal and Indian leases. In addition, MMS provided payors with the existing current estimate balances. This letter established December 2, 1991, as the effective date for the procedure and was signed by Mr. James R. Detlefs, Chief, Fiscal Accounting Division. The letter is reprinted below.

Dear Payor: This letter is to inform you that the Minerals Management Service (MMS) will calculate interest charges on insufficient estimate balances on Federal and Indian leases at the lease level effective with the September 1991 sales month. Please note that the sufficiency/insufficiency comparison will not be calculated at either the product type or payor code levels. This clarification will appear in the **Federal Register**. To avoid interest charges, payors must ensure that the estimate balance on each lease is sufficient to cover actual royalties to be reported. Therefore, we have enclosed a listing of your estimate balances as of June 20, 1991, for your analysis. Your estimate balances on this listing were calculated using only accepted royalty estimate information. Adjustments to your estimate balances received after June 20, 1991, will not appear on this report.

The procedures to establish or to adjust estimate payments are contained in the MMS Oil and Gas Payor Handbook, Volume II, Section 3.5. Federal and Indian oil and gas leases provide that royalties on production shall be done an payable monthly on the last day of the month following the month in which the oil or gas is removed and sold. Royalty payors may, however, make an estimated royalty payment and delay reporting and paying actual royalties an additional month. Your estimates must be adjusted no later than the October 1991 report month to cover September 1991 sales.

In calculating the lease-level insufficiency to determine the principal that is paid late, MMS will compare the estimate balance to the actual royalties reported and paid during and after the "extended estimate period" for each lease. The "extended estimate period" is defined as the time period the due date is extended because of an estimate. For example, for sales month September 1991, royalties are due October 31, 1991. If the payor had previously paid and reported an estimate, the extended due date would be December 2, 1991 (the usual due date of November 30 falls on Saturday). Therefore, the "extended estimate period" is November 1, 1991, through December 2, 1991.

In accordance with 30 CFR 218.54 (1991), we will calculate insufficient estimate interest on the insufficient estimate amount for the number of days payor uses the extended estimate period (the number of days in the "extended estimate period" or fewer if the payor submits payment earlier). When the actual royalties are paid past the "extended estimate period," the interest assessed on the insufficient estimate amount will be calculated only for the number of days in the "extended extended period." On a separate late-payment interest invoice, we will calculate interest on the full amount of the actual royalty for the number of days past the extended due date until the payment receipt date. These two interest bases do not overlap the same time periods; thus, you will not be assessed twice for the same time period.

You should review your estimated payments on each lease to ensure that the estimate balance at the lease level is sufficient to cover actual royalties for all products that you plant to report and pay during and after the "extended estimate period." Sufficient estimate payments will not preclude MMS from assessing applicable late-payment charges and late reporting assessments.

If you have questions regarding the insufficient estimate interest calculation, please call Mr. Dale Peterson at (303) 231-3606. If you have questions regarding the reporting or adjustment of estimates, please call your Lessee Contact Representative at (303) 231-3288.

End of letter.

Dated: January 22, 1992.

Jimmy W. Mayberry,

Associate Director for Royalty Management

[FR Doc. 92-2118 Filed 1-28-92; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Jimmy Carter National Historic Site

AGENCY: National Park Service, DOT.

ACTION: Notice of Advisory Commission Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Jimmy Carter National Historic Site Advisory Commission will be held at 8:30 a.m. to 4 p.m. at the following location and date.

DATES: February 28, 1992.

ADDRESSES: The Jimmy Carter Library and Museum Conference Room, One Coppenhill Avenue, Atlanta, Georgia 30307.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Boyles, Superintendent, Jimmy Carter National Historic Site, Route 1, Box 800, Andersonville, Georgia 31711.

SUPPLEMENTARY INFORMATION: The purpose of the Jimmy Carter National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on achieving balanced and accurate interpretation of the Jimmy Carter National Historic Site.

The members of the Advisory Commission are as follows:

Dr. Steven Hochman.
Dr. James Sterling Young.
Dr. Donald B. Schewe.
Dr. Henry King Stanford.
Dr. James David Barber.
Director, National Park Service, Ex-Officio Member.

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: January 17, 1992.

James W. Coleman, Jr.,

Regional Director, Southeast Region.

[FR Doc. 92-2143 Filed 1-28-92; 8:45 am]

BILLING CODE 4310-70-M

Office of the Secretary

[516 DM 6, Appendix 6]

National Environmental Policy Act - Proposed Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of Proposed Revisions to the DOI Manual 516 DM 6, Appendix 6, Managing the National Environmental Policy Act (NEPA) Process for the Bureau of Mines.

SUMMARY: This notice announces a proposed revision for implementing NEPA within the Bureau of Mines. The proposed revision primarily reflects changes in organization and responsibilities. The Department's procedures were published in the **Federal Register** on April 23, 1980 (45 FR 27541) and revised on May 21, 1984 (49 FR 21437). Appendix 6 for the Bureau of Mines was published on December 29, 1980 (45 FR 85528).

DATES: Comments due on or before February 28, 1992.

ADDRESSES: Comments to Dr. Jonathan P. Deason, Director, Office of Environmental Affairs, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Jonathan P. Deason, address above, telephone (202) 208–3891. For Bureau of Mines, contact Mr. William L. Miller, Division of Policy Analysis, telephone (202) 634–1292.

SUPPLEMENTARY INFORMATION: This proposed revised appendix to the Departmental Manual (516 DM 6, appendix 6) provides specific NEPA compliance instructions to the Bureau of Mines. In particular, it updates information about the Bureau's organizational responsibilities for NEPA compliance and makes minor technical changes in categorical exclusions for the NEPA process.

The appendix must be considered in conjunction with the Department's procedures (516 DM 1–6) and the Council on Environmental Quality's regulations implementing the procedural provisions of NEPA (40 CFR 1500–1508).

Comments on the proposed appendix which are received by February 28, 1992, will be carefully considered in preparing the final appendix. Comments received after that date will also be considered to the extent practicable.

Outline

Chapter 6 (516 DM 6) Managing the NEPA Process
Appendix 6—Bureau of Mines
6.1 NEPA Responsibility
6.2 Guidance to Applicants
6.3 Major Actions Normally Requiring an EIS
6.4 Categorical Exclusions.

Dated: January 24, 1992.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

516 DM 6, Appendix 6

6.1 NEPA Responsibility

A. The Director is responsible for the compliance of all Bureau of Mines activities with NEPA.

B. Chief, Office of Regulatory Projects Coordination is responsible to the Director for overseeing Bureau compliance with the requirements of NEPA. He or she reviews proposed legislation and Bureau programs for NEPA-related implications.

C. Associate Director—Research is responsible for the formulation, planning, management, effective performance, and evaluation of research programs under his/her purview. He or she ensures that environmental concerns are identified early in the planning stages for all proposed research projects, facilities, and related activities.

D. Chiefs, Research Divisions are responsible to the Associate Director—Research for integrating the NEPA process into all research programs.

E. Associate Director—Information and Analysis is responsible for the conduct of engineering investigations and evaluations, and economic investigations relative to the development, utilization, and conservation of mineral resources, assessments of mineral potential on public lands, and the conduct of State mineral activities. He or she is responsible for the overall coordination of the Bureau's NEPA activities, providing guidance and information on NEPA matters pertaining to the Bureau's programs. Information about Bureau of Mines NEPA documents or the NEPA process can be obtained by contacting the Division of Resource Evaluation.

F. Chief, Division of Resource Evaluation is responsible to the Associate Director—Information and Analysis for ensuring that potential environmental impacts on domestic mineral resources are adequately reviewed and assessed. He or she coordinates the internal environmental review process.

6.2 Guidance to Applicants

The Bureau of Mines is not involved in the application process.

6.3 Major Actions Normally Requiring an EIS

A. Approval of construction of a major new research center or test facility normally will require the preparation of an EIS.

B. If it is initially decided not to prepare an EIS, an EA will be prepared and handled in accordance with § 1501.4(c)(2).

6.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions outlined in appendix 1 of 516DM2, many of which the Bureau also performs, the following Bureau of Mines actions are designated categorical exclusions unless the action qualifies as an exception under appendix 2 of 516DM2.

A. Data collection activities and field surveys. Included are reconnaissance-type investigations, detailed field investigations, research studies to develop new information, and well logging.

B. Research activities concerning the development and evaluation of metallurgical or environmental technologies, and the demonstration of associated methodologies and related equipment.

C. Research activities concerning health, safety, and mining technology.

D. Research activities that take place in a laboratory where the scale of the activity does not exceed the design capacity of the laboratory and where the methods for proper control and disposal of laboratory wastes have been implemented to prevent any accidental release to the environment and its subsequent degradation.

E. Field demonstrations and pilot plant operations, when undertaken only in conjunction with existing operations and facilities of a cooperator or contractor, when the scale of the proposed demonstrations and pilot-plant tests does not exceed the capacity of the installation to control and contain any accidental release or other impact and such demonstrations or operations are in compliance with all existing Federal, State, and local standards and regulations to protect human health and the environment.

[FR Doc. 92–2140 Filed 1–28–92; 8:45 am]
BILLING CODE 4310–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–334]

Designation of Additional Commission Investigative Attorney

In the matter of certain condensers, parts thereof and products containing same, including air conditioners for automobiles.

Notice is hereby given that, as of this date, Gabrielle Siman, Esq. and Steven A. Glazer, Esq. of the Officer of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Steven A. Glazer , Esq.

The Secretary is requested to publish this notice in the **Federal Register.**

Dated: January 23, 1992.

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

[FR Doc. 92–2135 Filed 1–28–92; 8:45 am]
BILLING CODE 7020–02–M

[Investigation No. 337–TA–333]

Certain Woodworking Accessories

Notice is hereby given that the prehearing conference and hearing in this matter is presently scheduled to

commence 10 a.m., on February 10, 1992 and to continue on February 11, 12 and 13, as necessary in Hearing Room A (room 100) at the International Trade Commission Building at 500 E Street, SW., Washington, DC. The date is subject to change through order of the administrative law judge. Non-parties wishing to attend should contact Mr. Reiser at 202-205-2694 as to whether there have been any changes made in this schedule by the administrative law judge.

The Secretary shall publish this notice in the **Federal Register**.

Issued: January 21, 1992.

Paul J. Luckern,

Administrative Law Judge.

[FR Doc. 92-2136 Filed 1-28-92; 8:45 am]

BILLING CODE 7035-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31974]

Mountain Laurel Railroad Co.—Acquisition and Operation Exemption—Consolidated Rail Corp.; Notice

Mountain Laurel Railroad Company (MLR), a non-carrier, has filed a notice of exemption to acquire and operate Consolidated Rail Corporation's 127.75-mile Low Grade Cluster, in Cameron, Clarion, Clearfield, Elk, and Jefferson Counties, PA, between: (1) Milepost 6.0, at Lawsonham, and milepost 34.0 at Summerville; (2) milepost 34.0 and milepost 77.7, at Lady Jane Coal; and (3) milepost 77.7 and milepost 110.0, at Driftwood; (4) milepost 104.25, at Piney, and milepost 120.8, at Sutton; and (5) milepost 120.8 and milepost 128.0, at Rose (near Brookville). The transaction was to have been consummated on or about December 31, 1991.

The transaction also involves the issuance of securities under the exemption at 49 CFR 1175.1. In a related proceeding, by decision in Fiance Docket No. 31973, Arthur T. Walker Estate Corporation and Dumaines—Continuance in Control Exemption—Mountain Laurel Railroad Company (not printed), served December 27, 1991, the Commission exempted the continuance in control of MLR by Dumaines and Arthur T. Walker Estate Corporation upon MLR's becoming a rail carrier.

Any comments must be filed with the Commission and served on William P. Quinn, Rubin Quinn Moss Heaney & Patterson, P.C., 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition will not automatically stay the transaction.

Decided: January 23, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 92-2116 Filed 1-28-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32009]

Norfolk Southern Railway Co.—Trackage Rights Exemption—Cincinnati, New Orleans and Texas Pacific

Cincinnati, New Orleans and Texas Pacific Railway Company (CNO&TP) has agreed to grant overhead trackage rights to Northern Southern Railway Company (NS) over a 1.8-mile line between milepost 164.25H plus 1,331 feet±, at the entrance to the Tennessee Valley Authority's Caney Creek, TN, rail yard, and the junction with NS's line at milepost 165.8H±, near Devonia Street, Harriman, TN. The trackage rights will become effective on or after January 29, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: James L. Howe III, Northern Southern Railway Company, Three Commercial Place, Norfolk, VA 23510-2191.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 22, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-2112 Filed 1-28-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31996]

Rail Management and Consulting Corporation, Green Bay Packaging, Inc., and K. Earl Durden—Continuance in Control Exemption—Tomahawk Railway, L.P., and Valdosta Railway, L.P.

Rail Management and Consulting Corporation (RMCC), Green Bay Packaging, Inc. (Green Bay), and K. Earl Durden (Durden), all noncarriers, have filed a notice of exemption to continue to control Tomahawk Railway, L.P. (TR), and Valdosta Railway, L.P. (VR), upon the latter's becoming class III carriers. Consummation was expected to occur on the effective date of the exemption, December 30, 1991.

Concurrently with the filing in this proceeding, TR and VR have filed verified notices to exempt their acquisition and operation of rail lines in Wisconsin and Georgia, respectively. *See* Finance Docket No. 31996 (Sub-No. 1), *Tomahawk Railway, L.P.—Acquisition and Operation Exemption—Marinette, Tomahawk & Western Railroad Company*, and Finance Docket No. 31996 (Sub-No. 2), *Valdosta Railway, L.P.—Acquisition and Operation Exemption—Valdosta Southern Railroad Company*.

Green Bay and Durden each own 50 percent of RMCC. RMCC, Green Bay, and Durden jointly control eight other class III rail carriers. *See* Finance Docket No. 31869, *Green Bay Packaging, Inc.; K. Earl Durden; Galveston Railway, Inc.; Rail Management and Consulting Corporation; and Rail Partners, L.P.—Continuance in Control Exemption—Galveston Railroad, L.P.; LRW RY, L.P.; ET RY, L.P.; ATW RY, L.P.; KWT Railway, Inc.; Copper Basin Railway, Inc.; and Wilmington Terminal Railroad, Inc.* (not printed), served July 5, 1991, and Finance Docket No. 31948, *K. Earl Durden, Green Bay Packaging, Inc., Rail Management and Consulting Corporation, and Wilmington Terminal Railroad, Inc.—Continuance in Control Exemption—Wilmington Terminal Railroad, L.P., and Georgia Central Railway, L.P.* (not printed), served November 21, 1991.

RMCC, Green Bay, and Durden indicate that: (1) TR and VR will not connect with each other or any other railroad in their corporate family; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. The transaction therefore is exempt from the prior

approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Donald G. Avery, Slover & Loftus, 1224 17th Street, NW., Washington, DC 20036.

Decided: January 23, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-2114 Filed 1-28-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31996 (Sub-No. 1)]

Tomahawk Railway, L.P.—Acquisition and Operation Exemption—Marinette, Tomahawk & Western Railroad Co.

Tomahawk Railway, L.P. (TR), a non-carrier, has filed a notice of exemption to acquire and operate approximately 13.7 miles of rail line in Tomahawk, WI, owned and operated by Marinette, Tomahawk & Western Railroad Company (MTW), a Class III carrier. The transaction was to have been consumed shortly after the December 30, 1991, effective date of the exemption.

This proceeding is related to: Finance Docket No. 31996 (Sub-No. 2), *Valdosta Railway, L.P.—Acquisition and Operation Exemption—Valdosta Southern Railroad Company*, wherein Valdosta Railway, L.P. (VR), concurrently filed a verified notice to exempt its acquisition and operation of a line of railroad in Georgia, and to Finance Docket No. 31996, *Rail Management and Consulting Corporation, Green Bay Packaging, Inc., and K. Earl Durden—Continuance in Control Exemption—Tomahawk Railway, L.P., and Valdosta Railway, L.P.*, wherein Rail Management and Consulting Corporation, Green Bay Packaging, Inc., and K. Earl Durden concurrently filed a verified notice for an exemption to continue to control TR and VR upon their becoming carriers.

Any comments must be filed with the Commission and served on: Donald G. Avery, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 23, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-2115 Filed 1-28-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31996 (Sub-No. 2)]

Valdosta Railway, L.P.—Acquisition and Operation Exemption—Valdosta Southern Railroad Co.

Valdosta Railway, L.P. (VR), a non-carrier, has filed a notice of exemption to acquire and operate approximately 13.5 miles of rail line owned and operated by Valdosta Southern Railroad Company (VSC), a class III rail carrier, in Valdosta, Lowndes County, GA. The transaction was to have been consummated shortly after the December 30, 1991, effective date of the exemption.

This proceeding is related to: Finance Docket No. 31996 (Sub-No. 1), *Tomahawk Railway, L.P.—Acquisition and Operation Exemption—Marinette, Tomahawk & Western Railroad Company*, wherein Tomahawk Railway, L.P. (TR), concurrently filed a verified notice to exempt its acquisition and operation of a line of railroad in Wisconsin; and Finance Docket No. 31996, *Rail Management and Consulting Corporation, Green Bay Packaging, Inc., and K. Earl Durden—Continuance in Control Exemption—Tomahawk Railway, L.P., and Valdosta Railway, L.P.*, wherein Rail Management and Consulting Corporation, Green Bay Packaging, Inc., and K. Earl Durden concurrently filed a verified notice for an exemption to continue to control TR and VR upon the latters' becoming carriers.

Any comments must be filed with the Commission and served on: Donald G. Avery, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-2113 Filed 1-28-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-356X]

Cliffside Railroad Co.—Abandonment Exemption—in Rutherford County, NC; Notice

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its entire system, comprising a 7.84-mile line of railroad: (1) Between milepost 0.00, at Cliffside, and milepost 3.7, at Avondale; and, (2) between milepost 3.7, at Avondale, and milepost 4.14, at Ellenboro, in Rutherford County, NC.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Although in its verified notice applicant agreed to the imposition of the labor protective conditions normally imposed in abandonment exemption proceedings, by supplemental letter filed January 22, 1992, applicant indicates that labor protective conditions should not be imposed here because its entire system is being abandoned. Labor protective conditions will not be imposed consistent with longstanding precedent where a carrier is abandoning its entire system.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 28, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

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[1] A stay will be routinely issued by the Commission in these proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is

Continued

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27)(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 10, 1992.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by February 18, 1992, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

William P. Jackson, Jr., Jackson & Jessup, P.C., P.O. Box 1240, 3426 North Washington Blvd., Arlington, VA 22210.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by February 3, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 23, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–2117 Filed 1–28–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA

In accordance with Department policy 28 CFR 50.7, and pursuant to section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given that a proposed consent decree in *United States* v. *ABCO Industries, Ltd., et al.*, Civil Action No. 6:92–0153–20 was lodged with the United States District Court for the District of South Carolina on January 17, 1992. This agreement resolves a judicial enforcement action brought by the United States against the defendants pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The proposed consent decree provides that the defendants will install a soil vapor extraction system for the in-situ treatment of contaminated soils at the medley Farm Superfund Site in Gaffney, South Carolina. The defendants will also design a system to extract and treat contaminated groundwater beneath and in the vicinity of the Medley Farm Superfund Site. The proposed consent decree also requires the defendants to conduct continuous monitoring to assess the effectiveness of both the soil vapor extraction system and the groundwater extraction and treatment system. The proposed consent decree also requires that the defendants reimburse the Hazardous Substances Superfund in the amount $237,287.23 for costs incurred by the United States Environmental Protection Agency at the Medley Farms Superfund Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication, comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *ABCO Industries, Ltd., et al.*, D.O.J. Ref. 90–11–3–104A

The proposed consent decree may be examined at the offices of the United States Attorney, District of South Carolina, Greenville Division, room 318, Federal Building, 300 East Washington Street, Greenville, South Carolina 29601, at the Office of Regional Counsel, United States Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, and at the offices of the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1535, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC, 20004, 202–347–7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $75.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 92–2071 Filed 1–28–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, and pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that the final proposed Consent Decree in *United States* v. *Fred Webb.*, 89–41–CIV–2–BO, was lodged with the United States District Court for the Eastern District of North Carolina on January 2, 1992. This action was brought by the United States Environmental Protection Agency pursuant to Section 107 of CERCLA, 42 U.S.C. 9607.

United the proposed Consent Decree, Fred Webb, Inc., agrees to pay $540,000 to the United States to resolve the claims of the United States against Webb for environmental response actions taken and to be undertaken at the former FCX, Inc., pesticide blending facility located in Washington, North Carolina. The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Ave., Washington, DC 20530. All coments should refer to *United States* v. *Fred Webb, Inc.*, D.J. Ref. 90–11–3–483.

The proposed Consent Decree may be examined at the office of the United States Attorney, Fourth Floor Federal Building, 310 New Bern Avenue, Raleigh, NC 27611. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Enviornmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. Any

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encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

request for a copy of the proposed Consent Decree should be accompanied by a check in the amount or $3.75 for copying costs ($0.25 per page) payable to "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-2072 Filed 1-28-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984 "Ultra-Low Emissions Engine Program"

Notice is hereby given that, on January 9, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition a the party to its group research project regarding "Ultra-Low Emission Engine Program". The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the SwRI advised that Toyota Motor Corporation (effective December 17, 1991), 1 Toyota-cho, Toyota-shi, Aichi-ken 471, Japan has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the members intend to file additional written notification disclosing all changes in membership.

On November 13, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on December 9, 1991, 56 FR 64276.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-2073 Filed 1-28-92; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984 "Ultra-Low Emission Engine Program"

Correction

In notice document 91-29303 appearing on page 64276 in the issue of Monday, December 9, 1991, in the second column, in the first full paragraph, in the fifth and sixth lines, "Honda R&D Ltd." should read "Honda R&D, Co., Ltd."

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-2074 Filed 1-28-92; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 91-2]

Gilbert L. Franklin, D.D.S., Revocation of Registration

On January 12, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Gilbert L. Franklin, D.D.S., of 4312 W. Market Street, Louisville, Kentucky 40212, (Respondent), proposing to revoke his DEA Certificate of Registration, BF0375368, as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause was issued based on a lack of state authorization to handle controlled substances. Prior to the publication of a final order in the matter, Respondent's Kentucky license to practice dentistry was reinstated. A Superseding Order to Show Cause was issued on December 21, 1990, alleging that Respondent's continued registration would be inconsistent with the public interest.

By letter dated January 21, 1991, Respondent, through counsel, requested a hearing on the issues raised by the Superseding Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held before Judge Bittner in Louisville, Kentucky, on May 21, 1991. On August 19, 1991, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. On September 30, 1991, the administrative law judge transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby adopts the findings, conclusions and recommendations of the administrative law judge and issues his final order in this matter.

The administrative law judge found that the Respondent had been convicted in the Commonwealth of Kentucky of theft by taking of over $100.00, which conviction was based on Medicaid fraud charges; being a felon in possession of a handgun; and, in Tennessee, of five counts of sexual battery, two of the counts specifying that Respondent "had reason to know that [the victim] was physically helpless." The administrative law judge further found that the Department of Health and Human Services had excluded Respondent from participation in the Medicare program for a period of not less than five years. The administrative law judge noted that, while Respondent's license to practice dentistry in the Commonwealth of Kentucky was revoked on May 4, 1988, the license was reinstated with probationary terms on December 19, 1990. These facts are not disputed in the record.

The administrative law judge specifically found that the Respondent offered no explanation or justification for his misconduct, nor did he acknowledge any wrongdoing or produce evidence of rehabilitation. The Respondent clearly failed to demonstrate that his illegal behavior was not likely to recur; therefore, the administrative law judge recommended that the Respondent's Certificate of Registration be revoked. Again, the facts bear out the administrative law judge's findings.

The administrative law judge found that the Government made a prima facie showing of 21 U.S.C. 823(1) and (5), and found that the Government established conduct by the Respondent that would threaten the public health and safety. The Administrator takes particular note of the administrative law judge's citation to 21 U.S.C. 823(f)(5) and 824(a)(5), which make clear that misconduct which does not involve controlled substances may constitute grounds for the revocation of a DEA Certificate of Registration. Quite obviously, the criminal behavior of the Respondent creates a danger to the public even if he is not a registrant with the Drug Enforcement Administration. Further, mandatory exclusion from participation in the Medicare program constitutes an independent ground for revocation pursuant to 21 U.S.C. 824(a)(5).

The Administrator finds that not only was a showing made of Respondent's illegal behavior, but that the behavior of the Respondent indeed posed a threat to the public health and safety. The Respondent clearly is oblivious to the laws and regulations under which he must function as a DEA registrant. The Administrator determines that, based on the evidence in the record, the Respondent's DEA Certificate of Registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him under the provisions of 21 U.S.C. 823

and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BF0375368, previously issued to Gilbert L. Franklin, D.D.S., be and it is hereby, revoked. It is further ordered that any pending applications for renewal of that registration be, and they are hereby, denied.

This order is effective February 28, 1992.

Dated: January 22, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-2068 Filed 1-28-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatement. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours neded to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resouces Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on recordkeeping/requirements which have been submitted to OMB should avise Mr. Mills of this intent at the earliest possible date.

Revision

Employment and Training Administration

Quarterly Determinations, Allowance Activities and Employability Services under the Trade Act; Training Waivers Issued and Revoked; Trade Adjustment Assistance Annual Characteristics and Follow-up Report.

1205-0016.

ETA 563, 9027 9036.

	Form No.	Affected public	Respondents	Average time per Response
ETA 563	State or local governments	45	252	12 mins.
ETA 9027	State or local governments	52	4	15 mins.
ETA 9036	State or local governments	52	1	80 hrs.

6,480 total hours.

Quarterly data on trade adjustment activity is needed for timely program evaluation necessary for competent administration and for providing legally mandate reports to the Congress on the Trade Adjustment Assistance Program. The number of waivers of training issued and revoked by reason are needed quarterly for proper administration and to provide the statutorily required report to the Congress. Annual reports are to follow up workers in training.

Departmental Management

Compliance Informaiton Report (29 CFR part 31 title V) and Nondiscrimination—Handicapped (29 CFR part 32 (section 504)) 1225-0046.

On occasion.

State or local governments; non-profit institutions.

58 respondents; 24 average hours per response; 1,392 hours.

5,285 recordkeepers; 44 average hours per response; 232,534 hours.

Total burden hours 233,926.

The Directorate of Civil Rights has been delegated responsibility for enforcing equal opportunity and nondiscrimination laws pertaining to programs and activities that benefit from Department of Labor financial assistance. To ensure that services are provided equitably, various equal opportunity regulatory provisions require grantees to collect, maintain and report beneficiary characteristics data.

Extension

Employment Standards Administration

29 CFR part 516—Records to be kept by Employers.

1215-0017.

Recordkeeping.

Individuals or households; State or local governments; farms; businesses or other for profit; Federal agencies or employees; small businesses or organizations.

3.6 million recordkeepers; 654,937 total hours; 1 hour per recordkeeper.[1]

These records are maintained in order that employer compliance with Fair Labor Standards Act can be determined by the U.S. Department of Labor.

[1] Average hours per recordkeeper was calculated based on a percentage of private and public sector employees.

Signed at Washington DC this 22nd day of January, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92-2151 Filed 1-28-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Partnership Grants I Section) to the National Council on the Arts will be held on February 19-20, 1992 from 9 a.m.-5:30 p.m. and February 21 from 9 a.m.-3 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on February 19 from 9 a.m.-3 p.m. and February 21 from 10:45 a.m.-1:30 p.m. The topics will be welcoming remarks, panelist orientation, guidelines review and policy discussion.

The remaining portions of this meeting on February 19 from 3 p.m.-5:30 p.m., February 20 from 9 a.m.-5:30 p.m., and February 21 from 9 a.m.-10:45 a.m. and 1:30 p.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: January 16, 1992.

Yvonne M. Sabine,

Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-2075 Filed 1-23-92; 8:45 am]

BILLING CODE 7537-01-M

Arts in Education Advisory Panels; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Partnership Grants II Section) to the National Council on the Arts will be held on February 26-27, 1992 from 9 a.m.-5:30 p.m. and February 28 from 9 a.m.-3 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on February 26 from 9 a.m.-3 p.m. and February 28 from 10:45 a.m.-1:30 p.m. The topics will be welcoming remarks, panelist orientation, guidelines review and policy discussion.

The remaining portions of this meeting on February 26 from 3 p.m.-5:30 p.m., February 27 from 9 a.m.-5:30 p.m. and February 28 from 9 a.m.-10:45 a.m. and 1:30 p.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of the Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: January 16, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-2076 Filed 1-28-92 8:45 am]

BILLING CODE 7537-1-M

Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Audience Development Section) to the National Council on the Arts will be held on February 19-21, 1992 from 9 a.m.-5 p.m. in room 516 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 21 from 1 p.m.-2 p.m. The topics will be guidelines review and policy discussion.

The remaining portions of this meeting on February 19-20 from 9 a.m.-5 p.m. and February 21 from 9 a.m.-1 p.m. and 2 p.m.-5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532,

TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: January 16, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-2077 Filed 1-28-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Proposed Availability of FY 92 Funds for Financial Assistance (Grants) to Support Research at Educational Institutions and the Exchange of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research, announces proposed availability of Fiscal Year (FY) 92 funds to support a limited number of research grants to educational institutions. These funds may also be used to support professional meetings and conferences for the exchange and transfer of research concepts and findings related to the safety of nuclear power production.

The FY 92 ceiling for research grants to educational institutions is approximately $1,440,000.00. Of this amount, approximately $797,000.00 will be available for new grants. Because of this limitation, proposed grant budgets should be restricted to about $50,000.00 per year, with total project funding not exceeding $100,000.00 over a two-year period. Proposals for new FY 92 research grants should be submitted between the date of this Notice and March 13, 1992. Proposals received after March 13, 1992 will be considered for FY92 funding to the extent practicable.

ADDRESS: Nuclear Regulatory Commission, ATTN: Grants Officer, Mail Stop P-841, Division of Contracts and Property Management, Office of Administration, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Leslie Mills or Dennis Tarner on (301) 492-7054.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1990, the Nuclear Regulatory Commission (NRC) published in the **Federal Register** a notice that announced the proposed availability of FY 91 funds for the NRC Grant Program. The NRC is revising that notice to provide information on their grant program for FY 92.

Scope and Purpose of This Announcement

Pursuant to section 31.a and 141.b. of the Atomic Energy Act of 1954, as amended, the NRC's Office of Nuclear Regulatory Research proposes to support educational institutions, nonprofit entities, state and local governments, and professional societies through providing funds for expansion, exchange and transfer of knowledge, ideas, and concepts directed toward the NRC safety research program. The program includes, but is not limited to, support of professional meetings and conferences. In addition, the NRC has a limited amount for research grants to educational institutions (see topics below). The FY 92 ceiling for these grants is approximately $1,440,000.00 with approximately $797,000.00 of this amount available for new grants.

The purpose of this program is to stimulate research to provide a technological base for the safety assessment of system and subsystem technologies used in nuclear power applications. The results of this program will be to increase public understanding relating to nuclear safety, to pool the funds of theoretical and practical knowledge and technical information, and ultimately to enhance the protection of the public health and safety. In addition, each grant to an educational institution should contain elements which will potentially benefit the graduate research program of the institution, e.g., graduate student training.

The NRC encourages educational institutions to submit research grant proposals in the following areas:

1. Predictive modeling for thermal stratification, thermal, striping and flow-induced vibration in plant fluid systems.
2. Advantages and disadvantages of cooling water addition to a degraded core.
3. Behavior of hot hydrogen while exiting a break in the primary pressure boundary.
4. Modeling and experimentation on two-phase flow, interfacial relations, and heat transfer in reactor coolant systems.
5. Evaluation of severe accident phenomena including: High temperature chemistry of fission product and reactor fuel and structural materials, advanced modeling of the behavior of fluids, combustible gases and molten core materials in reactor primary systems during severe accidents.
6. Advanced demographic models or statistical methods to predict population density and distribution around future power reactor sites.
7. Interaction of reactor materials at very high temperature (e.g., core/concrete, core debris/vessel component interactions).
8. Evaluation of the risk reduction effectiveness of human factors requirements in nuclear power plant operations and maintenance.
9. Methods for applying the growing pool of human performance data to nuclear power plant safety requirements.
10. Development of methods for Risk Reliability Analysis of closed loop control systems, including advanced digital based control system.
11. Develop and codify pragmatic, statistically valid, methods for updating severe accident frequency and consequence analysis to reflect results of new operational, experimental, and calculation data.
12. Develop merit of methods and procedures for establishing the degree to which Probabilistic Risk Assessment (PRA) results compare with operational data and experience.
13. Development of methods to analyze and understand the aging effects, including irradiation damage effects, improved examination and testing methods for determining the condition of structures and components, and methods to assess residual lifetime of structures and components.
14. Development of nondestructive testing methods for in-situ evaluation of material properties and property degradation due to aging, such as fracture toughness and fatigue.
15. Development of approaches to assure that corrosion damage has not significantly reduced the capacity of containment structures at nuclear power plants.
16. Development of methods of assuring integrity of the primary system, i.e., pressure vessels, piping steam generator tubing, such as advanced nondestructive testing techniques, continuous monitoring techniques and fracture analysis procedures.
17. Development of methods to establish and validate decommissioning criteria and effects of water chemistry on the primary system integrity.
18. Development and/or validation of models to explain the tectonics of the

Central and Eastern United States (East of 106 degrees W).

19. Development and/or validation of models is to predict the propagation of seismic ground motions in the Central and Eastern United States or in a shallow soil column.

20. Investigations/studies including field observations of the paleoseismicity of the Central and Eastern United States.

21. Development of rapid bioassay analysis techniques for application to accidental internal exposure situation.

22. Natural analog studies of long-term stability of waste forms for low- and high-level nuclear waste.

23. Studies of volcanism in the Basin and Range.

24. Simplified modeling of thermohydrologic phenomena in high-level waste geological repositories.

25. Investigations of coupled tectonic-hydrological processes.

26. Development of a continuum approach for modeling unsaturated fractured rock.

27. Development of improved instrumentation or techniques for measuring activities, radiation dose, and dose rates, especially from small radioactive particles.

28. Development of methods for contamination prevention, measurement, and control.

29. Development of improved radiological air sampling methodology.

30. Research on the metabolism of radionuclides and their compounds relative to the calculation of internal dose.

31. Development of condensation model for systems codes such as RELAP5/MOD3 or TRAC—PF1/MOD2 for two cases: with and without condensible gases.

32. Investigation of radiation induced effects at the cellular/molecular levels emphasizing the reduction of uncertainties in risk of deleterious health effects from low-level radiation.

33. Validation of approaches to quantitatively assess human health effects of radiation, including new approaches to analyses of human epidemiological studies and experimental animal studies.

34. Studies of status, availability and accuracy of radiation measurements around and related to landfills, including establishment of baseline environmental dose rates.

35. Techniques to simplify the measurement of parameters used in pathway modeling.

36. Analysis of effectiveness of decontamination technologies for land, structures, recycling materials and equipment and their individual comparative costs to the envrionment.

37. Natural analog studies applicable to the assessment of long term performance of natural and engineered components of high-level and low-level radioactive waste disposal systems.

38. Studies of volcanism, tectonics, and other large scale geologic processes in the Basin and Range within the last ten million years (e.g., temporal and spatial history of volcanic events; volcanic hydo-thermalism; applications of seismic tomography).

39. Simplified modeling of thermohydrologic phenomena in high-level waste geological repositories.

40. Investigations of coupling between hydrologic, thermal, chemical, and/or mechanical processes as they effect the simulation of high-level waste repository performances.

41. Development of a continuum approach to modeling unsaturated, fractured rock.

42. Improved techniques for dating geologic formations and events for the period from one hundred to ten million years.

43. Studies of the thermodynamics and/or kinetics of the formation and alteration of solids controlling the release of HLW and LLW radionuclides.

Eligible Applicants

Educational institutions, nonprofit entities, State and Local governments, and professional societies are eligible to apply for a grant under this announcement.

Factors Generally Indicating Support Through Grants

The NRC's benefit from the results of grants should be no greater than for other interested parties, i.e., the public must be the primary beneficiary of the work performed. Surveys, studies, or research which provide specific information or data necessary for the NRC to exercise its regulatory or research mission responsibilities will not be funded by a grant. Applicants requesting support for work which has a direct regulatory application should submit their requests as an unsolicited proposal for consideration as a contract rather than a grant.

1. The primary purpose of NRC grants is to support the development of knowledge or understanding of the subject or phenomena under study.

2. The exact course of the work and its outcome are usually not defined precisely, and specific points in time for achievement of significant results need not be specified.

3. The NRC desires that the nature of the proposed investigation be such that the recipient will bear prime responsibility for the conduct of the research and exercise judgment and original thought toward attaining the scientific goals within broad parameters of the proposed research areas and the resources provided.

4. Meaningful technical reports (as distinguished from Semi-Annual Status Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule.

5. Simplicity and economy in execution and administration are mutually desirable.

Proposal Format

Proposals should be concise and provide a thorough understanding of the proposed project. Neither unduly elaborate applications nor voluminous supporting documentation is desired.

State and local governments shall submit proposals utilizing the standard forms specified in Office of Management and Budget (OMB) Circular A–102 (Revised), Paragraph 6.c). Nonprofit organizations, universities, and professional societies shall submit proposals utilizing the standard forms stipulated in OMB Circular A–110, (Attachment M).

The format used for project proposals should give a clear presentation of the proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exception.

1. *Cover Page.* The Cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

Title of Proposal.—To include the term "research, "study," "conference," "symposium," "workshop," or other similar designation to assist in the identification of the project;

Location and Dates for Conferences, Symposium, Workshop, etc.;

Names of Principal Researchers or Participants;

Total Cost of Proposal; (Identify Cost by Fiscal Year)

Period of Proposal;

Organization or Institution and Department;

Required Signatures:

Principal Participants:

Name:_____
Date:_____
Address:_____
Telephone No.:_____

Required Organization Approval:

Name:_____
Date:_____
Address:_____
Telephone No.:_____

Organization Financial Officer:

Name:
Date:
Address:
Telephone No.:

2. *Project Description.* Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding. Applicants must identify other possible sources of financial support for a particular project, and list those sources from which financial support has been or will be requested.

The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project description:

(a) *Project Goals and Objectives.* The project's objectives must be clearly and unambiguously stated. The proposal should justify the project including the problems it intends to clarify and the development it may stimulate.

(b) *Project Outline.* The proposal should show the project format and agenda, including a list of principal areas or topics to be addressed.

(c) *Project Benefits.* The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will accrue.

(d) *Project Management.* The proposal should describe the physical facilities required for the conduct of project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) *Project Costs.* Nonprofit organizations shall adhere to the cost principles set forth in OMB Circular A–122. Educational instructions shall adhere to the cost principles set forth in OMB Circular A–21, and state and local government shall adhere to the cost principles set forth in OMB Circular A–87.

The proposal must provide a detailed schedule of project costs, identifying in particular—

(1) *Salaries*—in proportion to the time or effort directly related to the project;

(2) Equipmemt (rental only);

(3) Travel and Per Diem/Subsistence in relation to the project;

(4) Publication Costs;

(5) Other Direct Costs (specify)—e.g., supplies or registration fees;

Note:—Dues to organizations, federations or societies, exclusive of registration fees, are not allowed as a charge.

(6) Indirect Costs (attached negotiated agreement/cost allocation plan); and

(7) Supporting Documentation. The supporting documentation should contain any additional information that will strengthen the proposal.

Proposal Submission and Deadline

This notice is valid for Federal Government Fiscal Year 92 (October 1, 1991 to September 30, 1992). Potential grantees are advised, however, that due to the limited funding available for new research grants to educational institutions, such proposals received after March 13, 1992, will be considered for FY92 funding to the extent practicable.

Funds

For Fiscal Year 92, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, anticipates making a total of approximately $1,440,000.00 available for funding research grants to educational institutions. Of this amount, approximately $797,000.00 will be available for new research grants in FY 92. Because of this limitation, proposed grant budgets should be restricted to about $50,000.00 per year, with total project funding not exceeding $100,000.00 over a period of two years.

Evaluation Process

All proposals received as a result of this announcemenmt will be evaluated by an NRC review panel.

Evaluation Criteria

The award of NRC grants is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Evaluation of proposals for research projects will employ the following criteria. No level of importance is implied by the order in which these criteria are listed.

1. Adequacy of the research design.
2. Scientific significance of proposal.
3. Technical adequacy of the investigators and their institutional base.
4. Relevance to a research area(s) described above.
5. Reasonableness of estimated cost in relation to the work to be performed and anticipated result.
6. Potential benefit of the project to the overall benefit of the institution's graduate research program.

Evaluation of proposals for professional meetings, conferences, symposia, etc., will employ the following criteria:

1. Potential usefulness of the proposed project for the advancement of scientific knowledge.
2. Clarity of statement of objectives, methods, and anticipated results.
3. Range of issues covered by the meeting agenda.
4. Qualifications and experience of project speakers.
5. Reasonableness of estimated cost in relation to anticipated results.

Disposition of Proposals

Notification of award will be made by the Grants Officer, and organizations whose proposals are unsuccessful will be so advised.

Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to (Grant application packages, Standard Form 424, must be requested in writing): U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Mail Stop P–841, Office of Administration, Washington, DC 20555.

The address for hand-carried applications is: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Office of Administration, Mail Stop P–841, 7920 Norfolk Avenue, Bethesda, MD 20814.

Note: Upon delivery of the application to the NRC guard desk (at the above address), the guard should be requested to telephone the Division of Contracts and Property Management (Extension 27054) for a pick-up of the application.

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applicants.

Dated at Bethesda, MD this 23rd day of January, 1992.

For the U.S. Nuclear Regulatory Commission.

Ronald D. Thompson,

Grants Officer, Division of Contracts and Property Management, Office of Administration.

[FR Doc. 92–2131 Filed 1–28–92; 8:45 am]

BILLING CODE 7590–01–M

ACNW Working Group on Systems Analysis Approach to Reviewing the Overall High-Level Waste Program; Notice of Meeting

The ACNW Working Group on Systems Analysis Approach to Reviewing the Overall High-Level Waste Program will hold a meeting on

February 19–20, 1992, 7920 Norfolk Avenue, Bethesda, Maryland. The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 19, 1992—8:30 a.m. until the conclusion of business (Room P–422)

Thursday, February 20, 1992—8:30 a.m. until 1 p.m. (tentative) (Room P–110)

The Working Group will discuss the feasibility of systems-analysis approach to reviewing the overall high-level waste program, including the short and mid-range technical milestones for handling high-level waste.

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group Chairman; written statements will be accepted and made available to the Working Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the ACNW Working Group, their consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Howard J. Larson, ACNW (telephone 301/492–7707) between 8 a.m. and 5:30 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 22, 1992.

R. K. Major,

Chief Nuclear Waste Branch.

[FR Doc. 92–2133 Filed 1–28–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Joint Subcommittee on Materials and Metallurgy/Maintenance Practices and Procedures; Notice of Meeting

The Subcommittees on Materials and Metallurgy/Maintenance Practices and Procedures will hold a meeting on February 13, 1992, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, February 13, 1992—8:30 a.m. until the conclusion of business

The Subcommittees will discuss the ASME Risk-Based Inspection Guidelines.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 22, 1992.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–2134 Filed 1–28–92; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.67, "Standard Format and Content for Emergency Plans for Fuel Cycle and Materials Facilities," provides guidance acceptable to the NRC staff on the information to be included in emergency plans for fuel cycle and materials facilities, and it establishes a format for presenting the information.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing

NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 8th day of January 1992.

For the Nuclear Regulatory Commission.

Themis P. Speis,

Deputy Director for Research, Office of Nuclear Regulatory Research.

[FR Doc. 92-2132 Filed 1-28-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology, Meeting

The President's Council of Advisors on Science and Technology will meet on February 6, 1992. The meeting will begin at 9 a.m. in the Conference Room, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC. The meeting will conclude at approximately 5 p.m.

The purpose of the Council is to advise the President on matters involving science and technology.

Proposed Agenda

1. Briefing of the Council on the current activities of the Office of Science and Technology Policy.
2. Briefing of the Council on current Federal activities and policies in science and technology.
3. Discussion of progress of working group panels.

Portions of the February 6 session will be closed to the public.

A portion of the briefings on current federal activities and policies in science and technology will require discussion of budget preparation of the Executive Office of the President and other Federal agencies which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. Also, a portion of the discussion of panel progress will necessitate discussion of information which is formally classified in the interest of national security. Accordingly, these portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1), (2), and (9)(B).

Because of the security requirements, persons wishing to attend the open portion of the meeting should contact Ms. Ann Barnett (202) 395-4692, prior to 3 p.m. on February 5, 1992. Ms. Barnett is available to provide specific information regarding time, place, and agenda.

Dated: January 15, 1992.

Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 92-2171 Filed 1-28-92; 8:45 am]

BILLING CODE 3170-01-M

Panel on High Performance Computing and Communications of the President's Council of Advisors on Science and Technology; Meeting

The Panel on High Performance Computing and Communications of the President's Council of Advisors on Science and Technology (PCAST) will meet on February 7, 1992. The meeting will begin at 9 a.m. in room 180 of the Old Executive Office Building, Washington, DC. The meeting will conclude at approximately 5 p.m.

The purpose of the panel is to advise the PCAST on issues related to high performance computing and communications that have a bearing on long-range national goals, government relation, the transition of Federal programs to industry, and on foreign access.

Proposed Agenda

1. Briefing of the panel by expert witnesses from industry on high performance computing and communication issues.
2. Briefing of the panel by agency personnel on ongoing Federal activities in high performance computing and communications.

The February 7 meeting will be closed to the public.

The briefing on some of the current Federal activities necessarily will involve discussion of materials that are formally classified in the interest of national defense or for foreign policy reasons. A portion of these briefings will also require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. Finally, the briefings will necessarily include discussion of potentially sensitive proprietary information. Therefore, the meeting will be closed to the public pursuant to *5 U.S.C. 552b(c) (1), (2), and (9)(B).*

Dated: January 23, 1992.

Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 92-2172 Filed 1-28-92; 8:45 am]

BILLING CODE 3170-70-M

POSTAL RATE COMMISSION

[Order No. 916; Docket No. A92-6]

Village, Virginia 22570 Ed King, Petitioner; Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued January 22, 1992.

Docket Number: A92-6.

Name of Affected Post Office: Village, Virginia 22570.

Name of Petitioner: Ed King.

Type of Determination: Closing.

Date of Filing of Appeal Papers: January 15, 1992.

Categories of Issues Apparently Raised: 1. Effect on the community (39 U.S.C. 404(b)(2)(A)); 2. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders

(A) The record in this appeal shall be filed on or before January 30, 1992.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

January 15, 1992.—Filing of Petition
January 22, 1992.—Notice and Order of Filing of Appeal
February 10, 1992.—Last day for filing of petitions to intervene (*see* 39 CFR 3001.111(b))
February 20, 1992.—Petitioner's Participant Statement or Initial Brief (*see* 39 CFR 3001.115(a) and (b))
March 11, 1992.—Postal Service Answering Brief (*see* 39 CFR 3001.115(c))
March 26, 1992.—Petitioner's Reply Brief should petitioner choose to file one (*see* 39 CFR 3001.115(d))
April 2, 1992.—Dead for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116)

May 14, 1992.—Expiration of 120-day decisional schedule (*see* 39 U.S.C. sec. 404(b)(5))

[FR Doc. 92-2089 Filed 1-28-92; 8:45 am]
BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act Release No. 30287; File No. 265-17]

Securities and Exchange Commission Market Oversight and Financial Services Advisory Committee; Meeting and Request for Public Comment

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission Market Oversight and Financial Services Advisory Committee.

SUMMARY: This is to give public notice that the Securities and Exchange Commission Market Oversight and Financial Services Advisory Committee will conduct a meeting on February 5, 1992, at 8:30 a.m. in room 1C30 at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. The meeting will be open to the public. This notice also serves to invite the public to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265-17. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Thomas Selman, Special Counsel, or Miriam Goldstein, Attorney, (202) 272-2428, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, 10(a), and the regulations thereunder, the Chairman has ordered publication of this notice that the Securities and Exchange Commission Market Oversight and Financial Services Advisory Committee will conduct a meeting on February 5, 1992, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, beginning at 8:30 a.m. This meeting will be open to the public. This will be the second meeting of the Advisory Committee. The purpose of the meeting will be to discuss small business initiatives and improvements to the regulation of financial markets. The Committee will consider issues relating to capital formation, systemic risk evaluation, and other matters regarding the financial markets.

The Chairman has determined that this meeting should be held sooner than fifteen days after publication of this notice in the **Federal Register** in view of prior scheduling commitments of the Committee members and Commissioners.

Dated: January 27, 1992.

Jonathan G. Katz,

Advisory Committee Management Officer.

[FR Doc. 92-2271 Filed 1-27-92; 12:24 pm]
BILLING CODE 8010-01-M

[Release No. 34-30281; File No. SR-NASD-91-62]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Exemption From the Filing Requirements of the Corporate Financing Interpretation

January 22, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 22, 1991, and December 16, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change and amendment [1] thereto as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to the filing requirements of the Interpretation of the Board of Governors—Review of Corporate Financing, Article III, Section 1 of the Rules of Fair Practice (the "Corporate Financing Interpretation"). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

[1] In Amendment No. 1 to rule filing SR-NASD-91-62, the NASD deleted proposed changes to the rule language of paragraph (1) to the exemptions from the Filing Requirements of the Interpretation as unnecessary. See discussion below in connection with Form F-9.

Interpretation of the Board of Governors—Review of Corporate Financing

Article III, Section 1 of the Rules of Fair Practice

* * * * *

Filing Requirements

* * * * *

Documents related to the following public offerings need not be filed with the Association for review, unless subject to the provisions of Schedule E to the By-Laws, provided, however, it shall be deemed a violation of Article III, Section 1 of the Rules of Fair Practice, or Appendix F to Article III, Section 34 of the Rules of Fair Practice if a direct participation program, for a member to participate in any way in such offerings if the underwriting or other arrangements in connection with the offering are not in compliance with this Interpretation or Appendix F, as applicable:

(1) securities offered by a corporate, foreign government or foreign government agency issuer which has non-convertible debt with a term of issue of at least four (4) years, or non-convertible preferred securities, rated by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories;

(2) securities registered with Securities and Exchange Commission on registration statement Forms S-3, *F-3 or F-10 (only with respect to Canadian issuers)* and offered pursuant to Rule 415 adopted under the Securities Act of 1933, as amended;

(3) securities offered pursuant to a redemption standby "firm commitment" underwriting arrangement registered with the Securities and Exchange Commission on Forms S-3, *F-3 or F-10 (only with respect to Canadian issuers)*; and

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On May 30, 1991, the Securities and Exchange Commission and the Canadian provinces of Quebec and Ontario adopted rules, forms and schedules effective July 1, 1991, to

facilitate cross-border offerings of securities and continuous reporting by specified Canadian issuers (the "Multi-Jurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuer's" or "MJDS"). SEC Rel. No. 33-6902 (June 21, 1991). In order to facilitate the SEC's efforts to facilitate cross-border offerings of securities under the MJDS, and NASD is proposing to amend the exemptions from the filing requirements in the Corporate Financing Interpretation to recognize new SEC Forms F-9 and F-10 for Canadian private and crown corporations. The NASD is simultaneously filing a proposed rule change to make the same amendments to the Corporate Financing Rule pending at the SEC in SR-NASD-91-19, consistent with the different provisions therein.[2]

Form F-9: A Canadian private or crown corporation relying on Form F-9 must have a reporting history with Canadian securities authorities of at least 36 months. Form F-9 is available to companies that are offering nonconvertible debt and nonconvertible preferred stock which, at the time of effectiveness of the registration statement, is recognized as investment grade by at least one nationally recognized rating organization. The Corporate Financing Interpretation currently includes in paragraph (1) to the exemption provisions of the Filing Requirements an exemption for offerings of securities by an issuer that has nonconvertible debt with a term of issue of at least four years or nonconvertible preferred securities rated investment grade. The NASD stated in its Notice to Members 91-34 (June 1991), requesting comment on the proposed rule change, that "The NASD has also interpreted this exemption to cover a current offering of investment-grade-rated debt or preferred securities."

The NASD believes that offerings of investment-grade-rated nonconvertible debt and nonconvertible preferred securities on Form F-9 (and Form F-10) would be exempt from the filing requirements of the Corporate Financing Interpretation under current paragraph (1) thereof. In rule filing SR-NASD-84-27, proposing to adopt the exemption in paragraph (1), the NASD stated "The exemption is proposed to be available to corporate issuers which include private corporations in the United States and foreign private corporations." Canadian corporate issuers are, therefore, already permitted to rely on this exemption. Moreover, a specific reference to a Canadian crown corporation is unnecessary as this type of entity comes within the categories of "foreign government" or "foreign government agency" issuers that may rely on the exemption provided by paragraph (1). In addition, a Canadian issuer is permitted to use Form F-9 to issue debt or preferred stock that is convertible if such convertibility does not occur prior to one year from the date of issuance and the issuer has total market value of its common stock of at least (CN) $180 million and a public float of at least (CN) $75 million. These offerings would not be exempt from the filing requirements of the Corporate Financing Interpretation unless the Canadian issuer can meet the requirements of paragraph (1) to the exemption provisions of the Filing Requirements, i.e., that the issuer have outstanding investment grade rated unsecured non-convertible debt with a term of issue of at least four years or investment grade rated unsecured non-convertible preferred securities.

Form F-10: All other securities offered for cash, or in connection with business combinations and exchange offers that cannot be registered on Form F-9 may be registered on Form F-10 by issuers with common stock with a value of at least (CN) $360 million and a public float of at least (CN) $75 million. The form is also limited to issuers that have a reporting history with Canadian authorities of at least 36 months.

The NASD is proposing to amend paragraphs (2) and (3) to the exemption provisions of the Filing Requirements of the Corporate Financing Interpretation to exempt offerings registered with the SEC on Form F-10 from the Corporate Financing Rule filing requirements if the securities are offered pursuant to Rule 415 or the securities are offered pursuant to a redemption standby "firm commitment" underwriting arrangement.

The SEC stated in the adopting release of the MJDS that it hoped to expand the concept to other countries. The NASD is concerned that, while Form F-10 is currently limited to offerings by Canadian issuers, it is possible that it may be amended to be available to offerings by issuers of other foreign countries. The NASD is, therefore, also proposing to limit the availability of the exemption to be provided by paragraphs (2) and (3) for offerings on Form F-10 only to Canadian issuers in order to specifically address at the time of an amendment to Form F-10 the applicability of the filing requirements to offerings by issuers from non-Canadian foreign countries.

Miscellaneous Amendment: The NASD is also proposing to amend paragraph (3) to the exemption provisions of the Filing Requirements to exempt offerings on Form F-3. The exemption for offerings registered with the SEC on Form F-3 was excluded through an oversight from the exemption provided by paragraph (3). This proposed change is consistent with the NASD's long-standing position that those exemptions available to domestic issuers qualified to register on Form S-3 are also available to foreign issuers qualified to register on Form F-3.

(b) The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed rule change will promote just and equitable principles of trade and in general protect investors and the public market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change to the filing requirements of the Corporate Financing Interpretation was published for comment in Notice to Members 91-34 (June 1991). No comments were received in response thereto.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

[2] This notice shall serve as notice of Amendment No. 1 to SR-NASD-91-19.

Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 19, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2122 Filed 1-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30279; File No. SR-NASD-91-65]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Permitting Direct Participation Program Principals and Representatives to Offer and Sell Direct Participation Program Debt

January 22, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 27, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Parts II and III of Schedule C to the NASD By-Laws to permit Direct Participation Program ("DPP") Principals and Representatives to offer and sell direct participation program debt. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Schedule C to the NASD By-Laws

Part II—Registration of Principals

* * * * *

(2) Categories of Principal Registration.

* * * * *

(e) Limited Principal—Direct Participation Programs.

(i) Each person associated with a member who is included within the definition of principal in Part II, Section (1) hereof, may register with the Corporation as a Limited Principal—Direct Participation Programs if:

a. his activities in the investment banking and securities business are limited solely to *the equity interests in or the debt of* direct participation programs as defined in Part II, Section (2)(e)(ii) hereof: and

* * * * *

Part III—Registration of Representatives

* * * * *

(2) Categories of Representative Registration

* * * * *

(c) Limited Representative—Direct Participation Programs.

(i) Each person associated with a member who is included within the definition of a representative in Part III, Section (1) hereof, may register with the Corporation as a Limited Representative—Direct Participation Programs if:

a. his activities in the investment banking and securities business are limited *solely* to the solicitation, purchase and/or sale of *equity interest in or debt of* direct participation programs as defined in Part II, Section (2)(e)(ii) hereof: and.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to amend parts II and III of Schedule C to the NASD's By-Laws to permit persons who are registered as DPP Principals and Representatives to offer and sell direct participation program debt instruments.

It has come to the NASD's attention that DPP synicators are offering debt securities of DPP's to pension plans and other institutional accounts which are considered "qualified plans" under the Employee Retirement and Income Security Act ("ERISA"). The NASD is informed that syndicators are offering such debt instruments in order to avoid having distributions classified as "unrelated business taxable income" under Internal Revenue Service regulations.

Schedule C currently allows a person to qualify to sell all types of securities (except options) by passing the Series 7 examination or to qualify to sell a specific category of security by passing a more limited examination such as the Series 22 (DPP Examination). The current definition of direct participation programs contained in Schedule C does not specify debt securities as instruments which a DPP registered person is permitted to sell.

Nevertheless, while DPP salesman must be familiar with the structure and tax consequences of a DPP offering, selling a DPP debt security does not require general market knowledge or knowledge of the debt securities market because the DPP debt security is typically sold to retirement plans that intend to hold the security to maturity Consistent with this position the proposed rule change would not permit a DPP registered person to buy or sell DPP debt securities in the secondary market. The NASD believes that there is no discernible difference between the knowledge required for the initial sale of debt and equity instruments issued by a DPP and, accordingly believes that DPP principles and representatives should be permitted to offer and sell such instruments.

The NASD is, therefore, proposing to amend part II, section 2(e)(i)a and part III, section 2(c)(i) a of Schedule C to add language specifying that a person may register as a DPP Principal or Representative, respectively, if their securities activities are "limited solely to the solicitation, purchase and/or sale of *equity interests in or the debt of* direct participation programs * * *." This change would specify that the sale of both DPP equity and debt instruments is permissible under the limited DPP registrations.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(3) of the Act in that the proposed rule change allows persons engaged in specific types of activity (the offer and sale of DPP debt instruments) to become associated with NASD members without being

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[1] The NASD filed Amendment No. 1 on December 18, 1991, which made technical changes to this filing. This amendment is available for inspection and copying in the Public Reference Room.

required to pass the more extensive Series 7 examination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants, or Others

Comments were neither solicited nor received

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 19, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2124 Filed 1-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30260; File No. SR-NYSE-91-38]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to the Addition of Rules 704, 705, 780.10(b), 80A(c) and (d), and 116.30 to Rule 476A and Amending the Minor Rule Violation Enforcement and Reporting Plan

January 22, 1992.

I. Introduction

On November 6, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to sections 19(b)(1) and (d)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rules 19b-4 and 19d-1(c)(2) thereunder,[2] a proposed rule change to add NYSE Rules 704, 705, 780.10(b), 80A(c) and (d), and 116.30 to both NYSE Rule 476A, the List of Exchange Rule Violations and Fines Under Rule 476A ("Rule 476A List"), and the Exchange's minor rule violation enforcement and reporting plan ("minor rule violation plan").[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 29955 (November 18, 1991), 56 FR 59311 (November 25, 1991). No comments were received on the proposal.

SEC Rule 19d-1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations.[4] In this regard, the NYSE adopted a minor rule violation plan,[5] now embodied in NYSE Rule 476A, which provides that the Exchange may designate violations of certain rules as minor rule violations and issue summary fines in lieu of commencing a full disciplinary proceeding before a hearing panel.[6] Accordingly, the NYSE is relieved of the current reporting requirements of section 19(d)(1) with respect to disciplinary action taken pursuant to the Exchange's minor rule violation plan.

Moreover, the Commission approved NYSE Rule 476A,[7] which provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.[8] Specifically, the Exchange will fine an individual $500, $1,000 or $2,500, and a member organization $1,000, $2,500 or $5,000, respectively, of first, second and subsequent violations within a rolling twelve month period of any rules on the Rule 476A List.[9] The Commission approved several amendments to this list, adding new or existing NYSE rules that are appropriate for summary disciplinary procedures.[10]

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[1] 15 U.S.C. 78s(b)(1) and (d)(1) (1988).

[2] 17 CFR 240.19b-4 and 240.19d-1(c)(2) (1991).

[3] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated November 8, 1991, requesting approval to amend the Exchange's 19(d)(1) minor rule violation plan.

[4] See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (order approving amendments to paragraph (c)(2) of Rule 19d-1under the Act). A self-regulatory organization ("SRO") is required, pursuant to paragraph (c)(1) of Rule 19d-1, to file promptly with the Commission any final disciplinary action taken by the SRO. However, paragraph (c)(2) of Rule 19d-1 establishes that minor rule plan determinations are not final, thereby permitting the SRO to report on a periodic, as opposed to immediate, basis.

[5] See Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (approving File No. 4-284).

[6] See NYSE Rule 476.

[7] See Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (approving File No. SR-NYSE-84-27).

[8] A list of the NYSE rules subject to Exchange Rule 476A procedures and the corresponding fine schedule were attached to the rule filing as Exhibit A. Both are contained under Supplementary Material to NYSE Rule 476A and are available at the Commission and the NYSE.

[9] In accordance with SEC Rule 19d-1(c)(2), fines in excess of $2,500, assessed under NYSE Rule 476A, are not considered pursuant to the minor rule violation plan and are thus subject to the current reporting requirements of section 19(d)(1) of the Act.

[10] See Securities Exchange Act Releases No. 22490 (October 2, 1985), 50 FR 41084 (order granting accelerated approval to File No. SR-NYSE-85-30); No. 23104 (April 11, 1986), 51 FR 13307 (approving File No. SR-NYSE-86-12); No. 24965 (October 5, 1987), 52 FR 41643 (approving File No. SR-NYSE-86-21); No. 25763 (May 27, 1988), 53 FR 20825 (approving File No. SR-NYSE-87-10); No. 27702 (February 12, 1990), 55 FR 6139 (approving pilot of 5 rules until October 5, 1990, File No. SR-NYSE-90-04); No. 27878 (April 4, 1990), 55 FR 13345 (approving File No. SR-NYSE-89-44); No. 28003 (May 8, 1990), 55 FR 20004 (approving File No. SR-NYSE-90-09); No. 28505 (October 2, 1990), 55 FR 41288 (permanently approving File No. SR-NYSE-90-04); No. 28995 (March 21, 1991), 56 FR 12967 (approving File No. SR-NYSE-91-04).

According to the Exchange, the purpose of NYSE Rule 476A is to provide a process to govern minor rule violations that necessitate a meaningful sanction, but do not require a more costly and time-consuming Rule 476 disciplinary proceeding in view of the minor nature of the violation.[11] The Exchange believes that the specific, required procedures of Rule 476A preserve the due process rights of the accused party.[12]

II. Proposal

The NYSE proposes to add to the Rule 476A List and the Exchange's minor rule violation plan the following three rules pertaining to options: Rule 704, which imposes option position limits; Rule 705, which prescribes option exercise limits; and Rule 780.10(b), which requires the delivery of an "exercise advice" to the Exchange for option exercises of a certain size.

In addition, the Exchange is seeking approval to add Exchange Rules 80A(c) and (d) and 116.30 to the Rule 476A List. Rule 80A establishes requirements for execution of index arbitrage orders when the Dow Jones Industrial Average has moved 50 points from the previous day's close. Rule 116.30 contains restrictions on a specialist's ability to stop stock.

The Exchange believes it is appropriate, in order to induce compliance, to make the failure to comply with the provisions of the above-named rules subject to the possible imposition of a fine under NYSE Rule 476A procedures. The Exchange further believes that, in many instances, the most appropriate sanction for the failure to comply with the requirements of these rules would be a summary fine under the minor rule violation plan.

III. Discussion and Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(1), (6), and (7), 6(d) (1) and 19(d).[13] The proposal is consistent with the section 6(b)(6) requirement that the rules of an exchange provide that its members, and persons associated with its members, be appropriately disciplined for violation of the rules of the exchange. In this regard, the Commission believes that the proposed additions to NYSE Rule 476A should provide a fair procedure for appropriately disciplining members and member organizations for minor rule violations warranting a sanction more severe than a warning or a cautionary letter.[14] In addition, the Commission believes the proposal is consistent with the Section 6(b)(7) requirement that the rules of an exchange be consistent with section 6(d)(1) and provide fair procedures. As noted in previous Commission orders regarding NYSE Rule 476A, [15] because the minor rule violation plan provides procedural rights to persons who are fined and permits disciplined persons to contest the Exchange's imposition of the fine and request a full disciplinary hearing, the proposal provides a fair procedure for the disciplining of members and persons associated with members, which is consistent with sections 6(b)(7) and 6(d)(1) of the Act.

The Commission also believes that the proposal furthers the purposes of section 6(b)(1) of the Act by providing an alternate means of deterring potential violations of the specified rules. Moreover, the Commission believes that inclusion of these rules on the violations list should prove to be an effective response to a violation when the initiation of full disciplinary proceedings is unsuitable because it would be costly and time-consuming in view of the minor nature of the particular violation. An exchange's ability to effectively enforce compliance with Commission and exchange rules by its members and member organizations is central to its self-regulatory functions. In this regard, the Commission believes that the inclusion of the above-cited rules will provide a more effective means of deterrence than, alternatively, either verbal or written cautions for lesser violations of the five rules.

As set forth above, NYSE Rules 704, 705, 780.10(b), 116.30 and 80A(c) and (d) contain certain requirements regarding options and equity trading. The Commission believes that many violations of these rules could be determined objectively and adjudicated quickly. For example, noncompliance with the Rules 704's position limits and Rule 705's exercise limits is easily determined by surveillance mechanisms. Position limits impose a ceiling on the number of option contracts of each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than a specified number of puts or calls in a particular underlying security within five consecutive business days. Aggressive enforcement of these limits through Rule 476A procedures should assist the Exchange in its efforts to thwart the use of large options positions to manipulate or disrupt the underlying market so as to benefit the options position.

As a second example, a specialist's failure to abide by Rule 116.30's restrictions on stopping stock is also easily determined. The rule requires, in part, that in order for the specialist to stop stock in response to a request by a member, the spread in the quotation cannot be less than twice the permitted minimum variation of trading in the stock and, after granting a stop, the specialist cannot reduce the size of the market and the spread between the bid and offer must be reduced. [16] These are objective standards that are amenable to enforcement through the mechanism of Rule 476A. Efficient and equitable enforcement of these two provisions should not entail the complicated factual and interpretive inquiries associated with more sophisticated Exchange disciplinary actions.

NYSE Rule 80A(c) and (d) imposes conditions on the entry of index arbitrage and stock basket orders when the Dow Jones Industrial Average moves 50 points or more from the previous day's close. Specifically, index arbitrage orders to buy must be entered "buy minus," while index arbitrage orders to sell must be marked "sell plus." Violations of these requirements could be readily and conclusively determined by, for example, examining order tickets.

For the above reasons, inclusion of these rules in NYSE's minor rule violation plan is consistent with the intent of SEC Rule 19d–1(c) and, accordingly, the Commission believes

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[11] Although the NYSE's Board of Governors makes the initial determination of whether an Exchange rule violation is "minor" for purposes of inclusion in NYSE Rule 476A, this determination is subject to Commission review pursuant to sections 19(b)(1) and (d)(1) of the Act and Rules 19b–4 and 19d–1(c)(2) thereunder.

[12] The party penalized by a Rule 476A citation and fine may either accept the citation or seek a full disciplinary hearing under Rule 476. In addition, the Exchange has the option of instituting a full disciplinary hearing for any violation of rules included on the Rule 476A List.

[13] 15 U.S.C. 78f(b)(1), (6), and (7), 78f(d)(1) and 78s(d) (1988).

[14] The Commission notes that the NYSE retains the discretion to bring full disciplinary proceedings for violations of the rules listed in Rule 476A and should do so when appropriate for the particular violation involved.

[15] See *supra* note 10.

[16] See NYSE Rule 116.30(3). See also Securities Exchange Act Release No. 28900 (March 21, 1991), 56 FR 12964.

that these rules should be added to the NYSE Rule 476A List.[17] In addition, the Commission believes that adding these rules to the Exchange's minor rule violation plan, in light of the Exchange's discretion to bring a full disciplinary hearing, should enhance, as opposed to reduce, the NYSE's enforcement capabilities regarding these rules. Inclusion of a rule in an exchange's minor rule violation plan should not be interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation plan should not only reduce the reporting burdens of an SRO, but also can make its disciplinary system more efficient in prosecuting violations of these rules. Finally, for any of the violations included in NYSE Rule 476A, the NYSE could bring a full disciplinary proceeding rather than use the abbreviated procedures and stipulated fines.

It is therefore ordered, pursuant to sections 19(b)(2)[18] and 19(b)(1) of the Act, That the proposed rule change (SR–NYSE–91–38) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–2123 Filed 1–28–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 1563]

Replacement of Cancelled Passports Endorsed as Valid Only for Travel to Israel

By a final rule appearing elsewhere in this issue, the Department is cancelling all passports that are endorsed as valid only for travel to Israel. The cancellation action is effective as of April 25, 1992. As reflected in the final rule, this cancellation is required by the provisions of section 129 of Public Law 102–138, enacted on October 28, 1991. This notice informs bearers of those passports of the alternative passport documentation they may be eligible to obtain to replace such cancelled passports.

In addition to setting forth the reasons for the cancellation action, the "SUPPLEMENTARY INFORMATION" section of the final rule notes that in lieu of a passport limited for travel only to Israel, any passport issued as an exception to the prohibition on possession and use of more than one passport to facilitate the foreign travel of United States citizens and nationals now is being issued valid for an initial period of two years from date of issue with the possibility of extension for additional two year periods up to the maximum period of validity prescribed for such passport, upon a showing of continued need by the bearer.

Consistent with the foregoing, bearers of passports valid only for travel to Israel that are cancelled under the final rule may, upon submission to a passport issuing office or U.S. diplomatic or consular post abroad of the cancelled passport and two new passport photographs, request issuance of a replacement passport that will be issued valid for a period of two years or for the remaining validity period of the cancelled passport, whichever is less.

In the alternative, the bearer of a passport cancelled under the final rule appearing elsewhere in this issue may present that passport and request that the Israel-only endorsement be invalidated and the passport be revalidated for the limited validity period described in the preceding paragraph. Such request for revalidation of the cancelled passport will be granted only where it is determined that their inability to use the passport for further travel or residence abroad would work an unnecessary hardship upon the bearer.

This notice will expire on October 28, 2002.

Dated: January 22, 1992.

James L. Ward,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 92–1948 Filed 1–28–92; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Montgomery County Airpark Gaithersburg, MD

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Montgomery County Revenue Authority for Montgomery County Airpark under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of FAA's determination on the noise exposure maps is January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA—Eastern Regional Office, Airports Division, AEA–610, Fitzgerald Federal Building, JFK International Airport, Jamaica, NY 11430, (718) 553–0902.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Montgomery County Airpark are in compliance with applicable requirements of Part 150, effective January 13, 1992.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of FAR part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Montgomery County Revenue Authority. The specific maps under consideration are the noise exposure maps: Figure 12.1 Ldn Contours for Existing (1991) Annual Average Day Operations and Figure 13.1 Ldn Contours for Future (1996) Annual Average Day Operations on pages 83 and 85 respectively of the July 1991 submission, as amended.

The FAA has determined that these maps for Montgomery County Airpark are in compliance with applicable requirements. This determination is effective on January 13, 1992. FAA's

[17] See Securities Exchange Act Release No. 13728 (July 8, 1977), 42 FR 36411.

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) and (44) (1991).

determination on an airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Eastern Regional Office, Fitzgerald Federal Building, Airports Division, rm. 337, JFK International Airport, Jamaica, NY 11430

Federal Aviation Administration, Washington Airports District Office, 101 West Broad St. Suite 300, Falls Church, Virginia 22046

Montgomery County Revenue Authority, 211 Monroe Street, Rockville, Maryland 20850

Questions may be directed to the individual named above under the heading "FOR FURTHER INFORMATION CONTACT".

Issued in Jamaica, NY on January 13, 1992.

Louis P. DeRosa,

Manager, Airports Division, Eastern Region.

[FR Doc. 92-2104 Filed 1-28-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Delaware and Chester Counties, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for proposed highway improvements to US 202, section ES1, in Delaware and Chester Counties, Pennsylvania

FOR FURTHER INFORMATION CONTACT: Philibert A. Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108-1086, telephone (717) 782-4422, or Timothy O'Brien, Project Manager, Pennsylvania Department of Transportation, 200 Radnor-Chester Road, St Davids, Pennsylvania 19087, telephone (215) 964-6611

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation, will be preparing an Environmental Impact Statement (EIS) on a proposal to improve US 202 between Matlack Street in West Chester, Chester County and the Pennsylvania/Delaware State line, Delaware County. Alternatives under consideration include: Widening of US 202; transportation system management (TSM) measures; and a No Build alternative

The various alternatives will be studied, and their impacts to the environment will be assessed in detail as they relate to the areas of regional and community growth, wetlands, soil erosion and sedimentation, vegetation, geological resources, parks and recreation facilities, water pollution, hazardous waste sites, visual quality, air quality, noise pollution, historical and archaeological resources, traffic/transportation/energy, public facilities and services, socio-economic, community cohesion, displacement of people, business and farms. In addition the EIS will contain a cost analysis of the various alternatives, preliminary engineering information and documentation of the public and agency consultation and coordination process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and individuals who express interest in the proposal. Meetings will take place with the appropriate Federal and State agencies between October 1991 and December 1993. Public notices of the time and place of these meetings, and any required public hearings, will be given. Public involvement and interagency coordination will be maintained throughout the development of the EIS

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be directed to the FHWA at the address provided above

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on January 16, 1992

George L. Hannon,

Assistant Division Administrator, Federal Highway Administration, Harrisburg, Pennsylvania

[FR Doc. 92-2078 Filed 1-28-92; 8:45 am]

BILLING CODE 4910-22-M

UNITED STATES INFORMATION AGENCY

U.S. Congress-Korean National Assembly Project

AGENCY: United States Information Agency

ACTION: Notice—Request for Proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs, U.S. Information Agency, announces its intention to award a grant of up to $70,000 to bring up to 10 Korean participants (university students and one adult leader) to the United States and to send an equivalent group of Americans to Korea for three to four weeks during the summer of 1992. The project is jointly funded by the U.S. and Korean Governments. Participants will spend part of their time as interns in the offices of interested members of the host country's national legislature, receive briefings from government officials and other specialists, meet with their peers and participate in cultural and educational activities.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. e.s.t. on February 28, 1992. Faxed documents will not be accepted, nor will documents postmarked on February 28 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above

deadline. Grant activities may begin no earlier than June 1.

ADDRESSES: The original and twelve copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref.: US Congress-Korean National Assembly, Grants Management Office, E/XE, room 357, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations/institutions should contact Bettye Stennis at the Youth Programs Division (E/VY), Office of International Visitors, room 357, 4th Street SW., Washington, DC 20547, telephone 202–619–6299, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overview—The purpose of this program is to broaden the perspectives of select groups of Korean and American young people on the legislative process, the history for U.S-Korean relations and current political, economic and security aspects of the bilateral relationship. It will also provide both groups with first-hand experience of the host country, its people and culture, as well as enable the participants to form personal contacts. The program should take place while the Congress and the Korean National Assembly are in session.

Eligibility—Not-for-profit private or public educational or exchange organizations may apply. Grants awarded to eligible organizations with less than four years experience in conducting international exchange programs will be limited to $60,000.

Guidelines—The program for each group should be for a minimum stay in country of 3 weeks. The program for the Korean participants should begin in Washington and the group should spend 10–15 days in Washington. Members of Congress will offer internships for the Koreans in their offices. The Koreans should be given a chance to interact with fellow interns in the Congressmen's offices where they are assigned, as well as meet with other young Americans in formal, structured situations designed by the grantee. In both cases, these should supplement orientations and lectures about the host country in which the speakers are government officials, professors, legislators or legislative staff. The group may then be programmed to travel to two or three locations outside of Washington, to experience the diversity of American society. Programming at one of these sites will be arranged in conjunction with the office of one of the Congressmen and include a visit to his/her district. It is desirable for the participants to spend a weekend with a host family without a structured program.

Members of Congress nominate American participants, using criteria prepared by USIA. The Korean National Assembly organizes the program for the Americans in Korea, part of which may include internships in the offices of Assemblymen. The Americans should have the opportunity to exchange views on current bilateral issues with Korean university students and other young people. Some travel in Korea will be arranged for them. The grantee organization will need to assign a responsible group leader to accompany the group, monitor these arrangements and work with the Korean Government in providing supplementary educational and cultural activities as needed. It is desirable for the American and Korean groups to meet, preferably at the beginning of the program when the Americans are undergoing pre-departure orientation. The exact date of the Korean group's arrival is not yet known, but it is usually in July. The time period of July 15 to August 15 may be used for planning purposes.

The grantee organization is responsible for the following: Arranging all programming including orientation; arranging lodging; working with Congressional staff in planning and implementing the internships for the Koreans and in the selection of the Americans; payment of per diem and allowances; administering the USIA health and accident insurance plan; travel arrangements; the assignment of an American escort for the travel portion of the Koreans' program in the U.S.; and the assignment of an American escort to accompany the American group in Korea.

Proposed Budget—The Korean Government pays for: International travel for the Korean participants; and all hosting costs for the Americans in Korea including local travel and per diem. The USIA grant covers: International and domestic (within the US) airfare for Americans and the costs of their pre-departure orientation and debriefing; and all hosting costs for the Koreans. Specific details on the submission of a budget are available in the application packet.

Review Process:

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the USIA Office of East Asian and Pacific Affairs, and the budget and contracts offices. They may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of the program plan and adherence of the proposed activity to the criteria and conditions described above.

2. Reasonable, feasible and flexible objectives. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Multiplier effect/impact. Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Value to U.S.-Korean relations—The assessment of USIA's geographic area desk of the potential impact and significance of the proposed project in Korea.

5. Cost effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

6. Institutional capacity. Proposed personnel and institutional resources should be adequate and appropriate to achieve the project's goals.

7. Proposals should demonstrate potential for program excellence and/or track record of applicant institution. The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

8. Evaluation plan. Proposals should provide a plan for evaluation by the grantee institution.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about May 15, 1992. Funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: January 23, 1992.

Carl D. Howard,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-2170 Filed 1-28-92; 8:45 am]

BILLING CODE 8230-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-85]

Request for Public Comment: Intellectual Property and Market Access Acts, Policies and Practices of the Government of India

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for written comments from the public.

SUMMARY: The United States Trade Representative (USTR) is seeking further public comment on acts, policies and practices of the Government of India concerning the protection and enforcement of intellectual property rights and market access conditions for motion pictures. In particular, USTR is requesting comments on whether such acts, policies and practices are unreasonable and burden or restrict U.S. commerce, and if so, what responsive action, if any, should be taken pursuant to section 301 of the Trade Act of 1974, as amended, ("the Trade Act").

DATES: Written comments from interested persons are due on or before 12 noon, Monday, February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director, Southeast Asian and Indian Affairs (202) 395-6813, Emery Simon, Deputy Assistant USTR for Intellectual Property (202) 395-7320, or Catherine Field, Associate General Counsel (202) 395-3432, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: On May 26, 1991, pursuant to section 302(b)(2)(A) of the Trade Act, the United States Trade Representatives initiated an investigation of those acts, policies and practices of the Government of India that were the basis for identification of India as a priority foreign country under section 182 of the Trade Act (19 U.S.C. 2242). In identifying India as a priority foreign country, the USTR noted deficiencies in that country's intellectual property acts, policies and practices including: (1) Numerous deficiencies in its patent law, in particular the failure to provide product patent protection for a wide range of products including pharmaceuticals and products resulting from chemical processes, an inadequate term of protection, and overly broad involuntary licensing provisions; (2) lack of protection for service marks and restrictions on use of foreign trademarks and (3) copyright compulsory licensing provisions that are overly broad. Further, the USTR noted the absence of effective enforcement of intellectual property rights in India, including copyrights, which has led to a high level of piracy in that country.

With respect to market access for persons that rely on intellectual property protection, USTR noted that access for U.S. motion pictures is severely restrained through quotas, fees and other barriers.

On November 26, 1991, the USTR decided to extend the investigation because the relevant issues are complex and complicated and require additional time to attempt to resolve. (56 FR 61447.) In this case, section 304(a)(3)(B) of the Trade Act requires the USTR to determine by February 26, 1992, whether the Government of India's acts, policies and practices are unreasonable and burden or restrict U.S. commerce. If that determination is affirmative, the USTR must determine what action, if any, to take under section 301 in response.

Requirements for Submissions

The USTR invites all interested persons to submit written comments on the required determinations. Comments will be considered in recommending any determination or action under section 301 to the USTR.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and are due no later than 12 noon, Monday, February 24, 1992. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301-85) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. (Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the Docket which is open to public inspection.) The docket shall be available for public inspection at the USTR Reading Room, room 101, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC. An appointment to review the docket may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading room is open to the public from 10 a.m. to 12 p.m. and from 1 p.m. to 4 p.m., Monday to Friday (except holidays).

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 92-2090 Filed 1-28-92; 8:45 am]

BILLING CODE 3190-01-M

Investment Policy Advisory Committee Schedule

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Investment Policy Advisory Committee Meeting Schedule.

SUMMARY: The meetings will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATES: The meetings of the Investment Policy Advisory Committee (INPAC) will be held from 10 a.m. to noon on: Tuesday, March 10; Monday, July 13; and Friday, October 16.

ADDRESSES: The meetings will be held at the Office of the United States Trade Representative, room 203, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mollie Shields, Director, Office of

Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 92-2127 Filed 1-28-92; 8:45 am]

BILLING CODE 3190-01-M

Advisory Committee for Trade Policy and Negotiations, Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Advisory Committee for Trade Policy and Negotiations meeting schedule.

SUMMARY: The meetings will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATES: The meetings of the Advisory Committee for Trade Policy and Negotiations (ACTPN) are to be held between 1:30-4 p.m. on: Wednesday, March 11; Thursday, June 25; Tuesday, September 22 and Thursday, December 3.

ADDRESSES: The meetings will be held at the Hay Adams Hotel, 800 16th Street, NW., Washington, DC, 20006.

FOR FURTHER INFORMATION CONTACT: Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 92-2125 Filed 1-28-92; 8:45 am]

BILLING CODE 3190-01-M

Services Policy Advisory Committee Schedule; Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Services Policy Advisory Committee Schedule.

SUMMARY: The meetings will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATES: The meetings of the Services Policy Advisory Committee will be held from 2-4:30 p.m. on: Tuesday, March 24; Wednesday, July 22; and Thursday, October 15.

ADDRESSES: The meetings will be held at the Hay Adams Hotel, 800 16th Street, NW., Washington, DC, 20006.

FOR FURTHER INFORMATION CONTACT: Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 92-2126 Filed 1-28-92; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before February 28, 1992.

Revision

1. Declaration of Status of Dependents, VA Form 21-686c.
2. The form is used to confirm marital status and the existence of any dependent children.
3. Individuals or households.
4. 56,500 hours.
5. 15 minutes.
6. On occasion.
7. 226,000 respondents.

Dated: January 22, 1992.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

[FR Doc. 92-2101 Filed 1-28-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 19
Wednesday, January 29, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 F.R. 2950.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Wednesday, January 29, 1992.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has rescheduled the meeting to discuss a rule enforcement review to Friday, January 31, 1992 at 11:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–63142.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–2309 Filed 1–27–92; 2:40 pm

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:45 a.m., Friday, January 31, 1992.

PLACE: 2033 K St., NW., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: ENFORCEMENT MATTERS.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–2310 Filed 1–27–92; 2:40 p.m.]

BILLING CODE 6351–01–M

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ISS
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federal register

Wednesday
January 29, 1992

Part II

Environmental Protection Agency

40 CFR Parts 260, 264, 265, 270, and 271
Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units; Final Rule

VOL 57 ISS 19 JA 29 1992 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, 265, 270, and 271

[FRL-4028-2]

RIN 2050-AA76

Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is today amending its current regulations under the Resource Conservation and Recovery Act (RCRA) concerning liner and leachate collection and removal systems for hazardous waste surface impoundments, landfills, and waste piles. EPA is also adding new regulations requiring owners and operators of hazardous waste surface impoundments, waste piles, and landfills to install and operate leak detection systems at such time as these units are added, laterally expanded, or replaced. EPA is promulgating most of these regulations in response to the requirements of the 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA.

EFFECTIVE DATE: July 29, 1992.

ADDRESSES: The public docket (docket reference code F-92-LLDF-FFFFF) for this rule is in room M2427, US EPA, 401 M Street SW., Washington, DC 20460, and is open from 9 am to 4 pm, Monday through Friday, excluding holidays. Call 202-260-9327 for an appointment to review docket materials. Up to 100 pages may be copied free of charge from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at 1-800-424-9346 (toll free), or 703-920-9810 in the Washington, DC area. For information on technical aspects of this rule, contact Ken Shuster, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M St SW., Washington, DC 20460, 202-260-2214.

SUPPLEMENTARY INFORMATION: Copies of the following documents are available for purchase through the National Technical Information Services (NTIS), U.S. Department of Commerce, Springfield, VA 22161, phone 1-800-553-6847 or 703-487-4650: (1) U.S. EPA, "Compilation of Current Practices at Land Disposal Facilities", January 1992; (2) U.S. EPA, "Action Leakage Rates for Leak Detection Systems", January 1992.

Preamble Outline

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I. Authority

These regulations are being promulgated under authority of sections 3004, 3005, 3006, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6924, 6925, 6926, and 6936.

II. Background

On November 8, 1984, Congress enacted the Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), placing stringent new requirements on the land disposal of hazardous waste. Among other requirements, Congress amended section 3004 of RCRA and added section 3015 to impose specific design standards for land disposal units.

Section 3004(o)(1)(A) of RCRA, added by HSWA, requires each new landfill and surface impoundment, and each replacement and lateral expansion of a landfill and surface impoundment for which an application for a final permit determination is received after November 8, 1984, to install two or more liners (i.e., a double-liner system) and a leachate collection system above (for landfills) and between the liners. Section 3004(o)(5)(A) of RCRA requires EPA to promulgate regulations or issue technical guidance implementing the requirements of section 3004(o)(1)(A) by November 8, 1986. These HSWA requirements for double liner systems are intended to prevent the migration of hazardous constituents to ground water from land disposal units. Until the effective date of regulations promulgated under section 3004(o)(5)(A), Congress provided that an interim statutory double-liner standard in section 3004(o)(5)(B) could be used to meet the section 3004(o)(1)(A) double-liner system requirement.

Section 3004(o)(4) of RCRA requires EPA by May 8, 1987, to promulgate standards requiring new landfills, surface impoundments, waste piles, land treatment units, and underground hazardous waste tanks to use approved leak detection systems. The statute defines an "approved leak detection system" as a system or technology that EPA determines to be "capable of detecting leaks of hazardous constituents at the earliest practicable time." The term "new units" is defined as those units on which construction commences after the date of promulgation of the Agency's rule for leak detection systems. The impact of this language upon the applicability of this rule between today's promulgation and the effective date July 29, 1992 is discussed elsewhere in this preamble (See Section IV.A.).

Section 3015(a) of RCRA establishes standards for interim status waste piles. Any new waste pile, or replacement or lateral expansion of an existing waste pile at an interim status facility, must comply with requirements for liners and leachate collection systems or equivalent protection provided in regulations issued by EPA under section 3004 of RCRA before October 1, 1982, or revised under section 3004(o) of RCRA with respect to waste received beginning May 8, 1985.

Section 3015(b) of RCRA establishes standards for interim status surface impoundments and landfills. Any new unit, or replacement or lateral expansion of an existing unit at an interim status facility, is subject to the requirements promulgated under section 3004(o)(1) (relating to double-liners and leachate collection systems), with respect to waste received beginning on May 8, 1985.

The HSWA requirements described above either directly amended or directed the Agency to amend the existing RCRA liner standards for new hazardous waste landfills, surface impoundments, and waste piles issued by EPA on July 26, 1982 (47 FR 32282). On July 15, 1985, EPA issued a final rule (50 FR 28702) amending the existing liner standards by codifying the new liner standards of sections 3004(o)(1)(A), 3004(o)(5)(B), and 3015 (a) and (b) that

were to become effective immediately or shortly after the enactment of HSWA, as directed by the statute.

On March 28, 1986 (51 FR 10706), under section 3004(o)(5)(A) of RCRA, EPA proposed amendments to the statutory double-liner and leachate collection system standards for surface impoundments and landfills codified in EPA's regulations on July 15, 1985. The proposal set forth two types of designs for double-liner systems. One design consisted of a geomembrane (then referred to as a flexible membrane liner (FML)) as the top liner and a composite bottom liner consisting of a geomembrane underlain by compacted soil material to minimize flow through the geomembrane component should a breach occur, and having a hydraulic conductivity of no more than 1×10^{-7} cm/sec. The other proposed double-liner design consisted of a geomembrane top liner and a bottom liner constructed to prevent migration through the liner through the post-closure period and of at least 3 feet of compacted clay or other compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. On April 17, 1987, EPA published a notice (52 FR 12566) requesting additional comments on certain aspects of the March 28, 1986 proposal. Specifically, EPA requested comments on data that demonstrated the advantages of a composite bottom liner versus a compacted soil material bottom liner. EPA also noticed the availability of two draft technical guidance documents for the design, construction, and operation of single- and double-liner systems and leachate collection systems. EPA solicited comments from the general public on the draft technical guidance documents.

On July 14, 1986 (51 FR 25422), EPA promulgated leak detection system requirements for underground hazardous waste tanks. In promulgating these regulations, EPA partially fulfilled its mandate under section 3004(o)(4) of RCRA to establish leak detection system requirements.

On May 29, 1987 (52 FR 20218), EPA proposed a rule establishing leak detection system requirements to fully implement section 3004(o)(4) of RCRA. The proposal specified design standards for leak detection systems for new and replacement landfills, surface impoundments, land treatment units, and waste piles, and for lateral expansions of these units at both permitted and interim status facilities. The proposal also expanded the double-liner requirements to waste piles. The proposal also included a requirement for a construction quality assurance program to be implemented by owners and operators to ensure the proper construction, installation, and closure of these units. Finally, the proposal included a requirement to develop a response action plan specifying actions that would be taken in reaction to liquid flow into the leak detection system above action leakage rates proposed by the owner or operator and approved by the Regional Administrator.

Today's rule finalizes EPA's proposed actions of March 28, 1986 and May 29, 1987, and completes the Agency's statutory rulemaking responsibilities imposed by RCRA sections 3004(o)(4) and 3004(o)(5)(A). EPA has not included additional leak detection standards for permitted land treatment units in today's rule because, as explained later in today's notice, existing unsaturated zone monitoring requirements in §§ 264.278 and 265.278 for such units are sufficient to ensure the detection of leaks at the earliest practicable time.

III. Summary of Today's Rule

A. Summary of Rule

Today's rule modifies the existing double-liner and leachate collection and removal system requirements for new and replacement surface impoundments and landfills and for lateral expansions of these units, including those units at interim status facilities. New surface impoundment and landfill units for which construction commences after January 29, 1992, and replacement units reused after and lateral expansions of existing units for which construction commences after July 29, 1992 must have a double liner consisting of a top liner, designed to prevent the migration of hazardous constituents into the liner during the active life and post-closure period (e.g., a geomembrane) and a composite bottom liner consisting of a geomembrane underlain by at least 3 feet of compacted soil material having a hydraulic conductivity of no more than 1×10^{-7} cm/sec. EPA is also extending the revised landfill double-liner and leachate collection and removal system requirements to new waste pile units for which construction commences after January 29, 1992, and replacement units reused after and lateral expansions of waste pile units for which construction commences after July 29, 1992.

Today's rule also requires a leak detection system for each new surface impoundment, waste pile, and landfill for which construction commences after January 29, 1992, and each replacement surface impoundment, waste pile, and landfill reused after, and each lateral expansion of these units for which construction commences after July 29, 1992. The leachate collection and removal system drainage layer immediately above the bottom composite liner at these units must be used as the leak detection system. The drainage layer functioning as the leak detection system must meet minimum design criteria and ensure that leaks are detected at the earliest practicable time. Specifically, the drainage layer bottom slope must be one percent or more. If granular material is used in the drainage layer, it must have a minimum hydraulic conductivity of 1×10^{-2} cm/sec for waste piles and landfills and 1×10^{-1} cm/sec for surface impoundments and a minimum thickness of 1 foot. If synthetic drainage material is used in the drainage layer, the drainage material must have a minimum hydraulic transmissivity of 3×10^{-5} m²/sec for waste piles and landfills and 3×10^{-4} m²/sec for surface impoundments. These transmissivities are equivalent to the above hydraulic conductivities and thickness specifications for granular drainage layers. EPA is requiring that each unit have a leak detection sump to collect and remove liquids, sized to prevent liquids from backing up into the drainage layer. In lieu of meeting these requirements, the owner or operator may receive a variance for an alternative leak detection system that functions in an equivalent manner.

EPA is establishing a site-specific action leakage rate that specifies a liquid flow rate detected in the leak detection system sump that warrants followup actions by the owner or operator. Owners and operators are required to develop a response action plan specifying monitoring, inspection, and corrective measures to be implemented if the action leakage rate is exceeded.

The Agency is requiring owners and operators of units affected by today's rule to develop a construction quality assurance (CQA) program for various components of surface impoundments, waste piles, and landfills. The program will be implemented through a construction quality assurance plan that the owner or operator prepares to ensure that the constructed unit meets or exceeds all design criteria, plans, and specifications.

Owners or operators of facilities applying for a permit for new surface impoundments, waste piles, and landfills must submit information on liners and leak detection system designs, the action leakage rate, the response action plan, and CQA plans as part of the permit application. For new and replacement surface impoundment, waste pile, and landfill units, and lateral

expansions of existing units at permitted facilities, owners and operators must submit this information as part of a permit modification request. For affected units at interim status facilities, the owner or operator must submit proposed action leakage rates, response action plans, and a certification that construction has been completed according to the design specifications in the CQA plan to the Agency in advance of the receipt of wastes. Liner and leak detection system designs and CQA plans need not be submitted to EPA, but must be maintained on site.

B. Achievement of EPA Program Goals

In developing today's rule, EPA paid careful attention to several principles that now guide its environmental programs: Pollution prevention, ground-water protection, cost-effective policies which provide protection of human health and the environment, flexibility in implementation, and fostering of an effective State-Federal partnership. Today's rule incorporates each of these principles.

The primary focus of today's rule is on pollution prevention and, more specifically, on ground-water protection. Effective liner and leak detection systems will minimize the potential for releases of hazardous constituents from hazardous waste land disposal units to underlying ground water. In this way, today's rule complements the Agency's waste minimization policies, which seek to reduce the quantities of waste produced, and the RCRA land disposal restrictions programs. Today's liner and leak detection standards contribute to pollution prevention by providing for the containment and isolation of hazardous waste after final disposal.

In today's rule, EPA has taken an important step in implementing its Ground-Water Principles, recently published in the Agency's "Protecting the Nation's Ground Water: EPA's Strategy for the 1990's (21Z–1020, July 1991). A central theme in EPA's ground-water policy, enunciated in the principles, is that prevention of ground-water contamination is often more cost effective and environmentally more desirable than remediation of ground-water after contamination. Experience in the RCRA and Superfund programs demonstrates that improperly designed landfills, surface impoundments, and waste piles can result in ground-water contamination. At the same time, remediation of contaminated ground-water has proved to be time-consuming, expensive, and in some cases technically infeasible. On the other hand, the release of hazardous constituents from landfills, surface impoundments, and waste piles can largely be eliminated through good design and construction.

Regarding costs, it should be noted that most of the standards incorporated into today's rule are already widely in use at hazardous waste facilities and are generally considered good engineering practices. Because HSWA required new landfills and surface impoundments, and lateral expansions and replacements of existing landfills and surface impoundments, for which an application for a permit is received after November 8, 1984, and those units in interim status receiving waste after May 8, 1985, to be designed with double-liner and leachate collection systems, most facilities already meet many of the design standards of today's rule. In addition, many facilities have designed units that are in compliance with today's final rule in anticipation of the promulgation of a final rule based on the March 28, 1986, and May 29, 1987 proposed rules. Thus, for a relatively small increase in cost (to those facilities that are not already meeting the standards of today's rule), the rule may save large corrective action costs. However, since all new units must comply with all the provisions of this rule and bear the corresponding costs, EPA has carefully chosen the minimum technical standards that adequately protect human health and the environment.

Although today's rule includes specific design standards, EPA has taken care to ensure that its requirements can be flexibly implemented. The presence of specific standards in the rules will simplify compliance by the regulated community, implementation by EPA and State permit writers, and enforcement by EPA and state officials. EPA, however, recognizes that national design standards may not be appropriate for every site and that technologies may improve. Therefore, today's rule allows EPA or an authorized State to approve alternative designs, as long as they achieve comparable or better levels of performance.

Similarly, today's rule requires construction quality assurance—a critical feature in land disposal unit construction—but it does so through general narrative performance standards. Thus, facility owners or operators can tailor the details of their construction quality assurance plans to the specifics of their facilities. These and similar provisions of today's rule ensure that the rule can be flexibly implemented, in a way that accommodates each regulated unit.

Finally, in today's rule EPA has paid special attention to eliminating the frequent strains resulting from the joint implementation of RCRA by EPA and the States. In proposals for this rule, EPA laid out a complicated State authorization process, which would require EPA to implement some parts of the rule for selected land disposal units and the States to implement other parts for the same units, over different timeframes. After radically simplifying the proposal, EPA is now promulgating most of the rule under HSWA, which avoids much of the confusion of joint implementation at individual units. In this way, today's rule is consistent with the Agency's attempt to simplify and rationalize Federal and State implementation of RCRA. Today's rule also requires fewer reports and mandatory Agency reviews than the proposal while still providing opportunity for Agency reviews.

IV. Detailed Discussion of the Final Rule

A. Scope of the Rule

The double liner and leak detection standards in today's final rule apply to new and replacement landfills, surface impoundments, and waste piles, and lateral expansions of these units. Today's rule applies, as it was proposed in May, 1987, to these units regardless of their permit status, including facilities that were issued permits prior to and after the enactment of HSWA and facilities that are still in interim status. In consideration of the explicit language of section 3004(o)(4) defining a new unit as a unit for which construction commences after the promulgation date of today's rule, the Agency maintains that the permit does not act as a shield with respect to the leak detection requirements under today's rule for new units. Because lateral expansions and replacement units are comparable in their environmental impact, the Agency has, as a policy matter, decided to similarly remove the permit as a shield for leak detection systems at replacement units and lateral expansions of existing units. EPA believes that the opportunity for constructing replacement units and lateral expansions of existing units to meet today's requirements is similar to that for new units. In addition, by requiring replacement units and lateral expansions at existing units to meet today's requirements, EPA is ensuring that these units meet the same minimum technological requirements and provide the same protection of human health and the environment. Therefore, the Agency is amending § 270.4 to require

owners or operators to apply for a permit modification to meet the standards of today's final rule. Owners and operators at permitted facilities may not begin construction of units subject to today's requirements, until the permitting Agency has approved the owner or operator's permit modification (see § 270.42).

Today's rule exempts certain replacements of permitted surface impoundment, waste pile, and landfill units from today's double-liner and leak detection system requirements. However, EPA has modified the scope of the exemption since the May 29, 1987 proposal. Sections 264.221(f), 264.251(f), 264.301(f), 265.221(c), 265.254(a), and 265.301(c) in today's rule exempt replacements of surface impoundments, waste piles, and landfills from the double-liner system and leak detection requirements if the replacements meet the following conditions: (1) The existing unit was constructed in compliance with the design standards for double-liner and leachate collection systems in sections 3004 (o)(1)(A)(i) and (o)(5) of RCRA; and (2) there is no reason to believe that the liner system is not functioning as designed. Of course, any replacement surface impoundment, waste pile, or landfill unit that otherwise qualified for a variance from the double-liner and leachate collection system requirements pursuant to sections 3004(o)(2), 3004(o)(3), or 3005(j) of RCRA remains exempt from today's double-liner and leak detection requirements.

In the May 29, 1987 proposed rule, EPA considered exempting replacements that were constructed in compliance with existing part 264 single-liner requirements for surface impoundments, waste piles, and landfills. EPA acknowledges that the arguments for this exemption in the proposed rule were erroneous and has decided not to exempt replacements of permitted single-lined surface impoundments, waste piles, and landfills in today's final rule, because owners or operators of these units have no early method of detecting whether the single liner is leaking. Owners or operators of such units would have to rely on ground-water monitoring to determine if the single liner was leaking. EPA agrees with the commenters that this is inconsistent with the statutory goal of leak detection at the earliest practicable time and of preventing leakage out of the unit.

The May 29, 1987 proposal indicated an effective date for most of the provisions, including the leak detection requirements, of six months after promulgation. The July 29, 1992 effective date of today's rule is consistent with that proposal and with section 3010(b) of RCRA. It is important to note that section 3004(o)(4)(B)(ii) defines "new units" as those units on which construction commences after date of promulgation (versus the effective date) of the Agency's rule for leak detection systems. Therefore, due to the clear language of the statute, construction of new landfills, new surface impoundments, and new waste piles is defined with respect to the promulgation date but today's final regulations become effective 6 months after promulgation. This interpretation is consistent with the Agency's definition of "new tank systems" discussed in the final hazardous waste tank requirements (51 FR 25446).

During the six month time period between promulgation and the effective date, owners and operators of new units have time to determine and then make any necessary adjustments to their designs, contract specifications, and other pre-construction plans so that the requirements of today's rule are satisfied by the effective date. This also allows adequate time, in the Agency's opinion, for preparation and submission to the Agency of documents and requests for approvals that are prerequisites to construction and operation. For permitted facilities, this includes permit modification requests. Similarly, any interim status facility that adds a new unit following the promulgation date is expected to comply with the requirements in today's rule to submit, along with their notification under §§ 265.221(b), 265.254(a), or 265.301(b), proposed action leakage rates and a response action plan, if the due date for that notification (i.e., at least 60 days prior to receipt of waste in the new unit) falls before the effective date.

Thus, the Agency anticipates that at the few facilities (both permitted and interim status) that plan to develop new units during this six month period, most of the effort will be the preparatory design and administrative work needed to comply by the effective date. If owners or operators at interim status facilities should commence construction of new units during this period, the construction would be subject to Agency review upon the effective date of today's requirements.

Replacement landfills, surface impoundment, or waste piles, or lateral expansions to those units are, in the absence of specific statutory direction, subject to this rule after July 29, 1992 (i.e., six months after promulgation as normally provided under section 3010(b) of RCRA).

It should be noted that EPA interprets the term "construction commences," as used in the "new unit" definition of section 3004(o)(4)(B)(ii) and in today's rule, according to its definition within the § 260.10 definitions of "existing hazardous waste management (HWM) facility" and "existing tank system." That is, a unit has commenced construction if (1) the owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction, and either (2)(i) a continuous on-site, physical construction program has begun; or (ii) the owner or operator has entered into a contractual obligation—which cannot be canceled or modified without substantial loss—for physical construction of the facility to be completed within a reasonable time. Therefore, any new unit that has commenced construction, according to this long-standing Agency definition of the term, prior to the promulgation date (i.e., today's Federal Register publication date) is outside the scope of today's rule. Similarly, any replacement unit that is reused (unlike new units and lateral expansions, construction is not a necessary step prior to reuse of a replacement unit) or lateral expansion on which construction commences prior to the effective date (i.e., six months after today's Federal Register publication date) of this rule is also beyond the scope of today's rule.

Today's rule includes a definition of "replacement unit" in § 260.10. EPA is today defining a replacement unit as a unit (1) from which all or substantially all of the waste is removed, and (2) that is subsequently reused after July 29, 1992 to treat, store, or dispose of hazardous waste. This definition, which is similar to the May 29, 1987, proposal, is consistent with the definition EPA has used in implementing the statutory liner requirements of section 3004(o)(5)(B) for replacement units.

In the 1987 proposal, EPA excluded from the definition of replacement units those units from which waste was removed and treated in preparation for closure and only the treated waste was replaced in the unit. EPA explained in the proposal that replacement units are units that remain in service for active waste management, not units that are permanently taken out of service through closure. EPA believed this approach not only reflected statutory intent, but also would encourage (or at least not discourage) environmentally beneficial activities during closure (e.g., waste treatment), because owners or

operators would not have to retrofit closing units from which waste was removed and replaced.

Today's definition of "replacement unit," like the proposal, exempts certain units undergoing closure. However, the exemption is slightly expanded in that today's definition of replacement unit would also exempt those closing units that receive compatible wastes from other closing units and/or corrective action areas at the facility, provided that such use of the closing unit is approved by EPA (or an authorized state) in the facility's closure plan or corrective action program. The Agency believes that the expanded exemption is a logical extension of the proposal since it is similarly necessary to encourage environmentally beneficial activities (e.g., treatment and consolidation of compatible wastes from on-site closing units into one unit, waste removal to inspect a liner, expeditious closure of other on-site units) that may not otherwise occur if the owner or operator had to retrofit the closing unit to meet today's liner and leak detection system requirements.

Thus, units and activities qualifying for exemption from the "replacement unit" definition are limited to the following conditions and safeguards: (1) The activity must be reviewed and approved by EPA or an authorized state as part of the closure plan or corrective action approval process, including a corrective action order; (2) only closing units that have notified EPA in accordance with § 264.113 or § 265.112 or notified an authorized State, may qualify; and (3) only compatible waste and debris that are from closing units or corrective action areas on-site may be deposited in these units. For a unit to qualify for this exemption, off-site waste, new waste generated on site, and waste from active units on site may not be disposed of in the unit.

The situations EPA envisions as qualifying for this exemption from the "replacement unit" definition include: (1) Waste is removed from a closing unit, treated (e.g., incinerated, dewatered, or solidified), and returned to the same unit; (2) waste is removed from a closing unit to inspect and/or repair the liner, and the waste is returned to the same unit; (3) scenario 1 or 2, plus waste from other closing units is disposed in the original unit; and (4) scenario 1 or 2, plus waste that is the result of corrective action at the same facility, is placed into the original unit.

Finally, EPA also proposed in the May 29, 1987, rule that the liner and leak detection system requirements apply to significant unused portions of existing units, where those portions did not have double liners and leachate collection systems meeting the minimum technological requirements. Today's rule has dropped this requirement. A number of commenters on the proposal pointed out the difficulty of defining "significant" unused portions of a unit, and EPA was unable to develop an unambiguous definition. Furthermore, after reviewing land disposal units constructed and permitted since 1984 (which is the universe most likely to have portions of units not yet covered by wastes), EPA noted that virtually all of these units were required in their permits to incorporate double liner and leak detection requirements into their respective designs. Therefore, EPA has concluded that it is no longer necessary to extend today's rule to significant unused portions of existing units. It should be noted, however, that lateral expansions of existing units remain subject to today's rule.

B. Standards for Liners and Leak Detection Systems

1. Technical Standards for Liner Systems

Today, EPA is promulgating regulations containing design standards for double liners in accordance with the requirements of section 3004(o)(1) and (o)(5)(A) of RCRA. These standards replace those contained in the interim statutory design provision of section 3004(o)(5)(B) of RCRA that were codified on July 15, 1985 (50 FR 28702).

Today's rule amends the double-liner requirements for surface impoundments and landfills in §§ 264.221(c), 264.301(c), 265.221(a), and 265.301(a). The major change from the existing rule is that the final rule requires owners or operators to install a composite bottom liner. Based on available data and public comments received by the Agency, the double liner system specified in today's rule, with the composite bottom liner, represents the best available technology with respect to: (1) Preventing hazardous constituent migration out of the unit during the active life and post-closure care period, (2) detecting leaks through the top liner at the earliest practicable time, and (3) maximizing the efficiency of the leachate collection and removal system.

Today's rule does not change the existing top liner performance standard for surface impoundment and landfill units. Owners or operators of affected units must still design the top liner to prevent the migration of hazardous constituents into the liner throughout the active life and post-closure period. EPA notes that for purposes of today's rule, the top liner is the liner directly above the leachate collection and removal system serving as the leak detection system (see Technical Standard for Leak Detection Systems in Section IV.B.2 of today's preamble).

The Agency, in the preambles to the July 26, 1982 rule (47 FR 32274) and the March 28, 1986 proposal (51 FR 10709), endorsed geomembranes as meeting the top liner performance standard. EPA was aware of a number of landfill unit designs that included a composite top liner consisting of a geomembrane upper component and a compacted soil or a soil/bentonite blanket lower component. Consequently, EPA raised several questions in the preamble to the May 29, 1987 proposal concerning the use of a composite liner as a top liner and the effect the compacted soil component would have on other components of the double liner system, principally the early detection of a leak through the upper geomembrane.

The Agency received several comments on this issue, all of which were in favor of allowing the use of a composite liner as a top liner. One comment on appropriate standards for a composite liner favored minimum thickness requirements for a compacted soil lower component. Most commenters, however, favored no restrictions on the use of top composite liners.

In response to these comments, EPA is not prohibiting the use of composite top liners in today's rule. A parenthetical reference to geomembranes has been included as an example to illustrate that the performance standard can be met through use of a geomembrane. EPA does not intend that this reference be interpreted to mean that the geomembrane is the only top liner design that will meet the performance standard. EPA does not want to discourage owners or operators from using top composite liners because such liners can provide additional environmental benefits by minimizing the flow rate through a leak in a geomembrane liner and potentially minimizing migration of hazardous constituents by attenuation. Although not specified in today's rule, EPA maintains that the soil component of the top liner, however, should generally not be more than three feet thick since a thickness of 2 to 3 feet adequately serves the purpose of minimizing the flow through the geomembrane component (a lesser thickness may be appropriate for soil/bentonite blankets). EPA finds that this depth balances the increased environmental protection afforded by top composite liners and the ability to detect leaks at the earliest

practicable time. The Agency does not intend, however, to imply that multiple liner systems (including multiple composite liners) or that thicker soil components of bottom liners (e.g., 4 or 5 feet) should be precluded.

EPA notes that such general performance standards provide flexibility which is essential since liner and leak detection system technologies have advanced significantly over the past several years and are continuing to do so. Some examples include the use of geonets, the use of geotextile fabric filters, and better seaming and construction quality assurance. Recent EPA studies show soil/bentonite blankets may be effective and reliable complements to top liners, resulting in a new type of composite top liner. As technologies improve, today's performance standards will allow different materials and designs to be used and specified in permits as site-specific considerations.

Today's rule amends the requirements for bottom liners at surface impoundment and landfill units to require owners and operators of units subject to today's rule to use a composite bottom liner instead of a compacted-soil bottom liner allowed by the interim statutory design. The composite bottom liner required by today's rule specifies that the upper component of the bottom-liner must consist of a geomembrane, and the lower component of the bottom-liner must consist of a minimum of 3 feet of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. The compacted soil component must be able to minimize hazardous constituent migration in the event of a breach in the geomembrane.

In the March 28, 1986 proposal, EPA offered two options for the bottom liner of the double-liner system. One option corresponded to a compacted soil liner with a maximum hydraulic conductivity of 1×10^{-7} cm/sec and sufficient thickness (minimum 3 feet) to prevent hazardous constituent migration through the liner during the active life and post-closure care period (51 FR 10710). The other proposed option was the composite liner specified in today's rule, consisting of a top component that would prevent hazardous constituent migration into the top component (a geomembrane) and a bottom compacted-soil component with a maximum hydraulic conductivity of 1×10^{-7} cm/sec and the preamble to the proposal recommended a minimum thickness of 3 feet (90 cm).

EPA received comments supporting both bottom liner options. Several commenters argued that the compacted soil bottom liner, coupled with the leachate collection and removal system between the top and bottom liners, would provide adequate protection of the environment. Some of these commenters also proposed the use of a composite top liner with a compacted soil bottom liner. Others supported the use of composite bottom liners as the design best able to enhance leachate detection, collection, and removal efficiency of the leachate collection and removal system between the liners. Several commenters favored the promulgation of performance standards in the rule and the specification of designs and materials in accompanying guidance documents.

After the proposal, EPA compiled information and data on performance of these two bottom liner systems with respect to maximizing leachate detection, collection, and removal, and preventing hazardous constituent migration out of the unit. The liners were evaluated based on leachate collection efficiency, leak detection capability, and leakage through the bottom liner. Results from computer simulations and engineering calculations showed that, on a comparative basis, the composite bottom liner will perform significantly better than the compacted soil liner with respect to the three criteria. The results were summarized in the April 17, 1987 Notice of Availability of Information (52 FR 12566–12575), with more detailed discussion of the calculations and analytical approach contained in the "Bottom Liner Performance in Double-Lined Landfills and Surface Impoundments" (EPA/530–SW–87–013). In the May 29, 1987 proposed rule on leak detection systems, the Agency indicated that it was likely to finalize a rule on double liners that would require a composite bottom liner as the generally applicable standard (52 FR 20251).

EPA also conducted a review of applications submitted for RCRA hazardous waste facility permits between November 8, 1984 and February 1987 to determine the type of bottom liner selected for installation at new landfills and surface impoundments. Of some 183 units for which permit applications were submitted as of February 1987, only seven units were to be constructed with compacted soil bottom liners. The vast majority of owners or operators selected the composite bottom liner rather than a compacted soil bottom-liner. More recent data available to EPA also confirms that the majority of owners and operators are using composite bottom-liners in their designs of hazardous waste surface impoundment and landfill units (Supporting Document #3 "Compilation of Current Practices of Land Disposal Facilities," 1992).

In summary, today's rule requires composite bottom liners, based on: (1) Available information that composite bottom-liners perform significantly better than compacted soil liners in terms of maximizing leachate detection, collection, and removal, and preventing hazardous constituent migration out of the unit; and (2) evaluation of current hazardous waste industry practices.

Consistent with existing requirements for single liners at surface impoundments and landfills, today's rule in §§ 264.221(c)(1)(ii), 264.301(c)(1)(ii), 265.221(a), and 265.301(a) requires that each liner that is included in the unit's design must be chemically resistant to the waste, placed on a structurally stable foundation, and large enough to cover all areas likely to be exposed to the waste.

Double liner systems must be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including status head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation. The liners must be placed upon materials capable of providing support to the liners and resistance to pressure gradients above and below the liners to prevent failure of the liners due to settlement, compression, or uplift. They must also be installed to cover all surrounding earth likely to be in contact with the waste or leachate.

2. Technical Standards for Leak Detection Systems

EPA is today establishing design standards for the leak detection systems for new landfills, surface impoundments, and waste piles, and replacements and lateral expansions of these units (§§ 264.221(c)(2), 264.251(c)(3), 264.301(c)(3), 265.221(a), 265.254(a), and 265.301(a)). These leak detection standards are designed to detect a leak through the top liner at the earliest of practicable time. Today's final rule also establishes the following design criteria for leak detection system drainage layers for affected landfills, surface impoundments, and waste piles: (1) A minimum bottom slope of 1 percent; (2) a minimum thickness of 1 foot and a minimum hydraulic conductivity of 1×10^{-2} cm/sec for granular materials used for the drainage layer for waste piles and landfills and 1×10^{-1} cm/sec

for granular materials used in surface impoundments; (3) a minimum hydraulic transmissivity of 3×10^{-5} m²/sec for synthetic materials used in drainage layers for waste piles and landfills and 3×10^{-4} m²/sec for synthetic drainage materials used in surface impoundments; and (4) sump design and operating requirements.

Location of leak detection systems. EPA proposed in the May 29, 1987 preamble (52 FR 20229) that the leachate collection and removal system adjacent to and below the top liner and above the bottom liner be designated as the leak detection system, but requested comments on the proper location of the leak detection system in a system with more than two liners. Commenters on this aspect of the rule stated that the leak detection system should be located immediately above the bottom liner. These comments claimed that specifying additional leachate collection and removal systems above the bottom liner as leak detection systems would create a regulatory disincentive for owners and operators to design systems with more than two liners by requiring these additional (intermediate) leachate collection and removal systems to meet the requirements for leak detection systems and to implement response actions in accordance with the unit's response action plan. As a result of these comments, EPA is today specifying that the leak detection system is the leachate collection and removal system drainage layer located immediately above the bottom composite liner. Under today's final rule, any additional leachate collection and removal systems located above the leak detection system are not required to meet the design and performance standards for leak detection systems.

Leak detection time. The design standards being promulgated today for leak detection systems will ensure that these systems meet the requirement in section 3004(o)(4) of RCRA for the detection of leaks of hazardous constituents at the "earliest practicable time". EPA has interpreted the term "earliest practicable time" to be the time lapse from the time a liquid has passed through a breach in the top liner to the time a technology-based leak detection system can detect the liquid, assuming saturated, steady-state flow. Without these simplifying assumptions, modelling flow rates in the leak detection system is difficult given the complexity and uncertainty of fluid flow under unsaturated conditions. After careful consideration of public comments on the proposal, EPA has decided not to specify 1 day (i.e., 24 hours) as the earliest practicable time for the detection of a leak through the top liner.

Commenters on the proposed 1-day leak detection time requirement argued that it was unnecessary and overly restrictive. Another commenter stated that the detection time could not be verified by field measurements. EPA agrees with the commenters that the proposed 1-day leak detection time requirement is unnecessary given that the Agency is promulgating minimum design specifications for leak detection systems. In addition, the Agency acknowledges that field measurement of leak detection times is a problem. EPA has determined that a leak detection system meeting today's design requirements will be capable of detecting leaks "at the earliest practicable time" consistent with the statutory mandate. Therefore, EPA is simplifying the rule by deleting the 1-day performance standard.

Leak detection sensitivity. EPA is also not finalizing the proposed leak detection sensitivity value of 1 gallon per acre per day (gpad) that was proposed. When developing a leak detection sensitivity performance standard for the May 29, 1987 proposed rule, EPA conducted comparative studies between the performance of composite bottom liners versus compacted soil bottom liners (Background Document "Bottom Liner Performance in Double-Lined Landfills and Surface Impoundments", 1987). These studies showed that composite bottom liners have a much more sensitive leak detection capability than do compacted soil-only bottom liners. For example, a compacted soil liner with a hydraulic conductivity of 1×10^{-7} cm/sec will allow some liquid migration into the liner; as a result, a simple, one-dimensional theoretical model predicts that a leak will not be detected until the flowrate through the top liner is approximately 80 gpad. In contrast, simple, one-dimensional theoretical models predict that the leak detection sensitivities of landfills and surface impoundments with composite bottom liners similar to those required in today's rule range from 0.001 to 0.1 gpad. Because EPA is today stipulating the use of a composite bottom liner, the Agency is confident that lower leak detection sensitivities will be achieved for all units affected by today's rule. Consequently, a separate requirement for leak detection sensitivity is no longer necessary and EPA has dropped this requirement from the final rule.

Slope. EPA is today finalizing a minimum slope requirement for the leak detection system. After further consideration of the slope requirement, the Agency has determined that a minimum 1 percent slope will provide adequate drainage at land disposal units at which proper construction quality assurance is used to minimize settlement (§§ 264.221(c)(2)(i), 264.251(c)(3)(i), 264.301(c)(3)(i), 265.221(a), 265.254(a), and 265.301(a)). The purpose of the requirement is to promote good drainage in the leak detection systems of units affected by today's rule. This slope requirement applies to all planar components of the leak detection system.

In the May 29, 1987 proposed rule, EPA proposed a 2-percent minimum slope but requested comments on whether the minimum bottom slope should be increased to a value between 2 and 4 percent. One commenter preferred that a 3-percent bottom slope be used to account for settlement in the final slope value. However, most commenters argued that the minimum should not be above 2 percent, expressing opposition to raising the minimum slope value above 2 percent. Many of these commenters pointed out that other improvements included in the proposed rules, such as construction quality assurance and an increased transmissivity value for synthetic drainage materials, would obviate the need for a slope greater than two percent. One commenter argued that slopes of less than 2 percent should be allowed for certain circumstances provided that the leak detection system meets other minimum design criteria and performance goals and the owner or operator can demonstrate that post-construction settlement/consolidation will be minimized or eliminated. The Agency agrees that with good CQA a lesser slope can be adequate.

Based on these comments, EPA carefully evaluated the minimum bottom slope requirement for today's rule. EPA recognizes that slope is one of several factors that will affect the performance of the leak detection system. For example, the hydraulic conductivity of materials used in the drainage system is important. In addition, the appropriate minimum slope required will also depend on the spacing of leachate collection laterals in the leak detection system; closer spacing will allow for a flatter slope. All of these design factors should be considered in selecting the appropriate slope for the system.

EPA agrees with commenters that today's rule sets in place improvements that affect the minimum slope that is needed to construct an effective leak detection system. First, the new

requirement to install a composite bottom liner provides a smooth impermeable base on which to install the leak detection system. The decreased permeability of the composite bottom liner over that of a soil liner required under previous regulations allows for a reduced slope while at the same time continuing to promote good drainage. Second, today's enhanced construction quality assurance requirements enable owners or operators the flexibility to build a flatter slope by maintaining consistent drainage without significant ponding of liquids. In addition, some of the new, rapidly draining synthetic draining materials promote more rapid drainage on flatter slopes.

Because of these improvements, EPA believes that minimum bottom slopes of less than 2 percent should be allowed where the owner or operator uses proper construction quality assurance to minimize settlement and resultant ponding of any leachate, as required by §§ 264.19 and 265.19 of today's rule. Such construction quality assurance should include surveying and other inspection techniques to measure the horizontal and vertical alignment of the bottom slope to minimize ponding and ensure leachate flow to the sump. Some owners or operators may elect to design leak detection systems using bottom slopes of greater than 1 percent. EPA emphasizes that the requirements promulgated today are minimum technical standards; owners and operators can always adopt more stringent designs at their discretion.

Thickness of granular drainage layer. Today's rule also requires that a granular drainage layer be a minimum of 12 inches in thickness for use in leak detection systems of new and replacement landfills, surface impoundments, and waste piles, and for lateral expansions of these units (§§ 264.221(c)(2)(ii), 264.251(c)(3)(ii), 264.301(c)(3)(ii), 265.221(a), 265.254(a), and 265.301(a)). EPA received no comments on this requirement in the May 29, 1987 proposed rule, and therefore is finalizing the 12-inch thickness requirement as proposed. The purpose of this minimum thickness is to decrease the chance that the underlying geomembrane will be damaged by equipment during placement of the drainage material. Current equipment used to install granular layers can only place drainage material to an accuracy of a few inches. The Agency is concerned that if granular drainage layers are designed to less than 12 inches, this equipment could damage underlying liners in areas where the drainage material is thin.

Further, this requirement for granular layer thickness is consistent with current EPA policy. A 12-inch granular layer thickness is specified in current Agency guidance (Background Document "Draft Minimum Technology Guidance Document on Double Liner Systems", 1985). In addition, a recent EPA evaluation of existing hazardous waste land disposal units (Background Document "Compilation of Current Practices at Land Disposal Units", January 1992) showed that 24 out of 28 landfills, surface impoundments, and waste piles with granular drainage layers, had a specified thickness of 12 inches.

Hydraulic conductivity of granular drainage materials. EPA proposed to require that granular materials used in leak detection systems have a minimum hydraulic conductivity of 1 cm/sec. The Agency contended that greater permeability afforded by granular materials having 1 cm/sec hydraulic conductivity was necessary to minimize capillary tensions present in leak detection system granular materials and to satisfy the proposed leak detection time performance standard of 1 day.

EPA requested and received comments on the proposed hydraulic conductivity requirement. Commenters opposed the 1 cm/sec requirement for several reasons. Several commenters stated that the requirement would force them to use rounded gravels or other granular materials meeting the hydraulic conductivity value. These commenters maintained that such materials were either not available or only available at significantly higher costs in many areas of the country. One commenter suggested that EPA should provide a variance to owners or operators in areas where suitable granular drainage materials having the proposed hydraulic conductivity are unavailable. Another commenter stated that the Agency should continue to require granular materials to have minimum hydraulic conductivities of 1×10^{-2} cm/sec as currently specified in EPA guidance. This commenter asserted that sand, which is the most common granular material used in leak detection systems, generally has a hydraulic conductivity of 1×10^{-2} cm/sec. Other commenters argued that using granular materials with hydraulic conductivities on the order of 1 cm/sec would significantly increase the susceptibility of geomembranes (above and below the drainage layer) to puncture, because it would be difficult to remove angular materials from the materials used to construct the drainage layer. Another commenter argued that by requiring granular materials to have a 1 cm/sec hydraulic conductivity, EPA was forcing owners or operators to use synthetic drainage materials that are incompatible with many materials used for synthetic liners.

The Agency acknowledges that the availability of granular materials meeting the proposed hydraulic conductivity requirement may be limited. The Agency is also concerned with the greater potential for geomembranes to be damaged from the use of granular materials having hydraulic conductivities of 1 cm/sec. In response to the commenters concerns, the final rule (§§ 264.221(c)(2)(ii), 264.251(c)(3)(ii), 264.301(c)(3)(ii), 265.221(a), 265.254(a), and 265.301(a)) requires that granular materials used in leak detection systems at waste pile and landfill units subject to today's rule have a minimum hydraulic conductivity of 1×10^{-2} cm/sec consistent with current Agency guidance. However, the final rule specifies that granular materials used in leak detection systems at surface impoundments subject to today's rule must have a minimum hydraulic conductivity of 1×10^{-1} cm/sec.

The Agency has determined that granular materials used in leak detection systems at surface impoundments must have a higher hydraulic conductivity (one order of magnitude greater than what is currently specified by Agency guidance) to account for the potentially greater hydraulic heads imposed on the top liner in surface impoundments. Surface impoundments are typically used to manage liquids, therefore the hydraulic heads on the liner systems of these units are often much higher than those in waste piles and landfills, which are not allowed to manage wastes containing free liquids and must have a leachate collection system above the top liner. Consequently, if a leak occurs in the top liner of a surface impoundment, and is not rapidly drained to the detection sump, areas of the bottom-liner system will potentially be subjected to hydraulic heads in excess of one foot, increasing the probability of migration of hazardous constituents out of the unit. A greater permeability in the leak detection system will drain any leak more rapidly and thus reduce the head on the bottom liner system. Although granular materials having hydraulic conductivities of 1×10^{-1} cm/sec will typically be coarser sands and fine gravels, the Agency feels that two common construction techniques can be

used in combination to prevent any damage to geomembranes adjacent to the drainage materials. First, facilities may select rounded drainage materials; these materials are less likely to puncture or otherwise damage geomembranes. Second, owners or operators may use additional layers of synthetic materials (e.g., a needle-punched nonwoven geotextile) next to the liner to provide a cushion for the drainage materials and reduce the probability of puncturing. In addition, today's construction quality assurance requirements help to assure against such punctures.

The Agency's recent evaluation of current industrial practices (see "Compilation of Current Practices at Land Disposal Facilities", January 1992) revealed that many facilities are selecting synthetic drainage materials, such as geonets, for their leak detection systems. Synthetic drainage materials are often selected instead of granular materials because they typically require less space and are easier to install than granular materials. Also, as discussed below, virtually all synthetic drainage materials have permeabilities greater than 10^{-2} cm/sec.

Transmissivity of synthetic drainage materials. EPA proposed a minimum transmissivity value of 5×10^{-4} m^2/sec for synthetic drainage materials that are used in lieu of granular drainage materials. This value was selected because it provides equivalent drainage capacity to that of a granular drainage layer meeting the requirements of the proposed rule; that is, 12 inches of a granular drainage layer with a hydraulic conductivity of 1 cm/sec. The minimum value of 5×10^{-4} m^2/s for hydraulic transmissivity was based on numerical simulations of typical leak detection systems. In these simulations, EPA considered a range of synthetic drainage materials, including nets, mats, and waffles. From the results of these simulations ("Liner and Leak Detection Rule Background Document", 1987), EPA concluded that a hydraulic transmissivity value of 5×10^{-4} m^2/sec would enable the leak detection system to collect and remove relatively large amounts of leakage while maintaining gravity flow conditions. This specification was to ensure that the liquids in the leak detection system would be rapidly collected while the hydraulic head on the bottom liner would be minimized.

One commenter objected to the transmissivity standard, claiming that a value of 5×10^{-4} m^2/sec is not achievable with a single layer of currently available netting, and that performance may be worse when creep, loading, and rib layover come into effect. EPA disagrees. The Agency has data (Liner and Leak Detection Rule Background Document, 1987) showing transmissivities of single layers of synthetic drainage materials produced by four major manufacturers under the conditions of ASTM Test Method D 4716–87 (that is, a pressure of 100 kilopascals (kPa) and a hydraulic gradient between 0.1 and 0.25). At the time of the proposal, these transmissivities ranged from approximately 2×10^{-4} m^2/sec to 4×10^{-4} m^2/sec. Improvements in geonets since then have resulted in typical transmissivities of 2×10^{-3} to 4×10^{-3} m^2/sec using the same ASTM test method. The Agency maintains that the conditions at which ASTM D 4716–87 is conducted are representative of the pressures and hydraulic gradients in many land disposal units, and as a result, a transmissivity value of 5×10^{-4} m^2/sec can be obtained with typical commercially available synthetic drainage materials. However, the Agency recognizes that the requirements for synthetic drainage materials should be consistent with the requirements for granular drainage systems in leak detection systems. Thus, the Agency has revised the transmissivity requirements in today's rule (§§ 264.221(c)(2)(ii), 264.251(c)(3)(ii), 264.301(c)(3)(ii), 265.221(a), 265.254(a), and 265.301(a)) to require that synthetic drainage materials achieve equivalent flow rates to drainage layers utilizing granular materials.

Other performance requirements. Today's final rule also includes several general performance standard requirements for leak detection systems that are simply restatements of what is already required in existing regulations for leachate collection and removal systems at surface impoundments, waste piles, and landfills subject to today's final rule. Under today's rule, leak detection systems for affected units must be constructed of materials that are chemically resistant to wastes and leachate in the unit, and be of sufficient strength to resist pressure gradients generated within the unit (§§ 264.221(c)(2)(iii), 264.251(c)(3)(iii), 264.301(c)(3)(iii), 265.221(a), 265.254(a), and 265.301(a)). These requirements are designed to ensure that leak detection systems are not damaged from chemical and physical stresses associated with the unit. Also, these requirements are simply an extension of the performance standards for liners.

Leak detection systems for units regulated under today's rule must also be designed and operated to minimize clogging during the active life and post-closure period (§§ 264.221(c)(2)(iv), 264.251(c)(3)(iv), 264.301(c)(3)(iv), 265.221(a), 265.254(a), and 265.301(a)). This requirement is to ensure that drainage in leak detection systems is not impeded over time. EPA is concerned about the potential for drainage layers to become clogged as a result of physical, chemical, or biological mechanisms. EPA data indicate that the potential for clogging increases as the hydraulic conductivity of drainage material decreases. Examples of techniques to minimize clogging include: Using properly graded granular filter materials, filter fabrics (geotextiles), or other filter materials to reduce fines; using poorly graded (i.e., uniform) granular drainage material; increasing collection pipe slot numbers or size; reducing liquid residence time by increasing slope, decreasing pipe spacing, or increasing the size of granular drainage material; and cleaning collection system pipes and drainage media using hydraulic jetting, steam, or acidic solutions.

In addition, today's rule requires that leachate collection and removal systems immediately above the top liner (for landfill and waste pile units) be capable of ensuring that the leachate depth over the top liner does not exceed 1 foot (30 cm) as proposed in the March 28, 1986 proposed rule. EPA received no comments on these requirements and is therefore finalizing them as proposed.

EPA is today also promulgating several requirements for sumps that are part of a leak detection system. Owners or operators of new and replacement landfills, surface impoundments, waste piles, and lateral expansions of such units must use sumps of sufficient size to collect and remove liquids efficiently and prevent these liquids from accumulating on the drainage layer. In addition, the design of the sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed. EPA received no comments on these requirements and is therefore finalizing them as proposed (§§ 264.221(c)(2)(v), 264.251(c)(3)(v), 264.301(c)(3)(v), 265.221(a), 265.254(a), and 265.301(a)).

EPA is today promulgating a requirement for owners or operators of units affected by today's rule to collect and remove pumpable liquids in leak detection sumps to minimize the head on the bottom liner (§§ 264.221(c)(3), 264.251(c)(4), 264.301(c)(4), 265.221(a), 265.254(a), and 265.301(a)). The Agency had proposed, in the May 29, 1987

Federal Register, that the head in the sump for the leak detection sump be minimized; in the preamble, the Agency suggested that the average liquid levels in the sump should be below 12 inches. One commenter on the proposed rule stated that the 12-inch maximum was unachievable in many instances because of the size and geometry of most sumps and the pumps used to empty them. The commenter also mentioned that automated level control systems and minimum submergence requirements make the 12-inch maximum level an impossible performance standard. EPA agrees that the geometry of sumps may vary and that minimum pumping levels may be greater than 1 foot. Thus, the Agency is not setting a maximum level of liquids in the sump, but specifying only that the head on the bottom liner must be minimized by requiring owners and operators to remove pumpable liquids from the sump. "Pumpable liquids" means any amount of liquids that can be reasonably pumped out of the sump, based on sump dimensions, pump operating levels for automated pump systems, and the goals of minimizing head in the sump and backup of liquids (from the sump and drainage tile or pipes) into the drainage layer.

Today's rule also modifies the definition of the term "sump" in § 260.10 to redefine sumps used as part of leak detection systems for waste piles, surface impoundments, and landfills. The purpose of this modification is to make clear that the regulations for hazardous waste tanks that are otherwise applicable to certain sumps do not apply to those sumps used at land disposal units that function as part of the leak detection system. These sumps serve fundamentally different purposes than many other types of sumps. Sumps used at land disposal units are usually surrounded by one or more liners; therefore, many requirements, especially secondary containment, are not practicable for these units. The Agency maintains that subjecting these units to the requirements for hazardous waste tanks will not provide a substantial environmental benefit and has therefore modified the definition of the term sump to redefine sumps used as part of leachate collection and removal or leak detection systems for surface impoundments, waste piles, and landfills.

Finally, today's rule includes a requirement applicable only to those leak detection systems installed at new, replacement, or lateral expansions of landfills, surface impoundments, and waste piles that are not located above the seasonal high water table. EPA received no comments on this requirement and is finalizing it as proposed. The Agency is therefore requiring in today's rule that owners or operators of leak detection systems not located completely above the seasonal high water table demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water (§§ 264.221(c)(4), 264.251(c)(5), 264.301(c)(5), 265.221(a), 265.254(a), and 265.301(a)).

3. Alternative Systems

Alternative designs. The existing rules (§§ 264.221(d), 264.251(b), 264.301(d), 265.221(c), and 265.301(c)) already provide for alternative designs to the liners and leachate collection and removal systems if an owner or operator can demonstrate that an alternative design will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the requirements in §§ 264.221(c), 264.251(a), and 264.301(c), as appropriate. Today's rule adds §§ 264.221(d), 264.251(d), 264.301(d), 265.221(a), 265.254(a), 261.301(a) to allow alternative designs for leak detection systems that are capable of detecting leaks of hazardous constituents at least as effectively as the new leak detection system requirements in §§ 264.221(c)(2), 264.251(c)(3), 264.301(c)(3), 265.221(a), 265.254(a), and 265.301(a). EPA feels that variance procedures allow owners or operators flexibility in designing their leak detection systems without discouraging the use of new leak detection systems.

In order to be granted a variance from the leak detection requirements of today's final rule, an owner or operator must demonstrate to the Regional Administrator that the proposed design detects leaks through the top liner at least as effectively as a leak detection system designed to meet today's minimum design standards. In deciding whether to allow a variance for an alternative leak detection system or technology, the Regional Administrator will consider: (1) The ability of the proposed system or technology to operate as effectively through the active life and post-closure period of the unit as a unit designed using the minimum design specifications; (2) the nature and quantity of the wastes to be managed in the unit; and (3) the ability of the system to detect leaks, and in combination with response actions to be taken upon discovery of leakage, prevent migration of hazardous constituents out of the unit during the active life and post-closure care period. For example, an alternative leak detection system that did not provide information about leakage until after the leakage migrated through the bottom liner would be deemed unacceptable, because such a system would trigger an owner or operator response after hazardous constituents migrated into the environment.

Owners or operators may apply for a variance if they wish to propose a leak detection system design that deviates from today's design parameters. For example, if an owner or operator specified that the drainage layer of a surface impoundment would utilize granular materials having a hydraulic conductivity of 1×10^{-2} cm/sec (instead of the minimum required value of 1×10^{-1} cm/sec), the owner or operator would have to describe how other components of the system (e.g., depth of impoundment, bottom slope, flow path to a collection pipe or sump or pipe spacing) or the action leakage rate or response action plan would detect leaks at the earliest practicable time, minimize head on the bottom liner, and prevent migration of potentially hazardous constituents out of the unit as effectively as the design required in today's rule.

Temporary units. In the May 29, 1987 proposal EPA invited comment about whether double liners and leachate collection systems are necessary for all waste piles, or if alternative systems might provide adequate environmental protection at some units. In response to the Agency's request, a commenter questioned whether double liner and leachate collection systems are necessary for short-term waste piles created during corrective action. The same commenter also suggested that EPA should propose an overall policy in its upcoming corrective action rule as to what technological requirements will apply to units used for corrective action.

The Agency agrees with these comments. There are circumstances where the Agency believes it should allow temporary units constructed as a part of corrective action pursuant to a permit or 3008(h) enforcement order, or an approved closure plan, to be constructed without a double liner and a leachate collection system. Due to the limited time these units are in operation, in concert with alternative design, location and operating practices, there are situations which are equally effective as double lined units in preventing migration of constituents to ground water or surface water. Many waste piles (as well as some temporary storage surface impoundments) may thus qualify for the double liner waiver

found in §§ 264.221(d), 264.251(d), 265.221(a), and 265.254(a).

These provisions provide for a generic waiver of the double liner system, but do not specifically address temporary units. In response to the special needs posed by corrective action and facility closure (e.g., rapid cleanup and short-term operation) the Agency has published a proposed "Subpart S" rule (55 FR 30798) that, among other things, specifically addresses standards for temporary units. That proposal outlines Agency guidance on what factors to consider in determining what constitutes a temporary unit.

4. Applicability to Waste Piles

EPA is requiring that new and replacement waste piles, and lateral expansions of waste piles, install, operate, and maintain double liner and leak detection systems (§§ 264.251 and 265.254). The Agency is extending the double liner and leachate collection and removal system requirements to waste piles, as discussed in the preamble to the May 29, 1987 proposal (52 FR 20250), because the Agency maintains, for several reasons, that these units pose threats similar to or greater than landfills concerning leakage through the top liner and releases of hazardous constituents. First, waste piles are often exposed to precipitation for longer periods of time than landfills. Many owners or operators of landfills provide an intermediate cover to minimize leachate generation; this practice is not as common for waste piles. Second, waste piles have a higher potential for equipment-related damage than do landfills, because equipment is frequently used to add and remove waste from piles during these units' active lives. This increased equipment activity at waste piles increases the risk of damage to the primary liner and merits use of a secondary liner for these units. Finally, waste piles typically have much longer active lives than landfills: Waste piles are typically used for 20 years or more, whereas landfill units are more common used for periods of 6 months to 5 years before being closed.

Today's rule provides a waiver from the double liner and leachate collection and removal system requirements for certain waste piles that are monofills. In the May 29, 1987 proposal rule, EPA proposed a variance for monofills when (1) the monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, (2) such waste do not contain constituents which would render the wastes hazardous for reasons other than EP toxicity characteristic, (3) the monofill has at least one liner for which there is no evidence that such liner is leaking, (4) the monofill is located more than a quarter mile from an underground source of drinking water, and (5) the monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permits. The Agency proposed this waiver to codify the language in section 3004(o)(3) of RCRA and to be consistent with regulations for landfills and surface impoundments. Because EPA received no comments on this proposed waiver, it is being finalized as proposed in today's rule (§§ 264.251(e)(1) and 265.254(a)).

Today's rules do not affect the existing exemption in § 264.250(c) and now in § 265.254 for certain indoor waste piles. These units continue to be excluded from today's double-liner and leak detection requirements because they contain no free liquids and are protected from precipitation and surface water run-on and are therefore unlikely to have any leakage.

5. Applicability to Land Treatment Units

EPA proposed a number of leak detection requirements for land treatment units in the May 29, 1987 proposed rule. These requirements included (1) a 95-percent confidence level for detecting hazardous constituents in the treatment zone, (2) monitoring conducted above the seasonal high water table, (3) response action plans, and (4) inspection of unsaturated zone monitoring equipment. Today's rule does not include additional leak detection requirements for land treatment units. EPA has concluded that the current regulatory requirements for unsaturated zone monitoring at land treatment units are sufficient to ensure that leakage of hazardous constituents will be detected at the earliest practicable time. Therefore, EPA finds that additional regulations for such units are not needed to meet the statutory requirements of section 3004(o)(4) of RCRA for these units.

In the preamble to the 1987 proposal, EPA noted that unsaturated zone monitoring systems serve as effective leak detection systems for land treatment units. The Agency received no comments challenging this position or suggesting more effective alternatives. The existing regulations, however, already require unsaturated zone monitoring—i.e., leak detection systems—at all land treatment units, both new and existing. Specifically, §§ 264.278 and 265.278 contain detailed technical standards for soil and soil-pore liquid monitoring in the unsaturated zone below the land treatment unit to ensure detection of any hazardous constituents migrating out of the treatment zone. Furthermore, when releases are detected, the owner or operator of a permitted facility is required to modify operating procedures at the land treatment unit to prevent further release. EPA has implemented these requirements through two guidance documents: "Permit Guidance Manual on Hazardous Waste Land Treatment Demonstrations" and "Guidance Manual on Unsaturated Zone Monitoring for Hazardous Waste Land Treatment Units." After reviewing public comments and its experience in permitting land treatment units since the proposal, EPA concluded that the current regulatory requirements, coupled with existing guidance, are sufficient to ensure that leak detection systems in new land treatment units are capable of detecting releases at the earliest practicable time.

In the May, 1987 proposal, EPA did not propose to change the basic regulatory requirements for unsaturated zone monitoring, but added several relatively minor amendments. For example, the proposal would have added a requirement that constituents migrating out of the treatment zone be detected at a 95% confidence level and that the unsaturated zone monitoring take place above the seasonal high water table as well as below the treatment zone (as the current standards specify). EPA has concluded that these minor changes are unnecessary, either to meet the statutory standard or to protect human health and the environment. Available guidance documents already specify a 95% level of confidence for monitoring, and EPA and the States have successfully incorporated this standard into permits. Therefore, it is unnecessary to impose this requirement as a matter of regulation. Similarly, monitoring below the seasonal high water table is already prohibited by the existing regulations, because monitoring below the water table would not qualify as unsaturated zone monitoring. Therefore, the regulatory requirement that the monitoring be above the seasonal high water table is also unnecessary.

Today's final rule also does not finalize requirements for a response action plan describing remedial action if releases are detected in the unsaturated zone. EPA has concluded that a response action plan for permitted land treatment units is superfluous, because the current regulations (§ 264.278(g)) already require facility owners or operators to take specific responses in the case of hazardous constituents detected in the unsaturated zone monitoring system. EPA also notes that

migration found in the unsaturated zone monitoring system would constitute migration from the unit, and therefore could be addressed by the Agency, if necessary, under RCRA corrective action requirements. Finally, EPA notes that, because of the RCRA land disposal restrictions, most if not all hazardous waste land treatment units in the future will be able to operate only if wastes placed in them meet applicable treatment standards before placement in the unit or if they are granted a no-migration variance. A unit granted a no-migration variance that then releases hazardous constituents from the unit would have to cease receipt of prohibited wastes (§ 268.6(f)). In this case, a unit found to be releasing hazardous constituents to the unsaturated zone would be required to cease operating. For these reasons, EPA has concluded that a response action plan is not necessary for land treatment units.

A December 6, 1991 decision of the United States Court of Appeals, District of Columbia addressed the soil-pore water monitoring requirements for interim status land treatment facilities (*Shell Oil Company* v. *EPA*, No. 89-1532). As of the date of this rule, the Court's mandate was not yet issued and the regulation remains in place. The Agency is still considering what response to take to the Court's decision.

C. Response to Leaks

1. Action Leakage Rate

The final rule requires owners or operators to establish one action leakage rate (ALR) for each unit affected by today's rule (§§ 264.222, 264.252, 264.302, 265.222, 265.225, and 265.302). The action leakage rate is a leakage rate that requires implementation of a response action to prevent hazardous constituent migration out of the unit. The Agency has determined, the public comments support, the need for an ALR and response actions that the ALR triggers. EPA believes that the ultimate goal of the liner and leak detection system requirements is to prevent the release of hazardous constituents from the unit, thereby protecting the ground water and surface water. A system in place to detect leaks at the earliest practical time should be complemented by early follow-up actions to effectively minimize the chance for migration of hazardous constituents from the unit. Furthermore, it is often more effective to address leaks within the liners than to later address ground-water contamination through corrective action.

Today's final rule requires owners or operators to monitor the rate of leakage into the leak detection sump and to determine whether the measured rate of leakage over a specified period of time exceeds the action leakage rate (see Section IV.D. of the preamble for further discussion of today's monitoring requirements). If the owner or operator determines that the measured rate of leakage exceeds the ALR, the owner or operator must notify EPA and implement procedures contained in a response action plan that owners or operators must prepare for units affected by today's rule.

The proposed rule allowed the owner or operator a choice in establishing an action leakage rate. EPA proposed to specify an action leakage rate between 5–20 gallons/acre/day (gpad). Alternatively, the owner or operator could propose a site-specific action leakage rate for EPA approval. The proposed rule required owners and operators to develop and submit a plan for responding to the action leakage rate.

The proposed rule also required owners and operators to establish a value and a response action plan for a rapid and large leakage rate (RLL). The RLL was defined as the maximum design leakage rate (plus a safety factor) that the leak detection system can remove under gravity flow conditions (i.e., without the fluid head on the bottom liner exceeding one foot in granular leak detection systems and without the fluid head exceeding the thickness of synthetic lead detection systems). EPA also considered in the proposal the possibility of owners or operators developing responses to leakage rates between the action leakage rate and rapid and extremely large leakage rate (referred to as an intermediate leakage rate). In addition, the Agency considered requiring owners or operators to develop responses to "significant changes" in the flow rate (EPA suggested a 100 gpad or 25–50 percent increase, whichever was larger), leakage that exceeded health-based concentrations of hazardous constituents, and a leakage rate exceeding 50 gpad for any one-day period. In summary, EPA discussed six leakage rates in the proposal that could trigger various response actions by owners or operators.

Although no commenters objected to the establishment of an action leakage rate, EPA received many comments on the proposed action leakage rate value. Several commenters favored EPA setting an action leakage rate within the proposed range of 5–20 gpad. Some suggested that EPA should not finalize a specific value within the proposed range, but keep the range of 5–20 gpad and allow the permit writer to select a specific value within the range to apply to the unit. Some commenters suggested an action leakage rate of 30 or 100 gpad. Another commenter suggested that EPA set an action leakage rate at 75 percent of the proposed rapid and extremely large leakage rate. One commenter stated that the action leakage rate should be decreased over the life of the unit according to a formula, thus allowing a higher action leakage rate during initial operation of the unit to account for presence of liquids in the sump from sources other than leaks (e.g., construction water).

In general, most commenters stated that EPA had little or no field data to set an action leakage rate within the proposed range, and argued that the Agency should allow site-specific action leakage rates to be set by the permit writer, especially to account for other potential sources of liquids in the leak detection sump (e.g., soil liner construction water, precipitation during construction, and ground-water infiltration). Although the proposed rule would allow site-specific variances to the proposed action leakage rate, commenters expressed concern that EPA would not allow many site-specific action leakage rates. These commenters claimed that site-specific action leakage rates based on the design and operation of the unit should be common.

EPA also received many comments on other leakage rates that would require owners or operators to develop response actions. Commenters opposed using "significant changes" in the flow rate or health-based concentrations of hazardous constituents in liquids entering the detection sump to trigger a response by the owner or operator. Commenters felt that the proposed "significant change" concept was unclear and difficult to define. Commenters felt using leachate quality analysis at flow rates below the rapid and extremely large leakage rate to trigger a response was costly, time-consuming, and provided no additional environmental benefit. These commenters generally felt that liquid flow rates into the detection sump should be the sole trigger of an owner or operator's response. Many of these commenters also disagreed with the use of health-based levels (e.g., maximum contaminant levels) in the leachate to trigger a response. They argued that EPA's assumptions in proposing such levels were overly conservative and unrealistic because such liquid was still contained in the leak detection system and migration to the environment was

controlled by the bottom-liner and drainage system.

Many commenters maintained that EPA was proposing too many leakage rates without a clear distinction between them as to the differences in response associated with the leakage. These commenters claimed that some of the responses actions discussed by EPA in the preamble seemed to be redundant for different leakage rates, and that EPA's requirements were confusing, burdensome, and provided no additional benefit. As an example, the commenters cited that flow rates above the proposed action leakage rate (5–20 gpad) would trigger many of the same responses that exceedance of other leakage rates, such as the rapid and extremely large leakage rate (an example in the preamble showed a RLL of 3000 gpad) or significant change in leakage rate, would mandate. Some of these commenters stated that leakage rates less than the rapid and extremely large rate did not necessarily indicate a failure of the top liner, and that leakage would still be contained within the unit by the bottom liner. Therefore, they felt that the Agency should not stipulate excessive and redundant responses on the part of owners or operators for leakage rates that do not pose environmental concerns.

EPA requested and received field data on actual leakage rates from commenters on the proposed rule, and obtained additional data from more recent studies of leakage rates through top liners at land disposal units. However, these data are limited and furthermore, indicate that a portion of units (>25%) with CQA could exceed 20 gpad, the highest end of the proposed range for action leakage rates. Therefore, the Agency agrees with commenters that existing field data do not support establishment of an action leakage rate within the proposed range of 5–20 gpad for all units.

In response to EPA's request for comments on the appropriateness of the proposed range for surface impoundments, commenters argued that it was inappropriate for the Agency to set the same action leakage rate for landfills and surface impoundments and that the Agency should take into account the type, size, and operation of the unit when establishing an action leakage rate. EPA agrees with the commenters that the size, type, and operation of the unit should be accounted for in establishing a leakage rate that will trigger a response by the owner or operator, and that a standard leakage rate value for all units is not appropriate at this time.

In addition, EPA acknowledges commenters' concerns about the proposed number of leakage rates triggering a response by the owner or operator, and the lack of distinction among them for purposes of implementation. To simplify the final rule, EPA has chosen to establish one leakage rate that will trigger a response by the owner or operator, account for the site-specific design of the unit, and indicate significant evidence that there is problematic leakage through the top liner that mandates a response. EPA is requiring owners or operators to propose an action leakage rate for each unit subject to today's rule based on an approach that is similar to the proposed definition of the rapid and extremely large leakage rate. That is, owners or operators must calculate an action leakage rate based on the maximum design leakage rate that the leak detection system can remove without the fluid head on the bottom liner exceeding one foot. This leakage rate must account for an adequate margin of safety for uncertainties in design, construction, and operation of the leak detection system. The action leakage rate must not be greater than the flow capacity of the drainage layer in order to assure detection of leaks (e.g., if the ALR is 500 gpad and the flow capacity is 400 gpad then the ALR would never be exceeded no matter how large the leak). The action leakage rate should always be less than or equal to the pumping capacity of the leak detection sump since the pumping capacity is required to be greater than the maximum leak detection system flow rate under which gravity flow conditions prevail (i.e., to prevent liquids from backing up into the drainage layer). If the owner or operator determines that the action leakage rate is exceeded, the owner or operator must implement the procedures contained in the response action plan.

EPA believes that flow rates in excess of the action leakage rate indicate a major localized or general failure of the top liner, thus increasing the potential for a buildup of head on the bottom liner and increasing the potential for migration of hazardous constituents into the bottom liner. For this reason, it is necessary to maintain leak detection flow rates below the action leakage rate and for the owner or operator to take response actions for leaks greater than the action leakage rate.

Under today's rule, as in the May 29, 1987 proposal, the owner or operator must propose an action leakage rate based on calculations of the maximum flow capacity of the leak detection system design so as not to exceed one foot head on the bottom liner (called rapid and extremely large leak in the proposal). The proposal background document "Liner and Leak Detection Rule Background Document", (EPA/530–SW–87–015, May 1987) presented a number of mathematical models for making such a determination. All of these models are based on Darcy's Law for non-turbulent flow through saturated media. Of these models, the Agency finds that the following formula for flow originating through a hole in the liner is the most likely leak scenario for a geomembrane liner:

$$Q = k.h.\tan\alpha.B$$

where

Q = flow rate in the leak detection system (drainage layer),
h = head on the bottom liner,
k = hydraulic conductivity of the drainage medium,
α = slope of the leak detection system,
B = width of the flow in the leak detection system, perpendicular to the flow.

Using this formula, the Agency calculated the maximum flow rates using the minimum specifications in today's rule: 1% slope, and 1×10^{-1} cm/sec hydraulic conductivity for surface impoundments and 1×10^{-2} cm/sec hydraulic conductivity for landfills and waste piles. Assuming that the head is 1 foot and the width of flow (B) is 100 feet, the results show maximum flow rates of 2,100 gpad for surface impoundments and 210 gpad for landfills and waste piles. Using a safety factor of two, as suggested in the proposed rule preamble, yields about 1,000 gpad for surface impoundments and 100 gpad for landfills and waste piles as the Agency recommended action leakage rates. Because this calculation used the minimum technical requirements and other design assumptions to maximize potential head on the bottom liner, the Agency believes that the units meeting the minimum technical requirements would not require action leakage rates below 100 gpad for landfills and waste piles and 1000 gpad for surface impoundments. The final background document on action leakage rates ("Action Leakage Rates for Leak Detection Systems," January 1992) provides further discussion and background on these recommended action leakage rates. As discussed earlier in the preamble, this document is available from the docket for this rule or from NTIS, U.S. Department of Commerce.

While EPA recommends the above action leakage rates for the minimum design specifications, the Agency recognizes that a number of site-specific

factors affect the maximum flow capacity of a leak detection system, and owners or operators may want to propose alternative action leakage rates. For example, the leak detection system design may be different than the minimums specified in today's rule. As indicated above and in the background document, hydraulic conductivity is a factor that significantly affects the flow capacity of the system. The Agency believes that leak detection systems with greater hydraulic conductivities would have higher action leakage rates. In additional, owners or operators may have information to justify a different width of flow in the above calculation. Owners or operators also may justify a higher action leakage rate by using a different formula or model. While the Agency recommends the use of the above model for defining the maximum flow capacity of the leak detection system and action leakage rate, EPA recognizes that there may be alternative models available now or in the future that may more accurately predict system flow capacity to justify higher action leakage rates. Therefore, owners or operators may propose to use an alternative model that they believe more accurately predicts the maximum flow capacity of the leak detection system. Further, owners or operators may want to do a flow (pump) test on the leak detection system to show actual flow capacity, which may justify a higher action leakage rate. Finally, the owner or operator may have flow rate data on similarly designed units to use to justify a different level. As more and more units are built, the Agency as well as owners or operators will develop a better data base that may be used to establish appropriate action leakage rates.

For facilities seeking a permit, the action leakage rate will be set after the Regional Administrator reviews the rate proposed by the owner or operator in either the facility's part B permit application or permit modification. for interim status facilities, the owner or operator must submit a proposed action leakage rate for the affected unit to the Regional Administrator 60 days prior to the receipt of waste in the unit. The Regional Administrator will either approve, modify, or deny the proposed leakage rate. The Regional Administrator may extend the review period to evaluate the owner or operator's proposed action leakage rate for up to 30 more days. If none of these actions occur within 60 days (or if the review period is extended, within 90 days), the proposed rate can be considered approved.

Owners and operators of units affected by today's rule must monitor the leak detection sump and use the monitoring information to determine if the action leakage rate has been exceeded. The final rule sets forth the procedures owners or operators must use in determining whether the action leakage rate has been exceeded §§ 264.222(b), 264.252(b), 264.302(b), 265.222(c), 265.255(c), and 265.302(c)). To calculate the flow rate into the leak detection sump, owners, or operators must convert flow rate data into an average daily flow rate per acre (i.e., gpad) for each leak detection sump. This calculation must be performed weekly during the active life and closure period of the unit, unless the Regional Administrator approves otherwise. Upon closure (installation of the final cover for the unit), owners or operators will monitor the leak detection sump monthly, or in some cases quarterly or semi-annually (see Section IV.D. for further discussion). While on a monthly monitoring schedule, owners or operators will have to convert the monitoring data to an average daily flow rate to determine if the action leakage rate has been exceeded. If an owner or operator is monitoring quarterly or semi-annually no calculations are needed unless liquids are detected in the sump above the pump operating level, in which case the owner or operator must resume monitoring the sump on a monthly basis. Such an owner or operator would then have to convert monitoring data to an average daily flow rate per acre for the purpose of determining if the action leakage rate has been exceeded.

2. Response Action Plan

The final rule requires owners or operators of affected units to develop a response action plan for leaks exceeding the action leakage rate §§ 264.223, 264.253, 264.304, 265.223, 265.259, and 265.303). The response action plan is a site-specific plan that the owner or operator develops to address leakage through the top liner to assure that it does not migrate out of the unit. It is based on an assessment of the capability of the total design, construction, and operation of the unit rather than of individual components of the unit.

The majority of commenters on the proposed response action plan requirements stated that there were too many potential triggers (i.e.,leakage rates) that the response action plan must potentially address in the proposed rule. These commenters argued that these trigger levels lacked distinction as to the responses they would necessitate. Other commenters felt that the response action plan requirements were confusing and inconsistent in certain cases. The commenters noted that many of the response actions for leaks above the proposed rapid and extremely large leakage rate were similar to actions for leaks above the proposed action leakage rate. In response to these comments, EPA has simplified and clarified the response action requirements in today's final rule.

The final rule specifies minimum response actions that the owner or operator must take when the owner or operator determines that the action leakage rate has been exceeded. The minimum response actions are included in the response action plan that the owner or operator must prepare. Although minimum response actions are required to be in the response action plan, the content of a response action plan is determined by site-specific factors. The minimum responses required under today's rule are typical of response action plans EPA has identified at operating facilities and incorporate comments EPA received on the proposed response action plan requirements. Although today's rule only requires the owner or operator to initiate response actions upon exceedance of the action leakage rate, owners or operators may want to implement some types of response actions for leakage rates less than the action leakage rate, because these actions will lower the probability that leakage will exceed the action leakage rate and trigger today's final response action requirements.

An owner or operator's response action plan must include notifying EPA within 7 days that the action leakage rate has been exceeded. EPA received no comments on the proposed notification requirement and thus, is finalizing this requirement. The Agency is also requiring that the owner or operator submit a preliminary written assessment to the Regional Administrator within 14 days of the determination as to amount and source of the liquids in the detection sump, information on possible size, location, and cause of the leak, and any immediate and short term actions the owner or operator will take (e.g., additional pumping and removal of the leachate, changes in operating practices to reduce the leakage). As stated above, the Agency believes that exceedance of the action leakage rate is significant and indicates a major localized or general failure of the top liner, thus increasing the potential for a buildup of head on the bottom liner and increasing the potential for migration of hazardous

constituents into the bottom liner and out of the unit. For this reason, the Agency must be notified and given a preliminary assessment of the actions taken by the owner or operator.

The focus of the response action requirements for flow rates above the action leakage rate is the degree and schedule of what remediation, if any, is needed to reduce the leakage to the action leakage rate. The final rule requires that owners or operators identify the location, size, and cause of the leakage, and sample and analyze the leachate present in the detection sump. EPA believes that analyzing the leachate is necessary as part of determining the response needed to reduce the leakage to below the action leakage rate. For example, such information may be useful in locating a leak at sites where different wastes are disposed of in different cells. The owner or operators's's response action plan must discuss whether wastes should be removed to locate and repair the leak, whether repairs or controls will be used to minimize the leakage, and if so, whether operational changes, such as reduction or cessation of waste receipt, or partial or final closure of the unit, will be implemented, and if so, what types.

Today's rule clarifies when the owner or operator must submit a report documenting the response actions taken concerning leakage above the action leakage rate. The final rule requires that the owner or operator submit a report to the Regional Administrator describing how effective the response actions have been in reducing the leakage below the action leakage rate and preventing migration of hazardous constituents out of the unit within 30 days of exceeding the action leakage rate. The final rule also requires that the owner or operator continue to submit these reports monthly as long as the action leakage rate is exceeded.

EPA received several comments on the proposed response action submission and approval process. Several commenters expressed concern over possible delays associated with requiring a response action plan before receipt of waste. EPA received comments both supporting and objecting to submittal of the response action plan as part of the permit application process. One commenter suggested that the response action plan for both leakage rates above the rapid and extremely large leakage rate and leakage rates above the proposed action leakage rate but below the rapid and extremely large leakage rate should be submitted as part of the permit application. Another commenter argued against submittal as part of the permit application. The commenter stated that the bottom liner system can contain leakage rates in excess of the rapid and extremely large leakage rate until the response action plan is approved, and that such liquid would not migrate very far into the bottom liner before the response action plan was approved.

Unlike the proposed rule, the final rule requires owners or operators to submit only one response action plan for leakages exceeding the action leakage rate. Although EPA acknowledges that the bottom liner will provide initial containment of any leakage into the leak detection system, EPA still feels that leakage above the action leakage rate is an indication of a significant problem with the unit. The Agency believes that a response action plan is necessary before receipt of the waste into a unit to assure that there is both a commitment and an instrument in place to initiate responses upon exceedance of the action leakage rate, before leaks can potentially migrate out of the unit.

The final rule requires that new hazardous waste management facilities submit their response action plans and have them approved as part of the permit application process. Permitted facilities must submit the plan as part of a permit modification according to the procedures in § 270.42. Consistent with the minimum technology notification requirements of RCRA section 3015 for surface impoundments and landfills, owners and operators of units at interim status facilities subject to today's leak detection system rules are required to submit a response action plant in conjunction with the proposed action leakage rate 60 days prior to receiving waste into the unit.

D. Monitoring and Inspection Requirements

In today's final rule, EPA is promulgating several minor amendments to monitoring and inspection requirements for new and replacement landfills, surface impoundments, and waste piles, and lateral expansions of these units. These amendments add inspection requirements for leak detection systems (§§ 264.226, 264.254, 264.303, 265.226, 265.260, and 265.304). Specifically, today's rule requires facility owners and operators to monitor the sumps in leak detection systems for the presence of liquids in the sumps and record the amount of liquid removed from the sumps. Under §§ 264.222(b), 264.252(b), 264.302(b), 265.222(c), 265.255(c), and 265.302(c), owners or operators must calculate the average daily flow rate in gpad for each leak detection system sump on a weekly basis during the active life and monthly during the post-closure period, when monthly monitoring is required, to determine if the action leakage rate has been exceeded.

In the May 29, 1987, proposal, EPA proposed to require daily monitoring of the leak detection system sump during the active life of the units, and weekly monitoring during the post-closure period. EPA received several comments on the issue of the frequency of leak detection system sump monitoring requirements. Among those who commented, several objected to the requirement for leak detection system sump measurement on a daily basis during the active life because (1) not all facilities are operational on weekends and holidays, and (2) the payment of overtime rates to personnel for monitoring activities on weekends and holidays would be a significant financial burden. Other commenters stated that it would be difficult to monitor many sumps on a daily basis, especially large sumps or facilities with small leakage rates. One commenter suggested monthly monitoring of the leak detection sump. Most of these commenters suggested that monitoring the sump weekly during the active life was sufficient to determine exceedance of an action leakage rate.

EPA maintains that precipitation or other events may lead to large heads on the bottom liner over a period of a week, and that monthly monitoring of the sump during the active life is insufficient for observing changes in liquid levels in the sump that may necessitate action on the part of the owner or operator. However, EPA agrees with commenters that daily monitoring of the sumps is excessive given that the Agency has redefined the action leakage rate that triggers a response action. Thus, EPA has changed the requirement from daily monitoring of the leak detection system sump to require weekly monitoring during the active life and closure period. As discussed earlier, EPA has also changed the requirement from daily removal of accumulated liquids in the sump to a requirement to remove liquids from the sump as necessary to minimize head on the bottom liner (§§ 264.221(c)(3), 264.251(c)(4), 264.301(c)(4), 265.221(a), 265.254(a), and 265.301(a)).

Two commenters also objected to the requirement to monitor the leak detection system sump weekly during post-closure. These commenters stated that monthly monitoring would be sufficient because the elimination of liquids from incident precipitation and the reduction of drainage from wastes will result in insignificant leachate

generation in the years following closure. These commenters stated that monitoring should be conducted monthly or quarterly and more often only if the volumes of liquid in the sump increased.

EPA acknowledges that leachate generation should decrease in the years following closure of the unit, due to the effectiveness of the final cover. In response to comments received on this issue, EPA is allowing owners or operators to conduct monthly monitoring of the sump after the final cover is installed on the unit (§§ 264.226(d), 264.303(c), 265.226(c), and 265.304(a)). The Agency has also decided in the final rule to allow owners or operators to conduct quarterly monitoring of the sumps during post-closure, if the liquid levels in the sump stay below the pump operating level for two consecutive months, and/or semi-annual monitoring of the sumps if the liquid level in the sump stays below the pump operating level for two consecutive quarterly inspections. However, if pumping is required to remove liquids from the leak detection sump (i.e., liquids above the operating level of the sump) at any time during quarterly or semi-annual inspections, owners or operators must increase their monitoring to a monthly or quarterly basis, respectively. However, the Agency acknowledges that in some cases the levels may vary at facilities depending on the design and geometry of the sump and the type of pump used.

The "pump operating level" is a level proposed by the owner or operator and approved by the Regional Administrator based on sump dimensions, pump activation levels, and a level that avoids backup of liquids (from the sump and drainage tile or pipes) into the drainage layer.

Today's rule requires the owner or operator to monitor for and record the presence and level of liquids present in each leak detection sump, as well as the amount of liquids removed from the sump, to determine the leakage rate through the top liner. The leachate volume in the sump typically will be determined by measuring the liquid level in the sump. The leachate volume removed from the sump can be determined by collecting (in containers, tanks, etc.) and measuring the quantity of liquid pumped out of the sump or, alternatively, by installing flow-metering equipment to record the volumes. A third option is to install a device to measure inflow into the sump, for those units where the sump is located outside the unit; this may be a weir or pump at the sump inflow pipe. The leakage rate is to be calculated as the volume of liquid entering the sump over a period of time divided by the time and then also divided by the unit area served by the sump.

EPA is today requiring, as proposed, that the measured leakage rate in each sump in the leak detection system be used for determining whether the action leakage rate for the unit has been exceeded. EPA received several comments on this requirement. These commenters maintained that a variance from the action leakage rate should be available when it can be demonstrated that liquid in the leak detection system is from a source other than leakage through the top liner. EPA acknowledges that the actual leakage rate through the top liner may be different (larger or smaller) than the measured leakage rate at the sump depending on: (1) The collection efficiency of the system and (2) the presence of water in the leak detection system from construction, ground-water infiltration, consolidation of compacted soil liners, or additional sources of liquid other than leakage. However, owners and operators may consider these other sources of liquid when determining an action leakage rate that is appropriate for their unit and in developing their response action plan.

Today's final rule makes several technical amendments to the general inspection requirements and operating record requirements for units affected by today's rule. EPA today is amending § 264.15 by correcting an earlier oversight by adding requirements to inspect hazardous waste tanks as required by §§ 264.193 and 264.195 (today's amendments also remove two erroneous cross-references—§§ 264.194 and 264.253—from § 264.15). Section 265.15 is being amended by adding today's inspection requirements for units at interim status facilities under §§ 265.260, 265.278, and 265.304. EPA is also today making technical changes to the operating record requirements for units affected by today's rule at permitted and interim status facilities in §§ 264.73 and 265.73. These sections have been modified to reference recordkeeping requirements for permitted tank facilities (in §§ 264.191, 264.193, and 264.195) and interim status tank facilities (in §§ 265.191, 265.193, and 265.195).

E. Construction Quality Assurance

EPA today is promulgating construction quality assurance requirements (CQA) for all new landfills, surface impoundments, and waste piles, and replacements and lateral expansions of such units to the extent they are affected by the double-liner system and leak detection system requirements in today's rule. Today's CQA requirements also apply, to the extent they are relevant to units built under variances granted under §§ 264.221, 264.251, 264.301, 265.221, 265.254, and 265.301. The Agency has concluded that CQA is integral to ensure the proper construction, operation, and design of double-liner and leak detection systems and the closure of land disposal units. The CQA requirements being issued incorporate standard engineering practices and common hazardous waste management industry practices that have already been proven to ensure that the design and performance standards of today's final rule are met.

EPA is today promulgating CQA requirements applicable to foundations, dikes, low-permeability soil liners, geomembranes, leachate collection and removal systems, leak detection systems, and final covers.

The Agency has conducted a number of studies that outline the need for CQA. In 1983, EPA conducted a study assessing existing technology for liner installation at hazardous waste land disposal facilities ("Liner and Leak Detection Rule Background Document", 1987). The data base used in the study consisted of information from the literature supplemented by data collected through 40 interviews with technical experts in industry, State regulatory agencies, trade and professional associations, research organizations, and waste management companies. This study's conclusions were: (1) Construction-related problems during liner system installation constituted one of the major causes of liner system failure and (2) a rigorous CQA program could have identified and corrected many of the problems that contributed to such failure. The study also concluded that construction techniques that were available at that time could be used to install geomembrane and clay liner systems that met the Agency's performance standards for liner systems. However, the study noted that a comprehensive monitoring and audit program during construction would be needed to attain the Agency's performance standards for liner systems.

In 1985, EPA conducted another study to supplement existing information on liner performance ("Liner and Leak Detection Rule Background Document", 1987). This study was designed to evaluate the factors that contributed to successes and failures at 27 landfills and surface impoundments selected for case studies. The results of this study showed

that there were two main elements related to successful liner installation. The first element was a proper conceptual approach applied to all stages of unit construction, use, and closure, including design, material selection, contractor selection, liner system installation, facility operation, and final cover design and installation. The second element was the extensive use of formal CQA programs to ensure that the components of the unit were constructed properly in all stages of a unit's construction. The report stated that a CQA program resulted in a better constructed liner system.

EPA data show the performance of double liner systems and leachate collection and removal/leak detection systems is greatly enhanced when CQA procedures are implemented. The implementation of CQA procedures results in increased leachate collection efficiency and reduces leakage through both synthetic and compacted soil liners. For example, information compiled in a recent report ("Action Leakage Rates for Leak Detection Systems", January, 1992) showed that from a group of landfills with geomembrane only top liners, 8 of 11 landfill cells showed leakage rates below 20 gpad when good CQA was implemented, as opposed to only 1 of 5 landfill cells where CQA was not implemented.

With the improved, consistent, performance of the double liner and leachate collection and removal system come significant environmental and practical benefits. The resultant reduction in leakage rates through the top and bottom liners reduces the threat of migration of hazardous constituents to ground water, as is called for by section 3004(o) of RCRA. The use of CQA also may result in fewer costly repairs to land disposal units after waste has been received, fewer occasions when an action leakage rate is exceeded and implementation of response action plans is necessary, and a diminished long-term need for corrective action.

Today's requirements for CQA add a framework for requirements already established in the regulations for CQA for permitted landfill, surface impoundment, and waste pile construction. Current regulations for these units (§§ 264.228, 264.254, and 264.303) already specify that synthetic and soil liners be inspected for uniformity, damage, and imperfections during and immediately after installation. The CQA requirements being promulgated primarily add procedures to ensure that the existing general performance standards for CQA are met. Because the requirements of today's rule also apply to new units and lateral expansions and replacements of existing units at interim status facilities, today's CQA requirements also apply to these units. The requirements being promulgated in §§ 264.19 and 265.19 are in contrast to those in the May 29, 1987 proposal, which would have put in place a substantial CQA program. EPA has concluded that the proposal was, in fact, redundant with existing guidance manuals and also unduly prescriptive and detailed with respect to methods, approaches, and documentation to the Regional Administrator.

The Agency is today continuing to rely on available Agency guidance documents (instead of additional regulations) to implement the performance standards for construction quality assurance of today's final rule because EPA believes that newer technologies may be discouraged by detailed regulations. Agency guidance includes guidelines for selecting specific test methodologies and the number of tests that should be conducted during installation, both of which will vary significantly for different types of units, construction materials, and unit locations. A final guidance document, entitled "Construction Quality Assurance for Hazardous Waste Land Disposal Facilities" (EPA 530–SW–86–031, October 1986), includes detailed guidance on the components of the CQA requirements of today's final rule. Additional guidance is also available in the May 24, 1985 draft "Minimum Technology Guidance on Double Liner Systems for Landfills and Surface Impoundments—Design, Construction, and Operation." Guidance for the construction of clay liners is available in the November, 1988 document entitled "Design, Construction, and Evaluation of Clay Liners for Waste Management Facilities" (EPA 530–SW–86–007F).

In today's final rule, EPA is requiring a site-specific construction quality assurance plan to be prepared by the owner or operator of new landfills, surface impoundments, and waste piles, and replacements and lateral expansions of such units (§§ 264.19(b) and 265.19(b)). This requirement is the same as was proposed in the May 29, 1987 proposed rule. EPA has concluded that this plan is needed to ensure that a hazardous waste management unit is designed, constructed, operated, and closed in accordance with the CQA program for the unit. Owners or operators are required to prepare a CQA plan before constructing all new units, replacement units, and lateral expansions of existing units at both permitted and interim status facilities.

The Agency received several comments objecting to two requirements for interim status facilities to submit documentation under the CQA program. These commenters objected to the proposed requirement that the owner or operator submit, prior to construction, a CQA plan describing actions to be taken to implement the CQA program. The commenters also objected to an associated requirement to submit, prior to placing wastes in the unit, a CQA report documenting compliance with the CQA plan. Many of these commenters felt that these approval processes could result in unnecessary delays in construction of new units at interim status facilities. EPA agrees with the commenters and is eliminating the requirement for interim status facilities to submit a CQA plan for approval. EPA is instead requiring that interim status facilities prepare a CQA plan and maintain it onsite. By contrast, permitted facilities must submit a CQA plan as part of the Part B permit application; any changes to an approved plan at a permitted facility would require a permit modification. In addition, the Agency is dropping the requirement for these interim status facilities to submit a CQA report and has replaced this requirement with one to submit a CQA certification (§ 265.19(d)). EPA is, however, reserving the right to request supporting documentation for the certification. This certification will ensure that CQA procedures have been followed at the facility. The certification must be signed by a registered professional engineer serving as a CQA officer, and must state that the unit has been constructed in accordance with the CQA plan and meets the design specifications. For units at permitted facilities, this certification must be submitted by the owner or operator to the Regional Administrator and either approved or have approval waived by the Regional Administrator under § 270.30(l)(2)(ii) prior to the receipt of waste. For units at interim status facilities, the owner or operator must submit this certification at least 30 days prior to the receipt of waste; this will allow the Regional Administrator time to review the certification, and if necessary, request additional information from the owner or operator. The owner or operator may receive wastes in the unit after 30 days, unless (1) the Regional Administrator notifies the owner or operator in writing that the construction is unacceptable, (2) the Regional Administrator extends the review period (by a maximum of 30

days), or (3) the Regional Administrator requests additional information within the 30-day period from submission of the CQA certification. The certification of CQA activities for the final cover is already addressed in the overall certification required for closure activities under parts 264 and 265.

EPA is also specifically requiring the use of a test fill for compacted soil liners as proposed in the May 29, 1987, proposed rule. The test fill is an area developed using the actual materials of construction for the compacted soil component of the bottom composite liner to ensure that the liner is constructed to meet design requirements for field permeability (§§ 264.19(c)(2) and 265.19(c)(2)). The test fill will allow owners and operators, in many cases, to avoid the costs of failures of the full-scale unit by identifying problems during the test fill analysis.

EPA received several comments on the requirement for a test fill. Some commenters argued that a test fill was not necessary, claiming that it is expensive and does not provide any better data than laboratory tests. One commenter contended that field permeability tests may be less precise than laboratory tests, because the field testing is subjected to more uncontrolled variables (e.g., weather conditions) than laboratory tests, and therefore a test fill often cannot be made to precisely replicate the larger unit.

EPA disagrees, and is confident that, when functionally equivalent materials and equipment are used, a test fill can be constructed to provide more accurate indication of full-scale unit performance. Recent data compiled from permit applicants shows that laboratory studies have often not accurately predicted field permeability of the installed liner. The Agency has found that constructed soil liners will often test well in the laboratory because specimen preparation activities (e.g., root removal, visual selection of a uniform sample, additional compaction) have been conducted on the laboratory sample. These preparation activities are often not achieved to the same degree in a large, field-scale operation. EPA has found that test fill testing using large-scale field tests (e.g., sealed double ring infiltrometer) consistently provide a more accurate indicator of the performance of a full scale unit than do laboratory tests. For these reasons, EPA concludes that the information gained from field testing of test fills is a more reliable indicator of actual field conditions than laboratory tests, and so is stipulating the use of field testing for test fills in today's rule. However, to provide flexibility, today's final rule contains a provision allowing for an alternative demonstration where available data are sufficient to clearly show that a constructed soil liner will meet design specifications (e.g., test fill data from a soil liner constructed using functionally equivalent materials and methods of construction). The Agency believes that as more test fills are constructed, this variance will become more achievable because more data will be available. For units at permitted facilities, this variance must be obtained as part of the permitting process; for interim status units, this variance is self-implementing. EPA is, however, reserving the right to review during inspections documentation associated with variances claimed by owners or operators of units at interim status facilities.

F. Implementation of Permitting and Interim Status Requirements

Today's final rule amends the existing part B permit application requirements in §§ 270.17, 270.18 and 270.21 for surface impoundments, waste piles, and landfills at facilities seeking a RCRA permit. These new provisions require owners or operators of such units to provide information on how the liner and leak detection system will be designed, constructed, operated, and maintained to meet the requirements of part 264. Today's rule also requires owners or operators who propose alternative designs for double liner, leachate collection and removal systems, or leak detection systems to submit the appropriate detailed plans, and engineering and hydrogeologic reports describing the alternative designs and operating practices, including pertinent location aspects. In addition, today's rule requires the owner or operator to submit the proposed action leakage rate, the response action plan and the CQA plan for review in the permitting process. Sections 270.17, 270.18, and 270.21 also require owners or operators to provide a description of how the leak detection system will be inspected to meet the requirements in part 264. The unit design, action leakage rate, response action plan, CQA plan, monitoring provisions, and inspection schedule will become permit conditions that must be complied with over the life of the permit. The monitoring and inspection items become part of the inspection schedule under § 264.15(b).

Currently permitted facilities that are affected by today's rule must submit permit modifications to EPA under the procedures of § 270.42. Since the March 28, 1986 and May 29, 1987 proposals, EPA has promulgated amendments to the procedures for permit modifications for treatment, storage, and disposal facilities (53 FR 37912, September 28, 1988). EPA will implement the new double-liner and leak detection system requirements using the new permit modification procedures, consistent with EPA policy (53 FR 37912, September 28, 1988). Therefore, today's rule contains amendments to § 270.42 that categorize the amended part 264 requirements of today's rule as various classes of permit modifications.

Today's rule subjects owners and operators of interim status facilities to the same design and operating requirements as permitted facilities. However, procedural requirements for documentation or reporting have been structured to be more self-implementing for interim status facilities since these facilities have not yet been subjected to the site-specific tailored standards of a permit. In today's rule, owners or operators of interim status facilities that are subject to today's requirements will follow the same notification and approval procedures existing for interim status surface impoundments and landfills subjected to the minimum technological requirements in section 3015 of RCRA (§§ 265.221(b) and 265.301(b)).

Existing regulations require interim status facilities to submit a notice to the Regional Administrator at least 60 days prior to receiving hazardous waste in units affected by today's requirements. In today's rule, EPA is requiring that owners or operators submit their proposed action leakage rate and response action plan to the Regional Administrator at least 60 days prior to receiving hazardous waste in units affected by today's requirements. If no objection or extension of the review time is made by the Regional Administrator, the proposed action leakage rate and response action plan are effective. In addition, EPA is requiring owners or operators to submit a certification that the unit has been constructed in accordance with the CQA plan at least 30 days prior to receiving hazardous waste in units affected by today's standards. If no objection or extension to the review time is made by the Regional Administrator by the end of the 30-day period, the owner or operator may receive wastes in the unit.

Interim status facilities are required to prepare, but are not required to submit, their design and operating plans, monitoring plans, or CQA plans prior to receiving wastes. These documents must be retained on-site and be available for review by the Regional Administrator. EPA is not requiring submission and

advance approval of this information because such activities would be inconsistent with the goal of interim status to minimize review and approval by the Regional Administrator.

V. State Authority

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under section 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program in lieu of EPA's administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law and was authorized for the requirements.

In contrast, under RCRA section 3006(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA-based requirements apply in authorized States in the interim.

B. Effect on State Authorizations

Most of today's final rule for liners and leak detection systems is finalized pursuant to RCRA sections 3004(o) and 3015 which were added by HSWA. The HSWA-based requirements are being added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. As noted above, EPA will implement those HSWA-based sections of today's rule in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because these requirements are finalized pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of state requirements that are equivalent or substantially equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. The deadline by which the States must modify their programs to adopt today's rule is July 1, 1993. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see 40 CFR 271.24(c)).

Portions of today's rule at the time they were proposed on May 29, 1987 (52 FR 20220), were proposed to be adopted pursuant to RCRA. As non-HSWA rules, therefore, they would not be effective in authorized States until those States revised their programs to adopt equivalent requirements under State law. EPA has reconsidered this issue and now interprets the statute to allow more of the rule, including the CQA, with the exception of its application to final cover requirements, to be promulgated pursuant to HSWA.

EPA views today's CQA requirements to be vital for liner and leak detection systems to perform as intended by HSWA, in section 3004(o), by effectively preventing the migration of hazardous constituents into and through liners and for detecting leaks of hazardous constituents at the earliest practicable time. The Agency has determined that CQA at land disposal facilities improves the performance of liners and leak detection systems. Specifically, test fills have proven to be necessary for ensuring that compacted soil liners satisfy the permeability requirements set by the statute. The response action plans, based on detected leakage from land disposal units are also considered to be integral parts of the process established by section 3004(o) for early detection of liner breakthrough and prevention of migration of hazardous constituents into the ground and surface water. Consequently, the Agency views the CQA program and the response action plan (including the action leakage rate and monitoring to determine if the flow rate exceeds the action leakage rate) to be promulgated pursuant to HSWA for those units where the liner and leak detection standards are promulgated pursuant to HSWA

New and replacement surface impoundments and landfill units, and lateral expansions of such units at facilities for which a permit application was received before November 8, 1984, are not explicitly addressed by section 3004(o)(1)(A); however, these units are covered by existing liner requirements which today are being revised by the Agency to take into account improvements in control technology. Thus these revisions are HSWA rules pursuant to section 3004(o)(1). Although section 3004(o)(1)(A) does not require waste piles to meet the double liner and leachate collection system standards, existing regulations already contain liner standards for waste piles and, therefore, pursuant to section 3004(o)(1), the Agency is revising the existing waste pile regulations to take into account improvements in control technology. As a result, the Agency is also promulgating these double liner and leachate collection system standards for waste piles as HSWA requirements In addition, the Agency views the liner requirements for new waste piles as mandated by the form of leak detection chosen for these regulations; and therefore the liners standards from this point of view are also HSWA requirements. Leak detection for replacement units and lateral expansions of existing units (landfills, surface impoundments, and waste piles) at permitted facilities and at interim status waste piles are also being issued as improvements in control and measurement technologies under section 3004(o)(1) of RCRA.

CQA requirements for final covers at both permitted and interim status facilities are promulgated pursuant to section 3004(a) of RCRA, since final covers is not a HSWA requirement. The CQA requirements for final covers, therefore, will not be effective in authorized states. They will be applicable only in those states that do not have authorization. In authorized states, the CQA requirements for final covers at permitted and interim status facilities will not be effective until the state revises its program to adopt equivalent requirements under state law and receives authorization by EPA for them.

Section 40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to submit the modification to EPA for approval. The deadline by which the State must modify its program to adopt this regulation is determined by the promulgation date in accordance with 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the

modification, the State requirements become subtitle C RCRA requirements.

Authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the existing Federal regulations. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose regulations in addition to those in the Federal program. EPA has determined that the liner and leak detection systems rule is more stringent than the existing Federal regulations. Therefore, authorized States are required to modify their programs to adopt regulations that are equivalent or substantially equivalent.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being finalized today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a State must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

VI. Regulatory Requirements

A. Economic Impact Analysis

Executive Order No. 12291 requires that regulatory agencies determine whether a new regulation constitutes a major rulemaking and, if so, it requires that the agency conduct a Regulatory Impact Analysis (RIA). An RIA consists of the quantification of the potential benefits, costs, and economic impacts of a major rule. A major rule is defined in Executive Order No. 12291 as a regulation likely to result in:

- An annual effect on the economy of $100 million or more; or
- A major increase in costs or prices for consumers, individuals, industries, Federal, State, and local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

EPA estimated the effects of this rule to determine if it is a major regulation as defined by Executive Order. The Agency's results indicate that the rule has an annual cost below $100 million. Furthermore, the Agency does not believe the rule will significantly increase costs for consumers, individuals, industries, Federal, State and local government agencies, or geographic regions, or have significant adverse effects on competition employment, investment, innovation, or international trade. Therefore, the Agency determines that the rule is not a major rule.

Because the rule is not a major rule, EPA has performed an Economic Impact Analysis (EIA), focusing its analyses on the costs and economic impacts of the rule only. The Agency's cost analysis indicates the annual incremental costs of the rule will be approximately $23 million per year (all costs are in 1990 dollars).

1. Estimated Cost of the Rule

a. *General approach.* EPA estimated incremental costs for provisions of the final rule which require new compliance activities. The incremental cost of each provision was estimated by computing the difference between the cost of complying with the provision and the cost of complying with current regulations (the baseline for measurement). The baseline created by current regulations includes requirements imposed on hazardous waste landfills, surface impoundments, and waste piles by the July 26, 1982 permitting requirements for land disposal facilities (47 FR 32274) and the July 15, 1985 Hazardous Waste Management System Final Codification Rule (50 FR 28702). These rules, taken together, create baseline landfills having synthetic membrane top liners over a clay bottom liner with leachate collection systems between the liners and on top of the membrane liner. Baseline surface impoundments are constructed similarly, but lack the leachate collection system over the top liner. Baseline waste piles are assumed to be built with a single clay liner beneath a leachate collection system.

In projecting the costs of today's provisions EPA developed estimates of affected populations, unit costs of compliance, and aggregate costs of compliance. Estimates of affected populations were based on the permitted land disposal universe as reported in the EPA Hazardous Waste Data Management System (HWDMS) and RCRIS National Oversight Data Base (October, 1991). Use of the permitted universe was based on the fact that by November 8, 1988, the Agency was required to permit all land disposal facilities that had submitted permit applications by November 8, 1984 (HSWA section 3005(c)(2)). This mandate has resulted in the permitting of nearly all of the land disposal universe. The data base does not, however, identify a very small future population that may be affected by the regulations being promulgated today (i.e., newly-regulated interim status facilities brought into the land disposal universe via new rulemakings). These new interim status facilities, however, are expected to be offset by facilities dropping out of the RCRA Subtitle C land disposal universe as a result of regulatory programs.

Unit costs of compliance, based on capital costs and operating and maintenance costs were developed using EPA's Liner Location and Cost Analysis Model. Both direct and indirect costs were included. Aggregate costs were then obtained by multiplying unit costs by the number of units in the affected population.

In the final rule, costs from the 1987 proposal have been adjusted for inflation and are expressed in terms of 1990 dollars. Also, cost estimates from the 1987 proposal have been adjusted to account for differences between the proposal and the final rule. Therefore, all costs related to permitted land treatment units have been removed. Costs associated with the implementation of response action plans have been incorporated in the final rule, although EPA expects that few facilities will exceed the action leakage rate which triggers response action. In addition, leak detection system unit costs for surface impoundments have been adjusted upward to account for the higher costs of higher-permeability (1×10^{-1} cm/sec) drainage material (this cost was not included in the cost analysis for the May 29, 1987 proposed rule). The CQA costs developed for the 1987 proposal have been incorporated in this final rule analysis with a few

modifications. First, costs used to calculate certain CQA activities for test fills were adjusted upward to reflect new cost information (See Section c. below). Second, an incremental cost of $400 per unit has been added to cover the cost of a professional engineer certifying that each unit was constructed according to the CQA plan. Finally, CQA costs related to closure have been deleted from the analysis. EPA believes owners and operators are routinely performing closure activities when complying with existing rules, which require certification of closure by a registered, professional engineer. Consequently, we do not believe these CQA requirements represent incremental costs attributable to this rulemaking.

EPA used discounted cash flow analysis to convert streams of costs over time to equivalent annual costs over the life of the facility. First, EPA converted cost streams to present values as follows:

$$PV = \sum_{i=0}^{n} \frac{(costs)}{(1+r)^n} \quad n$$

where the real rate of return (r) equals 3 percent and n is the number of periods in which costs are incurred. The cash flows do not include inflation, taxes, or depreciation. As such, the present value costs report the full pre-tax compliance costs in real terms assuming that an owner or operator can access capital at a real interest rate of 3 percent.

Second, in order to spread the costs evenly over the life of the facility, EPA annualized the present value costs by multiplying them by a capital recovery factor (CRF):

$$CRF = \frac{r(r+1)^{OL}}{(r+1)^{OL}-1}$$

where OL is the operating life of the facility. EPA assumed a 20-year operating life and a 3 percent real rate of return, which leads to a CRF of 0.0672. The annualized value represents the annual revenue required to cover the costs imposed by the provision. This value provides a consistent basis for presenting and comparing costs of different provisions. However, it implicitly assumes that facilities can predict future costs and access capital at a steady rate over the life of the facility.

b. *Double liner and leak detection system.* The final rule extends the requirements for double liners to waste piles. The rule also requires the bottom liners of landfills, surface impoundments, and waste piles to be a composite liner and a leak detection system to be installed above the bottom composite liner. The owner or operator is also required to propose an action leakage rate to serve as a trigger for response action and prepare a response action plan that would describe responses to be initiated by the owner or operator when leakage through the top liner exceeded the action leakage rate.

(1) Landfill cost analysis. In estimating the cost of complying with the composite bottom-liner and leak detection system provisions, EPA assumed that the number of landfills would remain equal to the current number in the affected population and that each unit would have a 20-year operating life and a 30-year post-closure care period. This simplifying assumption was necessary due to lack of data on the current and future number of new landfill units, replacement units, and lateral expansions. EPA also assumed that one cell would be opened and closed each year during the 20-year operating life of a unit. EPA also assumed that landfill owners or operators currently use double liners (but only a clay bottom liner) with leachate collection systems above and between the liners as required by the interim statutory design requirements, codified in §§ 264.301 and 265.301.

Based on facilities listed in the HWDMS and RCRIS National Oversight Data Base, the affected population was found to include 74 landfill facilities each with at least one unit, ranging in size from 500 MT/year to 150,000 MT/year. The affected population and the total incremental costs (above current statutory requirements) of the leak detection system provisions are shown in Table 1. This figure includes an annual allowance for repair costs similar to an insurance premium based on an assumption that 5 percent of units of all types and sizes will experience a leak at some time during their 20-year life large enough to require implementation of the response action plan. We believe the 5 percent rate is a reasonable upper limit for properly constructed units, based on an analysis of flow rates in leak detection systems at 82 landfill and surface impoundment units. Unit repair costs range from $28,000 for a 500 MT/year landfill to $6,100,000 for a 150,000 MT/year landfill (1990 dollars). EPA estimates that the incremental annualized costs for landfills required to comply with the liner and leak detection system provisions would be approximately $4,850,000.

TABLE 1.—COST OF COMPLIANCE WITH DOUBLE LINER AND LEAK DETECTIONS SYSTEM PROVISIONS FOR LANDFILL UNITS

[1990 Dollars]

Size	Number of active units	Incremental annualized present value unit cost ($1,000)	Incremental annualized present value total cost [1] ($1,000)	Allowance for repairs—Annualized present value total costs for all units [1] ($1,000)	Total costs per metric ton per year ($1,000)
500 mt/yr	28	11.1	310.5	39.2	25
1,000 mt/yr	8	14.6	116.5	22.4	17
2,000 mt/yr	5	19.9	99.7	28.0	13
6,000 mt/yr	12	37.2	446.2	168.0	9
15,000 mt/yr	13	55.4	720.8	436.7	5
35,000 mt/yr	4	98.0	392.0	302.4	5
60,000 mt/yr	1	134.7	134.7	126.0	4
100,000 mt/yr	1	194.3	194.3	207.2	4
150,000 mt/yr	2	247.7	495.3	610.3	4
Subtotal	74		2910.1	1940.1	
Total				4850.2	

[1] Totals may not compute exactly due to roundoff.

(2) Surface Impoundment Cost Analysis. To estimate the cost of the complete bottom-liner and leak detection system provisions, EPA assumed that the number of surface impoundment units would remain equal to the current number in the affected population (except that no new impoundments larger than 15 acres would be constructed) and that each unit would have a 20-year operating life. EPA also assumed that double liners (but only clay bottom liners) with a leachate collection system in between as required by the interim statutory design requirements, codified in §§ 264.221 and 265.221 are currently being used. We assumed that leachate collection drainage media having a permeability of 10^{-2} cm/sec are currently being used. Based on facilities identified in the data base, we estimated the affected population to include 329 surface impoundment units at 143 facilities. The units range in size from 0.25 acres to 15 acres. The affected population and the total incremental annualized costs (above current statutory requirements) of compliance with the leak detection system provisions are shown in Table 2. As with landfills, these costs include an allowance for repair costs based on an assumption that 5 percent will require repair during their 20-year life. Unit repair costs range from $28,000 for a 0.25-acre surface impoundment to $1,680,000 for a 15-acre unit (1990 dollars). EPA estimates that the incremental annualized costs of complying with the composite bottom-liner and leak detection system provisions would be approximately $2,650,000.

TABLE 2.—COST OF COMPLIANCE WITH DOUBLE LINER AND LEAK DETECTION SYSTEM PROVISIONS FOR SURFACE IMPOUNDMENT UNITS

[1990 Dollars]

Size	Number of active units [1]	Incremental annualized present value unit cost ($1,000)	Incremental annualized present value total cost [2] ($1,000)	Allowance for repairs—annualized present value total costs for all units ($1,000)[2]
0.25 AC	133	4.4	582.8	9.3
0.50 AC	81	5.2	422.7	11.3
1.00 AC	44	7.2	314.8	12.3
2.00 AC	46	10.8	494.8	25.8
5.00 AC	18	22.0	395.3	25.2
15.00 AC	7	47.0	329.1	29.4
Subtotal	329		2539.5	113.3
Total				2652.8

[1] Based on 2.3 impoundments per active facility.
[2] Totals may not compute exactly due to roundoff.

(3) Waste Pile Cost Analysis. EPA assumed that new, replacement, or expanded waste piles would have to add two geomembrane liners with a leak detection system in between. Current waste pile regulations require only a clay liner with a leachate collection system above. In estimating the cost of compliance with the double liner and leak detection system provisions, EPA assumed that the number of waste pile units would remain the same as the current number and that each unit would have an operating life of 20 years. Based on facilities identified in the data base, the affected population was found to include 35 waste pile facilities ranging in size from 250 cubic feet to 1,000,000 cubic feet.

The affected population and the total incremental costs (above current statutory requirements) of compliance with the double liner and leak detection system provisions are shown in Table 3. As with landfills and surface impoundments, this figure includes an allowance for repair costs based on an assumption that a maximum of 5 percent will require repair during their life. Unit repair costs range from $5,600 for a 250-cubic-foot waste pile to $450,000 for a 1 million-cubic-foot waste pile (1990 dollars). EPA estimates that the incremental annualized costs of compliance with the double liner and leak detection system requirements would be approximately $428,000.

TABLE 3.—COST OF COMPLIANCE WITH DOUBLE LINER AND LEAK DETECTION SYSTEM PROVISIONS FOR SURFACE WASTE PILE UNITS

[1990 Dollars]

Size	Number of active units [1]	Incremental annualized present value unit cost ($1,000)	Incremental annualized present value total cost [2] ($1,000)	Allowance for repairs—annualized present value total costs for all units ($1,000)[2]
250 cu. ft	3	5.2	15.5	<0.1
1,000 cu. ft	7	5.5	38.4	0.2
5,000 cu. ft	7	6.5	45.5	0.3
25,000 cu. ft	6	8.6	51.7	0.5
100,000 cu. ft	5	12.9	64.4	1.0
500,000 cu. ft	3	24.4	73.3	2.1
1,000,000 cu. ft	3	43.8	131.4	3.4
Subtotal	74		420.1	7.5
Total				427.6

[1] Outdoor (uncovered) waste piles.
[2] Total may not compute exactly due to roundoff error.

c. CQA. The final rule would require the owner/operator to complete a CQA plan, implement the plan during construction, and have a professional engineer certify that construction was completed in accordance with the CQA plan. As noted above, costs estimated for the 1987 proposal were used in this analysis except additional costs were added for test fills and certification of a professional engineer, and specific costs associated with closure were not included.

The proposed rule estimated that test fill costs would add about $10,000 (in 1987 dollars) to the cost of each facility. EPA has since determined that this figure is low and we have adjusted test fill costs upward to $50,000 (in 1990 dollars) for all types of units. Tables 4, 5, and 6 depict costs for implementing CQA (including test fills and construction certification) for landfills, surface impoundments, and waste piles, respectively.

d. Total Incremental Costs of the Leak Detection System, CQA, and Double-Liner Requirements. The total costs of the leak detection system, CQA, and double liner provisions are shown in Table 7 for landfills, surface impoundments, and waste piles. The total incremental annualized cost of the provisions would be approximately $7,930,000 for the leak detection system and double liner requirements and $13,400,000 for CQA, for a total of approximately $21,300,000. Table 8 compares the incremental costs from this rulemaking with costs from the July 15, 1985 codification rule and the July 26, 1982 permitting rule.

TABLE 4.—COST OF COMPLIANCE WITH CONSTRUCTION QUALITY ASSURANCE PROVISIONS FOR LANDFILL UNITS

[1990 Dollars]

Size	Number of active units	Incremental annualized present value unit cost ($1,000)	Incremental annualized present value total cost [1] ($1,000)	Total costs per metric ton per year ($1,000)
500 mt/yr	28	114.1	3195.7	230
1,000 mt/yr	8	114.1	913.1	114
2,000 mt/yr	5	114.1	570.7	57
6,000 mt/yr	12	114.1	1369.6	19
15,000 mt/yr	13	152.2	1979.2	8
35,000 mt/yr	4	154.7	618.9	4
60,000 mt/yr	1	209.9	209.9	3
100,000 mt/yr	1	209.9	209.9	2
150,000 mt/yr	2	209.9	419.8	1
Total	74		9466.6	

[1] Totals may not compute exactly due to roundoff.

TABLE 5.—COST OF COMPLIANCE WITH CONSTRUCTION QUALITY ASSURANCE PROVISIONS FOR SURFACE IMPOUNDMENT UNITS

[1990 Dollars]

Size	Number of active units [1]	Incremental annualized present value unit cost ($1,000)	Incremental annualized present value total cost [2] ($1,000)
0.25 AC	58	23.8	1377.7
0.50 AC	35	23.8	831.4
1.00 AC	19	23.8	451.3
2.00 AC	20	23.8	475.1
5.00 AC	8	29.4	235.6
15.00 AC	3	43.5	130.6
Total	143		3501.6

[1] Based on 2.3 impoundments per active facility.
[2] Totals may not compute exactly due to roundoff.

TABLE 6.—COST OF COMPLIANCE WITH CONSTRUCTION QUALITY ASSURANCE PROVISIONS FOR WASTE PILE UNITS

[1990 Dollars]

Size	Number of active units [1]	Incremental annualized present vaue unit cost ($1,000)	Incremental annualized present value total cost [2] ($1,000)
250 cu. ft	3	11.9	35.8
1,600 cu. ft	7	11.9	83.5
5,000 cu. ft	7	11.9	83.5
25,000 cu. ft	6	11.9	71.6
160,000 cu. ft	5	11.9	59.6
500,000 cu. ft	3	11.9	35.8
1,000,000 cu. ft	3	11.9	35.8
Total	35		405.5

[1] Outdoor (uncovered) waste piles.
[2] Totals may not compute exactly due to roundoff.

TABLE 7.—TOTAL COST OF COMPLIANCE WITH DOUBLE LINER, LEAK DETECTION SYSTEM, AND CQA PROVISIONS

[Incremental Annualized Present Value Cost in 1990 Dollars]

Facility type	Liner/leak detection system ($1,000)	Construction quality assurance ($1,000)	Total ($1,000)
Landfill	4850.2	9486.6	14336.8
Surface Impoundment	2652.8	3501.6	6154.5
Waste Pile	427.6	405.5	833.1
Total	7930.6	13393.7	21324.3

[1] Totals may not compute exactly due to roundoff.

TABLE 8.—INCREMENTAL COSTS OF DESIGN REQUIREMENTS

[In Millions of 1990 Dollars]

Facility type	1982 liner/LCS requirements [1,3]	1985 Double-liner requirements [2,3]	Today's rule [4]
Landfill	13.8–27.0	4.5	14.3
Surface Impoundment	10.4–40.9	11.9	6.2
Waste Pile	0.5–0.9		0.8
Total	24.7–68.8	16.4	21.3

[1] 47 FR 32274.
[2] 50 FR 28702.
[3] Incremental costs above previous Agency rules; costs adjusted to account for current number of units and 1990 dollars.
[4] Incremental costs above previous Agency rules. Costs do not consider potential savings due to use of 1% versus 2% minimum slope.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354) 5 U.S.C. 601 *et seq.*, which amends the Administrative Procedure Act, requires Federal regulatory agencies to consider small entities throughout the regulatory process. The purposes of the RFA are to describe the effects the regulations will have on small entities and to examine alternatives that may reduce these effects. As indicated at proposal, EPA has determined that today's rule will not have a significant impact on a substantial number of small entities. EPA conducted an evaluation of the impacts of this rule on small businesses. For purposes of this analysis, EPA used Small Business Administration criteria for identifying small businesses and evaluated the impact of today's rule using regulation-induced business closures as the key indicator of regulatory impact. The test assumed that any cost greater than 3 percent of total assets per year will result in forced closures. EPA also considered a second impact measure that compares increased annual compliance costs to total production costs with 5 percent of the threshold for significance. Using these tests, EPA has determined that the regulatory costs of today's rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control number ICR No. 995.06 as amended. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**. An Information Collection Request document has been prepared by EPA (ICR No. 995.06) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW. (PM–223Y), Washington, DC 20460 or by calling (202) 260–2740.

The public reporting burden for this collection of information is estimated to average 248 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Jonathan Gledhill."

VII. Supporting Documents

The following documents have been prepared in support of this rulemaking and placed in docket number F–92 LLDF–FFFFF.

1. U.S. EPA, "Liner and Leak Detection Rule Background Document", EPA/530–SW–87–015, May, 1987.
2. U.S. EPA, "Bottom Liner Performance in Double-Lined Landfills and Surface Impoundments Background Document", EPA/530–SW–87–013, April, 1987.
3. U.S. EPA, "Compilation of Current Practices at Land Disposal Facilities", January, 1992.
4. U.S. EPA, "Action Leakage Rate for Leak Detection Systems", January, 1992.
5. U.S. EPA, "Response to Public Comments on Final Double-Liner and Leak Detection Rule", January, 1992.
6. U.S. EPA Memorandum, "Revisions to Cost Analysis for the Final Rulemaking Entitled *Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units*," January, 1992.

List of Subjects in 40 CFR Parts 260, 264, 265, 270, and 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety

bonds, Water pollution control, Water supply.

Dated: January 15, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Section 260.10 is amended by adding the definition of "replacement unit" in alphabetical order, and revising the definition of "sump" to read as follows:

§ 260.10 Definitions.

* * * * *

Replacement unit means a landfill, surface impoundment, or waste pile unit (1) from which all or substantially all of the waste is removed, and (2) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or State approved corrective action.

* * * * *

Sump means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.15 is amended by revising paragraph (b)(4) to read as follows:

§ 264.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, and 264.1058, where applicable.

* * * * *

3. Subpart B is amended by adding § 264.19 as follows:

§ 264.19 Construction quality assurance program.

(a) *COA program.* (1) A construction quality assurance (CQA) program is required for all surface impoundment, waste pile, and landfill units that are required to comply with §§ 264.221 (c) and (d), 264.251 (c) and (d), and 264.301 (c) and (d). The program must ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program must be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program must address the following physical components, where applicable:

(i) Foundations;

(ii) Dikes;

(iii) Low-permeability soil liners;

(iv) Geomembranes (flexible membrane liners);

(v) Leachate collection and removal systems and leak detection systems; and

(vi) Final cover systems.

(b) *Written CQA plan.* The owner or operator of units subject to the CQA program under paragraph (a) of this section must develop and implement a written CQA plan. The plan must identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan must include:

(1) Identification of applicable units, and a description of how they will be constructed.

(2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(3) A description of inspection and sampling activities for all unit components identified in paragraph (a)(2) of this section, including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description must cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under § 264.73.

(c) *Contents of program.* (1) The CQA program must include observations, inspections, tests, and measurements sufficient to ensure:

(i) Structural stability and integrity of all components of the unit identified in paragraph (a)(2) of this section;

(ii) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;

(iii) Conformity of all materials used with design and other material specifications under §§ 264.221, 264.251, and 264.301.

(2) The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of §§ 264.221(c)(1)(i)(B), 264.251(c)(1)(i)(B), and 264.301(c)(1)(i)(B) in the field. Compliance with the hydraulic conductivity requirements must be verified by using in-situ testing on the constructed test fill. The Regional Administrator may accept an alternative demonstration, in lieu of a test fill, where data are sufficient to show that a constructed soil liner will meet the hydraulic conductivity requirements of §§ 264.221(c)(1)(i)(B), 264.251(c)(1)(i)(B), and 264.301(c)(1)(i)(B) in the field.

(d) *Certification.* Waste shall not be received in a unit subject to § 264.19 until the owner or operator has submitted to the Regional Administrator by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit

meets the requirements of §§ 264.221 (c) or (d), 264.251 (c) or (d), or 264.301 (c) or (d); and the procedure in § 270.30(l)(2)(ii) of this chapter has been completed. Documentation supporting the CQA officer's certification must be furnished to the Regional Administrator upon request.

4. Section 264.73 is amended by revising paragraph (b)(6) to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F and §§ 264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252–264.254, 264.276, 264.278, 264.280, 264.302–264.304, 264.309, 264.347, 264.602, 264.1034(c)–264.1034(f), 264.1035, 264.1063(d)–264.1063(i), and 264.1064.

* * * * *

5. Section 264.221 is amended by redesignating paragraphs (f), (g), and (h) as paragraphs (g), (h), and (i), respectively; by revising paragraphs (c) and (d); and by adding new paragraph (f) to read as follows:

§ 264.221 Design and operating requirements.

* * * * *

(c) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992 and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system between such liners. "Construction commences" is as defined in § 260.10 of this chapter under "existing facility".

(1)(i) The *liner system* must include:

(A) A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(ii) The liners must comply with paragraphs (a) (1), (2), and (3) of this section.

(2) The *leachate collection and removal system* between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a *leak detection system*. This leak detection system must be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;

(ii) Constructed of granular drainage materials with a hydraulic conductivity of 1×10^{-1} cm/sec or more and a thickness of 12 inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-4} m^2sec or more;

(iii) Constructed of materials that are chemically resistant to the waste managed in the surface impoundment and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes and any waste cover materials or equipment used at the surface impoundment;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sump(s). The design of each sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(3) The owner or operator shall collect and remove pumpable liquids in the sumps to minimize the head on the bottom liner.

(4) The owner or operator of a leak detection system that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(d) The Regional Administrator may approve alternative design or operating practices to those specified in paragraph (c) of this section if the owner or operator demonstrates to the Regional Administrator that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal system specified in paragraph (c) of this section; and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

* * * * *

(f) The owner or operator of any replacement surface impoundment unit is exempt from paragraph (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of sections 3004 (o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

* * * * *

6. New §§ 264.222 and 264.223 are added to read as follows:

§ 264.222 Action leakage rate.

(a) The Regional Administrator shall approve an action leakage rate for surface impoundment units subject to § 264.221 (c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(b) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under § 264.226(d) to an average daily flow rate (gallons per acre per day) for each sump. Unless the Regional Administrator approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and if the unit is

closed in accordance with § 264.228(b), monthly during the post-closure care period when monthly monitoring is required under § 264.228(d).

§ 264.223 Response actions.

(a) The owner or operator of surface impoundment units subject to § 264.221 (c) or (d) must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator must:

(1) Notify the Regional Administrator in writing of the exceedence within 7 days of the determination;

(2) Submit a preliminary written assessment to the Regional Administrator within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Regional Administrator the results of the analyses specified in paragraphs (b) (3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Regional Administrator a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in paragraphs (b) (3), (4), and (5) of this section, the owner or operator must:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

7. Section 264.226 is amended by adding new paragraph (d) to read as follows:

§ 264.226 Monitoring and inspection.

* * * * *

(d)(1) An owner or operator required to have a leak detection system under § 264.221 (c) or (d) must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump must be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps must be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Regional Administrator based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

8. Section 264.228 is amended by redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4) respectively, and by adding a new paragraph (b)(2) to read as follows:

§ 264.228 Closure and post-closure care.

* * * * *

(b) * * *

(2) Maintain and monitor the leak detection system in accordance with §§ 264.221(c)(2)(iv) and (3) and 264.226(d), and comply with all other applicable leak detection system requirements of this part;

* * * * *

9. Section 264.251 is amended by redesignating paragraphs (c), (d), (e), (f), and (g) as paragraphs (g), (h), (i), (j) and (k), respectively, and by adding new paragraphs (c), (d), (e), and (f) to read as follows:

§ 264.251 Design and operating requirements.

* * * * *

(c) The owner or operator of each new waste pile unit on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is as defined in § 260.10 under "existing facility".

(1)(i) The liner system must include:

(A) A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(ii) The liners must comply with paragraphs (a)(1)(i), (ii), and (iii) of this section.

(2) The *leachate collection and removal system* immediately above the top liner must be designed, constructed, operated, and maintained to collect and remove leachate from the waste pile during the active life and post-closure care period. The Regional Administrator will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must comply with paragraphs (c)(3)(iii) and (iv) of this section.

(3) The *leachate collection and removal system* between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a *leak detection system*. This leak detection system must be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner

likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;

(ii) Constructed of granular drainage materials with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m^2/sec or more;

(iii) Constructed of materials that are chemically resistant to the waste managed in the waste pile and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the waste pile;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sump(s). The design of each sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(4) The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(5) The owner or operator of a leak detection system that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(d) The Regional Administrator may approve alternative design or operating practices to those specified in paragraph (c) of this section if the owner or operator demonstrates to the Regional Administrator that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in paragraph (c) of this section; and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) Paragraph (c) of this section does not apply to monofills that are granted a waiver by the Regional Administrator in accordance with § 264.221(e).

(f) The owner or operator of any replacement waste pile unit is exempt from paragraph (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

* * * * *

10. New §§ 264.252 and 264.253 are added to read as follows:

§ 264.252 Action leakage rate.

(a) The Regional Administrator shall approve an action leakage rate for surface impoundment units subject to § 264.251(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(b) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly flow rate from the monitoring data obtained under § 264.254(c) to an average daily flow rate (gallons per acre per day) for each sump. Unless the Regional Administrator approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period.

§ 264.253 Response actions.

(a) The owner or operator of waste pile units subject to § 264.251 (c) or (d) must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator must:

(1) Notify the Regional Administrator in writing of the exceedance within 7 days of the determination;

(2) Submit a preliminary written assessment to the Regional Administrator within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and long-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the nonfication that the action leakage rate has been exceeded, submit to the Regional Administrator the results of the analyses specified in paragraphs (b) (3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Regional Administrator a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in paragraphs (b) (3), (4), and (5) of this section, the owner or operator must:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

11. Section 264.254 is amended by adding new paragraph (c) to read as follows:

§ 264.254 Monitoring and inspection.

* * * * *

(c) An owner or operator required to have a leak detection system under § 264.251(c) must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

12. Section 264.301 is amended by redesignating paragraphs (f), (g), (h), (i),

(j), and (k) as paragraphs (g), (h), (i), (j), (k), and (l), respectively, by revising paragraphs (c) and (d), and by adding new paragraph (f) to read as follows:

§ 264.301 Design and operating requirements.

* * * * *

(c) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is as defined in § 260.10 of this chapter under "existing facility".

(1)(i) The *liner system* must include:

(A) A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(ii) The liners must comply with paragraphs (a)(1) (i), (ii), and (iii) of this section.

(2) The *leachate collection and removal system* immediately above the top liner must be designed, constructed, operated, and maintained to collect and remove leachate from the landfill during the active life and post-closure care period. The Regional Administrator will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must comply with paragraphs (3)(c) (iii) and (iv) of this section.

(3) The *leachate collection and removal system* between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a *leak detection system*. This leak detection system must be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;

(ii) Constructed of granular drainage materials with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m^2/sec or more;

(iii) Constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the landfill;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods (e.g., pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sump(s). The design of each sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(4) The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(5) The owner or operator of a leak detection system that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(d) The Regional Administrator may approve alternative design or operating practices to those specified in paragraph (c) of this section if the owner or operator demonstrates to the Regional Administrator that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in paragraph (c) of this section; and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

* * * * *

(f) The owner or operator of any replacement landfill unit is exempt from paragraph (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

* * * * *

13. New § 264.302 is added to read as follows:

§ 264.302 Action leakage rate.

(a) The Regional Administrator shall approve an action leakage rate for surface impoundment units subject to § 264.301(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding l foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(b) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under § 264.303(c), to an average daily flow rate (gallons per acre per day) for each sump. Unless the Regional Administrator approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and monthly during the post-closure care period when monthly monitoring is required under § 264.303(c).

14. Section 264.303 is amended by adding new paragraph (c) to read as follows:

§ 264.303 Monitoring and inspection.

* * * * *

(c)(1) An owner or operator required to have a leak detection system under § 264.301(c) or (d) must record the amount of liquids removed from each leak detection system sump at least

once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump must be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps must be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Regional Administrator based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

15. New § 264.304 is added to read as follows:

§ 264.304 Response actions.

(a) The owner or operator of landfill units subject to § 264.301(c) or (d) must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator must:

(1) Notify the Regional Administrator in writing of the exceedence within 7 days of the determination;

(2) Submit a preliminary written assessment to the Regional Administrator within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Regional Administrator the results of the analyses specified in paragraphs (b)(3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Regional Administrator a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in paragraphs (b)(3), (4), and (5) of this section, the owner or operator must:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

16. Section 264.310 is amended by redesignating paragraphs (b)(3), (4), and (5) as paragraphs (b)(4), (5), and (6) respectively, and by adding a new paragraph (b)(3) to read as follows:

§ 264.310 Closure and post-closure care.

* * * * *

(b) * * *

(3) Maintain and monitor the leak detection system in accordance with §§ 264.301(c)(3)(iv) and (4) and 264.303(c), and comply with all other applicable leak detection system requirements of this part;

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 265 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936.

2. Section 265.15 is amended by revising paragraph (b)(4) to read as follows:

§ 265.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, and 265.1058, where applicable.

* * * * *

3. Subpart B is amended by adding § 265.19 to read as follows:

§ 265.19 Construction quality assurance program.

(a) *CQA program.* (1) A construction quality assurance (CQA) program is required for all surface impoundment, waste pile, and landfill units that are required to comply with §§ 265.221(a), 265.254, and 265.301(a). The program must ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program must be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program must address the following physical components, where applicable:

(i) Foundations;

(ii) Dikes;

(iii) Low-permeability soil liners;

(iv) Geomembranes (flexible membrane liners);

(v) Leachate collection and removal systems and leak detection systems; and

(vi) Final cover systems.

(b) *Written CQA plan.* Before construction begins on a unit subject to the CQA program under paragraph (a) of this section, the owner or operator must develop a written CQA plan. The plan must identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan must include:

(1) Identification of applicable units, and a description of how they will be constructed.

(2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(3) A description of inspection and sampling activities for all unit components identified in paragraph

(a)(2) of this section, including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description must cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under § 265.73.

(c) *Contents of program.* (1) The CQA program must include observations, inspections, tests, and measurements sufficient to ensure:

(i) Structural stability and integrity of all components of the unit identified in paragraph (a)(2) of this section;

(ii) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;

(iii) Conformity of all materials used with design and other material specifications under §§ 264.221, 264.251, and 264.301 of this chapter.

(2) The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full-scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of §§ 264.221(c)(1), 264.251(c)(1), and 264.301(c)(1) of this chapter in the field. Compliance with the hydraulic conductivity requirements must be verified by using in-situ testing on the constructed test fill. The test fill requirement is waived where data are sufficient to show that a constructed soil liner meets the hydraulic conductivity requirements of §§ 264.221(c)(1), 264.254(c)(1), and 264.301(c)(1) of this chapter in the field.

(d) *Certification.* The owner or operator of units subject to § 265.19 must submit to the Regional Administrator by certified mail or hand delivery, at least 30 days prior to receiving waste, a certification signed by the CQA officer that the CQA plan has been successfully carried out and that the unit meets the requirements of §§ 265.221(a), 265.254, or 265.301(a). The owner or operator may receive waste in the unit after 30 days from the Regional Administrator's receipt of the CQA certification unless the Regional Administrator determines in writing that the construction is not acceptable, or extends the review period for a maximum of 30 more days, or seeks additional information from the owner or operator during this period. Documentation supporting the CQA officer's certification must be furnished to the Regional Administrator upon request.

4. Section 265.73 is amended by revising paragraph (b)(6) to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(6) Monitoring, testing, or analytical data, and corrective action where required by subpart F and §§ 265.19, 265.90, 265.94, 265.191, 265.193, 265.195, 265.222, 265.223, 265.228, 265.255, 265.258, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302–265.304, 265.347, 265.377, 265.1034(c)–265.1034(f), 265.1035, 265.1063(d)–264.1083(i), and 265.1084.

* * * * * *

5. Section 265.221 is amended by revising the section heading and by revising paragraphs (a) and (c) to read as follows:

§ 265.221 Design and operating requirements.

(a) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system between such liners, and operate the leachate collection and removal system, in accordance with § 264.221(c), unless exempted under § 264.221(d), (e), or (f), of this chapter. "Construction commences" is as defined in § 260.10 of this chapter under "existing facility."

* * * * *

(c) The owner or operator of any replacement surface impoundment unit is exempt from paragraph (a) of this section if:

(1) The existing unit was constructed in compliance with the design standards of § 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

* * * * *

6. Paragraphs (a) and (b) of § 265.222 are transferred to § 265.221 and redesignated as paragraphs (f) and (g), respectively.

7. Section 265.222, is amended by revising, the section heading and adding paragraphs (a) through (c) and § 265.223 is added to read as follows:

§ 265.222 Action leakage rate.

(a) The owner or operator of surface impoundment units subject to § 265.221(a) must submit a proposed action leakage rate to the Regional Administrator when submitting the notice required under § 265.221(b). Within 60 days of receipt of the notification, the Regional Administrator will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Regional Administrator before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Regional Administrator shall approve an action leakage rate for surface impoundment units subject to § 265.221(a). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(c) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under § 265.226(b), to an average daily flow rate (gallons per acre per day) for each sump. Unless the Regional Administrator approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and if the unit closes in accordance with § 265.228(a)(2), monthly during the post-closure care period when monthly monitoring is required under § 265.226(b).

§ 265.223 Response actions.

(a) The owner or operator of surface impoundment units subject to § 265.221(a) must submit a response action plan to the Regional Administrator when submitting the

proposed action leakage rate under § 265.222. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator must:

(1) Notify the Regional Administrator in writing of the exceedence within 7 days of the determination;

(2) Submit a preliminary written assessment to the Regional Administrator within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Regional Administrator the results of the analyses specified in paragraphs (b)(3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Regional Administrator a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in paragraphs (b)(3), (4), and (5) of this section, the owner or operator must:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

8. Section 265.226 is amended by revising the section heading and adding new paragraph (b) to read as follows:

§ 265.226 Monitoring and inspection.

* * * * *

(b)(1) An owner or operator required to have a leak detection system under § 265.221(a) must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump must be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps must be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Regional Administrator based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with § 265.222(a).

9. Section 265.228 is amended by redesignating paragraphs (b)(2) and (3) as paragraphs (b)(3) and (4) respectively, and by adding a new paragraph (b)(2) to read as follows:

§ 265.228 Closure and post-closure care.

* * * * * * *

(b) * * *

(2) Maintain and monitor the leak detection system in accordance with §§ 265.221(c)(2)(iv) and (3) of this chapter and 265.226(b) and comply with all other applicable leak detection system requirements of this part;

* * * * * * *

10. Section 265.254 is revised, including the section heading, to read as follows:

§ 265.254 Design and operating requirements.

The owner or operator of each new waste pile on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each such replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with § 264.251(c), unless exempted under § 264.251(d), (e), or (f), of this chapter; and must comply with the procedures of § 265.221(b). "Construction commences" is as defined in § 260.10 of this chapter under "existing facility".

11. New §§ 265.255, 265.259, and 265.260 are added to read as follows:

§ 265.255 Action leakage rates

(a) The owner or operator of waste pile units subject to § 265.254 must submit a proposed action leakage rate to the Regional Administrator when submitting the notice required under § 265.254. Within 60 days of receipt of the notification, the Regional Administrator will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Regional Administrator before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Regional Administrator shall approve an action leakage rate for surface impoundment units subject to § 265.254. The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(c) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly flow rate from the monitoring data obtained under § 265.260, to an average daily flow rate (gallons per acre per day) for each sump. Unless the Regional Administrator approves a different calculation, the average daily flow rate for each sump must be calculated

weekly during the active life and closure period.

§ 265.259 Response actions.

(a) The owner or operator of waste pile units subject to § 265.254 must submit a response action plan to the Regional Administrator when submitting the proposed action leakage rate under § 265.255. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

(b) If the flow rate into the leak determination system exceeds the action leakage rate for any sump, the owner or operator must:

(1) Notify the Regional Administrator in writing of the exceedence within 7 days of the determination;

(2) Submit a preliminary written assessment to the Regional Administrator within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipts should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Regional Administrator the results of the analyses specified in paragraphs (b)(3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Regional Administrator a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in paragraphs (b)(3), (4), and (5) of this section, the owner or operator must:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

§ 265.260 Monitoring and inspection.

An owner or operator required to have a leak detection system under § 265.254 must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

12. Section 265.301 is amended by revising the section heading and by revising paragraphs (a) and (c) to read as follows:

§ 265.301 Design and operating requirements.

(a) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with § 264.301(d), (e), or (f), of this chapter. "Construction commences" is as defined in § 260.10 of this chapter under "existing facility".

* * * * * * *

(c) The owner or operator of any replacement landfill unit is exempt from paragraph (a) of this section if:

(1) The existing unit was constructed in compliance with the design standards of section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

* * * * * * *

13. Paragraphs (a), (b), (c), and (d) of § 265.302 are transferred to § 265.301 and redesignated as paragraphs (f), (g), (h), and (i), respectively.

14. Section 265.302, is amended by revising the section heading and adding paragraphs (a) through (c) and new §§ 265.303 and 265.304 are added to read as follows:

§ 265.302 Action leakage rate.

(a) The owner or operator of landfill units subject to § 265.301(a) must submit a proposed action leakage rate to the Regional Administrator when submitting the notice required under § 265.301(b). Within 60 days of receipt of the notification, the Regional Administrator will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Regional Administrator before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Regional Administrator shall approve an action leakage rate for surface impoundment units subject to § 265.301(a). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

(c) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under § 265.304 to an average daily flow rate (gallons per acre per day) for each sump. Unless the Regional Administrator approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and monthly during the post-closure care period when monthly monitoring is required under § 265.304(b).

§ 265.303 Response actions.

(a) The owner or operator of landfill units subject to § 265.301(a) must submit a response action plan to the Regional Administrator when submitting the proposed action leakage rate under § 265.302. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator must:

(1) Notify the Regional Administrator in writing of the exceedence within 7 days of the determination;

(2) Submit a preliminary written assessment to the Regional Administrator within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Regional Administrator the results of the analyses specified in paragraphs (b)(3), (4), and (5) of this section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Regional Administrator a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in paragraphs (b)(3), (4), and (5) of this section, the owner or operator must:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

§ 265.304 Monitoring and inspection.

(a) An owner or operator required to have a leak detection system under § 265.301(a) must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(b) After the final cover is installed, the amount of liquids removed from each leak detection system sump must be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps must be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps must be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator must return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(c) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Regional Administrator based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with § 265.302(a).

15. Section 265.310 is amended by redesignating paragraphs (b)(2), (3), and (4) as paragraphs (b)(3), (4), and (5), respectively, and by adding a new paragraph (b)(2) to read as follows:

§ 265.310 Closure and post-closure care.

* * * * *

(b) * * *

(2) Maintain and monitor the leak detection system in accordance with §§ 264.301(c)(3)(iv) and (4) of this chapter and 265.304(b), and comply with all other applicable leak detection system requirements of this part;

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.4 is amended by revising paragraph (a) to read as follows:

§ 270.4 Effect of a permit.

(a) Compliance with a RCRA permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which:

(1) Become effective by statute;

(2) Are promulgated under part 268 of this chapter restricting the placement of hazardous wastes in or on the land; or

(3) Are promulgated under part 264 of this chapter regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of § 270.42 Class 1* permit modifications.

* * * * *

(3) Section 270.17 is amended by redesignating paragraphs (b)(2) and (3) as (b)(6) and (7) respectively; revising paragraph (b); introductory text; adding paragraphs (b)(2) through (b)(5); and revising paragraph (c) to read as follows:

§ 270.17 Specific Part B information requirements for surface impoundments.

* * * * *

(b) Detailed plans and an engineering report describing how the surface impoundment is designed and is or will be constructed, operated, and maintained to meet the requirements of §§ 264.19, 264.221, 264.222, and 264.223 of this chapter, addressing the following items:

(1) * * *

(2) The double liner and leak (leachate) detection, collection, and removal system, if the surface impoundment must meet the requirements of § 264.221(c) of this chapter. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by § 264.221(d), (e), or (f) of this chapter, submit appropriate information;

(3) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(4) The construction quality assurance (CQA) plan if required under § 264.19 of this chapter;

(5) Proposed action leakage rate, with rationale, if required under § 264.222 of this chapter, and response action plan, if required under § 264.223 of this chapter;

* * * * *

(c) A description of how each surface impoundment, including the double liner system, leak detection system, cover system, and appurtenances for control of overtopping, will be inspected in order to meet the requirements of § 264.226(a), (b), and (d) of this chapter. This information must be included in the inspection plan submitted under § 270.14(b)(5);

* * * * *

4. Section 270.18 is amended by revising paragraphs (c) introductory text, (c)(1) and (d) to read as follows:

§ 270.18 Specific Part B information for waste piles.

* * * * *

(c) Detailed plans and an engineering report describing how the waste pile is designed and is or will be constructed, operated, and maintained to meet the requirements of §§ 264.19, 264.251, 264.252, and 264.253 of this chapter, addressing the following items:

(1)(i) The liner system (except for an existing portion of a waste pile), if the waste pile must meet the requirements of § 264.251(a) of this chapter. If an exemption from the requirement for a liner is sought as provided by § 264.251(b) of this chapter, submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner and leak (leachate) detection, collection, and removal system, if the waste pile must meet the requirements of § 264.251(c) of this chapter. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by § 264.251(d), (e), or (f) of this chapter, submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance (CQA) plan if required under § 264.19 of this chapter;

(v) Proposed action leakage rate, with rationale, if required under § 264.252 of this chapter, and response action plan, if required under § 264.253 of this chapter;

* * * * *

(d) A description of how each waste pile, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of § 264.254(a), (b), and (c) of this chapter. This information must be included in the inspection plan submitted under § 270.14(b)(5);

* * * * *

5. Section 270.21 is amended by revising paragraphs (b) introductory text, (b)(1) and (c) to read as follows:

§ 270.21 Specific Part B information requirements for landfills.

* * * * *

(b) Detailed plans and an engineering report describing how the landfill is designed and is or will be constructed, operated, and maintained to meet the requirements of §§ 264.19, 264.301, 264.302, and 264.303 of this chapter, addressing the following items:

(1)(i) The liner system (except for an existing portion of a landfill), if the landfill must meet the requirements of § 264.301(a) of this chapter. If an exemption from the requirement for a liner is sought as provided by § 264.301(b) of this chapter, submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner and leak (leachate) detection, collection, and removal system, if the landfill must meet the requirements of § 264.301(c) of this chapter. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by § 264.301(d), (e), or (f) of this chapter, submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance (CQA) plan if required under § 264.19 of this chapter;

(v) Proposed action leakage rate, with rationale, if required under § 264.302 of this chapter, and response action plan, if required under § 264.303 of this chapter;

* * * * *

(c) A description of how each landfill, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of § 264.303(a), (b), and (c) of this chapter. This information must be included in the inspection plan submitted under § 270.14(b)(5);

* * * * *

6. Section 270.42 is amended by adding the following to Appendix I:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

Appendix I To § 270.42.—Classification of Permit Modification

Modification	Class
* * * * *	
B. * * *	
7. Construction quality assurance plan:	
a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications	1
b. Other changes	2
* * * * *	
H. * * *	
6. Modifications of unconstructed units to comply with §§ 264.221(c), 264.222, 264.223, and 264.226(d)	*1
7. Changes in response action plan:	
a. Increase in action leakage rate	3
b. Change in a specific response reducing its frequency or effectiveness	3
c. Other changes	2
* * * * *	
J. * * *	
7. Modifications of unconstructed units to comply with §§ 264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304	*1
8. Changes in response action plan:	
a. Increase in action leakage rate	3
b. Change in a specific response reducing its frequency or effectiveness	3
c. Other changes	2

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

2. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

TABLE 1. REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
•	•	•	•
January 29,1992.	Liners and Leak Detection for Hazardous Waste Land Disposal Units [2].	57FR [Insert FEDERAL REGISTER Page Numbers]..	July 29, 1992

[2] The following portions of this rule are not HSWA regulations: §§ 264.19 and 265.19 for final covers

[FR Doc. 92-1655 Filed 1-28-92; 8:45 am]

BILLING CODE 6560-50-M

VOL
57

ISS
19

JA
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federal register

Wednesday
January 29, 1992

Part III

Environmental Protection Agency

Ethyl Parathion, Amendment of Cancellation Order; Notice

VOL 57 ISS 19 JA 29 1992

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66157A; FRL 4044-8]

Ethyl Parathion, Amendment of Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of amended cancellation order.

SUMMARY: On December 13, 1991, EPA published pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), an announcement of receipt of requests from a number of registrants to voluntarily cancel registrations of pesticide products containing ethyl parathion (*O,O*-diethyl-*O*-(*p*-nitrophenyl) phosphorothioate) ("parathion") and a cancellation order granting the requests. The cancellation order contained certain limitations upon the sale, distribution, and use of existing stocks of canceled pesticide products containing parathion. EPA has amended the cancellation order to permit limited additional use of existing stocks of certain canceled products containing parathion.

DATES: The amended cancellation order became effective on January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Brian Steinwand, Office of Pesticide Programs (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd Floor 2800 Jefferson Davis Highway, Arlington, VA 703-308-8174.

SUPPLEMENTARY INFORMATION:

I. Amended Cancellation Order

On December 13, 1991, EPA published a notice in the **Federal Register**, (56 FR 65061), pursuant to section 6(f)(1) of FIFRA, which announced receipt of requests from a number of registrants to voluntarily cancel registrations of pesticide products containing parathion as an active ingredient. The requests were the result of an agreement between EPA and registrants of parathion products which limited the sites where, and the application practices by which, parathion could be used. In the same notice, EPA published an order granting the cancellation requests and placed certain restrictions on the sale, distribution, and use of existing stocks of canceled products containing parathion. In brief, those restrictions prohibited any distribution or sale after December 1, 1991, and use after December 31, 1991, of any canceled parathion product unless the product is aerially applied on one of a small number of retained field crop uses according to specific conditions referenced in the cancellation order.

In recent weeks, the Agency has become aware of information that has led to the reconsideration of the existing stocks provision of the cancellation order. The Agency had assumed during the negotiations that led to the agreement that although some canceled parathion products, particularly those of emulsifiable concentrate formulations, could be diverted to use on the retained field crops, other formulations, particularly the wettable powder ones, would not be well suited to aerial application on field crops. Discussions with registrants and others have subsequently confirmed that wettable powder product is not likely to be diverted to or reformulated for use on the retained field crops. At the time EPA entered the agreement with the parathion registrants, it was hoped that much of the wettable powder existing stocks in the end-users' hands would be used prior to the December 31st cutoff date (particularly in California, where a great deal of parathion was previously used during the last months of the year). It appears that a significant amount of wettable powder stocks was diverted to California (and perhaps other western states) after the agreement was signed, but unfavorable weather conditions resulted in much less use than was anticipated. Consequently, there now appears to be a large amount of wettable powder product remaining in the hands of end-users (commercial and private applicators), particularly in California (and perhaps in other western states). Although EPA does not have firm figures on the amount of product in the hands of end users around the country, there is evidence of sufficient stock to be concerned about its long term safety.

EPA has held discussions with registrants in an effort to persuade them to participate in a voluntary recall of canceled parathion product. Although this appears likely to occur for the great bulk of emulsifiable concentrate product, many registrants, distributors, and retail dealers of parathion products are refusing to take back non-emulsifiable concentrate product currently in the hands of end-users. Because these products were not suspended before they were canceled, EPA lacks the authority under FIFRA section 19 to mandate a recall by registrants of the products still in the hands of end-users. Further, it appears unlikely that state governments have the resources required to assume responsibility for the proper disposal of this material. As a result, the Agency is faced with a situation where it appears increasingly likely that end-users may have to bear the burden of proper storage and disposal of large quantities of non-emulsifiable parathion products.

The Agency has had discussions with grower groups and state officials, and is concerned that, because of the expense of proper disposal, holders of parathion products may either attempt to store the products indefinitely or use or dispose of them illegally. Many of the wettable powder products are packaged in paper containers, which further complicates the storage and transportation of the material. EPA has doubts at this point that many end-users have proper facilities for long-term storage of hazardous materials, and is concerned with the risks of such long-term storage even if users attempt to store the material properly (EPA will be proposing long-term storage requirements for canceled parathion products in the near future).

In light of the concerns identified above, EPA has determined that the risks associated with canceled wettable-powder parathion products remaining indefinitely in the hands of end-users may outweigh the risks associated with restricted use of such products currently in the physical possession of end users, and has therefore decided to allow some limited additional use of such canceled products. Accordingly, EPA is amending the cancellation order issued on December 13, 1991 to allow use through July 31, 1992 (in accord with label directions, restrictions and conditions), of non-emulsifiable concentrate canceled parathion product currently in the physical possession of end users. This Amended Cancellation Order applies only to use of certain canceled parathion products; no further distribution or sale of such products is permitted. In order to be lawful under FIFRA, any such use must be in accordance with the previously-approved labeling for the particular product used.

The products for which additional use through July 31, 1992 is allowed are identified in the following Table 1:

Company Registration Number
279
769
2935
5481
5905
9779
10163
11656
19713
34704
51036

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TABLE 1.—PRODUCTS APPROVED FOR EXTENDED USE

Company Registration Number	Company Name	Company Address	Product Registration Number	Product Name
279	FMC Corporation, Agricultural Chemical Group	1735 Market Street, Philadelphia, PA 19103	279-336	Phoskil Spray
			279-447	Phoskil 25 Spray
			279-464	Phoskil 2 Dust Insecticide
			279-1251	Aqua Phoskil 6
			279-1957	Niagara Parathion 2 Coated Granules
			279-2069	Parathion 10 Granular
			279-2770	Malathion Parathion Wettable
769	Sureco	P.O. Box 938, Fort Valley, GA 31030	769-77	Parthion 15% Wettable
			769-110	Parathion-Sulphur 2 Peach Spray 6
			769-241	Parathion-Captan Peach Spray
			769-442	10% Parathion Granulated
			769-518	Sure-Kote P Parathion-Sulphur Flowable Peach Spray
			769-557	Parathion 25-W
2935	Wilbur-Ellis	191 W. Shaw Avenue, Suite 107, Fresno, CA 93704	2935-329	Wilbur-Ellis Parathion 8 Flowable
5481	AMVAC Chemical Corp.	4100 E. Washington Blvd., Los Angeles, CA 90023	5481-99	Durham Durathion Granules 2
			5481-127	Durham Durathion Granules 5
			5481-185	Parathion 25W
			5481-243	Royal Brand 1% Parathion
			5481-244	Ferbem Parathion Dust
			5481-246	3.75% Parathion & 70% Sulfur
			5481-252	Parathion 4-G
			5481-260	Thioden 3 Parathion 1 Tobacco Dust
			5481-263	Parathion 25 DB
			5481-265	Polyram 3.5 Dust With Parathion-1.0
			5481-277	Captan Parathion 25-7.5 Wettable
			5481-281	Parathion 15-W
			5481-290	Apple Dust No. 3
			5481-295	2% Parathion Dust
			5481-297	Cyprex, Parathion, Sulphur 2-2-20 Dust
			5481-299	Sulphur-Parathion Fungicide Insecticide For Apples
			5481-329	Parathion-Zinc-Sulfur 2.7-12-55 WP
5905	Helena Chemical Company	Suite 500, 6075 Poplar Avenue, Memphis, TN 38119	5905-284	Peach Spray
			5905-292	15% Parathion Wettable
9779	Riverside/Terra Corperation	P.O. Box 171376, Memphis, TN 38187	9779-205	Riverside 10% Parathion Granules
10163	Gowan Company	P.O. Box 5569, Yuma, AZ 85366	10163-54	Prokil Parathion 8 Flowable
			10163-62	Prokil Parathion 25 WP
11656	Western Farm Service	3705 W. Beechwood Ave., Suite 101, Fresno, CA 93711	11656-62	Parathion 25 Wettable
			11656-84	Parathion 25 Wettable
19713	Drexel Chemical Company	P.O. Box 9306, Memphis, TN 38109	19713-100	Drexel Parathion 10%G
			19713-280	Ide, Inc. Parathion 10%G
34704	Platte Chemical Company	419 18th Street, P.O. Box 667, Greeley, CO 80632	34704-56	Clean Crop Parathion 25W
			34704-85	Clean Crop Parathion 8-F
			34704-90	Parathion 25W
			34704-327	Kolo Phos Kil 3 Spray
			34704-334	Sulfur 6 Phos Kil 2 Spray
			34704-385	Captan 25 Parathion 7.5 W.P.
			34704-460	Parawet 25W
51036	Micro-Flo Company	P.O. Box 5948, Lakeland, FL 33807	51036-21	Parathion 15 WP
			51036-32	Parathion 15 WP
			51036-43	Parathion 10G
			51036-46	Peach Spray S-P-Z 6-2-3
			51036-47	Peach Spray S-P 6-2
			51036-86	Parathion 25 WP
			51036-155	Parathion 2% Bait
			51036-160	Parathion 10 Granular

The parathion section 24(c) special local need registrations that have been approved for extended use are list in the following Table 2:

TABLE 2.—PARATHION SECTION 24(C) (STATE) SPECIAL LOCAL NEED (SLN) REGISTRATIONS APPROVED FOR EXTENDED USE

Company Registration Number	Company Name	Company Address	Product Registration Number	Product Name
279	FMC Corporation, Agricultural Chemical Group	1735 Market Street, Philadelphia, PA 19103	CA780139	Niagara Phos Kil 25 Spray
			CA790084	Niagara Phos Kil 25 Spray
			CA800183	Niagara Phos Kil 25 Spray
			CA820084	Niagara Phos Kil 25 Spray
2935	Wilber-Ellis	191 W. Shaw Avenue, Suite 107, Fresno, CA 93704	OR780021	Niagara Phos Kil 25 Spray
			ID770020	Red Top Parathion 8 Flowable
			ID880010	Red Top Parathion 8 Flowable
			WA820073	Red Top Parathion 8 Flowable
4581	Pennwalt	Three Parkway, Room 619, Philadelphia, PA 19102	LA880005	Penncap-E Insecticide
			OK780015	Penncap-E

Products for which no additional use is allowed are identified in the following Table 3:

TABLE 3.—PRODUCTS NOT APPROVED FOR EXTENDED USE

Company Registration Number	Company Name	Company Address	Product Registration Number	Product Name
279	FMC Corporation, Agricultural Chemical Group	1735 Market Street, Philadelphia, PA 19103	279-1368	Parathion 4 Emusifiable
			279-1611	Aqua 8 Parathion
			279-2089	Parathion 1 Thiodan 2 EC
			279-2128	Methyl Parathion 3 Parathion 6 EC
769	Sureco	P.O. Box 936, Fort Valley, GA 31030	769-291	Parathion-EC4
2935	Wilbur-Ellis	191 W. Shaw Avenue, Suite 107, Fresno, CA 93704	2935-138	Wilbur-Ellis Parathion 4 Spray
			2935-360	Wilbur-Ellis Ethyl-Methyl Parathion 6-3
4787	Cheminova Holding A/S	1455 Broad Street, Bloomfield, NJ 07003	4787-12	Sure-Death Brand Airpara--Miscible
			4787-13	Sure Death Brand 4LB. Parathion Emusifiable Concentrate
5481	AMVAC Chemical Corp.	4100 E. Washington Blvd., Los Angeles, CA 90023	5481-151	Parathion 8
			5481-152	Parathion-Methyl Parathion 6-3
			5481-261	Parathion 1 Thiodan 2 EC
			5481-266	Parathion 800
			5481-267	Parathion 400
5905	Helena Chemical Company	Suite 500, 6075 Poplar Avenue, Memphis, TN 38119	5905-82	Helena Brand Parathion 4E Emulsifiable Insecticide Concentrate
			5905-86	Helena Brand Parathion 8E Emulsifiable Insecticide Concentrate
			5905-109	2 LB. Ethyl Parathion F/Mosquito Control
			5905-187	Ethyl Parathion 8 LB.
			5905-214	3 LB. Ethyl Parathion
			5905-215	Ethyl Parathion 4
			5905-225	Parathion-Methyl Parathion 6-3 Insecticide
			5905-334	Parathion 4 E.C.
7401	Voluntary Purchasing Group, Inc.	P.O. Box 460, Bonham, TX 75418	7401-156	Hi-Yield Brand 4 LB Ethyl Parathion
			7401-203	Hi-Yield 6-Ethyl 3-Methyl
			7401-297	Hi-Yield Brand 8 LB. Ethyl Parathion
9779	Riverside/Terra Corporation	P.O. Box 171376, Memphis, TN 38187	9779-26	Riverside Parathion 4
			9779-125	Riverside Dithon
			9779-136	Riverside Parathion 8
10107	Cornbelt Chemical Company	P.O. Box 410, McCook, NE 69001	10107-24	Parathion E8
10163	Gowen Company	P.O. Box 5569, Yuma, AZ 85366	10163-1	Prokil Parathion 4 LD.
			10163-6	Prokil Ethyl-Methyl Parathion 6-3E
			10163-52	Prokil Parathion 8 EC
			10163-117	Gowen Parathion-Methyl Parathion 6-3E
11656	Western Farm Service	3705 W. Beechwood Ave., Suite 101, Fresno, CA 93711	11656-14	Parathion 8EC

TABLE 3.—PRODUCTS NOT APPROVED FOR EXTENDED USE—Continued

Company Registration Number	Company Name	Company Address	Product Registration Number	Product Name
			11656-15	Western Farm Service, Inc. Parathion 4
			11656-16	Western Farm Service, Inc. Ethyl-Methyl 6-3
19713	Drexel Chemical Company	P.O. Box 9306, Memphis, TN 38109	19713-36	Drexel Parathion 8
			19713-83	Drexel Sele-Tree 6-3
			19713-218	Parathion 4 Emulsifiable Concentrate
			19713-272	Ida. Inc. Sele-Tree 6-3
34704	Platte Chemical Company	419 18th Street, P.O. Box 667, Greeley, CO 80632	34704-2	Clean Crop Parathion 4-EC
			34704-8	Clean Crop Parathion 8-E
			34704-16	Clean Crop 6-3 Parathion-Methyl Parathion
			34704-66	Thionspray No. 84
			34704-455	Clean Crop Parathion 4EC
			34704-459	Parathion 8 Aquamul
			34704-570	Hopkins Parathion
42761	Red Panther Chemical Company	P.O. Box 550, Clarksdale, MS 38614	42761-10	Red Panther Parathion 8
			42761-44	Smith-Douglas Ethyl-Methyl 6-3 Emulsion Concentrate
			42761-66	Parathion 8 lb. E.C.
51036	Micro-Flo Company	P.O. Box 5948, Lakeland, FL 33807	51036-19	Ethyl-Methyl parathion 6-3 EC
			51036-22	Parathion 4 EC
			51036-35	Parathion Emulsion 4
			51036-38	Aqua 8 Parathion
			51036-59	Ethyl-Methyl 6-3 EC
			51036-74	Parathion 4EC
			51036-114	Parathion 8E
			51036-161	Parathion 8 Concentrate
			51036-162	Parathion 8E

Parathion section 24(c) special local need registrations that have not been approved for extended use are listed in the following Table 4:

TABLE 4.—PARATHION SECTION 24(C) (STATE) SPECIAL LOCAL NEED (SLN) REGISTRATIONS NOT APPROVED FOR EXTENDED USE

Company Registration Number	Company Name	Company Address	Product Registration Number	Product Name
279	FMC	1735 Market Street, Philadelphia PA 19103	ID770021	Niagara Aqua 8 Parathion Insecticide Code 701
			UT840006	Niagara Aqua 8 Parathion Insecticide Code 701
			WA790060	Niagara Aqua 8 Parathion Insecticide Code 701
5905	Helena Chemical Company	Suite 500, 6075 Poplar Avenue, Memphis, TN 38119	NC810037	Atlas Parathion 8-E An Emulsifiable Liquid
2935	Wilbur-Ellis	191 W. Shaw Avenue, Suite 107, Fresno, CA 93704	OR810023	Red-Top Parathion 4 Spray
			WA810039	Red-Top Parathion 4 Spray
34704	Platte Chemical Company	419 18th Street, P.O.Box 667, Greely, CO 80632	GA810001	Clean Crop Parathion 8-E Emulsifiable Concentrate
			ID810011	Clean Crop Parathion 8-E Emulsifiable Concentrate
			MS810003	Clean Crop Parathion 8-E
			ND790010	Parathion 8-E Emulsifiable Concentrate
			TX790012	Clean Crop Parathion 8-E Emulsifiable Concentrate
			WA810030	Clean Crop Parathion 8-E Emulsifiable Concentrate

For purposes of this Amended Cancellation Order, certified commercial applicators will be considered end-users if they use the canceled product by providing a service of controlling pests without delivering any unapplied pesticide to any person so served. The terms of this Amended Order are effective immediately.

Dated: January 17, 1992.

Victor J. Kimm,
Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 92-1786 Filed 1-28-92; 8:45 am]
BILLING CODE 6560-50-F

VOL
57
ISS
19
JA
29
1992
UMI

federal register

Wednesday
January 29, 1992

Part IV

Department of Health and Human Services

Public Health Service

Availability of Grants for Adolescent Family Life Demonstration Projects; Notice

VOL 57 ISS 19 JA 29 1992 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, Office of Population Affairs, PHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) requests applications for grants under the Adolescent Family Life (AFL) Demonstration Grants Program. These grants are for community-based and community-supported demonstration projects to find effective means of encouraging abstinence from adolescent premarital sexual activity, promoting adoption as an alternative to adolescent parenting, and establishing innovative, comprehensive and integrated approaches to the delivery of services to pregnant adolescents, adolescent parents and their children. Funds are available for approximately 25 projects, which may be located in any State, the District of Columbia, the territories of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Republic of Palau, Republic of the Marshall Islands and the Federated States of Micronesia.

DATES: To receive consideration grant applications must be received by the Grants Management Officer by April 3, 1992. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

ADDRESSES: Application kits may be obtained from and applications must be submitted to: Grants Management Office, OPA, room 736E, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Grants Management Office at 202–245–0146 or Program Office at 202–245–7473. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z, *et seq.*, authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families. (Catalog of Federal Domestic Assistance Number 93.995) Title XX authorizes grants for two types of demonstration projects: (1) projects which provide "care services" only (*i.e.*, services for the provision of care to pregnant adolescents, adolescent parents and their families), and (2) projects which provide "prevention services" only (*i.e.*, services to prevent adolescent premarital sexual relations).

The Office of Adolescent Pregnancy Programs intends to make available approximately $4 million to fund an estimated 25 new and competing renewal AFL demonstration projects. Two categories of projects will be supported: (1) Traditional demonstration projects with evaluation components as described and limited by the statute, and (2) *evaluation-intensive* projects specifically designed to produce research quality information bearing on the effectiveness of the demonstration intervention. An applicant may submit a proposal for a local care or local prevention project or for a national multi-site prevention project with at least two sites in different States. The average award for a local prevention project will be $90,000, with a range between $50,000 and $180,000, and between $120,000 and $300,000 for a national multi-site prevention project. The average award for a local care project will be $160,000, with a range between $60,000 and $240,000. In the case of evaluation-intensive proposals awards may range up to 20 percent higher than the levels indicated above. The award levels for evaluation-intensive projects will include both intervention and evaluation funding, and evaluation activities may account for up to 30 percent of the total award.

Grants may be approved for project periods of up to 3 years. Grantees who receive 3 years of funding may then apply for an additional 2 years of funding through a competitive process.

Competing grant renewal applications will be accepted under this announcement from the 11 current AFL grantees whose grants will end on September 30, 1992 and who will have received fewer than 5 years of funding.

Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of a grant is contingent upon the availability of funds, satisfactory progress of the project and adequate stewardship of Federal funds. A grant award may not exceed 70 percent of the total cost of the project for each of the first and second years, and 60 percent for the third year. For those grantees who are then funded for an additional 2 years, the grant award may not exceed 50 percent for the fourth year and 40 percent for the fifth and final year. The non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including plant, equipment and services.

The specific services which may be funded under Title XX are listed below under Care Programs and Prevention Programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement is related to the priority area of Family Planning. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325. (Telephone (202) 783–3238).

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. Grants are awarded only to those organizations or agencies which the Office of Adolescent Pregnancy Programs determines demonstrate the capability of providing the proposed services and meet the statutory requirements.

Care Programs

Under this announcement, funds are available for local care demonstrations only and not for multi-site national projects. The project site must be identified in the application rather than selected after the grant is awarded.

Under the statute the purpose of care programs is to establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents and adolescent parents under 19 years of age at program entry, with primary emphasis on unmarried adolescents who are 17 years old or younger and their families. This includes young fathers and their families. The Office encourages the submission of care applications which: (1) Propose to provide care services to minority populations, (2) propose innovative

ways of involving families, (3) propose to promote adoption as a positive option and (4) propose to stress self-sufficiency skills, such as school completion (in mainstream or alternative schools and GED programs) and/or job training, preparation and placement, that will assist pregnant adolescents and adolescent parents to become productive independent contributors to family and community life. Applicants should propose sound approaches to strengthening family commitment and addressing the underlying problems that lead adolescents into out-of-wedlock pregnancy as well as offering innovative approaches to presenting adoption as an option for pregnant adolescents. Applicants should base their approaches upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration and linkages among such existing programs.

Applicants for care projects should attempt to address, through program objectives and activities, the following programmatic concerns, which are also national health objectives relating to family planning discussed in section 5 of the Public Health Service document, Healthy People 2000: reduction of repeat pregnancies among girls age 17 and younger; increase in the proportion of ever sexually-active adolescents 17 and under who have abstained from sexual activity for the previous three months; increase in the proportion of sexually active unmarried adolescents who use contraception, especially combined method contraception, to prevent repeat pregnancy and provide barrier protection against disease; increase in the proportion of people age 10 through 18 who have discussed human sexuality, including values surrounding sexuality, with their parents and/or have received information through another parentally-endorsed source, such as youth, school or religious programs; and increase in the proportion of pregnancy counselors who offer positive, accurate information about adoption to unmarried adolescents with unintended pregnancies.

Applicants for care programs are required to provide, either directly or by referral, the following 10 core services:

(1) Pregnancy testing and maternity counseling;

(2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(3) Primary and preventive health services, including prenatal and postnatal care;

(4) Nutrition information and counseling;

(5) Referral for screening and treatment of venereal disease;

(6) Referral to appropriate pediatric care;

(7) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(8) Appropriate educational and vocational services;

(9) Mental health services and referral to mental health services and to other appropriate physical health services;

(10) Counseling and referral for family planning services.

Note: No funds provided under Title XX may be used for the provision of family planning services other than counseling and referral services unless appropriate family planning services are not otherwise available in the community.

In addition to the 10 required core services listed above, applicants for care projects may provide any of the following supplemental services:

(1) Referral to licensed residential care or maternity home services;

(2) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(3) Consumer education and homemaking;

(4) Counseling for the immediate and extended family members of the eligible person;

(5) Transportation; and

(6) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors.

Within the context of providing the required core plus any supplemental services and developing evaluation strategies, applicants should pay particular attention to the following aspects of Title XX:

- Provision of assistance to pregnant adolescents and adolescent parents to enable them to obtain proper care and to become productive contributors to family and community life.
- Continuation of services to clients after the delivery of the baby to enable them to acquire good parenting skills and to ensure that their children are developing normally physically, intellectually and emotionally. Ideally, this should extend for approximately 2 years after delivery.
- Involvement of the families of pregnant adolescents and adolescent parents, including the father of the baby, and provision of assistance to families and adolescents in understanding and resolving the societal causes which are associated with adolescent pregnancy.
- Promotion of adoption as an option for pregnant adolescents.
- Involvement of voluntary associations, religious and charitable organizations and other groups in the private sector in order to help adolescents and their families deal with the complex issues surrounding adolescent pregnancy.

Prevention Programs

Under this announcement, funds are available for both local and multi-site national projects. A multi-site national project must have at least two sites in different States.

The purpose of prevention programs is to find effective means within the context of the family of reaching adolescents, both male and female, before they become sexually active in order to maximize the guidance and support available to adolescents from parents and other family members in promoting abstinence from adolescent premarital sexual relations.

OAPP is soliciting applications for grants to provide innovative approaches to family life educational services that clearly and unequivocally promote abstinence for unmarried adolescents. Applicants must: (1) Already have educational materials/curricula available to test, (2) propose to use educational materials/curricula that comply with the purposes of Title XX, and (3) include a strong evaluation design which will address questions pertaining to program impact. Under this announcement, OAPP will not fund proposals to develop new prevention curricula.

In addition, the office encourages the submission of applications which: (1) propose to provide prevention services to minority populations, (2) propose to provide services in conjunction with prevention projects addressing substance abuse; and/or (3) propose to implement a prevention curriculum consisting of multiple exposures across grade levels.

Applicants for prevention projects should attempt to address, through program objectives and activities, the

following programmatic concerns, which are also national health objectives relating to family planning discussed in section 5 of the Public Health Service document, Healthy People 2000: reduction of pregnancies among girls aged 17 and under; reduction of the proportion of adolescents who have engaged in sexual intercourse; increase in the proportion of ever sexually active adolescents aged 17 and younger who have abstained from sexual activity for the previous three months; and increase in the proportion of people age 10 through 18 who have discussed human sexuality, including values surrounding sexuality, with their parents and/or have received information through another parentally endorsed source, such as youth, school or religious programs.

Applicants for prevention programs are not required to provide any specific number of services; a proposal may include any one or more of the following services as appropriate:

(1) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(2) Appropriate educational and vocational services;

(3) Counseling for the immediate and extended family members of the eligible person;

(4) Transportation;

(5) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors;

(6) Pregnancy testing and maternity counseling;

(7) Nutrition information and counseling; and

(8) Referral for screening and treatment of venereal disease.

The following application requirements contain information collections subject to OMB approval under the Paperwork Reduction Act of 1980 (Pub. L. 96–511). These information collections have been approved by OMB under control number 0937–0189.

Applications requesting support for prevention projects should propose innovative, value-based, family-centered approaches to promoting adolescent premarital abstinence. Applicants should promote parents as the primary sex educators of their children and emphasize the provision of support by other family members, voluntary associations, religious and charitable organizations and other groups in the private sector in order to help adolescents and their families deal with complex issues of adolescent premarital sexual relations. Prevention applicants are encouraged to propose innovative, value-based approaches which will improve our understanding of effective strategies, as opposed to duplicating approaches which focus merely on improving knowledge, communication and assertiveness skills.

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at least one percent but not more than five percent of the Federal funds received under Title XX of evaluation of the project. In some cases, waivers of the five percent limit on evaluation (see sec. 2006(b)(1)) may be granted.

As this is a demonstration program, all applications are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding. All project evaluations should monitor program processes to determine whether the program has been carried out as planned and measure the program's outcomes. Outcome variables should be consistent with the key purposes of Title XX, including but not limited to family involvement, adoption and adolescent premarital abstinence.

In addition to soliciting applications incorporating such traditional evaluation designs, the office also requests applications for evaluation-intensive projects. For applications funded under the evaluation-intensive category, the Office will waive the five percent limit up to a maximum of 30 percent of the Federal funds received under Title XX. Applicants who wish to compete under this category should propose a project with a strong evaluation design which, in addition to focusing on outcome variables consistent with the key purposes of Title XX, compares these program outcomes with those of relevant control or comparison groups. Emphasis should be placed on measuring variables which are integral to the project's proposed intervention and which are central to the purposes of the AFL program. Proposals should show serious attention to problems of data collection and verification, should demonstrate sample size sufficiency (emphasizing techniques for controlling for attrition) and utilize a strong evaluation design, using randomized control of matched-comparison groups for measurement where possible.

Evaluation-intensive applications should include a plan for long-term monitoring: (1) Beyond the pre- and post-test point for prevention projects (preferably 12 months at a minimum) and (2) until 24 months post-partum for care projects. Applications for evaluation-intensive awards will be reviewed with like applications.

Note: Competing renewals that are not already evaluation-intensive projects may request a waiver to increase their evaluation efforts beyond the five percent limit of Federal funds, but may not change to the evaluation-intensive category.

Section 2006(b)(2) requires that an organization or an entity independent of the grantee providing services assist the grantee in evaluating the project. Particularly in the case of evaluation-intensive proposals, the OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator in the development of the intervention, development of the evaluation hypothesis(es), identification of the variables to be measured and a timetable for initiation of the intervention, baseline measurement, and ongoing evaluation data collection and analysis.

Application Requirements

Applications must be submitted on the forms supplied (PHS–5161–1) and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

It should be noted that grantees may not teach or promote religion in their AFL project. Each grant project must be accessible to the public generally, not just to those of a particular religious affiliation.

Under section 2011(a) of the Act, AFL projects may not provide abortions or abortion counseling or referral and may not advocate, promote or encourage abortion. Only if both the adolescent and her parents request abortion counseling may a project provide referral for abortion counseling to a pregnant adolescent.

Additional Requirements

Applicants for grants must also meet the following requirements:

(a) *Requirements for Review of an Application by the Governor.* Section

2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant.

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Review Under Executive Order 12372.* Applications under this announcement are subject to the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR part 100 (Intergovernmental Review of DHHS Programs and Activities). E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications.

As soon as possible, the applicant (other than federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) in each State in the area to be served, to alert it to the prospective application, discuss the project, and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The SPOC's comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, room 736E, H.H.H. Building, 200 Independence Avenue, SW., Washington, DC 20201. Such comments must be received by the Office of Population Affairs by June 3, 1992 to be considered.

The application kit contains information to guide applicants in fulfilling the above requirements.

Application Consideration and Assessment

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned. All other applications will be reviewed and assessed according to the following criteria:

(1) The capacity of the proposed applicant organization to provide the rapid and effective use of resources needed to conduct the project, collect data and evaluate it. This includes personnel, time and facilities. (15 points)

(2) The applicant's presentation of an appropriate project methodology, including a clear statement of goals and objectives consistent with Title XX, reasonable methods for achieving the objectives, a reasonable workplan and timetable and a clear statement of results or benefits expected. (20 points)

(3) The applicant's provision for complying with the legislation's requirements to involve families in the delivery of services; in the case of care programs to promote adoption as a positive alternative; and in the case of preventive programs to promote abstinence from adolescent premarital sexual activity. (20 points)

(4) The applicant's documentation of the innovativeness of the program approach and its worth for testing and replication. (15 points)

(5) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods and reflecting a practical, technically sound approach to assessing the project's achievement of program objectives. (20 points)

Note: Applications will be reviewed in two separate categories according to whether they are demonstration proposals with standard evaluations or evaluation-intensive proposals.

(6) The applicant's provision for the requirements set forth in section 2006(a) of Title XX of the Public Health Service Act. (10 points)

In making grant award decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which grants approved for funding will provide an appropriate distribution of resources throughout the country, the priorities in section 2005(a) and the other factors in section 2005 of Title XX of the Public Health Service Act, focusing on:

(1) The nature of the organization applying;

(2) The applicant's capacity to administer funds responsibly;

(3) The incidence of adolescent pregnancy and the availability of services in the geographic area to be served;

(4) The population to be served;

(5) The community commitment to and involvement in planning and implementation of the demonstration project;

(6) The organizational model(s) for delivery of service;

(7) The usefulness for policymakers and service providers of the proposed project and its potential for complementing or building upon existing AFL demonstration models;

(8) The applicant's proposed plans to access continued community funding as Federal funds decrease and end; and

(9) The reasonableness of the estimated cost to the government considering the anticipated results.

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: January 21, 1992.

William R. Archer III,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 92-2120 Filed 1-28-92; 8:45 am]

BILLING CODE 4160-17-M

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federal register

Wednesday
January 29, 1992

Part V

Department of Agriculture

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1992; Solicitation of Applications

VOL 57 ISS 19 JA 29 1992 UMI

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1992; Solicitation of Applications

Notice is hereby given that under the authority in section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), the Cooperative State Research Service (CSRS) of the United States Department of Agriculture (USDA) anticipates awarding standard grants for basic studies in certain areas of rangeland research. No more than $80,000 will be awarded for the support of any one project, regardless of the amount requested. The total amount of funds available for grants under the Rangeland Research Grants Program during fiscal year 1992 is $454,991.

Under this program, the Secretary may award grants to land-grant colleges and universities, State agricultural experiment stations, and to colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research. Except in the case of Federal laboratories, each grant recipient shall match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. Proposals received from scientists at non-United States organizations or institutions will not be considered for support.

Applicable Regulations

This program is subject to the provisions found in 7 CFR part 3401 (51 FR 16152, April 30, 1986), in which reference is made to 7 CFR part 3400. The rules regarding incorporation by reference are contained in 1 CFR part 51. In pertinent part, 1 CFR 51.1(f) provides: "(I)ncorporation by reference of a publication is limited to the edition of the publication that is approved. Future amendments or revisions of the publication are not included." Accordingly, amendments to 7 CFR part 3400 promulgated after April 30, 1986, (53 FR 49640–49642, December 8, 1988, and 56 FR 58146–58152, November 15, 1991) do not apply to the fiscal year 1992 Rangeland Research Grants Program. The provisions in 7 CFR part 3401 set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, processes regarding the awarding of grants, and regulations relating to the post-award administration of grant projects. Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or for tuition remission costs. Since these costs are not allowable costs for purposes of this program, such costs incurred by a grant recipient may not be used to meet the matching funds requirement. In addition, USDA Uniform Federal Assistance Regulations, 7 CFR part 3015, as amended, and Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended, and New Restrictions on Lobbying, 7 CFR part 3018, apply to this program.

How to Obtain Application Materials

Copies of this solicitation, the Grant Application Kit, and the Administrative Provisions for this program (7 CFR part 3401) may be obtained by writing to the address or calling the telephone number which follows:

Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, Washington, DC 20250–2200, Telephone: (202) 401–5048.

What to Submit

Each applicant shall include an original and nine copies of each proposal submitted under this program. This number of copies is necessary to permit thorough, objective merit evaluation of all proposals received before funding decisions are made. Each copy of each proposal must include a Form CSRS–661, "Grant Application." Applicants should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS–661 and the other required forms and certifications are contained in the Grant Application Kit).

Members of review committees and CSRS staff expect each project description to be complete in itself. Grant proposals shall be limited to 10 pages (single-spaced), exclusive of required forms, bibliography and vitae of the principal investigator(s), senior associate(s), and other professional personnel. Attachment of appendices is discouraged and should be included only if pertinent to an understanding of the proposal.

All copies of each proposal shall be mailed in one package. Please see that each copy of each proposal is stapled securely in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the guidelines contained in the Administrative Provisions which govern the Rangeland Research Grants Program, 7 CFR part 3401. Proposals submitted by organizations other than Federal laboratories shall state that the 50 percent non-Federal funding requirement will be met.

Where and When to Submit Grant Applications

Each research grant application shall be submitted to:

Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, Washington, DC 20250–2200.

Please note. Hand-delivered proposals or those delivered by overnight express services shall be brought to: Room 303, Aerospace Center, 901 D Street SW., Washington, DC 20024.

To be considered for funding during fiscal year 1992, proposals must be received in the Proposal Services Branch by close of business on March 20, 1992.

One copy of each proposal not selected for funding will be retained for one year. The remaining copies will be destroyed.

Specific Areas of Research to be Supported in Fiscal Year 1992

Standard grants will be awarded to support basic research in certain areas of rangeland research. Proposals will be considered in the following specific areas: (1) Management of rangelands and agricultural land as integrated systems for more efficient utilization of crops and waste products in the production of food and fiber; (2) methods of managing rangeland watersheds to maximize efficient use of water and improve water yield, water quality, and water conservation, to protect against onsite and offsite damage to rangeland resources from floods, erosion and other detrimental influences, and to remedy unsatisfactory and unstable rangeland conditions; and (3) revegetation and rehabilitation of rangelands including the control of undesirable species of plants.

If necessary, further information may be obtained by calling Dr. Wayne K. Murphey, CSRS–USDA; telephone: (202) 401–4089.

Supplementary Information

The Rangeland Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, the 23rd day of January, 1992.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 92–2138 Filed 1–28–92; 8:45 am]

BILLING CODE 3410–22–M

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ISS
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. 91-ASW-1; Special Condition No. 29-ASW-3]

Special Conditions: Sikorsky Model S-76C Helicopter, Turbomeca Arriel Model 1S1 Engine Tachometer Box

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition.

SUMMARY: This special condition is issued for the Sikorsky Model S-76C helicopter. This helicopter will have a novel or unusual design feature associated with installation of the Turbomeca Arriel Model 1S1 engine. This design feature is associated with the tachometer box which is installed as an approved accessory to the Arriel Model 1S1 engine. The special condition contains additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Carroll Wright, FAA, Rotorcraft Standards Staff, Regulations Group, Fort Worth, Texas 76193-0111, telephone 817-624-5121.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1989, Sikorsky Aircraft, Division of United Technologies Corporation, 6900 Main Street, Stratford, Connecticut 06601-1381, applied for an amendment to its Type Certificate No. H1NE to include the new Sikorsky Model S-76C helicopter. The Sikorsky Model S-76B is being modified to incorporate two Turbomeca Arriel Model 1S1 engines in place of the two Pratt and Whitney Corporation Model PT6 B-36 engines. Various other alterations will be made to accommodate the installation of these different engines, including the installation of the required Arriel engine accessory tachometer box. The Model S-76C will be a derivative of the Model S-76B, which is currently approved under Type Certificate No. H1NE. The Model S-76B is a 12-passenger, two-engine, 11,400-pound transport category helicopter.

Type Certification Basis

The certification basis for the Model S-76B includes: FAR part 29, February 1, 1965, and Amendments 29-1 through 29-11, and in addition, portions of Amendment 29-12, specifically, §§ 29.67, 29.71, 29.75, 29.141, 29.173, 29.175, 29.931, 29.1189(a)(2), 29.1555(c)(2), 29.1557(c) and portions of Amendment 29-13, specifically § 29.965; Instrument Flight Criteria for S-76 (interim) dated February 10, 1977; Special Conditions 29-82-NE-3 (Docket No. 17721), dated March 27, 1978; Partial Grant of Exemption from § 29.811(h), Exemption No. 2542 (Docket No. 17403), dated January 9, 1979, for the Model S-76A, granted July 3, 1985, for the Model S-76B; equivalent safety finding for § 29.173(b); National Environmental Act of 1969; Noise Control Act of 1972. Sikorsky Aircraft also elected to comply with: Ditching provisions §§ 29.563 including 29.801 and 29.807(d) and excluding 29.1411, 29.1415, and 29.1561 of Amendment 29-12, when emergency flotation gear, P/N 76076-02002, is installed. For over-water operations, compliance with the operating rules and §§ 29.1411, 29.1415, and 29.1561 must be shown. Compliance must be shown with Cargo Hook § 29.865, including § 29.25 of Amendment 29-12, when cargo hook system, P/N 76255-02000, is installed. For external load operations, compliance must be shown with Part 133, including Amendments 1-4. In addition, for the Model S-76B, compliance must be shown with portions of Amendment 29-24, specifically § 29.1325(f); equivalent safety finding for §§ 29.1013(e), 29.1203(a), 29.1181(a)(6), and 29.1189(a).

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an aircraft or installation.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

Discussion

Notice of Proposed Special Condition No. SC-91-1-SW was published in the Federal Register on January 31, 1991 (56 FR 3807). No comments were received. Therefore, the special condition is adopted as proposed.

The Sikorsky Model S-76C helicopter will incorporate one and possibly more electrical/electronic systems and equipment that will be performing functions critical to the continued safe flight and landing of the helicopter. The "tachometer box," which is a required accessory of the Turbomeca Arriel Model 1S1 engine, is an electronic device performing the function of engine overspeed protection. This protection from engine overspeed is critical to the continued safe flight and landing of the helicopter during all operating flight regimes (both Visual Flight Rules (VFR) and Instrument Flight Rules (IFR)). When the design is finalized, Sikorsky Aircraft will provide the FAA with a preliminary hazard analysis to identify any other critical functions performed by electrical/electronic systems and equipment.

If it is determined that this helicopter incorporates other electrical/electronic systems performing critical functions, it will be necessary to show that those systems meet the requirements of this special condition.

Conclusion

This action would affect only certain unusual or novel design features on one series of rotorcraft. It would not be a rule of general applicability and would affect only the manufacturer who applied to the FAA for approval of these features on the rotorcraft identified in this special condition.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11541; 49 U.S.C. 106(g) (Rev. Pub. L. 97–449, January 12, 1983).

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator of the Federal Aviation Administration, the following special condition is issued as a part of the type certification basis for the Sikorsky Model S–76C helicopter.

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on January 21, 1992.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92–2243 Filed 1–29–92; 8:45 am]

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14 CFR Part 39

[Docket No. 91–CE–76–AD; Amendment 39–8168; AD 91–20–14]

Airworthiness Directives; Beech Models B300 and B300C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting Airworthiness Directive (AD), which was previously made effective by individual letters as to all known U.S. owners and operators of Beech Models B300 and B300C airplanes. The AD requires the incorporation of revised takeoff and climb performance charts into the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (POH/AFM), and operation of the airplane in accordance with these performance charts. The Federal Aviation Administration (FAA) determined that under certain conditions takeoff and climb performance required by regulations may not be achieved while utilizing the original performance criteria. The actions specified by this AD are intended to ensure that minimum takeoff and climb performance can be achieved for each approved configuration, weight, pressure altitude, and temperature.

DATES: Effective February 20, 1992, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91–20–14, issued September 26, 1991, which contained this amendment. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 20, 1992.

ADDRESSES: The revision to the POH/AFM that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; Telephone (316) 676–7111. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91–CE–76–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carlos Blacklock, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4166.

SUPPLEMENTARY INFORMATION: On September 26, 1991, priority letter Airworthiness Directive (AD) 91–20–14 was issued and made effective immediately as to all known U.S. owners and operators of Beech Models B300 and B300C airplanes. The AD requires the incorporation of revised takeoff and climb performance charts into the Pilot's Operating Handbook and FAA Approved Flight Manual (POH/AFM) and operation of the airplane in accordance with these charts.

The action was based upon the FAA's determination that when production Beech Models B300 and B300C airplanes are operated at a maximum takeoff weight calculated by reference to the POH/AFM for existing conditions of temperature and pressure altitude, takeoff and climb performance required by Federal Aviation Regulations (FAR) 23.1583(c)(3) may not be achieved. A recent test showed that the climb performance with one engine inoperative was less than that shown in the Beech Models B300 and B300C POH/AFM.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued September 26, 1991, as to all known U.S. owners and operators of Beech Models B300 and B300C airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The takeoff and climb performance charts were included in the priority letter AD 91–20–14 package that was sent to all owners of Beech Models B300 and B300C airplanes. Since that time, Beech has issued these charts in an OH/AFM supplement format. The charts originally sent are the same as the POH/AFM supplement. Since the charts sent out with the priority letter AD 91–20–14 package and the POH/AFM supplement formats are the same, the charts will be referenced in this AD as the B2 revision, part number (P/N) 130–590031–1, dated September 1991.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

91-20-14 **Beech:** Amendment 39-8168; Docket No. 90-CE-76-AD. Applicability: Models B300 and B300C airplanes (all serial numbers), certificated in any category.

Compliance: Within the next 10 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To ensure that required minimum takeoff and climb performance can be achieved for each approved combination of takeoff configuration, weight, pressure altitude, and temperature, accomplish the following:

(a) Incorporate the takeoff and climb performance charts, B2 revision, part number (P/N) 130-590031-1, dated September 1991, into the Model B300 and B300C Pilot's Operating Handbook and FAA Approved Airplane Flight Manual, and operate the airplane accordingly.

Note: The charts that were sent in the priority letter AD 91-20-14 package and the B2 revision, P/N 130-590031-1, dated September 1991, are the same.

(b) FAR 43-3 notwithstanding, the actions required by this AD may be performed by a pilot and must be recorded in accordance with FAR section 43.9.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) The takeoff and climb performance limitations required by this AD shall be done in accordance with the Beech Pilot's Operating Handbook and FAA Approved Airplane Flight Manual, B2 revision, part number (P/N) 130-590031-1, dated September 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(e) This amendment (39-8168) becomes effective on February 20, 1992, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91-20-14, issued September 26, 1991, which contained this amendment.

Issued in Kansas City, Missouri, on January 14, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-2214 Filed 1-29-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-CE-92-AD; Amendment 39-8167; AD 91-25-11]

Airworthiness Directives; EMBRAER (Empresa Brasileira de Aeronautica, S.A.) EMB-110 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 91-25-11, which was previously made effective by individual letters as to all known U.S. owners and operators of EMBRAER EMB-110 series (Bandeirante) airplanes. The AD requires an inspection of the rudder trim tab actuator system for correct assembly and reinstallation if found incorrectly installed. The AD was issued based upon reports of broken rudder trim tab rods. The actions specified by this AD are intended to prevent severe vibration, flutter, and loss of control of the airplane caused by incorrect installation of the rudder trim tab system.

DATES: Effective February 10, 1992, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91-25-11, issued December 6, 1991, which contained this amendment. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from EMBRAER, P.O. Box 343-CE, 12.200 Sao Jose dos Campos, Sao Paulo, Brazil; or EMBRAER Aircraft Corporation, 276 SW 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91-CE-92-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis A. Jackson, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, suite 210, 1669 Phoenix Parkway, Atlanta, Georgia 30349; Telephone (404) 991-2910.

SUPPLEMENTARY INFORMATION: On December 6, 1991, priority letter AD 91-25-11 was issued and made effective immediately as to all known U.S. owners and operators of EMBRAER EMB-110 series airplanes. The AD requires an inspection of the rudder trim tab actuator system for correct assembly and reinstallation if found incorrectly installed.

The AD was prompted by reports from the Centrol Tecnico Aeroespacial (CTA) and the Departamento de Aviacao Civil (DAC), which are the airworthiness authorities for Brazil, of two instances of broken rudder trim tab rods. This condition could cause severe vibration or flutter and complete loss of control of the airplane. Further analysis revealed that the rudder trim tab system was incorrectly installed on the above reported incidents. In addition, there has been one more report of an incorrect rudder trim tab system installation, but it was detected prior to further incident.

The manufacturer, EMBRAER, issued Service Bulletin 110-27-0091, dated December 5, 1991, which specifies procedures for inspecting the rudder trim tab actuator system for proper assembly, and reinstallation procedures if found incorrectly installed.

The CTA issued CTA AD T91-11-01 in order to assure the airworthiness of these airplanes in Brazil. CTA AD T91-11-01 requires a one-time inspection of the rudder trim tab actuator system for correct assembly and reinstallation if found incorrectly installed. These airplanes are manufactured in Brazil and are type certificated for operation in the United States. Pursuant to a bilateral airworthiness agreement, the CTA and DAC kept the FAA totally informed of the above situation.

The FAA examined the findings of the CTA and DAC, reviewed all available information, and determined that AD action was necessary for products of this type design that are certificated for operation in the United States.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued December 6, 1991, to all known U.S. owners and operators of EMBRAER EMB-110 series airplanes (all serial numbers). These conditions still exist, and the AD is

hereby published in the Federal Register as an amendment to §39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

91–25–11 Embraer (Empresa Brasileira de Aeronautica, S.A.): Amendment 39–8167; Docket No. 91–CE–92–AD.

Applicability: EMB–110 Series airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 10 hours time-in-service after receipt of this AD, unless already accomplished.

To prevent severe vibration, flutter, and loss of control of the airplane caused by incorrect installation of the rudder trim tab system, accomplish the following:

(a) Visually inspect the rudder trim tab system for correct assembly in accordance with the instructions in EMBRAER Service Bulletin (SB) No. 110–27–0091, dated December 5, 1991.

(1) If determined to be correctly installed in accordance with the criteria specified in EMBRAER SB No. 110–27–0091, return the airplane to service.

(2) If determined to be incorrectly installed in accordance with the criteria specified in EMBRAER SB No. 110–27–0091, reinstall the rudder trim tab system in accordance with the instructions in EMBRAER SB No. 110–27–0091.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

(d) The inspection and possible reinstallation required by this AD shall be done in accordance with EMBRAER Service Bulletin (SB) No. 110–27–0091, dated December 5, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from EMBRAER, P.O. Box 343–CE, 12.200 Sao Jose dos Campos, Sao Paulo, Brazil; or EMBRAER Aircraft Corporation, 276 SW 34th Street, Fort Lauderdale, Florida 33315. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW.; room 8401, Washington, DC.

(e) This amendment (39–8167) becomes effective on February 10, 1992, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91–25–11, issued December 6, 1991, which contained this amendment.

Issued in Kansas City, Missouri, on January 14, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–2215 Filed 1–29–92; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 5

Economic and Public Interest Requirements for Contract Market Designation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; revision of interpretative guideline.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is revising herein its Guideline on Economic and Public Interest Requirements for Contract Market Designation, 17 CFR part 5, appendix A (1990) ("Guideline No. 1"). The Commission is revising Guideline No. 1 to streamline the designation approval process for both futures and option contract markets. These revisions clarify the standard of review for specified terms and conditions of proposed contract market designations under sections 5 and 5a of the Commodity Exchange Act, 7 U.S.C. 7 and 7a (1988) ("Act") and reduce unnecessary or redundant materials for the required application. A revised format for applications for designation of contract markets in options on futures and options on physical commodities is also included as a new section of Guideline No. 1. Finally, the Commission is reiterating that information which should be included by persons seeking an opinion whether a futures contract on a group or index of securities traded on a foreign exchange may be offered or sold in the United States.

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581, (202) 254–3201 or 254–6990, respectively.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Requirements for Designation

The requirement that boards of trade demonstrate that they meet specified conditions in order to be designated as contract markets has been a fundamental tool of federal regulation of commodity futures exchanges since the Future Trading Act of 1921, Public Law No. 67–66, 42 Stat. 187 (1921).[1] Currently,

[1] Designation as a contract market under the 1921 Act was contingent upon a board of trade's

Continued

the statutory requirements for designation are found in sections 5 and 5a of the Act, and additionally, for indexes of certain securities, in section 2(a)(1)(B) of the Act. Contract markets must demonstrate that they meet these requirements both for initial designation and on a continuing basis.[2] Included among these, section 5(g) of the Act requires that exchanges demonstrate that trading in a proposed contract is not contrary to the public interest.[3]

The Commission provided guidance to exchanges on meeting these requirements in its Guideline on Economic and Public Interest Requirements for Contract Market Designation, 40 FR 25849 (1975), ("Guidelines No. 1."). Subsequently, the Commission revised this guideline, publishing it as appendix A to part 5 of chapter 17 of the Code of Federal Regulations. 47 FR 49832 (November 3, 1982). These revisions to Guideline No. 1, as proposed, were intended to provide boards of trade with more specific criteria for initial and continued compliance with Sections 5 and 5a of the Act for applications for contract market designation and for all currently designated contract markets, and * * * [to] reflect specific requirements relating to proposed futures contracts based on financial instruments and aggregates or indices of securities. In addition, the Commission believes that this * * * will provid[e] a uniform procedural framework within which boards of trade shall be required to meet their burden of demonstrating, both initially and for purposes of continued designation, compliance with the Act.

47 FR 49833 (citation and footnote omitted).

As revised in 1982, Guideline No. 1 was updated to address proposed innovations in the trading of futures contracts, including, in particular, futures contracts on financial instruments and on various indices and cash-settled futures contracts. Experience has demonstrated that the Guideline has been adaptable and flexible, enabling the designation of a wide range of innovative products.[4]

Under the revised Guideline, the time elapsed for Commission review and approval of proposed contracts steadily declined throughout the period. In Fiscal Year 1983, for example, the average number of days during which complete applications were pending with the Commission was 426 for futures and 361 for options. In Fiscal Year 1991, this period was roughly half that of 1983, 225 days for futures and 190 for options; but somewhat higher than Fiscal Year 1990's average review period of 151 days for futures and 134 days for options.

Despite the relative success of the designation procedures of Guideline No. 1, the Commission, based upon its experience, reviewed the existing Guideline with the view of removing duplication of effort between its staff and the exchanges, streamlining further its procedures, reducing paperwork when such reductions could be made consistent with statutory requirements, updating the Guideline for market innovations and further clarifying and refining the requirements for designation. On September 4, 1991, the Commission proposed far-reaching revisions to Guideline No. 1 and requested comment on these proposals. 56 FR 43726. The comment period ended on November 4, 1991.

II. Proposed Revisions to Guideline

The Commission proposed to revise Guideline No. 1 in several fundamental respects. First, the Commission proposed to revise the Guideline to specify those terms or conditions of a proposed contract which, because they relate directly to the contract's susceptibility to manipulations, corners, squeezes or other disorderly trading, require a complete justification and explanation. In contrast, for certain other terms or conditions, the Commission proposed to permit Exchanges to certify that certain other terms or conditions of contracts are consistent with the cash market without providing further justification or evidence. For those terms or conditions, which are in essence business decisions of the exchange, no justification, explanation or certification would be required. In addition, a cash market overview was proposed to be required only to the extent that an application for designation differs from a previously designated contract.

Secondly, the Commission proposed to amend its policies regarding liquidity requirements for designation of options which, in effect, prohibited the simultaneous designation of options on futures and the underlying futures contract. Accordingly, as amended Guideline No. 1 would encourage exchanges to seek simultaneous designation of futures contracts and options thereon.

Thirdly, a new format for applications for designation of options on futures was proposed. This format specified those specific terms and conditions which clearly meet the requirements for designation and where met, no written justification or explanation for such terms and conditions would be required.

Lastly, guidance was provided with respect to the information required for a determination on whether stock indices traded on foreign boards of trade may be offered or sold in the United States. That guidance is repeated herein for the convenience of the reader.

III. Comments Received

The Commission received seven comments in response to its proposed revisions to Guideline No. 1. All seven were from futures exchanges. One commenter supported unreservedly the proposed revisions, stating that:

> The Exchange endorses the Commission's proposals to revise Guideline No. 1. The proposals clearly will streamline the submission of unnecessary or redundant information. The proposals will also clarify the standard of review for specified terms and conditions of proposed contract market designation as a contract market for options by recognizing the general uniformity of options terms and conditions. Each of these reforms will be beneficial in conserving the resources of exchanges and the Commission.

providing for the prevention of manipulative activity and the prevention of dissemination of false information, upon providing for certain types of recordkeeping, for admission into exchange membership of cooperative producer associations, and upon location of the contract market at a terminal cash market. *See*, sections 5(a), (b), (c), (d), and (e) of the Future Trading Act of 1921. Although the constitutionality of this Act was successfully challenged as an improper use of the Congressional taxing power in *Hill* v. *Wallace*, 259 U.S. 44 (1922), all subsequent legislation regulating the futures industry was patterned after this statutory scheme.

[2] Section 6 of the Act provides, in part, that: [a]ny board of trade desiring to be designated a 'contract market' shall make application to the Commission for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

[3] In addition, designated contract markets must provide for the prevention of dissemination of false information (section 5(c) of the Act); must provide for the prevention of price manipulation (section 5(d) of the Act); must provide for delivery periods which will prevent market congestion (section 5a(4) of the Act); and must permit delivery on the contract of such qualities, at such points and at such differentials as will minimize market disruptions (section 5a(10) of the Act). The Act further requires as a condition for contract market designation, that the contract market: be located at a terminal cash market or provide for terms and conditions as approved by the Commission (section 5(a) of the Act); provide for various forms of recordkeeping (section 5(b) and 5a(2) of the Act); permit the membership of cooperative associations (section 5(e) of the Act); provide for compliance with Commission orders (section 5(f) of the Act); submit its rules to the Commission (sections 5a(1) and 5a(12) of the Act); provide that the terms of the contracts conform to United States commodity standards or those adopted by the Commission (section 5a(6) of the Act); accept warehouse receipts issued under United States law (section 5a(3) of the Act); and enforce exchange rules (section 5a(8) of the Act).

[4] In this regard, the Commission notes that the past nine years have been a time of phenomenal growth and creativity in the futures industry. During this time, 115 futures contracts were designated by the Commission under the procedures established in the revised Guideline No. 1.

The Exchange supports the Commission's efforts.

Other commenters generally supported the proposals, but made several additional specific suggestions. For example, one commenter recommended that the Commission require that applications for designation include an index to the application cross-referencing the requirements of Guideline No. 1 to the application. This commenter further recommended that notice of an application be published in the **Federal Register** within thirty days of its submission and that the Commission staff rely on public comment rather than its own evaluation in analyzing whether the contract meets the requirements of the Act for designation. This commenter further opined that, in the absence of a contrary determination, the Commission approve automatically applications for contract market designation seven business days following the close of the public comment period. Several commenters agreed that the Commission should "move toward a contract market designation procedure which would provide for automatic approval of a proposed contract in the absence of Commission objection."

Several commenters shared the view, expressed by one, that the proposed revisions "do not go far enough." This commenter suggested that "(w)hile the Commission's proposal eliminates some of the paperwork required * * * new product innovation will continue to be subject to time-consuming regulatory requirements which are not imposed on other types of markets." A second commenter, agreed, stating that:

> it is not clear that the current proposal would, in practice, have any measurable effect on the length of approval periods. . . . The exchanges would still be required to make a submission prior to trading, the exchanges and potential users of the proposed contract would still have to wait for the submission to undergo review and approval by the CFTC staff, and the Commission would still retain the right to send a request for supplemental information, and perhaps, a 'materially incomplete' letter to an exchange if its application is deemed incomplete. Thus, reducing redundant paperwork would only be a marginal improvement to a process requiring redundant reviews, analysis and decisions—first by the exchanges and then by the Commission.

This commenter also contended that the proposed revisions "benefitted 'copy-cat' exchanges relative to innovative exchanges," and that foreign boards of trade "should be subject to equivalent contract 'designation' requirements as those imposed on U.S. exchanges."

Finally, one commenter urged that "the Commission * * * act quickly on its intent to reevaluate the current fee structure for designation applications," and suggested "a significant reduction or the elimination of the options contract filing fee, when such an options contract is submitted simultaneously with its underlying futures contract."

IV. The Final Rules

The Commission has considered carefully the comments received and is promulgating the revisions to Guideline No. 1, as proposed, with only slight technical modifications. These include a clarification in section (a)(2) that contract terms which are not justified because they are identical to other contract terms or conditions previously approved by the Commission must provide a citation to the previously approved term or condition, and technical corrections in section (a)(3)(iv) replacing "demand certificate" with "depository receipt" and in section (a)(3)(v) deleting the term "proportional rail billing" and revising it to read "freight allowances."

The Commission believes that the revisions to Guideline No. 1 being promulgated herein, in practice, will accomplish the goals stated by the commenters of achieving a more expeditious process for bringing new contracts to market. In this regard, the Commission is mindful of the competitive environment in which the exchanges operate, while at the same time adhering to the spirit and the requirements of the Act.

For example, although one commenter recommended that notice be required to be provided in the **Federal Register** within thirty days of receipt, it currently is the Commission's practice to provide such public notice within that time period, except in cases where fundamental amendments to the contract are apparently necessary, making a request for comment on the application as filed clearly premature.[5]

With regard to the suggestion that contract designation be automatic a short time after the public comment period has elapsed, the Commission notes that of the twelve contracts designated during the past six months under existing procedures, one-third have been approved within a period of three months of their receipt.

It can be assumed that as applications for contract market designation are filed and reviewed under the revised procedures, the time for review will be reduced even further. Moreover, the Commission will also reexamine its internal administration to determine whether additional time can be cut from the process. Accordingly, the Commission believes that, applying current policies along with these anticipated savings, the time necessary for the designation of routine applications will approach the time limits suggested by the commenter, while permitting the Commission the flexibility to give greater attention to those contracts which raise novel regulatory issues or which have proposed terms and conditions which are inconsistent with the statutory or regulatory requirements for designation. Finally, the Commission notes that the checklist format being adopted for options is indeed a form of "automatic" approval of applications.

With regard to the suggested requirement that applications contain an index cross-referencing the requirements of Guideline No. 1 to the terms of the proposed contract and to the analysis of those terms, the inclusion in applications for contract market designation of such an index would certainly aid Commission staff in its review. Although the Commission encourages exchanges to include such an index, the Commission, however, is not mandating its use. In promulgating Guideline No. 1 the Commission has attempted to provide guidance to exchanges on that which is necessary to demonstrate compliance with the requirements for designation of the Act. The Commission, however, believes that, with the exception of the option checklist, the actual format of the document itself need not be mandated.

With regard to the relative benefits of the revisions to the Guideline, the Commission expects that the revisions will be applicable to all applications, whether the contract is novel or a "copy-cat." In this connection, even novel contracts may share specific terms or conditions which under the revised Guideline would not be required to be justified. Further, this revision permits both the exchanges and Commission

[5] Of the 19 contracts pending as of December 10, 1991, eleven were published in the **Federal Register** within approximately one calendar month of their receipt. They are: CBT ECU Bonds, 56 FR 13630 (April 3, 1991); Comex Dubai Sour Crude, 56 FR 31616 (July 11, 1991); NYMEX Sour Crude Oil, 56 FR 36778 (August 1, 1991); CBT Homeowners Insurance, 56 FR 38123 (August 12, 1991); CME Mid-Cap 400 Futures, 56 FR 49177 (September 27, 1991); CME Mid-Cap 400 Futures Options, 56 FR 57323 (November 8, 1991); NYMEX Gulf Gasoline Futures, 56 FR 50589 (October 7, 1991); NYMEX Spread Options (2 contracts), 56 FR 56410 (November 4, 1991); CSCE Brazil Differential Coffee, 56 FR 59248 (November 25, 1991); and MCE Rough Rice Options, 56 FR 61236 (December 2, 1991).

staff better to focus their attention on the particularly complex issues involved in the novel applications. As the Commission noted in proposing these revisions:

> By concentrating on delineating those parts of the application for designation most crucial to demonstrating compliance with the requirements of the Act and Commission regulations, both the exchanges and the Commission will better be able to marshall their resources and to improve the timeliness of review.

56 FR at 43727. This will benefit all applications, whatever the level of originality.

Finally, one commenter suggested that the Commission "act quickly" in restructuring its fee structure in light of these revisions. The Commission believes that this suggestion has merit and, in a separate notice published recently in the **Federal Register**, 57 FR 1372 (January 14, 1992), has undertaken a restructuring of the fee structure. Of course, even with such a formal restructuring of fees, the fees charged in the future will continue to be adjusted to reflect any further savings brought about by these revisions.

A. Revisions to Guideline No. 1

Guideline No. 1 is being revised, as proposed, to include three sections which relate to the designation of futures contracts, options on futures contracts and options on physicals, respectively.

1. Revisions Relating to Applications for Futures Designation

Section (a)(1) of the Guideline, as amended, requires that an application for designation include a description of the relevant cash market. As revised herein, however, a cash market overview would be required to be included only when a contract, or only to the extent that a specific contract term, differs from a currently designated contract which is not dormant within the meaning of Rule 5.2, 17 CFR 5.2. In light of the Commission's and the exchanges' increased experience, the Commission believes that cash market overviews need only be included in a contract market designation application when a proposed instrument is materially different from, and not merely iterative of, an existing, non-dormant contract. As revised, Guideline No. 1 permits further that a cash market overview may be confined to the matters pertinent to a particular contract term(s), where no cash market overview would otherwise be required.[6]

Section (a)(2) of the Guideline, as amended, provides that an exchange justify those individual terms and conditions of the contract relating to the pricing and delivery mechanism of the contract. Consistent with the requirements for the cash-market overview, the justification of the proposed contract's individual terms and conditions would not be required when that term or condition is the same as one already approved by the Commission for a similar, non-dormant contract. Rather, when the previously approved and proposed rules are in all material respects identical, the application would be required to include only the text of the proposed rule and the rule number or other citation to the approved contract market rule upon which it is based. When the proposed rule is similar, but not identical, to a previously approved rule, an explanation and evaluation of the deviation should be provided. When the term is unique, a complete justification is required.

The evidence which is necessary to make the required showing is clearly set out in the Guideline. See, section (a)(2) of Guideline No. 1. As a whole, this evidence must demonstrate that the contract terms and conditions would result in a deliverable supply which will not be conducive to price manipulation or distortion, or when a term or condition does not conform with the prevailing cash market practices, that the particular term is nonetheless appropriate for the contract. For cash-settled contracts, the application must demonstrate that the settlement price of the contract is at a price reflecting the underlying cash market, and is not subject to manipulation or other distortions. Finally, the application would be required to specify and justify speculative position limits as required under Commission Rule 1.61, 17 CFR 1.61.[7]

Section (a)(3) of the Guideline, as amended, permits exchanges merely to stipulate that certain terms and conditions of a contract, which are more closely related to the contract's ease of trading but which normally do not bear directly on the contract's deliverable supply or cash settlement, are consistent with the cash market rather than requiring their full justification. These terms and conditions relate to: the delivery pack or composition of the delivery units; the size of the contract unit as related to the size of the typical cash market transaction; inspection and certification procedures, including the duration of inspection certificates; verification of delivery eligibility; requirements surrounding the delivery instrument; transportation terms at the point of delivery; and provisions for payment of costs in making and taking delivery, including inspection, assay, certification, warehouse charges or freight charges.[8] Similarly, with respect to maximum price limits, an exchange would stipulate that the proposed limits are not unduly restrictive.

Finally, for the reasons detailed in the Commission's Notice of Proposed Rulemaking, and in particular to avoid duplication of effort between Commission and exchange staff, the Commission is revising Guideline No. 1 to provide that a board of trade applying for contract market designation shall submit additional evidence pertaining to the economic purpose test, the public interest standard of section 5(g) of the Act, or any other requirement for designation under the Act or Commission rules, only as requested.[9] In

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[6] Although the determination is left to the exchange, in the first instance, of whether a complete or partial cash market overview is necessary and the appropriate degree of specificity which it should include, when a cash market overview is required, the analysis should support the justification of individual contract terms. See, section (a)(2) of the Guideline. As under current practice, however, supplementation of applications can be required when, in the view of Commission staff, necessary. Of course, where there is a question regarding these requirements, the Commission encourages exchanges to consult informally with its staff in advance of filing.

[7] As the Commission noted in the Notice of Proposed Rulemaking, 56 FR 43728–29, although applications for contract market designation presently are required to justify prospective speculative position limits by analogy to those levels initially approved for an existing contract for a similar commodity or, by reference to opportunity for arbitrage between the cash and proposed futures market and the breadth and liquidity of the cash market, the Commission is reviewing generally its speculative position limit policies and will propose further revisions to this section of Guideline No. 1 if it becomes appropriate in light of subsequent revisions to its speculative position limit policies.

[8] As the Commission previously noted, in certain instances, depending on the provision of the rule, the Commission might be required to consider further the particular rule under the standards of Section 15 of the Act. See, 56 FR at 43729, n.5.

[9] When the Congress, in 1974, enacted section 5(g) of the Act, it included a public interest test which it made clear, is broader than, but included, an economic purpose test for designation. See S. Rep. 1194, 93rd Cong., 2d Sess. 36 (1974). The economic purpose test requires a board of trade to demonstrate that transactions for future delivery in a commodity are, or reasonably can be expected to be, quoted and disseminated for price basing, or used as a means of hedging against possible loss through price fluctuation on more than an occasional basis.

Because the economic purpose of a contract is often implicit, or encapsulated, in the exchange's demonstration that the terms and conditions of the proposed contract meet the criteria of the Guideline, a further, separate justification is, in most instances, unnecessary and no longer will be required.

this way, the amount of information concerning the contract routinely filed will be reduced, and the Commission will be able to request with specificity the additional information or justification needed when particular instances warrant.

2. Revisions Relating to Applications for Options Designations

The requirements for the designation of option contract markets previously was not included in Guideline No. 1. Rather, in the absence of a guideline specific to options, applications for designation of options followed the pattern established in Guideline No. 1, substituting compliance with the various Commission rules, as appropriate.[10] In light of several recent revisions to the designation requirements for options,[11] the Commission determined that further guidance to the exchanges on the format for applications for designation might facilitate and expedite both the application and the review process. Accordingly, the Commission proposed to add to Guideline No. 1 two new sections, one relating to designation of contract markets for options on futures and one relating to designation of contract markets on options on physicals. The Commission is herein incorporating those revisions into the revised Guideline.

These revisions depart from prior practice in two fundamental ways. First, the Commission is promulgating a checklist format for option applications, based upon its experience that options have tended to exhibit uniform terms and conditions. 56 FR 43730. Secondly, as explained in the Notice of Proposed Rulemaking, the Commission has determined to encourage the filing of applications for designation of options simultaneously with that of the underlying futures contract. As the Commission noted:

> The Commission believes that when an exchange anticipates the eventual listing of both a futures and an associated option, the simultaneous designation of both instruments presents a ready opportunity to facilitate the designation process. In particular, because of the uniformity of their terms and the prior review of the underlying future, the time required currently for option designations is far less than for a related futures contract. However, the simultaneous analysis of these applications should avoid any duplicative effort by the staff, further reducing the time necessary for approval. In addition, simultaneous designations would be more efficient with regard to the preparation of both the applications and Commission documents by reducing the need for overlapping or redundant materials.
>
> While the Commission is not proposing to mandate that exchanges file such applications simultaneously, it encourages all exchanges to undertake to do so. This change in procedure, in addition to creating additional opportunities for administrative savings, should also provide exchanges with the opportunity to explore more fully any competitive advantages which they perceive may attach to an ability simultaneously to list new futures contracts and options thereon.

56 FR at 43731.

Part B of revised Guideline No. 1 standardizes the format for applications for designation of options on futures contracts. The application required under the Guideline, as amended, includes three documents: (1) The proposed exchange rules which constitute the terms and conditions of the option; (2) the exchange rules which constitute the terms and conditions of the underlying futures contract; and (3) the specified list of requirements or explanatory information as indicated, in the format identified in the Guideline.

The list of requirements identifies seven items which are reviewed by the Commission and the standard which unambiguously would meet each of the identified requirements.[12] No explanation or justification is necessary for those exchange rules which meet the stated standard; for those that do not, an explanation of how the exchange rule complies with the applicable Commission rule is required. Of course, the proposed checklist is merely a means of limiting the information which must be provided routinely by exchanges whose rules conform to these criteria. In this regard, the Commission will analyze the terms and conditions of the proposed contract to ascertain whether the contract meets all of the criteria for designation, in addition to those listed. Accordingly, the Guideline, as amended, clearly reserves to Commission staff the ability to request additional information or data as necessary and appropriate.[13]

V. Breadth and Effect of These Amendments

As the Commission noted in its Notice of Proposed Rulemaking, Guideline No. 1 pertains only to the economic and public interest requirements for contract market designation. These revisions do not broaden its applicability. Accordingly, as the Commission previously stated,

> there are additional requirements for designation which the Commission must consider and which are not addressed routinely in the required written application.
>
> As is true under current designation procedures, contract market applicants would continue to be subject to these requirements, despite their exclusion from the written submission required under the guideline. The Commission contemplates that, except for the initial contract market designation for a board of trade, its staff would continue to require written submissions regarding those designation requirements not addressed in revised Guideline No. 1 on a case-by-case basis.

56 FR 4372 (footnote omitted).

In proposing these revisions, the Commission determined to permit exchanges to file applications consistent with the proposed format immediately upon its publication in the **Federal Register**. *Id.* However, of the seven

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[10] Unlike the requirements for the designation of futures contracts which are found in the Commodity Exchange Act, the requirements for the designation of exchange-traded options are provided in Commission rules, in particular, Commission Rule 33.4, 17 CFR 33.4 (1990).

[11] See, 56 FR 43694. After reviewing the requirements for designation of option contract markets, the Commission revised several of its rules, removing the following: Rule 33.4(a)(5)(iii), which required a specified volume of trading in the underlying futures contract prior to designation; Rule 5.4, which established a delisting criterion for the trading of options on low-volume futures contracts; Rule 33.4(b)(1)(iv), which required that exchanges adopt rules establishing a period of time before the expiration of an option during which no new option strike prices can be added; and Rule 33.4(g), which required exchanges to provide a comprehensive list of occupational categories of commercial users of the commodity underlying the option. In addition, the Commission revised Rule 33.4(d)(1), which required exchanges to justify expiration dates of less than 10 days before first notice day or last trading day of the future, whichever came first, redesignating it as Rule 33.4(b)(2). In addition, the Commission amended Rule 15.00(b)(2), to raise to 50 contracts the minimum reportable level requiring no exchange justification.

[12] The Guideline checklist identifies the following standards as clearly meeting the requirements of Commission Rules 33.4(b), 33.4(d), 1.61, and 15.00(b)(2), 17 CFR 33.4(b), 33.4(d), 1.61, and 15.00(b)(2) (1990). Commission Rule 33.4(b)(1) is met by exchange rules which provide procedures for the listing of strike prices which are specified and automatic. Except for options on cash-settled futures contracts, the option may not expire later than the day before first notice day or the last trading day of the future, whichever comes first. 17 CFR 33.4(d)(1). The minimum tick size of the option must be equal to, or less than, that of the underlying futures; and a daily price limit, if any, must be equal to, or greater than, that of the underlying futures. 17 CFR 33.4(d). The exchange rule for aggregation of accounts must be identical with the language of Commission Rule 1.61(g) or with a previously approved rule of the exchange. The speculative position limit must provide for a combined net position in futures and options on a futures equivalent basis at the futures position levels with inter-month spread exemptions consistent with those of the futures contract. 17 CFR 1.61. And finally, the contract must have a reportable level of fifty contracts or fewer. 17 CFR 15.00(b)(2).

[13] Section (c) of the Guideline sets forth the information which should be included in an application for the designation of contract markets in options on physicals. Because options on physicals combine characteristics of both futures and options, the applications for designation of such instruments combine the relevant portions of the previous sections of the Guideline.

applications for designation submitted to the Commission subsequent to the notice, none were submitted in the revised format. Nevertheless, the Commission has begun to review pending applications under the standards articulated in the proposed revisions to this Guideline, as applicable. Because exchanges may have incurred costs associated with submissions already under development which comply with the existing Guideline, the Commission will continue to accept new applications in the current format for a period of six months from the effective date of these amendments. However, exchanges are encouraged to comply with the revised format immediately. Of course, all pending applications will continue to be processed in the form in which they were submitted. And, as the Commission stated previously, "on a case-by-case basis, it may permit certain modifications to, or adjustments in, the required format as necessary to mitigate any particular burdens associated with the transition to the revised format." 56 FR 43732.

VI. Foreign Exchange-Traded Stock Index Futures Contracts

In the Notice of Proposed Rulemaking, the Commission, in order to facilitate the process for filing requests for staff "no-action" letters regarding stock index contracts based on foreign securities by a foreign board of trade, identified that information which would assist in the staff's analysis of such requests. See, 56 FR 43733 for an explanation of the procedure and a list of the contracts subject to such relief. The Commission, for the convenience of the reader, is reproducing that list, *in toto*. As previously explained by the Commission, the following information is suggested to be included in such a no-action request by a foreign board of trade:

(1) The terms and conditions of the contract and all other relevant rules of the exchange, and if applicable, of the exchange on which the underlying equities are traded, which have an effect on the over-all trading of the contract, including circuit breakers, price limits, position limits or other controls on trading;

(2) Surveillance agreements between the foreign boards of trade and the exchange(s) on which the underlying equities are traded;

(3) When applicable, information regarding foreign blocking statutes and their impact on the ability of United States government agencies to obtain information concerning the trading of such contracts; and

(4) Information and data relating to:

(a) The computation, availability, and timeliness of the index;

(b) The total capitalization, number of stocks, and weighting of the stocks by capitalization and, if applicable, by price, in the index;

(c) Breakdown of the index by industry segment;

(d) Procedures and criteria for selection of individual stocks for inclusion in, or removal from, the index;

(e) Method of calculation of the cash-settlement price and the timing of its public release;

(f) Average daily volume of trading by calendar month in each of the underlying equities for a six month period of time, and separately, the daily volume in each underlying stock for six expirations (cash-settlement dates) or for the six days of that period on which cash-settlement would have occurred had each month of the period been an expiration month.

In addition, Commission staff considers the ability and willingness of the foreign regulatory authority to share information with the Commission. Finally, it should be noted that, in particular instances, additional information may be required by the Securities and Exchange Commission. All of the above correspondence, justifications, and information should be submitted in English. This includes the explanatory notes appended to tables and other charts of data.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. 47 FR 18618 (April 30, 1982). This interpretative guideline provides guidance to contract markets on what information is necessary to demonstrate compliance with the Statutory requirements for designation. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Commission invited comments from any firms or other persons which believe that the promulgation of these rules might have a significant impact upon their activities. None was received.

List of Subjects in 17 CFR Part 5

Contract markets, Commodity futures, Designation application, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular sections 4c, 5, 5a, 6 and 8a, 7 U.S.C. 6c, 7, 7a, 8, and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations by amending part 5 as follows:

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

1. The authority citation for part 5 continues to read as follows:

Authority 7 U.S.C. 6c, 7, 7a, 8 and 12a.

2. Appendix A to part 5 is revised to read as follows:

Appendix A to Part 5—Guideline No. 1; Interpretive Statement Regarding Economic and Public Interest Requirements for Contract Market Designation

For purposes of a board of trade seeking designation as a contract market and thereafter for the purpose of demonstrating continued compliance with the requirements of sections 4c, 5, and 5a of the Commodity Exchange Act, and regulations thereunder, the following shall be provided to the Commission.

(a) *For Designation of Contract Markets for Futures*—(1) *Description of the Cash Market.* In support of the justification and demonstration to be furnished under paragraph (a)(2) of this Guideline, a board of trade shall submit with its application a description of the cash market for the commodity on which the contract is based: *Provided, however*, That no such description is required when the same, or a closely related commodity, is already designated as a contract and is not dormant within the meaning of § 5.2 of this part, and when the terms and conditions of the proposed contract are the same, or substantially the same, as those of the designated contract market. When a particular term(s) or condition(s) of the proposed contract differs from those of the designated contract market, but otherwise is substantially the same, the description of the cash market can be confined to those aspects relevant to the particular term(s) or condition(s). For purposes of this section, the term cash market includes all aspects of the spot and forward markets in which the commodity underlying the contract is merchandised and for which the contract serves a hedging or price basing function. As applicable to the justification of individual contract terms or the contract's hedging or price basing function, the cash market description shall include:

(i) Production of the underlying commodity, including as appropriate, geographical locations and seasonal patterns in the case of

tangible commodities and scheduled issuances in the case of financial instruments;

(ii) Consumption of the underlying commodity, including, as appropriate, geographic locations and seasonal patterns of intermediate and ultimate consumption in the case of tangible commodities;

(iii) The nature and structure of the cash marketing channels, including the nature and number of marketing institutions, the nature of the forward contracting market, and the manner in which the price of the commodity is determined at various stages in its marketing;

(iv) The prevalent means of communications, methods of financing commodity ownership, and, in the case of tangible commodities, the manner in which tangible commodities are transported and stored; and

(v) Information provided by the board of trade pursuant to this paragraph shall include statistical data when applicable and when reasonably available. Such data shall cover a period of time sufficient to show accurately the historical patterns of production, consumption and marketing of the commodity which are relevant to the pricing or hedging use of the contract and/or the specification of its terms and conditions. In the absence of a justification of providing data from a shorter period, at least five (5) years of such data should be provided. If the board of trade through reasonable effort cannot obtain sufficient data, interviews with, or statements by, persons having knowledge of the cash market may be used to supplement or, if necessary, substitute for quantitative information.

(2) *Justification of Individual Contract Terms and Conditions.* A board of trade shall submit an analysis and justification of significant individual terms and conditions of the contract. Such analysis and justification for each term and condition should be supported in the manner provided by section (a)(1)(v) of the Guideline: *Provided, however,* That no such analysis or justification is required, when a contract on the same or a closely related commodity is already designated as a contract market and is not dormant within the meaning of § 5.2 of this part, and when the terms and conditions of the proposed contract are the same, or substantially the same, as those of the designated contract market. Instead, the individual term(s) or condition(s) of the proposed contract need only be referenced to the original, approved term(s) or condition(s). When, however, a particular term(s) or condition(s) of the proposed contract differs from that of the designated contract market, only the particular term(s) or condition(s) which differs must be analyzed or justified. When the proposed contract is substantially different from a designated contract market which is not dormant within the meaning of § 5.2 of this part, but an individual term(s) or condition(s) is the same as, or substantially the same as, a term or condition approved for any other designated contract market which is not dormant with the meaning of § 5.2 of this part, then the individual term(s) or condition(s) need not be analyzed and justified and need only be referenced to the original, approved term or condition.

(i) The justification submitted by a board of trade concerning significant contract terms shall include, when applicable, (a) evidence of conformity with the underlying cash market and (b) evidence that the term or condition will provide for a deliverable supply which will not be conducive to price manipulation or distortion and that such a supply reasonably can be expected to be available to the short trader and saleable by the long trader at its market value in normal cash marketing channels. To the extent that a term or condition is not in conformity with prevailing cash market practices, the board of trade shall provide a reason for the variance and demonstrate that the term or condition is necessary or appropriate for the contract and will result in sufficiently available and saleable deliverable supplies.

(ii) For contracts which require delivery, the justification shall include a demonstration that the contract terms and conditions, as a whole, will result in a deliverable supply which will not be conducive to price manipulation or distortion, including when applicable the following:

(A) Complete specification and commodity characteristics for par and non-par delivery (such as grade, class, weight, issuer, maturity, rating) including the economic basis for the premiums and discounts, or lack thereof, for differing characteristics. For futures contracts based on debt securities, this shall include an economic justification of the formula to be used for the evaluation of non-par instruments;

(B) All delivery points, including, when applicable, for each point:

(*1*) The nature of the cash market at the delivery point (e.g., auction market, buying station or export terminal);

(*2*) A description of the composition of the market;

(*3*) The normal commercial practice for establishing cash market values and the availability of published cash prices reflecting the value of the deliverable commodity;

(*4*) The level of deliverable supplies normally available, including the seasonal distribution of such supplies; and

(*5*) Any locational differentials for delivery points, including the economic basis for discounts or premiums, or lack thereof, applying to delivery points;

(C) A description of the delivery facility (such as warehouse, depository, financial institution) including:

(*1*) The type(s) of delivery facility at each delivery point;

(*2*) The number and total capacity of facilities meeting contact requirements;

(*3*) The proportion of such capacity expected to be available for traders who may wish to make delivery and seasonal changes in such proportions; and

(*4*) The extent to which ownership and control of such facilities is dispersed or concentrated.

(iii) For contracts when cash settlements may serve as an alternative to, or substitute for, physical delivery, information submitted by the board of trade pursuant to this section must include evidence that the cash settlement of the contract is at a price reflecting the underlying cash market, will not be subject to manipulation or distortion, and must also include:

(A) An analysis of the price series upon which such settlement will be based, including the series' reliability, acceptability, public availability and timeliness, and

(B) An analysis of the potential for manipulation or distortion of the cash-price series.

(iv) With regard to delivery months, the board of trade shall specify the delivery months and, when applicable, shall describe the relationship of each futures delivery month to cyclical variations in deliverable supplies, availability of warehouse space, transportation facilities, cash market activity, and any other factors which may affect the viability of delivery or ascertaining a cash settlement price in each such month. The board of trade's justification shall also consider the delivery months for existing contracts which draw on the same deliverable supply or cash settlement mechanism.

(v) For those contract markets required to have in effect speculative position limits under § 1.61 of this chapter, the board of trade shall include an analysis of the consistency of the speculative position limits proposed in the application with the criteria set forth in that section.

(3) *Stipulation of Conformity to the Cash Market.* A board of trade shall submit a stipulation that, when applicable, the following terms and conditions of its proposed contract are consistent with prevailing cash market practices. For those terms and conditions which are contrary to such a stipulation, the board of trade shall provide a reason for the variance from prevailing cash market practices and demonstrate that the term or condition is necessary or appropriate for the contract. These terms and conditions include the following:

(i) The permissible delivery pack or composition of delivery units;

(ii) The size of contract unit;

(iii) The inspection and certification procedures for the verification of delivery eligibility and, for perishable commodities, the duration of the inspection certificate and any discounts applied to deliveries of a given age;

(iv) The delivery instrument (such as a warehouse receipt or depository receipt), and the conditions under which such instrument is negotiable;

(v) The transportation terms at point of delivery (such as FOB, CIF, or freight allowances);

(vi) The provisions for payment of costs in making and taking delivery, including a description of significant costs (such as inspection, assay, certification, warehouse charges or rail charges);

(vii) The minimum price change (tick); and

(viii) A separate stipulation that any restrictions on daily price movements (maximum price fluctuations), are not overly restrictive in relation to price movements in the cash market.

(4) *Other required information.* As requested, a board of trade shall submit additional evidence relating to any of the

information, data or stipulations required by paragraph (a) of this Guideline. In addition, a board of trade shall submit any other evidence, information or data requested relating to whether a contract meets, initially or on a continuing basis, the public interest standard contained in section 5(g) of the Act, including in particular, whether a proposed contract reasonably can be expected to be used for hedging and/or price basing on more than an occasional basis, and whether a designated contract has in fact been used for such purposes on more than an occasional basis, or any other requirement for designation under the Act or Commission rules.

(b) *For Designation of Contract Markets in Options on Futures*—(1) *Terms and Conditions.* A board of trade shall submit the terms and conditions of the proposed option and of the proposed or designated futures contract underlying the proposed option.

(2) *Option Designation Checklist.* A board of trade shall submit an Option Designation Checklist for Options on Futures Contracts. When each individual criterion identified by the checklist is met by a term or condition of the proposed option, the exchange rule number or other identification of that term or condition shall be included on the checklist. The option designation checklist is as follows:

OPTION DESIGNATION CHECKLIST FOR OPTIONS ON FUTURES CONTRACTS

Criteria	Applicable commission rule, 17 CFR	Standard	Met by exchange rule number
1. Speculative limits	1.61	Combined net position in futures and options on a futures-equivalent basis at the futures position levels, with inter-month spread exemptions that are consistent with those of the futures contracts.	
2. Aggregation rule	1.61(g)	Same as Section 1.61(g) of this Chapter or previously approved language.	
3. Reporting level	15.00(b)(2)	50 contracts or fewer	
4. Strike prices	33.4(b)(1)	Procedures for listing strikes are specified and automatic	
5. Option expiration	33.4(d)(1)	Options, except for options on cash-settled futures contracts, expire not less than one business day before the earlier of the last trading day or the first notice day of the underlying futures contract.	
6. Minimum tick	33.4(d)	Tick is equal to, or less than, the underlying futures tick	
7. Daily Price limit, if specified	33.4(d)	Price limit, if any, is equal to, or greater than, underlying futures price limit.	

(3) *Justification of Individual Contract Terms and Conditions.* A board of trade shall submit an analysis and justification of the following:

(i) Any term or condition not meeting a criterion identified on the Option Designation Checklist identified in paragraph (b)(2) of this Guideline or any criterion of that Checklist which is not met by a particular term or condition of the option: *Provided, however,* That no such analysis or justification is required when such an individual contract term(s) or condition(s) is the same as, or substantially the same as, an identified term or condition approved for any other designated contract market which is not dormant within the meaning of § 5.2 of this part; and

(ii) Such other term(s) or condition(s) as requested.

(4) *Other required information.* As requested, a board of trade shall submit additional evidence, information, data or stipulations relating to whether a contract meets, initially or on a continuing basis, the public interest standard contained in section 5(g) of the Act, the economic purpose standard of § 33.4(a)(5)(i) of this chapter or any other requirement for designation under the Act or Commission rules.

(c) *For Designation of Contract Markets in Options on Physicals.*—(1) *Terms and Conditions.* A board of trade shall submit the terms and conditions of the proposed option.

(2) *Description of the Cash Market.* A board of trade shall submit a description of the cash market as provided under paragraph (a)(1) of this Guideline.

(3) *Justification of Terms and Conditions.* A board of trade shall submit an analysis and justification of the following:

(i) The term(s) and conditions(s) identified in paragraph (a)(2) of this Guideline relevant to the option on a physical;

(ii) Any term or condition not meeting a criterion identified on the Option Designation Checklist contained in paragraph (c)(5) of this Guideline; and

(iii) Such other term(s) and condition(s) as requested.

(4) *Stipulation of Conformity to the Cash Market.* A board of trade shall submit a stipulation that the terms and conditions listed in paragraph (a)(3) of this Guideline are consistent with prevailing cash market practices, or, for those which are not, a justification consistent with paragraph (a)(3) of this Guideline.

(5) *Option Designation Checklist.* A board of trade shall submit an Option Designation Checklist for Options on Physicals. When each individual criterion identified by the checklist is met by a term or condition of the proposed option, the exchange rule number or other identification of the term or condition shall be included on the checklist. The option designation checklist is as follows:

OPTION DESIGNATION CHECKLIST FOR OPTIONS ON PHYSICALS

Criteria	Applicable commission rule, 17 CFR	Standard	Met by exchange rule number
1. Speculative limits	1.61	If there is a futures contract in the same commodity on the same exchange, combined futures and options on a futures-equivalent basis at the futures position levels, with inter-month spread exemptions that are consistent with those of the futures contracts..	
2. Aggregation rule	1.61(g)	Same as section 1.61(g) of this chapter or previously approved language..	
3. Reporting level	15.00(b)(2)	50 contracts or fewer.	
4. Strike prices	33.4(b)(1)	Procedures for listing strikes are specified and automatic.	

OPTION DESIGNATION CHECKLIST FOR OPTIONS ON PHYSICALS—Continued

Criteria	Applicable commission rule, 17 CFR	Standard	Met by exchange rule number
5. Option expiration	33.4(d)(1)	Options expire not less than one business day before the earlier of the last trading day or the first notice day of any futures contract in the same or a related commodity, except for cash-settled futures contracts..	

(6) *Other required information.* As requested, a board of trade shall submit additional evidence, information, data or stipulations relating to whether a contract meets, initially or on a continuing basis, the public interest standard contained in section 5(g) of the Act, the economic purpose standard of § 33.4(a)(5)(i) of this chapter, or any other requirement for designation under the Act or Commission rules.

Issued in Washington, DC this 22nd day of January, 1992, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-1910 Filed 1-29-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 89N-0525]

Status of Certain Over-the-Counter Drug Category II and III Active Ingredients; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations regarding the status of certain over-the-counter (OTC) drug Category II and III active ingredients. This final rule makes nonsubstantive corrections to the final regulations that were published in the **Federal Register** of November 7, 1990 (55 FR 46914). That final rule listed the names of several active ingredients incorrectly. This document corrects those errors and provides clarification of the final rule for certain OTC drug products.

EFFECTIVE DATE: January 30, 1992.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: This document amends the final rule concerning drug products containing certain active ingredients offered OTC for certain uses in 21 CFR part 310 (as set forth in the **Federal Register** of November 7, 1990 (55 FR 46914)). That final rule lists several active ingredients incorrectly. This final rule corrects those errors in the regulations. As noted above, these amendments institute changes that are nonsubstantive in nature. Because the amendments are not controversial and because, when effective, they provide clarification of a final rule for OTC drug products, FDA finds that the usual notice and comment procedures are unnecessary.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512-516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b-360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354-360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b-263n).

§ 310.545 [Amended]

2. Section 310.545 *Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses* is amended in paragraph (a)(1) by removing the entry "Chlorhydroxyquinoline" and alphabetically adding the entry "Cloxyquin"; by removing from paragraph (a)(2) the entry "Acidulated sodium phosphate"; by removing from paragraphs (a)(6)(i) and (a)(6)(ii) the entry "Thenyldiamine" and adding in their place the entry "Thenyldiamine hydrochloride"; by removing from paragraph (a)(7) the entries "Alkyl isoquinolinium", "Lauryl isoquinolinium", and "Methylbenzethonium" and adding in their place the entries "Alkyl isoquinolinium bromide", "Lauryl isoquinolinium bromide", and "Methylbenzethonium chloride", respectively; by removing from paragraph (a)(8) the entries "Dihydroxyaluminum", "Glutamic acid", and "Homatropine", and adding in their place the entries "Dihydroxyaluminum sodium carbonate", "Glutamic acid hydrochloride", and "Homatropine methylbromide", respectively; by removing from paragraph (a)(12)(iv) the entry "Prune concentrate" and adding in its place the entry "Prune concentrate dehydrate".

Dated: January 24, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-2229 File 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8394]

RIN 1545-A037

Proceeds of Bonds Used for Reimbursement

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance as to when the allocation of bond proceeds to reimburse expenditures previously made by an issuer is treated as an expenditure of the bond proceeds. When bond proceeds are "spent," they are no longer subject to arbitrage rebate, arbitrage yield limitations, and certain other limitations. Changes to the applicable law were made by the Tax Reform Act of 1984 and the Tax Reform Act of 1986.

The regulations provide guidance to issuers of tax exempt bonds.

DATES: The regulations are effective for bonds issued after March 2, 1992.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo, 202–566–3283 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1226. The estimated average annual burden per recordkeeper is 2.4 hours. These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC, 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On April 25, 1991, the Internal Revenue Service published a notice of proposed rulemaking to provide guidance under sections 103 and 150 of the Internal Revenue Code with respect to reimbursement bonds (56 FR 19046 (1991)). The proposed regulations reflected amendments to section 103 and the addition of sections 141 through 150 to the Code by the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2602). The notice of proposed rulemaking proposed to add to the Income Tax Regulations (26 CFR part 1) provisions for determining when the use of bond proceeds to reimburse a previously paid expenditure is treated as an expenditure of the bond proceeds for purposes of sections 103 and 141 through 150 of the Code.

Written comments were received on the proposed regulations, and a public hearing was held on August 8, 1991. These written and oral comments requested many changes, including simplification of the regulations generally. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions and Changes

A. General Purpose of the Regulations

These regulations provide rules for allocating proceeds of "reimbursement bonds." Reimbursement bonds are bonds the proceeds of which are allocated to reimburse expenditures paid prior to the date of issue of the bonds.

Proceeds of a bond generally cease to be treated as proceeds on the date they are spent. Moneys that cease to be treated as proceeds of a bond are no longer subject to arbitrage yield limitations, the arbitrage rebate requirement, and certain other restrictions imposed by sections 103 and 141–150 of the Code. Therefore, spending bond proceeds as soon as possible may reduce the amount of arbitrage rebate an issuer would otherwise pay and may free the issuer from complying with other significant requirements of the Code.

The early expenditure of bond proceeds as a means of avoiding or minimizing the amount of arbitrage rebate due the United States is encouraged by section 148(f)(4) of the Code, which generally treats an obligation as complying with the arbitrage rebate requirement if all gross proceeds of the obligation are spent within 6 months of the date of issue of the obligation (subject to certain exceptions) or in prescribed installments over a 2-year period (subject to certain exceptions and other requirements). Encouraging the early expenditure of bond proceeds furthers Federal tax policy by discouraging the issuance of bonds earlier than the bond proceeds are needed for governmental purposes. Deferring bond issuances reduces opportunities for earning arbitrage and lessens the burden on financial markets.

Because the applicability of many restrictions and requirements imposed by the Code ceases when bond proceeds are spent, proper administration of sections 103 and 141–150 requires a definition of what constitutes an expenditure of bond proceeds. In particular, it is important to define to what extent the allocation of bond proceeds to reimburse prior expenditures is considered an expenditure of the proceeds.

These regulations describe the circumstances in which an allocation of bond proceeds to reimburse a prior expenditure is treated as an expenditure of bond proceeds on the date of allocation. If reimbursements were not limited to expenditures made a reasonable period of time prior to issuance of bonds, issuers could generally avoid compliance with sections 103 and 141–150 by simply allocating bond proceeds to capital expenditures paid long before, and without reliance on, the issuance of the bonds. In addition, the intent of these regulations is to limit the treatment of reimbursement allocations as expenditures of bond proceeds to situations in which economic circumstances justify the reimbursement. These regulations are not intended to permit or condone the use of reimbursement allocations to avoid arbitrage yield limitations, arbitrage rebate, or other tax limitations or restrictions.

B. General Requirements

An allocation of proceeds of governmental bonds, qualified 501(c)(3) bonds, and certain other private activity bonds to a previously paid expenditure must comply with § 1.103–18 to be an expenditure of bond proceeds. If a bond meets the requirements of these regulations, bond proceeds are deemed to be spent when they are allocated to reimburse a prior expenditure.

In the case of a governmental bond, a qualified 501(c)(3) bond, or a private activity bond the proceeds of which are used to finance a governmentally owned facility, three general requirements must be met in order for a reimbursement allocation of proceeds of those bonds to qualify as an expenditure of bond proceeds:

(1) On or before the date the expenditure that is being reimbursed is paid, the issuer (which, as defined, includes the borrower from a conduit issuer) must declare a reasonable official intent to reimburse the expenditure (the "official intent requirement").

(2) The allocation of reimbursement bond proceeds to an expenditure must take place by a required time (the "reimbursement period requirement"). The allocation must generally occur on or before the later of the date 1 year after the expenditure was paid or the date 1 year after the property was placed in service. Allocation may not occur before the date on which the expenditure was paid.

(3) The reimbursed expenditure must be a capital expenditure (the "capital expenditure requirement").

Under the "official intent period" requirement contained in the proposed regulations, official intent had to be declared no earlier than the date 2 years prior to the date of the expenditure. This requirement was not included in these

final regulations in an effort to simplify the regulations and in response to comments that the requirement was unnecessary in light of other requirements applicable to reimbursement allocations.

If proceeds of a private activity bond (other than a qualified 501(c)(3) bond) are allocated to reimburse a previously paid expenditure of the issuer, the allocation can qualify as an expenditure of the bond proceeds only if the bond complies with the requirements of § 1.103–8(a)(5) and does not violate the anti-abuse rules of § 1.103–18(k) (1) and (3) (ii) and (iii).

C. Official Intent Requirement

The purposes of the official intent requirement are to provide evidence that, on or prior to the date of payment, the issuer intended to reimburse the expenditure and to ensure that the reimbursement is not a device to avoid requirements imposed by the Code with respect to tax exempt bonds. In order to ensure that an issuer will consider its current financial and budgetary circumstances in connection with any declaration of official intent and that the reimbursement will be consistent with the issuer's financial and budgetary circumstances, the regulations require that the declaration of official intent (1) state that the issuer reasonably expects to reimburse the expenditure with proceeds of its debt, (2) specifically state that it is intended to be a declaration of official intent under these regulations, (3) contain a general functional description of the property to which the reimbursement relates or an identification of the fund or account from which the expenditure is to be paid and a general functional description of the purposes of the fund or account, (4) indicate the maximum principal amount of debt expected to be issued for reimbursement, and (5) be reasonably available for public inspection. The issuer may designate any person to act on its behalf in declaring official intent.

Unlike the proposed regulations, which required that the declaration of official intent state the issuer's intent to issue taxable or tax exempt debt to reimburse the prior expenditure, these regulations require only that the issuer declare its intent to issue debt to reimburse the expenditure. This change was made in response to comments expressing confusion over the language in the proposed regulations. The requirement that the declaration of official intent state that it is a declaration of official intent under these regulations was added in order to ensure appropriate evidence of intent to reimburse the expenditure. Without this evidence, expenditure authorizations by issuers or conduit borrowers (which may also be legal authorizations to incur debt) are not treated as declarations of official intent for purposes of these regulations.

With respect to the proposed regulations, state and local financial officers commented that many larger issuers use a fund or account method to account for ongoing projects for which reimbursement financing may be used. These commentators pointed out that because of their use of fund accounting, the project-specific accounting requirements of the proposed regulations were burdensome. In response to these comments, these regulations permit declarations of official intent to describe identified funds or accounts in lieu of identified specific projects. Therefore, if a declaration of official intent both identifies the fund or account from which the expenditure to be reimbursed is paid and describes the general functional purpose of the fund or account, that declaration adequately describes the expenditure to be reimbursed for purposes of the official intent requirement.

Commentators requested clarification regarding the provision in the proposed regulations permitting "reasonable deviations" between the property described in the declaration of official intent and the actual property acquired. In response to these comments, these regulations permit reasonable deviations between the project described and the project acquired if "the actual project financed is reasonably related in function to the project described in the declaration of official intent." The intent of this change is to simplify compliance with the official intent requirement and to allow flexibility for changes within the same project.

In response to comments that the public availability requirement under the proposed regulations was burdensome, these regulations require only that the declaration of official intent be "reasonably available for public inspection within a reasonable period of time." Safe harbors are provided for declarations of official intent made available for public inspection in compliance with State or local law and for declarations of official intent made available within 30 days of the declaration of official intent. The intent of these changes is to simplify compliance with the public availability requirement while assuring that declarations of official intent are available for public inspection. Special rules continue to apply to public availability of declarations of official intent with respect to conduit financings such as qualified 501(c)(3) bonds and other private activity bonds.

A declaration of official intent must be reasonable. The reasonableness requirement is intended to curb abuses that may otherwise arise when bond proceeds are allocated to reimburse expenditures primarily for the purpose of avoiding tax restrictions or requirements. The reasonableness requirement does not impose a requirement on an issuer that all other funds be exhausted. Instead, the requirement ensures that reimbursement of an expenditure is motivated by an intent to finance, on a long-term basis, an expenditure originally paid with moneys that were not available to fund the expenditure on a long-term basis.

Commentators asked for clarification of the concept of "available moneys" in the proposed regulations. In response to this request, these regulations clarify that moneys are taken into account for purposes of determining consistency with an issuer's budgetary and financial circumstances if, at the time of the declaration of official intent, they are, or are reasonably expected to be, allocated on a long-term basis, reserved, or otherwise set aside with respect to the expenditure to be reimbursed by the issuer or by any member of the same controlled group as the issuer. The application of the controlled group concept for purposes of determining available moneys should be easier for issuers to comply with since not all members of a controlled group need to be identified if it is clear that none of them could have available moneys with respect to the expenditure to be reimbursed by the issuer. A controlled group of entities is a group of entities controlled by the same entity or entities and is defined in new § 1.150–1(f). Because of these changes to the reasonableness requirement, the examples contained in the proposed regulations illustrating this principal were not included in these final regulations.

The reasonableness requirement is not intended to preclude an issuer from avoiding or minimizing arbitrage rebate or arbitrage yield limitations by intentionally delaying the issuance of a bond. For example, prior to the issuance of the bond, an issuer may pay expenditures with respect to a project with moneys that are not available on a long-term basis to finance the project. By delaying the bond issue, the issuer is able to reimburse itself for the prior expenditures with bond proceeds that

will be spent within the relevant 6-month or 2-year time period, thereby meeting an exception to arbitrage rebate. Delaying the issuance of obligations for this purpose furthers Federal tax policy and is encouraged.

The reasonableness requirement will not be applied to question the soundness or appropriateness of an issuer's budget or financial practices; rather it is meant to ensure that any intent to reimburse is consistent with an issuer's established budgetary and financial practices (provided that those practices are not adopted for tax avoidance purposes). In order to ensure that an issuer's actions reasonably conform to the issuer's declarations of official intent, under the reasonableness requirement the issuer must reasonably expect to reimburse the expenditure with proceeds of a borrowing (the "reasonable expectations test"). The determination of whether an expectation to reimburse is reasonable is based on all of the relevant facts and circumstances. For purposes of this determination, one important factor is whether an issuer has failed to reimburse expenditures which it has actually paid and for which it has declared official intent. The reasonable expectations test replaces the "pattern of failing to reimburse" rules of the proposed regulations. This change was made in part in response to comments that the "pattern of failing to reimburse" rules were burdensome.

D. Reimbursement Period Requirement

The purpose of the reimbursement period requirement is to provide assurance that the money originally used to pay for the expenditure that is to be reimbursed is not available with respect to the expenditure on a long-term basis. If an expenditure is not reimbursed within a relatively short period of time after its payment or after completion of the project, it is more likely that the money used to pay the expenditure is available with respect to that expenditure on a long-term basis.

Some commentators have suggested that reimbursement allocations be permitted on an unrestricted basis with respect to all expenditures paid within a certain period of time. For example, some commentators have suggested permitting unlimited reimbursement of all expenditures paid during the 3 fiscal years preceding the date of issue of the reimbursement bonds. These commentators have argued that such a rule would be simple and that significant abuse (e.g., reimbursement of expenditures incurred many years ago) would be curbed because of the time limitation. This provision was not included in these regulations because of the potentially adverse effect that it would have on arbitrage rebate, arbitrage yield restriction, and other tax requirements and limitations applicable to tax exempt bonds. If reimbursement allocations were permitted for defined periods of time without further limitation, issuers could conceivably reimburse themselves for all expenditures paid during the defined time period whenever they issued debt regardless of their actual economic motivation for incurring the debt. Issuers could then use the proceeds of that reimbursement bond to pay for all or a portion of the project that they had not originally intended to finance with bond proceeds. By structuring the financing as a reimbursement bond rather than as a "new money" bond, the bond proceeds could be treated as "spent" and no longer subject to most tax limitations that would otherwise apply to a new money bond.

E. Capital Expenditure Requirement

The purpose of the capital expenditure requirement is to prohibit the reimbursement of day-to-day operating costs and similar "working capital" items. Comments on the proposed regulations requested clarification of the distinction between costs with a reasonably expected economic life of 1 year or more and those with a life of less than a year. In response to this request, the economic life requirement was changed to a capital expenditure requirement. For this purpose, a "capital expenditure" is defined in new § 1.150–1(h) as any cost of a type that is properly chargeable to capital account (or would be so chargeable with proper election such as an election under section 266) under general Federal income tax principles. Whether an expenditure is a capital expenditure is determined at the time the expenditure is paid with respect to the property. Future changes in law do not affect whether an expenditure is a capital expenditure.

For purposes of applying the "general Federal income tax principles" standard referred to in § 1.150–1(h), an issuer should generally be treated as if it were a corporation subject to taxation under subchapter C of chapter 1 of the Code. For example, costs that would be deducted as trade or business expenses under section 162 of the Code are expenditures for working capital and are not capital expenditures. On the other hand, costs incurred to acquire, construct, or improve land, buildings, and equipment generally are capital expenditures under section 263 of the Code. Costs properly allocable to the issuance of the reimbursement bond are treated as capital expenditures.

F. Special Exception for Preliminary Expenditures and Abandonment Prior to Completion

Preliminary expenditures such as architectural, engineering, survey, reimbursement bond issuance, and similar costs (not exceeding in the aggregate 20 percent of the issue price of that portion of the issue that finances the project) generally are not subject to the official intent requirement. A separate exception also recognizes that projects may be abandoned prior to completion, and generally permits reimbursement of expenditures in this event. Under the proposed regulations, preliminary expenditures were excepted only from the official intent period requirement and were limited to 10 percent of the expected cost of the project. Changes to this provision were made in response to comments that the provision was insufficient to cover all ordinary preliminary expenditures.

G. Definition of Issuer

For purposes of these regulations, "issuer" means the actual issuer of an obligation. If the proceeds of a bond are loaned by the issuer to an entity (the "conduit borrower") that uses the bond proceeds to carry out the governmental purpose of the bond, "issuer" includes the conduit borrower. The actual issuer of the reimbursement bonds is not treated as the issuer with respect to proceeds loaned to a conduit borrower.

The proposed regulations defined issuer as including all entities that were members of the same controlled group. Comments were received indicating that application of the controlled group concept in all circumstances was burdensome. In response to these comments, the controlled group concept was deleted from the definition of issuer and was applied instead generally for purposes of determining available amounts under the reasonableness requirement.

H. Anti-Abuse Rule and Limitation on Scope of Reimbursement Regulations

In general, a reimbursement allocation is not treated as an expenditure of bond proceeds if any action or inaction of the issuer with respect to the allocation constitutes an artifice or device. This general anti-abuse rule was not contained in the proposed regulations and is added to these regulations to prevent abuse that may otherwise occur because of certain more liberal provisions contained in these regulations (e.g., more liberal definition

of issuer and a more narrow application of the reasonableness standard).

In addition to the general anti-abuse rule, a reimbursement allocation is not treated as an expenditure of bond proceeds if, absent that application, the bond proceeds are otherwise used directly or indirectly for one of the following prohibited uses: (1) Within 1 year of the allocation, to refund another issue of governmental obligations of the issuer within the meaning of section 148 of the Code, (2) within 1 year of the allocation, to create or increase the balance in a "sinking fund" (as defined in § 1.103–13(g)) with respect to any obligation of the issuer, or to replace funds that have been, are, or will be so used for sinking fund purposes, (3) within 1 year of the allocation, to create or increase the balance in a "reserve or replacement fund" (as defined in § 1.103–14(d)) with respect to any obligation of the issuer, or to replace funds that have been, are, or will be so used for reserve or replacement fund purposes, or (4) to reimburse any person (other than the issuer) for any expenditure or payment that was originally paid with proceeds of any obligation of the issuer. Any obligation that may arise when an issuer borrows from its own internal funds or from the funds of entities that are members of the same controlled group is not treated as an "obligation" as that term is used in subdivision (4) in the preceding sentence.

The purpose of the limitations on the use of reimbursement proceeds is to prohibit issuers from using a reimbursement allocation to earn otherwise prohibited arbitrage in certain transactions involving refundings, sinking funds, reserve and replacement funds, and previously-financed expenditures. Comments on the proposed regulations stated that the anti-abuse rule under the proposed regulations did not contain any time limit for "tracing" reimbursement bond proceeds to the prohibited uses, thereby making it difficult to determine when any use of moneys for the prohibited uses would be attributed to the reimbursement allocation. One-year time limitations were added to the prohibited use provisions in response to these comments. However, reimbursement proceeds intentionally used for these prohibited uses after the 1-year period are still subject to the general anti-abuse rule.

There are two exceptions to the limitations on uses of reimbursement proceeds. Under the first exception, the limitation does not apply if the issuer deposits the moneys from the reimbursement allocation in a bona fide debt service fund (as defined in § 1.103–13(b)(12)) or otherwise uses these moneys to pay current debt service on any obligation of the issuer (other than the reimbursement bonds). Under the second exception, the limitations with respect to refundings and expenditures originally paid with proceeds of a borrowing do not apply if the financing proceeds originally used to pay the expenditure were not reasonably expected to be used to finance that expenditure.

Because of confusion over the application of the proposed regulations to refunding bonds and reimbursements made with taxable debt, these regulations clarify the treatment of those transactions. In the case of a tax exempt refunding of a taxable bond, if proceeds of the taxable bond were allocated to reimburse a previously paid expenditure, the proceeds of the taxable bond are not deemed to have been spent unless the reimbursement allocation complied with the Federal tax law and regulations applicable to reimbursement allocations of proceeds of tax exempt issues in effect as of the date of issue of the taxable bond. If the proceeds of the taxable bond are deemed to be unspent by application of the preceding sentence, the proceeds of the taxable bond are subject to "transfer" to the tax exempt bond issued to refund the taxable bond (directly or indirectly in a series of refundings) and therefore may become proceeds of the refunding bond. For purposes of these regulations, proceeds of the taxable bond are deemed to remain unspent until a reimbursement allocation of those proceeds is made that complies with these regulations or the taxable bond proceeds are otherwise spent. The purpose of this provision is to prevent the use of a combination of taxable and tax exempt debt to circumvent the requirements of these allocation rules.

Effective Date

These regulations apply to bonds issued after March 2, 1992.

Special Analyses

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, the notice was not required by section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) since the regulations proposed in that notice and adopted by this Treasury decision are interpretive. Therefore, a final Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are David A. Walton, Office of Tax Legislative Counsel, Department of the Treasury, and formerly of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service and John J. Cross III, Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.101–1—1.133–1T

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * *

Par. 2. New § 1.103–18 is added to read as follows:

§ 1.103.18 Proceeds of bonds used for reimbursement.

(a) *Table of contents.* This table of contents contains a listing of the headings of § 1.103–18 (a) through (l).

(a) Table of contents.
(b) Scope of application.
(c) Operating rules for governmental bonds and certain private activity bonds.
(1) Bonds subject to these operating rules.
(2) Operating rules.
(i) Official intent requirement.
(ii) Reimbursement period requirement.
(iii) Capital expenditure requirement.
(d) Operating rules for certain private activity bonds.
(e) Definitions of reimbursement bond and reimbursement allocation.
(1) Definition of reimbursement bond.
(2) Definition of reimbursement allocation.
(f) Procedure for declaring official intent.

(1) Form of official intent.
(2) General description of property to which reimbursement relates and maximum anticipated debt.
(i) In general.
(ii) Specificity of description.
(iii) Project.
(3) Public availability of official intent.
(i) Public availability requirement.
(ii) Safe harbors.
(A) Time and location safe harbors.
(B) Compliance with State or local law.
(4) Special rule for conduit and "on-behalf-of" borrowers.
(g) Reasonableness requirement for declaring official intent.
(1) General rule.
(2) Consistency with budgetary and financial circumstances.
(3) Reasonable expectation to reimburse.
(i) Factors to be considered.
(A) General rule.
(B) Examples.
(ii) Failure to reimburse.
(h) Issuance costs treated as capital expenditures.
(i) Special exceptions.
(1) Exception for official intent declared subsequent to the payment of certain unforeseeable expenditures.
(i) Extension of time.
(ii) Example.
(2) Special exception for preliminary expenditures.
(i) General rule.
(ii) Definition of preliminary expenditures.
(3) Special rule for abandonment prior to completion.
(j) Definition of issuer.
(k) Anti-abuse rules.
(1) General rule.
(2) Reimbursement allocations of proceeds of refunded bonds.
(i) Operating rule.
(ii) Example.
(3) Limitations on uses of reimbursement amounts.
(4) Exception for bona fide debt service funds.
(5) Exception for certain previously financed expenditures.
(6) Examples.
(l) Effective date.
(1) In general.
(2) Transitional rule for certain expenditures.

(b) *Scope of application.* This section applies only to reimbursement allocations (as defined in paragraph (e)(2) of this section) of proceeds of any reimbursement bond (as defined in paragraph (e)(1) of this section). Except as provided in paragraph (d) of this section, the anti-abuse rules contained in paragraph (k) of this section do not apply to private activity bonds described in paragraph (d) of this section.

(c) *Operating rules for governmental bonds and certain private activity bonds*—(1) *Bonds subject to these operating rules.* The operating rules provided in this paragraph apply only to bonds that are—

(i) Not private activity bonds described in section 141(a) (except as otherwise provided in paragraphs (c)(1)(ii) and (iii) of this section),

(ii) Qualified 501(c)(3) bonds described in section 145, or

(iii) Private activity bonds the proceeds of which are used to finance a facility that is owned by a governmental unit (within the meaning of section 142).

(2) *Operating rules.* Except as provided in paragraph (i) of this section (relating to certain unforeseeable expenditures and certain preliminary expenditures) and in paragraph (k) (relating to anti-abuse rules) of this section, for purposes of applying section 103 and 141–150, a reimbursement allocation is treated as an expenditure of proceeds of the reimbursement bond on the date of the reimbursement allocation if each of the following requirements is met—

(i) *Official intent requirement.* On or before the date the expenditure is paid by the issuer, the issuer declares a reasonable intention to reimburse the expenditure with proceeds of a borrowing.

(ii) *Reimbursement period requirement.* The reimbursement allocation occurs not earlier than the date on which the expenditure is paid and not later than 1 year after the later of—

(A) The date on which the expenditure is paid, or

(B) The date on which the property is placed in service.

(iii) *Capital expenditure requirement.* The expenditure to be reimbursed is a capital expenditure (as defined in § 1.150–1(h)).

(d) *Operating rules for certain private activity bonds.* In the case of a reimbursement allocation of proceeds of an exempt facility bond under section 141(e)(1)(A) or a qualified small issue bond under section 141(e)(1)(D), a reimbursement allocation is treated as an expenditure of proceeds of the reimbursement bond on the date of the reimbursement allocation for purposes of applying section 103 and 141–150 if the property financed meets the requirements imposed under § 1.103–8(a)(5) and the reimbursement allocation does not violate the anti-abuse rules of paragraphs (k)(1) and (k)(3)(ii)–(iii) of this section.

(e) *Definitions of reimbursement bond and reimbursement allocation*—(1) *Definition of reimbursement bond.* For purposes of this section, "reimbursement bond" means the portion of an issue allocated to reimburse an expenditure that was paid prior to the date of issue. Thus, "reimbursement bond" does not include that portion of an issue allocated to reimburse an expenditure that is paid on or after the date of issue of the bond issue.

(2) *Definition of reimbursement allocation.* For purposes of this section, the term "reimbursement allocation" means an allocation of proceeds of a reimbursement bond to pay an expenditure if—

(i) The allocation is evidenced by an entry on the books or records of the issuer maintained with respect to the bonds,

(ii) The allocation entry identifies either an actual prior expenditure to be reimbursed or, in the case of a reimbursement of a fund or an account, the fund or account from which the expenditure was paid, and

(iii) As a result of the allocation, the bond proceeds covered by the entry are relieved from any restrictions under the relevant legal documents and applicable state law that apply to unspent bond proceeds.

(f) *Procedure for declaring official intent*—(1) *Form of official intent.* For purposes of paragraph (c)(2)(i) of this section, an issuer declares an intention to reimburse an expenditure ("official intent") if—

(i) The issuer, or any person or entity designated by the issuer to declare official intent on behalf of the issuer, states that the issuer reasonably expects to reimburse the expenditure with proceeds of debt to be incurred by the issuer,

(ii) The statement of official intent specifically states that it is a declaration of official intent under this section,

(iii) The statement contains the other information required by paragraph (f)(2) of this section, and

(iv) The public availability requirements contained in paragraph (f)(3) of this section are satisfied.

(2) *General description of property to which reimbursement relates and maximum anticipated debt*—(i) *In general.* The declaration of official intent must contain, at minimum, a general functional description of the project (as defined in paragraph (f)(2)(iii) of this section) for which the expenditure to be reimbursed is paid (e.g., "highway capital improvement program," "hospital equipment acquisition," "school building renovation," etc.) and a statement of the maximum principal amount of debt expected to be issued for such purposes.

(ii) *Specificity of description.* A description of project is sufficient if it identifies the fund or account from which the expenditure to be reimbursed is paid and describes the general functional purpose of the fund or

account (e.g., "parks and recreation fund—recreational facility capital improvement program"). Reasonable deviations between a project described in a declaration of official intent and an actual project financed with a reimbursement bond do not invalidate an otherwise valid official intent if the actual project financed is reasonably related in function to the project described in the declaration of official intent. For example, reimbursement of an expenditure for hospital equipment is a reasonable deviation from a project described in a declaration of official intent as "hospital building improvements." In contrast, reimbursement of an expenditure for a rehabilitation of a city office building is not a reasonable deviation from a project described in the declaration of offical intent as "highway improvements".

(iii) *Project.* For purposes of this section, "project" means a property, project, or program.

(3) *Public availability of official intent*—(i) *Public availability requirement.* The declaration of official intent must be reasonably available for public inspection within a reasonable period of time after the declaration of official intent.

(ii) *Safe harbors.* A declaration of official intent satisfies the public availability requirement set forth in paragraph (f)(3)(i) of this section if—

(A) *Time and location safe harbor.* Within 30 days after the date of the declaration, it is made available for public inspection at the main administrative office of the issuer or at the customary location of records of the issuer that are available to the general public and it remains available for public inspection on a reasonable basis until the date of issue of the reimbursement bonds, or

(B) *Compliance with State or local law.* The issuer complies with applicable State or local law governing the public availability of records of official acts of the actual issuer other than a law that was adopted for a purpose of avoiding or minimizing the public availability requirement of this paragraph (f)(3).

(4) *Special rule for conduit and "on-behalf-of" borrowers.* If, under paragraph (j) of this section, a conduit borrower (rather than the actual issuer) is treated as the issuer of the reimbursement bonds, or if the actual issuer issues on behalf of another entity (the "on-behalf-of unit"), any of the requirements of this paragraph (f) may be met by the conduit borrower, the actual issuer, or the on-behalf-of unit. For example, a declaration of official intent made available for public inspection within 30 days after the date of the declaration either at the main administrative office of the conduit borrower or at the main administrative office or customary location of records of the governmental entity reasonably expected to issue the reimbursement bonds is reasonably available for public inspection for purposes of paragraph (f)(3)(ii)(A) of this section.

(g) *Reasonableness requirement for declaring official intent*—(1) *General rule.* A declaration of official intent to reimburse an expenditure is reasonable only if, as of the date of the declaration—

(i) It is consistent with the budgetary and financial circumstances of the issuer, and

(ii) The issuer reasonably expects to reimburse the expenditure with proceeds of a borrowing.

(2) *Consistency with budgetary and financial circumstances.* In general, a declaration of official intent is consistent with an issuer's budgetary and financial circumstances if no funds from sources other than the reimbursement bond issue are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside by the issuer or by any member of the same controlled group as the issuer pursuant to their budget or financial policies with respect to the expenditure to be reimbursed. See § 1.150–1(f) for a definition of controlled group.

(3) *Reasonable expectation to reimburse*—(i) *Factors to be considered*—(A) *General rule.* The determination of whether, at the time of the declaration of official intent, an issuer reasonably expects to reimburse an expenditure with proceeds of a borrowing is based on all the relevant facts and circumstances, including the issuer's purposes for declaring official intent, its history of actual reimbursement of other expenditures for which official intent was declared and which were actually paid, and its actions taken toward reimbursement of the expenditures. Declarations of official intent that are made as a matter of course or are made for amounts of expenditures substantially in excess of amounts reasonably necessary for a described project (e.g., "blanket" declarations of official intent) do not meet the reasonable expectation requirement.

(B) *Examples.* The operation of this paragraph (g)(3)(i) is illustrated by the following examples.

Example 1. In order to preserve the option of reimbursing expenditures, an issuer declares official intent with respect to all expenditures it pays from cash on hand. A declaration of official intent made under these circumstances does not meet the reasonable expectation requirement.

Example 2. An issuer is planning on making certain expenditures that it expects to reimburse only if an expected grant or other source of money is not received. There is a reasonable possibility that the grant or other source of money will not be received or will be received a significant period of time after the expenditure is paid. The issuer declares an official intent to reimburse the expenditures in the event the grant is not received or is substantially delayed. Under these circumstances, the declaration of official intent meets the reasonable expectation requirement.

(ii) *Failure to reimburse.* A pattern of failing to reimburse expenditures for which official intent was declared and that were actually paid by the issuer is one factor indicating that the issuer does not reasonably expect to reimburse the expenditure for which official intent is declared. To the extent that a failure to reimburse was due to extraordinary circumstances that were beyond the control of the issuer and that could not have been foreseen, failure to reimburse is not taken into account in determining the reasonable expectations of the issuer. Examples of extraordinary circumstances include unexpected significant increases in interest rates, unexpected reductions in creditworthiness of the issuer, unexpected judicial or legislative impediments that make the financing uneconomic or impractical, unexpected or emergency borrowing for other needs that cause the issuer to reach its borrowing limits, and unexpected significant increases in tax or other revenues (or significant reductions in expected expenditures) that make the reimbursement unnecessary because of the increase in available funds.

(h) *Issuance costs treated as capital expenditures.* For purposes of this section, costs of issuing a reimbursement bond paid out of proceeds of the issue that are properly allocable to the reimbursement are treated as capital expenditures.

(i) *Special exceptions*—(1) *Exception for official intent declared subsequent to the payment of certain unforeseeable expenditures*—(i) *Extension of time.* If an expenditure was not reasonably foreseeable at least 30 days before its payment, the date (described in paragraph (c)(2)(i) of this section) by which official intent must be declared is extended to the date 45 days after the payment was made.

(ii) *Example.* The operation of this paragraph (i)(1) is illustrated by the following example.

Example. On June 1, 1992, fire destroyed city *B*'s data processing system. On June 5, 1992, *B* purchased replacement data processing equipment with moneys on hand in its general operating fund. On June 25, 1992, *B* declared official intent to reimburse the cost of the equipment. Because *B* could not have reasonably foreseen the destruction of the equipment, for purposes of paragraph (c)(2)(i) of this section, the period for declaring official intent to reimburse the expenditure is extended to July 20, 1992, and therefore *B*'s intent was declared during the required period.

(2) *Special exception for preliminary expenditures*—(i) *General rule.* The official intent requirement of paragraph (c)(2)(i) of this section does not apply to preliminary expenditures (as defined in paragraph (i)(2)(ii) of this section) that are reimbursed with proceeds of a bond that finances all or a portion of the project with respect to which the preliminary expenses were incurred.

(ii) *Definition of preliminary expenditures.* For purposes of this paragraph, subject to the limitation in the following sentence, the term "preliminary expenditures" includes architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of construction, rehabilitation, or acquisition of a project, but does not include land acquisition, site preparation, and similar costs incident to commencement of construction. Preliminary expenditures include only amounts that do not exceed in the aggregate 20 percent of the issue price of that portion of the issue or issues that finance the project with respect to which the preliminary expenditures were incurred. For purposes of the preceding sentence, issue price is determined in the same manner as under § 1.148–5T(c).

(3) *Special rule for abandonment prior to completion.* For a project abandoned prior to completion, the reimbursement period requirement of paragraph (c)(2)(ii) of this section is satisfied with respect to expenditures paid with respect to the abandoned project only if the reimbursement allocation for those expenditures is made by the later of—

(i) The date that is 1 year after the date that the project is abandoned, or

(ii) The date 2 years after the last payment of an expenditure with respect to the abandoned project that is not less than the lesser of $25,000 or 5 percent of the cost of the project.

(j) *Definition of issuer.* For purposes of this section, "issuer" generally means the entity that actually issues the reimbursement bond (the "actual issuer"). If the proceeds of a reimbursement bond are provided to a conduit borrower (as defined in § 1.150–1(g)), the term issuer generally means the conduit borrower and does not include the actual issuer.

(k) *Anti-abuse rules*—(1) *General rules.* A purported reimbursement allocation of bond proceeds is not treated as an expenditure of the bond proceeds if any action or inaction of the issuer with respect to the allocation is an artifice or device under § 1.103–13(j) or § 1.148–9T(g) to avoid, in whole or in part, arbitrage yield restrictions or arbitrage rebate requirements.

(2) *Reimbursement allocations of proceeds of refunded bonds*—(i) *Operating rule.* Amounts allocable to a taxable issue of bonds are treated as unspent proceeds of the taxable bonds (and thus are subject to "transfer" to a refunding issue of tax exempt bonds) if—

(A) The proceeds of the taxable bonds are allocated by the issuer to reimburse an expenditure that was paid by or on behalf of the issuer prior to the date of issue of the taxable bonds,

(B) If the taxable bonds were an issue of tax exempt bonds, the purported reimbursement would not be treated for Federal income tax purposes as an expenditure of the bond proceeds,

(C) The taxable issue is refunded directly or indirectly in a series of refundings by the tax exempt refunding issue, and

(D) The refunding issue is issued on or after March 2, 1992.

(ii) *Example.* The operation of this paragraph (k)(2) is illustrated by the following example.

Example. In 1998, city issues its tax exempt series 1999 bonds to refund its taxable series 1997 bonds (issued in 1997). The series 1997 bonds refunded the city's taxable series 1995 "new money" bonds. The proceeds of the series 1995 bonds were used to reimburse expenditures paid by the city prior to the date of issue of the series 1995 bonds. The principles of this paragraph (k)(2) apply to the original issue the proceeds of which were used to reimburse prior expenditures (the series 1995 bonds) to the extent that the proceeds of the series 1995 bonds would be treated as proceeds of the series 1999 bonds had all the bonds in the series of refundings been tax exempt. These unspent proceeds remain unspent either until a reimbursement allocation is made that complies with the relevant requirements of this section or the bond proceeds are otherwise spent.

(3) *Limitations on uses of reimbursement amounts.* Except as otherwise provided in this section, an allocation of bond proceeds to reimburse a previously paid expenditure is not treated as an expenditure of the bond proceeds if, but for the allocation, the bond proceeds are used directly or indirectly—

(i) Within 1 year of the date of the reimbursement allocation, to "refund" an issue of governmental obligations within the meaning of section 148,

(ii) Within 1 year of the date of the reimbursement allocation, to create or increase the balance in a "sinking fund" (within the meaning of § 1.103–13(g)) with respect to any obligation of the issuer, or to replace funds that have been, are being, or will be so used for sinking fund purposes,

(iii) Within 1 year of the date of the reimbursement allocation, to create or increase the balance in a "reserve or replacement fund" (within the meaning of § 1.103–14(d)) with respect to any obligation of the issuer, or to replace funds that have been, are being, or will be so used for reserve or replacement fund purposes, or

(iv) To reimburse any person (other than the issuer) for any expenditure or payment that was originally paid with proceeds of any obligation of the issuer (other than a borrowing by the issuer from one of its own funds or the funds of a member of the same controlled group).

(4) *Exception for bona fide debt service funds.* Paragraph (k)(3) of this section does not apply (and thus does not prevent a reimbursement allocation from being treated as an expenditure of bond proceeds) if the issuer deposits the moneys from the reimbursement allocation in a bona fide debt service fund (as defined in § 1.103–13(b)(12)) or otherwise uses these moneys to pay current debt service coming due within the next succeeding 1-year period on any obligation of the issuer (other than the reimbursement bonds).

(5) *Exception for certain previously financed expenditures.* Paragraphs (k)(3)(i) and (iv) of this section do not apply (and thus do not prevent a reimbursement allocation from being treated as an expenditure of bond proceeds) if, as of the date of issue of the bond originally used to pay the expenditure for which a reimbursement allocation is made (the "original financing"), the issuer did not reasonably expect to finance the expenditure with the proceeds of the original financing.

(6) *Examples.* The operation of this paragraph (k) is illustrated by the following examples.

Example 1. (i) City *C* issues $10,000,000 principal amount of its taxable bonds on April 20, 1992 (the 1992 taxable bonds), and allocates all of the proceeds to reimburse expenditures it paid on March 1, 1988, for property that was immediately placed in service by *C*. The expenditures do not constitute preliminary expenditures as defined in paragraph (i) of this section. The

reimbursement allocation of the 1992 taxable bond proceeds is not treated as an expenditure of the 1992 taxable bond proceeds under this section because the allocation violates the reimbursement period requirement of paragraph (c)(2)(ii) of this section.

(ii) On November 12, 1992, *C* issues $10,000,000 principal amount of its tax exempt refunding bonds and uses the proceeds to immediately redeem all of the outstanding 1992 taxable bonds. Because the reimbursement allocation of the 1992 taxable bond proceeds does not comply with the requirements of this section, under paragraph (k)(2) of this section, the proceeds of the 1992 taxable bonds are deemed to be unspent.

Example 2. County *D* issues reimbursement bonds with a yield of 7 percent per annum and reimburses a previously paid expenditure. *D* immediately uses the proceeds of the reimbursement bond to create a sinking fund with respect to an issue of its outstanding tax exempt bonds. The outstanding tax exempt bonds have a yield of 9 percent per annum. As a sinking fund of the outstanding 9 percent bonds, the reimbursement moneys are restricted to a yield of 9 percent per annum. If *D* had issued bonds to advance refund the outstanding 9 percent bonds and the advance refunding bonds had a yield of 7 percent per annum, the refunding escrow created with the proceeds of the advance refunding bonds would be restricted to a yield of 7 percent per annum. Thus, *D*'s use of the reimbursement proceeds is the equivalent of a refunding for purposes of section 148 of the Code, and the creation of a sinking fund violates § 1.103–18(k)(3)(ii). In addition, this transaction violates the arbitrage yield limitations imposed by section 148(a).

Example 3. On April 20, 1992, City *E* borrows $30,000 from a bank (tax exempt) and immediately purchases 2 police cars with the loan proceeds. On September 12, 1992, *E* issues general obligation bonds and proposes to use $30,000 of the bond proceeds to reimburse itself for the police cars. Because the police cars were financed with proceeds of an obligation incurred for the purpose of financing the police cars, the allocation of bond proceeds to reimburse the expenditure for the police cars is not treated as an expenditure of the bond proceeds. Even if the $30,000 bank loan were not outstanding at the time of *E*'s issuance of the general obligation bonds on September 12, 1992, the results of this example would be the same.

Example 4. The facts are the same as in *Example 3* except that instead of borrowing $30,000 from the bank, *E* finances the purchase of the police cars by using $30,000 of proceeds of its tax exempt general obligation bonds issued on February 5, 1992. On February 5, 1992, *E* reasonably expects to use the proceeds of the general obligation bonds to finance the renovation of city hall and not to finance police cars. The $30,000 expenditure is eligible for a reimbursement allocation if it meets the other relevant requirements of this section.

(l) *Effective date*—(1) *In general.* The provisions of this section apply to all allocations of proceeds of reimbursement bonds issued after March 2, 1992.

(2) *Transitional rule for certain expenditures.* The requirement of paragraph (c)(2)(i) of this section (concerning official intent) with respect to an expenditure paid by the issuer does not apply if—

(i) The expenditure was paid by the issuer after September 8, 1989, and before March 2, 1992,

(ii) There is objective evidence that, at the time the expenditure was paid, the issuer expected to reimburse the expenditure with proceeds of a borrowing (taxable or tax exempt), and

(iii) That expectation was reasonable as defined in paragraph (g) of this section.

Par. 3. The following new section 1.150–1 is added to read as follows:

§ 1.150–1 Definitions and special rules relating to tax exempt bond requirements in general.

(a) through (e) [Reserved]

(f) *Controlled group.* A controlled group of entities is a group of entities controlled directly or indirectly by the same entity or group of entities within the meaning of paragraphs (f)(1) or (f)(2) of this section.

(1) *Direct control.* The determination of direct control is made on the basis of all the relevant facts and circumstances. However, generally one entity or group of entities (the "controlling entity") controls another entity or group of entities (the "controlled entity") for purposes of this paragraph if the controlling entity possesses simultaneously at least two of the following rights or powers and the rights or powers are discretionary and non-ministerial—

(i) The right or power to remove or cause to be removed without cause a controlling portion of the governing body of the controlled entity,

(ii) The right or power to select, approve of, or disapprove of a controlling portion of the governing body of the controlled entity,

(iii) The right or power to determine the budget of the controlled entity or to require the use of funds or assets of the controlled entity for any purpose of the controlling entity, or

(iv) The right or power to approve, disapprove, or prevent the issuance of debt obligations by the controlled entity.

(2) *Indirect control.* If a controlling entity controls a controlled entity under the test in paragraph (f)(1) of this section, then the controlling entity also controls all entities controlled, directly or indirectly, by the controlled entity or entities.

(3) *Example.* The operation of this paragraph (f) is illustrated by the following example.

Example. State law prohibits authority *A* from issuing bonds unless city *C* approves the issue. *C*, however, is required by state law to approve *A*'s bond issues if the bonds meet certain objective criteria. *C* does not control, directly or indirectly, the establishment of the bond approval criteria. *C* possesses a purely ministerial or non-discretionary right or power with respect to *A*.

(g) *Conduit borrower.* The term "conduit borrower" means the obligor on a purpose investment (as defined in § 1.148–8T(e)(10)). For example, if an issuer invests proceeds in a purpose investment in the form of a loan, lease, installment sale obligation or similar obligation, to another entity (the obligor on the purpose investment) and the obligor uses the proceeds to carry out the governmental purpose of the issue, the obligor is a conduit borrower.

(h) *Capital expenditure.* The term "capital expenditure" means any cost of a type that is properly chargeable to capital account (or would be so chargeable with a proper election) under general Federal income tax principles. Whether an expenditure is a capital expenditure is determined at the time the expenditure is paid with respect to the property. Future changes in law do not affect whether an expenditure is a capital expenditure. For example, costs incurred to acquire, construct, or improve land, buildings, and equipment generally are capital expenditures. Capital expenditures do not include expenditures for items of current operating expense that are not properly chargeable to capital account (so called "working capital items").

(l) *Effective date*—(1) [Reserved]

(2) *Effective dates for definitions of control, conduit borrower, and capital expenditure.* The definitions contained in § 1.150–1 (f), (g), and (h) apply to bonds issued after March 2, 1992.

PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by adding the following entry in the table:

"§ 1.103–18.....1545–1226".

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: December 24, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 92–2023 Filed 1–27–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 301

[T.D. 8392]

RIN 1545–AM75

Civil Cause of Action for Unauthorized Collection Actions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance relating to the civil cause of action under section 7433 of the Internal Revenue Code of 1986 (the "Code") for certain unauthorized collection actions. The cause of action for unauthorized collection actions was created by section 6241 of the Technical and Miscellaneous Revenue Act of 1988. The regulations define certain key terms in the underlying statute and create an administrative remedy that must be exhausted prior to the filing of a cause of action. The regulations are needed to provide taxpayers with guidance and to create an administrative remedy in connection with this cause of action.

EFFECTIVE DATE: These regulations are effective with respect to actions filed after January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, 202–535–9682 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) pursuant to section 7433 of the Internal Revenue Code. The regulations reflect the addition of section 7433 to the Internal Revenue Code by section 6241 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647).

Explanation of Provisions

The Internal Revenue Service published a notice of proposed rulemaking in the **Federal Register** on May 25, 1991 [26 FR 28842], providing rules under section 7433 of the Code. The final regulations adopt the rules contained in the notice of proposed rulemaking without change.

Section 6241 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647, 102 Stat. 3342) added section 7433 to the Code. Section 7433 gives taxpayers the right to bring an action for damages in federal district court if, in connection with the collection of a federal tax, any officer or employee of the Internal Revenue Service recklessly or intentionally disregards any provision of the Internal Revenue Code or any regulation promulgated under the Internal Revenue Code. The taxpayer has a duty to mitigate damages, and the total amount of damages recoverable under section 7433 is the lesser of $100,000, or the sum of (i) the actual, direct economic damages sustained as a proximate result in the internal revenue officer's or employee's wrongful conduct, and (ii) costs of the action. No action may be filed in federal district court until the taxpayer exhausts administrative remedies available within the Internal Revenue Service.

The regulations define actual, direct economic damages as actual pecuniary damages sustained by a taxpayer as a proximate result of reckless or intentional actions of an internal revenue officer or employee. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages. Litigation and administrative costs are not recoverable under the regulations as actual, direct economic damages.

The Internal Revenue Service received only one comment concerning the proposed regulations. That comment proposed to include administrative costs in the definition of actual, direct economic damages. This issue was considered at length during the drafting of the proposed regulations, and for the reasons discussed below the final regulations adopt without change the definition of actual, direct economic damages contained in the proposed regulations.

According to the common law "American Rule", damages do not include any costs incurred by parties in seeking relief. Generally, each party must pay its own costs. If the right to receive costs from an opposing party, exists at all, the right exists only by virtue of a contract or specific statutory authority.

While section 7433 does provide for the recovery of certain costs, recovery is limited specifically to costs of the civil action in federal district court. The final regulations thus define costs of the action recoverable under section 7433(b)(2) as: (1) Fees of the clerk and marshal; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court appointed experts and interpreters. Costs of the action do not include any costs other than those costs specifically enumerated in the regulations. Therefore, administrative costs are not recoverable as economic damages or as costs of the action.

In addition, costs of the action do not include attorneys fees. Under the common law "American Rule", the term "costs of the action" in a statute is not ordinarily interpreted to include attorney's fees. In other contexts, where Congress intended to provide for the recovery of attorney's fees, Congress specifically provided that attorney's fees are recoverable in addition to or together with costs of the action. See section 6110(i)(2)(B) of the Code.

Reasonable litigation costs, including attorney's fees (generally limited to $75 per hour), not recoverable under section 7433 may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7433(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under section 7433.

Administrative costs, including attorney's fees incurred pursuing an administrative claim for damages under section 7433, are not recoverable under section 7430. Section 7430(c)(2) provides that recoverable administrative costs include only those costs incurred on or after the earlier of (1) the date of the receipt by the taxpayer of the notice of a decision by the Internal Revenue Service Office of Appeals, and (2) the date of the notice of deficiency. The legislative history to the Technical and Miscellaneous Revenue Act of 1988 indicates that this limitation is intended to prevent recovery of administrative

costs incurred in a collection action. H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 226 (1988).

The regulations provide that an action may not be maintained in federal district court under section 7433 unless the taxpayer first files an administrative claim for damages with the Internal Revenue Service. The claim must be made in writing to the district director (marked for the attention of Chief, Special Procedures Function) of the district in which the taxpayer currently resides. The claim must include: (1) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim; (2) the grounds, in detail, for the claim; (3) a description of the damages incurred by the taxpayer; (4) the dollar amount of the claim, including an estimate of damages that have not yet been incurred, but that are reasonably foreseeable; and (5) the signature of the taxpayer or duly authorized representative. A taxpayer is precluded from maintaining a civil action for an amount greater than the amount (already incurred and estimated) specified in the administrative claim, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

The regulations provide that, after an administrative claim has been filed, an action may not be filed in federal district court until the earlier of (1) the time a decision is rendered on the claim or (2) six months from the date the administrative claim is filed. A taxpayer, however, must file an action in federal district court within two years after a cause of action accrues. Thus, if an administrative claim is filed in the last six months before the two-year limitation period expires, the taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the two-year limitation period. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

For purposes of the recovery of litigation costs under section 7430, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that Internal Revenue Service did not violate section 7433(a).

Special Analyses

It has been determined that these final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on their impact on small business.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is amended as follows.

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7433–1 is added under "Proceedings by Taxpayers and Third Parties" to read as follows:

§ 301.7433–1 Civil cause of action for certain unauthorized collection actions.

(a) *In general.* If, in connection with the collection of a federal tax with respect to a taxpayer, an officer or an employee of the Internal Revenue Service recklessly or intentionally disregards any provision of the Internal Revenue Code or any regulation promulgated under the Internal Revenue Code, such taxpayer may bring a civil action for damages against the United States in federal district court. The taxpayer has a duty to mitigate damages. The total amount of damages recoverable is the lesser of $100,000, or the sum of:

(1) The actual, direct economic damages sustained as a proximate result of the reckless or international actions of the officer or employee; and

(2) Costs of the action. An action for damages filed in federal district court may not be maintained unless the taxpayer has filed an administrative claim pursuant to paragraph (e) of this section, and has waited for the period required under paragraph (d) of this section.

(b) *Actual, direct economic damages*—(1) *Definition.* Actual, direct economic damages are actual pecuniary damages sustained by the taxpayer as the proximate result of the reckless or intentional actions of an officer or an employee of the Internal Revenue Service. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages.

(2) *Litigation costs and administrative costs not recoverable.* Litigation costs and administrative costs are not recoverable as actual, direct economic damages. Litigation costs may be recoverable under section 7430 (*see* paragraph (h) of this section) or, solely to the extent described in paragraph (c) of this section, as costs of the action.

(i) *Litigation costs.* For purposes of this paragraph, litigation costs are any costs incurred pursuing litigation for relief from the action taken by the officer or employee of the Internal Revenue Service, including costs incurred pursuing a civil action in federal district court under paragraph (a) of this section. The term litigation costs includes the following:

(A) Court costs;

(B) Expenses of expert witnesses in connection with a court proceeding;

(C) Cost of any study, analysis, engineering report, test, or project prepared for a court proceeding; and

(D) Fees paid or incurred for the services of attorneys, or other individuals authorized to practice before the court, in connection with a court proceeding.

(ii) *Administrative costs.* For purposes of this section, administrative costs are any costs incurred pursuing administrative relief from the action taken by an officer or employee of the Internal Revenue Service, including costs incurred pursuing an administrative claim for damages under

paragraph (e) of this section. The term administrative costs includes:

(A) Any administrative fees or similar charges imposed by the Internal Revenue Service; and

(B) Expenses, costs, and fees described in paragraph (b)(2)(i) of this section incurred pursuing administrative relief.

(c) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the following costs:

(1) Fees of the clerk and marshal;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of paper necessarily obtained for use in the case;

(5) Docket fees; and

(6) Compensation of court appointed experts and interpreters.

(d) *No civil action in federal district court prior to filing an administrative claim*—(1) Except as provided in paragraph (d)(2) of this section, no action under paragraph (a) of this section shall be maintained in any federal district court before the earlier of the following dates:

(i) The date the decision is rendered on a claim filed in accordance with paragraph (e) of this section; or

(ii) The date six months after the date an administrative claim is filed in accordance with paragraph (e) of this section.

(2) If an administrative claim is filed in accordance with paragraph (e) of this section during the last six months of the period of limitations described in paragraph (g) of this section, the taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the period of limitations.

(e) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for the lesser of $100,000 or actual, direct economic damages as defined in paragraph (b) of this section shall be sent in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the taxpayer currently resides.

(2) *Form.* The administrative claim shall include:

(i) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim;

(ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iii) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

(v) The signature of the taxpayer or duly authorized representative.

For purposes of this paragraph, a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpaper.

(f) *No action in federal district court for any sum in excess of the dollar amount sought in the administrative claim.* No action for actual, direct economic damages under paragraph (a) of this section shall be instituted in federal district court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (e) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(g) *Period of limitations*— (1) *Time for filing.* A civil action under paragraph (a) of this section must be brought in federal district court within 2 years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(h) *Recovery of costs under section 7430.* Reasonable litigation costs, including attorney's fees, not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7433(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond shall be considered a denial of the claim on the grounds that the Internal Revenue Service did not violate section 7432(a). Administrative costs, including attorney's fees incurred pursuing an administrative claim under paragraph (e) of this section, are not recoverable under section 7430.

(i) *Effective date.* This section applies with respect to civil actions under section 7433 filed after January 30, 1992.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: December 31, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 92-2024 Filed 1-29-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 301

[T.D. 8393]

RIN 1545-AM63

Civil Cause of Action for Failure to Release a Lien Under I.R.C. Section 6325

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance relating to the civil cause of action under section 7432 of the Internal Revenue Code of 1986 (the "Code") for the knowing or negligent failure to release a lien under section 6325 of the Code. The cause of action for the failure to release a lien was created by section 6240 of the Technical and Miscellaneous Revenue Act of 1988. The regulations define certain key terms in the underlying statute, provide procedures for a taxpayer to notify the Internal Revenue Service of the failure to release a lien and create an administrative remedy that must be exhausted prior to the filing of a cause of action. The regulations are needed to provide taxpayers with guidance and to create

an administrative remedy in connection with this cause of action.

EFFECTIVE DATE: These regulations are effective for actions filed after January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, (202) 535-9682 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) pursuant to section 7432 of the Internal Revenue Code. The regulations reflect the amendment of section 7432 by section 6240 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647).

Explanation of Provisions

The Internal Revenue Service published a notice of proposed rulemaking in the **Federal Register** on June 25, 1991 (56 FR 28839), providing rules under section 7432 of the Code. The final regulations adopt the rules contained in the notice of proposed rulemaking without change.

Section 6240 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647, 102 Stat. 3342) redesignated section 7432 of the Code as section 7433 and added a new section 7432. New section 7432 gives taxpayers the right to bring an action for damages in federal district court if any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release, in accordance with section 6325 of the Code, a federal tax lien on property of the taxpayer. The taxpayer has a duty to mitigate damages, and the total amount of damages recoverable under section 7432 is the sum of (i) the actual, direct economic damages sustained by the taxpayer which, but for the actions of the officer or the employee of the Internal Revenue Service, would not have been sustained, and (ii) costs of the action. No action for damages may be filed in federal district court until the taxpayer exhausts administrative remedies available within the Internal Revenue Service.

Section 6325 requires the Secretary to release a lien not later than 30 days after the day on which: (1) The Secretary finds that the underlying liability has been fully satisfied or has become legally unenforceable; or (2) the Secretary accepts a bond that is conditioned upon full payment of the underlying liability.

The regulations provide that, for purposes of section 7432, a finding that the underlying liability has been fully satisfied or has become legally unenforceable is treated as made on the earlier of (1) the date the district director finds full satisfaction or legal unenforceability or (2) the date the district director receives a request for a certificate of release under § 401.6325-1(f) of the Income Tax Regulations, together with any information which is reasonably necessary for the district director to conclude that the lien has been fully satisfied or is legally unenforceable.

The regulations define actual, direct economic damages as actual pecuniary damages sustained by the taxpayer that would not have been sustained but for an officer's or an employee's failure to release, in accordance with section 6325, a lien on property of the taxpayer. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual, pecuniary damages. Litigation and administrative costs incurred in seeking relief, through litigation or administrative processes, from the failure to release a lien are not recoverable under the regulations as actual, direct economic damages.

The Internal Revenue Service received only one comment concerning the proposed regulations. That comment proposed to include administrative costs in the definition of actual, direct economic damages. This issue was considered at length during the drafting of the proposed regulations, and for the reasons discussed below the final regulations adopt without change the definition of actual, direct economic damages contained in the proposed regulations.

According to the common law "American Rule", damages do not include any costs incurred by the parties in seeking relief. Generally, each party must pay its own costs. If the right to receive costs from an opposing party exists at all, the right exists only by virtue of a contract or specific statutory authority.

While section 7432 does provide for the recovery of certain costs, the recovery is specifically limited to costs of the civil action in federal district court. The final regulations define costs of the action recoverable as damages under section 7432(b)(2) as: (1) Fees of the clerk and marshall; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court-appointed experts and interpreters. Costs of the action do not include any costs other than those costs specifically enumerated in the regulations. Therefore, administrative costs are not recoverable as economic damages or as costs of the action.

In addition, costs of the action do not include attorneys fees. Under the common law "American Rule", the term costs of the action in a statute is not ordinarily interpreted to include attorney's fees. In other contexts, where Congress intended to provide for the recovery of attorney's fees, Congress specifically provided that attorney's fees are recoverable in addition to or together with costs of the action. See section 6110(i)(2)(B) of the Code.

Reasonable litigation costs, including attorneys fees (generally limited to $75 per hour), not recoverable under section 7432 may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7432(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorneys fees and other reasonable litigation costs not recoverable under section 7432.

Administrative costs, including attorney's fees incurred pursuing an administrative claim for damages under section 7432, are not recoverable under section 7430. Section 7430(c)(2) provides that recoverable administrative costs include only those costs incurred on or after the earlier of (1) the date of the receipt by the taxpayer of the notice of a decision by the Internal Revenue Service Office of Appeals, and (2) the date of the notice of deficiency. The legislative history to the Technical and Miscellaneous Revenue Act of 1988 indicates that this limitation is intended to prevent recovery of administrative costs incurred in a collection action. H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 226 (1988). An action under section 7432 is a collection action for these purposes.

The regulations provide that an action may not be maintained in federal district court under section 7432 unless the taxpayer first files an administrative

claim for damages with the Internal Revenue Service. The claim must be made in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the taxpayer currently resides or the district in which the notice of federal tax lien was filed. The claim must include: (1) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim; (2) a copy of the notice of lien affecting the taxpayer's property, if available; (3) a copy of the request for release of lien under section 401.6325–1(f), if applicable; (4) the grounds for the claim; (5) a description of the damages incurred by the taxpayer; (6) the dollar amount of the claim, including an estimate of damages that have not yet been incurred, but that are reasonably foreseeable; and (7) the signature of the taxpayer or duly authorized representative. A taxpayer is precluded from maintaining a civil action for an amount greater than the amount (already incurred and estimated) specified in the administrative claim, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

The regulations provide that, after an administrative claim has been filed, an action may not be filed in federal district court until the earliers of (1) The time a decision is rendered on the claim or (2) 30 days from the date the administrative claim is filed. A taxpayer, however, must file an action with the federal district court within two years after the cause of the action accures. Thus, if an administrative claim is filed in the last 30 days before the two-year limitation period expires, a taxpayer may file an action in federal district court any time after the administrative claim is filed and before the expiration of the two-year limitation period. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

For purposes of the recovery of litigation costs under section 7430, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within 30 days after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that Internal Revenue Service did not violate section 7432(a).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an ititial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on their impact on small business.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is amended as follows.

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * * § 301.7432 also issued under 26 U.S.C. 7432(e).

Par. 2. Section 301.7432–1 is added under "Proceedings By Taxpayers and Third Parties" to read as follows:

§ 301.7432–1 Civil cause of action for failure to release a lien.

(a) *In general.* If any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien on property of the taxpayer in accordance with section 6325 of the Internal Revenue Code, such taxpayer may bring a civil action for damages against the United States in federal district court. The total amount of damages recoverable is the sum of:

(1) The actual, direct economic damages sustained by the taxpayer which, but for the officer's or the employee's knowing or negligent failure to release the lien under section 6325, would not have been sustained; and

(2) Costs of the action. The amount of actual, direct economic damages that are recoverable is reduced to the extent such damages reasonably could have been mitigated by the plaintiff. An action for damages filed in federal district court may not be maintained unless the taxpayer has filed an administrative claim pursuant to paragraph (f) of this section and has waited the period required under paragraph (e) of this section.

(b) *Finding of satisfaction or unenforceability.* For purposes of this section, a finding under section 6325(a)(1) that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable is treated as made on the earlier of:

(1) The date on which the district director of the district in which the taxpayer currently resides or the district in which the lien was filed finds full satisfaction or legal unenforceability; or

(2) The date on which such district director receives a request for a certificate of release of lien in accordance with § 401.6325–1(f), together with any information which is reasonably necessary for the district director to conclude that the lien has been fully satisfied or is legally unenforceable.

(c) *Actual, direct economic damages*—(1) *Definition.* Actual, direct economic damages are actual pecuniary damages sustained by the taxpayer that would not have been sustained but for an officer's or an employee's failure to release a lien in accordance with section 6325 of the Internal Revenue Code. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages.

(2) *Litigation costs and administrative costs not recoverable.* Litigation costs and administrative costs described in this paragraph are not recoverable as actual, direct economic damages. Litigation costs may be recoverable under section 7430 (*see* paragraph (j) of this section) or, solely to the extent described in paragraph (d) of this section, as costs of the action.

(i) *Litigation costs.* For purposes of this paragraph, litigation costs are any

costs incurred pursuing litigation for relief from the failure to release a lien, including costs incurred pursuing a civil action in federal district court under paragraph (a) of this section. Litigation costs include the following:

(A) Court costs;

(B) Expenses of expert witnesses in connection with a court proceeding;

(C) Cost of any study, analysis, engineering report, test, or project prepared for a court proceeding; and

(D) Fees paid or incurred for the services of attorneys, or other individuals authorized to practice before the court, in connection with a court proceeding.

(ii) *Administrative costs.* For purposes of this section, administrative costs are any costs incurred pursuing administrative relief from the failure to release a lien, including costs incurred pursuing an administrative claim for damages under paragraph (f) of this section. The term administrative costs includes:

(A) Any administrative fees or similar charges imposed by the Internal Revenue Service; and

(B) Expenses, costs, and fees described in paragraph (c)(2)(i) of this section incurred in pursuing administrative relief.

(d) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the following costs:

(1) Fees of the clerk and marshall;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of paper necessarily obtained for use in the case;

(5) Docket fees; and

(6) Compensation of court appointed experts and interpreters.

(e) *No civil action in federal district court prior to filing an administrative claim*—(1) Except as provided in paragraph (e)(2) of this section, no action under paragraph (a) of this section shall be maintained in any federal district court before the earlier of the following dates:

(i) The date a decision is rendered on a claim filed in accordance with paragraph (f) of this section; or

(ii) The date 30 days after the date an administrative claim is filed in accordance with paragraph (f) of this section.

(2) If an administrative claim is filed in accordance with paragraph (f) of this section during the last 30 days of the period of limitations described in paragraph (i) of this section, the taxpayer may file an action in federal district court anytime after the administrative claim is filed and before the expiration of the period of limitations, without waiting for 30 days to expire or for a decision to be rendered on the claim.

(f) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for actual, direct economic damages as defined in paragraph (c) of this section shall be sent in writing to the district director (marked for the attention of the Chief, Special Procedures Function) in the district in which the taxpayer currently resides or the district in which the notice of federal tax lien was filed.

(2) *Form.* The administrative claim shall include:

(i) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim;

(ii) A copy of the notice of federal tax lien affecting the taxpayer's property, if available;

(iii) A copy of the request for release of lien made in accordance with § 401.6325–1(f) of the Code of Federal Regulations, if applicable;

(iv) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(v) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(vi) The dollar amount of the claim, including any damages that have not yet been incurred but that are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

(vii) The signature of the taxpayer or duly authorized representative. For purposes of this paragraph, a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(g) *Notice of failure to release lien*—An administrative claim under paragraph (f) of this section shall be considered a notice of failure to release a lien.

(h) *No action in federal district court for any sum in excess of the dollar amount sought in the administrative claim*—No action for actual, direct economic damages under paragraph (a) of this section shall be instituted in federal district court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (f) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(i) *Period of limitations*—(1) *Time of filing.* A civil action under paragraph (a) of this section must be brought in federal district court within 2 years after the date the cause of action accrues.

(2) *Cause of action accrues.* A cause of action accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(j) *Recovery of costs under section 7430*—Reasonable litigation costs, including attorney's fees, not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7432(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under this section. For purposes of the paragraph, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within 30 days after the claim is filed, the Internal Revenue Service's failure to respond shall be considered a denial of the administrative claim on the grounds that the Internal Revenue Service did not violate section 7432(a). Administrative costs, including attorney's fees incurred pursuing an administrative claim under paragraph (f) of this section, are not recoverable under section 7430.

(k) *Effective date*—This section applies with respect to civil actions under section 7432 filed in federal district court after January 30, 1992.

Approved: December 31, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 92-2025 Filed 1-29-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 102

[DoD Directive 1215.6]

Uniform Reserve, Training and Retirement Categories

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document revises 32 CFR part 102 and establishes new policies and procedures consistent with recent changes in law and development of revised Defense Department Policy. The revision provides increased flexibility to the Military Departments for the management and training of Reserve component personnel within established Reserve training and retirement categories. It clarifies and simplifies existing policies, and ensures consistency with recent Dod policy directives affecting Reserve component manpower. This part outlines new and existing policies and consolidates categories for reporting and managing the Reserve components.

DATES: This part is effective December 18, 1990. Written comments on this final rule must be received by March 2, 1992.

ADDRESSES: Forward comments to the Office of Assistant Secretary of Defense, (Reserve Affairs/M&P), room 2D517, Pentagon, Washington, DC 20301-1500.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Spruell at (703) 695-7429.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 102

Armed forces reserves.

Dated: January 24, 1992.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

Accordingly, 32 CFR part 102 is revised to read as follows:

PART 102—UNIFORM RESERVE, TRAINING AND RETIREMENT CATEGORIES

Sec.

102.1 Purpose.
102.2 Applicability.
102.3 Definitions.
102.4 Policy.
102.5 Responsibilities.
102.6 Procedures.
Appendix A to Part 102—Uniform Reserve, Training and Retirement Categories.
Appendix B to Part 102—Members Participating in Approved Programs Outside the Department of Defense.
Appendix C to Part 102—Definitions Explained.
Appendix D to Part 102—Authorized Reserve, Training and Retirement Categories.

Authority: 10 U.S.C. 136.

§ 102.1 Purpose.

This revises 32 CFR part 102 to:

(a) Update DoD policy and assign responsibilities for implementing recent changes in law.

(b) Establish DoD policy guidance for maintaining and reporting personnel data in accordance with (IAW) DoD Directive 1205.17 [1] and DoD Instruction 7730.54.[2]

(c) Designate uniform Reserve component (RC) categories (RCCs) and training and retired categories (TRCs) for the Ready Reserve, Standby Reserve, and Retired Reserve of the Armed Forces under 10 U.S.C. 268, 270, 271, 273, 274, 1376, 2001, and 6017.

(d) Establish minimal training criteria for each category of the RCs.

(e) Provide DoD uniform planning policies and procedures on training.

(f) Establish DoD Policy guidance for participation in Selective Service System (SSS) activities, civil defense activities, and continental United States (CONUS) Defense programs by members of the Ready and Standby Reserve.

§ 102.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments and their Reserve components (RCs); the Chairman, Joint Chiefs of Staff and Joint Staff; the U.S. Coast Guard (USCG) and its Reserve Component (RC) with the concurrence of the Department of Transportation (DoT); and the Defense Agencies (hereafter referred to collectively as "DoD Components").

[1] Copies may be obtained at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 102.2(a).

§ 102.3 Definitions.

Uniform Reserve, training and retirement categories used in this part are defined in appendix A to this part. Other terms used in this part are defined in appendices B and C to this part.

§ 102.4 Policy.

It is DoD policy to:

(a) *Establish Authorized RCCs and TRCs.* Appendix D to this part establishes authorized RCCs and TRCs in the RCs for training and accountability purposes. Each unit and member of the RCs not counted in active duty (AD) end strengths, IAW 10 U.S.C. 115(b)(1)(B), shall be placed in one of the RCCs and TRCs so identified.

(b) *Establish Criteria.* To ensure that trained and qualified RC units and individuals are available for AD in time of war or national emergency, and that funds appropriated annually for RC training are adequate for meeting mobilization requirements, the Secretary concerned shall establish necessary criteria and procedures to do the following:

(1) Place all RC members in an RCC and TRC IAW the uniform Reserve, training and retirement categories described in appendices A and D of this part. Individuals shall be assigned to RCCs and TRCs based on their mobilization obligations and training requirements.

(2) Ensure that all RC members receive training IAW mobilization assignments and required readiness levels. All members of the Ready Reserve, except members of the Army National Guard (ARNG) of the United States and the Air National Guard (ANG) of the United States, may be required to serve on AD training (ADT) up to 30 days a year (section 270(a)(2) of title 10, U.S.C.) There is no statutory maximum annual limit on required training for members of the National Guard. Training for the Individual Ready Reserve (IRR), Standby Reserve, and Retired Reserve may be accomplished voluntarily IAW DoD procedures in § 102.6.

(3) Approve any additional inactive duty training (IDT), as necessary and consistent with law. Authorizing and utilizing additional training is subject to the categories, limitations, and controls in § 102.4(c).

(c) *Provide Consideration for Establishing Criteria.* (1) Training programs shall provide for the minimal number of IDT periods, annual training (AT), and ADT required for attaining the prescribed unit readiness status and maintaining individual proficiency.

(2) Paid IDT periods shall not be less than 4 hours. No more than two IDT periods may be performed in any calendar day. Service Secretaries shall prescribe minimum standards for IDT, IAW 37 U.S.C. 206.

(3) IDT periods for points only (without pay) shall not be less than 2-hours duration with a maximum of two points authorized in any 1 calendar day (one point in any 1 calendar day for attendance at professional or trade conventions) (DoD Instruction 1215.7.[3])

(4) Where practical, multiple IDT periods (MIDTPs) shall be used to maximize training effectiveness.

(d) *Provide Additional IDT Periods.* Additional IDT periods are intended to improve readiness by providing for individuals and units to receive required and necessary training for attaining and maintaining designated readiness levels. The Secretary concerned shall establish guidance for and approve use of additional IDT periods IAW limits in paragraphs (d)(1) through (d)(3) of this section.

(1) Those training periods are intended for the principal use of non-technician drilling Reservists. The RC shall identify additional IDT periods separately from normal unit or individual training periods in budget documents and in internal records so that training period costs and training support costs for each type of additional training clearly may be identified, justified, and audited. Those additional IDT periods used by technicians shall be identified separately in budget documents to monitor compliance with DoD policy.

(2) Three categories of additional IDT periods are, as follows:

(i) Additional training periods (ATPs) for units, subunits, and individuals are for accomplishing additional required training, as defined by a unit's postmobilization mission. The number of those training periods shall not exceed 12 each fiscal year (FY) for any member.

(ii) Additional flying and flight training periods (AFTPs) are authorized for primary aircrew members for conducting aircrew training and combat crew qualification training to attain and maintain aircrew flying proficiency and sustain mobilization readiness. AFTPs shall not be in addition to the ATPs in paragraph (d)(2)(i) of this section. The number of those training periods shall not exceed 48 each FY for any aircrew member, unless specifically authorized by the Secretary concerned.

(iii) Readiness management periods (RMPs) are used to support the ongoing day-to-day operation of the unit, accomplishing unit administration, training preparation, support activities, and maintenance functions. The number of RMPs shall not exceed 24 each FY for any member. Those training periods shall be used only where sufficient full-time support (FTS) personnel are not available to accomplish those duties. RMPs shall not be performed on the same day another training period (IDT, ATP, or AFTP) is being performed and not more than one RMP shall be performed by an individual in 1 calendar day.

(3) Notwithstanding the limitations in paragraphs (d)(2)(i) and (d)(2)(iii) of this section, the Service Secretary may authorize ATPs or RMPs in excess of those specified on an exception basis. Exception shall be strictly limited to specific skills and missions requiring training in excess of that authorized in paragraphs (d)(2)(i) and (d)(2)(iii) of this section. In no case shall ATPs or RMPs exceed 30 each year for each person. Those training periods shall not be used for augmenting missions or functions, but must provide bona fide training opportunities required to meet readiness levels. That authority may not be delegated below the Service Secretary.

(e) *Provide AD.* At any time, an authority designated by the Secretary concerned may order a member of the RC under his or her jurisdiction to AD or retain him or her on AD with the consent of the member under the authority of 10 U.S.C. 672(d). However, a member of the ARNG of the United States or the ANG of the United States may not be ordered to AD under that authority without the consent of the governor or other appropriate authority of the State or territory, the Commonwealth of Puerto Rico, or the District of Columbia. Five categories of AD for RC members serving with RC are, as follows:

(1) Initial AD training (IADT), which includes basic military training and technical skill training, is required for all enlisted accessions. For nonprior service (NPS) male enlistees who are between the ages of 18½ and 26 years, that IADT shall be for a period of not less than 12 weeks to commence, insofar as practical, within 270 days after the date of enlistment. For all other enlistees, the period of IADT shall be as prescribed by the Secretary concerned to commence, insofar as practical, within 360 days after entry into Service, except that in time of war or national emergency declared by Congress or the President basic training (or its equivalent) shall be for a period of not less than 12 weeks. Enlisted members receiving stipends under the Armed Forces Health Professions (AFHP) Stipend Program for Reserve Service (the Stipend Program) are not required to participate in Ready Reserve training until they have completed their educational training (10 U.S.C. 511(b), 511(d), 671(b), and 2128).

(2) AT may be required for all members of the Ready Reserve. By DoD policy, members of the Selected Reserve shall perform AT. For all members of Selected Reserve units, except for those in the National Guard, that training shall be for not less than 14 days (exclusive of travel time) each year (10 U.S.C. 270(a)(1)). National Guard units are required to perform full-time military training (in AD or full-time National Guard duty status) for at least 15 days each year including travel time (32 U.S.C. 502).

(3) ADT is authorized to provide for full-time attendance at organized and planned specialized skill training, flight training, combat crew training, unit conversion training, refresher and proficiency training, officer acquisition training, professional development education programs, etc., for providing RC members with necessary skills and disciplines supporting RC missions. Authorized ADT must provide a primary training content to the recipient. Authorization for ADT shall be managed IAW DoD Directives established by the Secretaries concerned. Nontechnician personnel shall receive priority consideration for such training.

(4) AD for special work (ADSW) is authorized for personnel from applicable military or Reserve personnel appropriations for projects supporting active or RC programs, such as annual screening, operation of training camps, training ships, and unit conversions to new weapons systems, when such duties are essential to the organization. Projects supporting study groups, training site and exercises, short-term mission projects, and administrative support functions also are included. Authorization of ADSW shall be managed IAW DoD Directives established by the Secretary concerned. ADSW tours exceeding 180 days are accountable against AD strengths (regular, or RC AD end strengths, consistent with pay appropriations) IAW 10 U.S.C. 115(b)(1)(B). By DoD policy, those tours normally are limited to 139 days, or less, in 1 FY. Exceptions to the 139-day limit may be granted on an individual basis for specific mission requirements. Nontechnician personnel shall receive priority consideration for those tours. Short breaks in tours; i.e., 30 days or less, to circumvent that requirement, are not authorized.

[3] See footnote 1 to § 102.1(a).

(5) AD, other than for training or ADSW, including full-time National Guard duty, is authorized in support of RC missions, under 10 U.S.C. 265, 672(d), 678, 715, 3019, 3033, 3496, 8019, 8033, and 8496 and 32 U.S.C. 708. Personnel performing such duty are included in the FTS numbers for each RC under the collective title of Active Guard or Reserve (AGR), including Navy training and administration of Reserves (TARs) and all statutory tour personnel.

(f) *Provide for Muster Duty (MD).* (1) To meet the annual screening requirement established by § 102.6(b)(1), an authority designated by the Secretary concerned may order a member of the IRR to MD (established by 10 U.S.C. 687). MD shall include a minimum of 2 hours at the muster site and may not include more than 1 day, including travel, each calendar year. An allowance for MD shall be paid IAW 37 U.S.C. 433 and DoD Instruction 1215.7 at the rate determined by the DoD Per Diem Committee and included in the "DoD Military Pay and Allowances Entitlement Manual."

(2) In cases where a total of more than 1 day is required to meet the annual screening requirement, or in other specific circumstances approved under regulations issued by the Secretary concerned, ADT may be used instead of MD.

(g) *Restrict Assignment Outside United States.* A member of the RCs may not be assigned to AD on land outside the United States, its territories and possessions, until the member has completed the basic training requirements of the member's Armed Forces (10 U.S.C. 671(a)).

(h) *Require Training Participation.* The Secretaries concerned shall establish minimal standards for satisfactory participation at required training periods, which shall include the number and percentages of training periods for meeting the minimal standards. Individuals attending IDT periods are required to meet those minimal training standards. Those standards shall contain procedures for accounting for absences and excused drills, as necessary. Individuals voluntarily may attend extra IDT periods for points, IAW DoD Directive 1215.13.[4]

§ 102.5 Responsibilities.

(a) The Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)) shall:

(1) Establish DoD policy and provide guidance for RC training and retirement categories.

(2) Establish policy guidance for the minimal training criteria and the AD requirements associated with each category.

(b) The Secretaries of the Military Departments and the Commandant of the United States Coast Guard (USCG) shall:

(1) Place all RC members in a RCC and TRC IAW criteria established in appendices A and D of this part.

(2) Ensure that plans and policies for the management of RCCs are consistent with this part.

(3) Ensure that RC members receive training and serve on AD IAW the minimum criteria established for each RCC in § 102.4(c).

§ 102.6 Procedures.

(a) *Selected Reserve*—(1) *IDT.* Except as specifically provided in paragraph (b) of this section, members of the Ready Reserve shall participate in 48 scheduled training periods each year. By DoD policy, that requirement applies to all members of Selected Reserve units (10 U.S.C. 270(a)(1) and 32 U.S.C. 502).

(2) *AT.* Except as specifically provided in paragraph (b) of this section, AT is required for all members of the Ready Reserve. By DoD policy, that requirement is limited to members of the Selected Reserve. For members of the Reserves, that training shall be for not less than 14 days (exclusive of travel time) each year except, as in paragraph (a)(2) of this section. Units of the National Guard are required to perform full-time military training for at least 15 days each year, including travel time.

(i) AT tours for individual mobilization augmentees (IMAs) or other Reservists assigned as an individual to any training categories ordered to AT at Headquarters, support organizations, or to activities not operating on Saturday, Sunday, or Federal holidays, normally are limited by DoD policy to 12 days excluding travel time; i.e., from Monday of the first week through Friday of the second week.

(ii) When required, members may be ordered to AT for longer periods than 12 days (excluding travel time), up to a maximum of 30 days each FY, for activities that enhance readiness, such as participating in mobilization exercises. Training may begin on days other than Monday, when special activities begin during the week.

(iii) AT normally is performed during one consecutive period. Split tours may be authorized for selected units or individuals, if required to meet training missions. Any additional costs must be justified fully. Authorization for variations in AT lengths shall be managed IAW DoD Directives established by the Secretaries concerned.

(3) *Short Periods of AD Performed by Members of the Selected Reserve.* Under 10 U.S.C. 672(d), 673, 673b, 3500, or 8500, that AD may not be substituted for training required by 10 U.S.C. 270 and by paragraph (a)(2) of this section, unless in the judgement of the Secretary concerned:

(i) AD service performed under 10 U.S.C. 672(d), 673, 673b, 3500, or 8500 is equivalent to the training that might have been performed under the authority of 10 U.S.C. 270 and paragraph (a)(2) of this section.

(ii) AD service under 10 U.S.C. 672(d), 673, 673b, 3500, or 8500, when combined with training required by 10 U.S.C. 270 and paragraph (a)(2) of this section constitutes an undue personal hardship.

(4) *NPS Personnel.* (i) Those personnel enlisted directly into an Armed Force who have not completed the basic training (IADT) requirements of that Armed Force. During war, the period of required basic training (or its equivalent) may not be less than 12 weeks. Exceptions for personnel with civilian-acquired skills may be authorized, as specified in the implementing regulations of the Military Departments.

(ii) The Secretaries concerned may require members enlisted for service in the Selected Reserve to participate in IDT periods before completing IADT. Those training periods may be with or without pay.

(iii) IADT, which includes basic military training and technical skill training, is required for all enlisted accessions. For NPS male enlistees who are between ages of 18½ and 26 years, that IADT shall be for a period of not less than 12 weeks to commence, insofar as practical, within 270 days after the date of enlistment. For all other enlistees and inductees, IADT shall be for a period prescribed by the Secretary concerned to commence, insofar as practical, within 360 days after entry into Service, except that, during war or national emergency declared by Congress or the President, the period of basic training (or its equivalent) shall be for a period of not less than 12 weeks. Individuals receiving stipends under the AFHP Stipend Program for Reserve Service are not required to participate in Ready Reserve training, until they have completed their educational training (10 U.S.C. 511(b), 511(d), 671(b), and 2128).

(iv) Individual Reservists are exempt from participating in AT or ADT during the last 120 days before completing their Military Service obligation (MSO) if

[4] See footnote 1 to § 102.1(a).

they have served on AD for 1 year, or longer. (See 10 U.S.C. 270(a)).

(b) *IRR*—(1) *IRR Screening.* Members of the IRR, not scheduled for mandatory or voluntary training, are required to serve at least 1 day of MD or AD each year to accomplish annual screening requirements IAW 10 U.S.C. 271(a), 275(a), 652, and 1004. Exemptions from IRR screening during 1 FY are authorized for members who served on AD during the FY; who are scheduled for discharge from the Military Service during the FY; who reside outside geographical limitations established by the Secretaries of the Military Departments; who are in the grade of O–4, or higher, and have no remaining MSO; or, who were successfully screened in the preceding FY. Under no circumstances should a member serve an initial period in the IRR of more than 18 months without participating in a screening either during an annual muster or during a period of training. The Services are required to maintain the current status of each member's physical condition, dependency status, military qualification, civilian occupational skills, availability for service, to include current address, and other information, as prescribed.

(2) *IRR Members.* Those members, including individuals enlisting directly into the IRR, may participate voluntarily in IDT for points only IAW the regulations of the Military Services.

(c) *Standby Reserve.* The Standby Reserve consists of personnel who maintain their military affiliation without being in the Ready Reserve IAW 10 U.S.C. 267, 272, and 273 and DoD Directive 1235.9.[5]

(1) *Active Status Listing.* The following members of the Standby Reserve are in an active status. By DoD policy, members of the Standby Reserve in an active status may participate voluntarily without pay in RC training for retirement points only. Those following members may receive promotion credit, be considered for promotion, and if selected, be promoted:

(i) Personnel who have not fulfilled their statutory MSO.

(ii) Personnel temporarily assigned for hardship, or other cogent reason, who intend returning to the Ready Reserve.

(iii) Personnel retained in an active RC status under 10 U.S.C. 1006.

(iv) Members transferred from the Ready Reserve to the Standby Reserve, after being designated as "key personnel" by their employers, may volunteer for assignment to the Standby Reserve Active Status List for the period they remain designated as key personnel. Individuals desiring to be transferred shall apply directly to the RC concerned.

(2) *Inactive Status List.* The following members of the Standby Reserve are in an inactive status (they may not participate for points, pay, or promotion credit and may not be considered for promotion, or promoted):

(i) Members transferred to the Inactive Status List instead of separating IAW 10 U.S.C. 1209.

(ii) All other members transferred to the Inactive Status List IAW DoD Directive 1235.9. Personnel enrolled in a military school course, including correspondence courses, when transferred from the Ready Reserve to the Standby Reserve Inactive Status List may continue voluntarily participating in the course until completion. Those personnel shall not be entitled to pay and allowances, travel and transportation, or to earn promotion and retirement points for that training.

(d) *Retired Reserve.* Consists of all personnel transferred to the Retired Reserve and subject to mobilization IAW DoD Directive 1352.1.[6] Retired Reservists voluntarily may train (with or without pay) with a unit where they have premobilization orders. Suitable arrangements with the unit are required. The Retired Reserve consists of the following categories:

(1) Reserve members in receipt of retired pay under 10 U.S.C. chapter 67.

(2) Reserve members who have transferred to the Retired Reserve after completing 20 qualifying years creditable for retired pay under 10 U.S.C. chapter 67, but who are not yet 60 years of age, or are age 60 and have not applied for retired pay.

(3) Reserve members retired for physical disability under 10 U.S.C. 1201, 1202, 1204, or 1205. Members have completed 20 years of Military Service creditable for retired pay, under 10 U.S.C. chapter 67 or are more than 30-percent disabled.

(4) Reserve officers and enlisted members who have retired after completion of 20, or more, years of active Military Service. That does not include Regular enlisted members of the Army, the Navy, the Air Force, or the Marine Corps, with 20 to 30 years of Military Service who are assigned to the Retired Reserve or transferred to the Fleet Reserve (Navy) or the Fleet Marine Corps Reserve.

(5) Reserve personnel drawing retired pay based on retirement for reasons other than age, Service requirements, or physical disability. That category is restricted to those who are retired under special conditions, as authorized by the ASD(RA) under legislation.

(e) *Voluntary Training.* Members of the RCs, not subject to mandatory training, shall be encouraged to participate in order to maintain their mobilization readiness. The opportunity to participate voluntarily without pay in training shall be limited by the manpower and resources authorized by the Secretary.

(f) *Funds.* Funds for personnel in uniform Reserve, training and retirement categories shall be IAW DoD 7110.1–M.[7] The Secretary concerned is authorized to include in the budget for the active component (AC) funds providing AD tours for Reserves on temporary duty (TDY) in support of AC and RC programs.

Appendix A to Part 102—Uniform Reserve, Training and Retirement Categories

There are three RCCs. They are the Ready Reserve, The Standby Reserve, and the Retired Reserve. Each member of the National Guard and Reserve is assigned within one of those categories. (All National Guard members, including those in the Inactive National Guard (ING), are in the Ready Reserve.)

A. Ready Reserve Categories

The Ready Reserve is comprised of military members of the Reserve and National Guard, organized in units or as individuals, and liable for order to AD in time of war or national emergency under 10 U.S.C. 672 and 673 (reference (d)). The Ready Reserve consists of three subcategories: the Selected Reserve, the IRR, and the ING.

1. *Selected Reserve.* The Selected Reserve consists of those units and individuals in the Ready Reserve designated by their respective Services and approved by the Chairman, Joint Chiefs of Staff (CJCS), as so essential to initial wartime missions that they have priority oyer all other Reserves. All Selected Reservists are in an active status. The Selected Reserve includes the following:

a. *Selected Reserve Units.* Units manned and equipped to serve and/or train either as operational or as augmentation units. Operational units train and serve as units. Augmentation units train together, but when mobilized, lose their unit identity and become part

[5] See footnote 1 to § 102.1(a).

[6] See footnote 1 to § 102.1(a).

[7] Distribution is maintained by the Office of the Comptroller, DoD, room 3A882, The Pentagon, Washington, DC 20301–1100.

of AC unit or activity. Selected Reserve units include:

(1) *Drilling Unit Reservists.* Trained unit members participating in unit training activities on a part-time basis shall have the RCC and TRC designator of "SA".

(2) *Unit FTS Personnel*—(a) *AGR.* Guard or Reserve members of the Selected Reserve serving on AD or full-time National Guard duty (includes Navy TAR personnel for organizing, administering, recruiting, instructing, or training RC units. All unit AGR members must be assigned against or attached to an authorized mobilization position in the unit they support. They shall have the RCC and TRC designator of "SG."

(b) *Military Technicians (MTs).* Drilling Reservists who are also Federal civilian employees providing FTS for administration, training, and maintenance in a Selected Reserve unit. MTS must maintain their status as drilling Reservists in the same unit they support as civilian employees. All dual status MTs must be in mobilizable positions. They are dual status in that they are both civilian employees and drilling Reservists of a Guard or Reserve unit, and are accountable under the TRC designator of "SA."

(c) *AC.* AD members paid from military personnel appropriations assigned or attached to National Guard or Reserve units to provide advice, liaison, management, administration, training, and/or maintenance support in the category of FTS. Those members are not part of the Selected Reserve, but shall deploy with their assigned unit, should it mobilize. AC members performing FTS are counted as part of trained strength in units, but not in the Selected Reserve strengths.

(d) *Civil Service Employees (CIV).* Those personnel are hired under 5 U.S.C. 3101 and 32 U.S.C. 709 to provide administrative support to the RCs. They are in the category of FTS to the RCs, but are not part of the Selected Reserve.

b. *Selected Reserve IMAs.* Individual members of the Selected Reserve assigned to an AC organization. Trained individuals preassigned to an AC, a SSS, or a FEMA billet that must be filled on, or shortly after, mobilization. IMAs participate in training activities on a part-time basis with an AC unit preparing for active service in a mobilization. The amount of training required is determined by DoD policy and may vary from 0 to 48 IDT periods a year. All IMAs must perform a minimum of 12 days of AT each year and have the RCC and TRC designator of "TB."

c. *Training Pipeline.* Selected Reserve enlisted members who have not yet completed IADT and officers who are in training for professional categories or in undergraduate flying training. IAW 10 U.S.C. 671, all Ready Reservists shall receive training commensurate with their intended wartime assignments, and must complete the basic training requirements of the member's Service before assignment on land outside the United States. The training pipeline is synonymous with the term "nondeployable account." Personnel in the training pipeline may be mobilized, but may not always be available for deployment with their units. It is DoD policy that, if otherwise eligible for mobilization and deployment, they shall be considered as mobilizable assets. Training pipeline personnel are accounted for separately in the following training categories:

(1) *Enlisted Members Currently on IADT.* Includes the second part of split IADT, which has the RCC and TRC designator of "TF."

(2) *Enlisted Members Awaiting Second Part of Split IADT.* Those members shall have the RCC and TRC designator of "UQ."

(3) *Enlisted Members Awaiting IADT.* Includes members in the Selected Reserve serving with or without pay. NPS males between the ages of 18½ and 26 years enlisting under 10 U.S.C. 511(d) shall enter IADT, insofar as practicable, within 270 days after the date of that enlistment. All other enlisted members shall perform IADT, insofar as practicable, within 360 days of their enlistment.

(a) *Members Not Authorized To Perform IDT.* Service performed by members while in that status is not creditable toward computation of basic pay and shall have the RCC TRC designator "UL."

(b) *Members Authorized To Perform IDT.* Service performed by members while in that status is creditable toward computation of basic pay and shall have the RCC TRC designator of "UP."

(4) *Other Selected Reserve Untrained Personnel in Training Programs.* Includes chaplain candidates, health profession students, and early commissioning program participants with the RCC and TRC designator of "UX."

(5) *AGR Enlisted Members Currently on, or Awaiting, IADT.* Includes NPS AGR personnel (Navy TARs and ADSW) and has the RCC and TRC designator of "US."

(6) *Individuals in a Simultaneous Membership Program.* Senior Reserve Officer Training Corps (ROTC) Cadets, Selected Reserve enlisted members in officer candidate programs, and Marine Corps Platoon Leader Class students who are also permitted to be members of a Selected Reserve unit and have the RCC and TRC designator of "UT."

2. *IRR and ING.* The IRR (together with the ING) consists of those Ready Reservists not in the Selected Reserve. The IRR consists of Reservists in the following categories:

a. IRR is a manpower pool comprised principally of individuals having had training, having served previously in the AC or in the Selected Reserve, and having some period of their MSO remaining. There are some voluntary individuals in the IRR for hardship or special nonpay programs providing a variety of professional assignments and opportunities for earning retirement points and military benefits. Those personnel all have an obligation to complete either MSO or another contractual commitment. Members voluntarily may participate in training for retirement points and promotion with or without pay. IRR members may be (but are not presently) required to meet the same training requirements as Selected Reservists. Required training (involuntary) may not exceed 30 days a year under 10 U.S.C. 270(a)(2).

b. The IRR also includes some personnel participating in officer training programs or in the AFHP Stipend Program. Members in that stipend program are required to perform 45 days of AD for training a year IAW 10 U.S.C. 2121(c). The RCC and TRC designator "PJ" is used for officers not in the Selected Reserve participating in officer training programs, or the RCC and TRC designator "PK" is used for officers not in the Selected Reserve participating in the Stipend Program.)

c. The IRR also includes members of the Delayed Entry Program (DEP) enlisted under 10 U.S.C. 513. (Currently, there is no requirement to account for those untrained members of the IRR in the RCCPDS.)

d. The ING consists of National Guard personnel in an inactive status in the Ready Reserve, not in the Selected Reserve, attached to a specific National Guard unit. To remain ING members, members must muster once a year with their assigned unit, but they do not participate in training activities. On mobilization, ING members mobilize with their units. Similar to other IRR, some ING members have legal and contractual obligations. ING members may not train for points or pay and are not eligible for promotion. Currently, the ING category is used only by the ARNG and has the RCC and TRC designator of "II".

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B. Standby Reserve Categories

The Standby Reserve consists of personnel maintaining their military affiliation without being in the Ready Reserve, having been designated key civilian employees, or who have a temporary hardship or disability. Those individuals are not required to perform training and are not part of units. The Standby Reserve is a pool of trained individuals who may be mobilized as needed to fill manpower needs in specific skills. The Standby Reserve consists of the following training categories:

1. *Active Status List.* The following members of the Standby Reserve are in an active status:

a. Members designated as key employees IAW DoD Directive 1200.7,[1] and transferred from the Ready Reserve to the Standby Reserve Active Status List for the period they remain designated as key personnel. Individuals desiring to be transferred shall apply directly to the DoD Component concerned. Key employees may participate voluntarily without pay in RC training for retirement points only and may be considered for promotion. While there is no statutory prohibition against paying active status Standby Reservists for IDT or AD, by DoD policy members of the Standby Reserve who have been screened out of the Ready Reserve as key employees may not be paid for training. They have the RCC and TRC designator of "YC."

b. Personnel not having fulfilled their statutory MSO, or temporarily assigned for hardship reason intending to return to the Ready Reserve, or retained by an RC in an active status under 10 U.S.C. 1006. Those members may participate voluntarily with or without pay and may receive credit for, and be considered for, promotion. They have the RCC and TRC designator of "YD."

2. *Inactive Status List.* The following members of the Standby Reserve are in an inactive status. They may not participate for points or pay and may not receive credit for or be considered for promotion:

a. Members transferred to the Standby Reserve Inactive Status List under 10 U.S.C. 1209 instead of separating. They have the RCC TRC designator of "YL."

b. All other members transferred to the Standby Reserve Inactive Status List IAW DoD Directive 1235.9. They have the RCC TRC designator of "YN."

[1] See footnote 1 to § 102.1(a).

C. Retired Reserve Categories

1. Consists of all personnel transferred to the Retired Reserve. Retired Reservists voluntarily may train, with or without pay, with a unit where they have premobilization orders. Suitable arrangements with the unit are required. The Retired Reserve consists of the following retired categories:

a. Reserve members who have completed 20 qualifying years creditable for retired pay and are in receipt of retired pay (at, or after, age 60) under 10 U.S.C. chapter 67. Those members shall be assigned the RCC and TRC designator of "V1."

b. Reserve members who have completed 20 qualifying years creditable for retired pay and are not yet 60 years of age, or are age 60 and have not applied for retirement pay. Those members shall be assigned the RCC and TRC designator of "V2."

c. Reserve members retired for physical disability under 10 U.S.C. 1201, 1202, 1204, or 1205. Members have completed 20 years of service creditable for retired pay or are more than 30-percent disabled. Those members shall be assigned the RCC and TRC designator of "V3."

d. Reserve enlisted members who have completed 20, or more, years of active service and are receiving retired or retainer pay. Regular enlisted personnel of the Army, the Navy, the Air Force, and the Marine Corps with 20 to 30 years of active Military Service who are transferred to the Reserve or the Fleet Naval Reserve on retirement until they have completed 30 years of total active and retired or retainer service, are NOT included in that category. That includes Regular (but not Reserve) Navy and Marine Corps retirees who are transferred to the Fleet Reserve and the Fleet Mairne Corps Reserve, respectively. Those personnel shall be assigned the RCC and TRC designator of "V4".

e. Reserve personnel drawing retired pay under other than age, service requirements, or physical disability. That category is restricted for retirement under special conditions, as authorized by the Office of the ASD(RA) (OASD(RA)) under legislation. Those personnel shall be assigned the RCC and TRC designator of "V5."

2. All members retired having completed at least 20 years of active service (Regular or Reserve), regardless of the retired list where assigned, may be ordered to AD when required by the Secretary of the Military Department concerned, IAW 10 U.S.C. 688.

3. Retired Reserve members may be ordered to AD in their status as Retired Reserve members. It is not necessary to place the member in the Ready Reserve for that purpose.

4. Former members having completed 20 satisfactory years service creditable for retirement, but electing to be discharged from the RCs, are not a part of the Retired Reserve nor Military Service members.

Appendix B to Part 102—Members Participating in Approved Programs Outside The Department of Defense

A. SSS

The SSS administers the Military Selective Service Act (MSSA), which authorizes the Director of Selective Service, by delegation from the President, "* * * to order to active duty with their consent and to assign to the Selective Service System such officers of the selective-service section of the State headquarters and headquarters detachments and such other officers of the federally recognized National Guard of the United States or other armed forces personnel (including personnel of the reserve components thereof), as may be necessary for the administration of the national and of the several State headquarters of the Selective Service System."

1. *AD.* Requests for assignment to the SSS and an AD status must be approved IAW DoD Directive 1000.17.[1] Costs for those members shall be reimbursed to the Department of Defense. Members shall not be assigned to a RCC or TRC, shall not be counted against RC strengths, and shall not be included in the RCCPDS files.

2. *Inactive Duty.* The Department of Defense and the Office of the Director of Selective Service shall agree annually on the number of RC members assigned as IMAs to the SSS. The SSS shall reimburse the Department of Defense for IDT and AT for those members.

B. Civil Defense Activities and CONUS Defense Programs

1. The U.S. civil defense and CONUS defense program are an integral part of U.S. national security. Support of civil defense may be provided through RC members participating with Federal, State, and local civil agencies only when clearly furthering specifically identifiable DoD interest. Participation shall be in an IDT or ADT status and on a reimbursable basis, except when the primary basis for participating is to meet a DoD program requirement. Subject to priorities and guidance in DoD Directive 3025.10,[2] military support of those

[1] See footnote 1 to § 102.1(a).
[2] See footnote 1 to § 102.1(a).

activities is a proper mission for DoD Components. Military planning and liaison may be provided by RC members at selected civil government and military headquarters and includes such tasks and responsibilities as mutual support to civil authorities for civil defense, CONUS defense, physical security of key assets, and disaster relief operations.

2. Programs involving RC members in civil defense activities directly supporting the FEMA or State and local government under a FEMA program must be approved jointly by the FEMA and the Department of Defense. Assigning members in an AD (other than for training) status supporting of civil defense outside the Department of Defense must be approved IAW DoD Directive 1000.17. The following programs are approved for such participation:

a. *Federal Liaison Officers.* Those are Reserve officers serving as IMAs performing planning and liaison responsibilities between DoD Components and Federal regional Headquarters, including interface with the civil sector, as directed by their DoD Component through the Military Service planning agent. Federal liaison officers function primarily in support of DoD missions. All costs are paid by the DoD Components. Each Military Department is authorized to assign one or more Federal liaison officers (other than flag or general officer rank) at each FEMA region and at FEMA national Headquarters.

b. *State Liaison Officers.* Those are reserve officers serving as IMAs performing planning and liaison responsibilities betwen their DoD Components and State or U.S. Territory Civil Defense or Emergency Service Headquarters for interfacing with the civil sector, as directed by their DoD Component through the Military Service planning agent. State liaison officers function primarily in support of DoD missions. All costs are paid by the DoD Component. Each Military Department is authorized to assign one or more State liaison officers (other than flag or general officer rank) at each State or U.S. territorial Headquarters and shall assign or attach such officers to functions supervised by the State Area Command (STARC).

c. *Regional Military Emergency Coordinators (RMECs).* Those are Reserve officers serving as IMAs and performing resource claimancy tasks for their DoD Components while participating in resource management of emergency preparedness and crisis operations under DoD Directive 5030.45.[8] RMEC officers function primarily in support of DoD missions. All costs are paid by the DoD Component. Each Military Department is authorized to assign one or more officers (other than flag or general officer rank) to the DoD RMEC team.

d. *Civil Preparedness Support Detachments (CPSD).* Those are Selected Reserve units of the U.S. Army Reserve (USAR), whose missions are to augment the communications and security capabilities of FEMA emergency operations centers.

e. *FEMA IMAs.* Those are IMAs assigned to responsibilities supporting civil defense planning at FEMA Headquarters and regions, and at State and local civil defense activities. FEMA IMAs perform 2 weeks of annual ADT, and the FEMA reimburses the Department of Defense for those training costs.

3. Members of the IRR and Standby Reserve Active Status List, voluntarily participating in approved civil defense activities, may receive retirement points IAW DoD Instruction 1215.7.

4. IRR members participating in civil defense activities may request ADT to attend civil defense courses. If so ordered, those Reservists shall be entitled to pay and allowance including travel allowances for such training.

Appendix C to Part 102—Definitions Explained

1. *Active Duty (AD).* Full-time duty in the active Military Service of the United States. A general term applied to all active Military Service, but not including full-time National Guard duty.

2. *Active Guard-Reserve (AGR).* RC members of the Selected Reserve ordered to AD or full-time National Guard duty with their consent and consent of the Governor for the purpose of organizing, administering, recruiting, instructing, or training RC units. The two major categories are statutory tour officer and/or enlisted members and unit personnel.

3. *Active Status.* Status of all Reserves, except those on an inactive status list or in the Retired Reserve. Reservists in an active status may train with or without pay, earn retirement points, and may earn credit for and be considered for promotion.

4. *AD for Special Work (ADSW).* A tour of AD for Reserve personnel authorized from military or Reserve personnel appropriations for work on AC or RC programs. That includes annual screening, training camp operation, training ship operation, and unit conversions to new weapons systems when such duties are essential. ADSW may also be authorized to support study groups, training sites and exercises, short-term projects, and administrative or support functions. By policy, ADSW tours are normally limited to 139 days, or less, in 1 FY. Tours exceeding 180 days are accountable against AD or AGR end strength.

5. *AD for Training (ADT).* AD that is used for training members of the RCs to provide trained units and qualified persons to fill the needs of the Armed Forces in time of war or national emergency and such other times as the national security requires. The member is under orders that provide for return to inactive status when the period of ADT is completed. ADT includes AT, special tours of ADT, school tours, and the initial duty for training performed by NPS enlistees.

6. *Annual Screening.* One-day ADT or MD required each year for IRR members so the Armed Forces can keep current on each member's physical condition, dependency status, military qualifications, civilian occupation skills, availability for service, and other information.

7. *Annual Training (AT).* The minimal period of training Reserve members must perform each year to satisfy the training requirements associated with their RC's assignment.

8. *IMA Detachments.* An administrative unit organized to assist in training and to manage IMAs.

9. *Inactive Duty Training (IDT).* Authorized training performed by a member of a RC not on AD, or ADT and consisting of regularly scheduled unit training periods, ATPs, or equivalent training, and performed by them in connection with the prescribed activities of the RC of which they are a member.

10. *Inactive Status.* Status of Reserve members on an inactive status list of RC or assigned to the ING. Those in an inactive status may not train for retirement points or pay, and may not receive credit for or be considered for promotion or be promoted.

11. *Individual Mobilization Augmentees (IMAs).* An individual Selected Reservist who receives training and is preassigned to an AC organization, a SSS or a FEMA billet that must be filled on, or shortly after, mobilization. IMAs train with those organizations preparing for mobilization. The IDT requirement for IMAs is decided by DoD Component policy and can vary from 0 to 48 drills a year. A minimum of 12 days AT is required of all IMAs.

[8] See footnote 1 to § 102.1(a).

12. *Initial ADT (IADT).* Basic military training and technical skill training required for all enlisted accessions. For NPS male enlistees beween the ages of 18½ and 26 years, that IADT shall be not less than 12 weeks and start, insofar as practical, within 270 days after enlistment. IADT for all other enlistees and inductees shall begin within 360 days after entry into Service. Military members may not be assigned to AD on land outside the United States or its territories and possessions until basic training or its equivalent has been completed.

13. *Key Employee.* Any Reservist identified by his or her employer, private or public, as filling a key position.

14. *Key Position.* A civilian position, public or private (designated by the employer IAW DoD Directive 1200.7) that cannot be vacated during war or national emergency.

15. *Multiple IDT Periods (MIDTPS).* Two scheduled IDT periods performed in 1 calendar day, each at least 4 hours in duration. No more than two IDT periods may be performed in 1 day.

16. *Nondeployable Account.* An account where Reservists (officer and enlisted) either in units or as individuals are assigned to a RCC or a TRC, when the individual has not completed IADT or its equivalent. Reservists in a nondeployable account are not considered as trained strength assigned to units or mobilization positions and are not deployable overseas on land with those units or mobilization positions. See also "training pipeline," definition 25., below.

17. *Nonprior Service (NPS) Personnel.* Individuals without any prior Military Service, who have not completed IADT or its equivalent, and who receive a commission or warrant in, or enlist directly into, a U.S. Armed Force.

18. *Qualifying Years Creditable for Retired Pay.* The time Guardsman or Reservist must serve to be eligible for retired pay at age 60 years. Individuals must have at least 20 years of service in which they received at least 50 retirement points, and the last 8 years of years of service must have been served in a RC.

19. *Reserve Component (RC) Category (ROC).* The category that identifies an individual's status in a RC. The three RCCs are Ready Reserve, Standby Reserve, and Retired Reserve. Each Reservist is identified by a specific RCC designation.

20. *Reserve Components (RCs).* RCs of the U.S. Armed Forces are, as follows:

a. The ARNG of the United States.

b. The USAR.

c. The U.S Naval Reserve (USNR).

d. The U.S. Marine Corps Reserve (USMCR).

e. The ANG of the United States.

f. The U.S. Air Force Reserve (USAFR).

g. The U.S. Coast Guard Reserve (USCGR).

21. *Secretary of Military Department.* The Secretaries of the Army, the Navy, and the Air Force; or the Secretary of Transportation, when the Coast Guard is operating as a DoT Agency.

22. *Trained Strength in Units.* Those personnel (Reservists, AGR, and AC) assigned to units who, in the case of enlisted members, have completed IADT of 12 weeks, or its equivalent, and are eligible for deployment overseas on land when mobilized under proper authority. Excludes personnel in nondeployable accounts or a training pipeline.

23. *Training and Retired Category (TRC).* The category identifying (by specific TRC designator) a Reservist's training or retirement status in a RCC and a RC.

24. *Training Period.* An authorized and scheduled regular IDT period. A training period must be at least 4 hours. Previously used interchangeably with other common terms such as drills, drill period, assemblies, or periods of instructions, etc.

25. *Training Pipeline.* An RCC designation that identifies officers in professional or flying training and untrained enlisted personnel who have not completed IADT of 12 weeks, or its equivalent. See also "nondeployable account," definition 16., above.

26. *Training Unit.* A unit established to provide military training to individual Reservists or to RC units.

27. *Unit.* For an RC of the Armed Forces, denotes a Selected Reserve unit organized, equipped, and trained for mobilization to serve on AD as a unit or that augments or shall be augmented by another unit. Headquarters and support functions without wartime missions are not considered units for accounting for units and individuals in the Selected Reserve.

28. *Voluntary Training.* Training in a nonpay status for IRRs and active status Standby Reservists. Participation in voluntary training is for retirement points only and may be achieved by training with Selected Reserve or voluntary training units; by ADT; by completion of authorized military correspondence courses; by attendance at designated courses of instruction; by performing equivalent duty; by participating in special military and professional events designated by the Military Department; or by participating in authorized civil defense activities. Retirees may voluntarily train with organizations to which they are properly preassigned by orders for recall to AD in a national emergency or declaration of war. Such training shall be limited to that training made available within the resources authorized by the Secretary concerned.

29. *Voluntary Training Unit or Reinforcement Training Unit.* A unit formed by volunteers to provide RC training in a nonpay status for IRRs and active status standby Reservists attached under competent orders and participating in such unit for retirement points. Also called "reinforcement training unit."

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APPENDIX D TO PART 102—AUTHORIZED RESERVE, TRAINING AND RETIREMENT CATEGORIES

RCC	RC sub-category	RCC designator	TRC designator	Comprised of	Minimum number of IDT periods required annually	Minimum number of days of at required annually	Remarks	Currently used by						
								ARNG	USAR	USNR	USMCR	ANG	USAFR	USCGR
Ready reserve.	Selected reserve.	S—trained in units	A	Individuals in units	48	Reserve, 14 days (exclude travel)	10 U.S.C. 270(a) (1) (reference (d)) requires 14 days.		X	X	X		X	X
						Guard, 15 days (include travel)	32 U.S.C. 502 (reference (g)) requires 15 days.	X				X		
			G	AGR	N/A		AGR may be required to attend drills. (Includes Navy Tars and ADSW, USCGR TEMAC and special active duty for training (SADT), Marine Corps FTS and all statutory tours.)	X	X	X	X	X	X	X
		T—trained individuals, nonunit.	B	IMAs	IDT varies between 0 and 48 days each year, as determined by service policy.	Reserve–12 to 14 days (exclude travel).	Unless training can be accomplished on weekends, at is limited to 12 days by policy. Replaces previous TRCs A, B, C, and D for IMAs		X	X	X		X	X
		U—training pipeline, non-deployable account.	F	Personnel currently on IADT.	0	N/A	Enlisted. Includes second part of split training and Army one-station unit training (applies to TRCs F, Q, and P)	X	X	X	X	X	X	X
			L	Personnel awaiting IADT.	Not authorized to perform IDT.	N/A		X	X	X	X	X	X	X
			P	Personnel awaiting IADT and authorized to perform IDT.	Minimum IDT to be determined by DoD component policy.	N/A	Includes personnel with or without pay.	X	X	X	X	X	X	X
			Q	Personnel awaiting second part of IADT.	48	N/A		X	X	X	X	X	X	X
			S	AGR currently on, or awaiting IADT.	Determined by DoD component policy.	N/A	Includes NPS AGR (Navy tar personnel.			X				
			T	Individuals in a simultaneous membership.	48	Same as TRC A	Senior ROTC cadets or Marine Corps platoon leader class members who are also permited to be members of a selected reserve unit.	X	X		X	X	X	

APPENDIX D TO PART 102—AUTHORIZED RESERVE, TRAINING AND RETIREMENT CATEGORIES—Continued

RCC	RC sub-category	RCC designator	TRC desig-nator	Comprised of	Minimum number of IDT periods required annually	Minimum number of days of at required annually	Remarks	Currently used by						
								ARNG	USAR	USNR	USMCR	ANG	USAFR	USCGR
			X	Personnel in other training programs.	48	Same as TRC A	Selected reserve untrained member in other training programs including chaplains, medical, health professional stipend, and early commissioning. Must meet the same training requirements as TRC A reservists.	X	X		X			
	IRR and ING.	R—IRR	E	Individual members of the ready reserve not in selected reserve (includes officers awaiting AD or selected reserve assignment).	N/A	1	IRR members may voluntarily participate in training for retirement points and promotion with or without pay. Required training may not exceed 30 days each year (10 U.S.C. 270(a)(2), reference (d)).		X	X	X		X	X
			H	Untrained members of the IRR. (DEP) section 513 of reference (d).					X	X	X		X	X
		P—ready reserve training.	J	Personnel not in the selected reserve participating in officer training programs.	0	As required by specific program.	Chaplain and judge advocate general (JAG) schooling, education delay, ROTC assignment delay, Army early commissioning program, Coast Guard direct commission candidates, Marine platoon leader class.		X	X	X		X	X
			K	Personnel not in the selected reserve participating in AFHP stipend programs.	0	45 days	AFHP stipend programs. Requires 45 days AD annually. Section 2121(c) of reference (d) and DoD directive 1215.4 (reference (s)).		X	X			X	

		I—ING	I	ING	0	1	Must meet annual muster with assigned unit. May not train for points or pay and are not eligible for promotion.	X						
Standby reserve.		Y—standby	C	Active status list	0	0	Key employees, only, per DoD directive 1200.7 (reference (n)). Active standby members may voluntarily train for points without pay and are eligible for promotion.		X	X	X		X	X
			D	Active status list	0	0	Other active status members.		X	X	X		X	X
			L	Inactive status list	0	0	Members transferred to inactive status list instead of separation under 10 U.S.C. 1209, chapter 61 (reference (d)). Inactive standby members may not train for points with or without pay and are not eligible for promotion.		X	X	X		X	X
			N	Inactive status list	0	0	Other inactive status members.		X	X	X		X	X
Retired reserve.		V—retired	1	Drawing reserve retired pay under 10 U.S.C. 1331 (reference (d)).	N/A	N/A	Reserve members who have completed 20 qualifying years creditable for retired pay, are 60 years, or more, of age, and are drawing retired pay.		X	X	X		X	X
			2	Not drawing retired pay, but eligible at age 60, under section 1331 of reference (d).	N/A	N/A	Reserve members who have completed 20 qualifying years creditable for retired pay, but are not yet 60 years of age, or are age 60 and have not applied for pay.		X	X	X		X	X

APPENDIX D TO PART 102—AUTHORIZED RESERVE, TRAINING AND RETIREMENT CATEGORIES—Continued

RCC	RC sub-category	RCC designator	TRC designator	Comprised of	Minimum number of IDT periods required annually	Minimum number of days of at required annually	Remarks	Currently used by						
								ARNG	USAR	USNR	USMCR	ANG	USAFR	USCGR
			3	Reserve members retired for physical disability.	N/A	N/A	Reserve members retired for physical disability under sections 1201, 1202, 1204, or 1205 of reference (d). Member who have 20 years of service creditable for retired pay or are more than 30-percent disabled.		X	X	X		X	X
		V—retired reserve	4	Reserve members who have completed 20, or more, years of AD.	N/A	N/A	Reserve members who have completed 20, or more, years of AD service and retired under 10 U.S.C. 3911, 3914, 6323, 6330, 6911, or 6913 (reference (d)). Does not include regular Army and Air Force enlisted personnel with between 20 and 30 years of military service; and regular and reserve Navy and Marine Corps enlisted personnel in the fleet reserve (Navy) and fleet Marine Corps reserve with between 20 and 30 years of service.		X	X	X		X	X
			5	Drawing reserve retired pay under other than section 1331 of reference (d), or other than reasons of physical disability.	N/A	N/A	Reserve personnel drawing retirement pay based on retirement for reasons other than age, service requirement or physical disability, as authorized by the ASD(RA).		X	X	X		X	X

[FR Doc 92-2197 Filed 1-29-92; 8:45 am]
BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 20

Implementation of Express Mail International Olympic Service

AGENCY: Postal Service.

ACTION: Temporary rule.

SUMMARY: Express Mail International Olympic Service (Olympic Service) is a new type of Express Mail International Service (EMS) that will be offered, on a temporary basis, from January 27, 1992, through August 31, 1992. Olympic Service will be available only to the United States Olympic Committee, the Postal Service's fellow official Olympic corporate sponsors, and their agents when they mail EMS shipments weighing more than two pounds to addresses within France, Switzerland, and Spain. Olympic Service will be equivalent to existing Express Mail International On Demand Service except that (1) mailers will be required to provide at least 24 hours' advance notice of any planned Olympic Service mailing, and (2) Olympic Service rates will be 15 percent lower than the corresponding Express Mail International On Demand Service rates to France, Switzerland, and Spain.

EFFECTIVE DATE: The temporary regulations will be in effect from January 27, 1992, through August 31, 1992.

FOR FURTHER INFORMATION CONTACT: George Shipman, (202) 268–6095.

SUPPLEMENTARY INFORMATION: Express Mail International Service (EMS) is a reliable high-speed mail service available to certain countries. The Postal Service currently offers two types of EMS: (1) Custom Designed Service, which is available only pursuant to a service agreement between the Postal Service and the mailer; and (2) On Demand Service, which is available at designated postal facilities for nonscheduled expedited services to addresses located in countries as shown in the Individual Country Listings of the International Mail Manual (IMM). At present, EMS is available to all addresses in France and Switzerland and to most addresses in Spain, including Barcelona postal codes 08001 through 08099.

In addition to the Postal Service, the United States Olympic Committee has designated 46 other U.S. companies as official corporate sponsors of the 1992 Olympic Games. Although all of these companies have substantial international operations, none uses EMS on a regular basis for shipments of merchandise. The Postal Service understands that these companies' reluctance to use EMS is due primarily to its higher cost. The Postal Service's competitors offer volume-based and other types of discounts. As a result of that discounting, the rates charged by those competitors to large companies such as the other Olympic sponsors are typically lower than the published EMS rates.

In order to encourage the other Olympic sponsors to use EMS for their international merchandise shipments, the Postal Service is establishing a new type of EMS, Express Mail International Olympic Service (Olympic Service). Rates for Olympic Service will be 15 percent lower than the corresponding Express Mail International On Demand Service rates. As a service directly related to the Postal Service's sponsorship of the 1992 Olympic Games, Olympic Service will be limited in terms of its availability, scope, and duration. Further, to facilitate the Postal Service's operations, a user of the service will be required to notify the Postal Service at least 24 hours prior to the date of a planned Olympic Service mailing and to provide information about the origin, destination, and contents of the mailing. In all other respects, Olympic Service will be equivalent to existing Express Mail International On Demand Service.

Olympic Service will be available only to the United States Olympic Committee (USOC), to companies that have been designated as official corporate sponsors of the 1992 Olympic Games by the USOC, and to agents mailing on behalf of the USOC or a sponsor. In order to qualify for the service, a mailer must satisfy two additional requirements. First, it must provide the Postal Service with the following information about the mailer's anticipated Olympic Service mailings: (1) The name of the person responsible for the mailings and his or her telephone number; (2) the anticipated origin addresses; (3) the anticipated mailing dates; (4) the anticipated destination addresses; (5) the anticipated volumes; and (6) the anticipated weights. The Postal Service will evaluate this information solely to make sure that the mailer's anticipated Olympic Service mailings meet the weight, size, preparation, and destination requirements for the service. Second, once approved, the mailer must establish an Express Mail corporate account with the Postal Service, at which time it will receive a unique Olympic Service account number that must be used for all Olympic Service mailings.

The service will be available only to addresses located in France, Switzerland, and Spain. Albertville, France, the site of the 1992 Winter Olympic Games, is situated near the French-Swiss border; the nearest large city to Albertville is Geneva, Switzerland. As Olympic sponsors plan to locate employees and operations in both France and Switzerland in connection with the Winter Games, the Postal Service will offer Olympic Service to those two countries. Additionally, since Barcelona is the site of the 1992 Summer Olympic Games, the Postal Service will offer the service to Spain. All EMS items sent to other countries will be subject to postage at the regular EMS rates.

Further, since Olympic Service is intended to attract merchandise shipments, the service will be available only for items weighing more than two pounds. EMS items weighing two pounds or less may be included in an Olympic Service mailing, but will be subject to postage at the regular EMS rates.

The Postal Service will offer Olympic Service only from January 27, 1992, through August 31, 1992. This seven-month time frame includes the dates of the Winter Olympic Games (February 8 to 23, 1992) and of the Summer Olympic Games (July 25 to August 9, 1992), as well as other periods during which the USOC and sponsors can be expected to send Olympic-related mail to France, Switzerland, and Spain. Olympic Service will terminate automatically on August 31, 1992. All EMS items mailed after that date will be subject to postage at the regular EMS rates.

In setting international postage rates, the Postal Service must ensure that such rates (1) do not apportion the costs of the service so as to impair the overall value of the service to the users; (2) apportion the costs of all postal operations to all users on a fair and equitable basis; (3) are fair and reasonable; and (4) are not unduly or unreasonably discriminatory or preferential. The Olympic Service rates announced herein satisfy these criteria.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the International Mail Manual is amended by adding new section 215 to read as follows:

CHAPTER 2—CONDITIONS FOR MAILING

210 Express Mail International Service

* * * * *

215 Olympic Service

215.1 Description

215.11 General. Express Mail International Olympic Service is available only for items sent by or on behalf of the United States Olympic Committee (USOC) and companies that have been designated as official corporate sponsors of the 1992 Olympic Games by the USOC, for expedited services to all addresses located in France and Switzerland and to addresses in Spain as shown in the IMM Individual Country Listing for that country. Olympic Service items may be sent from any point in the United States agreed upon by the Postal Service and the mailer. There is no service guarantee for Olympic Service.

215.12 Effective Dates. Olympic Service is available from January 27, 1992, through August 31, 1992.

215.13 Insurance and Indemnity. See IMM 211.4.

215.14 Return Receipt Service. Return Receipt service is available for Olympic Service items sent to Switzerland and Spain at no additional charge. See IMM 340 for preparation procedures.

215.2 Postage and Fees

215.21 Rates. Olympic Service rates are as shown in Exhibit 215.21. Olympic Service rates can also be determined by subtracting 15 percent from the Express Mail International On Demand Service rates set forth in the IMM Individual Country Listings for France, Switzerland, and Spain, as applicable.

215.22 Payment. Postage for Olympic Service items must be paid through the use of an Express Mail corporate account.

215.23 Pickup Service. The pickup charge, if applicable, is $4.50 per pickup stop regardless of the number of items picked up.

215.3 Weight and Size Limits

215.31 Weight Limits. Olympic Service items must weigh over 2 pounds. Olympic Service items may not weigh more than 33 pounds if sent to Switzerland, more than 44 pounds if sent to Spain, or more than 66 pounds if sent to France.

215.32 Size Limits. Maximum length: 36 inches. Maximum length and girth combined: 79 inches.

215.4 Application for Olympic Service

215.41 Responsibilities of Applicant. A mailer interested in qualifying for Olympic Service must contact its International Account Representative (IAR) or, in the absence of an IAR, one of the following offices at Postal Service Headquarters: Program Manager, Olympic Marketing, at (202) 268–6687; or Group Product Manager, Olympic Marketing, at (202) 268–2947. At that time, the applicant must provide the following information about its anticipated Olympic Service mailings: (1) The name and telephone number of the person responsible for the mailings; (2) the anticipated origin addresses; (3) the anticipated mailing dates; (4) the anticipated destination addresses; (5) the anticipated volumes; and (6) the anticipated weights. The applicant also must establish an Express Mail corporate account.

215.42 Responsibilities of IAR. The IAR determines eligibility for Olympic Service by verifying (1) that the applicant is the USOC, an official Olympic sponsor, or an agent mailing on behalf of the USOC or an official Olympic sponsor; and (2) that the applicant's anticipated mailings meet the requirements for Olympic Service. The IAR is also responsible for transmitting the information provided by the applicant about anticipated mailings to the International & Military Mail Operations Division and for establishing the applicant's Express Mail corporate account.

215.5 Pre-Mailing Notification

215.51 Responsibilities of Mailer. A mailer that has qualified to use Olympic Service must notify the Postal Service at least 24 hours prior to any planned Olympic Service mailing. At that time, the mailer must provide the following information about the mailing in question: (1) The origin address or addresses; (2) the destination address or addresses; (3) the number of items, their sizes, and their weights; and (4) the intended date and approximate time of mailing.

215.6 Preparation Requirements

215.61 Preparation by Mailer. The preparation requirements for Olympic Service are the same as those for Express Mail International on Demand Service. See IMM 214.21. The address label must show the mailer's unique Olympic Service account number.

215.62 Preparation by Acceptance Employee. The preparation requirements for Olympic Service are the same as those for Express Mail International On Demand Service. See IMM 214.22.

215.63 Customs Forms Required. Olympic Service mailers are responsible for determining customs requirements and complying with them. For additional information see the IMM Individual Country Listings for France, Switzerland, and Spain, as applicable.

A transmittal letter making the changes in the pages of the International Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

EXHIBIT 215.21.—RATES FOR EXPRESS MAIL INTERNATIONAL OLYMPIC SERVICE

Weight not over lbs.[1]	Switzerland	Spain	France
3	22.95	25.50	22.95
4	28.90	30.18	28.90
5	33.24	35.40	33.24
6	37.40	40.63	37.40
7	41.57	45.86	41.57
8	45.73	51.09	45.73
9	49.90	56.31	49.90
10	54.06	61.54	54.06
11	58.23	66.77	58.23
12	62.39	72.00	62.39
13	66.56	77.22	66.56
14	70.72	82.45	70.72
15	74.89	87.68	74.89
16	79.05	92.91	79.05
17	83.22	98.13	83.22
18	87.38	103.36	87.38
19	91.55	108.59	91.55
20	95.71	113.82	95.71
21	99.88	119.04	99.88
22	104.04	124.27	104.04
23	108.21	129.50	108.21
24	112.37	134.73	112.37
25	116.54	139.95	116.54
26	120.70	145.18	120.70
27	124.87	150.41	124.87
28	129.03	155.63	129.03
29	133.20	160.86	133.20
30	137.36	166.09	137.36
31	141.52	171.32	141.52
32	145.69	176.54	145.69
33	[2] 149.85	181.77	149.85
34		187.00	154.02
35		192.23	158.18
36		197.45	162.35
37		202.68	166.51
38		207.91	170.68
39		213.14	174.84
40		218.36	179.01
41		223.59	183.17
42		228.82	187.34
43		234.05	191.50
44		[2] 239.27	195.67
45			199.83
46			204.00
47			208.16

EXHIBIT 215.21.—RATES FOR EXPRESS MAIL INTERNATIONAL OLYMPIC SERVICE—Continued

Weight not over lbs.[1]	Switzerland	Spain	France
48			212.33
49			216.49
50			220.66
51			224.82
52			228.99
53			233.15
54			237.32
55			241.48
56			245.65
57			249.81
58			253.98
59			258.14
60			262.31
61			266.47
62			270.64
63			274.80
64			278.97
65			283.13
66			[2] 287.30

[1] Olympic service items must weigh over 2 pounds.
[2] Maximum weight for Switzerland: 33 lbs.; for Spain: 44 lbs; for France: 66 lbs.

[FR Doc. 92-2283 Filed 1-29-92; 8:45 am]
BILLING CODE 7710-12-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7533]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column of the table in § 64.6.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the FEDERAL REGISTER. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub.L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

* * * * *

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State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Regular Program Conversions				
Region II				
New York:				
Henrietta, Town of, Monroe County	360419	Mar. 23, 1973, Emerg.; Nov. 5, 1980, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Feb. 5, 1992.
Manlius, Town of, Onondaga County	360584	Nov. 8, 1973, Emerg.; Dec. 15, 1982, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Barker, Town of, Broome County	360037	July 22, 1975, Emerg.; Jan. 6, 1984, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Region III				
West Virginia: Shinnston, City of, Harrison County	540060	May 13, 1975, Emerg.; Mar. 16, 1988, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Region IV				
Tennessee: Spring City, Town of, Rhea County	475448	Feb. 25, 1972, Emerg.; Dec. 22, 1972, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Kentucky: Cumberland, City of, Harlan County	210100	Nov. 5, 1971, Emerg.; Mar. 15, 1977, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Region V				
Michigan:				
Wyoming, City of, Kent County	260111	Apr. 11, 1973, Emerg.; Sept. 2, 1982, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Georgetown, Charter, Township of, Ottawa County	260589	Dec. 16, 1975, Emerg.; July 18, 1985, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Clare, City of, Township of	260629	Aug. 26, 1975, Emerg.; Feb. 5, 1992, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Region VI				
Oklahoma: Payne County, Unincorporated Areas	400493	Apr. 7, 1987, Emerg.; Nov. 19, 1987, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Region IX				
California: San Clemente, City of, Orange County	060230	July 9, 1975, Emerg.; Dec. 4, 1979, Reg.; Feb. 5, 1992, Susp.	Feb. 5, 1992	Do.
Region V				
Minnesota: St. Louis County, Unincorporated Areas	270416	Apr. 23, 1974, Emerg.; Feb. 19, 1992, Reg.; Feb. 19, 1992, Susp.	Feb. 19, 1992	Feb. 19, 1992.
Region VI				
Oklahoma:				
Comanche County, Unincorporated Areas	400489	Sept. 26, 1991, Emerg.; Feb. 19, 1992, Reg.; Feb. 19, 1992, Susp.	Feb. 19, 1992	Do.
Lawton, City of, Comanche County	400049	Nov. 15, 1973, Emerg.; Feb. 19, 1992, Reg.; Feb. 19, 1992, Susp.	Feb. 19, 1992	Do.
Region VII				
Iowa: LeGrand, City of, Marshall County	190606	Dec. 5, 1977, Emerg.; Sept. 1, 1987, Reg.; Feb. 19, 1992, Susp.	Sept. 1, 1987	Do.
Region VIII				
Colorado: Arvada, City of, Adams and Jefferson Counties.	085072	Apr. 30, 1971, Emerg.; June 23, 1972, Reg.; Feb. 19, 1992, Susp.	Feb. 19, 1992	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: January 24, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-2150 Filed 1-29-92; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571, 572, and 587

[Docket No. 88-06; Notice 15]

RIN 2127-AE05

Federal Motor Vehicle Safety Standards; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Response to petitions for reconsideration.

SUMMARY: On October 30, 1990, NHTSA published in the **Federal Register** a final rule adding dynamic test procedures and performance requirements to Standard No. 214 (55 FR 45722). The dynamic test requirements of Standard No. 214 are phased in over a three-year period, beginning on September 1, 1993. At the same time, NHTSA also published final rules (1) establishing the specifications for the side impact dummy to be used in the dynamic crash test (55 FR 45757), (2) establishing the attributes of the moving deformable barrier (MDB) to be used in the dynamic crash test (55 FR 45770), and (3) establishing the reporting and recordkeeping requirements necessary for NHTSA to enforce the phase-in of the new requirements (55 FR 45768).

NHTSA received four petitions for reconsideration of these final rules. The petitions requested that NHTSA allow carry-forward credits during the phase-in of the dynamic test requirements, establish additional procedures and details concerning the dynamic crash test, make changes to address variability in the dynamic crash test, and adopt an alternative dynamic crash test.

This notice provides NHTSA's response to the petitions for reconsideration. The agency has concluded that it is not appropriate to adopt most of the changes requested in the petitions for reconsideration and is therefore, for the most part, denying the petitions. However, NHTSA is granting the petitions with respect to requests for certain changes in specifications concerning the axle length of the MDB in the crabbed mode and the wheel hub of the MDB. The agency plans to issue a separate final rule concerning those issues shortly.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4924).

SUPPLEMENTARY INFORMATION:

I. Background

NHTSA's safety standard for side impact protection is Federal Motor Vehicle Safety Standard No. 214. On October 30, 1990, NHTSA published in the **Federal Register** a final rule adding dynamic test procedures and performance requirements to Standard No. 214 (55 FR 45722). The dynamic test requirements of Standard No. 214 are applicable to passenger cars and are phased in over a three-year period, beginning on September 1, 1993. At the same time, NHTSA also published final rules (1) establishing the specifications for the side impact dummy to be used in the dynamic crash test (55 FR 45757), (2) establishing the attributes of the moving deformable barrier to be used in the dynamic crash test (55 FR 45770), and (3) establishing the reporting and recordkeeping requirements necessary for NHTSA to enforce the phasing-in of the new dynamic test procedure (55 FR 45788). (In this notice, NHTSA refers to the four final rules collectively as "the final side impact rules" or "the final rules.") NHTSA received petitions for reconsideration of these final rules from (1) the Motor Vehicle Manufacturers Association (MVMA), (2) the Ford Motor Company (Ford), (3) the Association of International Automobile Manufacturers (AIAM), and (4) the International Standards Organization (ISO).

II. Summary of Petitions for Reconsideration

MVMA petitioned for changes in the rules (1) to allow carry-forward credits during the phase-in of the dynamic test requirements, (2) to establish additional procedures and details concerning the dynamic crash test, and (3) to address variability in the dynamic crash test. Ford joined in the petition filed by MVMA. AIAM petitioned NHTSA to allow carry-forward credits during the phase-in. The ISO petitioned for NHTSA to review the draft ISO standard dealing with a dynamic side impact test procedure "with the thought to substitute it or using it as an alternative for the test procedure specified by NHTSA in the final rule." The issues raised by the petitioners are discussed more fully below.

III. Discussion of Issues Raised by Petitioners

A. Carry-Forward Credits

As discussed above, the new dynamic test requirements of Standard No. 214 are phased in over a three-year period, beginning on September 1, 1993. The October 30, 1990 final rule established two alternative compliance schedules. Each manufacturer must comply with either alternative, at its discretion. Under the first schedule, each manufacturer will have to meet the new side impact performance requirements based on the following phase-in schedule:

10 percent of automobiles it manufactures during the 12 month period beginning September 1, 1993;

25 percent of automobiles it manufactures during the 12 month period beginning September 1, 1994;

40 percent of automobiles it manufactures during the 12 month period beginning September 1, 1995; and

All automobiles it manufactures on or after September 1, 1996.

Under the other schedule, no compliance will be required during the production year beginning September 1, 1993, but full implementation will be required effective September 1, 1994.

NHTSA did not include any provisions for carry-forward credits for early compliance in the October 30, 1990 final rule. For the Standard No. 208 passenger car automatic restraint phase-in, the agency decided that it would be appropriate to permit manufacturers that exceeded the minimum phase-in requirements in earlier years to "count" those extra vehicles toward meeting the minimum percentage requirements of later years. The agency concluded that such a credit would encourage the early introduction of larger numbers of automatic restraints.

However, as explained in the preamble to the October 30, 1990 final rule establishing the dynamic side impact test, there is a major difference between the Standard No. 208 phase-in and the side impact phase-in. Almost all cars needed the addition of automatic belts or air bags to meet Standard No. 208, while some vehicles do not need any changes to meet the new side impact requirements. If carry-forward credit provisions were established for the side impact phase-in, manufacturers might be able to build up credits during the first year of the phase-in by using cars which already meet the requirements. With this approach, those manufacturers could avoid making changes to meet the percentage requirements in the second and third years of the phase-in. Under this scenario, allowing carry-forward credits could have the effect of slowing manufacturer's efforts to improve side impact protection. Therefore, for the final side impact rules, the agency concluded that carry-forward credit provisions would be inappropriate.

As discussed above, MVMA, Ford, and AIAM petitioned for carry-forward credits. The petitioners argued that NHTSA had underestimated the number of vehicles that require design changes. They further asserted that NHTSA had based its decision against allowing carry-forward credits, in part, on this alleged underestimate. The petitioners stated that NHTSA's estimate of how many current production models already meet the requirements was based on single crash test results of individual production cars. The petitioners asserted that the results from other tests would fall both above and below the results of any given test. They further stated that, therefore, manufacturers cannot base their certification of compliance with a safety standard on comparisons of single test scores with the level set by the standard. The petitioners stated that the average score of a particular model certified by a manufacturer needs to be far enough below the level set by the standard to assure compliance of all such vehicles. MVMA asserted that vehicles comprising less than 10 percent of the current fleet would be able to test at a low enough level to assure compliance with the standard.

MVMA further argued that manufacturers have formulated product engineering plans in reliance on the assumption that the final side impact

rule would include carry-forward credits. MVMA urged NHTSA to adopt carry-forward credits, in part, because of this reliance. MVMA also asserted that interested parties were not given notice in the proposed rule of NHTSA's decision not to include carry-forward credits. MVMA further asserted that the public was, thus, effectively denied the opportunity to comment on the effects of not permitting such credits.

Finally, MVMA argued that allowing carry-forward credits would encourage the early availability of complying vehicles and help avoid excessive tooling costs that would be associated with bringing vehicles into compliance ahead of normal scheduled design changes. NHTSA's analysis of these arguments appears below.

In the Final Regulatory Impact Analysis for the side impact rule, NHTSA estimated that 36.4 percent of front seat positions and 47.8 percent of rear seat positions in the current fleet would meet the requirements of the final side impact rule without any changes. NHTSA based the estimate on test data on production vehicles from 1984 and later model years that were available to the agency. NHTSA used the actual test data, without adjustment. As also discussed in the Final Regulatory Impact Analysis, NHTSA estimates that about 32 percent of today's fleet would test at a Thoracic Trauma Index (dummy) (TTI(d)) level of 80 g's or lower. This is 10 g's below the performance requirements for two-door cars and 5 g's below the performance requirement for four-door cars.

NHTSA recognizes that manufacturers may not be willing to base a certification of compliance with the dynamic test requirements of Standard No. 214 on the results of a single test. This would be particularly true if that test indicates compliance by only a narrow margin. NHTSA agrees with MVMA's assertion that a manufacturer's certification of compliance with safety standards should reflect a high degree of confidence that the vehicles do indeed comply. However, the petitioners did not provide any information indicating the performance level that they believe is necessary for certification. A manufacturer's confidence of compliance will depend upon a variety of factors, including the manufacturer's build tolerances, production methods, and quality control. Taking this into account, NHTSA is unable to agree with the assertion that vehicles comprising less than 10 percent of the fleet will be able to test at a low enough TTI(d) level to assure compliance with the standard.

NHTSA concludes that at least some manufacturers will be able to exceed the 10 percent requirement during the first year of the phase-in without applying any new measures. Some manufacturers may even be able to meet the 25 percent requirement for the second year without improvements in side impact protection. With carry-forward provisions, these manufacturers would be able to delay improvements quite far into the future. Therefore, NHTSA concludes that carry-forward credits could cause a delay in achieving the safety benefits of the final side impact rules.

The petitioners also asserted that interested parties were not given notice in the proposed rule of NHTSA's decision not to include carry-forward credits. They further asserted that the public was, thus, effectively denied the opportunity to comment on the effects of not permitting such credits. The NPRM did not discuss the issue of carry-forward credits. While the petitioners are correct that the NPRM did not specifically state that NHTSA was not planning to adopt carry-forward credits, neither did it state that NHTSA was planning to adopt them. The agency does not agree that this silence provided any basis for manufacturers to assume that such credits would be permitted.

Further, many commenters addressed the phase-in issue. However, no manufacturer stated that its compliance was premised on the availability of carry-forward credits.

The petitioners further asserted that manufacturers have formulated product engineering plans in reliance on the assumption that the final side impact rule would include carry-forward credits. They urged in their petitions that NHTSA adopt carry-forward credits, in part, because of this reliance. However, the manufacturers' unjustified reliance does not provide a basis for NHTSA to change an otherwise valid rule. All aspects of a proposal are subject to change upon issuance of a final rule. This is the case even if some manufacturers have, notwithstanding the potential for change, developed engineering plans based on the proposal. Further, as discussed above, the manufacturers developed their plans based on a matter that was not specifically addressed in the proposal.

In conclusion, NHTSA has decided not to allow for carry-forward credits in connection with the phase-in. NHTSA has concluded that such credits could have a negative impact on motor vehicle safety by slowing the increase in the number of passenger cars meeting the dynamic test requirements of the final side impact rules.

B. Additional Procedures and Details Concerning Dynamic Crash Test

MVMA petitioned NHTSA to establish additional procedures and details concerning the dynamic crash test. Ford supported the MVMA position in its own petition. MVMA was concerned that if a NHTSA compliance test (generally conducted by a contractor) appears to indicate that a vehicle is not in compliance with the rule, insufficient data will be available to indicate whether the compliance test was run according to NHTSA specifications. In particular, the petitioner was concerned about objective post-crash determination of:

1. The crush strength of the barrier face in the compliance test,

2. Lateral barrier-to-vehicle impact point relative to the ± 2 inch tolerance set forth in the specification,

3. Vertical barrier-to-impact point relative to the 13 inches ground-to-MDB bumper dimension, and

4. The perpendicularity of the vehicle centerline relative to the MDB centerline.

MVMA suggested that the above issues be resolved by "(1) providing a means for objective post-crash determination of the lateral and vertical impact point and the vehicle-to-MDB angle; (2) positive identification of the barrier face used, such as, for example, showing the test number on the barrier face in a manner which can be identified in crash films; and (3) preservation and custodial protection of the vehicle, barrier face, and test data for a period of time after the crash sufficient to allow NHTSA and the manufacturer an opportunity for inspection of the vehicle and barrier face and testing of material samples."

NHTSA agrees with the petitioners that their recommended procedures are generally desirable. In fact, NHTSA contractors currently use many of the recommended procedures during crash tests conducted to determine compliance with other safety standards. However, NHTSA does not consider it necessary to include these detailed procedures in Standard No. 214. NHTSA has not included this level of detail in other safety standards involving crash tests. Instead, NHTSA will adopt the MVMA suggestions, as appropriate, in the agency's Laboratory Test Procedure for the standard. This document will describe in detail how a NHTSA contractor is to conduct compliance testing with Standard No. 214. As an exercise of agency discretion, NHTSA allowed the public an opportunity to comment on a draft of this document.

NHTSA believes that this document will satisfy the concerns expressed by MVMA.

C. Variability in Test Results

MVMA also recommended changes in the final rule to address variability in dynamic crash test results. MVMA recommended changes to address what it considered to be problems with (1) barrier honeycomb crush strength variability and dummy response, (2) test dummy positioning variability, (3) test dummy calibration corridor width, and (4) the MDB track width. NHTSA analyzes these issues below.

1. Barrier Honeycomb Crush Strength Variability and Dummy Response

MVMA stated that its member companies had found that manufacturing variations produce significant crush strength differences in the aluminum honeycomb structure of the MDB. MVMA asserted that these differences have the potential for contributing to unpredictability in test dummy responses and results. MVMA stated that a series of tests conducted by Ford showed that the overwhelming majority of barrier faces tested did not meet the crush strength of 45 ± 2.5 psi specified in the final side impact rules. MVMA stated that some of the barriers furnished by Hexcel Corporation (Hexcel) may not meet the crush strength requirements of the final rules.

MVMA asserted that deviations from the crush strength specifications can significantly affect both certification and compliance test results. MVMA submitted data from 13 dynamic crash tests and concluded that front seat test dummy pelvic acceleration changed an average of 1–89 g's for each single psi change in barrier crush strength.

MVMA urged NHTSA to establish a certification procedure which would require barrier face manufacturers to (1) conduct a preassembly crush test of each barrier face and (2) provide the purchaser of each barrier face copies of all test documentation related to the certification of the barrier face. MVMA estimated that the honeycomb would need to be pre-crushed two inches under their proposed procedure.

NHTSA personnel have discussed possible barrier face variability with personnel from Hexcel. Hexcel determined the crush strength of barrier faces using a different procedure than that recommended by NHTSA. Some of the barrier faces certified by Hexcel (using their certification test procedure) as meeting the crush strength specified in the final side impact rules may actually have been outside the specifications (using the procedure for determining crush strength recommended by NHTSA).

However, NHTSA has not seen the variability claimed by MVMA in its analysis of data from various sources on crash test repeatability. Further, NHTSA is convinced, based on strong assurances from Hexcel, that Hexcel will be able to manufacture and supply barrier faces which meet the specified crush strength, as determined by the NHTSA procedure. Further, another company (Plascore, Inc.) has notified NHTSA that it is able to manufacture barrier faces that meet the specifications of the final rules.

Thus, NHTSA concludes that it is possible to manufacture barrier faces that meet the crush strength specifications of the final rules. NHTSA further concludes that passenger car manufacturers can request a manufacturer of barrier faces to "certify" that its product meets the NHTSA specifications, using the certification test procedure recommended by NHTSA. However, such a certification would be a private contractual matter. NHTSA does not have the authority to require such certification by a barrier face manufacturer as part of a safety standard. Safety standards apply only to manufacturers (and importers) of motor vehicles and motor vehicle equipment. Safety standards do not apply to manufacturers of test devices used in compliance tests. Therefore, NHTSA does not believe that the change requested by petitioners is necessary or appropriate.

2. Test Dummy Positioning Variability

In its petition, MVMA stated that variations in test dummy position can significantly affect test dummy responses in all forms of crash testing, including side impacts. MVMA recognized that NHTSA's present positioning procedures are the result of a substantial effort by the agency to minimize the variations in positioning. However, MVMA asserted that the procedures still lack sufficient objectivity, because manufacturers and NHTSA compliance contractors could unknowingly locate test dummies in different positions and those different positions could significantly affect test results.

MVMA submitted test data which it asserted showed that the response measurement for rear seat test dummy pelvic acceleration was directly related to the test dummy's lateral distance from the interior door trim. MVMA also submitted the results of a Ford study on dummy positioning in a 1990 Lincoln Continental. MVMA asserted that the Ford study identified lateral dummy position spread of up to 3.2 inches using the test dummy seating procedure specified in the final rules.

MVMA urged NHTSA to adopt a different dummy positioning procedure. MVMA recommended that NHTSA specify that the midsagittal plane of the test dummy be positioned on the longitudinal centerline of the manufacturer's Designated Seating Position, with a lateral tolerance of ±0.5 inches. According to MVMA, this location in the test vehicle can be determined by measuring from the vehicle centerline to the midsagittal plane. MVMA states that dimensions identifying the centerline of the DSP for individual vehicle models would be required from each manufacturer.

NHTSA agrees that pelvic readings on a test dummy would be affected by changes in lateral distance from the side surface of the struck car in a crash test. It is for this reason that NHTSA does not believe that it is appropriate to adopt the dummy positioning procedure suggested by MVMA. Under the MVMA approach, a manufacturer would be free to designate a seating position far away from the side surface of the car. As acknowledged by MVMA, a greater distance from the side surface of the car would lower pelvic readings on the test dummy during a crash test. However, actual passengers in such a car model may sit closer to the car's side surface, rather than in the designated seating position adopted by the vehicle's manufacturer. This would be particularly true for bench seats. Thus, the MVMA procedure might yield results that would not reflect actual sitting positions of many vehicle occupants. In addition, it would result in less stringent requirements for side impact protection.

Further, NHTSA believes that with the seating procedure specified in the final rules, there would be no noticeable variation in the position of the dummy in different cars of the same model, unless the vehicles have appreciable discrepancies in their dimensions. It is possible that the variability found in the data submitted by MVMA could be due to incorrect use of the prescribed seating procedures.

Therefore, NHTSA has decided to retain the dummy seating procedure specified in the final rules. NHTSA has concluded that this seating procedure is preferable to one recommended by MVMA and will not result in significant variability in dummy test results.

3. Test Dummy Calibration Corridor Width

MVMA also petitioned for a change in the pelvic acceleration calibration corridor width established in the final rules. Below, NHTSA discusses this aspect of the MVMA petition after explaining the concept of calibration corridors.

The final side impact rules set detailed specifications concerning the side impact dummy (SID) used for the dynamic side impact test. Before a test dummy can be used in a vehicle crash test, it must be examined to ensure that it conforms to all specifications set for the SID (including the blueprints of the SID, which are incorporated by reference in the final rules). In addition, the dummy must be carefully examined to make sure that it has been correctly assembled. Finally, the test dummy must pass a series of calibration tests, which are alo referred to as qualification tests. As stated in the preamble to the final rule establishing requirements for the SID, calibration tests are not the primary means for ensuring repeatability and reproducibility in full scale testing. The calibration tests serve as a final check on uniformity of construction, assembly, and instrumentation of the dummy and the proper functioning of the dummy as a system test device. They also help indicate if a dummy has been damaged in a prior test.

The final side impact rules established a SID pelvic acceleration calibration corridor of 40 to 60 g's, a width of 20 g's. MVMA recommended a narrower pelvic acceleration calibration corridor of 10 g's. MVMA agreed with NHTSA that the test dummy calibration corridor in the final rules would help reduce the risk of calibration failures. However, MVMA asserted that the benefits of fewer calibration failures "are vastly outweighed by the greater risk of unacceptably wide variation in test results that are produced by the wide calibration corridor." MVMA further asserted that the SID pelvic acceleration calibration corridor is "of itself a contributor to test-to-test variability." MVMA attached a regression analysis of Ford test data for the Taurus, which MVMA asserted indicated that pelvic acceleration could vary as much as 50 g's in crash tests, even if the test dummy responses were within the permissible calibration range. MVMA asserted that variations of this magnitude could produce "unmanageable and unpredictable crash test results."

NHTSA does not agree with MVMA that the calibration corridors established in the final rules will lead to excessive variability in vehicle crash test results, using the SID. As discussed more fully in Section III A of the Final Regulatory Impact Analysis for the final side impact rules, the variability for TTI(d) and pelvic acceleration observed by NHTSA in crash tests was less than 10 percent, far less than that cited by MVMA. In addition, there is inherent variability in crash tests. MVMA has no basis to ascribe all of this variability to the width of the dummy calibration corridors.

Further, as discussed above, calibration corridors are established to ensure that dummy system components are functioning properly in a laboratory environment. NHTSA believes that the agency has very thoroughly specified the various aspects of the SID. NHTSA is sufficiently confident about the tight specifications for the SID, that the agency concluded that a calibration corridor width of 20 g's would not cause unacceptable variation in dummy test results. As discussed more fully in the Final Regulatory Impact Analysis, NHTSA based this conclusion, in part, on an analysis of the side impact sled tests that had been conducted. After reviewing the material submitted by MVMA, NHTSA reaffirms this conclusion.

4. MDB Track Width and Other MDB Specifications

In its petition, MVMA stated that the regulatory text of the final side impact rules specify the MDB track width as 63 inches. MVMA asserted that drawing DSL-1287, which is incorporated by reference in the final rules, specifies 61.44 inches for the crabbed axle. MVMA stated that the addition of 6.6 inches for the wheel mounting plate and wheel produces a crabbed track width of 68.04 inches. MVMA concluded that there was a mistake in the MDB drawings and requested that the alleged discrepancies be corrected. MVMA also stated that the MDB drawings specify old American Motors Corporation (AMC) wheel hubs. MVMA requested that more readily available components be specified to facilitate maintenance and repair.

NHTSA has reviewed the drawing cited by MVMA and could not find the dimension cited by MVMA. The axle length for the crabbed barrier is 67.49 inches. Adding the wheel hub and tires increases the track width for the crabbed configuration to 74.0 inches. NHTSA believes that MVMA may have used the barrier track width of 63.0 inches for the straight configuration to calculate the axle length for the crabbed configuration. This mistake is understandable since the axle length for the crabbed configuration can be obtained only by adding several other dimensions in different parts of the MDB drawings. Therefore, NHTSA plans to amend the rule concerning the MDB to alleviate confusion concerning barrier specifications, including stating explicitly the MDB track width in the crabbed configuration.

In addition, NHTSA plans to amend the same rule to replace the specifications of the AMC wheel hubs that are not readily available with a generic specification.

D. Alternative Test Procedure

The ISO petitioned for NHTSA to review the draft ISO standard dealing with dynamic side impact test procedure "with the thought to substitute it or using it as an alternative for the test procedure specified by NHTSA in the final rule." The ISO thought that this would be in "the spirit of international harmonization." The ISO procedure specifies (1) a side impact test procedure, (2) test devices, and (3) the measurements to be made. However, the ISO procedure specifies no performance limits. According to the petitioner, the specification of performance limits is outside the charter of the ISO. The ISO procedure is only a draft one that has not yet officially been adopted by the ISO since the procedure has not been approved by the ISO members.

NHTSA received a comment on the NPRM from the ISO, which discussed similar issues. NHTSA explained why the agency did not adopt an approach like the draft ISO procedure in the preambles to the final side impact rules. The issue is also discussed at length in the Final Regulatory Impact Analysis. Briefly, NHTSA concluded that the barrier specified in the draft ISO procedure is not representative of the striking vehicle in side impact crashes in the United States. The barrier must be representative of striking vehicles to ensure that the dynamic crash test requirements result in safety measures that will reduce fatalities and injuries in actual crashes.

After reconsidering the issues, NHTSA reaffirms the earlier agency decision. However, NHTSA remains committed to international harmonization, where practical. As European and other nations develop their side impact standards, NHTSA will consider whether further rulemaking is appropriate.

In conclusion, based on the foregoing discussion, NHTSA is denying the petitions for reconsideration, except with respect to requests for certain changes in specifications concerning the

axle length of the MDB in the crabbed mode and the wheel hub of the MDB. The agency plans to issue a separate final rule concerning those issues shortly.

Issued on January 24, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-2217 Filed 1-29-92; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 57, No. 20
Thursday, January 30, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-66-89]

RIN 1545-AO14

Allocation and Accounting Rules on Tax Exempt Bonds for Arbitrage Rebate Purposes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to arbitrage rebate requirements applicable to tax exempt bonds issued by State and local governments. Changes to the applicable law were made by the Tax Reform Act of 1986, the Technical and Miscellaneous Act of 1988, and the Revenue Reconciliation Act of 1990. The proposed regulations affect issuers of tax exempt bonds and provide guidance on general allocation and accounting rules applicable for purposes of the arbitrage rebate requirement.

DATES: Written comments and requests to speak (with outlines of oral comments) at a public hearing must be received by March 30, 1992. A notice of public hearing on these regulations will be published in the near future in the **Federal Register.**

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines of comments to be presented to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI-66-89), Room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, William P. Cejudo, 202-566-3283 (not a toll-free number). Concerning the public hearing, Carol Savage of the Regulations Unit, 202-566-3935.

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend the Income Tax Regulations (26 CFR part 1) under section 148(f) of the Internal Revenue Code to provide general allocation and accounting rules for arbitrage rebate purposes. The Tax Reform Act of 1986 added section 148(f) to the Code. The Technical and Miscellaneous Act of 1988 and the Revenue Reconciliation Act of 1990 amended this section. The proposed regulations propose to amend the provisions of the temporary and proposed regulations §§ 1.148-0T through 1.148-8T published in the **Federal Register** for May 15, 1989 (54 FR 20787), as modified by temporary and proposed regulations published in the **Federal Register** for April 25, 1991 (56 FR 19045).

Explanation of Provisions

I. Background and Scope of Regulations

A. Background on Arbitrage Rebate Requirement and Need for Accounting Guidance

Code section 148(f), enacted in 1986, extended the requirement that issuers of tax exempt bonds rebate to the Federal government certain arbitrage derived from investing proceeds of the bonds at a yield in excess of bond yield. On May 15, 1989, temporary regulations were published under section 148(f) at §§ 1.148-0T through 1.148-8T (the "arbitrage rebate regulations"). On April 25, 1991, simplifying amendments to the arbitrage rebate regulations were published. Guidance on general allocation and accounting rules for purposes of the arbitrage rebate requirement was reserved in the arbitrage rebate regulations. The purpose of these proposed regulations is to provide those allocation and accounting rules.

In the legislative history to recent tax acts, Congress has encouraged the adoption of simplified general accounting regulations for arbitrage rebate purposes. The statutory arbitrage rebate requirement itself, however, generally requires precise computations of yields on tax exempt bonds and investments of bond proceeds. The proposed regulations provide simplified general arbitrage rebate accounting rules to the extent possible to provide issuers with maximum flexibility in accounting methods. The proposed regulations provide specific accounting rules to the extent necessary to implement the arbitrage rebate requirement and to prevent abuse.

B. Scope and Prospective Effective Date of Regulations

The proposed regulations provide general allocations and accounting rules with respect to the arbitrage rebate requirement for all purposes of section 148(f). The proposed regulations apply to methods used to account for investments and expenditures of gross proceeds of tax exempt bond issues.

The regulations are proposed to apply to tax exempt bonds issued after the date that is 30 days after publication of final regulations in the **Federal Register.**

C. Anticipated Extension of the Proposed Regulations to Other Tax Exempt Bond Provisions

The proposed regulations apply only for purposes of the arbitrage rebate requirement (i.e., section 148(f)). Existing §§ 1.103-13 to 1.103-15 continue to apply for general arbitrage yield restriction purposes under section 148. The purposes of the general arbitrage yield restrictions under section 148 and the arbitrage rebate requirement under section 148(f) are similar in many respects. Although both of these restrictions have the same general objective of controlling inappropriate arbitrage investments of tax-exempt bond proceeds, the existing regulatory guidance implementing these restrictions is inconsistent in many respects. For example, different definitions of tax exempt bond "proceeds" apply.

The Service intends to simplify this area by issuing more integrated rules. In particular, the Service is considering the adoption of the allocation and accounting concepts contained in these proposed regulations for purposes of section 148 generally.The Service is considering the adoption of unified definitions of "proceeds" for all purposes of section 148 and the withdrawal of existing regulatory guidance under section 148 to the extent that it is inconsistent with the proposed regulations. Provisions that may be withdrawn include §§ 1.103-13(c)(1)(iii)(B) ("market price" rules for refundings), § 1.103-13(f) (allocation and accounting rules for arbitrage yield restriction purposes), § 1.103-13(g)(6)

(sinking fund allocation rules), and § 1.103–14(c) (tax and revenue anticipation notes). The Service solicits comments on these proposals.

II. Description of Allocation and Accounting Rules

A. General Rule Permitting Reasonable, Consistently Applied Accounting Methods.

The proposed regulations generally permit an issuer to use any reasonable, consistently applied accounting method for arbitrage rebate purposes, except to the extent that a specific accounting method is mandated. Of primary importance under this general rule is the consistency requirement. The proposed regulations also contain a broad, general anti-abuse rule that prohibits use of any accounting method as an artifice or device to avoid the arbitrage rebate requirements.

B. Allocation of Gross Proceeds to an Issue

The proposed regulations generally require allocations of gross proceeds to an issue in the manner required by the definition of gross proceeds under the existing arbitrage rebate regulations. Moneys generally are allocable to only one issue at a time as gross proceeds. For example, moneys that otherwise might be treated as gross proceeds of more than one bond issue (under the general definition of gross proceeds) are allocated to only one issue under a special ordering rule for different kinds of gross proceeds (e.g., original proceeds, transferred proceeds, or replacement proceeds). Moneys are allocated to certain kinds of gross proceeds before others. For example, if moneys would be both original proceeds of issue A and replacement proceeds of issue B, the ordering rule requires that the moneys be treated only as original proceeds of issue A. These provisions generally continue principles of existing law.

The proposed regulations also contain a new "universal cap" rule that limits the amount of invested gross proceeds allocable to a bond issue. The universal cap provides generally that the amount of invested gross proceeds of a bond subject to arbitrage rebate is limited to the amount of the bonds outstanding. The universal cap generally clarifies the outside limit on amounts treated as invested gross proceeds allocated to an issue and subject to arbitrage rebate.

C. Allocation of Gross Proceeds to Investments

The proposed regulations provide generally that gross proceeds may not be allocated to the purchase of an investment in an amount greater than, or to the sale of an investment in an amount less than, fair market value. The Service is aware of abuses involving investment of gross proceeds in securities or contracts that provide a guaranteed rate of return (commonly referred to as "guaranteed investment contracts"). To prevent abuses such as "yield-burning" involving these investment contracts, the proposed regulations provide special requirements for any allocations of gross proceeds to the purchase of these investment contracts.

The proposed regulations provide a safe harbor for a fair market value purchase of a certificate of deposit. Under this safe harbor, if an issuer purchases a certificate of deposit in compliance with a prescribed "three-bid" procedure, the purchase is deemed to be at fair market value. It is anticipated that comparable safe harbors for other standardized financial investments will be provided in the future. The Service solicits comments on other appropriate safe harbors.

D. Allocation of Gross Proceeds to Expenditures

1. *General allocation rules for expenditures.* The proposed regulations contain a general, cash-based expenditure rule for gross proceeds. Any expenditure of gross proceeds generally must involve a reasonably current outlay of cash (normally within five banking days) and carry out a governmental purpose of an issue. Investment is a nonpurpose investment is not an expenditure of gross proceeds for purposes of the arbitrage rebate requirement.

Consistent with existing treatment of conduit financings, the proposed regulations generally treat gross proceeds lent to a conduit borrower as unspent for arbitrage rebate purposes until the conduit borrower spends the gross proceeds for the governmental purpose of the bond issue. A special rule permits an issuer to treat tax exempt bonds used to finance single-family housing and student loans as spent when the issuer makes or purchases the qualifying loans.

2. *Special allocation rules for working capital expenditures.* The proposed regulations provide needed guidance on allocations of gross proceeds to working capital expenditures. The proposed regulations define a "working capital expenditure" to mean any cost of a type that does not constitute a capital expenditure (as defined in § 1.150–1(b)). This definition of working capital expenditure was chosen because the capital expenditure standard is a known Federal tax standard. Abuses have occurred involving the allocation of gross proceeds to working capital expenditures. For example, in an effort to avoid the arbitrage rebate requirements, some issuers have engaged in the practice of allocating gross proceeds to working capital expenditures on a "specific tracing" basis (without regard to other funds available to pay the working capital expenditures). This practice raises concerns under the replacement rule of section 148(a).

Existing regulations with respect to "tax and revenue anticipation notes" ("TRANs") under § 1.103–14(c) provide a temporary period and a maximum principal amount rule for TRANs. Consistent with the approach of the statutory rebate safe harbor for TRANs under section 148(f)(4)(B)(iii), the proposed regulations reformulate the § 1.103–14(c) TRANs temporary period and sizing rule into a more properly focused working capital expenditure rule. In addition, existing § 1.103–14(c) is deficient because it addresses only short-term TRANs financings and fails to provide any regulatory guidance for long-term working capital financings. The proposed regulations provide rules applicable for all allocations of gross proceeds to working capital expenditures regardless of the maturity of the bond issue.

The proposed regulations generally permit allocation of proceeds of tax exempt bonds to working capital expenditures only after all other "available amounts" are spent for working capital purposes. This is in essence a "gross-proceeds-spent-last" allocation rule similar to that found in the TRANs rules under § 1.103–14(c). The definition of "available amounts" is generally the same as in § 1.103–14(c), with certain modifications. These modifications include a rule that permits an issuer to treat a reasonable working capital reserve as unavailable and an anti-abuse rule that ignores actions taken to make amounts unavailable for a purpose of avoiding arbitrage restrictions. The proposed regulations also provide a special rule that permits an issuer to spend certain limited amounts of gross proceeds on working capital associated with a "start-up" project without regard to the general "gross-proceeds-spent-last" rule. In addition, the proposed regulations clafify the treatment of working capital expenditures for purposes of the bond maturity limitation under section 147(b).

3. *Special allocation rules for grant expenditures.* Consistent with the

general treatment of conduit financings, the proposed regulations generally treat gross proceeds used to make a "grant" as spent only when the grantee spends the grant moneys for the ultimate governmental purpose of the grant. The "making of grants" in itself is not an ultimate governmental purpose. The proposed regulations define the term "grant" strictly to mean unconditional payments from the grantor to the grantee without any direct or indirect repayment obligation on the part of the grantee (other than repayment when the grantee fails to carry out the purpose of the grant).

Many States use tax exempt bonds to finance broad-based grant programs for their local governments, especially smaller governmental units. The Service recognizes that arbitrage rebate tracking of disbursed grant funds may be administratively burdensome for these issuers. The proposed regulations, therefore, contain a special rule that treats certain eligible grants of proceeds of bonds to uncontrolled grantees for prescribed uses as spent on the date the grantor gives the grant moneys to the grantee. This special rule is not available for grants expected to be used for working capital expenditures or for private business uses.

Grants of bond proceeds may not be used as an artifice or device to avoid arbitrage and other tax exempt bond restrictions. The governmental purpose of a grant is not the making of the grant itself but the ultimate use of the grant proceeds by the grantee. For example, if a grantee uses grant proceeds for a private business use under section 141, the grantor is treated as having used the grant proceeds for a private business use.

E. Special Allocation Rules for Commingled Funds

Many issuers routinely commingle gross proceeds of an issue with other funds for investment purposes in order to make more efficient investments at higher yields. In recognition of this common commingling practice, the proposed regulations generally permit issuers to commingle gross proceeds with other funds. The proposed regulations provide certain minimum special allocation and accounting rules for commingled funds to assure that allocations of earnings from these funds do not result in distortions for arbitrage rebate purposes. A "commingled fund" is any fund that contains both gross proceeds of an issue and other amounts. The commingled fund accounting rules apply to both internal commingled funds (e.g., an issuer's general fund) and external commingled funds (e.g., a State investment pool for local governments).

In order for an accounting method used by a commingled fund to be reasonable under the proposed regulations, the commingled fund must follow the general accounting requirements that apply to all gross proceeds of bonds and must follow certain special accounting requirements applicable to commingled funds. First, fund earnings, gains, and losses must be allocated among investors on the basis of a consistently applied, reasonable ratable allocation method. Specific tracing of high-yielding investments in a commingled fund to unrestricted-yield sources and low-yielding investments in the fund to tax exempt sources is not a reasonable method.

Second, a commingled fund must compute and allocate accrued earnings, realized gains and losses, and expenditures at least quarterly.

Third, a commingled fund must account for unrealized gains and losses by either limiting its average investment portfolio maturity to one year or marking its investment portfolio to fair market value at least annually. The purpose of this requirement is to prohibit the timing of sales of investments resulting in realized gains or losses in a manner that would minimize arbitrage earnings allocable to gross proceeds in the commingled fund. The Service solicits comments on other reasonable methods of accounting for unrealized gains and losses on investments in commingled funds that would prevent the abuse described in the preceding sentence.

Fourth, the proposed regulations permit commingled funds to take into account certain qualified administrative costs for arbitrage rebate purposes. This provision simplifies commingled fund accounting by permitting commingled funds to pass through net income to investors without "grossing up" income to reflect qualified administrative costs of the commingled fund. The proposed regulations limit qualified administrative costs to .25 percent of the average daily balance of amounts invested in the commingled fund for the fiscal year up to an average daily balance of $10,000,000 and .125 percent of the average daily balance in excess of $10,000,000. This provision applies only to commingled funds and does not apply to other investments of gross proceeds. Administrative costs of a commingled fund in excess of the amounts specified above do not reduce the earnings of the commingled fund that are passed through to its investors.

F. Special Commingled Investment Earnings Exception to the Arbitrage Rebate Requirement

The proposed regulations provide a modified commingled investment earnings exception for arbitrage rebate purposes similar to the exception contained in § 1.103–13(b)(2)(ii). Under § 1.103–13(b)(2)(ii), certain earnings on invested bond proceeds cease to be treated as proceeds of the bond subject to arbitrage yield restrictions upon reinvestment if the amounts are commingled within one year of receipt "with substantial tax or other substantial revenues from operations by a State or local government." The proposed regulations provide a commingled earnings exception that treats certain investment earnings of eligible governmental bonds as spent on the date of deposit in an eligible commingled fund if the earnings are reasonably expected to be spent within six months. The purpose of this exception is to simplify accounting for gross proceeds.

The six-month reasonably expected expenditure test has no mandatory verification requirements beyond reasonable expectations. One alternative considered was a longer expected expenditure period for this exception (e.g., 1 year) with more verification requirements to assure prompt expenditure of commingled earnings under a reasonable accounting method. For example, if a one-year expected expenditure period were adopted, a verification requirement requiring issuers to assume expenditure of commingled earnings on a "first-in, first-out" basis from the commingled fund to establish reasonable expectations might also be adopted. Another alternative considered was a "look-back" verification requirement that would require issuers to take into account their actual rate of expenditure of commingled earnings in the previous fiscal year. The six-month reasonable expectations expenditure test was chosen because it has relatively easy qualification requirements for issuers and it has a relatively immaterial impact on arbitrage. The Service solicits comments on various approaches to a commingled investment earnings exception.

Effective Date

These regulations are proposed to apply to bonds issued 30 days after the date of publication of final regulations in the **Federal Register.**

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (perferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying.

A notice of public hearing on these proposed regulations will be published in the near future in the Federal Register.

Drafting Information

The principal authors of these proposed regulations are John J. Cross III, Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, and David A. Walton, Office of Tax Legislative Counsel, Department of the Treasury. However, other personnel from the Service and Treatury Department participated in their development.

List of Subjects in 26 CFR 1.148–0T Through 1.150–1T

Bonds, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Note: The section numbers cited in the instructional paragraphs below as proposed sections reflect the section numbers as they would appear in the final rule (example: § 1.148–4). They do not reflect the "T" suffix currently found in the temporary rule version (example: § 1.148–4T).

PART 1—INCOME TAXES; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Sections 1.148–0 through 1.148–9 also issued under 26 U.S.C. 148 (f) and (i).

Par. 2. Proposed § 1.148–0 published May 15, 1989 (54 FR 20881) by cross-referencing temporary regulations published the same day (54 FR 20787), as amended by a notice of proposed rulemaking published April 25, 1991 (56 FR 19045) by cross-referencing temporary regulations published the same day (56 FR 19023), is amended as follows:

1. The introductory text of paragraph (d) of § 1.148–0 is revised as set forth below.

2. The § 1.148–4 entries are removed.

3. New § 1.148–4 entries are added as set forth below.

§ 1.148–0 Scope and effective date of restrictions on arbitrage (temporary).

* * * * *

(d) *List of subjects.* This paragraph (d) lists the captioned paragraphs contained in the temporary and final regulations in §§ 1.148–1T through 1.148–9T.

* * * * *

§ 1.148–4 Allocation and accounting rules.

(a) In general.
(1) Reasonable accounting methods required.
(2) Anti-abuse rule for accounting methods.
(3) Application of rules to conduit borrowers.
(4) Certain definitions.
Accounting method.
Commingled fund.
Consistently applied.
Grant.
Working capital expenditure.
(b) Allocation of gross proceeds to an issue.
(1) In general.
(2) "One-issue" rule and general ordering rules.
(3) Universal cap on value of nonpurpose investments allocated to an issue.
(i) Universal cap in general.
(ii) Certain nonpurpose investments allocated to an issue despite the universal cap limitation.
(iii) When the universal cap is computed and applied.
(iv) Valuation for purposes of universal cap.
(v) Allocations of amounts in excess of the universal cap.
(vi) Consequences of certain failures to do computations.
(c) Allocations of gross proceeds to investments.
(1) In general.
(2) Fair market value limit on allocations to nonpurpose investments.
(3) Requirements for purchase of an investment contract.
(i) In general.
(ii) Requirements for a qualifying bid.
(4) Safe harbor for purchase of a certificate of deposit.
(i) In general.
(ii) Requirements for a qualifying bid.
(d) Allocations of gross proceeds to expenditures.
(1) Expenditures in general.
(i) General rule.
(ii) General limitation.
(iii) Deviations from general accounting method.
(2) Expenditures of gross proceeds invested in purpose investments.
(i) In general.
(ii) Exception for qualified owner-occupied residence loans and qualified student loans.
(3) Expenditures for working capital purposes.
(i) In general.
(ii) De minimis exception for start-up projects.
(iii) Definition of available amount.
(iv) Other rules relating to working capital expenditures.
(4) Expenditures for grants.
(i) In general.
(ii) Special exception for certain grants.
(iii) Characterization of repayments of grants.
(5) Expenditures for reimbursement purposes.
(e) Special rules for commingled funds.
(1) In general.
(2) Investments held by a commingled fund.
(i) In general.
(ii) Permitted ratable allocation methods.
(iii) Definition of investor.
(iv) Definition of average daily balance.
(3) Certain expenditures involving a commingled fund.
(4) Computation periods.
(5) Unrealized gains and losses on investments of a commingled fund.
(i) Commingled funds with shorter-term investment portfolios.
(ii) Market-to-market requirement for commingled funds with longer-term investment portfolios.
(iii) Definition of weighted average maturity.
(6) Administrative costs of a commingled fund.
(i) In general.
(ii) Exception for qualified administrative costs.
(7) Allocations among issues of commingled funds serving as common reserve funds or sinking funds.
(i) Permitted ratable allocation methods.
(ii) Frequency of allocations.
(8) Expenditures of certain commingled investment proceeds of governmental issues.
(i) Commingled with certain governmental revenues.
(ii) Reasonably expected to be spent within six months.
(f) Consequences of certain failures to use permitted accounting methods.

* * * * *

Par. 3. Proposed § 1.148–4 published May 15, 1989 (54 FR 20881) by cross-referencing temporary regulations published the same day (54 FR 20787), as amended by a notice or proposed rulemaking published April 25, 1991 (56 FR 19045) by cross-referencing

temporary regulations published the same day (56 FR 19023), is revised to read as follows:

§ 1.148–4. Allocation and accounting rules.

(a) *In general*—(1) *Reasonable accounting methods required.* Except as otherwise provided in section 148, this section, or another regulation under section 148, an issuer may use any reasonable, consistently applied accounting method to account for gross proceeds of an issue for purposes of section 148(f). The determination of the reasonableness of any accounting method is based on all the facts and circumstances.

(2) *Anti-abuse rule for accounting methods.* For purposes of this section, an accounting method is not reasonable if it is employed as an artifice or device under § 1.148–9T(g) to avoid, in whole or in part, the arbitrage rebate requirements.

(3) *Application of rules to conduit borrowers.* Except as otherwise provided in this section, the allocation and accounting rules of this section apply to a conduit borrower (as defined in § 1.150–1(g)) of gross proceeds of an issue to the same extent as they apply to the issuer. Accordingly, a conduit borrower must comply with this section to account for any gross proceeds of an issue received by it under a purpose investment.

(4) *Certain definitions.* For purposes of this section, the following definitions apply:

Accounting method. "Accounting method" means both the overall method used to account for gross proceeds of an issue (e.g., the cash method or a modified accrual method) and the method used to account for or allocate any particular item within that overall accounting method (e.g., accounting for investments, expenditures, allocations to and from different sources, and particular items of the foregoing).

Commingled fund. "Commingled fund" means any fund or account that contains both gross proceeds of an issue and amounts that are not gross proceeds of that issue.

Consistently applied. With reference to an accounting method, "consistently applied" means that the method accounts uniformly for:

(A) Gross proceeds of an issue in a commingled fund and any other amounts in the same commingled fund containing those gross proceeds;

(B) Gross proceeds of an issue for each fiscal year or interim fiscal period therein during which the issue is outstanding; and

(C) Gross proceeds of an issue and all other funds of an issuer not contained in a commingled fund with those gross proceeds. (For purposes of this paragraph (C) of this definition, an accounting method does not fail to be consistently applied solely because the issuer uses a different accounting method to account for a particular amount, provided that this use of a different accounting method is for a bona fide purpose and is not an artifice or device under § 1.148–9T(g) to avoid, in whole or in part, the arbitrage rebate requirements.)

Grant. Grant means a transfer of money or property by a grantor to a grantee that accomplishes a governmental purpose of the grantor and that, except as expressly permitted by this definition, imposes no obligation or condition on the grantee:

(A) To repay the grant directly or indirectly with money, property, or services furnished;

(B) To satisfy any obligation of the grantor; or

(C) To provide any other consideration whatsoever for the benefit of the grantor.

Whether a grantor imposes an obligation or condition is determined on the basis of all the facts and circumstances. Conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent an otherwise eligible transfer from being a grant, unless the governmental purpose of the transfer is the satisfaction of an obligation of the grantor. For example, if a transferee is required to repay the transferred amount for failure to satisfy conditions that are described in the preceding sentence, this requirement does not disqualify an otherwise qualifying transfer as a grant. See paragraph (d)(4)(iii) of this section for characterization of repayments of grants.

Working capital expenditure. The term *working capital expenditure* means any cost of a type that does not constitute a capital expenditure (as defined in § 1.150–1(h)). For example, working capital expenditures generally include current operating expenses. See paragraph (d)(3)(iv)(B) of this section for the deemed economic life of working capital expenditures for certain purposes.

(b) *Allocation of gross proceeds to an issue*—(1) *In general.* Except as otherwise provided in this section or in applicable regulations on refunding issues under section 148, amounts are allocable to an issue as gross proceeds in the manner required by the definition of gross proceeds under § 1.148–6T. Transferred proceeds and proceeds of a refunding issue are allocable to an issue based on the requirements of any applicable regulations on refunding issues under section 148.

(2) *"One-issue" rule and general ordering rules.* Except as otherwise provided in this section, amounts are allocable to only one issue at a time as gross proceeds. Except as otherwise provided in this section, amounts that are original proceeds or transferred proceeds allocable to an issue must be so allocated to that issue and may not be allocated instead as replacement proceeds to another issue. Amounts cease to be original proceeds or transferred proceeds allocated to an issue only when they are properly allocated to an expenditure for a governmental purpose of that issue, when they become transferred proceeds of another issue, or when they cease to be allocated to that issue by operation of the limitation under paragraph (b)(3) of this section.

(3) *Universal cap on value of nonpurpose investments allocated to an issue*—(i) *Universal cap in general.* Except as otherwise provided in paragraph (b)(3)(ii) of this section, nonpurpose investments of gross proceeds of an issue are allocated (and remain allocated) to the issue only to the extent that the value (as defined in paragraph (b)(3)(iv)(B) of this section) of these nonpurpose investments does not exceed the value (as defined in paragraph (b)(3)(iv)(A) of this section) of all outstanding bonds of the issue. (The value of all outstanding bonds of the issue is referred to as the "universal cap.") Paragraphs (b)(3) (ii) through (v) of this section provide rules on exceptions, frequency of computations, valuation, and reallocations for purposes of this rule.

(ii) *Certain nonpurpose investments allocated to an issue despite the universal cap limitation*—(A) *In general.* Nonpurpose investments of gross proceeds described in paragraph (b)(3)(ii)(B) or (b)(3)(ii)(C) of this section are allocated to an issue in any event and are not subject to the limitations imposed by the universal cap under paragraph (b)(3)(i) of this section. Thus, the value of these nonpurpose investments does not reduce the aggregate value of nonpurpose investments proceeds that may be allocated to the issue under the universal cap.

(B) *Invested amounts during first year of initial temporary period.* Amounts (other than gross proceeds of a refunding issue) are described in this paragraph (b)(3)(ii)(B) if they are invested in nonpurpose investments

during the 1-year period following the date of issue and they qualify for an initial temporary period for unrestricted investment under section 148(c).

(C) *Invested amounts exempt from arbitrage rebate.* Amounts are described in this paragraph (b)(3)(ii)(C) if they are invested in nonpurpose investments of gross proceeds of an issue during any period to the extent that they qualify for an exception to the arbitrage rebate requirement under section 148(f). For example, notwithstanding their value and regardless of the universal cap, if nonpurpose investments of gross proceeds of an issue are held in a bona fide debt service fund that qualifies for an exception to the arbitrage rebate requirement under section 148(f)(4), those nonpurpose investments are allocated to an issue.

(iii) *When the universal cap is computed and applied*—(A) *Computation.* For purposes of paragraph (b)(3)(i) of this section, the values of the universal cap and the nonpurpose investments must be computed as of the date of issue and as of the first day of each bond year thereafter. In addition, in the case of a refunding issue and a refunded issue, these values must be computed as of each date that, without regard to the limitations in this paragraph (b)(3), proceeds of the refunded issue would become transferred proceeds of the refunding issue under applicable regulations on refunding issues under section 148.

(B) *Application.* The rule of paragraph (b)(3)(i) applies continuously. Between required dates of computation of the universal cap under paragraph (b)(3)(A) of this section, nonpurpose investments cease to be allocated to an issue to the extent that they are expended on a governmental purpose of the issue or otherwise cease to be allocated to the issue under the rules of paragraphs (b)(1) and (b)(2) of this section. To the extent that nonpurpose investments cease to be allocated to the issue, other nonpurpose investments of gross proceeds are allocated to the issue up to the amount of the unused universal cap. Allocations of nonpurpose investments under this paragraph (b)(3)(iii)(B) must be done not less frequently than quarterly. To the extent that nonpurpose investments do not cease to be allocated to the issue under this paragraph (b)(3)(iii)(B) at any time, their values continue to be their values as of the most recent date that these values were computed under paragraph (b)(3)(iii)(A) of this section.

(iv) *Valuation for purposes of universal cap.* For purposes of paragraph (b)(3)(i) of this section, the values of outstanding bonds and nonpurpose investments are computed as follows—

(A) *Value of outstanding bonds.* The value of all outstanding bonds of a fixed yield issue is equal to the present value of those bonds computed using the yield (as defined in § 1.148–3T(c)(1)) on the issue as the discount rate. The value of all outstanding bonds of a variable-yield issue is equal to the present value of those bonds determined under § 1.148–3T. See § 1.148–3T(b)(8) (i) and (iii), § 1.148–3T(b)(9), and § 1.148–3T(d)(4), *Examples 1* and *2*.

(B) *Value of nonpurpose investments.* The value of a nonpurpose investment on a date is equal to the receipt that would be taken into account on that date under § 1.148–2T(b)(2)(iii) if that date were a rebate installment computation date.

(v) *Allocations of amounts in excess of the universal cap*—(A) *General ordering rule.* If, on a date specified in paragraph (b)(3)(iii) of this section, nonpurpose investments of gross proceeds allocated to an issue have a value in excess of the universal cap, an amount of those investments necessary to eliminate that excess cease to be allocated to the issue. Nonpurpose investments cease to be allocated to gross proceeds of the issue in the following order—

(*1*) First, nonpurpose investments of replacement proceeds of the issue;

(*2*) Second, nonpurpose investments of transferred proceeds of the issue; and

(*3*) Third, nonpurpose investments of original proceeds of the issue.

(B) *Re-allocation after ordering.* If nonpurpose investments of gross proceeds of an issue exceed the universal cap and therefore cease to be allocable to an issue, they become eligible for allocation to another issue. For example, they may be allocated to another issue as replacement proceeds in accordance with the rules governing replacement proceeds. If nonpurpose investments of transferred proceeds of an issue exceed the universal cap and therefore cease to be gross proceeds of that issue, the nonpurpose investments are treated as proceeds of the issue from which they transferred to the extent of the unused universal cap on that issue.

(vi) *Consequences of certain failures to do computations.* A failure to do any computation under this paragraph (b)(3) does not violate this section if, in the absence of that failure, the issue nevertheless would have satisfied paragraph (b)(3)(i) of this section.

(c) *Allocations of gross proceeds to investments*—(1) *In general.* Except as otherwise provided in this section, gross proceeds of an issue may be allocated to investments pursuant to any reasonable, consistently applied accounting method.

(2) *Fair market value limit on allocations to nonpurpose investments.* Gross proceeds of an issue are not allocated to a payment for a nonpurpose investment in an amount greater than, or to a receipt from the sale or other disposition of a nonpurpose investment in an amount less than, the fair market value (as defined in § 1.148–2T(d)) of the nonpurpose investment.

(3) *Requirements for purchase of an investment contract*—(i) *In general.* For purposes of this section, any allocation of gross proceeds of an issue to a payment for the purchase of an investment contract is reasonable only if the following requirements are satisfied:

(A) In response to a solicitation for a specified investment contract, the issuer receives qualifying bids (as defined in paragraph (c)(3)(ii) of this section) from at least three separate financial institutions that have no material financial interest in the issue.

(B) The issuer purchases the highest-yielding investment contract for which a qualifying bid is made.

(ii) *Requirements for a qualifying bid.* For purposes of this paragraph (c)(3)(ii), a bid for an investment contract is a qualifying bid only if it satisfies the following requirements:

(A) The bidder is a reasonably competitive provider of investment contracts of the type solicited.

(B) Except for provisions on drawdowns for short-term reinvestment of float funds or reasonably required reserve and replacement funds, the investment contract under the bid generally restricts drawdowns prior to the time at which the issuer reasonably expects to need the gross proceeds for the governmental purpose of the issue (e.g., no unlimited liquidity contracts). If invested proceeds are to be used for construction or similar purposes, the reasonably expected drawdown schedule must be certified by a licensed engineer or architect. If those proceeds are to be used for other governmental purposes (e.g., single-family housing loans), the reasonably expected drawdown schedule must be certified by any qualified expert, based on the facts and circumstances.

(C) The collateral security requirements for the investment contract under the bid are reasonable, based on all the facts and circumstances.

(D) The bidder certifies all expenses reasonably expected to be incurred directly or indirectly in connection with the investment contract.

(E) The bidder undertakes to furnish an independent audited financial

statement reflecting direct expenses relating to the investment contract within a reasonable period of time after termination of the investment contract if the bid is accepted.

(F) The yield on the investment contract under the bid is not directly related to the yield on the issue.

(G) The yield on the investment contract under the bid is not less than the yield then currently available from the bidder on reasonably comparable investment contracts offered to other persons, if any.

(H) The yield on the investment contract under the bid is not less than the yield on reasonably comparable direct obligations of the United States (or, if lower, the yield on direct obligations of the United States that mature in approximately five years after the date of the bid).

(4) *Safe harbor for purchase of a certificate of deposit*—(i) *In general.* For purposes of paragraph (c)(2) of this section, the fair market value of a certificate of deposit at the time it is purchased is considered to be its purchase price if the issuer satisfies the following requirements:

(A) In response to a solicitation for a certificate of deposit specifying a fixed principal amount and fixed maturity, the issuer receives qualifying bids (as defined in paragraph (c)(4)(ii) of this section) from at least three separate financial institutions that have no material financial interest in the issue.

(B) The issuer purchases the highest-yielding certificate of deposit for which a qualifying bid is made.

(ii) *Requirements for a qualifying bid.* For purposes of this paragraph (c)(4)(ii), a bid for a certificate of deposit is a qualifying bid only if it satisfies the following requirements:

(A) The yield on the certificate of deposit under the bid is not less than the yield then currently available from the bidder on comparable certificates of deposit offered to other persons.

(B) The yield on the certificate of deposit under the bid is not less than the yield on reasonably comparable direct obligations of the United States (or, if lower, the yield on direct obligations of the United States that mature in approximately five years).

(d) *Allocation of gross proceeds to expenditures*—(1) *Expenditures in general*—(i) *General rule.* Except as otherwise provided in this section, gross proceeds of an issue may be allocated to expenditures pursuant to any reasonable, consistently applied accounting method. Reasonable accounting methods for allocating funds from different sources to expenditures for the same governmental purpose include any of the following methods applied consistently: a "specific tracing" method, a "gross-proceeds-spent-first" method, a "first-in, first-out" method, or a ratable allocation method. See the special rules for working capital expenditures in paragraph (d)(3) of this section and for commingled fund expenditures in paragraph (e) of this section.

(ii) *General limitation.* An allocation of gross proceeds of an issue to an expenditure must involve a reasonably current outlay of cash and must carry out a governmental purpose of the issue. Thus, an investment in a nonpurpose investment is not an expenditure. A "reasonably current outlay of cash" means an outlay, by check mailed, or available funds advanced, that is reasonably expected to occur not later than 5 banking days after the allocation of gross proceeds to the expenditure.

(iii) *Deviations from general accounting method.* For purposes of paragraph (d)(1) of this section, a general accounting method for expenditures does not fail to be a reasonable, consistently applied accounting method because the issuer uses a different accounting method to account for a particular expenditure, provided that this use of a different accounting method is for a bona fide purpose and is not an artifice or device under § 1.148–9T(g) to avoid, in whole or in part, the arbitrage rebate requirements. For example, a reason that may justify an issuer's deviation from its general accounting method for expenditures in appropriate circumstances is to avoid forfeiture of a grant.

(2) *Expenditures of gross proceeds invested in purpose investments*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, gross proceeds of an issue invested in a purpose investment are allocated to an expenditure on the date on which the conduit borrower under the purpose investment expends the proceeds to carry out the governmental purpose of the issue. For example, if an issuer lends the gross proceeds of an issue to a conduit borrower under a purpose investment to carry out the governmental purpose of providing an exempt facility under section 142, the gross proceeds are allocated to an expenditure on the date on which the conduit borrower expends the gross proceeds on costs of the exempt facility.

(ii) *Exception for qualifed owner-occupied residence loans and qualified student loans.* If gross proceeds of an issue are invested in a purpose investment that is a qualified loan for an owner-occupied residence under section 143 or a qualified student loan under section 144(b), those gross proceeds are allocated to an expenditure for the governmental purpose of the issue on the date on which the issuer invests gross proceeds in that purpose investment.

(3) *Expenditures for working capital purposes*—(i) *In general.* Except as provided in paragraph (d)(3)(ii) of this section, gross proceeds of an issue and available amounts (as defined in paragraph (d)(3)(iii) of this section) may be allocated to working capital expenditures only under a consistently applied "gross-proceeds-spent-last" method. Gross proceeds may be allocated to working capital expenditures as of any date only to the extent that working capital expenditures exceed available amounts calculated as of that date.

(ii) *De minimis exception for start-up projects*—(A) *Qualifed working capital expenditures.* Gross proceeds of an issue may be allocated to qualified working capital expenditures described in this paragraph (d)(3)(ii) under any reasonable, consistently applied accounting method, without regard to other available amounts (e.g., a "gross-proceeds-spent-first" method or a "specific-tracing" method). Working capital expenditures are qualified working capital expenditures only if they directly relate to a project described in paragraph (d)(3)(ii)(B) and they do not exceed the amount specified in paragraph (d)(3)(ii)(C).

(B) *Definition of project.* For purposes of paragraph (d)(3)(ii)(A) of this section, "project" means a newly-constructed or reconstructed operating facility that consists of real property or tangible personal property and that is reasonably expected, after an initial start-up period, to produce sufficient operating revenues to pay substantially all costs of operating the project, including maintenance, other working capital costs, and debt service.

(c) *Amount limitation.* Amounts are qualified working capital expenditures only if they do not exceed the lesser of the following amounts—

(*1*) The amount reasonably expected to be required to operate the project during the one-year period after it is placed in service; or

(*2*) 5 percent of the reasonably expected cost of the project.

(iii) *Definition of available amount*—(A) *In general.* For purposes of this paragraph (d)(3), "available amount" means any amount available to an issuer for working capital expenditure purposes (as defined in paragraph (a)(4) of this section), as further specified in

this paragraph (d)(3)(iii), but the term does not include gross proceeds of the issue. "Available amount" includes cash, investments, and other amounts held in accounts or otherwise by the issuer or any member of the same controlled group (as defined in § 1.150–1(f)) as the issuer if those amounts may be used by the issuer for working capital expenditures without legislative or judicial action and without a legislative, judicial, or contractual requirement that those amounts be reimbursed.

(B) *Permitted working capital reserve.* In determining whether an amount is available, a reasonable working capital reserve is treated as not available. The determination of whether a working capital reserve is reasonable is based on all the facts and circumstances regarding the issuer's operations and working capital expenditure needs. Absent extraordinary circumstances, a reasonable working capital reserve generally should not exceed an amount equal to 10 percent of the issuer's actual working capital expenditures in the previous fiscal year.

(C) *Attempts to keep amounts from being available.* In determining whether an amount is available to an issuer, any requirement that the issuer reimburse the amount and any action or lack of action by or on behalf of the issuer is disregarded if that requirement, action, or lack of action is an artifice or device under § 1.148–9T(g) to prevent amounts from being available for working capital expenditures for purposes of this paragraph (d)(3).

(iv) *Other rules related to working capital expenditures*—(A) *Statutory safe harbor for tax and revenue anticipation bond expenditures.* For purposes of section 148(f)(4)(B)(iii)(II), "amount available" has the same meaning as in paragraph (d)(3)(iii) of this section, except that the determination is made without regard to the otherwise-permitted reasonable working capital reserve.

(B) *Deemed economic life of working capital expenditures.* For purposes of section 147(b), all working capital expenditures are deemed to have an economic life of 364 days.

(4) *Expenditures for grants*—(i) *In general.* Except as provided in paragraph (d)(4)(ii) of this section, gross proceeds of an issue that are used to make a grant are allocated to an expenditure on the date on which the grantee allocates the grant moneys to an expenditure to carry out the governmental purpose for which the grant was made. For purposes of this paragraph (d)(4)(i), the allocation and accounting rules of this section apply to a grantee of gross proceeds of an issue to the same extent as they apply to the issuer. Accordingly, a grantee must comply with this section to account for any gross proceeds of an issue received by it under a grant.

(ii) *Special exception for certain grants.* Gross proceeds of an issue that are used to make a grant are allocated to an expenditure for the governmental purpose of the issue on the date on which the grantor transfers the grant moneys to the grantee if—

(A) The grantor and the grantee are not members of the same controlled group (as defined in § 1.150–1(f));

(B) The grantee reasonably expects to use the grant moneys for expenditures other than working capital expenditures;

(C) The grantee reasonably expects to use at least 90 percent of the grant moneys for uses other than any private business use (as defined in section 141(b)(6)); and

(D) The grant is not made as an artifice or device under § 1.148–9T(g) to avoid, in whole or in part, the arbitrage rebate requirements or otherwise to avoid the effect of any other limitations under sections 103 and 141–150.

(iii) *Characterization of repayments of grants.* If, for any reason, any amount of a grant financed by gross proceeds of an issue is repaid to the grantor, the amount of the repayment is treated as unspent sale proceeds (as defined in § 1.148–6T(d)(4)) of the issue as of the date of the repayment.

(5) *Expenditures for reimbursement purposes.* Section 1.103–18 applies for purposes of allocating gross proceeds of issues of reimbursement bonds (as defined in § 1.103–18)), to certain expenditures.

(e) *Special rules for commingled funds*—(1) *In general.* For purposes of this section, an accounting method used by a commingled fund to account for gross proceeds of an issue in a commingled fund is reasonable only if the accounting method satisfies all other requirements of this section and the special accounting requirements of this paragraph (e).

(2) *Investments held by a commingled fund*—(i) *In general.* All payments and receipts with respect to investments held by a commingled fund must be—

(A) Computed pursuant to a reasonable, consistently applied accounting method that complies with paragraph (c) of this section, and

(B) Allocated among the different investors (as defined in paragraph (e)(2)(iii) of this section) in the fund in accordance with a consistently applied, reasonable ratable allocation method.

(ii) *Permitted ratable allocation methods.* Reasonable ratable allocation methods for allocating payments and receipts with respect to investments held by a commingled fund among its different investors include, without limitation, methods that allocate these items in proportion to either—

(A) The average daily balances (as defined in paragraph (e)(2)(iii) of this section) of the amounts in the commingled fund from different investors during a computation period (as prescribed by paragraph (e)(3) of this section) (e.g., average daily balances during a daily, weekly, monthly, or quarterly computation period), or

(B) The average of the beginning and ending balances of the amounts in the commingled fund from different investors for a computation period that does not exceed one month.

(iii) *Definition of investor.* For purposes of this paragraph (e), the term "investor" means each different source of funds invested in a commingled fund. The same person is treated as a different investor with respect to each different source of funds invested in the commingled fund. For example, if a city invests gross proceeds of an issue and tax revenues in a commingled fund, it is treated as a different investor with respect to these two different sources of funds invested in the commingled fund.

(iv) *Definition of average daily balance.* For any period of time, the average daily balance of an amount in a commingled fund from a particular investor is the sum of the amounts in the commingled fund from that investor for each day in the period divided by the number of days in the period.

(3) *Certain expenditures involving a commingled fund.* Funds invested in the commingled fund from different investors may be allocated directly to expenditures for governmental purposes pursuant to a reasonable, consistently applied accounting method that complies with paragraph (d) of this section. If a ratable allocation method is used to allocate expenditures from the commingled fund under this paragraph (e)(3), it must be the same ratable allocation method as that used to allocate payments and receipts with respect to investments in the commingled fund under paragraph (e)(2) of this section.

(4) *Computation periods.* A commingled fund must adopt a fiscal year. Absent this adoption, a commingled fund is deemed to adopt the calendar year as its fiscal year. Not less frequently than at the end of each computation period within its fiscal year, the commingled fund must compute and allocate to each investor all payments and receipts with respect to investments, including accrued

income, gains or losses realized from sales or other dispositions of investments, and expenditures. A commingled fund may use as its computation period any consistent time period within its fiscal year that does not exceed three months (e.g., a daily, weekly, monthly, or quarterly computation period), but it must consistently use that time period.

(5) *Unrealized gains and losses on investments of a commingled fund*—(i) *Commingled funds with shorter-term investment portfolios.* If the weighted average maturity (as defined in paragraph (e)(5)(iii) of this section) of all investments held by a commingled fund during a particular fiscal year does not exceed one year, and the investments held by the commingled fund during that fiscal year consist exclusively of debt obligations, then the commingled fund is not required to satisfy the mark-to-market requirement of paragraph (e)(5)(ii) of this section.

(ii) *Mark-to-market requirement for commingled funds with longer-term investment portfolios.* Except as provided in paragraph (e)(5)(i) of this section, a commingled fund must satisfy the mark-to-market requirement in either paragraph (e)(5)(ii)(A) or (e)(5)(ii)(B) or this section.

(A) *Mark-to-market annually.* The commingled fund treats all its investments as if sold at fair market value (as defined in § 1.148–2T(d)), on the last day of the fiscal year. The net gains or losses from these deemed sales of investments must be allocated to all investors of the commingled fund during that fiscal year. That allocation must use the same ratable method used to allocate other investment items under paragraph (e)(1) of this section.

(B) *Mark-to-market for each interim computation period.* The commingled fund consistently treats its investments as if sold at fair market value on the last day of each computation period (as defined in paragraph (e)(4) of this section). The net gains or losses from these deemed sales must be allocated to all investors of the commingled fund during that computation period. That allocation must use the same ratable method used to allocate other investment items under paragraph (e)(1) of this section.

(iii) *Definition of weighted average maturity.* For any period of time, the weighted average maturity of the investments held by a commingled fund is the sum of the average maturities of the investments as of each day in the period divided by the number of days in the period. For any day, the average maturity of the investments of a commingled fund is the amount determined by—

(A) Multiplying the amount of the investment by its remaining maturity expressed in years (and any fraction thereof);

(B) Adding the products determined in paragraph (e)(4)(iii)(A) of this section; and

(C) Dividing the sum determined in paragraph (e)(4)(iii)(B) of this section by the aggregate amount of investments of the commingled fund for that day.

(6) *Administrative costs of a commingled fund*—(i) *In general.* Except as provided in paragraph (e)(6)(ii) of this section, administrative costs are not taken into account for purposes of determining payments and receipts under § 1.148–2T(b)(3) and § 1.148–2T(b)(2) with respect to investments held by a commingled fund. Thus, administrative costs generally do not increase the costs for investments or reduce the income from investments held by the commingled fund that are passed through to its investors. Accordingly, the income from investments held by the commingled fund must be "grossed up" by the fund's nonqualified administrative costs before being allocated to investors.

(ii) *Exception for qualified administrative costs*—(A) *In general.* In determining payments and receipts with respect to investments under § 1.148–2T(b)(3) and § 1.148–2T(b)(2) with respect to investments held by a commingled fund, qualified administrative costs of investments of a commingled fund are taken into account. Costs are qualified administrative costs only if they are paid or incurred for items described in paragraph (e)(6)(ii)(B) of this section and only to the extent they do not exceed the limitation specified in paragraph (e)(6)(ii)(C) of this section.

(B) *Use limitation.* Costs are described in this paragraph (e)(6)(ii)(B) if they are paid or incurred solely as direct administrative costs of the commingled fund, such as audit, safekeeping, custody, brokerage, recordkeeping, and similar costs and expenses.

(c) *Amount limitation.* Costs satisfy the limitation in this paragraph (e)(6)(ii)(C) if they do not exceed the sum of the following—

(*1*) .25 percent of that portion of the average daily balance (as defined in paragraph (e)(2)(iii) of this section) of amounts invested in the commingled fund for the fiscal year not in excess of $10,000,000, plus

(*2*) .125 percent of that portion of the average daily balance in excess of $10,000,000.

(7) *Allocations among issues of commingled funds serving as common reserve funds or sinking funds*—(i) *Permitted ratable allocation methods.* Except as otherwise required by paragraph (b)(2) or (b)(3) of this section, if a commingled fund serves as a common reserve fund, replacement fund, or sinking fund for two or more issues, investments held by that commingled fund must be allocated, as of any required date of allocation, ratably among the applicable issues sharing the commingled fund in accordance with one of the following proportions—

(A) *Outstanding principal amount.* The outstanding principal amounts of the issues as of the date of allocation, except that in the case of any bond of an issue that was issued with original issue discount or premium in excess of one-fourth of one percent multiplied by the number of complete years to maturity of issue, the present value of that bond must be used in lieu of its outstanding principal amount.

(B) *Present value.* The present values of the issues as of the date of the allocation determined in accordance with § 1.148–3T(b)(3).

(C) *Aggregate one-year debt service.* The aggregate amount of debt service payable on the issues covered by the commingled fund during the ensuing one-year period.

(ii) *Frequency of allocations.* An issuer must make any necessary allocations required by this paragraph (e)(7) not less frequently than each date on which a computation of the universal cap is required under paragraph (b)(3) of this section. In addition, an issuer must make allocations on each date that it adds an issue to the coverage of the commingled fund described in this paragraph (e)(7). This paragraph (e)(7) does not apply to a bona fide debt service fund (as defined in § 1.103–13(b)(12)).

(8) *Expenditures of certain commingled investment proceeds of governmental issues.* If an issue is neither a private activity bond issue under section 141 nor a refunding issue, amounts representing investment proceeds (as defined in § 1.148–6T(d)(5)) of the issue are treated as allocated to expenditures for a governmental purpose when both of the following requirements are satisfied—

(i) *Commingled with certain governmental revenues.* The amounts are deposited in a commingled fund with substantial tax or other revenues from governmental operations of the issuer.

(ii) *Reasonably expected to be spent within six months.* The amounts are reasonably expected to be spent for

governmental purposes within a period not to exceed six months from the date of the commingling.

(f) *Consequences of certain failures to use permitted accounting methods.* If the Commissioner determines that a failure to account for gross proceeds of an issue in accordance with this section is not due to willful neglect, the Commissioner may prescribe a reasonable accounting method for gross proceeds of the issue that satisfies this section in lieu of or in conjunction with determining other consequences of that failure. Regarding the consequences of certain failures to comply with the arbitrage rebate requirement that are not due to willful neglect generally, see § 1.148–1T(c).

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–1943 Filed 1–27–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[INTL–0372–88; INTL–0401–88]

RIN 1545–AM15, 1545–AL80

Intercompany Transfer Pricing and Cost Sharing Regulations Under Section 482

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to intercompany transfer pricing and cost sharing under section 482 of the Internal Revenue Code. The Tax Reform Act of 1986 amended section 482. These regulations would provide guidance implementing the amendment.

DATES: Comments and requests for a public hearing must be received by May 29, 1992.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL–0372–88) (for comments on cost sharing provisions) or (INTL–0401–88) (for comments on other provisions), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Howard Berger, with respect to all provisions except cost sharing, and Lisa Sams, with respect to cost sharing provisions, both of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL–0372–88 and INTL–0401–88) (202–377–9059 (Berger) and 202–874–1490 (Sams), not toll-free calls).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in these regulations is in § 1.482–2 (g)(2)(i) and (6). This information is required by the Internal Revenue Service to verify the existence of a qualified cost sharing arrangement and to determine the appropriateness of each participant's cost share. The likely respondents are businesses or other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require more or less time, depending on their particular circumstances.

Estimated total annual reporting and/or recordkeeping burden: 4,250 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 10 hours, depending on individual circumstances, with an estimated average of 8.5 hours.

Estimated number of respondents and/or recordkeepers: 500.

Effective Date

These regulations are generally proposed to be effective for taxable years beginning after December 31, 1992. However, they will not apply with respect to transfers made or licenses granted to foreign persons before November 17, 1985, or before August 17, 1986 for transfers or licenses to others. Nevertheless, they will apply with respect to transfers or licenses before such dates if, with respect to property transferred pursuant to an earlier and continuing transfer agreement, such property was not in existence or owned by the taxpayer on such date. Although these proposed regulations are generally effective for taxable years after December 31, 1992, the final sentence of section 482 (requiring that the income with respect to transfers or licenses of intangible property be commensurate with the income attributable to the intangible) is generally effective for taxable years beginning after December 31, 1986. For the period prior to the proposed effective date of these regulations, the final sentence of section 482 shall be applied using any reasonable method not inconsistent with the statute. The Internal Revenue Service considers a method that applies these proposed regulations or their general principles to be a reasonable method. A transitional rule is provided at § 1.482–2(g)(8) with respect to cost sharing arrangements entered into under current § 1.482–2(d)(4) in prior taxable years.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 482 of the Internal Revenue Code. Section 482 was amended by the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 2561, *et seq.*

Explanation of Provisions

Introduction

The Tax Reform Act of 1986 ("the Act") amended section 482, to require that consideration for intangible property be commensurate with the income attributable to the intangible. The legislative history of the Act states that this change was intended to assure that the division of income between related parties reasonably reflects the economic activities each undertakes. See H.R. Rep. 99–281, 99th Cong., 2d Sess. (1986) at II–637. The legislative history also expresses concern that insufficiently stringent standards previously had been used in determining whether an uncontrolled transfer is comparable to a controlled transfer. The legislative history specifically notes concern about the improper use of comparables with regard to "high profit-potential intangibles," noting that it is especially difficult to obtain realistic comparables with respect to such intangibles because they seldom if ever are transferred to unrelated parties. See H.R. Rep. 99–426, 99th Cong., 1st Sess. (1985) at 424.

The Conference Committee report on the Act recommended that the Internal Revenue Service (the "Service") conduct a comprehensive study of transfer pricing and consider whether regulations under section 482 should be modified. In response, the Treasury Department and the Service issued a

study of intercompany transfer pricing (Notice 88–123, 1988–2 C.B. 458, the "White Paper") on October 18, 1988. Although the White Paper primarily considered transfers of intangibles, it also addressed the application of section 482 to other transactions. The White Paper specifically discussed the need to modify the regulations dealing with transfers of tangible property to take into account the common incorporation of the value of intangibles into tangible property. As described in greater detail below, such changes are found in amendments to § 1.482–2(e).

The White Paper proposed two approaches for determining the proper charge for an intangible under the commensurate with income standard. The first was a pricing appfoach. It included two methods: The exact comparable method and the inexact comparable method. The second was an income approach. It also included two methods: The basic arm's length return method ("BALRM") and BALRM with profit split. The BALRM generally allocated income to the parties to a transaction by assigning industry average rates of return to their assets.

Many comments on the White Paper criticized the prominent role given to BALRM, arguing that BALRM would be difficult to apply because the information BALRM required generally would not be available, would be unfair to corporations whose rates of return vary considerably from the average, and would allocate too much income to U.S. entities. The Service also was urged to assign a greater role to inexact comparable transactions and to reconsider the use of safe harbor rules. These comments were taken into account in the development of the three pricing methods described in § 1.482–2 (d) and (f) of these proposed regulations.

Both the exact comparable and inexact comparable methods, like the methods for determining an appropriate price described elsewhere in § 1.482–2, are intended to apply the general standard of § 1.482–1 (*i.e.*, the price of an uncontrolled taxpayer dealing at arm's length with another uncontrolled taxpayer) to specific situations. They should not be applied mechanically or without regard for this purpose. Thus, § 1.482–1(b)(1) has been modified to clarify that its principles are intended to guide application of the specific methods described in § 1.482–2.

The Conference Committee report also noted that Congress did not intend to preclude the use of a cost sharing arrangement to allocate income attributable to an intangible among related parties provided that such an arrangement is consistent with the requirement that the allocation of income among related parties reasonably reflect the actual economic activity undertaken by each. To satisfy this requirement, each participant should bear an appropriate portion of all research and development costs on unsuccessful as well as successful products within an applicable product area, each participant's cost share generally should be proportionate to profit determined before deduction for research and development, and an appropriate return should be provided to a participant that effectively put its funds at greater risk than other participants. See H.R. Rep. 99–281, 99th Cong., 2d Sess. (1986) at II–638.

The White Paper concluded that cost sharing arrangements should have standard terms. For instance, the White Paper stated that most shared research and development should be conducted with respect to products that were within the same three-digit Standard Industrial Classification code. This proposal was intended to prevent a U.S. participant from paying for unsuccessful research while receiving little or no benefit from successful research, and to prevent a foreign participant from failing to pay for unsuccessful research while receiving significant benefits from successful research. Other requirements proposed by the White Paper included the assignment to each participant of exclusive rights in developed intangible property, the restriction of membership in a cost sharing arrangement to those in a position to exploit developed intangibles by means of the manufacture of products, and the exclusion of marketing intangibles from the scope of an arrangement's research and development.

Comments on these proposals maintained that the White Paper's approach would unduly restrict the ability of taxpayers to enter into a cost sharing arrangement. Additional comments raised concerns with respect to the White Paper's proposed method for measuring anticipated benefits in computing cost shares (including assignment of exclusive geographic rights), the adjustments of cost shares in subsequent years to reflect changes in subsequent benefits, the exclusion of non-manufacturers as eligible participants, the identification of costs that must be shared pursuant to the arrangement, and buy-in or buy-out rules that govern cases where a portion of the intangible is considered to be transferred (including whether going concern value should be included and whether taxpayers should be permitted flexibility in selecting the form of payment for a buy-in or buy-out). Several comments suggested that the Service model new cost sharing regulations on rules proposed in 1966 and withdrawn in 1968. These suggestions were taken into account in developing § 1.482–2 (g).

Summary of Proposed Regulations

Section 1.482–1(b)(1)

Section 1.482–1(b)(1) coordinates existing regulations that explain the scope and purpose of regulations under section 482 with new provisions interpreting the commensurate with income standard. Section 1.482–1(b)(1) also clarifies the general meaning of the arm's length standard and the relationship of § 1.482–1 to § 1.482–2. As revised, § 1.482–1(b)(1) provides that the test to be applied in all instances is whether uncontrolled taxpayers exercising sound business judgment would have agreed to the same terms given the actual circumstances under which controlled taxpayers dealt.

For example, closely related transfers of tangible and intangible property, such as "round-trip" transactions, should be viewed together in determining whether the price of each transaction is arm's length. A round-trip transaction typically begins with a license of an intangible to a related party. The licensee uses the intangible to produce tangible property and sells the tangible property either to the licensor of the intangible or to the licensor's affiliates. Rather than analyzing each of these transactions independently, the proposed regulations allow the district director to consider the price charged for the tangible property as one of the circumstances that should be taken into account in determining whether an uncontrolled taxpayer would have agreed to the same consideration for the intangible property.

Section 1.482–2(d)

Section 1.482–2(d) replaces current rules applicable to intangible property. Section 1.482–2 (d)(1)(i) provides that an arm's length consideration for an intangible must be commensurate with the income attributable to it. Section 1.482–2(d)(1)(ii) defines the terms intangible, transfer, controlled transfer, and uncontrolled transfer. Section 1.482–2(d)(1)(iii) provides that paragraph (d) applies to any transaction that in substance is a transfer of an intangible, regardless of the form of the transaction.

Section 1.482–2(d)(2) outlines how an arm's length consideration for an intangible is determined. Section 1.482–2(d)(2)(iii) prescribes the priority of the methods for determining an arm's length

consideration. Ordinarily, the method that relies on the most complete and accurate data and requires the fewest adjustments will most accurately reflect the amount of consideration that an unrelated taxpayer would have charged for the same intangible under the same circumstances. Highest priority therefore is assigned to the matching transaction method. Second priority is assigned to the comparable adjustable transaction method. If those methods cannot be applied, then an arm's length consideration is determined under the comparable profit method. Under § 1.482–2(d)(2)(iv), all relevant facts and circumstances must be considered in applying these methods, including information from the taxable year under review, and from taxable years before and after that taxable year. The regulations do not require the Service or the taxpayer to demonstrate the inapplicability of a higher priority method before applying a lower priority method. However, either the Service or the taxpayer may establish the applicability of a higher priority method.

Section 1.482–2(d)(3) describes the matching transaction method. A matching transaction is an uncontrolled transfer of the same intangible under the same, or substantially similar, economic conditions and contractual terms.

The intangible involved in a controlled transfer will be considered the same as the intangible involved in an uncontrolled transfer only if the protected interest or body of knowledge that is subject to exploitation through the use of each intangible are identical. Geographic or use restrictions are considered differences in contractual terms, rather than differences in the interests transferred.

Section 1.482–2(d)(3)(iii) provides guidance for determining whether the economic circumstances in the controlled and uncontrolled transfers are substantially similar. Economic factors that could affect the amount of consideration charged in the two transactions will be considered. Section 1.482–2(d)(3)(iv) provides guidance for determining whether the contractual terms of the controlled and uncontrolled terms are substantially similar. Contractual terms that could affect the amount of consideration charged in the two transactions will be considered.

Under § 1.482–2(d)(3)(v), adjustments will be made when the economic conditions and contractual terms of controlled and uncontrolled transactions are substantially similar but are not identical. Adjustments may be made to compensate only for a limited number of differences that both alone and combined have only a minor effect on the consideration charged in the uncontrolled transfer. If other adjustments would be required to compensate for differences, the economic conditions and contractual terms are not substantially similar and the matching transaction method does not apply.

Section 1.482–2 (d)(4) describes the comparable adjustable transaction method. Under this method an arm's length consideration is determined with reference to the amount of consideration charged in an uncontrolled transfer of the same or a similar intangible under adjustable circumstances, subject to verification by the comparable profit interval described in § 1.482–2(f). Verification of a comparable adjustable transaction by reference to the comparable profit interval is intended to ensure that adjustments under this method do not produce results that are inconsistent with the dealings of uncontrolled taxpayers. The same factors considered under the matching transaction method in determining whether economic conditions and contractual terms are substantially similar are considered in determining whether the economic conditions and contractual terms of controlled and uncontrolled transactions are adjustable. Contractual terms and economic conditions will be considered adjustable if they are sufficiently similar that the effect of any differences on the consideration charged in the uncontrolled transfer can be determined with reasonable accuracy.

The consideration charged in an uncontrolled transfer must be adjusted to compensate for material differences between the controlled and uncontrolled transfers. When more than one comparable adjustable transaction is available, an arm's length consideration should be determined with reference to the transaction for which the necessary adjustments can be most accurately determined.

Section 1.482–2(d)(5) describes the comparable profit method, which applies to determine an arm's length consideration when the matching and comparable adjustable transaction methods are inapplicable. This method requires a comparison of the operating income that results from the consideration actually charged in a controlled transfer ("reported operating income") with the operating incomes of similar taxpayers that are uncontrolled. See § 1.482–2(d)(5)(v) for the definition of "reported operating income." The consideration charged in the controlled transfer ordinarily will be considered an arm's length amount when reported operating income falls within the comparable profit interval but will not be considered arm's length, and may be adjusted, when reported operating income falls outside the comparable profit interval. In the latter case, the transfer price generally may be adjusted to produce operating income that is at the "most appropriate point" in the comparable profit interval. A special rule allows a smaller adjustment to be made when reported operating income is outside of, but corresponds closely to, the comparable profit interval. This special rule is intended to narrow the scope of controversies when reported operating income does not vary significantly from results that are within the comparable profit interval. Section 1.482–2(d)(5)(iv) provides limited exceptions to this special rule.

Section 1.482–2(d)(6) provides guidance regarding transfers of intangibles for more than one taxable year. Section 1.482–2(d)(6)(i) provides that all relevant facts throughout the period the intangible is used may be considered. Ordinarily an adjustment may be made with respect to an intangible in the taxable year under examination even though the charge for the intangible was arm's length in an earlier year. Section 1.482–2(d)(6)(ii) provides three exceptions to this rule. The first exception applies only in the case of the matching or comparable adjustable transaction methods. Generally, an allocation may not be made under those methods if an arm's length consideration was charged for the intangible in the year it was transferred, operating income remained in the comparable profit interval for all subsequent years (including the year under examination), and there has been no more than a minor variation in the amount of operating income attributable to the transferred intangible.

The second exception requires that the transferee paid a royalty in exchange for the use of the intangible, the intangible has been used for at least 10 years since the date of its initial transfer, and the royalty was determined to be an arm's length royalty for each year of its use throughout the 10-year period under the matching or comparable adjustable transaction method.

The third exception requires that the relevant agreement contained no provision for adjustments to the royalty to reflect unanticipated changes in profitability, the use of the intangible was limited in a commercially reasonable way, and the transferee's operating income has moved outside the comparable profit interval due to changes in circumstances that were

beyond the control of the taxpayers and neither anticipated nor reasonably foreseeable.

Section 1.482–2(d)(7), which will provide rules concerning the treatment of lump sum payments, is reserved. Chapter Six of the White Paper took the position that taxpayers may structure transactions with lump sum payments provided the economic consequences of a lump sum payment resemble those under a periodic payment approach. Chapter 8 of the White Paper suggested that a lump sum payment be treated as an open transaction, with the lump sum invested in a hypothetical certificate of deposit from which arm's length consideration would be subtracted year by year. Another approach would treat the lump sum as the present value of a stream of payments projected by the taxpayer. An adjustment could be made in the year of transfer to the extent the lump sum differed from the properly computed present value of the stream. Annual adjustments could be made to the extent the actual arm's length amount for a particular year differed from the projection for that year. The Service invites comments on these, or any other, approaches to lump sum payments.

Section 1.482–2(d)(8) clarifies the "developer-assister" rules now found in § 1.482–2(d)(1)(ii). New examples are provided illustrating the application of these rules to the development and enhancement of marketing intangibles.

Section 1.482–2(e)

Section 1.482–2(e)(1) modifies the rules applicable to sales of tangible property. Although the commensurate with income amendment to section 482 in the Act addressed the transfer of intangible property, the Conference Report also directed that "careful consideration be given to whether the existing regulations could be modified in any respect." H.R. Rep. 99–841, 99th Cong., 2d Sess. (1986) at II–637–638. The regulations extend the use of the comparable profit interval to the resale price, cost plus and so-called "fourth" methods (§§ 1.482–2(e)(1) (ii)–(iv)), which are employed when the comparable uncontrolled price method is inapplicable. When one of these methods is employed, the regulations provide that the comparable profit interval is to serve as a check on the result indicated by such method; if the result produced by the method does not fall within the comparable profit interval, then the result should be disregarded for purposes of determining an arm's length price.

This change is necessary because applying the comparable profit interval solely to transfers of intangibles would create an artificial and unwarranted distinction between the treatment of tangible and intangible property, and would lead to disputes in cases involving tangible property incorporating an intangible. Adoption of similar transfer pricing rules for the tangible and intangible components of the transferred property will eliminate or reduce the need to allocate the property's value between its tangible and intangible components and then to determine the profits attributable to each such component.

A similar allocation and valuation problem may arise in cases in which the transfer of services in indistinguishable from the transfer of intangible property. See *Hospital Corporation of America* v. *Commissioner*, 81 T.C. 520 (1983). The Service solicits comments on how the services regulations (§ 1.482–2(b)) should incorporate the commensurate with income standard.

These regulations modify the priority of methods under § 1.482–2(e). The comparable uncontrolled price method retains the highest priority. Second priority is given either to the resale price method or the cost plus method, depending on which of the two methods more accurately produces an arm's length price in a particular situation. A price determined under either the resale price method or the cost plus method will be considered arm's length only if it yields a level of operating income that is within the comparable profit interval. Other methods still may be applied, but such other methods also must yield a level of operating income that is within the comparable profit interval. The regulations do not require the Service or the taxpayer to demonstrate the inapplicability of a higher priority method before applying a lower priority method. However, either the Service or the taxpayer may establish the applicability of a higher priority method.

The legislative history expressed concern with judicial interpretations of the comparable uncontrolled price method. These regulations clarify that adjustments must be made to comparables when there are differences between them, in order to use them as comparables.

Section 1.482–2(f)

Section 1.482–2(f) describes the comparable profit interval. In general, the comparable profit interval should provide taxpayers with greater certainty in establishing their intercompany transfer prices. Many taxpayers should be able to apply objective measures of profitability (referred to as profit level indicators) of similarly situated parties to their own financial data to develop their own estimates of the comparable profit interval and confirm that their transfer prices produce results that fall within the comparable profit interval.

Section 1.482–2(f)(1) states that the comparable profit interval identifies levels of profits that the appropriate controlled taxpayer whose operating income is tested (the "tested party") would have earned if its profit level indicators had been equivalent to those of similarly situated uncontrolled taxpayers. Profit level indicators derived from uncontrolled taxpayers are applied to the financial data of the tested party to yield the "constructive operating income" that the tested party would have earned. The comparable profit interval then is derived from the constructive operating incomes that converge. If necessary, the most appropriate point within the comparable profit interval is selected.

Section 1.482–2(f)(2) provides that data used in constructing the comparable profit interval normally should be based on actual results before, during, and after the taxable year under examination.

Section 1.482–2(f)(3) identifies six steps that must be followed in developing a comparable profit interval. The steps are interdependent and, in some cases, certain steps may have to be repeated to match the availability of data used in later steps with the determination made in an earlier step.

Section 1.482–2(f)(4) provides rules for the first step: selecting the appropriate controlled taxpayer whose operating income should be tested. In the case of the transfer of an intangible, the tested party normally will be the transferee.

Section 1.482–2(f)(5) provides rules for the second step: determining the "applicable business classification" of the tested party. The applicable business classification normally includes the operations of the tested party that relate to transactions with controlled taxpayers, which are referred to as the "tested operations." The tested operations then are compared to the operations of uncontrolled taxpayers. If possible, operations of uncontrolled taxpayers are selected that closely correspond to the tested operations. If it is not possible to obtain reliable data regarding uncontrolled taxpayers with respect to products that closely correspond to the products related to the tested operations, then the scope of the applicable business classification is broadened.

Section 1.482–2(f)(6) provides rules for the third step: computing the constructive operating incomes that are

used to determine the comparable profit interval. The constructive operating incomes are derived by applying profit level indicators obtained from a selection of uncontrolled taxpayers in the applicable business classification to financial data relating to the tested operations.

Profit level indicators should be selected that provide the most reliable basis for comparison under the particular facts and circumstances. Some profit level indicators will be more reliable in particular types of cases than others. Section 1.482–2(f)(6)(iii)(C) identifies a number of profit level indicators that may be used in appropriate cases. These include: Rate of return on assets, ratio of operating income to sales, ratio of gross income to expenses, and profit splits. Before application of a profit level indicator to the data of the tested party, the data must be adjusted to reflect (1) any significant differences between the business practices of the tested party and the uncontrolled taxpayers, and (2) any other allocations under section 482. The Service invites comment on the specified profit level indicators and on other profit level indicators and the circumstances in which they might be used.

Section 1.482–2(f)(7) describes the fourth step: determining the comparable profit interval. The comparable profit interval normally is derived from a set of constructive operating incomes that are computed by applying various profit level indicators obtained from uncontrolled taxpayers to the financial data of the tested party. Data that tends to converge is used to form an interval that is reasonably restricted in size, and data that diverges significantly from other data is excluded from the interval.

Two tests are generally used to identify converging data. First, when constructive operating incomes computed with different profit level indicators from the same uncontrolled taxpayer converge, such data generally should be included within the comparable profit interval. Such convergence indicates that the uncontrolled taxpayer from which the data was drawn is comparable to the tested party. If the constructive operating incomes drawn from a single uncontrolled taxpayer diverge, such data generally should be excluded from the interval unless adjustments can be made that account for this lack of uniformity. The second type of convergence considered is convergence of constructive operating incomes obtained from one or more profit level indicators from different uncontrolled taxpayers. In determining both types of convergence, the reliability of all data must be considered, and greater weight accorded to data that is more reliable. If the number of uncontrolled taxpayers whose operations correspond to the applicable business classification is large enough to permit the use of valid statistical techniques, then convergence must be determined by using those techniques to identify a reasonably narrow area of concentration among all the constructive operating incomes computed. The Service solicits comments concerning which statistical techniques would be most appropriate for determining such an area of concentration.

Section 1.482–2(f)(8) describes the fifth step: selecting the most appropriate point within the comparable profit interval, when necessary. (It is not necessary to select the most appropriate point, for example, when the comparable profit method applies and the reported operating income was within the comparable profit interval.) If statistical techniques were used to construct the comparable profit interval, then the most appropriate point will be determined by using measures of central tendency. The Service solicits comments concerning which statistical methods would provide the most appropriate measures of central tendency. If statistical techniques were not used to construct the comparable profit interval, the most appropriate point will be determined by considering a number of factors relating to the comparability and reliability of the underlying data. These factors include similarity of functions performed by the tested party and the uncontrolled taxpayer, similarity of products or services, the extent to which different profit level indicators produce converging amounts of constructive operating income, the number and accuracy of the adjustments required to apply a profit level indicator to uncontrolled taxpayers, the extent to which the profit level indicator meets the reliability factors set forth in § 1.482–2(f)(7)(ii), and the extent to which the profit level indicator produces converging results when applied to the uncontrolled taxpayers.

Section 1.482–2(f)(9) describes the sixth step: determining the transfer price for the controlled transaction, when necessary. The transfer price is determined by adjusting the actual charge in the controlled transaction to produce an operating income for the tested party that equals the constructive operating income corresponding to the most appropriate point in the interval.

Section 1.482–2(g)

Section 1.482–2(g) provides rules for qualified cost sharing arrangements. In general, the regulations require that the structure of a cost sharing arrangement reflect the following general principles—

1. Each participant must have a reasonable expectation of using developed intangibles in the active conduct of its trade or business;

2. The costs of all related intangible development must be shared;

3. Each participant's share of the costs of developing intangibles must be proportionate to its share of the income attributable to developed intangibles; and

4. Participants must compensate the owners or developers of intangible property an arm's length amount for the use of that property, unless the property is developed by the participants through the cost sharing arrangement. Likewise, if a participant bears a portion of the costs incurred in developing an intangible, and subsequently transfers or abandons its rights in the intangible, the remaining participants must compensate the departing participant.

Section 1.482–2(g)(1) states that an intangible development cost sharing arrangement will not be considered a qualified arrangement unless it meets the requirements of § 1.482–2(g)(2), and a member of a controlled group will not be eligible to participate in a cost sharing arrangement unless the member meets the requirements of § 1.482–2(g)(3). If the requirements of § 1.482–2(g) (2) and (3) are met (that is, if a qualified cost sharing arrangement exists), the district director may nonetheless make allocations to cost shares, as provided in § 1.482–2(g)(4), to reflect each participant's arm's length share of the costs and risks of developing intangible property.

The requirements of a qualified cost sharing arrangement include the requirements contained in the current regulations (an agreement in writing between two or more eligible participants providing for the sharing of the costs and risks of developing intangible property in return for a specified interest in any intangible that may be produced), and two new conditions. The new conditions are that the arrangement comply with the administrative requirements of § 1.482–2(g)(6)(i), and that participants make a reasonable effort to measure the share of benefit that each expects to receive and divide costs accordingly. Costs shared must include the costs of unsuccessful or less successful intangible development. One of the

objectives of this requirement is to prevent "cherry picking" (*e.g.*, U.S. participants bearing disproportionate costs of unsuccessful research, or foreign participants deriving disproportionate benefits from successful research). The district director is also permitted under this paragraph to apply the cost sharing provisions to any arrangement that in substance constitutes a cost sharing arrangement, to the extent that application of the developer-assister rules under § 1.482–2(d)(8) would result in a failure to clearly reflect the income of a group of controlled taxpayers. The Service solicits comments on the appropriate scope of application of this rule. The Service also solicits comments on the appropriate application of the principles of § 1.482–2(g) in the context of partnerships that develop and exploit intangibles.

Section 1.482–2(g)(2)(ii) provides that a U.S. participant's cost share should be proportionate to the benefits that the participant reasonably anticipates it will derive from the research. Depending on the circumstances, anticipated benefits may be measured in several different ways, as long as the measure reasonably predicts the benefits to be shared. If the development activity relates to more than one cost sharing arrangement, the benefits derived by the participant must be compared to the benefits derived by all of the relevant participants, including those in the other arrangements, for purposes of determining an appropriate cost share. An effort to anticipate benefits generally should include annual review of the participants' cost shares, and permit any adjustments necessary to reflect changes in economic conditions and other factors.

To the extent that a cost sharing arrangement fails to divide cost shares in proportion to benefits, the regulations provide for three different types of adjustment. The type of adjustment to be applied is determined by a comparison of the U.S. participant's cost/income ratio and the cost/income ratio of the other participants.

The cost/income ratio used for purposes of the cost sharing provisions is generally the participant's three-year average cost share, divided by its three-year average operating income attributable to developed intangibles. Operating income attributable to developed intangibles is defined as income from the license or sale of developed intangibles plus income earned from the sale of products or services incorporating such intangibles.

First, if the cost/income ratio of a U.S. participant is "grossly disproportionate" to the cost/income ratio of the other participants, the method for dividing cost shares will be presumed not to reflect a reasonable effort to share costs in proportion to benefits, and the cost sharing arrangement will not be considered a qualified cost sharing arrangement. Second, if the cost/income ratio of a U.S. participant is "substantially disproportionate" to the cost/income ratio of the other participants, the cost sharing arrangement will be considered a qualified arrangement, but a partial transfer of intangible property may be deemed to have occurred outside of the scope of the arrangement. In such a "buy-in" or "buy-out" situation, consideration for the transfer of the intangible must be consistent with the provisions of § 1.482–2(d). Section 1.482–2(g)(4)(ii)(D) provides that a U.S. participant's cost/income ratio will not be considered substantially disproportionate if it is less than twice the cost/income ratio of the other eligible participants. Third, if the cost/income ratio of a U.S. participant is not substantially disproportionate to the cost/income ratio of the other participants, an adjustment will be limited to an adjustment of the participants' cost shares.

Section 1.482–2(g)(3) defines an eligible participant. As noted above, there must be at least two eligible participants in order for a cost sharing arrangement to be qualified. In order to be considered eligible, each participant must be able to use developed intangibles in the active conduct of its trade or business. The principles of § 1.367(a)–2T(b)(2) determine whether a participant's activities constitute a trade or business.

An active trade or business may exist even though activities are carried out by independent contractors on behalf of a participant. An intangible will not be considered used in the active conduct of a participant's trade or business if a principal purpose of the participant for entering into the arrangement was to obtain intangible property to transfer to an uncontrolled taxpayer.

One member of a group of controlled taxpayers may participate in a cost sharing arrangement on behalf of other members (the "cost sharing subgroup") for the purpose of meeting the "active trade or business" requirement. However, the intangible property must be transferred from the participating member to the other members of the subgroup on an arm's length basis, either under a separate cost sharing arrangement in effect within that subgroup or otherwise.

Section 1.482–2(g)(4) describes the allocations that may be made by the district director to reflect each participant's arm's length share of an arrangement's costs. First, if the intangible development encompassed by the arrangement is too broad or too narrow, then an adjustment in the participants' cost shares may be necessary to place the arrangement on an arm's length basis. An intangible development area is too broad if any participant will not be able to use developed intangibles in its active business, and it is too narrow if it does not encompass all related intangible development.

Second, if there is a variation between the share of the benefit that each participant expects to receive and the share that is actually received, then, as described above, cost share payments may be reallocated, a buy-in or buy-out may be required, or the cost sharing arrangement may be ignored. Unless another method is more reliable, allocations will be based on a comparison of the U.S. participant's cost/income ratio to the other participants' cost/income ratio, as described above.

Section 1.482–2(g)(5) provides that cost sharing payments will be characterized as costs of developing intangibles to the payor and reimbursements of such costs to the payee. That section also provides that if an arrangement is not considered a qualified arrangement, or if a "buy-in" or "buy-out" is deemed to have occurred, payments with respect to any transfer of intangible property must be treated in accordance with § 1.482–2(d).

Section 1.482–2(g)(6) provides the administrative requirements of a qualified cost sharing arrangement. It also lists the administrative requirements that an eligible participant must satisfy. The paragraph mandates substantial compliance with each requirement. Thus, a minor administrative error will not result in the disqualification of an arrangement or a participant.

Section 1.482–2(g)(7) defines three terms: "specified interest in any intangible," "U.S. participant," and "costs of developing intangibles." The regulations do not specify accounting principles that must be used in determining costs of developing intangibles. The Service invites comments with respect to whether U.S. generally accepted accounting principles, tax accounting principles, or other principles should be used. Section 1.482–2(g)(8) states that existing bona fide cost sharing arrangements, under

current § 1.482–2(d)(4), will be considered qualified cost sharing arrangements if modified, as necessary, to conform with § 1.482–2(g) within one year of the publication of the regulation.

Safe Harbor

In the absence of a matching transaction, an arm's length amount of consideration for an intangible may be determined by reference to a comparable adjustable transaction, defined in § 1.482–2(d)(4) as an uncontrolled transfer involving the same or similar intangible under adjustable economic conditions and contractual terms that results in a level of operating income for the tested party that is within the comparable profit interval. In this context the comparable profit interval is intended to verify the reasonableness of the amount of consideration derived by reference to the uncontrolled transfer.

Although the use of the comparable profit interval as a check on a comparable adjustable transaction should increase taxpayers' certainty regarding their transfer prices, a safe harbor for determining the comparable profit interval could provide even greater certainty. The Service solicits comments on whether such a safe harbor should be developed. Such a safe harbor, for example, could be created by multiplying the book value of the licensee's assets by published rates of return. These published rates of return could be based on an average country-wide ratio of operating income to book value of assets. For example, based on data from U.S. publicly-held companies, the average ratio of operating income to assets from 1980–1989 was approximately eleven percent. A safe harbor might be created by reference to a narrow interval of profits surrounding eleven percent.

For licensees with a dollar functional currency, the dollar book value of their assets could be used. For licensees with a different functional currency, the dollar book value of their assets could be calculated using historical exchange rates for their balance sheet assets, and their current operating income could be translated into dollars at the current exchange rate in order to determine whether their operating income falls within the safe harbor interval.

Such a safe harbor raises significant issues that may outweigh the benefits of simplicity and certainty. Matching a narrowly defined rate of return to the wider variations of returns observed in the marketplace is one problem. Differences in assets held by different taxpayers or shifting of assets among related taxpayers might be more of a problem under a safe harbor that relies solely upon rate of return on assets than under the comparable profit method, which uses rate of return on assets together with other measures.

Due to the difficulty of constructing a workable safe harbor, the proposed regulations do not include a safe harbor and specific comments are requested concerning the feasibility of such an approach and its structure. The following questions are of particular interest. Will a safe harbor simplify the comparable adjustable transaction method? Should a safe harbor be based only on a rate of return on assets method, or are there alternatives? If a safe harbor is included in regulations, how should the problems identified above be addressed? Should a safe harbor be refined so that, for example, adjustments are made to account for differences in taxpayers' debt to equity ratios relative to the country-wide average embodied in the total assets number? Should industry-specific intervals be published? How would such intervals be established? Should there be a provision permitting adjustments to book values of assets by either the taxpayer or the Service to correct distortions in the value of the assets reported by the licensee?

Operation of the Regulations

The regulations described above provide the basic framework for the operation of the transfer pricing rules under section 482 following the amendments made by the Act. The Service recognizes that the promulgation of regulations is only one step in the implementation of these rules, and that the practical effect of the rules proposed in this document will be affected by a variety of other factors. The Service continues to study the overall administration of section 482, and solicits comments on collateral administrative matters not directly relating to these regulations. Comments are particularly requested in the areas described below.

Documentation and Penalties

With respect to documentation, the White Paper noted that a "significant threshold problem in the examination of section 482 cases has been IRS access to relevant information to make pricing determinations." See 1988–2 C.B. at 461. In response to this problem, the White Paper suggested that the section 482 regulations be amended to require that the taxpayer document the methodology used to establish transfer prices prior to filing the tax return and to require that the taxpayer produce such documentation within a reasonable time during examination. The White Paper also suggested that the Government consider whether existing penalties are sufficient to compel production of such documentation. Commentators contended that such requirements would be overbroad and unduly burdensome. They proposed that if contemporaneous documentation is required at all, it be required only in cases of transfers of high profit or high volume intangibles to tax haven entities. Since the publication of the White Paper, Congress has enacted several amendments to the reporting and penalty provisions of the Code. Accordingly, questions regarding documentation and penalties will be addressed in regulations under sections 6001, 6038, 6038A, 6038C, and 6662(e) rather than under section 482. The Service requests comments on the implementation of these rules, and in particular on the appropriate scope of the "reasonable cause" and "good faith" exception to the new section 482-related penalty under sections 6662(e)(3)(B)(i) and 6664(c). For example, should a taxpayer's creation of contemporaneous documentation be a factor that is taken into account in determining whether the exception applies and, if so, what documentation should be required?

Advance Pricing Agreements

The advance pricing agreement procedure permits taxpayers to reach an agreement with the Service concerning the appropriate transfer pricing methodology to be applied in a particular case. See Rev. Proc. 91–22, 1991–1 C.B. 526. Comments are requested concerning any aspect of this program, including the potential impact of these proposed regulations and suggestions for coordination of that program with these regulations.

Improved Resolution of Section 482 Controversies

It is well settled that, upon judicial review, the Commissioner's determination of a deficiency ordinarily is entitled to a presumption of correctness, and taxpayers thus bear the burden of proving that the Commissioner's determination is incorrect in judicial proceedings. *Welch* v. *Helvering.*, 290 U.S. 111 (1933). A principal reason for this allocation of the burden of proof is that taxpayers possess the information necessary to establish the correct amount of their income and deductions. *United States* v. *Rexach*, 482 F. 2d 10 (1st Cir. 1973). Further, when Congress specifically grants discretion to the Commissioner to make certain determinations, courts will review those determinations with a greater degree of deference. *Dietz*

Corporation v. *United States*, 939 F. 2d 1 (2d Cir. 1991); *Asiatic Petroleum* v. *Commissioner*, 31 B.T.A. 1152 (1935), *aff'd*, 79 F. 2d 236 (2d Cir. 1935). Accordingly, in section 482 cases, courts generally have held that the Commissioner's determination will be revised only if it is arbitrary, capricious, or unreasonable. *Sundstrand Corporation* v. *Commissioner*, 96 T.C. 226 (1991); *G.U.R. Company* v. *Commissioner*, 41 B.T.A. 223 (1940), *aff'd*, 117 F. 2d 187 (7th Cir. 1941).

Some recent section 482 cases have found that the Commissioner's determination of a transfer price was arbitrary, capricious, or unreasonable, *e.g.*, *Merck & Company, Inc.* v. *United States*, 24 Cl. Ct. 73, 68 AFTR2d 91–5524 (Cl. Ct. 1991). Courts generally have so held when a comparable price has not been available and the courts found that the Service could not demonstrate a suitable alternative method under the current regulations. In that regard, the current regulations dealing with intangibles provide little guidance on methods to be used where comparable transactions do not exist. These proposed regulations provide such methods and prescribe when they should be used.

The guidance provided by the proposed regulations should facilitate transfer pricing by taxpayers in ways that will lead to less controversy with the Service. Similarly, the regulations should facilitate determinations by the Service of appropriate arm's length pricing. The three pricing methods prescribed in the regulations are intended to reduce disputes between taxpayers and the Service and make it easier to resolve disputes that do arise. In particular, the proposed regulations should facilitate the use of comparable transactions by permitting adjustments under the comparable adjustable transaction method. Further, the comparable profit method addresses the situation in which a comparable adjustable transaction cannot be found.

The Service anticipates that taxpayers will use these regulations to establish transfer prices for controlled transactions using the best available data, and that they will provide the data as early as is practicable in the course of an examination by the Service.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adoption of these regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits timely written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Howard Berger (all provisions other than cost sharing) and Lisa Sams (cost sharing provisions). Mr. Berger and Ms. Sams are with the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.481–1 Through 1.483–2T

Accounting, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805, 68A Stat. 917; 26 U.S.C. 7805. * * *

Par. 2. Section 1.482–1(a)(4) is amended as follows:

1. A second sentence is added at the end of paragraph (a)(4).
2. A new sentence is added at the end of paragraph (a)(5).
3. Seven new sentences are added at the end of paragraph (b)(1).
4. The additions read as follows:

§ 1.482–1 Allocation of income and deductions among taxpayers.

(a) * * *

(4) * * * The term *uncontrolled taxpayer* means any one of two or more organizations, trades, or businesses not owned or controlled directly or indirectly by the same interests.

(5) * * * The terms *uncontrolled group* and *group of uncontrolled taxpayers* mean the organizations, trades, or businesses not owned or controlled directly or indirectly by the same interests.

* * * * *

(b) * * *

(1) * * * In determining whether controlled taxpayers have dealt with each other at arm's length, the general principle to be followed is whether uncontrolled taxpayers, each exercising sound business judgment on the basis of reasonable levels of experience (or, if greater, the actual level of experience of the controlled taxpayer) within the relevant industry and with full knowledge of the relevant facts, would have agreed to the same contractual terms under the same economic conditions and other circumstances. In applying this principle, the district director may consider the combined effect of all transactions of a controlled taxpayer with other members of the group, as well as with uncontrolled taxpayers, before, during and after the taxable year under review, so that allocations described in section 482, taken as a whole, reflect the controlled taxpayer's true taxable income. For example, if a controlled taxpayer's business involves the use of intangibles licensed from another group member to produce finished products, the sale of those products to yet another member of the group, and financing arrangements with uncontrolled taxpayers, the combined effect of these transactions may be considered to determine if they reflect the true taxable income of the controlled taxpayer. The district director also may disregard contractual arrangements, or the absence of contractual arrangements, between controlled taxpayers and instead give appropriate consideration to the taxpayers' actual conduct. For example, when a controlled taxpayer that produces tangible property regularly sells its entire output to another member of the controlled group, in determining the producer's true taxable income, the district director may determine from the course of conduct that the producer does not bear the risk that the buyer will fail to purchase its output even if there is no contract requiring the buyer to do so. In the case of any transfer of an intangible between or among controlled taxpayers, the true taxable income of the transferor with respect to such transfer must be

commensurate with the income attributable to the intangible. See § 1.482–2(d).

* * * * *

Par. 3. Section 1.482–2 is amended as follows:

1. Paragraphs (d) and (e)(1) are revised.

2. The seventh sentence of paragraph (e)(2)(ii) is revised.

3. *Example (4)* and *Example (5)* are added to paragraph (e)(2)(ii).

4. Paragraphs (f) and (g) are added.

5. The additions and revisions read as follows:

§ 1.482–2 Determination of taxable income in specific situations.

* * * * *

(d) *Transfer or use of intangible property*—(1) *In general*—(i) *Arm's length standard.* If one member of a group of controlled taxpayers transfers an intangible to another member for other than an arm's length consideration, the district director may make appropriate allocations to reflect an arm's length consideration for that intangible or its use. An arm's length consideration for the intangible shall be commensurate with the income attributable to the intangible. See paragraph (g) of this section for special rules relating to qualified cost sharing arrangements.

(ii) *Definitions*—(A) *Intangible.* For purposes of section 482, the term intangible means any of the following items that have substantial value independent of the services of any individual:

(*1*) Patents, inventions, formulas, processes, designs, patterns, or know how;

(*2*) Copyrights;

(*3*) Literary, musical, or artistic compositions;

(*4*) Trademarks, trade names, or brand names;

(*5*) Franchises, licenses, or contracts;

(*6*) Methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;

(*7*) Other similar items; and

(*8*) Any interests in any such items.

(B) *Transfer.* For purposes of this section, a transfer of an intangible occurs if it is licensed, sold, assigned, loaned, contributed, or otherwise made available in any manner.

(C) *Controlled transfer.* For purposes of this section, a controlled transfer includes any transfer between members of a group of controlled taxpayers.

(D) *Uncontrolled transfer.* For purposes of this section, an uncontrolled transfer is one in which the transferor and the transferee are not members of the same group of controlled taxpayers. These include—

(*1*) Transfers between a member of one group and a party that is a member of a different group,

(*2*) Transfers between a member of one group and a party that is not a member of any group; and

(*3*) Transfers between parties each of which is not members of a group.

(E) *Other definitions.* Definitions of other terms are set forth in connection with other provisions of these regulations. These include the following—

(*1*) Applicable business classifications, defined in paragraph (f)(5)(iii) of this section;

(*2*) Assets, defined in paragraph (f)(6)(iii)(B)(*5*) of this section;

(*3*) Assisters, defined in paragraph (d)(8)(i) of this section;

(*4*) Buy-in and buy-out payments, defined in paragraph (g)(4)(iv) of this section;

(*5*) Comparable adjustable transaction, defined in paragraph (d)(4)(i) of this section;

(*6*) Comparable profit interval, defined in paragraph (f)(1) of this section;

(*7*) Comparable profit method, defined in paragraph (d)(5)(i) of this section;

(*8*) Comparable profit split, defined in paragraph (f) (6)(iii)(C)(*3*) of this section;

(*9*) Constructive operating income, defined in paragraph (f)(1) of this section (see also Operating income, Reported operating income and Operating income attributable to intangibles);

(*10*) Controlled sale, defined in paragraph (e)(1)(i) of this section;

(*11*) Costs of developing intangibles, defined in paragraph (g)(7)(ii) of this section;

(*12*) Departing participant, defined in paragraph (g)(4)(iv)(C) of this section;

(*13*) Developer, defined in paragraph (d)(8)(i) of this section;

(*14*) Eligible participant, defined in paragraph (g)(3) of this section;

(*15*) Gross income, defined in paragraph (f)(6)(iii) (B)(*2*) of this section;

(*16*) Intangible development area, defined in paragraph (g)(4)(i) of this section;

(*17*) Margins, defined in paragraph (f)(6)(iii)(C)(*2*) of this section;

(*18*) Matching transaction, defined in paragraph (d)(3)(i) of this section;

(*19*) Most appropriate point, defined in paragraph (f)(8) of this section;

(*20*) Operating expenses, defined in paragraph (f)(6)(iii)(B)(*3*) of this section;

(*21*) Operating income, defined in paragraph (f)(6)(iii)(B)(*4*) of this section;

(*22*) Operating income attributable to intangibles, defined in paragraph (g)(2)(ii)(C)(*3*) of this section;

(*23*) Profit level indicators, defined in paragraphs (f) (1) and (6)(iii)(C) of this section;

(*24*) Proportionate profits rule, defined in paragraph (g)(4)(ii)(D) of this section;

(*25*) Qualified cost sharing arrangement, defined in paragraph (g)(2) of this section;

(*26*) Related group, defined in paragraph (g)(3)(v)(A) of this section;

(*27*) Related intangible development, defined in paragraph (g)(4)(i)(B) of this section;

(*28*) Reported operating income, defined in paragraph (d)(5)(v) of this section;

(*29*) Sales, defined in paragraph (f)(6)(iii)(B)(*1*) of this section;

(*30*) Same intangible, defined in paragraph (d)(3)(ii)(A) of this section;

(*31*) Similar intangible, defined in paragraph (d)(4)(ii) of this section;

(*32*) Specified interest in an intangible, defined in paragraph (g)(7)(i) of this section;

(*33*) Substantially similar contracutal terms, defined in paragraph (d)(3)(iv) of this section;

(*34*) Substantially similar economic conditions, defined in paragraph (d)(3)(iii) of this section;

(*35*) Ten-year test, defined in paragraph (d)(6)(ii)(B) of this section;

(*36*) Tested operations, defined in paragraph (f)(5)(ii) of this section;

(*37*) Tested party, defined in paragraph (f)(4) of this section; and

(*38*) U.S. participant, defined in paragraph (g)(7)(ii) of this section.

(iii) *Coordination with paragraph (e) of this section.* This paragraph (d) applies to any transaction in which the transfer of an intangible occurs through transfers of tangible property or services, if the income attributable to the intangible is material in relation to the income attributable to the tangible property or services to which it relates. For an illustration of this rule, see *Example 3* of paragraph (f)(11).

(iv) *Scope of regulations.* Paragraph (d)(2) of this section provides general rules for determining the form and amount of an arm's length consideration. Paragraphs (d) (3), (4), and (5) of this section prescribe three methods for determining the amount of an arm's length consideration. They are, respectively, the matching transaction method, the comparable adjustable transaction method, and the comparable profit method. Paragraph (d)(6) of this section provides rules for multiple year transfers. Paragraph (d)(7) of this section is reserved for rules for regarding consideration that takes the form of a lump-sum payment. Paragraph (d)(8) of this section provides rules concerning

assistance rendered in connection with the development of an intangible. Paragraph (f) of this section provides additional guidance regarding the comparable profit method of paragraph (d)(5) of this section. Paragraph (g) of this section addresses qualified cost sharing arrangements.

(2) *Arm's length consideration*—(i) *Standard to be applied.* An arm's length consideration for an intangible is the amount of consideration that an uncontrolled taxpayer would have paid for the same intangible under the same circumstances. The income of the transferor with respect to a controlled transfer of an intangible must be commensurate with the income of the transferee attributable to the intangible.

(ii) *Form.* An arm's length consideration must be in a form that is consistent with a form that would be adopted in transactions between uncontrolled taxpayers under the same circumstances. If the transferee pays nominal or no consideration for an intangible and the transferor has retained a substantial interest in the property, the arm's length consideration shall be in the form of a royalty unless a different form is clearly more appropriate.

(iii) *Priority of methods for determining an arm's length consideration.* An arm's length consideration must be determined by applying the matching transaction method, the comparable adjustable transaction method, or the comparable profit method, described in paragraphs (d) (3), (4), and (5) of this section, respectively. Because the matching transaction method requires the fewest adjustments and relies on the most complete and accurate data, an arm's length consideration must be determined under that method if the standards for its application are met. If those standards are not met, an arm's length consideration must be determined under the comparable adjustable transaction method if the standards for its application are met. If the standards for applying neither of these methods are met, the amount of an arm's length consideration must be determined under the comparable profit method. The inapplicability of a higher priority method need not be specifically established before applying a lower priority method. However, an arm's length consideration must be determined under a higher priority method if it is established that the standards for its application are met.

(iv) *Application of methods.* In applying the methods described in paragraphs (d) (3), (4), and (5) of this section, the district director may consider all relevant facts and circumstances throughout the period the intangible is used, including information from before, during and after the taxable year under review. The district director is not limited to considering projections or forecasts, and may consider the actual income derived from the use of an intangible. See paragraph (d)(6) of this section for additional guidance in this regard.

(3) *Matching transaction method*—(i) *In general.* Under the matching transaction method, an arm's length consideration for a controlled transfer of an intangible is determined by reference to the consideration charged in an uncontrolled transfer of the same intangible under the same or substantially similar economic conditions and contractual terms (a "matching transaction"). If the uncontrolled transfer is under economic conditions and contractual terms that are not the same as, but are substantially similar to, those of the controlled transfer, the uncontrolled transfer must be adjusted as provided in paragraph (d)(3)(v) of this section. If the uncontrolled transfer is under economic conditions and contractual terms that are neither the same as, nor substantially similar to, those of the controlled transfer, the uncontrolled transfer is not a matching transaction but may be a comparable adjustable transaction under the method described in paragraph (d)(4) of this section.

(ii) *Same intangible*—(A) *In general.* A controlled transfer will be considered to involve the same intangible as an uncontrolled transfer if the property, protected interest or body of knowledge that is subject to exploitation through the use of each intangible and the relative stages of development of each intangible are identical. For example, a patented process used to manufacture a specific product is not the same intangible as a different patented process used to manufacture the same product merely because the products produced in each case are identical. Transfers must involve identical intangible property, interests or knowledge in order to be considered transfers of the same intangible.

(B) *Effect of different rights.* Differences in the exploitation rights permitted under two transfers are considered differences in the contractual terms and economic conditions of the transfers rather than differences in the intangible itself. Thus, different geographic or use restrictions are not differences in the intangible itself. For example, the transfer of the right to use a patented process to manufacture, use, and sell a product within a specified market involves the same intangible as a separate transfer of the right to use the same patented process to manufacture, use and sell, the product in a different market. The right to sell a patented product with an attached trademark (or similar marketing intangible), however, is not the same intangible as the right to sell the same product without the trademark.

(iii) *Substantially similar economic conditions.* The determination of whether economic conditions in the controlled and uncontrolled transfers are substantially similar requires a comparison of all economic factors that could affect the amount of consideration in the two transfers. These factors include, but are not limited to—

(A) The similarity of geographic markets, including:

(*1*) The relative size of each market,

(*2*) The extent of overall economic development in each market, and

(*3*) The extent of competition in each market with regard to the uses to which the intangible is applied;

(B) The extent to which the products or services to which the intangible relates have been accepted within each market;

(C) The existence and extent of any collateral transactions or ongoing business relationship between the parties to each transfer; and

(D) The functions performed by the parties and the economic risks associated with those functions.

For example, the transfer of an intangible for use in a developing country would not constitute a transfer under substantially similar economic conditions as the transfer of the same intangible for use in an industrialized country if the overall level of economic development in the markets affects the consideration for the intangible.

(iv) *Substantially similar contractual terms.* The determination of whether contractual terms in the agreements covering controlled and uncontrolled transfers are substantially similar requires a comparison of all contractual terms which could affect the amount of consideration under each agreement. These contractual terms include, but are not limited to—

(A) The amount and form of the consideration charged for the transferred intangible;

(B) The duration of the contracts, and any termination or renegotiation rights;

(C) The portion of the total interests in the intangible to which the contracts apply, including any limitations on the ways the transferee may use the intangible;

(D) Provisions for accelerating or delaying payment; and

(E) Provisions describing the functions to be performed by each party, including any ancillary services (such as technical assistance, marketing, and product development).

For example, if the uncontrolled transfer provides for the transferee to receive a specified level of technical assistance and training, the controlled transfer must contain corresponding rights in order for the contractual terms to be considered substantially similar. If one agreement calls for the transferee to perform significant marketing functions, while in the other the transferor agrees to perform such marketing functions, the contractual terms of the two transfers are not substantially similar.

(v) *Adjustments to economic conditions and contractual terms*—(A) *In general.* If the same intangible is transferred in a matching transaction under economic conditions and contractual terms that are not the same as, but are substantially similar to, those of the controlled transfer, the consideration charged in the uncontrolled transfer must be adjusted to compensate for those differences. Proper adjustments to the matching transaction will thus reflect the consideration that would have been charged had its economic conditions and contractual terms been the same as those of the controlled transfer.

(B) *Limitation.* Adjustments to an uncontrolled transaction under this paragraph (d)(3)(v) are permitted to compensate only for a limited number of minor differences in economic conditions and contractual terms that have a definite and precisely determinable effect on the consideration for the intangible. The differences for which adjustments will be permitted under this method must be sufficiently limited so that each adjustment alone and all the adjustments combined have only a minor effect on the consideration charged in the uncontrolled transfer. If these standards are not met, then the economic conditions and contractual terms will not be considered substantially similar and the matching transaction method will not apply.

(vi) *Examples.* The following examples illustrate matching transactions:

Example 1. (i) USCo is a U.S. corporation that develops and distributes business software for personal computers. USCo has developed a new line of specialized accounting software that it sells mainly in foreign markets. USCo serves the market in country F for this software by licensing it to an uncontrolled country F corporation, UF. USCo serves the market in country B through its wholly-owned foreign subsidiary, RB. UF and RB have identical license agreements with USCo which entitle them to be exclusive distributors of the product in their respective countries in exchange for a royalty of 20 percent of the net selling price.

(ii) In 1996, the IRS audits USCo's 1994 taxable year, the second year in which the agreement was in place. Since the accounting software sold by RB is identical to the software sold by UF, the two transfers involve the same intangible. In addition, the UF license satisfies the requirement of substantially similar contractual terms because the terms of the license that USCo has with UF are identical to the terms of the license it has with RB. Furthermore, RB and UF perform the same functions relating to marketing and distribution of the software. Reliable sales information relevant to these transactions for the years 1993 through 1995 shows that both RB and UF are relatively significant distributors in their respective markets; however, neither holds a monopoly position or a dominant market share. Based on the review of these and other relevant factors, it is determined that the economic conditions with respect to the two transfers are substantially similar and that no adjustments under paragraph (d)(3)(v) of this section need be made. Accordingly, the matching transaction method is applicable, and the royalty rate of 20 percent in the controlled transfer to RB is determined to be an arm's length amount of consideration for 1994.

Example 2. The facts are the same as in *Example 1*, except that the controlled transfer to RB covers all future revisions and updates to the accounting software while the uncontrolled transfer to UF covers only the current version of the software. Since the intangibles transferred in the two transactions are different, the transfers do not involve the same intangible. Therefore, the UF transfer is not a matching transaction.

Example 3. The facts are the same as in *Example 1*, except that the uncontrolled transfer to UF includes contractual terms that require USCo to furnish technical assistance to UF (including information concerning marketing and packaging of the accounting software). The UF agreement provides that USCo will be reimbursed for its costs attributable to any technical assistance it provides. The RB agreement does not contain a similar provision and it provides that the level of technical assistance that can be demanded by UF is relatively modest and will have little effect on the value of the accounting software. Minimal levels of technical assistance are actually provided to UF and RB by USCo. Definite and precisely determinable adjustments to the consideration charged for the accounting software can be made with respect to this difference in contract terms on the basis of the costs to USCo of the technical assistance actually provided. Accordingly, the contractual terms are substantially similar and the UF license is a matching transaction. However, the district director may make an allocation to reflect any differences in technical assistance actually provided.

Example 4. The facts are the same as in *Example 3*, except that USCo is required to provide the same forms of technical assistance at cost to both UF and RB under the contractual terms of the two transfers. In practice, however, the assistance actually provided by USCo to RB involves extensive transfers of knowhow with respect to developing effective distribution networks within the country B market. The marketing function in the uncontrolled transfer, however, is carried on primarily by UF with little actual assistance provided by USCo. The uncontrolled transfer in this case fails to meet the standards for a matching transaction for two reasons. First, because the transfer to RB involves different and more extensive areas of knowhow developed by USCo than the transfer to UF, the two transactions do not involve the same intangible. Second, because the economic conditions of the two transfers involve significantly different functions actually performed by USCo, and any adjustments to compensate for these differences could be relatively large, these conditions are not substantially similar. Accordingly, the uncontrolled transfer is not a matching transaction.

Example 5. The facts are the same as in *Example 1* and no adjustment is made in 1994. Due to RB's capacity for expansion of its distribution network, however, USCo anticipates that future growth in worldwide markets will be met by RB. Beginning in 1995, RB expands its marketing network beyond the country B market. By 1996, RB has significantly expanded its worldwide sales and has developed a dominant market share in several substantial new markets where it is able to charge premium prices for its product. The same factors are not present in country F, and UF continues to hold a relatively stable market share. These changes in economic conditions have a major effect on RB's operations. The adjustment to the consideration charged by UF to account for these differences in economic conditions would be material in comparison to the overall consideration paid to USCo. Accordingly, the economic conditions in the uncontrolled transfer are no longer substantially similar to those of the controlled transfer, and the standards for the matching transaction method are not met with respect to the 1996 taxable year. Nevertheless, the uncontrolled transfer may continue to be a comparable adjustable transaction described in paragraph (d)(4) of this section.

(4) *Comparable adjustable transaction method*—(i) *In general.* Under the comparable adjustable transaction method, an arm's length consideration for an intangible is determined by reference to the consideration charged in an uncontrolled transfer involving the same or similar intangible under adjustable economic conditions and contractual terms, adjusted as provided in paragraph (d)(4)(iv) of this section. An uncontrolled transfer will not meet the standards of this paragraph (d)(4) if the consideration determined by reference

to that transfer results in a level of operating income for the tested party, as defined in paragraph (f)(4) of this section, that is outside of the comparable profit interval, as provided under the rules of paragraph (f) of this section. An uncontrolled transfer that meets the standards of this paragraph (d)(4) is a "comparable adjustable transaction."

(ii) *Same or similar intangible.* A controlled transfer will be considered to involve the same or similar intangible as an uncontrolled transfer if the property, protected interest or body of knowledge that is subject to exploitation through the use of each intangible and the relative stages of development of each intangible are sufficiently similar that the effect of any material differences can be determined with reasonable accuracy.

(iii) *Adjustable economic conditions and contractual terms.* Whether economic conditions and contractual terms are adjustable must be determined using the same factors that apply in determining whether such conditions and terms are substantially similar for purposes of the matching transaction method (as described in paragraphs (d)(3) (iii) and (iv) of this section). The comparable adjustable transaction method does not require that all such terms and conditions be substantially similar, or that adjustments compensate for only a limited number of minor differences. To be considered adjustable, however, the contractual terms and economic conditions must be sufficiently similar that the effect of any material differences can be determined with reasonable accuracy.

(iv) *Adjustments for differences in intangibles, economic conditions, and contractual terms.* If the same or similar intangible is transferred under adjustable economic conditions and contractual terms, the consideration called for in the uncontrolled transfer must be adjusted to compensate for material differences between the intangibles, economic conditions, and contractual terms of the transfers. Adjustments to the uncontrolled transfer will reflect the consideration that would have been charged had its terms and conditions been the same as those of the controlled transfer.

(v) *Selection of most similar comparable adjustable transaction.* If more than one comparable adjustable transaction is available, the arm's length consideration is determined under this method by using the uncontrolled transfer most similar to the controlled transfer, determined by reference to the factors described in paragraphs (d)(4) (ii), (iii) and (iv) of this section. The most similar comparable adjustable transaction will generally be the uncontrolled transfer for which. the necessary adjustments can most accurately be determined.

(vi) *Examples.* The following examples illustrate comparable adjustable transactions. See also paragraph (f)(11) of this section, which provides examples of the application of the comparable profit interval to test a potential comparable adjustable transaction.

Example 1. X is a domestic corporation engaged in the manufacture and distribution of small plastic products. X has developed and patented certain processes used in the injection molding of its plastic products. In 1994, X expands its operations through a wholly-owned subsidiary, Y, incorporated in country F. Y uses the same manufacturing processes as X and sells its products in country F and other nearby markets. Y agrees to pay X a royalty of 6.5% of gross sales for its use of the injection molding process and related knowhow. In 1996, the district director examines the royalty agreement to determine if the consideration agreed to in 1994 was an arm's length amount. Intangibles related to various types of injection molding processes have been licensed between uncontrolled taxpayers, but none of the processes involve a property, protected interest or body of knowledge which is identical to the process developed by X. Accordingly, these uncontrolled taxpayer licenses do not involve the same intangible and cannot serve as matching transactions. The most similar transaction to the transfer between X and Y involves a process used for injection molding of soap products that was developed by corporation A and licensed to uncontrolled corporation B, a country F corporation. The royalty rate in the agreement between A and B is 5% of gross sales. B uses the licensed technology to manufacture soap products that it distributes in country F. Reasonably determinable adjustments can be made to reflect the following differences between the two transactions:

(i) The injection molding process developed by X is more sophisticated than the process developed by A and it affects more aspects of the manufacturing process;

(ii) The improved manufacturing technology in Y's plastic business in country F has a significant effect on Y's market share and overall profitability, while improvements to B's manufacturing process in country F have a less beneficial economic effect;

(iii) The contract between X and Y provides for continued technical assistance to be provided at no additional cost by X while the agreement between A and B does not mention technical assistance; and

(iv) Technical assistance has in fact been provided by both A and X to their respective licensees, but the costs of providing the technical assistance has been slightly more in the case of X.

Considering each of the above factors, it is determined that a 1.5% increase over the royalty rate charged in the transaction between A and B is an appropriate adjustment to reflect the differences between the two transactions. In addition, the operating income earned by Y after payment of the 6.5% royalty is within the comparable profit interval described in paragraph (f) of this section. Accordingly, the royalty rate set between X and Y will be an arm's length amount of consideration under the comparable adjustable transaction method.

Example 2. The facts are the same as in *Example 1*, except that the license agreement between X and Y contains a royalty rate of 3% of gross sales and there is no comparable adjustable transaction between A and B. X defends the 3% royalty as an arm's length amount by reference to a license agreement between uncontrolled taxpayers C and D. C is a developer of an intangible that involves improvements to the computer controls in the production of advanced machine tools. D licenses this intangible for use in its country F machine tool manufacturing business and pays C a royalty of 3% of gross sales. The differences between the functions performed with the two intangibles are substantial. For instance, C's process is used for only one step of many stages of the manufacturing of the machine tools and has little effect on the size of D's labor force. By contrast, the injection molding process developed by X replaces or significantly affects each stage of the manufacture of Y's plastic products and results in a major labor force reduction. Due to these differences between the intangibles involved in the two transfers, and the differences in the overall economic benefit to be derived from the cost reductions achieved, compensating adjustments to the royalty charged in the uncontrolled transfer cannot be reasonably ascertained. Accordingly, the transfer of the intangible from C to D is not a comparable adjustable transaction.

Example 3. The facts are the same as in *Example 1*, except that the assistance actually provided by X to Y in the controlled transfer is substantially greater than the assistance provided by A to B in the uncontrolled transfer. The assistance provided in the controlled transfer extends to all aspects of Y's manufacturing and marketing efforts, and constitutes a wide body of knowledge accumulated by X in its manufacturing and marketing of plastic products in the U.S. market. This assistance is a substantial factor in the success of Y's manufacturing and marketing operations. In contrast, B's assistance from A is limited solely to the operational aspects of A's injection molding process. B's other manufacturing expertise, and all of its marketing knowhow, were developed through B's long term experience in country F. Accordingly, there are substantial differences between the intangibles transferred by A and X, the transfer to Y involves knowhow relating to all of Y's manufacturing and marketing operations, whereas the transfer to B is limited to one aspect of the manufacturing process. Due to the lack of reliable data concerning the value to B of its self-developed intangibles as well as the comparative economic effects between the plastic and soap markets resulting from these

broader types of intangibles, the adjustments to account for these differences are not reasonably determinable. Accordingly, the transfer from A to B is not a comparable adjustable transaction.

Example 4. The facts are the same as in *Example 1*, except that Y's use of the injection molding processes in 1994 is only in an early stage of implementation within country F. As expected by X and Y, the process becomes fully operational in 1995 allowing Y to significantly reduce manufacturing costs, lower the prices of its products, and expand its market share within country F. By 1998, Y is the largest manufacturer of these products in the market and has significantly increased both its volume of sales and its profitability. As a result, the operating income earned by Y in 1998 (after payment of the 6.5% royalty to X) substantially exceeds the comparable profit interval described in paragraph (f) of this section. Moreover, the economic conditions involved in Y's operations have grown sufficiently different from the economic conditions involved in B's soap production that adjustments to the royalty rate paid by B to account for those differences are no longer reasonably determinable. Accordingly, the transfer between A and B is not a comparable adjustable transaction for the 1998 taxable year.

(5) *Comparable profit method*—(i) *In general.* If there are no uncontrolled transfers that meet the standards for either matching transactions or comparable adjustable transactions, then an arm's length consideration for the controlled transfer of an intangible must be determined by reference to the comparable profit interval of the tested party under the rules of paragraph (f) of this section. Paragraphs (d)(5) (ii), (iii), and (iv) of this section provide rules concerning application of the comparable profit method based on whether the reported operating income (as defined in paragraph (d)(5)(v) of this section) of the tested party is within or outside of the comparable profit interval. These rules do not apply for purposes of using the comparable profit interval to test a potential comparable adjustable transaction, as required in paragraph (d)(4)(i) of this section, or for purposes of testing a result under any method described in paragraph (e)(1) (iii) or (iv) of this section.

(ii) *Effect if reported operating income of the tested party is within the comparable profit interval.* If the comparable profit method applies (*i.e.*, the standards for the matching or comparable adjustable transaction methods have not been met) and the consideration charged in the controlled transfer results in reported operating income of the tested party that is within the comparable profit interval, that amount of consideration will generally be treated for purposes of this paragraph (d) as an arm's length consideration. Accordingly, allocations with respect to those transfers ordinarily will not be made under this paragraph (d). See paragraph (d)(5)(iv) of this section for exceptions to this rule.

(iii) *Effect if reported operating income of the tested party is outside of the comparable profit interval*—(A) *General rule.* If the comparable profit method applies (*i.e.*, the standards for the matching or comparable adjustable transaction methods have not been met) and the consideration due in the controlled transfer results in reported operating income of the tested party outside of the comparable profit interval, an adjustment under this method may be made to the amount of consideration for such transfer. Except as provided in paragraph (d)(5)(iii)(B) of this section, the adjustment must result in a level of operating income of the tested party at the most appropriate point within the comparable profit interval, as described in paragraph (f)(8) of this section.

(B) *Discretion to limit adjustments.* In determining the amount of any adjustment to be made under this method, the district director will consider how closely the reported operating income corresponds to the comparable profit interval. If reported operating income of the tested party is not significantly outside the comparable profit interval, any adjustments made by the district director will take into account the amount of deviation between the comparable profit interval and the reported operating income. The closer the reported operating income is to the comparable profit interval, the smaller an appropriate adjustment may be. The adjustment must bring the operating income within the comparable profit interval but may be smaller than necessary to reach the most appropriate point in the interval. See paragraph (d)(5)(iv) of this section for exceptions to this rule.

(C) *Examples.* The following examples illustrate an adjustment of the tested party's operating income:

Example 1. The transferee of an intangible is the party and the comparable profit interval for the transferee, as determined under paragraph (f) of this section, consists of operating income falling between $1.5 and $2 million. The transferee's reported operating income is $2.1 million. Under all the facts and circumstances of this case, the most appropriate point within the comparable profit interval is $1.7 million. However, the district director determines that the transferee's reported operating income is not significantly outside the comparable profit interval. Consequently, rather than adjusting the transferee's reported operating income to $1.7 million (the most appropriate point within the interval), the district director adjusts the transferee's reported operating income to $1.9 million.

Example 2. Assume the facts are the same as in *Example 1*, except that the transferee's reported operating income is $5.0 million. The transferee's reported operating income lies significantly outside the appropriate profit interval. Consequently, the district director adjusts the transferee's reported income to the most appropriate point, $1.7 million.

(iv) *Exceptions.* If the comparable profit method applies, the district director may make an adjustment that results in a level of operating income for the transferee at the most appropriate point within the comparable profit interval, as described in paragraph (f)(8) of this section, if—

(A) The transferee paid no consideration in connection with the controlled transfer; or

(B) The consideration paid by the transferee in connection with the controlled transfer was substantially disproportionate to the value of the intangible.

In such cases the rules of paragraphs (d)(5) (ii) and (iii)(B) of this section that would permit no adjustment or a more limited adjustment shall not apply.

(v) *Reported operating income.* The term "reported operating income of the tested party" means the operating income of the tested party reflected on a timely U.S. income tax return (or an amended return) filed before the Internal Revenue Service first contacts the tested party or any other member of the same group of controlled taxpayers concerning an examination of the return for the taxable year. If the tested party files a U.S. income tax return, its operating income is considered reflected on a U.S. income tax return if the calculation of taxable income on its return for the taxable year takes into account income attributable to the transferee's use of the intangible or consideration charged for the intangible by the transferor. A written statement furnished by a taxpayer subject to the Coordinated Examination Program will be considered an amended return for purposes of this paragraph (d)(5)(v) if it satisfies the requirements of a qualified amended return for purposes of § 1.6661–6(c) as set forth in those regulations or as the Commissioner may prescribe by Revenue Procedure. If the tested party does not file a U.S. income tax return, its operating income is considered reflected on a U.S. income tax return in any taxable year for which income attributable to the transferee's use of the intangible or consideration charged for the intangible by the transferor affects the calculation of

taxable income on the U.S. income tax return of any other member of the same group of controlled taxpayers.

(vi) *Example.* The following example illustrates reported operating income:

Example. USCo, a domestic corporation, wholly owns two foreign subsidiaries F1 and F2. F1 is the developer of an intangible, which it licenses to F2 for a royalty of 5% of gross sales. The royalty received by F1 constitutes foreign personal holding company income under section 954(c). USCo timely files a return for 1994 that includes the amount of the royalty payment as gross income under section 951. The royalty amount has no other effect on the taxable income reportable for 1994 on a U.S. tax return by any person. F2 is the tested party with respect to the controlled transfer of the intangible. In determining whether the royalty paid by F2 was an arm's length consideration, the operating income of F2 will be considered its reported operating income for purposes of applying the comparable profit method.

(6) *Transfers for more than one taxable year*—(i) *Timing of review.* If an intangible is transferred under an agreement with a term covering more than one taxable year, the consideration charged in each taxable year may be adjusted to assure that it is commensurate with the income attributable to the intangible. The district director may consider all relevant facts and circumstances throughout the period the intangible is used in determining whether to make allocations in the taxable year under examination. Except as provided in paragraph (d)(6)(ii) of this section, the determination in an earlier year that the amount charged for an intangible was arm's length will not preclude the district director in a subsequent taxable year from making an adjustment to the amount charged for the intangible.

(ii) *Exceptions*—(A) *Operating income of the tested party remains within the comparable profit interval.* No allocation will be made under paragraphs (d)(3) (matching transaction method) and (d)(4) (comparable adjustable transaction method) of this section for the use of an intangible if:

(*1*) An arm's length consideration (within the meaning of this paragraph (d)) was charged for the intangible in the year it was transferred;

(*2*) The reported operating income of the tested party was within the comparable profit interval (as described in paragraph (f) of this section) in all years subsequent to the year of the transfer, including the taxable year under examination; and

(*3*) There has not been a major variation in the annual amounts of revenue attributable to the transferred intangible.

(B) *Ten-year test.* No allocation shall be made under this paragraph (d) to increase the consideration for the use of an intangible if:

(*1*) The intangible was transferred pursuant to a written agreement that meets the following conditions:

(*i*) At the time the agreement was entered into, the intangible was in existence and was reasonably susceptible of valuation;

(*ii*) The agreement was in effect throughout a 10 year period ending at any time prior to the taxable year under examination; and

(*iii*) The agreement remained in effect in the taxable year under examination;

(*2*) Significant commercial production involving the intangible occurred throughout the 10 year period;

(*3*) The consideration charged under the agreement is set by reference to a royalty rate that was applied throughout the 10 year period and continued to apply with respect to the taxable year under examination; and

(*4*) Either of the following conditions is satisfied:

(*i*) The consideration charged with respect to each of the 10 years previously was determined, or is determined subsequently, to be an arm's length amount under either paragraph (d)(3) (matching transaction method) or (d)(4) (comparable adjustable transaction method) of this section; or

(*ii*) The transferee's reported operating income was within the comparable profit interval throughout the 10 year period and the taxable year under examination.

(C) *Limitation on allocations in subsequent taxable years due to unanticipated events.* No allocation will be made under this paragraph (d) to increase the consideration for the intangible for any taxable year if each of the following facts is established:

(*1*) The controlled taxpayers entered into a written agreement that provided for an amount of consideration with respect to any prior taxable year that is determined to be an arm's length amount under either the matching transaction method or the comparable adjustable transaction method.

(*2*) The written agreement between the uncontrolled taxpayers that entered into the matching or comparable adjustable transaction contained no provision that would have permitted adjustment or termination due to unanticipated changes of profitability, and no adjustment or termination was in fact made by the uncontrolled taxpayers in any taxable year through the taxable year under review.

(*3*) The written agreement between the controlled taxpayers limited the use of the intangible to a specified field or purpose in a manner that was consistent with industry practices and any limitation in the agreement between the uncontrolled taxpayers.

(*4*) The tested party's operating income moved outside of the comparable profit interval solely because of changes in economic conditions that were—

(*i*) Beyond the control of any member of the group of controlled taxpayers, and

(*ii*) Neither anticipated nor reasonably foreseeable.

(*5*) The written agreement between the controlled taxpayers contained no provision that would have permitted an adjustment of the amount of consideration charged for the intangible, and that agreement remained in effect in the taxable year under review.

(D) *Examples.* The unanticipated events test as set forth in paragraph (d)(6)(ii)(C) of this section is illustrated by the following examples:

Example 1. X is a U.S. corporation with a wholly-owned foreign subsidiary Y. X and Y perform pharmaceutical research, and manufacture and market pharmaceutical products worldwide. X has discovered, patented and obtained FDA approval for Lolip, a cholesterol-lowering drug the active ingredient of which is different from the other competitive drugs which perform similar therapeutic functions. Several of these competitive drugs are licensed to uncontrolled taxpayers in Europe and Asia under long term arrangements which do not provide a mechanism for adjusting the royalty payments in the event of unanticipated changes in economic circumstances. After trial marketing in Europe and Asia to determine expected levels of acceptance, X computes a royalty on the transfer from X to Y of the right to manufacture and market Lolip in Europe and Asia on the basis of the expectation that the competitive drugs will remain in those markets. Two years after X licenses Lolip to Y, a study is published linking the competing drugs to high rates of liver cancer. As a result, in a short time Lolip captures a substantially higher percentage of the European and Asian markets than originally anticipated. Based on reliable documentation, X establishes the five facts listed in paragraph (d)(6)(ii)(C) of this section. Accordingly, no adjustment will be made based solely on the increase in the profitability experienced by Y that was attributable to loss of market share by its competitors due to the liver cancer connection.

Example 2. Assume the same facts as in *Example 1* except that there is no linkage of the competing drugs to liver cancer and the competitors do not lose their anticipated market share. Furthermore, it is determined that the process for manufacturing Lolip generates and releases into the atmosphere high concentrations of a certain pollutant in violation of the U.S. Clean Air Act. Rather

than modify the process used in X's U.S. plant, X closes its manufacturing operation and purchases from Y 100 percent of the Lolip needed to supply the U.S. market. The plant closing is not a change that is beyond the control of the parties. Accordingly, the exception described in paragraph (d)(6)(ii)(C) of this section will not apply. Any allocation made by the district director for subsequent taxable years will take into account the fact that Y has acquired the right, in effect, to manufacture Lolip for the U.S. market.

(7) *Lump-sum payments.* [Reserved]

(8) *Development of an intangible*—(i) *Identification of the developer.* Except as provided in paragraph (g) of this section, when two or more members of a controlled group undertake the development of an intangible, one member will be regarded as the developer of the intangible, and, therefore, as its owner for purposes of section 482. The other participating members will be regarded as assisters. Which controlled taxpayer is the developer and which controlled taxpayers are assisters will be determined under all the facts and circumstances. In making this determination, greatest weight must be given to the extent to which each member—

(A) Bears the direct and indirect costs and corresponding risk of developing the intangible; and

(B) Makes available without adequate compensation property or services likely to contribute substantially to developing the intangible.

A controlled taxpayer will be treated as bearing the costs and corresponding risk of development only if it is legally bound before the costs are incurred to bear the costs without regard to the success of the project. For this purpose, the risk to be borne with respect to development activity is the possibility that such activity will not result in the production of intangible property or that the intangible property produced will not be of sufficient value to allow for the costs of developing it. Other factors that may be relevant in determining which controlled taxpayer is the developer include the location of the development activities, the capability of each controlled taxpayer to carry on the project independently, the extent to which each controlled taxpayer controls the project, and the actual conduct of the controlled taxpayers.

(ii) *Allocations with respect to transfers by the developer.* If the developer of an intangible makes the intangible available to another controlled taxpayer (including any assister), the district director may make an allocation with respect to that transfer to reflect an arm's length consideration for the intangible. See paragraph (d)(1) of this section.

(iii) *Allocations with respect to assistance provided to the developer.* The district director may make allocations to reflect arm's length consideration for assistance provided to the developer by another controlled taxpayer in connection with the development of an intangible. Such assistance may include loans, services, or the use of tangible or intangible property. The amount of any allocation required with respect to that assistance must be determined in accordance with the applicable rules of this section. For example, if one member of a controlled group allows another member of the group to use tangible property, such as laboratory equipment, in connection with the latter's development of an intangible, any allocations with respect to the developer's use of the tangible property will be determined under paragraph (c) of this section. If consideration for assistance provided to the developer is not arm's length, instead of making an allocation with respect to the assistance, the district director may treat the difference between the amount of an arm's length consideration for the assistance and the consideration charged by the assister as a loan, either from the assister to the developer (if consideration charged is less than an arm's length amount) or as a loan from the developer to the assister (if consideration charged exceeds an arm's length amount), that is subject to paragraph (a) of this section.

(iv) *Examples.* The following examples illustrate the principles of this paragraph (d)(8). In all these examples, it is assumed X and Y are members of the same group of controlled taxpayers.

Example 1. X, at the request of Y, undertakes to develop a new machine that will function effectively in the climate in which Y's factory is located. Y agrees in writing before X incurs any costs to bear all the direct and indirect costs of the project whether or not X successfully develops the machine. X does not make any of its own property available for use in connection with the project without adequate compensation. The machine is successfully developed and X provides to Y the process necessary to produce it. Y is considered the developer of the process and, therefore, shall not be treated as having obtained it in a transfer subject to the rules of this paragraph (d). The district director may make appropriate allocations with respect to assistance rendered by X. The district director also may treat any use of the process by X as a transfer by Y that is subject to the rules of this paragraph (d) and make allocations with respect to that transfer.

Example 2. Assume the same facts as in *Example 1* except that Y agrees to bear the costs only if the machine is successfully developed. X is considered the developer and Y is regarded as having obtained the process in a transfer subject to the rules of this paragraph (d). Therefore, the district director may make allocations to reflect an arm's length consideration for the transfer of the process.

Example 3. X undertakes to develop a new chemical product M in its research and development department and incurs direct and indirect costs of $1,000,000 per year in 1994, 1995, and 1996. X employs the formula for compound N which it developed and owns. The value of the use of the formula for compound N in connection with the project is $750,000. In 1995, four chemists employed by Y spend six months working on the project in X's laboratory. The salary and other expenses connected with the chemists' activities during that period total $200,000 and are paid by Y without charge to X. In 1996, product M is perfected and Y obtains patents on its formula. X is considered the developer of product M because, among other things, it bore the greatest share of the costs and risks incurred in connection with the project and made available valuable property (the formula for compound N). The formula for product M is deemed to have been transferred to Y in 1996 by virtue of Y's obtaining patent rights to product M. The district director may make allocations in that year to reflect arm's length consideration for the transfer. The district director also may make allocations in 1995 with respect to the assistance rendered by Y. If the district director does not make an allocation for 1995 with respect to the services of the chemists in accordance with the principles of paragraph (b) of this section, the district director may treat the amount of an arm's length consideration as a loan to X from Y.

Example 4. X, a foreign producer of cheese, markets its cheese in countries other than the United States under the trade name DR. X owns all worldwide rights to this name. The name is widely known and is valuable outside the United States but is not known within the United States. In 1995, X decides to enter the U.S. market and organizes U.S. subsidiary Y to be its U.S. distributor and to supervise the advertising and other marketing efforts that will be required to develop the name DR in the United States. Y incurs $5,000,000 of expenses promoting the name DR in that year for which it is not reimbursed by X. Y is considered the developer of the enhanced U.S. rights to the trade name.

(e) *Sales of tangible property*—(1) *In general*—(i) *Arm's length standard.* Where one member of a group of controlled taxpayers sells or otherwise disposes of tangible property to another member of the group ("controlled sale") at other than an arm's length price, the district director may make appropriate allocations between the seller and the buyer to reflect an arm's length price for that sale or disposition. An arm's length price is the price that an uncontrolled taxpayer would have paid under the same circumstances for the property involved in the controlled sale.

(ii) *Priority of methods.* Paragraphs (e)(2), (3), and (4) of this section prescribe three methods for determining an arm's length consideration. They are, respectively, the comparable uncontrolled price method, the resale price method, and the cost plus method. In addition, a special rule is provided in paragraph (e)(1)(vi) of this section for the sale of an ore or mineral. Because the comparable uncontrolled price method generally will involve the most complete and accurate data and require the fewest and most readily quantifiable adjustments, the amount of an arm's length consideration must be determined under this method if the standards for its application are met. If those standards are not met, the amount of an arm's length consideration must be determined under either the resale price method or the cost plus method, depending upon which method relies on the most complete and accurate data, and requires the fewest and most readily quantifiable adjustments. Use of the resale price method ordinarily is more appropriate when a manufacturer sells products to a controlled distributor which, without further processing or the use of significant intangibles, resells the products in uncontrolled transactions. Use of the cost plus method ordinarily is more appropriate when a manufacturer sells products to a controlled taxpayer that after further processing, or the use of significant intangibles, resells the products in uncontrolled transactions. The inapplicability of a higher priority method need not be specifically established before applying a lower priority method. However, an arm's length consideration must be determined under a higher priority method if it is established that the standards for its application are met.

(iii) *Confirmation of resale price and cost plus methods by the comparable profit interval.* A transfer price determined under either the resale price method or the cost plus method reflects arm's length consideration only if that price results in a level of operating income for the tested party that is within the comparable profit interval described in paragraph (f) of this section.

(iv) *Other methods.* Where none of the three methods of pricing described in paragraph (e)(1)(ii) of this section can reasonably be applied under the facts and circumstances of a particular case, a method of pricing other than those described in that paragraph, or a variation on those methods, may be used, but only if that method yields a level of operating income for the tested party that is within the comparable profit interval described in paragraph (f) of this section. Such methods may include an analysis based on profit level indicators, described in paragraph (f)(6)(iii) of this section. Generally, the best such method will result in operating income for the tested party that is at the most appropriate point within the comparable profit interval as described in paragraph (f)(8) of this section. The inapplicability of a higher priority method need not be specifically established before applying an "other method" under this paragraph (e)(1)(iv). However, an arm's length consideration must be determined under a higher priority method if it is established that the standards for its application are met.

(v) *Product line and statistical analysis.* The methods of determining arm's length prices described in this paragraph (e) are stated in terms of their application to individual sales of property. However, because a taxpayer may make controlled sales of many different products, or many separate sales of the same product, it may be impractical to analyze every sale for the purpose of determining the arm's length price. Therefore an arm's length price may be determined or verified by applying the pricing methods to product lines or other groupings where it is impractical to ascertain an arm's length price for each product or sale. In addition, the district director may determine or verify the arm's length price of all sales to a controlled taxpayer by employing reasonable statistical sampling techniques.

(vi) *Mineral products.* The price for a mineral product which is sold at the stage at which mining or extraction ends shall be determined under the provisions of §§ 1.613–3 and 1.613–4.

(2) * * *

(ii) * * * Some of the differences that may affect the price of property are differences in the quality of the product, terms of sale, intangible property associated with the sale, time of sale, sales volume, inventory turnover rate, advertising and warranty practices and the level of the market and the geographic market in which the sale takes place. * * *

Example (4). Assume that the circumstances surrounding the controlled and uncontrolled sales are identical, except that, in the controlled sales, the transferee bears the warranty obligations that arise in the resale of the product. If the effect of this difference on the price is not reasonably ascertainable, then the uncontrolled sales will not be comparable to the controlled sales.

Example (5). Assume that the circumstances surrounding the controlled and uncontrolled sales are identical, except for the fact that the volume of controlled sales is different from the volume of uncontrolled sales and such volume of controlled sales would produce a reasonably ascertainable volume discount. The adjusted uncontrolled sales will be comparable to the controlled sales.

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(f) *Comparable profit interval*—(1) *In general.* The comparable profit interval is composed of various amounts of profit that a tested party would have earned if objective measures of its profitability ("profit level indicators") had been equivalent to those of various uncontrolled taxpayers that performed similar functions. Specifically, profit level indicators derived from the financial data of uncontrolled taxpayers are applied to the tested party to recalculate its operating income. Each recalculated amount is referred to in this section as "constructive operating income." The comparable profit interval is then derived from those constructive operating incomes that converge. This comparable profit interval is used to confirm the validity of a transfer price calculated through the use of other methodologies, under the rules of paragraphs (d)(4), and (e)(1) (iii) and (iv) of this section. In addition, under the rules of paragraphs (d)(5) and (e)(1)(iv) of this section, the comparable profit interval may be used in determining the transfer price for the controlled transfer of intangible property. Paragraph (f)(3) of this section describes the six steps of the analysis that is applied in this paragraph (f) to derive the comparable profit interval. While in many cases this analysis will consist of a sequential application of the six steps, the steps are interdependent and certain steps may have to be reapplied to take into account results derived in succeeding steps.

(2) *Data from multiple years.* Unless the circumstances indicate that a different period is more appropriate, the interval will be based on actual results (rather than projections) from the three-year period that includes the taxable year under review, the preceding year and the following year. Circumstances that may warrant the use of a different period include the unavailability of reliable data from the relevant time periods, the normal business cycles of the industry under review, and the life cycle of the products or intangibles being examined. To the extent that reliable data is available, data pertaining to uncontrolled taxpayers and data pertaining to the tested party should relate to comparable time periods.

(3) *Development of a comparable profit interval.* The development of a

comparable profit interval consists of the following steps:

(i) *Step 1.* Select the party to a controlled transaction to be tested. This determination is made under paragraph (f)(4) of this section.

(ii) *Step 2.* Determine the applicable business classification of the tested party. This determination is made under paragraph (f)(5) of this section.

(iii) *Step 3.* Compute constructive operating incomes, as described in paragraph (f)(6) of this section.

(iv) *Step 4.* Determine the comparable profit interval, as described in paragraph (f)(7) of this section.

(v) *Step 5.* When necessary, determine the most appropriate point in the comparable profit interval, as described in paragraph (f)(8) of this section.

(vi) *Step 6.* Determine the transfer price for the controlled transaction, as described in paragraph (f)(9) of this section.

(4) *Step 1: Select the party to a controlled transaction to be tested*—(i) *In general.* The first step in constructing a comparable profit interval is to determine which of the parties to the controlled transaction will be the tested party. The party selected need not be the person that is under examination. For example, if an examination concerns the income of the U.S. parent corporation attributable to the transfer of an intangible to a foreign subsidiary, the comparable profit interval may be calculated with respect to the subsidiary.

(ii) *Basis for selection of the tested party.* The tested party is the party to the controlled transaction whose operating income can be verified using the most reliable data and with the fewest and most accurately quantifiable adjustments. In the case of a transfer of an intangible, the tested party ordinarily will be the transferee. In cases involving the controlled sale of tangible property in which the resale price method applies, the tested party ordinarily will be the buyer. In cases involving the controlled sale of tangible property in which the cost plus method applies, the tested party ordinarily will be the seller. However, the comparable profit interval may be applied to check the operating income of any party to a controlled transaction if the operating income of such party can be more reliably and accurately tested than the operating income of other parties.

(5) *Step 2: Determine the applicable business classification of the tested party*—(i) *In general.* The constructive operating incomes that are used to establish the comparable profit interval are derived from the operations of uncontrolled parties that are similar to the tested operations of the tested party. This paragraph (f)(5) provides rules for identifying these operations, which are referred to as the applicable business classification. As described in paragraphs (f)(5) (ii) and (iii) of this section, determining the applicable business classification is a two-stage process. First, the operations of the tested party that are related to the transactions between the tested party and the other members of the group of controlled taxpayers are identified (the "tested operations"). Second, the tested operations are matched as closely as possible to similar operations of uncontrolled taxpayers based on the data available to determine the applicable business classification. In some cases, the analyses of the constructive operating incomes discussed below may indicate that there is insufficient reliable data related to the applicable business classification to construct a comparable profit interval. In such a case it will be necessary under this paragraph (f)(5) to identify a different applicable business classification (or classifications) that may be more specific or more general than the original applicable business classification in order to obtain sufficient reliable data to construct the comparable profit interval.

(ii) *Tested operations.* Tested operations include that portion of the tested party's operations that are related to or integrated with the transactions with controlled parties that are under review. These operations may include manufacture and sale of products, product lines, or other product groupings, as well as types of services or other functions that the tested party performs. The identification of tested operations must consider both the types of products and the functions that are related to the transaction between the tested party and controlled taxpayers. For example, if the tested party's only transactions with other members of the group of controlled taxpayers consist of purchases of a single product for resale, and such purchases represent a small portion of the tested party's overall inventory purchases, then the tested operations should be those that relate to purchases and sales of that product. If, however, the tested party engages in multiple transfers of tangible and intangible property with other members of the group of controlled taxpayers, the tested operations should be those that relate to all such transfers. In appropriate cases, the tested operations will include all of the operations of the tested party.

(iii) *Applicable business classification.* The applicable business classification is the broadest category of tested operations that most corresponds to the products and functions of uncontrolled taxpayers for which sufficient reliable data is available. If, however, there is insufficient reliable data from uncontolled taxpayers that corresponds to the tested operations, then the tested operations are divided into more than one applicable business classification, each of which corresponds to products and functions or uncontrolled parties for which reliable data is available. If the tested operations must be divided, each applicable buisness classification selected must be as broad as possible, while still ensuring that reliable data regarding uncontrolled parties is available. A broad classification that corresponds to the tested operations may not be divided into more specific classifications if there is sufficient reliable data relating to the broad classification. If, however, it is not possible to obtain reliable data regarding uncontrolled taxpayers that perform functions with respect to products that closely correspond to the products related to the tested operations, then the scope of the applicable business classification is broadened to include the functions performed by the tested party and as broad a category of products as is necessary to obtain reliable data. For example, if the tested operations are distribution of compact disc players, in the absence of sufficient reliable data a broader applicable business classification, such as distribution of consumer electronic products, may be appropriate. Although it is not necessary to demonstrate that there is inadequate data relating to a narrow category of products before applying a broad category of products, if it subsequently is established that there is adequate reliable data relating to a narrow category of products, then the applicable business classification will be based on that narrow category.

(6) *Step 3: Compute constructive operating incomes*—(i) *In general.* Constructive operating income is computed by applying profit level indicators derived from uncontrolled taxpayers to financial data of the tested party. The selection of profit level indicators under this step depends upon two interdependent factors: First, the extent to which reliable data is available concerning similar uncontrolled taxpayers; and second, the extent to which particular profit level indicators provide a reliable basis for comparing profits of controlled and

uncontrolled taxpayers under the facts and circumstances of the case.

(ii) *Selection of data relating to uncontrolled taxpayers.* Data relating to uncontrolled taxpayers must be selected from the data used for purposes of selecting the applicable business classification under paragraph (f)(5)(iii) of this section. In determining which data to select, further consideration must be given to the similarity between the uncontrolled taxpayers and the tested party. Similarity with respect to the size of the operations composing the applicable business classification and the relevant markets, as well as other factors indicating similarity, must be considered. When an uncontrolled transfer used in a method described in paragraph (d)(4)(i) of this section, or an uncontrolled transaction used in a method described in paragraphs (e)(1)(iii) and (iv) of this section is tested to determine whether it results in a level of operating income that is within the comparable profit interval, the selected group generally should include the relevant party to such uncontrolled transfer or transaction.

(iii) *Selection of profit level indicators that provide a reliable basis for comparing profits*—(A) *In general.* Profit level indicators measure the relationship between various factors and income. A variety of different profit level indicators can be calculated in any given case. Thus this step requires the selection of the profit level indicator (or indicators) that will produce an accurate comparison under the facts and circumstances of the particular case, depending on the nature of the activities being examined and the reliability of the available data from uncontrolled taxpayers. A profit level indicator may provide a reliable basis for comparing profits even if it can be appropriately applied only to some, but not all, of the uncontrolled taxpayers.

(B) *Definitions.* The following definitions apply for purposes of determining profit level indicators and computing constructive operating income:

(*1*) *Sales.* The term *sales* means the amount of total revenue from sales, less discounts and returns.

(*2*) *Gross income.* The term *gross income* means sales less cost of goods sold.

(*3*) *Operating expenses.* The term *operating expenses* includes expenses associated with advertising, sales, marketing, administration, research and development, and a reasonable allowance for depreciation and amortization. It does not include interest expense, foreign income taxes (as described in § 1.901–2(a)), and domestic income taxes.

(*4*) *Operating income.* The term *operating income* means gross income less operating expenses.

(*5*) *Assets.* The term *assets* generally means the book value of total assets (measured by the average of the book values for the beginning of the year and the end of the year). Where recent acquisitions, leased assets, purchased intangibles or currency fluctuations, or other factors create a significant difference between the book value of the assets of the controlled taxpayer and the book value of the assets of the uncontrolled taxpayers that would distort the comparison, appropriate adjustments must be made so that the asset values in each case are measured on a comparable basis.

(C) *Profit level indicators.* Profit level indicators that provide a reliable basis for comparing profits may include the following:

(*1*) *Rate of return on assets.* The rate of return on assets is the ratio computed by dividing the operating income of the uncontrolled taxpayer by the assets of that taxpayer. It may be necessary to make certain adjustments to the assets of the uncontrolled taxpayers as described under the definition of assets in paragraph (f)(6)(iii)(B)(*5*) of this section. This profit level indicator is more reliable when the values of self-developed intangibles held by the tested party and the uncontrolled taxpayers are similar.

(*2*) *Margins.* Margins are ratios that are determined by relationships between income and costs. Different margins divide income and costs in different ways. Accordingly, a number of different margins may be examined, when appropriate, depending on the type of data available from the uncontrolled taxpayers. Reliable margins may include:

(i) *Ratio of operating income to sales.* The ratio of operating income to sales is frequently more reliable than other margins. Because it is based on broad measures, it accommodates some variation between the functions performed by uncontrolled taxpayers and the functions performed by controlled taxpayers. Nevertheless, similarity of the economic level of production for the functions performed (*e.g.*, manufacturer or distributor) and the type of business generally is necessary to ensure reliability.

(ii) *Gross income to operating expenses.* The ratio of gross income to operating expenses is most reliable when the uncontrolled taxpayers perform functions that are similar to the functions performed by the controlled taxpayer. If the functions performed are different, this ratio may not be used because the composition of operating expenses will be different and may lead to inappropriate results. Review of the classification of expenses for consistency is necessary even if the functions performed by the taxpayers being compared are virtually identical. This profit level indicator may be used only when the uncontrolled taxpayers being compared have characterized material items consistently or when adjustments can be made to the accounting entries so that such items are classified consistently.

(*iii*) *Other margins.* Other margins include, but are not limited to, the ratio of operating income to labor costs and the ratio of operating income to all expenses other than those included in cost of goods sold. Other margins should be used only when they provide reasonable indications of the income that the tested party would have earned had it dealt with controlled taxpayers at arm's length.

(*3*) *Comparable profit split*—(*i*) *In general.* A comparable profit split is derived from the combined operating income of uncontrolled taxpayers that entered transactions and performed functions similar to those of the members of the group of controlled taxpayers. Each such uncontrolled taxpayer's percentage of the combined operating income is determined and used to divide the combined operating income of the group of controlled taxpayers.

(*ii*) *Methods for determining comparable profit split.* Depending on the reliablility of the data, a residual profit split or an overall profit split may be used.

(*A*) *Residual profit split.* Under the residual profit split, income attributable to assets is determined by applying a rate of return to the value of assets held by the uncontrolled taxpayers. This amount then is subtracted from the operating income of each such uncontrolled taxpayer to yield the residual income. The sum of the uncontrolled taxpayers' residual incomes is the residual combined income. The profit split is the percentage of the residual combined income earned by each uncontrolled taxpayer. This profit split then is applied to the tested party to calculate its constructive operating income. The same rates of return that were applied to the uncontrolled taxpayers are applied to the assets of the group of controlled taxpayers, and the resulting amount then is subtracted from the combined operating income of the group of

controlled taxpayers. The residual combined income then is apportioned among the group of controlled taxpayers in the same percentages that were determined for the uncontrolled taxpayers. For purposes of this paragraph (f)(6)(iii)(C)(*3*) of this section, assets are defined by reference to paragraph (f)(6)(iii)(B)(*5*) of this section, except that assets do not include intangible property. The rate of return applied to the assets should be an average rate of return earned by uncontrolled taxpayers that perform functions similar to those performed by the controlled taxpayers but that do not have significant intangibles.

(*B*) *Overall profit split.* Under the overall profit split, the group of controlled taxpayers' profit split is determined in the same manner as under the residual profit split, but without first providing a return to assets.

(*iii*) *Rules for application of comparable profit split*—(*A*) *Limitations on use of profit split.* A comparable profit split may be used only if reliable financial data is available regarding the members of the group of controlled taxpayers and the uncontrolled taxpayers. In addition, a comparable profit split may be used only if the functions performed by each of the uncontrolled taxpayers are the same as the functions performed by each member of the group of controlled taxpayers. A profit split may not be used if the combined rate of return on assets earned by the uncontrolled taxpayers varies significantly from the combined rate of return on assets earned by the members of the group of controlled taxpayers. Furthermore, a profit split may not be used if an uncontrolled transferee possesses self-developed intangibles that are relevant to the applicable business classification and that contribute significantly more (or less) to the profits derived from the applicable business classification than self-developed intangibles that the related transferee owns. See *Example 6* of paragraph (f)(11) of this section for a case in which a comparable profit split cannot be used as a profit level indicator.

(*B*) *Appropriate uses of profit splits.* A comparable profit split is most appropriately used where the tested party and the other members of the group of controlled taxpayers employ significant self-developed intangibles that are not reflected on their financial statements, and the combined rate of return of the uncontrolled taxpayers is similar to the combined rate of return earned by the members of the group of controlled taxpayers. See *Example 1* of paragraph (f)(11) of this section for a case in which a comparable profit split is applicable as a profit level indicator. Use of the residual profit split generally is most appropriate when the proportion of the combined value of assets held by each of the uncontrolled taxpayers significantly differs from the proportion of the combined value of assets held by each member of the group of controlled taxpayers. The overall profit split generally is more appropriate when the relative book value of assets is approximately equal.

(*4*) *Other indicators.* [Reserved]

(*iv*) *Applying profit level indicator to controlled taxpayer to compute constructive operating income*—(A) *In general.* The profit level indicators selected in paragraph (f)(6)(iii) of this section and calculated for the uncontrolled taxpayers selected in paragraph (f)(6)(ii) of this section are applied to the relevant financial data of the tested party, adjusted as provided in paragraph (f)(6)(iv)(B) of this section, in order to compute constructive operating income.

(B) *Adjustments to financial data of the tested party.* For purposes of this paragraph (f), financial data of the tested party must be adjusted in two ways. First, adjustments must be made to reflect any allocations under section 482, other than adjustments made under this paragraph (or made under paragraph (d) or (e) of this section and verified under this paragraph) that affect the tested party's financial data. Second, adjustments must be made to account for material differences between the assets of the tested party and the assets of uncontrolled taxpayers, such as differences in the relative amounts of financial assets or inventory held. If the tested party's assets are adjusted, the tested party's operating income ordinarily must be adjusted to reflect income and expenses attributable to the adjusted assets. For example, an adjustment to impute carrying charges attributable to adjusted inventory may affect operating income. See *Examples 5* and *9* of paragraph (f)(11) of this section, illustrating adjustments that may be made to the tested party's assets and operating income.

(C) *Examples.* The following examples illustrate the principles described in paragraphs (f)(6)(iv) (A) and (B) of this section.

Example 1. Assume a selected profit level indicator is the rate of return on assets, the rate of return on assets for selected uncontrolled taxpayer A is 10.4 percent, and the assets of the tested party are $1,000. When using the rate of return on assets the relevant financial data of the tested party is the book value of the assets of the tested party. Therefore, the constructive operating income computed using the rate of return on assets derived from A is $104 (.104×$1,000).

Example 2. Assume the ratio of gross income to operating expenses is selected as a profit level indicator, the ratio of gross income to operating expenses for selected uncontrolled taxpayer B is ⅛, and the operating expenses of the tested party are $150. In addition, assume that a $10 rental adjustment has been made under paragraph (c) of this section. This adjustment increases the tested party's operating expenses to $160. When using the ratio of gross income to operating expenses, the relevant financial data of the tested party is its operating expenses. Therefore, constructive operating income computed for the ratio of gross income to operating expenses derived from B is $53 (⅛×$160).

(7) *Step 4: Determine the comparable profit interval.* The comparable profit interval is constructed by selecting amounts of constructive operating income that converge to form an interval that is reasonably restricted in size. If there is a small number of uncontrolled taxpayers whose operations correspond closely to the applicable business classification, two types of convergence should be considered in constructing the comparable profit interval. This first type of convergence is convergence of constructive operating incomes of the tested party derived from several profit level indicators of a single uncontrolled taxpayer. Convergence of multiple constructive operating incomes derived from a single uncontrolled taxpayer indicates that the uncontrolled taxpayer and the tested party are comparable and suggests that constructive operating incomes derived from that taxpayer should be included within the comparable profit interval. When multiple profit level indicators derived from a single uncontrolled taxpayer produce amounts of constructive operating income that diverge, those amounts will be excluded from the comparable profit interval unless the uncontrolled taxpayer's financial data can be adjusted appropriately to account for the factors contributing to this lack of conformity. See paragraph (f)(6)(iii)(C) of this section for a description of potential adjustments. The second type of convergence that must be considered is convergence of constructive operating incomes derived from one or more profit level indicators obtained from multiple uncontrolled taxpayers. Constructive operating incomes that diverge from other points in the interval will be excluded from the comparable profit interval. Factors that must be considered in determining whether the constructive operating income diverges include the relative

distance between the constructive operating income and the closest points in the interval compared to the distance between other points within the interval. In determining covergence, greater weight will be given to the more reliable constructive operating incomes. Reliability will be assessed by considering the quality of the underlying data with regard to its relative specificity, the similarity of the products and functions of the uncontrolled taxpayer from which the data is drawn and the tested operations, the similarity of the markets from which data is drawn, and the degree to which it fits the profit level indicator. If the number of uncontrolled taxpayers whose operations correspond to the applicable business classification is large enough to permit the use of valid statistical techniques, then convergence must be determined by using those techniques to identify a reasonably narrow area of concentration among all of the constructive operating incomes computed.

(8) *Step 5: Determine the most appropriate point in the comparable profit interval.* It may be necessary to identify the most appropriate point within the comparable profit interval under this paragraph (f)(8) for purposes of the comparable profit method described in paragraph (d)(5) of this section and other methods described in paragraph (e)(1)(iv) of this section. The most appropriate point must be determined considering all the facts and circumstances. If statistical techniques were used to construct the comparable profit interval, the most appropriate point is determined using statistical measures of central tendency. Otherwise, in selecting the constructive operating income that represents the most appropriate point, the following factors should be considered:

(i) The comparability of each uncontrolled taxpayer from which the constructive operating income was derived. Comparability for this purpose is based on—

(A) The similarity of the functions performed by the tested party to those performed by the uncontrolled taxpayer, and the similarity of the economic risks associated with those functions;

(B) The similarity of the products or services provided by the tested party to those provided by the uncontrolled taxpayer; and

(C) The extent to which different profit level indicators of the uncontrolled taxpayer produce converging results when applied to the tested party;

(ii) The extent to which adjustments are necessary to apply the profit level indicator that generated the constructive operating income. Constructive operating incomes derived from a profit level indicator requiring the fewest and most accurately quantified adjustments is accorded the greatest weight;

(iii) The extent to which the profit level indicator that generated the constructive operating income meets the reliability factors described in paragraph (f)(7)(ii) of this section; and

(iv) The extent to which the profit level indicator that generated the constructive operating income produces converging results when applied to each of the uncontrolled taxpayers used in determining the comparable profit interval.

(9) *Step 6: Determine the transfer price for the controlled transaction.* When the most appropriate point within the comparable profit interval has been determined as described in paragraph (f)(8) of this section (or, where appropriate, only the comparable profit interval has been determined under paragraph (f)(7) of this section), a transfer price for the controlled transaction is determined under the principles of paragraphs (d) and (e) of this section. The transfer price is determined by adjusting the actual charge for the controlled transaction to produce an operating income for the tested party that is equal to the constructive operating income corresponding to the most appropriate point.

(10) *Coordination of the use of the comparable profit interval with other allocations under section 482*—(i) *Allocations that affect operating income.* For purposes of paragraph (d) of this section, the tested party's reported operating income must be adjusted to reflect all other allocations under this section that affect operating income. Similarly, for purposes of paragraph (e)(1) of this section, adjustments must be made to account for allocations that affect operating income before determining whether operating income falls within the comparable profit interval. For example, if the resale price method under paragraph (e)(3) of this section is applied, and a rental allocation is made under paragraph (c) of this section, this adjustment should be taken into account in computing operating income before determining whether operating income falls within the comparable profit interval. As described in paragraph (f)(6)(iv) of this section, such adjustments also may affect the construction of the comparable profit interval.

(ii) *Allocations that do not affect operating income.* Income or expense adjustments under section 482 that do not affect the amount of operating income have no bearing on the application of this paragraph (f). For example, interest expense is an item of expense that is not deducted from gross income in order to calculate operating income. Therefore, any adjustments to interest expense have no effect on the determination of the comparable profit interval.

(11) *Examples.* The application of this paragraph (f) is illustrated by the following examples.

Example 1—Comparable profit interval applied to confirm a comparable adjustable transaction—(i) *Background.* Controlled taxpayer CE is a foreign corporation that is wholly-owned by a domestic corporation, USCorp. In 1994, CE and USCorp conclude a 10-year license agreement pursuant to which USCorp licensed the right to use a patented manufacturing process related to the producion of product P in exchange for royalty payments of 5 percent of CE's net sales of P. During the audit of USCorp's 1999 taxable year, the district director reviews whether the consideration charged for the patent is arm's length. Uncontrolled taxpayer UE operates in the same market and performs functions similar to those of CE. UE licenses rights to manufacture and sell its product Q solely from an uncontrolled taxpayer, X, and pays a royalty to X at the rate of 25 pecent of its sales. Since the two transfers do not involve the same intangibles (and no other potentially matching transactions are located), the matching transaction method is not applicable. The district director determines, however, that the intangibles involved in the two transactions are similar and that the economic conditions and contractual terms involved in the two transfers meet the standards described in paragraph (d)(4)(iii) of this section. Moreover, the district director determines that differences in the intangibles, contract terms and economic conditions offset one another in such a way that the royalty rate derived from the uncontrolled transaction for purposes of determining an arm's length royalty rate for the controlled transaction should remain 25 percent. Accordingly, the transaction will serve as a comparable adjustable transaction if the royalty rate from the uncontrolled transfer results in a level of operating income for CE that is within the comparable profit interval. To make this determination, the district director develops profit level indicators from UE and other companies that perform functions similar to those that CE performs.

(ii) *Financial data for CE and UE.* In order to develop profit level indicators from UE, financial data is reviewed for both CE and UE. For this purpose, data from years 1998 through 2000 is compiled and averaged. In addition, the profit earned by USCorp and X attributable to products P and Q, respectively, is calculated in order to determine the combined operating income with respect to these products. This review of financial data provides the following results (in $ thousands):

	Data from CE	Data from UE
Sales	1,200	1,000
Cost of goods sold	(650)	(550)
Gross income	550	450
Operating Expenses:		
Royalty payments	(60)	(250)
Other	(90)	(75)
Operating income	400	125
Assets	570	440

	Data from USCorp	Data from X
Operating income	170	525
Assets	1000	400

(iii) *Operating income under potential comparable adjustable transaction.* If CE had paid an amount of consideration consistent with the UE license agreement, its royalty payment would have been 25 percent of its sales, or $300 ($1,200 x 25 percent) rather than the $60 it actually paid. Adjusting the operating income of CE by the $240 difference in these royalty amounts ($300 minus $60) results in operating income of $160 ($400 minus $240). The district director determines whether this result would have been within the comparable profit interval.

(iv) *Profit level indicators.* The profit level indicators described in paragraph (f)(5) of this section are first analyzed with respect to the above financial data of UE to yield a percentage for each separate indicator. Those percentages can then be applied to the financial data for CE in order to derive an amount of constructive operating income for CE that conforms to each profit level indicator. The director determines that in the present case, the four following profit level indicators are appropriate, and CE's financial data does not need to be further adjusted in order to make them applicable:

(A) *Return on assets.* The UE data indicates that UE has earned a rate of return on its assets of 28.4 percent ($125 of operating income divided by $570 of assets). If CE had earned 28.4 percent on its assets, its constructive operating income would have been $162 ($570 of assets multiplied by 28.4 percent).

(B) *Ratio of gross income to operating expenses.* The district director determines that given the type of intangible transferred in the controlled transaction and given the fact that royalty payments are included in operating expenses by UE, royalty payments should be included in operating expenses for purposes of applying this ratio. The UE data provides a ratio of gross income to operating expenses in the amount of 138.5 percent ($450 divided by $325). Since the controlled transaction being reviewed for CE (*i.e.*, the royalty expense) is part of the operating expenses in this case, this ratio is applied to CE by determining the level of operating expenses yielding this ratio in relation to gross income of $550. The operating expenses required in this case would be $397 (550 divided by 138.5 percent). If CE had made royalty payments of $307 ($397 of total operating expenses minus $90 of other operating expenses), its gross income would have been $240, and its constructive operating income would have been $153 ($550 gross income minus $397 operating expenses).

(C) *Ratio of operating income to sales.* The ratio of operating income to sales for UE is 12.5 percent ($125 divided by $1,000). If CE's ratio were the same, its constructive operating income would have been $150 ($1,200 of sales multiplied by 12.5 percent).

(D) *Profit Split.* An analysis of the functions performed and income earned by CE and UE suggests that each has valuable self-developed intangibles. In addition, the combined rate of return on assets earned by CE and US Corp of 36.3% ([400+150]/[570+1000]) does not differ significantly from the combined rate or return on assets earned by UE and X of 34.1% ([125+400]/[400+1100]). Based on the foregoing, the district director determines that a profit split is an appropriate profit level indicator in this case. The district director determines that an appropriate return for UE's measurable assets is 15.0% and that an appropriate return for X's measurable assets is 10.0%. Subtracting these amounts from the operating income of each leaves a residual combined operating income of $349 (125−[.15×440]+400−[.10×1100]). UE's residual operating income of 59 (125−.15×440) represents 16.9% of the residual combined operating income. If CE had earned 15.0% on its measurable assets of 570 and X had earned 10% on its measurable assets of 1000 their residual combined operating income would be $384 (570−[.15×570]−[.10×1000]. If CE had earned 16.9% of this residual combined operating income, then CE's constructive operating income would have been $151 ([.15×570]+[.169×384]).

(v) *Summary of profit level indicators from UE.* The following chart summarizes each of the profit level indicators derived from UE and the profit results when those indicators are applied to CE's financial data:

	PLI from UE (percent)	Constructive operating income for CE
Return on assets	28.4	$162
Gross income to operating expenses	138.5	153
Operating income to sales	12.5	150
Profit split	16.9	151

(vi) *Weight to be given to UE results.* The data derived from UE should be given significant weight for serveral reasons. First, the analysis has been performed at a very specific level (by comparable products) and has been derived from the same market. Second, the results from four different profit level indicators converge at an interval of $150 to $162. Finally, the license between UE and X meets the standards for a comparable adjustable transaction and would produce operating income results of $160, which converges with the results produced by the other indicators.

(vii) *Further analysis.* The district director reviews other companies that are less comparable to CE than UE, but that perform functions similar to those performed by CE and operate in similar markets. Data from these other companies is not given as much weight as the data from UE. Nevertheless, the data confirms that any reasonable construction of an comparable profit interval would include $160 as an appropriate amount of constructive operating income for CE. Since the results from other similar companies confirm the above findings, it can be concluded that the royalty rate of 25 percent used by UE would have resulted in CE being within the comparable profit interval and that the transaction between UE and X meets the requirements for the comparable adjustable transaction method under paragraph (d)(4) of this section.

(viii) *Adjustment.* Based on the above review of UE and other similar companies, the district director determines that the royalty rate of 25 percent derived from the license between UE and X, resulting in $160 of operating income for CE, should serve as a comparable adjustable transaction as defined in paragraph (d)(4) of this section. Accordingly, for 1990 the district director adjusts the royalty to be received by USCorp to 25 percent of CE's sales.

Example 2—Comparable profit interval applied to disqualifying potential comparable adjustable transaction. (i) The facts are the same as in *Example 1* except that a different unontrolled taxpayer, DE, also is found. DE licenses rights to manufacture and sell its product B solely from an uncontrolled taxpayer, G, and pays a royalty to G at a rate of 5 percent of its sales. CE paid an amount of consideration consistent with the DE license agreement. If DE's license from G were a comparable adjustable transaction, the district director would need to determine whether CE's operating income result of $400 were within the comparable profit interval. The results from other uncontrolled taxpayers derived in *Example 1* suggest that CE's operating income of $400 would have been outside of this interval. Nevertheless, the district director examines DE's financial data to determine if this information suggests that inappropriate weight was given to the results in *Example 1.*

(ii) *Financial data for DE.* Averaged data for DE from years 1998 through 2000 is as follows (in $ thousands):

	Data from DE
Sales	1000
Cost of goods sold	(750)
Gross income	250
Operating expenses:	
Royalty payments	(50)
Other	(75)
Operating income	125
Assets	1,190

(iii) *Summary of profit level indicators from DE.* The following chart summarizes each of the profit level indicators derived from DE and the amounts of constructive operating income which result when those indicators are applied to CE's financial data.

Insufficient information on G is available to apply a profit split analysis.

	PLI from DE (percent)	Operating income for CE
Return on assets	10.5	$162
Gross income to operating expenses	200.0	185
Operating income to sales	12.5	150

(iv) *Analysis of DE's profit level indicators.* The levels of constructive operating income derived from DE's return on assets and operating income to sales are similar to one another and to the amounts of constructive operating income derived from UE. This information adds further weight to the results derived in *Example 1.* Therefore, the new data suggests that constructive operating income of $400 would not be within the comparable profit interval. The potential comparable adjustable transaction of DE's licence agreement is rejected and the allocation described in *Example 1* is not changed.

Example 3—Transfer of tanible property resulting in no adjustment. (i) Foreign Parent (FP) is a publicly-traded foreign corporation with a U.S. subsidiary (USS) that is under audit for its 1994 taxable year. FP manufactures a consumer product for worldwide distribution and has developed a trademark that has significant U.S. marketing value. USS imports the finished product and distributes it within the United States under that trademark. USS's income attributable to the trademark is material in relation to the income attributable to the sale of the product alone.

(ii) In accordance with paragraph (d)(1) (III) of this section, the district director applies an analysis based on paragraph (d) (5) of this section to determine an arm's length price for sales of the product from FP to USS.

(iii) Based on all the facts and circumstances, the district director determines that USS should be the tested party. Accordingly, the district director reviews the financial data of USS for the taxable years preceding and following the taxable year under review. The district director determines that no adjustments to the financial data of USS are necessary under paragraph (f)(6)(iv)(B) of this section. For the taxable years 1993 through 1995, USS shows the following results (in $ thousands):

	1993	1994	1995	Average
Assets	310,000	310,000	310,000	310,000
Sales	500,000	500,000	560,000	520,000
Cost of goods sold	393,000	400,000	412,400	401,800
Purchases from FP	350,000	350,000	365,000	355,000
Other	43,000	50,000	47,400	46,800
Gross income	107,000	100,000	147,600	118,200
Operating expenses	80,000	110,000	110,000	100,000
Operating income	27,000	(10,000)	37,600	18,200

The above data from USS, averaged over three years, results in the following ratios:

	Percent
Operating income/sales (OI/S)	3.5
Operating income/assets (OI/A)	5.9
Gross income/operating expenses (GI/OE)	118.2

(iv) To construct the comparable profit interval, the district director obtains data from independent operators of wholesale distribution companies. After examining this data, the district director selects only the companies in the most similar types of businesses and performing the most similar functions in comparison to USS. An analysis of the information available on these companies shows that their profit level indicators do not fluctuate significantly when at least three years are included in the average. Calculating the average ratio of operating income/sales, the average ratio of operating income/assets and the average ratio of gross income/operating expenses for each of the uncontrolled distributors and applying each profit level indicator to USS produces the following constructive operating incomes ("COI") (in $ thousands):

Unrelated distributor	OI/S (percent)	USS COI	OI/A (percent)	USS COI	GI/OE (percent)	USS COI
A	4.2	21,840	6.6	20,460	116.0	18,000
B	9.6	49,920	23.3	72,230	146.7	46,700
C	7.1	36,920	16.9	52,390	139.0	39,000
D	4.2	21,840	8.0	24,800	122.0	22,000
E	7.1	36,920	11.5	35,650	127.2	27,200
F	3.6	18,720	6.3	19,530	117.0	17,000
G	3.1	16,120	5.8	17,980	115.0	15,000
H	1.8	9,360	2.7	8,370	106.9	6,900

(v) The constructive operating incomes derived from the profit level indicators of uncontrolled distributors A, D, F and G are clustered most closely. USS's average reported operating income of $18.2 million is within the interval that could be constructed from these numbers. Therefore, the district director determines that no allocation should be made under section 482 even though USS's operating income for 1994, a loss of $10 million, is clearly outside of any interval that could be constructed from these numbers.

Example 4—Transfer of tangible property resulting in adjustment. (i) The facts are the same as in *Example 3* except that USS reported the following income and expenses (in $ thousands):

	1993	1994	1995	Average
Assets	310,000	310,000	310,000	310,000
Sales	500,000	500,000	560,000	520,000
Cost of goods sold	370,000	400,000	460,000	410,000
Purchases from FP	320,000	350,000	410,000	360,000
Other	50,000	50,000	50,000	50,000
Gross income	130,000	100,000	100,000	110,000
Operating expenses	110,000	110,000	110,000	110,000
Operating income	20,000	(10,000)	(10,000)	0

Applying the above data, the three profit level indicators described in *Example 3* would now produce the following results for USS:

	Percent
Operating income/sales (OI/S)	0
Operating income/assets (OI/A)	0
Gross income/operating expenses (GI/OE)	100

(ii) Applying the same profit level indicators derived from the same uncontrolled distributors to USS now results in the following constructive operating income (COI) for USS (in $ thousands):

Unrelated distributor	OI/S (percent)	USS COI	OI/A (percent)	USS COI	GI/OE (percent)	USS COI
A	4.2	21,840	6.6	20,460	118.0	19,800
B	9.6	49,920	23.3	72,230	146.7	51,370
C	7.1	36,920	16.9	52,390	139.0	42,900
D	4.2	21,840	8.0	24,800	122.0	24,200
E	7.1	36,920	11.5	35,650	127.2	29,920
F	3.6	18,720	6.3	19,530	117.0	18,700
G	3.1	16,120	5.8	17,980	115.0	16,500
H	1.8	9,360	2.7	8,370	106.9	7,590

(iii) Constructive operating incomes derived from A, D, F and G are most closely clustered. Using the principles described in paragraph (f)(8) of this section the district director determines that F is the most comparable uncontrolled taxpayer, the ratio of operating income to sales is the most reliable profit level indicator, and that $18.72 million is the most appropriate point in the interval. USS's reported operating income in 1994 was a loss of $10 million. Therefore, for 1994 the district director makes a $28.72 million adjustment with respect to USS's purchases from FP.

Example 5—Transfer of tangible property with adjustment for inventory. (i) The facts are the same as *Example 4* except that USS has assets of $450 million in 1993, 1994 and 1995. Applying the same profit level indicators derived from the same uncontrolled distributors to USS now produces the following constructive operating incomes for USS (in $ thousands):

Unrelated distributor	OI/S (percent)	USS COI	OI/A (percent)	USS COI	GI/OE (percent)	USS COI
A	4.2	21,840	6.6	29,700	118.0	19,800
B	9.6	49,920	23.3	104,850	146.7	51,370
C	7.1	36,920	16.9	76,050	139.0	42,900
D	4.2	21,840	8.0	36,000	122.0	24,200
E	7.1	36,920	11.5	51,750	127.2	29,920
F	3.6	18,720	6.3	28,350	117.0	18,700
G	3.1	16,120	5.8	26,100	115.0	16,500
H	1.8	9,360	2.7	12,150	106.9	7,590

(ii) Further examination reveals that USS's ratio of inventory to sales of .60 is substantially higher than the inventory to sales ratios for A through H, which range from .19 to .31. As described in paragraph (f)(6)(iv)(B) of this section, USS's inventory is adjusted to reflect the inventory to sales ratios of comparable companies. The district director determines based on all the facts and circumstances that it is necessary to adjust USS's average value of inventory for 1993, 1994 and 1995 to relect a ratio of .31 of USS's sales, as set forth below (in $ thousands):

USS	1993	1994	1995	Average
Actual inventory	300,000	300,000	336,000	312,000
Inventory adjustment	(145,000)	(145,000)	(162,400)	(150,800)
Adjusted inventory	155,000	155,000	173,600	161,200

(iii) Based on the foregoing, USS's total assets are adjusted under paragraph (f)(6)(iv)(B) of this section, as set forth below (in $ thousands):

1993	1994	1995	Average
305,000	305,000	287,600	299,200

(iv) Furthermore, adjustments to USS's operating income are necessary to reflect a carrying charge for the extra inventory held by USS. The district director calculates the carrying charge by multiplying the amount of the asset adjustment by an appropriate interest rate. Assuming that the appropriate rate in this case is 4%, the carrying charge for each of the years 1993 and 1994 is $5,800,000, the carrying charge for 1995 is $6,496,000, and the average carrying charge for all three years is $6,032,000.

(v) Based on the foregoing, the district director reduces USS's reported operating income for 1993 and 1994 by $5,800,000, and the reported operating income for 1995 by $6,496,000. Thus, USS's reported operating income for 1993 is $14,200,000, for 1994 it is ($15,800,000) and for 1995 it is ($16,496,000). The average reported operating income for the three years is adjusted under paragraph (f)(6)(iv)(B) of this section to ($6,032,000).

(vi) The comparable profit method under paragraph (d)(5) of this section is then applied, based on the assets as adjusted above, to determine whether the adjusted operating income of ($6,032,000) is within the comparable profit interval.

Example 6—Transfer of intangible to offshore manufacturer. (i) DevCo is a U.S. developer, producer and marketer of widgets. DevCo develops and patents new production techniques for the widgets. The widgets are manufactured by DevCo's foreign subsidiary, ManuCo, located in Country H. ManuCo and Devco enter a license agreement pursuant to which Devco transfers the right to use the patent to ManuCo in return for a royalty

equal to 5 percent of ManuCo's widget sales. ManuCo sells the widgets to Markco, a U.S. subsidiary of DevCo, for distribution and marketing in the United States. The price that DevCo charges to MarkCo for the widgets is determined to be a comparable uncontrolled price within the meaning of paragraph (e)(2) of this section. The district director examines whether the royalty rate of 5 percent paid by ManuCo to DevCo for taxable year 1994 is an arm's length consideration for the patent. No matching transactions or comparable adjustable transactions are available. Accordingly, the district director examines whether the operating income of ManuCo is within the comparable profit interval. To begin this analysis, the district director examines ManuCo's financial data from 1993–1995, which is as follows (in $ thousands):

	1993	1994	1995	Average
Assets	24,000	25,000	26,000	25,000
Sales to MarkCo.	25,000	30,000	35,000	30,000
Cost of goods sold	5,000	6,000	7,000	6,000
Gross income	20,000	24,000	28,000	24,000
Operating expenses	2,250	2,500	2,750	2,500
Royalty to DevCo (5%)	1,250	1,500	1,750	1,500
Other	1,000	1,000	1,000	1,000
Operating income	17,750	21,500	25,250	21,500

Based on this data, ManuCo's ration of operating income to sales (OI/S) from 1993 to 1995 was 71.7%, and ManuCo's ratio of operating income to assets (OI/A) was 86.0%.

(ii) In order to compare ManuCo's profits with those of other companies, the district director analyzes companies performing similar functions. No information on uncontrolled taxpayers in country H that perform similar functions is available. Other uncontrolled manufacturers exist in country H. However, the functions they perform are significantly different from those performed by ManuCo. The country H uncontrolled manufacturers produce products at the direction of their purchasers, who maintain supervision over all aspects of the production, including the amount produced. In addition, raw materials are either purchased from the buyer or made at the direction of the buyer and all processes employed in the manufacturing operation are owned by the buyers.

(iii) Since reliable data from comparable country H companies is unavailable, companies performing the most similar functions in the most similar markets are considered. The district director determines that data available in country M provides the best match of companies in a similar market performing similar functions.

(iv) Applying the principles of paragraph (f)(6) of this section to financial information from the uncontrolled country M companies, the district director computes the following constructive operating incomes from the uncontrolled country M companies (in $ thousands):

Unrelated company	OI/S (percent)	ManuCo OI	OI/A (percent)	ManuCo OI
A	5.3	1,590	3.3	825
B	11.6	3,480	8.2	2,050
C	17.0	5,100	16.5	4,125
D	10.0	3,000	12.0	3,000
E	8.6	2,574	8.5	2,120
F	14.0	4,200	15.0	3,750

Based on this data, the district director determines that the most appropriate point in the comparable profit interval for ManuCo would have resulted in operating income of $3 million, which requires an adjustment of $18.5 million. To reflect this adjustment, the royalty rate is increased from 5% of sales to 66.7% of sales.

Example 7—Transfer of intangible to manufacturer/distributor. The facts are the same as *Example 6* except that ManuCo no longer sells to its controlled affiliate, MarkCo. ManuCo manufacturers the widgets for sale in a region outside the United States and is responsible for distribution and marketing in that region. No information on uncontrolled taxpayers performing this set of functions in country H is available. In addition, no companies performing similar functions can be found in country M (since these functions are significantly different from the functions reviewed under the facts of *Example 6*). Companies performing the most similar functions in the most similar market are found in the United States. Therefore, the type of analysis undertaken in *Example 6* is repeated using a selection of U.S. companies to generate profit level indicators which are then applied to ManuCo.

Example 8—Transfer of intagible with profit split. (i) The facts are the same as *Example 7* except that more information is available with respect to RW, an uncontrolled U.S. taxpayer. Specifically, enough information is available to calculate the way that the profits are split between company RW and the uncontrolled taxpayer from which company RW licenses its intagible. The district director examines the following information to determine whether the analysis in *Example 7*, above, should be reconsidered:

	OI/A (percent)	Percent of combined OI(percent)
Unrelated:		
RW	25.0	75
Licensor (to RW)	15.0	25
Combined	21.4	100
Related:		
ManuCo	66.0	75
DevCo	15.0	25
Combined	39.4	100

(ii) This information shows that combined operating income is split 25 percent/75 percent in both cases (with 75 percent retained by the licensee). In addition, the licensor in both cases has earned a rate of return on its assets of 15 percent. Although the profits are split in the same way and the rate of return of the licensor is identical, the combined profitability of the products is substantially different. The product manufactured by ManuCo provides an overall rate of return on assets (39.4 percent) that is almost twice the return earned by the uncontrolled taxpayers (21.4 percent). Given this major variance between these combined rates of return, the profit split information from company RW fails to provide reliable information regarding how profits shoud be divided in the case under review. Accordingly, the analysis in *Example 7* is not modified.

Example 9—Transfer of intangible with adjustment for financial assets. The facts are the same as *Example 6*, above, except that ManuCo has assets of $45 millllion. Examination of ManuCo's balance sheet suggests that ManuCo has an unusually high ratio of financial assets to total assets. Based on a comparison of the financial assets held by ManuCo and those held by the

comparable companies, the district director determines that $20 million of ManuCo's assets should be segregated as excess financial assets. These financial assets are invested with uncontrolled taxpayers and earn a market rate of return. Segregation of the excess financial assets is necessary in order to enhance the reliability of the ratio of operating income to assets. Therefore, these financial assets are not included in the total assets when calculating constructive operating income and the income earned from these financial assets is not included in ManuCo's reported operating income within this applicable business classification. ManuCo's assets used in the calculation of operating income/assets are adjusted to $25 million and the analysis proceeds as in *Example 6*.

(g) *Sharing of costs and risks*—(1) *In general*—(i) *Limitation on allocations.* If a member of a group of controlled taxpayers acquires an intagible as an eligible participant in a qualified cost sharing arrangement, the district director may make allocations with respect to that acquisition to reflect each participant's arm's length share of the costs and risks of developing the intagible, under the rules of this paragraph (g). If a member of a group of controlled taxpayers acquires an intangible from another member of the group through any means other than as an eligible participant in a qualified cost sharing arrangement, then the district director may make appropriate allocations to reflect an arm's length consideration for the intangible under the rules of paragraph (d) of this section.

(ii) *Scope of regulations.* An arrangement for the development of intagibles will be considered a qualified cost sharing arrangement only if it meets the requirements of paragraph (g)(2) of this section. A member of a group of controlled taxpayers will be considered an eligible participant only if it meets the requirements of paragraph (g)(3) of this section. Paragraph (g)(4) of this section describes the allocations that may be made by the district director to reflect an eligible participant's arm's length share of the costs and risks of developing intangible property in a qualified cost sharing arrangement. The character of payments made pursuant to a qualified cost sharing arrangement is described in paragraph (g)(5) of this section. Paragraph (g)(6) of this section sets forth administrative requirements, and additonal definitions are provided in paragraph (g)(7) of this section. Paragraph (g)(8) of this section set forth a transitional rule.

(2) *Qualified cost sharing arrangement*—(i) *In general.* A qualified cost sharing arrangement must—

(A) Include two or more eligible participants;

(B) Be recorded in writing contemporaneously with the formation of the cost sharing arrangement;

(C) Provide for the sharing among eligible participants of the costs and risks borne by any participant of developing one or more intangibles in return for a specified interest in any intangible that may be produced;

(D) Reflect a reasonable effort by each eligible participant to share all of the costs and risks of intangible development, including the costs and risks of unsuccessful or less successful related development, such that each eligible participant's share of the costs and risks is proportionate to the benefits that each eligible participant reasonably anticipates it will receive from the exploitation of intangibles developed under the arrangement; and

(E) Meet the administrative requirements described in paragraph (g)(6)(i) of this section.

A cost sharing arrangement that includes ineligible participants may still be a qualified cost sharing arrangement but only with respect to its eligible participants. See paragraph (g)(3)(vi) of this section for rules applicable to ineligible participants.

(ii) *Costs proportionate to benefits*—(A) *In general.* A cost sharing arrangement must establish a method that, under all the facts and circumstances (including information about the markets in which the intangible is likely to be exploited), reflects a reasonable effort to share the costs of developing intangibles in proportion to the benefits that each eligible participant anticipates it will receive from the exploitation of intangibles developed under the arrangement. Under appropriate circumstances, anticipated benefits may be measured by reference to anticipated units of production (where there is a uniform unit of production for all participants), anticipated sales (measured at the same level of the production or distribution process for all participants), anticipated gross or net profit, or any other measure that reasonably predicts the benefits to be shared. If the intangible development benefits more than one qualified cost sharing arrangement, the anticipated benefits of a participant of any of those arrangements must be measured by reference to all such arrangements.

(B) *Adjustments to the method used.* A method reflects a reasonable effort to share costs in proportion to benefits only if it provides that the costs shared by each eligible participant must be adjusted to account for changes in economic conditions, the business operations and practices of the participants, and the ongoing development of intangibles under the arrangement. Such adjustments must ensure that the method continues to reflect a reasonable effort to share costs in proportion to benefits over time, and they should generally be made on an annual basis.

(C) *Presumption based on operating income*—(*1*) *In general.* A method will be presumed not to reflect a reasonable effort to share costs in proportion to benefits if a U.S. participant's cost/income ratio is grossly disproportionate to the cost/income ratio of all other eligible participants. The U.S. participant may rebut this presumption by establishing that the method used in the arrangement provides a reasonably accurate measure of benefits.

(*2*) *Cost/income ratio.* The cost/income ratio of a U.S. participant is the average of the cost of developing intangibles borne by the participant divided by the participant's average operating income attributable to intangibles developed under the arrangement. The cost/income ratio of other eligible participants is the sum of the other participants' average costs divided by the sum of their average operating incomes attributable to intangibles developed under the arrangement. For this purpose, the average cost of developing intangibles and average operating income is calculated by using the average of such amounts from the current taxable year and the two preceding taxable years. However, different periods for costs, income, or both may be used if amounts from such periods more clearly reflect the relationship between the cost of developing intangibles and operating income attributable to intangibles developed under the arrangement. For example, different periods may be used to reflect the effect of the time between the year in which the development costs were incurred and the year in which the benefits from developed intangibles were realized.

(*3*) *Operating income attributable to intangibles.* Operating income attributable to intangibles developed under the arrangement is all operating income that is directly or indirectly attributable to the intangible development area, without reduction for the cost of developing intangibles and without regard to cost sharing payments. Such income includes income from the license or sale of intangibles developed under the cost sharing arrangement, and income earned with respect to the sale of products or services incorporating developed intangibles.

(4) *Cross references.* U.S. participant is defined in paragraph (g)(7)(iii) of this section. Operating income is defined in paragraph (f)(6)(iii)(B)(4) of this section. Cost of developing intangibles is defined in paragraph (g)(7)(ii) of this section.

(iii) *Discretion to apply cost sharing.* In unusual circumstances in which application of the developer-assister rules under paragraph (d)(8) of this section would not clearly reflect the income of a member of a group of controlled taxpayers, the district director may apply the rules of this paragraph (g) to any arrangement that in substance constitutes a cost sharing arrangement (notwithstanding a failure to comply with any requirement of this section).

(3) *Eligible participant*—(i) *In general.* For purposes of this paragraph (g), an eligible participant is a member of a group of controlled taxpayers that agrees to participate in a qualified cost sharing arrangement, if the participant meets the administrative requirements described in paragraph (g)(6)(ii) of this section, and if intangibles developed under the arrangement are, or will be, used in the active conduct of the participant's trade or business. Rules describing whether an intangible is used in the active conduct of a participant's trade or business are provided in paragraphs (g)(3) (ii), (iii), and (iv) of this section. A special rule for the treatment of a group of controlled taxpayers as a single eligible participant is provided in paragraph (g)(3)(v) of this section.

(ii) *Trade or business.* The rules of § 1.367(a)-2T(b)(2) apply in determining whether the activities of a participant in a cost sharing arrangement constitute a trade or business. For this purpose, the term "participant in a cost sharing arrangement" must be substituted for the term "foreign corporation".

(iii) *Active conduct.* In general, a participant actively conducts a trade or business only if it carries out substantial managerial and operational activities. For this purpose, managerial and operational activities carried out on behalf of the participant by independent contractors may be attributed to the participant, but only to the extent that the participant bears the economic risks, and receives the benefits, of those activities.

(iv)(A) *Use of intangibles in the active conduct of a trade or business.* In general, an intangible is used in the active conduct of a trade or business of a participant if it is held for the purpose of promoting the participant's conduct of that trade or business, or is otherwise held in a direct relationship to that trade or business. An intangible is not used in the active conduct of a participant's trade or business if a substantial purpose for participating in the arrangement is to obtain an intangible to transfer to an uncontrolled taxpayer. It will be presumed that a substantial purpose for participating in a cost sharing arrangement is to obtain an intangile to transfer to an uncontrolled taxpayer if there are any significant direct or indirect transfers of developed intangibles to an uncontrolled taxpayer during the course of the arrangement or within four years of the termination of the arrangement. (B) *Example.* The following example illustrates a substantial purpose:

Example. Controlled corporations A, B and C enter into a qualified cost sharing arrangement for the purpose of developing an improved Product X. Costs are shared equally among the three taxpayers. A, B, and C have exclusive rights to sell Product X in North America, South America and Europe, respectively. When an improved Product X is developed, C manufactures and sells the new product in most of Europe. However, for sound business reasons, C licenses the right to use the new product technology to manufacture and sell products, within a small European country, to an unrelated manufacturer. Exploitation of the new Product X technology in that country is not a substantial transfer of the technology. The district director will not presume that C entered into the cost sharing arrangement with a substantial purpose of obtaining intangible property to license or sell to an uncontrolled taxpayer.

(v) *Treatment of controlled taxpayers as a single participant*—(A) *In general.* One member of a group of controlled taxpayers may participate in a cost sharing arrangement on behalf of one or more other members of the group (the "cost sharing subgroup"). For purposes of applying the rules of this paragraph (g) to such a cost sharing arrangement, the cost sharing subgroup will be treated as a single participant in the arrangement. Whether the cost sharing subgroup is treated as an eligible participant under the arrangement will be determined on the basis of all of the activities performed by members of the cost sharing subgroup. Whether the arrangement establishes a method that reflects a reasonable effort to share the costs of developing intangibles in proportion to the anticipated benefits must be determined on the basis of the benefits that the cost sharing subgroup reasonably anticipates receiving from the exploitation of intangibles developed under the arrangement.

(B) *Transfers within cost sharing subgroup—(1) In general.* Any intangible acquired pursuant to a qualified cost sharing arrangement in which a cost sharing subgroup is treated as a single eligible participant will be considered acquired solely by the member participating in the arrangement on behalf of the cost sharing subgroup. Accordingly, any transfer of that intangible by the participating member to any other member of the cost sharing subgroup is a transfer of an intangible subject to the rules of paragraph (d) of this section.

(2) *Arrangement within cost sharing subgroup.* The rule of the preceding paragraph (g)(3)(v)(B)(1) of this section will not apply if all the members of the cost sharing subgroup have themselves entered into a separate qualified cost sharing arrangement, pursuant to which they have reimbursed the participating member for an appropriate share of the arrangement's costs. In that case, any intangible acquired pursuant to the first cost sharing arrangement will be considered acquired by each member of the cost sharing subgroup that is an eligible participant in the separate cost sharing arrangement. The treatment of the separate cost sharing arrangement within the cost sharing subgroup must be determined under the rules of this paragraph (g).

(vi) *Treatment of ineligible participant.* If a qualified cost sharing arrangement has one or more ineligible participants in a taxable year, the costs of developing intangibles incurred by those participants in that taxable year must be taken into account by the eligible participants in determining their cost shares. An ineligible participant that is a member of the controlled group of taxpayers must be treated as an assister under the rules of paragraph (d)(8) of this section. Consideration for the transfer of an intangible that is due from an ineligible participant must be allocated among eligible participants in proportion to the share of costs of each eligible participant. See paragraph (g)(4)(iv) of this section for rules applicable to eligible participants that become ineligible participants in a qualified cost sharing arrangement.

(4) *Allocations with respect to qualified cost sharing arrangements*—(i) *Appropriate scope of intangible development area*—(A) *In general.* The district director may make allocations with respect to a qualified cost sharing arrangement to ensure that the intangible development area covered by the agreement is broad enough to encompass related intangible development (as described in paragraph (g)(4)(i)(B) of this section), and narrow enough so that the costs shared are for the development of products or services that are of potential use (as described in paragraph (g)(4)(i)(C) of this section) to each eligible participant. An intangible

development area is a classification of products or services with respect to which intangible development is conducted under a qualified cost sharing arrangement.

(B) *Related intangible development.* Related intangible development consists of all intangible development, including basic research, that may reasonably be regarded as leading to the development of any product or service in the stated intangible development area, without regard to whether such products or services are ever successfully developed or sold. Related intangible development also includes any activity, conducted or funded by any participant, relating to similar products or services. Whether products or services are similar for this purpose will be determined by examining all facts and circumstances that demonstrate the practical or scientific relationship between the intangible development activities engaged in with respect to the products or services. For this purpose, consideration will be given to the participants' prior business practices, the business practices of uncontrolled taxpayers in the same or related businesses, and the three-digit Standard Industrial Classification code which includes such products or services. If an intangible development area used in a qualified cost sharing arrangement is determined to be too narrow, the district director may make appropriate allocations to cost shares under this paragraph (g) so that all costs attributable to related intangible development are shared by the eligible participants. See paragraph (g)(4)(iii) of this section for rules pertaining to the taxable years with respect to which allocations will be made and the computation of interest charges with respect to such allocations.

(C) *Potential use of products or services.* An intangible development area covers costs for the development of products or services that are of potential use to an eligible participant if it is reasonable to expect that new products or services within the area will be used in the active conduct of a trade or business of that participant in a commercially significant manner. An intangible development area must exclude any significant area of intangible development if it is reasonable to expect that the intangible development will lead to products or services that are not of potential use to an eligible participant. If an intangible development area used in a qualified cost sharing arrangement is determined to be too broad, the district director may make appropriate allocations under this paragraph (g) so that only those costs attributable to the development of products or services that are of potential use to eligible participants are shared under the arrangement. See paragraph (g)(4)(iii) of this section for rules pertaining to the taxable years with respect to which allocations will be made and the computation of interest charges with respect to such allocations.

(D) *Examples.* The following examples illustrate the appropriate scope of an intangible development area:

Example 1. A group of controlled taxpayers in the automotive industry enters a cost sharing arrangement under which they develop new engine technologies. The group has members in Country A and the United States. Part of the intangible development conducted by the members relates exclusively to electric motors and has no potential application to internal combustion engines. The Country A members of the group do not presently and do not anticipate in the future producing or selling automobiles with electric motors. An appropriate intangible development area for the group's cost sharing arrangement will not include the electric motor development since it is reasonable to expect that such intangible development will lead to products that are not of potential use to the Country A members.

Example 2. The facts are the same as in *Example 1*, above. In addition, one member of the group conducts intangible development related to developing high performance engines that are used in race cars. This intangible development is not directly related to any products that the group markets commercially. However, in the past certain advances made in race car development have been applied commercially, and it is reasonable to expect that the intangible development will continue to yield technologies that will be exploited commercially. An appropriate intangible development area for the group's cost sharing arrangement will include this high performance intangible development, since it is reasonable to expect that new products within the area could be used by each member of the arrangement.

(ii) *Appropriate method for sharing costs*—(A) *In general.* The district director may make allocations with respect to a qualified cost sharing arrangement to ensure that the method used for sharing costs is an appropriate measure of the benefits reasonably anticipated by each eligible participant. Such allocations may be required when the method chosen fails to accurately reflect the reasonably anticipated benefits over time. Unless another method of sharing costs provides a more reliable measure of the participant's reasonably anticipated benefits over time, an allocation may be made by reference to a comparison of the participant's cost/income ratio and the cost/income ratio of the other eligible participants. Paragraphs (g)(4)(ii) (B) through (E) of this section describe the allocations that may be made to reflect an appropriate method of sharing costs. See paragraph (g)(4)(iii) of this section for rules pertaining to the taxable years with respect to which allocations will be made and the computation of interest charges with respect to such allocations.

(B) *Adjustments to costs shared.* If a U.S. participant's cost/income ratio is not substantially disproportionate to the cost/income ratio of the other eligible participants, allocations that may be made under this paragraph (g)(4)(ii) will be limited to appropriate adjustments with respect to the costs of developing intangibles shared by that participant. Paragraph (g)(4)(ii)(D) of this section describes when a participant's cost/income ratio will not be considered substantially disproportionate. The cost/income ratio is defined in paragraph (g)(2)(ii)(C)(*2*) of this section.

(C) *Adjustments based on a substantially disproportionate cost/income ratio.* If a U.S. participant's cost/income ratio is substantially disproportionate to the cost/income ratio of the other eligible participants, a transfer of an intangible may be deemed to have occurred outside of the scope of the arrangement; in that case, allocations may be made under the rules of paragraph (g)(4)(iv)(A) of this section (buy-in and buy-out) to reflect an arm's length consideration for that portion of the intangible deemed to have been transferred. The portion of the intangible deemed to have been transferred will be measured by the difference between the U.S. participant's cost/income ratio and the cost/income ratio of the other eligible participants. Alternatively, appropriate adjustments with respct to the costs of developing intangibles shared by that participant may be made under paragraph (g)(4)(ii)(B) of this section.

(D) *Proportionate profits rule.* A U.S. participant's cost/income ratio will not be considered substantially disproportionate if it is less than twice the cost/income ratio of the other eligible participants. That is, this rule will apply if:

$$\frac{\text{U.S. participant's average costs}}{\text{U.S. participant's average operating income}} < 2 \times \frac{\text{Sum of other participants' average costs}}{\text{Sum of other participants' average operating income}}$$

(E) *Examples.* Adjustments described in this paragraph (g)(4)(ii) are illustrated by the following examples.

Example 1. (i) A U.S. participant in a long-standing cost sharing arrangement for the development of manufacturing technology is audited for its 1993 taxable year. In order to determine the type of adjustment that potentially could be made, the district director applies the formula described in paragraph (g)(4)(ii)(D) of this section. Paragraph (g)(2)(ii)(C)(*2*) of this section requires that this formula generally be applied to the current year and the two preceding years. The following information is known about the participants in the cost sharing arrangement:

[In thousands of dollars]

	1991	1992	1993	Total
U.S. participant:				
Cost share payment	15	15	20	50
Operating income	25	30	35	90
Cost/income ratio 1991–1993 = 50/90 = .56				
Other participant:				
Cost share payment	35	30	25	90
Operating income	90	75	60	225
Cost/income ratio 1991–1993 = 90/225 = .4				

(ii) 2×Other Participant's Cost/Income Ratio=.8

(iii) Since the U.S. participant's cost/income ratio in paragraph (ii) of this *Example 1* is less than twice the other participant's cost/income ratio, the U.S. participant's cost/income ratio will not be considered substantially disproportionate to the other participant's cost/income ratio. Accordingly, the district director will limit any allocation to an adjustment to the costs borne by the U.S. participant.

(iv) The district director determines, based on all the facts and circumstances, that the intangible development expenses generate only current benefits and that the participants' current operating incomes attributable to the product area encompassed by the cost sharing arrangement accurately reflect the relative benefits that each participant derives from current intangible development expenses. Accordingly, the participants' cost/income ratios for 1993 should be approximately equal. The U.S. participant's cost/income ratio of .56 is not approximately equal to the other participant's cost/income ratio of .4. Therefore, the district director decreases the U.S. participant's 1993 cost share payment in the amount of $3. The district director also increases the 1993 cost share payment of the other participant in the amount of $3, which is treated as a reimbursement of intangible development expenses to the U.S. participant in accordance with paragraph (g)(5) of this section. After these allocations, the U.S. participant's 1993 cost/income ratio is .49 ($17/$35), and the other participant's 1993 cost/income ratio is .47 ($28/$60).

Example 2. (i) The facts are the same as in *Example 1*, above, except that the U.S. participant manufactures the product, markets it and distributes it under its trade name, and the other participant manufactures the product and immediately sells it to an unrelated entity. Because the U.S. participant performs significant non-manufacturing functions not performed by the other participant, the district director determines that the participants' operating incomes are not an accurate measure of the relative benefits that the participants derive from intangible development conducted pursuant to the cost sharing arrangement. Rather, the district director determines that the relative benefits that the participants derive are most accurately measured by a comparison of their respective unit sales volumes. The participants' unit sales volumes for 1993 are as follows:

U.S. participant:
Unit sales—100
Other participant:
Unit sales—215

(ii) Since, as discussed in *Example 1*, above, the U.S. participant's cost/income ratio is not substantially disproportionate to the cost/income ratio of the other eligible participant, the district director will limit an allocation to an adjustment to the costs borne by the participants.

(iii) To reflect accurately the benefits that each participant derived from the research and development conducted pursuant to the cost sharing arrangement, the district director compares the number of unit sales per dollar of cost share payment generated by the U.S. participant and the other participant in 1993. The U.S. participant's ratio of cost share payments to unit sales for 1993 is .2 ($20/$100), and the ratio of the other participant's cost share payments to unit sales for 1993 is .12 ($25/$215). To approximately equalize these ratios, the district director decreases the U.S. participant's 1993 cost share payment by $6, and increases the other participant's payment by $6. After adjustment, the U.S. participant's ratio of cost share payments to unit sales is .14 ($14/$100), and the other participant's ratio of cost share payments to unit sales is .14 ($31/$215).

Example 3. (i) Assume that the facts are the same as in *Example 1*, above, except that the cost share payments of the participants are as follows:

[In thousands of dollars]

	1991	1992	1993	Total
U.S. participant	20	25	30	75
Other participant	35	30	25	90

(ii) Based on this data, the cost/income ratio of the U.S. participant is .83 ($75/$90), and the cost/income ratio of the other participant is .4 ($90/$225). The U.S. participant's cost/income ratio (.83) is more than twice the cost/income ratio of the other participant (2×.4=.8). The district director further examines the facts to determine whether the U.S. participant's cost/income ratio is substantially disproportionate to the cost/income ratio of the other participant.

(iii) The U.S. participant presents data relating to later years that demonstrates that its cost/income ratio would not be considered substantially disproportionate if data from such years were used. The U.S. participant explains that in its business there normally is a two year lapse between the time that development of a new product is completed and the time that the product is introduced commercially. In order to match its costs and benefits more precisely, the cost sharing arrangement apportions the cost sharing payments among the participants based on anticipated sales two years in the future. Therefore, 1993 costs were apportioned based on anticipated sales in 1995. The relatively high payment by the U.S. participant in 1993 was in anticipation that the U.S. market for the product line was expanding.

(iv) The following data from the years 1990 through 1995 confirms that the U.S. market was expanding relative to the other markets:

[In thousands of dollars]

	1990	1991	1992	1993	1994	1995
U.S. participant:						
Cost share payment	20	20	25	30	30	35
Unit sales	80	90	100	100	250	300
Operating income	25	25	30	35	50	65
Other Participant:						
Cost share payment	40	35	30	25	20	15
Unit sales	400	300	250	215	180	160
Operating income	100	90	75	60	50	40

(v) Based on all of the facts and circumstances, the district director determines that the research and development benefits the participants two years after the research is performed. Accordingly, the district director applies the proportionate profits rules by using income data for the years 1993 through 1995 and cost

share payments for the years 1991 through 1993, as follows:

[In thousands of dollars]

U.S. Participant:
Cost share payments 1991–1993=(20+25+30)=75
Operating income 1993–1995=(35+50+65)=150
Cost/Income ratio=75/150=.5

Other participant:
Cost share payments 1991–1993=(35+30+25)=90
Operating income 1993–1995=(60+50+40)=150
Cost/Income ratio=90/150=.6

(vi) Based on this data, the U.S. participant's cost/income ratio is less than twice the cost/income ratio of the other participant. Accordingly, an allocation by the district director for the 1993 taxable year, if any, will be limited to an adjustment to the cost share payment made by the U.S. participant.

Example 4. (i) The facts are the same as in *Example 3*, above, except that after modifying the analysis, as described in paragraph (iv) of *Example 3*, the U.S. participant's cost/income ratio is still more than twice the cost/income ratio of the other participant. The district director determines that the portion of costs borne by the U.S. participant from 1990–1995 was substantially disproportionate to the portion of costs borne by the other participant. Therefore, the district director may deem a transfer of an intangible to have occurred outside of the scope of the arrangement.

(ii) The district director determines that the portion of the intangible deemed to have been transferred (measured by the difference between the U.S. participant's cost/income ratio and the cost/income ratio of the other eligible participant) is 50%. Pursuant to paragraph (d) of this section, the district director determines that at arm's length the U.S. participant would have charged a royalty equal to 6 percent of sales to an uncontrolled taxpayer using the intangible in the same markets as the other participant. Therefore, the district director determines that the other participant should pay the U.S. participant a royalty for the use of the patent equal to 3 percent of sales (i.e., half of an arm's length royalty).

Example 5. (i) In 1993, a U.S. corporation enters a cost sharing arrangement with a foreign affiliate. Neither party contributes any intangibles to the arrangement. The parties anticipate that the intangible development performed in connection with the cost sharing arrangement will result in commercial sales in 1995, and that the relative benefits that the parties will derive from the intangible development will be most accurately measured by the dollar sales volumes of products incorporating developed intangibles. The written agreement representing the terms of the arrangement provides that the U.S. participant will bear 70 percent and the foreign participant 30 percent of the costs of developing intangibles, respectively. The actual cost share payments by the two participants and their incomes attributable to sales of products incorporating developed intangibles are as follows:

[In thousands of dollars]

	1993	1994	1995	1996	1997	1998
U.S. participant:						
Cost share payment	70	35	28	28	21	21
Operating income	0	0	5	30	50	60
Sales volume	0	0	30	90	150	180
Other participant:						
Cost share payment	30	15	12	12	9	9
Operating income	0	0	7	70	120	140
Sales volume	0	0	70	210	350	420

(ii) Pursuant to the examination of the U.S. corporation's 1996 taxable year, the district director applies the formula of paragraph (g)(4)(ii)(D) of this section to determine the adjustments that might be made with respect to the cost sharing arrangement. The district director agrees with the taxpayer that there is a two year delay between the time that intangible development is conducted and the time that commercial sales result from the development. Accordingly, the data that the district director uses for purposes of the proportionate profits formula is the parties' 1994–1996 cost share payments and their 1996–1998 operating incomes, as follows:

[In thousands of dollars]

U.S. participant:
Cost share payments 1994–1996 (35+28+28)=91
Operating income 1996–1998 (30+50+60)=140
Cost/Income ratio=91/140=.65

Other participant:
Cost share payments 1994–1996 (15)+12+12)=39
Operating income 1996–1998 (70+120+140)=330
Cost/Income ratio=39/330=.12

(iii) This data indicates that the U.S. participant's cost/income ratio is more than twice the cost/income ratio of the other participant. Because the U.S. participant bore a substantially greater share of the costs of developing intangibles than the other participant throughout the years for which data is available, and because the parties failed to adjust their respective cost shares to better reflect their respective shares of the benefits, the district director determines that the U.S. participant's cost/income ratio is grossly disproportionate within the meaning of paragraph (g)(2)(ii)(C) of this section. Accordingly, the cost sharing arrangement adopted by the parties is presumed not to reflect a reasonable effort to measure anticipated benefits as required under paragraph (g)(2)(i)(D) of this section. The arrangement is not considered to be a qualified arrangement, and the district director may make allocations under paragraph (d) of this section to reflect an arm's length consideration for any intangible property obtained by the other participant as a result of the costs of developing intangibles borne by the U.S. participant.

(iii) *Timing of allocations and the computation of interest charges.* If the district director makes an allocation under the provisions of paragraph (g)(4)(ii)(B) of this section, the allocation must be included in income in the taxable year under review, even if the costs to be allocated were incurred in a prior taxable year. If such an allocation is made, appropriate interest adjustments must be made in accordance with paragraph (a)(2) of this section. Thus, for example, if the district director allocates additional cost sharing payments from a foreign subsidiary to its U.S. parent corporation, the allocation must include the computation of interest with respect to the subsidiary's underpayment of costs in prior taxable years.

(iv) *Buy-in and buy-out payments—*(A) *In general.* If an eligible participant in a qualified cost sharing arrangement transfers an intangible that it owns to another member of the group of controlled taxpayers, an arm's length consideration for the transfer must be determined under the provisions of paragraph (d) of this section. Such a transfer may occur, for example, if the intangible is developed outside of the arrangement, if the intangible is developed inside the arrangement but transferred to a new participant in the arrangement, or if the intangible is developed inside the arrangement but additional rights in it are transferred to existing participants upon the departure of a participant. Paragraph (g)(4)(iv)(B) of this section addresses the form of consideration in such cases. Paragraph

(g)(4)(iv)(C) of this section addresses transfers accomplished by the relinquishment of rights. In addition, the provisions of paragraph (d)(8) of this section apply to determine whether any member of the controlled group must receive compensation for assistance rendered in the development of the intangible. For the purposes of paragraph (d)(8) of this section, the eligible participants of a cost sharing arrangement may be treated as a single person.

(B) *Form of consideration.* The consideration for a transfer described in this paragraph (g)(4)(iv) may take any of the following forms:

(*1*) *Lump sum payments.* [Reserved]

(*2*) *Installment payments.* Installment payments spread over the period of use of the intantible by the transferee, with interest calculated in accordance with paragraph (a)(2) of this section; and

(*3*) *Royalties.* Royalties or other payments contingent on the use of the intangible by the transferee. The consideration is owed to the person that transfers the intangible to the eligible participant. For example, if a new participant receives rights to an intangible being developed under a qualified cost sharing arrangement, and those rights are limited to the use of that intangible in a portion of the geographic area in which exclusive rights were previously held by a single participant, the consideration is owed solely to the participant who owned the exclusive geographic rights.

(C) *Relinquishment of rights.* An eligible participant in a qualified cost sharing arrangement may be deemed to have acquired rights in a intangible in another participant (a "departing participant") transfers, abandons, or otherwise relinquishes some or all of its rights under the arrangement, to the benefit of one or more of the remaining participants. Once a relinquishment of rights occurs, a departing participant may not subsequently exploit the rights of any intangible deemed relinquished unless it pays the remaining participants an arm's length consideration determined in accordance with the rules of paragraph (d) of this section.

(D) *Examples.* The following examples illustrate payments described in this paragraph (g)(4)(iv):

Example 1. Three members of a controlled group decide to form a cost sharing arrangement for the development of a car that can run at normal speeds without the use of fossil fuels. Based on a reasonable projection of their future benefits, each company agrees to bear an equal share of the costs incurred during the term of the agreement. Each member contributes $1 million. The third member also contributes plans for a motor. The two members contributing only money must pay the member contributing intangible property their share of the fair market value of the motor plans, in accordance with paragraph (d) of this section.

Example 2. In year one, four foreign controlled taxpayers enter into a cost sharing arrangement to develop a commercially feasible process for capturing energy from nuclear fusion. The cost of developing intangibles for each participant with respect to the project is approximately $1 million per year. Based on a reasonable projection of their future benefits, each company bears an equal share of the costs. In year ten, a fifth controlled taxpayer joins the cost sharing group and agrees to bear one-fifth of the future costs in exchange for rights which are anticipated to represent one-fifth of the total benefit. The fair market value of intangible property within the arrangement at the time the fifth company joins the arrangement is $45 million. The new member pays one-fifth of that amount to the prior participants (that is, $9 million dollars total, or $2.25 million to each existing member). The principles of paragraph (d) of this section may be used to determine whether the new member's payment was commensurate with the income attributable to any intangible that is eventually developed.

Example 3. Domestic corporation M enters into a qualified cost sharing arrangement with its foreign parent, N, for the purpose of developing new products within the Group X product line. M and N share costs on the basis of the dollar value of sales in Group X products. Under an informal arrangement, M sells products in North America and N sells products in the rest of the world. N sells $10 million of Group X products every year. M sells $1 million of Group X products in the first year of the arrangement. However, each year M's Group X product line sales increase by $1 million resulting in $10 million in annual sales in the tenth year of arrangement. Accordingly, M increases the share of costs it bears. In the arrangement's tenth year, the Group X product developers make a major breakthrough. N decides to open a manufacturing plant in Mexico, and to sell its Group X product line in North America. M subsequently closes most of its factories, decreasing its total Group X product line sales to $1 million per year, and reducing its share of the costs of developing intangibles accordingly. M may be deemed a departing member of the cost sharing arrangement in the arrangement's tenth year.

Example 4. In year one, domestic pharmaceutical corporation M enters into a qualified cost sharing arrangement with its foreign parent, N, and a sister company, O, to develop a cure for the common cold. For ten years, each company contributes $1 million annually to the cost sharing arrangement. In the tenth year, M withdraws from the arrangement and is paid a buy-out amount of $10 million, plus interest. This amount is based on the supposition that the value of intangible property within the arrangement is equal to its development cost. Within a short period of M's withdrawal, however, N and O file a new drug application for a cure for the common cold. N and O will be require to pay M an additional amount, consistent with the provisions of paragraph (d) of this section, in consideration for M's ownership of one-third of the property. The amount may be reduced by development costs incurred by N and O after M's departure.

Example 5. In year one, domestic pharmaceutical corporation M enters into a qualified cost sharing arrangement with its foreign parent, N, and a sister company, O, to develop a cure for the common cold. For ten years, each company contributes $1 million annually to the cost sharing arrangement. In the tenth year, N withdraws from the arrangement, and is paid a buy-out payment of $10 million, plus interest. Within a short period of N's withdrawal, however, M and O decide that the intangible development is a complete failure, and they end the cost sharing arrangement. The buy-out payment will be deemed inappropriate on the basis that the group's intangibles were worth less than their cost at the time of N's departure.

(5) *Character of payments made pursuant to a qualified cost sharing arrangement.* Payments made pursuant to a qualified cost sharing arrangement (other than payments described in paragraph (g)(4)(iv) of this section) will be considered costs of developing intangibles of the payor and reimbursements of the same kind of costs of developing intangibles of the payee. Any payment made or received by a taxpayer pursuant to an arrangement that the district director determines not to be a qualified cost sharing arrangement, or a payment made or received pursuant to paragraph (g)(4)(iv) of this section, will be considered a payment in consideration for the transfer of an interest in intangible property, and will be subject to the provisions of paragraph (d) of this section.

(6) *Administrative requirements*—(i) *Cost sharing arrangement.* A cost sharing arrangement meets the administrative requirements of this paragraph (g)(6)(i) if it substantially complies with each of the following rules—

(A) The material provisions of the arrangement are recorded in writing contemporaneously with the formation of the cost sharing arrangement; and

(B) Any change to a material provision of the arrangement is recorded in writing and is reported on the attachment described in paragraph (g)(6)(ii)(A) of this section.

(ii) *Participants.* A participant meets the administrative requirements of this paragraph (g)(6)(ii) if the participant substantially complies with each of the following rules—

(A) The material provisions of the arrangement are summarized in (or a copy of the agreement is attached to) the income tax return filed by the

participant, if any, or they are summarized in any attachment to Schedule M of Form 5471 or Schedule N of Form 5472 filed with respect to that participant in each year that the arrangement is in effect;

(B) The participant maintains records that are sufficient to verify the material provisions of the arrangement, the amount of the costs borne under the arrangement by each participant during the taxable year, and the computation of each participant's operating income resulting from the arrangement; and

(C) The records described in paragraph (g)(6)(ii)(B) of this section are produced within 60 days of a request by the district director for such records (and translations of those records into English are provided within 30 days of a request for translations of specific records), or those records are produced (and translations are provided) within a period agreed upon by the district director.

(iii) *Material provisions of a cost sharing arrangement.* The material provisions of a cost sharing arrangement are—

(A) Identification of the arrangement's participants;

(B) The duration of the arrangement;

(C) The intangible development area(s) covered by the arrangement;

(D) The arrangement's method for dividing costs of developing intangibles;

(E) The extent to which any tangible or intangible property not developed under the arrangement is made available to the participants for use in the arrangement;

(F) The extent to which any entity other than an eligible participant is permitted to use intangibles developed under the arrangement (including any entity on whose behalf an eligible participant is sharing costs of developing intangibles under paragraph (g)(3)(v) of this section);

(G) Whether any participant has received an exclusive right to use developed intangibles (such as an exclusive right to manufacture particular products or an exclusive right to sell products in a particular geographic area), and, if so, the nature of that right. If a participant receives an exclusive right to use an intangible, permitting another entity to exploit the intangible in exchange for an arm's length consideration does not make the right non-exclusive;

(H) The conditions under which the arrangement may be modified or terminated; and

(I) The general administrative provisions of the arrangement.

(iv) *Example.* The following example illustrates recording and reporting changes in the material provisions of an arrangement:

Example. Corporations A, B, and C are members of a group of controlled taxpayers. A, B and C enter into a qualified cost sharing arrangement for the development of an improved Product X. They divide costs on the basis of units of product X currently produced by each: 60%–30%–10% respectively. A year later, C decides to switch to the production of Product Y, and C leaves the arrangement. A and B compensate C in an amount equal to C's share of the fair market value of the intangible property developed to date, and they change their cost shares to 66%–34%. They also license some of the intangible property already developed to D, an uncontrolled party. All of these changes (participants, users of intangible property and division of cost shares) must be recorded in writing and reported on the appropriate return.

(7) *Definitions.* The following definitions apply for purposes of this paragraph (g).

(i) *Specified interest in an intangible.* A specified interest in any intangible that may be produced pursuant to a qualified cost sharing arrangement is any legally enforceable interest, the benefits of which are susceptible of valuation, and which would ordinarily be transferred between uncontrolled taxpayers acting at arm's length under an arrangement to share costs of developing intangibles.

(ii) *Costs of developing intangibles.* The costs of developing intangibles to be shared under a qualified cost sharing arrangement include all of the direct and indirect costs of the intangible development area. When a cost sharing payment is owed by one member of a qualified cost sharing arrangement to another member, the district director may make appropriate allocations to reflect an arm's length rate of interest for the use of the amount owed, if the provisions of paragraph (a) of this section so require.

(iii) *U.S. participant.* The term "U.S. participant" means any eligible participant of a cost sharing arrangement whose income or earnings may be relevant for U.S. federal income tax purposes. Thus, for example, a "U.S. participant" includes a controlled foreign corporation as defined in section 957.

(8) *Transitional rule.* A cost sharing arrangement will be considered a qualified cost sharing arrangement, within the meaning of this paragraph (g), if the arrangement was considered a bona fide cost sharing arrangement under the provisions of § 1.482–2(d)(4), but only if the arrangement is amended, if necessary, to conform with the provisions of this paragraph (g) by the date that is one year after publication of § 1.482–2(g) in the Federal Register.

Par. 4. These amendments are effective for taxable years beginning after December 31, 1992. However, these amendments will not apply with respect to transfers made or licenses granted to foreign persons before November 17, 1985, or before August 17, 1986 for transfers or licenses to others. Nevertheless, these amendments will apply with respect to transfers or licenses before such dates if, with respect to property transferred pursuant to an earlier and continuing transfer agreement, such property was not in existence or owned by the taxpayer on such date. Although these amendments are generally effective for taxable years beginning after December 31, 1992, the final sentence of section 482 (requiring that the income with respect to transfers or licenses of intangible property be commensurate with the income attributable to the intangible) is generally effective for taxable years beginning after December 31, 1986. For the period prior to the effective date of these regulations, the final sentence of section 482 shall be applied using any reasonable method not inconsistent with the statute.

David G. Blattner,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–1941 Filed 1–24–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Definitions

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions to a previously proposed program amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated December 31, 1991 (Administrative Record No. KY–1095), Kentucky submitted additional information to both support and modify its proposed amendment dated June 28, 1991 (Administrative Record No. KY–

1059), as it relates to Kentucky Administrative Regulations (KAR) at 405 KAR 7:020 Definitions. The amendment consists of a reorganization from one definition section at 405 KAR 7:020 to definition sections for each Chapter of 405 Kentucky Administrative Regulations (KAR). This change is being made to insure consistency with Kentucky's administrative process. The proposed amendment includes those changes to terms that were part of the earlier proposed program amendment submitted on June 28, 1991. In addition, the proposed program amendment deletes two terms not used in Kentucky's regulations. The amendment also modifies some terms to reference the Kentucky Revised Statute (KRS) definition and defines some new terms that were previously defined in a specific section of the Kentucky regulation.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on March 2, 1992. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on February 24, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on February 14, 1992.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–2896.

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2828.

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the dispositon of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter dated December 31, 1991 (Administrative Record No. KY–1095), Kentucky submitted a proposed program amendment that reorganizes from one definition section at 405 KAR 7:020 to definition sections for each Chapter of 405 Kentucky Administrative Regulations (KAR). The change was for consistency with Kentucky's administrative process, KRS Chapter 13A. The proposed amendment repeals 405 KAR 7:020 at 405 KAR 7:021 and creates new definition sections at the beginning of each Chapter as follows: 405 KAR 7:001 definitions for 405 KAR Chapter 7, 405 KAR 8:001 definitions for 405 KAR Chapter 8, 405 KAR 10:001 definitions for 405 KAR Chapter 10, 405 KAR 12:001 definitions for 405 KAR Chapter 12, 405 KAR 16:001 definitions for 405 KAR Chapter 16, 405 KAR 18:001 definitions for 405 KAR Chapter 18, 405 KAR 20:001 definitions for 405 KAR Chapter 20, 405 KAR 24:001 definitions for 405 KAR Chapter 24.

The proposed amendment includes those changes to terms or additions of new terms that were part of the proposed program amendment (Administrative Record Number KY–1059) submitted June 28, 1991.

The proposed program amendment deletes two terms, "date of primacy" and "Federal lands program," that were not used in Kentucky's regulations.

The amendment also modifies some terms to reference the Kentucky Revised Statute (KRS) definition. Terms whose definitions in the Kentucky Administrative Regulations have been replaced with reference to KRS 350.010 are: "approximate original contour," "Cabinet," "operations," "operator," "overburden," "person," "reclamation," "Secretary," "small operator," "surface coal mining and reclamation operations," and "surface coal mining operations."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky on December 31, 1991, satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking as set forth in Kentucky's submission dated December 31, 1991, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on February 14, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public

hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 17, 1992.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 92-2178 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

Office of Air and Radiation

40 CFR Parts 72, 73, 75, and 77

[FRL-4096-3]

Acid Rain Program: Change in Public Comment Period for the Core Rules

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rules; Change in Public Comment Period.

SUMMARY: On December 3, 1991, EPA published the proposed Acid Rain Program "core" rules pursuant to title IV of the Clean Air Act Amendments of 1990, stating that public comments on the rules proposed by the December 3 notice must be received on or before February 3, 1992. However, because EPA temporarily closed public access (from January 22, 1992 to January 29, 1992) to the Air Docket containing these proposed core rules and relevant background material, the Utility Air Regulatory Group (UARG) has petitioned EPA for an extension of the public comment period until February 12, 1992. EPA is granting this petition, and will accept comments on the entire core rulemaking package until February 12, 1992.

DATES: Notice is hereby given that comments on the acid rain core rules proposed on December 3, 1991 in the **Federal Register** (56 FR 63001-63351) must be received on or before February 12, 1992.

ADDRESSES: All written comments on the acid rain core rules must be identified with the appropriate document control number and be submitted in duplicate to: EPA Air Docket (LE-131), Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Written comments on the Permits rule must be identified with the document control number "A-90-38"; written comments on the Allowance System rule must be identified with the document control number "A-91-43"; written comments on the Continuous Emissions Monitoring rule must be identified with the document control number "A-90-51"; and written comments on the Excess Emissions rule must be identified with the document control number "A-91-68". Commenters may have comments on the acid rain program or the core rules in general—such comments may be sent to the Acid Rain Core Rules-General Docket, and must be identified with the document control number "A-91-69". In addition, commenters may wish to call the Acid Rain Hotline at (617) 641-5377 to request information or ask general questions.

Comments received on these proposed rules will be available for reviewing and copying from 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m., Monday throughout Friday, excluding legal holidays, in room M-1500, first floor Waterside Mall, at the address given above.

FOR FURTHER INFORMATION CONTACT: Brian Mclean, Deputy Director, Acid Rain Division (ANR-445), U.S. Environmental Protection Agency, 401 M street, SW., Washington, DC 20460, (202) 475-9400.

SUPPLEMENTARY INFORMATION: None.

Dated: January 27, 1992.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 92-2295 Filed 1-29-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7032]

Proposed Flood Elevation Determination; Pennsylvania

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 56 FR 41316 on August 20, 1991. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Borough of Ashland, Schuylkill County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Borough of Ashland, previously published at 56 FR 41316 on August 20, 1991, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[CORRECTED]

On page 41317, in the August 20, 1991 issue of the **Federal Register** the entry for Mahanoy Creek under Ashland (Borough), Schuylkill County is corrected to read as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Mahanoy Creek:	
Downstream corporate limits	*852
Upstream corporate limits	*896

Issued: January 23, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-2140 Filed 1-29-92; 8:45am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for the Marbled Murrelet in Washington, Oregon and California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on the proposed determination of treatened status for the marbled murrelet (*Brachyramphus marmoratus marmoratus*) in Washington, Oregon, and California is reopened. The analysis of considerable research data collected during the 1991 breeding season has recently been completed by various researchers. The reopening of the comment period will allow the Service to consider this new information and any other information in determining whether or not a final designation of threatened status is warranted for the marbled murrelet in California, Oregon, and Washington.

DATES: Comments from all interested parties will now be received until March 2, 1992.

ADDRESSES: Comments and materials should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Portland Field Office, 2600 SE 98th Ave., Suite 100, Portland, Oregon 97266. The proposed rule, comments, and materials will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Russell D. Peterson, Field Supervisor, Portland Field Office at the above address (503/231–6179 or FTS 429.6179).

SUPPLEMENTARY INFORMATION:

Background

The marbled murrelet (*Brachyramphus marmoratus marmoratus*) is a robin-sized member of the Alcidae family found along the north Pacific coast of North America, with a separate subspecies being present in Asia. The marbled murrelet is threatened by the loss or adverse modification of nesting habitat (old-growth and mature forests) primarily due to timber harvesting. It is also threatened from mortality associated with gill-net fishing operations and the effects of oil spills throughout parts of its range.

A proposed rule to list the marbled murrelet as a threatened species in California, Oregon and Washington was published by the Service in the **Federal Register** on June 20, 1991 (56 FR 28362). The comment period on the proposal originally closed on September 18, 1991. Research addressing the life history, habitat requirements, and population status of the marbled murrelet has been ongoing. The Service believes the comment period should be reopened to obtain additional information on the species that was collected during the 1991 breeding season and is now available. This information will be considered by the Service in determining whether or not a final designation of threatened status is warranted for the marbled murrelet in California, Oregon, and Washington. Additional information and comments may now be submitted until March 2, 1992 to the Service office given in the ADDRESSES section.

Author

The primary author of this notice is Janet L. Stein, U.S. Fish and Wildlife Service (see ADDRESSES section); telephone 503/231–6179 or FTS 429–6179.

Authority

The authority for this action is as follows:

Authority: 16 U.S.C. 1361–1707; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated January 23, 1992.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92–2224 Filed 1–29–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 20
Thursday, January 30, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 24, 1992.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• Agricultural Marketing Service
7 CFR part 59, Regulations for Inspection of Eggs and Egg Products.
PY–38, PY–76, PY–155, PY0156, PY–214, PY–222, PY–240, PY–518–1.
Recordkeeping; On occasion; Monthly; Quarterly; Semi-annually; Annually; Daily.
State or local governments; Businesses or other for-profit; Small businesses or organizations; 46,718 responses; 30,621 hours.
C. Shields Jones, Jr., (202) 720–3506.

• Agricultural Marketing Service
7 CFR part 70, Regulations for Voluntary Grading of Poultry.
Products and Rabbit Products and U.S. Classes Standards, and Grades.
PY–32 and PY–33.
On occassion; Monthly.
State or local governments; Businesses or other for-profit; Small businesses or organizations; 24,951 responses; 3,086 hours.
C. Shields Jones, Jr., (202) 720–3506.

Extension

• Office of Finance and Management
Debt Collection.
On occasion.
Individuals or households; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 2,000 responses; 2,000 hours.
Reynaldo Gonzalez, (202) 720–1168.

• Foreign Agricultural Service
Export Sales of U.S. Agricultural Commodities.
FAS–97, 98, 99, 100.
On occasion; Weekly; Quarterly.
Businesses or other for-profit; 38,678 responses; 21,134 hours.
Thomas B. McDonald, Jr., (202) 720–3273.

• Foreign Agricultural Service
Financing Commercial Sales of Agricultural Commodities Under Title I, P.L. 480—Recordkeeping and Reporting Requirements.
Recordkeeping; On occasion.
Businesses or other for-profit; Small businesses or organizations; 522 responses; 582 hours;
James Chase, (202) 720–5780.

• Food and Nutrition Service
Monthly Report of Commodity Supplemental Food and Quarterly.
Administrative Financial Status Report.
FNS–153.
Monthly; Quarterly.
State or local governments; 240 responses; 1,512 hours.
Jackie Williams, (703) 305–2710.

Reinstatement

• Farmers Home Administration
7 CFR 1944–L, Farmers Home Administration Tenant Grievance and Appeals Procedure.
Recordkeeping; On occasion.
Individuals or households; State or local governments; Businesses or other for-profit; Small businesses or organizations; 2,000 responses; 1,967 hours.
Jack Holston (202) 720–9736.

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 92–2265 Filed 1–29–92; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Marketing Service

[Docket No. PE–92–001]

Organization, Functions, and Delegations of Authority

AGENCY: Agricultural Marketing Service.

ACTION: Notice.

SUMMARY: This notice sets forth the organization, functions, and delegations of authority for the Agricultural Marketing Service (AMS).

FOR FURTHER INFORMATION CONTACT: Burton L. McKitrick, Personnel Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, room 1721–S, Washington, DC 20090–6456, (202) 720–4874.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated to the Administrator of AMS in 7 CFR 2.50, the Organization, Functions, and Delegations of Authority of AMS published at 37 FR 6118, April 25, 1972, and amended by 39 FR 23076, June 26, 1974, 40 FR 29559, July 14, 1975, and 54 FR 26813, June 26, 1989, is superseded by the following Statement of Organization, Functions, and Delegations of Authority of AMS. Advance public notice and opportunity for comment are unnecessary because this document relates to rules and regulations of agency organization, procedure, and practice.

General

AMS was established by the Secretary of Agriculture on November 2, 1953, as authorized by 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 67 Stat. 633; and related authorities. The name was changed to the Consumer and Marketing Service on February 8, 1965. Effective April 2, 1972, the Secretary changed the name back to Agricultural Marketing Service. The central office of AMS is located in Washington, DC, but a large part of the program activity is carrried out through various regional and field offices. The functions and authorities delegated to the

Administrator, AMS, appear in 7 CFR 2.50.

Organization and Functions

The Administrator

The Administrator is responsible for the general direction and supervision of programs and activities assigned to AMS. The Administrator reports to the Assistant Secretary for Marketing and Inspection Services.

Deputy Administrator, Marketing Programs

The Deputy Administrator, Marketing Programs, is responsible for: Participating with the Administrator in developing, administering, and coordinating activities relating to AMS transportatiou, marketing and regulatory programs; directing and coordinating the administration of the transportation and marketing and regulatory programs including the inspection, grading, and classing of agricultural commodities, and standardization and market news activities; directing the functions contained in the Agricultural Marketing Act of 1946, as amended, including payments to State departments of agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned; and, directing the functions contained in the legislation identified under 7 CFR 2.50. The programs and activities are carried out by the Cotton, Dairy, Fruit and Vegetable, Livestock and Seed, Poultry, Tobacco, Transportation and Marketing, and Science Divisions.

Deputy Administrator, Management

The Deputy Administrator, Management, is responsible for participating with the Administrator in developing, administering, and coordinating all activities relating to AMS management programs; directing and coordinating the administration of AMS Equal Employment Opportunity (EEO) and civil rights functions; and directing and coordinating the administration of the overall administrative management programs of AMS including budget and financial services, personnel, training, information resources management, management services, communication services, and information and public affairs. The programs and activities are carried out by the Financial Management, Personnel, Management Services, and Information Resources Management Divisions; the EEO Staff; and, the Information Staff.

Compliance Staff

The Compliance Staff is responsible for developing and implementing methods to ensure integrity, effectiveness, and public confidence in all AMS programs and coordinating the AMS Management Control Program; evaluating and improving methods of detecting, preventing, and taking corrective actions on violations of AMS administered statutes; conducting investigations of non-criminal violations of the statutes administered by AMS; and, investigating minor criminal violations and allegations of employee misconduct as authorized by the Department's Office of Inspector General.

Legislative and Regulatory Review Staff

The Legislative and Regulatory Review Staff is responsible for formulating and coordinating AMS legislative affairs and regulatory review programs; serving as the principal advisor to the Administrator on legislative matters; and representing AMS in developing and maintaining relationships with congressional offices.

Marketing Programs

The Cotton, Dairy, Fruit and Vegetable, Livestock and Seed, Poultry, Tobacco, Transportation and Marketing, and Science Divisions are under the administrative, functional, and technical direction of the Deputy Administrator, Marketing Programs.

Cotton Division

The Cotton Division is responsible for planning and administering marketing services (market news, standardization, grading, sampling, and testing), research and promotion, expansion of market outlets, marketing regulations, and related programs for cotton, cotton linters, cottonseed, cotton products, and other vegetable fibers and related commodities as authorized by appropriate legislation listed in 7 CFR 2.50.

Dairy Division

The Dairy Division is responsible for planning and administering milk marketing agreement and order programs under the Agricultural Marketing Agreement Act of 1937, as amended, including directing and coordinating the administration of the overall administrative management programs of the Milk Market Administrators and their staffs; market news and milk order market information; promotion and research programs under the Dairy and Tobacco Adjustment Act of 1983; voluntary grading and inspection of dairy products and dairy plants including development of standards as authorized by the Agricultural Marketing Act of 1946, as amended, and related programs for milk and dairy products as authorized by appropriate legislation listed in 7 CFR 2.50.

Fruit and Vegetable Division

The Fruit and Vegetable Division is responsible for planning and administering marketing services related to market news for fresh fruits and vegetables; voluntary quality standardization and grading programs for fresh and processed fruits, vegetables, edible nuts, and related commodities; the purchase of fruits, vegetables, and related commodities for Government food donation programs; fruit, vegetable, and miscellaneous commodity research and promotion programs; fruit and vegetable marketing agreement and order programs; fruit export quality certification programs; a market regulatory program for fresh and frozen fruits and vegetables; and, a Governmentwide food quality assurance program, as authorized by appropriate legislation listed in 7 CFR 2.50.

Livestock and Seed Division

The Livestock and Seed Division is responsible for planning and directing the implementation and administration of marketing service and regulatory activities relating to commodity grading and certification for meat and livestock products; inspection and certification of quality of agricultural and vegetable seeds; development, revision, and interpretation of grade standards and specifications for livestock, meat, wool, and mohair; purchases of meat, meat products and fish for Government programs; market news reporting for livestock, meat, wool, and grain products; research and promotion programs; and, regulation of the marketing of agricultural and vegetable seeds in interstate commerce, as authorized by appropriate legislation listed in 7 CFR 2.50.

Poultry Division

The Poultry Division is responsible for planning and administering market news service on poultry, eggs, and related commodities; voluntary inspection and grading of poultry and poultry products, shell eggs, egg products, rabbits and related products; mandatory inspection in all plants processing liquid, dried or frozen egg products; surveillance inspections of shell egg handlers; development and revision of grade standards and

specifications; purchase and diversion programs; regulatory activities under the Egg Products Inspection Act, Agricultural Marketing Act, and Agricultural Fair Products Act; and, research and promotion activities, as authorized by appropriate legislation listed in 7 CFR 2.50.

Tobacco Division

The Tobacco Division is responsible for planning and administering marketing services relating to market news, standardization, inspection and grading, market regulatory programs, expansion of market outlets, and related programs for tabacco products and by-products, naval stores, and related commodities as authorized by legislation listed in 7 CFR 2.50.

Transportation and Marketing Division

The Transportation and Marketing Division is responsible for planning and formulating policies and programs to assure the availability of a transportation system to meet the needs of agriculture and rural development, and for AMS marketing assistance and research activities.

Science Division

The Science Division is responsible for planning and formulating policies and programs for AMS scientific activities; AMS statistical services; plant variety protection services; developing and implementing policies, programs, and central laboratory operations to provide scientific support to commodity programs; and, carrying out pesticide-related activities, laboratory quality assurance and safety oversight activities, and related laboratory training.

Management

The Financial Management, Information Resources Management, Personnel, and Management Services Divisions; the EEO Staff; and, the Information Staff are under the administrative, functional, and technical direction of the Deputy Administrator, Management.

Financial Management Division

The Financial Management Division is responsible for planning and administering budget and financial services; formulating and recommending integrated financial policies and programs including systems, instructions, procedures, and forms; providing advice and assistance on reimbursable and cooperative agreements and other forms of Federal Assistance; and the operation of an Investment Program for AMS user-fee reserve balances.

Personnel Division

The Personnel Division is responsible for formulating policy recommendations and developing comprehensive personnel employment programs; developing and administering AMS programs for the classification of positions, organizational analysis, and position management; employee and labor relations; employee development; and, employee benefits programs.

Information Resources Management Division

The Information Resources Management Division is responsible for administering AMS information systems (both automated and manual) by formulating, planning, and implementing systems to meet AMS' changing needs and requirements in conjunction with the Administrator, Deputy Administrators, and Division Directors of AMS; formulating and preparing multi-year budgets and reports on AMS systems, projects, and system activities as required; providing AMS support in data processing, office automation, microcomputers, telecommunications, micrographics, computer graphics, system studies and evaluation.

Management Services Division

The Management Services Division is responsible for developing and administering AMS policies and programs related to real and personal property management, procurement, information management, mail, printing and distribution, and other related programs; serving as liaison with the Animal and Plant Health Inspection Service in providing certain administrative support services to AMS; and administering the voice communication system for AMS.

Equal Employment Opportunity Staff

The EEO Staff is responsible for formulating recommendations for EEO and civil rights policies and procedures and providing guidance and technical assistance on EEO and civil rights concerns; developing implementation plans and monitoring and evaluating EEO and civil rights programs for effectiveness and progress; and administering the EEO Counselor/Mediation and Special Emphasis programs.

Information Staff

The Information Staff is responsible for the overall planning and administration of all public information programs relating to the AMS program activities. The responsibilities include developing and coordinating information and public education activities addressing consumer, industry, media, congressional, AMS, and Departmental audiences.

Delegations of Authority

Deputy Administrators

The Deputy Administrator, Marketing Programs, and the Deputy Administrator, Management, are delegated the authority to perform all the duties and to exercise all the functions and powers which are now, or which may be, vested in the Administrator (including the power of redelegation except when prohibited) except such authority as is reserved to the Administrator. Each Deputy Administrator shall be primarily responsible for the programs and activities of AMS to which assigned. The Deputy Administrator, Marketing Programs, and Deputy Administrator, Management, are delegated authority to establish and interpret program policies with respect to functions assigned.

Compliance Staff; Legislative and Regulatory Review Staff

The Directors of the Compliance and the Legislative and Regulatory Review Staffs are delegated authority, in connection with the respective functions to which assigned, to perform all duties and exercise all functions and powers which are now, or which may be, vested in the Administrator (including the power to redelegate except when prohibited) except such authority as is reserved to the Administrator.

Marketing Program Divisions and Management Divisions and Staffs

The Directors of the Marketing Programs Divisions and the Management Divisions and Staffs are delegated authority, in connection with the respective functions assigned to each of them, to perform all the duties and to exercise all the functions and powers which are now, or which may be, vested in the Administrator (including the power of redelegation except when prohibited) except such authority as is reserved to the Administrator and the Deputy Administrators.

Concurrent Authority and Responsibility to the Administrator

No delegation or authorization prescribed shall preclude the Administrator, or each Deputy Administrator, from exercising any of the powers or functions or from performing any of the duties conferred

upon them, and any such delegation or authorization is subject at all times to withdrawal or amendment by the Administrator, and in their respective fields, by each Deputy Administrator. The officers to whom authority is delegated shall:

Maintain close working relationships with officers to whom they report;

Keep superiors advised with respect to major problems and developments;

Discuss with superiors proposed actions involving major policy questions or other important considerations or questions including matters involving relationships with other Federal agencies, other agencies of the Department, other Divisions or offices of AMS, and other governmental or private organizations or groups.

Prior Authorization and Delegations

All prior delegations and redelegations of authority relating to any function, program or activity covered by this notice shall remain in effect except to the extent that they are inconsistent, amended, or revoked. Nothing herein shall affect the validity of any action taken under prior delegations or redelegations of authority or assignments of functions.

Dated: January 24, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-2191 Filed 1-29-92; 8:45 am]

BILLING CODE 3410-03-M

Animal and Plant Health Inspection Service

[Docket 92-002]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on the findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Petrie, Program Specialist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write Mr. Clayton Givens at this same address. The documents should be requested under the permit number listed below

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit No.	Permittee	Date issued	Organism	Field test location
91-302-02	Cargill Hybrid Seeds	12-23-91	Corn plants genetically engineered to express a phosphino-thricin acetyl transferase gene, for tolerance to the herbicide glufosinate.	Kane County, Illinois.
91-268-02, renewal of permit 90-353-01, issued on 04-18-91.	Ciba-Geigy Corporation	12-30-91	Tobacco plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki* HD1 (Btk), for resistance to lepidopteran insects.	Franklin County, North Caroline.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC this 24th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-2260 Filed 1-29-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-003]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 16 applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, United States Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of these documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT**".

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organism	Field test location
91-353-01	DNA Plant Technology Corporation	12-19-91	Tobacco plants genetically engineered to express a chitinase gene or beta-1,3-glucanase genes to confer resistance to pathogenic fungi.	Contra Costa County, California.
91-353-02	University of California, at Davis	12-19-91	Tomato plants genetically engineered to express maize transposable elements *Activator* (*Ac*) and *Dissociation* (*Ds*).	Yolo County, California.
91-357-01	Calgene, Incorporated	12-23-91	Cotton plants genetically engineered to express a bromoxynil tolerance gene from *Klesiella ozaenae* and a *Bacillus thuringiensis* (cry 1A(c)) gene, to confer resistance to lepidopteran insects.	Pinal County, Arizona; Washington County, Mississippi; and Darlington County, South CAroline.
91-357-02	Calgene, Incorporated	12-23-91	Potato plants genetically engineered to express a coat protein of the potato leaf roll virus (PLRV) and a *Bacillus thuringiensis* subsp. *tenebrionis* (Btt) protein to confer resistance to PLRV and Colorado potato beetle.	Washington County, Mississippi.
91-358-01	DuPont Agricultural Products	12-24-91	Cotton plants genetically engineered to express acetolactate synthase (ALS) genes to confer tolerance to the herbicide sulfonylurea.	Lee County, Arkansas; Bolivar and Washington Counties, Mississippi; and Hidalgo and Lubbock Counties, Texas.
91-358-02	Applied Starch Technologies, Incorporated	12-24-91	Potato plants genetically engineered to express carbohydrate metabolism genes.	Grand Forks County, North Dakota.
91-360-01	Monsanto Agricultural Company	12-26-91	Potato plants genetically engineered to express a protein from *Bacillus thuringiensis* for resistance to Colorado potato beetle (CPB), and to express coat protein genes from potato leaf roll virus (PLRV), potato virus X (PVX), and potato virus Y (PVY), for resistance to PLRV, PVX, and PVY.	Canyon and Bingham Counties, Idaho; Aroostook County, Maine; Otsego County, Michigan; Umatilla County, Oregon; and Benton and Othello Counties, Washington.
91-364-01	Dow Gardens	12-30-91	*Amelanchier laevis* plants (Allegheny Serviceberry) genetically engineered to express a gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk) for resistance to lepidopteran insects.	Midland County, Michigan.

Application number	Applicant	Date received	Organism	Field test location
92-002-01	Monsanto Agricultural Company	01-02-92	Potato plants genetically engineered to express a solids modification gene, a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *tenebrionis* (Btt), and coat protein genes from potato virus X (PVX), and potato virus Y (PVY), for resistance to Colorado potato beetle, PVX, and PVY.	Oneida and Waushara Counties, Wisconsin.
92-002-02	Monsanto Agricultural Company	01-02-92	Potato plants genetically engineered to express a solids modification gene and a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *tenebrionis* (Btt), for resistance to Colorado potato beetle.	Essen and Suffolk Counties, New York.
92-002-03	Pioneer Hi-Bred International, Incorporated	01-02-92	Corn plants genetically engineered to express a coat protein gene from maize chlorotic dwarf virus (MCDV) for resistance to MCDV, and the selectable marker phosphinothricin acetyltransferase from *S. hygroscopicus*, conferring tolerance to the herbicide glufosinate.	Obion County, Tennessee.
92-002-04	Pioneer Hi-Bred International, Incorporated	01-02-92	Corn plants genetically engineered to express a coat protein gene from a maize chlorotic mottle virus (MCMV) for resistance to MCMV, and the selectable marker phosphinothricin acetyltransferase from *S. hygroscopicus*, conferring tolerance to the herbicide glufosinate.	Franklin, Harlan, and York Counties, Nebraska.
92-002-05	Pioneer Hi-Bred International, Incorporated	01-02-92	Corn plants genetically engineered to express a coat protein gene from a maize dwarf mosaic virus (MDMV) for resistance to MDMV, and the selectable marker phosphinothricin acetyltransferase from *S. hygroscopicus*, conferring tolerance to the herbicide glufosinate.	Polk County, Iowa.
92-007-01	Monsanto Agricultural Company	01-07-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and/or a metabolizing enzyme for tolerance to the herbicide glyphosate.	Jersey County, Illinois
92-007-02	Monsanto Agricultural Company	01-07-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Crittenden County, Arkansas; Christian County, Illinois; Benton County, Indiana; Story County, Iowa; and Queen Annes County, Maryland.
92-007-03	Monsanto Agricultural Company	01-07-92	Soybean plants genetically engineered to express the enzyme 5-enolpyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Polk County, Iowa; and Obion County, Tennessee.

Done in Washington, DC, this 24th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-2262 Filed 1-29-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Smokey-Corridor Timber Sales, Lewis and Clark National Forest, Meagher County, MT

AGENCY: Forest Service, USDA

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of timber harvest, associated road construction, and prescribed fire to the various resources. The harvest of merchantable trees would be scheduled in four large sales (totaling 1,400 acres) to be sold in Fiscal Years (FY) 1993, 1994, 1995 and 1998. These timber sales include Corridor (400 acres-FY 1993), Smokey B (400 acres-FY 1994), Mizpah (200 acres-FY 1995), and South Deadman (400 acres-FY 1998). The harvest of post, poles, and other submerchantable trees would be scheduled in several small sales (500 acres) to be sold in FYs 1993–2002. Fire management practices (burning grasslands to prevent conifer encroachment) would be scheduled throughout the decade.

Road construction (6 miles) and reconstruction (8 miles) would be scheduled starting in 1993 and most likely be completed by FY 2000. Post-sale activities, firewood gathering, site preparation, and slash disposal are expected to be completed within two years after the closure of each sale. Road construction and reconstruction would be needed to implement the timber harvest and other management practices. The Forest Service also proposes to change the boundaries of Management Areas A, B, C, F, and H through an amendment to the Forest Plan, in order to better fit the management area goals identified in the Forest Plan.

DATES: Comments concerning the scope of the analysis should be received in writing within on or before March 2, 1992, in order to receive timely consideration in the preparation of the Draft EIS.

ADDRESSES: Send written comments to Victor Standa, District Ranger, Kings Hill Ranger District, 204 W. Folsom, Box A, White Sulphur Springs, MT 59645.

FOR FURTHER INFORMATION CONTACT: Craig Cowie, Smokey-Corridor Interdisciplinary Team Leader, Kings Hill Ranger District (406)547–3361.

SUPPLEMENTARY INFORMATION: The proposed projects are within the Corridor Geographic Unit (LB–3), the Black Butte Geographic Unit (LB–4), and the Smokey Geographic Unit (LB–7) as defined by the Forest Plan. The project area of approximately 89,000 acres includes all lands between Showdown Winter Sports Area south, to the District boundary from the Musselshell River on the east, to Coxcombe Butte on the west. About 77,000 acres of the project area are National Forest System lands and approximately 12,000 acres of private

land. The project area is approximately 15 miles north of White Sulphur Springs, Montana.

The timber management practices associated with the four sales are addressed together because the timing and geographic location represent a similar action under 40 CFR § 1508.25(a)(3). Road construction and fire management practices represent connected actions under § 1508.25(a)(i)(iii). The scope of the proposed action is site-specific with timer practices identified on a stand basis. Aprropriate mitigation measures are designed to respond to the identified issues and anticipated effects. The scope of the proposed action will be determined by looking at the range of alternatives, and impacts as specified by the National Environmental Policy Act.

This EIS will tier to the Lewis and Clark National Forest Land and Resource Management Plan of June, 1986, which provides goals and objectives. Forest-wide management standards and management area prescriptions are identified in the Plan to provide overall guidance and management practices in achieving these goals and objectives. The primary purpose and need for the proposed action is to begin harvesting timber that is mature and overmature and/or in a state of high risk from insect and/or disease, and to help supply commercial demands for timber on a long-term sustained yield basis. These stands of timber are proposed for harvest at this time because of their poor condition and occurring mortality. Timber sales were projected in the Forest Plan in the Sheep Creek and Deadman Creek drainages.

The areas of proposed harvest for the Smokey-Corridor project are within Management Areas A, B, and C of the Lewis and Clark Forest Plan.

The goal for Management Area A is to "(p)rotect, maintain or enchance the scenic values. Meet the visual quality objectives, usually retention or partial retention, with all management activities. Provide moderate timer and range levels" (Forest Plan, page 3–3).

The goal for Management Area B is to "(e)mphasize timber management and provide a moderate level of livestock forage production, while minimizing impacts to other resources" (Forest Plan, page 3–9).

The goal for Management Area C is to "(m)aintain or enhance existing elk habitat by maximizing habitat effectiveness as a primary management objective. Emphasis will also be directed toward management for habitat diversity to support a variety of indigenous wildlife species. Commodity resource management will be practiced where it is compatible to other resources" (Forest Plan, page 3–15).

No public meeting will be held prior to the issuance of the Draft EIS. However, a letter indicating the proposed action and a map of the project area will be sent to intrest publics for comment. One public meeting will be held during the formal review period of DEIS (June 1992). However, the public is invited to visit with Forest Service officials at any time during the EIS preparation prior to the issuance of the Record of Decision.

The Forest Service is seeking information and comments from Federal, State, and local agencies and individuals and organizations who may be interested in or affected by the proposed actions. The agency invites written comments and suggestions on the issues and management oppportunities in the area being analyzed. This information will be used in preparing the draft environmental impact statement (DEIS). This process includes:

1. Identification of potential issues related to the proposed action.
2. Identification of issues to be analyzed in depth.
3. Eliminiation of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of alternatives to the proposed action.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

The analysis will consider a range of alternatives. One of these will be the "No-Action" alternative, in which all harvest and regeneration activities are deferred. Other alternatives will examine various levels and locations of treatment and regeneration to emphasize differing mixes of timber and non-timber resource values.

The analysis will disclose the environmental effects of alternative ways of implementing management direction outlined in the Forest Plan and in addressing the identified issues. The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will disclose site-specific mitigation measures and the effectiveness of each proposed mitigation measure.

Preliminary scoping has been done for this project by the interdisciplinary team from the Lewis and Clark National Forest and six major issues have been identified.

Timber (Issue 1)

(a) Provide timber output as directed in the Forest Plan goals and objectives for Management Areas A, B, and C, as measured by suitable forest lands put under regulated management.

(b) Move towards a more balanced size class structure, as measured by the acres by size class.

(c) Ensure cost effective timber resource outputs, as measured by present net value (PNV) and benefit/cost ratio (B/C).

Elk (Issue 2)

(a) What are the effects on elk effective cover, as measured by effective hiding cover percentages?

(b) What are the effects on elk habitat availability, as measured by elk displacement?

(c) What are the effects on elk hunter opportunity, as measured by elk vulnerability?

Biodiversity (Issue 3)

(a) What are the effects of the proposed actions on threatened and endangered species, sensitive species, management indicator species, snag dependent species, old growth habitat, riparian areas, and fragmentation and corridors?

(b) What actions should be taken to maintain and/or restore the biological diversity and create a mosaic of successional stages in these fir dependent communities?

Water Resources (Issue 4)

(a) What are the effects on sediment produced over current levels on State water quality standards?

(b) What are the effects on fishery resources, as measured by the predicted changes in spawning and rearing habitat?

Visual Quality (Issue 5)

What are the effects of the proposed action on the visual resource as viewed from U.S. Highway 89 (Kings Hill Scenic Byway) and Showdown Winter Sports Area?

Recreation (Issue 6)

(a) What are the effects of the proposed action on winter recreation activities and opportunities?

(b) What are the effects of the proposed action on summer-fall recreation activities and opportunities?

The DEIS will be filed with the Environmental Protection Agency (EPA) and a notice of availability of the DEIS published in the **Federal Register**. It is estimated that the DEIS will be available for public review in June 1992.

The comment period on the DEIS will be for 45 days from the date of publication in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement (FEIS) may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed by October, 1992. The Forest Service will respond in the FEIS to the comments received on the DEIS. John D. Gorman, Forest Supervisor for the Lewis and Clark National Forest, the responsible official for this EIS, will make a decision regarding this proposal after considering the comments, responses, and environmental consequences discussed in the FEIS as well as applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The Forest Supervisor's address is: 1101 15th St. N., Box 869, Great Falls, MT 59403.

Dated: January 24, 1992.

John D. Gorman,

Forest Supervisor, Lewis and Clark National Forest.

[FR Doc. 92-2221 Filed 1-29-92; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System—Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Hannah D. Atkins, Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by John Kennedy, Secretary of State, for an additional farm product produced in that State as follows: Rhea.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.18(e)(3), 2.56(a)(3), 55 FR 22795.

Dated: January 27, 1992.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 92-2285 Filed 1-29-92; 8:45 am]

BILLING CODE 3410-KD-M

Rural Electrification Administration

Finding of No Significant Impact; Adams Electric Cooperative, Inc.

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of a headquarters facility in Adams County, Pennsylvania by Adams Electric Cooperative, Inc. (AEC).

FOR FURTHER INFORMATION CONTACT: REA's FONSI and AEC's Borrower's Environmental Report (BER), may be reviewed at and copies obtained from the office of the Director, Northern Regional Division, REA, room 0243, South Agriculture Building, Washington, DC 20250, telephone (202) 720-1420, or at the office of AEC, P.O. Box 130, Gettysburg, Pennsylvania 17325, telephone (717) 334-9211, during regular business hours. Questions or comments on the proposed project should be sent to the REA contact.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER submitted by AEC and has determined that it represents an accurate assessment of the scope and level of environmental impacts of the proposed project. The BER, which includes input from certain state and Federal agencies, has been adopted by REA to serve as its Environmental Assessment (EA).

The proposed construction project consists of an office building, an operations building/service center, a pole storage area, employee, visitor and cooperative vehicle parking and two storm water detention basins. AEC has purchased 8 hectares (20 acres) of which 6.8 ha (17 a) would be affected by the proposed facilities.

Alternatives examined for the proposed project included no action and alternative sites. REA has determined that the proposed project is an environmentally acceptable alternative that meets AEC's need with a minimum of adverse environmental impact.

REA has determined that the proposed project will have no effect on cultural resources, floodplains, water quality, air quality or threatened and endangered species or critical habitat. The proposed project is expected to have minimal impact on important farmland. The farmland soil proposed to be converted to AEC's use ranks relatively low in importance according to the Soil Conservation Service's (SCS) survey. In addition, the proposed site has been rezoned for commercial use thereby committing it to development. The SCS has determined that the proposed site is a prior converted (cropland) wetland thereby exempting it from the scope of Executive Order 11990. Therefore, wetlands will not be affected by the proposed project. REA has identified no other matters of potential concern related to the proposed project.

In accordance with REA Environmental Policies and Procedures, 7 CFR part 1794, AEC published a legal notice in The Gettysburg Times which has a general circulation in Adams

County. The notice appeared in the November 30 and December 2 editions of the newspaper. The public was given 30 days to respond on the environmental impact of the project. No responses to the notice were received by AEC or REA.

As a result of its independent evaluation, REA has concluded that project approval would not constitute a major federal action significantly affecting the quality of the human environment. Therefore, REA has made a FONSI with respect to the proposed project. The preparation of an environmental impact statement is not necessary.

Dated: January 21, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc. 92-2261 Filed 1-29-92; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Symone Morris Behrmann; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: Symone Morris Behrmann, 11 Goldfinch Court #505, Toronto, Canada, Respondent.

On May 10, 1990, Symone Morris Behrmann was convicted in the U. S. District Court for the District of Columbia of violating section 38 of the Arms Export Control Act (22 U.S.C. 2778) (AECA). Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991)) (EAA),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of a violation of section 38 of the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Behrmann's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Behrmann permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on May 10, 2000. I have also decided to revoke all export licenses issued pursuant to the EAA in which Behrmann had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered*

I. All outstanding individual validated licenses in which Behrmann appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Behrmann's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until May 10, 2000, Symone Morris Behrmann, 11 Goldfinch Court, #505, Toronto, Canada, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Behrmann by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until May 10, 2000.

VI. A copy of this Order shall be delivered to Behrmann. This Order shall be published in the **Federal Register**.

Dated: January 22, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92-2254 Filed 1-29-92; 8:45 am]

BILLING CODE 3510-DT-M

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[1] The EAA expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

Action Affecting Export Privileges; Maryanne E. Callaghan; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: Maryanne E. Callaghan, 39 Congress Street, Warwick, Rhode Island 02889, Respondent.

On July 20, 1990, Maryanne E. Callaghan was convicted in the U.S. District Court for the District of Columbia of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778) (AECA). Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2402 (1991)) (EAA),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of a violation of Section 38 of the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Callaghan's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Callaghan permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of her conviction. The 10-year period ends on July 20, 2000. I have also decided to revoke all export licenses issued pursuant to the EAA in which Callaghan had an interest at the time of her conviction.

Accordingly, it is hereby Ordered:

I. All outstanding individual validated licenses in which Callaghan appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Callaghan's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until 20, 2000, Maryanne E. Callaghan, 39 Congress Street, Warwick, Rhode Island 02889, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Callaghan by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until July 20, 2000.

VI. A copy of this Order shall be delivered to Callaghan. This Order shall be published in the **Federal Register**.

Dated: January 22, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92–2255 Filed 1–29–92; 8:45 am]

BILLING CODE 3510-DT-M

[1] The EAA expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

Action Affecting Export Privileges; George Wenzl; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: George Wenzl, 7375 South Potomac, Englewood, Colorado 80112, Respondent.

On November 19, 1987, George Wenzl (Wenzl) was convicted in the U.S. District Court for the District of Colorado of violating section 38 of the Arms Export Control Act (22 U.S.C. 2778) (AECA). Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991)) (EAA),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of a

[1] The FAA expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

violation of section 38 of the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke and export license previously issued to such a person. Having received notice of Wenzl's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Wenzl permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on November 19, 1997. I have also decided to revoke all export licenses issued pursuant to the EAA in which Wenzl had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered:*

I. All outstanding individual validated licenses in which Wenzl appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the office of Export Licensing for cancellation. Further, all of Wenzl's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until November 19, 1997, George Wenzl, 7375 South Potomac, Englewood, Colorado 80112, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Wenzl by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 767.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until November 19, 1997.

VI. A copy of this Order shall be delivered to Wenzl. This Order shall be published in the Federal Register.

Dated: January 22, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92–2257 Filed 1–29–92; 8:45 am]

BILLING CODE 3510–DT–M

Action Affecting Export Privileges; Yu-Hao Liu, aka Michael Liu, aka David Liu; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: YU-HAO LIU, also known as MICHAEL LIU and as DAVID LIU, c/o Triumph Comdata Corp. 7F No. 82, Sung Teh Road Taipei, Taiwan, R.O.C., Respondent.

On January 31, 1990, Yu-Hao Liu, also known as Michael Liu and as David Liu (Liu), was convicted in the U.S. District Court for the Northern District of Illinois of violating Section 2410(a) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991)) (EAA).[1] Section 11(h) of the EAA provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of a violation of the EAA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Liu's conviction for violating the EAA, and following consultants with the Director,

[1] The EAA expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

Office of Export Enforcement, I have decided to deny Liu permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on July 31, 2000. I have also decided to revoke all export licenses issued pursuant to the EAA in which Liu had an interest at the time of her conviction.

Accordingly, it is hereby Ordered:

I. All outstanding individual validated licenses in which Liu appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Liu's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until January 31, 2000, Yu-Hao Liu, also known as Michael Liu and as David Liu (Liu), c/o Triumph Comdata Corp., 7F No. 82, Sung Teh Road, Taipei, Taiwan, R.O.C., hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Liu by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until January 31, 2000.

VI. A copy of this Order shall be delivered to Liu. This Order shall be published in the **Federal Register**.

Dated: January 22, 1992.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 92-2256 Filed 1-29-92; 8:45 am]

BILLING CODE 3510-DT-M

COMMISSION OF FINE ARTS

1992 National Capital Arts and Cultural Affairs Program

Notice is hereby given that Public Law 99-190, as amended, authorizing the National Capital Arts and Cultural Affairs Program, has been funded for 1992 in the amount of $7,000,000. All requests for information and applications for grants should be addressed to: Charles H. Atherton, Secretary, Commission of Fine Arts, Pension Building, suite 312, 441 F Street, NW., Washington, DC 20001, Phone: 202-504-2200.

Deadlines for receipt of submission of grants applications is 2 March 1992.

This program provides grants for general operating support of organizations who primary purpose is performing, exhibiting, and/or presenting the arts. To be eligible for these grants, organizations must be located in the District of Columbia, must be not-for-profit, non-academic institutions of demonstrated national repute, and must have annual income, exclusive of federal funds, in excess of one million dollars for the current year and for the past three years.

Charles H. Atherton,

Secretary.

[FR Doc. 92-2179 Filed 1-29-92; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

TITLE, APPLICABLE FORM, AND APPLICABLE OMB CONTROL NUMBER: Defense FAR Supplement, part 239, Acquisition of Information Resources, and the clauses at 252.239; DD Form 428.

Type of Request: New collection.

Average Burden Hours/Minutes Per Response: 7.41 hours.

Responses Per Respondent: 1.

Number of Respondents: 26,000.

Annual Burden Hours: 192,750.

Annual Responses: 26,000.

Needs and Uses: Defense FAR Supplement (DFARS) part 239 concerns information collection requirements associated with acquiring Information Resources, specifically, the acquisition of Automatic Data Processing Equipment by DOD contractors for use in DOD contracts, and the acquisition of Telecommunication Services.

Affected Public: Businesses or other for-profit institutions and Small Businesses or Organizations.

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain a benefit.

Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposed

information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD CLEARANCE OFFICER: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Davis Highway, suite 1204, Arlington, Virginia, 22202-4302.

Dated: January 24, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-2198 Filed 1-29-92]

BILLING CODE 3810-01-M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Technology Surprise Task Force will meet February 13-14, 1992 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy requirements for stealth and stealth countermeasures systems. The entire agenda for the meeting will consist of discussion of key issues related to stealth and stealth countermeasures, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: January 27, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-2294 Filed 1-29-92 8:45 am]

BILLING CODE 3810-AE-F

DELAWARE RIVER BASIN COMMISSION

Amendment to Comprehensive Plan and Water Code of the Delaware River Basin

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its January 22, 1992 business meeting, the Delaware River Basin Commission amended its Comprehensive Plan and Water Code in relation to retail water pricing to encourage conservation. The amendment requires owners of water supply systems serving the public seeking approval under section 3.8 of the Compact to submit water conservation plans with applications for new or expanded water withdrawals. In addition, applications submitted after June 30, 1992 for new or expanded withdrawals resulting in total withdrawals equalling or exceeding an average of one million gallons per day must also include an evaluation of the feasibility of implementing a water conserving retail pricing structure and billing program.

EFFECTIVE DATE: January 22, 1992.

ADDRESSES: Copies of the Commission's Water Code are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION: The Commission held public hearings on proposed policy and regulations concerning retail water pricing to encourage conservation on August 14, 1991 (as noticed in the June 7, 1991 and August 6, 1991 issues of the **Federal Register**) and on December 11, 1991 (as noticed in the October 31, 1991 and December 5, 1991 issues of the **Federal Register**). Based upon testimony received and considerable deliberation and discussion, the Commission has adopted this amendment to its Comprehensive Plan and Water Code of the Delaware River Basin.

Article 2 of the Water Code of the Delaware River Basin, which is referenced in 18 CFR part 410, is amended by the addition of a new subsection 2.1.2.C and a new section 2.1.7 to read as follows:

2.1.2 New and Existing Users

[A.] * * *

[B.] * * *

C. Owners of water supply systems serving the public (purveyors) seeking approval under section 3.8 of the Compact for a new or an expanded water withdrawal shall include as part of the application, a water conservation plan. The plan shall describe the various programs adopted by the purveyor to achieve maximum feasible efficiency in the use of water.

(1) The water conservation plan shall, at a minimum, describe the implementation of the following programs as required by the Commission:

a. Source metering (Resolution No. 86-12);

b. Service metering (Resolution No. 87-7 Revised);

c. Leak Detection and Repair (Resolution No. 87-6 Revised;); and

d. Water Conservation Performance Standards for Plumbing Fixtures and Fittings (Resolution No. 88-2 Revision No. 2).

(2) All applications submitted after June 30, 1992 for a new or expanded water withdrawal that results in a total withdrawal equalling or exceeding an average of one million gallons of water per day shall include the following in the water conservation plan:

a. An evaluation of the feasibility of implementing a water conservation pricing structure and billing program as required in section 2.1.7; and

b. Provision of information on the availability of water-conserving devices and procedures (Resolution No. 81-9).

(3) The water conservation plan shall be subject to review and approval by the designated agency in the state where the system is located. The designated state agencies are: Delaware Department of Natural Resources and Environmental Control; New Jersey Department of Environmental Protection and Energy; New York Department of Environmental Conservation; and Pennsylvania Department of Environmental Resources.

(4) The Executive Director shall enter into administrative agreements with each of the designated agencies to administer and enforce the provisions of this regulation. In the absence of an administrative agreement, the Commission shall administer and enforce the regulation.

(5) This regulation shall be effective immediately.

2.1.7 Retail Water Pricing to Encourage Conservation

A. Policy.—It shall be the policy of the Delaware River Basin Commission to promote and support retail water pricing that encourages conservation.

B. Definitions:

1. A water conserving pricing structure is an important demand management tool that provides incentives to consumers to reduce average or peak water use, or both. Conservation pricing reflects the fact that water is a precious resource that should be used in an economically efficient manner. Such pricing includes:

a. Rates designed to recover the full cost of providing service, including a reasonable rate of return on investment; and

b. Timely billing based on metered usage.

Such pricing is also characterized by one or more of the following components:

c. Rates in which the unit price of water per class of customer (residential, industrial, etc.) is constant within each class regardless of the quantity of water used (uniform rates) or increases as the quantity of water used increases (increasing block rates);

d. Seasonal rates or excess-use surcharges to reduce peak water demands during summer months; or

e. Rates based on the long-run marginal cost or the cost of adding the next unit of water supply to the system.

2. A nonconserving pricing structure is one that provides no incentives or disincentives to consumers to reduce water use. Such pricing may be characterized by one or more of the following components:

a. Rates in which the unit price of water within any one class of customer decreases as the quantity of water used increases (decreasing block rates);

b. Rates that involve charging customers a set fee per unit of time regardless of the quantity of water used (flat rates);

c. Pricing that does not reflect the full cost of providing services; or

d. Pricing in which the typical bill is determined mainly by a minimum charge and metered usage has little impact on the total bill.

C. Criteria:

1. All purveyors are encouraged to evaluate alternative pricing structures with the objective of adopting a water conserving pricing structure.

2. A purveyor seeking approval under section 3.8 of the Compact for a new or expanded water withdrawal and whose proposed total withdrawal equals or exceeds an average of one million gallons of water per day shall include in its water conservation plan submitted as part of the application, an evaluation of the feasibility of implementing a water conserving pricing structure and billing program. A purveyor may limit the evaluation to less than its entire system upon application and a determination that a review of its entire system is not necessary. The evaluation shall, at a minimum, consider:

a. The potential change in the quantity of water demanded for customer classes and their end uses of water during both peak and non-peak periods stemming from alternative water conservation pricing structures;

b. The potential revenue effects of the alternative pricing structures;

c. Any legal or institutional changes necessary or desirable to implement a water conservation pricing structure; and

d. How conservation pricing could be coordinated with other conservation programs and measures to reduce both average and peak water use.

3. The requirement set forth in (2) shall be waived if the purveyor either documents it has adopted a water conserving pricing structure or is in the process of implementing such a pricing structure in accordance with a Commission schedule or a schedule established by the appropriate state public utility commission.

4. The Executive Director, on or before June 30, 1993 and annually thereafter, shall review the effectiveness of the retail water pricing activities hereunder to determine their adequacy in promoting and supporting water pricing that encourages water conservation. The results of such review and recommendations, if any, shall be submitted to the Commission for its consideration.

5. This resolution shall be effective immediately.

Delaware River Basin Compact, 75 Stat. 688.

Dated: January 24, 1992.

Susan M. Weisman,

Secretary.

[FR Doc. 92-2259 Filed 1-29-92; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.003C]

Developmental Bilingual Education Program

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1992.

Purpose of Program

To provide grants to establish, operate, or improve developmental bilingual education programs. These programs can support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, particularly Goal 3 and Goal 5. Programs of developmental bilingual education can support Goal 3 to the extent that they help limited English proficient (LEP) children and children whose native language is English achieve competence in English and a second language, while mastering challenging subject matter. The programs can also support Goal 5 if they prepare these children for productive employment in a global economy.

Eligible Applicants: Local educational agencies (LEAs) and institutions of higher education, including junior or community colleges, that apply jointly with one or more LEAs.

Deadline for Transmittal of Applications: April 3, 1992.

Deadline for Intergovernmental Review: June 2, 1992.

Applications Available: February 10, 1992.

Available Funds: $2,800,000.

Estimated Range of Awards: $75,000-$300,000.

Estimated Average Size of Awards: $175,000.

Estimated Number of Awards: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 501.

Priorities

Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or both of the following invitational priorities. However, an application that meets one or both of these invitational priorities does not receive competitive or absolute preference over applications that do not meet either or both of the priorities.

Invitational Priority 1—Certain Languages

A project providing instruction in one of the following second languages: Arabic, French, German, Hindustani, Italian, Japanese, Portuguese, Russian, Spanish, Vietnamese, or one of the Chinese languages. The special interest in programs of instruction in these major world languages is due to their importance in developing our international competitiveness. In addition, if the local community has a strategy for reforming education and reaching the National Education Goals, the second language chosen for the project should be consistent with that strategy.

Invitational Priority 2—Core Curriculum Areas

An instructional approach emphasizing one or more of the following core curriculum areas in addition to English: Mathematics, science, history, or geography.

Selection Criteria

In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 501.31.

In addition to the maximum of 100 points awarded under 34 CFR 501.31, the program regulations in 34 CFR 501.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 501.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 501.32(a)(1))—1 point.

(2) The relative need of the particular LEA(s) for the proposed program (34 CFR 501.23(a)(2))—6 points.

(3) The geographical distribution of LEP children. The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 501.32(a)(3))—7 points.

(4) The number and proportion of children from low-income families to be benefited by the program (34 CFR 501.32(a)(4))—1 point.

For Applications or Information Contact: Socorro Lara or Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202-6641. Telephone (202) 732-5700. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., eastern time.

Program Authority: 20 U.S.C. 3291.

Dated: January 23, 1992.

Rita Esquivel,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 92-2218 Filed 1-29-92; 8:45 am]

BILLING CODE 4000-01-M

Business and Education Standards Program

AGENCY: Department of Education.

ACTION: Notice of proposed selection criteria for awards to be made in Fiscal Year 1992.

SUMMARY: The Secretary proposes selection criteria for awards to be made in fiscal year (FY) 1992 using funds appropriated in FY 1991 under the Business and Education Standards Program, which is authorized by the Carl D. Perkins Vocational and Applied Technology Education Act, as amended (Perkins Act). This program implements a key component of AMERICA 2000, the President's education strategy on which the Departments of Education and Labor are jointly working to assist business and labor to adopt voluntary industry-based skill standards. The Secretary takes this action to establish selection criteria for FY 1992 grant awards under this new program with the understanding that the Departments of Education and Labor will meet regularly to discuss the issues surrounding voluntary industry-based standards and the development and promulgation of program regulations.

DATES: Comments must be received on or before March 2, 1992.

ADDRESSES: All comments concerning these proposed selection criteria should be addressed to Debra J. Nolan, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, room 4518), 400 Maryland Avenue, SW., Washington, DC 20202-7327.

FOR FURTHER INFORMATION CONTACT: Debra J. Nolan, Telephone: (202) 732-2417. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Business and Education Standards Program provides financial assistance for organizing and operating business-labor-education technical committees that will propose national standards for competencies in industries and trades. This program is authorized under section 416 of the Perkins Act, as amended by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. 101-392, 104 Stat. 753 (1990)).

The following entities are eligible for an award under this program:

- Industrial trade associations.
- Labor organizations.
- National joint apprenticeship committees.
- Comparable national organizations, such as educational associations, industry councils, business and industry organizations, and private national research organizations.

Under this program, standards are to be developed through a collaborative voluntary effort by business and industry. Thus, the Secretary intends that entities seeking awards under this program will provide evidence that they represent the industry in some way; that a majority of the industry representatives—employers, labor organizations, associations, vocational and other educators or experts familiar with the industry that is to use the standards—are in agreement; and that they will participate together in the development of the standards.

The Secretary intends to use the selection criteria, the program statute, and the Education Department General Administrative Regulations for FY 1992 grant awards under this program.

The Secretary will announce the final selection criteria in a notice in the **Federal Register**.

Note: This notice of proposed selection criteria does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with, or following publication of, the final selection criteria.

Matching Requirement

Each grant recipient shall provide 50 percent of the cost of the business-labor-education technical committee established under the grant.

Selection Criteria

The Secretary wishes to highlight, for potential applicants, that the Business and Education Standards Program is an element of AMERICA 2000, the President's education strategy to help America move itself toward achieving the National Education Goals. The Business and Education Standards program also supports the National Education Goal of ensuring that every adult American possesses the knowledge and skills necessary to compete in a global economy and to exercise the rights and responsibilities of citizenship. Specifically, the program addresses Track III of the AMERICA 2000 strategy—transforming America into "A Nation of Students"—by establishing standards for job skills and knowledge through a cooperative effort by business, industry, labor, and education groups, so that workers can see what skills are needed to perform a job and can evaluate their grasp of those skills.

The Assistant Secretary for the Office of Vocational and Adult Education has consulted with the Assistant Secretary of Labor for Employment and Training to explore the establishment of the Business and Education Standards

Program. Both Departments will be involved in the process of reviewing applications and will continue meeting throughout the operation of the program.

The Secretary proposes to use the following criteria to evaluate an application:

(a) *Program factors.* (20 points) The Secretary reviews each application to assess the quality and effectiveness of the applicant's approach to developing national standards for competencies in industries and trades, including the extent to which the application proposes—

(1) To develop standards for—

(i) The competencies required for actual jobs, including the increased competency requirements created by the changing workplace, which can be used to establish job-related and industry-specific skill standards, built around core proficiencies;

(ii) Major divisions or specialty areas identified within the occupations the applicant proposes to study;

(iii) The minimum hours of study needed to be competent in these divisions or specialty areas;

(iv) Minimum tools and equipment required in these division or specialty areas;

(v) Minimum tasks to be included in any course of study purporting to prepare individuals for work in these divisions or specialty areas;

(vi) Minimum qualifications for instructional staff in these divisions or specialty areas; and

(2) An adequate needs assessment of the program factors described in paragraph (a)(1) of this proposed selection criterion as part of the project.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including—

(1) The extent of the need for national job-related and industry-specific skill standards, built around core proficiencies, for competencies in the major division or specialty areas identified within the occupations that the applicant proposes to study;

(2) How the applicant identified and documented those needs;

(3) How the standards to be developed will meet those needs, including the need of business for competent entry-level workers in the occupations to be studied; and

(4) The benefits to business, labor, and education that will result from meeting those needs.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including the extent to which—

(1) The plan of management will be effective, will ensure proper and efficient administration of the program, and includes timelines that show starting and termination dates for all tasks;

(2) The specific procedures proposed will accomplish the project's objectives, including how the procedures for selecting the committee will ensure that the members are knowledgeable about the occupations to be studied and include representatives of business, labor, and education;

(3) The applicant plans to organize and operate a business-labor-education technical committee effectively in developing national standards for competencies in industries and trades;

(4) The development of proposed competencies for major divisions or specialty areas within occupations will be coordinated with businesses, industrial trade associations, labor organizations, vocational and other educators or experts familiar with that industry; and

(5) The methods the applicant proposes to use to select project participants, if applicable, will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the plan includes specific procedures for—

(1) A formative evaluation to help assess and improve the accuracy of standards for competencies; and

(2) A summative evaluation conducted by an independent evaluator.

(e) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the extent of the applicant's experience in fields related to the objectives of the project.

(2) The Secretary reviews each application to determine the quality of key personnel an applicant plans to use, including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (e)(2)(i) and (ii) will commit to the project; and

(iv) Experience and training of the project director and key personnel in project management.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) A clear description of the dissemination procedures;

(2) A description of the types of materials the applicant plans to make available; and

(3) Provisions for publicizing the proposed national standards for competencies in the industries and trades.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these selection criteria and applicant eligibility.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 4518, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 2416.

(Catalog of Federal Domestic Assistance Number 84.244, Business and Education Standards)

Dated: January 23, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-2220 Filed 1-29-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/JA(EU)-58, for the transfer from the Federal Republic of Germany to Japan of 20.2 kilograms of uranium oxide, enriched to 19.95 percent in the isotope uranium-235, for fabrication of fuel for the Nuclear Safety Research Reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on January 24, 1992.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 92-2286 Filed 1-29-92; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangements

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following retransfers: RTD/JA(EU)-59, for the transfer of 1.2 grams of uranium, enriched to 93.18 percent in the isotope uranium-235, and RTD/JA(EU)-60, for the transfer of 0.3 grams of plutonium-239.

The above mentioned materials are to be transferred from Belgium to Japan for use in determination of reaction rate distribution during the start-up of a new fast reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, D.C. on January 24, 1992.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 92-2287 Filed 1-29-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP88-248-003 and RP88-248-004]

Arkla Energy Resources, a Division of Arkla, Inc, Report of Refunds

January 24, 1992.

Take notice that Arkla Energy Resources, a division of Arkla, Inc. (AER), on September 16, 1991 tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of refunds, as amended on December 31, 1991, to report that the amounts overcollected were credited to two of its customer's December 1991 invoices. AER states that the report is filed pursuant to the Commission's May 21, 1991 order in the referenced proceeding.

AER states that the amounts being refunded were collected from two downstream customers. These amounts represent the passthrough of United Gas Pipe Line Company contract settlement costs.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2199 Filed 1-29-92; 8:45 am]

BILLING CODE 717-01-M

[Docket No. CP89-5-004]

CNG Transmission Corp.; Sale of Natural Gas

January 23, 1992.

Take notice that on January 21, 1992, CNG Transmission Corporation (CNG), 445 West Main Street, PO Box 2450, Clarksburg, West Virginia, submitted the following information regarding the sale of natural gas to be made to an affiliate under CNG's Rate Schedule USA, pursuant to the authorization granted by an order issued December 20, 1988, in Docket No. CP89-5-000.[1]

(1) Name of Buyer:Doswell Limited Partnership City of Richmond.

(2) Location of Buyer: Richmond, Virginia.

(3) Affiliation between CNG and Buyer: The buyers are not affiliated with CNG. However, a segment of the transportation service for these purchasers will be performed by CNG's affiliate, Virginia Natural Gas Company. CNG and Virginia Natural are owned by the same parent, Consolidated Natural Gas Company.

(4) Term of Sale—Doswell: December 1, 1991, through May 31, 1992, and month to month thereafter. Richmond: November 1, 1991, through March 31, 1992, and month to month thereafter.

(5) Estimated Total and Maximum Daily Quantities—Daily Quantity: Doswell Ltd. Partnership 125,000 Dt/day. City of Richmond 10,000 Dt/day. Estimated Total: Doswell Ltd. Partnership 6,000,000 Dt. City of Richmond 750,000 Dt.

(6) Maximum sales rate: $3.060 per Dt. Minimum sales rate: $2.865 per Dt. Rate to be charged during billing period: Doswell Ltd.—$3.060 per Dt. City of Richmond—$3.060 per Dt.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission,

[1] CNG Transmission Corporation, 45 FERC ¶ 61,440 (1988).

Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of December 20, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, CNG may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2200 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-92-005]

Colorado Interstate Gas Co.; Tariff Filing

January 24, 1992.

Take notice that Colorado Interstate Gas Company (CIG) on January 17, 1992, tendered for filing Second Revised Sheet No. 7 and Third Revised Sheet No. 23 of its Original Volume No. 3, FERC Gas Tariff to comply with a Commission order issued January 2, 1992, in Docket No. RP91-92-004. CIG states that the requested effective date is October 2, 1991, as required by the January 2, 1992 Commission order.

CIG states that the compliance filing reflects changes to Sections 2.3 of Rate Schedule TF-1 and 2.5 of Rate Schedule TI-1 to provide that CIG can perform transportation service for up to 30 days without an executed agreement, but if an agreement is not executed in 30 days, service must be suspended until an agreement is executed.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2201 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-94-000]

Florida Gas Transmission Co.; Petition for Limited Waiver of Tariff Provisions

January 24, 1992.

Take notice that on January 22, 1992, Florida Gas Transmission Company ("FGT"), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. RP92-94-000 a petition requesting authorization for waivers of Federal Energy Regulatory Commission's ("F.E.R.C." or "Commission") policy, Commission regulations, and FGT's F.E.R.C. Gas Tariff to the extent necessary to allow FGT to add delivery points under an existing Service Agreement for firm transportation service between FGT and Gainesville Regional Utilities ("GRU"), while permitting GRU to maintain its existing priority in FGT's first-come, first-served queue.

FGT states that good cause exists for granting the requested waivers in that (i) FGT will continue to serve the same end-user, (ii) the new delivery points will be located in the same geographic location as an existing delivery point at which FGT presently serves GRU, and (iii) the new delivery point will not interfere with FGT's ability to render firm service to FGT's other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 1992 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or protest in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2202 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-2-51-001]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

January 24, 1992.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on January 21, 1992 tendered for filing the following revised tariff sheets to its FERC Gas Tariff proposed to be effective January 1, 1992:

Original Volume No. 3

Substitute Fifth Revised Sheet No. 2
Substitute Fifth Revised Sheet No. 3

Great Lakes states that on November 22, 1991 it submitted to the Federal Energy Regulatory Commission ("Commission") revised tariff sheets to implement a Gas Research Institute ("GRI") Charge Adjustment of 1.51¢ per Mcf consistent with the Commission's order of October 1, 1991 in Docket No. RP91-170-000, *et al.*

Great Lakes states its filing included tariff sheets identified as Fifth Revised Sheet No. 2 and Fifth Revised Sheet No. 3 to Original Volume No. 3 of its FERC Gas Tariff and that such tariff sheets reflected base tariff rates that were filed with the Commission on November 15, 1991 in Docket No. RP91-143, *et al.* These tariff sheets were accepted for filing by the Commission on December 31, 1991 in Docket No. TM92-2-48-000, *et al.*

Great Lakes states further that pursuant to the Commission's order issued December 20, 1991 in Docket No. RP91-143, *et al.*, it was directed, *inter alia*, to eliminate certain costs associated with incrementally priced facilities from the design of rates for interruptible and overrun services in the Docket No. RP91-143, *et al.* proceedings. In compliance with the December 20 order, Great Lakes states that revised base tariff rates were filed with the Commission on January 10, 1992 in Docket No. RP91-143-008, *et al.*, to be effective November 1, 1991. Great Lakes states that such filing was made under protest and without prejudice to Great Lakes' requests for rehearing in Docket Nos. RP91-143, *et al.*

Great Lakes submits that due to the compliance filing made with the Commission on January 10, 1992, and subject to Great Lakes' protest and reservation of position in that filing, it is necessary to amend the November 22, 1991 filing to reflect the base tariff rates effective coincident with the implementation of the GRI Charge Adjustment on January 1, 1992. By this filing, Great Lakes states that it is not proposing a change to any of the rates previously filed with the Commission but is merely combining the effects of two non-coincident filings.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2203 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-2-5-001]

Midwestern Gas Transmission Co., Compliance Filing

January 24, 1992.

Take notice that on January 7, 1992, Midwestern Gas Transmission Company (Midwestern) tendered for filing a detailed statement explaining why its projected rates conform to the Commission's regulations requiring that pipelines projected purchased gas costs based on known and measurable changes in the rate.

Midwestern states that the statement is being filed in compliance with an OPPR Director Letter Order dated December 18, 1991, in Docket Nos. TQ92-2-5-000 and TM92-2-5-000 to demonstrate that the purchase gas cost are based on known and measurable changes in the rate.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2204 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-203-008 and RP88-203-007]

Panhandle Eastern Pipe Line Co.; Report of Refunds

January 24, 1992.

Take notice that on November 14, 1991, Panhandle Eastern Pipe Line Company (Panhandle) filed with the Federal Energy Regulatory Commission (Commission) a Refund Report in accordance with the Settlement Agreement dated April 22, 1991, approved by the Commission's August 1, 1991 and September 30, 1991 orders, issued in Docket Nos. RP85-203-000 and RP88-203-000.

Panhandle states that the report summarizes Order 94 and Order 473 amounts refunded to Subject Parties or Sponsoring Parties to the Settlement.

Panhandle states that copies of the filing was sent to each of Panhandle's affected customers and respective state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before January 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2205 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-8-002]

Seagull Interstate Corp.; Compliance Filing Pursuant to Order No. 497

January 24, 1992.

Take notice that on January 13, 1992, Seagull Interstate Corporation (Seagull) tendered Revised Implementation Procedures and the following tariff sheet for filing in the captioned docket pursuant to Order No. 497, Section 250.16 and § 161.3 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Substitute Second Revised Sheet No. 57A

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2206 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-6-001]

Southern Natural Gas Co; Proposed Changes to FERC Gas Tariff

January 24, 1992.

Take notice that on November 27, 1991, Southern Natural Gas Company (Southern) tendered for filing certain tariff sheets, to its FERC Gas Tariff, Sixth Revised Volume No. 1, as listed on Attachment A to the filing, to be effective December 1, 1991.

Southern states the purpose of the filing is to reflect in the Index of Requirements to its FERC Gas Tariff, the authorizations granted by the Commission in its Order Issuing Certificate and Approving Abandonment which issued on October 31, 1991, in Docket No. CP92-6-000. In addition, Southern notes that the revised tariff sheets incorporate various other changes based on superseding service agreements and certain service changes which have already been authorized by the Commission.

Southern states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions as well as parties of record in the above-captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 31, 1992. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2207 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM91-8-29-004 and TM91-9-29-004]

Transcontinental Gas Pipe Line Corp.; Compliance Filing

January 24, 1992.

On January 21, 1992, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing Second Revised Sheet Nos. 138, 144 and 151 to its FERC Gas Tariff, Third Revised Volume No. 1.

Transco proposes to notify its customers via electronic bulletin board of any upstream rate change proposal which Transco will track under its storage rates schedules within 3 business days following Transco's receipt of such filing.

Transco proposes to file to track any such rate change within 30 days following the issuance date of the Commission's order which accepts and makes effective the rate change.

Transco has requested that such revised tariff sheets be effective February 20, 1992.

Transco states that copies of the filing have been sent to all interested state commissions and all parties in the captioned proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before January 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2208 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-68-000]

Vesta Energy Co.; Petition for Declaratory Order

January 24, 1992.

Take notice that on January 23, 1992, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, Vesta Energy Company (Vesta) petitioned the Commission for a declaratory order to clarify that section 6.3 of Panhandle Eastern Pipe Line Company's (Panhandle) Gas Tariff provides that firm transportation utilizing alternate receipt points shall receive higher scheduling and curtailment priority at those points than interruptible shippers and that Panhandle be ordered to schedule shippers' receipt of gas accordingly.

Vesta further requested a shortened notice period and expeditious action by the Commission its petition, since it claims that timing is of the essence to protect Vesta from further irreparable economic harm as a result of being denied its contractual and legal rights to firm transportation at alternate receipt points.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2209 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-93-000]

Williston Basin Interstate Pipeline Co.; Revised Tariff Sheets

January 24, 1992.

Take notice that on January 21, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing proposed changes in Second Substitute First Revised Sheet Nos. 128 and 131 to Original Volume No. 1-B of its FERC Gas Tariff. The proposed effective date of the revised tariff sheets is January 21, 1992.

Williston Basin states that the revised tariff sheets were filed under protest to address the Commission's statement in its December 27, 1991 order in Docket No. RP91-141-004 concerning the manner in which it proposed that shippers cure imbalances.

Williston Basin states that the instant filing is being made under protest and without prejudice to Williston Basin's rights on rehearing and judicial review of the above referenced order.

Williston Basin states that a copy of the filing is being served upon those listed on the official mailing list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before January 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2210 Filed 1-29-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-120-NG]

Coenergy Ventures, Inc.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for Blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 31, 1991, of an application filed by Coenergy Ventures, Inc. (CVI) requesting blanket authorization to import up to 72 Bcf of natural gas from Canada over a two-year period commencing with the date of first delivery. CVI intends to use existing pipeline facilities for the proposed imports and states that it would submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and

written comments are to be filled at the address listed below no later than 4:30 p.m., eastern time, March 2, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: CVI, a Michigan corporation with its principal of business in Detroit, Michigan, is a wholly-owned subsidiary of MCN Investment Corporation, which is, in turn, a wholly-owned subsidiary of MCN Corporation, both Michigan corporations. CVI is a natural gas marketing company engaged in the business of buying and selling natural gas, and currently holds a blanket export authorization issued in DOE/FE Opinion And Order No. 504 on May 16, 1991 (1 FE Para 70,448). CVI proposes to be the seller of the gas to purchasers located in the United States, and, on occasion, act as an agent for either domestic purchasers or Canadian suppliers. CVI's states that the gas imported under the requested authorization will be sold on a firm and interruptible basis at market responsive prices for sale to various United States customers.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CVI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 24, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–2288 Filed 1–29–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–83–NG]

Enron Oil & Gas Marketing, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order granting blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Enron Oil & Gas Marketing, Inc. blanket authorization to export up to 36.5 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 24, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–2289 Filed 1–29–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91-109-NG]

Meridian Oil Transportation Inc.; Application To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 19, 1991, of an application filed by Meridian Oil Transportation Inc. (Meridian) requesting blanket authorization to export up to 54 Bcf of natural gas to Mexico over a two-year period commencing with the date of first delivery. Meridian intends to use existing U.S. pipeline facilities which interconnect with Mexican pipeline facilities at various points on the U.S./Mexican border. Meridian states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 2, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-7751.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Meridian, a Texas corporation with its principal place of business in Houston, Texas, is engaged in the business of purchasing, reselling, and transporting natural gas in the Texas intrastate market. Meridian is a wholly-owned subsidiary of Meridian Oil Hydrocarbons Inc., which in turn is a wholly-owned subsidiary of Burlington Resources Inc.

Meridian requests authorization to export gas for its own account as well as for the account of its suppliers and purchasers. The requested authority would be used for spot and/or short term sales on a firm or interruptible basis. Meridian states that all sales would result from arms-length negotiations with terms and conditions determined by market conditions.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedure

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Meridian's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 23, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-2290 Filed 1-29-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-107-NG]

Natural Gas Marketing & Storage Co.; Application To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 17, 1991, of an application filed by Natural Gas Marketing & Storage Company (NGMS) requesting blanket authorization to export up to 275 Bcf of natural gas to Mexico over a two-year period commencing with the date of first delivery. NGMS intends to use existing U.S. pipeline facilities which interconnect with Mexican pipeline facilities at various points on the U.S./Mexican border. NGMS states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 2, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: NGMS, a Texas corporation with its principal place of business in Houston, Texas, is engaged in the business of marketing natural gas. NGMS is a wholly-owned subsidiary of Houston Pipe Line Company, which in turn is a wholly-owned subsidiary of Enron Corporation.

NGMS expects to export the natural gas under spot and/or short term sales and on a firm or interruptible basis to end users, local distribution companies, state-owned entities, and pipeline companies located in Mexico. NGMS states that all sales would result from arms-length negotiations with terms and conditions determined by market conditions.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority.

The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedure

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, or oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a question to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NGMS's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 24, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-2201 Filed 1-29-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-110-NG]

Phillips Gas Marketing Co.; Application To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 26, 1991, of an application filed by Phillips Gas Marketing Company (PGMC) requesting blanket authorization to export up to 100 Bcf of natural gas to Mexico over a two-year period commencing with the date of first delivery. PGMC intends to use existing U.S. pipeline facilities which interconnect with Mexican pipeline facilities at various points on the U.S./Mexican border. PGMC states that it would submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 2, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: PGMC, a Delaware corporation with its principal place of business in Houston, Texas, engages in the natural gas marketing business. PGMC is a wholly-owned subsidiary of Phillips 66 Natural Gas Company, which in turn is a wholly-owned subsidiary of Phillips Petroleum Company. PGMC intends to export the natural gas for its own account as well as for the account of others. PGMC states that it will sell the requested natural gas volumes on a short-term or spot basis and the contractual arrangements will be the product of arms-length negotiations with an emphasis on competitive prices and contract flexibility.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedure

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided; such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PGMC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 23, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–2292 Filed 1–29–92; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–925–DR]

Marshall Islands; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Republic of the Marshall Islands (FEMA–925–DR), dated December 6, 1991, and related determinations.

DATES: January 23, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3606.

NOTICE: Notice is hereby given that, effective January 4, 1992, and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I have appointed Thomas P. Credle of the Federal Emergency Management Agency as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Major P. May as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92–2268 Filed 1–29–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–931–DR]

Puerto Rico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–931–DR), dated January 22, 1992, and related determinations.

DATES: January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3606.

NOTICE: Notice is hereby given that, in a letter dated January 22, 1992, the President declared a major disaster under the authority of the Robert. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93–288, as amended by Public Law 100–707), as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico, resulting from severe storms and flooding on January 5–6, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of Puerto Rico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jose A. Bravo of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Puerto Rico to have been affected adversely by this declared major disaster:

The municipalities of Adjuntas, Aguas Buenas, Aibonito, Arroyo, Barceloneta, Barranquitas, Caguas, Canovanas, Cayey, Cidra, Coamo, Comerio, Dorado, Fajardo, Guayama, Humacao, Jayuya, Juana Diaz, Lajas, Loisza, Luquillo, Maunabo, Naguabo, Naranjito, Orocovis, Patillas, Ponce, Salinas, San Lorenzo, Santa Isabel, Toa Baja, Utuado, Villalba, and Yabucoa for Individual Assistance.

The municipalities of Adjuntas, Aguas Buenas, Aibonito, Arroyo, Barceloneta, Barranquitas, Caguas, Canovanas, Cayey, Cidra, Coamo, Comerio, Dorado, Fajardo, Guayama, Humacao, Jayuya, Luquillo, Maunabo, Naguabo, Naranjito, Orocovis, Patillas, Ponce, Salinas, San Lorenzo, Santa Isabel, Toa Baja, Utuado, Villalba, and Yabucoa for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster (Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92–2269 Filed 1–29–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–930–DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–930–DR), dated December 26, 1991, and related determinations.

DATED: January 22, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3606.

NOTICE: The notice of a major disaster for the State of Texas, dated December 26, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 26, 1991:

The counties of Callahan, Freestone, Gillespie, Hamilton, Houston, Kerr, Mills, and Wise for Individual Assistance. (Previously designated for Public Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92–2270 Filed 1–29–92; 8:45 am]

BILLING CODE 6718–02–M

Advisory Committee for the National Urban Search and Rescue System; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463) (5 U.S.C. App 1 *et seq.*), announcement is made of the following committee meeting:

Name: Advisory Committee for the National Urban Search and Rescue System.

Dates of Meeting: February 13–14, 1992.

Place: Federal Emergency Management Agency, Federal Center Plaza, 500 C Street, SW., Washington, DC 20472.

Time: February 13—8:30 a.m. to 5 p.m. February 14—8:30 a.m. to 5 p.m.

Proposed Agenda: The Advisory Committee will discuss: (1) A draft White Paper on the state of the Federal Urban Search and Rescue (US&R) program; (2) a public outreach campaign to inform local and State representatives of the program and what US&R assets are available and how they may be accessed during times of emergency; (3) the status of the FEMA-developed training courses, including the orientation training course developed for Task Force leadership; (4) a review of the Montgomery County, Maryland, and Fairfax County, Virginia, Task Force deployment exercise; (5) FEMA US&R program update; and (6) organizational updates by the Advisory Committee members.

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting must contact Mrs. Kimberly S. Caulfield Vasconez, FEMA, Operations Planning and Response Branch, 202–646–4335, no later than February 11

Minutes of the meeting will be prepared and will be available for public viewing in Operations Planning and Response Branch (SL–OE–FR–OP), Federal Emergency Management Agency, 500 C Street, SW., room 613, Washington, DC, 20472. Copies of the minutes will be available upon request 30 days after the final day of the meeting.

Dated: January 24, 1992.

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 92–2267 Filed 1–29–92; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200606.

Title: North Carolina State Ports Authority/D.B. Turkish Cargo Lines Marine Terminal Agreement.

Parties:

North Carolina State Ports Authority
D. B Turkish Cargo Lines

Synopsis: This Agreement, filed January 21, 1992, provides for throughput rates on loaded and empty containers and defines the services and inclusive charges pertaining to those rates. The Agreement is for a period of three years.

Agreement No.: 224–200605.

Title: Port of Portland/SAGA Forest Carriers (Intl.) S/A Terminal Use Agreement.

Parties:

Port of Portland ("Port")
SAGA Forest Carriers (Intl.) S/A ("SAGA")

Synopsis: This Agreement, filed January 17, 1992, provides that in return for SAGA agreeing to use the Port as a designated Pacific Northwest port-of-call for specific services, the Port will share wharfage and dockage revenue with SAGA on revenue in excess of $120,000. The Agreement is for one year with options to renew.

Agreement No.: 203–011075–019.

Title: Central America Discussion Agreement.

Parties:

United States/Central America Liner Association
Nexos Line
Nordana Line, Inc.
Concorde Shipping, Inc.
Tropical Shipping and Construction Co. Ltd.
Central America Shippers, Inc.
Great White Fleet, Ltd.
Naviera Consolidada S.A.
Thompson Shipping Co., Ltd.
King Ocean Central America, S.A.
Network Shipping Ltd.

Synopsis: The proposed amendment adds Empresa Naviera Santa as a party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 202–011213–025.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
d'Amico Societa de Navigazione, S.p.A.
Nordana Line A/S
Sea-Land Service, Inc.

Synopsis: The proposed amendment provides that no member may withdraw from the Agreement prior to June 30, 1992, unless notice of withdrawal was submitted before January 14, 1992.

Agreement No.: 202–011241–011.

Title: USA-North Europe Rate Agreement.

Parties:

Atlantic Container Line AB
P&O Containers Limited
Sea-Land Service, Inc.
Compagnie Generale Maritime (CGM)
Hapag Lloyd AG
Nedlloyd Lijnen BV
A.P. Moller-Maersk Line

Synopsis: The proposed amendment extends the March 31, 1992 expiration date to July 1, 1992 of Articles 16.1 and 16.2 of the Agreement which apply to specific arrangements between ACL and Wallenius.

By Order of the Federal Maritime Commission.

Dated: January 24, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–2213 Filed 1–29–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

The Bessemer Group, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. The Bessemer Group, Incorporated, Woodbridge, New Jersey; to engage *de novo* in participating in loans made by its subsidiary banks, Bessemer Trust Company and Bessemer Trust Company, N.A., to their trust customers pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2225 Filed 1-29-92; 8:45 am]

BILLING CODE 6210-01-F

Casper Bocina, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 20, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Casper Bocina, Short Hills, New Jersey, to acquire an additional 3.7 percent for a total of 8.89 percent; Robert S. Bohrer, West Orange, New Jersey, to acquire an additional 0.18 percent for a total of 1.97 percent; Frank P. Farinella, Jr., Springfield, New Jersey, to acquire an additional 3.0 percent for a total of 11.74 percent; Mark S. Fogt, Bedminster, New Jersey, to acquire an additional 0.18 percent for a total of 1.06 percent; Bruce E. Goldman, Denville, New Jersey, to acquire an additional 0.3 percent for a total of 0.47 percent; Seymour Lehrhoff, South Orange, New Jersey, to acquire an additional 1.3 percent for a total of 8.33 percent; C. Thomas Thomas, Short Hills, New Jersey, to acquire an additional 1.2 percent for a total of 4.39 percent; Jerome N. Waldor, South Orange, New Jersey, to acquire an additional 5.3 percent for a total of 11.17 percent; and Nazario L. Paragano, Bernardsville, New Jersey, to acquire an additional 21.3 percent for a total of 34.78 percent of the voting shares of Inter Community Bancorp, Springfield, New Jersey, and thereby indirectly acquire Inter Community Bank, Springfield, New Jersey.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Ross Maxwell Whipple, Arkadelphia, Arkansas; to acquire 40.43 percent of the voting shares of Central Arkansas Bancshares, Inc., Malvern, Arkansas, and thereby indirectly acquire Bank of Malvern, Malvern, Arkansas; Bank of Hot Springs, Hot Springs, Arkansas; and Merchants & Planters Bank & Trust Co., Arkadelphia, Arkansas.

Board of Governors of the Federal Reserve System, January 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2227 Filed 1-29-92; 8:45 am]

BILLING CODE 6210-01-F

First Commonwealth Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 20, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Commonwealth Financial Corporation, Indiana, Pennsylvania; to acquire 100 percent of the voting shares of Central Bank, Claysburg, Pennsylvania.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First State Bancshares, Inc., New London, Wisconsin; to become a bank holding company by acquiring 95 percent of the voting shares of First State Bank, New London, Wisconsin.

Board of Governors of the Federal Reserve System, January 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2228 Filed 1-29-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0034]

Duramed Pharmaceuticals, Inc.; Withdrawal of Approval of Seven Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of seven abbreviated new drug applications (ANDA's) held by Duramed Pharmaceuticals, Inc., 5040 Lester Rd., Cincinnati, OH 45213 (Duramed). Duramed has agreed in writing to permit FDA to withdraw approval of the applications, and has waived its opportunity for a hearing. This action stems from the discovery of untrue statements, discrepancies, and omissions concerning information used to support approval of the applications.

EFFECTIVE DATE: January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Richard S. Lev, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 301-295-8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of untrue statements, discrepancies, and omissions that relate to batches of drug products used to support approval of the following ANDA's held by Duramed:

ANDA 70-308; Propranolol HC1 Tablets, 40 milligrams (mg);
ANDA 70-309; Propranolol HC1 Tablets, 60 mg;
ANDA 70-310; Propranolol HC1 Tablets, 80 mg;
ANDA 88-967; Trifluoperazine HC1 Tablets, 1 mg;
ANDA 88-968; Trifluoperazine HC1 Tablets, 2 mg;

ANDA 88-969; Trifluoperazine HCl Tablets, 5 mg; and
ANDA 88-970; Trifluoperazine HCl Tablets, 10 mg.

After careful review of inspectional findings, Duramed's own internal audit results, and letters from the firm, the agency determined that there was sufficient justification to initiate proceedings to withdraw approval of the products listed above. Duramed was notified in writing of these determinations and, in accordance with 21 CFR 314.150(d), was offered an opportunity to permit FDA to withdraw approval of the applications. Subsequently, in a letter dated November 8, 1991, Duramed requested that approval of these ANDA's be withdrawn.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is withdrawn effective January 30, 1992.

Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action.

Dated: January 22, 1992.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 92-2233 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92N-0033]

Duramed Pharmaceuticals, Inc.; Withdrawal of Approval of 35 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 35 abbreviated new drug applications (ANDA's) held by Duramed Pharmaceuticals, Inc., 5040 Lester Rd., Cincinnati, OH 45213 (Duramed). Duramed requested in writing that approval of the applications be withdrawn.

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Richard S. Lev, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a letter dated November 8, 1991, Duramed requested that FDA withdraw approval of the applications listed below. The applicant has also, by its request, waived its opportunity for a hearing.

ANDA No.	Drug
70-165	Tolazamide Tablets, 100 milligrams (mg).
70-166	Tolazamide Tablets, 250 mg.
70-167	Tolazamide Tablets, 500 mg.
70-306	Propranolol Hydrochloride Tablets, 10 mg.
70-307	Propranolol Hydrochloride Tablets, 20 mg.
70-326	Indomethacin Capsules, 25 mg.
70-327	Indomethacin Capsules, 50 mg.
70-894	Diazepam Tablets, 2 mg.
70-895	Diazepam Tablets, 5 mg.
70-896	Diazepam Tablets, 10 mg.
71-006	Methyldopa Tablets, 250 mg.
71-009	Methyldopa Tablets, 500 mg.
71-126	Propranolol Hydrochloride and Hydrochlorothiazide Tablets, 40 mg/25 mg.
71-127	Propranolol Hydrochloride and Hydrochlorothiazide Tablets, 80 mg/25 mg.
71-216	Haloperidol Tablets, 0.5 mg.
71-217	Haloperidol Tablets, 1 mg.
71-218	Haloperidol Tablets, 2 mg.
71-219	Haloperidol Tablets, 5 mg.
71-220	Haloperidol Tablets, 10 mg.
71-221	Haloperidol Tablets, 20 mg.
71-327	Propranolol Hydrochloride Tablets, 90 mg.
71-708	Temazepam Capsules, 15 mg.
71-709	Temazepam Capsules, 30 mg.
88-182	Aminophylline Tablets, 100 mg.
88-183	Aminophylline Tablets, 200 mg.
88-232	Cyproheptadine Hydrochloride Tablets, 4 mg.
88-593	Hydroxyzine Pamoate Capsules, 25 mg.
88-594	Hydroxyzine Pamoate Capsules, 50 mg.
88-595	Hydroxyzine Pamoate Capsules, 100 mg.
88-918	Chlorpropamide Tablets, 100 mg.
88-919	Chlorpropamide Tablets, 250 mg.
88-948	Phentermine Hydrochloride Capsules, 30 mg.
88-394	Prednisone Tablets, 5 mg.
88-395	Prednisone Tablets, 10 mg.
88-396	Prednisone Tablets, 20 mg.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is withdrawn effective March 2, 1992. Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action.

Dated: January 22, 1992.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 92-2234 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0208]

Chelsea Laboratories, Inc.; Withdrawal of Approval of Nine Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of nine abbreviated new drug applications (ANDA's) held by Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552 (Chelsea). This action is being taken because the applications contain untrue statements of material fact, and the drugs covered by these applications lack substantial evidence of effectiveness and have not been shown to be safe. Chelsea has withdrawn its request for a hearing on these products.

EFFECTIVE DATE: January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Richard S. Lev, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of June 22, 1990 (55 FR 25712), FDA offered an opportunity for a hearing (NOOH) on a proposal to issue an order under section 505(e)(2), (e)(3), and (e)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)(2), (e)(3), and (e)(5)) withdrawing approval of the following ANDA's held by Chelsea:

ANDA 70-421, Verapamil Hydrochloride Tablets, 80 milligrams (mg);
ANDA 70-422, Verapamil Hydrochloride Tablets, 120 mg;
ANDA 71-020, Disopyramide Phosphate Capsules, 100 mg;
ANDA 71-021, Disopyramide Phosphate Capsules, 150 mg;
ANDA 71-556, Perphenazine & Amitriptyline Hydrochloride Tablets, 4 mg/50 mg;
ANDA 71-661, Oxazepam Capsules, 10 mg;
ANDA 71-662, Oxazepam Capsules, 15 mg;
ANDA 71-663, Oxazepam Capsules, 30 mg; and
ANDA 89-700, Perphenazine Tablets, 8 mg.

The basis for the proposal stemmed from the discovery of discrepancies, false statements, and omissions regarding the manufacture and processing of batches of drug product used to support approval of the ANDA's. Identification of these discrepancies, false statements, and omissions raised

substantial questions about the reliability of the data, including the bioequivalence data, submitted in support of the applications.

On July 22, 1990, Chelsea requested a hearing, and on August 21, 1990, Chelsea submitted data and information in support of its hearing request. Subsequently, in a letter dated December 6, 1991, Chelsea requested the withdrawal of the applications listed above and withdraw its hearing request.

Therefore, the Director of the Center for Drug Evaluation and Research, under section 505(e) of the act, and under authority delegated to him (21 CFR 5.82), finds that the applications listed above contain untrue statements of material fact (21 U.S.C. 355(e)(5)); that new evidence of clinical experience, not contained in the applications or not available until after the applications were approved, shows that the drugs have not been shown to be safe for use under the conditions of use upon the basis of which the applications were approved (21 U.S.C. 355(e)(2)); and that on the basis of new information before him with respect to the drugs, evaluated together with the evidence available to him when the application were approved, there is a lack of substantial evidence that the drug will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling (21 U.S.C. 355(e)(3)).

Pursuant to the foregoing findings, approval of the ANDA's listed above, and all amendments and supplements thereto, is withdrawn effective January 30, 1992. Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action.

Section 505(j)(6)(C) of the act requires that FDA immediately remove from its approved product list ("Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug whose approval was withdrawn for grounds described in the first sentence of section 505(e) of the act. Such grounds apply to this withdrawal. Notice is hereby given that the drugs covered by these applications are removed from the list.

Dated: January 22, 1992.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 92-2232 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F-0499]

Sumitomo Chemical America, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sumitomo Chemical America, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate as an antioxidant in the manufacture of polystyrene and rubber-modified polystyrene articles that contact food.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4295) has been filed by Sumitomo Chemical America, Inc., 345 Park Ave., New York, NY 10154. The petition proposes to amend the food additive regulations in § 178.2010 Antioxidants and/or stabilizers for polymers. (21 CFR 178.2010) to provide for the safe use of 2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate as an antioxidant in the manufacture of polystyrene and rubber-modified polystyrene articles that contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 22, 1992.

Douglas L. Archer,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-2300 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92N-0035]

Chelsea Laboratories, Inc.; Withdrawal of Approval of Nine Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of nine abbreviated new drug applications (ANDA's) held by Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552 (Chelsea). Chelsea notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: March 2, 1991.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8038.

SUPPLEMENTARY INFORMATION: Chelsea, the holder of the ANDA's listed in the table in this document, has informed FDA that these drug products are no longer marketed and has requested that FDA withdraw approval of the applications. Chelsea has also, by its request, waived its opportunity for a hearing.

ANDA No.	Drug
18-369	Furosemide Tablets, 20 and 40 milligrams (mg).
62-402	Nystatin Oral Tablets, 500,000 Units.
85-552	Probenecid and Colchicine Tablets, 500 mg/0.5 mg.
85-876	Diphenoxylate Hydrochloride and Atropine Sulfate Tablets, 2.5 mg/.025 mg.
85-894	Prompt Phenytoin Sodium Capsules, 100 mg.
86-231	Butalbital, Aspirin, and Caffeine Capsules, 50 mg/325 mg/40 mg.
87-275	Acetaminophen and Codeine Phosphate Tablets, 300 mg/60 mg.
87-276	Acetaminophen and Codeine Phosphate Tablets, 300 mg/30 mg.
87-277	Acetaminophen and Codeine Phosphate Tablets, 300 mg/15 mg.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the abbreviated new drug applications listed above, and all supplements thereto, is hereby withdrawn, effective March 2, 1992.

Dated: January 22, 1992.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 92-2231 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 92N-0036]

Superpharm Corp., et al.; Withdrawal of Approval of 18 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 18 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that approval of the applications be withdrawn.

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Jean M. Olson, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8041.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA No.	Drug	Applicant
70-008	Metronidazole tablets USP, 250 milligrams (mg).	Superpharm Corp., 1769 fifth Ave., Bayshore, NY 11706.
70-009	Metronidzaole tablets USP, 500 mg.	Do.
70-488	Indomethacin capsules USP, 50 mg.	Do.
70-622	Metoclopramide injection USP, 5 mg/milliliter (mL) (ampule).	Smith & Nephew Solopak, 1845 Tonne Rd., Elk Grove Village, IL 60007-5125.
70-634	Nitroglycerin injection USP, 5 mg/mL (ampule).	Do.
71-517	Propranolol hydrochloride tablets USP, 40 mg.	Superpharm Corp.
71-518	Propranolol hydrochloride tablets USP, 80 mg.	Do.
71-727	Clorazepate dipotassium capsules, 3.75 mg.	G.D. Searle & Co., 4901 Searle Parkway, Skokie, IL 60077.
71-728	Clorazepate dipotassium capsules, 7.5 mg.	Do.
71-729	Clorazepate dipotassium capsules, 15 mg.	Do.
88-431	Quinidine gluconate sustained release tablets, 324 mg.	Roxane Laboratories, Inc., P.O. Box 16532, Columbus, Oh 43216-6532
88-986	Chlordiazepoxide hydrochloride capsules USP, 10 mg.	Superpharm Corp.
88-987	Chlordizsepoxide hydrochloride capsues USP, 5 mg.	Do.
88-988	Chlordiazepoxide hydrochloride capsules USP, 25 mg.	Do.
89-031	Hydroxyzine pamoate capsules USP, 25 mg.	Do.
89-032	Hydroxyzine pamoate capsules USP, 50 mg.	Do.
89-033	Hydroxyzine pamoate capsules USP, 100 mg.	Do.
89-137	Spironolactone and hydrochlorothiazide tablets, 25 mg/25 mg.	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the abbreviated new drug applications listed above, and all supplements thereto, is hereby withdrawn, effective March 2, 1992.

Dated: January 22, 1992.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 92-2230 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting

The following advisory committee meeting is announced:

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee

Date, Time, and Place

February 18, 19, and 20, 1992, 8 a.m., Grand Ballroom, Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD. If room reservations are made at the Bethesda Marriott, please refer to the FDA Breast Implant meeting to obtain a special group rate.

Type of Meeting and Contact Person

Open public hearing, February 18, 1992, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; if necessary, closed presentation of data and/or closed committee deliberations, 4 p.m. to 6 p.m.; open committee discussion, February 19 and 20, 1992, 8 a.m. to 4 p.m.; if necessary, closed presentation of data and/or closed committee deliberations, 4 p.m. to 6 p.m.; Paul F. Tilton, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1090.

General Function of the Committee

The committee reviews and evaluates data and information on marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open Public Hearing

Interested persons may present information or views on new issues pending before the committee. Those desiring to make oral presentations must, by February 7, 1992, notify the contact person and submit a copy of their proposed statements in writing, along with the names and addresses of proposed participants. Those wishing to present only written testimony must also submit it by February 7, 1992, to allow all written statements to be submitted to and reviewed by the Panel in advance of the meeting. This open public portion of the meeting will be considered an addendum to the full day of open public testimony during the previous panel meeting on November 12, 13, and 14, 1991, the proceedings of which will be incorporated into this meeting. Restatements of positions expressed at the November 1991 meeting are therefore inappropriate for this meeting. Each presenter will be limited in time and not all requests to speak may be able to be accommodated. All written statements submitted in a timely fashion will be provided to the Panel.

Open Committee Discussion

On January 6, 1992, the Commissioner of Food and Drugs called for a voluntary moratorium on the distribution and use of silicone gel-filled breast implants after receiving new information regarding these devices that amplified the agency's concerns about their safety. In light of this information, the committee will reassess its previous recommendation that the 180-day review period for premarket approval applications for these breast prostheses be extended and that the devices remain available during the extended review period to meet a public health need. The committee will also consider what advice should be provided to women who currently have these devices implanted.

Closed Presentation of Data

The committee may be presented with and discuss trade secret or confidential commercial information regarding the silicone gel-filled breast prostheses. This portion of the meeting will be closed to the extent necessary to permit discussion of this information (5 U.S.C. 552b(c)(4); 21 CFR 14.25 and 14.27).

Closed Committee Deliberations

The committee may discuss trade secret or confidential commercial information regarding the silicone gel-filled breast prostheses. This portion of the meeting will be closed to the extent necessary to permit discussion of this information (5 U.S.C. 552b(c)(4); 21 CFR 14.25 and 14.27).

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed to the extent necessary. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 28, 1992.

David A. Kessler,

Commissioner for Food and Drugs.

[FR Doc. 92–2393 Filed 1–28–92; 3:06 pm]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–92–3235; FR–2988–N–02]

Public Housing Resident Management Program Technical Assistance Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Public Housing Resident Management Program Technical Assistance. The announcement contains the names and addresses of the award winners and the amounts of the awards.

DATES: Date of NOFA publication in the **Federal Register**: March 25, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Walker, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–3611. The TDD number for the hearing impaired is (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to provide assistance to public housing Resident Councils (RCs) or Resident Management Corporations (RMCs), and RMCs/Resident Organizations (ROs) of Indian housing, to fund training and other activities for the resident management of public and Indian housing.

The 1991 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on March 25, 1991 (56 FR 12426). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $4,999,945 was awarded to 98 public and Indian housing resident organizations. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as follows:

NOFA for the Public Housing Resident Management Program Technical Assistance

Resident leader		Grant amount	Organization
Augie Kocheten	Dora Circle, Box 1227, Dutch Harbor, AK 99692	40000	Cape Cheerful Resident Council.
Darryl G. Turner	7862 Wisdom Way, Pinson, AL 35126	35330	Dixi Manor Resident Council.
Mrs. Melba Jones	602-A Dr. Thomas Drive, Mobile, AL 36610	40000	Mobile City-Wide Resident Council
Mr. Michael Nakai, Sr	P.O. Box 1436 Window Rock, AZ 86515	40000	Desert Hills Townhouses TA.
Tiki Hadley	986 Ellsworth, San Francisco, CA 94110	40000	Alemany RMC, Inc.
Mr. Michael Ward	290 East El Roblar Dr. #603, Meiners Oaks, CA 93023	40000	Area Tri-Council Organization.
Jewel Green	131 Middlepoint Road, San Francisco, CA 94124	40000	Hunter's View RMC. Inc.
Emory Cenance	209 E. 103rd Street, #699, Los Angeles, CA 90002	20000	Jordan Downs Res. Advisory Council.
Ms. Nora King	1593 E. 114th Street, #1108, Los Angeles, CA 90059	7000	Nickerson Gardens RMC.
Ms. Alicia Rodriguez	1305 South Concord, Unit 18, Los Angeles, CA 90023	7000	United Residents of Estrada Court.
Ms Edna Harrison	240 Maple Way, Alameda, CA 94501	32009	Esperanza RMC.
Minnie Conict	1212 South Federal Bldg. #8, Denver, CO 80204	40000	Central Resident Council.
Ms. Willie Ann Cooper	3096 Champa Street, Denver, CO 80205	40000	Curtis Park Resident Council.
Lorraine James	44 Pequot Lane, Stamford, CT 06902	40000	Southfield Village Resident Council.
Robert Perry	333 Valley St., New Haven, CT. 06515	40000	Valley Townhouses RC.
Ivory Walters	507 51st Street N.E., Washington, D.C. 20019	100000	Dept. of PGA Hsg. Res. Ad Bd.
Jacqueline Massey	916 Varney Street, S.E. #23, Washington, D.C. 20032	40000	Valley Green - Resident Council.
Susan Farley	1266-76 Whiteoak Road. Dover, DE 19901	40000	Dover Resident Advisoary Council.
Mr. Michael Stevenson	10770 Anders Boulevard, Jacksonville, FL 32216	40000	Anders Park Tenant Org.
Ms. Gussie Livingston	2205 East 32nd Avenue #360, Tampa, FL 33610	40000	College Hill RMC.
Ms. Doris Bell	4224 Michigan Avenue, Fort Myers, FL 33916	40000	Ft. Myers Resident Advisory.
Joan Riggins	1051 Third Avenue, St. Petersburg, FL 33705	40000	James Park Residents Assn.
Ms. Thelma A. Foster	321 Lakeside Park, Avon Park, FL 33825	40000	Lakeside Resident Council.
Ms. Rosemary Charles	54 William Clark Court, Sanford, FL 32771	40000	Sharc, Inc.
Ms. Margaret Greenway	821 Play Lane, NW, Atlanta, GA 30314	39500	Eagan Homes Tenant Assn.
Ms. Barbara Walker	1260 Gault Street, SE. #149, Atlanta, GA 30315	39500	Englewood Manor Tenant Assn.
Mr. Danny Moore	150 Tenth Street, No. NE #405, Atlanta, GA 30308	40000	Juniper/Tenth St. Highrise TA.
Margie Smith	522 Techwood Drive #497, Atlanta, GA 30313	40000	Techwood/Clark Howell TA.
Mr. Douglas E. McDonald	337 Palm Street #4, Wahiawa, HI 96786	27445	Wahiawa Terrace.
Mary Harris	117 West Third Street, Muscatine, IA 52761	40000	Clark House/Sunset Park RCS.
Marissie Shaw	401 Longview Place, Decatur, IL 62521	100000	Resident Employment & Mgmt. Co.
Mrs. Hallie Amey	252 W. 39th Street, Chicago, IL 60609	12000	Wentworth Gardens RC.
Mr. William Depriest	663 Cross Street, Evansville, IN 47713	100000	Fulton/Caldwell RC.
Ms. Emma Wiley	549 Marshall Court, Bldg. 40, Louisville, KY 40202	100000	Clarksdale Resident Corp.
Ms. Cynthia Wiggins	2300 Erato Street, New Orleans, LA 70113	40000	Guste Homes Low-Rise RC.
Dorothy Harrison	82 Curwin Circle, Lynn, MA 01905	40000	Curwin Circle Resident Council.
Myrtle L. Berry	78 Maplewood Park, Gloucester, MA 01930	40000	Maplewood Park Tenant Org.
Elly Saraceni	9 New Street, East Boston, MA 02128	100000	Maverick Tenants' ORG.
Ms. Hattie Dudley	81 Prentiss Street, Boston, MA 02120	100000	Mission Hill RC.
Ms. Gloria Beeks	131 Washington Street, Cambridge, MA 02139	40000	Pisani Center Tenant Council.
Ms. Mary Baker	4140 Tenth Street, Baltimore, MD 21225	40000	Brooklyn Homes Tenant Council.
Ms. Dellyne Camper	714 Greenwood Avenue, Cambridge, MD 21613	40000	Calvin Mowbray/ Stephen Camperpk.
Ms. Lena Bivens	3455 Woodward Avenue, Detroit, MI 48201	100000	United Tenant Speeks RC.
Marilyn Holman	90 S. Marys Avenue, SE, Minneapolis, MN 55414	50000	Glendale Residents AC & RMC.

Resident leader		Grant amount	Organization
Linda Richardson	1062 East 4th Street, Kansas City, MO 64106	100000	Guinotte Manor Resident Assn.
Mellanie Simmons	1102 Euclid, Kansas City, MO 64106	100000	Wayne Miner TMC
Gwendolyn McNair	621 45 Place, Meridian, MS 39301	40000	Meridian RC.
Laura Burns	560 Country Club Drive, Jackson, MS 39209	40000	Parents and Youth Inc.
Catherine Lonzo	274 Magnolia Drive, Yazoo City, MS 39194	40000	Yazoo Housing Authority.
Maxecine Mitchell	839 Airport Road, Chapel Hill, NC 27514	40000	Airport Gardens RA.
Johnnie M. Ingram	1400 Oak Street, Winston-Salem, NC 27105	100000	Kimberly Park RC.
Evelyn Taylor	1805-D Drive, Greensboro, NC 27401	100000	Morningside Homes RC.
Grace Howard	1006 Aycock Street, Box 4717, Rocky Mount, NC 27903	100000	Rocky Mount RC.
Rose Simmons	7 Hockman Drive, Apt. 8C, Jersey City, NJ 07305	38300	Curries Woods Tenants Task Force.
Ms. Elizabeth Perez	837 Sofield Avenue, Perth Amboy, NJ 08861	40000	Delaney/Dunlap Tenant Assoc.
Ms. Janice Minney	25 Beakes Street, Trenton, NJ 08638	57605	Donnelly Page Homes RC.
Ms. Gloria D. Pace	610 Hoffman Avenue, Trenton, NJ 08618	58000	Wilson-Haverstick RC.
Harry H. Clark	P.O. Box 658, Shiprock, NM 87420	40000	Beclabito Mutual Help RO.
Ms. Brenda Johnson	17 Buffalo Avenue #1-B, Freeport, NY 11520	40000	Moxey A. Rigby TA.
Ms. Sandra B. Morris	150 Moeller Street, Binghamton, NY 13904	40000	Carlisle Team.
Ms. Terriciena A. Brown	221 Smith Street, Poughkeepsie, NY 12601	67200	Hudson Gardens TC.
Ms. Shirley Colbert	585 Armory Avenue, Cincinnati, OH 45214	100000	Laurel Homes RC.
Ms. Janice Nichols	410 Court Street, Portsmouth, OH 45662	40000	United TC of Scioto County.
Blance Wilson	1130 E. Independence, Apt. 410, Shawnee, OK 74801	40000	Working to Improve Shawnee Homes.
Philip Handsaker	2654 11th Street, North Bend, OR 97459	40000	Airport Heights TC.
Ms. Ruby Foust	8920 N. Woolsey Avenue, Portland, OR 97203	39996	Columbia Villa/ Tamarack RC.
Ms. Joyce V. Richardson	1953 Nedro Avenue, Philadelphia, PA 19141	100000	Champost Homes TMC.
Ms. Thelma Grady	1621 East 20th Street, Erie, PA 16510	40000	Erie Tenant Council.
Judie Barr	407 Fairview Street, Phoenixville, PA 19460	40000	Fairview Tenant Council.
Lenore Williams	1240 N. 10th Street, Philadelphia, PA 19122	40000	Harrison Tenant Council.
Ms. Nellie Reynolds	2500 West Norris St., Philadelphia, PA 19121	100000	Johnson Tenant Council.
Ms. Corliss Gray	313 West Penn Street, Philadelphia, PA 19144	100000	Queen Lane Tenant Council.
Clara Rushing	3210 B. McMichael St., Philadelphia, PA 19129	100000	Abbottsford Homes TMC.
Ethel Branch-Cooper	412 Narragansett St., Philadelphia, PA 19144	34200	United Morton Homes TC.
Ms. Branda Robinson	1201 Luella, Fort Worth, TX 76102	40000	Butler Place Addition RC.
Mr. Cyrus L. Martin	424 Robert William, Diboll, TX 75941	40000	Diboll Cooperative RC.
Elaine Barker	8916 Forest Hollow Dr., Houston, TX 77078	40000	Forest Green RC.
Ms. Tillie Baylor	2801 Pueblo, Dallas, TX 75212	100000	George Loving Place RC.
Arturo Guerrero	84 Ala A. Dale, Brownsville, TX 78521	40000	Poinsettia RMC.
Ms. Clarice Rose	5712 Pilgrim Drive, Dallas, TX 75215	50000	Rhoads Terrace RMC.
Johnnie Robinson	1919 Runnels, Apt. 344, Houston, TX 70003	40000	Clayton Homes RC.
Tressie Bush	500 Meadow, Apt. 404, Houston, TX 77020	40000	Kennedy Place RC.
Dianne Sheffield	3271 Alabama, Houston, TX 77004	40000	Cuney Homes RC.
Mrs. Glenda Robinson	4A William T. Jarratt Ct., Petersburg, VA 23804	40000	Cedar Lawn RC.
Angela Darlene Carter	Centennial Hts., Mgmt., Office, E-7	6000	Centennial Hts. Assembly.
Ms. Janice Lee	P.O. Box 1328, Lebanon, VA 24266	40000	Fox Meadow Concerned TA.
Louis Ruffin	1122 Barbour Drive, Portsmouth, VA 23704	100000	Ida Barbour TC.
Shirley Freeman	2731 Monrovia Drive, Norfolk, VA 23504	100000	Roberts Village TMC.
Alma Marie Barlow	2233 Selden Street, Richmond, VA 23223	40000	Richmond Inc.
Ms. Jackie Cook	833 Smith Street, Norfolk, VA 23501	40000	Young Terrace TMC.
Laverne M. Jackson	102 Hillside Court, Lynchburg, VA 24501	40000	Birchwood RC.
Ms. Doris Cuneo	838 Locust Street, Everett, WA 98201	98880	Grandview RC.
Laurett Ortloff	611 S. Camus Avenue, Wapato, WA 98951	40000	Yakima Nation RC.
Mrs. Jeanie P. Wines	1912 Cameron Avenue, Parkersburg, WV 26101	40000	Homecrest Manor RC.
Darlene Thompson	905 Griffin Drive, Apt. 13, Charleston, WV 25312	40000	Orchard Manor RC.
Ms. Kay McMillen	1985 East A Street, Casper, WY 82601	40000	RC-HA City of Casper, Inc.

Dated: January 21, 1992.

Joseph G. Schuff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-2187 Filed 1-29-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-910-92-GP2-4111-15-410; NMNM 27639]

Proposed Reinstatement of Terminated Oil and Gas Lease; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 31082-3, Donald G. Stevens, petitioned for reinstatement of Oil and Gas Lease NMNM 27639, covering the following described land located in Chaves County, New Mexico:

T. 7 S., R. 27 E.,
Sec. 4, lots 3 and 4, S½NW¼, N½SW¼, and SW¼SW¼;
Sec. 12, SW¼SE¼;
Sec. 19, SW¼SE¼;
Sec. 22, NW¼, W½SW¼;
Sec. 28, N½NE¼.
Containing 679.440 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, May 1, 1991.

Dated: January 16, 1992.

Katy Galassini,

Acting Chief, Adjudication Section.

[FR Doc. 92-1994 Filed 1-27-92; 8:45 am]

BILLING CODE 4310-FB-M

[NM-910-92-GP2-4111-15-411; NMNM 29824]

Proposed Reinstatement of Terminated Oil and Gas Lease; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, Donald G. Stevens, petitioned for reinstatement of Oil and Gas Lease NMNM 29824, covering the following described land located in Chaves County, New Mexico:

T. 7 S., R. 27 E.,
Sec. 33, N½NW¼.
Containing 80.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, May 1, 1991.

Dated: January 16, 1992.

Katy Galassini,

Acting Chief, Adjudication Section.

[FR Doc. 92-1995 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-FB-M

[NM-910-92-GP2-4111-15-412; NMNM 30638]

Proposed Reinstatement of Terminated Oil and Gas Lease; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, Donald G. Stevens, petitioned for reinstatement of Oil and Gas Lease NMNM 30628, covering the following described land located in Eddy County, New Mexico:

T. 7 S., R. 27 E.,
Sec. 19, lots 1 to 4, E½W½;
Sec. 30, lots 1 to 4, E½W½;
Sec. 31, lots 1 to 4, E½W½.
Containing 973.53 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of 16 ⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, May 1, 1991.

Dated: January 16, 1992.

Katy Galassini,

Acting Chief, Adjudication Section.

[FR Doc. 92-1996 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-FB-M

[WY-060-02-4212-13; WYW106566]

Amendment to Realty Action; Exchange, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to notice of realty action, exchange of public lands in Sheridan County for private lands in Sheridan County.

SUMMARY: The realty action published in the **Federal Register**, 55 FR 28689, on July 12, 1990 indicating the exchange of 44.02 acres of public land for 40 acres of private land in Sheridan County, Wyoming is hereby amended to reflect a change in the proponent. The original Notice designates First Interstate Bank of Sheridan, Trustee for the Woods Sheridan Trust as the proponent. This has been changed to show that Giles Pritchard-Gordon is now the proponent of record for this action.

FOR FURTHER INFORMATION CONTACT: Dave Pomerinke, Area Manager, Buffalo Resource Area, BLM, 189 Cedar Street, Buffalo, Wyoming 82834, (307) 684-5586.

Dated: January 22, 1992.

James W. Monroe,

District Manager.

[FR Doc. 92-2245 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-12-M

[CO-942-92-4730-12]

Colorado: Filing of Plats of Survey

January 22, 1992.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., January 22, 1992.

The plat representing a metes-and-bounds survey between certain lots in sections 19 and 20, T. 5 S., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 968, was accepted December 11, 1991.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 18, and a metes-and-bounds survey between certain lots in sections 18 and 19, T. 5 S., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 952, was accepted December 19, 1991.

The plat representing the dependent resurvey of a portion of Homestead Entry Survey 238, the subdivision of section 9, and a metes-and-bounds survey of portions of Public Land Tracts 38, 39, and 40, T. 4 S., R. 78 W., Sixth Principal Meridian, Colorado, Group No. 982, was accepted December 18, 1991.

The plat (in three sheets) representing the dependent resurvey of portions of the east boundary, subdivisional lines, and certain mineral claims; the subdivision of certain sections; and the metes-and-bounds survey of portions of certain lots in sections 35 and 36, the north and south right-of-way of Interstate 70 in sections 26 and 27, and of the north right-of-way of Colorado State Highway No. 9 in sections 35 and 36, T. 5 S., R. 78 W., Sixth Principal Meridian, Colorado Group No. 968, was accepted December 18, 1991.

The plat (in two sheets) representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 8, and a metes-and-bounds survey between certain lots in sections 5 and 8, T. 7 S., R. 77 W., Sixth Principal Meridian, Colorado, Group No. 982, was accepted December 20, 1991.

The plat (in three sheets) representing the dependent resurvey of portions of the east boundary, the subdivisional lines, and the subdivision of section 22; the subdivision of a portion of section 22; a metes-and-bounds survey of a portion of the south right-of-way of U.S. Highway 6 in section 22; a metes-and-bounds survey between certain lots in sections 22, 23, and 24, t. 5 S., R. 77 W., Sixth Principal Meridian, Colorado, Group No. 968, was accepted December 11, 1991.

The plat representing the dependent resurvey of portions of Tracts 37 and 38 and a metes-and-bounds survey of Public Land Tracts 40 and 41, T. 6 S., R. 78 W., Sixth Principal Meridian, Colorado, Group No. 968, was accepted December 12, 1991.

The plat representing a metes-and-bounds survey of Public Land Tract 40, T. 6 S., R. 79 W., Sixth Principal Meridian, Colorado, Group No. 968, was accepted December 12, 1991.

The supplemental plat creating new lots 36, 37, 38, 39, 40, and 41, in the NE¼ of section 20, T. 5 S., R. 76 W., Sixth Principal Meridian, Colorado, was accepted December 11, 1991.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The supplemental plat creating new lots 24 and 25 in the NW¼ of section 13, T. 15 S., R. 70 W., Sixth Principal Meridian, Colorado, was accepted October 16, 1991.

The supplemental plat creating new lots 22, 23, 24, 25, and 26 in section 34, T. 43 N., R. 9 W., New Mexico Principal Meridian, Colorado, was accepted December 4, 1991.

The supplemental plat creating new lots 28 and 29 in section 1 and new lot 23 in section 2, T. 12 S., R. 72 W., Sixth Principal Meridian, Colorado, was accepted November 25, 1991.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 92-2250 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-JB-M

[NM-940-02-4730-12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on February 18, 1992.

New Mexico Principal Meridian, New Mexico

T. 20 N., R. 12 W., accepted September 25, 1991, for group 872 NM.
T. 27 N., R. 10 W., accepted December 19, 1991, for group 846 NM.
T. 21 N., R. 12 W., accepted September 25, 1991, for group 872 NM.
T. 8 N., R. 5 E., accepted November 26, 1991, supplemental plat.

Indian Meridian, Oklahoma

T. 9 N., R. 22 W., accepted September 19, 1991, for group 65 OK.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502-7115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: January 13, 1992.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 92-2258 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-FB-M

[ID-943-4214-11; IDI-15061, et al.]

Proposed Continuation of Withdrawals, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that nine withdrawals for the Boise and Payette-Boise Projects be continued for an additional 100 years. The lands involved, totalling 8,611.34 acres, would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received by April 29, 1992.

ADDRESSES: Comments should be sent to State Director, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-384-3000.

FOR FURTHER INFORMATION CONTACT: Larry Lievasy, BLM, Idaho State Office, 208-384-3166.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawals for the Boise and Payette Projects be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands are located within the following-described sections:

Boise Meridian

Boise Reclamation Project

IDI-15061 (SO dated August 19, 1925)

T. 11 N., R. 6 E.,
Secs. 12 and 13.
T. 11 N., R. 7 E.,
Secs. 5 to 9 inclusive, and 17 to 19, inclusive.

IDI-15063 (SO dated September 10, 1925)

T. 11 N., R. 6 E.,
Sec. 1.
T. 12 N., R. 6 E.,
Sec. 30.

T. 12 N., R. 7 E.,
Secs. 29 to 32, inclusive.

IDI–15065 (SO dated January 14, 1922)

T. 7 N., R. 1 E.,
Secs. 19 and 28.

IDI–15062 (SO dated January 18, 1922)

T. 7 N., R. 1 W.,
Sec. 28.

IDI–15058 (SO dated February 29, 1904)

T. 7 N., R. 1 W.,
Secs. 23 to 25, inclusive.

IDI–14882 (SO dated February 28, 1903)

T. 1 N., R. 7 E.,
Secs. 9, 10, 14, 15, and 23 to 26, inclusive.
T. 1 S., R. 8 E.,
Sec. 6.
T. 1 N., R. 8 E.,
Secs. 19, 30, and 31.

IDI–08956 (BLM O dated October 24, 1958)

T. 6 N., R. 3 W.,
Sec. 10.

Payette-Boise Project

IDI–14993 (SO dated March 5, 1903)

T. 7 N., R. 1 W.,
Sec. 28.

IDI–14994 (SO dated February 29, 1904)

T. 7 N., R. 1 E.,
Secs. 17 to 19, inclusive, 21, 28, and 29

The withdrawn lands in the described sections contain 8,611.34 acres in Elmore, Valley, and Gem Counties.

The withdrawals are essential for protection of the Reclamation Projects. The withdrawals close the described lands to surface entry and mining, but not to mineral leasing. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: January 10, 1992.

William E. Ireland,

Chief Realty Operations Section.

[FR Doc. 92–2180 Filed 1–29–92; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 1561–92]

Memorandum of Preliminary Guidance on Implementation of the Litigation Reforms of Executive Order No. 12778

AGENCY: Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: This notice promulgates a memorandum providing preliminary guidance to federal agencies regarding the implementation of those provisions of Executive Order No. 12778 (56 FR 55195, October 24, 1991) that concern the conduct of civil litigation with the United States Government, including the methods by which attorneys for the government conduct discovery, seek sanctions, present witnesses at trial, and attempt to settle cases. The Order authorizes the Attorney General to issue guidelines carrying out the Order's provisions on civil and administrative litigation. The guidelines issued here are interim guidelines. The Attorney General requests comments from federal agencies so that final guidelines may be drafted in light of the agencies' experience in applying the Order.

DATES: This action is effective January 24, 1992.

Comments are requested from federal agencies on or before July 20, 1992.

ADDRESSES: Comments should be sent to Stephen C. Bransdorfer, Deputy Assistant Attorney General, Civil Division, Department of Justice, Main Building, room 3137, 10th & Pennsylvania Ave., NW., Washington, DC 20530, (202) 514–3309.

FOR FURTHER INFORMATION CONTACT: Stephen C. Bransdorfer, Deputy Assistant Attorney General, Civil Division, Department of Justice, Main Building, room 3137, 10th & Pennsylvania Ave., NW., Washington, DC 20530, (202) 514–3309.

SUPPLEMENTARY INFORMATION: Executive Order No. 12778, which President Bush signed on October 23, 1991, is intended to "facilitate the just and efficient resolution of civil claims involving the United States Government." 56 FR 55195 (October 25, 1991). The Order, *inter alia*, mandates reforms in the methods by which attorneys for the government conduct discovery, seek sanctions, present witnesses at trial, and attempt to settle cases. These reforms apply to litigation begun on or after January 21, 1992.

The Order requires agencies to implement civil justice reforms applicable to each agency's civil litigation. It provides that the Attorney General has both the duty to coordinate efforts by federal agencies to implement the litigation process reforms and the authority to issue further guidelines as to the implementation and scope of the Order. (Exec. Order No. 12778, sections 4(a), (b) and 7(d).) Final guidelines, however, can most usefully be issued only after agencies and litigation counsel have had experience in applying the Order. That experience will offer a valuable basis for deciding how the final guidelines can best refine the operation of the Order.

The present guidelines, therefore, are offered as interim direction for applying the Order. Agencies and litigation counsel are requested to provide comments, on or before July 20, 1992, concerning their experience in carrying out the Order and their recommendations for revising this interim guidance. Comments should be sent to Stephen C. Bransdorfer, Deputy Assistant Attorney General, Civil Division, Department of Justice, who has been designated as the Justice Department's coordinator for advice about implementing the Order.

Agencies should note in particular the Order's requirements concerning the designation of persons within each agency to act on litigation documents. First, each agency must establish "a coordinated procedure" that shall include review by a "senior lawyer" of any request for document discovery in litigation to determine that it meets the substantive criteria of section 1(d)(2). Second, the Executive Order mandates that each agency designate a "sanctions officer" to review motions for sanctions that are filed either by or against litigation counsel on behalf of the United States. (section 1(f)(2).) Third, the Attorney General recommends that each agency designate a specific individual to serve as the agency coordinator for implementation of the Executive Order. Details regarding these designations and other guidelines are contained in the memorandum.

By virtue of the authority vested in me by law, including Executive Order No. 12778 (56 FR 55195, October 25, 1991), I hereby issue the following memorandum:

Introduction

Executive Order No. 12778, which President Bush signed on October 23, 1991, is intended to "facilitate the just and efficient resolution of civil claims involving the United States Government." (56 FR 55195, October 25, 1991). The Order, *inter alia*, mandates

reforms in the methods by which attorneys for the government conduct discovery, seek sanctions, present witnesses at trial, and attempt to settle cases. These reforms apply to litigation begun on or after January 21, 1992.

The Order authorized the Attorney General to issue guidelines carrying out the Order's provisions on civil and administrative litigation. Final guidelines, however, can most usefully be issued only after agencies have had experience in applying the Order. That experience will offer a valuable basis for deciding how the final guidelines can best refine the operation of the Order.

The present guidance, therefore, is offered as an interim direction for applying the Order's provisions concerning the conduct of civil litigation with the United States Government. Agencies are requested to provide comments, on or before July 20, 1992, concerning their experience in carrying out the Order and their recommendations for revising this interim guidance. Comments should be sent to Stephen C. Bransdorfer, Deputy Assistant Attorney General, Civil Division, Department of Justice (202–514–3309), who has been designated as the Justice Department's coordinator for advice about implementing the Order. Each agency is requested to designate its own coordinator for implementing the Order.

Pre-filing Notice of a Complaint

(Section 1(a))

The objective of sec. 1(a) of Executive Order No. 12778 is to ensure that a reasonable effort is made to notify persons against whom civil litigation is contemplated of the government's intent to sue and to provide disputants with an opportunity to settle the dispute without litigation.

This section requires either the agency or litigation counsel to notify each disputant of the contemplated action unless an exception to the notice requirement (set forth in 7(b)) applies. "Disputants" means persons from whom relief is sought in the contemplated civil action. The notifying persons shall offer to attempt to resolve the dispute without litigation. However, it is not appropriate to compromise litigation by providing pre-filing notice if the notice would defeat the purpose of the litigation.

Notice adequate to comply with section 1(a) can be provided either by the referring agency or by litigation counsel. If the referring agency provides the notice, it should supply the documentation of the notice to litigation counsel.

The section requires a "reasonable" effort to provide notification and to attempt to achieve a settlement. Both the timing and the content of a reasonable effort depend upon the particular circumstances. However, unless an exception set forth in section 7 (or otherwise provided for by the Attorney General) is applicable, complete failure to make an effort could not be deemed "reasonable."

If pre-complaint settlement efforts by government counsel require information in the possession of proposed defendants, litigating counsel or client agency counsel may request such information from defendants as a condition to settlement efforts. If proposed defendants refuse, or fail, to provide such information upon request within a reasonable time, counsel shall have no further obligation to attempt to settle the case prior to filing.

The Department of Justice retains authority to approve or disapprove any settlements proposed by the client agency or litigation counsel, consistent with existing law, guidelines, and delegations. The Order confers no litigating or settlement authority on agencies beyond any existing authority under law or explicit agreement with the Department.

Settlement Conferences

(Section 1(b))

As soon as adequate information is available to permit an accurate evaluation of the government's litigation position, litigation counsel shall evaluate the possibilities of settlement. Thereafter, litigation counsel has a continuous obligation to evaluate settlement possibilities. Litigation counsel is to offer to participate in a settlement conference or, when it is reasonable to do so, move the court for such a conference.

Prior to any such conference, litigation counsel should consult with the affected agency and with litigation counsel's supervisor. At the conference, litigation counsel should clearly state the terms upon which litigation counsel is prepared to recommend that the government conclude the litigation, but should not be expected to obtain authority to bind the government finally at settlement conferences. Final settlement authority is the subject of applicable regulations and may be exercised only by the officials designated in those regulations. The Executive Order does not change those regulations regarding final settlement authority.

The Executive Order does not constrain the government's full discretion to determine which government counsel represents the government at settlement conferences. Normally, a trial attorney assigned to the case will attend on behalf of the United States.

Section 1(b) does not permit settlement of litigation on terms that are not in the interest of the government; while "reasonable efforts" to settle are required, no unreasonable concession or offer should be extended or accepted. Likewise, this section does not countenance evasion of established agency procedures for development of litigation positions.

Alternative Methods of Resolving The Dispute In Litigation

(Section 1(c))

Section 1(c) encourages prompt and proper settlement of disputes.

The Executive Order does not permit litigation counsel to agree that ADR will result in a binding determination as to the government, without exercise of an agency's discretion. Likewise, the use of ADR does not authorize litigation counsel to agree to resolve a dispute in any manner or on any terms not in the interest of the United States.

Each agency should seek to use the skills of litigation counsel to bring about a reasonable resolution of disputes. Attorneys should bring the same high level of expertise to ADR proceedings as they bring to formal judicial proceedings. Disputes will be resolved reasonably if an ADR technique is used when the technique holds out a likelihood of success. Litigation counsel should consult with the affected agency as to the desirability of using ADR if resort to ADR is a reasonable prospect.

When evaluating whether proceeding with ADR is likely to lead to a prompt, fair, and efficient resolution of the action and thus be in the best interest of the government, government counsel should consider the amount and allocation of the cost of employing ADR.

Disclosure of Core Information

(Section 1(d)(1))

Section 1(d)(1) requires litigation counsel to make the offer to participate at an early stage of the litigation in a mutual exchange of core information as defined in sec. 1(d)(1). Reasonable efforts shall be made to obtain the agreement of other parties to such an exchange. When making the offer, litigation counsel should emphasize that the government is willing to be bound to exchange core information as defined in the section if, and only if, other parties agree to exchange this same information

and the court adopts the agreement as a stipulated order.

A mutually agreed-upon exchange of "core information" should occur reasonably early in the litigation, so as to serve its purpose of expediting and streamlining discovery. However, when the government is plaintiff, disclosure of "core information" need not be requested prior to receipt of opposing parties' answers to the complaint. Litigation counsel should not permit the core information disclosure offer requirement to delay the initiation of discovery.

Core information offers are not mandated if a dispositive motion is pending or if the exceptions to the ADR and core disclosure provisions set forth in section 7(c) (involving asset forfeiture proceedings and debt collection cases involving less than $100,000) apply. Nothing in section 1(d)(1) requires disclosure of information that litigation counsel does not consider reasonably relevant to the claims for relief set forth in the complaint.

In cases involving multiple opposing parties, the government may agree to disclose "core information" with individual opposing parties. It need not delay disclosure pending agreement by all of the parties unless individual exchange of core information would unfairly undermine the government's case.

All referrals from agencies requesting litigation counsel to file suit should include the "core information" described in this subsection. The identification of the location of documents most relevant to the case should be specific enough to enable litigation counsel to locate and, if necessary, retrieve the documents, and should specify the name, business address, and telephone number of the custodians of the documents. The identification of individuals having information relevant to the claims and defenses should include, where possible, current or last-known telephone numbers at which such persons can be reached.

In determining the extent to which compliance with this subsection is "practicable" in a given case, litigation counsel shall consider, *inter alia*, the utility of early issue-narrowing motions and devices, the scope and complexity of the disclosure that will be required, the time available to comply with the requirement, the extent to which disclosure of "core information" will expedite or limit the scope of subsequent discovery, and the cost to the government of compliance.

In cases where the government takes the position that the scope of judicial review of one or more issues involved in the litigation is limited to an agency's administrative record, identifying and affording access to the administrative record shall satisfy the requirements of this subsection with respect to such issues.

Litigation counsel is entitled to rely in good faith on the representations of agency counsel as to the existence, extent, and location of "core information."

Nothing in section 1(d)(1) prevents government counsel from seeking other discovery pursuant to the Federal Rules of Civil Procedure simultaneously with providing, or seeking, "core information" disclosure.

Review of Proposed Document Requests

(Section 1(d)(2))

Document discovery shall be pursued by government counsel only after complying with review procedures designed to ensure that the proposed document discovery is reasonable under the circumstances of the litigation.

When an agency's attorneys act as litigation counsel, that agency must establish a coordinated procedure, including review by a senior lawyer, before service or filing of any request for document discovery. The senior lawyer is to determine whether the proposed discovery meets the substantive criteria of section 1(d)(2). Cabinet or subcabinet officers, such as Assistant Attorneys General or Assistant Secretaries, officials of equivalent rank, and United States Attorneys, are authorized pursuant to this Memorandum to designate one or more senior lawyers for these purposes. While no particular title, level, or grade of senior lawyer is mandated, the persons designated should have substantial experience with regard to document discovery and should have supervisory authority. This designation should be made forthwith. If the designated senior lawyer is personally preparing the document discovery, further oversight is not necessary.

The designated senior lawyer reviewing document discovery proposals should determine whether the requests are cumulative or duplicative, unreasonable, oppressive, or unduly burdensome or expensive, and in doing so shall consider the requirements of the litigation, the amount in controversy, the importance of the issues at stake in the litigation, and whether the documents can be obtained in a manner that is more convenient, less burdensome, or less expensive than pursuit of the documentary discovery as proposed. Consideration of whether documents can be obtained from "more convenient, less burdensome, or less expensive" sources shall include consideration of the convenience, burden, and expense to both the government and the opposing parties.

In conducting this review of document requests, the senior lawyer is entitled to rely in good faith upon factual representations of agency counsel and the trial attorney. The review system should not be permitted to deter the pursuit of reasonable document discovery in accord with the procedures established in the Executive Order

Discovery Motions

(Section 1(d)(3))

The court shall not be asked to resolve a discovery dispute, including imposition of sanctions as well as the underlying discovery dispute, unless litigation counsel first attempts to resolve the dispute with opposing counsel or *pro se* parties. If pre-motion efforts at resolution are unsuccessful or impractical, a description of those efforts shall be set forth in the government's motion papers.

Litigation counsel, however, should not compromise a discovery dispute unless the terms of the compromise are reasonable.

Expert Witnesses

Section 1(e)

The function of section 1(e) is to ensure that litigation counsel proffer only reliable expert testimony in judicial proceedings. This practice, already widely used by the government, will enhance the credibility of the government's position in litigation and improve the prospects for a reasonable outcome of disputes warranting utilization of expert witnesses.

Litigation counsel shall use experts who have knowledge, background, research, or other expertise in the particular field of the subject to their testimony, and who base conclusions on widely accepted explanatory theories, i.e., those that are propounded by at least a substantial minority of experts in the relevant field.

In cases requiring expert testimony on newly emerging issues, litigation counsel shall ensure that the proffered expert and his or her testimony are reliable and meet the requirements of Rule 702 of the Federal Rules of Evidence. In evaluating the reliability of an expert's conclusions in new areas where there are no established majority or minority views, it is important for the trial attorney to keep in mind that only that theory, not the conclusion based on the theory, need be "widely accepted." Litigation

counsel may offer a "widely accepted explanatory theory" to support a conclusion in a novel area based on the qualifications of the expert to testify on that issue, the extent of peer acceptance or recognition of the expert's past work in the field, particularly of any work that is related to the issue on which the testimony is to be offered, and any other available indicia of the reliability of the proffered testimony. However, if an expert is unable to support the conclusion of "widely accepted" theories, the expert's testimony shall not be offered.

Litigation counsel shall offer to engage in mutual disclosure of expert witness information pertaining to experts a party expects to call at trial. "Expert witness information" within the meaning of this subsection should ordinarily include the expert's resume or curriculum vitae, a list of the expert's relevant publications, data, test results, or other information on which the expert is expected to rely in the case at issue, and any written reports or other materials prepared by the expert that the party expects to offer into evidence. The offer of mutual disclosure requirement (section 1(e)(3)) can be satisfied by an agreement to take depositions of experts that the parties plan to call to testify.

Litigation counsel shall not offer to pay an expert witness based on the success of the litigation. Similarly, litigation counsel should ordinarily object to testimony on the part of an expert whose compensation is linked to a successful outcome in the litigation and bring out on cross-examination of the expert such compensation arrangements or agreements. (See section 1(e)(4).)

Sanctions Motions

Section 1(f)

Litigation counsel shall take steps to seek sanctions against opposing counsel and parties where appropriate, subject to the procedures set forth in section 1(f) regarding agency review of proposed sanction filings. Before filing a motion for sanctions, litigation counsel should normally attempt to resolve disputes with opposing counsel. Of course, sanctions motions like all pleadings, should be filed only when there is a well-founded basis for the motion.

The Executive Order mandates that each agency which has attorneys acting as litigation counsel designate a "sanctions officer" to review proposed sanctions motions and motions for sanctions that are filed against litigation counsel, the United States, its agencies, or its officers. (Section 1(f)(2).) The Executive Order requires that the sanctions officer or designee "shall be a senior supervising attorney within the agency, and shall be licensed to practice law before a state court, courts of the District of Columbia, or courts of any territory or Commonwealth of the United States." The sanctions officer or his or her designee should be a senior lawyer with substantial litigation experience and supervisory authority.

The persons acting as sanctions officers within each agency should be designated specifically title or name. Action must be taken forthwith to designate sanctions officers within each agency. Cabinet or subcabinet officers, such as Assistant Attorneys General or Assistant Secretaries, officials of equivalent rank, and United States Attorneys are authorized pursuant to this Memorandum to designate sanctions officers meeting the criteria of this Memorandum.

Improved Use of Litigation Resources

Section 1(g)

Litigation counsel are to use efficient case management techniques and make reasonable efforts to expedite civil litigation as set forth in section 1(g)(1)–(4) of the Order.

In appropriate case, litigation counsel should move for summary judgment to resolve litigation on narrow the issues to be tried.

Litigation counsel should seek to stipulate to facts that are not in dispute and move for early trial dates where practicable. Referring agencies should identify facts not in dispute and inform litigation counsel of the fact of dispute and the basis of concluding that there is no factual dispute, as soon as it is feasible to do so. Litigation counsel should seek agreement to fact stipulations as early as practicable, taking into account the progress of discovery and after exercising sound judgment to determine the most appropriate and efficient timing for such stipulations.

At reasonable intervals, litigation counsel should review and revise submissions to the court and should apprise the court and all counsel of any narrowing of issues, resulting from discovery or otherwise. This requirement is not intended to suggest that litigation counsel should concede facts or issues as to which there is reasonable dispute, uncertainty, or inability to corroborate.

Fees and Expenses

Section 1(h)

Section 1(h) of the Executive Order provides that litigation counsel shall offer to enter into a two-way fee shifting agreement with opposing parties in cases involving disputes over certain federal contracts or in hay civil litigation initiated by the United States. Under such an agreement, the losing party would pay the prevailing parties's fees and costs, subject to reasonable terms and conditions. However, this section is to be implemented only "(t)o the extent permissible by law." The Executive Order requires the Attorney General to review the legal authority for entering into such agreements. Because no legislation currently provides specific authority for those agreements, litigation counsel shall not offer to enter into a two-way fee shifting agreement until legislation is enacted or other authority is provided by the Attorney General.

Principles to Promote Just and Efficient Administrative Adjudications

(Section 3)

Section 3 encourages agencies to implement the Administrative Conference's recommendations entitled "Case Management as a Tool for Improving Agency Adjudication" to the extent it is reasonable and practicable to do so (and to the extent it does not conflict with any provision of the Executive Order). The agency proceedings within the ambit of section 3 are adjudications before a presiding officer, such as an administrative law judge.

No Private Rights Created

(Section 6)

The Executive Order explicitly states that it does not create a private right of any kind or a right to judicial review. (section 6.) The qualifications stated in section of the Executive Order apply to this Memorandum as well.

Nothing in the Executive Order is designed to alter the substantive litigation position of the United States or its agencies.

The Executive Order assumes that litigation counsel will exercise professional judgment when representing the United States, its agencies, its officers, or any other persons.

Dated: January 24, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92-2253 Filed 1-29-92; 8:45 am]

BILLING CODE 4410-01-M

VOL 57 ISS 20 30 1992 JA UMI

Antitrust Division

United States v. Tidewater, Inc. and Zapata Gulf Marine Corp., Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Tidewater, Inc. and Zapata Gulf Marine Corporation.*

The Complaint of the United States in this cases alleges that the proposed acquisition by Tidewater, Inc. ("Tidewater") of Zapata Gulf Marine Corporation ("Zapata Gulf") may substantially lessen competition in the Gulf anchor-handling market in violation of section 7 of the Clayton Act. The Gulf anchor-handling market is defined as the provision of anchor-handling services for semi-submersible drilling rigs by anchor handling/towing supply ("AHTS") vessels of at least approximately 6,000 brake horsepower in the United States Gulf of Mexico. AHTS vessels must be Jones Act-qualified to provide anchor-handling services in the United States Gulf of Mexico, and Tidewater and Zapata Gulf operate the two largest fleets of Jones Act-qualified AHTS vessels of at least approximately 6,000 brake horsepower.

Anchor-handling and other offshore marine services are purchased by oil companies in connection with the offshore exploration for crude oil and natural gas in the United States Gulf of Mexico ("Gulf"). AHTS vessels are specially designed, built, and equipped to move and adjust the mooring systems of semi-submersible drilling rigs. They vary in their ability to handle the mooring systems of various sizes of semi-submersible drilling rigs and to do so in various water depths and sea conditions, depending predominantly on the brake horsepower ("BHP") of the AHTS vessel. AHTS vessels of at least approximately 6,000 BHP (5,600 BHP—6,140 BHP) generally are required to provide anchor-handling services for semi-submersible drilling rigs in water depths between 500 and 2,000 feet in the Gulf. It is in these water depths in which most semi-submersible drilling rigs operate in the Gulf.

The proposed Final Judgment requires Tidewater to divest two AHTS vessels by August 10, 1992. The vessels to be divested are the Gulf Fleet 54 and one of the following vessels: Darol Tide, Doc Tide, Hatch Tide, Gulf Fleet 55 or Gulf Fleet 59. If tidewater does not sell these assets by then, a trustee will be appointed to conduct the divestiture.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mark C. Schechter, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, room 9403, Judiciary Center Building, 555 4th Street, NW., Washington, DC 20001 (202/307–6349).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

January 13, 1992.

[Civil Action No. 92–0108

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties thereto, and venue of this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form of hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court;

3. The parties shall abide by and comply with the provisions of the Final Judgment pending its entry, and shall, from the date of the filing of this Stipulation, comply with all terms and provisions thereof as though the same were in full force and effect as an order of the Court;

4. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: January 13, 1992.

For Defendant Tidewater: Jones, Walker, Waechter, Poitevent, Carrere & Denegre.

By: A Member of the Firm, David G. Radlauer, 201 St. Charles Avenue, New Orleans, Louisiana 70170, (504) 582–8000.

For Defendant Zapata Gulf Marine Corp.: Cravath, Swaine & Moore.

By: A Member of the Firm, Allen F. Maulsby, 825 Eighth Avenue, New York 10019–7415, (212) 474–1452.

Stipulation approved for Filing

Done this _____ day of January, 1992.

United States District Judge

For Plaintiff United States of America:

James F. Rill,

Assistant Attorney General,

J. Mark Gidley,

John W. Clark,

Mark C. Schechter,

Roger W. Fones,

Angela L. Hughes,

Charles W. Corddry,

Burney P. C. Huber,

Attorneys, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, 555 Fourth Street, NW., Washington, DC 20001, (202) 307–6410.

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint here on January 13, 1992, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture is the essence of this agreement, and defendants have represented to plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment: A. *Tidewater* means defendant Tidewater, Inc.; each division, subsidiary, or affiliate thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. *The divestiture assets* means the anchor handling/towing supply vessels designated the Gulf Fleet 54 and one of the following vessels: Darol Tide, Doc Tide, Hatch Tide, Gulf Fleet 55, or Gulf Fleet 59.

C. *Person* means any natural person, corporation, association, firm, partnership, or other business or legal entity.

D. *Pool of divestiture assets* means the following anchor handling/towing supply vessels: Gulf Fleet 54, Darol Tide, Doc Tide, Hatch Tide, Gulf Fleet 55, and Gulf Fleet 59.

E. *Zapata Gulf* means defendant Zapata Gulf Marine Corporation; each division, subsidiary, or affiliate thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

III. Applicability

A. The provisions of this Final Judgment shall apply to the defendants, to their successors and assigns, to their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV. Divestiture of Assets

A. Defendant Tidewater is hereby ordered and directed to divest to a purchaser or purchasers prior to August 10, 1992, all of its direct and indirect ownership and control of the divestiture assets. The obligation to divest shall be satisfied if, by August 10, 1992, defendant Tidewater enters into a binding contract for sale of the divestiture assets to a purchaser or purchasers approved by plaintiff, according to terms approved by plaintiff, that is contingent only upon compliance with the terms of this Final Judgment and that specifies a prompt and reasonable closing date no later than October 10, 1992, and if sale is completed pursuant to the contract.

B. If defendant Tidewater has not accomplished the required divestiture prior to August 10, 1992, plaintiff may, in its sole discretion, extend this time period for an additional period of time not to exceed two months, if defendant Tidewater requests such an extension and demonstrates to plaintiff's satisfaction that it has made bona fide efforts to sell the divestiture assets and that there is a reasonable expectation that the assets can be sold in the requested extended time period, but that the divestiture cannot be completed prior to August 10, 1992.

C. Defendant Tidewater agrees to take all reasonable steps to accomplish quickly said divestiture. In carrying out the obligation to divest assets, defendant Tidewater may divest these assets alone, or may divest along with these assets other assets of defendant Tidewater.

D. In accomplishing the divestiture ordered by this Final Judgment, defendant Tidewater promptly shall make known in the United States, by usual and customary means, the availability of the divestiture assets, for sale. Defendants shall notify any person making an inquiry regarding the possible purchase of the divestiture assets that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchases of the divestiture assets, subject to customary confidentiality assurances, all pertinent information regarding the divestiture assets. Defendants shall provide such information to the plaintiff no later than the time they furnish such information to any other person. Defendants shall permit prospective purchasers of the divestiture assets to have access to personnel knowledgeable about the divestiture assets, and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of the divestiture assets.

E. Divestiture required by section IV. of the Final Judgment shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the purchaser or purchasers have the capability and present intent to operate the divestiture assets as part of a viable, ongoing business capable of providing anchor-handling services in the United States Gulf of Mexico. Divestiture shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's satisfaction that the purchaser will keep the divestiture assets Jones Act-qualified during the four-year period following purchase, and has the managerial, operational, and financial capability to compete effectively in the provision of anchor-handling services in the United States Gulf of Mexico.

F. Divestiture required by section IV. of the Final Judgment shall not be made to Seacor Holdings Inc., Ensco Marine Company, or Penrod Drilling Corporation; any of their parents; or any of their affiliates or subsidiaries.

G. Except to the extent otherwise approved by plaintiff, any assets divested pursuant to this Final Judgment shall be divested free and clear of all mortgages, encumbrances and material liens, other than any inchoate statutory; admiralty, maritime, or common law liens for obligations not yet due and payable. Defendant Tidewater shall indemnify the purchaser or purchasers of any assets divested pursuant to this Final Judgment for any such outstanding liens.

V. Appointment of Trustee

A. If defendant Tidewater has not accomplished the divestiture required by section IV. of the Final Judgment by July 10, 1992, defendants shall notify plaintiff of that fact. Within ten (10) days of that date, or twenty (20) days prior to the expiration of any extension granted pursuant to section IV. B., whichever is later, plaintiff shall provide defendant Tidewater with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Plaintiff will in good faith seek to assure that at least one of the nominees shall be a person knowledgeable and experienced in the offshore marine service industry. Defendant Tidewater shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendant Tidewater, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendant Tidewater, it shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties

have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court the names and qualifications of the nominees proposed by plaintiff and defendant Tidewater. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

B. If defendant Tidewater has not accomplished the divestiture required by section IV. of this Final Judgment at the expiration of the time period specified in section IV. A. or IV. B. of this Final judgment, as applicable, the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of the divestiture assets; provided, however, that the appointment of the trustee shall not become effective if, prior to expiration of the applicable time period, defendant Tidewater has notified plaintiff pursuant to section VI. of this Final Judgment of a proposed divestiture of the divestiture assets and plaintiff has not filed a written notice that it objects to said proposed divestiture. If divestiture of the undesignated vessel is not made by defendant Tidewater prior to the appointment of the Trustee, defendant Tidewater shall designate the identity of the vessel to be divested in addition to the Gulf Fleet 54 no later than five days prior to the effective date of the trustee's appointment.

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell any assets as to which it has been designated to effect divestiture. The trustee shall have the power and authority to accomplish divestiture to a purchaser or purchasers acceptable to plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of section VI. of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendant Tidewater shall not object to a sale of the divestiture assets by the trustee on any ground other than the trustee's malfeasance. Any such objection by defendant Tidewater must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendant Tidewater of the proposed sale in accordance with section VI. of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendant Tidewater, shall receive compensation based on a fee arrangement providing an incentive based on price and terms of the divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all monies derived from a sale of the divestiture assets and all costs and expenses incurred in connection therewith. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendant Tidewater and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture and shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the divestiture assets, and defendants shall develop such financial or other information relevant to the divestiture assets as the trustee may request.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in the divestiture assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these assets.

G. Within six months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section V. of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why any required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the trust and the term of the trustee's appointment.

VI. Notification

Immediately following entry of a binding contract, contingent upon compliance with the terms of this Final Judgment, to effect any proposed divestiture pursuant to section IV. or V. of this Final Judgment, defendant Tidewater or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendant Tidewater. The notice shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered to acquire, or expressed an interest in acquiring or desire to acquire any ownership interest in the divestiture assets, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. Defendant Tidewater and/or the trustee shall furnish any additional information requested within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendant Tidewater and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendant Tidewater and/or the trustee that it does not object, then the divestiture may be consummated, subject only to defendant Tidewater's limited right to object to the sale under the proviso in section V.C. Upon objection by plaintiff, a divestiture proposed under section IV. shall not be consummated. Upon objection by plaintiff, or by defendant Tidewater under the proviso in section V.C., a divestiture proposed under section V. shall not be consummated unless approved by the Court.

VII. Affidavits

Upon filing of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed or authority to effect divestiture passes to the trustee pursuant to Section V. of this Final Judgment, defendant Tidewater shall deliver to plaintiff an affidavit as to the fact and manner of compliance with section IV. of this Final Judgment. Each such affidavit of defendant Tidewater shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such affidavit, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in the divestiture assets, and shall describe in detail each contact with any such person during that period. Defendant Tidewater shall maintain full records of all efforts made to divest these operations.

VIII. Financing

Defendant Tidewater shall not finance all or any part of any purchase made pursuant to sections IV. or V. of this Final Judgment without plaintiff's prior consent.

IX. Preservation of Assets

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendant Tidewater shall take all steps necessary to assure that the pool of divestiture assets are maintained as separate, distinct, and salable assets, apart from other assets of defendant Tidewater. Defendant Tidewater shall use all reasonable efforts, including utilizing the pool of divestiture assets to perform contractual obligations, to maintain these assets in a condition which makes them usable for providing anchor-handling services.

B. Defendant Tidewater shall not sell, assign, transfer, or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefore), the pool of divestiture assets.

C. Defendant Tidewater shall preserve the pool of divestiture assets in a state of repair equal to their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendants shall preserve the documents, books, and records relating to any of the vessels in the pool of the divestiture assets until the date of divestiture.

D. Defendants shall refrain from taking any action that would jeopardize the sale of the divestiture assets.

E. Defendant Tidewater may, by notifying plaintiff, exclude up to four vessels other than the Gulf Fleet 54 from the pool of divestiture assets. Upon such notification, the requirements of this Section will thereafter no longer apply to the excluded vessel(s). Once excluded, a vessel may not reenter the pool of divestiture assets.

X. Notice of Proposed Acquisition

If defendant Tidewater proposes to acquire one or more Jones Act-qualified anchor handling/towing supply vessels of at least 5,600 brake horsepower, or the assets or stock of a company that owns or operates such a vessel, and such proposed acquisition is not reportable under 15 U.S.C. 18a, defendant Tidewater shall provide to plaintiff, prior to the acquisition, the following information regarding that proposed acquisition:

1. The name, address, and phone number of, and contact person for, the company that owns or operates the vessel or vessels;

2. The name, U.S. Coast Guard Official Number, Lloyd's identification number, former names, and brake horsepower of the vessel;

3. The proposed acquisition price of the vessel, stock or assets; and

4. The proposed acquisition date.

This information must be provided at least 30 days prior to the proposed acquisition date.

XI. Compliance Inspection

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal office, be permitted:

1. access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees, and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section XI. shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

This Final Judgment will expire on the third anniversary of the date of its entry.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), the United States of America files this Competitive Impact Statement relating to the

proposed Final Judgment submitted for entry with the consent of Tidewater, Inc. and Zapata Gulf Marine Corporation in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On January 13, 1992, the United States filed a Complaint alleging that the proposed acquisition of Zapata Gulf Marine Corporation (hereafter "Zapata Gulf") by Tidewater, Inc. (hereafter "Tidewater") would violate section 7 of the Clayton Act (15 U.S.C. 18). The Complaint alleges that the effect of the merger may be substantially to lessen competition in the Gulf anchor-handling market, defined as the provision of anchor-handling services for semi-submersible drilling rigs in the United States Gulf of Mexico ("Gulf"). Anchor-handling/towing supply ("AHTS") vessels of at least approximately 6,000 brake horsepower are required to provide the relevant service. AHTS vessels must be Jones Act-qualified to provide anchor-handling services in the Gulf, and Zapata Gulf and Tidewater are the two largest operators of Jones Act-qualified AHTS vessels of at least 6,000 brake horsepower. Both companies provide anchor-handling services to semi-submersible drilling rigs with AHTS vessels in the Gulf. Anchor-handling and other offshore marine services are purchased by oil companies in connection with the offshore exploration for crude oil and natural gas in the Gulf.

On January 13, 1992, the United States and defendants also filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the merger. Under the proposed Final Judgment, as explained more fully below, Tidewater would be required to sell, by August 10, 1992, certain AHTS vessels. If it should fail to do so, a trustee appointed by the Court would be empowered to sell these vessels.

The United States, Tidewater, and Zapata Gulf have agreed that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify and enforce the Final Judgment, and to punish violations of the Final Judgment.

II. Events Giving Rise to the Alleged Violation

On June 19, 1991, Tidewater and Zapata Gulf entered into a merger agreement under which Tidewater would exchange approximately $310 million worth of its stock for all of the stock of Zapata Gulf. In addition, Tidewater agreed to assume approximately $90 million in Zapata Gulf debt.

One of Tidewater's major divisions, Tidewater Marine, provides support services to the domestic and foreign offshore petroleum industry through a fleet of marine vessels. As of June 30, 1991, Tidewater's fleet consisted of 238 U.S. flagged and 69 foreign flagged vessels. In its fiscal year 1990, Tidewater derived approximately $151 million in worldwide revenues from its marine operations.

Zapata Gulf operates a U.S. and foreign-flagged marine service fleet consisting of about 270 vessels. Of the vessels that are wholly owned or leased by Zapata Gulf, 146 vessels are U.S. flagged and 103 are foreign flagged. In its fiscal year ended September 30, 1990, Zapata Gulf derived approximately $195 million in worldwide revenues from its marine operations.

Tidewater and Zapata Gulf provide offshore marine service vessels, including AHTS vessels, to operators of semi-submersible drilling rigs. Semi-submersible rigs are used to explore for natural gas and oil in the Gulf. These rigs are moored by a system of eight anchors, each of which is attached to the rig by chain, cable, and wire. When the rig is moved to a new drilling location, the mooring system is handled by an AHTS vessel. AHTS vessels are generally between 185 and 225 feet in length and 40 to 50 feet in width, and are fitted with high powered engines, winches and other anchor-handling equipment. They are specially designed, built, and equipped to provide anchor-handling services for semi-submersible drilling rigs. An anchor can weigh as much as 40,000 pounds, and the added weight of the chain, cable, and wire dragging along the ocean floor can require an AHTS vessel to handle several hundred thousand pounds.

Two AHTS vessels are almost always used to provide anchor-handling services to a semi-submersible drilling rig when it is moved. Once the rig has been moved to its new drilling location, one AHTS vessel often remains on charter while the rig is in operation to reset an anchor if one becomes dislodged, to be available when the rig is ready to be moved at the completion of the drilling operation, and to ferry supplies to the rig. These supplies include liquid drilling "mud", which is carried in the vessel's below-deck storage tanks. The vessel that remains with the rig during the drilling operation is hired at a charter rate that ranges between $3,400 and $8,000 per day, depending on the size of the vessel. The second vessel used to assist on the move of the rig may be hired on a spot basis at a rate approximately twice the charter rate.

AHTS vessels vary in their ability to handle the mooring systems of various sizes of semi-submersible drilling rigs and to do so in various water depths and sea conditions, depending predominantly on the brake horsepower ("BHP") of the AHTS vessel. AHTS vessels of at least approximately 6,000 BHP (5,600 BHP–6,140 BHP) generally are required to provide anchor-handling services for semi-submersible drilling rigs in water depths between 500 and 2,000 feet in the Gulf, which is where most semi-submersible drilling rigs operate in the Gulf. There is no substitute for these AHTS vessels to which lessees and operators of semi-submersible rigs in the Gulf would turn to obtain anchor-handling services in the event of a small but significant and nontransitory price increase.

AHTS vessels that are used to provide anchor-handling services for semi-submersible drilling rigs in the Gulf must be Jones Act-qualified, that is, eligible to operate in the unrestricted U.S. coastwise trade under the Merchant Marine Act of 1920, 46 U.S.C. 883. About 36 percent of the Jones Act-qualified fleet of AHTS vessels of at least approximately 6,000 BHP currently are operating in the Gulf, with little idle capacity. The remainder are deployed outside the Gulf. Tidewater and Zapata Gulf own the two largest fleets of such vessels. Together they account for about 61 percent of the total 42 vessel fleet, and about 85 percent of the fleet deployed outside of the Gulf.

The Complaint alleges that the provision of anchor-handling services for semi-submersible drilling rigs by AHTS vessels of at least approximately 6,000 BHP is a relevant product market for antitrust purposes. The Complaint further alleges that the United States Gulf of Mexico is a relevant geographic market within the meaning of section 7 of the Clayton Act. The Complaint refers to the relevant market as the "Gulf anchor-handling market."

Tidewater and Zapata Gulf are direct competitors in the Gulf anchor-handling market. They are two of only six firms capable of providing anchor-handling services in this market. Based upon the 15 AHTS vessels of at least approximately 6,000 BHP competing in the Gulf, Tidewater and Zapata Gulf have 13 and 7 percent, respectively, of capacity.

The Gulf anchor-handling market is highly concentrated and would become substantially more concentrated as a result of the proposed transaction.

Market concentration is measured by the Herfindahl-Hirschaman Index ("HHI"). The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. The HHI, which takes into account the relative size and distribution of the firms in the market, ranges from virtually zero to 10,000. The HHI approaches zero when a market is occupied by a large number of firms of relatively equal size. The HHI increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases. A market with a post-acquisition HHI of 1000 is moderately concentrated, and a market with a post-acquisition HHI of 1800 is highly concentrated.

The HHI for the Gulf anchor-handling market, based on capacity, is 2,892. Following the proposed transaction, the HHI would rise to 3,070—an increase of 178. The combination of Tidewater and Zapata may increase the likelihood of coordinated anticompetitive conduct in the Gulf anchor-handling market. There is insufficient excess capacity among AHTS vessels in the Gulf to mitigate this risk of anticompetitive conduct.

Successful new entry into the Gulf anchor-handling market would not be induced by a small but significant nontransitory price increase. Neither are a sufficient number of the AHTS vessels deployed outside the Gulf likely to return to the Gulf in response to a small but significant nontransitory price increase.

III. Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the proposed acquisition of Zapata Gulf by Tidewater may be substantially to lessen competition, in violation of section 7 of the Clayton Act, in the Gulf anchor-handling market. The risk to competition posed by this transaction, however, substantially would be eliminated were sufficient AHTS vessels to be sold to a purchaser or purchasers that could operate them as active, independent and financially viable competitors in the Gulf anchor-handling market. To this end, the provisions of the proposed Final Judgment are designed to accomplish the sale of certain vessels capable of performing services in the market to such a purchaser or purchasers and prevent the anticompetitive effects of the proposed acquisition.

Section IV of the proposed Final Judgment requires defendant Tidewater, by August 10, 1992, to divest two AHTS vessels to a purchaser or purchasers that have the capability and present intent to operate the vessels as part of a viable, ongoing business capable of providing anchor-handling services in the Gulf. The vessels are the Gulf Fleet 54 and a second vessel to be selected by Tidewater from the following group of AHTS vessels: Darol Tide, Doc Tide, Hatch Tide, Gulf Fleet 55 or Gulf Fleet 59. These vessels, as well as the Gulf Fleet 54, are Jones Act-qualified AHTS vessels of approximately 6,0000 BHP. They are the newest Jones Act-qualified AHTS vessels in the Tidewater and Zapata Gulf fleets and are equipped with liquid mud capacity so that they can not only handle the mooring systems of semi-submersible drilling rigs, but also provide supply services to the rigs during the drilling operations. The ability of AHTS vessels to serve these dual functions is an important criterion to Gulf customers in choosing AHTS vessels. Section IV. F. of the proposed Final Judgment bars the divestiture of the vessels to three competitors of Tidewater and Zapata Gulf: SeaCor Holdings, Inc., Ensco Marine Company, and Penrod Drilling Corporation.

Under the proposed Final Judgment, defendants must take all reasonable steps necessary to accomplish quickly the divestiture of the specified assets, and shall cooperate with bona fide prospective purchasers by supplying all information relevant to the proposed sale. Should Tidewater fail to complete its divestiture by August 10, 1992, the Court will appoint, pursuant to section V, a trustee to accomplish the divestiture. The United States will have the discretion to delay the appointment of the trustee for up to an additional two months should it appear that the assets can be sold in the extended time period.

Following the trustee's appointment, only the trustee will have the right to sell the divestiture assets, and defendant Tidewater will be required to pay for all of the trustee's sale-related expenses. If divestiture of the undesignated vessel is not made by Tidewater prior to the appointment of the Trustee, the proposed Final Judgment requires Tidewater to designate the identity of the vessel to be divested in addition to the Gulf Fleet 54 no later than five days prior to the effective date of the trustee's appointment.

Section VI of the proposed Final Judgment would assure the United States an opportunity to review any proposed sale, whether by Tidewater or by the trustee, before it occurs. Under this provision, the United States is entitled to receive complete information regarding any proposed sale or any prospective purchasers prior to consumation. Upon objection by the United States to a sale of the divestiture assets by the defendant Tidewater, a proposed divestiture may not be completed. Should the United States object to a sale of the divested assets by the trustee, such sale shall not be consummated unless approved by the Court.

Pursuant to section V. G., should the trustee not accomplish the divestiture within six months of appointment, the trustee and the parties will make recommendations to the Court, which shall enter such orders as it deems apropriate to carry out the purpose of the trust, which may include extending the trust or the term of the trustee's appointment.

Under section IX of the proposed Final Judgment, defendant Tidewater must take certain steps to ensure that, until the required divestiture has been completed, the pool of divestiture assets, defined as the Gulf Fleet 54 and the five AHTS vessels from which Tidewater will designate a vessel to be divested, will be maintained as distinct salable assets. Until such divestiture, defendant Tidewater must also preserve and maintain the pool of divestiture assets as salable assets, making all reasonable efforts to maintain the vessels in a condition which makes them usable as part of a viable and active business providing anchor-handling services. Tidewater may, by notifying plaintiff, exclude a vessel other than the Gulf Fleet 54 from the pool of divestiture assets. Upon that notification, the requirements of section IX will no longer apply to that vessel. Once excluded, a vessel may not reenter the pool of divestiture assets.

Section X requires Tidewater to provide certain information about any proposed acquisition of one or more Jones Act-qualified AHTS vessels of at least 5,600 BHP, or of the stock or assets of a company owning such a vessel, if the acquisition is not reportable under the Hart-Scott-Rodino premerger notification law. 15 U.S.C. 18a. This information must be provided at least 30 days prior to the acquisition, and includes data about the current owner of the vessel, the vessel, and the transaction. Section XIII of the proposed Final Judgment provides that it will expire on the third anniversary of its entry by the Court.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may

bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedure Available for Commenting on the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Mark C. Schechter, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Judiciary Center Building, 555 4th Street, NW., room 9403, Washington, DC 20001.

VI. Alternatives to the Proposed Final Judgment

The proposed Final Judgment requires that the divestiture assets be sold to a purchaser or purchasers with the capability and present intent of operating them as part of a viable, ongoing business capable of providing anchor-handling services in the Gulf. Thus, compliance with the proposed Final Judgment and the completion of the sale or sales required by the Judgment should resolve the competitive concerns raised by the proposed transaction, and assure that the divestiture assets would be used as part of a viable and active competitor to Tidewater's provision of anchor-handling services.

Litigation is, of course, always an alternative to a consent decree in a section 7 case. The United States rejected this alternative because the sale required under the proposed Final Judgment should prevent the acquisition by Tidewater of Zapata Gulf from having a significant anticompetitive effect in the relevant market alleged, the Gulf anchor-handling market.

While the number of AHTS vessels operated in the Gulf by Tidewater and Zapata Gulf has varied over time, since June of 1990 Zapata Gulf has provided anchor-handling services in the Gulf with two AHTS vessels. Thus, by requiring the divestiture of two AHTS vessels, Zapata Gulf will be effectively replaced as a competitor in the Gulf.

The United States is satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the proposed merger alleged in the Complaint. Although the proposed Final Judgment may not be entered until the criteria established by the APPA (15 U.S.C. 16(b)–(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because the defendants have stipulated to comply with the terms of the Judgment pending its entry by the Court.

VII. Determinative Materials and Documents

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: January 13, 1992.

Respectfully submitted,

Angela L. Hughes,
Charles W. Corddry,
Burney P. C. Huber,
Attorneys, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, 555 Fourth Street, NW., room 9810, Washington, DC 20001, (202) 307–6410.

[FR Doc. 92–2154 Filed 1–29–92; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act Allotments; Wagner-Peyser Act Preliminary Planning Estimates; Program Year (PY) 1992

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces States' Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1992 (July 1, 1992–June 30, 1993) for JTPA Titles II–A and III, and for the JTPA Title II–B summer youth program in Calendar Year (CY) 1992; and preliminary planning estimates for public employment service activities under the Wagner-Peyser Act for PY 1992.

FOR FURTHER INFORMATION CONTACT: For JTPA allotments, contact the Office of Employment and Training Programs, room N4703, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–535–0577. For Employment Service planning levels contact Mr. Robert J. Litman, Acting Director, U.S. Employment Service, room N4470, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–535–0157. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) is announcing Job Training Partnership Act (JTPA) allotments for Program Year (PY 1992) (July 1, 1992–June 30, 1993) for JTPA Titles II–A and III, and for the summer youth program in Calendar Year (CY) 1992 for JTPA Title II–B; and, in accord with section 6 of the Wagner-Peyser Act, preliminary planning estimates for public employment service (ES) activities under the Wagner-Peyser Act for PY 1992. The allotments and estimates are based on the appropriations for DOL for Fiscal Year (FY) 1991 and FY 1992.

Attached are a list of the allotments for PY 1992 for programs under JTPA Titles II–A and III, a list of the allotments for the CY 1992 summer youth program under Title II–B of JTPA, and a list of preliminary planning estimates for public employment service activities under the Wagner-Peyser Act. The PY 1992 allotments for title II–A and Title III, and the ES preliminary planning estimates, are based on the funds appropriated by the Department of Labor Appropriations Act, 1992, Public Law 102–170, for FY 1992. The CY 1992 allotments for Title II–B are based on funds appropriated by the Department of Labor Appropriations Act, 1991, Public Law 101–517, for FY 1991.

These JTPA allotments will not be updated for subsequent unemployment data. The Employment Service preliminary estimates will be updated as final allotments to reflect CY 1991 data, and published in the **Federal Register** at a later date.

JTPA Title II–A Allotments

Attachment No. I shows the PY 1992 JTPA Title II–A allotments by State on a total appropriation of $1,773,484,000. The amount is composed entirely of PY 1992 formula funds. For all States, Puerto Rico, and the District of Columbia, the following data were used in computing the allotments:

—Data for areas of substantial unemployment (ASUs) are averages for the 12-month period, July 1990 through June 1991.
—The number of excess unemployed individuals or the ASU excess (depending on which is higher) are averages for this same 12-month period.
—The economically disadvantaged data are from the 1980 Census.

The allotments for the Insular Areas, including the Freely Associated States, are based on estimated unemployment. The estimated unemployment data were developed using the 1980 Decennial Census unemployment data as a base, updated according to relative shifts in the population. A 90-percent relative share "hold-harmless" of the Title II–A allotments for these areas and a minimum allotment of $125,000 were also applied in determining the allotments.

PY 1992 Title II–A funds are to be distributed among designated Service Delivery Areas (SDAs) according to the statutory formula contained in Section 202(a) of JTPA, as amended.

JTPA Title II–B Allotments

Attachment No. II shows the CY 1992 JTPA Title II–B Summer Youth Program allotments by State based on a total FY 1991 available appropriation of $682,880,001. The data used for these allotments are the same data as were used for Title II–A allotments. The amount allotted is composed entirely of PY 1991 formula funds.

For the Insular Areas, the amount is based on the percentage of Title II–B funds each area received during the previous summer.

CY 1992 Title II–B funds are to be distributed among designated SDAs in accordance with the statutory formula contained in Section 202(a) of JTPA, as amended.

JTPA Title III Allotments

Attachment No. III shows the PY 1992 JTPA Title III Dislocated Worker Program allotments by State, from a total of $526,986,000. The total includes 80 percent allotted by formula to the States ($421,588,800), and 20 percent for the National Reserve, including funds allotted to the Insular Areas.

Title III formula funds are to be distributed to State and substate grantees in accordance with the provisions in section 302(c) and (d) of JTPA.

Except for the Insular Areas, the unemployment data used for computing these allotments, relative numbers of unemployed and relative numbers of excess unemployed, are averages for the September 1990 through August 1991 period. Long-term unemployed data used were for CY 1990.

Allotments for the Insular Areas are based on the proportion of title II–A funds these jurisdictions received.

A reallotment of these published Title III formula amounts, as provided for by section 303 of JTPA, will be completed on or about October 1, 1992, based on expenditure reports submitted by the States. Title III allotments will be adjusted upward or downward, based on whether the State is eligible to share in reallotted funds or is subject to recapture.

Wagner-Peyser Act Employment Service Preliminary Planning Estimates

Attachment No. IV shows planning estimates which have been produced using the formula set forth at section 6 of the Wagner-Peyser Act, 29 U.S.C. 49e. These preliminary estimates are based on averages for the most current 12 months ending September 1991 for each State's share of the civilian labor force (CLF) and unemployment. Final planning estimates will be issued within 90 days, based on Calendar Year 1991 data, as required by the Wagner-Peyser Act.

The total planning estimate reflects $19,389,950 or 2.36 percent of the total amount available, withheld from distribution to finance postage costs associated with the conduct of Employment Service business.

The Secretary of Labor has set aside 3 percent of the total available funds to assure that each State will have sufficient resources to maintain statewide employment services, as required under section 6(b)(4) of the Wagner-Peyser Act. In accordance with this provision, $24,066,542 is set aside for administrative formula allocation. These setaside funds are included in the total planning estimate. Setaside funds are distributed in two steps to States which have lost in relative share of resources from the prior year. In step one, States which have a CLF below one million and are below the median CLF density are maintained at 100 percent of their relative share of prior year resources. All remaining funds are distributed on a pro rata basis in step two to all other States losing in relative share from the prior year but which do not meet the size and density criteria for step one. The technical change introduced in PY 1991 remains in effect. The change redefined a "losing" State as one losing in relative share of total current available resources under the Wagner-Peyser base formula allocation as compared to its relative share of the prior year's total allotment.

Ten percent of the total sums allotted to each State shall be reserved for use by the Governor to provide performance incentives for public employment service offices; services for groups with special needs; and for the extra costs of exemplary models for delivery job services.

Signed at Washington, DC, this 13th day of January, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1992 JTPA TITLE II–A ALLOTMENTS TO STATES

State	Dollars
Alabama	36,214,646
Alaska	5,204,356
Arizona	22,290,580
Arkansas	22,269,062
California	209,066,542
Colorado	22,429,467
Connecticut	15,325,411
Delaware	4,421,957
District of Columbia	5,523,629
Florida	84,405,599
Georgia	39,963,106
Hawaii	4,421,957
Idaho	6,802,412
Illinois	81,904,495
Indiana	32,561,946
Iowa	12,445,564
Kansas	7,782,977
Kentucky	31,667,644
Louisiana	56,225,635
Maine	9,806,914
Maryland	25,082,622
Massachusetts	54,129,669
Michigan	80,109,035
Minnesota	20,814,947
Mississippi	29,892,936
Missouri	34,490,254
Montana	6,012,732
Nebraska	4,579,233
Nevada	5,377,709
New Hampshire	7,647,298
New Jersey	44,928,373
New Mexico	12,896,941
New York	119,745,592
North Carolina	32,993,823
North Dakota	4,421,947
Ohio	71,995,136
Oklahoma	20,182,996
Oregon	16,250,351
Pennsylvania	74,315,528
Puerto Rico	71,614,006
Rhode Island	6,126,463
South Carolina	20,025,578
South Dakota	4,421,957
Tennessee	31,583,748
Texas	139,448,899
Utah	8,928,802
Vermont	4,421,957

U.S. Department of Labor Employment and Training Administration PY 1992 JTPA Title II-A Allotments to States

State	Dollars
Virginia	31,372,937
Washington	29,619,095
West Virginia	19,038,720
Wisconsin	22,174,294
Wyoming	4,421,957
American Samoa	141,674
Guam	1,189,936
Marshall Islands	505,231
Micronesia	1,189,375
Northern Marianas	125,000
Palau	125,000
Virginia Islands	1,425,113
Total	1,773,484,000

U.S. Department of Labor Employment and Training Administration PY 1991 JTPA Title II-B Allotments to States

State	Dollars
Alabama	13,713,266
Alaska	1,924,501
Arizona	8,266,413
Arkansas	8,262,854
California	79,191,693
Colorado	8,317,009
Connecticut	5,805,410
Delaware	1,673,311
District of Columbia	3,435,734
Florida	31,971,110
Georgia	15,139,901
Hawaii	1,673,311
Idaho	2,511,180
Illinois	31,031,871
Indiana	12,334,478
Iowa	4,512,128
Kansas	2,949,650
Kentucky	11,778,038
Louisiana	20,812,945
Maine	3,715,655
Maryland	9,501,451
Massachusetts	20,501,811
Michigan	34,137,792
Minnesota	7,885,741
Mississippi	11,105,137
Missouri	13,065,191
Montana	2,277,891
Nebraska	1,687,149
Nevada	2,036,968
New Hampshire	2,896,235
New Jersey	17,018,959
New Mexico	4,799,018
New York	45,365,688
North Carolina	12,501,187
North Dakota	1,673,311
Ohio	27,277,618
Oklahoma	7,501,369
Oregon	6,156,410
Pennsylvania	28,152,434
Puerto Rico	27,132,153
Rhode Island	3,078,045
South Carolina	7,587,385
South Dakota	1,673,311
Tennessee	11,958,441
Texas	48,666,629
Utah	2,559,823
Vermont	1,673,311
Virginia	11,885,126
Washington	11,222,124
West Virginia	7,211,903
Wisconsin	8,400,961
Wyoming	1,673,311
American Samoa	91,840
Guam	632,251
Marshall Islands	18,632
Micronesia	44,154
Northern Marianas	24,250
Palau	7,312
Virgin Islands	358,495
Native Americans	12,418,726
Total	682,880,001

U.S. Department of Labor Employment and Training Administration PY 1992 JTPA Title III Allotments to States

State	Dollars
Alabama	7,546,002
Alaska	1,095,337
Arizona	3,679,217
Arkansas	4,821,391
California	53,396,196
Colorado	4,111,191
Connecticut	5,166,429
Delaware	1,108,377
District of Columbia	1,250,041
Florida	22,316,933
Georgia	9,485,638
Hawaii	528,231
Idaho	1,535,745
Illinois	22,245,871
Indiana	7,906,667
Iowa	2,979,518
Kansas	2,452,743
Kentucky	7,032,754
Louisiana	7,142,859
Maine	2,516,947
Maryland	5,962,960
Massachusetts	15,467,683
Michigan	23,266,180
Minnesota	5,718,393
Mississippi	5,611,193
Missouri	8,891,617
Montana	1,421,994
Nebraska	624,258
Nevada	1,431,532
New Hampshire	2,375,797
New Jersey	12,581,054
New Mexico	2,829,299
New York	30,941,227
North Carolina	7,454,570
North Dakota	496,462
Ohio	18,842,800
Oklahoma	4,691,208
Oregon	4,643,060
Pennsylvania	20,621,009
Pureto Rico	11,233,391
Rhode Island	2,362,681
South Carolina	4,704,548
South Dakota	492,392
Tennessee	6,343,707
Texas	28,467,253
Utah	1,354,312
Vermont	961,117
Virginia	6,628,328
Washington	6,142,633
West Virginia	5,332,266
Wisconsin	4,817,509
Wyoming	538,260
American Samoa	33,769
Guam	283,677
Marshall Islands	120,446
Micronesia	283,543
Northern Marianas	29,711
Palau	29,711
Virgin Islands	339,743
National Reserve	104,276,600
Total	526,986,000

U.S. Department of Labor Employment and Training Administration Preliminary PY 1992 Wagner-Peyser Allotments to States

State	Basic formula	3 percent distribution			Total allotment [3]
		Step 1 [1]	Step 2 [2]	Total	
Alabama	11,340,436	0	494,977	494,977	11,835,413
Alaska	7,612,415	1,108,078	0	1,108,078	8,720,493
Arizona	9,412,598	0	399,685	399,685	9,812,283
Arkansas	6,797,537	0	373,473	373,437	7,171,010
California	88,688,251	0	0	0	88,688,251
Colorado	9,632,266	0	378,325	378,325	10,010,591
Connecticut	10,020,327	0	74,877	74,877	10,095,204
Delaware	2,173,349	0	67,386	67,386	2,240,735
District of Columbia	4,570,061	0	422,780	422,780	4,992,841
Florida	38,224,895	0	0	0	38,224,895
Georgia	18,066,559	0	529,485	529,485	18,596,044
Hawaii	2,680,088	0	86,394	86,394	2,766,482
Idaho	6,342,497	923,226	0	923,226	7,265,723

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PRELIMINARY PY 1992 WAGNER-PEYSER ALLOTMENTS TO STATES—Continued

State	Basic formula	3 percent distribution			Total allotment [3]
		Step 1 [1]	Step 2 [2]	Total	
Illinois	35,198,973	0	866,037	866,037	36,065,010
Indiana	16,039,026	0	188,635	188,635	16,227,661
Iowa	8,080,978	0	545,792	545,792	8,626,770
Kansas	7,039,161	0	32,254	32,254	7,071,415
Kentucky	10,495,311	0	255,356	255,356	10,750,667
Louisiana	11,768,692	0	1,088,731	1,088,731	12,857,423
Maine	3,893,187	427,670	0	427,670	4,320,857
Maryland	14,267,279	0	0	0	14,267,279
Massachusetts	19,805,623	0	0	0	19,805,623
Michigan	29,090,598	0	603,942	603,942	29,694,540
Minnesota	13,330,701	0	47,867	47,867	13,378,568
Mississippi	7,546,518	0	293,034	293,034	7,839,552
Missouri	15,534,326	0	0	0	15,534,326
Montana	5,183,121	754,465	0	754,465	5,937,386
Nebraska	6,229,093	906,718	0	906,718	7,136,811
Nevada	5,038,540	733,419	0	733,419	5,771,959
New Hampshire	3,770,891	0	0	0	3,770,891
New Jersey	23,205,867	0	0	0	23,205,867
New Mexico	5,816,373	846,643	0	846,643	6,663,016
New York	50,366,154	0	2,273,898	2,273,898	52,640,052
North Carolina	19,166,110	0	0	0	19,166,110
North Dakota	5,277,967	768,271	0	768,271	6,046,238
Ohio	31,468,099	0	419,779	419,779	31,887,878
Oklahoma	10,766,676	0	996,035	996,035	11,762,711
Oregon	8,560,951	0	297,016	297,016	8,857,967
Pennsylvania	34,717,002	0	0	0	34,717,002
Puerto Rico	8,909,933	0	472,945	472,945	9,382,878
Rhode Island	3,170,197	0	36,008	36,008	3,206,205
South Carolina	9,834,789	0	0	0	9,834,789
South Dakota	4,878,055	710,059	0	710,059	5,588,114
Tennessee	13,838,728	0	6,900	6,900	13,845,628
Texas	49,508,413	0	2,049,842	2,049,842	51,558,255
Utah	10,668,900	1,552,965	0	1,552,965	12,221,865
Vermont	2,285,161	332,632	0	332,632	2,617,793
Virginia	16,156,365	0	0	0	16,156,365
Washington	14,190,257	0	270,592	270,592	14,460,849
West Virginia	5,583,416	812,733	0	812,733	6,396,149
Wisconsin	14,166,637	0	66,499	66,499	14,235,136
Wyoming	3,784,631	550,899	0	550,899	4,335,530
Formula Total	776,195,978	10,427,798	13,638,744	24,066,542	800,262,520
Guam	375,376	0	0	0	375,376
Virgin Islands	1,560,154	0	0	0	1,560,154
Indicia Postage	19,369,950	0	0	0	19,369,950
National Total	797,541,458	10,427,798	13,638,744	24,066,542	821,608,000

[1] Funds are allocated to the 13 States whose relative share decreased from PY 1991 to the PY 1992 basic formula amount and which have a Civilian Labor Force (CLF) below one million and are below the median CLF density. These States are held harmless at 100% of their PY 1991 relative share.
[2] The Balance of the 3% funds are distributed to the remaining 28 States losing in relative share from PY 1991 to their 1992 total allotment amount.
[3] Hold harmless provisions required under section 6(B) of the Wagner-Peyser Act, as amended, are maintained at the revised allotment level.

[FR Doc. 92-2033 Filed 1-29-92; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-09]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATES: February 20, 1992, 9 a.m. to 5 p.m.; and February 21, 1992, 8:30 a.m. to noon.

ADDRESSES: National Aeronautics and Space Administration, room 7002, Federal Office Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code ADA-2, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8766.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Caleb Hurtt and is composed of 27 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, aerospace medicine, space science and applications, space systems and technology, space station, commercial programs, and history, as they relate to NASA's activities.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Council members and other participants. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.
Agenda: Thursday, February 20, 1992
9 a.m.—Opening Remarks.

9:15 a.m.—Overview and 1992 Forecast, NASA Program Offices.
5 p.m.—Adjourn.
Friday, February 21, 1992
8:30 a.m.—Overview and 1992 Forecast, NASA Program Offices, Continued.
9:15 a.m.—NAC Committee Reports.
11 a.m.—Council Actions.
Noon—Adjourn.

Dated: January 23, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-2184 Filed 1-29-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice 92-08]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: March 18, 1992, 2 p.m. to 3:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, 400 Maryland Avenue, SW., room 7002, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur V. Palmer, Code Q-1, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8971).

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will present its annual report to the NASA Administrator and Deputy Administrator. This is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of manned flight. The major subjects covered will be the National Space Transportation System, Space Station, and Aeronautical Operations. The Aerospace Safety Advisory Panel is chaired by Norman R. Parmet and is composed of 8 members and 5 consultants. The meeting will be open to the public up to the capacity of the room (approximately 50 persons including members of the Panel).

Type of Meeting: Open.
Agenda: Wednesday, March 18, 1992

2 p.m.—Presentation of the findings and recommendations of the Aerospace Safety Advisory Panel.
3:30 p.m.—Adjourn.

Dated: January 23, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-2183 Filed 1-29-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice (92-10)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Space Station Science and Applications Advisory Subcommittee (SSSAAS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Space Station Science and Applications Advisory Subcommittee.

DATES: February 10, 1992, 8:30 a.m. to 10 p.m.; February 11, 1992, 8 a.m. to 10 p.m.; February 12, 1992, 8 a.m. to 5:30 p.m.; and February 13, 1992, 8 a.m. to noon.

ADDRESSES: Holiday Inn Hotel, 1217 Wildwood Avenue, Sunnyvale, CA 94089.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond M. Reeves, Code SM, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1570).

SUPPLEMENTARY INFORMATION: The Space Station Science and Applications Advisory Subcommittee (SSSAAS) reports to the Space Science and Applications Advisory Committee (SSAAC) and consults with and advises the NASA Office of Space Science and Applications (OSSA) on the new capabilities to be made available by the Space Station program and how these may be most effectively utilized. It also advises the NASA Space Station Freedom Office on how the Space Station program may most effectively support potential science and applications users. The Subcommittee will meet to discuss reports from the participating groups and organizations, updates on programs, and splinter group discussions. The Subcommittee is chaired by Dr. Charles A. Fuller and is composed of 19 members. The meeting will be closed to the public from 6:30 p.m. to adjournment on February 11, 1992, for a discussion of the qualifications of additional candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this discussion will be concerned with matters listed in 5 U.S.C. 522b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting

Open—except for a closed session as noted in the agenda below.

Agenda

Monday, February 10
8:30 a.m.—Opening Remarks and Subcommittee Business.
9:30 a.m.—Organizational Updates.
10:30 a.m.—Multilateral Science Working Group: Past and Present.
11 a.m.—OSSA Payload Traffic Model.
11:30 a.m.—Hardware Development Subgroup Report.
1 p.m.—Overview of OSSA Issues and Concerns.
2:30 p.m.—Office of Aeronautics and Space Technology Update.
3 p.m.—Office of Commercial Programs Update.
3:30 p.m.—Vibroacoustic Plans and Allocations.
4 p.m.—Venting.
5:30 p.m.—Organizations and Technical Status.
10 p.m.—Adjourn.
Tuesday, February 11
8 a.m.—Customer Data and Operations Systems Update.
9 a.m.—Tracking and Data Relay Satellite System Availability Update.
9:30 a.m.—Data Systems Capability Update.
11 a.m.—Telescience: European Space Agency Meeting Review.
11:30 a.m.—Latency: Projected Capabilities.
Noon—Data Management Systems Workshop Plans.
1:30 p.m.—Attached Payload Capability Status.
2 p.m.—Environment Update.
2:30 p.m.—Splinter Sessions: Data and Communications, Attached Payloads, Pressurized Volume.
6:30 p.m.—Closed Session.
10 p.m.—Adjourn.
Wednesday, February 12
8 a.m.—Discussion of Upcoming Meetings.
8:15 a.m.—Japanese Experiment Module Workshop Report.
8:45 a.m.—Status of Collaborative Discussions: Microgravity and Life Sciences.

10:45 a.m.—Reports from the International Partners.
1:30 p.m.—Italian Space Agency/NASA Memorandum of Understanding.
5:30 p.m.—Adjourn.
Thursday, February 13
8 a.m.—Splinter Group Reports and Discussion.
Noon—Adjourn.

Dated: January 23, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-2185 Filed 1-29-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice (92-12)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Microgravity Science and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Microgravity Science and Applications Advisory Subcommittee.

DATES: February 11, 1992, 8:30 a.m. to 5:30 p.m..

ADDRESSES: The National Aeronautics and Space Administration, 600 Independence Avenue, S.W., room 226, Washington DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Roger F. Crouch, Code SN, National Aeronautics and Space Administration, Washington, DC 20546 (202) 453-1490.

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Microgravity Science and Applications Advisory Subcommittee provides advice to the Microgravity Science and Applications Division (MSAD) concerning all of its programs in the microgravity sciences. The Subcommittee will meet to review the current status of the MSAD, the Discipline Working Group (DWG) plans, proposed augmentation for Satellite Test of the Equivalence Principle (STEP) and Low Temperature Research Facility (LTRF), MSAD Strategic Plan, and long-range research. The Subcommittee is chaired by Dr. Dudley Saville and is composed of 8 members. The meeting will be open to the public up to the capacity of the room (approximately 50 including Subcommittee members). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

TYPE OF MEETING: Open.

Agenda

Tuesday, February 11
8:30 a.m.—MSAD Overview.
10 a.m.—DWG Plans.
1 p.m.—Proposed Augmentation for STEP and LTRF.
2 p.m.—MSAD Strategic Plan.
3 p.m.—Long-Range NASA-Wide Microgravity Research.
5 p.m.—Action Items for May 28, 1992, Meeting.
5:30 p.m.—Adjourn.

Dated: January 24, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-2252 Filed 1-29-92; 8:45 am]

BILLING CODE 7510-01-M

[Notice [92-11]

Performance Review Board; Senior Executive Service

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of membership of SES Performance Review Board.

SUMMARY: The Civil Service Reform Act of 1978, Public Law 95-454 (section 405) requires that appointments of individual members to a Performance Review Board be published in the Federal Register.

The performance review function for the Senior Executive Service in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator. The following individuals are serving on the Committee and the Board:

Senior Executive Committee.

Samuel W. Keller, Chairperson, Associate Deputy Administrator, NASA Headquarters.

John E. O'Brien, Assistant Deputy Administrator, NASA Headquarters.

Spence M. Armstrong, Associate Administrator for Human Resources and Education, NASA Headquarters.

Thomas P. Murphy, Non-NASA Member.

Performance Review Board.

John E. O'Brien, Chairperson, Assistant Deputy Administrator, NASA Headquarters.

Ann P. Bradley, Executive Secretary, Director, Personnel Division, NASA Headquarters.

Gary L. Tesch, Deputy General Counsel, NASA Headquarters.

Robert W. Brown, Deputy Associate Administrator for Human Resources and Education, NASA Headquarters.

Thomas N. Tate, Non-NASA Member.

Jerry J. Fitts, Deputy Associate Administrator for Space Communications, NASA Headquarters.

Robert Rosen, Deputy Associate Administrator for Aeronautics and Space Technology, NASA Headquarters.

Thomas E. Utsman, Deputy Associate Administrator for Space Flight, NASA Headquarters.

Stuart J. Fordyce, Deputy Director, NASA Lewis Research Center.

J. Wayne Littles, Deputy Director, NASA Marshall Space Flight Center.

Victor L. Peterson, Deputy Director, NASA Ames Research Center.

Peter T. Burr, Deputy Director, NASA Goddard Space Flight Center.

Paul J. Weitz, Deputy Director, NASA Johnson Space Center.

Dated: January 23, 1992.

Richard H. Truly,

Administrator.

[FR Doc. 92-2251 Filed 1-29-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Public Hearings Announcement

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In according with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: February 16-17, 1992, Commissioners' Retreat. Sunday, February 16, 10 a.m. through Monday, February 17, 12 Noon.

ADDRESSES: Hyatt Regency Reston, 1800 Presidents Street, Reston, VA 22090.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street, N.W., #7121, Washington, DC 20005 (202) 275–6933.

TYPE OF MEETING: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 92–2222 Filed 1–29–92; 8:45 am]

BILLING CODE 6820–07–M

Public Hearings Announcement

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In according with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: Thursday, February 27, 1992, Public Hearing.

TIME: 9 a.m.–4 p.m., Friday, February 28, 1992, Commission Meeting.

TIME: 10 a.m.–3 p.m.

ADDRESSES: General Services Administration, 26 Federal Plaza, room 305 A, B & C, New York, NY 10278, (212) 264–9290.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street, NW., #7121, Washington, DC 20005, (202) 275–6933.

TYPE OF MEETING: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 92–2223 Filed 1–29–92; 8:45 am]

BILLING CODE 6820–07–M

OVERSIGHT BOARD

Oversight Board Meeting

AGENCY: Oversight Board.[1]

ACTION: Meeting notice.

DATES: Wednesday, February 12, 1992, 3 to 4 p.m.

ADDRESSES: Federal Deposit Insurance Corporation (FDIC), 550 17th Street, NW., Sixth floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bonnie Limbach, Director, Corporate Communications, 1777 F Street, NW., Washington, DC 20232, (202) 786–9672.

SUPPLEMENTARY INFORMATION: Discussion Agenda:

- RTC Update
- National Advisory Board Recommendations
- Other agenda items to be determined.

Closed session to follow.

Dated: January 27, 1992.

Jill Nevius,

Committee Management Officer.

[FR Doc. 92–2276 Filed 1–29–92; 8:45 am]

BILLING CODE 2222–01–M

[1] Under section 302(a), Public Law 102–233, 105 Stat. 1761, 1767, as of February 1, 1992 the Oversight Board's new name will be the Thrift Depositor Protection Oversight Board.

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2648, Redetermination of Withdrawal Liability Upon Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget for a currently approved collection of information (1212–0034) contained in its regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal (29 CFR part 2648). Current approval of the collection of information expires on February 29, 1992.

DATES: The PBGC is requesting that OMB approve or disapprove the collection of information by February 29, 1992.

ADDRESSES: All written comments should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0034), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, 2020 K Street, NW, Washington, DC 20006, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal (29 CFR part 2648).

Section 4219(c)(1)(D) of the Employee Retirement Income Security Act of 1974 ("ERISA") requires the PBGC to prescribe regulations for the allocation of a multiemployer plan's total unfunded vested benefits in the event of a plan termination due to the withdrawal of every employer or a withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw. The regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal is issued pursuant to this statutory requirement.

The regulation requires a plan to give employers timely notice of a mass withdrawal and to advise them of their rights and liabilities arising therefrom. Included in the notices to employers is a demand for payment, which initiates the employer liability assessment and collection process and triggers an employer's rights to review of its assessment. The required notices to the PBGC identify the plan as having experienced a mass withdrawal and provide certifications that the plan has determined and assessed mass withdrawal liability. This enables the PBGC to monitor the plan's compliance with the mass withdrawal liability provisions of ERISA and the regulation. By assuring compliance with these rules, the PBGC guards against the increased risk of plan insolvency (with resulting benefit losses to participants and claims against the insurance program) caused by the mass withdrawal. If this information were not provided, the PBGC would be significantly hindered in the performance of its statutory duties.

The multiemployer plans subject to this regulation are those that experience a mass withdrawal and have unfunded vested benefits. Based on its experience, the PBGC estimates that fewer than one plan per year meets these requirements.

The estimated total annual reporting and recordkeeping burden resulting from this collection of information is 28 hours.

Issued at Washington, DC, this 27th day of January, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92–2284 Filed 1–29–92; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30277; File No. SR-DTC-91-19]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving DTC's Proposed Trade Adjustment System for Participants Trading Collateralized Mortgage Obligations

January 22, 1992.

On July 31, 1991, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change will permit DTC to provide a new trade adjustment service for Participants trading collateralized mortgage obligations ("CMO's").[2] Notice of the proposal was published in the **Federal Register** on August 23, 1991.[3] No comments were received. As discussed below, the Commission is approving DTC's proposal.

I. Description

The proposed rule change establishes DTC's Trade Adjustment System ("TAS") for Participants trading CMO's.[4] CMO's have been eligible in DTC's Next-Day Funds Settlement ("NDFS") system since 1983.[5] Most, but not all DTC eligible CMO's are now in the Same-Day Funds Settlement ("SDFS") system.[6]

TAS will adjust automatically the cash balances between sellers and buyers of CMO's when the actual factor [7] used to calculate principal and interest payments (the "true factor") differs from the factor the parties used on trade date to calculate the CMO price and accrued interest (the "trade factor").[8] On trade date, the parties to the trade deliver to DTC the deliver order instructions, with the necessary trade information (*i.e.*, the CUSIP number, the dollar value of the trade, the number of shares to be traded, and the settlement date). The Participants may submit the trade factor used in calculating the price of the securities, or they may refrain from offering a trade factor.[9] If the parties offer no trade factor, DTC automatically uses the last publicly known true factor as the trade factor and compares it to the true factor when it becomes known to make the trade adjustment.[10]

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[1] 15 U.S.C. 73s(b)(1).

[2] CMO's also known as fast pay/slow pay bonds and serialized mortgage-backed securities, are debt investment vehicles, permitting short, medium, and long term investments in trust like entities which pass income from a collateral mortgage pool through to investors. Unlike other pass through securities, CMO's pay down principal to only one class of investors at a time, until that class is retired, when the next class begins to be paid down. This continues until all classes are paid down and a residual class remains to receive the remaining cash flow from the collateral. CMO's typically have monthly, quarterly, or semi-annual payments. Public Securities Association, PSA Uniform Practices ("PSA"), (1990), Chapter 5, at 5-1. Gregory J. Parseghian, "Collateralized Mortgage Obligations, "The Handbook of Fixed Income Securities (1987), at 404.

[3] Securities Exchange Act Release No. 29577 (August 16, 1991), 56 FR 41672.

[4] CMO products eligible at DTC include "private label" CMO's backed by Government National Mortgage Association pass-throughs or "whole-loans" and a few issue of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation that are not eligible for the Federal Reserve Bank's book-entry system. Similar asset-backed products, such as automobile, credit card, and other consumer loan backed securities are also eligible.

[5] DTC eligibility requirements for CMO's include that DTC receive a copy of the disclosure documents, and that the trustee agree to comply with DTC's "Operational Arrangements." See Securities Exchange Act Release No. 24818 (August 19, 1987), 52 FR 31833 (order describing DTC's operational arrangements necessary for an issue settling in next-day funds to be eligible for DTC) and Securities Exchange Act Release No. 25948 (July 27, 1988), 53 FR 29294 (order describing and clarifying prerequisites for an issue being eligible for DTC's SDFS system). If the CMO is book-entry only, DTC also requires a letter of representation from the issuer and the trustee. Finally, if DTC cannot obtain accurate prices to determine the daily market value of a CMO, DTC may limit its eligibility to DTC's NDFS system. Letter from Patricia H. Trainor, Associate Counsel, DTC, to Ester Saverson, Branch Chief, Division, Commission (September 5, 1991).

As of January, 1992, 16% of the CMO's held at DTC were in the NDFS system. Telephone conversation between Particia Trainor, Associate Counsel, DTC, and Jack Drogin, Attorney Adviser, Division of Market Regulation, Commission (January 13, 1992).

[6] CMO's currently represent the largest principal amount of any SDFS security at DTC. As of June 1991, 3,409 CMO's valued at $138.2 billion were SDFS eligible and 62 CMO underwriting distributions (316 tranches) had been completed during the year. Each day, DTC calculates the collateral value of these securities, based on the market prices supplied by Trepp Information Services, Inc. ("Trepp"), to collateralize Participants' SDFS positions in CMO's. DTC, "Program Agenda Proposals and Report" (September 1991).

As of January, 1992, 84% of the CMO's held at DTC were in the SDFS system. Telephone conversation between Particia Trainor, Associate Counsel, DTC, and Jack Drogin, Attorney Adviser, Division of Market Regulation, Commission (January 13, 1992).

[7] Since a CMO is a mortgage-backed security, its par value is reduced by the amount of the underlying mortgage obligation which has been paid during each payment period. The "true factor" represents the actual amount of principal remaining on the mortgages underlying the CMO on trade date. Since on trade date this amount is often not yet public, the parties substitute an estimated factor, the "trade factor", representing their estimate of the amount of principal paid on schedule, prepaid principal, and mortgage principal considered defaulted on during the relevant prior period.

[8] Assume, for example, that on July 1, buyer S buys a newly issued $1,000 CMO which pays 12% interest per annum. Assume further, that during July, homeowners prepay their home mortgages so that $100 prepayment is allocated to S's CMO. August 1 is the record date for the September 1 payable date, and S is the record owner on August 1.

On August 10, S sells the CMO to buyer B for $1,000. Since the true factor is not yet public, the parties use the trade factor of 1.00 (the last known true factor, which was available at the date of issuance, July 1). B pays S the $1,000 sales price plus $3.33 accrued interest ($1,000×10/360×12% interest for the period from August 1 to August 10).

On August 28, the true factor for the month of July is announced at 0.9 ($1,000 original principal minus $100 prepayment during July divided by the original $1,000 principal amount). Upon receiving the true factor of 0.9, TAS would compute the value of the trade. The $1,000 sales price on August 10 would be adjusted to $900 ($1,000×0.9). The $3.33 accrued interest paid by B to S would be adjusted to $3.00 ([900×10/360]×12%).

On September 1, the income payable date for August 1, the issuer pays S (the record owner on August 1) $100 prepayment of principal due to the July prepayments. The issuer pays S, the record owner on August 1, $10 interest. On September 1, TAS would automatically debit S's account $100 (the sales price times the difference between the trade factor and the true factor on August 10) and $0.33 (the difference between the accrued interest paid by B to S and the actual accrued interest on August 10 ([$1,000×10/360-$900×10/360]×12%). On September 1, TAS would automatically credit B's account $100.33 to account for the prepayments and excess interest paid.

[9] The new factors will be received on a daily basis from Trepp, a subsidiary of The Thomson Corporation. Trepp was established in 1987, under a charter from the Public Securities Association, an independent organization of securities dealers and other professionals. Trepp obtains its information directly from the prospectus, underwriter, and trustee/manager of the CMO's. Trepp offers daily reports, via CPU to CPU delivery, including daily updates of paydown factors, monthly updates of basic descriptive information of structured securities, and monthly updates of record information date information on structured securities. See, enclosures contained in letter from Patricia Trainor, Associate Counsel, DTC to Ester Saverson, Branch Chief, Division of Market Regulation, Commission (September 5, 1991).

Between a CMO's record date and beneficial date (the date as of which all holders of the CMO have a right to all principal and interest payments for a given period) and the factor availability date, CMO's incur a "blackout period." During the blackout period, it is not yet known how much principal and interest was paid (or prepaid) during the previous period, so the true value of the CMO is not certain. Instead, parties trading CMO's generally use the previous period's factor, and then settle the difference between the trade factor and the true factor on trade date. The current procedures for settling this difference are done outside of DTC, and in many cases do not account for the interest lost during this interval.

[10] Currently, availability of CMO factors varies and there is no fixed date on which each factor is available. The nature of the underlying assets has no effect on the availability of the factor. TAS does not purport to affect or standardize current factor availability. Trepp does not warrant to DTC, nor does DTC warrant to Participants, that the information received from Trepp is accurate. DTC believes it would have no liability if the information received from Trepp were incorrect, although in such a case DTC would assist Participants by

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TAS will automatically perform the price adjustment by charging the deliverer's DTC settlement account on the later of the day immediately following receipt of the true factor for the relevant trade date or the next income payment date on the CMO CUSIP.[11] In the rare instance where the true factor is greater than the trade factor, the seller will have been underpaid. TAS will then charge the receiver's DTC settlement account and credit the deliverer's settlement account for the cash adjustment.

The trigger mechanism for adjustment of the trade price is the receipt of the new factor. DTC will adjust all the trades identified during the relevant blackout period on an overnight batch basis, refactoring all trades based on the new factor information. The participants to TAS will be able to access an online trade inquiry system through FTS, permitting them to view deliver orders, factors used, and adjustments for the period beginning 60 business days prior to their inquiry. This will permit Participants to both observe and challenge any DTC TAS adjustment made during that prior period.

II. Discussion

The Commission believes that proposed rule change is consistent with section 17A of the Act and section 17A(b)(3)(A) of the Act in particular [12] because it promotes the prompt and accurate clearance and settlement of securities transactions by centralizing a previously decentralized procedure for the adjustment to trades settled at DTC. The centralization of the CMO trade adjustment process should facilitate a more efficient and more accurate process for trade adjustments than the current process where each party has to adjust each of its trades bilaterally and independently of DTC.

In addition, TAS offers standard procedures for the adjustments to trades. By using TAS, Participants are agreeing in advance to an acceptable basis for their trade adjustment information and to the process through which funds will flow upon settlement and adjustment. TAS establishes Trepp as the accepted source for CMO factor information and the later of payment date or the day after factor availability date as the date on which the adjustments will occur. Just as important, TAS standardizes the procedures by which the adjustments themselves occur, by permitting DTC to make the adjustments by book-entry, rather than forcing the trading parties to use independent methods, such as mailing checks to adjust the transactions upon factor availability.

DTC, as the record owner of the CMO's, independently receives factor information directly from the CMO's trustees. As a result, DTC could, based solely on its own computations, properly credit Participants with the appropriate principal and interest payments. Because Trepp can provide factor information to DTC in a readily useable format, DTC has determined that the Trepp service will expedite the trade adjustment process, permitting adjustments to be done in a more efficient and timely manner. Trepp is a leading independent source of factors for structured securities and is the most widely used independent source of factor information among DTC Participants. Virtually all of DTC's Participants currently use Trepp for factor information.[13] Therefore, DTC's decision to use Trepp services for factor information was both reasonable and appropriate in light of Trepp's significant current role in providing this information to the industry.[14]

During the first six months [15] of TAS, DTC will compare the Trepp supplied factors with DTC's results based on information supplied by CMO trustees. Thereafter, DTC will continue to compare a sampling of the Trepp supplied factors with their own results to monitor Trepp's continued accuracy.[16]

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–DTC–91–19) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–2192 Filed 1–29–92; 8:45 am]

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processing adjustments based on current information. Letter from Patricia Trainor, Associate Counsel, DTC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission (September 5, 1991).

[11] For example, if a trade settles on January 15, the true factor becomes known on January 20, and the next income payment date is on February 1, DTC will make (and alert the parties to the true factor) the adjustment on February 1, as part of its normal debiting and crediting of these accounts. If the true factor does not become known until February 5, DTC will adjust the trade on February 6 (and alert the parties of the true factor on that date).

[12] 15 U.S.C. 78q–1(b)(3)(A).

[13] Telephone conversation between Patricia Trainor, Associate Counsel, DTC, Anthony DiMurro, Director, DTC, and Jack Drogin, Attorney Adviser, Division of Market Regulation, Commission (January 13, 1992).

[14] Also, due to DTC Participants' current reliance on Trepp for factor information, and TAS trade adjustments needed to be later corrected as a result of Trepp error should not cause significant problems or Participant complaints to DTC.

[15] DTC intends to begin TAS as a pilot, for an initial period of approximately four weeks. After the initial four week period, DTC will consider offering TAS on a wider scale, basing its decision on the results of their initial pilot. During the first six months that TAS is in operation, including the pilot period, DTC will keep a record of, and report to the Commission about, how many times it is necessary to make an adjustment to Participants' accounts after settlement of a CMO because the factor information used for settlement adjustment was incorrect. Letter from Patricia Trainor, Associate Counsel, DTC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission (January 15, 1992).

[16] Letter from Patricia Trainor, Associate Counsel, DTC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission (January 15, 1992).

[Release No. 34–30283; File No. SR–DTC–91–16]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to a DTC's Proposed Deposit and Withdrawal at Custodian ("DWAC") Service

January 23, 1992.

I. Introduction

On July 17, 1991, The Depository Trust Company ("DTC") filed a proposed rule change (File No. SR–DTC–91–16) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] relating to DTC's proposed Deposit and Withdrawal at Custodian ("DWAC") service. On October 29, 1991, DTC amended the proposed rule change.[2] Notice of the proposal was published in the **Federal Register** on November 25, 1991, to solicit comments from interested persons.[3] No comments were received.

[1] 15 U.S.C. 78s(b).

[2] The amendment revises the form of agreement that transfer agents must sign to be able to use the DWAC service for securities issues that are eligible for deposit at DTC. The amendment also revises DTC's procedures to clarify that a custodian in the DWAC service must either accept or reject DWAC deposit and withdrawal instructions from DTC participants on the same day those instructions are received. Letter from Patricia H. Trainor, Associate Counsel, DTC, to Ester Saverson, Jr., Esq., Branch Chief, Division of Market Regulation, Commission (October 29, 1991).

[3] Securities Exchange Act Release No. 29962 (November 18, 1991), 56 FR 60137.

As discussed below, this order approves the proposal.

II. Description of the Proposal

The proposed rule change establishes a DWAC service that would supplement DTC's current deposit and withdrawal procedures.[4] The proposal would provide participants the opportunity to make deposits and withdrawals directly with a transfer agent for an issue evidenced by a balance certificate [5] registered in the name of Cede & Co. and held for DTC by a transfer agent ("DTC Custodian").[6] Only issues eligible under DTC's Fast Automated Securities Transfer ("FAST") Program [7] and certain other issues (including U.S. book- entry-only ("BEO") issues [8] and certain limited certificate issues) [9] are eligible for DTC's DWAC service. Participants may initiate a DWAC deposit or withdrawal request using DTC's Participant Terminal System ("PTS").[10]

To use DWAC for deposits or withdrawals of securities, participants must determine whether the appropriate DTC Custodian participates in the DWAC system and what its requirements are with respect to deposits and withdrawals of DWAC eligible securities. To facilitate this determination, DTC will maintain a list of participating DTC Custodians and provide the same to participants on a regular basis. DTC recommends that a participant contact the DTC Custodian regarding the custodian's procedures for the acceptance of DWAC deposits or withdrawals, including any fee charged by the DTC Custodian, before submitting DWAC deposits or withdrawals. This will minimize the possibility of rejected deposits or withdrawals being rejected.

To make a deposit through DWAC, the participant notifies DTC over PTS that it has delivered or is delivering securities to the DTC Custodian for deposit to the participant's DTC account. For non-certificated deposits, the participant notifies DTC that a deposit has been or will shortly be made into DTC's account at the DTC Custodian on behalf of the DTC participant. DTC would then make this deposit information available to the DTC Custodian over PTS. The DTC Custodian has until 6:30 p.m. that day to either approve or disapprove the deposit by acknowledging to DTC the acceptance or rejection of the deposit through PTS.[11] If the DTC Custodian accepts the deposit, it would effect a transfer of ownership that results in an increase in DTC's account on the issuer's books and the balance certificate held for DTC.[12] Once notified of the acceptance of the deposit by the DTC Custodian, DTC would credit the participant's account by the amount deposited and contemporaneously increase DTC's record of securities on the balance certificate held by the DTC Custodian.

To make a withdrawal of securities through DWAC, the participant would instruct DTC through PTS to withdraw the securities from its account. After DTC receives the instruction from a participant, DTC checks the participant's account to determine whether the participant has a sufficient quantity of securities required for such a withdrawal. If so, DTC would debit the participant's account for subject securities and credit an internal DTC account to reflect a pending withdrawal. DTC would forward the withdrawal instruction through PTS to the appropriate DTC Custodian. The DTC Custodian has until 6:30 p.m. that day to either approve or disapprove the withdrawal by acknowledging to DTC the acceptance or rejection of the withdrawal instruction through PTS.[13] By approving the withdrawal, the DTC Custodian acknowledges that it has completed the withdrawal request and has decreased the amount of securities held for DTC, as evidenced by the balance certificate.[14] Once accepted by the DTC Custodian, DTC would make the appropriate entries on its records and notify the participant that DTC has debited the participant's DTC account and that the DTC Custodian, in its capacity as transfer agent, has received the instructions to credit securities to another account. If the issue is certificated, the participant may collect its certificates from the DTC Custodian; otherwise, the participant may obtain a confirmation of position from the transfer agent.

Finally, DTC proposed to charge participants initiating DWAC deposits and withdrawals $0.62 for each deposit and withdrawal.

III. Discussion

The Commission believes that DTC's proposal is consistent with section 17A of the Act and, specifically with sections 17A(b)(3)(A) and (F).[15] Sections 17A(b)(3)(A) and (F) of the Act require a clearing agency to be so organized and its rules be designed to facilitate the prompt and accurate clearance and settlement of securities transactions and the safeguarding of funds and securities in DTC's possession or under its control. Accordingly, for the reasons discussed below, the Commission is approving the proposal.

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[4] The proposed rule change supplements current physical deposit and withdrawal procedures and replaces current procedures for Direct Transfer Agent Deposit ("DTAD") and for Certificate on Demand Exceptional Instruction ("CODX"). Therefore, participants may continue to deposit and withdraw securities at DTC under existing DTC rules and procedures.

[5] A balance certificate is held in the custody of and is maintained by a DTC Custodian and represents the balance of securities held in the name of Cede & Co. The total number of shares or units represented by a balance certificate increases and decreases daily based upon the amount of deposited or withdrawn securities.

[6] At present, all DTC Custodians intending to participate in DTC's DWAC service are transfer agents registered under the Act. If DTC decides to allow the non-registered transfer agents to act as DTC Custodians, that decision must be submitted for review in accordance with Section 19(b) of the Act. See letter from Patricia Trainer, Associate Counsel, DTC, the Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission (January 21, 1992).

[7] Under DTC's FAST (Fast Automated Securities Transfer) program, instead of securities being on deposit at DTC, DTC leaves securities in the custody of transfer agents in the form of balance certificates registered in the name of Cede & Co., DTC's nominee name (Securities Exchange Act Release No. 13342 (March 16, 1977), 42 FR 14792). Typically FAST transfer agents are banks. In cases where a non-bank FAST transfer agent participates in DWAC, the FAST procedures governing non-bank FAST transfer agents apply and the balance certificate in the custody of such transfer agent would not evidence the entire Cede & Co. position but must be limited to a minority of the quantity of securities registered in the name of Cede & Co.

[8] BEO securities are certificated securities that are evidenced by one balance certificate registered in the name of Cede and Co. Beneficial owners generally cannot obtain negotiable certificates evidencing their ownership interests.

[9] An example of a limited certificate issue is where part of a global issue is represented in the U.S. by one certificate in the custody of a DTC custodian and the remainder is evidenced by one or more other certificates located elsewhere. See letter from Patricia H. Trainor, Associate Counsel, DTC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission (September 11, 1991).

[10] PTS is DTC's electronic system that enables DTC and its participants to communicate. Securities Exchange Act Release No. 20619 (December 30, 1984), 49 FR 988.

[11] According to DWAC procedures, if the DTC Custodian fails to act on an instruction by the end of the day, the instruction would be dropped and the participant must resubmit the instruction over PTS the next business day to allow the custodian to act on the instruction. The failure of a DTC Custodian to act on an instruction by the end of the day is deemed to be a rejected transfer and the DTC Custodian may not debit or credit DTC's account to reflect such instruction. See supra note 2.

[12] Prior to participation in the DWAC program, a DTC Custodian must sign an agreement that states it understands the effect of an approval of a DWAC instruction. *Id.*

[13] See supra note 11.

[14] See supra note 12.

[15] 15 U.S.C. 78q–1(b)(3)(A) and (F).

The purpose of DWAC is to supplement the current DTC deposit and withdrawal services by providing DTC participants the ability to effect deposits and withdrawals of securities directly with DTC Custodians. For some participants it may be more convenient to deliver and pick up certificates directly from the DTC Custodian rather than through DTC. This service may be especially beneficial when the DTC Custodian and the participant reside outside the New York city area. In many cases it may be easier and more efficient for the DTC participant to deliver the securities or pick up the securities at the transfer agent then for the participant, in the case of deliveries, and the DTC Custodian, in the case of withdrawals, to deliver certificates to DTC. In addition, the proposal will reduce the movement of securities between DTC and its Custodians. Thus, the proposal is consistent with sections 17A(a)(1)(C) and 17A(e) of the Act.[16]

The addition of DWAC allows participants to choose, on a transaction by transaction basis, the various deposit and withdrawal services available at DTC based upon the efficiency and cost of the service. Accordingly, the proposal will promote the prompt and accurate clearance of securities transactions as required under sections 17A(b)(3)(A) and (F).

DTC will not provide immediate credit for deposits of certificates through DWAC, as it does for securities deposits made at DTC.[17] This will help assure that DTC's agents have received the securities and that DTC has good title to those securities. In addition, the DWAC service is designed to prevent the unauthorized movements of securities to or from a participant account at DTC and from DTC's balance order account at the DTC Custodian. All DWAC instructions will be processed through DTC, and a DTC Custodian can not withdraw from or make deposits to DTC's balance order account except upon DTC's instructions. Moreover, a DTC Custodian must notify DTC of the acceptance or rejection of the DWAC instruction on the day the transfer agent received the instruction.[18] Finally, the elimination of the movement of securities to and from DTC will reduce the potential instances of lost or stolen securities. Accordingly, the Commission believes that the DWAC proposal will facilitate the safeguarding of securities and funds in its custody or control or for which it is responsible as required by sections 17A(b)(3)(A) and (F) of the Act.[19]

DTC plans to charge participants $0.62 for each DWAC instruction.[20] The Commission believes that the proposed fee of $0.62 to be charged in connection with each DWAC deposit or withdrawal is consistent with section 17A(b)(3)(D) of the Act,[21] which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

IV. Conclusion

For the reasons stated above, the Commission finds that DTC's proposal is consistent with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[22] that DTC's proposed rule change (SR–DTC–91–16) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–2277 Filed 1–29–92; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78q–1(a)(1)(C) and 78q–1(e).

[17] Currently DTC gives a participant immediate credit, subject to transfer agent acceptance of the certificate for transfer, while under DWAC a DTC Custodian will have until the end of the day to either accept or reject the certificates. This will help assure that DTC's Custodians have received the securities and that DTC has good title to those securities.

[18] For example, as noted above, if a DTC Custodian fails to act on an instruction by the end of the day, the instruction would be dropped and the participant must resubmit the instruction over PTS the next business day to allow the custodian to act on the instruction. The failure of a DTC Custodian to act on an instruction by the end of the day is deemed to be a rejected transfer the DTC Custodian may not debit or credit DTC's account to reflect such instruction. See *supra* note 11.

[19] 15 U.S.C. 78q–1(b)(3)(A) and (F).

[20] The Commission notes that DTC's rules do not prohibit DTC Custodians from imposing and collecting additional transfer fees for DWAC deposits and withdrawals that will not be collected by DTC. Thus, a DWAC deposit or withdrawal may cost participants more than $0.62.

[21] 15 U.S.C. 78q–1(b)(3)(D).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 C.F.R. 200.30–3(a)(12).

[Release No. 34–30278; File No. SR–MBSCC–90–08]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving Proposed Rule Change Revising Standards for Letter of Credit Issuers

January 22, 1992.

On October 30, 1990, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change will modify MBSCC's rules relating to the standards by which MBSCC approves issuers of letters of credit used for Participants Fund purposes. On August 19, 1991, MBSCC amended the proposed rule change and then corrected that amendment on November 15, 1991.[2] Notice of the proposal was published in the **Federal Register** on November 27, 1991.[3] No comments were received. As discussed below, the Commission is approving MBSCC's proposal.

I. Description

The proposed rule change will revise and strengthen MBSCC's standards for approval of issuers of letters of credit used for Participants Fund purposes. MBSCC has conducted a comprehensive review of its risk management system with the goal of further minimizing related operational and financial risks. MBSCC's management has placed particular emphasis on letters of credit generally and letter of credit issuer eligibility standards.[4] The new standards are proposed to go into effect, promptly upon Commission approval of this proposed rule change.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 initially clarified and corrected the original proposal to state that MBSCC management and/or the Board of Directors will have the authority to accept letters of credit issued by banks that do not meet the basic standards outlined in this Order, provided the letters of credit issued by such banks do not exceed 5% of the total Participants Fund deposits of all Participants. This figure was later changed, pursuant to MBSCC Board approval, to provide that such letters of credit do not exceed 0.5% (½ of 1%) of the total Participants Fund deposits of all Participants. *See,* letter from Jeffrey E. Lewis, Associate Counsel and Assistant Secretary, MBSCC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission (November 15, 1991).

[3] Securities Exchange Act Release No. 29973 (November 20, 1991), 56 FR 60137.

[4] MBSCC requires banks issuing letters of credit to honor drafts in accordance with MBSCC's instructions by 4:30 p.m. (Eastern time) on the day of presentation, notwithstanding any contrary provision of commercial law. See Securities Exchange Act Release No. 29906 (January 22, 1991), 56 FR 3129.

[5] Each current letter of credit issuer has been notified of the proposed standards. MBSCC currently accepts letters of credit as collateral from 19 issuers, each of which meets the proposed standards. In the event an issuer were to be downgraded by either Standard & Poor's or Moody's or otherwise failed to meet these standards, MBSCC would promptly notify the Participant of the need to replace the letter of credit. The Participant would then have a reasonable period of time, usually a week to ten days, to either provide a new letter of credit from a qualified issuer or replace the existing letter of credit with an equivalent amount of cash or securities. MBSCC will monitor issuer compliance with the proposed standards by subscribing to both Standard & Poor's and Moody's reporting services which offer both daily notice of changes in issuer debt ratings as well as more complete monthly

Continued

Under the proposed rule change, issuers of letters of credit will be required to maintain prescribed Standard & Poor's, as well as Moody's, long-term debt ratings.[6] In the absence of available long-term debt ratings, MBSCC will substitute an issuer's Moody's or Standard & Poor's long-term deposit ratings. The proposed new standards for letter of credit issuers are:

1. Letter of credit issuers must have and maintain a Moody's long-term debt rating of at least A—3 and a Standard & Poor's long-term debt rating of at least A—.

2. In the event that a current or prospective letter of credit issuer does not have a Moody's or Standard & Poor's long-term debt rating, the long-term deposit rating must be at least A—3 in the case of Moody's and at least A— in the case of Standard & Poor's.

3. In the event that a prospective letter of credit issuer has neither a Standard & Poor's nor a Moody's long-term debt or long-term deposit rating of A— or A—3, respectively, MBSCC's management and/or the Board of Directors, in consultation with the Risk Management Committee, may determine to accept a letter of credit, from that issuer, provided that in no event will the aggregate value of the letters of credit of all such issuers accepted by MBSCC exceed 0.5% (½ of 1%) of the total Participant's Fund deposit of all Participants.

Even if an issuer meets the above requirements (Moody's long-term debt or long-term debt deposit rating of A—3 or better and a Standard & Poor's long-term debt or long-term deposit rating of A— or better), MBSCC will not accept a letter of credit by that bank or trust company, if, upon acceptance of the letter of credit, more than 25% of the overall collateral deposits to the Participants Fund would consist of letters of credit issued by the bank or trust company.

As an additional restriction on issuers, any letter of credit issued by a parent/holding or affiliate company of an MBSCC Participant will only be accepted if the letter of credit has been confirmed by an unaffiliated bank or trust company that meets MBSCC's issuer standards.[7] As the prior standards dictated, each letter of credit must continue to be irrevocable.[8] In addition, the letters of credit must each commit the issuer to pay a specified amount upon demand to MBSCC at any time prior to expiration of the letter of credit.

II. Discussion

The Commission believes that MBSCC's proposal is consistent with the Act, and in particular section 17A of the Act. Specifically, the Commission believes MBSCC's proposal "promotes the prompt and accurate clearance and settlement of securities transactions" and assures "the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible."[9]

Under its rules, deposits to the MBSCC Participants Fund, in excess of the basic deposit,[10] may be made by delivery to MBSCC of an irrevocable letter of credit issued by an approved bank or trust company. MBSCC's rules permit MBSCC to approve as an issuer of a letter of credit any domestic or foreign bank or trust company meeting the requirements set forth in the Procedures.[11] Under the Procedures in place prior to approval of this proposed rule change, an approved letter of credit issuer had to have a Moody's long-term debt rating of at least A—3. The proposed rule change therefore, among other things, adds as an additional requirement a Standard & Poor's long-term debt (or in its absence, a long-term deposit) rating of at least A-. The new standards therefore give MBSCC management the flexibility of reviewing the opinions of two independent rating agencies, rather than just one. This additional requirement should result in a more thorough inspection of proposed letter of credit issuers.

The proposal helps to ensure the credit quality of letters of credit MBSCC receives from members in partial satisfaction of their Participants Fund contribution requirements, which will facilitate MBSCC's ability to meet its obligations, including trade netting guarantees, on a timely basis even if more than one member defaults on its obligations to MBSCC. In particular, the proposed 25% limit on the acceptance of letters of credit from any one issuer will help MBSCC to ensure the liquidity of the Participants Fund by preventing too heavy a concentration of letters of credit from one financial institution, particularly if the failure of that financial institution coincides with an immediate funding requirement, such as a member default.

MBSCC's Board of Directors will have discretion to accept letters of credit issued by otherwise financially sound institutions that do not meet the rating criteria generally required for MBSCC acceptance. The proposed rule, however, appropriately limits MBSCC's exposure by limiting these letters of credit issuers to 0.5% (½ of 1%) of the value of all deposits to the Participants Fund. Thus, the proposed rule provides MBSCC with greater flexibility in approving letter of credit issuers while reducing risks to the clearing agency.

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–MBSCC–90–08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92–2193 Filed 1–29–92; 8:45 am]
BILLING CODE 8010–01–M

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reports rating debt issuers. Telephone conversation between Jeffrey E. Lewis, Associate Counsel and Assistant Secretary, MBSCC, and Jack Drogin, Staff Attorney, Division of Market Regulation, Commission (January 15, 1992).

[6] Standard and Poor's Corporation ("Standard & Poor's") and Moody's Investor Service, Inc. ("Moody's") issue credit ratings (such as A— in the case of Standard & Poor's and A—1, A—2, A—3 in the case of Moody's) to recommend the creditworthiness of various financial institutions with regard to certain financial obligations. These agencies may look at many factors, including profitability, capital, asset quality, liquidity, and interest rate management before assigning a rating to the obligations of a financial institution.

Under MBSCC's current procedures, both foreign and domestic issuers must demonstrate a Moody's long-term debt rating of at least A—3.

[7] The Uniform Commercial Code defines a "confirming" bank as "one which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank." U.C.C. 5–103(f) (1991).

[8] Each letter of credit must also state that it is subject to either the Uniform Customs and Practices of Documentary Credit (1983 Revision) International Chamber of Commerce Pub. No. 400 or the Uniform Commercial Code.

[9] Section 17A(b)(3)(F) of the Act, 15 U.S.C. 78q–1(b)(3)(F).

[10] MBSCC's rules define "Basic Deposit" as a required minimum deposit to the Participants Fund. It is currently not less than $10,000 for each account in certain account groups held by Participant broker-dealers. MBSCC rules article IV, rule 1.

[11] MBSCC article IV, rule 2, section 7.

[Rel. No. IC–18494; 812–7782]

Equus Investments II, L.P. et al.; Application

January 23, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Equus Investments II, L.P. (the "Partnership"), Equus II Incorporated (the "Fund"), Equus Capital Corporation ("ECC"), and Equus Capital Management Corporation ("ECMC").

RELEVANT ACT SECTIONS: Order requested under section 57(c) to permit a reorganization otherwise prohibited under section 57(a).

SUMMARY OF APPLICATION: Applicants propose a reorganization under which the Partnership will transfer all of its assets, including all securities and cash (subject to liabilities), to the Fund in exchange for Fund shares having an aggregate net asset value equal to the value of the net assets of the Partnership.

FILING DATE: The application was filed on September 25, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. On February 17, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 2929 Allen Parkway, suite 2500, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2283, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representatives

1. The Partnership, a business development company ("BDC") as defined in section 2(a)(48) of the Act, was organized as a Delaware limited partnership on June 2, 1986. The investment objective of the Partnership is to achieve capital appreciation by making equity and equity-oriented investments in leveraged buy-outs of established medium-sized companies or divisions thereof located in the United States. On June 26, 1986, the Partnership filed a registration statement under the Securities Act of 1933. In the public offering that ensued, 1,844,041 units of limited partnership interest were sold for an aggregate sales price of $36,821,728. The net proceeds of the offering have been invested primarily in leveraged buy-out investments.

2. ECC and its controlling corporation, ECMC, are both registered as investment advisers under the Investment Advisers Act of 1940. ECC and ECMC both provide investment advisory services to the Partnership. ECC serves as the managing general partner of the Partnership and is responsible for approving the Partnership's investments, arranging financing for leveraged buy-out transactions, and providing management assistance to portfolio companies. ECMC serves as the partnership's management company.

3. The Fund, a closed-end management investment company, was organized as a Delaware corporation on August 16, 1991. The investment objective of the Fund is substantially the same as that of the Partnership. The Fund is more fully described in the Registration Statement filed under the Securities Act on Form N–14 on September 6, 1991 (File No. 33–42621). The Fund has elected BDC status pursuant to the provisions of sections 2(a)(48)(c) and 54(a) of the Act.

4. Applicants wish to enter into an agreement and plan of exchange (the "Exchange") under which the Partnership will transfer to the Fund all of the assets of the Partnership, including all securities and cash (subject to liabilities), in exchange for Fund shares having an aggregate net asset value equal to the value of the net assets of the Partnership. Immediately following the Exchange, the former partners of the Partnership will hold the only outstanding Fund shares. These shares will include 60 shares that represent the initial capital contributed to the Fund by the Partnership. The Fund shares will then be distributed by the Partnership to the partners, with each partner receiving a pro rata distribution of the Fund shares for the partnership interest held prior to the Exchange. Following this distribution, the Partnership will be liquidated and dissolved.

5. As compensation for its services to the Partnership, ECC is allocated a portion of the Partnership's net realized capital gains or losses, as the case may be, for each calendar year until it has received: (a) 10% of the Partnership's net realized capital gains calculated on a cumulative basis over the life of the Partnership through the calendar year, if the Partnership has generated net realized capital gains on that cumulative basis; or (b) 5% of the Partnership's net realized capital losses calculated on a cumulative basis over the life of the Partnership through the calendar year, if the Partnership has generated net realized capital losses on that cumulative basis ("Special Allocation"). In addition, ECC, together with the other general partners and the limited partners, receives allocations and distributions of the Partnership's net realized capital gains or losses in excess of ECC's Special Allocation and all other profits, losses, deductions, and credits, in proportion to its capital contribution to the Partnership.

6. Pursuant to a management agreement between ECMC and the Partnership, ECMC receives an annual management fee of 2% of the net assets of the Partnership and an incentive fee equal to 10% of the Partnership's cumulative net realized capital gains over the life of the Partnership. The cumulative and annual amount of the ECMC incentive fee will be determined at the end of each fiscal year and upon termination of the Partnership. If, at the end of any year or upon termination of the Partnership, net payments previously made to ECMC exceed 10% of the Partnership's cumulative net realized capital gains less unrealized capital depreciation, ECMC would be required to repay all or a portion of the ECMC incentive fee previously received. In addition to the investment advisory services to be provided by ECMC, ECMC also provides, on behalf of ECC, certain administrative services to the Partnership. As additional compensation for such services, ECMC currently is paid annually (i) the sum of $10,000, (ii) the sum of $15 per limited partner account in excess of 3,000, and (iii) reimbursement of certain out-of-pocket expenses relating to such services.

7. The Fund intends to enter into a management agreement with ECMC (the "Fund Management Agreement") whereby ECMC will render services to the Fund substantially the same as those services ECMC currently renders to the Partnership. ECMC intends to enter into a sub-adviser agreement with ECC whereby ECC will render services to the Fund substantially the same as those services ECC currently renders to the Partnership.

8. In return for its services and the expenses that ECMC assumes under the Fund Management Agreement, the Fund will pay ECMC, on a quarterly basis, a management fee equal to 0.5% of the net

assets of the Fund on the last day of each calender quarter (2% per annum). The management fee is payable quarterly in arrears.

9. In addition to the management fee, the Fund will pay ECMC quarterly and at the final dissolution or liquidation of the Fund an incentive fee in an amount equal to 20% of the net realized capital gains less unrealized capital depreciation of the Fund and the Partnership on a cumulative basis from October 23, 1987 through the end of the calendar quarter, less the aggregate amount of the incentive fee payments in prior periods. If the amount of the incentive fee in any quarter is a negative number, or cumulative net realized capital gains less unrealized capital depreciation at the end of any fiscal quarter is less than such amount calculated at the end of the previous fiscal quarter, ECMC will be required to repay to the Fund all or a portion of the incentive fee previously paid.

10. In return for its services, ECMC will pay ECC quarterly and at the final dissolution or liquidation of the Fund an incentive fee in an amount equal to 10% of the net realized capital gains less unrealized capital depreciation of the Fund and the Partnership on a cumulative basis from October 23, 1987 through the end of each calendar quarter, less the aggregate amount of the incentive fee payments in prior periods. If the amount of the incentive fee in any quarter is a negative number, or cumulative net realized capital gains less unrealized capital depreciation at the end of any quarter is less than such amount calculated at the end of the previous quarter, ECC will be required to repay to ECMC all or a portion of the incentive fee previously paid.

11. At a meeting of the general partners of the Partnership, including all of the independent general partners, held in September 1991, ECC recommended that the general partners consider, and the general partners approved, the Exchange. The board of directors of the Fund, including all of the independent directors, also considered and approved the Exchange. Both the general partners and the directors found that the Exchange would be in the best interests of the Partnership and the Fund, and that the Exchange will not result in dilution of the financial interests of the limited or general partners of the Partnership when their interests are converted to Fund shares.

12. The Exchange must be approved by a majority interest of the limited partners of the Partnership, in accordance with the Delaware Revised Uniform Limited Partnership Act. Solicitation of limited partner approval of the Plan will be made by means of a proxy statement/prospectus, an example of which is in the N–14 registration statement. The proxy statement/prospectus will describe the nature of and reasons for the Exchange, the tax and other consequences to the limited partners of the Partnership, and other relevant matters, including comparisons of the Fund and the Partnership in terms of their investment objectives and policies, fee structures, management structures, and other aspects of their operations, as well as the financial information required by Form N–14.

13. The Exchange will establish the Fund as a successor investment vehicle to the Partnership. The Exchange will permit partners to pursue as shareholders of the Fund the same investment objectives and policies they were expecting from the Partnership without sacrificing the pass-through tax features of the Partnership. The Exchange will also provide the partners the increased liquidity that arises from the corporate form of organization, which is more familiar to possible investors in the secondary market. When the Partnership was organized, BDCs could not qualify as "regulated investment companies" under the Internal Revenue Code of 1986 (the "Code"). The only way to provide the investors in a BDC with distributions free from double taxation was by use of the partnership format. However, the Technical and Miscellaneous Revenue Act of 1988 amended the Code to provide that BDCs may qualify as regulated investment companies. It is also believed that organization as a corporation will prove beneficial in that the Fund will be simpler and less expensive to operate than the Partnership.

14. The Exchange will not be effected unless and until each of the following conditions is satisfied: (a) The N–14 Registration Statement has been declared effective; (b) the Exchange has been approved by a majority in interest of the limited partners of the Partnership; (c) the SEC has issued an order relating to the application; and (d) the Fund has received opinions of counsel that the Exchange will have specified tax consequences.

15. ECC and ECMC are bearing a portion of the expenses of the Exchange by providing services of their employees in designing and effectuating the Exchange and in preparing the application. The terms of the Exchange provide that the other expenses of the Exchange (including, without limitation, fees and disbursements of attorneys and auditors and printing costs of proxy soliciting material, but excluding up to $50,000 in fees and expenses that may be paid by the Partnership to an independent soliciting agency to solicit proxies from the Partnership's limited partners) will be borne by the Partnership up to the amount of $100,000. Any amount in excess of $100,000 will be allocated to ECC and ECMC. As of the time of the filing of the amended application, ECC estimates that the $100,000 level will be exceeded by approximately $10,000. The directors of the Fund and general partners of the Partnership believe that, in view of the expected benefits to applicants, it is reasonable to allocate expenses of the Exchange in the foregoing manner.

Applicants' Legal Conclusions

1. Applicants seek an exemption pursuant to section 57(c) of the Act from the provisions of section 57(a) of the Act to the extent necessary to permit the Exchange. Section 57(a), in pertinent part, prohibits certain affiliated persons of a BDC from selling to or purchasing from the BDC any security or other property. Section 57(a) of the Act disallows the Exchange because the Partnership is the sole shareholder of the Fund, and therefore controls the Fund as that term is used in section 56(b)(2) of the Act. Section 57(a) also applies to the Exchange because FCC, in addition to being an interest holder in the Partnership, will be an investment adviser of the Fund.

2. Applicants believe that the terms of the Exchange meet the criteria contained in section 57(c) of the Act, *i.e.*, (a) that the terms of the proposed transaction are reasonable and fair to all parties and do not involve overreaching of the Partnership or the Fund on the part of any person concerned, (b) that the proposed transaction is consistent with the policies of the Partnership and the Fund, and (c) that the proposed transaction is consistent with the general purposes of the Act. Applicants offer the following arguments in support of this conclusion:

(a) Given the similarity of investment objectives and policies of the Fund and the Partnership, the Fund will be attempting to assemble a portfolio of securities substantially similar to that held by the Partnership. The same investment adviser that selected the investments for the Partnership will be selecting them for the Fund.

(b) No brokerage commission, fee, or other remuneration will be paid in connection with the Exchange. Neither the limited partners nor FCC will receive any financial benefit from the Exchange apart from their pro rata interests in

Fund shares and other property distributed by the Partnership upon dissolution.

(c) If effected in the manner described in the application, the Exchange will result in no gain or loss being recognized by partners of the Partnership. Thus, as a body, the partners will become investors in an entity that offers greater liquidity than the Partnership without immediate tax consequences and without having incurred brokerage charges in order to do so.

(d) A majority of the members of the board of directors of the Fund and a majority of the general partners of the Partnership, including a majority of the prospective independent directors and a majority of the independent general partners, have approved the Exchange.

(e) Fund shares will be issued at their net asset values. At the time the Exchange is effected, there will be no Fund shares outstanding, except for the shares issued when seed capital was contributed. Thus, the question of whether Fund shareholders will be diluted as a result of the exchange does not arise.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2194 Filed 1-29-92; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18496; No. 811-5394]

Mony Legacy Variable Account A

January 23, 1992.

AGENCY: Securities and Exchange Commission "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Meny Legacy Variable Account A.

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: The Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on December 9, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 18, 1992. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the daie of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1740 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Attorney (202) 272-2676, or Heidi Stam, Assistant Chief (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant, a unit investment trust, is a separate account of MONY Legacy Life Insurance Company ("Legacy"). The Applicant registered under the 1940 Act and filed its registration statement (Reg. No. 811-5394) under the Act on November 20, 1987.

2. The Applicant also filed three registration statements pursuant to the Securities Act of 1933. On November 20, 1987, the Applicant filed a registration statement on Form N-4 (Reg. No. 33-18626) for an indefinite amount, in accordance with Rule 24f-2, of flexible premium variable annuity contracts, which became effective on December 17, 1987, the date on which the initial public offering commenced. On March 25, 1988, the Applicant filed two registration statements on Form N-4 (Reg. Nos. 33-20839 and 33-20840, respectively) for an indefinite amount, in accordance with Rule 24f-2, of flexible payment variable annuity contracts, both of which became effective on August 1, 1988, the date on which their respective initial public offerings commenced.

3. Due to the Merger of Legacy into The Mutual Life Insurance Company of New York ("Mutual of New York") on February 28, 1991 ("Merger"), the Applicant ceased to exist as a separate entity. The Boards of Directors of Legacy and of Mutual of New York approved the Merger. Under New York Insurance Law, no security holder authorization of the Merger was required.

4. In connection with the Merger, all assets, reserves, and other liabilities of the Applicant were transferred to an affiliated separate account, MONY Variable Account A ("MONY VA-A") (Reg. No. 811-6216), and Mutual of New York became the depositor of, and obligated under, the flexible payment variable annuity contracts issued by Legacy (the purchase payments for which were, prior to the Merger, allocated to Applicant). No assets have been retained by the Applicant, and no debts or other liabilities of the Applicant are outstanding. The expenses incurred in connection with the Merger were primarily legal, accounting, and administrative and were absorbed by Mutual of New York. None of the expenses were allocated to or paid by the Applicant or by MONY VA-A.

5. Each security holder of the Applicant had the same interest in the MONY VA-A immediately following the Merger as such security holder had in the Applicant immediately prior to the Merger, without diminution in any way. The Applicant has no security holders who did not receive a distribution of their interest by allocation ad transfer to MONY VA-A as a result of the Merger.

6. An order with respect to the Merger granting an exemption pursuant to section 17(b) from section 17(a) of he 1940 Act was issued by the Commission on February 28, 1991 (Rel. No. IC-18022).

7. The Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of the Applicant.

8. The Applicant is not a party to any litigation or administrative proceedings. The Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2272 Filed 1-29-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18495; No. 811-4275]

Mony Legacy Variable Account L

January 23, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Mony Legacy Variable Account L.

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: The Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on December 9, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 18, 1992. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1740 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Attorney (202) 272–2676, or Heidi Stam, Assistant Chief (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representatives

1. The Applicant, a unit investment trust, is a separate account of MONY Legacy Life Insurance Company ("Legacy"). The Applicant registered under the 1940 Act and filed its registration statement (Reg. No. 811–4275) under the 1940 Act on April 3, 1985.

2. The Applicant also filed a registration statement under the Securities Act of 1933 on April 3, 1985 (Reg. No. 2–96860) for an indefinite amount, in accordance with Rule 24f–2, of flexible premium variable life insurance contracts, which became effective on February 14, 1986, the date on which the initial public offering commenced.

3. Due to the Merger of Legacy into The Mutual Life Insurance Company of New York ("Mutual of New York") on February 28, 1991 ("Merger"), the Applicant ceased to exist as a separate entity. The Boards of Directors of Legacy and of Mutual of New York approved the Merger. Under New York Insurance Law, no security holder authorization of the Merger was required.

4. In connection with the Merger, all assets, reserves, and other liabilities of the Applicant were transferred to an affiliated separate account, MONY Variable Account L ("MONY VA–L") (Reg. No. 811–6215), and Mutual of New York became the depositor of, and obligated under, the flexible payment variable life insurance contracts issued by Legacy (the purchase payments for which were, prior to the Merger, allocated to the Applicant). No assets have been retained by the Applicant, and no debts or other liabilities of the Applicant are outstanding. The expenses incurred in connection with the Merger were primarily legal, accounting, and administrative and were absorbed by Mutual of New York. None of the expenses were allocated to or paid by the Applicant or by MONY VA–L.

5. Each security holder of the Applicant had the same interest in the MONY VA–L immediately following the Merger as such security holder had in the Applicant immediately prior to the Merger, without diminution in any way. The Applicant has no security holders who did not receive a distribution of their interest by allocation and transfer to MONY VA–L as a result of the Merger.

6. An order with respect to the Merger granting an exemption pursuant to section 17(b) from section 17(a) of the 1940 Act was issued by the Commission on February 28, 1991 (Rel. No. IC–18022).

7. The Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of the Applicant.

8. The Applicant is not a party to any litigation or administrative proceedings. The Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–2273 Filed 1–29–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18497; No. 811–5132]

Mony Legacy Variable Account S

January 23, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Mony Legacy Variable Account S.

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: The Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on December 9, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 18, 1992. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1740 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Attorney (202) 272–2676, or Heidi Stam, Assistant Chief (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant, a unit investment trust, is a separate account of MONY Legacy Life Insurance Company ("Legacy"). The Applicant registered under the 1940 Act and filed its registration statement (Reg. No. 811–5132) thereunder on April 29, 1987.

2. The Applicant filed a registration statement under the Securities Act of 1933 on April 29, 1987 (Reg. No. 33–13850), for an indefinite amount, in

accordance with Rule 24f-2, of variable life insurance with additional premium option contracts, which became effective on August 25, 1987, the date on which the initial public offering commenced.

3. Due to the Merger of Legacy into The Mutual Life Insurance Company of New York ("Mutual of New York") on February 28, 1991 ("Merger"), the Applicant ceased to exist as a separate entity. The Boards of Directors of Legacy and of Mutual of New York approved the Merger. Under New York Insurance Law, no security holder authorization of the Merger was required.

4. In connection with the Merger, all assets, reserves, and other liabilities of the Applicant were transferred to an affiliated separate account, MONY Variable Account S ("MONY VA-S" (Reg. No. 811-6217), and Mutual of New York became the depositor of, and obligated under, the variable life insurance with additional premium option contracts issued by Legacy (the purchase payments for which were, prior to the Merger, allocated to the Applicant). No assets have been retained by the Applicant, and no debts or other liabilities of the Applicant are outstanding. The expenses incurred in connection with the Merger were primarily legal, accounting, and administrative and were absorbed by Mutual of New York. None of the expenses were allocated to or paid by the Applicant or by MONY VA-S.

5. Each security holder of the Applicant had the same interest in the MONY VA-S immediately following the Merger as such security holder had in the Applicant immediately prior to the Merger, without diminution in any way. The Applicant has no security holders who did not receive a distribution of their interest by allocation and transfer to MONY VA-S as a result of the Merger.

6. An order with respect to the Merger granting an exemption pursuant to section 17(b) from section 17(a) of the 1940 Act was issued by the Commission on February 28, 1991 (Rel. No. IC-18022).

7. The Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of the Applicant.

8. The Applicant is not a party to any litigation or administrative proceedings. The Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2274 Filed 1-29-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18469; 811-3951]

Pilgram Corporate Cash Fund; Notice of Deregistration

January 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Pilgram Corporate Cash Fund (the "Fund").

RELEVANT 1940 ACT SECTIONS: Section 8(f) and rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 11, 1991 and amended on January 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 18, 1992, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 10111 Santa Monica Boulevard, Los Angeles, California 90067.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or Max Berueffy, Branch Chief, (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Fund is a California corporation and open-end diversified management company registered under the Act. On January 26, 1984, the Fund filed a registration statement on Form N-1A, thereby registering under section 8(b) of the Act and under the Securities Act of 1933. The Fund's registration statement became effective on March 21, 1988 and its initial public offering commenced on this date.

2. On September 6, 1988 the Fund's Board of Directors approved an Agreement for the Transfer of Assets and Liabilities (the "Agreement") between the Fund and the PAR Fund, a series of Pilgram Adjustable Rate Fund (File No. 811-3645) (the "Company").

3. The Board of Directors, on behalf of the Fund, filed proxy materials dated October 7, 1988 with the SEC to obtain shareholder approval of the proposed Agreement. At a meeting on November 11, 1988, a majority of the Fund's shareholders approved the Agreement.

4. On November 11, 1988, the date of the transfer of assets and liabilities, (the "Closing Date") the Fund had 1,085,040 shares outstanding with an aggregate net asset value of $10,800,315 and a net asset value per share of $9.95. On the Closing Date, all of the assets of the Fund were transferred to the Company in exchange for equivalent interests in shares of the Company, which in turn were issued to the owners of the Fund. Pursuant to the exchange, the Fund received 618,877 shares of the Company with an aggregate net asset value of $10,800,315 and a net asset value per share of $17.88.

5. All expenses incurred in connection with the transfer of assets and liabilities and the liquidation of the Fund, consisting of legal fees, accounting fees, and printing and mailing costs of the proxy solicitation, were paid by First Capital Holdings Corp. ("First Capital"), the parent corporation of Pilgrim Management Corporation, the Fund's investment adviser, and an affiliated person of the Fund within the meaning of section 2(a)(3) of the Act. The Fund incurred no expenses in connection with the transfer of assets and liabilities and liquidation.

6. At the time of filing of the application, the Fund had no shareholders, assets or liabilities. The Fund is not a party to any litigation or administrative proceedings. The Fund is current on its filings of Form N-SAR. The Fund is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. The Fund

intends to file a Certificate of Dissolution with the Department of State of the state of California.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2195 Filed 1-29-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18499; File No. 811-5456]

RSVP Variable Life Account One

January 23, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: RSVP Variable Life Account One of Anchor National Life Insurance Company ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order under section 8(f) of the Act declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 16, 1991 and amended on October 2, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by 5:30 p.m., on February 18, 1992. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Susan L. Harris, Esq., Anchor National Life Insurance Company, 11601 Wilshire Boulevard, Los Angeles, California 90025.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Staff Attorney, at (202) 272-2058 or Heidi Stam, Assistant Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant filed a notification of registration on Form N-8A and an initial registration statement on Form N-8B-2 on January 22, 1988. Applicant filed a registration statement on Form S-6 pursuant to the Securities Act of 1933 on January 22, 1988 and a pre-effective amendment on May 16, 1988. The registration statement became effective on June 1, 1988. An indefinite number of securities were registered pursuant to Rule 24f-2 under the Act.

2. Applicant was originally established by Integrated Resources Life Insurance Company pursuant to Iowa insurance law on January 15, 1988. Applicant was assumed intact by Anchor National Life Insurance Company ("Anchor National") on January 16, 1990, as part of an assumption reinsurance transaction by which Anchor National assumptively reinsured the variable life insurance policies (the "Policies") issued by the Applicant. Anchor National reestablished Applicant as a separate account under California insurance law.

3. Applicant invests exclusively in the Anchor Series Trust, an open-end diversified management company registered under the Act (File No. 811-3836).

4. On September 27, 1990, the Executive Committee of the Board of Directors of Anchor National unanimously approved a resolution authorizing the assumptive reinsurance of the Applicant. On February 15, 1991, Anchor National transferred, on behalf of Applicant, and Phoenix Mutual Life Insurance Company ("Phoenix Mutual") acquired intact, on behalf of its Phoenix Mutual Variable Universal Life Account ("Phoenix VUL Account), all twelve sub-accounts of the Applicant, and the assets and offsetting liabilities contained therein. Phoenix Mutual assumed all the liabilities, obligations and guarantees of the Policies as of that date. No Policy owner vote or consent was required either under the terms of the Policies or of Anchor Series Trust or otherwise under the 1940 Act or state law, with respect to the assumption reinsurance transaction.

5. Phoenix VUL Account is a unit investment trust created pursuant to Connecticut insurance law and registered under the 1940 Act. On October 9, 1990, the Phoenix VUL Account filed a registration statement pursuant to the Securities Act of 1933 for the reinsured Policies (File No. 33-37129). The registration statement became effective on February 15, 1991. Anchor Series Trust remains the investment fund for the reinsured Policies.

6. Applicant has no assets. Applicant has no debts or other liabilities outstanding. Applicant is not party to any litigation or administrative proceedings. Applicant has no securityholders. All filings with the Commission required under the federal securities laws to be made by the Applicant have been made.

7. Applicant is not now engaged nor does it intend to engage in any business activity other than that necessary for the winding-up of its affairs.

8. All expenses incurred in connection with the assumption reinsurance of the Applicant were borne by Anchor National. No brokerage fees were incurred in connection with the assumption reinsurance of the Applicant.

9. All filings and other actions required by state insurance law have been completed. The assumption reinsurance transaction has been approved by the appropriate state regulatory authorities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2275 Filed 1-29-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18500; File No. 811-4610]

Variable Life Account One

January 23, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Variable Life Account One of Anchor National Life Insurance Company ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order under section 8(f) of the Act declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 16, 1991 and amended on October 2, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be

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received by 5:30 p.m., on February 18, 1992. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Susan L. Harris, Esq., Anchor National Life Insurance Company, 11601 Wilshire Boulevard, Los Angeles, California 90025.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Staff Attorney, at (202) 272–2058 or Heidi Stam, Assistant Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant filed a notification of registration on Form N–8A and an initial registration statement pursuant to the Act on March 13, 1986.

Applicant filed a registration statement on Form S–6 pursuant to the Securities Act of 1933 on March 13, 1986 and a pre-effective amendment on August 11, 1986. The registration statement became effective on January 16, 1987. An indefinite number of securities were registered pursuant to Rule 24f–2 under the Act.

2. Applicant was originally established by Integrated Resources Life Insurance Company as "ICAP Variable Life Account One" pursuant to Iowa insurance law on August 28, 1985. Applicant was assumed intact by Anchor National Life Insurance Company ("Anchor National") on January 18, 1990, as part of an assumption reinsurance transaction by which Anchor National assumptively reinsured the variable life insurance policies (the "Policies") issued by the Applicant. Anchor National reestablished Applicant as a separate account under California insurance law.

3. Applicant invests exclusively in the Anchor Series Trust, an open-end diversified management company registered under the Act (File No. 811–3836).

4. On September 27, 1990, the Executive Committee of the Board of Directors of Anchor National unanimously approved a resolution authorizing the assumptive reinsurance of the Applicant. On February 15, 1991, Anchor National transferred, on behalf of Applicant, and Phoenix Mutual Life Insurance Company ("Phoenix Mutual") acquired intact, on behalf of Phoenix Mutual Variable Universal Life Account ("Phoenix VUL Account"), all twelve sub-accounts of the Applicant, and the assets and offsetting liabilities contained therein. Phoenix Mutual also assumed all the liabilities, obligations and guarantees of the Policies. No Policy owner vote or consent was required either under the terms of the Policies or of Anchor Series Trust or otherwise under the Act or state law, with respect to the assumption reinsurance transaction.

5. Phoenix VUL Account is a unit investment trust created under Connecticut insurance law and registered under the Act. On October 23, 1990, the Phoenix VUL Account filed a registration statement pursuant to the Securities Act of 1933 for the reinsured Policies (File No. 33–37330). The registration statement became effective on February 15, 1991. Anchor Series Trust remains the investment fund for the reinsured Policies.

6. Applicant has no assets. Applicant has no debts or other liabilities outstanding. Applicant is not party to any litigation or administrative proceedings. Applicant has no securityholders. All filings with the Commission required under the federal securities laws to be made by Applicant have been made.

7. Applicant is not now engaged nor does it intend to engage in any business activity other than that necessary for the winding-up of its affairs.

8. All expenses incurred in connection with the assumption reinsurance of the Applicant were borne by Anchor National. No brokerage fees were incurred in connection with the assumption reinsurance of the Applicant.

9. All filings and other actions required by state insurance law have been completed. The assumption reinsurance transaction has been approved by the appropriate state regulatory authorities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–2276 Filed 1–29–92; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **FEDERAL REGISTER** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before March 2, 1992. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, telephone (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Application for Certificate of Competency; Monthly Cash Flow Projection; SBA Plant Survey.

Form No.: SBA Forms, 74, 74A, 74B, 183.

Frequency: On Occassion.

Description of Respondents: Small Business.

Annual Responses: 1708.

Annual Burden: 18,635.

Richard Sadowski,

Director, Office of Administrative Services.

[FR Doc. 92–2212 Filed 1–29–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Deputy Secretary

[Public Notice 1562]

Determination Under FAA Section 620(q); Subject: Assistance to Senegal

Pursuant to the authority vested in me by section 620(q) of the Foreign Assistance Act of 1961, as amended (the

Act), Executive Order 12163, and the Department of State Delegation of Authority No. 145, I hereby determine that the furnishing of assistance under the Act to Senegal is in the national interest of the United States.

This determination is effective immediately and shall expire on September 30, 1992.

This determination shall be reported to the Congress as required by law.

This determination shall be published in the **Federal Register.**

Dated: January 21, 1992.

Lawrence Eagleburger,

Deputy Secretary of State.

[FR Doc. 92-2181 Filed 1-29-92; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Alliance Air, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 92-1-40, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Alliance Air, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determinations should file their responses with the Air Carrier Fitness Division, P-56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: January 23, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-2216 Filed 1-29-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 164; Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment, Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the twelfth meeting of Special Committee 164 to be held February 24-26, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the eleventh meeting's minutes; (3) Technical presentations; (4) Review of task assignments from last meeting; (5) Review of the sixth draft of the MOPS; (6) Working group sessions; (7) Assignment of tasks; (8) Other business; (9) Date and Place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 23, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-2240 Filed 1-29-92; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); RTCA Technical Management Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for a meeting of the RTCA Technical Management Committee to be held February 18, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 1 p.m.

The agenda for this meeting is as follows: (1) Opening remarks and introductions; (2) Approve minutes of January 14, 1992, meeting; (3) Establish committee administrative procedures; (a) Balloting in lieu of meeting; (b) TMC alternate members; (4) Review and approve revised Terms of Reference for Special Committee SC-173, "Minimum Operational Performance Standards for Airborne Doppler Weather Radar With Forward-Looking Windshear Detection Capability"; (5) Review and approve Terms of Reference for proposed Special Committee to update FAA Specification G-2100; (6) Review of special committee progress; (7) Take action on recommendations of Ad Hoc Committee on RTCA Technical Matters, RTCA paper no. 610-91/TMC-2; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 21, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-2241 Filed 1-29-92; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 173; Minimum Operational Performance Standards for Airborne Weather and Ground Mapping Pulsed Radar; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the third meeting of Special Committee 173 to be held February 20-21, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review and approval of meeting agenda; (3) Approval of minutes of second meeting held October 24-25, 1991, RTCA paper no. 353-91/SC173-5 (previously distributed); (4) Review of task assignments; (5) Status report of FAA Windshear Program; (6) Status report of Radome Working Group; (7) Review of second draft of MOPS for Airborne Weather Radar With Forward Looking Windshear Capability, RTCA paper no. 627-91/SC173-15 (enclosed); (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available.

With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC., on January 21, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-2242 Filed 1-29-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 24, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0217.
Form Number: IRS Form 5735 and Schedule P (Form 5735).
Type of Review: Revision.
Title: Possessions Corporation Tax Credit Allowed Under section 936 Allocation of Income and Expenses Under section 936(h)(5).
Description: Form 5735 is used to compute the possessions tax credit under 936. Schedule P is used by corporations that elect to share the income or expenses with their affiliates. Each form provides the IRS with information to determine if the corporations have correctly computed the tax credit and the cost-sharing of profit-split method.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 1,371.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—11 hours, 43 minutes
Learning about the law or the form—2 hours, 5 minutes
Preparing and sending the form to IRS—2 hours, 22 minutes
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 22,397 hours.
OMB Number: 1545-0731.
Regulation ID Numbers: PS-1-83 NPRM, PS-259-82 TEMP, and PS-262-82 NPRM.
Type of Review: Extension.
Title: Certain Elections Under the Subchapter S Revision Act of 1982 PS-1-83); Certain Elections Under the Subchapter S Revision Act of 1982 (PS-259-82); and Definition of S Corporation (PS-262-82).
Description: The regulations provide the procedures and the statements to be filed by certain individuals for making the election under section 1361(d)(2), the refusal to consent to that election, or the revocation of that election. The statements required to be filed would be used to verify that taxpayers are complying with requirements imposed by Congress.
Respondents: Individual or households, Businesses or other for-profit.
Estimated Number of Respondents: 1,250.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Other (non-recurring).
Estimated Total Reporting Burden: 1,252 hours.
OMB Number: 1545-0735.
Regulation ID Number: LR-189-80 Final.
Type of Review: Extension.
Title: Amortization of Reforestation Expenditures.
Description: Section 194 of the Internal Revenue Code allows taxpayers to elect to amortize certain reforestation expenditures over a 7-year period if the expenditures meet certain requirements. The regulations implement this election provision and allow the Internal Revenue Service to determine if the election is proper and allowable.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 12,002.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 6,001 hours.
OMB Number: 1545-0768.
Regulation ID Number: EE-178-78 Final.
Type of Review: Extension.
Title: Employers' Qualified Educational Assistance Programs.
Description: The affected public includes employers who maintain educational assistance programs and their employees. The employer must set forth the terms of the program in a separate written plan. Eligible employees must be given notification of the terms and availability of the program. Employees may be required to substantiate eligibility to receive benefits.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 5,200.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 615 hours.
OMB Number: 1545-0955.
Regulation ID Number: LR-12-86 Final.
Type of Review: Extension.
Title: Time and Manner of Making Quarterly Payments of the Railroad Unemployment Repayment Tax.
Description: Section 3321 imposes a tax (railroad unemployment repayment tax) on every rail employer with respect to rail wages paid to the employees of such employer and on every employee representative with respect to rail wages received by such employee representative.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 2,457.
Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes.
Frequency of Response: Quarterly, Annually.
Estimated Total Reporting/ Recordkeeping Burden: 681 hours.
OMB Number: 1545-1142.
Regulation ID Number: INTL-0939-86 NPRM.
Type of Review: Extension.
Title: Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986.
Description: The information is required to determine the location of movable property; allocate income and deductions to the proper category of insurance income, determine those amounts for computing taxable income that are derived from an insurance company annual statement, and permit a Controlled Foreign Corporation (CFC) to elect to treat related person insurance income as income effectively connected with the conduct of a U.S. trade or business.

The respondents will be businesses or other for-profit institutions.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1 hour.
OMB Number: 1545-1196.
Regulation ID Number: CO-005-90 NPRM.
Type of Review: Extension.
Title: Returns Relating to Certain Changes in Corporate Control or Capital Structure.
Description: These proposed regulations concern the reporting requirements of section 6043(c) of the Internal Revenue Code. They require that a corporation file a return on (new) Form 8820, generally, if control of the corporation is acquired by any person or if the corporation has a substantial change in capital structure.
Respondents: Businesses or other for-profit, Non-profit institutions.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 1 hour.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92-2263 Filed 1-29-92; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

January 24, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. On January 24, 1992, the Department requested an expedited approval by the Office of Management and Budget by January 25, 1992.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New.
Form Number: ATF F 3350.5 and 3350.6.
Type of Review: New Collection.
Title: Knowledge and Attitudes Survey for the Gang Resistance Education and Training (GREAT) Program Project Outreach.
Description: Forms 3350.5 and 3350.6 will be used to assess the effectiveness of Project Outreach which is an effort to educate high risk youths in the Phoenix, Arizona area about the dangers of joining street gangs. The task force consists of ATF agents, Phoenix area law enforcement agencies, and community leaders.
Respondents: Individuals or households.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of response: Two times.
Estimated Total Reporting Burden: 5,000 hours.
Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 92-2264 Filed 1-29-92; 8:45 am]
BILLING CODE 4810-01-M

[Number: 102-05]

Maximum Entry Age for Original Appointment to a Law Enforcement Officer Position

January 17, 1992.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 321(b) and 5 U.S.C. 3307 (d) and (e), *it is ordered,* That:

1. The date immediately preceding an individual's 37th birthday is the maximum entry age for original appointment to a position within the Department of the Treasury as a law enforcement officer, as that term is defined in 5 U.S.C. 8331(20) or in 5 U.S.C. 8401(17).

2. Exceptions to the maximum entry age may be made in situations involving especially qualified individuals, or where skill short-ages arise in specific law enforcement positions or in certain areas of the country. In those cases, the date immediately preceding an individual's 40th birthday will be the maximum entry age for original appointment to a position as a law enforcement officer.

3. The Assistant Secretary (Management) shall issue any necessary regulations or instructions to implement this Order, pursuant to the delegations of personnel management authority in Treasury Order (TO) 102-01, "Delegation of Authority Concerning Personnel Management," or any successor Order.

4. TO 102-05, "Establishing a Maximum Entry Age Limit for Law Enforcement Officer Positions within the Department of the Treasury," dated January 7, 1977, is superseded.

5. This Order shall be effective on the date of signature.

Nicholas F. Brady,
Secretary of the Treasury.
[FR Doc. 92-2190 Filed 1-29-92; 8:45 am]
BILLING CODE 4810-25-M

[Number: 101-19]

Designation of Rigorous and Secondary Positions for Purposes of the Federal Employees' Retirement System

January 17, 1992.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority in 31 U.S.C. 321(b) and subpart H of part 842 of title 5 of the Code of Federal Regulations (CFR), it is hereby ordered that rigorous and secondary positions within the Department of the Treasury will be designated according to the following procedures.

1. Application of the special provisions for law enforcement officers under the Federal Employees' Retirement System, Chapter 84 of title 5, United States Code, and the implementing regulations of the Office of Personnel Management in 5 CFR part 842, requires that the Secretary designate rigorous and secondary positions.

2. For purposes of the Federal Employees' Retirement System (FERS), a "rigorous position" is defined at 5 CFR 842.802 to include a position the duties of which are so rigorous that employment opportunities are required to be limited to young and physically vigorous individuals and the primary duties are investigating, apprehending or

detaining individuals suspected or convicted of offenses against the criminal laws of the United States, or protecting the personal safety of United State officials. The condition in this definition that employment opportunities be limited does not apply with respect to an employee who moves directly from one rigorous law enforcement officer position to another.

3. For purposes of FERS, "secondary position" is defined at 5 CFR 842.802 to include a position that is:

a. Clearly in the law enforcement field;

b. In a Treasury organization having a law enforcement mission; and

c. Either:

(1) Supervisory; i.e., a position whose primary duties are as a first-level supervisor of law enforcement officers in rigorous positions; or

(2) Administrative; i.e., an executive, managerial, technical, semiprofessional, or professional position for which experience in the law enforcement field is a mandatory prerequisite.

4. Bureaus shall submit to the Director, Human Resources Directorate, documentation concerning those positions which are proposed to be designated as either rigorous or secondary. The Director, Human Resources Directorate, shall be responsible for reviewing official documentation to ensure that it meets the requirements of 5 CFR 842.804. Final action on the designation of rigorous and secondary positions shall be by the Secretary.

5. TO 101-19, "Designation of Rigorous and Secondary Positions for Purposes of the Federal Employees' Retirement System," dated December 22, 1987, is superseded. No designation made under that Order shall be deemed invalid due to the withdrawal of that Order.

Nicholas F. Brady,

Secretary of the Treasury.

[FR Doc. 92-2189 Filed 1-29-92; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 20
Thursday, January 30, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 92-1840.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 30, 1992, 10:00 a.m., Meeting Open to the Public.

The following item was added to the agenda:

1992 Presidential Compliance Manual

DATE AND TIME: Tuesday, February 4, 1992, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, February 6, 1992, 10:00 a.m.

PLACE: 999 E STreet, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Repayment Determination and Statement of Reasons—Senator Robert Dole and Dole for President Committee, Inc.
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Harris,
Administrative Assistant.

[FR Doc. 92-2397 Filed 1-28-92; 2:36 pm]

BILLING CODE 6715-01-M

RAILROAD RETIREMENT BOARD

Notice of Public Hearing

Notice is hereby given that the Railroad Retirement Board, acting through its appointed Examiner, will hold a hearing on February 11, 1992, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The hearing will be held at the request of the Chicago and Northwestern Transportation Company for the purpose of taking evidence relating to the agency's claim for reimbursement from the Company under 45 U.S.C. § 352(f).

The entire hearing will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: January 27, 1992.

Beatrice Ezerski,
Secretary to the Board.

[FR Doc. 92-2394 Filed 1-28-92; 2:35 pm]

BILLING CODE 7905-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 2836, January 22, 1992.

PREVIOUSLY ANNOUNCED DATE OF MEETING: February 4, 1992.

CHANGE: Delete the following item from the open meeting agenda:

6. Capital Investment.
a. Kansas City, Kansas, GMF

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,
Secretary.

[FR Doc. 92-2390 Filed 1-28-92; 2:06 pm]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 57, No. 20
Thursday, January 30, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Western Michigan Institute, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 91-28150, appearing on page 58881, in the issue of Friday, November 22, 1991, in the 2d column, in the 3d paragraph, in the 11th line, "bar/ul" should read "bar μl".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

National Advisory Council for Health Care Policy, Research and Evaluation: Request for Nominations for Public Members

Correction

In notice document 92-213, beginning on page 573, in the issue of Tuesday, January 7, 1992, make the following correction:

On page 573, in the third column, under **ADDRESSES:**, in the second line, "2102" should read "2101".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91M-0508]

Advanced Pulmonary Technologies, Inc., Premarket Approval of APT 1010 Ultrahigh Frequency Ventilator

Correction

In notice document 92-1098 beginning on page 1748 in the issue of Wednesday, January 15, 1992, make the following corrections:

On page 1749, in the second column, in the last full paragraph, the third line should read as set forth below: "515(d), 520(h) (21 U.S.C. 360e(d), 360j(h)))"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 92-1022 beginning on page 1749 in the issue of Wednesday, January 15, 1992, make the following correction:

On page 1750, in the second column, in the second line, "contract" should read "contact."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6915

[CA-940-4214-10; CACA 27508, CACA 9003 WR]

Partial Revocation of Secretarial Order Dated May 5, 1927, and Removal of the Need for a Restriction Imposed by Section 24 of the Federal Power Act; California

Correction

In rule document 91-28629, appearing on page 60929,in the issue of Friday, November 29, 1991, make the following correction:

On page 60929, in the second column, under Mount Diablo Meridian, in Sec.2, "S½N¼" should read "S½NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Saugus Iron Works National Historic Site, Saugus, MA; General Management Plan; Intent to Prepare an Environmental Impact Statement and Notice of Public Scoping Meeting

Correction

In notice document 91-25997, appearing on page 55686, in the issue of Tuesday, October 29, 1991, in the second column, in the file line at the end of the document, "FR Doc. 91-25597" should read "FR Doc. 91-25997".

BILLING CODE 1505-01-D

federal register

Thursday
January 30, 1992

Part II

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Federal Public Lands in Alaska; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AB43

Subsistence Management Regulations for Federal Public Lands in Alaska

AGENCY: Forest Service, USDA. Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule will establish Subsistence Management Regulations for Federal Public Lands in Alaska (36 CFR part 242, and, 50 CFR part 100), implementing the subsistence priority for qualified rural residents of Alaska as required or specified to comply with title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 (16 U.S.C. 3111–3126; Pub. L. 96–487). This rule will promulgate regulations regarding program structure and process as previously contained in subparts A, B and C of "Temporary Subsistence Management Regulations for Public Lands in Alaska, Final Temporary Rule", June 29, 1990 (55 FR 27114–27170). This rulemaking is necessary because subparts A, B and C are part of the temporary rule that will expire June 30, 1992. Subpart D is not included in this proposed rulemaking as it is being promulgated under a separate rulemaking process. That rulemaking will also expire June 30, 1992. Subpart D will be combined with subparts A, B and C in the final rulemaking which will become effective July 1, 1992.

DATES: Written and oral comments will be accepted regarding this proposed rulemaking until March 16, 1992.

ADDRESSES: Written comments may be sent to the Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest lands, contact Norman Howse, Assistant Director Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21623, Juneau, Alaska 99102–1628; telephone (907) 586–8880.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act requires the Secretary of the Interior and the Secretary of Agriculture (Secretaries) to implement a joint program to grant a priority for subsistence uses of fish and wildlife resources by rural residents on Federal public lands in Alaska. Until recently the State of Alaska has managed the subsistence program on Federal public lands pursuant to section 805 title VIII of ANILCA. In December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute, which is required by ANILCA, violated the Alaska Constitution. This ruling placed the State out of compliance with title VIII. The Court stayed the effect of the decision until July 1, 1990.

Consequently, the Secretaries were required to assume responsibility for the implementation of title VIII of ANILCA on Federal public lands on July 1, 1990. On June 29, 1990 the "Temporary Subsistence Management Regulations for Public Lands in Alaska, Final Temporary Rule" were published in the **Federal Register** (55 FR 27114 *et seq.*). These regulations defined and implemented a temporary program that is administered by a Federal Subsistence Board (Board). The Chair is appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture. Other members of the Board are the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska Regional Forester, USDA Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. These five agencies within the Federal Government are responsible for management of Federal public lands in Alaska covered by title VIII of ANILCA. All agencies participated in the development of these temporary regulations. All Board members have reviewed this proposed rule and concur in its publication for public review and comment. Because these regulations relate to lands managed by Federal agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Draft Environmental Impact Statement

A draft environmental impact statement (DEIS) that describes four alternatives for developing a Federal Subsistence Management Program in Alaska was distributed for public comment on October 7, 1991. That document examined the environmental consequences of these alternatives and described the major issues associated with Federal subsistence management that were identified through public meetings, written comments and staff analysis.

This proposed rule reflects the proposed action (Alternative IV) as described in the DEIS. The final rule will result from public review and comment on the DEIS and this proposed rule.

Subpart C

The following addresses three sections of the proposed rule that require additional explanation in subpart C.

Section _____.22 Subsistence Resource Regions

The proposed action in the DEIS calls for eight subsistence resource regions. A final decision on the resource region boundaries will be made based on conclusions reached through the EIS process.

Section _____.23 Rural Determinations

Initial rural determinations were made by adopting the State's determinations of rural and non-rural community status. The Board proposed a process and revised determinations in the **Federal Register** (55 FR 40897) on October 5, 1990. Public comment was received, reviewed and considered by the Board. Final determinations were adopted and published in the **Federal Register** on January 3, 1991. Rural determinations are subject to further change depending on public comment on the DEIS and this proposed rule.

Section _____.24 Customary and Traditional Use Determinations

Customary and traditional use determinations as adopted in the June 29, 1990, Temporary Regulations, are offered for public comment and proposed changes. The determinations are anticipated to change due to the addition of several communities classified as rural, based on public comment on the DEIS, and on this proposed rule, and as a result of specific requests already made to the Federal Subsistence Board. Specific recent requests for customary and traditional use determination review include the Kilbuck Caribou Herd, rainbow trout, bear, and selected species in Game Management Units 11, 12, 13, 20, and 1B.

Subpart D.

This subpart will contain sections on definitions, prohibitions, methods and means, individual species seasons and bag limits, and fish and shellfish. It is not included in this proposed rulemaking as it is being promulgated under a separate rulemaking process; however, it will be combined with subparts A, B and C as a final rule. It should be noted that the section numbering detailed in this proposed rulemaking may change when the Federal subsistence program regulations (subparts A, B and C of 36 CFR part 242 and 50 CFR part 100) are issued as a final rule by July 1, 1992. For present purposes of this rulemaking, however, all references to these proposed regulations should cite the section numbering contained herein.

Public Comments/Proposals and Hearings

It is the policy of the Departments of the Interior and Agriculture, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments or proposals for change to this version of subparts A, B and C to the address noted at the beginning of this proposed rule. Comments may also be submitted at public hearings to be held in Alaska during January 1992. Comments on the proposed regulations included in the appendix of the DEIS that were submitted as part of the public review of that document will be considered during the final rulemaking process for this proposed rule. Comments on this published version of subparts A, B and C will then be compiled with those previously received for internal agency review and revision in preparation for Board action. Action on proposed changes to subparts A, B and C, will be taken at a March 1992 Board meeting. The location of this meeting will be announced in forthcoming notices published throughout the State of Alaska.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A DEIS, "Subsistence Management for Federal Public Lands in Alaska," was released on October 7, 1991. A final EIS and Record of Decision will be issued prior to implementation of the final "Subsistence Management Regulations for Federal Public Lands in Alaska, subparts A, B and C."

ANILCA Section 810 Compliance

The intent of all Federal Subsistence Regulataions is to best accommodate customary and traditional subsistence uses subject to the limitation of protecting healthy, or natural and healthy fish and wildlife populations. The 810 analysis will be completed as part of the final EIS process.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501 et seq. They apply to subsistence users of Federal public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018-00075.

Economic Effects

Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The Departments of the Interior and Agriculture have determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, and certify that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue pre-existing uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12812. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on Federal public lands. The scope of this program is limited by definition to certain Federal lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Drafting Information

This regulation was drafted by Peggy Fox under the guidance of Richard S. Pospahala, both of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, fish, Federal public lands, reporting and record keeping requirements, subsistence, wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, fish, Federal public lands, reporting and record keeping requirements, subsistence, wildlife.

Text of the Joint Proposed Rule

The text of the proposed rule as proposed by the Forest Service and the Fish and Wildlife Service in the common preamble appears below:

PART _____—SUBSISTENCE MANAGEMENT REGULATIONS FOR FEDERAL PUBLIC LANDS IN ALASKA

Subpart A—General Provisions

Sec.

_____.1 Purpose.
_____.2 Authority.
_____.3 Applicability and scope.
_____.4 Definitions.
_____.5 Eligibility for subsistence use.
_____.6 Licenses, permits, harvest tickets, tags, and fees.
_____.7 Restriction on use.
_____.8 Penalties.
_____.9 Information collection requirements.

Subpart B—Program Structure

_____.10 Federal Subsistence Board.
_____.11 Regional advisory councils.
_____.12 Local advisory committees.
_____.13 Board/agency relationships.
_____.14 Relationship to State procedures and regulations.
_____.15 Rural determination process.
_____.16 Customary and traditional use determination process.
_____.17 Determining priorities among subsistence users.
_____.18 Regulation adoption process.
_____.19 Closures and other special actions.

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_____.20 Request for reconsideration.
_____.21 [Reserved].

Subpart C—Board Determinations

_____.22 Subsistence resource regions.
_____.23 Rural determinations.
_____.24 Customary and traditional use determinations.

Authority: 16 U.S.C. 3, 472, 551, 668dd *et seq.*, 3101 *et seq.*; 18 U.S.C. Chapter 227; 43 U.S.C. 1733.

Subpart A—General Provisions

§ _____.1 Purpose.

The regulations in this part implement the Federal Subsistence Management Program on Federal public lands within the State of Alaska.

§ _____.2 Authority.

These regulations are issued pursuant to authority vested with the Secretary of the Interior and Secretary of Agriculture specified in section 814 of the Alaska National Interest Lands Conservation Act (ANILCA) (94 Stat. 2371, Pub. L. 96–487).

§ _____.3 Applicability and scope.

The regulations of this part apply to subsistence taking and uses of fish and wildlife on all Federal public lands in the State of Alaska as authorized in title VIII of ANILCA. Such subsistence taking and uses are prohibited in Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park established as Mt. McKinley National Park prior to passage of ANILCA. These regulations do not supersede agency specific regulations.

§ _____.4 Definitions.

The following definitions apply to all regulations contained in this part.

Agency means a subunit of a cabinet level Department such as U.S. Fish & Wildlife Service, USDA Forest Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, etc.

ANILCA means the Alaska National Interest Lands Conservation Act, Public Law 96–487, 94 Stat. 2371, as amended.

Barter means the exchange of fish or wildlife or their parts taken for subsistence uses: for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

Board means the Federal Subsistence Board as described in § _____.10 of this part.

Conservation of healthy populations of fish and wildlife means the maintenance of fish and wildlife resources and their habitats in a condition that assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystem, including the recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; and ensures the maximum practicable diversity of options for the future; and recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.

Conservation of natural and healthy populations of fish and wildlife is specifically mandated for national parks and national park monuments and means the maintenance of fish and wildlife resources and their habitats in a condition unaffected by the activities of humans, except for customary and traditional subsistence use activities, which may be a natural part of related ecosystems, and, sport fishing and visitor service related activities which are mandated by law.

Conservation system unit means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic River Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established, designated, or expanded by ANILCA, additions to such units, and any such unit established, designated, or expanded thereafter.

Councils refers to the Regional Advisory Councils as described in § _____.11.

Customary and traditional use means a long-established, consistent pattern of use, incorporating beliefs and customs, transmitted from generation to generation. This use plays an important role in the economy of the community.

Customary trade means types and volumes of trade by subsistence users intended to provide alternative means of supporting their basic personal and family subsistence needs and does not include trade which constitutes a significant commercial enterprise.

Family means all persons related by blood, marriage or adoption, or any person living within the household on a permanent basis.

Federal lands means lands and waters the title to which is in the United States.

Fish and wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or part thereof.

Person means an individual and does not include a corporation, company, partnership, firm, association, organization, business trust or society.

Public lands means lands situated in Alaska which are Federal lands, except—

(a) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(b) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(c) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

Regulatory year means July 1 through June 30.

Resident means any person who has their primary, permanent home within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented or leased; location of stored household goods; residence of spouse, minor children or dependents; tax documents; or whether the person claims residence in another location for any purpose.

Rural means any area of Alaska determined by the Board to qualify as such under the process described in § _____.15 of this part.

Secretary means the Secretary of the Interior, except that in reference to matters related to the National Forest System, such term means the Secretary of Agriculture.

State means the State of Alaska.

Subsistence uses means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and

wildlife resources taken for personal or family consumption; for barter, or sharing for personal family consumption; and for customary trade.

Take or taking as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Year means calendar year unless another year is specified.

§ _____.5 Eligibility for subsistence use.

(a) The taking of fish and wildlife on Federal public lands for subsistence uses as defined in § _____.4 is restricted to Alaska residents of rural areas or communities. Other individuals, including Alaska residents of non-rural areas or communities listed in § _____.23, are prohibited from taking fish and wildlife on Federal public lands for subsistence uses.

(b) Where the Board has made a customary and traditional determination regarding subsistence use of a specific fish stock or wildlife population, in accordance with, and as listed in, § _____.24, only those Alaska residents of rural areas or communities so designated, are eligible for subsistence taking of that population under these regulations. All other individuals are prohibited from taking fish or wildlife from that population under these regulations.

(c) Where customary and traditional determinations for a fish stock or wildlife population within a specific area have not yet been made by the Board (e.g., no determination), all rural Alaska residents are eligible to participate in subsistence taking of that population under these regulations.

(d) This section does not limit the authority of the National Park Service to regulate further the eligibility of qualified subsistence users on National Park Service lands in accordance with specific authority in ANILCA, and Naitonal Park Service regulations found in 36 CFR part 13.

§ _____.6 Licenses, permits, harvest tickets, tags, and fees.

(a) To engage in subsistence taking on Federal public lands as defined in this part individuals must possess any licenses, permits, harvest tickets, or tags for taking required by the State of Alaska, unless Federal licenses, permits, harvest tickets, or tags are required by the Board.

(b) Harvest tickets, tags, permits, or other required documents must be validated before removing the kill from the harvest site.

(c) Subsistence users must comply with all reporting provisions required by the Board.

(d) Permit systems may be authorized by the Board upon evaluation of Regional Advisory Council recommendations, customary and traditional use patterns, and harvest report needs. All requirements of a particular approved permit system are incorporated in these regulations. Any transfer of a Federal subsistence permit is prohibited except for approved systems.

(1) Transferable permits may be issued to a qualified user whose needs are to be supplied by another individual. The permittee, on application, may designate another eligible rural resident to implement the take. The permittee may cancel an unused permit and reapply for another permit, designating another individual to do the taking. The permit must be in the possession of the individual during harvest. The individual, immediately after taking the fish or wildlife (before leaving the site), must validate the permit and return it with the fish or wildlife to the permittee. The permittee is responsible for reporting the taking. Taking authorized by these permits counts against any predetermined bag limit or other allocation for the permittee. Each permit system may have additional requirements.

(2) Community harvest permits may be allocated for a predetermined use level. The community will designate an official who is responsible for reporting the harvest and otherwise complying with the provisions of this section. For example, when applicable, this will include accounting for tags. An eligible user must carry the tag when in the process of the taking. The individual, immediately after taking the fish or wildlife (before leaving the site), must validate the tag. The tag must be countersigned and accounted for by the community harvest official within a reasonable period of time.

(e) Upon request of a State or Federal law enforcement officer, individuals must produce: any license, permits, harvest tickets, tags, or other pertinent documents required by this section. Individuals must allow said law enforcement officers to inspect any apparatus designed to be, or capable of being used to take fish or wildlife, or any fish or wildlife in possession.

§ _____.7 Restriction on use.

(a) Trade of fish and wildlife, and their parts, taken pursuant to these regulations, other than customary trade or barter as defined in this part, is prohibited.

(b) [Reserved]

§ _____.8 Penalties.

Any persons convicted of violating any provision of 50 CFR part 100 or 36 CFR part 242 on Federal public land may be punished by a fine of up to $500 or by imprisonment of up to 6 months, or both: or punishment in accordance with the penalty provisions of 18 USC chapter 227.

§ _____.9 Information collection requirements.

(a) These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501 et seq. They apply to subsistence users of Federal Public lands in Alaska.

(1) § _____.20, Request for reconsideration. The information collection requirements contained in this section provide a standardized process to allow individuals the opportunity to appeal decisions of the Federal Subsistence Board. Submission is voluntary, but required to receive a final determination on their appeal. The Department of the Interior estimates that an appeal will take 4 hours to prepare and submit for consideration.

(2) § _____.6, Licenses, permits, harvest tickets, tags, and fees. The information collection requirements contained in this section provide for permit-specific subsistence activities not authorized through the general adoption of State regulations. The information requested is required to obtain subsistence benefits on Federal public lands. The Department estimates that the average time necessary to obtain and comply with this permit information collection requirement is 15 minutes.

(3) The remaining information collection requirements contained in this part imposed upon subsistence users are those adopted from State regulations. The information collection requirements are required to obtain subsistence benefits on Federal public lands in Alaska. The Department estimates that the average burden imposed upon individuals will be 8 minutes.

(b) Direct comments on the burden estimate or any other aspect of this to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0075), Washington, DC 20503. Additionally, information requirements may be imposed if the councils and committees subject to the Federal Advisory Committee Act are established under subpart B. Such

requirements will be submitted to OMB for approval prior to their implementation.

Subpart B—Program Structure

§ _____.10 Federal Subsistence Board.

(a) The Secretary of the Interior and Secretary of Agriculture hereby establish, and delegate responsibility for administering the subsistence taking and uses of fish and wildlife on Federal public lands, and the related promulgation and signature authority for regulations of subparts C and D, contained herein, to a Federal Subsistence Board.

(b) *Membership.* (1) The voting membership of the Board shall consist of a Chair to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) [Reserved]

(c) *Powers and Duties.* (1) Meetings shall occur at least annually, and at such other times as deemed necessary by the Board. Meetings will occur at the call of the Chair, but any member may request a meeting.

(2) A quorum shall consist of four members.

(3) No action my be taken unless at least four members are in agreement.

(4) The Board is empowered, to the extent necessary to implement title VIII of ANILCA, to:

(i) Promulgate regulations for the management of subsistence taking and uses of fish and wildlife on Federal public lands;

(ii) Determine which areas of the State are rural or non-rural, and consequently, indicate which Alaska residents are qualified as subsistence users;

(iii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of specific fish and wildlife populations;

(iv) Allocate the subsistence taking from populations of fish and wildlife on Federal public lands consistent with the conservation of healthy fish and wildlife populations, or where affecting National Park Service park and monument lands consistent with the conservation of natural and healthy fish and wildlife populations;

(v) Ensure that the taking on Federal public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes;

(vi) Close Federal public lands to the non-subsistence taking of fish and wildlife as necessary;

(vii) Prioritize subsistence taking of fish and wildlife among users when necessary;

(viii) Restrict or eliminate taking of fish and wildlife by subsistence users if necessary to conserve healthy fish and wildlife populations on Federal public lands, to conserve natural and healthy fish and wildlife populations on National Park Service park and monument lands, or for reasons of public safety or administration;

(ix) Determine what types and forms of trade of fish and wildlife taken for subsistence purposes constitute allowable customary trade;

(x) Establish eight geographic subsistence resource regions;

(xi) Establish a regional advisory council in each subsistence resource region and appoint its members pursuant to the Federal Advisory Committee Act;

(xii) Establish local advisory committees within the subsistence resource regions as necessary and appoint their members pursuant to the Federal Advisory Committee Act;

(xiii) Establish rules and procedures for the operation of the Board, and the regional advisory councils established pursuant to this part;

(xiv) Review and respond to proposals by regional advisory councils for regulations, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(xv) Enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native corporations, and other appropriate persons and organizations, including international entities to effectuate the purposes and policies of the Federal Subsistence Management Program;

(xvi) Develop alternative permitting processes relating to the subsistence taking of fish and wildlife to ensure continued opportunities for subsistence; and

(xvii) Take other actions necessary to implement title VIII of ANILCA.

(5) The Board will establish a Staff Committee composed of a member from the U.S. Fish and Wildlife Service, National Park Service, USDA Forest Service, Bureau of Land Management, and Bureau of Indian Affairs for analytical and administrative assistance. The U.S. Fish and Wildlife representative shall serve as Chair of the Staff Committee.

(6) The Board may establish and dissolve additional committees as necessary for assistance.

(7) The Fish and Wildlife Service shall provide appropriate administrative support for the Board.

(d) Relationship to Councils.

The Board shall consider the reports and recommendations of the councils concerning the taking of fish and wildlife on Federal public lands within their respective regions for subsistence uses. The Board may choose not to follow any recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision.

§ _____.11 Regional advisory councils.

(a) The Board shall establish a regional advisory council for each subsistence resource region to participate in the Federal Subsistence Program. The councils will be established, and conduct their activities, in accordance with the Federal Advisory Committee Act. The councils will provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on Federal public lands. The councils will provide for public participation in the Federal regulatory process.

(b) Establishment of councils—membership. (1) The number of members of each council shall be established by the Board, and shall be an odd number. A council member must be a resident of the region in which he/she is appointed and be knowledgeable about the region and subsistence uses of the Federal public lands therein. The Board shall solicit nominations from the public. Appointments to the councils are made by the Board.

(2) Council members shall serve 3 year terms and may be reappointed. Initial members shall be appointed with staggered terms up to three years.

(3) The Chair of the council shall be elected by the council, from its membership, for a one year term and may be reelected.

(c) Powers and duties. (1) The councils are empowered to:

(i) Hold public meetings related to subsistence uses of fish and wildlife within their respective regions;

(ii) Elect officers;

(iii) In consultation with the local advisory committees, established

pursuant to this part, or State fish and game advisory committees, in its region; review, evaluate, and make recommendations to the Board on any existing or proposed regulation, policy, or management plan, or any other matter relating to the subsistence take of fish and wildlife within its region.

(2) The councils are authorized to:

(i) Prepare and submit to the Board an annual report containing:

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations from the Federal public lands within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs related to the Federal public lands; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy.

(ii) [Reserved]

(3) The councils shall:

(i) Provide a forum for, and assist local advisory committees, established pursuant to this part, or State fish and game advisory committees, in obtaining the opinions and recommendations of rural residents interested in subsistence taking and uses of fish and wildlife.

(ii) Comply with rules of operation established by the Board.

(iii) Perform other duties specified by the Board.

(d) The U.S. Fish and Wildlife Service shall provide appropriate financial, technical and administrative assistance to the councils. Federal coordinators shall be assigned to provide assistance to the councils.

§ _____.12 Local advisory committees.

(a) The Board shall establish such local advisory committees within each region as necessary at such time that it is determined, after notice and hearing, that the existing State fish and game advisory committees do not adequately perform the functions of local advisory committees as set forth in Section 805 of ANILCA. Advisory committees will advise and assist the Regional Advisory Councils in fulfilling their responsibilities detailed in § _____.11. Advisory committees will provide a local public forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife on Federal public lands, may make recommendations to the councils concerning regulations affecting Federal public lands, and will provide for public participation in the regulatory process to help adequately protect subsistence uses.

(b) Establishment and membership of local advisory committees. (1) Committees and their membership shall be recommended by the Regional Advisory Councils to the Board. The membership of each committee shall be an odd number. Members must be residents of the local area, and be knowledgeable about the area and subsistence uses of Federal public lands. Authorizations of, and appointments to, the committees are made by the Board.

(2) Committee members shall serve 3 year terms and may be reappointed. Initial members shall be appointed with staggered terms up to three years.

(3) The Chair of each committee shall be elected by the committee from its membership, for a one year term and may be reelected.

(4) When considering a request by a council to create a committee, the Board will consider:

(i) Whether existing representation of subsistence users of Federal public lands within the region is adequate, and

(ii) Whether participation in the Board's decision making process would be enhanced meaningfully.

(c) Powers and Duties. (1) The local advisory committees are empowered to:

(i) Elect officers;

(ii) Provide a local forum for proposing regulations of subsistence taking and uses of fish and wildlife on Federal public lands and assisting the councils in obtaining the opinions and recommendations of rural residents interested in subsistence taking and uses of fish and wildlife matters on Federal public lands;

(iii) Develop regulatory proposals for submission to the council;

(iv) Evaluate regulatory proposals submitted to the committees and make recommendations to the council and Board;

(v) Advise the appropriate regional council regarding the conservation, development, and subsistence use of fish and wildlife resources on Federal public lands;

(vi) Work with the appropriate regional council to accomplish the duties described in § _____.11(c)(1)(iii); and

(vii) Cooperate and consult with interested persons and organizations, including government agencies, to accomplish their charge; and

(viii) Perform other duties specified by the Board.

(2) Local advisory committees must operate in conformance with the provisions of the Federal Advisory Committee Act, and comply with rules of operation established by the Board.

(d) The U.S. Fish and Wildlife Service shall provide appropriate financial, technical, and administrative assistance to the local advisory committees.

§ _____.13 Board/agency relationships.

(a) *General.* (1) The Board, in mak'ng decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on conservation system units or other Federal public lands, recognizing that the management policies applicable to some units may entail methods of resource and habitat management and protection different from methods appropriate for other units.

(2) The Board shall promulgate regulations for subsistence taking of fish and wildlife on Federal public lands. The Board is the final administrative authority on the promulgation of regulations relating to the subsistence taking of fish and wildlife on Federal public lands.

(3) Nothing in these regulations shall abrogate the authority of individual Federal agencies to promulgate regulations necessary for the proper management of lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes park and park monument Subsistence Resource Commissions. Nothing in these regulations affects the appointments, duties or authorities of those Commissions.

§ _____.14 Relationship to State procedures and regulations.

(a) State of Alaska fish and wildlife regulations apply to Federal public lands and such laws are hereby adopted and made a part of these regulations to the extent they are not inconsistent with, or superseded by this part.

(b) The Board may close Federal public lands to hunting and fishing, or take actions to restrict the taking of fish and wildlife as authorized by the State. The Board may review and adopt State closures which serve to achieve the objectives of title VIII of ANILCA.

(c) The Board may enter into agreements with the State in order to coordinate respective management responsibilities.

§ _____.15 Rural determination process.

(a) The Board shall determine the rural or non-rural status of all areas or communities within Alaska. In determining whether a specific area of Alaska is rural, the Board will use the following guidelines:

(1) A community or area with a population of 2500 or less will be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area.

(2) Communities or areas with populations between 2500 and 7000 will be determined to be rural or non-rural.

(3) A community with a population of 7000 or more is presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor will be utilized in this process.

(5) Community or area characteristics will be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:

(i) Fish and wildlife use;

(ii) History and tradition of the community; and,

(iii) Development and diversity of educational and cultural institutions, the economy, transportation, communication links, community infrastructure, and government institutions.

(6) Communities or areas which are economically, socially and communally integrated will be considered in the aggregate.

(b) The Board will review and change rural and non-rural determinations as necessary.

(c) Current determinations are listed at _____.23.

§ _____.16 Customary and traditional use determination process.

(a) The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations will identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) Residents of a community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on application of the following factors:

(1) A long-term consistent pattern of use, excluding interruptions beyond the users' control;

(2) A pattern of use recurring in specific seasons for many years;

(3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

(4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the users' residence;

(5) A means of handling, preparing, preserving, and storing fish or wildlife which have been traditionally used by past generations, without excluding consideration of alteration of past practices due to recent technological advances, where appropriate;

(6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;

(7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

(8) A pattern of use related to the users' reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements of the users' lives.

(c) The Board shall take into consideration the reports and recommendations of the appropriate regional council(s) regarding customary and traditional uses of subsistence resources.

(d) Current determinations are listed in _____.24.

§ _____.17 Determining priorities among subsistence users:

(a) In accordance with section 804 of ANILCA, whenever it is necessary to restrict the subsistence taking of fish and wildlife on Federal public lands in order to protect the continued viability of such populations, or to continue subsistence uses, the Board shall establish a priority among the users.

(b) The priority shall be implemented through appropriate limitations based on the application of the following criteria to each area, community, or individual determined to have customary and traditional use, as necessary:

(1) Customary and direct dependence upon the populations as the mainstay of livelihood;

(2) Local residency; and,

(3) The availability of alternative resources.

(c) If allocation on an area or community basis are not achievable, then the Board shall allocate subsistence opportunity on an individual basis through application of the above criteria.

(d) In addressing a situation where prioritized allocation becomes necessary the Board shall seek the input of the Regional Advisory Council in the area affected.

§ _____.18 Regulation adoption process.

(a) Proposals for changes to the Federal subsistence regulations in subpart D shall be accepted by the Board according to a published schedule, but at least once a year. Proposals for changes to subpart C will be accepted by the Board according to a published schedule.

(1) Public and governmental proposals will be made available for review by the regional councils. Regional councils will forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted as a part of the regional council's annual report described in § _____.11.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least 30 days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and means. The Board may choose not to follow any recommendation which they determine is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a regional council is not adopted by the Board they shall set forth the factual basis and the reasons for their decision in writing to the regional council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subparts C and D in the **Federal Register**.

(b) [Reserved]

§ _____.19 Closures and other special actions.

(a) The Board may make or direct temporary closures or restrictions of any or all taking of fish and wildlife including subsistence taking on Federal public lands, if necessary, for reasons of public safety, administration, or to ensure the continued viability of a particular fish stock or wildlife population or continuation of

subsistence opportunity. In so doing, the Board will consult with the State, and provide adequate notice and public hearing.

(b) In an emergency situation, the Board may direct immediate closures, restrictions, or other changes related to any or all taking of fish and wildlife, including subsistence taking, on Federal public lands, if necessary for the same reasons stated in § _____.19(a). The Board shall publish notice and reasons justifying the emergency action in the Federal Register and in newspapers of the area(s) affected. The emergency action shall be effective when directed by the Board, may not exceed 60 days, and may not be extended unless it is determined, after notice and hearing, that such action should be extended.

(c) Individual agency regulations and authority to direct emergency or temporary closures or restrictions on lands under such agency's management and related to the taking of fish and wildlife, for the purposes stated in § _____.19(a) or other purposes authorized by Federal statute are unaffected by the regulations of this part.

(d) Taking of fish or wildlife in violation of a Board closure restriction, or change implemented pursuant to this section is prohibited.

§ _____.20 Request for reconsideration.

(a) Regulatory actions of the Board are subject to requests for reconsideration.

(b) Any affected person may file a request for reconsideration.

(c) To file a request for reconsideration, the requestor must notify the Board in writing within 45 days of the effective date or date of publication of the notice, whichever is earliest, for which reconsideration is requested.

(d) It is the responsibility of a requestor to provide the Board with sufficient narrative evidence and argument to show why the action by the Board should be reconsidered. The following information must be included in the request for reconsideration:

(1) The requestor's name, and mailing address;

(2) The action for which reconsideration is requested and the date of Federal Register publication of that action;

(3) A detailed statement of how the requestor is adversely affected by the action;

(4) A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that the requestor believes to be violated and the reason for such allegation;

(5) A statement of how the requestor would like the action changed.

(e) Upon receipt of a request for reconsideration the Board shall transmit a copy of such request to the appropriate regional council(s) for review and recommendation. The Board shall consider any Council recommendations in making a final decision.

(f) The Board shall make a final decision on a request for reconsideration within 45 days after receiving such a request. The decision of the Board is the final administrative remedy except as specified in paragraph (g) of this section. Further relief is only available through the courts.

(g) The Secretary, at his discretion, may review actions by the Board.

(h) Decisions by a Federal agency outside its role on the Board are subject to appeal under the appeal procedures of that agency.

§ _____.21 [Reserved]

Subpart C—Board Determinations

§ _____.22 Subsistence resource regions.

The following areas are hereby designated as subsistence resource regions:

(a) Southeast Region
(b) Southcentral Region
(c) Southwest Region
(d) Bristol Bay Region
(e) Western Region
(f) Western Arctic Region
(g) Northern Arctic Region
(h) Interior Region

§ _____.23 Rural Determinations.

(a)(1) All communities and areas have been determined by the Board to be rural in accordance with § _____.15 except the following:

Adak;

Fairbanks North Star Borough;

Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek;

Juneau area—including Juneau, West Juneau and Douglas;

Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch;

Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cover, Saxman East, and parts of Pennock Island;

Municipality of Anchorage;

Seward area—including Seward and Moose Pass;

Valdez; and,

Wasilla area—including Palmer, Wasilla, Sutton, Big Lake, Houston, and Bodenberg Butte.

(2) Maps delineating the precise boundaries of non-rural areas listed in paragraph (a)(1) are available from the U.S. Fish and Wildlife Service.

(b) [Reserved]

§ _____.24 Customary and traditional use determinations.

(a) The customary and traditional use determinations listed as follows were adopted from State determinations as of the 1989–90 regulatory year.

(b) Rural Alaska residents of the listed communities and areas have been determined to have customary and traditional subsistence use of the specified species in the specified areas:

Area	Species	Determination
GMU 1	Brown Bear	No determination, except no subsistence for residents of Wrangell, Klukwan, Haines and Skagway.
1(A)	Deer	Rural residents of 1(A) and 2.
1(B)	Deer	Rural residents of Unit 1(A), residents of 1(B), 2 and 3.
1(B)	Goat	No determination, except no subsistence for residents of Petersburg, Kupreanof and outlying areas.
1(B)	Moose	The Stikine River drainages only—residents of Wrangell.
1(B)	Moose	North of the LeConte Glacier and 1(C) Berner's Bay—no subsistence.
1(C)	Black Bear	Rural residents of Unit 1(C) and Haines, Gustavus, Klukwan, and Hoonah.
1(C)	Deer	Rural residents of 1(C) and (D), and residents of Hoonah and Gustavus.
1(C)	Goat	Residents of Haines, Klukwan, and Hoonah.
1(D)	Deer	No subsistence.
1(D)	Moose	Residents of Unit 1(D).

Area	Species	Determination
GMU 2	Deer	Rural residents of Unit 1(A) and residents of Units 2 and 3.
GMU 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
GMU 4	Brown Bear	Residents of GMU 4 and Kake.
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, and Wrangell.
GMU 5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Moose	Residents of Yakutat.
GMU 6	Brown Bear	No subsistence.
6	Moose	No subsistence.
6	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
6(A)	Black Bear	Residents of Yakutat.
6(B) and (C)	Black Bear	Residents of Unit 6(B) and (C), except Cordova.
6(C) and (D)	Goat	Rural residents of Unit 6(C) and (D).
6(D)	Black Bear	Residents of Chenega.
GMU 8	Deer	Residents of Unit 8.
GMU 9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9(A), (B), (C) and (E).
9(A), (C) and (D)	Brown Bear	No subsistence.
9(B)	Brown Bear	Residents of Unit 9(B).
9(C)	Caribou	Residents of Unit 9(B), 9(C), 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of False Pass.
9(D)	Moose	No subsistence.
9(E)	Brown Bear	Residents of Chignik Lake, Ivanof Bay and Perryville.
9(E)	Caribou	Residents of Units 9(B), (C), (E), 17, Nelson Lagoon and Sand Point.
GMU 10	Caribou	Unit 10—Unimak Island: residents of False Pass. Remainder: no determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
GMU 11	Caribou	Mentasta Herd—Residents of Units 11, 12 (along Nabesna Road) and 13 (A)–(D).
11	Sheep	Residents of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, McCarthy Road, Mentasta Lake, Mentasta Pass (milepost 79–110) Nabesna Road, Slana, McCarthy/South Wrangell/South Park, Tazline, and Tonsina. However, no subsistence for Cantwell, east Glenn Highway (milepost 110–180) and to milepost 14 on the Lake Louise Road, Homestead North, Homestead South, Lake Louise, Paxson, Sourdough, Tanacross, Tok, and west Glenn Highway (milepost 78–110).
11	Moose	Residents of Unit 11, residents of Unit 12 (along Nabesna Road) and Unit 13 (A)–(D).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
11	Grouse (Spruce, Blue, Ruffed and Sharptailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and Whitetailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
GMU 12	Caribou	Nelchina Herd—Residents of Northway and Tetlin.
12	Caribou	40 Mile Herd—Residents of Unit 12, north of Wrangell Park Preserve and rural residents of Unit 20(D) and (E).
12	Moose	South of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River—Residents of Unit 11 north of 62nd parallel and excluding BLM parcels of north and south Slana; and residents of Unit 12, 13(A)–(D) and residents of Dot Lake.
12	Moose	East of the Nabesna River, south of the Winter Trail from Pickerel Lake to the Canadian Border—Residents of Unit 12.
12	Moose	Remainder of Unit 12—Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
GMU 13	Caribou	Nelchina Herd—Residents of Units 11, 13, and 12 (along Nabesna Road).
13	Sheep	Tok Management Area—no subsistence.
13	Sheep	Delta Management Area—no subsistence.
13	Moose	Residents of Unit 13.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (Rock, Willow and White-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 & 23.
13(D)	Sheep	No subsistence.
13(D)	Goat	No subsistence.
GMU 14 (B) and (C)	Brown Bear	No subsistence.
GMU 15	Grouse (Spruce, Blue, Ruffed and Sharp-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
15	Ptarmigan (Rock, Willow and White-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.

Area	Species	Determination
GMU 16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
16(A)	Moose	No subsistence.
16(B)	Moose	Residents of Unit 16(B).
GMU 17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
17(A)	Brown Bear	Residents of Unit 17, Goodnews Bay and Platinum.
17(A)	Moose	Residents of Unit 17 and residents of Gdodnews Bay and Platinum.
17 (A) and (B)	Brown Bear	Those portions north and west of a line beginning from the GMU 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the GMU 17 boundary intersects the Shotgun Hills—Residents of Kwethluk.
17 (A) and (B)	Caribou	Those portions north and west of a line beginning from the GMU 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the GMU 17 boundary intersects the Shotgun Hills—Residents of Kwethluk.
17 (A) and (B)	Moose	Those portions north and west of a line beginning from the GMU 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the GMU 17 boundary intersects the Shotgun Hills—Residents of Kwethluk.
17 (B) and (C)	Brown Bear	Residents of Unit 17.
17 (B) and (C)	Moose	Residents of Unit 17, Nondalton, Levelock, Goodnews Bay and Platinum.
GMU 18	Brown Bear	Residents of Aklachak, Aldak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Caribou	Residents of Kwethluk.
18	Moose	Residents of Unit 18 and Upper Kalskag.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
GMU 19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
19(A)	Brown Bear	Residents of Unit 19(A), (D), Tuluksak, Lower Kalskag and Kwethluk.
19 (A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River and Unit 19.
19 (A) and (B)	Caribou	(fall season) Residents of Unit 19 (A) and (B) and Kwethluk—(winter season) Residents of Unit 18 in Kuskokwim Drainage and Bay. Residents of 19(A), (B) and Kwethluk.
19(B)	Brown Bear	Residents of Kwethluk.
19(C)	Brown Bear	No subsistence.
19(C)	Caribou	Residents of Unit 19(C), Lime Village, McGrath, Nikolai, and Telida.
19(C)	Moose	Residents of Unit 19.
19(D)	Brown Bear	Residents of Unit 19(A), (D), Tuluksak and Lower Kalskag.
19(D)	Caribou	Residents of Unit 19(D), Lime Village, Sleetmute and Stony River.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.
GMU 20	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
20(A)	Moose	Residents of Cantwell, Minto, and Nenana.
20 (A) and (C)	Moose	No subsistence for residents of McKinley Village, the area along the Parks Highway between mileposts 216 and 239 and households of the Denali National Park Headquarters.
20(A), (C) (Delta, Yanert, and 20(C) herds) and (D).	Caribou	No determination, except no subsistence for residents of McKinley Village, the area along the Parks Highway between mileposts 216 and 239 and households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—Residents of Minto and Nenana.
20(B)	Moose	Remainder—Rural residents of Unit 20(B), Nenana and Tanana.
20(C)	Moose	Rural residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana and Telida.
20(D)	Grouse (Spruce, Blue, Ruffed and Sharp-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
20(D)	Ptarmigan (Rock, Willow and White-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
20(D) and (E)	Caribou	40-Mile Herd—Residents of Unit 12 north of Wrangell Park-Preserve, rural residents of 20(D) and residents of 20(E).

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Area	Species	Determination
20(E)	Brown Bear	No subsistence.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto and Stevens Village.
GMU 21	Brown Bear	Rural residents of Unit 21 and 23.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
21	Caribou	Western Arctic Caribou Herd only—Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, 22(A), (B), 23 and 26(A).
21(A)	Moose	Residents of Unit 21(A), (E), Takotna, McGrath, Aniak and Crooked Creek.
22(A) and (E)	Caribou	Residents of Unit 21(A) and Aniak, Chuathbaluk, Crooked Creek, Grayling, Holy Cross, McGrath, Shageluk and Takotna.
21(B) and (C)	Moose	Residents of Unit 21(B) and (C), Tanana and Galena.
21(D)	Moose	Residents of Unit 21(D), Huslia and Ruby.
21(E)	Moose	Residents of Unit 21(E) and Russian Mission.
GMU 22	Brown Bear	Residents of Unit 22.
22	Caribou	Western Arctic Caribou Herd only—Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22(A), (B), 23 and 26(A).
22	Moose	Residents of Unit 22.
22	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
22	Grouse (Spruce, Blue, Ruffed and Sharp-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
22	Ptarmigan (Rock, Willow and White-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
GMU 23	Brown Bear	Rural residents of Units 21 and 23.
23	Caribou	Western Arctic Caribou Herd only—Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (A), (B), 23 and 26(A).
23	Sheep	Residents of Unit 23 north of the Arctic Circle.
23	Moose	Residents of Unit 23.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
23	Ptarmigan (Rock, Willow and White-tailed)	Residents of Units 11, 13, 15, 16, 20(D), 22 and 23.
GMU 24	Brown Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Corridor.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna and Anaktuvuk Pass.
24	Moose	Residents of Unit 24, Anaktuvuk Pass, Koyuk and Galena.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
GMU 25	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik and Venetie.
25(A)	Moose	Residents of Unit 25(A) and residents of Venetie only.
25 (B) and (C)	Sheep	No subsistence.
25(D)	Moose	West—Residents of Beaver, Birch Creek and Stevens Village.
25(D)	Moose	Remainder—Residents of "Remainder of Unit 25".
GMU 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26	Caribou	Western Arctic Caribou Herd only—Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (A), (B), 23 and 26(A).
26	Moose	Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), and residents of Point Hope and Anaktuvuk Pass.
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and 16–26.
26 (A) and (B)	Sheep	Residents of Anaktuvuk Pass, Kaktovik, Nuiqsut and Wiseman.
26(B)	Caribou	Central Arctic Herd—Residents of Anaktuvuk Pass, Kaktovik, Nuiqsut and Wiseman.
26 (B) and (C)	Musk Oxen	Residents of Kaktovik.
26(C)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik and Venetie.

For the reasons set out in the preamble, chapter I, subchapter H of title 50 and chapter II of title 36 of the Code of Federal Regulations are proposed to be amended as follows:

TITLE 36—PARKS, FORESTS AND PUBLIC PROPERTY

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Part 242 of title 36 is proposed to be revised as set forth at the end of the common rule.

PART 242—SUBSISTENCE MANAGEMENT REGULATIONS FOR FEDERAL PUBLIC LANDS IN ALASKA

Subpart A—General Provisions

Sec.

242.1 Purpose.
242.2 Authority.
242.3 Applicability and scope.

Sec.
242.4 Definitions.
242.5 Eligibility for subsistence use.
242.6 Licenses, permits, harvest tickets, tags, and fees.
242.7 Restriction on use.
242.8 Penalties.
242.9 Information collection requirements.

Subpart B—Program Structure.

242.10 Federal Subsistence Board.
242.11 Regional advisory councils.
242.12 Local advisory committees.
242.13 Board/agency relationships.
242.14 Relationship to State procedures and regulations.
242.15 Rural determination process.
242.16 Customary and traditional use determination process.
242.17 Determining priorities among subsistence users.
242.18 Regulation adoption process.
242.19 Closures and other special actions.
242.20 Request for reconsideration.
242.21 [Reserved]

Subpart C—Board Determinations

242.22 Subsistence resource regions.
242.23 Rural determinations.
242.24 Customary and traditional use determinations.

Authority: 16 U.S.C. 3, 472, 551, 668dd *et seq.*, 3101 *et seq.*; 16 U.S.C. Chapter 227; 43 U.S.C. 1733.

TITLE 50—WILDLIFE AND FISHERIES

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Part 100 of title 50 is proposed to be revised as set forth at the end of the common rule.

PART 100—SUBSISTENCE MANAGEMENT REGULATIONS FOR FEDERAL PUBLIC LANDS IN ALASKA

Subpart A—General Provisions

Sec.
100.1 Purpose.
100.2 Authority.
100.3 Applicability and scope.
100.4 Definitions.
100.5 Eligibility for subsistence use.
100.6 Licenses, permits, harvest tickets, tags, and fees.
100.7 Restriction on use.
100.8 Penalties.
100.9 Information collection requirements.

Subpart B—Program Structure

100.10 Federal Subsistence Board.
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100.18 Regulation adoption process.
100.19 Closures and other special actions.
100.20 Request for reconsideration.
100.21 [Reserved]

Subpart C—Board Determinations

100.22 Subsistence resource regions.
100.23 Rural determinations.
100.24 Customary and traditional use determinations.

Authority: 16 U.S.C. 3, 472, 551, 668dd *et seq.*, 3101 *et seq.*; 16 U.S.C. Chapter 227; 43 U.S.C. 1733.

John F. Turner,

Director, U.S. Fish and Wildlife Service.

Michael A. Barton,

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[FR Doc. 92-2141 Filed 1-29-92; 8:45 am]

BILLING CODES 3410-11-M; 4310-55-M

VOL
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ISS
20
JA
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1992
UMI

federal register

Thursday
January 30, 1992

Part III

Department of Education

Foreign Languages Assistance Program; Notice

VOL 57 ISS 20 JA 30 1992 UMI

DEPARTMENT OF EDUCATION

Foreign Languages Assistance Program

AGENCY: Department of Education.

ACTION: Final interpretations and designation of critical foreign languages.

SUMMARY: For the purposes of the Foreign Languages Assistance Act of 1988, authorized by title II, part B, of the Elementary and Secondary Education Act, the Secretary designates Chinese (all dialects), Japanese, Korean, Arabic (all dialects), and Russian as the primary critical foreign languages. The Secretary also establishes, for a State that can clearly document that it lacks the capability to implement model programs in any of those languages, a procedure under which the State educational agency (SEA) may apply for a waiver of the requirement to fund model programs only in the designated primary languages. An SEA that is granted a waiver may use funds under this program to support model programs in any of the alternate critical languages of French, German, Italian, Portuguese, and Spanish. The Secretary also provides certain interpretations of other portions of the Act that are needed to administer the program.

EFFECTIVE DATE: These interpretations take effect either March 16, 1992, or later if the Congress takes certain adjournments, except that the provision for obtaining the Secretary's approval to support model projects in French, German, Italian, Portuguese, or Spanish, will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these interpretations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Doris Crudup, School Effectiveness Division, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6140, (202) 401–1062. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Foreign Language Assistance Program is authorized by title II, part B, of the Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297). It is a new formula grant program that is intended to provide financial assistance to State educational agencies (SEAs) to improve the quantity and quality of instruction at both the elementary and secondary school levels in those foreign languages that are critical to the economic and security interests of the United States. Specifically, the Foreign Languages Assistance Program provides support for model programs that will assist school districts in their efforts to help move the Nation toward accomplishing National Education Goal Number 3, which has, as one of its objectives, increasing the percentage of students who are competent in more than one language. The program outlined in this notice can help States and localities make schools better and more accountable for today's students—a major aim of AMERICA 2000, the President's education strategy.

Congress has appropriated $4.9 million for fiscal year 1991 and $10 million for fiscal year 1992 to implement this program. Under the statute, each SEA distributes funds on a competitive grant basis to local educational agencies (LEAs) for model programs they have designed that represent alternative and innovative approaches to foreign language instruction. Unless the Secretary grants a waiver, the non-federal matching requirement is 50 percent. Because each SEA's application must describe the model projects to be conducted, the Secretary is announcing the criteria under which the Foreign Languages Assistance Program will be administered.

On April 29, 1991, the Secretary published a notice of proposed interpretations and designation of critical foreign languages for the Foreign Languages Assistance Program in the **Federal Register** (56 FR 19645). The notice proposed certain statutory interpretations that would apply to all projects that the program would fund. In addition, the Secretary proposed to designate Chinese (all dialects), Japanese, Korean, Arabic (all dialects), and Russian as the only foreign languages whose instruction the program would support.

The major difference between the proposed interpretations and these final interpretations is inclusion of procedures under which an SEA may apply for a waiver of the requirement that it fund model programs only in the primary languages designated by this notice.

Analysis of Comments and Changes

The Department received forty-six comments on the proposed interpretations. An analysis of the comments and of the portions of this notice that reflect changes from the proposed interpretations follows.

Major issues are grouped according to subject, with appropriate sections of the statute (if any) referenced in parentheses.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

The Critical Foreign Languages

Comments: Nearly all of the comments received addressed the proposed designation of Chinese (all dialects), Japanese, Korean, Arabic (all dialects), and Russian as the only critical foreign languages for purposes of this program. Many of the respondents disagreed with the proposed designation and recommended that it be expanded to include other languages. Some recommended that the foreign languages specified in the proposed notice be given priority, but that other languages be added. Other commenters recommended that the list of 169 languages designated in a notice published in the **Federal Register** on August 2, 1985 (50 FR 31412), for programs at the postsecondary level, serve as the list of "critical" foreign languages for this program.

Many commenters felt that limiting the program to the five languages as proposed would make it difficult for some States and localities to participate in the program because they lack qualified teachers or the necessary financial resources. Some commenters stated that, because the proposed languages are considered of "high difficulty" for English speakers and very few universities offer programs for teacher preparation in these languages, new programs in these languages would require careful planning and the development of a sequential program with implementation over an extended period of time. Other commenters stated that the proposed designation would require States and LEAs to create programs that do not presently exist and for which there is no guarantee of long-term funding. Commenters pointed out that few elementary schools offer instruction in any foreign language, and suggested that restricting the use of funds to instruction in the proposed five languages would not encourage States or LEAs to begin foreign language programs at the elementary level.

Some commenters recommended that the decision as to what constitutes a "critical" foreign language be left to each State. According to these commenters, the definition of "critical" varies from State to State and is often determined by geographical location, ethnic population, and primary sources of trade for that State.

Five commenters supported the designation of the five critical foreign languages as proposed. These commenters felt that the designation would allow necessary resources to be focused on crucial, yet widely neglected, languages. They also suggested that expanding the list of critical languages would divert support from these less commonly taught languages, diluting the impact of the legislation. Some commenters noted that there are few models for programs in Chinese, Japanese, Korean, Russian, and Arabic, and that the Foreign Languages Assistance Program could serve as a catalyst to support the creation of model programs in these languages.

Discussion: The authorizing statute requires the Secretary to designate the "critical" foreign languages. This responsibility cannot be delegated to the States or LEAs. In carrying out this responsibility, the Secretary believes that to designate all 169 languages from the August 2, 1985 Federal Register notice would not meet the intent of the legislation to establish model foreign language programs at the elementary and secondary levels that promote "the economic and security interest of the Nation." The 1985 list was associated with a postsecondary education program, and was developed to identify languages important to scientific inquiry and research as well as of national security and economic interest.

The Secretary believes that the primary objectives of the Foreign Languages Assistance Program would best be served by focusing resources on a select group of less commonly taught, but highly critical, foreign languages, and that the emphasis on Chinese, Japanese, Korean, Arabic, and Russian would best serve the economic and security interests of the United States. This interpretation is consistent with the report of the Senate Appropriations Committee that accompanied the fiscal year 1991 appropriation for this program. In that report, the Senate expressed its intent that the program "focus primarily on the less commonly taught languages."

The Secretary recognizes, however, that Congress enacted the Foreign Languages Assistance Program as a State formula grant program, presumably with the intent that all States be able to participate. Consequently, the Secretary agrees that a State should not be precluded from participation in the program solely because LEAs in the State are unable to procure trained teachers or other resources needed to operate model programs in one of the languages proposed in the April 1991 Federal Register notice. For this reason, the Secretary has determined that an SEA that can demonstrate either (1) a clear lack of resources needed to implement model programs in Chinese, Japanese, Korean, Arabic, and Russian, or (2) other compelling reasons, may obtain a waiver to implement model programs in the more commonly taught languages of French, German, Italian, Portuguese, and Spanish. The section of this notice on "Application Content" describes the information that the Secretary will review in considering any SEA's request for a waiver.

The Secretary anticipates, however, that few requests for waivers are likely to be granted. To make a convincing case for approval to undertake projects in the five alternative languages, an SEA must demonstrate that the lack of available qualified teachers or other resources throughout the State or region, or other compelling reasons make it impossible for any LEA in the State to develop and implement model programs in Chinese, Japanese, Korean, Arabic, or Russian. An SEA's supporting evidence might include the following kinds of data: Surveys of school districts and universities to determine the availability of teachers in those languages, a comparison of the costs of implementing projects in the five critical languages with the costs of projects in the five alternate languages, accompanied by an analysis of local and State resources available for implementing projects in each group of languages, or descriptions of programs proposed by LEAs in the primary languages accompanied by an explanation for the SEA's rejection.

Furthermore, this program is not designed to support long-term projects. Rather, awards are to be made for a three-year period, and funds are to be used to develop models that can be replicated in other locations. The argument by some commenters that the "difficulty" of the designated language will deter LEAs from establishing model programs in elementary schools is not persuasive. In fact, because experience seems to show that young children have less difficulty learning a foreign language than older children or adults, it is likely that many of the most promising projects will be proposed for the elementary level. Finally, States should note that, although the statute requires a 50 percent State and local match, the law makes provisions for applying to the Secretary for a waiver of that requirement.

Changes: The Secretary has changed the definition of "critical foreign languages." The languages of Chinese, Japanese, Korean, Arabic, and Russian are now designated as the primary critical foreign languages, and, absent a waiver, all States will be required to fund local model programs in those languages. However, the definition also now includes French, German, Italian, Portuguese, and Spanish as alternate critical foreign languages. In order to fund model programs in any of the alternate languages, a State will have to apply for a waiver from the basic requirement and gain the approval of the Secretary. The section of this notice on "Application Content" has been modified to reflect this change.

Program Application

Comments: Commenters asked if (1) the State application is to be for a one- or three-year period; (2) a State application that merely describes the State's plan for selecting model programs can be approved prior to the identification of the LEA model programs; and (3) the LEA application must be developed for a three-year period. One commenter suggested that the Secretary define what is meant by a "model" program.

Discussion: The Act requires that a description of the model programs designed by LEAs be included in the State application. It further states that funds "shall be made available to the State two additional years after the first fiscal year during which the State receives its allotment" if the funds in the first year were used in the manner required under the State's approved application. Therefore, the Secretary will require that State applications cover a three-year period, pending the availability of appropriations. The State application must contain a description of model programs that have been selected on a competitive basis prior to submission of the application. While the statute requires that funds be used to support model programs for the commencement or improvement and expansion of foreign language study, the Secretary believes that the actual definition and duration of a model program is best determined by the SEA.

Changes: The application procedures have been amended to require that State applications cover a three-year period.

Participating Children

Comments: Commenters questioned the proposed requirement that children aged 5 through 17 who reside in the school district of the LEA must be eligible to participate in the program. One commenter recommended that SEAs be required to identify the mechanisms to be used to ensure that the programs will be available to children attending private schools or that the Secretary require LEAs to set aside funds to be allocated to private elementary and secondary institutions located in the LEA to implement programs. Other commenters noted that the requirement that the State's application contain an assurance that "all children * * * who reside in the school district of the LEA" must be able to participate in the program could limit participation by LEAs and restrict the programs to magnet schools. Another commenter pointed out that the language in the notice differed from language in other legislation, such as chapter 2 of title I of the ESEA, or the Drug Free Schools and Communities Program, and that private school children to be served under those programs are identified as those children attending school within the boundaries of a program or project. However, under the Foreign Languages Assistance Program eligibility for participation is extended to all children residing in the LEA.

Discussion: Section 2103(b)(2) of the Act requires that the SEA provide an assurance that all children, enrolled in public or private schools, who reside in the school district be eligible to participate in any model program funded under the Foreign Languages Assistance Program. In addition, section 2103(d) of the Act requires that, to the extent consistent with the number of children in the State or in the school district of each LEA who are enrolled in private elementary and secondary schools, each State or LEA shall, after consultation with appropriate private school representatives, make provision for including special services in which children attending private schools can participate. Because section 2103(a) limits activities to model programs "designed and operated by local educational agencies," the statute does not authorize these services to private school children to be provided out of funds that would be separately allocated to private institutions.

Furthermore, the Secretary believes that, as a practical matter, Congress could not have intended to require all LEAs to implement model programs for which all children, regardless of age and grade level, are eligible to participate, or to issue conditions that would restrict model programs to magnet school sites. Therefore, the proposed and final interpretations continue to require that participation in model programs be open to all children in the grade level or levels for which the model was designed rather than all children ages 5 through 17.

Changes: None.

Non-Federal Share

Comments: One commenter urged that the interpretation specify that no new funds be required for the 50 percent match and that the matching requirement be ignored.

Discussion: the law explicitly requires a 50 percent match, with provision for a waiver for those States able to demonstrate significant hardship.

Changes: None.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

Authority: 20 U.S.C. 2961–2991, 2993

Definitions and Interpretations

The Critical Foreign Languages

Section 2105 of the Act defines the term "foreign language instruction" as "instruction in critical foreign languages as defined by the Secretary." For the Foreign Languages Assistance Program, the Secretary designates Chinese (all dialects), Japanese, Korean, Arabic (all dialects), and Russian as the primary critical foreign languages. An SEA that can document a clear lack of capability to fund local model projects in any of these primary languages, which would preclude its participation in the program, may apply to the Secretary for approval to support, instead, local model projects in one or more of the alternate critical foreign languages. For the purposes of this program, the alternate languages are French, German, Italian, Portuguese, and Spanish. An Sea that wishes to apply for a waiver in order to support model programs in one or more of the alternate languages must provide justification as discussed under the next section of this notice.

Application Content

Section 2103(b) of the Act requires that an Sea desiring to receive a grant shall submit an application to the Secretary that covers three fiscal years and contains information and assurances as the Secretary may require. Consistent with the purpose of the program, all applications must include information that will ensure that projects contribute to the statutory goal of developing model programs from which other schools in the Nation can benefit. In addition, applications must include the following information as well as the items enumerated in section 2103(b) of the statute:

(1) A description of how each model program could benefit other school systems in the Nation;

(2) A description of how each program's design will provide a reliable measure of the impact of the program or of student educational achievement; and

(3) An assurance that, upon completion of each program, the SEA will provide to the Secretary documentation and a final evaluation of the program, in a form suitable for dissemination to other schools or school districts that may wish to replicate the program.

In addition, an application requesting approval from the Secretary to support model programs in one or more of the secondary critical foreign languages of French, German, Italian, Portuguese, or Spanish, must specifically describe:

(1) Efforts made by the State to identify and inform LEAs about, personnel and resources that LEAs can use in designing and implementing programs in the five primary critical languages (Chinese, Japanese, Korean, Arabic, or Russian);

(2) Use of criteria to select model programs that give additional weight to proposed programs offering instruction in one of the five primary critical languages;

(3) Reasons for the inability to fund projects in any of the five primary languages; and

(4)Any other conditions or circumstances that would clearly preclude implementation of model programs in any of the five primary critical languages.

In deciding whether to grant a waiver to an SEA from the basic requirement that it fund local model projects exclusively in one or more of the five primary languages designated in this

notice, the Secretary will consider whether the SEA's application demonstrates that, without a waiver, the State clearly would be unable to participate in the program. The Secretary will look for evidence that LEAs in the State are unable to implement model projects in the primary languages because either (1) an inability to procure qualified teachers or other needed resources, or (2) other compelling reasons. The Secretary will not consider local or State preference as a compelling reason for granting a waiver.

Program Variety

In approving an SEA's plan, the Secretary takes into consideration the amount of program funds that each State receives in determining whether the State's model programs represent a variety of alternative and innovative approaches to foreign language instruction, as required by section 2103(b)(1)(B) of the Act.

Participating Children

Section 2103(b)(2) of the Act requires and SEA's application to contain an assurance that "all children aged 5 through 17 who reside within the school district of the local educational agency shall be eligible to participate in any model program" funded under the Foreign Languages Assistance Act. The Secretary interprets this provision to mean that, for whatever grade span a model program is designed, all children in those grade levels who reside within the area served by the LEA must be eligible to participate.

Non-Federal Share

Section 2103(b)(3) of the Act requires that an SEA's application contain an assurance "that the state will pay the non-Federal share of the activities for which assistance is sought from non-Federal sources." For purposes of this program, this means that the source of the non-Federal share will be either State or local. In either case, the contribution must come from non-Federal sources. In addition, the requirement of a 50 percent non-Federal share of project costs includes both these costs and third party in-kind contributions that are allowable under § 80.24 of EDGAR.

Waiver of Non-Federal Share

Section 2103(c)(2) of the Act authorizes the Secretary to waive the requirement of a 50 percent State or local share if the Secretary determines that adequate resources are not available. Consistent with the intent of Congress in enacting the waiver provision (see S. Rep. No. 222, 100th Cong., 1st Sess. 76 (1987)) the Secretary will grant a waiver only if presented with a clear case of hardship.

Program Authority: 20 U.S.C. 3001–3006.

Dated: January 22, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–2219 Filed 1–29–92; 8:45 am]

BILLING CODE 4000–01–M

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Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice of Approved Tribal-State Compact

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary-Indian Affairs, Department of the Interior, through his delegated authority has approved a Tribal-State Compact between the Oneida Tribe of Indians of Wisconsin and the State of Wisconsin executed on November 8, 1991.

DATES: This action is effective upon date of publication.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joyce Grisham, Bureau of Indian Affairs, Washington, DC 20240 (202) 208-7445.

Dated: January 24, 1992.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 92-2286 Filed 1-29-92; 8:45 am]

BILLING CODE 4310-02-M

federal register

Thursday
January 30, 1992

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 172

Aspartame; Denial of Request for Hearing on Final Rules; Food Additives Permitted for Direct Human Consumption; Final Rules

VOL 57 ISS 20 JA 30 1992 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket Nos. 87F-0240 and 85F-0346]

Aspartame; Denial of Request for Hearing on Final Rules

AGENCY: Food and Drug Administration.

ACTION: Final rule; denial of request for hearing and response to objections.

SUMMARY: The Food and Drug Administration (FDA) is denying a request for a hearing on the final rules that amended the food additive regulations to authorize the use of aspartame as a sweetener in frozen dairy and nondairy frostings, toppings, and fillings and in frozen, ready-to-thaw-and-eat cheesecakes, fruit, and fruit toppings. After reviewing the objections to the two final rules and the request for a hearing, FDA has concluded that no genuine issues of material fact have been raised that would justify a hearing. In addition, FDA is overruling other objections to the final rule for which there were no hearing requests because the agency has addressed similar objections in prior administrative proceedings concerning aspartame.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 2, 1989 (54 FR 23646 through 23647), FDA issued final rules that amended § 172.804(c) (21 CFR 172.804) of the food additive regulations by adding new paragraphs (c)(19) and (c)(20). Section 172.804(c)(19) authorizes the use of aspartame as a sweetener in frozen ready-to-thaw-and-eat cheesecakes, fruit, and fruit toppings. This rule responded to a petition filed by Foodways National, Inc. Section 172.804(c)(20) authorizes the use of aspartame as a sweetener in frozen dairy and nondairy frostings, toppings, and fillings. This rule responded to a petition filed by Foodways National, Inc., and the NutraSweet Co.

In accordance with 21 U.S.C. 348(f), four consumers and one consumer group filed objections to the final rules for aspartame. The aspartame Consumer Safety Network (ACSN), the consumer group, also requested a hearing on its objections. The agency's response to each objection and the request for a hearing is provided below.

II. Standard for Granting a Hearing

The Criteria for deciding whether to grant or deny a hearing are stated in 21 CFR 12.24(b). The regulation states that a hearing will be granted when the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commissioner concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, e.g., if the Commissioner concludes that the action would be the same even if the factual issue were resolved in the way sought, or if a request is made that a final regulation include a provision not reasonably encompassed by the proposal.

(5) The action requested is not inconsistent with any provision in the act or any regulation in this chapter particularizing statutory standards. The proper procedure in those circumstances is for the person requesting the hearing to petition for an amendment or waiver of the regulation involved.

(6) The requirements in other applicable regulations, e.g., §§ 10.20, 12.21, 12.22, 314.200, 314.300, 514.200, and 601.7(a), and in the notice promulgating the final regulation or the notice of opportunity for hearing, are met.

A party seeking a hearing is required to meet a "threshold burden of tendering evidence suggesting the need for a hearing." *Costle* v. *Pacific Legal Foundation*, 445 U.S. 198, 214-215 (1980), *reh. den.*, 445 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 620-621 (1973). An allegation that a hearing is necessary to "sharpen the issues" or to "fully develop the facts" does not meet this test. *Georgia Pacific Corp.* v. *U.S. EPA*, 671 F.2d 1235, 1241 (9th Cir. 1982). If a hearing request fails to identify any evidence that would be the subject of a hearing, there is no point in holding one. A hearing request must not only contain evidence, but that evidence must raise a material issue of fact concerning which a meaningful hearing might be held. *Pineapple Growers Ass'n* v. *FDA*, 673 F.2d 1083, 1085 (9th Cir. 1982). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the agency need not grant a hearing. *Dyestuffs and Chemicals, Inc.* v. *Flemming*, 271 F.2d 281 (8th Cir. 1959), *cert. denied*, 362 U.S. 911 (1960). FDA need not grant a hearing in each case where an objector submits additional information or posits a novel interpretation of existing information. See *United States* v. *Consolidated Mines & Smelting Co.*, 455 F.2d 432 (9th Cir. 1971). Stated another way, a hearing is justified only if the objections are made in good faith, and if they "draw in question in a material way the underpinnings of the regulation at issue." *Pactra Industries* v. *CPSC*, 555 F.2d 677 (9th Cir. 1977). Finally, courts have uniformly recognized that a hearing need not be held to resolve questions of law or policy. See *Citizens for Allegan Country, Inc.* v. *FPC*, 414 F.2d 1125 (D.C. Cir. 1969); *Sun Oil Co.* v. *FPC*, 256 F.2d 233, 240 (5th Cir.), *cert. denied*, 358 U.S. 872 (1958).

Even if the objections raise material issues of fact, FDA need not grant a hearing if those same issues were adequately raised and considered in an earlier proceeding. Once an issue has been so raised and considered, a party is estopped from raising that same issue in a later proceeding without new evidence. The various judicial doctrines dealing with finality are validly applied to the administrative process. In explaining why these principles "self-evidently" ought to apply to an agency proceeding, the D.C. Circuit wrote:

> The underlying concept is as simple as this: Justice requires that a party have a fair chance to present his position. But overall interests of administration do not require or generally contemplate that he will be given more than a fair opportunity.

Retail Clerks Union, Local 1401, R.C.I.A. v. *NLRB*, 463 F. 2d 316, 322 (DC Cir. 1972). (See *Costle* v. *Pacific Legal Foundation*, *supra* at 1108; See also *Pacific Seafarers, Inc.* v. *Pacific Far East Line, Inc.*, 404 F. 2d 804 (DC Cir. 1968)).

III. Analysis of Request for Hearing

The ACSN requested that FDA convene a public hearing to receive and evaluate evidence relevant to its objections on four issues. These four issues are: That an aspartame double blind challenge test (Ref. 1) is erroneous; that pilots have lost their medical

certification to fly due to adverse reactions resulting from their consumption of aspartame; that the labeling of aspartame products will not protect individuals with phenylketonuria (PKU), or other sensitive individuals, when these products are served in the home and other social settings; and that pregnant patients are not being warned that aspartame consumption during pregnancy can cause mental retardation and other birth defects.

A. Adverse Reactions to Aspartame

ACSN's first objection challenged the reliability of a double blind test (Ref. 1) reporting that aspartame is unlikely to produce headaches at any greater rate than placebo and implicitly asserted that aspartame causes a wide range of adverse reactions in consumers. In support of this objection, ACSN submitted three letters, published in the New England Journal of Medicine, which reported deficiencies in the study's experimental design. In addition, ACSN submitted news articles, as well as some physician case reports, reporting that some consumers develop headaches after consuming aspartame-containing products.

The study in question was performed by Schiffman, et al., at Duke University. The study was a double blind crossover design in which the investigators administered capsules containing aspartame, at a dosage of 30 milligrams per kilogram of body weight, to 40 human subjects, most of whom had a family or personal history of allergic reactions. In addition, each of the test subjects had previously reported suffering a headache within 24 hours of ingesting aspartame. Thirty-five percent of the subjects reported headaches after taking aspartame, while 45 percent reported headaches after a placebo. No other reactions occurred. The investigators concluded that the study demonstrated that a patient ingesting aspartame is no more likely to suffer a headache than when receiving a placebo.

FDA is denying ACSN's first objection for the following reasons. First, the results of the study by Schiffman, et al., are consistent with the agency's conclusion that aspartame is safe. FDA did not rely upon this study, however, as the basis (or as part of the basis) for the agency's safety determination. Thus, even if the study must be disregarded because it is flawed as ACSN has alleged, this will not alter the foundation underlying FDA's conclusion that aspartame is safe. Therefore, establishment of ACSN's claims of design deficiency would not require the revocation of the aspartame regulations in question. Accordingly, FDA is overruling ACSN's first objection and denying its hearing request on this issue. 21 CFR 12.24(b)(4).

Second, FDA is overruling ACSN's first objection and denying the hearing request to the extent that the objection asserts that aspartame causes a wide range of adverse reactions. The data ACSN filed in support of its hearing request on this issue were in the form of physician case reports and individual testimonials. In previous proceedings on aspartame in November 1986, in which the agency denied a petition of the Community Nutrition Institute (CNI) to revoke all uses of aspartame (Ref. 2), FDA evaluated the use of individual complaints and case reports to determine whether a causal link exists between aspartame consumption and alleged adverse effects of the sweetener. The agency concluded that only well-controlled clinical trials focusing on specific endpoints could provide evidence for the existence of such a link. (Indeed, the United States Supreme Court has characterized anecdotal evidence as "treacherous." *Weinberger v. Hynson, Westcott and Dunning*, 412 U.S. 609,629 (1973).) Accordingly, the data and information submitted by ACSN are not reliable and thus, cannot serve as the basis for a hearing. 21 CFR 12.24(b)(2).

B. Seizures and Adverse Reactions of Airline Pilots

ACSN's second objection asserts that "hundreds of pilots have reported adverse reactions including grand mal seizures" and that many pilots have lost their certification to fly because of consumption of aspartame. In support of this second objection, ACSN submitted individual testimonials and case reports allegedly reflecting untoward reactions to aspartame, news articles on pilots and aspartame, and letters from aviation industry consultants.

FDA is overruling ACSN's second objection and denying its hearing request on this issue because the agency has previously considered in prior administrative proceedings on aspartame whether consumption of the sweetener causes seizures. Specifically, in responding in November 1986, to the CNI petition to revoke aspartame's approvals, FDA considered the possible link between aspartame consumption and seizure onset. The agency concluded that there was no reliable evidence from controlled clinical trials or other research that aspartame consumption is not safe (Ref. 2), a position subsequently reiterated in the agency's March 2, 1988, denial of a hearing request on amendments to the aspartame regulation (53 FR 6595 and 6597, March 2, 1988). Once an issue has been considered in a prior proceeding, a party is estopped from raising that same issue in a subsequent proceeding in the absence of new evidence.

In the present case, ACSN's objection neither identifies nor contains any reliable new data that would provide a basis for reconsideration of this factual issue by FDA. ACSN submitted only individual testimonials and case reports to support its assertions. This information is simply more of the type previously submitted in support of the alleged link between aspartame and various adverse reactions and, as noted in the discussion of objection 1, is not a reliable basis for determining a link between consumption of aspartame and such reactions. In the absence of new, reliable information, FDA need not hold a hearing on this factual issue. 21 CFR 12.24(b)(2).

C. Lack of Warning to PKU Children and Adults

ACSN's third objection asserted that PKU children and adults, as well as others wishing to avoid aspartame, will be unable to do so because there will be no warning label on aspartame-containing foods when served in the home and other social settings. ACSN also asserted that there are 20 million PKU gene carriers who are also at risk from consumption of aspartame. In support of this third objection, ACSN filed a sheet "Facts You Should Know About Aspartame or NutraSweet."

FDA is overruling this objection and denying ACSN's request for a hearing on this issue because the issue has previously been considered by FDA in prior proceedings on aspartame. ACSN's assertion that PKU adults and children will be unable to avoid aspartame if the sweetener is permitted in frozen, ready-to-eat cheesecakes, fruits, and fruit toppings is simply a restatement of the basic issue of aspartame's safety when eaten in moderation by average consumers. In a number of prior administrative proceedings, including the final decision of the Commissioner of Food and Drugs on aspartame's initial approval (46 FR 38285, July 24, 1981), the denial of the hearing request on aspartame's approval for use in carbonated beverages (49 FR 6672, February 22, 1984), and the November 21, 1986, denial of CNI's citizen petition to revoke all approved uses of aspartame (Ref. 2), FDA considered the safety of aspartame and concluded that there is a reasonable certainty of no harm from consumption of the additive.

ACSN has neither identified nor filed new reliable data or information to support its assertions on this point. In view of the prior consideration and in the absence of new data, no hearing need be held on this factual issue.

FDA is also denying ACSN's third objection to the extent that it asserts that PKU heterozygotes are at risk from consumption of aspartame. First, ACSN did not identify or file any data or information in support of this aspect of its third objection. Therefore, no hearing is required to be held on this issue. 21 CFR 12.24(b)(2). In addition, in the context of the Commissioner's final decision on aspartame, FDA concluded that there is no evidence that PKU heterozygotes are adversely affected by ingestion of aspartame (46 FR 38285 at 38287–38288, 38290–38291, and 38303–38305). The agency is not required to hold a hearing where, as here, the same issue was raised and considered in a prior proceeding and the objector has filed no new data or information.

D. Risk of Aspartame Use During Pregnancy

ACSN's fourth objection asserts that use of aspartame during pregnancy can cause mental retardation and other birth defects. ACSN asserts that Drs. Louis Elsas and William Partridge have warned against aspartame use during pregnancy. However, ACSN did not identify or file data or other information in support of this objection.

The agency is denying ACSN's fourth objection for two reasons. First, as noted, ACSN filed no data or other information to support its assertions about aspartame's relationship to birth defects. A hearing will not be granted on the basis of mere allegations or general descriptions of positions. 21 CFR 12.24(b)(2).

Secondly, in its prior decisions on the safety of aspartame, FDA considered the risks that high levels of the amino acid phenylalanine pose to the developing fetus (46 FR 38285 at 38290–38291 and 38303–38305, July 24, 1981; 53 FR 6595 at 6598–6600, March 2, 1988). At that time, FDA explained that eliminating aspartame from new products is an ineffective means of preventing birth defects because there are multiple sources of dietary phenylalanine, of which aspartame is only a relatively minor one. Thus, to prevent retardation and birth defects from elevated phenylalanine blood levels, the cause of the elevation must be diagnosed and all dietary sources of phenylalanine restricted. ACSN has filed no new data or information that dispute FDA's previous findings on this factual issue. In such circumstances, a hearing need not be granted.

IV. Analysis of Other Objections

In addition to ACSN, four consumers filed objections to the final aspartame rules, but did not request a hearing on any of these objections. Because there was considerable overlap, FDA has combined the objections in the agency's response to them set out below.

A. Lack of Comprehensive Human Testing

One objection asserted that FDA has not been provided with comprehensive human test data or studies to establish the safety of aspartame. In support of this assertion, the objection stated that: (1) Rodents do not metabolize "aspartic and phenylalanine acids" in the same manner as humans; (2) FDA overrode the objections and recommendations of the 1975 and 1977 FDA Task Forces, and the 1980 Public Board of Inquiry on aspartame; (3) FDA considered the monkey study pivotal and that this study demonstrated the toxicity of aspartame; and (4) there are an increasing number of consumer reports of the harmful effects of aspartame usage which FDA is ignoring. To support this objection, the objector submitted a chronology from 1969 to 1986 that arguably relates to aspartame, a list of scientists who have conducted studies on the reported adverse effects of aspartame, and a list of publications dealing with aspartame's safety.

The agency has considered this first objection and, as discussed below, has determined that it provides no basis for reconsideration or alteration of the final rules at issue. First, the objector did not identify any data or other information to support its assertion that additional studies of aspartame in humans are necessary to establish the safety of the additive. In fact, there have been extensive clinical studies of aspartame, including tests in children, infants, and obese, diabetic, and normal adults; doses of aspartame in these studies have ranged from very large acute doses to more moderate subchronic (13 to 28 weeks) doses. FDA considered and discussed these human test data in prior proceedings involving aspartame (46 FR 38285 at 38292–38294, July 24, 1981; 49 FR 6672 at 6680, February 22, 1984; 48 FR 31376 at 31381, July 8, 1983). Importantly, these clinical studies are only a portion of the scientific data that support the agency's determination that the additive is safe, which data are discussed in the Commissioner's final decision (46 FR 38285 at 38289–38301, July 24, 1981). Likewise, the objector filed no data or information to support its claims concerning rat metabolism. Finally, the objector provided only anecdotal case reports to support its assertion that aspartame has harmful effects, which, as discussed above, are not an adequate basis for support. Accordingly, FDA is overruling this objection.

B. Change in ADI for Aspartame

A second objection asserted that no safe level of aspartame has been established and that FDA originally set the safe maximum daily intake for aspartame at 20 mg/kg/day and then increased it to 50 mg/kg/day without requiring new testing. The objection further asserts that aspartame should have been examined and tested as a drug instead of a food additive. The objector relies upon the data and information identified in objection 1 above to support this objection.

FDA has considered this second objection and has determined, as set out below, that it provides no basis for reconsideration or alteration of the final rules at issue.

First, no objector provided any data or other information to demonstrate that the current acceptable daily intake (ADI) of 50 mg/kg of body weight/day is inadequate. The objector correctly asserts that the original aspartame ADI was 20 mg/kg of body weight/day. However, additional clinical testing data were provided by the petitioner to support a revision of the ADI to 50 mg/kg of body weight/day. In prior administrative proceedings concerning aspartame, FDA discussed the basis for this revision of the ADI (49 FR 6672 at 6678, February 22, 1984). Second, the objector provided no support for its assertion that aspartame should have been tested as a drug. To the contrary, aspartame meets the definition of a food additive, 21 U.S.C. 321(s), not the definition of a drug, 21 U.S.C. 321(g), in the Federal Food, Drug, and Cosmetic Act and thus, should be tested, evaluated, and regulated as such. Accordingly, because no objector has provided any basis for impeaching the current ADI or for testing and regulating aspartame as a drug, FDA is overruling this second objection.

C. Risks Posed by DKP and Methanol

A third objection expressed a concern about two breakdown products of aspartame: Diketopiperazine (DKP) and methanol. The objection asserted that DKP is a cancer-causing substance that occurs in large amounts if aspartame is stored for an extended period of time, especially at elevated temperatures. The objection also challenges FDA's position that the methanol that results from

aspartame consumption is not harmful because methanol is a component of fruit juices and a few vegetables; the objector claims that this reasoning is faulty because methanol in these natural products is safely bound by pectin and is always accompanied by ethanol, which is claimed to block any damaging effects of methanol. In support of this objection, the objector filed an outline of the toxicity of methanol, including the quantity ingested from the degradation of aspartame and a list of the breakdown products of aspartame.

FDA has considered this third objection and has determined, as set out below, that it does not provide a basis for reconsideration or alteration of the final rules in question.

First, FDA has previously considered the possible effects of DKP from metabolism of aspartame (48 FR 31376 at 31380, July 8, 1983; 49 FR 6672 at 6677, February 22, 1984). FDA agrees that DKP concentration may increase if aspartame is stored under abusive conditions. However, based on well-conducted chronic bioassays in two rodent species, FDA previously concluded that the acceptable daily intake of DKP exceeds any dietary exposure that is likely to result from aspartame consumption (48 FR 52899 at 52901, November 23, 1983). No objector filed any data or information to support its assertion to the contrary. In such circumstances, there is no basis to reevaluate the final rules at issue.

Second, FDA has also previously considered the effect, if any, that methanol has on the safety of aspartame consumption. FDA determined that the amount of methanol due to exposure to aspartame is well below levels that produce the earliest signs of methanol toxicity (49 FR 6672 at 6677, February 22, 1984). Furthermore, the levels of methanol from ingesting aspartame is the same magnitude as that presented by other food sources, such as fruit juices and tomatoes; those levels of methanol are easily eliminated or metabolized by the body. No objector provided any new data or information to contradict FDA's previous evaluation of this issue. Accordingly, FDA is overruling this objection.

D. Absence of Warning Labels on Aspartame

A fourth objection questioned the absence of a label warning pregnant women to avoid products containing aspartame and asserted that aspartame causes fetal damage and mental retardation. This objection also questioned the usefulness of the phenylketonuria labeling for products containing aspartame and appeared to imply that certain carriers of the PKU gene are at risk from consumption of aspartame. No objector provided any specific data or information to support the claim that pregnant women cannot safely consume aspartame or that PKU gene carriers are at risk from consumption of aspartame.

In responding above to the ACSN request for a hearing on these same issues, FDA noted that the agency has addressed both issues in prior administrative proceedings on aspartame and that in the absence of new data or information, no hearing need be held. Likewise, in the absence of new data or information, there is no basis for reconsideration or alteration of the final rules at issue here. Therefore, FDA is overruling this fourth objection.

V. Conclusion

As set out above, FDA concludes that no new issues or reliable evidence have been presented to support the objections to the final rules providing for the use of aspartame in frozen desserts and frozen frostings, toppings, and fillings. Furthermore, when analyzed according to the proper standards, ACSN has not justified a hearing on its objections to the final rules.

VI. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Schiffman et al., New England Journal of Medicine, 317:1181–1185, 1989.

2. Letter dated November 21, 1986, from John M. Taylor to James S. Turner.

Dated: January 24, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92–2235 Filed 1–29–92; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 172

[Docket No. 87F–0277]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in malt beverages of less than 7 percent ethanol by volume and containing fruit juice. This action is in response to a petition filed by The Stroh Brewery Co.

DATES: Effective January 30, 1992; written objections and requests for a hearing by March 2, 1992.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9528.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of October 14, 1987 (52 FR 38144), FDA announced that a food additive petition (FAP 7A4029) had been filed by the Stroh Brewery Co., 100 River Pl., Detroit, MI 48207–4291, proposing that § 172.804 Aspartame (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in malt beverages of less than 7 percent ethanol by volume and containing fruit juice.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended in 21 CFR 172.804(c) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 2, 1992 file with

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the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. Section 172.804 is amended by adding new paragraph (c)(22) to read as follows.

§ 172.804 Aspartame.

* * * * *

(c) * * *

(22) Malt beverages of less than 7 percent ethanol by volume and containing fruit juice.

* * * * *

Dated: January 24, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-2236 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 172

[Docket No. 83F-0262]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener available to consumers in bulk package form. This action is in response to a petition filed by the Searle Research and Development Division of G.D. Searle & Co. (now the NutraSweet Co.).

DATES: Effective January 30, 1992; written objections and requests for a hearing by March 2, 1992.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 8, 1983 (48 FR 40562, FDA announced that a food additive petition (FAP 3A3744) had been filed by the Searle Research and Development Division of G.D. Searle & Co. (now the NutraSweet Co., Box 1111, 4711 Golf Rd., Skokie, IL 60076) proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener available to consumers in bulk package form.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended in § 172.804(c)(1) and (e) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 2, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. Section 172.804 is amended by revising paragraph (c)(1) and by adding paragraph (e)(4) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(1) Dry, free-flowing sugar substitutes for table use (not to include use in cooking) in package units not exceeding the sweetening equivalent of 1 pound of sugar.

* * * * *

(e) * * *

(4) Packages of the dry, free-flowing additive shall prominently display the sweetening equivalence in teaspoons of sugar.

* * * * *

Dated: January 24, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-2237 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 172

[Docket No. 88F-0007]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration IFDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in hot and instant cereals. This action is in response to a petition filed by the NutraSweet Co.

DATES: Effective January 30, 1992; written objections and requests for a hearing by March 2, 1992.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 11, 1988 (53 FR 4075), FDA announced that a food additive petition (FAP 8A4055) had been filed by the NutraSweet Co., 4711 Golf Rd., Skokie, IL 60076, proposing that § 172.804 Aspartame (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in hot and instant cereals.

Aspartame is an approved sweetener for use in cold breakfast cereals under § 172.804(c)(3). The requested amendment will remove the restrictions on temperature and permit the use of aspartame in hot and instant cereals. FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended in § 172.804(c)(3) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 2, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. Section 172.804 is amended by revising paragraph (c)(3) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(3) Breakfast cereals.

* * * * *

Dated: January 24, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-2238 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 172

[Docket No. 89F-0127]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame in refrigerated ready-to-serve puddings and fillings. This action is in response to a petition filed by General Foods USA.

DATES: Effective January 30, 1992; written objections and request for a hearing by March 2, 1992.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9528.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register**

of May 15, 1989 (54 FR 20924), FDA announced that a food additive petition (FAP 9A4143) had been filed by General Foods USA, 250 North St., White Plains, NY 10625, proposing that the food additive regulations be amended to include the use of aspartame in refrigerated ready-to-serve puddings and fillings.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended by revising 21 CFR 172.804(c)(13) to read as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 2, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. Section 172.804 is amended by revising paragraph (c)(13) to read as follows:

§ 172.804 Aspartame.

* * * * * *

(c) * * *

(13) Refrigerated ready-to-serve gelatins, puddings, and fillings.

* * * * * *

Dated: January 24, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-2239 Filed 1-29-92; 8:45 am]

BILLING CODE 4160-01-M

federal register

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January 30, 1992

Part VI

Office of Management and Budget

Notice of Transmittal of Sequestration Preview Report to the President and Congress

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OFFICE OF MANAGEMENT AND BUDGET

January 29, 1992.

Notice of Transmittal of Sequestration Preview Report to the President and Congress

Pursuant to section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Sequestration Preview Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

Darrell A. Johnson,

Assistant Director for Administration.

[FR Doc. 92-2447 Filed 1-29-92; 9:56 am]

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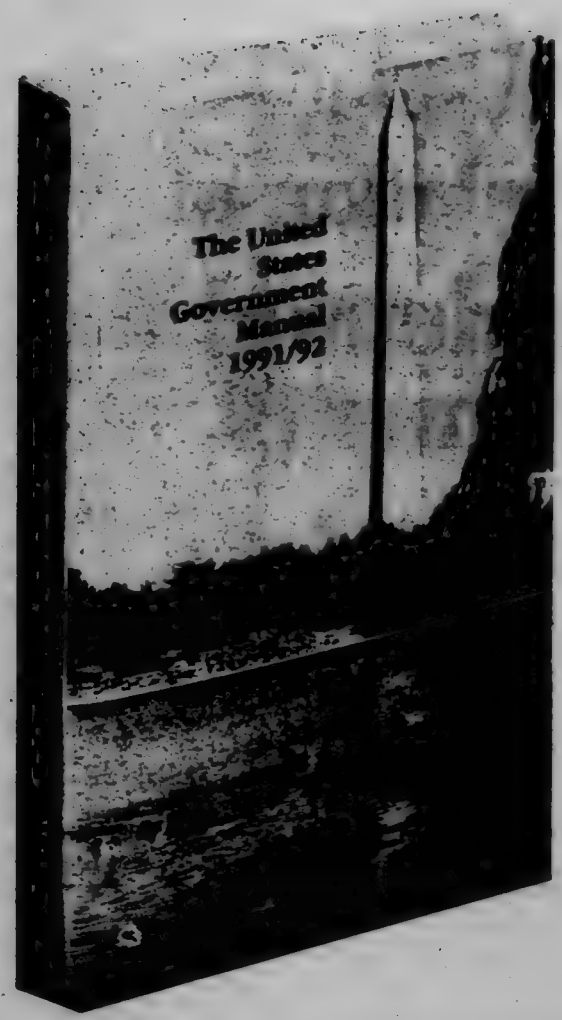

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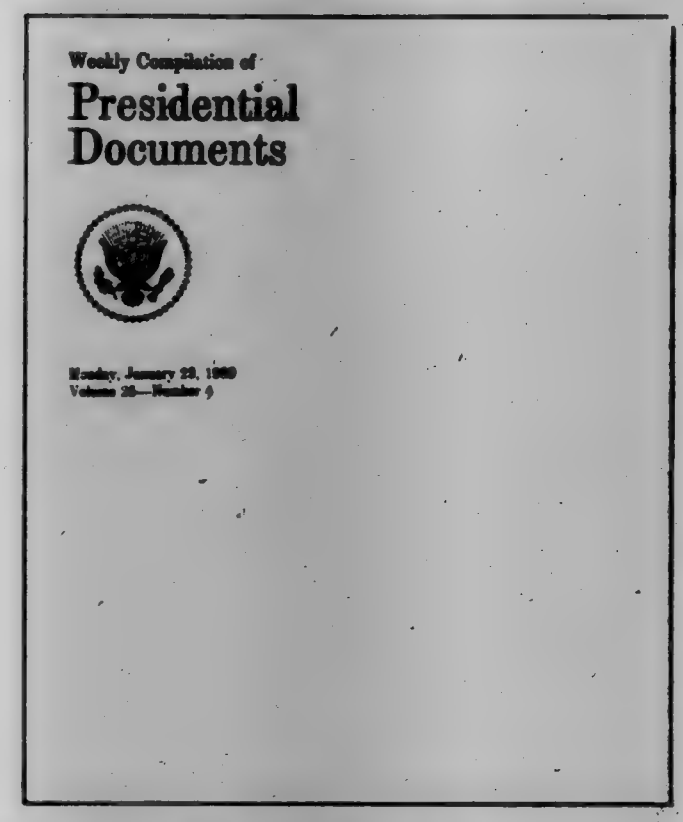

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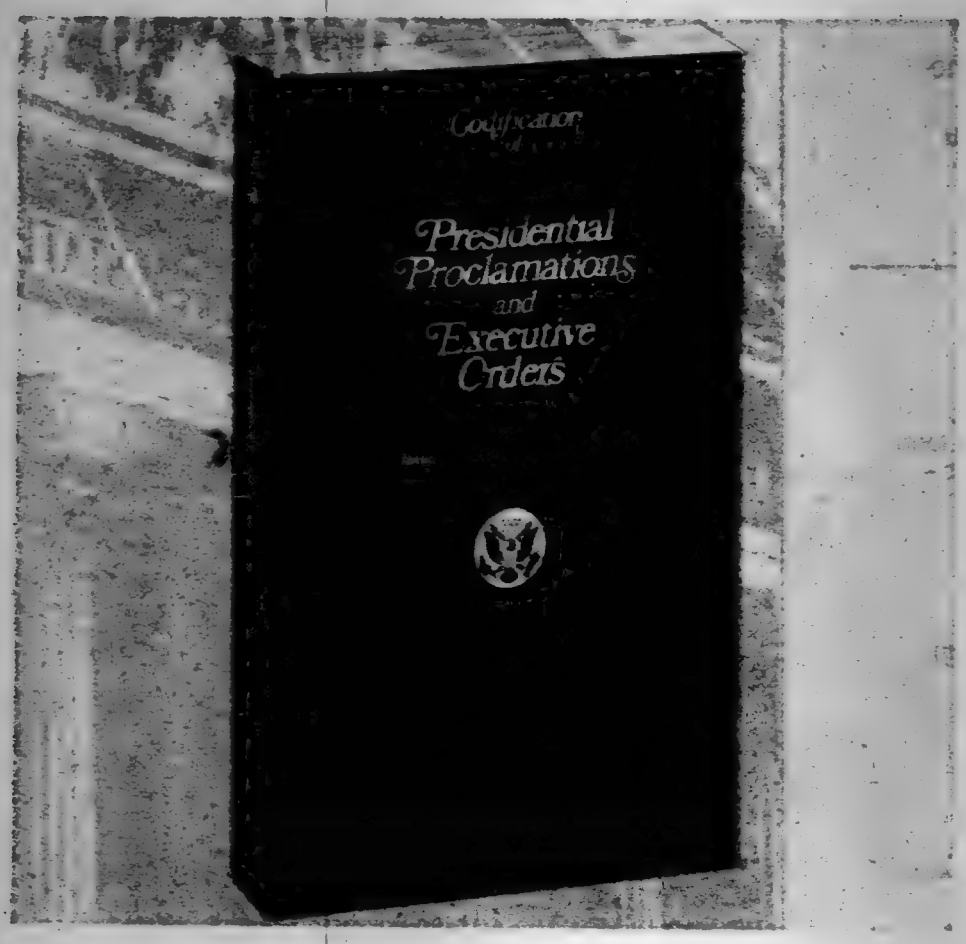

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